

School Board

Administrative Procedure – Title IX Response ¹

The District responds to all reports of alleged sexual harassment in violation of Title IX regardless of whether the Complainant or Title IX Coordinator² pursues a Formal Title IX Sexual Harassment Complaint. Use this procedure to implement the District’s required response to reports of sexual harassment that may violate Title IX.

Responses must include: Training, Reporting, an Initial Meeting with the Complainant and Complaint Analysis, Consideration of a Formal Title IX Sexual Harassment Complaint, Consideration of Removal of the Respondent, and Recordkeeping. Procedures for each of these responses are outlined below.

Formal Title IX Sexual Harassment Complaints are processed using 2:265-AP2, *Formal Title IX Complaint Grievance Process*.

Glossary of Terms

Use exhibit 2:265-E, *Title IX Glossary of Terms*, in conjunction with this procedure.

Training

Actor	Action
Superintendent or Designee	Ensures: <ol style="list-style-type: none"> 1. All District employees³ receive training on the definition of sexual harassment, the scope of the District’s education program or activity, all relevant District policies and procedures, and the necessity to promptly forward all reports of sexual harassment to the Title IX Coordinator. 2. An individual designated by the District as a Title IX Coordinator, investigator, decision-maker (including the Initial Decision-Maker and Appellate Decision-Maker), or informal resolution process facilitator receives training on 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. 3. Title IX investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

¹ Customize this sample Title IX sexual harassment response to ensure alignment with the district’s policies, procedures, and practices.

² At least one employee must be designated as the Title IX Coordinator. 34 C.F.R. §106.8(a).

³ Though not required by Title IX regulations, “elementary and secondary schools may choose to train non-employees such as volunteers about how to report sexual harassment or require volunteers to do so...and such schools would not face expanded Title IX liability by doing so.” 85 Fed. Reg. 30119. Consult the board attorney about this issue.

Actor	Action
	<p>4. Title IX decision-makers receive training on issues of relevance of questions and evidence, including when questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior are not relevant to the allegations.</p> <p>5. Public availability of all training materials for the Title IX Coordinator, investigators, decision-makers, and any informal resolution facilitators⁴ by posting them on the District’s website, if any, or otherwise making them available upon request for inspection by members of the public. 34 C.F.R. §106.45(b)(10)(i)(D). See exhibit 2:250-E2, <i>Immediately Available District Public Records and Web-Posted Reports and Records</i>.</p>

Reporting

Actor	Action
All District employees	<p>Upon receiving knowledge of a sexual harassment allegation:</p> <ol style="list-style-type: none"> 1. Immediately report a suspicion of child abuse or neglect to the Ill. Dept. of Children and Family Services on its Child Abuse Hotline 1-800-25-Abuse (1-800-252-2873 (within Illinois); 1-217-524-2606 (outside Illinois); or 1-800-358-5117 (TTY)). 2. Promptly forward all reports of sexual harassment to the Title IX Coordinator. <p>Note: Employees may receive knowledge of a sexual harassment allegation via an anonymous report. 85 Fed. Reg. 30132.</p>

Initial Meeting with the Complainant; Complaint Analysis

Actor	Action
Title IX Coordinator	<p>Upon receiving knowledge of a sexual harassment allegation, promptly contacts the Complainant to (34 C.F.R. §106.44(a)):</p> <ol style="list-style-type: none"> 1. Discuss the availability of supportive measures; 2. Consider the Complainant’s wishes with respect to supportive measures; <p>Note: If a Complainant desires supportive measures, the District should keep the Complainant’s identity confidential (including from the Respondent) unless disclosing the Complainant’s identity is necessary to provide a particular supportive measure, e.g., no contact order. 85 Fed. Reg. 30133.</p> <p>Inform the Complainant that supportive measures are available regardless of whether the Complainant files a Formal Title IX Sexual Harassment Complaint; and</p>

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⁴ Naming only the training provider and course does not meet this requirement. See 85 Fed. Reg. 30254. Consult the board attorney regarding this requirement; making training materials of third-party consultants publicly available may violate their intellectual property rights. The DOE acknowledged the potential for intellectual property violations, suggesting that districts either “secure permission from the consultant to publish the training materials” or create their own training materials. 85 Fed. Reg. 30412.

