



Title IX Sexual Harassment

**Elementary Assistant Principals
Presentation**

Legal Services Office, Cypress-
Fairbanks ISD
2024-2025

Title IX Guidance Overview

Title IX is a statute Congress passed in 1972 to prohibit sex discrimination in educational institutions and provide remedies against such discrimination.

Title IX protects students and employees from discrimination on the basis of sex in their education programs and activities, including sexual harassment.

In 2020, the U.S. Department of Education released new regulations under Title IX that dictated specific procedures on how schools must respond to sexual harassment complaints.

In 2021 the Department of Education issued guidance which interpreted Title IX to prohibit discrimination on basis of sexual orientation and gender identity in education programs and activities that receive federal funding.

Title IX Guidance Overview

In 2023 the State of Texas sued to enjoin the 2021 Department of Education guidance.

On April 29, 2024, the Department of Education released new rules for the implementation of Title IX.

On June 11, 2024, a federal court in Texas declared the 2021 guidance unlawful and barred the Department of Education from enforcing the 2021 guidance against Texas and Texas public schools

On July 11th, a federal court in Texas enjoined the new 2024 Title IX Rules. As a result, the 2020 Title IX rules remain in effect.

Key Changes in the 2024 Title IX Rules

- ▶ The new rules define sex discrimination to include discrimination and harassment on the basis of sex stereotypes, sex characteristics, pregnancy and related conditions, sexual orientation, and gender identity.
- ▶ The new rules revise the definition of hostile environment sex-based harassment to expand the conduct that is covered.
- ▶ The new rules provide additional protections for pregnant and parenting students, including pregnancy-related conditions.

Key Changes in the 2024 Title IX Rules

- ▶ The new rules allow districts to use the “single-investigator model” in your Title IX grievance process, where the investigator also serves as the decisionmaker.
- ▶ The new rules no longer require a formal complaint to trigger the grievance process; an oral complaint is sufficient.
- ▶ The new rules require grievance processes for addressing all forms of sex discrimination.

Overview of Regulations

Require defined roles for staff:

Title IX coordinator, investigator, decisionmaker, informal resolution facilitator, hearing advisor, and appeal officer

Create new terms for the parties:

Complainant-an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Respondent-an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Recipient-school districts/schools



Overview of Regulations

Also require that any individual involved in the Title IX process:

- not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent
- avoid prejudgment of the facts

Schools Resposne Obligations

A school must respond when it has:

- Actual knowledge
- Of sexual harassment
- That occurred within the school's education program or activity
- Against a person in the US

A school has actual knowledge when:

- ANY employee of an elementary or secondary school has notice of sexual harassment or allegations of sexual harassment
 - Includes teachers, teacher's aide, bus drivers, cafeteria workers, counselors, school resource officers, maintenance staff worker, etc.



Schools Resposne Obligations

A school's education programs or activities include any events, or circumstances over which the school exercised **substantial control** over both

- the **respondent**; and
- the **context** in which the sexual harassment occurs

What constitutes sexual harassment under Title IX?

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

- Quid Pro Quo: a school employee conditioning education benefits on participation in unwelcome sexual conduct
- Hostile Environment: 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
- “Sexual assault” as defined in 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).

What constitutes sexual harassment under Title IX?

- ▶ The definition of sexual assault under Title IX includes:
 - ▶ non-consensual sexual penetration (vaginal, anal, or oral, including with an object);
 - ▶ sexual conduct where the victim is incapable of giving consent because of age or temporary or permanent mental or physical incapacity;
 - ▶ fondling (non-consensual touching of private body parts above or under clothing for sexual gratification);
 - ▶ incest (nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law);
 - ▶ and statutory rape (nonforcible sexual intercourse with a person who is under the statutory age of consent)

What constitutes sexual harassment under Title IX?

The term "dating violence" means violence committed by a person-
(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- (i) The length of the relationship.
- (ii) The type of relationship.
- (iii) The frequency of interaction between the persons involved in the relationship.

What constitutes sexual harassment under Title IX?

Domestic Violence includes felony or misdemeanor crimes of violence committed by:

- (1) a current or former spouse or intimate partner of the victim;
- (2) a person with whom the victim shares a child in common;
- (3) a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
- (4) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state; or
- (5) 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 state

What constitutes sexual harassment under Title IX?

The term "stalking" means 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.

