

Title IX Sexual Harassment Regulations: The Role of Title IX Coordinators



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Training Agenda

- Overview of Title IX Regulations
- Overarching Considerations for All Title IX Personnel
- Mandates and Compliance Components
- Coordinator Staffing Options
- Coordinator Checklist
- Coordinator's Responsibilities in Title IX Grievance Process
- Record-Keeping Requirements





Thank You For Serving

As a Title IX coordinator, you are an invaluable resource for every person in your district regarding rights under Title IX, including students, parents/guardians, employees, and applicants for employment.



Title IX Overview





What is 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**.”

-Title IX of the Education Amendments of 1972





The Impact of Title IX

Before



After





“Sexual Harassment” Definition - § 106.30(a)

“**Sexual Harassment**” = conduct on the basis of sex that satisfies one or more of the following:

1. 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);
2. 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
3. “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

“**Education program or activity**” = any location, event, or circumstance over which the recipient exhibits substantial control over both the alleged harasser and the context in which harassment occurred

SH definition does not turn on method of harassment; can be via e-mail, internet, or other technologies, as well as in-person, mail, handwritten, or other communications





General Response Standard - § 106.44(a)

- A recipient with **actual knowledge**
- of **sexual harassment** (as defined on previous slide)
 - in an **education program or activity** of the district
 - against a person **in the United States**,
- must **respond promptly**
- in a manner that is **not deliberately indifferent**.

“**Actual knowledge**” means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator, any ISD official who has authority to institute corrective measures on behalf of the ISD, or to any employee of an elementary and secondary school.

“**Education program or activity**” includes locations, events, or circumstances over which the district exercised substantial control over both the respondent and the context in which the sexual harassment occurs

New regulations do not apply to sexual harassment alleged to have happened outside the U.S.

- Districts may still address this under the student code of conduct.
- Note that other Title IX prohibitions *do* apply outside the U.S.

“**Deliberately indifferent**” means clearly unreasonable in light of the known circumstances.

