

# Title IX: K-12 Training

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## DISCLAIMER AND NOTE

- The information provided in this presentation does not constitute legal advice.
- Please consult with your legal counsel regarding your specific situation.
- These slides can be posted electronically by your Title IX Coordinator as is required by 34 CFR §106.45(b)(10)(i)(D).



# AGENDA

- I. Brief Overview of Title IX (4–10)
- II. Title IX Coordinator & District-Role & Responsibilities (11–37)
- III. Title IX Investigator-Role and Responsibilities (38–56)
- IV. Title IX Decision Maker-Role and Responsibilities (57–70)





# I. Brief Overview of Title IX

## STATUTORY DEFINITION OF TITLE IX

- Title IX, codified at 20 USC §1681, is a federal civil rights law that was passed as part of the Education Amendments of 1972.
- Title IX states: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance . . . .”
- Essentially, Title IX prohibits **sexual harassment** in any **education program or activity** that receives Federal financial assistance from the Department of Education.

## Statutory Definition of “Sexual Harassment”

Definition of “sexual harassment” for purposes of Title IX [34 CFR §106.30(a)]:

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

Conditioning the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct (i.e. “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 District's education program or activity; or

“Sexual assault,” “dating violence,” “domestic violence,” or “stalking,” as is defined by federal statute.



## Statutory Definition of “Educational Program of Activity”

Definition of “**educational program or activity**” for purposes of Title IX:

- “locations, events, or circumstances over which the [District] exercised substantial control over both the respondent and the context in which the sexual harassment occurs...” 34 CFR §104.44(a).
- In other words, all operations that fall within the District.
  - This includes, but is certainly not limited to, in-person and online instruction, employment, athletics, extracurricular activities, school events, and more.
- District is not responsible for sexual harassment that occurs in private settings, outside of the U.S., and otherwise outside the scope of the District’s education programs and activities
  - May be prohibited by District policy, Student Code of Conduct, or other law.

# THE FORMAL GRIEVANCE PROCESS AND PROCEDURES

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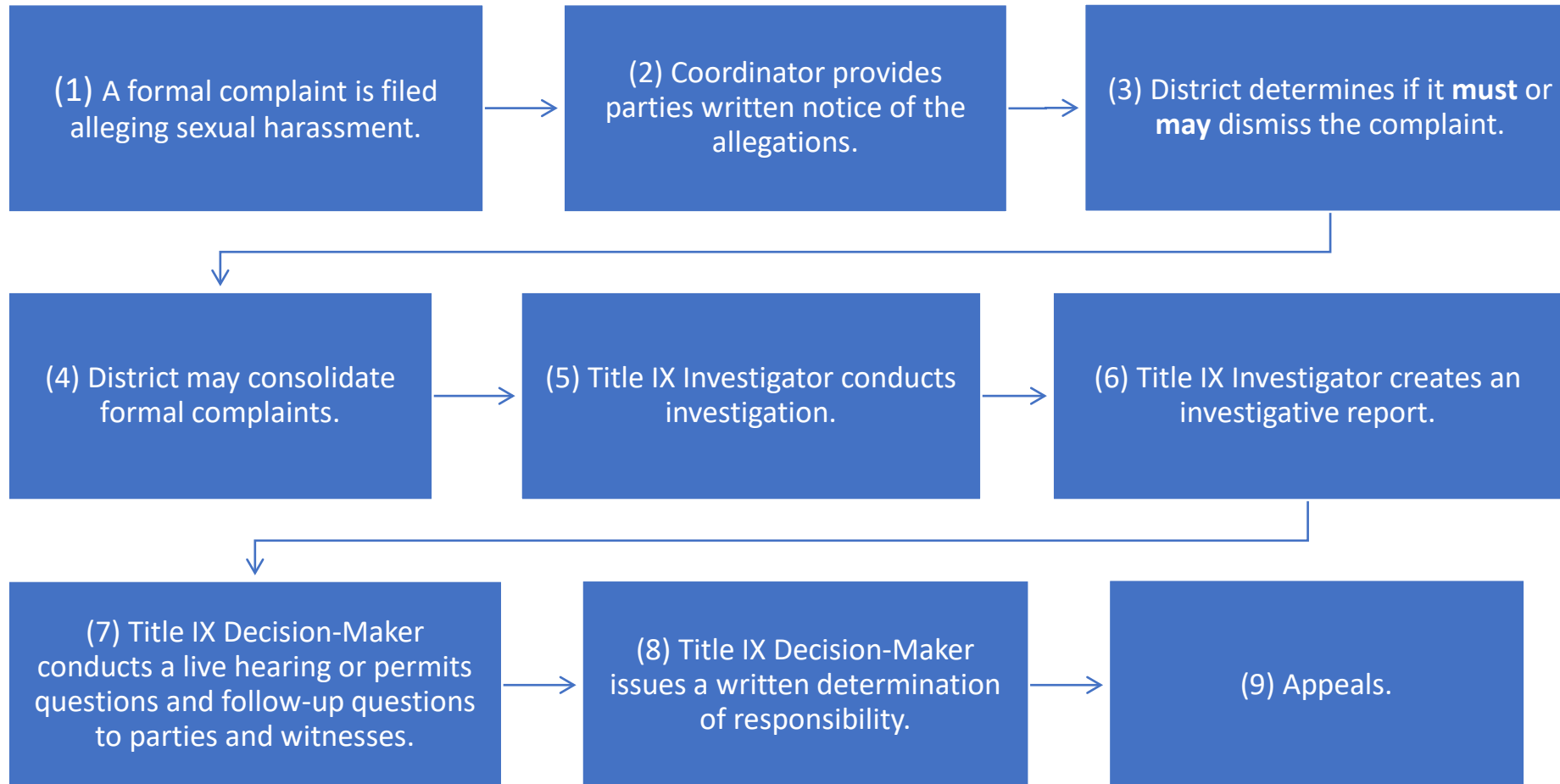