Title IX Assignments in CFISD



Title IX Coordinator(s)
Assistant Principal
(Elem)
Assistant Principal
(MS)
Associate Principal
(HS)



Investigator
Assistant Principal



Decision maker
Campus Principal

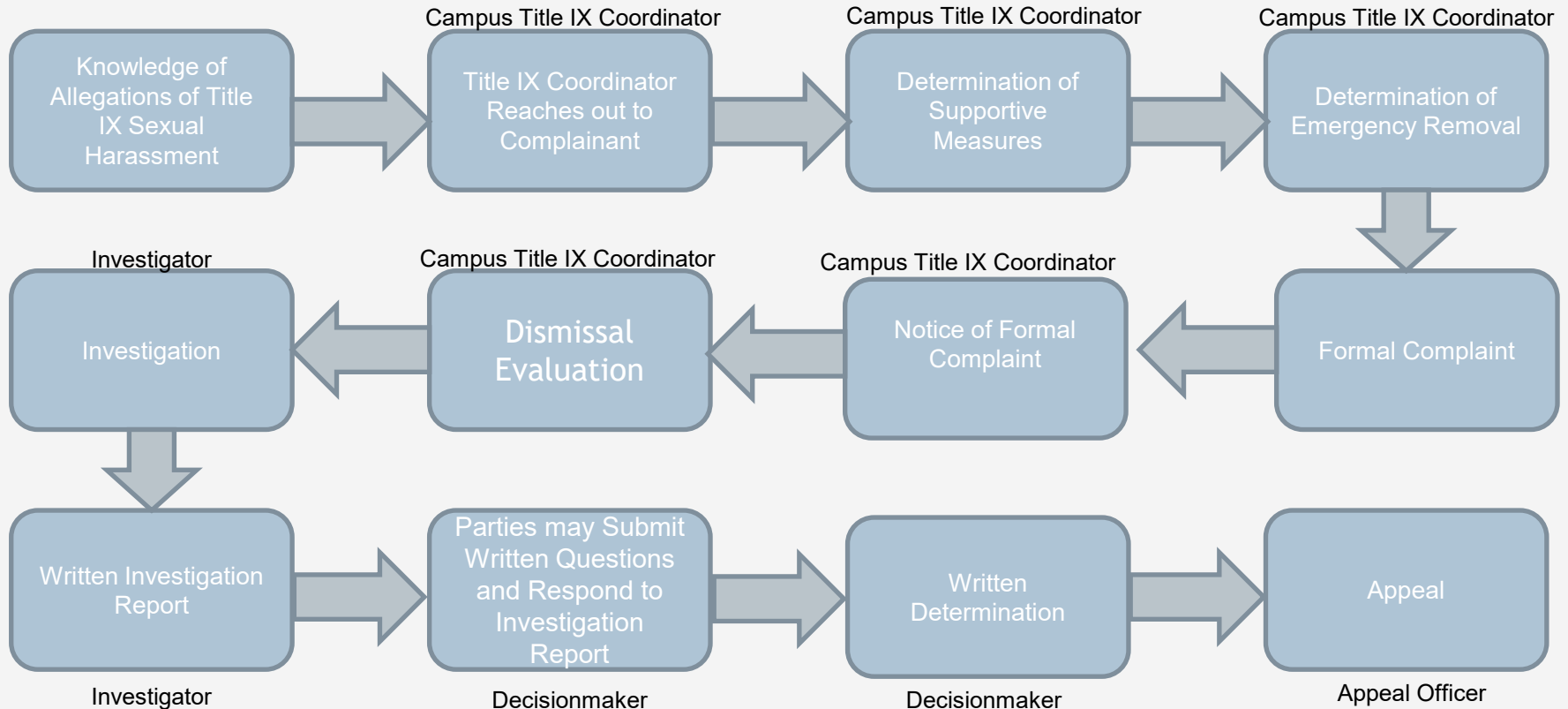


Appeal Officer
Assistant
Superintendent



Informal Resolution Facilitator
Campus Title IX Coordinator

Basic Title IX Process



Role of Title IX Coordinators

The role of Campus Title IX Coordinator includes:

- Receive complaints of alleged sexual harassment
- Advise complainants of availability of supportive measures
- Explain to the complainant the process for filing a formal complaint
- Potentially sign a formal complaint of harassment, if needed
- Implement supportive measures, monitor and adjust as needed
- Overseeing the formal complaint process



Role of Title IX Coordinators

District must designate and authorize at least one District Title IX Coordinator (Dr. Deborah Stewart)