	<p>Explain to the Complainant the process for filing a Formal Title IX Sexual Harassment Complaint, including administrative procedure 2:265-AP2, <i>Formal Title IX Complaint Grievance Process</i>.</p> <p>Maintains the confidentiality of the sexual harassment allegation, to the greatest extent practicable.</p> <p>Analyzes the sexual harassment allegation under the following Board policies:</p> <ul style="list-style-type: none"> • 2:260, <i>Uniform Grievance Procedure</i> • 5:20, <i>Workplace Harassment Prohibited</i> • 5:90, <i>Abused and Neglected Child Reporting</i> • 5:120, <i>Employee Ethics; Code of Professional Conduct; and Conflict of Interest</i> • 7:20, <i>Harassment of Students Prohibited</i> • 7:180, <i>Prevention of and Response to Bullying, Intimidation, and Harassment</i> • 7:185, <i>Teen Dating Violence Prohibited</i> • 7:190, <i>Student Behavior</i> <p>Answers the following questions:</p> <ol style="list-style-type: none"> 1. Does another appropriate method exist for processing and reviewing the sexual harassment allegation? 2. If yes, does that other method govern the District’s response in addition to or at the exclusion of Board policy 2:265, <i>Title IX Grievance Procedure</i>? <p>See exhibit 2:265-E, <i>Title IX Glossary of Terms</i>, for a discussion of sexual harassment governed by laws other than Title IX. Consult the Board Attorney for guidance.</p>
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Consideration of a Formal Title IX Sexual Harassment Complaint

A Formal Title IX Sexual Harassment Complaint may be filed by the Complainant with the Title IX Coordinator in person, by mail, or by email, by using the contact information required to be listed for the Title IX Coordinator under 34 C.F.R. §106.8(a), and by any additional method designated by the District. The Formal Title IX Sexual Harassment Complainant must contain the Complainant’s physical or digital signature, or otherwise indicate that the Complainant is the person filing it.

When the Title IX Coordinator signs⁵ a Formal Title IX Sexual Harassment Complaint, the Title IX Coordinator is not a Complainant or otherwise a party under administrative procedure 2:265-AP2, *Formal Title IX Complaint Grievance Process*. 34 C.F.R. §106.30.

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⁵ Additionally, a Title IX coordinator who *signs* (instead of *files*) a formal Title IX sexual harassment complaint does not create a conflict of interest with the *respondent*. 85 Fed. Reg. 30216.

Actor	Action
Title IX Coordinator	<p>When a Complainant Does NOT File a Formal Title IX Sexual Harassment Complaint:</p> <p>Assesses the sexual harassment allegation to determine whether the circumstances justify overriding the Complainant’s choice and signing a Formal Title IX Sexual Harassment Complaint.</p> <p>“If a grievance process is initiated against the wishes of the complainant, that decision should be reached thoughtfully and intentionally by the Title IX Coordinator [and] not [be] an automatic result that occurs any time [the District] has notice that a complainant was allegedly victimized by sexual harassment.” 85 Fed. Reg. 30131. Consult the Board Attorney for guidance.</p> <p>The District’s Every Student Succeeds Act (ESSA) obligations may require the Title IX Coordinator to sign a Formal Title IX Sexual Harassment Complaint initiating a grievance process against an employee-respondent, even when the Complainant does not wish to file a Formal Title IX Sexual Harassment Complaint;⁶ e.g., the District wishes to investigate allegations in order to determine whether it has probable cause of employee sexual misconduct that affect its ESSA obligations.⁷</p> <p>When a Complainant Files, or the Title IX Coordinator Signs, a Formal Title IX Sexual Harassment Complaint:</p> <p>Proceeds to and follows administrative procedure 2:265-AP2, <i>Formal Title IX Complaint Grievance Process</i>, in conjunction with any response required by this procedure.</p>

Consideration of Removal of the Respondent

Actor	Action
Title IX Coordinator	<p>Emergency Removal of Respondent-Student:</p> <p>If the Respondent is an identified student, considers whether the Respondent-student should be removed from the District’s education program or activity on an emergency basis in accordance with 34 C.F.R. §106.44(c).</p> <p>Before removing a Respondent-student on an emergency basis, conducts an individualized safety and risk analysis to determine whether removal is justified by an immediate threat to the physical health or safety of any student or other individual arising from the sexual harassment</p>

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⁶ 85 Fed. Reg. 30192; 20 U.S.C. §7926 (Every Student Succeeds Act).

⁷ *Id.* See also *ESSA Dear Colleague Letter on ESEA Section 8546 Requirements*, DOE Office of Elementary and Secondary Education (June 27, 2018), at: www2.ed.gov/policy/elsec/leg/essa/section8546dearcolleagueletter.pdf.

