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Agenda

- What is Title IX?
- What is Title IX Sexual Harassment?
- When Must a School Respond to Title IX Sexual Harassment?
- Responding to Allegations of Sexual Harassment
- Title IX Team Members
- Bias, Conflicts of Interest, and Prejudgment
- Record Keeping

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Title IX Statute

"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. 1681-1688.

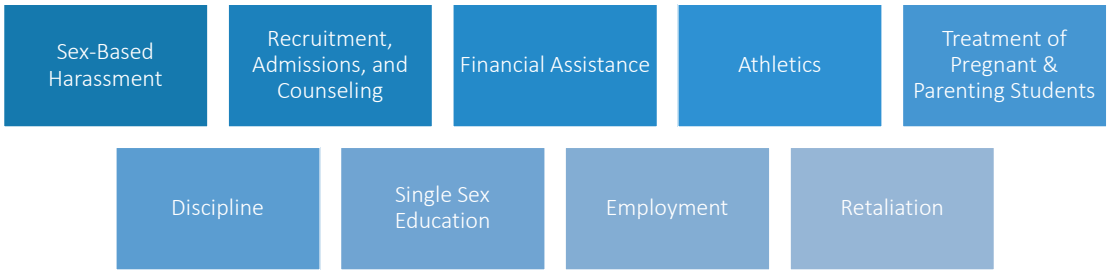
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Title IX Regulations

- Under the Title IX Regulations, harassment on the basis of sex is *prohibited*.

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What Falls Under Title IX?



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What Do The Title IX Regulations Require?

- Each educational institution must have a Title IX Policy and detailed Title IX Grievance Procedure.
- Each educational institution must designate a Title IX Coordinator.
- Each educational institution must follow the regulations when investigating allegations of Title IX Sexual Harassment.

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Title IX Sexual Harassment

Hostile Environment	Quid Pro Quo	Specific Offenses: Sexual Assault Domestic Violence Dating Violence Stalking

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Quid Pro Quo Sexual Harassment

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Quid Pro Quo

- Quid = Something
- Pro = For
- Quo = Something

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Quid Pro Quo

- **Definition:** An employee of the educational institution conditioning an aid, service, or benefit of the educational institution on the individual's participation in unwelcome sexual conduct.
- **Respondent:** Must be an employee (not a volunteer, another student, etc.).
- **Severity and harm are presumed.**

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Specific Offenses

- Sexual Assault
- Domestic Violence
- Dating Violence
- Stalking

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Sexual Assault

Definition: An offense classified as a forcible or nonforcible sex offense under the definitions maintained by the Federal Bureau of Investigation (FBI), and includes rape, criminal sexual contact (previously called fondling), incest, and statutory rape.

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Sexual Assault: Criminal Sexual Contact

Definition: The intentional touching of the clothed or unclothed body party without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

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Title IX Hostile Environment Sexual Harassment

- **Definition:** Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person's equal access to the school's education program or activity.

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Unwelcome Conduct

- Not Participation
- Not Silence
- Age Matters
- Intoxication Matters
- Ability Matters



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Unwelcome Conduct

- When determining whether conduct is unwelcome, look at whether a **subjective** and **reasonable person** would consider the conduct unwelcome.



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Severe Conduct



- Something more than juvenile behavior.
- Something more than antagonistic, non-consensual, and crass conduct.
- Simple acts of teasing and name calling are not enough to meet the severity standard, even when those comments are based on sex.
- It is not enough to show that a student has been teased or called offensive names.

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Pervasive Conduct

- Systemic or widespread.
- Multiple instances of harassment.
- One incident is not enough, even if it is very severe.



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Objectively Offensive Conduct



- Behavior that would be offensive to a reasonable person under the circumstances.
- Not just offensive to the victim, personally or subjectively.
- Consider the ages, numbers, relationships – the constellation of surrounding circumstances, expectations, and relationships.

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Hostile Environment Factors

Context	Nature	Scope	Frequency	Duration
Location	Identity	Number	Ages	Relationships of Individuals Invovled

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Denial of Access



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Pop Quiz

A student makes multiple insensitive jokes to another student.

Is it Title IX Sexual Harassment?

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Pop Quiz

A teacher makes a sexually inappropriate comment to a student in class.

Is it Title IX Sexual Harassment?

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Pop Quiz

One student grabs another student's breasts as the student is falling down the stairs to break the fall.

Is it Title IX Sexual Harassment?

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Pop Quiz

A teacher tells asks a student teacher to go for a drink to talk about a positive recommendation letter.

Is it Title IX Sexual Harassment?

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When must a school respond?

