TITLE IX: 2020 REFRESHER

Lyons Township High School District 204 ▪ September 10, 2025
Presented by: Jennifer Rosenberg

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Title IX of the Education Amendments Act of 1972

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No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

20 U.S.C.A. § 1681

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TITLE IX: BRIEF HISTORY

- 1972: Title IX enacted
- 1974: Title IX regulations issued
- 1980: Title IX enforcement transferred to the new U.S. Department of Education Office for Civil Rights ("OCR")
- 1992: U.S. Supreme Court recognized student right to damages for sexual harassment (*Franklin v. Gwinnett County Schools*)

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TITLE IX: BRIEF HISTORY

- 1998: U.S. Supreme Court set standard for teacher-on-student harassment liability as **"deliberate indifference" after "actual notice"** of misconduct (*Gebser v. Lago Vista School District*)
- 1999: U.S. Supreme Court narrowed the definition of "sexual harassment" to require ***Gebser* standard + "severe, pervasive, and objectively offensive"** harassment (*Davis v. Monroe County Board of Education*)
- Late 1990s to 2017: Several OCR guidance documents issued regarding the response of educational institutions to allegations of sexual harassment and sexual assault/violence

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2020 TITLE IX REGULATIONS

- May 2020: U.S. Department of Education (ED) released the final rule amending Title IX regulations (34 C.F.R. Part 106)
- Effective August 14, 2020
- Significant changes to the Title IX grievance process and, thus, the way schools responded to allegations of ***sexual harassment*** under Title IX
- Did not change Title IX rules or investigations of allegations not related to sexual harassment (e.g., athletic participation, employment, and single-sex education)

2024 TITLE IX REGULATIONS

- ED released its long-awaited final rule amending Title IX regulations (34 C.F.R. Part 106)
- Effective August 1, 2024
- Significant changes to the Title IX regulations and the way schools respond to ***sex discrimination***
- Applied to ***all sex discrimination*** occurring under a school district's education program or activity
- ***But…***

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2024 TITLE IX REGULATIONS VACATED

- January 9, 2025: Final 2024 Title IX regulations vacated (*State of Tennessee, et al. v. Cardona, et al.*)
- January 31, 2025: OCR issued a Dear Colleague Letter stating that the 2020 Title IX regulations will be enforced
- February 4, 2025: OCR issued an updated Dear Colleague Letter stating that any current Title IX investigations under 2024 regulations should be converted to the 2020 regulations:
  - "[O]pen Title IX investigations initiated under the 2024 Title IX Rule should be immediately reevaluated to ensure consistency with the requirements of the 2020 Title IX Rule and the preexisting regulations at 34 C.F. R. 106 et seq."

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2020 Title IX Regulations – Sexual Harassment

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2020 TITLE IX REGULATIONS: GENERAL OVERVIEW

A school district can violate Title IX when "sexual harassment" occurs:

- In the district's education program or activity;
- By any person, against any person in the United States;
- *Any* district employee has notice of the allegations of sexual harassment ("actual knowledge"); and
- The district is deliberately indifferent in its response

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TERMINOLOGY

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TERMINOLOGY

Complainant

Respondent

Report of Sexual Harassment

Formal Complaint

Supportive Measures

Sexual Harassment

Education Program or Activity

Actual Knowledge

Deliberate Indifference

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COMPLAINANT

- An individual who is alleged to be the victim of conduct that could constitute sexual harassment
- May or may not be the individual who reported the allegation of sexual harassment to the Title IX Coordinator or any district employee
- May file Formal Complaint with the Title IX Coordinator

RESPONDENT

- An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment
- The district must have substantial control over the Respondent (alleged harasser) and the context in which the alleged conduct occurred

REPORT OF SEXUAL HARASSMENT

- Any person may report sexual harassment, whether or not the person reporting is the person alleged to be the victim of the conduct that could constitute sexual harassment
- May be in person, mail, phone, email, or by any means that results in the Title IX Coordinator receiving the report
- May be made at any time, including during non-business hours
- May be verbal or written, and may be anonymous
- To the Title IX Coordinator or ***any*** district employee
- District employees must promptly forward all reports of sexual harassment to the Title IX Coordinator

