

NEW TITLE IX REGULATIONS – TRAINING SESSIONS

# TITLE IX COORDINATOR TRAINING

DECEMBER 2, 2020

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PreK-12 Title IX Administrator



# GROUND RULES



- Questions
  - Raise your hand for relevant questions during training.
  - You can email questions during the presentation and we will make sure to address those questions during our break or at the end.
    - [julia@scottscrivenlaw.com](mailto:julia@scottscrivenlaw.com)
  - You can use the chat function for questions.
- Please keep your video on so we can see your smiling faces.
- Please mute on your end unless you are asking or responding to a question.
- We will be sending certificates of completion after every training.

# YOUR TITLE IX TOOLBOX



- Training materials from this session are available at the following link:

<https://scottscrivenlaw-my.sharepoint.com/:f:/p/julia/EjQxh9psGYVJvcgsIRswstkB-WH7UpY69F7O5rwqKjyudw?e=oL4GNv>

- The folder also contains other useful resources we will reference during the training.

# AGENDA



- 9:00 – 9:30 Introduction and Foundational Principles
- 9:30 – 10:30 Overview of New Regulations and Sexual Harassment Responsibilities
- 10:30 BREAK
- 10:45 Q & A
- 11:00 – 11:30 Overview of New Regulations and Sexual Harassment Responsibilities (Continued)
- 11:45 – 12:00 Wrap Up and More Q & A

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# **INTRODUCTION AND FOUNDATIONAL PRINCIPLES**



# **TITLE IX BACKGROUND**

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.

20 U.S.C. § 1681(a).

## SCOPE OF TITLE IX



- Title IX protects students, employees, applicants for admission and employment, and other persons from all forms of sex discrimination, including discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity.
- The essence of Title IX is that an institution may not exclude, separate, deny benefits to, or otherwise treat differently any person on the basis of sex unless expressly authorized to do so under Title IX or the Department's implementing regulations.

# EXAMPLES OF SEXUAL DISCRIMINATION IN EDUCATION

- Recruitment, Admissions & Counseling
- Financial Assistance
- Sex-based Harassment
- Athletics
- Pregnant and Parenting Students
- Discipline
- Single-Sex Education
- Employment
- Retaliation
- Treatment of Transgender Students



## TITLE IX ENFORCEMENT – REGULATORY



- United States Department of Education’s Office for Civil Rights (“OCR”) oversees Title IX compliance. OCR also enforces other federal civil rights laws that apply to schools.
- OCR issues regulations regarding Title IX. See 34 C.F.R. Part 106.
- OCR has the power to receive complaints alleging violations of Title IX, investigate complaints, issue remedial measures and sanctions, and even take away a school’s federal funding for violations of Title IX.

