



# Title IX Grievance Process from Start to Finish

CABE/CAPSS Convention November 17, 2023

THIS OUTLINE IS INTENDED TO BE A GENERAL DISCUSSION OF THE SUBJECT MATTER HEREIN AND IS APPROVED FOR EDUCATIONAL PURPOSES. THE OUTLINE DOES NOT CONSTITUTE LEGAL ADVICE ON ANY ISSUE. THE READER SHOULD CONTACT AN ATTORNEY FOR ADVICE AS TO THE LAW IN ANY PARTICULAR SITUATION.



Presented By:

Carolyn Mazanec Dugas, Esq.  
Rebecca Goldberg, Esq.

75 Broad Street  
Milford, CT 06460  
(203) 783-1200



1221 Post Road East  
Westport, CT 06880  
(203) 227-9545

# What You'll Learn



- When Title IX Grievance Procedures Apply
- Definition of Sexual Harassment Under Title IX
- Grievance Process
- Interplay with Other Policies/Laws
- Best Practices
- Pitfalls
- Board's Role
- Scenarios

# When Do Title IX Grievance Procedures Apply?

- When there is an allegation of sexual harassment (as defined by Title IX) in a district's education program or activity.
- "Education program or activity" includes any location, event, or circumstance over which the district exercises substantial control over the harasser and the context in which the harassment occurs.
  - Includes conduct occurring at school, on a school bus, field trip, at an extracurricular activity, function, and program even if outside of school, and conduct during remote learning.
  - Does **not** include:
    - Private social media outside of school (might be included if additional conduct occurs in a school program or activity as an outgrowth of the initial conduct)
    - Conduct outside the U.S.
- Title IX covers sex, including sexual orientation and gender identity, but not other protected statuses (e.g., race).
- Title IX applies to employees and students. Other laws also protect employees (e.g., Title VII of the Civil Rights Act).

# Definition of Sexual Harassment

- Sexual Harassment is conduct on the basis of sex.
- It can be defined in one or more of the following ways:
  1. A district employee conditioning an aid, benefit, or service on participation in an unwelcome sexual conduct (Quid Pro Quo - This for That)
  2. Unwelcome sexual conduct that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education programs or activities
  3. Sexual assault, dating violence, domestic violence, or stalking as defined by identified statutes

# Review of Title IX Basics

- Districts' response is to be equitable and prompt; emphasis on transparency, fairness, no bias or conflict, and may not be based on stereotypes.
- Districts must adopt grievance procedures to address formal complaints of sexual harassment.
- Grievance procedures require personnel be assigned to discrete roles: Title IX Coordinator, Investigator and Decision-Makers as well as Informal Resolution Facilitators.
- Grievance procedures are to be used when a formal complaint is filed. These may be brought by a Complainant or initiated by the Title IX Coordinator only.
- Informal reports can be brought by anyone: all submissions require a response, but only formal complaints require Title IX grievance procedures be followed.
- Retaliation for participation or non-participation in the Title IX process is prohibited. Discipline for submitting a false claim is not considered retaliation.

# Need to Respond to Sexual Harassment

- Districts must respond to allegations of sexual harassment of which it has “actual knowledge.”
- Failure to respond violates Title IX as “deliberate indifference” and may violate other laws.
- Actual knowledge by any employee is deemed actual knowledge by the district.
  - Ensure employees at all levels know how to make a report.
- Administrators need to know as soon as a situation seems like it could involve Title IX, STOP and contact the Title IX Coordinator. Other than ensuring immediate needs are met (safety, calming a crying student, etc.), the first step is to contact the Title IX Coordinator.
- Do not investigate, request written statements, etc.

# Distinct Roles and Responsibilities

- Regulations expand the role and responsibilities of a Title IX Coordinator and require that additional district personnel fill distinct roles in the grievance process.
- Districts must identify individuals to fill these roles:
  - Title IX Coordinator
  - Investigator
  - Decision-Maker
  - Decision-Maker on Appeal, if applicable
  - Facilitator of Informal Resolution
- Individuals filling all roles are to be trained.
- It is important to know the roles and responsibilities assigned to each person to ensure compliance with the law/policy/regulation and to ensure no overlapping of roles and to facilitate a better understanding of your role.