	<p>allegations. See administrative procedure 4:190-AP2, <i>Threat Assessment Team (TAT)</i>.</p> <p>If the Respondent-student is removed on an emergency basis:</p> <ol style="list-style-type: none"> 1. Provides the Respondent-student with written⁸ notice and an opportunity to challenge the decision immediately⁹ following the removal; and 2. Follows requirements set forth in 105 ILCS 5/10-22.6. <p>Administrative Leave for Respondent-Employee:</p> <p>If the Respondent is identified and is a non-student employee, in conjunction with the Assistant Superintendent for Human Resources, considers whether the Respondent-employee should be placed on administrative leave in accordance with 34 C.F.R. §106.44(d), relevant District policies and procedures, and any applicable collective bargaining agreements. See Board policies 5:240, <i>Suspension</i>, and 5:290, <i>Employment Termination and Suspensions</i>.</p> <p>Note: While Title IX regulations do not impose a time limit on the duration of an emergency removal (85 Fed. Reg. 30230), time limits may apply based upon District policies and procedures, any applicable collective bargaining agreements, and other laws and regulations, e.g., the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, 105 ILCS 5/10-22.6.</p>
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Recordkeeping

Actor	Action
Title IX Coordinator	<p>Creates and maintains, for a period of at least seven years, records of any actions and supportive measures taken and provided in response to the report of sexual harassment, regardless of whether a Formal Title IX Sexual Harassment Complaint was filed. 34 C.F.R. §106.45(b)(10)(ii). Ensures that records document:</p> <ol style="list-style-type: none"> 1. Why the District’s response to the sexual harassment allegation was not deliberately indifferent, e.g., was deliberately concerned and appropriate; 2. The supportive measures the District took to restore or preserve equal access to its education program or activity; and 3. If the District did not provide Complainant with supportive measures, why not providing them was clearly reasonable in light of the circumstances. <u>Id.</u>

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⁸ While Title IX regulations do not require written notice to the respondent (85 Fed. Reg. 30234), most attorneys agree providing written notice is a best practice. If the district does not want to provide written notice, delete “written.”

⁹ *Immediately* is fact-specific and is generally understood in the context of a legal process to mean occurring without delay, as soon as possible, or given the circumstances.” 85 Fed. Reg. 30229.

	<p>See Board policy 5:150, <i>Personnel Records</i>, and administrative procedure 5:150-AP, <i>Personnel Records</i>, addressing the identification and storage of, and access to personnel records.</p> <p>See Board policy 7:340, <i>Student Records</i>, along with administrative procedures 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.</p>
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School Board

Administrative Procedure – Formal Title IX Complaint Grievance Process ¹

This procedure implements the District’s investigation and response process for a Formal Title IX Sexual Harassment Complaint after a decision to pursue one has been made using 2:265-AP1, *Title IX Response*. See 34 C.F.R. Part 106. Use this procedure to comply with 34 C.F.R. §106.45, *Grievance process for formal complaints of sexual harassment*. Use exhibit 2:265-E, *Title IX Glossary of Terms*, in conjunction with this procedure.

This procedure contains a **Table of Contents** and lettered **Sections**.

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- A. Overview of 34 C.F.R. §106.45 Grievance Process
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- D. Dismissal of Formal Title IX Sexual Harassment Complaint
- E. Informal Resolution of Formal Title IX Sexual Harassment Complaint
- F. Investigation of Formal Title IX Sexual Harassment Complaint
- G. Determination Regarding Responsibility; Remedies
- H. Appeals
- I. Recordkeeping

Sections

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:

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.² 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 work³ locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar

The footnotes should be removed before the material is used.

¹ This sample Title IX grievance process must be customized to ensure alignment with the district’s policies, procedures, and practices.

² Customize this list to reflect locally available supportive measures.

³ For districts with residential facilities, insert “or housing” here.

measures to Complainants and/or Respondents. 34 C.F.R. §106.45(b)(1)(ix). See exhibit 2:265-E, *Title IX Glossary of Terms*, for the definition of *supportive measures*.

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 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). ⁴
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. The Grievance Process is concluded within 90 school business days⁵ after receipt 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. Good cause may 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 Respondent, 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 ensures certain training requirements are met. At a minimum, any individual designated by the District as a Title IX Coordinator, investigator,

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⁴ See f/n 26 in sample policy 2:265, *Title IX Grievance Procedure*. Ensure the same standard of proof used in that policy is used here.

⁵ The method of calculation may be customized locally. This sample uses school business days. If the district uses a different calculation method, e.g., calendar days, insert it. 85 Fed. Reg. 30188. The formal Title IX sexual harassment complaint grievance process must include “reasonably prompt time frames for [their] conclusion, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the recipient offers informal resolution processes.” 34 C.F.R. §106.45(b)(1)(v). **Consult with the board attorney to determine the most appropriate timeline for the district.**

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 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. Provides written notice to all known parties of the following information: ⁶
 - a. This procedure 2:265-AP2, *Formal Title IX Complaint Grievance Process*, including 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.
2. 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.

