

## Administrative Procedure B: Title IX Sexual Harassment (Attachment for Policies 248 and 348)

---

*The Title IX sexual harassment procedures and grievance process for formal complaints prescribed in this document apply only when the Compliance Officer/Title IX Coordinator or Employee Title IX Coordinator determines that a report or complaint includes allegations of Title IX sexual harassment subject to Title IX regulations.*

*All other reports or complaints of discrimination, harassment, or retaliation, other than Title IX sexual harassment, shall follow the complaint process established in the relevant policy and its administrative procedures and its administrative procedures. [1][2][3][4][5]*

---

### **Purpose**

The School District of Philadelphia (“District”) is committed to maintaining schools that are spaces with inclusive climates and that support the social, emotional, and mental health of all students and staff. The purpose of these procedures is to maintain an educational environment in which Title IX sexual harassment, which is a form of discrimination, is not tolerated and to establish procedures for handling reports of Title IX sexual harassment.

### **Definitions**

For purposes of these procedures, terms are defined as follows:

**Actual knowledge:** Notice of sexual harassment or allegations of sexual harassment to the District’s Compliance Officer/Title IX Coordinator or to any employee, other than the Respondent.

**Complainant:** Any individual who is alleged to be the victim of Title IX sexual harassment.

**Disciplinary transfer:** Transfer of student made pursuant to a disciplinary hearing or recommendation of the Decision-maker pursuant to the Title IX grievance procedure.

**Exculpatory evidence:** Evidence tending to exonerate the Respondent or help to establish their innocence.

**Formal complaint:** A document filed by a Complainant or signed by the applicable Title IX Coordinator alleging Title IX sexual harassment and requesting that the District investigate the allegation. The authority for the applicable Title IX Coordinator to sign a formal complaint does not make the applicable Title IX Coordinator the Complainant or other party during the grievance process. The phrase “**document filed by a Complainant**” refers to a document or electronic submission that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint.

**Inculpatory evidence:** Evidence tending to incriminate the Respondent or indicate their guilt.

**Respondent:** Any individual who is reported to be the perpetrator of conduct that could constitute Title IX sexual harassment.

**Retaliation:** Actions including, but not limited to, intimidation, threats, coercion, or discrimination against a Complainant or other person because they report conduct that may constitute discrimination or harassment, including Title IX sexual harassment, in accordance with Board policy and procedures, participate in an investigation or other process addressing discrimination or Title IX sexual harassment, or act in opposition to discriminatory practices.

The following actions shall not constitute retaliation:

1. An individual exercising free speech under the rights protected by the First Amendment.
2. The assignment of consequences consistent with Board policy, the Pennsylvania Public School Code, applicable collective bargaining agreements, and the District's [Code of Conduct](#)<sup>1</sup> when an individual knowingly makes a materially false statement in bad faith in an investigation. The fact that the charges of discrimination were unfounded or unsubstantiated shall not be the sole reason to conclude that any party made a materially false statement in bad faith.

**Supportive measures:** Nondisciplinary, nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

Possible supportive measures include, but are not limited to, the following actions:

1. Parent/student conferences;
2. Offer of one-to-one counseling with appropriate professional staff;
3. Behavioral supports, such as Functional Behavioral Assessments, check in/check out, and Positive Behavior Support Plans;
4. Increased adult supervision in hot spot areas and during transition times (e.g. admission and dismissal, classroom changes, lunch, recess);
5. Social skills training, including role playing;
6. Positive incentives and reinforcements for appropriate or improved behavior;
7. Development of a safety plan for the Complainant; and
8. Daily report.

**Title IX sexual harassment:** Conduct on the basis of sex that satisfies one or more of the following:

1. A District employee conditioning the provision of an aid, benefit, or District service on an individual's participation in unwelcome sexual conduct, commonly referred to as *quid pro quo sexual harassment*;

---

<sup>1</sup> The Code of Conduct is available at <https://www.philasd.org/studentrights/>

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 a District education program or activity; or
3. Sexual assault, dating violence, domestic violence, or stalking.
  - a. **Dating Violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship is determined by the following factors:
    - 1) Length of relationship.
    - 2) Type of relationship.
    - 3) Frequency of interaction between the persons involved in the relationship.
  - b. **Domestic violence:** Includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving federal funding, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
  - c. **Sexual assault:** An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
  - d. **Stalking:** Under Title IX means stalking on the basis of sex, for example when the stalker desires to date a victim. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to either:
    - 1) Fear for their safety or the safety of others, or
    - 2) Suffer substantial emotional distress.

Such conduct must have taken place during a District education program or activity and against a person in the United States to qualify as sexual harassment. An **education program or activity** includes the locations, events, or circumstances over which the District exercises substantial control over both the Respondent and the context in which the harassment occurs.

