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Title IX Team and Administrator Training

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Hattiesburg Public School District

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Speaker

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Reminder

This session is a training session.

It is not legal advice.

We will discuss potential options for responses to hypotheticals, but your counsel will provide you legal advice.

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 subjected to discrimination under any education program or activity receiving Federal financial assistance.

20 U.S.C 1681(a) Title IX Education Amendments of 1972

Major Provisions

- Define conduct constituting Title IX sex harassment
- Specify conditions that activate obligation to respond to sex harassment allegations
- Impose general standard for sufficiency of response
- Specify requirements that response must include (ex. supportive measures)
- Establish procedural due process protections that must be in grievance process
- Affirm that OCR may require recipients to take remedial action for discriminating on basis of sex or otherwise violate Title IX
- Clarify that recipients are not required to deprive individuals of rights guaranteed under U.S. Constitution when responding to sexual harassment claim under Title IX
- Acknowledge intersection of Title IX, Title VII, and FERPA and legal rights of parents to act
- Update Title IX Coordinator designations, notice requirements, and policy distribution
- Prohibit retaliation

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Complainant

The individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Respondent

The individual who has been reported to be the perpetrator of the conduct that could constitute sexual harassment.

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Preamble Comments

Complainants and respondents have different interests in the outcome of a sexual harassment complaint. (Below from Preamble p. 914)

Complainants	Respondents
"have a right, and are entitled to expect, that they may attend [school] without fear of sexual assault or harassment" and to expect recipients to respond promptly to complaints.	"finding of responsibility for a sexual offense can have a 'lasting impact' on a student's personal life, in addition to [the student's] 'educational and employment opportunities'[.]" Although these interests may differ, each represents high-stakes, potentially life-altering consequences deserving of an accurate outcome.

Training

- ☑ Recognize and eliminate bias for or against a complainant or respondent
- ☑ Recognize and eliminate conflicts of interest
- ☑ Understanding definition of sexual harassment under Title IX
- ☑ Understanding "scope of the District's program or activity"
- ☑ How to conduct an investigation and grievance process
- ☑ Training investigators how to prepare an investigation report
- ☑ Training decision-makers – both initial and appeal
- ☑ Training ALL EMPLOYEES on actual notice and reporting

Bias

State of mind where the person has a predisposition in favor of or against someone or something. This is a fact specific analysis.

Avoiding Bias

How do I know if someone is biased?

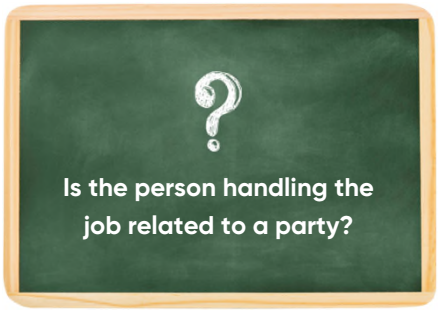
- Requires examination of the particular facts of a situation, i.e. fact specific analysis
- Apply an objective **common sense approach to evaluating whether a particular person serving in a Title IX role is biased*
- Exercise caution not to apply generalizations that might unreasonably conclude that bias exists

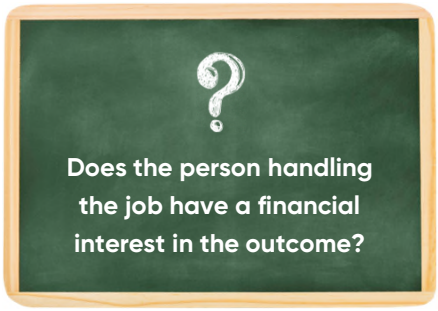
*whether a reasonable person would believe bias exists

This training provides you with the tools needed to serve impartially and without bias- must not let your prior assumptions shade your judgement.

Conflict of Interest

A conflict between the private interests and the official responsibilities of a person in a position of trust.





One of the many reasons it is important to eliminate bias and conflicts of interest:

Decision may be overturned on appeal by the appeal decision maker if:

1) the Title IX Coordinator, investigator(s), or decision maker(s) had a conflict of interest or bias
2) for or against complainants or respondents generally or the individual complainant or respondent
3) that affected the outcome of the matter.

Training - Impartiality

A training approach that encourages Title IX personnel to "believe" one party or the other would fail to comply with the requirement that Title IX personnel be trained to serve impartially and violate the regulations precluding credibility determinations based on a party's status as a complainant or respondent.

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Training – Fair Process

- Parties should be treated with equal dignity and respect by Title IX personnel.
- The credibility of any party, as well as ultimate conclusions about responsibility for sexual harassment, must not be prejudged and must be based on objective evaluation of the relevant evidence in a particular case.
- In summary, training materials that promote the application of "profiles" or "predictive behaviors" to particular cases would likely run contrary to the regulatory requirements of fairness.

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Formal Complaint Process

Elements of Grievance Procedure
"Top Ten" List
34 C.F.R. § 106.45(b)(1)

The following provisions govern the district's Title IX grievance process.

1. The district treats complainants and respondents equitably by:
- providing remedies to a complainant after a determination of responsibility for sexual harassment has been made against a respondent, and
- by following this grievance process before imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent.

Remedies must be designed to restore or preserve equal access to the district's education program or activity.

Remedies may include supportive measures but may also include punishing respondent.

2. The district provides an objective evaluation of all available evidence without making credibility determinations based on a party's status as complainant, respondent, or witness.

3. The district ensures that the Title IX coordinator, investigator, decision-maker, or any person designated to facilitate an informal process must not have a conflict of interest or bias for or against either the complainant or the respondent.

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Formal Complaint Process

Elements of Grievance Procedure
"Top Ten" List
34 C.F.R. § 106.45(b)(1)

3. (cont.) The district further ensures that training has been provided individuals holding Title IX jobs re: definition of Title IX sexual harassment, scope of the district's program or activity, how to conduct an investigation and the grievance process, hearings [hearings not required in K12 under TIX process], appeals and informal processes.

4.There is a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility has been the conclusion of the grievance process.

5.The district provides reasonably prompt time frames for completing the grievance process, including a process to accommodate permissible delays.

6. The district identifies disciplinary sanctions and remedies that may be implemented. Employee sanctions - action up to and including suspension or termination. Student sanctions - student code of conduct consequences, up to and including suspension or expulsion. Student remedies – ex. no contact restrictions, extra-curricular prohibitions, schedule changes or class reassignments, limits on future class registrations, access restrictions.

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Formal Complaint Process

Elements of Grievance Procedure
"Top Ten" List
34 C.F.R. § 106.45(b)(1)

7. The district adopts an allowable standard to determine responsibility.
[Either the preponderance of the evidence standard OR the clear and convincing standard.]

8. The district provides an appeal option. Either party may appeal.

9. The district identifies a range of supportive measures.

10. The district disallows evidence or questions that constitute or seek legally privileged information, unless the privilege is waived.

