



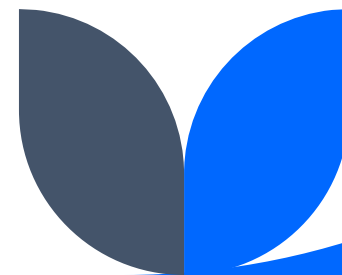
Title IX Decision- Maker

Presented By: Jackie Saxenmeyer

District Title IX Coordinator

Agenda

1. Title IX Overview
2. When Does Title IX Apply?
3. The Title IX Team
4. Bias, Conflicts of Interest, and Recusal
5. Definitions of Sexual Harassment
6. Case Study: Is it Title IX?
7. Overview of the Title IX Grievance Process
8. Notice to the Title IX Coordinator
9. Responding to Formal Complaint
10. Decision-Maker Checklist
11. Consent
12. Understanding the Evidence
13. Making a Decision
14. Appeals



TITLE IX OVERVIEW

What is Title IX?



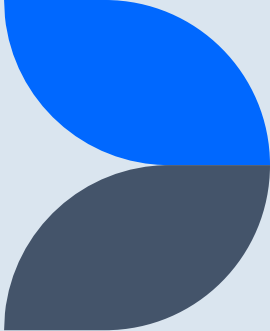
Title IX of the Education Amendments of 1972 is a federal civil rights laws that prohibits federally funded educational institutions from discriminating against students or employees based on sex.

“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 educational program or activity receiving federal financial assistance.”
20 U.S.C. § 1681 et seq.

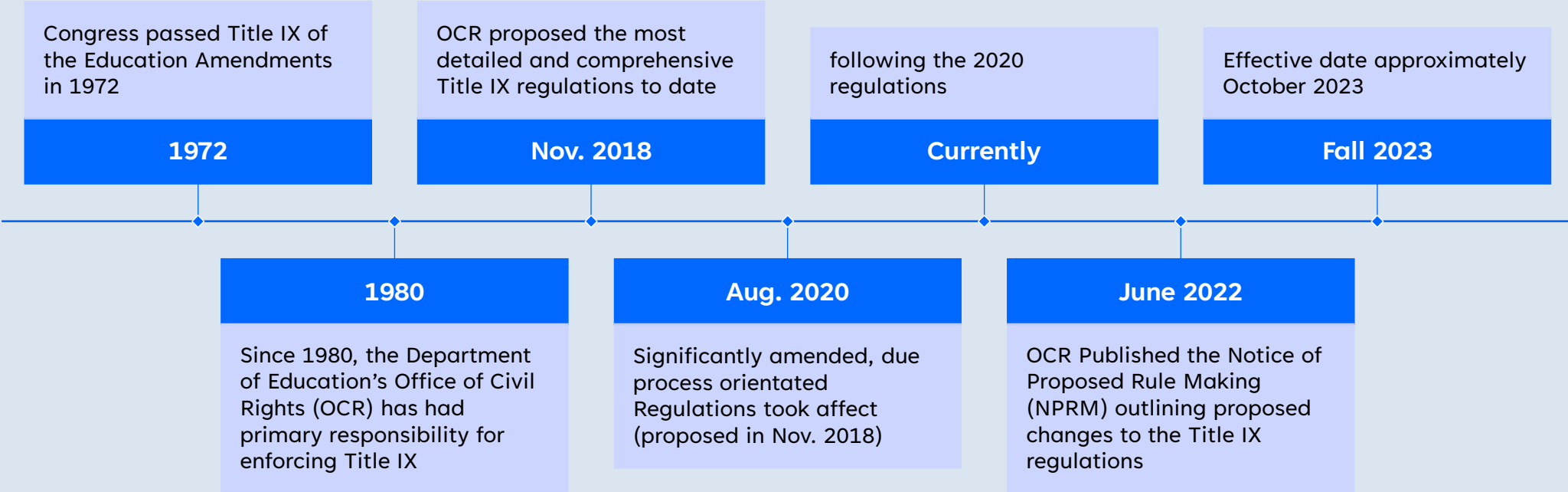
Role of OCR & Title IX

- The Office for Civil Rights (OCR) under the U.S. Department of Education is responsible for establishing the compliance standards to be applied in investigations and enforcement of Title IX regarding sexual harassment.
- OCR administratively enforces Title IX by conducting investigations of complaints filed by an individual, a representative, or group.
- Technical Assistance: OPEN Center
 - OCR's Outreach, Prevention, Education and Nondiscrimination (OPEN) Center





Title IX Regulations



Sex/Gender-Based Discrimination

- Program Equity
- Recruitment, Admissions, and Access
- Pregnancy
- Athletics
- Employment, Recruitment, and Hiring
- Extra-curricular Activities
- Housing
- Access to Course Offerings
- Salaries and Benefits
- Financial Assistance
- Facilities
- Funding
- Sex, Sexual Orientation, Gender Identity.

Sexual Harassment

- Quid Pro Quo
- Hostile Environment
- Sexual Assault
- Domestic Violence
- Dating Violence
- Stalking

Retaliation

WHEN DOES TITLE
IX APPLY?

When Does Title IX Apply?

Brevard Public Schools Policy 2266: *Nondiscrimination on The Basis of Sex in Education Programs and Activities*, outlines the grievance process.

Title IX applies, and BPS Policy 2266 grievance process must be used to resolve allegations of sexual harassment when the District has:

- Control over the **Context** of the harassment

AND

- Control over the **Respondent**

**** Jurisdiction will be determined by the Title IX Coordinator ****





Control of the Context

At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the District with which the formal complaint is filed.

Control of the Context Cont.

“Education program or activity”: refers to locations, events, and circumstances over which the District exercised substantial control. This applies to all operations of the District, including but not limited to in-person and online educational instruction, employment, extra-curricular activities, athletics, performances, and community engagement and outreach programs.

- All programs or activities that occur on school grounds or on other property owned or controlled by the District
- Programs and activities that take place off-school property/grounds over which the District exercises substantial control over both the Respondent and the context in which the sexual harassment occurs (e.g., field trips, incidents on the school bus to/from school ect.).
- Conduct that occurs through the use of data or computer software that is accessed at a non-school related location, activity, function, or program or through the use of technology or an electronic device that is not owned, leased, or used by the District or school, if the harassment substantially interferes with or limits the Complainants ability to participate in or benefit from the services, activities, or opportunities offered by the District or school or substantially disrupts the education process or operation of a school.





Control over the Respondent



Personal Jurisdiction

-If the Respondent is **not** affiliated with the District in any way, the District **lacks authority** to take disciplinary action.

- Employee of an outside company (e.g., vendor, construction worker)
- Guest of invitee
- Former student
- Former employee
- Student from another institution

-The District has control over the Respondent when the District is able to take disciplinary action to address their behavior. Typically, a Respondent must be a member of the “School District Community” for the school District to have control over the Respondent.

Third Party Respondent

-**“Third Party”**- third parties include, but are not limited to, guests and/or visitors on School District property (e.g., visiting speakers, participants on opposing athletic teams, parents), vendors doing business with, or seeking to do business with the District, and other individuals who come in contact with members of the School District community at school-related events/activities (whether on or off District Property).

