

Title IX:


A District's Responsibility in Sexual Harassment Cases.



Title IX provides that . . .

“ [n]o 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 . . . ”



A blurred photograph of a classroom. In the foreground, a male teacher in a light blue shirt is looking towards the right. Behind him, several female students are seated at desks, looking in various directions. The background shows rows of desks and a whiteboard. The overall scene is dimly lit and out of focus.

**Title IX Prohibits Sexual Harassment within
the Scope of the School's Education
Program or Activity**

Sexual Harassment

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

- An employee of the school conditioning the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome 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 recipient's education program or activity; or
- "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).

Education Program or Activity

A school's 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 occurs...

What is the district's responsibility?

The new rule went into effect August 14, 2020. What does your district need to do?

Policy

- ✓ The district must adopt a grievance procedure that comports with the new rules.
- ✓ The district must publish the grievance procedure for all applicants for admission and employment, students, parents or legal guardians, employees and all unions or professional organizations holding collective bargaining or professional agreements with the school/district.
- ✓ The district must provide to persons entitled to notification how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the district will respond.

Title IX Coordinator

- ✓ The district must appoint at least one Title IX Coordinator.
- ✓ The district must notify applicants for admission and employment, students, parents or legal guardians, employees and all unions or professional organizations holding collective bargaining or professional agreements with the school/district, of the name or title, office address, email address, and telephone number of the employee or employees designated as the Title IX Coordinator(s).
- ✓ The name and contact information for the Title IX Coordinator(s) must be published on the district's websites, if any, and in each handbook or catalog that the district makes available to persons entitled to notification.

Training

- ✓ Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution must be trained on:
 1. The definition of sexual harassment;
 2. The scope of the district/school's education program or activity;
 3. How to conduct an investigation and grievance process including appeals, and informal resolution processes;
 4. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
 5. Decision-makers must be trained on issues of relevance of questions and evidence, including when questions and evidence about a Complainant's prior sexual history are relevant; and
 6. Investigators must be trained on issues of relevance to create an investigative report that fairly summarizes the relevant evidence.

Training

- ✓ Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process must be made publicly available on the district/school's website, or if they do not have a website they must make the materials available upon request for inspection by members of the public.

Record Keeping

Each district must create and maintain for a period of seven years, records of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment. In each case the district must document the basis for its conclusion that the district was not deliberately indifferent and document that it has taken measures designed to restore or preserve equal access to the district's education program or activity.

Key Individuals

Parties

Complainant: an individual participating or attempting to participate in the school's education program or activity who is alleged to be the victim of conduct that could constitute sexual harassment.

Respondent: an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.



Complainants and Respondents may be male or female, of the same gender as one another or different genders. Complainants and Respondents may be students, teachers, staff members, other employees, or anyone participating in or attempting to participate in the school's education program

Title IX Coordinator: the responsible employee of the school with major responsibility for Title IX compliance efforts

Investigator: an individual who investigates formal complaints

Facilitator: an individual who facilitates the informal resolution process

Decision-Maker: an individual who makes a determination of responsibility after a formal investigation or an individual who reviews an appeal of a determination and makes a ruling on the appeal

Advisor: Complainants and Respondents are permitted to have an advisor of his/her choice throughout the process. The advisor may be, but does not need to be, an attorney

