Title IX Training

Presented To:

Rankin County School District

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Presented By:
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Title IX

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

20 U.S.C 1681(a) Title IX Education Amendments of 1972



Where and When?

34 CFR Part 106 – Amendments to Title IX Regulations and New Sections

Effective date: August 14, 2020

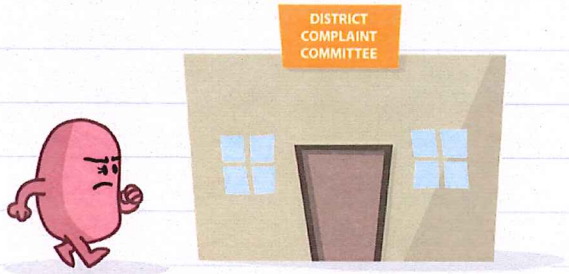
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Major Provisions

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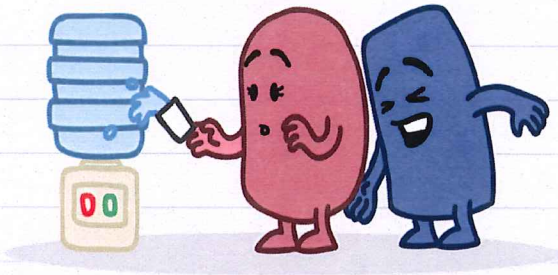
- ✓ Define conduct constituting Title IX sex harassment
- ✓ Specify conditions that activate obligation to respond to sex harassment allegations
- ✓ Impose general standard for sufficiency of response
- ✓ Specify requirements that response must include (ex. supportive measures)
- ✓ Establish procedural due process protections that must be in grievance process
- ✓ Affirm that OCR may require recipients to take remedial action for discriminating on basis of sex or otherwise violate Title IX
- ✓ Clarify that recipients are not required to deprive individuals of rights guaranteed under U.S. Constitution when responding to sexual harassment claim under Title IX
- ✓ Acknowledge intersection of Title IX, Title VII, and FERPA and legal rights of parents to act
- ✓ Update Title IX Coordinator designations, notice requirements, and policy distribution
- ✓ Prohibit retaliation

Complainant



The individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Respondent



The individual who has been reported to be the perpetrator of the conduct that could constitute sexual harassment.

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Training

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- ✓ Recognize and eliminate bias for or against a complainant or respondent
- ✓ Recognize and eliminate conflicts of interest
- ✓ Understanding definition of sexual harassment under Title IX
- ✓ Understanding "scope of the District's program or activity"
- ✓ How to conduct an investigation and grievance process
- ✓ Training investigators how to prepare an investigation report.
- ✓ Training decision makers – both initial and appeal
- ✓ Training ALL EMPLOYEES on actual notice and reporting

Bias

state mind where the person has a predisposition in favor of or against someone or something.

must be conscious of bias and keep an open mind toward both parties

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Bias

Example: Can't assume all complainants are victims or all respondents are wrongly accused. Must listen to all facts presented.

Avoiding Bias

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How do I know if someone is biased

- Requires examination of the particular facts of a situation
- Apply an objective, *common sense approach to evaluating whether a particular person serving in a Title IX role is biased.
- Exercise caution not to apply generalizations that might unreasonably conclude that bias exist

*whether a reasonable person would believe bias exist

This training provides you with the tools needed to serve impartially and without bias- must not let your prior assumptions shade your judgement.

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Conflict of Interest

a conflict between the private interests and the official responsibilities of a person in a position of trust

Is the person handling the job related to a party?

Does the person handling the job have a financial interest in the outcome?

One of the many reasons it is important to eliminate bias and conflicts of interest:

The grievance process provides that the decision may be overturned on appeal by the appeal decision maker if the Title IX Coordinator, investigator(s) 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

Training - Impartiality

A training approach that encourages Title IX personnel to "believe" one party or the other would fail to comply with the requirement that Title IX personnel be trained to serve impartially, and violate the regulations precluding credibility determinations based on a party's status as a complainant or respondent.

Training –Fair Process

-parties should be treated with equal dignity and respect by Title IX personnel

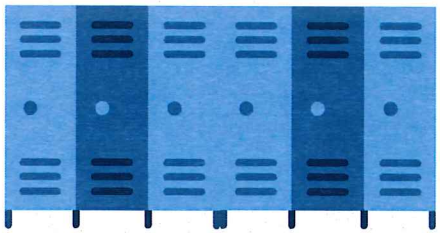
--the credibility of any party, as well as ultimate conclusions about responsibility for sexual harassment, must not be prejudged and must be based on objective evaluation of the relevant evidence in a particular case

- in summary, training materials that promote the application of "profiles" or "predictive behaviors" to particular cases would likely run contrary to the regulatory requirements of fairness.