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Which Standard of Evidence Did Your District Choose?

Preponderance of the evidence requires that the evidence be "more likely than not" to prove the matter at hand. The party with the burden [district] must prove that there is a greater than 50% chance that the claim is true or is not true.

Clear and convincing evidence requires that the district must prove that there is substantially greater than a 50% likelihood of the claim being true or not being true. The evidence is highly and substantially more likely to be true than untrue.

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Formal Complaint Process

Elements of Grievance Procedure
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Roles (Responsibilities) in the Title IX Processes

Determine who handles these roles:

- Title IX coordinator
- Dismissals
- Facilitator
- Investigator
- Initial decision maker (separate person(s))
- Appeal decision maker (separate person(s))

Who can handle which role?

- ☑ Must have a Title IX Coordinator.
- ☑ Can outsource one or more of the other roles.
- ☑ Only overlap in duties can occur in Title IX coordinator, dismissals, facilitator, and investigator roles. (Best practice to separate some of these roles.)

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Definition of Sexual Harassment under Title IX

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

Prong 1:

An employee of the recipient (i.e. educational institution such as a school district that receives federal funds) conditioning the provision of an aid, benefit or service of the educational institution on an individual's participation in unwelcome sexual conduct (similar to quid pro quo sexual harassment);

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Continued

Definition of Sexual Harassment under Title IX

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

Prong 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 educational institution's education program or activity (similar to hostile environment);

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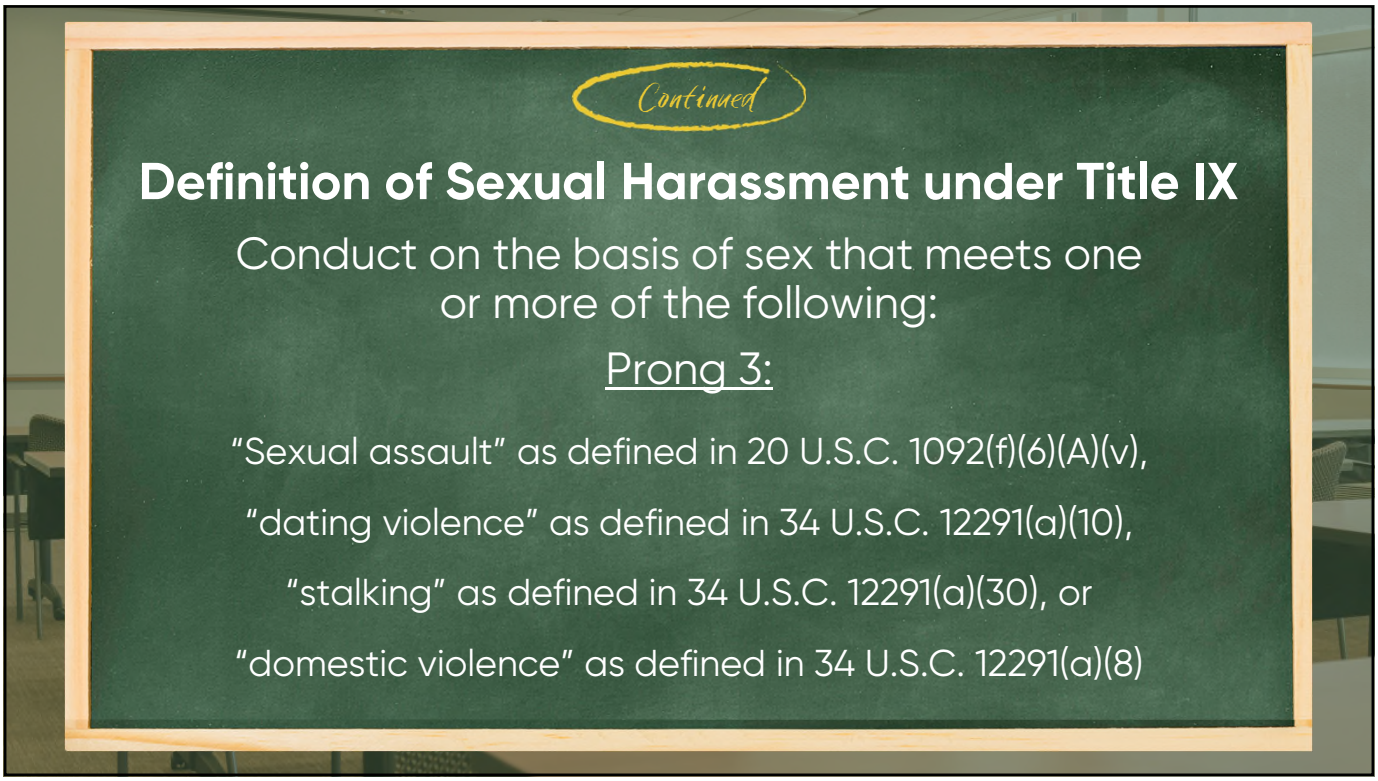

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Brief Detour:
Title VII Sexual Harassment

Can the harasser be a student under Title VII?

It is unlawful to harass a person (an applicant or employee) because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general.

Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.

Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

EEOC.gov/sexual-harassment

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What are some differences between Title VII sexual harassment and Title IX sexual harassment?

Title VII: Sexual Harassment

- Employees only
- Unwelcome conduct that is severe, pervasive OR objectively offensive
- Protects employees in the workplace
- Administrative requirements (EEOC) before going to court

Title IX: Sexual Harassment

- Students and Employees
- Unwelcome conduct that is severe, pervasive AND objectively offensive
- Applies to education program or activity in education institution
- Specific, internal due process procedures are required

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Back to Title IX:
Education Program or Activity

Title IX previously defined as all the

"operations of a [district]…."

However, in 34 C.F.R. § 106.44(a), the definition has been enlarged to include any location, event or circumstance over which the district exercised substantial control over both the respondent and the context in which the harassment occurs.

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Education Program or Activity – Preamble Comments

No single factor is determinative – fact specific inquiry

"A teacher's sexual abuse of a student 'undermines the basic purposes of the educational system' thereby implicitly recognizing that a teacher's sex harassment of student is likely to constitute sex harassment 'in the program' of the school even if the harassment occurs off campus."

Student using personal device to perpetrate online sexual harassment during class time may constitute a circumstance over which the district exercises substantial control.

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Training ALL EMPLOYEES on knowing what qualifies as Title IX behaviors and on reporting responsibilities

ANY Employee's knowledge of sexual harassment or allegations of sexual harassment counts as the School knowing about it

Easy call – Complainant reports it verbally or in writing

Anonymous reporting? Yes, also included

Includes third party reporting (parent, friend or community member) verbally or in writing

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Training ALL EMPLOYEES on knowing what qualifies as Title IX behaviors and on reporting responsibilities

Knowledge activates district's Title IX response requirements

Train employees to recognize Title IX sexual harassment

Includes every employee position in the district

Not new in some respects - conforms with Miss. Code Ann. §43-21-353. Requires reporting abuse or neglect

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Which of the Below Examples Should You/All Employees Report?