-Per BPS Policy 2266: The District retains the right to limit any vendor’s, contractors, or third-party’s access to school grounds for any reason. The District further retains all rights it enjoys by contract or law to terminate its relationship with any vendor, contractor, or third party, irrespective of any process or outcome under this Title IX policy.

If TIX Jurisdiction Is Not Present

Behavior may still violate:

- Student Code of Conduct policies
- Technology/Acceptable Use policies
- Employee Handbook/Policies
- Professionalism standards

Brevard County, Florida

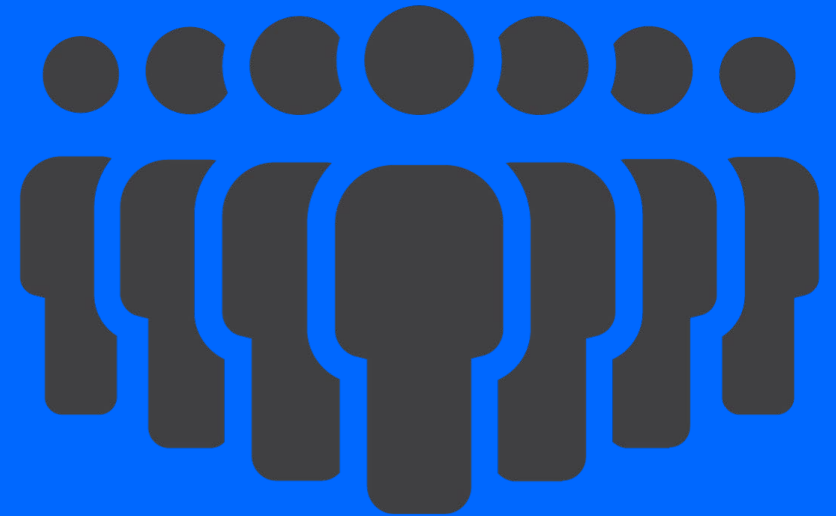


**Elementary and Secondary
Code of Student Conduct
2022-2023 School Year**

Approved by the School Board on September 8, 2022

THE TITLE IX TEAM

- District Title IX Coordinator
 - School Based Title IX Coordinator
- Investigator
- Informal Resolution Facilitator
- Decision-Maker
- Appellate Decision-Maker



Roles & Responsibilities

- Principal or Assistant Principal
- Point of contact for sexual harassment & Sex/Gender-Based Discrimination complaints
- Initial assessment
- Supportive Measures: Stop, Prevent, and Remedy
- The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, regardless of whether a formal complaint is filed and explain the process to file a formal complaint
- Notice of investigation and allegations
- Supervising investigators
- Timeline compliance
- The Title IX Coordinator may serve as an Investigator but may **not** be a Decision-Maker
- ****Mandatory Training****

**School Based
Title IX
Coordinator**

Title IX Investigator

Roles and Responsibilities

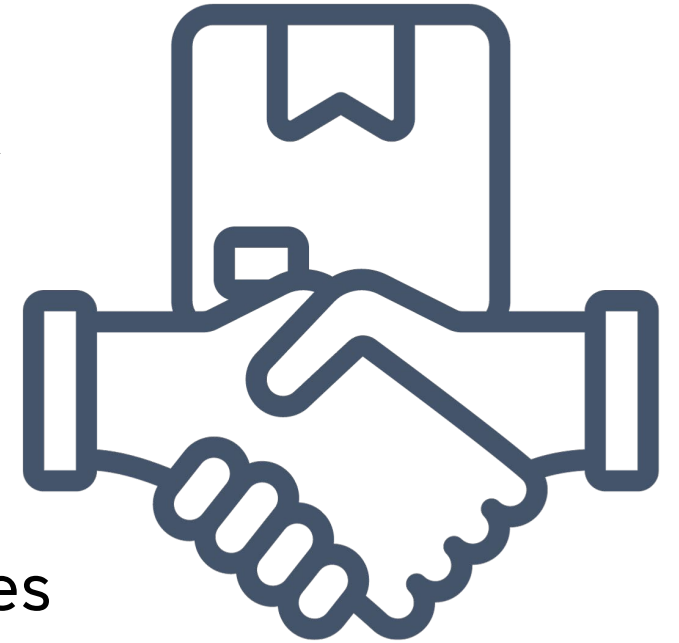
- Assistant Principal, Dean, Teacher on Assignment, Human Resources (Employee related matters)
- Conduct reliable, prompt, fair, and impartial investigations
- Identify and interview parties and witnesses
- Neutral fact-finder
- Gathers evidence
- Maintains accurate and thorough investigation records
- Sends formal letters to parties via email or mail
- Share the evidence with the parties and their advisors
- The parties have **10 days** to submit a response to the evidence, which the Investigator will consider prior to the completion of the investigative report
- Write investigative report
- The TIX Coordinator and TIX Investigator roles can be assigned to the same person, however it is **not ideal**
- ****Mandatory Training****



Informal Resolution Facilitator

District Title IX Coordinator is the trained Facilitator

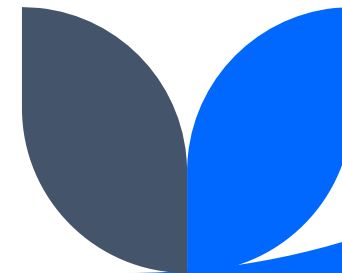
- **Informal Resolution:** a complaint resolution approved by both parties and the District Title IX Coordinator that occurs prior to a formal Final Determination being reached.
- Must have a formal complaint in order to participate in informal resolution.
- Informal Resolution Includes: supportive measures only, accepted responsibility, and alternative resolution.



Decision Maker

Roles and Responsibilities

- The TIX Decision Maker (DM) is selected from a pool of trained individuals at the District
- Determines whether District policy has been violated
- Sends written notice to both parties allowing them the opportunity to submit relevant questions that they want asked of any party or witness prior to final determination regarding responsibility
- The parties have **10 days** to submit a response to the DM
- Determines appropriate sanctions/discipline when a policy violation is found
- Sends out a written determination letter to the involved parties which outlines the rationale for their decision
- ****Mandatory Training****



Appellate Decision-Maker

- Both parties have the right to file an appeal to the written determination of responsibility issued by the DM, and the District Title IX Coordinator's dismissal of a formal complaint
- A party must submit a written appeal to the District Title IX Coordinator within **5 days** after receipt of the Decision-Makers determination of responsibility or the Title IX Coordinator's dismissal of a formal complaint
- The Appellate Decision-Maker can not be the coordinator, investigator, or decision-maker in the original grievance process
- ****Mandatory Training****



Transitioning Decision-Maker Role

- This school year the District will be transitioning the Decision-Maker role to school principals.
- Principals will **NOT** be the Decision-Maker at their assigned school.
- The District will assign each school with a nearby neighboring school to act as the Decision-Maker for one another.
- Elementary and Secondary schools will be paired equally.
- Principals will remain the Coordinator at their assigned school.
- This training today will also be qualifying you to be a Decision-Maker.
- If the principal of your school is not attending today's training, they will need to register for the Decision-Maker training in October.



