

Title IX Investigator Training 2025-2026 school year

**Galena Park ISD
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Title IX

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



How Title IX is Enforced

Two avenues for enforcement:

- **Administrative**
 - ❖ The U.S. Department of Education Office for Civil Rights (OCR) has jurisdiction over public school districts to investigate and review complaints under Title IX
 - ❖ Failure to comply may result in loss of federal funding
- **Litigation**
 - ❖ May result in money damages
 - ❖ Not required to file OCR complaint first

Three Key Inquiries

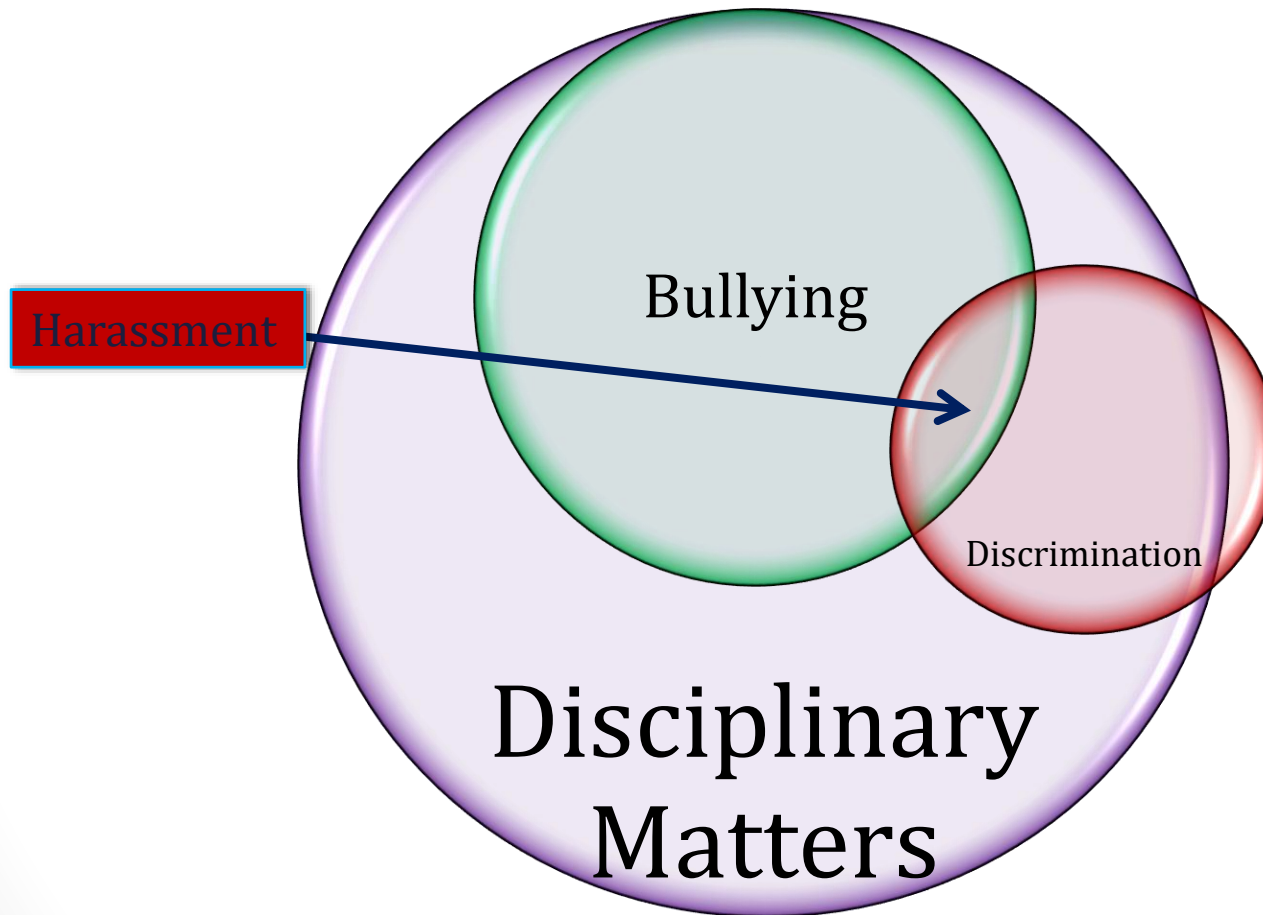
- What conduct is covered by Title IX?
- What triggers an institution's obligation to respond to an allegation of sexual harassment?
- What must that response entail?

