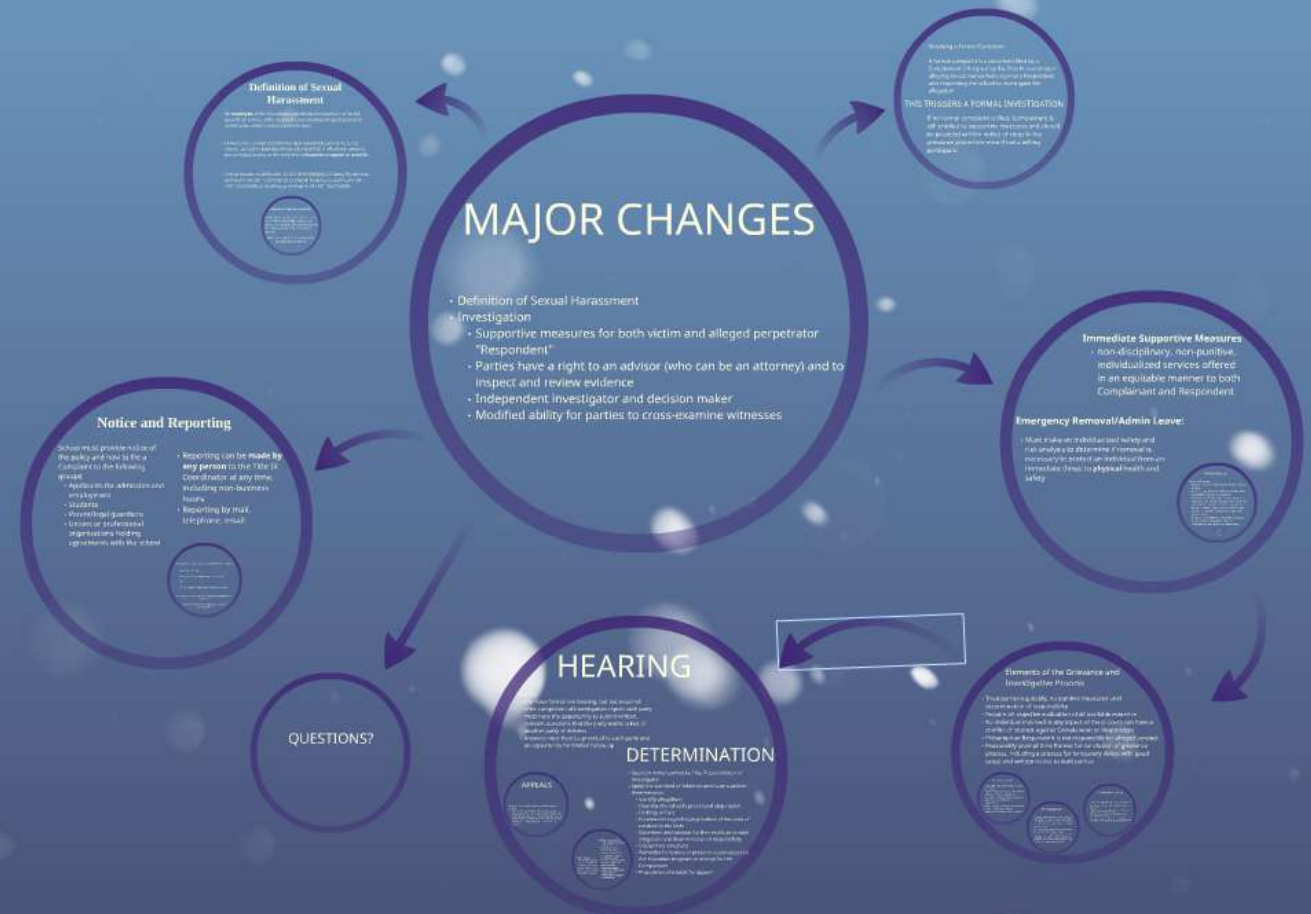
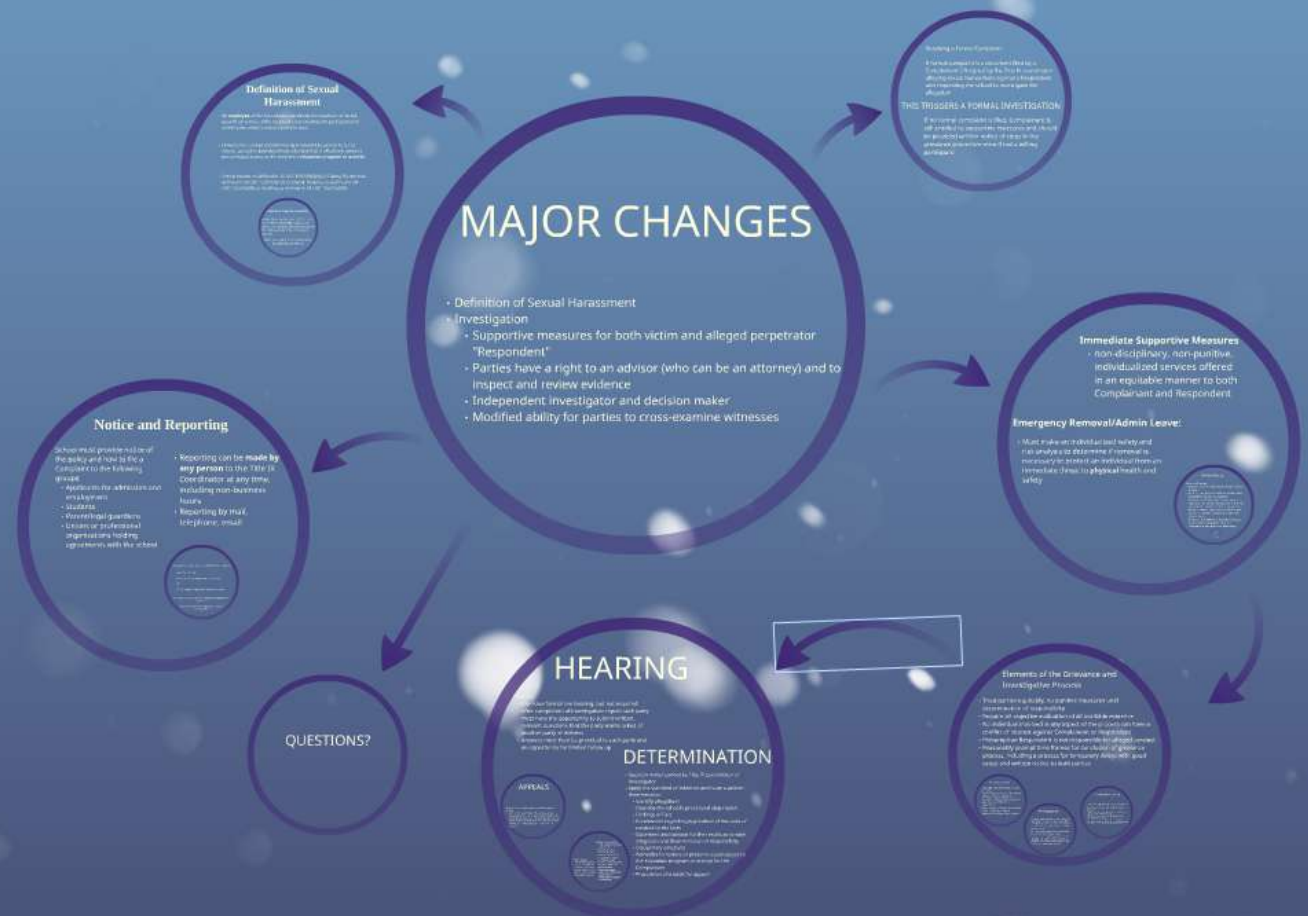