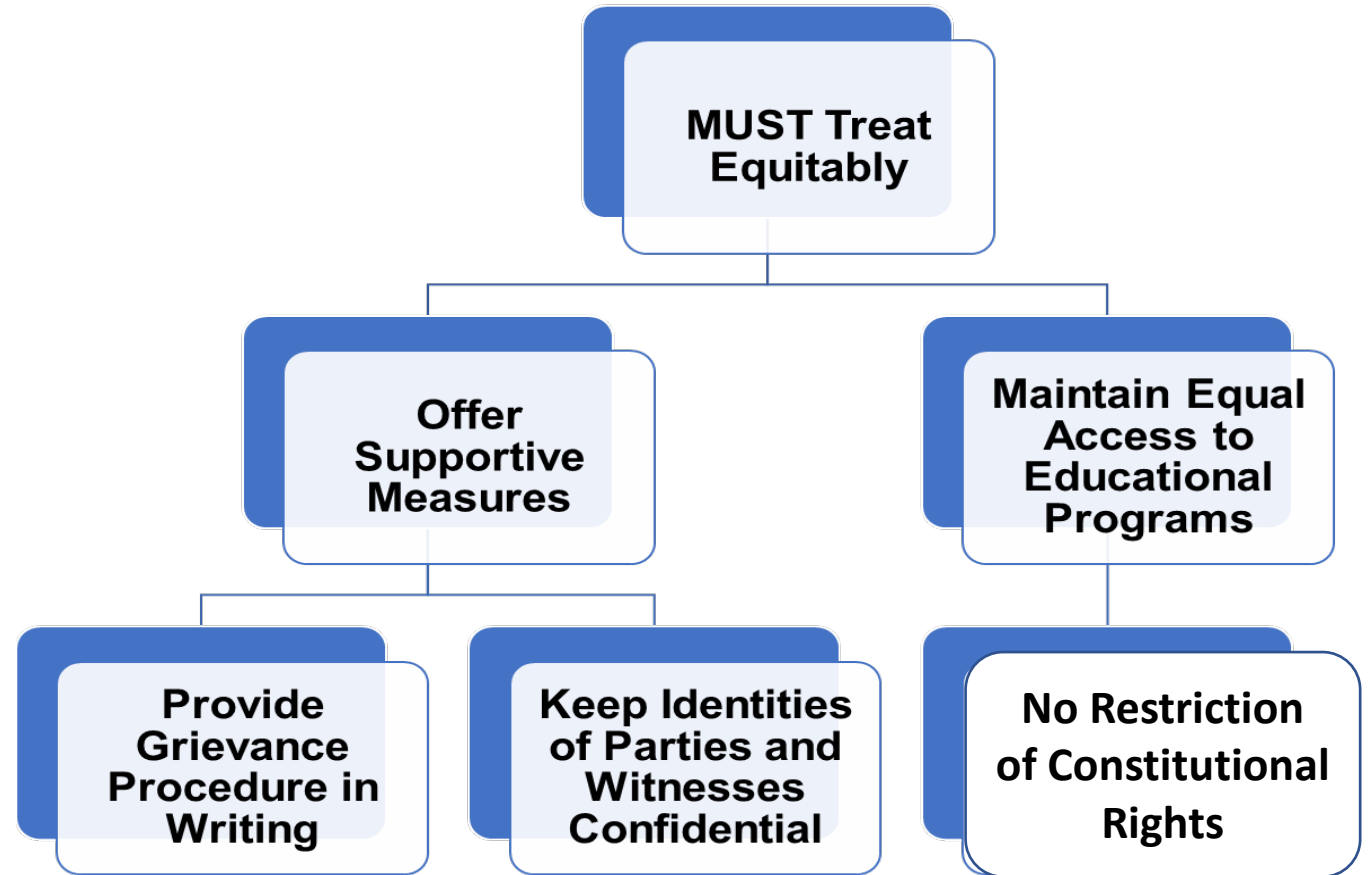




Rights of the Parties in Connection with District's Response to Sexual Harassment

“A district's response must treat complainants and respondents equitably by:

- **offering supportive measures** to a complainant, and
- **following a grievance process** that complies with § 106.45 **before the imposition of any disciplinary sanctions** or other actions that are not supportive measures against a respondent.”





Response to a Formal Complaint § 106.44(b)

In response to a formal complaint, districts must follow a **grievance process** that complies with § 106.45 before imposing disciplinary sanctions against a Respondent.



Overarching Considerations for All Title IX Personnel





Avoidance of Bias & Conflicts of Interest

All Title IX personnel must serve impartially and free from conflicts of interest or bias against the individual complainant and respondent involved in a formal complaint or against complainants and respondents generally.

- Bias includes but is not limited to bias against an individual's sex, race, ethnicity, sexual orientation, gender identity, disability, immigration status, or financial ability.





Prompt Timelines

Absent good cause for the District to delay an investigation, the Title IX formal-complaint process, beginning with filing or signing of the formal complaint and ending with the determination of responsibility, should be completed within a **reasonable time frame**.

- Your district's Title IX grievance process will establish that time frame.
- Days used for any voluntary informal resolution process do not count towards the time frame for concluding the formal complaint process.
- The day a document is filed is "day zero." The next District business day is "day one."





Modifying Timelines

- **All time limits shall be strictly followed** unless modified by the parties' mutual written consent or extended by the District for good cause. If the District grants an extension of time for one party, the same time extension must also be granted to the other party.
- If the District temporarily delays or extends timelines associated with the formal complaint process, the Title IX Coordinator shall provide a written explanation to the parties of the good cause basis for the delay or extension.
 - Permissible modifications to timelines include the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; the need for language assistance or accommodation of disabilities; or other good cause as determined by the Title IX Coordinator.
- The District shall make reasonable attempts to schedule meetings at a time mutually agreeable to all parties. However, extensions should not unnecessarily extend the timeline established in District policy for concluding the formal complaint process.





Confidentiality

The District must keep information confidential as required by law *except as necessary to*:

- provide supportive measures,
- conduct proceedings under the formal complaint process, when disclosure is required by law, or when permitted by the District in compliance with FERPA and state law, or
- otherwise carry out the purposes of the Title IX Regulations

- District may not restrict the ability of the parties to discuss the allegations under investigation or to gather and present relevant evidence.
- **A complainant's identity, if known, must be disclosed to the respondent once a formal complaint is filed by a complainant or signed by the Title IX Coordinator.**





Confidentiality of Parties' Identities

Other than the limited exceptions to confidentiality discussed on the previous slide, **Districts must keep confidential the identities** of anyone who has reported sexual harassment or who is alleged to be a perpetrator of sexual harassment.

OCR Warning

If a District discloses the identity of a party in circumstances other than the three limited confidentiality exceptions, OCR may deem the disclosure to be an act of improper **retaliation** against a party.





Role of Parents/Guardians and Advisors

Parents/guardians may act on their child's behalf at any time during Title IX Grievance Process.

Each party may be accompanied by an **advisor** of the party's choice during the interview with the investigator or other meetings during the formal complaint process.

Advisor may be, but is not required to be, an attorney.





