



TITLE IX COORDINATOR TRAINING



OVERVIEW

- 01 Introduction**
- 02 New Sexual Harassment Definition**
- 03 Notice and Publication Requirements**
- 04 Response after Actual Knowledge**
- 05 Response after Formal Complaint**
- 06 Formal Complaint Grievance Process**
- 07 Record Keeping**

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.

FINAL RULE GOES INTO EFFECT ON

**AUGUST 14,
2020**



NEW SEXUAL HARASSMENT DEFINITION



NEW SEXUAL HARASSMENT DEFINITION

“Sexual Harassment” is conduct on the basis of sex that satisfies one of the following:

- 01 Quid Pro Quo Harassment, or
- 02 Hostile environment, or
- 03 Harassment under the Violence Against Women Act



1. QUID PRO QUO HARASSMENT

- An **employee** conditioning an aid, service, or benefit of the school district on an individual's participation in unwelcome sexual conduct
- Does not need to be evaluated for "severity, pervasiveness, and objective offensiveness"
- Expressed or implied



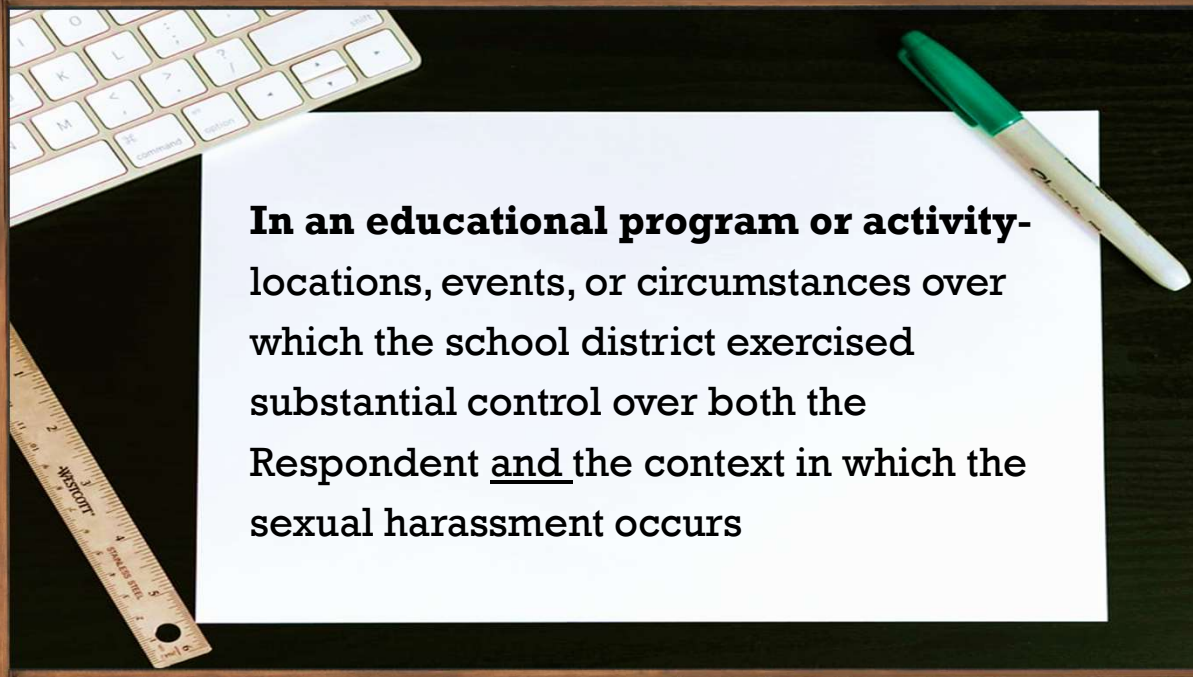
2. HOSTILE ENVIRONMENT

- a) Unwelcome conduct
- b) Reasonable person
- c) So severe, pervasive, **and** **objectively offensive**
- d) Effectively denies a person's equal access to education program or activity



