

K12 Title IX Investigator Live Virtual Training

Investigator

October 23, 2024

TITLE IX UNIVERSITY K-12
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About Us

OUR MISSION

To provide the best Care and Support for our clients, Community Partners, employees, contractors, collaborators, vendors, and all others who encounter our company.

GOAL

To assist schools and districts in providing a safe and healthy learning and working environment for students, faculty and staff.

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Before We Get Started...

- Not legal advice
- Materials
- Chat Bar and Questions
- Breaks
- Posting Link
- No recording

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Agenda

01 Welcome

02 Title IX Overview - How we Got Here

03 Role of an Investigator

04 Title IX Grievance Process - 2020 and 2024

05 Investigative Techniques

06 Report Writing

07 Closing Thoughts/Questions

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Course Appropriate for:

- **Title IX and Equity Investigators**
- **Coordinators/Deputies/Designees**
- **Decisionmakers**
- **Others involved with Title IX**

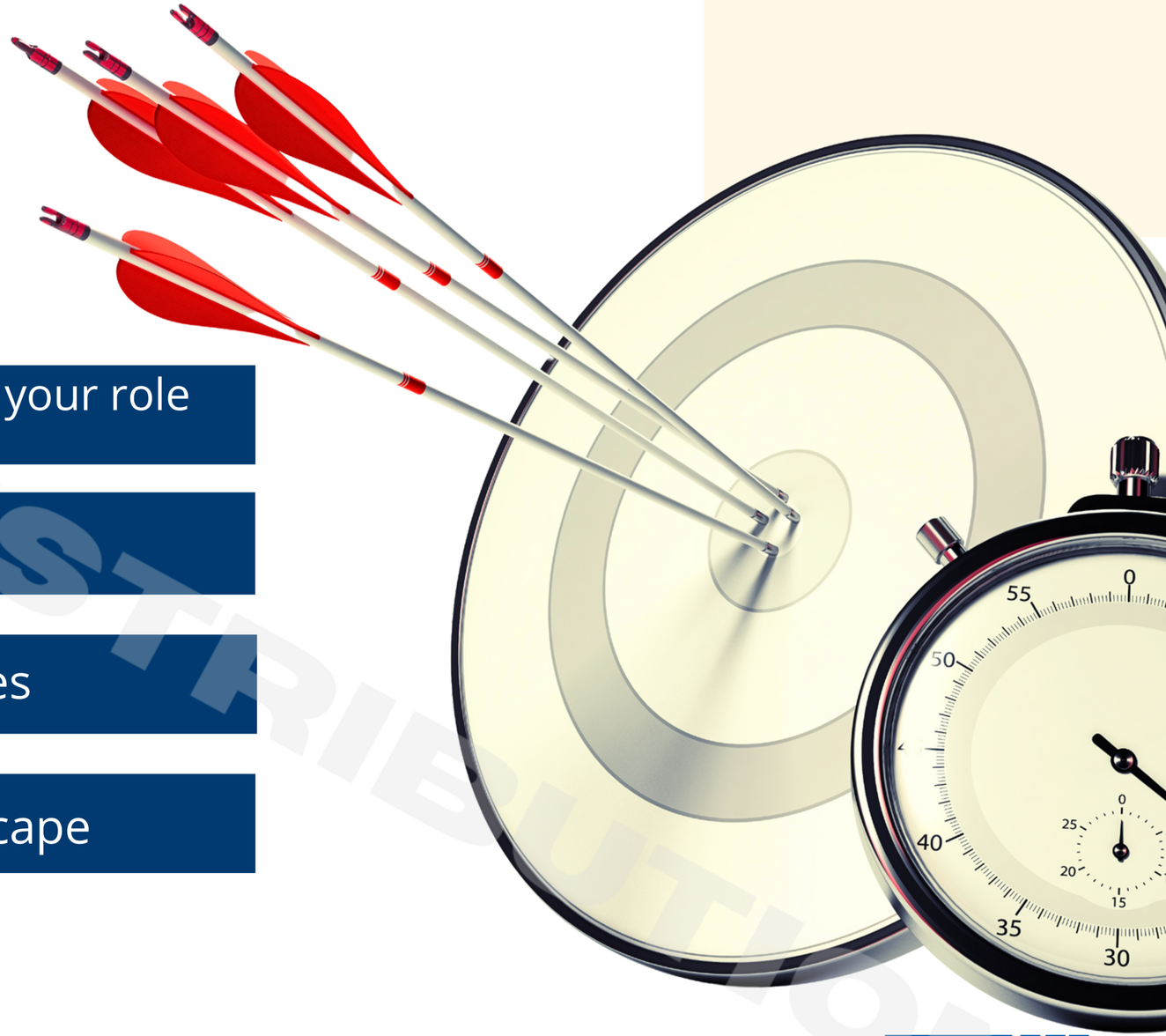
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Training Objectives

- Understand role of Title IX Investigator and your role at your district
- Learn best practices for your role
- Explain the grievance process/procedures
- Learn the current Title IX litigation landscape



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The "Why"

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The choice of investigator is one of the MOST critical decisions a school will make.



Describe a GREAT Investigator

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WHO ARE YOU LOOKING FOR?

- Organized
- Reliable
- Consistent
- Kind
- Non biased
- Articulate
- Critical thinking





- Ability to break down complex situations
- Capacity
- Attention to detail
- Not afraid to make a decision
- Trauma informed

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The "Who"

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CONDUCT THAT INVOLVES

- STUDENT ON STUDENT
- STUDENT ON EMPLOYEE
- EMPLOYEE ON STUDENT
- EMPLOYEE ON EMPLOYEE

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PARTIES IN TITLE IX PROCESS

PARTIES

COMPLAINANT

RESPONDENT



The Title IX Coordinator
is never the Complainant



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"Parties" in Title IX Matter

	COMPLAINANT	RESPONDENT
2020	an individual who is alleged to be the victim of conduct that could constitute sexual harassment.	an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
2024	**1)** a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or this part; or **(2)** A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or this part and who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination.	a person who is alleged to have violated the recipient's prohibition on sex discrimination.

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School and/or Coordinator are NOT a PARTY (Complaint or Respondent) even if the matter is signed by the Title IX Coordinator OR the complaint of discrimination is general against the school.

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TITLE IX TEAM

- Title IX Coordinator
- Investigator(s)
- Decisionmaker(s)
- Appellate Decisionmakers
- Informal Resolution Facilitators
- Building Point People
- All Employees



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The "What"

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What is 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."

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A Law About Access

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1972

Title IX was enacted (athletics).

2001

ED issued guidance that described sexual harassment as violating Title IX.

2011 & 2014

ED articulated procedures required by schools in their response to sexual harassment. Significant Complainant focus.

2020

Regulations focused on due process rights for Respondents.

2024

Current regulations - defining “on the basis of sex” to include sexual orientation and gender identity and additional responsibilities for pregnant students/employees.

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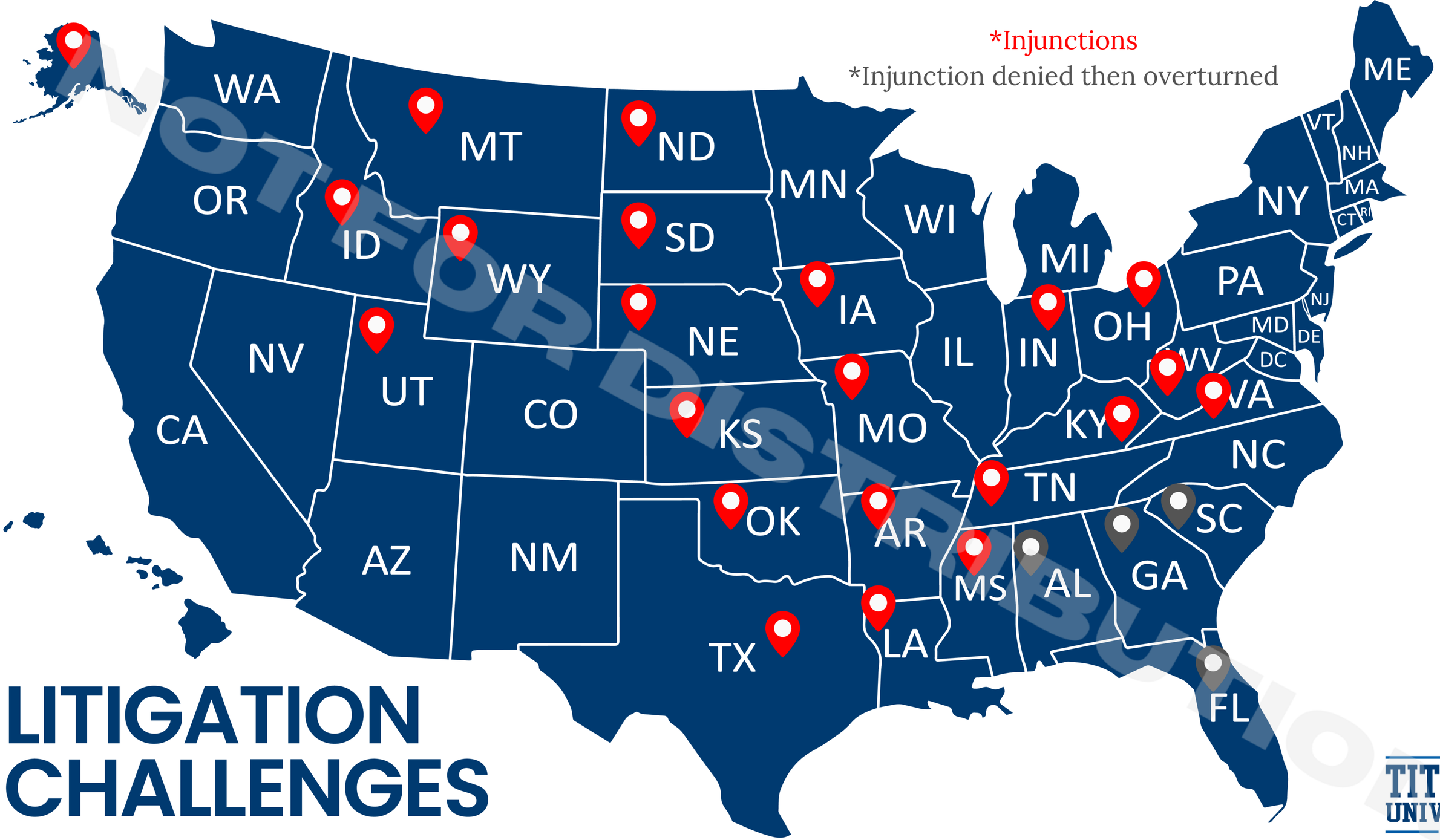


Enforced by the Department of Education, Office for Civil Rights.

Covers discrimination based on "sex" . . . gender-equity in athletics, pregnancy.

