TITLE IX COORDINATOR & COMPLIANCE OFFICER TRAINING

A two-part practical training for Missouri public schools

Part 1: Choosing the right policy and response • Part 2: Grievance process and investigation practice

TRAINING ROADMAP

Four hours, two connected questions

PART 1

What policy governs?

Protected classes • broader harassment rules • intake • routing • supportive response

PART 2

What process follows?

Formal complaint • notice • evidence • decision • appeal • informal resolution

PART 2 PRACTICE

How do we investigate?

Interviewing • credibility • relevance • evidence review • report writing

PART 1

Which policy and which response?

Begin with the broader district obligations, then classify and route the report.

Applicable Policies

MSBA	
Policy AC	Prohibition Against Illegal Discrimination and Harassment
Policy ACA	Sexual Harassment under Title IX
MCE	
Policy 1300	Prohibition Against Harassment, Discrimination and Retaliation
Regulation 1300	Prohibition Against Harassment, Discrimination and Retaliation
Policy 1301	Prohibition Against Sexual Harassment and Retaliation under Title IX
Regulation 1301	Prohibition Against Sexual Harassment and Retaliation under Title IX
EGS	
C-130-P	
C-131-P	

General Duties of the Compliance Officer



- Coordinate district compliance with applicable laws and Board policies
- Receive and promptly respond to reports of discrimination, harassment, and retaliation
- Ensure complaints are assigned, investigated, and resolved within required timelines
- Arrange interim or supportive measures and help prevent retaliation
- Identify patterns or systemic concerns and recommend corrective action
- Maintain appropriate records, confidentiality, training, and follow-up

Interim Measures

- Interim measures to protect victim
- Prevent retaliation



Prohibited Conduct

- Discrimination
- Harassment
- Sexual Harassment
- Retaliation



Prohibited Conduct (cont.)



- Encompasses a wide range of allegations:
  - Racial Slurs
  - Gender-specific name-calling
  - Failure to Promote
  - Teacher transfers to “less desirable buildings or positions”
  - Transgender rights
  - Name calling, slurs, acts of physical aggression, comments about an individual’s body, theft, graffiti, written material, sexual advances, etc.
  - Harassing conduct so severe, persistent, and/or pervasive that it affects ability to participate in or benefit from education program/activity and/or unreasonably/substantially interferes with employment/educational environment

Prohibited Conduct (cont.)



- Student-on-Student
  - No cause of action for bullying
  - Trend is to classify bullying as discrimination or harassment to bring claim under MCHR
  - Not just clear discriminatory conduct that should be reported to Compliance Officer
  - Claims right now where conduct is gender-specific name calling
  - Must show that the "bullying" was because of victims protected class
  - Administrators when investigating the "bullying" should be asking the "why" question to help determine if discriminatory intent

Understanding Protected Classifications

- Race
- Color
- Religion
- Sex
- National Origin
- Ancestry
- Disability

- Age
- Ethnicity
- Religion
- Genetic Information
- Any other characteristic protected by law or based on belief that such characteristic exists



Nature of Discrimination/Harassment

- Not limited to conduct by norms – for example, in cases of sexual harassment males toward females.
- May occur between any or all of the following, for example:
  - Student to student
  - Staff to student
  - Student to staff
  - Between opposite genders
  - Within the same gender



Reporting Requirements

- MSBA: Report Incidents that might constitute discrimination, harassment or retaliation directly to the Compliance Officer
    - Instruct all persons seeking to make a grievance to communicate directly with the compliance officer.
- MCE: OBLIGATION TO REPORT
    - The District is steadfastly committed to providing an inclusive environment that is free from discrimination and harassment for all of its students and staff. Unless a concern is informally resolved, staff and students shall report all incidents of discrimination, harassment and retaliation to the Compliance Officer as set forth in this Regulation. When a formal complaint is filed with the Compliance Officer, the investigation and complaint process detailed below will be used, including a possible determination by the Compliance Officer that the incident has been appropriately addressed through the informal process. Reports of discrimination, harassment and/or related retaliation must contain as much specific information as possible to allow for proper assessment of the nature, extent and urgency of preliminary investigative procedures.

