

New Title IX Regulations

IMPORTANT CHANGES YOU NEED TO KNOW

Main Changes:

- Definitions, including the conduct that constitutes sexual harassment
- When and How District must respond to allegations of sexual harassment; including offer of supportive measures and grievance process
- Which employees can bind the District based on knowledge of sexual harassment
- Complications as to discipline procedures

What does Title IX Actually Say?

- 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 financial assistance

The United States Supreme Court on Title IX

1) Cannon v University of Chicago (1979), private right of action exists under Title IX
2) Franklin v. Gwinnett County Pub. Sch. (1992), recognizing an implied cause of action for monetary damages under Title IX against education institutions receiving federal funds
3) Gebser v. Lago Vista Indep. Sch. Dist. (1998), the plaintiff must establish that **an official with authority to institute corrective measures** (a) had **actual notice** of the teacher's misconduct and (b) was **deliberately indifferent** in responding to it.
4) Davis v. Monroe County Board of Education (1999), the conduct of the perpetrator must be so severe, pervasive and objectively offensive that it denies the victim equal access to educational opportunities or benefits

Office of Civil Rights: Guidance and Dear Colleague Letters

- 2001 Guidance
- 10/2001 Dear Colleague Letter
- 4/2011 Dear Colleague Letter
- 4/2014 Dear Colleague Letter
- 4/2015 Dear Colleague Letter
- 5/2016 Dear Colleague Letter
- 9/2017 Dear Colleague Letter



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May 6, 2020 New Title IX Regulations

EFFECTIVE AUGUST 14, 2020

Important Terms

- Actual Knowledge
  - Notice of sexual harassment or allegations of sexual harassment to a school's Title IX Coordinator or any official of the school who has authority to institute corrective measures, **or to any employee of an elementary and secondary school.**

Sexual Harassment

Quid Pro Quo

An employee of the recipient conditioning the provision of aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct

Hostile Environment

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectionably offensive that it effectively denies a person equal access to the recipient's educational program or activity

Clery Act/Violence Against Women Act

sexual assault – example: seduction, incest, indecent exposure

Domestic Violence

- Committed by:
  - Current/former spouse
  - Current/former intimate partner
  - Current/former cohabitation person
  - Person similarly situated as a spouse
  - Any other person

Dating Violence

- Committed by a person:
  1. Is or was in social relationship of romantic/intimate nature AND
  2. Existence of relationship determined by various factors (length, type, frequency)

Stalking

- Conduct directed at a person that would cause a reasonable person to:

1. Fear for own safety or others safety OR
2. Suffer substantial emotional distress

Complainant

- Means an individual who is alleged to be the victim of conduct that could constitute sexual harassment
  - In K-12 also means parent or guardian of student
  - Any person can report sexual harassment and trigger recipient's obligation to respond
    - Victim, bystander, witness, friend, or any other person

Respondent

- Means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment

The Obligation to Respond

- A school is obligated to respond when:
  1) The school has actual knowledge of sexual harassment;
  2) The act occurred within the school's own "education program or activity";
  3) Against a "person in the United States."

A school must respond meaningfully to every report of sexual harassment.

Program or Activity

- "all of the operators" of elementary and secondary school
- Includes locations, events or circumstances over which the recipient exercised substantial control over both the respondent and context in which the harassment occurs
  - ***What about online?***

Who Has to have Actual Knowledge?

- Title IX Coordinator or
- Any employee of the school

- Actual Knowledge
- Formal Complaint

How are Districts Supposed to Respond?

Regardless, District MUST respond:

1) Promptly
2) Offer supportive measures to complainant and respondent

In addition, Title IX Coordinator must contact complainant to:

- discuss supportive measures
  - wishes
  - with or without formal complaint
  - explain process of filing formal complaint

What are Supportive Measures?

