



# Title IX Grievance Process from Start to Finish

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# What You'll Learn



- When Title IX Grievance Procedures Apply
- Definition of Sexual Harassment Under Title IX
- Grievance Process
- Interplay with Other Policies/Laws
- Best Practices
- Pitfalls
- Board's Role
- Scenarios

# When Do Title IX Grievance Procedures Apply?

- When there is an allegation of sexual harassment (as defined by Title IX) in a district's education program or activity.
- "Education program or activity" includes any location, event, or circumstance over which the District exercises substantial control over the harasser and the context in which the harassment occurs.
  - Includes conduct occurring at school, on a school bus, field trip, at an extracurricular activity, function, and program even if outside of school, and conduct during remote learning.
  - Does **not** include:
    - Private social media outside of school (might be if additional conduct occurs in a school program or activity as an outgrowth of the initial conduct)
    - Conduct outside the U.S.
- Title IX covers sex, including sexual orientation and gender identity, but not other protected statuses (e.g. race).
- Title IX applies to employees and students. Other laws also protect employees (like Title VII of the Civil Rights Act).

# Definition of Sexual Harassment

- Sexual Harassment is conduct on the basis of sex.
- It can be defined in one or more of the following ways:
  1. A District employee conditioning an aid, benefit, or service on participation in an unwelcome sexual conduct (Quid Pro Quo - This for That)
  2. Unwelcome sexual conduct that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education programs or activities
  3. Sexual assault, dating violence, domestic violence, or stalking as defined by identified statutes

# Review of Title IX Basics

- District's response to be equitable and prompt; emphasis on transparency, fairness, no bias or conflict, and may not be based on stereotypes.
- Districts must adopt grievance procedures to address formal complaints of sexual harassment.
- Grievance procedures require personnel be assigned to discrete roles: Title IX Coordinator, Investigator and Decision-Makers as well as Informal Resolution Facilitators.
- Grievance procedures to be used when a formal complaint is filed by a Complainant or initiated by the Title IX Coordinator.
- Informal reports/complaints can be brought by anyone: all submissions require a response, but only formal complaints require Title IX grievance procedures to be followed.

# Need to Respond to Sexual Harassment

- District must respond to allegations of sexual harassment of which it has actual knowledge.
- Failure to respond violates Title IX as deliberate indifference and may violate other laws.
- Actual knowledge by any employee is deemed actual knowledge by the District.
  - Ensure employees at all levels know how to make a report.
- Administrators need to know: as soon as a situation seems like it could involve Title IX, STOP and contact the Title IX Coordinator. Other than ensuring immediate needs are met (safety, calming a crying student, etc.), the first step is to contact the Title IX coordinator.
- Do not investigate, request written statements, etc.

# Distinct Roles and Responsibilities

- Regulations expand the role and responsibilities of a Title IX Coordinator and requires that additional District personnel fill distinct roles in the grievance process.
- District must identify individuals to fill these roles:
  - Title IX Coordinator
  - Investigator
  - Decision-Maker
  - Decision-Maker on Appeal, if applicable
  - Facilitator of Informal Resolution
- Individuals filling all roles are to be trained.
- It is important to know the roles and responsibilities assigned to each person to ensure compliance with the law/policy/regulation and to ensure no overlapping of roles and to facilitate a better understanding of your role.





# Which Personnel Fill These Roles?

A Typical Designation – may vary by district

- Title IX Coordinator: Director of Pupil Services (all specified contact information must be posted on the District's website)

Additional roles may be assigned on case-by-case basis

- Investigators: Principals or HR director
- Decision-Maker: Assistant Superintendent
  - Cannot be the investigator or the Title IX Coordinator.
- Decision-Maker on Appeal: Superintendent
- Informal Resolution Facilitators: May be school counselors or other designated trained personnel

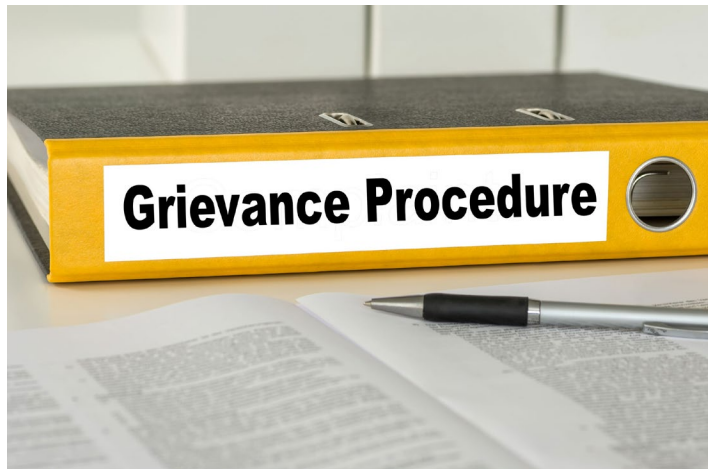
Roles may be outsourced (e.g. to counsel)