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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
- May be filed with the Title IX Coordinator in person, mail, email, or any other method made available by a district; may be a hard copy or electronic document
- Must contain the Complainant's physical or digital signature, or otherwise indicate that the Complainant is the person filing the Formal Complaint
- If the Title IX Coordinator signs the Formal Complaint, he/she does not become the Complainant or otherwise a party to the complaint
- At the time a Formal Complaint is filed, the Complainant must be participating in or attempting to participate in a district's education program or activity

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SUPPORTIVE MEASURES

- Purpose is to restore or preserve equal access to the district's education program or activity without *unreasonably* burdening the other party
- Include measures designed to protect safety of all parties or district's educational environment, or deter sexual harassment
- Non-disciplinary, non-punitive measures
  - Removing Respondent from an activity may be considered unreasonably burdensome and punitive, unless an "emergency removal"

SUPPORTIVE MEASURES

- Counseling services
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Hall escort
- Mutual restrictions on contact between parties
- Changes in work/school locations
- Leaves of absences
- Increased supervision of certain school areas

SEXUAL HARASSMENT

- Previously, prior to the 2020 regulations, Title IX regulations did not refer to or define "sexual harassment"
- Amended Title IX regulations explicitly define sexual harassment

SEXUAL HARASSMENT

Conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the district conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcome sexual conduct (*quid pro quo*);
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the district's education program or activity (*hostile environment*); or
- (3) Sexual assault, dating violence, domestic violence, or stalking as defined under the *Clery Act/Violence Against Women Act*.

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SEXUAL HARASSMENT: EXAMPLES

- Touching
- Crude jokes or pictures
- Discussions of sexual experiences
- Teasing related to sexual characteristics
- Spreading rumors related to a person's alleged sexual activities
- Rape
- Sexual battery
- Sexual abuse
- Sexual coercion

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EDUCATION PROGRAM OR ACTIVITY

- A school district must respond when sexual harassment occurs in the district's education program or activity, against a person in the United States
- Education program or activity includes any location, event, or circumstance over which the district exhibits substantial control over both the alleged harasser and the context in which the harassment occurred
  - Examples: school, field trip, extracurricular activity
  - Includes via technology (email, internet, social media, etc.)

ACTUAL KNOWLEDGE

- When a school district has *actual knowledge* of sexual harassment in its education program or activity against a person in the United States, it must respond promptly and in a manner that is not deliberately indifferent
- A school district has actual knowledge when ***any employee*** has notice of the allegations of sexual harassment
- Notice also can include report of sexual harassment to Title IX Coordinator

ACTUAL KNOWLEDGE: REPORTING TO THE TITLE IX COORDINATOR

- ***ALL*** district employees must immediately report sexual harassment allegations to the Title IX Coordinator (and building administrator/supervisor)
- Failure to make or forward a report to the Title IX Coordinator (and building administrator/supervisor) may result in employee discipline, up to and including discharge
- Also immediately report to DCFS if allegations raise suspicion of child abuse or neglect

DELIBERATE INDIFFERENCE

- A school district must respond promptly and in a manner that is not deliberately indifferent when it has actual knowledge of sexual harassment in an education program or activity against a person in the United States
- Adopts *Gebser/Davis* standard, which is a higher legal standard than the previous OCR standard
- The district's response must:
  - Be prompt
  - Treat Complainants and Respondents equitably
  - Inform Complainant of supportive measures and process for filing a Formal Complaint, by Title IX Coordinator
  - Follow Title IX grievance process

Policy and Notice Requirements

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TITLE IX COORDINATOR

- Districts must designate and authorize an employee to coordinate the district's efforts to implement the law
- Typically, districts do not employ a full-time Title IX Coordinator; designated employee(s) usually combine Title IX Coordinator responsibilities with other assigned duties
- Recommend adding "Title IX Coordinator" to existing job title of currently designated employee(s) and reviewing job duties to ensure sufficient authority and time to carry out role

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NOTICE OF POLICIES AND PROCEDURES

- Must provide notice of the district's nondiscrimination policies and grievance procedures to the following groups:
  - Students
  - Parents/Legal Guardians
  - Employees
  - Unions or professional organizations holding agreements with the district
  - Applicants for employment
- Includes notice of Board Policy 2:260, *Uniform Grievance Procedure*; Board Policy 2:265, *Title IX Sexual Harassment Grievance Procedure*; and applicable administrative procedures (2:265-AP1; 2:265-AP2)

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WEBSITE POSTING AND NOTICE REQUIREMENTS

