

**The Title IX Sexual Harassment Regulations:
Comprehensive Training for Title IX Coordinators,
Administrators, and Relevant Personnel**

The Wilmington Public Schools

May 1, 2025

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**Title IX of the Education Amendments Act of 1972
20 U.S.C. §1681-§1688**

“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 program or activity receiving federal financial assistance.”

Sexual harassment is a form of sex discrimination.

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The Title IX Sexual Harassment Regulations

The 2020 Regulations:

- The 2020 Title IX Sexual Harassment Regulations went into effect on August 14, 2020. These were the first set of federal regulations governing how schools respond to complaints of sexual harassment.
- The regulations require that schools create and implement a procedurally intensive grievance procedure for responding to and investigating reports and complaints of sexual harassment.
- The regulations prohibit the use of a single investigator/decision maker model and mandate a multi-step team (“Title IX Team”) approach to conducting investigations and determining whether sexual harassment has occurred. The required regulatory process places emphasis on ensuring the rights of the accused in the investigation process.

The 2024 Regulations:

- The 2020 regulations were substantially revised by the Biden Administration effective August 2024 and all public schools were required to immediately develop new grievance procedures to comply with the revised requirements.
- The 2024 regulations expanded the scope of regulations to cover all forms of sex discrimination as well as sex-based harassment on the basis of sexual orientation and/or gender identity.
 - The 2024 regulations eliminated many of the 2020 procedural requirements and also allowed for the use of a single investigator/decision maker model in investigating and making determinations on complaints of “sex-based” harassment.

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2024 Title IX Regulations Invalidated

On January 9, 2025, the United States District Court for Eastern Kentucky issued a decision striking down the 2024 Amendments to Title IX of the 1972 Education Amendments to the Civil Rights Act ("Title IX"), codified at 34 CFR Part 106.

- In the decision, the District Court held that the U.S. Department of Education exceeded its authority when it expanded Title IX to prohibit discrimination on the basis of gender identity. While there were parts of the 2024 Title IX Amendments that were not at issue in the case, such as the inclusion of parent, family, or marital status and pregnancy-related conditions, the Court held that the issues raised in the case fatally tainted the 2024 Amendments as a whole and that, consequently, the 2024 Amendments are invalid and are set aside in their entirety.

On February 4, 2025, the US DOE's Office for Civil Rights issued a directive to all public schools to immediately cease compliance with the 2024 Title IX regulations and to revert to the definitions and procedural requirements set forth in the previous, 2020, Title IX regulations.

- <https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl-109477.pdf>

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District's Duty to Respond to Sexual Harassment under Title IX

- When must the district respond under Title IX?
 - Whenever the **district has actual knowledge**, which means whenever **any employee** receives notice of alleged sexual harassment of a student or employees within a district education program or activity of the district in the U.S.
- The district's response must be prompt and not deliberately indifferent, which means not clearly unreasonable in light of the known circumstances.



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Title IX Definition of Sexual Harassment

- (1) Any instance of quid pro quo harassment by a employee; or
- (2) Unwelcome conduct on the basis of sex that is sufficiently severe and pervasive and objectively offensive conduct, effectively denying a person equal educational access; or
- (3) Any instance of sexual assault, dating violence, domestic violence, or stalking as defined by the Clery Act and the Violence Against Women Act.

TITLE IX

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Quid pro quo Sexual Harassment

An employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct.

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Severe, and pervasive, and objectively offensive sex-based conduct

Unwelcome conduct, on the basis of sex, determined by a reasonable person to be so severe, and pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity.

- Examples
- o Verbal statements
 - o Physical acts or gestures
 - o Public postings
 - o Electronic communications

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First Amendment Rights in the Educational Environment

"The Department believes that the tension between student and faculty freedom of speech, and regulation of speech to prohibit sexual harassment, is best addressed through rules that prohibit harassing and assaultive physical conduct, while ensuring that harassment in the form of speech and expression is evaluated for severity, pervasiveness, objective offensiveness, and denial of equal access to education."



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Clery Act & Violence Against Women Act (VAWA) Offenses

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

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Sexual Assault, Dating Violence, Domestic Violence, or Stalking

Sexual Assault:

Under Title IX, the term “sexual assault” means an offense classified as a sex offense under the Uniform Crime Reporting System’s National Incident-Based Reporting System. This includes Rape, Sodomy, Sexual Assault With An Object, or Fondling directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent; also, unlawful sexual intercourse.