1) You overhear students discussing another student having a flirtatious text exchange with an employee

2) You overhear two students talking before class. Student 1 is very upset. Student 1 is saying to Student 2 that drank too much that weekend and Student 3 sexually assaulted her.

You see Student 2 staring at Student 1 on multiple occasions in a manner that makes you uncomfortable. You witness Student 2 slapping Student 1 on butt. Student 1 laughs and moves away.

A community member tells you about a rumor that Student 1 was seen sitting close to Employee 2 in the front cab of Employee 2's truck outside Subway.

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Which of the Below Examples Should You/All Employees Report?

You overhear a group of girls talking about a boy who has made repeated vulgar comments of a sexual nature to some of them at school and is "handsy."

A teacher co-worker tells you that the principal has rubbed his arm, grabbed his crotch, and asked what he was doing after work.

At lunch, you hear a fellow teacher say that Student 1 has made multiple vulgar, sexually laced comments to Student 2 in her class.

You have had the same issue with these same two 5th graders.

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Website and Handbook Notice Requirements

Publish Notice of Title IX Nondiscrimination on website (link to policies) and in handbooks

State how to file or report sexual harassment and how District will respond to students and parents/legal guardians

List Title IX Coordinator's name, title, email/office address and telephone number

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Your Role: Title IX Coordinator

1. Authorized by the District to coordinate the District's Title IX compliance program - must have capacity;
2. Receive and respond promptly to all general reports as well as formal complaints of sexual harassment;
3. Coordinate the District's responses to both reports and formal complaints of sexual harassment so that the same are prompt and equitable;
4. Meet with a complainant and inform the parent/guardian once you become aware of allegations of conduct that could constitute sexual harassment as defined in Title IX;
5. Identify and implement supportive measures;
6. Sign, in certain cases, the complaint of sexual harassment;
7. Engage with parents/guardians of parties to any formal complaint of sexual harassment;
8. Coordinate with District and school-level personnel to facilitate and assure implementation of investigations and remedies, and help to assure that the District otherwise meets its obligations associated with reports and complaints of sexual harassment;

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Your Job: Title IX Coordinator

9. Monitor the formal complaint progress to make sure the correct notices are provided, and the steps are in the required order.
10. Set the timeframes addressing sexual harassment allegations that fall under Title IX (policy may also address - some timeframes mandated);
11. Determine, in emergency situations, whether an individualized safety and risk analysis is required with regard to a respondent;
12. Inform the Superintendent of any employee respondents so that the Superintendent can make any required reports to Mississippi Department of Education in compliance with applicable statutes, administrative regulations, and the Mississippi Educator Code of Ethics and Standards of Conduct.
13. Coordinate with supervisor with respect to assignment of persons to fulfill the District's obligations, both general and case specific (including who will serve as "Acting Title IX Coordinator" when Title IX Coordinator is unavailable/has conflict).
14. Coordinate with District and school-level personnel to ensure appropriate training and professional development of employees and others in accordance with the training requirements in the Title IX amended regulations.
15. Develop and implement systems to maintain sexual harassment records and data for a period of seven years.

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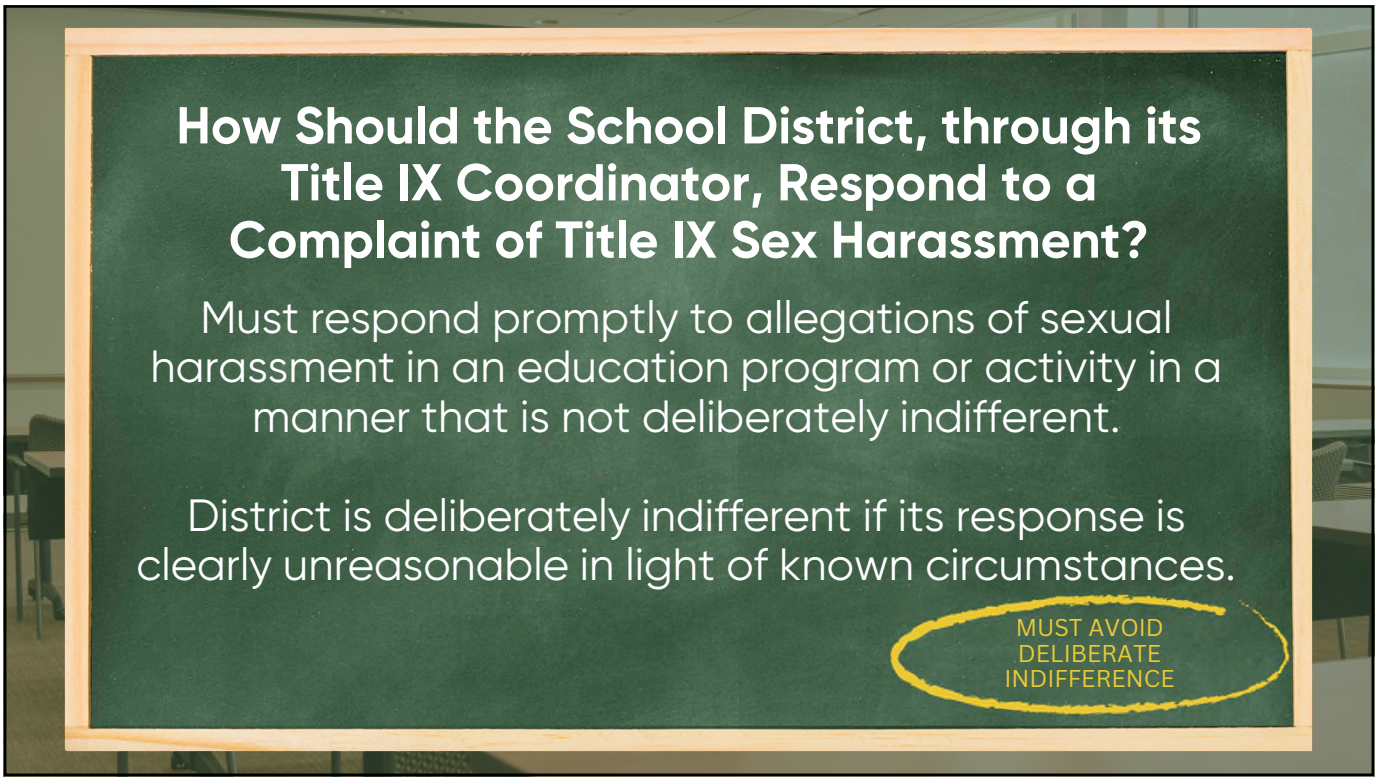

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How Should a School District, through its Title IX Coordinator, Respond to A Complaint of Title IX Sex Harassment?

