

## School Board

### Title IX Grievance Procedure <sup>1</sup>

Sexual harassment affects a student's ability to learn and an employee's ability to work. Providing an educational and workplace environment free from sexual harassment is an important District goal. The District does not discriminate on the basis of sex in any of its education programs or activities, and it complies with Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulations (34 C.F.R. Part 106) concerning everyone in the District's education programs and activities, including applicants for employment, students, parents/guardians, employees, and third parties.

### Title IX Sexual Harassment Prohibited

Sexual harassment as defined in Title IX (Title IX Sexual Harassment) is prohibited. Any person, including a District employee or agent, or student, engages in Title IX Sexual Harassment whenever that person engages in conduct on the basis of an individual's sex that satisfies one or more of the following: <sup>2</sup>

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<sup>1</sup> Title IX of the Education Amendments of 1972 (Title IX) (20 U.S.C. §1681 *et seq.*) requires this subject matter be covered by policy and controls this policy's content. This policy contains items on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right. Employee grievance procedures are a mandatory subject of bargaining and cannot be changed without the employee exclusive representative's consent. This policy and its companion policy 2:260, *Uniform Grievance Procedure*, are in addition to, and not a substitute for, the employee grievance procedure contained in a collective bargaining agreement.

For the sake of consistency and ease of administration, this policy addresses only Title IX sexual harassment grievances, except those contained in collective bargaining agreements. See the cross references for the policies referring to this Title IX sexual harassment grievance procedure policy.

A district must have at least one policy explicitly stating it does not discriminate on the basis of sex in its education programs or activities under Title IX and its implementation regulations (34 C.F.R. Part 106). 34 C.F.R. §106.8(b)(1). Title IX jurisdiction is geographically limited to discrimination against a person in the United States. 34 C.F.R. §106.8(d). Though all complaints of sexual harassment may not constitute sexual harassment under Title IX, Title IX's reach is broad because an alleged complainant or alleged respondent may be *anyone* in the District's educational program or activity in the United States – including applicants for employment, students, parents/guardians, any employee, and third parties.

<sup>2</sup> 34 C.F.R. §106.30. The definition of *sexual harassment* in the policy and in Title IX includes *unwelcome* conduct. *Id.* However, case law does not always distinguish between *welcome* and *unwelcome* conduct. See *Mary M. v. North Lawrence Community Sch. Corp.*, 131 F.3d 1220 (7th Cir. 1997) (8th grade student did not need to show that a school employee's sexual advances were *unwelcome* in order to prove sexual harassment).

1. A District employee conditions the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct;<sup>3</sup> or
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 educational program or activity; or
3. *Sexual assault* as defined in 20 U.S.C. §1092(f)(6)(A)(v), *dating violence* as defined in 34 U.S.C. §12291(a)(11), *domestic violence* as defined in 34 U.S.C. §12291(a)(12), or *stalking* as defined in 34 U.S.C. §12291(a)(36).<sup>4</sup>

Examples of sexual harassment include, but are not limited to, touching, crude jokes or pictures, discussions of sexual experiences, teasing related to sexual characteristics, spreading rumors related to a person's alleged sexual activities, rape, sexual battery, sexual abuse, and sexual coercion.

Definitions from 34 C.F.R. §106.30

*Complainant* means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.<sup>5</sup>

*Education program or activity* includes locations, events, or circumstances where the District has substantial control over both the *Respondent* and the context in which alleged sexual harassment occurs.<sup>6</sup>

*Formal Title IX Sexual Harassment Complaint* means a document filed by a *Complainant* or signed by the Title IX Coordinator<sup>7</sup> alleging sexual harassment against a *Respondent* and requesting that the District investigate the allegation.<sup>8</sup>

*Respondent* means an individual who has been reported to be the perpetrator of the conduct that could constitute sexual harassment.<sup>9</sup>

*Supportive measures* mean non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the *Complainant* or the *Respondent*

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<sup>3</sup> 34 C.F.R. §106.30. This behavior is commonly called *quid pro quo* sexual harassment. See 85 Fed. Reg. 30036, f/n 94. By using the term *individual*, Title IX regulations do not limit *quid pro quo* sexual harassment to situations where the provision of an aid, benefit or service by an employee is conditioned on a current *student's* participation in unwelcome sexual conduct. By way of example, *quid pro quo* Title IX sexual harassment involving an employee and an individual other than a current student may be implicated when: an employee tells a former student she can only get a letter of recommendation if she participates in unwelcome sexual conduct; an employee selects a volunteer for a coveted field trip chaperone position if he participates in unwelcome sexual conduct; or a supervisory employee subjects a subordinate employee to unwelcome sexual conduct in exchange for a promotion.

<sup>4</sup> See sample exhibit 2:265-E, *Title IX Glossary of Terms*, for these definitions and other definitions of italicized terms in this policy. Title IX regulations at 34 C.F.R. §106.30 contain pinpoint citations to the Violence Against Women Act (VAWA), 34 U.S.C. §12291 *et seq.*, for the definitions of *dating violence*, *domestic violence*, and *stalking*. VAWA was reauthorized in 2022 and the citations changed; however, 34 C.F.R. §106.30 has not been updated. This policy uses the updated VAWA citations.

<sup>5</sup> 34 C.F.R. §106.30.

<sup>6</sup> 34 C.F.R. §106.44(a).

<sup>7</sup> See f/n 19 in sample policy 2:260, *Uniform Grievance Procedure*.

<sup>8</sup> 34 C.F.R. §106.30.

<sup>9</sup> *Id.*

before or after the filing of a *Formal Title IX Sexual Harassment Complaint* or where no *Formal Title IX Sexual Harassment Complaint* has been filed. <sup>10</sup>

#### Title IX Sexual Harassment Prevention and Response

The Superintendent or designee will ensure that the District prevents and responds to allegations of Title IX Sexual Harassment as follows:

1. Ensures that the District's comprehensive health education program in Board policy 6:60, *Curriculum Content*, incorporates (a) age-appropriate sexual abuse and assault awareness and prevention programs in grades pre-K through 12,<sup>11</sup> and (b) age-appropriate education about the warning signs, recognition, dangers, and prevention of teen dating violence in grades 7-12. <sup>12</sup> This includes incorporating student social and emotional development into the District's educational program as required by State law and in alignment with Board policy 6:65, *Student Social and Emotional Development*.
2. Incorporates education and training for school staff<sup>13</sup> as recommended by the Superintendent, Title IX Coordinator, Nondiscrimination Coordinator, Building Principal, Assistant Building Principal, Dean of Students, or a Complaint Manager. <sup>14</sup>
3. Notifies applicants for employment,<sup>15</sup> students, parents/guardians, employees, and collective bargaining units of this policy and contact information for the Title IX Coordinator by, at a minimum, prominently displaying them on the District's website, if any, and in each handbook made available to such persons. <sup>16</sup>

#### Making a Report

A person who wishes to make a report under this Title IX Sexual Harassment grievance procedure may make a report to the Title IX Coordinator, Nondiscrimination Coordinator, Building Principal, Assistant Building Principal, Dean of Students, a Complaint Manager, or any employee with whom

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<sup>10</sup> *Id.* See sample administrative procedure 2:265-AP1, *Title IX Response*, for further discussion of supportive measures.

<sup>11</sup> Required by 105 ILCS 110/3 and 105 ILCS 5/10-23.13 (*Erin's Law*).

<sup>12</sup> Required by *Id.* at 110/3.

<sup>13</sup> For boards that insert optional paragraphs listing trainings in f/n 4 of policy 5:100, *Staff Development Program*, insert "pursuant to policy 5:100, *Staff Development Program*, and" after the word staff.

<sup>14</sup> 105 ILCS 110/3. Detailed training requirements exist for Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. 34 C.F.R. §106.45(b)(1)(iii). Title IX rules "[leave districts] discretion to determine the kind of training to other employees that will best enable the [district], and its Title IX Coordinator, to meet Title IX obligations." 85 Fed. Reg. 30114. Many attorneys agree the best practice is to train all district staff about 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. See sample procedure 2:265-AP1, *Title IX Response*.

