

TITLE IX Training

**Adapted from the NWRESA Title IX
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September 2026*



Updated Fall 2026

TITLE IX

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

20 USC Sec. 1681

Conduct Covered: allegations of **sexual harassment** that occur in an **education program or activity** located **within the United States** and of which the recipient has **actual knowledge**.

TITLE IX IS NOT...

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Not Ordinary Teasing
Not Mutual Flirting
Not Personality Conflicts
Not General Bullying Unrelated to Sex
Not Classroom Discipline Issues

These may still violate a BOE policy, but they are not Title IX.

DEFINITION OF SEXUAL HARASSMENT

According to **WCS BOE Policy 4035/7236**, SEXUAL HARASSMENT prohibited under Title IX is conduct on the basis of sex occurring in a school system education program or activity and satisfies one or more of the following:

1. An employee **conditioning the established services** of the school system on someone's participation in unwelcome sexual conduct
2. **Unwelcome conduct that is so severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the program or activities.
3. **Sexual assault**; defined as an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the FBI.
 - a. Sexual act (rape, sodomy, sexual assault with an object, fondling) directed against another person w/o the consent of the victim (including cases where the victim is incapable of giving consent due to temporary [under the influence of drugs/alcohol] or permanent mental or physical incapacity or because of age)
 - b. Unlawful sexual intercourse (statutory rape and incest)
4. **Dating violence**; committed by a person who is or was in a social relationship (romantic or intimate) with the victim
5. **Domestic violence**; including crimes committed by current or former spouses/partners, the use or attempted use of physical abuse or sexual abuse, a pattern of any coercive behavior (including verbal, psychological, economic, or technological abuse)
6. **Stalking**; engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or to suffer substantial emotional distress

This definition does not stretch to conduct occurring outside of the US or under circumstances in which the school system did not have substantial control over both the harasser and the context in which the harassment occurred.

A DEEPER DIVE INTO “HARASSMENT”...

Sexual harassment is considered “criminal conduct” with sexual assault, fondling, stalking, and domestic/dating violence.

Title IX also covers conduct described as:

1. **Quid Pro Quo** ***Only employees can commit this type of harassment***
 - a. No pattern in required
 - b. Does not require severe or pervasive conduct
 - c. Example:
 - i. A principal tells a teacher: “If you want your contract renewed, you should have dinner with me.”
 - ii. A coach tells a student: “You’ll start Friday if you’re nicer to me.”
2. **Hostile Environment**
 - a. Conduct that is severe, pervasive, and objectively offensive
 - b. Conduct that effectively denies equal access to education

A DEEPER DIVE INTO “DENIED EQUAL ACCESS”...

To be deemed a situation where a student was “denied equal access” to the educational program or activity, it does not necessarily mean that the student had to withdraw from the school. It could also mean the following:

- Declining grades
- Avoiding a classroom
- Quitting athletics
- Leaving extracurricular activities
- Anxiety affecting attendance
- Difficulty eating or sleeping

OTHER KEY DEFINITIONS

EDUCATIONAL PROGRAM OR ACTIVITY	All the operations of a district; any locations, events, or circumstances over which the district exercised substantial control over both the respondent and the context in which the alleged harassment occurs, including any building owned or controlled by a recognized student organization.
COORDINATOR (T9C)	Coordinates the district's duty to prevent, investigate, and remedy. They ensure that policies and procedures are followed, that personnel are trained, documentation is recorded, and that interactions are appropriate.
ACTUAL KNOWLEDGE	Considered an objective standard; existing when an employee with authority to correct sexual harassment receives information that can objectively be taken to allege sexual harassment. The knowledge is based on what was reported, not what someone believes.
DELIBERATE INDIFFERENCE	A response from the district that is clearly unreasonable given any known circumstances.
SUPPORTIVE MEASURES	Individualized services designed to restore or preserve equal educational access, protect student safety, and avoid unnecessary burden on either party; not a punishment.

WHERE TO START?

Upon hearing about alleged sexual harassment, ask yourself:

1. **Could this be Title IX?**
 - a. Reread the definition of Title IX.
2. **Do we have “actual knowledge”?**
 - a. Refer to the definition of “actual knowledge”.
3. **What must we do next?**
 - a. Remember that your first job is not to decide who is right, but rather to ensure that the district responds appropriately to the situation at hand.
 - b. Call the T9C.

DETERMINING ACTUAL KNOWLEDGE

“Actual knowledge” (AK) is an **objective standard** and the **trigger** for moving forward.

AK exists when an employee with authority to correct sexual harassment receives information that can objectively be taken to allege sexual harassment.

Remember, AK is **based on what was reported**, not simply on what one believes. The word is “knowledge”, not proof → you don’t need any type of proof to get started.

Examples:

- An email from a student to a faculty member alleging forced nonconsensual acts occurred.
- A student’s parent requests a meeting with the Director of Student Services stating that their child has been the victim of a sexual assault during a class trip.
- As part of an unrelated investigation, an administrator finds an email between a student and a faculty member where the student states that another student touched him in a nonconsensual manner.
- A teacher overhears a student saying that their coach keeps sending them inappropriate Snapchats.

All of these examples give some level of actual knowledge, you don’t have to have proof or a formal report/complaint to get started with the process after confirming that the situation deals with a) sexual harassment and b) actual knowledge.

WHAT MUST WE DO NEXT?

