

UNDERSTANDING AND IMPLEMENTING THE TITLE IX REGULATIONS

ROLES, RESPONSIBILITIES, AND LEGAL COMPLIANCE

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SEXUAL HARASSMENT

What does Title IX really mean?



It isn't just sports...

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SEXUAL HARASSMENT

Title IX of the Education Amendments of 1972 protects people from discrimination based on sex in education programs or activities that receive Federal financial assistance. Title IX states:

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.

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TITLE IX

SEXUAL HARASSMENT, HISTORY OF TITLE IX, AND RECENT LITIGATION

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TITLE IX

- 2020 Title IX Regulations (Published May 6, 2020; Effective August 14, 2020) regarding sexual harassment.
- 2024 Title IX Regulations (Published April 2024; Effective August 1, 2024;
- 2024 Title IX Regulations vacated January 9, 2025 by Eastern District of Kentucky). Department of Education guidance stated that this meant returning to 2020 Title IX Regulations.

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TITLE IX: POLICY

- On January 31, 2025, OCR issued a *Dear Colleague Letter*:
- *In light of these federal court decisions and President Trump's Defending Women Executive Order, the binding regulatory framework for Title IX enforcement includes the principles and provisions of the 2020 Title IX Rule and the longstanding Title IX regulations outlined in 34 C.F.R. 106 et seq., but excludes the vacated 2024 Title IX Rule. Accordingly, open Title IX investigations initiated under the 2024 Title IX Rule should be **immediately reoriented to comport fully with the requirements of the 2020 Title IX Rule.***

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SEXUAL HARASSMENT

#MeToo

The national movement to highlight sexual harassment, abuse, and misconduct.

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SEXUAL HARASSMENT

- A 2018 Survey demonstrated that 81% of women and 43% of men had experienced some form of sexual harassment, including 38% of women who have experienced sexual harassment in the workplace.

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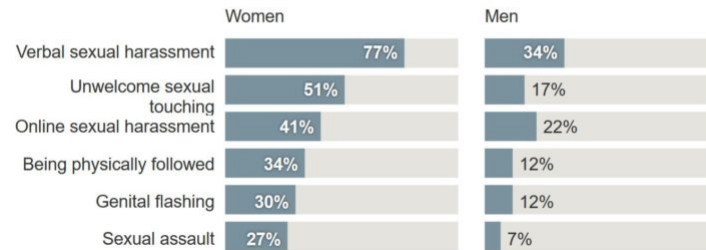
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SEXUAL HARASSMENT

What Happened, and to Whom

Percent who say they have experienced:



<https://www.nytimes.com/2018/02/21/upshot/pervasive-sexual-harassment-why-me-too-took-off-poll.html>

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SEXUAL HARASSMENT

- Nearly 50% of grade 7-12 students reported experiencing sexual harassment since 2011.
- Yet, OCR noted in 2014 that 67% of school districts had zero records of allegations of sexual harassment.

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SEXUAL HARASSMENT

Why people don't report....

- Fear of retaliation
- Fear of humiliation
- Fear of being labeled a trouble-maker
- Advised: Ignore it and it will go away
- Denial: You're overreacting
- Told they should be flattered by it
- Blamed for victim's own behavior
- Fear of being ostracized
- Fear of reaction of spouse, significant other, or friends
- Fear of career damage
- Unaware of rights

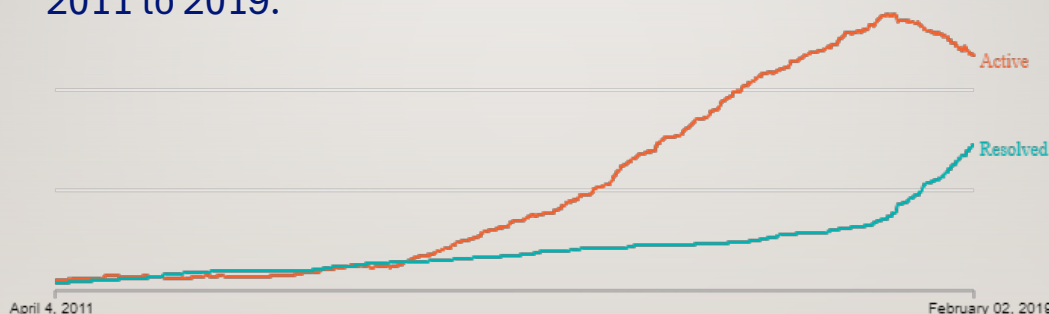
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SEXUAL HARASSMENT

Increase in Ed Department Open Title IX Investigations from 2011 to 2019:



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OFFICE FOR CIVIL RIGHTS

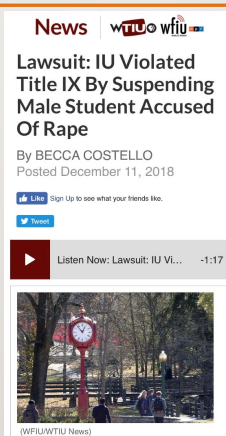
- Staffing reductions, but focus placed on certain civil rights issues.
- 7 of 12 OCR regional offices closed.
- OCR directed to prioritize investigation/litigation to “enforce rights and freedoms based on the binary nature of sex.”

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HOW WE GOT HERE



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LITIGATION RELATED TO TITLE IX INVESTIGATIONS

- ***Doe v. Oberlin College (6th Cir. 2020):***
- John Doe sued Oberlin College under Title IX after being expelled for sexual assault, and when his Title IX claim was dismissed by the trial court, he appealed to the Sixth Circuit. The Sixth Circuit reversed the trial court, holding that, “for any number of reasons,” Mr. Doe had adequately pled that his expulsion was due to unlawful gender discrimination.
- **The investigative procedure was unfair because the investigator was also the decision maker.**

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LITIGATION RELATED TO TITLE IX INVESTIGATIONS

- ***Doe v. Purdue University (7th Cir. 2019):***
- Jane and John had consensual sex 15-20 times, then Jane’s behavior became erratic and she attempted suicide. He reported this to his advisor and Jane became aware, upset, and then distanced herself from him.
- Months later, she alleged that while she had been sleeping with John, she had awoken to him groping her over her clothes and purported he admitted to digitally penetrating her when she had been sleeping weeks earlier.
- Jane Doe did not file a formal complaint, but Purdue pursued her allegations of sexual assault against John Doe. He was suspended from Navy ROTC, banned from buildings where Jane Doe had classes and his dining hall.
- John Doe submitted a written denied and alleged Jane had texted him over the holidays, sent his family cookies, and invited him to her room.

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LITIGATION RELATED TO TITLE IX INVESTIGATIONS

- ***Doe v. Purdue University (7th Cir. 2019):***
- Investigators DID NOT give John a copy of the investigation report or share its contents with him.
- Minutes before his appearance before the committee that would make a determination on Jane's allegations was the first time he saw the investigation report where it falsely reported that he had admitted to the allegations and it failed to describe Jane's suicide attempt.
- Jane did not appear at the hearing, nor did she submit a written statement.
- John appeared at the hearing and was not permitted to present witnesses.
- The committee found him responsible by the preponderance of the evidence.
- **Procedures denied a fair process.**

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LITIGATION RELATED TO TITLE IX INVESTIGATIONS

- ***Doe v. Purdue University (7th Cir. 2019):***
- John sued the university and several of its officials, asserting two basic claims. First, he argued that they had violated the Fourteenth Amendment by using constitutionally flawed procedures to determine his guilt or innocence. Second, he argued that Purdue had violated Title IX by imposing a punishment infected by sex bias. The 7th Circuit held that John adequately alleged violations of both the Fourteenth Amendment and Title IX.
- **There were sufficient allegations of gender bias for John to proceed with his claims.**

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LEGAL FRAMEWORK

“The *Gebser/Davis* framework is the appropriate starting point for ensuring that the Department’s Title IX regulations recognize the conditions under which a school’s response to sexual harassment violates Title IX. Whether the available remedy is money damages (in private litigation) or termination of Federal financial assistance (in administrative enforcement), the Department’s regulations must acknowledge that when a school itself commits sex discrimination, the school has violated Title IX.”

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LEGAL FRAMEWORK

The regulations build on and modify the framework set out in Supreme Court decisions, *Gebser v. Lago Vista Independent School District* (1998) and *Davis v. Monroe County Board of Education* (1999), which together establish a three-part framework for analyzing when a school’s response to sexual harassment indicates that the school itself engaged in intentional discrimination (the “*Gebser/Davis* framework”).

- **Specifically, the *Gebser/Davis* framework considers:**
 - (1) the definition of actionable sexual harassment;
 - (2) the school’s “actual knowledge” of such harassment; and
 - (3) the school’s “deliberate indifference” to the report of harassment.

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SCHIEBEL V. SCHOHARIE CENTRAL SCHOOL DISTRICT, __ F.4TH __, 2024 WL 4644958 (2ND CIR. NOV. 1, 2024).

- A three-judge panel of the Second Circuit has concluded that a contractor who provided a presentation to students in a school district has plausibly alleged that the district discriminated against him on the basis of sex in violation of Title IX.
- The panel described Schiebel as a "veteran agriculture educator" who brought the "Mobile Maple Experience"-a trailer with educational programming about the maple syrup industry-to the SCSD campus. About a month later, the SCSD Superintendent informed Schiebel that the mother of a student had reported that Schiebel made her daughter feel uncomfortable during the program and that he would need to file Title IX paperwork. For several weeks thereafter, Schiebel asked to be informed of the specific allegations, "and SCSD ignored his requests."

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SCHIEBEL V. SCHOHARIE CENTRAL SCHOOL DISTRICT, __ F.4TH __, 2024 WL 4644958 (2ND CIR. NOV. 1, 2024).

- When SCSD finally agreed to discuss the matter with Schiebel, the panel said, the meeting lasted about twenty-five minutes. Schiebel alleges that the Title IX coordinator of SCSD was "hostile and accusatory" throughout the meeting, telling him that "her back was to the wall and she was aware of the exits" because she was scared of him. The coordinator then informed Schiebel of the accusations against him: A student had said that, during the maple syrup program, Schiebel "reached around her with two hands and had touched her breast and buttocks." Schiebel did not recall the complaining student or any such incident, but he said that it was possible that "he may have reached around a student at one point in the trailer to get something." After Schiebel made this statement, the coordinator abruptly ended the meeting.

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*SCHIEBEL V. SCHOHARIE CENTRAL SCHOOL DISTRICT, __
F.4TH __, 2024 WL 4644958 (2ND CIR. NOV. 1, 2024).*

- Two weeks later, the coordinator determined that the sexual harassment allegation against Schiebel was well-founded. In a letter reporting the findings of her investigation, the coordinator explained that the student had "alleged conduct that, whether intentional or not ... constitutes sexual harassment in violation of [school district] policy." The coordinator decided that the harassment occurred because Schiebel "did not deny that he 'may have reached around the Student' while attempting to reach for cups and supplies." As a sanction, the school district banned the Mobile Maple Experience from its campus for five years. Schiebel lost his job as a result of the coordinator's letter. Schiebel appealed the decision to the Superintendent, who upheld it.

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*SCHIEBEL V. SCHOHARIE CENTRAL SCHOOL DISTRICT, __
F.4TH __, 2024 WL 4644958 (2ND CIR. NOV. 1, 2024).*

- Scheibel then filed this lawsuit, alleging that SCSD erroneously found that he committed sexual harassment because of its sex-based bias, in violation of Title IX. He also asserted state law claim. The district court dismissed the Title IX claim, holding that although Schiebel had plausibly alleged that the finding was erroneous, he had not plausibly alleged that sex-based bias "was a motivating factor behind the erroneous finding." The district court declined to exercise supplemental jurisdiction over the state law claims.

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SCHIEBEL V. SCHOHARIE CENTRAL SCHOOL DISTRICT, __ F.4TH __, 2024 WL 4644958 (2ND CIR. NOV. 1, 2024).

- Schiebel appealed the judgement of the district court dismissing his Title IX claims against the school district and his state law claims. The panel found that Schiebel's complaint states a Title IX claim under either of two theories. "First, the allegations indicate that the school district was deliberately indifferent to the truth or falsity of the accusations against him because its investigation was so deficient as to constitute a sham grievance process and its decision was inexplicable. Second, the allegations indicate that the school district affirmatively discriminated against Schiebel because the Title IX coordinator exhibited bias against Schiebel based on his sex."
- The panel reversed the judgment of the district court and remanded.