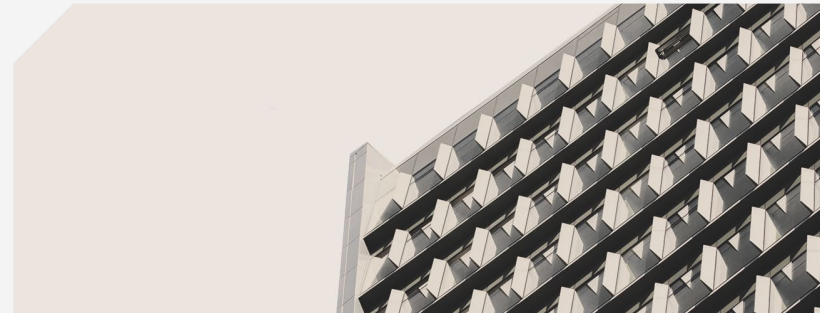
May also designate additional employees to serve as “Deputy Title IX Coordinators” which we call the Campus Title IX coordinators at every campus

Title IX Coordinator's Response to Allegations of Sexual Harassment

Once allegations of sexual harassment are reported, the Campus Title IX Coordinator will promptly contact the complainant (the alleged victim) to:

- Explain:
 - The right to file a formal complaint
 - Process for filing a formal complaint
 - Formal complaint process
- Discuss the availability of supportive measures whether or not a formal complaint is filed
- Consider the complainant's wishes with respect to supportive measures
- Document the supportive measures offered and what will be implemented

If a formal complaint is not filed, the Campus Title IX Coordinator is still required to engage in this outreach.



Understanding Supportive Measures

Supportive measures are designed to restore or preserve equal access to the recipient's education program or activity, without unreasonably burdening the other party, protect the safety of all parties and the recipient's educational environment, and deter sexual harassment.

Supportive measures cannot be punitive or disciplinary. Supportive measures may include:

- counseling
- course related adjustments
- modifications of work or class schedules
- campus escort services
- increased security and monitoring of certain areas of campus
- mutual restrictions on contact between parties

Supportive measures should also be made available to the respondent as appropriate.

The Campus Title IX Coordinator must follow up to determine if the supportive measures are being implemented and if they are effective. These supportive measures should be kept confidential.

Emergency Removal

Once allegations of sexual harassment are reported, a student may be subject to emergency removal under the following conditions;

- Must conduct an individualized safety and risk assessment to determine if a student is an imminent threat to the physical health or safety of another student or individual arising from the allegations of sexual harassment
- Must provide notice and opportunity to challenge the removal immediately following the removal

Keep in mind possible IDEA and Section 504 implications

- Must follow state law, Board policy, and normal district procedures
- MDR requirements and procedural safeguards will be triggered if a removal would result in a change of placement
- Some supportive measures, such as provision of counseling or changes to class schedules, could also implicate placements and services under IDEA and Section 504

Understanding Formal Complaints

A formal complaint is a document filed by a complainant (or parent, or legal guardian) or signed by the Campus Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment.

The complainant's wishes regarding filing a formal complaint should be respected unless the Campus Title IX Coordinator determines that initiating an investigation against the complainant's wishes is not clearly unreasonable.

Requires a complainant to be participating in or attempting to participate in the education program or activity of the school.

Understanding Formal Complaints

Notice of Allegations

Upon the filing of a formal complaint the Campus Title IX Coordinator must provide both parties with written notice of the following prior to the commencement of the investigation:

- school's formal complaint process
- the allegations of sexual harassment
- the presumption of innocence
- the standard of evidence that will be used
- the right to inspect and review evidence
- the right to have an advisor during the process
- any provisions in the school's code of conduct that prohibit knowingly making false statements or submitting false information during the formal complaint process
- and informal resolution options.

Understanding Formal Complaints

Response and Dismissal

MANDATORY DISMISSAL

The Campus Title IX Coordinator is required to dismiss a formal complaint when the allegations:

- do not meet the definition of sexual harassment
- did not occur in a school's education program or activity
- did not occur against a person in the U.S.
- the Complainant was not participating in or attempting to participate in the District's education program or activity at the time they filed the formal complaint.

Understanding Formal Complaints

Response and Dismissal

PERMISSIVE DISMISSAL

The Campus Title IX Coordinator may dismiss a formal complaint if :

- the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint
- the respondent is no longer enrolled or employed by the school
- specific circumstances prevent the school from gathering sufficient evidence to reach a determination.

Understanding Formal Complaints

Response and Dismissal

NOTICE REQUIREMENTS

If the Campus Title IX Coordinator dismisses the complaint, he or she must send the parties written notice of dismissal including:

- Notice of dismissal
- Reasons for dismissal
- Appeal options for a dismissal

Any party may appeal dismissal

The Formal Complaint Process Requirements—Objective Evaluation

Objective evaluation of all relevant evidence, inculpatory and exculpatory, and the avoidance of credibility determinations based on a person's status as a complainant, respondent, or witness. The formal complaint process should operate under the assumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the formal complaint process.

