



## RESPONDING TO REPORTS OF SEXUAL MISCONDUCT UNDER THE NEW TITLE IX REGULATIONS: A PROCESS CHART

The following is intended to serve as a summary of the steps to take upon receipt of notice of inappropriate conduct that is sexual in nature. The chart is not a substitute for the training required under the new regulations. Details as to policy and procedure are set forth in District policies:

- FFH, with regard to alleged student victims, and
- DIA, with respect to alleged employee victims.

**ALL STEPS SHOULD BE DOCUMENTED AND DETAILED RECORDS MUST BE MAINTAINED FOR SEVEN YEARS** (including records of trainings materials for employees handling various aspects of sexual harassment complaints).

This chart may be supplemented or amended as developments warrant.

<b>EMPLOYEE NOTICE OF SEXUAL MISCONDUCT OR HARASSMENT</b>	Employee reports any notice or knowledge of sexual misconduct or sexual harassment to the District's Title IX Coordinator.  Students may report directly, but parents or guardians may report on behalf of their child.  The report to the Title IX Coordinator may be by a variety of means and at any time.
<b>DISTRICT RESPONSE TO REPORT OF SEXUAL MISCONDUCT</b>	The required response:  ✓ Offer supportive measures to the complainant and respondent;

	<ul style="list-style-type: none"> <li>✓ Explain that supportive measures are available regardless of whether a Formal Complaint is filed.</li> <li>✓ “If the District does not provide a complainant with supportive measures, then the District must document the reasons why such a response was not clearly unreasonable in light of known circumstances.”</li> <li>✓ Explain the Formal Complaint process to the complainant.</li> <li>✓ The school district must follow the formal complaint grievance process before it imposes any disciplinary sanctions or other sanctions that are not supportive measures against a respondent.</li> </ul>
<p><b>EMERGENCY REMOVAL OR ADMINISTRATIVE LEAVE?</b></p>	<p>While supportive measures are to be offered to both complainant and respondent, a school may remove a respondent from its educational programs or activities if <i>after undertaking an individualized safety and risk analysis the district determines the respondent presents an immediate threat to physical health or safety or any student or other individual justifying removal</i>. The district must provide the respondent with notice of removal and opportunity to challenge the decision immediately following removal.</p> <p>The regulations do not preclude a District from placing a non-student employee respondent on administrative leave during the pendency of the grievance process contemplated under the regulations.</p> <p>The above provisions may not be construed to modify any rights under the IDEA, Section 504, or both.</p>
<p><b>DECISION POINT: FORMAL COMPLAINT OR NOT</b></p>	<p>The complainant may decide that she or he does not want to initiate an investigation and grievance against the respondent. The complainant, for example, may be satisfied with the District’s initial response and plan to address the matter administratively or with response through law enforcement. The Title IX Coordinator should respect a complainant’s wishes about whether to investigate <b>unless the Title IX Coordinator determines that signing a Formal Complaint to initiate an investigation over the wishes of the complainant is clearly not unreasonable in light of the known circumstances</b>.</p>

	<p>An example of when the Title IX Coordinator might decide to move forward over the wishes of the complainant: On the basis of the facts learned, there may be more victims or a respondent could be expected to victimize others if the matter is not investigated and otherwise pursued further. The District may not be deliberately indifferent to sexual harassment.</p> <p><i>Note:</i> If a Formal Complaint is not filed, the District will need to document why its response was not deliberately indifferent [§106.45(b)(10)(D) (ii)].</p>
<p><b>GRIEVANCE PROCESS FOR FORMAL COMPLAINTS</b></p>	<p>Review standards of the grievance process:</p> <ul style="list-style-type: none"> <li>✓ The regulations require that this process treats respondents equally by not imposing disciplinary sanctions without following the grievance process provided by the regulations.</li> <li>✓ The process must include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.</li> <li>✓ Title IX personnel must be free from conflicts of interest or bias.</li> <li>✓ The process must describe appeal procedures.</li> <li>✓ <b>Consolidation of complaints:</b> Formal complaints of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations arise out of the same facts or circumstances may be consolidated.</li> </ul>
<p><b>GRIEVANCE PROCESS: ASSIGN INVESTIGATOR AND DECISION-MAKER(S)</b></p>	<p>Select a trained investigator who is free from bias and has no conflict of interest. Once an investigator is identified, let both parties know the identity of the investigator and ask for any objections to that person performing the investigation.</p> <p>Decide who will serve as decision-maker(s), including on any appeal of the decision or dismissal of the complaint. Decision-makers must be free from bias and have no conflict of interest.</p>
<p><b>GRIEVANCE PROCESS: WRITTEN NOTICE OF ALLEGATIONS TO THE PARTIES</b></p>	<ul style="list-style-type: none"> <li>✓ Sufficient details must be provided. (The regulations define “sufficient details” as the “identities of parties, if known; the conduct allegedly constituting sexual harassment; and the date and location of the alleged incident; if known”.)</li> </ul>

