

Students

Sexual Discrimination and Sexual Harassment

Sexual discrimination and harassment will not be tolerated among students in the Ellington Public Schools. It is the policy of the Board of Education that any form of sexual harassment or sexual discrimination is forbidden. Students are expected to adhere to a standard of conduct that is respectful and courteous to employees, to fellow students and to the public.

The Board of Education encourages victims of sexual discrimination or sexual harassment and any school employee who has actual knowledge of such alleged conduct, to promptly report such claims. Timely reporting of improper conduct facilitates implementation of supportive measures and prompt resolution of any formal complaint that may be filed.

The District will respond promptly to actual knowledge of sexual harassment in an education program or activity in the Ellington Public Schools against a student in a manner that is not deliberately indifferent.

I. DEFINITIONS

Actual knowledge – notice of sexual discrimination or harassment or allegations of sexual discrimination or harassment made to or shared with the Title IX coordinator or to any employee of the Board of Education.

Complainant - an individual who is alleged to be the victim of conduct that could constitute sexual discrimination or harassment.

Complaint - a document filed by a complainant or signed by the Title IX Coordinator alleging sexual discrimination or harassment against a respondent and request that the Ellington Public Schools investigate the allegation of sexual harassment.

Investigator – an individual appointed by the school administration to investigate formal complaints of sexual discrimination or harassment.

Respondent - an individual who has been reported to be the perpetrator of conduct that could constitute sexual discrimination or harassment.

Retaliation – intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX.

Sexual Discrimination - occurs when a person, because of his or her sex, is denied participation in or the benefits of any educational program or activity operated by the Board of Education.

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Sexual Harassment –any one of the following three types of conduct:

Quid pro quo sexual harassment, meaning that an employee of the Ellington Public Schools conditions the provision of an aid, benefit, or service of the educational program or school activity on an individual’s participation in unwelcome sexual conduct;

Hostile educational 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 District’s educational program or activity;

Any instance of 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), and/or stalking, as defined in 34 U.S.C. 12291(a)(30).

Supportive Measures - non-disciplinary, nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent where no formal complaint has been filed or before or after the filing of a formal complaint.

II. REPORT OR COMPLAINT OF DISCRIMINATION / HARASSMENT

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed below for the Ellington Title IX Coordinator.

Dr. Kristy LaPorte
Director of Special Services
Ellington Public Schools
47 Main Street, P.O. Box 179
Ellington, CT 06029-0179
Telephone: (860) 896-2300

If the Title IX Coordinator is the subject of the discrimination or harassment complaint, the complaint should be forwarded directly to the Superintendent of Schools or his/her designee.

Any school employee who makes a report of alleged sexual harassment should consider whether a child abuse report should be completed in accordance with Board Policy and state law.

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If a report of sexual harassment raises a concern about potential bullying behavior, the Title IX Coordinator should notify the Safe School Climate Specialist, or designee, who shall coordinate any bullying investigation with the Title IX Coordinator, so as to ensure that any such bullying investigation complies with the requirements of applicable Board policies.

Response to Report or Notice of Discrimination or Harassment // Title IX Coordinator

Each year, the District shall designate and authorize one employee to coordinate its efforts to comply with Title IX, who shall be referred to as the "Title IX Coordinator."

Once the District has received a report of or has notice of alleged incident of sexual discrimination or harassment, the Title IX Coordinator will be do the following:

- (a) Promptly contact and inform the complainant of the range of supportive measures that are available with or without the filing of a formal complaint;
- (b) Consider the complainant's wishes with respect to supportive measures;
- (c) Coordinate the effective implementation of supportive measures; and
- (d) Explain to the complainant the process for filing a formal written complaint.

Supportive measures are designed to restore or preserve equal access to the Board's educational program or activity without unreasonably burdening the other party, and, may include measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment.

Although not an exhaustive list, supportive measures may include the following:

- (a) counseling,
- (b) extensions of deadlines,
- (c) course related adjustments,
- (d) modifications of work or class schedules,
- (e) provision of an escort,
- (f) mutual restrictions on contact between the parties,
- (g) increased security and monitoring, and
- (h) other similar measures.

*Records should document that the District was not deliberately indifferent to the report of sexual harassment and that measures were taken to restore or preserve equal access to the education program or activity.