Conduct an Initial Intake Meeting with the reporter/complainant:

THE DO's:

- » Take every report seriously
- » Receive the report fully and document everything
- » Explain the options
- » Inform the T9C
- » Ensure safety of the reporting student
- » Consider supportive measures

THE DONT's:

- » Don't investigate on your own
- » Don't make any credibility assessments
- » Don't wait until you are convinced of distinct misconduct before responding

Administrators are inherently “fixers”, they want to solve the problem immediately, but with Title IX, they need to **focus on safety, notification, and documentation**.

- Just like the first job of those receiving the report is not to decide who is right, the question of the district is not “did we make the perfect decision”.
- The first job is to ensure that the **district responds appropriately** and made a reasonable decision.
- What creates liability is when a district's response is clearly unreasonable given the known circumstances.

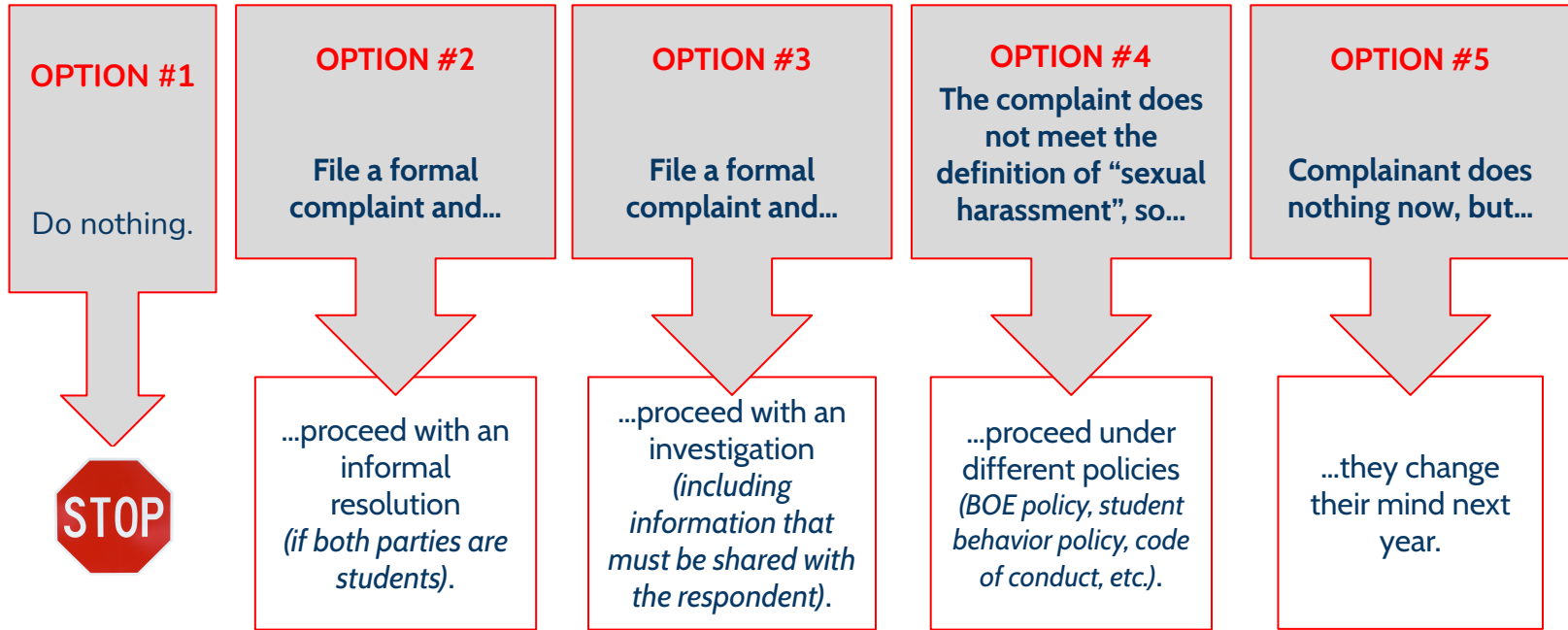
QUESTIONS NEEDING ANSWERS DURING INTAKE

- Did you as the T9C receive a formal complaint from a complainant?
- Are there allegations against a respondent?
 - ◆ Do these allegations allege sexual harassment?
- Is the person(s) attempting to or are participating in an education program or activity?
 - ◆ Did the person experience the alleged sexual harassment?
 - ◆ Did the alleged sexual harassment occur within the district's Title IX jurisdiction?

REPORTING & DOCUMENTATION

- Listen!
- Ensure immediate **safety**.
- **Notify** the appropriate official.
- Document, document, **document....everything**.
 - ◆ Date and time of the report.
 - ◆ Who made the report.
 - ◆ Exact words used, when possible.
 - ◆ Individuals present at the meeting.
 - ◆ Immediate actions taken.
 - ◆ Notifications made.
 - ◆ Supportive measures offered.
- **Do NOT make promises.**
 - ◆ Specifically, confidentiality. We have a duty to respond, therefore, we cannot promise confidentiality.
 - ◆ Be careful with your responses:
 - *Never say: "Don't worry, I won't tell anyone."*
 - Instead say: **"Thank you for telling me."**
 - *Never say: "I'm sure it is just a misunderstanding."*
 - Instead say: **"Our priority is your safety."**
 - *Never say: "You need proof before I can do anything."*
 - Instead say: **"I need to share this with the appropriate personnel."**

