ORANGEBURG COUNTY SCHOOL DISTRICT

It shall be the policy of Orangeburg County School District (OCSD) to maintain employment practices that are free of discrimination on the basis of race, sex (including pregnancy, childbirth, or related conditions), color, religion, national origin, gender, age (40 or older), genetic information, immigrant status, English speaking status, veteran status, disability, or any other applicable status protected by local, state or federal law. The employment practices of the district shall be in conformity with the Title VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 and all other applicable Civil Rights Laws.

Title IX

Title IX is the federal civil rights law that prohibits sex discrimination in educational programs and activities. Specifically, Title IX provides that "[n]o person in the United States on the basis of sex shall 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."

- OCSD does not discriminate on the basis of sex
- OCSD is required by Title IX not to discriminate on the basis of sex
- The requirement not to discriminate based on sex extends to admission and employment
- Inquiries should be referred to Title IX Coordinator, Mr. Ernest Holiday

New Title IX Regulations

The United States Department of Education ("USDOE") recently issued new regulations regarding Title IX complaints related to allegations of sexual harassment in schools. These new regulations significantly impact the manner in which public schools will be required to investigate and handle complaints of sexual harassment. Importantly, schools currently must implement the changes via policy and provide required training to relevant employees by August 14, 2020.

Purpose
New Title IX Regulations

In a summary statement, the USDOE stated the purpose of the new regulations as follows: These final regulations are premised on setting forth clear legal obligations that require recipients to: promptly respond to individuals who are alleged to be victims of sexual harassment by offering supportive measures; follow a fair grievance process to resolve sexual harassment allegations when a complainant requests an

investigation or a Title IX Coordinator decides on the recipient's behalf that an investigation is necessary; and provide remedies to victims of sexual harassment.

Revisions and Definitions

New Title IX Regulations

The new regulations broadly prohibit three types of sexual harassment:

1. Any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal education access.

2. Sexual misconduct in the form of "quid pro quo" is prohibited, which in a school setting means an educational benefit or opportunity is conditioned upon submission to some type of sexual favor in return. Evaluating the "severity, pervasiveness, offensiveness, or denial of equal educational access" is not necessary when there is quid pro quo harassment. Instead, quid pro quo harassment on its own is "sufficiently serious to deprive a person of equal Access."

3. Any act of sexual assault as defined in the Clery Act, domestic violence, dating violence, or stalking as defined in the Violence Against Women Act.

The new regulations apply when there is an allegation of sexual harassment that has occurred in a school's education program or activity. An educational program or activity is defined as a location, event, or circumstance in which the school exercises "substantial control over both the respondent [alleged perpetrator] and the activity in which the sexual harassment occurred."
Thus, both on and off campus activities may be impacted; however, a school sponsored trip abroad does not apply under the new regulations as the conduct must occur against a person in the United States.

Importantly, the new Title IX regulations do not prevent a school from addressing misconduct of a sexual nature or sexual harassment that falls outside the regulations' definitions and requirements. In fact, schools must continue to address such allegations of misconduct and harassment in a manner deemed appropriate and consistent with established policies.

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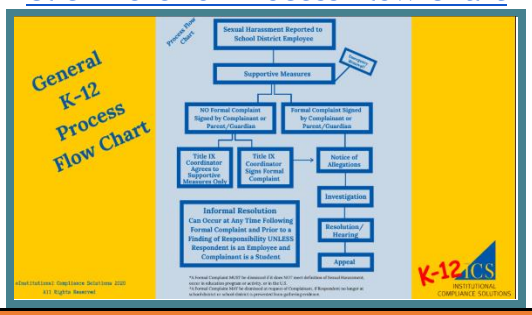
Updates to the Grievance and Investigations Process

New Title IX Regulations

The updated regulations generally seek to add additional protections to the person accused of sexual harassment (the respondent), so that both the person complaining of sexual harassment (the complainant) and the respondent are treated equitably. To this end, the new regulations require, among other things, the following:

- Supportive measures should be offered for both the complainant and respondent designed to preserve equal access to the education program or activity without unreasonably burdening the other party;
- The Title IX Coordinator must be trained on how to conduct an investigation and must not have conflicts of interest and be free of bias;
- The investigation must employ a presumption that the accused is not responsible;
- Equal opportunity for both parties to review all evidence related to the allegations;
- Prompt time frames for the conclusion of the grievance process;
- A written determination of responsibility;
- A right to appeal resulting in a written decision.

