

TITLE IX COMPLIANCE: Policy & Practice for District Leaders

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TITLE IX IN THE COURTS

- Recent public interest in Title IX has been related to a U.S. Supreme Court decision in *B.P.J. v. West Virginia*, which relates to whether states can prohibit transgender female student athletes from participating on girls' sports teams
 - Court held that states are permitted to define sex as "biological sex" (term used by the court) and prohibit students whose biological sex is male from playing girls sports
 - Court did not state Title IX *requires* this definition
 - Minnesota law/MSHSL policy unaffected by that decision
 - Court also did not decide bathroom/locker room access
- Title IX Policies/ Grievance Procedures are separate and unrelated

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THE ROLLERCOASTER RIDE

- May 2020 – Department of Education (under President Trump) issued final rule containing sweeping changes to Title IX standards governing sexual harassment
- August 2020 – The 2020 regulations went into effect
- April 2024 – Department of Education (under President Biden) issued another final rule with significant changes to the 2020 regulations
- August 2024 – The 2024 regulations went into effect and were immediately the subject of legal challenges
- January 9, 2025 – A federal district court issued a decision vacating the 2024 regulations. New Trump Admin did not appeal
- Today – The 2020 standards apply since the court order still stands

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VOCABULARY

Complainant

Respondent

Reporter

**Formal
Complaint**

**Grievance
Process**

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**“Education program or activity,”
which includes:**

Locations, events, or circumstances
over which the district “exercised substantial
control” over both the respondent and the
context in which it occurred



In the U.S.

WHERE DOES TITLE IX APPLY?

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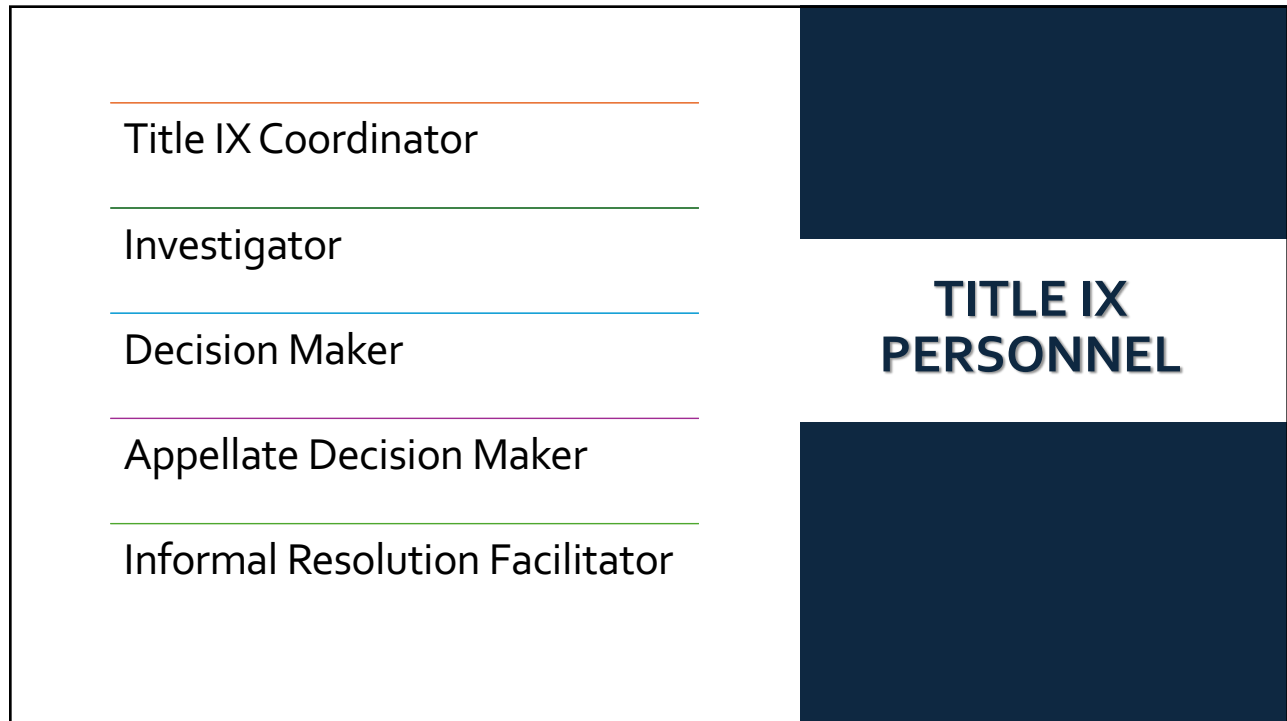
QUESTION 1

Following an away track meet that ran late, Coach Lipton took the track team out for celebratory ice cream. While Coach Lipton was paying for the team’s ice cream, Jake took a picture of Savannah eating a popsicle and edited the picture to make it look like Savannah was performing oral sex. Jake sent the picture to multiple District students on Snapchat with the caption “DM me for her onlyfans.”