- Must post policies and grievance procedures on the district's website
- Must post Title IX Coordinator's contact information (name, title, address, phone number, email) on the district's website and print in any handbook to persons entitled to notification (see previous list)
- Must post Title IX training materials on the district's website; if the district does not have a website, must have the training materials available for members of the public to inspect

TITLE IX SEXUAL HARASSMENT GRIEVANCE PROCESS

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TITLE IX GRIEVANCE PROCESS

Two-fold district response:

- (1) Upon "actual knowledge" of allegation (a report to *any* district employee):
  - Title IX Coordinator promptly contacts the Complainant to discuss the availability of supportive measures and explain the process for filing a Formal Title IX Sexual Harassment Complaint
- (2) Upon receiving/filing Formal Complaint:
  - Title IX Coordinator initiates Formal Title IX Sexual Harassment Complaint Grievance Process

TITLE IX GRIEVANCE PROCESS: ROLES

Title IX Coordinator: Individual authorized to coordinate the district's compliance efforts with Title IX

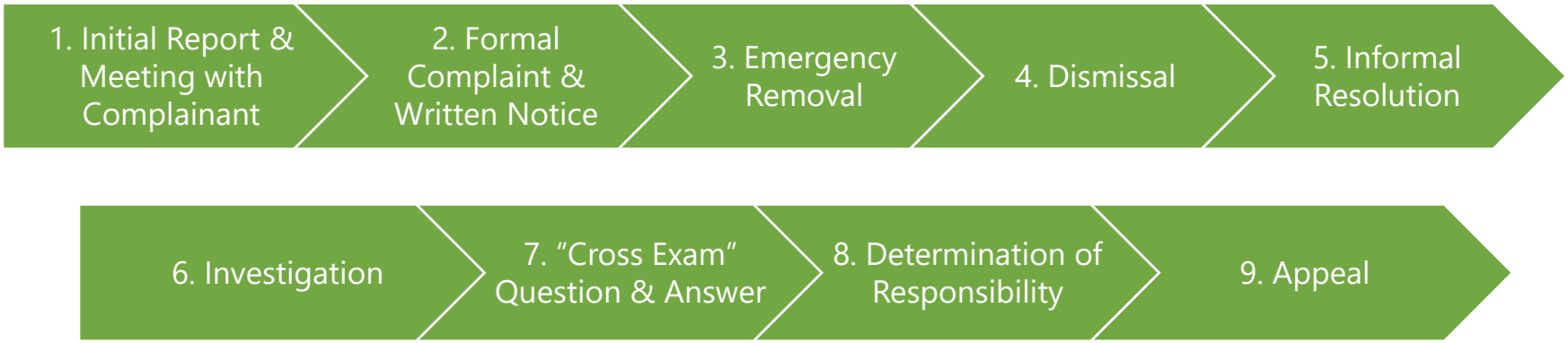
Investigator: Individual designated by the Title IX Coordinator to investigate a Formal Title IX Sexual Harassment Complaint

Initial Decision-Maker: Individual designated by the Title IX Coordinator to reach a determination regarding responsibility in a Formal Title IX Sexual Harassment Complaint

Appellate Decision-Maker: Individual/group that reviews an appeal of the Initial Decision-Maker's determination of responsibility or the dismissal of a Formal Complaint (or allegations therein)

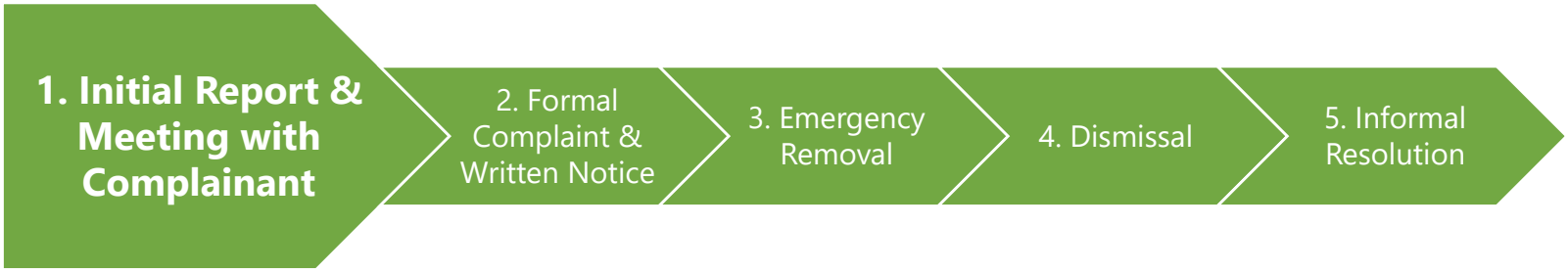
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TITLE IX GRIEVANCE PROCESS