THE CENTRAL DISTINCTION

Title IX is narrower; district nondiscrimination policies are broader

GENERAL DISCRIMINATION / HARASSMENT

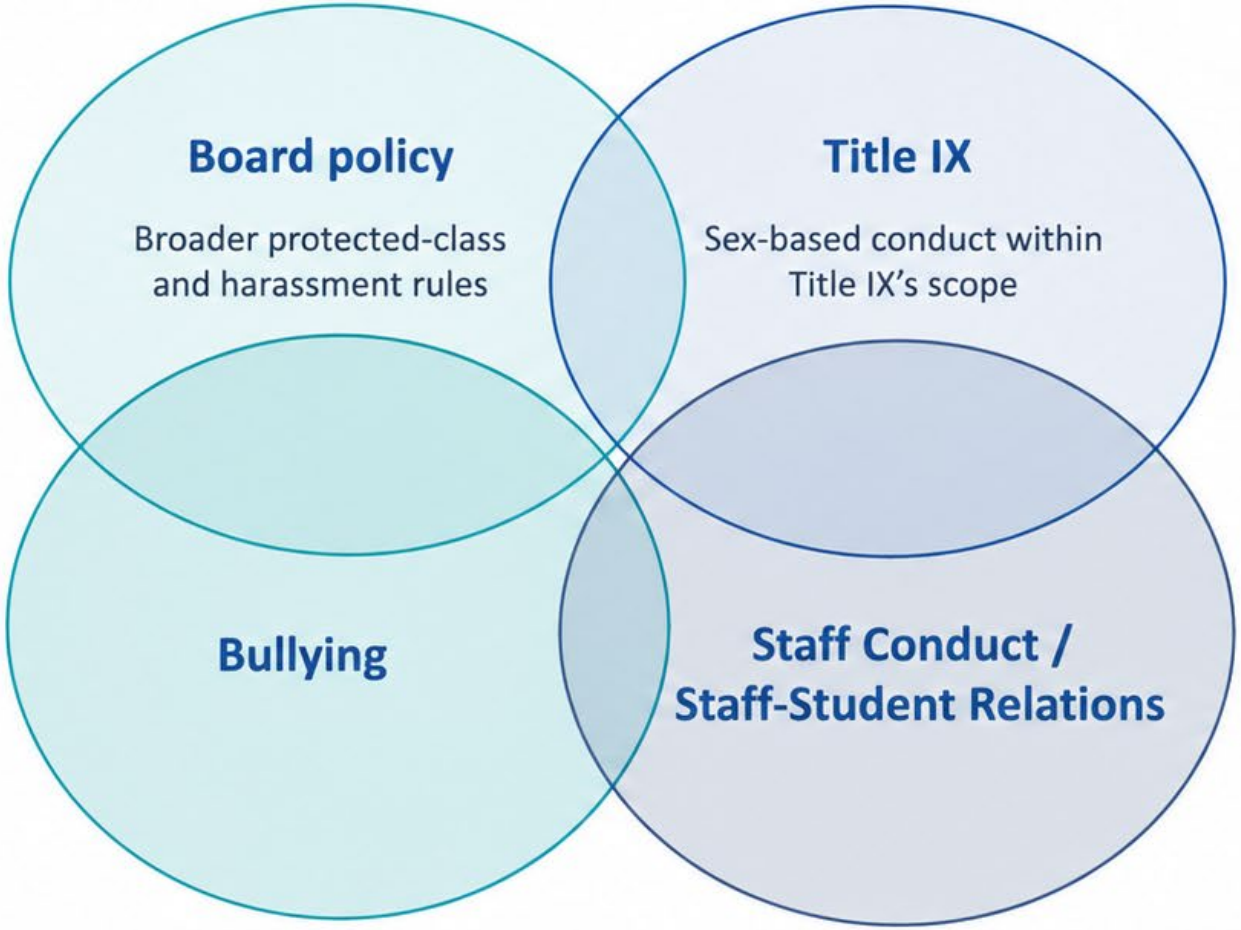
- Many protected classifications
- Broader definitions of prohibited conduct
- May cover conduct outside Title IX's jurisdiction
- Board-policy grievance process and remedies

TITLE IX

- Sex-based conduct only
- Regulatory definition and jurisdictional limits
- Required supportive response
- Specialized grievance process when a formal complaint proceeds

DO NOT FORCE EVERY REPORT INTO ONE BOX

The same facts may trigger more than one district obligation



Coordinate the response; do not duplicate interviews or issue inconsistent directives.

AN INTAKE DECISION, NOT A CREDIBILITY DECISION

Route the report before you choose the procedure

1. Does the report allege sex-based conduct?

NO → Use the applicable general policy process.

2. If true, does it fit the Title IX definition and scope?

YES → Offer supportive measures and explain the Title IX options.
NO → Address under the broader Board policy; consider parallel duties.

3. What other policy or legal duties apply regardless?

Consider child-abuse reporting, law enforcement, discipline, disability supports, safety planning, and retaliation prevention.

Explain the available paths without making the choice for the complainant

Start with safety	Ask what support is needed now; do not condition support on a complaint.
Describe both frameworks	Use plain language: scope, available remedies, formality, timelines, and who will receive information.
Clarify what choice controls	The complainant may choose whether to file a formal Title IX complaint, subject to the coordinator's independent duties.
Avoid false promises	Do not promise confidentiality, a particular outcome, or that no other reporting duty will be triggered.
Confirm in writing	Document options offered, supportive measures, the complainant's response, and next steps under each policy.

SUGGESTED LANGUAGE

A neutral explanation coordinators can actually use

“The district has more than one policy that may apply. Title IX covers certain sex-based conduct and has a specific formal process. Our broader nondiscrimination and harassment policies may cover conduct that Title IX does not. Support is available whether or not you choose a formal Title IX complaint. I will explain each option, what information may need to be shared, and what happens next so you can make an informed choice.”

Then pause. Ask what the person wants clarified before requesting a decision.

