

Powell, You



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Powell, Youngblood & Taylor, LLP
September 2020

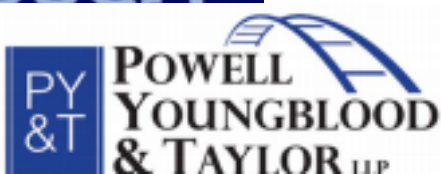
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Adopt revised Board Policies in TASB Update 115 FFH(LOCAL) and DIA(LOCAL).

Identify administrators for Title IX roles and provide training.

Also train employees regarding reporting sexual harassment.



employees via website. Publish Training on website (See sample posting requirements.)



Notice to parents, students, and

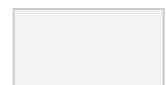
Adopt New Title IX Procedures (Formal Complaint, Investigation...)

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- To comply with new Title IX rules school district's websites must include:
 - The district's non-discrimination policy.
 - The contact information for the district's Title IX Coordinator.
 - All training materials used to train Title IX personnel.
- Merely summarizing training materials is not the same as posting "all materials."
- Districts may not choose whether to post or offer a public inspection option.
- Preserve information regarding who has been trained as part of the district's recordkeeping procedures.
- Post all training materials on your website to a Title IX page or a Legal Compliance page where you publish all other postings required by law, and include the following statement:

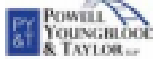
"In compliance with the requirements of Title IX, 34 C.F.R. section 106.45(b)(10), all materials used to train the District's Title IX personnel are available here: [insert link to training materials] and are also available for inspection upon request by contacting the Title IX Coordinator."



- The definition of prohibited conduct was revised to include conduct that meets the Title IX definition of sexual

harassment.

- But policies retain the broader definitions of prohibited conduct in districts' current policies to ensure that all prohibited conduct is addressed.
- A new provision that requires that **any** employee who receives a report or observes prohibited conduct based on sex to notify the Title IX Coordinator.
- New provisions that direct the superintendent to develop a Title IX formal complaint process that must comply with the elements in the new regulations, as included in FFH (LEGAL).
- Adopt and publish grievance procedures that provide the prompt and equitable resolution of student and employee complaints, including a grievance process for resolving formal complaints.
- Districts will use a preponderance of the evidence standard to determine responsibility in a Title IX Formal Complaint.
- Provisions on retaliation and records retention have been updated to reflect the new rules' requirements.



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- *Unwelcome conduct on the basis of sex that a reasonable person would determine is so "severe, pervasive, and objectively offensive" that it effectively denies a person equal access to the district's education program or activity (hostile environment)*
- *Quid pro quo harassment – when an employee of the district conditions the provision of an aid, benefit, or service of the district on an individual's participation in unwelcome sexual conduct.* • *A type of sexual violence as defined by federal law.*

(The Clery Act)

- 1. Sexual assault*
- 2. Dating violence*
- 3. Domestic violence*
- 4. Stalking*

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Upon receipt of a report alleging sexual harassment, the District's

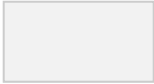
Title IX Coordinator will promptly contact the complainant to:

- Provide information about supportive measures;
- Discuss the availability of supportive measures;
- Consider the complainant's wishes concerning supportive measures;
- Explain to the complainant the process for filing a formal complaint under Title IX; and
- Provide each complainant with a copy of the District's Title IX formal complaint process.



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The Title IX Coordinator will document whether a complainant elects to accept or decline the supportive measure or measures offered.

The Title IX Coordinator may interact directly with the parent/guardian of the alleged victim, when appropriate.

Equitable Treatment

The District's treatment of complainants, respondents, witnesses, and any other person involved in a formal complaint process shall not discriminate on the basis of sex. All parties involved will be treated fairly, with dignity, respect, and sensitivity and without bias, prejudice, or reliance on stereotypes.

In all aspects of the District's initial response, there should be no bias or conflict of interest. In the initial response, the Title IX Coordinator shall make no assumption of responsibility.



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Supportive measures must be offered to a complainant and, as appropriate, also to a respondent.

