

Title IX Training

Title IX Team: Title IX Coordinators, Investigators,
Decision-Makers, and Appeal Decisionmakers

School District of Kohler

September 25, 2025, 10:00 a.m. – 12:00 p.m.

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Overview of Training



- Title IX
- Definition of Sexual Harassment
 - Conduct prohibited by Title IX Regulations
- Scope of the District's Education Program or Activity
- The Grievance Process
 - Conducting an Investigation
 - The Decision-Making Process
 - The Appeals Process
 - Informal Resolution Process
- Additional Considerations Throughout the Grievance Process
 - Supportive Measures
 - Complaint Filed by TIX Coordinator
 - Emergency Removal
 - Early Dismissal
 - Informal Resolution
 - Confidentiality
 - Retaliation
 - Recordkeeping

Title IX: The Law & Regulations



Title IX of the Education Amendments of 1972

- *No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.*
 - 20 U.S.C. § 1681



Title IX – The Regulations

- Trump Administration
 - November 2018 – Proposed TIX rule released by DOE and published in May 2020.
 - August 14, 2020 – The 2020 Regulations became effective.
- Biden Administration
 - June 2022 – Proposed new regulations released by DOE.
 - August 1, 2024 – New 2024 Regulations become effective.
- Trump Administration
 - Back to the 2020 Regulations.



Why a Return to the 2020 Regulations?

- Multiple lawsuits filed against the 2024 Rule
- January 9, 2025 – Eastern District of Kentucky vacates the 2024 Rule nationwide (*Tennessee v. Cardona*)
- January 31, 2025 – DOE releases “Dear Colleague Letter”
 - Clarified the *Tennessee v. Cardona* decision to definitively state that DOE will enforce the 2020 Regulations.
 - DOE directs that all open Title IX investigations initiated under the 2024 Title IX Rule should be immediately reevaluated to ensure consistency with the requirements of the 2020 Title IX Rule.



Definition of Sexual Harassment



Scope of Conduct that Constitutes Sexual Harassment

- Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
 - A District employee conditions the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct ("*quid pro quo*");
 - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, AND objectively offensive that it effectively denies a person equal access to the District's education program or activity ("hostile environment"); or
 - Sexual assault, dating violence, domestic violence, or stalking ("specific offenses").
 - Sexual assault includes rape, sodomy, sexual assault with an object, fondling, incest, and statutory rape.
 - All are specifically defined by policy.



Scope of the District's Education Program or Activity



Obligation to Address Sex Discrimination

- A district “with actual knowledge of sexual harassment in an education program or activity of the [district] against a person in the United States, must respond promptly in a manner that is not deliberately indifferent.”
 - A district will have actual knowledge when a Title IX Coordinator, any district official who has authority to institute corrective measures on behalf of the district, or any district employee of an elementary or secondary school has been provided with “notice of sexual harassment allegations.”
- A district “is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.”



