

TITLE IX TEAM COMPLIANCE TRAINING

SEPTEMBER 24, 2020
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BEFORE WE BEGIN ...

- Thank you!!
- You will not like what you hear; prepare yourself ☹️
- The Regulations were designed to address sexual harassment and assault occurring on college campuses and due process concerns raised by advocates for the accused students
- Nonetheless, Regulations apply equally to universities and K-12 who receive federal funding

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WHAT THIS TRAINING IS NOT

- This is not a general overview of Title IX
- This is not a sexual harassment training

*Rather ... this is **the training** all Title IX team members must take to be in compliance with 34 CFR §106.45(b)(1)(iii)*

* For documentation purposes, print the September 23 email from Katie Chenowith with ZOOM login instructions and sign by all attendees. Maintain with Title IX Coordinator file. Include copy of power point presentation.

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IN A NUTSHELL

- New regulations become effective **August 14, 2020** *
- Created federal definition of "sexual harassment" of students
- Clarified actual knowledge (for liability purposes)
- New investigation and grievance procedures (balanced, impartial)
- Required training and posting **for Title IX team members**

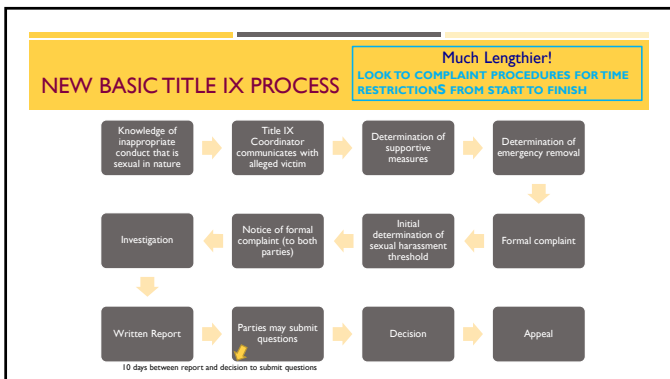
**Critical for all team members to be trained before responding to complaint*

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WHO'S ON YOUR TEAM?

Title IX Coordinator Investigator Decision-Maker Appeal Officer Informal Resolution Facilitator

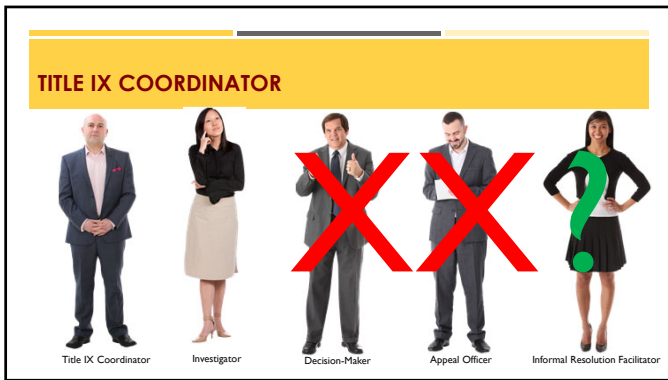
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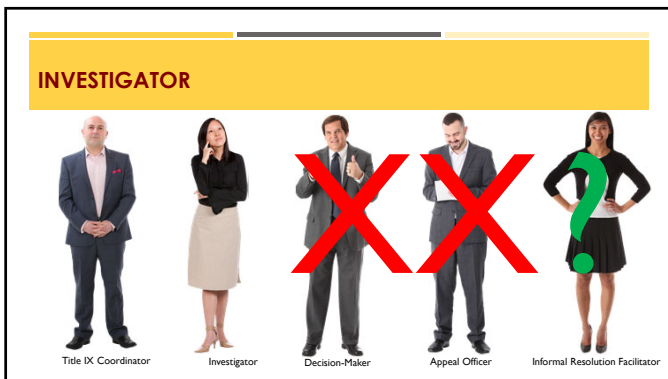
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Time Frame for Formal Complaint Process	<p>Absent good cause for the District to delay an investigation, the Title IX formal complaint process beginning with filing or signing of the formal complaint and ending with the determination of responsibility should be completed within <u>[insert reasonable time frame, e.g., 60 days.]</u> Days used for any voluntary informal resolution process do not count towards the time frame for concluding the formal complaint process.</p>
Modifying Time Frames	<p>In calculating timelines under this regulation, the day a document is filed is "day zero" and the next District business day is "day one."</p> <p>All time limits shall be strictly followed unless modified by the parties' mutual written consent or extended by the District for good cause. If the District grants an extension of time for one party, the same time extension must also be granted to the other party.</p> <p>If the District temporarily delays or extends timelines associated with the formal complaint process, the Title IX Coordinator shall provide a written explanation to the parties of the good cause basis for the delay or extension. Permissible modifications to timelines include the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; the need for language assistance or accommodation of disabilities; or other good cause as determined by the Title IX Coordinator.</p> <p>The District shall make reasonable attempts to schedule meetings at a time mutually agreeable to all parties. However, extensions should not unnecessarily extend the timeline established below for concluding the formal complaint process.</p>

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DECISION MAKER

Title IX Coordinator Investigator Decision-Maker Appeal Officer Informal Resolution Facilitator

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APPEAL OFFICER

Title IX Coordinator Investigator Decision-Maker Appeal Officer Informal Resolution Facilitator

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CONCLUSION?