# TITLE IX ENFORCEMENT - LAWSUITS



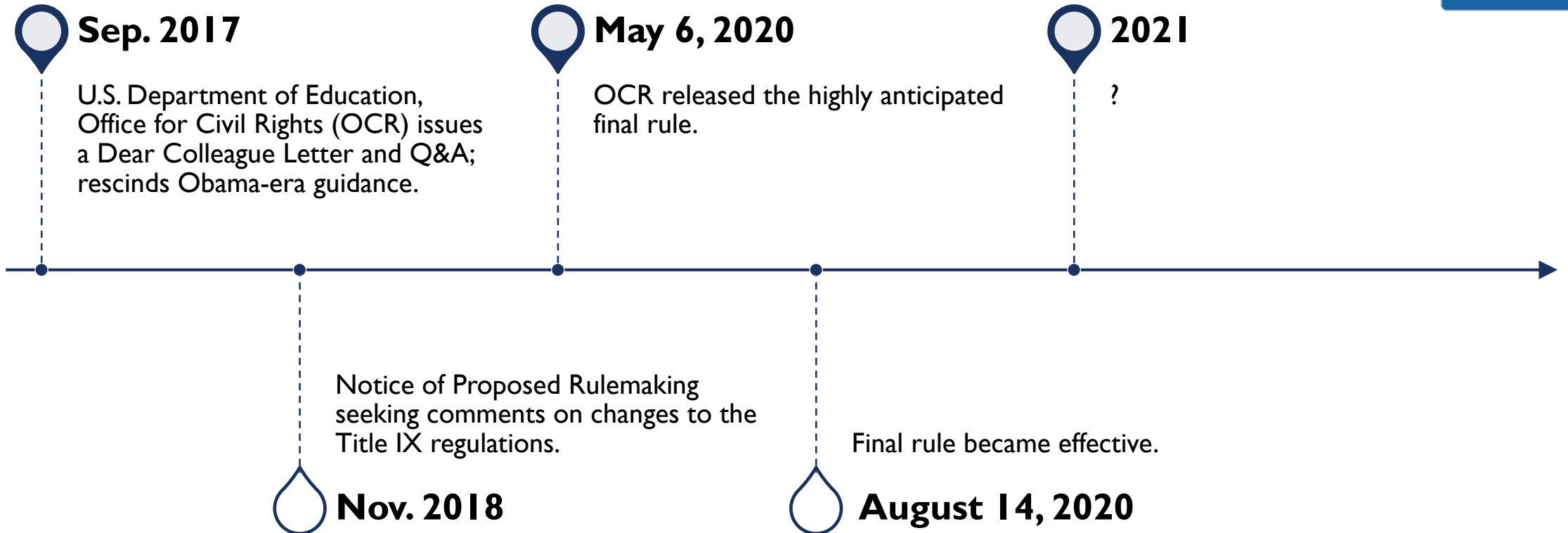
- Individuals may file private lawsuits to seek awards of money damages.
- *Franklin v. Gwinnett Public Schools* (1992): Money damages are an available remedy in a private lawsuit alleging a school's intentional discrimination in violation of Title IX.
- *Gebser v. Lago Vista Independent School District* (1998): A school district is liable for failing to respond to a teacher's sexual harassment of a student if a school official who had authority to institute corrective measures on the district's behalf had **actual notice** of, and was **deliberately indifferent** to the teacher's misconduct.
- *Davis v. Monroe County Board of Education* (1999): A school district is liable for failing to respond to a student's sexual harassment of another student if the district was **deliberately indifferent** to known acts of harassment in its programs or activities, and the harassment was **so severe, pervasive, and objectively offensive** that it effectively barred the victim's access to an educational opportunity or benefit.

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**NEW RULES; NEW OBLIGATIONS**  
**TITLE IX SEX HARASSMENT REGULATIONS**



# BACKGROUND ON TITLE IX REGULATIONS



## NEW TITLE IX LINGO (TERMS)

**Recipients:** School districts are now referred to as “recipients.”

**Complainant:** A person alleged to be the victim of conduct that could constitute sexual harassment.

**Respondent:** A person who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

**Supportive Measures:** These are your “interim measures.”

**Determination of Responsibility.** Finding whether a person is responsible for sexual harassment.

**Advisors:** Parties may have an advisor, who may be an attorney, participate in the process.

## NEW TITLE IX LINGO (DEFINITIONS)



### Sexual Harassment: Conduct on the basis of sex that satisfies one or more of the following:

- An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (i.e., *quid pro quo* sexual harassment);
- 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; OR
- "Sexual assault," "dating violence," "domestic violence," or "stalking," as defined by the Clery Act.

## NEW TITLE IX LINGO (DEFINITIONS)



### Actual Knowledge

- Notice of sexual harassment or allegations of sexual harassment **to any employee.**

### Obligation to Respond

- A school with **actual knowledge** of sexual harassment in a program or activity against a person in the U.S. must respond promptly and in a manner that is **not deliberately indifferent.**

## NEW TITLE IX LINGO (DEFINITIONS)



### Deliberate Indifference

- Failure to respond reasonably in light of known circumstances.
- (Old rule: The school must take immediate action to eliminate the sexual harassment or sexual violence, prevent its recurrence, and address its effects.)



# TITLE IX COORDINATOR



- All districts must designate at least one employee to coordinate their efforts to comply with and carry out their responsibilities under Title IX and notify all students of that employee's contact information.
- Consider multiple coordinators.

