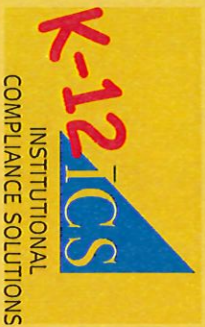
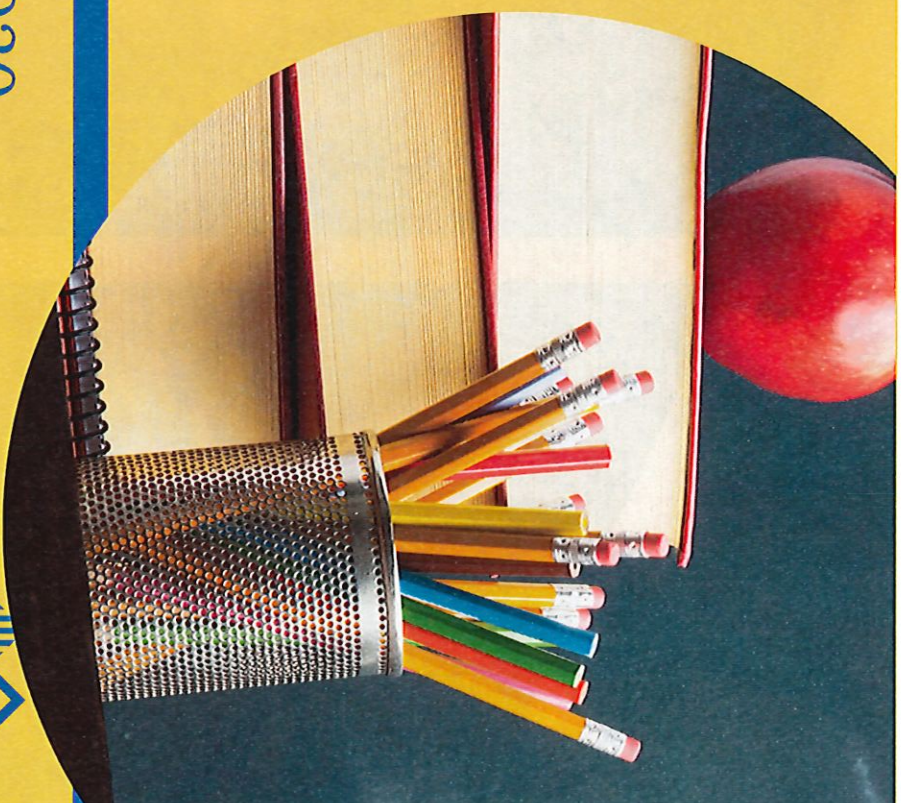


