



TITLE IX COORDINATOR BOOT CAMP

OCTOBER 19, 2021



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Foundational Principles of Title IX and Legal Requirements of Process in Current Regulations



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October 19, 2021

Title IX: 1972

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education programs or activity receiving federal financial assistance.”

Immediate Impact: Athletic Opportunities

1979: Students can Sue for Discrimination

1982: Employees can Sue for Discrimination

1992: Students can Sue for Sexual Harassment by Employees

1999: Students can Sue for Sexual Harassment by Students

1996: Dear Colleague Letter on LGBTQ (May 13)

New OCR Guidelines: What is Title IX now?

- Title IX covers sexual harassment that happens in a school’s “education program or activity.”
- Now defined as broader than “on campus” situations.
- That includes locations, events, and circumstances where a school exercises *substantial control over the context of the alleged harassment and the person accused of committing sexual harassment*.
- Includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution (fraternity house).

Outline for Changes to be Covered Herein

1. What is sexual harassment?
2. When is a school on notice of sexual harassment?
3. What must a school do to support alleged victims?
4. What personnel and policies do schools need?
5. What grievance process must a school generally follow before making findings and disciplining?
6. What are other features of the new regulations?
7. How do the new regulations “protect” free speech?
8. Who needs to be trained?

1. The definition of sexual harassment

“Quid Pro Quo” harassment, or...

- (Hostile Environment*) 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 school’s education program or activity*. (Old definition used by courts for student to student)
- Or: “Sexual assault,” “dating violence,” “domestic violence,” or “stalking” as those terms are defined under the Federal laws called the Clery Act and the Violence Against Women Act. (These have their own definitions)

*Purple signifies our editorial/advice/clarification

2. When does a school have notice?

- Once a school has actual knowledge of sexual harassment or allegations of sexual harassment, the school has to respond and take action.
- A school has **actual knowledge** when the school has **notice** that a person may have been victimized by sexual harassment.
- Any person, whether the alleged victim or a parent, friend, or bystander, has the right to report sexual harassment to put the school on notice.
- If school personnel will personally witness sexual harassment.

Notice/Reports

Reports may be made by:

- Filling out Form
- Verbal
- Mail
- Telephone
- Email

Reports may be made at any time, including non-school hours

Actual Knowledge and School Personnel

- The Title IX Coordinator for the school district or school.
- Schools have to provide the contact information for the Title IX Coordinator. (see next slide)
- Other people within the school who have authority to institute corrective measures. This could vary from school to school, but always includes the Title IX Coordinator.
- **In elementary and secondary schools, telling any school employee always puts the school on notice.** This includes cafeteria workers, substitute teachers, bus drivers, custodians, clerks.
- This means we must train ALL employees.

Notice

Title IX Coordinator's Contact Information must be given to:

- Students
- Employees
- Applicants for Admission
- Employee Applicants
- Parents/Legal Guardians
- All Unions

Contact Information: Name, Title, Office Address, email address, and telephone number. **Must be "prominently displayed" on website.**

3. What kind of response must the school provide?

- The school can't be "**deliberately indifferent.**" **Deliberate indifference = liability.** That also means that it can't be "**clearly unreasonable**" in light of the known circumstances. **The clearly unreasonable standard may protect districts who "do not do enough, but were not clearly unreasonable"**
- The Title IX Coordinator must provide information to the individual:
 - The availability of supportive measures; **[better have a list of these]**
 - The right to file a complaint, and
 - How to file a complaint and the process. **[should have a form ready with instructions for filing]**

4. What personnel and policies do schools need to have?

- Title IX Coordinator;
 - Specific information about how to contact the Title IX Coordinator must be provided by the school. **[in policy, in handbooks, on website]**
- Non-Discrimination policy; **[we have]**
- Written grievance procedures; **[we have but must tweak]**
- Information about how to file a formal complaint regarding sexual harassment. **[policy, handbook, poster?]**

Formal Complaints

- A formal complaint is an official document alleging sexual harassment.
- It's filed **and signed** by the student (or their parent or legal guardian in some cases), or in some cases the Title IX Coordinator.
- In cases where an alleged victim doesn't file a formal complaint, a Title IX Coordinator might initiate **grievance procedures** where discipline is appropriate. **Discipline for Title IX will be difficult without using procedure.**

Written Grievance Procedures

- Schools' written grievance procedures for dealing with sexual harassment must abide by the new regulations. [we will need to tweak]
- The grievance procedures themselves can't discriminate on the basis of sex, and any additional provisions that a school adds must **apply equally to complainants as respondents**. (New attitude)
- Note: The final regulations refer to alleged **victims as complainants** and alleged **perpetrators as respondents**, whether or not the grievance process has begun.
- Written grievance procedures need to include **10 other specific items**.

Requirement 1: Treat Parties "Equitably"

- The school's grievance process must treat complainants and respondents equitably by providing remedies to a complainant if a respondent is found responsible, and by following the prescribed grievance process imposing discipline on a respondent.
- The **remedies for a complainant have to be designed to restore or preserve equal access to the school's education program or activity**.
- Unlike supportive measures in place with or without a grievance process pending, a complainant's remedies **CAN** be punitive or disciplinary against the respondent.

Requirement 2: Objective Evaluation of Evidence

- The school's **grievance process** must ensure an objective evaluation of all relevant evidence – including inculpatory and exculpatory evidence.
- Credibility determinations can't be made on the basis of a person's status as a complainant, respondent, or witness.

The term "grievance process" by OCR refers to the investigative process by a school.

Requirement 3: Training; No Conflicts of Interest

- The individuals involved in the process - like the **Title IX Coordinator, investigators, decision-makers, or facilitators of informal, voluntary resolution efforts** – **must not have any bias or conflict of interest**.
- **These individuals must also be trained**. The **materials used to train** Title IX personnel can't rely on sex stereotypes, must promote impartial investigations and adjudications, and must be **posted on each school's website** (and if a school does not maintain a website, **make them available for public inspection upon request**). **Must have copyright permission to publish**.

Requirement 4: Presumption of Innocence

- Under the school's grievance procedures, the respondent must be presumed not responsible, so that any finding of responsibility only comes at the conclusion of a grievance process. **This implies that before a conclusion can be reached, therefore as part of the investigation, there must be a grievance process.**

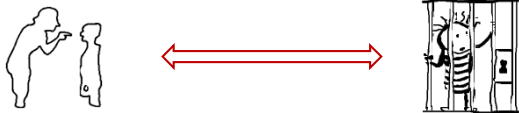


Requirement 5: Reasonably Prompt Time Frames

- The grievance process must include reasonably prompt time frames for resolving formal complaints of sexual harassment.
- **Temporary delays** are permitted only for **good cause**. *Good cause can include law enforcement activities, the absence of a party or witness, the absence of a party's advisor of choice, or the need to provide language assistance or accommodation of disabilities.* **District policy and handbooks should include these reasons along with "any other reason deemed good cause."**

Requirement 6: Description of Outcomes

The grievance process must describe or list the range of possible remedies and disciplinary sanctions that could occur following a determination of responsibility. This means “the range” should be listed in handbook and administrative regulations that are published.



Requirement 7: Standard of Evidence

- The grievance process must state which standard of evidence the school will use to reach a determination regarding responsibility.
- Schools can choose between the **preponderance of the evidence** standard and the **clear and convincing evidence** standard.
- Whichever standard the school chooses, it **has to use that standard for all formal complaints of sexual harassment, whether the respondent is a student or employee.**
- All sexual harassment proceedings must have the same standard of evidence.

Requirement 8: Right to Appeal

- The grievance procedures must contain the **right to appeal the result of a grievance process.** Will need appeal process in handbook and administrative regulations that are published.
- Schools must **offer an appeal** (details in later slide)

Requirement 9: Description of Range of Supportive Measures

The school’s grievance process must describe the **range of supportive measures** available to complainants and respondents. The range will need to go into handbooks and administrative regulations that are published.



Supportive Measures

Supportive measures may include:

- individualized services that are non-punitive, non-disciplinary, and do not unreasonably burden the other party yet are designed to restore or preserve a person’s equal access to education;
- placing students immediately in separate classes pending the results of the school’s investigation;
- notify the complainant of the options to avoid contact with the respondent and allow students to change academic situations as appropriate;
- counseling.

Requirement 10: Privileges

- The school’s grievance process must explain that **no information protected by a legal privilege, such as the attorney-client privilege or the doctor-patient privilege, can be used during an investigation unless the person holding that privilege has waived it.** Not sure how school would obtain privileged information.
- Neither a party nor the school is allowed to seek, permit questions about, or allow the introduction of evidence that is protected by a recognized privilege.
- Individuals can always opt to waive their own privileges.

5. Walking Through the Grievance Process

- This is the process initiated by a formal complaint, either by an individual or the Title IX Coordinator.

The “Grievance Process” contains multiple parts, including the the “investigation,” which comes before you come to any “conclusions,” and before any “appeal.”

Emergency Removals

Two quick notes:

- A school may **remove a respondent from the school’s education programs or activities on an emergency basis if the respondent poses an immediate threat to anyone’s physical health or safety.** There are additional requirements for emergency removal proceedings that schools should consider if they institute this process.
- **If the respondent is a school employee, the final regulations don’t prevent a school from placing that employee on administrative leave during the investigation.**

Overarching “Principles”

- The grievance process cannot itself discriminate against a complainant or a respondent on the basis of sex.
- Practices must apply equally to both complainants and respondents – either of which can be male or female – and can’t discriminate as between men and women, notable with respect to credibility determinations.

Written Notice to the Parties

- **When the school begins an investigation, it has to provide the parties with written notice of certain information.** This could result in retaliation or intimidation by “respondent.”
- It has to give **notice to the parties of the school’s grievance process,** which must comply with the 10 items we listed before. **Miranda for harassment allegations.**
- It also has to include whether there is an opportunity to engage in **informal resolution.** Schools don’t have to offer informal resolution processes, but if they choose to, it’s important that they are mentioned in this initial notice. **No informal resolution option for employee-student harassment.**

Details of Written Notice

1. The actual allegations and facts that would constitute sexual harassment.
2. The presumption of innocence.
3. **A statement that the parties are entitled to advisor of their choice.**
4. **A statement that the parties can request to inspect and review certain evidence.**
5. **Information regarding the code of conduct and false statements.**

Mandatory Dismissal

- A school **must** dismiss a complaint:
 - that does not describe conduct that meets the definition of sexual harassment;
 - that alleges sexual harassment that did not occur in the school’s education program or activity;
 - that alleges sexual harassment that did not occur in the United States at all. **Schools trips out of U.S. excluded.**
- **Schools can still address these complaints under their code of conduct, even if the misconduct is not sexual harassment under Title IX.**

Discretionary Dismissals

A school may dismiss a complaint:

- if the complainant notifies the Title IX Coordinator in writing that he/she wishes to withdraw the formal complaint or some of its allegations;
- if the respondent is no longer enrolled or employed by the school; or [for EEs, continue for SBEC/DNHR]
- if specific circumstances prevent the school from gathering evidence sufficient to reach a determination about the allegations.

Dismissal Procedures

- Whenever a school dismisses a formal complaint, or any allegations in it, the school must promptly **send written notice of the dismissal and the reasons to the parties.**
- Both parties have the right to appeal a school's dismissal decisions (more later).



Gathering Evidence: Schools and Parties

- The school must give both parties specific, equal rights and protections. These rights and protections apply whether the complainant filed the formal complaint, or whether the Title IX Coordinator began the investigation by signing the formal complaint.
- The school is not allowed to access a party's personal records if they are maintained by a physician, psychiatrist, psychologist, or other professional for the purpose of treatment to the party, without consent.

Gathering Evidence: Schools and Parties

- The school must provide an equal opportunity for the parties to present witnesses and evidence, **including expert witnesses**, as well as inculpatory or exculpatory evidence.
- The school can't restrict the ability of either party to discuss allegations under investigation, or to gather and present relevant evidence. Note this is for parties, not witnesses.
- The school **has to provide the same opportunities to the parties to have others present during the grievance proceedings, including access to an advisor of choice for any meetings or hearings.** Both complainant and respondent entitled to an "advisor" of their choice. This needs to be in handbook and administrative regulations.

Gathering Evidence: Schools and Parties

- The school has to provide **to the party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all hearings, interviews, or other meetings, with sufficient time for the party to prepare.**
- The school must also provide **equal opportunities for the parties and their advisors to inspect and review the evidence obtained by the school as part of its investigation**, if the information is directly related to the allegations raised in the formal complaint.
- The school also must **give the parties a meaningful opportunity to respond to the evidence after the school has provided it.** Strange?

Investigative Reports

- After gathering evidence, the school needs to prepare an **investigative report** on the allegations of the formal complaint.
- A school has to give the parties **at least 10 days to respond to the evidence in writing.** If a response is submitted, the school must consider that response before finalizing the investigative report. The investigative report can then be finalized and provided to the parties.
- That report must be circulated to the parties **at least another 10 days before any determination of responsibility, or 10 days before a hearing**, if a hearing happens. **This means before there can be a conclusion, we wait at least 20 days.**

Hearings (ESE)

- For elementary and secondary schools, the school has the **option**, but never the obligation, to hold a hearing.
- **Event without a hearing**, the elementary or secondary school must still give the parties equal opportunity to submit relevant, written questions to each other, before the decision-maker reaches a determination.
- Rape Shield Laws: Questions and evidence about a complainant's prior sexual history are not relevant, with two limited exceptions:
 - to prove someone other than the respondent committed the alleged misconduct or
 - to prove consent.

Cross-Examination

- No party is EVER allowed to personally cross-examine anyone.
- Parties **must be permitted an advisor of the party's choosing**. If a school offers an advisor for a hearing, **solely for the purpose of conducting cross-examination** on that party's behalf.
- An advisor chosen by the school **does NOT need to be a lawyer**.
- OCR: By hearing each party's version of events and hearing each party answer questions about their version of events, the neutral, unbiased decision-maker is more likely to reach an accurate determination regarding responsibility. **Thus, both parties must testify. This may chill complaints.**

Participation and Cross-Examination

- Every person has the right to choose to participate, or not participate, in any part of a grievance process. No one may be forced, threatened, coerced, or discriminated against for choosing not to be part of the school's grievance process.
- If a party or witness chooses not to appear at the live hearing, or not to answer cross-examination questions, the decision-maker excludes that party's or witness's statements and evaluates any evidence that doesn't involve those statements. If party does not permit cross examination, their statement is out.
- The decision-maker must never make inferences about the determination regarding responsibility based on the fact that a party or witness didn't come to the hearing or submit to cross-examination.
- A school may hold the entire live hearing virtually, or a school may allow some participants to appear virtually, with technology that allows everyone to see and hear each other.

Recordings

- Schools also must create an audio or audiovisual recording, or a transcript, of any live hearing, and make it available to the parties for inspection and review.
- It's important to remember that a school must ALWAYS comply with disability laws, so that individuals with disabilities who participate in a school's grievance process are appropriately accommodated, including with respect to the use of technology and reliance on visual, auditory, or written modes of communication.

Decision-making: Objective and Unbiased

- The school's decision-maker needs to objectively evaluate the relevant evidence and reach conclusions about whether the respondent is responsible for the alleged sexual harassment.
 - A school's decision-maker needs to use independent judgment: **cannot be the same person who conducted the investigations or the Title IX Coordinator.**
- Who are the decision-makers?**
- Decision-makers must be free from conflicts of interest or bias for or against complainants or respondents and **must receive special training about how to be impartial and how to decide what evidence is relevant.**
 - The decision-maker will weigh the relevant evidence and decide whether it meets the school's standard of evidence for sexual harassment allegations.

Decision-making: Written Decisions

After the evidence has been weighed, must issue a **written decision**. It must include:

1. The **portion of the school's policies that was violated**.
2. A **description of the procedural steps that were taken by the school on the way to getting to that point**.
3. A **findings of fact section**
4. A **section that draws conclusions after applying the facts to the portion of the school's policy that applies**
5. A **statement and rationale for the ultimate determination of responsibility**.

Decision-making: Written Decisions

6. **Any disciplinary sanctions** that the school will impose on the respondent and state whether the school will provide remedies to the complainant.
7. **A statement and rationale for any remedies for the complainant, addressing how those remedies will restore or preserve equal access.**
8. **A statement of the recipient's procedures, a statement that the parties have a right to appeal the initial determination regarding responsibility, and the permissible bases for appeal.**

Decision-making: After the Decision

- The school must **send the written determination to the parties simultaneously, along with information about how to appeal the determination.**
- A school has discretion to set deadlines for when an appeal must be filed, bearing in mind the obligation to conclude the entire grievance process and bring resolution to the situation for both parties, within a reasonably prompt time frame.
- The **Title IX coordinator is responsible for carrying out the remedies contained in the written decision.**

Remedies

The District's remedies are designed to "restore or preserve equal access to the school's education program or activity." Possible "range of remedies" - verbal warning to assignment to disciplinary alternative placement.

Consider:

- training program for those involved in the complaint
- comprehensive education program for the school community
- counseling to the complainant and the respondent who engaged in prohibited conduct
- increasing staff monitoring of areas where prohibited conduct has occurred
- reaffirming the District's policy against discrimination and harassment.

Respondents who are employees may be subject to a range of discipline from a written warning up to and including termination of employment.

Appeals

- A school has to offer **both parties** an opportunity to appeal.
- Appeals can be taken from two different steps in the process.
 - **After a dismissal** before the grievance process, whether mandatory or discretionary
 - **At the end of the grievance process (after a hearing, if you allow hearings)**

Grounds for Appeal

1. A procedural irregularity affected the outcome of the matter.
2. New evidence has been discovered that was not reasonably available at the time of the determination of responsibility or dismissal.
3. A conflict of interest on the part of a Title IX Coordinator, an investigator who compiled the evidence, or a decision-maker, and the conflict of interest affected the outcome.
4. **Schools can offer additional grounds for appeals**, if they want to, so long as the grounds apply on an equal basis to the parties.

Appellate Process

- The recipient has to notify the parties in writing and implement appeal procedures equally.
- Both parties must have equal opportunity to submit a written statement supporting or challenging the outcome
- **The person who decides the appeal cannot be the same person who reached the determination regarding responsibility, or the same person as the investigator or Title IX Coordinator.**
- After considering the parties' written statements, the decision-maker on appeal has to issue a **written decision** and send it to the parties simultaneously.
- The school's determination about whether the respondent is responsible for the sexual harassment allegations **become final after appeal.** **Final does not mean an employee is denied due process if we wish to terminate.**

Informal Resolution

- Schools can offer informal resolution in appropriate cases:
 - **Exception: Where the respondent is an employee of the school**
- Informal resolution only if voluntary by each party.
- A school can never force, threaten, or require informal resolution.
- If informal resolution proceeds, the school must provide a **facilitator** who is **unbiased**, and **who has received special training**.
- The school still needs to provide complainant and respondents with notice of the allegations, notice of their rights, information about whether an informal process is confidential, and about withdrawing from the process.

6. Other Issues: Record-keeping

This duty extends for **7 years**, and includes several categories of documents:

1. Records of investigation.
2. Records of any appeal/materials associated with an appeal.
3. Records of any informal resolution process
4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution (and remain posted on District's website).
5. Records of the supportive measures that they took in response to a report or complaint of sexual harassment.

Other Issues: Retaliation

- No school or person is allowed to retaliate against anyone for exercising rights under Title IX.
- Any person retaliated against can file a complaint with the school, and the school must have procedures in place for the prompt and equitable resolution of such complaints.
- **The school should keep the identities of parties and witnesses confidential, unless disclosure of someone's identity is required under other laws (e.g. FERPA) or is necessary in order to conduct the grievance process.**

Retaliation: Code of Conduct Issues

- It is retaliation to charge a person with code of conduct violation for the purpose of discouraging the person from pursuing a sexual harassment report or formal complaint, or exercising any other Title IX rights.
- It may be prohibited retaliation if a code of conduct charge is for a violation unrelated to sexual harassment yet arises from the same facts as a sexual harassment allegation.

7. Free Speech

- OCR says they can never require a school to violate the First Amendment. **No kidding?**
- When OCR investigates a school for possible Title IX violations, OCR will never view a school's attempt to suppress free speech as an appropriate response to sexual harassment. **Is this a Captain Obvious commercial?**



Record Keeping - Training

A recipient must maintain for a period of **seven** years records of:

- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.
- Training materials must be made publicly available on a district's 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.

Need to Decide

- **Standard for Finding a Violation:**
preponderance of the evidence standard
or
clear and convincing evidence
 - Hearing Process?
- (Both must be noted on website, in policy, and in handbooks)

Need to Add:

- Language to published administrative regulations and Handbooks on:
- Title IX Coordinator ([already there](#))
 - Campus Handbooks: Anyone on Campuses who have authority to institute “corrective measures”
 - “Grievance” Process
 - Informal Resolution Process
 - Appeal Process
 - Range of remedies and disciplinary sanctions for Respondent
 - Range of Supportive Measures for Complainant
 - Sexual Harassment Complaint Form
 - Form letters (notice)

Need to Create Position of:

- Title IX Coordinator
- Investigators
- Decision-makers (independent, unbiased)
- Facilitators (independent, unbiased) (trained in informal resolution efforts)
- **Advisors (Optional)**

The materials used to train Title IX personnel can’t rely on sex stereotypes, must promote impartial investigations and adjudications, and must be posted on each school’s website (and if a school does not maintain a website, make them available for public inspection upon request).

More on Training:

- Training must include:
- Definition of sexual harassment
 - The Scope of the school’s education program/activity (what is included)
 - How to conduct an investigation/grievance process
 - Hearing ([if you have them](#))
 - Appeals
 - Informal Resolution Process
 - Avoiding prejudgment of the facts at issue, conflicts of interest, bias
 - Investigators must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence

“Decision-maker” Training

- Decision makers must be trained in technology if will be used at live hearing
- Decision makers and Investigators trained in issues of “relevance”
- Decision makers and Investigators trained in rape shield protections

More on OCR

- To learn more about OCR, visit: www.ed.gov/OCR
- If you have questions for OCR, you may contact OCR at the OPEN Center at T9questions@ed.gov

Questions?

CONTACT US



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Title IX - What's New?


In 2020, the U.S. Department of Education's Office for Civil Rights (OCR) announced updated regulations for Title IX of the Education Amendments of 1972. This year, it has been announced that Title IX enforcement will be expanded. Below are the major updates to Title IX.

- The definition of sexual harassment is more narrowly tailored: "unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity."
- Schools may now use the clear and convincing standard of evidence in complaints by students and employees
- OCR clarified that a school must respond when the school has actual knowledge of sexual harassment
- A cause for dismissal of a complaint depends on the enrollment of the respondent in the district
- Schools must prominently display on website the name and contact information of Title IX Coordinator
- The new regulations require that schools provide supportive measures to the complainant
- Informal resolutions require the consent of both parties and are not available if complaint is by a student against an employee
- New rules for the use of a party's medical or psychological treatment history
- The regulations permit relaxed requirements for oral hearings for elementary and secondary students
- Both parties must receive written notice of the allegations, the opportunity to select an advisor, and an equal opportunity to submit and review evidence through a grievance proceeding
- The placement of the burden of proof on the school is strengthened under the new regulations
- New regulation to ensure that the decision-maker is not the Title IX Coordinator
- Current enforcement of Title IX prohibits discrimination on the basis of sexual orientation and gender identity



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TEXAS
TITLE IX
Administrator Conference

Understanding Your Role as a Title IX Administrator and How to Handle Common Campus Scenarios

Holly Boyd Wardell
www.edlaw.com

Title IX Coordinators

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

April 24, 2015

Dear Colleague:

I write to remind you that all school districts, colleges, and universities receiving Federal financial assistance must designate at least one employee to coordinate their efforts to comply with and carry out their responsibilities under Title IX of the Education Amendments of 1972 (Title IX), which

Dear Colleague Letters (DCLs)

- Advisory in nature*
- Guidance to recipients of federal funding
- DOE's policies in reviewing Title IX compliance
- Not legislative rules/law
- OCR cannot create new law, rights, or duties through a DCL

*The Office for Civil Rights is an administrative agency of the federal government and, therefore, constrained by the Administrative Procedure Act (APA). If an agency proposes a rule that would impose new obligations on the public, the APA requires the agency to subject those proposed rules to notice and comment before they may be adopted.

Title IX Coordinators

- Position cannot be vacant
- Sufficiently independent
- Avoid conflicts of interest
- Full-time T9 Coordinator ensures sufficient time to perform responsibilities
- Qualifications, training, authority and time
- Multiple T9 Coordinators

DESIGNATION OF T9 COORDINATOR(S)

Title IX Coordinators

- Monitor outcomes
- Identify and address patterns
- Assess campus climate
- Educate school community on how to file complaint
- Promptly and appropriately resolve complaints
- Provide technical assistance on school policies
- Work with law enforcement

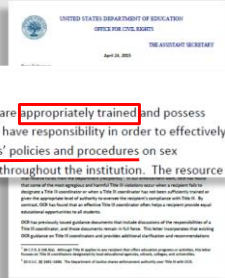
RESPONSIBILITIES AND AUTHORITY OF T9 COORDINATOR

Title IX Coordinators

- District's policies and procedures
- Drafting and revising policies/procedures
- Collecting information
- Participation in subject areas, athletics
- Administration of school discipline
- Incidents of sex-based harassment
- Retaliation
- Aware of all T9 complaints
- Visible in the school community

RESPONSIBILITIES AND AUTHORITY OF T9 COORDINATOR

Title IX Coordinators



B. Training of Title IX Coordinators

Recipients must ensure that their Title IX coordinators are **appropriately trained** and possess comprehensive knowledge in all areas over which they have responsibility in order to effectively carry out those responsibilities, including the recipients' policies and procedures on sex discrimination and all complaints raising Title IX issues throughout the institution. The resource

Training on Policies and Grievance Procedures

RELEVANT POLICIES AND PROCEDURES

- FB (LEGAL) Equal Educational Opportunity
- FB (LOCAL) Equal Educational Opportunity
- FFG (LEGAL) Student Welfare: Child Abuse and Neglect
- FFG (LOCAL) Student Welfare: Child Abuse and Neglect
- FFH (LEGAL) Freedom from Discrimination, Harassment, & Retaliation
- FFH (LOCAL) Freedom from Discrimination, Harassment, & Retaliation
- FM (LOCAL) Student Activities
- FNE (LEGAL) Pregnant Students
- FNE (LOCAL) Pregnant Students
- FNG (LEGAL) Student & Parent Complaints
- FNG (LOCAL) Student & Parent Complaints
- DAA (LEGAL) Equal Employment Opportunity
- DGBA (LOCAL) Employee Complaints
- DGBA (LEGAL) Employee Complaints
- EHAA (LEGAL) Required Instruction
- GF (LOCAL) Public Complaints
- GRA (LEGAL) Relations with Governmental Entities – State and Local Authorities
- GRA (LOCAL) Relations with Governmental Entities – State and Local Authorities



Responsibilities from 2020 Sexual Harassment Regulations

www.edlaw.com

T9 Coordinator Responsibilities Under New Regulations

- The new regulations pertain to reports and formal complaints of sexual harassment.
- They do not affect responsibilities pertaining to equity in athletics, inequities, or discrimination in course selections, etc.



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Title IX Coordinator Responsibilities

- Ensure policies reflect current information about T9 Coordinator
- Ensure website and publications contain proper notices
- For all reports of sexual harassment, contact alleged victims (complainant) to discuss the availability of supportive measures
- Consider a complainant's wishes re supportive measures
- Inform complainants of the right to file formal complaint and right to supportive measures with or without a formal complaint
- Decide whether to file a formal complaint when the complainant does not

*Many of these tasks can be delegated but must be overseen by the Title IX Coordinator.

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Title IX Coordinator Responsibilities

- Decide whether to dismiss a formal complaint (or who should decide dismissal)
- Assist with emergency removal and administrative leave decisions
- Provide notice to parties of grievance process in case of formal complaints
- Post all training materials to district's website
- Ensure proper record keeping

*Many of these tasks can be delegated but must be overseen by the Title IX Coordinator.

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All of these individuals must be informed of the Title IX Coordinators...

 Name or Title	 Office address	 E-mail address	 Telephone number
Applicants for admission and employment	Students and parents or legal guardians of elementary and secondary students	Employees	All unions or professional organizations holding collective bargaining or professional agreements with the recipient

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Reporting sexual harassment...

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment)...

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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Reporting sexual harassment...

Such report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

34 C.F.R. § 106.8(a).

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SCENARIO: Reporting sexual harassment...

Higgins (paraprofessional) sees Jamie (student-athlete) and his minions harassing Nate (student) for being namby-pamby and womanish.

Higgins mentions this in passing to Coach Beard, who says nothing to anyone about this. Higgins does not report this to Principal Lasso (Title IX C'r – Students) or to Ms. Rebecca (Title IX C'r – Employees).

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SCENARIO: Reporting sexual harassment...

After months of this treatment, Nate finally tells his mother. She immediately calls Principal Lasso to report that her son is being bullied.

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SCENARIO: Failing to Report

Relevant Policies: FFI/FFH - Employee report to appropriate official listed in policy

Action Needed: Students: 1) review policy – FFI or FFH?; 2) contact parents/student – offer info about TIX process; 3) offer supportive measures; 4) employee documentation/retraining

Documentation Required/Recommended: 1) supportive measures offered; 2) whether FC filed; 3) if FC filed...

Retention of Documentation: At least 7 years

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Standard TASB Policy-A

Reporting Procedures	Any student who believes that he or she has experienced prohibited conduct or believes that another student has experienced prohibited conduct should immediately report the alleged acts to a teacher, school counselor, principal, other District employee, or the appropriate District official listed in this policy.
Student Report	
Employee Report	Any District employee who suspects or receives direct or indirect notice that a student or group of students has or may have experienced prohibited conduct shall immediately notify the appropriate District official listed in this policy and take any other steps required by this policy.

Standard TASB Policy-A

Definition of District Officials	For the purposes of this policy, District officials are the Title IX coordinator, the ADA/Section 504 coordinator, and the Superintendent.
Title IX Coordinator	Reports of discrimination based on sex, including sexual harassment, gender-based harassment, or dating violence, may be directed to the designated Title IX coordinator for students. [See FFH(EXHIBIT)]
ADA / Section 504 Coordinator	Reports of discrimination based on disability may be directed to the designated ADA/Section 504 coordinator for students. [See FFH(EXHIBIT)]
Superintendent	The Superintendent shall serve as coordinator for purposes of District compliance with all other nondiscrimination laws.

Model EWHPM Policy/Regulation

Reporting Procedures	Any student who believes that he or she has experienced prohibited conduct or believes that another student has experienced prohibited conduct should immediately report the alleged acts to a teacher, school counselor, principal, assistant principal, or the Title IX Coordinator/designee.
Student Report	
Employee Report	Any District employee who suspects or receives notice that a student or group of students has or may have experienced prohibited conduct shall promptly notify a campus administrator or the Title IX Coordinator.
Definition of District Officials	For the purposes of this regulation, District officials are the Title IX Coordinator/designee and campus administrators.
Title IX Coordinator	Reports of discrimination based on sex, including sexual harassment or gender-based harassment, may be directed to the designated Title IX Coordinator for students. [See FFH(EXHIBIT)]

Checklist:

- Use the checklist.
- Red text = suggested procedures

Dissemination of policy

- District **does not discriminate on the basis of sex** in the education program of activity that it operates
- It is required by Title IX to not discriminate in this manner
- Requirement not to discriminate **extends to admission and employment**
- **Inquiries** about the application of Title IX to the district may be referred to the Title IX Coordinator, the Assistant Secretary for Education (USDOE), or both

Applicants for admission and employment Students and parents or legal guardians of elementary and secondary students Employees All unions or professional organizations holding collective bargaining or professional agreements with the recipient

www.edlaw.com 34 C.F.R. § 106.8(b)

August 2010

U.S. Department of Education

Sample Notice of Non-discrimination

The following sample notice of non-discrimination meets the minimum requirements of the regulations enforced by OCR:



The (Name of Recipient) does not discriminate on the basis of race, color, national origin, sex, disability, or age in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups. The following person has been designated to handle inquiries regarding the non-discrimination policies:

Name and/or Title
Address
Telephone No.

<https://www2.ed.gov/about/offices/list/ocr/docs/nondisc.html>
Accessed 2020-10-11

Publications

Must promptly display Title IX Coordinator's contact information:

- On district's website 
- In each handbook or catalog 

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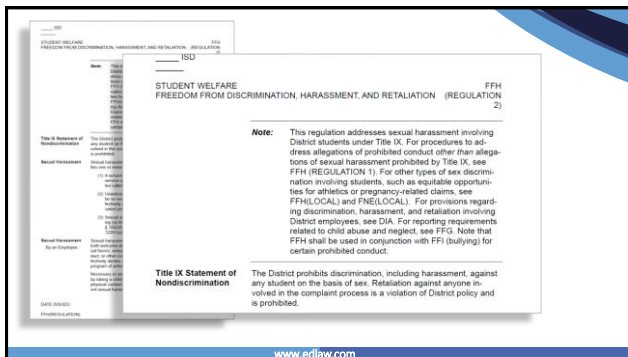
34 C.F.R. § 106.8(b).

District must adopt and publish grievance procedures and provide notice of process including...

1. How to report or file a complaint of sex discrimination;
2. How to report or file a formal complaint of sexual harassment; and
3. How the district will respond.

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34 C.F.R. § 106.8(b).



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The 2020 regulations...

Seek to create a separation between the investigation and decision-making of formal complaints (sexual harassment).

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While it is best to separate roles...

- The Title IX Coordinator can also be the investigator and the informal resolution facilitator.
- The Title IX Coordinator **cannot** also serve as the decision-maker on a formal complaint or on appeal.
- All roles can be outsourced, except the Title IX Coordinator (e.g., investigator, decision-maker, informal resolution facilitator, appellate decision maker).

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Remember that anyone serving as a Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate an information resolution process must not have a **conflict of interest** or **bias** for or against **complainants** or **respondents generally** or an **individual** complainant or respondent.

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SCENARIO: Conflicts of Interest

An employee files a Formal Complaint of sexual harassment against Sam (Employee). Rebecca is the Director of HR and the Title IX Coordinator for employee-related complaints. She usually serves as the investigator for Formal Complaints. Sam and Rebecca were previously romantically involved.

- Can she serve as the investigator?
- Can she serve as the Title IX Coordinator in this case?

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The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures... consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without filing a formal complaint, and explain to the complainant the process for filing a formal complaint."

- Respond to every report of sexual harassment
- Must not be deliberately indifferent
- For OCR purposes, actual knowledge is imputed to the district if any employee is aware of sexual harassment.

34 C.F.R. § 106.44(a).

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- Respond to every report of sexual harassment
- Must not be deliberately indifferent
- For OCR purposes, actual knowledge is imputed to the district if any employee is aware of sexual harassment.

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SCENARIO: Verbal reports

Nate does not tell his parents, but another student reports the situation to his parents, who calls Principal Lasso.

Principal Lasso tells her that he is going to need her to put her concerns in writing, so he can address the situation.

This parent will not put her concerns in writing and wants to remain anonymous.

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SCENARIO: Verbal reports



Ask for written report: An administrator may ask the individual to provide a written statement, but the reporter is not required to put the report in writing. This District may request, but not require, a written report. If a report is made orally, an administrator will put the report in written form and provide it to the Title IX Coordinator.

FFH(LOCAL)

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CONTACTING THE COMPLAINANT

Regulations do not dictate the medium of contact.

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CONTACTING THE COMPLAINANT

K-12 SETTING

- Phone call, followed by email/letter.
- In person parent conference, followed by email/letter.

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DISTRICT LETTERHEAD

"This letter may be sent to adult students or parents of minor students after initial verbal contact by school officials about a report of alleged sexual harassment involving their child when no Formal Complaint is filed."

[Date]

[Adult Student Complainant/Parent/Guardian]
[Address]

Re: Title IX Complaint – Response to Sexual Harassment Report Supportive Measures

Dear Mr./Ms. _____:

This letter is to confirm receipt of a report of alleged sexual harassment involving your child. It is our understanding that, at this time, you do not wish to file a Formal Complaint and pursue this matter further. If you change your mind, please contact my office immediately.

