

School Board

Administrative Procedure –Title IX Sexual Harassment Grievance Process

This procedure implements the District’s Title IX Sexual Harassment Policy, Board policy 2:265, with respect to the District’s response to a *Formal Title IX Sexual Harassment Complaint*. See 34 C.F.R. Part 106. Use this “Grievance Process” to comply with Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulations (34 C.F.R. Part 106) as applied to sexual harassment reports and complaints. See 34 C.F.R. §106.45. Italicized terms in this procedure are defined in Board policy 2:265.

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A. Overview of 34 C.F.R. §106.45 Grievance Process

The District treats *Complainants* and *Respondents* engaging in the Formal Title IX Sexual Harassment Complaint Grievance Process (Grievance Process) equitably and adheres to the following guidelines in addition to those set forth in Board policy 2:265:

1. Presumption of Non-Responsibility. The *Respondent* is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Grievance Process. 34 C.F.R. §106.45(b)(1)(iv).
2. Grievance Process Required Before Imposing Sanctions. The District complies with this Grievance Process before imposing any disciplinary sanctions or other actions against a *Respondent*. 34 C.F.R. §106.45(b)(1)(i).
3. Supportive Measures.¹ The District may provide 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 work² locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures to *Complainants* and/or *Respondents*. 34 C.F.R. §106.45(b)(1)(ix).
4. Evidence Considered. All relevant evidence – including both inculpatory and exculpatory evidence – is objectively evaluated. Credibility determinations are not based on a person’s status as a *Complainant*, *Respondent*, or witness. The District does not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, e.g., attorney-client privilege, doctor-patient

The footnotes should be removed before the material is used.

¹ Customize this list to reflect locally available supportive measures.

² For districts with residential facilities, insert “or housing” here.

privilege, or spousal privilege, unless the person holding such privilege has waived the privilege. 34 C.F.R. §106.45(b)(1)(ii) and (x).

5. Standard of Proof. All determinations are based upon the *preponderance of evidence* standard. 34 C.F.R. §106.45(b)(1)(vii).
6. Right to Appeal. Each party may appeal any determination as described in **Section H. Appeals**, below. 34 C.F.R. §106.45(b)(1)(viii); 34 C.F.R. §106.45(b)(8)(i).
7. Timeline. This Grievance Process should be concluded within 120 school business days after filing or signing of a Formal Title IX Sexual Harassment Complaint. As used in this Grievance Process, *school business days* means days on which the District's main office is open. For good cause, this Grievance Process may be temporarily delayed or extended for a limited time only if the *Complainant* and the *Respondent* are provided written notice of the delay/extension and the reasons for it. Examples of good cause include: 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. 34 C.F.R. §106.45(b)(1)(v).
8. Disciplinary Sanctions and Remedies. Following a determination of responsibility, the District may implement recommended disciplinary sanctions, up to and including: discharge, for a *Respondent*-employee; expulsion, for a *Respondent*-student; and termination of any existing contracts and/or prohibition from District property and activities, for a third-party *Respondent*. 34 C.F.R. §106.45(b)(1)(vi).

Where a determination of responsibility for sexual harassment is made against a , remedies designed to restore or preserve equal access to the District's education program or activities are provided to a *Complainant*. Remedies may include the same individualized services described in *Supportive Measures*, above. Unlike *Supportive Measures*, however, remedies may be disciplinary or punitive, and they may burden the *Respondent*. 34 C.F.R. §106.45(b)(1)(i). The District may implement remedies up to and including the recommended disciplinary sanctions described above. 34 C.F.R. §106.45(b)(1)(vi).