- A school with **actual knowledge** of Title IX Sexual Harassment in an education program or activity against a person in the United States must respond.

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Actual Knowledge

- Sense
- Report



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Official with Authority



- Title IX Coordinator.
- Any other officials who have been given authority to institute corrective measures by the school district.
- At the K-12 level, *all employees* are officials with authority.

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Reporting Sexual Harassment

- Any person may report sexual harassment, regardless of whether the person is the alleged victim of the reported conduct.
- Reports can be made by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinator.
- Reports can be made by any means that results in the Title IX Coordinator receiving the person's report.
- Such a report may be made at any time, including during non-business hours, by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.



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Reporting ≠ Filing a Complaint



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Key Word: Allegation

Once a school has notice of an allegation that, **if true,** would constitute Title IX Sexual Harassment, **it must** respond.

"Well, we didn't believe there was enough evidence it happened," is not a valid excuse to avoid using your Title IX Sexual Harassment grievance process.

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Education Program or Activity



- Title IX Sexual Harassment must be "in a program or activity."
- Any location, events, or circumstances over which the school exhibits substantial control both over the alleged harassment and the "context" in which the harassment occurs.

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Education Program or Activity

Schools need only address Title IX Sexual Harassment occurring against a person in the United States under Title IX.



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Overview of Title IX Response



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Initial Response/Supportive Measures

Title IX Coordinator or designee must promptly, even if no Formal Complaint is filed:

1. **Contact** the Title IX Complainant to discuss the availability of "supportive measures."
2. **Consider** the Title IX Complainant's wishes with respect to supportive measures.
3. **Inform** the Title IX Complainant of the availability of supportive measures with or without filing a Formal Complaint.
4. **Explain** the process for filing a Formal Complaint.

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Formal Complaint



Document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the school investigate the allegations of sexual harassment.

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Supportive Measures

- Non-punitive, individualized services offered as appropriate and without charge to a Complainant or a Respondent before or after the filing of a Formal Complaint, or where no Formal Complaint has been filed.
- Should be designed to restore or preserve equal access to the education program or activity without "unreasonably" burdening the other party.
- Should be confidential.



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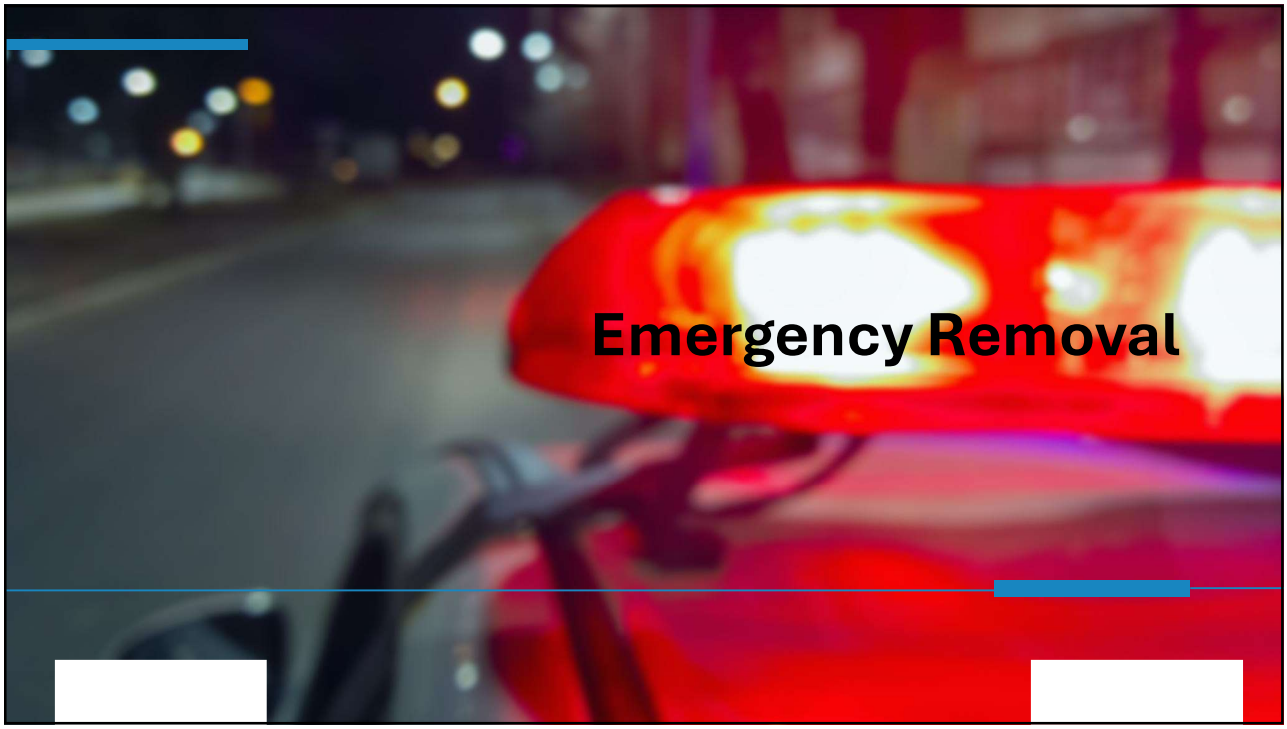
NOTICE TO COMPLAINANT OF REPORT OF TITLE IX SEXUAL HARASSMENT (NOTICE 1A)

