

# Marblehead Community Charter Public School

## Title IX Forms and Samples

Designed for Compliance with the 2020 Title IX Final  
Regulations, effective August 14, 2020

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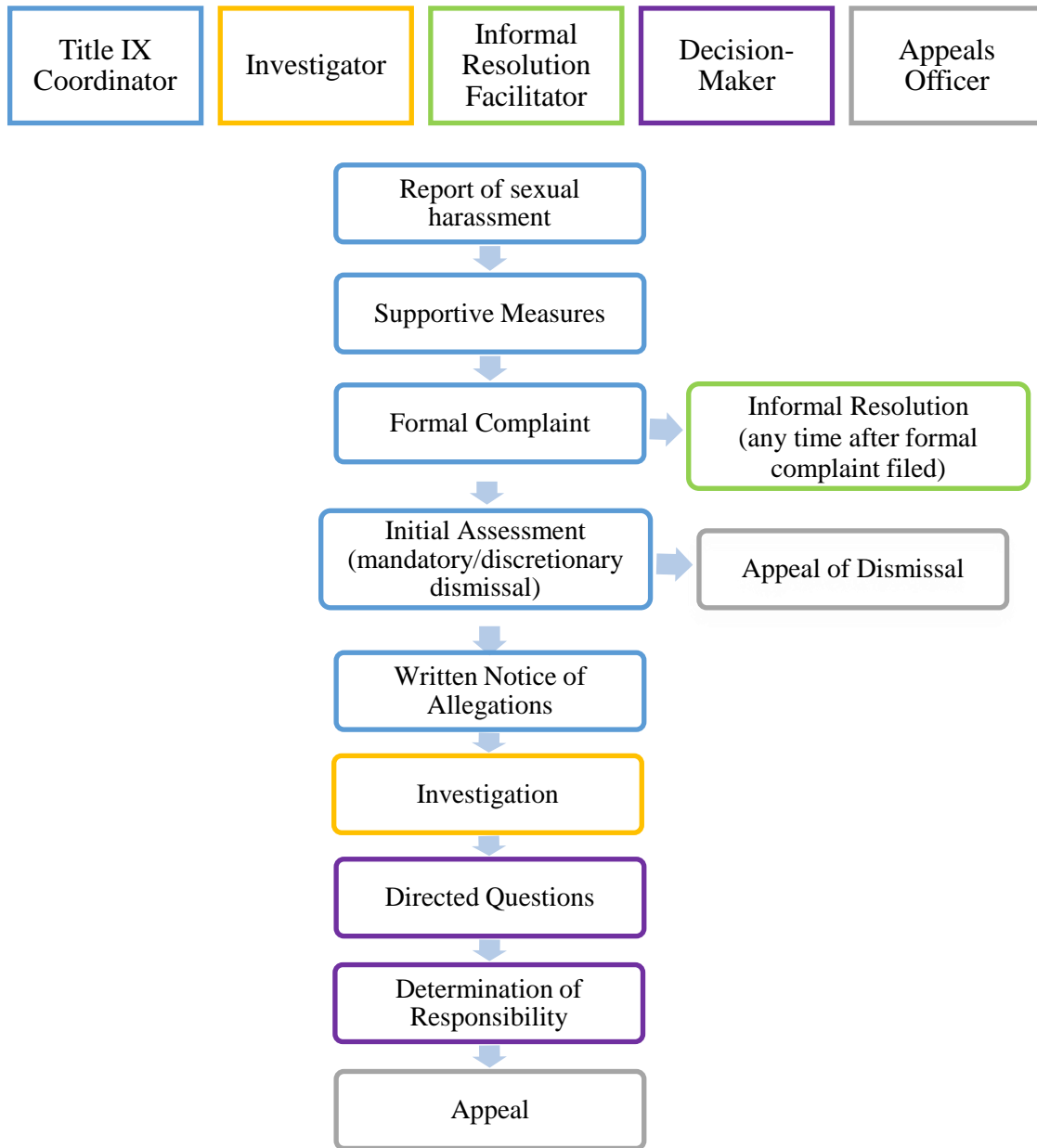
## Contents

<b>Flowcharts .....</b>	<b>5</b>
Title IX Process Overview Flowchart.....	6
Title IX Coordinator Flowchart .....	7
Investigator Flowchart .....	8
Informal Resolution Facilitator Flowchart.....	9
Decision-Maker Flowchart .....	10
Appeals Officer Flowchart.....	11
<b>Processing of Initial Reports and Formal Complaints .....</b>	<b>12</b>
Title IX Coordinator’s Initial Contact with Alleged Victim/Parents/Guardians.....	13
Consideration of Supportive Measures Documentation .....	14
Follow-up to Report of Sexual Harassment .....	15
Notice to Complainant of Title IX Coordinator’s Decision to File a Title IX Formal Complaint.....	17
Formal Complaint of Sexual Harassment Under Title IX .....	18
Initial Assessment of Formal Complaint .....	20
Mandatory Dismissal of Formal Complaint - Notice to the Parties .....	22
Discretionary Dismissal of Formal Complaint – Notice to the Parties .....	24
Notice of Allegations .....	26
<b>Investigation .....</b>	<b>27</b>
Notice to Party Whose Participation is Expected at an Investigative Interview .....	28
Investigator’s Checklist for Interviews of Parties and Witnesses .....	29
Notice of Opportunity to Review Evidence and Non-Disclosure Agreement .....	32
Non-Disclosure Agreement Regarding Inspection and Review of Evidence .....	33
Notice of Opportunity to Review Evidence and Notice of Opportunity to Submit a Written Response Within Ten (10) Days .....	34
Investigative Report Template .....	35
Cover Letter to Investigative Report with Notice of Opportunity to Submit Written Response to the Investigative Report .....	38
<b>Decision-Making .....</b>	<b>39</b>
Directed Questions Template (to be completed by the parties) .....	40
Notice to Party Explaining Any Decision to Exclude a Question as Not Relevant .....	42
Answers to Directed Questions (to be completed by the party or witness) .....	44

Cover Letter to Parties of Answers to Directed Questions and Notice of Opportunity for Limited Additional Questions .....	46
Answers to Follow-Up Questions (to be completed by the parties) .....	47
Cover Letter to Parties Providing Copy of Answers to Follow-up Questions .....	49
Determination of Responsibility (sufficient evidence to find respondent responsible) .....	50
Determination of Responsibility (insufficient evidence to find respondent responsible for allegations of sexual harassment).....	56
Determination of Responsibility (mixed determination of responsibility) .....	60
<b>Appeal .....</b>	<b>66</b>
Notice of Appeal .....	67
Dismissal of Appeal for Failure to Meet Appeal Criteria .....	68
Appeal Decision Template.....	69
<b>Informal Resolution .....</b>	<b>71</b>
Notice to Parties of Informal Resolution .....	72
Informal Resolution Process Agreement to Participate Consent Form.....	74
Notice of Successful Informal Resolution and Closure of Formal Complaint Process .....	76
Notice that Informal Resolution was Not Successful and Referral Back to Title IX Coordinator .....	77
Informal Resolution Agreement Template.....	78
Informal Resolution Checklist for Facilitator .....	79
<b>Emergency Removal .....</b>	<b>80</b>
Notice of Title IX Emergency Removal - Initial .....	81
Notice of Title IX Emergency Removal – Decision After Hearing .....	83
<b>Definitions .....</b>	<b>84</b>

# Flowcharts

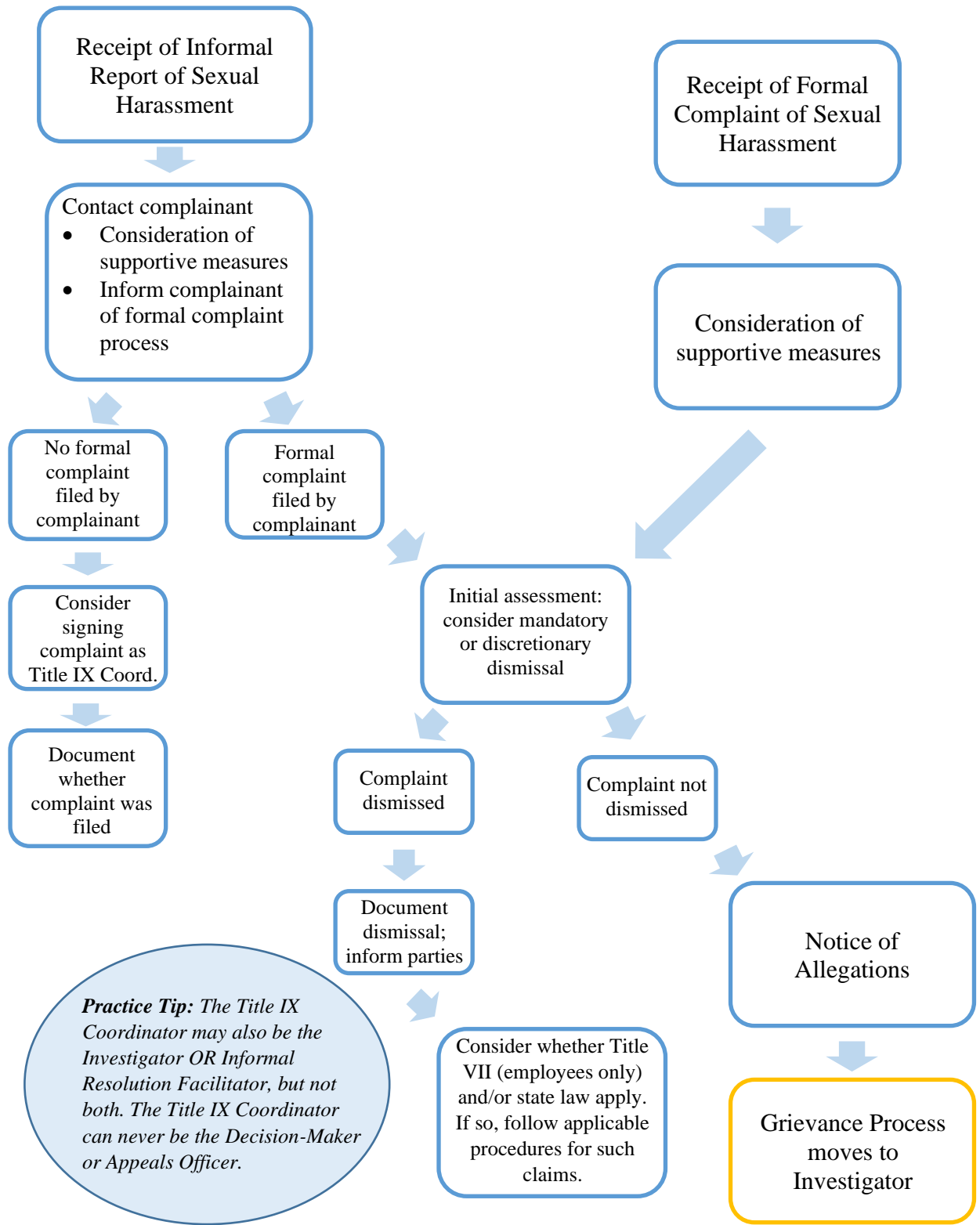
## Title IX Process Overview Flowchart



***The School must maintain the records related to the Title IX grievance process for seven years.***

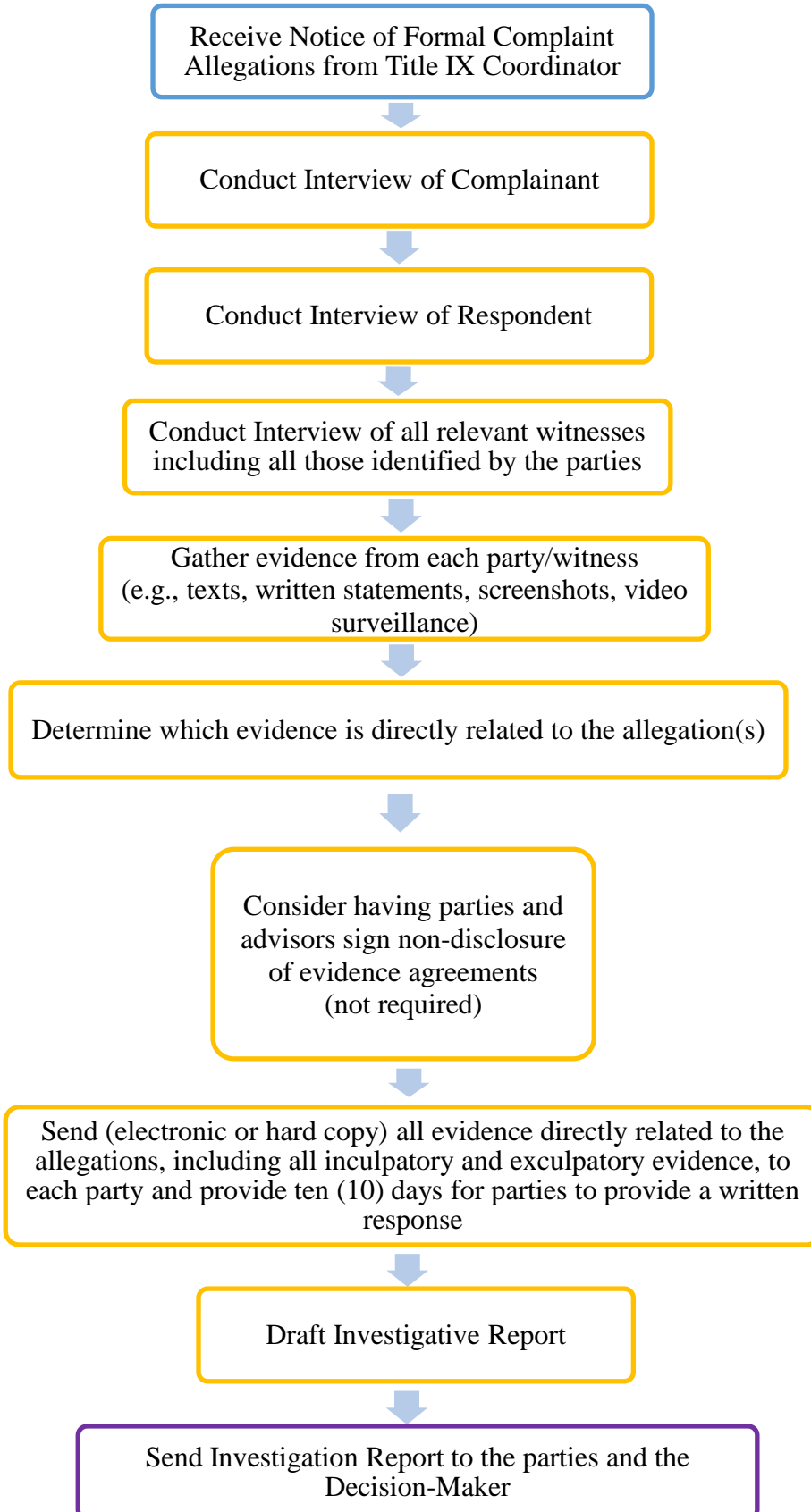
## Title IX Coordinator Flowchart

Remember – the Title IX Coordinator is responsible for coordinating the entire Title IX Grievance Process!



