Thrun Law Firm Webinar
Comprehensive Title IX Training – 2020 Regulations

Comprehensive Title IX Training 2020 Regulations

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Caution

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Important Notes

This training is intended to satisfy the training requirements for Title IX Coordinators, Investigators, Decision-Makers, Informal Resolution Facilitators, and Appeals Officers under the 2020 Title IX regulations.

Review of these slides without the synchronous training may not satisfy training requirements.

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Title IX

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

20 USC 1681

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Title IX Timeline

- **1972** – Title IX enacted
- **1974** – Dept. of Health, Education, & Welfare issues regulations
- **1992** – SCOTUS: student right to money damages for sexual harassment
- **1997** – OCR: schools must respond to sexual harassment allegations
- **1998** – SCOTUS: employee-to-student liability is deliberate indifference following actual notice
- **1999** – SCOTUS: narrow definition of student-to-student sexual harassment
- **2020** – OCR (Trump) issues new Title IX regulations
- **2024** – OCR (Biden) issues new, *new* Title IX regulations
- **2025** – Federal court vacates 2024 Title IX regulations. Return to 2020 Title IX regulations

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Tennessee v Cardona (ED KY, Jan. 9, 2025)

- Vacated 2024 regulations for being unlawful, unconstitutional, arbitrary, and capricious
- 2024 regulations no longer effective in *any* jurisdiction, takes them "off the books"
- Court: "[E]xpanding the meaning of "on the basis of sex" to include "gender identity" turns Title IX on its head.

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Tennessee v Cardona (cont).

- 2024 regulations violated 1st Amendment (compelled speech), were vague and overbroad, & violated the Spending Clause.
- USDOE did not provide sufficient or reasoned explanation for defining "sex" to include gender identity.
- 2024 regulations added unwelcome sex-based conduct that is *subjectively* offensive to definition of sex-based harassment. "Subjective" element too vague, schools could not predict what type of conduct would violate it.

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Executive Order 14168

- *"It is the policy of the United States to recognize two sexes, male and female."* These definitions *"govern all Executive interpretation of and application of Federal law and administration policy."*
- **Sex**: *"An individual's immutable biological classification as either male or female. "Sex" is not a synonym for and does not include the concept of "gender identity."*
- **Male**: *"a person belonging, at conception, to the sex that produces the small reproductive cell."*
- **Female**: *"a person belonging, at conception, to the sex that produces the large reproductive cell."*

Executive Order, Jan. 20, 2025

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OCR Dear Colleague Letter (Feb. 4, 2025)

"In light of the recent federal court decision vacating the 2024 Title IX Rule…the binding regulatory framework for Title IX enforcement includes the principles and provisions of the 2020 Title IX Rule … but excludes the vacated 2024 Title IX Rule. Accordingly, open Title IX investigations initiated under the 2024 Title IX Rule should be immediately reevaluated to ensure consistency with the requirements of the 2020 Title IX Rule…."

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Overview of 2020 Regulations

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Scope of 2020 Regulations

- Went into effect August 14, 2020
- Do not apply to sexual harassment that allegedly occurred before effective date
- Address sexual harassment as subset of sex-based discrimination
- Apply to staff-to-staff, staff-to-student, student-to-staff, and student-to-student sexual harassment occurring **against persons in the U.S.**

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Key Provisions

- **All** staff have reporting obligation
- "Single investigator" model prohibited
- Grievance process includes specific required steps
- Respondent presumed not responsible until responsibility determination is made
- Additional policy, training, documentation, and record retention requirements
- Due process emphasized

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Key Title IX Roles

1. **Title IX Coordinator:** oversees school's Title IX compliance and is a school employee
2. **Investigator:** Conducts investigation and issues investigation report
3. **Decision-Maker:** Makes determination of responsibility
4. **Appeals Officer:** Hears appeals
5. **Informal Resolution Facilitator ("IRF"):** assists parties in reaching informal resolution, if applicable

- Investigator, IRF, Decision-Maker, and Appeals Officer must be different persons and appropriately trained
- Title IX Coordinator may also serve as investigator or IRF

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Impartiality is Key

- Persons serving in key roles must not have a conflict of interest or bias for or against:
  - Complainants and respondents generally, or
  - An individual complainant or respondent
- Prejudgment of the facts must be avoided

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Constitutional Concerns

- 1st Amendment (Freedom of Speech)
  - Attempts to suppress free speech by school are not appropriate – No gag orders
- 14th Amendment (Equal Protection)
- 5th Amendment (Due Process)
  - Respondent presumed not responsible until determination made

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What is Sexual Harassment?

