

Responding to Sexual Harassment Complaints Under Title IX

Leon | Alcala, PLLC | Ganado Independent School District | March 7, 2024

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Part 2

For Title IX Coordinators,
Investigators, Decision-
Makers, and Facilitators

Why are we here today?

- ❑ Title IX regulations impose formal requirements and procedures for public schools.
- ❑ Title IX regulations are different, and in addition to, state law and District policy
- ❑ Requirements include specific roles and duties:
 - ✓ Title IX Coordinator
 - ✓ Informal Resolution Facilitator
 - ✓ Investigator (discussed in Part III)
 - ✓ Decision-Maker

Title IX Roles

Title IX
Coordinator



Investigator



Decision Maker



Appeal Officer



Informal Resolution
Facilitator



What Will You Learn?

- ❑ Review Title IX definitions
- ❑ Responsibilities of the Title IX Coordinator, Informal Resolution Facilitator, Investigator, and Decision-Maker (*Part III of this training provides additional training for these individuals as to investigations and decision makers and avoiding conflict/bias.*)
- ❑ An overview of the Title IX formal complaint and grievance process

REVIEW

Why Do Schools Need to Be Familiar with Title IX?

- Public K-12 schools receive federal funding and are required to comply with Title IX.

So, What Does Title IX Do?

- Prohibits discrimination “on the basis of sex” in **education programs against a person in the United States** in schools and colleges receiving federal funding.
- The DOE’s view is that it is a recipient’s obligation to take prompt and effective action to end all discrimination to help ensure that Title IX’s protections are fully enforced, and to avoid recipients’ use of Federal funds to support discriminatory practices.
- A K-12 school in which any employee has actual knowledge of Title IX “sexual harassment” in its “education program or activity” against a person in the United States must respond using the Title IX Sexual Harassment process.

Sexual
harassment is
expressly
recognized as
sex
discrimination.

Review of the Definition of Sexual Harassment

- ❑ Sexual harassment is defined as any one of three categories of conduct:
 - quid pro quo harassment
 - hostile work environment
 - sexual violence

See 34 C.F.R. §106.30; Board Policies DIA and FFDH

Definition of Sexual Harassment under Title IX

“Sexual harassment” is defined under Title IX as “conduct on the basis of sex that satisfies one or more of the following:”

- 1) **Quid pro quo:** A District employee conditioning the provision of an aid, benefit, or service of the District on an individual’s participation in unwelcome sexual conduct, **which interferes with education services** ;
- 2) **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 District’s education program**; or
- 3) **Sexual violence under law** [as defined in 20 U.S.C. § 1092(f)(6)(A)(v)].

What Does It Mean To Be

“Excluded from participation or denied benefits of education”



Skipping class to avoid a harasser, decline in a student's grade point average, or having difficulty concentrating in class.



An athlete that quits the team but carries on with other school activities following sexual harassment from a team member.



An employee who no longer wants to work at the school due to repeated sexual harassment from a supervisor.

Examples of Conduct Covered Under Title IX

Sexual discrimination and harassment <ul style="list-style-type: none">• Verbal• Physical• Electronic	Interpersonal violence <ul style="list-style-type: none">• Intimate partner• Domestic• Dating• Relationship
Sexual violence <ul style="list-style-type: none">• Rape• Sexual assault• Exploitation	Retaliation
Stalking <ul style="list-style-type: none">• Cyberstalking	Gender-based discrimination and harassment
	Bullying/hazing

What about off-campus conduct?

Title IX applies to “**education programs or activities**” in locations, events, or circumstances over which the school has “**substantial control**” over both the alleged perpetrator and the context in which the sexual harassment occurs.

IF A SCHOOL HAS “ACTUAL KNOWLEDGE” OF SEX DISCRIMINATION OR SEX HARASSMENT THAT IS OR MAY BE DENYING A PERSON EQUAL ACCESS TO SCHOOL “PROGRAMS AND ACTIVITIES, THEN YOU SHOULD BE THINKING ABOUT TITLE IX.

Understanding the Title IX Lingo

“**Actual knowledge**” under Title IX means, in part, “notice of sexual harassment or allegations of sexual harassment to:

- ✓ **In elementary and secondary school settings, ANY Employee.**
- ✓ This includes notice to a teacher, teacher’s aide, bus driver, cafeteria worker, counselor, school resource officer, maintenance staff worker, coach, athletic trainer, or any school employee.
- ✓ All employees must be trained to report sexual harassment to the Title IX Coordinator.