Even though you have not filed a Formal Complaint, the District is implementing the following supportive measures for your child, because school board policy FFH prohibits discrimination on the basis of sex, including sexual harassment and other prohibited conduct, against students in all of its educational programs. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, without fee or charge to students, when a report of alleged sexual harassment is made.

Supportive Measures: *(Select only those that apply and provide details. Delete the options below that will not be implemented.)*

- Counseling of students regarding appropriate behavior expectations
- Review of district and code of conduct expectations with students by administrator
- Change of class schedule/lunch schedule/locker location
- Campus/class escort
- Increased school monitoring of [location] for [time period e.g., next 9 weeks]
- School counseling
- Stay away agreement/No contact directives
- Limitation on extracurricular activities
- Training
- Other: _____

“The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.”

34 C.F.R. § 106.30.

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SUPPORTIVE MEASURES

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Supportive Measures means...

- Non-disciplinary, non-punitive individualized services
- Offered as appropriate, as reasonably available
- Without fee or charge to the complainant or respondent
- Before or after filing of a formal complaint or where no formal complaint has been filed
- Designed to restore or preserve equal access to the district's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment or deter sexual harassment

34 C.F.R. § 106.30

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Supportive Measures examples

- 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 or housing locations
- Leaves of absence
- Increased security and monitoring of certain areas of the campus
- Other similar measures

34 C.F.R. § 106.30

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- Counseling of students regarding appropriate behavior expectations
- Review of district and code of conduct expectations with students by administrator
- Change of class schedule/lunch schedule/locker location
- Campus/class escort
- Increased school monitoring of [location] for [time period e.g., next 9 weeks]
- School counseling - # sessions
- No contact/no communication agreements
- No contact/communication directives
- Limitation on extracurricular activities
- Social Skills Training
- Staff Training
- Other: _____

Add the term of supportive measures (e.g., pending resolution of the grievance process; four weeks; end of semester; end of the school year).



Supportive Measures means...

The recipient must maintain as confidential any supportive measures provided to the complainant or respondent—to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures.

34 C.F.R. § 106.30

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Keep documentation of supportive measures (e.g., no contact/communication agreements, log of counseling sessions, copies of social skills stories/trainings, summary of schedule changes, summary of campus escorts).

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SCENARIO: Emergency Removal

If a Formal Complaint is filed, Principal Lasso and Coach Beard cannot remove Jamie (et al) from the team until the Title IX Investigative Process is completed and a determination of “responsibility” is made, unless the criteria for an “emergency removal” are met.

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SCENARIO: Emergency Removal

If a Formal Complaint is filed, Principal Lasso and Coach Beard cannot remove Jamie (et al) from the team until the Title IX Investigative Process is completed and a determination of “responsibility” is made, unless the criteria for an “emergency removal” are met.

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NOTICE TO PARTIES IF FORMAL COMPLAINT IS FILED

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DISTRICT LETTERHEAD

**This notice must be sent simultaneously to the Complainant and Respondent and before investigation of the Formal Complaint begins, including student interviews occur.*

[Date]

[Adult Student Complainant/Parent/Guardian Address]

Re: Notice to Parties of Title IX Formal Complaint of Sexual Harassment Case No. _____

Dear Mr./Ms. _____

This letter is to notify you of the filing of a Formal Complaint of sexual harassment involving your student. The details of the allegations are included on the enclosed Formal Complaint form. Sexual harassment is prohibited by and defined in Board Policy FFH (LEGAL) and (LOCAL). The grievance process for handling this complaint can be found in FFH (REGULATION 2-SEXUAL HARASSMENT). The policies and procedures are enclosed for your reference.

SENT BY TITLE IX COORDINATOR OR DESIGNEE

- Investigation of Formal Complaint – Appoint Investigator and Decision Maker**
Provide Notice to Parties: Simultaneous notice must be provided to all known parties that includes:
- Allegations of sexual harassment, known at the time, with sufficient detail to prepare before any initial interview;
 - Identities of the parties involved;
 - Date, location of alleged incident(s);
 - Statement that **Respondent is presumed not responsible** and that a determination will not be made until the conclusion of the grievance process
 - Statement that the parties have the right to an advisor of their choosing, who can be a parent/guardian or another individual who may, but is not required to be, an attorney and who may inspect and review evidence; and
 - Statement that the Code of Conduct prohibits knowingly making false statements.
 - **An offer of informal resolution.**

ASSISTING WITH EMERGENCY REMOVAL OR ADMINISTRATIVE LEAVE DECISIONS

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Emergency Removal: The Title IX Coordinator/designee and the campus administration/HR will determine whether a respondent should be removed on an emergency basis. The District must first undertake an individualized safety and risk analysis to determine whether an immediate threat to the physical health and safety of others, arising from the alleged sexual harassment, justifies removal.

*Title IX does not modify the rights of students with disabilities regarding change of placement under the Individuals with Disabilities Education Act and Section 504 still apply.

- Title IX Coordinator
- Campus Administrator
- Threat Assessment Personnel

SCENARIO: Locker Room Bums & Arses

Several of the school's soccer players are annoyed by a new student, Jan Maas, who has recently moved to the district from another country with different cultural norms. Jan is more direct when communicating with others and does not always appreciate the subtleties of local customs and relationships.

A handful of teammates decide to "take him down a notch" by holding him down and sticking something "up his bum."

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SCENARIO:

Relevant Policies: FFI/FFH

Action Needed: Students: 1) review policy – FFI or FFH? - both; 2) contact parents/student – offer info about FFH process; 3) contact law enforcement; 4) offer supportive measures; 5) determine whether immediate threat to physical health or safety of students

Documentation Required/Recommended: 1) supportive measures offered; 2) that reported to law enforcement; 3) whether FC filed; 3) if FC filed...

Retention of Documentation: At least 7 years (or 2 years passed 18)

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Emergency Removal: The Title IX Coordinator/designee and the campus administration/HR will determine whether a respondent should be removed on an emergency basis. The District must first undertake an individualized safety and risk analysis to determine whether an **immediate threat** to the physical health and safety of others, arising from the alleged sexual harassment, justifies removal.

*Title IX does not modify the rights of students with disabilities regarding change of placement under the Individuals with Disabilities Education Act and Section 504 still apply.

• Title IX Coordinator
• Campus Administrator
• Threat Assessment
• Personnel

SCENARIO:

Keeley and Jamie used to date. Jamie has "nudes" of Keeley. After they break up, Jamie sends the pics to other students who show them around school. Keeley's new boyfriend, Roy, finds out about this and "avenges" Keeley's honor by punching Jamie in the nose at school.

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SCENARIO:

What do about:

- Jamie
- Roy
- Keeley

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SCENARIO:

Relevant Policies: FFI/FFH

Action Needed: Students: 1) review policy – FFI or FFH? - both; 2) contact parents/student – offer info about FFH process; 3) contact law enforcement; 4) offer supportive measures; 5) determine whether immediate threat to physical health or safety of students

Documentation Required/Recommended: 1) supportive measures offered; 2) that reported to law enforcement; 3) whether FC filed; 3) if FC filed...

Retention of Documentation: At least 7 years (or 2 years passed 18)

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DETERMINING WHETHER TO DISMISS A FORMAL COMPLAINT

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Title IX Discrimination Dismissal Form
Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on the sex of students in educational institutions that receive federal financial assistance. A Formal Complaint of sexual harassment must be dismissed if alleged conduct, even if proven, would not constitute sexual harassment, demonstrated in a school-based program or activity, or did not occur in the United States. A Formal Complaint may be dismissed if a Complainant notifies the Title IX Coordinator that they would like to withdraw the complaint or any of the allegations therein, the evidence is sufficient to reach a determination, or specific circumstances prevent the district from gathering evidence to reach a determination.

COMPLAINT

Case Name: _____
 Complaint #: _____
 District: _____
 Complainant: _____
 Respondent: _____
 Date: _____
 Reasoning for Dismissal: Describe the reasoning behind the dismissal of this complaint.

Name: _____ Title IX Coordinator/Investigator Date: _____

Once signed, a copy of this dismissal form will be placed in the file for this complaint and sent to all parties involved.

“

The Title IX Coordinator is responsible for effective implementation of remedies.”

34 C.F.R. § 106.45(b)(7)(iv).

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- ## What are examples of remedies?
- Not defined in Title IX
 - No list of examples in regulations
 - Money damages were removed as possible remedy in final rules
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Remedies - Purpose

Designed to restore or preserve the complainant's equal access to education

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- ## Remedies for Complainants
- Supportive measures
 - Counseling
 - Opportunity to make up work, retake exams
 - Change of class, lunch period, campus
 - Escort on campus
 - Increase security
 - Training efforts
- www.edlaw.com

Remedies for Complainants

- Disciplinary sanctions against respondent per the Student Code of Conduct (e.g., OSS, DAEP, expulsion)
- Removal of respondent from extracurricular activity/activities
- Unilateral no-contact order on respondent
- Other sanctions applicable to respondent

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“

The Department believes that a complainant entitled to remedies should not need to file an appeal to challenge the recipient's selection of remedies; instead, we have revised [the rules] to require that Title IX Coordinator be responsible for effective implementation of remedies. This permits a complainant to work with the Title IX Coordinator to select and effectively implement remedies designed to restore or preserve the complainant's equal access to education.”

p. 940 = Commentary

Selection of Remedies Not Appealable

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Selection of Remedies Not Appealable

Bases for Appeal of Decisions

- Procedural irregularity
- Bias or conflict of interest
- That affected the outcome

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Written Determination must include



- any sanctions the recipient imposes on the respondent; and
- **whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided to the complainant**

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REMEDIES

- Shared with complainant – complainant's remedies and respondent's sanctions
- Shared with respondent – sanctions and whether remedies were provided to complainant (not details of the remedy, unless the sanctions overlap with remedies)



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POSTING TRAINING MATERIALS

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What to post:

- Notice of non-discrimination policy
- Title IX Coordinator's contact information
- Links to FFH and DIA – LEGAL, LOCAL, EXHIBIT, REGULATIONS
- Training materials used to train T9 Coordinator, Investigators, Decision-Makers, Facilitators

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Permission from the copyright holder should be obtained, but failure to obtain permission does not relieve a district from the requirement to post.

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Where to post:



- Non-discrimination policy and Title IX Coordinator's contact information must be prominently displayed.
- There is no requirement that the materials be on the homepage or linked to the homepage.

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Where to post:



- There is no requirement to have a section of the website dedicated to Title IX requirements.
- There is no requirement that Title IX information be located on multiple pages of a district's website.
- Title IX information could be added as a drop-down option in any of the following areas: Required Notices, Public Information, Departments, Students, Employees, Community

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RECORD KEEPING

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DISTRICT LETTERHEAD

Title IX Record Keeping Cover Sheet

This record is related to a report of sexual harassment and must be kept for a period of seven (7) years from the date of conclusion of the grievance process.

Date of Initial Complaint: _____

Date of Final Decision: _____

1. Initial Intake Report

2. Grievance Process Management Report - Required Retention

3. Final Complaint or Any

4. Notice of Final

5. Grievance Process - All Records

6. Grievance Process - All Records

7. Grievance Process - All Records

8. Grievance Process - All Records

9. Grievance Process - All Records

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38. Grievance Process - All Records

39. Grievance Process - All Records

40. Grievance Process - All Records

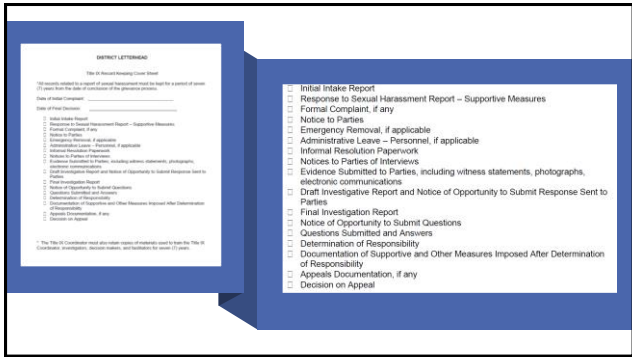
DISTRICT LETTERHEAD

Title IX Record Keeping Cover Sheet

*All records related to a report of sexual harassment must be kept for a period of seven (7) years from the date of conclusion of the grievance process.

Date of Initial Complaint: _____

Date of Final Decision: _____



U.S. Department of Education - 2020

- Overview of New Rule
- Fact Sheet
- Summary of New Rules
- Comparison of Proposed Rules

Resources for Title IX Coordinators

SEARCH

Student Loans Grants Laws Data

ARCHIVED INFORMATION

Secretary DeVos Announces New, Proactive Civil Rights Compliance Center within Office for Civil Rights

OPEN Center will focus on Outreach, Prevention, Education and Non-discrimination to Promote Equity in Education

JANUARY 21, 2020

Contact: Press Office, (202) 401-1576, opsa@ed.gov

WASHINGTON — U.S. Secretary of Education Betsy DeVos announced today that the Office for Civil Rights (OCR) at the U.S. Department of Education will launch the **Outreach, Prevention, Education and Non-discrimination (OPEN) Center** to focus on promoting compliance with federal civil rights laws. The OPEN Center will provide assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws.

"The creation of the OPEN Center is yet another example of this Department's focus on supporting school districts, colleges, and those closest to students," said Secretary DeVos. "The OPEN Center underscores OCR's efforts to support all schools and provide technical assistance to help them come into compliance with federal civil rights law prior to the filing of a complaint. This agency will continue supporting school districts and colleges by working with them cooperatively to ensure that every child has access to a quality education."

While OCR typically enforces federal civil rights laws through the traditional complaint-resolution process, OCR will, through the provision of targeted support to recipient institutions and the public, also be able to work more proactively—prior to the filing of

How Do
• Student
• College
• Every Stu
• FERPA
• FAFSA
• 1098, tax
• More...

Informa
• Civil
• Consti

Search p

Office for Civil Rights Blog

THE DEFINITION OF SEXUAL HARASSMENT UNDER THE TITLE IX RULE PROVIDES CLARITY TO SCHOOLS

October 7, 2020

The new Title IX Rule went into effect on August 14, 2020. Since that time, the Office for Civil Rights (OCR) has received inquiries regarding the definition of sexual harassment under the Final Rule. All references and citations are to the unofficial version of the Title IX Rule, which is available here. A link to the official version of the Rule published in the Federal Register is here.

Sexual Harassment under Section 106.30 of the new Title IX Rule (found in the Code of Federal Regulations at 34 C.F.R. Part 106) means conduct on the basis of sex in an education setting that satisfies one or more of the following:

<https://www2.ed.gov/about/offices/list/ocr/blog/index.html>

Previous Blogs

- 20180726
- 20200109
- 20200515
- 20200518
- 20200521
- 20200522
- 20200623
- 20200702
- 20200707

The information in this handout was prepared by Eichelbaum Wardell Hansen Powell & Muñoz, P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If special legal advice is sought, consult an attorney.

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Twenty New Tasks from the 2020 Title IX Regulations: A Checklist for Title IX Coordinators

By Holly Boyd Wardell
August 2020

The May 2020 Title IX regulations pertaining to sexual harassment require each “recipient” (i.e., an educational institution that receives federal funds) designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under Title IX. 34 C.F.R. § 106.8(a). That employee must be referred to as the “**Title IX Coordinator**.” *Id.* This is not a new position, but it does entail new responsibilities. If one of the many hats you wear for your district includes the “Title IX” hat, take note. Here’s your new to-do list:

1. Notify all applicants for admission and employment, students and parents, employees, and unions with which the district has collective bargaining agreements of the name/title, office address, email address, and telephone number of the **Title IX Coordinator**.
2. Ensure that policies and handbooks reflect current information about the Title IX Coordinator (e.g., DIA, FB, and FFH Exhibits).
3. Confirm that the district’s **website** and **publications** contain proper **nondiscrimination notices**. While there is no requirement that the district’s non-discrimination policy and Title IX Coordinator’s contact information be on the homepage or linked to the homepage, it must be **“prominently displayed.”** There is no requirement to have a section of the website dedicated to Title IX requirements. There is no requirement that Title IX information be located on multiple pages of a district’s website. Title IX information could be added as a drop-down option in any of the following areas: Required Notices, Public Information, Departments, Students, Employees, Community.
4. Develop a **grievance procedure** that comports with 34 C.F.R. Part 106 for responding to all reports of sexual harassment and a process for investigating formal complaints. Various model regulations/procedures are available that will work in conjunction with the district’s FFH policies. Although TASB Policy service has updated FFH and DIA (LEGAL) and (LOCAL) policies, they do not contain all of the required elements for the new Title IX grievance process. Additional regulation or procedures are necessary.
5. **Train all district staff** on the definition of sexual harassment, school policies, and reporting requirements. The Office of Civil Rights will now impute to the district knowledge of sexual harassment on the part of any school employee. In other words, OCR will treat the district as having **actual knowledge** if any employee knew of the harassment, regardless of whether the employee ever reported the conduct (unless the employee is the harasser). It is imperative that staff be trained on their duty to report suspected sexual harassment and the adverse employment implications to them for failing to do so.
6. Develop a system for **documenting** the district’s efforts to respond to all reports of sexual harassment. Both OCR and reviewing courts, in the event of litigation, will assess the district’s response to sexual harassment to determine whether school officials were deliberately indifferent to the harassment. Documentation of the district’s efforts will be critical to defending against sexual harassment claims, which may be asserted years after the fact.
7. For all reports of sexual harassment, contact the alleged victim (Complainant) to discuss the availability of **supportive measures** (e.g., counseling, schedule change, increased supervision).
8. Consider a Complainant’s wishes regarding supportive measures. Complainants may decline supportive measures offered by the district; they may also suggest alternative supportive measures. The Title IX Coordinator has the authority to decide which supportive measures will be implemented. Supportive measures should not impose an unreasonable burden on either party, and Respondents are entitled to a

presumption that they did not engage in sexual harassment unless and until the formal grievance process is completed.

9. Inform the Complainant of the right to file a **formal complaint** and the right to supportive measures with or without a formal complaint.
10. Decide **whether to file a formal complaint** when the Complainant does not. There may be circumstances where a Title IX Coordinator chooses to file a formal complaint even when the Complainant chooses not to (e.g., when there is an allegation of an improper relationship between a student and a staff member).
11. Decide **whether to dismiss** a formal complaint (or who should decide dismissals). A formal complaint must be dismissed if it does not constitute sexual harassment as now defined in the new regulations, did not occur in a district program or activity, or did not occur in the U.S.
12. Assist with **emergency removal** and **administrative leave** decisions.
13. Provide **notice to parties** of the grievance process in the case of a formal complaint. § 106.45. Before an investigation begins, including interviews of the parties, the Title IX Coordinator must ensure that the parties are provided written notice of their rights, including the right to be represented by an advisor, advance notice of interviews, right to examine the evidence, and appeal the decision.
14. Coordinate the effective **implementation of supportive measures**. § 106.30.
15. Assign an **investigator**. The investigator, who can be the Title IX Coordinator, must investigate formal complaints of sexual harassment and produce a written report. The investigator may be a district employee or outside source (e.g., consultant or law firm). The investigator must provide written notice to parties of the date, time, participants, purpose and location of any interview, allowing sufficient time to prepare. The investigative report must be shared with the parties at least 10 days before any determination of responsibility (i.e., whether the respondent engaged in sexual harassment). Investigators must be trained on impartial investigations, standards of evidence, how to equitably and meaningfully include both parties in the process including inculpatory and exculpatory evidence, how to write an investigative report, the role of expert witnesses, legal privileges, and more.
16. Assign a **decision maker**. The decision maker cannot be the investigator or the Title IX Coordinator, at least not on the same complaint. The decision maker will review the investigative report and “determine responsibility” (i.e., whether sexual harassment occurred). The decision maker must issue a written decision addressing the allegations, the procedural steps taken, findings of fact, application of the code of conduct to the facts, and the rationale as to each allegation to the determination of responsibility, disciplinary actions, and whether remedies to restore or preserve equal access will be provided. A decision maker must have training on objectivity and independent analysis, impartiality and how to decide what evidence is relevant, weighing evidence based on different standards of proof, drafting written decisions consistent with regulatory mandates, determining appropriate disciplinary sanctions and supportive measures, and providing appeal rights. In the case of an appeal, there will be a separate appellate decision maker, who still cannot be the investigator or Title IX Coordinator.
17. Ensure the **implementation of remedies**. § 106.45(b)(7)(iv).
18. Obtain **training** for school employees who will serve as Title IX personnel, investigators, decision makers, appellate decision makers, and informal resolution facilitators.
19. Post all **training materials** to the district’s website, including obtaining permission from copyright holders.
20. Gather and **preserve all documents** related to alleged sexual harassment for 7 years or otherwise directed by the district’s records control schedules, whichever is longer. § 106.45(b)(10).

Many of these tasks may be delegated, but the Title IX Coordinator must oversee the process. More information about the new Title IX grievance process can be found at www2.ed.gov and www.edlaw.com.



EICHELBAUM WARDELL
HANSEN POWELL & MUÑOZ, P.C.



Sexual Harassment TITLE IX GRIEVANCE PROCESS for Reports, Complaints, Investigations, Appeals



Effective August 14, 2020



	<p>Sexual harassment is conduct based on sex that satisfies one or more of the following:</p> <ol style="list-style-type: none"> 1. An employee conditioning an aid, benefit, or service of the school on an individual’s participation in sexual conduct; 2. Unwelcome conduct that a reasonable person would consider severe, pervasive, and objectively offensive such that it effectively denies an individual equal access to a district program or activity; or 3. Sexual assault, dating violence, domestic violence, or stalking. 	<p>New Definition of Sexual Harassment 34 C.F.R. §106.30</p>
<p>Terminology</p>	<p>Complainant: an individual who is alleged to be the victim of sexual harassment. Respondent: an individual who is alleged to be the perpetrator of sexual harassment. A Respondent may not be disciplined for sexual harassment until the conclusion of this grievance process. Formal Complaint: a document filed by a Complainant (or parent/guardian) or signed by the Title IX Coordinator¹ alleging sexual harassment against a Respondent and requesting that the District investigate the allegation.</p>	<p>**All employees must report suspected sexual harassment, but only a Complainant or the Title IX Coordinator can file a Formal Complaint.</p>
	<p>Reporting: All employees must immediately/promptly² report all instances of suspected sexual harassment to a campus administrator or the Title IX Coordinator or a Title IX Coordinator designee. (An employee’s failure to report alleged sexual harassment will result in disciplinary action up to and possibly including termination).</p>	<p>RESPONSIBILITY: All Employees FFH(LOCAL) DIA(LOCAL)</p>
	<p>A student may report alleged sexual harassment to a teacher, school counselor, administrator, or other appropriate school employee. Those employees must immediately report alleged sexual harassment to a campus administrator.</p>	<p>All Employees FFG(LOCAL)</p>
	<p>Child Abuse Reporting: If the incident could be child abuse, the employee must report to CPS or law enforcement within 48 hours of learning of incident.</p>	<p>All Employees FFG(LOCAL)</p>
	<p>Ask for written report: An administrator may ask the individual to provide a written statement, but the reporter is not required to put the report in writing. This District may request, but not require, a written report. If a report is made orally, an administrator will put the report in written form and provide it to the Title IX Coordinator.</p>	<p>FFH(LOCAL)</p>

	<p>Notify Title IX Office: A campus administrator must inform the Title IX Coordinator/designee of report of sexual harassment by telephone call or email within 24 hours.</p>	<p>Campus Administrators</p>
	<p>Emergency Removal: The Title IX Coordinator/designee and the campus administration/HR will determine whether a respondent should be removed on an emergency basis. The District must first undertake an individualized safety and risk analysis to determine whether an immediate threat to the physical health and safety of others, arising from the alleged sexual harassment, justifies removal.</p>	<ul style="list-style-type: none"> • Title IX Coordinator • Campus Administrator • Threat Assessment Personnel
	<p>*Title IX does not modify the rights of students with disabilities regarding change of placement under the Individuals with Disabilities Education Act and Section 504 still apply.</p>	
	<p>Administrative Leave: The Title IX Coordinator/designee and Human Resources Department, in conjunction with campus administration, will determine whether an employee should be put on administrative leave.</p>	<ul style="list-style-type: none"> • Title IX Coordinator • Human Resources • Campus Administrator
	<p>Contact Alleged Victim/Complainant: The Title IX Coordinator must promptly contact the Complainant to discuss:</p> <ol style="list-style-type: none"> 1. The availability of supportive measures; 2. Consider the Complainant’s wishes regarding supportive measures; 3. Inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint; and 4. Explain the process for filing a Formal Complaint. 	<p>Title IX Coordinator</p>
	<p>Supportive Measures: non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, without fee or charge to the Complainant and Respondent, when a report of alleged sexual harassment is made. They may include counseling, change of schedules/classes, campus escort or monitoring support, mutual restrictions on contact between the parties, increased security and monitoring, or other similar measures.</p>	<ul style="list-style-type: none"> • Title IX Coordinator • Campus Administration
	<p>If no Formal Complaint Filed: The Title IX Coordinator/designee must offer the Complainant and Respondent with supportive measures and document the measures provided. Documentation of supportive measures must be retained for at least 7 years.</p>	<p>Title IX Coordinator</p>
	<p>If Formal Complaint Filed (Dismissal): A Formal Complaint may be dismissed at any time during the grievance process if one of the following conditions are met. Mandatory Dismissal: The District is required by law to dismiss a Formal Complaint if the conduct alleged: 1) would not constitute sexual harassment even if proved; 2) did not occur in a District program or activity; or 3) did not occur in the U.S.</p>	<p>Title IX Coordinator</p>




¹ Designees: The Title IX Coordinator may designate other employees within the District to assist in fulfilling the requirements of Title IX.
² Red text indicates areas where the U.S. Department of Education left the timeline or process to the discretion of recipients. This chart contains recommendations from which districts may deviate.

<p>Discretionary Dismissal: The District may dismiss a Formal Complaint at any time during the investigation if: 1) the Complainant withdraws the allegations or complaint in writing; 2) the Respondent is no longer enrolled in the District; or 3) specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to allegations.</p> <p>Dismissal of a Formal Complaint does not preclude the District from taking disciplinary measures against Respondents for non-sexual harassment violations of the Code of Conduct.</p>	
 <p>Investigation of Formal Complaint – Appoint Investigator and Decision Maker</p> <p>Title IX Coordinator</p> <p>Provide Notice to Parties: Simultaneous notice must be provided to all known parties that includes:</p> <ul style="list-style-type: none"> Allegations of sexual harassment, known at the time, with sufficient detail to prepare before any initial interview; Identities of the parties involved; Date, location of alleged incident(s); Statement that Respondent is presumed not responsible and that a determination will not be made until the conclusion of the grievance process Statement that the parties have the right to an advisor of their choosing, who can be a parent/guardian or another individual who may, but is not required to be, an attorney and who may inspect and review evidence; and Statement that the Code of Conduct prohibits knowingly making false statements. An offer of informal resolution. 	
 <p>Facilitation of Voluntary Informal Resolution: At any time prior to deciding of responsibility the District may facilitate an informal resolution process, such as mediation. This is a voluntary process. Any party may decline to participate. (The investigation may be abated for a short, defined period for the parties to engage in informal resolution. However, the informal resolution process cannot be used to delay an investigation.)</p> <p>Informal Resolution cannot be used to resolve allegations that an employee sexually harassed a student.</p> <p>Prior to a resolution, a party has the right to withdraw and resume the grievance process with respect to the Formal Complaint.</p>	<p>Facilitator</p>

 <p>New Rules for Investigating Formal Complaints:</p> <ol style="list-style-type: none"> The burden of proof (preponderance of the evidence) rests on the District and not on the parties. The District cannot demand access to legally privileged information (e.g., healthcare-patient, attorney-client, priest-penitent). Both parties must have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. The District cannot restrict a party's ability to discuss the allegations under investigation or to gather or present relevant evidence. Both parties have the right to have a parent/guardian and/or advisor present during any part of the grievance process, including interviews. Parties are entitled to written notice of the date, time, location, participants, and purpose of investigative interviews and other meetings in this grievance process, with sufficient time for the party to prepare to participate. Parties have the right to inspect and review any evidence obtained as a part of the investigation that is directly related to the allegations raised in the Formal Complaint. 	<p>Investigator(s)</p>
 <p>Conduct the Investigation:</p> <ol style="list-style-type: none"> Review Formal Complaint. Determine whether there is an on-going criminal investigation and confer with law enforcement about whether the school's investigation will interfere with the criminal investigation. If so, the school's investigation may be abated for a short, defined period in cooperation with law enforcement. Contact law enforcement on a weekly basis regarding the status of the investigation. Document law enforcement contact and directives. Determine whether nature of allegations suggest the need for forensic interview by individuals specially trained in interviewing young children. If so, contact law enforcement or local child-advocacy center. Send written notice of interviews to parties, including date, time, location, participants, and purpose of meeting with sufficient time (3-5 days) for the party to prepare to participate. Interview Complainant regarding facts and potential witnesses. Advisor may be present but cannot answer for the Complainant. Interview Witnesses identified by Complainant. Witnesses are not entitled to have a parent/guardian or advisor present, unless allowed by administration. Interview Respondent. Advisor may be present but cannot answer for Respondent. Interview Witnesses identify by Respondent. Re-interview Complainant for clarification, if necessary. Gather physical evidence, visit incident site(s), review discipline and other relevant records of parties and witnesses. Review statements or reports from expert witnesses, if any. Allows parties access to facilities to gather evidence, if requested. 	<p>Investigator(s)</p>

<p>10 + 10</p> <ol style="list-style-type: none"> The parties do not have the right to be present during witness interviews. They can ask questions of the other party and witnesses through written question process later. Organize evidence to share with parties. Prior to completion of the investigative report, the investigator must send an electronic³ or hard copy of the relevant evidence gathered to the parties and the parties' advisors, if any. The parties must be provided at least 10 calendar days to submit a written response that the investigator must consider before completing the investigative report. Prepare an investigative report that summarizes relevant evidence. The report may include proposed findings of fact. The investigative report must be sent to the parties at least 10 calendar days before the Decision Maker decides regarding responsibility. Send investigative report to Decision Maker. 	
 <p>Decision/Determination of Responsibility: A Decision Maker (who is not the Title IX Coordinator or the Investigator) must issue a comprehensive written determination regarding responsibility (i.e., whether sexual harassment occurred) and the complete grievance process to date. The decision must include:</p> <ol style="list-style-type: none"> Identification of the allegations that constitute sexual harassment; Description of the procedural steps taken since the receipt of the Formal Complaint through the Decision, including notifications, interviews with the parties and witnesses, site visits, methods used to gather other evidence; Findings of Fact Conclusions regarding the application of the District's Code of Conduct to the facts; A statement of and the rationale for the results of each allegation, including a determination of responsibility; Any disciplinary sanctions imposed on the Respondent; A statement whether remedies to the Complainant have been designed to restore or preserve equal access to the District's education program or activity; and Information about the ability of the parties to appeal the decision. <p>The decision must be sent to the parties simultaneously.</p>	<p>Decision Maker</p>
 <p>Appeal: Either party may appeal on a form provided by the District within 10 calendar days of issuance of the decision. The only allowable bases for appeal are:</p> <ol style="list-style-type: none"> Procedural irregularity that affected the outcome of the matter; New evidence that was not reasonably available at the time of the decision that could affect the outcome; and The Title IX Coordinator, Investigator(s), or Decision Maker had a conflict of interest or bias for or against Complainants or Respondents 	<p>Appeals Decision Maker</p>

³ The evidence may be provided using a platform that prevents downloading and copying to protect the confidentiality of information about students or victims of sexual offenses.

<p>generally or the individual Complainant or Respondent that affected the outcome of the matter.</p> <p>If an appeal is filed, the Appeals Decision Maker shall provide notice to the other party in writing. Both parties shall have the opportunity to submit a written statement in support of or challenging the outcome. Parties will be provided 10 calendar days to submit an appeal statement.</p> <p>After considering the written appeal statements of the parties, the Appeals Decision Maker will issue a written decision that includes a rationale for the result and provide the decision to both parties simultaneously.</p>	
 <p>Record Keeping: All records related to a sexual harassment report under this grievance process must be maintained by the District for at least 7 years.</p>	<p>Title IX Coordinator</p>
 <p>Office for Civil Rights: An individual also has the right to file a complaint with United States Department of Education Office for Civil Rights.</p>	
 <p>Retaliation Prohibited: All individuals shall be protected from retaliation if the individual made a report or complaint, testified, assisted, or participated or refused to participate in an investigation or the grievance process. Retaliation may include intimidation, threats, coercion, or discrimination.</p>	<p>All Employees</p>

Note: This regulation addresses sexual harassment involving District students under Title IX. For procedures to address allegations of prohibited conduct *other than* allegations of sexual harassment prohibited by Title IX, see FFH (REGULATION 1). For other types of sex discrimination involving students, such as equitable opportunities for athletics or pregnancy-related claims, see FFH(LOCAL) and FNE(LOCAL). For provisions regarding discrimination, harassment, and retaliation involving District employees, see DIA. For reporting requirements related to child abuse and neglect, see FFG. Note that FFH shall be used in conjunction with FFI (bullying) for certain prohibited conduct.

Title IX Statement of Nondiscrimination The District prohibits discrimination, including harassment, against any student on the basis of sex. Retaliation against anyone involved in the complaint process is a violation of District policy and is prohibited.

Sexual Harassment Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) A school employee conditioning an educational benefit or service upon a student's participation in sexual conduct (often called "quid pro quo" harassment);
- (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 programs or activities; or
- (3) Sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined in the Clery Act, 20 U.S.C. § 1092(f), and the Violence Against Women Act, 34 U.S.C. § 12291(a)).

Sexual Harassment By an Employee Sexual harassment of a student by a District employee includes both welcome and unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature that effectively denies a student equal access to the District's education program of activity.

Necessary or permissible physical contact such as assisting a child by taking a child's hand, comforting a child with a hug, or other physical contact not reasonably construed as sexual in nature is not sexual harassment.

By Others However, romantic or inappropriate social relationships between students and District employees are strictly prohibited. Any sexual relationship between a student and a District employee is always prohibited, even if consensual. [See DH]
Sexual harassment of a student includes harassment committed by another student, unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct when the conduct is severe, pervasive, and objectively offensive to the point it denies a student equal access to the District's education programs or activities.

Gender-Based Harassment Gender-based harassment includes physical, verbal, or nonverbal conduct based on the student's gender, the student's expression of characteristics perceived as stereotypical for the student's gender, or the student's failure to conform to stereotypical notions of masculinity or femininity. For purposes of this policy, gender-based harassment is considered prohibited sexual harassment if the conduct is so severe, pervasive, and objectively offensive that the conduct effectively denies a student equal access to the District's education programs or activities.

Dating Violence Dating violence occurs when a person in a current or past dating relationship uses physical, sexual, verbal, or emotional abuse to harm, threaten, intimidate, or control the other person in the relationship. Dating violence also occurs when a person commits these acts against a person in a marriage or dating relationship with the individual who is or was once in a marriage or dating relationship with the person committing the offense.

For purposes of this policy, dating violence is considered prohibited harassment if the conduct is so severe, pervasive, and objectively offensive that the conduct effectively denies a student equal access to the District's education program or activity.

Dating violence is defined as "an act, other than a defensive measure to protect oneself, by an actor that:

- (1) is committed against a victim or applicant for a protective order:
 - (A) with whom the actor has or has had a dating relationship; or
 - (B) because of the victim's or applicant's marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and
- (2) is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the victim

or applicant in fear of imminent physical harm, bodily injury, assault, or sexual assault.

Tex. Family Code section 71.0021.

Retaliation The District prohibits retaliation by a student or District employee against an individual alleged to have experienced sexual harassment, an individual who makes a good faith report of sexual harassment, serves as a witness, or participates or refuses to participate in an investigation.

Any person who believes he or she has been retaliated against may file a complaint in accordance with the grievance process described in this regulation.

False Claim A student or employee who intentionally makes a false claim or provides a materially false statement shall be subject to appropriate disciplinary action as defined in this regulation.

Prohibited Conduct The term "prohibited conduct" includes sex discrimination, harassment, sexual assault, dating violence, domestic violence, stalking, and retaliation as defined by this regulation, even if the behavior does not rise to the level of unlawful conduct.

Reporting Procedures Student Report Any student who believes that he or she has experienced prohibited conduct or believes that another individual has experienced prohibited conduct should immediately report the alleged acts to a teacher, school counselor, principal, assistant principal, or the Title IX Coordinator/designee.