BIAS, CONFLICTS OF INTEREST, AND RECUSAL

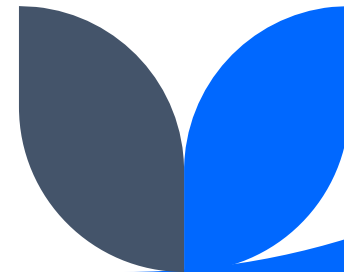
Bias

Title IX Regulations prohibit conflicts of interest or bias with Coordinators, Investigators, and Decision-Makers against parties generally or an individual party. It also can be grounds for an appeal.

- Bias is a prejudice in favor of or against one thing, person, or group compared with another, usually in a way considered to be unfair.

Forms of Bias that can impact decisions:

- Investigators supporting a particular party during questioning, analysis, or report
- Decision-Makers supporting a particular party in questioning, findings, or sanctions
- Pre-determined outcome
- Animosity based on a person's gender, sexual orientation, race, religion, disability, etc.
- Improper application of policies and procedures





Conflicts of Interest

- A Conflict of Interest occurs when personal or private interests may compromise one's judgment, decisions, or actions. Conflicts of interest may arise from family, friendships, relationships, social factors, etc.
- A conflict of interest that disqualifies an individual from participating in the Title IX process is one that prevents the individual from being impartial.
- There are no per se conflicts of interest outlined in the Title IX regulations.



Conflicts of Interest Cont.

Conflicts of Interest can be “actual”, “perceived”, or “potential”

- An **actual conflict** of interest is a direct conflict between one’s official duties and responsibilities, and a competing personal interest or obligation.
- A **perceived conflict** of interest occurs when an individual may reasonably be perceived to have two competing interests that could improperly interfere with or undermine the individual’s ability to fulfill their responsibilities in the Title IX process.
- A **potential conflict** of interest occurs when a personal interest may interfere with an individual’s ability to fulfill their responsibilities in the Title IX process in the future.



Recusal

Decision-Maker(s) may determine that they need to recuse themselves from a particular complaint. A party may also seek a Decision-Makers recusal by contacting the District Title IX Coordinator.


If it is determined that a recusal is required, the District Title IX Coordinator will assign and alternate Decision-Maker.

If you determine that you are not able to hear a complaint impartially, please contact the District Title IX Coordinator.

DEFINITIONS OF SEXUAL HARASSMENT



Definitions of Sexual Harassment

- Quid pro Quo Sexual Harassment
 - Hostile Environment Sexual Harassment
 - Sexual Assault
 - Domestic Violence
 - Dating violence
 - Stalking
- 

Quid Pro Quo Sexual Harassment

Quid Pro Quo Is intended to compel a student to engage in “unwelcome” sexual conduct in order to gain or maintain some type of benefit or favor. It applies to any situation a teacher, faculty member, coach, or any other employee of the District holds control or authority over a student. “This for that”.

Examples:

- In order to receive good grades
- Please the teacher
- Avoid getting in trouble
- Holding position within athletic team



Hostile Environment Sexual Harassment

SPOO: Unwelcomed conduct on the basis of sex that is determined by a reasonable person to be so severe, AND pervasive, AND objectively offensive that it effectively denies, a person equal access to the District's education program or activity.

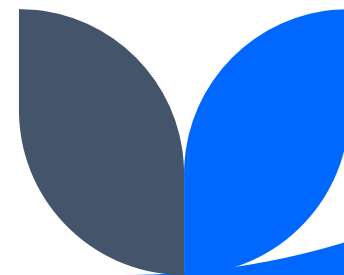
“Unwelcomed”- is subjective and determined by the complainant (except when the Complainant is younger than the age of consent)

“Reasonable Person”- The perspective of an individual in the same or similar circumstance. (In the shoes of the complainant)



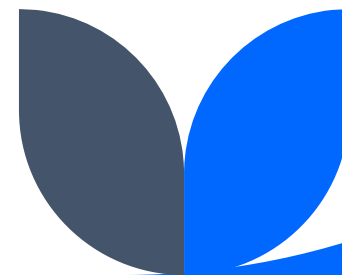
Hostile Environment “Severe”

- Physical conduct is more likely to be severe
- Accompanied by threats or violence (Verbal threat to cause physical harm, text, social media)
- Consider the circumstances (The ability of the complainant to remove themselves from the harassment)



Hostile Environment “Pervasive”

- Widespread
- Openly practiced
- Occurring in public spaces (more likely to be pervasive)
- Frequency for the conduct is often a variable in assessing pervasiveness
- Does not have to be multiple incidents
- Impact on student/employee (not wanting to go to school/work)



Hostile Environment “Objectively Offensive”

- Reasonable person standard
- Age and relationship of complainant and respondent
- Number of person involved
- Frequency
- Physically threatening
- Humiliating
- Intimidating
- Abusive
- Ridiculing



Sexual Assault

- Any sexual act directed against another person, without the consent of the Complainant including instances where the Complainant is incapable of giving consent.
- Sexual Assault covers all the below definitions:

Rape

Sodomy

Sexual Assault with an Object

Fondling

Incest

Statutory Rape



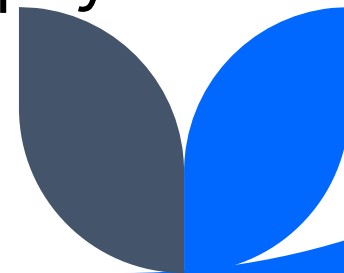
Sexual Assault Cont.

- **Rape**- Penetration, no matter how slight, of the vagina or anus with any body part or object, or penetration by a sex organ of another person, without their consent, including instances where they are incapable of giving consent because of age or temporary or permanent mental or physical incapacity.
- **Sodomy**- Oral or anal sexual intercourse with another person, forcibly and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent or physical incapacity.



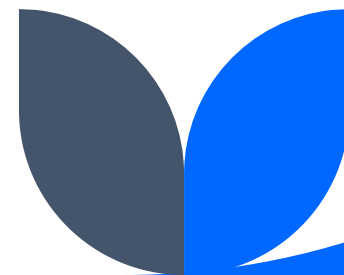
Sexual Assault Cont.

- **Sexual Assault with an object**- The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against the person's will (non-consensually) or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- **Fondling**- The touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification, forcibly and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.



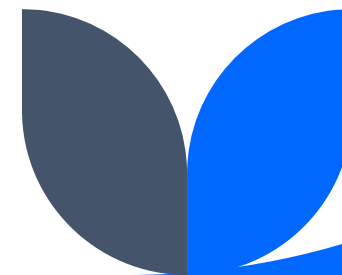
Sexual Assault Cont.

- **Incest**- Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Florida law.
- **Statutory Rape**- Nonforcible sexual intercourse with a person who is under the statutory age of consent in Florida.



Domestic Violence

- A felony or misdemeanor crime of violence committed by:
 - A current or former spouse or intimate partner of the complainant
 - A person with whom the Complainant shares a child in common
 - A person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner
 - A person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Florida



Domestic Violence Cont.

- By 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 Florida
- To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.