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LITIGATION CHALLENGES

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Department of Education Resources / Downloads

- Department of Education Press Release
- Final Regulations – Published in Federal Register April 29, 2024
- Final Regulations Including Preamble – Unofficial Version
- Regulations Only
- Fact Sheet
- Summary of Major Provisions
- Resource for Policy Drafting

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Litigation Challenges

- The State of Louisiana v. U.S. Department of Education (W.D. La. filed April 29, 2024) (joined by Mississippi, Montana, and Idaho)
- State of Texas v. U.S. Department of Education (N.D. Tex. filed April 29, 2024)
- State of Alabama v. U.S. Department of Education (N.D. Ala. filed April 29, 2024) (joined by Florida, Georgia and South Carolina)
- State of Tennessee v. U.S. Department of Education (E.D. Ky. filed April 30, 2024) (joined by Kentucky, Ohio, Indiana, Virginia and West Virginia)
- State of Oklahoma v. U.S. Department of Education (W.D. Okla. filed May 6, 2024)
- The State of Arkansas v. U.S. Department of Education (E.D. Mo. filed May 7, 2024) (joined by Missouri, Iowa, Nebraska, North Dakota and South Dakota)
- State of Kansas v. US Department of Education (D. Kan. filed May 14, 2024) (joined by Alaska, Utah and Wyoming)

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Language Changes

2020	2024
Report	Notification
Formal Complaint	Complaint
Formal Grievance Process	Grievance Procedures
Pregnancy Accommodations	Modifications

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PROHIBITED CONDUCT UNDER TITLE IX



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2024 SEX-BASED HARASSMENT
2020 SEXUAL HARASSMENT

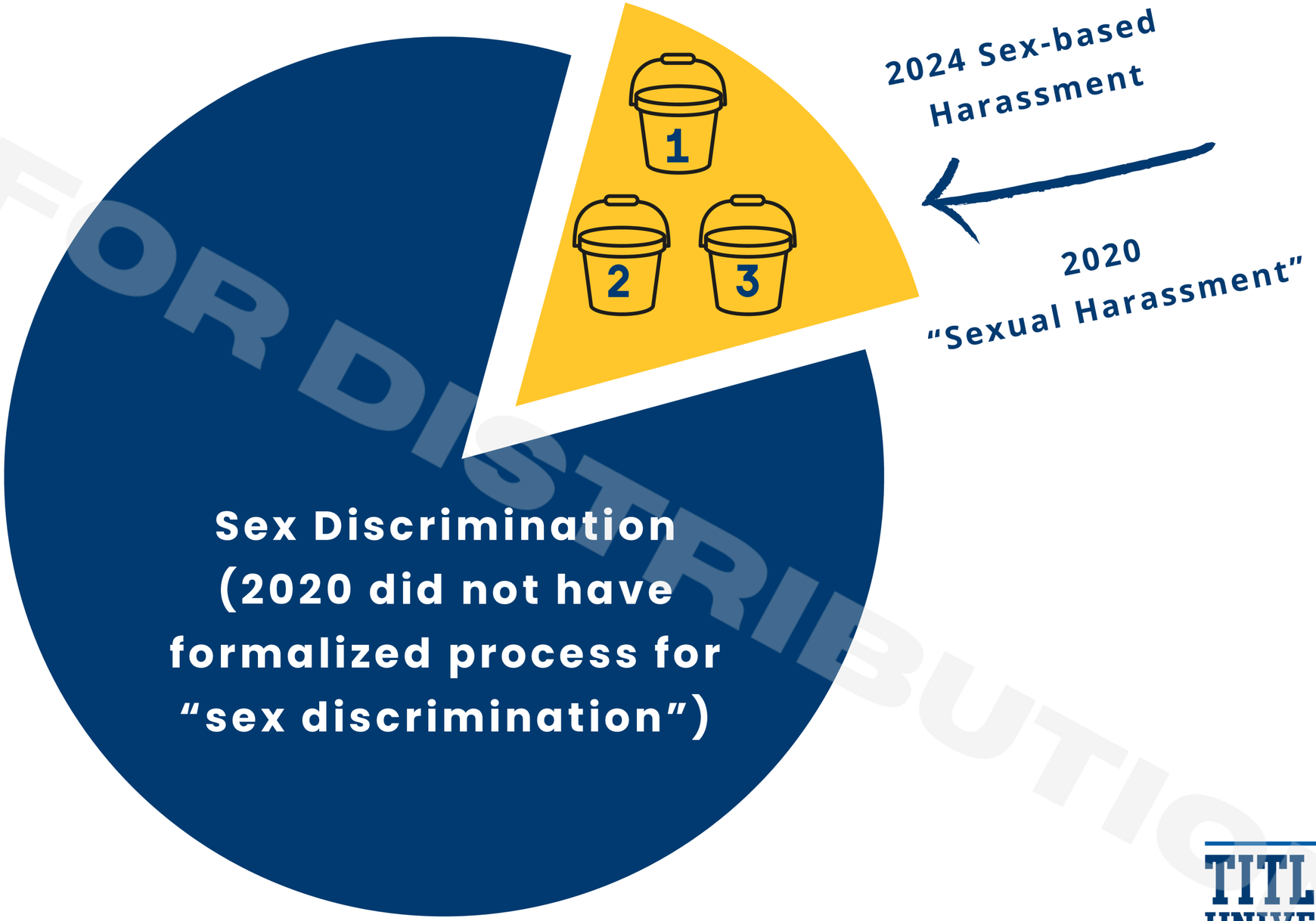


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2020 SEXUAL HARASSMENT



Conducts on the basis of sex that satisfies one or more of the following

- An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive AND objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- "Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.

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2024 Sex Based Harassment

A form of sex discrimination. Sexual harassment and other harassment **on the basis of sex** that is:



Quid Pro Quo Harassment: An employee, agent or other person authorized to provide an aid, benefit, or service, under the school's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit or service, on a person's participation in unwelcome sexual conduct.



Hostile Environment Harassment: Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so **severe or pervasive** that it limits or denies a person's ability to participate in or benefit from the school's education program or activity.



Specific Offenses

a. Sexual Assault
b. Dating Violence
c. Domestic Violence
d. Stalking

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On The Basis of Sex

This is the big issue surrounding the current litigation, injunctions, and legislation.

2020 - Not Defined in the Regulations (it can be found in guidance).

2024 - Defined to include:

Discrimination on the basis of sex includes:

1. **Sex Stereotypes**
2. **Sex Characteristics**
3. **Pregnancy or Related Conditions**
4. **Sexual Orientation**
5. **Gender Identity**

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QUID PRO QUO



1. **An employee, agent or other person authorized to provide an aid, benefit, or service, under the school's education program or activity**
2. **Explicitly or impliedly* conditioning the provision of such an aid, benefit or service,**
3. **On a person's participation in unwelcome sexual conduct.**

*only change between 2020 and 2024, 2024 adds "explicitly and impliedly".

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EXAMPLE

Amanda, an administrative assistant, tells Mr. Jones, the Superintendent, that she needs to leave early from work for the next week. Mr. Jones agrees... if Amanda provides him sexual favors.



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2020 Hostile Environment -- Severe, Pervasive, AND Objectively Offensive







- Severe - can be non verbal through sexual assault (touching/fondling)
- Pervasive - how often and how widespread
- Objectively Offensive - behavior that would be offensive to a reasonable person under the circumstances

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2024 HOSTILE ENVIRONMENT HARASSMENT



Hostile Environment Harassment

1. Unwelcome
2. Sex-based Conduct
3. Subjectively AND Objectively Offensive
4. Severe OR Pervasive
5. Limits or Denies Ability to Participate (Access)

Fact Specific Inquiry

1. Degree to which conduct affected access
2. Type, frequency, and duration of conduct
3. Ages, roles, previous interactions, other factors about each party
4. Location of the conduct and context in which it occurred
5. Other sex-based harassment

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Note:
Hostile Environment

EXAMPLES

- Emile, a 5th grader, calls James, another 5th grader, sexually explicit names.
- Linda, a cafeteria worker, constantly comments on Mia's appearance. It started as just talking about her outfits, but turned into conversation about her boobs and her butt.
- Every time Thomas sees Ms. Jones, he licks his lips and moans.



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SPECIFIC OFFENSES



Specific Offenses

1. **Sexual Assault**
    a. Rape
    b. Fondling
    c. Incest
    d. Statutory Rape
2. **Dating Violence**
3. **Domestic Violence**
4. **Stalking**

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SEXUAL ASSAULT SAME FOR 2020 & 2024



Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

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 incapacity.

Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.

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CONSENT

Not Defined under regulations — but you need to have one.

The Assistant Secretary will not require a recipient to adopt A PARTICULAR definition of consent.



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Note:
Specific Offenses
Sexual Assault

EXAMPLES...

- Cindy, a first grader, puts her pencil up the butt of Courtney, a kindergartner.
- Amy touches James' penis under his clothes and moans. She asks him if it feels good.
- James, an 18 year old senior, has sex with Reba, a 13 year old 8th grader.



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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; **and**

- Where the existence of such a relationship shall be determined based on a consideration of the following factors:
  1. Length of relationship
  2. Type of relationship
  3. Frequency of interaction between the persons involved in the relationship

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Note:
Specific Offenses
Dating Violence

EXAMPLES...

- Paxton, a sophomore, is seen in the hallway grabbing his girlfriend Lainey, another sophomore, by the neck and pushing her against the locker.
- Lily, a middle school student, slaps her boyfriend Landry across the face at recess.
- Mr. Jones, the art teacher, punches the wall in Ms. Dulin's classroom, right next to her head because he thinks she is seeing someone else.



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DOMESTIC VIOLENCE 2020:

A FELONY OR MISDEMEANOR CRIME OF VIOLENCE COMMITTED BY A:

- Current or former spouse or intimate partner of the victim.
- Person with whom the victim shares a child in common.
- Person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner.
- 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 or 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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DOMESTIC VIOLENCE 2024:



Felony or misdemeanor crimes committed by a person who:

- Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction* of the recipient (school), or a person similarly situated to a spouse of the victim.
- Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner.
- Shares a child in common with the victim OR
- Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

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Note:
Specific Offenses
Domestic Violence

EXAMPLES...

- Thomas, a custodian, pushes Linda (his wife), another custodian, in the hallway after school.
- Ms. White and Mr. White are both teachers. They were previously married, but recently got divorced. Ms. White is frustrated with Mr. White because he has not paid child support. She holds a knife to him in the parking lot in an attempt to get the $.



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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



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Note:
Specific Offenses
Stalking

EXAMPLES...

- Samantha, a freshman, cannot seem to “shake” Adam. They used to be friends, but Adam began asking Samantha to be in a relationship with him. Samantha told Adam she was not interested. Now, Adam is EVERYWHERE. He watches Samantha’s track practice in the bleachers even though he is not on the track team. He is always near Samantha’s locker. He winks every time he sees Samantha. Samantha has told Adam that he is freaking her out multiple times.



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Note:

You may be working under both the 2020 Title IX regulations and the 2024 Title IX regulations during this transition

*consider how you explain your role under both

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The "When"

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THERE IS NO STATUTE OF LIMITATIONS...

