

# IASB SUGGESTED LANGUAGE AS SHOWN

August 2020

2:265-AP1

## School Board

### Administrative Procedure – Title IX Sexual Harassment Response 1

The District responds to all reports of alleged sexual harassment in violation of Title IX regardless of whether the Complainant or Title IX 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 Sexual Harassment Complaint Grievance Process*.

#### Glossary of Terms

Use exhibit 2:265-E, *Title IX Sexual Harassment 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></ol>

The footnotes should be removed before the material is used.

<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>4. Title IX decision-makers receive training on issues of relevance of questions and evidence, including when questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior are not relevant to the allegations.</p> <p>5. Public availability of all training materials for the Title IX Coordinator, investigators, decision-makers, and any informal resolution 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>

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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>3. Inform the Complainant that supportive measures are available regardless of whether the Complainant files a Formal Title IX Sexual Harassment Complaint; and</p> <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 Sexual Harassment 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 Sexual Harassment Grievance Procedure</i>?</li> </ol> <p>See 2:265-E, <i>Title IX Sexual Harassment 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 Sexual Harassment Complaint Grievance Process*. 34 C.F.R. §106.30.

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<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.

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 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 Sexual Harassment Complaint Grievance Process</i>, in conjunction with any response required by this procedure.</p>

Consideration of Removal of the Respondent

Actor	Action
Title IX Coordinator	<p><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>

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<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).

	<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> <li>2. Follows requirements set forth in 105 ILCS 5/10-22.6.</li> </ol> <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

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

<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.