

“It Takes a Team!”

Role of the District’s Title IX Team

Human Resources
Training & Consulting

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
- Other TIX Team Members Responsibilities

Thank You For Serving

As a Title IX coordinator and every other member of TIX team, 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 is 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

Sexual Harassment Definition

"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)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30)

Response Standard

- A recipient with **actual knowledge**
- Of **sexual harassment** (as defined 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 to a recipients Title IX Coordinator, any ISD official who has authority to institute corrective measures on behalf of the ISD, or to any employee of an elem or sec school.

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

"Deliberately indifferent" means clearly unreasonable in light of know circumstances.

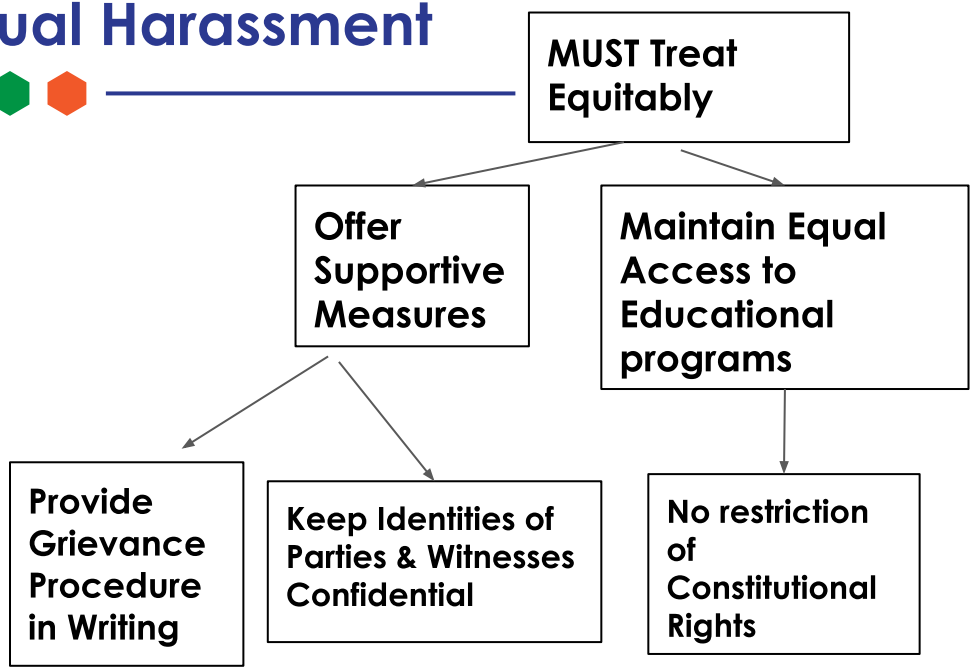
New regs do not apply to sexual harassment alleged to have happened outside the US.

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

Rights of the Parties in Connection with Response to Sexual Harassment

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

- Offering supportive measures to a complainant, and
- Follow 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

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

Avoid 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 estable 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 a 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 investigations 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 previous slide, **District's 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 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 & respond to prohibited conduct in accordance with board policies and the Student Code of Conduct.

Standard of Evidence
Preponderance of 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.



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.



- Parties have a right to participate fully & 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.

Inculpatory vs Exculpatory Evidence

Inculpatory Evidence	**Exculpatory Evidence**
Serving to show responsibility for alleged conduct	Serving to clear of responsibility for alleged conduct

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

TIXC 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 coordinators 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.

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

Decisionmaker

Investigator

Appellate Decisionmaker

Informal Resolution Facilitator



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 **<u>one lead Title IX Coordinator</u>** 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
- Identity 3rd party provider support, if applicable.

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.

