EICHELBAUM WARDELL
HANSEN POWELL & MUÑOZ, P.C.

Student Sexual Harassment

TITLE IX GRIEVANCE PROCESS

for Reports, Complaints, Investigations, Appeals

August 14, 2020



Terminology

Sexual harassment is conduct based on sex that satisfies one or more of the following:

1. **An employee conditioning an aid, benefit, or service of the school on a student's participation in sexual conduct;**
2. **Unwelcome conduct that a reasonable person would consider severe, pervasive, and objectively offensive such that it effectively denies a student equal access to a district program or activity; or**
3. **Sexual assault, dating violence, domestic violence, or staking.**

Complainant: a student who is alleged to be the victim of sexual harassment.
Respondent: a student who is alleged to be the perpetrator of sexual harassment. A Respondent may not be disciplined for sexual harassment until the conclusion of this grievance process.
Formal Complaint: a document filed by a Complainant (or parent/guardian) or signed by the Title IX Coordinator[1] alleging sexual harassment against a Respondent and requesting that the District investigate the allegation.

New Definition of Sexual Harassment 34 C.F.R. §106.30

****All employees must report suspected sexual harassment, but only a Complainant and the Title IX Coordinator can file a Formal Complaint.**



Reporting: All employees must immediately/promptly[2] report all instances of suspected sexual harassment to a campus administrator or the Title IX Coordinator or a Title IX Coordinator designee. (An employee's failure to report alleged sexual harassment will result in disciplinary action up to and possibly including termination).

A student may report alleged sexual harassment to a teacher, school counselor, administrator, or other appropriate school employee. Those employees must immediately report alleged sexual harassment to a campus administrator.

RESPONSIBILITY: All Employees FFH(LOCAL)



Child Abuse Reporting: If the incident could be **child abuse**, the employee must report to CPS or law enforcement with **48 hours** of learning of incident.

All Employees FFG(LOCAL)



Ask for written report: A campus administrator will ask the individual to provide a written statement, but the reporter is not required to put the report in writing. This District may request, but not require, a written report. If a report is made orally, a campus administrator will put the report in written form and provide it to the Title IX Coordinator.

FFH(LOCAL)

[1] **Designees:** The Title IX Coordinator may designate other employees within the District to assist in fulfilling the requirements of Title IX.
[2] Red text indicates areas where the U.S. Department of Education left the timeline or process to the discretion of school districts. This chart contains recommendations from which districts may deviate.

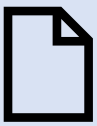
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Notify Title IX Office: A campus administrator must inform the Title IX Coordinator/designee of report of sexual harassment via telephone call or email within **24 hours**.	**Campus Administrators**
Emergency Removal: The Title IX Coordinator/designee and the campus administration will determine whether a student should be removed on an emergency basis. The District must first undertake an individualized safety and **risk analysis** to determine whether an **immediate threat** to the physical health and safety of others, **arising from the alleged sexual harassment**, justifies removal. *Title IX does not modify the rights of students with disabilities regarding change of placement under the Individuals with Disabilities Education Act and Section 504 still apply.	• Title IX Coordinator • Campus Administrator • Threat Assessment Personnel
Administrative Leave: The Title IX Coordinator/designee and Human Resources Department, in conjunction with campus administration, will determine whether an employee should be put on administrative leave.	• Title IX Coordinator • Human Resources • Campus Administrator
Contact Alleged Victim/Complainant: The Title IX Coordinator must **promptly** contact the Complainant to discuss: 1. The availability of supportive measures; 2. Consider the Complainant's wishes regarding supportive measures; 3. Inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint; and 4. Explain the process for filing a Formal Complaint.	**Title IX Coordinator**
Supportive Measures: non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, without fee or charge to the Complainant and Respondent, when a report of alleged sexual harassment is made. They may include counseling, change of schedules/classes, campus escort or monitoring support, mutual restrictions on contact between the parties, increased security and monitoring, or other similar measures.	• Title IX Coordinator • Campus Administration
If no Formal Complaint Filed: The Title IX Coordinator/designee must offer the Complainant and Respondent with **supportive measures** and **document** the measures provided. Documentation of supportive measures must be retained for at least 7 years.	**Title IX Coordinator**
If Formal Complaint Filed (Dismissal): A Formal Complaint may be dismissed at any time during the grievance process if one of the following conditions are met. **Mandatory Dismissal:** The District is required by law to dismiss a Formal Complaint if the conduct alleged: 1) would not constitute sexual harassment even if proved: 2) did not occur in a District program or activity; or 3) did not occur in the U.S.	**Title IX Coordinator**

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Discretionary Dismissal: The District may dismiss a Formal Complaint at any time during the investigation: 1)the Complainant withdraws the allegations or complaint in writing; 2) the Respondent is no longer enrolled in the District; or 3) specific circumstances prevent the District from gather evidence sufficient to reach a determination as to allegations.

Dismissal of a Formal Complaint does not preclude the District from taking disciplinary measures against Respondents for non-sexual harassment violations of the Code of Conduct.



Investigation of Formal Complaint –
Appoint Investigator and Decision Maker

Title IX Coordinator

Provide **Notice to Parties**: Simultaneous notice must be provided to all known parties that includes:

- Allegations of sexual harassment, known at the time, with sufficient detail to prepare before any initial interview;
- Identities of the parties involved;
- Date, location of alleged incident(s);
- Statement that Respondent is presumed not responsible and that a determination will not be made until the conclusion of the grievance process
- Statement that the parties have the right to an advisor of their choosing, who can be a parent/guardian or another individual who may, but is not required to be, an attorney and who may inspect and review evidence; and
- Statement that the Code of Conduct prohibits knowingly making false statements.
- An offer of informal resolution.



