



Title IX Training

New Admin Academy
July 20 & Aug 1, 2023



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Title IX: No Small Matter

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Student Affairs

Title IX Coordinator

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Title IX Training For:

**Campus Admin:
Investigators, Decision Makers and
Facilitators of the Informal Resolution
Process**

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Required Training for Title IX



Required:

- ★ Sexual harassment definition
- ★ The scope of the district's education program or activity
- ★ How to conduct an investigation
- ★ Identifying conflict or bias
- ★ How to serve impartially
- ☐ Issues of relevance of questions and evidence
- ☐ The investigative report: fairly summarizing relevant evidence
- ☐ Title IX formal complaint process, including hearings, appeals, and informal resolution processes

34 C.F.R. 106.45(b)(1)(iii)



Title IX origins

Title IX is part of the federal government's Civil Rights laws, and pertains to civil rights of persons in education.

In that law, it is mandated that...



“

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.

37 very important words!

[Federal Code
linked here](#)



Title IX Video





Title IX investigations and coordinators

Title IX investigations and coordinators did not exist in their current iteration before April 2020. Before, sexual harassment was handled under general harassment and discrimination and bullying policies and laws.



What changed in April 2020?

I. Recipient's Response to Sexual Harassment

(Proposed § 106.44)

Statute: Title IX states generally that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance, 20 U.S.C. 1681(a), but does not specifically mention sexual harassment.

A. Adoption of Supreme Court Standards for Sexual Harassment

Section 106.44(a) General; Section 106.30

Proposed Regulations: We propose adding a new § 106.44 covering a recipient's response to sexual harassment. Proposed § 106.44(a) would state that a recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States must respond in a manner that is not deliberately indifferent. Proposed § 106.44(a) would also state that a recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

We propose definitions for "sexual harassment" and "actual knowledge" in § 106.30. The Department defines "sexual harassment" to mean either 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; or unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or sexual assault as defined in 34 CFR 668.46(a), implementing the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). We define "actual knowledge" as notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to a teacher in the elementary and secondary context with regard to student-on-student harassment. The



Defining Sexual Harassment

New rules in effect in August of 2020



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

1. **Quid pro quo:** 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;
2. **Hostile environment:** 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 recipients education program or activity; or
3. **Sexual violence:** sexual assault, [dating violence](#), domestic violence, stalking



Duty to Report Sexual Harassment

All district employees must report sexual harassment to the Title IX Coordinator promptly.

Students: Dr. Cindy Bauter

Staff: Dr. Cindy Bauter & Dr. Eric Drewery

Think of this as similar to CPS reporting responsibilities.



Response: No Deliberate Indifference

Schools and colleges must promptly respond in a manner that is **not deliberately indifferent** when they have **actual knowledge** of sexual harassment in an education program or activity, against a person in the **United States**.



Scope of the Education Program or Activity

The district exercised substantial control over:

**The locations,
events or
circumstances;**

**The respondent;
and**

**The context in
which the sexual
harassment occurs.**

- On campus or off campus
- In the United States
- Schools must respond when sexual harassment occurs in the school's education program or activity.
- Even if conduct falls outside of Title IX jurisdiction, a school can still take other appropriate action, such as providing supportive measures or disciplinary consequences.



Wait, I'm not sure.

Please do think about the possibility of meeting Title IX standard, but deciding whether to report is not your job.

Let's look at some complexities that necessitate you and I to think through together.



So what *could* be Title IX?



Possible Elementary Examples

5th Grade

A male student continuously “bothers”, bumps into (sometimes purposely touches) and says inappropriate words to a fellow student. Words include “rape”, “virgin” and “slut”.

3rd Grade

A male student followed another 3rd grade student into the bathroom. The second student tells the nurse that “the boy in the bathroom touched his privates”.

1st Grade

While sitting in the hallway, two 1st grade students decide to “show their “peepees” to each other.



Possible Secondary Examples

6th Grade

A female student sends explicit images to her boyfriend, they break up and he threatens to share the images on the internet if she does not get back together with him.

8th Grade

A male student records his friend in a bathroom stall masturbating and shares the video with their friend group.

10th Grade

2 students are found in the same bathroom stall acting inappropriately. One student implies it was non-consensual.