EXPLAIN OPTIONS TO THE POTENTIAL COMPLAINANT



SUPPORTIVE MEASURES

- Services that are **individualized** in order to:
 - ◆ Restore or preserve **equal educational access**
 - ◆ Protect **student safety**
 - ◆ **Avoid unnecessary burden** on either party
- Supportive measures are NOT a form of punishment.
- They are available **regardless of a formal complaint.**
- Examples of appropriate measures:
 - ◆ Academic accommodations
 - ◆ Schedule changes
 - ◆ No-contact directives
 - ◆ Counseling referrals
 - ◆ Escort between classes
 - ◆ Temporary extracurricular modifications
 - ◆ Transportation adjustments

WITH THE INITIAL INTAKE MEETING...

- Identify the Title IX team given the circumstances of the report.
 - ◆ Investigators? Decision-Makers? Appeal Entities? Informal Resolution Facilitators?
 - ◆ Define the roles and identify the required separation between each team member.
- Consider BOE policy and procedural options.
 - ◆ Informal resolution?
 - ◆ Formal Investigation?
 - ◆ Code of Conduct?
 - **REMINDER:** No discipline action can be taken against the respondent for the sole violation of sexual harassment until after the formal investigation occurs and they are found in violation OR as part of an informal resolution process
 - ◆ How will you explain your process to others?

NOTES ON FORMAL COMPLAINTS...

- A formal complaint is “a document filed by a complainant or signed by the T9C alleging sexual harassment against a respondent and requesting the district investigate allegations of sexual harassment.”
- In response to a Formal Complaint, the district must follow a grievance process.
- When should a T9C file a formal complaint?
 - ◆ When the T9C determines a “non-deliberately indifferent response to the allegations requires an investigation”.
 - Examples: serial respondent or pattern of alleged sexual harassment by a respondent in a position of authority
 - ◆ Remember, the T9C filing a formal complaint does NOT make the T9C the complainant
- Closing a Report or Complaint
 - ◆ Mandatory to close if:
 - Allegations, even if proven, would not violate Title IX policy
 - Allegations did not occur in an education program or activity or in the US
 - ◆ Permissive reasons to close:
 - Complainant requests withdrawal
 - Respondent is no longer enrolled or employed by the district
 - District is prevented from gathering sufficient evidence

CLOSING A REPORT OR COMPLAINT

- **Mandatory to close the complaint if:**
 - ◆ Allegations, even if proven, would not violate Title IX policy
 - ◆ Allegations did not occur in an education program or activity or in the US
- **Permissive to close the complaint if:**
 - ◆ Complainant requests withdrawal
 - ◆ Respondent is no longer enrolled or employed by the district
 - ◆ District is prevented from gathering sufficient evidence
- **Procedure:**
 - ◆ T9C must notify parties. Notification must include:
 - The reason for closure
 - The parties' rights to appeal
 - Directions to an appropriate district office or department to resolve the report or complaint (if applicable)

WE'VE RECEIVED THE FORMAL COMPLAINT...NOW WHAT?

→ Provide a **Notice of Allegations**

- ◆ Document should be written by the T9C and sent to the complainant and respondent.
 - Specifically provides notice of the sexual harassment allegations and the district's grievance process.
- ◆ Must give the parties sufficient time to review the Notice of Allegations before scheduling investigative interviews.
- ◆ Must send an additional notification to the parties of any new allegations that may arise during the investigation.
- ◆ Should include:
 - Sufficient details to allow parties to respond and prepare for the initial interviews.
 - Identify of the parties involved. (Remember we cannot guarantee confidentiality so never promise this.)
 - Statement identifying the conduct alleged to be sexual harassment.
 - Date and location of the alleged incidents.
 - Statement that respondent is presumed not responsible and responsibility determination is made at the conclusion of the process.
 - Parties' right to an Advisor.
 - Parties' right to review the evidence.
 - Notice of the prohibition of making knowingly false statements or submitting false information.

WE'VE PROVIDED A NOTICE OF ALLEGATIONS...NOW WHAT?

- Are the complainant and respondent students?
 - ◆ No → informal resolution is not allowed
 - ◆ Yes → offer an informal resolution
 - Voluntary participation - both parties must provide written consent
 - May encompass a broad range of options including:
 - Conflict resolution strategies
 - Arbitration
 - Mediation
 - Restorative justice
 - An independent, neutral person should facilitate the information resolution process - NOT the T9C

THE INFORMAL RESOLUTION PROCESS

- T9C provides notice to both/all parties of:
 - ◆ The specific allegations of sexual harassment.
 - ◆ Requirements of the informal resolution (IR) process.
 - ◆ Potential outcomes resulting from participating in the IR process
- Resolution is concluded only when all parties have **signed a written agreement**, and that agreement is **non-revocable** and **non-appealable**.

REMINDERS FOR ADMIN

→ Removal/Leave

- ◆ Districts are permitted to remove a respondent from school on an emergency basis, provided the district:
 - Undertakes an individualized safety and risk analysis;
 - Determines an immediate threat to the physical health or safety of any person arising from the allegations justifies the removal; and
 - Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.
- ◆ Districts are permitted to place an employee (as a respondent) on administrative leave with pay during the pendency (awaiting decision) of the grievance process.