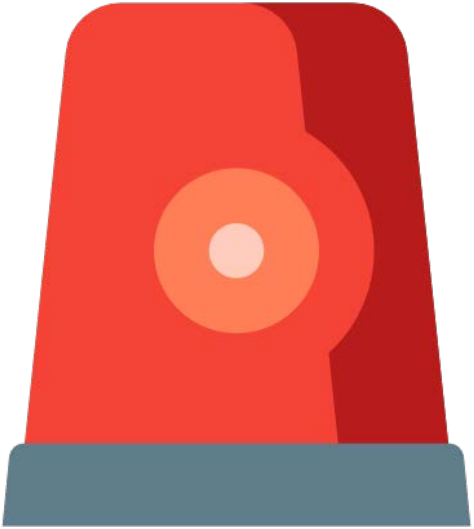
Advisors & Confidentiality

1. In order to preserve the confidentiality of student information protected by FERPA, the **District may require the parent of a minor student to sign a release form** indicating consent to allow the District to release information related to the allegations to the designated advisor.
2. District must inform any designated advisors that **confidential information** received during the Title IX formal complaint process, including the evidence received for inspection and review as well as the investigation report, **may be used only for purposes of the Title IX formal complaint process** and may not be further disclosed or disseminated.
3. Note: Any restriction or requirement regarding an advisor must apply equally to all parties.





Required Reporting



- At any point during a District's investigation that evidence is uncovered that requires reporting to law enforcement, CPS, SBEC, or another entity, District employees must take the necessary actions to do so in compliance with law or board policy.





Equitable Treatment

- A District's treatment of complainants, respondents, witnesses, and any other person involved in a formal complaint process must not discriminate on the basis of sex.
- All parties involved must be treated fairly, with dignity, respect, and sensitivity and without bias, prejudice, or reliance on stereotypes.





Presumption of Nonresponsibility

All District actions must presume that the respondent is **not responsible** for the alleged conduct until after a final determination in a formal complaint process.

In a formal complaint process, a respondent may face Title IX disciplinary sanctions for sexual harassment only after a fair process determines responsibility.

However, even if a Title IX formal complaint is not filed or signed, the District may investigate and respond to prohibited conduct in accordance with board policies and the Student Code of Conduct.





Standard of Evidence: Preponderance of the Evidence

TASB Model Grievance Process: “The District uses the preponderance of evidence standard of evidence to determine responsibility unless stated otherwise in FFH(LOCAL).”

- Same standard must apply to all formal complaints (employees and students)

51%

“Preponderance of the Evidence” means that a proposition is more likely than not to be true.





Privileged Information

Districts cannot use information protected under a legally recognized privilege unless the person holding the privilege has waived it.

If a party seeks or uses information protected under a legally recognized privilege, the party must provide written documentation indicating that the individual holding the privilege has waived the privilege and consents to use of the information for purposes of the formal complaint process.



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District Bears the Burden of Proof

The **burden of proof** and **burden of gathering evidence** sufficient to reach a determination regarding responsibility **rests with the District** and not with the parties.



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- **Parties have right to participate fully and robustly** in investigation process if they choose by gathering evidence, presenting fact and expert witnesses, reviewing the evidence gathered, responding to investigative report, and asking questions of other parties and witnesses before the determination of responsibility.





Understanding “Relevance”

Evidence is considered relevant if:

- (1) it has **any tendency to make a fact more probable or less probable** than it would be without the evidence; and
- (2) the **fact is of consequence** in determining the complaint.