Employee Report Any District employee who suspects or receives notice that a student, group of students, or other individual in the school has or may have experienced prohibited conduct shall promptly notify a campus administrator or the Title IX Coordinator.

Definition of District Officials For the purposes of this regulation, District officials are the Title IX Coordinator/designee and campus administrators.

Title IX Coordinator Reports of discrimination based on sex, including sexual harassment or gender-based harassment, may be directed to the designated Title IX coordinator for students. [See FFH(EXHIBIT)]

Definition of Complainant A complainant is an individual who is alleged to be the victim of prohibited conduct under this policy.

Definition of Respondent A respondent is the person who has been reported to be the perpetrator of prohibited conduct under this policy.

Definition of Formal Complaint A formal complaint means a document filed by a complainant (or complainant's parent/guardian) or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the District investigate the allegation of sexual harassment.

Alternate Reporting Procedures A student shall not be required to report prohibited conduct to the person alleged to have committed the conduct. Reports concerning prohibited conduct, including reports against the Title IX coordinator, may be directed to the Superintendent.

A report against the Superintendent may be made directly to the Board. If a report is made directly to the Board, the Board shall appoint an appropriate person to conduct an investigation.

Timely Reporting Reports of prohibited conduct shall be made as soon as possible after the alleged act or knowledge of the alleged act. A failure to promptly report may impair the District's ability to investigate and address the prohibited conduct.

Notice to Parents Upon receipt of a formal complaint, the District official or designee shall promptly notify the parents of any student alleged to have experienced prohibited conduct and the parents of a student who is alleged to have engaged in prohibited conduct with notice in compliance with the Written Notice section below.

[For parental notification requirements regarding an allegation of educator misconduct with a student, see FFF.]

Supportive Measures The District shall offer the parties supportive measures. Supportive measures may include individualized services that are non-punitive, non-disciplinary, and do not unreasonably burden the other party yet are designed to restore or preserve a student's equal access to education. Supportive measures may include but are not limited to counseling, extensions of deadlines or other class-related adjustments, modifications of class schedules, campus escort services, mutual restrictions on contact between the parties, increased monitoring of certain areas of the campus, and other similar measures. The District must maintain as confidential any supportive measures provided to the parties to the extent this would not impair the ability of the District to provide supportive measures.

Grievance Procedure: A formal complaint alleging prohibited conduct under this policy shall be in writing. A formal complaint may be made by the complainant-student, a parent, or legal guardian. In cases where an alleged victim doesn't file a formal complaint, the Title IX Coordinator may initiate grievance procedures where warranted (e.g., allegations of sexual assault or abuse, improper relationship between employee and student). The grievance process shall be engaged with all deliberate speed for resolving formal complaints of sexual harassment. Temporary delays shall be permitted only for good cause. Good cause can include but is not limited to law enforcement activities, the absence of a party or witness, the absence of a party's advisor of choice, or the need to provide language assistance or accommodation of disabilities.

Equitability and Objectivity: Both the complainant and the respondent are to be treated equitably in the grievance process. The District must ensure an objective evaluation of all relevant evidence including inculpatory and exculpatory evidence.

Credibility and Presumption of Innocence: Credibility determinations shall not be made on the basis of a person's status as a complainant, respondent, or witness. The respondent is presumed not responsible, and any finding of responsibility comes only at the conclusion of a grievance process.

No Conflicts of Interest: The individuals directly involved in the grievance process (Title IX Coordinator or designee, investigator, decision-maker, and facilitator of informal resolution efforts) must not have any bias or conflict of interest. These individuals shall also be trained. The materials used to train Title IX personnel may not rely on sex stereotypes, must promote impartial investigations and adjudications, and must be posted on the District's website.

Standard of Evidence: The standard of evidence the District will use to reach a determination regarding responsibility shall be the preponderance of the evidence standard *[or clear and convincing evidence standard]*.

DATE ISSUED: ADOPTED: 5 of 14
FFH(REGULATION)

Such dismissal does not preclude the District taking disciplinary action under the Student Code of conduct for non-sexual harassment misconduct.

If the District official dismisses a formal complaint or any allegations in it, the District official shall promptly send written notice of the dismissal and the reasons to the parties. Both parties have the right to appeal a dismissal decision.

The District will not dismiss a complaint involving an alleged improper relationship between an employee and student.

If the District official determines that the allegations, if proven, would not constitute prohibited conduct as defined by this policy but might constitute bullying, the District official shall refer the complaint for consideration under FFI.

DATE ISSUED: ADOPTED: 7 of 14
FFH(REGULATION)

Privileges: No information protected by a legal privilege, such as the attorney-client privilege or the doctor-patient privilege, can be used during an investigation unless the person holding that privilege has waived it. Neither a party nor the District is allowed to seek, permit questions about, or allow the introduction of evidence that is protected by a recognized privilege. Individuals can always opt to waive their own privileges.

Emergency Removals: The District may remove a respondent from the District's education programs or activities on an emergency basis if the District undertakes an individualized safety and risk analysis and determines that an immediate threat, arising from the allegations of sexual harassment, to anyone's physical health or safety justifies removal. The District must provide the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision does not override or modify the rights of individuals under the Individuals with Disabilities Education Act, Section 504, or the Americans with Disabilities Act.

If the respondent is a District employee, the employee may be placed on administrative or other district initiated leave during the investigation.

Initial Assessment Dismissal Option: Upon receipt of a formal complaint, the District official or designee shall determine whether the allegations, if proven, would constitute prohibited conduct as defined by this policy. The District official/designee must dismiss a complaint:

- (1) that does not describe conduct that meets the definition of sexual harassment;
- (2) that alleges sexual harassment that did not occur in the District's education program or activity;
- (3) that alleges sexual harassment that did not occur in the United States.

Such dismissal does not preclude the District taking disciplinary action under the Student Code of conduct for non-sexual harassment misconduct.

The District may dismiss a complaint:

- (1) if the complainant notifies the Title IX Coordinator in writing that he/she wishes to withdraw the formal complaint or any allegations therein;
- (2) if the respondent is no longer enrolled in the District; or
- (3) if circumstances prevent the District from gathering evidence sufficient to reach a determination about the allegations.

DATE ISSUED: ADOPTED: 6 of 14
FFH(REGULATION)

Written Notice: When an investigation begins, the parties will receive written notice. Included in the notice shall be a copy of this regulation and policy FFH. Written notice shall also include:

- (1) The actual allegations and facts that would constitute sexual harassment, including the date and location of the alleged incident(s), if known.
- (2) A statement that the respondent is presumed to be innocent and that a determination regarding responsibility is made at the conclusion of the grievance process.
- (3) A statement that the parties are entitled to an advisor of their choice who may be a parent/guardian or who may be, but is not required to be, an attorney.
- (4) A statement that the parties can inspect and review relevant evidence
- (5) Information from the District's code of conduct about making false statements.
- (6) *Information about the opportunity to engage in informal resolution.*

This written notice must be provided to allow the parties sufficient time to prepare a response before any initial interview.

If, in the course of the investigation, the District decides to investigate allegations about the complainant or respondent that were not included in the original notice, the District must provide notice of the additional allegations to the parties.

Informal Resolution: The District may offer informal resolution in appropriate cases except where the respondent is an employee of the District. Informal resolution may be attempted only if each party enters the process completely voluntarily. The District shall never force, threaten, or require any party to participate in an informal resolution process.

The District shall provide a specially trained facilitator who is free from conflicts of interest or bias. All parties shall be provided with notice of the allegations, notice of their rights, information about whether an informal process is confidential, and about withdrawing from the process.

The District may abate the investigation for two weeks for the parties to engage in informal resolution or longer if by agreement of the parties.

District Investigation The Investigator:

DATE ISSUED: ADOPTED: 8 of 14
FFH(REGULATION)

STUDENT WELFARE
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION (REGULATION 2) FFH

The investigation may be conducted by a trained District official or a designee, such as a principal, an assistant principal, a central administrator, or by a third party designated by the District, such as an attorney. When appropriate, the principal shall be involved in or informed of the investigation.

The District shall provide an equal opportunity for the parties to present witnesses to be interviewed and evidence to be considered, including information from fact and expert witnesses, as well as inculpatory or exculpatory evidence.

The District cannot restrict the ability of a party to discuss the allegations under investigation or to gather and present relevant evidence.

Representation

Both parties shall have the opportunity to have an advisor of choice accompany them to any meetings [or hearings] throughout the grievance process. A parent/guardian may serve as a student's advisor. A student may also have an advisor in addition to his/her parent present at meetings in the grievance process. However, parents and advisors cannot interfere with interviews. Advisors may only observe.

The Investigation

The District shall provide written notice of the date, time, location, participants, and purpose of all [hearings,] interviews, or other meetings with sufficient time for the party to prepare.

The District shall provide equal opportunities for the parties and their advisors to inspect and review the evidence obtained as part of its investigation, if the information is directly related to the allegations raised in the formal complaint.

Every party has the right to choose to participate, or not participate, in any part of a grievance process. No party shall be forced, threatened, coerced, discriminated against, or retaliated against for choosing not to be part of the grievance process.

The investigation may consist of personal interviews with the person making the report, the complainant, the respondent, and others with knowledge of the circumstances surrounding the allegations. The investigation may also include analysis of other information or documents related to the allegations.

Prior to the completion of the investigative report, the District shall send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy. The District may use an electronic format that prevents the parties from being able to download or copy the evidence in order to ensure confidentiality. The parties must have at least 10 days to

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submit a written response, which the investigator will consider prior to completing the investigative report.

If a response is submitted, the investigator shall consider that response before finalizing the investigative report. The investigative report can then be finalized and provided to the parties.

That report shall be circulated to the parties at least another 10 days before any determination of responsibility [, or 10 days before a hearing].

Before making a determination of responsibility, the parties shall be given an opportunity to submit relevant, written questions to each other. The decision maker may establish a deadline for a party to respond to questions posed by another party. Responses may be verbal or written at the decision-maker's discretion. Parents/guardians may respond in writing for their children. The decision maker may ask additional questions of the parties and witnesses before making a determination of responsibility.

Questions and evidence about a complainant's prior sexual history are not relevant with two limited exceptions: to prove someone other than the respondent committed the alleged misconduct or to prove consent.

If a law enforcement or regulatory agency notifies the District that a criminal or regulatory investigation has been initiated, the District shall confer with the agency to determine if the District investigation would impede the criminal or regulatory investigation. The District shall proceed with its investigation only to the extent that it does not impede the ongoing criminal or regulatory investigation. After the law enforcement or regulatory agency has finished gathering its evidence, the District shall promptly resume its investigation.

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Hearing

The District may offer the parties a hearing as part of the grievance process. Any hearing must give the parties an equal opportunity to present evidence and witnesses. The parties shall be entitled to an advisor of their choice. The parties shall be given an opportunity to submit relevant, written questions to each other. Questions and evidence about a complainant's prior sexual history are not relevant, with two limited exceptions: to prove someone other than the respondent committed the alleged misconduct or to prove consent.

The District may hold the entire live hearing virtually or the District may allow some participants to appear virtually, with technology that allows everyone to see and hear each other.

Disability Accommodations

The District shall ensure that individuals with disabilities who participate in a District grievance process are appropriately accommodated, including with respect to the use of technology and reliance on visual, auditory, or written modes of communication.

Concluding the Investigation

Absent extenuating circumstances, such as a request by a law enforcement or regulatory agency for the District to delay its investigation, the investigation should be completed with all deliberate speed from the date of the formal complaint; the investigator shall take the time necessary to complete a thorough investigation.

The investigator shall prepare a final written report of the investigation. The report shall not include a determination of whether prohibited conduct occurred but may include recommended findings of fact. The report shall be filed with the Title IX Coordinator and the decision-maker.

Written Determination of Responsibility and Notification of Outcome Decision-maker

Notification of the outcome of the investigation shall be provided to both parties in compliance with FERPA.

The decision-maker shall objectively evaluate the relevant evidence and reach conclusions about whether the respondent is responsible for the alleged sexual harassment. The decision-maker shall use independent judgment and shall not be the same person who conducted the investigations or the Title IX Coordinator.

Decision-makers shall be free from conflicts of interest or bias for or against complainants or respondents and shall have received special training about how to be impartial and how to decide what evidence is relevant. The decision-maker will weigh the relevant evidence and decide whether it meets the District's standard of evidence for sexual harassment allegations.

After the evidence has been weighed, the decision-maker shall issue a written decision. It shall include:

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- (1) Identification of the allegations potentially constituting sexual harassment.
- (2) A description of the procedural steps taken from the formal complaint through determination of responsibility, including notifications to parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held, if any.
- (3) Findings of fact supporting the determination.
- (4) Conclusions regarding the application of the District's code of conduct to the facts.
- (5) A statement and rationale for the ultimate determination of responsibility.
- (6) Any disciplinary sanctions that will be imposed on the respondent and state whether the District will provide remedies to the complainant.
- (7) A statement and rationale for any remedies for the complainant, addressing how those remedies will restore or preserve equal access to District activities.
- (8) A statement of the District's procedures, a statement that the parties have a right to appeal the initial determination regarding responsibility, and the permissible bases for appeal.

The District shall send the written determination to the parties simultaneously, along with information about how to appeal the determination.

The Title IX coordinator is responsible for implementing the remedies contained in the written decision if there is no timely appeal or once the appeal process is completed.

Corrective Action/Remedies

The District's remedies are to be designed to restore or preserve equal access to the District's education programs or activities. Disciplinary sanctions for students will range from a verbal warning to expulsion. Examples of corrective action may include a training program for those involved in the complaint, a comprehensive education program for the school community, counseling to the complainant and the respondent who engaged in prohibited conduct, follow-up inquiries to determine if any new incidents or any instances of retaliation have occurred, involving parents and students in efforts to identify problems and improve the school climate, increasing staff monitoring of areas where prohibited conduct has occurred, and reaffirming the District's policy against

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discrimination and harassment. Respondents who are employees may be subject to a range of discipline from a written warning up to and including termination of employment.

Bullying If the results of an investigation indicate that bullying occurred, as defined by FFI, the District official shall refer to FFI for appropriate notice to parents and District action. The District official shall refer to FDB for transfer provisions.

Improper Conduct If the investigation reveals improper conduct that did not rise to the level of prohibited conduct or bullying, the District may take disciplinary action in accordance with the Student Code of Conduct or other corrective action reasonably calculated to address the conduct, if it has not already done so.

Confidentiality To the greatest extent possible, the District shall respect the privacy of the complainant, respondent, and witnesses. Limited disclosures may be necessary in order to conduct a thorough investigation, comply with applicable law, and to implement supportive measures. The District shall maintain the identities of parties and witnesses as confidential, unless disclosure of someone's identity is required under other laws or is necessary in order to conduct the grievance process, including the implementation of supportive measures.

Appeal An appeal must be in writing (on a form provided by the District) and filed with the Title IX Coordinator within ten calendar days of issuance of the determination of responsibility. Appeals can be taken from two different points in the process: after a dismissal of a complaint (whether mandatory or discretionary) or after the issuance of the determination of responsibility. Grounds for appeal are limited to:

- (1) A procedural irregularity that affected the outcome of the matter.
- (2) New evidence was discovered that was not reasonably available at the time of the determination of responsibility or dismissal.
- (3) A conflict of interest on the part of a Title IX Coordinator, an investigator, or a decision-maker that affected the outcome.

The person who decides the appeal shall not be the same person who reached the determination regarding responsibility, the investigator, or the Title IX Coordinator.

After considering the parties' written statements, the decision-maker on appeal shall issue a written decision and send it to the parties simultaneously.

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DISTRICT LETTERHEAD

****This letter may be sent to adult students or parents of minor students after initial verbal contact by school officials about a report of alleged sexual harassment involving their child when no Formal Complaint is filed.***

[Date]

[Adult Student Complainant/Parent/Guardian]
[Address]

Re: Title IX Complaint – Response to Sexual Harassment Report Supportive Measures

Dear Mr./Ms. _____:

This letter is to confirm receipt of a report of alleged sexual harassment involving your child. It is our understanding that, at this time, you do not wish to file a Formal Complaint and pursue this matter further. If you change your mind, please contact my office immediately.

Even though you have not filed a Formal Complaint, the District is implementing the following supportive measures for your child, because school board policy FFH prohibits discrimination on the basis of sex, including sexual harassment and other prohibited conduct, against students in all of its educational programs. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, without fee or charge to students, when a report of alleged sexual harassment is made.

Supportive Measures: ***(Select only those that apply and provide details. Delete the options below that will not be implemented.)***

- Counseling of students regarding appropriate behavior expectations
- Review of district and code of conduct expectations with students by administrator
- Change of class schedule/lunch schedule/locker location
- Campus/class escort
- Increased school monitoring of [location] for [time period e.g., next 9 weeks]
- School counseling
- Stay away agreement/No contact directives
- Limitation on extracurricular activities
- Training
- Other: _____

The District's determination about whether the respondent is responsible for the sexual harassment allegations becomes final after appeal. A respondent who is an employee may be subject to disciplinary actions pursuant to the District's employment policies.

A student or parent/guardian shall be informed of his or her right to file a complaint with the United States Department of Education Office for Civil Rights.

SBEC and Do Not Hire Registry Respondent employees who are found to have engaged in Reportable Misconduct under DFB shall be reported to the State Board of Educator Certification or the Texas Education Agency for the Do Not Hire Registry consistent with state regulations.

Records Retention The District shall retain copies of each sexual harassment investigation, including the allegations; witness statements; relevant evidence relied upon; investigation reports; any appeal and the materials associated with an appeal; records of any informal resolution process; all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution; records of the supportive measures taken in response to a report or complaint of sexual harassment; and related records regarding any prohibited conduct in accordance with the District's records retention schedules for no less than 7 years. [See CPC]

Access to Procedures Information regarding this regulation shall be included in the employee and student handbooks.

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The District's goal is for you/your child to feel safe and comfortable on campus. If you have questions about the District's Title IX grievance process or supportive measures, please contact the Title IX Coordinator's Office at (XXX) XXX-XXXX or [email].

Sincerely,

[Name]
Title IX Coordinator/designee

Enclosure: FFH(LOCAL)

DISTRICT LETTERHEAD

*This notice must be sent simultaneously to the Complainant and Respondent and before investigation of the Formal Complaint begins, including student interviews occur.

[Date]

[Adult Student Complainant/Parent/Guardian]
[Address]

Re: Notice to Parties of Title IX Formal Complaint of Sexual Harassment
Case No. _____

Dear Mr./Ms. _____:

This letter is to notify you of the filing of a Formal Complaint of sexual harassment involving your student. The details of the allegations are included on the enclosed Formal Complaint form. Sexual harassment is prohibited by and defined in Board Policy FFH (LEGAL) and (LOCAL). The grievance process for handling this complaint can be found in FFH (REGULATION 2-SEXUAL HARASSMENT). The policies and procedures are enclosed for your reference.

The District's Title IX sexual harassment grievance process includes an opportunity to participate in an informal resolution process at any time prior to a determination regarding responsibility. During the grievance process, the filer of the complaint is called the Complainant, and the accused is called the Respondent.

The first step in the grievance process is an investigation. I have appointed _____ [name], _____ [title] to serve as investigator, and he/she will be in contact with you.

Please be aware that, by law, the Respondent is presumed not responsible for the alleged conduct and a determination regarding responsibility is made only at the conclusion of the grievance process by a decision-maker other than the investigator. I have appointed _____ [name], _____ [title] as the decision-maker in this complaint.

You are allowed an advisor to assist you in this process. This may be any adult whom you wish to help you through the process or represent your student. This person may be an attorney but does not have to be. If you would prefer, you may proceed without an advisor. You are also entitled to inspect and review all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that you can meaningfully respond to the evidence prior to conclusion of the investigation.

Title IX Temporary No Contact Order – Supportive Measure

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on sex in educational institutions that receive federal financial assistance. When a report of sexual harassment is made, the Title IX Coordinator/designee must promptly contact the alleged Complainant to discuss the availability of supportive measures with or without the filing of a Formal Complaint. If a Formal Complaint is filed, the Title IX Coordinator shall ensure the implementation, as appropriate, of supportive measures for Complainants and Respondents. Restrictions on contact between the parties is an example of a supportive measure. Restrictions may be applied to both parties (mutual) or to one party, so long as the measure does not unreasonably burden a party. A Temporary No Contact Order may be used to help create an environment that is free from harassment. Use of a Temporary No Contact Order is not an indication that the school has determined an individual is responsible for sexual harassment; rather, it is a method of protecting individuals involved during the pendency of the Title IX grievance process. Consideration should be given to the developmental appropriateness of the students involved.

Student Name: _____

This is an official directive that you have no contact with: _____

This temporary no contact order is not a determination of responsibility of sexual harassment. This temporary order is a method of protecting you and the other student(s) during the review of a sexual harassment report or Formal Complaint. This temporary order applies to direct contact and indirect contact with the above-named individual(s).

Direct contact includes but is not limited to face-to-face contact; email, text, written, or electronic communication; contacting through social networks including on mutually "liked" pages; phone calls, voice mails, and text messages.

Indirect contact includes but is not limited to making contact through a third party, including mutual friends; social network postings regarding the person named above.

At all times during the school day and at any school-sponsored event, you must stay away from the above-named individual(s). This means you may not approach, talk to, sit by, or have any contact with this person on school property, school buses, and bus stops.

Violations of this agreement and acts of retaliation directly or indirectly toward the individual or individual's friends or family members will be taken seriously and may result in disciplinary action.

[ADD OTHER RESTRICTIONS AS NEEDED]

It is your responsibility to ensure compliance with this directive. This temporary no contact directive shall last until dismissed in writing by the Title IX Coordinator/designee. A copy of this directive will be provided to the individual named above with the direction to report any violation.

By your signature below, you acknowledge you have been notified and received a copy of this temporary no contact directive.

Signed by Student _____

Date _____

Title IX Coordinator/designee _____

Date _____

Once signed, a copy of this dismissal form will be placed in the file for this report/complaint and sent to all parties involved.

cc: Principal
Assistant Principal
Counselor
SRO

Please also be aware that provision XX of the District's code of conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If you have any questions regarding this information, please let me know. Thank you for your cooperation during this grievance process to ensure that our students experience an education environment free from discrimination on the basis of sex.

Sincerely,

[Name],
Title IX Coordinator/designee

Enclosures: FFH(LEGAL) & (LOCAL)
FFH(Regulation 2)
Formal Complaint Form

DISTRICT LETTERHEAD

Title IX Record Keeping Cover Sheet

*All records related to a report of sexual harassment must be kept for a period of seven (7) years from the date of conclusion of the grievance process.

Date of Initial Complaint: _____

Date of Final Decision: _____

- Initial Intake Report
Response to Sexual Harassment Report – Supportive Measures
Formal Complaint, if any
Notice to Parties
Emergency Removal, if applicable
Administrative Leave – Personnel, if applicable
Informal Resolution Paperwork
Notices to Parties of Interviews
Evidence Submitted to Parties, including witness statements, photographs, electronic communications
Draft Investigative Report and Notice of Opportunity to Submit Response Sent to Parties
Final Investigation Report
Notice of Opportunity to Submit Questions
Questions Submitted and Answers
Determination of Responsibility
Documentation of Supportive and Other Measures Imposed After Determination of Responsibility
Appeals Documentation, if any
Decision on Appeal

* The Title IX Coordinator must also retain copies of materials used to train the Title IX Coordinator, investigators, decision makers, and facilitators for seven (7) years.

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GUIDING PRINCIPLES

Historic Recognition of Sexual Harassment as Sex Discrimination

For the first time, the Department’s Title IX regulations recognize that sexual harassment, including sexual assault, is unlawful sex discrimination. The Department previously addressed sexual harassment only through guidance documents, which are not legally binding and do not have the force and effect of law. Now, the Department’s regulations impose important legal obligations on school districts, colleges, and universities (collectively “schools”), requiring a prompt response to reports of sexual harassment. The Final Rule improves the clarity and transparency of the requirements for how schools must respond to sexual harassment under Title IX so that every complainant receives appropriate support, respondents are treated as responsible only after receiving due process and fundamental fairness, and school officials serve impartially without bias for or against any party.

Supporting Complainants & Respecting Complainants’ Autonomy

Under the Final Rule, schools must offer free supportive measures to every alleged victim of sexual harassment (called “complainants” in the Final Rule). Supportive measures are individualized services to restore or preserve equal access to education, protect student and employee safety, or deter sexual harassment. Supportive measures must be offered even if a complainant does not wish to initiate or participate in a grievance process. Every situation is unique, and individuals react to sexual harassment differently. Therefore, the Final Rule gives complainants control over the school-level response best meeting their needs. It respects complainants’ wishes and autonomy by giving them the clear choice to file a formal complaint, separate from the right to supportive measures. The Final Rule also provides a fair and impartial grievance process for complainants, and protects complainants from being coerced or threatened into participating in a grievance process.

Non-Discrimination, Free Speech, and Due Process

The Final Rule reflects core American values of equal treatment on the basis of sex, free speech and academic freedom, due process of law, and fundamental fairness. Schools must operate free from sex discrimination, including sexual harassment. Complainants and respondents must have strong, clear procedural rights in a predictable, transparent grievance process designed to reach reliable outcomes. The Final Rule ensures that schools do not violate First Amendment rights when complying with Title IX.

A SCHOOL’S RESPONSE TO SEXUAL HARASSMENT

- Under the Final Rule, any of the following conduct on the basis of sex constitutes sexual harassment:
 - A school employee conditioning an educational benefit or service upon a person’s participation in unwelcome sexual conduct (often called “*quid pro quo*” harassment);
 - 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 school’s education program or activity; or
 - Sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined in the Clery Act, 20 U.S.C. § 1092(f), and the Violence Against Women Act, 34 U.S.C. § 12291(a)).

U.S. Department of Education Title IX Final Rule Overview

- Consistent with Supreme Court precedent and the text of Title IX, a school must respond when: (1) the school has actual knowledge of sexual harassment; (2) that occurred within the school’s education program or activity; (3) against a person in the United States. The Final Rule expands “actual knowledge” to include notice to any elementary or secondary school employee, and states that any person (e.g., the alleged victim or any third party) may report to a Title IX Coordinator in person or by e-mail, phone, or mail. The Final Rule also specifies that a school’s “education program or activity” includes situations over which the school exercised substantial control, and also buildings owned or controlled by student organizations officially recognized by a postsecondary institution, such as many fraternity and sorority houses.
- Consistent with Supreme Court precedent, a school violates Title IX when its response to sexual harassment is clearly unreasonable in light of the known circumstances, and the Final Rule adds mandatory response obligations such as offering supportive measures to every complainant, with or without a formal complaint.
- Schools must investigate every formal complaint (which may be filed by a complainant or by a school’s Title IX Coordinator). If the alleged conduct does not fall under Title IX, then a school may address the allegations under the school’s own code of conduct and provide supportive measures.

A FAIR GRIEVANCE PROCESS

The Final Rule requires schools to investigate and adjudicate formal complaints of sexual harassment using a grievance process that incorporates due process principles, treats all parties fairly, and reaches reliable responsibility determinations. A school’s grievance process must:

- Give both parties written notice of the allegations, an equal opportunity to select an advisor of the party’s choice (who may be, but does not need to be, an attorney), and an equal opportunity to submit and review evidence throughout the investigation;
- Use trained Title IX personnel to objectively evaluate all relevant evidence without prejudgment of the facts at issue and free from conflicts of interest or bias for or against either party;
- Protect parties’ privacy by requiring a party’s written consent before using the party’s medical, psychological, or similar treatment records during a grievance process;
- Obtain the parties’ voluntary, written consent before using any kind of “informal resolution” process, such as mediation or restorative justice, and not use an informal process where an employee allegedly sexually harassed a student;
- Apply a presumption that the respondent is not responsible during the grievance process (often called a “presumption of innocence”), so that the school bears the burden of proof and the standard of evidence is applied correctly;
- Use either the preponderance of the evidence standard or the clear and convincing evidence standard (and use the same standard for formal complaints against students as for formal complaints against employees);
- Ensure the decision-maker is not the same person as the investigator or the Title IX Coordinator (i.e., no “single investigator models”);
- For postsecondary institutions, hold a live hearing and allow cross-examination by party advisors (never by the parties personally); K-12 schools do not need to hold a hearing, but parties may submit written questions for the other parties and witnesses to answer;
- Protect all complainants from inappropriately being asked about prior sexual history (“rape shield” protections);

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- Send both parties a written determination regarding responsibility explaining how and why the decision-maker reached conclusions;
- Effectively implement remedies for a complainant if a respondent is found responsible for sexual harassment;
- Offer both parties an equal opportunity to appeal;
- Protect any individual, including complainants, respondents, and witnesses, from retaliation for reporting sexual harassment or participating (or refusing to participate) in any Title IX grievance process;
- Make all materials used to train Title IX personnel publicly available on the school’s website or, if the school does not maintain a website, make these materials available upon request for inspection by members of the public; and
- Document and keep records of all sexual harassment reports and investigations.

SEX DISCRIMINATION REGULATIONS

Relating to sex discrimination generally, and not only to sexual harassment, the final regulations also:

- Affirm that the Department may require schools to take remedial action for discriminating on the basis of sex or otherwise violating the Department’s Title IX regulations;
- Expressly state that in response to any claim of sex discrimination under Title IX, schools are never required to deprive an individual of rights guaranteed under the U.S. Constitution;
- Account for the interplay of Title IX, Title VII, and FERPA, as well as the legal rights of parents or guardians to act on behalf of individuals with respect to exercising Title IX rights;
- Update the requirement for schools to designate and identify a Title IX Coordinator, disseminate their non-discrimination policy and the Title IX Coordinator’s contact information to ensure accessible channels for reporting sex discrimination (including sexual harassment), and notify students, employees, parents, and others of how the school will respond to reports and complaints of sex discrimination (including sexual harassment); and
- Clarify that an institution controlled by a religious organization is not required to submit a written statement to the Department to qualify for the Title IX religious exemption.

Summary of Major Provisions of the Department of Education’s Title IX Final Rule

Issue	The Title IX Final Rule: Addressing Sexual Harassment in Schools
1. Notice to the School, College, University (“Schools”): Actual Knowledge	<p>The Final Rule requires a K-12 school to respond whenever <i>any</i> employee has notice of sexual harassment, including allegations of sexual harassment. Many State laws also require all K-12 employees to be mandatory reporters of child abuse. For postsecondary institutions, the Final Rule allows the institution to choose whether to have mandatory reporting for all employees, or to designate some employees to be confidential resources for college students to discuss sexual harassment without automatically triggering a report to the Title IX office.</p> <p>For all schools, notice to a Title IX Coordinator, or to an official with authority to institute corrective measures on the recipient’s behalf, charges a school with actual knowledge and triggers the school’s response obligations.</p>
2. Definition of Sexual Harassment for Title IX Purposes	<p>The Final Rule defines sexual harassment broadly to include any of three types of misconduct on the basis of sex, all of which jeopardize the equal access to education that Title IX is designed to protect. Any instance of <i>quid pro quo</i> harassment by a school’s employee; any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).</p> <ul style="list-style-type: none"> The Final Rule prohibits sex-based misconduct in a manner consistent with the First Amendment. <i>Quid pro quo</i> harassment and Clery Act/VAWA offenses are not evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access, because such misconduct is sufficiently serious to deprive a person of equal access. The Final Rule uses the Supreme Court’s <i>Davis</i> definition (severe and pervasive and objectively offensive conduct, effectively denying a person equal educational access) as one of the three categories of sexual harassment, so that where unwelcome sex-based conduct consists of speech or expressive conduct, schools balance Title IX enforcement with respect for free speech and academic freedom. The Final Rule uses the Supreme Court’s Title IX-specific definition rather than the Supreme Court’s Title VII workplace standard (severe or pervasive conduct creating a hostile work environment). First Amendment concerns differ in educational environments and workplace environments, and the Title IX definition provides First Amendment protections appropriate for educational institutions where students are learning, and employees are teaching. Students, teachers, faculty, and others should enjoy free speech and academic freedom protections, even when speech or expression is offensive.

Summary of Major Provisions of the Department of Education's Title IX Final Rule

<p>3. Sexual Harassment Occurring in a School's "Education Program or Activity" and "in the United States"</p>	<p>The Title IX statute applies to persons in the United States with respect to education programs or activities that receive Federal financial assistance. Under the Final Rule, schools must respond when sexual harassment occurs in the school's education program or activity, against a person in the United States.</p> <ul style="list-style-type: none"> - The Title IX statute and existing regulations contain broad definitions of a school's "program or activity" and the Department will continue to look to these definitions for the scope of a school's education program or activity. Education 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, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution (such as a fraternity or sorority house). - Title IX applies to all of a school's education programs or activities, whether such programs or activities occur on-campus or off-campus. A school may address sexual harassment affecting its students or employees that falls outside Title IX's jurisdiction in any manner the school chooses, including providing supportive measures or pursuing discipline.
<p>4. Accessible Reporting to Title IX Coordinator</p>	<p>The Final Rule expands a school's obligations to ensure its educational community knows how to report to the Title IX Coordinator.</p> <ul style="list-style-type: none"> - The employee designated by a recipient to coordinate its efforts to comply with Title IX responsibilities must be referred to as the "Title IX Coordinator." - Instead of notifying only students and employees of the Title IX Coordinator's contact information, the school must also notify applicants for admission and employment, parents or legal guardians of elementary and secondary school students, and all unions, of the name or title, office address, e-mail address, and telephone number of the Title IX Coordinator. - Schools must prominently display on their websites the required contact information for the Title IX Coordinator. - Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by e-mail, 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. - Such a report may be made at any time, including during non-business hours, by using the telephone number or e-mail address, or by mail to the office address, listed for the Title IX Coordinator.
<p>5. School's Mandatory Response Obligations: The Deliberate Indifference Standard</p>	<p>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. Schools have the following mandatory response obligations:</p> <ul style="list-style-type: none"> - Schools must offer supportive measures to the person alleged to be the victim (referred to as the "complainant").

Summary of Major Provisions of the Department of Education's Title IX Final Rule

	<ul style="list-style-type: none"> - The Title IX Coordinator must promptly contact the complainant confidentially to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. - Schools must follow a grievance process that complies with the Final Rule before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent. - Schools must not restrict rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment, when complying with Title IX. - The Final Rule requires a school to investigate sexual harassment allegations in any formal complaint, which can be filed by a complainant, or signed by a Title IX Coordinator. - The Final Rule affirms that a complainant's wishes with respect to whether the school investigates 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 allegations in a formal complaint do not meet the definition of sexual harassment in the Final Rule, or did not occur in the school's education program or activity against a person in the United States, the Final Rule clarifies that the school must dismiss such allegations for purposes of Title IX but may still address the allegations in any manner the school deems appropriate under the school's own code of conduct.
<p>6. School's Mandatory Response Obligations: Defining "Complainant," "Respondent," "Formal Complaint," "Supportive Measures"</p>	<p>When responding to sexual harassment (e.g., by offering supportive measures to a complainant and refraining from disciplining a respondent without following a Title IX grievance process, which includes investigating formal complaints of sexual harassment), the Final Rule provides clear definitions of complainant, respondent, formal complaint, and supportive measures so that recipients, students, and employees clearly understand how a school must respond to sexual harassment incidents in a way that supports the alleged victim and treats both parties fairly.</p> <p>The Final Rule defines "complainant" as an individual who is alleged to be the victim of conduct that could constitute sexual harassment.</p> <ul style="list-style-type: none"> - This clarifies that any third party as well as the complainant may report sexual harassment. - While parents and guardians do not become complainants (or respondents), the Final Rule expressly recognizes the legal rights of parents and guardians to act on behalf of parties (including by filing formal complaints) in Title IX matters. <p>The Final Rule defines "respondent" as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.</p>

Summary of Major Provisions of the Department of Education's Title IX Final Rule

	<p>The Final Rule defines "formal complaint" as a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment and states:</p> <ul style="list-style-type: none"> - 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. - A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under the Final Rule, and by any additional method designated by the school. - The phrase "document filed by a complainant" means a document or electronic submission (such as by e-mail or through an online portal provided for this purpose by the school) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. - Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or a party during a grievance process, and must comply with requirements for Title IX personnel to be free from conflicts and bias. <p>The Final Rule defines "supportive measures" as individualized services reasonably available 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.</p> <ul style="list-style-type: none"> - The Final Rule evaluates a school's selection of supportive measures and remedies based on what is not clearly unreasonable in light of the known circumstances, and does not second guess a school's disciplinary decisions, but requires the school to offer supportive measures, and provide remedies to a complainant whenever a respondent is found responsible.
<p>7. Grievance Process, General Requirements</p>	<p>The Final Rule prescribes a consistent, transparent grievance process for resolving formal complaints of sexual harassment. Aside from hearings (see Issue #9 below), the grievance process prescribed by the Final Rule applies to all schools equally including K-12 schools and postsecondary institutions. The Final Rule states that a school's grievance process must:</p> <ul style="list-style-type: none"> - Treat complainants equitably by providing remedies any time a respondent is found responsible, and treat respondents equitably by not imposing disciplinary sanctions without following the grievance process prescribed in the Final Rule. - Remedies, which are required to be provided to a complainant when a respondent is found responsible, must be designed to maintain the complainant's equal access to education and may include the same individualized services described in the Final Rule as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent. - Require objective evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person's status as a complainant, respondent, or witness.