DOCUMENT THE CLASSIFICATION DECISION

A defensible file shows the route considered—not just the route selected

- ✓ Report received and by whom
- ✓ Alleged facts used for classification
- ✓ Title IX definition and jurisdiction analysis
- ✓ Other policies and mandatory duties considered
- ✓ Supportive measures offered and accepted/declined
- ✓ Options explained; questions answered
- ✓ Formal complaint decision and coordinator assessment
- ✓ Referrals, handoffs, and follow-up dates

DISCUSS BEFORE REVEALING YOUR ANSWER

Quick application: one report, two possible paths

A student reports repeated sexual comments in a group chat created by classmates. Some messages were sent at home; the group is used daily to coordinate a school activity. The student wants the comments to stop but is unsure about a formal complaint.

ASK

What facts determine Title IX scope? What broader policy applies? What support can be offered now? What must be documented before the student decides?

Classification is based on the allegations—not on whether you believe them yet.

Responsibilities and Duties of the Title IX Coordinator



- Defined by Board Policy and Title IX Regs
- Focuses specifically on sexual harassment under Title IX
- May have multiple Title IX Coordinators
- Others must be involved in the process

Title IX Coordinator's Duties – MSBA (ACA)

- Receive and review all reports of sexual harassment even if a formal complaint has not been filed.
- When a report is made, promptly contact the complainant and:
  - Provide information about the supportive measures available to the complainant and inform the complainant that he or she may receive supportive measures without filing a formal complaint.
  - Consider the complainant's wishes with respect to supportive measures and implement appropriate supportive measures.
  - Explain to the complainant the process for filing a formal complaint.
- When a party has an IEP, consult with the appropriate special education administrator(s) for assistance in determining the appropriate supportive measures based on the special needs of the student.

MSBA (ACA) (cont.)

- May sign a formal complaint initiating the grievance process.
- Investigate formal complaints unless another District employee is appointed as the investigator.
- Designate someone to serve as the decision-maker to determine whether the respondent is responsible for sexual harassment under Title IX.
- Be responsible for effective implementation of any remedies, including coordination with the district's disciplinary authorities.



MSBA (ACA) (cont.)



- If an appeal is filed:
  - Assign the appeal to an appellate decision-maker who is not the same person as the initial decision-maker, the investigator or the Title IX coordinator.
  - Notify other parties in writing.
  - Implement the appeals process equally to all parties.
  - Give all parties the opportunity to submit a written statement in support of or challenging the outcome within 5 business days of receiving the notice of appeal.
- Receive required training and maintain records of the same.
- Coordinate the effective implementation of supportive measures.

MCE (1301)

- The District has designated the Title IX Coordinator with the responsibility to identify, prevent, and remedy unlawful harassment and retaliation under Title IX in the District. The Title IX Coordinator is in charge of assuring District compliance with Regulation 1301 and Title IX of the Education Amendments of 1972.
- Receive reports of behaviors that may constitute sexual harassment and related retaliation.
- When a report is received:
  - Promptly contact the complainant to discuss the availability of supportive measures;
  - Consider the complainant's wishes with respect to supportive measures;
  - Explain the process for filing a formal complaint under this Regulation; and
  - Inform the complainant of the availability of supportive measures regardless of whether a formal complaint is filed under this Regulation.



MCE (1301) (cont.)



- Upon receipt of a formal complaint:
  - Provide written notice of the allegations, the grievance process, and any informal resolution process to the complainant and the respondent to give both parties the proper time to prepare a response before an interview;
  - Inform the complainant and the respondent of the prohibition against making false statement or knowingly submitting false information;
  - Inform the complainant and the respondent that they may have an advisor (who may be but who is not required to be an attorney) present during any of their own subsequent meetings; and
  - Offer supportive measures in an equitable manner to the complainant and the respondent, when appropriate.

MCE (1301) (cont.)

- Consolidate formal complaints when they arise out of the same facts or circumstances.
- Dismiss complaints.
- Investigate complaints unless another District employee is designated as the investigator.
- After a determination of responsibility is made:
  - Work with the complainant to determine if further supportive measures are necessary.
  - Determine whether any other actions are necessary to prevent reoccurrence of the harassment and to restore equal access to the education program or activity.



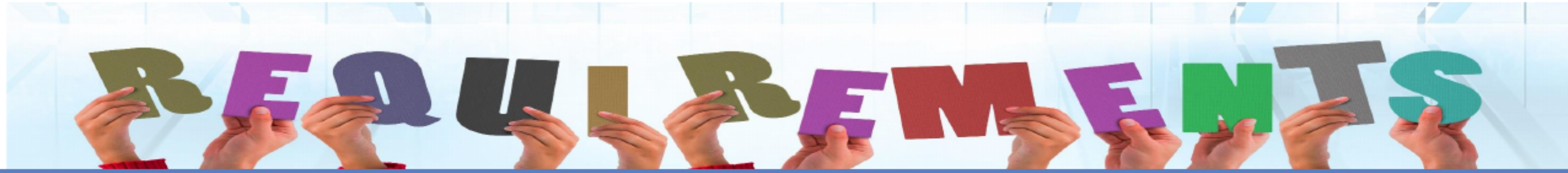
MCE (1301) (cont.)