# TITLE IX COORDINATOR RESPONSIBILITIES



- Coordinate compliance.
- Have knowledge of the district's policies and procedures on sex discrimination and should be involved in the drafting and revision of such policies and procedures to help ensure that they comply with the requirements of Title IX.
- Coordinate the district's response to all reports and complaints involving possible sex discrimination to monitor outcomes, identify patterns and assess effects on the school climate.
- Provide training and technical assistance on school policies and procedures related to sex discrimination and develop programs to train and educate the school community on their rights and obligations under Title IX.
- New regulations: case management and record-keeping.

# NEW OBLIGATIONS FOR TITLE IX COORDINATOR



## ■ Title IX Coordinator(s)

- Must be called the “Title IX Coordinator.”
- Must be designated and authorized to coordinate compliance efforts.
- Must promptly contact Complainant, discuss available supportive measures (with or without a formal complaint), and explain process for filing a formal complaint.
- Responsible for effective implementation of any supportive measures and remedies.
- New documentation requirements:
  - Measures taken to restore or preserve equal access to the program or activity;
  - The basis for the conclusion that the District’s response was not deliberately indifferent.

# TITLE IX COORDINATOR RESPONSIBILITIES

## RECORD-KEEPING



The district maintains the following records for a period of seven years:

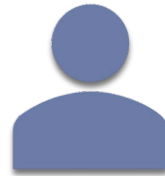
- Documentation of the district's response to a report or formal complaint of sexual harassment. Such documentation must include:
  - Any actions, including supportive measures, taken and designed to restore or preserve equal access to the district's education program or activity.
  - If supportive measures were not provided, documentation of the reasons why such a response was not clearly unreasonable in light of the known circumstances.
  - Documentation for the basis that its conclusion that its response to the report or complaint was not deliberately indifferent.
- Documentation of each sexual harassment investigation, including any determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the district's education program or activity.
- Any appeal and the appeal outcome.
- Any informal resolution and the outcome.
- All materials used to train Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process.

# TITLE IX TEAM MEMBERS



## Investigator

Person designated to investigate, gather evidence and compile an investigation report.



## Decisionmaker

Person who issues a written determination regarding responsibility.

Cannot be the same person as the Title IX Coordinator or the Investigator.



## Appeals Designee

Must offer both respondent and complainant an opportunity to appeal.

Cannot be the same person as the Title IX Coordinator, Investigator, or the Decisionmaker.

## EMPHASIS ON IMPARTIALITY



- Whomever the district selects, it is critically important that those individuals understand their duty to serve impartially during the process.
- Individuals must avoid prejudgment of the facts at issue.
- Individuals must avoid conflicts of interest and recuse themselves when they occur.
- Individuals must avoid bias in the process for Complainants or Respondents.

# DUTY TO AVOID BIAS AND CONFLICTS



- Your focus is the integrity of the process. Never an outcome.
- Recognize and understand what your biases are so that you can put them aside.
- Cultural competency – understand your microaggressions or unconscious biases.
- Check ego at the door.
- Conflicts of interest are not specifically defined in the regulations.
- Conflict of interest or bias of the Title IX Coordinator, investigator or decision-maker are grounds for appeal.

# POLICY DEVELOPMENT



- The new regulations require revisions to your Board Policies addressing Title IX.
- OSBA/NEOLA have provided templates.
- Review templates carefully to ensure alignment with your district's operations and preferences:
  - Title IX Team
  - Live hearings are optional.



# GRIEVANCE PROCEDURES – OCR'S 10 REQUIREMENTS

- Treat parties equitably.
- Objective evaluation of evidence.
- Training; no conflicts of interest or bias.
- Presumption of innocence.
- Reasonably prompt time frames.
- Description of range of outcomes.
- Standard of evidence.
- Right to appeal.
- Description of range of supportive measures.
- Privileges.