**Practice Tip:** The Title IX Coordinator may also be the Investigator OR Informal Resolution Facilitator, but not both. The Title IX Coordinator can never be the Decision-Maker or Appeals Officer.

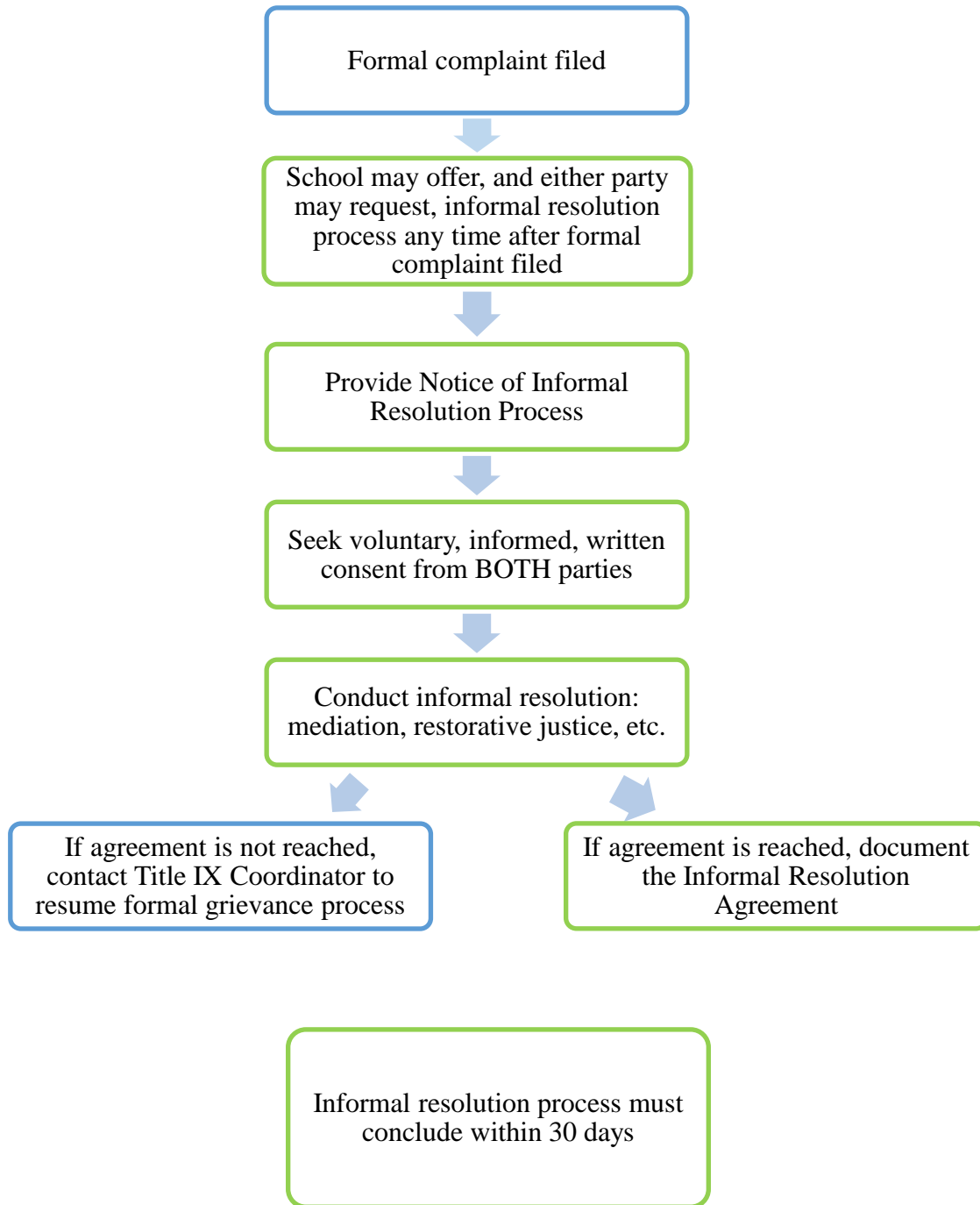
## Investigator Flowchart



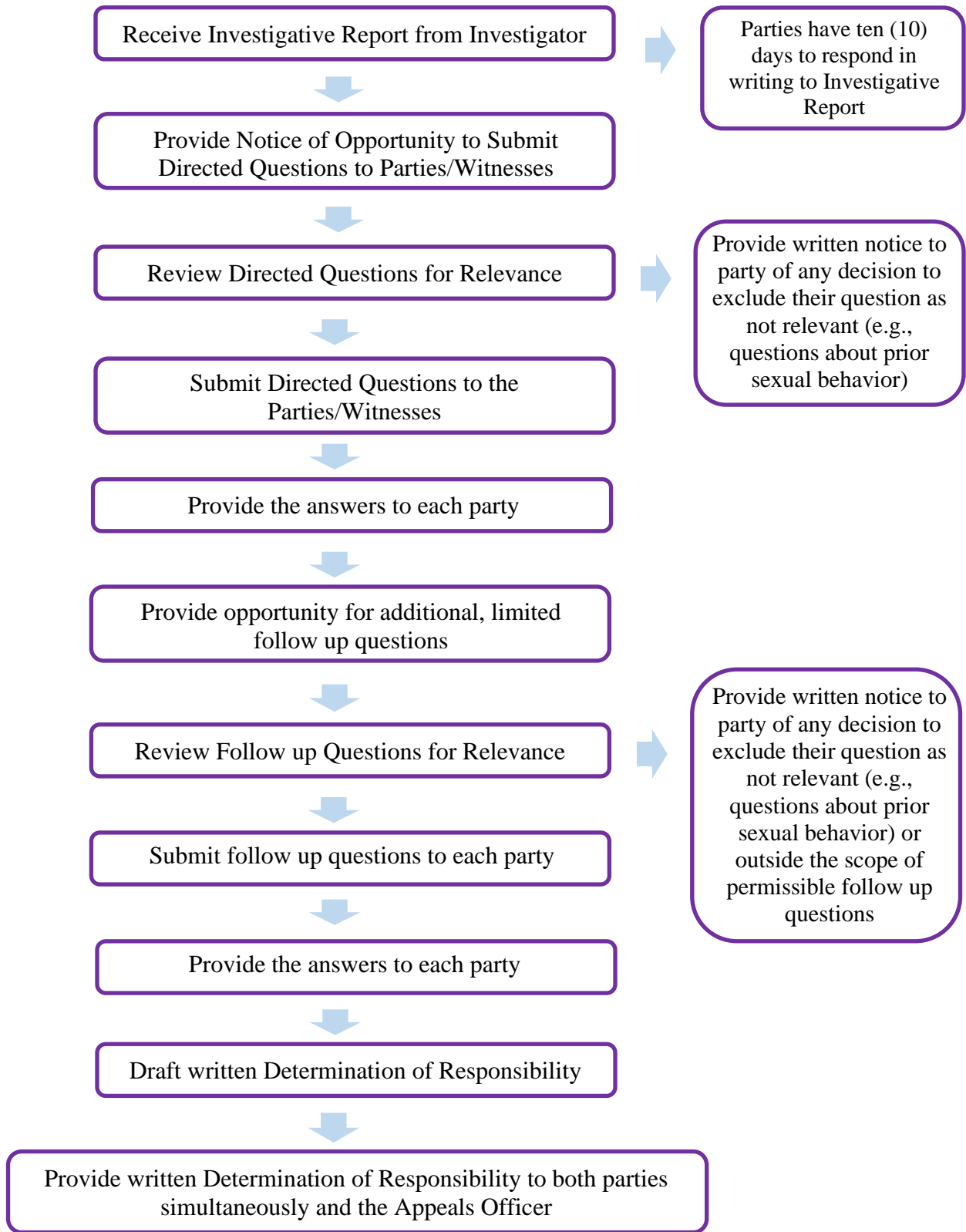


## Informal Resolution Facilitator Flowchart

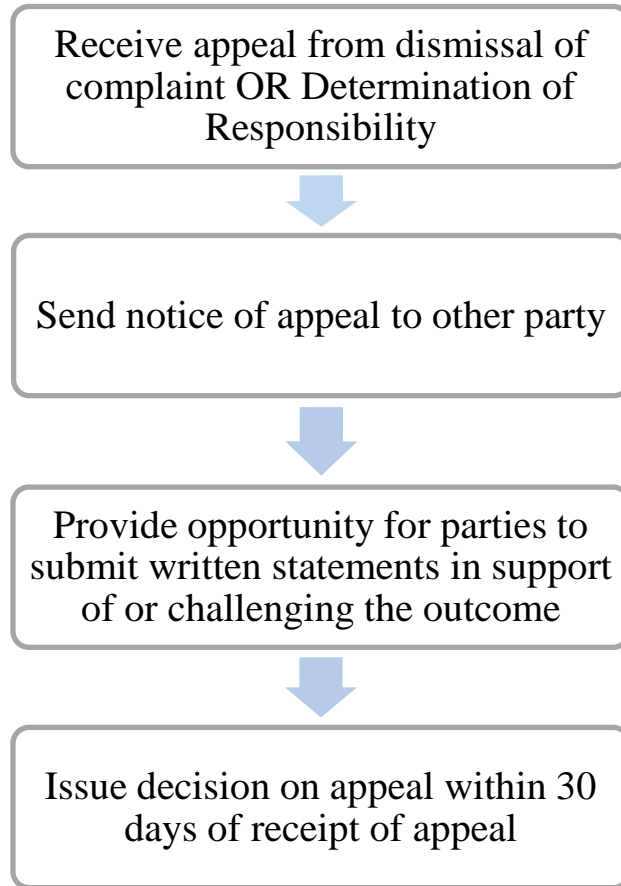
Remember, informal resolution can NOT be used if the Respondent is an employee and the Complainant is a student. Either party may terminate or decline informal process at any time and resume the formal grievance process.



## Decision-Maker Flowchart



## Appeals Officer Flowchart



# **Processing of Initial Reports and Formal Complaints**

**(Title IX Coordinator)**

## Title IX Coordinator's Initial Contact with Alleged Victim/Parents/Guardians

**Name of Alleged Victim:**

**Source of Report:**      Alleged Victim/Parents/Guardians

Other:

Anonymous

**Date of Report:**

**Date/Time of Title IX Coordinator's Initial Contact with Alleged Victim/Parents/Guardians:**

**Steps Taken in Initial Contact:**

- Discussed the availability of supportive measures.
- Explained that supportive measures would be considered with or without the filing of a Formal Title IX Sexual Harassment Complaint.
- Considered the alleged victim's wishes with respect to supportive measures.
- Explained the process for filing a Formal Title IX Sexual Harassment Complaint.
- Provided alleged victim/parents/guardians with a copy of the Title IX Sexual Harassment Grievance Procedures.

Title IX Coordinator Signature: \_\_\_\_\_ Date: \_\_\_\_\_

***Legal Reference:*** 34 C.F.R. § 106.44: Title IX Coordinator "must 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."

### Consideration of Supportive Measures Documentation

34 C.F.R. § 106.30: “Supportive measures means non-disciplinary, 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. Such measures are designed to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient’s educational environment, or deter sexual harassment... The recipient must 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 the recipient to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.”

- The complainant/parents/guardians requested the following supportive measures: **Insert requested supportive measures**
- After discussion with the complainant, and consideration of the complainant’s wishes with respect to supportive measures, the following measures have been implemented: **Insert supportive measures granted**
- Except in cases of emergency removal (as defined under Title IX) the supportive measures are not disciplinary in nature.
- Any supportive measures provided to the complainant or respondent will be kept confidential, except to the extent that the confidentiality would not impair the ability of the School to provide supportive measures.
- The complainant was denied his or her request for supportive measures for the following reasons<sup>1</sup>: **Insert the reasons why the denial of the request(s) was reasonable.**

*Examples of supportive measures include, but are not limited to: counseling; extension of deadline(s); other course-related adjustment(s); modifications of schedule (class or employment); mutual restrictions on contact between the parties; campus escort service; leave of absence from employment; increased security and monitoring of certain areas of the building/campus; other similar measures.*

Title IX Coordinator Signature: \_\_\_\_\_ Date: \_\_\_\_\_

<sup>1</sup> This determination and documentation are required by regulation. 34 C.F.R. § 106.45(b)(10)(ii) provides: “...If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken.”

## Follow-up to Report of Sexual Harassment

34 C.F.R. § 106.44 provides that the Title IX Coordinator “must 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.”

Date

Insert parents’/guardians’ names, name of complainant, and address

RE: Report of Sexual Harassment, Insert name of Complainant

Dear Parent/Guardian and Student or Dear Employee:

In accordance with the Marblehead Community Charter Public School’s Title IX Sexual Harassment Grievance Procedure, I am writing to confirm that on Insert date I spoke with you to discuss a report of sexual harassment. Specifically, you alleged that Insert description of allegations here.

During our conversation, we discussed confidentiality and the availability of supportive measures, including the availability of those measures whether or not you file a formal complaint. I also explained the formal complaint process, your right to choose to file or not file a formal complaint, and the School’s discretion to file a formal complaint if it determines that it would not be clearly unreasonable in light of the known circumstances to do so. For more information on the grievance process, please find a copy of the procedure here: Insert link to Title IX Sexual Harassment Grievance Procedures.

*[Choose one of the following options, as applicable]*

*Option 1:* In this case, after consideration of your wishes, the School is providing you the following supportive measures: Insert supportive measures to be provided.

*Option 2:* After discussing the availability of supportive measures, the School did not provide any such measures because you stated that you did not want any supportive measures at this time.

*Option 3:* Although you requested additional supportive measures, namely fill in supportive measures requested, the request(s) was denied because:

*Option 3(a):* Such an action is prohibited by Title IX because it would impose an unreasonable burden on the other party prior to the completion of the investigation.

As a person who has reported sexual harassment, you have the right to be free from retaliation for making a report and for participating or refusing to participate in the Title IX formal complaint process. If you choose to file a formal complaint, you would have the right to an impartial investigation, the right to an advisor at your expense, the right to identify witnesses and other evidence as part of the investigation, the right to review the evidence and the investigative report, the right to submit questions to the other party, and the ongoing right to protection from retaliation for reporting harassment and for participating or not participating in any Title IX investigation or proceeding.

If you have any questions or concerns about this letter, please contact me at your earliest convenience at Insert telephone number.

Sincerely,

Title IX Coordinator



## Notice to Complainant of Title IX Coordinator's Decision to File a Title IX Formal Complaint

*(used only in instances in which the complainant has decided not to file a formal complaint, but the Title IX Coordinator has decided to file a formal complaint after determining that it would not be clearly unreasonable in light of the known circumstances to do so)*

*34 C.F.R. § 106.30 Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment.... Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this part or under § 106.45, and must comply with the requirements of this part, including § 106.45(b)(1)(iii).*

### Date

Insert parents'/guardians' names, Complainant's name, and address

RE: Notice of Title IX Formal Complaint Filed by Title IX Coordinator

Dear Parent/Guardian and Complainant:

I am writing to notify you that I have filed a Title IX Formal Complaint in regard to the allegation of sexual harassment received by the School on Insert date. Enclosed please find a Notice of Allegations.