- Receive appeals and provide subsequent notices.
- If the evidence suggests that the conduct at issue is also a crime in violation of a Missouri criminal statute, report the conduct to the appropriate law enforcement agency charged with responsibility for handling such crimes.
- Receive required training.
- Consult with the District on additional training for District employees.

Requirements for All in the Title IX Process

- Treat the complainant and the respondent equitably.
- Ensure that relevant evidence is objectively evaluated, including both inculpatory and exculpatory evidence, and that credibility determinations are not based on a person's status as a complainant, respondent, or witness.
- Do not have a conflict of interest or bias for or against complainants or respondents generally or individually.
- Do not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.



Title IX Regulations

- Initially effective August 14, 2020
- Numerous procedural changes
- District has adopted policy ACA/1301 or "Sexual Harassment under Title IX".



Basic Steps Outlined in the Current Regulations



- District or school receives actual knowledge of conduct that may constitute sexual harassment.
- District-level or school-based Title IX Coordinator meets with alleged victim to discuss supportive measures and the process for filing a formal complaint.
- Investigator leads the investigation after the formal complaint is in place and written notice is given to the involved individuals and their parents/guardians.

Select Definitions

- *Actual Knowledge* – Notice of sexual harassment under Title IX or notice of allegations of sexual harassment under Title IX to the district's Title IX coordinator or to any district official who has the authority to institute corrective measures on behalf of the district or to any employee of the district, except where the only district official or employee with actual knowledge is also

Select Definitions

- *Formal Complaint* – A document or electronic submission filed by the complainant or signed by the Title IX coordinator alleging sexual harassment under Title IX against a respondent and requesting that the district investigate the allegations. When a complainant files a formal complaint, the document or electronic submission must have the complainant's physical or digital signature or otherwise indicate the complainant's identity. A formal complaint may be filed only by a complainant participating in or attempting to participate in the district's education programs or activities.

Select Definitions

- *Informal Resolution Process* – Alternative dispute resolution methods designed to resolve allegations of sexual harassment without completing the formal complaint process. The purpose of the process is to restore or preserve equal access to the district's education programs or activities for all parties. Such a process may be offered by the Title IX coordinator after a formal complaint has been filed and after consultation with the district's attorney as to whether an informal resolution process will be sufficient to meet the district's Title IX obligations.

Select Definitions

- *Sexual harassment* under Title IX is conduct on the basis of sex within the scope of the district's education programs or activities that satisfies one or more of the following:
  - An employee of the district conditioning the provision of an aid, benefit or service of the district on an indivi participation in unwelcome sexual conduct;
  - Unwelcome conduct determined by a reasonable be so severe, pervasive and objectively offensive effectively denies a person equal access to the d education program or activity; or
  - "*Sexual assault*" as defined in 20 U.S.C. 1092(f)(6) "*dating violence*" as defined in 34 U.S.C. 12291(a "*domestic violence*" as defined in 34 U.S.C. 1229 "*stalking*" as defined in 34 U.S.C. 12291(a)(30).

Select Definitions



- *Sexual assault* is an offense classified as forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

Select Definitions

- *Sexual offenses* are any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent, and unlawful sexual intercourse. This includes rape, sodomy, sexual assault with an object, fondling, incest, statutory rape, and failure to register as a sex offender.



Select Definitions

- *Dating violence* is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship
  - The type of relationship
  - The frequency of interaction between the persons involved in the relationship.



Select Definitions

- *Domestic violence* is a felony or misdemeanor crime of violence committed by:
  - A current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common;
  - A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
  - A person similarly situated to a spouse of the victim under the domestic or family violence laws of Missouri; or
  - Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Missouri.

Select Definitions



- *Stalking* is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - Fear for his or her safety of others; or
  - Suffer substantial emotional distress.

Schools Must . . .



- Provide for the "prompt and equitable" resolution of student and employee complaints.
- Treat complainants and respondents equitably.
- Require an objective evaluation of all relevant evidence.
- Require that Title IX Coordinator, Investigator, Decision-maker, or any other key player have no conflicts of interest or bias for or against complainants or respondents, and that all such individuals receive specified professional development.
- Include a presumption of innocence for respondents.

Schools Must . . .

- Include a presumption of innocence for respondents.
- Designate reasonably prompt time-frames for resolution and the range of possible disciplinary actions.
- Use either the "preponderance of the evidence" ~~or "clear and convincing" standard~~ and apply it equally to employee and student complaints.
- Provide complainant and respondent (and their parents/guardians) an equal opportunity to review any evidence obtained that is directly related to the allegations raised in a formal complaint.
- r procedural steps enumerated at 34 C.F.R. § 106.45 of

Roles and Responsibilities



- Investigator gathers and reviews evidence, and prepares an investigative report; the involved individuals and their parents/guardians review and respond to the report.
- Decision-maker provides opportunity for involved individuals and their parents/guardians to prepare written questions to be answered by the other side.
- Decision-maker reviews all materials and makes a written responsibility determination – an impartial determination as to whether the alleged conduct occurred – including sanctions.

