

# Title IX Policies and Procedures

Kentucky School for the Blind and Kentucky School for the Deaf



Equal Employment Opportunity

# Nondiscrimination

- As required by Title IX, KSB/KSD does not discriminate on the basis of sex regarding admission to KSB/KSD or in the educational programs or activities operated by KSB/KSD. Inquiries regarding Title IX Sexual Harassment may be referred to the KSB/KSD Title IX Coordinator (TIXC), the Assistant Secretary for Civil Rights, or both.
- The Commissioner/Designee shall adhere to a policy of equal employment opportunity in all personnel matters. No person shall be subjected to discrimination in regard to employment, retention, promotion, demotion, transfer or dismissal because of race, color, religion, sex, sexual orientation, gender identity, genetic information, national or ethnic origin, pregnancy, veteran status, age, disabling condition, or limitations related to pregnancy, childbirth, or related medical conditions.

# Individuals with Disabilities

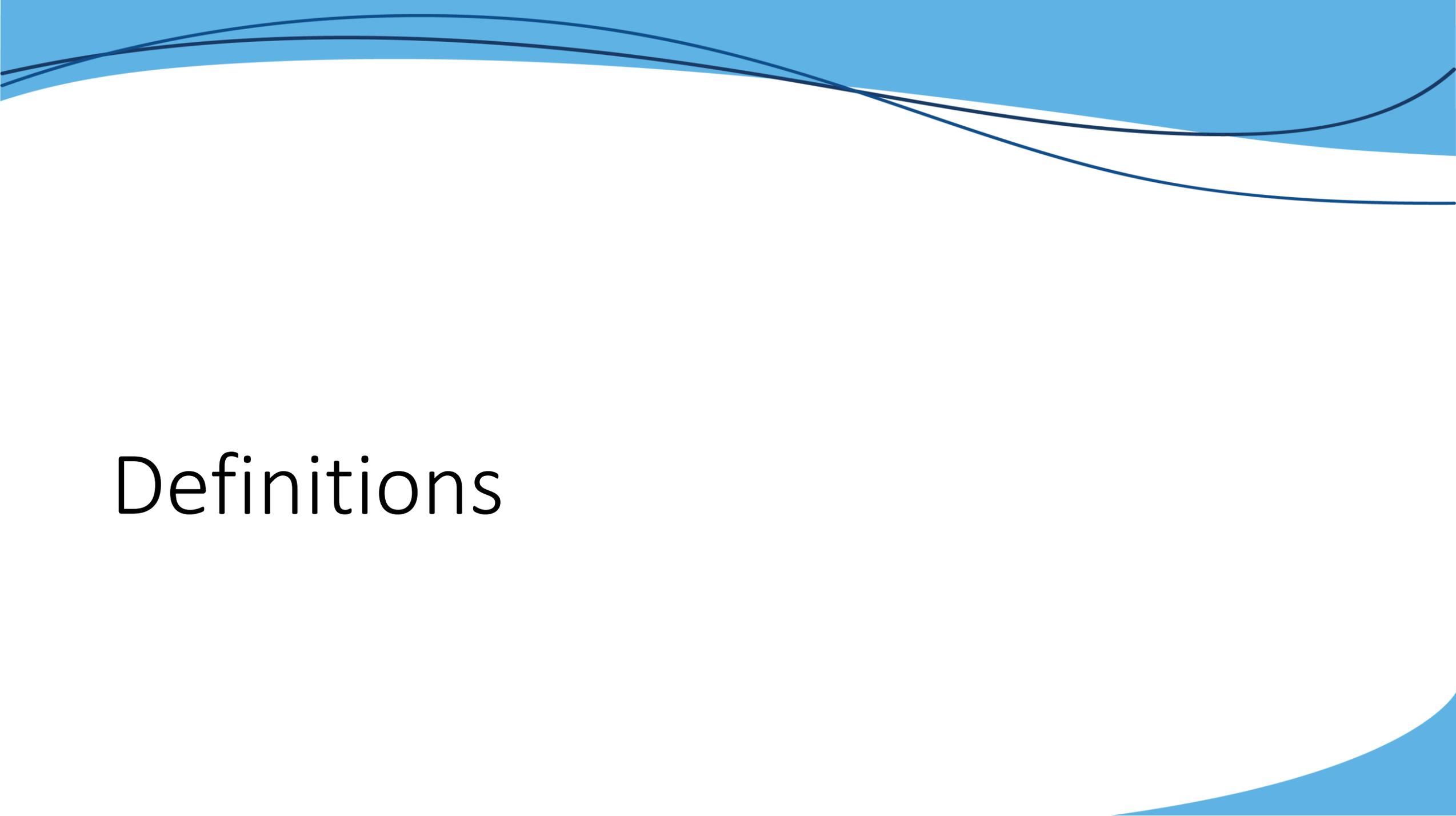
- No qualified person with a disability, as defined by law, shall, on the basis of the disability, be subject to discrimination in employment.
- KSB/KSD employment practices shall be in accordance with the state-approved procedures addressing requirements of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.
- No human immunodeficiency virus (HIV) related test shall be required as a condition of hiring, promotion, or continued employment, unless the absence of HIV infection is a bona fide occupational qualification for the job in question as defined in KRS 207.135.

