

CMS TITLE IX GRIEVANCE PROCEDURES

Title IX of the Education Amendments of 1972 ("Title IX") prohibits discrimination on the basis of sex by any institution receiving federal funds in the United States. Title IX also prohibits retaliation against individuals who submit complaints or participate in the resolution process. Charlotte-Mecklenburg Schools (CMS) shall not discriminate on the basis of sex in any of its educational programs or activities. All allegations of sexual misconduct will be taken seriously by the District and investigated accordingly. Allegations of sex discrimination shall be handled in accordance with the following Title IX Grievance Procedures set forth by the District and pursuant to federal law.

I. PURPOSE

The purpose of these procedures is to secure, at the lowest possible level, prompt and equitable resolutions of complaints based on sex discrimination, including complaints of sexual harassment or sexual violence, in violation of Title IX and of District policies that prohibit these types of discrimination. These procedures apply only to complaints alleging discrimination prohibited by Title IX (including sexual harassment and sexual violence). These procedures will be available in every school site administrative office and posted on the CMS District website. District policies on sexual harassment and discrimination will be outlined in the CMS Student Code of Conduct for students and CMS Board policies for employees.

II. WHAT IS SEXUAL HARRASSMENT?

Sexual Harassment – is defined by Title IX (§106.30) as conduct on the basis of sex that satisfies one or more of the following:

- 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 (referred to as *quid pro quo* sexual harassment)
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectivity offensive that it denies a person equal educational access to the recipient's educational program or activity; or
- "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)

Sexual Harassment may include acts of sexual violence. Sexual violence is a form of sex discrimination prohibited by Title IX. Acts of sexual violence, including sexual

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assault, dating violence, domestic violence and stalking, are not only subject to the District's disciplinary procedures, but also to state criminal laws.

III. DEFINITIONS

"Complainant" - a student or employee of the District who submits a complaint alleging discriminatory action or treatment prohibited by Title IX, including acts of sexual harassment or sexual violence

"Respondent" - the person, employees, other students, or third parties, alleged to be responsible for the prohibited conduct alleged in a complaint

"Actual Knowledge"

"Day" - the calculation of days in complaint processing, except as otherwise expressly provided, shall exclude Saturdays, Sundays, and federal, state and school holidays or closures

"Sexual Assault" - an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation ¹

"Dating Violence" - violence committed by a person--(A) who is or has been in a social relationship of a romantic or intimate nature with the complainant; and(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:(i) The length of the relationship (ii) The type of relationship (iii) The frequency of interaction between the persons involved in the relationship ²

"Domestic Violence" - felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of the jurisdiction ³

"Stalking" - engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress ⁴

¹ 20 U.S.C. 1092(f)(6)(A)(v)

² 34 U.S.C. 12291(a)(10)

³ 34 U.S.C. 12291(a)(8)

⁴ 34 U.S.C. 12291(a)(30)

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“Sexual Violence” - Physical sexual acts occurring between any persons, including members of the same sex, perpetrated by against a person’s will or where a person is incapable of giving consent (e.g., due to the student’s age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). Several acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, other students, or third parties. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX.

“Educational programs or activity”- locations, events or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred. This also includes virtual learning environments and online communications between students and employees.

“Formal Complaint” - a document filed by a complainant or signed by the Responsible Administrator or the District Title IX Administrator, alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment

"Complaint Submission Date" - the date on which a written complaint was received by the Responsible Administrator

"Responsible Administrator" – the principal, assistant principal, dean of students, District Title IX Administrator, the authorized designee of this individuals, or the administrator designated by the Superintendent

"Neutral and objective investigator/administrator" - an administrator or designated investigator who is not the subject of a complaint or is not a complainant

“Notice of Allegation” - a written statement given to all parties providing the details of the allegations and the rights entitled to both parties during the investigation process

“Notice of Investigation” - a written statement informing all parties involved, including witnesses, that a formal investigation is in progress

“Notice of Outcome” - a written statement given to all parties providing a final determination and a detailed analysis as to how that determination was reached

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IV. PROCEDURAL REQUIREMENTS

A. Actual Notice: Once a school has notice of allegations of sexual harassment or discrimination, it must respond. Actual notice occurs when an individual notifies the Responsible Administrator or any school employee, regardless of job description, of sexual misconduct. Misconduct witnessed by any school employee serves as actual notice. Indirect notice from sources such as media, on-line media, and videos also serves as actual notice.