## REQUIREMENT I – TREAT PARTIES EQUITABLY



- The school's grievance process must treat Complainants and Respondents equitably by providing remedies to a Complainant if a Respondent is found responsible, and by following the prescribed grievance process imposing discipline on a Respondent.
- The remedies for a Complainant have to be designed to restore and preserve equal access to the school's education program or activity.
- Unlike supportive measures in place with or without a grievance process pending, a complainant's remedies CAN be punitive or disciplinary against the Respondent.

## REQUIREMENT 2 – OBJECTIVE EVALUATION OF EVIDENCE



- The school's grievance process must ensure an objective evaluation of all relevant evidence—including inculpatory and exculpatory evidence.
- Credibility determinations cannot be made on the basis of a person's status as a Complainant, Respondent, or witness.

## REQUIREMENT 3 – TRAINING; NO CONFLICTS OF INTEREST



- The individuals involved in the process—the Title IX Coordinator, investigators, decision-makers, or facilitators of informal, voluntary resolution efforts—must not have any bias or conflict of interest.
- These individuals must also be trained. The materials used to train Title IX personnel cannot rely on sex stereotypes, must promote impartial investigations and adjudications, and must be posted on each school’s website (and if a school does not maintain a website, make them available for public inspection upon request).

## REQUIREMENT 4 – PRESUMPTION OF INNOCENCE



- Under the school's grievance procedures, the Respondent must be presumed not responsible, so that any finding of responsibility only comes at the conclusion of a grievance process.

## REQUIREMENT 5 – REASONABLY PROMPT TIME FRAMES



- The grievance process must include reasonably prompt time frames for resolving formal complaints of sexual harassment.
- Temporary delays are permitted only for good cause and with notice to the parties. Good cause can include law enforcement activities, the absence of a party or witness, the absence of a party's advisor of choice, or the need to provide language assistance or accommodation of disabilities.

## REQUIREMENT 6 – DESCRIPTION OF RANGE OF OUTCOMES



- The grievance process must describe or list the range of possible remedies and disciplinary sanctions that could occur following a determination of responsibility.

## REQUIREMENT 7 – STANDARD OF EVIDENCE



- The grievance process must state which standard of evidence the school will use to reach a determination regarding responsibility, to be used for all sexual harassment proceedings.
- Schools can choose between the preponderance of the evidence standard and the clear and convincing evidence standard.
- Whichever standard the school chooses, it has to use that standard for all formal complaints of sexual harassment, whether the Respondent is a student, or employee, including a faculty member.
- All sexual harassment proceedings must have the same standard of evidence.



## REQUIREMENT 8 – RIGHT TO APPEAL



- The grievance procedures must contain the right to appeal the result of a grievance process, and information about how to invoke the right to appeal.
- Schools must offer an appeal to every party on certain bases, and schools have the option to expand the bases on which an appeal may be taken, as long as they apply those bases equally to both parties.