Rape-Shield Protections for Complainants

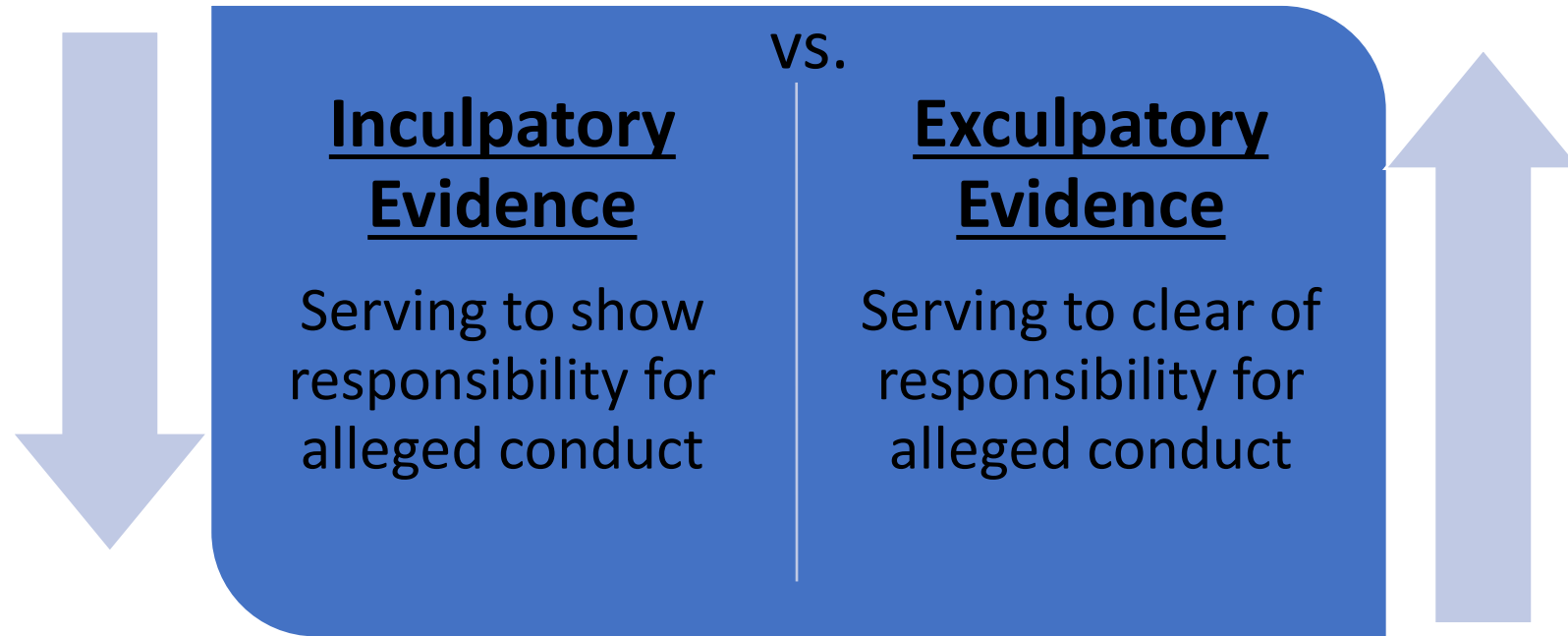
Evidence about a **complainant’s prior sexual behavior or sexual predisposition is not relevant** unless the evidence:

- is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
- concerns specific incidents of the complainant’s prior sexual behavior with respect to the respondent and is offered to prove consent.





Exculpatory vs. Inculpatory Evidence



Districts must consider both exculpatory and inculpatory evidence and must provide the parties an equal opportunity to present and review such types of evidence.



Mandates and Compliance





Title IX Coordinator Mandate

All educational institutions receiving Federal financial assistance **MUST designate and authorize** at least one employee to coordinate their efforts to comply with and carry out their responsibilities under Title IX.





District Compliance

- One of the most important facets of the Title IX coordinator's responsibility is helping to ensure the district's compliance with Title IX's administrative requirements.



The Title IX Coordinator SHOULD



- Work closely with many different members of the school community, such as administrators, counselors, athletic directors, and legal counsel.
- Be visible to the school district community.

The Title IX Coordinator SHOULD



- Provide Title IX personnel the support they need to ensure consistent practices and enforcement of the district's policies and compliance with Title IX.
- Be available to meet with the school community, including other employees, students, and parents or guardians, as needed to discuss any issues related to Title IX.

TITLE



The Title IX Coordinator MUST



Ensure that members of the school community are aware of their rights under Title IX, have the contact information for the Title IX coordinator, and know how to file a complaint alleging a violation of Title IX.





Title IX Coordinator

Investigator

Decisionmaker

Appellate
Decisionmaker

Informal Resolution
Facilitator



The Title IX
Coordinator MUST

Ensure all Title IX personnel mandated under the new regulations are identified, trained, and supported to work effectively and collaboratively in their specific roles.





Monitor and Guide District Compliance

- Establish official grievance process to respond to allegations of sexual harassment.
- Update District Policy and Handbooks.
- Provide notice of Title IX Coordinator and Non-Discrimination Policy.
- Train all employees about what “sexual harassment” is under the new regulations and how to respond.



Staffing Options





Coordinator Staffing Options

- ✓ There may be more than one Title IX coordinator in a district.
 - ✓ Certain employees may be designated to coordinate specific Title IX compliance issues (e.g., gender equity in academic programs or athletics, harassment, or complaints from employees).
- ✓ If a district has multiple Title IX coordinators, then it should designate and authorize **one lead Title IX Coordinator** who has ultimate oversight responsibility.



Coordinator Checklist





Title IX Coordinator Checklist

- ☐ **Identify Title IX district personnel**
- ☐ **Facilitate the training of all Title IX district personnel:**
 - Investigators
 - Decision-makers
 - Appellate Decision-makers
 - Informal-Resolution Facilitators
- ☐ **Identify 3rd-party provider support, if applicable**





Title IX Coordinator Checklist (cont.)

- ☐ Coordinate and implement district Title IX procedures.
- ☐ Train the school community concerning sexual harassment and how to file a complaint.
- ☐ Monitor reports and complaints to ensure compliance with all components of the Title IX grievance process.
- ☐ Work with law enforcement when necessary.
- ☐ Establish a system for the prompt and equitable resolution of complaints.