What Issues Fall Under Title IX

“ . . . on the basis of sex . . . ”

- Sex discrimination
- Gender-based discrimination
- Gender-based harassment
- Gender-based bullying
- Gender-based assault
- Sexual harassment
- Sexual assault
- Domestic violence
- Dating violence
- Stalking
- Retaliation

Harassment v. Discrimination v. Bullying v. Discipline



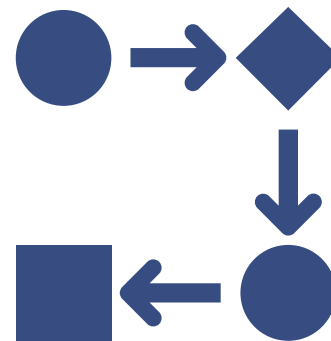
Overview of 2020 Regulations

- Effective August 14, 2020
- Defines sexual harassment and scope of Title IX protections
- Adopts deliberate indifference to actual knowledge of sexual harassment standard
- Adds that knowledge of any school district employee can trigger a duty to respond
- Discusses formal/informal complaints



Overview of 2020 Regulations

- Discusses the procedures schools must have to respond to reports
 - ❖ Supportive measures
 - ❖ Process for emergency removal, if applicable
- Discusses procedures schools must have for due process
 - ❖ Investigation
 - ❖ Grievance process
 - ❖ Appeals process



Overview of 2020 Regulations

- Further defines role of Title IX Coordinator
- Provides role for investigator, decisionmaker, facilitator, and person reviewing any appeal
- Identifies policies school districts must implement
- Discusses written notices schools must provide
- Provides training schools must provide to personnel involved in the Title IX complaint process
- Includes specific anti-retaliation provisions with a complaint process for any retaliation

The Rationale for the Grievance Process

- The 2020 Title IX regulations require schools to investigate and adjudicate formal complaints of sexual harassment using a grievance process that incorporates **due process principles**, treats all parties fairly, and reaches reliable responsibility determinations.
- Schools must follow a grievance process that complies with Title IX regulations **before** the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent.

Many District Staff Members Will Be Involved



Title IX Coordinator



Investigator



Decision-maker



Appeal Officer



Informal Resolution Facilitator



Hearing Advisors (if live hearings are utilized)

Training

Requires specific training for personnel involved
in the Title IX complaint process



How to Serve Impartially

- The 2020 Title IX regulations require that any individual involved in the Title IX process -- Title IX Coordinator, investigator, decisionmaker, appellate decisionmaker, or informal resolution facilitator -- not have a **conflict of interest** or **bias** for or against complainants or respondents generally or an individual complainant or respondent.



Impartiality

- All Title IX personnel must avoid:
 - Prejudgment of the facts
 - Conflict of interest
 - Bias



Avoiding Prejudgment

Definition of prejudgment

- “To judge before hearing or before full and sufficient examination”
- “[A]n opinion about a situation of a person that is formed before knowing or considering all of the facts.” – Cambridge Dictionary

Synonyms – Merriam-Webster

- Preconception
- Assumption
- Presumption/presupposition
- Speculation



Avoiding Prejudgment

Ways to Avoid Prejudgment:

- Remember: anyone can be a Complainant, and anyone can be a Respondent (don't pre-judge)
- Full and fair consideration of the allegations
- Full and fair investigation of the allegations and the evidence
- Full and fair consideration of the facts and the evidence
- Maintain the presumption that the Respondent is not responsible



Conflicts of Interest

Definition of conflict of interest

- “A situation in which the concerns or aims of two different parties are **incompatible**.”
- A conflict of interest arises when what is in a person’s best interest is not in the best interest of another person or organization to which that individual owes loyalty.”

<https://ethicsunwrapped.utexas.edu/glossary/conflict-of-interest>



Conflicts of Interest

Identifying relationships that raise a conflict of interest

- Family
 - Within the first degree of consanguinity or affinity
 - Parent, child and spouse
- Workplace
 - Manager-employee
- Personal
 - Significant other
 - Friend



Conflicts of Interest

Criteria for assessing and detecting conflicts of interest

- What is the scope of the relationship?
- What are the competing interests?
- Can I act with total objectivity with regard to the interests?

****Also applies to the appearance of potential conflicts of interest****



Conflicts of Interest

How to remedy conflicts of interest

- Disclosure
 - To supervisor
- Recusal
 - Evaluate necessity
 - Err on side of caution to avoid even the appearance of impropriety
- Mitigation



Bias

Definition of bias

- “[A]n inclination of temperament or outlook, especially: a personal and sometimes unreasonable judgment.”
- “[T]o give a settled and often prejudiced outlook to...his background biases him against foreigners.”