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Sexual Assault, Dating Violence, Domestic Violence, or Stalking

- **Rape** - the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- **Sexual Assault With An Object** - To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- **Fondling** - the touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. In Massachusetts, pursuant to M.G.L. c. 265, § 13B, a child under the age of 14 is incapable of giving consent to indecent touching.

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Sexual Assault, Dating Violence, Domestic Violence, or Stalking

- **Sodomy** - oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- **Incest** - Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape** - Nonforcible sexual intercourse with a person who is under the statutory age of consent.

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Sexual Assault, **Dating Violence**, Domestic Violence, or Stalking

Dating Violence:

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 such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

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Sexual Assault, Dating Violence, **Domestic Violence**, or Stalking

Domestic Violence:

A felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

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Sexual Assault, Dating Violence, Domestic Violence, or **Stalking**

Stalking:

Engaging in a *course of conduct* directed at a specific person that would cause a *reasonable person* to fear for the person's safety or the safety of others or suffer *substantial emotional distress*.

- **Course of conduct:** two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- **Reasonable person:** a reasonable person under similar circumstances and with similar identities to the victim.
- **Substantial emotional distress:** significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

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Sexual Harassment: Recap

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Quid pro quo

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Sexual assault, dating violence, domestic violence, or stalking

Always *per se* sexual harassment regardless of the impact on the complainant.

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Sexual Harassment: Recap

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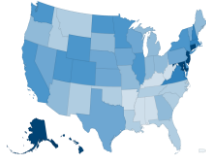
Hostile Environment sexual harassment always requires a determination of:
Severity;
Pervasiveness;
Objective offensiveness; and
Denial of alleged victim's equal access to education.

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Scope of the District's Responsibility under the Title IX Sexual Harassment Regulations

- What locations are covered?
 - Any education program or activity of the district in the U.S.
 - *Education program or activity:* locations, events, or circumstances over which the district exercised substantial control over both the accused and the context in which the sexual harassment occurred.



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What does this mean for other off-campus conduct (conduct within the U.S.)?

- Did the off-campus conduct take place in whole or in part at a location, event, or circumstance over which the district exercised substantial control over both the respondent and the context in which the sexual harassment occurred?

School Field Trip

vs.

Private Weekend House Party



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What does this mean for electronic communications/social media?

Was this a location, event or circumstance over which the district exercised substantial control over both the accused and the context in which the sexual harassment occurred?

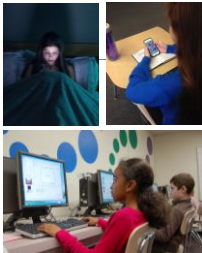
School computer

vs.

Cell phone use at school

vs.

Cell phone use at home



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Is harassment on the basis of sexual orientation or gender identity subject to the Title IX Grievance Procedures?

- ❑ The United States Department of Education's stated interpretation of applicable federal caselaw at this time does not support that Title IX provides protection from harassment on the basis of sexual orientation and/or gender identity.
- ❑ Complaints of harassment on the basis of sexual orientation and/or gender identity must now be investigated in accordance with the District's Non-Title IX Civil Rights Grievance Procedure and applicable state laws.
 - ❑ Harassment on the basis of sexual orientation or gender identity is still a violation of Massachusetts state law.
 - ❑ M.G.L. c. 76, § 5.



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What about sex-based harassment that does not fit within the Title IX definitions?

The District continues to have an obligation to respond to sexual harassment of students and employees that does not meet the Title IX definition of sexual harassment but would meet the definition under Massachusetts state law and/or Title VII.

The specific due process procedures for investigating Title IX sexual harassment formal complaints are not, however, required for sexual harassment or discrimination complaints that fall outside the scope of Title IX. For those complaints, the district should follow its standard Civil Rights Grievance Procedures and conduct a prompt and equitable investigation to comply with state law and Title VII.

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Sexual Harassment under Massachusetts State Law

Any sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (1) Quid pro quo: submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of the provision of the benefits, privileges or placement services or as a basis for the evaluation of academic achievement or employment; or
- (2) Hostile Environment: such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's education or employment by creating an intimidating, hostile, humiliating or sexually offensive educational environment.



