



Investigating, Deciding, and Resolving Complaints Under Policy 8410

Title IX

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 assistance.



Process Overview

Report

- TIX Coordinator receives report
- TIX Coordinator contacts complainant to discuss options under Policy 8410, including supportive measures

Complaint

- Complainant files complaint
- Complaint reviewed by TIX Coordinator to determine if it falls under Policy 8410

Resolution

- Informal Resolution
- Grievance Process

District Policy 8410 Title IX Process (Before Formal Complaint)

When a District employee observes, or receives a report of, alleged sexual harassment

Report to Title IX Coordinator:

All District employees shall notify the Title IX/NonDiscrimination Coordinator of any reports of alleged sexual harassment they receive immediately when practical and not later than 24 hours following receipt of a report. . . When practicable, the details of the report to the Title IX/Non-Discrimination Coordinator shall also be provided to the building principal.
(see Policy 8410 section 8.0)

*Child Abuse Mandatory Reporting, if applicable (see Policy 8410 section 8.1 and Policy 5540)

Title IX Coordinator gathers information, collaborates with others, and makes a preliminary determination whether or not the allegations meet the definition of sexual harassment under Policy 8410

If Not Sexual Harassment under District Policy 8410:

Title IX Coordinator will work with school staff to determine the next steps to address student behavior.

If Sexual Harassment under District Policy 8410:

Title IX Coordinator contacts complainant to offer supportive measures and explain process of filing complaint; supportive measures determined in collaboration between building administrators or supervisors, Title IX Nondiscrimination Coordinator, and/or other district employees
(see Policy 8410 section 6.0 and 11.0)

Proceed to grievance process if complainant files a formal complaint or Title IX Coordinator signs a complaint

Categories of Title IX Sexual Harassment

- *Quid pro quo* sexual harassment
- Hostile environment sexual harassment
- Sexual assault
- Dating violence
- Domestic violence
- Stalking

Quid Pro Quo Sexual Harassment

Occurs when:

- A District employee
- Conditioning the provision of an aid, benefit, or service of the District
- On an individual's participation in unwelcome sexual conduct.

see District Policy 8410 § 3.9.1

Hostile environment sexual harassment



Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education programs or activities.

see District Policy 8410 § 3.9.2

Sexual Assault

Four categories:

- Rape: The penetration, no matter how slight, of vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without victim's consent.
- Fondling: The touching of private body parts (genitals, breasts, buttocks) of another person for the purpose of sexual gratification, without the consent of the victim.
- Incest: Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited.
- Statutory rape: Non-forcible sexual intercourse with a person under the age of consent.

see District Policy 8410 § 3.9.3

Dating/Domestic Violence

- 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.
- Domestic violence: Violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shared a child in common, by a person who is cohabiting or has cohabited with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim.



see District Policy 8410 § 3.9.4-5

Stalking



Engaging in a course of conduct directed at a specific person based on their sex that would cause a reasonable person to:

- a) Fear for their safety or the safety of others; or
- b) Suffer substantial emotional distress.

see District Policy 8410 § 3.9.6

Informal Resolution

- Resolution option available when both parties agree.
- Involves Mediation and/or Restorative Justice.
- Option for a respondent to take responsibility without following a full investigation process.
- Overseen by a neutral mediator and both parties have equal opportunity to participate.
- Not available in the case of an employee who allegedly engages in sexual harassment of a student.
- May result in disciplinary sanctions under District Policy.

see District Policy 8410 § 13.1

Formal Grievance Process Steps

1. Title IX Coordinator Receives Formal Complaint
2. Title IX Coordinator Makes Determination Allegations Fall within Scope of Policy 8410
3. Title IX Coordinator Appoints Investigator and Decisionmaker
4. Investigator Sends Notice of Formal Complaint/Allegations to the Parties
5. Investigator Conducts Investigation with Support of Title IX Coordinator
6. Evidence Sent to Parties for Review
7. Investigator Drafts Investigation Report
8. Investigation Report Sent to Parties for Review
9. Decision Maker Reviews Investigation Report and Evidence and Drafts Decision
10. Decision Sent to Parties
11. Appeals

see District Policy 8410 § 13.2

Party Interviews

Written notice required

Purpose, attendees, date and time

Right to have adviser present

May be an attorney, but may otherwise be anyone of party's choice

Participation

Presumption of Nonresponsibility; no adverse inference if Respondent does not participate

Opportunity to present evidence and witnesses

Parties may bring this information to the meeting

Follow-up interviews

For timeline and to resolve inconsistent statements

Best Practices in Interviewing

- Explain the need to ask difficult questions and help interviewee understand why the questions are being asked.
- Be thoughtful about how your questions may be taken by the interviewee, but make sure to ask the questions you need to in order to be thorough.
 - Ask clarifying questions about slang terms;
 - Ask additional questions when the interviewee's statement doesn't make sense;
 - Ask questions from a different perspective.

