

Title IX Overview for Administrators

(Investigatory/Disciplinary Authority)

Fulton County Schools

Content Notice

- The content and discussion in this training will necessarily engage with sex- and gender-based harassment, discrimination, violence, and associated sensitive topics that can evoke strong emotional responses.
- During this training, we may offer examples that emulate the language and vocabulary that Title IX practitioners (you!) may encounter in your roles including slang, profanity, and other graphic or offensive language. It is not used gratuitously, and no offense is intended.

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Title IX: A Primer



What is Title IX?

- Title IX of the Education Amendments of 1972
- Protects people from discrimination based on sex in education programs or activities that receive federal financial assistance.
- Enforced by the Office of Civil Rights ("OCR").
- Protects all persons from discrimination, including parents and guardians, students, and employees.
- What does Title IX say?
  - 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.



Doesn't Title IX Only Apply to Athletics?

- NO!
- Title IX also applies to:
  - Recruitment, admissions and counseling
  - Sex based harassment
  - Treatment of pregnant and parenting students
  - Discipline
  - Single sex education
  - Employment matters

Pregnancy or Parental Status

- Title IX prohibits a school from discriminating against a student based on the student's:
  - Pregnancy
  - Childbirth
  - False pregnancy
  - Termination of pregnancy
  - Recovery from any of these conditions.
- Title IX also prohibits a school from applying any rule related to a student's parental, family, or marital status that treats students differently based on their sex.