See M.G.L. c. 151B (employment) and M.G.L. c. 151C (education)

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Reports of Sexual Harassment: Methods of Reporting

- Can be written or verbal, formal or informal. No specific forms are required for a District to be on notice of an allegation of sexual harassment.
- Can be made at any time, including non-business hours, to the contact information for the Title IX Coordinator posted on the District's website.
- Any district employee who observes sexual harassment of a student or receives a report of sexual harassment from a student **must immediately notify** the Principal or Title IX Coordinator.
 - Upon receipt of a report of sexual harassment, Principal must immediately notify Title IX Coordinator.



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Anonymous Reports

- An anonymous report can suffice to put the district on notice of an allegation of sexual harassment.
- The district's obligation is to respond to an anonymous report in a manner that is not clearly unreasonable in light of the known circumstances.
- A Formal Complaint may not be filed anonymously.



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Responding to Reports and Complaints of Sexual Harassment under the Title IX Grievance Procedures

The Title IX Team

- Title IX Coordinator
- Investigator(s)
- Decision-Maker
- Appeals Officer
- Informal Resolution Facilitator(s)



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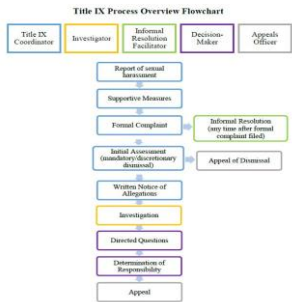
Title IX Team Members
Impartiality Required

- A conflict of interest can create a bias for or against a party.
- Types of conflict and impartiality to consider:
 - Playing too many roles in the process.
 - Decision-Makers who are not impartial.
 - Training materials are biased.
 - All Title IX Team members must avoid prejudgment of the facts at issue and must afford the accused the presumption of innocence..

Title IX Team has no side other than the integrity of the process!

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Title IX Coordinator

- Every school district must appoint a District-level Title IX Coordinator:
- Can have more than one Title IX Coordinator.
 - District can also appoint Deputy Title IX Coordinators (i.e., Athletics, Human Resources)
- Title IX Coordinator's Responsibilities:
- Leads and coordinates compliance efforts for Title IX of the entire district.
 - **Must** have an understanding of Title IX, the Title IX Sexual Harassment regulations, and the District's Title IX Grievance Procedures.
 - **Must** have autonomy and independence
 - Should report directly to the Superintendent.
 - **Cannot** be the Decision-Maker or Appeals Officer.
 - **Can** serve as the Investigator or
 - **Can** serve as the Informal Resolution Facilitator.
 - **Cannot** serve as both the Investigator and Informal Resolution Facilitator, but not both.

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Wilmington Public Schools Title IX Coordinator

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Receipt of Report of Sexual Harassment: Initial Contact with Alleged Victim/Parents/Guardians

Upon receipt of a report of conduct that would, if true, constitute sexual harassment under Title IX, the Title IX Coordinator must:

- Promptly contact the identified victim to explain the process for filing a Formal Title IX Sexual Harassment complaint.
- Provide the alleged victim and parents/guardians with a copy of the District's Title IX Sexual Harassment Grievance Procedure.
- Inform the victim of the availability of supportive measures and consider the victim's wishes with respect to those measures.
 - In some limited circumstances, the Coordinator may also contact the accused respondent to provide supportive measures prior to filing of formal complaint. Not a requirement until after a Formal Title IX Complaint has been filed, however.
- Explain that supportive measures will be considered and provided regardless of whether a Formal Complaint is filed.
- Encourage victim/parents/guardians to follow up promptly to notify the District as to whether or not they intend to file a formal complaint.

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Consideration of Supportive Measures

- Document the supportive measures requested by the complainant/parents.
- Determine which supportive measures will be implemented.
 - Examples: counseling; extension of deadline(s); other course-related adjustment(s); modifications of schedule (class or employment); mutual restrictions on contact between the parties; campus escort service; leave of absence from employment; increased security and monitoring of certain areas of the building/campus; other similar measures.
- No Contact Orders: most often, no contact orders will be mutual.
- Ensure the supportive measures are individualized and non-disciplinary.
 - Supportive measures may not unreasonably burden the accused.
 - Taking disciplinary action against a respondent prior to the completion of the Title IX Grievance Procedure is prohibited and may not be provided as a supportive measure for the complainant.

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Supportive Measures:
Examples

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

This is a non-exhaustive list and does not preclude Districts from implementing other measures that do not place unreasonable burdens on either party and are not disciplinary or punitive in nature. Carefully crafted supportive measures must be created after a fact-specific inquiry.