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Reminder



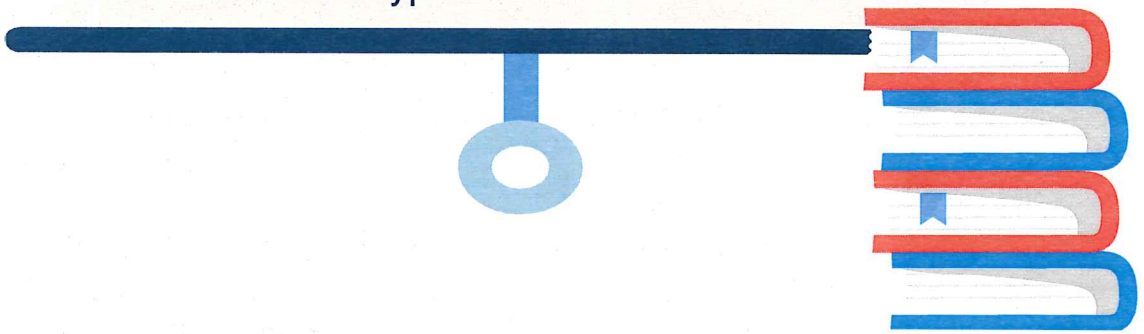




Strive to serve impartially

AVOID:

- prejudgment of the facts at issue,
- conflict of interest and bias, and
- sex stereotypes



JOBS (Responsibilities) in the Title IX Processes

Determine who handles these jobs:

- Title IX coordinator
- Dismissals
- Facilitator
- Investigator
- Initial decision maker (separate person(s))
- Appeal decision maker (separate person(s))



Who can handle which Job?

- ✓ Must have a Title IX Coordinator.
- ✓ Can outsource one or more of the other jobs.
- ✓ Only overlap in duties can occur in Title IX coordinator, dismissals, facilitator, and investigator roles. (Best practice to separate some of these jobs.)

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Definition of Sexual Harassment under Title IX

Conduct on the basis of sex that meets one or more of the following:

An employee of the recipient (i.e. educational institution such as a school district that receives federal funds) conditioning the provision of an aid, benefit or service of the educational institution on an individual's participation in unwelcome sexual conduct (quid pro quo sexual harassment);

Definition of Sexual Harassment under Title IX

Conduct on the basis of sex that meets one or more of the following:

Cont.

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity (hostile environment);

Definition of Sexual Harassment under Title IX

Conduct on the basis of sex that meets one or more of the following:

Cont.

"Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v),

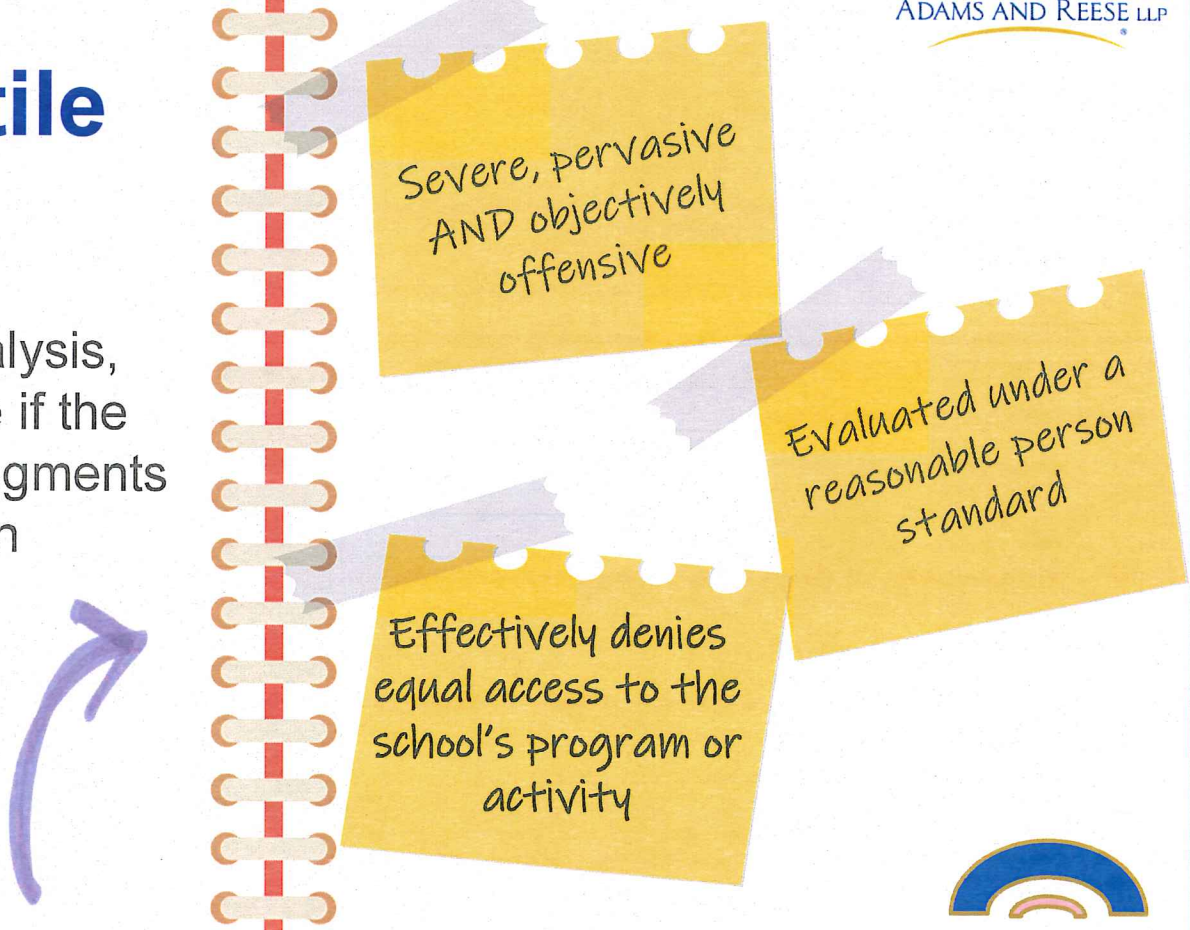
"dating violence" as defined in 34 U.S.C. 12291(a)(10),

"stalking" as defined in 34 U.S.C. 12291(a)(30), or

"domestic violence" as defined in 34 U.S.C. 12291(a)(8)

Prong 2 –Hostile Environment

Requires the most analysis, generally, to determine if the allegations "meet" the segments of each description



Education Program or Activity

Title IX previously defined as all the "operations of a [district]…."