- As discussed throughout this presentation, the **grievance process** is the **steps/procedure** taken by the District to promptly and equitably resolve any complaints alleging sexual harassment in a District's education program or activities.
- The primary Title IX team members that facilitate this process are the Coordinator, Investigator, and Decision-Maker.



# GRIEVANCE PROCESS TIMELINE

34 C.F.R. §106.45



# MOST IMPORTANT TITLE IX FEDERAL STATUTE/REGULATIONS



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**20 USC §1681 et seq.** – Title IX

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**34 CFR §106.8** – Designation of Coordinator, Dissemination of Policy, and Adoption of Grievance Procedures

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**34 CFR §106.30** – Title IX Definitions

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**34 CFR §106.44** – District's Response to Sexual Harassment

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**34 CFR §106.45** – Grievance Process for Formal Complaints of Sexual Harassment

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**34 CFR §106.71** – Retaliation



## **II. Title IX Coordinator Role and Responsibilities**



## WHO AND WHAT IS A TITLE IX COORDINATOR?

- The District “must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under [Title IX]...”  
20 CFR §106.8(a).
  - The “Title IX Coordinator”
  - Not a Compliance Officer anymore
- This position is required and therefore must not be left vacant.
- Can have more than one Coordinator (building, grade level, etc.).

# How to Designate a Title IX Coordinator

- Must provide notice of the Coordinator to:
  - “applicants for admission and employment, students, parents or legal guardians of students, employees, and all unions or professional organizations.” 34 CFR §106.8(a)
- “Notice” of the Coordinator must include the following:
  - (1) Name or title; (2) office address; (3) e-mail address; and (4) telephone number.
  - Include this information in the District’s policy regarding Title IX.

# Title IX Coordinator's Responsibilities

- Overarching role is to coordinate the school's compliance with Title IX.
- Review, assess, and update Title IX policies to ensure compliance.
  - Including grievance procedures for resolving possible Title IX complaints.
- Oversee and coordinate the grievance procedures.
- Identify and address any patterns of sexual harassment.
- Help the other Title IX team members (Investigator & Decision Maker) perform their jobs effectively.

# Title IX Coordinator's Responsibilities

## **Distribution of the District's Title IX Policy [34 CFR §106.8(b)].**

- Provide notice that school “does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by [T]itle IX . . . not to discriminate in such a manner”
  - ...and that protection extends to admission of students/employees.
  - ...and that questions concerning Title IX should be referred to Coordinator.
- Each school must display the Coordinator's contact information and policy on its website and handbook.

# Title IX Coordinator's Responsibilities

## Title IX Training:

- School is responsible for training the Coordinator (and Investigator, Decision-Maker, or any other person designated to facilitate Title IX compliance). 34 CFR §106.45(b)(1)(iii).
- The Coordinator facilitates and schedules Title IX training for all District employees.



