

TITLE IX SEXUAL HARASSMENT & TITLE IX ROLES

Community High School District 155 • May 17, 2022
Presented by: Jennifer Rosenberg • Jessica Nguyen

HODGES LOIZZ
Eisenhammer Rodick & Kohn

REVIEW OF TITLE IX SEXUAL HARASSMENT REGULATIONS

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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.

Title IX of the Education Amendments Act of 1972 – 20 U.S.C.A. § 1681

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TITLE IX: BRIEF HISTORY

- 1972: Title IX enacted
- 1974: Title IX regulations issued
- 1980: Title IX enforcement transferred to the new U.S. Department of Education Office for Civil Rights ("OCR")
- 1992: U.S. Supreme Court recognized student right to damages for sexual harassment (*Franklin v. Gwinnett County Schools*)

TITLE IX: BRIEF HISTORY

- 1998: U.S. Supreme Court set standard for teacher-on-student harassment liability as "deliberate indifference" after "actual notice" of misconduct (*Gebser v. Lago Vista School District*)
- 1999: U.S. Supreme Court narrowed the definition of "sexual harassment" to require *Gebser* standard + "severe, pervasive, and objectively offensive" harassment (*Davis v. Monroe County Board of Education*)
- Late 1990s to 2017: Several OCR guidance documents issued regarding the response of educational institutions to allegations of sexual harassment and sexual assault/violence

TITLE IX: BIDEN ADMINISTRATION

- March 8, 2021: President Biden issued an Executive Order entitled "Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity"
- U.S. DOE held a virtual public hearing on Title IX and whether the regulations require changes from June 7-11, 2021
- Additional Guidance:
 - OCR Letter to Students, Educators, and Other Stakeholders (April 2021)
 - OCR Notice of Interpretation (June 2021): OCR explained that it will enforce Title IX's prohibition on discrimination on the basis of sex against LGBTQ+ students to include (1) discrimination based on sexual orientation and (2) discrimination based on gender identity
 - Dear Educator Letter and Fact Sheet (June 2021): OCR will enforce Title IX to "prohibit discrimination based on sexual orientation and gender identity in educational programs and activities that receive federal financial assistance"
 - Questions and Answers on the Title IX Regulations on Sexual Harassment (July 2021) and Appendix (July 2021)

TITLE IX: FUTURE

- US DOE Notice of Proposed Rulemaking (NPRM) with amendments to the Title IX regulations was expected in April 2022; now expected in May 2022
- The 2020 regulations remain in effect while the rulemaking process is ongoing (with a few exceptions based on court rulings and OCR guidance)

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MAY 2020 – AMENDED TITLE IX SEXUAL HARASSMENT REGULATIONS

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TITLE IX REGULATIONS AMENDED

- On May 6, 2020, the U.S. DOE released its long-awaited final rule amending Title IX regulations (34 C.F.R. Part 106)
- Effective **August 14, 2020**
- Significant changes to the Title IX grievance procedure and, thus, the way schools respond to allegations of sexual harassment under Title IX

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TITLE IX REGULATIONS: GENERAL OVERVIEW

- A school district can violate Title IX when "sexual harassment" occurs:
 - In the district's education program or activity;
 - By any person, against any person in the United States;
 - Any district employee has notice of the allegations of sexual harassment ("actual knowledge"); and
 - The district is deliberately indifferent in its response

TERMINOLOGY

TERMINOLOGY

- | | |
|---------------------------------|-------------------------------|
| • Title IX Coordinator | ▪ Complainant |
| • Sexual Harassment | ▪ Respondent |
| • Education Program or Activity | ▪ Report of Sexual Harassment |
| • Actual Knowledge | ▪ Formal Complaint |
| • Deliberate Indifference | ▪ Supportive Measures |

TITLE IX COORDINATOR

- Districts must designate and authorize an employee to coordinate the district's efforts to implement the law
- Typically, districts do not employ a full-time Title IX Coordinator; designated employee(s) usually combine Title IX Coordinator responsibilities with other assigned duties
- Consider adding "Title IX Coordinator" to existing job title of currently designated employee(s) and reviewing job duties to ensure sufficient authority and time to carry out role

TITLE IX COORDINATOR

- Title IX Coordinators (Starting 2022-2023 School Year):

Jay Sargeant

Associate Superintendent of Human Resources
jsargeant@d155.org

Matthew Timmerman

Assistant Superintendent of Educational Services
mtimmerman@d155.org

1 South Virginia Road, Crystal Lake, IL 60014
Phone: 815-455-8500

SEXUAL HARASSMENT

- Conduct on the basis of sex that satisfies one or more of the following:
 - (1) An employee of the district conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcome sexual conduct (*quid pro quo*);
 - (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the district's education program or activity (*hostile environment*); or
 - (3) Sexual assault, dating violence, domestic violence, or stalking as defined under the *Clery Act/Violence Against Women Act*

SEXUAL HARASSMENT: EXAMPLES

- Touching
- Crude jokes or pictures
- Discussions of sexual experiences
- Teasing related to sexual characteristics
- Spreading rumors related to a person's alleged sexual activities
- Rape
- Sexual battery
- Sexual abuse
- Sexual coercion

EDUCATION PROGRAM OR ACTIVITY

- A school district must respond when sexual harassment occurs in the district's education program or activity, against a person in the United States
- Education program or activity includes any location, event, or circumstance over which the district exhibits substantial control over both the alleged harasser and the context in which the harassment occurred
 - Examples: school, field trip, extracurricular activity
 - Includes via technology (email, internet, social media, etc.)