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Retaliation and Discipline Outside of
Title IX Process Prohibited

“No [school district] or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under [these regulations].”

“Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or [these regulations] constitutes retaliation.”

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Administrative Leave for Employees



The Title IX Emergency Removal regulations do not preclude a district from placing an employee on administrative leave for the duration of the investigation – specifically, the emergency removal standard does not need to be satisfied to implement an administrative leave.

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Title IX Emergency Removal

(Do **not** confuse with emergency removal
under M.G.L. c. 71, § 37H ¾)

Districts may remove a respondent on an emergency basis at any time provided the school district:

- 1) Undertakes an “individualized safety and risk analysis”;
- 2) Determines that “an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal” and that there is no alternative to the respondent’s emergency removal to mitigate the threat presented; and
- 3) Provides the respondent with notice (oral or written) and the opportunity to challenge the decision immediately following the removal.

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Documentation of Initial Contact

- Following the initial meeting and the Coordinator’s decisions on supportive measures, the Coordinator must send written notice to the victim and the victim’s parents documenting the initial contact and the supportive measures to be implemented.
 - If any requested supportive measures are denied, document why the denial was reasonable.
- Supportive measures must be kept confidential!
- Only exceptions are measures like mutual no contact orders – both parties need to be aware there is a no contact order in place so the District can enforce it.

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Victim Chooses Not to File Formal Complaint

- The Title IX Coordinator cannot force the victim to inform the District whether they are going to file a formal complaint.
- There is no statute of limitations on a Title IX complaint.
- If they are not going to file within a reasonable period of time, consider filing complaint as the Title IX Coordinator.
- Consider best interests of community, information shared by complainant/parents, individual circumstances of the situation.
- If filing as Title IX Coordinator, use form “Notice to Complainant of Title IX Coordinator’s Decision to File a Title IX Formal Complaint” in Title IX Manual.
- Title IX Coordinator must file formal complaint on victim’s behalf if report involves an a pattern of alleged sexual harassment by an individual in a position of authority.

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Frequently Asked Question

If the Complainant does not want to file a formal complaint under Title IX and the Title IX Coordinator does not find a basis to sign a complaint, can the District then proceed with school discipline under school rules violations?

- No. The Title IX Grievance Process must be implemented and completed before the imposition of any disciplinary sanctions or other actions against a respondent.
- Supportive measures should be offered to the complainant, and documentation of the offer and/or implementation of supportive measures and the complainant’s decision not to file a formal complaint should also be made.
- Supportive measures must be non-punitive, non-disciplinary, and not place an unreasonable burden on either party.

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Frequently Asked Question

What if a complainant does not want to file a formal complaint under Title IX, but does want an investigation conducted pursuant to state law only?

- Complainants do not determine which law to file the complaint under. If the conduct alleged, if proven, would constitute sexual harassment under Title IX, the complaint must be investigated in accordance with the District’s Title IX Grievance Procedures.
- Complainants do not have the right to determine the amount of due process afforded to the accused (respondent).

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Formal Complaint
Process

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Filing of a Formal Complaint

What constitutes a Formal Complaint?

- A document (paper or electronic) filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment by a respondent and requesting that the district investigate the allegation of sexual harassment.
- Must state (if known to the reporter or alleged victim) the name(s) of the persons involved, witnesses to the conduct, if any, a description of the conduct, and to the extent possible, the dates and locations of the conduct. A formal complaint may not be dismissed solely because it was not completely filled out or it was filled out incorrectly.



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Who can file a Formal Complaint?

I. Victim/target of the alleged sexual harassment

II. Parental Authority – A parent/legal guardian who retains legal rights over a student may file a formal complaint on their child's behalf.

III. District-wide Title IX Coordinator

- Reports filed by a Third Party – not a formal complaint**
 - While reports filed by a third party trigger the district's obligation to respond, a formal complaint may only be signed by the complainant (or parent/guardian) or the Title IX Coordinator.
- Anonymous Reports – not formal complaint**

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Formal Complaint Process: Initial Assessment

Upon receipt of the formal complaint Title IX Coordinator should conduct an initial assessment to determine whether the Complaint is subject to immediate dismissal.

- Does the formal complaint allege sexual harassment by a respondent and request that the District investigate the allegation of sexual harassment?
- Did the conduct complained of occur in a program or activity over which the District exercised substantial control of both the activity and the accused?
- Filed by the correct party? (Complainant or their parent/legal guardian)
- Is the complainant currently participating in, or attempting to participate in the District's education program or activity?