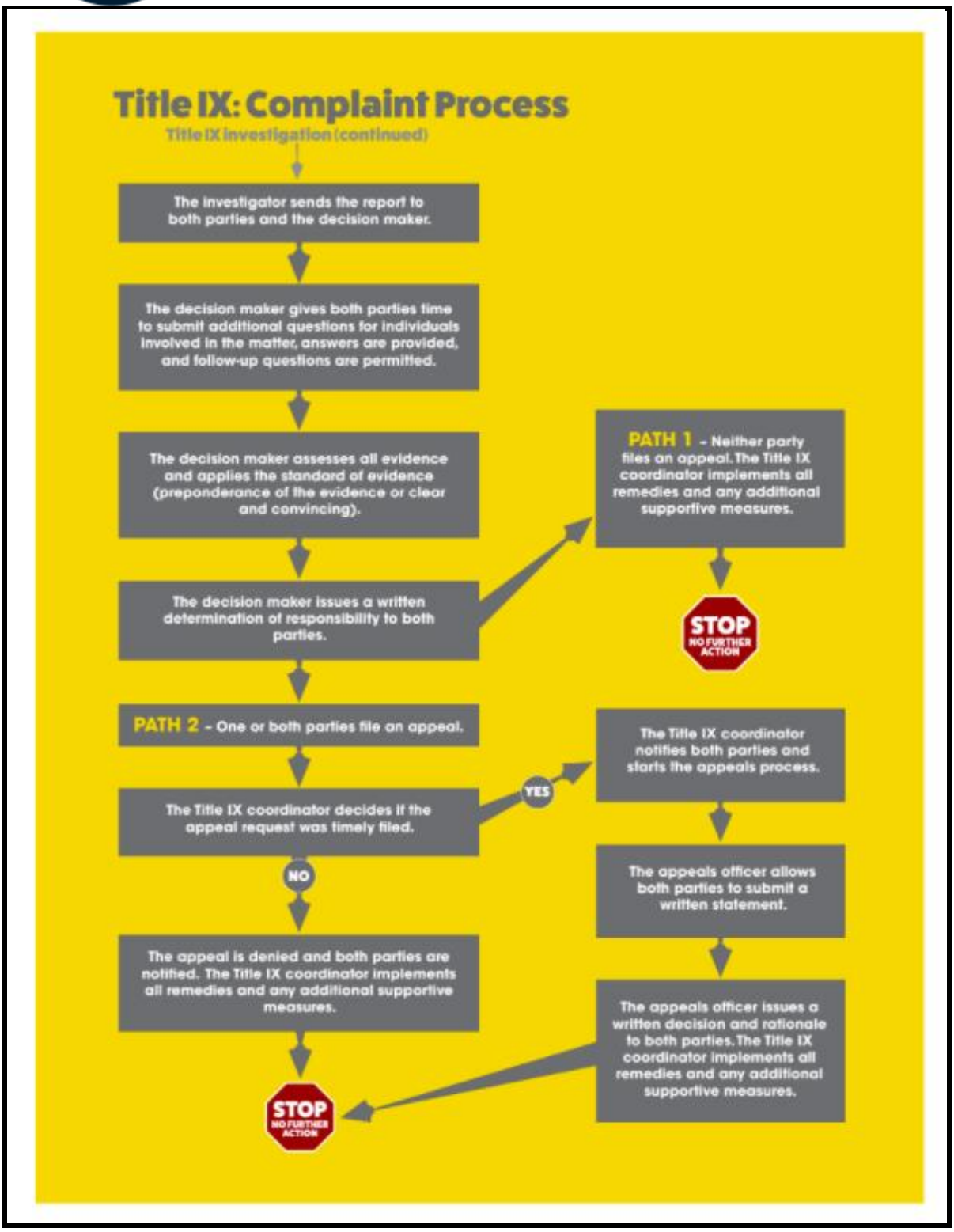
Click Here for Process Flow Chart



Complainant Process

New Title IX Regulations

Complaint Process Form


Title IX: Complaint Process
Title IX investigation (continued)
The investigator sends the report to both parties and the decision maker.
The decision maker gives both parties time to submit additional questions for individuals involved in the matter, answers are provided, and follow-up questions are permitted.
The decision maker assesses all evidence and applies the standard of evidence (preponderance of the evidence or clear and convincing).
The decision maker issues a written determination of responsibility to both parties.
PATH 1 - Neither party files an appeal. The Title IX coordinator implements all remedies and any additional supportive measures.
STOP
NO FURTHER ACTION
PATH 2 - One or both parties file an appeal.
The Title IX coordinator decides if the appeal request was timely filed.
YES
NO
The Title IX coordinator notifies both parties and starts the appeals process.
The appeals officer allows both parties to submit a written statement.
The appeals officer issues a written decision and rationale to both parties. The Title IX coordinator implements all remedies and any additional supportive measures.
The appeal is denied and both parties are notified. The Title IX coordinator implements all remedies and any additional supportive measures.
STOP
NO FURTHER ACTION

Reporting

Members of the district community, including, but not limited to, staff members and students, are encouraged to promptly report incidents of sexual harassment to the Title IX coordinator or building-level principal.

Reports may be made orally or in writing via mail, telephone, electronic mail, or in person meeting at any time, including non-business hours. All reports not made directly to the Title IX coordinator will be memorialized in writing and reported to the Title IX coordinator within two (2) business days.

Reports of prohibited conduct should be made as soon as possible after the alleged act or knowledge of the alleged act. Failure to promptly report may impair the district's ability to investigate and address the prohibited conduct.

Grievance Process

Upon learning of an instance of alleged sexual harassment or retaliation, even if no formal complaint is filed, the Title IX coordinator will promptly contact the complainant to discuss the availability of supportive measures irrespective of the filing of a formal complaint and explain the process for filing a formal complaint.

