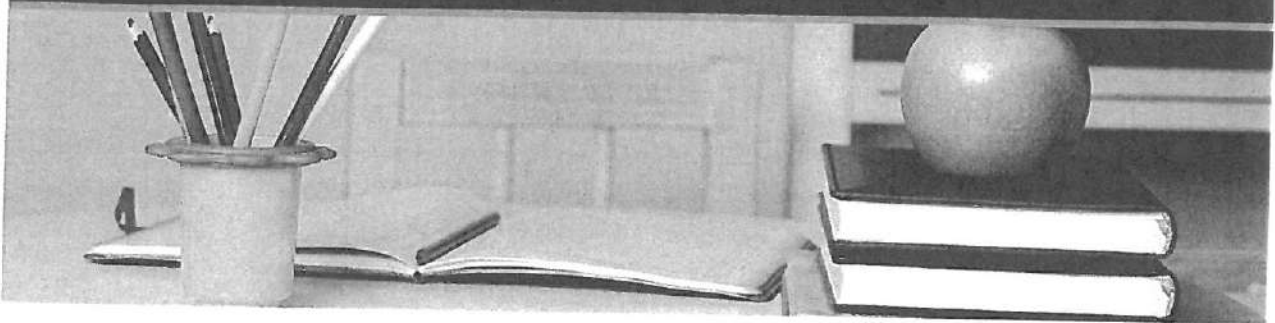




LET'S SHINE A LIGHT ON

TITLE IX

A guide about the major provisions of the Final Rule



The Final Rule

Topics to be Covered

- What is Title IX
- History of Title IX
- Common Words Defined
- Major Provisions
- How to Serve Impartially
- You Need to Decide
- Impact of New Requirements



What is Title IX

Prohibits discrimination on the basis of sex in education programs and activities that receive federal financial assistance.

Some examples:

- Title IX Sexual Harassment
- Failure to provide equal opportunity in athletics
- Discrimination in STEM courses and programs
- Discrimination based on pregnancy

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History of Title IX

Education Amendments of 1972

1975-US Dept of Education published 34 CFR Part 106, which implements Title IX

Guidance documents were used when law had not specifically addressed an issue

1997-US Dept. of Education published *Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*

2001-US Dept. of Education published *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*

2011 and 2016-Dear Colleague Letters

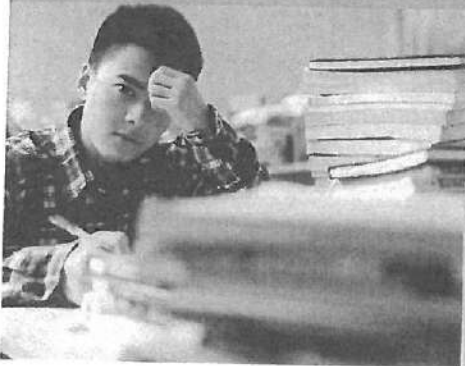
New Regulations are now law:
effective August 14, 2020



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Sex Discrimination

Big Picture Law



Title IX Sexual Harassment

Form of Sex Discrimination



Clarity

in
Terms &
Requirements



TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

Title IX Sexual Harassment Definition



TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

Title VII Sexual Harassment Definition



ARKANSAS CIVIL RIGHTS ACT OF 1993

Court Sexual Harassment Interpretation

TITLE IX SEXUAL HARASSMENT MEANS

CONDUCT 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

*Recipient - institution that receives Federal financial assistance

34 CFR 106.30(A)(1-3)

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SEX OFFENSES AS FORMS OF SEXUAL HARASSMENT:

SEXUAL ASSAULT

An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation (FBI).

20 U.S.C. § 1092(F)(6)(A)(V)

DATING VIOLENCE

Violence committed by a person-
(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:
(i) The length of the relationship.
(ii) The type of relationship.
(iii) The frequency of interaction between the persons involved in the relationship.

34 U.S.C. 12291(A)(10)

DOMESTIC VIOLENCE

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

34 U.S.C. 12291(A)(8)

STALKING

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to-
(A) fear for his or her safety or the safety of others; or
(B) suffer substantial emotional distress.

34 U.S.C. 12291(A)(30)

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SEXUAL ASSAULT OFFENSES:



RAPE

The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

(NIBRS)

SODOMY

Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

STATUTORY RAPE

Nonforcible sexual intercourse with a person who is under the statutory age of consent.

INCEST

Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

SEXUAL ASSAULT WITH AN OBJECT

To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

FONDLING

The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

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CONSENT:



THE ASSISTANT SECRETARY WILL NOT REQUIRE RECIPIENTS TO ADOPT A PARTICULAR DEFINITION OF CONSENT WITH RESPECT TO SEXUAL ASSAULT

34 CFR 106.30(a)(103)



RAPE

The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

(NIBRS)

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Complainant

Individual who is alleged to be the victim of conduct that could constitute Title IX sexual harassment.

34 CFR §106.3(A)

Respondent

Individual who has been reported to be the perpetrator of conduct that could constitute Title IX sexual harassment.

34 CFR §106.3(A)

Recipient

Institution that receives Federal financial assistance.

34 CFR §106.2(l)



The Final Rule

Topics to be Covered

What is Title IX
History of Title IX
Common Words Defined

Major Provisions

How to Serve Impartially
You Need to Decide
Impact of New Requirements



The Final Rule

Sections Covered

- § 106.2
- § 106.6
- § 106.8
- § 106.30
- § 106.44
- § 106.45
- § 106.71

34 C.F.R. Part 106

Title IX Personnel Team

What is their role?



Title IX Coordinator



Title IX Coordinator

What is their role?

1

COORDINATE

recipient's efforts to comply with Title IX responsibilities

2

"AUTHORIZED"

to do their job

3

RESPONSIBLE

for effective implementation of supportive measures and remedies

4

MUST BE READILY AVAILABLE AND ACCESSIBLE

§ 106.44(a) and § 106.8(a)

Title IX Personnel Team

What is their role?



Title IX Coordinator



Investigators



Investigators

What is their role?

1 **CONDUCT INVESTIGATIONS**

2 **CREATE INVESTIGATIVE REPORT**

Title IX Personnel Team

What is their role?



Title IX Coordinator



Investigators



Decision-Makers



Decision-Makers

What is their role?

1

EVIDENCE

Evaluate evidence and apply the standard of evidence chosen by the recipient

2

DECISIONS

Reach conclusions whether respondent is responsible for alleged Title IX sexual harassment
Whether remedies will be provided to complainants
Appropriate disciplinary consequences for respondents

3

WRITTEN DETERMINATION

regarding responsibility

WRITTEN DECISION

in an appeal

DETERMINATION



APPEALS

Title IX Personnel Team

What is their role?



Title IX Coordinator



Investigators



Decision-Makers

DETERMINATION


APPEALS

Title IX Coordinator + Investigators ~~Decision-Makers~~

SEX DISCRIMINATION GRIEVANCE PROCEDURE

VS.

TITLE IX SEXUAL HARASSMENT GRIEVANCE PROCESS

A black and white photograph of a classroom with rows of desks and chairs, serving as a background for the 'REPORTING SEX DISCRIMINATION' section.

REPORTING SEX DISCRIMINATION

ANY PERSON

may report to the Title IX Coordinator
(whether or not the person reporting is the
person alleged to be the victim of conduct
that could constitute sex discrimination or
Title IX sexual harassment).