→ Presumption of Non-Responsibility

- ◆ At ALL TIMES prior to a determination by the decision maker, the respondent is presumed NOT responsible for the alleged conduct.
- ◆ This does NOT mean:
 - The complaint lacks merit.
 - The complainant is not believed.

→ Retaliation

- ◆ Individuals may not be retaliated against because they files a complaint, reported misconduct, participated in an investigation, served as a witness, or declined to participate.

WHERE DO SCHOOLS USUALLY FIND THEMSELVES IN TROUBLE?

- Waiting to report or giving delayed responses
- Failure to notify the T9C
- Trying to investigate alone
- Inadequate or poor documentation
- Promising confidentiality
- Poor communication with all parties involved
- Failure to offer supportive measures
- Inconsistent application of the policy

Avoid these issues by reviewing our Title IX training resources, US Supreme Court Precedent, Fourth Circuit Precedent, NC Statutes, 2020 Title IX Regulations, OCR Guidance, Local BOE Policy, and Advice of Counsel.

KEEP IN MIND...

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Title IX compliance is **not about having all of the answers...**
you won't.

Title IX is about **recognizing** concerns, **responding** promptly,
treating everyone fairly, **documenting** carefully, and
following district policy/procedures.

PARTIES CHOSE NOT TO AGREE TO AN INFORMAL RESOLUTION...NOW WHAT?

→ INVESTIGATE!

◆ The Process



◆ The Goal

- To reach a determination as to whether a respondent violated one or more BOE policies prohibiting sexual harassment.

WHEN TO INVESTIGATE

- After the receipt of a **formal complaint** by the T9C, where both parties did not agree to an informal resolution.
 - ◆ Again...admin are auto-wired to investigate and act, but they must hold and follow the process.
- T9C will appoint a trained investigator and provide written notice to both parties about their rights and responsibilities during the investigation.
 - ◆ Is the complaint between students?
 - Usually the school level administrator will be assigned as the investigator.
 - ◆ Is the complaint between a student and an adult?
 - Usually the district HR director will be assigned as the investigator.
- But still...how do we know when to investigate?
 - ◆ Remember, did the alleged conduct occur in the US? Did the alleged conduct occur in an education program or activity? Does the reporter have actual knowledge?
 - ◆ If yes to the above, does the complainant want to pursue a formal investigation?
 - If yes → investigate.
 - If no → are the allegations of the type that the district must investigate regardless of the complainant's wishes?
 - This is when the T9C must submit the complaint - not as the complainant - but as the submitter.
 - Examples:
 - ◆ The more serious the conduct, the higher need to investigate (instance of rape)
 - ◆ The more frequent the conduct, the higher need to investigate (widespread behavior against multiple victims)

REMINDER: FORMAL COMPLAINTS

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May only be initiated/submitted by the complainant, complainant's parent, or the T9C.

Must include:

- Name and address of complainant
- Description of alleged sexual harassment
- Request to investigate
- Signature of complainant

WCS FORMAL COMPLAINT FORM

This form should be printed for the complainant and filled out during the intake meeting if the complainant wishes to make a formal complaint.

GENERAL EQUITABLE PRINCIPLES FOR INVESTIGATIONS

- Evidence must be **evaluated objectively**.
- Both parties have opportunity to have an **advisor** present in any meeting, interview, or decision-making process.
- **Supportive measures** should be offered to both parties.
- Respondent is **presumed not responsible** for alleged conduct.
- **Written notice** of any meeting, interview, or hearing must be provided to parties.
- Burden of proof and gathering of evidence **rests on the district**.

Purpose: *a fact-finding process to determine,
A) whether the respondent violated Board policies prohibiting sexual harassment;
and if so, B) what steps the district will take to end the sexual harassment/violence,
eliminate the hostile environment, and prevent recurrence.*

CONDUCTING THE INVESTIGATION

- Investigations must be prompt, thorough, and equitable.
 - ◆ Aim to bring all investigations to resolution within **30 business days** from the date the T9C determines an investigation should commence.
- They may include, but are not limited to:
 - ◆ Conducting interviews with the parties and witnesses
 - ◆ Reviewing law enforcement investigation documents.
 - ◆ Reviewing student and/or personnel files.
 - ◆ Gathering and examining relevant documents and evidence.
- Extensions of this timeframe allowed for “good cause”:
 - ◆ Complexity or number of allegations;
 - ◆ Severity and extent of alleged misconduct;
 - ◆ Number of parties, witnesses, and other evidence involved;
 - ◆ Availability of the parties;
 - ◆ A request by a party to delay an investigation;
 - ◆ Effect of a concurrent criminal investigation or proceeding;
 - ◆ Good faith efforts to reach a resolution; or
 - ◆ Other unforeseen circumstances.