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Consideration of Dismissal



Mandatory dismissal – Title IX Coordinator **MUST** dismiss the formal complaint if:

- Even if true, the alleged conduct would not constitute sexual harassment as defined by Title IX; or
- The alleged conduct did not occur in the district's education program or activity; or
- The alleged conduct did not occur within the United States.

Even if a complaint is dismissed under this section, the District may still take action under its code of conduct and applicable statutes (i.e. bullying law, M.G.L. c. 151B and 151C, Title VII).

If a complaint is dismissed under Title IX, but could still violate state sexual harassment standards, then proceed in accordance with our Civil Rights Grievance Procedure (non-Title IX Sexual Harassment).

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Consideration of Dismissal

Discretionary dismissal – Title IX Coordinator **MAY** dismiss the formal complaint if at any time during the investigation:

- Complainant notifies the Title IX Coordinator in writing that he/she would like to withdraw the formal complaint or any allegations in it;
- Respondent is no longer enrolled or employed by the district;
- Specific circumstances prevent the district from gathering evidence sufficient to reach a determination as to the formal complaint or the allegations.

Upon any dismissal (mandatory or discretionary), the District must send written notice of the dismissal and the reasons for it to both parties simultaneously and must notify the parties of their right to appeal the dismissal.

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Formal Complaint Process: Written Notice of Allegations



Upon receipt of a formal signed complaint, the Title IX Coordinator must send written notice of the allegations to both the complainant (victim) and respondent (accused) that includes:

- A statement prohibiting knowingly submitting false information;
- Sufficient details known at the time to allow the respondent the opportunity to respond, which includes the identities of the parties, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident if known;
- A statement that the respondent is presumed not responsible;
- A statement that a determination regarding responsibility is made at the conclusion of the grievance process;
- A statement that the parties may have an advisor of their choice who may be, but is not required to be, an attorney; and
- A statement that the parties/advisors will have the opportunity to inspect and review the evidence.

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The Title IX Grievance Procedure Informal Resolution

- Upon the filing of a Formal Complaint, The Title IX Coordinator may offer informal resolution of any Title IX complaint that does not involve an employee's alleged sexual harassment of a Student.
- Title IX Coordinator may serve as the Informal Resolution Facilitator

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Informal Resolution Facilitator

- Facilitates the **voluntary** process for informal resolution only after a formal complaint has been filed. Districts do not have to offer it.
- Cannot** be Investigator or Decision-Maker, could be Title IX Coordinator not also acting as the Investigator.
- Informal resolution cannot be used if respondent is an employee of the District.
- Either party can withdraw from the informal resolution process at any time.
- Timelines for grievance procedure paused if parties agree to informal resolution process.

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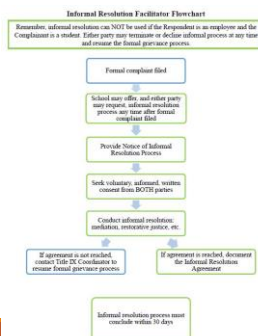


Informal Resolution Process

- Information shared during the Informal Resolution process is not confidential. It may be provided to the Title IX Coordinator, Investigator, administrator, or other outside agency (i.e. Department of Children and Families) as appropriate and required by law.
- Document agreement to participate in informal resolution process with the "Informal Resolution Process Agreement to Participate Consent Form."
- Once you have voluntary, informed, written consent from both parties, consider how you want to conduct the informal resolution.
 - Face-to-face meeting with both parties (in person or virtually) not recommended unless both parties provide written consent.
 - Shuttle Diplomacy

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The Title IX Grievance Procedure Investigation of the Formal Complaint

Formal complaint to be investigated by a designated Investigator.

- Can be the Title IX Coordinator but in practice would most likely be an Assistant Principal.
- Any formal complaint about an employee who holds a supervisory position shall be investigated by a person who is not subject to that supervisor's authority.

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Formal Complaint Investigations Parties' Right to Advisor

Throughout the formal complaint investigation process:

- Each party may have one (1) advisor of their own selection and at their own expense participate in the grievance process (districts do not need to provide). May not be a District staff member.
- In the case of a minor child, the advisor may be in addition to the parents.