ANY TIME

the report may be made
(during business and non-business
hours).

VERBAL OR WRITTEN

may be made in person, by mail,
by telephone, or by email

(contact information needs to be on
website and in each handbook or
catalog made available to required
parties).

The recipient must notify applicants for admission and employment, students, parents or legal guardians of elementary and secondary students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient.

POST ON WEBSITE

CONTACT INFORMATION

for Title IX Coordinator

*prominently display

NON-DISCRIMINATION POLICY

*prominently display

TRAINING MATERIALS

used to train the Title IX
Personnel Team

SEX DISCRIMINATION GRIEVANCE PROCEDURE

vs.

TITLE IX SEXUAL HARASSMENT GRIEVANCE PROCESS

General Response to Title IX Sexual Harassment

Actual knowledge means notice (report) of Title IX sexual harassment or allegations of Title IX sexual harassment to a recipient's Title IX Coordinator or to **any** employee of an elementary and secondary school.

RESPOND PROMPTLY

-in a manner that is not deliberately indifferent

RESPOND EQUITABLY

-by offering supportive measures to complainant
-by following a grievance process before imposing any disciplinary sanction or other actions that are not supportive measures against a respondent

DISCUSS SUPPORTIVE MEASURES

-discuss the availability with the complainant
-consider the complainant's wishes with respect to supportive measures
-availability with or without a formal complaint

EXPLAIN FORMAL COMPLAINT

-document filed by a complainant or signed by the Title IX Coordinator alleging Title IX sexual harassment against a respondent and requesting that the recipient investigate the allegation of Title IX sexual harassment

EMERGENCY REMOVAL OR ADMINISTRATIVE LEAVE

-respondent may be removed on an emergency basis under certain conditions
-employees may be placed on administrative leave during pending grievance process
-emergency removal or administrative leave cannot conflict with Disability Laws

Formal Complaint Guidelines

COMPLAINANT MUST BE PARTICIPATING IN OR ATTEMPTING TO PARTICIPATE

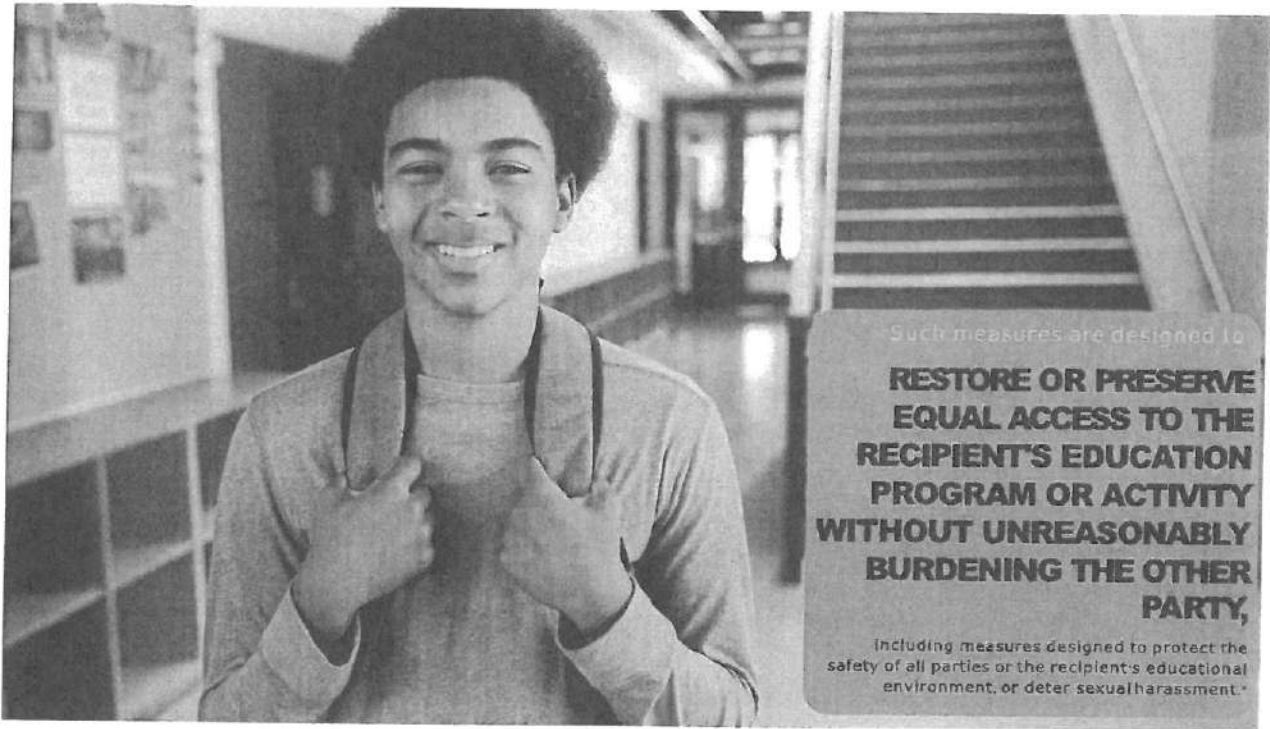
in the education program or activity of the recipient with which the formal complaint is filed

PARENT OR GUARDIAN MAY FILE A FORMAL COMPLAINT

on behalf of complainant

"DOCUMENT FILED BY A COMPLAINANT" MEANS

a document or electronic submission that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint



Such measures are designed to

**RESTORE OR PRESERVE
EQUAL ACCESS TO THE
RECIPIENT'S EDUCATION
PROGRAM OR ACTIVITY
WITHOUT UNREASONABLY
BURDENING THE OTHER
PARTY,**

Including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment.*

Supportive Measures are

INDIVIDUALIZED SERVICES

TO BE AVAILABLE TO COMPLAINANT AND RESPONDENT

NON-DISCIPLINARY AND NON-PUNITIVE

OFFERED AS APPROPRIATE.

as reasonably available, and without fee or charge to complainant or respondent.

TO BE MAINTAINED AS CONFIDENTIAL

to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measure.

THE RESPONSIBILITY OF THE TITLE IX COORDINATOR

to coordinate the effective implementation.

TO BE DOCUMENTED FOR 7 YEARS

(If no supportive measures were provided to the complainant, the reasons must also be documented.)

General Response to Title IX Sexual Harassment

Section 106.44(a)

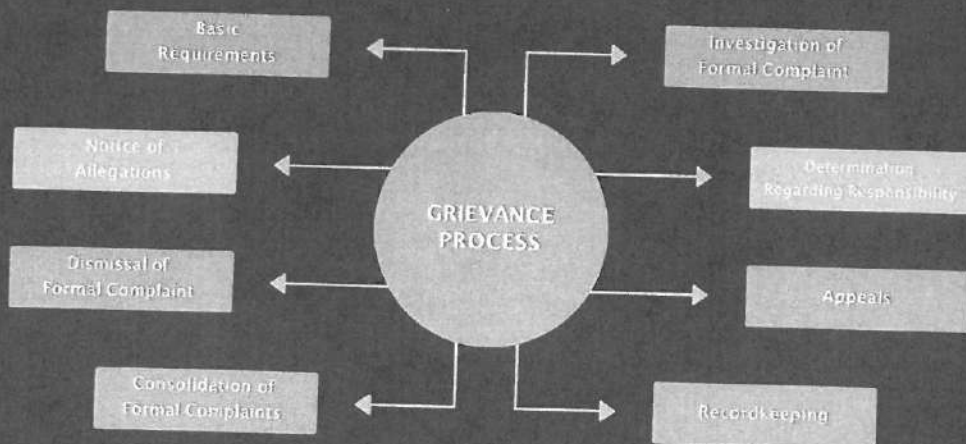
Report

Grievance Process for Title IX Sexual Harassment

Section 106.45

Formal Complaint

For the purpose of addressing formal complaints of Title IX sexual harassment



Any provisions, rules, or practices other than those required by this section that a recipient adopts as part of its grievance process for handling formal complaints of sexual harassment as defined in §106.30, must apply equally to both parties.