INVESTIGATION ADVICE

- Create a system to organize evidence to assist in the final report. You should develop and implement the system from the beginning of the investigative process. Include in the plan:
 - ◆ A list of potential witnesses
 - ◆ An inventory document for all evidence collected
 - Documents
 - Audio/video recordings
 - Messages
 - Other artifacts
 - ◆ Note taking document and system
 - ◆ Document summarizing witness interviews
 - ◆ Create two timelines:
 - Investigation procedure timeline
 - Timeline of events relative to the complaint

INTERSECTION WITH CRIMINAL INVESTIGATIONS

- State law requires the district to report any sexual assault or abuse to law enforcement.
- The district should inform alleged victim(s) of their right to make a criminal report and not dissuade an alleged victim from making a criminal report.
- Evidence obtained in a criminal investigation may be used by the district as a source of fact-finding.
- The district may NOT wait for the conclusion of a criminal investigation to act under Title IX.
 - ◆ Caveat: The district may need to slightly delay an investigation during the law enforcement/criminal investigation.
 - If they delay →
 - The district must still offer supportive measures to both parties.
 - The district should update both parties on the status of the matter during any delay
- OCR Advice:
 - ◆ The district should seek a memorandum of understanding (MOU) with local law enforcement regarding concurrent criminal and Title IX investigations:
 - The MOU must allow the district to meet its Title IX requirements.
 - The MOU must also recognize student FERPA-based rights (i.e., no sharing of student information unless properly subpoenaed or otherwise allowed by law).

NOTES ON SETTING UP & PREPPING INTERVIEWS

- Who to interview and order?
 - ◆ Complainant 1st
 - ◆ Respondent 2nd
 - ◆ Witnesses next
 - ◆ Complainant again, if new information comes forward
- Rights of those involved:
 - ◆ Must be provided written notice of the interview; email is fine
 - If scheduling is proving difficult, simply document the attempts
 - Sometimes it helps to put a bug in complainants ear that their witnesses are not responding
 - ◆ Advisor may be present, however:
 - They are not to participate/advocate in the interview
 - Must maintain privacy of records shared
 - Expected to refrain from interfering with the investigation
 - Should be there solely to support the advisee
 - They get one(1) warning - if they continue to disrupt or overstep limits, they should be asked to leave. Inform the T9C about the event and they will determine if they can return or should be replaced.
- Can the district record the meeting?
 - ◆ Yes, but...do not use AI and inform all parties present that you are recording

INTERVIEW ADVICE

- Get the WWWWHW!
 - ◆ Who, what, when, where, how, and why questions.
- Take your time and be thorough.
- Be thoughtful in who you speak with and what you ask them.
 - ◆ Do not rely solely on written statements from witnesses; need to dig in.
 - ◆ Use their written statement to corroborate what they are saying by asking questions and reiterating what they wrote during the interview.
- Don't be afraid to conduct follow-up interviews with parties and witnesses.
- Don't make promises to parties about potential findings or whether someone will have to testify at a hearing.
- Be a blank slate; never assume you know anything!
- Summarize interview notes immediately after the meeting.
- Interview witnesses separately.
- Ask a lot of questions:
 - ◆ Start broad and then ask narrower more specific questions (don't lead a witness...until you need to).
 - ◆ Come back to prior answers or questions multiple times to clarify if necessary.
 - Also use this tactic and more specific questioning to not only clarify but test credibility.
 - ◆ Use a prepared list of questions, but don't be afraid to deviate from the list.
 - Hearing answers may prompt follow-up questions that weren't on the original list and that is okay.
- Yes, you can ask to see their phone...they can also decline.
- Yes, you can ask what did they mean by this or that questions.
- Just consider that all evidence will be turned over to the parties after investigations are complete.

SPECIFIC ADVICE FOR RESPONDENT INTERVIEWS

- Besides everything mentioned previously about interviews...
- Give the respondent the opportunity to tell his/her side and to respond to all allegations.
 - ◆ Don't "beat around the bush" with questions that are too broad:
 - Example: "Tell me what happened on April 5th." = too broad
 - Instead, try: "It is alleged on April 5th you approached the complainant and blah de blah...Tell me what happened."
- Be upfront with the respondent on the allegations and other important evidence.
 - ◆ Know what to release and what to hold back.
 - Example: Hold back facts to determine if the respondent can corroborate them.
- Do not be afraid to ask the hard questions and ask leading questions when necessary!
- Do not let assumptions stop you from asking a question!

EXAMPLES OF THE HARD/SPECIFIC QUESTIONS

- Sex & Romantic Relationships
 - ◆ Did you/employee have a sexual relationship with the complainant?
 - ◆ Did you ask the complainant to have sex with you?
 - ◆ Have you had any physical/romantic contact with the complainant?
 - ◆ Have you met with the complainant outside of class?
- Texting
 - ◆ Have you texted with any students?
 - ◆ Have you sent personal text messages to any of your students?
 - ◆ Are your text messages personal or class related?
 - ◆ Which students? When? How many times?
 - Ask about each student individually by name if the respondent named them.
 - If the respondent didn't name party in question, then ask them specifically...have you ever exchanged text message with [specific student]?
 - ◆ Complainant has provided screen shots of the following text messages, did you send these messages?
 - ◆ Why would you send complainant text messages about...?
 - ◆ Why would you send complainant text messages late at night?
 - ◆ Other than sending the complainant text messages outside of class, have you had any other contact with them outside of school?
 - ◆ May I see these messages on your phone? Now?
 - Thank you, can you show me the messages?
 - If you're not going to allow me to see these photos, I am going to think there is something you are hiding and that concerns me.
 - ◆ Do you have any messages between you and your witnesses/friends about this complaint?