# Which Personnel Fill These Roles?

A Typical Designation – may vary by district

- Title IX Coordinator: Director of Pupil Services (all specified contact information must be posted on the district's website)

Additional roles may be assigned on case-by-case basis

- Investigators: Principals or HR director
- Decision-Maker: Assistant Superintendent
  - Cannot be the investigator or the Title IX Coordinator.
- Decision-Maker on Appeal: Superintendent
- Informal Resolution Facilitators: May be school counselors or other designated trained personnel

Roles may be outsourced (e.g., to counsel)

# First Steps – Title IX Coordinator

- Meets with Complainant and reviews the Title IX policy/regulation and option to file a formal complaint, if one has not yet been filed.
- May assist the Complainant with filing the formal complaint or file on their own to avoid deliberate indifference.
- Discusses supportive measures with Complainant and Respondent (explaining this occurs with or without a formal complaint).
- Collaborates with school administrators and/or HR about implementation of supportive measures and need for modifications to the measures.
- Provides written notice of a formal complaint or directs such notice to be provided to the parties; sends or directs an additional notice if allegations are revised (initial notice must be sent prior to the conducting of an initial interview with a Respondent).
- Designates roles and monitors compliance with grievance procedures.



# Formal Complaint: Grievance Procedures



- The burden of proof rests on the recipient (district), not either party.
  - Either preponderance of the evidence or clear and convincing evidence (as set by your policy)
- Both parties shall be given the opportunity to present witnesses and evidence.
- Focus on transparency – witnesses are named, evidence is shared, etc.
- “Gag orders” are prohibited.
- No discipline for Respondent for sexual harassment until process is completed.
  - Emergency removal when warranted
  - Administrative leave for employees

# Formal Complaint: Investigation

- Discuss and obtain signed nondisclosure agreements from the parties as early in the process as possible; preferably during initial interviews to enable sharing of evidence (as required). Title IX trumps FERPA.
- Investigator interviews parties and witnesses and gathers evidence.
- Keep notes of interviews but maintain them as personal notes. Do not share with anyone or they become a student record. Interview summaries can become part of the evidence.
- Investigator provides both parties the evidence (including exculpatory evidence) with at least 10 days to submit comment.
- Investigator drafts investigation report summarizing the evidence. Investigator DOES NOT determine credibility or make findings of fact.
- TIP: Investigator should make sure the report is clear and specific enough that someone with no prior knowledge could understand it and have sufficient information. The Investigation Report must be thorough enough to allow the Decision-Maker to reach a determination regarding responsibility without relying on information obtained outside the process.

# Formal Complaint: Investigator Handoff to Decision-Maker



- Investigation report is sent to both parties and the Decision-Maker.
- Investigator is no longer involved in the process.

# Formal Complaint: Decision-Maker

- Decision-Maker notifies parties of their rights to (1) submit a written response to the Investigator's report and (2) 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 exclude irrelevant questions and must explain to the party proposing the question any decision to exclude a question as not relevant.
- After at least 10 days, Decision-Maker issues a determination with specific elements, most significantly findings of fact, conclusions as to whether sexual harassment occurred, and what remedies to apply. May need to *recommend* rather than make final disciplinary decision if other due process requirements exist (e.g., expulsion hearing, teacher termination hearing).

# Formal Complaint: Final Decision/Written Determination of Responsibility

- The Decision-Maker issues a written determination that:
  - identifies the allegations constituting sexual harassment
  - describes the procedural steps taken from receipt of the complaint through the investigation
  - makes findings of fact supporting the determination
  - makes conclusions (sexual harassment did or did not occur)
  - includes a statement of and rationale for each allegation, including a determination of responsibility, any sanctions imposed on the Respondent, and any remedies to restore or preserve equal access to education program or activity to be provided to the Complainant
  - describes the procedure and basis for a possible appeal
- The Title IX Coordinator is responsible for the effective implementation of any remedies.