*Editor's Note: Use Notice of Allegations from page 24 of this manual.*

Under Title IX, a Title IX Coordinator may file a Title IX Formal Complaint to initiate an investigation over the wishes of the complainant when it is not clearly unreasonable in light of the known circumstances to do so. In making this determination, I have taken into account the concerns that you have shared with me, the best interests of the community, and individual circumstances pertaining to this matter.

If you have any questions or concerns about this letter or the Title IX Formal Complaint process, please contact me at your earliest convenience at: Insert telephone number.

Sincerely,

Title IX Coordinator

Enc.: Notice of Allegations

cc: Insert name of complainant's personal advisor (if applicable)

## **Formal Complaint of Sexual Harassment Under Title IX**

*Use of this form to file a formal complaint of sexual harassment under Title IX is not mandatory. Any document that is filed by a complainant with the Title IX Coordinator that: (1) alleges sexual harassment against a respondent; and (2) requests that the School investigate the allegation, will constitute a formal complaint. The filing of a formal complaint will result in the initiation of the School's formal complaint grievance process under Title IX.*

*A complainant is an individual who is alleged to be the victim of conduct that could constitute sexual harassment. In the case of a minor or an individual under guardianship, a parent/legal guardian may file a formal complaint on behalf of the complainant. Other third parties may not file a formal complaint on behalf of the complainant, with the exception of the Title IX Coordinator.*

### **Complainant's Contact Information**

*A complainant is an individual who is alleged to be the victim of sexual harassment.*

**Name:**

**Email Address:**

**Mailing Address:**

**Phone Number:**

*If parent/guardian is filing on behalf of complainant, please also include the name and contact information of parent/guardian.*

**Parent/guardian name:**

**Email Address:**

**Mailing Address:**

**Phone Number:**

### **Respondent's Contact Information, if known**

*A respondent is an individual who is reported to be the perpetrator of sexual harassment.*

**Name:**

**Email Address:**

**Mailing Address:**

**Phone Number:**

### **Description of Conduct Alleged to Constitute Sexual Harassment**

Please provide a detailed description of what occurred and, to the extent possible, include dates, times, locations, witnesses, and any other relevant evidence. If witness contact information is known, please provide that as well.

**Request for an Investigation**

*In order to initiate the formal complaint grievance process under Title IX, a complainant (or parent/guardian) must affirmatively request an investigation of the sexual harassment allegations. Please indicate below whether you are requesting an investigation.*

I am requesting an investigation by the School of the above allegation(s) of sexual harassment.

Yes \_\_\_\_\_ No \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Printed Name

## Initial Assessment of Formal Complaint

Name of complainant:

Name of respondent:

Date formal complaint received:

Following receipt of the formal complaint, the Title IX Coordinator must review the complaint to determine whether it must (mandatory dismissal) or may (discretionary dismissal) be dismissed under the Title IX regulations. To conduct this assessment, complete the following:

### Mandatory dismissals:

- 1) Did the conduct occur in the United States?

Yes       No

*If Yes, move to Number 2. If No, the formal complaint MUST be dismissed.*

- 2) Did the conduct occur in an educational program or activity of the Marblehead Community Charter Public School?

Yes       No

*If Yes, move to Number 3. If No, the formal complaint MUST be dismissed.*

- 3) The allegation(s), even if proved, would NOT meet the definition of sexual harassment under Title IX.

True       False

*If True, the formal complaint MUST be dismissed. If False, move to 4.*

*If the formal complaint must be dismissed, promptly send written notice of the dismissal to both parties, using the "Mandatory Dismissal of Formal Complaint" letter.*

### Discretionary dismissals:

- 4) Has the complainant informed the Title IX Coordinator in writing that s/he wishes to withdraw the formal complaint or allegations in it?

Yes       No

*If Yes, the formal complaint MAY be dismissed.*

- 5) Is the respondent no longer enrolled or employed by the Marblehead Community Charter Public School?

Yes       No

*If Yes, the formal complaint MAY be dismissed.*

- 6) Have specific circumstances prevented the School from gathering sufficient evidence to make a determination?

Yes       No

*If Yes, the formal complaint MAY be dismissed.*

*If choosing to dismiss the formal complaint or allegations therein as a discretionary dismissal, document the specific circumstances that led to this determination in the “Dismissal of Formal Complaint - Discretionary Dismissal” letter and promptly send to both parties.*

Title IX Coordinator Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Legal Reference:** 34 C.F.R. § 106.45(b)(3): *Dismissal of a formal complaint – (i) The recipient must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in § 106.30 even if proved, did not occur in the recipient’s education program or activity, or did not occur against a person in the United States, then the recipient must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX or this part; such a dismissal does not preclude action under another provision of the recipient’s code of conduct. (ii) The recipient may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the recipient; or specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. (iii) Upon a dismissal required or permitted pursuant to paragraph (b)(3)(i) or (b)(3)(ii) of this section, the recipient must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.*

## Mandatory Dismissal of Formal Complaint - Notice to the Parties

34 C.F.R. § 106.45(b)(3) Dismissal of a formal complaint – (i) The recipient must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in § 106.30 even if proved, did not occur in the recipient’s education program or activity, or did not occur against a person in the United States, then the recipient must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX...; such a dismissal does not preclude action under another provision of the recipient code of conduct... (iii) Upon a dismissal....the recipient must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

Date

Insert parents’/guardians’ names, complainant/respondent name and address

RE: Report of Sexual Harassment, Insert complainant/respondent name

Dear Parent/Guardian and Complainant/Respondent:

The Marblehead Community Charter Public School (“School”) received a formal complaint that Insert name of respondent had engaged in sexual harassment of Insert name of complainant. More specifically, the formal complaint alleged the following:

- Insert date(s) and location(s) of each allegation.
- For each allegation insert details of the allegations(s) (the specific actions of which the respondent is accused).

The School is writing to inform you that the formal complaint has been dismissed.

*[Choose one (or more) of the following options, as applicable]*

*Option 1:* Under Title IX, the School is required to dismiss a complaint if the allegations, even if true, would not constitute sexual harassment under Title IX. In this case, the formal complaint has been dismissed because the allegations as described above, even if true, would not constitute sexual harassment as defined by Title IX (specifically, 34 C.F.R. § 106.30).

*Option 2:* Under Title IX, the School is required to dismiss a complaint when the alleged conduct did not occur in the School’s education program or activity. In this case the formal complaint has been dismissed because the alleged conduct did not occur in the School’s education program or activity.

*Option 3:* Under Title IX, the School is required to dismiss a complaint when the alleged conduct did not occur in the United States. In this case, the formal complaint has been dismissed as the alleged conduct did not occur within the United States.

Please note that such a dismissal under the Title IX sexual harassment grievance procedure does not preclude the School from taking action in accordance with state or other federal laws or under another provision of the School’s code of conduct.

An appeal of this dismissal may be made to the Executive Director or designee within five (5) calendar days after receipt of this notice. The opportunity to appeal is limited to the following bases: 1) procedural irregularity that affected the outcome of the matter; 2) newly discovered evidence that could affect the outcome of the matter; and/or 3) Title IX personnel had a conflict of interest or bias that affected the outcome of the matter.

If you have any questions or concerns about this letter or the investigation, please contact me at your earliest convenience at: Insert telephone number.

Sincerely,

Title IX Coordinator

cc: Insert name of complainant's/respondent's personal advisor (if applicable)

## Discretionary Dismissal of Formal Complaint – Notice to the Parties

34 C.F.R. § 106.45(b)(3) Dismissal of a formal complaint .... (ii) The recipient may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the recipient; or specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. (iii) Upon a dismissal...the recipient must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

Date

Insert parents'/guardians' names, complainant/respondent name, and address

RE: Report of Sexual Harassment, Insert complainant/respondent name

Dear Parent/Guardian and Complainant/Respondent:

The Marblehead Community Charter Public School (“School”) received a formal complaint that Insert respondent’s name had engaged in sexual harassment of Insert complainant’s name. More specifically, the formal complaint alleged the following:

- Insert date and location of each allegation.
- For each allegation insert details of the allegations(s), including the specific actions of which the respondent is accused.

The School is writing to inform you that the formal complaint has been dismissed.

*[Choose one (or more) of the following options, as applicable]*

*Option 1:* In this case, the complainant has notified the Title IX Coordinator in writing of the withdrawal of the formal complaint and/or the allegations contained therein. After consideration of this request from the complainant, the Title IX formal complaint has been dismissed.

*Option 2:* In this case, the respondent is no longer enrolled or employed by the School. For that reason, after consideration of all the options and the applicable standards for dismissal under Title IX, this complaint has been dismissed.

*Option 3:* In this case, specific circumstances prevented the School from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. More specifically, those circumstances were: *Insert fact specific circumstances (for example, “After multiple attempts to engage the complainant, the complainant ceased cooperating with the investigation, which prevented the School from gathering sufficient evidence to reach a determination as to the allegations raised in the formal complaint”).*

Please note that such a dismissal under the Title IX Sexual Harassment Grievance Procedure does not preclude the School from taking action in accordance with state or other federal laws or under another provision of the School’s code of conduct.

An appeal of this dismissal may be made to the Executive Director or designee within five (5) calendar days after receipt of this notice. The opportunity to appeal is limited to the following bases: 1) procedural irregularity that affected the outcome of the matter; 2) newly discovered evidence that could affect the outcome of the matter; and/or 3) Title IX personnel had a conflict of interest or bias that affected the outcome of the matter.



If you have any questions or concerns about this letter or the investigation, please contact me at your earliest convenience at: Insert telephone number.

Sincerely,

Title IX Coordinator

cc: Insert name of complainant's/respondent's personal advisor (if applicable)

## Notice of Allegations

*34 C.F.R. § 106.45(b)(2)(i) – Upon receipt of a formal complaint, a recipient must provide the following written notice to the parties who are known: (A) Notice of the recipient’s grievance process...including any informal resolution process; (B) Notice of the allegations...potentially constituting sexual harassment..., including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identity 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.*

### Date

Insert parents’/guardians’ names, complainant/respondent name, and address

RE: Notice of Title IX Sexual Harassment Allegations

Dear Parent/Guardian and complainant/respondent:

I am writing because the Marblehead Community Charter Public School (“School”) received a formal complaint that Insert respondent name (“respondent”) engaged in sexual harassment of an individual, Insert complainant name (“complainant”). More specifically, the formal complaint alleged the following:

- Insert date(s) and location(s) of each allegation.
- For each allegation insert details of the allegations(s) sufficient to allow the respondent to prepare a response (the specific actions of which the respondent is accused).

Because the School has received a formal complaint of sexual harassment, it has opened an investigation under Title IX of the Education Amendments Act of 1972 and comparable state laws (collectively referred to as “Title IX”). For more information on the Title IX investigation process, please find a copy of the School’s Title IX Sexual Harassment Grievance Procedure here: Insert link to Title IX Sexual Harassment Grievance Procedure. In this case, after an initial consultation with the complainant and his/her parents/guardians and, separately, the respondent and his/her parents/guardians, the School will implement the following supportive measures for you/your child while the investigation is pending: Insert the supportive measure(s) provided to the party (sharing only those directly related to that party). Please note that supportive measures (if any) which are provided to another party are kept confidential, unless doing so would impair the School’s ability to provide the supportive measures.

In accordance with School policy and applicable laws, the School is initiating an investigation under Title IX. Under Title IX both parties have the right to an impartial investigation, the right to identify witnesses and other evidence as part of the investigation, and the right to protection from retaliation for reporting harassment and/or cooperating with this investigation. During the investigation, the respondent (accused party) is presumed not responsible for the alleged conduct and a determination of responsibility is made at the conclusion of the grievance process. Both parties, the complainant and the respondent, may have an advisor of their choice (and at their own expense), who may be, but is not required to be, an attorney. Title IX requires the School to notify both parties that the School’s code of conduct prohibits knowingly making false statements or knowingly submitting false information during the Title IX investigation process. If you have any questions or concerns about this letter or the investigation, please contact me at your earliest convenience at: Insert telephone number.

Sincerely,

Title IX Coordinator

cc: Insert name of complainant’s/respondent’s personal advisor (if applicable)

# Investigation

## Notice to Party Whose Participation is Expected at an Investigative Interview

34 C.F.R. § 106.45(b)(5)(v) Recipient must provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all...investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

**Date** [Provide at least 48 hours advance notice, whenever possible]

Insert parents'/guardians' names, complainant/respondent name, and address

RE: Notice of Title IX Sexual Harassment Formal Grievance Procedures

Meeting

Investigative Interview

Dear Parent/Guardian and complainant/respondent:

I am writing to provide you with written notice of a scheduled appointment regarding a Title IX sexual harassment complaint, at which your participation is expected/invited. You have the right to be accompanied by an advisor of your choice and at your own expense, who may be, but is not required to be, an attorney.

Please see appointment details below:

**Date:**

**Time:**

**Location:**

**Participants:**

**Purpose:**  **Meeting to discuss:** *Insert description of specific subject matter to be discussed*

**Investigative Interview regarding:** *Insert description of specific subject matter to be discussed*

If you have any questions and/or need to request an alternate time/date, please contact me promptly at Insert email address and telephone number.

Sincerely,

Insert name

Insert appropriate title(s): Title IX Investigator/Title IX Coordinator

cc: Insert name of complainant's/respondent's personal advisor (if applicable)

## **Investigator's Checklist for Interviews of Parties and Witnesses**

*To be completed for each witness/party and interview*

Witness Name:

Interview Date:

Interview Time:

Name of Complainant:

Name of Respondent(s):

Date Written Notice of Interview was provided to complainant, parents/guardians and advisor (*required for parties, i.e. complainant or respondent*):

Was Interview Conducted: Yes / No      If no, reason:

Individuals present:

Notes Taken? Yes No

Name and Title of Notetaker:

### **Interview Guidelines:**

- Provided written notice of date/time/location of interview.
- Explained the purpose of the interview and the prohibition/protection against retaliation prior to beginning interview.
- Explained the investigator's role as not representing any party and serving as an impartial gatherer of the evidence.
- Interviewed each witness separately outside the presence of other witnesses and/or parties with consideration for confidentiality.
- Explained to witness that s/he may be asked to be interviewed again as a follow up and that this is common in any investigation.
- Asked witness to be truthful and not submit false information.
- Maintained contemporaneous notes of the interview.

### **As investigator/interviewer, I also notified the witness of the following:**

- That both complainant and respondent must be provided an equal opportunity to present/produce fact and expert witnesses and relevant evidence.
- That we are requesting confidentiality regarding the ongoing investigation; however, parties have the right to discuss the allegations or gather and present relevant evidence (i.e., no "gag orders").
- That during this investigation, the respondent is presumed not responsible.

### **Guidance for the Interview Process**

- The investigator's role is to "create an investigative report that fairly summarizes the relevant evidence." 34 C.F.R. § 106.45(b)(5)(vii).