EVIDENCE (*Like, Evidentiary Support*)

NOTES

- Investigator should objectively evaluate all physical, documentary, or other evidence as appropriate and available.
- No person acting on behalf of the district may rely upon or otherwise use questions or evidence that seek disclosure of information protected under legally recognized privilege, unless the privilege is waived.
 - ◆ Attorney-Client
 - ◆ Healthcare Provider-Patient
 - ◆ Agents of Rape Crisis Centers and Domestic Violence Programs-Victims

STANDARDS	
Beyond a Reasonable Doubt	Highest standard of evidence; used in criminal law; facts of the case lead to only one reasonable conclusion
Clear & Convincing	Hybrid; proof that a particular fact or event was highly and substantially more likely than not to have occurred
Preponderance of Evidence	Civil standard; proof that a fact or event was more likely than not to have occurred

EVIDENCE: ISSUES OF RELEVANCY

Evidence is generally considered relevant if it **has value proving or disproving an alleged policy violation or a party/witness' credibility**. The investigator will make initial relevance “decisions” by including a summary of evidence in the investigation report, however, relevance is ultimately up to the decision-maker who is not bound by the investigator's judgment. *Must be documented.*

ASSESSING RELEVANCY

- Does it tend to support to either prove or disprove allegations?
 - ◆ Does it tend to make a material fact more or less true?
- Is the piece of evidence relevant to the complaint?
- Does it directly relate to a material fact in the allegations?
- Is it authentic and can it be corroborated?

CREDIBILITY

- May not be based on a person's status in the case (complainant, respondent, or witness)
- Look at the accuracy and reliability of the information
 - ◆ Corroboration
 - ◆ Consistency
- Review: Source + Content + Plausibility
- Is the evidence worthy of belief?
- Is the provider of the evidence worthy of trust?

INVESTIGATIVE REPORT: CONTENT



REQUIRED TO INCLUDE:

- ◆ Summary of Allegations/Response
- ◆ Summary of Procedure
 - Including investigative steps taken
- ◆ Cite the Standard of Review
- ◆ Summary of Evidence
 - Summary of testimony/interviews
 - Include notes on credibility
 - List and explanation of documentary evidence
- ◆ Analysis of Evidence
- ◆ Conclusion
- ◆ Recommendations on Responsibility, and, if relevant, disciplinary action (optional)



NOTES:

- ◆ Use BOE policy language in the writing to support the conclusions provided in the report.
 - Example: “Board policy states that sexual harassment is defined as...I find the Respondent’s actions of...constitute sexual harassment under board policy and Title IX. Therefore, it is more likely than not that the Respondent’s actions violate Title IX and Board Policy.”
- ◆ Based on the conclusion, provide a recommendation on discipline or referral to appropriate person/body.
 - Example: “Although I made a finding that the Respondent did not violate Title IX, the Respondent’s actions violate the student code of conduct and the Respondent should be referred to the principal for appropriate consideration of discipline.”
 - Don’t forget about supportive measures like no-contact orders and counseling.

INVESTIGATIVE REPORT: CONCLUSION & POSTING

MENU OF OPTIONS AVAILABLE TO INVESTIGATOR	
OPTION #1	Respondent committed some or all of the alleged sexual violence/misconduct.
OPTION #2	Respondent did NOT commit any of the alleged sexual violence/misconduct.
OPTION #3	Evidence is inconclusive. Investigator cannot determine who is being truthful. <i>**While this may prevent a remedy under Title IX, it does not prevent the district from supporting the complainant.</i>

- Provide a copy of the full report to all parties, advisors, and parents.
- Provide all parties with ten(10) more days to provide a written response to the report, along with the parties initial questions
 - ◆ See Adjudication Section
- Investigator provides report, evidence and written responses and questions to the decision-maker.

ADJUDICATION

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This is when the designated “third-party” or “incident outsider” provides a determination. This position is called the “**Decision-Maker (D-M)**”.

The D-M will be the superintendent or designee.

The D-M has no side other than the integrity of the process and representing the district's process.

Remember: the burden of proof and the burden of gathering evidence sufficient to reach a determination rests on the district, not on the parties.

BEFORE ADJUDICATION...QUESTIONS

- Remember when the investigator offered a chance in their summary report for everyone to ask questions?
 - ◆ Now the D-M shall take any written questions provided in their responses to the appropriate party/witness.
 - ◆ The D-M must provide each party with the answers to those questions.
 - If any were excluded, the reason must be explained:
 - Why might they be excluded?
 - ◆ Questions about complainant's sexual predisposition or prior sexual behavior is not relevant unless proved to demonstrate someone other than the respondent committed the alleged conduct.
 - ◆ If necessary, provide each party with additional time for follow-up questions.

ADJUDICATION

- D-M reviews all evidence, investigation reports, and party responses/questions
- D-M makes determinations regarding:
 - ◆ Responsibility
 - ◆ Any disciplinary action or recommendations for disciplinary action
 - ◆ Supportive or other appropriate measures
- Determination must be an objective evaluation of the evidence using the evidentiary standard adopted in policy

- Determination of Responsibility Logistics
 - ◆ D-M should author the written determination.
 - ◆ Written determination should be provided to parties simultaneously.
 - ◆ Determination becomes final either on the date the district provides the parties with the appeal result, or if an appeal is not filed, the date on which an appeal would not be timely.
 - ◆ FERPA cannot be construed to conflict with or prevent compliance with Title IX.