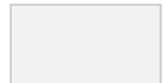
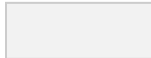
Supportive measures must be offered regardless of whether a formal complaint is initiated, or whether the complainant participates in the formal complaint process.

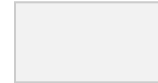
A complainant is not required to show proof of allegations to receive supportive measures and is not required to accept supportive measures.

Supportive measures shall be individualized, non-punitive and offered without fee or charge.

They cannot unreasonably burden either party.

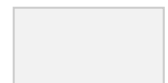
They must be designed to protect the safety of all parties or the District's educational environment or to deter sexual harassment.





- Removal must be based upon an individualized safety and risk analysis due to immediate threat. •
- The District shall provide notice of removal to the respondent.
- The removal may continue for the duration of an ongoing threat.
 - Removal under this provision must comply with all due process requirements under law and policy, including the Individuals with Disabilities Education Act (IDEA) and Section 504.
 - Title IX regulations do not affect District's ability to place an employee on administrative leave pending the investigation.

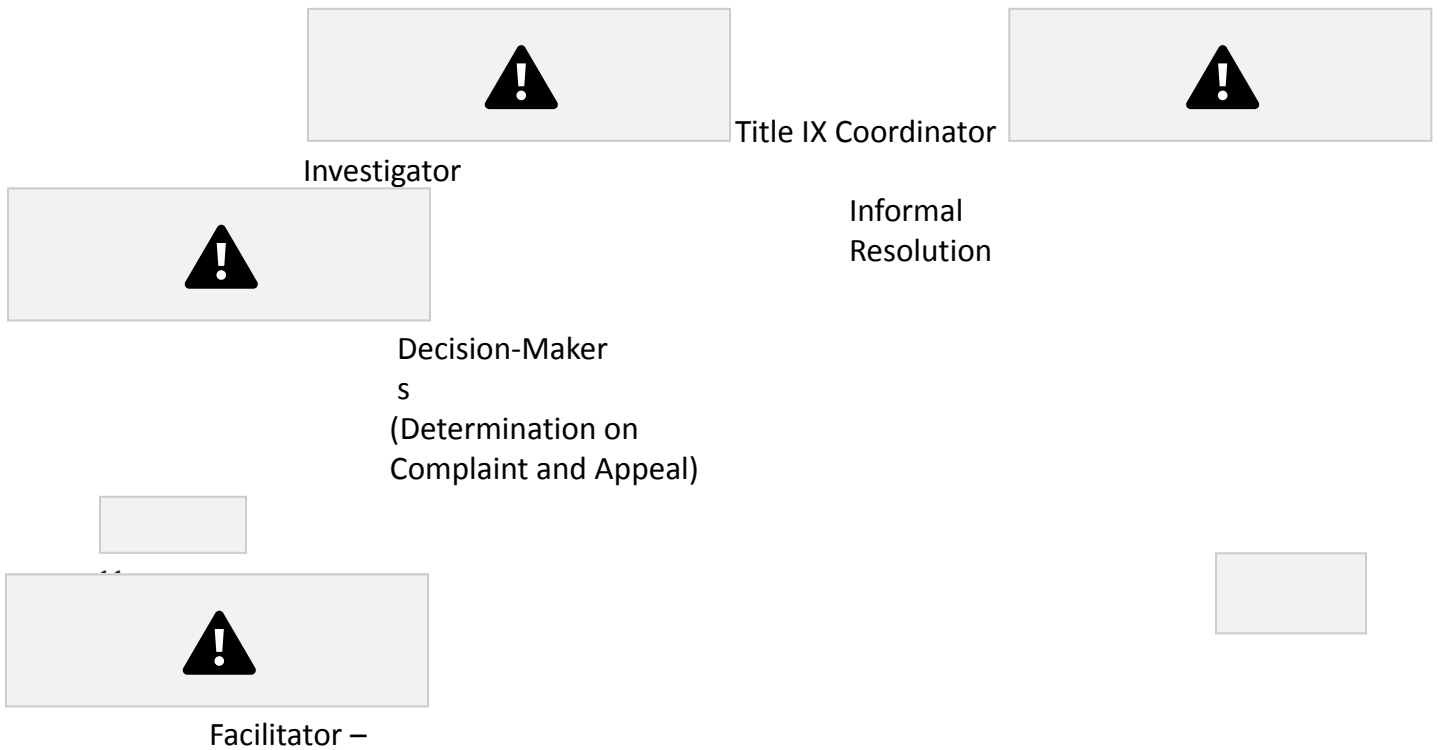
Effort must be made by the District throughout the entire Formal Complaint Process to use supportive measures in order to maintain the status quo between the parties and ensure equal access to education.