*Conduct on the basis of sex or gender includes conduct on the basis of sexual orientation and gender identity. Sexual harassment can take place regardless of sexual orientation or gender identity and can happen among people of the same gender identity.*

### **Title IX Sexual Harassment Procedures**

## I. General Response

### A. *Reporting*

A report may be made at any time, including during nonbusiness hours.

NOTE: It is critical when receiving a complaint to determine whether immediate steps must be taken to avoid further harm, such as keeping students separated, getting medical/behavioral health aid for anyone harmed, etc.

#### **A.1. Reporting Sexual Harassment of a Student**

Any person, whether the alleged victim or not, may submit a report alleging Title IX sexual harassment of a student by any means that results in the Compliance Officer/Title IX Coordinator receiving the person's verbal or written complaint including:

1. Completing the [online Bullying Harassment and Discrimination Reporting form](#).<sup>2</sup>
2. Calling the Bullying/Harassment hotline at 215-400-SAFE;
3. Submitting a complaint via [Safe2Say](#).<sup>3</sup>
4. Emailing the Compliance Officer/Title IX Coordinator directly at [antiharassment@philasd.org](mailto:antiharassment@philasd.org); or
5. Reporting the incident to the building principal or designee, or to any other member of the school staff, including teachers, guidance counselors, bilingual counseling assistants (BCAs), coaches, and administrators.

A report may be made at any time, including during nonbusiness hours. Complaints will be treated the same, regardless of whether they are made verbally or in writing.

Any school employee who receives a complaint or witnesses, suspects, or is notified that a student may have been subject to conduct that constitutes a violation of this policy shall immediately complete the [online Bullying Harassment and Discrimination Reporting form](#), report the incident to the building principal or designee, and properly make any mandatory police or child protective services reports required by law or Board policy.

If the building principal is the subject of a complaint, the student, parent/guardian, third party, or employee shall report the incident directly to the Compliance Officer/Title IX Coordinator.

#### **A.2. Reporting Sexual Harassment of an Employee**

Any person, whether the alleged victim or not, may report Title IX sexual harassment of an employee by any means that results in the Employee Title IX Coordinator receiving the person's verbal or written complaint including:

---

<sup>2</sup> The online Bullying, Harassment, and Discrimination Reporting form is available at <https://pareporting.hibster.com/Pages/Home.aspx?id=241>

<sup>3</sup> The Safe2Say complaint form is available at [safe2saypa.org](https://safe2saypa.org)

1. Using the [Employee Discrimination, Harassment, and Sexual Misconduct Reporting and Investigation form](#);<sup>4</sup>
2. Making a general report verbally or in writing to their supervisor; or
3. Using the contact information listed for the Employee Title IX Coordinator.

Upon receipt of a report, all supervisors and employees shall immediately notify the Employee Title IX Coordinator at [employeerelations@philasd.org](mailto:employeerelations@philasd.org).

District staff who become aware of conduct that may constitute Title IX sexual harassment affecting a staff member shall promptly report it to their supervisor or the Employee Title IX Coordinator.

All reports shall be documented by the Employee Title IX Coordinator and these procedures shall be implemented appropriately.

#### *B. District's Initial Response*

When the District has actual knowledge of Title IX sexual harassment, the District is required to respond promptly and in a manner that is not deliberately indifferent, meaning not clearly unreasonable in light of the known circumstances. If either party is an identified student with a disability, or thought to be disabled, the Compliance Officer/Title IX Coordinator shall contact the school's Director of Special Education to coordinate the required actions in accordance with Board policy.

If a student is identified as a party in the report, parents/guardians of students have the right to act on behalf of the Complainant, the Respondent, or other individual at any time.

The District's initial response through the applicable Title IX Coordinator shall include the following steps which are set forth in more detail in sections B.1 through B.4 below:

1. Conduct an initial assessment of the information submitted in the report;
2. If the Complainant or Respondent is a student, notify their parents/guardians;
3. Contact the Complainant to discuss the availability of supportive measures; and
4. Work with appropriate school personnel to promptly conduct an individualized safety and risk analysis.

An emergency reassignment of an employee may be initiated when warranted to address an immediate threat to the health, well-being, or safety of an individual or a school community. Emergency reassignment must be approved by Deputy, Employee and Labor Relations.

An accused nonstudent District employee may be placed on administrative leave or administrative assignment during the pendency of the grievance process for Formal Complaints, consistent with all rights under Section 504 of the Rehabilitation Act and the Americans with

---

<sup>4</sup> The Employee Discrimination, Harassment, and Sexual Misconduct Reporting and Investigation form is available at <https://www.philasd.org/employeerelations/forms/employee-discrimination-and-harassment-reporting-and-investigation-form/>

Disabilities Act, and in accordance with state law and regulations, Board policy, and an applicable collective bargaining agreement or individual contract.