Interview Considerations

Where interview is conducted

- Private, quiet area with easy exit

Pace of interview

- Allowing for breaks
- Giving person time to consider questions and respond
- Providing opportunity to consult with adviser

Phrasing of questions

- Avoiding “why” questions unless completely necessary

Interview Considerations

Allow interviewee to narrate their accounts in their own words and in their own way.

Ask open-ended follow-up questions as necessary.

If interviewee has issues with recall, phrasing questions so that they focus on sensory details – smells, sounds, touch, etc.

Witness Interviews

Individuals identified by the investigator and/or parties

Source of information that may be used to corroborate parties' accounts

May be able to fill in blanks in parties' accounts

Be careful to consider witnesses' potential bias or motive to fabricate

Physical and documentary evidence

Police report

Surveillance
footage

Photos/videos
from phones

Texts,
voicemails,
recorded call

Social media
screenshots

Prior
disciplinary
actions

Properly
obtained
medical records

Evidence Review

- Not all the evidence you gather will be included in the investigation report.
- Parties must be provided with the opportunity to review all evidence that is “directly related” to the allegations. But, all evidence does not have to be included in the investigation report.
- Only “relevant evidence” will be included in the investigation report that is submitted to the decision-maker.
- The investigator shall consider the parties’ written responses to the evidence when preparing the investigation report.

see District Policy 8410 § 13.2.7

Putting Together an Investigation Report

Essential elements:

Identification of the allegations potentially constituting sexual harassment, the source of the allegations, and the policy provisions allegedly violated;

A summary of the incident reported;

A description of the steps taken from the receipt of the formal complaint through the end of fact-finding;

A summation of the evidence the investigator determined was relevant; and

Appendices containing any attached documentary evidence.

Investigation Report Review

After the release of the investigation report, the parties will have ten (10) work days to review respond to it in writing.



Their responses may be to correct or add to evidence, submit arguments regarding the relevance of certain evidence, or suggest additional witnesses.