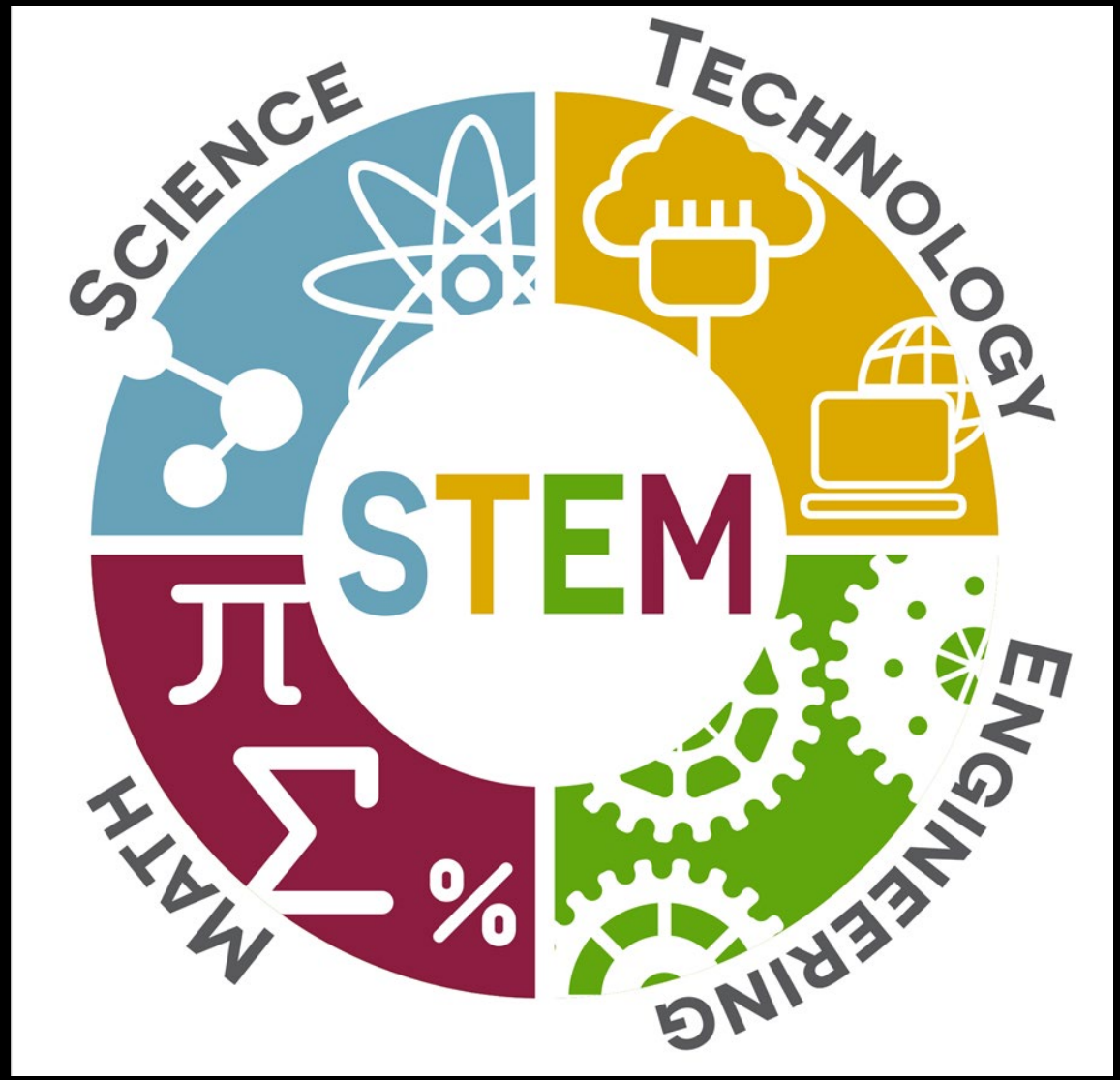
Title IX in Athletics

- School districts must provide equal athletic opportunities for both sexes.
- OCR considers whether an institution is effectively accommodating the athletic interests and abilities of students of both sexes.
- Factors that are considered by OCR:
  - Equipment and supplies;
  - Game and practice times;
  - Travel and per diem allowances;
  - Coaching and academic tutoring;
  - Assignment and compensation of coaches and tutors;
  - Locker rooms, practice and competitive facilities;
  - Medical and training facilities and services;
  - Housing and dining facilities and services; and
  - Publicity.



Other Examples of Title IX Issues

- Discrimination in student discipline
- Unequal access to educational resources
  - STEM opportunities / programs
  - Career / technical education





Statutory and Regulatory Changes

Recent Changes to Title IX Regulations

- OCR amended Title IX Regulations in 2020, focusing on those provisions pertaining to sexual harassment.
- Subsequent 2024 regulatory amendments, currently enjoined (blocked) statewide in Georgia.
- This presentation will focus on Title IX obligations and requirements that are relevant to K12 school districts.



Title IX Policies and Procedures

- Fulton County Schools has its own comprehensive Title IX policies and procedures.
- They are currently being updated to comply with applicable Title IX Regulations, but should be each employee's starting point with respect to Title IX matters.
- The District's Title IX Coordinator and Title IX staff are valuable resources for school-level administrators as they receive complaints, investigate allegations, and make determinations regarding responsibility.
- Make sure you are familiar with Board policies associated with Title IX, discrimination, harassment, grievance procedures – available on District website.

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Student-on-Student Sexual Misconduct

- According to data from the U.S. Department of Education's Office for Civil Rights, there were 14,938 incidents of sexual violence in K–12 schools in 2017 – 2018 compared with 9,649 in 2015 – 2016, representing a 55 percent increase.
- According to a 2019 report from the National Center for Educational Statistics, the number of reported forcible sex offenses on school campuses increased from 2,200 in 2001 to 10,400 in 2017 (a 372 percent increase).
- Both the 2015 – 2016 Civil Rights Data Collection and the Data Highlight on School Climate and Safety published in 2018 indicated that students reported approximately 9,700 incidents of sexual assault, rape, or attempted rape at elementary and secondary schools in the 2015 to 2016 academic year.
- Research from Hofstra University found that roughly 1 in 10 students in K-12 schools have suffered "some form of sexual misconduct by an educator," but student-on-student sexual misconduct continues to be a matter of great concern to the District.



Student-on-Student Sexual Misconduct: Prevention

- Create a culture of consent.
- Partner with parents and other trusted adults in students' lives.
- Share age-appropriate resources for education.
- Monitor high-risk areas or activities (but know that sexual misconduct or abuse can and does take place in areas that may not be deemed "high risk").
- Dispel common sexual misconduct myths and misconceptions.



Student-on-Student Sexual Misconduct: Identification

- Student-on-student sexual misconduct can take many forms. Misconduct might include, but is not limited to:
  - Title IX specific offenses, hostile environment, or quid pro quo;
  - Dating or relationship violence;
  - Transmitting sexually explicit images, photos, videos or any other media without the consent of the recipient and all involved parties;
  - Soliciting or promoting sexual performance using minors;
  - Inappropriate touching of private body parts;
  - Invasions of privacy;
  - Sexual exploitation;
  - Other inappropriate behaviors of a sexual nature.
- **If you see (or hear or otherwise become aware of) something, make a report to the Title IX Office!**



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Student-on-Student Sexual Misconduct: Identification

- **Non-exhaustive** behaviors to look out for:
  - Ducking behind desks, lab benches, gym mats, or using other methods to avoid detection;
  - Shushing or motioning for other students to be quiet so as not to draw attention;
  - Removal or alteration of clothing;
  - Inappropriate physical contact with others or with oneself;
  - Fear of physical contact;
  - Emotional manipulation or assertion of pressure;
  - Excitement surrounding a cell phone or mobile device;
  - Unwelcome touching, pinching, or restraining of students by another student;
  - Catcalling or suggestive comments;
  - Obscene gestures;
  - Refusal to sit next to or near another student;
  - Behavioral changes.



