

TITLE IX Training

Presented to



Marietta
city schools
A Georgia Charter System

2022/2023 school year

Agenda

- **MCS Title IX Complaint Structure**
- **Title IX History and Background**
- **Title IX – Key Points and Terminology**
- **Grievance Procedure**
- **Investigation Process**
- **Decision**
- **Appeals, Informal Resolution & After**
- **Complaints Involving Employees**

Title IX Complaint Structure

Title IX Complaint Structure:

- Title IX Coordinator
- Formal Complaint Investigator
- Formal Complaint Decision-Maker
- Appeal Decision-Maker
- Informal Resolution Facilitator

Title IX Complaint Process

- Concern observed or reported by student, parent, staff or other individual to *any MCS staff member*
- Initial meeting with Title IX Coordinator
 - Discussion regarding availability of supportive measures; Right to file complaint; How to file complaint
- Employee, Student/Parent or Title IX Coordinator file complaint
 - Formal notice sent to complainant and respondent
- Complaint referred to investigator and written investigative report
 - Witness interviews; review of evidence; complainant and respondent access to evidence; written report; opportunity to review, submit written questions

Title IX Decision, Appeal

- Decisionmaker reviews complete investigative report and makes written decision
- Complainant submitted to Deputy Superintendent for final decision
- At any time in this process after Formal Complaint is filed, voluntary informal resolution may be pursued
 - Informal resolution is not an option if an employee is the accused

Title IX Resources

- US Department of Education information & resources:
 - www.ed.gov/titleix/

Title IX: History & Background

Title IX of the Education Amendments of 1972

- Enacted in 1972
- Prohibits discrimination on the basis of sex in education programs for recipients of federal funding, including K-12 public school districts.

“no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives ... Federal financial assistance”

Title IX History

- Regulations to implement Title IX were enacted reinforcing its non-discrimination mandate and prohibition on sex discrimination on hiring, admissions, athletics and other aspects of educational programs and activities.
- Historic emphasis on athletics under Title IX.
- Sexual harassment.

Office for Civil Rights (“OCR”)

- U.S. Department of Education
- Federal agency with the responsibility of ensuring equal access to education.
- Includes all public education institutions—i.e., all state education agencies, elementary and secondary school systems, colleges and universities, vocational schools, and proprietary schools.
- Federal laws that OCR enforces prohibit discrimination on the basis of race, color, national origin, sex, disability, or age.

New Title IX Regulations

- Sept. 22, 2017: U.S. Department of Education (“ED”) withdrew major 2011 policy statement regarding sexual harassment and related guidance. It concurrently released interim guidance and announced rulemaking for new Title IX regulations regarding sexual harassment.
- May 6, 2020: ED released new Title IX regulations regarding sexual harassment following a 1.5 year period of review between release of the proposed and final rule.
- Aug. 14, 2020: Effective date of new regulations.¹²

Significant Changes – 2020

- Emphasis on due process
- Definition of sexual harassment under Title IX
- Title IX Coordinator
- Detailed grievance and investigative process
- Right to appeal
- Allowance for informal resolution

Looking forward

- What is next for Title IX?



Title IX



- June 2022 – release of proposed Title IX rule, including protections for LGBTQ students, sex-based discrimination and harassment

"The proposed regulations reflect the Department's commitment to give full effect to Title IX, ensuring that no person experiences sex discrimination in education, and that school procedures for addressing complaints of sex discrimination, including sexual violence and other forms of sex-based harassment, are clear, effective, and fair to all involved." - Catherine E. Lhamon, Assistant Secretary for Civil Rights.

<https://www2.ed.gov/about/offices/list/ocr/docs/t9nprm-factsheet.pdf>

- Next up: Athletics

Key Provisions & Terminology

“Sexual Harassment”

- Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
 - Quid pro quo harassment by school employee;
 - Unwelcome conduct that reasonable person would find so severe, pervasive & objectively offensive that it effectively denies equal educational access; or
 - Sexual assault, dating violence, domestic violence or stalking.

1. Quid Pro Quo Harassment

An employee of the District conditioning the provision of a District aid, benefit, or service on an individual's participation in unwelcome sexual conduct;

- "something for something"
- Does not require the elements of severity, pervasiveness, or objective offensiveness

2. Unwelcome Conduct

Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity

- Look for all necessary elements based upon reasonable person standard:
 - Severe;
 - Pervasive;
 - Objectively offensive; and
 - Denial of equal educational access.

3. Sexual Assault, Dating Violence

Sexual assault, dating violence, domestic violence, or sex-based stalking as defined under federal laws.