The Formal Complaint Process Requirements--Prompt Time Frame

Reasonably prompt time frame for its conclusion, including for appeals, with allowance for short-term, good cause delays, or extensions of the time frames.

Good time delay includes concurrent law enforcement activity, the absence of a party or witness, the absence of a party's advisor of choice, or the need for language assistance or accommodation of disabilities.

Under the District Title IX Procedures the Title IX formal complaint process beginning with filing or signing of the formal complaint and ending with the determination of responsibility is required to be completed within sixty (60) days.

Formal Complaint Process: Investigations

Investigator Role

- Determine the scope of the investigation
- Immediately identify and gather sources of evidence
- Preserve evidence
- Conduct interviews
- Interview facts and expert witnesses
- Evaluate all the evidence
- Give parties an opportunity to respond to the evidence
- Draft investigative report
- Provide finalized report to Decisionmaker and Campus Title IX Coordinator



Formal Complaint Process: Investigation Requirements

Once assigned to investigate a Title IX formal complaint, Investigators must provide parties written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings with sufficient time to prepare

Must provide parties with equal opportunity to present evidence and identify fact and expert witnesses.

Must also allow the parties to use an advisor of their choice during the formal complaint process.

Investigators may interview non-party witnesses without providing prior written notice

Hearing Advisor

If a party elects to use a hearing advisor—

- Their advisor may be present during interviews and meetings, must be allowed to review evidence and reports from investigation process, and may be present for the written hearing process.
- A party's hearing advisor may be a friend, family member, attorney, or other individual with whom the party has a trusted relationship.

The district is not responsible for providing or training hearing advisors.

Formal Complaint Process: Investigation Evidence

EVIDENCE REQUIREMENTS

- Burden of gathering evidence and burden of proof must remain on schools
- All evidence must be objectively evaluated
- Confidentiality should be maintained to the greatest extent possible
- Parties' attorney-client communications and medical/psychological information are protected by legal privilege and the school cannot access or use such records unless the school obtains the party's voluntary, written consent to do so
- Investigator must provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence

Formal Complaint Process: Investigation Evidence

EVIDENCE REQUIREMENTS

- Investigator must not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., **no “gag orders”**)
- Rape Shield – Evidence about a complainant’s prior sexual behavior is irrelevant during the entire formal complaint process unless:
 - Offered to prove that someone other than the respondent committed the alleged misconduct
 - Offered to prove consent

Formal Complaint Process: Investigation Evidence

STANDARD OF EVIDENCE

The law gives school districts the choice between the preponderance of the evidence standard and clear and convincing evidence standard.

- The preponderance of the evidence standard is understood to mean concluding that a fact is more likely than not to be true. Under this standard if at least 51% of the evidence favors the complainant, then the respondent will be found responsible.
- A clear and convincing evidence standard is more rigorous, understood to mean that a fact is highly probable to be true.
- In CFISD, we have adopted the preponderance of the evidence standard
- This standard must be used for all complaints against students and employees.

Evaluating Evidence

Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence, and; (b) the fact is of consequence in determining the action.

Respondent maintains the presumption of not being responsible during the investigation. Only at the conclusion of the entire formal complaint process can a finding of responsibility be made.

Credibility determinations cannot be made based on the status as a Complainant, Respondent, or witness

- Credibility determinations are not made by the investigator—the Decisionmaker will decide credibility
- Investigator can include a summary of contradicting evidence and statements for the Decisionmaker

Formal Complaint Process: Opportunity to Review Evidence and the Investigation Report

Upon concluding the investigation process, you must give both parties the opportunity to review all evidence prior to the completion of the investigation report and each party must be given at least 10 District business days to submit a written response to you.

Contents of the investigation report

- Identification of the allegations
- A summary of the investigation
- Summary of the facts
- Relevant evidence considered by the investigator
- The parties' responses to the evidence after review and inspection

Investigator does not make a finding of responsibility.

Upon finalizing the investigation report the Investigator provides a copy of the report to the Decisionmaker and the Campus Title IX Coordinator

Written Determination Requirements

Upon receipt of the Investigation Report, the Decisionmaker has several steps to follow.

Decisionmakers Responsibilities

- Provide copies of the Investigation Report to both parties
- Facilitates the written questions process
- Determine responsibility using investigative report and written responses from parties
- Create a written determination
- Distribute determination to both parties simultaneously

Decisionmaker may not be the Campus Title IX Coordinator or investigator.