“Actual
Knowledge”

Understanding the Title IX Lingo

“Complainant”

A “**Complainant**” is an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

“Respondent”

A “**Respondent**” is an individual who has been reported to be perpetrator of conduct that could constitute sexual harassment.

“Supportive Measures”

Understanding the Title IX Lingo

“Supportive measures” refer to:

- “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 a formal complaint has been filed or where no formal complaint has been filed.”

These measures are to restore or preserve equal access to the educational program or activity *without unreasonably burdening the other party.*

Understanding the Title IX Lingo

A “**Formal Complaint**” is a document that is:

- filed by a Complainant or
- signed by the Title IX Coordinator that,

alleges sexual harassment against a **Respondent** and requesting that the school investigate the allegations of sexual harassment.

“Formal
Complaint”

TITLE IX REGULATIONS

Designate Title IX Coordinator

Implementing the Title IX Regulations:

First Steps

The District must designate Title IX Coordinator(s) to coordinate its efforts to comply with its responsibilities under Title IX.

- The coordinator may be current Title IX coordinator, or
- The District can designate more than one coordinator,

The Title IX Coordinator may not serve as the final Decision-maker in the formal complaint process.

Recommend that the Title IX Coordinator does not also serve as the Investigator because of potential for bias.

Title IX Roles

Title IX
Coordinator

Investigator

Decision Maker

Appeal Officer

Informal
Resolution
Facilitator



The same person can do all three of these roles, but it is not ideal

Must be two new people-cannot be the same person; cannot be the Coordinator or Investigator

Title IX Coordinator Requirements

The District must have always at least one Title IX Coordinator:

- Must be referred to as “Title IX Coordinator” (even if they also have other roles or titles)
- If current coordinator leaves, is promoted, or retires, the District must name interim
 - Must also ensure interim coordinator receives the required training
- If only one coordinator is named, it is advisable to have deputy coordinator to serve as backup

Title IX Regulations: First Steps

- ❑ Notify all parties below the following of the name or title, office address, electronic mail address, and telephone number of the Title IX Coordinator:
 - Applicants for admission and employment
 - Students
 - Employees

Publish Title IX
Coordinator's
Information
(DIA and FFH)

Title IX
Reporting
Procedures

(published in
DIA and FFH)

Implementing the Title IX Regulations: First Steps

The Title IX regulations require that the District allow for the reporting of sex discrimination, including sexual harassment:

- ❑ **By any person** – whether or not the person reporting is the alleged victim.
- ❑ **Through a variety of means** – in person, by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinator – “or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report.”
- ❑ **At any time** – including during non-business hours (by telephone, e-mail, or by mail to the address listed for the Title IX Coordinator).

From a Report to the Formal Title IX Grievance Process

Report of Sexual Harassment Received by Title IX Coordinator

Supportive Measures Offered to both Complainant and Respondent

Offer Complainant Opportunity to File a Formal Complaint Under Grievance Policy

If Either Complainant or Title IX Coordinator Signs Formal Complaint, then

The School Must Investigate By Following A Grievance Process That Complies With Title IX

Upon receipt of a report of sexual harassment

...

- The Title IX Coordinator is responsible for evaluating the complaint for Title IX applicability
- If the matter implicates Title IX, the Title IX Coordinator is responsible for overseeing the grievance procedure required by the Title IX rules
- Owe a duty of confidentiality to the alleged victim (complainant) unless and until a Formal Complaint is filed or signed
- This means you can't tell the alleged perpetrator (Respondent) the Complainant's name or any information that might identify the Complainant
- In most cases, the Complainant (or a minor Complainant's parents/guardians) control whether a Formal Complaint is filed

Title IX Coordinator Must
Offer Complainant Opportunity to
File a “Formal Complaint”

Title IX Grievance Process

- The 2020 Title IX regulations required schools to implement lengthy and comprehensive grievance procedure to address “Formal Complaints” of sexual harassment under Title IX.

Title IX Roles

Title IX
Coordinator



Investigator



Decision Maker



Appeal Officer



Informal Resolution
Facilitator



The Basic Elements of a Formal Complaint Process Include:

Objective evaluation of **inculpatory** (favorable to **Complainant**) and **exculpatory** (favorable to **Respondent**) evidence.

The goal is to promote fairness, due process, and an increased likelihood of reaching an accurate result.

- Credibility may not be based on the person's status.
- Must not have a conflict of interest or bias against a party.
- Presumption Respondent is not responsible.
- A **reasonably prompt** time frame for the grievance process.
- Ensure the standard of evidence – either **“preponderance of the evidence” (more likely than not)** or **“clear and convincing” (reasonably certain)**.
- Ensure burden on the school, not the parties, to gather evidence
- The school may not breach any privilege (*e.g.*, doctor-patient) without a voluntary waiver.