SUMMARY OF SUPPORTIVE MEASURES MEETING WITH COMPLAINANT (NOTICE 1B)

TITLE IX FORMAL COMPLAINT (FORM A)

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Emergency Removal

Immediate Emergency Removal (Student)

- Based on an individualized safety and risk analysis.
- Necessary to protect a student or other individual from immediate threat to physical health or safety.
- Notice and an opportunity to challenge must be provided "immediately."
- Consider other laws – expulsion (SB100), change in placement under IDEA or 504.

Employee Administrative Leave

- Not prohibited.
- Must follow state law, Board Policies, Employee Handbooks, and Collective Bargaining Agreements.

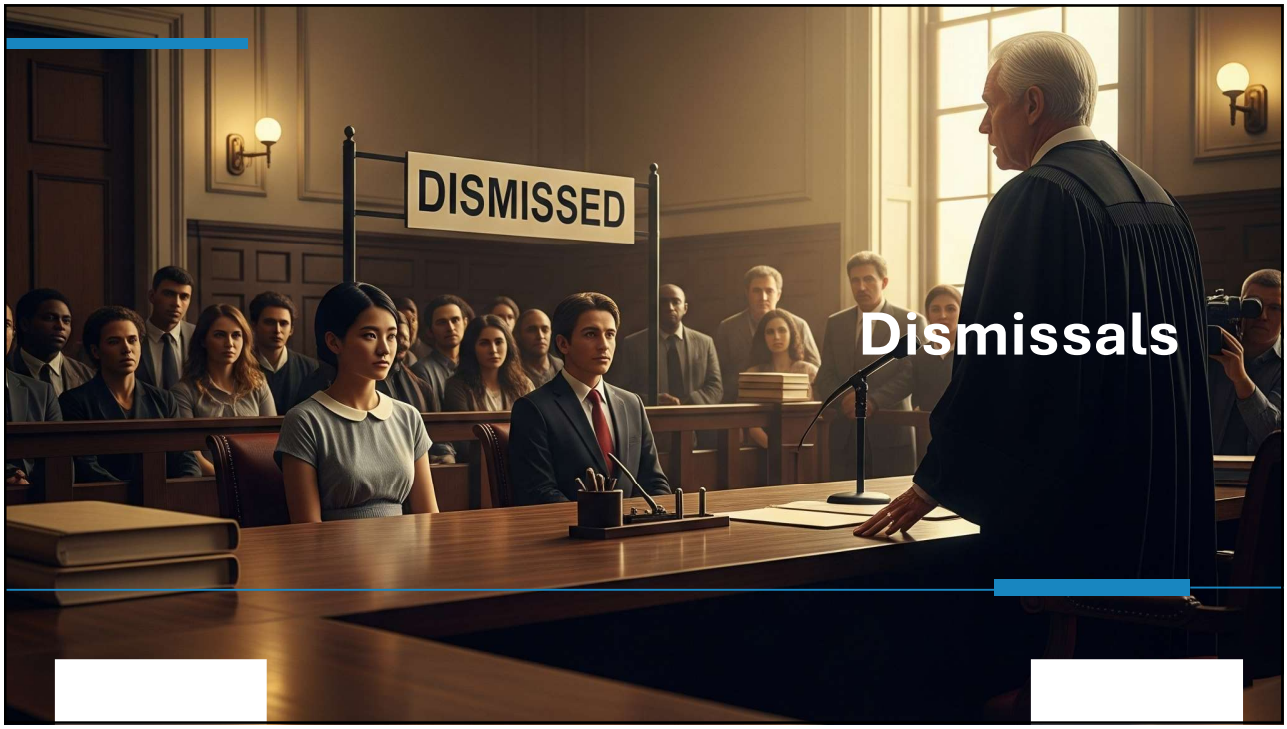
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NOTICE OF TITLE IX EMERGENCY REMOVAL OF STUDENT (NOTICE 4A)

NOTICE OF TITLE IX EMERGENCY REMOVAL OF EMPLOYEE (NOTICE 4B)

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Mandatory Dismissals



The Title IX Coordinator must dismiss a complaint if the conduct alleged:

- Is not Title IX Sexual Harassment.
- Did not occur in the school's program or activity.
- Did not occur in the United States.