Conduct on the basis of sex that satisfies one or more of the following:

- Employee *quid pro quo*;
- Sexual assault, dating violence, domestic violence, stalking; and
- Hostile environment

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Quid Pro Quo

- Recipient's **employee** conditioning an aid, service, or benefit of the recipient on an individual's participation in unwelcome sexual conduct.
- Only applicable to **employee** Respondents; not applicable to Respondent volunteer, student, etc.

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Sexual Violence Definitions

- "**Sexual assault**": an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
- "**Dating violence**": violence committed by a person who is or has been in a romantic or intimate relationship with the Complainant. The existence of such a relationship is based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

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Sexual Violence Definitions
(cont'd)

- "**Domestic violence**": felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the Complainant, person with whom the Complainant shares a child, person who is cohabitating with or has cohabited with the Complainant as a spouse or intimate partner, person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Michigan; or any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Michigan.
- "**Stalking**": engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress.

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Consent

- Term not defined in regulations
- District must define term in its policy
- How does your policy define consent?
  - Consider absence or negation of consent, and capacity to consent
- Persons in key Title IX roles must know how to apply your consent definition consistently, impartially, and in accordance with policy
- **REMEMBER**: Staff/student conduct ALWAYS prohibited, regardless of consent

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Hostile Environment

*"Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it **effectively denies** a person's **equal access** to the recipient's education program or activity."*

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Denial of Equal Access

- Reactions to sexual harassment vary and should be assessed from perspective of a reasonable person in Complainant's position
- Denial may include skipping class to avoid harasser, grade decline, difficulty concentrating in class
- No concrete injury required
- Complainant need not drop out of school, fail a class, have a panic attack, or otherwise reach "breaking point"

OCR, Question and Answers Regarding the Department's Final Title IX Rule, September 4, 2020

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"Education Program or Activity"

"Includes locations, events or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the harassment occurs,..."

34 CFR 106.44(a)

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Off-Campus Sexual Harassment

- Case-by-case analysis
- Investigate if school doesn't know where misconduct occurred
- Not during school activity? Consider effects of off-campus conduct at school!
- Consider applicable codes of conduct and Revised School Code provisions

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OCR Guidance on Off-Campus Conduct

- School must make a fact-specific determination
  - Consider "whether the [school] funded, promoted, or sponsored the event or circumstance where the alleged harassment occurred"
  - OCR Examples: Two students in a private hotel room as part of school-sponsored activity (field trip or athletic event) and teacher visiting student's home "ostensibly to give the student a book but in reality to instigate sexual activity with the student"
- No single factor is determinative

"Questions and Answers on the Title IX Regulations on Sexual Harassment," U.S. Department of Education Office for Civil Rights, July 2021

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Deliberate Indifference

Take complaints seriously.
Schools and school officials must not be **deliberately indifferent** to sexual harassment.

What is deliberate indifference?

- Failure to respond reasonably in light of known circumstances
- Response must be **reasonably prompt**

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Reporting Sexual Harassment Under Title IX

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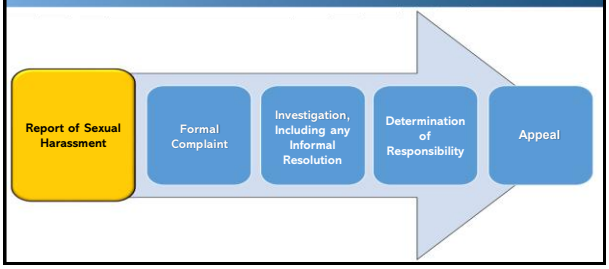
2020 Title IX Grievance Process