Identify the Roles



- Since multiple individuals are needed to fill the roles in the process, it is important to establish the roles at the onset.
  - Title IX Coordinator can be the investigator.
  - Decision-maker must be someone other than the Title IX Coordinator or Investigator.
  - Appeal decision-maker cannot be the same person as the decision-maker, the investigator, or Title IX Coordinator.
- Title IX has specific training requirements for individuals filling these roles, which will be covered by this training.

Reporting Requirements

- Any person may report sexual harassment regardless of whether the person is the alleged victim(complainant).
- However, Board members and employees must immediately report to the Title IX coordinator any incident or behavior that could constitute sexual harassment or retaliation in accordance with this policy.
- Reports may be made at any time, including during nonbusiness hours, by using the telephone number, email address or office address listed below.



Intake and Classification of Reports



- The Title IX coordinator will receive and review all reports of sexual harassment even if a formal complaint has not been filed.
- If the Title IX coordinator determines that the report concerns conduct that does NOT involve sexual harassment under Title IX as that term is defined in this policy or did not occur in the district's education program or activity, the Title IX coordinator will use the grievance process in policy AC/1300/C-130-P or forward the complaint to the individual responsible for implementing policy AC/1300/C-130-P.

Basic Steps

- If a school has actual knowledge of sexual harassment allegations, the school must respond promptly and in a manner that is not deliberately indifferent (i.e., not "clearly unreasonable in light of the known circumstances").
- A school must offer "supportive measures" to the alleged victim (complainant) and follow a grievance process that meets certain minimum requirements before imposing discipline or other actions that are not supportive measures against an alleged perpetrator (respondent).
- A school may not continue with the grievance process in the absence of a formal complaint.

Supportive Measures

- Supportive Measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee to the complainant or respondent before or after filing a formal complaint or where no formal complaint is filed.
  - Designed to restore or preserve equal access to the district's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the district's educational environment, or deter sexual harassment.
  - If the District does not provide complainant with supportive measures, the District must document the reasons why such response was not clearly unreasonable in light of the known circumstances.



Supportive Measures (cont.)



- Supportive Measures may include:
  - Counseling
  - Extensions of deadlines or other course-related adjustments
  - Modifications of work or class schedules
  - Campus escort services
  - Mutual restrictions on contact between parties
  - Changes in work or housing locations
  - Leaves of absence
  - Increased security or monitoring of certain areas of the campus

Removal of Respondent

- The district is not precluded from removing a Respondent from the education program or activity on an emergency basis, provided that the district:
  - Undertakes an individualized safety risk and analysis
  - Determine that an immediate threat to the physical health or safety of any student or other individual rising from the allegations of sexual harassment justifies removal; and
  - Provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.
- The requirement of supportive measures does not preclude the district from placing an employee on administrative leave during the grievance process.
- Keep in mind disciplinary requirements under policy and state law as you work through this process.

Procedures Prior to or without a Formal Complaint



- When the Title IX coordinator has actual knowledge of an allegation of sexual harassment under Title IX in an education program or activity of the district, the Title IX coordinator will promptly contact the complainant and:
  - Provide information about the supportive measures available to the complainant and inform the complainant that he or she may receive supportive measures without filing a formal complaint.
  - Consider the complainant's wishes with respect to supportive measures and implement appropriate supportive measures.
  - Explain to the complainant the process for filing a formal complaint.

In Absence of Formal Complaint

- If no formal complaint is filed by the complainant or signed by the Title IX coordinator, no disciplinary action will be taken against the respondent *on the grounds of sexual harassment under Title IX*.



PART 2

The Title IX process and investigation practice

Follow the required grievance sequence, then apply sound investigation methods within it.

The Formal Complaint Process



- The complainant may file a formal complaint or choose not to file a formal complaint and simply receive the supportive measures.
- If the complainant does not file a formal complaint, the Title IX coordinator **may** sign a formal complaint initiating the grievance process.
- The Title IX coordinator will do so only if initiating the grievance process against the respondent is not clearly unreasonable in light of the known circumstances.

Confidentiality

- The district must keep confidential (except as permitted by FERPA, as required by law, or to carry out the purpose of Title IX) the identity of any individual who has made a report or filed a formal complaint, including:
  - Any individual who has made a report or filed a formal complaint
  - A complainant

Title IX Grievance Process upon Filing of a Formal Complaint

The district's grievance process will provide a prompt and equitable resolution of complaints and will:

- Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent;
- Comply with Title IX regulations before imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent;
- Require a decision-maker to objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence, and not make credibility determinations based on a person's status as a complainant, respondent or witness;
- Require that all Title IX coordinators, investigators, those responsible for facilitating informal resolution processes and decision-makers not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent;

Title IX Grievance Process upon Filing of a Formal Complaint (cont.)