## REQUIREMENT 9 – DESCRIPTION OF RANGE OF SUPPORTIVE MEASURES



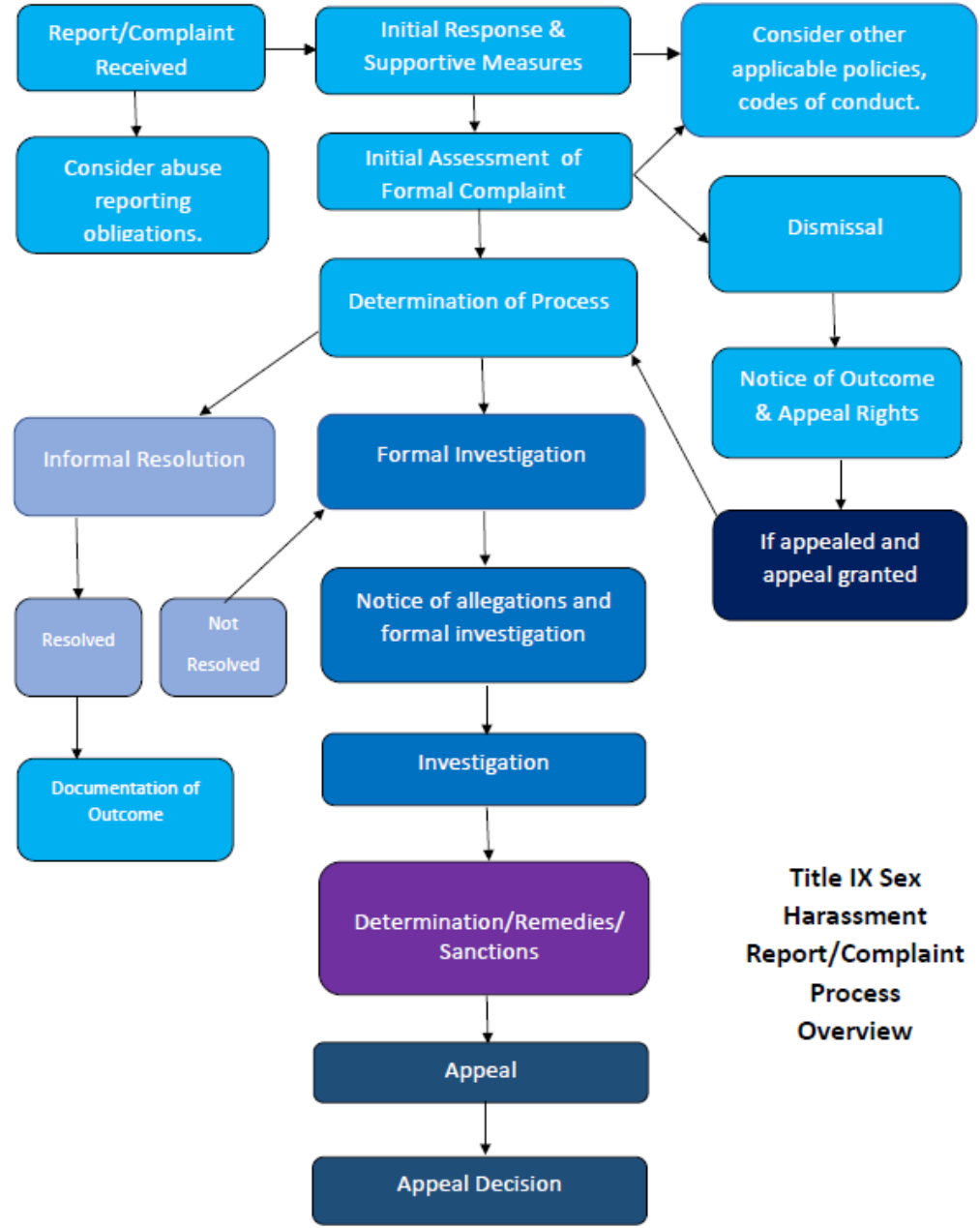
- The school's grievance procedures must describe the range of supportive measures available to Complainants and Respondents.

## REQUIREMENT 10 – PRIVILEGES



- The school's grievance process must explain that no information protected by a legal privilege, such as the attorney-client privilege or the doctor-patient privilege, can be used during an investigation unless the person holding that privilege has waived it.
- Neither a party nor the school is allowed to seek, permit questions about, or allow the introduction of evidence that is protected by a recognized privilege.
- Individuals can always opt to waive their own privileges, if they want, but they do not have to.

# TITLE IX PROCESS FLOWCHART



**Title IX Sex Harassment Report/Complaint Process Overview**

# OVERVIEW OF GRIEVANCE PROCEDURES

- Report
- Formal complaint
- Initial assessment
- Jurisdiction/dismissals
- Informal resolution
- Formal investigation
- Determination of Responsibility
- Appeals

# REPORT OF ALLEGED HARASSMENT



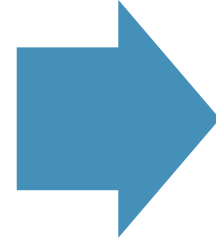
- Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.
- Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.
- School employees are mandatory reporters of alleged sex harassment.
- Districts must promptly respond to reports of sex harassment in a manner that is not deliberately indifferent.

