



TUETH KEENEY  
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# BEYOND THE BASICS!

## Policy AC and ACA Investigations Liberty Public Schools

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DIFFERENT  
BY DESIGN

# Today's Agenda

- Review of Policy AC
- Review of Policy ACA
- Conducting Investigations

# Discrimination, Harassment, and Retaliation

- Prohibited by law
  - Missouri Human Rights Act
  - Title VI
  - Title VII
  - Title IX
  - Americans with Disabilities Act
  - Age Discrimination in Employment Act
  - Age Discrimination Act (this is not a duplicate)

# Discrimination, Harassment, and Retaliation

- Protected categories
  - Age
  - Disability
  - Race
  - National origin
  - Religion
  - Sex
    - Sexual orientation
    - Perceived sexual orientation
    - Gender identity
    - Transgender

# Discrimination, Harassment, and Retaliation

- Prohibited conduct
  - Discrimination
    - Treating a student, employee, or other person differently on the basis of a protected category or activity
  - Harassment
    - A form of discrimination that involves creating a hostile work or learning environment
  - Retaliation
    - Engaging in negative behavior toward a person who had complained about discrimination, harassment, or retaliation (against themselves or others) – or who has engaged in other protected behavior

# Discrimination, Harassment, and Retaliation

## • Consequences and Enforcement

- Office for Civil Rights complaints
- Special education due process hearings
- EEOC and MCHR complaints
- Lawsuits
  - Institutional liability
  - Individual liability
- Remediation
- Discipline
- Loss of employment

## District Authority to Investigate?

# Board of Education Policy AC

- Prohibits discrimination and harassment against employees, students, or others on the basis of race, color, religion, sex, national origin, ancestry, disability, age, genetic information, or any other characteristic protected by law
- Prohibits retaliatory actions against those who make complaints, report prohibited discrimination or harassment, or participate in investigation

## District Authority to Investigate?

# Board of Education Policy AC

- Reviews reporting obligations
- Reviews who is the designated compliance officer for different situations
- Reviews the role of the District compliance officers
- Reviews the grievance process



# Board Policy AC: Grievance Process

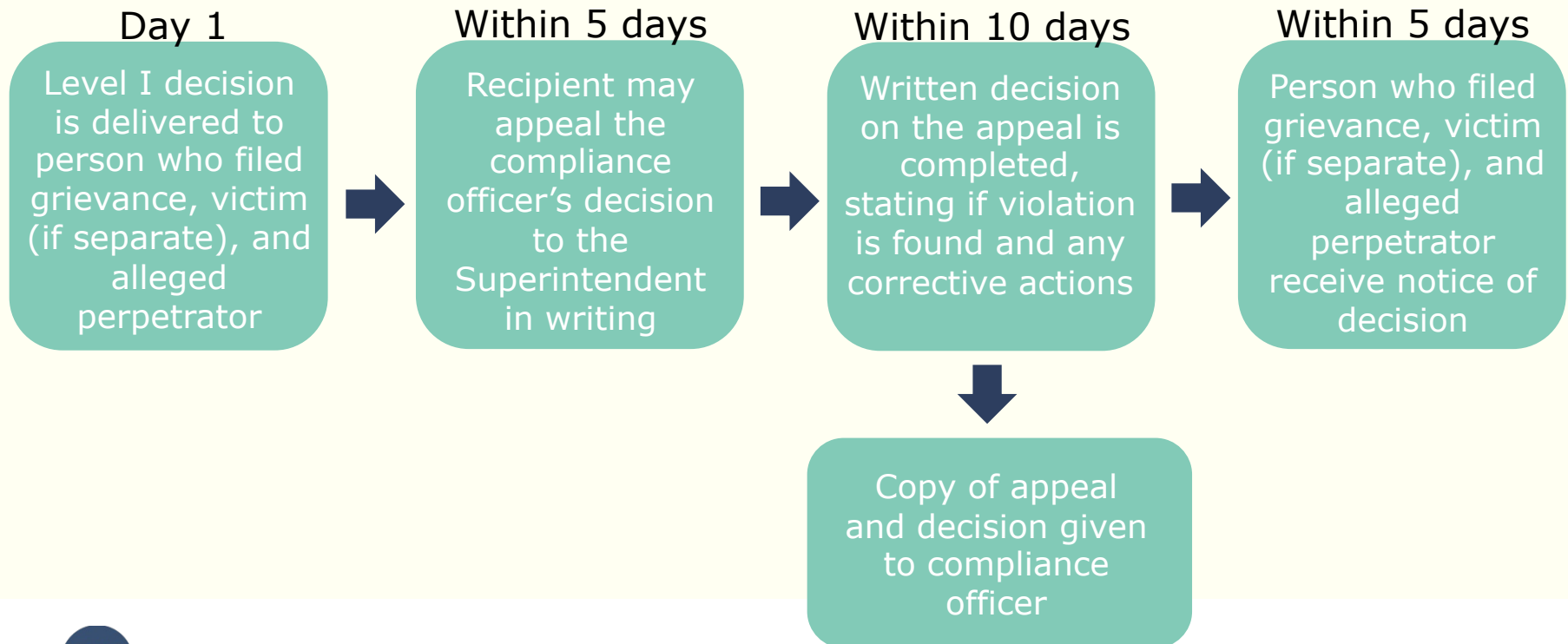
## Level I (Compliance Officer) Grievance Process Timeline:

**Note: Days = working days**



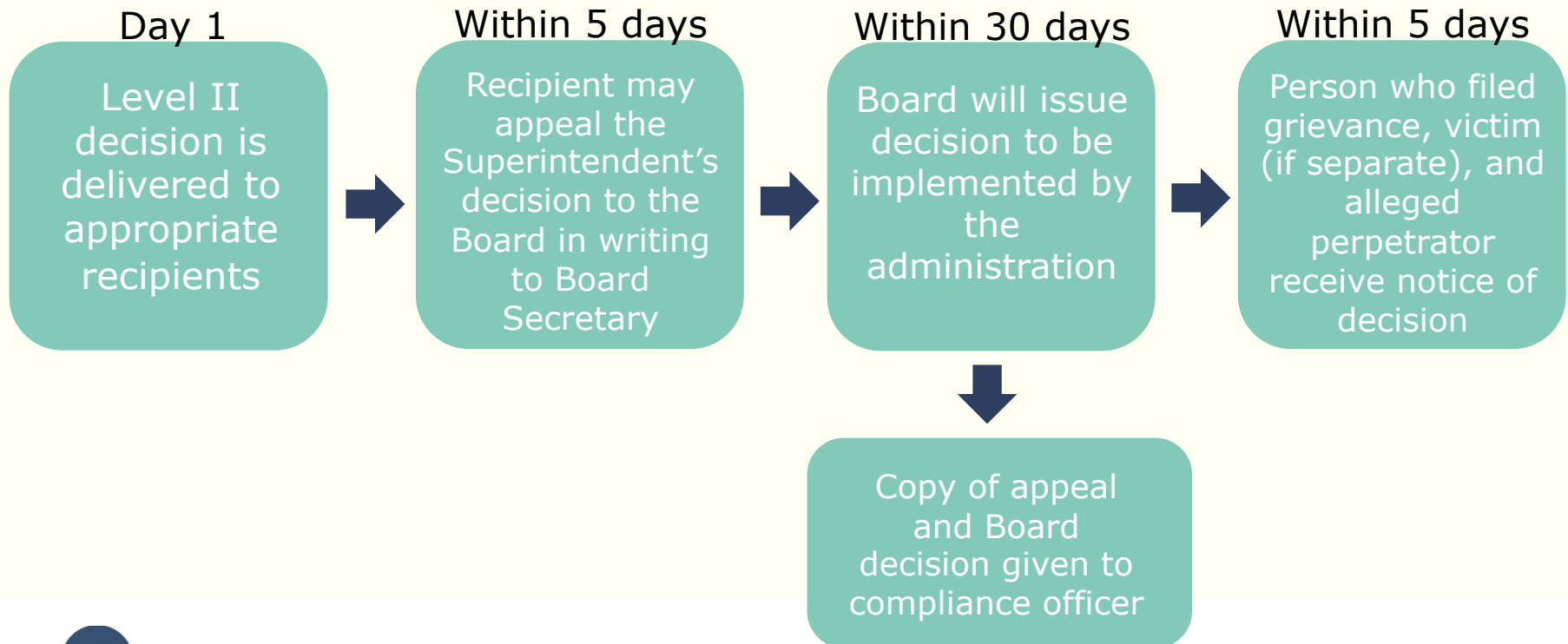
# Board Policy AC: Grievance Process

## Level II (Superintendent) Grievance Process Timeline:



# Board Policy AC: Grievance Process

## Level III (Board) Grievance Process Timeline:



# Title IX – Policy ACA

Title IX of the Education Amendments of 1972 (Title IX) provides that:

“[n]o 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. . . .”

# What Does Title IX Affect?



# 2020 Title IX Regulations

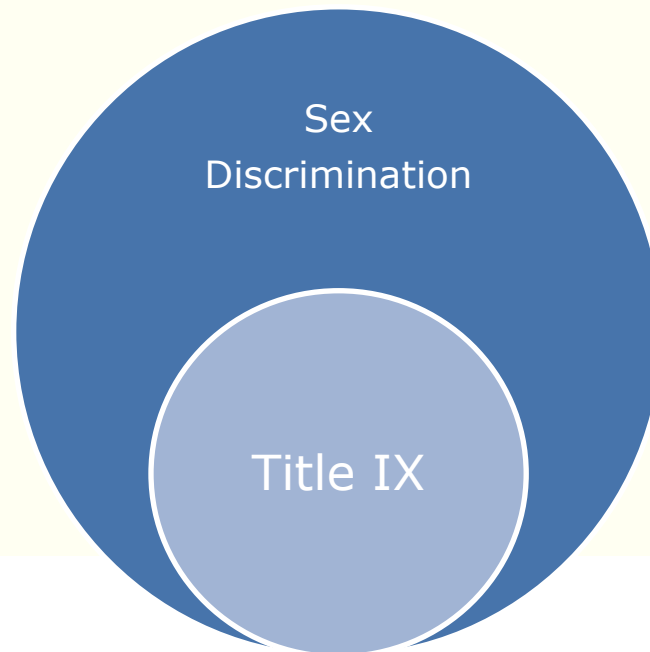
- Most commentary focuses on changes to required procedures related to institutional response to “sexual harassment,” . . .
- But a few other changes. . .

# 2020 Title IX Regulations

- Requirement to specifically designate employee called “Title IX Coordinator”.
- Any person may report sex discrimination (including sexual harassment and sexual abuse) to the Title IX Coordinator.
- Requirement to adopt a grievance procedure with specific provisions for addressing “sexual harassment,” as that term is defined in the Title IX regulations. (Policy ACA)

# 2020 Title IX Regulations

Requirements related to district's response to addressing "sexual harassment" (not required for all issues of sex *discrimination*).





# When must a school respond to sexual harassment under Title IX?

A recipient with **actual knowledge** of **sexual harassment** in an education program or activity against a person in the United States must **respond promptly** and in a manner that is **not deliberately indifferent**.

# Definition – “Sexual Harassment”

*Sexual harassment* means conduct **on the basis of sex** that satisfies one or more of the following:

1. 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. 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 recipient's education program or activity; or
3. **“Sexual assault”** as defined in Violence Against Women Act (VAWA) 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

# Definition – “Sexual Harassment”

“In a Program or Activity”

- Any location, events, or circumstance over which the recipient exhibits substantial control over both the alleged harasser and the “context” in which the harassment occurred.
- Regulations now specify “in the United States.”