WRITTEN DETERMINATION

- Must include:
 - ◆ Identification of the allegations potentially constituting sexual harassment under board policy.
 - ◆ A description of the procedural steps taken from the receipt of the formal complaint through the determination. Include:
 - Any notifications to the parties, interviews with parties/witnesses, site visits, methods used to gather other evidence, hearings held.
 - ◆ Findings of fact supporting the determination.
 - ◆ Conclusions regarding the application of board policy and/or the Code of Student Conduct or expected standards of employee behavior to the facts including whether, the respondent engaged in prohibited sexual harassment or other proscribed conduct.
 - ◆ A statement of, and rationale for, the result as to each allegation. Include:
 - A determination regarding responsibility
 - Any disciplinary sanctions imposed on the respondent (which may just be a commendation to the board for discipline that is beyond the authority of the superintendent or other D-M)
 - Whether remedies designed to restore or preserve equal access to the school system's education program and activities will be provided to the complainant.
 - ◆ The procedures and permissible bases for the complainant and respondent to appeal.
 - ◆ Any other notices that are required to accompany the decision under state law.
 - Potentially for a long-term suspension or recommendation of dismissal.

DETERMINATION NOTES

- **What should be answered in the determination:**
- ◆ What facts have been established?
 - ◆ What facts remain disputed?
 - ◆ What evidence is more persuasive?
 - ◆ Does the evidence establish that the conduct occurred?
 - ◆ Was there consent?
 - ◆ Does the conduct meet the applicable Title IX definition?
 - ◆ Does the conduct constitute sexual harassment under the school's policy even if it does not constitute Title IX sexual harassment?
 - ◆ What standard of evidence applies?
 - ◆ What findings should be made?
 - ◆ What information should be considered in determining sanctions or remedies?

- **Common Sanctions:**
- ◆ Warning
 - ◆ Probation
 - ◆ Loss of Privileges
 - ◆ Counseling
 - ◆ No Contact
 - ◆ Limited Access to Campus
 - ◆ Service Hours
 - ◆ Online Education
 - ◆ Alcohol & Drug Assessment
 - ◆ Suspension
 - ◆ Expulsion
 - ◆ Termination

APPEAL

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Either party may appeal to the Board of Education; and **may appeal the responsibility determination and/or disciplinary sanction.**

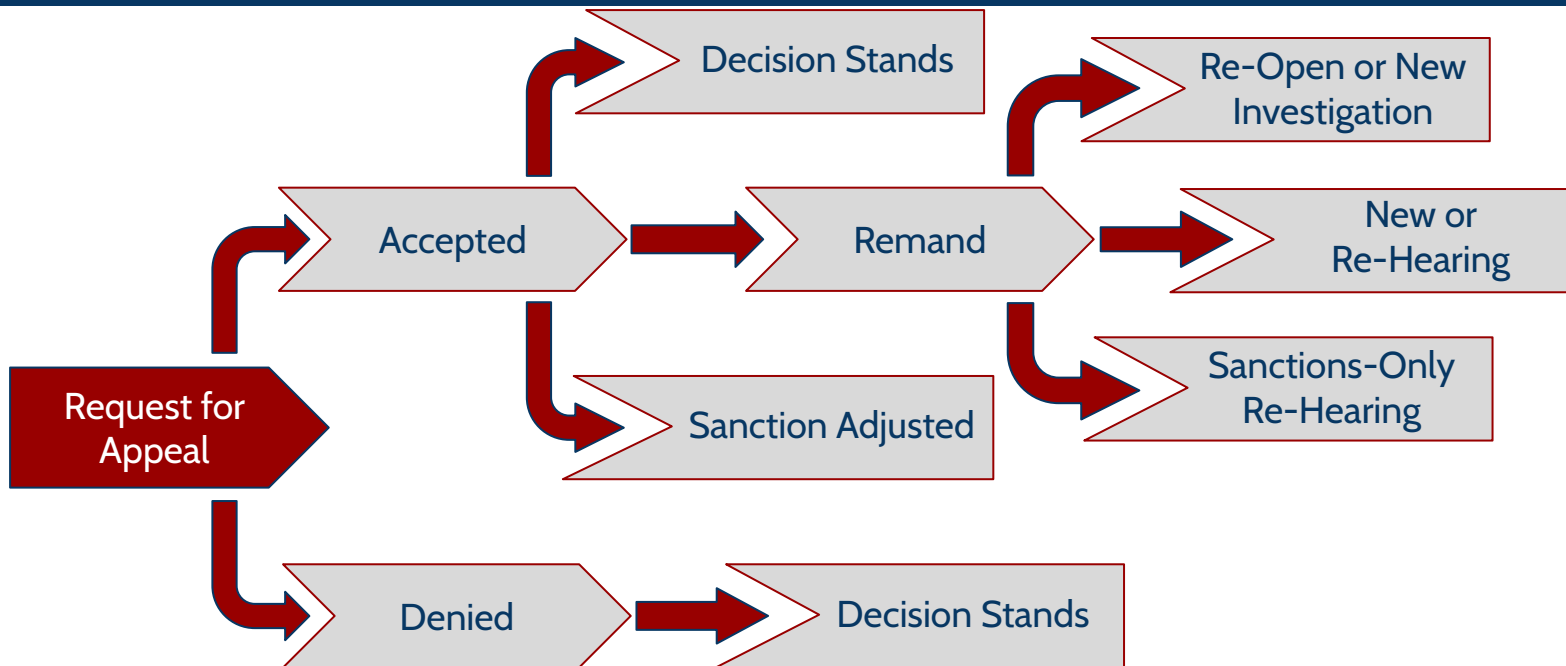
Must provide notice to both parties when an appeal is filed.