Checklist (cont)

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

Checklist (cont)

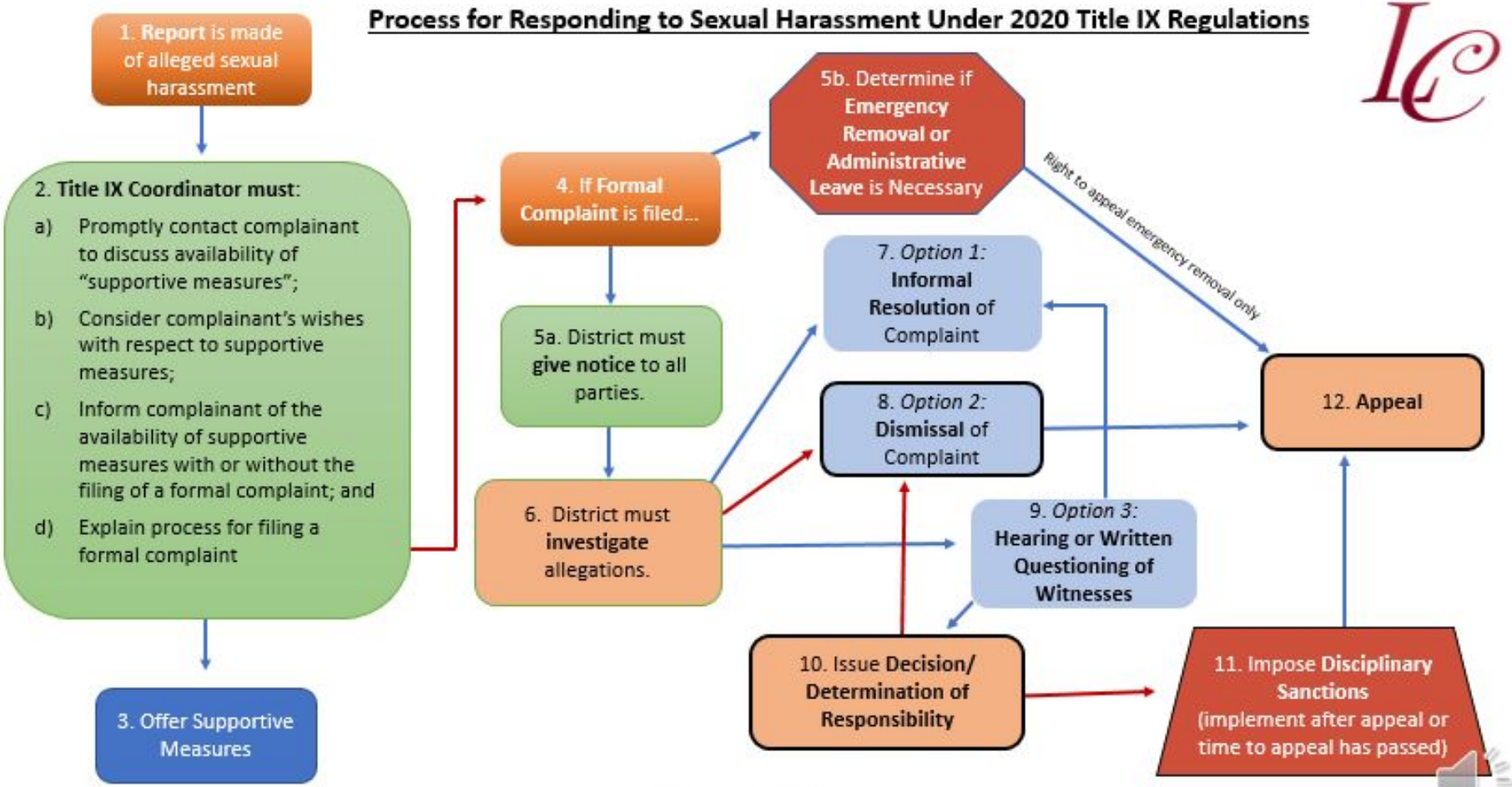
- Develop a method to survey the school climate and coordinate the collection and analysis of information from that survey.
- Monitor students' participation in athletics and across academic fields and programs.
- Ensure all required notices, reporting mandates, and records retention remain in compliance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

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



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1. Report is made of alleged sexual harassment

- To whom must the report be made?
  - In person, by mail, by phone, or by email using the contact info listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's report
  - Report can be made at any time, including during non-business hours via phone, email, or mail
- How is a report made?
- Who can report alleged sexual harassment?
  - Anyone! (not just the alleged victim)
- Remember "actual knowledge": District charged with actual knowledge upon notice to ANY EMPLOYEE

All employees must be trained re: how to handle reports of alleged sexual harassment

- **Report allegations to Title IX Coordinator**
- Report allegations to CPS and/or law enforcement

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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 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 (cont)

- **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 complainants' objections.
- Noted 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.