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Making a Report

- Any person can make a sexual harassment report at any time
- Reports can be made verbally, in writing, or electronically at any time to **any school employee** or the Title IX Coordinator
- Anonymous reports are permissible
- Report of sexual harassment is **NOT** the same as a Formal Complaint

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Actual Knowledge

- School's obligation to respond to sexual harassment is triggered when it has "actual knowledge"
- "Actual knowledge" means notice of sexual harassment or allegations of sexual harassment to school's Title IX Coordinator **or any school employee**

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Employee Reporting Obligation

- Employees must convey reports to Title IX Coordinator **promptly**.
  - Check your policy for employee reporting steps and timelines!
  - TLF Policy requires any District employee who receives a report of sexual harassment or has actual knowledge of sexual harassment to convey that information to the Title IX Coordinator **by the end of the next business day**.
- Messages to all staff
  - If you see something, say something!
  - Noncompliance = discipline

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Responding to Report

- Title IX Coordinator must, upon receipt of report:
  - Contact Complainant (alleged victim) to discuss "supportive measures"
  - Inform Complainant of "supportive measures" available
  - Explain process for filing Formal Complaint
- Failure to do the above = deliberate indifference

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Supportive Measures

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Supportive Measures

- Must be non-disciplinary, non-punitive, and individualized
- Offered as appropriate, as reasonably available, and without fee or charge to parties
- Available before, during, and after Formal Complaint is filed, or when no Formal Complaint is filed
- Designed to restore or preserve equal access to education program or activity without "unreasonably" burdening other party

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Examples

- Counseling
- Work/class schedule changes
- Extensions of deadlines
- Increased supervision or escorts
- Mutual no-contact order
- **But**, school may not impose discipline or other actions that are not supportive measures against Respondent before completing the grievance process

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Offering Supportive Measures

- No "one size fits all"
- Must be offered whether Complainant files Formal Complaint or not
- Document whether supportive measures were offered and which were taken, and retain documentation
- Modify, as necessary, to avoid deliberate indifference
- Keep confidential to extent possible except as may be required by law
- Coordinated by Title IX Coordinator

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Respondent Removal

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General Rule

Disciplinary sanctions may **NOT** be imposed against respondents before grievance process concludes except:

- Employee Respondents may be placed on non-disciplinary administrative leave pending completion of grievance process
- Student Respondents may be removed from school programs or activities on emergency basis only

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Student Emergency Removal

- Before removing student, school officials must:
  - Conduct individualized safety and risk analysis;
  - Determine that an immediate threat to physical health or safety of students or staff justifies removal; and
  - Provide removed student notice and opportunity to challenge removal immediately after being removed
- Consider IDEA and Section 504 requirements governing disciplinary removals of students with disabilities

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The Grievance Process

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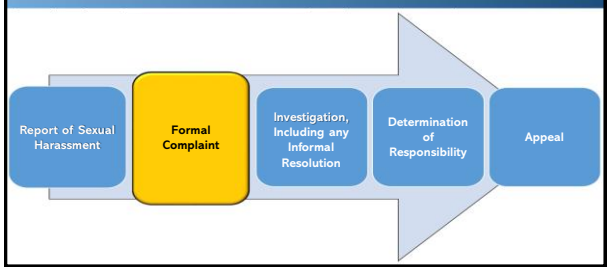
2020 Title IX Grievance Process



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Formal Complaint

A document filed and signed by a complainant or signed by Title IX Coordinator alleging sexual harassment against a Respondent and requesting that District investigate the sexual harassment allegation.

34 CFR §106.30

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Complainant's Status

- Complainant must be participating in or attempting to participate in school's education program or activity at the time the Complainant files a Formal Complaint
- But, nothing in the regulations prohibits a Title IX Coordinator from signing a Formal Complaint when the Complainant is not currently participating or attempting to participate in the school's programs

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Coordinator Signing Complaint

Key Question:

Is it clearly unreasonable in light of the known circumstances for the Title IX Coordinator to sign or not sign a Formal Complaint?