Education Program or Activity

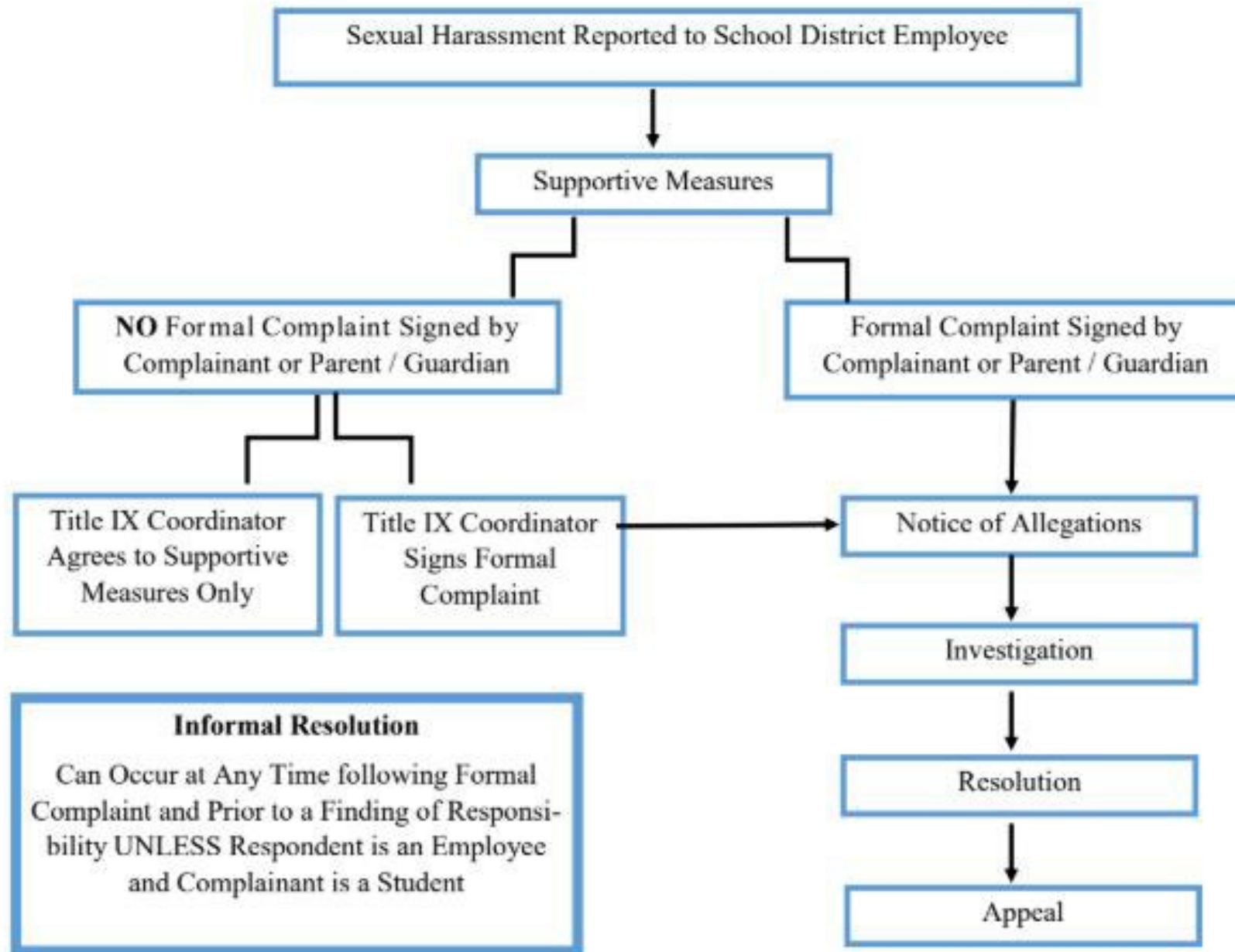
- Education program or activity “includes locations, events, or circumstances over which the [district] exercised substantial control over both the respondent and the context in which the sexual harassment occurs.”
 - Note that sexual harassment that occurs outside of the United States or off District property and outside the scope of the District’s education programs or activities, does not constitute Title IX sexual harassment.



The Title IX Grievance Process



Title IX K-12 Process Flow Chart



Grievance Process – General Requirements

- School districts are required to adopt a grievance process that must:
 - Treat Complainant and Respondent equitably.
 - Presume Respondent is not responsible for alleged sexual harassment until determination is made (and not impose any discipline prior to the determination).
 - Provide remedies to the Complainant where a determination against a Respondent has been made.
 - Require an objective evaluation of all relevant evidence and provide credibility determinations that are not based on a person status as a Complainant, Respondent, or witness.
 - Require the absence of conflicts of interest or bias in TIX team members.
 - Describe the range of supportive measures available.
 - Describe the possible disciplinary sanctions and remedies upon determination.
 - State the standard of evidence to be used for the determination – preponderance of the evidence OR clear and convincing standard.