# Formal Complaint: Dismissals

## **Mandatory**

- Conduct alleged in the complaint, even if proved, does not constitute sexual harassment as defined by Title IX
- Conduct did not occur in a district's education program or activity
- Conduct did not occur against a person in the United States

## **Permissive**

- Complainant notifies the Title IX Coordinator in writing that the Complainant wants to withdraw the formal complaint or any allegations therein
- Respondent is no longer enrolled or employed by the district
- Specific circumstances prevent the district from gathering evidence sufficient to reach a determination re: the complaint
- Even if dismissed, may still discipline under other provisions of the code of conduct



# Formal Complaints: Appeals

- Either party may appeal the decision of responsibility or dismissal of a formal complaint or allegation therein.
- Appeal may only be based upon and granted for the following reasons:
  1. a procedural irregularity that affected the outcome;
  2. new evidence that was not reasonably available at the time of the determination and could affect the outcome; and
  3. conflict of interest on the part of the Title IX Coordinator, the Investigator, or Decision-Maker.
- A district may, but need not, offer an appeal equally to both parties on an additional basis.
- Written notice of the appeal must be provided to both parties, and they shall be provided with an opportunity to submit a written statement in support of or challenging the appeal.
- Written decision must be issued.



# Formal Complaints: Informal Resolution

- Informal resolution may be offered by the Title IX Coordinator if a formal complaint is filed. This may occur any point in the process.
- Both parties must consent to informal resolution. If both elect informal resolution, the grievance process is placed on hold. Informal resolution is not permitted if the allegation involves an adult Respondent and a student Complainant.
- May include a broad range of strategies, including mediation and restorative justice.
- Must be facilitated by trained personnel.
- Any party has the right to withdraw from the informal resolution process at any time and the formal grievance will process resume.



# What About Other Laws?

- Title VII/CFEPA – Employee victims only. Lower standard for conduct: severe or pervasive; conduct may occur outside of work setting. No specific investigation protocol.
- Teen Dating Violence/Bullying – Follow separate protocols.
- Child Abuse/Neglect – Report to DCF.
- Other kinds of discrimination/harassment – Conduct investigation separate from Title IX for harassment covered by other laws (e.g., Title VI, ADA).
- Collective bargaining agreements – Need to comply with contract unless unlawful to do so. Discipline must follow the contract and may be grieved, etc.

# Best Practices



- Make sure your policy and regulation are compliant with the Title IX grievance procedures.
  - If using CAGE policy, make sure you select when given choices and remove explanatory notes.
  - When choosing between calendar days and school days, consider implications of summer break. (We recommend calendar days.)
- Use templates to ensure correspondence meets all regulatory criteria.
- Update training for all relevant personnel. Make sure every employee knows how to report to Title IX Coordinator.
- Designate “default” roles for personnel but be flexible to avoid conflict of interest or bias or to adapt to other circumstances.
- Make sure personnel know their roles and do not encroach.
- Act promptly – the process takes long enough without additional delay.

# Pitfalls



- Outdated policies/regulations.
- Title IX Coordinator information not published/available.
- Not bringing the Title IX Coordinator into the situation right away.
  - Teachers/administrators should not be asking questions, investigating, etc. beyond addressing immediate needs.
- Assigning the wrong staff for the situation.
  - Does the Pupil Personnel Director know how to investigate/discipline staff, especially those in a union?
  - Guidance counselors of the students involved generally should not be used for any step other than informal resolution.
- Investigative report leaves too many questions, so Decision-Maker lacks enough information to make a determination whether sexual harassment has occurred.
- Taking too long so that problems fester.
- Moving too fast and not being thorough (remember supportive measures allow for needs to be met while the process is pending).

# Board's/Superintendent's Role

- Adopt compliant policy/regulations.
  - Update may be needed if new regulations are promulgated – stay tuned!
- Designate Title IX Coordinator.
- Ensure policies, training materials, and Title IX Coordinator information are disseminated.
- Ensure adequate training.
- Keep parties to the process and avoid entering the fray.
- Contact legal counsel for advice throughout the process, especially in more difficult cases.