Merrian-Webster

Synonyms – nonobjectivity, one-sidedness, partiality, partisanship, prejudice



Bias

- Under the commentary regarding the Title IX regulations, this includes bias against an individual's:
 - Sex
 - Race
 - Ethnicity
 - Sexual orientation
 - Gender identity
 - Disability
 - Immigration status
 - Financial ability
 - Other characteristic



Bias

- Recognize bias
- Ensure bias does not affect review or consideration of facts or evidence
 - For or against Complainants, generally
 - For or against Respondents, generally
 - For or against a particular Complainant
 - For or against a particular Respondent
- Leave any of your own biases out of the investigation before you begin
- The Investigator must remain neutral



Ensuring the Investigation is Impartial

- Conduct self-reflection and be honest with yourself
- In instances where you do not believe you can remain impartial, disclose this and allow someone else to conduct the investigation or engage in this role, in the particular case



Important Terms in the Title IX Grievance Process

- **Complainant:** The alleged victim of the conduct that could constitute sexual harassment
 - The Complainant is always the victim, even if the report was made by a parent/guardian, third party, or signed by the Title IX Coordinator
- **Respondent:** The individual reported to be the perpetrator of the conduct that could constitute sexual harassment
 - Required to call the accused the “Respondent”
- **Formal Complaint:** Written and signed document containing the allegations of sexual harassment



Sexual Harassment Defined

1) Quid Pro Quo

- ❖ A **school employee** conditioning an educational benefit or service on an individual's participation in unwelcome sexual conduct

2) Hostile environment

- ❖ 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 school's educational program or activity

3) Sexual assault, dating violence, domestic violence, or stalking as defined under the Clery Act and the Violence Against Women Act

Sexual Harassment: Hostile Environment

Several factors are considered:

- the degree to which the conduct affected the student's education
- the type, frequency, and duration of the conduct
- the relationship between the victim and the participant
- the number of individuals involved
- the age and sex of the participants
- size of school, location of incidents, and context
- other incidents of sex-based harassment

Sexual Harassment: Hostile Environment

- Must be based on sex
- Must be severe and pervasive and objectively offensive
 - ❖ Severe – nature of the harassment
 - ❖ Pervasive – frequency of the harassment and length of time over which it has occurred
 - ❖ Objectively offensive – reasonable person standard
- Must deprive of educational opportunities
- An isolated incident, if severe, can be sufficient

Sexual Violence Defined Under Federal Law

- Sexual assault
 - Defined in Clery Act
- Dating violence
- Domestic violence
- Stalking
 - Defined in Violence Against Women Act (VAWA)



“Sexual assault” under the Clery Act:

- “An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation” 20 U.S.C. § 1092(f)(6)(A)(v)
- Includes:
 - Rape
 - Fondling
 - Statutory Rape
- Does not require an element of physical force, but turns on lack of consent of the victim



NO
MEANS
NO

“Dating violence” under VAWA:

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim
- The existence of a relationship is determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship

34 U.S.C. § 12291(10)



“Domestic violence” under VAWA

- A felony or misdemeanor crime of violence committed by:
 - A current or former spouse or intimate partner of the complainant,
 - A person with whom the complainant shares a child in common,
 - A person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner,
 - A person similarly situated to a spouse of the complainant under the domestic or family violence laws of the jurisdiction receiving grant monies, or
- Any person against a complainant who is protected from that other person’s acts under the domestic or family violence laws of the jurisdiction

34 U.S.C. § 12291(8)



“Stalking” under VAWA

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for his or her safety or the safety of others or;
- Suffer substantial emotional distress

34 U.S.C. § 12291(30)



Severe, Pervasive, and Objectively Offensive

Sanches v. Carrollton-Farmers Branch Indep. Sch. Dist., 647 F.3d 156 (5th Cir. 2011)

- Sanches alleged that J.H. started harassing her because she was dating J.H.'s former boyfriend, C.P.
- J.H. allegedly called Sanches a “ho” and said she “would beat her ass if it weren’t for cheerleading.” J.H. also started a rumor that Sanches “had a hickey on her boob.”
- J.H. “cornered” Sanches in the hallway during a passing period, “told [her] that she [J.H.] was having sex with [C.P.],” and “physically touched her by wiping the tears from [Sanches’s] eyes.”
- J.H. slapped C.P.’s buttock as she walked by Sanches and C.P. and stated that “your ass is so cute and you and [Sanches] are so cute!”

Severe, Pervasive, and Objectively Offensive

Sanches v. Carrollton-Farmers Branch Indep. Sch. Dist., 647 F.3d 156 (5th Cir. 2011)

“Reduced to its essentials, this is nothing more than a dispute fueled by a disgruntled cheerleader mom, over whether her daughter should have made the squad. It’s a petty squabble, masquerading as a civil rights matter.”



Severe, Pervasive, and Objectively Offensive

Sanches v. Carrollton-Farmers Branch Indep. Sch. Dist., 647 F.3d 156 (5th Cir. 2011)

- Sanches's mother complained to the school about J.H.
- Meanwhile, J.H.'s parents complained about Sanches and her mother harassing J.H. They alleged that the administration was unfairly "allow[ing] one parent to drive an entire program..." The school attempted to investigate all the complaints.
- In rejecting the student's Title IX claim, the court wrote: "Dating and relationships are an inescapable part of high school, as is the resulting stress. It is a trying time for young people who experience a wide range of emotions and often lack the skills to control them. J.H. was acting like a typical high-school whose ex-boyfriend began dating a younger cheerleader."