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TLF Formal Complaint Form

District Letterhead

TITLE IX SEXUAL HARASSMENT FORMAL COMPLAINT FORM

This form is being submitted by:

☐ Complainant ☐ Title IX Coordinator

Complainant Name: _____

Address: _____

Phone: _____ Email: _____

If the Complainant is a student:

School Building Attending: _____ Grade: _____ Birthdate: _____

If the Complainant is an employee:

Job Title: _____ Building: _____

Reporter's Name (if different than Complainant): _____

Relationship to Complainant: _____

Reporter Address: _____

Reporter Phone: _____ Reporter Email: _____

1. Describe the alleged violation of the District's Title IX Sexual Harassment Policy that you are requesting the District investigate. Please be specific. Describe the specific incident(s) and identify the individuals and potential witnesses involved. Describe or attach any evidence you believe is relevant. Attach additional pages if needed.

_____

_____

_____

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Notice to Parties

Upon receipt of Formal Complaint, provide written notice to the parties (if known) that includes:

- Notice of grievance process, including any informal resolution process
- Notice of allegations
  - Must be detailed!
  - Include dates, locations, names, and other specifics alleged in complaint
- Statement that Respondent is presumed not responsible and that a determination of responsibility is made at conclusion of grievance process

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Notice to Parties (cont'd)

- Right to have advisor of their choice, including an attorney
- Right to inspect and review evidence
- Notice of any code of conduct provision that prohibits knowingly making false statements or submitting false information

If, during the investigation, it is determined that additional allegations will be investigated, notice of additional allegations must be sent to the parties

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Consolidation of Complaints

If there are multiple Formal Complaints arising out of the same facts and circumstances (*e.g.*, several complaints alleging similar behavior by one Respondent), the Formal Complaints may be consolidated to streamline the grievance process.

- Consider evidence implications before consolidating.

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Bifurcation of the Investigation

- 2020 regulations only apply to Title IX sexual harassment
- If a report or Formal Complaint includes allegations implicating other harassment/discrimination policies, investigation can be bifurcated
- BUT Title IX sexual harassment must be investigated pursuant to the 2020 regulations

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Formal Complaint Dismissal

Mandatory

Must be dismissed if allegations, if proven:

- Would not constitute sexual harassment under new definition;
- Did not occur in recipient's (school) program or activity; or
- Did not occur against a person in the U.S.

Permissive

May be dismissed if:

- Complainant requests withdrawal;
- Respondent's enrollment or employment ends; or
- Specific circumstances prevent the school from gathering evidence sufficient to reach a determination (e.g., Complainant not cooperating with investigation, many years between alleged misconduct and complaint filing)

REMEMBER: Even if complaint is dismissed under Title IX, school may address complaint under another policy or code of conduct provision in some circumstances.

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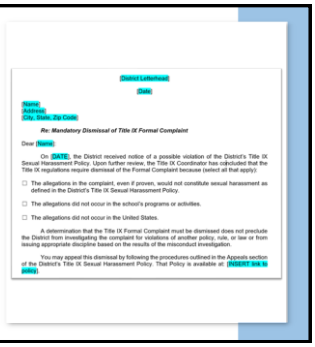
Dismissal Notice

Prompt, simultaneous written notice to both parties that includes:

- Reasons for mandatory or discretionary dismissal, and
- Right to appeal



District Letterhead

Date:

Name:
Address:
City, State, Zip Code:

Re: Mandatory Dismissal of Title IX Formal Complaint

Dear (Name):

On (DATE), the District received notice of a possible violation of the District's Title IX Sexual Harassment Policy. Upon further review, the Title IX Coordinator has concluded that the Title IX regulations require dismissal of the Formal Complaint because (select all that apply):

☐ The allegations in the complaint, even if proven, would not constitute sexual harassment as defined in the District's Title IX Sexual Harassment Policy.

☐ The allegations did not occur in the school's programs or activities.

☐ The allegations did not occur in the United States.

A determination that the Title IX Formal Complaint must be dismissed does not preclude the District from investigating the complaint for violations of another policy, rule, or law or from issuing appropriate discipline based on the results of the misconduct investigation.