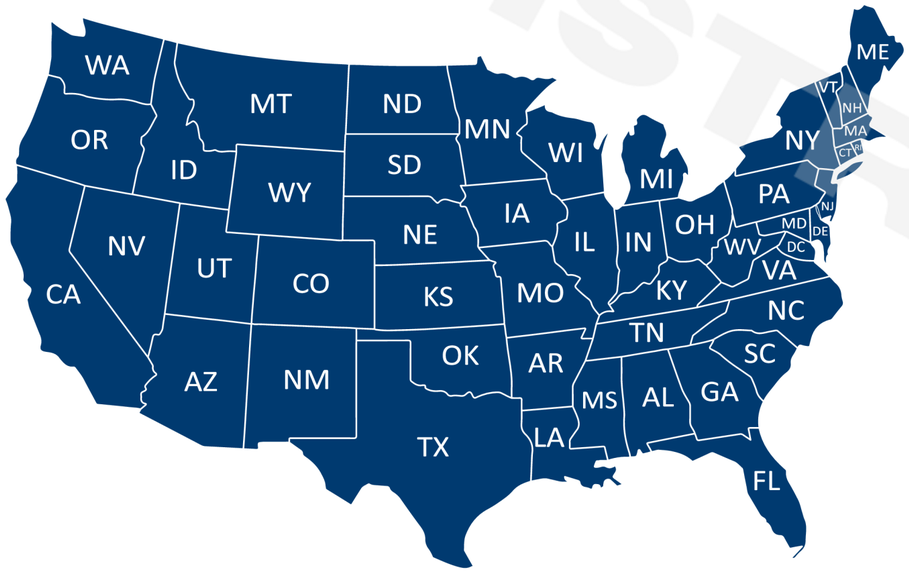
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Pre- August 1, 2024 conduct = 2020 Regulations---

No matter where you are located.



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The "Where"

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Jurisdiction ***2020***

Education Program or Activity



Locations, events, or circumstances (operations) over which the school or district exercised substantial control over both the respondent AND the context in which the sexual harassment occurs.



Includes online sexual harassment but it must be analyzed to determine if it occurs in education program or activity.



Does not create or apply a geographic test, does not draw a line between “off campus/property” and “on campus/property,” & does not create a distinction between sexual harassment occurring in person vs online.

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Application (Jurisdiction - EXPANDED in ***2024***)

ALL sex discrimination that occurs under the school's education program or activity in the U.S., including but not limited to:

- Conduct that occurs in a building owned or controlled by a student organization that is officially recognized by the school.
- Conduct that is subject to the school's disciplinary authority (What is school's jurisdiction for other policies?).
- **Even when some conduct alleged to be contributing to the hostile environment occurs outside of the education program or activity or outside of the US.**

Consider: Does the behavior OUTSIDE of education program or activity CONTRIBUTE to a sex-based hostile environment INSIDE the education program or activity?

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A Few Important Notes

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ESTABLISH REASONABLY PROMPT TIMEFRAMES FOR THE MAJOR STAGES OF THE GRIEVANCE PROCEDURES

Major Stages (2024 language) Include:

01 Evaluation (whether to dismiss or investigate a complaint)

02 Investigation

03 Determination

04 Appeal

Allow for reasonable extension of timeframes on case-by-case basis for good cause and with notice to the parties that includes reason for delay.

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Language Changes 2020 v. 2024

Report

Notification

Formal Complaint

Complaint

Formal Grievance Process

Grievance Procedures

Pregnancy Accommodations

Modifications



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Definition Changes 2024

Complainant: Adds student or employee who WAS participating or attempting to participate in the education program or activity at the time of the alleged sex discrimination.

Complaint: Oral or Written!

Pregnancy or Related Condition: Extensive.

Relevant: When it may aid in showing whether the alleged sex discrimination occurred.

Student
Student with a Disability
Admission
Applicant
Confidential Employee
Supportive Measures

Consent: NO DEFINITION

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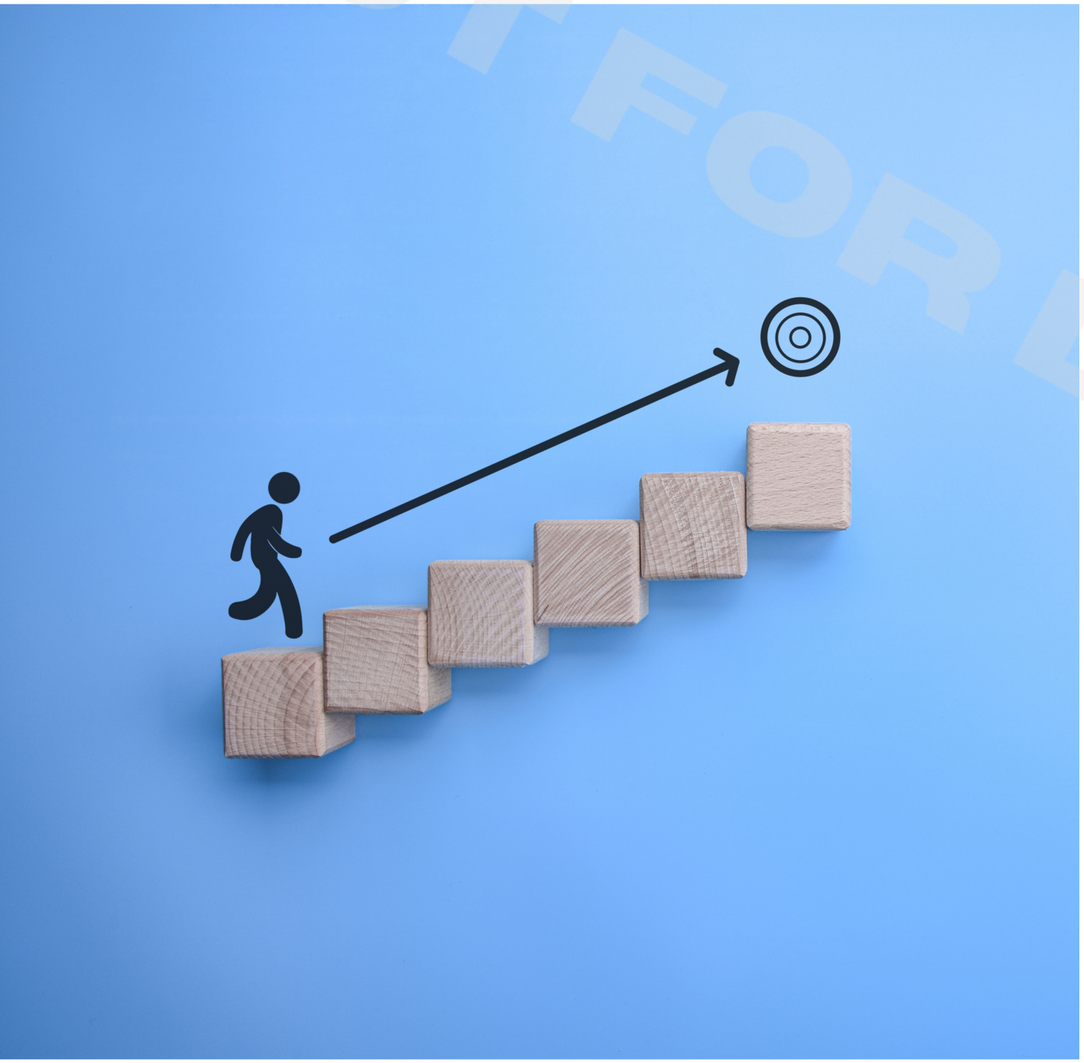
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Role and Scope Overview

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What is the role/purpose of a Title IX Investigator (why are we doing this work?)

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YOUR ROLE AND SCOPE



Conduct Interviews
Interview parties/witnesses (with notice under 2020)

Notice of Allegations?
Issued by Coordinator or Investigator

Collect information/evidence
Collect information/evidence, including from parties

Follow prescribed timeframes
Timeframes set forth under regulations/policy

Prepare Investigative Report
Draft investigative report and provide to parties for review

Oversee Review of Report/Evidence
Oversee review of report/evidence by parties

Impartial/Unbiased

Supportive Measures
Evaluate/assist with supportive measures as needed

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Note:

You (Investigator) are part of the Title IX Team at your school.

Title IX Coordinator is leader of that team.

Also on the team:

- Deputies/Designees
- Decisionmaker
- Appellate Decisionmaker
- Informal Resolution Facilitator
- Supportive Measure Review Administrator (2024 only)

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Title IX Roles 2020



Title IX Coordinator

Cannot serve as the Decision-Maker or Appellate Decision-Maker. May serve as an Investigator - though if possible, it is recommended that another individual serve as an Investigator. May serve as an Informal Resolution Facilitator.

Investigator

Cannot serve as the Decision-Maker or Appellate Decision-Maker. May be the Title IX Coordinator but if possible, it is recommended that this individual be separate from the Title IX Coordinator. It is not recommended that an Investigator serve as the Informal Resolution facilitator in a case that they have started, or later serve, as an Investigator.

Decision-Maker

Cannot be the Title IX Coordinator. Cannot serve as the Investigator or Appellate Decision-Maker. It is not recommended that a Decision-Maker serve as the Informal Resolution facilitator in a case that they may later serve as a Decision-Maker.

Appellate Decision-Maker

Cannot be the Title IX Coordinator. Cannot serve as the Investigator or Decision-Maker. It is not recommended that an Appellate Decision-Maker serve as the Informal Resolution facilitator in a case that they may later serve as an Appellate Decision-Maker.

Informal Resolution Facilitator

May be the Title IX Coordinator. It is not recommended that an individual who has or will serve as an Investigator, Decision-Maker or Appellate Decision-Maker in the same case serve as the Informal Resolution Facilitator.

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Role & Responsibility Overlap (2024)

- Coordinator can be Investigator/Decisionmaker *single Investigator model is permitted ⚠
- Investigator cannot be the Informal Resolution Facilitator
- Supportive Measure Review Administrator should not be the Coordinator or their supervisor
- Appellate Decisionmaker(s)



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To Do:



- Clarify your role with your Coordinator
- Assess any issues with overlap (especially if under 2024 and serving in all roles)
- Consider how you will explain any overlap to parties if under 2024

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Stay in Your Lane

- Fair and equitable investigation
- Free from Conflict of Interest/Bias
- Interview parties and witnesses
- Gather evidence
- Draft Investigative Report

1

2

3

4

5

Coordinator

Investigator

Decisionmaker

Decisionmaker Appeals

Informal Resolution Facilitator

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Training Requirements: Investigator/Decision-Maker/ (2024)

1. The school's obligation to address sex discrimination in its education program or activity.
2. The scope of conduct that constitutes sex discrimination under Title IX - including sex based harassment*.
3. Reporting requirements.
4. All applicable notification and information requirements (where they need to add the link to the website).*



5. Response procedures after report received (section 106.44).
6. Grievance procedures (section 106.45 and if applicable 106.46).
7. How to serve impartially:
   - Avoiding prejudgment of facts and
   - Bias/Conflicts of interest
8. Definition of "relevant."*

*new or changed in 2024

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YOU ARE ALSO A RESPONSIBLE EMPLOYEE.

K-12: **ALL EMPLOYEES** (who are not confidential) **MUST** notify Title IX Coordinator when they have information about conduct that REASONABLY MAY constitute sex discrimination.

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Avoiding Conflicts of Interest and Bias



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Title IX team must serve impartially in their role and avoid prejudgment of the facts as issue, conflicts of interest, and bias.