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Title IX Investigator General Responsibilities

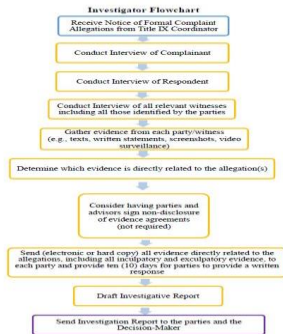
Responsible for completing an impartial investigation by seeking and gathering evidence relative to the investigation.

Responsibilities:

- Interview parties and witnesses
- Gather evidence (emails, photos, social media postings, video recordings, etc.)
- Maintain a presumption that the Respondent is not responsible
- Provide an equal opportunity for the parties to present facts and witnesses and to inspect and review any evidence obtained that is directly related to the allegations
- Identify, organize and compile relevant information.
- Maintain investigation records and notes.
- Complete Investigation and issue a final Investigative Report that fairly summarizes the relevant evidence within twenty-five (25) school days (includes mandatory 10 calendar day period for parties to respond to initial evidence package.)

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Investigative Considerations Definition of Consent

- Question: During the formal complaint investigation process, what constitutes consent?
- Definition of Consent to be Applied: "The Department believes the definition of what constitutes consent ... within a recipient's education community is a matter best left to the discretion of recipients, many of whom are under State law requirements to apply particular definitions of consent."
- Massachusetts definition of lack of consent: compelling a person to do an act by force or by threat of bodily injury and against the complainant's will.
- Note: In Massachusetts, a child under the age of 14 is incapable of giving consent to "indecent touching" and a child under the age of 16 is incapable of giving consent to sexual intercourse. M.G.L. c. 265, §13B and §23.

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Investigative Considerations Standard of Proof

The Standard of proof to be applied in examining and determining with Sexual Harassment occurred is the "Preponderance of Evidence" standard:

- Preponderance of Evidence: The evidence establishes that the conduct complained of was **more likely than not to have occurred**.
 - "50% plus a feather."

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Conducting the Investigation

- Provide written notice to Complainant and Respondent of any interview to be conducted of them.
 - Use "Notice to Party Whose Participation is Expected at an Investigative Interview" form in Title IX Handbook at p. 27.
- Written notice not required prior to interviews of witnesses.
 - Utilize "Investigator's Checklist for Interviews of Parties and Witnesses" in Title IX Handbook (p. 28) to document every interview. Use a separate checklist for each witness, and for each interview if there are subsequent or follow-up interviews for a party or witness.
- Take notes during all interviews conducted. If possible, ask for another person (not Decision Maker, Appeals Officer, or Informal Resolution Facilitator) to be present to take notes.
- Investigator may request confidentiality, but parties can still discuss the allegations and gather and present relevant evidence. Cannot give a "gag order."

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Interviewing the Parties



Prior to interviewing the Complainant and Respondent

- Both parties should be allowed to have parents/guardians and advisor (if any) present.
 - Parents/guardians and/or advisors may not, however, interfere in the interview process.
- Review the Formal Title IX Complaint prior to conducting interviews.
- Interview Complainant first.
 - If Complainant makes new allegations not contained within the original complaint, must investigate but must also provide written notice to both the Complainant and Respondent of the additional allegations.
- Inform each party of right to be free from retaliation for the filing of the Formal Complaint and/or for participating in the Title IX Grievance Process.
 - Begin by reviewing and confirming the allegations set forth in the Formal Complaint.
 - Where did this happen?
 - When?
 - Where any witnesses present?
 - Is there any evidence that the Complainant could provide relative to the allegations set forth in the Formal Complaint?
 - At conclusion of interview, inform Complainant that you may need to conduct a follow up interview and, if so, will provide written notice of that follow up interview.

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Witness Interviews



- Be specific!
- The burden is on the District and Investigator to gather enough evidence for the Decision-Maker to make a determination.
 - The burden of proof is not on the complainant or respondent.
- Look for evidence or information that tends to corroborate or dispel the allegations.
- The questions need to be exhaustive and cover all relevant questions for each allegation.
- For non-party witnesses, start with general questions.
 - E.g., Can you tell me about your relationship with Complainant/Respondent?
- Then move on to more specific questions as the interview progresses.

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Witness Interviews

•Who? What? When? Where? Why?

•For each and every allegation, you need to be asking:

- The date, time, and location of the incident;
- The exact phrase or words used;
- Number of times conduct occurred;
- Frequency that the incident(s) occurred (daily, weekly, etc.);
- Names of any other witnesses who may have been present;
- Names of any other witnesses who may have information regarding the allegations;
- If relevant, the exact location on the alleged victim's person that the touching occurred, how long the physical contact lasted, and whether there were changes to the physical contact.