ACTUAL KNOWLEDGE

- When a school district has *actual knowledge* of sexual harassment in its education program or activity against a person in the United States, it must respond promptly and in a manner that is not deliberately indifferent
- A school district has actual knowledge when **any employee** has notice of the allegations of sexual harassment
- Notice also can include report of sexual harassment to Title IX Coordinator

■ ■ ■ ACTUAL KNOWLEDGE: REPORTING TO THE TITLE IX COORDINATOR

- **ALL** district employees must immediately report sexual harassment allegations to the Title IX Coordinator (and building administrator/supervisor)
- Failure to make or forward a report to the Title IX Coordinator (and building administrator/supervisor) may result in employee discipline, up to and including discharge
- Also immediately report to DCFS if allegations raise suspicion of child abuse or neglect

■ ■ ■ DELIBERATE INDIFFERENCE

- A school district must respond promptly and in a manner that is not deliberately indifferent when it has actual knowledge of sexual harassment in an education program or activity against a person in the United States
- Adopts *Gebser/Davis* standard, which is a higher legal standard than the previous OCR standard
- The district's response must:
 - Be prompt
 - Treat Complainants and Respondents equitably
 - Inform Complainant of supportive measures and process for filing a Formal Complaint, by Title IX Coordinator
 - Follow Title IX grievance process

■ ■ ■ COMPLAINANT

- An individual who is alleged to be the victim of conduct that could constitute sexual harassment
- May or may not be the individual who reported the allegation of sexual harassment to the Title IX Coordinator or any district employee
- May file Formal Complaint with the Title IX Coordinator

RESPONDENT

- An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment
- The district must have substantial control over the Respondent (alleged harasser) and the context in which the alleged conduct occurred

REPORT OF SEXUAL HARASSMENT

- Any person may report sexual harassment, whether or not the person reporting is the person alleged to be the victim of the conduct that could constitute sexual harassment
- May be in person, mail, phone, email, or by any means that results in the Title IX Coordinator receiving the report
- May be made at any time, including during non-business hours
- May be verbal or written, and may be anonymous
- To the Title IX Coordinator or any district employee
- District employees must promptly forward all reports of sexual harassment to the Title IX Coordinator

FORMAL COMPLAINT

- A document filed by a Complainant, or signed by the Title IX Coordinator, alleging sexual harassment against a Respondent and requesting that the district investigate the allegation of sexual harassment
- May be filed with the Title IX Coordinator in person, mail, email, or any other method made available by a district; may be a hard copy or electronic document
- Must contain the Complainant's physical or digital signature, or otherwise indicate that the Complainant is the person filing the Formal Complaint
- If the Title IX Coordinator signs the Formal Complaint, he/she does not become the Complainant or otherwise a party to the complaint
- At the time a Formal Complaint is filed, the Complainant must be participating in or attempting to participate in a district's education program or activity

SUPPORTIVE MEASURES

- Purpose is to restore or preserve equal access to the district's education program or activity without *unreasonably* burdening the other party
- Include measures designed to protect safety of all parties or district's educational environment, or deter sexual harassment
- Non-disciplinary, non-punitive measures
 - Removing Respondent from an activity may be considered unreasonably burdensome and punitive, unless an "emergency removal"

SUPPORTIVE MEASURES

- | | |
|---|--|
| ▪ Counseling services | ▪ Mutual restrictions on contact between parties |
| ▪ Extensions of deadlines or other course-related adjustments | ▪ Changes in work/school locations |
| ▪ Modifications of work or class schedules | ▪ Leaves of absences |
| ▪ Hall escort | ▪ Increased supervision of certain school areas |



POLICY AND NOTICE REQUIREMENTS

NOTICE OF POLICIES AND PROCEDURES

- Must provide notice of the district's nondiscrimination policies and grievance procedures to the following groups:
 - Students
 - Parents/Legal Guardians
 - Employees
 - Unions or professional organizations holding agreements with the district
 - Applicants for employment
- Includes notice of Board Policy 2:260, *Uniform Grievance Procedure*; Board Policy 2:265, *Title IX Sexual Harassment Grievance Procedure*; and applicable administrative procedures

WEBSITE POSTING AND NOTICE REQUIREMENTS

- Must post policies and grievance procedures on the district's website
- Must post Title IX Coordinator's contact information (name, title, address, phone number, email) on the district's website and print in any handbook to persons entitled to notification (see previous list)
- Must post Title IX training materials on the district's website; if the district does not have a website, must have the training materials available for members of the public to inspect