- “Sexual assault”- an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the FBI
- “Dating Violence”- sex-based violence committed by a person
 - Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship.
 - The type of relationship.
 - The frequency of interaction between the persons involved in the relationship.

3. Domestic Violence

“Domestic Violence”- sex-based violence which includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

3. Sex Based Stalking

“Sex-based Stalking” - engaging in a course of conduct directed at a specific person that would cause a reasonable person to-

- (A) fear for his or her safety or the safety of others; or
- (B) suffer substantial emotional distress.

“Actual Knowledge”

- Actual knowledge means notice of sexual harassment or allegations of sexual harassment to the District’s Title IX Coordinator or to any official or employee of the District. This notice requirement is not met when the only District official or employee with actual knowledge is the respondent.
- "Notice" includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.
- What triggers actual knowledge?
 - At the K-12 level, whenever *any* employee (other than a respondent) has notice of sexual harassment or allegations of sexual harassment.

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 District 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 a District education program or activity.

Deliberately Indifferent

- If a school district has actual knowledge of sexual harassment in an education program or activity of the school district against a person in the United States, it must respond promptly in a manner that is not deliberately indifferent.
- Deliberately indifferent means a response to sexual harassment that is clearly unreasonable in light of the known circumstances.

Where?

- For jurisdiction under Title IX, sexual harassment must occur within the scope of a school’s “education program or activity”
- Education program or activity includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurs
- May include programs or activities that occur either on-campus or off-campus.

Responding to a report of sexual harassment

- Any employee who receives information from a student alleging sexual harassment shall report it to the School Administrator.
- If allegations involve potential violation of criminal law, report to appropriate law enforcement agency or official(s).
- If allegations involve potential child abuse, as defined by OCGA 19-7-5, report to appropriate child welfare agency and law enforcement agency or official(s) per mandatory reporter procedures and protocol.

Response to Initial Report

- The Title IX Coordinator shall promptly:
 - Contact the complainant;
 - Offer the complainant supportive measures;
 - Explain the process of filing a formal complaint;
 - Explain that supportive measures can be available with or without a formal complaint;
 - Consider complainant’s wishes regarding supportive measures;
 - Contact the respondent, who must also be offered supportive measures; and
 - If supportive measures are not provided to a complainant, document why school did not provide complainant with supportive measures and why not providing such measures is not deliberately indifferent.

“Supportive Measures”

Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment.

“Supportive Measures”

- Examples: 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, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
- Maintain as confidential any supportive measures provided to the complainant/respondent, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures.
- The Title IX Coordinator is responsible for coordinating effective implementation.

The Parties

- Complainant: an individual who is alleged to be the victim of conduct that could constitute sexual harassment. If the complainant is under 18, the parent/guardian can file a complaint and act on complainant's behalf.
 - Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or party.
- Respondent: an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Filing of a Formal Complaint

- A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed for the Title IX Coordinator in the District's nondiscrimination notice posted on its website. The phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided by the District) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.
- Once a formal complaint is filed, the District's grievance process is initiated.

Confidentiality

The District shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by federal or state law or regulations, or to carry out the purposes of Title IX requirements, including the conduct of any investigation or judicial proceeding arising thereunder.

Title IX
Complaint
Procedures

Report

Reports or complaints may be verbal or written and may be made at any time (including during non-business hours), in person, by mail, by telephone, or by electronic mail using the contact information posted on the school and/or district website.

Initial Report

Any student, employee, parent or other person wishing to report or file a complaint alleging a violation as described above shall promptly notify either the principal or counselor at his/her school or the Title IX Coordinator designated and authorized by the District. Any employee who receives information from a student alleging sexual harassment shall report it to the Principal or Title IX Coordinator.

Report

The Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures, consider the 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 complainant the process for filing a formal complaint.

Equitable Process

The District shall treat complainant(s) and respondent(s) equitably by following this grievance process before punishing the respondent or providing remedies to the complainant. Remedies will be designed to restore or preserve equal access to the District's education program or activity. Such remedies may include the same individualized services described as “supportive measures.” However, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.