- Presume that the respondent is not responsible for the conduct until a determination of responsibility is made at the conclusion of the grievance process;
- Follow stated timelines unless the district temporarily delays the grievance process for good cause (including, but not limited to, the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of a disability) and notify the parties in writing of the reason for a delay, if any; and
- Not require, allow, rely upon or otherwise use questions or evidence that constitutes, or seeks disclosure of, information protected under a legally recognized privilege unless the person holding such privilege has waived the privilege.



Notice to the Parties

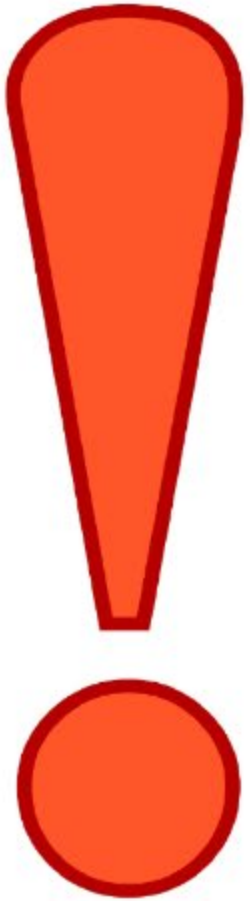


When the complainant files a formal complaint, written notice will be provided to all known parties and will include:

- Notice of the grievance process, including any informal resolution process that is available and the timeline for such process.
- Notice of the allegations of sexual harassment under Title IX made by the complainant with sufficient details known at the time and with sufficient time to allow the respondent to prepare before the initial interview. At a minimum, the details will include the identities of the parties involved in the incident, if known, the conduct and the date and location of the alleged incident if known.
- A statement that the respondent is presumed not responsible for the conduct and that a determination of responsibility will be made at the conclusion of the grievance process.

Notice to the Parties (cont.)

- A statement that parties may have an advisor of their choice, who may be an attorney.
- A statement that the parties and their advisors will have an equal opportunity to inspect and review any evidence that is directly related to the allegations raised in the formal complaint, including evidence upon which the district does not intend to rely, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
- Notice of any provision in the district's discipline code that prohibits knowingly making a false statement or providing false information during the grievance process.
- If in the course of the investigation of sexual harassment under Title IX the district decides to investigate allegations about the complainant or respondent that were not in the initial notice, notice of the additional allegations will be provided to all known parties.



Investigation Process and Scope



- After the formal complaint is filed, the investigator will provide an investigative report to the decision-maker.
- The investigation **may** be conducted by someone other than the Title IX coordinator.
- The investigator will gather evidence sufficient to reach a determination of responsibility or nonresponsibility and may not require the parties to do so.

Investigation Process and Scope (cont.)

- During the investigation and the grievance process, the district will:
  - Provide equal opportunity to present witnesses, including fact and expert witnesses, and all evidence, including inculpatory and exculpatory evidence.
  - Not restrict the parties from discussing the allegations under investigation or gathering and presenting relevant evidence.
  - Provide the same opportunity for parties to have others, including an advisor of their choice, present during any grievance proceedings and related meetings, though the district may restrict the extent to which advisors may participate as long as the rules apply to both parties.
  - Provide written notice to parties who are invited or expected to participate of the date, time, location, participants and purpose of all hearings, investigative interviews or other meetings with sufficient time for the parties to prepare to participate.
  - Obtain written, voluntary consent before accessing records, such as medical records or counseling notes, that a physician, psychiatrist, psychologist or other recognized professional or paraprofessional made or maintained in connection with the provision of treatment to the party. If the party is at least 18 years old or is enrolled in postsecondary education, the party can sign on his or her own behalf. Otherwise, a parent/guardian must sign on the party's behalf.

Investigation Process and Scope (cont.)

- Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation.
  - This includes evidence upon which the district does not intend to rely in reaching a determination of responsibility and inculpatory or exculpatory evidence, whether obtained from a party or other source.
- Send to each party and the party's advisor, if any, the evidence subject to inspection and review prior to completion of the investigative report and within _____ [recommended: 20] business days of the parties receiving notice of the formal complaint.
  - The evidence may be sent in an electronic format or hard copy. The parties will be given at least ten business days, as required by law, to submit a written response, which the investigator will consider prior to the completion of the report.
- Create an investigative report that fairly summarizes relevant evidence and send it in an electronic or hard copy format to each party and their advisors, if any, for their review and written response.
  - The investigative report must be sent no later than ten business days prior to the time of determination of responsibility by the decision-maker, as required by law.

PART 2: INVESTIGATION PRACTICE

A reliable investigation is planned, neutral, and documented

Apply these techniques within the Title IX requirements and any parallel Board-policy investigation.