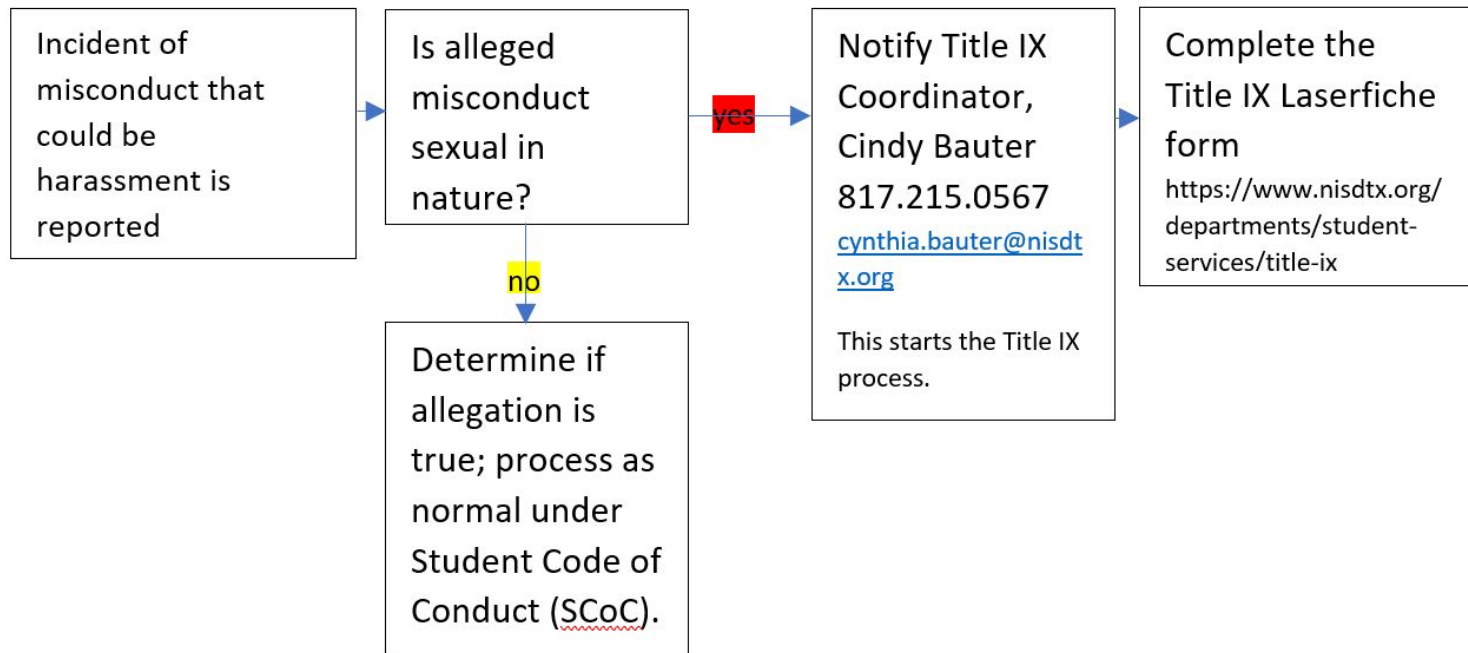


The Complaint Process



Complaint Process for campus administrators

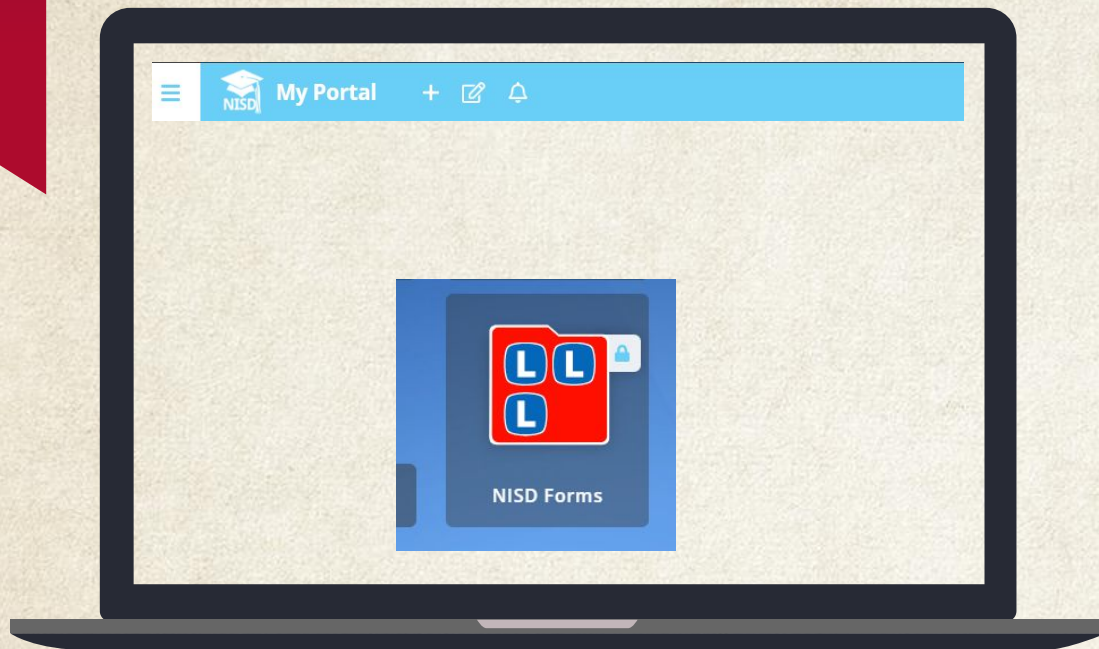
Beginning of the Harassment Investigation Process





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Submitting a Title IX Form:





If a Title IX report involves behavior between a **staff member** and a student, contact Dr. Eric Drewery in HR along with contacting Cindy. There are some additional steps when staff are involved in a possible incident.



How Does the District (Cindy) Track Title IX?

Spreadsheet



Red Folders



Notes/Follow-up
Emails



Laserfiche
documentation



The goal of keeping good documentation is to protect the district from being found indifferent. When in doubt, document:)



Investigation Team

Title IX Coordinator	Investigator	Decision Maker
Dr. Bauter	Assistant Principal	Principal / Associate Principal
❖ Reviews complaint ❖ Guides all parties through the investigation & appeal process	❖ Gives notice to parties of allegations ❖ Gives parties an opportunity to inspect & review all evidence before conclusion ❖ Creates & shares investigative report with all parties 10 days before hearing or written Q&A ❖ Ensures all parties get due process provided by new regs	❖ Reviews all evidence ❖ Issues detailed written determination of investigation



Appeals Team

Title IX Coordinator	Appeal Officer	Informal Resolution Facilitator
Dr. Bauter	Executive Director of Elementary or Secondary Education	Executive Director of Elementary or Secondary Education
❖ Reviews complaint ❖ Guides all parties through the investigation & appeal process	❖ Hears Title IX appeals (separate from FNG complaints) ❖ Considers procedural irregularities, new evidence not available during investigation, and conflict or bias of Title IX coordinator, investigator, or decision maker	❖ Facilitates voluntary mediation or informal resolution process ❖ No informal resolution available for allegations that an employee sexually harassed a student



Conducting an Investigation



SLOW

**DUE
PROCESS
AHEAD**

“promptly”



Due Process and Disciplinary Consequences

Due process must be provided **before** disciplinary sanctions are imposed on the respondent. (Caveat: unless sexual assault is also simple assault or similar)

Before the investigation process is complete, schools can:

- ◆ Provide supportive measures to the parties 
- ◆ Impose disciplinary consequences for SCOC violations not covered under Title IX 
- ◆ Place an employee on administrative leave during the pendency of a Title IX complaint 



Due Process and Disciplinary Consequences

- ◆ Remove students from the educational program or activity on an emergency basis (MDR's could apply), if the district:
 - ◆  Undertakes an individualized safety and risk analysis
 - ◆  Determines that an immediate threat to the physical health or safety of any person justifies removal; and
 - ◆  Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal



Example of an Investigation Timeline

Sept. 1: Formal complaint filed

Sept. 1-3: Evaluate formal complaint

Sept. 3: Notice of allegations to parties

Must wait a “sufficient time” for the parties to prepare for questioning

Sept. 10: Interviews

Sept. 14: Allow parties to inspect evidence & submit questions

Must wait 10 business days before proceeding

Sept. 28: Receive & consider parties’ written response

Sept. 30: Issue Investigative Report (by Investigator)