***applies to 2020 or 2024**

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Conflict of interest or bias cannot be:

- **for or against complainants or respondents generally or**
- **for or against the individual complainant or respondent in a matter.**

Family friend is a witness in a matter

Child is a party in a matter.

You are a witness in a matter.

Close relationship with a party.

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Why is this Important?

- Erodes trust in grievance procedures/creates barriers
- Decrease ability to ensure a fair and reliable outcome

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Ways to Mitigate Bias/Conflict of Interest

- Evaluate situations where serving in overlapping roles
- Training that avoids sex stereotypes
- Be wary of the single investigator model
- Equitable treatment of the parties



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In Every Case:



- Evaluate whether a conflict of interest/bias exists at the outset of a matter.
- Check biases throughout a matter.
- Notify the Title IX Coordinator if a bias/conflict of interest arises.

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Overview of the Process

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Report/Notification Pathway Overview

01

Report/Notification

Can be directly to Title IX Coordinator/Employee or other mechanism. Title IX Coordinator will offer supportive measures/assess for appropriate pathway - Title IX or?

02

Investigation

If a complaint is initiated (2024) or a Formal Complaint signed (2020), investigator assigned

03

Decisionmaking

At conclusion of investigation, determination made

04

Appeal?

May be an appeal of the outcome

05

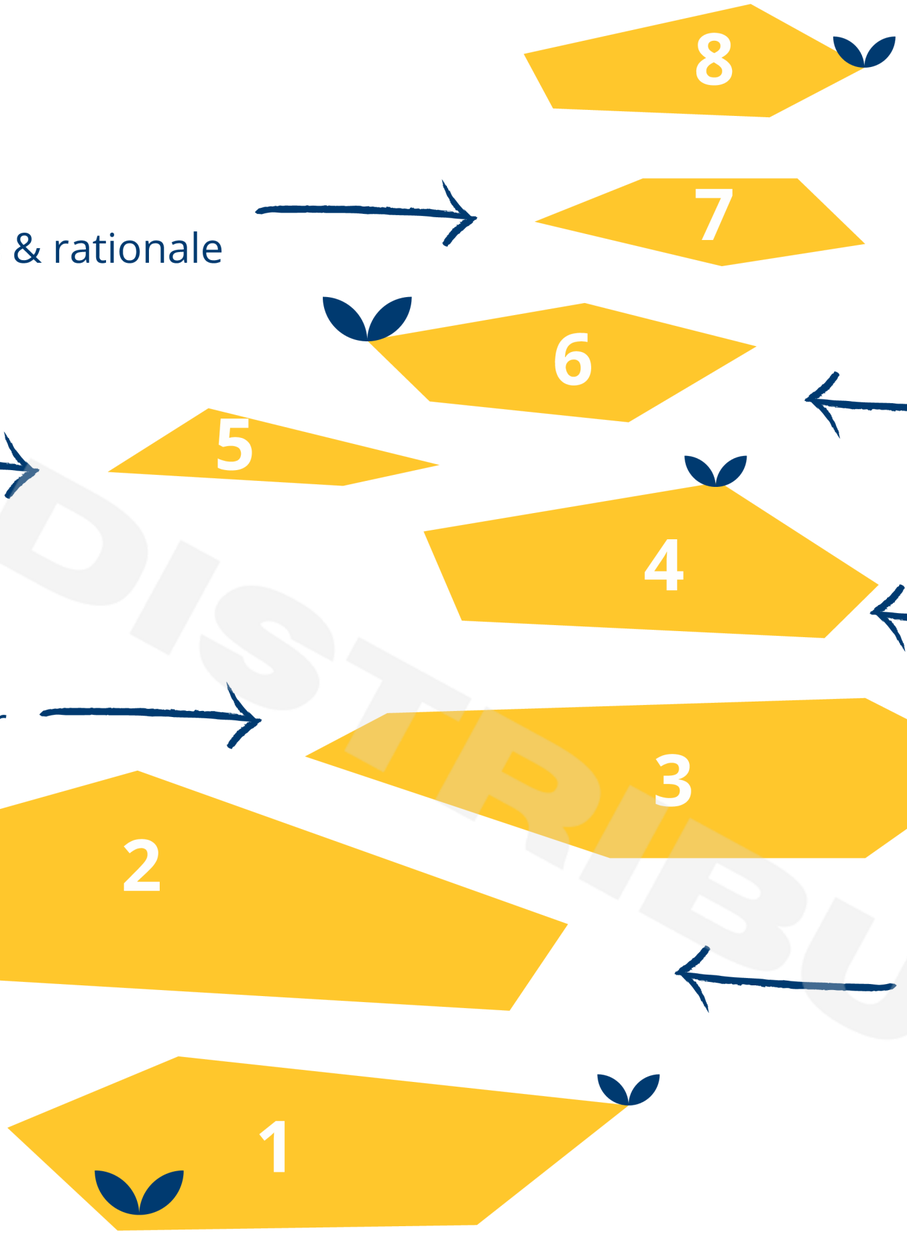
Informal Resolution?

Informal resolution may occur during the grievance procedure/process

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2020



Appeal:
Required 3 basis

Decisionmaking:
Q& A
Determination including sanctions & rationale

Review:
Of evidence (10 days)
Of report (10 days)

Investigation:
Meetings with parties and witnesses
Collection of evidence

Notice of Allegations:
Sent to both parties

Formal Complaint:
Signed by Complainant or Coordinator

Triage:
Supportive measures
Is it Title IX?

Report of Sexual Harassment
Notice that sexual harassment allegedly occurred.

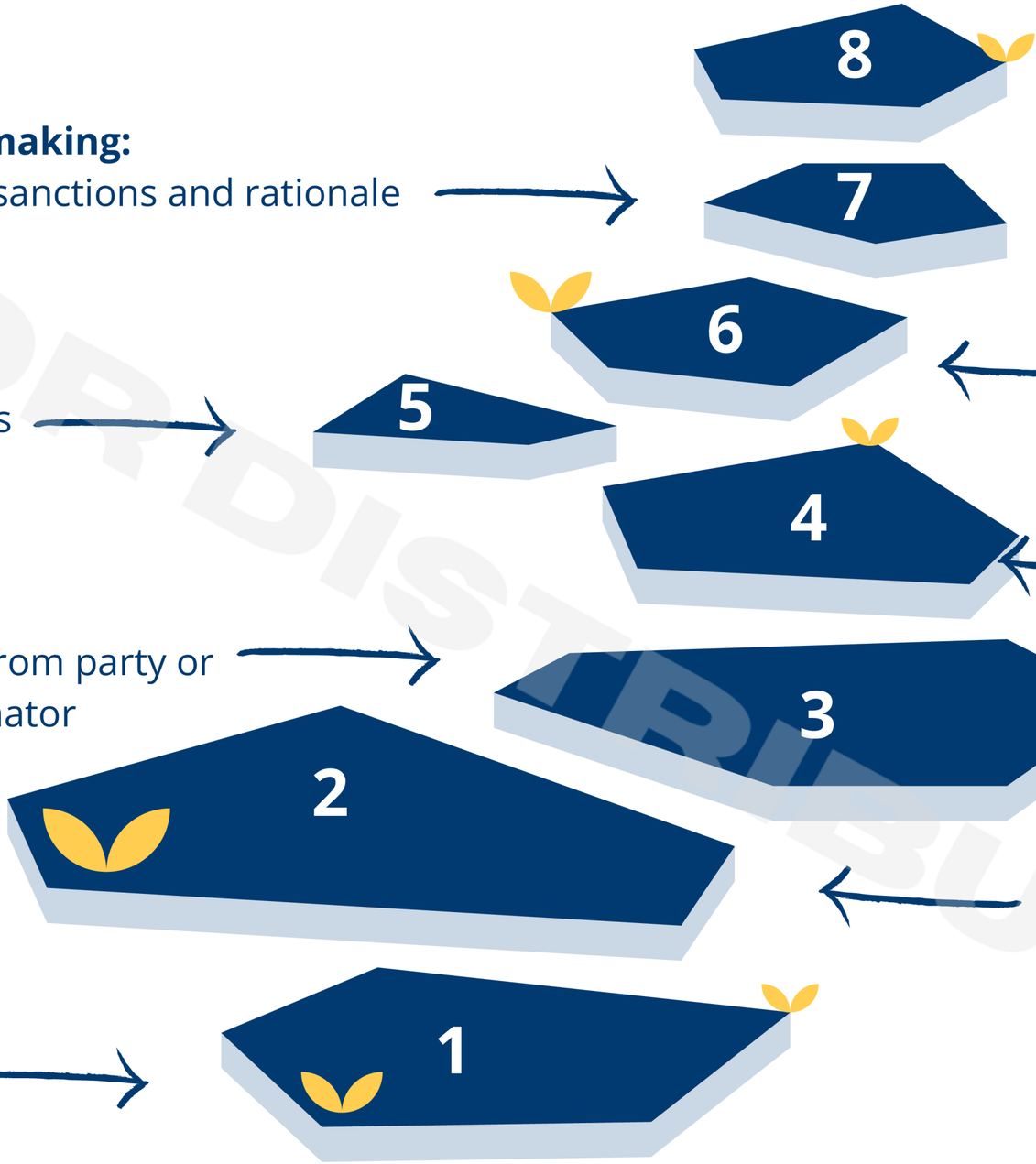
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2024



Appeal:
Of evidence and/or report*

Decisionmaking:
Including sanctions and rationale

Review:
Of evidence and/or report*

Investigation:
Meetings with parties and witnesses
Collection of evidence

Notice of Allegations:
Sent to both parties
.

Complaint:
Request for investigation from party or initiated by Title IX Coordinator

Evaluation:
Supportive measures
Is it Title IX?
When did conduct occur?

Notification:
Notice that sex discrimination allegedly occurred.

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Before a matter is investigated...

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Title IX Coordinator will:

- Offer Supportive Measures
- Triage/evaluate conduct for Title IX
- Determine if initiating a Complaint/a Formal Complaint
- Consider Emergency Removal/Admin Leave of Respondent

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SUPPORTIVE MEASURES



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Supportive Measures:

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Individualized measures offered,

- as appropriate,
- as reasonably available,
- without unreasonably burdening a complainant or respondent,
- not for punitive or disciplinary reasons, and
- without fee or charge to the complainant or respondent to:

PURPOSE:

- **Restore or preserve that party's access** to the recipient's (school's) education program or activity, including measures that are designed to protect the safety of the parties or the school's educational environment; Or
- **Provide support** during the grievance procedures, or during the informal resolution process.

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SUPPORTIVE MEASURES MAY INCLUDE

but are not limited to:

- COUNSELING
- **RESTRICTIONS ON CONTACT APPLIED TO ONE OR MORE PARTIES***
- EXTENSION OF DEADLINES AND OTHER COURSE RELATED ADJUSTMENTS
- LEAVES OF ABSENCE
- CHANGE IN EXTRACURRICULAR OR OTHER ACTIVITY
- CAMPUS ESCORT SERVICES
- CHANGE IN CLASS WORK
- TRAINING AND EDUCATION PROGRAMS RELATED TO SEX-BASED HARASSMENT
- INCREASED SECURITY AND MONITORING OF CERTAIN AREAS
- CHANGE IN HOUSING (IF APPLICABLE)

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Support Matters

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- Supportive measures fundamental
- Support first, support always
- Ensure access
- Offer, offer, offer!