When an emergency removal of a student is warranted to address an immediate threat to the physical health or safety of an individual, and it is not feasible to continue educational services remotely or in an alternative setting, the normal procedures for suspension and expulsion shall be conducted to accomplish the removal, including specific provisions to address a student with a disability, where applicable.

### **B.1. Initial Assessment by Compliance Officer/Title IX Coordinator**

Based on the chart below, the applicable Title IX Coordinator shall gather additional information from the reporter and/or other parties identified in the report, to determine if the allegations meet the definition and parameters for Title IX sexual harassment.

The applicable Title IX Coordinator shall promptly contact the Complainant to gather additional information as necessary, and to discuss the availability of supportive measures. The applicable Title IX Coordinator shall consider the Complainant's wishes with respect to supportive measures.

The applicable Title IX Coordinator shall assess whether the reported conduct:

1. Meets the definition of Title IX sexual harassment;
2. Occurred in a District program or activity under the control of the District against a person in the United States;
3. Involves other Board policies;
4. Indicates, based on the individualized safety and risk analysis,<sup>5</sup> that there is an immediate threat to the physical health or safety of an individual; and
5. Involves a student identified as a student with a disability under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act.

<b>Complainant</b>	<b>Respondent</b>	<b>Initial assessment conducted by:</b>	<b>Investigation/Decision-making/Appeal:</b>	<b>Supportive measures provided by:</b>
Student	Student	Compliance Officer/Title IX Coordinator	Compliance Officer/Title IX Coordinator	Compliance Officer/Title IX Coordinator
Employee	Student	Employee Title IX	Compliance	Employee Title

---

<sup>5</sup> When the Respondent is an employee, the Employee Title IX Coordinator shall conduct the Safety and Risk analysis and oversee the process for emergency removal. When the Respondent is a student, the Compliance Officer/Title IX Coordinator shall conduct the Safety and Risk analysis and oversee the process for emergency removal.

		Coordinator	Officer/Title IX Coordinator	IX Coordinator
Student	Employee	Compliance Officer/Title IX Coordinator	Employee Title IX Coordinator	Compliance Officer/Title IX Coordinator
Employee	Employee	Employee Title IX Coordinator	Employee Title IX Coordinator	Employee Title IX Coordinator

If the result of this initial assessment determines that the reported conduct does not meet the definition of Title IX sexual harassment but could involve other Board policies, the individual conducting the assessment shall assess whether the reported conduct involves other Board policies or the [Code of Conduct](#) and, if so, shall inform the Complainant of this assessment and redirect the Complaint to the appropriate administrator to address the allegations.

If the result of the initial assessment determines that the allegations may constitute Title IX sexual harassment, the individual conducting the assessment shall promptly explain to the Complainant the process for filing a Formal Complaint and inform the Complainant of the continued availability of supportive measures with or without the filing of a Formal Complaint. If the Complainant does not wish to file a Formal Complaint, the applicable Title IX Coordinator shall inform the Complainant of other options available to them, as appropriate, and direct the report to the appropriate office or administrator to address the allegations under other Board policies, if applicable.

The District is required to initiate the grievance process for Formal Complaints when a Complainant or the Complainant's parent/guardian files a Formal Complaint. The applicable Title IX Coordinator is also authorized, but not required, to initiate this process despite a Complainant's wishes when the applicable Title IX Coordinator determines it is not clearly unreasonable to initiate the Formal Complaint process against the Complainant's wishes. Only the applicable Title IX Coordinator is authorized to initiate the Formal Complaint process despite a complainant's wishes, but the applicable Title IX Coordinator may consult with the Office of General Counsel ("OGC") and other District officials in making this decision. A decision not to initiate the Formal Complaint process does not bar the District from investigating and resolving the complaint pursuant to the [Code of Conduct](#) or other Board policies or administrative procedures.

## **B.2. Parental Notification**

If the Complainant or Respondent is a student, the Compliance Officer/Title IX Coordinator shall contact the parents/guardians of the Complainant and Respondent to provide them with information regarding the report and Title IX sexual harassment procedures and grievance process for Formal Complaints.

If the Complainant, school staff, or others with professional knowledge relating to the Complainant's health and well-being indicate that notifying the parents/guardians could cause serious harm to the health or well-being of the Complainant or other person(s), the Compliance Officer/Title IX Coordinator will determine, in consultation with such individuals and upon advice of OGC, whether to delay notification of the report from the Complainant's parents/guardians until such time as it has been determined that the student's safety is not at risk.