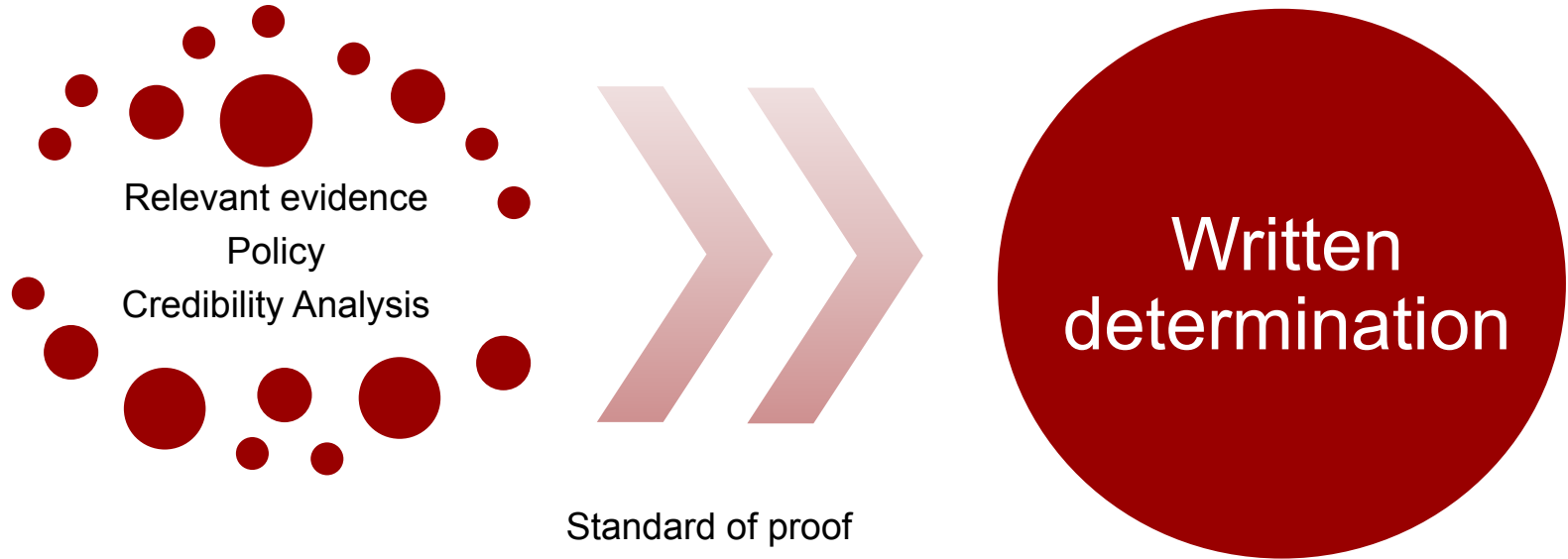


The investigator shall submit the investigation report and any documentary evidence to the decision-maker for review.



see District Policy 8410 § 13.2.8-10

The Written Determination



see District Policy 8410 § 13.2.14

Standard of Proof



Preponderance
of the Evidence

- More likely than not that the Respondent violated the policy
 - Tipped scale
 - 50.1%
 - 50% and a feather
- Decision-maker looks at where the greater weight of the evidence lies – it's quality, not quantity.

see District Policy 8410 § 13.2.14

Factors to Consider

When making findings of fact, consider:



Assessing Credibility

Detail

- Did the individual see or hear events directly or rely on second-hand information?
- How general or specific was each person's account? How well did they remember and describe details?

Consistency

- Was the individual's account consistent with other evidence in the case, including statements from other witnesses?
- Was the individual's account consistent throughout the interview?
- Was the individual's account supported by other witnesses or evidence?
- Did the individual make any contradictory statements?

Assessing Credibility

Motive

- Does the individual have any interest in the matter? Bias? Prejudice? Any other motive that could affect the statement they gave?

Demeanor

- Was the individual ever self-contradictory or evasive when providing their narrative?
- What were others' impressions of individual's demeanor when discussing the alleged incident?

Avoiding Bias in the Policy 8410 Process

Take notes so you are not forced to rely on memory, which is easily impacted by bias.

When you make a decision, ensure that you can articulate the reasons for your decision.

Carefully examine the work you have done, the decisions you have made, and the conclusions you draw to ensure you are being fair and that your actions are not impacted by implicit bias.

Listen carefully throughout the process.

Be open to other interpretations and solutions.

Ask for feedback.

The Decision Includes:

- 1) An outline of findings of fact and whether a policy violation occurred,
- 2) Any disciplinary sanctions to be implemented consistent with District Policy and applicable law and the rationale for those sanctions, and
- 3) Whether the District will provide remedies to a complainant.

Disciplinary sanctions may include, but are not limited to, a warning, restorative justice, alternatives to suspension or expulsion, suspension, expulsion, or termination.

see District Policy 8410 § 13.2.14

Findings of Fact

- The first part of the written determination must be a series of findings of fact.
- Any fact you intend to rely upon in your policy analysis must be found by a preponderance.
- Each finding should look like:
 - Fact you found
 - Reason 1 in support
 - Reason 2 in support

Policy Analysis

- In this step, the Decision Maker applies the facts they have found to the relevant policy provisions.
- For example, if you have an allegation of *quid pro quo* sexual harassment, the elements to consider are:
 - 1) Respondent is a District employee;
 - 2) Respondent conditioned an aid, benefit or service of the District;
 - 3) An individual's participation in unwelcome sexual conduct.

Appeals

If either party is not satisfied with the outcome, the party may file an appeal within 5 work days of the release of the Written Determination.

A party may file an appeal based on:

- Procedural irregularity that affected the outcome of the grievance process;
- New evidence that was not reasonably available at the time the determination regarding the existence of a policy violation was made that could affect the outcome of the grievance process; and/or
- The Title IX/Non-Discrimination Coordinator, the investigator, or the decision-maker had a conflict of interest or bias that affected the outcome of the grievance process.

see District Policy 8410 § 13.3

Title IX/Nondiscrimination Coordinator

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