

**Policy #901**

**Title IX Sexual Discrimination/Harassment Grievance Procedures**

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**Sponsor: Jacalyn Auris, Vice President of Education Services**

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**I. Purpose**

To Document Devereux's Grievance Procedures in compliance with Title IX as it relates to sexual discrimination including sexual harassment claims within schools.

**II. Scope**

This policy applies to all Devereux Centers that operate school programs. This policy applies to all Devereux centers that operate school programs for students aged 5-21 years. Centers are required to have procedures in place to comply with Title IX regulations.

**III. Background**

Devereux does not discriminate on the basis of sex in its school programs and activities. Its prohibition against sex discrimination, including sexual harassment, covers students, employees, applicants, and other third parties. Devereux complies with Title IX. Persons seeking further information about Devereux's nondiscrimination policy and procedures in the School Programs should contact Devereux School's Title IX Coordinator. See Attachment for a listing of the Contact information for each Devereux School. Inquiries may also be directed to the U.S. Department of Education's Assistant Secretary for Civil Rights at:

U.S. Department of Education
Office for Civil Rights
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Telephone: 1-800-421-3481
FAX: 202-453-6012

**A. Prohibition of Sexual Harassment**

Devereux prohibits sexual harassment, a form of sex discrimination. It is a violation of policy for any student or staff member to engage in sexual harassment, as defined in these procedures, or to retaliate against anyone that reports sex-based discrimination or sexual harassment or who participates in a Title IX investigation. These grievance procedures apply to student and employee complaints that fall within the scope of Title IX which are specific to School Programs.

## **B. Definitions**

For purposes of these procedures, terms shall have the following meanings:

1. Complainant: an individual who is alleged to be the victim of conduct that could constitute sexual harassment
2. Title IX Decision-maker: the individual assigned to assess relevant evidence and issue a written determination regarding responsibility
3. The decision-maker may not be the Title IX Coordinator or the investigator See Attachment for the name and contact information of the Decision-maker for each Devereux School Education program or activity: locations, events, or circumstances in which the school exercises substantial control over both the complainant and the respondent and the context in which the sexual harassment occurs
4. Formal complaint: a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment
  - a) At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed
  - b) A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail
5. Title IX Investigator: the individual trained and assigned to conduct an impartial investigation designed to gather sufficient evidence to reach a determination regarding responsibility
  - a) The investigator may be the Title IX Coordinator but may not be the decision-maker
  - b) The Title IX Coordinator will maintain a list of Center Investigators who are trained to conduct Title IX investigations for their school
6. Respondent: an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment
7. Sexual harassment: conduct on the basis of sex that satisfies one or more of the following:
  - a) (1) A school employee conditioning the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct;
  - b) (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 school's education program or activity; or
  - c) (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)

8. Supportive measures: non-disciplinary, non-punitive, individualized services offered as appropriate, as reasonably available, without fee or charge, to the complainant or respondent, before or after the filing of a formal complaint or where no formal complaint has been filed
  - a) The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures
9. Title IX Coordinator: the employee designated to coordinate Devereux schools' efforts to comply with Title IX responsibilities. The school's Title IX Coordinator is listed on the Attached schedule.
10. Title IX Appeals Officer: The Title IX Appeals Coordinator handles all appeals of the decision made by the Title IX Decision Maker in the event either party requests an appeal through the appeal process.

#### **IV. Procedures:**

##### **A. Fair and Equitable Process**

1. No individual designated as a Title IX Coordinator, investigator, decision-maker, or appeal decision-maker may have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Devereux will not make credibility determinations based on a person's status as a complainant, respondent, or witness.
2. A respondent is presumed not responsible for alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

##### **B. Reports of Sexual Harassment**

1. Any person may report sex discrimination, including sexual harassment, at any time. Such a report may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, or by any other means that results in the Title IX Coordinator receiving the verbal or written report.
2. Any school employee who receives a report of sexual harassment, or otherwise has notice of sexual harassment or allegations of sexual harassment, must promptly report the allegations to the Title IX Coordinator. An alternate Title IX Coordinator will be designated if it is alleged that the Title IX Coordinator committed harassment or if any other conflict of interest exists.

##### **C. Supportive Measures**

1. Wherever there is a report of sexual harassment, the Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures (even in the absence of a formal complaint), consider the complainant's wishes with respect to supportive measures, and explain to the complainant the process for filing a formal complaint.

2. The Title IX Coordinator must also offer supportive measures to a respondent, regardless of whether a formal complaint has been filed against the respondent.
3. The purpose of supportive measures is to restore or preserve equal access to the school's education program or activity without unreasonably burdening the other party. They include measures designed to protect the safety of all parties or the school's educational environment and to deter sexual harassment.
4. Supportive measures may 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 or housing locations; leaves of absence; increased security and monitoring of certain areas of campus; or other similar measures.
5. Supportive measures do not include disciplinary sanctions. A Title IX grievance process must be completed before imposing disciplinary sanctions or other actions that are not supportive measures against a respondent.
6. Devereux will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality does not impair the school's ability to provide the supportive measures.