3. HARASSMENT UNDER VIOLENCE AGAINST WOMEN ACT

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking



In an educational program or activity-
locations, events, or circumstances over
which the school district exercised
substantial control over both the
Respondent and the context in which the
sexual harassment occurs

COMPLAINANT

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

RESPONDENT

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

RECIPIENT

Recipients of
Federal financial
assistance
covered by Title
IX, include
elementary and
secondary
schools

ADVISOR

Parties may
have an advisor
of their choice,
who may be,
but is not
required to be,
an attorney

TITLE IX COORDINATOR

Coordinates school district's
compliance efforts

INVESTIGATOR

Investigates allegations in a
formal complaint and
creates investigative report

DECISION-MAKER

Weighs the evidence and
issues a written determination
of responsibility

FACILITATOR

Facilitates an informal
resolution process, upon
parties' consent, that does
not involve a full
investigation

NOTICE AND PUBLICATION REQUIREMENTS

NOTICE OF NON-DISCRIMINATION

A

Title IX Coordinator's:



Name or Title



Office Address



Email Address



Telephone Number

Must include:



Grievance Procedures



Grievance Process:
How to report or file a
formal complaint

DISSEMINATION OF NOTICE

Must publish to

Students

Of all district schools

Parents

Or legal guardians of elementary and
secondary school students

Applicants

For admission and employment

Unions

Or professional organizations

Publications

Policy and training materials must be posted



SCHOOL DISTRICT RESPONSE



TWO PATHS TO RESPOND

**Actual
Knowledge**

**Formal
Complaint**



**PATH
ONE**

Actual Knowledge

ACTUAL KNOWLEDGE

- Any person may report sexual discrimination (alleged victim themselves or any third party)
- May report to Title IX Coordinator in person, by mail, phone, or email
- May be made during non-business hours



RESPONSE AFTER ACTUAL KNOWLEDGE

“Actual knowledge” is notice of sexual harassment or allegations of sexual harassment to:

- 1) Title IX Coordinator, or
- 2) School official who has authority to institute corrective measures, or
- 3) **Any employee** of an elementary and secondary school (new)



RESPONSE AFTER ACTUAL KNOWLEDGE

Must promptly contact Complainant to:

- 1) Discuss availability of supportive measures
- 2) Consider their wishes for supportive measures
- 3) Inform them of the availability of supportive measures with or without the filing of a formal complaint
- 4) Explain the process for filing a formal complaint



GENERAL RESPONSE TIME

Must respond:

- 1) Promptly
- 2) In a way that is not “deliberately indifferent”

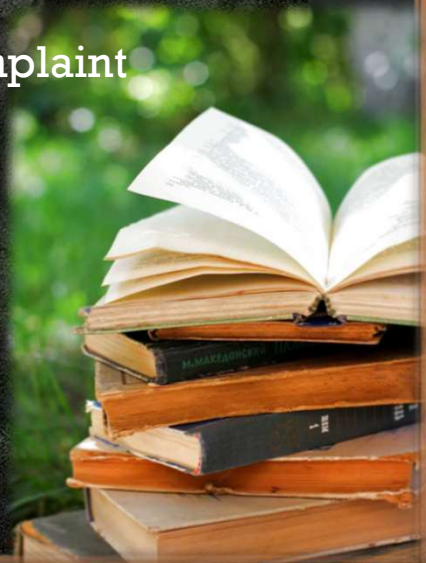


“Deliberately Indifferent” = clearly unreasonable in light of the known circumstances

SUPPORTIVE MEASURES



- Available before or after a formal complaint or when no complaint has been filed
- Can be offered to Complainant or Respondent, or both
- Non-disciplinary, non-punitive, individualized services
- Free, individualized services



SUPPORTIVE MEASURES

B

- Title IX Coordinators are responsible for implementation
- Must record any supportive measures taken
- If supportive measures are not part of school's response, schools must specify why



SUPPORTIVE MEASURES

B

Examples:

- Counseling
- Extensions of deadlines
- Modifications of class schedules
- Building escort services
- Mutual restrictions on contact between parties
- Leaves of absence
- Increased security and monitoring of certain areas of the building