# FORMAL COMPLAINT OF ALLEGED HARASSMENT



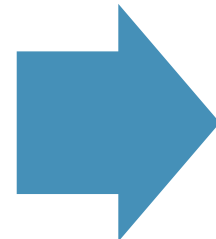
- Document filed or signed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that district investigate the allegation of sexual harassment.
- At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.
- A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under § 106.8(a), and by any additional method designated by the recipient.
- As used in this paragraph, the phrase “document filed by a complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the recipient) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.
- Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under the regulations.

Report



Respond

Formal  
Complaint



Investigate



**When the Title IX Coordinator receives a report of sex harassment, they must contact the Complainant and provide specific information:**

- **Discuss the availability of 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.**

**Contact  
Complainant  
Upon Receipt  
of a Report or  
Complaint**

# SUPPORTIVE MEASURES



- *Supportive measures* means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed.
- Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment.
- Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
- Must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures.
- The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

# TITLE IX COORDINATOR'S INITIAL ASSESSMENT



- Consider involvement/coordination with law enforcement.
- Consider other applicable policies, codes of conduct involved.
- Consider jurisdiction and mandatory/permissive dismissal.
- Consider Complainant's wishes regarding a formal complaint.
- Consider Complainant's request for confidentiality or no action.
- Consider whether to initiate a formal complaint and investigation.
- Consider district safety and the obligation to promptly respond in a manner that is not deliberately indifferent.
- Consider whether informal resolution could be appropriate, if a formal complaint is filed.
- Consider emergency removal/administrative leave.
- Consider consolidation of complaints.

# TITLE IX COORDINATOR-INITIATED COMPLAINT/INVESTIGATION



- When required by policy (i.e., where student alleges sexual harassment by an employee).
- Where the conduct is an alleged crime.
- Where disciplinary action against the employee or student would result if the allegations are true.
- Where district safety or the obligation to promptly respond in a manner that is not deliberately indifferent are implicated by failure to pursue a formal complaint/investigation.

- ✓ Notice of the grievance process, including any informal resolution process;
- ✓ Notice of the allegations, including sufficient detail (i.e., names of known parties, the conduct alleged to be sexual harassment, and the date and location of the conduct, if known) to allow the respondent to prepare a response before an initial interview;
- ✓ A statement that the respondent is presumed not responsible for the conduct and that responsibility will be determined at the conclusion of the grievance process;
- ✓ Notice of the parties' right to have an advisor (who may be, but is not required to be, an attorney) and to inspect and review evidence; and
- ✓ Notice of any provision in the code of conduct that prohibits knowingly making false statements or providing false information in the grievance process.

## Written Notice Receipt of Formal Complaint

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# JURISDICTION & DISMISSALS



# JURISDICTION



- To file a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient. (Recent OCR FAQs indicate an expansive view of this definition).
- “Education program or activity” includes locations, events, or circumstances over which the recipient exercised **substantial control** over both the **respondent and the context** in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

# JURISDICTION



- What about off campus conduct?
  - Jurisdiction may still lie if there is control over the Respondent and the context, even if it occurs off campus.
- For off-campus misconduct outside the jurisdiction of the district, there may be in-program effects.
- Even if no jurisdiction under Title IX, a non-disciplinary remedial response would be best practice.
- May also want to look to other policies and code of conduct.



# MANDATORY DISMISSAL OF FORMAL COMPLAINT



- Must dismiss a formal complaint if:
  - The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the law/policy, even if proved;
  - If the conduct alleged did not occur in the recipient's education program or activity;
  - If the conduct alleged did not occur against a person in the United States.
- Such dismissal does not preclude other action under the District's code of conduct or other policies.

# DISCRETIONARY DISMISSAL OF FORMAL COMPLAINT



- The District may dismiss a formal complaint or any allegations in the complaint if:
  - Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations;
  - The Respondent is no longer enrolled or employed by the District;
  - Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations.
- Upon dismissal, must promptly send written notice of the dismissal and the reasons to the parties.
- Dismissal may be appealed to the appeals decision-maker.

# EMERGENCY REMOVALS



- A school can remove a student from the school's education program or activities on an emergency basis if the Respondent poses an immediate threat to anyone's physical health or safety.
- The district must undertake an individualized safety and risk analysis, determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.
- A school may place an employee on administrative leave during an investigation.