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S.J. FOR N.J. V. PERRYTON IND. SCH. DIST., 2024 WL 4906751 (N.D. TEXAS NOV. 27, 2024)

- A Texas district court has allowed a parent's case to proceed against a school district which the plaintiff claims violated a student's Fourteenth Amendment due process and equal protection rights as well as Title IX. The claims stem from the alleged actions of an assistant football coach, later promoted to Athletic Director, who engaged in inappropriate relationships and interactions with minor female students. The parent alleges that the coach focused efforts on the 15-year-old student. His alleged behavior included personal conversations, including phone calls lasting over six hours, Snapchat communications, other social media contact, and text messaging. He also freely used a school-required communications platform to cultivate his relationship with the student. Eventually, he told her that he loved her and had sexual encounters with her at school up to the time of his arrest. According to the complaint, numerous teachers, parents, coaches, students, and community members noticed, discussed, and reported the coach's behavior to little avail. In April 2024, local law enforcement arrested and charged him with sexual assault of a minor child. He was arrested by federal law enforcement in June 2024.

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S.J. FOR N.J. V. PERRYTON IND. SCH. DIST., 2024 WL 4906751 (N.D. TEXAS NOV. 27, 2024)

- The Court found that the plaintiff had satisfied the burden at this stage to allege a Section 1983 claim. While one teacher's sexual abuse against one student is alone not enough to say there was a custom or policy at the school district that permitted the abuse of students this coach's abuse is not the only instance of alleged abuse at PISD. The court said PISD "has a recent history of sexual harassment and sexual abuse claims. ... Appallingly, within 'the last three ... years, at least three ... separate claims have been made concerning sexual harassment or sexual abuse of students at [PISD] by employees of [PISD].'" The plaintiff "declares a litany of policies and customs were moving forces behind N.J.'s abuse," the court said. "These can be loosely grouped into a custom of failing to enforce its own policies and a custom of failing to adequately train PISD's employees that amount to a deliberate indifference to N.J.'s constitutional rights." The plaintiff puts forth evidence, the court determined, that PISD has a "well settled" custom of failing to properly train staff on PISD's policies; and that PISD has a custom of failing to implement its own policies against sexual abuse. PISD's "feeble" attempt to counter the plaintiff's allegations by saying that a custom must be persistent and widespread was not enough to grant the Motion to Dismiss.

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S.J. FOR N.J. V. PERRYTON IND. SCH. DIST., 2024 WL 4906751 (N.D. TEXAS NOV. 27, 2024)

- "PISD had a history of sexual abuse stemming from its unexplained failure to train and implement its own policies. In response, the Board of Trustees did nothing and continued the status quo. Such lethargy constitutes deliberate indifference to the likelihood that future abuse would occur."
- On the plaintiff's Title IX claim, the court similarly found sufficient allegations that a school official with authority to take corrective action had actual notice of a substantial risk that the coach was abusing or would abuse the student, and that the district acted with deliberate indifference toward the coach's sexual predation against the student.

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THE BALANCING ACT

The Title IX regulations require school districts to balance the rights of students/employees who are victims of sexual harassment (to **stop, prevent, and remedy** the effects of harassment), with the rights of accused students/employees to ensure a fair process.

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DUE PROCESS

- Due process concerns prompted these Title IX regulations, so it is important to note on a very basic level, due process requires:
 - Notice;
 - Opportunity to present evidence;
 - Opportunity to hear evidence against (and to cross-examine it);
 - Opportunity for representation;
 - Requirement for unbiased decision to be based upon the record of evidence.

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TITLE IX SCOPE

Today's
Primary Focus

Sex Discrimination

(uses 2:260 grievance procedure)

- Disparate Treatment
- Disparate Impact

Sexual Harassment

(uses 2:265 grievance procedures)

- *Quid Pro Quo*
- Hostile Environment (SPOO)
- Sexual Assault Dating Violence
- Domestic Violence
- Stalking

Retaliation

(uses 2:260 grievance procedure)

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PRESS POLICY UPDATES

- Ensure your policy is consistent with the 2020 rules.
 - *PRESS 116 was issued in April 2025.*

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TERMS USED IN REGULATIONS

- Respondent = Accused
- Complainant = Victim/Accuser
- Recipient = School receiving federal funds

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TERMS USED IN REGULATIONS

- Actual Knowledge
- Formal Complaint
- Supportive Measures
- Informal Resolution
- Complaint Grievance Process



Much, much more on
these as we proceed...

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INCIDENT REPORT VS FORMAL COMPLAINT

- Incident Report (report) is typically verbal, but might be in writing.
- It is information that something happened that might have been Title IX Sexual Harassment.
- Triggers the Title IX Coordinator's intake responsibilities.
- Formal Complaint (complaint) is a signed, written request alleging a violation of Title IX.
- Formal Complaints flow from an Incident Report when the Complainant decides they would like to proceed with the investigation route.
- Triggers a Notice of Investigation/Notice of Allegations.

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TITLE IX

OVERVIEW OF THE ROLES OF TITLE IX PERSONNEL

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TITLE IX PERSONNEL

- Title IX Coordinator
- Investigator(s)
- Initial Decision-Maker
- Appellate Decision-Maker
- Informal Resolution Facilitator

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TITLE IX PERSONNEL

Title IX Coordinator

- The Title IX Coordinator is the individual designated by the school district to coordinate compliance with Title IX, including overseeing all sex discrimination complaints and identifying and addressing any patterns or systematic problems that arise during the review of such complaints.

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TITLE IX PERSONNEL

Title IX Coordinator is also responsible for:

- determining whether the complaint allegations are prohibited sexual harassment as alleged;
- appointing an investigator to conduct a formal investigation;
- ensuring reports and complaints are handled properly in a prompt and timely manner;
- informing students, employees, and witnesses of their rights during a formal investigation and what supportive measures are available to them;
- confirming that all parties have been notified of the investigation's conclusion and the right to, and procedures for, an appeal, if applicable;
- maintaining information and documentation related to the investigation in a secure manner.

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TITLE IX PERSONNEL

The Investigator is the person that conducts the investigation once a formal complaint is filed.

- Conducts impartial interviews of the Complainant, Respondent, and witnesses;
- Ensures the burden of proof is on the school and not the parties;
- Collects evidence such as, but not limited to, statements, documents, text messages, chats, video, audio and photographs;
- Prior to completion of the investigative report, sends to the Complainant, the Respondents and the Advisors the evidence collected so that they can inspect, review and provide comments;
- Prepares a written investigative report fairly summarizing the relevant evidence;
- Sends the investigative report to the Complainant, Respondent and the Decision-Maker.

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TITLE IX PERSONNEL

Initial Decision-Maker

- Reviews the investigation report;
- Provides parties with the opportunity to submit written cross-examination questions;
- Authors the Written Determination.

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TITLE IX PERSONNEL

Under PRESS 2:265-AP2:

- “The Superintendent or designee acts as the **Initial Decision-Maker** for all Formal Title IX Sexual Harassment Complaints, unless it involves allegations against the Superintendent or designee or against a Board Member. In such cases, an outside consultant, e.g., an attorney or retired school administrator, acts as the Initial Decision-Maker.”

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TITLE IX PERSONNEL

Appellate Decision-Maker

- When an appeal is filed, the Appellate Decision-Maker reviews the entire file.
- First, they look for whether there is an adequate basis for appeal. If not, the Written Determination of the Initial Decision-Maker is affirmed.
- If there is an adequate basis for appeal, then the Appellate Decision-Maker can direct the case be re-opened for further investigation, overturn the decision, or affirm the decision.

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TITLE IX PERSONNEL

Under PRESS 2:265-AP2:

- **Appellate Decision-Maker** – An individual or group, e.g., a Board-appointed appeal examiner or the Board, which reviews an appeal of the Initial Decision-Maker's determination regarding responsibility or a dismissal of a Formal Title IX Sexual Harassment Complaint. The Appellate Decision-Maker cannot be the same person as the Initial Decision-Maker, the Investigator, or the Title IX Coordinator. The Appellate Decision-Maker must be free from conflicts of interest or bias against complainants and respondents generally or against an individual Complainant or Respondent, and must be trained to serve impartially.

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TITLE IX PERSONNEL

Informal Resolution Facilitator

- When the parties voluntarily agree in writing to participate in informal resolution, the facilitator works to resolve the allegations without the need for a full investigation and Written Determination.

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TITLE IX PERSONNEL

Deciding which role for which individual –

- Can the Title IX Coordinator be an investigator?
 - *Yes, but not on a complaint where they facilitated informal resolution or have a conflict of interest.*
- Can the Title IX Coordinator be the Initial or Appellate Decision-Maker?
 - *No, and the Title IX Coordinator should be the subordinate of the decision-maker, and never the other way around.*

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TITLE IX PERSONNEL

- **Deciding which role for which individual –**
- Can the Investigator facilitate informal resolution?
 - *No, not on the same complaint or where there may be a conflict of interest.*
- Can the Investigator be the Initial or Appellate Decision-Maker?
 - *No, and the Investigator should be the subordinate of the decision-maker, and never the other way around.*

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TITLE IX PERSONNEL

- **Deciding which role for which individual –**
- Can the Decision-Maker facilitate informal resolution?
 - *No, not on the same complaint or where there may be a conflict of interest.*
- Can the Decision-Maker assist with the investigation?
 - *No, that is the separate responsibility of the Investigator.*

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TITLE IX PERSONNEL

- Title IX Coordinator
- Investigator(s)
- Initial Decision-Maker
- Appellate Decision-Maker
- Informal Resolution Facilitator



***Who will fill these
roles in your school
district?***

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TITLE IX PERSONNEL IN A LARGE DISTRICT SETTING

- Title IX Coordinator → Principal or Assistant Supt
- Investigator(s) → Principal, AP or Assistant Supt
- Initial Decision-Maker → Superintendent
- Appellate Decision-Maker → AP or AS not serving as investigator
- Informal Resolution Facilitator → Principal



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TITLE IX PERSONNEL IN A SMALL DISTRICT SETTING

- Title IX Coordinator → Probably Principal
- Investigator(s) →
- Initial Decision-Maker → Superintendent
- Appellate Decision-Maker → Trained Board, Retired Administrator,
or Neighboring District Administrator
- Informal Resolution Facilitator →



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TITLE IX COORDINATOR

The Title IX Coordinator is responsible for the overall coordination of Title IX compliance by the school district.

- Sexual harassment complaints, but also athletics and gender discrimination complaints (2:260).

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TITLE IX COORDINATOR

- Contact information for Title IX Coordinator (which includes: name or title, office address, e-mail address, and telephone number) must be provided to students, employees, applicants for admission and employment, parents or legal guardians of elementary and secondary school students, all unions.

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TITLE IX COORDINATOR

- Contact information for Title IX Coordinator must also be **prominently displayed on the school website**.
- Schools should also publish the materials used to train Title IX Coordinators, investigators, decision-makers, and persons who facilitate informal resolutions on the school's website or be prepared to make materials available upon request for inspection by members of the public.
 - Be aware of this when hiring outside consultants for this training—the school will need to secure permission from the consultant to publish the training materials.

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TITLE IX COORDINATOR

- Receives reports and formal complaints of Title IX Sexual Harassment.

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TITLE IX COORDINATOR

- Provides information to the Complainant and/or Respondent about the process.

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TITLE IX COORDINATOR

- May initiate an investigation under their own signature without a formal complaint from the Complainant.

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TITLE IX COORDINATOR

- Makes determination as to whether an allegation or complaint should be dismissed prior to investigation.

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TITLE IX COORDINATOR

- Ensures that all formal complaints are investigated and adjudicated.

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TITLE IX COORDINATOR

- Offers the Complainant and the Respondent the possibility of an informal resolution process (when applicable).

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TITLE IX COORDINATOR

- Responsible for the effective implementation of supportive measures (in all cases) and remedies (after grievance process and determination by decision-maker).
 - “The Title IX Coordinator must serve as the point of contact for the affected students to ensure that the supportive measures are effectively implemented so that the burden of navigating paperwork or other administrative requirements within the recipient/school’s own system does not fall on the student receiving the supportive measures”.

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TITLE IX COORDINATOR

- **Document:** If a recipient/school does not provide a complainant with supportive measures that have been requested, then they **must document the reasons why** such a response was not clearly unreasonable in light of the known circumstances. Thus, if a Title IX Coordinator determines that a particular supportive measure was not appropriate even though requested by a Complainant, the recipient must document why the recipient’s response to the complainant was not deliberately indifferent.