Severe, Pervasive, and Objectively Offensive

Carmichael v. Galbraith, 574 F. App'x 286 (5th Cir., June 19, 2014)

- The plaintiffs' 13-year-old son killed himself after allegedly being bullied by his fellow students.
- “Jon was accosted by a group of boys in the locker room—oftentimes having his underwear removed—while Defendant Watts observed.” Members of the football team allegedly “stripped [Jon] nude and tied him up” and “placed [Jon] into a trash can” while calling him “fag,” “queer,” and “homo.” One student “videotaped the attack and uploaded it to YouTube.”
- The harassment was, according to the complaint, “based on gender or gender-based stereotypes.”
- The court wrote that the “removal of a person’s underwear without their consent on numerous occasions plausibly constitutes pervasive harassment of a sexual character.”

What Triggers A Need to Respond?

A school must respond **promptly** when it has:



- ✓ actual knowledge
- ✓ of sexual harassment
- ✓ that occurred within the school's educational program or activity
- ✓ against a person in the United States

*A school must respond when it has **actual knowledge** of sexual harassment that occurred within the school's educational program or activity against a person in the United States*

Actual knowledge means notice of sexual harassment or allegations of sexual harassment by **any employee** of an elementary and secondary school.

“In elementary and secondary schools telling **any** school employee always puts the school on notice.”

- OCR Webinar on New Title IX Regulations (emphasis in original)



A school must respond when it has actual knowledge of sexual harassment that occurred
within the school's educational program or activity
against a person in the United States

- The sexual harassment must occur **within the school's program or activity** (on or off campus)
 - ❖ This “includes locations, events, or circumstances over which the recipient exercised **substantial control over both the respondent and the context** in which the sexual harassment occurs.”
- The harassment must have been perpetrated against a person **in the United States**

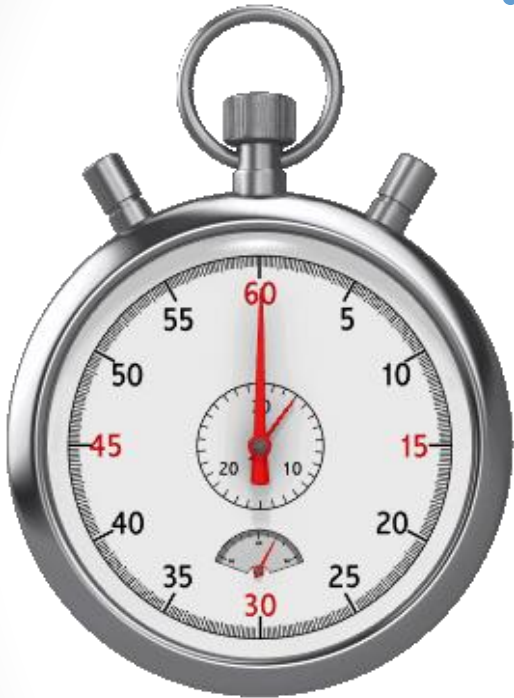


Educational Programs and Activities

“...under any education program or activity...”

- Institution must have **substantial control** over the **respondent and context** of the harassment
- Context:
 - ❖ Off-campus conduct not categorically excluded; fact specific and case-by-case basis
 - ❖ Did the school promote or sponsor the event?

School District's Response



- Must respond in a manner that is **not “deliberately indifferent”**
 - ❖ The school cannot act in a manner that is clearly unreasonable in light of the known circumstances
 - ❖ The response must be **prompt**, even if the student delayed in bringing forth his or her complaint

School District's Response

- Once the school knows about the sexual harassment, the Title IX Coordinator must contact the complainant (victim) to provide information regarding:
 - ❖ Supportive measures
 - ❖ Right to file a complaint
 - ❖ How to file a formal complaint
- A Title IX Coordinator must engage in such outreach even if no formal complaint has been filed by anyone

Supportive Measures

- During the grievance process, the school must ensure supportive measures are offered to both the Complainant **and** the Respondent
 - ☐ Free, individualized services designed to restore or preserve an individual's equal access to education, to protect the individual's safety, or deter further sexual harassment
 - ☐ Cannot be punitive or disciplinary
- The measures should not unreasonably burden another person
- The measures should be kept confidential
- Title IX Coordinator is responsible for implementing the supportive measures

Supportive Measures

- Examples:
 - ❖ **Counseling** (to both parties),
 - ❖ extensions of deadlines or other course-related adjustments,
 - ❖ modifications of work or class schedules,
 - ❖ campus escort services,
 - ❖ **mutual restrictions on contact between the parties,**
 - ❖ leaves of absence, and
 - ❖ increased security and monitoring of certain areas of the campus.