# Actual Knowledge

- Final Rule adopts standard from Supreme Court case law.
  - Means 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 any employee of an elementary and secondary school.**
  - Constructive notice is not sufficient.
  - BUT note – **any employee!**

# Deliberate Indifference

- Old OCR Guidance – The school must take immediate action to eliminate the sexual harassment or sexual violence, prevent its reoccurrence, and address its effects.
- Final Rule – Failure to respond reasonably in light of known circumstances.

# TIX Investigation Overview



## Intake Analysis

- Dismissal?
- Informal Resolution?
- Emergency Removal?



## Investigation

- Meet with both parties and witnesses
- Review of evidence
- Issues Investigation Report



## Decision

- Reviews Investigation Report
- Issues decision
- Option for Appeal



# Title IX Definitions

- **Title IX Coordinator** – individual designated by the District to coordinate compliance with Title IX; can sign formal complaint
- **Investigator** – individual who has been trained to conduct investigations of formal complaints under Title IX; must be unbiased
- **Decisionmaker** – individual who has been trained to make the determination of formal complaint after investigation; cannot be the investigator; cannot be the Title IX Coordinator
- **Appeals Officer** – individual designated to hear appeal of formal complaint determination; cannot be investigator or decisionmaker

# Title IX Definitions

- **Complainant** – individual who is alleged to be the victim of conduct that could constitute sexual harassment
- **Respondent** – individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment
- **Actual knowledge** – 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  
• any employee of an elementary or secondary school



# Title IX Definitions

- **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 recipient investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.

# Title IX Key Terms

**Formal Resolution** is the processing of a complaint from intake by the Title IX Coordinator, to investigation by an Investigator, to decision by a Decision-Maker and appeal to an Appeals Officer, if requested.

**Informal Resolution** is the process to resolve a complaint without resorting to the formal resolution procedures. This may include the use of mediation or other restorative justice measures.

# Title IX Key Terms

## **Informal Resolutions:**

- Not allowed for allegations of an employee sexually harassing a student
- Parties must consent in writing to participate in an informal resolution process
- School must provide written notice disclosing the allegations and the requirements of the informal resolution process (including when the informal process precludes resuming the formal complaint process)
- At any time prior to agreeing on a resolution, either party can withdraw from the informal resolution process

# Initial Response by TIXC

- Should Children's Division be contacted?
- Should law enforcement be contacted?
- Should school SRO be contacted?

# Initial Response by TIXC

- Notify parents and/or employees of formal complaint.
- Determine if the allegations, IF TRUE, would constitute a violation of Title IX?
  - If so, proceed.
  - If not, may dismiss the complaint and consider if investigation is warranted under other policies.

# Initial Response by TIXC

“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 before or after the filing of a formal complaint or where no formal complaint has been filed.

- Designed to restore or preserve **equal access** to the school’s programs or activities, without unreasonably burdening the other party, including measures to protect the safety of all parties or the educational environment, or deter sexual harassment
- Should be confidential to the extent possible

# Initial Response by TIXC

- Here are some possible measures:
  - Counseling
  - Course Modifications
  - Schedule changes
  - Increased monitoring or supervision
  - No contact orders
- **A measure that completely removes a student from an activity would likely be considered punitive.**
- **Exception:** Emergency removals and administrative leave for employees.

# Initial Response by TIXC

- Emergency Removal of Student?
  - Need to perform analysis of safety and risk on a case-by-case basis.
  - Establish it is necessary to protect a student or another person from immediate threat to physical health or safety.
  - Must give notice to the student and an opportunity for the student to immediately challenge the removal.
  - Must consider other protections provided to the student, such as IEP and/or 504 Plan, which could take precedence.
- Administrative Leave for Employee?