<sup>15</sup> Most school districts are not covered by Subpart C of Title IX, which "applies only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education." 34 C.F.R. §106.15(d). If your district is covered by Subpart C, amend this to state "applicants for admission or employment."

<sup>16</sup> 34 C.F.R. §106.8. See paragraph 2 of f/n 21 in sample policy 2:260, *Uniform Grievance Procedure*. See also sample exhibit 2:250-E2, *Immediately Available District Public Records and Web-Posted Reports and Records*.

the person is comfortable speaking.<sup>17</sup> A person who wishes to make a report may choose to report to a person of the same gender.

School employees shall respond to incidents of sexual harassment by promptly making or forwarding the report to the Title IX Coordinator. An employee who fails to promptly make or forward a report may be disciplined, up to and including discharge.

The Superintendent shall insert into this policy and keep current the name, office address, email address, and telephone number of the Title IX Coordinator.<sup>18</sup>

**Title IX Coordinator:**

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Name

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Address

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Email

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Telephone

Processing and Reviewing a Report or Complaint

Upon receipt of a report, the Title IX Coordinator and/or designee will promptly contact the Complainant to: (1) discuss the availability of supportive measures, (2) consider the *Complainant's* wishes with respect to *supportive measures*, (3) inform the Complainant of the availability of supportive measures with or without the filing of a *Formal Title IX Sexual Harassment Complaint*, and (4) explain to the Complainant the process for filing a *Formal Title IX Sexual Harassment Complaint*.<sup>19</sup>

Further, the Title IX Coordinator will analyze the report to identify and determine whether there is another or an additional appropriate method(s) for processing and reviewing it.<sup>20</sup> For any report

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<sup>17</sup> Using “or any employee with whom the Complainant is comfortable speaking” ensures Title IX compliance because Title IX deems “any employee” of an elementary or secondary school who has notice of sexual harassment or allegations of sexual harassment to have *actual knowledge*. Therefore, a report to any employee triggers a district’s duty to respond. 34 C.F.R. §106.30. This policy contains an item upon which collective bargaining may be required. Any policy that impacts wages, hours, and terms and conditions of employment is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right.

<sup>18</sup> Title IX regulations require districts to designate and authorize at least one employee to coordinate its efforts to comply with Title IX and to refer to that employee as the *Title IX Coordinator*. 34 C.F.R. §106.8(a). Districts must identify the Title IX coordinator by name, office address, email address, and telephone number. *Id.* A district’s nondiscrimination coordinator often also serves as its Title IX coordinator. See sample policy 2:260, *Uniform Grievance Procedure*.

While the names and contact information are required by law to be listed, they are not part of the adopted policy and do not require board action. This allows for additions and amendments to the names and contact information when necessary. It is important for updated names and contact information to be inserted into this policy and regularly monitored.

<sup>19</sup> Required by 34 C.F.R. §106.44(a) and (b) regardless of whether a formal Title IX sexual harassment complaint is filed.

<sup>20</sup> See sample exhibit 2:265-E, *Title IX Glossary of Terms*, for a discussion of Title IX sexual harassment and non-Title IX sexual harassment. Consult the board attorney for further guidance.

received, the Title IX Coordinator shall review Board policies 2:260, *Uniform Grievance Procedure*; 5:20, *Workplace Harassment Prohibited*; 5:90, *Abused and Neglected Child Reporting*; 5:120, *Employee Ethics; Code of Professional Conduct; and Conflict of Interest*;<sup>21</sup> 7:20, *Harassment of Students Prohibited*; 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*; 7:185, *Teen Dating Violence Prohibited*; and 7:190, *Student Behavior*, to determine if the allegations in the report require further action.

Reports of alleged sexual harassment will be confidential to the greatest extent practicable, subject to the District's duty to investigate and maintain an educational program or activity that is productive, respectful, and free of sexual harassment.

#### Formal Title IX Sexual Harassment Complaint Grievance Process

When a *Formal Title IX Sexual Harassment* Complaint is filed, the Title IX Coordinator will investigate it or appoint a qualified person to undertake the investigation.<sup>22</sup>

The Superintendent or designee shall implement procedures to ensure that all *Formal Title IX Sexual Harassment Complaints* are processed and reviewed according to a Title IX grievance process that fully complies with 34 C.F.R. §106.45.<sup>23</sup> The District's grievance process shall, at a minimum:<sup>24</sup>

1. Treat *Complainants* and *Respondents* equitably by providing remedies to a *Complainant* where the *Respondent* is determined to be responsible for sexual harassment, and by following a grievance process that complies with 34 C.F.R. §106.45 before the imposition of any disciplinary sanctions or other actions against a *Respondent*.
2. Require an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations may not be based on a person's status as a *Complainant*, *Respondent*, or witness.
3. Require that any individual designated by the District as a Title IX Coordinator, investigator, decision-maker, or any person designated by the District to facilitate an informal resolution process:
  - a. Not have a conflict of interest or bias for or against complainants or respondents generally or an individual *Complainant* or *Respondent*.

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<sup>21</sup> See sample administrative procedure 5:120-AP2, *Employee Conduct Standards*.

<sup>22</sup> This policy gives Title IX coordinators the flexibility to appoint another qualified individual to conduct an investigation. This may be appropriate when the neutrality or efficacy of the Title IX coordinator is an issue, and/or where the district wishes to have the expertise that an in-house or outside attorney may afford to an investigation. Alternative appointments are often made in consultation with the superintendent or other district-level administrator (except in cases involving complaints about those individuals) and the board attorney. If a complaint involves the superintendent or other district-level administrator, alternative appointments are often made in consultation with the board and the board attorney.

<sup>23</sup> 34 C.F.R. §106.45(b). See sample administrative procedures 2:265-AP1, *Title IX Response*, and 2:265-AP2, *Formal Title IX Complaint Grievance Process*.

<sup>24</sup> 34 C.F.R. §106.45(b)(1) lists the basic requirements for a grievance process. While live hearings are only required for postsecondary institutions, elementary and secondary schools may choose to offer them as part of their grievance process. **Consult the board attorney if the board wants the district to use a live hearing in its grievance process.**

If using a live hearing during the grievance process, amend #5 by inserting the following underscored text: "Require that any individual designated by the District as a decision-maker receive training on any technology to be used at a live hearing and 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."

- 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. <sup>25</sup>
4. Require that any individual designated by the District as an investigator receiving training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
5. Require that any individual designated by the District as a decision-maker 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.
6. 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.
7. Include reasonably prompt timeframes for conclusion of the grievance process.
8. Describe the range of possible disciplinary sanctions and remedies the District may implement following any determination of responsibility.
9. Base all decisions upon the *preponderance of evidence* standard. <sup>26</sup>
10. Include the procedures and permissible bases for the *Complainant* and *Respondent* to appeal.
11. Describe the range of *supportive measures* available to *Complainants* and *Respondents*.
12. 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. <sup>27</sup>

### Enforcement

Any District employee who is determined, at the conclusion of the grievance process, to have engaged in sexual harassment will be subject to disciplinary action up to and including discharge. Any third party who is determined, at the conclusion of the grievance process, to have engaged in sexual harassment will be addressed in accordance with the authority of the Board in the context of **The footnotes should be removed before the material is used.**

<sup>25</sup> Aside from the general training requirements of 34 C.F.R. §106.45(b)(1)(iii), the DOE gives districts flexibility to determine certain training practices or techniques to best meet training requirements based upon their unique local conditions and resources within their educational community. 85 Fed. Reg. 30120. See also 85 Fed. Reg. 30084 (declining to specify that training of Title IX personnel must include implicit bias training, so long as training provides instruction on how to serve impartially and avoid prejudgment of the facts at issue, conflicts of interest, and bias, and that training materials avoid sex stereotypes).