Remember, you can still address the alleged conduct under non-Title IX policies

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Permissive Dismissals

The Title IX Coordinator may dismiss a complaint if:

- The Complainant requests to withdraw in writing.
- The Respondent's enrollment or employment in/at the institution ends.
- Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination(e.g., passage of time, lack of cooperation).



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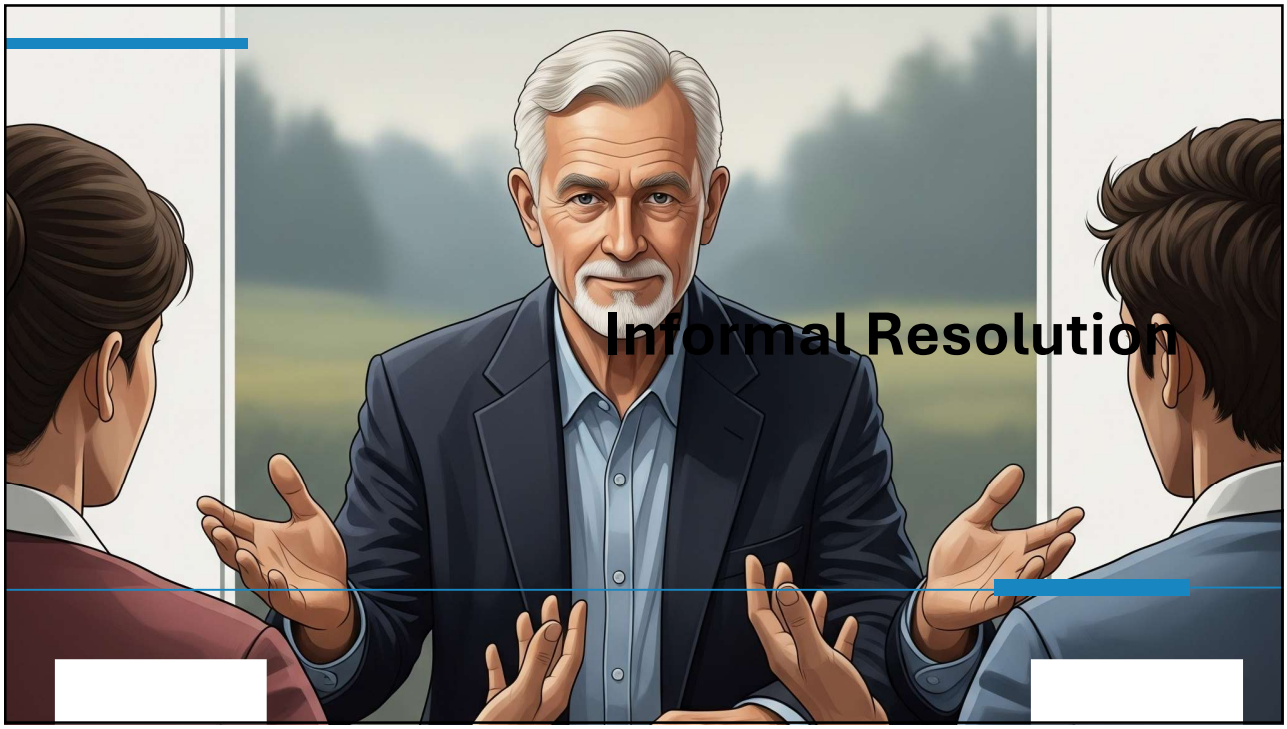
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NOTICE OF MANDATORY DISMISSAL OF ALLEGATIONS OF TITLE IX SEXUAL HARASSMENT (NOTICE 3A)

NOTICE OF PERMISSIVE DISMISSAL OF ALLEGATIONS OF TITLE IX SEXUAL HARASSMENT (NOTICE 3B)

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Informal Resolution: Not Required

- An institution cannot condition enrollment, employment, or any right on a waiver of the right to an investigation and adjudication of Formal Complaints under the grievance procedure.
- Both parties must voluntarily consent in writing to participate in Informal Resolution.

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Informal Resolution: Not Allowed for Employee – Student Allegations



Informal Resolution is not available to resolve allegations that an employee sexually harassed a student.

