

TITLE IX TRAININGS SPECIFIC ROLES

INVESTIGATORS DECISION-MAKERS

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REVIEW IN CONJUNCTION WITH

- Trainings regarding harassment and sexual harassment
- Title IX 2020 Regulations training
- Board Policies FFH, FFI, and DIA
- This training assumes those trainings/policies have been reviewed and discusses the specific roles of the Title IX Coordinator, Investigators, Decision-Makers, Appeal Decision-Makers, and Informal Resolution Facilitators
 - With a focus on **Investigators** and **Decision-Makers**
- Remember to post trainings on District website
 - Recommendation: Title IX Page on website

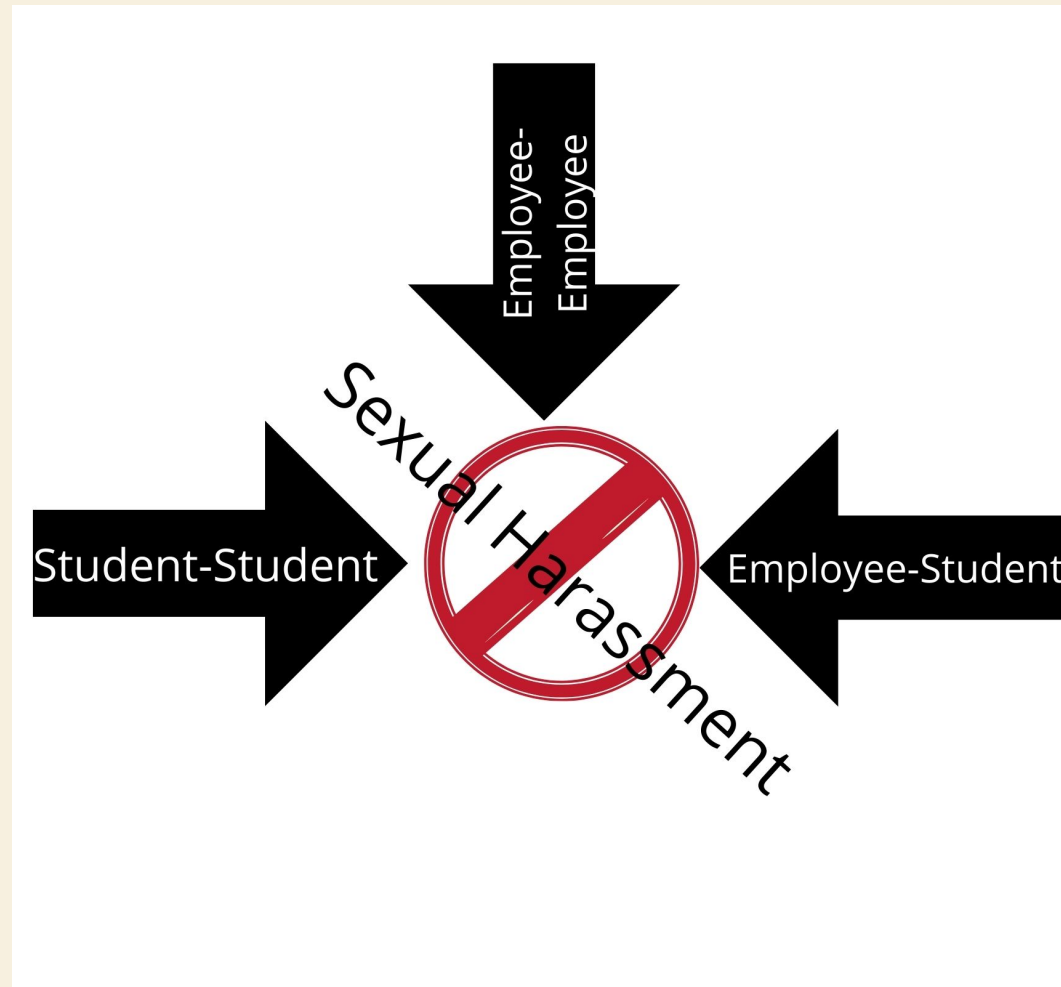
TRAININGS FOR DIFFERENT ROLES

- Title IX Coordinator
- Investigator
- Decision-Maker
- Appeal Decision-Maker
- Informal Resolution Facilitator

SEXUAL HARASSMENT DEFINITION (REMINDER)

- Quid Pro Quo: Employee conditioning the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct
 - Employee only (cannot be student-student)
- Hostile Environment: Unwelcome sexual conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it **effectively denies a person equal access to the District's education program or activity**
- Sexual assault, dating violence, domestic violence, stalking

WHO CAN BE INVOLVED IN SEXUAL HARASSMENT SITUATIONS?