<sup>26</sup> 34 C.F.R. §106.45(b)(1)(vii) requires the Title IX sexual harassment grievance process to state the standard of evidence it will use to determine responsibility of the respondent. The standard of evidence selected must be applied "consistently to formal complaints alleging Title IX sexual harassment regardless of whether the respondent is a student or an employee." 85 Fed. Reg. 30373. This sample policy uses the *preponderance of the evidence* standard, not the *clear and convincing evidence* standard. *Preponderance of evidence* is a standard used in civil cases. It means "the greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force." See *Black's Law Dictionary, 11th ed. 2019*. *Preponderance of the evidence* is the standard used in sample policy 2:260, *Uniform Grievance Procedure*. *Clear and convincing* is a higher standard, requiring more than *preponderance of the evidence* but less than proof beyond a reasonable doubt. It means "evidence indicating that the thing to be proved is highly probable or reasonably certain." See *Black's Law Dictionary, 11th ed. 2019*. **Consult the board attorney regarding the appropriate standard for the district, as well as implications if a different standard is used in this policy than in 2:260, *Uniform Grievance Procedure*.** For boards that choose the *clear and convincing evidence* standard, delete "*preponderance of*" and insert "*clear and convincing*." Ensure the same standard of evidence is used in 2:265-AP2, *Formal Title IX Complaint Grievance Process*.

<sup>27</sup> Examples of legally-recognized privileges include attorney-client privilege, doctor-patient privilege, and spousal privilege. See 85 Fed. Reg. 30277.

the relationship of the third party to the District, e.g., vendor, parent, invitee, etc. Any District student who is determined, at the conclusion of the grievance process, to have engaged in sexual harassment will be subject to disciplinary action, including, but not limited to, suspension and expulsion consistent with student behavior policies.<sup>28</sup> Any person making a knowingly false accusation regarding sexual harassment will likewise be subject to disciplinary action.

This policy does not increase or diminish the ability of the District or the parties to exercise any other rights under existing law.<sup>29</sup>

#### Retaliation Prohibited<sup>30</sup>

The District prohibits any form of retaliation against anyone who, in good faith, has made a report or complaint, assisted, or participated or refused to participate in any manner in a proceeding under this policy. Any person should report claims of retaliation using Board policy 2:260, *Uniform Grievance Procedure*.<sup>31</sup>

Any person who retaliates against others for reporting or complaining of violations of this policy or for participating in any manner under this policy will be subject to disciplinary action, up to and including discharge, with regard to employees, or suspension and expulsion, with regard to students.

LEGAL REF.: 20 U.S.C. §1681 et seq., Title IX of the Educational Amendments of 1972; 34 C.F.R. Part 106.  
Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999).  
Gebser v. Lago Vista Independent Sch. Dist., 524 U.S. 274 (1998).

CROSS REF.: 2:260 (Uniform Grievance Procedure), 5:10 (Equal Employment Opportunity and Minority Recruitment), 5:20 (Workplace Harassment Prohibited), 5:90 (Abused and Neglected Child Reporting), 5:100 (Staff Development Program), 5:120 (Employee Ethics; Code of Professional Conduct; and Conflict of Interest), 6:60 (Curriculum Content), 6:65 (Student Social and Emotional Development), 7:10 (Equal Educational Opportunities), 7:20 (Harassment of Students Prohibited), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 7:185 (Teen Dating Violence Prohibited), 7:190 (Student Behavior)

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<sup>28</sup> See sample policies 7:190, *Student Behavior*, and 7:230, *Misconduct by Students with Disabilities*. See also sample policies 7:200, *Suspension Procedures*, and 7:210, *Expulsion Procedures*, for due process requirements when student suspension or expulsion is recommended following a determination of responsibility for Title IX sexual harassment.

<sup>29</sup> Examples of rights the district or parties may exercise ancillary to this Title IX sexual harassment grievance procedure include, but are not limited to: disciplinary processes for suspensions and expulsions of students under 105 ILCS 5/10-22.6; tenured teacher dismissal proceedings under 105 ILCS 5/24-12; any other pre-termination process required by an applicable collective bargaining agreement, employment policy or procedure, or employment contract; and student appeal of a sex equity grievance decision under 23 Ill. Admin. Code §200.40 (see sample policy 7:10, *Equal Educational Opportunities*).

<sup>30</sup> 34 C.F.R. §106.71.

<sup>31</sup> Retaliation complaints must be processed under policy 2:260, *Uniform Grievance Procedure*, because they are covered under the district's grievance procedure for resolving non-sexual harassment Title IX complaints. See 34 C.F.R. §106.8(c). Title IX sexual harassment regulations state that "[c]omplaints alleging retaliation may be filed according to the grievance procedures for sex discrimination required to be adopted under §106.8(c)." 34 C.F.R. §106.71.

## School Board

### Administrative Procedure – Title IX Response <sup>1</sup>

The District responds to all reports of alleged sexual harassment in violation of Title IX regardless of whether the Complainant or Title IX Coordinator<sup>2</sup> 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"> <li>1. All District employees<sup>3</sup> 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.</li> <li>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.</li> <li>3. Title IX investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.</li> <li>4. Title IX decision-makers receive training on issues of relevance of</li> </ol>

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

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

<sup>3</sup> 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>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 facilitators<sup>4</sup> 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 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"> <li>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)).</li> <li>2. Promptly forward all reports of sexual harassment to the Title IX Coordinator.</li> </ol> <p><b>Note:</b> 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"> <li>1. Discuss the availability of supportive measures;</li> <li>2. Consider the Complainant’s wishes with respect to supportive measures;</li> </ol> <p><b>Note:</b> 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> <ol style="list-style-type: none"> <li>3. Inform the Complainant that supportive measures are available regardless of whether the Complainant files a Formal Title IX Sexual Harassment Complaint; and</li> </ol>

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<sup>4</sup> 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>4. Explain to the Complainant the process for filing a Formal Title IX Sexual Harassment Complaint, including 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"> <li>• 2:260, <i>Uniform Grievance Procedure</i></li> <li>• 5:20, <i>Workplace Harassment Prohibited</i></li> <li>• 5:90, <i>Abused and Neglected Child Reporting</i></li> <li>• 5:120, <i>Employee Ethics; Conduct; and Conflict of Interest</i></li> <li>• 7:20, <i>Harassment of Students Prohibited</i></li> <li>• 7:180, <i>Prevention of and Response to Bullying, Intimidation, and Harassment</i></li> <li>• 7:185, <i>Teen Dating Violence Prohibited</i></li> <li>• 7:190, <i>Student Behavior</i></li> </ul> <p>Answers the following questions:</p> <ol style="list-style-type: none"> <li>1. Does another appropriate method exist for processing and reviewing the sexual harassment allegation?</li> <li>2. If yes, does that other method govern the District’s response in addition to or at the exclusion of policy 2:265, <i>Title IX Grievance Procedure</i>?</li> </ol> <p>See 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 Complaint 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 signs<sup>5</sup> a Formal Title IX Sexual Harassment Complaint, the Title IX Coordinator is not a Complainant or otherwise a party under 2:265-AP2, *Formal Title IX Complaint Grievance Process*. 34 C.F.R. §106.30.

Actor	Action
Title IX Coordinator	<p><b>When a Complainant Does NOT File a Formal Title IX Sexual Harassment Complaint:</b></p> <p>Assesses the sexual harassment allegation to determine whether the circumstances justify overriding the Complainant’s choice and signing</p>

The footnotes should be removed before the material is used.

<sup>5</sup> 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.

	<p>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;<sup>6</sup> 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.<sup>7</sup></p> <p><b>When a Complainant Files, or the Title IX Coordinator Signs, a Formal Title IX Sexual Harassment Complaint:</b></p> <p>Proceeds to and follows 2:265-AP2, <i>Formal Title IX Complaint Grievance Process</i>, in conjunction with any response required by this procedure.</p>
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Consideration of Removal of the Respondent

Actor	Action
Title IX Coordinator	<p><b>Emergency Removal of Respondent-Student:</b></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 allegations. See 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"> <li>1. Provides the Respondent-student with written<sup>8</sup> notice and an opportunity to challenge the decision immediately<sup>9</sup> following the removal; and</li> </ol>

The footnotes should be removed before the material is used.