However, in 34 C.F.R. § 106.44(a), the definition has been enlarged to include any location, event or circumstance over which the district exercised substantial control over both the respondent and the context in which the harassment occurs.

Education Program or Activity – Preamble comments

No single factor is determinative – fact specific inquiry

"A teacher's sexual abuse of a student 'undermines the basic purposes of the educational system' thereby implicitly recognizing that a teacher's sex harassment of student is likely to constitute sex harassment 'in the program' of the school even if the harassment occurs off campus."

Student using personal device to perpetrate online sexual harassment during class time may constitute a circumstance over which the district exercises substantial control.

Training ALL EMPLOYEES on Actual Knowledge and Reporting

"Actual knowledge" of sexual harassment is notice of sexual harassment or allegations of sexual harassment to ANY EMPLOYEE



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Easy call – Complainant reports it verbally or in writing

Anonymous reporting? Yes, also included

Includes third party reporting (parent, friend or community member) verbally or in writing

Training ALL EMPLOYEES on Actual Knowledge and Reporting (cont.)

Actual Knowledge activates district's Title IX response requirements



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Not new in some respects - conforms with Miss. Code Ann. §43-21-353 Requires reporting abuse or neglect

Train employees to recognize Title IX sexual harassment

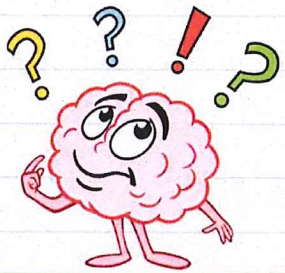
Includes every employee position in the district

Which of the Below Examples are Actual Knowledge?

Employee overhears students discussing another student having a sexual relationship with an employee

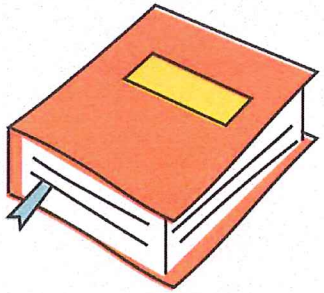
Employees see sexualized graffiti scrawled across school locker

A community member tells an employee about a student having a sexual relationship with an employee



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Website and Handbook Notice Requirements



- Publish Notice of Title IX Nondiscrimination on website (link to policies) and in supplement to handbooks
- State how to file or report sexual harassment and how District will respond to students and parents/legal guardians
- List Title IX Coordinator's name, title, email/ office address and telephone number

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Your Job

Title IX Coordinator

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1. Authorized by the District to coordinate the District's Title IX compliance program – must have capacity;

2. Receive and respond promptly to all general reports as well as formal complaints of sexual harassment;

3. Coordinate the District's responses to both reports and formal complaints of sexual harassment so that the same are prompt and equitable;

4. Meet with a complainant and inform the parent/guardian once you become aware of allegations of conduct that could constitute sexual harassment as defined in Title IX;

5. Identify and implement supportive measures;

6. Sign, in certain cases, the complaint of sexual harassment;

7. Engage with the parents/guardians of parties to any formal complaint of sexual harassment;

8. Coordinate with District and school-level personnel to facilitate and assure implementation of investigations, and remedies, and help to assure that the District otherwise meets its obligations associated with reports and complaints of sexual harassment;

Your Job

Title IX Coordinator

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9. Monitor the formal complaint progress to make sure the correct notices are provided and the steps are in the required order.

10. Set the timeframes to ensure the District promptly addresses sexual harassment allegations that fall under Title IX (policy may also address – some timeframes mandated);

11. Determine, in emergency situations, whether an individualized safety and risk analysis is required with regard to a respondent;

12. Inform the Superintendent of any employee respondents so that the Superintendent can make any required reports to Mississippi Department of Education in compliance with applicable statutes, administrative regulations, and the Mississippi Educator Code of Ethics and Standards of Conduct.

13. Coordinate with supervisor with respect to assignment of persons to fulfill the District's obligations, both general and case specific (including who will served as "Acting Title IX Coordinator" when Title IX coordinator is unavailable.

14. Coordinate with District and school-level personnel to assure appropriate training and professional development of employees and others in accordance with the training requirements in the Title IX amended regulations.

15. Develop and implement systems to maintain sexual harassment records and data for a period of seven years.

How Should the Title IX Coordinator Respond to Actual Knowledge?

Must respond promptly to actual knowledge of sexual harassment in an education program or activity in a manner that is not deliberately indifferent

District is deliberately indifferent if its response is clearly unreasonable in light of known circumstances



How Should the Title IX Coordinator Respond to Actual Knowledge?

Cont.

District must treat complainants and respondents equitably by

1)Offering supportive measures to a complainant and respondent, and

2)Following a grievance process BEFORE imposing any disciplinary sanctions on a respondent, and

3)Provide remedies to complainant AFTER determination of responsibility of respondent

What are Supportive Measures?

Supportive measures are non-disciplinary, non-punitive, individualized services offered as appropriate and without charge to a complainant or a respondent before or after the filing of a formal complaint or where a complaint has not been filed

counseling, course modifications, schedule changes, increased monitoring or supervision, etc.

What are Supportive Measures?

Cont.