You may appeal this dismissal by following the procedures outlined in the Appeals section of the District's Title IX Sexual Harassment Policy. That Policy is available at: (INSERT link to policy)

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Informal Resolution Process

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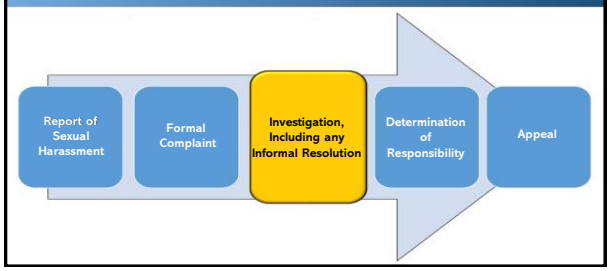
2020 Title IX Grievance Process



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What is Informal Resolution?

- After Formal Complaint is filed but before determination of responsibility is made, school *may (but is not required to)* offer parties the opportunity to informally resolve the complaint without a full investigation
- May encompass a broad range of conflict resolution strategies, including arbitration, mediation, or restorative justice - direct interaction between the parties is not required
- Not available for Formal Complaints alleging an employee sexually harassed a student

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Voluntary Process

- Neither party can be pressured to participate
- Schools cannot require parties to participate or otherwise waive their right to an investigation and adjudication of the Formal Complaint
- Parties may withdraw from the informal resolution process and resume the investigation at any time before resolution is reached

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Notice and Consent Required

Title IX Coordinator or Investigator must:

- Provide both parties written notice of their informal resolution rights; and
- Obtain written, voluntary consent from both parties to enter into the informal resolution process.

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Informal Resolution Notice

The written notice must include:

- Allegations being investigated;
- Informal resolution requirements, including when informal resolution would preclude resuming a formal complaint arising from same allegations;
- Right to withdraw from informal resolution and resume the grievance process; and
- Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

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Conducting a Title IX Investigation

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General Considerations

- School has burden of proof and burden to "gather evidence sufficient to reach a determination of responsibility"
- Parties must be treated equally
- Standard of evidence must be same for all complaints (employee and student)
- Reasonably prompt timelines
- Respondent presumed not responsible
- Consult your policy for specific procedures!

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Initial Steps

- If students are involved – contact parent/guardian
- Consider Mandatory Reporting Requirement and report to law enforcement
- Don't promise confidentiality!
- Secure evidence
  - Physical
  - Documentary
  - Electronic & Video

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CAUTION: Photos and Videos of Students

- If allegation involves sexting or other photos or videos of students that could possibly be considered child pornography,

CALL LAW ENFORCEMENT

- Do not view, save, copy, disseminate, handle or maintain photos and videos of students that could be considered child pornography
- Legal exposure for employee & school

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Law Enforcement Involvement

- Does ***not*** relieve school of Title IX obligation to investigate
- Do ***not*** use police involvement as excuse not to investigate
- Do ***not*** wait for criminal conclusion
- Can ***briefly*** delay Title IX investigation for concurrent criminal investigation

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Delays and Time Extensions

- Temporary delays for "good cause" are permitted with written notice to parties
- "Good cause" examples:
  - Complexity of investigation
  - Concurrent law enforcement investigation with time-dependent release of evidence
  - Absence of parties or witnesses
  - Need to provide accommodations for party or witness with a disability
- **Delay for administrative convenience is not "good cause"**

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Advisors

- Parties may be accompanied by an advisor of their choice in any meeting or grievance process proceeding
- Advisors can be parents, staff members, attorneys, friends, or other persons -- the party is in the best position to decide who serves in this role
- School may not restrict who serves as advisor

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Notice of Interviews

- Must provide date/time/location, participants, and purpose of all hearings (if any), investigative interviews, and meetings, to party whose participation is invited or expected, ***in writing***
- Notice must be given a sufficient time in advance so that a party may prepare for interview