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

<sup>7</sup> *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](http://www2.ed.gov/policy/elsec/leg/essa/section8546dearcolleagueletter.pdf).

<sup>8</sup> 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.”

	<p>2. Follows requirements set forth in 105 ILCS 5/10-22.6.</p> <p><b>Administrative Leave for Respondent-Employee:</b></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><b>Note:</b> 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

<b>Actor</b>	<b>Action</b>
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> <p>Why the District’s response to the sexual harassment allegation was not deliberately indifferent, e.g., was deliberately concerned and appropriate;</p> <p>The supportive measures the District took to restore or preserve equal access to its education program or activity; and</p> <p>If the District did not provide Complainant with supportive measures, why not providing them was clearly reasonable in light of the circumstances. <i>Id.</i></p> <p>See 5:150, <i>Personnel Records</i>, and 5:150-AP, <i>Personnel Records</i>, addressing the identification, storage, and access to personnel records.</p> <p>See 7:340, <i>Student Records</i>, along with 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.

<sup>9</sup> *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.

## School Board

### Administrative Procedure – Formal Title IX Complaint Grievance Process <sup>1</sup>

This procedure implements the District’s investigation and response process to 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**.

#### Table of Contents

- A. Overview of 34 C.F.R. §106.45 Grievance Process
- B. Notice of Allegations
- C. Consolidation of Formal Title IX Sexual Harassment Complaints
- 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.<sup>2</sup> 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 work<sup>3</sup> locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures to Complainants and/or Respondents. 34 C.F.R. §106.45(b)(1)(ix). See 2:265-E, *Title IX Glossary of Terms*, for the definition of *supportive measures*.

**The footnotes should be removed before the material is used.**

<sup>1</sup> This sample Title IX sexual harassment grievance process must be customized to assure alignment with the district’s policies, procedures, and practices.

<sup>2</sup> Customize this list to reflect locally available supportive measures.

<sup>3</sup> For districts with residential facilities, insert “or housing” here.

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).<sup>4</sup>
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. This Grievance Process is concluded within 90 school business days<sup>5</sup> 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, 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

**The footnotes should be removed before the material is used.**

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<sup>4</sup> 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.

<sup>5</sup> 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.**

- 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:<sup>6</sup>
  - 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.
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.<sup>7</sup>

**The footnotes should be removed before the material is used.**

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<sup>6</sup> 34 C.F.R. §106.45(b)(2).

<sup>7</sup> 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.

### 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).

### **E. Informal Resolution of Formal Title IX Sexual Harassment Complaint <sup>8</sup>**

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)):

**The footnotes should be removed before the material is used.**

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



1. Provides the parties 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	<p>During an investigation and throughout the Grievance Process (34 C.F.R. §106.45(b)(5)):</p> <ol style="list-style-type: none"> <li>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).</li> <li>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).</li> <li>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).</li> <li>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 their choice (who may, but is not required to, be an attorney). 34 C.F.R. §106.45(b)(5)(iv).<sup>9</sup></li> <li>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).</li> <li>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</li> </ol>

The footnotes should be removed before the material is used.

<sup>9</sup> 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).

Actor	Action
	<p>(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).</p> <p>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. <i>Id.</i></p> <p>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> <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 the party’s advisor, if any, the investigative report in an electronic format or hard copy, for their review and written response. <i>Id.</i></p> <p style="padding-left: 40px;"><b>Note:</b> This step must occur at least 10 school business days before the Initial Decision-Maker’s determination regarding responsibility. <i>Id.</i></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"> <li>1. The Formal Title IX Sexual Harassment Complaint;</li> <li>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</li> <li>3. The investigative report.</li> </ol>

**G. Determination Regarding Responsibility; Remedies**

Initial Decision-Maker	<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><b>Reviews Investigative Report and Corresponding Materials; Opportunity for Parties to Submit Questions</b></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"> <li>1. Questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior are not relevant, unless they:</li> </ol>
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	<p>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></p> <p>2. Any questions must be submitted to the Initial Decision-Maker within five (5) school business days. <sup>10</sup></p> <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. <sup>11</sup></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></p> <p>Informs the parties that any questions must be submitted to the Initial Decision-Maker within five (5) school business days. <sup>12</sup></p> <p>Upon receipt of answers to the additional questions, provides each party with copies of them. <u>Id.</u></p> <p><b>Determination and Written Notice of Determination</b></p> <p>Basing all decisions on the <i>preponderance of evidence</i><sup>13</sup> 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"> <li>1. Identifies the allegations potentially constituting Title IX sexual harassment;</li> <li>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;</li> <li>3. Contains findings of fact supporting the determination;</li> <li>4. Contains conclusions regarding the application of the District’s policies and procedures to the facts;</li> </ol>
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The footnotes should be removed before the material is used.

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<sup>10</sup> See f/n 5, above.  
<sup>11</sup> Id.  
<sup>12</sup> Id.  
<sup>13</sup> See f/n 4, above.

	<p>5. Contains a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any recommended<sup>14</sup> 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</p> <p>6. Outlines the District’s procedures and permissible bases for the Complainant and Respondent to appeal.</p>
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	<p>Within 10 school business days<sup>15</sup> after receiving the either the Initial Decision-Maker’s written determination regarding responsibility or the notice of dismissal of Formal Title IX Sexual Harassment Complaint, makes a written request to the Title IX Coordinator appealing the determination/dismissal based on:</p> <ol style="list-style-type: none"> <li>1. Procedural irregularity that affected the outcome.</li> <li>2. New evidence now available that could affect the outcome but that was not reasonably available at the time the determination.</li> <li>3. The Title IX Coordinator, Investigator, or Initial Decision-Maker had 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).</li> </ol> <p><b>Note:</b> 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>

The footnotes should be removed before the material is used.

<sup>14</sup> 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.

<sup>15</sup> See f/n 5, above.

Actor	Action
Title IX Coordinator	<p>Upon receiving an appeal from one party:</p> <ol style="list-style-type: none"> <li>1. Notifies the other party in writing that an appeal has been filed.</li> <li>2. Provides both parties five (5) school business days to submit a written statement in support of, or challenging, the outcome.</li> <li>3. Promptly forwards all materials relative to the appeal to the Appellate Decision-Maker.</li> </ol> <p><b>Note:</b> 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). <b>If the Board acts as the Appellate Decision-Maker, the Board must receive the training in Section A.9, above.</b></p> <p><b>Note:</b> 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. <b>Districts should discuss their options with their board attorney.</b></p>
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). <sup>16</sup></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"> <li>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</li> </ol>

The footnotes should be removed before the material is used.

<sup>16</sup> 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*.

	<p>access to the District's education program or activity;</p> <ol style="list-style-type: none"> <li>2. Any appeal and its result;</li> <li>3. Any informal resolution and its result; and</li> <li>4. All materials used to train the Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution.</li> </ol> <p>See 5:150, <i>Personnel Records</i>, and 5:150-AP, <i>Personnel Records</i>, addressing the identification, storage, and access to personnel records.</p> <p>See 7:340, <i>Student Records</i>, along with 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

### Exhibit – Title IX Glossary of Terms <sup>1</sup>

Use this exhibit to educate employees and students about Title IX terms, and with the required Title IX response and grievance process in Board policy 2:265, *Title IX Grievance Procedure*, implemented by administrative procedures 2:265-AP1, *Title IX Response*, and 2:265-AP2, *Formal Title IX Complaint Grievance Process*.

#### Glossary of Terms

**Actual Knowledge** – Notice of sexual harassment or allegations of sexual harassment to any District employee or to the District’s Title IX Coordinator. Assumption of knowledge based solely on the District’s status as an employer or other presumption under law does not constitute actual knowledge. This standard is not met when the only official of the District with actual knowledge is the Respondent. *Notice* as used here includes, but is not limited to, a report or complaint of sexual harassment to the Title IX Coordinator in person, by mail, by telephone, or by email using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report. 34 C.F.R. §§ 106.30, 106.8(a).

