



Department of Student Support Services

Title IX

Norfolk Public Schools Decision-Maker Training





Department of Student Support Services



What is Title IX?

- Title IX of the Education Amendments of 1972.
- Protects people from discrimination based on sex in education programs or activities that receive federal financial assistance.
- Enforced by the Office of Civil Rights ("OCR").



Department of Student Support Services

Sexual Harassment

- If the School Division has actual knowledge of sexual harassment in an education program or activity of the school division against a person in the United States, it must respond promptly in a manner that is not deliberately indifferent.





Department of Student Support Services

"Actual Knowledge"

- **“Actual knowledge” means notice of sexual harassment or allegations of sexual harassment to the School Division’s Building Title IX Coordinator or any official of the School Division who has authority to institute corrective measures on behalf of the School Division or to any employee of an elementary or secondary school.**
- **Administrators**
- **Teachers**
- **Staff**
- **Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge.**



Department of Student Support Services

Education Program or Activity

- **Locations, events, or circumstances over which the School Division exercised substantial control over both the respondent and the context in which the sexual harassment occurs.**
- **“Program or activity” encompasses all of the School Division’s operations including, but not limited to: computer and internet networks; digital platforms and computer hardware or software owned or operated by, or used in the operations of, the School Division.**
- **Title IX does not impose a duty to report purely off-campus conduct.**



Department of Student Support Services

Education Program or Activity – Continued

- **Includes conduct that occurs in a building owned or controlled by a student organization that is officially recognized by the School Division.**
- **Does not include conduct that occurs on an international field trip or at any location outside the United States.**
- **Does not include conduct that occurred off-campus but has an on-campus effect.**



Department of Student Support Services

Deliberate Indifference

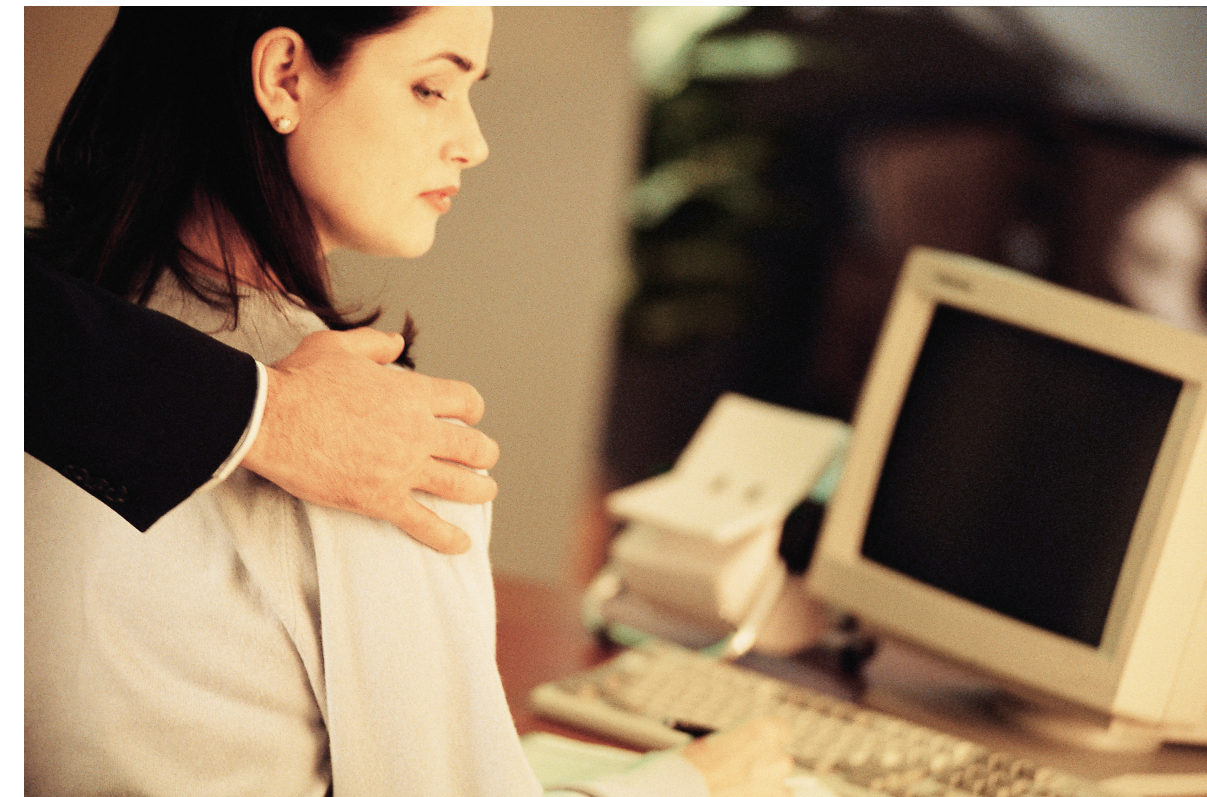
- **A School Division is “deliberately indifferent” if its response to sexual harassment is clearly unreasonable in light of the known circumstances.**