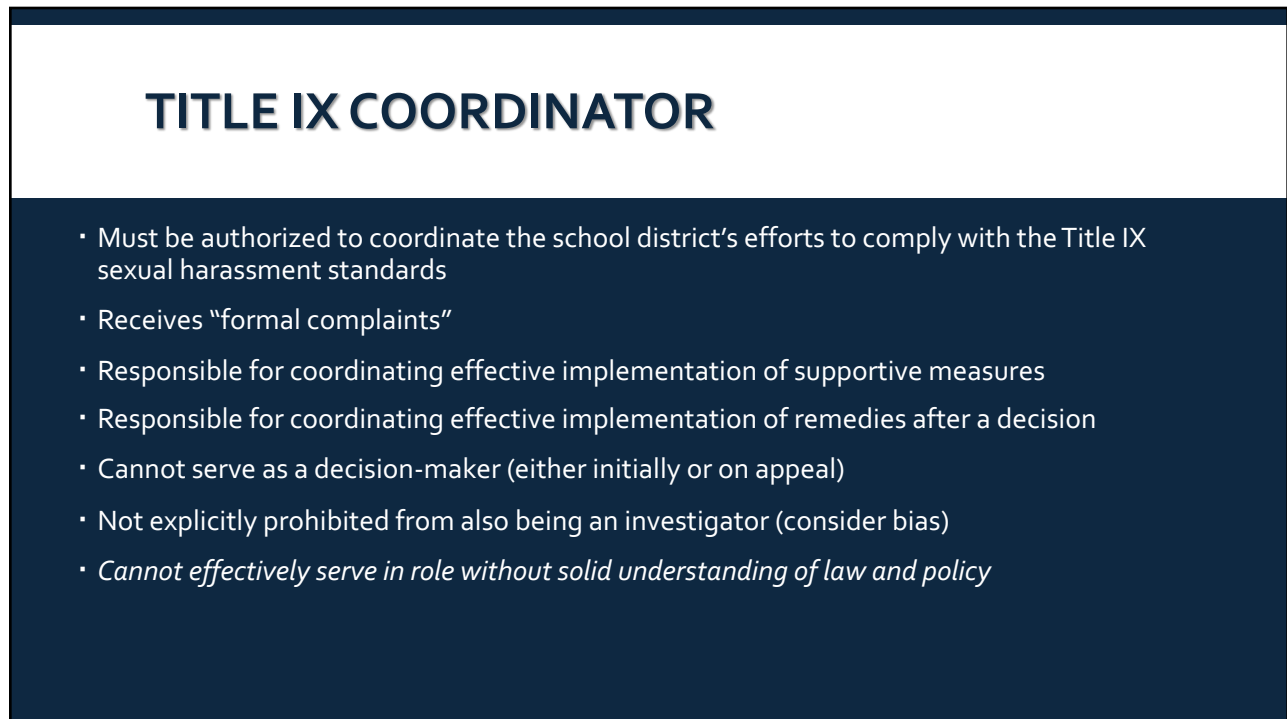
Students on the bus immediately started making comments to Savannah about how much she enjoyed her popsicle. When the bus got back to school, Savannah told Coach Lipton what happened.

Do the Title IX requirements apply?

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TRAINING AND ADMINISTRATION



Title IX personnel must receive training

Training for other staff recommended



"Prominently" post Title IX Coordinator contact info



Disseminate grievance procedure

Website
Handbooks



Maintain records for 7 years

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Defining Sexual Harassment

Quid pro quo:

- Conditioning a benefit on engaging in unwelcome sexual conduct

Criminal conduct

- Sexual Assault
 - Forcible rape, forcible sodomy, sexual assault with an object, forcible fondling
 - Statutory rape
- Dating violence
- Domestic violence
- Stalking

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DEFINING CRIMINAL CONDUCT

- “**Sexual Assault**” is defined by federal law using the FBI Uniform Crime Reporting System (“UCRS”)
- 2025 change that may affect Title IX claims in bullying/ hazing contexts.

Criminal Sexual Contact:

The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of **sexual degradation**, **sexual gratification**, or **sexual humiliation**.