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Student-on-Student Sexual Misconduct: Reporting

If you see or hear or are told about something, say something.

ALL allegations of conduct that **MIGHT** qualify as sex discrimination—in any form—**MUST** be reported **TO THE TITLE IX COORDINATOR** as quickly as possible.

FCSD's Title IX Coordinators are Jose Mena and Jim Yerich. They can be reached at MenaJ@fultonschools.org (for student matters) or YerichJ@fultonschools.org (for employee matters).

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Student-on-Student Sexual Misconduct: Investigation

- Must be adequate, reliable, and impartial.
- Burden on the assigned Title IX investigator to conduct the investigation and gather evidence.
- Equal opportunity to be accompanied by an advisor (which can be, but isn't required to be, an attorney).
- Parties must have equal opportunity to present fact and expert witnesses, inculpatory & exculpatory evidence that is relevant and permissible.
- Determine what evidence is relevant and what evidence is impermissible even if it's relevant.
- Provide equal opportunity to access relevant and not otherwise impermissible evidence: investigative report and evidence inspection (10 day timeline).
- Take reasonable steps to prevent and address unauthorized disclosure.

Student-on-Student Sexual Misconduct: Resolution

- Standard of Proof: Preponderance of the evidence.
  - "More likely than not" that the conduct occurred.
  - "50% and a feather"
- If the Decision-Maker is not persuaded under that standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the Decision-Maker **must not** determine that sex discrimination occurred.
- Under both the 2020 and 2024 Regs the District is not required to hold a live hearing.
- Determination must be issued in writing and must include:
  - The rationale for the determination, and
  - The procedures and bases for appeal.
- Title IX Coordinator must coordinate provision and implementation of remedies and sanctions.

Students With Disabilities: Additional Considerations

Students with disabilities may be at an increased risk of experiencing sex discrimination or sex-based harassment, due in part to:

- Communication barriers that prevent giving consent and disclosing abuse;
- Potential decreased capacity to consent to sexual activity;
- Limited sexual education and knowledge;
- Increased personal care needs requiring close contact.

Students traveling on Special Education busses or in in Special Education classrooms are not inherently or automatically safer than those students on General Education busses or in General Education classrooms.

Consent Considerations

- The Assistant Secretary [OCR] will not require recipients [schools] to adopt a particular definition of consent with respect to sexual assault, as referenced in this section [the 2020 Title IX Regulations].
- Educating students about consent:
  - For students:
    - Consent means that you agree to something. You say YES. But consent isn't just saying YES.
    - We need our consent to be "informed." Informed consent means that when you say YES, you understand exactly what you are agreeing to and what the results may be.
    - Your body belongs to you, and someone needs to ask to get consent from you before touching you. Remember, "My body belongs to me."
    - You can say NO to someone touching you, or say YES to one thing (hugging) and NO to another (kissing).
    - You must also get consent from other people before you touch them. The other person must say YES.

Consent Considerations and Intersection with Students with Disabilities

- When considering whether or not a student consented, their special education status/disability needs to be considered.
- Non-verbal students may have trouble giving or communicating consent.
- Students with severe intellectual disabilities cannot provide informed consent to sexual activity.
- Consent cannot and should not be assumed, particularly in the case of students with disabilities. Not all disabilities are visible, and cognitive disabilities may prevent students who physically or developmentally resemble their peers from fully understanding their conduct or its consequences.

Title IX Life Cycle



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Sexual Harassment

If a school district has actual knowledge of sexual harassment in an education program or activity of the school district against a person in the United States, it must respond promptly in a manner that is not deliberately indifferent.

“Actual Knowledge”

- “Actual knowledge” means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient ***or to any employee of an elementary and secondary school.***
  - Administrators
  - Teaching staff
  - Clerical staff
  - Custodial and food service staff
  - Transportation staff
  - **YOU!!**

“Education Program or Activity of School District”

- What is “an education program or activity of the school district”?
  - Any location, event, or circumstance over which the school district exhibits substantial control over both the alleged harasser and the context in which the harassment occurred.
- Title IX does not impose a duty to report purely off-campus conduct.



“Education Program or Activity of School District”

- If conduct occurs in a building owned or controlled by a student organization that is officially recognized by the District, this qualifies as an “activity of the school district.”
- If conduct occurs on an international field trip or at any location outside the United States, it is excluded from this definition.
- What about sexual misconduct that occurred off-campus but has an out-campus effect?
    - This falls outside the DOE’s jurisdictional requirements and would be addressed through other District policies.



“Deliberate Indifference”

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

Three Categories of Sexual Harassment

- There are three categories that meet OCR's definition of sexual harassment and must be reported
  - Quid pro quo
  - Sexual assault, dating violence, domestic violence, stalking
  - "Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity"
  - Remember, though, that **ALL** incidents of sexual misconduct—even misconduct that doesn't fall into the above categories—should be reported promptly to your supervisor and to the Title IX office for review.