Summary of Major Provisions of the Department of Education's Title IX Final Rule

	<ul style="list-style-type: none"> - Require Title IX personnel (Title IX Coordinators, investigators, decision-makers, people who facilitate any informal resolution process) to be free from conflicts of interest or bias for or against complainants or respondents. - 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. - A school must ensure that decision-makers receive training on any technology to be used at a live hearing. - A school's decision-makers and investigators must receive training on issues of relevance, including how to apply the rape shield protections provided only for complainants. - Include 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. - Recipients must post materials used to train Title IX personnel on their websites, if any, or make materials available for members of the public to inspect. - 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 frames. - Describe the range, or list, the possible remedies a school may provide a complainant and disciplinary sanctions a school might impose on a respondent, following determinations of responsibility. - 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 where employees and faculty are respondents). - Describe the school's appeal procedures, and the range of supportive measures available to complainants and respondents. - A school's 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 the privilege. - 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 complaints of sexual harassment, must apply equally to both parties.
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Summary of Major Provisions of the Department of Education's Title IX Final Rule

<p>8. <i>Investigations</i></p>	<p>The Final Rule states that the school must investigate the allegations in any formal complaint and send written notice to both parties (complainants and respondents) of the allegations upon receipt of a formal complaint. During the grievance process and when investigating:</p> <ul style="list-style-type: none"> - The burden of gathering evidence and burden of proof must remain on schools, not on the parties. - Schools must provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence. - Schools must not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no "gag orders"). - Parties must have the same opportunity to select an advisor of the party's choice who may be, but need not be, an attorney. - Schools must send written notice of any investigative interviews, meetings, or hearings. - Schools must send the parties, and their advisors, evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review, and respond to the evidence. - Schools must send the parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the parties to respond. - Schools must dismiss allegations of conduct that do not meet the Final Rule's definition of sexual harassment or did not occur in a school's education program or activity against a person in the U.S. Such dismissal is only for Title IX purposes and does not preclude the school from addressing the conduct in any manner the school deems appropriate. - Schools may, in their discretion, 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, 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. - Schools must give the parties written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal. - Schools may, in their discretion, consolidate formal complaints where the allegations arise out of the same facts. - The Final Rule protects the privacy of a party's medical, psychological, and similar treatment records by stating that schools cannot access or use such records unless the school obtains the party's voluntary, written consent to do so.
<p>9. <i>Hearings:</i></p>	<p>The Final Rule adds provisions to the "live hearing with cross-examination" requirement for postsecondary institutions and clarifies that hearings are optional for K-12 schools (and any other recipient that is not a postsecondary institution).</p>

Summary of Major Provisions of the Department of Education's Title IX Final Rule

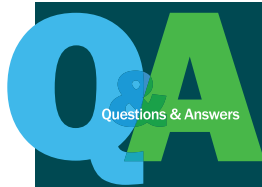
<p>(a) <i>Live Hearings & Cross-Examination (for Postsecondary Institutions)</i></p>	<p>(a) For postsecondary institutions, the school's grievance process must provide for a live hearing:</p> <ul style="list-style-type: none"> - At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. - Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. - At the request of either party, the recipient must provide for the entire live hearing (including cross-examination) to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other. - Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain to the party's advisor asking cross-examination questions any decision to exclude a question as not relevant. - If a party does not have an advisor present at the live hearing, the school must provide, without fee or charge to that party, an advisor of the school's choice who may be, but is not required to be, an attorney to conduct cross-examination on behalf of that party. - If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. - Live hearings may be conducted with all parties physically present in the same geographic location or, at the school's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually. - Schools must create an audio or audiovisual recording, or transcript, of any live hearing.
<p>(b) <i>Hearings are Optional, Written Questions Required (for K-12 Schools)</i></p>	<p>(b) For recipients that are K-12 schools, and other recipients that are not postsecondary institutions, the recipient's grievance process may, <i>but need not</i>, provide for a hearing:</p> <ul style="list-style-type: none"> - With or without a hearing, after the school has sent the investigative report to the parties and 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.
<p>(c) <i>Rape Shield Protections for Complainants</i></p>	<p>(c) The Final Rule provides rape shield protections for complainants (as to all recipients whether postsecondary institutions, K-12 schools, or others), deeming irrelevant questions and evidence about a complainant's prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.</p>

Summary of Major Provisions of the Department of Education's Title IX Final Rule

<p>10. <i>Standard of Evidence & Written Determination</i></p>	<p>The Final Rule requires the school's grievance process to state whether the standard of evidence to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard. The Final Rule makes each school's grievance process consistent by requiring each school to apply the same standard of evidence for all formal complaints of sexual harassment whether the respondent is a student or an employee (including faculty member).</p> <ul style="list-style-type: none"> - 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.
<p>11. <i>Appeals</i></p>	<p>The Final Rule states that a school must offer both parties an appeal from a determination regarding responsibility, and from a school's dismissal of a formal complaint or any allegations therein, on 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 affected the outcome of the matter.</p> <ul style="list-style-type: none"> - A school may offer an appeal equally to both parties on additional bases.
<p>12. <i>Informal Resolution</i></p>	<p>The Final Rule allows a school, in its discretion, to choose to offer and facilitate informal resolution options, such as mediation or restorative justice, so long as both parties give voluntary, informed, written consent to attempt informal resolution. Any person who facilitates an informal resolution must be well trained. The Final Rule adds:</p> <ul style="list-style-type: none"> - A school may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment. Similarly, a school may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed. - At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint. - Schools must not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

Summary of Major Provisions of the Department of Education's Title IX Final Rule

<p>13. <i>Retaliation Prohibited</i></p>	<p>The Final Rule expressly prohibits retaliation:</p> <ul style="list-style-type: none"> - Charging an individual with code of conduct violations that do not involve sexual harassment, but 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 constitutes retaliation. - The school must keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding. - Complaints alleging retaliation may be filed according to a school's prompt and equitable grievance procedures. - The exercise of rights protected under the First Amendment does not constitute retaliation. - Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX grievance proceeding does not constitute retaliation; however, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.
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Questions and Answers on the Title IX Regulations on Sexual Harassment (July 2021)



UNITED STATES DEPARTMENT OF EDUCATION
Office for Civil Rights
July 20, 2021



Questions and Answers on the Title IX Regulations on Sexual Harassment and Appendix (July 2021) Notice of Language Assistance

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Questions and Answers on the Title IX Regulations on Sexual Harassment (July 2021)

Ensuring equal access to education for all students—from pre-K through elementary and secondary schools and postsecondary institutions—is at the heart of the mission of the U.S. Department of Education’s Office for Civil Rights. This includes protecting rights of students and others to an educational environment free from discrimination based on sex, including discrimination in the form of sexual harassment and discrimination based on sexual orientation or gender identity, as guaranteed by Title IX of the Education Amendments of 1972.

This question-and-answer resource describes OCR’s interpretation of schools’ responsibilities under Title IX, and the Department’s current implementing regulations related to sexual harassment, as enforced by OCR. The focus here is on questions related to the most recent amendments to the regulations in 2020 (the 2020 amendments).¹ The Department is undertaking a comprehensive review of its current Title IX regulations as amended in 2020, following President Biden’s *Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity*. While this review is ongoing and until any new regulations go into effect, the 2020 amendments remain in effect.

This Q&A does not address policies or procedures under Title VII of the Civil Rights Act of 1964, which prohibits sex discrimination in employment. As the 2020 amendments state: “Nothing in [these regulations] may be read in derogation of any individual’s rights under title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.* or any regulations promulgated thereunder.” [34 C.F.R. § 106.6\(f\)](#).

For additional information about Title IX, please also see [OCR’s Title IX and Sex Discrimination Webpage](#) and [OCR’s Sex Discrimination FAQ Webpage](#). You can find the Department’s Title IX regulations, including the 2020 amendments, at [34 C.F.R. Part 106](#).

This Q&A has 17 sections and provides information on a variety of topics covered by the 2020 amendments, including the definition of sexual harassment, how a school can obtain notice of sexual harassment, a school’s response to allegations of sexual harassment, and how a school must process formal complaints of sexual harassment, including live hearings and cross-examination.

➤ [Preamble](#) references: Please note that where appropriate, this Q&A refers to the preamble to the 2020 amendments, which clarifies OCR’s interpretation of Title IX and the regulations. You can find citations to specific preamble sections in the endnotes of this Q&A. The preamble itself does not have the force and effect of law.

➤ Q&A Appendix: OCR provides an appendix to accompany this Q&A, with examples of policy provisions from various schools. These examples may be helpful as schools continue their work to implement the requirements of the 2020 amendments.

Who can file a discrimination complaint – and how to file: Anyone can file a complaint with OCR, including students, parents and guardians, community members, and others who experience or observe discrimination in education programs or activities. To file a complaint, please use this [online form](#). For more information, see [How to File a Discrimination Complaint with the Office for Civil Rights](#) and this short video on [How to File a Complaint with the Office for Civil Rights](#).

Additional questions? Please note that this Q&A addresses many important issues but is not comprehensive. We recognize that you might have additional questions and invite you to send them to OCR at ocr@ed.gov.

Alternate formats for accessibility: On request, this publication is available in alternate formats, such as Braille or large print. For more information, please contact the Department’s Alternate Format Center at 202-260-0818 or via e-mail at alternateformatcenter@ed.gov.

Translation Services: The Department offers language assistance services for all publicly available Department information. These services are free of charge. For more information about interpretation or translation services, please see the Department’s [Notice to Persons with Limited English Proficiency](#).

Please note: This Q&A resource does not have the force and effect of law and is not meant to bind the public or regulated entities in any way. This document is intended only to provide clarity to the public regarding OCR’s interpretation of existing legally binding statutory and regulatory requirements. As always, OCR’s enforcement of Title IX stems from Title IX and its implementing regulations, not this or other guidance documents.

A mini-glossary for this Q&A:

This Q&A is geared towards recipients of federal financial assistance that are educational institutions and uses the term “schools” to refer to all such recipients, including school districts, colleges, and universities. It also includes several terms that are commonly used in Title IX grievance processes for formal complaints of sexual harassment. Here is information about what those terms mean in this document:

Allegation:	An assertion that someone has engaged in sexual harassment.
Complainant:	The person who has experienced the alleged sexual harassment. This person is considered a complainant regardless of whether they choose to file a formal complaint of sexual harassment under Title IX.

Respondent:	The person accused of the alleged sexual harassment.
Reporter:	The person who reports sexual harassment to the school. This may be the complainant but may also be someone else (also known as a “third party” reporter).
Title IX grievance process:	This is the formal name used in the Title IX regulations for a school’s process for addressing formal complaints of sexual harassment under Title IX.
Actual knowledge:	When a school receives notice of alleged misconduct that meets the definition of “sexual harassment” under the Title IX regulations, as described below, the school has “actual knowledge” and must respond appropriately. Additional information regarding how schools receive notice and have “actual knowledge” is discussed in Question 14.

I. General Obligations

Question 1: What did the 2020 amendments change about the Department’s Title IX regulations?

Answer 1: The Department’s Title IX regulations were first issued in 1975, reissued in 1980, and then amended after that, including in 2006 and 2020. Prior to 2020, the regulations set out requirements under Title IX for educational programs and activities that receive federal financial aid, but they did not include specific requirements related to sexual harassment. Instead, OCR had several guidance documents in place to assist schools in understanding how OCR interpreted the Department’s Title IX regulations. The 2020 amendments added specific, legally binding steps that schools must take in response to notice of alleged sexual harassment.

Question 2: Is a school permitted to take steps in response to reports of sexual harassment that go beyond those set out in the 2020 amendments?

Answer 2: Yes. The 2020 amendments set out the minimum steps that a school must take in response to notice of alleged sexual harassment. A school may take additional actions so long as those actions do not conflict with Title IX or the 2020 amendments. The preamble provides this additional guidance:

A school “remain[s] free to adopt best practices for supporting survivors and standards of competence for conducting impartial grievance processes, while meeting obligations imposed under the [2020 amendments].”²

(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)(10), ‘domestic violence’ as defined in 34 U.S.C. 12291(a)(8), or ‘stalking’ as defined in 34 U.S.C. 12291(a)(30).

For additional information, please see [34 C.F.R. § 106.30](#).

When unwelcome conduct on the basis of sex meets one or more of these three categories, the conduct is considered to be sexual harassment under the 2020 amendments. Here is some additional information about each category:

- The first category is commonly referred to as “quid pro quo” sexual harassment, meaning that a school employee offers something to an individual in exchange for sexual conduct.
- The second category incorporates the definition of sexual harassment set out by the Supreme Court in a case about when a school may be required to pay financial compensation in a lawsuit for sexual harassment by one student toward another student. The case is [Davis v. Monroe County Board of Education](#), 526 U.S. 629 (1999).
- The third category refers to definitions in the Clery Act and the Violence Against Women Act (VAWA). The Clery Act is a federal law that requires colleges and universities that participate in the federal student financial aid programs to provide current and prospective students and employees, the public, and the Department with crime statistics and information about campus crime prevention programs and policies. VAWA is a federal law administered by the U.S. Departments of Justice (DOJ) and Health and Human Services (HHS) that supports comprehensive responses to domestic violence, sexual assault, dating violence, and stalking.

Definitions under the Clery Act: The Clery Act defines sexual assault as a forcible or nonforcible offense under the uniform crime reporting system of the Federal Bureau of Investigation.⁵ This system includes the National Incident-Based Reporting System (NIBRS), which defines forcible sex offenses to include any sexual act, including rape, sodomy, sexual assault with an object, or fondling “directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.” Please see Question 6 explaining that the 2020 amendments do not require schools to use a particular definition of consent. NIBRS also includes incest and statutory rape as “nonforcible” sex offenses.⁶ Conduct that fits within any of these definitions under NIBRS is considered a type of sexual harassment in the 2020 amendments.

Definitions under VAWA: The 2020 amendments refer to the following definitions of dating violence, domestic violence, and stalking in VAWA:

- Dating violence includes violence committed by a person who has been in a social relationship of a romantic or intimate nature with the complainant; the existence

Question 3: What does the Department expect from schools regarding prevention of sexual harassment?

Answer 3: The 2020 amendments focus on “setting forth requirements for [schools’] responses to sexual harassment.”³ However, the preamble also says that “the Department agrees with commenters that educators, experts, students, and employees should also endeavor to *prevent* sexual harassment from occurring in the first place.”⁴ OCR encourages schools to undertake prevention efforts that best serve the needs, values, and environment of their own educational communities.

Question 4: Are there any differences in the 2020 amendments’ requirements for elementary and secondary schools and postsecondary schools?

Answer 4: Yes. Although the 2020 amendments have many of the same requirements for elementary and secondary and postsecondary schools, there are two requirements that differ – notice and live hearings.

- Notice: Any time an elementary or secondary school employee has notice that sexual harassment might have occurred, the school must respond. Notice requirements are more limited for postsecondary school employees. See Section V for more information on notice requirements.
- Live hearing: Only postsecondary schools are required to provide for a live hearing with the opportunity for cross-examination to be conducted by each party’s advisor of choice. For more information on live hearings and cross-examination, see Section XII.

II. Definition of Sexual Harassment

Question 5: What is the definition of sexual harassment in the 2020 amendments?

Answer 5: The 2020 amendments define sexual harassment to include certain types of unwelcome sexual conduct, sexual assault, dating violence, domestic violence, and stalking. Here is the full definition in the regulations:

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the [school] conditioning the provision of an aid, benefit, or service of the recipient 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 school’s education program or activity; or

of such a relationship shall be determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.⁷

- Domestic violence includes felony or misdemeanor crimes of violence committed by: a current or former spouse or intimate partner of the complainant, a person with whom the complainant shares a child, a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, a person similarly situated to a spouse of the complainant under the jurisdiction’s domestic or family violence laws, or any other person against a complainant who is protected under the domestic or family violence laws of the jurisdiction.⁸
- Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their own safety or the safety of others or to suffer substantial emotional distress.⁹ The 2020 amendments cover instances of stalking based on sex—including stalking that occurs online or through messaging platforms, commonly known as cyber-stalking—when it occurs in the school’s education program or activity.¹⁰

Question 6: Do schools need to adopt a particular definition of consent for determining whether conduct is “unwelcome” under the definition of sexual harassment in the 2020 amendments?

Answer 6: No. The preamble states that the Department will not require a school to adopt a particular definition of consent.¹¹ The preamble explains that a school has the flexibility to choose a definition of consent that “best serves the unique needs, values, and environment of the [school’s] own educational community.”¹²

Question 7: May a school respond to alleged sexual misconduct that does not meet the definition of sexual harassment in the 2020 amendments?

Answer 7: Yes. The preamble makes clear that “Title IX is not the exclusive remedy for sexual misconduct or traumatic events that affect students.”¹³ A school has discretion to respond appropriately to reports of sexual misconduct that do not fit within the scope of conduct covered by the Title IX grievance process.¹⁴ This may include, for example, reported sexual misconduct that a) occurs outside of a school’s education program or activity; b) occurs outside of the United States; or c) causes harm in the school environment that does not fit within the definition set out above in Question 5.¹⁵

The preamble also says that “nothing in the final regulations precludes [a school] from vigorously addressing misconduct (sexual or otherwise) that occurs outside the scope of Title IX or from offering supportive measures to students and individuals impacted by misconduct or trauma.”¹⁶

Put simply, Title IX's sexual harassment regulation need not replace a school's more expansive code of conduct and does not prohibit a school from enforcing that code to address misconduct that does not constitute sexual harassment under the 2020 amendments. OCR encourages schools to develop and enforce their codes as an additional tool for ensuring safe and supportive educational environments for all students. OCR does not enforce school codes of conduct but may investigate complaints that a school's code of conduct treated students differently based on sex, including sexual orientation or gender identity.¹⁷

For examples of school codes that address sexual misconduct not covered by Title IX, please see Q&A Appendix Section XVI.

Question 8: How can a school determine whether sexual harassment "effectively denies a person's right to equal access to its education program or activity" under the "unwelcome conduct" category in the definition of sexual harassment in the 2020 amendments? (See the definition in Question 5.)

Answer 8: The preamble explains that to determine whether a person has been effectively denied equal access to a school's education program or activity, a school must evaluate "whether a reasonable person in the complainant's position would be effectively denied equal access to education compared to a similarly situated person who is not suffering the alleged sexual harassment."¹⁸

The preamble provides this additional guidance to schools:

- An effective denial of equal access to educational opportunities may include skipping class to avoid a harasser, a decline in a student's grade point average, or having difficulty concentrating in class.¹⁹
- Examples of specific situations that likely constitute effective denial of equal access to educational opportunities also include "a third grader who starts bed-wetting or crying at night due to sexual harassment, or a high school wrestler who quits the team but carries on with other school activities following sexual harassment."²⁰
- A complainant does not need to have "already suffered loss of education before being able to report sexual harassment."²¹
- Effective denial of equal access to education does not require "that a person's total or entire educational access has been denied."²²
- While these examples help illustrate an effective denial of access, "[n]o concrete injury is required" to prove an effective denial of equal access.²³

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Question 10: How should a school determine whether it has substantial control over the respondent and context in an off-campus setting?

Answer 10: The school must make a fact-specific determination. The preamble says that it "may be helpful or useful for a [school] to consider factors applied by Federal courts to determine the scope of a [school's] education program or activity"—such as "whether the [school] funded, promoted, or sponsored the event or circumstance where the alleged harassment occurred"—but also that "no single factor is determinative" in concluding whether the school has substantial control over the respondent and the context in which the reported harassment occurred.³⁰

In making this fact-specific determination, the preamble also says:

A school "must consider whether, for example, a sexual harassment incident between two students that occurs in an off-campus apartment" or house is a "situation over which the [school] exercised substantial control [and], if so, the [school] must respond [to notice] of sexual harassment or allegations of sexual harassment that occurred there."³¹

If an incident of sexual harassment between two students in a private hotel room occurs in a context related to a school-sponsored activity, such as a school field trip or travel with a school athletics team, the school would need to consider whether it exercised substantial control over the context in which the sexual harassment occurred.³²

The preamble adds that a school may have substantial control over an incident that occurred in a student's home, such as where "a teacher employed by a school visits a student's home ostensibly to give the student a book but in reality to instigate sexual activity with the student."³³

Question 11: How do the 2020 amendments apply to alleged sexual harassment that takes place electronically or on an online platform used by the school?

Answer 11: In discussing Title IX and online platforms used by a school, the preamble provides this guidance to schools:

- The operations of a school "may certainly include computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of, the [school]."³⁴
- "[T]he factual circumstances of online harassment must be analyzed to determine if it occurred in an education program or activity."³⁵

The preamble adds that the definition of "education program or activity" in the 2020 amendments "does not create a distinction between sexual harassment occurring in person versus online."³⁶

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- Complainants do not need to have "dropped out of school, failed a class, had a panic attack, or otherwise reached a 'breaking point'" or exhibited specific trauma symptoms to be effectively denied equal access.²⁴
- "School officials turning away a complainant by deciding the complainant was 'not traumatized enough' would be impermissible."²⁵

Schools may wish to include these and other examples in their internal policies, training, and communications to students and employees to help illustrate this concept.

III. Where Sexual Harassment Occurs

Question 9: Which settings are covered by the 2020 amendments?

Answer 9: The 2020 amendments apply to reports of sexual harassment in education programs and activities in the United States, including in the following settings:

1. Buildings or other locations that are part of the school's operations, including remote learning platforms;
2. Off-campus settings if the school exercised substantial control over the respondent and the context in which the alleged sexual harassment occurred (e.g., a school field trip to a museum); and
3. Off-campus buildings owned or controlled by a student organization officially recognized by a postsecondary school, such as a building owned by a recognized fraternity or sorority.²⁶

For additional information, please see [34 C.F.R. § 106.44\(a\)](#). For more information on how a school can determine whether it has substantial control over the respondent and context in an off-campus setting, see Question 10.

The 2020 amendments require that schools provide training to their Title IX personnel to "accurately identify situations that require a response under Title IX."²⁷ OCR also encourages schools to include examples of their programs and activities in each of the three areas described above in their policies, staff training, and student-oriented communications.

Please note that sexual harassment that takes place in settings outside of the United States is not covered under the 2020 amendments.²⁸

Schools should also note that, under the 2020 amendments, a school may still offer "supportive measures to a complainant who reports sexual harassment that occurred outside the [school's] education program or activity, and any sexual harassment that does occur in an education program or activity must be responded to even if it related to, or happens subsequent to, sexual harassment that occurred outside the education program or activity."²⁹

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Question 12: How do the 2020 amendments apply to alleged sexual harassment that is perpetrated by a student using a personal electronic device during class?

Answer 12: The preamble explains that "a student using a personal device to perpetrate online sexual harassment during class time may constitute a circumstance over which the [school] exercises substantial control."³⁷ As with in-person harassment, "the factual circumstances of online harassment must be analyzed to determine if it occurred" in circumstances "over which a school exercised substantial control over the respondent and the context."³⁸

IV. When Harassment Occurred

Question 13: What is the appropriate standard for evaluating alleged sexual harassment that occurred before the 2020 amendments took effect?

Answer 13: The 2020 amendments took effect on August 14, 2020, and are not retroactive. This means that a school must follow the requirements of the Title IX statute and the regulations that were in place at the time of the alleged incident; the 2020 amendments do not apply to alleged sexual harassment occurring before August 14, 2020. This is true even if the school's response was on or after this date. In other words, if the conduct at issue in the complaint took place prior to August 14, 2020, the 2020 amendments do not apply even if the complaint was filed with a school on or after August 14, 2020.

Before August 2020, the Title IX regulations did not have specific requirements for schools related to sexual harassment. Instead, OCR had several guidance documents in place to assist schools in understanding how OCR interpreted the Department's Title IX regulations. Although the guidance documents issued in [2011](#) and [2014](#) were rescinded in 2017, and the [2001](#) and [2017](#) guidance documents were rescinded in 2020, these documents remain accessible on OCR's website for historical purposes to the extent they are helpful to schools when responding to earlier allegations of sexual harassment.³⁹

V. Notice of Sexual Harassment

Question 14: Which school employees must be notified about allegations of sexual harassment for a school to be put on notice that it must respond?

Answer 14: In elementary and secondary school settings, a school must respond whenever any school employee has notice of sexual harassment.⁴⁰ This includes notice to a teacher, teacher's aide, bus driver, cafeteria worker, counselor, school resource officer, maintenance staff worker, coach, athletic trainer, or any other school employee.⁴¹

In postsecondary school settings, notice may be more limited in scope. The institution must respond when notice is received by the Title IX Coordinator or another official who has authority to institute corrective measures on the institution's behalf.⁴² The Department is unable to

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provide examples of types of individuals who have this authority because the determination of whether a person is an official who has authority to institute corrective measures on behalf of the institution depends on facts specific to that institution. A school “may, at its discretion, expressly designate specific employees as officials with this authority for purposes of Title IX sexual harassment and may inform students of such designations.”⁴³

The preamble explains that “the Department does not limit the manner in which [a school] may receive notice of sexual harassment.” This means that the employees described above “may receive notice through an oral report of sexual harassment by a complainant or anyone else, a written report, through personal observation, through a newspaper article, through an anonymous report, or through various other means.”⁴⁴

The 2020 amendments refer to this notice of sexual harassment as “actual knowledge.”

For additional information, please see [34 C.F.R. § 106.30](#).

Question 15: If a school trains or requires non-employees who interact with the school’s students to report sexual harassment incidents, are those individuals (for example, volunteers, alumni, independent contractors) automatically considered “officials with authority to institute corrective measures” on the school’s behalf?

Answer 15: No. The 2020 amendments state that at any school level—elementary, secondary, or postsecondary— “[t]he mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual [such as a volunteer parent, or alumnus] as one who has authority to institute corrective measures on behalf of the [school].”⁴⁵

The preamble explains that “the Department does not wish to discourage [schools] from training individuals who interact with the [school’s] students about how to report sexual harassment.”⁴⁶ It also says that “the Department will not assume that a person is an official with authority solely based on the fact that the person has received training on how to report sexual harassment.”⁴⁷ Similarly, the preamble says that “the Department will not conclude that volunteers and independent contractors are officials with authority, unless the [school] has granted the volunteers or independent contractors authority to institute corrective measures on behalf of the [school].”⁴⁸

For additional information, please see [34 C.F.R. § 106.30](#).

harassment confidential (e.g., counselors, therapists, other mental health providers, victim advocates).⁵⁸

- Nothing in the 2020 amendments prevents a postsecondary school “from instituting [its] own policy] to require professors, instructors, or all employees to report to the Title IX Coordinator every incident and report of sexual harassment.”⁵⁹ However, the Department will not hold a postsecondary school responsible for responding to such sexual harassment unless an employee “actually did give notice to the [school’s] Title IX Coordinator” or other official with authority to institute corrective measures.⁶⁰
- A postsecondary school may also “empower as many officials as it wishes with the requisite authority to institute corrective measures on the [school’s] behalf, and notice to these officials with authority constitutes the [school’s] actual knowledge.”⁶¹ A postsecondary school “may also publicize [a] list[] of officials with this authority,” and OCR encourages postsecondary schools to do so, as this will assist students and others to understand which reports will require the school to respond.⁶²

VI. Response to Sexual Harassment

Question 20: How must a school respond to allegations of sexual harassment?

Answer 20: When a school has actual knowledge of sexual harassment in any of its programs or activities that take place in the United States, it must “respond promptly in a manner that is not deliberately indifferent.”⁶³ This includes schools that serve any age, grade, or level of students, from pre-K through postsecondary.

The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, regardless of whether a formal complaint is filed, and to explain the process for filing a formal complaint.⁶⁴ For more on supportive measures, see Questions 32-34.

In addition, if a formal complaint is filed, either by the complainant or the Title IX Coordinator, a school must:

- offer supportive measures to the respondent, and
- follow the Title IX grievance process specified by the 2020 amendments.⁶⁵ For more on this process, including the requirement to offer supportive measures to the respondent, see Question 26 and Section IX.

In addition to setting out these requirements, the regulations provide that a school is deliberately indifferent “only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.”⁶⁶

For more information on the obligations described in this section, please see [34 C.F.R. § 106.44\(a\)](#).

Question 16: May a school accept reports of sexual harassment from individuals who are not associated with the school in any way?

Answer 16: Yes. A school may receive actual knowledge of sexual harassment from any person.⁴⁹ There is no requirement that the person be participating in or attempting to participate in a school program or activity to report sexual harassment.⁵⁰

Question 17: Is a school required to respond to allegations of sexual harassment if the only employee or school official who has notice of the harassment is the alleged harasser?

Answer 17: Not under the 2020 amendments. At any school level—elementary, secondary, or postsecondary—the school does not have notice for purposes of Title IX if the only official or employee of the school with actual knowledge is the respondent.⁵¹ The preamble explains the reason for this is that the school “will not have [an] opportunity to appropriately respond if the only official or employee who knows [of the alleged misconduct] is the respondent.”⁵²

For additional information, please see [34 C.F.R. § 106.30](#).

Question 18: Is a school required to respond if it has notice of alleged misconduct that could meet the definition of sexual harassment but is not certain whether the harassment has occurred?

Answer 18: Yes. At any school level—elementary, secondary, or postsecondary—actual knowledge refers to notice of conduct that *could* constitute sexual harassment.⁵³ A complainant is “an individual who is alleged to be the victim of conduct that could constitute sexual harassment” and the definition of actual knowledge refers to “allegations of sexual harassment.”⁵⁴ Thus, the preamble explains that a school must respond promptly and appropriately when it receives notice of alleged facts that, if true, could be considered sexual harassment under the 2020 amendments.⁵⁵

For additional information, please see [34 C.F.R. § 106.30](#).

Question 19: Does a postsecondary school have discretion to require additional employees to report allegations of sexual harassment to the school?

Answer 19: Yes. The preamble says that a postsecondary school may empower as many officials as it wishes to institute corrective measures on its behalf, including coaches and athletic trainers.⁵⁶ If any of these officials receives notice of sexual harassment allegations, the school must respond as the 2020 amendments require (see Question 20).⁵⁷ The preamble also provides this guidance:

- A postsecondary school has discretion to determine which of their employees should be mandatory reporters, and which employees may keep a student’s disclosure about sexual

Question 21: Is a school required to impose particular remedies when a respondent is found responsible for sexual harassment?

Answer 21: No. The 2020 amendments do not dictate that a school provide any particular remedies for the complainant or disciplinary sanctions for the respondent after a finding of responsibility.⁶⁷ Each school is free to make disciplinary and remedial decisions that it “believes are in the best interest of [its] educational environment.”⁶⁸

When a school finds a respondent responsible for sexual harassment under its Title IX grievance process, the school must provide remedies to the complainant that are “designed to restore or preserve equal access to the [school’s] education program or activity.”⁶⁹ These remedies may include the same individualized services that the school provided to the complainant as supportive measures, additional services, or different services.⁷⁰ These remedies can be disciplinary or punitive and can burden the respondent.⁷¹ Schools are required to “[d]escribe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies,”⁷² however the preamble clarifies that this requirement “is not intended to unnecessarily restrict a [school’s] ability to tailor disciplinary sanctions to address specific situations.”⁷³

For additional information, please see [34 C.F.R. § 106.45\(b\)\(1\)\(i\)](#), [34 C.F.R. § 106.45\(b\)\(1\)\(vi\)](#), and [34 C.F.R. § 106.45\(b\)\(7\)\(ii\)\(E\)](#).

VII. Formal Complaints

Question 22: What is a “formal complaint” under the 2020 amendments?

Answer 22: A “formal complaint” is a document filed by a complainant alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment.⁷⁴ It may be a hard copy document or an electronic document submitted via email or an online portal.⁷⁵ Whether it is a hard copy document or an electronic document, it must contain the complainant’s physical or digital signature or otherwise indicate that the complainant is the person filing the formal complaint.⁷⁶ For example, an email from a student to the Title IX Coordinator that ends with the student signing their name would suffice.

A formal complaint may be filed with the school’s Title IX Coordinator in person, by mail, or by email using the contact information provided by the school. A formal complaint may also be filed by any additional method designated by the school.⁷⁷ A parent or guardian who has a legal right to act on behalf of an individual may also file a formal complaint on that individual’s behalf.⁷⁸ In addition, a Title IX Coordinator may initiate a formal complaint as described in Question 24.⁷⁹

For additional information, please see [34 C.F.R. § 106.30](#).

Question 23: Is a school required to accept a formal complaint of sexual harassment from a complainant who is not currently enrolled in or attending the school?

Answer 23: Yes, but only if the complainant is attempting to participate in the school's education program or activity at the time they file the formal complaint.⁸⁰ Individuals who are currently participating in the school's education program or activity may also file formal complaints.⁸¹ When a formal complaint is filed, the school must respond as described in Question 20.

The preamble gives several examples of situations of a complainant "attempting to participate" in a school's education program, including when a complainant:

- (1) has withdrawn from the school due to alleged sexual harassment and expresses a desire to re-enroll if the school responds appropriately to the allegations,
- (2) has graduated but intends to apply to a new program or intends to participate in alumni programs and activities,
- (3) is on a leave of absence and is still enrolled as a student or intends to re-apply after the leave of absence, or
- (4) has applied for admission.⁸²

It is important to keep in mind that this requirement concerns a complainant's status at the time a formal complaint is filed and is not affected by a complainant's later decision to remain or leave the school.⁸³

Question 24: If a complainant has not filed a formal complaint and is not participating in or attempting to participate in the school's education program or activity, may the school's Title IX Coordinator file a formal complaint?

Answer 24: Yes. A Title IX Coordinator may file a formal complaint even if the complainant is not associated with the school in any way.⁸⁴

In some cases, a school may be in violation of Title IX if the Title IX Coordinator does not do so.⁸⁵ For example, the preamble explains that if a school "has actual knowledge of a pattern of alleged sexual harassment by a perpetrator in a position of authority," OCR may find the school to be deliberately indifferent (i.e., to have acted in a clearly unreasonable way) if the school's Title IX Coordinator does not sign a formal complaint, "even if the complainant . . . does not wish to file a formal complaint or participate in a grievance process."⁸⁶ Put simply, there are circumstances when a Title IX Coordinator may need to sign a formal complaint that obligates the school to initiate an investigation regardless of the complainant's relationship with the school or interest in participating in the Title IX grievance process. This is because the school has a Title IX obligation to provide all students, not just the complainant, with an educational environment that does not discriminate based on sex.

Question 28: May a school use trauma-informed approaches when responding to a formal complaint?

Answer 28: Yes. A school may use trauma-informed approaches to respond to a formal complaint of sexual harassment. The preamble clarifies that the 2020 amendments do not preclude a school "from applying trauma-informed techniques, practices, or approaches," but notes that the use of such approaches must be consistent with the requirements of [34 C.F.R. § 106.45](#), particularly [34 C.F.R. § 106.45\(b\)\(1\)\(iii\)](#).⁹³

VIII. Handling Situations in Which a Party or Witness May be Unable to Participate in the Title IX Grievance Process in Person

Question 29: May a school stop offering its Title IX grievance process due to the COVID-19 pandemic?