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Establish Ground Rules

- May set ground rules for interviews, but rules must apply equally to both parties
- Examples:
  - Be honest and forthright
  - Abusive, disruptive behavior or language will not be tolerated
  - Advisor may not interrupt the interview but will be given an opportunity to provide additional information at end of interview
- Cannot restrict parties from discussing allegations or gathering/presenting relevant evidence

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Do's and Don'ts

- **DO**: Give parties equal opportunity to present witnesses, evidence
- **DON'T**: Use questions or evidence that constitute, or seek disclosure of, legally-privileged information
- **DON'T**: access, consider, disclose, or otherwise use a party's medical records, including mental health records without voluntary, written consent to do so

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Notice of Additional Allegations

- If investigation reveals additional allegations not in original notice to parties and investigator decides to investigate those allegations, must provide notice of additional allegations to both parties
- Additional notice must:
  - Identify date notice of the additional allegations given to the parties, and
  - Describe additional allegations
- If additional allegations will not be investigated, investigator must state basis for decision not to investigate in investigation report

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Evidence Review

- Before the investigation report is completed, the investigator must send (in electronic or hard copy) the parties and their advisors **ALL** evidence obtained in investigation for response before investigator finalizes report
- Parties must be given **at least 10 calendar days** to submit written response to evidence
- Investigator must consider any responses received before completing the report
- Consider reminder to parties that redisclosure of evidence outside of Title IX grievance process is prohibited

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Investigation Report

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Parties' Information

- Name of Party
- Name of advisor (if any)
- If student: age, grade level, and building
- If employee: job, title, and building

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Investigator's Information

- Investigator name and title
- Training verification
- Statement that investigator does not have conflict of interest or bias against either party, generally or individually, that affected the investigation

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Relevant Chronology

- Date of Formal Complaint
- Date notice letters sent
- Date Complainant(s) and Respondent(s) were notified of interviews
- Dates interviews conducted
- Date evidence submitted to parties/advisors for review
- Date each party's response was due and whether response received
- Date investigation report submitted to Decision-Maker

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Nature of Allegations

- Describe each allegation, including date, time, place, and nature of the incident(s)
- Additional allegations?
  - If not in original notice to parties and investigator decides to investigate those allegations, identify date notice of additional allegations was given and describe the additional allegations
  - If the additional allegations will not be investigated, state basis for decision

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Fact Finding Activities

- Summarize party interviews, noting date and who attended
- Identify any other contacts with parties or their advisors, noting date, contact method, purpose
- Summarize all other witness interviews, noting date and who attended
- Identify and describe any relevant evidence, including who submitted it or how obtained
- Describe any other fact-finding activities (e.g., site visits, record review, or video review)

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Findings of Fact

Investigator may:

- Make specific findings of fact for review by the Decision-Maker
- Make credibility determinations

But, may **NOT** make the determination of responsibility

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Final Tips

- Report must fairly summarize relevant evidence
- Use witness quotes, specific dates, times, and locations in the report when possible
- Check for correct spelling of names
- Cite other applicable Board policies, code of conduct provisions, RSC Sections
- Ensure report is clear, concise, and complete
- Assume either party may release report

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Transmittal of Final Report

- Investigator, Coordinator, or Decisionmaker must send (electronic or hard copy) investigation report to the parties and any advisors for review and response
- Report also should be sent to:
  - Title IX Coordinator
  - Decision-Maker
- Receipt of the report by the parties starts the Decision-Maker's timelines
- Parties must have 10 calendar days to review report

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Determination of Responsibility

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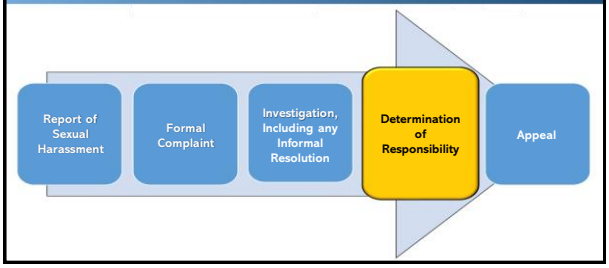
2020 Title IX Grievance Process