B. Reporting: Reports of sexual harassment can be made directly to the Responsible Administrator or to *any* school employee, regardless of job their description. Reports can also be made by the Responsible Administrator. Reports of sexual misconduct will be initially processed by the Responsible Administrator. Once a report has been made, the Responsible Administrator is mandated to offer the complainant supportive measures and inform the complainant of the formal complaint process. Reports of sexual harassment under Title IX are distinct and separate from reports made to law enforcement agencies and violations under The Clery Act.⁵

C. Supportive/Interim Measures:

- a. Title IX requires the school to provide supportive/interim measures to ensure equal access to its education programs and activities, protect the complainant and provide due process to the respondent, pending the outcome of an investigation.
- b. Supportive/interim measures are individualized services that are non-disciplinary in nature, reasonably available and ensure equal educational access while providing a safe environment for all parties. Upon notice of an allegation of sexual harassment, the Responsible Administrator must confidentially contact the complainant to discuss available supportive/interim measures. Supportive/interim measures can be offered with or without a formal complaint.
- c. The specific supportive/interim measures implemented and the process for implementing those measures will vary depending on the facts of each case. The Responsible Administrator should consider a number of factors in determining what interim measures to take, including, for example, the specific need expressed by the complainant; the age of the students involved; the severity or pervasiveness of the allegations; any continuing effects on the complainant; whether the complainant and alleged

⁵ The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, codified at 20 U.S.C. § 1092(f) with regulations at 34 C.F.R. 668.46

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perpetrator share the class, transportation, or extra-curricular activities; and whether other judicial measures have been taken to protect the complainant (e.g., civil protection orders).

d. Some examples of supportive/interim measures are:

- Counseling
- Classroom reassignment
- Restorative conversation
- Restorative conference
- Peer mediation
- Extensions of deadlines or other course-related adjustments
- Mutual restrictions on contact between parties

e. The Responsible Administrator should also ensure that both parties are aware of any available resources, such as victim advocacy, housing assistance, academic support, disability services, health and mental health services, and legal assistance, and the right to report a crime to local law enforcement.

D. Time Limits: A complaint under this procedure should be filed as soon as possible after the alleged misconduct. There is no statute of limitations for filing a formal complaint of sexual misconduct under Title IX. However, in accordance with 85 Fed. Reg. 30214, a complaint may be dismissed if the elapsed time between the alleged sexual misconduct and the filing of a complaint prevents the District from collecting the evidence necessary to reach a determination. A party not satisfied with a resolution or outcome of an investigation, may submit a written appeal within ten (10) days to the District Title IX Administrator.

E. Service: Service of any notice or decision under this procedure shall be deemed effective on the person served as of the date of delivery if personally served, faxed or emailed. If delivered by mail, notice is effective three calendar days of deposit.

F. Evidentiary Standard: The school shall use a preponderance of the evidence standard (more likely than not) when investigating and resolving a complaint under these procedures. The evidence provided will be weighed against the facts that it is more likely than not that the formal complaint occurred as alleged.

G. Applicability: Title IX applies to a schools' educational programs or activities, whether such programs or activities occur on-campus or off-campus, including remote learning and electronic communications.

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V. CONFIDENTIALITY

Confidentiality will be maintained to the greatest extent possible. Any information gathered during an informal procedure may be used during a formal procedure, if initiated. While there can be no assurance of complete confidentiality, complaints under this procedure will be treated as sensitive information not to be shared with others except in limited circumstances. Examples of exceptions to maintaining confidentiality include:

- Information the law requires to be reported
 - Information imparted to others in supervisory positions in order to further an investigation or halt a discriminatory practice
 - Information given to the respondent in order to have sufficient information to respond to the allegations
- A.** The school will take all reasonable steps to investigate and respond to a complaint consistent with a request by the complaining party not to disclose his/her name. However, such requests for confidentiality may limit the school's ability to adequately investigate and respond to the allegations raised in the complaint.
- B.** Requests for confidentiality will be evaluated in the context of the school's responsibility to provide a safe and nondiscriminatory environment for all students, and the request will be weighed against whatever factors the school deems relevant, including, without limitation:
- The complainant's age
 - Circumstances that suggest there is an increased risk of future acts of harassment and/or sexual violence under similar circumstances
 - Whether the school possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence)
- C.** All parties to a complaint, including the complainant, respondent and witnesses, have privacy interests and, therefore, all parties should be cautioned not to divulge or publicize the nature of the proceedings or the identity of those involved outside the scope of the investigation.

