Title IX

Comprehensive Awareness & Coordinator Training

Lakeview School District ● Monday, July 21, 2025

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What is Title IX?

"No person . . . 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(a)

Translation:

We want an educational environment free from sex-based harassment

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Title IX Scope

- Historical Context = Sports
- Not-So-Historical Context = Sex Discrimination
- Modern Context = LGBTQ Students & Sexual Violence/Assault on Campus
  - Sex discrimination includes sexual violence and gender-based harassment
  - **The protections of Title IX extend to all academic, educational, extracurricular, athletic, and other programs of a school**, whether those programs take place on campus, in a school facility, at an off-campus class, seminar, or event that the school sponsors, or elsewhere
  - **Title IX protects both male and female students** and faculty and staff from sexual harassment by any school employees, non-employee third parties, and other students

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Evolution of New Title IX Regulations

- Issued by the Department of Education in November 2018; first overhaul since 1997 …
  - Impacts how schools will handle allegations of sexual harassment/assault
  - College-focused … with an attempt to apply to K-12
- Final rule announced on May 6, 2020
- New rules took effect on **August 14, 2020**
- Then came the Biden Administration
- Back to the Future!

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Vocabulary

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

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

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(Re)Defining Sexual Harassment

- **Headline**: "*For the First Time, Title IX Regulations Define Sexual Harassment*"
- Sexual harassment means one of the following types of behaviors:
  - Conditioning aid, benefits, or services on an individual's participation in unwelcome sexual conduct (i.e., ***quid pro quo* harassment**)
  - Unwelcome conduct determined by a reasonable person to be **so severe, pervasive, and objectively offensive** that it **effectively denies** a person equal access to an education program or activity
  - Sexual assault, dating violence, domestic violence, or stalking [as defined by Clery Act and the Violence Against Women Act (VAWA)]
    - Mostly postsecondary, but need to familiarize with these definitions

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When Do We Have to Respond?

A recipient with **actual knowledge** of sexual harassment **in an education program or activity** against a person **in the United States** must respond promptly and in a manner that is **not deliberately indifferent**.

- Any person may report sexual harassment/sex discrimination, regardless of whether the person is the alleged victim of the reported conduct
- Reports can be made by mail, telephone, in-person, or by email, using the contact information for the Title IX Coordinator
- Reports can be made at any time, including non-business hours

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What Does That Mean?

- "**Actual knowledge**" of sexual harassment …
  - Report to a Title IX Coordinator
  - Report to an official who has the authority to institute corrective measures on behalf of the school district (*Gebser*)
  - **Report to *any* employee of an elementary or secondary school**
    - "arguably broadens … an elementary or secondary school's obligation to respond to Title IX sexual harassment"
    - "unreasonable to expect young children to seek out specific employees for the purpose of disclosing Title IX sexual harassment"
- "**In a Program or Activity**" …
  - Any location, event, or circumstance over which the recipient exhibits substantial control over the alleged harasser and the "context" in which the harassment occurred
  - Only have to address issues occurring against a person in the United States

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What Does That Mean?

- "**Not Deliberately Indifferent**" …
  - "The response must amount to deliberate indifference to discrimination. The administrative enforcement scheme presupposes that an official who is advised of a Title IX violation refuses to take action to bring the [district] into compliance. The premise, in other words, is an official decision by the [district] not to remedy the violation."
  - Straight Outta *Gebser*
  - "**Clearly unreasonable in light of known circumstances …**"
  - Good news, right?

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Title IX Coordinator

- District MUST Have a Title IX Coordinator
- Function of Coordinator
  - Required by Title IX and Interpretive Guidance
  - "*The Title IX coordinator is an integral part of a recipient's systematic approach to ensuring nondiscrimination, including a nondiscriminatory environment*"
  - "*Ensure that [the district] maintains an environment for students and employees that is free from unlawful sex discrimination in all aspects of the educational experience, including academics, extracurricular activities, and athletics*"
  - Receive Complaints
  - Investigate Complaints*
  - Address Problems
  - Ensure Training / Ongoing Compliance by District Staff

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Title IX Coordinator – Under 2020 Regs

- Still required to have one or more persons identified
- Must have someone with the title "**Title IX Coordinator**" – officially and publicly
- Must be designated and "**authorized**" to coordinate district's compliance efforts
  - Check job description; inclusive, authorized?
- Name and contact information, including email, must be posted/provided …
  - On district website
  - Send information to students, parents or legal guardians, unions or professional organizations holding agreements with the district
  - Listed in all handbooks

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Title IX Coordinator

- Most Important Question to Know the Answer to …

Who is the District's Title IX Coordinator?

- Important Questions to Ask …

Do We Have a Title IX Policy (prohibiting discrimination on the basis of sex)?

Do We Have a Procedure for Title IX Reporting/Investigating?