Title IX Grievance Process

The grievance process is designed to:

- ❑ Treat Complainants and Respondents equitably, by providing remedies to a Complainant where a determination of responsibility for sexual harassment has been made against the Respondent.

These remedies:

- must be designed to restore or preserve equal access to the education program or activities, which may include the same individualized services...described as “supportive measures;” however, *unlike supportive measures, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.*

Title IX Grievance Process

- ❑ The Title IX Coordinator, Investigator, an Informal Resolution Facilitator or Decision-maker cannot have “a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.”
- ✓ To ensure compliance with the above requirement the District must ensure that the individuals listed above have the training specifically required of them in the new regulations.

The District is responsible for ensuring that:

- ◆ Anyone who serves in any of the above four capacities receives training on:
 - The Title IX definition of sexual harassment;
 - **The scope of the District’s education program or activity;**
 - How to investigate and grievance process, including hearings, appeals, and informal resolution processes, as applicable; and
 - “How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.”

Title IX Grievance Process: Requirements

- ✓ “Include the procedures and permissible bases for the Complainant and Respondent to appeal;”
- ✓ “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.”

Title IX Grievance Process

Grievance Process Time Frames:

- ❑ Reasonably prompt time frames for the conclusion of the grievance process, including appeals , *and*
- ❑ Policies allow for the temporary delay of the grievance process or limited extension of time frames for good cause:
 - When delay occurs, the District must provide written notice to the parties of the extension and the reasons for it
 - Good Cause may be:
 - **the absence of a party, a party's advisor, or a witness**
 - concurrent law enforcement activity, or
 - the need for language assistance or disability accommodation

Title IX Notice Requirements

Notice Requirements:

Notice must include that:

1. The District “does not discriminate on the basis of sex in the education program or activity that it operates,” in accordance with Title IX;
2. The District’s non-discrimination policy includes admissions as well as employment; and
3. Inquiries about Title IX may be referred to either the Title IX Coordinator or to the Assistant Secretary of Education.

Training Program

- ❑ Training for Title IX Coordinators, investigators, decision-makers, and anyone who facilitates an informal resolution process must:
 - Define sexual harassment
 - Explain how to investigate and the grievance process
 - **Promote impartial investigations**
 - Not rely on sex stereotypes

Posting Requirements

- ❑ Materials used to train those in the above roles must be made publicly available on the District's website
 - If the district does not maintain a website, the district must make these materials available upon request by members of the public
- ❑ The district is also required to post on its website and in any handbook that is made available to the persons entitled to a notification:
 - all the contact information required for the Title IX Coordinator and
 - the updated grievance policy information referenced earlier (**FFH and DIA**)

The Formal Complaint Process

Title IX: From a Report to Grievance Process

Part I of the Process

Report of Sexual Harassment Received by Title IX Coordinator

Supportive Measures Offered to both Complainant and Respondent

Offer Formal Complaint Under District's Grievance Policy

Either Complainant or Title IX Coordinator Signs Formal Complaint

The District Must Investigate by Following a Grievance Process That Complies with Title IX

The Title IX Report to Grievance Process

Part II of the Process (after receipt of a “Formal Complaint”)

Written
Notice of
Allegations
to
Respondent

Possible
Dismissal of
Complaint
-possible handling
under another policy
-dismissal subject to
appeal

Evidence
Collected and
Offered to
Parties for
Review

Completion of
Investigation Report,
with copies provided
to parties

Decision-Making
and Appeal

Two-Part Mandatory Response

PART ONE

Response after
“Actual Knowledge” or after a
Report of Sexual Harassment

PART TWO

Response after “Formal
Complaint”

Part One: Report of Sexual Harassment

Role of the Title IX Coordinator Upon Receipt of a Report of Sexual Harassment

The Title IX Coordinator *must*:

- Respond **promptly** to allegations of sexual harassment
- Inform the Complainant that supportive measures are available (*whether a Formal Complaint is filed or not*) and oversee their implementation
- Inform a Complainant of the right to file a Formal Complaint
- Explain to a Complainant how a Formal Complaint may be filed

(As we will see later, the Title IX Coordinator will also be the individual responsible for the implementation of remedies after the Formal Complaint process.)

Mandatory Response to Sexual Harassment

A District with **actual knowledge** of sexual harassment:

- in an education program or activity of the District
- against a person in the United States
- must respond *promptly* in a manner *that is not deliberately indifferent*

34 C.F.R. 106.44

What is “deliberately indifferent”?