Supportive measures should be designed to restore or preserve equal access to the educational program or activity without unreasonably burdening the other party

For example, a supportive measure that completely removes the respondent from an activity could be considered punitive.

Immediate removal of respondent ONLY if

1. District conducts an individualized safety and risk analysis, and
2. Determines that an emergency removal is necessary to protect a student or other individual from an immediate threat to physical health or safety
3. Must provide respondent with notice and an opportunity to challenge the decision immediately after removal
4. Can implement immediate removal with regard to both student and employee respondents

Report

meet with complainant, offer supportive measures (available whether or not files a formal complaint) and consider wishes of complainant as to supportive measures, explain how to file a formal complaint

A "report" of sexual harassment is different from a "formal complaint" and each requires different actions on the part of the District.

Formal Complaint

document filed by a complainant, the complainant's parent/guardian, or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the district investigate the allegations.

The formal complaint is what initiates the grievance process. DOE holds districts responsible to investigate.

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What to do when a formal complaint is filed

34 C.F.R. § 106.45(b)(2)

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Written notice to all parties must contain:

notice of the grievance process, including informal resolution process;

notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in Title IX, include the below known details

– identity of the parties(if known);

--conduct allegedly constituting sexual harassment under Title IX

--date and location of incident (if known);

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;

notice that the parties may have an advisor of their choice (may or may not be an attorney) and may inspect and review evidence under 34 C.F.R. § 106.45(b)(5)(vi)

identify provisions of code of conduct that prohibit knowingly providing false statements/information, and

must be provided to parties prior to initial interview in the investigative process so the parties can prepare

Administrative Leave
34 C.F.R § 106.44(d)

District may place employee respondents on Title IX administrative leave – only available AFTER a formal complaint is filed.

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What Do These Jobs Entail? Dismissal of formal complaint

The person what handles this job evaluates the allegations to determine whether the formal complaint Must be dismissed or May be dismissed. The job could be held by a separate person or by the Title IX coordinator or the investigator.



Formal Complaint Process

Discretionary Dismissal
34 C.F.R. § 106.45(b)(3)

Complaint **may** be dismissed if:

- ✓ complainant notifies the Title IX Coordinator at any time that he/she wishes to withdraw the complaint or an allegation,
- ✓ if the respondent's enrollment or employment ends, or
- ✓ If specific circumstances prevent the educational institution from gathering evidence (e.g. passage of several years between complaint and alleged conduct, non-cooperation of complainant, etc.)

Notice of dismissal must be provided to both parties, including the reasons for dismissal and chance to appeal.

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Mandatory Dismissal
34 C.F.R. § 106.45(b)(3)

Complaint **must** be dismissed if

- ✓ the allegations do not constitute sexual harassment as defined,
- ✓ did not occur in the District's program or activity or
- ✓ did not occur against a person in the United States

Notice of dismissal must be provided to both parties, including the reasons for dismissal and chance to appeal

*Dismissal for Title IX purposes doesn't preclude possible action under another provision of a district's code of conduct.

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What Do These Jobs Entail? Facilitator of informal resolution

The person who conducts the informal resolution process. Also referred to as a mediator. This job could be handled by a separate person, by the Title IX coordinator or by the investigator. If the investigator handles the informal resolution, remember that either party can withdraw from informal resolution and resume the grievance process wherever it was left, which could be in the investigation stage.

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Informal Resolution [K12 not required to offer this]

Formal Complaint Must Have Been Filed

- Can be offered at any point during the formal complaint process
- District may offer to facilitate an informal process that does not require a full investigation
- Both parties receive written notice of their rights and provide written, voluntary consent.
- Cannot require the waiver of the right to an investigation/decision as a condition of employment, continuing employment, enrollment or continuing enrollment.
- Cannot be offered if allegations are made against an employee by a student.
- Right to withdraw from the informal resolution process and resume the grievance process at any time with respect to the formal complaint.

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What Do These Jobs Entail?

Investigator

--investigates the allegations in the formal complaint under the seven components outlined in the Title IX regulations.

--districts can have more than one person trained as an investigator and trained to prepare an investigation report. Title IX coordinator (but not decision-maker) can also serve as the investigator.

Decision maker

Two types of Decision-makers:

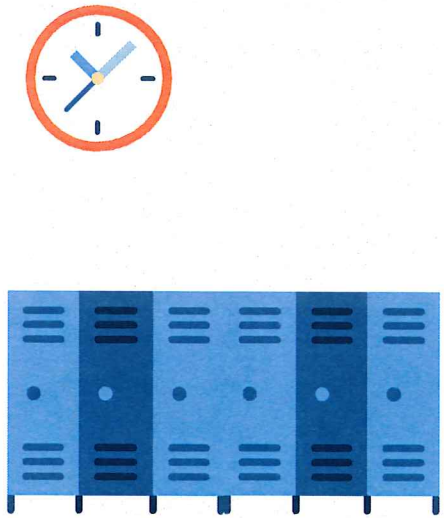
1) Initial decision-maker - makes decision regarding the determination of responsibility.

2) Appeal decision-maker - the responsibility to decide any appeal of the Initial decision makers' determination of responsibility or any appeal of a dismissal.