BASIC REQUIREMENTS

OF GRIEVANCE PROCESS

EQUITABLE

Treat complainants and respondents equitably...

EVALUATION OF EVIDENCE

Require an objective evaluation of all relevant evidence.

CONFLICT OF INTEREST OR BIAS

Require Title IX Personnel Team to not have a conflict of interest or bias.

TRAINING

Recipient must ensure that Title IX Personnel Team receive training.

NOT RESPONSIBLE

Presumption that respondent is not responsible for alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

REASONABLY PROMPT TIME FRAME

Include reasonably prompt time frames for conclusion of grievance process...

DCR Current COVID-19 Environment Q&A

DISCIPLINARY SANCTION

Describe the range or list the possible disciplinary sanctions and remedies...

STANDARD OF EVIDENCE

Preponderance of Evidence or Clear and Convincing Standard.

APPEAL

Procedures and permissible bases for the complainant and respondent to appeal.

SUPPORTIVE MEASURES

Describe the range of supportive measures.

LEGALLY RECOGNIZED PRIVILEGE

Do not require information protected under legally recognized privilege...

Notice of Allegations

PROVIDED BY THE RECIPIENT

PROVIDED TO THE PARTIES WHO ARE KNOWN

PROVIDED UPON RECEIPT OF A FORMAL COMPLAINT



Notice of Allegations must contain:

NOTICE OF GRIEVANCE PROCESS

NOTICE OF ALLEGATIONS OF SEXUAL HARASSMENT

INCLUDING SUFFICIENT DETAILS KNOWN AT THE TIME

IDENTITIES OF THE PARTIES INVOLVED IN THE INCIDENT

THE CONDUCT ALLEGEDLY CONSTITUTING TITLE IX SEXUAL HARASSMENT

DATE AND LOCATION OF THE ALLEGED INCIDENT

STATEMENT REGARDING RESPONDENT IS PRESUMED NOT RESPONSIBLE...

INFORM PARTIES THAT THEY MAY HAVE AN ADVISOR OF THEIR CHOICE

INFORM PARTIES REGARDING FALSE STATEMENTS OR FALSE INFORMATION

Additional Allegations

“

IF, IN THE COURSE OF AN INVESTIGATION, THE RECIPIENT DECIDES TO INVESTIGATE ALLEGATIONS ABOUT THE COMPLAINANT OR RESPONDENT THAT ARE NOT INCLUDED IN THE NOTICE PROVIDED PURSUANT TO PARAGRAPH (B)(2)(I)(B) OF THIS SECTION, THE RECIPIENT MUST PROVIDE NOTICE OF THE ADDITIONAL ALLEGATIONS TO THE PARTIES WHOSE IDENTITIES ARE KNOWN.

- Section 106.45(b)(2)(ii)

”

Dismissing a Formal Complaint

Must Dismiss

If conduct alleged in a formal complaint would not constitute sexual harassment.

If conduct did not occur in the recipient's education program or activity.

If conduct did not occur against a person in the United States.

"Such dismissal does not preclude action under another provision of the recipient's code of conduct."

May Dismiss

If complainant notifies the Title IX Coordinator in writing that they want to withdraw the formal complaint or any allegations therein.

If respondent is no longer enrolled or employed by the recipient.

If specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon dismissal for any reason above, the recipient must promptly send written notice of the dismissal and reason(s) simultaneously to the parties.

Consolidating Formal Complaints

1 Complainant

2 or more Complainants

1 party

+

2 or more Respondents

1 or more Respondents

Other party



Where allegations arise out of the same facts or circumstances.

An investigation of sexual harassment does not occur until a formal complaint is filed.

The recipient must investigate the allegations in a formal complaint.

Report puts recipient on notice
Formal Complaint initiates an investigation

INVESTIGATION GUIDELINES

ENSURE

burden of proof and burden of gathering evidence rest on the recipient

PROVIDE EQUAL OPPORTUNITY

- for parties to present witnesses and other evidence
- for parties to have others present during any grievance proceeding
- for parties to inspect and review any evidence

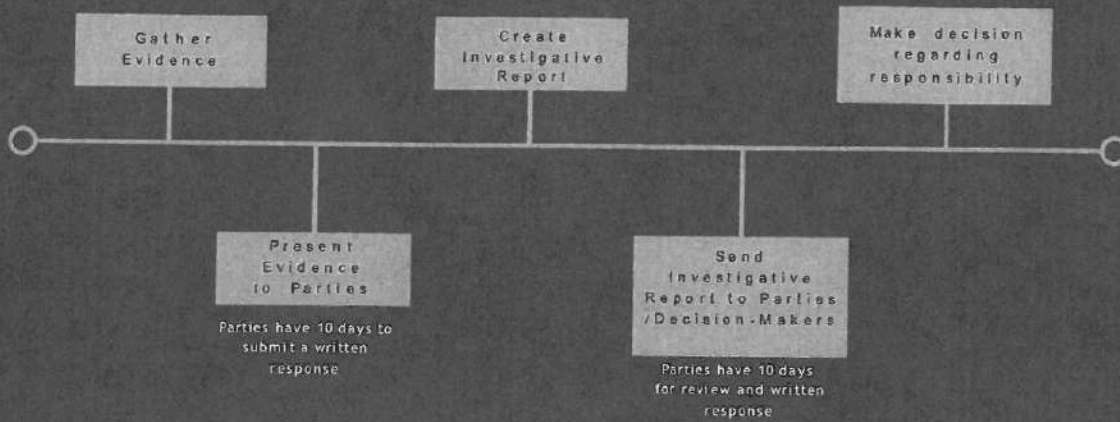
DO NOT RESTRICT

the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence

PROVIDE WRITTEN NOTICE

to a party whose participation is invited or expected

INVESTIGATION TIMELINE



Title IX Personnel Team

What is their role



Title IX Coordinator

General Response to Title IX Sexual Harassment

Section 106.44(a)

Report



Title IX Coordinator



Investigators



Decision-Makers

Grievance Process for Title IX Sexual Harassment

Section 106.45

Formal Complaint

DETERMINATION REGARDING RESPONSIBILITY

Must be provided simultaneously to the parties.