# The Investigation - Initiation

- Title IX Coordinator refers case to a designated ***Investigator***
  - Cannot have a bias, either explicit or implicit
  - Consider complainant's request for a specific investigator
  - Title IX Coordinator may also be the Investigator

## **THE COORDINATOR MONITORS THE INVESTIGATION PROCESS TO ENSURE:**

- Complete and thorough investigation within specified timelines
- There is no bias, either explicit or implicit during the investigation
- Applicable Title IX policies are followed by the Investigator

# Role of the Investigator

- Must ensure the burden of proof and of gathering evidence is on the District, not the parties
- Must provide an equal opportunity for the parties to present witnesses and evidence
- Must not restrict either party's ability to discuss the allegations or gather and present evidence
- Must provide the parties with the same opportunities to have others present during interviews or other related proceedings, including an advisor (for any part of the grievance process) who may but is not required to be an attorney

# Role of the Investigator

- Provide, to a party who is invited or expected to attend, written notice of the date, time, participants, purpose and location of any investigative interview, hearing, or other meeting with enough time to allow the party to prepare to participate
- Provide both parties and advisors equal opportunity to review all evidence on which recipient does not intend to rely and any exculpatory or inculpatory evidence from any source, prior to the completion of the final investigation report and in time to give parties at least 10 days to prepare a written response, which the investigator must consider prior to completing the investigation report
- Prepare a written investigation report that fairly summarizes the relevant evidence and provide the report to the parties and their advisors, if any, for their review and written response, at least 10 days before a hearing or other determination of responsibility

# Role of the Investigator

## •When does the investigation begin?

- When notice is received, preparations begin!
- The Title IX Investigator begins his or her job when selected by the Title IX Coordinator to conduct an investigation.
- Title IX Coordinator and Investigator need to be aware of reporting requirements to local law enforcement or other agencies, agreements in place for reporting, and agreements about reciprocity of investigation materials.

# Role of the Decision-Maker

- Receives the report from the Investigator / Title IX Coordinator
- Allows the parties to submit any written, relevant questions to be asked of the other party or witnesses
- Each party receives the answers and ability to submit follow up questions
- Makes a determination of whether a violation of Policy ACA can be substantiated
- Preponderance of the evidence standard

# Role of the Decision-Maker

- Prepares a report (within 20 business days after closing of questioning)
- Reaches conclusions
- Provides written decision to all parties simultaneously
- Provides written decision to Title IX Coordinator

# Role of the Appeals Officer

- Either party may appeal the decision of a formal complaint or the dismissal of an informal complaint
- Written appeal due within 5 business days to the Title IX Coordinator
- Must state one of the following that affected the outcome:
  - A procedural irregularity
  - New evidence that was not reasonably available at the time of the decision
  - Conflict of interest or bias by the TIXC, investigator or decision-maker
- TIXC sends appeal to the Appeals Officer
  - Gives another opportunity for parties to submit written statement
- Makes decision within 10 business days after close of written submission

# Let's Review!

- Review flowcharts



# Incident Checklist

- Most incidents happen at the building level, so how do you know what is a Title IX issue?
- Let's review how you know whether or not an incident should be reported to the Title IX Coordinator.

# STOP AND THINK!

- Does this incident involve:
  - Off-campus conduct?
  - A student who has an IEP or Section 504 plan?
  - An allegation of sexual harassment?
  - **A repeated interaction between two students?**
  - A reason for me to search the student or their belongings?



# Things to Know

- “Supportive measures” are available to both the complainant and respondent at any time (and even without a formal complaint).
  - Non-disciplinary
  - Individualized services
  - Kept confidential to extent possible

# Things to Know

- When Title IX investigation is ongoing, student **cannot** be disciplined until found responsible for alleged conduct.
- Emergency removal may be necessary safety measure depending on circumstances.
- Employees may still be placed on administrative leave pending outcome of investigation.

# Things to Know

- Parties may have advisors support them through the investigation process.
- Parties are able to review **all** evidence directly related to the allegations in formal complaint.
- Unlike colleges and universities, a live hearing is NOT required.

# Things to Know

- Retaliation is specifically prohibited.
  - Cannot take action or encourage other to take action against an individual for the purpose of interfering with Title IX rights or because a person has participated or refused to participate in a proceeding under Title IX regulations.
  - If you witness or experience retaliation, inform Title IX Coordinator immediately.



# QUESTIONS?



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DIFFERENT  
BY DESIGN