# NEW TITLE IX REGULATIONS

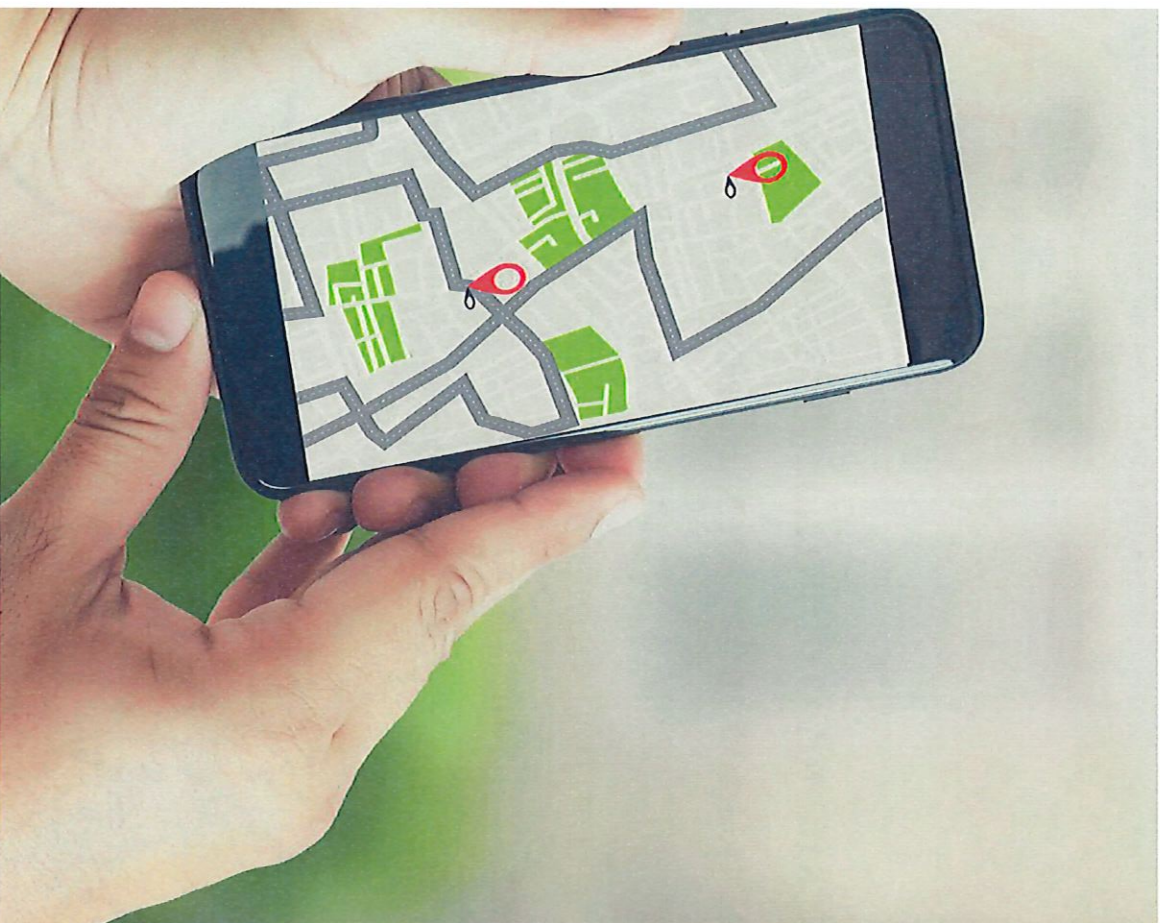
May 12, 2020



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# HOW DID WE GET HERE?

- September 2017- New Guidance
- November 2018- Notice of Proposed Rule
- May 6, 2020- New Regulations



# How to Read the Regulations

- Preamble vs. Regulations

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# THEMES

## SIGNIFICANT CHANGES

- Actual Notice
- Responsible Employees
- Supportive Measures
- Training
- Conflicts of Interest
- Due Process Guardrails
- Formal Process / Informal Process
- Hearings
- Jurisdiction
- Advisors



Information





# Sexual Harassment

- Conduct on the basis of sex that satisfies one or more of the following:
  - An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
  - Unwelcome conduct determined by a reasonable person to be so severe, pervasive AND objectionably offensive that it effectively denies a person equal access to the recipient's education program or activity; or
  - "Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.





# JURISDICTION

## Education Program or Activity

- Locations, events, or circumstances (operations)
- district exercised substantial control
  - over both the respondent AND the context in which the sexual harassment occurs
- Includes online sexual harassment but it must be analyzed to determine if it occurs in education program or activity
- Does not create or apply a geographic test, does not draw a line between “off campus” and “on campus,” and does not create a distinction between sexual harassment occurring in person versus online.



# SUPPORTIVE MEASURES CONTINUED

**Purpose:**

- restoring or preserving equal access
- protecting safety
- deterring sexual harassment

**Burden:** remains on the district not the parties

**Not:** punitive or disciplinary

**Confidential:** as much as possible

**Document:** when provided, when not provided and why

**Title IX Coordinator:** ultimately responsible for effective implementation, but others can also implement

**Examples:** in section 106.3





# DISMISSAL OF A FORMAL COMPLAINT

## **MUST Dismiss if:**

- Would not constitute sexual harassment as defined in regulations
- Did not occur in education program or activity
- Did not occur against a person in the U.S.

\*May act under another provision of code of conduct

## **May Dismiss if:**

- Complainant notifies Title IX Coordinator in writing that Complainant would like to withdraw formal complainant or allegations
- Respondent is no longer enrolled or employed by district
- Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination

\*Must promptly send written notice of dismissal and reasons for dismissal simultaneously to parties