The district will respect the confidentiality of the complainant and the respondent to the greatest extent possible and information will only be disclosed to the appropriate individuals as necessary to investigate allegations of harassment and take disciplinary action.

Disciplinary consequences or sanctions will not be initiated against the respondent until the grievance process has been completed. Unless there is an immediate threat to the physical health or safety of any student arising from the allegation of sexual harassment that justifies removal, the respondent's placement will not be changed. The respondent will have the opportunity to challenge the decision immediately following a change in placement. If the respondent is a staff member, he/she may be placed on administrative leave during the pendency of the grievance process.

Formal complaint

The formal complaint process under Title IX does not apply to sexual harassment or retaliation occurring outside of the United States. However, the district will investigate all instances of sexual harassment and retaliation, including those that occur outside of the country (field trips, study abroad, etc.) in accordance with district policy. Should

an investigation conclude that such actions took place, the respondent will be subject to discipline.

Forms for initiating a formal complaint may be found online as an exhibit to this administrative rule. Printed copies are available in the principal's office, the district office, and from the Title IX coordinator. All formal complaints must include the following information, to the extent it is available:

- identity of the individual believed to have engaged in harassing conduct (hereinafter "respondent")
- nature of the alleged conduct
- date and location of the alleged violation
- list of potential witnesses
- resolution sought by the complainant
- signature of complainant

The Title IX coordinator can initiate a formal complaint by alleging sexual harassment against a respondent and signing the complaint document. The Title IX coordinator is not the complainant in such circumstances.

Investigation

NOTE: The Title IX coordinator may serve as the investigator; however, the investigator, decision-maker, and entity that hears appeals must all be separate persons/entities. *(SCSBA recommends that the Title IX coordinator remain independent from the investigation.)* However, if the Title IX coordinator serves as the investigator, modify the language accordingly.