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Defining Sexual Harassment

Severe, Pervasive, Objectively Offensive

- Unwelcome conduct determined by a **reasonable person** to be **so severe, pervasive, and objectively offensive** that it **effectively denies** a person equal access to a school’s education program or activity

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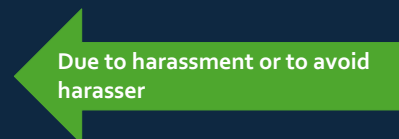
DEFINING "SEVERE, PERVASIVE & OBJECTIVELY OFFENSIVE"

- Most Title IX sexual harassment issues will come up under the severe, pervasive and objectively offensive standard
- All three elements must be present
- Pervasive conduct must occur more than one time. *See, e.g., K.T. v. Stockton College*, 865 F.3d 1054 (8th. Cir. 2017) (finding that one-time instance of misconduct was not "pervasive")
- Under this definition, a one-time instance of alleged misconduct will not meet the definition of sexual harassment unless it involves:
 - Quid pro quo harassment
 - Criminal conduct specifically referenced within the Title IX definitions

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DEFINING "SEVERE, PERVASIVE & OBJECTIVELY OFFENSIVE," CONT'D

- "Effectively deny" equal access to education examples include:
 - Skipping class
 - Declining grades
 - Difficulty concentrating
 - Emotional reactions outside of school
 - Quitting an activity, even if student continues to participate in other activities
- No requirement of educational loss or total denial
- Do not screen out complaints due solely to insufficient trauma



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QUESTION 2



A teacher reported to the Title IX Coordinator that during a freshman study hall, a group of male students were calling out “moonbeam ice cream” and then mooning each other. The same group of students had been spoken to last month because during the study hall, they played a game where they tried to see who could say the word “penis” the loudest without being caught. No one has informed the Title IX Coordinator that they wish to make a formal complaint, but the reporting teacher informed the Title IX Coordinator that it is clear other students are fed up with the behavior of this group.

Does this conduct meet the definition of sexual harassment?

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SAME-SEX BEHAVIOR

- Same-sex behavior can be sexual harassment under Title IX
- Title IX implications must be considered with hazing-type allegations involving sexual name-calling or inappropriate touching in connection with sports programs, even if the alleged harasser and victim are the same sex
- Considerations
 - “Inherently sexual” touching, defined in a recent case as “grabbing, poking, rubbing or mouthing areas of the body linked to sexuality.” *C.W. v. Smith*, 178 F.4th 1278 (11th Cir. 2026)
 - Harassers do not need to be specifically motivated by sexual desire
 - Name-calling based on a victim’s perceived failure to conform to sex-based stereotypes

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YOUNG STUDENTS

- Regulations do not contain exception based on the age of the alleged perpetrator
 - Clear that a young student can be a victim
- Comments to the regulations discuss whether young students can understand whether to report sexual harassment to the Title IX Coordinator or how a student who can't write can file a formal complaint
- Age could be considered in determining whether conduct is "severe" or "objectively offensive"
- In 1999, the U.S. Supreme Court noted that a student's age is relevant to whether gender-oriented conduct rises to the level of actionable harassment



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GRIEVANCE PROCESS

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GRIEVANCE PROCESS REQUIREMENTS