Grievance Process Overview

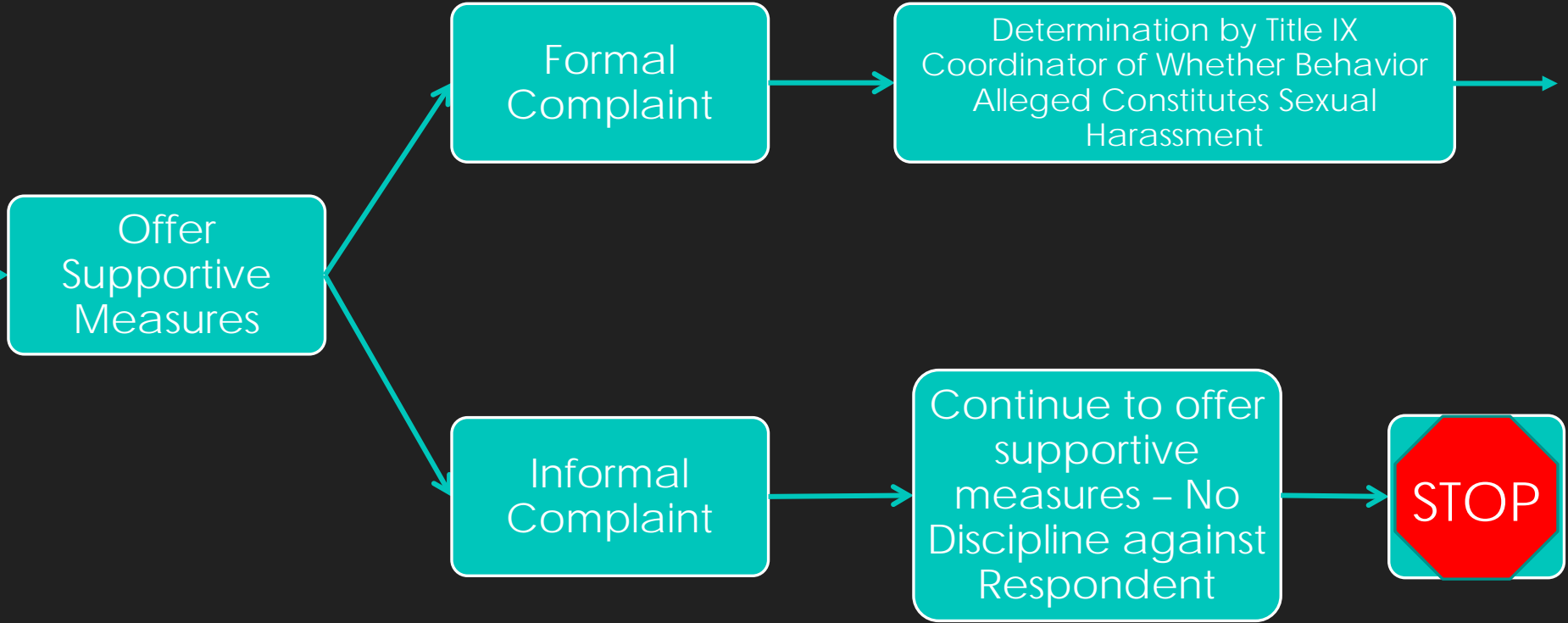
Notice

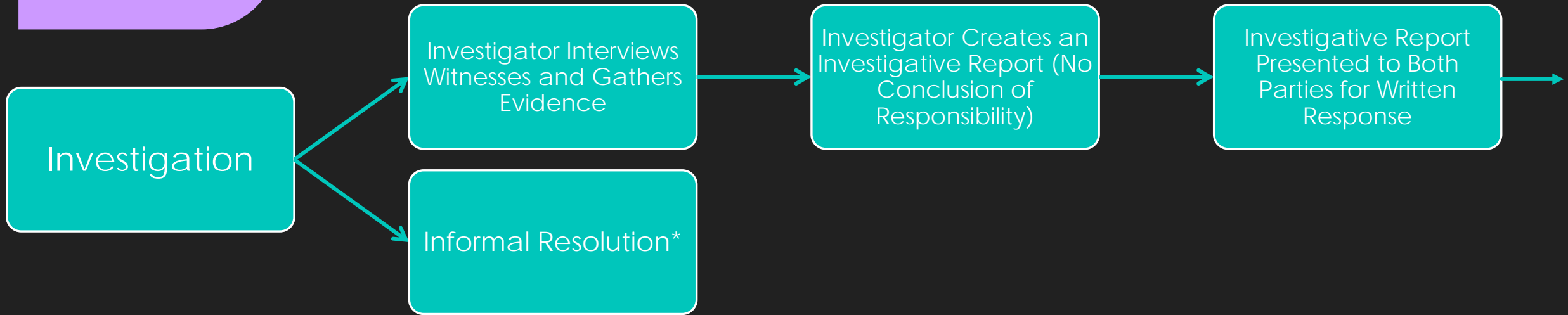
The K-12 schools are deemed to be on notice whenever any employee has notice of sexual harassment, including allegations of sexual harassment. Notice to any employee triggers the school's response obligations and triggers liability if the school does not act appropriately.

Supportive Measures

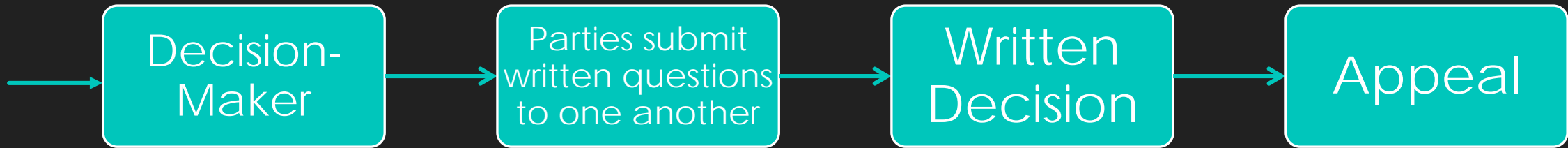
Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

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 locations, leaves of absence, increased security and monitoring of certain areas on campus, and other similar measures.





*Not available if the Respondent is an employee and the Complainant is a student



Decision-Makers



MAKE A RULING

OR



REVIEW AN APPEAL
AND MAKE A RULING

Burden of Proof

In recognition that Title IX governs schools, not parties, the Department obligates the school to carry both the burden of proof and the burden of collecting evidence sufficient to reach a determination regarding responsibility, while also providing parties equal opportunity (but not the burden or obligation) to gather and present witnesses and other evidence, review and challenge the evidence collected, and question other parties and witnesses.



Remedies

Remedies must be designed to restore or preserve equal access to the school's education program or activity. Such remedies may include "supportive measures" or discipline for Respondents only *after* a determination of responsibility for sexual harassment has been made against the Respondent.



Throughout the Process...

- The school must provide reasonably prompt time frames to complete the grievance process
- All evidence must be evaluated objectively
- Complainants and Respondents are to be treated equally throughout the process
 - Respondents are presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process
- All Title IX Coordinators, Investigators, Facilitators, and Decision-Makers must be properly trained



Family Educational Rights and Privacy Act (FERPA)

A Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

“...FERPA continues to apply in the context of Title IX enforcement, but if there is a direct conflict between requirements of FERPA and requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions.”

2001 Revised Sexual Harassment Guidance: Harassment of Students By School Employees, Other Students, or Third Parties - Department of Education

Confidentiality

The school must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute or regulations, 20 U.S.C. 1232g and 34 CFR part 99, or as required by law, or to carry out the purposes of [34 CFR part 106], including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.



Why?

Because it's the law.

Questions?



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