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Informal Resolution: Timing

- An institution cannot offer Informal Resolution *until* the Formal Complaint is filed.
- Once the Formal Complaint is filed, the institution can offer Informal Resolution at any time prior to reaching a determination.
- Either party can request Informal Resolution.
- Either party can withdraw from Informal Resolution prior to reaching an agreement.



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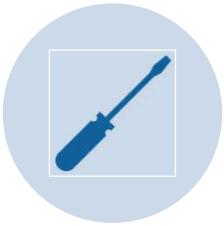
Informal Resolution: Facilitators



- Informal Resolution Facilitators must be trained.
- We do not recommend using the Title IX Coordinator or the Investigator or the Decision Maker as the Informal Resolution Facilitator.

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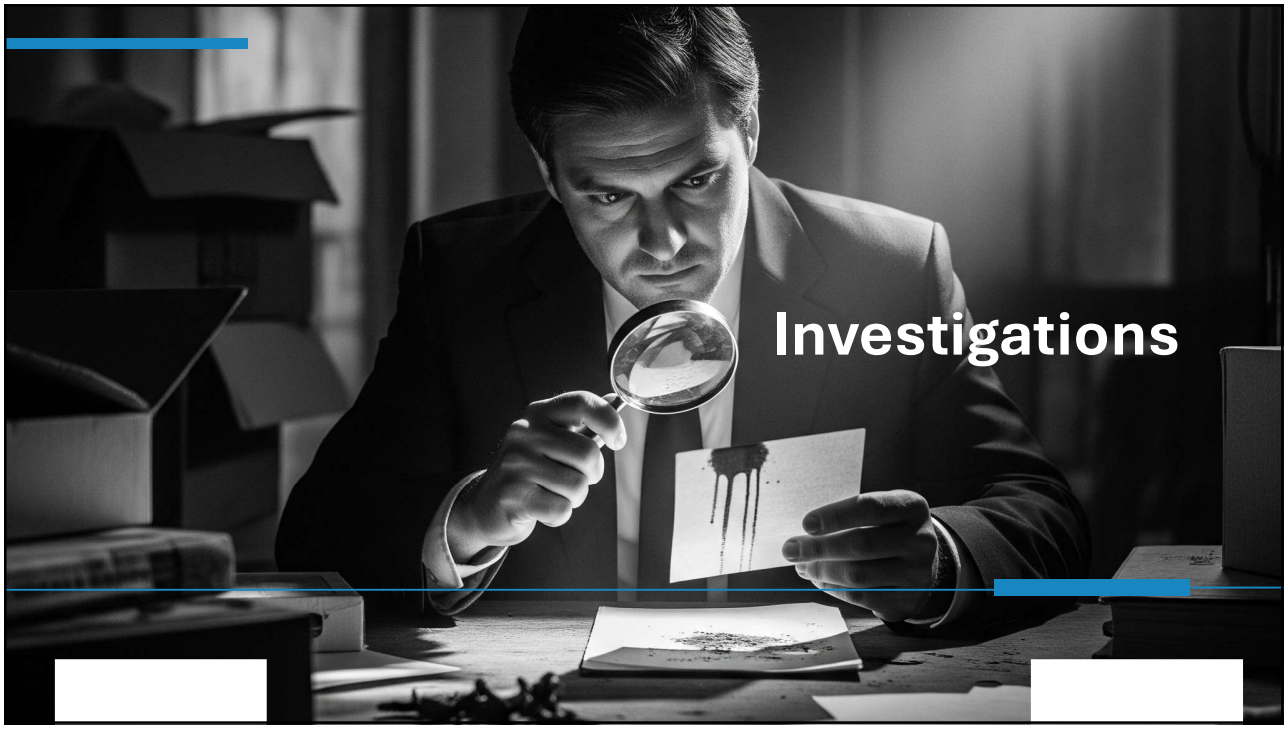


OFFER OF INFORMAL RESOLUTION PROCESS
(NOTICE 5A)



NOTICE OF CLOSURE OF TITLE IX INFORMAL RESOLUTION PROCESS
(NOTICE 5B)

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Who Should Investigate?

- The Investigator can be the Title IX Coordinator.
- But should it?



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Written Notice



- The Institution must provide written notice to all known parties "upon receipt of the written complaint."
- The Institution must provide sufficient time to allow the Respondent to prepare a response before any initial interview.
- The Institution must supplement the written notice if new allegations are opened for investigation or new parties are identified.