(cont)

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 Complaints 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.
    a) 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.

5b. Emergency Removal: TIXC Duties

5b. Determine if Emergency Removal or Admin Leave is necessary

Nothing in (Title IX Regs) precludes a recipient from removing a respondent from the recipients 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 the 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 emploee 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 the 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 designing 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 determination (i.e. passage of time, lack of cooperation by complainant).

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 the 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 <u>simultaneously</u>.

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

- To reach this determination, decision-maker <u>must apply the standard of evidence</u> 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 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 allegation therein, on the following basis:

1. Procedural irregularity that affected the outcome of the matter.
2. New evidence that was not reasonably available at the time of 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.

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 (cont.)

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.

Title IX Investigators

Who May Be An Investigator?

The Title IX Coordinator may serve as an investigator, appoint a trained District employee to serve as an investigator, or, in consultation with the Superintendent, appoint an external third-party investigator, to investigate the allegations in a formal complaint.



Time Frame for Investigation

Investigation must be completed in a **reasonably prompt** manner.

- Consult your district policy to determine the specific time frame applicable to Title IX investigations in your district.
  - Investigation should be completed within time frame specified in District policy absent good cause for delay.



- **10 days:** Prior to completion of the investigative report, the district must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy.
  - The parties must have <u>at least 10 days</u> to submit a written response, which the investigator must consider prior to completion of the investigative report.
- **10 more days after completion of investigative report:** The completed investigative report must be sent to each party and the party's advisor, if any, in electronic or hard copy format, <u>at least 10 days prior</u> to a hearing or other time of determination regarding responsibility to allow the parties an opportunity to review & prepare a written response.

Beginning the Investigation

After receiving the written complaint, the **investigator will meet promptly with each party** to conduct initial interviews, gather information, and collect evidence.

- Parties may also present fact and expert-witness testimony in the form of written statements.
- Investigator **must provide written notice** to any party whose participation is invited or expected of the **date, time, location, participants, and purpose** of any investigative interview or other meetings, sufficient time for the party to prepare to participate.

Planning the Complainant Interview

- A sufficient amount of time should be set aside for the initial interview. Complainants can be very emotional and embarrassed when discussing a very private matter. Investigator must allow time for the conversation to wander and to develop rapport in order to reduce stress.
- When scheduling the interview, remind the complainant that he/she is allowed to have an advisor of their choice accompany them to the interview.
- Choose a site for the interview that will make the Complainant comfortable and where privacy is assured, such as adequately sized office. If an advisor attends, place them somewhere in the room where visual cues with the Complainant are inhibited, such as side by side or a little behind the Complainant.

Interviewing the Complainant

- Be sensitive, objective, and avoid the appearance of bias.
- Begin the interview by describing the purpose, the District's strong desire to eliminate sexual harassment, and its non-retaliation policy. Inform the Complainant who to contact if he/she experiences retaliation.
- Invite the Complainant to explain the allegations in the Formal Complaint. Avoid making any statements about the allegations or asking targeted questions until after the Complainant has the opportunity to describe the allegations free from your input or leading questions.
    - Tip: If Complainant is reluctant to discuss the allegations, try to discuss neutral topics to develop a rapport and allow the Complainant to gain a comfort level with you.

Interviewing the Complainant

- After listening to the Complainant recount the allegations without interruption, ask for details regarding **Who, What, When, Where, Why and How.**
    - Ex: What specifically did the Respondent allegedly say or do? Did it happen more than once? How often? Get details of each incident. What was happening before the alleged incident? What happened after?
- Ask if there were any witnesses to any of the alleged conduct or other evidence supporting the allegations.
- Take notes to review after interview and identify any specific questions to ask Respondent.

Wrapping Up the Complainant Interview

- Outline the timetable of the investigation and the actions the investigator will take.
- Inform the Complainant that he/she will be kept apprised of the investigation and will have the opportunity to review the evidence gathered in the investigation and to prepare a written response before the completion of the investigative report.
- Thank the Complainant for their time and willingness to discuss the allegations.