- Smart to cross train team members in all roles!

Importantly ...

- Do not have to pre-assign each role (other than Title IX Coordinator)
- Can make assignments as allegation is raised (based on facts, availability, etc.)
- Can assign District Team or Campus Team
- Consider male and female for each role
- OK to assign between campuses

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ON TAP TODAY...

REQUIRED TRAINING TOPICS

- Definition of sexual harassment
- Scope of recipient's education program or activity
- How to conduct an investigation
- Grievance process, including hearings and appeals
- Resolution processes
- Roles and responsibilities
- How to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Use of technology to be at a live hearing
- Relevance of questions and evidence
- Creation of investigative report

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GO-TO RESOURCES

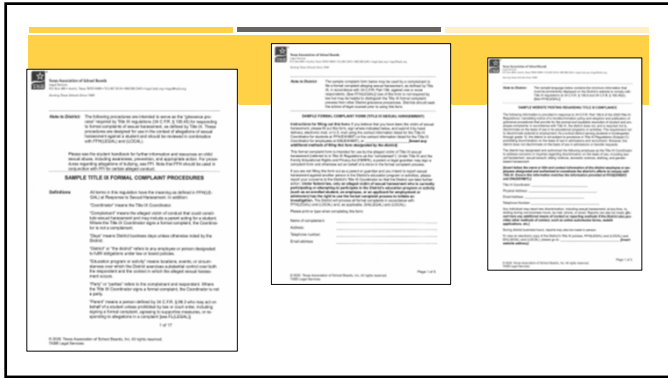
- DIA (LOCAL) *Annotated from Update 115*
- FFH (LOCAL) *Annotated from Update 115*
- TASB Title IX Sexual Harassment Publication
- TASB Sample Title IX Formal Complaint Procedures
- TASB Sample Formal Complaint Form
- TASB Sample Website Posting Regarding Title IX Compliance

<https://www.tasb.org/services/legal-services/tasb-school-law-esource/students/freedom-from-bullying-and-harassment.aspx>

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The collage shows three documents from the Texas State Board of Education (TASB). The left document is a policy titled 'Title IX Sexual Harassment' with sections for 'Purpose', 'Scope', and 'Definitions'. The middle document is a procedure titled 'Title IX Sexual Harassment' with sections for 'Purpose', 'Scope', and 'Definitions'. The right document is a form titled 'Title IX Sexual Harassment' with sections for 'What is Title IX?' and 'How does Title IX apply to sexual harassment?'.

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TERMINOLOGY

- Grievance : THIS NEW COMPLAINT PROCESS *not ENG!!*
- Complainant : Student making allegation
- Respondent : Student accused
- Allegation : Initial outcry (can be verbal or in writing)
- Complaint : Initiated pursuant to FFH (LOCAL)
- Report : Factual findings resulting from investigation
- Decision : Ultimate determination based upon preponderance of evidence

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ROLES: WHO DOES WHAT WHEN?

- Can use District employees in roles or can outsource (e.g. attorney, retired administrator, etc.)
- Title IX Coordinator may be Investigator but may not be Decision-Maker
- Investigator may not be Decision-Maker
- Investigators, Decision-Makers, Appeal Officers, and Informal Resolution Facilitators must be:
 - Impartial
 - Free from Bias
 - Free from Conflict of Interest

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BIAS, IMPARTIALITY & CONFLICT OF INTEREST

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BIAS

- “Prejudice in favor of or against one thing, person, or group compared with another, usually in a way that is considered to be unfair”
 - *Does it pass the sniff test? Do the skeptics raise an eyebrow?*
- Concern about “cover-ups” or protection of one person or institution based on who the Investigator/Decision-Maker is and their role
- Perceived does not mean actual, **but recognize its impact**

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IMPARTIAL

- This means being free from bias
- “Treating all rivals and disputants equally; fair and just”
- Neutral – not helping or supporting either side; no pre-disposition
- Nondiscriminatory
 - Example: Avoid sex stereotyping (e.g. female dress)
- Decisions based on objective criteria rather than bias, prejudice

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CONFLICT OF INTEREST

- Can be both **aligned interests** and **conflicting interests**
- Perceived does not mean actual (but again, proceed with caution)

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WHAT TO AVOID

<ul style="list-style-type: none"> ▪ Family members ▪ Friendships ▪ Enemies ▪ Business relationships ▪ _____ ▪ _____ 	<p>Examples:</p> <ul style="list-style-type: none"> ▪ Respondent is nephew of Appeal Officer ▪ Complainant was in a fight last year with daughter of Investigator ▪ Complaint involves allegation of sexual assault; Decision-Maker's daughter was victimized previously ▪ Investigator is in same Sunday school class as Respondent's parents ▪ Decision-Maker put Respondent in DAEP earlier this year
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BOTTOM LINE...