A District is deliberately indifferent “only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.”

34 C.F.R. 106.44

Potential Title IX Liability for Schools

1. *Existence of actionable sexual harassment?*
2. *Actual knowledge by the school?*
3. *Deliberate indifference when responding?*

Responding to Complaints: Supportive Measures

The Title IX Coordinator must offer supportive measures to a Complainant before or after a Formal Complaint is filed, or where no Formal Complaint is filed

Supportive measures must also be provided to Respondents as appropriate.

- **Title IX defines supportive measures as:**
 - ✓ Non-disciplinary, non-punitive individualized services
 - ✓ Offered as appropriate, as reasonably available, and without fee or charge
 - ✓ **Designed to restore or preserve equal access to the recipient's (the District's) education program or activity**
 - ✓ Without unreasonably burdening the other party
- *The District must maintain as confidential any supportive measures provided to either party to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures.*

Responding to Allegations: Supportive Measures

Supportive measures may include any of the following:

- 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
- Leave of absence
- Increased security and monitoring of areas of campus
- Other similar measures

* *Supportive measures may not be punitive in nature.*

Supportive Measures

- Available before, during, after, *and even if there never is* a Title IX formal complaint process
- Available for both the Complainant and the Respondent, although the measures offered need not be equal
- Free, individualized services designed to restore or preserve and individual's equal access to education, to protect the individual's safety, or deter further sexual harassment
- *Cannot be punitive or disciplinary*
- *Cannot unreasonably burden another person*

Title IX Grievance Process: Emergency Removal

The regulations state that they do not preclude a District from removing a Respondent from the District's education program or activity on an emergency basis, provided the 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

Emergency Removal

- Generally, emergency removal is a high standard to meet.
- **Emergency removal does not affect student rights under IDEA, Section 504, or the ADA.**
- Students identified under IDEA or 504 could be removed for up to 10 days without an ARD or 504 committee meeting.
- *Also consider the district's threat assessment process.*



Title IX Coordinator Offers Complainant Opportunity to File a Formal Complaint

Grievance Process: Formal Complaints

What are the Requirements for a Formal Complaint?

According to the regulations, a **Formal Complaint** is a document that:

- Alleges sexual harassment against a Respondent and **requests that the District investigate the allegation of sexual harassment**
- Filed by a Complainant *or signed by the Title IX Coordinator*
- Complainant must be participating in or attempting to participate in the District's education program or activity
- A Formal Complaint may be filed in person, by mail or by email, or “by any additional method designated” by the District

Grievance Process: Formal Complaints

Who May Sign a Formal Complaint?

- ❑ The Complainant
- ❑ Parents or guardians may file a formal complaint on behalf of a minor student
- ❑ When a Complainant declines or refuses to sign a Formal Complaint:
 - In some instances, Title IX Coordinator may sign a formal complaint
 - **The Title IX Coordinator is required to sign the Formal Complaint where not doing so would be “clearly unreasonable in light of the known circumstances”**

In these instances, the Title IX Coordinator is not considered a Complainant.

What if a
Formal
Complaint is
Not Filed?

Formal Complaints

- ❑ Failure to file a Formal Complaint does not preclude or excuse school from taking action under another provision of its Code of Conduct, or other grievance policies.
- ❑ In other words, the school must still investigate under its grievance policies, *e.g.*, DIA (employees) or FFH (students).

Part Two: Receipt of a Formal Complaint

Title IX Grievance Process: Notice of Allegations

Notice of Allegations:
Must Provide
Sufficient Written
Notice to the
Respondent of the
Allegations

The Title IX Coordinator must provide:

- ✓ Notice of the allegations potentially constituting sexual harassment;
- ✓ Including sufficient details (known at the time); and
- ✓ Allowing sufficient time to prepare a response before any initial interview.

Sufficient details include:

- ✓ *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.
- ✓ *This means no more confidentiality.*

Title IX Grievance Process: Notice of Allegations

Letterhead

January 10, 2023

(Via CMRRR _____ and Regular Mail)

Respondent Name

Respondent Address

Re: Notice Regarding Sexual Harassment Allegations and Title IX Investigation

Dear Respondent:

Pursuant to § 34 CFR 106.45(b)(2)(B) (relating to Title IX of the Education Amendments Act of 1972) and _____ (school) policy, please take notice that _____ (school) has received notice of the following information, which gives rise under federal law and _____ (insert school) policy _____ (insert school policy) to a duty on part of the school to conduct an investigation as required by 34 CFR § 106.45(b)(5)(v).