VI. INFORMAL RESOLUTION PROCESS

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After a report or complaint is received, the Responsible Administrator may provide the option of an Informal resolution. Informal Resolution is appropriate when the conduct involved is not of a serious or repetitive nature and disciplinary action is not required to remedy the situation. No formal investigation is involved in the informal resolution process, and the informal resolution process shall not be considered a precondition for the filing of a formal complaint.⁶

- A.** A written request for informal resolution must be made within five (5) days of the date of the alleged incident. The school principal or designee shall determine whether the nature of the problem is such that it is likely to be resolved by agreement on an informal basis.
- B.** Methods for informal resolution may include:
- Coaching a person on how to directly address the situation causing the problem
 - Mediating the dispute between parties
 - Offering a Restorative Conference, Restorative Circle, or Restorative Conversation
 - Developing written behavior expectations of the alleged offender to redirect conduct
 - Arranging a meeting with the alleged offender that involves a discussion of the sexual misconduct policies and requirements for compliance.
- C.** The Responsible Administrator shall document any informal resolution using the District's centralized record-keeping system (Title IX Tracking System), copies of such documentation and outcome letters shall be uploaded in the Title IX Tracking System. The Responsible Administrator shall email the signed Informal Resolution Agreement to the Title IX Office within three (3) days of resolution. The Informal Resolution Agreements must be emailed to titleixcoordinator@cms.k12.nc.us.

VII. FORMAL COMPLAINT PROCEDURES

In contrast to a report, a formal complaint requires a Complaint Form filed by a complainant, someone allowed to file on the complainant's behalf (a parent/guardian) or signed by a Responsible Administrator, alleging sexual harassment against a respondent that requests the school to investigate the matter. All formal complaints by students or employees in violation of Title IX shall be submitted to the Responsible Administrator. Complaints emailed to the Title IX Office at titleixcoordinator@cms.k12.nc.us will be forwarded to Responsible Administrator for

⁶ Informal Resolution not available if the complaint involves an employee.

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processing. Once a formal complaint is made, the school is required to respond and must offer ongoing supportive measures to both parties throughout the grievance process. The investigation will be conducted by the assigned Responsible Administrator.

Step 1 – Submitting a Formal Complaint

- A.** The complainant may obtain a Complaint Form to file a formal complaint from the Responsible Administrator, or the District website. A Complaint Form also may be copied from the Code of Student Conduct handbook. The complainant may attach a written narrative explaining the nature of the complaint on the Complaint Form. The Complaint Form shall contain information that describes the conduct that constitutes sex discrimination, including sexual harassment and sexual violence, and identify with reasonable particularity the respondent(s) and any witnesses to the alleged conduct. The Complaint Form should also contain the complainant's physical or digital signature that indicates that the complainant is the person filing the formal complaint.
- B.** Any District employee who either reasonably believes a student has been discriminated against based on sex or who receives a complaint of sex discrimination, harassment or violence from a student must immediately report the allegation to the Responsible Administrator. This reporting obligation is in addition to a school employee's reporting obligations to appropriate officials pursuant to the law and the Mecklenburg County Child Sexual Abuse Investigation and Intervention Guidelines when the employee has a reasonable belief that a student is being sexually abused or subjected to other forms of abuse and neglect prohibited by law.
- C.** If the complainant is unwilling or unable to provide a written statement including the information set forth above, the Responsible Administrator shall ask for such details in an oral interview. In the event the complainant is a student with disabilities, the Responsible Administrator will carefully review the reporting student's IEP or 504 plan to determine what specific accommodations that child should have to aid in their oral interview.

Step 2 - Determining Jurisdiction

- A.** After a formal complaint is received, the Responsible Administrator shall offer the complainant supportive measures.
- B.** Within five (5) days after the Complaint Submission Date, the Responsible Administrator shall initiate an investigation of the complaint, or inform the complainant in writing that the complaint does not fall under the jurisdiction of the District and the school will not carry out any further investigation.

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- C.** If the complaint falls under the jurisdiction of the District, the Responsible Administrator shall review the complaint to determine whether the matter falls within the scope of the expanded definition of sexual harassment under Title IX (§106.30).
- a. If the complaint does not meet the threshold of a Title IX violation, the case will be dismissed as a Title IX violation. The Responsible Administrator will then determine if there is misconduct as defined by the CMS Student Code of Conduct or CMS Board Policy.
 - b. If the complaint constitutes sexual misconduct as defined by the CMS Student Code of Conduct or CMS Board Policy, the Responsible Administrator will offer supportive measures and use the CMS investigation process to investigate case going forward.
 - c. If the complaint does meet the threshold of sexual misconduct under Title IX, the complaint will be forwarded to the Title Office and investigated adhering to the following Title IX Grievance Procedures.