Must provide both parties a chance to submit a written statement supporting or challenging the initial decision. **NCSBA policy = ten(10) days after notice of appeal** to submit statements.

APPEAL NOTES

- No hearing unless a hearing is otherwise required by law (or policy):
 - ◆ Teacher dismissal hearing
 - ◆ Long-term suspension hearing
- Grounds for appeal:
 - ◆ Procedural irregularity that affected the outcome.
 - ◆ New evidence that was not reasonably available at the time of the determination was made that could have affected the outcome.
 - ◆ The T9C, investigator, or D-M had a conflict of interest or bias that affected the outcome.
 - ◆ Disciplinary sanction is inappropriate or unreasonable.
- Board of Education's Role:
 - ◆ Determines whether the grounds for the appeal have been substantiated.
 - ◆ Provides written decision within thirty(30) days after receiving the appeal unless there is a good cause delay.
 - ◆ Their decision final, unless it remands the matter back for further investigation.

APPEAL PROCESS



RECORDS

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Keep all records associated with Title IX cases for **seven(7) years**. This is a federal requirement.

SO WHO DOES WHAT IN WATAUGA?

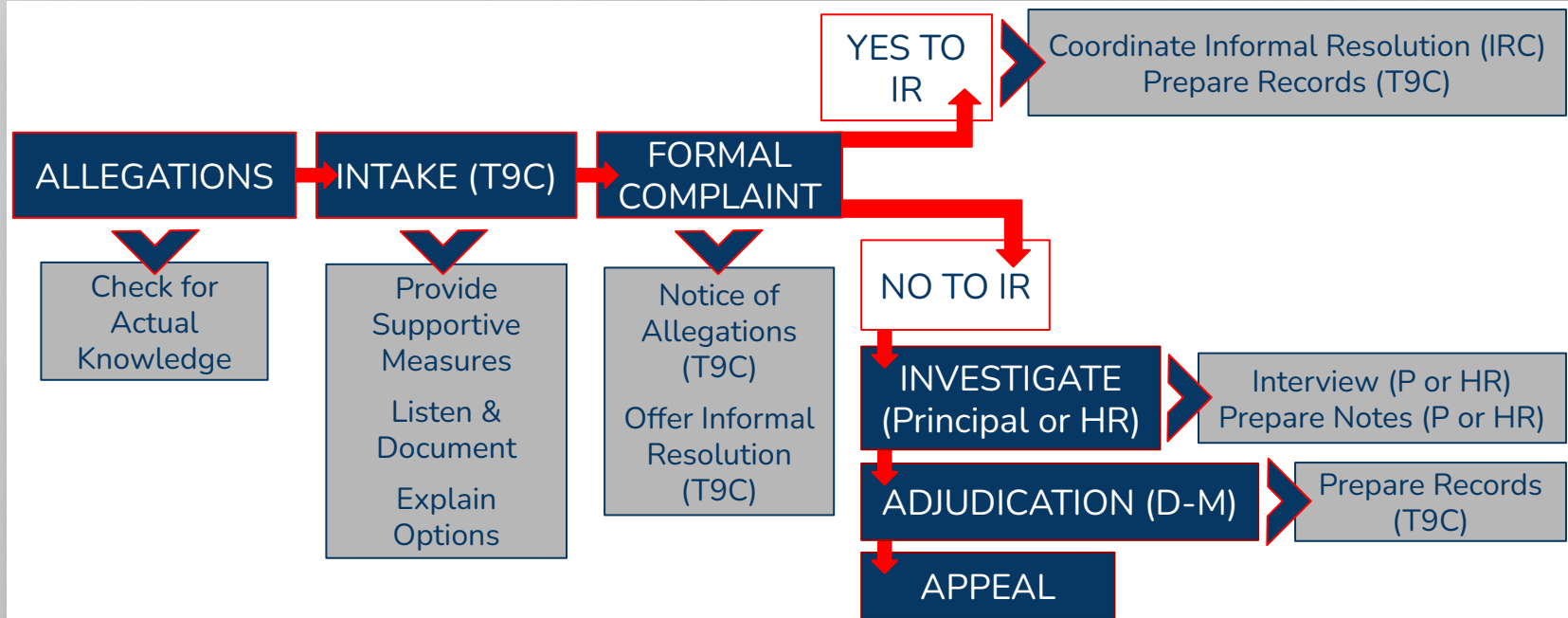
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T9C → Director of Federal Programs

Investigator → Principal or HR Director

Decision-Maker → Superintendent

Informal Resolutions Coordinator → Director of Student Services



WAIT...WHAT WERE THOSE STEPS AGAIN?

ALWAYS CONTACT THE TITLE IX COORDINATOR

Tierra Stark

starkt@wataugaschools.org

(828) 264-7190

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[Title IX
Nondiscrimination
on the Basis of Sex](#)

1725

[Title IX Sexual
Harassment -
Prohibited
Conduct &
Reporting](#)

1726

[Title IX Sexual
Harassment
Grievance
Process](#)

4040

[Staff-Student
Relations](#)

4329

[Bullying &
Harassing
Behavior
Prohibited](#)

4001

[Equal
Educational
Opportunities](#)

4020

[Discrimination &
Harassment
Prohibited by
Federal Law](#)