Sexual Harassment: Category 1

- “Quid pro quo”
- If an **employee** of the school district conditions the provision of an aid, benefit, or service of the school district on an individual’s participation in **unwelcome** sexual conduct, this is sexual harassment.
- This conduct must be reported.

Sexual Harassment: Category 2

- “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)
- “Stalking” as defined in 34 U.S.C. § 12291(a)(30)

- Conduct that falls within any of these definitions must be reported.

Sexual Harassment: Category 3

- “Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity.”
- This conduct must be reported.

What Happens After Report of Sexual Harassment

- Upon a report or formal complaint of sexual harassment, a school district must treat complainants and respondents equitably by offering supportive measures to both and following a grievance process before disciplining/sanctioning respondents.
  - Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
  - Respondent means a person who has been reported to be a perpetrator of conduct that could constitute sexual harassment.

“Supportive Measures”

- Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.
- Designed to restore or preserve equal access to the school district’s education program or activity, without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the school district’s educational environment, or deter sexual harassment.
- Cannot be punitive.

Examples of Supportive Measures

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- Mutual restrictions on contact between the parties
- Changes in work or housing locations
- Leaves of absence
- Increased security and monitoring of certain areas of the campus
- Special supports for special education students
- Other similar measures



Supportive Measures

- Title IX Coordinator must promptly contact complainant 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 to the complainant the process for filing a formal complaint

Grievance Process

- A school district's response must treat complainants and respondents equitably by following a grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

Grievance Process Continued

- Emergency removal of a respondent from an educational program or activity is permitted on an emergency basis IF the school district:
  - Undertakes an individualized safety and risk analysis,
  - Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and
  - Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.
- Emergency removal is subject to the student's rights under the IDEA, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act.
- Title IX Coordinators or their designees are the only individuals who can enact an emergency removal!

Grievance Process Continued

- School districts may place non-student employee-respondents on administrative leave during the pendency of a formal grievance process subject to the employee's rights under Section 504 and the ADA.



Grievance Process: Retaliation Prohibited

- Cannot retaliate against a person for purpose of interfering with any right under Title IX or because that person has been involved in a Title IX investigation, proceeding or hearing.
- What constitutes “retaliation”?
  - Intimidation, threats, coercion, or discrimination that arises out of the same facts/circumstances as report or complaint of sex discrimination or report/complaint of sexual harassment.



Grievance Process: Retaliation Prohibited

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

Grievance Process: Other Considerations

- A school district's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute sex discrimination under Title IX.
- Grievance process must treat complainants and respondents equitably:
  - Provide remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent; and
  - Follow a grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

Grievance Process: Basic Requirements

- Require an objective evaluation of all relevant evidence.
- Provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness.
- The Title IX Coordinator, investigator, decision-maker, or any person facilitating the informal resolution process may not have a conflict of interest or bias and must receive adequate training.
- Training materials cannot rely on sex stereotypes and must promote impartial investigations / adjudications

Grievance Process: Basic Requirements Continued

- The respondent is presumed not responsible until a determination regarding responsibility is made at the conclusion of the grievance process.
- Prompt timeframes for conclusion of the entire grievance process, including informal resolution process and appeals are required.
- Must allow temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the parties.
  - "Good cause" includes the absence of a party, party's advisor or witness; concurrent law enforcement activity; and the need for language assistance or accommodation of disabilities.

Grievance Process: Basic Requirements Continued

- A school district's grievance process:
  - Must describe range of potentially available disciplinary sanctions and remedies;
  - Must specify the standard of evidence that will be used and apply that standard to all complaints:
    - Preponderance of the evidence;
    - Clear and convincing evidence;
  - Must include procedures and permissible bases for parties to appeal;
  - Must describe the range of supportive measures available to the parties;
  - May not allow any evidence or questions that would invade a legally recognized privilege, unless the privilege holder waives it.

Grievance Process: Notice of Allegations

- Upon receipt of a formal complaint, a school district must provide known parties with written notice of various matters, including:
  - The formal complaint's allegations;
  - The formal grievance procedures; and
  - Any code-of-conduct provision that prohibits knowingly making false statements or submitting false information during the grievance process.



Grievance Process: Dismissal

- Mandatory Dismissal
  - Dismissal is required if the alleged conduct does not meet “basic jurisdictional requirements” under Title IX.
- Permissive dismissal
  - A formal complaint or any allegation within the complaint CAN be dismissed at any time during the investigation or hearing IF:
    - The complainant notifies Title IX Coordinator in writing that he/she would like to withdraw the formal complaint or any allegations therein;
    - The respondent is no longer enrolled in or employed by school district; or
    - Specific circumstances prevent the school district from gathering evidence sufficient to reach a determination as to the formal complaint or the allegations therein.
- Upon dismissal, the school district must provide prompt written notice to the parties.