DMs can't be TIX coordinator or investigator

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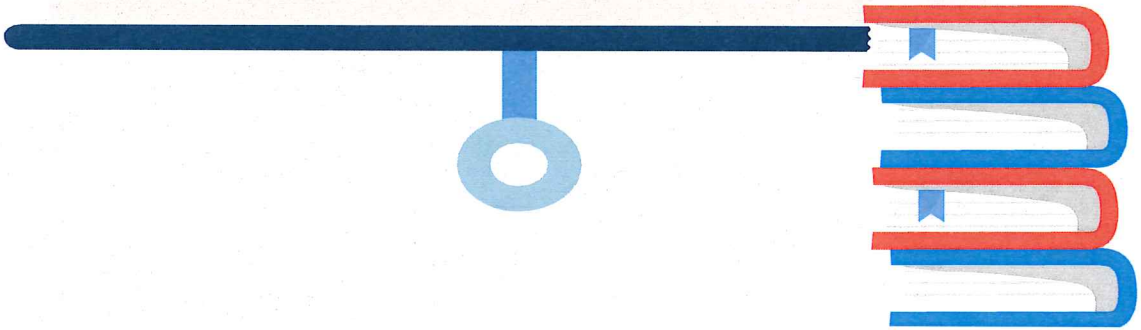
On What do Investigators Need to Focus?





How to conduct an investigation in the Title IX grievance process.

How to prepare a Title IX investigation report.



Formal Complaint Process

Elements of Grievance Procedure "Top Ten" List 34 C.F.R. § 106.45(b)(1)

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The following Provisions Govern the District's Title IX Grievance Process.

1. The district treats complainants and respondents equitably by

- providing remedies to a complainant after a determination of responsibility for sexual harassment has been made against a respondent, and
- by following this grievance process before imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent.

Remedies must be designed to restore or preserve equal access to the district's education program or activity.

Remedies may include supportive measures, but may also include punishing respondent.

2. The district provides an objective evaluation of all available evidence without making credibility determinations based on a party's status as complainant, respondent, or witness.

3. The district ensures that the Title IX coordinator, investigator, decision-maker, or any person designated to facilitate an informal process must not have a conflict of interest or bias for or against either the complainant or the respondent.

Formal Complaint Process

Elements of Grievance Procedure
"Top Ten" List
34 C.F.R. § 106.45(b)(1)

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3. (cont.) The district further ensures that training has been provided individuals holding Title IX jobs re: definition of Title IX sexual harassment, scope of the district's program or activity, how to conduct an investigation and grievance process, hearings [hearings not required in K12 under TIX process], appeals and informal processes.

4. There is a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility has been made at the conclusion of the grievance process.

5. The district provides reasonably prompt time frames for completing the grievance process, including a process to accommodate permissible delays.

6. The district identifies disciplinary sanctions and remedies that may be implemented. Employee sanctions - action up to and including suspension or termination. Student sanctions -student code of conduct consequences, up to and including suspension or expulsion. Student remedies – ex. no contact restrictions, extra-curricular prohibitions, schedule changes or class reassignments, limits on future class registrations, access restrictions

Formal Complaint Process

Elements of Grievance Procedure
"Top Ten" List
34 C.F.R. § 106.45(b)(1)

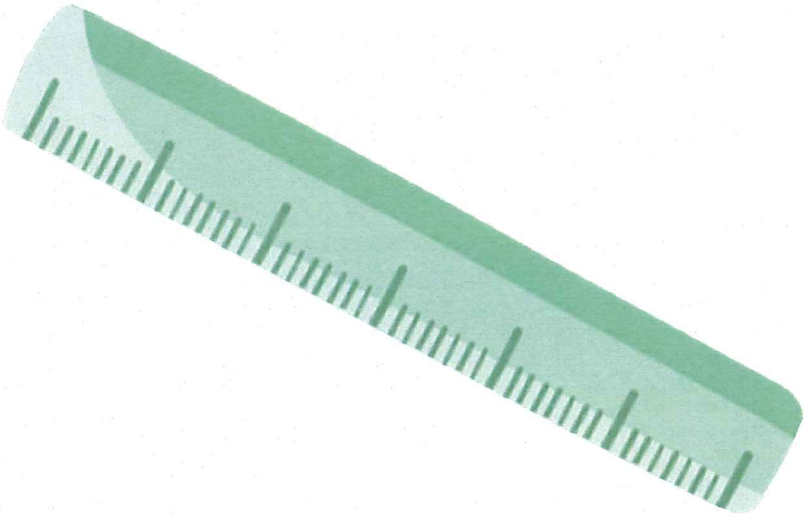
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7. The district adopts an allowable standard to determine responsibility. [Either the preponderance of the evidence standard OR the clear and convincing standard].

8. The district provides an appeal option. Either party may appeal.

9. The district identifies a range of supportive measures.

10. The district disallows evidence or questions that constitute or seek legally privileged information, unless the privilege is waived.



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Which Standard of Evidence Does a District Chose?

Preponderance of the evidence requires that the evidence be "more likely than not" to prove the matter at hand. The party with the burden [district] must prove that there is a greater than 50% chance that the claim is true or is not true.

Clear and convincing evidence requires that the district must prove that there is a substantially greater than a 50% likelihood of the claim being true or not being true. The evidence is highly and substantially more likely to be true than untrue.

