Sexual Harassment of Students Prohibited

This procedure is intended to set forth the requirements of Policy 3205, including the process for a prompt, thorough, and equitable investigation of allegations of sexual harassment and the need to take appropriate steps to resolve such situations. If sexual harassment is found to have created a hostile environment, staff must take immediate action to eliminate the harassment, prevent its reoccurrence, and address its effects.

This procedure applies to sexual harassment (including sexual violence) targeted at students carried out by other students, employees, or third parties involved in ESD 123 programs/activities. Because students can experience the continuing effects of off-campus harassment in the educational setting, ESD 123 will consider the effects of off-campus conduct when evaluating whether there is a hostile environment on campus. ESD 123 has jurisdiction over these complaints pursuant to Title IX of the Education Amendments of 1972, Chapter 28A.640, RCW, and Chapter 392-190 WAC.

Title IX Coordinator, Investigator, and Decision-maker

ESD 123 will designate and authorize one employee to act as "Title IX Coordinator" to coordinate ESD 123's state and federal sex discrimination and sexual harassment regulation compliance efforts. The decision-maker who reaches the final determination of responsibility for alleged Title IX sexual harassment will be the Superintendent or designee. The decision-maker cannot be the same person who serves as the Title IX Coordinator or the investigator of the Title IX complaint.

The Title IX coordinator's name, title, office address, telephone number, and email address must be available on the ESD 123 website; in handbooks/catalogs that are made available to staff, students, and parents; and in ESD 123's nondiscrimination statement.

Any individual designated as Title IX Coordinator, an investigator, or decision-maker, and any person who facilitates an informal resolution process must not have a conflict of interest or bias for or against the individual(s) who made the complaint ("complainant(s)") or the individual(s) reported to be the perpetrator of the conduct that could constitute sexual harassment ("respondent(s)") in general or individually, and must receive training on the following:

1. The definition of sexual harassment under Title IX and state law;
2. The scope of ESD 123's education program or activity;
3. How to conduct an investigation and grievance process and informal resolution process;
4. How to serve impartially;
5. Their responsibilities in chapter WAC 392-190; and
6. How to raise awareness of and eliminate bias based on sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal.

ESD 123 investigators must also receive training on issues of relevance to creating an investigative report that fairly summarizes relevant evidence.

ESD 123 decision-makers must also receive training on any technology to be used during hearings if ESD 123 provides for a hearing and on issues of relevance of questions and evidence, including the

requirement that questions and evidence about a complainant's sexual predisposition or prior sexual conduct are not relevant unless 1) such questions and evidence are offered to prove that someone other than the respondent committed the alleged conduct or 2) questions and evidence concerning specific incidents of the complainant's prior sexual behavior with respect to the respondent are offered to prove consent.

Any training materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process must not rely on sex stereotypes and must promote impartial investigations and adjudications of complaints. ESD 123 shall maintain for a period of seven years records of any informal resolution and the result; and all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process and make such materials available on ESD 123's website.

Notice of Sexual Harassment Policy and Procedure

1. Information about ESD 123's sexual harassment policy and complaint procedure will be easily understandable, conspicuously posted throughout each program facility, and be reproduced in each student, staff, volunteer, and parent handbook. This notice will be provided in a language that each parent and guardian can understand.

2. In addition to the posting and reproduction of this procedure and Policy 3205, ESD 123 will provide annual notice to employees that complaints pursuant to this procedure may be filed at the ESD 123 administrative office (1601 R Avenue; Anacortes, WA 98221).

Responding to Notice of Sexual Harassment

ESD 123 is on notice and required to take action when any employee knows, or in the exercise of reasonable care should know, about possible sexual harassment. This includes informal and formal reports made to any staff member.

Upon notice of possible sexual harassment, staff will always notify the Title IX Coordinator. In addition, in the event of an alleged sexual assault, the program administrator will immediately inform law enforcement and notify the targeted student(s) and their parent/guardian of their right to file a criminal complaint and a sexual harassment complaint simultaneously.