9. Training Requirements. The District requires That any individual designated by the District as a Title IX Coordinator, investigator, decision-maker (including the Initial Decision-Maker and Appellate Decision-Maker), or any person designated by the District to facilitate an informal resolution process will:
 - a. Not have a conflict of interest or bias for or against *Complainants* or *Respondents* generally or an individual *Complainant* or *Respondent*; and
 - b. Receive training on, at minimum, the definition of sexual harassment, the scope of the District's *Education Program or Activity*, how to conduct an investigation and Grievance Process (including hearings, appeals, and informal resolution processes, as applicable), and how to serve impartially (including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias).

Any individual designated by the District as an investigator receives training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Any individual designated by the District as a decision-maker receives training on issues of relevance of questions and evidence, including training about when questions and evidence about the *Complainant's* sexual predisposition or prior sexual behavior are not relevant to the allegations. 34 C.F.R. §106.45(b)(1)(iii).

B. Notice of Allegations

Upon signing a Formal Title IX Sexual Harassment Complaint or receiving a Formal Title IX Sexual Harassment Complaint filed by a *Complainant*, the Title IX Coordinator:

1. Ensures that the *Complainant*, at the time of filing the complaint, was participating in or attempting to participate in an *Education Program or Activity* of the District. If not, the *Complainant* will be notified that Title IX does not apply to the complaint. The matter will be evaluated under and addressed using other District policies and procedures, if relevant.
2. Provides written notice to all known parties of the following information:
 - a. This procedure 2:265-AP1, and information about any available informal resolution process.
 - b. The allegations of sexual harassment potentially constituting Title IX 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 identities of the parties involved in the incident, if known, the conduct allegedly constituting Title IX sexual harassment, and the date and location of the alleged incident, if known.
 - c. 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. That all parties may have an advisor of their choice, who may be, but is not required to be, an attorney.
 - e. That all parties may inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Title IX Sexual Harassment Complaint (including evidence the District does not intend to rely on in determining responsibility, and inculpatory or exculpatory evidence) so that each party can meaningfully respond to the evidence before the investigation concludes.
 - f. That the District's behavior policies prohibit knowingly making false statements or knowingly submitting false information during the Grievance Process.
3. Provides a second written notice to all known parties if, during the investigation, the District decides to investigate allegations not included in the first written notice.
4. Decides whether to personally conduct the investigation or appoint a qualified investigator. If the Title IX Coordinator appoints a qualified investigator, provides written notice of the appointment to the Investigator.

When the *Complainant's* Identity Is Unknown

If the *Complainant's* identity is unknown, such as where a third party reports that a *Complainant* was victimized by sexual harassment but does not reveal the *Complainant's* identity or where a *Complainant* reports anonymously, the Grievance Process may proceed if the Title IX Coordinator determines it is necessary to sign a Formal Title IX Sexual Harassment Complaint, even though the written notice provided in **Section B.1**, above, will not include the *Complainant's* identity. 85 Fed. Reg. 30133. If the *Complainant's* identity is later discovered, the Title IX Coordinator provides another written notice to the parties. *Id.* at f/n 594.

When the *Respondent's* Identity is Unknown

If the *Respondent's* identity is unknown, such as where a *Complainant* does not know the *Respondent's* identity, the Grievance Process shall proceed because an investigation might reveal the *Respondent's* identity, even though the written notice provided in **Section B.1**, above, will not include the *Respondent's* identity. If the *Respondent's* identity is later discovered, the Title IX Coordinator provide another written notice to the parties. 85 Fed. Reg. 30138.

C. Consolidation of Formal Title IX Sexual Harassment Complaints

When multiple Formal Title IX Sexual Harassment Complaints contain allegations of sexual harassment arising out of the same facts or circumstances, the Title IX Coordinator may consolidate the complaints even if the complaints contain different *Respondents* and *Complainants* or allegations between parties. 34 C.F.R. §106.45(b)(4).