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# INFORMAL RESOLUTION



# INFORMAL RESOLUTION CONDITIONS



- Districts may not offer an informal resolution process unless a formal complaint is filed.
- Districts may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment.
- Districts may not require the parties to participate in an informal resolution process.
- However, at any time prior to reaching a determination regarding responsibility the district may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the recipient provides written notice disclosing certain items (next slide).
- Prior to informal resolution, the district must obtain the parties' voluntary, written consent to the informal resolution process.
- Districts cannot offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

● Notice to the parties must include:

- ✓ the allegations,
- ✓ the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal 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 with respect to the formal complaint, and
- ✓ any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

## Written Notice Prior to Informal Resolution

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# INVESTIGATIONS



# THE INVESTIGATION



- **No bias approach.** Must maintain a presumption that the respondent is not responsible for the alleged conduct until a determination has been made.
- **Standard – choose only one.** Preponderance of the evidence or clear and convincing?
- **Presenting witnesses and evidence.** Provide an equal opportunity for the parties to present witnesses and evidence.
- If new allegations emerge that will be part of the investigation, you must provide the Respondent with a revised written notice of the specifics of those allegations.



# THE INVESTIGATION



- Reviewing evidence and report.
  - Must provide both parties and their advisors (if any) an equal opportunity to review all evidence related to the allegations in the formal complaint, even if you do not intend to rely on that evidence.
  - Prior to completing the report, the investigator must send each party and the party's advisor (if any) the evidence subject to inspection and review in an electronic format or hard copy and the parties get at least 10 days to submit a written response.
  - Must give the report to both parties at least 10 days prior to a hearing, or determination, for their review and written response.

# REPORT WRITING: THE INVESTIGATOR'S RESPONSIBILITY – BEST PRACTICE



- **Step One:**
  - Draft written investigation report.
    - Must fairly summarize the relevant evidence.
    - Give prior to completing the final investigation report, hearing, and determination of responsibility.
  - Give at least 10 days for the parties to prepare a written response to the draft, which the investigator considers in completing the final report.
- **Step Two:**
  - Draft final investigation report and provide to the Decisionmaker.

- ✓ **Fairly summarizes relevant evidence;**
- ✓ **Evaluates all relevant evidence objectively, including both inculpatory and exculpatory evidence, and**
- ✓ **Provides credibility determinations that may not be based on a person's status as a Complainant, Respondent, or Witness.**
- ✓ **The investigator submits the final report to the decision maker for a determination of responsibility.**

# Written Investigation Report

# DETERMINATION OF RESPONSIBILITY



- **Question Exchange:** After receiving the investigation report and before reaching a determination of responsibility, the decision maker must afford each party the opportunity to 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.
- Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are 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, or 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.
- The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

- ✓ **Applies the standard;**
- ✓ **Identifies the allegations that potentially constitute sexual harassment;**
- ✓ **Describes the recipient's procedural steps taken from the receipt of the complaint to the determination;**
- ✓ **Includes findings of fact supporting the determination;**
- ✓ **Includes conclusions regarding application of board policy to the facts;**
- ✓ **Includes a statement of, and a rationale for, the result as to each allegation, including a determination of responsibility, any disciplinary sanctions, and whether remedies to restore or preserve equal access to the recipient's education program or activity will be provided to the complainant; and**
- ✓ **Includes procedures and permissible bases for appeals.**

## Written Determination of Responsibility

# GROUNDS FOR APPEAL



Both parties have the right to appeal a determination of responsibility or a dismissal for the following reasons:

1. A procedural irregularity affected the outcome;
2. New evidence that was not reasonably available at the time of the determination and could affect the outcome;
3. Conflict of interest on the part of the Title IX Coordinator, Investigator, or Decisionmaker that affected the outcome; or
4. Other reasons as permitted by the recipient.