Grievance Process – General Requirements, con't.

- School districts are required to adopt a grievance process that must:
 - Include the procedures and permissible bases for appeal.
 - 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 waived.



Making a Report of Sexual Harassment



Making A Report of Sexual Harassment

- Any person alleged to be victim of conduct (student, employee, third party) can make a report of sex discrimination (including sexual harassment).
- Report can be made either to the Title IX Coordinator or any District employee
 - District employees must forward any reports they receive within **TWO (2) days** to the Title IX Coordinator.
 - Failure to do so could result in discipline for the District employee.
- Report can be made in any format
 - Phone, in person, email, telephone, etc.
- If the Title IX Coordinator is the person alleged to have engaged in sexual harassment:
 - Then the report can be made to the Superintendent or other District employee
 - The Superintendent will serve as the Title IX Coordinator



Title IX Coordinator

- Responsible for coordinating the District's efforts to comply with its obligations under Title IX
- Responsibilities include:
 - Build the District's Title IX Team
 - Coordinating training for Title IX Team and District employees
 - Coordinating all questions and compliance efforts related to District's Title IX responsibilities and nondiscrimination policies.
 - Accepting reports/complaints of Title IX violations, including formal complaints of sexual harassment.
 - Discuss "supportive measures" with the Complainant and/or Respondent.
 - Explain the process for filing a formal complaint.
 - Potentially initiate a formal complaint on behalf of a complainant if the complainant chooses not to file and the Title IX Coordinator deems it necessary.
 - Provide notice to complainant and respondent when a complaint is received.
- Prohibited from serving as the Decision-Maker but could serve as the Investigator. *

Title IX Coordinator, con't.

- Title IX Coordinator must determine if the allegations implicate any other Board policies, in addition to the Title IX policy.
 - Ex: Employee or Student Anti-Harassment Policies, Employee or Student Nondiscrimination Policies, Bullying Policy, etc.
- Title IX Coordinator must:
 - Institute supportive measures.
 - Discuss informal resolution with the parties, as appropriate.
 - Make determinations as to emergency removal.
- Housekeeping Responsibilities:
 - Monitor patterns and trends
 - Update policies and procedures
 - Recordkeeping



Conducting an Investigation



Investigator

- Responsible for conducting the investigation of complaint under the District's Title IX policy.
- Responsibilities include:
 - Conduct an impartial investigation.
 - Interview the complainant, respondent, and all relevant witnesses.
 - Gather and review evidence from all parties.
 - Prepare an investigation report, which is shared with all parties (decision-maker, Complainant, Respondent) at the conclusion of the investigation.
- Investigator and Title IX Coordinator can be the same person.*



Investigation Must be Reasonably Prompt

- Legally required.
- Will establish that the District acted reasonably and objectively.
- May yield admissions from wrong-doer.
- Will enable District to take efficient, effective, and appropriate corrective action.
- Will build credibility.
- Failure to do so:
 - May lead to further concerns and issues.
 - May be used as a basis to show that the District failed to prevent wrongdoing from occurring or that the District condoned/ratified unlawful conduct.
 - May be used by aggrieved individual as an independent cause of action (failure to investigate).
 - May create an inference of malice, which could be the basis to award punitive damages.
 - WILL lead to distrust.



Preparing for the Investigation

- Take command of the investigation!
 - Plan the investigation – checklist.
 - Who, what, when, where, why, and how questions.
 - Define the scope (and be prepared to modify).
 - Do not artificially limit the scope of an investigation.
 - You never know what you will learn until you start learning.
 - Allow witnesses and documents to lead you as problems or issues are uncovered.
 - What do you need to resolve the question of whether sexual harassment occurred?
 - Identify who may have the information needed for resolution?
 - In what order should witnesses be interviewed?
 - What documentary evidence must be reviewed?
 - Develop outline of questions (not a rigid list).
 - What do you need to learn from the complainant, respondent, and each witness?
- Preservation of Evidence
 - Secure all evidence from the outset.