Formal Complaint Process

Elements of Grievance Procedure
"Top Ten" List
34 C.F.R. § 106.45(b)(1)

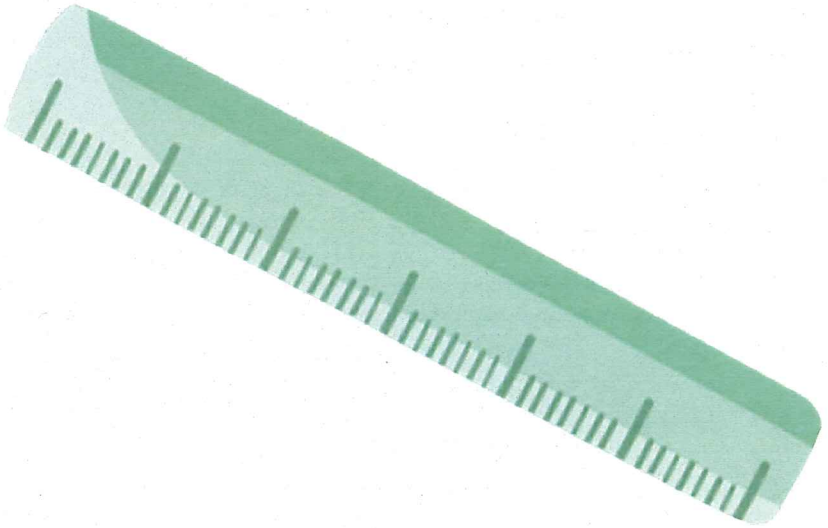
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8. The district provides an appeal option. Either party may appeal.

9. The district identifies a range of supportive measures.

10. The district disallows evidence or questions that constitute or seek legally privileged information, unless the privilege is waived.

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Formal Complaint Process

Your Job – Investigator

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1. Ensuring that the burden of proof and gathering evidence rests on the district (i.e. you) rather than the parties, i.e. complainant or respondent (note: certain treatment records cannot be obtained without voluntary, written consent; also parent consent must be sought under FERPA if applicable);

2. Providing an equal opportunity for both parties to present witnesses and evidence;

3. Making sure that both parties have the ability to discuss the allegations or gather and present evidence- for example, can't prohibit the parties from talking to witnesses to obtain evidence in support of their position;

4. Ensuring that the parties have the same opportunity to have an advisor (who may be an attorney) present during all interviews and proceedings; any restrictions on advisor participation apply equally to both parties – a student may have both a parent and advisor present;

5. With regard to an investigative interview or other meeting, providing written notice to a party who is invited or expected to attend and including the date, time, participants, purpose, and location and providing the notice with enough time to allow the party and advisor (if obtained) to prepare to participate;

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Investigator Component One Deep Dive



"burden of proof" - duty to prove or disprove a disputed fact; neither of the parties has to prove anything – this is your duty. The standard of evidence (whether "preponderance" or "clear and convincing") established by district policy is what you are required to prove meet the burden of proof.

Formal Complaint Process

Your Job – Investigator

1. Ensuring that the burden of proof and gathering evidence rests on the district (i.e. you) rather than the parties, i.e. complainant or respondent (note: certain treatment records cannot be obtained without voluntary, written consent; also parent consent must be sought under FERPA if applicable);

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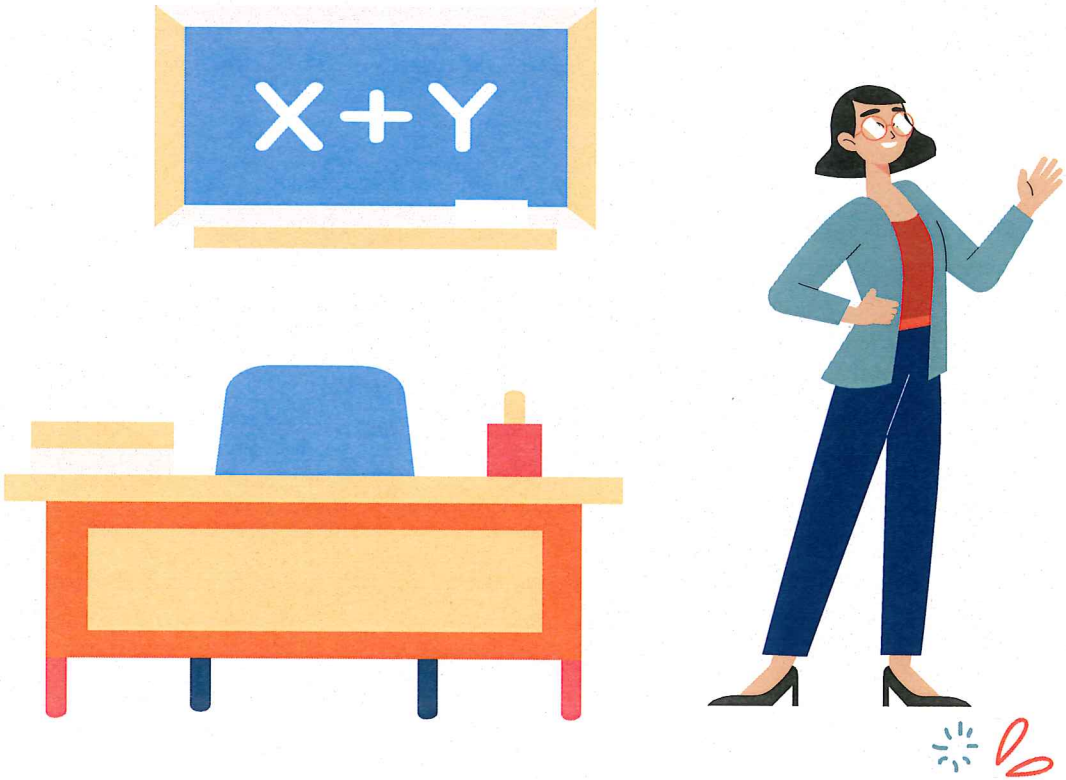
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4. Ensuring that the parties have the same opportunity to have an advisor (who may be an attorney) present during all interviews and proceedings; any restrictions on advisor participation apply equally to both parties – a student may have both a parent and advisor present;

5. With regard to an investigative interview or other meeting, providing written notice to a party who is invited or expected to attend and including the date, time, participants, purpose, and location and providing the notice with enough time to allow the party and advisor (if obtained) to prepare to participate;

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Investigator Component Three Deep Dive



"parties have the ability to discuss the allegations or gather and present evidence" – cannot say "you can't talk to anyone about this," or restrict the parties from gathering evidence, but this right does not preclude the district from warning the parties not to discuss or disseminate the allegations in a manner that constitutes retaliation or unlawful tortious conduct (ex. defamation, libel, slander).