TITLE IX POLICIES

- Relevant Board Policies:
 - 2:260, *Uniform Grievance Procedure*
 - 2:265, *Title IX Sexual Harassment Grievance Procedure* – NEW
 - 2:265-AP1, *Title IX Sexual Harassment Response* – NEW
 - 2:265-AP2, *Formal Title IX Sexual Harassment Complaint Grievance Procedure* – NEW
 - 2:265-E, *Title IX Sexual Harassment Glossary of Terms* – NEW
 - 5:10, *Equal Employment Opportunity*
 - 5:20, *Workplace Harassment Prohibited*
 - 5:90, *Abused and Neglected Child Reporting*
 - 7:10, *Equal Educational Opportunities*
 - 7:20, *Harassment of Students Prohibited*
 - 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*
 - 7:185, *Teen Dating Violence Prohibited*
 - 7:190, *Student Behavior*

TITLE IX SEXUAL HARASSMENT GRIEVANCE PROCESS

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TITLE IX GRIEVANCE PROCESS

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graph LR; 1[1. Initial Report & Meeting with Complainant] --> 2[2. Formal Complaint & Written Notice]; 2 --> 3[3. Emergency Removal]; 3 --> 4[4. Dismissal]; 4 --> 5[5. Informal Resolution]; 5 --> 6[6. Investigation]; 6 --> 7[7. "Cross Exam" Question & Answer]; 7 --> 8[8. Determination of Responsibility]; 8 --> 9[9. Appeal];
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TITLE IX GRIEVANCE PROCESS: ROLES

- **Title IX Coordinator:** Individual authorized to coordinate the district's compliance efforts with Title IX
- **Investigator:** Individual designated by the Title IX Coordinator to investigate a Formal Title IX Sexual Harassment Complaint
- **Initial Decisionmaker:** Individual designated by the Title IX Coordinator to reach a determination regarding responsibility in a Formal Title IX Sexual Harassment Complaint
- **Appellate Decisionmaker:** Individual/group that reviews an appeal of the Initial Decisionmaker's determination of responsibility or the dismissal of a Formal Complaint (or allegations therein)

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REPORTING TO THE TITLE IX COORDINATOR

- **ALL** district employees must **immediately report** sexual harassment allegations **to the Title IX Coordinator** (and building administrator/supervisor)
- Failure to make or forward a report to the Title IX Coordinator (and building administrator/supervisor) may result in employee discipline, up to and including discharge
- Also immediately report to DCFS if allegations raise suspicion of child abuse or neglect

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TITLE IX GRIEVANCE PROCESS

- Two-fold district response:
 - (1) Upon "actual knowledge" of allegation (report to *any* district employee):
 - Title IX Coordinator promptly contacts the Complainant to discuss the availability of supportive measures and explain the process for filing a Formal Title IX Sexual Harassment Complaint
 - (2) Upon receiving/filing Formal Complaint:
 - Title IX Coordinator initiates Formal Title IX Sexual Harassment Complaint Grievance Process

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STEP 1



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INITIAL MEETING WITH COMPLAINANT

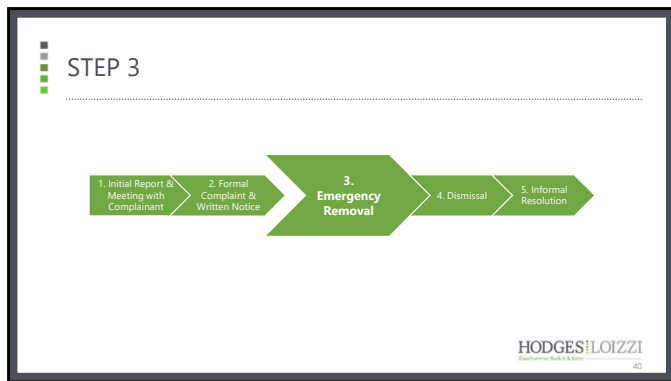
- Upon notice/report of the sexual harassment allegation, Title IX Coordinator must promptly:
 - Determine if falls under Title IX jurisdiction
 - Contact and meet with Complainant (alleged victim) to offer supportive measures
 - Consider the Complainant's wishes with respect to supportive measures
 - Inform the Complainant of the availability of supportive measures with or without the filing of a Formal Complaint
 - Explain the process for filing a Formal Complaint