Planning the Respondent Interview

- A sufficient amount of time should be set aside for the initial interview. Respondents can be very emotional or defensive as a result of being accused of sexual harassment. Investigator must allow time for the conversation to wander, to develop rapport in order to reduce stress, and to allow for periods of de-escalation to maintain calm.

- When scheduling the interview, remind the Respondent that he/she is allowed to have an advisor of their choice accompany them to the interview.

- Choose a site for the interview that will make the Respondent feel comfortable and where privacy is assured, such as an adequately sized office. If an advisor attends, try to place them somewhere in the room where visual cues with the Respondent are inhibited, such as side-by-side or a little behind the Respondent.

Interviewing the Respondent

- Be sensitive, objective, and avoid the appearance of bias.
- Begin the interview by describing its purpose, the District's prohibition against sexual harassment, and its non-retaliation policy. Inform the Respondent who to contact if he/she experiences retaliation as a result of the allegations. Remind the Respondent that she/he is presumed not responsible for the alleged conduct until after the conclusion of the Title IX Grievance Process.
- Invite Respondent to begin the conversation by telling you what he or she knows about the allegations in the Formal Complaint and what his or her response is to those allegations. (The Respondent will have received notice of the allegations in advance of this interview.) Ask broad, open-ended question to try to get Respondent talking. Avoid making any statements about the allegations or asking targeted questions until after Respondent has the opportunity to describe the allegations free from your input or leading questions.
    - Tip: If Respondent is reluctant to discuss the allegations, try to discuss neutral topics to develop a rapport and allow the Respondent to gain a comfort level with you.
    - If Respondent declines to give you a narrative discussion of the allegations, then try asking broad questions to facilitate the discussion.

Interviewing the Respondent

- After providing the Respondent an opportunity to discuss the allegations without interruption, ask targeted questions regarding the specific allegations in the Formal Complaint. Ask for response to Who/What/When/ Where/Why/How details from Complainant's interview.
- Ask Respondent if there is any evidence supporting his/her response and that he/she believes may disprove/refute the allegations.
- Any witnesses?
- Take Notes.

Wrapping Up the Respondent Interview

- Outline the timetable of the investigation and the actions the investigator will take.
- Inform the Respondent that he or she will be kept apprised of the investigation and will have the opportunity to review the evidence gathered in the investigation and to prepare a written response before the completion of the investigative report.
- Thank the Respondent for their time and willingness to discuss the allegations. Ensure Respondent has your contact information so that he/she can provide any additional information/evidence that Respondent may think of after the interview.

Emergency Removal of Respondent

- If you develop concerns based on Respondent's interview that the Respondent may pose a risk to the physical health and safety of themselves or to the Complainant or to any other person as a result of the sexual-harassment allegations:
  - Inform the Title IX Coordinator immediately so a threat assessment may be conducted.
  - Contact law enforcement if warranted.

Interviewing Non-Party Witnesses

- Contact other witnesses as soon as possible. Find out if there are any availability problems to determine the order of interviewing. Keep track of who suggested interviewing a particular witness. Prepare a list of questions to ask.
- Do not promise absolute confidentiality to witnesses. The District is obligated to provide all relevant evidence to both parties involved in the Title IX Grievance Process, including the identities of any witnesses who provided such evidence. Additionally, the parties have the right to ask written questions to any witness who provides information during the investigation that is relevant to the allegations of sexual harassment.
- Do not share the details of the complaint with non-party witnesses other than those they need to know in order to provide information in the investigation.

Interviewing Non-Party Witnesses

- Do not ask if they have seen or experienced "sexual harassment" by the Respondent. Instead, ask about specific behaviors they have observed.
- Ask if, from their point of view, the alleged harasser was bothering the Complainant and why.
- Ask if there are others who might be able to comment on the interaction or if there is any documentation of which they are aware that might relate to the alleged behavior.
- Ask if the Complainant complained to them about the Respondent's behavior.