# APPEAL PROCESS



- Once an appeal is made, the recipient must give both sides written notice and an opportunity to submit a written statement in support of or challenging the determination.
- Appeals must result in a written decision that is provided to both parties simultaneously.
- Note: Carefully consider the appropriate appeal person(s) to serve as appeal decisionmakers, given the unique training requirements and prohibitions on conflicts of interest.

# CONFIDENTIALITY



Recipients cannot restrict either party's ability to discuss the allegations or gather and present evidence.

Recipients must keep confidential the identity of a person who complains or reports sexual harassment, including parties and witnesses, except as permitted by law or to carry out the purpose of these regulations.

Will these responsibilities be frustrated in practice?



## HYPOTHETICAL EXAMPLE



- Katie is a Junior on the school's dance team and has dated two different football players this year. She had sex with both of them and now that she has broken up with them, they've told the entire team about the details of everything they've done. They've shared intimate texts and sexting between the two of them and now the whole school knows. Katie has been called a "slut" and a "whore" by various classmates, but especially by Nick, her most recent boyfriend. Twice she has been in the hallway at school at her locker and had her butt grabbed by someone, and she doesn't know who it was. She confides in her school counselor about it and how she has missed school a couple of days in the last month because she feels so awful about it at school. She begs the counselor not to tell her parents or anyone else about what is happening, as she wants to handle it herself and hopes it will all just go away.

# QUESTIONS



- What's the counselor's obligation here?
- Does it matter that the counselor thinks she has confidentiality with the student?
- Let's assume the counselor does the right thing and contacts you.
- What do you do next?
- If Katie tells you she does not want to file a formal complaint, what do you do?
- What if Katie's Dad is the building administrator who would normally investigate?

## ANOTHER HYPOTHETICAL



- Billy is a Sophomore student who has struggled academically. His math teacher suggested he start meeting with her after school for private tutoring/review, at no cost. His parents are aware. Billy meets with his teacher for two months in her classroom with the door shut, and then during a tutoring meeting the teacher leans in towards him, puts her hand on his stomach, and kisses him. He was stunned, didn't say anything, and went home and told his parents. The following day the parents call the school counselor and tell her what happened. They do not want to see the teacher ever again and they do not want to participate in an investigation because it will be too traumatic for Billy.

# QUESTIONS



- Can Billy elect an informal resolution?
- What do you do outside the Title IX process?
- What if the teacher resigns?

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# MISCELLANEOUS REQUIREMENTS



# REQUIRED NOTICES



- Each district is required to provide notice of the following to certain groups:
  - Nondiscrimination Policy Statement.
  - Notice of the Title IX Coordinator's name or title, office address, electronic mail address, and telephone number.
  - Notice of the District's grievance procedures and grievance process, including how to file a complaint of sex discrimination, how to report file a formal complaint of sexual harassment, and how the District will respond.

# NONDISCRIMINATION NOTICE



- The District does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by Title IX and its regulations not to discriminate in such a manner.
- The requirement not to discriminate in the education program or activity extends to admission and employment and inquiries about the application of Title IX and its regulations may be referred to the Title IX Coordinator or the Assistant Secretary for Civil Rights of the U.S. Department of Education.

# NONDISCRIMINATION NOTICE



- Each district must provide notices to the following:
  - Applicants for admission and employment
  - Students
  - Parents/guardians of elementary and secondary school students
  - Employees
  - All unions or professional organizations with collective bargaining agreements or professional agreements with a school or institution



# PUBLICATION REQUIREMENTS



- Districts must “prominently” display the name or title, office address, electronic mail address and telephone number of the employee(s) designated as the Title IX Coordinator(s) and its nondiscrimination notice on its website and in handbooks.
- Districts must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part and a grievance process that complies with the requirements for formal complaints.

# TRAINING REQUIREMENTS



- Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process must receive training on:
  - the definition of sexual harassment in the regulations,
  - the scope of the recipient's education program or activity,
  - how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and
  - how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

# TRAINING REQUIREMENTS



- Districts must ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in the regulations.
- Districts must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in the regulations.

# TRAINING REQUIREMENTS



- Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.
- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution must be made available on its website, if it has one.
- Training materials must be kept for 7 years.

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**THANK YOU!**