- Generally, the questions need to be exhaustive and cover all relevant questions for each allegation.
- For each allegation, the decision-maker will need to determine whether the conduct meets the definition for sexual harassment. For most non-physical allegations, the decision-maker will need to analyze whether the conduct was severe, pervasive, and objectively offensive.
- For each allegation, the investigator seeks to glean significant details regarding the following questions:
  - Who?
  - What?
  - When?
  - Where?
  - Who else was there?
- The investigator will need to ask questions designed to elicit information regarding:
  - The date, time, location for each incident;
  - The exact phrase or words that were used;
  - The number of times the conduct occurred;
  - The frequency (e.g. daily, weekly?);
  - The location of the incident(s);
  - The identification of other witnesses who may have been present or have information regarding the allegations;
  - If relevant, the exact location on the alleged victim's person that the touching occurred and how long the physical contact lasted.
- In regard to the parties, ask them who they have spoken to about the incident (to learn if there are other relevant witnesses to speak to).
- Generally, during initial interviews do not make any attempts at this stage to question the credibility of the witness. If there are reasons to confront a witness regarding credibility, the Investigator can request to re-interview him/her at a later time.

### **Other Information**

- Asked witness for names of all relevant witnesses.
- Asked witness for any physical evidence s/he believes may tend to prove, or disprove, the allegations.

Evidence for Investigator to consider seeking either during interviews of the complainant, respondent, and witnesses, or through independent investigation:

- Surveillance video
- Photographs
- Screenshots
- Texts
- Social media posts
- Documents / Notes

- Emails
- Attendance records
- Medical Records (only request if relevant and, if relevant, cannot gather or share until after receipt of written consent)
- Psychological Records (only request if relevant and, if relevant, cannot gather or share until after receipt of written consent)

**Legal Reference:** 34 C.F.R. § 106.45(b)(5): *Investigation of a formal complaint* When investigating a formal complaint and throughout the grievance process a recipient must ... (i) Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the [School] and not on the parties... (ii) Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence; (iii) Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence; ... (v) Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all ... investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

## Notice of Opportunity to Review Evidence and Non-Disclosure Agreement

*34 C.F.R. § 106.45(b)(5) Investigation of a Formal Complaint. When investigating a formal complaint and throughout the grievance process, a recipient must ... (vi) Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the recipient must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report...."*

Date

Parents'/Guardians' names, respondent's or complainant's name (as applicable), and address

RE: Title IX Grievance Procedures, Notice of Opportunity to Review Evidence and Non-Disclosure Agreement

Dear Parent/Guardian and complainant/respondent:

I am writing in my capacity as the Investigator for the Title IX grievance process. In accordance with 34 C.F.R. § 106.45(b)(5) and the grievance procedures adopted by the Marblehead Community Charter Public School, I am providing you with notice of your opportunity to review evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint. This evidence is being made available to both parties and their advisors, if any, for inspection and review so that the parties may meaningfully respond to the evidence prior to the conclusion of my investigation.

The evidence is expected to be made available for inspection and review on Insert date at specify location. Should you want a hard copy of the evidence sent to you electronically or by mail, please sign and return the enclosed Non-Disclosure Agreement in which you agree not to disseminate any of the evidence subject to inspection and review, or use such evidence for any purpose unrelated to the Title IX grievance process.

Lastly, you are hereby reminded that all participants in the Title IX grievance process have the right to protection from retaliation for reporting harassment or for participating or not participating with this investigation.

Sincerely,

Title IX Investigator

cc: Insert name of complainant's/respondent's personal advisor (if applicable)



**Non-Disclosure Agreement Regarding Inspection and Review of Evidence**

As a party, parent/guardian of a party, or advisor currently participating in the grievance process following the filing of a formal complaint alleging sexual harassment under Title IX, I agree and acknowledge that I have been provided notice of my opportunity to inspect and review evidence obtained as part of the investigation that is directly related to the allegations.

I hereby agree not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX grievance process. Furthermore, I understand and acknowledge that retaliation for reporting harassment or for participating or not participating with this investigation is prohibited.

Signed under the pains and penalties of perjury:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

**Party/Parent/Guardian/Advisor (circle one)**

***Editor’s Note:*** Each individual who receives (or inspects and reviews the evidence) is required to sign this document.

**Notice of Opportunity to Review Evidence and  
Notice of Opportunity to Submit a Written Response Within Ten (10) Days**

*34 C.F.R. § 106.45(b)(5) Investigation of a Formal Complaint. When investigating a formal complaint and throughout the grievance process, a recipient must ... (vi) Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the recipient must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report...."*

Date

Parents'/Guardians' names, respondent's or complainant's name (as applicable), and address

RE: Title IX Grievance Procedures, Notice of Opportunity to Review Evidence and Notice of Opportunity to Submit a Written Response Within Ten Calendar (10) Days

Dear Parent/Guardian and complainant/respondent:

I am writing in my capacity as the Investigator for the Title IX grievance process. In accordance with 34 C.F.R. § 106.45(b)(5) and the grievance procedures adopted by the Marblehead Community Charter Public School, I am providing you with notice of your opportunity to review evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint. The evidence is enclosed or attached hereto. This evidence is being made available to both parties and their advisors, if any, for inspection and review so that the parties may meaningfully respond to the evidence prior to the conclusion of my investigation.

*Option 1 – include only if applicable:* Please be advised that certain evidence has not been enclosed or attached due to its sensitive nature but will be made available for your inspection and review. The following evidence has been withheld due to its sensitive nature: **Insert list of evidence withheld from enclosure due to its sensitive nature.** If you would like the opportunity to inspect and review this evidence, please contact me at **Insert telephone number** to schedule an appointment to do so.

Also, in accordance with 34 C.F.R. § 106.45(b)(5), I hereby provide notice of your opportunity to submit a written response to the evidence within ten (10) calendar days. Your written response may be submitted electronically to **Insert Investigator's email address** or by hand delivery/mail to **Insert Investigator's office address.** Pursuant to 34 C.F.R. § 106.45(b)(5), I will consider your written response prior to completion of my investigative report.

Sincerely,

Title IX Investigator

cc: **Insert name of complainant's/respondent's personal advisor (if applicable)**

## Investigative Report Template

*34 C.F.R. § 106.45(b)(5) Investigation of a formal complaint. When investigating a formal complaint and throughout the grievance process, a recipient must ... (vii): Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to... time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.*

### Title IX Investigative Report

The following is a summary of the investigation and relevant evidence compiled during the investigation into the allegations as set forth in the Written Notice of Allegations (correspondence dated **Insert date** from Title IX Coordinator).

Complainant(s): \_\_\_\_\_

Respondent(s): \_\_\_\_\_

Allegations: **Insert the allegations from the Title IX Written Notice of Allegations**

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### Interviews of parties/witnesses:

#### Complainant

- Notice to complainant of request for interview: **Insert date**
- Date(s) of interview(s) of complainant: **Insert date**
- Persons present during interview(s) of complainant: **Insert date, persons present and their role**
- Summary of relevant evidence from interview with complainant: **Either insert summary of relevant evidence here or include a summary as an Attachment to the Investigative Report.**

#### Respondent

- Notice to respondent of request for interview: **Insert date**
- Date(s) of interview(s) of respondent: **Insert date**
- Persons present during interview(s) of respondent: **Insert date, persons present, and their role**
- Summary of relevant evidence from interview with respondent: **Either insert summary of relevant evidence here or include a summary as an Attachment to the Investigative Report.**

#### Witness 1 – **Insert witness name**

- Date(s) of interview(s) of witness: **Insert date**
- Persons present during interview(s) of witness: **Insert date, persons present, and their role**

- Summary of relevant evidence from interview with witness: Either insert summary of relevant evidence here or include a summary as an Attachment to the Investigative Report.

Witness 2 – Insert witness name

- Date(s) of interview(s) of witness: Insert date
- Persons present during interview(s) of witness: Insert date, persons present, and their role
- Summary of relevant evidence from interview with witness: Either insert summary of relevant evidence here or include a summary as an Attachment to the Investigative Report.

Witness 3 – Insert witness name

- Date(s) of interview(s) of witness: Insert date
- Persons present during interview(s) of witness: Insert date, persons present and their role
- Summary of relevant evidence from interview with witness: Either insert summary of relevant evidence here or include a summary as an Attachment to the Investigative Report.

Additional Relevant Evidence:

*[Insert summary of additional relevant evidence you have discovered during the process. Include a description of all physical evidence collected and the source of each piece of physical evidence. Physical evidence might include, but is not limited to: documents, text messages, screenshots, videos, photographs, or other physical evidence examined and reviewed by the Investigator. See below for examples of how to list such information.]*

- Email messages (description of any email messages, who provided it), See Attachment Insert numeric reference (e.g., “Attachment No. 1”)
- Text messages (description of any text messages, who provided it), See Attachment Insert numeric reference
- Video(s) (description of any videos, who provided it), See Attachment Insert numeric reference
- Screenshots (description of any screenshots, who provided it), See Attachment Insert numeric reference
- *Optional – include only if applicable:* I conducted a site visit on Insert date and time of the alleged location of the incident, namely Insert description the location. Insert any photos/videos taken during the site visit, and your observations of the physical space. Include relevant information on how the space relates to the allegations. Include photos/videos as an Attachment if applicable. See Attachment 10.
- *Optional – include only if applicable:* The complainant/respondent also provided written, voluntary consent for the use of his/her privileged medical/mental health records in this grievance process. Records from Insert name of mental health provider/medical provider regarding complainant/respondent were obtained by the Investigator. Relevant information from those records is summarized here: Insert summary of relevant information from records, copy of relevant sections of records. See Attachment 11.

- Insert any other methods that were used to gather evidence and summary of the relevant evidence [Examples include: accepting written statements from parties/witnesses; gathering text messages, photographs, social media posts, etc.; verifying attendance documents; reviewing school security footage]. Include any relevant evidence as attachments to the report.

Opportunity to Respond to Evidence:

Date on which evidence directly related to the investigation, including the evidence upon which the School does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, was sent to each party so that each party can meaningfully respond to the evidence prior to conclusion of the investigation: Insert date evidence was sent to parties.

Date on which parties responded to evidence:

Respondent provided a response to the evidence on Insert date. **OR** Respondent did not provide a response to the evidence prior to conclusion of the investigation.

Complainant provided a response to the evidence on Insert date. **OR** Complainant did not provide a response to the evidence prior to conclusion of the investigation.

This concludes the Title IX Investigation Report in this matter.

\_\_\_\_\_  
Name, Title IX Investigator

\_\_\_\_\_  
Date

cc: Title IX Decision Maker

Complainant

Respondent

Insert name of complainant's/respondent's personal advisor (if applicable)

## **Cover Letter to Investigative Report with Notice of Opportunity to Submit Written Response to the Investigative Report**

*34 C.F.R. § 106.45(b)(5) Investigation of a formal complaint. When investigating a formal complaint and throughout the grievance process, a recipient must ... (vii): Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to ... time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or hard copy, for their review and written response.*

Date

Parents' Names, Respondent's or Complainant's Name (as applicable), and Address

RE: Title IX Grievance Procedures, Investigative Report

Dear Parent/Guardian and complainant/respondent:

I am writing in my capacity as the Investigator for the Title IX grievance process. As Investigator, it has been my responsibility to seek and gather evidence relative to the allegations raised in the formal complaint. In addition, and in accordance with 34 C.F.R. § 106.45(b)(5), I have: 1) ensured that the burden of proof and the burden of gathering evidence remained on the School, not the parties; 2) provided an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence; 3) not restricted the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence; 4) provided the parties with the equal opportunity to have an advisor of their choice; 5) provided the parties with prior written notice of any investigative interviews, meetings, or hearings in which their participation was invited or expected; 6) provided the parties with written notice of their opportunity to review evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint; 7) provided the parties with written notice of their opportunity to submit a written response to the evidence; 8) considered any written submissions forwarded to me in response to the parties' review of the evidence; and 9) have not accessed or considered either party's medical, psychological, or similar privileged treatment records unless the party provided prior written consent to do so.

In accordance with 34 C.F.R. § 106.45(b)(5)(vii) and the grievance procedures adopted by the Marblehead Community Charter Public School, enclosed is a copy of the final Investigative Report in this matter. Please be advised that a copy of this investigative report will be forwarded to the Decision-Maker, **Insert name**. You are hereby provided notice of your opportunity to submit a written response to the investigative report within ten (10) calendar days of this date to the Decision-Maker. 34 C.F.R. § 106.45(b)(5).

Should you choose to submit a written response to the investigative report you may submit your response electronically to **Insert Decision-Maker's email address** or by hand delivery/mail to **Insert Decision-Maker's office address**.

Sincerely,

Title IX Investigator

cc: Title IX Decision Maker

Insert name of complainant's/respondent's personal advisor (if applicable)

# Decision-Making

**Directed Questions Template (to be completed by the parties)**

*34 C.F.R. § 106.45(b)(6)(ii) ...after the recipient has sent the investigative report to the parties pursuant to paragraph (b)(5)(vii) of this section and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.... [Q]uestions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.*

**Date**

Insert parents’/guardians’ names, complainant/respondent name and address

RE: Title IX Grievance Procedures, Directed Questions

Dear Parent/Guardian and complainant/respondent:

I am writing to provide you with a form for directed questions to be posed to the other party/parties/witnesses in the ongoing Title IX matter in which you are the/a respondent/complainant. Each party has the opportunity to ask directed questions of the other party/parties and any witnesses involved in a Title IX investigation within ten (10) calendar days. *See* 34 C.F.R. § 106.45(b)(6)(ii). Please provide me with your directed questions to the other party/witnesses no later than [insert date 10 calendar days from date investigative report was sent to parties]. You may use this form to provide questions or provide questions in a separate writing.

Please be advised that all questions must be posed in a respectful manner. Additionally, only relevant questions will be permitted; if after review I determine one or more of your directed questions is to be excluded as not relevant, I will provide reason(s) for the exclusion. Pursuant to 34 C.F.R. §106.45(b)(6)(ii), questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.

Your relevant questions to the other party/witnesses will be forwarded by me to the other party/witness. Once I receive the answers from the other party/witnesses, I will forward the answers to you. You will then be provided an opportunity for additional, limited follow-up questions.

**Question 1:**

Name of Party/Witness to be Asked:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Question 2:**

Name of Party/Witness to be Asked:



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Question 3:

Name of Party/Witness to be Asked:

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Question 4:

Name of Party/Witness to be Asked:

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Question 5:

Name of Party/Witness to be Asked:

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Thank you for your continued cooperation throughout this process. If you have any questions or concerns, please contact me at Insert phone number.

Sincerely,

Title IX Decision-Maker

cc: Insert name of complainant's/respondent's personal advisor (if applicable)

## Notice to Party Explaining Any Decision to Exclude a Question as Not Relevant

34 C.F.R. § 106.45(b)(6)(ii) ... after the recipient has sent the investigative report to the parties pursuant to paragraph (b)(5)(vii) of this section and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked 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 such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

**Editor's Note** → If a party asks a question that calls for the other party to provide medical records, mental health treatment records, or other records which are protected by a legally recognized privilege, the School cannot seek those records without the voluntary, written consent of the party who holds the privilege. See 34 C.F.R. § 106.45(b)(5)(i), which provides "...the recipient cannot 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 in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent to do so for a grievance process under this section (if a party is not an "eligible student" as defined in 34 C.F.R. 99.3, then the recipient must obtain the voluntary, written consent of a "parent," as defined in 34 C.F.R. 99.3).