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TITLE IX COORDINATOR

- Determines if emergency removal or administrative leave is appropriate.

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TITLE IX COORDINATOR

- Ensures that the required written notifications are sent to the Complainant and the Respondent.

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TITLE IX COORDINATOR

- Must receive Title IX training and ensure that Investigators, Decision-makers, and Facilitators of Informal Resolution receive Title IX training.
 - Maintain documentation of training

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TITLE IX COORDINATOR

A recipient must maintain for a period of seven years records of –

- Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript . . . , any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant . . . ;
- Any appeal and the result therefrom;
- Any informal resolution and the result therefrom; and
- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.

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TITLE IX COORDINATOR

- The Title IX Coordinator may also be an investigator.

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TITLE IX

PREVENTION AND RESPONSE

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PREVENTION AND RESPONSE

- K-12 schools must respond whenever ANY employee has notice of sexual harassment, including allegations of sexual harassment.
- The notice can come from the complainant themselves as well as any third party, including parents and guardians.

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WHAT IS ACTUAL KNOWLEDGE?

Actual Knowledge – Notice of sexual harassment or allegations of sexual harassment to any District employee or to the District's Title IX Coordinator. Assumption of knowledge based solely on the District's status as an employer or other presumption under law does not constitute actual knowledge. This standard is not met when the only official of the District with actual knowledge is the Respondent. *Notice* as used here includes, but is not limited to, a report or complaint of sexual harassment to the Title IX Coordinator in person, by mail, by telephone, or by email using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

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PREVENTION AND RESPONSE

- Without question, the most important solution to issues of sexual harassment is to make efforts to prevent it from happening in the first place.
- *Is there such a thing as a good sexual harassment training?*

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PREVENTION AND RESPONSE

- Age-appropriate content related to sexual abuse awareness, teen dating violence, and student social/emotional development.
- Training for all school staff.
- Notification (as noted below) of policy and Title Coordinator contact information.

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PREVENTION AND RESPONSE

PA 101-418 (Effective January 1, 2020):

Sec. 10-20.69. *Policy on sexual harassment.* Each school district must create, maintain, and implement an age-appropriate policy on sexual harassment that must be posted on the school district's website and, if applicable, any other area where policies, rules, and standards of conduct are currently posted in each school and must also be included in the school district's student code of conduct handbook.

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PREVENTION AND RESPONSE

One in seven teens report that they are sending sexts, and one in four are receiving sexts, according to a study of over 110,000 teens from around the world published in February 2018, in [JAMA Pediatrics](#).

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PREVENTION AND RESPONSE

C.R. v. Eugene Sch. Dist. 4J, 835 F.3d 1142, 1145 (9th Cir. 2016), cert. denied, 137 S. Ct. 2117 (2017):

“Because the harassment happened in such close proximity to the school, administrators could reasonably expect the harassment’s effects to spill over into the school environment. Simply seeing their harassers in the hallway could well be disruptive for affected students. Similarly, a student who is routinely subject to harassment while walking home from school may be distracted during school hours by the prospect of the impending harassment. A student’s ability to focus during the day could be impaired by intrusive worries about whether she or he would once again face uncomfortable and sexually intimidating comments immediately after school lets out...”

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PREVENTION AND RESPONSE

- A person may make a report to the Title IX Coordinator, Nondiscrimination Coordinator, Building Principal, Assistant Building Principal, Dean of Students, a Complaint Manager, or **any employee with whom the person is comfortable speaking**. A person who wishes to make a report may choose to report to a person of the same gender.
- School employees shall respond to incidents of sexual harassment by **promptly making or forwarding the report to the Title IX Coordinator**. An employee who fails to promptly make or forward a report may be disciplined, up to and including discharge.
- Using “or any employee with whom the Complainant is comfortable speaking” ensures Title IX compliance because Title IX deems “any employee” of an elementary or secondary school who has notice of sexual harassment or allegations of sexual harassment to have *actual knowledge*. Therefore, a report to any employee triggers a district’s duty to respond.

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SEXUAL HARASSMENT

SB75, now PA-101-221, created multiple new requirements related to sexual harassment, the key provisions affecting school districts, include:

- Creates the Workplace Transparency Act:
 - Limits employment agreements from restricting employees from reporting allegedly unlawful practices.

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SEXUAL HARASSMENT

SB75, now PA-101-221, created multiple new requirements related to sexual harassment, the key provisions affecting school districts, include:

- Extends the Illinois Human Rights Act to protect actual or perceived characteristics; extends the concept of working environment beyond physical location; adds an explicit definition of “harassment”; and makes harassment of employees and non-employees a civil rights violation (articulates standard regarding an “awareness of” and “failure to respond”).

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SEXUAL HARASSMENT

SB75, now PA-101-221, created multiple new requirements related to sexual harassment, the key provisions affecting school districts, include:

- *"Harassment" means any unwelcome conduct on the basis of an individual's actual or perceived race, color, religion, national origin, ancestry, age, sex, marital status, order of protection status, disability, military status, sexual orientation, pregnancy, unfavorable discharge from military service, or citizenship status that has the purpose or effect of substantially interfering with the individual's work performance or creating an intimidating, hostile, or offensive working environment. For purposes of this definition, the phrase "working environment" is not limited to a physical location an employee is assigned to perform his or her duties.*

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SEXUAL HARASSMENT

SB75, now PA-101-221, created multiple new requirements related to sexual harassment, the key provisions affecting school districts, include:

- Creates new requirements for mandatory training:
 - The Act requires the Illinois Department of Human Rights to adopt a new model sexual harassment prevention training program; requires all employers must use the model or establish a training program that equals or exceeds the minimum standards provided by the model; and employers are subject to civil penalties for violations.
 - The Act provides for civil penalties to be assessed against employers for failure to provide mandatory training or mandatory disclosures, to be assessed following an opportunity to comply with an Order to Show Cause, with penalties in escalating amounts from \$500 to \$5,000 per offense.

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SEXUAL HARASSMENT

SB75, now PA-101-221, created multiple new requirements related to sexual harassment, the key provisions affecting school districts, include:

- Creates the Sexual Harassment Victim Representation Act (for Unions) to prohibit dual representation. The intent of the Act is to require unions to designate separate union representatives for an alleged victim and an alleged perpetrator who is a “member of the same union” as the victim.

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SEXUAL HARASSMENT

SB75, now PA-101-221, created multiple new requirements related to sexual harassment, the key provisions affecting school districts, include:

- Amends the Victims' Economic Security and Safety Act (VESSA) to add “gender violence” as grounds for VESSA protection and leave; also updates list of ‘electronic communication’ to include online platforms and social networks; and defines gender violence.

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PREVENTION AND RESPONSE

- Every employer in the State of Illinois is required to provide employees with annual sexual harassment prevention training that complies with section 2-109 of the Illinois Human Rights Act (“IHRA”).
- All employees regardless of their status (i.e. short-term, part-time, or intern) must be trained.
- If an employer has an independent contractor working on-site with the employer’s staff, the independent contractor should receive sexual harassment prevention training.

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PREVENTION AND RESPONSE

1. Develop, implement and regularly communicate the employer’s sexual harassment policy.
2. Provide training for administrators, employees, and students on sexual harassment prevention.
3. Ensure clear communication on how to report incidents of sexual harassment or conduct of a sexual nature.

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PREVENTION AND RESPONSE

- 4. Administrators should monitor their environment to ensure the school is free of sexual harassment – both employee and student.
- 5. Administrators must lead by example and model appropriate conduct – refrain from engaging in conduct of a sexual nature.

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PREVENTION AND RESPONSE

- 6. Administrators should conduct a sexual harassment climate check throughout the year -discuss the topic at a team or staff meeting, in-service day or as part of structured communication.
- 7. Ensure that all school employees (all means all) are aware of what to do when they have knowledge of an allegation of sexual harassment.

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MANDATED REPORTER

- Don't overlook the potential mandated report to DCFS and/or law enforcement in many of these situations!
 - If there is suspected abuse or neglect → DCFS
 - If there is criminal activity → law enforcement

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PREVENTION AND RESPONSE

Effective August 14, 2020, every school that has a website must post important information about the school's Title IX policies and procedures on their website.

The new Title IX regulations specifically require schools to post on their websites:

1. The contact information for the school's Title IX Coordinator(s)
2. The school's non-discrimination policy
3. All training materials used to train the school's Title IX personnel

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TITLE IX

THE DEFINITION OF SEXUAL HARASSMENT AND THE SCOPE OF EDUCATIONAL PROGRAMS AND ACTIVITIES

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SEXUAL HARASSMENT OCCURRING IN A SCHOOL'S "EDUCATION PROGRAM OR ACTIVITY"

- Title IX applies to persons in the United States with respect to education programs or activities that receive Federal financial assistance.
- "Program or activity" includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred.

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SEXUAL HARASSMENT OCCURRING IN A SCHOOL'S "EDUCATION PROGRAM OR ACTIVITY"

- "Substantial control" → while factors "such as whether the recipient funded, promoted, or sponsored the event or circumstance where the alleged harassment occurred . . . may be helpful or useful for recipients to consider . . . to determine the scope of a recipient's program or activity, no single factor is determinative."
- "a recipient's Title IX obligations extend to incidents of sexual harassment that occur off campus if any of three conditions are met:
 - 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);
 - the recipient exercised substantial control over the respondent and the context of alleged sexual harassment that occurred off campus pursuant to § 106.44(a);

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WHAT IS SEXUAL HARASSMENT?

Sexual harassment as defined in Title IX is prohibited. Any person, including a District employee or agent, or student, engages in Title IX Sexual Harassment when that person engages in conduct on the basis of an individual's sex that satisfies one or more of the following:

1. A District employee conditions the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
2. 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;
3. *Sexual assault* as defined in 20 U.S.C. §1092(f)(6)(A)(v), *dating violence* as defined in 34 U.S.C. §12291(a)(11), *dating violence* as defined in 34 U.S.C. §12291(a)(12), or *stalking* as defined in 34 U.S.C. §12291(a)(36).

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BREAKING DOWN SPOO

- Conduct on the basis of an individual's sex
- 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.

Does it involve a private body part (breasts, genitals, buttocks)?

Would the person have done the same to a person of a different gender?

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BREAKING DOWN SPOO

- Conduct on the basis of an individual's sex
- 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.

Was the conduct invited?

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BREAKING DOWN SPOO

- Conduct on the basis of an individual's sex
- 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.

A reasonable person shares the same general characteristics and the context of the incident or pattern.

e.g., female, 14 year old, student.

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BREAKING DOWN SPOO

- Conduct on the basis of an individual's sex
- 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.

- Egregiousness (more than just rude or insulting).
- Circumstances like ability to remove oneself matters.
- More severe when accompanied by physical conduct, threats, or violence.

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BREAKING DOWN SPOO

- Conduct on the basis of an individual's sex
- 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.

Widespread, openly practiced, well-known, or widely distributed, or persistent/repeated.

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BREAKING DOWN SPOO

- Conduct on the basis of an individual's sex
- 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.

Is it objectively offensive to a person in the same shoes (female, 14 year old, student) as the Complainant?

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BREAKING DOWN SPOO

- Conduct on the basis of an individual's sex
- 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.

Difficult focusing?
Missed school?
Skipped a particular
class?
Grades dropped?

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WHAT IS SEXUAL ASSAULT?

- Rape
- **Fondling** – *the touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.*
- Incest
- Statutory Rape
- Sodomy
- Sexual Assault with an Object

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TITLE IX

HOW TO SERVE IMPARTIALLY, CONFLICTS OF INTEREST, AND BIAS

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TITLE IX PERSONNEL TRAINING

- Training of Title IX personnel must include training on:
 - the definition of sexual harassment in the Final Rule,
 - the scope of the school'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.**
 - Schools must ensure that decision-makers receive training on any technology to be used at a live hearing, if applicable.

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IMPARTIALITY

- Title IX Personnel includes the Coordinator, investigators, decision-makers, and people who facilitate any informal resolution process.
 - All personnel are required to be “free from conflicts of interest or bias against complainants or respondents.”

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IMPARTIALITY

Impartiality is integral to the Title IX formal grievance process.

- Serving impartially includes avoiding the following:
 - Prejudgment of the facts at issue
 - Conflicts of interest
 - Bias

But what do each of these things mean (and how do you avoid them)?