REPORTING (REMINDER)

- Any person may report at any time
- Any employee with “actual knowledge” must report
- Report can be oral or written

MORE DEFINITIONS (REMINDER)

- Education Program or Activity: location, events, or circumstances over which the District exercises substantial control over both respondent and the context in which the sexual harassment occurs
 - Must be in the United States
- Actual knowledge: when a report is made to any employee
- Deliberate Indifference: Schools must respond promptly to Title IX sexual harassment in a manner that is not deliberately indifferent, which means a response that is not clearly unreasonable in light of the known circumstances.



FORMAL COMPLAINT (REMINDER)

- Difference between a “report” and a “formal complaint”
- After a report is made, a formal complaint can be made
- The alleged victim (complainant) or the Title IX Coordinator can make a formal complaint which requests that the District investigate the allegation(s) of sexual harassment
- Complainant = alleged victim
- Respondent = alleged perpetrator

Response after actual knowledge is acquired (after the initial report); and

Response after receipt of a “Formal Complaint.”

THE TWO RESPONSE REQUIREMENTS

HOW DOES TITLE IX REQUIRE SCHOOL DISTRICTS TO RESPOND TO ALLEGATIONS OF SEXUAL HARASSMENT?

- A school district
 - ❖ With **actual knowledge** of sexual harassment
 - ❖ In an **education program or activity** of the school district
 - ❖ Against a person in the United States
 - ❖ Must respond **promptly** in a manner that is **not deliberately indifferent**.





TITLE IX COORDINATOR

TITLE IX COORDINATOR

- Main point of contact regarding Title IX
- Must designate on website and handbooks with name, number, email
- Can have more than one
- Can have deputy Title IX Coordinators
- Supervises the process (clearinghouse)
 - Assigns investigators
 - Assigns decision-makers, appeal decisions makers
 - Assigns facilitators
 - Ensures compliance with final sanctions

TITLE IX COORDINATOR WHEN A **REPORT** OF SEXUAL HARASSMENT COMES IN

- Contact complainant and respondent to discuss supportive measures
 - To both parties
 - Available with or without a formal complaint
- Explain the complaint process
- Ensure no disciplinary sanctions are put in place against respondent until grievance process is complete
 - However, can take emergency measures
 - Can place an employee on administrative leave with pay (only the Superintendent can make that placement)

TITLE IX COORDINATOR SUPPORTIVE MEASURES

- Individualized services to preserve and restore equal access to education programs/activities
- Examples (include)
 - Stay away agreements; mutual restrictions
 - Increased monitoring; escort
 - Counseling
 - Extensions of deadlines/course changes
 - Schedule changes

TITLE IX COORDINATOR COMPLAINANT DOES NOT WISH TO FILE

- Even if a formal complaint is not filed, can investigate and respond to prohibited conduct in accordance with Policy and Student Code of Conduct
 - Except when threat to community → must investigate
 - As long as we can respond to prevent future harassment of Complainant and others, do not have to investigate if Complainant does not want
 - And must explain the consequences to the Complainant of not filing a formal complaint
 - Document if Complainant does not file
- Can sign a formal complaint on behalf of complainant
 - A Complainant's wishes with respect to whether the school investigates should be respected unless the Title IX Coordinator determines that signing the formal complaint is not clearly unreasonable in light of the known circumstances
 - Can also initiate grievance procedures where discipline is appropriate

FORMAL COMPLAINT PROCESS FOR TITLE IX COMPLAINTS

- Superintendent must develop
- Must be placed on District's website
- Process must contain at least 12 basic requirements...