Facilitation of Voluntary Informal Resolution: At any time prior to deciding of responsibility the District may facilitate an informal resolution process, such as mediation. This is a voluntary process. Any party may decline to participate. (The investigation may be abated for a short, defined period for the parties to engage in informal resolution. However, the informal resolution process cannot be used to delay an investigation.)

Facilitator

Informal Resolution cannot be used to resolve allegations that an employee sexually harassed a student.

Prior to a resolution, a party has the right to withdraw and resume the grievance process with respect to the Formal Complaint.

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New Rules for Investigating Formal Complaints: **Investigator(s)**



1. The **burden of proof** (preponderance of the evidence) rests on the District and not on the parties.
2. The District cannot demand access to **legally privileged information** (e.g., healthcare-patient, attorney-client, priest-penitent).
3. Both parties must have an equal opportunity to present **witnesses**, including fact and expert witnesses, and other inculpatory and exculpatory **evidence**.



4. The District **cannot restrict a party's ability to discuss the allegations** under investigation or to gather or present relevant evidence.



5. Both parties have the right to have a **parent/guardian** and/or **advisor present** during any part of the grievance process, including interviews.
6. Parties are entitled to **written notice** of the date, time, location, participants, and purpose of **investigative interviews** and other meetings in this grievance process, with sufficient time for the party to prepare to participate.
7. Parties have the right to inspect and **review** any **evidence** obtained as a part of the investigation that is directly related to the allegations raised in the Formal Complaint.

Conduct the Investigation: **Investigator(s)**



1. Review **Formal Complaint**.
2. Determine whether there is an **on-going criminal investigation** and confer with law enforcement about whether the school's investigation will interfere with the criminal investigation. If so, the school's investigation may be abated for a short, defined period in cooperation with law enforcement. Contact law enforcement on a weekly basis regarding the status of the investigation. Document law enforcement contact and directives.
3. Determine whether nature of allegations suggest the need for **forensic interview** by individuals specially trained in interviewing young children. If so, contact law enforcement or local child-advocacy center.
4. Send written notice of interviews to parties, including date, time, location, participants, and purpose of meeting with sufficient time (3-5 days) for the party to prepare to participate.
5. Interview **Complainant** regarding facts and potential witnesses. Advisor may be present but cannot answer for student.
6. Interview **Witnesses** identified by Complainant. Witnesses are not entitled to have a parent/guardian or advisor present, unless allowed by administration.
7. Interview **Respondent**. Advisor may be present but cannot answer for student.
8. Interview **Witnesses** identify by Respondent.
9. Re-interview Complainant for clarification, if necessary.
10. Gather **physical evidence**, visit incident site(s), review discipline and other relevant records of parties and witnesses.
11. Review statements or reports from **expert witnesses**, if any.
12. Allows parties access to facilities to gather evidence, if requested.

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13. The parties do not have the right to be present during witness interviews. They can ask questions of the other party and witnesses through written question process later.
14. Organize evidence to share with parties.
15. **Prior to completion of the investigative report**, the investigator must **send an electronic[3] or hard copy of the relevant evidence** gathered to the parties and the parties' advisors, if any. The parties must be provided **at least 10 calendar days** to submit a written response that the investigator must consider before completing the investigative report.
16. Prepare an investigative report that summarizes relevant evidence. The report may include proposed findings of fact.
17. **The investigative report must be sent to the parties at least 10 calendar days before the Decision Maker decides regarding responsibility**.
18. Send investigative report to Decision Maker.



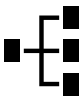
Decision/Determination of Responsibility: A Decision Maker (who is not the Title IX Coordinator or the Investigator) must issue a comprehensive written determination regarding responsibility (i.e., whether sexual harassment occurred) and the complete grievance process to date. The decision must include:

Decision Maker

1. Identification of the **allegations** that constitute sexual harassment;
2. Description of the **procedural steps** taken since the receipt of the Formal Complaint through the Decision, including notifications, interviews with the parties and witnesses, site visits, methods used to gather other evidence;
3. Findings of Fact
4. Conclusions regarding the application of the District's Code of Conduct to the facts;
5. A statement of and the rationale for the results of each allegation, including a determination of responsibility;
6. Any disciplinary sanctions imposed on the Respondent;
7. A statement whether remedies to the Complainant have been designed to restore or preserve equal access to the District's education program or activity; and
8. Information about the ability of the parties to appeal the decision.



The decision must be sent to the parties simultaneously.



Appeal: Either party may appeal on a form provided by the District within 10 calendar days of issuance of the decision. The only allowable bases for appeal are:

Appeals Decision Maker

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time of the decision that could affect the outcome; and
3. The Title IX Coordinator, Investigator(s), or Decision Maker had a conflict of interest or bias for or against Complainants or Respondents

[3] The evidence may be provided using a platform that prevents downloading and copying to protect the confidentiality of information about students or victims of sexual offenses.

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generally or the individual Complainant or Respondent that affected the outcome of the matter.

If an appeal is filed, the Appeals Decision Maker shall provide notice to the other party in writing. Both parties shall have the opportunity to submit a written statement in support of or challenging the outcome. Parties will be provided 10 calendar days to submit an appeal statement.

After considering the written appeal statements of the parties, the Appeals Decision Maker will issue a written decision that includes a rationale for the result and provide the decision to both parties simultaneously.



Record Keeping: All records from a sexual harassment investigation under this grievance process must be maintained by the District for at least 7 years.

Title IX Coordinator



Office for Civil Rights: A student also has the right to file a complaint with United States Department of Education Office for Civil Rights.



Retaliation Prohibited: All individuals shall be protected from retaliation if the individual made a report or complaint, testified, assisted, or participated or refused to participate in an investigation or the grievance process. Retaliation may include intimidation, threats, coercion, or discrimination.

All Employees

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