Department of Student Support Services

Three Categories of Sexual Harassment

1. **Quid pro quo**
2. **Statutory Offenses: Sexual assault, dating violence, domestic violence, stalking**
3. **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 [School Division]'s education program or activity."**





Department of Student Support Services

Sexual Harassment: Quid pro quo

- **An employee of the School Division conditions the provision of an aid, benefit, or service of the School Division on an individual's participation in unwelcome sexual conduct.**
- **Must be reported.**





Department of Student Support Services

Examples of Sexual Harassment: Defined by Statute

- **“Sexual assault” as defined by 20 U.S.C. 1092(f)(6)(A)(v)**
- **“Dating violence” as defined by 34 U.S.C. 12291(a)(10)**
- **“Domestic Violence” as defined by 34 U.S.C. 12291(a)(8)**
- **“Stalking” as defined by 34 U.S.C. 12291(a)(30)**
- **Any conduct meeting these definitions must be reported.**



Department of Student Support Services

Sexual Harassment: 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 [School Division]’s education program or activity.”
- Must be reported.





Department of Student Support Services

Other Definitions

- **Complainant**: an individual who is alleged to be the victim of conduct that could constitute sexual harassment under Title IX.
- **Respondent**: an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment under Title IX.
- **Supportive Measures**: non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent.
- **Formal Complaint**: a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the School Division investigate the allegation of sexual harassment.



Department of Student Support Services

Response to Sexual Harassment

- **The School Division must respond when it has actual knowledge of sexual harassment that occurred within the School Division's education program or activity.**
- **All School Division employees are responsible for reporting suspected sexual harassment to the Title IX Coordinator in writing.**
- **Regardless of whether a Formal Complaint is filed, the Building Title IX Coordinator must confer with the Complainant regarding the availability of supportive measures when the School Division has actual knowledge of sexual harassment allegations.**



Department of Student Support Services

Response: No formal complaint

- **Building Title IX Coordinator will promptly contact Complainant to:**
- **discuss availability of supportive measures,**
- **consider Complainant's wishes with respect to supportive measures,**
- **inform the Complainant of the availability of supportive measures with or without the filing of a Formal Complaint, and**
- **explain to the process for filing a Formal Complaint.**



Department of Student Support Services

Formal Complaint Required

- If the School Division intends to impose disciplinary sanctions against a Respondent for sexual harassment as defined by Title IX, Building Title IX Coordinator will initiate the School Division's grievance process by signing a Formal Complaint.
- If the alleged incident involves actions against a student by an employee, Building Title IX Coordinator shall immediately forward complaint to Department of Human Resources for further investigation, and if appropriate, to Child Protective Services and/or Law Enforcement.

The image shows a 'SEXUAL HARASSMENT COMPLAINT' form. A black pen is resting on the form. The form has several sections and fields:

- Complainant Information**: Includes fields for Given Name, Middle Name, City, State, Home Phone Number, and Alternate Phone Number.
- Respondent Information**: Includes fields for Given Name, Middle Name, City, State, Home Phone Number, and Alternate Phone Number.
- Date of allegation**: A field for the date of the incident.



Department of Student Support Services

Response: Supportive Measures

- **Designed to restore or preserve equal access to the School Division's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the School Division's educational environment, or deter sexual harassment.**
- **Examples include: counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, leaves of absence for student Complainants or Respondents, increased security and monitoring of certain areas of campus, and other similar measures.**



Department of Student Support Services

Response: Supportive Measures – Con't

- **Can be provided to Complainants, Respondents, and any other members of the NPS community who are affected by sexual misconduct.**
- **May be sought or provided before or after the filing of a Formal Complaint, or where no Formal Complaint has been filed.**
- **Building Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.**
- **When possible, must maintain confidentiality with respect to supportive measures.**



Department of Student Support Services

Grievance Process: Overview

When is the Grievance Process required?

- **When a Formal Complaint has been filed (either by a Complainant or the Building Title IX Coordinator); or**
- **The School Division intends to discipline a Respondent for behavior that constitutes “sexual harassment” as defined by Title IX.**
- **If no Formal Complaint is filed, the grievance process cannot start.**

What is the scope of the Grievance Process?