Specifically, _____ (school) has received a Formal Complaint from _____ (Complainant) that alleges that you _____ on the following occasions _____. The allegations that will be investigated are as follows: _____ (you can pull this from the Formal Complaint).

Each of these allegations will be investigated and, if supported by fact, could constitute prohibited sexual harassment as defined by law and prohibited by Title IX.

If additional allegations are later included in the scope of the investigation, you will be provided additional notice.

Please take notice that as the Respondent to the sexual harassment complaint, you are presumed not responsible until a determination is made at the conclusion of the grievance process.

All parties may have an advisor of their choice, who may be, but is not required to be, an attorney. Your advisor may accompany you to any meeting or proceeding in which you are invited or expected to participate and may inspect and review evidence gathered in the investigation. If you decide to have an advisor, please notify me of the name and contact information for the advisor.

You may prepare a response prior to any interview or meeting conducted as part of the investigation to which you will be invited to participate.

Please contact Leon Alcala, PLLC at 512.637.4244 or titleIX@LeonAlcala.com with any questions.

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This notice is provided currently to provide sufficient time for you or your advisor to prepare to participate in _____ (school) investigation of the above-referenced complaint.

Please be advised that _____ (school) Board policy prohibits knowingly making false statements or submitting false information during the investigation process.

_____ (school) has a formal complaint process, along with an informal complaint process, as described in Board Policy [FFH/DIA]. The referenced Board Policy is attached for your convenience.

_____ (school) proposes to assign _____ to conduct the formal investigation. If you have any objection about this assignment, including any concerns about potential bias or conflict of interest, please let me know within three business days.

_____ (school) policies also provide for an informal resolution process, please contact me if you are interested in learning more about informal resolution.

Sincerely,

Title IX Coordinator

Attachments: Board Policy _____

CC: Complainant

Please contact Leon Alcala, PLLC at 512.637.4244 or titleIX@LeonAlcala.com with any questions.

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Title IX Grievance Process: Notice of Allegations

Notice of Allegations:

Other Required Elements

- ❑ State that the Respondent is initially presumed not responsible for the alleged conduct.
- ❑ Inform the parties that:
 - they may have an *advisor* (*who may be but is not required to be an attorney*) and
 - may inspect and review evidence.
- ❑ Inform the parties of any code of conduct provision that prohibits knowingly making false statements during the grievance process.
- ❑ *If the District, during an investigation, decides to investigate allegations that are not in the initial written notice, the District must provide notice of those new allegations to the parties.*

Title IX Grievance Process: Advisors

Advisors?

- Parties may have advisor of their choosing present during any grievance proceeding, including interviews
- Districts may not limit the choice or presence of advisor for either the Complainant or Respondent
- Districts may restrict the extent to which the advisor may participate in the proceedings
- Advisor restrictions must apply to both parties

Title IX Grievance Process: Other Issues

Free Speech

Districts **may not restrict** the parties' ability to:

- discuss the allegations under investigation;
- to gather and present relevant evidence.

Formal Complaints

Where allegations involve the same set of facts or circumstances, the Title IX Coordinator may consolidate Formal Complaints:

- ❑ Involving allegations of sexual harassment against more than one Respondent, OR
- ❑ by more than one Complainant against one or more Respondents, or by one party against the other party.

Consolidation of Formal Complaints

When Dismissal Is Required

The District must dismiss a Formal Complaint if the conduct alleged:

- ❑ Would *not constitute sexual harassment under Title IX, even if proved*
- ❑ Did not occur in the District's education program or activity
 - **Remember:** education program or activity = locations, events, or circumstances over which the District exercised substantial control over both the respondent and the context in which the sexual harassment occurs
 - May include electronic harassment that occurs off-campus
- ❑ Did not occur against a person in the United States
 - **Please note:** A Decision-Maker should dismiss the Formal Complaint, not the Title IX Coordinator.

Possible Dismissal and Alternative Actions

Permissive Dismissals. The District may dismiss the Formal Complaint or any allegations therein if at any time during the investigation or hearing:

- a. A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint;
- b. The Respondent is no longer enrolled or employed” by the District. *However, remember completion of investigation and reporting requirements under the Texas Education Code.*
- c. “Specific circumstances prevent the district from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.”

SCENARIO

Is a school required to investigate a Formal Complaint if the Respondent (student or employee) leaves the school?

ANSWER

Although the school may dismiss a Formal Complaint under Title IX, remember the school's other non-discrimination policies.