**Appellate Decision-Maker** – An individual or group, e.g., a Board-appointed appeal examiner or the Board, which reviews an appeal of the Initial Decision-Maker’s determination regarding responsibility or a dismissal of a Formal Title IX Sexual Harassment Complaint (defined below). The Appellate Decision-Maker cannot be 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 Appellate Decision-Maker must be free from conflicts of interest or bias against complainants and respondents generally or against an individual Complainant or Respondent, and must be trained to serve impartially. 34 C.F.R. §106.45(b)(1)(iii).

**Complainant** – An individual who is alleged to be the victim of conduct that could constitute sexual harassment. 34 C.F.R. §106.30.

**Consent** – Knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Consent may not be inferred from silence, passivity, or a lack of verbal or physical resistance. A person’s manner of dress does not constitute consent. Past consent to sexual activities, or a current or previous dating relationship, does not imply ongoing or future consent. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). Consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another person. Consent may be withdrawn at any time. A person cannot consent to sexual activity if that person is unable to understand the nature of the activity or give knowing consent due to circumstances, including without limitation the following: (1) the person is incapacitated due to the use or influence of alcohol or drugs; (2) the person is asleep or unconscious; (3) the person is under age; or (4) the person is incapacitated due to a mental disability. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred. Coercion, force, or the threat of either invalidates consent.

The footnotes should be removed before the material is used.

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<sup>1</sup> This sample exhibit must be customized to assure alignment with the district’s policies, procedures, and practices.

**Note:** 34 C.F.R. §106.30, added at 85 Fed. Reg. 30574, states that Title IX recipients are not required to adopt a particular definition of consent with respect to sexual assault; however, in its 2020 Title IX rulemaking, the U.S. Dept. of Education (DOE) stated that “recipients must clearly define consent and must apply that definition consistently.” 85 Fed. Reg. 30125. **Consult the Board Attorney if the District would like to customize this definition.**

**Education Program or Activity** – Includes locations, events, or circumstances in the United States over which the District exercised substantial control over both the Respondent and the context in which the sexual harassment occurred. 34 C.F.R. §106.44(a).

**Note:** Title IX jurisdiction is geographically limited to discrimination against a person in the United States. 34 C.F.R. §106.8(d). The District’s Title IX obligations extend to off-campus sexual harassment incidents “if the off-campus incident occurs as part of the [district]’s ‘operations’ pursuant to 20 U.S.C. 1687 and 34 CFR 106.2(h)” or if the District “exercised substantial control over the respondent and the context of alleged sexual harassment that occurred off campus pursuant to § 106.44(a).” 85 Fed. Reg. 30196. No single factor is determinative of whether the District exercised *substantial control* or whether an incident occurred as part of the District’s *operations*. *Id.* at 30197. *Operations* may include computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in, the District’s operations. *Id.* at 30202. **Consult the Board Attorney for further guidance.**

**Formal Title IX Sexual Harassment Complaint** – 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. At the time of filing a Formal Title IX Sexual Harassment Complaint, a Complainant must be participating in or attempting to participate in the District’s education program or activity with which the Formal Title IX Sexual Harassment Complaint is filed.

**Note:** Whether a Complainant is *attempting to participate* is a fact-specific inquiry. For example, a Complainant who has graduated may still be attempting to participate in an education program where he or she intends to remain involved in alumni programs or activities. 85 Fed. Reg. 30138.

**Consult the Board Attorney for further guidance.**

**Initial Decision-Maker** – An individual designated by the Title IX Coordinator to reach an initial determination regarding responsibility in a Formal Title IX Sexual Harassment Complaint (defined above) by applying the standard of proof set forth in 2:265-AP2, *Formal Title IX Complaint Grievance Process*. See 85 Fed. Reg. 30054. The Title IX Coordinator cannot be the Initial Decision-Maker. 34 C.F.R. §106.45(b)(7)(i). The Initial Decision-Maker must be free from conflicts of interest or bias against complainants and respondents generally or against an individual Complainant or Respondent, and must be trained to serve impartially. 34 C.F.R. §106.45(b)(1)(iii).

**Investigator** – The Title IX Coordinator or an individual designated by the Title IX Coordinator to investigate a *Formal Title IX Sexual Harassment Complaint* (defined above) according to 2:265-AP2, *Formal Title IX Complaint Grievance Process*. The Investigator must be free from conflicts of interest or bias against complainants and respondents generally or against an individual Complainant or Respondent, and must be trained to serve impartially. 34 C.F.R. §106.45(b)(1)(iii).

**Respondent** – An individual who has been reported to be the perpetrator of the conduct that could constitute sexual harassment. 34 C.F.R. §106.30.

**Supportive Measures** – Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to a Complainant or Respondent before or after the filing of a Formal Title IX Sexual Harassment Complaint or where no Formal Title IX Sexual Harassment Complaint has been filed. Such measures are designed to restore or preserve equal access to the District’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. 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<sup>2</sup> locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The District will maintain as confidential any supportive measures provided to a 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. 34 C.F.R. §106.30.

**Sexual Harassment Governed by Laws Other Than Title IX** – The District must also address sexual harassment that does not meet the definition of Title IX sexual harassment, including but not limited to sexual harassment in violation of the State Officials and Employees Ethics Act (5 ILCS 430/), Illinois Human Rights Act (775 ILCS 5/), and Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e et seq.).

For each report or complaint received, the Title IX Coordinator reviews the following Board policies<sup>3</sup> to determine if they require additional action by the District in addition to or at the exclusion of policy 2:265, *Title IX Grievance Procedure*:

- 2:260, *Uniform Grievance Procedure*. This policy provides a method for any student, parent/guardian, employee, or community member to file a complaint if he or she believes that the School Board, its employees, or its agents have violated his or her rights under the State or federal Constitution, State or federal statute, Board policy, or various enumerated bases.
- 5:20, *Workplace Harassment Prohibited*. This policy prohibits employees from engaging in sexual harassment.
- 5:90, *Abused and Neglected Child Reporting*. This policy requires employees who suspect or receive knowledge that a student may be an abused or neglected child to immediately report their suspicion to the Ill. Dept. of Children and Family Services (DCFS). If an employee reports an alleged incident of sexual abuse to DCFS and DCFS accepts the report for investigation, it further requires the District to coordinate with the local Children’s Advocacy Center.<sup>4</sup>
- 5:120, *Employee Ethics; Code of Professional Conduct; and Conflict of Interest*. This policy sets forth high standards for employee ethics and conduct, and incorporates by reference the Code of Ethics for Illinois Educators.
- 7:20, *Harassment of Students Prohibited*. This policy prohibits all sexual harassment of students.
- 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*. This policy prohibits students from engaging in bullying, intimidation, and harassment at school, school-related events and electronically. Prohibited conduct includes stalking, sexual harassment, sexual violence, or retaliation for asserting or alleging an act of bullying.

The footnotes should be removed before the material is used.

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<sup>2</sup> For districts with residential facilities, insert “or housing” here.

<sup>3</sup> Ensure the referenced locally-adopted board policies contain the language paraphrased in this exhibit. If not, either substitute similar language from the locally-adopted board policies on the same topics, or insert the titles from relevant locally adopted policies.

<sup>4</sup> Delete the second sentence if your district is not within a county served by an accredited Children’s Advocacy Center. For further discussion see f/n 13 in sample policy 5:90, *Abused and Neglected Child Reporting*.

- 7:185, *Teen Dating Violence Prohibited*. This policy prohibits students 13-19 years of age from using or threatening to use physical, mental, or emotional abuse to control an individual in the dating relationship, and from using or threatening to use sexual violence in the dating relationship.
- 7:190, *Student Behavior*. This policy sets forth student conduct rules, prohibited student conduct, and behavioral interventions and disciplinary measures designed to address the causes of misbehavior and teach students positive behavioral skills.