EQUITABLE TREATMENT OF PARTIES

- Must offer supportive measures to the Complainant
- May offer supportive measures to the Respondent
- Grievance process required before any disciplinary or punitive measures
- Supportive measures must not “unreasonably burden the other party”



EMERGENCY REMOVAL

Must conduct an individualized safety and risk analysis

Determine an immediate threat to the physical health or safety of any individual

Provide Respondent with:
1) notice and
2) an opportunity to challenge the decision

Remove Respondent on an “emergency basis”

ADMINISTRATIVE LEAVE

- School districts can place an employee Respondent on administrative leave during the pendency of the grievance process



**PATH
TWO**

Formal Complaint

FORMAL COMPLAINT



A document filed by the Complainant or signed by the Title IX Coordinator that alleges sexual harassment against a Respondent requesting that the District investigate the allegation of sexual harassment



FORMAL COMPLAINT: BY COMPLAINANT



- May be filed with the Title IX Coordinator in person, by email, by mail, or their listed contact information
- Complainant must be participating in the education program or activity at time of filing



FORMAL COMPLAINT: BY PARENT



- Parents and legal guardians have the right to act on behalf of their child with respect to Title IX rights (whether Complainant or Respondent)
- The child remains “The Complainant”
- No other third party can file a formal complaint

C

FORMAL COMPLAINT: BY COORDINATOR



- Title IX Coordinator may sign a Formal Complaint to initiate a grievance process to investigate and adjudicate allegations
- May happen over the alleged victim’s objections

C



FORMAL COMPLAINT GRIEVANCE PROCESS



INITIAL RESPONSE AFTER FORMAL COMPLAINT

- Similar to response after Actual Knowledge:
 - 1) Must promptly respond
 - 2) Availability of supportive measures
 - 3) Equitable treatment of parties
 - 4) Option for emergency removal
 - 5) Option for administrative leave
- Different: must follow a formal grievance process



BASIC ELEMENTS OF GRIEVANCE PROCESS

- 01 Must Treat Parties Equally
- 02 Objective Evaluation of Evidence
- 03 No conflict of interest or bias
- 04 Presumption of Not Responsible
- 05 Prompt Time Frames