Proceeding with the grievance process could potentially allow a school to determine the scope of the harassment, whether school employees knew about it but failed to respond, and whether there is a pattern of harassment in the programs or activities that need remedial action.

Title IX Grievance Process: Appeal from Dismissal

Notice and Appeal

- a. When dismissing a Formal Complaint (whether a required dismissal or permitted dismissal), the District must promptly send written notice of the dismissal and reason(s) for it to the parties
- a. A party may appeal dismissal of a Formal Complaint
- a. Bases for appeal of dismissal include:
 - Procedural irregularity
 - New evidence
 - Bias or conflict of interest
 - Any other bases offered by the District

Dismissal

NOTE: Dismissal does not preclude *or excuse* the District from acting under another provision of its grievance policies.

The Investigation (will be discussed in Part III)

Informal Resolution

Title IX Grievance Process: Informal Resolution

Districts 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 this section;”
- “Require the parties to participate in an informal resolution process; or
- “[O]ffer an informal resolution process unless a Formal Complaint is filed.”

However, Districts may:

- At any time prior to reaching a determination regarding responsibility may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication.*

Title IX Grievance Process: Informal Resolution

- ❑ Districts must provide to the parties a written notice disclosing:
 - the allegations,
 - 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,
 - that at any time prior to agreeing to a resolution, any party has the right to withdraw and resume the grievance process, and
 - any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- ❑ The District must obtain the parties' voluntary, written consent to the informal resolution process; and
- ❑ **Note: the District may not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.**

Appeals

Title IX Grievance Process: Appeals

The District must allow for appeal of a Formal Complaint determination by either the Complainant or Respondent.

With all appeals, the District must:

- “Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- Ensure that the Decision-maker(s) for the appeal is not the same person as the Decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator; and**
- Ensure that the Decision-maker(s) for the appeal complies with the standards” in the Title IX regulations regarding training requirements and the absence of a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent.

Title IX Grievance Process: Appeals

In addition, the District must:

- ❑ Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome of the grievance process;
- ❑ Issue a written decision describing the result of the appeal and the rationale for the result; and
- ❑ Provide the written appeal decision simultaneously to both parties.

Title IX Grievance Process: Appeals

Appeals may be taken:

In any of the following instances:

- a determination of responsibility, or
- the dismissal of a Formal Complaint

On the following bases:

- 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.”
- A District may offer appeal on additional bases at its discretion.

Recordkeeping Requirements

Recordkeeping Requirements

(1) **The District must maintain for a period of seven years records of:**

- “Each sexual harassment investigation including
 - ✓ any determination regarding responsibility,
 - ✓ any audio or audiovisual recording or transcript required under” the section on hearings (as required of postsecondary institutions but not elementary and secondary schools);
 - ✓ any disciplinary sanctions imposed on the respondent, and
 - ✓ any remedies provided to the complainant designed to restore or preserve equal access to the recipient’s education program or activity.

- Any appeal and the result therefrom;

- Any informal resolution and the result therefrom; and

- All material used to train Title IX Coordinators, investigators, Decision-makers, and any person who facilitates an informal resolution process.”
 - The District must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.”

Recordkeeping Requirements

- (2) Also, for each response required of the District under §106.44 (Recipient's Response to Sexual Harassment), the **District must create and maintain for a period of seven years:**
- ✓ Records of any actions, including any supportive measures, taken in response to:
 - a report, or
 - Formal Complaint of sexual harassment.

 - ✓ **In each instance, the District “must document:**
 - **The basis for its conclusion that its response was not deliberately indifferent, and**
 - **That it has taken measures designed to restore or preserve equal access to the recipient's education program or activity.”**

 - **If the District “does not provide a Complainant with supportive measures, then the recipient (the District) must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the recipient (the District) in the future from providing additional explanations or detailing additional measures.”**

Retaliation Prohibited

Retaliation Prohibited

Districts may not retaliate against any party for complaining, assisting, participating, or refusing to participate in an investigation or grievance process.

Notably, the regulations limit Districts from charging students with code of conduct violations when the violation arises from the same facts underlying a complaint of sexual harassment.

“Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation.”

34 C.F.R. § 106.71

Retaliation Prohibited

The District must 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 Formal Complaint of sexual harassment,
- any individual who has been reported to be the perpetrator of sex discrimination,
- any Respondent,
- any witness, and
- except as may be permitted by the FERPA statute, 20 USC 1232 g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

Retaliation Prohibited

COMPLAINTS OF RETALIATION:

“Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination required to be adopted under §106.8(c).”