District must treat complainants and respondents equitably by:

1. Offering supportive measures to a complainant and respondent, and

2. Following a grievance process **BEFORE** imposing any disciplinary sanctions on a respondent, and

2. Provide remedies to a complainant **AFTER** determination of responsibility of respondent.

Continued

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Report

Title IX Coordinator must meet with complainant, offer supportive measures (available whether or not complainant files a formal complaint) and consider wishes of complainant as to supportive measures; explain how to file a formal complaint.

A "report" of sexual harassment can be different from a "formal complaint," and each requires different actions on the part of the District.

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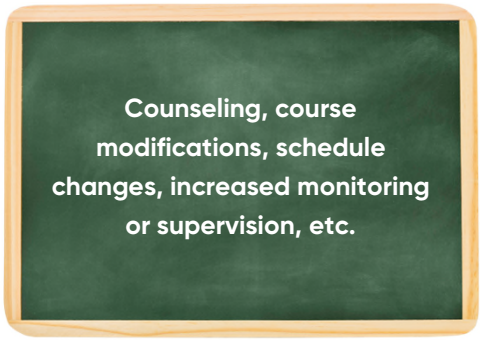
What are Supportive Measures?

Supportive measures are non-disciplinary, non-punitive, and without charge to a complainant or a respondent before or after filing of a formal complaint or where a complaint has not been filed.



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What are Supportive Measures?

Supportive measures should be designed to restore or preserve equal access to the educational program or activity without unreasonably burdening the other party.

For example, a supportive measure that completely removes the respondent from an activity could be considered punitive.

Immediate removal of respondent ONLY if:

1.	2.	3.	4.
District conducts an individualized safety and risk analysis, and	Determines that an emergency removal is necessary to protect a student or other individual from an immediate threat to physical health or safety.	Must provide respondent with notice and an opportunity to challenge the decision immediately after removal.	Can implement immediate removal with regard to both student and employee respondents.

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Formal Complaint

A document filed by a complainant, the complainant's parent/guardian, or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the district investigate the allegations.

The formal complaint is what initiates the grievance process. DOE holds districts responsible to investigate.

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What To Do When a Formal Complaint is Filed

34 C.F.R. § 106.45(b)(2)

Title IX Coordinator sends written notice to all parties. Notice must contain:

- Notice of the grievance process, including informal resolution process;
- Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in Title IX, include the below known details
  - identity of the parties (if known);
  - conduct allegedly constituting sexual harassment under Title IX;
  - date and location of incident (if known);
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- Notice that the parties may have an advisor of their choice (may or may not be an attorney) and may inspect and review evidence under 34 C.F.R. § 106.45(b)(5)(vi);
- Identify provisions of code of conduct that prohibit knowingly providing false statements/information; and
- Must be provided to parties prior to initial interview in the investigative process so the parties can prepare.

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Administrative Leave
34 C.F.R § 106.44(d)
After a formal complaint is filed, District may place employee respondents on administrative leave.

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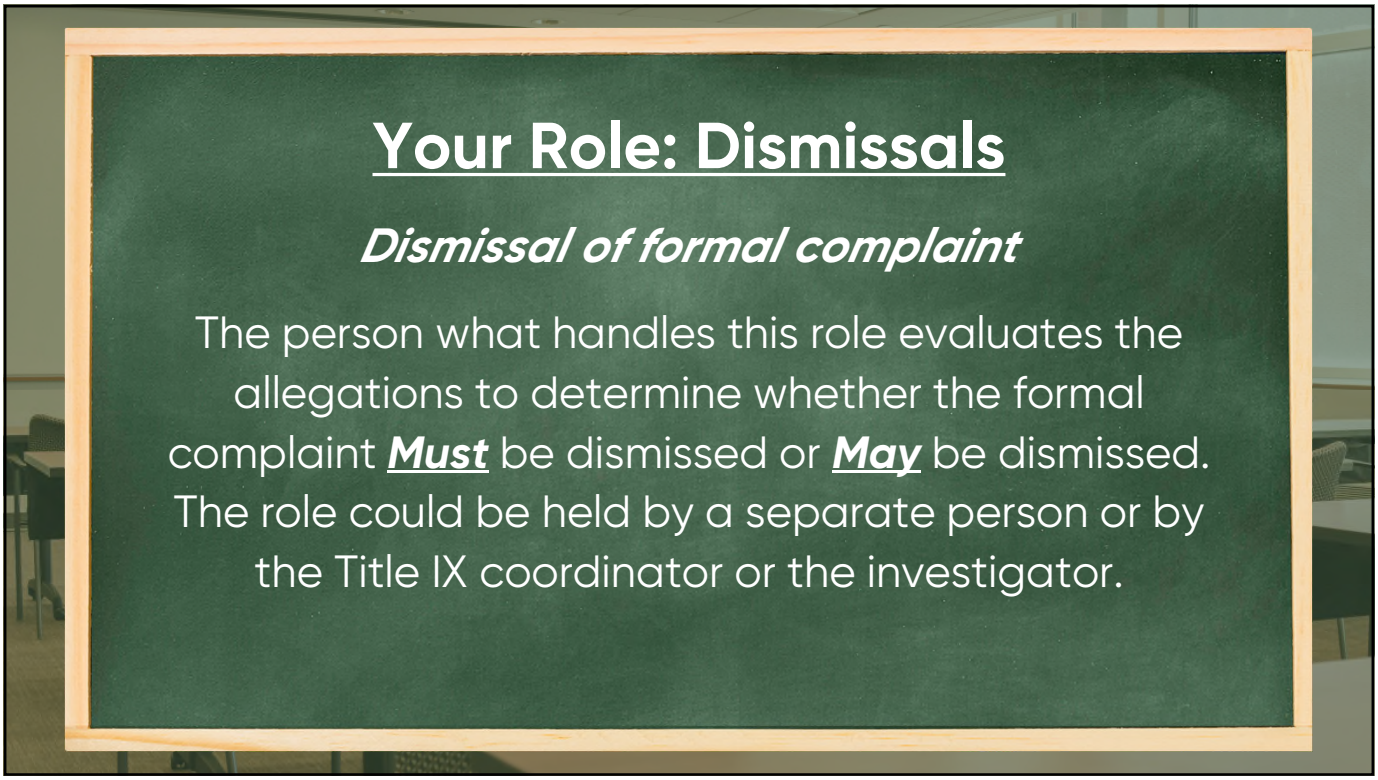
Your Role: Dismissals
Dismissal of formal complaint
The person what handles this role evaluates the allegations to determine whether the formal complaint Must be dismissed or May be dismissed. The role could be held by a separate person or by the Title IX coordinator or the investigator.

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Formal Complaint Process

Discretionary Dismissal
34 C.F.R. § 106.45(b)(3)

Complaint **may** be dismissed if:

- ☑ Complainant notifies the Title IX Coordinator at any time that he/she wishes to withdraw the complaint or an allegation,
- ☑ If the respondent's enrollment or employment ends, or
- ☑ If specific circumstances prevent the educational institution from gathering evidence (e.g. passage of several years between complaint and alleged conduct, non-cooperation of complainant, etc.)