Answer 29: No. A school must follow its policies for receiving and responding to reports of sexual harassment and may not adopt a policy of putting investigations or proceedings on hold due to COVID-19.⁹⁴

For additional discussion of schools' ongoing Title IX obligations during the COVID-19 pandemic, please see OCR's [Questions and Answers on Civil Rights and School Reopening in the COVID-19 Environment](#).

Question 30: How should a school proceed in the Title IX sexual harassment grievance process when a party or a witness is temporarily unable to participate due to a disability?

Answer 30: A school has "discretion to apply limited extensions of time frames during the grievance process for good cause, which may include, for example, a temporary postponement of a hearing to accommodate a disability."⁹⁵ However, when deciding whether to grant a delay or extension, a school must balance the interests of promptness, fairness to the parties, and accuracy of adjudications. The school also must promptly notify all parties of the reason for the delay and the estimated length of the delay, in addition to important updates about the investigation.⁹⁶

Additionally, a school must not delay investigations or hearings solely because in-person interviews or hearings are not feasible. Instead, a school must use technology, as appropriate, to conduct activities remotely, in a timely and equitable manner, and consistent with the applicable law.

For additional information, please see [34 C.F.R. § 106.45\(b\)\(1\)\(v\)](#).

Question 25: If a complainant is not participating in or attempting to participate in the school's education program or activity, may a school respond to reports of sexual harassment under its own code of conduct?

Answer 25: Yes. As discussed in Question 7, a school has discretion to use its own student-conduct process to address alleged misconduct not covered by the 2020 amendments. This includes situations where a complainant is not participating in or attempting to participate in the school's education program or activity.⁸⁷ There are also circumstances when a Title IX Coordinator may need to file a formal complaint that obligates the school to initiate an investigation regardless of the complainant's relationship with the school or interest in participating in the Title IX grievance process. See Question 24.

Question 26: Is a school required to take action even if the respondent has left the school prior to the filing of a formal complaint with no plans to return?

Answer 26: Yes. As explained in the preamble, a school must always respond promptly to a complainant's report of sexual harassment when it has actual knowledge.⁸⁸ (For more on actual knowledge, see Question 14.) The Title IX Coordinator must inform the complainant about the availability of supportive measures, with or without the filing of a formal complaint, and consider the complainant's wishes regarding supportive measures.⁸⁹

Question 27: Is a school required to dismiss a formal complaint if a respondent leaves the school?

Answer 27: No. Although a school may dismiss a formal complaint if, at any time during the grievance process, the respondent is "no longer enrolled or employed" by the school, dismissal is not required.⁹⁰ The preamble explains that a school has discretion to assess the facts and circumstances of a case before deciding whether to dismiss the complaint because the respondent has left the school.⁹¹

A school may consider, for example, "whether a respondent poses an ongoing risk to the [school's] community," or "whether a determination regarding responsibility provides a benefit to the complainant even where the [school] lacks control over the respondent and would be unable to issue disciplinary sanctions, or other reasons."⁹²

Proceeding with the grievance process could potentially allow a school to determine the scope of the harassment, whether school employees knew about it but failed to respond, whether there is a pattern of harassment in particular programs or activities, whether multiple complainants experienced harassment by the same respondent, and what appropriate remedial actions are necessary.

Question 31: May a school use technology to permit participants to appear virtually in its Title IX grievance process?

Answer 31: Yes. The 2020 amendments grant a school discretion to allow participants, including witnesses, to appear at a live hearing virtually; however, technology must enable all participants to see and hear other participants,⁹⁷ with appropriate accommodations for individuals with disabilities.

For additional information, please see [34 C.F.R. § 106.45\(b\)\(6\)\(i\)](#).

IX. Supportive Measures and Temporary Removal of Respondents from Campus

Question 32: Does a school have to offer supportive measures to a complainant who has not filed a formal complaint of sexual harassment?

Answer 32: Yes. The 2020 amendments specify that the school must contact the complainant to discuss the availability of, and to offer, supportive measures, regardless of whether a formal complaint is filed.⁹⁸ A school must also consider the complainant's wishes with respect to supportive measures.⁹⁹

For additional information, please see [34 C.F.R. § 106.30](#) and [34 C.F.R. § 106.44\(a\)](#).

Question 33: What are the supportive measures a school must offer to complainants?

Answer 33: A school must offer supportive measures that "are designed to restore or preserve equal access to the [school's] education program or activity."¹⁰⁰ The 2020 amendments add that these include "measures designed to protect the safety of all parties or the [school's] educational environment, or deter sexual harassment."¹⁰¹ A school also must consider the complainant's wishes in determining which supportive measures to provide and may not provide supportive measures that "unreasonably burden[] the other party."¹⁰²

A school has discretion and flexibility to determine which supportive measures are appropriate. The preamble states that a school must consider "each set of unique circumstances" to determine what individualized services would be appropriate based on the "facts and circumstances of that situation."¹⁰³

Examples of supportive measures include "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 or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures."¹⁰⁴

For additional information, please see [34 C.F.R. § 106.30](#) and [34 C.F.R. § 106.44\(a\)](#).

Question 34: Is a school still required to provide supportive measures during the COVID-19 pandemic?

Answer 34: Yes. COVID-19-related disruptions do not relieve a school of its obligation to comply with Title IX. A school must continue to offer academic adjustments and supports to complainants and respondents in Title IX sexual harassment complaints.

In light of the COVID-19 pandemic, “the facts and circumstances”¹⁰⁵ of a given situation may require a school to provide remote counseling, or similar teletherapy option, as a supportive measure to students who are unable to access on-campus counseling services. Similarly, in a remote learning environment, supportive measures may include ensuring that parties to a complaint do not share the same online classes.

For additional discussion of schools’ ongoing Title IX obligations during the COVID-19 pandemic, please see OCR’s [Questions and Answers on Civil Rights and School Reopening in the COVID-19 Environment](#).

Question 35: May a school remove a respondent from campus while a Title IX grievance process is pending if the school determines that the respondent is a threat to others?

Answer 35: Yes. The 2020 amendments specify that a school may remove a respondent from its education program or activity on an emergency basis.¹⁰⁶ The school must “undertake[] an individualized safety and risk analysis, determine[] that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provide[] the respondent with notice and an opportunity to challenge the decision immediately following the removal.”¹⁰⁷ A school must also meet its obligations to students under federal disability laws.¹⁰⁸

A school may also place non-student employee respondents on administrative leave while a Title IX grievance process is pending.¹⁰⁹ Again, the school must comply with federal disability laws, as applicable.¹¹⁰

For additional information, please see [34 C.F.R. §§ 106.44\(c\)-\(d\)](#).

X. Presumption of No Responsibility

Question 36: The 2020 amendments require schools to presume that the respondent is not responsible for the alleged misconduct. Does this mean the school also must assume the complainant is lying or that the alleged harassment did not occur?

Answer 36: No. A school should never assume a complainant of sexual harassment is lying or that the alleged harassment did not occur.

The Department had previously identified, but not required, a 60-day time frame, prior to appeal, for resolving sexual harassment complaints. Although that guidance is no longer in place, nothing in the 2020 amendments prohibits a school from adopting the 60-day time frame.¹²¹

The 2020 amendments permit a temporary delay of the grievance process or the limited extension of time frames, with good cause.¹²² The 2020 amendments provide illustrations of good cause, including considerations such as the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.¹²³

For additional information, please see [34 C.F.R. § 106.45\(b\)\(1\)\(v\)](#).

XII. Live Hearings and Cross-Examination

Question 38: Are all schools required to hold live hearings as part of their Title IX grievance processes?

Answer 38: Postsecondary schools must have a live hearing under the 2020 amendments.¹²⁴ A live hearing may occur virtually “with technology enabling the decision-maker[] and parties to simultaneously see and hear the party or the witness answering questions.”¹²⁵ Elementary and secondary schools are not required to have a live hearing.¹²⁶

For additional information, please see [34 C.F.R. § 106.45\(b\)\(6\)](#).

Question 39: What is cross-examination?

Answer 39: At a live hearing, “each party’s advisor [must be permitted to] to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.”¹²⁷ The 2020 amendments refer to this process of questioning as cross-examination.

The 2020 amendments explain that a party may not conduct cross-examination, but instead the party’s advisor must ask the questions on their behalf.¹²⁸ The amendments also require a postsecondary school to provide an advisor to conduct cross-examination for any party who does not have their own advisor.¹²⁹

For additional information, please see [34 C.F.R. § 106.45\(b\)\(6\)](#).

Question 40: Since elementary and secondary schools are not required to provide a live hearing, what kind of process are they required to provide?

Answer 40: The 2020 amendments state that elementary and secondary schools “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.”¹³⁰ In addition, the decision-maker “must explain to the party proposing the questions any decision to exclude a question as not relevant.”¹³¹

The 2020 amendments require a school to include in its Title IX grievance process “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.”¹¹¹ However, the preamble explains that “[t]he presumption does not imply that the alleged harassment did not occur,” or that the respondent is truthful or a complainant is untruthful.¹¹² Instead, the preamble says that the presumption is designed to ensure that investigators and decision-makers serve impartially and do not prejudge that the respondent is responsible for the alleged harassment.¹¹³ Schools that have relied on this presumption to decline services to a complainant or to make assumptions about a complainant’s credibility have done so in error.

For examples of language related to this issue, please see Q&A Appendix Section XI.

XI. Time Frames

Question 37: What is the appropriate length of time for a school’s investigation into a complaint of sexual harassment?

Answer 37: The 2020 amendments require that a school’s grievance process for formal complaints of sexual harassment include reasonably prompt time frames for concluding the process, including filing and resolving appeals and for any informal resolution processes the school offers.¹¹⁴ The preamble states that because the 2020 amendments specify that “the time frames designated by the [school] must account for conclusion of the entire grievance process, including appeals and any informal resolution process,” no part of the process “is subject to an open-ended time frame.”¹¹⁵

The preamble also explains that “the reasonableness of the time frame is evaluated in the context of the [school’s] operation of an education program or activity.”¹¹⁶ Additionally, the preamble says that “the conclusion of the grievance process must be reasonably prompt, because students (or employees) should not have to wait longer than necessary to know the resolution of a formal complaint of sexual harassment; any grievance process is difficult for both parties, and participating in such a process likely detracts from students’ ability to focus on participating in the [school’s] education program or activity.”¹¹⁷ The preamble adds that because “victims of sexual harassment are entitled to remedies to restore or preserve equal access to education, . . . prompt resolution of a formal complaint of sexual harassment is necessary to further Title IX’s nondiscrimination mandate.”¹¹⁸

The preamble explains that each school “is in the best position to balance promptness with fairness and accuracy based on [its] own unique attributes and [its] experience with its own student disciplinary proceedings,” and thus, each school has discretion to determine its own reasonably prompt time frames.¹¹⁹ A school must resolve each formal complaint of sexual harassment according to the time frames the school has committed to in its grievance process.¹²⁰

The preamble also explains that a school may exclude as not relevant questions that are duplicative or repetitive.¹³²

The 2020 amendments permit a parent or legally authorized guardian to act on behalf of the complainant or respondent.¹³³ Whether a parent or guardian has the legal right to act on behalf of a complainant or respondent “would be determined by State law, court orders, child custody arrangements, or other sources granting legal rights to parents or guardians.”¹³⁴ If a parent or guardian has a legal right to act on a complainant or respondent’s behalf, this authority applies throughout all aspects of the Title IX matter, including throughout the grievance process.¹³⁵

For additional information, please see [34 C.F.R. § 106.45\(b\)\(6\)\(ii\)](#) and [34 C.F.R. § 106.30](#).

Question 41: Is a postsecondary school required to provide complainants and respondents with an advisor for a live hearing?

Answer 41: Yes. The 2020 amendments require a postsecondary school to provide an advisor to conduct cross-examination for any party who does not have their own advisor.¹³⁶ The amendments also require all schools to provide the parties with the same opportunities to be accompanied by an advisor of their choice in other parts of the grievance process, but do not require a school to provide an advisor for any part of the process other than the requirement that a postsecondary school provide one for cross-examination.¹³⁷

The preamble explains that the parties are in the best position to decide which individuals should serve as their advisors and notes that advisors may be friends, family members, an attorney, or other individuals chosen by the party or provided by the school if the party does not choose one.¹³⁸

For additional information, please see [34 C.F.R. § 106.45\(b\)\(5\)\(iv\)](#) and [34 C.F.R. § 106.45\(b\)\(6\)\(i\)](#).

Question 42: Are parties and witnesses required to participate in the Title IX grievance process, including submitting to cross-examination during a live hearing at the postsecondary school level?

Answer 42: No. Parties and witnesses are not required to submit to cross-examination or otherwise participate in the Title IX grievance process.¹³⁹ For information on the consequences of not submitting to cross-examination, see Question 51.

The 2020 amendments do require schools to offer complainants supportive measures regardless of whether they participate in a grievance process and to prohibit retaliation against individuals based on their decision to participate, or not participate, in a grievance process.¹⁴⁰

Question 43: May a school create its own rules for conducting a live hearing?

Answer 43: Yes. The preamble states that a school may implement rules regarding how the live hearing is conducted as long as those rules are applied equally to both parties.¹⁴¹ For

example, a school “may decide whether or how to place limits on evidence introduced at a hearing that was not gathered and presented prior to the hearing.”¹⁴²

The preamble also explains that a school may adopt rules on “whether the parties may offer opening or closing statements, specify a process for making objections to the relevance of questions and evidence, [and] place reasonable time limitations on a hearing.”¹⁴³ The preamble adds that a school may adopt a rule stating that duplicative questions are irrelevant.¹⁴⁴

In addition, the preamble says that an advisor’s cross-examination role “is satisfied where the advisor poses questions on a party’s behalf, which means that an assigned advisor could relay a party’s own questions to the other party or witness.”¹⁴⁵ Thus, for example, a postsecondary school could limit the role of advisors to relaying questions drafted by their party.

For examples of language related to this issue, please see Q&A Appendix Sections V-VII.

Question 44: May a school put in place rules of decorum or other rules for advisors, parties, and witnesses to follow during a live hearing?

Answer 44: Yes. The preamble says that a school may “adopt rules of decorum” and notes that a school is “in a better position than the Department to craft rules of decorum best suited to [its] educational environment.”¹⁴⁶

For example, a school may prohibit advisors from questioning parties or witnesses in an abusive, intimidating, or disrespectful manner.¹⁴⁷

A school also may require a party to use a different advisor if the party’s advisor refuses to comply with the school’s rules of decorum. For example, the preamble explains that if a party’s advisor of choice yells at others in violation of a school’s rules of decorum, the school may remove the advisor and require a replacement.¹⁴⁸ The school has this authority even when the advisor is asking a question that is relevant to the hearing. If the manner in which an advisor attempts to ask the question is harassing, intimidating, or abusive (e.g., advisor yells, screams, or comes too close to a witness), the preamble explains that a school may enforce a rule requiring that relevant questions must be asked in a respectful, non-abusive manner.¹⁴⁹

For examples of language related to this issue, please see Q&A Appendix Section VI.

Question 45: Are all parties required to be physically present in the same location during the live hearing?

Answer 45: No. The 2020 amendments state that, “at the [school’s] discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.”¹⁵⁰ Additionally, the preamble states that even if a school does not regularly hold virtual hearings, any party may request that the entire hearing, including cross-examination, be held virtually, and the school

respondent might be relevant to prove consent regarding the particular allegations at issue “depends in part on a [school’s] definition of consent.”¹⁶¹ Some schools’ definitions of consent “require a verbal expression of consent,” and other schools’ definitions of consent “inquire whether based on circumstances the respondent reasonably understood that consent was present (or absent).”¹⁶²

For additional information, please see [34 C.F.R. § 106.45\(b\)\(6\)](#).

For examples of language related to this issue, please see Q&A Appendix Section IX.

Question 48: Can cross-examination include questions about an individual’s medical or mental-health records?

Answer 48: Questions that seek information about any party’s medical, psychological, and similar records are not permitted unless the party has given written consent.¹⁶³ Questions about other records protected by a legally recognized privilege are also not permitted unless waived by the party.¹⁶⁴ The preamble also explains that “[schools] (and, as applicable, parties) must follow relevant State and Federal health care privacy laws throughout the grievance process.”¹⁶⁵

These protections apply throughout the investigation as well as the hearing.

Question 49: May a school put measures in place to protect the well-being of the parties during the cross-examination?

Answer 49: Yes. For example, the preamble notes that a school is permitted to grant breaks to the parties during a live hearing.¹⁶⁶ Also, as discussed in Question 46, the 2020 amendments require a pause in the cross-examination process each time before a party or witness answers a cross-examination question in order for the decision-maker to determine if the question is relevant.¹⁶⁷ The preamble explains that this is to help ensure that the cross-examination includes only relevant questions and that the pace of the cross-examination does not place undue pressure on a party or a witness to answer immediately.¹⁶⁸

Question 50: How do the 2020 amendments address the manner in which a decision-maker should evaluate answers to cross-examination questions?

Answer 50: The 2020 amendments do not require that answers to cross-examination questions “be in linear or sequential formats” or that any party “must recall details with certain levels of specificity.”¹⁶⁹ The preamble adds that the 2020 amendments “protect against a party being unfairly judged due to inability to recount each specific detail of an incident in sequence” because “decision-makers must be trained to serve impartially without prejudging the facts.”¹⁷⁰

For examples of language related to this issue, please see Q&A Appendix Section VIII.

Question 51: What are the consequences if a party or witness does not participate in a live hearing or submit to cross-examination?

must grant that request.¹⁵¹ The party does not need to provide a reason for making this request.¹⁵²

In addition, nothing in the 2020 amendments prohibits schools from holding virtual hearings or from having the parties participate in separate locations even if no party makes such a request, particularly in light of the operational challenges posed by the COVID-19 pandemic.¹⁵³

For additional information, please see [34 C.F.R. § 106.45\(b\)\(6\)\(i\)](#).

For examples of language related to this issue, please see Q&A Appendix Section V.

Question 46: Is a school permitted to limit the questions that may be asked by each party of the other party or witnesses?

Answer 46: Yes, and in fact the 2020 amendments require certain limitations, whether in a hearing or as part of an exchange of written questions at the elementary and secondary school level. Note that the 2020 amendments do not require a hearing at the elementary and secondary school level.¹⁵⁴

Questions must be relevant. More specifically, the 2020 amendments state that questions about the complainant’s prior sexual behavior are not relevant, subject to certain limitations.¹⁵⁵ The preamble states that any school may exclude as not relevant questions that are duplicative or repetitive.¹⁵⁶ For more information regarding other limitations on questioning, see Question 48.

Further, the 2020 amendments state that during cross-examination at the postsecondary school level, “only relevant cross-examination questions and other questions may be asked of a party or witness” and the decision-maker must determine the relevance of a question before a party or a witness answers.¹⁵⁷

For additional information, please see [34 C.F.R. § 106.45\(b\)\(6\)](#).

For examples of language related to this issue, please see Q&A Appendix Sections VIII and IX.

Question 47: Are questions and evidence about the complainant’s sexual history relevant?

Answer 47: The 2020 amendments state that “questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged” or the “questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.”¹⁵⁸

The preamble explains that the term “prior sexual behavior” refers to “sexual behavior that is unrelated” to the alleged conduct.¹⁵⁹ The preamble also addresses questions and evidence about sexual behavior after an alleged incident, saying that the regulations do not imply that these kinds of questions are relevant.¹⁶⁰ Whether sexual behavior between the complainant and

Answer 51: Postsecondary schools, which are required to provide for cross-examination at a live hearing, should keep in mind that, under the 2020 amendments, if a party or a witness does not submit to cross-examination, that individual’s statements cannot be relied on by the decision-maker in determining whether the respondent engaged in the alleged sexual harassment.¹⁷¹

The preamble explains that even if a party is unable to participate at a hearing “due to death or post-investigation disability,” the school’s decision-makers may not rely on any statements from that individual in their decision-making about whether the respondent has committed sexual harassment in violation of school policy.¹⁷² As discussed in Question 37, a school has “discretion to apply limited extensions of time frames during the grievance process for good cause, which may include, for example, a temporary postponement of a hearing to accommodate a disability.”¹⁷³

The decision-maker also may not draw any inference from a decision of a party or witness not to participate at the hearing, including not to submit to cross-examination.¹⁷⁴ This means, for example, that the decision-maker may not make any decisions about a party’s credibility based on their decision not to participate in a hearing or submit to cross-examination.

Note that “police reports, medical reports and other documents and records may not be relied on to the extent they contain the statements of a party or witness who has not submitted to cross-examination.”¹⁷⁵

For examples of language related to this issue, please see Q&A Appendix Section X.

For additional information, please see [34 C.F.R. § 106.45\(b\)\(6\)\(i\)](#).

Question 52: May a decision-maker at a postsecondary school rely on non-statement evidence, such as photographs or video images, if a party or witness does not submit to cross-examination?

Answer 52: Yes. Although a decision-maker may not rely on any statement of a party or witness who does not submit to cross-examination, other relevant evidence can still be considered to determine whether the respondent is responsible for the alleged sexual harassment.¹⁷⁶ The preamble explains that the term “statements” should be interpreted using its ordinary meaning, but does not include evidence, such as a video of the incident itself, where the party or witness has no intent to make an assertion regarding whether or not the alleged harassment occurred or discuss factual details related to the alleged harassment, or where the evidence does not contain such factual assertions by the party or witness.¹⁷⁷ Thus, the decision-maker may rely on non-statement evidence related to the alleged prohibited conduct that is in the record, such as photographs or video images showing the underlying incident.¹⁷⁸

For examples of language related to this issue, please see Q&A Appendix Section X.

Question 53: May a decision-maker at a postsecondary school rely on statements of a party, such as texts or emails, even if the party does not submit to cross-examination?

Answer 53: It depends. The decision-maker may consider certain types of statements by a party where the statement itself is the alleged harassment, even if the party does not submit to cross-examination. For example, the decision-maker may consider a text message, email, or audio or video recording created and sent by a respondent as a form of alleged sexual harassment even if the respondent does not submit to cross-examination.¹⁷⁹ Similarly, if a complainant alleges that the respondent said, "I'll give you a higher grade in my class if you go on a date with me," the decision-maker may rely on the complainant's testimony that the respondent said those words even if the respondent does not submit to cross-examination.¹⁸⁰

In these types of situations, the decision-maker is evaluating whether the statement was made or sent. In second example above, the complainant's testimony was about the fact that the respondent made the offer, and not about what the respondent intended or whether the respondent took an additional action based on the statement, such as changing the student's grade after a date.¹⁸¹

In contrast, evidence in which a party or witness comments on the interaction between the parties without engaging in harassment (e.g., email or text exchanges leading up to the alleged harassment or an admission, an apology, or other comment about the alleged harassment), would be considered statements that could not be considered unless the party or witness is cross-examined.¹⁸²

For examples of language related to this issue, please see Q&A Appendix Section X.

Question 54: May a decision-maker rely on a video, text message, or other piece of evidence that includes statements by multiple parties or witnesses if some of them do not submit to cross-examination?

Answer 54: Yes. The preamble explains that in such cases, even if a party or witness in a text message, email, or video does not submit to cross-examination, the decision-maker may still rely on the statements by other people in that text message, email, or video who do submit to cross-examination.¹⁸³

Question 55: May a decision-maker rely on the statements of a party or witness who submits to cross-examination, but does not answer questions posed by the decision-maker?

Answer 55: Yes. The preamble explains that cross-examination differs from questions posed by a neutral fact-finder and that if a party or witness submits to cross-examination by a party's advisor, but does not answer a question posed by the decision-maker, the decision-maker may still rely on all of that person's statements.¹⁸⁴ The preamble also explains that "the decision-maker still may not draw any inference about the party's credibility in making the responsibility

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The 2020 amendments explain that they leave the term "informal process" undefined to allow a school the discretion to adopt whatever process best serves the needs of its community.¹⁸⁴ The amendments do not require that the parties interact directly with each other as part of an informal resolution process; mediations are often conducted with the parties in separate rooms and the mediator conversing with each party separately.¹⁸⁵ The parties' participation in mediation or restorative justice, if offered, should remain a decision for each individual party to make in a particular case, and neither party should be pressured to participate in the process. Schools may exercise discretion to make fact-specific determinations about whether to offer informal resolution in response to a complaint. The Department will not require the parties to attempt mediation in its enforcement of Title IX.¹⁸⁶

For additional information, please see [34 C.F.R. § 106.45\(b\)\(9\)](#).

For examples of language related to this issue, please see Q&A Appendix Section XV.

Question 59: If a school chooses to offer an informal resolution process, are there any requirements under Title IX?

Answer 59: Yes. If a school chooses to offer an informal process, the 2020 amendments require that the school obtains the complainant's and the respondent's voluntary, written consent before using any kind of "informal resolution" process, such as mediation or restorative justice.¹⁹⁷ With the parties' consent, schools have the freedom to allow the parties to choose an informal resolution mechanism that best suits their needs.¹⁹⁸ If those needs change, however, the 2020 amendments also make clear that either party may withdraw from the informal resolution process and resume the formal grievance process at any time prior to agreeing to a resolution.¹⁹⁹

A school's discretion to offer an informal resolution process is also limited by the school's obligation to ensure that all persons who facilitate informal resolutions are free from conflicts of interest and bias, and are trained to serve impartially without prejudging the facts at issue.²⁰⁰ For example, schools that choose to offer restorative justice as a means of an informal resolution should ensure that the restorative justice facilitators are well-trained in effective processes.²⁰¹ A school may use trauma-informed techniques during the informal resolution process.

For additional information, please see [34 C.F.R. § 106.45\(b\)\(9\)](#).

XV. Retaliation and Amnesty

Question 60: What is retaliation, and is it prohibited under the 2020 amendments?

Answer 60: The 2020 amendments prohibit retaliation.²⁰² Retaliation is defined as "[i]ntimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report

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determination based solely on a party's refusal to answer questions posed by the decision-maker" because [34 C.F.R. § 106.45\(b\)\(6\)\(i\)](#) states that no inference may be drawn based on the refusal to answer cross-examination or other questions.¹⁸⁵

XIII. Standard of Proof

Question 56: What standard of proof must a school use when deciding whether a respondent is responsible for committing sexual harassment?

Answer 56: Under the 2020 amendments, a school's grievance process must state whether the standard of evidence or proof to be used to determine responsibility is the preponderance-of-the-evidence standard or the clear-and-convincing-evidence standard.¹⁸⁶ The preamble explains that the preponderance-of-the-evidence standard means the decision-maker must determine whether alleged facts are more likely than not to be true.¹⁸⁷ It also explains that the clear-and-convincing-evidence standard means the decision-maker must determine whether it is "highly probable" that the alleged facts are true.¹⁸⁸

For additional information, please see [34 C.F.R. § 106.45\(b\)\(1\)\(vii\)](#).

Question 57: May a school use a different standard of proof for formal complaints of sexual harassment involving students and employees?

Answer 57: No. Regardless of which standard of proof is used, a school must apply the same standard of proof to all formal complaints of sexual harassment made by a student, employee, or faculty member.¹⁸⁹ The preamble explains that if a school has a collective bargaining agreement in place that requires the school to use the clear-and-convincing standard for sexual harassment investigations involving employees, it is required under the 2020 amendments to use only the clear-and-convincing standard for sexual harassment investigations involving students as well.¹⁹⁰ In those cases, the preamble indicates that the school may work cooperatively with its employee unions to renegotiate the standard of proof used in employee sexual harassment investigations.¹⁹¹

For additional information, please see [34 C.F.R. § 106.45\(b\)\(1\)\(vii\)](#).

XIV. Informal Resolution

Question 58: May a school offer an informal resolution process, including restorative justice or mediation, as a way to resolve a sexual harassment complaint?

Answer 58: Yes. The 2020 amendments state that a school is not required to offer an informal resolution process but may facilitate an informal resolution process at any time prior to reaching a determination regarding responsibility, subject to certain conditions.¹⁹² A school is not permitted to offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.¹⁹³

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or formal complaint of sexual harassment, for the purposes of interfering with any right or privilege secured by [the] Title IX [statute or regulations]."²⁰³

For additional information, please see [34 C.F.R. § 106.71](#).

Question 61: May a school discipline a complainant, respondent, or witness for violating the school's COVID-19 or other policy during a reported incident of sexual harassment?

Answer 61: No, unless the school has a policy that always imposes the same punishment for violating the COVID-19 or other policy regardless of the circumstances. The 2020 amendments prohibit "charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or formal complaint of sexual harassment [i.e., collateral conduct], for the purpose of interfering with any right or privilege secured by Title IX or [its implementing regulations]."²⁰⁴

The preamble explains that if a school punishes an individual for violations of other school policies, it will be considered retaliation if the punishment is for the purpose of interfering with any right or privilege secured by Title IX.²⁰⁵ The preamble adds that if a school has a zero-tolerance policy that always imposes the same punishment for such conduct regardless of the circumstances, imposing that punishment would not be for the purpose of interfering with any right or privilege secured by Title IX and thus, would not be considered retaliation.²⁰⁶

For additional information, please see [34 C.F.R. § 106.71](#).

Question 62: Is a school permitted to have an amnesty policy as a way to encourage reporting of sexual harassment?

Answer 62: Yes. The preamble notes that "[t]he Department is aware that some schools have adopted 'amnesty' policies designed to encourage students to report sexual harassment."²⁰⁷ Under these policies, "students who report sexual misconduct (whether as a victim or witness) will not face charges for school code of conduct violations relating to the sexual misconduct incident (e.g., underage drinking at the party where the sexual harassment occurred)."²⁰⁸ "Nothing in the [2020 amendments] precludes a [school] from adopting such amnesty policies," and schools retain broad discretion to adopt such amnesty policies or to otherwise define retaliation more broadly than in the regulations.²⁰⁹

More generally, schools should keep in mind that the 2020 amendments require that a school's Title IX grievance process treat complainants and respondents equitably.²¹⁰

Question 63: May a school punish a complainant for filing a complaint if the decision-maker finds that the respondent did not engage in the alleged sexual harassment?

Answer 63: Not without a finding of bad faith. The 2020 amendments state that "a determination regarding responsibility, alone, is not sufficient to conclude that any party made

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a materially false statement in bad faith.²²¹ To the contrary, it might be considered retaliation for a school to penalize a student for bringing a complaint, depending on the circumstances.²²² However, if a school believes a student made a materially false statement in bad faith in the course of a Title IX grievance proceeding, it would not constitute retaliation for a school to charge that individual with a code-of-conduct violation.²²³

For additional information, please see [34 C.F.R. § 106.71](#).

XVI. Forms of Sex Discrimination Other Than Sexual Harassment as Defined by the 2020 Amendments

Question 64: How should a school respond to complaints alleging sex discrimination that do not include sexual harassment allegations?

Answer 64: The 2020 amendments explain that the grievance process required for formal sexual harassment complaints does not apply to complaints alleging discrimination based on pregnancy, different treatment based on sex, or other forms of sex discrimination.²¹⁴

Instead, the 2020 amendments state that schools must respond to these complaints using the “prompt and equitable” grievance procedures that schools have been required to adopt and publish since 1975, when the original Title IX regulations were issued.²¹⁵ The 1975 regulations, which are still in place today, require schools to have a Title IX Coordinator to receive complaints of sex discrimination and require schools to respond promptly and equitably to such complaints.²¹⁶

For additional information, please see [34 C.F.R. § 106.8\(c\)](#).

Question 65: What constitutes a prompt and equitable grievance procedure under Title IX for responding to complaints of sex discrimination that do not include sexual-harassment allegations?

Answer 65: OCR has historically looked to whether and how schools have communicated information about their procedures, including where to file complaints, to students, parents/caregivers (for elementary and secondary school students), and employees. In addition, OCR has considered whether the procedures have provided for adequate, reliable, and impartial investigation of complaints; designated and reasonably prompt time frames for the complaint and resolution process; and notice to the parties of the outcome of a complaint.²¹⁷

OCR also has historically explained that a grievance procedure cannot be prompt or equitable unless students know it exists, how it works, and how to file a complaint. Thus, the procedures should be written in language appropriate to the age of the school’s students, easily understood, and widely disseminated.²¹⁸

¹ You can read the 2020 amendments, entitled “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” at 85 Fed. Reg. 30,026 (May 19, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf>. The amendments begin on page 30,572. The Federal Register notice also includes a preamble, at pages 30,026-30,570, that clarifies OCR’s interpretation of Title IX and the Title IX regulations. As discussed above, please note that the preamble itself does not have the force and effect of law.

² 85 Fed. Reg. at 30,063.

³ *Id.*

⁴ *Id.*

⁵ 20 U.S.C. § 1092(f)(6)(A)(v).

⁶ NIBRS User Manual at 40 (April 15, 2021), <https://www.fbi.gov/file-repository/ucr/ucr-2019-1-nibrs-user-manual-093020.pdf/view>.

⁷ 34 U.S.C. § 12291(a)(10).

⁸ *Id.* § 12291(a)(8).

⁹ *Id.* § 12291(a)(30).

¹⁰ 34 C.F.R. § 106.30 (definition of sexual harassment). See also 85 Fed. Reg. at 30,202.

¹¹ 85 Fed. Reg. at 30,174.

¹² *Id.*

¹³ *Id.* at 30,199.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 34 C.F.R. § 106.31.

¹⁸ 85 Fed. Reg. at 30,170. See also 34 C.F.R. § 106.30(a) (definition of sexual harassment).

¹⁹ 85 Fed. Reg. at 30,170.

²⁰ *Id.*

²¹ *Id.* at 30,169.

²² *Id.*

²³ *Id.* at 30,170.

²⁴ *Id.*

²⁵ *Id.*

²⁶ 34 C.F.R. § 106.44(a). See also 85 Fed. Reg. at 30,196-98.

²⁷ 85 Fed. Reg. at 30,093. See also 34 C.F.R. § 106.45(b)(1)(ii).

²⁸ 34 C.F.R. § 106.8(d).

²⁹ 85 Fed. Reg. at 30,201.

³⁰ *Id.* at 30,197.

³¹ *Id.* at 30,199 n.875.

³² *Id.* at 30,200 n.877.

³³ *Id.* at 30,200.

³⁴ *Id.* at 30,202.

³⁵ *Id.*

³⁶ *Id.* at 30,203.

³⁷ *Id.* at 30,202.

³⁸ *Id.*

³⁹ U.S. Department of Education, Office for Civil Rights, Letter from Acting Assistant Secretary for Civil Rights, Kimberly M. Richey, Withdrawing Certain OCR Documents (Aug. 26, 2020), <https://www2.ed.gov/policy/gen/guid/ffr-200826-letter.pdf>. Guidance documents previously issued by the Department that have since been withdrawn are available at <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/ffr/policyguidance/resppolicy.html>. Note that these

XVII. Religious Exemptions

Question 66: Are all schools that receive federal financial assistance required to comply with Title IX?

Answer 66: Title IX does not apply to an educational institution that is controlled by a religious organization to the extent that application of Title IX would be inconsistent with the religious tenets of the organization.²¹⁹ This religious exemption was in the text of Title IX when it was enacted in 1972. The religious exemption does not apply to public schools or to colleges or universities run by state or local governments.

A school may, at its discretion, seek an assurance of a Title IX religious exemption at any time by submitting a letter from the highest ranking official of the institution to the Assistant Secretary for Civil Rights in the Department of Education.²²⁰ The letter must identify the provisions of the Title IX regulations that conflict with specific tenets of the religious organization.²²¹ A religious exemption is not a blanket exemption from Title IX, and a school’s religious exemption extends only as far as the conflict between the Title IX regulations and the religious tenets of the controlling religious organization.²²² A school must comply with the Title IX regulations to the extent that compliance would not conflict with the tenets of the controlling religious organization.²²³

The 2020 amendments state that a school is not required to seek a written assurance of its religious exemption under Title IX before claiming the exemption, and the regulations state that a school can invoke a religious exemption after OCR has received a complaint regarding the school.²²⁴ This is consistent with OCR’s handling of religious exemption requests dating back more than two decades.

For additional information, please see [34 C.F.R. § 106.12](#).

Please visit OCR’s [website](#) for additional information about religious exemptions.

Question 67: May a student file a complaint with OCR against a school that has obtained an assurance of a religious exemption from OCR?