Questioning the Parties and Witnesses

- Determine who should be interviewed and in what order.
 - Generally, Complainant should be interviewed first; Respondent should be interviewed last.
 - Consider the order of witnesses.
- Investigator has discretion to determine whether or not to interview those identified by the parties or other witnesses.
- Query Interviewees: “Is there anyone else who may have witnessed the incident?” “Is there anyone else who may have relevant information.” “Is there anyone else involved?”
- Follow up as needed and as new witnesses are identified in course of the investigation.
- Ensure proper notes are taken.



Questioning the Parties and Witnesses, con't.

- Be flexible!
- Ask open-ended, unbiased questions – avoiding yes/no questions.
- Ensure appropriate follow-up questions are asked that may not have been originally planned for.
 - Go with the flow; anticipate answers; prepare to pivot.
- Clarify any discrepancies, inconsistencies, and gaps.+
 - Probe deeper – “are you saying...”; “do you mean...”
- Ask for any documentary evidence the interviewee might possess.
- Paraphrasing:
 - So, if I understand this correctly...
 - People have a physiological compulsion to correct a story if it is about them.
 - “No, not like that...”
- Advise interviewees that retaliation is prohibited and that any retaliatory conduct should be reported.



Relevance

- Relevant evidence is evidence which is:
 - Closely connected to the allegations; information about events and conduct contemporaneous to the allegations.
- Relevant evidence includes both inculpatory and exculpatory evidence:
 - Inculpatory evidence: tends to indicate Respondent responsibility.
 - Exculpatory evidence: tends to excuse Respondent from responsibility.
- Questions about a Complainant's sexual predisposition or prior sexual behavior are not relevant, unless:
 - It is being used to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or
 - The questions and evidence concerns specific incidents of the Complainant's prior sexual behavior with the Respondent and is offered to prove consent.



The Investigative Report

- Date of Complaint and identification of allegations
- Description of procedural steps
- Selection of the investigator and investigation approach
- Identification of applicable Board policies and Code of Conduct/Employee Handbook provisions
- Pre-investigation evidence
- Summary of Interviews
- Summary of documentary/record evidence
- Delivery of relevant evidence and opportunity for written response
- Findings of fact and credibility determinations



Opportunity to Inspect and Review Evidence

- Both Complainant and Respondent have the opportunity to inspect and review evidence obtained as part of the investigation prior to completion of the investigative report.
- The Investigator will send the parties all evidence subject to inspection.
- The parties have 10 days to review the evidence and submit a written response, if they chose.
- The Investigator must consider any written response when completing the final investigative report.
- What is “evidence?”
- What does “inspect and review” mean?



Opportunity to Respond to Investigative Report

- Prior to completion of investigation report, Complainant and Respondent must receive a copy of the investigative report and be provided an opportunity to submit written response.
- Provide 10 days for written response to investigation report.
 - This 10-day period can run concurrently with the period whereby the Complainant and Respondent have the opportunity to submit written, relevant questions for a party and/or witness.



Written Determination of Responsibility



Decision-Maker

- Responsible for receiving the investigation report from the Investigator and making a determination.
- Responsibilities include:
 - Review the investigation report
 - Give each party the opportunity to submit written, relevant questions that the person wants asked of any party or witness, provide those questions to each person, and allow limited follow-up questions
 - Issue a written determination of responsibility, which must include all required elements as listed in Board Policy
- Cannot be the same person as either the Title IX Coordinator or Investigator.