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Role of Investigator with Supportive Measures?



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TRIAGE/EVALUATION

NOTIFICATION

↓

EVALUATION

↓

MEETING

↓

COMPLAINT?

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SAFETY AND SUPPORT FIRST -- ALWAYS

Regardless of whether Title IX or Not...
If it makes it to you, evaluate for safety and supportive needs IMMEDIATELY.



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Title IX or Not Title IX

2020 Title IX

- Fits in a bucket
- At school or school related event
- Substantial control over Respondent

2024 Title IX

- Fits in a bucket (sex based harassment) OR Broad Sex discrimination
- At school or school related event or causing hostile environment at school
- Substantial control over Respondent or events (discrimination)

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FORMAL COMPLAINT 2020

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-In Writing

- Hard copy
- Electronic
- Online submission

-Signed by:

- Complainant or Parent/Guardian
- Title IX Coordinator

-Alleging Sexual Harassment

-Requesting an Investigation

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COMPLAINT 2024

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NOTE: not just informing of incident but "request to investigate"

...an oral or written request to the school that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination
under Title IX or this part.

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If a Complainant (parent or guardian) Does Not Want to Initiate a Complaint:

- Title IX Coordinator may initiate/sign
- Title IX Coordinator does not become the Complainant/a party
- Provide all notices as Investigator as if Complainant is participating

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EVALUATION

- NOTIFICATION
  - TITLE IX ON ITS FACE
    - COMPLAINT BY COMPLAINANT
    - COMPLAINT BY COORDINATOR
    - NO COMPLAINT
  - NOT TITLE IX
    - HIGH KICK

INVESTIGATION

SUPPORTIVE MEASURES ONLY



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IF A PARTY HAS A DISABILITY THE TITLE IX COORDINATOR...



MUST consult with ONE or MORE members (as appropriate) of the student's IEP team.

OR



MUST consult with one or more members (as appropriate) of the individuals responsible for the student's placement under 504 to determine how to comply with the requirements of the IDEA and Section 504 throughout the implementation of grievance procedures.

&



IEP/504 Team member must also be consulted regarding supportive measures.

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Consolidation of Complaints



School MAY consolidate:

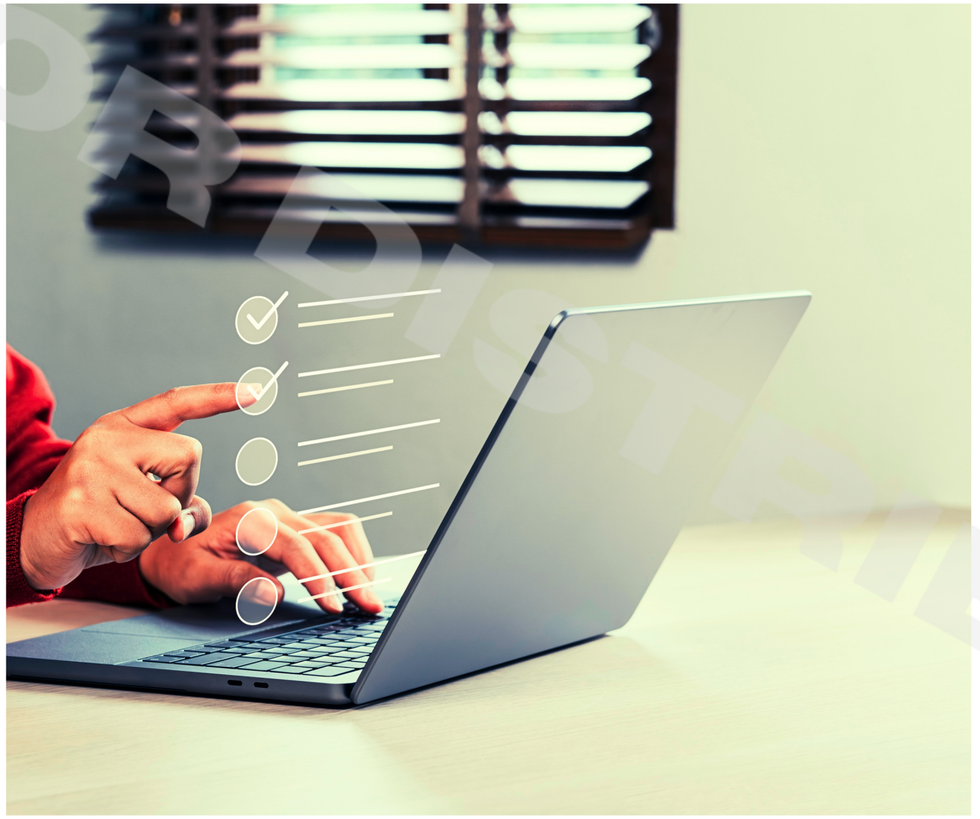
- Complaints related to more than one Respondent.
- Complaints related to or more than one Complainant against one or more Respondents.
- Complaints by one party against another party.

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When you are assigned as an investigator, consider:

1. Student/Employee?
2. What policies may be implicated?
3. Capacity
4. When did the conduct occur (2020 v. 2024)?



5. Add IEP/ADA involvement?
6. Notice of Allegations
7. Conflict of interest/bias?
8. Timeframes outlined in your policies/procedures

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Notice of Allegations 2024



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Upon initiation of grievance procedures (after Complaint), school MUST provide Notice of Allegations to parties (whose identities are known)

NOTE: Notice MUST be amended if necessary with additional allegations or needs to be consolidated

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BASIC TITLE IX POLICY AND PROCEDURE REQUIREMENTS

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Response to a Formal Complaint (Grievance Process 2020)

- Treat parties equitably.
- Require an objective evaluation of all relevant evidence (inculpatory and exculpatory).
- No conflict of interest or bias by Title IX Coordinator, Investigator, Decision-maker or Facilitator of informal resolution process.
- Trained Title IX Team.
- Presumption that respondent is not responsible.
- Include reasonably prompt time frames for process and appeals with written notice for limited extensions with good cause (may include absence of party, witness, or advisor, law enforcement activity or the need for language/accommodation of disability).
- Describe range of sanctions and remedies.
- Standard of evidence (same for students and employees).
- Procedures and permissible bases for appeals.
- Notice of Allegations containing specific information as outlined in regulations.



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Grievance Procedures 2024 (After Complaint) - Basic Principles

- For: K-12 (All Sex Discrimination)
- Higher Ed (All Employee on Employee Sex Discrimination)
- Higher Ed (Non Sex-Based Harassment for Students and Employees)

- Parties Treated Equitably.
- No Bias or Conflict by Title IX Coordinator, Investigator, or Decisionmaker.
- Presumption of Not Responsible.
- Established reasonably prompt time frames for each major stage (evaluation, investigation, determination, and appeal (if any)).
- Reasonable steps to protect privacy of parties.
- Objective evaluation of relevant and not otherwise impermissible evidence.
- Articulate principles for how the school will determine which procedures apply.
- *If K-12 or Employee on Employee AND allegations include sex-based harassment.
  - Grievance procedures must ALSO:
- Describe the range of supportive measures available to Complainants and Respondents.
- List or describe the range of potential disciplinary sanctions that the school may impose and the remedies that the school may provide following a determination that sex-based harassment occurred.

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BASIC REQUIREMENTS OF GRIEVANCE PROCEDURES



- **Grievance Procedures MUST be in writing.**
- **If allegations against a school regarding the school's policy or practice, the school is NOT considered a Respondent.**
- **Complaint initiates Grievance Process.**

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Hybrid Investigator/Decisionmaker aka - Single Investigator (2024)

Think of it as a Prius... one car, multi functions (electric and gas)

One Human = Investigator AND Decisionmaker

- Safeguards
  - reviews
  - appeals



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2020 v. 2024 Differences Overview

2020 Formal Grievance Process

2024 Grievance Procedures

2020 Advisors allowed

2024 Do not have to allow advisors

2020 Prescriptive Review Periods

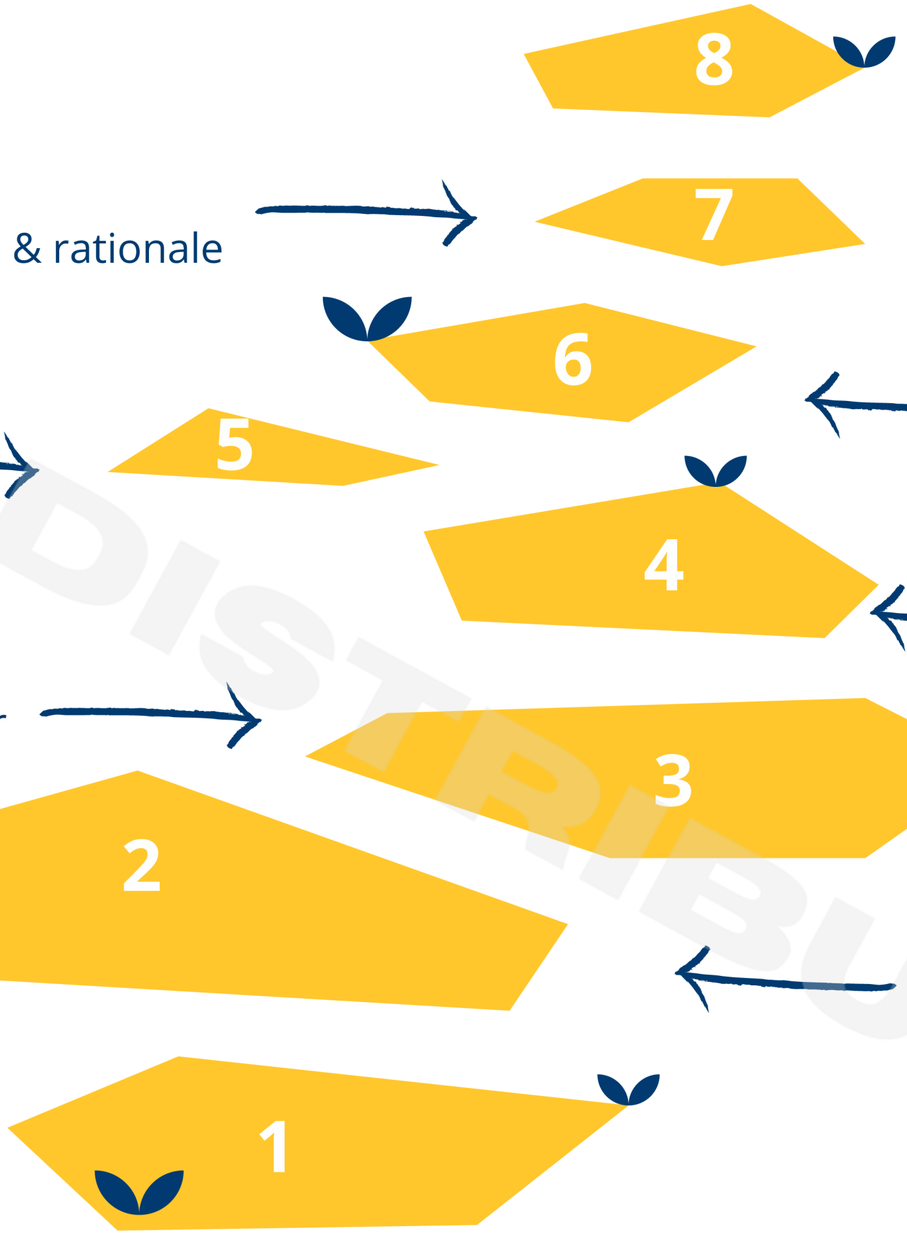
2024 Must provide review but no timeline

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2020



Appeal:
Required 3 basis

Decisionmaking:
Q& A
Determination including sanctions & rationale

Review:
Of evidence (10 days)
Of report (10 days)

Investigation:
Meetings with parties and witnesses
Collection of evidence

Notice of Allegations:
Sent to both parties

Formal Complaint:
Signed by Complainant or Coordinator

Triage:
Supportive measures
Is it Title IX?