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STEP 1



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INITIAL MEETING WITH COMPLAINANT

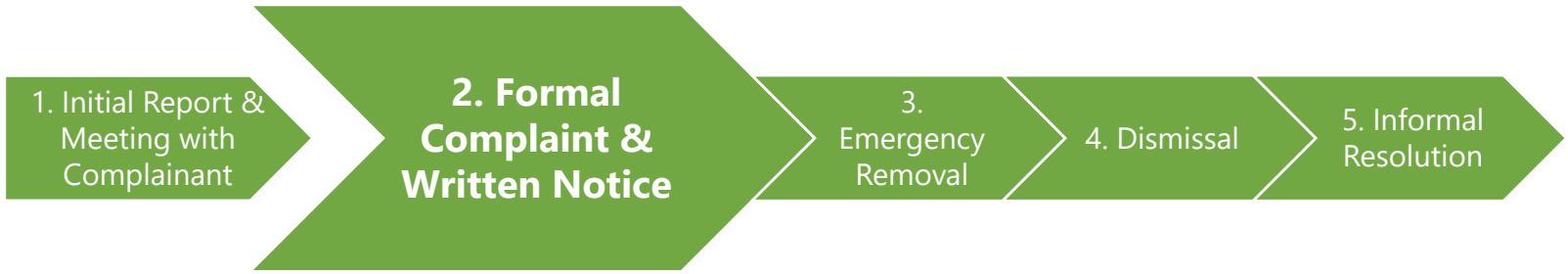
Upon notice/report of the sexual harassment allegation, Title IX Coordinator must promptly:

- Contact the Complainant (alleged victim) 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
- Explain the process for filing a Formal Complaint

Remember: Follow grievance process before imposing disciplinary measures on Respondent

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STEP 2



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FORMAL COMPLAINT

At time of filing a Formal Complaint, Complainant must be participating in or attempting to participate in the district's education program or activity

Complainant may file a Formal Complaint with the Title IX Coordinator in person, by mail, by email, or other method made available by the district, at any time

May be a hard copy or electronic document; must contain the Complainant's physical or digital signature, or otherwise indicate that the Complainant is the person filing the Formal Complaint

FILING A FORMAL COMPLAINT

Third party reporter cannot file a Formal Complaint

However, Title IX Coordinator may sign a complaint to trigger investigation to ensure the district is not responding with "deliberate indifference"

- If the Title IX Coordinator signs the Formal Complaint, s/he does not become the Complainant or otherwise a party to the complaint

May entail implementing the formal grievance process over the Complainant's objections

WRITTEN NOTICE OF FORMAL COMPLAINT

Upon receipt of (or signing) a Formal Complaint, the district must provide written notice to all known parties

The notice must be provided in sufficient time to give the Respondent time to prepare a response before any initial interview

WRITTEN NOTICE OF FORMAL COMPLAINT

Written notice must include:

- Notice of grievance process, including any informal resolution process
- Notice of allegations, including sufficient detail to allow Respondent to prepare a response:
  - Identities of parties, if known
  - Conduct alleged to be sexual harassment
  - Date and location of conduct, if known

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WRITTEN NOTICE OF FORMAL COMPLAINT

Statement that the Respondent is presumed not responsible for the conduct and that responsibility will be determined at the conclusion of the grievance process

Notice of the parties' right to have an advisor of their choice (may be an attorney) and to inspect and review evidence

Notice of any provision in the district's code of conduct (e.g., Board Policy 7:190) that prohibits knowingly making false statements or providing false information in the grievance process

WRITTEN NOTICE OF FORMAL COMPLAINT

The district must provide additional written notice(s) to all parties if, during the investigation, the district decides to investigate allegations not included in the first written notice

Decide whether the district will conduct investigation or appoint a qualified investigator (*best practice*: provide written notice of investigator if appointed)

STEP 3



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EMERGENCY REMOVAL

The district *may* remove Respondent from the education program or activity on an emergency basis to protect a student or other individual from "an immediate threat to physical health or safety" ***after*** an individualized safety and risk analysis

Must provide Respondent with notice and opportunity to challenge decision immediately following the removal (*best practice:* written notice)