Opportunity for Parties to Submit Questions

- After the Title IX Coordinator appoints a Decision-Maker, the Investigator provides the Decision-Maker with the Investigative Report.
- The Decision-Maker must afford the Complainant and the Respondent with the opportunity to submit written, relevant questions that a party wants asked of any party or witness.
 - The Decision-Maker determines whether the question(s) are relevant.
 - Questions about a Complainant's sexual predisposition or prior sexual behavior are not relevant, unless:
 - It is being used to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or
 - The questions and evidence concerns specific incidents of the Complainant's prior sexual behavior with the Respondent and is offered to prove consent.
- The Decision-Maker will then provide the party or witness with the question(s) and provide each party with the answer(s).
 - The Decision-Maker must then allow for additional time for limited follow-up questions.



Determination of Responsibility

- The Decision-Maker is tasked with considering both inculpatory and exculpatory evidence before issuing a written determination regarding responsibility.
- Written Determination must include all the following:
 - Identification of the allegations potentially constituting sexual harassment under Title IX;
 - A description of the 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 relevant legal standards and the District's code of conduct (applicable District policies and rules); and
 - A statement of, and rational for, the result of each allegation.



Determination of Responsibility, con't.

- The statement of, and rational for, the result of each allegation, must include:
 - A determination regarding responsibility
 - Any disciplinary sanctions the District imposes on the Respondent (or recommended sanctions).
 - Cannot be enforced until the determination becomes final.
- Whether the District will provide Complainant with any remedies to restore/preserve their equal access to the District's education program or activity.
 - Any remedies that cannot be offered as supportive measures cannot be enforced until the determination becomes final.
- The District's procedures and bases for appeal.
- If the formal complaint also constitutes a complaint of pupil discrimination, the District may also inform the Complainant of their right to appeal an adverse final determination of their complaint under state law to the DPI.



Appeals



Appeals

- Either party may file an appeal from a:
 - Determination of responsibility
 - Dismissal of a formal complaint
- The appealing party must file a written appeal with the Title IX Coordinator **within 5 business days** of either the determination of responsibility or the dismissal of a formal complaint.
- An appeal may be based on any of the following and must have affected the outcome of the matter:
 - A procedural irregularity;
 - New evidence that was not reasonably available at the time of the determination regarding responsibility was made;
 - The Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias;
 - The initial decision was substantively erroneous in that the facts did not adequately support the conclusion.



Appeals, con't.

- The District must provide both parties with the ability to submit a written statement in support of, or challenging, the outcome.
- The Appeals Decision-Maker must then issue a written decision describing the result of the appeal and the rationale for the result.
- Disciplinary sanctions and any remedies that could not be offered as supportive measures may not be enforced until the determination becomes final.
 - The determination becomes final when:
 - The time for filing an appeal has passed and no appeal has been filed; or
 - The Appeal Decision-Maker's decision is delivered to the parties if an appeal has been filed.



Disciplinary Sanctions – District Employees

- Will be imposed in accordance with Board Policies and the Employee Handbook
- Disciplinary sanctions available for District employees include, but are not limited to:
 - A formal reprimand
 - A demotion or other disciplinary reassignment
 - Suspension from work
 - Contract nonrenewal
 - Termination of employment
 - Restrictions on permission to be present on District property or at District sponsored events or activities



Disciplinary Sanctions - Students

- Disciplinary sanctions available for students include, but are not limited to:
 - Suspension or expulsion consistent with Board Policies and Wis. Stat. Sec. 120.13(1)
 - Suspension of eligibility to participate in co-curricular activities or other District-sponsored events
 - Restriction or denial of permission to be present on District property or at certain District-sponsored events
- Note that Title IX does not change your responsibilities under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973.



Disciplinary Sanctions – Third Parties

- Disciplinary sanctions available for third-parties include, but are not limited to:
 - Suspension or termination of a District-authorized role (*e.g.*, volunteer)
 - Termination or nonrenewal of third-party contracts
 - Restrictions on permission to be present on District property or at District sponsored events



Serving Impartially

- Must avoid prejudice, conflicts of interests, and bias.
- Objective listening is key.
- Project Non-Judgmentalism
 - Judgement and the specter of looming consequences may hinder truth telling.
 - When the stakes feel lower or distant, one may be more likely to tell the truth.
- Ability to judge credibility/common sense critical.