SPECIFIC CIRCUMSTANCES:

- “The exercise of rights protected under the First Amendment does not constitute retaliation prohibited” under this section.
- Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute prohibited retaliation,
- However, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.”

Title IX Coordinator:

What Did You Learn?

- Responsibilities for coordinating District Title IX efforts
- Requirements to provide supportive measures and to implement remedies
- An understanding of the Title IX grievance and investigative process
- Other roles in which Title IX Coordinator may or may not serve

Informal Resolution Facilitator:

What Did You Learn?

- When informal resolution is available to complainants and respondents
- Availability of supportive measures
- Approaches to informal resolution of complaints
- Title IX grievance and investigative process

Let's Test Your Knowledge!

Grievance Process

□ DIA (employees)

Investigation of Reports Other Than Title IX

immediately notify the Title IX coordinator.

The following procedures apply to all allegations of prohibited conduct other than allegations of harassment prohibited by Title IX. [See FFH(LEGAL)] For allegations of sex-based harassment that, if proved, would meet the definition of sexual harassment under Title IX, see the procedures below at Response to Sexual Harassment—Title IX.

The District may accept, but shall not require, a written report. If a report is made orally, the District official shall reduce the

Response to Sexual Harassment—Title IX

The complainant may have a right to file a complaint with appropriate state or federal agencies.

For purposes of the District's response to reports of harassment prohibited by Title IX, definitions can be found in FFH(LEGAL).

General Response

When the District receives notice of an allegation of conduct that, if proved, would meet the definition of sexual harassment under Title IX, the Title IX coordinator shall promptly contact the complainant to:

- Discuss the availability of supportive measures and inform the complainant that they are available, with or without the filing of a formal complaint;
- Consider the complainant's wishes with respect to supportive measures; and
- Explain to the complainant the option and process for filing a formal complaint.

The District's response to sexual harassment shall treat complainants and respondents equitably by offering supportive measures to both parties, as appropriate, and by following the Title IX formal complaint process before imposing disciplinary sanctions or other actions that are not supportive measures against a respondent.

If a formal complaint is not filed, the District reserves the right to investigate and respond to prohibited conduct in accordance with Board policies and administrative procedures.

Title IX Formal Complaint Process

To distinguish the process described below from the District's general grievance policies [see DGBA, FNG, and GF], this policy refers to the grievance process required by Title IX regulations for responding to formal complaints of sexual harassment as the District's "Title IX formal complaint process."

Where Do I
Find the Title
IX Grievance
Process?

Grievance Process

☐ FFH (students)

Where Do I
Find the
Title IX
Grievance
Process?

Investigation of Reports Other Than Title IX	<p>perpetrator.</p> <p>The following procedures apply to all allegations of prohibited conduct other than allegations of harassment prohibited by Title IX. [See FFH(LEGAL)] For allegations of sex-based harassment that, if proved, would meet the definition of sexual harassment under Title IX, including sexual harassment, gender-based harassment, and dating violence, see the procedures below at Response to Title IX Sexual Harassment.</p>
Response to Title IX Sexual Harassment	<p>For purposes of the District's response to reports of harassment prohibited by Title IX, definitions can be found in FFH(LEGAL).</p>
General Response	<p>When the District receives notice or an allegation of conduct that, if proved, would meet the definition of sexual harassment under Title IX, the Title IX coordinator shall promptly contact the complainant to:</p> <ul style="list-style-type: none">• Discuss the availability of supportive measures and inform the complainant that they are available, with or without the filing of a formal complaint;• Consider the complainant's wishes with respect to supportive measures; and• Explain to the complainant the option and process for filing a formal complaint. <p>The District's response to sexual harassment shall treat complainants and respondents equitably by offering supportive measures to both parties, as appropriate, and by following the Title IX formal complaint process before imposing disciplinary sanctions or other actions that are not supportive measures against a respondent.</p> <p>If a formal complaint is not filed or dismissed, the District reserves the right to investigate and respond to prohibited conduct in accordance with Board policies and the Student Code of Conduct. The Title IX coordinator also reserves the right to sign a formal complaint, initiating the Title IX grievance process, if it would be deliberately indifferent not to investigate and respond to the prohibited conduct in accordance with Board policies and the Student Code of Conduct.</p>
Title IX Formal Complaint Process	<p>To distinguish the process described below from the District's general grievance policies [see DGBA, FNG, and GF], this policy refers to the grievance process required by Title IX regulations for responding to formal complaints of sexual harassment as the District's "Title IX formal complaint process."</p>

The Title IX Coordinator, Investigator,
Informal Resolution Facilitator or Decision-
maker cannot have a
“Conflict of interest or Bias.”