Once ESD 123 is on notice of possible sexual harassment, the Title IX Coordinator will promptly contact the "complainant" to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. Additionally, staff will inform an appropriate supervisor or professional staff member when they receive complaints of sexual harassment, especially when the complaint is beyond their training to resolve or alleges serious misconduct.

Supportive measures must be offered to the complainant, before or after the filing of a formal complaint, or where no formal complaint has been filed. Supportive measures may also be provided to the respondent. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent. Supportive measures should be designed to restore or preserve access to ESD 123's education program or activity without unreasonably burdening the other party.

Supportive measures may include:

1. An opportunity for the complainant to explain to the alleged harasser that his or her conduct is unwelcomed, offensive, or inappropriate, either in writing or face-to-face;

2. A statement from a staff member to the alleged harasser that the alleged conduct is not appropriate and could lead to discipline if proven or repeated;
3. A general public statement from a program administrator reviewing the ESD 123 sexual harassment policy without identifying the complainant;
4. Developing a safety plan;
5. Modifications of work or class schedules;
6. Mutual restrictions on contact between the parties;
7. Increased security and monitoring of certain areas of the campus or program facility, or
8. Providing staff and/or student training.

In response to a notice of sexual harassment, ESD 123 will take prompt and appropriate action to investigate and take prompt and effective steps reasonably calculated to end harassment, eliminate the hostile environment, prevent its recurrence, and as appropriate, remedy its effects.

ESD 123 will inform the complainant and his/her parent/guardian how to report any subsequent problems. Additionally, ESD 123 will conduct follow-up inquiries to see if there have been any new incidents or instances of retaliation and to promptly respond and appropriately address continuing or new problems. Follow-up inquiries will follow a timeline agreed to by ESD 123 and the complainant.

A complainant may file a formal complaint at any time while receiving supportive measures. A complainant, their parent or guardian, or the Title IX Coordinator may file a formal complaint because, for example, they feel the complaint needs to be more thoroughly investigated or discipline may be warranted for the individual alleged to have engaged in sexually harassing conduct.

Confidentiality

1. ESD 123 will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of ESD 123 to provide the supportive measures.
2. If a complainant requests that his/her name not be revealed to the alleged perpetrator or asks that ESD 123 not investigate or seek action against the alleged perpetrator, the request will be forwarded to the Compliance Officer for evaluation.
3. The Compliance Officer should inform the complainant that honoring the request may limit his/her ability to respond fully to the incident, including pursuing disciplinary action against the alleged perpetrator.
4. If the complainant still requests that his/her name not be disclosed to the alleged perpetrator or that ESD 123 not investigate or seek action against the alleged perpetrator, ESD 123 will need to determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, staff, and other third parties engaging in ESD 123 activities, including the person who reported the sexual harassment. Although a complainant's request to have his/her name withheld may limit ESD 123's ability to respond fully to an individual allegation of sexual harassment, ESD 123 will use other appropriate means available to address the sexual harassment.

Retaliation

Title IX and state law prohibit retaliation against any individual who files a complaint under these laws or participates in a complaint investigation. When an informal or formal complaint of sexual harassment is made, ESD 123 will take steps to stop further harassment and prevent any retaliation against the person who made the complaint, was the subject of the harassment, or against those who provided information as a witness. ESD 123 will investigate all allegations of retaliation and take action against those found to have retaliated.

Formal Complaint Process

Level One – Complaint to ESD 123

Anyone may initiate a formal complaint of sexual harassment, even if the informal complaint process is being utilized.

1. All formal complaints will be in writing and will set forth the specific acts, conditions, or circumstances alleged to have occurred and to constitute sexual harassment. The Compliance Officer may draft the complaint based on the report of the complainant for the complainant to review and approve. The Compliance Officer may also conclude that ESD 123 needs to conduct an investigation based on information in his/her possession, regardless of the complainant's interest in filing a formal complaint.
2. The time period for filing a complaint is one (1) year from the date of the alleged occurrence that is the subject matter of the complaint. However, a complaint filing deadline may not be imposed if the complainant was prevented from filing due to 1) specific misrepresentations by ESD 123 that it had resolved the problem forming the basis of the complaint; or, 2) withholding of information that ESD 123 was required to provide under WAC 392-190-065 or WAC 392-190-005.
3. Complaints may be submitted by mail, fax, email, or hand-delivery to the ESD 123 Compliance Officer. Any ESD 123 employee who receives a complaint that meets these criteria will promptly notify the Compliance Officer.