- Non-disciplinary, non-punitive individual services designed to restore or preserve equal access to educational program or activity without unreasonably burdening the other party
  - Without fee or charge
  - i.e. counseling, deadline extensions, modification of class/work schedules, restricting contact between parties, revised seating or assignments, increased monitoring, emergency removals

Focus on the Process

1) Treat both complainant and respondent equal
2) Evaluate all relevant evidence objectively
3) Title IX Coordinator, Investigator, and decision-maker are to be free from conflict of interest and trained to be impartial
4) Presume innocence of respondent
5) Prompt time frames for process
6) Range of remedies and sanctions which may be imposed
7) Standard of proof –preponderance of evidence
8) Appeal procedures
9) Privileged (with waiver)

Focus On Due Process

- A presumption of innocence throughout the grievance process;
- Written notice of allegations against the accused;
- An equal opportunity for both parties to present and review all the evidence;
- Opportunity to submit written questions to challenge credibility of both parties

Formal Complaint

- Upon receipt, recipient must provide written notice to the known parties that includes:
  1) Notice of grievance process and informal resolution
  2) Notice of allegations in sufficient detail and time to allow preparation of response prior to initial interview
  3) Identities of known parties, alleged conduct, date and location of conduct, if known
  4) Statement that respondent is not responsible for alleged conduct; determination made at conclusion of process
  5) Notice that parties may inspect and review evidence
  6) Notice of any provision in student code of conduct regarding making false statement

Investigation

- Decision-maker must be someone other than Title IX Coordinator or Investigator
- Burden of gathering evidence and determination of responsibility is on recipient
- Certain evidence is protected unless waiver signed
- Give all parties same opportunity to present witnesses and evidence
- Can't restrict parties' obligation to discuss allegations or gather and present relevant evidence
- Provide parties with written notice of day, time, location, participants and purpose of each investigation interview with sufficient time for party to prepare
- Provide complainant and respondent with at least 10 days to review evidence prior to investigative written report, and opportunity to respond

Determination of Responsibility

- Decision maker can't be Title IX Coordinator or investigator
- Must issue written determination that includes:
  - Allegations
  - Description of procedural steps taken, making notification to and interview of parties and witnesses
  - Finding of facts
  - Application of code of conduct
  - Statement of and rationale for result as to each allegation
    - Must Include
      - Determination of responsibility
      - Discipline sanctions, whether remedies to restore/preserve, equal access to educational program/activity will be provided by recipient to complainant

Appeals

- Must offer to both parties for:

1) Determination of responsibility

2) Dismissal

As to the following bases:

a) Procedural irregularity that affects the outcome

b) New evidence not reasonably available at time of determination

c) Conflict of interest on part of Title IX Coordinator, Investigator or decision-maker

Putting All This Together…

Board Policy **Descriptor Code: JCAC**

Sexual Harassment of Students

The intent of this policy is to comply with the Title IX federal regulations concerning sexual harassment. To the extent that additional requirements are specified in federal law or regulations, the District shall comply with such requirements.

DEFINITIONS

Actual knowledge means notice of sexual harassment or allegations of sexual harassment to the District's Title IX Coordinator or to any official or employee of the District. This notice requirement is not met when the only District official or employee with actual knowledge is the respondent.

Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. If the complainant is under the age of 18, the parent or legal guardian can file a complaint and act on behalf of the student.

Days for the purpose of this policy means "school days."

Deliberately indifferent means a response to sexual harassment that is clearly unreasonable in light of the known circumstances.

Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the District investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in a District education program or activity. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed for the Title IX Coordinator in the District's nondiscrimination notice posted on its website. As used in this policy, the phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided by the District) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this policy.

Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the District conditioning the provision of a District aid, benefit, or service on an individual's participation in unwelcome sexual conduct;

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2. 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 program or activity; or
3. "Sexual assault"- an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation; or

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

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DEFINITIONS

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

"Sex-based Stalking" - engaging in a course of conduct directed at a specific person that would cause a reasonable person to-

(A) fear for his or her safety or the safety of others; or

(B) suffer substantial emotional distress.

