

# Part III in a Series: Is Your District Prepared to Implement the New Title IX Regulations at the Start of the 2020-2021 School Year? The Formal Complaint Process

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## Education Law Notes

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The new Title IX regulations (the “Regulations”) proscribe very specific things that must occur whenever a formal complaint of sexual harassment is filed, whether against another student or a staff member. These provisions may, in some cases, require the hiring of new staff to fill the required roles, and most definitely will require significant training for staff assigned to the roles required by the Regulations including the Title IX Coordinator, investigator and decision makers. Districts need to be thinking about how this will be accomplished so it can be rolled out before the August 14, 2020 deadline. The rules are complex, often are not intuitive,

and will require a significant change from the way most K-12 schools investigated Title IX sexual harassment complaints in the past. Below is a general overview of the approximately 2,000-page document issued by the Department of Education regarding the new Regulations.

### What is Considered a “Formal Complaint?”

A “formal complaint” is a complaint filed by the alleged victim (and in the case of a student, the alleged victim’s parent or guardian) signed by the Title IX Coordinator alleging sexual harassment and requesting that the school investigate the allegation of sexual harassment. A district is only required to conduct a formal investigation into a formal complaint. Even if no formal complaint is filed, however, a school still has an obligation to address sexual harassment of which any of its employees has actual knowledge.

### Notice of the Formal Complaint

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The Regulations require that the school must provide simultaneous written notice to both the complainant and the respondent upon receipt of a formal complaint. The notice must provide sufficient detail and time to allow the parties to prepare a response before any initial interview. The notice must include the identities of the parties involved in the incident, if known; the conduct alleged to constitute sexual harassment; the date and location of the alleged incident, if known; and a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process. The parties also must be informed that they have a right to have an advisor of their choosing, including an attorney, throughout the process, and may inspect and review all evidence. Finally, the notice must inform the parties of any provisions in the school's code of conduct that prohibit knowingly making false statements during the grievance process.

What Must be in a District's Grievance Procedure?

Below is a brief overview of the major items that must be included in the district's grievance procedure.

- The Title IX Coordinator must be a different person than the decision-maker,
- Any individual designated as the Title IX Coordinator, investigator or decision-maker must not have any conflict of interest or bias,
- It must state that there is a presumption that the respondent is not responsible for the alleged conduct until an official determination is made,
- It must contain a reasonable time frame for completing investigations,
- It must describe the range of possible sanctions and remedies available if the respondent is found responsible,
- It must define whether the standard of evidence to be used to determine responsibility is preponderance of the evidence or clear and convincing evidence,
- It must describe the process to appeal the investigative finding, and
- It must describe the range of supportive measures available to both complainants and respondents.

The Investigation

While it is beyond the scope of this blog to discuss all aspects of the required investigation process, some of the major things specifically required by the Regulations include that:

- Each party must be provided equal access to provide witnesses, including expert witnesses, and evidence,

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- The school cannot restrict either party from discussing the allegations or gathering and presenting relevant evidence,
- That each party is allowed to be accompanied by an advisor of their choosing, including an attorney,
- The investigator must provide each party with copies of all evidence directly related to the allegations in the complaint and allow the party to meaningfully respond to the evidence,
- The investigator must create an investigative report that fairly summarizes the evidence and send it to each party at least 10 days before any determination of responsibility for the party's review and written response,
- That after sending the investigative report, and before determining responsibility, each party is allowed the opportunity to submit relevant questions the party wants asked of any party or witness, provide the party with the answer and allow for additional, limited follow up questions from each party.

While there were rumors that school districts were going to be required to conduct in-person hearings on these matters, and while colleges and universities are required to conduct in-person hearings with some limited exceptions, for K-12 schools in-person hearings are optional.

### The Determination of Responsibility

The determination of responsibility must be made by a "decision-maker" who cannot be the same person as the Title IX Coordinator or investigator. The determination of responsibility must be issued in writing, including findings of fact, conclusions and a statement of rationale for the decision, among other things. The determination must be sent to all parties simultaneously.

### The Appeal Process

The school must have in place an appeal process available to both parties. The decision-maker on the appeal cannot be the original decision-maker, the Title IX Coordinator or the investigator.

Pullman & Comley's School Law attorneys are available to help you develop policies and procedures to meet these new obligations. If you wish to discuss any of these issues further, please contact any of the attorneys in our School Law practice.

Additionally, please join Pullman and Comley School Law attorneys for a webinar on the new Title IX regulations on June 4, 2020. You can register for the program [here](#). There will be time for Q&A at the end of the presentation. Participants may submit questions in advance to [mkaufmann@pullcom.com](mailto:mkaufmann@pullcom.com).

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