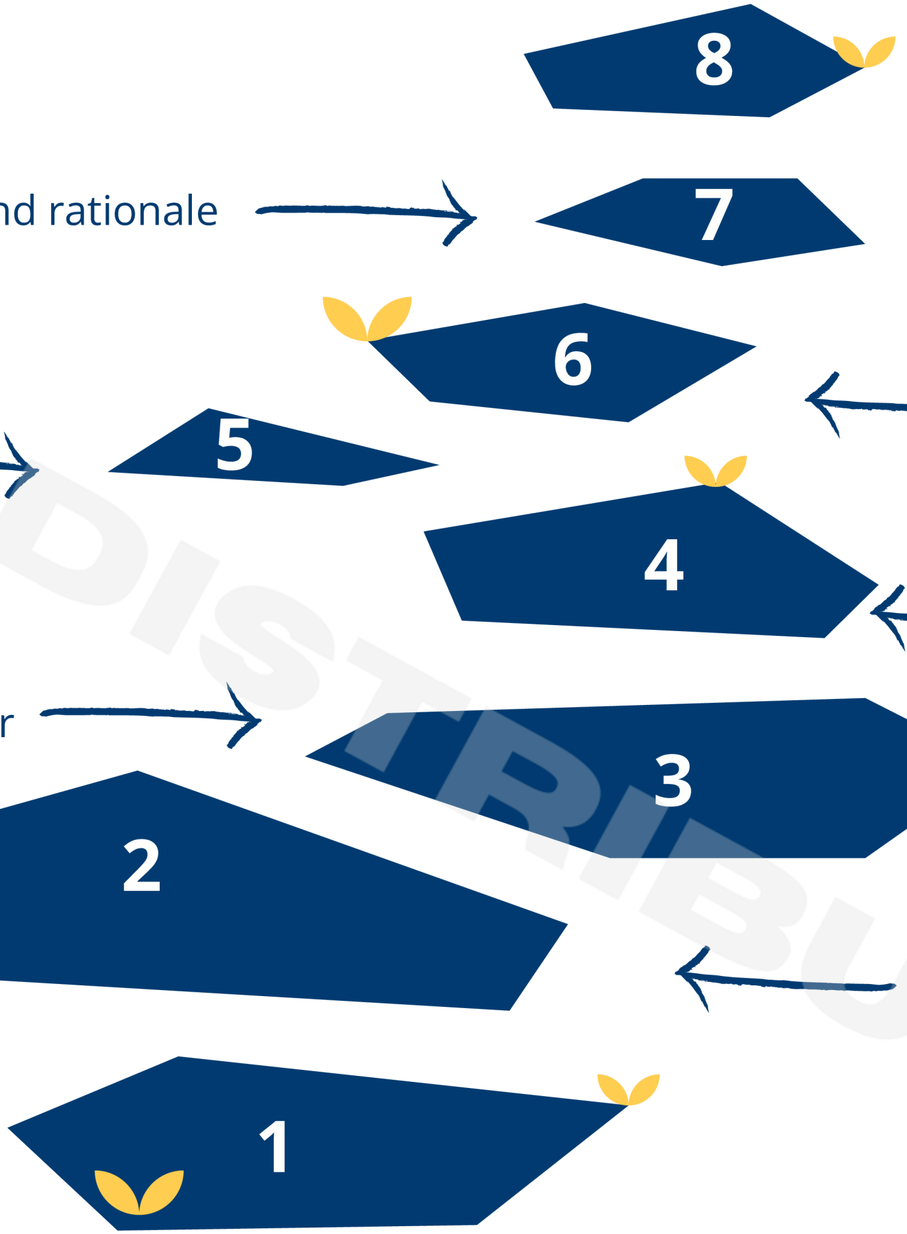
Report of Sexual Harassment
Notice that sexual harassment allegedly occurred.

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2024



Appeal:
Recommended & sometimes required

Decisionmaking:
Including sanctions and rationale

Review:
Of evidence and/or report*

Investigation:
Meetings with parties and witnesses
Collection of evidence

Notice of Allegations:
Sent to both parties

Complaint:
Request for investigation from party or initiated by Title IX Coordinator

Evaluation:
Supportive measures
Is it Title IX?

Notification:
Notice that sex discrimination allegedly occurred.

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INVESTIGATION

REVIEW INFORMATION

↓

NOTICE OF ALLEGATIONS

↓

MEETINGS

↓

COLLECTION OF EVIDENCE

↓

CREATION OF DIGITAL FILE → REVIEW(S) → REPORT

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2020

K12 INVESTIGATIVE FLOWCHART

NOTICE OF ALLEGATIONS

INVESTIGATION

Notice to parties of all meetings and interviews with time to prepare.

REVIEW

Opportunity for parties to inspect, review, and respond to all evidence directly related to allegations - relevant or not. Written Response: 10 days

INVESTIGATIVE REPORT

- Considers responses to evidence
- Determines what evidence is relevant
- Summarizes the relevant evidence
- May include recommended finding

REVIEW

Opportunity for parties to review the investigative report. Can provide written response.
10 days

Q&A
DETERMINATION

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INVESTIGATION 2024

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1

Burden on school (NOT the parties) to conduct investigation that gathers sufficient evidence.

Preponderance of Evidence Unless Clear and Convincing for all other proceedings.

2

Provide opportunity for parties to present **FACT witnesses** (note, doesn't say character witnesses) that are relevant and not otherwise impermissible.

3

Provide opportunity to present **inculpatory and exculpatory** evidence that is relevant and not otherwise impermissible.

4

Provide **opportunity to access** the relevant and not otherwise impermissible evidence.

- Actual evidence OR an accurate description.
- If accurate description, must provide opportunity to review the evidence upon request.

5

Provide reasonable **opportunity to respond** to the evidence or accurate description.

6

Take reasonable steps to **prevent** and address the parties' **unauthorized disclosure** of evidence.

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REVIEW INFORMATION

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PRIOR TO INVESTIGATING, REVIEW WHAT YOU HAVE...

- **NEED BASIC UNDERSTANDING OF THESE THINGS BEFORE MOVING FORWARD**

1. **<u>WHO</u> IS COMPLAINANT**
2. **<u>WHO</u> IS RESPONDENT**
3. **<u>WHERE</u> DID IT HAPPEN**
4. **<u>WHEN</u> DID IT HAPPEN**
5. **<u>WHAT</u> EXACTLY HAPPENED**



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NOTICE OF ALLEGATIONS

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NOTICE OF ALLEGATIONS

Upon initiation of Grievance Procedures (after Complaint), school MUST provide Notice of Allegations to parties (whose identities are known).

Notice **MUST** be amended if necessary with additional allegations or needs to be consolidated

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Notice Of Allegations

Upon initiation of Grievance Procedures (after Complaint), school MUST provide Notice of Allegations to parties (whose identities are known). Notice MUST include:

- Grievance Procedures and Informal Resolution Process.
- Sufficient Information available at the time to allow parties to respond.
  - Identities of the parties.
  - Conduct alleged to constitute sex discrimination.
  - Date(s)
  - Location(s)
- Statement that retaliation is prohibited.
- Statement that parties are entitled to equal opportunity to access the RELEVANT and not otherwise impermissible evidence OR an ACCURATE description of the evidence.
  - If description provided, the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.
- Notice MUST be amended, if necessary, with additional allegations or needs to be consolidated.
- *2020 - must also include right to an advisor of choice (can be an attorney)

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NOTE:

NO ANONYMOUS PARTIES OR WITNESSES---



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NOTE: SAFETY CONCERNS/DELAY OF NOTICE (2024)

If REASONABLE concern for the safety of any person as a result of providing notice of allegations, the school may REASONABLY delay providing written notice of the allegations in order to address safety concerns appropriately.

These must be based on INDIVIDUALIZED safety and risk analysis (not speculation or stereotypes)

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INVESTIGATIVE MEETINGS

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2020 NOTICE OF MEETINGS WITH SUFFICIENT TIME TO PREPARE REQUIRED; INCLUDING WHO WILL BE IN THE MEETING.



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- **NOTICE IS STILL A BEST PRACTICE FOR 2024.**

- **ALLOW OPPORTUNITY FOR GUARDIAN TO ATTEND AS WELL**



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Questioning the parties and witnesses:

- Notice for parties.
- Notice for witnesses?
- In person or virtual?
- Support before and/or after.

Challenges:

- Preventing retaliation.
- Connection with guardians.

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RAPPORT

How do you develop?

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CREDIBILITY...

Must provide a process that allows the decisionmaker to question the parties and witnesses to adequately assess credibility to the extent credibility is in dispute and relevant to evaluating the allegations.

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HOW WILL YOU TAKE NOTES?