Equal treatment

Objective
evaluations of
relevant evidence

Investigations by
trained, unbiased
individuals

Presumption of no
responsibility

"Reasonably
prompt" time
frames

Identify possible
disciplinary
sanctions

Standard of
evidence

Describe appeal
procedure and
bases

Supportive
measures for
complainants and
respondents

No requirements to
waive legally
recognized
privilege

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REPORTING ALLEGATIONS



Any person may report

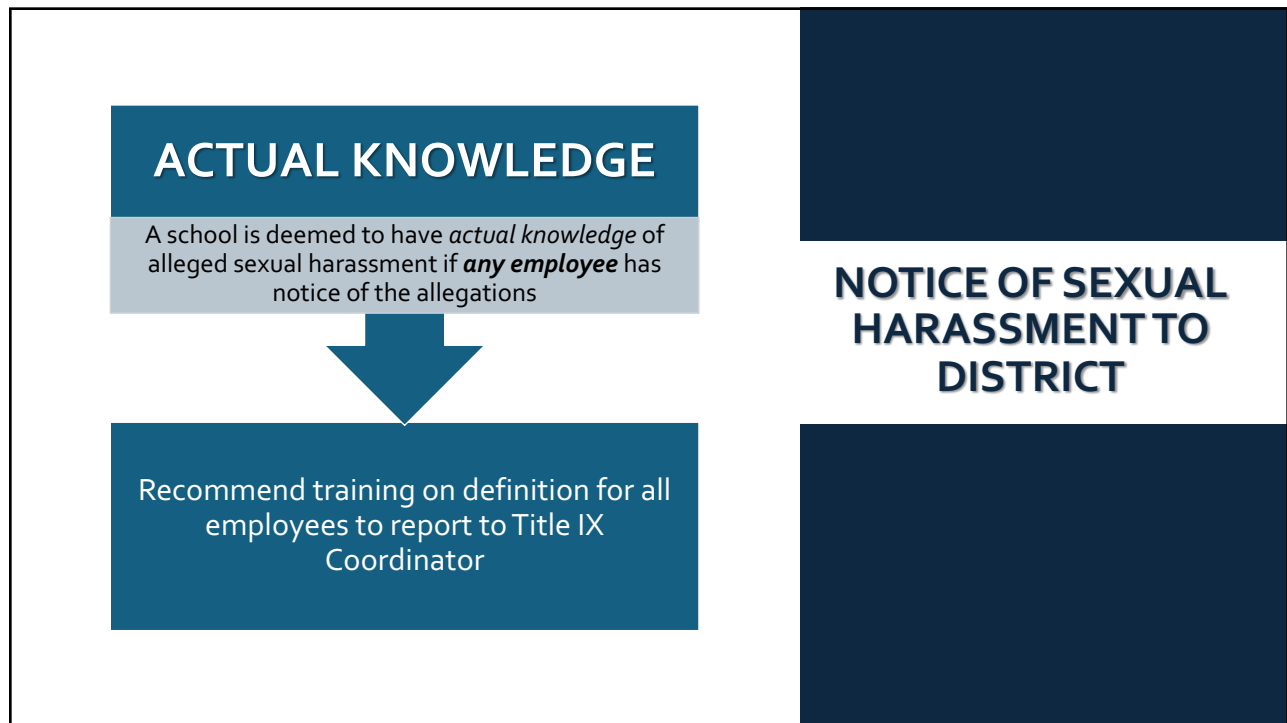


May report in person, by mail,
by telephone, by e-mail, or
other means

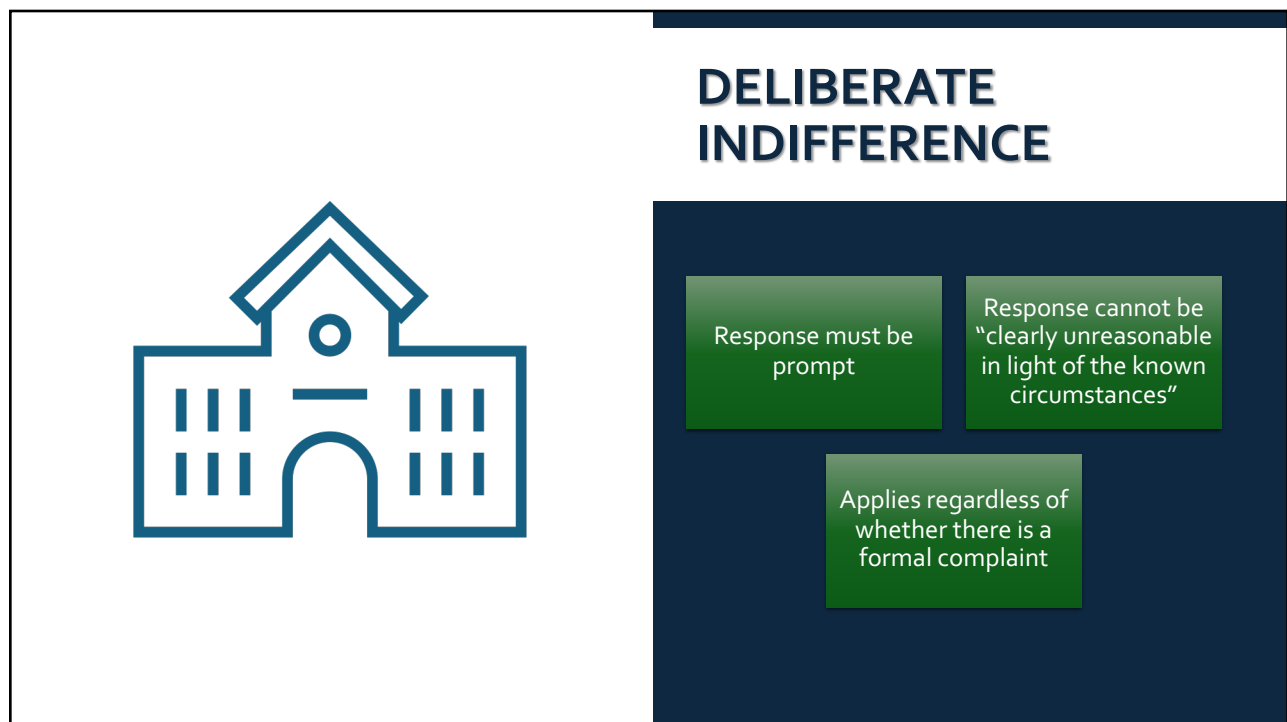


Any time, including outside
business hours

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FORMAL COMPLAINT

Filed by complainant (alleged victim)

Parent may file on behalf of child

Complainant must participate or attempt to participate in education program or activity

Title IX Coordinator may also file formal complaint *(with or without Complainant's agreement)*

If formal complaint filed, must follow grievance procedure

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COMPLAINTS OTHER THAN FORMAL COMPLAINTS



If district has actual knowledge, Title IX Coordinator must contact complainant about supportive measures and discuss filing complaint



Require response, but not grievance process



Deliberate indifference standard

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QUESTION 3

Tyson informed the Title IX Coordinator that last year when he was a freshman on the boys' soccer team, two of the junior captains dared him to ask a female soccer player, Annika, for nude photographs. Since Tyson refused the dare, upperclassmen on the team have refused to pass him the ball during games and practice and began to spread rumors that Tyson was gay. Tyson wanted the Title IX Coordinator to be aware of the issue because he is considering quitting soccer but did not want to file a formal complaint out of fear of further retaliation.