Must wait 10 business days for parties to review report & issue written response

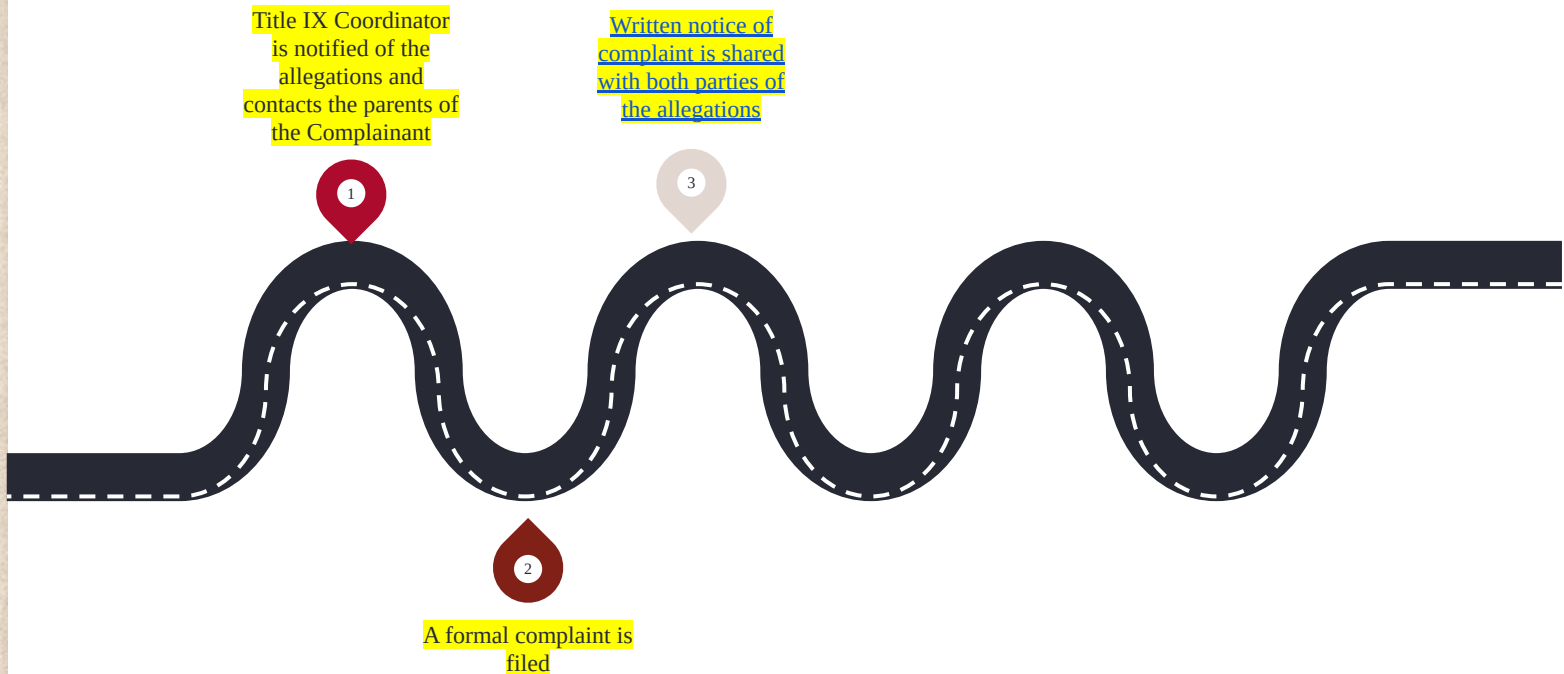
Oct. 14: Receive & consider written responses from parties

Oct. 16: Issue Determination (by Decision Maker)

***This would be super fast. Most take about 3- 5 months.**



Conducting an Investigation



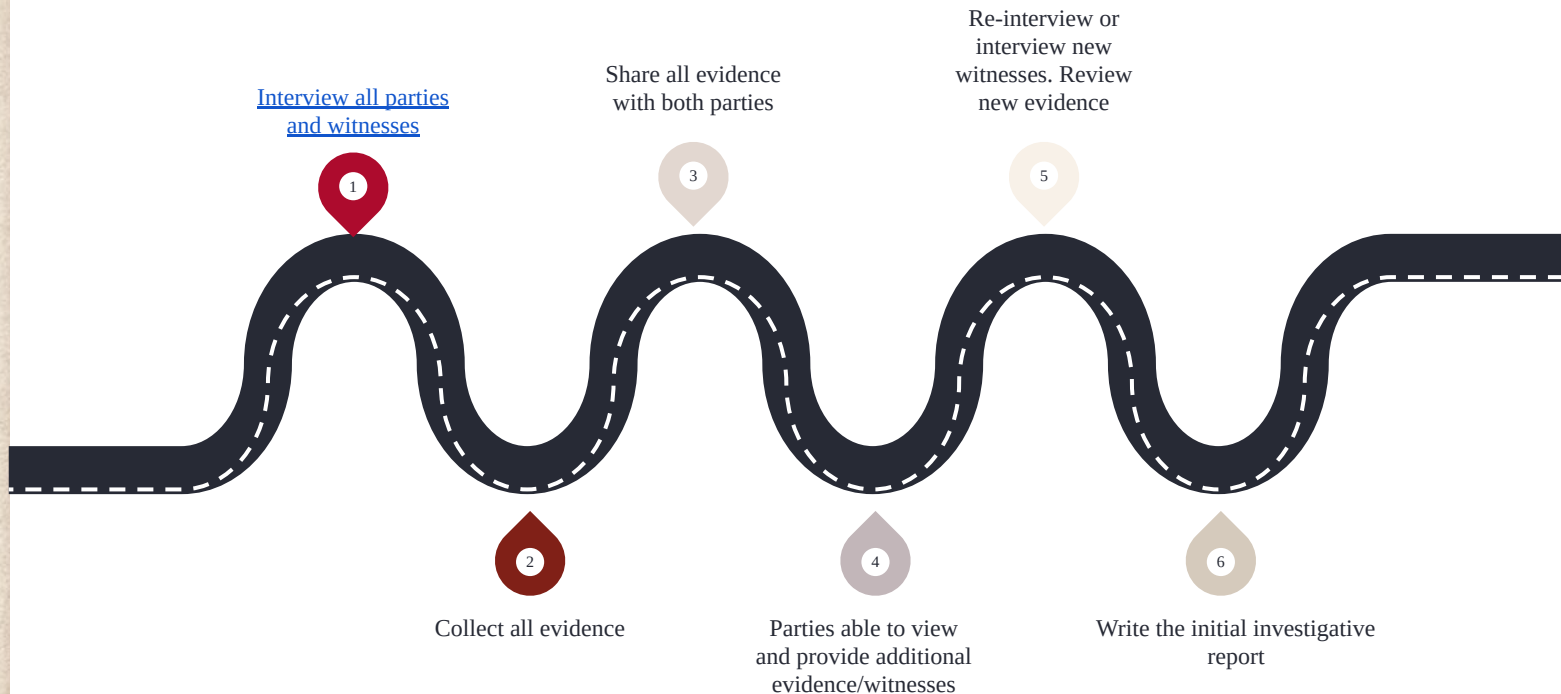


Written Notice of Allegations:

- ❑ Identities of the parties and witnesses (FERPA does not apply)
- ❑ Alleged conduct (in detail)
- ❑ Prohibition of knowingly making false statements
- ❑ Right to an advisor who may be an attorney (can attend interviews and review documents)
- ❑ Right to inspect all evidence
- ❑ Date and location of the incident
- LEO temporary abatement?
 - document the request
 - get a timeframe
 - weekly check-in
 - avoid obstruction of justice charges



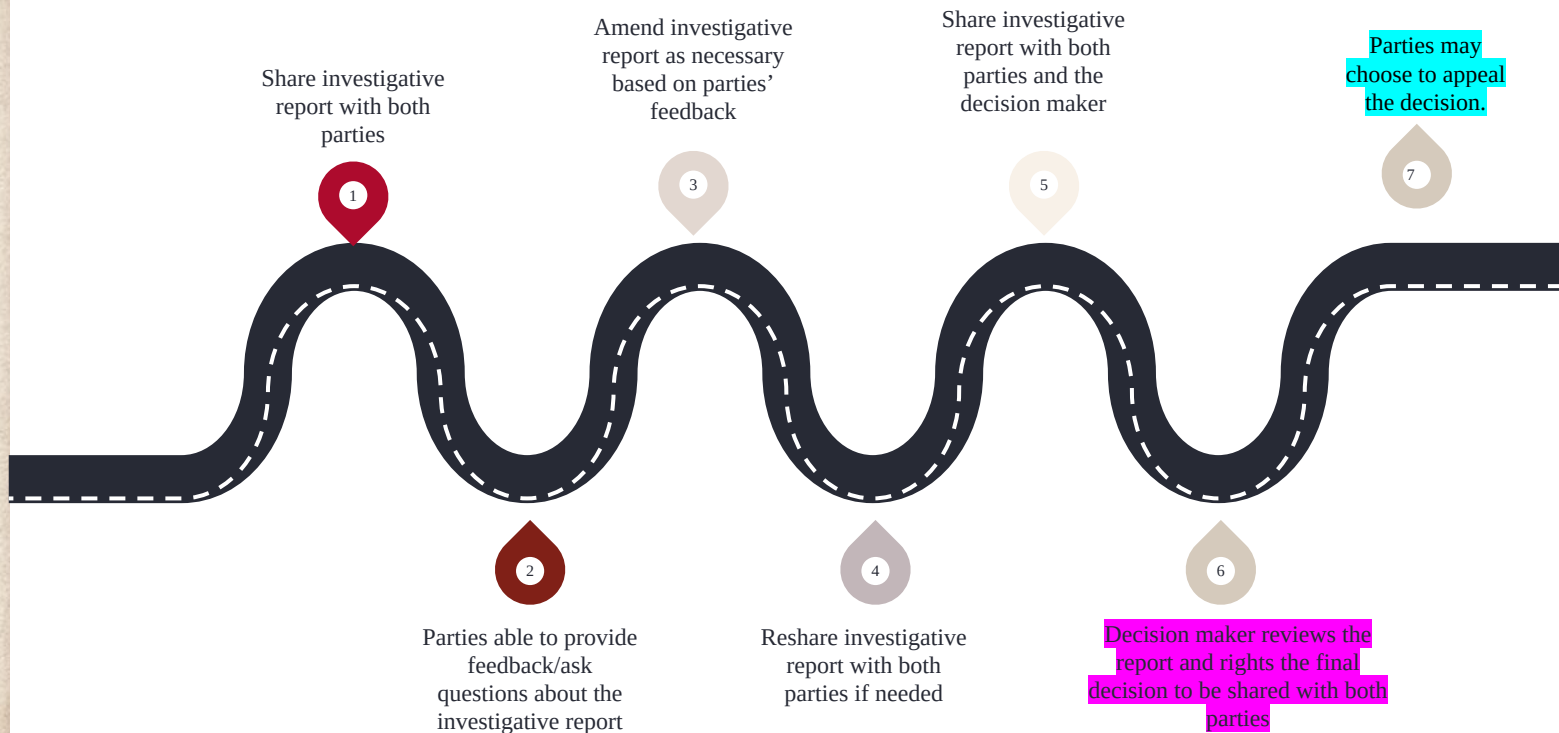
Conducting an Investigation





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Conducting an Investigation





What if there is an appeal:

All appeals go to the appropriate executive director. The ED (elementary or secondary) uses the investigative report and any information shared by the complainant/respondent when filing the appeal to make a final decision. There are no other appeals past this stage (appeals do not go the board the same way typical grievances do).



Supportive Measures

Are offered to the complainant or the respondent before and after the filing of a formal complaint or when no complaint is filed.

- ◆ Counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus chaperones, mutual restrictions on contact, increased security and monitoring of certain areas of the campus....



Equitable Treatment of Parties

Treat complainants and respondents equitably:

- Provide remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent
- Follow Title IX complaint process before imposing disciplinary sanctions against the respondent.
- Require objectivity when evaluating all relevant evidence



Collecting Evidence



Interviewing the Parties

You should interview:

- The Complainant
- The Respondent
- The individual who filed the complaint (if different from the Complainant)
- Witnesses to the reported incident

Explain the investigation process.

- Assure participants that retaliation will not be permitted and they should immediately report any further misconduct.

Refusal to participate

- If a person refuses to answer questions or participate in the investigation and you have tried to persuade him/her otherwise, make note of that in the investigation.



Concluding Interviews

- Review notes and facts before ending each interview.
 - Review the witness's written statement with them.
 - Go over your notes to ensure a complete and accurate understanding of their testimony.
 - Ask follow-up questions to fill in important gaps or make corrections.
 - Repeat the significant points and ask the person to confirm accuracy.
- You can schedule a second interview with witnesses if new information is found during the investigation that requires follow-up questioning.



Documentation

- Thorough & detailed notes
 - Interview details
 - Date; start & end time; names & relationship of people present; location; name of the interviewer
 - Student witnesses: first & last name, grade, student ID
 - Staff witnesses: first & last name, job title
 - Who, what, when, and where
 - If rumors are discussed, label them accordingly in notes.
 - Note the interviewee's conduct and details reflecting credibility.
- Specific and unambiguous language
- Quote the exact language used by the witness, where possible.
 - Don't replace profanity with asterisks (f**k)
 - Don't editorialize
- Ask for and secure copies of any evidence such as emails, texts, letters, gifts, etc.