Stalking

- Engaging in a **course of conduct** directed at a specific person that would cause a **reasonable person** to:
 - Fear for the person's safety or the safety of others: or
 - Suffer **substantial emotional distress**

For Purposes of this definition:

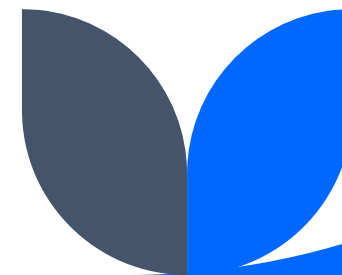
Course of Conduct: means two or more acts, including, but not limited to, acts in which the stalker directly, or indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates, to or about a person, or interferes with a person's property



Stalking Cont.

Reasonable Person: means a reasonable person under similar circumstances and with similar identities to the Complainant

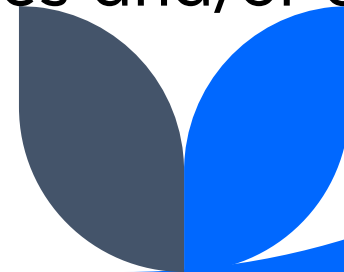
Substantial Emotional Distress: means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling



Retaliation

According to BPS Policy 2266:

- Neither the Board nor any 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, its implementing regulations, or this policy, or because the individual made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.
- Retaliation against a person for making a report of Sexual Harassment, filing a formal complaint, or participating in an investigation is a serious violation of this policy that can result in imposition of disciplinary sanctions/consequences and/or other appropriate remedies.



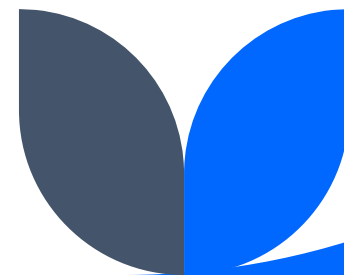
CASE STUDY



Case Study: Is it Title IX?

- A student attends a party at a friend's house over the weekend.
- At the party, the student is sexually assaulted by another person who attended the party.
- The student reports the sexual assault to the local police department and to the school.

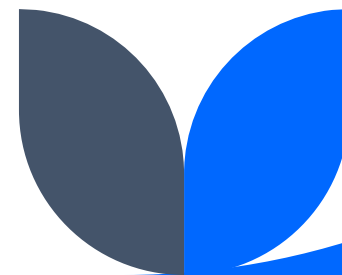
Does the District have jurisdiction under Title IX?



Case Study: Emily and Travis

- 8th grade student Emily and 8th grade student Travis have been dating one another for approximately one month.
- Over the weekend Travis tells Emily that if she doesn't send nude photos of herself to him via text that he is going to break up with her.
- Emily decides to send the photos to Travis.
- Monday morning when Travis is riding on the bus to school, he air drops the nude photos of Emily to everyone on the bus.
- One of the students on the bus reports Travis to the school administration.

Does the District have jurisdiction under Title IX? If so, which Sexual Harassment Definition applies?



Case Study: Amanda and Sean

- 18 year old student Amanda and 17 year old student Sean have been dating one another throughout high school.
- Amanda finds out through friends at school that Sean has been texting another female student and has plans to take that person out on a date.
- Amanda who is upset approaches Sean in school about the rumors. Sean admits to the date he has planned. Amanda begins shoving Sean in his chest and slaps him across the face.
- A school administrator is close by and breaks up the two students.

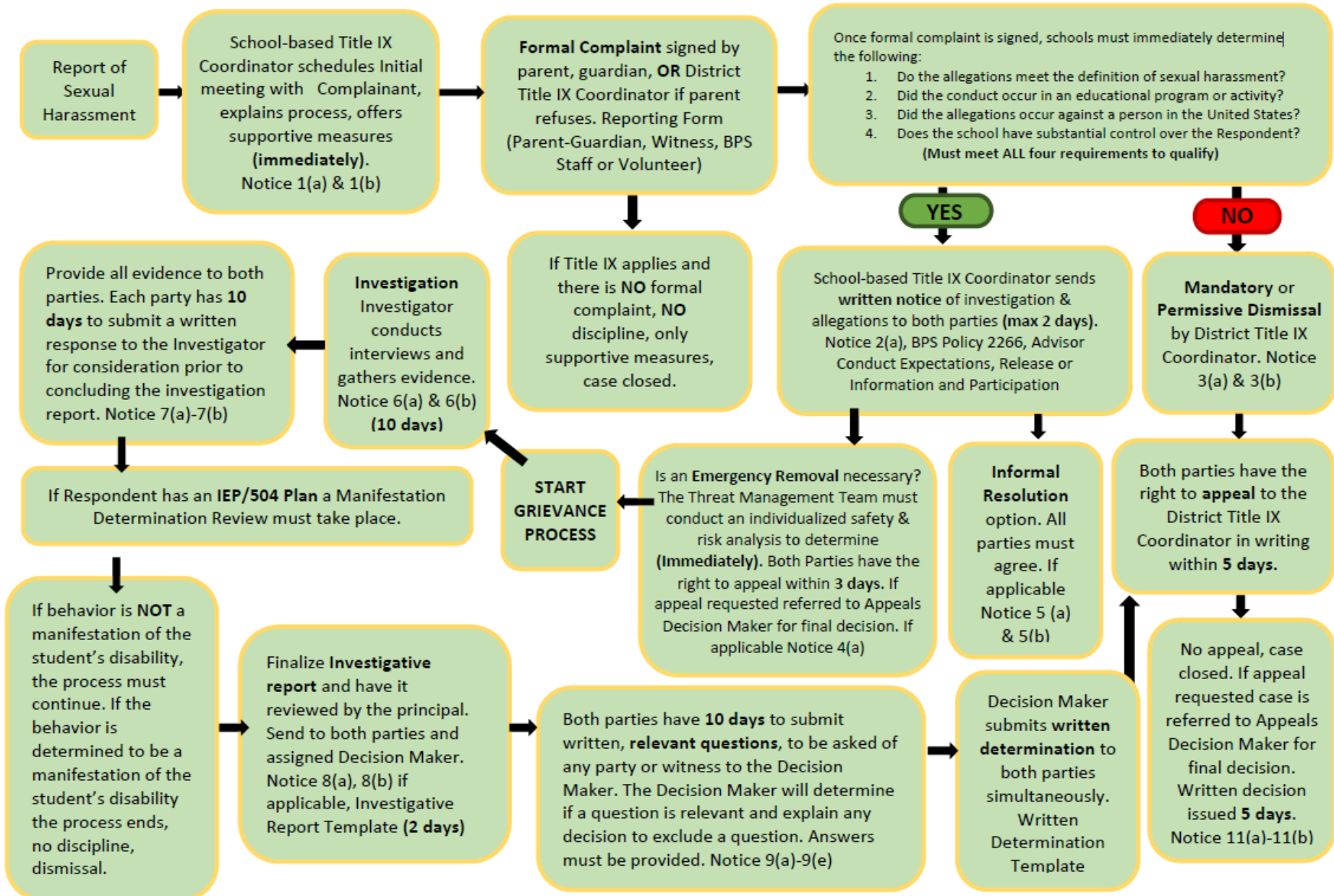
Does the District have jurisdiction under Title IX? If so, which Sexual Harassment Definition applies?