You are the TIX Coordinator. Would you file a formal complaint over Tyson's wishes?

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QUESTION 4

An assistant coach who is new this year has repeatedly sent snaps to Tyson about the captains' dare. The coach has told Tyson that Annika is "hott af" and speculated about her bra size. The coach told Tyson that if Tyson doesn't make a move soon, the coach will.

Tyson showed the snaps to Annika. She turned bright red and told Tyson to forget about it and not tell anyone else.

Tyson reports this information to the Title IX Coordinator.

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QUESTION 4

Which of the following are appropriate actions for the Title IX Coordinator?

- a) Check in with Annika's teachers and counselor to see if she seems affected by the information Tyson shared
- b) File a formal complaint
- c) Talk to Annika to explain the complaint process and ask if she would like to file a formal complaint
- d) Talk to the coach to find out if the allegations are true
- e) Talk to Annika to offer supportive measures
- f) Tell Tyson that, unless he has screenshots, there's nothing you can do

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SUPPORTIVE MEASURES

Non-disciplinary, non-punitive individualized services offered as appropriate

Before or after a formal complaint is filed or in situations where not formal complaint is filed

Deter sexual harassment and restore or preserve equal access

Confidential to the extent possible

Title IX Coordinator responsibility

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EXAMPLES OF SUPPORTIVE MEASURES

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Mutual restrictions on contact between the parties
- Increased security and monitoring of certain areas of campus
- Other similar measures

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QUESTION 5

Ms. Carpenter, a paraprofessional, approached the principal to express her concerns about an inappropriate sexual joke special education teacher Ms. Payne privately made to her while they were supervising the lunchroom. Ms. Carpenter does not want to file a complaint because this is the first time Ms. Payne has engaged in this behavior with her, but she asked for her schedule to be changed to supervise a different lunch hour.

Did Ms. Carpenter report conduct that likely violates Title IX?

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QUESTION 6

How should the District respond to Ms. Carpenter's request for a schedule change?

- a) The District must make the change as a reasonable supportive measure
- b) The District may, but it could also consider other supportive measures
- c) The District may make the change, but it is not required to offer supportive measures

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QUESTION 7

After seniors Alana (she/her) and Berti (she/they) broke up, an anonymous Instagram page began sharing private messages that Berti sent Alana over the course of their relationship. The private messages included nude photographs that Berti had sent to Alana when they were both 18 years old. Alana has repeatedly denied sharing any messages and insists that her phone must have been hacked. Berti filed a formal complaint of sexual harassment against Alana.

The school intends to separate the students while they are in school as a supportive measure. However, both students were planning to attend, and have already paid for, an optional spring break trip next week, which is offered to all seniors. Berti has stated that they do not think Alana should be allowed to go on the trip

Can the district follow Berti's wishes and tell Alana she cannot attend this optional spring break trip while the district completes its Title IX grievance procedures?

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REMOVALS

Students:

- Allowable subject to compliance with Pupil Fair Dismissal Act and special education laws
- Based on individualized safety and risk assessment that determines student poses immediate threat to physical health or safety of another student

Employees

- Paid administrative leave

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INFORMAL RESOLUTION



Must be voluntary

Any time before decision, subject to certain requirements

Requires mutual agreement

May not be used if allegation is employee sexual harassment of student

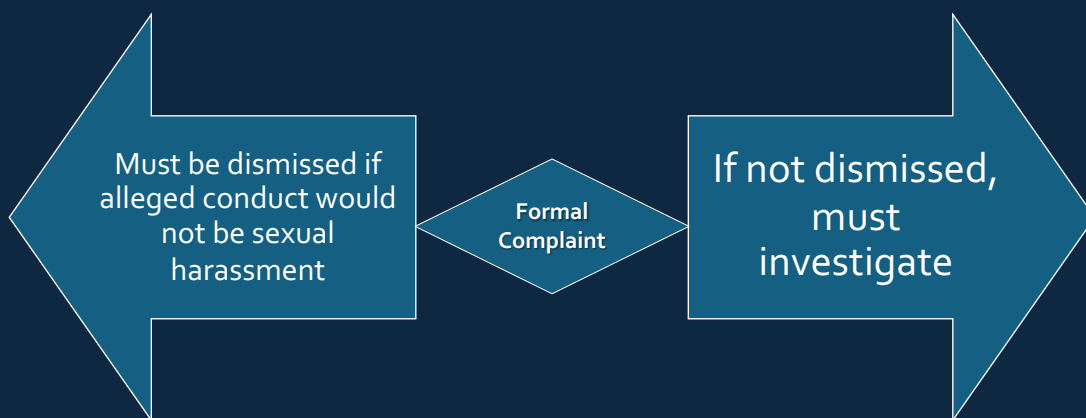
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INVESTIGATION PROCEDURES