Interviewing Non-Party Witnesses

- Explain the District's definition of sexual harassment, and give each witness a copy of it in writing.
- Explain the need to limit speculation and conversation about the matter outside of the interview in order to protect the witness from allegations of defamation. Also explain the district's policy against retaliation for participating as a witness in an investigation and to whom any retaliation should be reported.
- Find out if any witnesses anticipate leaving the area for any period of time. If so, it may be appropriate to get a signed statement about the incident prior to their departure. Counsel should be consulted about the proper form of such a statement to preserve it for use in any subsequent legal proceedings.
- Determine if a written statement should be obtained from any other witnesses. Such statements are discoverable and may lock a witness into a set of facts that the witness may want to change later. Again, consult with legal counsel about the advisability of obtaining such signed statements.

Misc. Procedural Matters: Interviews

- Transcribe notes from interviews as soon as possible after they occur. Make a separate report of the interview containing your impression of the witness's credibility, demeanor, or nonverbal behavior, if such observations are noted and warranted.
- Maintain a current list of addresses and phone numbers of all individuals contacted during investigation.

Gathering Other Evidence

- Remember that the **burden of gathering evidence** is on the District.
- Obtain and review relevant employment or student records and any evidence identified during the interviews.
- Note: In situations in which a **Complainant's medical or treatment records** may be relevant to a Formal Complaint, a District may not obtain that information unless it first obtains the Complainant's consent.

Inspection of Evidence

In order to afford each party the opportunity to respond meaningfully to the evidence prior to the conclusion of the investigation, evidence submitted by the parties or obtained as part of the investigation that is directly related to the allegations raised in a formal complaint must be made available to both parties by the investigator for the parties' inspection and review.

- This includes evidence upon which the District's decision maker may choose not to rely when reaching a determination regarding responsibility, as well as inculpatory or exculpatory evidence.

- Prior to completion of the investigative report, the investigator must send to each party and the party's advisor, if any, the evidence subject to review and inspection in an electronic format or hard copy.
- Each party must be allowed 10 days from the date of receipt of the evidence to inspect and review the evidence and to submit a written response that the investigator will consider when completing the final investigative report.

Completing the Investigative Report

The investigative report **must fairly summarize all relevant evidence** and may include the following content:

- Identification of the allegations potentially constituting sexual harassment;
- Any procedural steps taken by Title IX personnel from the receipt of the formal complaint through the conclusion of the investigation, including any notifications to the parties, interviews, site visits, and methods used to gather evidence;
- Responses of each party to the allegations in the formal complaint;
- Evidence obtained by the District;
- Relevant evidence considered by the investigator;
- The parties' responses to the evidence after review and inspection;
- Findings of fact; and
- Identification of any District policies or codes of conduct implicated by the facts, including referrals to FFH for Investigations for Reports Other Than Title IX, FFI, or other District processes initiated as a result of the investigation.

The investigator must simultaneously provide the completed investigation report to both parties. The Investigator must also send a copy of the investigation report to the TIXC, who will immediately assign a decision maker and provide him/her a copy of the investigative report.

Your Role After the Investigation

- You may be called as a witness in the next stage of the grievance process and required to answer written questions submitted by the Complainant or Respondent.
- The decision maker is permitted to have discussions with the investigator concerning the investigator's opinions or recommendations, as long as those discussions do not interfere or inhibit the decision maker from making an independent, objective evaluation of all relevant evidence in reaching a determination of responsibility.

Title IX Informal Resolution Facilitators

Your Role in Context:

- Informal Resolution Facilitator
- Facilitates informal resolution process between a complainant and respondent with respect to a formal complaint.
- The informal Resolution Facilitator may be:
  - District employee or third-party provider.
  - Ideally should not be the same person as any other Title IX role in order to avoid conflicts of interest.



Informal Resolution Facilitator Mandates, Requirements, and Responsibilities

Required Training:

** Training must promote impartial investigations and adjudication of formal complaints and must not be based on sex stereotypes.**

Mandatory Components:

- Definition of sexual harassment in section 160.30;
- The scope of the recipient's education program or activity;
- How to conduct an investigation and grievance process, including, as applicable, hearings, appeals, and informal processes; and
- How to serve impartially, by avoiding prejudgement of the facts at issue, conflicts of interest, and bias.

Informal Resolution: Written Notice

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 district-

(I) Provides written notice to the parties disclosing:

- 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.

(II) Obtains the parties' voluntary, written consent to the informal resolution process; and

(iii) Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

A district 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 consistent with section 106.4 5

A district may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed.