# Scenarios

- What questions does the scenario raise for you?
- Do you need more information? What information?
- What actions should be taken?
- If the allegations are true, do they constitute sexual harassment?
- Are additional investigations or policies relevant? Or are additional actions required?

# Jasmine and Trevor

Jasmine is a 10th-grade student who is new to the district. Her sex assigned at birth is male and she presents as female. Trevor knows Jasmine from a summer camp the two attended a few years ago, when Jasmine was known as James. Nobody else in the high school knew Jasmine previously and Jasmine does not want others to know that she is transgender. Trevor posts photos from summer camp on Facebook, when Jasmine was clearly presenting as male, and tags her in them and captions the photos by calling her James. In school, he refers to Jasmine as “he/she/it – I can’t keep it straight” and “corrects” others when they call her Jasmine or use feminine pronouns when referencing her. Although she loves math, Jasmine has stopped attending this class, because Trevor is in it.



# Megan and Charlotte

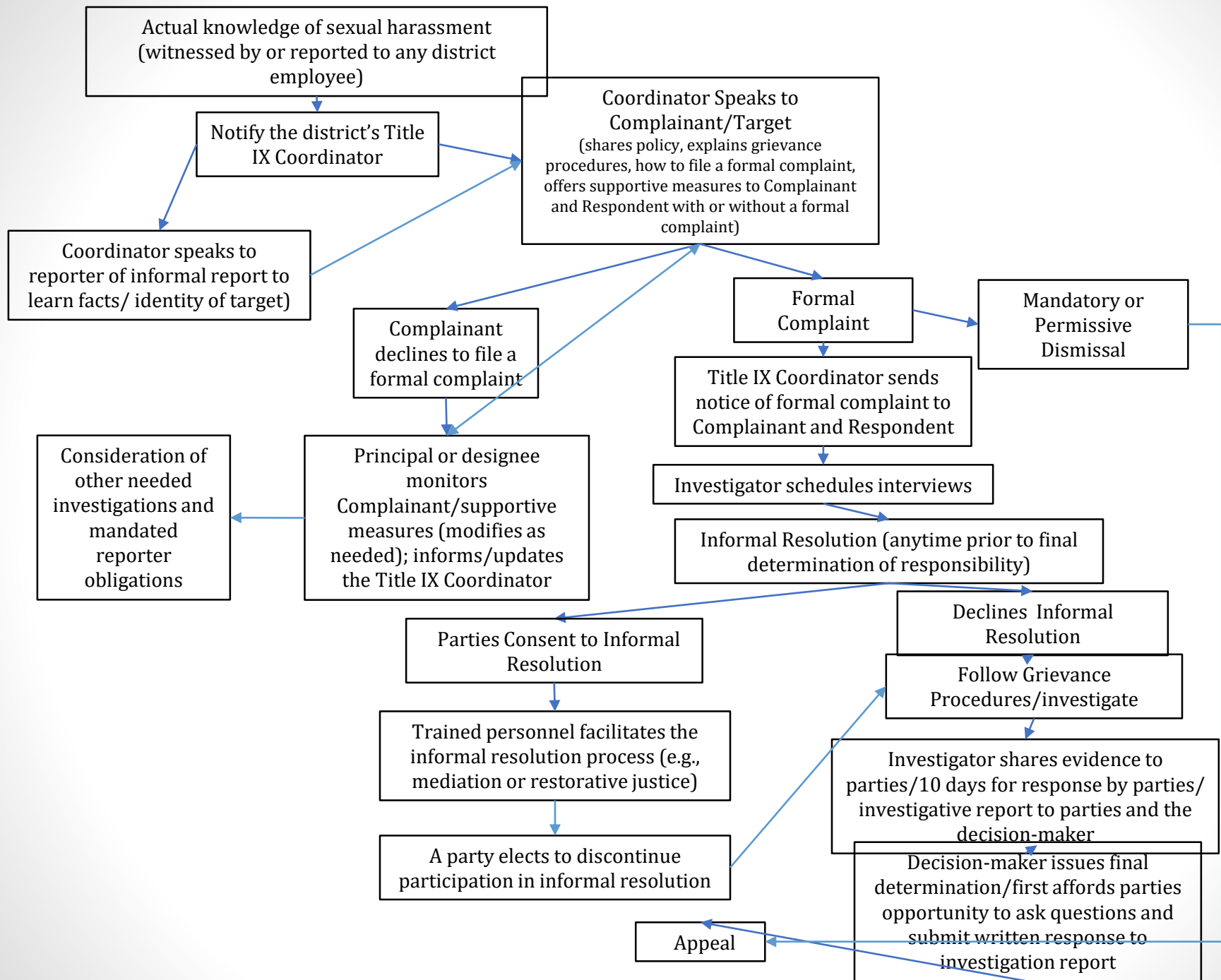
Megan is a middle school student on the soccer team. It is well-known among her teammates that she is a lesbian, but she generally does not disclose her sexual orientation.