STEP 2



FORMAL COMPLAINT

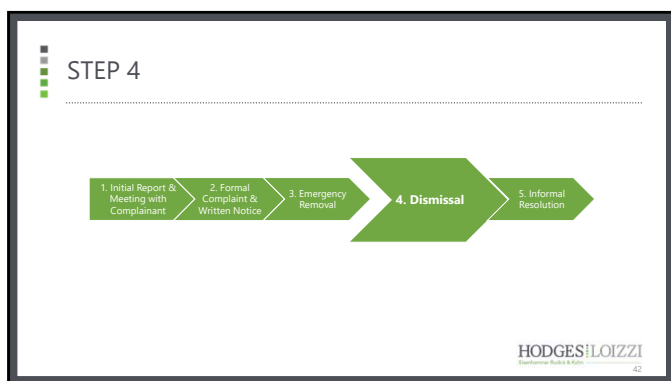
- Must be filed by the Complainant
- Title IX Coordinator may sign the Formal Complaint to trigger investigation to ensure the district is not responding with "deliberate indifference"
 - Title IX Coordinator does not become the Complainant or otherwise a party to the complaint
- Upon receipt/filing of a Formal Complaint:
 - Appoint investigator
 - Send written notice to both parties



EMERGENCY REMOVAL

- The district *may* remove Respondent from the education program or activity on an emergency basis to protect a student or other individual from "an immediate threat to physical health or safety" *after* an individualized safety and risk analysis
- Must provide Respondent with notice and opportunity to challenge decision immediately following the removal (*best practice*: written notice)
- Considerations:
 - Interaction with SB 100 for Respondent-Student: must follow 105 ILCS 5/10-22.6
 - Remember IDEA and Section 504 rights: emergency removal can trigger "change of placement" for Respondent-Student
 - Placing Respondent-Employee on administrative leave during the pendency of a grievance process

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DISMISSAL OF FORMAL COMPLAINT

Mandatory Dismissal

- If the conduct would not constitute sexual harassment as defined by the Title IX regulations, even if proved
- If the conduct did not occur in the district's program or activity
- If allegations did not occur against a person in the United States

Discretionary Dismissal

- If Complainant notifies the Title IX Coordinator at any time that s/he wishes to withdraw the Formal Complaint or any allegation therein
- If Respondent is no longer enrolled in or employed by the district
- If specific circumstances prevent the district from gathering evidence sufficient to reach a determination as to the Formal Complaint or any allegation therein (e.g., passage of several years between Formal Complaint and alleged conduct; Complainant ceases to cooperate with grievance process)

34 C.F.R. § 106.45(b)(2)
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Note: Dismissal under Title IX does not preclude required action under another law or Board policy

43

DISMISSAL OF FORMAL COMPLAINT

- If the district dismisses a Formal Complaint, or allegation(s) therein, written notice must be promptly provided to both parties simultaneously
- Must include the reason(s) for mandatory or discretionary dismissal, and the right to appeal the dismissal
- If dismissing a Formal Complaint, but investigating allegation(s) under different process, e.g., Board Policies 2:260 or 7:180, include in the written notice
- The district must document its rationale for dismissal to show that it is not acting in a deliberately indifferent manner

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44

STEP 5



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INFORMAL RESOLUTION PROCESS

- Prohibited unless Formal Complaint is filed
- Allowed at any time after a Formal Complaint is filed and during the grievance process, prior to reaching a determination regarding responsibility
- Cannot involve a full investigation and adjudication of the allegations
- Cannot be offered for a complaint alleging that an employee harassed a student
- Not defined, but may encompass a broad range of conflict resolution strategies, including, but not limited to, arbitration, mediation, or restorative justice

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34 C.F.R. § 106.45(d)(9)

46

INFORMAL RESOLUTION PROCESS: REQUIREMENTS

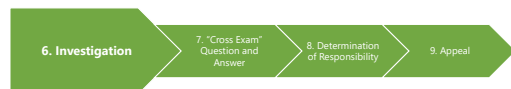
- Written notice to both parties disclosing:
 - Allegations
 - Informal resolution process requirements
 - Including the circumstances where parties are precluded from resuming a Formal Title IX Sexual Harassment Complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the Grievance Process for the Formal Title IX Sexual Harassment Complaint
 - Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- Both parties provide voluntary, written consent

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34 C.F.R. §§ 106.45(b)(9)(1), (2)

47

STEP 6



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48

INVESTIGATOR REQUIREMENTS

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INVESTIGATOR REQUIREMENTS

- The investigator must be someone who:
 - Is trained
 - Can approach the investigation without prejudging the facts at issue or the involved parties or witnesses
 - Does not rely on sex stereotypes
 - Can promote an impartial investigation
 - Can prepare an accurate and thorough investigative report

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INVESTIGATOR REQUIREMENTS

- The investigator should NOT be someone who:
 - Is close to the Complainant or the Respondent
 - Merely knowing one party, the other or both is not evidence of conflict
 - May be perceived as having serious bias or a conflict with the Complainant or the Respondent (e.g., history of discipline, conflict with family, subject of complaint)

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INVESTIGATOR REQUIREMENTS

- Must be impartial
- Must listen equally to all sides and focus on understanding the viewpoints of all involved
- Not assume one party or the other is more credible
- Not rely on stereotypes in place of objective facts
- Not let personal relationships influence evaluation of facts
- Must prepare for interviews, listen carefully to interviewees, and ask follow-up questions as appropriate
- Must be able to keep confidential information

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PREPARING FOR AND BEGINNING THE INVESTIGATION

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INITIAL STEPS

- Review the allegations in the initial report and Formal Complaint
- Confirm written notice of Formal Complaint sent to parties
- Confirm report to law enforcement or DCFS, if necessary
 - If so, confirm have authority to proceed with the investigation
- If the Formal Complaint is serious, confirm reported to district's insurance carrier as soon as possible and have written record of the report

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SPECIAL CIRCUMSTANCES TO CONSIDER

- Is the Respondent covered by a collective bargaining agreement that sets forth any conditions concerning investigatory conferences?
- Is the Respondent entitled to a qualified immunity?