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Formal Complaint Response – Generally

- Must investigate ***every*** formal complaint – can be filed by a complainant OR signed by the Title IX Coordinator (does not render partial)
- Specific steps for investigating, dismissing, and determining responsibility in formal complaint
- **Required elements for grievance procedures**:
  - Treat parties equitably
  - Objective evaluation of all evidence
  - No conflict of interest for investigator or decision-makers
  - Presumption respondent is not responsible
  - Reasonably prompt timeframes
  - Description or list of possible discipline/other remedies
  - Statement of standard used (preponderance v. clear and convincing)
  - Appeals procedures and bases
  - Range of supportive measures available
  - No breach of privilege without waiver

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Responding to Reports of Sexual Harassment

- Reports of sexual harassment may be verbal or written and may be received at any time
- Upon receiving a report, the Title IX Coordinator must:
  - Contact Complainant as soon as practicable
  - Notify Complainant of his/her right to file a formal complaint and the grievance process
  - Discuss and implement "**supportive measures**"

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Contacting Complainant

- Keep in Mind:
  - At the K-12 level parents should be included
  - Complainant and parents may not be aware of the report prior to notice from the Title IX Coordinator
  - An in-person or virtual meeting may be preferable to a telephone conversation
  - The difficulty of describing the grievance process unless Complainant and parents are looking at the policy
  - A formal complaint followed by the grievance procedure may delay the imposition of disciplinary measures against a Respondent-student
  - "Supportive measures" can and should be implemented regardless whether a formal complaint is filed
  - It's a lot to take in, and no final decisions need be made during the first conversation
  - The importance of emphasizing Title IX's prohibition against retaliation
- **Take Notes!!**

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Supportive Measures

- Title IX was enacted to prevent sex discrimination and harassment from adversely affecting access to educational opportunities
- Supportive measures should restore or ensure continued access to educational opportunities, must be free to Complainant, and may not be punitive or unreasonably burden Respondent
- Non-exclusive examples of supportive measures include: **no-contact orders, counseling, course modifications, schedule changes, transfers, increased security and monitoring**
- The Title IX Coordinator must consider, *but is not bound by*, Complainant's wishes

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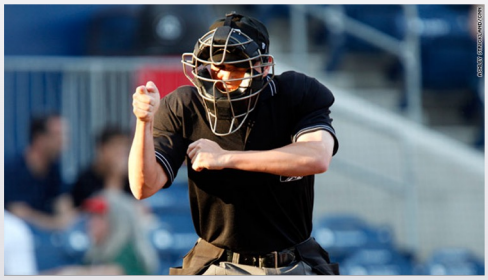
Temporary Removal



- The temporary removal of a Respondent-student is not a supportive measure
  - A Respondent-student may be removed based on an individualized assessment that he/she poses an immediate threat to the physical health or safety of Complainant or others
  - Due process must follow immediately
- A Respondent-employee may be placed on a temporary administrative leave

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Disabled Students

- A disabled student's status as a Respondent does not waive or otherwise affect his/her protections under the IDEA, the ADA, or Section 504
- Generally, but subject to statutory exceptions, an IDEA or Section 504-eligible student may not be disciplined for misconduct that is a manifestation of his/her disability
- ***A few additional thoughts …***

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The Formal Complaint

- A formal complaint should describe the **who, what, why, where, and when**
- A formal complaint must be signed by Complainant or the Title IX Coordinator
- Formal Complaint forms [*see next slide*]

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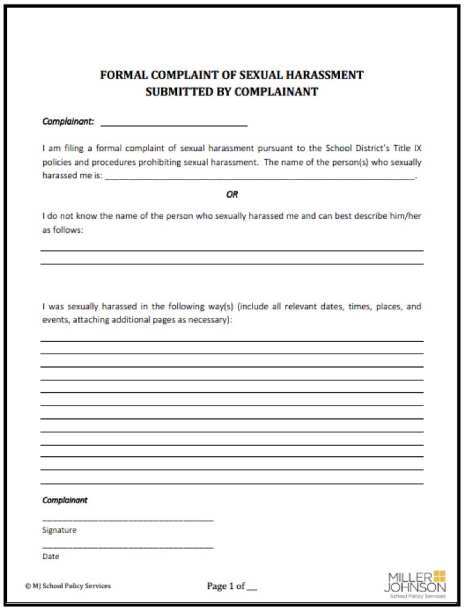

FORMAL COMPLAINT OF SEXUAL HARASSMENT
SUBMITTED BY COMPLAINANT

Complainant: _____

I am filing a formal complaint of sexual harassment pursuant to the School District's Title IX policies and procedures prohibiting sexual harassment. The name of the person(s) who sexually harassed me is: _____.

OR

I do not know the name of the person who sexually harassed me and can best describe him/her as follows:

_____
_____

I was sexually harassed in the following way(s) (include all relevant dates, times, places, and events, attaching additional pages as necessary):

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Complainant

_____
Signature

_____
Date

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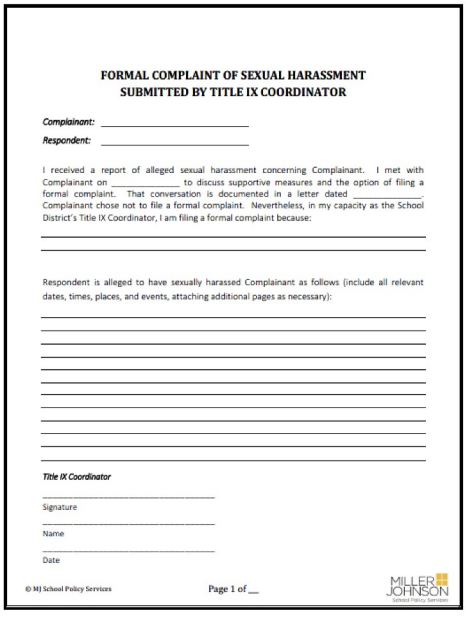