# Reasonable Accommodations

- Employees who have a long-term or permanent disability may request the KSB/KSD supervisor to provide reasonable accommodations necessary for them to perform the essential duties of the position. Medical information obtained as part of an employee request shall be confidential.
- If assistive technology is deemed necessary for an employee, every effort will be made to obtain that technology in a timely fashion.
- KSB/KSD shall engage in a timely, good faith and interactive process to determine reasonable accommodations for an employee's limitations related to pregnancy, childbirth, or related medical conditions. Reasonable accommodation shall be provided as required by law.



# Title IX Sexual Harassment



# Definitions

# Title IX Sexual Harassment

- “Title IX Sexual Harassment” means conduct on the basis of sex that satisfies one or more of the following:
  - An employee of the KSB/KSD conditioning the provision of an aid, benefit, or service of the KSB/KSD on an individual’s participation in unwelcome sexual conduct (i.e., quid pro quo sexual harassment);
  - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the KSB/KSD education program or activity;
  - “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30). For purposes of this definition, “sexual assault” means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI’s Uniform Crime Reporting system. A sex offense is an act directed against another person, without the consent of the second person, including instances where the second person is incapable of giving consent. The term “dating violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be based on the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. The term “domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction. The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others; or suffer substantial emotional distress.

# Consent

- “Consent” means a voluntary expression of willingness, permission, or agreement to engage in sexual activity throughout a sexual encounter. Consent cannot be granted by an individual: who is less than the statutory age of consent under Kentucky criminal law, has a mental or physical condition or incapacity that prevents the giving of consent; or from whom ostensible “consent” is extracted through threat, coercion, or forcible compulsion.

# Complainant

- “Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. This applies to such individual even if no formal complaint is filed. Only a complainant who is participating or attempting to participate in the KSB/KSD’s educational programs or activities may file a formal complaint.

# Respondent

- “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. This applies to such individual even if no formal complaint is filed. Only a person in his or her individual capacity is subject to a Title IX investigation.

# Title IX Coordinator

- The TIXC is the individual or individuals designated and authorized to coordinate KSB/KSD Title IX programs. The TIXC is expected to engage in activities intended to provide a fair and neutral process for all parties, including implementation of supportive measures and remedies where appropriate. The KSB/KSD may use co-coordinators and/or deputy coordinators.
- The Title IX Coordinator for KSB/KSD is Anitra Williams. She is the Title IX Coordinator for the Kentucky Department of Education (KDE).

# Formal Complaint

- “Formal complaint” means a document filed by a complainant or signed by the TIXC alleging sexual harassment against a respondent and requesting that the KSB/KSD investigate the allegation of sexual harassment. A formal complaint may be filed with the TIXC in person, by mail, or by electronic mail, by using the contact information provided by the KSB/KSD. The complaint document may be physical or electronic, shall contain the complainant’s physical or digital signature, or otherwise indicate that the complainant is the person filing the formal complaint. Where the TIXC signs a formal complaint, the TIXC is not “the complainant” or otherwise considered a party, but is to comply with applicable procedures.