Recently, Charlotte, one of her teammates, has been making comments insinuating that Megan has a crush on her. She makes a dramatic show in the locker room of making sure that Megan cannot see her changing and loudly proclaims it is because Megan wants to “jump her bones.”

Megan confides to her coach about the situation and says she is thinking about quitting the team because of it, but insists that she does not want anything to be done. She explains that her parents are divorced and her father knows her sexual orientation, but her mother would hate her if she knew.

## Linda and Mr. Perry

Linda, the school secretary, complains to Human Resources that she is experiencing sexual harassment in the workplace. Specifically, she says that Mr. Perry, the school principal, makes inappropriate remarks to her on a daily basis. She reports that today he told her that she is way too pretty to be with her overweight husband and asks if she ever considered having an affair. She says he regularly boasts about his libido in front of her. Mr. Perry has been well-respected in the community for decades while Linda is known to exaggerate and has poor attendance.



# How We Can Help You

- Review your policy/regulation and suggest changes or provide our model versions.
- Provide standardized “toolbox” documents (notification letters, complaint forms, determination template, etc.).
- Provide counsel from education attorneys and/or labor and employment attorneys throughout the process to ensure compliance and handle tough decisions.
- Act as the investigator or decision-maker in individual cases, especially high-stakes cases (e.g. superintendent is accused).
- Train administrators on navigating the Title IX process.

## Just When You Thought You Had a Handle on the 2020 Title IX Regulations, Changes Are Coming... Awaiting Release of New Final Rule

- 2020 Title IX regulations are still effective and being enforced.
- New proposed regulations were released in June 2022. The Final Rule was expected in May 2023 and then in October 2023, but has been delayed again.
  - Will Final Rule be released in January 2024?
  - Implementation usually three months after release
- The Final Rule is likely to cover a broader scope of complaints (not just sexual harassment) and make changes to the grievance procedures.
- Districts are encouraged to schedule in-service training on the Final Rule for early spring in anticipation of the release and effective date of post-January 2024.

# Something Else to Ponder: Connecticut to Develop Title IX Compliance Toolkit for Required Use by School Districts

- Connecticut passed legislation\* requiring the state to develop a Title IX Toolkit by July 1, 2024\*\*.
- Beginning in the 2025-2026 school year, school districts will be required to use the Toolkit.
- Toolkit to include model antidiscrimination and abuse prevention policy and procedures, training materials, and other guidance and information with a heavy emphasis on adult sexual misconduct against children in schools and on eliminating discrimination against of students who are members of groups that are more commonly subjected to discrimination (i.e., students with disabilities, gay, lesbians, bisexual, transgender students, queer or another sexual orientation or identity and others.)
- The Toolkit is to help districts prevent, identify and respond to reports of child sexual abuse, harassment and discrimination.
- Beginning in the 2025-2026 school year, districts must report to the SDE its Title IX compliance.

\*PA-23-66, An Act Concerning A Title IX Compliance Toolkit For School Districts

\*\*Commission on Women, Children, Seniors, Equity and Opportunity to identify or develop the Toolkit.

Questions?