Upon receipt of a formal complaint, the Title IX coordinator will provide written notice of the grievance process to the parties to include the following information:

- statement of the allegations
- statement that the respondent is presumed not responsible for the allegations until a determination is made
- prohibition against making a false statement or knowingly submitting false information
- right to have an advisor, who may be an attorney, present during any subsequent meetings
- list of supportive measures available to both parties

If the Title IX coordinator dismisses a complaint that does not meet the requirements of Title IX, after the complaint is withdrawn in writing, when the respondent moves out

of the district or is no longer employed with the district, or for any other reason during the investigation process, written notice, including the reasons for dismissal, will be provided to both parties simultaneously. **This does not preclude the district from investigating the facts under another district policy (e.g. policy GBA, *Open Hiring and Equal Employment Opportunity* (e.g. Title VII complaints) or GBAC, *Discrimination*, *Harassment*, *or Retaliation*) or the student/staff member code of conduct.** The dismissal of a formal complaint is subject to appeal.

The school administrator(s) will serve as the investigator and be responsible for investigating complaints in an equitable manner that involves an objective evaluation of all relevant evidence; credibility determinations may not be based on an individual's status as a complainant, respondent, or witness. The burden for obtaining evidence sufficient to reach a determination regarding responsibility rests on the school district and not the complainant or respondent.

Once a complaint is received, the investigator will initiate an investigation within *five (5) business days* of receipt of the complaint. If an investigation is not initiated within *five (5) business days*, the investigator will provide the Title IX coordinator with appropriate documentation detailing the reasons why the investigation was not initiated within the required timeframe.

All investigations will be completed within *thirty (30) calendar days* from the receipt of the initial complaint. If the investigation is not complete within t*hirty (30) calendar days*, the investigator will provide the Title IX coordinator with appropriate documentation detailing the reasons why the investigation has not been completed.

Investigations will be conducted in the following manner:

- provide an equal opportunity for the parties to present witnesses and evidence
- not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant evidence
- refrain from requiring, allowing, relying upon, or otherwise using questions or evidence that seek disclosure of information protected under a legally recognized privilege unless such privilege has been waived
- provide the parties with the same opportunities to have others present during any grievance proceeding
- provide to parties whose participation is requested written notice of the date, time, location, participants, and purpose of all investigative interviews, or other meetings, with sufficient time for the party to prepare to participate
- provide both parties an equal opportunity to inspect and review any evidence directly related to the allegations in the formal complaint

- result in the creation of an investigative report that fairly summarizes relevant evidence
  - prior to the completion of the investigative report, the investigator will send to each party the evidence subject to inspection and review; all parties will have at least ten (10) days to submit a written response which will be taken into consideration in creating the final report

Determination of responsibility

NOTE: While Title IX provides that a hearing may be conducted at this level, it is not required for K-12.

The respondent is presumed to not be responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. The *preponderance of the evidence standard* will be used in making this determination.

Mr. Jerome Davis, Director of Certified Staff, Mrs. Loretta Gadson-Washington, Director of Classified Staff, and Mr. Hayward Jean, Director of Student Services will act as the decision-makers. They will receive the final report of the investigation and allow each party ten (10) business days to submit additional questions to be answered by the appropriate party with limited follow-up prior to determining responsibility.
The decision-maker will provide the written determination to the parties simultaneously along with information about how to file an appeal within *fourteen (14) days* after the deadline for receiving all information from the parties.

A substantiated complaint against a student may result in corrective or disciplinary action up to and including expulsion. A substantiated complaint against a staff member will result in disciplinary action up to and including termination.

After a determination of responsibility is made, the Title IX coordinator will work with the complainant to determine if further supportive measures are necessary. The Title IX coordinator will also determine whether any other actions are necessary to prevent reoccurrence of the harassment.

Appeals

Dr. Jesse Washington, Ombudsman and Assistant to the Superintendent will hear appeals. If the complainant or respondent is not satisfied with the determination of the decision maker, he/she may request a review by the Dr. Jesse Washington, Ombudsman and Assistant to the Superintendent. Additionally, a complainant can request an appeal upon the dismissal of a formal complaint.

The request for appeal must be made in writing to the Title IX coordinator within *ten (10) business days* of receipt of the decision maker's determination or dismissal of the complaint. The appeal must include the original complaint form, a copy of the report and determination, and a written statement as to the reason for appeal.