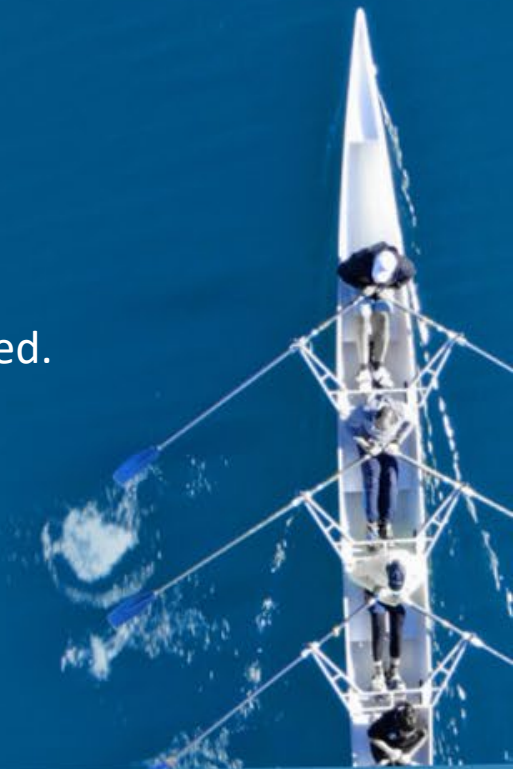


Additional Considerations



Supportive Measures

- The purpose of supportive measures is to ensure equal access to the District's education program or activity, without unreasonably burdening the other party.
- Non-disciplinary, non-punitive individualized services offered to the Complainant and/or the Respondent (not required to be provided to Respondent).
- Only offered if appropriate and reasonably available.
- No fee or charge to the Complainant or respondent for the services.
- Can be offered before or after a formal complaint is filed, or where no formal complaint is filed.
- Examples: counseling, extending deadlines, modifying work or class schedules, adding additional supervision, mutual restrictions on contact between the parties, change in work locations, leave of absence, monitoring of certain areas of the school grounds, etc.
- Any supportive measures provided should be kept confidential to the extent possible.



Supportive Measures, con't.

- When a report of sexual harassment is made, the Title IX Coordinator must contact the Complainant (who may or may not be the person who made the report) **within 2 days** to:
 - Offer and discuss the availability of supportive measures;
 - Consider the Complainant's wishes with respect to supportive measures;
 - Inform the Complainant of the availability of supportive measures with or without filing a formal complaint; and
 - Explain the process of filing a formal complaint.
- The Title IX Coordinator should document what supportive measures are provided, or document the reason why supportive measures were not provided.



Formal Complaint Filed by TIX Coordinator

- The TIX Coordinator has the authority to sign a formal complaint (if a complainant opts not to file a formal complaint) and trigger the District's Title IX grievance process.
 - Unlike the 2024 Regulations, the 2020 Regulations offer no guidance.
- The TIX Coordinator does not become a Complainant or a party to the complaint by doing so.
- The Complainant retains their status as a Complainant, even if the formal complaint is filed by the TIX Coordinator.



Emergency Removal/Administrative Leave

- When appropriate, the Title IX Coordinator may also decide to remove the Respondent from the Complainant's immediate environment.
- Emergency Removal (Students)
 - A student Respondent may be removed from the District's education program or activity on an emergency basis.
 - To do so, the TIX Coordinator must find the Respondent poses an immediate threat to the physical health or safety of any student or other individual involved after conducting an individualized safety and risk analysis.
 - The Respondent must be provided with notice and the opportunity to challenge following the removal.
 - Emergency removal of students does NOT modify any rights under IDEA, Section 504, or the ADA.
- Administrative Leave
 - Employee Respondent may be placed on administrative leave during TIX grievance process.