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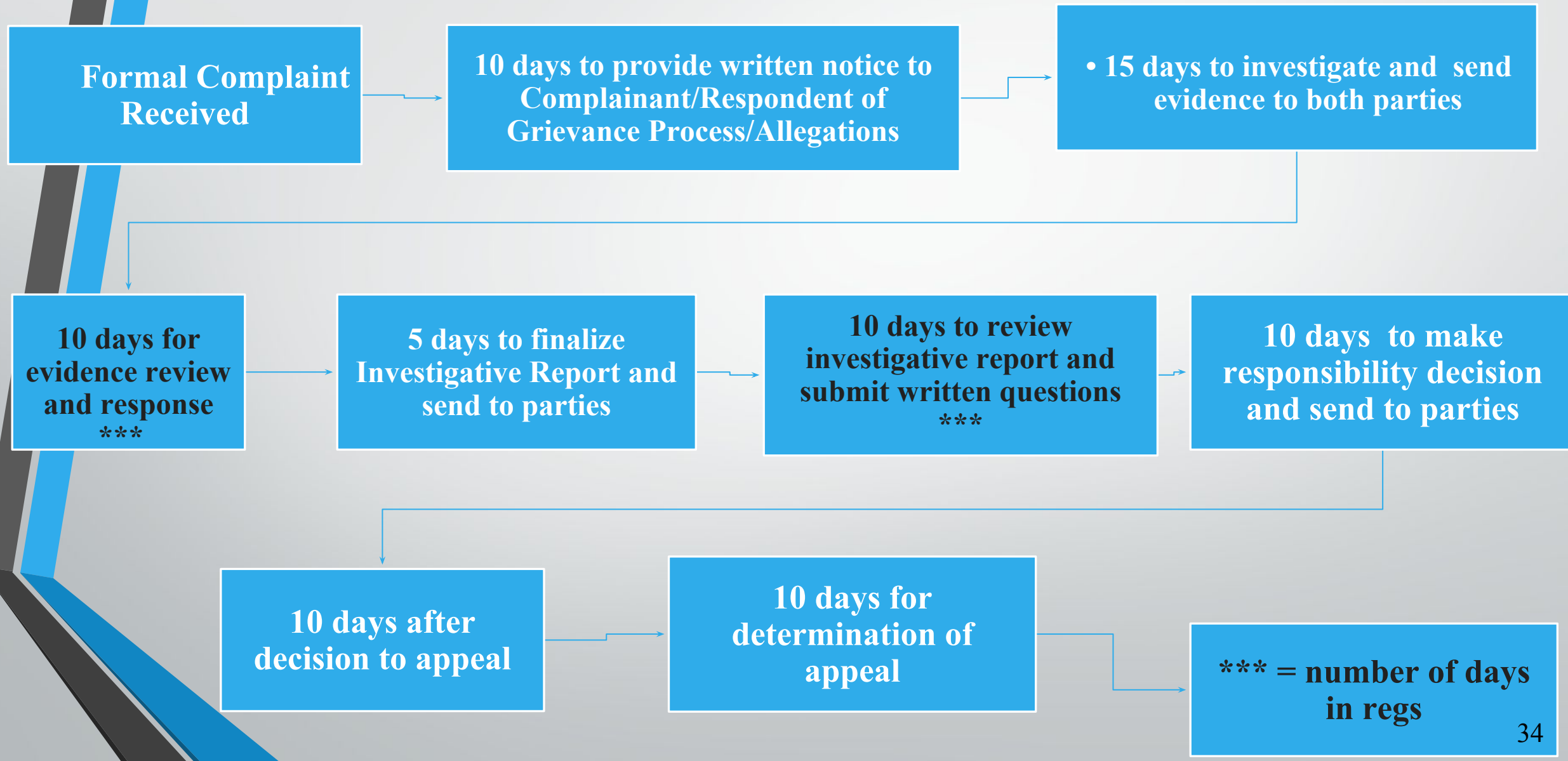
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Supportive measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment. The District shall presume that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. The grievance process will be followed before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Supportive measures may include 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 work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The District shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

benefit, or service on an individual's participation in unwelcome sexual conduct;

TITLE IX SEXUAL HARASSMENT TIMELINE



GRIEVANCE PROCESS

1. Reports or complaints may be verbal or written and may be made at any time (including during non-business hours), in person, by mail, by telephone, or by electronic mail using the contact information posted on the school and/or district website.

2. Any student, employee, parent or other person wishing to report or file a complaint alleging a violation as described above shall promptly notify either the principal or counselor at his/her school or the Title IX Coordinator designated and authorized by the District. Any employee who receives information from a student alleging sexual harassment shall report it to the principal or Title IX Coordinator. If the alleged offending individual is the principal, the report or complaint should be made by the complainant to the Title IX Coordinator.

3. The Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures as defined in this policy, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. The District shall treat complainants and respondents equitably by following this grievance process before punishing the respondent or providing remedies to the complainant. Remedies will be designed to restore or preserve equal access to the District's education program or activity. Such remedies may include the same individualized services described as "supportive measures." However, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.