TITLE IX CHANGES



TITLE IX CHANGES



MAJOR CHANGES

- Definition of Sexual Harassment
- Investigation
 - Supportive measures for both victim and alleged perpetrator "Respondent"
 - Parties have a right to an advisor (who can be an attorney) and to inspect and review evidence
 - Independent investigator and decision maker
 - Modified ability for parties to cross-examine witnesses

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Definition of Sexual Harassment

- An **employee** of the School who conditions the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (quid pro quo)
- 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**
- Sexual Assault as defined in 20 USC 1092 (f)(6)(A)(v); Dating Violence as defined in 34 USC 12291(a)(10); Domestic Violence as defined in 34 USC 12291(a)(8); or Stalking as defined in 34 USC 12291(a)(30)

Education Program or Activity

Any location, event, or circumstance over which the school exhibits substantial control over both the alleged harasser and the context in which the harassment occurred

MUST BE WITHIN THE GEOGRAPHICAL BOUNDARIES OF THE US

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Notice and Reporting

School must provide notice of the policy and how to file a Complaint to the following groups:

- Applicants for admission and employment
- Students
- Parent/legal guardians
- Unions or professional organizations holding agreements with the school

- Reporting can be **made by any person** to the Title IX Coordinator at any time, including non-business hours
- Reporting by mail, telephone, email

School has notice of sexual harassment when:

ANY EMPLOYEE HAS

(1) Any actual knowledge of sexual harassment

OR

(2) knowledge of allegations of sexual harassment

The School cannot respond with **deliberate indifference** which is -

Failure to respond reasonably in light of known circumstances

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Receiving a Formal Complaint:

A formal complaint is a document filed by a Complainant OR signed by the Title IX coordinator alleging sexual harassment against a Respondent and requesting the school to investigate the allegation