# Title IX Coordinator's Responsibilities

## Title IX Training:

- The District must train the Coordinator on the following [34 CFR §106.45 (b)(1)(iii)]:
  - (1) Definition of sexual harassment;
  - (2) Scope of the District's education programs or activities;
  - (3) How to conduct an investigation and carry out the grievance process including hearings, appeals, and informal resolution processes; and
  - (4) how to serve impartially, including conflict of interest, bias, and avoiding prejudgment of the facts at issue.
- All training materials must be retained by the District.

# Title IX Coordinator's Responsibilities

## Recordkeeping [34 CFR §106.45(b)(10)]:

- The District must maintain the following records for 7 years:
  - (1) Each Title IX investigation;
  - (2) Any appeal and the result therefrom;
  - (3) Any informal resolution and the result therefrom;
  - (4) All materials used for Title IX training (*should be on website*); and
  - (5) Records of any actions taken in response to a report or formal complaint of sexual harassment.

# TITLE IX COORDINATOR'S ROLE

## When is the Coordinator/District on Notice of a Complaint? [34 CFR §§106.30, 106.44]

- (1) When a formal complaint is filed; or
  - Commence grievance policies/procedures
- (2) When the Coordinator/District has **actual knowledge** of sexual harassment in an education program or activity.
  - “Actual Knowledge” means “notice of sexual harassment or allegations of sexual harassment to...any official...who has authority to institute corrective measures...or to any employee of an elementary and secondary school”
  - The Coordinator must meet with the alleged victim, offer supportive measures, and provide notice of formal procedures available.

# TITLE IX COORDINATOR'S ROLE

## Can a Coordinator Initiate a Complaint?

- **Yes!** – a “formal complaint” is “filed by a complainant or **signed by the Title IX Coordinator.**” 34 CFR §106.30.
  - The Coordinator’s signature triggers an investigation—it does **not** mean that the Coordinator is a complainant or party.
  - At the time of filing, the complainant must be participating in or attempting to participate in an education program or activity.
  - A “document filed by a complainant” means a document or electronic submission with complainant’s physical or digital signature, or other indication that the complainant is the person filing the complaint.

# TITLE IX COORDINATOR'S ROLE

## How to Respond to a Complaint?

- The response must treat complainants and respondents equitably by:
  - (1) offering **supportive measures** to a complainant (see slides 27–29); and
  - (2) following **grievance procedures** before imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent. (see slides 31–35).

# PRELIMINARY RESOLUTION

## What is a Voluntary Informal Resolution and When is it Available? [34 CFR §106.45(b)(9)]:

- Prior to final determination, the District may explore an **informal resolution**, such as mediation, so long as the District:
  - (1) provides the parties with written notice of:
    - (a) the allegations;
    - (b) the informal resolution requirements; and
    - (c) any consequences of the informal resolution process.
  - (2) obtains the parties' voluntary, written consent; and
  - (3) does not offer an informal resolution process regarding allegations that an employee sexually harassed a student.
- Many claims may start going this route.

# PRELIMINARY RESOLUTION

## A District may not:

- (1) require a waiver of the right to a formal investigation and adjudication of sexual harassment claims as a condition of enrollment/employment/enjoyment of other rights; or
- (2) require the parties to participate in an informal resolution.

*Note:* Informal resolutions may only be offered after a formal complaint is filed.

# PRELIMINARY RESOLUTION

## When is Dismissal of a Formal Complaint Required?

### [34 CFR §106.45(b)(3)(i)]:

- (1) The conduct alleged in the complaint would not constitute sexual harassment even if proved;
- (2) The conduct did not occur in an education program or activity; or
- (3) The conduct did not occur against a person in the United States.



# PRELIMINARY RESOLUTION

## When is Dismissal of a Formal Complaint Permitted?

### [34 CFR §106.45(b)(3)(ii)]:

- (1) Complainant notifies the Coordinator in writing that he/she would like to withdraw the formal complaint or allegations therein;
- (2) The respondent is no longer enrolled or employed by the District; or
- (3) Specific circumstances prevent the District from gathering evidence sufficient to reach a determination.