FORMAL COMPLAINT OF SEXUAL HARASSMENT
SUBMITTED BY TITLE IX COORDINATOR

Complainant: _____

Respondent: _____

I received a report of alleged sexual harassment concerning Complainant. I met with Complainant on _____ to discuss supportive measures and the option of filing a formal complaint. That conversation is documented in a letter dated _____. Complainant chose not to file a formal complaint. Nevertheless, in my capacity as the School District's Title IX Coordinator, I am filing a formal complaint because:

_____
_____

Respondent is alleged to have sexually harassed Complainant as follows (include all relevant dates, times, places, and events, attaching additional pages as necessary):

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Title IX Coordinator

_____
Signature

_____
Name

_____
Date

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Presumption of Innocence

- Respondents are **always** presumed innocent; or, more technically, not responsible for sexual harassment
- Respondents may not be sanctioned unless and until an investigation is completed and a final decision rendered
- **Why?**

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Notice

- The Title IX Coordinator must notify Complainant and Respondent, in writing, when a formal complaint is filed
- Notice to Respondent must include:
  - a statement of the allegations in sufficient detail to permit Respondent to prepare a response
  - a statement Respondent is presumed not responsible until a final decision is rendered
  - the parties' right to inspect the formal complaint and all relevant evidence
  - the parties' right to be represented by an advisor, who may be an attorney
  - any provision of the Student Code of Conduct prohibiting false statements or representations
- Supplemental notice must be provided if new allegations arise during the course of the investigation
- Notice forms *[see next slide]*

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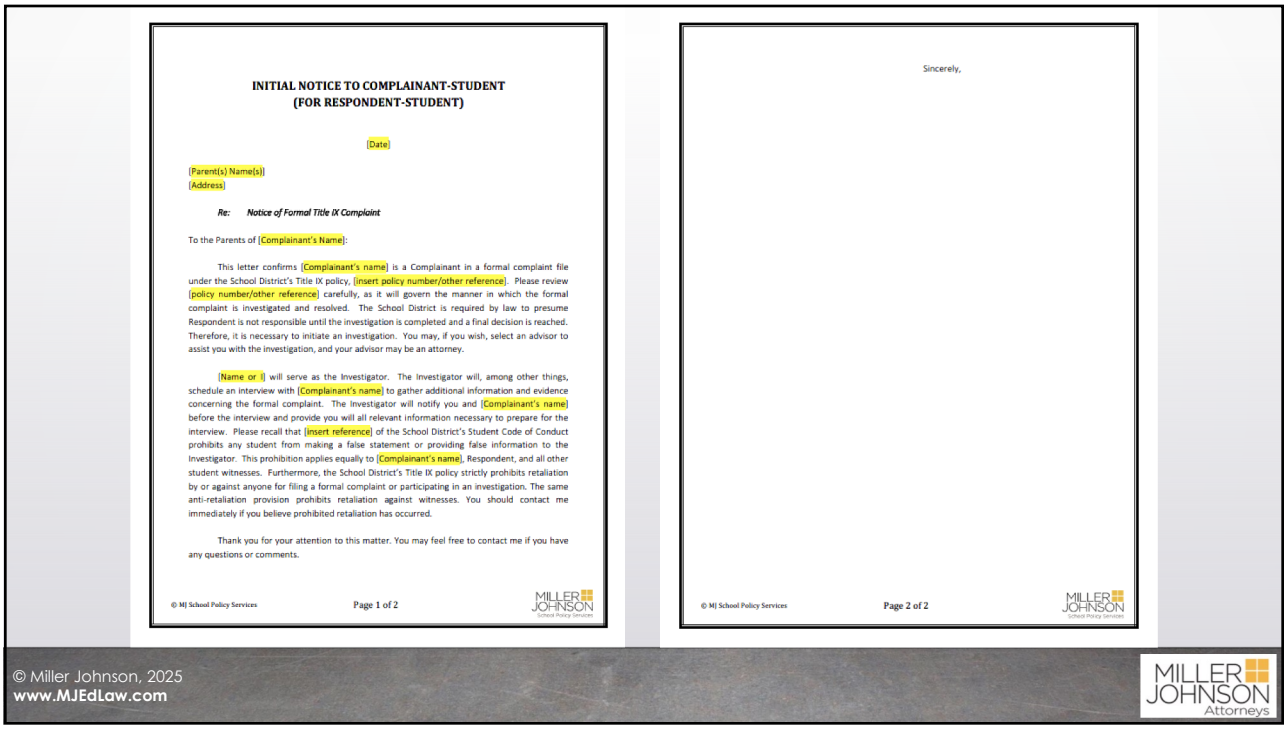

INITIAL NOTICE TO COMPLAINANT-STUDENT
(FOR RESPONDENT-STUDENT)

[Date]

[Parent(s) Name(s)]
[Address]

Re: ***Notice of Formal Title IX Complaint***

To the Parents of [Complainant's Name]:

This letter confirms [Complainant's name] is a Complainant in a formal complaint file under the School District's Title IX policy, [insert policy number/other reference]. Please review [policy number/other reference] carefully, as it will govern the manner in which the formal complaint is investigated and resolved. The School District is required by law to presume Respondent is not responsible until the investigation is completed and a final decision is reached. Therefore, it is necessary to initiate an investigation. You may, if you wish, select an advisor to assist you with the investigation, and your advisor may be an attorney.