**Title IX Sexual Harassment** – Conduct on the basis of sex that satisfies one or more of the following (34 C.F.R. §106.30):

- A District employee conditions the provision of an aid, benefit, or service on an individual’s participation in unwelcome sexual conduct; or
- 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
- *Sexual assault* as defined in 20 U.S.C. §1092(f)(6)(A)(v), *dating violence* as defined in 34 U.S.C. §12291(a)(11), *domestic violence* as defined in 34 U.S.C. §12291(a)(12), or *stalking* as defined in 34 U.S.C. §12291(a)(36).
  - *Sexual assault* means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system (UCR Program) of the Federal Bureau of Investigation (FBI), and includes rape, fondling, incest, and statutory rape. 20 U.S.C. §1092(f)(6)(A)(v); 34 C.F.R. Part 668, Appendix A to Subpart D. For more information regarding the FBI UCR Program, see [www.fbi.gov/services/cjis/ucr/](http://www.fbi.gov/services/cjis/ucr/).
  - *Dating violence* means violence committed by a person: (1) who is or has been in a social relationship of a romantic or intimate nature with the victim, and (2) where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. 34 U.S.C. §12291(a)(11).
  - *Domestic violence* includes any felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding and, in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who: (1) is a current or former spouse or intimate partner of the victim, or person similarly situated to a spouse of the victim; (2) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (3) shares a child in common with the victim; or (4) commits acts against a youth or adult victim who is protected from those acts under the domestic or family violence laws of the jurisdiction. 34 U.S.C. §12291(a)(12).
  - *Stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others, or (2) suffer substantial emotional distress. 34 U.S.C. §12291(a)(36).

## Students

### Discrimination and Harassment on the Basis of Race, Color, and National Origin Prohibited<sup>1</sup>

Discrimination and harassment on the basis of race, color, or national origin negatively affect a student's ability to learn and an employee's ability to work. Providing an educational and workplace environment free from such discrimination and harassment is an important District goal. The District does not discriminate on the basis of actual or perceived race, color, or national origin in any of its education programs or activities, and it complies with federal and State non-discrimination laws.

The footnotes should be removed before the material is used.

<sup>1</sup> 105 ILCS 5/22-95 (final citation pending), added by P.A. 103-472, eff. 8-1-24, requires districts to have a written policy (or policies) that prohibit discrimination and harassment based on race, color, and national origin, as well as retaliation. The policy must contain the following: (1) descriptions of various forms of discrimination and harassment based on race, color, and national origin, including examples; (2) the district's internal process for filing a complaint regarding a violation of the policy; (3) an overview of the district's prevention and response program that includes procedures for responding to complaints of discrimination and harassment based on race, color, and national origin and retaliation; (4) potential remedies for a violation of the policy; (5) a prohibition on retaliation for making a complaint or participating in the complaint process; (6) the legal recourse available to the Ill. Dept. of Human Rights (IDHR) and federal agencies if a district fails to take corrective action; and (7) directions on how to contact IDHR. *Id.* at (b)(1). Discrimination and harassment based on race, color, and national origin are also covered more generally as protected categories in sample policies 5:10, *Equal Employment Opportunity and Minority Recruitment*, 5:20, *Workplace Harassment Prohibited*, 7:10, *Equal Educational Opportunities*, and 7:20, *Harassment of Students Prohibited*.

Two laws apply to discrimination of students based on race, color, and national origin. Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color or national origin in any educational program or activity receiving federal financial assistance. 42 U.S.C. §2000d. The IHRA prohibits any district employee from harassing a student based on certain actual or perceived protected categories, including race, color, and national origin, and it requires schools to take appropriate corrective action to stop harassment if the school knows an employee or agent is engaged (or has engaged) in harassment. 775 ILCS 5/5A-101(F) and 5/5A-102(C)-(D), added by P.A. 103-472, eff. 8-1-24. The IHRA defines "harassment in elementary secondary, or higher education," in relevant part, as any unwelcome conduct by a school employee toward a student on the basis of a student's actual or perceived race, color, or national origin "that has the purpose or effect of substantially interfering with a student's educational performance or creating an intimidating, hostile, or offensive educational environment." 775 ILCS 5/5A-101(F), added by P.A. 103-472, eff. 8-1-24. The *educational environment* "includes conduct that occurs at school, school-related activities, or events, and may include conduct that occurs off school grounds, subject to applicable State and federal law. *Id.* at (G). See sample policy 7:190, *Student Behavior*, at f/n 3, for a discussion about the ability of schools to discipline for off-campus conduct and consult the board attorney for advice in specific cases.

For a discussion of laws that prohibit discrimination in the employment context, including harassment based on race, color, and national origin, see sample policies 5:10, *Equal Employment Opportunity and Minority Recruitment*, and 5:20, *Workplace Harassment Prohibited*, at f/n 1.

Districts are also required to train all employees on discrimination and harassment based on race, color, and national origin using a free model training program developed by the Ill. Dept. of Human Rights. See sample policy 5:100, *Staff Development Program*, and sample administrative procedure 2:270-AP, *Prevention and Response Program for Complaints of Discrimination and Harassment Based on Race, Color, and National Origin*, for more detail on the training requirements.

## Examples of Prohibited Conduct<sup>2</sup>

Examples of conduct that may constitute discrimination on the basis of race, color, or national origin include: disciplining students more harshly and frequently because of their race, color, or national origin; denying students access to high-rigor academic courses, extracurricular activities, or other educational opportunities based on their race, color, or national origin; denying language services or other educational opportunities to English learners; and assigning students special education services based on a student's race, color, or national origin.

Harassment is a form of prohibited discrimination. Examples of conduct that may constitute harassment on the basis of race, color, or national origin include: the use of racial, ethnic or ancestral slurs or stereotypes; taunts; name-calling; offensive or derogatory remarks about a person's actual or perceived race, color, or national origin; the display of racially-offensive symbols; racially-motivated physical threats and attacks; or other hateful conduct.

## Making a Report or Complaint; Investigation Process<sup>3</sup>

Individuals are encouraged to promptly report claims or incidences of discrimination or harassment based on race, color, or national origin to the Nondiscrimination Coordinator, a Complaint Manager, or any employee with whom the student is comfortable speaking. Reports under this policy will be processed under Board policy 2:260, *Uniform Grievance Procedure*.

Any District employee who receives a report or complaint of discrimination or harassment must promptly forward the report or complaint to the Nondiscrimination Coordinator or a Complaint Manager. Any employee who fails to promptly comply may be disciplined, up to and including discharge.

Reports and complaints of discrimination or harassment will be confidential to the greatest extent practicable, subject to the District's duty to investigate and maintain an educational environment that is productive, respectful, and free of unlawful discrimination, including harassment.

This policy does not impair or otherwise diminish the existing rights of unionized employees to request an exclusive bargaining representative to be present during any investigatory interviews, nor does this policy diminish any rights available under an applicable collective bargaining agreement, including, but not limited to, a grievance procedure.<sup>4</sup>

## Federal and State Agencies

If the District fails to take necessary corrective action to stop harassment based on race, color, or national origin, further relief may be available through the Ill. Dept. of Human Rights (IDHR) or the U.S. Dept. of Education's Office for Civil Rights.<sup>5</sup> To contact IDHR, go to:

**The footnotes should be removed before the material is used.**

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<sup>2</sup> Required by 105 ILCS 5/22-95(b)(1)(A) (final citation pending), added by P.A. 103-472, eff. 8-1-24. The examples of discrimination and harassment under this subhead are based on definitions provided by the U.S. Dept. of Education's Office for Civil Rights, see [www2.ed.gov/about/offices/list/ocr/frontpage/faq/race-origin.html#racehar1](http://www2.ed.gov/about/offices/list/ocr/frontpage/faq/race-origin.html#racehar1) and [www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-shared-ancestry-202301.pdf](http://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-shared-ancestry-202301.pdf), and the U.S. Equal Opportunity Employment Commission, see [www.eeoc.gov/racecolor-discrimination](http://www.eeoc.gov/racecolor-discrimination).

<sup>3</sup> Required by 105 ILCS 5/22-95(b)(1)(B) (final citation pending), added by P.A. 103-472, eff. 8-1-24.