# Notice of the Sexual Harassment Allegations

**Per 34 CFR §104.45(b)(2)(i), the Coordinator/District must provide written notice to the parties of:**

- (1) The District's grievance process, including any informal resolution process;
- (2) The allegations of sexual harassment, including:
  - (a) sufficient details and with sufficient time to prepare a response;
  - (b) a statement that respondent is presumed not responsible and that responsibility is determined at the conclusion of the grievance process;
- (3) The parties' right to have advisor (including an attorney) inspect and review the evidence; and
- (4) Any provisions in the District's code of conduct that prohibits knowingly making false statements during the process.

## Implementing Supportive Measures

- Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent (34 CFR §106.30).
  - Supportive measures are available before or after the filing of a formal complaint or where no formal complaint has been filed.
- Supportive measures are designed to:
  - (1) restore or preserve equal access to the District's education program or activity without unreasonably burdening the other party; and
  - (2) to deter sexual harassment.

# Implementing Supportive Measures

## Supportive Measures Before a Formal Complaint is filed.

### [34 CFR §106.44(a)] :

Upon “actual knowledge” of sexual harassment, Coordinator must promptly contact alleged victim to:

- (1) discuss 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 a formal complaint; and
  - (4) explain the process for filing a formal complaint.
- Even if a formal complaint is filed, the parties are still entitled to have supportive measures during the grievance process/procedures. 34 C.F.R. § 106.45

# Implementing Supportive Measures

## What Supportive Measures are Available?

### [34 CFR §106.30] :

- Counseling;
- Extensions of deadlines or other course-related adjustments;
- Modifications of work or class schedules;
- Mutual restrictions on contact between the parties;
- Leaves of absence;
- Increased monitoring;
- And other similar measures.

## Emergency Removal – 34 CFR §106.44(c)

- May remove a student from educational program or activity on an emergency basis when:
  - (1) Coordinator/District conducts an individualized safety and risk analysis and determines an **immediate** threat to the physical health or safety of any student or individual arising from the allegations of sexual harassment justifies removal; and
    - Must be supported by particularized facts—not speculation.
    - The District is given flexibility in terms of how it conducts its analysis.
  - (2) Coordinator/District provides the student with notice and an opportunity to challenge the decision immediately following the removal.
- \*Emergency removal does not modify student’s rights under the IDEA & Section 504.
- There is no temporal restriction on emergency removals—they can be implemented at any time.

# FORMAL GRIEVANCE PROCESS

## Basic Statutory Requirements [34 CFR §106.45(b)(1)]:

- (i) Treat complainants and respondents equitably by providing remedies to the complainant and by following the grievance process;
  - Remedies are designed to restore/preserve equal access to an education program or activity.
- (ii) Require an **objective** evaluation of evidence and provide that credibility determinations are not based on a person's status;
- (iii) Require that the Coordinator, Investigator, Decision-Maker, and others do not have a conflict of interest or bias;

# FORMAL GRIEVANCE PROCESS

## Statutory Requirements (continued):

- (iv) Include a presumption that neither party is responsible for the alleged conduct until a determination;
- (v) Include reasonably prompt time frames for the grievance process;
  - Filing, appeals, and informal resolution
- (vi) Describe/list the range of possible disciplinary sanctions and remedies;
- (vii) State whether the standard of evidence is (1) preponderance of the evidence or (2) clear and convincing evidence;
- (viii) Include the procedures and permissible bases for appeal;



# FORMAL GRIEVANCE PROCESS

## Statutory Requirements (continued):

- (ix) Describe the supportive measures available to complainants/respondents; and
- (x) Not require, allow, rely upon, or use questions or evidence that constitute, or seek disclosure of, information protected under a recognized privilege.

# FORMAL GRIEVANCE PROCESS

## Notice of Allegations – 34 CFR §106.45(b)(2).

- Must provide the parties with written notice of (i) the grievance process; and (ii) the allegations of sexual harassment.
- Notice must also:
  - (i) include a statement that the respondent is presumed not responsible;
  - (ii) inform the parties that they may have an advisor of their choice if they choose; and
  - (iii) inform the parties of any provision in the District's code of conduct that prohibits knowingly making false statements.

# FORMAL GRIEVANCE PROCESS

## Coordinator's Role During the Investigatory/Decision-Making Process:

- Once the parties receive the evidence, Coordinator may be responsible for working with Investigator to facilitate the review process.
- After a determination regarding responsibility is given, Coordinator is responsible for effective implementation of any remedies.