# First Steps – Title IX Coordinator

- Meets with Complainant and reviews the Title IX policy/regulation and option to file a formal complaint.
- May assist with filing the formal complaint or file on their own.
- Discusses supportive measures with Complainant and Respondent (explaining this occurs with or without a formal complaint).
- Collaborates with school administrators and/or HR about implementation of supportive measures and need for modifications to the measures.
- Provides written notice of a formal complaint or directs such notice to be provided to the parties; sends or directs an additional notice if allegations are revised (initial notice must be sent prior to the conducting of an initial interview with a Respondent).
- Designates roles and monitors compliance with grievance procedures.



# Formal Complaint: Grievance Procedures



- The burden of proof rests on the recipient (District), not either party.
  - Either preponderance of the evidence or clear and convincing evidence (as set by your policy)
- Both parties shall be given the opportunity to present witnesses and evidence.
- Focus on transparency – witnesses are named, evidence is shared, etc.
- “Gag orders” are prohibited.
- No discipline for Respondent for sexual harassment until process is complete.
  - Emergency removal when warranted
  - Administrative leave for employees

# Formal Complaint: Investigation

- Discuss and obtain signed nondisclosure agreements from the parties as early in the process as possible; preferably during initial interviews to enable sharing of evidence (as required). Title IX trumps FERPA.
- Investigator interviews parties and witnesses and gathers evidence.
- Keep notes of interviews, but maintain them as personal notes. Do not share with anyone or they become a student record. Interview summaries can become part of the evidence.
- Investigator provides both parties the evidence (including exculpatory evidence) with at least 10 days to submit comment.
- Investigator drafts investigation report summarizing the evidence. Investigator DOES NOT determine credibility or make findings of fact.
- TIP: Investigator should make sure the report is clear and specific enough that someone with no prior knowledge could understand it and have sufficient information. The Investigation Report must be thorough enough to allow the Decision-Maker to make a decision without relying on information obtained outside the process.

# Formal Complaint: Investigator Handoff to Decision-Maker



- Investigation report is sent to both parties and the Decision-Maker.
- Investigator is no longer involved in the process.

# Formal Complaint: Decision-Maker

- Decision-Maker notifies parties of their rights to (1) submit a written response to the Investigator's report and (2) submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.
  - The Decision-Maker must exclude irrelevant questions and must explain to the party proposing the question any decision to exclude a question as not relevant.
- After at least 10 days, Decision-Maker issues a determination with specific elements, most significantly findings of fact, conclusions as to whether sexual harassment occurred, and what remedies to apply. May need to *recommend* rather than make final disciplinary decision if other due process requirements exist (e.g., expulsion hearing, teacher termination hearing).

# Formal Complaint: Final Decision/Written Determination of Responsibility

- The Decision-Maker issues a written determination that:
  - identifies the allegations constituting sexual harassment
  - describes the procedural steps taken from receipt of the complaint through the investigation
  - makes findings of fact supporting the determination
  - makes conclusions (sexual harassment did or did not occur)
  - includes a statement of and rationale for each allegation, including a determination of responsibility, any sanctions imposed on the Respondent, and any remedies to restore or preserve equal access to education program or activity to be provided to the Complainant
  - describes the procedure and basis for a possible appeal
- The Title IX Coordinator is responsible for the effective implementation of any remedies.

# Formal Complaints: Appeals

- Either party may appeal the decision of responsibility or dismissal of a formal complaint or allegation therein.
- Appeal may only be based upon and granted for the following reasons:
  1. a procedural irregularity that affected the outcome;
  2. new evidence that was not reasonably available at the time of the determination and could affect the outcome; and
  3. conflict of interest on the part of the Title IX Coordinator, the Investigator, or Decision-Maker.
- A District may, but need not, offer an appeal equally to both parties on an additional basis.
- Written notice of the appeal must be provided to both parties, and they shall be provided with an opportunity to submit a written statement in support of/challenging the appeal.
- Written decision must be issued.





# Formal Complaints: Informal Resolution

- Informal resolution may be offered by the Title IX Coordinator if a formal complaint is filed.
- A full investigation need not be conducted as long as written consent of both parties is obtained and the allegation does not involve an adult Respondent and a student Complainant.
- May include a broad range of strategies, including, mediation and restorative justice.
- Must be facilitated by trained personnel.
- Any party has the right to withdraw from the informal resolution process at any time and may resume the formal grievance process.