Grievance Process: Investigation

- The school district is tasked with gathering evidence sufficient to reach a determination.
- The parties must receive an equal opportunity to present witnesses and any inculpatory and exculpatory evidence.
- There can be no restriction on the parties' ability to discuss the case and gather evidence.
- The parties must have opportunity to have others present during a grievance proceeding, including an advisor of their choice (can be an attorney).
  - *But the school district can restrict the extent to which advisors may participate IF the restrictions apply equally to both parties.

Grievance Process: Investigation

- Must provide to the party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.
- Both parties must receive an equal opportunity to inspect/review any evidence.
  - Before an investigative report is completed, both parties (and their advisors) must receive the evidence and have ten days to submit a written response.
  - The investigator must consider the written response before completing the final report.

Grievance Process: Investigation

- Must create an investigative report that fairly summarizes the relevant evidence and provide the parties (and their advisors) with a copy at least ten days before a hearing “for their review and written response.”
- A live hearing is NOT required for K12 school districts.



Grievance Process: Adjudication

- After providing investigative report to both parties, each party must have opportunity to submit written questions that a party wants asked of any party or witness.
- Live hearings with cross-examination are not required in the K-12 setting.
- Each party must also receive the answers to the questions and must be allowed to submit additional, limited follow up questions.
- The decision maker must issue a written determination regarding responsibility which includes:
  - Allegations constituting sexual harassment;
  - Description of the matter's procedural history;
  - Findings of fact supporting the determination;
  - Conclusions reached by applying the school's code of conduct to the facts;
  - Explanation of the rationale for the conclusions, including a determination of responsibility, disciplinary sanctions, and remedies; and
  - Description of the school's appellate procedures.

Grievance Process: Determination of Responsibility

- The school district must provide the written documentation to the parties simultaneously.
- The determination regarding responsibility becomes final either on:
  - The date that the school district provides the parties with the written determination of the result of the appeal (if appeal is filed); OR
  - The date on which an appeal would no longer be considered timely (if no appeal is filed).



Grievance Process: Determination of Responsibility

- Title IX Coordinator is responsible for effective implementation of any remedies.
- Both parties must have opportunity to appeal the following:
  - Determination regarding responsibility (on limited grounds); and
  - Dismissal of a formal complaint or any allegation therein.

Grievance Process: Appeals

- Mandatory grounds for appeal:
  - Procedural irregularity that affected the outcome of the matter;
  - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
  - The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias that affected the outcome of the matter.
- School districts can offer appeals equally to both parties on additional bases.
  - Please see Title IX Grievance Procedure for more information about bases for appeal.

Grievance Process: Informal Resolution

- A school district may facilitate an informal resolution process, such as mediation, in lieu of a formal grievance process.
- Must first provide written notice to the parties of their rights, including the right to withdraw from the process at any time, and obtain both parties' voluntary, written consent to informal measures.
- Informal resolution processes are not allowed for formal complaints involved employee-respondents.

Grievance Process: Record Keeping Requirements

- School districts must maintain the following records for 7 years:
  - Each sexual harassment investigation, including determination, sanctions, and remedies resulting therefrom;
  - Any appeals therefrom;
  - Any informal resolutions thereof; and
  - All training materials, which the recipient must also make available for public inspection.
- School districts must also maintain records of any other actions it takes, including supportive measures, in response to reports or formal complaints of sexual harassment.
- This is why understanding the entirety of the process is so important—your actions (the District's actions) will be memorialized for years, and it's important to get it right.

Reporting

- ALL employees are responsible for reporting sexual harassment AND allegations of sexual harassment.
- Reports should be made IMMEDIATELY.
- Staff can report sexual harassment to their principal, who can assist in ensuring this conduct is reported properly.
- The District's Title IX Coordinator and Title IX staff are valuable resources for school-level administrators as they receive complaints, investigate allegations, and make determinations regarding responsibility.
- FCSD's Title IX Coordinators are Jose Mena and Jim Yerich. They can be reached at MenaJ@fultonschools.org (for student matters) or YerichJ@fultonschools.org (for employee matters).

Best Practices for Title IX Investigators



Definitions

1. Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in a FCSD "education program or activity."

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

3. Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:

(1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct ("quid pro quo harassment");

(2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity ("hostile environment harassment"); or

(3) "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).

4. Title IX Jurisdiction: The 2020 Title IX Regulations apply **only** to conduct that occurs in the United States. Specifically, for the 2020 Title IX Regulations to apply, the alleged conduct must have occurred within the context of a FCSD "education program or activity," which includes locations, events, or circumstances over which the District exercises substantial control over both the Respondent and the context in which the sexual harassment occurs. This includes, but is not limited to:

- On-campus conduct;
- Field trips;
- Home and away athletics events; and
- School-sponsored extracurricular activities.