	<p>✓ Must include statements of <u>each</u> of the following:</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• The parties may have an advisor of their choice who may be, but is not required to be, an attorney, and may inspect and review evidence.</li> <li>• Whether the district’s code of conduct includes prohibitions against making false statements or submitting false information during the grievance process.</li> </ul> <p>If the district decides to address additional allegations about the complaint or respondent, additional notice must be provided.</p> <p>The district may not access, consider, disclose or otherwise use a party’s records that are made by a health care professional unless the district obtains that party’s voluntary, written consent to do so for a grievance process.</p>
<p><b>GRIEVANCE PROCESS: INVESTIGATION</b></p>	<p>Key aspects of the investigation process:</p> <ul style="list-style-type: none"> <li>✓ The District must already have selected a standard of evidence as matter of board policy: either (a) preponderance of the evidence or (b) clear and convincing evidence. This same standard shall be used for all formal complaints of sexual harassment, regardless of whether the complainant is a student or employee.</li> <li>✓ The District must provide written notice of any investigative interviews, meetings or hearings to those parties expected to participate.</li> <li>✓ Objective evaluation of all relevant evidence, both inculpatory and exculpatory, is required.</li> <li>✓ Avoid credibility determinations based on the person’s status as complainant, respondent or witness.</li> <li>✓ The District may not restrict the ability of either party to discuss the allegations under investigation and to gather and present relevant evidence.</li> <li>✓ The District must send to the parties and their advisors evidence directly related to the allegations, in electronic format or hard copy, within at least 10 days <i>prior</i> to the completion of the investigative report for the parties to inspect, review and respond to the evidence.</li> </ul>

	<ul style="list-style-type: none"> <li>✓ Once an investigative report that fairly summarizes the evidence is complete, the District must send it to the parties and their advisors with at least 10 days for the parties to respond in writing.</li> <li>✓ The investigator collects facts but does not make a decision as to responsibility.</li> </ul>
<p><b>EARLY DISMISSAL?</b></p>	<p><b>Required Dismissals:</b> The regulations, while stating that all Formal Complaints must be investigated, also (in the same section) <u>require</u> that the District dismiss the Formal Complaint for Title IX purposes if the conduct alleged in the formal complaint:</p> <ul style="list-style-type: none"> <li>• Would not constitute sexual harassment even if proved;</li> <li>• Did not occur in the District’s education program or activity; or</li> <li>• Did not occur against a person in the United States.</li> </ul> <p>However, the District should then determine whether it should instead take action under another provision of the Student/Employee Codes of Conduct/Handbook or of District policy.</p> <p><b>Permissive Dismissals:</b> The District may dismiss the Formal Complaint or any allegations therein, if at any point during the investigation or hearing (the district is <u>not</u> required to hold a live hearing):</p> <ul style="list-style-type: none"> <li>• A complainant notifies the Title IX coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;</li> <li>• The respondent is no longer enrolled or employed by the recipient; or</li> <li>• Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.</li> </ul> <p><b>Notification of Dismissal/Right to Appeal:</b></p> <p>If the District dismisses the Complaint or allegation therein, the District <u>must</u>:</p> <ol style="list-style-type: none"> <li>(1) Promptly send written notice of the dismissal of the Formal Complaint or of any allegations therein and the reason(s) simultaneously to the parties and</li> <li>(2) Offer both parties an appeal from the dismissal of the Formal Complaint or of any allegations therein on the following bases: <ol style="list-style-type: none"> <li>(A) Procedural irregularity that affected the outcome of the matter;</li> </ol> </li> </ol>