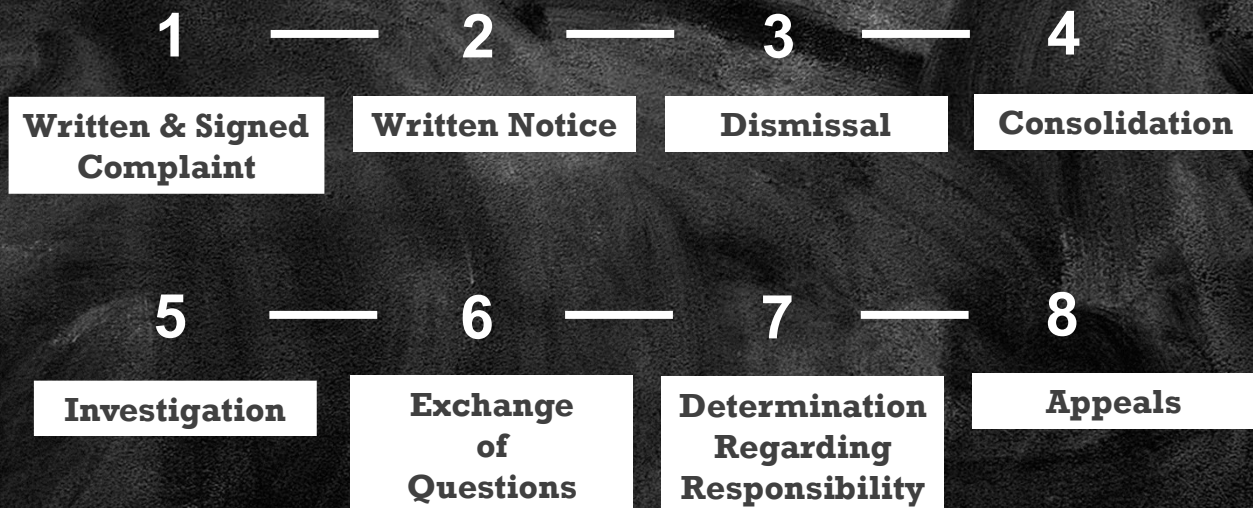


BASIC ELEMENTS OF GRIEVANCE PROCESS

- 06 Describe the range or list the possible disciplinary sanctions or remedies
- 07 State the Standard of Evidence
- 08 Must Have Procedure for Appeals
- 09 Do Not Use Legally Privileged Information
- 10 Describe the Range of Supportive Measures



FORMAL COMPLAINT PROCESS



1 WRITTEN & SIGNED COMPLAINT

Description of allegation (date, location, witnesses, etc)

As practical, in Complainant's words



2 WRITTEN NOTICE



Must Provide to Parties:

- Notice of the school districts' grievance process, including informal resolution process
- Notice of the allegations of sexual harassment
- Statement that Respondent is presumed not responsible

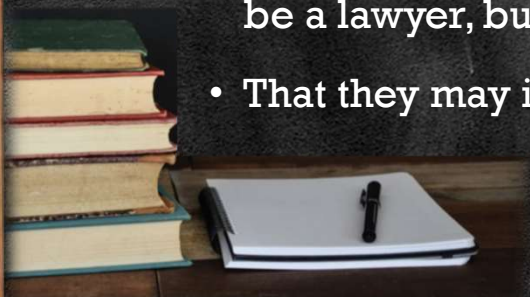


2 WRITTEN NOTICE



Must Inform Parties:

- That they may have an advisor of their choice- can be a lawyer, but is not required to be
- That they may inspect and review evidence



2 WRITTEN NOTICE



Must Inform Parties:

- Of any provision in school district's code of conduct that prohibits knowingly making false statements or submitting false information during grievance process



2 WRITTEN NOTICE



Must Inform Parties:

- A notice of additional allegations is required to known parties if the school district decides to investigate allegations that are not included in the original notice



2 WRITTEN NOTICE



Must include sufficient details:

- Identities of the parties involved
- The conduct allegedly constituting sexual harassment
- Date and location of the alleged incident



3 DISMISSAL



Mandatory Dismissals

- 1) If the conduct alleged would not constitute sexual harassment even if proved
- 2) Did not occur in school district's education program or activity
- 3) Did not occur against a person in the United States



3 DISMISSAL



Discretionary Dismissals

- 1) A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint
- 2) The Respondent is no longer enrolled or employed
- 3) The specific circumstances prevent the school district from gathering evidence

4 CONSOLIDATION



Can consolidate formal complaints when:

- Allegations against more than one Respondent, or
- Allegations by more than one Complainant against one or more Respondents, or
- By one party against the other party,

AND the allegations arise out of the “same fact or circumstances”

5 INVESTIGATION

School districts must:

- 1) Ensure that the burden of proof and the burden of gathering evidence rest on the school district and not on the parties, except certain records
- 2) Provide an equal opportunity for parties to present witnesses and evidence
- 3) Not restrict the ability of either party to discuss the allegations or gather and present evidence

5 INVESTIGATION

School districts must:

- 4) Provide the parties with the same opportunity to have others present during the proceeding




- 5) Provide written notice to a party who is invited or expected to participate

- 6) Provide the parties an equal opportunity to inspect and review any evidence


5 INVESTIGATION

Before the investigative report is complete, school districts must:

-  • Send each party the evidence subject to inspection and review
- Allow the parties 10 days to submit a written response
- Consider the parties' response prior to completion

5 INVESTIGATION

- School districts must create an investigative report that “fairly summarizes relevant evidence”

-  • Send to each party the investigative report 10 days prior to a determination of responsibility
- Allow parties to review and respond to investigative report

6 EXCHANGE OF QUESTIONS

- The decision- maker must allow each party the opportunity to submit written, relevant questions
- Provide each party with answers and allow for limited follow-up questions