Best Practices for Title IX Investigators



5. Relevant Evidence is evidence that tends to prove or disprove a fact in question. Relevant evidence can be exculpatory (offered in support of someone's innocence or responsibility) or inculpatory (points to someone's guilt or responsibility). Some evidence, even if it's relevant, should be excluded from an Investigative Report:

- **Treatment records**: FCSD cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent.
- **Privileged information**: FCSD must not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- **Complainant's sexual history**: Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, **unless**
    - (1) Such questions and evidence about the Complainant's prior sexual behavior are offered to **prove that someone other than the Respondent committed the conduct** alleged by the complainant, or
    - (2) If the questions and evidence concern **specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent**.

2020 Title IX Regulations: Requirements and Protections

- The requirement that FCSD follow a prescribed Title IX grievance process before imposing any disciplinary sanctions or other actions that are not supportive measures against a Respondent;
- An understanding that credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness;
- Prohibitions on Investigators and other Title IX staff having any conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent;
- A presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process;
- Protections against the inclusion of irrelevant or impermissible evidence;
- The right of parties to have an advisor of their choice, who may or may not be an attorney, present during the Title IX process (including at your investigative interviews);
- An assurance that the burden of gathering sufficient evidence regarding responsibility rests on the District and not on the parties;

2020 Title IX Regulations: Requirements and Protections

- An equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- No restrictions on the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
- Written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
- An equal opportunity for the parties to inspect and review evidence directly related to the allegations;
- A 10-day window in which to submit a written response to the draft Investigative Report, and the requirement that investigators consider any written feedback prior to finalizing the Investigative Report; and
- An equal opportunity for the parties to submit written, relevant questions that a party wants asked of any party or witness, an obligation to provide each party with the answers, and the requirement to allow for additional, limited follow-up questions from each party before an ultimate decision regarding responsibility is made.

Qualities of a Title IX Investigator

- Preparation: Before interviewing anyone associated with a Title IX matter, review the formal complaint and any available evidence. You should **NOT** pre-judge the evidence, pre-assign weight to an individual's answers, or develop an internal narrative of what you "***think***" happened. Use the existing file to **inform** your questions, but don't let it **dictate** them.
- Flexibility: Research and evidence on the effects of trauma tell us that parties' recollections of events is often not linear or chronological; skilled investigators are able to pick up and put down conversation threads as the person they are interviewing changes direction. The ability to connect the dots in real time, even if the person you are interviewing appears to tell a fractured narrative, allows for a cohesive delivery of information in an Investigative Report.
- Emotional Intelligence: Title IX cases are emotional, stressful, and often frightening for those involved. Parties may be concerned about sanctions like suspension or expulsion, retaliation, potential impacts to college admissions or extracurricular participation, and other tangible and intangible consequences of alleging or being accused of any form of sexual harassment. Interviewers should attempt to build rapport and establish trust with Title IX parties, while acknowledging that repeated interviews may re-traumatize Title IX parties. Understand that "I don't know" or "I don't remember" is an acceptable response.

Qualities of a Title IX Investigator

- Respect: Interviewers should be respectful of interviewee's time and experiences. Cell phone ringers and alarms should be turned off or silenced during interviews, and adequate time should be allotted to speak with Complainants, Respondents, and witnesses. Interviewers should be mindful of their body language and other non-verbal cues.
- Attention to Detail: Title IX interviewers, in familiarizing themselves with the facts of the case they have been appointed to investigate, should develop party and witness outlines to help guide discussions. If parties give partial answers to your questions, follow up. If parties dodge or don't answer your questions, rephrase them to ensure the interviewee understands what you are asking of them. If information appears contradictory, seek clarification. Interviewers will need to tailor those outlines in real time depending on the interviewee's answers, and will need to take detailed notes to determine which items need follow-up.
- Neutrality: Interviewers may not appear to have any bias for or against complainants or respondents, and all parties should be treated with dignity and respect. The 2020 Title IX Regulations explicitly state that credibility determinations may not be based on an individual's status as a Complainant, a Respondent, or a witness, meaning that investigators cannot proceed under an assumption or belief that, for example, all Complainants must be telling the truth or that every Respondent has something to hide. Similarly, the 2020 Regulations prohibit attitudes like "believe women" or "not all men." Rather, each interview should be neutral, fact-oriented, and objective, aimed at gathering information.