Step 3 - Investigation

- A. Notice of Allegation:** Once it has been determined that the allegation constitutes sexual misconduct under Title IX, the Responsible Administrator will send a written Notice of Allegation to the Complainant and Respondent. The Notice of Allegation must include:
- The actual allegations that would constitute sexual harassment
 - The provision of sufficient time for the respondent to prepare a response to the allegations prior to any initial interview
 - The presumption of innocence of the respondent
 - A statement that the parties are entitled to an advisor of their choice
 - A statement that the parties can request to inspect and review any evidence
 - Information regarding the Code of Conduct and false statements
 - The option for an informal resolution
 - A copy of the Title IX Grievance Procedures

Both parties must be made aware of any additional allegations that come forth during the investigation that were not included in the initial complaint.

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- B. Notice of Investigation:** A written notice stating that a formal investigation is in progress will be sent to all parties involved, including witnesses, once the investigation has begun.
- C.** In order to provide a neutral and objective investigation, the Responsible Administrator cannot be both an investigator and decision-maker in the investigation.
- D.** If the Responsible Administrator is not a neutral party, the Title IX Administrator shall designate a neutral and objective administrator to conduct the investigation.
- E.** In conducting the investigation, the designated investigator shall interview all parties identified in the complaint and other witnesses that the investigator determines may provide information relevant to resolving the complaint allegation(s). Both the complainant and respondent shall have the opportunity to identify witnesses to be interviewed and provide documentation or other evidence for the designated investigator to review.
- F.** The Responsible Administrator shall consider the evidence provided and may take additional measures necessary to complete the investigation.
- G.** The Responsible Administrator will maintain documentation of all proceedings, which may include written findings of facts, transcripts, surveillance videos, notes, or audio recordings in the CMS Centralized Record Keeping System (Title IX Platform.)⁷
- H.** Supportive measures may be continued or offered to both parties during the investigation process.
- I. Emergency Removal of Respondent from School:** Title IX permits the school to temporarily remove a student on an interim basis during the investigation process in limited “emergency” circumstances if there is an immediate threat to physical health or safety to them or the complainant. Before the school can enact emergency removal, however, the school must do the following:
 - Undertake an individualized risk assessment to determine whether there is an immediate threat to the physical health or safety of any person arising from the allegations of sexual harassment

⁷ These records are not included in the student’s cumulative file.

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- Make an affirmative determination that an immediate threat exists based on the individualized risk assessment
- Provide the respondent with notice and an opportunity to challenge the emergency removal decision immediately following the respondent's removal.

The District has ability to place an employee on administrative leave during the investigation process. Whether such leave is paid or unpaid is at the District's discretion and subject to North Carolina law and CMS Board of Education policies.

Step 4 - Notice of Outcome

- A. Once the Responsible Administrator weighs the evidence against the facts of the case using the preponderance of the evidence standard (i.e., it is more likely than not that discrimination/sexual harassment/sexual violence occurred), a written
- B. Notice of Outcome letter will be issued, detailing the findings and conclusions supporting the determination. The Responsible Administrator shall notify both the complainant and respondent immediately upon conclusion of the investigation.

The Notice of Outcome shall state the following:

- Whether the school found that sexual harassment or misconduct occurred
- The analysis used to determine the findings
- Ways to immediately end the discriminatory conduct
- Ways to remedy the discriminatory effects of any discriminatory behavior on the complaining party and, if applicable, the District's educational environment
- The steps to be taken to prevent the recurrence of any discriminatory or harassing conduct found to have occurred. The recommendations of the Responsible Administrator shall become final and shall be implemented unless either party appeals as provided in Step 5 - Appeal Rights

Step 5 - Appeal Rights

- A. A party not satisfied with the resolution in Step 4, above, may submit a written appeal within ten (10) days to the District Title IX Administrator. The written appeal shall state with particularity the nature of the disagreement, the reasons underlying such disagreement, and how the outcome would be changed by reconsideration of the determination.
- B. The District Title IX Administrator or designee shall conduct a review of the record to determine whether the preponderance of the evidence supports the

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determination. The District Title IX Administrator or designee shall issue a written decision and mail it to the parties within ten (10) days of the receipt of the appeal. The District Title IX Administrator's decision is a final decision.