FORMAL COMPLAINT PROCESS

12 BASIC REQUIREMENTS

- 1. Equitable treatment of Complainants and Respondents
- 2. Objective evaluation of all relevant evidence
- 3. Requirement that Title IX Coordinator, investigator, decision-maker, or informal resolution facilitator not have a conflict of interest or bias
- 4. Presumption that the Respondent is not responsible for the alleged sexual harassment until a determination is made at the conclusion of the Title IX formal complaint process.
- 5. Timeframes that provide a reasonably prompt conclusion of the Title IX formal complaint process, including time frames for appeals and any informal resolution process, and that allow for temporary delays or the limited extension of time frames with good cause and written notice as required by law.
- 6. Description of the possible disciplinary sanctions that may be implemented following a determination of sexual harassment

FORMAL COMPLAINT PROCESS

12 BASIC REQUIREMENTS

- 7. A statement of the standard of evidence to be used to determine responsibility for all Title IX formal complaints of sexual harassment
- 8. Procedures and permissible bases for the complainant and respondent to appeal a determination of responsibility or a dismissal of a Title IX formal complaint or any allegation therein
- 9. A description of the supportive measures available to the Complainant and Respondent
- 10. Prohibition on using or seeking information under a legally recognized privilege unless the individual holding the privilege has waived the privilege.
- 11. Additional formal complaint procedures required by law including written notice of a formal complaint, consolidation of formal complaints, recordkeeping, and investigation procedures
- 12. Other local procedures as determined by the Superintendent.

TITLE IX COORDINATOR- WHAT DO WHEN A FORMAL COMPLAINT IS MADE

- Must provide written notice to complainant and respondent:
 - Grievance process
 - Allegations of sexual harassment including sufficient details known at the time (identify of parties, alleged conduct, date(s), location(s) of the alleged incident(s))
 - Statement that the respondent is presumed NOT responsible for the alleged conduct until a determination is made at the conclusion of the grievance process
 - Inform parties that they may have an advisor of their choice who may be but is not required to be an attorney
 - Right of each party to inspect and review evidence
 - The standard of evidence that will be used (preponderance of the evidence)
 - Inform of policy/student code of conduct that prohibits knowingly making false statements/submitting false information during an investigation
 - Notification of the formal complaint process including procedures for informal resolution and appeal of final decision
 - May attach a copy of FFH.

TITLE IX COORDINATOR WHEN A COMPLAINT IS DISMISSED

- Decides whether to dismiss a formal complaint
- Must be dismissed
 - Allegations do not constitute sexual harassment as defined
 - Did not occur in District program or activity
 - Consider in person effects of out of activity/program conduct
 - Did not occur in the United States
- Can (discretionary) be dismissed
 - Complainant no longer wants to pursue (wants to withdraw)
 - Respondent is no longer in the District
 - The investigation cannot be completed
- Must provide written notice of dismissal
 - Dismissal can be appealed

FORMAL COMPLAINT PROCESS – EVIDENTIARY STANDARD

- Board Policy FFH
 - Standard: Preponderance of the Evidence

ROLES

- Can use District employees in roles or can outsource
- Title IX Coordinator may be investigator but may not be Decision-Maker
- Investigator may not be decision-maker
- Investigators, Decision-Makers, Appeal Decision-Makers, and Informal Resolution Facilitators must be:
 - Impartial
 - Free from Bias
 - Free from Conflict of Interest

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**IMPARTIALITY
BIAS
CONFLICT OF
INTEREST**

IMPARTIAL

- This means being free from bias
- “Treating all rivals and disputants equally; fair and just”
- Neutral
- Nondiscriminatory
 - Example: Avoid sex stereotyping
- Decisions based on objective criteria rather than bias, prejudice

BIAS

- Concern about “cover-ups” or protection of one person or institution based on who the investigator/decision-maker is and their role
- “prejudice in favor of or against one thing, person, or group compared with another, usually in a way that is considered to be unfair.”
- Perceived does not mean actual

Gender Preferences Subconscious
Unconscious Judgement
Cognition
IMPLICIT BIAS
Stereotypes Behavior
Prejudice Race Research Decisions Disrespect
Unfair Ethnicity Psychologist
Reaction Beliefs People Groups
Social Hidden Subtle Train

CONFLICT OF INTEREST

- Aligned interests
- Conflicting interests
- Perceived does not mean actual

BOTTOM LINE...