Considerations:

- Interaction with SB 100 for Respondent-Student: must follow 105 ILCS 5/10-22.6
  - Remember IDEA and Section 504 rights: emergency removal can trigger "change of placement" for Respondent-Student
- Placing Respondent-Employee on administrative leave during the pendency of a grievance process

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STEP 4



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DISMISSAL OF FORMAL COMPLAINT

Amended Title IX regulations establish mandatory and discretionary reasons a Title IX sexual harassment Formal Complaint, or an allegation therein, may be dismissed during or after an investigation

DISMISSAL OF FORMAL COMPLAINT

Mandatory Dismissal

If the conduct would not constitute sexual harassment as defined by the Title IX regulations, even if proved

If the conduct did not occur in the district's program or activity

If allegations did not occur against a person in the United States

Discretionary Dismissal

If Complainant notifies the Title IX Coordinator at any time that s/he wishes to withdraw the Formal Complaint or any allegation therein

If Respondent is no longer enrolled in or employed by the district

If specific circumstances prevent the district from gathering evidence sufficient to reach a determination as to the Formal Complaint or any allegation therein (e.g., passage of several years between Formal Complaint and alleged conduct; Complainant ceases to cooperate with grievance process)

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DISMISSAL OF FORMAL COMPLAINT

- If the district dismisses a Formal Complaint, or allegation(s) therein, written notice must be promptly provided to both parties simultaneously
- Must include the reason(s) for mandatory or discretionary dismissal, and the right to appeal the dismissal
- If dismissing a Formal Complaint, but investigating allegation(s) under different process, e.g., Board Policies 2:260 or 7:180, include in the written notice
- The district must document its rationale for dismissal to show that it is not acting in a deliberately indifferent manner

STEP 5



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INFORMAL RESOLUTION PROCESS

- Prohibited unless Formal Complaint is filed
- Allowed at any time after a Formal Complaint is filed and during the grievance process, prior to reaching a determination regarding responsibility
- Cannot involve a full investigation and adjudication of the allegations
- Cannot be offered for a complaint alleging that an employee harassed a student
- Not defined, but may encompass a broad range of conflict resolution strategies, including, but not limited to, arbitration, mediation, or restorative justice

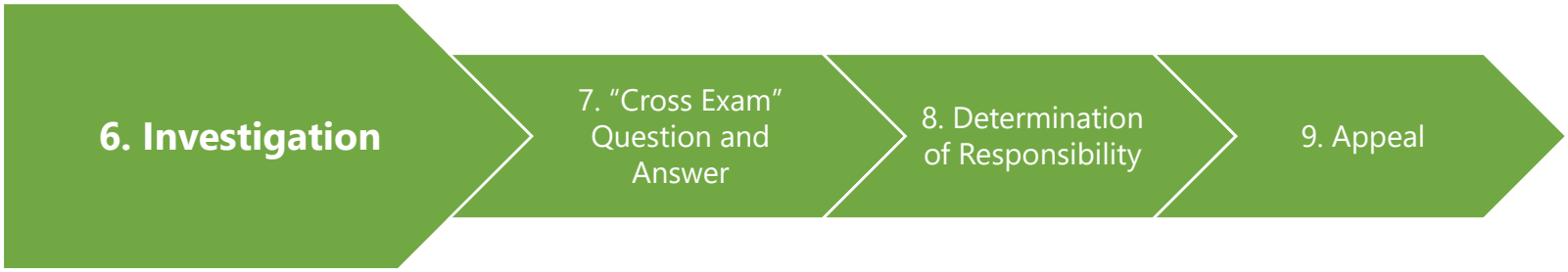
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INFORMAL RESOLUTION PROCESS: REQUIREMENTS

- Written notice to both parties disclosing:
  - Allegations
  - Informal resolution process requirements
  - Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared
- Both parties provide voluntary, written consent

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STEP 6



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TITLE IX INVESTIGATION REQUIREMENTS

When investigating a complaint and throughout the grievance process, the Investigator must:

- Ensure that burden of proof and of gathering evidence rests on the district, rather than parties
- Provide an equal opportunity for parties to present witnesses and evidence (fact and expert witnesses; inculpatory and exculpatory evidence)
- Not restrict either party's ability to discuss the allegations or gather and present evidence

