



Title IX Investigations



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EXCELLENCE **ALWAYS**

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Title IX

“No person in the United States shall, *on the basis of sex*, be excluded from participation in, be denied the benefits of, or be subject to *discrimination under any education programs* or activity receiving federal financial assistance.”

Background



- In April 2020, the U.S. Dept. of Education (DOE) published regulations that treated “sex” as biological sex for the purposes of Title IX.
- On June 15, 2020, the U.S. Supreme Court held in *Bostock v. Clayton County*, 590 U.S. 644 (2020), that, **for Title VII**, discrimination on the basis of sexual orientation or gender identity is discrimination on the basis of sex.
- In 2021, the DOE issued Guidance Documents that applied *Bostock* to Title IX.
- In April 2024, the DOE issued its Final Rule incorporating the reasoning of the Guidance Documents to the Title IX regulations.

Differences between the 2024 and 2020 Regs

- The 2024 Regulations simplified Title IX investigations:
 - Complaints could be oral
 - The investigator and decisionmaker could be the same person
 - Only had to provide parties a description of relevant evidence rather than all related evidence and the investigative report
 - No more cross examination
 - Detailed written description no longer required (only notice of the decision & the rationale)
 - Could use existing grievance appeals process rather than the Title IX appeals process

Title IX Litigation



11 June 2024

Federal court in Fort Worth rules that the DOE improperly interpreted Title IX to prohibit discrimination based on sexual orientation and gender identity and declares DOE's regs unlawful
(*Texas v. Cardona*)



11 July 2024

Fort Worth court stops implementation of the new regulations and the simplified grievance procedures under the 2024 regulations

(*Carroll ISD v. U.S. Dep't of Educ.*)

- TEA recommends that schools continue using the 2020 regulations

***Texas v.
Cardona,
2024 WL 3658767
(Aug. 5, 2024).***

- The court enjoined the DOE from the following:
 - enforcing its guidance against Texas schools.
 - implementing or enforcing Title IX based on an interpretation that “sex” includes gender identity or sexual orientation in Title IX's prohibition against discrimination on the basis of sex against Texas schools.
 - initiating, continuing, or concluding any investigation based on its interpretation that “sex” includes gender identity or sexual orientation under Title IX's prohibition against discrimination on the basis of sex

Prohibited Conduct – Policy FFH

- Discrimination
- Retaliation
- Harassment
 - sexual harassment
 - dating violence
 - ~~○ gender-based harassment~~ (under Title IX)

Sexual Harassment

- includes unwelcome sexual advances; requests for sexual favors; or sexually motivated physical, verbal, or nonverbal conduct when the conduct is so severe, persistent, or pervasive that it:
 1. Affects a student's ability to *participate in or benefit from an educational program* or activity, or *creates an intimidating, threatening, hostile, or offensive educational environment*;
 2. Has the purpose or effect of substantially or unreasonably *interfering with the student's academic performance*; or
 3. Otherwise *adversely affects the student's educational opportunities*.

Examples of Sexual Harassment

- sexual advances;
- touching intimate body parts or coercing physical contact that is sexual in nature;
- jokes or conversations of a sexual nature;
- and other sexually motivated conduct, contact, or communications, including electronic communication.

Dating Violence

- Dating violence occurs when a person in a current or past dating relationship uses physical, sexual, verbal, or emotional abuse to harm, threaten, intimidate, or control the other person in the relationship.
- Dating violence also occurs when a person commits these acts against a person in a dating relationship with the individual who is or was once in a dating relationship with the person committing the offense.

Dating Violence Examples

- physical or sexual assaults
- name-calling/ put-downs
- threats directed at the student/ student's family members,
- destroying property belonging to the student
- threatening to commit suicide or homicide if the student ends the relationship
- attempting to isolate the student from friends and family;
- stalking
- threatening a student's current dating partner
- encouraging others to engage in these behaviors

When does a school have notice?