Title IX Coordinator Checklist (cont.)

- ☐ Coordinate the district's response to all complaints involving possible sex discrimination
- ☐ Monitor outcomes
- ☐ Identify patterns
- ☐ Assess effects on campus climate





Title IX Coordinator Checklist (cont.)

- ☐ Develop a method to survey the school climate and coordinate the collection and analysis of information from that survey.
- ☐ Monitor students' participation in athletics and across academic fields and programs.
- ☐ Ensure all required notices, reporting mandates, and records retention remain in compliance with the new Title IX regulation.





Title IX Coordinator Checklist (cont.)

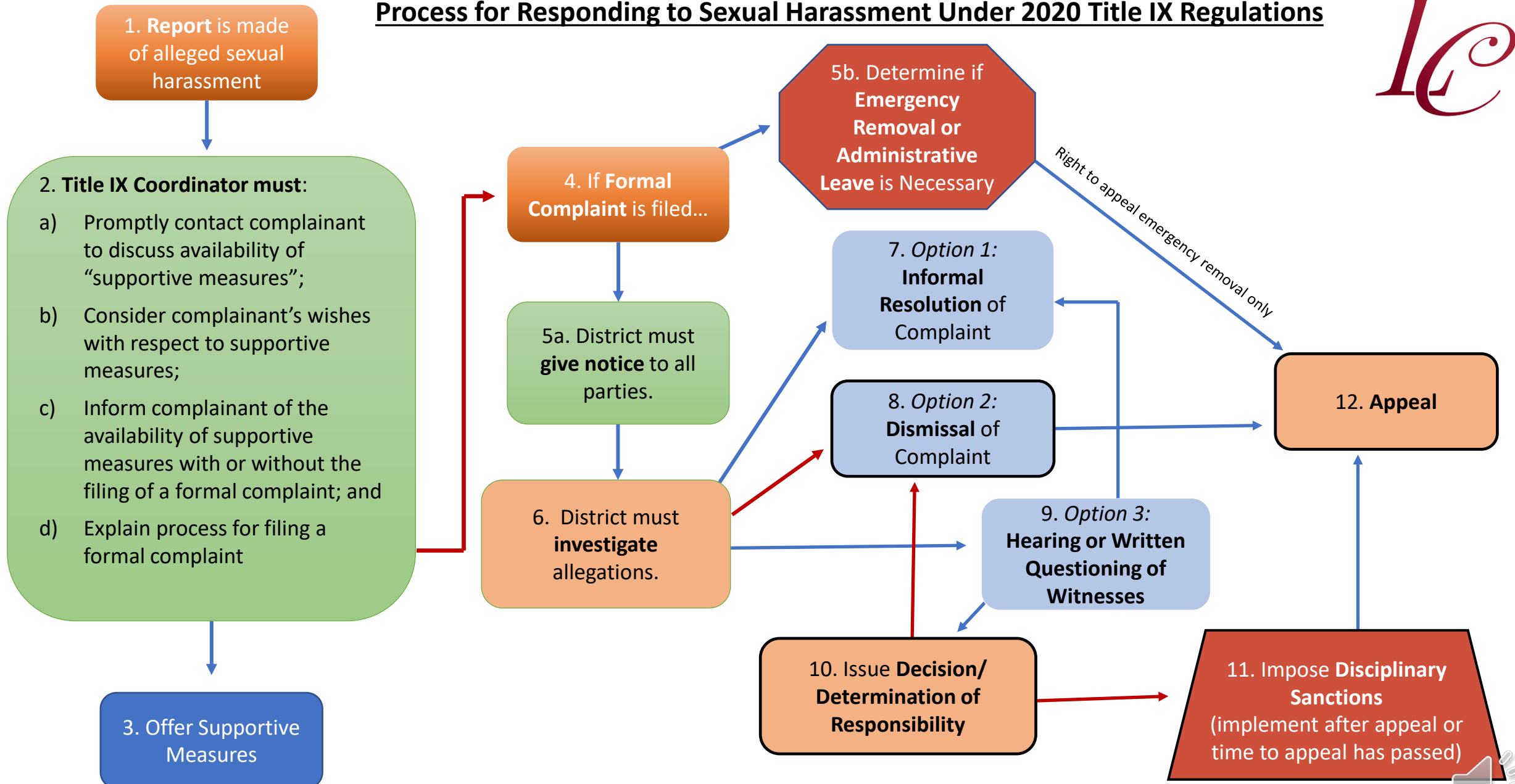
- ☐ Provide training and technical assistance on school policies related to sex discrimination.
- ☐ Develop programs on issues related to Title IX to assist the district in making sure that all members of the school community are aware of their rights and obligations under Title IX.
- ☐ Regularly assess the adequacy of current training opportunities and programs and propose improvements as appropriate.