[Name or I] will serve as the Investigator. The Investigator will, among other things, schedule an interview with [Complainant's name] to gather additional information and evidence concerning the formal complaint. The Investigator will notify you and [Complainant's name] before the interview and provide you will all relevant information necessary to prepare for the interview. Please recall that [insert reference] of the School District's Student Code of Conduct prohibits any student from making a false statement or providing false information to the Investigator. This prohibition applies equally to [Complainant's name], Respondent, and all other student witnesses. Furthermore, the School District's Title IX policy strictly prohibits retaliation by or against anyone for filing a formal complaint or participating in an investigation. The same anti-retaliation provision prohibits retaliation against witnesses. You should contact me immediately if you believe prohibited retaliation has occurred.

Thank you for your attention to this matter. You may feel free to contact me if you have any questions or comments.

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Sincerely,

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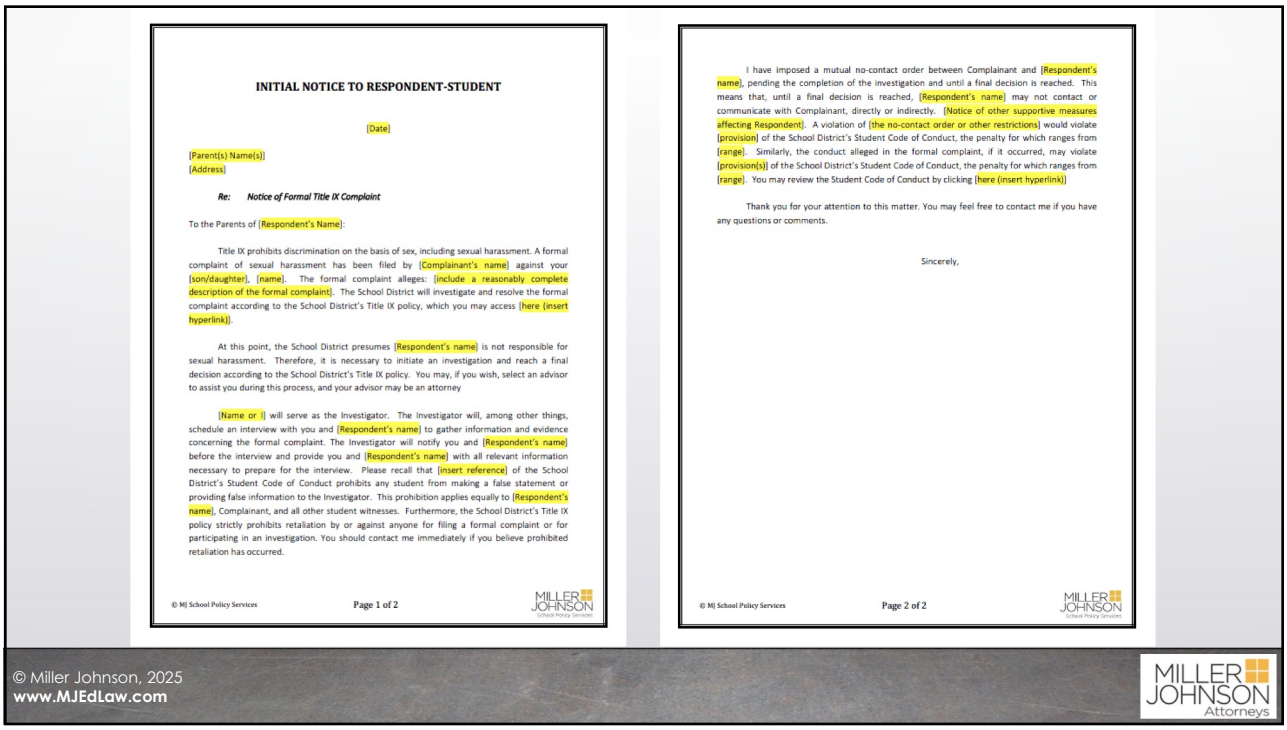

INITIAL NOTICE TO RESPONDENT-STUDENT

[Date]

[Parent(s) Name(s)]
[Address]

Re: ***Notice of Formal Title IX Complaint***

To the Parents of [Respondent's Name]:

Title IX prohibits discrimination on the basis of sex, including sexual harassment. A formal complaint of sexual harassment has been filed by [Complainant's name] against your [son/daughter], [name]. The formal complaint alleges: [include a reasonably complete description of the formal complaint]. The School District will investigate and resolve the formal complaint according to the School District's Title IX policy, which you may access [here (insert hyperlink)].

At this point, the School District presumes [Respondent's name] is not responsible for sexual harassment. Therefore, it is necessary to initiate an investigation and reach a final decision according to the School District's Title IX policy. You may, if you wish, select an advisor to assist you during this process, and your advisor may be an attorney

[Name or I] will serve as the Investigator. The Investigator will, among other things, schedule an interview with you and [Respondent's name] to gather information and evidence concerning the formal complaint. The Investigator will notify you and [Respondent's name] before the interview and provide you and [Respondent's name] with all relevant information necessary to prepare for the interview. Please recall that [insert reference] of the School District's Student Code of Conduct prohibits any student from making a false statement or providing false information to the Investigator. This prohibition applies equally to [Respondent's name], Complainant, and all other student witnesses. Furthermore, the School District's Title IX policy strictly prohibits retaliation by or against anyone for filing a formal complaint or for participating in an investigation. You should contact me immediately if you believe prohibited retaliation has occurred.