When?

An informal resolution may occur at any time AFTER the filing of a formal complaint and BEFORE reaching a determination of responsibility.



Voluntary Consent

- The TIXC MUST obtain the parties' voluntary, written consent to the informal-resolution process.



Parties Right to Withdraw

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.

Initiating the Informal-Resolution Process

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 First!

Remedies

- The district may take the specific factual circumstances into account in deciding what **remedies are appropriate** for the complainants and what disciplinary sanctions are appropriate for the respondent. (OCR at 447, n.643)
- **Remedies must be designated to restore or preserve equal access to the recipient's education program or activity.**
- Such remedies may include the same individualized services described in 106.30 as "supportive measures"; **However, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.**

Disciplinary Consequences

- Disciplinary consequences may be included within an informal Resolution Agreement.
- **<u>NOTICE Requirement:</u>** Consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared, **MUST be provided to the parties.**



Discipline Guidance

Employees:

- Consult Board Policy (CJ, DC, DH, DHB), District Administrative Regulations, and Employee Handbook Protocols.
- Possible disciplinary sanctions; directives, reassignment, nonrenewal, & termination.
- Remember SBEC reporting duty under Texas law.

Students:

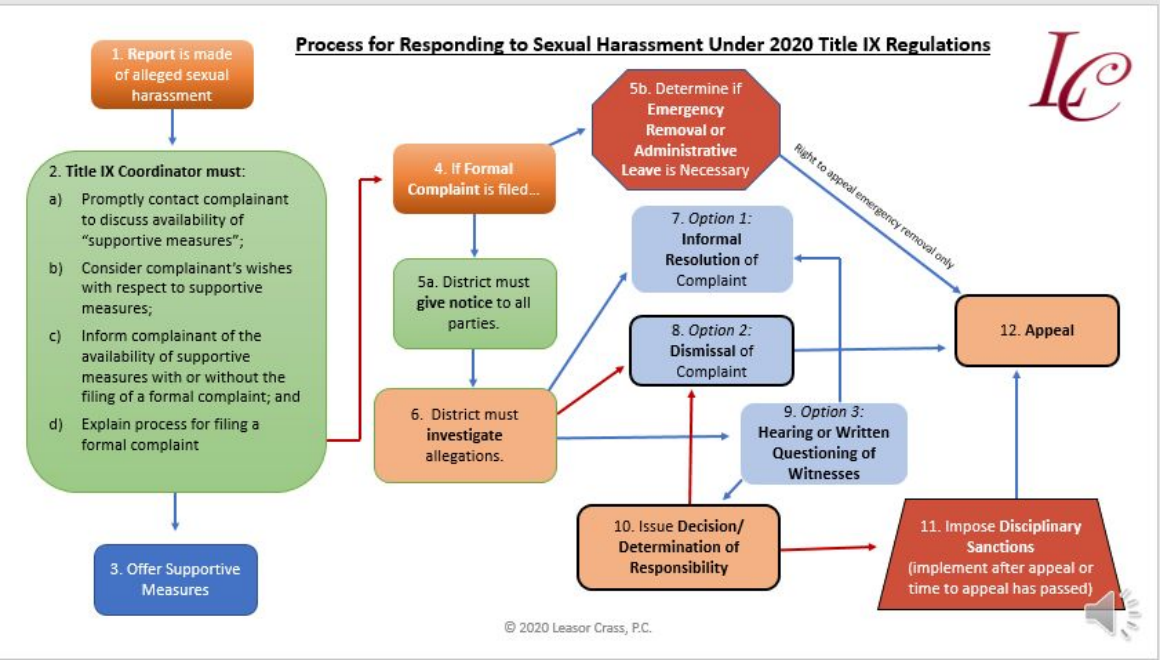
- Consult the District's Student Code of Conduct guidelines concerning disciplinary options.

Withdrawing from the Informal Resolution Process

Either party may withdraw from an informal- resolution process BEFORE the determination of responsibility and resume the formal complaint process.