- Notetaker
- Handwritten and transfer over
- Typed
- Record



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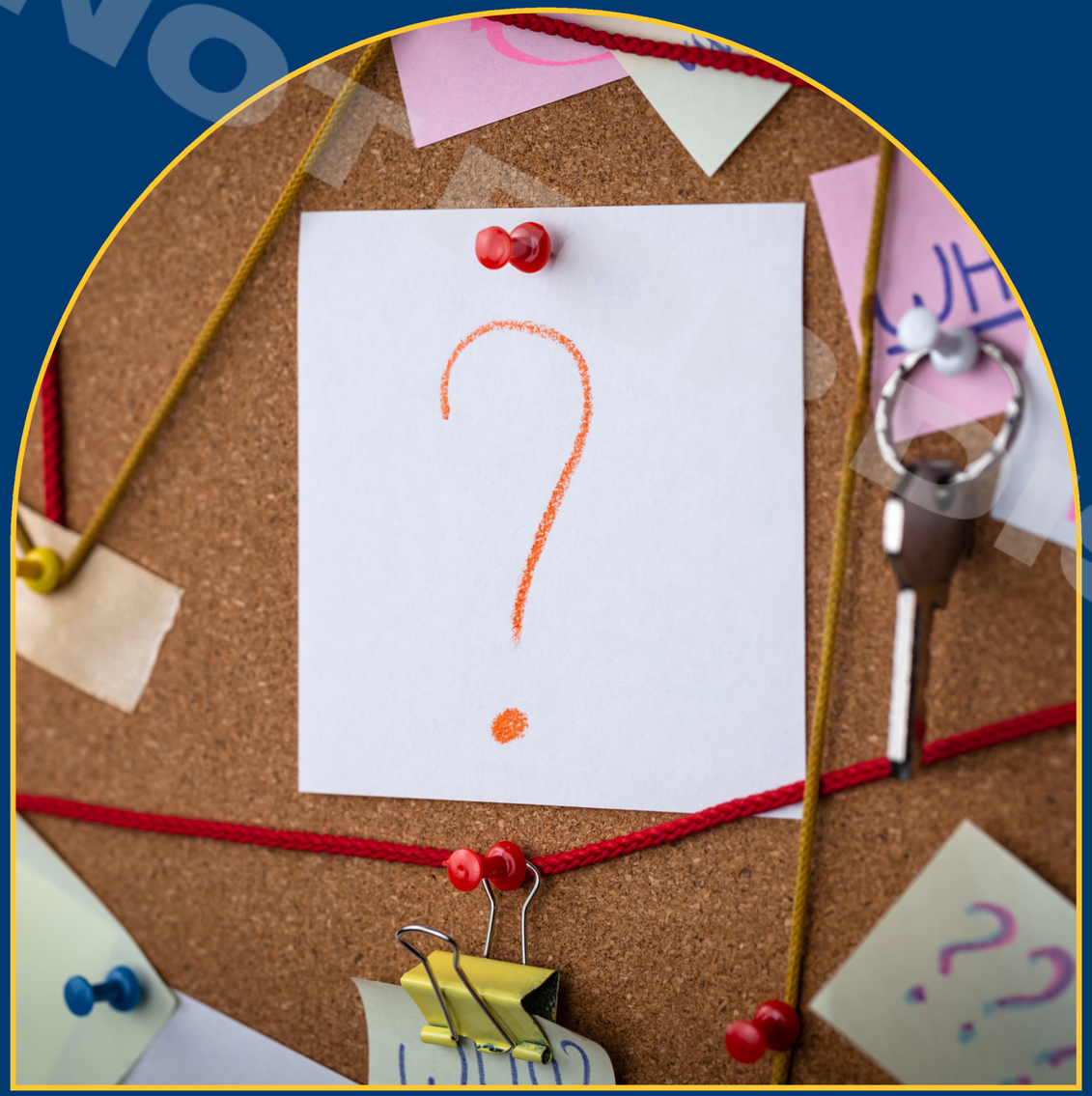
TYPES OF QUESTIONS

- Opening questions
- Open ended
- Who, what, when, where, how… why?
- Circling techniques
- Clarity on timelines/who is involved, etc.
- Repeat, repeat, repeat
- Closing questions
- Opportunity to provide clarification after interview

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COLLECTION OF RELEVANT EVIDENCE

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WHAT SHOULD BE COLLECTED?

- VIDEO EVIDENCE
- SOCIAL MEDIA EVIDENCE
- TEXT MESSAGES
- EMAILS
- OTHER



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RELEVANT 2024

Relevant: related to the allegations of sex discrimination.

Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred.

Evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

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Require objective evaluation of ALL RELEVANT evidence and not otherwise impermissible	Relevant	Exclude the following types of evidence (Impermissible evidence)
Include inculpatory and exculpatory evidence.	Questions are relevant when they seek evidence that may aid in knowing whether the alleged sex discrimination occurred.*	Evidence protected under privilege as recognized by Federal or State law OR evidence provided to a confidential employee – unless the person with whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality.
Credibility determinations MUST NOT be based on status as Complainant, Respondent, or witness.	Evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.*	A party's or witness' records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with treatment to the party or witness - unless the school obtains the party's or witness' voluntary, written consent for use in the grievance procedures.
	*Specific to 2024	Evidence that relates to the COMPLAINANT'S sexual interests or prior sexual conduct – UNLESS: ◦ Evidence about the Complainant's prior sexual conduct is offered to prove that someone OTHER than the Respondent committed the alleged conduct OR ◦ Evidence about specific incidents of the Complainant's prior sexual conduct WITH THE RESPONDENT that is offered to PROVE CONSENT to the alleged sex-based harassment. ▪ Prior consensual sexual conduct between the parties does NOT, by itself, demonstrate or imply consent to the alleged sex-based harassment OR preclude determination that sex-based harassment occurred.

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TURNING OVER STONES

But how deep do you need to dig beneath them?
ex: unrelated information and rabbit holes

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Curiosity

VS

Nosiness

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ICS School District (Chattanooga, TN) Title IX Notification/Inquiry Form:

Your Name:
Amelia Beck

Your Role:
Mom?

Name of Complainant:
Minnie Mason

Grade of Complainant:
9th

Does Complainant have IEP or 504:
Unknown?

Name of Respondent:
Mickey James

Grade of Respondent:
11th

Does Respondent have IEP or 504:
Unknown

Date of Incident:
Yesterday (10-7-24)

Location of Incident:
Disney World- Magic Kingdom

Description of Incident:
My daughter, Daisey, is on the ICS High School band trip to Disney World. She called me early this morning and told me that Minnie, her roommate on the trip, did not come back to the room last night until 3:00 am. When she came back she was crying. She said that Mickey forced his hands down her pants on the Seven Dwarfs Mine Train last night.

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INVESTIGATION PRACTICE

Investigation meeting: Minnie

Investigation meeting: Mickey

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EVIDENCE GATHERING MINNIE & MICKEY

Witnesses?

Other evidence to request from parties?

Other evidence to attempt to acquire yourself?

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CREATION OF DIGITAL FILE

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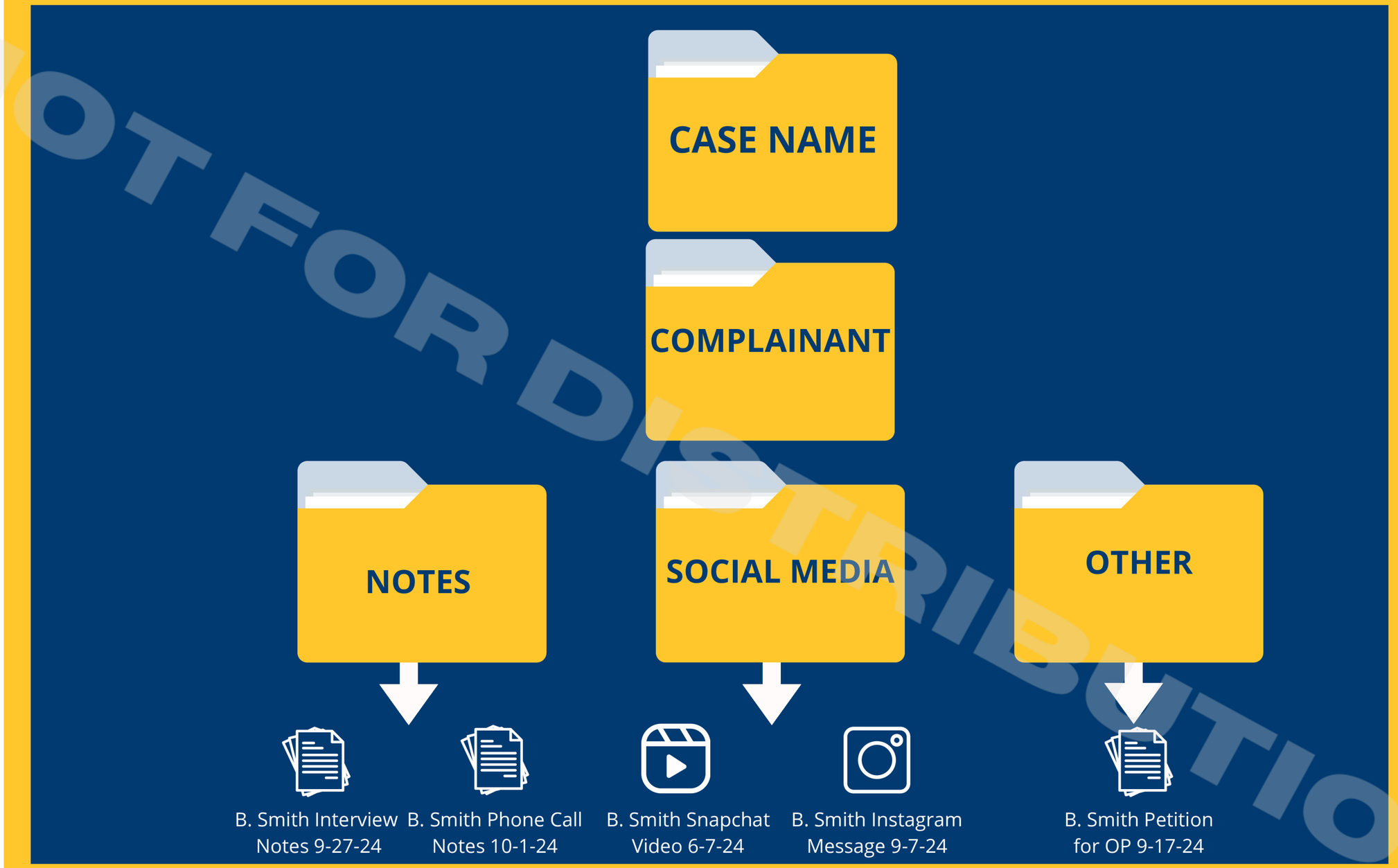
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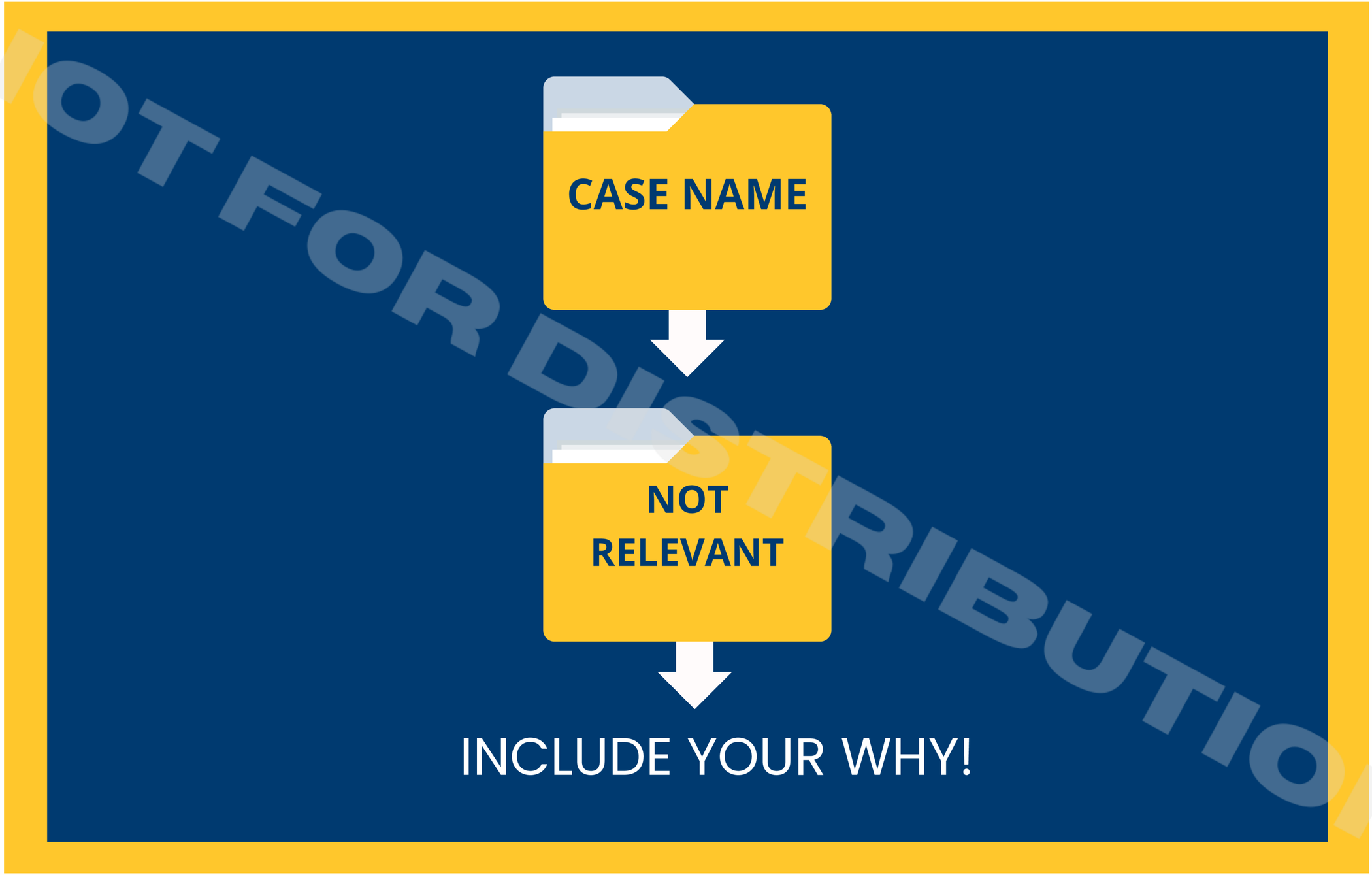
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REVIEW (S)