<sup>4</sup> Required by Id. at (b). The U.S. Supreme Court case of *National Labor Relations Board v. Weingarten*, 420 U.S. 251 (1975), established the right of unionized employees to request and have union representation at investigatory interviews if the employee reasonably believes discipline may result.

<sup>5</sup> Required by 105 ILCS 5/22-95(b)(1)(F).

<https://dhr.illinois.gov/about-us/contact-idhr.html> or call (312) 814-6200 (Chicago) or (217) 785-5100 (Springfield).<sup>6</sup>

#### Prevention and Response Program<sup>7</sup>

The Superintendent or designee shall establish a prevention and response program to respond to complaints of discrimination based on race, color, and national origin, including harassment, and retaliation. The program shall include procedures for responding to complaints which:

1. Reduce or remove, to the extent practicable, barriers to reporting discrimination, harassment, and retaliation;
2. Permit any person who reports or is the victim of an incident of alleged discrimination, harassment, or retaliation to be accompanied when making a report by a support individual of the person's choice who complies with the District's policies and rules;
3. Permit anonymous reporting, except that an anonymous report may not be the sole basis of any disciplinary action;
4. Offer remedial interventions or take such disciplinary action as may be appropriate on a case-by-case basis;
5. Offer, but do not require or unduly influence, a person who reports or is the victim of an incident of harassment or retaliation the option to resolve allegations directly with the accused; and
6. Protects a person who reports or is the victim of an incident of harassment or retaliation from suffering adverse consequences as a result of a report of, investigation of, or a response to the incident.

#### Policy Posting and Distribution

This policy shall be posted on the District's website.<sup>8</sup> The Superintendent shall annually inform staff members of this policy by posting it in a prominent and accessible location such as the District website, employee handbook, staff intranet site, and/or in other areas where policies and rules of conduct are made available to staff.<sup>9</sup> The Superintendent shall annually inform students and their

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<sup>6</sup> Required by *Id.* at (b)(1)(G).

<sup>7</sup> Required by *Id.* at (b)(1)(C). Items 1-6 must be addressed in a district's procedures for responding to complaints of discrimination and harassment based on race, color, and national origin. *Id.* at (c). See sample administrative procedure 2:270-AP, *Prevention and Response Program for Complaints of Discrimination and Harassment Based on Race, Color, and National Origin*.

<sup>8</sup> 105 ILCS 5/22-95(b)(3) (final citation pending), added by P.A. 103-472, eff. 8-1-24, requires districts to post this policy in their website if one exists. If a district does not maintain a website, delete this sentence.

<sup>9</sup> *Id.* at (b)(2) requires this policy to be "posted in a prominent and accessible location and distributed in such a manner as to ensure notice of the policy to all employees." A district website or staff intranet site qualifies as a prominent and accessible location under 105 ILCS 5/22-95(b)(2) (final citation pending), added by P.A. 103-472, eff. 8-1-24. If a district does not maintain a website and/or staff intranet, delete ~~District website~~ and/or ~~staff intranet site~~ from this sentence, as applicable.

parents/guardians of this policy by posting it on the District's website and including an age-appropriate summary of the policy in the student handbook(s). <sup>10</sup>

#### Enforcement <sup>11</sup>

Any District employee who is determined, after an investigation, to have engaged in conduct prohibited by this policy will be subject to remedial action and/or disciplinary action, up to and including discharge.

Any District student who is determined, after an investigation, to have engaged in conduct prohibited by this policy will be subject to remedial action and/or disciplinary action, including but not limited to, suspension and expulsion consistent with Board policy 7:190, *Student Behavior*.

Any third party who is determined, after an investigation, to have engaged in conduct prohibited by this policy will be addressed in accordance with the authority of the Board in the context of the relationship of the third party to the District, e.g., vendor, parent, invitee, etc. Any person making a knowingly false accusation regarding prohibited conduct will likewise be subject to remedial and/or disciplinary action.

#### Retaliation Prohibited <sup>12</sup>

Retaliation against any person for bringing complaints, participating in the complaint process, or otherwise providing information about discrimination or harassment based on race, color, or national origin is prohibited (see Board policy 2:260, *Uniform Grievance Procedure*).

Individuals should report allegations of retaliation to the Building Principal, an administrator, the Nondiscrimination Coordinator, and/or a Complaint Manager.

The footnotes should be removed before the material is used.

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<sup>10</sup> Id. at (b)(3) requires a district to publish the policy on its website, if one exists, and in a student handbook. If the district does not maintain a website, delete ~~posting it on the District's website~~ and from the sentence. The law also requires a district to annually distribute a "summary of the policy in accessible, age-appropriate language" to students and parents/guardians. The summary may, but does not have to be, included in a student handbook to satisfy the annual distribution requirement. For ease of administration, this sample policy refers to inclusion in the student handbook(s). Districts may find it cumbersome to include both the policy and an age-appropriate summary of the same policy in a handbook. Consult the board attorney for guidance if the district would like to include a hyperlink to the policy, rather than the full text of the policy in the handbook. The Ill. Principals Association maintains a handbook service that coordinates with PRESS material, *Online Model Student Handbook (MSH)*, at: [www.ilprincipals.org/msh](http://www.ilprincipals.org/msh).

<sup>11</sup> Required by Id. at (b)(1)(D).

<sup>12</sup> Required by Id. at (b)(1)(E).

LEGAL REF.: 42 U.S.C. §2000d, Title VI of the Civil Rights Act of 1964; 34 C.F.R. Part 100.  
42 U.S.C. §2000e et seq., Title VII of the Civil Rights Act of 1964; 29 C.F.R. Part 1601.  
105 ILCS 5/22-95 (final citation pending).  
775 ILCS 5/1-101 et seq., Illinois Human Rights Act.

CROSS REF.: 2:260 (Uniform Grievance Procedure), 5:10 (Equal Employment Opportunity and Minority Recruitment), 5:20 (Workplace Harassment Prohibited), 5:90 (Abused and Neglected Child Reporting), 5:120 (Employee Ethics; Code of Professional Conduct; and Conflict of Interest), 7:10 (Equal Educational Opportunities), 7:20 (Harassment of Students Prohibited), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 7:190 (Student Behavior), 7:240 (Conduct Code for Participants in Extracurricular Activities)

**School Board**

**Administrative Procedure – Prevention and Response Program for Complaints of Discrimination and Harassment Based on Race, Color, and National Origin**

The District responds to all reports of alleged discrimination and harassment based on an individual's race, color, or national origin in violation of federal law, State law, and/or Board policy. Use this procedure and 2:260-AP1, *Guidelines for Investigating Complaints Filed Under Policy 2:260, Uniform Grievance Procedure, and Allegations of Misconduct*, to implement the District's response to reports of discrimination and harassment based on a student's, employee's, or community member's race, color, or national origin, as well as any related complaints of retaliation.