Overview of Title IX Grievance Process



Brevard Public Schools Division of Student Services Title IX Process for K-12 Students



Grievance Process Timeframe

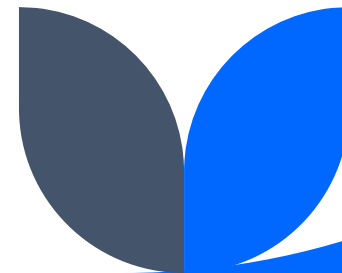
- BPS Policy 2266, “The District will endeavor to conclude the grievance process within **60 days** of receipt of the Formal Complaint”.
- The goal is to avoid undue delay
- BPS Policy 2266, “The timeline, however, may be subject to a temporary delay or a limited extension for **good cause** with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action”



Due Process: Current Issues

Due Process concerns are at the heart of 2020 regulations:

- Standard of evidence, “preponderance of Evidence”
- Requirements for “Emergency Removal”
- Detailed Notice of Investigation and Allegations (NOIA)
- Providing investigation report and evidence for review/response
- Title IX investigations are an exception to FERPA Rights
- Involvement of an advisor of choice
- Presumption of non-responsibility for Respondent
- Limited ability to take any punitive or disciplinary actions prior to completion or grievance process.
- Required opportunity to appeal for all parties
- Requirement to publicly post all training materials
- Parties may discuss the allegations under investigation





Bullying, Harassment and Cyberbullying and Title IX Sexual Harassment

Home Title IX Contact Us Outcome Letters Coord. Outcome Ltrs BPS Home Recent Site Contents

Search this site

Title IX

Administration Investigation Forms

+ new document or drag files here

Find a file

✓	Name	Modified
	Advisor Conduct Expectations Letter	... September 19, 2022
	Evidence Log	... August 26, 2021
	Refusal to Participate in Investigation	... January 14, 2021
	Release of Information and Participation in Title IX Process - Advisor	... August 14, 2020
	Reporting Form (Parent-Guardian, Witness, BPS Staff or Volunteer) 10-21-22 JS	... October 24, 2022
	Respondent's Statement Form	... January 7, 2021
	Safety Plan (Complainant)	... August 17, 2022
	Safety Plan (Respondent)	... August 17, 2022
	Stay Away Contract	... February 8, 2021
	Student Reporting Form 10-21-22 JS	... October 24, 2022
	Title IX Checklist - BPS	... January 7, 2021
	Witness Flowchart	... August 26, 2021
	Witness Statement	... October 14, 2020

Investigation Template Letters

Hope Scholarship

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✓	Name	Modified
	Hope Notification Form February 2023	... March 20
	Hope Scholarship Notification Form Spanish	... August 17, 2022

Reports

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✓	Name	Modified
	BPS Title IX Investigative Report Template updated 12-01-22	... December 1, 2022
	BPS Written Determination Template for Decision Maker 1-13-23 JS	... January 13

Resources

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✓	Name	Modified
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School Title IX Triage Form

The screenshot shows a web browser window with two tabs: 'BPS' and 'School Title IX Triage'. The address bar shows the URL: forms.office.com/pages/designpagev2.aspx?lang=en-US&origin=OfficeDotCom&route=Start&subpage=design&id=LGaFrd9pi0iFpl7ChwlywCUnZUr... The page title is 'School Title IX Triage - Saved'. The navigation bar includes 'Forms', 'Questions', 'Responses', 'Preview', 'Style', 'Collect responses', and 'Present'. The main content area displays the title 'School Title IX Triage' and a list of four bullet points explaining the tool's purpose and process. The bottom of the page shows 'Section 1' and a taskbar with various application icons and system information like '85°F' and '6:26 PM 8/14/2023'.

Forms School Title IX Triage - Saved

Questions Responses Preview Style Collect responses Present

School Title IX Triage

- This triage tool will help you determine whether a reported matter falls under Title IX (meets the definition of sexual harassment and falls within your education program or activity per the 2020 Title IX regulations) and therefore requires a Title IX Formal Grievance process. Remember that if the matter falls under Title IX, you cannot discipline the Respondent through another school/campus process.
- If the matter falls under Title IX, this triage will provide the administrator with some examples of supportive measures that could be provided to both the Complainant and Respondent as well as next steps to follow.
- If the matter does not rise to the level of Title IX Sexual Harassment or fall within your education program or activity, the matter can be referred to another process such as the Student Code of Conduct.
- The District Title IX Coordinator will be in contact with you to discuss the submission of your completed form.

Section 1

Type here to search 85°F 6:26 PM 8/14/2023

NOTICE TO THE TIX COORDINATOR

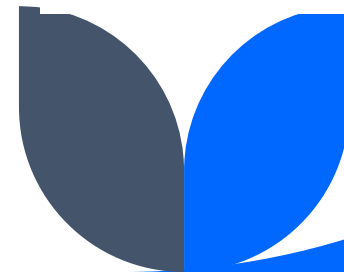
Mandatory Reporting

- All school board employees must comply with any mandatory reporting responsibilities regarding suspected abuse, abandonment, or neglect of a child pursuant to F.S. 39.201 and BPS policy 8462- Student Abuse, Abandonment, and Neglect.
- If the reported activity is criminal in nature, you must immediately notify your School Resource Officer/Law Enforcement and the Department of Children and Families (DCF).
- A reporting person may file criminal charges with law enforcement.
- The Title IX grievance process is a separate investigation conducted by the school in order to determine responsibility for a potential violation of BPS policy 2266.



Role of Law Enforcement

- Criminal investigations do not relieve the school of its duty to respond promptly and effectively
- Criminal investigations and Title IX investigations may run concurrently with one another
- Police investigations or case reports may not be determinative of whether harassment occurred under Title IX
- Temporary delays in Title IX investigation may occur by request of law enforcement
- Legal standards for criminal investigations are different



Report Received

Upon receiving a “**REPORT**” (Either from Complainant or third party) the Title IX Coordinator must:

- Promptly reach out and provide supportive measures to the Complainant
- Explain how to file a formal complaint
- Discuss BPS Policy 2266 regarding the Title IX grievance process

Forms to Complete/Send: (Preferably by email, Convert to PDF) *Title IX Coordinator*

-BPS Notice 1(a) “Notice to Title IX Complainant of Report of Title IX Sexual Harassment and Supportive Measures Meeting”

-BPS Notice 1(b) “Summary of Supportive Measures Meeting with Title IX Complainant”





Supportive Measures

- Provided to both parties throughout the process:
 - Non disciplinary
 - Individualized services designed to restore and preserve equal access to education, protect student and employee safety, and deter sexual harassment.

A formal complaint is not required to provide supportive measures.

- **Examples of supportive measures:** stay away contract, safety plan, classes schedule change, class seating assignment, scheduled meeting with school counselor, academic support, extending assignment deadlines, increased security and monitoring ect.