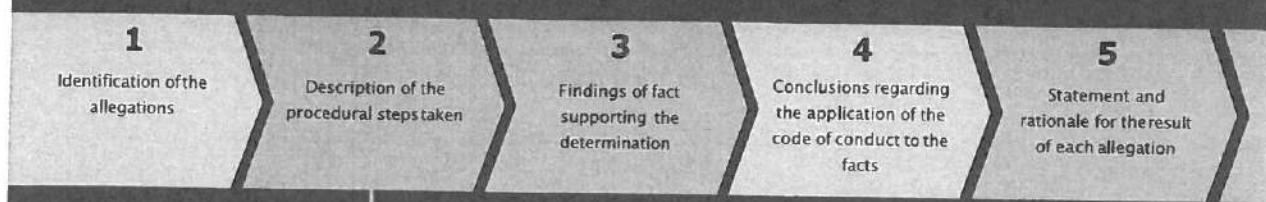
Issued by Decision-Maker

In written form

Standard of Evidence is applied

DETERMINATION REGARDING RESPONSIBILITY

MUST INCLUDE

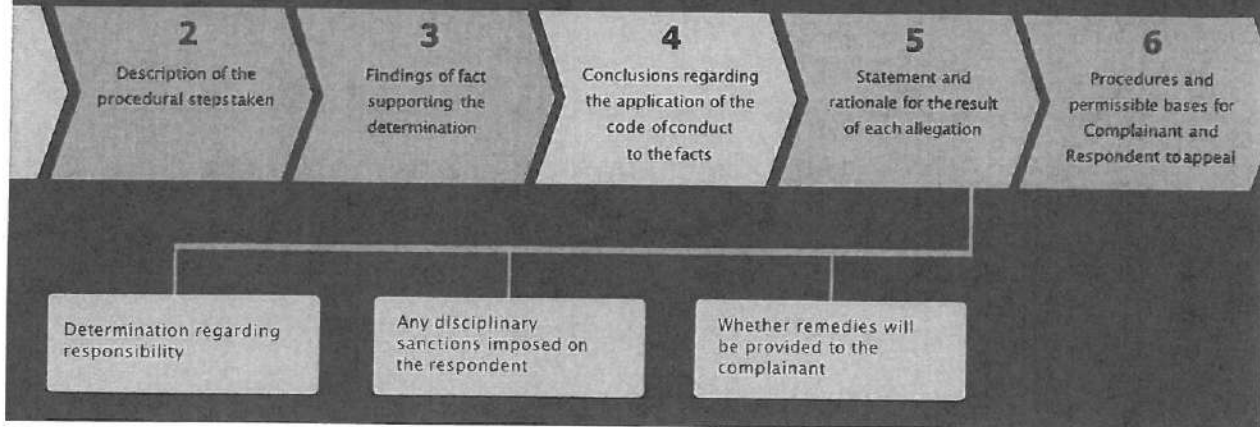


RECEIPT OF FORMAL COMPLAINT

→ DETERMINATION

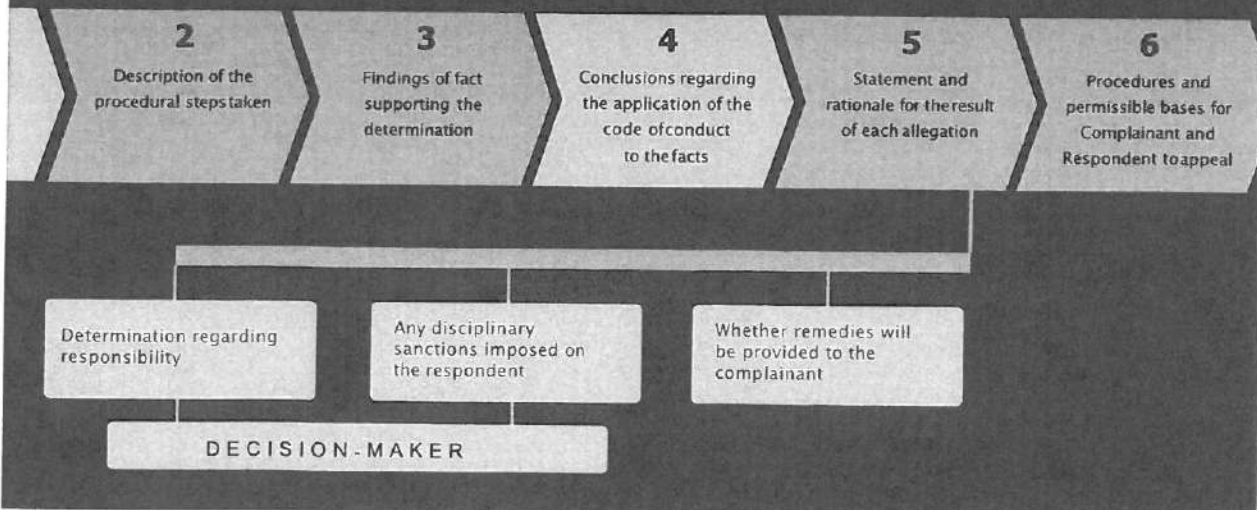
DETERMINATION REGARDING RESPONSIBILITY

MUST INCLUDE



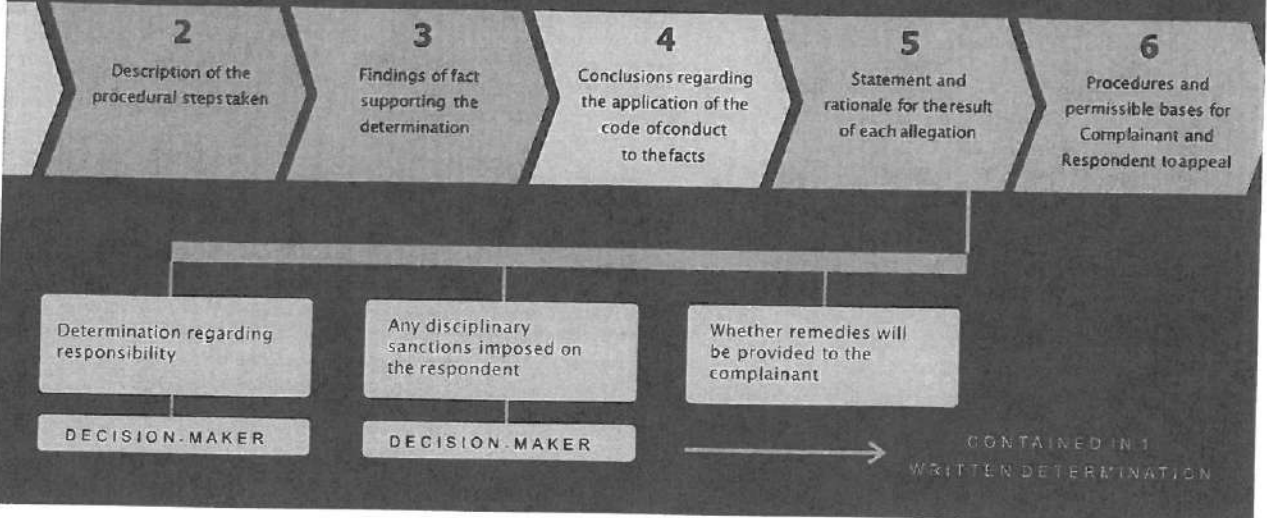
DETERMINATION REGARDING RESPONSIBILITY

MUST INCLUDE



DETERMINATION REGARDING RESPONSIBILITY

MUST INCLUDE



MAY INCLUDE THE SAME

Remedies

INDIVIDUALIZED SERVICES AS SUPPORTIVE MEASURES

PROVIDED TO COMPLAINANT ~~AND RESPONDENT~~

~~NON-DISCIPLINARY AND NON-PUNITIVE~~

OFFERED AS APPROPRIATE, as reasonably available, and without fee or charge to complainant or respondent.

