

**NONDISCRIMINATION ON THE BASIS OF SEX**

The procedures that follow are specified in 34 C.F.R. Part 106 at 106.45 as required by 106.44a and though listed as a regulation are federal regulations implementing Title IX of the Education Amendments of 1972 as amended. Therefore, this regulation is considered the same as a policy.

The following procedures apply to all reports and formal complaints of sexual harassment that may be received with the following exceptions for reports of sex discrimination that are not formal complaints:

- notice of the allegations,
- consolidation of formal complaints,
- dismissal of formal complaints,
- investigation of formal complaints, and
- any part of a noted procedure that is specified for a formal complaint

**Discrimination on the basis of sex.**

A District's treatment of a complainant or a respondent in response to a report or formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX. For the purpose of addressing formal complaints of sexual harassment, the grievance process must comply with the following requirements. Any provisions, rules, or practices other than those required by § 106.45 as part of this grievance process for handling formal complaints of sexual harassment as defined in § 106.30, must apply equally to both parties.

**Basic Requirements**

A district's grievance process will:

- Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following this grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent. Remedies will be designed to restore or preserve equal access to the District's education program or activity. Such remedies will include the same individualized services described in § 106.30 as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent;

- 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;
- Any individual designated by a District as a Title IX Coordinator, investigator, decision-maker, or any person designated by a District to facilitate an informal resolution process, shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The District will ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The District will ensure that decision-makers 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, as set forth in paragraph (b)(6) of § 106.45. The District also will ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in paragraph (b)(5)(vii) of § 106.45. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, will not rely on sex stereotypes and shall promote impartial investigations and adjudications of formal complaints of sexual harassment;
- It is to be presumed that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process;
- Include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the District offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as 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;
- Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the District may implement following any determination of responsibility;
- Use the preponderance of the evidence standard, apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment;
- Include the procedures and permissible bases for the complainant and respondent to appeal;

- Describe the range of supportive measures available to complainants and respondents; and
- 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.

### **Notice of Allegations**

The following is required upon receipt of a formal complaint

- The District must provide the following written notice to the parties who are known:
  - Notice of the District's grievance process that complies with § 106.45, including any informal resolution process.
  - Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in § 106.30, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include if known:
    - ▲ the identities of parties involved in the incident,
    - ▲ the conduct allegedly constituting sexual harassment under § 106.30, and
    - ▲ the date and location of the alleged incident.
  - The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
  - The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of § 106.45, and may request to inspect and review evidence under paragraph (b)(5)(vi) of § 106.45.
  - The written notice must inform the parties of any provision in the District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process. That information may be found at:
    - ▲ GBEB Standard II, GBEBB last sentence and GCQF Misconduct for Professional staff,
    - ▲ GDQD Categories of Misconduct for Support Staff,

▲ JK for students.

If, in the course of an investigation, the District decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to paragraph (b)(2)(i)(B) of § 106.45, the District must provide notice of the additional allegations to the parties whose identities are known.

### **Dismissal of a formal complaint**

- The District must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in § 106.30 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 District must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX or § 106. Such a dismissal does not preclude action under another provision of the District's code of conduct.
- The District may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; or the respondent is no longer enrolled or employed by the District; or specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
- Upon a dismissal required or permitted pursuant to paragraph (b)(3)(i) or (b)(3)(ii) of § 106.45, the District must promptly send written notice of the dismissal and reasons therefor simultaneously to the parties.

### **Consolidation of formal complaints.**

The District may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in § 106.45 to the singular "party," "complainant," or "respondent" include the plural, as applicable.

### **Investigation of Formal Complaints**

When investigating a formal complaint and throughout the grievance process, the District must:

- Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the District and not on the parties provided that the District cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's

capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the District obtains that party's voluntary, written consent to do so for a grievance process under § 106.45 (if a party is not an "eligible student," as defined in 34 CFR 99.3, then the District must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3);

- Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
- Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the District may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;
- Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate;
- Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
  - Prior to completion of the investigative report, the District must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.
  - The District must make all such evidence available for the parties' inspection and review and at any hearing, give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and
- Create an investigative report that fairly summarizes relevant evidence and, at least (ten)10 days prior to a hearing (if a hearing is required under § 106.45 or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

## **Alternative to Hearings**

The District's grievance process will not provide for a hearing.

- After the District has sent the investigative report to the parties pursuant to paragraph (b)(5)(vii) of § 106.45 and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.
- Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

## **Determination Regarding Responsibility**

The decision-maker(s), who cannot be the same persons as the Title IX Coordinator or the investigators, must issue a written determination regarding responsibility. To reach this determination, the decision-maker(s) must apply the standard of evidence described herein.

The written determination must include:

- Identification of the allegations potentially constituting sexual harassment as defined in § 106.30;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the District's code of conduct to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the District imposes on the respondent, and whether remedies designed to restore or preserve equal access to the District's education program or activity will be provided by the District to the complainant; and

- The District's procedures and permissible bases for the complainant and respondent to appeal if the District offers an appeal.

The District must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the District provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

The Title IX Coordinator is responsible for ensuring the implementation of any remedies.

### **Appeal**

The District must offer both parties an appeal from a determination regarding responsibility, and from the District's 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, that could affect the outcome of the matter; and
- The Title IX Coordinator, investigators, or decision-maker(s) 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.

The District may offer an appeal equally to both parties on additional bases.

As to all appeals, the District must:

- Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
- Ensure that the decision-maker(s) for the appeal complies with the standards set forth in paragraph (b)(1)(iii) of § 106.45;
- Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- Issue a written decision describing the result of the appeal and the rationale for the result; and

- Provide the written decision simultaneously to both parties.

### **Informal Resolution**

The District may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with § 106.45. Similarly, the District may not require the parties to participate in an informal resolution process under § 106.45 and may not offer an informal resolution process unless a formal complaint is filed.

At any time prior to reaching a determination regarding responsibility the District may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the District:

- Provides to the parties a written notice disclosing, the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations;
- Obtains the parties' voluntary, written consent to the informal resolution process; and
- Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

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 with respect to the formal complaint; and
- Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

### **Recordkeeping**

The District must maintain for a period of seven (7) years records of:

- Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under paragraph (b)(6)(i) of § 106.45, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the District's education program or activity;
- Any informal resolution and the result therefrom;
- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The District must make these



training materials publicly available on its website, or if the District does not maintain a website the District must make these materials available upon request for inspection by members of the public; and

- For each response required under § 106.44, the District must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the District must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the District's education program or activity.

**If the District does not provide a Complainant Supportive Measures**

If the District does not provide a complainant with supportive measures, then the District must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the District in the future from providing additional explanations or detailing additional measures taken.