•Ask who else they may have talked to about the incident.

•Any other evidence (notes, emails about the incident, written statement, etc.).



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Gathering Evidence

•Ask for any additional evidence from each party/witness:

- Emails, text messages, social media messages, screen shots, etc.;
- Notes or statements provided by party/witness;
 - Written statement not required from each party/witness, burden is on the school district.

•Gather additional relevant evidence:

- Request IT Department pull relevant emails or files on school servers
- Obtain surveillance video
- Social media posts
- Attendance records of parties
- Visit location of alleged incident if on school grounds. Document with notes and photos.
- Medical and Psychological records
 - Can request them if they are relevant but cannot share them unless written consent obtained from parent/guardian or student if 18+.

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Potential Investigation Pitfalls

•Failure to investigate each allegation.

•Investigating the singular allegation without inquiry as to whether other incidents occurred.

•Failure to follow up on other allegations learned during the course of the investigation.

•Failure to interview all of the witnesses.

•Failure to establish what actually occurred (e.g., what statements were made or what actions were taken).



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Concluding the Investigation: Sharing Evidence with Parties

- Investigator must provide all parties with the opportunity to review all evidence “directly related” to the allegation(s) and provide a written response.
 - May require redaction – if part of an email/other evidence is totally unrelated to investigation, that part must be redacted.
 - Use the form “Notice of Opportunity to Review Evidence and Notice of Opportunity to Submit a Written Response Within Ten (10) Days” in the Title IX Handbook (p. 33).
- Provide copies of interview notes, witness/party statements, emails, text messages, photographs, screen shots, etc.
 - Do not redact names of witnesses interviewed unless the witness specifically requested to remain anonymous.
- Have parties sign a non-disclosure agreement prior to emailing or mailing a hard copy of the evidence.

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Evidence “Directly Related” to the Complaint

- “Directly related” is broader than “relevant.”
- “Directly related” evidence can be any information that potentially corroborates or contradicts the allegations.
 - Err on the side of caution. If it was provided by a witness or party, most likely include the evidence in the initial evidence package.
- After parties have reviewed the evidence, the Investigator will then determine what evidence is “relevant.”

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Relevant?

“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.
- What is never “relevant”:
 - Questions and evidence offered by the respondent regarding the complainant’s general sexual predisposition are not relevant and should not be considered.
 - A complainant’s prior sexual behavior is also not relevant and should not be considered except for the two limited exceptions that are specific to the actual offensive conduct alleged:
 - If it is offered to prove someone else committed the conduct;
 - If it is offered to prove the complainant consented to the conduct under investigation.

Note: questions and evidence about a *respondent’s* sexual predisposition or prior sexual behavior are not subject to any special consideration but rather must be judged like any other question or evidence as relevant or irrelevant to the allegations at issue.

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Drafting the Investigation Report

- Allow 10 calendar days from sending out evidence to the parties before issuing the completed Investigation Report.
 - Consider any written responses from the parties when drafting the Report.
 - Include all procedural steps that were taken:
 - Dates of notices sent to parties;
 - Dates, times, participants in interviews;
 - Date on which evidence was sent to parties to review, date they provide written response (if any).
 - Include summaries of all interviews and relevant evidence.
- *Use Title IX Handbook forms at pp. 34-37



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Forwarding the Final Investigation Report to the Decision Maker and Parties

- Upon completion of the Final Investigation Report, the Investigator must send a copy to the designated Decision-Maker (Principal) and to the Parties. (*Use form letter at p. 37 in the Title IX Handbook.*)
- The Investigator must notify the parties that they will be provided with ten (10) calendar days to submit a written response to the Investigation Report.
- Parties are not, however, required to respond.
- **The Grievance Process then shifts to the designated Decision-Maker (Principal).**

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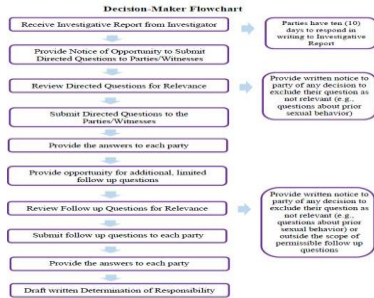


The Title IX Grievance Procedure The Decision-Maker

- The Decision-Maker cannot be the Investigator or the Title IX Coordinator and must not report directly to the Title IX Coordinator or Investigator.
 - Usually, will be the building Principal
- Decision-Maker must be objective and unbiased.