Resumption of the Formal Grievance Process



After a party's withdrawal, the TIXC will notify the other party that the informal resolution process has been terminated and will **resume the formal complaint process.**



Records



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;

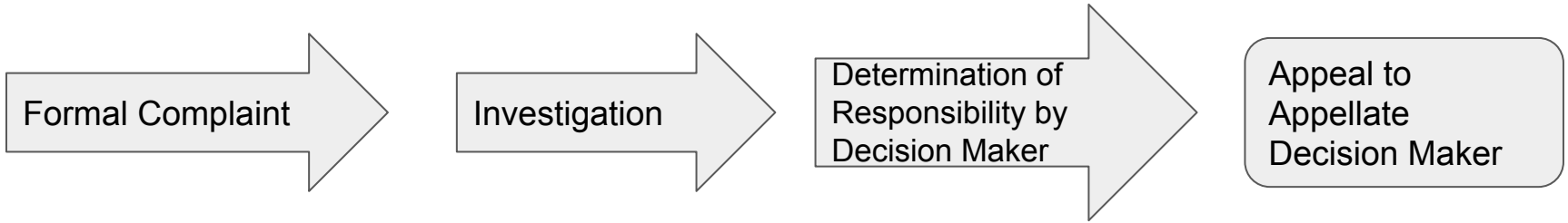
(B) **Any appeal** and the result therefrom;

(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.

Title IX Decision Makers



Your Role in Context

- A decision maker designated by the Title IX Coordinator will make an independent determination regarding a respondent's responsibility for alleged sexual harassment.
- The decision maker cannot be the District's Title IX Coordinator or the investigator who investigated the complaint at issue.

Timeline & Procedure Before Decision Maker

- Investigative report must be provided to each party and their advisors at least 10 days before the determination of responsibility by a decision maker.
    - Consult your District's specific Title IX grievance process to determine any additional timing requirements allotted to procedures before a decision maker.
- After both parties have received the investigative report and prior to a determination regarding responsibility, the decision maker will notify each party of the opportunity to submit written, relevant questions that a party wants asked of any party or witness noted in the investigation report.
    - As determined by the decision maker, the parties may reasonably exchange additional, limited follow-up questions.
- In order to maintain a reasonably prompt timeline, the decision maker may give addressed parties or witnesses a reasonable and equitable deadline to provide answers in response.
- In consultation with the Title IX Coordinator, the decision maker may also extend the timeline for good cause.

Timelines & Procedure Before Decision Maker

The decision maker shall ensure that questioning is relevant, respectful, and non-abusive.

A party or witness is not required to respond to any questions posed by the other party.

- Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are <u>not relevant.</u>
  - Unless such questions and evidence about the complainants 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 complainants 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.

Preparing the Determination of Responsibility

The decision maker must issue a determination regarding responsibility for the alleged conduct in a reasonably prompt manner after the date all questions, answers, and supporting documentation were requested to be submitted to the decision maker.

- To reach this determination, decision maker must apply the preponderance of evidence standard to weigh the relevant evidence applicable to the formal complaint.

The written determination must include:

A) Identification of the allegations potentially constituting sexual harassment under the Title IX regulations;

B) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including
   a) Any notification to the parties
   b) Interviews with parties and witnesses
   c) Stie visits
   d) Methods used to gather other evidence, and
   e) Hearings held;

C) Findings of fact supporting the determination

cont..

D. Conclusions regarding the applications of the district's code of conduct to the facts

E. A statement of, and rationale for, the result as to each allegation, including

- A determination regarding responsibility,
- Any disciplinary sanctions the district imposes on the respondent, and
- Whether remedies designed to restore or preserve equal access to the district's education program or activity will be provided by the district to the complainant; and

F. The district's procedures and permissible bases for the complainant and respondent to appeal.

Written determination must be provided to both parties simultaneously.

The determination regarding responsibility becomes final either

- On the date that the district provides the parties with the written determination of the result of the appeal, if an appeal is filed, or
- If an appeal is not filed, the date on which an appeal would no longer be considered timely

Disciplinary Sanctions & Remedies

- If a respondent has been determined through the formal complaint process to be responsible for the alleged sexual harassment, the District must provide remedies to the complainant that are designed to restore or preserve the complainant's equal access to the District's educational programs and activities.
    - The Title IX Coordinator is responsible for effective implementation of remedies.
- Remedies may include individualized services offered as supportive measures or may be disciplinary sanctions imposed against a Respondent including suspension, expulsion, or any other disciplinary measure provided by the Student Code of Conduct.
    - Examples of other permissible sanctions include declaring the Respondent ineligible to play sports or serve in student government position etc.
- Unlike supportive measures offered after a report of sexual harassment, remedies need not be non-disciplinary, non punitive or avoid burdening the respondent.