Answer 67: Yes. Students may always file a complaint with OCR if they believe their school has violated their rights under Title IX, even if OCR has previously provided assurance to the school of a religious exemption under Title IX. After receiving the complaint, OCR would first evaluate whether the allegation is appropriate for investigation. If yes, and if the school has previously asserted a religious exemption, then OCR would determine whether the exemption applies to the alleged discrimination. If the exemption applies, OCR would dismiss the complaint. If the alleged discrimination does not fall within the school’s religious exemption from Title IX, then OCR would proceed with the investigation, following OCR’s Case Processing Manual.²²⁵

guidance documents, even prior to their withdrawal, do not have the force and effect of law, and are not meant to bind the public or regulated entities in any way.

²¹⁹ 34 C.F.R. §§ 106.30(a) (definition of actual knowledge), 106.44(a).

²²⁰ 85 Fed. Reg. at 30,109, 30,115.

²²¹ 34 C.F.R. § 106.30(a) (definition of actual knowledge).

²²² 85 Fed. Reg. at 30,115-16, 30,120.

²²³ *Id.* at 30,115.

²²⁴ 34 C.F.R. § 106.30(a) (definition of actual knowledge); 85 Fed. Reg. at 30,043.

²²⁵ 85 Fed. Reg. at 30,043.

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ 34 C.F.R. §§ 106.8(a), 106.30(a) (definition of actual knowledge).

²²⁹ 85 Fed. Reg. at 30,093.

²³⁰ 34 C.F.R. § 106.30(a).

²³¹ 85 Fed. Reg. at 30,116.

²³² *Id.* at 30,192.

²³³ *Id.* See also 34 C.F.R. § 106.30(a) (definition of complainant).

²³⁴ 85 Fed. Reg. at 30,192.

²³⁵ *Id.* at 30,107, 30,115, 30,523.

²³⁶ *Id.* at 30,107.

²³⁷ *Id.* at 30,523.

²³⁸ *Id.* at 30,107.

²³⁹ *Id.* at 30,115, 30,523.

²⁴⁰ *Id.* at 30,107.

²⁴¹ *Id.*

²⁴² 34 C.F.R. § 106.44(a).

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ 34 C.F.R. § 106.45(b)(1)(i), (b)(7)(ii)(E); 85 Fed. Reg. at 30,274.

²⁴⁶ 85 Fed. Reg. at 30,274.

²⁴⁷ 34 C.F.R. § 106.45(b)(1)(i).

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.* § 106.45(b)(1)(vi).

²⁵¹ 85 Fed. Reg. at 30,275.

²⁵² 34 C.F.R. § 106.30(a) (definition of formal complaint).

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.* § 106.6(g); 85 Fed. Reg. at 30,453.

²⁵⁶ *Id.* § 106.30(a) (definition of formal complaint).

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ 85 Fed. Reg. at 30,138, 30,198 n.869, 30,219.

²⁶⁰ 34 C.F.R. § 106.30(a) (definition of formal complaint).

²⁶¹ *Id.*

²⁶² 34 C.F.R. §§ 106.30(a) (definition of formal complaint), 106.44(a).

²⁶³ 85 Fed. Reg. at 30,089.

²⁶⁴ 34 C.F.R. § 106.45(b)(3)(i). See also 85 Fed. Reg. at 30,199.

⁸⁸ 34 C.F.R. § 106.44(a).
⁸⁹ *Id.*
⁹⁰ *Id.* § 106.45(b)(3)(iii). See also 85 Fed. Reg. at 30,290.
⁹¹ 85 Fed. Reg. at 30,290.
⁹² *Id.*
⁹³ *Id.* at 30,187.
⁹⁴ See 34 C.F.R. § 106.45(b)(1)(v).
⁹⁵ 85 Fed. Reg. at 30,348. See also 34 C.F.R. § 106.45(b)(1)(v).
⁹⁶ 34 C.F.R. § 106.45(b)(1)(v).
⁹⁷ 34 C.F.R. § 106.45(b)(6)(i). See also 85 Fed. Reg. at 30,348.
⁹⁸ 34 C.F.R. § 106.44(a).
⁹⁹ *Id.*
¹⁰⁰ *Id.* § 106.30(a) (definition of supportive measures). See also 34 C.F.R. § 106.44(a).
¹⁰¹ 34 C.F.R. § 106.30(a) (definition of supportive measures).
¹⁰² *Id.*
¹⁰³ 85 Fed. Reg. at 30,182.
¹⁰⁴ *Id.* at 30,401.
¹⁰⁵ *Id.* at 30,182.
¹⁰⁶ 34 C.F.R. § 106.44(c).
¹⁰⁷ *Id.*
¹⁰⁸ *Id.* (referencing the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act).
¹⁰⁹ *Id.* § 106.44(d).
¹¹⁰ *Id.* (referencing Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act).
¹¹¹ *Id.* § 106.45(b)(1)(iv).
¹¹² 85 Fed. Reg. at 30,259.
¹¹³ *Id.*
¹¹⁴ 34 C.F.R. § 106.45(b)(1)(v).
¹¹⁵ 85 Fed. Reg. at 30,269.
¹¹⁶ *Id.*
¹¹⁷ *Id.*
¹¹⁸ *Id.*
¹¹⁹ *Id.*
¹²⁰ *Id.*
¹²¹ *Id.*
¹²² 34 C.F.R. § 106.45(b)(1)(v).
¹²³ *Id.*
¹²⁴ *Id.* § 106.45(b)(6)(i).
¹²⁵ *Id.*
¹²⁶ *Id.* § 106.45(b)(6)(ii).
¹²⁷ *Id.* § 106.45(b)(6)(i).
¹²⁸ *Id.*
¹²⁹ *Id.*
¹³⁰ *Id.* § 106.45(b)(6)(ii).
¹³¹ *Id.*
¹³² 85 Fed. Reg. at 30,361.
¹³³ 34 C.F.R. § 106.6(g).
¹³⁴ 85 Fed. Reg. at 30,453.
¹³⁵ *Id.* at 30,122.
¹³⁶ 34 C.F.R. § 106.45(b)(6)(1).

¹³⁷ 34 C.F.R. § 106.45(b)(6)(i). See also 85 Fed. Reg. at 30,349 n.1341.
¹³⁸ 34 C.F.R. § 106.45(b)(1)(vii).
¹³⁹ 85 Fed. Reg. at 30,386 n.1472, 30,388 n.1480.
¹⁴⁰ *Id.* at 30,386 n.1473.
¹⁴¹ 34 C.F.R. § 106.45(b)(1)(viii). See also 85 Fed. Reg. at 30,378.
¹⁴² 85 Fed. Reg. at 30,378.
¹⁴³ *Id.*
¹⁴⁴ 34 C.F.R. § 106.45(b)(9).
¹⁴⁵ *Id.* § 106.45(b)(9)(iii).
¹⁴⁶ 85 Fed. Reg. at 30,401.
¹⁴⁷ *Id.* at 30,403.
¹⁴⁸ *Id.* at 30,361.
¹⁴⁹ 34 C.F.R. § 106.45(b)(9).
¹⁵⁰ 85 Fed. Reg. at 30,406.
¹⁵¹ 34 C.F.R. § 106.45(b)(9).
¹⁵² 34 C.F.R. § 106.45(b)(1)(iii).
¹⁵³ 85 Fed. Reg. at 30,401, 30,403.
¹⁵⁴ 34 C.F.R. § 106.71(a).
¹⁵⁵ *Id.*
¹⁵⁶ *Id.*
¹⁵⁷ 85 Fed. Reg. at 30,536.
¹⁵⁸ *Id.*
¹⁵⁹ *Id.*
¹⁶⁰ *Id.*
¹⁶¹ *Id.*
¹⁶² 34 C.F.R. § 106.45(b)(1)(i).
¹⁶³ *Id.* § 106.71(b)(2). See also 85 Fed. Reg. at 30,537.
¹⁶⁴ 34 C.F.R. § 106.71(b)(2).
¹⁶⁵ *Id.*
¹⁶⁶ *Id.* §§ 106.8(c), 106.45. See also 85 Fed. Reg. at 30,095, 30,129, 30,471, 30,473.
¹⁶⁷ 34 C.F.R. §§ 106.8(c), 106.45. See also 85 Fed. Reg. at 30,095, 30,129, 30,461, 30,473.
¹⁶⁸ 34 C.F.R. § 106.8(a)-(c).
¹⁶⁹ U.S. Department of Education, Office for Civil Rights, *Revised Sexual Harassment Guidance: Sexual Harassment of Students by School Employees, Other Students, or Third Parties* at 19-20 (Jan. 19, 2001), <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>. This guidance was rescinded in 2020 but remains accessible on the Department’s website for historical reference.
¹⁷⁰ *Id.* at 20.
¹⁷¹ 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12.
¹⁷² 34 C.F.R. § 106.12(b).
¹⁷³ *Id.*
¹⁷⁴ *Id.* § 106.12(a).
¹⁷⁵ *Id.*
¹⁷⁶ *Id.* § 106.12(b).
¹⁷⁷ U.S. Department of Education, Office for Civil Rights Case Processing Manual (Aug. 26, 2020), <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

¹⁷⁷ *Id.* § 106.45(b)(5)(iv).
¹⁷⁸ 85 Fed. Reg. at 30,297.
¹⁷⁹ 34 C.F.R. § 106.45(b)(6)(i).
¹⁸⁰ *Id.* §§ 106.44(a), 106.71. See also 85 Fed. Reg. at 30,324.
¹⁸¹ 85 Fed. Reg. at 30,360. These rules would be in addition to any rules required under 34 C.F.R. § 106.45.
¹⁸² *Id.* at 30,360.
¹⁸³ *Id.* at 30,361.
¹⁸⁴ *Id.* at 30,331.
¹⁸⁵ *Id.* at 30,340.
¹⁸⁶ *Id.* at 30,319. See also 34 C.F.R. § 106.45(b)(5)(iv).
¹⁸⁷ 85 Fed. Reg. at 30,319, 30,324, 30,331, 30,361.
¹⁸⁸ *Id.* at 30,320, 30,324, 30,342.
¹⁸⁹ *Id.*
¹⁹⁰ 34 C.F.R. § 106.45(b)(6)(i).
¹⁹¹ *Id.* See also 85 Fed. Reg. at 30,324, 30,355-56.
¹⁹² 34 C.F.R. § 106.45(b)(6)(i).
¹⁹³ 85 Fed. Reg. at 30,362.
¹⁹⁴ 34 C.F.R. § 106.45(b)(6)(ii).
¹⁹⁵ *Id.*
¹⁹⁶ 85 Fed. Reg. at 30,361.
¹⁹⁷ 34 C.F.R. § 106.45(b)(6)(i).
¹⁹⁸ *Id.*
¹⁹⁹ 85 Fed. Reg. at 30,354 n.1355.
²⁰⁰ *Id.*
²⁰¹ *Id.* at 30,353.
²⁰² *Id.*
²⁰³ *Id.*
²⁰⁴ 34 C.F.R. § 106.45(b)(5)(i). See also 85 Fed. Reg. at 30,361, 30,294.
²⁰⁵ 34 C.F.R. § 106.45(b)(1)(x).
²⁰⁶ 85 Fed. Reg. at 30,286.
²⁰⁷ *Id.* at 30,323.
²⁰⁸ *Id.* at 30,323-24.
²⁰⁹ *Id.*
²¹⁰ *Id.*
²¹¹ 34 C.F.R. § 106.45(b)(6)(i).
²¹² 85 Fed. Reg. at 30,348.
²¹³ *Id.*
²¹⁴ 34 C.F.R. § 106.45(b)(6)(i).
²¹⁵ 85 Fed. Reg. at 30,349.
²¹⁶ 34 C.F.R. § 106.45(b)(6)(i). See also 85 Fed. Reg. at 30,328, 30,345, 30,349, 30,361.
²¹⁷ 85 Fed. Reg. at 30,328, 30,345, 30,349, 30,361.
²¹⁸ *Id.* at 30,328, 30,345, 30,349, 30,361.
²¹⁹ *Id.* at 30,349.
²²⁰ *Id.*
²²¹ See, e.g., *id.* at 30,142 n.625 (acknowledging that speech, when not protected under the U.S. Constitution, may constitute actionable harassment under 34 C.F.R. § 106.30 even when speech is part of the misconduct at issue).
²²² See also *id.* at 30,349.
²²³ 85 Fed. Reg. at 30,349.
²²⁴ *Id.*
²²⁵ *Id.*

**Appendix to
 Questions and Answers on the Title IX Regulations on Sexual Harassment (July 2021)**

This Appendix accompanies Questions and Answers on the Title IX Regulations on Sexual Harassment (July 2021) from the U.S. Department of Education’s Office for Civil Rights. This Appendix responds to schools’ requests for examples of Title IX procedures that may be adaptable to their own circumstances and helpful in implementing the 2020 amendments to the Department’s Title IX regulations.¹ Schools that receive federal funds are obligated to implement these regulations, with some limited exceptions described in the statute and regulations.

The Appendix includes examples for elementary and secondary schools and postsecondary schools. It is not comprehensive but addresses many areas in which questions arise.

Important notes:

- Schools may use the example policy language in this Appendix to guide the creation of their own policies but are not required to do so. The Department does not endorse these provisions in particular, nor does it prefer or support these examples as compared with others that schools may use.
- Other than any statutory and regulatory requirements included below, the contents of this Appendix do not have the force and effect of law and are not meant to bind the public. This Appendix is intended only to provide clarity to the public regarding how OCR interprets existing requirements under the law or agency policies.
- Adoption of one or more of the examples from this Appendix alone does not demonstrate compliance with Title IX. If OCR investigates a discrimination complaint, OCR will make a fact-specific determination regarding whether a school’s Title IX policies and procedures, and their implementation, complies with the law.
- The example policy language does not address policies or procedures that may be required to comply with Title VII of the Civil Rights Act of 1964, which prohibits sex discrimination in employment. As the 2020 amendments state: “Nothing in [these regulations] may be read in derogation of any individual’s rights under title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq. or any regulations promulgated thereunder.” 34 C.F.R. § 106.6(f).

Please also note that this Appendix focuses on procedures for addressing reports and complaints of sexual harassment, including sexual violence, because the regulations themselves focus on procedures.

¹ The Department issued the regulations to implement Title IX of the Education Amendments Act of 1972. The Department’s current Title IX regulations are in 34 C.F.R. Part 106, which is available at https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=f12a46d66326f0c23de5edac094d253d&mc=true&npt34_1_106&r=PART&ty=HTML.

The examples are excerpted from the policies at a variety of schools across the United States, and OCR has edited them for readability and consistency.

Many of the sections below include multiple examples to illustrate choices that different schools have made about communicating their procedures to students and their communities. The 2020 amendments do not necessarily require the approaches in the examples here and, again, the Department does not endorse these provisions in particular, nor does it prefer or support these examples as compared with others that schools may use.

The 2020 amendments impose some different requirements for elementary and secondary schools, as compared to postsecondary schools. In light of this, we have noted where examples track requirements for elementary and secondary schools, postsecondary schools, or both. For more information on these differences, please see the Title IX Q&A.

I. Receiving and Responding to Reports of Sexual Harassment

Example Policies Used by Elementary and Secondary Schools and Postsecondary Schools

- Example Policy 1: When a complaint or report of sexual harassment is made under this school's policy, the Title IX Coordinator (or designee) will: (1) confidentially contact the complainant to offer supportive measures, consider the complainant's wishes with respect to supportive measures, and inform them of the availability of supportive measures with or without filing a formal complaint; (2) explain the process for how to file a formal complaint; (3) inform the complainant that any report made in good faith will not result in discipline; and (4) respect the complainant's wishes with respect to whether to investigate unless the Title IX Coordinator determines it is necessary to pursue the complaint in light of a health or safety concern for the community.
- Example Policy 2: Choosing to make a report, file a formal complaint, and/or meet with the Title IX Coordinator after a report or formal complaint has been made, and deciding how to proceed, can be a process that unfolds over time. You do not have to decide whether to pursue a formal complaint or to name the other party/ies at the time of the report. Reporting does not mean you wish to pursue a formal complaint—it may mean you would like help accessing resources and supportive measures. You do not have to pursue a formal complaint to take advantage of the supportive measures available to you.

Example Policy Used by Elementary and Secondary Schools

- Example Policy 1: The district must respond whenever any District employee has been put on actual notice of any sexual harassment or allegations of sexual harassment as

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the needs of the individual and may include counseling, extensions of deadlines or course-related adjustments, restrictions on contact between parties (must be applied equally to both parties), leaves of absence, and increased security and monitoring of certain areas of the school.

III. Investigations

Example Policies Used by Elementary and Secondary Schools and Postsecondary Schools

- Example Policy 1: Once a formal Title IX complaint is filed, an investigator will be assigned and the parties will be treated equitably, including in the provision of supportive measures and remedies. They will receive notice of the specifics of the allegations as known, and as any arise during the investigation. The investigator will be unbiased and free from conflicts of interest and will objectively review the complaint, any evidence, and any information from witnesses, expert witnesses, and the parties. If the investigator conducts interviews, the parties will be provided time to prepare and will receive notice of the time/date/location/participants/purpose for the interviews.
- Example Policy 2: Upon receipt of a formal Title IX complaint, the Title IX Coordinator will appoint an investigator to investigate the allegations subject to the formal grievance process. The investigation may include, among other things, interviewing the complainant, the respondent, and any witnesses; reviewing law enforcement investigation documents if applicable; reviewing relevant student or employment files (preserving confidentiality wherever necessary); and gathering and examining other relevant documents, social media, and evidence.

Example Policies Used by Elementary and Secondary Schools

- Example Policy 1: The Investigator will attempt to collect all relevant information and evidence. While the Investigator will have the burden of gathering evidence, it is crucial that the parties present evidence and identify witnesses to the Investigator so that they can be considered during the investigation. While all evidence gathered during the investigative process and obtained through the exchange of written questions will be considered, the decision-maker may in their discretion grant lesser weight to last-minute information or evidence introduced through the exchange of written questions that was not previously presented for investigation by the Investigator.
- Example Policy 2: The decision-maker will facilitate a written question and answer period between the parties. Each party may submit their written questions for the other party and witnesses to the decision-maker for review. The questions must be relevant to the case. The decision-maker will determine if the questions submitted are relevant and will then forward the relevant questions to the other party or witnesses for a response. The decision-maker can then review all the responses, determine what is relevant or not

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defined in this district's policy. This mandatory obligation is in addition to the child abuse mandatory reporting obligation under state law.

II. Supportive Measures

Example Policies Used by Elementary and Secondary Schools and Postsecondary Schools

- Example Policy 1: Supportive measures are short-term measures that are designed to restore or preserve access to the school's education program or activity. Examples of supportive measures include 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 or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
- Example Policy 2: Supportive measures are available regardless of whether the complainant chooses to pursue any action under this school's policy, including before and after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures are available to the complainant, respondent, and as appropriate, witnesses or other impacted individuals. The Title IX Coordinator will maintain consistent contact with the parties to ensure that safety and emotional and physical well-being are being addressed. Generally, supportive measures are meant to be short-term in nature and will be re-evaluated on a periodic basis. To the extent there is a continuing need for supportive measures after the conclusion of the resolution process, the Title IX Coordinator will work with appropriate school resources to provide continued assistance to the parties.
- Example Policy 3: Supportive measures are provided based on an individualized assessment of the needs of the individual. They may include, but are not limited to: facilitating access to medical and counseling services, assistance in arranging the rescheduling of exams and assignments, academic support services, assistance in requesting long-term academic accommodations if the individual qualifies as an individual with a disability, allowing either a complainant or respondent to drop a class in which both parties are enrolled, a mutual "no contact order," and any other reasonably supportive measure that does not unreasonably burden the other party's access to education and that serves the goals of this policy.
- Example Policy 4: The school will make available supportive measures with or without the filing of a formal complaint. These supports will be available to both parties, free of charge. These supports are non-disciplinary and non-punitive individualized services designed to offer support without being unreasonably burdensome. They are meant to restore access to education, protect student and employee safety, and/or deter future acts of sexual harassment. Supportive measures are temporary and flexible, based on

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relevant, and issue a decision as to whether the Respondent is responsible for the alleged sexual harassment.

IV. The Role of the Advisor

Example Policies Used by Postsecondary Schools²

- Example Policy 1: The role of the advisor is narrow in scope: the advisor may attend any interview or meeting connected with the grievance process that the party whom they are advising is invited to attend, but the advisor may not actively participate in interviews and may not serve as a proxy for the party. The advisor may attend the hearing and may conduct cross-examination of the other party and any witnesses at the hearing; otherwise, the advisor may not actively participate in the hearing.
- Example Policy 2: During meetings and hearings, the advisor may talk quietly with the student or pass notes in a non-disruptive manner. The advisor may not intervene in meetings with the school. In addition, while advisors may provide guidance and assistance throughout the process, all written submissions must be authored by the student.
- Example Policy 3: The advisor may provide advice and consultation to the parties or parties' witnesses outside of the conduct of the live hearing to assist parties in handling the formal resolution process.

V. The Live Hearing Process

Example Policies Used by Postsecondary Schools³

A. Before the hearing

- Example Policy 1: In order to promote a fair and expeditious hearing, the parties and their advisors will attend a pre-hearing conference with the decision-maker. The pre-hearing conference assures that the parties and their advisors understand the hearing process and allows for significant issues to be addressed in advance of the hearing.

² While elementary and secondary schools may choose to permit parties to have an advisor, the 2020 amendments only require an advisor at the postsecondary school level due to the cross-examination requirement. See the Question 41 in the Q&A for more information.

³ While elementary and secondary schools may choose to use a live hearing, the 2020 amendments only require a live hearing with cross-examination at the postsecondary school level. See Section XII in the Q&A for more information.

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B. Hearing Format

- Example Policy 1: While the hearing is not intended to be a repeat of the investigation, the parties will be provided with an equal opportunity for their advisors to conduct cross-examination of the other party and of relevant witnesses. A typical hearing may include: brief opening remarks by the decision-maker; questions posed by the decision-maker to one or both of the parties; cross-examination by either party's advisor of the other party and relevant witnesses; and questions posed by the decision-maker to any relevant witnesses.
- Example Policy 2: The parties and witnesses will address only the decision-maker, and not each other. Only the decision-maker and the parties' advisors may question witnesses and parties.
- Example Policy 3: When it is an individual's turn to appear before the decision-maker, that person will appear separately before the panel and may bring notes for their reference. The decision-maker may ask any individual for a copy of or to inspect their notes. The complainant and respondent may be accompanied by or may otherwise be in contact with their advisor at all times. If the hearing is conducted wholly or partially through video conference, an administrator will ensure that each party has the opportunity to appear before or speak directly to the hearing panel and to appropriately participate in the questioning process.
- Example Policy 4: At the request of either party, the decision-maker will allow the parties and/or witnesses to be visually separated during the hearing. This may include, but is not limited to, the use of videoconference and/or any other appropriate technology. To assess credibility, the decision-maker must have sufficient access to the complainant, respondent, and any witnesses presenting information; if the decision-maker is sighted, then the decision-maker must be able to see them.
- Example Policy 5: Parties will be able to see and hear (or, if deaf or hard of hearing, to access through auxiliary aids or services) all questioning and testimony at the hearing, if they choose to. Witnesses (other than the parties) will attend the hearing only for their own testimony.
- Example Policy 6: The school will ensure that students with disabilities have an equal opportunity to participate in, and benefit from the school's Title IX grievance process, consistent with the requirements of Section 504 of the Rehabilitation Act of 1973. The school will also ensure that English learner students can participate meaningfully and equally in the school's Title IX grievance process, as required by Title VI of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act of 1974.

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complainant from disclosing the final outcome of a formal complaint process (after any appeals are concluded). All other conditions for disclosure of hearing records and outcomes are governed by the school's obligations under the Family Educational Rights and Privacy Act (FERPA), any other applicable privacy laws, and professional ethical standards.

E. Decision-makers asking questions of the parties or witnesses

- Example Policy 1: The decision-maker may question the parties and witnesses, but they may refuse to respond.

VI. Behavior During the Live Hearing/Rules of Decorum

Example Policies Used by Postsecondary Schools

- Example Policy 1: The school will require all parties, advisors, and witnesses to maintain appropriate decorum throughout the live hearing. Participants at the live hearing are expected to abide by the decision-maker's directions and determinations, maintain civility, and avoid emotional outbursts and raised voices. Repeated violations of appropriate decorum will result in a break in the live hearing, the length of which will be determined by the decision-maker. The decision-maker reserves the right to appoint a different advisor to conduct cross-examination on behalf of a party after an advisor's repeated violations of appropriate decorum or other rules related to the conduct of the live hearing.
- Example Policy 2: The hearing will be conducted in a respectful manner that promotes fairness and accurate factfinding and that complies with the rules of conduct.
- Example Policy 3: The school (including any official acting on behalf of the school such as an investigator or a decision-maker) has the right at all times to determine what constitutes appropriate behavior on the part of an advisor and to take appropriate steps to ensure compliance with this policy.
- Example Policy 4: Parties and advisors may take no action at the hearing that a reasonable person would see as intended to intimidate that person (whether party, witness, or official) into not participating in the process or meaningfully modifying their participation in the process.

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C. Evidence

- Example Policy 1: The hearing is an opportunity for the parties to address the decision-maker. The parties may address any information in the investigative report, submit supplemental statements in response to the investigative report or, at the time of any sanction, provide verbal impact and mitigation statements. The school will make all evidence gathered available to the parties at the hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination. In reaching a determination, the decision-maker will meet with the complainant, respondent, investigator, and any relevant witnesses, but the decision-maker may not conduct their own investigation.
- Example Policy 2: The parties will have the opportunity to present the evidence they submitted, subject to any exclusions determined by the decision-maker. Generally, the parties may not introduce evidence, including witness testimony, at the hearing that they did not identify during the pre-hearing process. However, the decision-maker has discretion to accept or exclude additional evidence presented at the hearing. In addition, the parties are expected not to spend time on undisputed facts or evidence that would be duplicative.
- Example Policy 3: Courtroom rules of evidence and procedure will not apply. The decision-maker will generally consider, that is rely on, all evidence that they determine to be relevant and reliable. Throughout the hearing, the decision-maker will: (1) Exclude evidence including witness testimony that is, for example, irrelevant in light of the policy violation(s) charged, relevant only to issues not in dispute, or unduly repetitive, and will require rephrasing of questions that violate the rules of conduct; (2) Decide any procedural issues for the hearing; and/or (3) Make any other determinations necessary to promote an orderly, productive, and fair hearing that complies with the rules of conduct.

D. Confidentiality

- Example Policy 1: All live hearings will be closed to the public and witnesses will be present only during their testimony. For live hearings that use technology, the decision-maker shall ensure that appropriate protections are in place to maintain confidentiality.
- Example Policy 2: The hearing is a closed proceeding and is not open to the public. All participants involved in a hearing are expected to respect the seriousness of the matter and the privacy of the individuals involved. The school's expectation of privacy during the hearing process should not be understood to limit any legal rights of the parties during or after the resolution. The school may not, by federal law, prohibit the

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VII. Protecting the Well-Being of the Parties During the Live Hearing/Investigation

Example Policies Used by Postsecondary Schools

- Example Policy 1: Each participating individual will have access to a private room for the duration of the hearing if the hearing is in person and may choose to participate in the proceedings via video conference.
- Example Policy 2: The decision-maker will discuss measures available to protect the well-being of parties and witnesses at the hearing. These may include, for example, use of lived names and pronouns during the hearing, including names appearing on a screen; a party's right to have their support person available to them at all times during the hearing (in addition to their advisor); and a hearing participant's ability to request a break during the hearing, except when a question is pending.

Example Policy Used by Elementary and Secondary Schools

- Example Policy 1: To the greatest extent possible, and subject to Title IX, the school will make reasonable accommodations in an investigation to avoid potential re-traumatization of a child and to avoid any potential interference with an investigation by the Department of Child and Family Services or a law enforcement agency.
- Example Policy 2: The school will ensure that students with disabilities have an equal opportunity to participate in, and benefit from the school's Title IX grievance process, consistent with the requirements of Section 504 of the Rehabilitation Act of 1973. The school will also ensure that English learner students can participate meaningfully and equally in the school's Title IX grievance process, as required by Title VI of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act of 1974.

VIII. The Cross-Examination Process

Example Policies Used by Postsecondary Schools

A. Explaining Cross-Examination

- Example Policy 1: The parties' advisors will have the opportunity to cross examine the other party (and witnesses, if any). Such cross-examination must be conducted directly, orally, and in real time by the party's advisor and never by a party personally.
- Example Policy 2: Each party's advisor may pose relevant questions to the opposing party and witnesses (including the Investigative Team).
- Example Policy 3: Each party will prepare their questions, including any follow-up questions, for the other party and witnesses, and will provide them to their advisor. The advisor will ask the questions as the party has provided them, and may not ask questions that the advisor themselves have developed without their party.

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- Example Policy 4: The role of the advisor at the live hearing is to conduct cross-examination on behalf of a party. The advisor is not to represent a party, but only to relay the party's cross-examination questions that the party wishes to have asked of the other party and witnesses. Advisors may not raise objections or make statements or arguments during the live hearing.

B. Relevant questions only/Decision-maker reviews all questions

- Example Policy 1: Only relevant questions may be asked of a party or witness. Before a complainant, respondent, or witness responds to a question, the decision-maker will first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- Example Policy 2: When a party's advisor is asking questions of the other party or a witness, the decision-maker will determine whether each question is relevant before the party or witness answers it, will exclude any that are not relevant or unduly repetitive, and will require rephrasing of any questions that violate the rules of conduct. If the decision-maker determines that a question should be excluded as not relevant, they will explain their reasoning.
- Example Policy 3: Only relevant cross-examination questions and follow-up questions, including those that challenge credibility, may be asked. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker first must determine whether the question is relevant or cumulative and must explain any decision to exclude a question that is not relevant or is cumulative.

IX. Restrictions on Considering a Complainant's or Respondent's Sexual History

Example Policies Used by Elementary and Secondary Schools and Postsecondary Schools

- Example Policy 1: The investigator will not, as a general rule, consider the sexual history of a complainant or respondent. However, in limited circumstances, sexual history may be directly relevant to the investigation. As to complainants: While the investigator will never assume that a past sexual relationship between the parties means the complainant consented to the specific conduct under investigation, evidence of how the parties communicated consent in past consensual encounters may help the investigator understand whether the respondent reasonably believed consent was given during the encounter under investigation. Further, evidence of specific past sexual encounters may be relevant to whether someone other than respondent was the source of relevant physical evidence. As to respondents: Sexual history of a respondent might be relevant to show a pattern of behavior by respondent or resolve another issue of importance in

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to remain silent during the process. An investigator or decision-maker, in the investigation or the hearing respectively, will reach findings and conclusions based on the information available.

- Example Policy 3: If a party does not submit to cross-examination, the decision-maker cannot rely on any prior statements made by that party in reaching a determination regarding responsibility, but may reach a determination regarding responsibility based on evidence that does not constitute a statement by that party. The decision-maker may also consider evidence created by the party where the evidence itself constituted the alleged prohibited conduct. Such evidence may include, by way of example but not limitation, text messages, e-mails, social media postings, audio or video recordings, or other documents or digital media created and sent by a party as a form of alleged sexual harassment, or as part of an alleged course of conduct that constitutes stalking. The decision-maker cannot draw an inference about the responsibility for a policy violation based solely on a party's absence from the hearing or refusal to answer cross-examination or other questions.
- Example Policy 4: A statement is a person's intent to make factual assertions, including evidence that contains a person's statement(s). Party or witness statements, police reports, Sexual Assault Nurse Examiner (SANE) reports, medical reports, and other records may not be relied upon in making a final determination after the completion of a live hearing to the extent that they contain statements of a party or witness who has not submitted to cross-examination. However, the decision-maker cannot draw any inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or their refusal to answer cross-examination questions.

XI. Presumptions about Complainants, Respondents, and Witnesses

Example Policies Used by Elementary and Secondary Schools and Postsecondary Schools

- Example Policy 1: The school presumes that reports of prohibited conduct are made in good faith. A finding that the alleged behavior does not constitute a violation of this school's policy or that there is insufficient evidence to establish that the alleged conduct occurred as reported does not mean that the report was made in bad faith.
- Example Policy 2: All formal sexual misconduct complaints are assumed to be made in good faith. However, if the evidence establishes that the formal complaint was intentionally falsely made, corrective/disciplinary action may be taken, up to and including suspension, expulsion, or termination. This does not include allegations

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the investigation. Sexual history evidence that is being proffered to show a party's reputation or character will never be considered relevant on its own.

- Example Policy 2: An individual's character or reputation with respect to other sexual activity is not relevant and will not be considered as evidence. Similarly, an individual's prior or subsequent sexual activity is typically not relevant and will only be considered as evidence under limited circumstances. For example, prior sexual history may be relevant to explain the presence of a physical injury or to help resolve other questions raised in the investigation. It may also be relevant to show that someone other than the respondent committed the conduct alleged by the complainant. The investigator will determine the relevance of this information, and both parties will be informed in writing if evidence of prior sexual history is deemed relevant.
- Example Policy 3: Where the parties have a prior sexual relationship and the existence of consent is at issue, the sexual history between the parties may be relevant to help understand the manner and nature of communications between the parties and the context of the relationship, which may have bearing on whether consent was sought and given during the incident in question. Even in the context of a relationship, however, consent to one sexual act does not, by itself, constitute consent to another sexual act; in addition, consent on one occasion does not, by itself, constitute consent on a subsequent occasion. The investigator will determine the relevance of this information and both parties will be informed if evidence of prior sexual history is deemed relevant.

X. Situations in Which a Party or Witness Does Not Participate in a Live Hearing or in Cross-examination

Example Policies Used by Postsecondary Schools

- Example Policy 1: If the complainant, the respondent, or a witness informs the school that they will not attend the hearing (or will attend but refuse to be cross-examined), the school's Title IX Coordinator may determine that the hearing may still proceed. The decision-maker may not, however: (a) rely on any statement or information provided by that non-participating individual in reaching a determination regarding responsibility; or (b) draw any adverse inference in reaching a determination regarding responsibility based solely on the individual's absence from the hearing (or their refusal to be cross-examined).
- Example Policy 2: Neither the complainant nor the respondent is required to participate in the resolution process outlined in these procedures. The school will not draw any adverse inferences from a complainant's or respondent's decision not to participate or

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that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

- Example Policy 3: The respondent is presumed to be not responsible for the alleged conduct until a determination regarding responsibility is made by the decision-maker.
- Example Policy 4: An individual's status as a respondent will not be considered a negative factor during consideration of the grievance. Respondents are entitled to, and will receive the benefit of, a presumption that they are not responsible for the alleged conduct until the grievance process concludes and a determination regarding responsibility is issued. Similarly, credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

XII. Determination Regarding Responsibility

Example Policies Used by Elementary and Secondary Schools and Postsecondary Schools

- Example Policy 1: The school will review the evidence provided by all parties and will make a final determination of responsibility after the investigation. The decision-maker will not be the Title IX Coordinator, the investigator, or any other individual who may have a conflict of interest. The final determination will be provided to the parties at the same time, with appeal rights provided. It will explain if any policies were violated, the steps and methods taken to investigate, the findings of the investigation, conclusions about the findings, the ultimate determination and the reasons for it, any disciplinary sanctions that will be imposed on the respondent, and any remedies available to the complainant to restore or preserve equal access.
- Example Policy 2: The decision-maker will issue a written determination following the review of evidence. The written determination will include: (1) identification of allegations potentially constituting sexual harassment as defined in 34 C.F.R. § 106.30; (2) a description of the procedural steps taken from the receipt of the complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather evidence; (3) findings of fact supporting the determination, conclusions regarding the application of this formal grievance process to the facts; (4) a statement of, and rationale for, the result as to each allegation, including any determination regarding responsibility, any disciplinary sanctions the decision-maker imposed on the respondent that directly relate to the complainant, and whether remedies designed to restore or preserve equal access to the school's education program or activity will be provided to the complainant; and (5) procedures and permissible bases for the parties to appeal the determination. The written determination will be provided to the parties simultaneously. Remedies and supportive measures that do not impact the respondent should not be disclosed in the

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written determination; rather the determination should simply state that remedies will be provided to the complainant.