Title IX Grievance Process: Responsibilities of the Title IX Coordinator

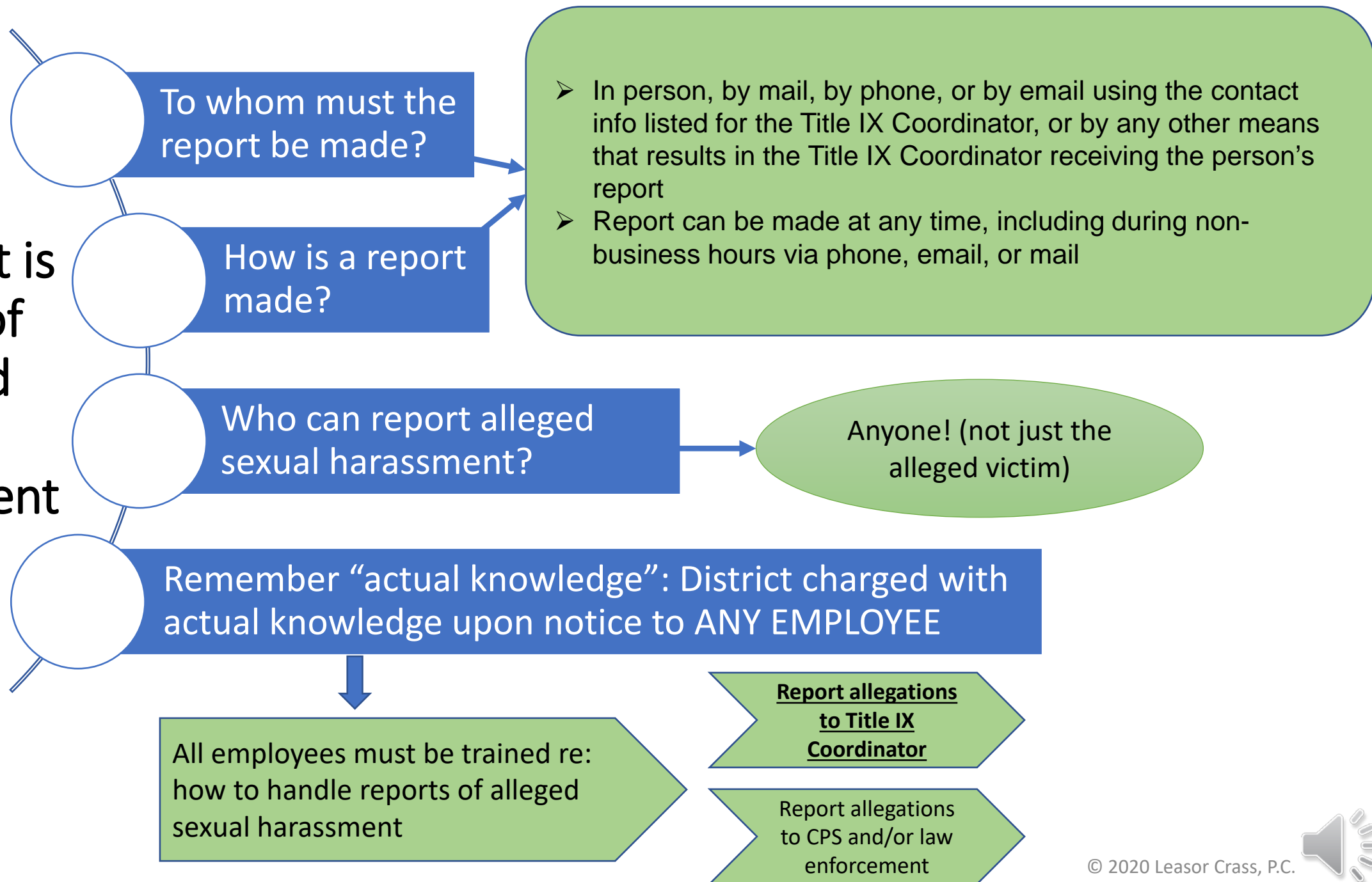


Process for Responding to Sexual Harassment Under 2020 Title IX Regulations





1. Report is made of alleged sexual harassment



2. Title IX Coordinator – Discussion with Complainant



After a report is made of alleged sexual harassment, the Title IX Coordinator must:

- a) Promptly contact complainant to discuss availability of “supportive measures”;
- b) Consider complainant’s wishes with respect to supportive measures;
- c) Inform complainant that supportive measures are available with or without the filing of a formal complaint; and
- d) Explain process for filing a formal complaint under Title IX.





2. Title IX Coordinator Action

When the Coordinator determines that an allegation of sex-based harassment in a District program or activity, if proved, would meet the definition of sexual harassment under Title IX, the Coordinator must follow the district's Title IX grievance procedures.