#### D. Formal Complaints

1. Formal complaints must be filed with the Title IX Coordinator. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the school's education program or activities. A complainant, a parent or guardian with the legal right to act for the complainant, or the Title IX Coordinator may file a formal complaint. Forms for this purpose are available at [identify location(s), which may include the school's website, counseling offices, administrative offices, etc.]. A complainant may, but need not, use this form to file a formal complaint.
2. Upon receipt of a formal complaint, the Title IX Coordinator will provide written notice to the known parties, which must include:
  - a) notice of the school's Title IX grievance procedures;
  - b) notice of the allegations of sexual harassment, including sufficient details known at the time and with sufficient time to prepare for any initial interview;
  - c) a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
  - d) notice to the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney; and
  - e) a statement that the parties may inspect and review any evidence obtained through the investigation that is directly related to the allegations raised in the formal complaint.

3. In response to a formal complaint, Devereux will follow these grievance procedures and will comply with Title IX and applicable regulations, including 34 C.F.R. § 106.45. Devereux will investigate the allegations in a formal complaint.

E. Timeframe

1. Devereux will make a good faith effort to complete the investigation and grievance process within an average of 60 to 90 days, without jeopardizing the rights of either party.
2. The grievance process may be temporarily delayed for good cause. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. Devereux will provide written notice to the parties for any delay or extension of any timeframe in these procedures and the reasons for the delay or extension.

F. Advisors

1. Each party may have an advisor of their choice who may, but is not required to be, an attorney. A party's advisor may accompany the party to any meeting, interview, or proceeding related to this Title IX grievance process.
2. However, an advisor may not speak on the party's behalf (for instance, when a party is asked questions by the investigator or decision-maker) and may not appear on behalf of a party when the party's attendance is expected.

G. Emergency Removal and Administrative Leave

1. Nothing in this policy prohibits Devereux from removing a respondent from the school's education program or activities on an emergency basis. Before doing so, however, the school must undertake an individualized safety and risk analysis; determine 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 provide the respondent with notice and an opportunity to challenge the decision immediately following the removal.
2. An emergency removal does not amount to a pre-judging of the allegations against the respondent, who is entitled to a presumption of non-responsibility pending the completion of the grievance process.
3. Nothing in this policy prohibits [Name of school] from placing a school employee respondent on administrative leave during the pendency of the grievance process.

H. Dismissal of Formal Complaints

1. The Title IX Coordinator must dismiss a formal complaint if: the alleged conduct would not constitute sexual harassment as defined in these procedures even if proved; the alleged conduct did not occur within Devereux's education program or activity; or the alleged conduct did not occur against a person in the United States.
2. The Title IX Coordinator may dismiss a formal complaint or any allegations therein, if, at any time during the grievance process: the 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 school; or specific circumstances prevent the school from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
3. Upon dismissal of a formal complaint, the school will promptly send written notice of the dismissal and reasons for the dismissal to all parties.
  4. A dismissal from the Title IX grievance does not prohibit the complainant from pursuing other remedies under state or federal law, nor does it prohibit [Name of school] from addressing the allegations pursuant to separate law, policy, or school code of conduct in any manner the school deems appropriate.
- I. Informal Resolution of Formal Complaints [If applicable]
1. At any time prior to reaching a determination regarding responsibility, Devereux may facilitate an informal resolution process, such as mediation or restorative justice, that does not involve a full investigation and adjudication to resolve a formal complaint. The school will never require any party to participate in informal resolution and may not condition enrollment, employment, or enjoyment of any other right or privilege upon agreeing to informal resolution.
  2. Informal resolution is not an option where allegations concern a school employee sexually harassing a student.
- J. Details about the school's informal resolution process
1. To engage in informal resolution, Devereux will provide a written notice to all parties that discloses the allegations; the requirements of the informal resolution process; the right of any party to withdraw from informal resolution and resume the grievance process with respect to the formal complaint; and any potential consequences that may result from participating in informal resolution. The school must then obtain each party's voluntary, written consent to the informal resolution process.
  2. An informal resolution process may result in the parties, and the school, agreeing on a resolution of the formal complaint that involves sanctioning or disciplining a respondent.
- K. Investigation of Formal Complaints
1. Devereux will investigate the allegations in a formal complaint. Devereux, not the parties, has the burden of proof and burden of gathering evidence sufficient to reach a determination of responsibility. The investigator will begin and carry out the investigation in a reasonably prompt manner. If, in the course of an investigation, the school decides to investigate allegations about either party that were not included in the earlier written notice, it will provide notice to the parties of the additional allegations.
  2. During the investigation, each party will have an equal opportunity to present witnesses and evidence. The investigator will provide, to any 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.