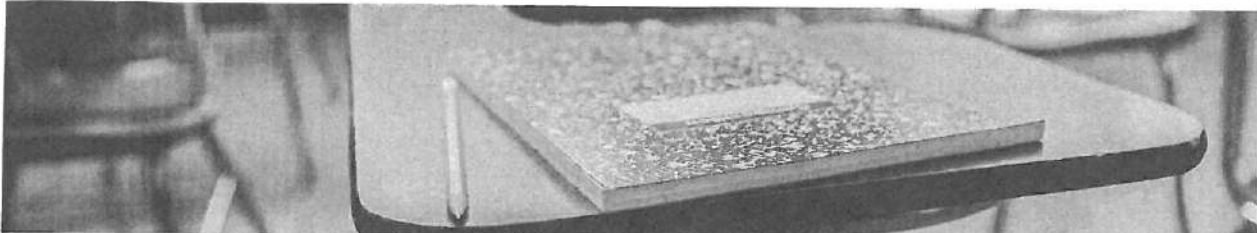
TO BE MAINTAINED AS CONFIDENTIAL to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the ~~supportive measure~~.

THE RESPONSIBILITY OF THE TITLE IX COORDINATOR

to coordinate the effective implementation.

TO BE DOCUMENTED FOR 7 YEARS

"NEED NOT AVOID BURDENING THE RESPONDENT"



Appeals must be offered to both parties

From a determination regarding responsibility

From a recipient's dismissal of a formal complaint or any allegations therein

on the following bases:

Procedural irregularity that affected the outcome of the matter

New evidence that was not reasonably available that could affect the outcome of the matter

Justic IX Personnel Team had a conflict of interest or bias towards complainant or respondent that affected the outcome of the matter

A recipient may offer an appeal equally to both parties on additional bases.

APPEAL GUIDELINES

Notify other party in writing when an appeal is filed

Implement appeal procedures equally to both parties

Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome

WRITTEN DETERMINATION
regarding responsibility

WRITTEN DECISION
in an appeal

Must describe the result of the appeal and the rationale for the result.

Must be provided simultaneously to both parties.

At conclusion of investigation

At conclusion of appeal

ACTIVITY

JOIN THEKAHOOT
www.kahoot.it

GAME PIN: **ON SCREEN**



Serving Impartially

NEUTRAL ✓

FAIR IN ACTIONS ✓

OBJECTIVE CRITERIA ✓



DESIGNATED INDIVIDUALS MUST
"not have a **conflict of interest**
or **bias** for or against
complainants or respondents
generally or an individual
complainant or respondent"

✗ PREJUDGEMENT OF THE FACTS AT ISSUE

✗ CONFLICTS OF INTEREST

✗ BIAS

34 CFR 106.45(B)(1)(III)

Serving Impartially



DESIGNATED INDIVIDUALS MUST
be trained "how to serve
impartially, including by avoiding
**prejudgment of the facts at
issue, conflicts of interest, and
bias**"

DESIGNATED INDIVIDUALS MUST

Be self-aware

State when they cannot be
impartial

Objectively gather and evaluate
evidence
- including inculpatory and
exculpatory evidence

34 CFR 106.45(B)(1)(III)

CONFIDENTIALITY APPLIES EXCEPT

EXCEPT

EXCEPT

Permitted by FERPA

Required by any law

to carry out the purpose of 34 CFR part 106.

Supportive
Measures

Schools Must not Restrict
the Ability of Either Party to:

Discuss Allegations
under Investigation

Gather and Present
Relevant Evidence

34 CFR 106.71(A)



Retaliation

“

NO RECIPIENT OR OTHER PERSON MAY
INTIMIDATE, THREATEN, COERCE, OR
DISCRIMINATE AGAINST ANY INDIVIDUAL FOR
THE PURPOSE OF INTERFERING WITH ANY
RIGHT OR PRIVILEGE SECURED BY TITLE IX

34 CFR 106.71 (a)

”

You Need to Decide.

Three major items a district must decide



Informal Resolutions



Hearings



Standard of Evidence

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Informal Resolutions

MAY BE OFFERED

AFTER COMPLAINT/BEFORE DETERMINATION

NO WAIVER OF RIGHTS

NOT EXPLICITLY DEFINED/FLEXIBILITY

VOLUNTARY

NOT EMPLOYEE - STUDENT

INCLUDED IN NOTICE OF ALLEGATIONS



"YES OR NO?"

Hearings

"YES?"



OR

"NO?"

MAY BE PROVIDED

For recipients that are elementary and secondary schools...the recipient's grievance process may, **but need not**, provide for a hearing.

MUST ALLOW QUESTIONING

BY ADVISOR ONLY

LEA PROVIDED ADVISOR

SEPARATE PARTIES

RELEVANT QUESTIONS (INCL. CREDIBILITY)

RECORDING/TRANSCRIPT

ADDITIONAL QUESTIONS

ALLOW ANSWERS AND FOLLOW-UP

RELEVANT QUESTIONS

Title IX § 106.45(b)(8)

Standard of Evidence



"WHICH ONE?"

SELECT ONE STANDARD

The standard must be listed in the grievance process.

CONSISTENTLY APPLIED

It cannot be harder to prove an allegation against a teacher than it is to prove an allegation against a student.

PREPONDERANCE OF THE EVIDENCE

The evidence shows that the allegation is more likely to have occurred than to have not occurred. (>50% chance that the allegations are correct.)

CLEAR AND CONVINCING EVIDENCE

The evidence shows that the allegation is substantially more likely to be true than untrue. (High probability, but still less than "beyond a reasonable doubt")

Title IX § 106.45(b)(1)(vii)

You Need to Decide.

Three major items a district must decide



Informal Resolutions



Yes

No



Hearings



Yes

No



Standard of Evidence



Preponderance
of Evidence

Clear and
Convincing

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Impact

OF NEW REQUIREMENTS

TRAINING

- In-Depth Training for Personnel Team *(Required)*
- Basic Sexual Harassment Training for All Employees *(Recommended)*

PERSONNEL TEAM

- Designate and Authorize at Least One Title IX Coordinator
- Title IX Team Creation
 - Internal Employees vs. Regional Center Model
- Single Investigator Model not Allowed
- Flexibility of Assignments

TIMELINE

- Investigative Time Line
 - Report *(at least 10 days)*
 - Hearing/Determination *(at least 10 days)*
- Appeal *(additional time)*

DISCIPLINE PROCESSES & POLICIES

- FERPA
- Other Considerations
- Comparison of Policies/Definitions
- Is It Title IX Sexual Harassment?

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Training

REQUIRED

Title IX § 106.45(b)(1)(iii)

Personnel Team - In-Depth Training

ALL Team Members

- Title IX definition of sexual harassment
- Scope of the education program/activity
- Conducting an investigation
- Grievance process
- Hearings (if applicable to the institution)
- Appeals
- Impartiality
 - Prejudging facts
 - Conflicts of interest
 - Bias
- Informal resolution (if applicable to the institution)

Investigators

- Issues of relevance
- Evidence

Decision Makers

- Issues of relevance
- Evidence
- Questions
- Technology used in hearings (if applicable to the institution)

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Training

RECOMMENDED

Basic Sexual Harassment Training

ALL Employees

- Title IX definition of sexual harassment
- Duty to report
- How to report
- Basic grievance process and timeline

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Title IX Personnel Team

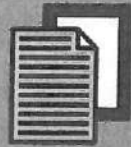
How Do We Do It?



