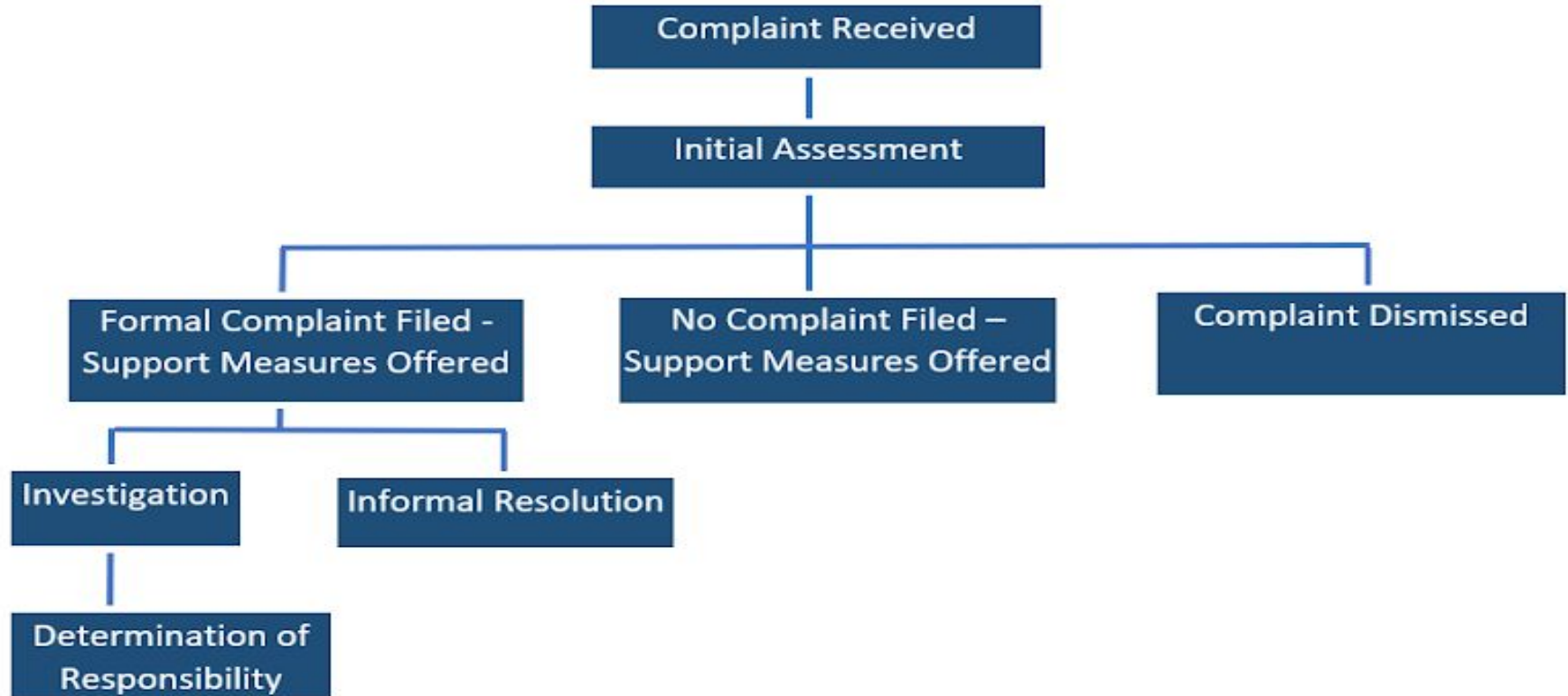




# New Title IX Protections Against Sexual Harassment: The Investigative Role

October 30, 2020

# Grievance Process



# Definitions of Terms

# New Definition of Sexual Harassment

- Quid pro quo
- 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 recipient's education program or activity
- Sexual assault, dating violence or stalking

# New Terms

Complainant: Alleged victim of the conduct

Respondent: Alleged perpetrator of the conduct

Advisor: An adult of a party's choosing (may be an attorney)

Formal Complaint: Document alleging sexual harassment filed by a student, parent/legal guardian, school staff or in some cases the School Title IX Coordinator

# New Title IX Regulations

- Increased procedural rights and timelines
- Provision of supportive measures to restore equal access
- Protection against disciplinary sanctions before conclusion of the grievance process
- Freedom from staff conflict of interest and bias during the grievance process

# Greater Transparency of Information:

- Published School Title IX Coordinator contact information
- Published grievance procedures and training materials
- Identification of procedural roles:
  - School Title IX Coordinator
  - Investigator
  - Decision Maker
  - District Title IX Coordinator

# Investigator Role:

- Gather information in a fair and impartial manner about the allegations
- Avoid conflict of interest or bias
- Assume innocence of all parties
- Report the findings



# Written Notifications

# Written Notifications

- Complaint
- Intent to interview
- Preliminary investigative findings
- Investigative Report
- Determination of Responsibility
- How to appeal

# Notification Timelines

- Supportive measures - offered immediately
- Interview - allow time for an advisor to be present
- Preliminary findings + 10 days to respond
- Investigative Report + 10 days to respond
- Written Determination of Responsibility + 30 days to submit an appeal

# Standard of Evidence

## Preponderance of Evidence:

The Complainant's/Respondent's proposition is more likely to be true than not true.