7 DETERMINATION

- The decision-maker cannot be the Title IX Coordinator or the investigator
- Decision-maker must apply the standard of evidence and issue a written determination regarding responsibility



7 DETERMINATION



Written Determination Must Include:

- 1) Identification of the allegations
- 2) Description of the procedural steps taken
- 3) Findings of fact supporting the determination
- 4) Conclusions regarding the application of the school district's Code of Conduct to the facts



7 DETERMINATION



Written Determination Must Include:

- 5) Statement and rationale for result of each allegation
 - Determination regarding responsibility
 - Any disciplinary sanctions
 - Future remedies
- 6) The procedures and bases for the Complainant and Respondent to appeal



8 APPEALS



Must offer both parties an appeal from a determination or a dismissal of a formal complaint or an allegation therein based on:

- 1) Procedural irregularity
- 2) New evidence
- 3) Conflict of Interest or Bias



8 APPEALS

For appeals, the school district must:



- Notify the other party in writing when an appeal is filed
- Decision-maker for the appeal cannot be the same person as the original decision-maker, the investigator, or the Title IX Coordinator



8 APPEALS

For appeals, the school district must:

- Give both parties an opportunity to submit a statement supporting or challenging the outcome
- Issue a written decision simultaneously to both parties



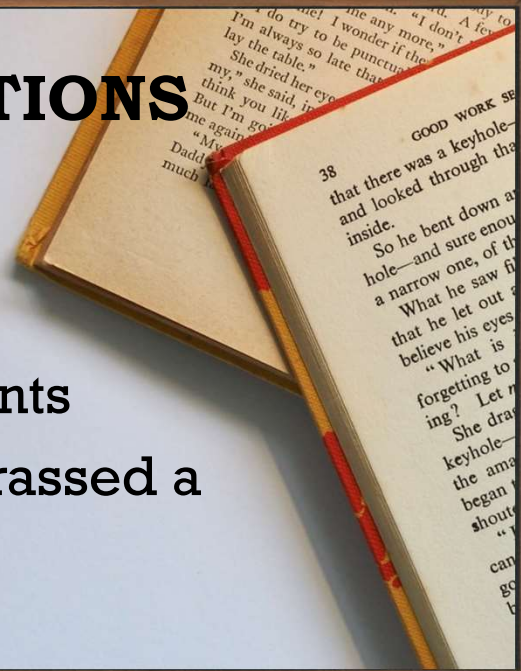
INFORMAL RESOLUTIONS

- Only available when a formal complaint is filed
- Written notice to the parties:
 - The allegations
 - The requirements of the process
 - The right to withdraw



INFORMAL RESOLUTIONS

- Need written, voluntary consent
- Not available for complaints alleging an employee harassed a student



RETALIATION

- Must remain confidential:

Individuals who
made a report

Complainant

Respondent

Witnesses

- Confidentiality exceptions: to conduct an investigation, hearing, or judicial proceeding





RETALIATION

- District or other person may not intimidate, coerce, or discriminate:
 - 1) For the purpose of interfering with any right under Title IX, or
 - 2) Because the individual participated or refused to participate
- Retaliation complaints are addressed under the Title IX grievance process



RECORD KEEPING

**Records of
investigations**

**Results of
Appeals**

**Results of
Informal
Resolutions**

**All Title IX
training
material**

**Records of
actions taken**

RECORD KEEPING: RESPONSE

Record of school district's response must include:

- 1) Actions taken in response to a report or formal complaint
- 2) Why their response was not “deliberately indifferent”
- 3) Measures to restore or preserve equal access to education

TRAINING

Must Receive Training On:

- The new definition of sexual harassment
- Scope of the education program or activity
- How to conduct an investigation and grievance process
 - How to serve impartially



TRAINING

- Training for **all staff** on how to identify and report sexual harassment
- Training for Title IX Coordinator, investigators, and decision-makers, including those in charge of decisions and appeals
- Maintaining records for 7 years and posting the materials on the school district's website