Written Determination Requirements

Written determination must include:

- Identification of the allegations potentially constituting sexual harassment
- Portion of the school's policies that was violated
- Description of the procedural steps
- Findings of fact
- Conclusions regarding application of code of conduct to facts
- Statement of/ rationale for the result as to each allegation
- Determination regarding responsibility
- Any disciplinary sanctions imposed on the respondent
- Whether remedies will be provided to the complainant
- Permissible bases for the complainant and respondent to appeal

The Campus Title IX Coordinator is responsible for effective implementation of any remedies.

Remedies

Remedies are required to be provided to a complainant when a respondent is found responsible, and they must be designed to maintain the complainant's equal access to education.

Possible remedies a school may provide a complainant and disciplinary sanctions a school might impose on a respondent following a determination include:

Examples of remedies:

- counseling
- course-related adjustments
- modifications of work or class schedules
- campus escort services
- increased security and monitoring of certain areas of campus
- mutual restrictions on contact between the parties

Example of disciplinary sanctions:

- removal from a regular classroom or campus
- out-of-school suspension
- placement in a disciplinary alternative education program
- expulsion from school

Appeals

The parties may appeal a written determination of responsibility or dismissal of a formal complaint on the following basis:

- Procedural irregularity that affected the outcome of the matter,
- Newly discovered evidence that could affect the outcome of the matter, and/or
- Title IX personnel had a conflict of interest or bias that affected the outcome of the matter

Either party may appeal by submitting Title IX Appeal Form to Campus Title IX Coordinator.

If the reason for appealing the dismissal or determination of responsibility is not one of the permitted bases for appeal, the Title IX Coordinator may dismiss the appeal.

If the request for an appeal is not dismissed, the Title IX Coordinator will assign an Appeal Hearing Officer to proceed.

Appeal Officer Role/ Appeal Process

- The appeal hearing officer may not be the Campus Title IX Coordinator, Investigator or Decisionmaker. The determination of the Appeal Hearing Officer is final.
- Issue notice of appeal to both parties
- Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging the outcome
- Review appeal form and appeal statements
- Evaluate the evidence and outcome
- Issue a written decision including:
 - Result of the appeal
 - Rationale for the result
- Provide the written decision simultaneously to both parties and Title IX Coordinator

Informal Resolution Requirements

A formal complaint must have been filed in order to engage in informal resolution

The informal resolution process can be initiated at any time before a final decision is issued.

Not available for allegations involving allegation that an employee sexually harassed a student

The Campus Title IX Coordinator may offer the parties the option to participate in informal resolution but not require their participation

Either party may also request to participate in informal resolution by making written request to the Campus Title IX Coordinator

When should Informal Resolution be used?

Factors to be consider when making a decision as to whether or not to utilize informal resolution:

- The nature of the alleged offense
- Whether there is an ongoing threat of harm or safety to the campus community
- Whether alleged respondent is a repeat offender
- Whether the alleged respondent is participating in good faith

Informal resolutions should not be used when an respondent denies responsibility.

Informal Resolution Requirements

Prior to initiating the informal resolution process both parties must provide voluntary, informed, written consent to the Campus Title IX Coordinator

Campus Title IX Coordinator must provide written notice of the following prior to initiating informal resolution process:

- Allegations
- Circumstances under which the parties would be precluded from resuming a formal complaint
 - i.e. after agreeing to a resolution determination
- The right to withdraw
- Consequences of the process

Conducted by the informal resolution facilitator who assists the parties in reaching an agreement.

Informal Resolution Requirements

An agreement reached in writing through the informal resolution process cannot be appealed through formal complaint process.

A party may terminate the informal resolution process at any time prior to reaching an informal resolution agreement by contacting the Campus Title IX Coordinator in writing, and the Campus Title IX Coordinator will notify the other party that the informal resolution process has been terminated and resume the formal complaint process.

RETALIATION STRICTLY PROHIBITED

No recipient or other 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, proceeding, or hearing under this part.

Charges of code of conduct violations that arise out of the same facts or circumstances as a report of sex discrimination or sexual harassment for the purpose of interfering with any right under Title IX constitutes retaliation.

RETALIATION STRICTLY PROHIBITED

Charges for making a materially false statement is not retaliation if charge is not based solely on outcome of the formal complaint process.

Complaints regarding retaliation may be filed in accordance with the District's Title IX formal complaint process.

Record Keeping

Records related to the District's entire response and process related to an allegation of sexual harassment must be maintained for seven years.

Title IX Resources

All of the Title IX resources will be available on Legal Services webpage on the CFISD Staff Intranet:

- Training materials
- Title IX documents

[Title IX - Principal Drive \(SLT Department\) - Google Drive](#)

Additional training in the fall

Student Services