### Date

Insert parents'/guardians' names, complainant/respondent name and address

RE: Title IX Grievance Procedures, Notice of Exclusion of Directed Question(s)

Dear Parent/Guardian and complainant/respondent:

I am in receipt of the directed questions you have submitted to be answered by Insert name of the party and/or witness as part of the ongoing Title IX Grievance Process in this matter. As required by 34 C.F.R. § 106.45(b)(6)(ii), only relevant questions may be asked of a party or witness. Please note that under the regulations, questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. 34 C.F.R. § 106.45(b)(6)(ii).

The following questions you have submitted will be excluded:

Insert each question that was excluded, and provide the reason for excluding each one:

This question was excluded because

*Option 1:* the question(s) is not relevant to the allegations of sexual harassment under investigation.

*Option 2:* question(s) about the complainant's sexual predisposition or prior sexual behavior are not relevant, and the question does not fall into any of the exceptions set forth under 34 C.F.R. § 106.45(b)(6)(ii).

*Option 3:* the question was not posed in a respectful manner.

Sincerely,

Title IX Decision-Maker

cc: Insert name of complainant's/respondent's personal advisor (if applicable)

**Answers to Directed Questions (to be completed by the party or witness)**

*34 C.F.R. § 106.45(b)(6)(ii): ...after the recipient has sent the investigative report to the parties pursuant to paragraph (b)(5)(vii) of this section and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each part*

Date

Insert parents'/guardians' names, complainant/respondent name, and address

RE: Title IX Grievance Procedures, Answers to Directed Questions

Dear Parent/Guardian and complainant/respondent:

I am writing to provide you with the directed questions posed by the other party/parties in the ongoing Title IX matter in which you are the/a respondent/complainant/witness. As part of the Title IX Grievance Process, each party has the opportunity to ask directed questions of the other party/parties and any relevant witnesses. See 34 C.F.R. § 106.45(b)(6)(ii). The Insert "Complainant" or "Respondent," as applicable has submitted the following directed questions for your response and I have determined them to be relevant to these proceedings. Please provide the answers to these directed questions to the Decision-Maker within **five (5)** calendar days. These answers will be provided to each party. You may use this form to provide answers or you may provide your answers in a separate writing.

Once all parties have received these answers, additional, limited follow-up questions from each party will be allowed.

Question 1: Insert Question 1 here

Answer to Question 1:

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Question 2: Insert Question 2 here

Answer to Question 2:

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Question 3: Insert Question 3 here

Answer to Question 3:

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Question 4: **Insert Question 4 here**

Answer to Question 4:

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Question 5: **Insert Question 5 here**

Answer to Question 5:

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**Continue with questions and answers spaces if there are more than five (5) questions.**

Thank you for your continued cooperation throughout this process; I look forward to receiving your responses by **Insert date five (5) calendar days after date of correspondence**. If you have any questions or concerns, please contact me at **Insert phone number**.

Sincerely,

Title IX Decision-Maker

cc: **Insert name of complainant's/respondent's personal advisor (if applicable)**

## **Cover Letter to Parties of Answers to Directed Questions and Notice of Opportunity for Limited Additional Questions**

*34 C.F.R. § 106.45(b)(6)(ii): after the recipient has sent the investigative report to the parties pursuant to paragraph (b)(5)(vii) of this section and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each part*

Date

Insert parents'/guardians' names, complainant/respondent name and address

RE: Title IX Grievance Procedures, Copy of Answers to Directed Questions and Notice of Opportunity for Additional Questions

Dear Parent/Guardian and complainant/respondent:

I am writing to provide you with the answers to your directed questions provided by the other party/parties/witnesses in the ongoing Title IX matter in which you are the respondent/complainant. Please see the enclosed answers.

At this time, you may submit limited additional questions within three (3) calendar days of this correspondence. As with the initial directed questions, these follow up questions must be relevant. The scope of these follow-up questions is limited; you may only ask questions related to the answers you received to your initial set of directed questions. Any follow-up questions that are not relevant or that are outside the scope of the answers to your prior directed questions will not be forwarded to the other party/parties/witnesses.

You may submit any additional follow-up questions to me within three (3) calendar days via email at Insert email address.

Sincerely,

Title IX Decision-Maker

Encl.

cc: Insert name of complainant's/respondent's personal advisor (if applicable)

**Answers to Follow-Up Questions (to be completed by the parties)**

*34 C.F.R. § 106.45(b)(6)(ii) ...after the recipient has sent the investigative report to the parties pursuant to paragraph (b)(5)(vii) of this section and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each part*

Date

Insert parents'/guardians' names, complainant/respondent name and address

RE: Title IX Grievance Procedures, Answers to Follow-Up Questions

Dear Parent/Guardian and complainant/respondent:

I am writing to provide you with the additional follow-up questions posed by the other party/parties in the ongoing Title IX matter to which you are the/a respondent/complainant/witness. As indicated in my previous correspondence, under the Title IX grievance procedure each party has the opportunity to ask additional, limited follow-up questions. See 34 C.F.R. § 106.45(b)(6)(ii). The following additional follow-up questions have been submitted to me and I have determined them to be relevant to these proceedings and within the permissible scope. Please provide me with your answers to these questions within **three (3)** calendar days. These answers will be provided to each party. You may use this form to provide answers or provide answers in a separate writing.

Question 1: Insert Question 1 here

Answer to Question 1:

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Question 2: Insert Question 2 here

Answer to Question 2:

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Question 3: Insert Question 3 here

Answer to Question 3:

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Question 4: Insert Question 4 here

Answer to Question 4:

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Continue with questions and answers spaces if there are more than four (4) questions.

Thank you for your continued cooperation throughout this process; I look forward to receiving your responses by Insert date three (3) days after date of correspondence. If you have any questions or concerns, please contact me at Insert phone number.

Sincerely,

Title IX Decision-Maker

cc: Insert name of complainant's/respondent's personal advisor (if applicable)



## Cover Letter to Parties Providing Copy of Answers to Follow-up Questions

*34 C.F.R. § 106.45(b)(6)(ii): after the recipient has sent the investigative report to the parties pursuant to paragraph (b)(5)(vii) of this section and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each part*

Date

Insert parents'/guardians' names, complainant/respondent name and address

RE: Title IX Grievance Procedures, Copy of Answers to Follow-Up Questions

Dear Parent/Guardian and complainant/respondent:

I am writing to provide you with the answers to your follow-up questions provided by the other party/parties/witnesses in the ongoing Title IX matter. Please see the enclosed answers.

Sincerely,

Title IX Decision-Maker

Encl.

cc: Insert name of complainant's/respondent's personal advisor (if applicable)

## Determination of Responsibility (sufficient evidence to find respondent responsible)

34 C.F.R. § 106.45(b)(7) Determination regarding responsibility. (i) The decision-maker(s)...must issue a written determination regarding responsibility. To reach this determination, the recipient must apply the standard of evidence described in paragraph (b)(1)(vii) of this section. (ii) The written determination must include – (A) Identification of the allegations potentially constituting sexual harassment as defined in § 106.30; (B) A description of 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...; (C) Findings of fact supporting the determination; (D) Conclusions regarding the application of the recipient’s code of conduct to the facts; (E) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient’s education program or activity will be provided by the recipient to the complainant; and (F) the recipient’s procedures and permissible bases for the complainant and respondent to appeal. (iii) The recipient must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

### Date

Insert parents’/guardians’ names, complainant/respondent name and address

RE: Title IX Grievance Procedure, Determination of Responsibility

Dear Parent/Guardian and complainant/respondent:

I am writing to notify you of the outcome of the Title IX investigation and grievance procedure relative to the formal complaint which was submitted to the Marblehead Community Charter Public School (“School”). The allegations potentially constituting sexual harassment as defined in 34 C.F.R. § 106.30 made in the formal complaint are as follows: Insert allegations from the Written Notice of Allegations sent by the Title IX Coordinator.

### Description of Procedural Steps

- Formal Complaint received: Insert date
- Supportive measures were considered and/or put into place: Insert date
- Title IX Coordinator provided written notice of the allegations to the parties: Insert date
- Notice to respondent of request for interview: Insert date
- Notice to complainant of request for interview: Insert date
- Date that evidence was sent to the parties to review and to provide opportunity to respond: Insert date
- Date that the complainant provided a written response to the evidence: Insert date or note that no response was provided
- Date that the respondent provided a written response to the evidence: Insert date or note that no response was provided
- Date the investigative report was completed and sent to the parties and decision-maker: Insert date
- Date that complainant responded in writing to the investigative report: Insert date or note that no response was provided

- Date that the respondent responded in writing to the investigative report: Insert date or note that no response was provided
- Date that the complainant submitted directed questions to other parties/witnesses: Insert date or note that no questions were submitted
- Date that the respondent submitted directed questions to other parties/witnesses: Insert date or note that no questions were submitted
- Date follow-up questions were submitted: Insert party that submitted follow up questions and the date the answers were provided to the other party (or note that the answers were not responded to). If parties did not submit follow up questions, simply write, “not applicable”
- The following individuals were interviewed during the investigation:
  - Complainant Insert date(s) of interview(s)
  - Respondent Insert date(s) of interview(s)
  - Insert name of witness 1 Insert date(s) of interview(s)
  - Insert name of witness 2 Insert date(s) of interview(s)
  - Insert name of witness 3 Insert date(s) of interview(s)
  - Insert name of witness 4 Insert date(s) of interview(s)

*[Add in all witnesses interviewed during investigation]*
- *Optional – include only if applicable:* The Investigator conducted a site visit on Insert date and time of the alleged location of the incident, namely Insert description the location.
- *Optional – include only if applicable:* The complainant/respondent also provided written, voluntary consent for the use of his/her privileged medical/mental health records in this grievance process. Records from Insert name of mental health provider/medical provider regarding complainant/respondent were obtained by the Investigator and provided to the complainant/respondent on Insert date.
- *Identify any other methods that were used to gather evidence [Examples include: accepting written statements from parties/witnesses; gathering text messages, photographs, social media posts, etc.; verifying attendance documents; reviewing school security footage].*

Legal Standard

Title IX prohibits discrimination on the basis of sex. “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...” 20 U.S.C. § 1681. Under the Title IX implementing regulations at 34 C.F.R. § 106, no individual may be subject to sexual harassment. Sexual harassment means conduct on the basis of sex that satisfies one or more of the following: (1) an employee of the School conditioning the provision of an aid, benefit, or service of the School on an individual’s participation in unwelcome sexual conduct; (2) 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 recipient’s 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).

### Determination of Responsibility under Title IX

After an objective review of all relevant evidence, including consideration of the Investigative Report, any directed questions and answers submitted by the parties, and any follow-up questions and answers submitted by the parties/witnesses, the following facts were found by a preponderance of the evidence:

For each allegation insert the description of the facts that you have determined, by a preponderance of the evidence (more probable than not), actually occurred.

**Editor's note:** *In this section, it is the Decision-Maker's responsibility to examine the evidence and determine which facts occurred.*

- *This section should address circumstances in which the facts were established. For example, "The evidence from multiple witnesses consistently supported the complainant's statements as alleged. Accordingly, the evidence was sufficient to determine that the conduct occurred."*
- *This section should also address circumstances when the facts were not able to be established: For example, "The complainant alleged that the respondent made these statements and the respondent denied making those statements. The investigator interviewed each witness identified and I reviewed all of the relevant evidence. Neither the witness statements nor other evidence corroborated the allegations against the respondent. In the absence of independent witnesses or other evidence, the investigation was unable to reconcile the conflicting accounts between the complainant and the respondent. Accordingly, the evidence was insufficient to establish that the respondent made the statements as alleged."*

**Editor's note:** *Once the facts have been set forth, the decision-maker must determine whether the established facts constituted sexual harassment.*

Applying the legal standard as set forth in the Title IX regulations, I find that the conduct that the respondent has been found to be responsible for constitutes sexual harassment under Title IX. I have determined that the respondent engaged in

**Option 1:** quid pro quo harassment, in that, as an employee, the respondent conditioned the provision of an aid, benefit, or service of the School on an individual's participation in unwelcome sexual conduct;

**Option 2:** unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denied the complainant equal access to the School's education program or activity;

**Editor's note:** *Option 2 is a fact-specific determination. The Decision-Maker will need to cite specifically to the **severity** of the conduct, **pervasiveness** of the conduct (consider the frequency, duration, and/or degree to which it was widespread, such as through social media) **and offensiveness** to a reasonable person of the same age, grade and gender. The decision-maker will also need to include how this conduct effectively denied the complainant equal access to the School's education program or activity, again using a reasonable person standard. For example: "Based on my review of information gathered in the course of this investigation, and based on the totality of the circumstances, I have determined that the respondent engaged in actions that were unwelcome, repeated, and directed at the complainant and that such actions were so severe, pervasive and objectively offensive such that the respondent effectively denied the complainant equal access to the School's education program or activity. I based this determination on the specific and repeated comments and/or actions of the respondent (detailed above)*

*and after considering the context, duration, nature and frequency of these comments and the impact upon a reasonable person in the complainant's position."*

**Option 3:** sexual assault as defined in 20 U.S.C. 1092(f)(6)(A)(v). More specifically, I have determined that the evidence gathered was sufficient to establish that the respondent engaged in *(insert the applicable offense(s) and omit those that are not applicable)*:

**Option 3(a):** rape, which is defined as the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

**Option 3(b):** fondling, which is defined as: the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity. In Massachusetts, pursuant to M.G.L. c. 265, § 13B, a child under the age of 14 is incapable of giving consent to indecent touching.

**Option 3(c):** incest, which is defined as sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**Option 3(d):** statutory rape, which is defined as sexual intercourse with a person who is under the statutory age of consent. In Massachusetts, pursuant to M.G.L. c. 265, § 23, the statutory age of consent is 16 years of age.

**Option 4:** "dating violence," which is defined as, "[v]iolence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence."

**Option 5:** "domestic violence," which is defined as, "[a] felony or misdemeanor crime 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 in which the crime of violence occurred; 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 in which the crime of violence occurred."

**Option 6:** "stalking," which is defined as "[e]ngaging 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."

This determination was based on consideration of all of the facts gathered in the course of this investigation, including all of the information provided by both the respondent and the complainant.

#### Application of the Marblehead Community Charter Public School's Code of Conduct

Based upon the facts established by the preponderance of the evidence, the respondent is also determined to be in violation of the Marblehead Community Charter Public School's Code of Conduct, namely the

prohibition against Insert applicable school rules violations, and has been referred for consideration of disciplinary removal from school.