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CHOOSE A "SECOND CHAIR"

- Considerations when selecting a "second chair":
 - Does the individual have any history with the Complainant or Respondent that could give rise to the appearance of conflict of interest or bias?
 - Can the individual take accurate notes and recognize relevant information?
 - Can the individual listen carefully to the witness interviews and feel comfortable assisting with follow-up questions as appropriate?
 - Can the individual keep confidential information?
 - Can the individual help to complete an accurate and thorough investigative report?

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INVESTIGATION DOCUMENTS

- Open a file for the investigation; all investigation documents should be kept in a single location
 - Determine how maintain electronic and hard copy evidence
- Maintain a chronology of all actions taken, notices sent, communications sent/received, etc.
- Maintain the investigation file, consistent with Title IX recordkeeping requirements (7 years), state and federal laws, and in case legal action occurs

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PRE-INTERVIEW INVESTIGATION

- Depending on what is known about the allegations in the Formal Complaint, consider whether any evidence can be gathered and reviewed before the investigatory interviews begin:
 - Report and Formal Complaint
 - Records
 - Video surveillance
 - Email history
 - Other electronic or documentary history

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CONDUCTING THE INVESTIGATION

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TITLE IX: INVESTIGATION REQUIREMENTS

- When investigating a Formal Complaint and throughout the grievance process, the Investigator must:
 - Ensure that the burden of proof and of gathering evidence rests on the district, rather than parties
 - Provide an equal opportunity for parties to present witnesses and evidence (fact and expert witnesses; inculpatory and exculpatory evidence)
 - Not restrict either party's ability to discuss the allegations or gather and present evidence

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TITLE IX: INVESTIGATION REQUIREMENTS

- Advisor/Attorney: Provide the parties with the same opportunities to have others present during interviews and other parts of the grievance process, including an advisor/attorney of their choice
- Written Notice of Interview: Provide, to a party who is invited or expected to attend, written notice of date, time, participants, purpose, and location of any investigative interviews or other meetings, with sufficient time to allow the party to prepare to participate

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SCHEDULING INTERVIEWS

- Give adequate written notice of date, time, participants, purpose, and location of interview
 - Plan ahead for rescheduling interviews after send out notice
- Allow more time than think is necessary for the interview
- Allow time afterwards to collect/record your thoughts

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GENERAL GUIDELINES FOR CONDUCTING THE INVESTIGATION

- Interviews should be conducted as promptly as possible, while memories are still fresh
- Parties and witnesses should be interviewed separately
- Interviews should be discreet
 - Conducted in a private room
 - Scheduled in a way that does not draw attention to the fact that something unusual is occurring

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■ ■ ■ GENERAL GUIDELINES FOR CONDUCTING THE INVESTIGATION

- Consider writing out questions or interview target topics prior to the interview
- Take your time during the interview
- Take notes during the interview; inform interviewees that you will be taking notes

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■ ■ ■ GENERAL GUIDELINES FOR CONDUCTING THE INVESTIGATION

- Address housekeeping matters (breaks, restroom, refreshments, temperature, etc.)
- Establish "ground rules"; for example:
 - You have been appointed to investigate by the District's Title IX Coordinator
 - You are conducting the interviews; you are in charge
 - You will be asking questions and expect the interviewee's truthfulness and full cooperation
 - If the interviewee is accompanied by an attorney, union representative, parent, friend, or advisor, make certain they know that you expect the interviewee to answer your questions, not their representative
 - To the extent the representative feels they have anything germane to add to the investigation, they will be allowed the time to do so before the interview concludes
- Apply equally to both parties

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■ ■ ■ GENERAL GUIDELINES FOR CONDUCTING THE INVESTIGATION

- Start with open-ended questions to obtain what the interviewee knows
 - Follow up with specific questions about what was stated by the Complainant, Respondent, and witnesses
- Obtain sufficient details for each relevant incident, including:
 - Date and time
 - Location
 - Who was present
 - Detailed description of what occurred
 - Reaction(s) to the incident

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■ ■ ■ GENERAL GUIDELINES FOR CONDUCTING THE INVESTIGATION

- If interviewees ask you to keep information confidential, inform them that confidentiality will be maintained to the extent possible, but that the Title IX regulations require you to allow the Complainant and the Respondent to review and respond to the information collected during the course of the investigation
- Get as much information as possible in writing (e.g., by signed witness statements or written summaries of interviews)