### **B.3. Supportive Measures**

The applicable Title IX Coordinator, in conjunction with the building administrator or other appropriate District or school-based staff, shall determine what supportive measures may be offered to both the Complainant and the Respondent.

Supportive measures shall be designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment, or to deter sexual harassment.

Supportive measures may include, but are not limited to:

1. Counseling or Employee Assistance Program,
2. Extensions of deadlines or other course-related adjustments,
3. Modifications of work or class schedules,
4. Campus escort services,
5. Mutual restrictions on contact between the parties,
6. Changes in work or housing locations,
7. Leaves of absence,
8. Increased security measures or protocols,
9. Monitoring of certain areas of the campus,
10. Referrals to domestic violence or rape crisis programs, and
11. Referrals to community health resources including counseling resources.

Supportive measures may also include assessments or evaluations to determine eligibility for special education or related services, or the need to review an Individualized Education Program ("IEP") or Section 504 Service Agreement based on a student's behavior. This could include, but is not limited to, a manifestation determination or Functional Behavioral Assessment ("FBA"), in accordance with applicable law, regulations, or Board policy. Supports may need to be changed to meet a student's evolving needs and may span multiple school years.

When any party is an identified student with a disability, or thought to be a student with a disability, the Compliance Officer/Title IX Coordinator shall notify the school's Director of Special Education and coordinate to determine whether additional steps must be taken as supportive measures for the party while the Title IX procedures are implemented. Such measures may include, but are not limited to, conducting a manifestation determination, FBA, or other assessment or evaluation, in accordance with applicable law, regulations, or Board policy. FBAs must be conducted when a student's behavior interferes with the student's learning or the learning of others and information is necessary to provide appropriate educational programming,



and when a student's behavior violates the [Code of Conduct](#) and is determined to be a manifestation of a student's disability.

#### **B.4. Safety and Risk Analysis/Emergency Removal**

Nothing precludes the District from removing a Respondent from the education program or activity on an emergency basis, provided that the District undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student, employee, or other individual arising from the allegations of sexual harassment justifies removal, and provides the Respondent with appropriate notice and an opportunity to challenge the decision immediately following the removal in accordance with applicable Board policy or administrative procedures or collective bargaining agreements.

This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act. If the Respondent is an identified student with a disability, or thought to be disabled, the Compliance Officer/Title IX Coordinator shall contact the school's Director of Special Education to coordinate the required actions in accordance with Board policy.

When expulsion of a student is necessary because continuation of educational services is not feasible, the Board's written adjudication of expulsion shall address the pending Title IX process and the impact of the outcome of the Title IX process on a student's emergency removal status.

#### *C. Disciplinary Procedures When Reports Allege Title IX Sexual Harassment*

When reports allege Title IX sexual harassment, disciplinary sanctions may not be imposed until the completion of this grievance process. The District shall presume that the Respondent is not responsible for the alleged conduct until a determination has been made at the completion of the grievance process for Formal Complaints.

##### **C.1. Discipline/Placement of Student Convicted or Adjudicated of Sexual Assault**

Upon notification of a conviction or adjudication of a student in the District for sexual assault against another student enrolled in the District, the District shall comply with the disciplinary or placement requirements established by state law and the [Code of Conduct](#).

#### *D. Confidentiality*

All supportive measures provided by the District shall remain confidential, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures.

Confidentiality regarding the identity of the individuals making a report or Formal Complaint, Complainant(s), Respondent(s), and witnesses shall be maintained, except as may be permitted by law or regulations relating to the conduct of any investigation.

#### *E. Reasonable Accommodations*

Throughout the Title IX sexual harassment procedures, the District shall make reasonable accommodations for identified physical and intellectual impairments that constitute disabilities for any party, and address barriers being experienced by disadvantaged students such as English learners and students experiencing homelessness, consistent with the requirements of federal and state laws and regulations and Board policy.

#### *F. Required Reporting Under Other Policies*

In addition to implementing the Title IX sexual harassment procedures, the applicable Title IX Coordinator shall ensure that reported conduct which meets the definition of other laws, regulations, or Board policies is also appropriately reported in accordance with the applicable laws, regulations, or Board policies, including but not limited to, incidents under the Safe Schools Act, reports of educator misconduct, threats, or reports of suspected child abuse.

#### *G. Timeframes*

The established timeframes included in these procedures, below, may be adjusted to allow for a temporary delay or a limited extension of time for good cause. The applicable Title IX Coordinator shall provide written notice of the delay or extension and the reason for such action to the Complainant and the Respondent, and document such notice with the records of the complaint. Good cause may include, but is not limited to, considerations such as:

1. The absence or temporary unavailability of a party, a party's advisor, or a witness;
2. Concurrent law enforcement activity; or
3. Need for language assistance or accommodation of disabilities.