D. Dismissal of Formal Title IX Sexual Harassment Complaint

If the Title IX Coordinator or designee determines that conduct alleged in a Formal Title IX Sexual Harassment Complaint would not constitute Title IX sexual harassment even if proved, is not alleged to have occurred in the District's *Education Program or Activity*, or is not alleged to have occurred against a person in the United States, then the Title IX Coordinator or designee dismisses the Formal Title IX Sexual Harassment Complaint with regard to that conduct for purposes of Title IX Sexual Harassment only. Such a dismissal does not preclude action under another applicable District policy or procedure.

The Title IX Coordinator may dismiss a Formal Title IX Sexual Harassment Complaint or any allegations contained in it if any of the following occur:

1. The Complainant requests in writing to the Title IX Coordinator s to withdraw the Formal Title IX Sexual Harassment Complaint or any allegations contained in it;
2. The *Respondent* is no longer enrolled or employed by the District; or
3. Specific circumstances prevent the District from gathering enough evidence to reach a determination as to the Formal Title IX Sexual Harassment Complaint or allegations in it.

Upon dismissal, the Title IX Coordinator promptly sends simultaneous written notice to the parties of the dismissal, reason(s) for the dismissal, and the right to appeal the dismissal. 34 C.F.R. §106.45(b)(3).

E. Informal Resolution of Formal Title IX Sexual Harassment Complaint

If a Formal Title IX Sexual Harassment Complaint has been filed by a Complainant or signed by t the Title IX Coordinator or designee and no determination regarding responsibility has been reached, the District may facilitate informal resolution of a Formal Title IX Sexual Harassment Complaint, such as mediation, that does not involve a full investigation and adjudication, provided that the District (34 C.F.R. §106.45(b)(9)):

1. Provides the parties written notice disclosing:
 - a. The allegations in the Title IX Sexual Harassment Complaint;
 - b. The requirements of the informal resolution process, including the circumstances in which parties who have elected to use informal resolution may not resume the Grievance Process for the Formal Title IX Sexual Harassment Complaint. This includes the limitation that once the parties have agreed to a resolution in informal resolution, the parties are precluded from resuming that Grievance Process for the allegations in the Formal Title IX Sexual Harassment Complaint and allegations of conduct arising from the same allegations as those in the Formal Title IX Sexual Harassment Complaint.
 - c. Notice that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process, in which case the Grievance Process for the Formal Title IX Sexual Harassment Complaint will resume; and
 - d. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained and could be shared;
2. Obtains the parties' voluntary, written consent to the informal resolution process; and
3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

F. Investigation of Formal Title IX Sexual Harassment Complaint

The Investigator follows these steps when investigating the allegations in a Formal Title IX Sexual Harassment Complaint.

Actor	Action
Investigator or Title IX Coordinator	During an investigation and throughout the Grievance Process (34 C.F.R. §106.45(b)(5)): 1. Ensures that the burden of proof and burden of gathering evidence rest on the District and not the parties involved. 34 C.F.R. §106.45(b)(5)(i). 2. Provides an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. 34 C.F.R. §106.45(b)(5)(ii). 3. Refrains from restricting the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. 34 C.F.R. §106.45(b)(5)(iii). 4. Provides the parties the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice (who may, but is not required to, be an attorney). 34 C.F.R. §106.45(b)(5)(iv). However, the District can restrict the extent to which the advisor may participate in the proceedings if its restrictions apply equally to both parties. 34 C.F.R. §106.45(b)(5)(iv). 5. Provides, 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. 34 C.F.R. §106.45(b)(5)(v). 6. Provides the parties an equal opportunity to inspect and review any evidence obtained during the investigation that is directly related to the Formal Title IX Sexual Harassment Complaint's allegations (including evidence the District does not intend to rely on in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence). 34 C.F.R. §106.45(b)(5)(vi). 7. Prior to the completion of the investigative report, sends 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 provides each party with 10 school business days to submit a written response. <u>Id.</u> 8. Upon receipt of a party's written response to the evidence, reviews the response and sends a copy to the other party in an electronic format or a hard copy. 9. Prepares an investigative report summarizing all relevant evidence. 34 C.F.R. §106.45(b)(5)(vii). 10. Sends 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. <u>Id.</u>

Actor	Action
	Note: This step must occur at least 10 school business days before the Initial Decision-Maker's determination regarding responsibility. <u>Id.</u> 11. At the conclusion of the investigation, sends to the Initial Decision-Maker in an electronic format or hard copy: - The Formal Title IX Sexual Harassment Complaint; - All evidence gathered during the investigation that is directly related to the Formal Title IX Sexual Harassment Complaint's allegations (including evidence the District does not intend to rely on in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence); and - The investigative report.