# FORMAL GRIEVANCE PROCESS

## **Coordinator's Obligation if There is a Hearing – 34 CFR §106.45(b)(6):**

Coordinator may be responsible for facilitating the hearing, including:

- Scheduling;
- Explaining the hearing process and procedures to the parties;
- Provide accommodations (Zoom logistics) at the hearing if necessary;
- More as needed.



**Questions?**



# III. Title IX Investigator – Role and Responsibilities



# WHO AND WHAT IS A TITLE IX INVESTIGATOR?

The Investigator is responsible for investigating and resolving formal complaints of sexual harassment in the District's education programs and activities.

- Investigator gathers all information related to the allegations, such as statements of the parties/witnesses, documents, electronic materials (e.g., texts, emails, phone logs, pictures, videos, audio recordings), and more.
- Investigator creates an investigative report that summarizes the evidence.



# WHO AND WHAT IS A TITLE IX INVESTIGATOR?

## **Training – The District is responsible for training the Investigator on:**

- (1) the definition of sexual harassment in 34 CFR §106.30;
- (2) the scope of the District's education programs or activities;
- (3) how to conduct an investigation and the grievance process;
- (4) how to serve impartially; and
- (5) issues of relevance related to the investigative report.



## When is an Investigation Required/Prohibited?

### [34 CFR §106.45(b)(3):

- The District **must investigate** the allegations in a **formal complaint**.
- The District **must dismiss** a formal complaint (not investigate) when:
  - (1) The alleged conduct does not constitute “sexual harassment” as defined;
  - (2) The alleged conduct did not occur in an education program or activity; or
  - (3) The alleged conduct did not occur against a person in the United States.

## What are we Investigating? – What is Sexual Harassment?

Conduct on the basis of sex that satisfies one or more of the following:

**(34 CFR §106.30):**

- (1) An employee conditioning the provision of an aid, benefit, or service of the District 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 an education program or activity; or
- (3) “Sexual assault,” “dating violence,” “domestic violence,” or “stalking,” as is defined by federal statute.

## What are we Investigating? – What is Sexual Harassment?

### What is sex/gender?

- The definition of “sex” or “gender” is applied differently across federal jurisdictions.
- The modern trend, including within the Sixth Circuit, is that sex/gender is based on one’s gender identity—not biological status at birth.

## What are we Investigating? – What is Sexual Harassment?

### Retaliation – 34 CFR §106.71

- Cannot “intimidate, threaten, coerce, or discriminate against any individual...because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.”
- Claims for retaliation may be filed pursuant to the District’s formal grievance procedures.

# GRIEVANCE PROCEDURES

## Formal Complaint

- A “formal complaint” is the document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting an investigation.

## Due Process and Fairness to Both Sides:

- Parties have a right to due process before a responsibility determination is made.
- The respondent is presumed not responsible for the alleged conduct.
- The parties are entitled to fair process, procedure, and an opportunity to be heard.
- Treat the parties equitably.
- No conflict of interest or bias.

# GRIEVANCE PROCEDURES

## **The District must provide the following written notice to the parties:**

- (1) Notice of the District's grievance process, including any informal resolution process; and
- (2) Notice of the allegations of sexual harassment, which must include:
  - (a) sufficient details and with sufficient time to prepare a response;
  - (b) a statement that the respondent is presumed not responsible and that responsibility is made at the conclusion of the grievance process;
- (3) Notice that the parties may have advisor (including an attorney) inspect and review the evidence; and
- (4) Notice of any provisions of the District's code of conduct that prohibits knowingly making false statements during the process.

# GRIEVANCE PROCEDURES

## Dismissal

- **Mandatory Dismissal**: As explained previously, a formal complaint must be dismissed if the alleged conduct:
  - (1) did not constitute “sexual harassment”;
  - (2) did not occur in the District’s education program or activity; or
  - (3) did not occur against a person in the United States.

# GRIEVANCE PROCEDURES

## Dismissal

- **Permissive Dismissal**: A formal complaint may be dismissed if:
  - (1) Complainant notifies the Coordinator in writing that he/she would like to withdraw the complaint or the allegations therein;
  - (2) The respondent is no longer enrolled or employed by the District; or
  - (3) Specific circumstances prevent the District from gathering evidence sufficient to reach a determination.



# GRIEVANCE PROCEDURES

## Consolidation of Formal Complaints – 34 CFR §165(b)(4)

- When the allegations arise out of the same facts or circumstances, the District **may** consolidate formal complaints as to claims of sexual harassment:
  - (1) against more than one respondent;
  - (2) by more than one complainant against one or more respondents; or
  - (3) by one party against the other party.