- The school has ***notice*** of sexual harassment:
 - If school personnel personally witnesses sexual harassment
 - If any person (e.g., an alleged victim, parent, friend, or bystander) reports sexual harassment, e.g., completes form, sends email, makes a verbal report.
 - In elementary and secondary schools, telling any school employee always puts the school on notice.
 - This includes cafeteria workers, substitute teachers, bus drivers, custodians, clerks etc.
- This means **ALL EMPLOYEES MUST BE TRAINED!**
Please remind all staff on your campus.

What must the school do?

- The school cannot be “deliberately indifferent.”
Deliberate indifference = liability/money damages.
- **Any District employee who suspects or receives notice of sexual harassment shall**
- **(1) immediately notify the Title IX Coordinator and**
- **(2) follow the steps in Title IX Flow Chart and Sexual Harassment Investigation Guide**

Report vs. Formal Complaint Paths



Report vs. Formal Complaint

- A “report” is simply the initial complaint/allegations which can be reported by anyone. (can be anonymous)
- A “formal complaint” can only be filed by a Complainant/parents or the Title IX Coordinator. (*cannot* be anonymous)
- Once a Complainant files or a Title IX Coordinator signs a formal complaint, schools must initiate the Title IX “grievance process.”

Report vs. Formal Complaint (cont.)

- The **formal complaint process will take a minimum of 20 calendar days.**
 - (Both parties have 10 calendar days to submit a written response that the investigator must consider before finalizing the investigative report. Once the investigative report is finalized, the decision maker must wait another 10 calendar days to issue a final determination).
- By contrast , a report of sexual harassment can be dealt with on a much shorter timeline.
- With a formal complaint, the Complainant may be cross examined by the Respondent/Respondent's representative

Responding to a Report

- A report of sexual harassment may be verbal or in writing. A campus administrator should document a verbal report.
- If the alleged conduct could violate Title IX, immediately send the written report to the Title IX Coordinator.
- Title IX Coordinator must promptly contact the Complainant (and parents if student is under 18) to:
 - discuss the report;
 - explain the formal complaint process and provide the Complainant with a copy of the district's Title IX formal complaint process;
 - provide information about and availability of supportive measures; and
 - consider the Complainant's wishes concerning supportive measures and whether to make a formal complaint.

4 Roles Required for Formal Complaints

***Must be
Different
People**

1) Title IX Coordinator

- Coordinates district's compliance, communicates with parties throughout the process
 - ([April Sarpy](#))

2) Investigator

- investigates the formal complaint
 - ([Campus Behavior Coordinator/ AP](#))

3) *Decision-maker

- makes a determination after the investigation is completed
 - ([Executive Director of Admin Services- Valerie Mayad](#))

4) *Appellate decision-maker

- makes a determination upon an appeal
 - ([Asst. Supt. of Admin Services- Taylor Morris](#))