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OBLIGATION TO INVESTIGATE OR DISMISS



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WRITTEN NOTICE OF INVESTIGATION TO PARTIES

- Grievance procedures, including informal resolution option
- Notice of the allegations, including:
 - Identities, description of conduct, date and location
- Sufficient time to prepare a response before initial interview
- Must be supplemented if new allegations are added

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WRITTEN NOTICE, CONTINUED

- Parties may have advisor of their choice
- Right to inspect and review evidence
- Any provisions of code of conduct prohibiting false statements
- Respondent presumed not responsible
- Parties cannot be directed not to talk about investigation with others

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REQUIREMENTS FOR INVESTIGATION

District has burden of proof and is responsible for gathering evidence.

No access to privileged communications

Equal opportunities to present witnesses and evidence

No prohibition on discussing allegations

Equal opportunity to have someone present during any grievance proceeding

Reasonable advance written notice of the date, time, location, participants, and purpose for any meetings, including hearings or investigative interviews, to any invited or expected participant

Prior to completing the investigative report, investigator sends all evidence to the parties and provides **ten days to submit a written response**

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QUESTIONING WITNESSES

- Use a funnel approach by starting general and getting specific, for example:
 - "Describe what happened on August 1 in the locker room."
 - "You said the seniors 'touched you. Which seniors?"
 - "Where did they touch you?"
 - "You said Matt, James, and Pete were involved. Please tell me specifically what each of them did."

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QUESTIONING WITNESSES, CONT'D

- Do not tap dance around delicate topics. Ask the direct question when it is appropriate, for example:
 - "You said Samantha 'touched your privates.' I know this may be uncomfortable, but I need to you to describe exactly how and where Samantha touched you."
 - "Did you stick your finger in Wyatt's anus?"
- Ask for corroborating evidence, such as documents or other witnesses.

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BEFORE INVESTIGATION REPORT



- The investigator sends all documentary evidence to all parties / their advisors
- Parties have ten days to review evidence and submit a written response, if they choose

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QUESTION 8

You are the assigned investigator in a formal complaint in which Carlos alleges Evie repeatedly subjected him to vulgar and unwanted emails/texts identifying various sexual acts she wanted him to perform. During the investigation, Carlos and his parent provided you copies of Carlos' journal where he documented the effect Evie's communications had on him. Some of the entries reference Carlos' conversations with his therapist.

Is the District required to provide Evie copies of Carlos' journal entries?

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DATA PRIVACY

- Cannot use FERPA or MGDPA as reason for failure to comply with Title IX
- May warn parties of potential consequences of using evidence in TIX investigation for unrelated purpose or to retaliate



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INVESTIGATION REPORT

- Procedural steps and summarize facts
- Inculpatory and exculpatory evidence should be referenced
- May include recommended findings of fact and conclusions
 - Show your work
 - Recommended findings and conclusions should be supported by evidence

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INVESTIGATION REPORT, CONT'D

- **Describe conduct, not just conclusions**
 - "Claude sexually harassed Siri."
- **Show, don't tell**
 - *Compare:*
 - Mr. Boomer made an inappropriate sexual comment to Malia after class
 - Mr. Boomer asked Malia to stay after class. Once they were alone, he told her her outfit was "too sexy for school" but she should wear it to meet him at a restaurant that evening

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INVESTIGATION REPORT, CONT'D

- **Active voice rather than passive:**
 - Harassment didn't just happen to the complainant absent an actor
- *Compare:*
 - A photo of Andre changing in the locker room was posted on Snapchat
 - Chad posted the photo of Andre changing in the locker room on his Snapchat story.

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SAMPLE REPORT OUTLINE

- Introduction
- Summarize allegations
- Identify witnesses interviewed and whether a representative was present
- Identify documentary evidence considered by investigator
- Summarize what each witness said
- Summarize factual findings and basis for findings

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AFTER INVESTIGATION REPORT

- The investigator sends report to parties/their representatives
- Parties have ten days to review draft report and submit a written response, if they choose

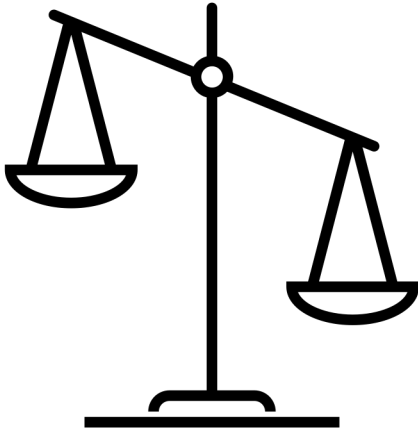


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DETERMINATION OF RESPONSIBILITY

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DECISION-MAKER'S ROLE

- Decision-maker (not investigator) makes "determination of responsibility"
- Decision-maker is not Coordinator
- Only requirements are impartiality and training

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EXCHANGE OF WRITTEN QUESTIONS



- Parties have the opportunity to submit written questions to any other party or witness
- Decision-maker determines if questions are relevant and time for responding
- Written answers provided to decision-maker, who provides them to parties.
- No requirement to allow written response/analysis after receiving answers
- May include limited follow-up

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RELEVANCE OF QUESTIONS

Does the information sought by the question have a tendency to make a fact more or less probable?