#### *H. Dismissal and Redirection of Title IX Formal Complaints*

The applicable Title IX Coordinator shall dismiss Formal Complaints, if at any time during the investigation or prior to the written determination it is determined that none of the allegations, even if true, would meet the definition and parameters of Title IX sexual harassment within the District's jurisdiction.

The applicable Title IX Coordinator may dismiss Formal Complaints, if at any time during the investigation or prior to the written determination:

1. A Complainant provides written notification of withdrawal of any allegations or of the Formal Complaint;
2. The Respondent is no longer enrolled or employed by the District in a District program or activity; or

3. Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations.

Regardless of dismissal as a Formal Complaint, if the matter merits review and possible action under the [Code of Conduct](#), other Board policies, or administrative procedures, then the applicable Title IX Coordinator shall redirect the report to the appropriate individual to address the allegations. Appropriate individuals could include a principal or school administrator, central-office administrator, or contracted entity.

Written notification shall be promptly issued by the applicable Title IX Coordinator to the parties simultaneously of any allegations found not to qualify or that are dismissed in compliance with Title IX. Written notification shall state whether the allegations will continue to be addressed pursuant to the [Code of Conduct](#), other Board policies, or administrative procedures.

A dismissal may be appealed by either the Respondent or Complainant via the appeal procedures set forth below.

### *I. Consolidation of Title IX Formal Complaints*

The Compliance Officer/Title IX Coordinator may consolidate Formal Complaints against more than one (1) Respondent, or by more than one (1) Complainant against one (1) or more Respondents, or by one (1) individual against another individual, where the allegations of sexual harassment arise out of the same facts or circumstances.

## II. Grievance Process for Formal Complaints

### *A. Formal Complaint*

To file a Formal Complaint, a Complainant must provide the applicable Title IX Coordinator a written, signed complaint describing the facts alleged. Complainants may file a Formal Complaint under this Policy only if they are currently participating in, or attempting to participate in, the education programs or activities of the District, including as an employee.

The District is required to initiate the grievance process for Formal Complaints when a Complainant files a Formal Complaint.

The Title IX Formal Complaint Form shall be used to file or sign a Formal Complaint.

The applicable Title IX Coordinator shall investigate the complaint or promptly assign the investigation to another appropriately trained individual.<sup>6</sup>

---

<sup>6</sup> The applicable Title IX Coordinator, investigator, Decision-maker, and appeal Decision-maker must have completed the required training for such roles and shall not have a conflict of interest or bias for or against an individual Complainant or Respondent, or for or against Complainants or Respondents in general.

An employee Complainant who files a Formal Complaint may request, at any time, to address the matter through the District's informal resolution process.

### *B. Notice*

The applicable Title IX Coordinator shall provide written notice of a Formal Complaint to all known parties, and the parents/guardians of known parties, where applicable, providing the following information:

1. Notice of the District's grievance process for Formal Complaints and any informal resolution process that may be available.
2. Notice of the allegations 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:
  - a. the identity of the parties involved, if known;
  - b. the conduct allegedly constituting sexual harassment; and
  - c. the date and location of the alleged incident(s), if known.
3. A statement that a written determination regarding responsibility shall be made at the conclusion of the grievance process for Formal Complaints and, until that time, the Respondent is presumed not responsible for the alleged conduct.
4. Notice that parties may have an advisor of their choice, who may be, but is not required to be, an attorney. The advisor may inspect and review evidence.
5. Notice that Board policy, the [Employee Code of Ethics](#),<sup>7</sup> and the [Code of Conduct](#) prohibit knowingly making false statements or knowingly submitting false information to school officials in connection with reports of misconduct or discrimination complaints.
6. Notice of any additional allegations that the District decides to investigate during the course of the investigation.

### *C. Investigation*

The designated investigator, if other than the applicable Title IX Coordinator, shall work with the applicable Title IX Coordinator to assess the scope of the investigation, who needs to be interviewed, and what records or evidence may be relevant to the investigation.

The Respondent shall be presumed not responsible for the alleged conduct until a written determination regarding responsibility has been made at the conclusion of the grievance process for Formal Complaints.

The investigation stage shall be concluded within ninety (90) calendar days but the investigator shall strive to complete the investigation within thirty (30) calendar days whenever possible.