In addition to adoption of Policies and Procedures-

- Superintendent must identify personnel who may serve in a Title IX role.

- Title IX Coordinator will designate personnel for necessary roles based upon each individual complaint filed.



The Superintendent shall ensure the development of a Title IX formal complaint process that complies with the following basic requirements:

1. Equitable treatment of complainants and respondents;
2. An objective evaluation of all relevant evidence;
3. The Title IX Coordinator, investigator, decision-maker, or facilitator must not have a conflict of interest or bias;
4. A presumption that the respondent is not responsible until a determination is made at the conclusion of the Title IX formal complaint process;
5. Time frames that provide for a reasonably prompt conclusion of the Title IX formal complaint process;
6. A description of the possible disciplinary sanctions and remedies.
7. A statement of the standard of evidence to be used (preponderance or clear and convincing);
8. Procedures to appeal a determination or dismissal of a complaint.

- Any time used for voluntary informal resolution does not count in the timeline.

<https://www.tasb.org/services/legal-services/tasb-school-law-resource/students/freedom-from-bullying-and-harassment.aspx>

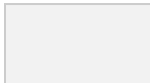
RECOMMENDED DEADLINE TO COMPLETE THE FORMAL

COMPLAINT PROCESS IS 60 DAYS • The Coordinator may modify the timeline and allow for delays for good cause such as:

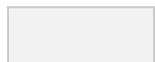


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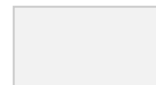
- The Title IX Formal Complaint Process begins with the receipt of the signed complaint form. • The process ends with the determination of responsibility.



- The absence of a party, a party's advisor, or a witness; **concurrent law enforcement activity**; the need for language assistance or accommodation of disabilities; or other good cause.
- Timeline must be followed unless District modifies for good cause or upon consent of all parties.



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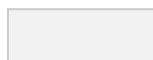


notice must include:

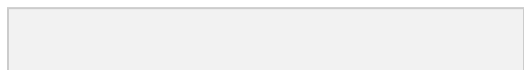
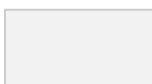
The allegations of sexual harassment as defined by law, including known detail such as identity of parties, alleged conduct, and date(s) and location(s) of alleged incident(s);

- The District should have a form in accordance with requirements of FFH(LEGAL) at Definitions, Formal Complaint.
- The Title IX Coordinator is responsible for accepting the formal complaint form and determining whether the law requires the District to initiate an investigation.
- The Title IX Coordinator may, without consent of a complainant, sign a written complaint to initiate the process.
- A complainant is **not required** to participate in the formal complaint signed by a Title IX Coordinator but will **retain all the rights** of a complainant in the process.
- The Title IX Coordinator will coordinate the assignment of duties to ensure that all obligations under Title IX are completed in a timely manner.

Both the complainant and respondent must receive notice of allegations and information about the investigation process before any interview.



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Written

A statement that the District, by law, must presume that the respondent is not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the formal complaint process;

Notification that each party may choose an advisor of choice who may be, but is not required to be, an attorney;

The right of each party to inspect and review all evidence;

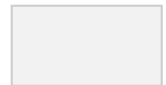
The standard of evidence that will be used (District must choose either: *preponderance or clear and convincing*);

Notification about the District's Title IX formal complaint process, including procedures for informal resolution and appealing the final determination; and

Any provision of a District code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the formal complaint process.