Will that fact affect the outcome of the investigation?

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QUESTIONS 9/10

Students and staff have reported an anonymous Instagram account called "shadysecrets" that posts pictures of District students with inappropriate captions. Some of the more minor shadysecrets posts include captions calling certain students "chopped," but one female student, Kelsey, has been repeatedly targeted by shadysecrets, with captions calling her a whore and often referring to her sexual activities with a male student.

Kelsey believes that another student, Talia, is running shadysecrets. Kelsey insists that shadysecrets has shared information about Kelsey that only Talia and the male student, who does not use social media, would know. In support of this allegation, Kelsey alleged that Talia uses Instagram and further provided Snapchat messages to the Title IX investigator confirming that Talia received the information from Kelsey that was later posted on the account.

Talia denies participating in shadysecrets.

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QUESTION 9

Kelsey submits this question for Talia:

- Have you previously bullied any of the students targeted by shadysecrets?

Is this question relevant for Title IX purposes?

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QUESTION 10

Talia submits the following question for Kelsey:

- Is it true that you also shared information posted by shadysecrets with another student, Devyn?

Is this question relevant for Title IX purposes?

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QUESTIONS ABOUT PRIOR SEXUAL BEHAVIOR

- Will be relevant only in exceedingly rare situations
 - Offered to show someone other than respondent committed the alleged conduct
 - Relate to prior conduct between complainant and respondent and used to prove consent
- Consent and prior conduct not relevant to employee/ student conduct

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BURDEN OF PROOF

Burden of proof is on school, meaning school must collect sufficient evidence to support a finding of responsibility

Grievance procedure identifies standard of evidence:

- **Preponderance of the evidence:** whether it is more likely than not that the complainant engaged in the alleged conduct.



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QUESTION 11

Same facts as before.

Kelsey responds to Talia's question about whether she shared information by stating:

- Yes, but Devyn is my best friend and would never, ever post private information about me!

Which of the following options are available to the decision-maker?

- a) Determine Talia is not responsible for sexual harassment
- b) Determine Talia is responsible for sexual harassment
- c) Interview Devyn to get more information
- d) Determine there is not enough information to make a decision

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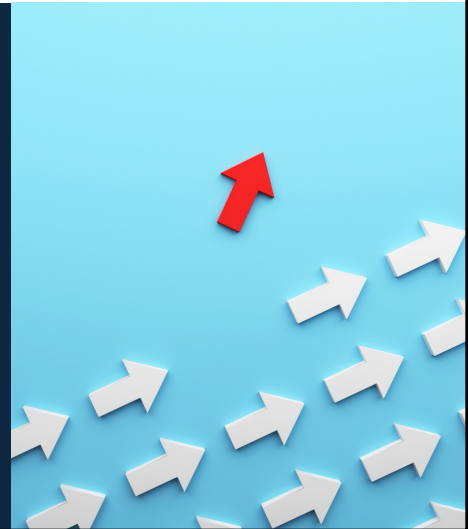
WRITTEN DETERMINATION OF RESPONSIBILITY

- Identify allegations
- Procedural steps
- Findings of fact
- Conclusions applying policies to facts
- Result of each allegation and rationale
- Grounds for Appeal
- Provide decision to parties simultaneously

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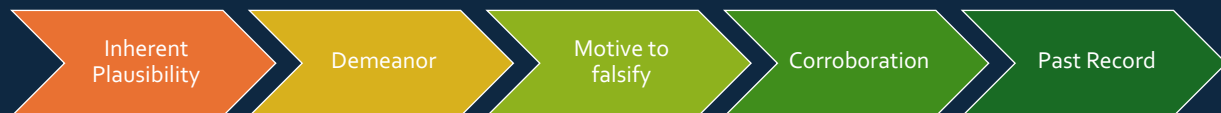
IMPARTIALITY: BIAS

- Do not let bias affect outcomes
- Be aware of implicit biases you may hold
- Must not be biased for/against Complainants or Respondents generally