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**If the District did not offer supportive measures in response to a report of sexual harassment, the records should document why the response was not unreasonable under the known circumstances.

The District will maintain as confidential each of the supportive measures provided to a complainant or respondent, except to the extent that maintaining such confidentiality would impair the ability of school personnel to provide the supportive measures.

The Title IX Coordinator shall confer, where necessary, with school personnel who manage and/or supervise a student's Section 504 accommodation plan or IEP to ensure coordination of and consistency in the delivery of the supportive measures, accommodations, and/or services.

Emergency Removal

In situations where a respondent poses an immediate threat to the physical health and safety of any individual before an investigation into sexual harassment allegations concludes, or where no formal complaint is filed, the District may remove the respondent from the Ellington Public Schools' educational programs or activities.

Such a removal may be necessary for the District to fulfill its duty not to be deliberately indifferent to the notice or a report of alleged sexual harassment, and/or to fulfill its duty to protect the safety of the school community. Such an emergency removal may be undertaken in addition to implementing supportive measures designed to restore or preserve a complainant's equal access to educational programs and/or activities in the Ellington Public Schools.

III. GRIEVANCE PROCESS

1. Filing a Written Title IX Complaint

A complainant may file a formal Title IX grievance complaint alleging sexual harassment against a respondent and requesting that the District investigate the allegation(s).

The complaint should contain the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where necessary, the Title IX Coordinator may sign a formal complaint to commence the grievance process.

At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the educational program or activity of the Ellington Public Schools.

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The formal Title IX grievance complaint should include the following information:

- (a) Name of the complainant,
- (b) Date of the complaint,
- (c) Date(s) of the alleged harassment/discrimination,
- (d) Name(s) of the harasser(s) or discriminator(s),
- (e) Location where such harassment/discrimination occurred,
- (f) Names of any witness(es) to the harassment/discrimination,
- (g) Detailed statement of the circumstances constituting the alleged harassment/discrimination; and
- (h) Remedy requested.

At any time, a complainant alleging sex discrimination or sexual harassment may file a formal complaint with the Office for Civil Rights, Boston Office, U.S. Department of Education, 8th Floor, 5 Post Office Square, Boston, MA 02109-3921 (Telephone # (617) 289-0111).

* The District may investigate any reported allegation of misconduct through its traditional student discipline procedures if a complainant is not willing to file a formal Title IX complaint

2. Due Process Principles

Once the Title IX Coordinator receives a formal complaint of sexual harassment, the District shall follow a grievance process that affords all parties the following rights.

- (a) Equitable treatment - complainants and respondents will be treated equitably.
- (b) No conflict of interest - the Title IX Coordinator, any person designated to facilitate an informal resolution, the investigator and the decision maker(s) may not have a conflict of interest or bias for or against complainants or respondents, generally, or against an individual complainant or respondent.
- (c) Objective evaluations - the investigator and decision maker(s) will objectively evaluate all relevant evidence, –including both inculpatory and exculpatory evidence – and, they will not make credibility determinations on the basis of a person’s status as a complainant, respondent, or witness.
- (d) Presumption - the presumption at the outset of the written complaint process is that the respondent is not responsible for the alleged sexual harassment until a decision is reached at the end of the grievance process. Remedies shall be provided to a complainant after a determination of responsibility against a respondent has been made, and no disciplinary sanctions – except for possible emergency removal - will be imposed against a respondent until the conclusion of the grievance process.

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- (e) Advisor - the complainant and the respondent will have the opportunity to be accompanied in any meeting or proceeding by the advisor of their choice. The District may establish restrictions on how the advisor may participate in the document review process and in any investigatory or decision-making proceedings. The District may instruct advisors to use the evidence received for inspection and review by the complainant and/or the respondent during investigation process *only for purposes* of the grievance, and not to further disseminate or disclose these materials. The District may use a non-disclosure agreement to compel compliance.
- (f) Engagement in process – the District may not restrict the ability of either the complainant or the respondent to discuss the allegations under investigation or to gather and present relevant evidence.
- (g) Written notice - the District will provide written notice to any party whose participation is invited or expected, with sufficient time for the party to prepare to participate. The notice shall contain the date, time, location, participants, and purpose of the investigatory interview or other meeting.
- (h) Time frames – include reasonably prompt time frames for the conclusion of the complaint grievance process, including with regard to filing and resolving appeals and informal resolution procedures.
- (i) Privileged information - the investigator and/or decision maker shall not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