### Sanctions and Remedies

Given the determination that the respondent was found responsible for the allegations of sexual harassment as delineated above, the respondent will be subject to the following potential remedies and/or sanctions:

- *Examples are below (select those applicable). This is a non-exhaustive list so other applicable sanctions and remedies may be added:*
  - *The respondent will be referred for consideration of a short term/long term suspension in accordance with M.G.L. c. 71, § 37H3/4. If potentially subject to suspension the respondent (student) will be notified under separate cover of the date and time of a hearing to consider the respondent's long-term suspension (longer than ten (10) school days).*
  - *The respondent's course schedule or work schedule will be modified to limit contact between the respondent and the complainant.*
  - *The respondent will be prohibited from participation in team/extracurricular activities for a duration of Insert number of days/weeks.*
  - *The respondent will be required to meet with the Insert name and title of guidance counselor/school adjustment counselor/social worker for Insert duration of this remedy (E.g., 6 weeks) in order to identify appropriate behavior, to identify the effects and consequences of sexual harassment, and to ensure continued compliance with the Marblehead Community Charter Public School's prohibitions on sexual harassment.*
  - *The respondent will be prohibited from contacting the complainant.*
  - *The respondent will be referred for consideration of discipline in accordance with any controlling collective bargaining agreement and/or employment contract/policy.*
  - *Should the respondent engage in any further sexual harassment or retaliation, he/she will be subject to further disciplinary action.*

Additionally, remedies designed to restore or preserve equal access to the School's education program or activity will be provided by the School to the complainant. *Note that this letter should state whether or not remedies will be provided to the complainant, not what those remedies are, unless disclosure to the respondent is necessary for the remedy to be implemented, such as a mutual no contact order between the complainant and the respondent.*

Under Title IX, individuals have the right to protection from retaliation for reporting harassment and/or participating or not participating with this investigation. Should the School receive a report that you or someone acting on your behalf retaliated against any individual who participated or decided not to participate in this investigation, those allegations would be investigated promptly and could result in disciplinary sanctions.

### Appeals

Any party may appeal this determination of responsibility on the following limited bases: (1) procedural irregularity that affected the outcome of the matter; (2) newly discovered evidence that could affect the outcome of the matter; and/or (3) Title IX personnel had a conflict of interest or bias that affected the outcome of the matter. An appeal must be made within five (5) calendar days to the Executive

Director/Appeals Officer. The Executive Director/Appeals Officer may be contacted at: Insert name, phone number, email address to file an appeal.

Thank you for your continued cooperation throughout this matter.

Sincerely,

Title IX Decision-Maker

cc: Insert name of complainant's/respondent's personal advisor (if applicable)



## **Determination of Responsibility (insufficient evidence to find respondent responsible for allegations of sexual harassment)**

*34 C.F.R. § 106.45(b)(7) Determination regarding responsibility. (i) The decision-maker(s)...must issue a written determination regarding responsibility. To reach this determination, the recipient must apply the standard of evidence described in paragraph (b)(1)(vii) of this section. (ii) The written determination must include – (A) Identification of the allegations potentially constituting sexual harassment as defined in § 106.30; (B) A description of 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...; (C) Findings of fact supporting the determination; (D) Conclusions regarding the application of the recipient’s code of conduct to the facts; (E) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient’s education program or activity will be provided by the recipient to the complainant; and (F) the recipient’s procedures and permissible bases for the complainant and respondent to appeal. (iii) The recipient must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.*

### **Date**

Insert parents’/guardians’ names, complainant/respondent name and address

RE: Title IX Grievance Procedure, Determination of Responsibility

Dear Parent/Guardian and complainant/respondent:

I am writing to notify you of the outcome of the Title IX investigation and grievance procedure relative to the formal complaint which was submitted to the Marblehead Community Charter Public School (“School”). The allegations potentially constituting sexual harassment as defined in 34 C.F.R. § 106.30 made in the formal complaint are as follows: Insert allegations from the Written Notice of Allegations sent by the Title IX Coordinator.

### Description of Procedural Steps

- Formal Complaint received: Insert date
- Supportive measures were considered and/or put into place: Insert date
- Title IX Coordinator provided written notice of the allegations to the parties: Insert date
- Notice to respondent of request for interview: Insert date
- Notice to complainant of request for interview: Insert date
- Date that evidence was sent to the parties to review and to provide opportunity to respond: Insert date
- Date that the complainant provided a written response to the evidence: Insert date or note that no response was provided
- Date that the respondent provided a written response to the evidence: Insert date or note that no response was provided
- Date the investigative report was completed and sent to the parties and decision-maker: Insert date



- Date that complainant responded in writing to the investigative report: Insert date or note that no response was provided
- Date that the respondent responded in writing to the investigative report: Insert date or note that no response was provided
- Date that the complainant submitted directed questions to other parties/witnesses: Insert date or note that no questions were submitted
- Date that the respondent submitted directed questions to other parties/witnesses: Insert date or note that no questions were submitted
- Date follow-up questions were submitted: Insert party that submitted follow up questions and the date the answers were provided to the other party (or note that the answers were not responded to). If parties did not submit follow up questions, simply write, “not applicable”
- The following individuals were interviewed during the investigation:
  - Complainant Insert date(s) of interview(s)
  - Respondent Insert date(s) of interview(s)
  - Insert name of witness 1 Insert date(s) of interview(s)
  - Insert name of witness 2 Insert date(s) of interview(s)
  - Insert name of witness 3 Insert date(s) of interview(s)
  - Insert name of witness 4 Insert date(s) of interview(s)

*[Add in all witnesses interviewed during investigation]*
- *Optional – include only if applicable:* The Investigator conducted a site visit on Insert date and time of the alleged location of the incident, namely Insert description the location.
- *Optional – include only if applicable:* The complainant/respondent also provided written, voluntary consent for the use of his/her privileged medical/mental health records in this grievance process. Records from Insert name of mental health provider/medical provider regarding complainant/respondent were obtained by the Investigator and provided to the complainant/respondent on Insert date.
- Insert any other methods that were used to gather evidence [Examples include: accepting written statements from parties/witnesses; gathering text messages, photographs, social media posts, etc.; verifying attendance documents; reviewing school security footage].

### Legal Standard

Title IX prohibits discrimination on the basis of sex. “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...” 20 U.S.C. § 1681. Under the Title IX implementing regulations at 34 C.F.R. § 106, no individual may be subject to sexual harassment. Sexual harassment means conduct on the basis of sex that satisfies one or more of the following: (1) an employee of the School conditioning the provision of an aid, benefit, or service of the School on an individual’s participation in unwelcome sexual conduct; (2) 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 recipient’s 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).

## Determination of Responsibility under Title IX

For each allegation insert the description of the facts that you have determined, by a preponderance of the evidence (more probable than not), actually occurred.

**Editor's note:** *In this section, it is the Decision-Maker's responsibility to examine the evidence and determine which facts occurred.*

- *This section should address circumstances in which the facts were established. For example, "The evidence from multiple witnesses consistently supported the complainant's statements as alleged. Accordingly, the evidence was sufficient to determine that the conduct occurred."*
- *This section should also address circumstances when the facts were not able to be established: For example: "The complainant alleged that the respondent made these statements and the respondent denied making those statements. The investigator interviewed each witness identified and I reviewed all the relevant evidence. Neither the witness statements nor other evidence corroborated the allegations against the respondent. In the absence of independent witnesses or other evidence, the investigation was unable to reconcile the conflicting accounts between the complainant and the respondent. Accordingly, the evidence was insufficient to establish that the respondent made the statements as alleged."*

**Editor's note:** *Once the facts have been set forth, the Decision-Maker must determine whether the established facts constituted sexual harassment.*

Based upon a thorough review of all the available evidence, including the Investigative Report, any directed questions and answers and any follow up questions and answers, and consideration of the above-referenced legal standards, the preponderance of the evidence was insufficient to support a determination of responsibility for the allegations of sexual harassment. Specifically, the preponderance of the evidence was insufficient to support a finding of responsibility for the following allegations: List allegations of sexual harassment from the Written Notice of Allegations.

This determination was made based on an objective review of all the available relevant evidence, including but not limited to: the inconsistent accounts of witnesses, the evidence of \_\_\_\_\_, the interview of the respondent wherein he/she provided evidence he/she did not commit the alleged violations, namely that he/she was not present at the time of the alleged sexual harassment, etc. (Example 2: "Based on the facts gathered in the course of this investigation, the School established that the alleged comments and actions made on Insert date(s) were inappropriate and offensive. Despite the offensive nature of the comments, however, the School could not establish sufficient evidence to conclude that the comments were so severe, pervasive and objectively offensive so as to effectively deny a reasonable person in the complainant's position equal access to the School's education programs or activities. In the absence of a pattern of offensive conduct, the investigation did not establish that the comments rose to the level of harassment or discrimination as defined under Title IX.")

### Application of the Marblehead Community Charter Public School's Code of Conduct

Although the respondent was determined to be not responsible under the limited definition of sexual harassment provided for by Title IX, he/she may be subject to disciplinary action under the Marblehead Community Charter Public School's Code of Conduct, namely the respondent may be referred for consideration of disciplinary action based on school rules violations, including: fill in school rules violations based on the facts that fit the situation: teasing, bullying, threats against others, physical violence against others....

### Sanctions and Remedies

Given the determination that there was insufficient evidence to find the respondent responsible for the allegations of sexual harassment as delineated above, further action will not be taken under Title IX. As designated above, the respondent may be subject to disciplinary action for violations of the Marblehead Community Charter Public School's Code of Conduct or in accordance with any controlling collective bargaining agreement and/or employment contract/policy.

Although the evidence was insufficient to establish that the respondent committed the allegations, the School will provide supportive measures designed to preserve equal access to the School's education program or activity to the complainant. *[Note that the letter just states whether or not remedies will be provided, not what those remedies are, unless it is necessary for the remedy to be implemented, such as a mutual no contact order].*

Under Title IX individuals have the right to protection from retaliation for reporting harassment and/or participating or not participating with this investigation. Should the School receive a report that you or someone acting on your behalf retaliated against any individual who participated or decided not to participate in this investigation, those allegations would be investigated promptly and could result in disciplinary sanctions.

### Appeals

Any party may appeal this determination of responsibility only on the following limited bases: (1) procedural irregularity that affected the outcome of the matter; (2) newly discovered evidence that could affect the outcome of the matter; and/or (3) Title IX personnel had a conflict of interest or bias that affected the outcome of the matter. An appeal must be made within five (5) calendar days to the Executive Director/Appeals Officer. The Executive Director/Appeals Officer may be contacted at: Insert name, phone number, email address to file an appeal.

Thank you for your continued cooperation throughout this matter.

Sincerely

Title IX Decision-Maker

cc: Insert name of complainant's/respondent's personal advisor (if applicable)

## Determination of Responsibility (mixed determination of responsibility)

34 C.F.R. § 106.45(b)(7) Determination regarding responsibility. (i) The decision-maker(s) ... must issue a written determination regarding responsibility. To reach this determination, the recipient must apply the standard of evidence described in paragraph (b)(1)(vii) of this section. (ii) The written determination must include – (A) Identification of the allegations potentially constituting sexual harassment as defined in § 106.30; (B) A description of 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 ...; (C) Findings of fact supporting the determination; (D) Conclusions regarding the application of the recipient’s code of conduct to the facts; (E) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient’s education program or activity will be provided by the recipient to the complainant; and (F) the recipient’s procedures and permissible bases for the complainant and respondent to appeal. (iii) The recipient must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed the date on which an appeal would no longer be considered timely.

Date

Insert parents’/guardians’ names, complainant/respondent name and address

RE: Title IX Grievance Procedure, Determination of Responsibility

Dear Parent/Guardian and complainant/respondent:

I am writing to notify you of the outcome of the Title IX investigation and grievance procedure relative to the formal complaint which was submitted to the Marblehead Community Charter Public School (“School”). The allegations potentially constituting sexual harassment as defined in 34 C.F.R. § 106.30 made in the formal complaint are as follows: Insert allegations from the Written Notice of Allegations sent by the Title IX Coordinator.

### Description of Procedural Steps

- Formal Complaint received on: Insert date
- Supportive measures were considered and/or put into place: Insert date
- Title IX Coordinator provided written notice of the allegations to the parties: Insert date
- Notice to respondent of request for interview: Insert date
- Notice to complainant of request for interview: Insert date
- Date that evidence was sent to the parties to review and to provide opportunity to respond: Insert date
- Date that the complainant provided a written response to the evidence: Insert date or note that no response was provided
- Date that the respondent provided a written response to the evidence: Insert date or note that no response was provided
- Date the investigative report was completed and sent to the parties and decision-maker: Insert date

- Date that complainant responded in writing to the investigative report: Insert date or note that no response was provided
- Date that the respondent responded in writing to the investigative report: Insert date or note that no response was provided
- Date that the complainant submitted directed questions to other parties/witnesses: Insert date or note that no questions were submitted
- Date that the respondent submitted directed questions to other parties/witnesses: Insert date or note that no questions were submitted
- Date follow-up questions were submitted: Insert party that submitted follow up questions and the date the answers were provided to the other party (or note that the answers were not responded to). If parties did not submit follow up questions, simply write, “not applicable”
- The following individuals were interviewed during the investigation:
  - Complainant Insert date(s) of interview(s)
  - Respondent Insert date(s) of interview(s)
  - Insert name of witness 1 Insert date(s) of interview(s)
  - Insert name of witness 2 Insert date(s) of interview(s)
  - Insert name of witness 3 Insert date(s) of interview(s)
  - Insert name of witness 4 Insert date(s) of interview(s)

*[Add in all witnesses interviewed during investigation]*
- *Optional – include only if applicable:* The Investigator conducted a site visit on Insert date and time of the alleged location of the incident, namely Insert description the location.
- *Optional – include only if applicable:* The complainant/respondent also provided written, voluntary consent for the use of his/her privileged medical/mental health records in this grievance process. Records from Insert name of mental health provider/medical provider regarding complainant/respondent were obtained by the Investigator and provided to the complainant/respondent on Insert date.
- Insert any other methods that were used to gather evidence [Examples include: accepting written statements from parties/witnesses; gathering text messages, photographs, social media posts, etc.; verifying attendance documents; reviewing school security footage].

### Legal Standard

Title IX prohibits discrimination on the basis of sex. “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...” 20 U.S.C. § 1681. Under the Title IX implementing regulations at 34 C.F.R. § 106, no individual may be subject to sexual harassment. Sexual harassment means conduct on the basis of sex that satisfies one or more of the following: (1) an employee of the School conditioning the provision of an aid, benefit, or service of the School on an individual’s participation in unwelcome sexual conduct; (2) 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 recipient’s 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).

After an objective review of all relevant evidence, including consideration of the Investigative Report, any directed questions and answers submitted by the parties, and any follow-up questions and answers submitted by the parties, the following facts were found by a preponderance of the evidence.

For each allegation insert the description of the facts that you have determined, by a preponderance of the evidence (more probable than not), actually occurred.