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Decision-Maker's Role

- Has independent obligation to:
  - Evaluate relevance of available evidence including evidence summarized in investigation report, and
  - Consider all relevant evidence
- Make determination of responsibility

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Right to Submit Questions

After the parties receive the investigation report but before the Decision-Maker makes the responsibility determination, the Decision-Maker must:

- Allow each party **the opportunity** to submit written, relevant questions for any party or witness to answer;
- Provide each party the answers to the questions; and
- Allow for limited follow-up questions from each party
- Explain to party submitting question basis for excluding any questions

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Complainant's Sexual History

Questions and evidence about Complainant's sexual predisposition or prior sexual behavior ***are not relevant*** unless:

- Offered to prove that someone other than the Respondent committed the alleged misconduct; or
- The questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

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Assessing Relevance

- Not defined in the regulations; use ordinary meaning of the word
- Relevant – does it deal with the issue of concern? Does the evidence impact facts?
- Duplicative or repetitive questions may be excluded as not relevant
- BUT relevancy does not determine weight, credibility, or persuasiveness
- Weigh evidence based on credibility and other circumstances

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Evidence Standard

- Decision-Maker makes finding(s) based on policy's standard of evidence or proof
- District may select the standard, but must use same standard for *all* Title IX sexual harassment investigations
- Recommend: "preponderance of evidence"
  - More likely than not
  - 51%

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Determination of Responsibility

Must be in writing and address:

- Allegations
- Procedural steps taken
- Findings of fact
- Student code of conduct or Board policy implications
- Conclusion for each allegation and rationale
- Disciplinary sanctions imposed and whether remedies provided
- Appeal rights

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Disciplinary Sanctions

- Determination of Responsibility letter must include any disciplinary action taken or recommended against the Respondent
- Sanctions should be consistent with applicable codes of conduct, policies, law
- If Board approval required for discipline (e.g., tenure hearing, expulsion hearing), Determination of Responsibility will include a recommendation that Superintendent prepare and present tenure charges, or that appropriate Administrator prepare and present a recommendation for long-term suspension or expulsion, to the Board

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Remedies

- Determination of responsibility must include whether Complainant will receive remedial measures
- Title IX Coordinator should directly communicate with Complainant about specifics
- Remedies should be designed to restore and preserve equal access to the District's education program or activity

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Remember!

- Supportive measures are available to more than just Complainant
- Also consider systemic remedies, such as training
- For students with disabilities, convene IEP or Section 504 meetings as necessary

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Final Reminders

- Determination of responsibility should:
  - Provide evidence-based rationales
  - Be clear and precise
  - Be nearly identical for both Complainant and Respondent
  - Be sent to parties simultaneously
- Title IX Coordinator is responsible for effective implementation of any remedies

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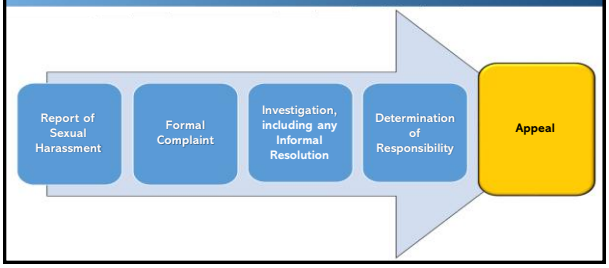
2020 Title IX Grievance Process



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How to Process Appeals

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Appeal Bases

1. Procedural irregularity that affected the outcome.
2. New evidence that was not reasonably available at the time of the determination and could affect the outcome.
3. Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias that affected the outcome.

Schools can create additional appeal bases - check your policy!