Mandatory or Permissive Dismissal

- When a formal complaint is filed, the TIX Coordinator must consider whether there is a basis for dismissal of the complaint (or any of the allegations) before proceeding with the TIX grievance process.
- Mandatory Dismissal – The formal complaint, or specific allegation in the formal complaint, must be dismissed if the alleged conduct:
 - Would not constitute sexual harassment as defined under Title IX, even if proved;
 - Did not occur within the District's education program or activity; or
 - Did not occur against a person in the United States.
- Permissive Dismissal – The formal complaint, or specific allegation in the formal complaint, may be dismissed if:
 - The Complainant notifies the Title IX Coordinator in writing that they want to withdraw the formal complaint (or any allegations);
 - The Respondent is no longer enrolled in the District or no longer employed by the District; or
 - Specific circumstances prevent the District from gathering evidence sufficient to reach a determination.
- If a formal complaint is dismissed:
 - Written notice must be promptly sent to all parties, including the reasons for dismissal.
 - The dismissal may be appealed through the appeal process in the Title IX policy.



Option for Informal Resolution

- Permitted by Policy (through the Regulations).
- May be offered at any point after a formal complaint has been filed and prior to reaching a determination of responsibility under the grievance process.
- May not be required of the parties.
- District may not retaliate against a party who refuses to participate in informal resolution.
- MAY NEVER BE USED: if the formal complaint alleges an employee sexually harassed a student or in cases of sexual assault.
- Facilitator controls the process.
- Process may differ across complaints, *e.g.*, mediation, restorative practices.
- If unsuccessful, investigation/grievance process is resumed.



Informal Resolution

- Notice must be provided to the parties if informal resolution is utilized.
- Notice must include:
 - The allegations
 - An explanation that resolving informally prevents the parties from resuming the grievance process for the same allegations
 - Must provide the consequences of participation (*i.e.*, forfeiture of right to grievance procedure and written determination)
 - Must state maintenance of records
 - Provided to parent/guardian
- Consent for informal resolution must be in writing.
 - Voluntary, written consent



Application of Title IX and Other District Policies

- The Title IX definition of sexual harassment is generally narrower than the broader definition found under other laws or District policy
 - Meaning even if conduct does not fall under the Title IX policy as “sexual harassment,” the District can likely address the conduct under another District policy



Confidentiality

- The Regulations prohibit “gag orders”
 - Students and employees may not be prohibited from discussing (*i.e.*, speaking or writing about) the allegations under investigation
 - This applies to the “allegations under investigation”
- May demand honest and truthful participation
 - May relay the serious nature of the allegations and the need for the integrity of the investigation



Retaliation

- Retaliation is prohibited against anyone who, in good faith, has made a report or complaint, or anyone who has assisted, participated, or refused to participate in any manner in a proceeding under the District's Title IX policy.
- Retaliation includes intimidation, threats, coercion, and discriminatory treatment.
- Complaints alleging retaliation may be filed according to the District's procedure under applicable board policy.
- For any individual who retaliates against others under the Title IX policy:
 - Employees will be subject to disciplinary action, up to and including termination.
 - Student will be subject to suspension and expulsion.
 - Third parties will be subject to all remedies available to the school board.



Recordkeeping

- All records required by state and federal law which have been created or obtained in response to a report or formal complaint of sexual harassment must be maintained for seven (7) years.
 - Formal complaint
 - Notices
 - Evidence of all contacts or attempts to contact witnesses
 - Documents and physical evidence
 - Pertinent policies, rules, laws, contracts
 - Final report
 - Disciplinary documents, if any
- District should consider how to implement a central recordkeeper for all TIX related records.



Required Training – 34 C.F.R. Sec. 106.45(b)(1)(iii)

- Districts “must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment in § 106.30, the scope of the recipient's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. A recipient must ensure that decision-makers receive training on . . . issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in paragraph (b)(6) of this section. A recipient also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in paragraph (b)(5)(vii) of this section. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.”



Q&A





Hypotheticals

Thank You!



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