Emergency Removal

Emergency removal of a respondent from an educational program or activity is permitted on an emergency basis **IF** the school district:

- Undertakes an individualized safety and risk analysis,
- Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and
- Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

Still subject to the student's rights under the IDEA, Section 504 and ADA

Written Notice

Within *3 business days* of receipt of a formal complaint, the District shall provide the following information in a written notice to the known **parties**:

- Notice of complaint process
- Notice of allegations to include:
 - Statement that respondent is presumed not responsible and that determination is made at the conclusion of the process
 - Right to advisor of choice (including attorney)
 - Right to inspect and review evidence
 - Code of conduct prohibition on knowingly making false statements or knowingly submitting false information
 - Range of disciplinary sanctions and remedies that may be implemented

Dismissal

- A complainant is NOT required to file a formal complaint.
- Under certain conditions a formal complaint may be dismissed:
 - Mandatory dismissal
 - Discretionary dismissal
- Upon dismissal, the District must promptly send written notice and reason(s) for the dismissal simultaneously to the parties.
- Dismissal may be appealed.

Mandatory Dismissal

- District must dismiss a formal complaint if:
 - The conduct alleged would not meet the definition of sexual harassment under Title IX;
 - The alleged sexual harassment did not occur in the school's educational program or activity; or
 - The alleged sexual harassment did not occur in the U.S.

Dismissal does not preclude action under another provision of the District's code of conduct.

Discretionary Dismissal

- A school may dismiss a complaint if:
 - The complainant notifies the Title IX Coordinator in writing that the complainant wishes to withdraw the formal complaint or some of its allegations;
 - The respondent is no longer enrolled or employed by the school; or
 - Specific circumstances prevent the school from gathering evidence sufficient to reach a determination about the allegations.

Other Requirements

- Preponderance of the evidence
- Presumption of innocence
- Require an objective evaluation of all relevant evidence.
- Credibility determinations may not be based on a person's status as a complainant, respondent, or witness.
- Title IX Coordinator, investigator, decision-maker, or any person facilitating the informal resolution process may not have a conflict of interest or bias and must receive adequate training.

Investigative Process

Outside Reporting

- If at any point in the reporting or investigation of reported sexual harassment of a student, a staff member, site coordinator or investigator determines that the reported harassment should more properly be termed abuse, the reported incident or situation shall be referred pursuant to the established protocol for child abuse investigation.
- Required reporting will include reports to DFCS, District and outside law enforcement per District reporting procedures for suspected child abuse.

Written Notice

Upon receipt of a formal complaint, the District shall within 10 days provide the following written notice to known parties:

- Notice of the District's grievance process;
- Notice of the allegations potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known.
- The written notice shall include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- The written notice shall inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence.

Written Notice

Continued..

- The written notice shall inform the parties of any provision in the code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- The notice shall describe the range of or list the possible disciplinary sanctions and remedies that the District may implement following any determination of responsibility
- If, in the course of an investigation, the District decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to paragraph (4)(B), the District shall provide notice of the additional allegations to the parties whose identities are known.

Timeline

- After providing written notice to the parties of the receipt of a formal complaint, the District will have an initial designated time period to investigate.
- District shall allow for temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent 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.

Events

- Written notice to parties
 - Must be updated for other allegations
- Parties may submit evidence to investigators
- Initial review of evidence completed by investigator and sent to parties for review.
- Parties may submit written responses.
- Investigative report finalized, distributed.

Investigators

- Investigators will prepare report that summarizes findings, but will not make a determination or recommendation regarding responsibility.

Non-Bias

- Status as respondent, complainant, witness should not weigh into credibility determinations;
- Respondent presumption of innocence through investigative process;
- Title IX Coordinator, investigators, decision-makers and other facilitators must:
 - Not have a conflict of interest;
 - Be non-biased.

Investigation

- Equal opportunity
- Lack of restrictions
- Right to an advisor
- Written notice of interviews, meetings
- Access to evidence
 - Opportunity to submit written response

Equal Opportunity

- The school must provide an equal opportunity for the parties to present witnesses and evidence, including expert witnesses, as well as inculpatory or exculpatory evidence.
- The school can't restrict the ability of either party to discuss the allegations under investigation, or to gather and present relevant evidence.
- Parties must have same opportunities to have others present during the grievance proceedings, including access to an advisor of choice for any meetings.

Investigative processes:

- Interviews of complainant, respondent, witnesses;
- Review of accessible law enforcement documents;
- Review of relevant student or employee records;
- Gathering and examining other relevant documents and evidence.

Evidence

- Objectively evaluate relevant evidence
- Relevant evidence: evidence that may tend to make the allegations at issue more or less likely to be true.

Party Rights

- Where a party has been invited to or is expected to participate in an investigative interview or other meeting, written notice will be issued to that party:
 - Date;
 - Time;
 - Location;
 - Participants; and
 - Purpose of the meeting
- Minimum 48 hours of notice.