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PREJUDGMENT

Prejudgment refers to passing judgment prematurely or without sufficient reflection or investigation. For example:

A Complainant was crying while making a sexual harassment report. You conclude that because the Complainant was crying when describing the conduct at issue, the Complainant must be telling the truth and the Respondent must be responsible for the actions alleged.

Neither Complainants reporting sexual harassment, nor Respondents defending against allegations of sexual harassment, should be met with prejudice throughout the Title IX process.

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PREJUDGMENT

Prejudgment often occurs when allegations involve sexual conduct, sexual history, drugs, and/or alcohol use. Examples of prejudging the facts:

- *The Complainant was drinking at the time of the incident so the investigator presumes his/her recollection of an event is not accurate.*
- *The Respondent and Complainant were in a consensual relationship previously so the Title IX coordinator assumes consent to particular conduct was given.*

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PREJUDGMENT

Sex stereotypes also often lead to prejudice – for example:

- *Men are sexually aggressive and/or likely to perpetrate sexual assault.*
- *Women have regret about sexual experiences and are likely lying about sexual assault.*
- *Men cannot be sexually assaulted.*
- *Women complaining about sex harassment are just jumping on the "#MeToo" bandwagon*

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PREJUDGMENT

- Subordinate relationships:
 - Decision-maker authority relationships may raise concerns about prejudice.

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PREJUDGMENT

How do you avoid prejudging facts?

- ✓ Keep an open mind throughout the investigation process.
- ✓ Be mindful about Title IX personnel roles.
- ✓ Wait to hear all of the facts (there are two or more) sides to every story.
- ✓ Seek out additional facts and/or witnesses if you feel yourself jumping to conclusions – facts matter, assumptions do not!

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PREJUDGMENT

Mr. Jones, the high school assistant principal, is the investigator on a new case regarding two students—Casey and Riley. He was working on drafting a script for a witness interview. The Title IX Coordinator, the high school principal walked in and asked how the case was going. Mr. Jones responded, “Working on the new case you gave me. You probably know Riley—one of those kids who doesn’t think the rules applies to him because he plays sports and his mom is a teacher here.” The Title IX Coordinator asked, “So you think he did it?” Mr. Jones said, “Well, based on what Casey reported—and what I’ve heard about Riley’s reputation—I wouldn’t be surprised. Some of these kids think they are untouchable.”

What went wrong?

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CONFLICT OF INTEREST

- A “conflict of interest” occurs if, within a particular decision-making context, an individual is subject to two coexisting interests that are in direct conflict with each other and the decision-making process is disrupted or compromised in a manner that affects the integrity or the reliability of the outcomes.

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CONFLICT OF INTEREST

- 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 is a situation where it could reasonably be perceived that a competing interest could improperly influence the performance of one's official duties and responsibilities.
- A **potential** conflict of interest arises where a personal interest or obligation could conflict with one's official duties and responsibilities in the future.

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CONFLICT OF INTEREST

- Conflict of interests may arise from family, friendships, employment relationships, financial investments, or other social factors.

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CONFLICT OF INTEREST

Carter went to the Title IX Coordinator and reported he had experienced inappropriate comments in class and at soccer practice from his teacher and coach (Ms. Roberts)—comments about his appearance and dating/sexual life. What Carter didn't know was that Ms. Roberts was best close friends with the Title IX Coordinator. They had previously coached club soccer together, were in the same weekend running club, and they lived on the same street where their kids frequently played together and the wives had a book club. Because there were not many other trained investigators, the Title IX Coordinator assigned herself to the investigation. The Superintendent (who would be the Decision-Maker) found out about the investigation and asked the Title IX Coordinator what was going on. The Title IX Coordinator told the Superintendent, "Carter was overly sensitive to some comments that Ms. Roberts made to him. He is making a big deal over nothing, but we are going through the steps anyway. I'd like to make this just go away. I know Ms. Roberts would never do what he has alleged—we have been friends for a decade."

What went wrong?

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BIAS

- A **bias** is a tendency, inclination, or prejudice toward/against someone.
 - Biases are often based on stereotypes, rather than actual knowledge of an individual or a particular circumstance.
 - They are frequently based on a person's gender, race, or sexual orientation.
- In effect, biases are “shortcuts” our mind makes that can result in prejudgments, which lead to improper decisions or potentially discriminatory practices.

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BIAS

Cole (7th grade) filed a complaint that Reece (7th grade) had, daily, been making sexually explicit jokes and had been “grazing” Cole’s butt with Reece’s hand or arm when Cole got off of the bus. They were the last off of the bus so there were no witnesses.

During the investigation, the investigator documented that Reece admitted to some of the conduct, but stated “it was all just a joke.”

After the investigation, the Initial Decision-Maker found that it was not a violation because, “Reece is a good kid. He’s in the gifted program and volunteers in the reading with kindergarteners program. I don’t think he meant any harm.”

What went wrong?

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IMPARTIALITY

- Understanding bias is particularly important in the Title IX context because:
 - Most evidence is circumstantial rather than direct
 - There are social stigmas associated with sex, alcohol, and drugs
 - Improper sex-based bias is prevalent and prevents reliable outcomes
 - There are also potential biases related to economic status, gender, race/ethnicity, and academic standing

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IMPARTIALITY

- Illinois “Sample” Jury Instructions:
 - *It is your duty to resolve this case by determining the facts based on the evidence and following the law. Your decision must not be based upon speculation, prejudice, or sympathy. Each party should receive your same fair consideration.*

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IMPARTIALITY

- Illinois “Sample” Jury Instructions:
- *Facts may be proven by evidence or reasonable inferences drawn from the evidence. Evidence consists of the testimony of witnesses you will hear and of exhibits you will read. You should consider all the evidence without regard to which party produced it. You may use common sense gained from your experiences in life, in evaluating what you see and hear during the investigation.*

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IMPARTIALITY

- Illinois “Sample” Jury Instructions:
- *In evaluating the credibility of a witness, you may consider that witness' ability and opportunity to observe, memory, manner, interest, bias, qualifications, experience, and any previous inconsistent statement or act by the witness concerning an issue important to the case.*

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IMPARTIALITY

- Illinois “Sample” Jury Instructions:
- *You should not do any independent investigation or research on any subject relating to the case. What you may see or hear outside the investigation is not evidence.*

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IMPARTIALITY

- Treat all informal reports of sexual harassment equally, regardless of the form of the report or the demographics of the Complainant or Respondent.
- Make no assumptions about the allegations based on the demographics of the Complainant or Respondent.
- Offer supportive measures to Complainants and Respondents equally. Keep an open mind and actively listen to all the facts presented.
- View all relevant evidence objectively.
- Remember that each case is unique.

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TITLE IX

NOTICE OF A COMPLAINT AND SUPPORTIVE MEASURES

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NOTICE

- K-12 schools must respond whenever ANY employee has notice of sexual harassment, including allegations of sexual harassment.
- The notice can come from the complainant themselves as well as any third party, including parents and guardians.

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NOTICE

- A person may make a report to the Title IX Coordinator, Nondiscrimination Coordinator, Building Principal, Assistant Building Principal, Dean of Students, a Complaint Manager, or any employee with whom the person is comfortable speaking. A person who wishes to make a report may choose to report to a person of the same gender.
- **School employees shall respond to incidents of sexual harassment by promptly making or forwarding the report to the Title IX Coordinator. An employee who fails to promptly make or forward a report may be disciplined, up to and including discharge.**
- Using “or any employee with whom the Complainant is comfortable speaking” ensures Title IX compliance because Title IX deems “any employee” of an elementary or secondary school who has notice of sexual harassment or allegations of sexual harassment to have *actual knowledge*. Therefore, a report to any employee triggers a district’s duty to respond. 34 C.F.R. §106.30.

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RESPONSE REQUIREMENT STANDARD

- Schools must respond promptly to Title IX sexual harassment in a manner that is not deliberately indifferent, which means “a response that is not clearly unreasonable in light of the known circumstances.”
 - PRESS Procedure indicates 90 school business days for completion of entire process.

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RESPONSE REQUIREMENTS

- Schools must offer supportive measures to the complainant.
- Title IX Coordinator must promptly contact the complainant confidentially to discuss supportive measures whether the complainant chooses to file a formal complaint or not and must explain the process for filing a formal complaint.

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FIRST STEPS

Promptly contact the Complainant to discuss the availability of supportive measures.

Consider the complainant's wishes with respect to supportive measures.

Title IX Coordinator Responsibilities

Inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint.

Explain to the Complainant the process for filing a formal complaint.

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PREPARE FOR PARENTAL INVOLVEMENT

- Right to exercise all Title IX rights including requesting supportive measures or participation in grievance process.
- Parent/guardian must be permitted to accompany student to meetings, interviews, and hearings, but student still has a right to an advisor that is separate from parent/guardian.

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SUPPORTIVE MEASURES

- Supportive measures are individualized services provided that are **non-punitive, non-disciplinary, and not unreasonably burdensome to the other party** while designed to ensure equal educational access, protect safety, or deter sexual harassment.
- A school's selection of supportive measures and remedies will be evaluated based on what is not clearly unreasonable in light of the known circumstances.

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SUPPORTIVE MEASURES

- Examples in PRESS:
 - The District may provide
 - counseling,
 - extensions of deadlines or other course-related adjustments,
 - modifications of work or class schedules,
 - campus escort services,
 - mutual restrictions on contact between the parties,
 - changes in work locations,
 - leaves of absence,
 - increased security and monitoring of certain areas of the campus, and
 - other similar measures to Complainants and/or Respondents.

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COMPLAINANT CHOICE

- A Complainant's wishes with respect to whether the school investigates (choosing not to file a formal complaint) should be respected unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.
 - If the Title IX Coordinator decides to sign a formal complaint against the wishes of a complainant, the school needs to document the reasons why that decision was not clearly unreasonable and how the recipient believes that it met its responsibility to provide that complainant with a non-deliberately indifferent response.

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TITLE IX COORDINATOR CHOICE

- There are some circumstances when a Title IX Coordinator signing a formal complaint under their own signature is very clearly not unreasonable in light of the known circumstances:
 - DCFS involvement
 - Law enforcement involvement
 - Serious teacher on student allegations



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COMPLAINANT CHOICE

Yes, the
Complainant filed a
formal complaint.

- Must not respond with deliberate indifference.
- Must offer supportive measures.
- Must follow required grievance process.

No, the Complainant
did not file a formal
complaint.

- Must not respond with deliberate indifference.
- Must offer supportive measures.
- Title IX Coordinator determines whether to file formal complaint under their own signature: If YES, then follow required grievance process. If NO, supportive measures remain in place, but no further remedy or discipline.

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NOTICE OF INVESTIGATION/NOTICE OF ALLEGATIONS

- Issue the written notice of allegations to **both** parties before the investigation begins.
 - A copy of procedures
 - The allegations with sufficient details and sufficient time to prepare a response before interview (Who? What? When? Where?)
 - Policy alleged to have been violated
 - Presumption of non-responsibility
 - Parties are entitled to have an advisor
 - Parties will be permitted to inspect and review directly related evidence (including that which the District does not intend to rely on) so that each party can meaningfully respond before conclusion of the investigation
 - Parties are prohibited from making knowingly false statements
 - (Not required, but recommended)—statement reminding of prohibition on retaliation.

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NOTICE OF INVESTIGATION/NOTICE OF ALLEGATIONS

- Issue a revised notice of allegations if new information comes to light that was not included in the first notice of allegations.

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EMERGENCY REMOVAL OF RESPONDENT (STUDENT)

- Before removing a Respondent-student on an emergency basis, conducts an individualized safety and risk analysis to determine whether removal is justified by an immediate threat to the physical health or safety of any student or other individual arising from the sexual harassment allegations. See 4:190-AP2, *Threat Assessment Team (TAT)*.
- If the Respondent-student is removed on an emergency basis:
 - Provides the Respondent-student with written notice and an opportunity to challenge the decision immediately following the removal; and
 - Follows requirements set forth in 105 ILCS 5/10-22.6. for suspension.

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EMERGENCY REMOVAL OF RESPONDENT (EMPLOYEE)

- If the Respondent is identified and is a non-student employee, the Title IX Coordinator (in conjunction with Human Resources personnel, to the extent permitted to avoid bias or conflict of interest with the decision-maker), considers whether the Respondent-employee should be placed on administrative leave in accordance with 34 C.F.R. §106.44(d), relevant District policies and procedures, and any applicable collective bargaining agreements.