Supportive Measures

The courts have held that schools have a duty to evaluate whether their efforts to stop ongoing harassment are ineffective, and potentially increase the severity of the measures they have put in place or take new measures to avoid new liability.

Patterson v. Hudson Area Schs., 551 F.3d 438, 444 (6th Cir. 2009).

Vance v. Spencer Cty. Pub. Sch. Dist., 231 F.3d 253, 262 (6th Cir. 2000).



Emergency Removal / Administrative Leave

- Emergency removal of student
 - ❖ Must conduct an individualized safety and risk assessment
 - ❖ Student is an imminent threat to the physical health or safety of another student or individual arising from the allegations of sexual harassment
 - ❖ Provide notice and immediate opportunity to challenge the decision
- Administrative leave for employees during investigation is permitted
 - ❖ Follow state law, Board policy, and normal district procedures

IDEA & Section 504 Implications

- Removal of a student would be a change of placement
-
- MDR requirements and procedural safeguards will be triggered
- Some supportive measures, such as provision of counseling or changes to class schedules, will also implicate placements and services under IDEA and Section 504
- **Bottom line**: ARD/Section 504 Committees will need to be involved from the beginning and the Title IX staff will need to be trained on identifying and address SPED/504 implications

Formal Complaints

- May be made by a complainant (or parent, or legal guardian) or signed by the Title IX Coordinator
 - ❖ Complainant's wishes as to whether to file a formal complaint should be respected unless the Title IX Coordinator determines that initiating an investigation against the complainant's wishes is not clearly unreasonable
- Complainant must be participating in or attempting to participate in the school's education program or activity
- School must have policy regarding how to file a formal complaint and must publish how to file the formal complaint on the district's website

Response to Formal Complaints

- Upon receipt of a formal complaint and prior to any interviews, school must provide the parties written notice of:
 - ❖ The school's grievance process;
 - ❖ The allegations of sexual harassment;
 - ❖ The presumption of innocence;
 - ❖ The right to inspect and review evidence;
 - ❖ The right to have an advisor during the process; and
 - ❖ Any provision in the school's code of conduct that prohibits knowingly making false statements or submitting false information during the grievance process.



Dismissal of Formal Complaints

- The regulations set out **mandatory** and **discretionary** reasons for dismissal of formal complaints.
- Goal: complainants must be empowered with the authority to start an investigation, but OCR cannot require schools to adjudicate misconduct not covered by Title IX or control how such non-Title IX misconduct is handled.



34 C.F.R. § 106.45(b)(3)

Formal Complaints: Dismissal

- **Mandatory Dismissal**
 - ❖ Complaint does not describe conduct that would constitute sexual harassment, as defined, even if proven
 - ❖ The sexual harassment did not occur in the school's education program or activity
 - ❖ The sexual harassment did not occur against a person in the United States

Formal Complaints: Dismissal

- **Permissive/Discretionary Dismissal**
 - ❖ Complainant notifies Title IX Coordinator in writing that he/she wishes to withdraw the formal complaint or some allegations in the complaint
 - ❖ The respondent is no longer enrolled or employed
 - ❖ Circumstances exist that prevent the school from gathering sufficient evidence to reach a determination about the allegations