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REVIEW OF EVIDENCE 2020

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-Interviews with parties and witnesses.

- Including Notice with sufficient time to prepare for the meeting/interview.
- Document date of meeting and date notice provided.

-Collect evidence and information.

- Document when and how evidence/information was collected.

-Allow parties and advisors to review "evidence directly related to the allegations" (10 days).

-Write investigation report that "fairly summarizes relevant evidence."

-Provide opportunity for parties and advisors to review the report (10 days).

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REVIEW OF EVIDENCE 2024

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-Must provide an equal opportunity to access evidence that is:

- Relevant to the allegations of sex-based harassment and
- Not otherwise impermissible.

-Must provide as either the evidence or an accurate summary in an investigative report.

- If providing the report, must also allow equal opportunity to access the evidence upon the request of either party.

-Must provide the parties with a reasonable opportunity to review and respond to the evidence or the investigative report.

-Must take reasonable steps to prevent the unauthorized disclosure of information and evidence obtained solely through the grievance procedure.

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EVIDENCE

ONLY relevant and not otherwise impermissible.

- Separate folders/digital drive
- Appendix to the report
- One attachment

Consider redactions and protected information

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- **Receipt of the evidence can be challenging for the parties and their families**

- **Ensure that supports are in place when sending out evidence for review.**



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REPORT

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Report Content



- How reported
- Date of Formal Complaint
- Who investigated
- Policy
- Timelines (of events and of investigation)
- Information from parties and witnesses
- Physical Evidence
- Summary of Relevant Information
- Note for your record: Information not included or witnesses not interviewed and why

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Who is Your Audience?







What is the intent of the report?
Who needs to understand/use it?
Where/how will it be used?

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Organization is Key

- By party/witness?
- By time/chronological?
- By event?



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Report Must:

- Fairly summarize relevant evidence
- Be provided to parties AND advisors
- Hard copy or electronic



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THIS IS NOT A DUMP OR COPY OF YOUR NOTES



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REPORT

Organization of Report (if you draft)

- Only include **“relevant”** evidence
- Summary of information from each party and witness
- Description of physical or digital evidence
- Timeline
- Consistencies/Inconsistencies



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REPORTS NEED:

- FOOTNOTES
- PAGE NUMBERS
- ATTACHMENTS/APPENDIX WITH PAGE NUMBERS
- TABLE OF CONTENTS FOR THE ATTACHMENTS/APPENDIX



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REVIEW OF REPORT

2020 Title IX

- Required with 10 day review

2024 Title IX

- Can be either report or evidence - ICS recommends review of BOTH at same time

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PRACTICE SUMMARIZING

Witness- Daisy

- **Take Notes**
- **Summarize the interview**
- **Discuss with a partner**

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RESOLUTION/DETERMINATION

Review

↓

Determine Responsibility

↓

Draft Sanction

↓

Notify

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REVIEW (S)

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NEW PERSON OR SAME AS INVESTIGATOR?

2020 Title IX

- MUST be different person

2024 Title IX

- MAY be different person (Hybrid/Single Investigator Model)

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Reminder: Length of Reviews

2020 Title IX

- 2 x 10 day reviews
- Note: start drafting your report during initial review

2024 Title IX

- No specified time
- Only one required

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DETERMINE RESPONSIBILITY

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WHAT ARE THE ALLEGED VIOLATIONS

- TITLE IX AND OTHER POLICIES
- SEPARATE ALLEGED VIOLATIONS BY ELEMENT
- STANDARD OF PROOF (PREPONDERANCE OF THE EVIDENCE OR CLEAR AND CONVINCING)



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Decision-Maker Determination Regarding Responsibility Checklist:

- Identification of the Allegations
- Description of Procedural Steps Taken
  - Notifications to the Parties
  - Interviews with Parties and Witnesses
  - Site Visits
  - Methods Used to Gather Other Evidence
  - Hearings Held
- Findings of Fact Supporting Determination
- Conclusions Regarding the Application of the Code of Conduct to the Facts
- Result of Each Allegation Including Rationale
  - Determination Regarding Responsibility
  - Disciplinary Sanctions
  - Whether Remedies Designed to Restore or Preserve Equal Access to Education Program or Activity Provided to the Complainant
- Procedures and Permissible Basis for Appeal

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2024 DETERMINATION



Must use preponderance of the evidence — unless school uses clear and convincing standard in ALL other comparable proceedings.

Notify the parties IN WRITING of the determination.
- Include a rationale in the determination.
- Include permissible basis for appeal (if applicable).
- If determination that sex discrimination occurred, MUST require Title IX Coordinator to:
  - Coordinate the provision and implementation of remedies to Complainant and others who had access denied.
  - Coordinate disciplinary sanctions.
  - Take other appropriate, prompt and effective steps to ensure that sex discrimination does not continue or recur.

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DRAFT SANCTION

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DECISION MAKING

Is Mickey Responsible for Fondling?



Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

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 incapacity.

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WHAT ARE THE SANCTION OPTIONS?

Warning to Expulsion, Consider:

- Prior discipline
- Impact on Complainant and Others
- Educational Opportunities
- Restorative Opportunities

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- **<u>SUPPORTIVE MEASURES</u> CAN AND SHOULD REMAIN IN PLACE REGARDLESS OF OUTCOME.**

- **<u>REMEDIES</u> TO PREVENT FUTURE BEHAVIOR CAN AND SHOULD OCCUR REGARDLESS OF OUTCOME.**



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SANCTION

Assume Mickey IS Responsible

- **Draft a sanction with a rationale for your decision.**
- **Include recommended remedies.**
- **Any additional supportive measures?**

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NOTIFY PARTIES OF DECISION

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REMINDER:





- Make sure supports are in place when sending notification of determination.
- Send to BOTH parties and advisors/guardians simultaneously.
  Include Appeal Options.

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APPEALS

Appeal Options

↓

If Appeal is Filed

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APPEAL OPTIONS

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APPEALS 2020



-Offered to both parties.
-Can appeal dismissal of Formal Complaint or any allegations therein or determination regarding responsibility.
-On the Following Basis:

- Procedural irregularity that affected the outcome of the matter.
- New Evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter.
- Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.
- Additional basis if offered equally to both parties.

-Written decision describing the result and rationale for the result.
-Notify the other party in writing when an appeal is filed.
-Provide written decision simultaneously to both parties.
-Give both parties a reasonable opportunity to submit a written statement in support of or challenging the outcome.

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APPEALS 2024

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MUST offer appeal that AT A MINIMUM is the same as the school offers in ALL OTHER COMPARABLE PROCEEDINGS (including other discrimination complaints)

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IF APPEAL IS FILED

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IF A PARTY APPEALS

01 **Notify the parties of the appeal.**

02 **Provide the parties a reasonable and equal opportunity to make a statement in support of or challenging the outcome.**

03 **Notify the parties of the result of the appeal and the rationale for the result.**

04 **Ensure that the appellate decisionmaker has been trained.**

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A FEW MORE THINGS ...

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DETERMINATION BECOMES FINAL

The date the parties are provided with the written determination of the result of any appeal.

OR

The date when an appeal would no longer be considered timely (day after appeal deadline).

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MAY NOT discipline Respondent for sex discrimination UNLESS there is a determination AT THE CONCLUSION OF THIS PROCESS that Respondent engaged in

MAY NOT discipline a party or witness for a false statement, or for engaging in consensual sexual conduct based SOLELY on determination of whether sex discrimination occured.

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THE ATMOSPHERE MATTERS

- Consider the look and feel of the office/
- Interview location
- Not too formal but still professional
- Not intimidating

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YOUR INVESTIGATIVE FILE CONTINUED

- 7 years
- Contingency and Sustainability planning (what will happen to your file if you leave or change roles)
- Anyone should be able to pick up your file and understand what happened

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INVESTIGATE AS THOUGH YOU WILL BE INVESTIGATED

- Have a clear/organized plan - but remain flexible
- Document, Document, Document (delays, objections EVERYTHING)
- Duplication of documentation
- To record or not to record?
- Inclusivity vs. Exclusivity

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Recordkeeping Requirements

NOTIFICATION

For EACH Notification (Report) of information that may reasonably constitute sex discrimination, the following actions MUST be documented:

- How it responded promptly and effectively.
- Barriers and how they are addressed.
- Notifications to the Title IX Coordinator.
- Supportive Measures.
- Notification to the Complainant (or reporter) of the Grievance Procedures.
- Evaluation of whether to initiate Complaint.
- Steps to effectuate the remedies to ensure that sex discrimination does not continue or recur.

COMPLAINT

For EACH Complaint of sex discrimination, the following actions MUST be documented:

- Records documenting, or informal resolution process.
- Records documenting grievance procedures.

TRAINING MATERIALS

Training materials must be made available upon request for inspection by members of the public.

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Parallel Criminal Investigations

- Cannot wait to initiate Title IX process because of a criminal investigation (only a small delay is allowed)
- Develop relationship with law enforcement now to explain Title IX obligations of district/school



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Any Questions?

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1. You have a vital role
2. Stay in your lane



3. Get clarity on your role in each/every case
4. Refer often to policies and procedures for timelines/definitions/etc

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Your Homework:

Get clarity on your role

Templates/ forms

Bookmark policies/ procedures

Use correct language

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Upcoming Trainings

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Here's Your Easy Button!

ICS COMMUNITY PARTNERS



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