Title IX Coordinator



Investigators



Decision-Makers



Informal Resolution Facilitators

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Title IX Coordinator

What is their role?

1

COORDINATE

recipient's efforts to comply with Title IX responsibilities

2

"AUTHORIZED"

to do their job

3

RESPONSIBLE

for effective implementation of supportive measures and remedies

4

MUST BE READILY AVAILABLE AND ACCESSIBLE

106.44(a) and 106.8(a)



Title IX Coordinator

What is their role?

MAYBE ASSISTANTS?

1

COORDINATE

2

RESPONSIBLE

Train Title IX Team Personnel

Respond to all actual knowledge of Title IX sexual harassment

Ensure Due Process throughout

Oversee implementation of:

• Title IX regulations • Policies • Sanctions

Ensure Recording of:

Determination
Audio/Video/visual
Recording
Sanctions
Remedies

Supportive measures
Basis for conclusion it was not deliberately indifferent
Measures taken to restore or preserve equal access
Reasons for not providing supportive measures

Make viewable to public

Title IX § 106.8(a); 106.44(a), (b); 106.45(a), (b); 106.45(b)(7)(iv); 106.45(b)(10)

Single Investigator Model

A process where one person interviews all parties and witnesses, gathers and examines the evidence and makes the final determination regarding guilt or innocence of the respondent. Typically, that person would also determine the actions to be taken against the respondent and/or for the complainant.

Previous

- Title IX did not specify investigation model
- Previous guidance somewhat encouraged model (2014 WH Task Force report)

Current

- New rules expressly forbid the single investigator model.

Title IX § 106.45(b)(7); Preamble pp. 30366-30372, 30456-30457



Investigators

~~SINGLE INVESTIGATOR MODEL~~

1

CONDUCT INVESTIGATIONS

2

CREATE INVESTIGATIVE REPORT

- CANNOT be a decision maker, for this complaint.
- Can be Title IX Coordinator.
 - Consider the other responsibilities of the Title IX coordinator.
- Principals or Assistant Principals?
 - As long as they have received the required training.
- Title IX does not specify who can or cannot be an investigator, as long as they...
 - have received the appropriate training, AND
 - are not the decision maker in the complaint they are investigating.

Title IX § 106.45(b)(1)(iii); 106.45(b)(7)Preamble pg. 30367



Decision Makers

~~SINGLE INVESTIGATOR MODEL~~

1

WRITTEN DETERMINATION

or

WRITTEN DECISION

- Single individual
- Panel of individuals
- Multiple individuals who each adjudicate specific portions of the grievance process.
- First point of appeal cannot go to the original decision maker.
- School principals may be the decision makers for their buildings, provided they are not involved in any way in collecting evidence.
 - If they have interviewed any witnesses are they investigators?
 - Can they be unbiased if they received the initial report?

Title IX § 106.45(b)(7); 106.45(b)(8); Preamble pg. 30097, 30367, 30370, 30371



Informal Resolution Facilitators

FACILITATE INFORMAL RESOLUTIONS

- Must be trained.
- Decision-maker, Investigator, Title IX Coordinator, someone else?
 - The rules do not delineate any further information regarding the requirements for who can be an informal resolution facilitator.
 - Impartiality/Bias?
- May be called as witnesses in subsequent formal investigations.
 - Recipient makes this decision.
 - If allowed, it must be clearly disclosed to both parties.

Title IX § 106.45(b)(1)(iii); 106.45(b)(8); Preamble pp. 30399 - 30401, 30404

Title IX Personnel Team

Who?

Flexibility of assignment

- It appears that the investigator, decision-maker and informal facilitator can be adjusted on a case-by-case basis.
 - We recommend maintaining as much consistency as possible, but situations may demand flexibility.
- All must receive appropriate training!

Internal Employees vs. Regional Center Models

- Districts can contract out investigative and adjudication duties.
 - Educational Cooperatives may be able to provide these services.
 - District to district agreements.
 - *Must ensure all training used is available publicly.*
- <https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-20200904.pdf#page=5>
- **Cannot contract out Title IX coordinator**

Title IX Preamble pp. 30063, 30099 - 30100

Equity Assistance Center | 2020

Title IX Timelines

"Reasonably Prompt"

Investigation Timeline

No less than 20 days

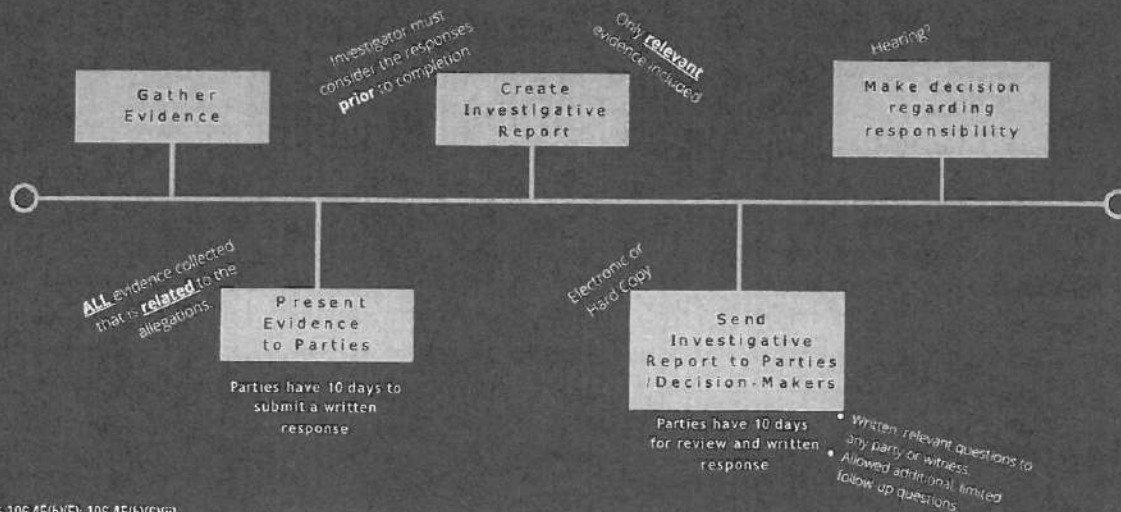
Appeals Timeline

Not specified

Title IX s 106.45(b)(5)(v), (vi); 106.45(b)(8)

Equity Assistance Center | 2020

INVESTIGATION TIMELINE



Title IX s 106.45(b)(5); 106.45(b)(6)(ii)

Appeals Timeline

Must be filed and resolved in a “reasonably prompt” time frame.

Recipient decides and specifies in grievance process.

10
days?

- Commonly used in education policies
 - SpEd/504/Expulsion/Title IX Investigations
- Up to 10 days to file?
- 10 days for parties to respond/resolution?

WHAT ABOUT FERPA?

The obligation to comply with Title IX is not obviated or alleviated by the FERPA statute or FERPA regulations.