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Written Notice

- The Written Notice must include:
  - Notice of the grievance process, including any Informal Resolution process.
  - Notice of the allegations, in sufficient detail to allow the Respondent to prepare a response.
    - Known parties
    - Conduct alleged
    - Date and location of conduct



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Written Notice



- The Written Notice must include:
  - Statement that the Respondent is presumed not responsible and that responsibility will be determined at the conclusion of the grievance process.
  - Notice of the parties' rights to have an attorney or non-attorney advisor.
  - Notice of the parties' rights to inspect and review evidence.
  - Notice of any provision in the Code of Conduct that prohibits knowingly making false statements or providing false evidence during the grievance process.

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NOTICE OF ALLEGATIONS OF TITLE IX SEXUAL HARASSMENT BY A COMPLAINANT (NOTICE 2A)



NOTICE OF ALLEGATIONS UPON SIGNING OF FORMAL COMPLAINT BY THE TITLE IX COORDINATOR (NOTICE 2B)

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Investigation Elements

- Burden of proof is on the school, not the parties.
- Certain treatment records cannot be obtained without voluntary, written consent.
- No restriction of the rights of the parties to discuss allegations or gather and present evidence.
- The parties must be provided the same opporutnities for others to be present during interviews or related proceedings (e.g., attorney or non-attorney-advisor).

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Investigation Elements

- The Institution must provide written notice to the parties of the date, time, participants, purpose, and location of each investigative interview with sufficient ime to prepare.
- All directly related evidence must be provided to the parties and their advisor with ten days to respond before the investigation report is issued.
- The written investigative report must "fairly summarize the evidence," and be provided to the parties and their advisors at least ten days before the determination of responsibility.

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NOTICE OF TITLE IX INTERVIEW OR MEETING WITH TITLE IX PARTY (NOTICE 6A)



NOTICE OF TITLE IX INTERVIEW OR MEETING WITH NON PARTY WITNESS (NOTICE 6B)

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Privileged Information



ATTORNEY CLIENT PRIVILEGE



PRIVILEGE AGAINST SELF-INCRIMINATION



CONFESSIONS TO CLERGY OR RELIGIOUS FIGURE



SPOUSAL PRIVILEGE

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Rape Shield

- The Institution must exclude evidence of the Complainant's sexual behavior or predisposition (not applicable to Respondent).
- There are two narrow exceptions:
  - To show that someone other than the Respondent committed the conduct; or
  - To show past conduct between the Complainant and the Respondent to show consent.

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Treatment Records

Can't access, consider, disclose, or use records

Made by a physician, psychologist, or other recognized professional

Which are made and maintained in connection with the provision of treatment,

Unless the party gives voluntary, written consent

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Opportunity to Review Evidence

- Before the investigative report is complete, all directly related evidence must be sent to each party and their advisor.
- This includes evidence that the school does not intend to rely upon (both exculpatory and inculpatory evidence must be shared).
- Parties have ten days to provide a written response to the directly related evidence.



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NOTICE OF DIRECTLY RELATED EVIDENCE (NOTICE 7A)



NOTICE OF OTHER PARTY'S WRITTEN RESPONSE TO THE EVIDENCE (NOTICE 7B)

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Investigative Report



- Applicable Policies and Procedures
- Timeline of Investigation
- Description of Allegations
- Unbiased Summary of Evidence (Including Interviews)
- Credibility Determinations

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Investigative Report

- The Investigative Report must fairly summarize all relevant evidence.
- Provide the report to the parties and their advisors for review and written response at least ten days before a determination of responsibility.

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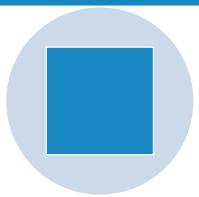
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TITLE IX INVESTIGATIVE REPORT TEMPLATE (FORM B)