XIII. Sanctions and Remedies

Example Policies Used by Elementary and Secondary Schools and Postsecondary Schools

- Example Policy 1: The school will take reasonable steps to address any violations of this policy and to restore or preserve equal access to the school's education programs or activities. Sanctions for a finding of responsibility depend upon the nature and gravity of the misconduct, any record of prior discipline for similar violations, or both. The range of potential sanctions and corrective actions that may be imposed on a student includes, but is not limited to the following: [list of possible sanctions decided on by the school].
- Example Policy 2: When a respondent is found responsible for the prohibited behavior as alleged, sanctions are based on the severity and circumstances of the behavior. Disciplinary actions or consequences can range from a conference with the respondent and a school official through suspension or expulsion. When a respondent is found responsible for the prohibited behavior as alleged, remedies must be provided to the complainant. Remedies are designed to maintain the complainant's equal access to education and may include supportive measures or remedies that are punitive or would pose a burden to the respondent.
- Example Policy 3: Whatever the outcome of the investigation, hearing, or appeal, the complainant and respondent may request ongoing or additional supportive measures. Ongoing supportive measures that do not unreasonably burden a party may be considered and provided even if the respondent is found not responsible.
- Example Policy 4: The role of the Title IX Coordinator following the receipt of the written determination from the decision-maker is to facilitate the imposition of sanctions, if any, the provision of remedies, if any, and to otherwise complete the formal resolution process. The appropriate school official, after consultation with the Title IX Coordinator, will determine the sanctions imposed and remedies provided, if any. The Title IX Coordinator must provide written notice to the parties simultaneously. The school must disclose to the complainant the sanctions imposed on the respondent that directly relate to the complainant when such disclosure is necessary to ensure equal access to the school's education program or activity.
- Example Policy 5: For students with disabilities: If a decision-maker has determined that the respondent has engaged in sexual harassment and prior to consideration of imposing a long-term suspension, reassignment, or recommendation for expulsion, the following shall occur, and timelines will be extended accordingly: (1) For any student with an Individualized Education Program (IEP), or that a school has knowledge may be a child with a disability, the decision-maker will make a referral to the school to conduct a

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investigation affecting the outcome, new evidence becoming available, or due to bias or a conflict of interest by Title IX personnel that may have affected the outcome. Appeal requests must be made within 30 days of the school's final determination and include the rationale for the appeal. Parties will be given an opportunity to submit a written statement in support of or against the final determination. A new decision-maker will issue the final decision at the same time to each party.

- Example Policy 3: The complainant and respondent have an equal opportunity to appeal the policy violation determination and any sanctions. The school administers the appeal process, but is not a party and does not advocate for or against any appeal. A party may appeal only on the following grounds and the appeal should identify the reason(s) why the party is appealing: (1) there was a procedural error in the hearing process that materially affected the outcome; procedural error refers to alleged deviations from school policy, and not challenges to policies or procedures themselves; (2) there is new evidence that was not reasonably available at the time of the hearing and that could have affected the outcome; (3) the decision-maker had a conflict of interest or bias that affected the outcome; (4) the determination regarding the policy violation was unreasonable based on the evidence before the decision-maker; this ground is available only to a party who participated in the hearing; and (5) the sanctions were disproportionate to the hearing officer's findings. The appeal must be submitted within 10 business days following the issuance of the notice of determination. The appeal must identify the ground(s) for appeal and contain specific arguments supporting each ground for appeal. The school will notify the other party of the appeal, and that other party will have an opportunity to submit a written statement in response to the appeal, within three business days. The school will also inform the parties that they have an opportunity to meet with the appeal officer separately to discuss the proportionality of the sanction. The appeal officer, who will not be the same person as the Title IX Coordinator, investigator, or decision-maker, will decide the appeal considering the evidence presented at the hearing, the investigation file, and the appeal statements of both parties. In disproportionate sanction appeals, they may also consider any input the parties provided during the meeting. The appeal officer will summarize their decision in a written report that will be sent to the complainant and respondent within 10 business days of receiving the appeal.

XV. Informal Resolution

Example Policies Used by Elementary and Secondary Schools and Postsecondary Schools

- Example Policy 1: Informal resolution is available only after a formal complaint has been filed, prior to a determination of responsibility, and if the complainant and respondent voluntarily consent to the process in writing. Informal resolution is not available in cases in which an employee is alleged to have sexually harassed a student. Informal resolution

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manifestation determination review (MDR). The MDR team meeting shall convene as soon as reasonably possible and make available to the decision-maker the MDR decision and written rationale in no later than ten school days; (2) For any student with a disability covered by Section 504, the decision-maker will make a referral to have a knowledgeable committee convene a Section 504 Causality Review. The causality review meeting shall convene as soon as reasonably possible and make available to the decision-maker the causality review decision and written rationale in no later than ten school days; (3) Before a student with a disability is suspended, reassigned, or recommended for expulsion, the principal of the school will consult with the student's case manager, review the student's IEP, and take into account any special circumstances regarding the student. The IEP team will consider the parents' views and any preference for the reassignment location along with any location proposed by school staff at the meeting. It is the duty of the IEP team at its meeting to discuss, propose, and decide upon the educational placement, consistent with the disciplinary decision. Accordingly, the IEP team will consider the views of all members, including the parents, at the meeting.

XIV. Appeals

Example Policies Used by Elementary and Secondary Schools and Postsecondary Schools

- Example Policy 1: Each party may appeal (1) the dismissal of a formal complaint or any included allegations and/or (2) a determination regarding responsibility. To appeal, a party must submit their written appeal within five business days of being notified of the decision, including the grounds for the appeal. The grounds for appeal are as follows: Procedural irregularity that affected the outcome of the matter (i.e., a failure to follow the institution's own procedures); New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter. The submission of an appeal stays any sanctions for the pendency of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal. If a party appeals, the school will as soon as practicable notify the other party in writing of the appeal; however the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal. Appeals will be decided by an individual, who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or decision-maker in the same matter.
- Example Policy 2: Appeals are available after a complaint dismissal or after a final determination is made. Appeals can be made due to procedural irregularities in the

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may involve agreement to pursue individual or community remedies, including targeted or broad-based educational programming or training; supported direct conversation or interaction with the respondent; mediation; indirect action by the Title IX Coordinator; and other forms of resolution that can be tailored to the needs of the parties. With the voluntary consent of the parties, informal resolution may be used to agree upon disciplinary sanctions. Disciplinary action will only be imposed against a respondent where there is a sufficient factual foundation and both the complainant and the respondent have agreed to forego the additional procedures set forth in this school's policy and accept an agreed upon sanction. Any person who facilitates an informal resolution will be trained and free from conflicts of interest or bias for or against either party.

- Example Policy 2: The informal resolution process is only available where the complainant has filed a formal sexual harassment complaint that involves parties of the same status (e.g., student-student or employee-employee) and the parties voluntarily request in writing to resolve the formal complaint through the informal resolution process. Within five workdays of receiving a written request to start the informal resolution process, the school will appoint an official to facilitate an effective and appropriate resolution. The Title IX Coordinator may serve as the facilitator. Within five workdays of such appointment, the parties may identify to the Title IX Coordinator in writing any potential conflict of interest or bias posed by such facilitator to the matter. The Title IX Coordinator will consider the information and appoint another facilitator if a material conflict of interest or bias exists. The facilitator will request a written statement from the parties to be submitted within 10 workdays. Each party may request that witnesses are interviewed, but the school shall not conduct a full investigation as part of the informal resolution process. The facilitator will hold a meeting(s) with the parties and coordinate the informal resolution measures. Each party may have one advisor of their choice during the meeting, but the advisor may not speak on the party's behalf. The informal resolution process should be completed within 30 workdays in most cases, unless good cause exists to extend the time. The parties will be notified in writing and given the reason for the delay and an estimated time of completion. Any resolution of a formal complaint through the informal resolution process must address the concerns of the complainant and the responsibility of the school to address alleged violations of its policy, while also respecting the due process rights of the respondent. Informal resolution process remedies include mandatory training, reflective writing assignment, counseling, written counseling memorandum by an employee's supervisor, suspension, termination, or expulsion, or other methods designed to restore or preserve equal access to the school's education programs or activities. At the conclusion of meetings, interviews, and the receipt of statements, the facilitator will write an informal resolution report and provide the parties with the informal resolution report simultaneously. At any time prior to resolving a formal complaint through the informal resolution process,

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either party may withdraw in writing from the informal resolution process and resume or begin the formal resolution process.

- Example Policy 3: The Title IX Coordinator will determine whether it is appropriate to offer the parties informal resolution in lieu of a formal investigation of the complaint. In the event that the Title IX Coordinator determines that informal resolution is appropriate, the parties will be provided written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared. Both parties must provide voluntary, written consent to the informal resolution process.

XVI. Addressing Conduct That the School Deems to be Sexual Harassment but Does Not Meet the Definition of Sexual Harassment Under the Title IX Regulations

Example Policies Used by Elementary and Secondary Schools and Postsecondary Schools

- Example Policy 1: It is important to note that conduct that does not meet the criteria under Title IX may violate other federal or state laws or school policies regarding student misconduct or may be inappropriate and require an immediate response in the form of supportive measures and remedies to prevent its recurrence and address its effects.
- Example Policy 2: This school adopts a “two-pronged” approach. All conduct not covered under the current definition of sexual harassment, including sexual misconduct, will be addressed by the principal under the student code of conduct. Title IX procedures will be reserved only for those alleged actions that fall under the Title IX definition of sexual harassment.
- Example Policy 3: The Title IX Coordinator shall investigate the allegations in all formal complaints. The Title IX Coordinator must dismiss the formal complaint if the conduct alleged in the formal complaint would not constitute sexual harassment as defined in this school’s policy even if proved, or is outside the jurisdiction of the school, i.e., the conduct did not involve an education program or activity of the school, or did not occur against a person in the United States. The Title IX Coordinator shall forward the formal complaint to an appropriate school official that will determine whether the conduct alleged in the formal complaint violates a separate policy or code of conduct.

- Example Policy 4: In May of 2020, the U.S. Department of Education issued new regulations for colleges and universities that address sexual assault and other sexual misconduct. These regulations cover certain specific forms of sexual misconduct. To comply with these regulations, this school has revised its existing policy for those types of misconduct. In addition, this school maintains its existing Sexual Misconduct Policy for other types of sexual misconduct that are not covered by the new regulations. Both policies are important to creating and supporting a school community that rejects all forms of sexual misconduct.

- Example Policy 5: The Title IX regulations direct the school’s response to some, but not all, of the forms of prohibited behavior in this school’s Title IX policy. Allegations in a Title IX formal complaint related to behavior that occurs outside of the education program or activity or outside the United States, or behavior that would not meet the definition of Title IX sexual harassment as defined in this school’s Title IX policy, must be dismissed. Both the complainant and respondent may appeal the dismissal of any allegations under Title IX. However, in keeping with the school’s educational mission and commitment to fostering a learning, living, and working environment free from discrimination, harassment, and retaliation, this school will still move forward with an investigation or formal resolution under the same resolution process for all forms of prohibited behavior under this school’s Title IX policy. In this instance, this school is using its Title IX policy as a code of conduct to address behavior that occurred outside of the education program or activity or outside of the United States, even though the behavior falls outside of Title IX jurisdiction under the Department of Education’s 2020 amendments.

XVII. Parent and Guardian Rights

Example Policy Used by Elementary and Secondary Schools

- Example Policy 1: Consistent with the applicable laws of the jurisdiction in which the school is located, a student’s parent or guardian must be permitted to exercise the rights granted to their child under this school’s policy, whether such rights involve requesting supportive measures, filing a formal complaint, or participating in a grievance process. A student’s parent or guardian must also be permitted to accompany the student to meetings, interviews, and hearings, if applicable, during a grievance process in order to exercise rights on behalf of the student. The student may have an advisor of choice who is a different person from the parent or guardian.



The Intersection of Title VII and Title IX in Investigations

Presented by: Jennifer A. Powell



North Haven Board of Education v. Bell 456 U.S. 512 (1982)

The Court upheld the ruling of the Court of Appeals that Title IX prohibited employment discrimination.

(nothing in the statute excludes employment)

Suing for employment discrimination

- However, there is a split of authorities about whether employees can *sue* under Title IX rather than Title VII.
- The Fifth Circuit has held that Title VII displaces Title IX for an employment discrimination private right of action. *Lakoski v. James*, 66 F.3d 751 (5th Cir. 1995).
- The Seventh Circuit has held similarly.
- The Third, Fourth, Sixth, and First Circuits have held the opposite.

Jackson v. Birmingham Bd. of Educ., 544 U.S. 167 (2005)

Supreme Court found an employee/coach could sue for retaliation under Title IX where he experienced an adverse employment action after complaining about discrimination against girls' athletic program.

- In *Lowrey v. Tex. A & M Univ. Sys.*, 117 F.3d 242, 249 (5th Cir. 1997), the Fifth Circuit had already agreed that *Lakoski* did not preempt such a claim but noted that *Lakoski* still controlled the question about whether Title VII preempts claims that an employee was retaliated against for complaining about conditions of employment as opposed to educational disparities.
- Since *Jackson*, the Fifth Circuit continues to hold that Title VII preempts claims of employment discrimination under Title IX. See *Taylor-Travis v. Jackson State Univ.*, 984 F.3d 1107, 1118 (5th Cir. 2021).
- So, there is still a split of authorities to be decided by Supreme Court if the right case is teed up.

Why is this significant?

Title VII

- Title VII has an administrative scheme that must be followed.
- Title VII has damage caps.

Title IX

- No administrative remedies to exhaust
- No damage caps

What about claims of sexual harassment?

- Sexual harassment is just another form of discrimination on the basis of sex, so those claims should be treated the same by the courts.

What about OCR?

- US Department of Education's Office for Civil Rights has investigatory role in Title IX complaints.
- Nothing about who can sue for what impacts that authority.
- In 2020 Title IX regulations, OCR has asserted that the sexual harassment grievance procedures apply in the employment setting.
- "The Department acknowledges that Title VII and Title IX impose different requirements and that some recipients will need to comply with both Title VII and Title IX."

- "These final regulations require all recipients with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, to respond promptly in a manner that is not deliberately indifferent, irrespective of whether the complainant and respondent are students or employees."
- "The grievance process in § 106.45 does not contradict Title VII or its implementing regulations in any manner and at most may provide more process than Title VII requires (such as specifying that a decision-maker must be a different person than the Title IX Coordinator or investigator)."

What about Policy?

DIA (LOCAL) includes:

Response to Sexual Harassment—Title IX	For purposes of the District's response to reports of harassment prohibited by Title IX, definitions can be found in FFH(LEGAL).
General Response	When the District receives notice or an allegation of conduct that, if proved, would meet the definition of sexual harassment under Title IX, the Title IX coordinator shall promptly contact the complainant to:
DATE ISSUED: 7/14/2020	4 of 7
UPDATE: 1/15	
DIA(LOCAL).H	

McAllen ISD
105906

EMPLOYEE WELFARE: DIA
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION (LOCAL)

- Discuss the availability of supportive measures and inform the complainant that they are available, with or without the filing of a formal complaint.
- Consider the complainant's wishes with respect to supportive measures; and
- Explain to the complainant the option and process for filing a formal complaint.

The District's response to sexual harassment shall treat complainants and respondents equitably by offering supportive measures to both parties, as appropriate, and by following the Title IX formal complaint process before imposing disciplinary sanctions or other actions that are not supportive measures against a respondent.

If a formal complaint is not filed, the District reserves the right to investigate and respond to prohibited conduct in accordance with Board policies and administrative procedures.

- So, treat a claim of sexual harassment by an employee as you would a claim by a student.
- Title IX coordinator should meet with complainant and offer supportive measures and determine whether the complainant wants to file a formal complaint.
- If a formal complaint is filed follow the grievance procedure.
- If not, follow DIA (LOCAL) procedure for investigations.

Questions?



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Title IX Investigations



TERMS

- **Complainant** is an individual alleged to be the victim of conduct that could be sexual harassment.
- **Respondent** is an individual alleged to have engaged in conduct that could be sexual harassment against the Complainant.
- Title IX (Student or Employee) or Title VII (Employee only) – **remember**, Title VII does not have the constrictions of Title IX.

Sexual Harassment*

1. Quid pro quo
2. Hostile environment
3. Sexual assault, dating violence, domestic violence, stalking



Severe, pervasive, and
objectively offensive

*In a school program or activity in the United States

We begin with deadline issues:

- If the incident could be **child abuse**, it must be reported to CPS or law enforcement within 48 hours. FFG (LOCAL)
- Do we need to notify SBEC or Do Not Hire Registry within 7 business days?

Confidentiality

Prior OCR guidance instructed schools to investigate even when the Complainant did not want the school to investigate.

The new regulations obligate schools to initiate the grievance process when a Complainant files or a Title IX Coordinator signs a formal complaint, so that the Title IX Coordinator takes into account the wishes of a complainant and only initiates a grievance process against the complainant's wishes if doing so is not clearly unreasonable in light of the known circumstances.

Confidentiality of Complainant's Identity

- A Complainant can report anonymously.
- A Complainant cannot file a Formal Complaint anonymously.
- Filing a Formal Complaint means that the Respondent will know the Complainant's identity.
- People outside the grievance process should not know of the Complainant's identity, unless disclosure is permitted by FERPA (student), required by law, or as necessary to conduct the grievance process.

ASSIGN AN INVESTIGATOR

- Someone other than Decision Maker, Facilitator of Voluntary Resolution
- Title IX Coordinator is not prohibited but not best choice
- Campus administrators
- Central administrators
- Outside investigator
- Train more than one
- Can assign more than one investigator/team

WHO SHOULD INVESTIGATE ?

- No axe to grind with the Complainant or Respondent
- No bias
- Must be trained
- Not involved in any incidents that prompted the investigation
- Not someone under the supervision of the Respondent, if employee
- **The more serious the allegation, the more experienced and well-trained the investigator needs to be.***

ASSIGN AN INVESTIGATOR

Training:

- impartial investigations
- standards of evidence
- how to equitably and meaningfully include both parties in the process including inculpatory and exculpatory evidence
- how to write an investigative report
- the role of expert witnesses
- legal privileges

IMPARTIALITY

- Unbiased, disinterested
- No conflict of interest: a real or seeming incompatibility between one's private interests and one's public duties

STANDARDS FOR RECUSAL OF JUDGES

1. Personal bias or prejudice concerning a party
2. Personal knowledge of disputed evidentiary facts
3. Material witness in the matter in controversy
4. Spouse or minor child residing in household has a financial interest in the subject matter in controversy or in a party
5. Any other interest that could substantially affect the outcome of the proceeding
6. Relative is a party

28 U.S.C. §455
(Disqualification of federal justice, judge, or magistrate).

STANDARDS FOR RECUSAL OF JUDGES

Recusal is required when, objectively speaking, the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.

Rippo v. Baker, 137 S.Ct. 905 (2017).

STANDARDS OF EVIDENCE

- The degree or level of proof demanded in a specific case.
- District choice: preponderance of evidence, clear and convincing evidence

PREPONDERANCE OF EVIDENCE

The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

CLEAR AND CONVINCING EVIDENCE

Evidence indicating that the thing to be proved is highly probably or reasonably certain.

This is a greater burden than preponderance of evidence, the standard applied in most civil trials, but less than evidence beyond a reasonable doubt, the norm for criminal trials.

EQUITABLE TREATMENT OF PARTIES

- Providing remedies to Complainants where a determination of responsibility for sexual harassment has been made
- Following a grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a Respondent
- Presumption that Respondent is not responsible for the alleged conduct until the conclusion of the grievance process

EQUITABLE TREATMENT OF PARTIES

- Not making credibility determinations based on a party's status as a Complainant, Respondent, or Witness
- Not restrict the ability of either party to discuss "the allegations under investigation" or to gather and present relevant evidence

EQUITABLE TREATMENT OF PARTIES

- Equal opportunities for supportive measures
- Equal opportunity to review evidence
- Equal opportunity to present witnesses and other evidence
- Considering inculpatory and exculpatory evidence
- Objective evaluation of evidence

EVIDENCE: INCULPATORY & EXCULPATORY

Inculpatory evidence: showing or tending to show one's involvement in a crime or wrong

Exculpatory evidence: tending to establish a person's innocence

INVESTIGATOR: Initial Steps

- Confirm whether allegation reported to CPS/law enforcement, if appropriate
- Find out whether there is an on-going criminal/juvenile investigation

LAW ENFORCEMENT INVESTIGATION

- The District may abate* its investigation **temporarily**, if request by law enforcement officials.
- **Document the request.**
- **Get a timeframe.**
- **Check with law enforcement on a weekly basis to determine status of investigation.**

*May also want to temporarily abate for voluntary informal resolution process.

INVESTIGATION TIMELINES

- The regulations do not dictate any timelines for initiating or completing investigations.
- They should be initiated and completed **promptly**.
- It will depend on the nature of the allegations and scope of the investigation.

NOTICE TO PARTIES

The parties will have been sent a notice from the Title IX Coordinator:

- Grievance process
- Informal resolution options
- Details of allegations
- Identity of the parties
- Date/location of alleged incident(s)
- Statement that Respondent presumed not responsible
- Right to an Advisor, who may be, but is not required to be, an attorney

NOTICE OF INTERVIEWS

Party whose participation is invited or expected is entitled to written notice of the following for any meeting in the grievance process, including interviews, with sufficient time to prepare:

- Date
- Time
- Location
- Participants
- Purpose of meeting

NOTICE OF INTERVIEWS

- Parties may be accompanied by an advisor to interviews/any meeting in the grievance process that they are expected to participate.
- Students may have a parent and an additional advisor.

CONFIDENTIALITY OF PROCESS - PARTIES

- Schools cannot prohibit parties from discussing the “allegations under investigation” or from gathering their own evidence.
- This does not apply to information that does not consist of “the allegations under investigation,” (e.g., the evidence provided to the parties or the investigative report).

PARTY EVIDENCE

- Parties have the right to submit their own evidence (e.g., text messages, photographs, medical reports, psychological reports).
- Parties should be told that any evidence submitted will be shared with the other party.

INTERVIEWING WITNESSES

- No one can be required to participate in an investigation.
- The regulations prohibit retaliation against any person for participating or refusing to participate in a Title IX proceeding.

WITNESSES

Witnesses are not entitled to written notice before being interviewed or to be accompanied by a parent/advisor.

RESEARCH BEFORE INTERVIEWING

- Review the policy and be familiar with the burden of proof and definition of sexual harassment
- Who are the parties?
- Employee? History....time with the District?
- Student disciplinary history?
- Relationship between the parties?
- Prior complaints?
- Prior claims made by others?

But avoid prejudice of the facts at issue

LOOK AT DOCUMENTS YOU HAVE

- Discipline records
- Academic records
- Personnel records
- Correspondence between Complainant and Respondent

MAKE DECISIONS ON NOTE-TAKING AND RECORDING

- Who takes the notes?
- Do we sign the notes?
- Do we want to record?
- Be consistent.
- Test your equipment.

OPEN YOUR FILE

- Assign a case number, if not already
- All notes, memoranda, written statements, letters, policies, and other matters related to the investigation should be in the file.
- File should be marked as "CONFIDENTIAL."
- Access must be limited.

INTERVIEWING

- Generally, meet with the Complainant first.
- Provide enough time.
- Make it a neutral area.
- Do not rush. Remember this may be embarrassing.
- You want as much detail as possible. Provide time to think and opportunity to return.
- Tell them there will be no retaliation and to report any retaliation to you immediately.

WRITTEN STATEMENT

Determine whether age/developmentally appropriate to obtain a written statement from a student.

Written statements:

- Shows seriousness
- Helps assure later testimony
- Solidifies testimony
- Helps determine requested outcome

QUESTIONS FOR THE COMPLAINANT

- What happened – exactly?
- When – date and time?
- Where – specific (room, trip, outdoor)?
- Happen online?
- Why were you and this other person together?
- What happened or was said just before?

QUESTIONS

- What exactly was said?
- What was the tone?
- Expression when said?
- Gestures or motions?
- Touch you in anyway?
- Did you touch them?

QUESTIONS

- Can you describe the type of touching?
- What did you say in response to any touching?
- How did the words or conduct make you feel?
- Have you had conversations or interactions with this person before?
- Was the tone or atmosphere different?

QUESTIONS

- How long have you known the person?
- Was anyone else present?
- Who?
- Have you told anyone else about this?
- Who, and when, and what did you say?
- Has anything similar happened before?
- If yes, ask the same type of questions about each prior incident.

QUESTIONS

- Do you have any written documentation?
- Anything on social media such as Instagram, Snapchat, Facebook, Twitter, or other evidence for me to review?
- Are there any other individuals you would like me to interview?

REMEMBER:

Do not ask about prior sexual behavior or sexual predisposition, unless to establish that another person committed the alleged conduct or that the conduct was consensual

THOROUGHNESS

- Do not interview only the Complainant and the Respondent.
- Who else was there? [Corroboration]
- Who else knows about this? How? [Contemporaneous discussions]
- Is there anyone else you would like me to interview about this? [Thoroughness; other victims]
- Are there any other documents you would like me to review?
- Must thoroughly document procedures

QUESTIONS FOR CORROBORATING WITNESSES

- Where were you at on (fill in the date and time of the incident as alleged)?
- If online – have you seen the online material?
- Who else was there at the time, or does anyone else know about this?
- Did you see the parties in that place or at that time?
- Did you see or hear any interactions/conversations between the parties?

QUESTIONS FOR CORROBORATING WITNESSES

- Please tell me in your own words what you saw or heard.
- What exactly did you hear – the precise words?
- What exactly did you see – and from how far/angle/obscured?
- How did complainant look?
- Did the respondent make any motions or gestures?
- What response did you see or hear from the complainant?

QUESTIONS FOR CORROBORATING WITNESSES

- What impressions do you have about what you saw or heard?
- Do you have personal knowledge of prior interactions?
- Do you know either party? How well, and in what capacity?
- How long have you known either?
- Is there any current or former relationship with either?
- Do you have opinions about trustworthiness? What led you to that opinion?

QUESTIONS FOR CORROBORATING WITNESSES

- Do you know either of the parties?
- How well do you know them?
- How do you know?
- Is there an official relationship?
- Description of their character, personality, nature?
- Know of any similar past events?

QUESTIONS FOR CORROBORATING WITNESSES

- Have you observed either or both interact with persons of different sex?
- What were your observations or impressions?
- Do you know if either is generally truthful or deceptive?
- Do you know anyone else that may know about any of these issues?
- Have you heard others talking about it – who?

ISSUES FOR STUDENTS

- Do not need parental consent to interview
- Written consent is needed when recording (A/V) a student interview related to an investigation. See Tex. Educ. Code §26.009.

*Including recording a video conference that is not related to a regular classroom purpose.

ISSUES FOR STUDENTS

- Consider interviewing in environment comfortable to them
- Classroom or library, other than office
- Who will be present?

ISSUES FOR STUDENTS

- Involve the professionals on campus when appropriate and able.
- Do not ask leading questions: Isn't it true that you did X because of Y?
- What did you do? Why did you do it?
- Consider audio recording with consent if child cannot write statement.

ISSUES FOR STUDENTS

- Never interview together
- Always take students one at a time - protects against duplication, false memories
- Provides a clearer picture of events
- If parents present, set the ground rules – silent observer, cannot lead, sits behind student.

ISSUES FOR STUDENTS

- Start with small talk* – developing trust
- Learn what the student has told others about incident
- Determine how others have reacted
- Ask questions many times in different ways
- Don't have an agenda. Students often say what they think you want to hear.

*The Investigator should assess the credibility of witnesses, so observe how witnesses respond to simple questions to learn the baseline of behavior of a witness.

INTERVIEWING RESPONDENTS

- Do you know the Complainant?
- How and for how long?
- What type of relationship, conversations, interactions in the past?
- Where were you on the date and time alleged?
- Why were you there?
- Who else was there?

INTERVIEWING RESPONDENTS

- Was the Complainant there?
- Did you do or say anything in relation to the Complainant?
- What exactly did you say or do?
- Tone of voice?
- Did you make any gestures or motions while speaking? What type? Show me.

INTERVIEWING RESPONDENTS

- What did the Complainant say or do then?
- Did they make any gestures or motions? What? Demonstrate.
- Did they say or do anything in response to your statements or actions? What?
- Expression on his/her face?
- Did you touch them in any way? Demonstrate how.

INTERVIEWING RESPONDENTS

- How did the words or conduct overall make you feel?
- Have you talked to anyone else about this matter?
- Who, when, where? Do you mind if I talk to them?
- Do you have anything else that you feel is important for me to know?
- Would you do the same thing if you were in front of your parent/grandparent/the principal?
- How would you feel if something similar happened to your younger sister/brother?

THINGS TO TELL ALL WITNESSES*

We will try to keep this confidential, but we cannot guarantee. You should not speak to others about what we have discussed.

Remind all about the anti-retaliation provisions.

*Remember that parties cannot be prohibited from discussing the allegations raised in the Complaint.

BODY LANGUAGE

- Read the body language and demeanor
- Rate of speaking
- Volume of speaking
- Stuttering
- Getting sidetracked
- Avoiding questions

BODY LANGUAGE

- Not answering the question asked
- Hands – moving, still, tapping?
- Feet?
- Playing with anything?
- Arms crossed?
- Standing up? Moving around?

BODY LANGUAGE

- Eye contact?
- Head movement when speaking?
- Changes in patterns when changes in subjects or persons?
- Off the baseline?

The Three F's of Nonverbals

Freeze
Flight
Fight

Freeze Response

Hold breath

Turtle look – shoulders up, lower head – like dejected team after football game walking to locker room

Arms not moving freely when walking

Flight Response

- Leaning Away
- Eye Blocking with hands
- Placing objects between oneself and threat (purse in lap)
- Feet – are they turned away?

Fight Response

- Aggression
- Insults, sarcasm
- Posture, puffing out chest, stern eyes, violating one's personal space

Discomfort Signals

People under stress give tells:

- Rubbing neck when asked a question, pulling on collar
- Touches hair
- Touches mouth
- Looks away
- Touching neck dimple
- Presses or strokes legs or arms, tapping
- Chew gum, play with objects, jewelry, play with pencil
- Yawning can be a sign of stress –dry mouth

Discomfort Signals

People under stress give tells:

- Tightening of jaw muscles
- Flaring of nose wings
- Crinkle of nose
- Squinting of eyes
- Quivering of the mouth
- Stiff neck, no head tilt

DEALING WITH HOSTILE PEOPLE

- People become hostile or confrontational when talking about uncomfortable things.
- Appreciate and respect hostility – especially in parents.
- Understand where their concern comes from.
- Also understand that such behavior is ultimately counter-productive.

DEALING WITH HOSTILE PEOPLE

- Do not respond in kind
- Think and talk positively
- First impressions are critical
- Show you are listening by repeating
- Speak softly, and they may do the same
- Give praise where you can

DEALING WITH HOSTILE PEOPLE

- Acknowledge frustration
- Take time-outs
- Don't allow things to get personal
- Walk away when you need to

DEALING WITH HOSTILE PEOPLE

- Acknowledge frustration
- Take time-outs
- Don't allow things to get personal
- Walk away when you need to

QUESTIONS?

CONTACT US



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INVESTIGATOR REPORT WRITING, ANALYSIS, AND DECISION-MAKING



Holly Boyd Wardell

October 19, 2021

TYPES OF INVESTIGATIVE REPORTS

1. Sexual harassment (2020 content requirements)
2. Other types of sex discrimination
3. Athletics

The 2020 regulations pertaining to sexual harassment complaints...

seek to create a separation between the investigation and decision-making of formal complaints (sexual harassment).

While it is best to separate roles...

- The Title IX Coordinator can also be the investigator and the informal resolution facilitator.
- The Title IX Coordinator **cannot** also serve as the decision-maker on a formal complaint or on appeal.
- All roles can be outsourced, except the Title IX Coordinator (e.g., investigator, decision-maker, informal resolution facilitator, appellate decision maker).

Remember that anyone serving as a Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate an information resolution process must not have a **conflict of interest** or **bias** for or against **complainants** or **respondents generally** or an **individual** complainant or respondent.

SCENARIO:

Keeley and Jamie used to date. Jamie has "nudes" of Keeley. After they break up, Jamie sends the pics to other students who show them around school. Keeley's new boyfriend, Roy, finds out about this and "avenges" Keeley's honor by punching Jamie in the nose at school.

- Both Jamie and Roy play on the soccer team.
- Keeley's parents decide to file a Formal Complaint against Jamie.

INVESTIGATIVE REPORT

- Prepare an investigative report that summarizes relevant evidence.
- The report may include proposed findings of fact.

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INVESTIGATIVE REPORT

Prior to completion of the investigative report, the investigator must send an electronic or hard copy of the relevant evidence gathered to the parties and the parties' advisors, if any. The parties must be provided at least 10 calendar days to submit a written response that the investigator must consider before completing the investigative report. The evidence may be provided using a platform that prevents downloading and copying to protect the confidentiality of information about students or victims of sexual offenses.

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INVESTIGATIVE REPORT



COMPLAINANT: Jones, Keeley
RESPONDENT: Tart, Jamie
DATE: Mar. 11, 2021
CASE NO.: T9-2021-4 Jones, K.

Title IX Final Investigation Report

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on sex in educational institutions that receive federal financial assistance. The Complainant and Respondent may submit relevant questions that they would like asked of a party or witness to the Decision Maker.

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INVESTIGATIVE REPORT



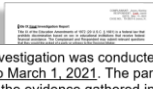
A Formal Complaint was filed on February 17, 2021, by Mr. & Mrs. Jones on behalf of their minor daughter, Keeley Jones. This report contains a summary of the evidence gathered through the District's investigation of the Formal Complaint, as part of the District's Title IX grievance process.



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INVESTIGATIVE REPORT



This investigation was conducted by: High School Principal Ted Lasso from February 17, 2021 to March 1, 2021. The parties have been given the opportunity to inspect and review the evidence gathered in this investigation and an opportunity to provide a written response.



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INVESTIGATIVE REPORT

Allegations

Identify the allegations potentially constituting sexual harassment:

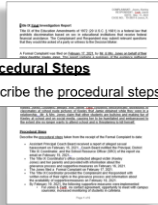
Keeley Jones (Student) alleges that Jamie Tart (Student) electronically distributed to classmates at school nude pictures of Keeley that Jamie obtained while they were in a relationship. Mr. & Mrs. Jones claim that other students are bullying and making fun of Keeley at school and on social media, causing her to be humiliated and embarrassed to the extent she no longer wants to attend school and is threatening to kill herself.



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INVESTIGATIVE REPORT



Procedural Steps

Describe the procedural steps taken from the receipt of the Formal Complaint to date:

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INVESTIGATIVE REPORT

- Assistant Principal Coach Beard received a report of alleged sexual harassment on February 15, 2021. Coach Beard notified the Principal, District Title IX Coordinator, and the School Resource Officer (SRO) of the report via email on February 15, 2021.
- The Title IX Coordinator's office contacted alleged victim (Keeley Jones) and her parents and provided with information about the grievance process and supportive measures on February 16, 2021.
- The Jones filed a Formal Complaint on February 17, 2021.
- The Title IX Coordinator provided the Complainant and Respondent with written notice of their rights in the grievance process and information about the availability of supportive measures on February 18, 2021.

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INVESTIGATIVE REPORT

- By February 19, 2021, the following supportive measures were implemented:
 - For Jones & Tartt: no contact agreement, opportunity to meet with campus counselor, increased monitoring of students in cafeteria.
 - For Jones: one-week extension to take Algebra II test scheduled for February 15, 2021; one-week extension to turn in history project; campus escort to and from lunch; opportunity to eat lunch in front office
 - For Tartt: schedule change to different Algebra II class

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INVESTIGATIVE REPORT

- On February 18, 2021, the Title IX Coordinator appointed the undersigned (Lasso) to investigate the Formal Complaint. I was trained to conduct Title IX sexual harassment investigations in accordance with the May 2020 federal regulations at the Texas Title IX Administrators Conference, October 19-20, 2021.
- This Investigator/I reviewed the Formal Complaint and relevant district policy and student code of conduct provisions beginning February 18, 2021.