- **The grievance process shall apply only to:**
 - **“sexual harassment” in a School Division’s “education program or activity”**
 - **against a person in the United States.**



Department of Student Support Services

Formal Complaint

Who may file a formal complaint?

- The Building Title IX Coordinator, the Complainant, or the minor aged Complainant's parent or legal guardian.
- At the time of filing, Complainant must be participating in or attempting to participate in the education program or activity of the School Division.

How is a formal complaint filed?

- May be filed with the Building Title IX Coordinator in person, by mail, or by electronic mail.
- Must be a document or electronic submission that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant (or person authorized to act on the Complainant's behalf) is the person filing the complaint.



Department of Student Support Services

Steps in the Grievance Process

Preliminary Steps

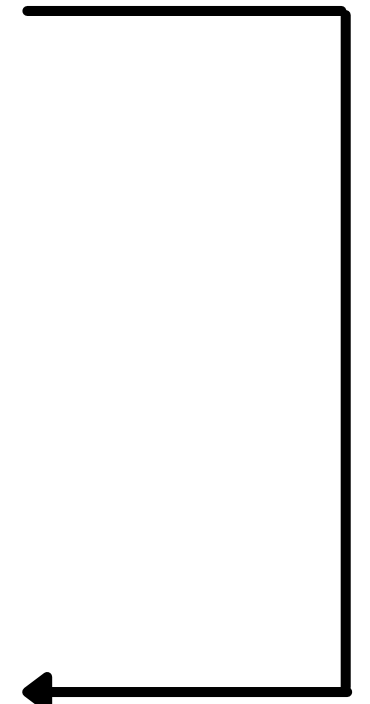
- Formal Complaint
- Offer supportive measures
- written notice and appointment of investigator
- initial determination regarding mandatory dismissal

Investigation

- Produce Investigative Report within 35 school days of appointment

Determination of Responsibility

Appeal





Department of Student Support Services

Conflict of Interest/Bias

- **Any individual designated by the School Division as a Building Title IX Coordinator, Investigator, Decision-Maker, or any person designated by the School Division to facilitate an informal resolution process, must not have a conflict of interests or bias for or against complainants or respondents generally or an individual complainant or respondent.**
- **The prohibition against bias and conflict of interests is intended to minimize premature judgment of the facts related to the grievance throughout the Title IX grievance process. It is also intended to minimize partiality in the decision-making process.**



Department of Student Support Services

Grievance Process: Preliminary Steps

- Promptly contact the Complainant regarding the availability of supportive measures;
- Within 2 school days of receipt of complaint, provide written notice to the parties of the complaint and grievance process, and appoint an Investigator;
- Within 3 school days, make an initial determination regarding mandatory dismissal; and
- Consider appropriateness of emergency removal and consolidation of multiple complaints.





Department of Student Support Services

Appointment of Investigator

- Investigator will be appointed by the Building Title IX Coordinator at the time of the written notice to the parties.
- Any individual designated as an Investigator must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.





Department of Student Support Services



Mandatory Dismissal

- **Within 3 business days of receipt of the complaint, and before assigning an Investigator, the Building Title IX Coordinator will conduct an initial investigation and review of the allegations in the Formal Complaint.**
- **Must dismiss a Formal Complaint prior to commencing an investigation if the conduct alleged:**
 - **would not constitute sexual harassment as defined by Title IX, even if proved; or**
 - **did not occur against a person in the United States.**
- **Upon dismissal, promptly send written notice and reason(s) for dismissal to the parties.**



Department of Student Support Services

Discretionary Dismissal

- **Building Title IX Coordinator may dismiss Formal Complaint or any allegations therein, if at any time during the investigation:**
 - **A Complainant notifies the Building Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;**
 - **Respondent is no longer enrolled or employed by the School Division; or**
 - **Specific circumstances prevent the School Division from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.**
- **Upon such dismissal, Building Title IX Coordinator will promptly send written notice and reason(s) for dismissal simultaneously to the parties.**



Department of Student Support Services

Grievance Process: Investigation

- Investigator will conduct factual investigation of allegations and allow both parties equal opportunity to submit and review evidence.
- Within 35 school days of the filing of the complaint, Investigator will produce Investigative Report fairly summarizing the evidence.
- Parties must be provided at least 10 calendar days to review and respond to the evidence before completion of the Investigative Report.