4. **Formal Complaint:** Upon receipt of a formal complaint, the District shall within 10 days provide the following written notice to the parties who are known:

   (A) Notice of the District's grievance process;

   (B) Notice of the allegations potentially constituting 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 sexual harassment, and the date and location of the alleged incident, if known. The written notice shall include a statement 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. The written notice shall inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence. The written notice shall

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   C) If, in the course of an investigation, the District decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to paragraph (4)(B), the District shall provide notice of the additional allegations to the parties whose identities are known.

attorney, and may inspect and review evidence. The written notice shall

GRIEVANCE PROCESS

1. Reports or complaints may be verbal or written and may be made at any time (including during non-business hours), in person, by mail, by telephone, or by electronic mail using the contact information posted on the school and/or district website.

5. Dismissal of a formal complaint— The District shall investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined herein even if proved or did not occur in the District's education program or activity, or in the United States, then the District shall dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX; such a dismissal does not preclude action under another provision of the District's code of conduct.

(A) The District may dismiss the formal complaint or any allegations therein, if at any time during the investigation: A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the District; or specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

(B) Upon a dismissal required or permitted pursuant to paragraph (5), the District shall promptly send written notice of and reason(s) for the dismissal simultaneously to the parties.

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 sexual harassment, and the date and location of the alleged incident, if known. The written notice shall include a statement 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. The written notice shall inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence. The written notice shall

6. Consolidation of formal complaints. The District may consolidate formal complaints as to allegations 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 of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references to the singular "party," "complainant," or "respondent" include the plural, as applicable.

principal, the report or complaint should be made by the complainant to the Title IX Coordinator.

3. The Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures as defined in this policy, consider the

7. Investigation of a formal complaint. After providing written notice to the parties of the receipt of a formal complaint, the District shall have 15 days to investigate. When investigating a formal complaint and throughout the grievance process, the District shall—

(A) Assume the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility and not place such burdens on the parties provided that the District cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the District obtains that party's voluntary, written consent to do so;

(B) (B) Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence. The written notice shall

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(C) Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
(D) Provide the parties with 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 be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the District may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;
(E) Provide, 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;
(F) Provide both parties an equal opportunity to inspect and review any non-privileged evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the District shall send 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 the parties shall have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The District shall make all such evidence subject to the parties' inspection and review available at any meeting to give each party equal opportunity to refer to such evidence during the meeting, including for purposes of cross-examination; and

have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence. The written notice shall

GRIEVANCE PROCESS

1. Reports or complaints may be verbal or written and may be made at any time (including during non-business hours), in person, by mail, by telephone, or by electronic mail using the contact information posted on the school and/or district website.

2. Any student, employee, parent or other person wishing to report or file a

(G) Create within 5 days an investigative report that fairly summarizes relevant evidence, and at least 10 days prior to the determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

3. the availability of supportive measures as defined in this policy, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. The District shall treat complainants and

(H) If at any point in the investigation of reported sexual harassment of a student, the investigator determines that the reported harassment should more properly be termed abuse, the reported incident or situation shall be referred pursuant to the established protocol for child abuse investigation. Reported sexual harassment determined not to be sexual harassment as defined under Title IX may be investigated in accordance with Policy JAA.

4. (A) Notice of the District's grievance process;

(B) Notice of the allegations potentially constituting 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 sexual harassment, and the date and location of the alleged incident, if known. The written notice shall include a statement 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. The written notice shall inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence. The written notice shall

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8. Questions. After the District has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker(s) shall afford a 10 day period for each party to have the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The District shall not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. The decision-maker(s) shall explain to the party proposing the questions any decision to exclude a question as not relevant.

(B) Notice of the allegations potentially constituting 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 sexual harassment, and the date and location of the alleged incident, if known. The written notice shall include a statement 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. The written notice shall inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence. The written notice shall

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2. Any student, employee, parent or other person wishing to report or file a

Determination regarding responsibility. The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), shall, within 10 days of the conclusion of the question and answer period, issue a written determination regarding responsibility. To reach this determination, the District shall apply the preponderance of the evidence standard of evidence to formal complaints against students, to formal complaints against employees and to all complaints of sexual harassment.

The written determination shall include—

(A) Identification of the allegations potentially constituting sexual harassment as defined in this policy;

(B) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence;

(C) Findings of fact supporting the determination;

(D) Conclusions regarding the application of the District's code of conduct to the facts;

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 sexual harassment, and the date and location of the alleged incident, if known. The written notice shall include a statement 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. The written notice shall inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence. The written notice shall

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(E) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the District imposes 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

(F) The District's procedures and permissible bases for the complainant and respondent to appeal.

(G) The District shall provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the District provides the parties with the written determination 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.

(H) The Title IX Coordinator is responsible for effective implementation of any remedies.

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