Determining Whether to Incorporate Additional Title IX Complaint Procedures

The Title IX Coordinator will assess whether a formal complaint of sexual harassment meets the criteria for a Title IX complaint. If so, ESD 123 will implement investigation and response procedures under state law, as well as the following additional procedures as required by Title IX regulations.

Under Title IX, the term "sexual harassment" means:

1. an employee of ESD 123 conditioning the provision of aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
2. conduct that creates a "hostile environment," meaning 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 education program or activity; or
3. "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).

ESD 123 will implement additional Title IX procedures in response to a sexual harassment complaint when the alleged conduct constitutes sexual harassment as defined by Title IX regulations, and:

1. The written complaint is filed by the complainant of the alleged sexual harassment, by the complainant's legal guardian, or by the Title IX Coordinator;
2. The complaint requests that ESD 123 investigate the allegation(s) of sexual harassment, as defined under Title IX regulations;
3. The complaint is against a named respondent who, at the time of the alleged harassment, was under the control of ESD 123 (such as a student, employee, or volunteer);
4. The alleged sexually harassing conduct occurred in the United States; and
5. The complainant is participating in or attempting to participate in ESD 123's educational program or activity at the time.

If the formal complaint is determined to meet the criteria for a Title IX complaint, ESD 123 will conduct the investigation implementing the additional Title IX procedures. Skip to Standard Complaint Process with Additional Title IX Requirements.

If the formal complaint is determined not to meet the criteria for a Title IX complaint, ESD 123 will conduct the investigation without implementing the additional Title IX procedures. Continue to Standard Complaint Process.

Standard Complaint Process

Acknowledging a Complaint – Standard Complaint Process

1. Upon receipt of a complaint, the Coordinator will provide the complainant with a copy of this procedure in a language the complainant can understand.

Investigating a Formal Complaint – Standard Complaint Process

1. Investigations will be carried out in a manner that is prompt, thorough, reliable, and impartial. During the investigation process, the complainant and respondent(s), if the complainant has identified an accused harasser(s), will have an equal opportunity to present witnesses and relevant evidence. Complainants, respondents, and witnesses may have a trusted adult with them during any ESD 123-initiated investigatory activities. ESD 123 and the complainant may also agree to resolve the complaint in lieu of an investigation.
2. When the investigation is completed, the investigator will compile a full written report of the complaint and the results of the investigation.

Mediation – Standard Complaint Process

At any time during the complaint procedure set forth in WAC 392-190-065 through 392-190-075, the ESD 123 may, at its own expense, offer mediation. The complainant and ESD 123 may agree to extend the complaint process deadlines in order to pursue mediation.

The purpose of mediation is to provide both the complainant and ESD 123 an opportunity to resolve disputes and reach a mutually acceptable agreement through the use of an impartial mediator. Mediation must be voluntary and requires the mutual agreement of both parties. It may be terminated by either party at any time during the mediation process. It may not be used to deny or delay a complainant's right to utilize the complaint procedures.

Mediation must be conducted by a qualified and impartial mediator who may not: 1) Be an employee of any school district, public charter school, or other public or private agency that is providing education-related services to a student who is the subject of the complaint being mediated; or 2) Have a

personal or professional conflict of interest. A mediator is not considered an employee of ESD 123 charter school or other public or private agency solely because he or she serves as a mediator.

If the parties reach an agreement through mediation, they may execute a legally binding agreement that sets forth the resolution and states that all discussions that occurred during the course of mediation will remain confidential and may not be used as evidence in any subsequent complaint, due process hearing, or civil proceeding. The agreement must be signed by the complainant and an ESD 123 representative who has the authority to bind ESD 123.