Plan the Investigation

- Determine the required timelines
- Identify sources of evidence
- Consider preservation of evidence, especially electronic evidence
- Create an outline
- Consider the relationships
- Implement interim measures, as appropriate

conduct interviews

- Consider asking individuals to bring documentation to the interview
- Set clear expectations at the outset
- Try to get information before disclosing information
- Cover any areas of discrepancies between witnesses
- Consider using a "funnel" approach to questioning
- Do not promise confidentiality
- Obtain written statements
- Assess credibility and make determinations as to the "facts" shared by the witness

conduct interviews

- Wrap-up Questions:
  - "Who else might be helpful to discuss with?"
  - "Is there anything else you'd like to share?"
- Notify of expectations before the close of the interview, and remind of prohibition against retaliation (Title IX and Discrimination/Harassment)
- Don't be afraid to re-interview
- Collect documentation after the interview
- Provide an open line of communication
- Summarize interviews with notes

Re-interviews

- Re-interview: don't be afraid to revisit issues with witnesses if you need clarification
- State purpose of the re-interview, i.e., to get additional information about the allegations.
- Cover any areas of discrepancies between witnesses.
- Have them acknowledge in writing or provide a written statement regarding new information.
- Discuss retaliation and confidentiality.
- Remember - interview notes will be produced in later litigation.

Collect physical & digital evidence

- Paper records (student records, personnel records, timesheets, etc.)
- Video (surveillance footage, cell-phone recordings, etc.)
- Cell phones (call logs, texts, direct messages, social-media screenshots, etc.)
- Email
- District devices
- Examine the scene
- Preserve and collect evidence from the alleged wrongdoer

Dismissal of the Formal Complaint

- If the district determines that the allegations, even if proved, would not constitute sexual harassment under Title IX as defined in this policy, did not occur in the district's education program or activity, or were not committed against a person in the United States, the formal complaint will be dismissed. The dismissal does not mean that a complaint cannot be made under another district policy or that any misbehavior will not be addressed under another policy or the district's code of conduct.
- The district may dismiss a formal complaint or any allegations in a formal complaint at any time if:
  - The complainant notifies the Title IX coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations in the formal complaint;
  - The respondent is no longer enrolled in or employed by the district; or
  - Specific circumstances prevent the district from gathering evidence sufficient to reach a determination of responsibility based on the merits of the formal complaint or allegations therein.

Dismissal of the Formal Complaint (cont.)

- If the formal complaint is dismissed, the district will notify the parties simultaneously. A party may appeal the dismissal of a formal complaint by submitting a written notification of appeal to the Title IX coordinator within _____ [recommended: five] business days of receiving the notice that the complaint was dismissed. If the Title IX coordinator or the investigator dismissed the complaint, the dismissal will be heard by the decision-maker. If the decision-maker dismissed the complaint, the dismissal will be heard by the appellate decision-maker. The appeal is limited to the following bases:
  - There was a procedural irregularity that affected the outcome.
  - There is new evidence that was not reasonably available at the time the dismissal was made that could affect the outcome of the matter.
  - The Title IX coordinator, investigator or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent that affected the outcome of the matter.

Submission for a Determination of Responsibility and the Related Findings and Conclusions

- The Title IX coordinator will designate someone to serve as the decision-maker to determine whether the respondent is responsible for sexual harassment under Title IX.
- The designated person may be a district administrator, an attorney or another appropriate adult. The person designated cannot have been part of the investigation.



Procedures of the Decision-Maker and Party Questions and Answers

- After the parties receive the final investigative report, each party may submit to the decision-maker any written, relevant questions that the party wants asked of any party or witness.
- Each party will receive the answers to the questions and will be allowed time to submit limited follow-up questions.
- The decision-maker:
  - Will permit questions and evidence about the complainant's sexual predisposition or prior sexual behavior only if such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant or if 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.
  - May exclude a question that is not relevant. The party who submitted the question will receive an explanation as to why the question was judged not relevant.

Initiating an Appeal of a Title IX Decision—Time, Contents and Assignment

- Either party may appeal the determination(s) of responsibility, the dismissal of a formal complaint or any allegation in a formal complaint by notifying the Title IX coordinator in writing within_____ [recommended: five] business days of the parties receiving the written Title IX decision from the decision-maker.

- Appeals must be based on one or more of the following:
  - A procedural irregularity that affected the outcome of the matter.
  - New evidence that was not reasonably available at the time of the determination and that could affect the outcome of the matter.
  - The Title IX coordinator, investigator(s) or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent that affected the outcome of the matter.

Appeals



Appeals

- If an appeal is filed, the Title IX coordinator will:
  - Assign the appeal to an appellate decision-maker who is not the same person as the initial decision-maker, the investigator or the Title IX coordinator.
  - Notify other parties in writing.
  - Implement the appeals process equally to all parties.
  - Give all parties the opportunity to submit a written statement in support of or challenging the outcome within _____ [recommended: five] business days of receiving the notice of appeal.
- Written statements and other written documents pertaining to the appeal will be shared with all parties.

Appeals

- The appellate decision-maker will review the findings of the initial decision-maker and review the written statements filed by the parties supporting or opposing the appeal.
- Within _____ [recommended: ten] business days of the close of the period for parties to file their written statements supporting or opposing the appeal, the appellate decision-maker will issue a written decision describing the result of the appeal and the rationale for the result to all parties simultaneously.
- The appellate decision-maker may refer an appealed issue back to a prior point in the grievance process for correction.