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DISMISSING FORMAL COMPLAINTS

- If the allegations in the formal complaint (1) do not meet the definition of sexual harassment, (2) did not occur in the school's education program, or (3) the activity was not against a person in the United States, the school must dismiss the allegations under Title IX, but the school can still address the allegations in any manner appropriate under the school's own code of conduct.
- 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 school with which the formal complaint is filed.
 - Graduates?

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DISMISSING FORMAL COMPLAINTS

- Schools have the discretion to dismiss a formal complaint or allegations therein if the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein.
- Schools also have the discretion to dismiss if the respondent is no longer enrolled or employed by the school or if specific circumstances prevent the school from gathering sufficient evidence to reach a determination.
- **A school must give the parties written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal and it is subject to appeal.**

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DISMISSING FORMAL COMPLAINTS

Mandatory –must dismiss if the conduct alleged in the formal complaint:

1. Would not constitute sexual harassment as defined even if proved,
2. Did not occur in the school's education program or activity, or
3. Did not occur against a person in the United States.

Permissive –may dismiss at any time if:

1. The complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
2. The respondent is no longer enrolled or employed by the school; or
3. Specific circumstances prevent the school from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon dismissal, school must promptly and simultaneously send written notice of the dismissal and reason(s) for the dismissal to the parties with notice of appeal rights.

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NEXT STEPS

Is the conduct within the scope of Title IX?

- 1. If no, the Title IX regulations do not apply and the school can dismiss the complaint.
- 2. If yes, the school must respond in a manner that is not deliberately indifferent.
 - By providing supportive measures in all cases.
 - And, if a formal complaint was filed, by following the specific grievance process requirements.

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TITLE IX

THE INVESTIGATION

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WHO SHOULD INVESTIGATE? AND OTHER PRE-INVESTIGATION CONSIDERATIONS

- The investigator, as already mentioned, needs to have adequate training to conduct the investigation and should be free of bias or conflicts of interest.
 - Title IX Coordinator = Dispatch when you call 911
 - Investigator = Detective investigating the case
 - Decision-maker = Judge

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TWO-STEP INVESTIGATIONS



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INVESTIGATOR

The Investigator is the person that conducts the investigation once a formal complaint is filed.

- Conducts interviews of the Complainant(s), Respondent(s), witnesses.
- Collects evidence such as, but not limited to, statements, documents, text messages, chats, video, audio and photographs.
- Prior to completion of the investigative report, sends to the Complainant, the Respondents and the Advisors the evidence collected (Preliminary Investigation Report) so that they can inspect, review and provide comments.
- Prepares a written investigative report fairly summarizing the relevant evidence.
- Sends the investigative report to the Complainant, Respondent and the Decision-Maker.

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INVESTIGATION

- Ensure that the burden of proof and burden of gathering evidence rest on the District and not the parties involved.

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INVESTIGATION

- Do **not** assume that because there are signs of trauma that the respondent caused the trauma and violated the policy.
- Do **not** assume that because there are no signs of trauma nothing bad happened.

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INVESTIGATION

- Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

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INVESTIGATION

- Provide the parties the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice (who may, but is not required to, be an attorney).

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INVESTIGATION

- Provide both of the parties with an equal opportunity to inspect and review any evidence obtained during the investigation that is directly related to the Formal Title IX Sexual Harassment Complaint's allegations (including evidence the District does not intend to rely on in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence).

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INVESTIGATION

- Prior to the completion of the investigative report, send to each party and the party's advisor, if any, the evidence subject to inspection (Preliminary Investigation Report) and review in an electronic format or a hard copy and provide each party with 10 school business days to submit a written response.

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INVESTIGATION

- Upon receipt of a party's written response to the evidence, review the response and send a copy to the other party in an electronic format or a hard copy.

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INVESTIGATION

- Prepare an investigative report summarizing all relevant evidence.
- Send to each party and the party's advisor, if any, the investigative report in an electronic format or hard copy, for their review and written response (at least 10 days before the decision).

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INVESTIGATION

- **Investigation Report(s) should include:**
 - Basic description of charges
 - How did the complaint make its way to an investigation?
 - Witnesses interviewed
 - Witnesses not interviewed (and why)
 - Any procedural anomalies that need explained?

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INVESTIGATION

- **Investigative Report should include:**
 - Applicable Policy Provisions
 - Definition of prohibited conduct alleged
 - Related definitions as appropriate
 - Include verbatim, in entirety (handbook, contract, etc.)

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INVESTIGATION

- **Investigative Report should be arranged in a manner that is not difficult to read:**
 - Ways to arrange:
 - Chronologically
 - By witness summary
 - By allegation/topic

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INVESTIGATION

- Include the evidence you don't intend to rely on (must include all evidence "related to" the allegations, not just information to be relied upon).
- Include inculpatory or exculpatory evidence whether obtained from a party or other source.
- **Purpose:** allow each party to meaningfully respond to the evidence prior to conclusion of the investigation and argue something is more relevant.

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INVESTIGATION

- Include screenshots and other reference material directly in summary when possible.
- Don't paraphrase a document when you can use direct quotes.

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INVESTIGATION

- Maintain a non-judgmental tone.
- Stay away from charged words of advocacy:
 - *Clearly/obviously*
 - *Innocent/guilty*
 - *Victim/perpetrator*
- Watch your adjectives and adverbs – unless they are in a quote.

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INVESTIGATION

- At the conclusion of the investigation, send to the Initial Decision-Maker in an electronic format or hard copy:
 - ✓ The Formal Title IX Sexual Harassment Complaint;
 - ✓ All evidence gathered during the investigation that is directly related to the Formal Title IX Sexual Harassment Complaint's allegations (including evidence the District does not intend to rely on in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence); and
 - ✓ The investigative report.

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INVESTIGATION REPORT MECHANICS

- Tone – should be neutral.
- Tense – Everything you've written in an investigation report is alleged to have happened in the past. Use past tense.
- Point of View – third person.

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INVESTIGATION REPORT MECHANICS

- When words are omitted from a quotation, use an ellipses.
- ...=quote omits words in the sentence
-=quote omits words at the end of one sentence and continues onto the next sentence

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INVESTIGATION REPORT MECHANICS

- Words can be altered to improve the understandability by using [brackets].
 - Use to change the [C]apitalization of letters.
 - Use it to change the verb tense.
 - Use it to clarify word meaning.

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INVESTIGATION REPORT MECHANICS

- Quotations go OUTSIDE of end of sentence punctuation.
 - Complainant reported, “It was the third time he told me that I look[ed] pretty.”
- Block quotes (50 words or longer) should be indented on the right and left.
- MINIMIZE pronoun usage. Pretend you are writing the report for a judge who knows nothing about the students or how schools work.

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INVESTIGATION REPORT MECHANICS

- Use conventional file naming when you are creating exhibits.
- Use footnotes to reference specific pieces of evidence or provide explanation that is helpful, but not critical.
- Use page numbers.

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INVESTIGATION REPORT MECHANICS

Good investigation reports:

1. Create an opportunity for equitable access to evidence.
2. Show the investigator's process.
3. Protect the school.

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INVESTIGATION REPORT MECHANICS

Document efforts to obtain information that was unobtainable.

- Investigators sought to speak with Officer Reynolds regarding the matter involving Reagan, but Officer Reynolds stated he could not talk about an ongoing law enforcement investigation.
- Investigators pulled bus video from bus 17 on January 7th, however, the bus video from December 15th had been written over.

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INVESTIGATION

- The key reminders for the Investigator:
 - Do not assume the truth of the allegations or the guilt/responsibility of an individual prior to the completion of the investigation.
 - Conduct the investigation in a manner that is (and appears to be) fair and impartial.
 - Follow applicable District Policies and Administrative Procedures.
 - Treat those involved with dignity and respect.
 - The goal of the Investigator is to determine what happened – not to merely confirm pre-existing suspicions.

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TITLE IX

ISSUES OF EVIDENCE, RELEVANCE AND OTHER PROTECTIONS

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TITLE IX PERSONNEL TRAINING

Training of Title IX personnel must include training on:

- the definition of sexual harassment in the Final Rule,
- the scope of the school'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.

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TITLE IX PERSONNEL TRAINING

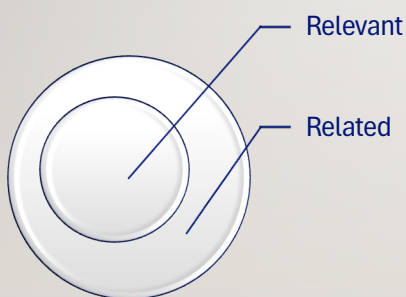
- The regulations require an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness.

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EVIDENCE



Related

Investigator must collect all evidence that is related to the allegations whether or not relevant (excluding evidence subject to privilege, medical records). It means the evidence is connected to the subject matter in some way, but it does not necessarily prove or disprove a crucial issue.

Relevant

Relevant evidence is all evidence related to a meaningful fact at issue that makes it more or less probable, except that which is protected under the rape shield provisions (and not otherwise privileged, medical records).

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RELEVANCE

- **Federal Rule of Evidence No. 401- Test for Relevant Evidence.**
- Evidence is relevant if:
 - **(a)** it has any tendency to make a fact more or less probable than it would be without the evidence; and
 - **(b)** the fact is of consequence in determining the action.

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RELEVANCE

- The relevance standard is pretty easy to meet.
- It just asks if whether the “evidence” is likely to make the allegation more or less true. While there are other concerns, like whether it might be privileged or hearsay, nearly everything that actually relates to allegation is relevant.

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HEARSAY

- What does the witness “know” vs what do they have firsthand knowledge of?
- Seek out firsthand information
- What did the witness see or hear?
- If the witness has secondhand information, allow them to present it, but determine who they received it from (because you may need to go talk to the person they heard it from and use the person they heard it from as the witness.)
 - Including social media
- **Include it in investigation reports, but make it clear what it is:**
 - “Olivia reported that she heard from her boyfriend, Bryson, that Jayden (Respondent) had nude images of his girlfriend on his phone and showed them to the wrestling team while in the locker room before practice on Wednesday. Olivia told Investigators she was not present in the locker room during the alleged conduct.”

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PROTECTIONS FOR COMPLAINANT'S SEXUAL PREDISPOSITION AND PRIOR SEXUAL BEHAVIOR

- Rape shield laws deem questions and evidence about a complainant's sexual predisposition or prior sexual behavior irrelevant unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.
 - Illinois courts have held that a defendant's right to confrontation doesn't include a right to present irrelevant evidence such as the victim's reputation and sexual acts with other people.

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RAPE SHIELD PROTECTIONS

Questions and evidence about the Complainant's prior sexual behavior are NOT RELEVANT, unless offered to prove:

- "Mistaken Identity": that someone other than the respondent committed the conduct alleged by the complainant, or
- Consent: concern specific incidents of the complainant's *prior* sexual behavior with respect to the respondent and are offered to prove consent.

Note that questions about a Complainant's predisposition are never allowed, they are not subject to the exception.

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PRIVILEGED EVIDENCE

Investigations cannot 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 in writing**:

- Patient-doctor
- Attorney-client
- Spousal communication privilege

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REMINDERS

- The burden of gathering evidence and the burden of proof is on the school, not the parties.
 - How can you evidence you did this?
- Schools must provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence.
 - How can you evidence you did this?

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REMINDERS

- Parties must have the same opportunity to select an advisor of the party's choice who may be, but need not be, an attorney.
 - Where would there be evidence that you did this?
- Schools must not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no "gag orders").
 - Could prevent parties from finding witnesses and could cause First Amendment issues

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EVIDENCE GATHERING

- Evidence is likely to include physical documents, electronic records, witness statements, and interviews with witnesses.
 - How can you evidence you asked for everything that could exist?
- Testimony is evidence, and is oftentimes the most important evidence.
 - There should not be a finding that something did not happen merely because "no one saw" where no one is alleged to have seen it.

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WITNESS STATEMENTS

- General Guidelines:
 - Witnesses should be instructed to be as specific as possible about dates, times, locations, and events, but should never be given prompts or suggestions regarding wording.

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WITNESS STATEMENTS

- General Guidelines:
 - Witness statements must be legible.
 - Allowing the witness to type their statement may be preferable in certain cases.
 - Statements should be signed and dated by the witness.

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WITNESS STATEMENTS

- General Guidelines:
 - Ideally, witness statements should be given as close to the event in question as possible.
 - The time duration between the event in question and the witness statement should be noted in the investigation notes.
 - Ask if the witness was told by anyone else to say share anything specific in the interview.