3. Prior to issuing an investigative report, the investigator will send to each party and each party's advisor, if any, all evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, whether or not the school intends to rely on such evidence in reaching a determination regarding responsibility. The parties then have at least ten (10) days to submit a written response to the investigator, which the investigator will consider prior to completion of the investigative report. The investigator will advise the parties in writing of the deadline for the parties' written response.
4. The investigator will create an investigative report that fairly summarizes the relevant evidence. At least ten (10) days before the deadline for the parties to submit written questions to the decision-maker, the investigator must send the investigative report to each party and advisor, if any, for their review and written response.

**L. Decision-Making Process and Written Determination**

1. After the investigator issues the investigative report to the parties, each party will have at least ten (10) days to submit written, relevant questions that the party wants asked of any party or witness, provide each party with the answers, and allow for submission of additional, limited follow-up questions from each party.
2. The Title IX Coordinator will advise the parties in writing of the deadline to submit written questions and a written response to the investigative report.
3. Only relevant questions may be asked of a party or witness. Before a party or witness answers a question, the decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant to the party proposing the question.
4. After the opportunity for each party to submit and respond to written, relevant questions (as outlined above), the decision-maker must objectively evaluate all relevant evidence and issue a written determination of evidence applying the [standard of evidence] standard. The decision-maker will not consider the following:
  - a) evidence about the complainant's sexual predisposition;
  - b) evidence about the complainant's prior sexual behavior, unless such evidence is offered to prove that someone other than the respondent committed the alleged conduct or when offered to prove consent;
  - c) information protected under a legally recognized privilege, unless the person holding such privilege has waived it; or
  - d) a party's records from a physician, psychiatrist, psychologist, or other recognized professional which are made and maintained in connection with treatment to the party, unless the party provides voluntary, written consent to do so for the purpose of this grievance process.
5. The decision-makers written determination will include:

- a) identification of the allegations potentially constituting sexual harassment as defined by Title IX;
  - 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, and hearings held;
  - c) findings of fact supporting the determination;
  - d) conclusions regarding the application of the school's student code of conduct and policies to the facts;
  - e) a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and whether remedies designed to restore or preserve equal access to the school's education program or activity will be provided to the complainant; and
  - f) the school's procedures and permissible bases for appeal.
6. [Name of school] will provide the written determination to the parties simultaneously. The determination becomes final on the date that the school provides the parties with the written determination of the result of an appeal, if an appeal is filed, or the date on which an appeal would no longer be considered timely.

#### M. Remedies and Disciplinary Sanctions

- 1. Where a determination of responsibility for sexual harassment is made against the respondent, Devereux will provide remedies to the complainant. Remedies must be designed to restore or preserve equal access to the school's education program or activities. Remedies may include actions that are the same or similar to the supportive measures identified in these procedures.
- 2. If a respondent is determined responsible for sexual harassment following the grievance process, Devereux may impose disciplinary sanctions. Sanctions may include reprimand; imposition of a protective or restrictive order limiting contact with the complainant or certain areas of campus; detention; suspension; or expulsion.

#### N. Appeals

- 1. Either party may appeal the dismissal of a formal complaint or a determination of responsibility. A party may appeal only on one or more of 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; or
  - c) the Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.



2. In order to appeal a dismissal or determination of responsibility, a party must notify the Title IX Coordinator in writing no later than ten (10) days after the dismissal or determination is sent to the party. The written notice of appeal must state with specificity the issues being appealed and the bases for the appeal.
3. Upon receipt of a timely filed written notice of appeal, the Title IX Coordinator will notify the parties in writing:
  - a) that the appeal was filed; and
  - b) the process and deadline for submitting a written statement, in support of or against, the issues being appealed. The Title IX Coordinator must allow at least ten (10) days for the parties to submit written statements.
  - c) The appeal, including any written statements submitted by the parties and any evidence and information considered by the decision-maker, will be considered by an appeal decision-maker. The appeal decision-maker cannot be the Title IX Coordinator, investigator, or the same decision-maker who issued the determination of responsibility. Devereux's appeal decision-makers are listed on the Attachment
  - d) The appeal decision-maker will issue a written determination of appeal, which will describe the result of the appeal and rationale for the result. The Title IX Coordinator will provide the appeal decision simultaneously to both parties.

O. Recordkeeping

1. Devereux maintains for seven (7) years records of:
  - a) records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment;
  - b) each sexual harassment investigation including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant;
  - c) any appeal and the result therefrom;
  - d) any informal resolution and the result therefrom; and
  - e) all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

Approved: \_\_\_\_\_



**Carl E. Clark II, President**  
**September 14, 2021**