Formal Complaint Process

Your Job – Investigator

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1. Ensuring that the burden of proof and gathering evidence rests on the district (i.e. you) rather than the parties, i.e. complainant or respondent (note: certain treatment records cannot be obtained without voluntary, written consent; also parent consent must be sought under FERPA if applicable);

2. Providing an equal opportunity for both parties to present witnesses and evidence;

3. Making sure that both parties have the ability to discuss the allegations or gather and present evidence- for example, can't prohibit the parties from talking to witnesses to obtain evidence in support of their position;

4. Ensuring that the parties have the same opportunity to have an advisor (who may be an attorney) present during all interviews and proceedings; any restrictions on advisor participation apply equally to both parties – a student may have both a parent and advisor present;

5. With regard to an investigative interview or other meeting, providing written notice to a party who is invited or expected to attend and including the date, time, participants, purpose, and location and providing the notice with enough time to allow the party and advisor (if obtained) to prepare to participate;

Formal Complaint Process

You're Job – Investigator

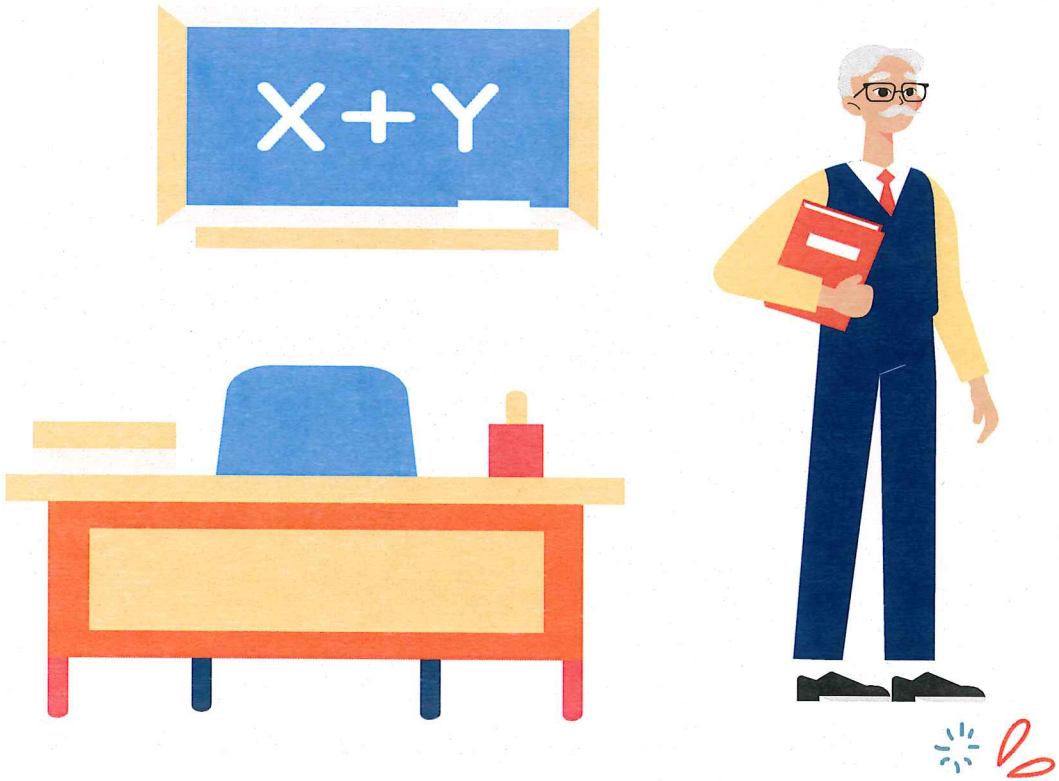
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6. Providing both parties and their advisors, if any, an equal opportunity to review all evidence that is directly related to the allegations in the formal complaint, including evidence on which the district does not intend to rely and any exculpatory or inculpatory evidence from any source; must be provided to both parties prior to the completion of the final investigative report and in time to give the parties at least 10 days to submit a written response, which investigator must consider before completing the investigation report; and

7.Preparing a written investigation report that fairly summarizes the relevant evidence and providing the report to the parties and their advisors at least 10 days before a determination of responsibility for review and written response.

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Investigator Component Six Deep Dive



"evidence directly related to the allegations" – all evidence that involves in some way any part of any allegation.

- Both parties get all the evidence collected, though district has confidentiality responsiblity.
- Title IX requires transparency and must be balance with FERPA concerns
- Establish best practices

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"Evidence on Which the District Does Not Intend to Rely"

cannot leave out any information related to the allegations, even if you do not think it is important or probative

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"Exculpatory Evidence"

tends to exonerate the respondent as to an allegation –can be as to some or all of the allegations

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"Inculpatory Evidence"

tends to prove the respondent is responsible for conduct alleged – can be as to some or all of the allegations

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Evidence "must be provided prior to the completion of the final investigative report and in time to give the parties at least 10 days to submit a written response"

parties must be given ten days to review the statements of witnesses or notes of your evidence gathered and provide a written response of their position for your consideration.