After the Interviews: Inspection of Evidence

- ❑ After interviewing the parties and before issuing the Investigative Report, you must allow the parties to:
 - ❑ Inspect the evidence,
 - ❑ Submit additional questions, and
 - ❑ Submit a written response for your review
- ❑ Wait 10 days before proceeding.
- ❑ Consider the parties' written responses.
- ❑ Review all information and determine if the investigation is complete or if further action or investigation is needed.
- ❑ Investigate follow-up questions submitted by the parties.
- ❑ Draft the Investigative Report.



Investigation Report

- ❑ Complete the Investigation Report.
 - ❑ Summarize the evidence, facts, and information gathered.
 - ❑ Do not make a determination as to the guilt or innocence of any party.
 - ❑ The Decision Maker (not the Investigator) will reach a conclusion, based on the facts and information.
- ❑ Submit the Investigation Report and evidence to the Decision Maker.
- ❑ Give the parties a copy of the Investigation Report.
- ❑ Allow the parties to review the report and issue a written response.
 - ❑ Wait 10 days before proceeding.
- ❑ The Decision Maker issues a written determination.



Written Determination

- ❑ The Decision Maker drafts the written determination.
- ❑ Evidentiary standard: preponderance of the evidence
- ❑ Must include:
 - ❑ Allegations
 - ❑ Description of the procedural steps followed
 - ❑ Findings of fact
 - ❑ Conclusions, including references to the Student Code of Conduct
 - ❑ Determination of responsibility
 - ❑ Disciplinary actions
 - ❑ Remedies provided
 - ❑ Appeal procedure



Child Abuse Report

- Notify Child Protective Services or law enforcement if there is reason to believe child abuse or neglect occurred.
 - Within 48 hours



CAUTION

**WATCH
YOUR STEP**



Conflicts of Interest & Bias

- ☐ Conflicts of interest
- ☐ Bias
- ☐ Impartiality
- ☐ Should you recuse yourself?
 - ☐ Do I have an axe to grind with complainant or respondent?
 - ☐ Do I have any bias?
 - ☐ Am I trained?
 - ☐ Have I been involved in any incidents that prompted the investigation?
 - ☐ Am I related to or under supervision of respondent, if an employee?
 - ☐ Will my being the investigator be perceived as a problem?



Title IX Training Part 2 For:

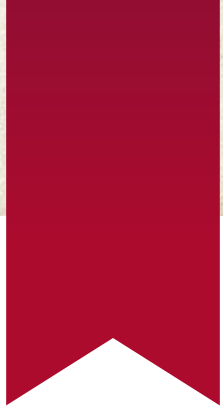
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- ★ The investigative report: fairly summarizing relevant evidence
- ★ Title IX formal complaint process, appeals and informal resolution processes

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Key Points: A Look Back



Defining Sexual Harassment

New Law Put Into Place in August of 2020



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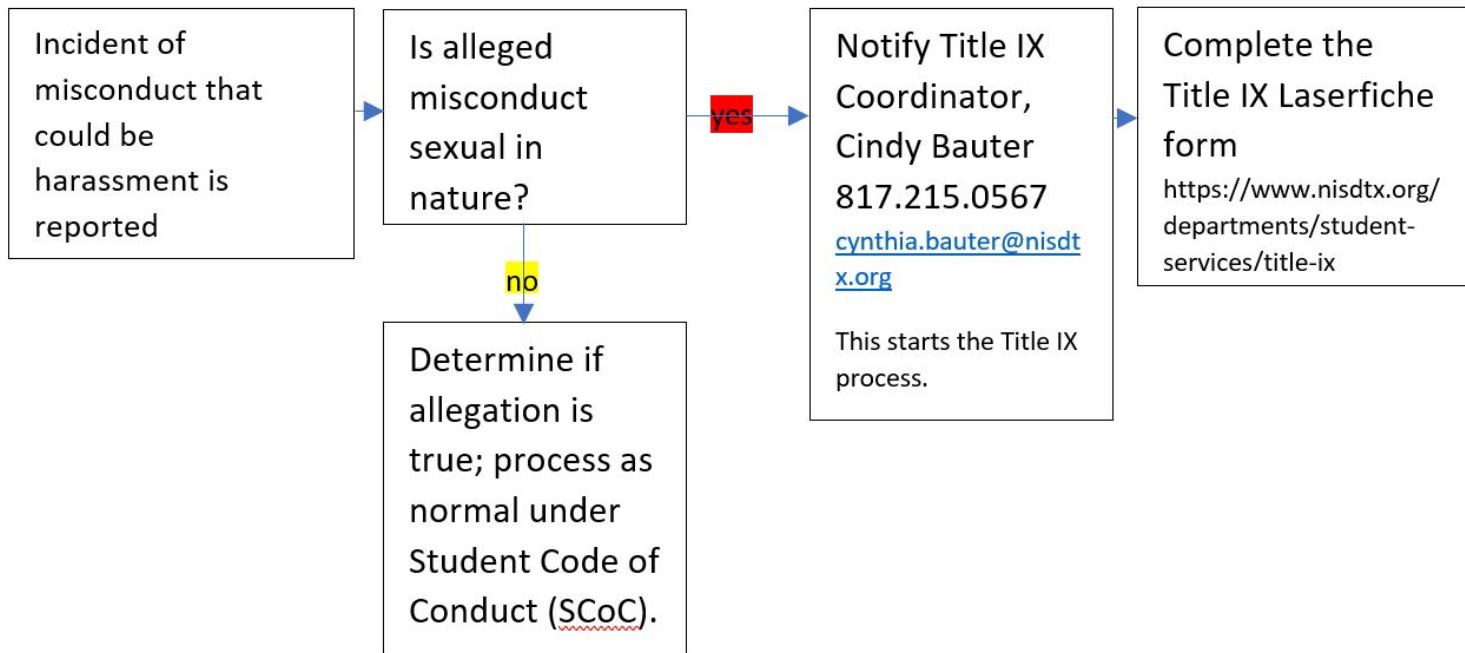