THIS TRIGGERS A FORMAL INVESTIGATION

If no formal complaint is filed, Complainant is still entitled to supportive measures and should be provided written notice of steps in the grievance procedure even if not a willing participant



Immediate Supportive Measures

- non-disciplinary, non-punitive, individualized services offered in an equitable manner to both Complainant and Respondent

Emergency Removal/Admin Leave:

- Must make an individualized safety and risk analysis to determine if removal is necessary to protect an individual from an immediate threat to **physical** health and safety

Written Notice

Notice to all parties

- Grievance process, including informal resolution process
- Notice of allegations in sufficient detail to allow Respondent to prepare a response
- Statement that Respondent is presumed not responsible for conduct and responsibility will be determined at conclusion of grievance process
- Notice of parties' right to have an advisor (that can be an attorney) and right to inspect and review evidence
- Notice of any provision in the code of conduct that prohibits knowingly making false statements or providing false information



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Dismissal of Formal Complaint

MAJORITARIAN DISMISSAL

- Allegations resolved via informal resolution
- Grievant does not file a formal complaint or appeal
- Grievant does not appeal a decision in the informal process

DISCRETIONARY DISMISSAL

- Grievant notifies Title IX Coordinator of intent to withdraw the complaint or request for investigation
- Respondent withdraws or completes an appeal
- Grievant does not appeal a decision in the informal process
- Grievant does not appeal a decision in the formal process

Dismissal of Formal Complaint

MANDATORY DISMISSAL:

- Allegation would not constitute sexual harassment
- Did not occur in the School's program or Activity; or
- Did not occur against a person in the United States

DISCRETIONARY DISMISSAL:

- Complainant notifies Title IX Coordinator that he or she wishes to withdraw the Complaint or allegation
- Respondent's enrollment or employment ends; or
- specific circumstances prevent the school from gathering evidence sufficient to reach a determination

Elements of the Grievance and Investigative Process

- Treat parties equitably, no punitive measures until determination of responsibility
- Require an objective evaluation of all available evidence
- No individual involved in any aspect of the process can have a conflict of interest against Complainant or Respondent
- Presumption Respondent is not responsible for alleged conduct
- Reasonably prompt time frames for conclusion of grievance process, including a process for temporary delays with good cause and written notice to both parties

More basic elements:

- List possible disciplinary outcomes and remedies
- State burden of proof (must be same for both students and employees)
- Procedures and permissible reasons for appeal by a respondent or a complainant
- Describe range of supportive measures
- Do not use legally privileged information unless privilege is waived

Investigation

- School is responsible for gathering evidence and meeting burden of proof, except when certain treatment records cannot be obtained without voluntary, written consent from the party or parent
- Provide an equal opportunity for the parties to present witnesses and evidence
- Cannot restrict party's ability to discuss the allegations or gather and present evidence
- Allow parties to have others present during interviews or related proceedings

MORE INVESTIGATION

- Provide written notice of date, time, participants, purpose, and locations of any investigative interview, hearing, or other meeting with enough time allow the party to prepare to participate
- Equal opportunity to review all evidence, 10 days prior to the completion of the investigative report
- Parties are allowed to provide a written response, which investigator must consider
- Prepare a written investigation report that fairly summarizes the relevant evidence and provide the report to the parties at least 10 days before a hearing or other determination.

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HEARING

Hearing:

- Can have formal live hearing, but not required
- After completion of investigation report each party must have the opportunity to submit written, relevant questions that the party wants asked of another party or witness
- Answers must then be provided to each party and an opportunity for limited follow up

APPEALS

Appeals can be taken by either side for the following reasons:

- Procedural irregularity that affected the outcome
- New evidence that was not reasonably available at the time of the determination and could affect the outcome
- Conflict of interest on the part of the Title IX Coordinator, Investigator, or decision maker that affected the outcome

RECORD KEEPING:

- Maintain all records for a minimum of 7 years
- Record why measures were or were not taken
- Training materials must be posted on website

INFORMAL RESOLUTIONS

- Prohibited unless a formal complaint of sexual harassment is filed
- Can offer informal resolutions without a full investigation so long as school provides both parties with written notice of rights, obtains the parties' written, voluntary consent
- CANNOT BE OFFERED IN THE CONTEXT OF EMPLOYEE HARASSMENT OF A STUDENT

DETERMINATION

- Decision maker cannot be Title IX Coordinator or Investigator
- Apply the standard of evidence and issue a written determination
 - Identify allegations
 - Describe the school's procedural steps taken
 - Findings of Fact
 - Conclusion regarding application of the code of conduct to the facts
 - Statement and rationale for the results as to each allegation and determination of responsibility
 - Disciplinary sanctions
 - Remedies to restore or preserve equal access to the education program or activity for the Complainant
- Procedures and basis for appeal



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QUESTIONS?

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