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General Considerations

- Both parties may appeal a dismissal or determination of responsibility
- Check your policy for time frames to file and decide appeal
- Appeals Officer cannot be same person as Title IX Coordinator, Investigator, Informal Resolution Facilitator, or Decision-Maker, and must not have a conflict or bias

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Appeal Process

- Determination of responsibility or dismissal includes parties' appeal rights
- Party submits appeal to Appeals Officer or Title IX Coordinator as applicable
- Appeals Officer provides written notice to both parties that appeal filed
- Parties may submit written statement to Appeals Officer in support of, or challenging, determination
- Appeals Officer issues written decision to parties simultaneously

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Hearings

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Hearings

- Live hearing and cross-examination ***NOT*** required for K-12 (unless your policy provides otherwise)
- Hearing is opportunity for parties to tell their side of the story through witness testimony, documentation, recordings, video, audio, photos, and any other relevant evidence

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Hearing Location

- Create space for all parties to view testimony and evidence equally
- Ensure student privacy
- At request of either party, hearing must occur with parties in separate rooms with use of technology so all can see and hear live testimony
- If using any technology, this training is ***not sufficient***
  - Get training from IT Director or other person on use of technology
  - Post those training materials on website

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Opening the Hearing

- Introduction of Decision-Maker, parties, advisors and anyone else present
- Decision-Maker describes previous steps of grievance process (notice provided to parties, opportunity to review evidence etc.)
- Describe allegations
- Explain evidentiary standard
- Both parties have opportunity to present testimony and evidence
- No strict rules of evidence, but Decision-Maker determines relevancy of testimony and evidence
- Statement that Decision-Maker has no bias or conflict of interest and can be impartial

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Hearing Format

- District determines hearing format
- Typical hearing format includes:
- Opening statements
- Presentation of evidence by Complainant, with cross examination
- Presentation of evidence by Respondent, with cross examination
- Rebuttal, if any
- Closing statements

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Hearing Rules

- Each party's advisor must be permitted to ask the other party and witnesses relevant questions and follow-up questions
  - Including questions challenging credibility
  - Questions related to Complainant's prior sexual history are not relevant except in very limited circumstances

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Hearing Rules (cont'd)

- Cross examination must be conducted directly, orally, and in real time by party's advisor and never by party personally
- Decision-Maker/Hearing Officer determines relevance and must explain decision to exclude any question

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Retaliation

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Retaliation Prohibited

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 or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.

34 CFR 106.71(a)

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Clarifying the Definition

- Retaliation includes threats, intimidation, coercion against person who makes a report, files a Formal Complaint, participates in, or refuses to participate in a Title IX proceeding
- Exercise of First Amendment rights does not constitute retaliation prohibited by Title IX
- Charges for "collateral misconduct" may be retaliation (e.g., charging Complainant with underage drinking to interfere with Complainant reporting sexual harassment)

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Student Privacy

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Confidentiality

- Schools must keep confidential the identity of reporter, person who files Formal Complaint, and the parties and witnesses except as permitted or required by law or to carry out any provision of Title IX
- Supportive measures must also be kept confidential

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Confidentiality of Evidence

"Recipients may require parties and advisors to refrain from disseminating the evidence (for instance, by requiring parties and advisors to sign a non-disclosure agreement that permits review and use of the evidence only for purposes of the Title IX grievance process), thus providing recipients with discretion as to how to provide evidence to the parties that directly relates to the allegations raised in the formal complaint."

85 Fed Reg 30297-30298 (May 19, 2020)

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Record Keeping

- Records relating to Title IX reports must be maintained for at least seven years
  - Applies to investigation records, disciplinary sanctions, remedies, appeals, and records of any action taken (i.e., supportive measures)
- Must retain any materials used to train Title IX Coordinators, Investigators, Decision-Makers, Appeals Officers, and Informal Resolution Facilitator
  - This PowerPoint!

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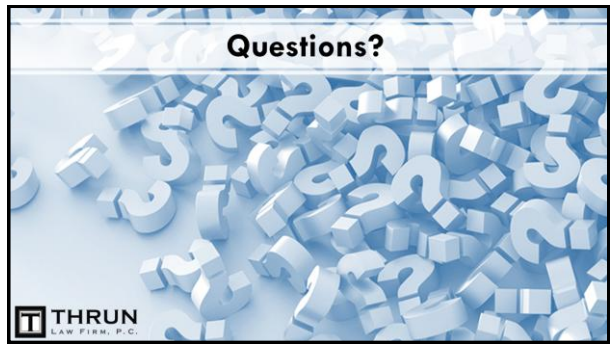

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