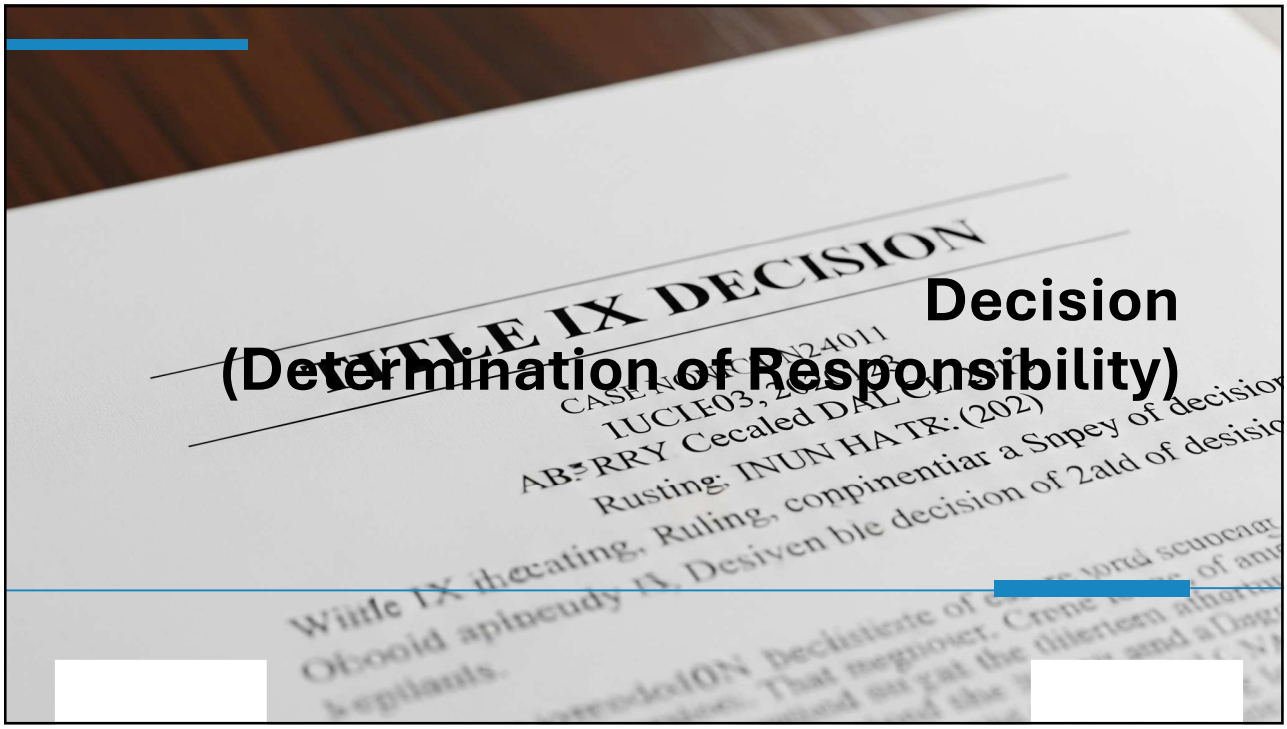
NOTICE OF INVESTIGATIVE REPORT (NOTICE 8A)



NOTICE OF OTHER PARTY'S WRITTEN RESPONSE TO THE INVESTIGATIVE REPORT (NOTICE 8B)

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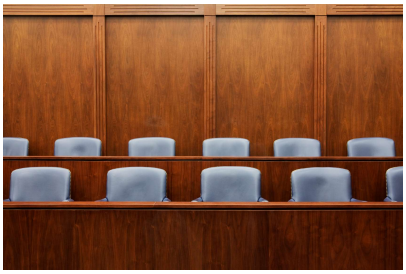


Decision (Determination of Responsibility)

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Decision Maker

- The Decision Maker cannot be the Title IX Coordinator or the Investigator.
- The Decision Maker must be trained.



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Determinations of Responsibility

- Live hearing with live cross-examination is required for higher education institutions, but not required for K-12 institutions.
- Each party is allowed to submit written, relevant questions to be asked of another party or witness to the decision-maker, who will provide each party with the answers and the opportunity for follow-up questions.

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Decisions on Relevance (Cross Examination)



- The Decision Maker must provide the reasoning for determining the question was irrelevant or the exception for exclusion.
- The Decision Maker must admit and consider all relevant evidence.
- Questions must be appropriate.

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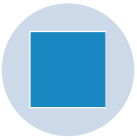
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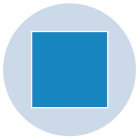
NOTICE OF OPPORTUNITY TO SUBMIT QUESTIONS (NOTICE 9A)



NOTICE OF DECISION MAKER'S EXCLUSION OF QUESTIONS AS NON-RELEVANT (NOTICE 9B)



NOTICE OF QUESTIONS (NOTICE 9C)



NOTICE OF ANSWERS TO QUESTIONS AND OPPORTUNITY TO SUBMIT FOLLOW UP QUESTIONS (NOTICE 9D)

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Written Determination

Identify	Identify the allegations
Describe	Describe procedural steps taken
Cite	Cite potential policy violations
Summarize	Fairly summarize all relevant evidence
Provide	Provide statement of result, with rationale, for each allegation
Appeal	Appeal procedures

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Standard of Proof

Preponderance of the Evidence

- A fact is more likely than not to be true.



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Remedies

- Can be punitive/disciplinary
- Can be supportive measures or similar actions as well
- Can address individuals or larger community

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WRITTEN DETERMINATION TEMPLATE (FORM C)

TANSMISSION OF WRITTEN DETERMINATION TO PARTIES AND ADVISORS (NOTICE 10)

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Appeals

- Appeals must be available to both parties.
- Parties may appeal a dismissal or a determination.