Department of Student Support Services

Investigation

- **Investigation includes:**
 - **Interviewing Complainant, Respondent and witnesses;**
 - **Reviewing law enforcement investigation documents, if any;**
 - **Reviewing relevant student or employee files; and**
 - **Gathering and examining other relevant documents, social media, and evidence.**
- **The investigator bears the burden of gathering evidence and shall attempt to collect all relevant information and evidence.**
- **The investigation file should contain all information gathered during the investigation that is potentially relevant to the alleged misconduct.**
- **Relevant evidence is any evidence that may tend to make the allegations at issue more or less likely to be true.**



Department of Student Support Services

Investigation – Continued

- **Parties can (and should) present evidence and identify witnesses to the Investigator so that they may be considered during the investigation.**
- **Parties must have an equal opportunity to present witnesses and evidence.**
- **Parties cannot be restricted from discussing the allegations or**
- **gathering/presenting evidence.**
- **Parties may not retaliate against any person because they participate or refuse to participate in the grievance process.**
- **Confidential information must be kept confidential and must not disclose such information outside the grievance process.**



Department of Student Support Services

Investigation – Continued

- **Parties must have equal opportunity to have others present during any meeting/interview, including opportunity to be accompanied by an advisor of their choice, who may be, but is not required to be, an attorney.**
- **Investigative meetings**
- **Parties must receive advanced written notice of any meeting.**
- **Notice must include the date, time, location, participants, and purpose of meeting.**
- **Notice can be provided by email.**



Department of Student Support Services

Investigation – Continued

- **Both parties must have an equal opportunity to inspect and review any evidence obtained as part of the investigation.**
- **School Division will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in their capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the party voluntarily consents in writing to their use in a formal grievance process.**



Department of Student Support Services

Investigation – Continued

- **Within 35 school days of the filing of the complaint, Investigator will produce Investigative Report fairly summarizing the evidence.**
- **Investigative Report will be sent simultaneously to both parties.**
- **The parties will have at least 10 calendar days to submit a written response, if any, to the Investigative Report, for the Decision-Maker to consider.**





Department of Student Support Services

Grievance Process: Determination of Responsibility

- **Upon completion of the Investigative Report, the Building Title IX Coordinator will promptly designate a Decision-Maker to make an ultimate determination of responsibility.**
 - **Cannot be the same person as the Building Title IX Coordinator or Investigator.**
 - **Must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.**



Department of Student Support Services

Responsibilities of Decision-Maker

- **Conduct an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence, and issue a written determination of responsibility.**
- **Facilitate and allow the parties to submit written questions for the other parties and witnesses to answer.**



Department of Student Support Services

Facilitation of Written Questions

- **Before reaching a determination regarding responsibility, the Decision-Maker must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.**
- **The Decision-Maker must explain to the party proposing the questions any decision to exclude a question as not relevant.**
- **The parties' initial set of relevant questions, if any, must be submitted to the Decision-Maker within 10 school days of receiving the Investigative Report.**
- **The Decision-Maker may in his/her discretion grant lesser weight to last-minute information or evidence introduced through the exchange of written questions that was not previously presented to the Investigator.**



Department of Student Support Services

Facilitation of Written Questions: Bases to Exclude Questions

- **Irrelevant**: question seeks information that is not directly related to any of the allegations or evidence in the record.
- **Sexual predisposition/history**: questions about Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions:
 - are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
 - concern specific incidents of the Complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- **Privilege**: question seeks disclosure of information protected under a legally recognized privilege, and there has not been a waiver of that privilege.



Department of Student Support Services

Review of Evidence

- **Presumption that Respondent is not responsible for the alleged conduct until a determination of responsibility is made after reviewing the evidence.**
- **Decision-Maker must consider all relevant evidence, including both inculpatory and exculpatory evidence.**
- **Credibility determinations cannot be based on status as Complainant, Respondent, or witness.**
- **Questions/evidence about Complainant's sexual predisposition or prior sexual behavior are not relevant unless one of the exceptions is met.**
- **Cannot rely on information protected under a legally recognized privilege, without waiver of that privilege.**



Department of Student Support Services

Written Determination

- **Within 10 school days of the receipt of the investigative report, the Decision-Maker must issue a written determination of responsibility.**
- **Determination based on a preponderance of the evidence.**
 - **The burden of proof is met and a Respondent may be found responsible if the Decision-Maker determines that it is more likely than not that the Respondent committed the conduct alleged.**
- **Primary question is whether a preponderance of the evidence demonstrates that the Respondent's behavior constitutes "sexual harassment" as defined by Title IX.**