# CONDUCTING THE INVESTIGATION

## Burden of Proof

- The burden is on the District, not on the parties, to gather sufficient evidence to reach a determination on responsibility.

# CONDUCTING THE INVESTIGATION

## Evidence and How it is Gathered – The Investigator must:

- Be responsible for gathering evidence from the parties regarding the allegations;
  - Evidence protected by a privilege is inadmissible
  - Conduct interviews of the parties and their witnesses
- Work with the Coordinator to facilitate the collection of evidence from the parties;
- Provide an equal opportunity for the parties to present witnesses;
- Not restrict either party from discussing the allegations or gathering evidence;
- Provide the parties with the same opportunity to be represented by an advisor;
- Provide written notice of the date, time, location, and participants of all hearings, investigative interviews, or other meetings; and
- Provide both parties with an equal opportunity to inspect/review the evidence.

# CONDUCTING THE INVESTIGATION

## Bias, Impartiality, and Prejudgment

- The Investigator cannot have a conflict of interest or bias.
  - The District is responsible for ensuring this is not a problem.
- The Investigator must be **impartial, objective, and fair** in reaching its determination on responsibility.
- The Investigator must avoid prejudgment of the facts at issue.

# PREPARING THE INVESTIGATIVE REPORT

## Opportunity to Inspect and Review:

- The Investigator must provide both parties an equal opportunity to inspect/review evidence obtained in the investigation so that each party can meaningfully respond to the allegations.
- Prior to the completion of the investigative report, the Investigator must send the evidence to each party and his/her advisor.
  - The parties have 10 days to review and submit a written response.

# PREPARING THE INVESTIGATIVE REPORT

## Contents of the Investigative Report

- After the complainant and the respondent have been given an opportunity to review and respond to the evidence, the Investigator will make an investigative report.
- Must be sent to the parties at least 10 days prior to a hearing or determination on responsibility to allow the parties review and submit a written response.
- The report fairly summarizes the relevant evidence in the investigation.
- It may include facts related to the allegations, witnesses, evidence relied upon, policy, and more.

# Title IX Investigator Checklist



- ✓ **Collect evidence**
- ✓ **Create an inventory list of all collected items and potential evidence**
- ✓ **Interview complainant**
- ✓ **Write complainant memorandum of interview**
- ✓ **Interview respondent**
- ✓ **Write respondent memorandum of interview**
- ✓ **Interview other witnesses**
- ✓ **Write witness memorandum of interview**
- ✓ **Draft an executive summary of investigation**
- ✓ **Draft a factual report of the investigation**
- ✓ **Provide the parties with evidence and give them an opportunity to respond**
- ✓ **Combine materials to create the Investigation Report**



**Questions?**





# IV. Title IX Decision-Maker – Role and Responsibilities

## Who and What is a Title IX Decision-Maker?

The Coordinator and/or District shall appoint a Decision-Maker(s) to conduct an objective evaluation of all relevant evidence and issue a determination on responsibility.

- Conducts the live hearing (if there is one).
- Has the power to dismiss the formal complaint.
- Cannot be the same person as the Coordinator or the Investigator.

## Who and What is a Title IX Decision-Maker?

### **Training - The District is responsible for training the Decision-Maker on:**

- (1) the definition of sexual harassment in 34 CFR §106.30;
- (2) the scope of the District's education programs or activities;
- (3) how to conduct an investigation and the grievance process;
- (4) how to serve impartially;
- (5) any technology to be used at a hearing; and
- (6) issues of relevance relating to questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.

# What Specifically Does the Title IX Decision-Maker Do?

## Evaluation of Evidence

- The Decision-Maker must objectively evaluate all of the relevant evidence presented and the credibility of the parties and witnesses.

## Hearing

- **Postsecondary Institutions** - the school/university is required to provide the parties a live hearing.  
34 CFR §106.45(b)(6)(i).
- **\*Elementary and Secondary Schools** – the District may, but need not, provide the parties a live hearing. 34 CFR §106.45(b)(6)(ii).