Grounds for appeal include the following factors:

- procedural irregularity that affected the outcome of the case
- new evidence that was not reasonably available when the complaint was dismissed or a determination was made that could affect the outcome of the matter
- district staff member assigned to the matter had a conflict of interest or bias for or against the parties that affected the outcome of the matter

Dr. Jesse Washington, Onbudsman and Assistant to the Superintendent will review the material submitted and provide both parties *five (5) business days* to submit a written statement outlining their position. Within *fourteen (14) business days* of the deadline to receive submissions from the parties, a written decision will be issued simultaneously to both parties stating whether the determination of the decision maker will be upheld, modified, or reversed along with the rationale.

The decision of the *Ombudsman* is final. (*Option: The decision of the Ombudsman may be appealed to the board.*)

Informal Complaint Procedure (Mediation)

The district's informal complaint procedure may be initiated after a formal complaint has been made. The informal complaint process is designed to resolve complaints quickly, efficiently, and to the mutual satisfaction of all parties involved. Mediation is a voluntary process intended to allow the parties involved in a complaint to discuss their respective understandings of the incident with each other through the assistance of a trained mediator. Mediation is designed to encourage each person to be honest and direct with the other and to accept personal responsibility where appropriate. Where circumstances allow, and both parties agree to participate in writing, mediation will be initiated as soon as possible. Mediation is only available in those circumstances where the district believes that the allegations are appropriate for resolution through an informal process, and both parties voluntarily agree to participate. Mediation is not appropriate in certain cases, such as alleged sexual assaults, even on a voluntary basis.

Participation in mediation does not waive an individual's right to participate in the formal complaint procedure or to pursue other remedies available by law, including the filing of a complaint with state or federal agencies, as appropriate. An individual may

request suspension of the informal complaint procedure and initiation of the formal complaint procedure at any time.

Upon the written consent of all parties to the complaint, the Title IX coordinator will seek an outcome through mediation conducted by a qualified district mediator or an external professional engaged by the district. All parties to the complaint must mutually agree upon any resolution reached through the mediation process. The outcome of the mediation will be documented and maintained by the Title IX coordinator.

School Policies
New Title IX Regulations

- Sexual Harassment and Retaliation (Staff) Code GBAA
- Sexual Harassment and Retaliation (Students) Code JIAA
- Sexual Harassment and Retaliation (Students) Code JIAA-R
- **Sexual Harassment and Retaliation Complaint Form GBAA-E1**

Title IX Coordinator
New Title IX Regulations

Inquiries, a report and/or formal complaint of sexual harassment can be made and reported to the Title IX Coordinator:

Mr. Ernest Holiday
Assistant Superintendent for Human Resources
102 Founder's Ct. · Orangeburg, SC 29118
(803) 534-5454 Ext. 6551
Ernest.Holiday@ocsdsc.org

Training for Orangeburg County School District Employees:

Training for the Title IX Coordinator, Investigators, Decision Maker, and the Appellate has been conducted by **ICS-Institutional Compliance Solutions.**
Title IX Professional Development certifications courses include the following:

- **Title IX Investigator Training and Certification**
- **Title IX Coordinator Compliance Training and Certification**
- **Title IX Decision-Maker/Appeals Training and Certification**
- **Title IX 2020 Regulations Overview for School Leaders**

Institutional Compliance Solutions (ICS) provides a full range of consulting services for K-12school districts with a specialization in Title IX compliance. Lawyer, consultant, and Title IX expert Courtney Bullard is the owner and CEO of ICS. Her team provides consulting services to school districts, conducts external investigations in high profile matters, serves as an expert witness in Title IX litigation, provides virtual and in-person Title IX training and more. Please click the following link to view the training that was utilized by Orangeburg County School District: *https://icslawyer.com/posting-for-review-k-12-virtual-certified-title-ix-coordinator/*

All faculty and staff have received training from SafeSchools. Training includes modules such as Sexual Harassment: Staff to Staff and Staff to Student. Vector Solutions, the developers of SafeSchools products, partners with leading insurance and workers' compensation providers to deliver our award-winning K-12 safety and compliance programs to their policyholders.