The Complaint Process



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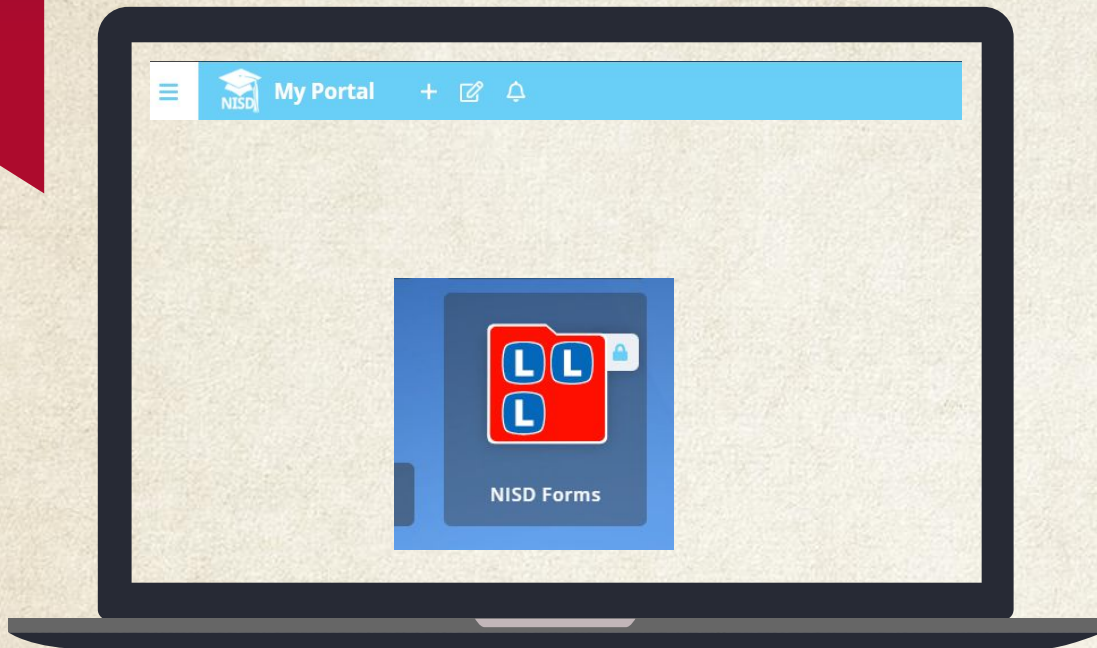
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 - ◆ Undertakes an individualized safety and risk analysis
 - ◆ Determines that an immediate threat to the physical health or safety of any person justifies removal; and
 - ◆ Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal



Conducting an Investigation

Title IX Coordinator is notified of the allegations and contacts the parents of the Complainant

1

Written notice of complaint is shared with both parties of the allegations

3

All parties given sufficient time for the parties to prepare questions

5

A formal complaint is filed

2

All parties able to have an advisor/attorney present during interviews

4

Written notice of the interview (date/time/location/participants)

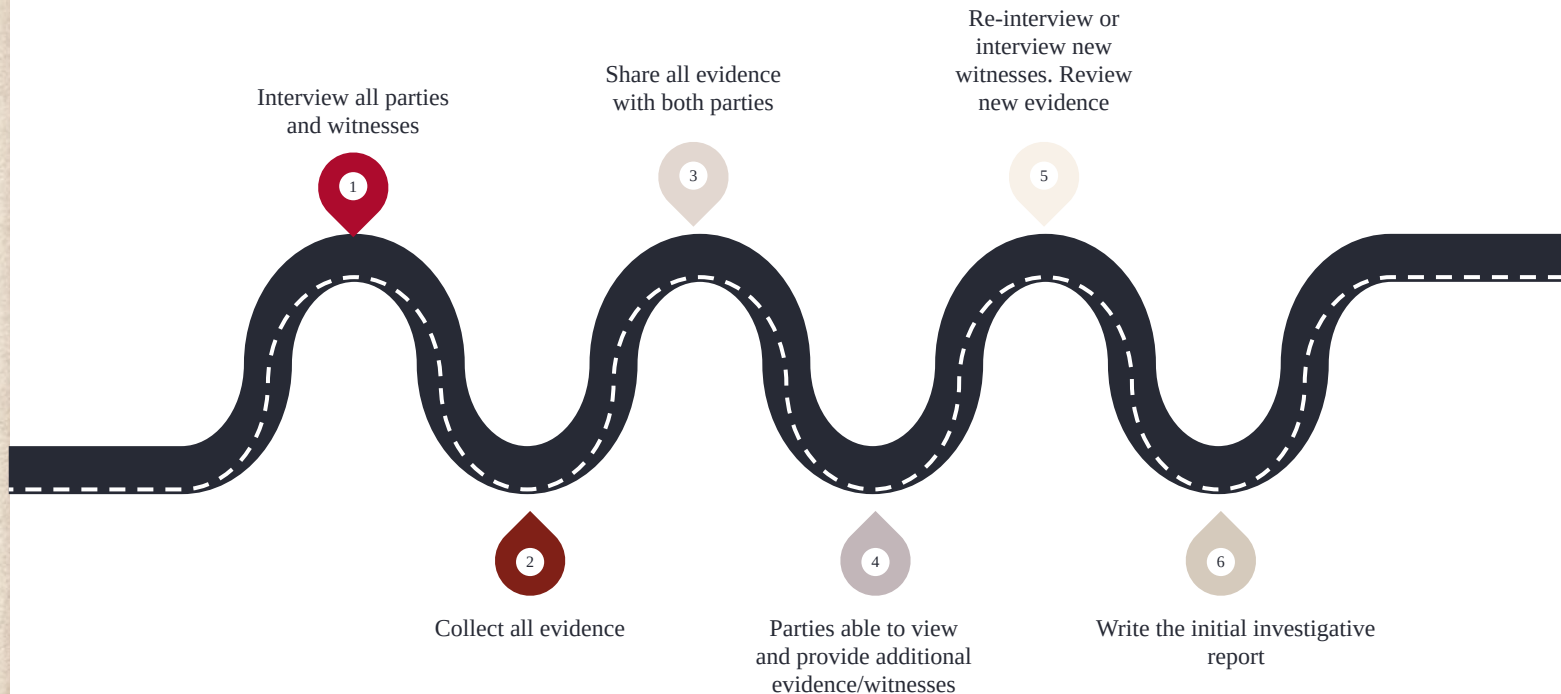
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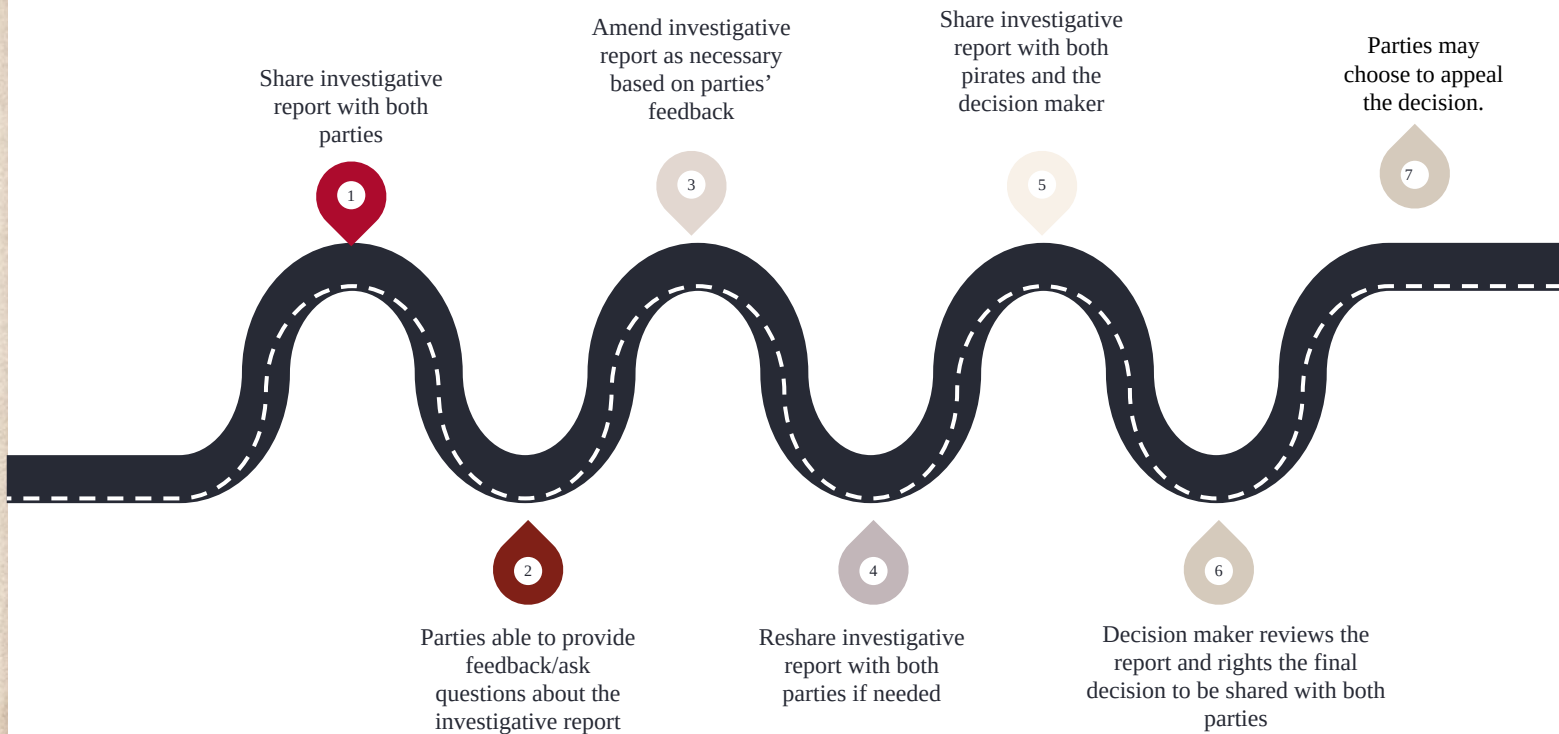
Conducting an Investigation