- Go in with an open mind
- Go in with a clean slate
 - Example: Avoid prejudgment of facts, witnesses, and parties
- Be free from stereotypes based on anything, including sex stereotypes
- Do you have a conflict of interest? Perceived or real?
- Keep out all personal beliefs
- If you don't think you can do it or should do it... say something!
 - To Title IX Coordinator

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INVESTIGATORS

INVESTIGATORS

- As the title suggests, your job is to investigate the complaint
- However, you are not the Decision-Maker!
- The District has the burden of proof and burden to gather evidence
- Must be free from bias or conflict of interest, and you must be impartial
 - Bias
 - Conflict of interest
 - Impartiality

INVESTIGATOR – FIRST STEPS

- Confirm Notice to Parties was given; provide if not already given
 - Written notice of the school's grievance process
 - Whether or not there is an opportunity for informal resolution
 - Actual allegations and facts that would constitute sexual harassment
 - Presumption of innocence
 - Statement that the parties are entitled to advisor of their choice
 - Statement that the parties can request to inspect and review certain evidence
 - Information regarding the code of conduct and false statements

INVESTIGATORS – PLANNING THE INVESTIGATION

- Review the evidence that has been provided
- What are you researching/What are the allegations
- Review allegations within the context of the definition of sexual harassment
- What do you need to know?
- Create a list of needed evidence (changes along the way)
- Create a list of anticipated witnesses (changes along the way)
- Create an outline of questions for witnesses (but listen and adjust as necessary)
- *Notes may be discoverable
- Make sure witnesses have space to share information you may not have asked about specifically

INVESTIGATOR – CONDUCTING THE INVESTIGATION

- Meet with both parties promptly to conduct initial interviews, gather information, collect evidence
 - Meet individually (not both parties together)
- Give notice of meeting and opportunity to bring advisor
 - Written notice of date, time, location, participants, and purpose of any investigative interview or other meetings with sufficient time to prepare (not just pulling a student out of class)
- Each party may submit evidence, testimony, witnesses, or other information
- Cannot restrict the ability of either party to discuss allegations or to gather and present relevant evidence
- Require a party's written consent before using the party's medical, psychological, or similar treatment records
- May present fact and expert witnesses (in writing)
- Deadlines you set apply equally to both parties

INVESTIGATORS – FERPA INFORMATION

- Share with parties that FERPA protected information may be disclosed as part of the Title IX process
- Share with the parties that FERPA protected information cannot be disclosed outside of the process
- Investigation reports are not redacted for FERPA. Parents/students need to be aware of that.

INVESTIGATORS – MEETINGS WITH WITNESSES

- Best practices in questioning the Complainant, Respondent, and Witnesses:
 - Explain the groundwork for conducting the interview and hold all interviewees to the same standards of conduct and decorum
 - Maintain control of the interview, both in the substance of the questions and answers and in the conduct of those in the room (interviewees and their advisors)
 - Begin with general, more open-ended questions and work your way to more specific questions
 - Generalized questions can go to the elements of the alleged offense
 - Specific questions should be built off documentary evidence evaluated before the interview, information obtained from prior interviews, and other known facts
 - Keep in-mind that interviews are meant to determine disputed issues of fact, and questions should be directed at solving the disputed fact questions

INVESTIGATORS- NOTES ON EVIDENCE

- Relevance
 - OCR's Title IX Guidance provides, "The final regulations do not define relevance, and the ordinary meaning of the word should be understood and applied."
 - Federal Rule of Civil Procedure 401 provides a commonly understood definition of relevance:
 - 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.
 - Does it help to answer the allegations
 - Is it about the individuals involved
 - Is it allowable?
 - NO: sexual behavior or predisposition
 - EXCEPT to determine someone other than respondent committed the behavior
 - EXCEPT specific incidents related to complainant and respondent offered to prove consent
 - NO: information protected by legal privilege
 - NO: party's treatment records (absent voluntary consent)