Formal Complaint- TIX Regulations

- A formal complaint can either be a document (student or parent reporting form) or electronic submission (email).
- Filed by the Complainant, preferably the parent/guardian.
- The District Title IX Coordinator has ultimate discretion to file a Formal Complaint “PPTVWM”.
- Alleging sex/gender-based discrimination or sexual harassment.
- Requesting an investigation be completed.
- Complainant must be participating or attempting to participate in the District’s education program or activity at the time of filing.
- Upon receipt of a formal complaint, investigation is required.

****If a Complainant does not wish to file a formal complaint, supportive measures only can be implemented. No Discipline can be enforced****



Parent and Student Reporting Form

Reporting Form (Parent-Guardian, Witness, BPS Staff or Volunteer) Revised 10-10-22 JS.pdf - Adobe Acrobat Pro DC (64-bit)

File Edit View E-Sign Window Help

Home Tools Reporting Form (Pa... x

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For reports of sexual harassment as defined in Brevard Public Schools Policy 2266, do you want the school to conduct a formal investigation? Yes No

**The District Title IX Coordinator has the discretion to dismiss a formal complaint under the pervasions described within Brevard Public Schools Policy 2266, Subsection I, Dismissal of a Formal Complaint (Mandatory or Permissive).*

I certify that, to the best of my knowledge and belief, that the information provided by me on this form is “true and correct” and not a “false statement or charge” to the best of my knowledge. Providing false information may lead to discipline pursuant to federal and state law and/or regulations.

Signature _____ Date _____

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Book	Policy Manual
Section	2000 Program
Title	NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES
Code	po2266
Status	Active
Adopted	February 8, 2022

2266 – NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES

A. Title IX Policy

1. The Board does not discriminate on the basis of sex (including sexual orientation or gender identity), in its education programs or activities, and is required by Title IX of the Education Amendments Act of 1972, and its implementing regulations, not to discriminate in such manner. The requirement not to discriminate in its education program or activity extends to admission/enrollment and employment. The Board is committed to maintaining an education and work environment that is free from discrimination based on sex, including sexual harassment.
2. The Board prohibits Sexual Harassment that occurs within its education programs and activities. When the District has actual knowledge of Sexual Harassment in its education program or activity against a person in the United States, it shall promptly respond in a manner not deliberately indifferent.
3. Pursuant to its Title IX obligations, the Board is committed to eliminating Sexual Harassment and will take appropriate action when an individual is determined responsible for violating this policy. Board employees, students, third-party vendors and contractors, guests, and other members of the School District community who commit Sexual Harassment are subject to the full range of disciplinary sanctions set forth in this policy. The Board will provide persons who have experienced Sexual Harassment ongoing remedies as reasonably necessary to restore or preserve access to the District's education programs and activities.

B. Title IX Coverage

1. This Title IX policy applies only to Sexual Harassment that occurs within the scope of the District's education programs and activities and that is committed in the United States by a member of the School District community or a Third Party.
2. This Title IX policy does not apply to Sexual Harassment that occurs off school grounds, in a private setting, and outside the scope of the District's education programs and activities; however, such Sexual Misconduct/Sexual Activity may be prohibited and subject to discipline under the Student Code of Conduct if committed by a student, or pursuant to Board policies and administrative procedures, applicable State and/or Federal laws, the Code of Ethics, and/or any applicable Employee/Administrator Handbook(s) if committed by a Board employee.
3. Consistent with the U.S. Department of Education's implementing regulations for Title IX, this policy does not apply to Sexual Harassment that occurs outside the geographic boundaries of the United States, even if the Sexual Harassment occurs in the District's education programs or activities. Sexual Harassment that occurs outside the geographic boundaries of the United States is governed by the Student Code of Conduct if committed by a student, or by Board policies and administrative procedures, applicable State and/or Federal laws, the Code of Ethics, and/or any applicable Employee/Administrator Handbook(s) if committed by a Board employee.
4. The Board does business with various vendors, contractors, and other third parties who are not students or employees of the Board. Notwithstanding any rights that a given vendor, contractor, or third party Respondent may have under this policy, the Board retains the right to limit any vendor's, contractor's, or third-party's access to school grounds for any reason. The Board further retains all rights it enjoys by contract or law to terminate its relationship with any vendor, contractor, or third party irrespective of any process or outcome under this Title IX policy.

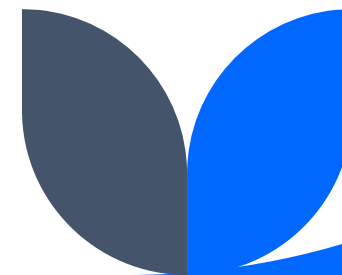
C. Title IX Definitions

RESPONDING TO FORMAL COMPLAINT

Formal Complaint

Upon receiving a “**FORMAL COMPLAINT**” the Title IX Coordinator must immediately determine the following:

- Do the allegations meet the definition of sexual harassment?
- Did the conduct occur in an educational program or activity?
- Did the allegations occur against a person in the United States?
- Does the school have substantial control over the Respondent?

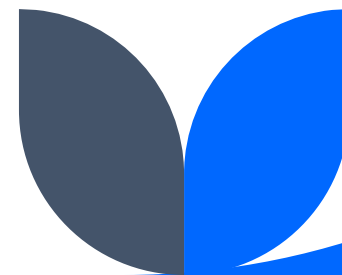


Sending the NOIA

- The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Complainant and Respondent upon commencement of the Formal Grievance Process.
- State the Title IX charge(s)

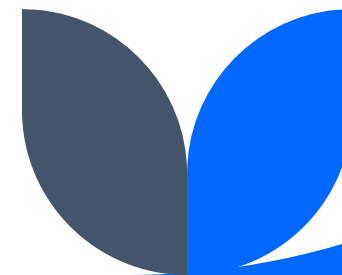
Forms to Complete/Send: *Title IX Coordinator*

1. BPS Notice 2(a) Notice of Allegations of Title IX Sexual Harassment by a Complainant
2. Advisor Conduct Expectations Letter
3. Advisor Release of Information form
4. Copy of BPS Policy 2266



Advisor of Choice

- The Complainant and the Respondent may each have an Advisor of their choice present with them for all meetings, and interviews during the grievance process.
- For students, the Advisor is someone in addition to their parent/legal guardian.
- The Advisor can be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with throughout the grievance process.
- Advisors are present during interviews primarily to assist and support the party being interviewed. The interviewed party is responsible for presenting their own information.
- **Advisor Release of Information form**- If the party wishes to have the school share documentation and evidence related to the allegations with their Advisor.
- **Advisor Conduct Expectations letter**- Outlines the role of the Advisor and the school's discretion to remove an Advisor.



Hope Scholarship

- Supportive measure- Formal Complaint must be filed first and NOIA sent
- Students subjected to an incident of violence or bullying at school have the opportunity to seek a transfer to another District school with capacity or request a scholarship to attend an eligible private school.
- Contingent upon availability, a student in grade k-12 is eligible for a Hope Scholarship if it is established that the student was subjected to, and subsequently reported to the principal or designee, any of the following incidents per F.S. 1002.40(3):

** Battery; harassment; hazing; bullying; kidnaping; physical attack; robbery; sexual offenses; threat or intimidation; fighting **



Mandatory Dismissal

If one of the following preceding circumstances exist, the District Title IX Coordinator shall dismiss the formal complaint and close the Title IX investigation:

The conduct alleged does not constitute sexual harassment even if proven true

Conduct did not occur in an educational program or activity

Conduct did not occur against a person in the U.S.