**Editor's note:** *In this section, it is the Decision-Maker's responsibility to examine the evidence and determine which facts occurred.*

- *This section should address circumstances in which the facts were established. For example: "The evidence from multiple witnesses consistently supported the complainant's statements as alleged. Accordingly, the evidence was sufficient to determine that the conduct occurred."*
- *This section should also address circumstances when the facts were not able to be established. For example: "The complainant alleged that the respondent made these statements and the respondent denied making those statements. The investigator interviewed each witness identified and I reviewed all the relevant evidence. Neither the witness statements nor other evidence corroborated the allegations against the respondent. In the absence of independent witnesses or other evidence, the investigation was unable to reconcile the conflicting accounts between the complainant and the respondent. Accordingly, the evidence was insufficient to establish that the respondent made the statements as alleged."*

**Editor's note:** *Once the facts have been set forth, the Decision-Maker must determine whether the established facts constituted sexual harassment.*

#### Allegations Supported by Sufficient Evidence

Applying the legal standard as set forth in the Title IX regulations, I find that the conduct that the respondent has been found to be responsible for constitutes sexual harassment under Title IX. I have determined that the respondent engaged in

**Option 1:** quid pro quo harassment, in that, as an employee, the respondent conditioned the provision of an aid, benefit, or service of the School on an individual's participation in unwelcome sexual conduct;

**Option 2:** unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denied the complainant equal access to the School's education program or activity;

- **Editor's note:** *Option 2 is a fact-specific determination. The Decision-Maker will need to cite specifically to the severity of the conduct, frequency of the conduct, duration of the conduct, and offensiveness to a reasonable person of the same age, grade and gender. The Decision-Maker will also need to include how this conduct would effectively deny a reasonable person equal access to the School's education program or activity.*
- *For example: "Based on my review of information gathered in the course of this investigation, and based on the totality of the circumstances, I have determined that the respondent engaged in actions that were unwelcome, repeated, and directed at the complainant and that such actions were so severe, pervasive and objectively offensive*



*such that the respondent effectively denied the complainant equal access to the School's education program or activity. I based this determination on the specific and repeated comments and/or actions of the respondent (detailed above) and after considering the context, duration, nature and frequency of these comments and the impact upon a reasonable person in the complainant's position."*

**Option 3:** sexual assault as defined in 20 U.S.C. 1092(f)(6)(A)(v). More specifically, I have determined that the evidence gathered was sufficient to establish that the respondent engaged in (*insert the applicable offense(s) and omit those that are not applicable*):

**Option 3(a):** rape, which is defined as the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

**Option 3(b):** fondling, which is defined as: the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity. In Massachusetts, pursuant to M.G.L. c. 265, § 13B, a child under the age of 14 is incapable of giving consent to indecent touching.

**Option 3(c):** incest, which is defined as sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**Option 3(d):** statutory rape, which is defined as sexual intercourse with a person who is under the statutory age of consent. In Massachusetts, pursuant to M.G.L. c. 265, § 23, the statutory age of consent is 16 years of age.

**Option 4:** "dating violence," which is defined as, "[v]iolence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

**Option 5:** "domestic violence," which is defined as, "[a] felony or misdemeanor crime 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 in which the crime of violence occurred; 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 in which the crime of violence occurred.

**Option 6:** "stalking," which is defined as "[e]ngaging 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."

#### Allegations that were *Not* Supported by Sufficient Evidence

As for the remaining allegation[s] of sexual harassment that Insert allegation(s) deemed not responsible, the preponderance of the evidence was not sufficient to support a determination that the respondent was responsible for that/those specific allegation[s]. This determination was made based upon an objective review of all the available relevant evidence, including, but not limited to: the inconsistent accounts of witnesses, the evidence of \_\_\_\_\_, the interview of the respondent wherein he/she provided evidence he/she did not commit the alleged violations, namely that he/she was not present at the time of the alleged sexual harassment, etc.

These determinations were based on consideration of all of the facts gathered in the course of this investigation, including all of the information provided by both the respondent and the complainant.

#### Application of the Marblehead Community Charter Public School's Code of Conduct

Based upon the facts established by the preponderance of the evidence, the respondent has been referred for consideration of violation of the Marblehead Community Charter Public School's Code of Conduct, namely, the prohibition against Insert applicable school rules violation(s).

#### Sanctions and Remedies

Given the determination that the respondent was found responsible for the specific allegations of sexual harassment as delineated above, the respondent will be subject to the following potential disciplinary sanctions and/or remedies:

- *Examples are below (select those applicable). This is a non-exhaustive list so other applicable sanctions and remedies may be added.*
  - *The respondent will be referred for consideration of a short term/long term suspension in accordance with M.G.L. c. 71, § 37H3/4. If potential suspension: The respondent will be notified under separate cover of the date and time of a hearing to consider the respondent's long-term suspension (longer than ten (10) school days).*
  - *The respondent will be referred for consideration of discipline in accordance with any controlling collective bargaining agreement and/or employment contract/policy.*
  - *The respondent's course schedule or work schedule will be modified to limit contact between the respondent and the complainant.*
  - *The respondent will be prohibited from participation in team/extracurricular activities for a duration of Insert number of days/weeks.*
  - *The respondent will be required to meet with the Insert name and title of Guidance Counselor/School Adjustment Counselor/Social Worker] for Insert duration in order to identify appropriate behavior, to identify the effects and consequences of sexual harassment, and to ensure continued compliance with the Marblehead Community Charter Public School's prohibitions on sexual harassment.*
  - *The respondent will be prohibited from contacting the complainant.*
  - *Should the respondent engage in any further sexual harassment or retaliation, he/she will be subject to further disciplinary action.*

Additionally, remedies designed to restore or preserve equal access to the School's education program or activity will be provided by the School to the complainant. [Note that the letter just states whether or not remedies will be provided, not what those remedies are, unless it is necessary for the remedy to be implemented, such as a mutual no contact order].



Under Title IX individuals have the right to protection from retaliation for reporting harassment and/or participating or not participating with this investigation. Should the School receive a report that you or someone acting on your behalf retaliated against any individual who participated or decided not to participate in this investigation, those allegations would be investigated promptly and could result in disciplinary sanctions.

#### Appeals

Any party may appeal this determination of responsibility only on the following limited bases: (1) procedural irregularity that affected the outcome of the matter; (2) newly discovered evidence that could affect the outcome of the matter; and/or (3) Title IX personnel had a conflict of interest or bias that affected the outcome of the matter. An appeal must be made within five (5) calendar days to the Executive Director/Appeals Officer. The Executive Director/Appeals Officer may be contacted at: Insert name, phone number, email address to file an appeal.

Thank you for your continued cooperation throughout this matter.

Sincerely,

Title IX Decision-Maker

cc: Insert name of complainant's/respondent's personal advisor (if applicable)

# Appeal

## Notice of Appeal

(to be sent to both the complainant and respondent)

34 C.F.R. § 106.45(b)(8). Appeals. (i) A recipient must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein, on the following bases: (A) Procedural irregularity that affected the outcome of the matter; (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and (C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter. (ii) A recipient may offer an appeal equally to both parties on additional bases. (iii) As to all appeals, the recipient must: (A) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties; (B) Ensure that the decision-maker(s) for the appeal 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 decision-maker(s) for the appeal complies with the standards set forth in paragraph (b)(1)(iii) of this section; (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.

Date

Insert parents'/guardians' names, respondent's or complainant's name (as applicable) and address

RE: Title IX Grievance Procedure, Notice of Appeal

Dear Parent/Guardian and complainant/respondent:

I am writing in my capacity as the Appeals Officer for the Title IX Grievance Process. The respondent/complainant has filed an appeal of the School's determination of responsibility/dismissal of the formal complaint or any allegations therein. This appeal was filed on Insert date. In accordance with 34 C.F.R. § 106.45(b)(8) and the grievance procedures adopted by the Marblehead Community Charter Public School, an appeal may be filed only on the following bases: 1) procedural irregularity that affected the outcome of the matter; 2) new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or 3) the Title IX Coordinator, Investigator(s), or Decision-Maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

The basis/bases for this appeal filed by the complainant/respondent was Insert reason 1, 2, and/or 3 from paragraph above. Specifically, the complainant/respondent alleged Insert specific allegations of procedural irregularity, new evidence, or allegations of conflict of interest or bias of one of the Title IX team members as the basis/bases for the appeal. Should you wish to submit a written statement in support of, or challenging, the outcome, please submit such a statement to me within five (5) calendar days. This statement may be submitted via electronic mail to me at Insert email address. I will issue a decision regarding the appeal within thirty (30) calendar days of receipt of the written appeal, no later than Insert date.

Sincerely,

Title IX Appeals Officer

cc: Insert name of complainant's/respondent's personal advisor (if applicable)

### **Dismissal of Appeal for Failure to Meet Appeal Criteria**

*34 C.F.R. § 106.45(b)(8). Appeals. (i) A recipient must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein, on the following bases: (A) Procedural irregularity that affected the outcome of the matter; (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and (C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter. (ii) A recipient may offer an appeal equally to both parties on additional bases. (iii) As to all appeals, the recipient must: (A) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties; (B) Ensure that the decision-maker(s) for the appeal 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 decision-maker(s) for the appeal complies with the standards set forth in paragraph (b)(1)(iii) of this section; (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.*

Date

Insert parents'/guardians' names, respondent's or complainant's name (as applicable) and address

RE: Title IX Grievance Procedure, Appeal Decision

Dear Parent/Guardian and complainant/respondent:

I am writing in my capacity as the Appeals Officer for the Title IX Grievance Process. The respondent/complainant filed an appeal of the School's determination of responsibility/dismissal of the formal complaint or any allegations therein on Insert date. In accordance with 34 C.F.R. § 106.45(b)(8) and the grievance procedures adopted by the Marblehead Community Charter Public School, an appeal may be filed only on the following bases: 1) procedural irregularity that affected the outcome of the matter; 2) new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or 3) the Title IX Coordinator, Investigator(s), or Decision-Maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Because your submission does not meet one or more of the enumerated bases for appeal set forth in the Marblehead Community Charter Public School's policy, the appeal has been dismissed.

Sincerely,

Title IX Appeals Officer

cc: Insert name of complainant's/respondent's personal advisor (if applicable)

## Appeal Decision Template

34 C.F.R. § 106.45(b)(8). Appeals. (i) A recipient must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein, on the following bases: (A) Procedural irregularity that affected the outcome of the matter; (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and (C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter. (ii) A recipient may offer an appeal equally to both parties on additional bases. (iii) As to all appeals, the recipient must: (A) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties; (B) Ensure that the decision-maker(s) for the appeal 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 decision-maker(s) for the appeal complies with the standards set forth in paragraph (b)(1)(iii) of this section; (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.

### Date

Insert parents'/guardians' names, respondent's or complainant's name (as applicable) and address

RE: Title IX Grievance Procedure, Appeal Decision

Dear Parent/Guardian and complainant/respondent:

I am writing in my capacity as the Appeals Officer for the Title IX Grievance Process. As you know, the respondent/complainant filed an appeal of the School's determination of responsibility/dismissal of the formal complaint or any allegations therein on Insert date. In accordance with 34 C.F.R. § 106.45(b)(8) and the grievance procedures adopted by the Marblehead Community Charter Public School, an appeal may be filed only on the following bases: 1) procedural irregularity that affected the outcome of the matter; 2) new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or 3) the Title IX Coordinator, Investigator(s), or Decision-Maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

The basis/bases for the appeal filed was an allegation that Insert reason 1, 2, and/or 3 from paragraph above. Specifically, the appealing party alleged Insert specific allegations of procedural irregularity, new evidence, or allegations of conflict of interest or bias of one of the Title IX team members.

On Insert date, I provided both parties with written notice of the appeal and an opportunity to submit a written statement in support of or challenging the outcome.

After reviewing the basis/bases for appeal, all documentation from the grievance process, and the statements provided by both the complainant and respondent regarding this appeal, I have determined that the determination of responsibility/dismissal of the complaint issued in accordance with the Title IX Grievance Process on Insert date shall remain in effect/be overturned.

This decision was made after consideration of all relevant factors, specifically list reasons for the appeal decision here. Some examples might include: a thorough review of the documentation and further inquiry amongst the Title IX Coordinator/Investigator/Decision-Maker revealed no conflict of interest or bias that

affected the outcome of the matter; the evidence put forward by the complainant/respondent was not in fact new evidence, as it was reasonably available during the original investigation, and it could not affect the outcome of the matter; there was no procedural irregularity that affected the outcome of the matter, etc.

This decision in this matter is final and there is no further opportunity for appeal.

Sincerely,

Title IX Appeals Officer

cc: Insert name of complainant's/respondent's personal advisor (if applicable)

# **Informal Resolution**

## Notice to Parties of Informal Resolution

34 C.F.R. § 106.45(b)(9) *Informal Resolution*. A recipient may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section. Similarly, a recipient may not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the recipient - (i) Provides to the parties a written notice disclosing: The allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming the formal complaint arising from the same allegation, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; (ii) Obtains the parties' voluntary, written consent to the informal resolution process; and (iii) Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

**Editor's Note:** Informal Resolution CANNOT be used until after a Formal Complaint is filed and CANNOT be used when the Complainant is a student and the Respondent is an employee of the School. Otherwise, the School has the discretion and responsibility to determine whether the use of the informal resolution process is appropriate to offer in a given matter.

### Date

Insert parents'/guardians' names, complainant/respondent name and address

RE: Title IX Grievance Procedures, Notice of Informal Resolution Process Request

Dear Parent/Guardian and complainant/respondent:

I am writing because one (1) or more of the parties has expressed an interest in the Informal Resolution Process. On, Insert date, both parties were notified that a formal complaint was filed and that the School had opened an investigation under Title IX of the Education Amendments Act of 1972. The complaint included the following allegation (s):

- Insert details of alleged allegations (you may use the information from the Formal Notice Letter) that are sufficient to allow the accused to prepare a response.

As an alternative to the formal investigation process, the School is able to offer an Informal Resolution Process as a way to resolve the issues raised in the complaint. This process is VOLUNTARY. Should both parties agree to participate, the informal resolution process would be facilitated by an individual who is not directly involved in either the investigation or decision-making relative to the formal complaint. The role of the informal resolution facilitator is to guide the process, facilitate communication, and assist the parties in their attempt to successfully resolve the formal complaint. A facilitator does not act as a judge and does not render decisions on the substantive merits of the formal complaint.

If you choose to participate in the informal resolution process you will be required to sign an agreement to participate, indicating you understand and agree to the following: (1) the process is voluntary; (2) either party can withdraw at any point prior to reaching an agreement and resume the formal grievance process; (3) you have been informed of the consequences resulting from participating in the informal resolution process, including that the records will be maintained or could be shared; and (4) if an agreement is reached, the parties cannot resume the formal complaint process for the same allegation(s).



If you are interested in participating in this informal resolution process, please sign and return the enclosed “Informal Resolution Process Agreement to Participate.” The informal resolution process will not begin unless and until both parties have signed and returned the enclosed form.

If you have any questions or concerns about this letter or the Informal Resolution Process, please contact me at your earliest convenience at: Insert telephone number.