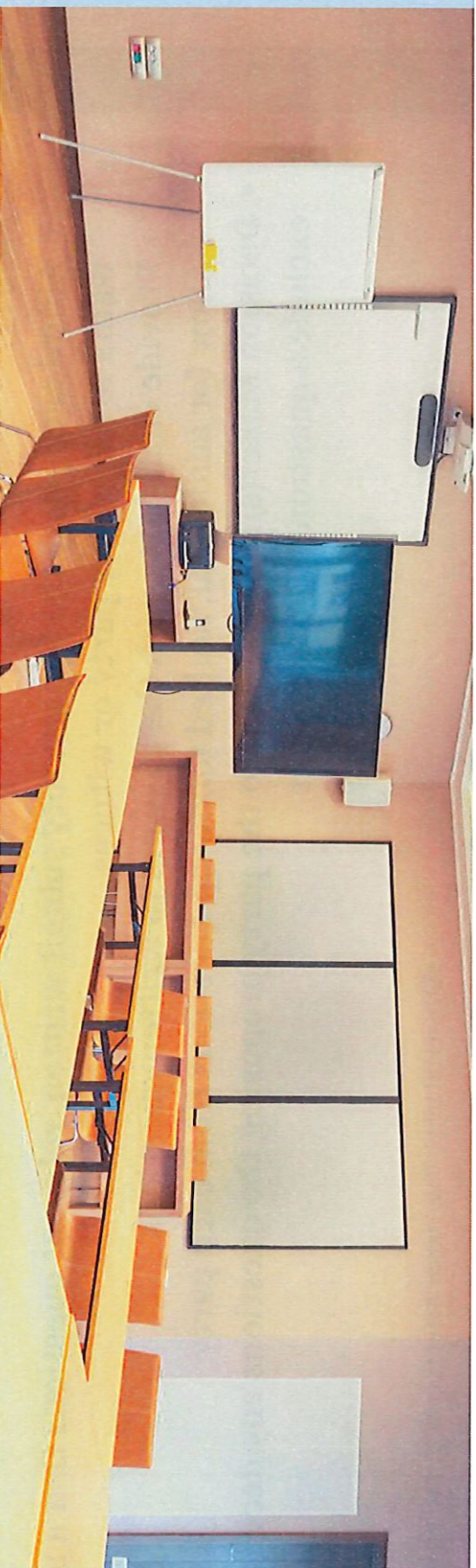


# Investigation of Formal Complaint

## MUST

- Ensure that burden of proof and burden of gathering evidence with district, not parties (no medical or counseling records w/o written consent of party)
- Provide equal opportunity to present witnesses (including EXPERT), and inculpatory/exculpatory evidence
- Not restrict ability of either party to discuss the allegations or to gather/present relevant evidence
- Provide opportunity for both parties to have advisor (can be attorney and can restrict the extent to which advisor can participate in the process)
- Provide written notice of date, time, location, participants and purpose of all hearings, investigative interviews, or other meetings with sufficient time to prepare to participate
- Provide equal opportunity to inspect and review evidence obtained as part of investigation (even if not relied on) – sent to party AND advisor (electronic or hard copy) with 10 days to respond prior to completion of investigative report.
- Create investigative report that fairly summarizes relevant evidence
- Provide report to parties AND advisors 10 days prior to hearing for review and written response.





# Hearings

- Live Hearing -if using them (in same room or using technology in separate rooms- not only via telephone)
  - Permit ADVISOR to ask the other party and witnesses **RELEVANT** questions (including those challenging credibility)
- Cross-Examination
  - Directly, orally, in real time by ADVISOR
  - If a party or witness does not submit to cross-examination, the decision-maker(s) must not rely on any statement of that party or witness
- Recording (audio, visual, or transcript) made available to parties for inspection and review
- Written determination regarding responsibility and sanctions with rationale
- Decision provided to parties simultaneously
- Effective implementation of remedies (Title IX Coordinator)





# INFORMAL RESOLUTIONS

## May NOT:

- Be required /condition of enrollment or employment
- Be offered unless Formal Complaint is filed
- Be offered or facilitated when allegations of employee sexually harassing student

## May:

- Be facilitated at any time after Formal Complaint and prior to determination regarding responsibility
- Expel if agreed to in Informal Resolution
- Provide Informal Resolution Process (NOT REQUIRED TO PROVIDE)

## Must:

- Provide information regarding Informal Resolution Process in initial Notice of Allegations
- Provide parties written notice of informal resolution with
  - allegations
  - requirements of process (including what information/documents will be shared)
  - circumstances which presume Formal Complaint arising from same allegations
  - right to withdraw/resume grievance process
  - consequences-including records kept/shared
- Obtain voluntary, written consent
- Have reasonably prompt time frames





# Burden of Proof

- Discretion of School District
- Must be Consistent Throughout ALL Process ie. Employees and Students
- Campus / District Specific





**Title IX  
Coordinator**



**Investigator(s)**

**Decision-  
Maker(s)**

**Appellate  
Member(s)**

**Informal  
Resolution  
Facilitators?**

**Responsible  
Employees**





# Deliberate

# Indifference

*"Clearly unreasonable in light of the circumstances"*

- Must promptly offer supportive measures
- Cannot impose discipline without a formal process
- Must investigate allegations in a formal complaint





# Positives

- Flexibility
- "Will not Second Guess"
- Deliberate Indifference standard that will place institutions/school districts in violation is higher and clearer





# Be Patient

There is a lot of work to be done, but it is most important that it is done correctly. Right NOT Rushed.