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I have imposed a mutual no-contact order between Complainant and [Respondent's name], pending the completion of the investigation and until a final decision is reached. This means that, until a final decision is reached, [Respondent's name] may not contact or communicate with Complainant, directly or indirectly. [Notice of other supportive measures affecting Respondent]. A violation of [the no-contact order or other restrictions] would violate [provision] of the School District's Student Code of Conduct, the penalty for which ranges from [range]. Similarly, the conduct alleged in the formal complaint, if it occurred, may violate [provision(s)] of the School District's Student Code of Conduct, the penalty for which ranges from [range]. You may review the Student Code of Conduct by clicking [here (insert hyperlink)]

Thank you for your attention to this matter. You may feel free to contact me if you have any questions or comments.

Sincerely,

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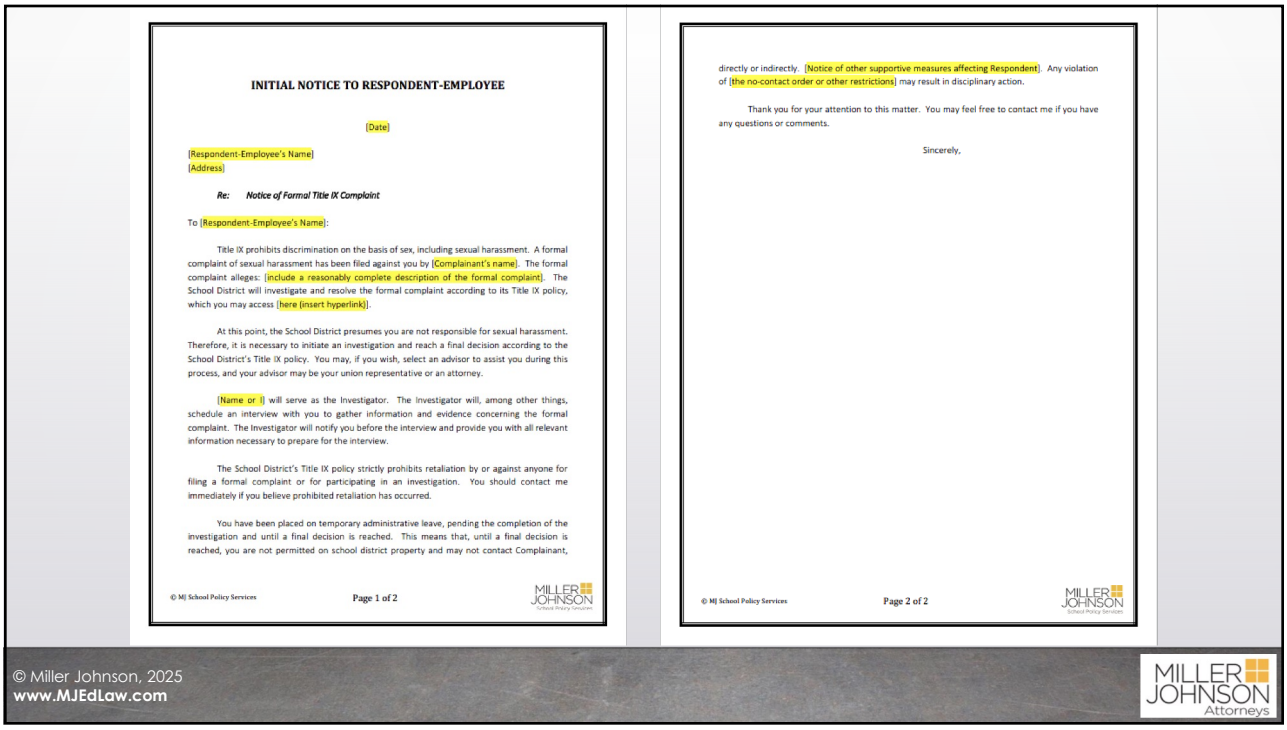

INITIAL NOTICE TO RESPONDENT-EMPLOYEE

[Date]

[Respondent-Employee's Name]
[Address]

Re: Notice of Formal Title IX Complaint

To [Respondent-Employee's Name]:

Title IX prohibits discrimination on the basis of sex, including sexual harassment. A formal complaint of sexual harassment has been filed against you by [Complainant's name]. The formal complaint alleges: [include a reasonably complete description of the formal complaint]. The School District will investigate and resolve the formal complaint according to its Title IX policy, which you may access [here (insert hyperlink)].

At this point, the School District presumes you are not responsible for sexual harassment. Therefore, it is necessary to initiate an investigation and reach a final decision according to the School District's Title IX policy. You may, if you wish, select an advisor to assist you during this process, and your advisor may be your union representative or an attorney.

[Name or I] will serve as the Investigator. The Investigator will, among other things, schedule an interview with you to gather information and evidence concerning the formal complaint. The Investigator will notify you before the interview and provide you with all relevant information necessary to prepare for the interview.

The School District's Title IX policy strictly prohibits retaliation by or against anyone for filing a formal complaint or for participating in an investigation. You should contact me immediately if you believe prohibited retaliation has occurred.

You have been placed on temporary administrative leave, pending the completion of the investigation and until a final decision is reached. This means that, until a final decision is reached, you are not permitted on school district property and may not contact Complainant,

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directly or indirectly. [Notice of other supportive measures affecting Respondent]. Any violation of [the no-contact order or other restrictions] may result in disciplinary action.