TITLE IX INVESTIGATION REQUIREMENTS

Party Interviews

- Provide the parties with the same opportunities to have others present during interviews and other parts of the grievance process, including an advisor/attorney of their choice
- Provide, to a party who is invited or expected to attend, written notice of date, time, participants, purpose, and location of any investigative interviews or other meetings, with sufficient time to allow the party to prepare to participate

TITLE IX INVESTIGATION REQUIREMENTS

Evidence Inspection

- Provide the parties (and their advisors/attorneys, if any) an equal opportunity to inspect and review any evidence obtained during the investigation that is directly related to the allegations in the Formal Complaint
- Including evidence the district does not intend to rely on in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence

TITLE IX INVESTIGATION REQUIREMENTS

Evidence Inspection

- Prior to the completion of the investigation report, send to each party (and the party's advisor/attorney, if any) the evidence subject to inspection and review in an electronic format or a hard copy
- Provide each party with *10 days* to submit a written response
- Upon receipt of a party's written response to the evidence, review the response and send a copy to the other party

Note: PRESS 2:265-AP2 specifies 10 school business days; all days within the policy and procedures are "school business days"

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TITLE IX INVESTIGATION REQUIREMENTS

Investigation Report

- Prepare an investigation report that fairly summarizes all relevant evidence
- Send the investigation report to each party (and the party's advisor/attorney, if any) the investigation report, in an electronic format or hard copy, for their review and written response
- The investigation report must be sent to the parties *10 days* before the Initial Decision-Maker's determination regarding responsibility

Note: PRESS 2:265-AP2 specifies 10 school business days; all days within the policy and procedures are "school business days"

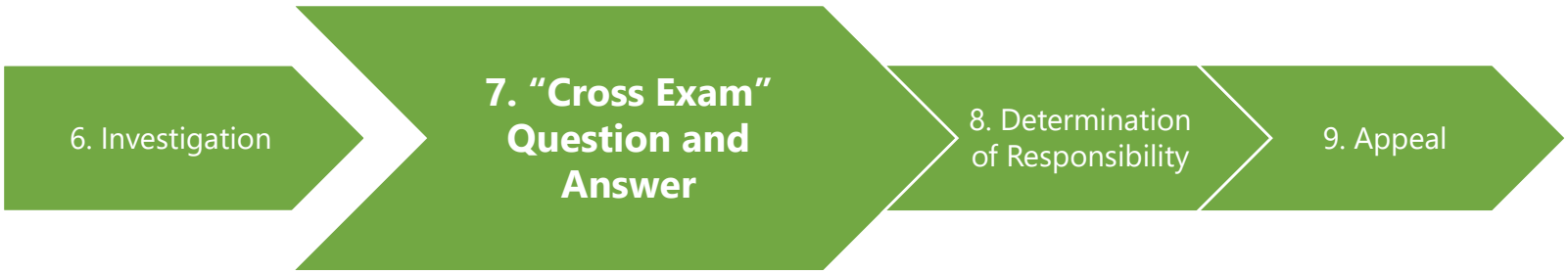
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TITLE IX INVESTIGATION REQUIREMENTS

At the conclusion of the investigation, Investigator sends to the Initial Decision-Maker in an electronic format or hard copy:

- Formal Complaint;
- All evidence gathered during the investigation that is directly related to the Formal Complaint's allegations (including evidence the district does not intend to rely on in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence); and
- Investigation report with any written response received from the parties.

STEP 7



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INITIAL DECISION-MAKER

- Cannot be the Investigator or the Title IX Coordinator
- Reviews from Investigator:
  - Formal Complaint;
  - All evidence gathered during the investigation that is directly related to the Formal Complaint's allegations (including evidence the district does not intend to rely on in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence); and
  - Investigation report, with any written response received from the parties.
- Facilitates written "cross examination" question and answer among parties
- Issues a written determination to the parties

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HEARINGS

- K-12 school districts are not required to conduct live hearings
- Instead, K-12 school districts must provide each party the opportunity, after the completion of the investigation report, to submit written, relevant questions that the party wants asked of another party or witness, provide each party with the answers, and provide for limited follow-up questions

"CROSS EXAMINATION" QUESTION & ANSWER

The Initial Decision-Maker:

Provides the parties with written notice of the opportunity to submit written, relevant questions that a party wants asked of any party or witness; include description of the process and timelines

Determines which questions to forward to any party or witness for answers

If any proposed questions are excluded as not relevant, provides the proposing party with a written explanation of the decision to exclude a question as not relevant