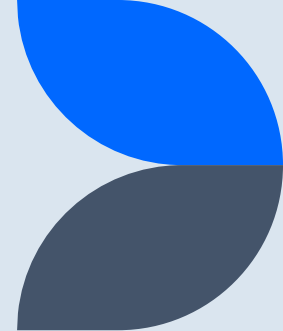
** Both parties have the right to appeal the District Title IX Coordinators dismissal of a formal complaint**

[Forms to Complete/Send: BPS Notice 3\(a\)](#)



Mandatory Dismissal Cont.

If the District Title IX Coordinator dismisses the Formal Complaint due to one of the proceeding reasons, the District may still investigate and take action with respect to such alleged misconduct pursuant to another provision of any applicable student or employee code of conduct, Board policy, and/or Employee/Administrative Handbook.



Permissive Dismissal

The District Title IX Coordinator may dismiss a Formal Complaint, or any allegations therein, if at any time during the investigation:

The Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations therein;

The Respondent is no longer enrolled within BPS or employed by the Board; or

Specific circumstances prevent BPS from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations contained therein.

** Both parties have the right to appeal the District Title IX Coordinators dismissal of a formal complaint**

Forms to Complete/Send: [BPS Notice 3\(b\)](#)

Emergency Removal

The District may remove a student Respondent from the education program or activity on an emergency basis, only after:

*****Must Consult with District Title IX Coordinator*****

1. Threat Assessment Team (TAT) completes an individualized safety risk analysis
2. Determining if an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal
3. Providing the Respondent with notice and an opportunity to challenge the decision immediately following the removal while respecting all rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act, as applicable.

-Forms to Complete/Send: BPS Notice 4(a) Title IX Emergency Removal of Student

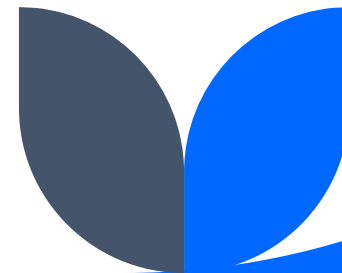


Informal Resolution

- Informal Resolution (IR) can include the following approaches:
 - **Supportive Resolution**- supportive measures (only) to remedy the situation
 - **Alternative Resolution**- Facilitated dialogue, mediation, restorative practice
 - **Accepted Responsibility**- Respondent accepts responsibility for violating policy and accepts the recommended sanction(s)
- District Title IX Coordinator must determine that IR is appropriate.
- IR can not be used to resolve BPS employee/adult sexual harassment allegations made by a student.
- To initiate IR, a Complainant must submit a formal complaint first.
- The Complainant and Respondent must both agree to participate in IR and sign “**BPS Notice 5(a) Offer of Title IX Informal Resolution**”

Steps for the Investigator

1. Establish Investigation strategy
2. Formal comprehensive Investigation
 - Conduct Party/Witness interviews
 - Understanding evidence/Evidence gathering
3. Begin drafting investigation report
4. Meet with School-Based TIX Coordinator to review draft report and evidence
5. Provide all evidence directly related to the allegations to the involved parties and their Advisors for inspection and review (10 days)
6. Revise and finalize investigation report
7. Meet with Title IX Coordinator to review final investigation report
8. Schedule ESE Manifestation hearing(s) if applicable
9. Send final investigation report to Decision-Maker and parties/Advisor for review and written response at least (10 days) prior to Decision-Maker making their determination of responsibility



Decision-Maker Check-List

Preparation

Decision-Maker Check List:

- ✓ Conflicts and recusal protocol
- ✓ Review applicable policies and procedures (BPS Policy 2266 outlines the Title IX grievance process)
- ✓ Read over the Respondent's written notice of investigation and allegations (NOIA) to understand all allegations
- ✓ Review evidence
- ✓ Review Investigative Report
- ✓ Exchange of questions, responses and follow-up responses between parties and witnesses
- ✓ Prepare any questions that you may have for parties/witnesses



Preparation Cont..

Who Can The Decision-Maker Contact?

- Should the DM feel additional information is required to make a determination, the DM may coordinate with the School-Based Title IX Coordinator to request the Investigator conduct additional interviews, ask additional questions, or gather additional evidence.
- The Decision-Maker may choose to reach out to the School-Based Title IX Coordinator and Investigator with clarifying questions.
- Any additional material will be added to the Investigative Report and a final copy provided to the parties to review. The parties must receive **(10) calendar days** to respond.



Exchange of Questions

- The same day the Investigator sends the final Investigative report to the parties/advisors/Decision-Maker, the Decision-Maker must also send [BPS Notice 9\(a\) “Notice of Opportunity to Submit Questions”](#).
- The Decision-Maker must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.
- The Decision-Maker must explain to the party proposing the questions any decision to exclude a question as not relevant.
- The Decision-Maker cannot make a determination regarding responsibility prior to (10 days) from the conclusion of the investigation.

Decision-Maker SharePoint Forms to Complete

Forms to Complete/Send: (Preferably by email, Convert to PDF)

- BPS Notice 9(a) Notice of Opportunity to Submit Questions- **Must be sent the same day the Investigator sends the investigative report to the Decision-Maker**
- BPS Notice 9(b) Notice of Questions (If applicable)
- BPS Notice 9(c) Notice of Decision-Maker's Exclusion of questions as Not Relevant (If applicable)
- BPS Notice 9(d) Notice of Answers to Questions and Opportunity to Submit Additional, Limited Follow-up Questions (If applicable)
- BPS Notice 9(e) Notice of Answers to Additional Questions (If applicable)
- BPS Written Determination of Title IX Decision-Maker



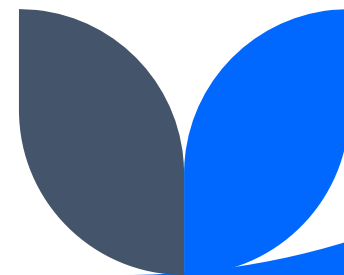
CONSENT



Consent

❖ Consent is:

- Knowing
- Voluntary
- Clear permission
- By word or action
- To engage in sexual activity



Consent Cont..

- No means no, but nothing also means no. Silence and passivity do not equal consent.
- For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied.
- Consent can be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated.
- A current or previous intimate relationship is not sufficient to constitute consent.