- Anonymous reports should be addressed by the Coordinator if there is an identifiable party.
- The Coordinator may consolidate formal complaints or separate proceedings if the allegations of sexual harassment arise out of the same facts or circumstances.





3. Supportive Measures

- **Purpose:** Supportive measures should be designed to restore or preserve equal access to the education program or activity without “unreasonably” burdening the other party.

What are Supportive Measures?

- Non-disciplinary, non-punitive, individualized services
- offered as appropriate and without charge to a complainant or a respondent
- before or after the filing of a formal complaint, or where no complaint has been filed

Examples:

Counseling, course modifications, schedule changes, and increased monitoring or supervision

CAUTION: A supportive measure that completely removes a respondent from an activity would likely be considered punitive.





3. Supportive Measures: TIXC Duties

The Title IX Coordinator is responsible for effective implementation of supportive measures and will serve as the point of contact for any questions or concerns related to supportive measures.

- Supportive measures must be offered to a complainant and, as appropriate, also to a respondent.
- Supportive measures must be offered regardless of whether a formal complaint is initiated, or whether the complainant participates in the formal complaint process.





3. Supportive Measures: TIXC Duties (continued)

- **The Title IX Coordinator must document whether a complainant elects to accept or decline the supportive measures offered.**
- The Title IX Coordinator's initial response and interaction may be directed solely at the parent of the alleged victim when appropriate based on the circumstances.



4. Formal Complaint



Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator **alleging sexual harassment** against a respondent and **requesting that the recipient investigate** the allegation of sexual harassment.

Complainant may file a formal complaint with the Title IX Coordinator by mail, email, or other method made available by ISD.

Title IX Coordinator may sign the complaint if the Complainant is unwilling to file a formal complaint.

- OCR included this option to ensure that an ISD does not respond to sexual harassment with deliberate indifference.
- This could involve implementing the formal grievance procedure over complainant's objections.
- Note that the complainant must still be provided access to supportive measures and receive written notice of steps in the grievance procedure even if they are not a willing participant in the procedure

Parent or guardian may act on student's behalf at any time during process.

At time of filing complaint, a complainant must be participating in or attempting to participate in the education program or activity of the ISD. (Complaints cannot be filed by or o/b/o former students.)

Filing of Formal Complaint triggers District's duty to investigate.



5a. Notice to be Provided After Formal Complaint is Filed

Upon receipt of a formal complaint, **District must provide the following written notice to all known parties:**

- (1) Notice of the **District's grievance process**, including any informal resolution process.
- (2) Notice of the **allegations of sexual harassment**, including sufficient details known at the time and **with sufficient time to prepare a response before any initial interview**.
 - Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under the regulations, and the date and location of the alleged incident, if known.

The written notice must also:

- include a statement that **the respondent is presumed not responsible** for the alleged conduct;
- include a statement that a determination regarding responsibility is made at the conclusion of the grievance process;
- inform the parties that they **may have an advisor of their choice**, who may be, but is not required to be, an attorney;
- inform the parties that they **may inspect and review evidence**; and
- inform the parties of any provision in the district's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

Note: If, in the course of an investigation, the district decides to investigate allegations about the complainant or respondent that are not included in the written notice provided, the district must provide notice of the additional allegations to the parties whose identities are known.



5b. Determine if
Emergency
Removal or
Administrative
Leave is
Necessary

5b. Emergency Removal: TIXC Duties



Nothing in [the Title IX Regulations] precludes a recipient from removing a respondent from the recipient's education program or activity on an emergency basis, provided that the recipient:

1. undertakes an **individualized safety and risk analysis**,
2. determines 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
3. **provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.**

An emergency removal does not modify any rights under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

- **School districts must coordinate their compliance efforts with special education staff members.**
- Emergency removal of a student in a Title IX proceeding could potentially constitute a change of placement triggering procedural protections under IDEA or Section 504.





6. Investigation: TIXC Duties

6. District must **investigate** allegations.

- **Assign the formal complaint to an Investigator.**
 - ✓ Can be a district employee or third-party provider.
 - ✓ Cannot be same person as any other role, except Title IX Coordinator.
- **Title IX Coordinator may conduct the investigation for a formal complaint.**
- **Ensures a written investigative report is produced and properly distributed to the parties and representatives.**





7. Informal Resolution: TIXC Duties

7. Option 1:
Informal Resolution of
Complaint

- The Title IX Coordinator may offer but may not require a party to participate in a voluntary informal resolution process, such as mediation.
- Not allowed for allegations involving an employee sexually harassing a student.
- **Either party may request informal resolution by making a written request to the Title IX Coordinator, who will promptly notify the other party of this request.** The other party is not required to agree to participate.