Superintendent's Response to a Formal Complaint – Standard Complaint Process

1. The Superintendent or his/her designee will respond in writing to the complainant and the respondent within thirty (30) calendar days of receipt of the complaint, unless otherwise agreed to by the complainant or if exceptional circumstances related to the complaint require an extension of the time limit. In the event, an extension is needed, ESD 123 will notify the parties in writing of the reason for the extension and the anticipated response date. At the time ESD 123 responds to the complainant, ESD 123 must send a copy of the response to the Office of the Superintendent of Public Instruction.
2. The response of the Superintendent or designee will include 1) a summary of the results of the investigation; 2) a statement as to whether a preponderance of the evidence establishes that the complainant was sexually harassed; 3) if sexual harassment is found to have occurred, the corrective measures ESD 123 deems necessary, including assurance that ESD 123 will take steps to prevent recurrence and remedy its effects on the complainant and others, if appropriate; 4) notice of the complainant's right to appeal to ESD 123 board and the necessary filing information; and 5) any corrective measures ESD 123 will take, remedies for the complainant (e.g., sources of counseling, advocacy, and academic support), and notice of potential sanctions for the perpetrator(s) (e.g., discipline).
3. The Superintendent's or designee's response will be provided in a language the complainant can understand and may require language assistance for complainants with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964. If the complaint alleges discriminatory harassment by a named respondent or respondent(s), the coordinator will provide the respondent(s) with notice of the outcome of the investigation and notice of their right to appeal any discipline or corrective action imposed by ESD 123.
4. Any corrective measures deemed necessary will be instituted as quickly as possible, but in no event more than thirty (30) days after the Superintendent's mailing of a written response, unless the accused is appealing the imposition of discipline and ESD 123 is barred by due process considerations or a lawful order from imposing the discipline until the appeal process is concluded. Staff may also pursue complaints through the anti-discrimination policy.
5. ESD 123 will inform the complainant and their parent/guardian how to report any subsequent problems. Additionally, ESD 123 will conduct follow-up inquiries to see if there have been any new incidents or instances of retaliation and to promptly respond and appropriately address continuing or new problems. Follow-up inquiries will follow a timeline agreed to by ESD 123 and the complainant.

Standard Complaint Process with Additional Title IX Requirements

The following sections outline the process ESD 123 will take to respond to complaints of sexual harassment under state law and Title IX.

Acknowledging a Formal Title IX Complaint

The Title IX Coordinator will receive and investigate all formal, written complaints of sexual harassment or information in the Coordinator's possession that they believe requires further investigation. The Coordinator will delegate his or her authority to participate in this process if such action is necessary to avoid any potential conflicts of interest. Upon receipt of a complaint, the Coordinator will offer supportive measures to both parties.

ESD 123 will acknowledge receipt of the formal complaint by providing the following written notice to the respondent(s) and complainant:

1. A copy of ESD 123's discrimination complaint procedure in a language the parties can understand.
2. Notice of the allegations of sexual harassment with sufficient time for the parties to prepare a response before any initial interview and with sufficient detail. Such sufficient detail includes the identities of the parties involved in the incident if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident if known.
3. Notice that the parties may have an advisor of their choice who may be an attorney or non-attorney, and who may inspect and review evidence of the alleged sexual harassment.
4. Notice that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility for the alleged sexual harassment is made at the conclusion of the grievance process.
5. Notice of any provision in student conduct policies and procedures that prohibits false statements or submitting false information.

Investigation of a Title IX Formal Complaint

ESD 123 must investigate allegations contained in a formal complaint. If the conduct alleged would not constitute sexual harassment under Title IX regulations even if proved, did not occur in ESD 123's education program or activity, or did not occur against a person in the United States, then ESD 123 must dismiss the formal complaint under Title IX. Such dismissal does not preclude action under another provision of ESD 123 policy or procedure or under sexual harassment investigation procedures as required by state law (see Standard Complaint Process).

ESD 123 adopts preponderance of the evidence as to the standard of proof it will use in reaching decisions regarding complaints.