INVESTIGATORS - NOTES ON EVIDENCE

- What is “inculpatory” and “exculpatory” evidence?
 - Inculpatory evidence shows or tends to show Respondent’s responsibility
 - Exculpatory evidence shows or tends to show the Respondent is not responsible

INVESTIGATORS - NOTES ON EVIDENCE

- Evidence about the complainant's sexual predisposition or prior sexual behavior is not relevant, unless:
 - such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant;
 - if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

INVESTIGATORS - INVESTIGATION

- A hearing is not required for K-12 institutions.
 - We will not hold hearings.
- After you have gathered all the evidence, you must give each party evidence directly related to the allegations provided and obtained as part of the investigation so they can respond.
 - Including evidence that the decision-maker may not rely upon.
 - Including inculpatory and exculpatory evidence
- Must give both parties a meaningful opportunity to respond to evidence
 - 10 days

INVESTIGATORS - REPORT

- Investigative Reports
 - After gathering evidence and giving an opportunity to review and respond, prepare an investigative report on the allegations that fairly summarize all relevant evidence
 - But do not reach a conclusion!

INVESTIGATORS - REPORT

- Investigative Reports will fairly summarize all relevant evidence and may* include the following:
 - Identification of the allegations
 - Any procedural steps taken (including any notifications to the parties)
 - Responses to each party to the allegations in the formal complaint
 - Evidence obtained by the District/Relevant evidence considered
 - Parties' responses to the evidence after review
 - Findings of Fact
 - Identification of District Policies, Student Code of Conduct provisions implicated
- *should

INVESTIGATORS - NOTES ON THE INVESTIGATIVE REPORT

- The purpose of the investigative report is to put the Decision-Maker in the best position to make a thorough, well-reasoned, and supported decision
- Organization and clarity are key in the investigative report
 - The most natural way for a neutral third-party to understand a story is to present it to them chronologically and fully
 - Show your work! Cite to the sources of information gathered in your investigation
 - Include the evidence you have received and considered.
 - Proofread to ensure that the investigative report meets the District's standards of professionalism and propriety

INVESTIGATORS - INVESTIGATIONS

- Simultaneously provide the investigation report to both parties
- Send a copy of the investigation report to the Title IX Coordinator
- Title IX Coordinator immediately assigns a Decision-Maker

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DECISION- MAKERS

DECISION-MAKER

- Responsibilities
 - Must be free from conflicts of interest or bias for or against Complainants or Respondents
 - Must be impartial
 - Needs to use independent judgment
 - Weigh the relevant evidence, and decide whether it meets the school's standard of evidence for sexual harassment allegations
 - Issue decision in reasonably prompt manner

DECISION-MAKER

- Role is to make a decision regarding allegations
- Can NOT be the person who received the formal complaint or investigated it, including the Title IX Coordinator
- May not issue written determination of responsibility until investigative report has been circulated to parties for 10 days (investigator circulates...wait 10 days before issuing decision)
- Must give each party the opportunity to present to you written questions they want asked of the other party or any witness
- You must present the questions to the other party if you determine them to be relevant, respectful, and not-abusive.
 - If you exclude a question, you must explain to the party proposing the question why it is not relevant
 - Give deadline to parties and witnesses to respond to questions
 - Cannot force an answer
 - Can allow reasonable follow up questions if you determine appropriate

INVESTIGATORS- NOTES ON EVIDENCE

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DECISION-MAKER RELEVANT EVIDENCE

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DECISION-MAKER

- Review evidence
- Assess credibility of evidence/witnesses
 - Be objective in the evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person's status as a Complainant, Respondent, or Witness
- Is there a policy violation?
- Remember standard is preponderance of the evidence (more likely than not)
- Cite reasons for conclusion
- Consider punishments/sanctioning

DECISION-MAKER

- Written Decision must include:
 - Identification of the allegations potentially constituting sexual harassment
 - Description of the procedural steps that were taken by the school on the way to getting to that point (notifications to parties, methods used to gather other evidence, etc.)
 - Findings of fact supporting the determination
 - Conclusions regarding the application of the Code of Conduct (or other policy) to the facts
 - Statement of and rationale for the ultimate determination/result of responsibility for each allegation and any disciplinary sanctions imposed on the respondent
 - Statement of and rationale for any remedies for the Complainant, addressing how those remedies will restore or preserve equal access
 - Statement of the District's procedures and basis for appeal for either party
 - Can set deadlines for appeal (put in decision)
 - **Must be sent to the parties simultaneously