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WITNESS STATEMENTS

- General Guidelines:
 - The investigator should note when and where the statement was given and who was present.
 - The investigator should note whether witnesses had an opportunity to discuss events among themselves before giving statements.

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WITNESS STATEMENTS

- Witnesses should be allowed to supplement or change their statement upon request.
- Copies of both the “before” and “after” versions of the statement should be maintained.
- Supplementation and/or changes to a witness statement may require additional investigation.

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WITNESS STATEMENTS

- When witnesses use only first names, last names, or nicknames, the investigator should question the witness and document in writing the full names of each individual.
- Using a copy of the witness statement to document additional information may be helpful.

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WITNESS STATEMENTS

- When witnesses use slang or describe events in a manner in which the meaning is not readily apparent, the investigator should question the witness and document in writing the meaning of slang in question.

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WITNESS STATEMENTS

- Witness statements are NOT a substitute for a thorough investigation, interview, and/or detailed investigation notes.
 - Ask questions.

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CONDUCTING INTERVIEWS

- Consider who should be present during interview:
 - Note taker? –would not necessarily require Title IX training
 - Additional trained investigator?
 - Social worker/counselor? –trauma informed
 - Be very careful to not stack the table with “authority” that may overwhelm or frighten witnesses
- Consider whether additional individuals must or should be included in the interview (parents or union representation).

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CONDUCTING INTERVIEWS

- Conduct interviews as soon as possible after the event in question
- If time permits, draft or outline questions in advance.
 - Consider having a set of prepared questions that you’ll always ask ready at all times. You can then add the situation specific questions to it more quickly.
 - See *PRESS Policy 520-AP for Sample Questions*
- If available, and if time permits, review security footage before the interview. Preserve the footage by downloading (except CSAM).

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CONDUCTING INTERVIEWS

Sample of general questioning:

- What happened?
- When did it happen?
- Where did it happen?
- If a witness, do you know what is alleged to have happened? – If so, where were you when it happened?
- If a witness, do you know the respondent and complainant? – If so, how long have you known them and how would you describe them (friend, acquaintance)?
- Have you talked to others about what happened? Who and when?
- Did you write down what happened? (diary [video or otherwise], notes, blog)
- Have you posted or seen anything posted on social media about this incident?

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CONDUCTING INTERVIEWS

Ending questions:

- Is there anything you thought I was going to ask you that I didn't ask?
- Is there anything else you think I should know to make sure I understand what happened with this?
- Is there anyone you think I need to talk to about this because they might have useful information?

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CONDUCTING INTERVIEWS

- Interview the complaining party first.
- Interview each participant, victim and/or witness separately.
- Approach each interview individually.
 - Start from the beginning each time.
 - Do not assume facts disclosed in previous interviews.

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CONDUCTING INTERVIEWS

- Do not disclose information obtained in separate interviews.
 - If disclosure is necessary, disclose as little as possible.
 - Start with broad questions and move to specific questions.
- Have you ever sexually harassed anyone?
 - Have you had conversations with anyone in your class that could be considered sexual harassment?
 - What occurred in Spanish class last week?
 - What did you say in Spanish class last week to Braylen? (here is when disclosure becomes necessary)

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CONDUCTING INTERVIEWS

- Avoid making assumptions
- Ask follow-up questions
- Slow and deliberate questions produce better information
- Avoid being accusatory
- Avoid anything that resembles an interview or interrogation from a TV drama.

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CONDUCTING INTERVIEWS

- Know and respect the difference between an interview and a search
- Students are subject to 4th Amendment protection from unreasonable searches.
 - Asking to see photos on phone is a search
 - Asking to see notebook is a search

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CONDUCTING INTERVIEWS

- Take notes
- Take Notes
- TAKE NOTES
- **TAKE NOTES!!!!**
- **TAKE NOTES OF YOUR QUESTIONS AND THEIR ANSWERS.**

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GET BETTER INFORMATION

- “If you switched roles with me here and just heard what you said, would you find that believable?”
- “I’m not sure I understand—I thought you said [X] earlier, but I hear you saying [Y] now. Can you help me understand how both can be true?”
- So, I’m curious how the decision-maker is going to view what you just said, compared to [Z].”

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CONDUCTING INTERVIEWS

- Convert your interview summaries in narrative form so you can easily include them in the report.
- Be consistent in terminology – clarity is key.
- Be clear as to the source of information – compare:
 - “Bob stated that this happened.”
 - ~~“This happened.”~~

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CONDUCTING INTERVIEWS

- **Structure of an Interview Summary:**
- Who, when, where, via what medium?
- Did they have an advisor?
- Did you discuss your role? Their role?
- Did you discuss the prohibition on retaliation?

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CONDUCTING INTERVIEWS

- **Structure of an Interview Summary:**
- **Background:**
 - How does this person connect with the parties and witnesses?
 - Age, year in school?
 - Length of employment, position?

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CONDUCTING INTERVIEWS

- **Structure of an Interview Summary:**
- **Summary of Facts and Evidence**
 - Details
 - Direct quotes where possible
 - Include inculpatory and exculpatory information

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CREDIBILITY

- Credibility is the process of weighing the accuracy and veracity of evidence. To assess credibility, evaluate the source, content, and plausibility of what is offered in light of other evidence.

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CREDIBILITY

- A decision can still be made that an incident occurred when the evidence of the allegation(s) is credible, even if there were no witnesses to the incident. Put another way, **a preponderance can be established simply because you believe one party and not the other based on the assessment of the credibility of the parties and the evidence provided.**

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CREDIBILITY

- Credibility is best established through corroboration, which is provided through sufficient independent evidence to support the facts at issue.
- Corroboration is not merely a second witness who agrees with the first witness, because for instance, they could be lying to support each other. Rather, it is evidentiary support for what a witness contends after evaluating source, content, and plausibility.

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CREDIBILITY

It is alleged the behavior continued after the Respondent was informed that the behavior was unwelcome. If established, this would add credibility to the reporting party's account as corroborative.

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CREDIBILITY

Major inconsistencies in testimony would likely detract from credibility. Minor inconsistencies usually would not detract from credibility. Even lying is not a 100 percent credibility killer. We all lie. The job of investigators, as noted earlier, is to determine why someone is lying, or what the lie is about. Lying about alcohol consumption to avoid an alcohol violation does not prove or disprove an underlying sexual harassment.

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CREDIBILITY

A delay in reporting harassment does not detract from credibility. Individuals may delay reporting over fear of retaliation, because they don't know or trust the policy, over fear of being blamed for causing the harassment or incident, not due to a lack of understanding that it was harassment, etc.

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CREDIBILITY

- Changes in the behavior of a reporting party after an incident might add to credibility. For example, after being harassed, the reporting party cried, was upset, avoided class (or meetings, or certain areas), their academic performance deteriorated, etc.

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CREDIBILITY

- However the absence of such changes does not mean that the allegation is not credible, only that the individual who complained perhaps has been affected differently, less intensely than others might, or does not express emotions openly.

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CREDIBILITY

- Documents such as diaries, texts, emails, calendar entries, journals, notes, or letters describing the incident(s) can add to credibility, but can also be manufactured after the fact. The adage, “Trust, but verify,” applies, especially in the age of *www.iphonefaketext.com*.

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CREDIBILITY

- Telling other people about the incident may add to credibility, but if the accounts provided to others vary meaningfully, that can also undermine credibility.
- Other similar allegations about a Respondent might add to credibility of the allegation, but that evidence must be in the record if it is to be used.

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CREDIBILITY

- The fact that a relationship was at one time or in some aspects consensual does not detract from credibility, nor is it a defense against a subsequent charge of sexual harassment—except to prove consent. Consensual relationships can be followed by sexual harassment when one person tries to end the relationship and the other person tries to intimidate the former partner into staying in the relationship. People can be assaulted after consensual sexual acts, or engage in consensual sexual acts after having been assaulted.

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CREDIBILITY

- The fact that the person who made the allegation(s) did not tell the alleged harasser that the behavior was offensive does not necessarily affect credibility. Many people are fearful of doing so.
- Additionally, there is no obligation for the reporting party to inform the responding party that behavior is offensive.

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CREDIBILITY

- Explanations of why the harassment occurred do not add to credibility. People who have sexually harassed others often acknowledge their behavior but explain and defend it in ways that do not justify their actions.
- To the contrary, such excuses should be seen as admissions of having engaged in sexually harassing behaviors.

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CREDIBILITY

The following do not add or detract from the credibility of the responding party because they are **irrelevant**:

- Popularity with staff and other students. (*“Everybody likes him; I just don’t believe he would do that.”*)
- No history of past problems. (*“She’s never been in trouble before.”*)
- Academic performance. (*“But she’s a really good student. Her teachers really like her.”*)

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CREDIBILITY

The following do not add or detract from credibility of the reporting party:

- Clothing. (*"Just look at what she was wearing."*) Clothing does not cause sexual harassment, nor do they give anyone permission to touch someone or make sexual remarks.
- Appearance. (*"She is so pretty; no wonder he did it,"* or *"She is so unattractive! I don't believe anyone would do that to her."*)
- Flirting behavior. (*"He's always flirting with the boys. What did he expect?"*)
- Males as victims. (*"He should have realized she meant it as a compliment."*)
- Sexual orientation of victims (*"Listen, he came out and told everyone. He should have expected that people would act like this."*)

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EEOC ON CREDIBILITY

- Corroborating evidence: evidence that can be verified by an independent & objective source.
- Inherent plausibility: information that is believable on its face.
- Consistency of evidence/testimony: consistent amongst retellings, witnesses,
- Motive to falsify: nasty breakup where retaliation was threatened?
- Past record: lower value; if you plan to use, investigation must include information on this.
- Demeanor: lower value

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CONFIDENTIALITY

A school must keep confidential the identity of any individual

- Who has made a report or filed a complaint
- Who has been reported as a perpetrator
- Who has been a witness
- FERPA
- Legal obligations
 - Mandated reporter
 - Contacting law enforcement
- Carry out the purposes of these regulations
 - Disclosure of identities may be necessary to carry out Title IX investigation

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CONFIDENTIALITY

- [Letter to Soukup, 115 LRP 18668 \(FPCO 02/09/15\)](#)
- According to the Family Policy Compliance Office, FERPA does not conflict with Title IX's "notice of outcome" requirements outlined in a *Dear Colleague Letter* reported at 111 LRP 23852 (OCR 04/04/11). It concluded that a California district's proposed discrimination procedures, which obligated it to disclose certain information to parents regarding the outcome of its harassment investigations, did not violate FERPA's confidentiality provisions. While FERPA generally prohibits a district from disclosing students' personally identifiable information to third parties without parental consent, there's an exception to this rule in cases involving unlawful discriminatory harassment. A district may inform the parents of a harassment victim of the disciplinary sanction imposed on the perpetrators of the harassment when that sanction directly relates to the victim, such as an order that the harasser stay away from the harassed student.

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CONFIDENTIALITY

- [Letter to Anonymous](#), 20 FAB 7 (FPCO 2016).
- FCPO advised a district to consider informing all appropriate district officials of FERPA's consent requirements as they pertain to information about bullying incidents at school. Generally, they should avoid answering a parent's question about another student at school when the information sought could be part of the student's education records. Here, a principal allegedly disclosed protected information about a student's involvement in a bullying incident when talking to the parent of another student on the phone. The principal could have avoided the alleged violation by declining to respond to questions regarding another students' educational records.

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TITLE IX

THE INITIAL DECISION-MAKER

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INVESTIGATION

After the school has sent the investigative report to the parties but before reaching a determination regarding responsibility, the decision-maker(s) 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.

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SUBMITTED QUESTIONS

Decision-makers **must** explain their reasons for excluding any irrelevant proposed questions.

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GRIEVANCE PROCESS

- An objective evaluation of all relevant evidence, inculpatory and exculpatory is required for the grievance process.
- Credibility determinations based upon a person's status as complainant, respondent, or witness must be avoided.
- There must be a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

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GRIEVANCE PROCESS

The grievance process should include reasonably prompt time frames for conclusion of the grievance process, including appeals and informal resolutions, with allowance for short-term, good cause delays or extensions of the time frame.

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GRIEVANCE PROCESS

- A school must notify the complainant of the range, list, or possible remedies that a school may provide.
- A school must notify the respondent of the disciplinary sanctions a school might impose on the respondent following a finding of responsibility.
- A school's grievance process must state whether the school has chosen to use the preponderance of the evidence standard ~~or the clear and convincing evidence standard~~ for all formal complaints of sexual harassment (including those where employees are respondents).