Access/Response to Evidence

- The investigator(s) will send to each party and the party's advisor, if any, any non-privileged evidence subject to inspection and review in an electronic format or a hard copy.
- No later than ten (10) calendar days after the receipt of the initial review of the evidence, each party has the right to submit a written response to the evidence, which the investigator(s) will review and consider prior to the completion of the investigative report

Written Report

- An investigative report that fairly summarizes relevant evidence will be prepared
 - 10 days prior to the determination regarding responsibility, the investigative report, sent to each party and the party's advisor, if any, in an electronic format or a hard copy, for their review and written response.
- Question period

Written Report

- The investigation report should succinctly describe all collected information by investigator
- The investigator's role is *not* to make any recommendation as to whether a Title IX violation has occurred. That is the role of an independent decision-maker.

Decision

Division of responsibilities

- Decision-maker will not be the same person as Title IX Coordinator, investigator(s) or appeal decision-maker

Question & Answer Period

- After the investigative report has been sent to parties and before reaching a determination, decision-maker shall afford a 10-day period for each party to submit written, relevant questions for any party/witness, provide each party with the answers and allow for additional, limited follow-up questions.

Question & Answer Period

- Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- The District shall not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. The decision-maker(s) shall explain to the party proposing the questions any decision to exclude a question as not relevant.

Determination

- The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), shall, within 10 days of the conclusion of the question and answer period, issue a written determination regarding responsibility.
- Issued simultaneously to both parties.

Decision

- Standard of Review: Preponderance of the evidence.
- Did Respondent commit the alleged violation – more likely than not?
- Presumption: Respondent not responsible for alleged conduct until conclusion of grievance process and determination of responsibility.

Elements of Written Decision:

- Identification of allegations potentially constituting sexual harassment under Title IX;
- Description of procedural steps taken from receipt of formal complaint through determination;
- Findings of fact supporting each determination;
- Conclusions regarding the application of the grievance process to the facts;

Written Decision, continued:

- A statement of, rationale for, the result regarding each allegation, including:
 - Determination regarding responsibility
 - Any disciplinary sanctions imposed upon Respondent
 - Whether remedies designed to restore or preserve equal access to education program or activity will be provided to the complainant
- Procedures and permissible bases for appeal.

Written Decision, continued:

- Provided to parties simultaneously
- Final either on the date the District provides the parties with the written determination of the result of the appeal if filed; or on the date that an appeal would be no longer timely (if none is filed)
- Title IX Coordinator is responsible for effective implementation of remedies.

Appeals, Informal Resolution & After the Complaint

Bases for Appeal

- The District shall offer *both parties* an appeal from a determination regarding responsibility, and from a District's dismissal of a formal complaint or any allegations therein.
- Limited bases for appeal
 - Procedural irregularity that affected the outcome of the matter;
 - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
 - The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
- The District shall offer *both parties* an appeal from a determination regarding responsibility, and from a District's dismissal of a formal complaint or any allegations therein.
- 10 days for filing

Appeal

As to all appeals, the District shall:

- Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- Each party has five days to submit a written statement
- No consideration of additional evidence, unless it is new evidence that could affect outcome that was not reasonably available before.

Appeal Decision

- Issue a written decision describing the result of the appeal and the rationale for the result;
- Decision will be issued within 10 business days from parties' submission of written statement;
- Decision is final.

Informal Resolution

- Voluntary
- Only available if formal complaint is filed
- Unavailable to resolve allegations that an employee sexually harassed a student

Informal Resolution

- At any time prior to reaching a determination regarding responsibility, the District may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, if District receives parties' voluntarily provided written consent to the informal resolution process; and

Record Keeping Requirements

- All Title IX records should be maintained for 7 years
 - Each sexual harassment investigation including any determination regarding responsibility, disciplinary sanctions, remedies;
 - Appeal;
 - Informal resolution;
 - Training materials.

Retaliation

- No District or person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding under Title IX.
- Exercise of rights protected under the First Amendment does not constitute retaliation.
- Charging an individual with a code of conduct violation for making a materially false statement in bad faith does not constitute retaliation.

Allegations Involving Employees

Employee as Respondent

- Determine if allegations rise to level of child abuse or other criminal misconduct, subject to District and/or outside law enforcement reporting
 - If behavior *does* cross line, make legally-required referral within 24 hours; communicate with Public Safety
- Communications, documentation of findings.

Employee as Complainant

- Title VII and Title IX can apply to employee reports of sexual harassment.
- If an employee is a complainant, report to Title IX Coordinator to initiate the investigative process.

Questions?



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