# Supportive Measures

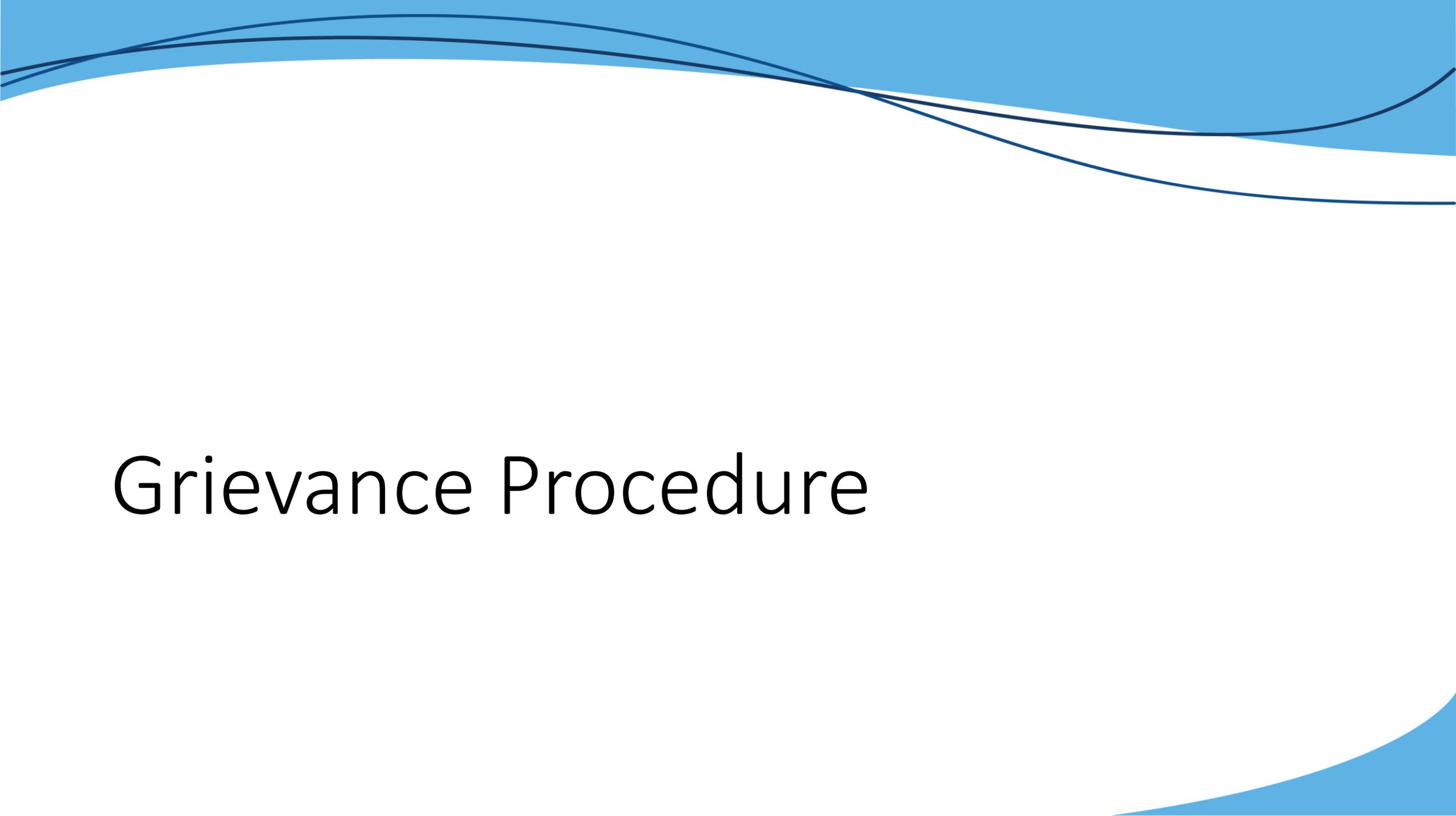
- “Supportive measures” mean nondisciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services mutual restrictions on contact between the parties, unilateral restrictions on contact that are not unreasonably burdensome on a respondent, changes in work or housing locations, authorized leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Supportive measures shall be confidential, to the extent that maintaining such confidentiality would not impair the ability of the KSB/KSD to provide the supportive measures. The TIXC is responsible for coordinating the effective implementation of supportive measures.