Formal Complaints: Dismissal

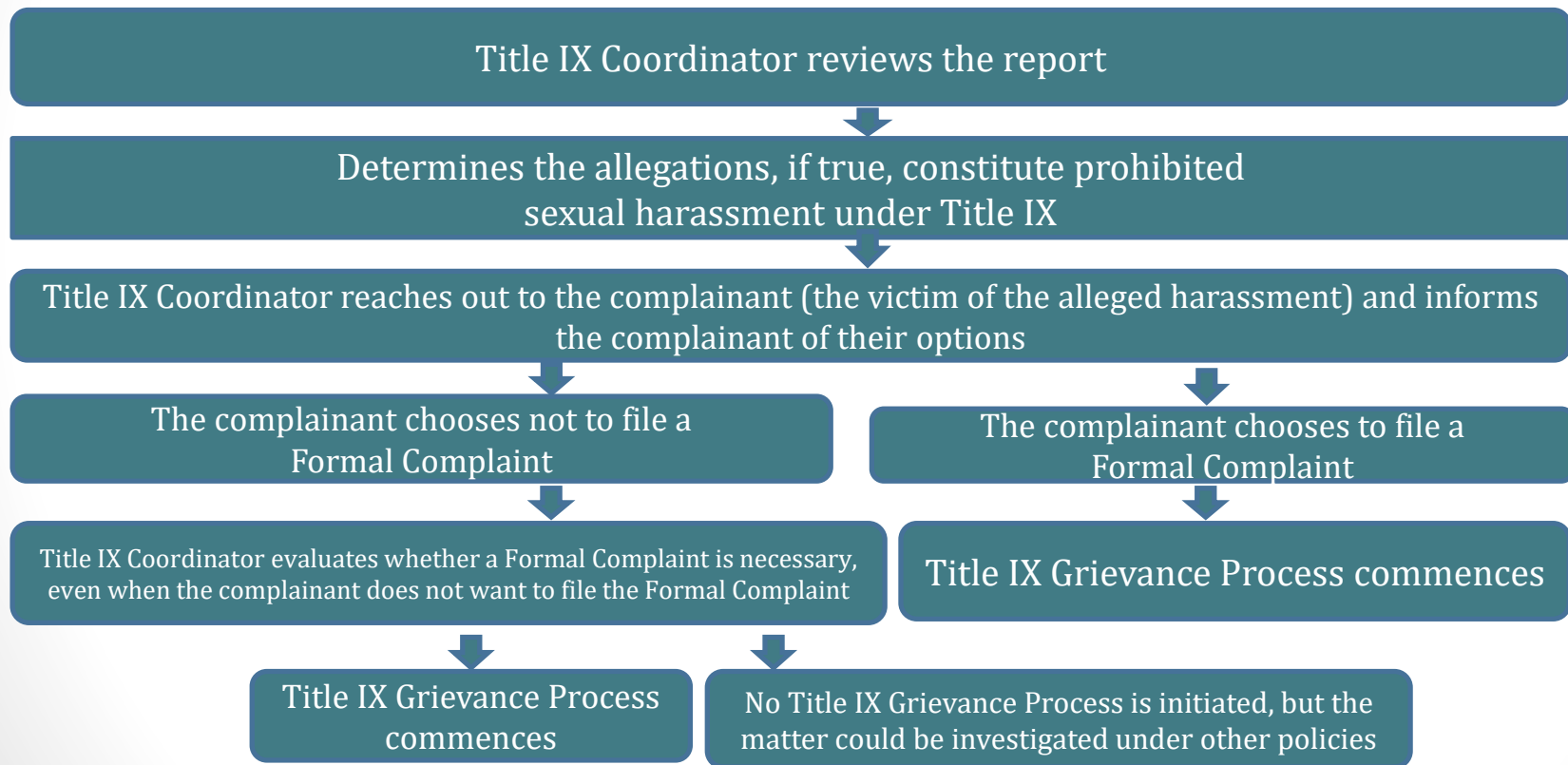
- If the school dismisses the complaint or allegations in the complaint, it must promptly send written notice of the dismissal **and** the reason for the dismissal to all parties
- Any party can appeal the dismissal decision

Formal Complaints: Dismissal

- Even if you dismiss a complaint because it doesn't meet the requirements for **Title IX**, you should consider whether it violates something else, like **the Student Code of Conduct**.



Title IX Complaint Process



The Investigation



Overview of the Investigative Process

- The school district must investigate all Formal Complaints
- Treat the Complainant and Respondent equitably
- The school district must provide equal opportunity to the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence

Overview of the Investigative Process

- The Respondent is **presumed not responsible** at the outset of the investigation
- The Investigators must remain impartial and be free of conflicts of interest or bias
- Consistent investigation process for student-on-student and employee-on-student sexual harassment

Overview of the Investigative Process

- A school cannot restrict the parties' ability to discuss the allegations or gather evidence (i.e. no “gag orders”)
- But confidentiality should be maintained to the greatest extent possible



Right to an Advisor

- The Complainant and Respondent must be given the opportunity to select an advisor of their choice
- The advisor may be present for any meeting or interview during the investigative process
- The school district may establish restrictions regarding the extent to which the advisor may participate in the proceedings if the restrictions are equally applied to both parties
- Advisor may inspect and review the evidence

Investigation Time Frames

- Investigation is conducted within reasonably prompt time frames
 - ☐ Some exceptions due to law enforcement investigations, party or witness absence, or providing language or disability accommodations
- Considerations in developing time frames
 - ☐ Written notice required for any interviews or meetings
 - ☐ Provide party with sufficient time to prepare for interviews
 - ☐ Scope of investigations
 - ☐ Required time for parties to submit written responses to the evidence

Gathering Evidence

- The burden to gather evidence is on the school—not the parties
- After receipt of the Formal Complaint, an investigator should:
 - ☐ Immediately identify and preserve likely sources of evidence
 - ☐ Preserve evidence—locate and take control of the evidence



Relevant evidence

Evidence is relevant if

(a) it has any tendency to make a fact more or less probable than it would be without the evidence, and;

(b) the fact is of consequence in determining the action.