The obligation to conduct this investigation shall not be negated by the fact that a criminal or child protective services investigation of the allegations is pending or has been concluded. The investigator should coordinate with any other ongoing investigations of the allegations, including

---

<sup>7</sup> The Employee Code of Ethics is available at <https://www.philasd.org/schoolboard/policies/>

agreeing to request for a delay in fulfilling the District's investigative responsibilities during the fact-finding portion of a criminal or child protective services investigation. Such delays shall not extend beyond the time necessary to prevent interference with or disruption of the criminal or child protective services investigation and the reason for such delay shall be documented by the investigator.

When investigating a Formal Complaint, the investigator shall:

1. Gather evidence and conduct interviews sufficient to reach a written determination.  
During the process of gathering evidence, unless the District obtains the voluntary, written consent of the party, or the party's parent/guardian when legally required, the District cannot access, consider, disclose, or otherwise use, as part of the investigation, a party's records which are protected by legal privilege, such as those records 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 providing treatment to the party.
2. Provide written notice to any individual whose participation is invited or expected during the investigation process with the following information, in sufficient time for the individual to prepare to participate:
  - a. Date,
  - b. Time,
  - c. Location,
  - d. Participants, and
  - e. Purpose of all investigative interviews or other meetings.
3. Objectively evaluate all available evidence, including inculpatory and exculpatory evidence.
4. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
5. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. However, the District may request a nondisclosure agreement be signed by the parties and their advisor(s), if any, stating that they will not disseminate or disclose evidence and documents exchanged in the investigation.
6. Provide the parties with the same opportunities to have others present during any interview or other meeting, including an advisor of the party's choice. The District may establish restrictions, applicable to both parties, regarding the extent to which the advisor may participate.
7. 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, including evidence the District does not intend to rely on to reach a determination regarding responsibility and any inculpatory and exculpatory evidence, whether obtained from a party or other source.

### **C.1. New Allegations**

If at any point the investigation expands to include additional allegations that were not included in the initial notice provided upon initiation of the grievance process for Formal Complaints, the investigator shall alert the applicable Title IX Coordinator. The applicable Title IX Coordinator

or assigned investigator shall provide written notice of the new allegations to the known parties.

## **C.2 Simultaneous Investigations**

In the course of an investigation, it is possible that conduct other than, or in addition to, Title IX sexual harassment may be identified as part of the same incident or set of circumstances. The fact that there may be Title IX sexual harassment involved does not preclude the District from addressing other identified violations of the [Code of Conduct](#), [Employee Code of Ethics](#), or Board policy. If such other conduct is being investigated and addressed together with Title IX sexual harassment as part of the Title IX grievance process for Formal Complaints, disciplinary action normally should not be imposed until the completion of the Title IX grievance process for Formal Complaints. A decision whether and when to take such action should be made in consultation with OGC.

## **C.3. Possible Violation of Criminal Law**

If the investigation reveals that the conduct being investigated may involve a violation of criminal law, the investigator shall promptly notify the applicable Title IX Coordinator, who, if required by state law and regulations or the procedures set forth in the memorandum of understanding with local law enforcement, shall promptly inform law enforcement authorities about the allegations and make any additional required reports, in accordance with law, regulations, and Board policy.

## **C.4. Investigative Report and Report Review**

Prior to finalizing the investigative report, the investigator shall:

1. Send to each party and the party's advisor, if any, the draft investigative report and any evidence obtained as part of the investigation that is directly related to the allegations, subject to inspection and review, in electronic or hard copy format;
2. Provide the parties at least ten (10) calendar days following receipt of the draft report and evidence to submit a written response; and
3. Consider the written response and incorporate any relevant additional information or comments into the investigative report prior to finalizing the report.

Once the report is finalized, the investigator shall provide the investigative report to all parties and to the designated Decision-maker.

### *D. Written Determination and District Action*

#### **D.1. Designation of Decision-Maker**

To avoid any conflict of interest or bias, the Decision-maker cannot be the same person as the applicable Title IX Coordinator or the investigator. The responsibility as the Decision-maker for complaints of Title IX sexual harassment shall be determined by the applicable Title IX Coordinator on a case by case basis. If the assigned Decision-maker has a conflict of interest or

is a party in the Formal Complaint process, they shall disclose the conflict and the applicable Title IX Coordinator shall designate another individual to serve as the Decision-maker.

## **D.2. Submissions for Written Determination**

Before the Decision-maker reaches a written determination of responsibility (“Determination”), the Decision-maker shall afford each party the opportunity to submit written, relevant questions that a party wants to be asked of any party or witness, shall provide each party with the answers, and shall allow for additional, limited follow-up questions from each party. Therefore, a Determination must not be finalized less than fourteen (14) days after the investigator completes the investigative report and provides it to all parties.

Questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior are not relevant as part of the follow-up questions and responses, 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 may determine that a question is not relevant and shall explain to the party proposing the question their reasoning for any decision to exclude a question as not relevant.

Relevant questions for a party or witness must be submitted by each party within seven (7) calendar days following receipt of the investigative report. Follow-up questions must be submitted by each party within seven (7) calendar days of being provided the answers to the initial questions.

## **D.3. Written Determination**

The Decision-maker must issue a Determination for the conduct alleged in Formal Complaints. To reach this Determination, the Decision-maker shall apply the preponderance of the evidence standard, meaning that the decision-maker must find that it is more probable than not that the alleged conduct occurred and constitutes Title IX sexual harassment.

In considering evidence, the Decision-maker shall ensure credibility determinations are not based on an individual’s status as a Complainant, Respondent, or witness.

After considering all relevant evidence, the Decision-maker shall issue a Determination in writing that includes:

1. Identification of the allegations potentially constituting Title IX sexual harassment.
2. A description of the procedural steps taken from the receipt or signing of the Formal Complaint through to the Determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence.
3. Findings of fact supporting the Determination.

4. Conclusions regarding the application of the [Code of Conduct](#) or Board policies to the facts.
5. A statement of, and rationale for, the result as to each allegation, including:
  - a. Determination regarding responsibility.
  - b. Recommended disciplinary sanctions.
  - c. Remedies designed to restore or preserve equal access to the District's education program or activity that will be provided by the District to the Complainant. Such remedies may be punitive or disciplinary and need not avoid burdening the Respondent.
6. The procedures, deadline, and permissible bases for the Complainant and Respondent to appeal.

The Determination shall be provided to the parties simultaneously. The Determination becomes final either:

1. On the date that the District provides the parties with the written decision of the result of the appeal, if an appeal is filed;
2. Or, if an appeal is not filed, on the date on which an appeal would no longer be considered timely, in accordance with the timeframe established for appeals set forth below.

The applicable Title IX Coordinator or designee shall be responsible to ensure that any remedies are implemented by the appropriate District officials and for following up as needed to assess the effectiveness of such remedies. Disciplinary actions, including a recommendation of disciplinary transfer or expulsion, shall be consistent with the [Code of Conduct](#), Board policies and administrative procedures, applicable collective bargaining agreements, and state and federal laws and regulations, including specific requirements and provisions for students with disabilities.

Employees shall be subject to appropriate disciplinary action consistent with the applicable Board policy, collective bargaining agreements, and individual contracts, up to and including dismissal and/or referral to law enforcement officials.

#### *IEP Team/Section 504 Team Notification*

If a complaint is substantiated and either the Respondent or the Complainant is a student with a disability who has an Individualized Education Plan ("IEP") or a Section 504 Plan, the principal or bullying designee must notify the student's IEP Team or Section 504 Team.

The appropriate team must convene to make a determination of whether and how the student's IEP or 504 plan should be amended and the extent to which additional or different services or evaluations are needed and ensure that any needed changes are made promptly. If a change of placement is considered, Section 504 or IEP services must be provided in an educational setting with persons who do not have disabilities to the maximum extent appropriate to the needs of the student with a disability.



### *E. Appeals*

Complainants and Respondents have the right to appeal a Determination and the right to appeal the District's dismissal of a Title IX Formal Complaint or dismissal of any allegation in the Title IX Formal Complaint.

Written notice of an appeal shall be submitted to the applicable Title IX Coordinator within fifteen (15) calendar days after the date of the Determination. Students should send appeals to [antiharassment@philasd.org](mailto:antiharassment@philasd.org), and employees should send appeals to [employeerelations@philasd.org](mailto:employeerelations@philasd.org), using the Notice of Appeal form referenced in the Determination Letter. Regardless of form, an appeal is required to include a brief statement describing the basis for the appeal, which is limited to the following reasons as stated in the Title IX regulations:

1. A procedural irregularity that affected the outcome of the matter;
2. New evidence that could affect the outcome was not reasonably available at the time the decision to dismiss or Determination was made; or
3. The applicable Title IX Coordinator, investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against the individual Complainant or Respondent or for or against Complainants or Respondents generally that affected the outcome of the matter.

The applicable Title IX Coordinator shall forward the appeal for review and processing to the Appeal Decision-maker. If the assigned Appeal Decision-maker has a conflict of interest, they shall disclose the conflict and the applicable Title IX Coordinator shall designate another Appeal Decision-maker.

The Appeal Decision-maker shall provide written notice to the other party when Notice of Appeal is filed and implement appeal procedures equally for both parties as follows.

*Statements in support* of the stated basis for the appeal must be submitted to the Appeal Decision-maker within seven (7) calendar days of the written notice of appeal. All responses and appeals will be shared with all parties.