# What About Other Laws?

- Title VII/CFEPA – Employee victims only. Lower standard for conduct: severe or pervasive; conduct may occur outside of work setting. No specific investigation protocol.
- Teen Dating Violence/Bullying – Follow separate protocols.
- Child Abuse/Neglect – Report to DCF.
- Other kinds of discrimination/harassment – Conduct investigation separate from Title IX for harassment covered by other laws (e.g. Title VI, ADA).
- Collective bargaining agreements – Need to comply with contract unless unlawful to do so. Discipline must follow the contract and may be grieved, etc.

# Best Practices



- Make sure your policy and regulation are compliant with the Title IX grievance procedures.
  - If using CABE policy, make sure you selected when given choices and removed explanatory notes.
  - When choosing between calendar days and school days, consider implications of summer break. (We recommend calendar days.)
- Use templates to ensure correspondence meets all regulatory criteria.
- Update training for all relevant personnel. Make sure every employee knows how to report to Title IX Coordinator.
- Designate “default” roles for personnel, but be flexible to avoid conflict of interest or bias or to adapt to other circumstances.
- Make sure personnel know their roles and do not encroach.
- Act promptly – the process takes long enough without additional delay.

# Pitfalls



- Outdated policies/regulations.
- Title IX Coordinator information not published/available.
- Not bringing the Title IX Coordinator into the situation right away.
  - Teachers/administrators should not be asking questions, investigating, etc. beyond addressing immediate needs.
- Assigning the wrong staff for the situation.
  - Does the Pupil Personnel Director know how to investigate/discipline staff, especially those in a union?
  - Guidance counselors of the students involved generally should not be used for any step other than informal resolution.
- Investigative report leaves too many questions so Decision-Maker lacks enough information to make a decision.
- Taking too long so that problems fester.
- Moving too fast and not being thorough (remember supportive measures allow for needs to be met while the process is pending).

# Board's/Superintendent's Role

- Adopt compliant policy/regulations.
  - Update may be needed if new regulations are promulgated – stay tuned!
- Designate Title IX Coordinator.
- Ensure policies, training materials, and Title IX Coordinator information are disseminated.
- Ensure adequate training.
- Keep parties to the process and avoid entering the fray.
- Contact legal counsel for advice throughout the process, especially in more difficult cases.

# Scenarios

- What questions does the scenario raise for you?
- Do you need more information? What information?
- What actions should be taken?
- If the allegations are true, do they constitute sexual harassment?
- Are additional investigations or policies relevant? Or are additional actions required?

# Jasmine and Trevor

Jasmine is a 10th-grade student who is new to the district. Her sex assigned at birth is male and she presents as female. Trevor knows Jasmine from a summer camp the two attended a few years ago, when Jasmine was known as James. Nobody else in the high school knew Jasmine previously and Jasmine does not want others to know that she is transgender. Trevor posts photos from summer camp on Facebook, when Jasmine was clearly presenting as male, and tags her in them and captions the photos by calling her James. In school, he refers to Jasmine as “he/she/it – I can’t keep it straight” and “corrects” others when they call her Jasmine or use feminine pronouns when referencing her. Although she loves math, Jasmine has stopped attending this class, because Trevor is in it.

# Mason and Liam

Mason and Liam are first-grade boys. One day, Mason touches Liam's private area while the two are in the bathroom. Liam giggles. When he returns to the classroom, he is still giggling and announces to his teacher, "Mason touched my peepee!" Liam's parents email the entire Board the next day extremely angry about the incident and demand to know what the district is going to do about the matter.