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■ ■ ■ GENERAL GUIDELINES FOR CONDUCTING THE INVESTIGATION

- Do NOT audio or video record interviews!
- Before beginning the interview, advise the interviewee, and anyone attending with the interviewee, that you will not be recording the interview and ask them to confirm for the record that they are not recording the interview
- Explain that it is unlawful in Illinois to record a conversation with another person without that person's consent

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■ ■ ■ GENERAL GUIDELINES FOR CONDUCTING THE INVESTIGATION

- Allow plenty of time for each interview and do not feel any need to rush while you are conducting the interview
- Pause to consider the interviewee's answers—to make note of anything that you consider important and to consider your next question
- Allow some "space" between questions
- Do not be too linear with questions
- "Challenge" answers that are inconsistent or implausible—be polite, but firm
- Be professional, but use your investigative skills (voice, volume, compassion, skepticism, logic, body language)

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■ ■ ■ GENERAL GUIDELINES FOR CONDUCTING THE INVESTIGATION

- Take note of the interviewee's relevant mannerisms and memorialize them in the interview notes
 - Did the interviewee roll his/her eyes when you asked questions? Refuse to make eye contact? Stare at the floor throughout the interview? Fidget endlessly? Stare at a phone? Cry? Get red-faced? Raise his/her voice? Appear to be overly confused?
- If an interviewee refuses to answer a question, or is belligerent, address the behavior and explain that their actions during the investigation will be included in the investigation report
- Do NOT express or imply agreement with any accusations made by any person

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■ ■ ■ GENERAL GUIDELINES FOR CONDUCTING THE INVESTIGATION

- Consider whether the interviewee independently recalls details, or only when prompted or provided documentation
- Be certain to determine whether the interviewee has personal knowledge of an incident or is merely repeating rumors
- If the interviewee was not an eye-witness to an incident, ask him/her why he/she believes it happened

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■ ■ ■ GENERAL GUIDELINES FOR CONDUCTING THE INVESTIGATION

- If the interviewee claims not to remember, ask follow-up questions to determine if there is anything that would help him/her to remember
- Clarify whether the interviewee is asserting that something could be true/false, but they just cannot remember
- Consider whether the inability to recall the answer is plausible. If not, calmly explain why it seems implausible. Allow the interviewee time to reconsider their answer.

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GENERAL GUIDELINES FOR CONDUCTING THE INVESTIGATION

- Thank everyone for their time
- Remind interviewees that depending on the rest of your investigation, follow-up interviews may need to be conducted
- Remind interviewees that if they recall something important after the interview, they should contact the investigator as soon as possible

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INTERVIEWING THE COMPLAINANT

- In most cases, this should be the first interview
- Provide Complainant a copy of the Title IX policy and administrative procedures
- Ask the Complainant why he/she filed a Formal Complaint

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INTERVIEWING THE COMPLAINANT

- If possible, let the Complainant tell you his/her story, but do not hesitate to prompt or probe where appropriate
- Obtain sufficient details for each relevant incident, including:
 - Date and time
 - Location
 - Who was present
 - Detailed description of what occurred
 - Reaction(s) to the incident
 - History of the relationship between the Complainant and the Respondent, as well as any witnesses

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INTERVIEWING THE COMPLAINANT

- Ask the Complainant what he/she did after the incident(s)
- Ask the Complainant if he/she told anyone else about the incident(s). Why/why not? If so, who?
- Ask the Complainant if there is anyone else you should interview and, if so, why
- Request documents or other evidence relating to the incident(s) and allegation(s)

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INTERVIEWING THE COMPLAINANT

- Advise Complainant not to confront the Respondent or witnesses, and to avoid the appearance of retaliation of any kind
- Advise the Complainant to notify you or the Title IX Coordinator immediately if he/she has any other concerns related to the Formal Complaint or the Respondent

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INTERVIEWING WITNESSES

- Let the witness know he/she is not the target of the investigation
- Start with general, open-ended questions to obtain information on what the witness observed; probe with follow-up questions
- Obtain sufficient details for each relevant incident, including:
 - Date and time
 - Location
 - Who was present
 - Detailed description of what occurred
 - Reaction(s) to the incident
 - History of the relationship between the Complainant and the Respondent, as well as any witnesses

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INTERVIEWING WITNESSES

- Ask about the witness's relationship with the Complainant and the Respondent
- After asking general questions, follow up with specific questions about the Complainant's allegations
- Did the witness report the incident(s) to anyone else? If so, who and when?
- Did anyone else observe the incident(s)? If so, who?
- If the witness is not an eye-witness to an incident, ask him/her what he/she believes and why