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- The State of Texas mandates that threat assessments must be conducted when students display "harmful, threatening, or violent behavior" which includes threats of self-harm, bullying, cyberbullying, fighting, the use or possession of a weapon, sexual assault, sexual harassment, dating violence, stalking, or assault, by a student. On February 18, 2021, Campus administration (Lasso, Beard) and the Title IX Coordinator (Wellton) requested that the campus Threat Assessment Team determine whether Respondent Tartt should be removed from school on an emergency basis. On February 19, 2021, the Threat Assessment Team undertook an individualized safety and risk analysis to determine whether an immediate threat to the physical health and safety of Complainant Jones or others, arising from the alleged sexual harassment, justified removal. The Threat Assessment Team's determined that Tartt's presence on campus did not pose a threat to the physical health or safety of Jones or others. Tartt remained on campus with the supportive measures cited above. The Threat Assessment also reviewed Complainant's parents' comments about suicidal ideation and provided Complainant and her parents with information about community and school resources. A plan was developed for Complainant to have access to a school counselor.

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INVESTIGATIVE REPORT

- I sent both Complainant and Respondent a letter including written notice of interviews and rights under the Title IX investigation process on February 19, 2021.
- I interviewed the Complainant on February 22, 2021. She was accompanied by her parents.
- I interviewed witnesses provided by Complainant on February 22, 2021 – February 24, 2021. I gave the witnesses an opportunity to provide written statements. For students who declined to provide a written statement, I took notes of their verbal statements. I interviewed all witnesses separately. Dr. Sharon Fieldstone observed the interviews and assisted me in the development of my investigation notes.

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INVESTIGATIVE REPORT

- I interviewed the Respondent on February 23, 2021. He was accompanied by his mother and an attorney/advisor, Dewey Cheatham.
- I interviewed witnesses identified by the Respondent on February 23-25, 2021.
- I gave the parties the opportunity to submit evidence. Complainant submitted text messages, which I reviewed.
- I then completed secondary interviews with the Complainant, witnesses, additional witnesses, and the Respondent.

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INVESTIGATIVE REPORT

- The parties were given the opportunity to inspect and review evidence and submit a written response. Specifically, on March 1, 2021, I emailed a secure, password protected and link for the parties to access electronic copies of all evidence collected in this investigation (except the photos). The parties agreed that additional access to the photos was not necessary. All evidence was provided in an electronic format that prevented alteration, editing, and copying.
- On March 5, 2021, the Respondent submitted written responses that were considered by the Investigator. The Complainant did not submit a response.

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INVESTIGATIVE REPORT

SUMMARY OF EVIDENCE:

Factual information about the parties

On February 14, 2021, Assistant Principal Coach Beard broke-up a fight in the cafeteria between two students: Jamie Tartt and Roy Kent. When investigating the cause of the fight, Coach Beard learned that Roy was avenging the honor of his girlfriend, Keeley Jones, who had previously been in a dating relationship with Jamie Tartt. Jones and Tartt are both 15 year old sophomores; they were a couple in a dating relationship during their freshman year of high school. Until February 18, 2021, they were in the same class for Algebra II (5th period). Kent is a senior. Tartt and Kent are both members of the men's soccer team.

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INVESTIGATIVE REPORT

Relevant sections of board policy and the student of code of conduct

Richmond ISD Board Policy FFH(LOCAL) prohibits discrimination, including harassment, against any student on the basis of race, color, religion, sex, gender, national origin, age, disability, or any other basis prohibited by law. The District further prohibits dating violence. Retaliation against anyone involved in the complaint process is also a violation of District policy and is prohibited. Discrimination, harassment, dating violence, and retaliation as defined in policy are considered "prohibited conduct," even if the behavior does not rise to the level of unlawful conduct. Prohibited conduct also includes sexual harassment as defined by Title IX.

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INVESTIGATIVE REPORT

Prohibited sexual harassment means conduct on the basis of sex that satisfies one or more of the following: 1) a school employee conditioning an educational benefit or service upon a student's participation in sexual conduct (often called "quid pro quo" harassment); 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 programs or activities; or 3) Sexual assault, dating violence, domestic violence, or stalking.

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INVESTIGATIVE REPORT

Additionally, dating violence, prohibited by state law and Board policy, includes behavior when a person in a current or past dating relationship uses physical, sexual, verbal, or emotional abuse to harm, threaten, intimidate, or control the other person in the relationship. Tex. Family Code §71.0021.

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INVESTIGATIVE REPORT

Under the Richmond ISD 2020-2021 Student Code of Conduct:

- **Sexual harassment** is a Group III Behavior.
- **Sexual harassment** that involves physical conduct is a Group IV Behavior.
- **Dating violence** is a Group IV Behavior.

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INVESTIGATIVE REPORT

The range of consequences for **Group III** behaviors include: parent/administrator/teacher/SEL support staff/student conference; restorative practices; peer mediation; loss of privilege to have any telecommunication device on campus; suspension; emergency removal from school; referral to law enforcement agencies; and/or any other corrective action deemed appropriate by campus administration and approved by the Office of Student Services.

The range of consequences for **Group IV** behaviors include: parent/administrator/teacher/SEL support staff/student conference; restorative practices; campus reassignment; assignment to DAEP; expulsion; and/or any other corrective action deemed appropriate by campus administration and approved by the Office of Student Services.

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INVESTIGATIVE REPORT

To the extent that federal law, including Title IX federal regulations pertaining to sexual harassment investigations, conflicts with the RISD policy or its SCOC, federal law supersedes.

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INVESTIGATIVE REPORT

Whether a CPS report was necessary

The allegations as presented did not indicate child abuse or neglect as defined by the Texas Family Code. The investigation did not yield facts indicating suspected child abuse or neglect.

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INVESTIGATIVE REPORT

Whether there is a related criminal/juvenile investigation

The campus SRO was notified of the allegations; local law enforcement will determine whether there has been a penal code violation. Law enforcement did not request that the school district delay or abate its investigation in this situation. Law enforcement did not suggest a forensic interview.

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INVESTIGATIVE REPORT

Evidence collected or provided by witnesses, including physical evidence

- Formal Complaint Form completed by Complainant's Parents
- Notice of Rights Letters to Complainant and Respondent
- Complainant's Statement Form
- Student Discipline Fee for Respondent 1 and 2
- During Complainant's interview, she identified 4 students who reportedly received messages; messages with copies of audio photographs of her. Student A, B, C, and D
- Witness Statement Forms from A, B, C, and D
- Transcript of Statement from Witness D
- Respondent's Statement Form
- During Respondent's interview, he identified 2 students who reported that Complainant allowed Students E and F to have access to her phone to view the media photographs.
- Witness Statements from both E and F
- Statement from AP Coach Basset regarding initial report
- Interview Notes of All Witnesses
- Photographs of Complainant
- Board Policy 4194
- RISD Student Code of Conduct
- Attest: Code of Conduct and Respondent's Signature for same

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INVESTIGATIVE REPORT

*Photographs in this case were viewed by the undersigned but not maintained as part of the investigative file. The lewd nature of the photographs is not in dispute and maintaining a copy is not necessary for a determination in this matter...

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INVESTIGATIVE REPORT

Consideration of written responses to evidence.

After reviewing the evidence, Respondent Tarrt submitted an additional statement to the effect that: 1) Complainant Jones voluntarily took and sent the pictures to him; 2) no school devices or technology were involved; 3) Complainant sent the pictures to him outside of the school setting and at night when they were in a relationship; 4) at no time did Complainant ask Respondent not to show the pictures to others; and 5) he did not show the pictures to other students at school.

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INVESTIGATIVE REPORT

This is the final investigative report in this matter. The Decision Maker will allow the parties to submit relevant questions for the other party(ies) or witnesses before making a determination of responsibility for sexual harassment.

Ted Lasso

March 11, 2021

Title IX Investigator

Date

cc: Title IX Coordinator – Ms. Rebecca Welton
Title IX Decision Maker – Mr. Leslie Higgins



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DETERMINATION OF RESPONSIBILITY

1. Identification of the **allegations** that constitute sexual harassment;
2. Description of the **procedural steps** taken since the receipt of the Formal Complaint through the Decision, including notifications, interviews with the parties and witnesses, site visits, methods used to gather other evidence;
3. **Findings of Fact**
4. **Conclusions** regarding the application of the District's Code of Conduct to the facts;

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DETERMINATION OF RESPONSIBILITY

5. A statement of and the **rationale** for the results of **each allegation**, including a **determination of responsibility**;
6. Any **disciplinary sanctions** imposed on the Respondent;
7. A statement **whether remedies** to the Complainant have been designed to **restore or preserve equal access** to the District's education program or activity; and
8. Information about the ability of the parties to **appeal** the decision.

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DETERMINATION OF RESPONSIBILITY

- Note the burden of proof standard (e.g., preponderance, clear and convincing)
- Note the evidence relied upon and not relied upon
- Summarize and assess credibility

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DETERMINATION OF RESPONSIBILITY

- Describe how your finding meets the standard of proof (e.g., POE)
- If more than one allegation, make a separate finding for each allegation.

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DETERMINATION OF RESPONSIBILITY

- Describe how your finding meets the standard of proof (e.g., POE)
- Identify any specific sanctions imposed and explain the basis for choosing those (e.g., precedent, history, cumulative violations, pattern of behavior, aggravating or mitigating factors, Complainant's request, etc.)

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DETERMINATION OF RESPONSIBILITY

- Write in active voice (e.g., I determined that...) rather than passive voice (e.g., It was determined that...)
- Write in the past tense
- If there is more than one Respondent, write a separate decision for each Respondent.

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DETERMINATION OF RESPONSIBILITY

Title IX Determination of Responsibility – Sexual Harassment Decision

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on the sex in educational institutions that receive federal financial assistance. This decision must be issued simultaneously to the Complainant and Respondent.

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DETERMINATION OF RESPONSIBILITY

CASE INFORMATION (Please Print):

Case Number: T9-2021-4 Jones, K.
 Complainant: Keeley Jones Campus: Richmond High School
 Respondent: Jamie Tartt Campus: Richmond High School

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DETERMINATION OF RESPONSIBILITY

Type of Complaint:

Discrimination based on: (Check all that apply)
 Sexual Harassment Sexual Assault Gender Based Harassment Dating Violence Stalking Retaliation Other

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DETERMINATION OF RESPONSIBILITY

Findings of Fact

- Students C and D denied having seen or possessed the photos. Student C provided a written statement denying being shown the photos. Student D declined to write a statement. The investigator interviewed Student D and made notes of the interview.
- Respondent claims that Complainant showed Students E and F the photographs from her own cell phone. Complainant denies this. Students E and F also deny seeing any photographs.

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DETERMINATION OF RESPONSIBILITY

Findings of Fact

- Neither Complainant nor Respondent identified an adult/employee witness to these events. However, the investigator obtained a statement from English Teacher, Trent Crimm, who overheard students talking about seeing pictures of Complainant.
- Complainant claims that she did not share the photos or show the photos with anyone other than Respondent and that others must have seen them because details of the photos have been the subject of comments made on social media. Those details included descriptions of Complainant's physique, what Complainant was doing in the photographs, and a specific object Complainant had in her hand. Complainant provided copies of two social media posts that contained these details.

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DETERMINATION OF RESPONSIBILITY

Findings of Fact

- Complainant provided copies of text messages between Complainant and Respondent in which he apologized for "hurting her" and stated that he has "deleted the pics." This text message exchange occurred after Complainant heard from Students C and D that other students had seen the photos.
- Complainant provided a letter from a private counselor stating the effects this situation has had on Complainant, which include an inability to sleep, loss of appetite, inability to focus and complete schoolwork, and comments about self-harm.

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DETERMINATION OF RESPONSIBILITY

Conclusion regarding the Code of Conduct and Rationale

Based on a preponderance of the evidence, it is determined that:

- I. Allegation:
Keelev Jones (Student) alleges that Jamie Tartt (Student) electronically distributed to classmates at school nude pictures of Keelev that Jamie obtained while they were in a relationship. Mr. & Mrs. Jones claim that other students are bullying and making fun of Keelev at school and on social media, causing her to be humiliated and embarrassed to the extent she no longer wants to attend school and is threatening to kill herself.

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DETERMINATION OF RESPONSIBILITY

Conclusion regarding the Code of Conduct and Rationale

Based on a preponderance of the evidence, it is determined that:

- a. I have determined that it is more likely than not that the Respondent engaged in sexual harassment and dating violence under the district's FFH policy and student code of conduct.
- b. Rationale for determination: It is undisputed that Complainant provided nude electronic images of herself to Respondent while they were in a dating relationship. Other students had knowledge of specific details about the photos that they would not have, if they had not seen them, as evidenced by the social media posts provided by Complainant. Complainant has been

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DETERMINATION OF RESPONSIBILITY

- Complainant has been consistent in her version of events.
- Respondent's version of events has evolved or differed slightly. When interviewed Respondent denied having shown the photos or sent the photos to anyone. However, in his post-evidence review statement, Respondent stated that he did not show the pictures to other students at school. I infer from this subsequent statement that he did show the pictures to students away from school.
- The timing of this matter also corresponds to Complainant's new relationship with another student on campus.
- I have determined that Respondent showed the photographs in retaliation for Complainant entering a new relationship and that Respondent was jealous of Complainant's new relationship.

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DETERMINATION OF RESPONSIBILITY

- This matter has had an effect at school by affecting Complainant's ability and desire to participate in school programming, causing disruption by students gossiping about this matter as overheard by at least one teacher, and resulting in this investigation.
- Respondent's action of sharing nude photos of Complainant with other students in an attempt to embarrass her was unwelcome conduct that was so severe, pervasive, and objectively offensive that it effectively denied equal access to the District's education programs or activities.
- I also find that, because Complainant and Respondent had been in a past dating relationship, Respondent's actions constitute emotional abuse to intimidate or control Complainant by subjecting her to ridicule and making her uncomfortable at RHS.

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DETERMINATION OF RESPONSIBILITY

Remedies Provided

Disciplinary Sanctions

Due to the severity of the impact Respondent's actions have had on Complainant, the following disciplinary sanctions are to be imposed upon the Respondent:

- Respondent will be suspended from the soccer team for the remainder of the 2020-21 school year,...
- A recommendation will be made that Respondent be placed in DAEP for 30 school days.

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Supportive Measures to Complainant: (Select only those that apply and provide details. Delete the options below that will not be implemented.)

- Counseling of students regarding appropriate behavior expectations
- Review of district and code of conduct expectations with students by administrator
- Change of class schedule/lunch schedule/locker location
- Campus/class escort
- Increased school monitoring of [location] for [time period e.g., next 9 weeks]
- School counseling
- Stay away agreement/No contact directives
- Limitation on extracurricular activities
- Training

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Supportive Measures to Respondent: (Select only those that apply and provide details. Delete the options below that will not be implemented.)

- Counseling of students regarding appropriate behavior expectations
- Review of district and code of conduct expectations with students by administrator
- Change of class schedule/lunch schedule/locker location
- Campus/class escort
- Increased school monitoring of [location] for [time period e.g., next 9 weeks]
- School counseling
- Stay away agreement/No contact directives
- Limitation on extracurricular activities: removal from soccer team for remainder of 20-21 SYr
- Training
- Change of work schedule/reassignment
- Other: DAEP - 30 days

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DETERMINATION OF RESPONSIBILITY

The remedies and measures listed above are designed to restore or preserve equal access to the district's educational programs.

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DETERMINATION OF RESPONSIBILITY

Appeal

Either party may appeal this determination of responsibility on a form provided by the District within 10 calendar days of issuance of this decision. The only allowable bases for appeal are:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time of the decision that could affect the outcome; and
3. The Title IX Coordinator, Investigator(s), or Decision Maker has a conflict of interest or bias for or against Complainants or Respondents.

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DETERMINATION OF RESPONSIBILITY

Name _____ Date _____
Title IX Decision Maker

cc: Title IX Coordinator

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The information in this handout was prepared by Eichelbaum Wardell Hansen Powell & Muñoz, P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If special legal advice is sought, consult an attorney.



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Title IX Final Investigation Report

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on sex in educational institutions that receive federal financial assistance. The Complainant and Respondent may submit relevant questions that they would like asked of a party or witness to the Decision Maker.

A Formal Complaint was filed on February 17, 2021, by Mr. & Mrs. Jones on behalf of their minor daughter, Keeley Jones. This report contains a summary of the evidence gathered through the District's investigation of the Formal Complaint, as part of the District's Title IX grievance process.

This investigation was conducted by: High School Principal Ted Lasso from February 17, 2021 to March 1, 2021. The parties have been given the opportunity to inspect and review the evidence gathered in this investigation and an opportunity to provide a written response.

Allegations

Identify the allegations potentially constituting sexual harassment: _____

Keeley Jones (Student) alleges that Jamie Tartt (Student) electronically distributed to classmates at school nude pictures of Keeley that Jamie obtained while they were in a relationship. Mr. & Mrs. Jones claim that other students are bullying and making fun of Keeley at school and on social media, causing her to be humiliated and embarrassed to the extent she no longer wants to attend school and is threatening to kill herself.

Procedural Steps

Describe the procedural steps taken from the receipt of the Formal Complaint to date:

- ... Assistant Principal Coach Beard received a report of alleged sexual harassment on February 15, 2021. Coach Beard notified the Principal, District Title IX Coordinator, and the School Resource Officer (SRO) of the report via email on February 15, 2021.
- ... The Title IX Coordinator's office contacted alleged victim (Keeley Jones) and her parents and provided with information about the grievance process and supportive measures on February 16, 2021.
- ... The Jones filed a Formal Complaint on February 17, 2021.
- ... The Title IX Coordinator provided the Complainant and Respondent with written notice of their rights in the grievance process and information about the availability of supportive measures on February 18, 2021.
- ... By February 19, 2021, the following supportive measures were implemented:
 - * For Jones & Tartt: no contact agreement, opportunity to meet with campus counselor, increased monitoring of students in cafeteria.

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- * For Jones: one-week extension to take Algebra II test scheduled for February 15, 2021; one-week extension to turn in history project; campus escort to and from lunch; opportunity to eat lunch in front office
- * For Tartt: schedule change to different Algebra II class
- ... On February 18, 2021, the Title IX Coordinator appointed the undersigned (Lasso) to investigate the Formal Complaint. I was trained to conduct Title IX sexual harassment investigations in accordance with the May 2020 federal regulations at the Texas Title IX Administrators Conference, October 19-20, 2021.
- ... This Investigator/I reviewed the Formal Complaint and relevant district policy and student code of conduct provisions beginning February 18, 2021.
- ... The State of Texas mandates that threat assessments must be conducted when students display "harmful, threatening, or violent behavior" which includes threats of self-harm, bullying, cyberbullying, fighting, the use or possession of a weapon, sexual assault, sexual harassment, dating violence, stalking, or assault, by a student. On February 18, 2021, Campus administration (Lasso, Beard) and the Title IX Coordinator (Welton) requested that the campus Threat Assessment Team determine whether Respondent Tartt should be removed from school on an emergency basis. On February 19, 2021, the Threat Assessment Team undertook an individualized safety and risk analysis to determine whether an immediate threat to the physical health and safety of Complainant Jones or others, arising from the alleged sexual harassment, justified removal. The Threat Assessment Team's determined that Tartt's presence on campus did not pose a threat to the physical health or safety of Jones or others. Tartt remained on campus with the supportive measure cited above. The Threat Assessment also reviewed Complainant's parents' comments about suicidal ideation and provided Complainant and her parents with information about community and school resources. A plan was developed for Complainant to have access to a school counselor.
- ... I sent both Complainant and Respondent a letter including written notice of interviews and rights under the Title IX investigation process on February 19, 2021.
- ... I interviewed the Complainant on February 22, 2021. She was accompanied by her parents.
- ... I interviewed witnesses provided by Complainant on February 22, 2021 – February 24, 2021. I gave the witnesses an opportunity to provide written statements. For students who declined to provide a written statement, I took notes of their verbal statements. I interviewed all witnesses separately. Dr. Sharon Fieldstone observed the interviews and assisted me in the development of my investigation notes.
- ... I interviewed the Respondent on February 23, 2021. He was accompanied by his mother and an attorney/advisor, Dewey Cheatham.
- ... I interviewed witnesses identified by the Respondent on February 23-25, 2021.
- ... I gave the parties the opportunity to submit evidence. Complainant submitted text messages, which I reviewed.
- ... I then completed secondary interviews with the Complainant, witnesses, additional witnesses, and the Respondent.
- ... The parties were given the opportunity to inspect and review evidence and submit a written response. Specifically, on March 1, 2021, I emailed a secure, password protected and link for the parties to access electronic copies of all evidence collected in this investigation (except the photos). The

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parties agreed that additional access to the photos was not necessary. All evidence was provided in an electronic format that prevented alteration, editing, and copying.

- ... On March 5, 2021, the Respondent submitted written responses that were considered by the Investigator. The Complainant did not submit a response.

violence, domestic violence, or stalking.

Additionally, dating violence, prohibited by state law and Board policy, includes behavior when a person in a current or past dating relationship uses physical, sexual, verbal, or emotional abuse to harm, threaten, intimidate, or control the other person in the relationship. Tex. Family Code §71.0021.

Under the Richmond ISD 2020-2021 Student Code of Conduct:

- ... **Sexual harassment** is a Group III Behavior.
- ... **Sexual harassment** that involves physical conduct is a Group IV Behavior.
- ... **Dating violence** is a Group IV Behavior.

The range of consequences for **Group III** behaviors include: parent/administrator/teacher/SEL support staff/student conference; restorative practices; peer mediation; loss of privilege to have any telecommunication device on campus; suspension; emergency removal from school; referral to law enforcement agencies; and/or any other corrective action deemed appropriate by campus administration and approved by the Office of Student Services.

The range of consequences for **Group IV** behaviors include: parent/administrator/teacher/SEL support staff/student conference; restorative practices; campus reassignment; assignment to DAEP; expulsion; and/or any other corrective action deemed appropriate by campus administration and approved by the Office of Student Services.

To the extent that federal law, including Title IX federal regulations pertaining to sexual harassment investigations, conflicts with the RISD policy or its SCOC, federal law supersedes.

Whether a CPS report was necessary

The allegations as presented did not indicate child abuse or neglect as defined by the Texas Family Code. The investigation did not yield facts indicating suspected child abuse or neglect.

Whether there is a related criminal/juvenile investigation

The campus SRO was notified of the allegations; local law enforcement will determine whether there has been a penal code violation. Law enforcement did not request that the school district delay or abate its investigation in this situation. Law enforcement did not suggest a forensic interview.

Evidence collected or provided by witnesses, including physical evidence

SUMMARY OF EVIDENCE:

Factual information about the parties

On February 14, 2021, Assistant Principal Coach Beard broke-up a fight in the cafeteria between two students: Jamie Tartt and Roy Kent. When investigating the cause of the fight, Coach Beard learned that Roy was avenging the honor of his girlfriend, Keeley Jones, who had previously been in a dating relationship with Jamie Tartt. Jones and Tartt are both 15 year old sophomores; they were a couple in a dating relationship during their freshman year of high school. Until February 18, 2021, they were in the same class for Algebra II (5th period). Kent is a senior. Tartt and Kent are both members of the men's soccer team.

The allegations in the Formal Complaint

Keeley Jones (Complainant-Student) alleges that Jamie Tartt (Respondent-Student) electronically distributed to classmates nude pictures of her that Jamie obtained while they were in a dating relationship. Mr. & Mrs. Jones claim that other students are bullying and making fun of Keeley at school and on social media, causing her to be humiliated and embarrassed such that she no longer wants to attend school and is threatening suicide.

Relevant sections of board policy and the student of code of conduct

Richmond ISD Board Policy FFH(LOCAL) prohibits discrimination, including harassment, against any student on the basis of race, color, religion, sex, gender, national origin, age, disability, or any other basis prohibited by law. The District further prohibits dating violence. Retaliation against anyone involved in the complaint process is also a violation of District policy and is prohibited. Discrimination, harassment, dating violence, and retaliation as defined in policy are considered "prohibited conduct," even if the behavior does not rise to the level of unlawful conduct. Prohibited conduct also includes sexual harassment as defined by Title IX.

Prohibited sexual harassment means conduct on the basis of sex that satisfies one or more of the following: 1) a school employee conditioning an educational benefit or service upon a student's participation in sexual conduct (often called "quid pro quo" harassment); 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 programs or activities; or 3) Sexual assault, dating

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- ... Formal Complaint Form completed by Complainant's Parents
- ... Notice of Rights Letters to Complainant and Respondent
- ... Complainant's Statement Form
- ... Student discipline file for Respondent Tartt
- ... During Complainant's interview, she identified 4 students who reportedly received electronic messages with copies of nude photographs of her: Student A, B, C, and D.
- ... Witness Statement Forms from A, B, C.
- ... Transcription of Statement from Witness D.
- ... Respondent's Statement Form
- ... During Respondent's interview, he identified 2 students who reported that Complainant allowed Students E and F to have access to her phone to view the nude photographs.
- ... Witness Statements Forms from E and F.
- ... Statement from AP Coach Beard regarding initial report
- ... Interview Notes of All Witnesses
- ... Photographs of Complainant*
- ... Board Policy FFH
- ... RISD Student Code of Conduct
- ... Athletic Code of Conduct and Respondent's Signature for same

cc: Title IX Coordinator – Ms. Rebecca Welton
Title IX Decision Maker – Mr. Leslie Higgins

*Photographs in this case were viewed by the undersigned but not maintained as part of the investigative file. The lewd nature of the photographs is not in dispute and maintaining a copy is not necessary for a determination in this matter.

Consideration of written responses to evidence.

After reviewing the evidence, Respondent Tartt submitted an additional statement to the effect that: 1) Complainant Jones voluntarily took and sent the pictures to him; 2) no school devices or technology were involved; 3) Complainant sent the pictures to him outside of the school setting and at night when they were in a relationship; 4) at no time did Complainant ask Respondent not to show the pictures to others; and 5) he did not show the pictures to other students at school.

This is the final investigative report in this matter. The Decision Maker will allow the parties to submit relevant questions for the other party(ies) or witnesses before making a determination of responsibility for sexual harassment.

Ted Lasso

March 11, 2021

Title IX Investigator

Date

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Page 6 of 6

Title IX Determination of Responsibility – Sexual Harassment Decision

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on the sex in educational institutions that receive federal financial assistance. This decision must be issued simultaneously to the Complainant and Respondent.

CASE INFORMATION (Please Print):

Case Number: T9-2021-4 Jones, K.

Complainant: Keeley Jones Campus: Richmond High School

Respondent: Jamie Tartt Campus: Richmond High School

Type of Complaint:

Discrimination based on: (Check all that apply)

- Sexual Harassment Sexual Assault Gender Based Harassment Dating Violence Stalking Retaliation Other

Nature of Allegations:

- A school employee conditioning an educational benefit or service upon a student's participation in sexual conduct
- 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 programs or activities
- Sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined in the Clery Act, 20 U.S.C. § 1092(f), and the Violence Against Women Act, 34 U.S.C. § 12291(a))

Specific Allegations

Identify the allegations potentially constituting sexual harassment:

Keeley Jones (Student) alleges that Jamie Tartt (Student) electronically distributed to classmates at school nude pictures of Keeley that Jamie obtained while they were in a relationship. Mr. & Mrs. Jones claim that other students are bullying and making fun of Keeley at school and on social media, causing her to be humiliated and embarrassed to the extent she no longer wants to attend school and is threatening to kill herself.

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 - For Jones & Tartt: no contact agreement, opportunity to meet with campus counselor, increased monitoring of students in cafeteria.
 - For Jones: one-week extension to take Algebra II test scheduled for February 15, 2021; one-week extension to turn in history project; campus escort to and from lunch; opportunity to eat lunch in front office
 - For Tartt: schedule change to different Algebra II class
- ... On February 18, 2021, the Title IX Coordinator appointed the undersigned (Lasso) to investigate the Formal Complaint. The investigator was trained to conduct Title IX sexual harassment investigations in accordance with the May 2020 federal regulations at the Texas Title IX Administrators Conference, October 19-20, 2021.
- ... This Investigator reviewed the Formal Complaint and relevant district policy and student code of conduct provisions beginning February 18, 2021.
- ... The State of Texas mandates that threat assessments must be conducted when students display "harmful, threatening, or violent behavior" which includes threats of self-harm, bullying, cyberbullying, fighting, the use or possession of a weapon, sexual assault, sexual harassment, dating violence, stalking, or assault, by a student. On February 18, 2021, Campus administration (Lasso, Beard) and the Title IX Coordinator (Welton) requested that the campus Threat Assessment Team determine whether Respondent Tartt should be removed from school on an emergency basis. On February 19, 2021, the Threat Assessment Team undertook an individualized safety and risk analysis to determine whether an immediate threat to the physical health and safety of Complainant Jones or others, arising from the alleged sexual harassment, justified removal. The Threat Assessment Team's determined that Tartt's presence on campus did not pose a threat to the physical health or safety of Jones or others. Tartt remained on campus with the supportive measures cited above. The Threat Assessment also reviewed Complainant's parents' comments about suicidal ideation and provided Complainant and her parents with information about community and school resources. A plan was developed for Complainant to have access to a school counselor.
- ... The investigator sent both Complainant and Respondent a letter including written notice of interviews and rights under the Title IX investigation process on February 19, 2021.
- ... The investigator interviewed the Complainant on February 22, 2021. She was

- ... accompanied by her parents.
- ... The investigator interviewed witnesses provided by Complainant on February 22, 2021 – February 24, 2021. The investigator gave the witnesses an opportunity to provide written statements. For students who declined to provide a written statement, the investigator took notes of their verbal statements. The investigator interviewed all witnesses separately. Dr. Sharon Fieldstone observed the interviews and assisted me in the development of my investigation notes.
- ... The investigator interviewed the Respondent on February 23, 2021. He was accompanied by his mother and an attorney/advisor, Dewey Cheatham.
- ... The investigator interviewed witnesses identified by the Respondent on February 23-25, 2021.
- ... The investigator gave the parties the opportunity to submit evidence. Complainant submitted text messages, which the investigator reviewed.
- ... The investigator then completed secondary interviews with the Complainant, witnesses, additional witnesses, and the Respondent.
- ... The parties were given the opportunity to inspect and review evidence and submit a written response. Specifically, on March 1, 2021, the investigator emailed a secure, password protected and link for the parties to access electronic copies of all evidence collected in this investigation (except the photos). The parties agreed that additional access to the photos was not necessary. All evidence was provided in an electronic format that prevented alteration, editing, and copying.
- ... On March 5, 2021, the Respondent submitted written responses that were considered by the Investigator. The Complainant did not submit a response.

Findings of Fact

- ... Complainant is Keeley Jones is a 15 year old sophomore at RHS.
- ... Respondent is Jamie Tartt is a 15 year old sophomore at RHS.
- ... Complainant and Respondent were in a dating relationship during their freshman year of high school, 2019-2020. They are no longer dating.
- ... During their relationship, Complainant took photos of herself in a state of undress using her personal cell phone and while in her home. In her interview, Complainant stated that Respondent asked for "nudes," which she understood to mean nude photos of herself.
- ... In Respondent's interview, he admitted to asking for and receiving "nudes" of Complainant during the 2019-2020 school year. He received them on his cell phone through a text message. He saved the photos to his cell phone. Respondent provided a supplemental statement in which he stated that: Complainant voluntarily took and provided him the photos; no school devices or technology were used in the transmission of the photos; Complainant sent the photos outside of the school setting and at night when they were in a relationship; at no time did Complainant ask Respondent to not show the photos to others; and that he did not show the pictures to other students at school.
- ... Complainant claimed that, after Complainant and Respondent were no longer in a dating relationship, Respondent showed the "nudes" to fellow schoolmates, Students C and D. Complainant was told by Students A and B that Students C

- and D claimed to have seen the photos.
- ... Students C and D denied having seen or possessed the photos. Student C provided a written statement denying being shown the photos. Student D declined to write a statement. The investigator interviewed Student D and made notes of the interview.
- ... Respondent claims that Complainant showed Students E and F the photographs from her own cell phone. Complainant denies this. Students E and F also deny seeing any photographs.
- ... Neither Complainant nor Respondent identified an adult/employee witness to these events. However, the investigator obtained a statement from English Teacher, Trent Crimm, who overheard students talking about seeing pictures of Complainant.
- ... Complainant claims that she did not share the photos or show the photos with anyone other than Respondent and that others must have seen them because details of the photos have been the subject of comments made on social media. Those details included descriptions of Complainant's physique, what Complainant was doing in the photographs, and a specific object Complainant had in her hand. Complainant provided copies of two social media posts that contained these details.
- ... Complainant provided copies of text messages between Complainant and Respondent in which he apologized for "hurting her" and stated that he has "deleted the pics." This text message exchange occurred after Complainant heard from Students C and D that other students had seen the photos.
- ... Complainant provided a letter from a private counselor stating the effects this situation has had on Complainant, which include an inability to sleep, loss of appetite, inability to focus and complete schoolwork, and comments about self-harm.

Conclusion regarding the Code of Conduct and Rationale

Based on a preponderance of the evidence, it is determined that:

- I. Allegation: Keeley Jones (Student) alleges that Jamie Tartt (Student) electronically distributed to classmates at school nude pictures of Keeley that Jamie obtained while they were in a relationship. Mr. & Mrs. Jones claim that other students are bullying and making fun of Keeley at school and on social media, causing her to be humiliated and embarrassed to the extent she no longer wants to attend school and is threatening to kill herself.
 - I have determined that it is more likely than not that the Respondent engaged in sexual harassment and dating violence under the district's FFH policy and student code of conduct.
 - Rationale for determination: It is undisputed that Complainant provided nude electronic images of herself to Respondent while they were in a dating relationship. Other students had knowledge of specific details about the photos that they would not have, if they had not seen them, as evidenced by the social media posts provided by Complainant. Complainant has been

consistent in her version of events. Respondent's version of events has evolved or differed slightly. When interviewed Respondent denied having shown the photos or sent the photos to anyone. However, in his post-evidence review statement, Respondent stated that he did not show the pictures to other students at school. I infer from this subsequent statement that he did show the pictures to students away from school. The timing of this matter also corresponds to Complainant's new relationship with another student on campus. I have determined that Respondent showed the photographs in retaliation for Complainant entering a new relationship and that Respondent was jealous of Complainant's new relationship. This matter has had an effect at school by affecting Complainant's ability and desire to participate in school programming, causing disruption by students gossiping about this matter as overheard by at least one teacher, and resulting in this investigation. Respondent's action of sharing nude photos of Complainant with other students in an attempt to embarrass her was unwelcome conduct that was so severe, pervasive, and objectively offensive that it effectively denied equal access to the District's education programs or activities. I also find that, because Complainant and Respondent had been in a past dating relationship, Respondent's actions constitute emotional abuse to intimidate or control Complainant by subjecting her to ridicule and making her uncomfortable at RHS.

Remedies Provided

Disciplinary Sanctions

- Due to the severity of the impact Respondent's actions have had on Complainant, the following disciplinary sanctions are to be imposed upon the Respondent:
- ... Respondent will be suspended from the soccer team for the remainder of the 2020-21 school year.
 - ... A recommendation will be made that Respondent be placed in DAEP for 30 school days.

Supportive Measures to Complainant: (Select only those that apply and provide details. Delete the options below that will not be implemented.)

- Counseling of students regarding appropriate behavior expectations
- Review of district and code of conduct expectations with students by administrator
- Change of class schedule/lunch schedule/locker location
- Campus/class escort
- Increased school monitoring of [location] for [time period e.g., next 9 weeks]
- School counseling
- Stay away agreement/No contact directives
- Limitation on extracurricular activities
- Training

- Change of work schedule
- Other: _____

Supportive Measures to Respondent: (Select only those that apply and provide details. Delete the options below that will not be implemented.)

- Counseling of students regarding appropriate behavior expectations
- Review of district and code of conduct expectations with students by administrator
- Change of class schedule/lunch schedule/locker location
- Campus/class escort
- Increased school monitoring of [location] for [time period e.g., next 9 weeks]
- School counseling
- Stay away agreement/No contact directives
- Limitation on extracurricular activities: removal from soccer team for remainder of 20-21 SYr
- Training
- Change of work schedule/reassignment
- Other: DAEP – 30 days

The remedies and measures listed above are designed to restore or preserve equal access to the district's educational programs.

Appeal

Either party may appeal this determination of responsibility on a form provided by the District **within 10 calendar days** of issuance of this decision. The only allowable bases for appeal are:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time of the decision that could affect the outcome; and
- The Title IX Coordinator, Investigator(s), or Decision Maker has a conflict of interest or bias for or against Complainants or Respondents.

Name _____	Date _____
Title IX Decision Maker	
cc: Title IX Coordinator	