- Questions regarding a Complainant's prior sexual behavior or sexual predisposition are not relevant, unless such questions and evidence are offered to establish that another person committed alleged conduct or that conduct was consensual

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"CROSS EXAMINATION" QUESTION & ANSWER

- Forwards relevant questions to any party or witness with instructions to submit answers to the Initial Decision-Maker
- Upon receipt of answers to questions, provides each party with copies of the answers
- Follows the same process for the additional, limited follow-up questions from each party
- Timelines are not specified in the Title IX regulations; PRESS 2:265-AP2 uses 5 school business days for each step

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STEP 8



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DETERMINATION OF RESPONSIBILITY

The Initial Decision-Maker must apply the district's standard of evidence and issue a written determination of responsibility simultaneously to the parties that includes:

- Allegations that potentially constitute sexual harassment as defined in the Title IX regulations
- Description of the procedural steps taken from the receipt of the Formal Complaint to the determination (including notifications, interviews, methods of gathering evidence, etc.)
- Findings of fact supporting the determination

DETERMINATION OF RESPONSIBILITY

Written Determination, continued:

- Conclusions regarding application of the code of conduct to the facts
- Statement of, and a rationale for, the result as to each allegation, including:
  - A determination of responsibility;
  - Any disciplinary sanctions imposed on the Respondent; and
  - Whether remedies to restore or preserve equal access to the district's education program or activity will be provided to the Complainant
- Procedures and permissible bases for the Complainant or Respondent to appeal

STEP 9



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APPEAL

Must offer to both parties for dismissal of Formal Complaint, or allegations therein, and determinations of responsibility in specified circumstances:

- Procedural irregularity
- New evidence now available that could affect the outcome and was not reasonably available at the time of the determination
- Conflict of interest or bias of the Title IX Coordinator, Investigator, or Decision-Maker

The district may offer other bases for appeal; check Board Policy 2:265

APPEAL

Title IX Coordinator, upon receipt of an appeal:

- Issues written notice to both parties:
  - Informing the parties that an appeal has been filed
  - Provides both parties a specified amount of time to submit a written statement in support of, or challenging, the outcome
- Promptly forwards all materials relevant to the appeal to the Appellate Decision-Maker

APPEAL

- Appellate Decision-Maker = e.g. Board of Education, Board-appointed examiner, administrator, etc. (individual or group)
- Cannot be or include Title IX Coordinator, Investigator, and Initial Decision-Maker
- Must be impartial, without conflict of interest or bias
- Decides whether to affirm, reverse, or amend the Initial Decision-Maker's written determination regarding responsibility or the dismissal
- Issues written decision describing the result of the appeal and the rationale for the result
- Written decision must be provided simultaneously to both parties

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EVALUATING THE APPEAL

Review all materials relevant to the appeal, including:

- Appeal of dismissal or written determination; notice of appeal; written statements by parties (if any) in support of, or challenging, the outcome subject to appeal; dismissal written notice or written determination; all relevant evidence

Make reasoned conclusions, including as to the bases for appeal and relevant evidence

- Must do so impartially, without prejudgment or bias about the facts at issue or the parties, or generally about complainants or respondents
- Must not rely on stereotypes
- Cannot let personal relationships influence evaluation of appeal

Apply preponderance of the evidence standard

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APPEAL

Timelines are not specified in the Title IX regulations

PRESS 2:265-AP2 uses:

- 10 school business days as the deadline for filing an appeal, in writing, with the Title IX Coordinator by the Complainant or Respondent after receipt of the Initial Decision-Maker's written determination or the notice of dismissal
- 30 school business days for the Appellate Decision-Maker to make its decision
- 5 school business days after the Appellate Decision-Maker's decision to send the written decision to both parties

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OTHER REQUIREMENTS

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RECORDKEEPING

- Must keep Title IX records for a minimum of **7 years**
- Remember student and personnel record requirements under State and federal laws

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TITLE IX: TRAINING

All district employees:

- Definition of sexual harassment
- Scope of the district's education program or activity
- All relevant district policies and procedures
- Requirement to promptly forward all reports of sexual harassment to Title IX Coordinator

Additional training for Title IX roles—Title IX Coordinator(s), Investigator(s), Initial and Appellate Decision-Makers, and Informal Resolution Process Facilitator(s):

- How to conduct an investigation and implement the grievance process
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Investigators: Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- Decision-Makers: Issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant

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QUESTIONS

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