3. Notice of Title IX Complaint

Once the Title IX Coordinator receives a formal complaint of sexual harassment, he/she must give all parties written notice that includes the following:

- (a) Explanation of the District’s Title IX grievance procedure, including the informal resolution process.
- (b) Sufficient details known at the time, which may include identities of the parties involved in the alleged incident, if known, the conduct allegedly constituting sexual harassment under Title IX, and the date(s) and location(s) of the alleged incident, if known.
- (c) Statement that the respondent is presumed not responsible for the alleged conduct until a final decision is reached.

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(d) Statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and that the party may inspect and review evidence.

(e) Statement that the school's code of conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance process, if it so provides.

(f) Identity of the appointed investigator.

If in the course of a Title IX complaint investigation the District's investigator decides to investigate allegations about the complainant or respondent that are not included in the original notice, the District will provide notice of the additional allegations to the parties whose identities are known.

4. Consolidation of Written Complaints

The Title IX Coordinator may consolidate formal complaints of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, when the allegations of sexual harassment arise out of the same facts or circumstances.

5. Investigation of a Written Complaint

When investigating a formal complaint, the investigator should do the following:

(a) Provide an equal opportunity for the complainant and the respondent to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint.

(b) Provide an equal opportunity for the complainant and the respondent to meaningfully respond to the collected evidence prior to conclusion of the investigation.

(c) Conduct any required interviews, providing sufficient notice to each invited or expected party.

(d) Act in accordance with the due process principle that the burden of proof and burden of gathering evidence is on the District, not on the complainant or respondent.

Regulation 5145.5(h)

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(e) Prior to completion of the investigative report, share evidence subject to inspection and review in an electronic format or hard copy with each party and their respective advisor(s) and provide the parties 10 days to review and submit a written response.

(f) Prior to completion of the investigative report, consider any written response submitted by either party.

(g) Create an investigative report that fairly summarizes relevant evidence and send a copy of the report in an electronic format or a hard copy to each party and their advisor(s), if any, for their review and written response. The report shall be created within thirty (30) calendar days from the date the formal complaint is received, except the investigator may extend this deadline for no more than ten (10) calendar days if needed to complete the investigation. The complainant and the respondent shall be notified of such extension.

6. Dismissal of Title IX Complaint

The District is obligated under Title IX regulations to dismiss a formal complaint if its investigation reveals:

- (a) that the alleged harassment did not occur in its educational program or activity;
- (b) that the allegations, even if proved, would not constitute sexual harassment; or
- (c) the alleged conduct did not occur against a person in the United States.

The District may dismiss a formal Title IX complaint if:

- (a) the complainant provides the Title IX Coordinator a written request to withdraw the complaint, or any allegations;
- (b) the respondent is no longer employed by the Board or enrolled in the Ellington Public Schools; or
- (c) if specific circumstances prevent the District from gathering enough evidence to reach a decision.

Upon a dismissal required or permitted under Title IX, the District shall promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

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7. Decision Regarding Responsibility

The decision maker who determines responsibility in a formal Title IX complaint must be someone who does not act as the Title IX Coordinator or as the investigator.

The decision maker should do the following before reaching a determination:

(a) Afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, then provide each party with the answers to said questions; and, then, allow for additional, limited follow-up questions from each party.

(b) Explain to the party proposing the questions any decision to exclude a question as not relevant.

(c) Not permit a respondent to submit questions and/or evidence about the complainant's sexual predisposition or prior sexual behavior unless such questions and/or evidence are offered (i) to prove that someone other than the respondent committed the conduct alleged by the complainant; or (ii) to demonstrate specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

(d) Apply *the preponderance of the evidence standard*, the same one that is utilized in the determination of sexual harassment complaints involving District employees.

The decision maker's written report regarding determination of responsibility for the alleged sexual harassment and the determination must be shared with both parties simultaneously.