Thank you for your attention to this matter. You may feel free to contact me if you have any questions or comments.

Sincerely,

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Dismissals

- The Title IX Coordinator ***must*** dismiss a formal complaint if:
  - The allegations do not establish sexual harassment even if they are true
  - The allegations did not occur in connection with the school district's programs or services
  - The allegations did not occur in the United States
  - Need to document basis for dismissal
- The Title IX Coordinator ***may*** dismiss a formal complaint if:
  - Respondent's employment with or enrollment in the school district ends
  - Specific circumstances prevent the school district from gathering sufficient relevant evidence to reach a final decision (e.g., passage of time, unavailability of witnesses or other information)

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Informal Resolution

- Once a formal complaint is filed, the school district may not informally resolve allegations of sexual harassment unless:
  - Complainant and Respondent have been advised of their rights and the circumstances in which informal resolution may preclude resumption of a formal complaint investigation
  - Complainant and Respondent have voluntarily consented to informal resolution, in writing
- Informal resolution may consist of the following, as well as other informal resolution procedures:
  - A written agreement, facilitated by the Title IX Coordinator or others
  - Restorative practices, See, e.g., MCL 380.1310c
  - Facilitated mediation
  - Arbitration, etc.
- **Not available in staff-student situations**
- Example letters [*see next slide*]

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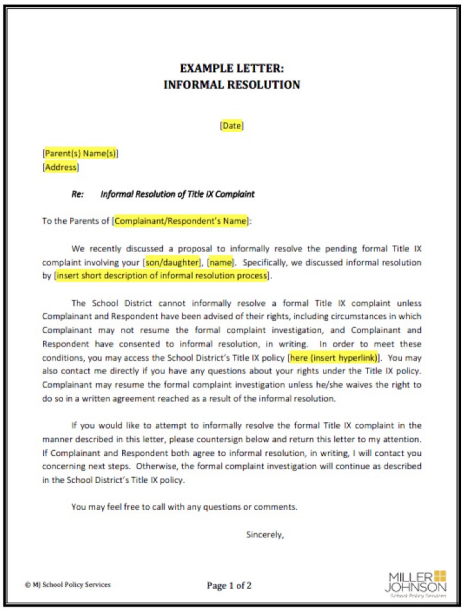

EXAMPLE LETTER:
INFORMAL RESOLUTION

[Date]

[Parent(s) Name(s)]
[Address]

Re: Informal Resolution of Title IX Complaint

To the Parents of [Complainant/Respondent's Name]:

We recently discussed a proposal to informally resolve the pending formal Title IX complaint involving your [son/daughter], [name]. Specifically, we discussed informal resolution by [insert short description of informal resolution process].

The School District cannot informally resolve a formal Title IX complaint unless Complainant and Respondent have been advised of their rights, including circumstances in which Complainant may not resume the formal complaint investigation, and Complainant and Respondent have consented to informal resolution, in writing. In order to meet these conditions, you may access the School District's Title IX policy [here (insert hyperlink)]. You may also contact me directly if you have any questions about your rights under the Title IX policy. Complainant may resume the formal complaint investigation unless he/she waives the right to do so in a written agreement reached as a result of the informal resolution.

If you would like to attempt to informally resolve the formal Title IX complaint in the manner described in this letter, please countersign below and return this letter to my attention. If Complainant and Respondent both agree to informal resolution, in writing, I will contact you concerning next steps. Otherwise, the formal complaint investigation will continue as described in the School District's Title IX policy.

You may feel free to call with any questions or comments.

Sincerely,

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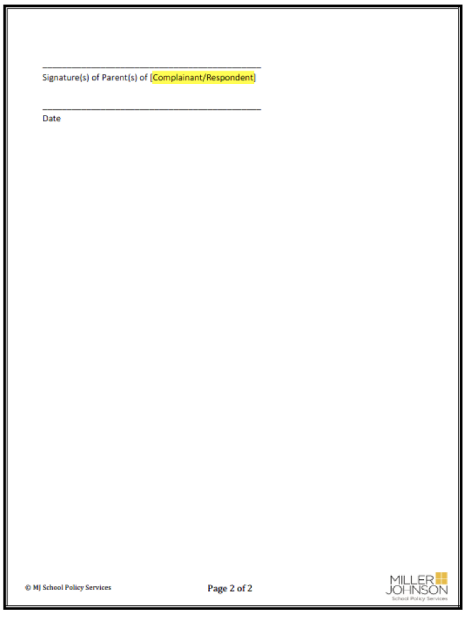

Signature(s) of Parent(s) of [Complainant/Respondent]

Date

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Investigation - Overview

- Appointing the Investigator
- Fairness and Impartiality
- Respondent's Response
- Interviews and Information Gathering
- Distribution of Directly Related Evidence
- The Investigator's Report
- Questions, Responses, and Appeals

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Appointing the Investigator

- The Title IX Coordinator or designee may serve as the Investigator
- Consider the Pros and Cons:
  - The Title IX Coordinator is very familiar with the school district's Title IX policy, the requirements of Title IX, and has training and experience
  - The Title IX Coordinator's role as an impartial investigator may limit his/her ability to empathically support Complainant and Respondent
  - After the parties receive the Title IX Coordinator's investigative report, one or both may not view the Title IX Coordinator as impartial