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Mandatory Dismissal:

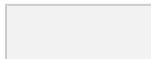
A formal complaint or allegation must be dismissed as required by law when the allegation(s), if proved:

- Would not meet the definition of sexual harassment under 34 C.F.R. § 106.30(a);
- Did not occur against a person in the United States; or
- Did not occur in the District's education program or activity.

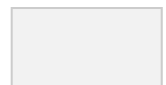
Discretionary Dismissal:

A formal complaint may be dismissed for the following reasons:

- If, at any time, a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations in the complaint;
- If the respondent is no longer enrolled or employed by the District;
- If specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein; or
- If the complainant no longer has any involvement with the District.



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The Title IX Coordinator may:

- Serve as an investigator,
- Appoint a trained District employee to serve as an investigator, or,
- In consultation with the Superintendent, appoint an external investigator, to investigate the allegations in a formal complaint.

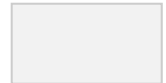
- The burden of proof and burden of gathering evidence sufficient to reach a determination regarding responsibility rests with the District and not with the parties. All allegations in a formal complaint must be investigated.

After receiving the written complaint, the investigator will meet promptly with each party to conduct initial interviews, gather information, and collect evidence.



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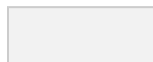


Parties may submit evidence, testimony, witnesses, or other information that they wish the investigator to consider. Parties may also present fact and expert witness testimony in the form of written statements.

- The investigator must provide written notice of the date, time, location, participants, and purpose of any investigative interview or other meetings, **with sufficient time for the party to prepare to participate.**
- Any deadlines or other restrictions related to the formal complaint process must apply equally to both parties.

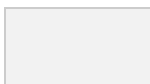
Each party may be accompanied by an advisor of the party's choice

Advisors



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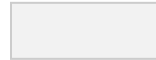
during the interview with the investigator or other meetings during the formal complaint process.



RECOMMENDED DEADLINE TO COMPLETE THE INVESTIGATION PROCESS IS 30 DAYS

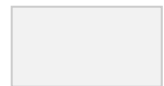
- Investigator will conduct interviews and gather evidence.

- Investigator will make evidence available to both parties and **ALLOW 10 DAYS** from the date of receipt of the evidence for party to review the evidence and respond.
- Investigator must complete the investigation report and distribute the report to both parties.
- The Investigator may take additional time in accordance with law, board policies or Title IX procedures.



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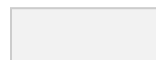
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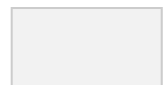
The investigator must make evidence submitted by the parties or obtained during the investigation process available to both parties for inspection and review.

- All evidence must be shared that is directly related to the allegations raised in the formal complaint. • This includes evidence that the decision-maker may not choose to rely on when reaching a determination of responsibility.
- The investigator will send to each party and the party's advisor, if any, the evidence subject to review and inspection in an electronic format or hard copy.
- As required by law, each party must be **allowed 10 days** from the date of receipt of the evidence to inspect and review the evidence, and to submit a written response that the investigator will consider when completing the final investigative report.

District may require a release before sharing information protected by FERPA (Family Educational Rights and Privacy Act.)



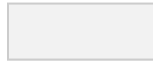
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- Identification of allegations;
- Any procedural steps taken by Title IX personnel from the receipt of the formal complaint through the conclusion of the investigation, including any notifications to the parties, interviews, site visits, and

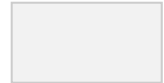
- methods used to gather evidence;
- Responses of each party to the allegations in the formal complaint;
- Evidence obtained by the District;
- Relevant evidence considered by the investigator;
- The parties' responses to the evidence after review and inspection;
- Findings of fact (***without conclusions as to responsibility***); and
- Identification of any District policies or codes of conduct implicated by the facts.

The investigator will simultaneously provide the investigation report to both parties. The investigator also will send a copy of the investigation report to the Title IX Coordinator, who immediately will assign a decision-maker and provide the decision-maker with a copy of the investigation report.



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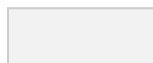
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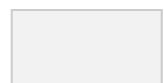
The Title IX Coordinator will designate the decision-maker to make an independent determination regarding a respondent's responsibility for the alleged sexual harassment.