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Bases for Appeal

- Procedural issue that impacted the outcome
- New evidence that would have impacted the outcome
- Bias/conflict of interest

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Appeal Process

- Notify the parties of an appeal (in writing)
- Apply procedures equally for both parties
- Provide an opportunity to submit a written statement
- Issue written decision to both parties

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TITLE IX APPEAL FORM (FORM D)

NOTICE OF APPEAL FILING (NOTICE 11A)

NOTICE OF WRITTEN STATEMENT IN SUPPORT OF OR CHALLENGING THE OUTCOME (NOTICE 11B)

APPEAL DETERMINATION (FORM F)

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Title IX Team Members

- Title IX Coordinator
- Title IX Investigator
- Title IX Informal Resolution Facilitator
- Title IX Decision Maker
- Title IX Appellate Decision Maker

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Title IX Coordinator Responsibilities

- Must be identified as the Title IX Coordinator in Board Policy, District website, and in handbooks.
- Must meet with alleged victims of Title IX Sexual Harassment.
- Inform Complainant of availability of supportive measures with or without a Formal Complaint.
- Decides whether to "sign" a Formal Complaint when the Complainant does not wish to file a Formal Complaint.

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Title IX Coordinator Responsibilities

- Coordinates the implementation of supportive measures.
- Ensures effective implementation of remedies.
- Monitors the District's ongoing compliance with Title IX.

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Title IX Informal Resolution Facilitator Responsibilites

- Act as an intermediary between the parties, make suggestions, and help draft an agreement.
- The agreement itself is between the parties; the institution is not a party.

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Title IX Investigator Responsibilities

- Identify and interview parties and witnesses.
- Gather and assess evidence.
- Share evidence with the parties and provide an opportunity for written response.
- Write and share investigative report.

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Title IX Decision Maker Responsibilities

- Review evidence collected during the investigation.
- Facilitate written-cross examination.
- Make relevancy determinations.
- Make independent judgment on responsibility and sanctions.

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Title IX Appellate Decision Maker Responsibilities

- Review Decision-Maker's written determination.
- Review appeal documents.
- Grant parties the opportunity to respond to the appeal.
- Review party responses.
- Make independent judgment on appeal.

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Bias/Conflict of Interest/Prejudgment

- The Title IX Coordinator, Investigator, Decision Maker, and Informal Resolution Facilitator must not have a conflict of interest or bias for or against Complainants or Respondents generally or for or against any individual Complainant or Respondent.
- These individuals must also not prejudge any matter before them.

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Bias/Conflict of Interest/Prejudgment

- Consider perception, not just reality:
  - Institutional bias.
  - Your friendship or other relationship with the accused.
  - Your personal characteristics.
  - Your personal conflicts (even if just perceived).
  - Personality conflicts.

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Conflict of Interest

- Consider training multiple staff members to allow for the flexibility to assign roles for each specific complaint.
- Consider when outsourcing adjudiction functions may be appropriate.
- There are no *per se* conflicts of interest when using school employees or individuals with histories of working in the field of sexual violence as decision makers.
- Caution against using generalizations to identify conflicts of interest.

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Pre-Judgment

- Tips for Avoiding Pre-Judgment
  - Each case is fact specific.
  - Keep an open mind.
  - Actively listen to the facts presented.

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Sex Stereotypes

- Title IX team members must not rely on sex stereotypes.
- Examples of Sex Stereotypes:
  - Women are "asking for it" based on actoins or clothing.
  - Men cannot be sexually assaulted.
  - Women only decide they were assaulted after the fact due to regret and embarassment.
  - Men are more likely to be sexual aggressors.
- Consider the intersection of sex stereotypes with race, ability, sexuality, and gender identity.

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Written Notice Required

- Notice of Allegations
- Informal Resolution
- Dismissal
- Interview
- Investigator Report
- Irrelevant or Excluded Questions
- Written Determination & Right to Appeal

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Written Notice Recommended

- Supportive Measures
- Provision of Directly Related Evidence
- Cross-Examination

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Records Must Be Maintained for Seven Years

- Responses to Formal Complaints and informal allegations of Title IX Sexual Harassment.
- All actions taken in response.
- The basis for the school's conclusion that its response was not deliberately indifferent.
- Documentation that the school has taken measures designed to restore or preserve equal access to the education program or activity.
- Supportive measures or the reasons why supportive measures were clearly unreasonable in light of known circumstances.

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- Questions?

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