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APPEAL DECISION MAKER

APPEAL DECISION-MAKER

- Either party may appeal
- Filed with the Title IX Coordinator
- Grounds for appeal
 - Procedural irregularity affected outcome of the matter
 - New evidence has been discovered that was not reasonably available at the time of the determination on responsibility or dismissal
 - Conflict of Interest of Title IX Coordinator, Investigator, or Decision-Maker, and the conflict of interest affected the outcome
 - Schools can offer additional grounds for appeal, so long as the grounds apply on an equal basis to the parties

APPEAL DECISION-MAKER

- Can NOT be the Decision-Maker, Investigator, or Title IX Coordinator
- Notify parties in writing and implement appeal procedures equally
- Both parties have equal opportunity to submit written statement supporting or challenging the outcome
- After considering parties' written statements, issue written decision and send it to the parties simultaneously
- Determination about whether the Respondent is responsible for the sexual harassment becomes final after appeal decision

RETALIATION (REMINDER)

- District or any person may not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX because the individual has:
 - Made a report or complaint
 - Testified
 - Assisted
 - Participated in or refused to participate in any manner in an investigation, proceeding, or hearing

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INFORMAL RESOLUTION FACILITATORS

INFORMAL RESOLUTION PROCESS

- Applies after a formal complaint is filed
- Both parties must consent
- Cannot use if employee - student

FACILITATOR

- Impartial
- Free from bias
- Free from conflict-of-interest

FACILITATOR

- Informal resolution may be of interest to some complainants
- Both parties have to agree
- Must file formal complaint first
- Can engage in informal process anytime before decision-maker makes final determination
- Can never do informal resolution when the allegation is sexual harassment of a student by an employee

FACILITATOR

- Who should informal facilitators be?
- Trained in mediation?
- Trained in conflict resolution?
- Trained in restorative practices?

FACILITATOR

- Give space to tell story
- Give space to share what they want to get out of process
- Be prepared to share lists of supportive measures
- Do you meet together in the same room or separate rooms?
- Remain neutral; do not push
- Require confidentiality

FACILITATOR

- If an agreement is reached
 - Put in writing
 - Be specific with the terms so there is not room for misinterpretation
 - Require confidentiality
 - Insert consequences for breach of terms or breach of confidentiality
 - Student Code of Conduct
 - Have check in provisions?

ADDITIONAL TITLE IX RESOURCES



ADDITIONAL TITLE IX RESOURCES

- OCR's Title IX Blog will provide updates on an ongoing basis
 - <https://www2.ed.gov/about/offices/list/ocr/blog/index.html>
- Summary of Major Provisions of the Department of Education's Title IX Final Rule
 - <https://www2.ed.gov/about/offices/list/ocr/docs/titleix-summary.pdf>
- TASB's Title IX Basics
 - <https://www.tasb.org/services/legal-services/tasb-school-law-esource/students/documents/title-ix-basics.pdf>

SOME PARTING WORDS

- “We know this much to be true: one rape is one too many. One assault is one too many. One aggressive act of harassment is one too many. One person denied due process is one too many. This conversation may be uncomfortable, but we must have it. It is our moral obligation to get this right. Campus sexual misconduct must continue to be confronted head-on. Never again will these acts only be whispered about in closed-off counseling rooms or swept under the rug. Not one more survivor will be silenced. We will not abandon anyone. We will amplify the voices of survivors who too often feel voiceless . . . We must continue to condemn the scourge of sexual misconduct on our campuses. We can do a better job of making sure the handling of complaints is fair and accurate. We can do a better job of preventing misconduct through education rather than reacting after lives have already been ruined. We can do a better job of helping institutions get it right. And we can do a better job for each other. The truth is: we must do better for each other and with each other.” – Betsy DeVos, September 7, 2017

THANK YOU!

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