FED. R. EVID. 401



Gathering the Evidence



- No information protected by legal privilege may be used during an investigation unless waived in writing by the person holding the privilege
 - Attorney-Client, Physician/ Psychotherapist-Patient, etc.
 - No questions may be asked about these matters unless privilege is waived

Interviews

- School must provide parties **written notice** of the date, time, location, participants, and purpose of all investigative interviews or other meetings **with sufficient time to prepare**

No more surprise interviews!



Interviews – Rape Shield Protections

- Questions and evidence related to a Complainant's prior sexual history or sexual behavior are **not relevant** and may not be asked/sought
- Exceptions in two narrow circumstances:
 1. The evidence is offered to prove someone other than the respondent committed the alleged sexual harassment
 2. The evidence relates to the sexual behavior between the complainant and respondent and is offered to prove consent
- Except in these two narrow circumstances, do not seek evidence or ask a complainant questions about their prior sexual history or sexual behavior

Interviews

DO	DON'T
Take all allegations and statements seriously	Make credibility determinations based on sex-stereotyping or status in the investigation
Make the employee feel at ease	Create a hostile or unwelcoming environment
Be neutral, objective, and open-minded	Have an agenda
Let the interviewee tell his or her story	Conduct an interrogation
Listen <u>actively</u>	Be a passive interviewer
Be thorough – make sure to elicit all relevant facts	Shy away from asking tough questions
Test the credibility of the statements made during the interview	Conduct the interview without reference to any documentation
Seek information regarding potential justifications/excuses	Rush to judgment
Ask probing questions	Be argumentative or accusatory
Ask all necessary follow-up questions	Do all the talking
Ask for any supporting documentation and/or corroborating witnesses	Be unprepared

Other Legal Considerations

- Student Fifth Amendment Rights – No Right Against Self-Incrimination

- ☐ “District officials may question a student regarding the student's own conduct or the conduct of other students. In the context of school discipline, students may not refuse to answer questions based on a right not to incriminate themselves.”

GPISD Policy FNF (Local)

- ☐ At the same time, “No student shall be required... to submit to a survey, analysis, or evaluation that reveals information concerning the following topics without the prior consent of the student or parent:
 - Sex behavior and attitudes
 - Illegal, anti-social, self-incriminating, and demeaning behavior.”

GPISD Policy FA (Legal)

Investigation – Practical Tips

- Develop an investigation plan. What needs to be investigated? What is the scope?
- Interview the complainant and the respondent.
 - Develop outlines in advance based on available information.
 - Identify relevant documents (e.g., club or class roster).
 - Conduct follow-up interviews as may be appropriate during the investigation.

Investigation – Practical Tips

- Take excellent notes. Use quotation marks to indicate direct quotes. Obtain a written statement from witnesses when possible.
- Avoid developing an email/texting relationship with the reporting party, respondent, or witnesses. Emails should be ministerial (*e.g.*, to schedule a meeting).
- Promptly pull and *save* surveillance video if relevant. Obtain and save copies of electronic evidence as promptly as possible (*e.g.*, text messages, Facebook postings). Take photographs when needed. Do not photograph a victim's injuries without consent.

Investigation – Practical Tips

- Ask open-ended questions, followed by appropriate clarifying questions.
- Ask at the end of the interview: “Is there anything else about this situation that I should know?”
- Invite the individual to contact you with additional information.

Investigation – Practical Tips

- Interview individuals who are likely to have material information. Document efforts to contact witnesses. Interview witnesses one at a time.
- Inform each person interviewed about the policy against retaliation.
- When interviewing third-party witnesses, share the least amount of information possible, and ask non-leading questions.
 - Ex.: “We have a complaint about the lab environment. What can you tell me about the environment in the lab?”

Investigation – Practical Tips

- Ask questions to understand relationships and bias. E.g., “How do you know the reporting party?”
- Withhold judgment until the facts are in. Don’t offer opinions about facts that are shared.
- Don’t ask the complainant and the respondent to contact witnesses themselves...
 - ... but do obtain contact information.

What Do You Do When the Police Show Up and Say “Stop”?



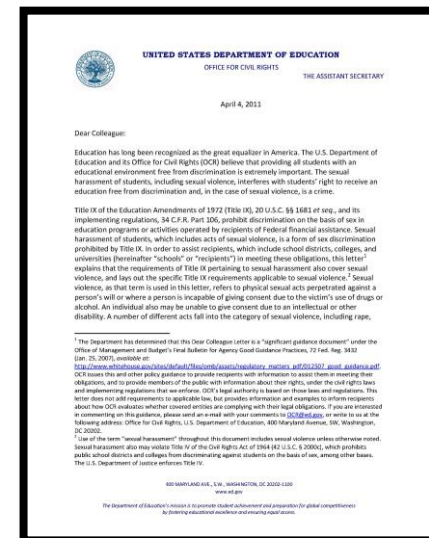
The Old OCR Dilemma....