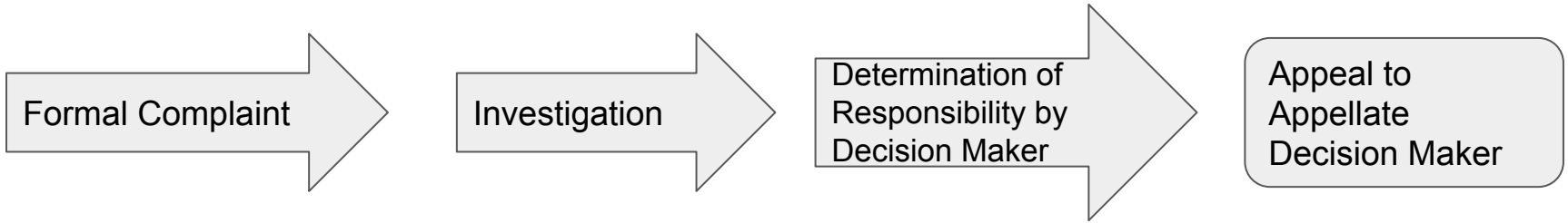
Choosing an Appropriate Disciplinary Response

- **Appropriate steps should be taken to end the harassment.**
  - For example, school personnel may need to counsel, warn, or take disciplinary action against the harasser based on the severity of the harassment or any record of prior incidents or both.
- Discipline decisions must be made for the purpose of deciding how best to enforce the code of 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.**

Employee Discipline

- Consult Board Policy (CJ, DC, DH, and DHB), District Administrative Regulations, and Employee Handbook protocols.
- Must complete Title IX grievance process before disciplining an employee for sexual harassment.
- Possible disciplinary sanctions: directives, reassignment, nonrenewal, and termination.

Title IX Appellate Decision Makers



Bases for Appeals

- Either party has the right to appeal a determination regarding responsibility, and a district's dismissal of a formal complaint or any allegations therein, on any of 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, or decision makers 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

Appellate Procedures

- To initiate an appeal, a party must file a written request for appeal with the Title IX Coordinator within the time period specified under District policy following the party's receipt of the determination of responsibility.
- The Title IX Coordinator will review the request and assign an appropriate appellate decision maker. If the reason for appealing the dismissal or determination of responsibility is not mandatory, the District may dismiss the appeal. If the request for an appeal is not dismissed, the Coordinator will designate an appellate decision maker to proceed.
- The appellate decision maker may not be the same person as the decision maker that reached the determination regarding responsibility or dismissal, the investigator who investigated the complaint at issue to Title IX Coordinator.

(Cont)

- The Title IX Coordinator will notify the non-appealing party in writing when an appeal is filed and implement appeal procedures equally for both parties.
- Both parties will be provided a reasonable, equal opportunity to submit a written statement in support of, or challenging, the dismissal of a formal complaint or determination of responsibility.

Appeal of Complaint Dismissal

- The appellate decision maker will review the request for appeal and any other written statements provided by the parties and issue a written decision explaining why the appeal of the dismissal is granted or denied.
- The decision will either instruct the Title IX Coordinator to resume implementation of the Title IX formal complaint process or will inform the appealing party of additional options.
- Written decision must be provided simultaneously to both parties.

Effect of Appeal of Determination of Responsibility

- If an appeal regarding the determination of responsibility is filed, the determination does not become final, and the District may not proceed with administering Title IX disciplinary sanctions or remedies based on the determination, until the date that the District provides both parties with the written result of the appeal.
- If an appeal is not filed, the determination of responsibility becomes final on the date on which appeal of the determination would no longer be considered timely.
- For an appeal by either party to be fully effective, the District must wait to act on determination regarding responsibility while maintaining the status quo between the parties through supportive measures designed to ensure equal access to education.

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QUESTIONS?