The decision maker's written report should be issued within twenty-one (21) calendar days from the date the investigator issued his/her report, and the report should:

- (a) Identify the allegations potentially constituting sexual harassment;
- (b) Describe the procedural steps taken from the 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 any hearings held;
- (c) Provide findings of fact that support the determination;
- (d) Include conclusions regarding application of the code of conduct to the facts;
- (e) Include a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;

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- (f) Include any disciplinary sanctions the recipient imposes on the respondent;
- (g) Indicate whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided to the complainant. The report should not include the precise remedies the District is providing a complainant because said information is part of the complainant's educational record; and
- (g) Provide notice of the District's procedures and permissible bases for either party to file an appeal

The decisionmaker's determination regarding responsibility becomes final either

- (a) on the date that the appellate decision maker provides the parties with the written determination of the results of an appeal, if an appeal is filed, or
- (b) if an appeal is not filed, the date on which an appeal would no longer be considered timely in accordance with the District's grievance procedures.

8. Remedies

The decision maker may consider a range of possible remedies following any determination of responsibility for a Title IX violation that are designed to restore or preserve equal access to the recipient's education program or activity. Remedies may include the same individualized services described above as supportive measures, and may include, but are not limited to the following:

- (a) Counseling services,
- (b) Restrictions on contact between the parties,
- (c) Increased security and monitoring, and
- (d) Other similar measures.

Remedies may be disciplinary or punitive and may burden the respondent.

Possible disciplinary outcomes for the respondent include the following:

- (a) Suspension or expulsion of a student respondent,
- (b) Mandatory training,
- (c) Mandatory counseling, and
- (d) Removal from school sponsored activity or team of a student respondent.

* The Title IX Coordinator is responsible for effective implementation of any remedies.

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9. Appeal

Any request by a complainant or a respondent to appeal a decision maker's final decision on responsibility regarding the alleged discrimination and/or harassment, or to appeal the District's dismissal of a formal complaint must be filed within ten (10) calendar days of the delivery of the written determination, and may only be filed under one of circumstances set forth below:

- (a) A procedural irregularity affected the outcome of the grievance complaint;
- (b) A party has new evidence that was not reasonably available at the time of the determination, and could affect the outcome; or
- (c) Title IX Coordinator, investigator, or decision-maker had a conflict of interest /bias for or against complainants or respondents that affected the outcome.

In response to a properly filed appeal, the District shall do the following:

- (a) Notify the other party in writing that an appeal has been filed and implement appeal procedures equally for both parties.
- (b) Ensure that the appellate decision-maker(s) is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.
- (c) Ensure that the appellate decision-maker(s) complies with the standards set forth in this Regulation regarding training and non-conflict of interest.
- (d) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- (e) Issue a written decision describing the result of the appeal and the rationale for the result; and
- (f) Provide the written decision simultaneously to both parties.

10. Delay of Title IX Complaint Process Timeline

The complainant and/or the respondent may request a temporary delay of the complaint process timelines for good cause. Good cause may include considerations such as the absence of a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The requesting party shall provide written notice to the other party of the reason for the request for a temporary delay.

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11. Informal Resolution Session

Offering Resolution Session

The District may offer parties to a Title IX complaint the opportunity to engage in informal resolution, which encompasses mediation and other similar methods.

The District may not offer either party an informal resolution process if a formal complaint has not been filed.

The District may not offer an informal resolution process to resolve Title IX complaint allegations that an employee sexually harassed a student.

The District may not compel either the complainant or the respondent to participate in an informal resolution process

Requesting Informal Resolution / Timeline

A request for participation in the informal resolution process may be made at any time prior to the decision maker reaching a determination regarding responsibility under Title IX.

The informal resolution process shall be concluded within ten (10) calendar days of the parties' agreement to participate in said process.

Before convening an informal resolution session, the District shall obtain the parties' voluntary, written consent to the informal resolution process.

Written Notice of Resolution Session

Before convening an informal resolution session, the District shall provide each party with written notice of:

- (a) The allegations,
- (b) Requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations,
- (c) A party's right at any time prior to a proposed resolution to withdraw from the informal resolution process and resume the grievance process with respect to the complaint,
- (d) Consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

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12. No Waiver

The District cannot require a respondent to waive the right to a formal Title IX investigation and formal resolution of a sexual harassment complaint as a condition of continuing enrollment, or enjoyment of any other right in the Ellington Public Schools.