ESD 123's investigation of a Title IX complaint must:

1. Include a prompt and thorough investigation into the allegations in the complaint.
2. Ensure that ESD 123 bears the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility for the alleged sexual harassment. ESD 123 may not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting or assisting in their professional capacity and made and maintained in connection with the provision of treatment to the party unless ESD 123 obtains the party's voluntary, written consent to do so.
3. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

4. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
5. Provide the parties with the same opportunities to have others present during any grievance proceeding; including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be an attorney or non-attorney. ESD 123 will apply any restrictions regarding the extent to which an advisor may participate equally to both parties;
6. Provide to a party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all hearings, interviews, or other meetings, with sufficient time for the parties to prepare to participate;
7. Prior to the completion of an investigative report, provide an equal opportunity for the parties to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation. This includes evidence that ESD 123 does not intend to rely on in reaching a determination of responsibility for the alleged sexual harassment, regardless of the source of the evidence. The parties will have at least ten (10) days to submit a written response for the investigator to consider prior to the completion of the investigative report.
8. At least ten (10) days prior to a determination regarding responsibility, create an investigative report that fairly summarizes relevant evidence and send the investigative report in an electronic or hard copy format to each party and each party's advisor for their review and written response.
9. After transmitting the investigative report to the parties, but before reaching a final determination regarding responsibility, the decision-maker must give each party the opportunity to submit written, relevant questions that a party wants to ask of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant unless they are offered to prove that someone other than the respondent committed the conduct alleged by the complainant or unless they concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker must explain to the party proposing the questions any decision to exclude a question as not relevant.

ESD 123's Title IX investigative and grievance process is not required to include investigative hearings.

Discipline and Emergency Removals for Alleged Sexual Harassment under Title IX

A respondent who is accused of sexual harassment under Title IX is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. ESD 123 may not impose any disciplinary sanctions or other actions that are not supportive measures, against the respondent until ESD 123 has determined the respondent was responsible for the sexual harassment at the conclusion of the grievance process.

These additional Title IX sexual harassment procedures do not preclude ESD 123 from removing a student from a program on an emergency basis consistent with Policy and Procedure 3241 – Student Discipline and the associated student discipline regulations for emergency expulsion.

Title IX Informal Resolution Process

At any time prior to a determination in a formal Title IX complaint, ESD 123 may permit a complainant to waive the formal complaint grievance process in favor of an informal resolution process not involving a full investigation and adjudication, provided that ESD 123 obtains the parties' voluntary, written consent, ESD 123 does not offer an informal resolution of sexual harassment allegations against a respondent who is an employee of ESD 123; ESD 123 provides reasonably prompt time frames for the informal resolution process; and ESD 123 provides the parties with a written notice disclosing the allegations, the requirements for the informal resolution process, and the circumstances in which the parties would be precluded from continuing with a formal resolution process for the same allegations.

A party has the right to withdraw from the informal resolution process and resume the formal Title IX grievance process at any time prior to agreeing to a resolution. ESD 123 may not require the waiver of the right to an investigation and adjudication of formal complaints of sexual harassment under Title IX as a condition of enrollment, employment, or enjoyment of any other right, nor may ESD 123 require the parties to participate in an informal resolution process. ESD 123 will not offer an informal resolution process unless a formal complaint is filed.

Superintendent's Response to a Formal Title IX Complaint

At the conclusion of the investigation, the decision-maker (Superintendent or designee) must issue a written determination of responsibility regarding the alleged sexual harassment within thirty (30) calendar days of receipt of the complaint, unless otherwise agreed to by the complainant or if exceptional circumstances related to the complaint require an extension of the time limit. In the event, an extension is needed, ESD 123 will notify the parties in writing of the reason for the extension and the anticipated response date.

The Superintendent's or designee's written determination must be issued to the parties simultaneously and must include the following:

1. Identification of the allegations potentially constituting sexual harassment under Title IX regulations;
2. A description of the procedural steps taken from the time of ESD 123's receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings supporting the determination;
4. A summary of the results of the investigation;
5. Conclusions regarding the application of ESD 123's code of conduct policies to the facts;
6. A statement as to whether a preponderance of the evidence establishes that the complainant was sexually harassed;
7. A statement of, and rationale for, the result of each allegation, including a determination regarding responsibility, any disciplinary or other sanctions imposed on the respondent, and

whether remedies designed to restore or preserve equal access to the education program or activity will be provided to the complainant; and

8. If sexual harassment is found to have occurred, the corrective measures ESD 123 deems necessary, including assurance that ESD 123 will take steps to prevent recurrence and remedy its effects on the complainant and others, if appropriate; and
9. Notice of the parties' right to appeal to the ESD 123 board and the necessary filing information.