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Fairness and Impartiality

- Bias
  - The Investigator may not be biased
  - Bias is a predisposition or preconceived opinion that prevents a person from impartially evaluating facts that have been presented for determination; a prejudice
- Presumption of Innocence
  - Until the investigation is completed the Investigator must presume Respondent has not sexually harassed Complainant

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Respondent's Response

- Respondent should be given an opportunity to submit a written response
- Respondent's response may help focus the investigation and highlight or identify relevant witnesses and information
- The School District may not require a response

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Interviews and Information Gathering

- Interviewing Complainant and Respondent
  - Complainant and Respondent should be interviewed in every case
  - The interview must be preceded by written notice the that gives the parties adequate time to prepare for the interview and:
    - identifies the date, time, and place of the interview
    - provides the interviewee with all relevant evidence (redacted per FERPA unless it will impact a party's ability to fairly participate in the process)
    - Example letters [*see next slide*]
  - The Investigator should create a written summary of the interview as soon as practicable

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EXAMPLE LETTER:
INTERVIEW SCHEDULED
(TO STUDENTS)

[Date]

[Parent(s) Name(s)]
[Address]

Re: ***Notice of Investigative Interview***

To the Parents of [Complainant/Respondent's Name]:

The interview of [Complainant/Respondent] has been scheduled on [date] at [time] at [location]. The relevant evidence gathered thus far is enclosed. Please note that any no-contact orders issued during this investigation remain in full force and effect.

You may feel free to call with questions or comments.

Sincerely,

_____
[Name(s) of Parent(s) of Complainant/Respondent]

_____
Signature(s) [of Parents(s) of Complainant/Respondent]

_____
Date

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EXAMPLE LETTER:
INTERVIEW SCHEDULED
(TO EMPLOYEES)

[Date]

[Employee's Name]
[Address]

Re: ***Notice of Investigative Interview***

To [Employee's Name]:

Your interview has been scheduled on [date] at [time] at [location]. The relevant evidence gathered thus far is enclosed. Please note that any no-contact orders issued during this investigation remain in full force and effect.

You may feel free to call with questions or comments.

Sincerely,

_____
[Employee's Name]

_____
Signature

_____
Date

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Interviews and Information Gathering

- Interviewing Witnesses
  - Generally, all identified eye-witnesses should be interviewed
  - Questioning should cover the allegations, relationship to the parties, and the identification of other witnesses and information of which the parties may not be aware
  - The Investigator should create a summary of the interview as soon as practicable
- Securing Data, Documents, and Other Information

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Interviews and Information Gathering

- "Directly Related Evidence"
  - Provide both parties an equal opportunity to inspect and review any evidence obtained that is directly related to the allegations, including the evidence on which the recipient does not intend to rely in reaching a determination regarding responsibility
  - The parties have 10 days to review it and provide feedback before an investigative report can be issued

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Interviews and Information Gathering (cont.)

- Relevant Evidence
  - Title IX does not assume Investigators will apply the Rules of Evidence like lawyers in a trial
  - Investigators should consider information "relevant" if it makes the existence of an allegation, or a response to an allegation, more or less likely
  - Included as part of DRE
- Rape-Shield
  - Information about the sexual behavior or proclivities of Complainant is not relevant, by definition, unless it is about Complainant's sexual behavior with Respondent to prove consent
- Privileged Information
  - The Investigator may not seek, access, or rely on privileged information (e.g., medical records) without a party's written consent

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The Investigative Report

- The Investigator must complete an investigative report within the timeline specified in the school district's Title IX policy
- The Title IX Coordinator may grant extensions (adjournments) for good cause
- The investigative report must fairly summarize the relevant evidence
- The Investigator may resolve credibility issues, but should fairly summarize information that may bear on the Decision-Maker's resolution of credibility issues so D-M can make own judgment

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Delivery of Investigative Report

- The Investigator must deliver the following documents to the Title IX Coordinator and simultaneously to the parties within the time specified in the District's Title IX policy
  - A cover letter – Example [*see next slide*]
  - The investigative report
  - Witness summaries (part of DRE)
  - Other relevant information

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EXAMPLE LETTER:
TRANSMITTAL OF INVESTIGATIVE REPORT
(TO STUDENTS)

[Date]

[Parent(s) Name(s)]
[Address]

Re: ***Investigative Report***

To the Parents of [Complainant/Respondent's Name]:

I have enclosed the Investigator's investigative report. I have also enclosed the Investigator's summaries of the interviews of all witnesses, including Complainant and Respondent, and other relevant evidence. The School District considers the investigative report, interview summaries, and other relevant evidence private and confidential. Any disclosure of these documents by you, [Complainant/Respondent's name], or your advisor may result in legal consequences, including: disciplinary charges; allegations or claims of retaliation under the School District's Title IX policy; adverse inferences in this investigation; or, civil actions.

You may file a written response to the investigative report within seven (7) school days or ten (10) calendar days. You may also, if you wish, submit written questions for the Investigator to pose to the opposite party or any witness. The Investigator will either pose the question and provide you with a written response or explain why he/she declined to pose the question.

You may feel free to call with questions or comments

Sincerely,

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EXAMPLE LETTER:
TRANSMITTAL OF INVESTIGATIVE REPORT
(TO EMPLOYEES)

[Date]

[Employee's Name]
[Address]

Re: ***Investigative Report***

To [Employee's Name]:

I have enclosed the Investigator's investigative report. I have also enclosed the Investigator's summaries of the interviews of all witnesses, including Complainant and Respondent, and other relevant evidence. The School District considers the investigative report, interview summaries, and other relevant evidence private and confidential. Any disclosure of these documents by you or your advisor may result in legal consequences, including: disciplinary charges; allegations or claims of retaliation under the School District's Title IX policy; adverse inferences in this investigation; or, civil actions.