# Education Program or Activity

- “Education program or activity” means KSB/KSD operations and includes locations, events, or circumstances over which the KSB/KSD exercises substantial control over both the respondent and the context in which the sexual harassment occurs.

# Preponderance of Evidence

- “Preponderance of evidence” means evidence that is of greater weight or more convincing that an asserted fact or facts occurred than evidence in opposition to such facts. It is evidence which as a whole shows that an assertion to be proven is more likely than not.



# Grievance Procedure

# Reporting

- School employees who have reason to believe that a student has been subjected to Title IX Sexual Harassment are required to promptly make a report to the Title IX Coordinator (TIXC).
- Students, parents/legal guardians or other individuals who believe a student has been sexually harassed may make a report to the TIXC.
- If the individual making the report is the alleged victim (“Complainant” as defined in the Title IX Sexual Harassment regulation), or if the Complainant is identified by the individual making the report, the TIXC will meet with the Complainant to discuss supportive measures that may be appropriate in the particular circumstances and explain the process for filing a formal complaint.
- The KSB/KSD cannot provide an informal resolution process for resolving a report unless a formal complaint is filed.
- The Superintendent/designee shall be informed of all reports and formal complaints of sexual harassment.

# Formal Complaint

- A Complainant and/or their parent/legal guardian may file a formal written complaint requesting investigation of alleged Title IX Sexual Harassment. The written complaint must include basic information concerning the allegation of sexual harassment (i.e., date, time, location, individual(s) who allegedly engaged in sexual harassment, description of allegation).
- Students who need assistance in preparing a formal written complaint, may consult with the TIXC.
- In accordance with the Title IX regulations, the TIXC **must** dismiss a formal complaint under this Title IX procedure if:
  - the conduct alleged in the formal complaint does not constitute sexual harassment as defined under the Title IX regulations and the Title IX Sexual Harassment policy; or
  - the conduct alleged did not occur within the scope of the KSB/KSD's education programs and activities, or
  - did not occur in the United States.

# Formal Complaint Continued

- In accordance with the Title IX regulations, the TIXC **may** dismiss a formal complaint if:
  - a Complainant withdraws the formal complaint, or withdraws particular allegations within the complaint;
  - the Respondent is no longer employed by or enrolled in the KSB/KSD; or
  - there are specific circumstances that prevent the KSB/KSD from gathering evidence sufficient to reach a determination regarding the formal complaint. However, if the conduct potentially violates other policies or laws, it may be addressed through other applicable Board policy/procedure.
- If a formal complaint is dismissed under this Title IX procedure, the TIXC will promptly and simultaneously send written notices to the parties explaining the reasons. The parties have the opportunity to appeal dismissals.

# Formal Complaint Continued

- In certain circumstances, the TIXC may file a formal complaint even when the alleged victim chooses not to. Examples could include instances where the Respondent (person alleged to have engaged in sexual harassment) has been found responsible for previous sexual harassment; a safety threat within the KSB/KSD, or other alleged serious violations where pursuit of a complaint is warranted.
- If the conduct alleged in a formal complaint potentially violates other laws or Board policies, the KSB/KSD may address the conduct under another applicable Board policy/procedure.

# Emergency Removal/Suspension

- The Superintendent may direct the removal of a student from education programs and activities on an emergency basis during the complaint procedure:
  - If there is a determination, following an individualized safety and risk analysis which may be performed as provided in KSB/KSD Policy 09.429 (Threat Assessment), that there is an immediate threat to the physical health or safety of an individual arising from the allegations of sexual harassment. Examples of such circumstances might include, but are not limited to, a continued threat of violence against a Complainant by a Respondent, or a Respondent's threat of self-harm due to the allegations.<sup>1</sup>
  - The Respondent and parent/legal guardian will be provided notice of the emergency removal, and will be provided an opportunity to challenge the decision either before or following the removal (this is an opportunity to be heard, not a hearing) utilizing the procedure applicable to student suspensions per Policy 09.434 Suspension.
  - Any such decision shall be made in compliance with any applicable disability laws, including the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

# Employee Suspension with Pay

- An employee may be suspended with pay during the complaint procedure as provided in Board policies.