Investigative Interviews: Effective Questioning

- Ask open-ended questions.
- Avoid leading questions (“Isn’t it true that…”) and preconceived judgments (“Well that skirt was pretty short, wasn’t it?” or “Now this isn’t the first time I’ve heard about you touching boys on the bus, so this must be a pattern for you.”).
- Follow each conversational thread to its conclusion by asking the interviewee to tell you what happened next, then what happened after that, then what happened after that.
- Use “Tell me more about…” to gain additional information about a particular topic, event, or witness.
- Ask each interviewee who else you should speak to in order to get the full picture of what happened.
- Sensory questions (“What did you see when…” or “Did you hear her say anything when…” or “Do you remember how it felt when…”) may aid memory or recognition.
- Ask the interviewee to rephrase an answer if it isn’t clear, and make sure to clarify statements that are ambiguous, vague, or wandering.
- Your final question should be some version of the following: “Is there anything else we haven’t talked about that you think would be helpful for me to know?”

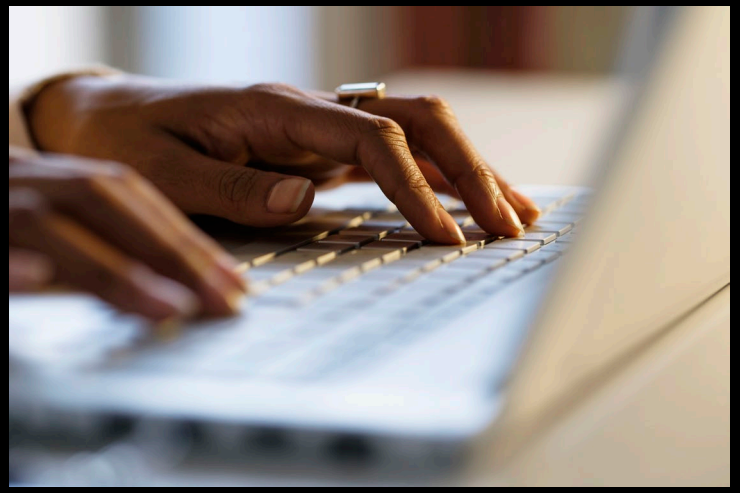
Title IX Investigative Report

[DRAFT/FINAL] TITLE IX INVESTIGATOR REPORT

[This title should be revised to read "Final" Title IX Investigator Report once the draft has been distributed to the parties and any feedback has been incorporated. The initial draft should be appropriately titled as a "Draft" Title IX Investigator Report.]

Date: *[This should be the date on which the Investigative Report will be distributed to the parties.]*
Investigator: *[Your first and last name, title, and school affiliation]*
Complainant: *[Complainant's (person who brought the complaint or who is alleged to be the victim) first and last name, grade, school (ex: Jane Doe, 8th Grade, XYZ Middle School)]*
Respondent: *[Respondent's (person alleged to be the perpetrator) first and last name, grade level, school (ex: John Doe, 7th grade, ABC Middle School)]*
Case Number: *[As assigned by Title IX Coordinator]*

Title IX Investigative Report: Parties, Charges, & Dates



I. PARTIES *[Please note that there may be more than one Complainant and more than one Respondent. Contact information should be provided individually for each party to a Title IX matter (but not for witnesses).]*

Complainant:
Jane Doe
Street Address
City, State, Zip

Respondent:
John Doe
Street Address
City, State, Zip

II. CODE OF CONDUCT CHARGE(S):

[Add relevant violations from the Code of Conduct. Please ensure you are looking at the correct version of the CoC for the applicable school year, as CoC provisions are revised annually.]

Applicable CoC charges should be determined in consultation with the District's Title IX Coordinator and Legal, and often depend on the results of your investigation. CoC charges can be revised during the course of the Title IX process, which is why it's important for our investigations to be thorough.

III. DATE(S) OF ALLEGED MISCONDUCT

[Include the date(s) on which the misconduct is alleged to have occurred. This can be a single day, multiple individual dates, or a collective date range. Please include all dates on which relevant misconduct is alleged to have occurred, and ask questions during your interviews to confirm the timeline.]

Title IX Investigative Report: Description & Statements

IV. DESCRIPTION OF ALLEGED MISCONDUCT

[This information should be copied and pasted from the Title IX Reporting Form provided to you when you were appointed as the investigator. However, if clarifying information needs to be added to that initial incident description (e.g., including individuals' names for clarity, identifying school personnel by name and title, etc.), please update the description accordingly.]