You may file a written response to the investigative report within seven (7) school days or ten (10) calendar days. You may also, if you wish, submit written questions for the Investigator to pose to the opposite party or any witness. The Investigator will either pose the question and provide you with a written response or explain why he/she declined to pose the question.

You may feel free to call with questions or comments

Sincerely,

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Parties' Questions and Responses

- The parties, after receiving the investigative report, may submit written questions to the opposite party or witnesses and may, within the time permitted by the school district's Title IX policy, file a response
- Generally, the Decision-Maker should submit written questions and provide responses. If the Decision-Maker declines to submit a question, he/she must notify the party who submitted it with an explanation

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The Decision-Maker

- The Decision-Maker determines whether Respondent sexually harassed Complainant.
- The Decision-Maker ***may not*** be the Title IX Coordinator or the Investigator
- The Decision-Maker:
  - Reviews all of the information collected during the investigation
  - Issues a decision concluding Respondent is or is not responsible for sexual harassment in violation of Title IX

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Decision – Standard of Proof

- The standard of evidence may be "**a preponderance of the evidence**" or "**clear and convincing evidence**"
- Proof by a "**preponderance of the evidence**" means the evidence on one side of a question is more convincing than the evidence on the other side
  - This concept must be distinguished from the quantity of the evidence
  - In other words, for a variety of reasons, one witness may be more convincing than two others
- "**Clear and convincing evidence**" is a higher standard of proof
  - Evidence is "clear and convincing" if the evidence on one side of a question is highly and substantially more probable than the evidence on the other side

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Decision - Credibility

- Credibility determinations may be based on a variety of factors, including:
  - Ability and capability to observe
  - Consistency with other known facts
  - Consistency over time
  - Relationship to parties
  - Others
- The Decision-Maker may not make credibility determinations based on a person's status as a Complainant or Respondent

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Decision-Maker's Report

- Required Components
- The Decision-Maker's Report **must** be delivered to the parties and the Title IX Coordinator
  - Complainant's allegations
  - Procedural steps taken to resolve allegations
  - Site visits, or other methods used to gather evidence
  - Findings of fact
  - The application of the school district's Title IX policy and the school district's student code of conduct
  - A statement of and rationale for the result as to each allegation; including determinations of responsibility, disciplinary sanctions, whether Complainant will be provided remedies to restore or preserve his/her equal access to the school district's education programs and activities, and the procedure and bases for appeal

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Appeals

- Complainant or Respondent may appeal the Decision-Maker's Decision
- Bases for Appeal:
  - Procedural irregularity affecting the outcome
  - Decision-Maker not aware of newly discovered evidence
  - Bias or conflict of interest on the part of the Investigator or Decision-Maker
    - How shown?

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Resolving Appeals

- Appellate Officer must:
  - Review the appeal
  - Determine whether the appeal implicates one or more the bases for appeal
- If not, the appeal should be denied
- If so, the Appellate Officer must:
  - Review the entire record
  - Decide whether to grant the appeal, in whole or in part
  - Affirm or reverse the Decision, in whole or in part
  - If necessary, remand the Decision to the Investigator or Decision-Maker for further action
- Decision are not final until the appeal process is over or the time for taking an appeal has passed with no appeal

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Retaliation

- Retaliation is broadly prohibited by the new regulations
- "**For the purpose of interfering with Title IX rights**" or "**because the person has participated or refused to participate in any manner in a proceeding under Title IX regulations**"
- Charges against an individual for SCC violations not involving sex discrimination or sexual harassment, but arising out of the same facts or circumstances, constitute retaliation IF the purpose is to interfere with any right or privilege secured by Title IX

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Recordkeeping

- Records related to alleged sexual harassment must be maintained for a **minimum of seven (7) years**
  - *All* records … investigation records, disciplinary sanctions, remedies, appeals, supportive measures, etc.
- Must document:
  - Why response was not deliberately indifferent
  - Measures were taken to restore or preserve equal access to educational program or activity
  - If no supportive measures provided, why that was not deliberately indifferent

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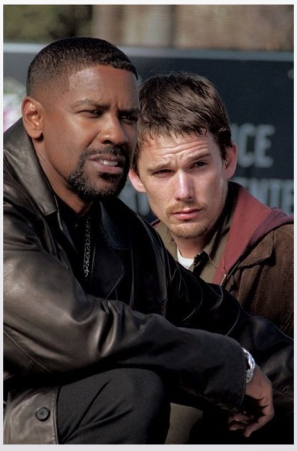
Training

- Required for ALL staff (to identify and report sexual harassment)
- Required for Title IX Coordinator, investigators, and decision-makers (both initial and appeal)
- Maintain records for seven (7) years and **post training materials on website****
  - Attorney copyright considerations



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IX Things to Remember

- New Vocabulary: Complainant / Respondent
- Title IX Coordinator – Make it Official
- Posting of Info on Website / Distribution to Community
- **Development of Grievance Process**
- Single Investigator Model No Longer Works
- Training … for Everyone
- Report to Any Employee is Actual Knowledge
- Appeals … for everything
- Maintain Records for 7 Years

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Questions / Discussion

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Thank You!

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