UNDERSTANDING THE EVIDENCE

- Relevance
- Credibility

Relevant Evidence

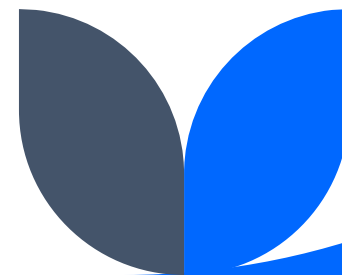
- Evidence is generally considered relevant if it has value in proving or disproving a fact at issue, this evidence will also be relied upon by the Decision-Maker:
 - Regarding alleged policy violation and/or
 - Regarding a party or witness's credibility
- All relevant evidence must be objectively evaluated and considered- inculpatory and exculpatory
- The Investigator will have made the initial assessment of whether evidence is relevant by including it in the investigation report
- Relevance is ultimately up to the Decision-Maker to determine. They may consider the opinion of the Investigator regarding credibility however they must be objective and independent





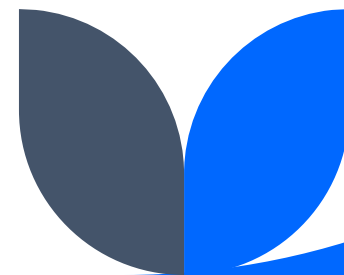
Directly Related Evidence

- Evidence is directly related when it is connected to the complaint but is neither inculpatory nor exculpatory and will not be relied upon in the investigation report.
- Directly related evidence is evidence that in the reasoned judgment of the Investigator, is determined to be connected to the complaint even if not relied upon by the Investigator in the investigation report.
- Examples of directly related evidence include the following: Evidence related to character, evidence gathered by law enforcement in the course of a concurrent criminal investigation, expert witness testimony, etc.



Irrelevant Evidence

- Facts that do not have the potential to describe or explain an incident under investigation.
- Evidence should be maintained by the Investigator but disregarded for the purposes of this grievance process.
- Redacted from evidence files shared with the parties/Advisors/Decision-Makers



Types of Evidence

There are various “types” of evidence that the Decision-Maker must determine to be relevant and credible:

Documentary Evidence: Written statements and official documents such as medical records and police reports

Electronic Evidence: Photos, text messages, emails, videos, Snapchat screenshots, school video surveillance footage (Stored for 30 days)

Direct or Testimonial Evidence: “Eyewitness” personal observation or experience

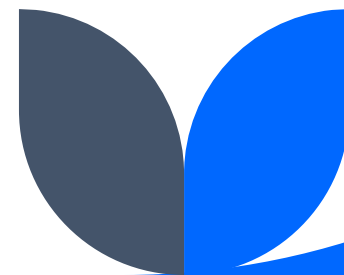
Circumstantial Evidence: “Not Eyewitness”, but compelling

Real Evidence: Physical object (less common)



Evidence Restrictions Under TIX Regulations

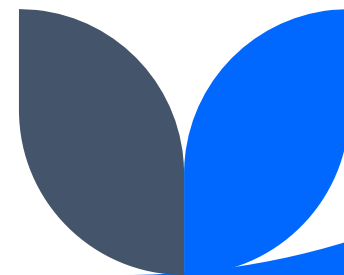
- Questions and evidence about the Complainant's sexual predisposition is explicitly deemed to be not relevant.
- Evidence of the Complainant's prior sexual behavior is not relevant unless:
 1. Offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant or
 2. Concerns specific incidents of the Complainant's sexual behavior with respect to the Respondent and is offered to prove consent



Evidence Restrictions Under TIX Regulations Cont..

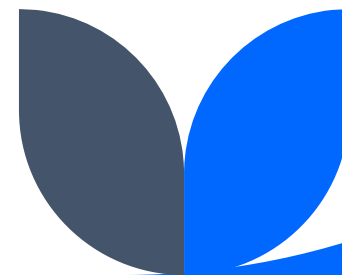
Additional Permissions (from the party) required for:

- Records made or maintained by a physician, psychiatrist, and psychologist
- The Title IX Investigator is responsible for ensuring that BPS “Authorization for Release and Exchange of Information” form is signed by the party with approval to share confidential information



What is Credibility?

- Corroborating evidence
- Inconsistency and contradictions
- Memory, evasion, misleading
- Accuracy and reliability of information
- Plausibility
- Demeanor
- “Credible” is not the same as “truthful”
- Credibility assessment must not be based on a person’s status as a Complainant, Respondent, or Witness





Factors to Consider For Credibility

Inherent Plausibility:

- Does what the party described make sense?
- Is the statement consistent with the evidence presented?
- Would a reasonable person in the same situation react in the same manner?
- How good is their memory?

Motive to Falsify:

- Does the party or witness have a reason to lie?



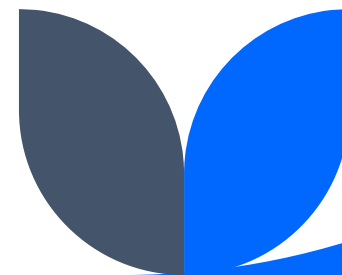
Factors to Consider For Credibility

Corroborating Evidence

- To provide facts and information that supports a parties statement
- The strongest indicator of credibility
- Example: A party/student states that they were in a classroom during specific time. The teacher in the classroom confirms the student's attendance.
- Be mindful of academic clubs, teammates, friendships

Past Record

- Past violations do not mean a current violation exists
- Are there determinations of responsibility for similar misconduct?



MAKING A DECISION

Preponderance of the Evidence Standard

- After the involved parties have had the opportunity to respond to the investigative report, the Decision-Maker will issue a written determination regarding responsibility.
- In order to reach a determination, they must apply the Preponderance of the Evidence Standard.
- **Preponderance of the Evidence:** It is “more likely than not” policy was violated
 - 50.1% (50% plus a feather)
 - Greater weight of the evidence
 - The tipped scale



Written Determinations

- **The written determination will include the following content:**
 - Identification of the allegations potentially constituting Sexual Harassment;
 - A description of procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence;
 - Findings of fact supporting the determination;
 - Conclusions regarding the application of the applicable code of conduct to the facts;



Written Determinations Cont..

- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, and disciplinary sanctions the decision-maker is recommending that the District impose on the respondent(s);
- Whether remedies designed to restore or preserve equal access to the education program or activity will be provided by the District to the Complainant;
- Procedures and permissible bases for the parties to appeal



Common Disciplinary Sanctions

- Writing assignments
- Changing of seating or location
- Loss of privileges
- Detention
- In-school discipline
- Suspension of bus riding/transportation
- Emergency removal
- Suspension for up to (10) school days
- Expulsion



APPEALS

Grounds For Appeal

Both parties have the right to file an appeal from a determination regarding responsibility, or from the Title IX Coordinator's dismissal of a Formal Complaint or any allegations therein, on the following bases:

- A. Procedural irregularity that affected the outcome of the matter
- B. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
- C. The Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias that affected the outcome of the matter

Parties can not challenge the ultimate disciplinary sanction that is imposed



Appeal Process

- A party wishing to appeal must submit a written appeal to the District Title IX Coordinator within **5 days** after receipt of the Decision-Makers written determination of responsibility or the District Title IX Coordinators dismissal of a formal complaint.
- As to all appeals, the Title IX Coordinator will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.
- The Decision-Maker for the appeal shall not be the same person as the Decision-Maker that reached a determination regarding responsibility.
- Both parties shall have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
- The Appellate Decision-Maker shall issue a written decision describing the result of the appeal and the rationale for the result.

[Forms to Complete/Send: \(Preferably by email, Convert to PDF\)](#)

-BPS Notice 11(a)-11(c)



Questions?

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Saxenmeyer.J@brevardschools.org