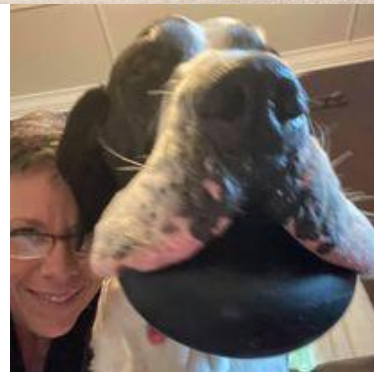
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Conducting an Investigation





Collecting Evidence





CAUTION

**WATCH
YOUR STEP**



Conflicts of Interest & Bias

- ❑ Conflicts of interest
- ❑ Bias
- ❑ Impartiality
- ❑ Should you recuse yourself?
- ❑ Avoid prejudgment of facts





Intersection of Title IX and Sped/504





Intersection of IDEA, 504 and Title IX

- Alleged violations of IDEA, Section 504 and Title IX are being increasingly brought as claims stemming from the same set of facts.
- FAPE and Title IX - Students who are harassed will/may fail to make progress. The failure to make progress violates FAPE.



SpEd/504 Students are More Vulnerable to Harassment of All Kinds

- Seen as easy targets by other students
- Less likely to fight back or resist
- Less likely to report
- More likely to be victimized
- Easier to intimidate
- May not realize they are being harassed or assaulted
- May not understand the implications/consequences of actions



Harm From Harassment is Often Magnified

- SpEd students may be impacted in different and more severe ways than their gen ed peers
 - Disabilities may manifest more severely
 - New disabilities may develop
 - Re-evaluations may be necessary
 - Revised IEP's could be required to ensure educational benefit.



Title IX Implications

Title IX implicates how you respond to the information you find

- Any SpEd student will likely require new/revised BIP/IEP
- Additional evaluations could be required
- Discipline under the Student Code of Conduct/MDR
- Criminal charges are possible against the respondent



Title IX Implications

Implications for Discipline

- MDR is required for respondent
- May find harassing behavior was a function of disability
- May find harassing behavior was the result of the district's failure to implement the IEP
- Difficult to explain to faculty and parents
- Possible revision of BIP or conduct a FBA



Title IX Implications

Investigation complications for SpEd students:

- Complainant or respondent could be unreliable
- Memory deficits can impact recalling facts and details
- Can be susceptible to parental influence
- Possibly more traumatized by the investigation



How we can be in violation of a student's rights with Title IX?:

1. The sexual harassment was so severe and pervasive and objectively offensive that it can be said to have deprived the student access to the educational opportunities or benefits provided by the school
2. The district must have actual knowledge of the sexual harassment
3. The district must have been deliberately indifferent to the harassment.



Important Takeaways

- ◆ Title IX violations can result in a denial of FAPE
- ◆ Be aware when the complainant or respondent is served through special education.