Process for Informal Resolution of Formal Complaints

- After a formal complaint has been filed and at any time prior to reaching a determination of responsibility, the district may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. If a party requests the use of an informal resolution process, the district will provide the parties a written notice that:
  - Discloses the allegations and the requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations;
  - Discloses that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint;
  - Discloses any consequences resulting from participating in the informal resolution process, including the records that, with voluntary written consent from the parties, will be maintained or could be shared; and
  - Obtains the parties' voluntary, written consent to the informal resolution process.

Process for Informal Resolution of Formal Complaints



- The informal resolution process may not be used to resolve allegations that an employee sexually harassed a student.
- If the informal resolution process does not resolve the formal complaint within ___ [recommended: 30] business days after both parties consented to use the process, the Title IX coordinator will resume the grievance process unless both parties again consent to continue using the informal resolution process.

Training for Title IX Coordinators, Investigators, Decision-Makers

- These individuals must receive training on:
  - Definition of sexual harassment (previously covered)
  - The scope of the District's education program or activity
  - How to conduct an investigation and grievance process (previously covered)
  - How to serve impartially (avoiding prejudgment of the facts, conflicts of interest, bias)



Training for Investigators

- Investigators must receive additional training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.



Training for Decision-Makers



- Decision-Makers must receive additional training on issues of relevance of questions and evidence, including sexual predisposition and prior behavior not relevant

Scope of the District's Program or Activity

- "Education program or activity" includes locations, events, or circumstances over which the District exercised substantial control over both the Respondent and the context in which the sexual harassment occurs.
- Title IX obligations extend to sexual harassment incidents that occur off campus if either of these conditions are met:
  - If the off-campus incident occurs as part of the recipient's "operations" pursuant to 20 U.S.C. 1687 and 34 CFR 106.2(h), which is all of the operations of a local education agency, or
  - If the recipient exercised substantial control over the respondent and the context of alleged sexual harassment that occurred off campus pursuant to § 106.44(a)
- Considered whether sexual harassment occurred in a district's education program or activity by examining factors such as whether the recipient funded, promoted, or sponsored the event or circumstance where the alleged harassment occurred.

How to Serve Impartially – Avoiding Prejudgment of the Facts

- Prejudgment generally is to judge before a full and sufficient investigation.
- Do not make assumptions or judgments about the parties.
  - Hear all the facts from the parties and witnesses.
- Findings of facts and decisions are to made on the basis of individualized facts and not on stereotypical notions of what "men" or "women" do or do not do.
- Do not make assumptions about situations of sexual assault.
  - Complainant cried so she's telling the truth.
  - Complainant was drinking so she can't remember.
  - Men are aggressive and likely to sexually assault.
  - Men cannot be sexually assaulted.
  - Women have regrets and lie about sexual assault.
  - Respondent has been sexually active with Complainant before so he couldn't have sexually assaulted Complainant.
- Keep an open mind and seek additional information if you jump to conclusions.
- Communicate facts in the investigation report, not conclusions.

How to Serve Impartially - Avoiding Bias

- Bias generally is an inclination of temperament or outlook. Bias is based on stereotypes and not facts.
  - Facts, credibility determinations, and decisions cannot be based on an individual's sex, race, ethnicity, sexual orientation, gender identity, disability or immigration status, financial ability, or other characteristic.
  - Implicit bias are attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.
    - Everyone has them even if they don't align with declared beliefs.
    - Question your thinking throughout this process. Most evidence will be circumstantial rather than direct.
- Be aware how comments you've made can be used to claim prejudgment and bias.
  - "My daughter would not go out of the house looking like that. Females who dress like that are just asking for it."

How to Serve Impartially – Avoiding Conflict of Interest

- Conflict of interest generally is a real or seeming incompatibility between one's private interests and one's public or fiduciary duties and the private interests compromise one's judgment and decisions.
  - Can arise from family relationships, friendships, colleague relationships, romantic relationships, financial investments, etc.
  - Keep this in mind when assigning individuals to the roles of investigator, decision-maker, appeal decision-maker, especially in smaller districts.
    - Also be aware of perceived or potential conflicts of interest, and determine if the process should proceed with them in a particular role.
  - Bottom line - must be able to serve impartially.

Training for Investigators and Decision-Makers - Relevance

- Relevance is generally having a logical connection and tending to prove or disprove a matter in issue and tending to persuade people of the probability or possibility of some alleged fact.
  - Is the fact or information likely to prove/disprove the allegations?
    - If it is likely to prove/disprove, even indirectly, it is relevant.
    - If it is not likely to do so, it is irrelevant.
- Investigators are to only include relevant evidence in their investigative reports.
- As previously covered, questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant unless such questions are offered:
  - To prove that someone other than respondent committed the conduct alleged by the complainant; or
  - If the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent are offered to prove consent.

Record Retention



- All records regarding the investigation and determinations regarding responsibility must be maintained for at least 7 years for purposes of Title IX.
- This could be longer depending on requirements under a retention schedule or as required by FERPA.
- Make training material available on District website as required by law.

END OF PARTS 1 AND 2

The coordinator’s first job is correct routing; the next job is a fair process

1. Classify under every applicable policy.
2. Offer support and explain choices neutrally.
3. Use the required process—and document why.