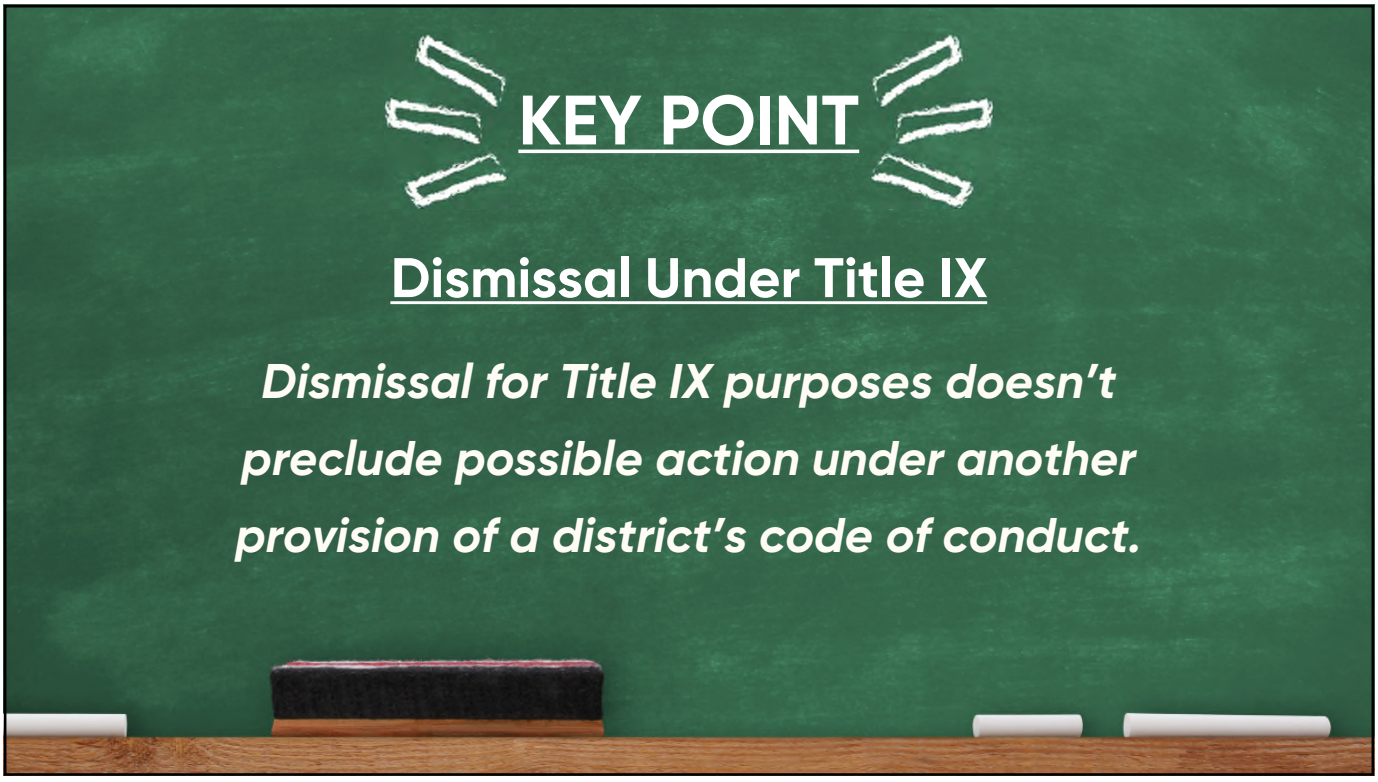
Notice of dismissal must be provided to both parties, including the reasons for dismissal and chance to appeal.

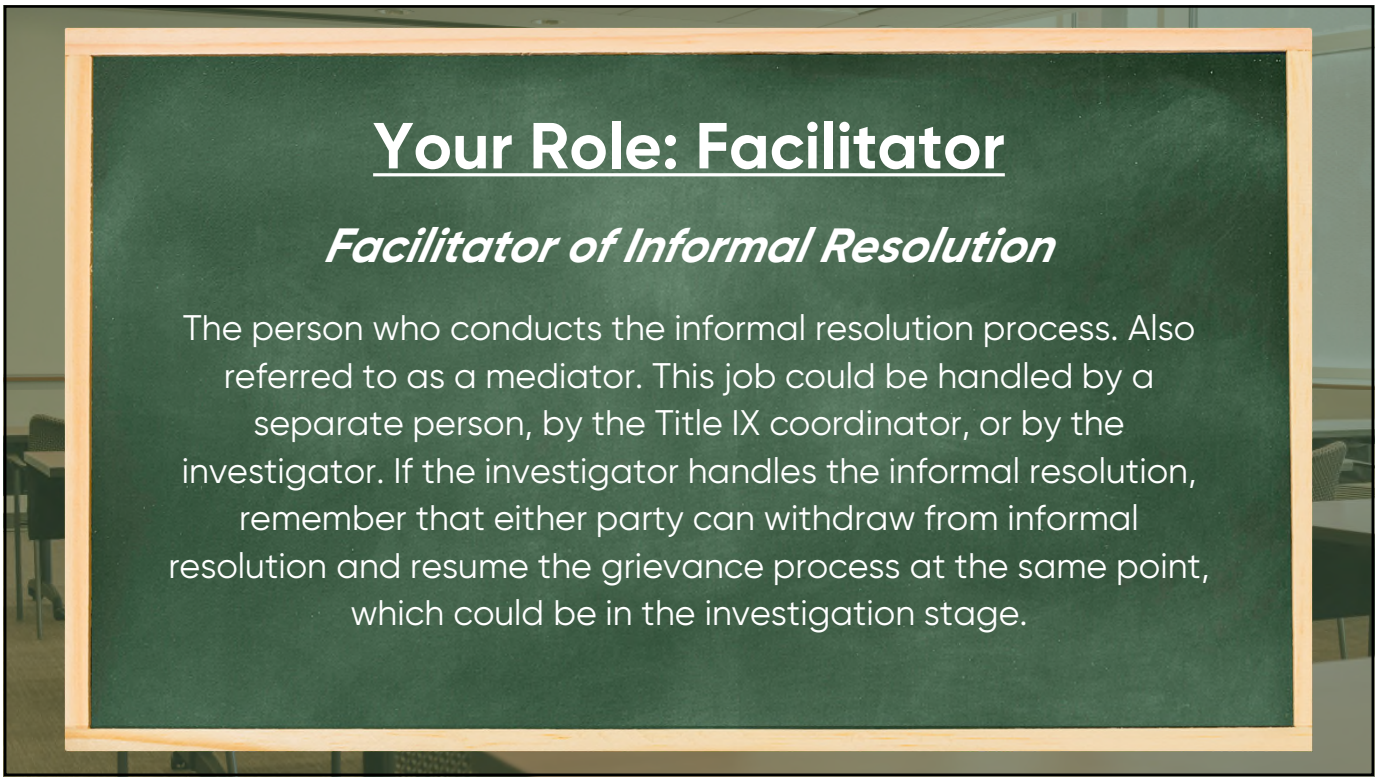
Mandatory Dismissal
34 C.F.R. § 106.45(b)(3)

Complaint **must** be dismissed if:

- ☑ The allegations do not constitute sexual harassment as defined,
- ☑ Did not occur in the District's program or activity, or
- ☑ Did not occur against a person in the United States

Notice of dismissal must be provided to both parties, including the reasons for dismissal and chance to appeal.