Step 6 - Complaints to an External Agencies

If a party is not satisfied with the District Title IX Administrator's decision in Step 5, above, the party may file a complaint with the Office of Civil Rights ("OCR") in Washington, D.C within 180 days of the alleged violations of Title IX.⁸ More information is available at the Office for Civil Rights of the U.S. Department of Education at 400 Maryland Avenue SW, Washington, D.C. 20024.⁹

VIII. DISCIPLINARY SANCTIONS AND REMEDIES

If the investigation reveals that sexual harassment created a sexually hostile environment, then the District and/or school will take prompt and effective steps to end the harassment, eliminate the hostile environment, and prevent its recurrence. Employees and students may be disciplined if it is determined through these procedures that discriminatory action, harassment or retaliation for complaining, has occurred in violation of federal or state laws or District policies.

- A. Students.** Students may be disciplined including, if circumstances warrant, out-of-school suspension, expulsion or alternative school placement. If the recommended disciplinary consequences involve either a long-term suspension or expulsion, the student is entitled to pursue the hearing and appeal rights pursuant to North Carolina General Statute § 115C-390.8, North Carolina General Statute § 115C-390.11, CMS Board of Education Policies and CMS Student Code of Conduct.
- B. Employees.** Disciplinary consequences for employees including hearings and appeal rights will be governed by North Carolina law and CMS Board Policy and regulations. Employee sanctions are processed by the CMS Employee Relations department.
- C. Supportive measures and non-disciplinary remedies** may be provided to both parties at the conclusion of an investigation. Examples of these supportive measures or remedies include but are not limited to:
 - Extensions of assignments
 - Class schedule changes
 - No contact agreements
 - Enactment of a safety plan

⁸ See OCR manual <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>

⁹ At any time during the proceedings, a party can file a complaint with OCR

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- Counseling

IX. NO RETALIATION

- A.** Students, employees or parents who make complaints in good faith, shall be free from retaliation, coercion, and reprisal in seeking resolution of their complaint. Furthermore, persons acting as witnesses to a complaint, in good faith, shall be free from reprisal.
- B.** Retaliation is a separate violation distinct from the initial underlying harassment or discrimination allegation. Claims of retaliation, submitted in good faith and in writing to the Responsible Administrator, shall be investigated pursuant to these procedures. Individuals who engage in retaliation will be subject to discipline, regardless of whether there has been a finding of cause for the underlying complaint.

X. FALSE COMPLAINTS

- A.** Individuals who knowingly file a false or misleading complaint alleging harassment, discrimination or retaliation are subject to appropriate disciplinary action, including, but not limited to, dismissal of the complaint.
- B.** If the preponderance of the evidence supports a finding that the complainant knowingly submitted a false or misleading complaint alleging harassment, discrimination or retaliation, the complaint is subject to being dismissed, and the student or employee who submitted the complaint is subject to discipline in a manner consistent with the District's Student Code of Conduct and CMS Board Policy and regulations.

XI. RELATIONSHIP OF THESE PROCEDURES AND TIMELINES TO LAW ENFORCEMENT ACTIVITIES

- A.** Nothing in these Procedures should in any way be deemed to discourage the complainant from reporting acts subject to these procedures to local law enforcement. Complainants have the right to simultaneously file both a Title IX complaint with the District and/or school and a criminal complaint with law enforcement. If the complainant files a criminal complaint, the Responsible Administrator should not wait for the conclusion of a criminal investigation or criminal proceeding to begin the complaint process.

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- B.** Although the District and/or school may need to temporarily delay the fact-finding portion of a Title IX investigation while local law enforcement officials are gathering evidence, the Responsible Administrator must offer supportive measures to protect the complainant during this delay. The Responsible Administrator should also continue to update the parties on the status of the investigation and inform the parties when the District and/or school resumes the Title IX investigation.

XII. TITLE IX TRAINING MATERIALS

Training materials used by Responsible Administrators can be accessed on the CMS website.

[Link to Title IX webpage](#)

[Link to training](#)

XIII. TITLE IX COORDINATOR CONTACT INFORMATION

Any questions about student-to-student or employee-to-student sexual harassment, available counseling or educational resources for students impacted by sexual harassment, or about filing a Title IX complaint with the school may be directed to the Title IX Coordinator at titleixcoordinator@cms.k12.nc.us. The Title IX coordinator can be emailed 24 hours a day, seven days a week.

Additional concerns can be relayed to:

Stephanie B. McKinney
District Title IX Administrator
Charlotte-Mecklenburg Schools
4339 Stuart Andrews Blvd
Suite 350/Courier #835A
Charlotte, NC 28217
980-343-9433_