**Formal Complaint
MUST Be Filed 1st**

ASSIGN Informal Resolution Facilitator

- *District employee or third-party provider.*
- Should not be same person as any other role.





7. Informal Resolution (cont.)

- If a party declines or at any time withdraws from an informal resolution process, the Title IX Coordinator will notify the other party that the informal resolution process has been terminated and resume the formal complaint process.
- Prior to facilitating or designating another person to facilitate the informal resolution process, the Title IX Coordinator will provide both parties written notice.

The notice of an informal resolution MUST comply with the Title IX notice requirements specified in board policy.





8. Dismissal: TIXC Action

8. Option 2: Dismissal of Complaint

Mandatory Dismissal IF:

- Allegation would not constitute “sexual harassment” as defined in section 106.30 even if proven;
- Did not occur in the school’s program or activity; OR
- Did not occur in the United states.

**Can still address these complaints under non-Title IX policy/Student Code of Conduct.*

Discretionary Dismissal IF:

- Complainant notifies the Title IX Coordinator in writing requesting to withdraw the formal complaint.
- Respondent’s enrollment or employment ends.
- Specific circumstances prevent recipient from gathering evidence sufficient to reach a determine (e.g., passage of time, lack of cooperation by complainant).

OCR’s commentary alludes to the passage of several years between a formal complaint and the alleged conduct, or a complainant ceasing to cooperate with the grievance process, as examples of “specific circumstances.”

Upon dismissal of a formal complaint or an allegation, the Title IX Coordinator will promptly provide written notification to both parties. Dismissal of an allegation or allegations does not preclude action under another provision of the code of conduct.





9. Hearing: TIXC Action

*9. Option 3:
Hearing or Written
Questioning of
Witnesses*

- **Assign the formal complaint to a Decision-maker.**

- ✓ District employee or third-party provider.
- ✓ Cannot be same person as any other role.





10. Determination of Responsibility: TIXC Action

10. Issue Decision/
Determination of
Responsibility

- **Ensures evidence is evaluated and a written determination of responsibility is issued.**

The district must provide the written determination to the parties simultaneously.

Decision-maker(s) must issue a written determination regarding responsibility.

- To reach this determination, decision-maker must apply the standard of evidence chosen by the District for its Title IX grievance process (preponderance of the evidence or clear and convincing).





11. Disciplinary Sanctions & Remedies: TIXC Action

11. Impose **Disciplinary Sanctions**
(implement after appeal or time to appeal has passed)

Students

- **Appropriate steps should be taken to end the harassment.**
- Enforce the school's code of student conduct while considering the impact of separating a student from her or his education.
- *Any disciplinary decision must be made as a proportionate response to the violation.*

Employees

- **Follow Board Policy, District Administrative Regulations, and Employee Handbook protocols.**
- Must complete Title IX grievance process before disciplining an employee for sexual harassment.
 - *Note that a District cannot use its Title IX informal resolution process where there is alleged sexual harassment of a student by District employee.*
- Possible disciplinary sanctions: directives, reassignment, nonrenewal, termination.
- Remember SBEC reporting duty under Texas law.





12. Appeal: TIXC Action

12. Appeal

District must offer both parties an **appeal from a determination regarding responsibility**, and **from a district's dismissal of a formal complaint or any allegations therein**, on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
 2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
 3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
- A recipient may offer an appeal equally to both parties on additional bases.

TIXC Duty: ASSIGN Appellate Decision- Maker

- ***District employee or third-party provider.***
- **Cannot be same person as any other role.**

As to all appeals, the district must:

- A. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- B. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
- C. Ensure that the decision-maker(s) for the appeal does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent;
- D. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- E. Issue a written decision describing the result of the appeal and the rationale for the result; and
- F. Provide the written decision simultaneously to both parties.



Records





Record-Keeping

A district must maintain for a period of **seven years** records of –

(A) **Each sexual harassment investigation** including

- any determination regarding responsibility and any audio or audiovisual recording or transcript of any live hearing,
- 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;

(B) **Any appeal** and the result therefrom;

(C) **Any informal resolution** and the result therefrom; and

(D) All **materials used to train** Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process.

- A district must make these training materials publicly available on its website, or if the district does not maintain a website, the district must make these materials available upon request for inspection by members of the public.





Record-Keeping - *continued*

For each response required under § 106.44, a district **must create, and maintain for a period of **seven years**, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.**

- In each instance, the district must document the basis for its conclusion that its response was not deliberately indifferent, and
- document that it has taken measures designed to restore or preserve equal access to the district's education program or activity.
- If a district does not provide a complainant with supportive measures, then the district must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.
- The documentation of certain bases or measures does not limit the district in the future from providing additional explanations or detailing additional measures taken.



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