The Superintendent's or designee's response will be provided in a language the complainant can understand and may require language assistance for complainants with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964.

At the time ESD 123 responds to the parties, ESD 123 must send a copy of the response to the Office of the Superintendent of Public Instruction.

Any corrective measures deemed necessary will be instituted as quickly as possible, but in no event more than thirty (30) days after the Superintendent's mailing of a written response, unless the accused is appealing the imposition of discipline and ESD 123 is barred by due process considerations or a lawful order from imposing the discipline until the appeal process is concluded. Staff may also pursue complaints through the appropriate collective bargaining agreement process or anti-discrimination policy.

Level Two – Appeal to the Board of Directors

Notice of Appeal and Hearing

1. If the complainant or respondent(s) disagree with the Superintendent's or designee's written decision, the disagreeing party may appeal the decision to the ESD 123 Board of Directors, by filing a written notice of appeal with the secretary of the board within ten (10) calendar days following the date upon which the complainant received the response.
2. If the complaint involves a named respondent, ESD 123 will implement appeal procedures equally for both parties and provide written notice to the other party when an appeal is filed.
3. ESD 123 will ensure that the decision-maker for the appeal is not the same decision-maker who reached the determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator;
4. ESD 123 will ensure that the decision-maker for the appeal has received the training required for decision-makers as required by this procedure.
5. The board will schedule a hearing to commence by the twentieth (20th) calendar day following the filing of the written notice of appeal unless otherwise agreed to by the complainant and the Superintendent or for good cause.
6. Both parties will be allowed a reasonable, equal opportunity to submit a written statement in support of or challenging the outcome of the initial determination.

Board Decision

1. Unless otherwise agreed to by the complainant, the board will render a written decision within thirty (30) calendar days following the filing of the notice of appeal and provide the complainant with a copy of the decision.
2. The written decision will describe the result of the appeal and the rationale for the result.
3. The decision will include notice of the complainant's right to appeal to the Superintendent of Public Instruction and will identify where and to whom the appeal must be filed. ESD 123 will send a copy of the appeal decision to the Office of the Superintendent of Public Instruction.
4. The decision will be provided in a language that the complainant can understand, which may require language assistance for complainants with limited English proficiency in accordance with Title VI of the Civil Rights Act.

Level Three – Complaint to the Superintendent of Public Instruction

Filing a Complaint

1. If a complainant disagrees with the decision of the Board of Directors, or if ESD 123 fails to comply with this procedure, the complainant may file a complaint with the Office of the Superintendent of Public Instruction (OSPI).
2. A complaint must be received by OSPI on or before the twentieth (20) calendar day following the date upon which the complainant received written notice of the Board's decision unless OSPI grants an extension for good cause. Complaints may be submitted by mail, fax, electronic mail, or hand-delivery.
3. A complaint must be in writing and include: 1) a description of the specific acts, conditions, or circumstances alleged to violate applicable anti-sexual harassment laws; 2) the name and contact information, including address, of the complainant; 3) the name and address of ESD 123 subject to the complaint; 4) a copy of ESD 123's complaint and appeal decision if any; and, 5) a proposed resolution of the complaint or relief requested. If the allegations regard a specific student, the complaint must also include the name and address of the student, or in the case of a homeless child or youth, contact information.

The Investigation, Determination, and Corrective Action

1. Upon receipt of a complaint, OSPI may initiate an investigation, which may include conducting an independent on-site review. OSPI may also investigate additional issues related to the complaint that were not included in the initial complaint or appeal to the Superintendent or board.
2. Following the investigation, OSPI will make an independent determination as to whether ESD 123 has failed to comply with RCW 28A.642.010 or Chapter 392-190 WAC and will issue a written decision to the complainant and ESD 123 that addresses each allegation in the complaint and any other noncompliance issues it has identified. The written decision will

include corrective actions deemed necessary to correct noncompliance and documentation ESD 123 must provide to demonstrate that corrective action has been completed.