G. Determination Regarding Responsibility; Remedies

Initial Decision-Maker	The Title IX Coordinator will appoint an Initial Decision-Maker for each Formal Title IX Sexual Harassment Complaint. The Initial Decision-Maker may not be the Title IX Coordinator or any designee who worked on the complaint or the investigator assigned to the same complaint. Throughout the decision-making process, the Initial Decision-Maker: Reviews Investigative Report and Corresponding Materials; Opportunity for Parties to Submit Questions - Reviews all materials received from the Investigator. - Provides the parties with written notice of the opportunity to submit to the Initial Decision-Maker written, relevant questions that a party wants the Initial Decision-Maker to ask another party or witness. 34 C.F.R. §106.45(b)(6)(ii). In the written notice, informs the parties that: - Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless they: (i) are offered to prove that someone other than the <i>Respondent</i> committed the conduct alleged by the <i>Complainant</i>; or (ii) concern specific incidents of the <i>Complainant's</i> prior sexual behavior with respect to the <i>Respondent</i> and are offered to prove consent. <u>Id.</u> - Any questions must be submitted to the Initial Decision-Maker within five (5) school business days. - Reviews any questions received from each party for submission to any party or witness. - Determines which questions are relevant questions that must be forwarded to the other party or witness for answers. If any proposed questions are excluded as not relevant or under an exception, provides the proposing party with a written explanation of the decision to exclude a question. <u>Id.</u>
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	5. Forwards relevant questions to the appropriate party or witness with instructions to submit answers to the Initial Decision-Maker within five (5) school business days.³ 6. Upon receipt of answers to questions, provides each party with copies of the answers. <u>Id.</u> 7. Provides the parties with written notice of the opportunity to submit to the Initial Decision-Maker, additional, limited follow-up written, questions that a party wants the Initial Decision-aker to ask another party or witness. <u>Id.</u> Informs the parties that any questions must be submitted to the Initial Decision-Maker within five (5) school business days. ⁴ 8. Upon receipt of answers to the additional questions, provides each party with copies of them and considers whether it is appropriate to allow any additional follow-up questions. <u>Id.</u> Determination and Written Notice of Determination Basing all decisions on the <i>preponderance of evidence</i> standard, simultaneously issues to the parties a written determination regarding responsibility that (34 C.F.R. §106.45(b)(7)(ii)): 1. Identifies the allegations potentially constituting Title IX sexual harassment; 2. Describes the procedural steps taken from the receipt of the Formal Title IX Sexual Harassment Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence; 3. Contains findings of fact supporting the determination; 4. Contains conclusions regarding the application of the District’s policies and procedures to the facts; 5. Contains a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any recommended disciplinary sanctions for the District to impose on the <i>Respondent</i>, and whether remedies designed to restore or preserve equal access to the District’s <i>Education Program or Activity</i> will be provided by the District to the <i>Complainant</i>; and 6. Outlines the District’s procedures and permissible bases for the <i>Complainant</i> and <i>Respondent</i> to appeal.
Title IX Coordinator	Implements any remedies for the <i>Complainant</i> as ordered by the Initial Decision-Maker if no appeal is timely filed or after the resolution of any appeals. 34 C.F.R. §106.45(b)(7)(iv).

H. Appeals

The determination regarding responsibility becomes final either on the date that the Appellate Decision-Maker provides the parties with the written decision of the result of the appeal, if an

The footnotes should be removed before the material is used.