The footnotes should be removed before the material is used.

⁶ 34 C.F.R. §106.45(b)(2).

3. 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.⁷

When the Complainant's Identity Is Unknown

If the Complainant's identity is unknown, e.g., where a third party reports that a Complainant was victimized by sexual harassment but does not reveal the Complainant's identity, or 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, e.g. 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 provides another written notice to the parties. 85 Fed. Reg. 30138.

C. Consolidation of Formal Title IX Sexual Harassment Complaints

When the allegations of sexual harassment arise out of the same facts or circumstances, the Title IX Coordinator may consolidate Formal Title IX Sexual Harassment Complaints alleging 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. 34 C.F.R. §106.45(b)(4).

D. Dismissal of Formal Title IX Sexual Harassment Complaint

After an investigation, if the Title IX Coordinator determines that the conduct alleged would not constitute Title IX sexual harassment even if proved, did not occur in the District's education program or activity, or did not occur against a person in the United States, then the Title IX Coordinator 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.

At any time during the investigation, the Title IX Coordinator may dismiss the Formal Title IX Sexual Harassment Complaint, or any allegations contained in it, if any of the following occur:

1. The Complainant notifies the Title IX Coordinator in writing that he or she wants 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).

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⁷ Optional. Many attorneys agree written notice is a best practice. Delete this sentence if the district will not provide written notice of the appointment to the Investigator.

E. Informal Resolution of Formal Title IX Sexual Harassment Complaint ⁸

At any time prior to reaching a determination regarding responsibility, 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 with written notice disclosing:
 - a. The allegations;
 - b. Informal resolution process requirements, including the circumstances where parties are precluded from resuming a Formal Title IX Sexual Harassment Complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the Grievance Process for the Formal Title IX Sexual Harassment Complaint; and
 - c. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or 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 or Title IX Coordinator 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)): <ol style="list-style-type: none">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

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⁸ Informal resolution may be offered only if a Formal Title IX Sexual Harassment Complaint is filed. 34 C.F.R. §106.45(b)(9).

Actor	Action
	<p>their choice (who may be, but is not required to be, an attorney). 34 C.F.R. §106.45(b)(5)(iv).⁹</p> <ol style="list-style-type: none"> 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. <p>Prepares an investigative report summarizing all relevant evidence. 34 C.F.R. §106.45(b)(5)(vii).</p> <p>Sends to each party and each party’s advisor, if any, the investigative report in an electronic format or hard copy, for their review and written response. <u>Id.</u></p> <p>Note: This step must occur at least 10 school business days before the Initial Decision-Maker’s determination regarding responsibility. <u>Id.</u></p> <p>At the conclusion of the investigation, sends to the Initial Decision-Maker in an electronic format or hard copy:</p> <ol style="list-style-type: none"> 1. The Formal Title IX Sexual Harassment Complaint; 2. 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 3. The investigative report.

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⁹ While the district cannot limit the choice or presence of an advisor for any party, it 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).

G. Determination Regarding Responsibility; Remedies

<p>Initial Decision-Maker</p>	<p>The Superintendent or designee acts as the Initial Decision-Maker for all Formal Title IX Sexual Harassment Complaints, unless it involves allegations against the Superintendent or designee or against a Board Member. In such cases, an outside consultant, e.g., an attorney or retired school administrator, acts as the Initial Decision-Maker.</p> <p>Reviews Investigative Report and Corresponding Materials; Opportunity for Parties to Submit Questions</p> <p>Reviews all materials received from the Investigator.</p> <p>Provides the parties with written notice of the opportunity to submit, through the Initial Decision-Maker, written, relevant questions that a party wants asked of any party or witness. 34 C.F.R. §106.45(b)(6)(ii). In the written notice, informs the parties that:</p> <ol style="list-style-type: none"> 1. Questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior are not relevant, unless they: are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent. <u>Id.</u> 2. Any questions must be submitted to the Initial Decision-Maker within five (5) school business days. ¹⁰ <p>Reviews any questions received from each party for submission to any party or witness.</p> <p>Determines which questions to forward to any party or witness for answers. If any proposed questions are excluded as not relevant, provides the proposing party with a written explanation of the decision to exclude a question as not relevant. <u>Id.</u></p> <p>Forwards relevant questions to any party or witness with instructions to submit answers to the Initial Decision-Maker within five (5) school business days. ¹¹</p> <p>Upon receipt of answers to questions, provides each party with copies of them. <u>Id.</u></p> <p>Provides the parties with written notice of the opportunity to submit, through the Initial Decision-Maker, additional, limited follow-up written, questions that a party wants asked of any 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. ¹²</p>
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¹⁰ See f/n 5, above.