The decision-maker cannot be the District's Title IX Coordinator or the investigator who investigated the complaint at issue.

- The determination of responsibility may not be issued earlier than 10 days from the date the parties received the final investigation report from the investigator.
- The decision-maker will give each party the opportunity to written, relevant questions that a party wants asked of any party or witness noted in the investigation report.
- The decision-maker shall ensure that questioning is relevant, respectful, and non-abusive.
- The decision-maker may give a deadline to provide answers in response.
- A party or witness is not required to respond to any questions posed by the other party.
- The parties may reasonably exchange follow-up questions.



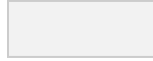
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The written determination of responsibility will include:

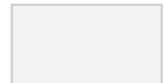
- Identification of the allegations potentially constituting sexual harassment;
- A description of all procedural steps taken from the receipt of the formal complaint through the determination;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the District's applicable code of conduct or other policy to the facts;
- A determination regarding responsibility as to each allegation, any Title IX disciplinary sanctions the District will 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 to the complainant; and
- The permissible bases and procedures for appeal.

The determination of responsibility, and any disciplinary sanctions, is not final or effective until after the period for appeal is over.



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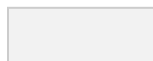


A party may appeal the written determination regarding responsibility or a dismissal of a formal complaint or any allegations therein on the following bases:

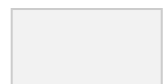
- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made and that could affect the outcome of the matter; or
- The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Title IX does not require the District to accept appeals based on any other reasons.

To initiate an appeal, a party must file a written request for appeal with the Title IX Coordinator within [Recommended 10] number of days of the receipt of the final determination.



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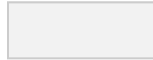


The Title IX Coordinator will review the request for appeal and either:

- Determine that the reason for appealing the request is not mandatory and dismiss the appeal; or •
- Designate an appellate decision-maker to proceed with the appeal.
- The Title IX Coordinator will notify the non-appealing party in writing when an appeal is filed, and appellate procedures will be implemented equally for both parties.
- Both parties will be provided equal opportunity to submit a written statement.

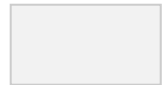
The appellate decision-maker cannot be the same person as the decision-maker that reached the determination of responsibility, the investigator or the Title IX Coordinator.

- The District's designated appellate decision-maker will review the request for appeal and issue a written decision explaining why the appeal is granted or denied.



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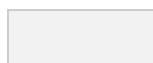
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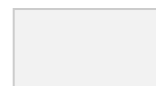
If a respondent has been determined through the formal complaint process to be responsible for the alleged sexual harassment, the District must provide remedies to the complainant that are designed to restore or preserve the complainant's equal access to the District's educational programs and activities.

The Title IX Coordinator is responsible for effective implementation of remedies.

Remedies may include suspension, expulsion, any disciplinary measure provided by the District's Student Code of Conduct or other remedies listed in the Title IX procedures.



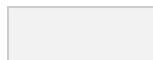
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If a formal complaint has been filed, other than a complaint alleging sexual harassment of a student by an employee, and prior to reaching a determination regarding responsibility, the Title IX Coordinator may offer (but **may not require**) a voluntary informal resolution process, such as mediation.

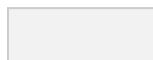
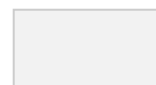
- In addition, either party may request informal resolution by making a written request to the Title IX Coordinator, who will promptly notify the other party of this request.
- The other party is not required to agree to participate.
- If a party declines or at any time withdraws from an informal resolution process, the Coordinator will notify the other party that the informal resolution process has been terminated and resume the formal complaint process.

The Title IX Coordinator will obtain the parties' voluntary, written consent to the informal resolution process.



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REQUIRED REPORTING

At any point during a District's investigation that evidence is uncovered that requires reporting to law enforcement, Child Protective Services, State Board of Educator Certification, or another entity, District employees must take the necessary actions to do so in compliance with law or board policy.

THANK YOU!

QUESTIONS?



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