Training

<b>Actor</b>	<b>Action</b>
Superintendent or Designee	<p>Ensures all District employees receive training on the prevention of discrimination and harassment based on race, color, and national origin in school as part of new employee training and at least once every two years. Uses the model training program developed by the Ill. Dept. of Human Rights (IDHR) or another training program that includes, at a minimum, the following (775 ILCS 5/5A-103(b), added by P.A. 103-472, eff. 8-1-24):</p> <ol style="list-style-type: none"> <li>1. A primary focus on prevention of discrimination and harassment based on race, color, and national origin and retaliation;</li> <li>2. An explanation of discrimination and harassment based on race, color, and national origin and an explanation of retaliation;</li> <li>3. Examples of conduct that constitute discrimination and harassment based on race, color, and national origin and retaliation;</li> <li>4. An explanation, with examples, of how patterns of conduct can, taken together over time, rise to the level of bullying, harassment, or discrimination;</li> <li>5. An explanation of the difference between discrimination based on disparate treatment and discrimination based on disparate impact;</li> <li>6. A summary of other classes that are protected from harassment and discrimination, and a statement that training intended to improve recognition of discrimination based on race, color, and national origin does not diminish protections under the law for other protected classes;</li> <li>7. An explanation of the difference between harassment as defined under the Ill. Human Rights Act (IHRA) and bullying;</li> <li>8. A summary of relevant federal and State statutory protections and remedies available to victims concerning discrimination and harassment based on race, color, and national origin, and retaliation, including, but not limited to, a summary of the IHRA's protections from discrimination, harassment and retaliation in the following contexts: (a) students toward other students; (b) teachers and other school employees toward students; (c) students toward</li> </ol>



Actor	Action
	<p>teachers and other school employees; and (d) teachers and other school employees toward other teachers and other school employees.</p> <p>9. Directions on how to contact the IDHR if a school fails to take corrective action to stop the harassment or discrimination;</p> <p>10. A summary of responsibilities of schools in the prevention, investigation, and corrective measures of discrimination, harassment, and retaliation, including, but not limited to, explanation of responsibilities in the contexts listed in item #8, above; and</p> <p>11. An explanation of the liability for discrimination, harassment, and retaliation under the IHRA.</p>

Reporting

Actor	Action
All District employees	<p>Upon receiving a report of an allegation of discrimination or harassment based on race, color, or national origin, or any other conduct prohibited by Board policy 2:270, <i>Discrimination and Harassment on the Basis of Race, Color, and National Origin Prohibited</i>:</p> <ol style="list-style-type: none"> <li>1. If applicable, immediately reports 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)).</li> <li>2. Promptly forwards the report of the allegation of discrimination or harassment to the District's Nondiscrimination Coordinator or a Complaint Manager.</li> </ol>

Investigation

Actor	Action
Nondiscrimination Coordinator or Complaint Manager	<p>Follows the internal complaint process in policy 2:260, <i>Uniform Grievance Procedure</i>, and the guidelines in 2:260-AP1, <i>Guidelines for Investigating Complaints Filed Under Policy 2:260, Uniform Grievance Procedure, and Allegations of Misconduct</i>. In addition, does the following:</p> <p>In the case of an anonymous report, investigates the allegation(s); however, in no case can an anonymous report be the sole basis of disciplinary action against a student or employee. 105 ILCS 5/22-95(c)(3) (final citation pending), added by P.A. 103-472, eff. 8-1-24.</p> <p>Assigns the Building Principal to investigate allegations of student misconduct, in accordance with this procedure.</p> <p>Permits any person who reports or is the victim of an incident of</p>

	<p>alleged discrimination, harassment, or retaliation to be accompanied by a support individual<sup>1</sup> of the person's choice when making a report. 105 ILCS 5/22-95(c)(2) (final citation pending), added by P.A. 103-472, eff. 8-1-24.</p> <p>If a support individual is accompanying a complainant, reminds the support individual that he or she:</p> <ol style="list-style-type: none"> <li>1. May be present for emotional support of the complainant, but may not respond on the complainant's behalf, act as the complainant's advocate, or otherwise disrupt the interview.</li> <li>2. Must abide by school rules for visitors, including Board policy 8:30, <i>Visitors to and Conduct on School Property</i>. 105 ILCS 5/22-95(c)(2) (citation pending), added by P.A. 103-472, eff. 8-1-24.</li> <li>3. Is expected to maintain confidentiality.</li> </ol> <p>Informs the complainant that he/she is protected from retaliation and will not suffer adverse consequences as a result of the complaint or investigation. Explains the protection from retaliation does not mean the complainant is exempt from adverse consequences for conduct not related to the investigation. 105 ILCS 5/22-95(c)(6) (final citation pending), added by P.A. 103-472, eff. 8-1-24.</p> <p>When appropriate, offers the complainant the option to resolve allegations directly with the offender, but does not require or unduly influence the complainant to accept this option. 105 ILCS 5/22-95(c)(5) (final citation pending), added by P.A. 103-472, eff. 8-1-24.</p> <p>Based on the findings of the investigation, makes recommendations to the Superintendent regarding remedial interventions and/or disciplinary action. For employees, examples of possible remedial interventions include additional training and restorative justice practices. For students, examples of possible remedial interventions include behavior intervention supports, schedule alterations, assigned seating arrangements, and restorative justice practices.</p>
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ADMIN PROC.: 2:260-AP1 (Guidelines for Investigating Complaints Filed Under Policy 2:260, Uniform Grievance Procedure, and Allegations of Misconduct)

The footnotes should be removed before the material is used.

<sup>1</sup> The term *support individual* is not defined, but the law does not specifically grant the complainant the right to have an attorney present. Contact the board attorney if the complainant indicates he or she plans to bring an attorney to an investigatory interview.

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## Operational Services

### Fund Balances <sup>1</sup>

The Superintendent or designee shall maintain fund balances adequate to ensure the District's ability to maintain levels of service and pay its obligations in a prompt manner in spite of unforeseen events or unexpected expenses. The Superintendent or designee shall inform the Board whenever it should discuss drawing upon its reserves or borrowing money.

The School District seeks to maintain a year-end fund balance to revenue ratio of no less than 15-20 percent, as calculated under the Ill. State Board of Education's *School District Financial Profile*. <sup>2</sup>

CROSS REF.: 4:10 (Fiscal and Business Management), 4:80 (Accounting and Audits)

The footnotes should be removed before the material is used.

<sup>1</sup> This optional policy is at the local board's discretion. Its intent is to help the board monitor the district's financial health and allows a board to clarify its expectations for maintaining fund balances. A board must modify the policy to reflect realistic targets after considering important financial and operational issues, such as current financial practices, long term projects, standards of fiscal health, and the current budget. A board facing a doubting and demanding employee union may want to obtain an objective opinion from an outside auditor before adopting this policy.

<sup>2</sup> Optional. Pursuant to its authority under 105 ILCS 5/1A-8, the Ill. State Board of Education (ISBE) developed the *School District Financial Profile* to help monitor the finances of school districts and identify those districts moving toward financial difficulty. A district's total profile score (and corresponding profile designation) is based on four weighted indicators: (1) fund balance to revenue ratio (35%), (2) Expenditure to Revenue Ratio (35%), (3) days cash on hand (10%), and (4) percent of short-term and long-term borrowing ability remaining (10% each). See [www.isbe.net/Documents/OEPP-PCTC-Profile.pdf](http://www.isbe.net/Documents/OEPP-PCTC-Profile.pdf) for a detailed explanation of the calculation of the School District Financial Profile and designations. This policy addresses the first factor in a district's Financial Profile, which, according to ISBE, "reflects the overall financial strength of the district." A target of 25% or higher for a district's fund balance to revenue ratio would result in a school district being in the lowest risk category for this factor of the district's Financial Profile. The following alternative is for a district with fund balances deemed not currently adequate:

The School District will seek to establish year-end fund balances representing \_\_\_\_\_ percent of the annual revenues for each operating fund by budgeting a surplus in each fund.

*Operating fund* refers to the Educational, Operations and Maintenance, Transportation, and Working Cash Funds. See [www.isbe.net/Documents/OEPP-PCTC-Profile.pdf](http://www.isbe.net/Documents/OEPP-PCTC-Profile.pdf). The board should ask the administration to prepare a multi-year cash flow projection to validate the sufficiency of the target figure.

**Note:** If the board maintains a fund balance at the start of a fiscal year that is two or more times the average expenditures of that fund (based on the past three fiscal years), it may face a tax rate objection based on excess accumulation of funds. This figure is sometimes referred to as a district's *Miller ratio*, based on the Ill. Supreme Court case Central Ill. Public Service Co. v. Miller, 42 Ill.2d 542 (1969); see also Allegis Realty Investors v. Novak, 379 Ill.App.3d 636 (2nd Dist. 2008). Whether such an objection has merit depends on a number of factors, including the type of fund at issue and/or reason(s) for the excess accumulation. Consult the board attorney for further guidance regarding fund balances and related tax rate objections. See sample policy 4:10, *Fiscal and Business Management*, and its ¶n 20 for more information on a board's duty to annually report its average expenditures and combined balances of its operational funds.