# Notice to Parties

- The TIXC will provide to the parties written notice of the formal complaint and allegations of sexual harassment potentially constituting Title IX Sexual Harassment.
- If additional allegations become known at a later time, notice of the additional allegations will be provided to the parties.
- The TIXC will discuss supportive measures with each party and oversee implementation of such measures as appropriate.

# Informal Resolution Process

- After a formal complaint has been filed, and if the TIXC believes the circumstances are appropriate, the TIXC may offer the parties the opportunity to participate in an informal resolution process to resolve the complaint without completing the investigation and determination process. Informal resolutions cannot be used to resolve a formal complaint where a student is the Complainant and the Respondent is an employee.
- If an informal resolution process does not resolve the formal complaint, nothing from the informal resolution process may be considered as evidence in the subsequent investigation or determination. The parties will be advised that engagement in the informal resolution process is grounds for extension of the investigation timeline.

# Investigation

- The complaint will be investigated by a trained internal or external individual designated by the Superintendent, who should consult with KSB/KSD legal counsel concerning the handling and investigation of the complaint.
- The Investigator may consult with the TIXC as agreed during the investigation process.
- If the complaint is against an employee of the KSB/KSD, rights conferred under an applicable collective bargaining agreement shall be applied, to the extent they do not conflict with the Title IX regulatory requirements.
- The investigation shall be concluded within forty (40) calendar days from the date of the TIXC Notice to the Parties Following a Formal Complaint as referenced above, but reasonable extension of time for good cause shall be allowed.

# Determination of Responsibility

- The Superintendent shall assign a trained Decision Maker to arrive at a determination of responsibility. The Decision Maker cannot be the Investigator, Informal Resolution Facilitator, or the TIXC.
- The Decision Maker shall issue a written determination.
- The written determination shall be provided to the parties simultaneously. The determination concerning responsibility becomes final either on the date that the KSB/KSD provides the parties with the written determination of the results of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which the appeal would no longer be considered timely.
- The implementation of measures or sanctions shall be made subject to and in compliance with applicable disability laws included the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.
- The determination shall be issued with thirty (30) calendar days of the Decision Maker's receipt of the Investigator's report and recommendation, but reasonable extension of time for good cause shall be allowed.

# Remedies, Discipline and Other Actions

## Range of Remedies to Allow Equal Access to Complainant

- Remedies are measures used to ensure that the Complainant has equal access to the KSB/KSD's education programs and activities following the Decision Maker's determination. Such remedies may include supportive measures, and may include other appropriate measures, depending upon the determination and the needs of the Complainant. The TIXC is responsible for implementing remedies and providing needed assistance to the Complainant.
- Range of Disciplinary Sanctions (Students)
- The following is a non-exhaustive range of disciplinary sanctions that may be imposed when there is a determination that students are responsible for one or more violations involving sexual harassment: In or out of school suspension; expulsion; assignment to alternative education programs; requirement to engage in education or counseling program; disqualification or modification of privileges to participate in sports or extracurricular programs; unilateral no-contact orders, school assignment alteration, or schedule changes; prohibitions or limitations on presence on school property or at school-related events; and other disciplinary sanctions and interventions set forth in the Code of Acceptable Behavior and Discipline.
- Range of Disciplinary Sanctions (Employees)
- The following is a non-exhaustive range of disciplinary sanctions that may be imposed when there is a determination that employees are responsible for one or more violations involving sexual harassment: Requirement to engage in education or counseling program; unilateral no-contact orders, school assignment alteration; prohibitions or limitations on presence on school property or at school-related events; private reprimand; public reprimand; suspension without pay; termination.