V. SUMMARY OF RELEVANT STATEMENTS

*[Please include separate summaries for each Title IX Complainant, Respondent, and relevant Witness interviewed as part of your investigation. The only limitation in this section is relevance. **Relevant information is evidence that tends to prove or disprove a fact in question.** If, during your investigation, you realize that a Title IX party (Complainant or Respondent) or Witness has given you irrelevant information, that irrelevant information should not be included in the Investigation Report. If you have any questions about relevance during your investigation, please contact the Title IX Coordinator.]*

Title IX Investigative Report: Party Statements

Summary of Complainant *[First Name Last Name]*'s Statement:

Interviewed on [date] by [your name, (Investigator)] at [location]. *[Please include all dates on which you as the Investigator spoke to the Complainant in person, virtually, or via email or phone.]*
If Applicable: Complainant accompanied by [name and relationship of any additional parties, like parents or attorneys or advisors].

*[This section must be a synthesized summary of your interview(s) with the Complainant. It can include portions of the Complainant's written statement, but **must also include your verbal interactions with the Complainant.** It is the role of the Investigator to get the Complainant's version of events via investigative interview and to recount that version here. Please see the "Best Practices for Investigators" guide to inform your investigation strategy.]*

Summary of Respondent *[First Name Last Name]*'s Statement:

Interviewed on [date] by [your name, (Investigator)] at [location]. *[Please include all dates on which you as the Investigator spoke to the Respondent in person, virtually, or via email or phone.]*
If Applicable: Respondent accompanied by [name and relationship of any additional parties, like parents or attorneys or advisors].

*[This section must be a synthesized summary of your interview(s) with the Respondent. It can include portions of the Respondent's written statement, but **must also include your verbal interactions with the Respondent.** It is the role of the Investigator to get the Respondent's version of events via investigative interview and to recount that version here. Please see the "Best Practices for Investigators" guide to inform your investigation strategy.]*

Title IX Investigative Report: Witness Statements

Summary of Witness Statements:

Interviewed on [date] by [your name, (Investigator)] at [location]. *[Please include all dates on which you as the Investigator spoke to each Witness in person, virtually, or via email or phone.]*
If Applicable: Witness accompanied by [name and relationship of any additional parties, like parents or attorneys or advisors].

*[This section must be a synthesized summary of your interview(s) with any Witness that provides you with relevant information. It can include portions of any witness's written statement, but **must also include your verbal interactions with the Witness(es).** It is the role of the Investigator to get the Witness's version of events via investigative interview and to recount that version here. Please see the "Best Practices for Investigators" guide to inform your investigation strategy.]*

Optional Language for Witnesses Providing Only Irrelevant Information:
Interviewed on [date] by [your name, (Investigator)] at [location]. *[Please include all dates on which you as the Investigator spoke to each Witness in person, virtually, or via email or phone.]*
If Applicable: Witness accompanied by [name and relationship of any additional parties, like parents or attorneys or advisors].

Witness [Last Name] was interviewed as part of the District's Title IX response but provided no relevant information.

Title IX Investigative Report: Summary of Evidence

VI. SUMMARY OF RELEVANT EVIDENCE

List of Written Statements Collected

1. Written Statement of Complainant *[Last Name]* collected on *[date statement was written or dictated]*.
2. Written Statement of Respondent *[Last Name]* collected on *[date statement was written or dictated]*.
3. Written Statement of Witness *[Last Name]* collected on *[date statement was written or dictated]*.
4. *[Include each written statement collected from a party or involved individual during your investigation.]*

Summary of Video Footage Reviewed

[Summarize any relevant video footage you reviewed as part of your investigation here. If no video footage is available, please say so and explain why (there is no camera coverage of the area in question, the footage exists but was corrupted, the event was reported well after it occurred and any relevant footage no longer exists, etc.). If there is relevant video footage, include as much information about that footage as is known: from which camera was the footage retrieved, where is the camera located, was the footage recorded on a cell phone, etc. Please include time-stamped entries if at all possible.]

Title IX Investigative Report: Summary of Evidence

Summary of Photographs

[Summarize any relevant photographic evidence you reviewed as part of your investigation here. If there is relevant photographic evidence, include as much information about that evidence as is known: are the photos screenshots of text conversations, from whose cell phone or other electronic device did the photos originate, etc. If there is no such evidence, write "N/A" in this section.]

Physical Evidence

[Summarize any relevant physical evidence you reviewed as part of your investigation here. If there is relevant physical evidence, include as much information about that evidence as is known: what is the evidence, from where did it originate, to whom does it belong,, etc. Physical evidence may include things like electronic devices, clothing, weapons, personal property, etc. If there is no such evidence, write "N/A" in this section.]

Documentary Evidence

[Summarize any relevant documentary evidence you reviewed as part of your investigation here. If there is relevant documentary evidence, include as much information about that evidence as is known: what is the document, where did it come from, what does it say, with whom was it shared, etc. Documentary evidence may include items like police reports, social services referrals, etc. If there is no such evidence, write "N/A" in this section.]

Location Visit(s)

[Include any observations made during any site or location visits. If no such site visits were conducted during the investigation, write "N/A" in this section.]

END OF REPORT

Questions?