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INTERVIEWING WITNESSES

- Ask whether the witness discussed the incident with anyone else
- Ask the witness if there is anyone else you should interview and, if so, why
- Thank the witness for cooperating in the investigation and ask the witness to follow up with you about any additional details he/she may recall after the interview or if the witness has any concerns about interactions with anyone else associated with the investigation of the Formal Complaint

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INTERVIEWING THE RESPONDENT

- Prior to meeting, review the Formal Complaint, notes from other interviews and evidence gathered, and make a list of all relevant incidents/allegations
- Review the written notice of the Formal Complaint with the Respondent and his/her advisor/attorney at the start of the interview
- Advise the Respondent that this is his/her opportunity to provide his/her version of the incident(s) at issue

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INTERVIEWING THE RESPONDENT

- Review each incident/allegation and obtain all relevant details; prompt or probe where appropriate
 - Date and time
 - Location
 - Who was present
 - Detailed description of what occurred
 - Reaction(s) to the incident
 - History of the relationship between the Complainant and the Respondent, as well as any witnesses
- If the Respondent denies an incident, ask for any possible reason or motive for Complainant to make allegations

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INTERVIEWING THE RESPONDENT

- Ask the Respondent what he/she did after the incident(s)
- Ask the Respondent if he/she told anyone else about the incident(s). Why/why not? If so, who?
- Ask the Respondent if there is anyone else you should interview and, if so, why
- Request documents or other evidence relating to the incident(s) and allegation(s)

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INTERVIEWING THE RESPONDENT

- Advise Respondent not to confront the Complainant or witnesses, and to avoid the appearance of retaliation of any kind
- Advise the Respondent to notify you or the Title IX Coordinator immediately if he/she has any other concerns related to the Formal Complaint or the Complainant

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Chartered Accountants & Co.

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 Transformation Builders & Kitchens

34 C.F.R. § 106.45(b)(5)(f)

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34 C.F.R. § 106.45(b)(5)(f)

EVALUATING EVIDENCE

- Determine **relevant** evidence
- Compare witness statements
- Follow up with Complainant, Respondent, or other witnesses, if necessary
- Do not end the inquiry simply because no corroborating evidence can be found
 - Document all evidence, witness information, impressions, etc.
 - Initial Decisionmaker will have to make reasoned judgments as to the parties' credibility

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TITLE IX: INVESTIGATION REPORT

- Must prepare an **investigation report that fairly summarizes all relevant information**
- It is not the role of the Investigator to make a determination of responsibility, but the investigation report should make it a fairly easy task for the Initial Decisionmaker
- Provide all the relevant evidence, but stop short of saying "therefore, I conclude"

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TITLE IX: INVESTIGATION REPORT

- Summary of the Formal Complaint allegations
- Summary of the investigation and procedural requirements (written notices sent, communications sent/received, etc.)
- Summary of witness testimony/statements, relevant observations, and relevant evidence
- Summary of the findings of fact and relevant evidence
- Other Considerations:
 - References to exhibits throughout
 - Use identifiers with key

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TITLE IX: INVESTIGATION REPORT

- Send the investigation report to each party (and the party's advisor/attorney, if any) in an electronic format or hard copy, for their review and written response
- The investigation report must be sent to the parties **10 [school business] days** before the Initial Decisionmaker's determination regarding responsibility

34 C.F.R. § 106.45(b)(5)(g)

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TITLE IX: INVESTIGATION REPORT TIPS

- Review Formal Complaint, all evidence, all investigation notes and materials, etc. prior to drafting the report
- Allow ample time for multiple drafts and working with "second chair"
- Consider audience; include foundational information
- Write in active voice (not passive voice)
- Synthesize the information

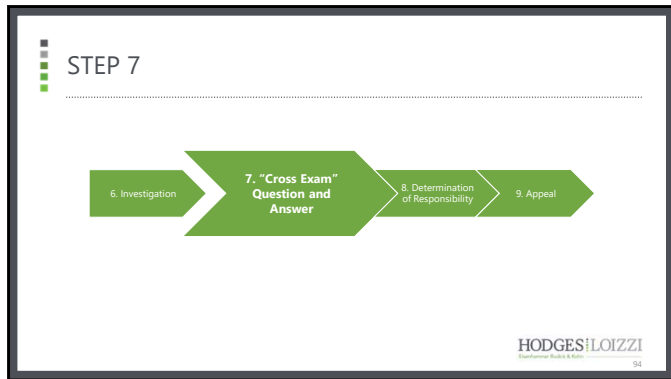
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TITLE IX: INVESTIGATION CONCLUSION

- At the conclusion of the investigation, Investigator sends to the Initial Decisionmaker in an electronic format or hard copy:
 - Formal Complaint;
 - All evidence gathered during the investigation that is directly related to the Formal Complaint's allegations (including evidence the district does not intend to rely on in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence); and
 - Investigation report with any written response received from the parties