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Informal Resolution *[K12 not required to offer this, but useful]*

Formal Complaint Must Have Been Filed

- Can be offered at any point during the formal complaint process.
- District may offer to facilitate an informal process that does not require a full investigation.
- Both parties receive written notice of their rights and provide written, voluntary consent.
- Cannot require the waiver of the right to an investigation/decision as a condition of employment, continuing employment, enrollment or continuing enrollment.
- Cannot be offered if allegations are made against an employee by a student.
- Right to withdraw from the informal resolution process and resume the grievance process at any time with respect to the formal complaint.

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Your Role: Investigator or Decision Maker

Investigator

- Investigates the allegations in the formal complaint under the seven components outlined in the Title IX regulations.
- Districts can have more than one person trained as an investigator and trained to prepare an investigation report. Title IX coordinator (but not decision-maker) can also serve as the investigator.

Decision Maker

Two types of decision-makers:

1) Initial decision-maker - makes decision regarding the determination of responsibility.

2) Appeal decision-maker - the responsibility to decide any appeal of the Initial decision makers' determination of responsibility or any appeal of a dismissal.

DMs can't be TIX coordinator or investigator

On What Do Investigators Need to Focus?

How to conduct an investigation in the Title IX grievance process.

How to prepare a Title IX investigation report.

Investigation - Witness Interviews

- Not required, but it can be helpful to have an interviewer and a "scribe" when conducting interviews
  - Detailed notes by the investigator become part of the Title IX record (consider witness review and approval)
- Follow up with parties/witnesses if you learn information from a later witness about which you need to ask someone you've already interviewed
- Advisor offer for C and R in writing prior to interview
  - *For students who are either a C or R*, parents/ guardians have the right to attend their child's interview and "right to act" on child's behalf
- Questions start broad. Questions narrow as interviewer moves through the interview
  - Avoid asking questions in such as way to as suggest the answer.
  - What does DM need to know?
  - Ask the difficult question.

Investigation - Witness Statements and/or Your Notes

- Who is this?
  - Name and Context
  - Employee? What position?
  - Student? What grade?
- Number the pages
  - Be clear about dates and differentiate between the date of the event (more important) and date of the statement
- Legible
  - If not, consider having witness review, make corrections, and initial changes
  - Or consider typing for witness review and edits
- Follow up on witness statements that don't contain information initially stated in the interview

Investigation - Notes and Video Footage

Investigator notes should include correct dates, times, and locations Number pages!	Pretend that someone who does not know anything about the matter can read your notes and be able to understand all the information obtained	Immediately save any potentially applicable video footage	Be prepared to handle issues related to evidence on phones and legally securing phone evidence

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Your Job: Investigator

Formal Complaint Process

1. ***Ensuring that the burden of proof and gathering evidence rests on the district (i.e. you) rather than the parties, i.e. complainant or respondent (note: certain treatment records cannot be obtained without voluntary, written consent; also, parental consent must be sought under FERPA if applicable);***
2. Providing an equal opportunity for both parties to present witnesses and evidence;
3. Making sure that both parties have the ability to discuss the allegations or gather and present evidence- for example, can't prohibit the parties from talking to witnesses to obtain evidence in support of their position;
4. Ensuring that the parties have the same opportunity to have an advisor (who may be an attorney) present during all interviews and proceedings; any restrictions on advisor participation apply equally to both parties – a student may have both a parent and advisor present;
5. With regard to an investigative interview or other meeting, providing written notice to a party who is invited or expected to attend and including the date, time, participants, purpose, and location and providing the notice with enough time to allow the party and advisor (if obtained) to prepare to participate;

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Investigator Component One Deep Dive

"Burden of proof" - duty to prove or disprove a disputed fact; neither of the parties has to prove anything – this is your duty.

The standard of evidence (whether "preponderance" or "clear and convincing") established by district policy is what you are required to prove to meet the burden of proof.

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Your Role: Investigator

Formal Complaint Process

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Your Role: Investigator

Formal Complaint Process

6. ***Providing both parties and their advisors, if any, an equal opportunity to review all evidence that is directly related to the allegations in the formal complaint, including evidence on which the district does not intend to rely and any exculpatory or inculpatory evidence from any source; must be provided to both parties prior to the completion of the final investigative report and in time to give the parties at least 10 days to submit a written response, which investigator must consider before completing the investigation report; and***

(This is the first ten-day time period)

7. Preparing a written investigation report that fairly summarizes the relevant evidence and providing the report to the parties and their advisors at least 10 days before a determination of responsibility for review and written response.

(This is the second ten-day time period)

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Investigator Component Six Deep Dive

"Evidence directly related to the allegations" – all evidence that involves in some way any part of any allegation.

- Both parties get all the evidence collected, though district has confidentiality responsibility.
- Title IX requires transparency and must be balanced with FERPA concerns
- Establish best practices

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"Evidence on Which the District Does Not Intend to Rely"

Cannot leave out any information related to the allegations, even if you do not think it is important or probative

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"Exculpatory Evidence"

Tends to exonerate the respondent as to an allegation – can be as to some or all of the allegations

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"Inculpatory Evidence"

Tends to prove the respondent is responsible for conduct alleged – can be as to some or all of the allegations

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Evidence "must be provided prior to the completion of the final investigative report and in time to give the parties at least 10 days to submit a written response"

Parties must be given ten days to review the statements of witnesses or notes of your evidence gathered and provide a written response of their position for your consideration.

[This is the first ten-day time period]

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Your Role: Investigator

Formal Complaint Process

6. Providing both parties and their advisors, if any, an equal opportunity to review all evidence that is directly related to the allegations in the formal complaint, including evidence on which the district does not intend to rely and any exculpatory or inculpatory evidence from any source; must be provided to both parties prior to the completion of the final investigative report and in time to give the parties at least 10 days to submit a written response, which investigator must consider before completing the investigation report; and

(This is the first ten-day time period)

7 ***Preparing a written investigation report that fairly summarizes the relevant evidence and providing the report to the parties and their advisors at least 10 days before a determination of responsibility for review and written response.***

(This is the second ten-day time period)

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Investigator Component Seven Deep Dive

"Fairly summarizes the 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.