Sincerely,

Informal Resolution Facilitator

cc: Insert name of complainant’s/respondent’s personal advisor (if applicable)

## **Informal Resolution Process Agreement to Participate Consent Form**

34 C.F.R. § 106.45 (b)(9)(i)-(iii)

*Editor's Note: Each party must sign this agreement prior to engaging in the informal resolution process. This signed agreement must be maintained as part of the recordkeeping requirements.*

### **Title IX Agreement to Participate in Informal Resolution**

The parties involved in the Title IX Grievance Process have voluntarily agreed to participate in the Informal Resolution Process. Each party understands and agrees to the following:

- The School has provided written notice of the allegations;
- Participation in the Informal Resolution Process is voluntary;
- During the Informal Resolution Process, the grievance process timelines will be suspended and will not resume unless the Informal Resolution Process has not resulted in a resolution of all the allegations;
- The School has informed me of the consequences resulting from participating in the Informal Resolution Process and I have had the opportunity to ask questions about any potential consequences;
- The School has informed me which records will be maintained or could be shared if an agreement is reached;
- The School has informed me that this process is not confidential, and that any information shared during the Informal Resolution Process may be shared with the investigative team, other administrators and/or outside agencies, as appropriate. By participating in the Informal Resolution Process, the parties agree that they may not seek any notes or internal documents related to the Informal Resolution Process and they are not entitled to access any such documentation from the School unless that information is shared with the Investigator and/or Decision-Maker;
- The parties are precluded from resuming the formal complaint process arising from the same allegation(s) if an informal resolution agreement is achieved;
- Either party can end the Informal Resolution Process by withdrawing from it in writing at any time prior to reaching an agreement and the formal complaint process will resume;
- The correspondence to the parties, this Agreement to Participate, and the actual resolution agreement will be considered part of each party's educational record;
- That the Informal Resolution Process is separate from the grievance process, and the Informal Resolution Facilitator will not have any obligation or responsibility to share the statements or discussions from the Informal Resolution Process with the staff involved in the formal complaint grievance process;
- That the School is not a party to any agreement that is reached. The role of the Informal Resolution Facilitator is solely to facilitate an agreement between the parties;
- That the Informal Resolution Facilitator will not be acting as the decision maker and will not make a determination as to responsibility; and
- That if the Informal Resolution Process does not result in an agreement relative to the allegation(s), no fault or blame will attach to either party and both parties will retain the rights relative to each unresolved allegation that they had prior to attempting informal resolution.

The Informal Resolution Facilitator will work with both parties to attempt to clarify the issues and to facilitate the reaching of an agreement.

If you agree to the above, please sign and date below.

\_\_\_\_\_  
Insert Name of Party- Parent/Guardian and/or  
Complainant or Respondent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Insert Name of Party- Parent/Guardian and/or  
Complainant or Respondent

\_\_\_\_\_  
Date

## Notice of Successful Informal Resolution and Closure of Formal Complaint Process

Date

Insert parents'/guardians' names, complainant/respondent name and address

RE: Title IX Grievance Procedures, Notice of Informal Resolution Agreement

Dear Parent/Guardian and complainant/respondent:

I am writing to follow up regarding the Informal Resolution Process. As you are aware, the parties voluntarily participated in the Informal Resolution Process and were able to reach an agreement regarding the allegations raised in the complainant's formal Title IX complaint. I have enclosed a copy of that agreement with this correspondence.

Because the parties reached an agreement, the formal complaint is now closed.

Thank you for your participation in the Informal Resolution Process. If you have any questions or concerns about this letter, please contact me at: Insert telephone number.

Sincerely,

Title IX Coordinator

Encl. (Informal Resolution Agreement)

cc: Insert name, Informal Resolution Facilitator  
Insert name of complainant's/respondent's personal advisor (if applicable)

**Notice that Informal Resolution was Not Successful and Referral Back to Title IX  
Coordinator**

Date

Insert parents'/guardians' names, complainant/respondent name and address

RE: Title IX Grievance Procedures, Notice of Informal Resolution Process Conclusion

Dear Parent/Guardian and complainant/respondent:

I am writing to follow up regarding your participation in the informal resolution process. Although both parties consented to participate in the Informal Resolution Process, the parties were not able to reach an agreement to resolve the allegations. For that reason, the Informal Resolution Process has concluded, and the matter has been referred to the Title IX Coordinator to resume the formal complaint process.

If you have any questions or concerns about this letter or the Informal Resolution Process, please contact me at your earliest convenience at: Insert telephone number.

Sincerely,

Informal Resolution Facilitator

cc: Insert name, Title IX Coordinator  
Insert name of complainant's/respondent's personal advisor (if applicable)

## Informal Resolution Agreement Template

34 C.F.R. § 106.45(b)(9)(i)-(iii)

*The School must maintain any formal agreement reached by the parties for seven (7) years. Additionally, the Title IX Coordinator needs to be informed of the agreement to ensure implementation of the terms agreed to by each party.*

Date:

Complainant:

Respondent:

The Parties above agreed to voluntarily participate in the Title IX Informal Resolution Process. Through this process, the following agreement has been reached:

List out each term that was agreed to by the parties and be specific. If the parties seek and agree to it, the agreement may contain a statement that the parties will not disclose the contents of the Agreement. Agreements can include, but are not limited to, agreed-upon supportive measures as outlined in the applicable policy; agreed-upon disciplinary measures as outlined in the applicable policy; agreed upon modifications to class work or class schedules; and mutual restrictions on contact between the parties.

As a result of reaching this agreement, the Parties understand that they cannot resume the formal complaint process on the same allegation(s). This formal agreement will be maintained by the School for seven (7) years.

\_\_\_\_\_  
Name and Signature of Parent/Guardian and/or Complainant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Signature of Parent/Guardian and/or Respondent

\_\_\_\_\_  
Date

### Informal Resolution Checklist for Facilitator

- Formal Title IX Complaint has been filed
- The Formal Complaint does NOT involve a complaint filed by a student against a staff member
- A determination was made that informal resolution would be appropriate in this matter
- Written Notice of the Opportunity for Informal Resolution has been provided to both parties and their parents
- The complainant (or parents/guardians if under 18) has signed and returned the Informal Resolution Procedure Agreement to Participate Consent Form
- The respondent (or parents/guardians if under 18) has signed and returned the Informal Resolution Procedure Agreement to Participate Consent Form
- Informed each party of the format by which informal resolution will be conducted (e.g.; facilitator meeting with each party separately; facilitator speaking with each party separately by phone or videoconference, etc.)

***Editor's note:** face-to-face mediation with the parties in the same room or virtual room is not recommended unless the School has received written consent from both parties to participate in such a format.*
- Assisted the parties in drafting an agreement reflecting the parties' consensus (See Template)
- Both parties have reviewed, signed, and dated the agreement
- If any of the terms of the agreement impact the roles and responsibilities of School staff, those terms have been shared with the relevant staff members, including the Title IX Coordinator
- A copy of the following documents has been placed in the student record of the complainant and the respondent: 1) notice of informal resolution process; 2) Informal Resolution Process Agreement to Participate Consent Form; 3) the resolution agreement or notice of return to the formal complaint grievance process
- If an agreement was not reached, notice was sent to the parties and the Title IX Coordinator so that the formal complaint process can be resumed

34 C.F.R. § 106.45(b)(9) *Informal Resolution. A recipient may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section. Similarly, a recipient may not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the recipient - (i) Provides to the parties a written notice disclosing: The allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming the formal complaint arising from the same allegations provided, however, that at any time prior to agreeing to a resolution, any party has a right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; (ii) Obtains the parties' voluntary, written consent to the informal resolution process; and (iii) Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.*

# Emergency Removal



## Notice of Title IX Emergency Removal - Initial

*34 C.F.R. § 106.44(b)(2)(c) Emergency removal. Nothing in this part precludes a recipient from removing a respondent from the recipient's education program or activity on an emergency basis, provided that the recipient undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.*

### Title IX Emergency Removal:

- *"Individualized safety and risk analysis" that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal.*
- *No limit to amount of days.*
- *Respondent has an opportunity to challenge the decision immediately following removal.*
- *Because of the nuances between a Title IX emergency removal and a state law emergency removal under M.G.L. c. 71, § 37H3/4, and the requirement that a respondent not be disciplined prior to completion of the Title IX formal complaint process, consultation with legal counsel is strongly recommended prior to implementing an emergency removal under Title IX.*

### Date

Insert parents'/guardians' names, student's name and address

RE: Notice of Title IX Emergency Removal

Dear Parent/Guardian and Student:

On behalf of the Marblehead Community Charter Public School, I am writing to document the School's decision today to remove Insert student's name ("the respondent") from school on an emergency basis in accordance with Title IX of the Education Amendments Act of 1972. Following receipt of an allegation that the respondent engaged in sexual harassment of a fellow student, the School engaged in an individualized safety and risk analysis to determine whether the respondent's continued presence in the school building at this time presented an immediate threat to his/her physical health or safety and/or the physical health or safety of other students and/or staff. Based upon this safety and risk analysis, the School has determined that Insert student's name would be, effective today, removed from school on an emergency basis. As you are aware, I orally contacted you to notify you of the reasons for the respondent's emergency removal today and to confirm that there were adequate provisions for the respondent's safety and transportation prior to being removed from school.

Please be advised that I have scheduled a hearing to be conducted at my office on Insert date and time. [Date must be before the expiration of two (2) school days following the emergency removal]. At that hearing both you, should you choose to participate, and your child will have the following rights: the opportunity to present information regarding whether your child's presence at school presents an immediate threat to the physical health or safety of any student or other individual; the opportunity to dispute the allegations and to present an explanation of the alleged incident, including any mitigating facts, but your child may not be compelled to testify; the opportunity to review your child's record and the documents on which the school may rely in making the Title IX emergency removal decision; the

right to be represented by an advisor, including counsel or lay person, of your child's choice, at private expense; the right to produce witnesses on your child's behalf; the right to cross-examine witnesses presented by the School; the right to request that the hearing be audio recorded and to receive a copy of the audio recording upon request; and the right to interpreter services, if needed, to participate. If there is a need for a translator, please notify me immediately so that the school can make prompt arrangements for interpreter services.

While excluded from the school premises on an emergency basis under Title IX, your child will have the opportunity to complete and submit his/her class assignments and to make up any test or quizzes administered in his/her absence so as to ensure Insert student name's continued academic progress while removed from school.

Sincerely,

Title IX Coordinator acting as the Principal's designee

cc: Principal  
Insert name of student's personal advisor (if applicable)

## Notice of Title IX Emergency Removal – Decision After Hearing

Date

Insert parents'/guardians' names, student's name and address

RE: Notice of Title IX Emergency Removal

Dear Parent/Guardian and Student:

On behalf of the Marblehead Community Charter Public School, I am writing to inform you of my decision, based upon the hearing conducted on Insert date, as to your child's continued emergency removal from school in accordance with Title IX of the Education Amendments of 1972. My decision is as follows:

*Option 1:*

After hearing, the School determined that the student's continued presence at school does not present an immediate threat to your own physical health or safety or that of others, and you are permitted to return to school effective Insert date.

*Option 2:*

After hearing and consideration of the individualized safety and risk analysis, the School has determined that Insert student's name's presence at school poses an immediate threat to his/her physical health or safety and/or the physical health or safety of his/her fellow students and/or staff. For that reason, your child will continue to be removed from school on an emergency basis pending the outcome of the Title IX investigation.

Because your child is subject to removal for more than ten (10) consecutive days, he/she has the opportunity to receive educational services during his/her period of removal. Please find enclosed the school's Education Service Plan, which provides a list of the specific education services that are available during the student's removal from school and contact information for school personnel who will be able to provide you more information about accessing such services.

Please be advised you have a right to appeal this determination to the Executive Director or his/her designee in writing, within five (5) calendar days of the effective date of this decision. You or the student may also request an extension of up to seven (7) calendar days of the time for filing the written appeal. The emergency removal will remain in effect during the appeal process.

If you have any questions about this matter, please contact me directly.

Sincerely,

Title IX Coordinator acting as the Principal's designee

Enclosure

cc: Principal  
Insert name of student's personal advisor (if applicable)

# Definitions

**Complainant:** An individual who is alleged to be the victim of conduct that could constitute sexual harassment under Title IX. Parents and/or legal guardians of a complainant are not considered a complainant but may file a Formal Complaint on behalf of a minor child and act on behalf of the minor child in any Title IX matter. For the purpose of the Title IX Procedures the terms “complainant” and “alleged victim” shall have the same meaning.

**Confidentiality:** The School 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 by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 C.F.R. part 99, or as required by law, or to carry out the purposes of 34 C.F.R. part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

**Dating Violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

**Domestic Violence:** A felony or misdemeanor crime 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 in which the crime of violence occurred; 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 in which the crime of violence occurred.

**Formal Complaint:** A document or electronic submission filed by a complainant, that contains the complainant’s physical or digital signature or otherwise indicates that the complainant is the person filing the Formal Complaint, or a document signed by the Title IX coordinator, that:

- (1) alleges sexual harassment against a respondent; and
- (2) requests that the School investigate the allegation of sexual harassment.

At the time of filing a Formal Complaint, the complainant must be participating in or attempting to participate in the School’s education program or activity.

**Informal Resolution:** A recipient may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section. Similarly, a recipient may not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination

regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the recipient - (i) Provides to the parties a written notice disclosing: The allegations, the 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 provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; (ii) Obtains the parties' voluntary, written consent to the informal resolution process; and (iii) Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

**Party or Parties:** The complainant and/or respondent.

**Principal:** The Principal or Principal's designee.

**Recipient:** The Marblehead Community Charter Public School.

**Recordkeeping:** A recipient must maintain for a period of seven years records of:

- (A) Each sexual harassment investigation including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity;
- (B) Any appeal and the result therefrom;
- (C) Any informal resolution and the result therefrom; and
- (D) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.

For each response required under the Title IX regulations, a School must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the recipient must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity. If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken.

**Retaliation:** No recipient 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 the regulations issued pursuant thereto, 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 Title IX or its regulations. 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 or this part, constitutes retaliation.

**Respondent:** An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

**Sexual Harassment:** Under Title IX, the term “sexual harassment” includes three (3) types of misconduct based on sex:

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct;
- (2) unwelcome conduct on the basis of sex, including unwelcome conduct based on sex stereotyping or on the basis of traditional notions of masculinity and femininity, that is sufficiently severe and pervasive and objectively offensive conduct, effectively denying a person equal educational access; or
- (3) any instance of sexual assault, dating violence, domestic violence, or stalking as defined within this section.

**Sexual Assault:** An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI’s Uniform Crime Reporting system and set out below:

- Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity. In Massachusetts, pursuant to M.G.L. c. 265, § 13B, a child under the age of 14 is incapable of giving consent to indecent touching.
- Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent. In Massachusetts, pursuant to M.G.L. c. 265, § 23, the statutory age of consent is 16 years of age.

For the purposes of the definition of sexual assault, the term “consent” shall be defined in a manner consistent with Massachusetts laws.

**Stalking:** 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.” For the purposes of this definition: “Course of conduct” means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property. “Reasonable person” means a reasonable person under similar circumstances and with similar identities to the victim. “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

**Executive Director:** The Executive Director or Executive Director’s designee.

**Supportive Measures:** Individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the complainant or respondent, while designed to ensure equal educational access, protect safety, and/or deter sexual harassment. Supportive measures may be offered before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Supportive measures available to complainants and respondents include, but are not limited to: 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; changes in work locations; leaves of absence; increased security and monitoring of certain areas of the building and/or campus; and other similar measures. Violations of the restrictions imposed by supportive measures may be considered a violation of school rules and may also be considered in determining whether sexual harassment has occurred.