Important Takeaways

- ◆ SpEd staff must be able to identify and take steps when possible for Title IX violations, and then make decisions to revisit IEPs based on the investigation.
- ◆ To avoid deliberate indifference take prompt action in keeping with IEP and made adjustments as needed.
- ◆ Prevention is the ultimate goal - adequate student supervision is required



Relevance and Evidentiary Standards



Preponderance of the Evidence

Preponderance of the evidence

- A fact is more likely true than not true
- 51% chance it's true

Clear & Convincing evidence

- The thing to be proved is highly probable or probably certain
- 90% probable or probably certain

NISD's standard in Title IX investigations is **preponderance of the evidence. This is stated in policy.**



No Evidence



Preponderance



Clear and
Convincing



Relevant Evidence

- “Relevant evidence” makes the existence of any fact that is of consequence to the determination **more probable** or **less probable** than it would be without the evidence.
- **Key question:** Does the fact make it **more likely** or **less likely** that the alleged sexual harassment occurred?
- **Sexual predisposition or sexual history**
Questions about the complainant’s sexual predisposition or prior sexual history are not relevant, unless they are offered to prove:
 - ☐ Someone other than the respondent committed the alleged conduct, or
 - ☐ The complainant consented to the conduct, and the evidence concerns specific incidents of the complainant’s prior sexual behavior with the respondent.



Relevant Evidence?

Cambrie alleged that Ash sexually assaulted her in the cafeteria at lunch. Which of these facts are relevant to your investigation?

- a. Ash and his friends sit with Cambrie's friends at lunch.
- b. Cambrie had a dentist appointment on Tuesday.
- c. Ash gets pizza on Wednesdays.
- d. Ash asked Cambrie out, and she turned him down.
- e. Ash texted Alyssa and asked her to send him nude photos of herself. Alyssa sent the photos to him.
- f. Between her freshman and sophomore years, Cambrie dated every member of the Varsity boys tennis team. It is rumored that she slept with all of them.
- g. Ash worked the Student Council table during lunch on Thursday, selling tickets to the homecoming dance.
- h. Three witnesses report that Cambrie sits in Ash's lap most days during lunch.
- i. Cambrie sent racy texts to Ash before and after the alleged assault.
- j. Cambrie sent racy texts to two other boys this week.
- k. Cambrie is tutoring Ash's best friend in geometry.



Written Documentation given to decision maker

- Must be specific.
- Must address allegation(s).
- Must follow all procedural steps.
- Must contain a finding of facts.



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The Written Determination





Written Determination

- ❖ Drafted by the Decision Maker
- ❖ Must include
 1. Allegations of sexual harassment
 2. All procedural steps followed
 - Notifications to parties
 - Interviews with parties & witnesses
 - Methods used to gather evidence
 - Hearings (if any)
 3. Findings of fact
 4. Conclusions, as applied to the Student Code of Conduct
 - Determination of responsibility
 - Disciplinary sanctions
 - Remedies to preserve equal access to educational programs
 3. Statement & rationale for each allegation
 4. How to appeal



Appeals

Both parties may appeal a Title IX determination or dismissal of a formal complaint because of:

- A procedural irregularity that affected the outcome
- New evidence that was not reasonably available at the time of the determination that could affect the outcome
- A conflict of interest or bias by the Title IX Coordinator, investigator, or decision maker

In an appeal, the school district must:

- Notify the other party when an appeal is filed
- Ensure that the decision-maker in the appeal is not the same person as the decision maker in the investigation or dismissal
- Give both parties a reasonable, equal opportunity to submit a written statement
- Issue a written decision describing the appeal decision & the rationale
- Give the written decision to both parties simultaneously



DUTY TO REPORT

Anyone in the district who is told means the district is PUT ON NOTICE.

You should contact your campus administrator AND Cindy Bauter.



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Let's talk about examples to ingrain Title IX thinking...



Real Life Example of Title IX - What Not to DO

An eighth-grader at Sedgwick Middle School was repeatedly sexually assaulted in and around the locker room during gym class. On one occasion, the student was grabbed by three other students in gym class who were yelling out to rape him. They dragged him into a closet where they assaulted him with a broom and groped him. A teacher entered the closet, told the boys to knock it off, and took no further action.





Real Life Example of Title IX - What Not to DO

Five former high school students were sexually abused by their water polo coach. At least seven school administrators were aware of allegations, **but failed to report to CPS or interview alleged victims.** After a former student emailed a teacher allegations against the same coach, the school launched an investigation that it completed in less than 24 hours finding the coach not responsible. The coach went on to harass and abuse several other students in subsequent years because of the district's failure to take action.





Example of Title IX - Not Sexual Harassment But Equity issue

- June 28, 2021 - Grant High softball coach, players sued a Portland school district, alleging discrimination over off-campus dirt field
- This case was initiated in 2005, when a girls' softball team in the Sweetwater Union High School District asked their school to provide the same resources as the boy's baseball team. Their request was denied, and their coach fired. This landmark case was the first to prevail under the three-part test of Title IX's mandate for equity in athletics. Specifically, the mandate requires equal opportunities for girls to play, equal treatment and benefits for female athletes, and no retaliation for raising concerns about Title IX violations.



Examples of *Possible* Title IX Violations

During summer vacation, the girl's soccer team had a bonfire at the team captain's house. Paige, a freshman member of the team, says she was sexually assaulted that night by Aidan, a football player at a neighboring high school. Paige's parents want you to investigate the assault under Title IX. They are threatening to sue the school if you don't, noting that the assault occurred at a soccer team party.



Examples of Possible Title IX Violations

In the 8th grade, Jane sent a topless picture to her then boyfriend, Jim, who was in high school at the time. Jane's freshmen year, she and her boyfriend break up and to "get back at her", he sends her topless pictures to his friends. Jane reports that Jim's friends are "looking at her funny" and whispering "boobs" everytime they are in class with her or walking by her in the hallway.



Examples of Possible Title IX Violations

During 4th period, friends John and Jay are in the restroom at the same time. John starts to masturbate while using the stall. Jay slides his cell phone under the door and records John, without John noticing, while he is masturbating. During lunch, Jay shares the video with several other students. John is completely caught off guard when a friend sends him the video.



Real Life Examples of Title IX Violations

Upper-class football players sexually assaulted a freshman teammate at a school sponsored camp by blowing pressurized air into his rectum with a battery-powered air pump. The teammates also groped him in the shower and beat him on the head and face with a pillowcase full of heavy objects. After the weekend, the freshman became the target of anti-gay taunts.



Real Life Examples of Title IX Violations

Doe v Hutchinson (2018)

Coach made “gender-based, sexually charged comments to Student despite the District’s instruction to stop making such comments. Hutchinson asked Student to ‘twerk’ for the class, implied to the class that Student was sexually active, called her ‘dumb,’ and encouraged Student’s boyfriend to discuss their sexual lives.” Court found against Coach.



So what could be Title IX?

Examples and Questions



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**If you are not sure if it is a possible Title IX violation, contact Cindy.*

**We can help save time and possible grievances by talking through the situation.*

**Cindy calling parents to offer supportive measures helps a lot in the long run.*