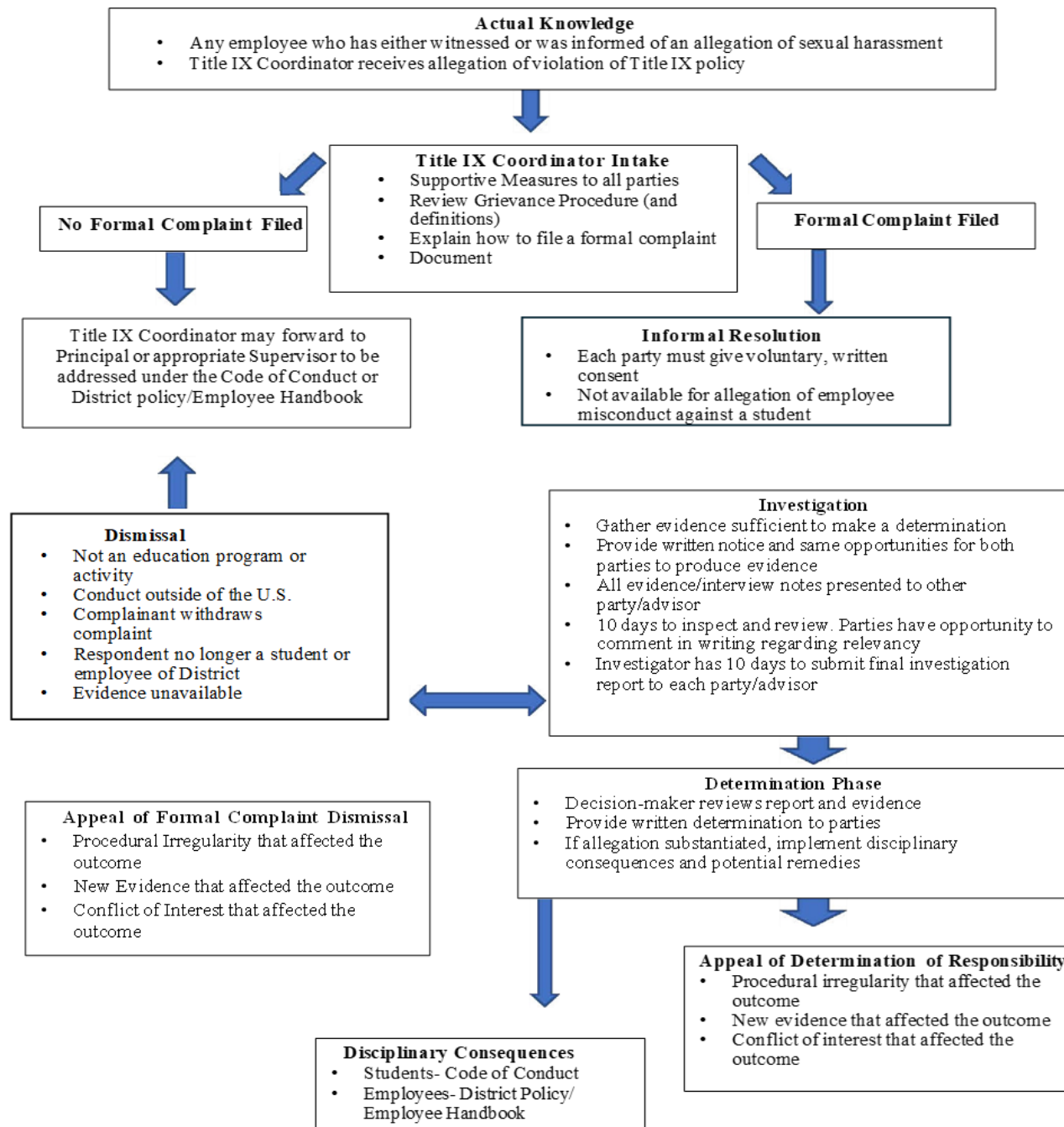
Optional= Facilitator

- independent, unbiased person trained in informal resolution efforts

Student Investigation Guidance

- Determine whether the allegations in the report, if proven, would constitute prohibited conduct as defined by policy FFH, (sexual harassment, dating violence, or discrimination on the basis of sex). If not, proceed with typical investigative process. ***If it could be a Title IX violation, pause your investigation and immediately report it to the Title IX Coordinator.*** If a formal Title IX complaint is filed, we must follow the Title IX “grievance process” for formal complaints. If the conduct could be sexual harassment as well as other prohibited conduct, follow the Title IX Flow Chart/Sexual Harassment Investigation Guide.
- The Title IX Coordinator will offer supportive measures and explain to the Complainant how to file a formal complaint.
- If a formal complaint is filed, provide written notice and the same opportunities to both parties to present evidence. *See* the electronic forms from the Sexual Harassment Investigation Guide. There is a link on the last slide of this presentation.
- Interview students separately and have them provide *written, signed, and dated statements*. Start with the alleged victim (A.K.A. “Complainant”), then other witnesses, and finally the alleged perpetrator (A.K.A. “Respondent”).
- *For sexual assault allegations*, do not have the Complainant write a statement. Instead, question the student (to determine if Title IX applies) and document the response. If sexual assault is alleged, do not ask further questions. Immediately contact law enforcement and the Title IX Coordinator for guidance. Depending on the circumstances, you may still need to proceed with your Title IX investigation under federal law. However, if the police instruct you to cease your investigation, stop and consult with the Title IX Coordinator/General Counsel.
- Gather relevant evidence, e.g., emails, texts, social media posts, surveillance video, cell phone video, photos.
- All interview notes and evidence must be presented to the parties (and their advisors, if applicable). They have 10 days to review and provide written comments.
- View all information involving the incident and use the Student Code of Conduct as a reference for potential corrective action(s). For example, if the conduct is both bullying under Policy FFI and sexual harassment under Policy FFH, include a determination on each type of prohibited conduct.
- Send the final investigative report and evidence to the Executive Director of Administrative Services, Valeria Mayad.
- Ten days after providing the evidence to the parties, submit the final investigation report to the parties.