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Provide written Determination of Responsibility to both parties simultaneously and the Appeals Officer

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NEXT STEPS

Title IX Decision-Maker First Steps

• Upon receipt of the final Investigation Report, the designated Decision-Maker must send written notice to the parties of the parties' right to submit, within ten (10) calendar days:

- (1) A written Response to the Investigation Report
- (2) Directed Questions to the opposing party or any witnesses.
 - Parties do not have right to submit written questions to Title IX Coordinator or Investigator.

• Use Title IX Handbook form at p. 37.

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The Title IX Grievance Procedure Directed Questions From Parties

Restrictions on Directed Questions:

- All questions must be posed in a respectful manner.
- Only relevant questions will be permitted (Decision-Maker must provide reason(s) for excluding any questions as not relevant).
- Questions regarding the complainant's sexual predisposition are not relevant.
- Questions about the complainant's prior sexual behavior are also not relevant unless such questions are posed to prove someone other than the respondent committed the conduct alleged, or if the questions concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

After receipt of answers by the parties, the Decision-Maker must allow additional, but limited, follow-up questions from each party to be answered by the opposing party or witness to whom they are directed within 5 calendar days.

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Objective Evaluation of the Evidence

- The Decision-Maker must maintain a presumption of non-responsibility until the conclusion of the grievance process.
- The Decision-Maker cannot make credibility determinations based on the status of the individual as either the complainant or the respondent - invites bias and partiality.
- The Decision-Maker must evaluate both inculpatory and exculpatory evidence.
- Any rules or process of evaluating evidence by the Decision-Maker must apply equally to both parties.
 - Example: the district may adopt a rule or standard for evaluating the weight or credibility of prior bad acts, but this standard needs to be applied to both the complainant and respondent.

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Determination of Responsibility

- Upon conclusion of the Directed Questions time period, the Decision-Maker must apply the standard of proof (preponderance of the evidence) to the facts to determine whether sexual harassment occurred as alleged and issue a written Notice of Determination of Responsibility
 - The regulations contain specific requirements regarding the content of the written Notice of Determination
 - See Title IX Handbook Forms pp. 49-59.
- Three possible outcomes:
 - Sufficient evidence to find Respondent responsible for the allegations of sexual harassment
 - Insufficient evidence to find Respondent responsible for the allegations of sexual harassment
 - Mixed determination of Responsibility (sufficient evidence for some but not all of the allegations)
 - Use the corresponding letter templates in the Title IX Manual to customize the determination based on the situation.
- **Written Determination should be sent to both parties and to the District's designated Appeals Officer.**

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The Title IX Grievance Procedure Appeals

Within 5 calendar days of receipt of the Decision-Maker's determination, either the Complainant or Respondent may appeal from a determination regarding responsibility only on the following bases:

- I. Procedural irregularity that affected the outcome of the matter;
- II. Newly discovered evidence that could affect the outcome of the matter; and/or
- III. Title IX personnel had a conflict of interest or bias that affected the outcome of the matter.

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Appeals Officer

- Appeals Officer cannot be the Title IX Coordinator, the Decision-Maker or Investigator.
- Appeals Officer must be an individual not previously involved (someone other than the Title IX Coordinator, Investigator, and Decision-Maker).
- Should be the Superintendent
- Must determine if the appeal can move forward based on specific criteria.
- Reviews investigation report and other evidence that was gathered, along with statements by all parties.
- Within 30 calendar days of receipt of the appeal, the Appeals Officer issues a written determination describing the outcome of the appeal and the rationale. (use Title IX Handbook forms at pp. 65-69.)

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Record Keeping Requirements

- District must maintain the following records for 7 years:
- Records of each sexual harassment investigation, including disciplinary and remedies;
 - Any appeal and the result therefrom;
 - Any informal resolution and the result therefrom;
 - All materials used to train Title IX Coordinators, investigators, decision-makers, and informal resolution facilitators;
 - Training materials must also be publicly available on the District's website;
 - Record of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.
 - In each instance, the district must document that its response was not deliberately indifferent and that it has taken measures to ensure equal access to the district's educational program or activity.



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Questions?

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Resources

US DOE, Questions and Answers on the Title IX Regulations on Sexual Harassment (July 2021, updated June 2022), available at:
<https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>

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