13. Retaliation Prohibited

The District, its employees and students may not 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 manner in an investigation, proceeding, or hearing under this part.

Individuals alleging retaliation in violation of Title IX may follow the same grievance procedures outlined in Sections 2 to 12 above.

14. Training

The District will take steps to ensure that Title IX Coordinators, investigators, initial and appellate decision-makers, and any person who facilitates an informal resolution process, receive training on the following:

- (a) definition of sexual harassment,
- (b) scope of the Ellington Public Schools programs and activities,
- (c) the grievance process;
- (d) informal resolution process,
- (e) conducting an investigation;
- (f) issues of relevance;
- (g) the appeals process,
- (h) how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

The District will take additional steps to ensure that investigators receive training on how to create an investigative report that fairly summarizes relevant evidence.

The District will take additional steps to ensure that decision-makers receive training on issues of relevance regarding questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.

Any materials the District utilizes to train Title IX Coordinators, investigators, decisionmakers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

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15. Confidentiality

The District will 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 (a) as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or (b) as required by law, or (c) to carry out the purposes of the May 2020 Title IX Regulations.

16. Record Keeping

The District must maintain the following documents regarding the Title IX complaint grievance process for seven years:

- (a) records of each sexual harassment investigation, including, but not limited to, any determination of responsibility; any audio or audiovisual recording or transcript; any disciplinary sanctions imposed on the respondent; and any remedies provided to the complainant;
- (b) records of any appeal and the results of that appeal;
- (c) records of any informal resolution and the results of that informal resolution;
- (d) all materials used to train Title IX Coordinators, investigators, initial and appellate decisionmakers, and any person who facilitates an informal resolution process; and
- (e) records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.

*Records should document that the District was not deliberately indifferent to the report of sexual harassment and that measures were taken to restore or preserve equal access to the education program or activity.

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17. Publication.

A. Website

- (1) The District must make materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process publicly available on its website.
- (2) The District shall prominently display the contact information for its Title IX Coordinator and the District's Title IX grievance procedures and process on its website.

B. Specific Notice

- (1) The District shall notify applicants for employment, students, parents/legal guardians of students, employees, and all unions who hold collective bargaining agreements with the Board of Education, of the name, title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator.
- (2) The District will provide notice to all persons referenced in (B)(1) above, of the District's Title IX grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the recipient will respond.
- (3) The District will notify all persons referenced in (B)(1) above, it does not discriminate on the basis of sex in the educational programs or activities that it operates, and that it is required by Title IX and this part not to discriminate in such a manner. The notice will state that inquiries about the application of Title IX in the District may be referred to the District's Title IX Coordinator, and/or to the Assistant Secretary of the U.S. Department of Education.
- (4) The District will include contact information required for the Title IX Coordinator and the District's Sexual Discrimination and Harassment Policy in each handbook or catalog that it makes available to employees, applicants for employment, students, parents/guardians, including such documents published exclusively online.

Regulation 5145.5(p)

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- Legal Reference: United States Constitution, Article XIV
- Constitution of the State of Connecticut Article I, Section 20.
- Title IX of the Education Amendments of 1972, 20 U.S.C. §1681, *et seq.*
- Title IX of the Education Amendments of 1972, 34 C.F.R. §106.1, *et seq.*
- Title IX Final Rule, 34 CFR §106.45, *et seq.*, May 6, 2020
- Gebser v Lago Vista Independent School District* 524 U.S. 274 (1998)
- Davis v Monroe County Board of Education* 526 U.S. 629 (1999)
- Office for Civil Rights, U.S. Department of Education, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* 66 Fed. Reg. 5512 (January 19, 2001).
- P.A. 19-16, An Act Combatting Sexual Assault and Sexual Harassment

Regulation 5145.5(q)
Form

SEXUAL DISCRIMINATION / HARASSMENT COMPLAINT
ELLINGTON PUBLIC SCHOOLS (*Students*)

Name of the complainant _____

Date of the complaint _____ Date(s) of alleged harassment _____

Name or names of the alleged harasser(s) _____

Location(s) where alleged harassment occurred _____

Name(s) of any witness(es) to the alleged harassment _____

Detailed statement of the circumstances constituting the alleged discrimination or harassment

Remedy Requested _____