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GRIEVANCE PROCESS

- Preponderance of the evidence is one type of evidentiary standard used in a burden of proof analysis. Under the preponderance standard, the burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true.

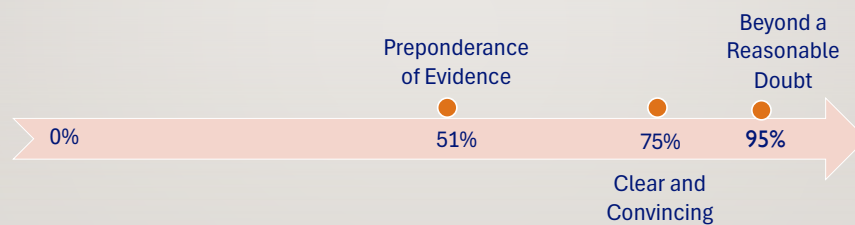
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GRIEVANCE PROCESS

- The Written Determination should use the words “preponderance of evidence” in every factual finding and in the conclusion.



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GRIEVANCE PROCESS

- The grievance process must describe the school’s appeal procedures.
- The grievance process must not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived it.
- Any provisions, rules, or practices other than those required by the Final Rule that a school adopts as part of its grievance process for handling formal complains of sexual harassment, must apply equally to both parties.

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THE DECISION

- The decision-maker (who cannot be the same person as the Title IX Coordinator or the investigator) must issue a written determination regarding:
 - Responsibility with findings of fact,
 - Conclusions about whether the alleged conduct occurred,
 - Rationale for the result as to each allegation,
 - Any disciplinary sanctions imposed on the respondent, and
 - Whether remedies will be provided to the complainant.
- The written determination must be sent simultaneously to the parties along with information about how to file an appeal.

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DISCIPLINE

- Discipline may only follow an investigation and a finding of responsibility.

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REMEDIES

- Remedies are required to be provided to a complainant when a respondent is found responsible. The remedies must be designed to maintain the complainant's equal access to education and may include the same individualized services described as supportive measures.
- Remedies after a finding of fault may be disciplinary, punitive, and may burden the respondent.

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MAKING CREDIBILITY DETERMINATIONS

- The Decision-Maker must make written findings as to credibility of witnesses when matters turn on credibility of parties or witnesses.
- The Decision-Maker must explain the testimony and information of each party or witness the degree of importance they reasonably believe it is entitled to receive.

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MAKING CREDIBILITY DETERMINATIONS

- The Decision-Maker makes credibility determinations based upon:
 - Statements by any other witnesses to the alleged incident.
 - Evidence about the relative credibility of the Complainant/Respondent:
 - The level of detail and consistency of each person's account should be compared in an attempt to determine who is telling the truth.
 - Is corroborative evidence lacking where it should logically exist?

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MAKING CREDIBILITY DETERMINATIONS

- The Decision-Maker makes credibility determinations based upon:
 - Evidence of the complainant's reaction or behavior after the alleged harassment
 - Were there witnesses who saw that the complainant was upset?
 - Changes in behaviors? Work-related? School? Concerns from friends and family?
 - Avoiding certain places?
 - May not manifest until later

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MAKING CREDIBILITY DETERMINATIONS

- The Decision-Maker makes credibility determinations based upon:
 - Evidence about whether the complainant filed the complaint or took other action to protest the conduct soon after the alleged incident occurred.
 - **But:** failure to immediately complain may merely reflect a fear of retaliation, a fear that the complainant may not be believed, etc. rather than that the alleged harassment did not occur

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MAKING CREDIBILITY DETERMINATIONS

- The Decision-Maker makes credibility determinations based upon:
 - Other contemporaneous evidence:
 - Did the complainant write about the conduct and reaction to it soon after it occurred (e.g. in a diary, email, blog, social media post)?
 - Did the student tell others (friends, parents) about the conduct and their reaction soon after it occurred?

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THE DECISION

- Because the written decision must include findings of fact, along with rationale for the decision, it cannot be generic or non-specific.
 - Details in the written decision are what will prevent and ease questions of the decision's validity.

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THE DECISION

Outline each allegation investigated, relevant facts, the Decision-Maker's analysis of the facts, and the conclusion(s) reached.

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THE DECISION

- Keep an open mind until all evidence has been heard.
- Don't come to any judgment, opinion, conclusion or belief about any aspect of this matter until you've reviewed or heard all of the evidence AND consider only the relevant evidence.

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THE DECISION

- The Decision-Maker must render a sound, reasoned decision on every charge.
- The Decision-Maker must determine the facts in this case based only on the information presented.

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THE DECISION

- The Decision-Maker must determine what evidence to believe, the importance of the evidence, and the conclusions to draw from that evidence.
- The Decision-Maker should not be swayed by prejudice, sympathy, or a personal view that you may have of the claim or any party.

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THE DECISION

- The quality of evidence is not determined by the volume of evidence or the number of witnesses or exhibits.
- It is the **weight** of the evidence, or its **strength** in tending to prove the issue at stake that is important.
- You must evaluate the evidence as a whole based on your own judgment.

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THE DECISION

- Look to all the evidence in total, make judgments about weight and credibility, and then determine whether or not the burden has been met.
 - Include the burden in the final written decision.
 - “The preponderance of the evidence has been met because...”

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THE DECISION

- Don't consider the potential impact of your decision on either party when determining if the charges have been proven.
 - Impact will be a consideration in the remedies phase. Impact is not a consideration in the responsibilities phase.
- Focus only on the charge or charges brought in the case and whether the evidence presented to you is sufficient to persuade you that the respondent is responsible for the charges.

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REMEDIES

- When considering remedies, the focus is on whether the remedies will be effective to:
 - Stop the harassment from occurring
 - Prevent future harassment
 - Remedy effects on victim

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TITLE IX

STEPS OF AN INVESTIGATION

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1. RECEIVE NOTICE/COMPLAINT

- Most common: parent calls a school administrator
- Others:
 - Parent reports to teacher
 - Student reports to any employee about their own or another student's experience
 - Staff learns of something that might be qualifying through rumor or social media.

NO
INVESTIGATION
YET!!!!!!

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1. RECEIVE NOTICE/COMPLAINT

Response:

- Title IX Coordinator meets with the Complainant (and their parent, if not 18) and explains how to file a formal complaint, what the process looks like (that the student will not be anonymous), that supportive measures are available—with or without a complaint, and respect's Complainant wishes with regard to supportive measures.

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2. INITIAL ASSESSMENT & JURISDICTION DETERMINATION

- Did the conduct, as alleged, occur in the school's jurisdiction?
- Mandatory dismissal?
- Permissive dismissal?

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3. DETERMINE BASIS FOR INVESTIGATION

- Are there other policies that apply?
- Are there other collective bargaining agreement provisions that matter?

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4. NOTICE OF INVESTIGATION/ NOTICE OF ALLEGATIONS

- Issue the written notice of allegations to **both** parties before the investigation begins.
 - A copy of procedures
 - The allegations with sufficient details and sufficient time to prepare a response before interview (Who? What? When? Where?)
 - Policy alleged to have been violated
 - Presumption of non-responsibility
 - Parties are entitled to have an advisor
 - Parties will be permitted to inspect and review directly related evidence (including that which the District does not intend to rely on) so that each party can meaningfully respond before conclusion of the investigation
 - Parties are prohibited from making knowingly false statements
 - (Not required, but recommended)—statement reminding of prohibition on retaliation.

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4. NOTICE OF INVESTIGATION/ NOTICE OF ALLEGATIONS

- Issue a revised notice of allegations if new information comes to light that was not included in the first notice of allegations.

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5. INVESTIGATION

- Conduct a thorough, reliable, and impartial investigation.
 - Outline what you need to obtain before interviews by looking back to what the policy requires.
 - Don't get stuck to scripts.
 - Ask follow-up questions.
 - Conduct follow up interviews as necessary.
 - Consider order of interviews.

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6. SHARE EVIDENCE WITH THE PARTIES

- This can be done through a Preliminary Investigation Report or by sharing the evidence in the form it exists.
- Because there is required to be a Final Investigation Report under the 2020 Title IX regulations, it can be beneficial to getting a start on that, helping the parties understand the evidence, and to get better Written Responses from the parties, if the evidence is put into a Preliminary Investigation Report.
- Consider having the Title IX Coordinator review.
- Alert parties to their ten school business days to submit Written Responses.

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7. EXCHANGE WRITTEN RESPONSES TO THE PRELIMINARY INVESTIGATION REPORT/EVIDENCE SHARING

- If you receive any Written Responses to the **Preliminary Investigation Report/Evidence Sharing** the PRESS procedures require you to share it between the parties.
 - So, Complainant gets sent a copy of Respondent's and vice versa.
 - Wait until the ten school business day timeline has run to send.

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8. DRAFT THE FINAL INVESTIGATION REPORT

- The Final Investigation Report **must** include all **relevant** evidence.
- Consider any information from Written Responses to the Preliminary Investigation Report/Evidence Sharing. Include relevant information in the Final Investigation Report.
- Include the exhibits.

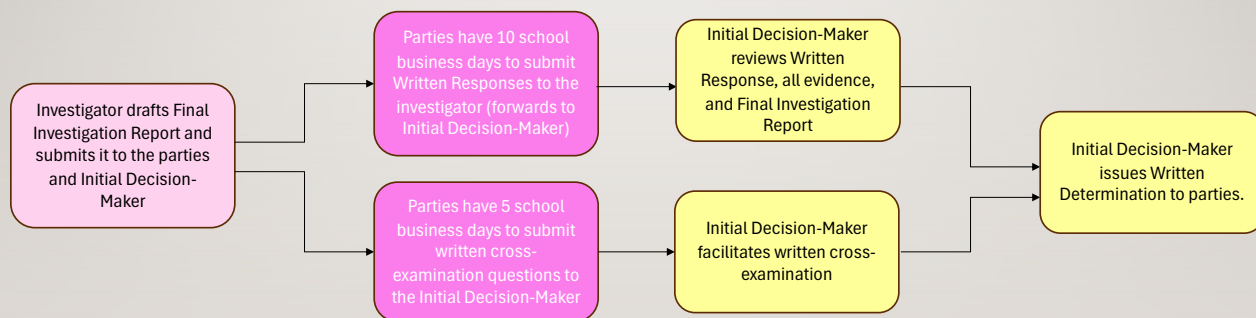
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9. SEND THE FINAL INVESTIGATION REPORT

- **Alert parties to their two concurrent timelines.**



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10. WRITTEN DETERMINATION

- Sent simultaneously to both parties
- Required parts:
 - The allegations and policy alleged to be violated
 - Procedural steps
 - Findings of fact
 - Conclusions regarding policy
 - A statement of, and rationale for, the result as to each allegation, including sanctions and remedies
 - Appeal procedures and permissible bases

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11. APPEAL

- Permissible bases for appeal:
 1. Procedural irregularity that affected the outcome.
 2. New evidence now available that could affect the outcome but that was not reasonably available at the time of the determination.
 3. The Title IX Coordinator, Investigator, or Initial Decision-Maker had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that affected the outcome.

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11. APPEAL

- Upon receiving an appeal from one party, the Title IX Coordinator notifies the other party of the appeal and allows both parties five (5) school business days to submit a written statement in support or, or challenging, the outcome.
- All materials received are forwarded to the Appellate Decision-Maker.
- Within thirty (30) school business days, the Appellate Decision-Maker affirms, reverses, or amends the underlying decision. Within five (5) school business days, the Appellate Decision-Maker issues a written decision describing the result of the appeal and the rationale.

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TITLE IX

APPEALS PROCEDURE

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APPEALS

- The school must offer both parties an appeal from a determination regarding responsibility.
- The school must also offer both parties an appeal if the school dismisses a formal complaint or any allegations therein, as well as the following bases:
 - Procedural irregularity that affected the outcome of the matter,
 - Newly discovered evidence that could affect the outcome of the matter, and/or
 - Title IX personnel had a conflict of interest or bias, that affect the outcome of the matter.
- A school may offer an appeal equally to both parties on additional bases as well.

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APPEALS

- PRESS procedures provide for 10 school business days after receiving the Initial Decision-Maker's written determination to make a written request to appeal. The written appeal is made to the Title IX Coordinator.

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APPEALS

- Upon receiving an appeal, the Title IX Coordinator must:
 - Notify the other party in writing of the appeal.
 - Provide both parties 5 school business days to submit a written statement in support of, or challenging, the outcome.
 - Forward these materials to the Appellate Decision-Maker.