## Linda and Mr. Perry

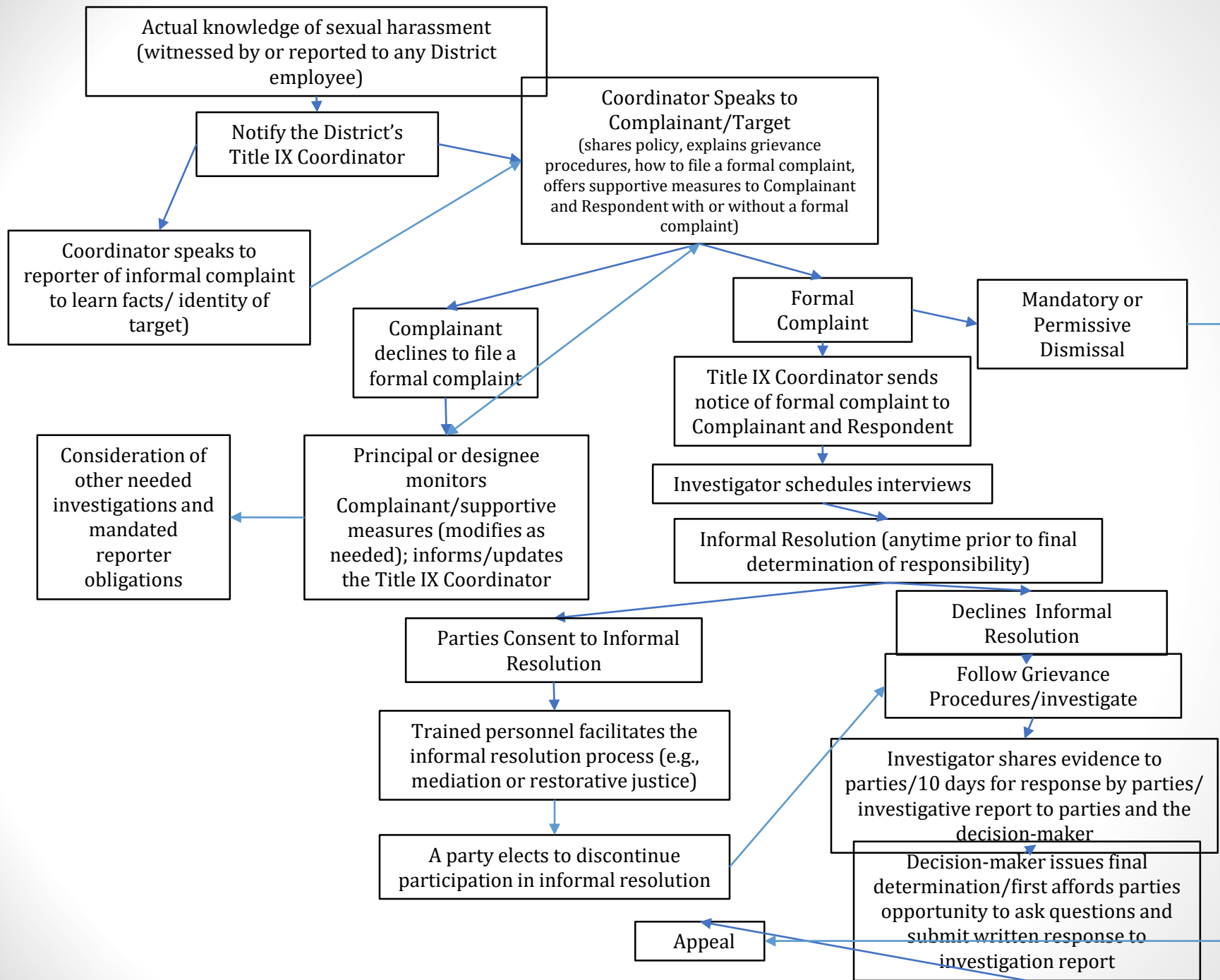
Linda, the school secretary, complains to Human Resources that she is experiencing sexual harassment in the workplace. Specifically, she says that Mr. Perry, the school principal, makes inappropriate remarks to her on a daily basis. She reports that today he told her that she is way too pretty to be with her overweight husband and asks if she ever considered having an affair. She says he regularly boasts about his libido in front of her. Mr. Perry has been well-respected in the community for decades while Linda is known to exaggerate and has poor attendance.

# Lucas and Annabelle

Lucas is a 7th-grade student who has a crush on Annabelle. He asks her to send him a nude photo, comments that her butt looks amazing in leggings, and repeatedly “accidentally” touches her waist as they leave the classroom. Annabelle confides to her English teacher about what is happening.

## Lucas and Annabelle – Part 2

An investigation into Annabelle's complaint substantiates that Lucas was sexually harassing her. Lucas serves a suspension and returns to school, with schedule adjustments to minimize interaction between the two. Annabelle and her cousin send Snapchat messages to their classmates calling Lucas a rapist and bashing the district for not expelling him. Because of what is occurring on social media, Lucas's parents file a bullying complaint and request that he be given a distance-learning option.



# How We Can Help You

- Review your policy/regulation and suggest changes or provide our model versions.
- Provide standardized “toolbox” documents (notification letters, complaint forms, determination template, etc.).
- Provide counsel from education attorneys and/or labor and employment attorneys throughout the process to ensure compliance and handle tough decisions.
- Act as the investigator or decision-maker in individual cases, especially high-stakes cases (e.g. superintendent is accused).
- Train administrators on navigating the Title IX process.

Questions?