I CANNOT TELL YOU WHAT
ACTION I CAN TAKE AGAINST
ANOTHER STUDENT

Notice of Allegations

IDENTITIES of the parties involved in the incident.

Determination

Given to **both** parties.
Declaration of responsibility.
What sanctions are imposed on **respondent**.
If remedies are offered **complainant**.

Supportive Measures

Kept confidential **so long as** the confidentiality **does not deter the ability** to provide the supports.

Other Considerations/Questions



LOCATIONS

Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs.

- School
- Field Trips
- Dances
- Student Events
 - Sports, performances, plays, etc.
 - Home/Away?
- Chromebooks/iPads

DATING VIOLENCE

School Dance?
School Event?

Effectively deny access?

STALKING

Students can stalk other students.

When is it stalking vs. annoyance?

Reasonable person clause?

DUAL-ENROLLMENT

K-12 Rules?
Post-Secondary Rules?
Both?

DOMESTIC VIOLENCE

Staff on child who is also a student at your school?

Does it have to happen at school?

Discipline Policy Definitions

District A

"Sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:

- A District employee:
 - Conditions the provision of an aid, benefit, or service of the District on an individual's participation in sexual conduct, or uses the rejection of sexual conduct as the basis for academic decisions affecting that individual;
- The conduct is:
 - Unwelcome; and
 - Determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity; or
 - Constitutes:
 - Sexual assault;
 - Dating violence
 - Domestic violence, or
 - Stalking.
- Depending upon such circumstances, examples of sexual harassment include, but are not limited to:
 - Making sexual propositions or pressuring for sexual activities;
 - Unwelcome touching;
 - Writing graffiti of a sexual nature;
 - Displaying or distributing sexually explicit drawings, pictures, or written materials;
 - Performing sexual gestures or touching oneself sexually in front of others;
 - Telling sexual or crude jokes;
 - Spreading rumors related to a person's alleged sexual activities;
 - Discussions of sexual experiences;
 - Rating other students as to sexual activity or performance;
 - Circulating or showing emails or Web sites of a sexual nature;
 - Intimidation by words, actions, insults, or name calling; and
 - Teasing or name-calling related to sexual characteristics or the belief or perception that an individual is not conforming to expected gender roles or conduct or is homosexual, regardless of whether or not the student self-identifies as homosexual or transgender.

Discipline Policy Definitions

District B

"Sexual harassment" means conduct that is:

Of a sexual nature, including, but not limited to:

- Sexual advances;
- Requests for sexual favors;
- Sexual violence; or
- Other personally offensive verbal, visual, or physical conduct of a sexual nature;
- Unwelcome, and denies or limits a student's ability to participate in or benefit from any of the District's educational programs or activities through any or all of the following methods: Submission to the conduct is made, either explicitly or implicitly, a term or condition of an individual's education; Submission to, or rejection of, such conduct by an individual is used as the basis for academic decisions affecting that individual; and/or such conduct has the purpose or effect of substantially interfering with an individual's academic performance or creates an intimidating, hostile, or offensive academic environment.

The terms "intimidating," "hostile," and "offensive" include conduct of a sexual nature that has the effect of humiliation or embarrassment and is sufficiently severe, persistent, or pervasive that it limits the student's ability to participate in, or benefit from, an educational program or activity.

Within the educational environment, sexual harassment is prohibited between any of the following: students, employees and students; and non-employees and students.

Actionable sexual harassment is generally established when an individual is exposed to a pattern of objectionable behaviors or when a single, serious act is committed. What is or is not, sexual harassment will depend upon all of the surrounding circumstances and may occur regardless of the sex(es) of the individuals involved. Depending upon such circumstances, examples of sexual harassment include, but are not limited to:

- Making sexual propositions or pressuring for sexual activities;
- Unwelcome touching;
- Writing graffiti of a sexual nature;
- Displaying or distributing sexually explicit drawings, pictures, or written materials;
- Performing sexual gestures or touching oneself sexually in front of others;
- Telling sexual or crude jokes;
- Spreading rumors related to a person's alleged sexual activities;
- Discussions of sexual experiences;
- Rating other students as to sexual activity or performance;
- Circulating or showing emails or Web sites of a sexual nature;
- Intimidation by words, actions, insults, or name calling; and
- Teasing or name-calling related to sexual characteristics or the belief or perception that an individual is not conforming to expected gender roles or conduct, or is homosexual, regardless of whether or not the student self-identifies as homosexual or transgender.

Sexual harassment, as governed by policy 4.27, is also a form of bullying

Discipline Policy Definitions

District C

Sexual Harassment Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct of a sexual nature. It also includes conduct that is not sexual in nature, but that is engaged in because of the gender of the victim. It includes conduct that is also criminal in nature such as rape, sexual assault, stalking, and similar offenses. Under this policy, sexual harassment is prohibited regardless of the sex of the harasser, i.e., sexual harassment may occur even if the harasser and the person being harassed are the same sex.

Sexual Misconduct to engage in or attempt to engage in a sexual act with another person, to touch in a sexually offensive manner or send sexually explicit pictures/sexting on District property or a school related activity is prohibited.

Sexual Orientation Harassment Harassment on the basis of sexual orientation is unwelcome verbal, written, physical conduct directed at the characteristics of a person's sexual orientation or gender identity or expression such as negative name-calling and imitating mannerisms.

Sexual Harassment unwelcome sexual advances, request for sexual favors, sexually motivated physical conduct or the verbal/physical conduct of a sexual nature.

Discipline Policy Definitions

District D

Sexual Harassment is unwanted verbal, written or physical behavior of a sexual nature; physical intimidation and mockery or scorn based on perceived sexual orientation. Such behavior is illegal if it created an environment that is hostile or intimidating.

Sexual harassment is any unwelcome sexual advance, request for sexual favors and other verbal or physical conduct of a sexual nature.

Sexual Activity or Sexual Misconduct to include possession of or distribution of pornographic media. Students shall not touch other students in a sexual manner.

Public Display of Affection - A public display of affection is inappropriate school behavior. Refusal to comply with reasonable expectations of school staff will lead to disciplinary action. Students shall not touch other students in a sexual manner.

Discipline Policy Definitions

District E

"Sexual harassment" means conduct that is:

- Of a sexual nature, including, but not limited to:
 - Sexual advances;
 - Requests for sexual favors;
 - Sexual violence; or
 - Other personally offensive verbal, visual, or physical conduct of a sexual nature;
- Unwelcome; and
- denies or limits a student's ability to participate in or benefit from any of the District's educational programs or activities through any or all of the following methods:
 - Submission to the conduct is made, either explicitly or implicitly, a term or condition of an individual's education;
 - Submission to, or rejection of, such conduct by an individual is used as the basis for academic decisions affecting that individual; and/or
 - Such conduct has the purpose or effect of substantially interfering with an individual's academic performance or creates an intimidating, hostile, or offensive academic environment.

Immorality Students shall abstain from any indecent or immoral act, this shall also include possessing, viewing, distributing, or electronically transmitting sexually explicit or vulgar images or representations, whether electronically, on a data storage device, or in hard copy form. A student guilty of such conduct will face a minimum punishment of suspension and a maximum punishment of expulsion.