Title IX Flow Chart



Supportive Measures- Examples

- **individualized services** that are non-punitive, non-disciplinary, and do not unreasonably burden the other party yet are designed to restore or preserve a person's equal access to education (available regardless of whether a report becomes a formal complaint);
- May include:
 - placing students in **separate classes** pending the results of the school's investigation,
 - **stay-away agreement**,
 - **campus escort**,
 - **counseling**, and
 - **extending deadlines**.

Emergency Removal

- “Emergency removal” means the removal of the Respondent from the school’s educational programs or activities.
- A student respondent can only be subject to emergency removal if there is an immediate threat to the PHSYICAL health and safety of any person.
- Emergency removal is not permitted for emotional or mental health needs; supportive measures may be used for those needs.
- If removing a student with a disability, remember to convene an ARD or 504 meeting, as appropriate.

Record-Keeping Duties

For 7 years must retain records of:

1. **investigation.**
2. any **appeal/materials associated with an appeal.**
3. any informal resolution process
4. the **supportive measures** that they took in response to a report or complaint of sexual harassment
5. **disciplinary action(s)** taken
6. all **materials used to train Title IX Coordinators, investigators, and decision-makers** (and must remain posted on District's website).



Scenario 1

- Kaley and Leonard used to date last year as juniors. Leonard threatens to send nude photos of Kaley to other students at school if Kaley does not break up with her with her new boyfriend, Zack. Kaley has been so upset she has not gone to school all week. She is afraid everyone at school will find out. Zack tells Keely he'll turn Leonard's pretty, little face into Shepherd's pie. The next day, school employees break up a fight between Zack and Leonard in the school cafeteria and send them to the office.

Scenario 1

What to do about

- Leonard?
- Zack?
- Kaley?

Scenario 1

- **Relevant Policies:** FFI (bullying), FFH (discrimination & harassment- including dating violence)
- **Action Needed:** (1) review policies FFI and FFH, (2) contact the Title IX Coordinator, (3) contact parents/student, (4) contact law enforcement, (5) offer supportive measures, (6) determine whether there's an immediate threat to physical health or safety of students, and (7) offer the option to file Title IX formal complaint to Kaley
- **Documentation Required/Recommended:** (1) supportive measures offered, (2) that it was reported to law enforcement (3) whether formal complaint filed, (4) investigative report, and (5) disciplinary consequences
- **Retention of Documentation:** 7 years

Scenario 2

- Several of the school's soccer players are annoyed by a new student, Raj, who has recently moved to Mesquite from another country with different cultural norms. Raj is more direct when communicating with others and does not always appreciate the subtleties of local customs and relationships. A handful of teammates decide to "take him down a notch" by holding him down and sticking something "up his bum."
- The next day, Raj's mom calls the school and complains that Raj was bullied, and quits the team.

Scenario 2

- **Relevant Policies:** FFI (bullying), FFH (discrimination & harassment)
- **Action Needed:** (1) review policies FFI and FFH (2) contact the Title IX Coordinator, (3) contact parents/student, (4) contact law enforcement, (5) offer supportive measures, (6) determine whether there's an immediate threat to physical health or safety of students, and (7) offer the option to file Title IX formal complaint to Raj
- **Documentation Required/Recommended:** (1) supportive measures offered, (2) that it was reported to law enforcement (3) whether formal complaint filed, (4) investigative report, and (5) disciplinary consequences
- **Retention of Documentation:** 7 years