## What Specifically Does the Title IX Decision-Maker Do?

### **Coordinate the Parties' Evidentiary/Question Submissions.**

- After the investigative report is sent to the parties and before a determination is made, the Decision-Maker must afford each party the opportunity to:
  - Submit written questions that the party wants asked (subject to relevancy);
  - Provide each party with the answers; and
  - Allow for additional, limited follow-up questions from each party.
- Decision-Maker must exclude any questions or evidence about the complainant's sexual predisposition or prior sexual behavior, unless offered to prove that someone else committed the alleged sexual harassment.

## What Specifically Does the Title IX Decision-Maker Do?

**The Decision-Maker is responsible for rendering a written determination as to responsibility of the parties.**

- The Decision-Maker/District is responsible for providing the written determination to the parties simultaneously.
- The written determination becomes final either:
  - (1) on the date the parties are provided the written determination of the appeal (if an appeal is filed); or
  - (2) if an appeal is not filed, the date on which an appeal would no longer be considered timely.

**The Decision-Maker/District must offer both parties the right to appeal.**

## Title IX Decision-Maker Must be Impartial

**In reaching a determination on responsibility, the Decision-Maker must serve impartially, including the avoidance of:**

- (1) prejudice of the facts at issue;
- (2) bias to either party;
- (3) credibility determinations based on a party's status as the complainant, respondent, or witness; and
- (4) stereotypes.

# SEQUENCE OF STEPS

- (1) The investigative report is sent to the parties at least 10 days prior to a hearing (if one is required) or other time of determination regarding responsibility;
- (2) The parties submit to the Decision-Maker written questions they want asked of any party or witness;
- (3) The Decision-Maker provides the parties with the answers to the written questions;
- (4) The Decision-Maker provides the parties with limited follow-up questions;
- (5) The Decision-Maker objectively evaluates all of the relevant evidence in light of the District's policy on sexual harassment; and
- (6) The Decision-Maker determines if the evidence is sufficient to meet the specified burden of proof.
  - Most common is “preponderance of the evidence”: Is it more likely than not that the respondent engaged in the alleged sexual harassment?



# ELEMENTS FOR A WRITTEN DETERMINATION

## The Decision-Maker's Determination Must Include:

- (1) The allegations potentially constituting sexual harassment;
- (2) A description of the procedural steps taken, from the receipt of the formal complaint through the determination;
- (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 of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant; and
- (6) The District's procedures and permissible bases for the parties to appeal.

## DISCIPLINARY SANCTIONS

### **Disciplinary Sanctions are Provided in the District's Policy on Sexual Harassment.**

- Per 34 CFR §106.8(b), the District must publish and notify others of its Policy on Sexual Harassment.
- In 34 C.F.R. § 106.45(b)(1)(vi), the range of possible disciplinary sanctions is provided to the parties.
- Any disciplinary sanctions resulting from a determination of sexual harassment will be outlined and provided for in the District's Policy.

# DISCIPLINARY SANCTIONS

## IEP/504 Considerations

- When students have an IEP or 504 Plan, the District must comply with Title IX *and* IDEA / Section 504.
- The Title IX regulations do not have any deference to the IDEA or 504 processes.
- This often can be difficult as the laws conflict.
  - The Title IX immediate supportive measures and corrective measures will likely trigger IDEA and Section 504 obligations.
- To try and thwart any issues, the District must include the IEP and 504 teams in the Title IX process.
- Ultimately, this will lengthen the timeline of the Title IX investigation.

# APPEALS

## **Bases for an Appeal – 34 CFR §106.45(b)(8):**

- (1) Procedural irregularity that affected the outcome of the matter;
- (2) New evidence that was not reasonably available at the time of the determination or dismissal was made, that could affect the outcome;
- (3) The Title IX Coordinator, Investigator(s), or Decision-Maker(s) had a conflict of interest or bias for or against the parties that affected the outcome.

The Decision-Maker(s) for the appeal must not be the same person as the Decision-Maker(s) that reached the determination regarding responsibility or dismissal, the Investigator(s), or the Coordinator.

# APPEALS

The appeal can be filed by either party to the investigation.

**Notice – As to an appeal, the District must:**

- (1) Notify the other party of the appeal in writing and implement appeal procedures equally;
- (2) Ensure the appellate Decision-Maker(s) is not the same as anyone on the Title IX team;
- (3) Ensure the Decision-Maker(s) have proper training;
- (4) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- (5) Issue a written decision on the appeal and the rationale for the result; and
- (6) Provide the written decision simultaneously to both parties.



Title IX:  
K-12 Training Level 2  
with Ryan M. Gembala and Trae E. Graham

Questions?

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