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IMPARTIALITY: CREDIBILITY

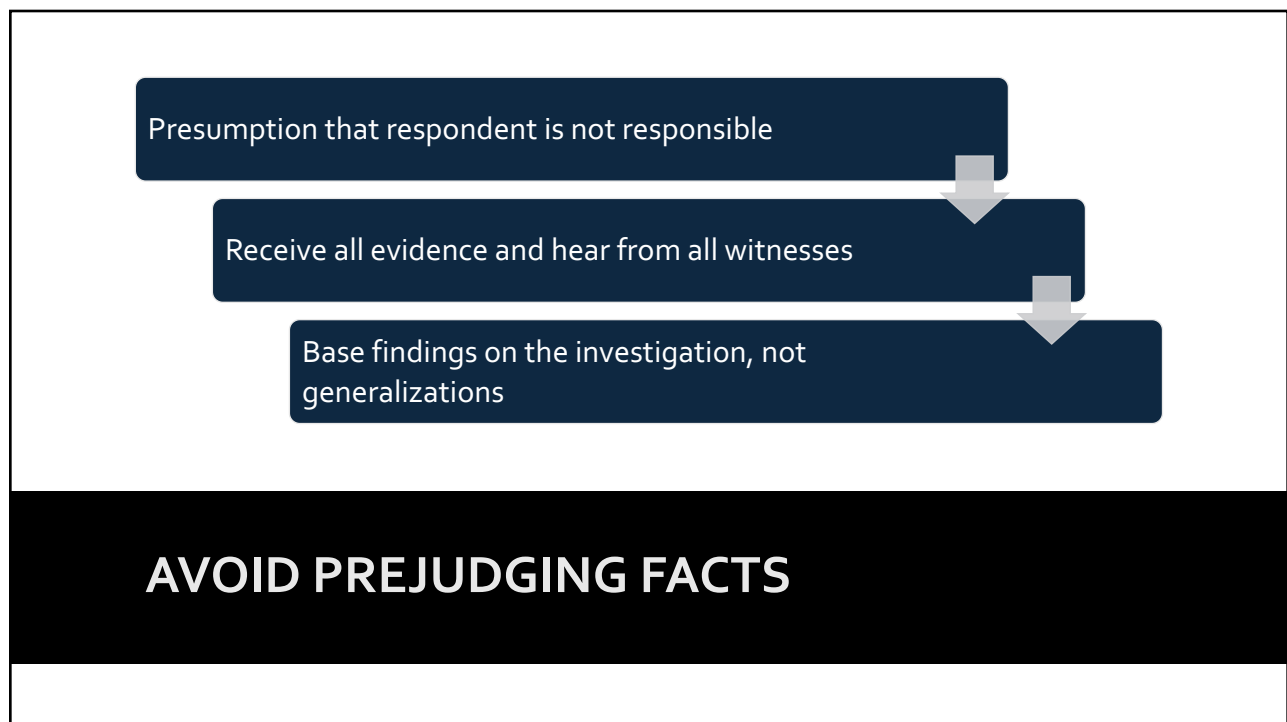


None of the above factors alone determine credibility

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APPEALS



Any party from determination of responsibility or dismissal



Three identified grounds, all must affect outcome

Procedural Irregularity
New evidence
Conflict of interest/ bias



Decision-maker on appeal

Someone other than investigator, initial decision-maker, or Coordinator

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QUESTION 12

Stephan filed a formal Title IX complaint on behalf of his daughter, Cadence, alleging that another student, Taylor, sexually assaulted Cadence at school. The TIX Coordinator repeatedly sought clarification from Stephan regarding which of the school's 14 students named "Taylor" the complaint was against. Stephan said Cadence did not know and he would not allow the TIX Coordinator to meet with Cadence to gather additional information to identify the Respondent.

The TIX Coordinator issued a written dismissal stating that the District could not complete an investigation because it could not identify the Respondent.

It is now 2 years later. Stephan and his friend ChatGPT send a lengthy email to the TIX Coordinator who is somehow able to decipher that Stephan is seeking to appeal the dismissal based on procedural irregularities that ChatGPT found when Stephan uploaded the complaint and notice of dismissal.

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QUESTION 12

How should the Title IX Coordinator respond?

- a) Ask ChatGPT how to respond
- b) Grant the appeal because Stephan did not know about the procedural irregularities until recently
- c) Deny the request appeal because it is untimely.

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Prohibition on "intimidating, threatening, coercing, or discrimination against anyone for the purpose of interfering" with Title IX or because of a complaint or participation



Complaints of retaliation follow grievance process

RETALIATION

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SCENARIOS

Find a team of 3-5 people to work through application of Title IX concepts



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QUESTIONS?

NOTE: These materials and the corresponding presentation are meant to inform you of interesting and important legal developments. While current as of the date of presentation, the information that is provided may be superseded by court decisions, legislative amendments, rule changes, and opinions issued by bodies interpreting the area of law. We cannot render legal advice without an awareness and analysis of the facts of a particular situation. If you have questions about the application of concepts addressed in this outline or discussed in the presentation, you should consult with your legal counsel. ©2026 Squires, Waldspurger & Mace, P.A.



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