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APPEALS

- Who should the Appellate Decision-Maker be?
- *If it is the Board of Education...*
 - Aligns with Uniform Grievance Procedure
 - Must have required training
 - Concerns about impartiality in other related hearings (i.e., student disciplinary hearing, employee discipline/dismissal)

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APPEALS

- Who should the Appellate Decision-Maker be?
- *If it is not the Board of Education...*
 - Outside consultant or attorney?
 - Retired administrator?
 - Trained administrator from neighboring school district?
 - Other appellate officer?

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APPEALS

- Within 30 school business days, the Appellate Decision-Maker will affirm, reverse, or amend the initial decision.
- Appellate Decision-Maker issues a written decision on the appeal transmitted to both parties simultaneously.
- Written decision must include rationale for the result.

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APPEALS

A Written Determination becomes “final” only after:

- The time period to file an appeal has expired, or
- If a party does file an appeal, after the appeal decision has been sent to the parties.

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TITLE IX

INFORMAL RESOLUTION OF COMPLAINTS

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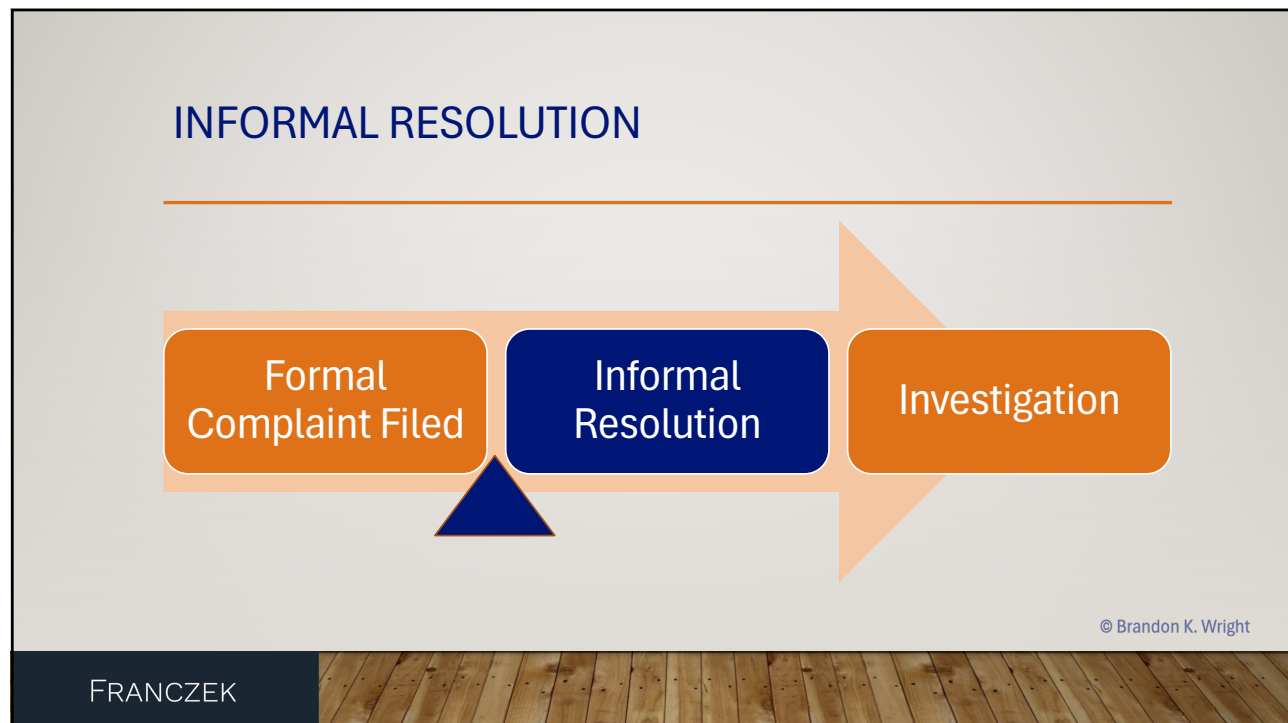
INFORMAL RESOLUTION

- Informal resolution may not be used unless a formal complaint has been filed.
- This means that for there to be informal resolution, there must be a Notice of Allegations sent.

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INFORMAL RESOLUTION

- Informal resolution may not be used to resolve an allegation that an employee or staff member sexually harassed a student.

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INFORMAL RESOLUTION

- A school has the discretion to choose to offer and facilitate informal resolution options, such as mediation or restorative justice, as long as both parties give voluntary, informed, **written** consent to attempt informal resolution.

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INFORMAL RESOLUTION LIMITS

- A school may not require for admission, enrollment, or employment, waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment.

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INFORMAL RESOLUTION

- If parties agree to participate in an informal resolution process, either may withdraw from the process at any time and resume the grievance process through the formal complaint process as long as it is prior to agreeing to a resolution.

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INFORMAL RESOLUTION

Initial Consideration: Meeting Separately?

- When issues are very emotional, as they often are in Title IX disputes, keeping parties separate during the facilitating may be the best way for the parties to move forward.
- “Shuttle Diplomacy”

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INFORMAL RESOLUTION

- (1) Separate the People and the Issues.
 - Understand the other's experiences
 - Identify misconceptions
 - Allow for the communication of emotions
- (2) Focus on interests. - "Your position is something you have decided upon. Your interests are what caused you to so decide." - Parties need to share interests with one another
- (3) Generate options to address interests.

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INFORMAL RESOLUTION

Resolution agreements:

- If the parties reach a resolution, **document the terms**.
- Have both parties review the terms.
- Have both parties **sign** the agreement

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INFORMAL RESOLUTION

If not resolved, then the case returns to the formal investigation track.

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TITLE IX

RECORD-KEEPING, RETALIATION, AND OTHER

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RECORD-KEEPING

- Schools are required to retain all records regarding a Title IX proceeding for seven years (starting at the date of creation), including proceedings where there was a finding of “no responsibility” or the formal complaint or allegations therein were dismissed.

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RETALIATION

- Retaliation is expressly prohibited.
- Individuals may not be charged with code of conduct violations that arise out of the same facts or circumstances as a report or formal complaint of sexual harassment for the purpose of interfering with any right or privilege secured by Title IX.

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RETALIATION

- No party or witness can be compelled to participate in a Title IX investigation. They can simply say no.

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RETALIATION

- The exercise of rights protected under the First Amendment **by a party** does not constitute retaliation.
 - A party has the right to discuss the allegations under investigation and a right to gather and present evidence.
 - “[A] recipient should not, under the guise of confidentiality concerns, impose prior restraints on students’ and employees’ ability to discuss the allegations under investigation, for example with a parent, friend, or other source of emotional support, or with an advocacy organization.
 - A party’s right to publish articles and essays criticizing the handling of the Title IX investigation or approach to Title IX is protected, as long as it is consistent with the First Amendment.

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RETALIATION

- The **school** must keep confidential the identity of complainants, respondents, and witnesses, except as permitted by FERPA, required by law, or as necessary to carry out a Title IX proceeding.

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RETALIATION

- A code of conduct charge for an individual making a materially false statement in bad faith in the course of a Title IX grievance proceeding does not constitute retaliation.
- A determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith, materially false statement.

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RETALIATION EXAMPLES

- Conduction violation charges arising from same circumstances of sexual harassment for **the purpose of deterring the Title IX complaint** are retaliation
 - An alcohol consumption conduct violation if respondent does not admit to the sexual harassment claim
 - A physical violence conduct violation for the complainant who tried to fight off aggressor if they don't withdraw their Title IX complaint
 - Any non-compliance violation for not participating in the grievance process
 - A conduct violation for sexual activity on school grounds

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TITLE IX

- **District Obligations:**
 - Update district policies
 - Address complainant and provide supportive measures
 - Mandatory reporting
 - Informal resolution
 - Investigation
 - Formal grievance process: - Notice - Report - Decision - Appeal

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TITLE IX

- **Employee Obligations:**

- Know who the District Title IX Coordinator is (their information will be posted on the school's website)
- Recognize a potential Title IX violation
- Report any potential Title IX violation to the Title IX Coordinator immediately upon receiving notice of it
- Review the district's anti-discrimination and anti-harassment policies as soon as they are updated
- Recognize responsibility to report any acts of retaliation
- Understand supportive measures you may need to help implement

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BE PREPARED TO TALK TO PARENTS ABOUT TITLE IX

- **Especially parents of complainants/victims**

- Timeline for discipline is LONG (6 weeks is expected—more is very possible)
 - Their previous encounters with school discipline not representative of Title IX processes.

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TITLE IX: POSTING

- The Title IX policy *and procedures* must be posted on your website in a prominent and easily-maneuverable manner. ***Still the same.***
- This information needs to be in all handbooks for the 2025-2026 school year.
- This must include the specific identity and contact information of the Title IX Coordinator. ***Still the same.***

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TITLE IX: PERSONNEL

- Identify (and train) the appropriate personnel to serve as Title IX Coordinator, as Investigator/Decisionmaker, as Informal Resolution Facilitator, and as Appellate Decisionmaker.
- *Who should serve each role?*
- *Reminder that single investigator/decisionmaker model no longer permitted.*

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TITLE IX: PERSONNEL

- Training requirements for all employees, with additional tiers of training required for Title IX personnel is ***still best practice, although formal training not required for all under 2020 regs.***
- Training all employees means all employees (coaches, non-certified, etc.)
 - Don't under-train
 - Don't wait until you have a potential T9 complaint to train

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TITLE IX: BE PREPARED TO SPOT ISSUES

- While the 2020 regulations do not specifically *include discrimination on the basis of sexual orientation, gender identity, and pregnancy*, ***don't forget Illinois law covers this regardless of T9!***

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TITLE IX: PROCESS

- For conduct that violates Title IX, the grievance process required by the regulations must be followed, with discipline only at the end of the process if there is a finding of responsibility. ***Still the same.***
- Supportive measures must be provided in the interim. ***Still the same.***
- All employees must promptly report to the Title IX Coordinator if they have knowledge of allegations of sexual harassment. ***Still the same.***

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ARTICLE 26A – *EFFECTIVE JULY 1, 2025*

- Creates new responsibilities for children and students who are parents, expectant parents, or victims of domestic or sexual violence.
- Additional policy requirements for a complaint investigation process, which dovetails with Title IX.

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ARTICLE 26A – *EFFECTIVE JULY 1, 2025*

- Each school district shall designate or appoint at least one staff person at each school in the district who is employed at least part time at the school and who is a school social worker, school psychologist, school counselor, school nurse, or school administrator trained to address, in a survivor-centered, trauma responsive, culturally responsive, confidential, and sensitive manner, the needs of students who are parents, expectant parents, or victims of domestic or sexual violence.

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ARTICLE 26A – *EFFECTIVE JULY 1, 2025*

- To facilitate the full participation of students who are parents, expectant parents, or victims of domestic or sexual violence, each school district must provide those students with in-school support services and information regarding nonschool-based support services, and the ability to make up work missed on account of circumstances related to the student's status as a parent, expectant parent, or victim of domestic or sexual violence. Victims of domestic or sexual violence must have access to those supports and services regardless of when or where the violence for which they are seeking supports and services occurred. All supports and services must be offered for as long as necessary to maintain the mental and physical well-being and safety of the student. Schools may periodically check on students receiving supports and services to determine whether each support and service continues to be necessary to maintain the mental and physical well-being and safety of the student or whether termination is appropriate.

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CREATE A LOG TO DOCUMENT CORRESPONDENCE EARLY

The regulations require the investigative report include a “description of procedural steps taken during the investigation.”

- Time consuming if investigator has to create
- Many steps are taken by Title IX Coordinator, not investigator

Date	Who	Contact Type	Re:	Additional Notes
12/5 End of school day	Ms. Stephens, assistant volleyball coach	In Person	Reported Alex came to her to report repeated sexually explicit images being received from another student during school day	Could not catch Alex before Alex left school
12/5	Alex's Parents	Called home	<ul style="list-style-type: none"> • Offer of supportive measures that will be in place tomorrow • Set up meeting to discuss next steps 	Parents will be in to meet tomorrow morning at 8am.
12/6	Complainant Alex and Parents	In person	<ul style="list-style-type: none"> • Supportive measures in place • Formal complaint signed • Willing to engage in informal resolution 	Alex asked for mutual no contact order Supportive measures form sent home with parents—provided to necessary teachers

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