Department of Student Support Services

Written Determination – Continued

- **Written determination must include:**
 - **Identification of the allegations potentially constituting sexual harassment;**
 - **A description of the procedural steps taken;**
 - **Findings of fact supporting the determination;**
 - **Conclusions regarding the application of the School Division's Code of Student Conduct and the grievance process to the facts;**
 - **A statement of, and rationale for, the result as to each allegation, including:**
 - **determination regarding responsibility;**
 - **any disciplinary sanctions imposed on the Respondent; and**
 - **whether remedies designed to restore or preserve equal access to the School Division's education program or activity will be provided to the Complainant;**
 - **The School Division's procedures and permissible bases for the Complainant or Respondent to appeal.**



Department of Student Support Services

Written Determination – Continued

- **Must be provided to the parties simultaneously.**
- **Supportive measures may also be provided to the Complainant.**
 - **If the supportive measures do not impact the Respondent, they should not be disclosed in the written determination.**
 - **Instead, written determination should simply provide that “remedies will be provided to the Complainant.”**
- **The determination becomes final either:**
 - **on the date the School Division provides the parties with written determination of the result of the appeal, if an appeal is filed, or**
 - **if an appeal is not filed, on the date on which an appeal would no longer be considered timely.**
- **Building Title IX Coordinator is responsible for effective implementation of any remedies and supportive measures.**



Department of Student Support Services



Grievance Process: Appeal

- Both parties have right to appeal determination of responsibility or dismissal on the following bases:
 - Procedural irregularity that affected outcome of the matter;
 - New evidence that was not reasonably available at the time of determination or dismissal, that could affect the outcome of the matter; or
 - Building Title IX Coordinator, Investigator(s), or Decision-Maker(s) had conflict of interest or bias for or against complainants or respondents generally or individual complainant or respondent that affected the outcome of the matter.
- The issues for consideration on appeal are limited to the bases described above. If the appeal does not challenge the outcome on any one of these enumerated bases, the appeal must be denied.



Department of Student Support Services

Appeal

- **Written appeal must be filed with Building Title IX Coordinator within 5 school days of the determination or dismissal.**
- **The Building Title IX Coordinator will promptly notify the other party in writing of the appeal and appoint a Decision-Maker for the appeal. The matter will be referred to appropriate Appeal Decision-Maker.**
- **Any individual designated as a Decision-Maker for an appeal must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.**



Department of Student Support Services

Appeal – Continued

- Both parties will have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. Statements must be submitted to the appropriate Appeal Decision-Maker within 2 school days.
- Within 15 calendar days of the filing of the appeal, the Decision-Maker will issue a written decision, provided simultaneously to both parties, describing the result of the appeal and the rationale for the result.
- No further appeal is available under Title IX.





Department of Student Support Services

Responsibilities of Appeal Decision-Maker

- **Review appeals of a determination of responsibility or dismissal of a Formal Complaint.**
- **Review the parties' written statements in support of, or challenging the outcome.**
- **Issue a written decision describing the result of the appeal and the rationale for the result.**



Department of Student Support Services



Delays/Extensions

- Any time period required by the grievance process may be temporarily delayed or extended for good cause with written notice to both parties of the delay or extension and the reasons for the action.
- Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
- Such extension will be for a reasonable time period, but not longer than thirty (30) business days from the date that the action was originally due.



Department of Student Support Services

Informal Resolution

- **The Complainant or Respondent may request in writing at any time that informal methods, such as mediation, be utilized to address the allegations in a Formal Complaint.**
- **The Building Title IX Coordinator may place the grievance process on hold while the informal resolution process is ongoing.**



Department of Student Support Services

Informal Resolution: Procedure

- **At any time prior to reaching a determination regarding responsibility on the allegations in a Formal Complaint, and upon written request to the Building Title IX Coordinator by either party, the School Division may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication.**
- **The Building Title IX Coordinator must provide the parties written notice disclosing the allegation, 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.**



Department of Student Support Services

Informal Resolution: Procedure–Continued

- **The Building Title IX Coordinator must obtain the parties' voluntary, written consent to the informal resolution process.**
- **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.**



Department of Student Support Services

Informal Resolution: Limitations

- **A Complainant or Respondent cannot be compelled to participate in any informal resolution process.**
- **The School Division 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 these guidelines.**



Department of Student Support Services

Retaliation

- **Retaliation against an individual who makes a complaint or participates in the grievance process is strictly prohibited.**
- **Intentional false reporting or misrepresentation of complaints or evidence regarding complaints is strictly prohibited and may result in appropriate action being taken by the School Division.**
- **The School Division will keep the identity of any Complainant, Respondent,**



Department of Student Support Services

Questions?