# Appeals

- The Superintendent may serve as the Appellate Decision Maker and shall assign or arrange for the services of a trained Appellate Decision Maker if s/he does not serve in that role. The Appellate Decision Maker cannot be the Initial Decision Maker, Informal Resolution Facilitator, Investigator, or TIXC.
- The Appellate Decision Maker shall have authority to preside over the appeal process in a manner that allows Complainant and Respondent an equal opportunity to participate, including setting reasonable page limits, enforcing timelines, and limiting review on the record to allowable grounds.
- The parties (Complainant and Respondent) have the opportunity to appeal a responsibility determination and dismissals of formal complaints.

# Appeals Continued

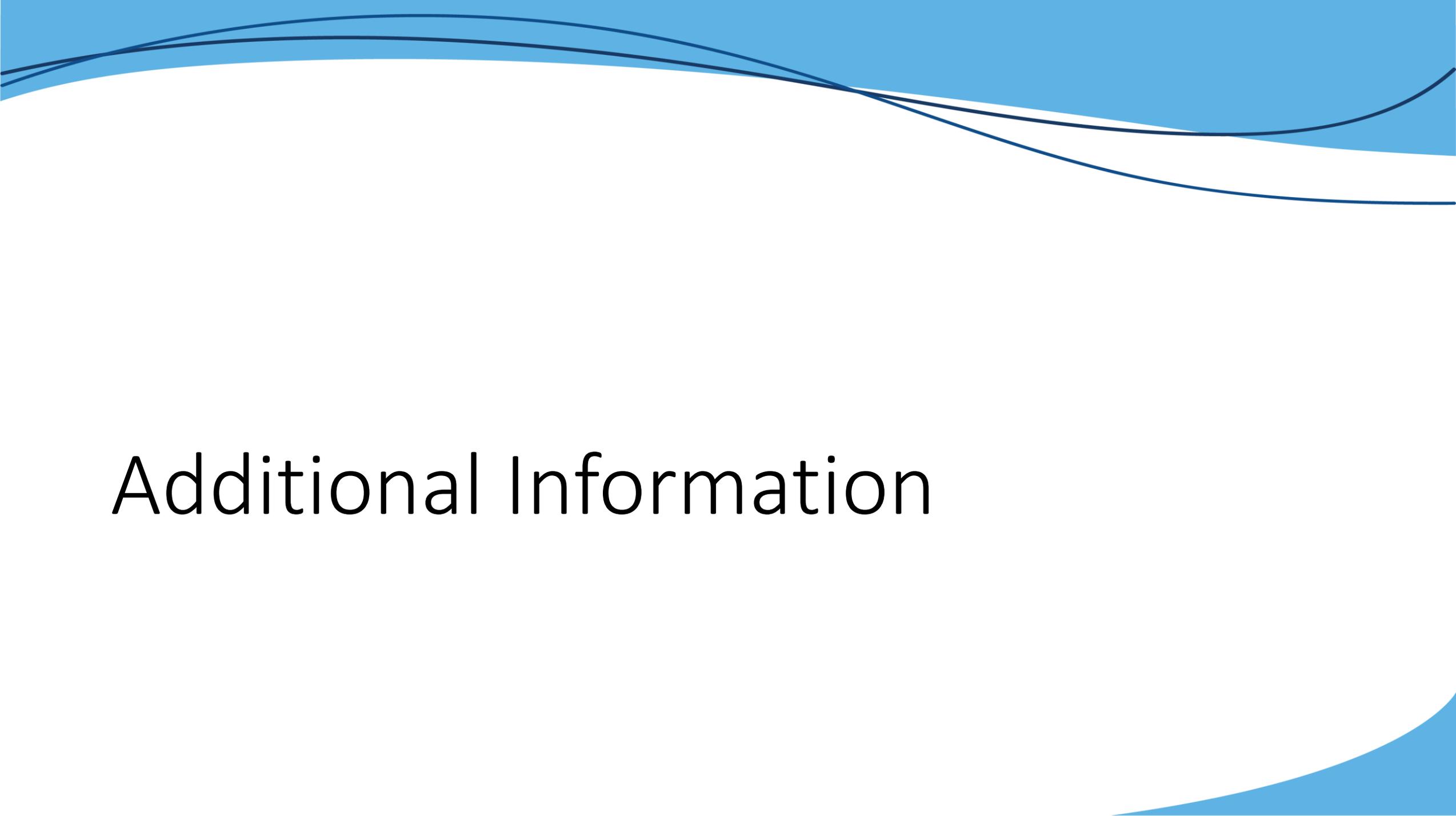
- Appeals will be considered only on the following grounds:
  - A procedural irregularity that affected the outcome;
  - New evidence that was not reasonably available as of the date of the determination regarding responsibility or dismissal of the formal complaint, that could affect the outcome;
  - The TIXC, Investigator, or Decision Maker had a conflict of interest or bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent that affected the outcome.