- “[A] law enforcement investigation does not relieve the school of its independent Title IX obligation to investigate the conduct.” DCL, p. 4.
- “In addition, a criminal investigation into allegations of sexual violence does not relieve the school of its duty under Title IX to resolve complaints promptly and equitably.” DCL, p. 10

Dear Colleague Letter: Sexual Violence 4, Russlynn Ali,
Assistant Sec’y for Civil Rights, Office for Civil Rights,

U.S. Dep’t of Educ. (Apr. 4, 2011),

<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>.



The Police are the Beginning, and Not the End!

“Police investigations may be useful for fact-gathering; but because the standards for criminal investigations are different, police investigations or reports are not determinative of whether sexual harassment or violence violates Title IX. Conduct may constitute unlawful sexual harassment under Title IX even if the police do not have sufficient evidence of a criminal violation.”

2011 DCL Letter, p. 10



What to do When You First Hear from the Police

- Document everything!
- All communications should be in writing (reduce telephone conversations to writing)
- Ask police to put request to delay investigation in writing
- Respond to police agreeing to wait, but noting obligation to conduct Title IX investigation and asking police to notify you ASAP when you can begin your investigation



What to do When You First Hear from the Police



- Provide notice to complainant and respondent that your investigation will be subject to temporary delay or limited extension for good cause, due to concurrent law enforcement activity and at the request of the police
- Implement supportive measures!

Don't Forget About It!!!



Send police
periodic requests
for updates, if
you don't hear
back from them

What to do When the Police Tell You that You May Start Your Investigation

- Determine whether any supportive or interim measures need to be adjusted, changed, etc.
- Determine whether you need to conduct any additional investigation
 - You may have done enough before the police got involved
 - The police may share their information with you, potentially obviating the need for additional investigation



Evaluating the Evidence

- Investigators must objectively evaluate all the evidence
 - ☐ No conflict of interest or bias
 - ☐ Investigation cannot itself discriminate against the Complainant or Respondent on the basis of sex
 - ☐ Respondent maintains the **presumption of not responsible** during the investigation
 - Only at the conclusion of the entire grievance process can a finding of responsibility be made

Evaluating the Evidence

- Investigators must objectively evaluate all the evidence
 - ❑ Credibility determinations cannot be made based on the status as a Complainant, Respondent, or witness
 - Credibility determinations are not made by the investigator—the decision-maker will decide credibility
 - Investigator can include a summary of contradicting evidence and statements for the decision maker

Reviewing the Evidence

- Must provide the parties and advisors an opportunity to inspect and review the evidence
 - Evidence that is directly related to the allegations raised in the Formal Complaint
 - Statements, notes of interviews, and other types of evidence the school plans to use before reaching a determination *and* evidence the school doesn't think it will use
 - Provide the evidence in electronic or hard copy format
- The parties must be given at least **10 days** to review all the evidence and submit written responses about the evidence to the investigator

Considering the Parties' Comments

- The Investigator must consider the parties' response(s) to the evidence:
 - Did either party identify new witnesses who may need to be interviewed, or new evidence that will need to be collected and considered?
 - Did either party raise relevancy concerns about the current evidence?
 - Did either party point out inconsistencies in the evidence?

Drafting the Investigation Report

- Investigator does **not** make a finding of responsible/not responsible
- Must fairly summarize the evidence the school gathered about the alleged sexual harassment incident
 - No length requirement
- Report should show that the investigator considered the parties' written response regarding the evidence, and address whether it comports with or contradicts other evidence

Finalizing the Investigation Report

- Investigator must share the final Investigative Report with both parties and their advisors
- Both parties must be given at least **10 days** to review and submit a written response regarding the investigation report to the decisionmaker before any final determination of responsibility



Investigation Time Frame Example

Week	Su	M	Tu	W	Th	F	Sa
1		Formal Complaint Submitted		Notice to Parties	Determine Scope of Investigation		
2		Gathering Evidence and Interviews					
3		Gathering Evidence and Interviews					
4		Provide Evidence to Parties					
5						Written Response Deadline	
6		Receive and consider written responses to the evidence.		Issue Investigative Report			

Recordkeeping

Must retain records for **seven** years.
Records must include:

- ❖ Final determination;
- ❖ Any audio/visual records or transcripts;
- ❖ Supportive measures taken or reason for no supportive measures;
- ❖ Sanctions imposed;
- ❖ Remedies provided;
- ❖ Appeal and result;
- ❖ Informal resolution and result;
- ❖ All training materials; and
- ❖ The basis for the school's conclusion that any response to an allegation of sexual assault was not deliberately indifferent and that it took measures to restore/preserve equal access.



Questions? Comments?



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