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Ideal Investigation - Witness Statements



- Follow up on witness statements that don't contain information initially stated in the interview
- Follow up with parties/witnesses if you learn information from a later witness about which you need to ask someone you've already interviewed
- Notify parents/guardians - parents/guardians have the "right to act" on behalf of all students who are parties
- Detailed notes by the investigator of all interviews

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Ideal Investigation – Notes and video footage



- Investigator notes should include correct dates, times, locations, page numbers
- Pretend that someone who does not know anything about the matter can read your notes and be able to understand all the information obtained
- Immediately save any potentially applicable video footage
- Be prepared to handle issues related to evidence on phones and legally securing phone evidence

Formal Complaint Process

You're Job – Investigator

6. Providing both parties and their advisors, if any, an equal opportunity to review all evidence that is directly related to the allegations in the formal complaint, including evidence on which the district does not intend to rely and any exculpatory or inculpatory evidence from any source; must be provided to both parties prior to the completion of the final investigative report and in time to give the parties at least 10 days to submit a written response, which investigator must consider before completing the investigation report; and

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7.Preparing a written investigation report that fairly summarizes the relevant evidence and providing the report to the parties and their advisors at least 10 days before a determination of responsibility for review and written response.

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Investigator Component Seven Deep Dive



"fairly summarizes the relevant evidence" - evidence is relevant if

A. it has any tendency to make a fact more or less probable than it would be without the evidence; and

B. the fact is of consequence in determining the action.

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Ideal Investigation Report

Summarizes the steps you took in the investigation;
Summarizes what you determine to be relevant evidence;
Includes relevant inculpatory and exculpatory evidence;
Shows that you considered parties' written response re evidence and covers whether report comport with/contradict other evidence;
Does not make finding of responsible/not responsible;
Can make credibility assessments by evaluation of evidence, though the decision-maker is not bound by assessment

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"providing the report to the parties/advisors at least 10 days before a determination of responsibility for review and written response"

Before the initial decision-maker determines whether the respondent is responsible, the parties have ten days to review the investigation report and prepare a written response to be provided to the initial decision-maker.

The Initial Decision-Maker Phase

Hearings

Title IX compliant hearings are not required in K-12 educational institutions for Title IX formal complaints.



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Written questions

After the District has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker must provide each party the opportunity to submit written, relevant questions that the party wants asked of another party or witness, provide each party with the answers, and provide for limited follow-up questions.

The Initial Decision-Maker Phase

Determination of Responsibility

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The decision–maker issues a written determination of responsibility that:

1. Identifies the allegations that potentially constitute sexual harassment as defined in the amendments;
2. Describes the District's procedural steps taken from the receipt of the complaint to the determination;
3. Includes findings of fact supporting the determination;
4. Includes conclusions regarding application of the code of conduct to the facts;
5. Includes a statement of, and a rationale for, the result as to each allegation, including a determination of responsibility, any disciplinary sanctions imposed upon the respondent, and whether remedies to restore or preserve equal access to the District's education program or activity will be provided to the complainant; and
6. Includes procedures for appeals.

The Initial Decision-Maker Phase

Show Your Work

The decision-maker has to:

- Make an independent decision.
- Address the things that come AFTER the investigation report
  - Written responses of the Parties come after the investigation report
  - Written questions come after the investigation report

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Decision-Maker!!



"Inculpatory Evidence"

tends to prove the respondent is responsible for conduct alleged – can be as to some or all of the allegations

"Exculpatory Evidence"

tends to exonerate the respondent as to an allegation – can be as to some or all of the allegations

"Fairly Summarizes the Relevant Evidence" - evidence is relevant if

- it has any tendency to make a fact more or less probable than it would be without the evidence; and
- the fact is of consequence in determining the action.
- Does it matter or is it important with regard to the facts

The Appeal Decision-Maker Phase

Both parties have the right to appeal

1) a determination of responsibility and
2) the District's dismissal of a formal complaint

for the following reasons:

- A procedural irregularity that affected the outcome
- New evidence that was not reasonably available at the time of the determination regarding responsibility and could affect the outcome
- Conflict of interest or bias on the part of the Title IX Coordinator, investigator, or decision-maker that affected the outcome



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Steps in the appeal process

Provide both parties..



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Retaliation



Retaliation is prohibited against any person for the purpose of interfering with Title IX rights or because the person participated, or refused to participate, in any manner in a proceeding under Title IX regulations.

Complaints of retaliation may be reported and filed under the Title IX grievance process.

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Confidentiality

The District must keep confidential the identity of a person who complains of or reports sexual harassment, including parties and witnesses, except as permitted by law to carry out the purpose of the regulations with regard to conducting an investigation into the complaint.

OCR's Role?

Final Thoughts

Takeaway Message from Title IX Amendments

Complainants and respondents have different interests in the outcome of a sexual harassment complaint. Complainants "have a right, and are entitled to expect, that they may attend [school] without fear of sexual assault or harassment" and to expect recipients to respond promptly to complaints.

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For respondents, a "finding of responsibility for a sexual offense can have a 'lasting impact' on a student's personal life, in addition to [the student's] 'educational and employment opportunities'[.]" Although these interests may differ, each represents high-stakes, potentially life-altering consequences deserving of an accurate outcome. Preamble p. 914.

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