*Statements in opposition* to the appeal shall be submitted within seven (7) calendar days of the submission of the statement in support.

The Appeal Decision-maker shall determine whether the appeal meets the grounds for permitted reasons for appeal and if so, justifies modifying the written determination. Within twenty-one (21) calendar days of receipt of the appeal, the Appeal Decision-maker shall issue a written decision denying the appeal or setting forth the respects in which the written determination is modified and the rationale. The written decision shall be provided simultaneously to both parties as well as to the applicable Title IX Coordinator.

### *F. Disciplinary Action*

Following the issuance of the written determination and any applicable appeal, any disciplinary action specified in the written determination or appeal decision shall be implemented in accordance with the normal procedures for suspensions, expulsions, terminations, or other disciplinary actions, including specific provisions to address a student with a disability, where applicable.

An employee who violates this policy shall be subject to appropriate disciplinary action consistent with the applicable Board policy, collective bargaining agreement, and individual contract, up to and including dismissal and/or referral to law enforcement officials.

### III. Title IX Sexual Harassment Training Requirements

The Compliance Officer/Title IX Coordinator, Deputy, Employee & Labor Relations, investigator(s), decision-maker(s), and any individual designated to facilitate an informal resolution process related to Title IX sexual harassment shall receive the following training, as required or appropriate to their specific role:

1. Definition of sexual harassment;
2. Scope of the District's education program or activity, as it pertains to what is subject to Title IX regulations;
3. How to conduct an investigation and grievance process for formal complaints, including examination of evidence, drafting written determinations, handling appeals, and informal resolution processes, as applicable;
4. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
5. Use of relevant technology;
6. Issues of relevance including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant;
7. Issues of relevance, weight of evidence, and application of standard of proof and drafting investigative reports that fairly summarize relevant evidence; and
8. How to address complaints when the alleged conduct does not qualify as Title IX sexual harassment but could be addressed under another complaint process or Board policy.

All training materials shall promote impartial investigations and adjudications of formal complaints of Title IX sexual harassment without relying on sex, sexual orientation and gender identity stereotypes.

### IV. Recordkeeping

The District shall maintain the following records for a minimum of seven (7) years after conclusion of procedures and implementation of disciplinary sanctions and/or remedies, or in the case of a Complainant or Respondent who is a minor, until the expiration of the longest statute of limitations for filing a civil suit applicable to any allegation:

1. Each Title IX sexual harassment investigation, including any written determination and any audio or audiovisual recording or transcript, and 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;

2. Any appeal filings and the result;
3. Any records related to an informal resolution and the result;
4. All materials used to train the applicable Title IX Coordinator, investigators, Decision-makers, and any person who facilitates an informal resolution process; and
5. Records of any District actions, including any supportive measures, taken in response to a report or Formal Complaint of Title IX sexual harassment.
  - a. In each instance, the District shall 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.
  - b. 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.

#### **Related References:**

1. Policy 102 - Multiracial, Multicultural, and Gender Education
2. Policy 103 - Nondiscrimination in School and Classroom Practices
3. Policy 103.1 - Nondiscrimination-Qualified Students with Disabilities-Protected Handicapped Students
4. Policy 248 - Harassment and Discrimination of Students
5. Policy 348 - Harassment and Discrimination of Employees
6. Policy 806 - Child Abuse
7. Policy 805.1 - Relations with Law Enforcement
8. Policy 317 - Employee Misconduct and Reporting Requirements
9. Policy 113 - Special Education
10. Policy 113.1 - Discipline of Students with Disabilities
11. Policy 113.2 - Behavior Support
12. Policy 113.3 - Screening and Evaluations for Students with Disabilities
13. Policy 104 - Nondiscrimination in Employment Practices
14. Policy 218 - Student Conduct and Discipline
15. Policy 234 - Pregnant/Parenting/Married Students
16. Policy 247 - Hazing
17. Policy 249 - Bullying/Cyberbullying
18. Policy 252 - Transgender and Gender Non-conforming Students
19. Policy 348 - Harassment and Discrimination of Employees
20. Policy 906 - Addressing Student and Constituent Concerns
21. Policy 233 - Suspension and Expulsion
22. 24 P.S. 1318.1
23. Policy 138 - English Language Development/Bilingual Education Program
24. Policy 251 - Students Experiencing Homelessness

25. Policy 824 - Maintaining Professional Adult/Student Boundaries
26. Policy 113.4 - Confidentiality of Special Education Information
27. Policy 207 - Confidential Communications of Students
28. Policy 216 - Student Records
29. Policy 805 - Emergency Preparedness
30. Policy 300 - Employee Code of Ethics