¹¹ Id.

¹² Id.

	<p>Upon receipt of answers to the additional questions, provides each party with copies of them. <u>Id.</u></p> <p>Determination and Written Notice of Determination</p> <p>Basing all decisions on the <i>preponderance of evidence</i>¹³ standard, simultaneously issues to the parties a written determination regarding responsibility that (34 C.F.R. §106.45(b)(7)(ii)):</p> <ol style="list-style-type: none"> 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 recommended¹⁴ disciplinary sanctions for the District to impose on the Respondent, and whether remedies designed to restore or preserve equal access to the District’s education program or activity will be provided by the District to the Complainant; and 6. Outlines the District’s procedures and permissible bases for the Complainant and Respondent to appeal.
Title IX Coordinator	Implements any remedies for the Complainant as ordered by the Initial Decision-Maker. 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 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
Complainant or Respondent	Within 10 school business days ¹⁵ after receiving either the Initial Decision-Maker’s written determination regarding responsibility or the notice of dismissal of Formal Title IX Sexual Harassment

The footnotes should be removed before the material is used.

¹³ See f/n 4, above.

¹⁴ 34 C.F.R. §106.45(b)(7)(ii)(E). This sample procedure uses the phrase “recommended disciplinary sanctions” because oftentimes, a district cannot immediately *impose* disciplinary sanctions – it can instead recommend disciplinary sanctions, e.g., a recommendation for student expulsion or teacher dismissal, which may only be imposed after each party exhausts their due process rights.

¹⁵ See f/n 5, above.

Actor	Action
	<p>Complaint, makes a written request to the Title IX Coordinator appealing the determination/dismissal based on:</p> <ol style="list-style-type: none"> 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 having a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that affected the outcome. 34 C.F.R. §106.45(b)(8)(i). <p>Note: The District may offer appeals on additional bases, so long as they are offered equally to both parties. 34 C.F.R. §106.45(b)(8)(ii). Consult the board attorney before offering additional appeal bases, as they may overlap with or impact related proceedings that occur separately from this Grievance Process, e.g., a student expulsion hearing or teacher dismissal hearing to impose recommended disciplinary sanctions as a result of this Grievance Process.</p>
Title IX Coordinator	<p>Upon receiving an appeal from one party:</p> <ol style="list-style-type: none"> 1. Notifies the other party in writing that an appeal has been filed. 2. Provides both parties five (5) school business days to submit a written statement in support of, or challenging, the outcome. 3. Promptly forwards all materials relative to the appeal to the Appellate Decision-Maker. <p>Note: The District must ensure that the Appellate Decision-Maker is not the same person as the Initial Decision-Maker, the Investigator, or the Title IX Coordinator. 34 C.F.R. §106.45(b)(8)(iii)(B). The Board may, but is not required to, hear and decide the appeal; it is a suggestion that aligns with the appeal provisions in policy 2:260, <i>Uniform Grievance Procedure</i>, and with Ill. State Board of Education sex equity regulations requiring districts to “provide for final appeal of grievance decisions made at the system level to the system’s governing board.” 23 Ill.Admin.Code §200.40(c)(1). If the Board acts as the Appellate Decision-Maker, the Board must receive the training in Section A.9, above.</p> <p>Note: Some school attorneys recommend that the appeal not go to the Board, so that the Board’s objectivity is not called into question if it needs to conduct a hearing related to recommended disciplinary sanctions resulting from the Grievance Process. Districts should discuss their options with their board attorneys.</p>

Actor	Action
Appellate Decision-Maker	<p>Within 30 school business days, affirms, reverses, or amends the written determination regarding responsibility or the notice of dismissal.</p> <p>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). ¹⁶</p>

I. Recordkeeping

Actor	Action
Title IX Coordinator	<p>Creates and maintains, for a period of at least seven (7) years, records of (34 C.F.R. §106.45(b)(10)(i)):</p> <ol style="list-style-type: none"> 1. The sexual harassment investigation, including any determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore/preserve equal access to the District’s education program or activity; 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. <p>See Board policy 5:150, <i>Personnel Records</i>, and administrative procedure 5:150-AP, <i>Personnel Records</i>, addressing the identification, storage, and access to personnel records.</p> <p>See Board policy 7:340, <i>Student Records</i>, along with administrative procedures 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.</p>

The footnotes should be removed before the material is used.

¹⁶ These timelines are optional and used for ease of use and administration to align with the appeal timelines in sample policy 2:260, *Uniform Grievance Procedure*.