# Appeal Steps

- An appeal must be filed in writing within five (5) calendar days of the receipt of the determination decision. Appeals after that deadline will not be considered. The written appeal must state the grounds and arguments for reversal or modification of the determination.
- Appeals must be filed with the Superintendent, who will submit the appeal to the Appellate Decision Maker or engage in further appellate steps if the Superintendent is the Appellate Decision Maker. Parties initiating an appeal or seeking reversal or modification of a responsibility determination must explain the impact of any asserted error on the outcome and, in the case of new evidence, are to explain why such evidence was not available, summarize the evidence and explain how the party contends such evidence would have affected the outcome.
- The Appellate Decision Maker shall notify the other party in writing of the appeal and include copies of the of the document setting forth the grounds and arguments in support the appeal. The other party shall have the option to file with the Appellate Decision Maker written arguments in response to the opposing party's appeal within five (5) calendar days of receipt of the appeal document. An untimely response will not be considered.

# Appeal Steps Continued

- The Appellate Decision Maker shall conduct an impartial review of the appeal including consideration of arguments of the parties and the written record and may consult with KSB/KSD legal counsel in the decision-making process.
- The Appellate Decision Maker shall issue a written decision describing the result of the appeal and rationale for the result and provide notice of the written decision simultaneously to the parties. The Decision may: affirm the determination, reverse the determination, or modify the determination in whole or in part.
- The Title IX grievance determination of responsibility is final when there is no timely appeal or on the date when the Appellate Decision Maker sends his or her decision to the parties. A determination that conduct is not Title IX Sexual Harassment does not prevent the imposition of sanctions consistent with other law or policy where the conduct is determined to be in violation of such other law or policy.



# Additional Information

# Confidentiality

- With respect to its administration of Title IX Sexual Harassment policies and corresponding procedures, the KSB/KSD must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted under FERPA<sup>5</sup>, required by law, or to carry out Title IX purposes, including the conduct of any investigation, hearing or Title IX judicial proceedings.
- Investigative evidence directly related to the allegations of a formal complaint gathered by the KSB/KSD is subject to inspection and review by the parties but is not to be disseminated to the public. The United States Department of Education rule commentary provides that under the applicable FERPA definition of “education records” a parent of a complainant or respondent or (eligible student) has a right to inspect and review any witness statement that is directly related to the student, even if that statement contains information that is also directly related to another student, if the information cannot be segregated or redacted without destroying its meaning.

# Employees Shall Report

- Employees who believe or have been made aware that they or any other employee, student, or visitor has been subject to Title IX Sexual Harassment shall report it to the TIXC. Failure to make such a report shall be grounds for discipline up to and including termination. If the knowledge of the reporting party gives rise to reasonable cause to believe that the reported conduct constitutes child abuse Policy 09.227 or a reportable criminal offense Policy 09.221, notification of state officials shall be made as required by law.

# False Reports Prohibited

- Employees or students who intentionally make false reports related to the KSB/KSD's administration of this policy and the corresponding procedures, are subject to disciplinary sanctions under applicable KSB/KSD policy, law, or the Code of Acceptable Behavior and Discipline.

# Retaliation Prohibited

- No District or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any Title IX investigation, proceeding, or hearing.

# Prohibition

- Title IX Sexual Harassment in educational programs or activities of the KSB/KSD is prohibited.