A Conflict of Interest or Bias?

- A. I've known the Respondent for years; he goes to my church and I know his family.
- B. I can't believe the Respondent would do something like that.
- C. The Complainant tends to be dramatic and exaggerate.
- D. I know this student and she has a history of lying.
- E. All the above.



- A student complains that while riding the school bus for a field trip, another student showed her and other students pornographic videos. The student no longer wants to ride the bus. This is reported to the Principal.
- WHAT SHOULD PRINCIPAL DO?
- WHAT SHOULD THE TITLE IX COORDINATOR DO?

Role of the Title IX Coordinator Upon Receipt of a Report of Sexual Harassment

The Title IX Coordinator *must*:

- Respond promptly to allegations of sexual harassment
- Inform a Complainant that supportive measures are available (*whether a formal complaint is filed or not*) and oversee their implementation
- Inform a Complainant of the right to file a Formal Complaint
- Explain how a Formal Complaint may be filed

What if the report was made to
the bus driver?



Title IX
Triggered?

SCENARIO

A teacher is accused of sexually harassing a student off campus and outside a school sponsored activity. Is Title IX triggered?

ANSWER

Yes, a teacher's sexual harassment of a student is likely to constitute sexual harassment "in the program" of the school even if the harassment occurs off campus or off school grounds and outside a school-sponsored activity.

SCENARIO

We are supposed to remain unbiased and treat the Parties equitably, so . . .

Can the teacher be placed on administrative leave during the investigation?

ANSWER

Yes, the Title IX regulations permit a school to place an employee Respondent on administrative leave while a Title IX grievance process is pending.

Also, think about SBEC reporting requirements.

SCENARIO

A district employee receives an anonymous report that a current employee was subjected to stalking by a co-worker who is still employed by the district.

A report is made to the Title IX Coordinator.

ANSWER

Yes, the school has actual knowledge even if the information is anonymous.

Still must investigate and commence process without “deliberate indifference.”

If a Formal Complaint is not filed, school still must investigate under its grievance policy.

SCENARIO

Can You Remove a Student Who Has Been Accused of a Sexual Assault During an Investigation?



ANSWER

Yes. The regulations do not preclude a district from removing a Respondent from the district's education program or activity on an emergency basis, provided the 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.

REMINDER! Title IX and Law Enforcement: Two Distinct Systems

“A law enforcement investigation **does not relieve the school of its independent Title IX obligation** to investigate the conduct” and “resolve complaints promptly and equitably.”

“Police investigations may be useful for fact-gathering, but because the standards for criminal investigations are different, **police investigations or reports are not determinative of whether sexual harassment or violence violates Title IX.**”

“Conduct **may constitute unlawful sexual harassment** under Title IX **even if the police do not have sufficient evidence** of a criminal violation.

SCENARIO

Student reports she was sexually assaulted in a nightclub off campus by a third party who does not live in the area. Student is now experiencing emotional distress and is unable to attend classes.?

Is Title IX triggered?

ANSWER

No, because the assault occurred off campus, and the Respondent is not a representative of the recipient or otherwise a person over whom the recipient exercises authority and the assault did not occur within the recipient's education program or activity.

Student is also not alleging a hostile environment within the education program or activity due to the respondent's presence or additional harassment she is experiencing, *BUT* if she does . . .

SCENARIO

How should a school respond to complaints alleging sex discrimination that do not allege sexual harassment?

ANSWER

Currently, the grievance process required for a formal sexual harassment complaint does not apply to alleged discrimination based on pregnancy, different treatment, in athletics, for example based on sex, or other forms of sex discrimination but stand by. . . the new regulations are coming!

Appendix

1. Process Chart
2. Formal Complaint
3. Notice of Formal Complaint (Respondent)
4. Notice of Emergency Suspension Pending Title IX Investigation (Respondent)
5. Investigation Notes
6. Letter Regarding Opportunity to Review Evidence (Complainant)
7. Written Determination

Thank you



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trainings, client alerts, and
events.



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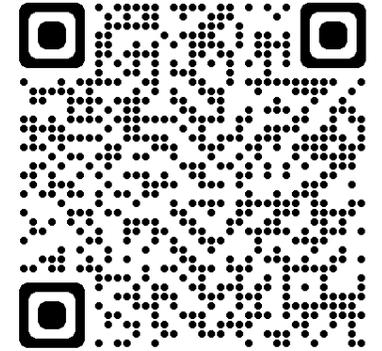
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