³ This number can be increased; 5 days is just a recommendation.

⁴ Id.

appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. 34 C.F.R. §106.45(b)(7)(iii).

Actor	Action
<i>Complainant or Respondent</i>	Within 10 school business day after receiving either the Initial Decision-Maker’s written determination regarding responsibility or a notice of dismissal of Formal Title IX Sexual Harassment Complaint, makes a written request to Title IX Coordinator appealing the determination/dismissal based on: 1. Procedural irregularity that affected the outcome. 2. New evidence now available that could affect the outcome but that was not reasonably available at the time the determination. 3. The Title IX Coordinator, Investigator, or Initial Decision-Maker had a conflict of interest or bias for or against <i>Complainants</i> or <i>Respondents</i> generally or the individual <i>Complainant</i> or <i>Respondent</i> that affected the outcome. 34 C.F.R. §106.45(b)(8)(i).
Title IX Coordinator	Within five (5) school business days of the deadline for receipt of an appeal from the parties, the Title IX Coordinator will appoint an Appellate Decision-Maker, who may not be the Title IX Coordinator or any designee who worked on the complaint, the investigator assigned to the same complaint, or the Initial Decision-Maker assigned to the same complaint.
Appellate Decision-Maker	The Appellate Decision-Maker: 1. Within five (5) school business days of appointment, notifies both parties of the following: a. That one or more appeals have been filed. b. That each party has five (5) school business days to submit a written statement in support of or challenging the outcome of the appeal. 2. Within 30 school business days, affirms, reverses, or amends the written determination regarding responsibility or the notice of dismissal. 3. Within five (5) school business days after its decision, simultaneously issues a written decision to both parties that describes the result of the appeal and the rationale for the result. 34 C.F.R. §106.45(b)(8)(iii)(E), (F).

I. Recordkeeping

Actor	Action
Title IX Coordinator	Creates and maintains, for a period of at least seven (7) years from the date that a report or complaint of Title IX Sexual Harassment is resolved, records of any actions, including any <i>Supportive Measures</i>, taken in response to a report or formal complaint of sexual harassment, documenting in each case the basis for the conclusion

	that the responses was not deliberately indifferent, that it has taken measures designed to restore or preserve equal access to the recipient's <i>Education Program or Activity</i> and, if the District does not provide a <i>Complainant</i> with <i>Supportive Measures</i>, the reasons why such a response was not clearly unreasonable in light of the known circumstances. (34 C.F.R. §106.45(b)(10)(ii). This includes (34 C.F.R. §106.45(b)(10)(i): 1. The sexual harassment investigation, including any determination regarding responsibility, any disciplinary sanctions imposed on the <i>Respondent</i>, and any remedies provided to the <i>Complainant</i> designed to restore/preserve equal access to the District's <i>Education Program or Activity</i>; 2. Any appeal and its result; 3. Any informal resolution and its result; and 4. All materials used to train the Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution. See 5:150, <i>Personnel Records</i>, and 5:150-AP, <i>Personnel Records</i>, addressing the identification, storage, and access to personnel records. See 7:340, <i>Student Records</i>, along with 7:340-AP1, <i>School Student Records</i>, and 7:340-AP2, <i>Storage and Destruction of School Student Records</i>, addressing the District's legal obligations regarding the identification, confidentiality, safeguarding, access, and disposal of school student records. The Title IX Coordinator will ensure that all materials required to be updated in policies and procedures and posted on the District's website by the Title IX regulations are addressed. This includes: 1. Posting all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process on the District's website. 2. Prominently displaying the contact information for the Title IX Coordinator, including name or title, mailing address, email address, and telephone number, on its website. This information should also be included in any handbook or catalog that the District makes available to students, parents, employees, or other members of the District community. 3. Posting a copy of these procedures on the District's website or in the District's Board Policy Handbook.
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