3. All corrective actions must be completed within the timelines established by OSPI in the written decision unless OSPI grants an extension. If timely compliance is not achieved, OSPI may take action, including but not limited to, referring ESD 123 to appropriate state or federal agencies empowered to order compliance.

A complaint may be resolved at any time when, before the completion of the investigation, ESD 123 voluntarily agrees to resolve the complaint. OSPI may provide technical assistance and dispute resolution methods to resolve a complaint.

Level Four – Administrative Hearing, State Requirements

If a complainant or ESD 123 desires to appeal the written decision of OSPI, a written notice of appeal may be filed with OSPI within thirty (30) calendar days following the date of receipt of that office's written decision. OSPI will conduct a formal administrative hearing in conformance with the Administrative Procedures Act, Chapter 34.05 RCW.

Other Complaint Options

Office for Civil Rights (OCR), U.S. Department of Education

OCR enforces several federal civil rights laws, which prohibit discrimination in public schools on the basis of race, color, national origin, sex, disability, and age. File complaints with OCR within 180 calendar days of the date of the alleged discrimination.

206-607-1600 | TDD: 1-800-877-8339 | OCR.Seattle@ed.gov| www.ed.gov/ocr

Washington State Human Rights Commission (WSHRC)

WSHRC enforces the Washington Law Against Discrimination (RCW 49.60), which prohibits discrimination in employment and in places of public accommodation, including schools. File complaints with WSHRC within six months of the date of the alleged discrimination.

1-800-233-3247 | TTY: 1-800-300-7525 | www.hum.wa.gov

Investigation Recordkeeping

ESD 123 will maintain, for a period of six (6) years, records of all sexual harassment investigations.

ESD 123 will maintain, for a period of seven (7) years, records of each Title IX sexual harassment investigation, including any determination regarding responsibility and any audio or audiovisual recording or transcript; any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant; and any appeal from the result of a determination regarding responsibility.

ESD 123 will maintain, for a period of seven years, records of any actions, including supportive measures taken in response to a report or formal complaint of sexual harassment under Title IX.

Training and Orientation

A fixed component of all ESD 123 orientation sessions for staff, students, and regular volunteers will introduce the elements of this procedure and the corresponding policy. Staff will be provided information on recognizing and preventing sexual harassment. Staff will be fully informed of their responsibilities

when on notice of sexual harassment, of the formal complaint procedures, and their roles and responsibilities under the policy and procedure.

Certificated staff will be reminded of their legal responsibility to report suspected child abuse, and how that responsibility may be implicated by some allegations of sexual harassment. Regular volunteers will get the portions of this component of orientation relevant to their rights and responsibilities.

Students will be provided with age-appropriate information on the recognition and prevention of sexual harassment and their rights and responsibilities under this and other ESD 123 policies and rules at student orientation sessions and on other appropriate occasions, which may include parents.

As part of the information on the recognition and prevention of sexual harassment, staff, volunteers, students, and parents will be informed that sexual harassment may include, but is not limited to:

1. demands for sexual favors in exchange for preferential treatment or something of value;
2. stating or implying that a person will lose something if he/she does not submit to a sexual request;
3. penalizing a person for refusing to submit to a sexual advance, or providing a benefit to someone who does;
4. making unwelcome, offensive, or inappropriate sexually suggestive remarks comments, gestures, or jokes; or remarks of a sexual nature about a person's appearance, gender, or conduct;
5. using derogatory sexual terms for a person;
6. standing too close, inappropriately touching, cornering, or stalking a person; and/or,
7. displaying offensive or inappropriate sexual illustrations on program property.

Policy and Procedure Review

Annually, the Superintendent or designee may convene an ad hoc committee composed of representatives of certificated and classified staff, member district representatives, students, and parents/guardians to review the use and efficacy of this policy and procedure. The Compliance Officer will be included in the committee. Based on the review of the committee, the Superintendent will prepare a report to the Board including, if necessary, any recommended policy changes. The Superintendent will consider adopting changes to this procedure if recommended by a student, staff member, member district representative, and/or parent/guardian.

Adoption: 01/24