C. "Probative of any material fact concerning allegation." (Preamble)

*Regulations do not define "relevance" – so ordinary meaning of word should be understood and applied

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Ideal Investigation Report

Summarizes the steps you took in the investigation;
Summarizes what you determine to be relevant evidence;
Includes relevant inculpatory and exculpatory evidence;
Shows that you considered parties' written response re evidence and addresses whether written response comports with/contradicts other evidence;
Does not make finding of responsible/not responsible;
Can make credibility assessments, though the decision-maker is not bound by assessment.

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"Providing the report to the parties/advisors at least 10 days before a determination of responsibility for review and written response"

Before the initial decision-maker determines whether the respondent is responsible, the parties have ten days to review the investigation report and prepare a written response to be provided to the initial decision-maker.

(This is the second ten-day time period)

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Your Role: Initial Decision-Maker

Hearings

Title IX compliant hearings are not required in K-12 educational institutions for Title IX formal complaints.

Written Questions

After the District has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker must provide each party the opportunity to submit written, relevant questions that the party wants asked of another party or witness, provide each party with the answers, and provide for limited follow-up questions.

(This written question process can occur/begin during the second ten-day time period)

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Your Role: Initial Decision-Maker

Determination of Responsibility

The decision–maker issues a written determination of responsibility that:

1. Identifies the allegations that potentially constitute sexual harassment as defined in the amendments;
2. Describes the District's procedural steps taken from the receipt of the complaint to the determination;
3. Includes findings of fact supporting the determination;
4. Includes conclusions regarding application of the code of conduct to the facts;
5. Includes a statement of, and a rationale for, the result as to each allegation, including a determination of responsibility, any disciplinary sanctions imposed upon the respondent, and whether remedies to restore or preserve equal access to the District's education program or activity will be provided to the complainant; and
6. Includes procedures for appeals.

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Your Role: Initial Decision-Maker

Show Your Work

The decision-maker must:

- Make an independent decision
- Address the things that come **AFTER** the investigation report
  - Written responses of the Parties come after the investigation report
  - Written questions come after the investigation report

Decision-Maker!!!

"Inculpatory Evidence"

Tends to prove the respondent is responsible for conduct alleged – can be as to some or all of the allegations

"Exculpatory Evidence"

Tends to exonerate the respondent as to an allegation – can be as to some or all of the allegations

"Fairly Summarizes the Relevant Evidence" - evidence is relevant if:

- Has any tendency to make a fact more or less probable than it would be without the evidence; and
- The fact is of consequence in determining the action
- Does it matter or is it important with regard to the facts

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Your Role: Appeal Decision-Maker

Both parties have the right to appeal
1) A determination of responsibility and
2) The District's dismissal of a formal complaint

for the following reasons:

A procedural irregularity that affected the outcome	New evidence that was not reasonably available at the time of the determination regarding responsibility and could affect the outcome	Conflict of interest or bias on the part of the Title IX Coordinator, investigator, or decision-maker that affected the outcome

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Steps in the Appeal Process

Provide both parties...

A written notice of the appeal.	An equal opportunity to submit a written statement in support of, or challenging, the determination.	A written decision simultaneously.

Retaliation

Retaliation is prohibited against any person for the purpose of interfering with Title IX rights or because the person participated, or refused to participate, in any manner in a proceeding under Title IX regulations.

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Confidentiality

The District must keep confidential the identity of a person who complains of or reports sexual harassment, including parties and witnesses, except as permitted by law to carry out the purpose of the regulations regarding investigating the complaint.

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Record Keeping

The Title IX Coordinator, on behalf of the District, must keep records related to reports of sexual harassment for a minimum of seven (7) years, including investigation records, disciplinary sanctions, remedies, appeals and records of any action taken, including supportive measures.

A. Records should reflect that the District's response was not deliberately indifferent and that measures were taken to restore or preserve equal access to the education program or activity.

B. If the District does not provide a complainant with supportive measures, the District must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

C. The District must also retain for seven (7) years any materials used to train Title IX Coordinators, investigators, decision-makers and any employee designated to facilitate an informal process.

D. The District must post training materials on the District website.

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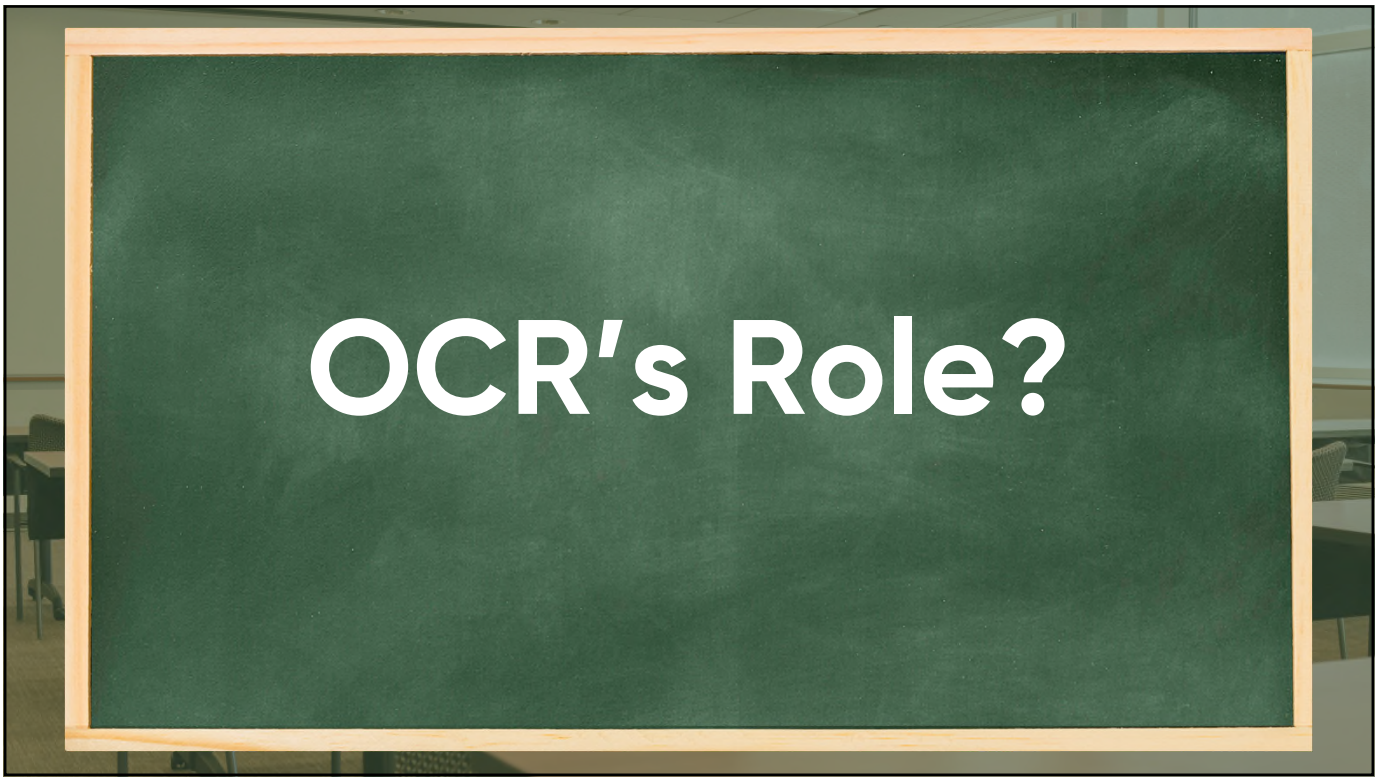