34 C.F.R. § 106.45(b)(5)(g)

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INITIAL DECISIONMAKER

- **Cannot** be the Investigator or the Title IX Coordinator
- Reviews from Investigator:
 - Formal Complaint;
 - All evidence gathered during the investigation that is directly related to the Formal Complaint's allegations (including evidence the district does not intend to rely on in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence); and
 - Investigation report, with any written response received from the parties
- Facilitates "cross examination" question and answer among parties
- Issues a written determination to the parties

34 C.F.R. § 106.45(b)(7)

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"CROSS EXAMINATION" QUESTION & ANSWER

The Initial Decisionmaker:

- Provides the parties with written notice of the opportunity to submit written, relevant questions that a party wants asked of any party or witness; include description of the process and timelines
- Determines which questions to forward to any party or witness for answers
- If any proposed questions are excluded as not relevant, provides the proposing party with a written explanation of the decision to exclude a question as not relevant

34 C.F.R. § 106.45(b)(8)

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"CROSS EXAMINATION" QUESTION & ANSWER

- Forwards relevant questions to any party or witness with instructions to submit answers to the Initial Decisionmaker
- Upon receipt of answers to questions, provides each party with copies of the answers
- Follows the same process for the additional, limited follow-up questions from each party
- Timelines are not specified in the Title IX regulations; PRESS 2:265-AP2 uses 5 school business days for each step

STEP 8



DETERMINATION OF RESPONSIBILITY

- The Initial Decisionmaker must apply the district's standard of evidence (preponderance of the evidence) and issue a written determination of responsibility simultaneously to the parties that includes:
 - Allegations that potentially constitute sexual harassment as defined in the Title IX regulations
 - Description of the procedural steps taken from the receipt of the Formal Complaint to the determination (including notifications, interviews, methods of gathering evidence, etc.)
 - Findings of fact supporting the determination

DETERMINATION OF RESPONSIBILITY

- Written Determination, continued:
 - Conclusions regarding application of the code of conduct to the facts
 - Statement of, and a rationale for, the result as to each allegation, including:
 - A determination of responsibility;
 - Any disciplinary sanctions imposed on 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
 - Procedures and permissible bases for the Complainant or Respondent to appeal

EVALUATING EVIDENCE

- Review all evidence from the investigation, including the investigation report and responses from the parties, as well as additional information from the "cross examination" question and answer process
- Do not end the inquiry simply because no corroborating evidence can be found
- Make reasoned conclusions as to the evidence, including making reasoned judgments as to the parties' credibility

REPORTING DETERMINATION OF RESPONSIBILITY

- Depending on the severity of the allegation(s), the determination of responsibility report should be prepared with the help of legal counsel
- Be aware that the report may become discoverable in subsequent litigation
- Keep the report, investigation file, and related documents as confidential as much as possible
- Disclose the report on a need-to-know basis; but must be sent to all parties simultaneously
- Title IX Coordinator is responsible for effective implementation of any remedies

STEP 9



APPEAL

- Must offer to both parties for dismissal of Formal Complaint, or allegations therein, and determinations of responsibility in specified circumstances:
 - Procedural irregularity
 - New evidence now available that could affect the outcome and was not reasonably available at the time of the determination
 - Conflict of interest or bias of the Title IX Coordinator, Investigator, or Decisionmaker
- District may offer other bases for appeal

APPEAL

- Title IX Coordinator, upon receipt of an appeal:
- Issues written notice to both parties:
 - Informing the parties that an appeal has been filed
 - Provides both parties a specified amount of time to submit a written statement in support of, or challenging, the outcome
- Promptly forwards all materials relevant to the appeal to the Appellate Decisionmaker

APPEAL

- Appellate Decisionmaker: Board of Education or Board-appointed examiner (individual or group)
 - Cannot be or include Title IX Coordinator, Investigator, and Initial Decisionmaker
- Must be impartial, without conflict of interest or bias
- Decides whether to affirm, reverse, or amend the Initial Decisionmaker's written determination regarding responsibility or the dismissal
- Issues written decision describing the result of the appeal and the rationale for the result
- Written decision must be provided simultaneously to both parties

EVALUATING THE APPEAL

- Review all materials relevant to the appeal, including:
 - Appeal of dismissal or written determination; notice of appeal; written statements by parties (if any) in support of, or challenging, the outcome subject to appeal; dismissal written notice or written determination; all relevant evidence
- Make reasoned conclusions, including as to the bases for appeal and relevant evidence
 - Must do so impartially, without prejudgment or bias about the facts at issue or the parties, or generally about complainants or respondents
 - Must not rely on stereotypes
 - Cannot let personal relationships influence evaluation of appeal
- Apply preponderance of the evidence standard

APPEAL

- Timelines are not specified in the Title IX regulations
- PRESS 2:265-AP2 uses:
 - 10 school business days as the deadline for filing an appeal, in writing, with the Title IX Coordinator by the Complainant or Respondent after receipt of the Initial Decisionmaker's written determination or the notice of dismissal
 - 30 school business days for the Appellate Decisionmaker to make its decision
 - 5 school business days after the Appellate Decisionmaker's decision to send the written decision to both parties



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