# Supportive Measures

- Non-disciplinary, measures meant to:
  - Restore
  - Protect
  - Deter
- Post the range of available supportive measures

# Outcomes

## Range of Outcomes:

- School must describe or list the range of disciplinary sanctions that could occur following a determination of responsibility

# Right to Appeal

- Grievance procedures must contain the right to appeal and information on how to make an appeal
- Schools must offer an appeal to every party

# Written Notice



# Required Written Notices

- Complaint
- Rights
- Intent to Interview
- Preliminary Investigative Findings
- Investigative Report
- Determination of Responsibility
- Dismissal

# Written Notice: Intent to Interview

Must provide sufficient time for parties to have an advisor present if they so choose

# Written Notice: Preliminary Findings

- Informal written presentation of the facts
- Affords parties 10 days to review and submit additional information

# Written Notice: Investigative Report

- Written report sent to both parties and the Decision Maker
- Affords 10 days for parties to submit written responses to the Decision Maker before final determination of responsibility

# Written Notice: Investigative Report Cont'd

Should Include:

- Identification of the grievance procedures taken
- Description of witnesses/parties interviewed and their final statements
- Documentation of evidence
- Summary of findings

# Written Notice: Notification of Dismissal

- Must send written notice of the dismissal and the reasons for dismissal to both parties
- Both parties have the right to appeal a school's dismissal decision

# Mandatory Dismissal

- Behavior does not meet the definition of sexual harassment
- Incident did not occur in the school's educational program or sponsored activity
- Incident did not occur in the United States

# Discretionary Dismissal

- Complainant withdraws the formal complaint in writing
- Respondent is no longer enrolled
- Circumstances prevent the gathering of sufficient evidence to reach a determination



# When Does A School Have Notice?

- When it has knowledge of sexual harassment allegations
- When sexual harassment is personally witnessed by staff
- When any school employee puts the school on notice

# Informal Resolution

# Informal Resolution

- May be attempted if each party enters the process voluntarily
- School must provide a facilitator who is free from conflicts of interest or bias, and who has received training

# Informal Resolution Requirements

School still needs to provide complainants and respondents:

- Notice of the allegations
- Notice of their rights
- Signed voluntary agreement to pursue informal resolution
- Information about withdrawing from the informal resolution process

# Formal Complaint Investigation

# Investigative Requirements

- Provide equal opportunity for both parties to present witnesses and evidence
- Do not restrict the ability of either party to discuss allegations or gather evidence
- Provide the same opportunities to parties to have an advisor of choice present for any meeting

# Investigative Requirements Continued

- Provide written notice of interviews with sufficient time for the party to prepare
- Provide parties equal opportunity to review the evidence if directly related to the allegations in the complaint
- Give parties a meaningful opportunity to respond to the evidence after it has been provided

# Investigative Requirements Continued

- Provide a preliminary report of investigative findings
- Give parties at least 10 days to respond to the evidence in writing
- Finalize the report with consideration of party responses
- Provide finalized Investigative Report to both parties and the Decision Maker



# Investigative Process

1. Request for a Title IX Investigation is received
2. Send *Notice of Intent To Interview* to Complainant and Respondent (Allow sufficient time)
3. Interview Complainant, Respondent, and Witness(es) (Gender considerations)

# Investigative Process Continued

4. Send Preliminary Findings + wait 10 days
5. Incorporate any additional relevant findings
6. Send Investigative Report to both parties and the Decision Maker

# Student Procedural Rights

Students have the right to:

- Prior knowledge of the conduct which is prohibited
- Be informed of the specific violations of the discipline regulation
- Refute the allegations

# Witness Interviews

- Interview witnesses provided by involved parties
- Separate multiple witnesses
- Obtain statements in writing

# Written Statements

Should be:

- Signed and dated by the witness/party
- Signed and dated by both the investigator and student if written on behalf of a student.
- Legible and include facts reported during the interview

# Written Summary of Findings

Should:

- Be void of subjective language
- Fairly summarize relevant evidence
- Report findings without recommendation to the Decision Maker

# Appeals

# When Can Appeals Occur?

- After a dismissal
- After a written Determination of Responsibility



# Appeal Process

- Must notify parties in writing and implement appeal procedures equally
- Must afford parties equal opportunity to submit a written statement supporting or challenging the outcome

# Record Keeping

# Record Retention

District Title IX Coordinator must retain all records pertaining to the grievance procedure for 7 years

Retaliation

# Retaliation: Code of Conduct

- A school may not charge a person with a code of conduct violation for the purpose of discouraging the person from filing a sexual harassment complaint
- Issuing a code of conduct violation on discoveries made during the investigation that are unrelated to the allegation may be considered retaliation

# Non-Retaliatory Conduct

- A school may discipline someone for making a bad-faith false statement during a Title IX grievance process in accordance with SMCPS policy JFDG
- A bad-faith statement cannot be based on the outcome of a case

# Title IX Materials File

<https://drive.google.com/drive/folders/1HFm5IB2WoZgM7DAEoubocx5UZK6JGsmK?usp=sharing>

Questions?