Discipline Policy Definitions

District F

Sexual harassment: Any unwanted and unwelcome sexual behavior (physical or verbal). Examples can include: petting, pinching, grabbing, indecent gesture, sexual remarks, jokes, innuendoes, photographs, illustrations, cartoons, or making someone the target of sexual rumors

"Sexual harassment" means conduct that is:
Of a sexual nature, including, but not limited to:

- Sexual advances;
- Requests for sexual favors;
- Sexual violence; or
- Other personally offensive verbal, visual, or physical conduct of a sexual nature;
- Unwelcome and denies or limits a student's ability to participate in or benefit from any of the District's educational programs or activities through any or all of the following methods:
Submission to the conduct is made, either explicitly or implicitly, a term or condition of an individual's education. Submission to, or rejection of such conduct by an individual is used as the basis for academic decisions affecting that individual and/or such conduct has the purpose or effect of substantially interfering with an individual's academic performance or creates an intimidating, hostile, or offensive academic environment;

The terms "intimidating," "hostile," and "offensive" include conduct of a sexual nature that has the effect of humiliation or embarrassment and is sufficiently severe, persistent, or pervasive that it limits the student's ability to participate in or benefit from an educational program or activity. Within the educational environment, sexual harassment is prohibited between any of the following: students, employees and students, and non-employees and students.

Sexual Misconduct: Any act of sexual gratification involving the touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female.

Actionable sexual harassment is generally established when an individual is exposed to a pattern of objectionable behaviors or when a single, serious act is committed. What is, or is not, sexual harassment will depend upon all of the surrounding circumstances and may occur regardless of the sexes of the individuals involved. Depending upon such circumstances, examples of sexual harassment include, but are not limited to:

- Making sexual propositions or pressuring for sexual activities;
- Unwelcome touching;
- Writing graffiti of a sexual nature;
- Displaying or distributing sexually explicit drawings, pictures, or written materials;
- Performing sexual gestures or touching oneself sexually in front of others;
- Telling sexual or crude jokes;
- Spreading rumors related to a person's alleged sexual activities;
- Discussions of sexual experiences;
- Rating other students as to sexual activity or performance;
- Circulating or showing emails or Web sites of a sexual nature;
- Intimidation by words, actions, insults, or name calling; and
- Teasing or name-calling related to sexual characteristics or the belief or perception that an individual is not conforming to expected gender roles or conduct or is homosexual, regardless of whether or not the student self-identifies as homosexual or transgender.

Discipline Policy Definitions

District G

Sexual Harassment Is when a student engages repetitively in behavior that involves unwelcome sexual advances, unwelcome touching that is sexual in nature, unwelcome requests for sexual favors from or offers sexual favors to another student such that the conduct has the purpose or effect of interfering with the other's performance in the school environment.

Sexual Behavior Mutual sexual acts including sexual intercourse, fondling, nudity, etc...

Sexual Misconduct Engaging in sexual activity; possession or distribution of pornographic materials

Is it Title IX Sexual Harassment?

Title IX Preamble

"Signs of enduring unequal educational access due to severe, pervasive, and objectively offensive sexual harassment may include:

- *skipping class to avoid a harasser*
- *a decline in a student's grade point average, or*
- *having difficulty concentrating in class*

however,

no concrete injury is required

to conclude that serious harassment would deprive a reasonable person in the complainant's position of the ability to access the recipient's education program or activity on an equal basis with persons who are not suffering such harassment."

Davis v. Monroe

Landmark Supreme Court case, 1999. It stated that for Title IX offenses it must be:

- *Severe Pervasive – AND*
- *Objectively Offensive – THAT*
- *Denies Equal Access to Education*

Davis v. Monroe

Whether gender-oriented conduct rises to the level of actionable "harassment" thus:

"depends on a constellation of surrounding circumstances, expectations, and relationships, ...including, but not limited to, the ages of the harasser and the victim and the number of individuals involved."

Davis v. Monroe

Courts must bear in mind that schools are *unlike the adult workplace and that children may regularly interact in a manner that would be unacceptable among adults.*

It is thus understandable that, in the school setting, students often engage in insults, banter, teasing, shoving, pushing, and gender-specific conduct that is upsetting to the students subjected to it.

Davis v. Monroe

Damages are not available for simple acts of teasing and name-calling among school children, however,

even where these comments target differences in gender.

Is it Title IX Sexual Harassment?

A young man repeatedly grabs and rubs his crotch whenever a young woman enters into their English class.

Is it Title IX Sexual Harassment?

A student yells across the cafeteria calling another student a "THOT."

Is it Title IX Sexual Harassment?

A student from another school in the district is at an evening extracurricular activity at your school. The student meets a student from your school and repeatedly sends text messages and calls asking for sexual favors.

Is it Title IX Sexual Harassment?

You receive a call from the parent of a student in a neighboring school district. The parent states that one of your students is constantly texting their child inappropriate pictures during the school day.

Is it Title IX Sexual Harassment?

A substitute teacher, hired through a temp agency, is accused of only helping the young women who have low cut shirts and lean forward when working with them.

Is it Title IX Sexual Harassment?

A teacher who worked at your school last year, but is now employed by another school district is accused of sending text messages this year to many of the students at your school requesting "nudes."

Is it Title IX Sexual Harassment?

A virtual student sends sexually explicit messages and images to another virtual student using the school provided device.

Is it Title IX Sexual Harassment?

A virtual student sends sexually explicit messages and images to another virtual student on their cell phones during school time.

Not Title IX Sexual Harassment?

(Have to Dismiss?)

If it is not sexual harassment as defined by Title IX and you must dismiss the complaint, remember that **“a dismissal does not preclude action under another provision of the recipient's code of conduct.”**

The U.S. Department of Education recently released new Title IX requirements that will become effective Friday August 14, 2020. The Final Rule defines sexual harassment (including sexual assault, dating violence, domestic violence, and stalking) as unlawful sex discrimination, and imposes important legal obligations on school districts and charter schools.

TITLE IX SEXUAL HARASSMENT: GETTING STARTED CHECKLIST

This non-exhaustive list serves as a starting point for school districts and charter schools.

Superintendent and Principal:

Develop

- Process for responding to sexual harassment
- Process for filing a formal complaint
- Process for responding to formal complaints
- Grievance process
- Appeal process

Determine

- The supportive measures the school will use
- If school will conduct hearings
- Standard of Evidence
- If school will offer informal resolution option

Schools must determine whether they will use the preponderance of evidence standard or the clear and convincing standard for all formal complaints of sexual harassment.

Title IX Coordinator:

Appoint and authorize a Title IX Coordinator

Display the Title IX Coordinator's contact information on School's Website

Notify the following groups of the Title IX Coordinator's contact information:

- Students
- Parents or Legal Guardians
- Employees
- Applicants for Admission and Employment
- Unions

The Title IX Coordinator's contact information needs to include name or title, office address, e-mail address, and telephone number.

Title IX Personnel Team:

Appoint a Title IX Personnel Team

- Title IX Coordinator
- Investigators
- Decision-Makers

Train the Title IX Personnel Team

- Definition of Sexual Harassment
- Scope of school's education program or activity
- How to of school's processes
- How to serve impartially
- Confidentiality Training

Train Decision-Makers and Investigators on issues of relevance

Post materials used to train the Title IX Personnel Team on the school's website

The Title IX Coordinator and the Investigators cannot be Decision-Makers.



EQUITY ASSISTANCE CENTER TEAM

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