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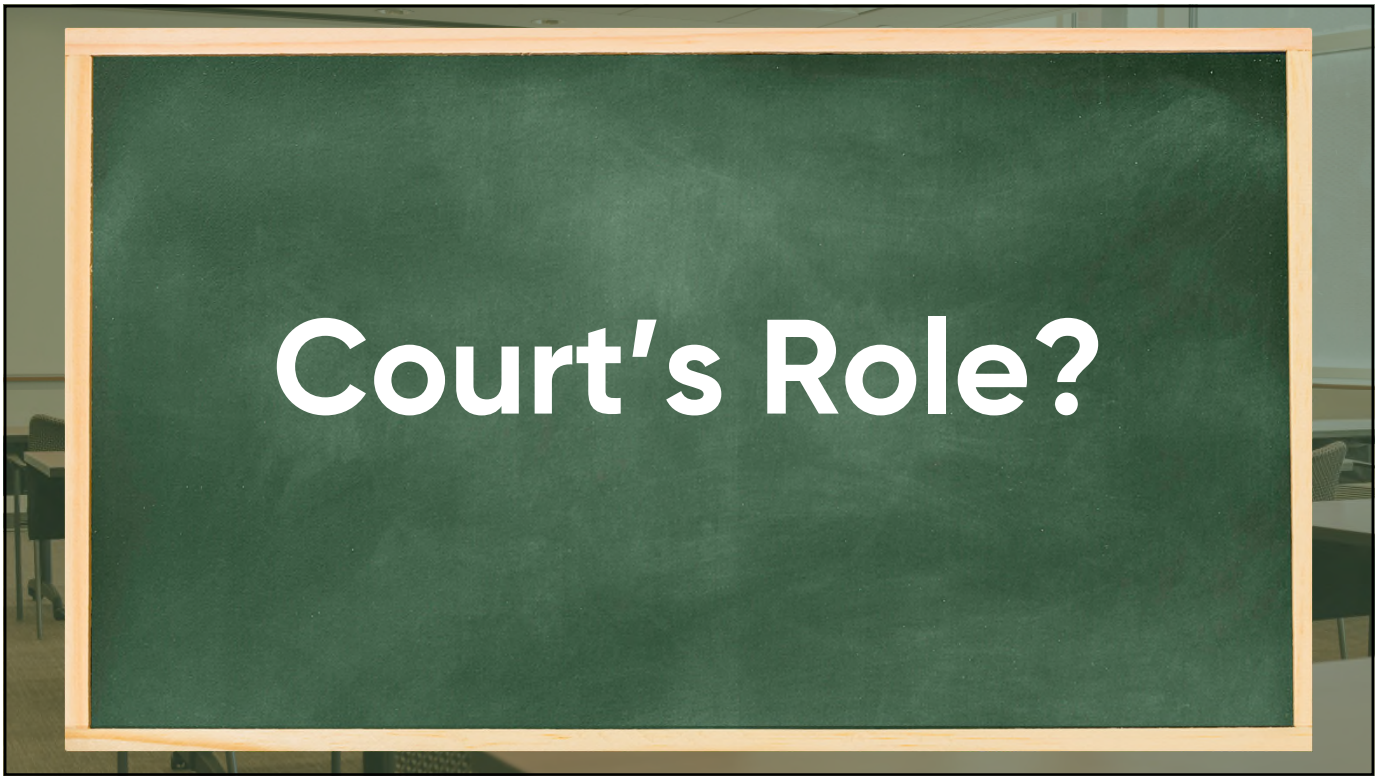

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Status Report...

2024 Title IX FINAL RULE as to claims of Sex Harassment and Discrimination

(Temporarily Enjoined in 26 states (**2020 Title IX Final Rule remains in effect**)),

and

Athletics Title IX proposed Rule (on hold, Final Rule not published)

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Questions?

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Title IX – Notice of Public Rulemaking (NPRM)

Timeline – **2024 Final Rule – Enjoined in MS**

- Released June 23, 2022 (50th Anniversary of Title IX)
- Published July 12, 2022
- 60-day comment period closed Sept. 12, 2022 (240,000+ comments)
- Final Rule published in Federal Register on April 29, 2024 with effective date of August 1, 2024
- Court temporarily enjoined US Dept. of Ed's ability to enforce new Title IX regulations

Current 2020 Regs covered in this PD REMAIN in effect

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26 State/Commonwealth Attorneys General File Seven Suits; 2024 Final Rule Enjoined in 26 States (as of August 1, 2024)

- Texas Filed Suit in Texas Federal Court – ENJOINED
- Louisiana, Mississippi, Idaho, and Montana filed suit in Louisiana Federal Court – ENJOINED
- Alabama, Florida, Georgia, and South Caroline filed suit in Alabama Federal Court – ENJOINED
- Kentucky, Tennessee, Virginia, West Virginia, Ohio, and Indiana filed suit in Kentucky Federal Court – ENJOINED
- Arkansas, Missouri, Iowa, Nebraska, North Dakota, and South Dakota filed suit in Missouri Federal Court ENJOINED
- Oklahoma filed suit in Oklahoma Federal Court – ENJOINED
- Alaska, Kansas, Utah, and Wyoming filed suit in Kansas Federal Court– ENJOINED

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Title IX – Notice of Public Rulemaking (NPRM)

Timeline – **Proposed** Athletic Regs

- Released April 6, 2023
- 30-day comment period closed May 15, 2023 (210,500 comments)
- Athletic Final Rule deadline was at one time March 2024 with possible effective date of July 2024 – did not happen.
- News report from Friday, March 28, 2024* citing anonymous sources said President Biden's administration will delay the Athletic rule until after the presidential election in November 2024.
- US Secretary of Education subsequently denied that the upcoming election impacted release date.**
- In its Spring 2024 Unified Agenda, "OMB moved athletics proposal to 'long term action,'" which means agency not expecting regulatory action during next year.**
- Summary – on hold.

*Washington Post, 3.28.24 L. Meckler
**Higher Ed Dive 7.9.24 N. Modan and N. Schwartz

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Questions?

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