	<p>(B) New evidence that was not reasonably available at the time the dismissal was made that could affect the outcome of the matter; and</p> <p>(C) The Title IX Coordinator, investigator, or decision-maker had a conflict of interest/bias.</p> <p>Note: The decisions to dismiss should be made by a <u>decision-maker</u>, not the investigator or Title IX Coordinator.</p>
<p><b>INFORMAL RESOLUTION?</b></p>	<p>If a formal complaint has been filed, the District may offer to facilitate an informal resolution process at any point prior to reaching a determination regarding responsibility provided:</p> <ul style="list-style-type: none"> <li>• Written notice is provided disclosing the requirements, the allegations, and consequences of participating, such as records that will be maintained or that could be shared, and affirming the right of participants to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint;</li> <li>• The District obtains the parties’ written consent.</li> </ul> <p>The district may not require informal resolution as a condition of enrollment or employment, may not require the parties to the formal complaint to participate in informal resolution and may only offer informal resolution if a formal complaint has been filed.</p> <p><b>Informal resolution may not be offered or facilitated to resolve allegations that an employee sexually harassed a student.</b></p>
<p><b>DECIDING RESPONSIBILITY: QUESTIONS FOR THE PARTIES</b></p>	<p>A hearing is not required for K-12 schools.</p> <p>With or without a hearing, after the school has sent the investigative report to the parties and before reaching a determination regarding responsibility, the Decision-Maker(s)—who cannot be the Title IX Coordinator or Investigator—must afford each party:</p> <ul style="list-style-type: none"> <li>• the opportunity to submit written, relevant questions that a party wants asked of any party or witness;</li> <li>• provide each party with the answers; and</li> <li>• allow for additional, limited follow-up questions from each party.</li> </ul>

	<p>➤ Questions and evidence about the complainant’s prior sexual behavior are deemed irrelevant “unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.”</p> <p>The Decisionmaker must explain to the party proposing the questions any decision to exclude a question as not relevant.</p>
<p><b>WRITTEN DETERMINATION OF RESPONSIBILITY</b></p>	<p>Applying the standard of evidence selected by the District as matter of policy, <i>i.e.</i>, either the preponderance of the evidence or clear and convincing evidence standard—the Decision-maker(s) must issue a written determination regarding responsibility with:</p> <ul style="list-style-type: none"> <li>• Description of all procedural steps taken;</li> <li>• Findings of fact;</li> <li>• Conclusions about whether the alleged conduct occurred;</li> <li>• Rationale for result as to each allegation;</li> <li>• Any disciplinary sanctions imposed on the respondent; and</li> <li>• Whether remedies will be provided to the complainant.</li> <li>• The District’s procedures and permissible bases for complainant and respondent to appeal.</li> </ul> <p>Provide the written decision simultaneously to both parties.</p>
<p><b>APPEAL</b></p>	<p>Both parties must be offered an appeal from a determination as to responsibility, and from dismissal of a formal complaint or any allegations therein, on the following bases:</p> <ul style="list-style-type: none"> <li>➤ Procedural irregularity that affected the outcome of the matter;</li> <li>➤ New evidence not reasonably available at the time determination or dismissal;</li> <li>➤ Title IX Coordinator, investigator(s) or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or individual complainant or respondent that affected the outcome of the matter.</li> </ul> <p>Decision-maker(s) for the appeal may not be the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal or the Title IX Coordinator.</p>

**NO RETALIATION**

The regulations protect any person from retaliation for having made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding of hearing under the regulations.

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Reminder: Firm trainings on the new Title IX Regulations are available for purchase on the firm's website.

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