- Go in with an open mind
- Go in with a clean slate
 - Example: Avoid prejudgment of facts, witnesses, and parties
- Be free from all stereotypes, including sex stereotypes (e.g. jock, cheerleader)
- Do you have a conflict of interest? Perceived or real?
- Keep out all personal beliefs; (e.g. "ME TOO" movement)
- If you don't think you can do it or should do it, alert Title IX Coordinator

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TITLE IX COORDINATOR

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TITLE IX COORDINATOR

- Main point of contact regarding Title IX
- Must designate on website and handbooks with name, number, email
- Can have more than one
- Can also have deputy Title IX Coordinators
- Supervises the process (clearinghouse)
 - Assigns Investigators
 - Assigns Decision-Makers, Appeal Officers
 - Assigns Facilitators
 - Ensures compliance with final sanctions

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TITLE IX COORDINATOR
WHEN AN ALLEGATION OF SEXUAL HARASSMENT COMES IN

- Contact Complainant and Respondent to discuss supportive measures
 - To both parties
 - Available with or without a formal complaint
- Explain the formal complaint process
- Ensure no disciplinary sanctions are put in place against Respondent until grievance/complaint process is complete
 - However, can take emergency measures (e.g. stay away agreement, etc.)
 - Can place an employee on administrative leave with pay (only the Superintendent can make that placement)

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TITLE IX COORDINATOR
SUPPORTIVE MEASURES

- “Individualized services to preserve and restore equal access to education programs/activities”
- Examples (include)
 - Stay away agreements; mutual restrictions
 - Increased monitoring; escort
 - Counseling
 - Extensions of deadlines/course changes
 - Schedule changes

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TITLE IX COORDINATOR
COMPLAINANT DOES NOT WISH TO FILE

- Even if a formal complaint is not filed, can OK principal to investigate and respond to prohibited conduct in accordance with Student Code of Conduct
 - Except when threat to community → must investigate
 - As long as we can respond to prevent future harassment of Complainant and others, do not have to investigate if Complainant does not want
 - And must explain the consequences to the Complainant of not filing a formal complaint
 - Document if Complainant does not file

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TITLE IX COORDINATOR
COMPLAINANT DOES NOT WISH TO FILE, CONT.

- Can sign a formal complaint on behalf of Complainant
 - A Complainant's wishes with respect to whether the school investigates should be respected unless the Title IX Coordinator determines that signing the formal complaint is not clearly unreasonable in light of the known circumstances
 - Can also initiate grievance procedures where discipline is appropriate

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TITLE IX COORDINATOR
WHEN A COMPLAINT IS DISMISSED

- Decides whether to dismiss a formal complaint
- Must be dismissed when:
 - Allegations do not constitute sexual harassment as defined
 - Did not occur in District program or activity
 - Consider in person effects of out of activity/program conduct
 - Did not occur in the United States

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TITLE IX COORDINATOR
WHEN A COMPLAINT IS DISMISSED, CONT.

- Can (discretionary) be dismissed
 - Complainant no longer wants to pursue (wants to withdraw)
 - Respondent is no longer in the District
 - The investigation cannot be completed
- Must provide written notice of dismissal
 - Dismissal can be appealed

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SEXUAL HARASSMENT DEFINED

WHAT DO WE INVESTIGATE?

- Conduct on the basis of sex that is one or more of the following:
 - Quid pro quo harassment by a district employee
 - Hostile environment (newly defined)
 - Violence Against Women Act offenses (i.e. sexual assault, dating violence, stalking, domestic violence)

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QUID PRO QUO SEXUAL HARASSMENT

- Definition: An employee making an aid, service, or benefit of the district conditional on an individual's participation in unwelcome sexual conduct
- NEW: ONLY APPLIES TO EMPLOYEE CONDUCT (not volunteer, another student, etc.)
- Unwelcomeness and severity of conduct is presumed

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HOSTILE ENVIRONMENT SEXUAL HARASSMENT

<p>OLD DEFINITION</p> <ul style="list-style-type: none"> ○ Unwelcome conduct ○ Determined by a reasonable person ○ To be severe, pervasive, or persistent, and to interfere with or limit a student's ability to participate in or benefit from school services, activities, or opportunities 	<p> NEW DEFINITION</p> <ul style="list-style-type: none"> ○ Unwelcome conduct ○ Determined by a reasonable person ○ To be so severe, pervasive, AND objectively offensive that it effectively denies a person's equal access to the recipient's education program or activity
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IN AN EDUCATIONAL PROGRAM OR ACTIVITY

- Location, events, or circumstance where the district exhibits substantial control over both the alleged harasser and the "context" in which the harassment occurred
 - At school, school related-activity on or off school
- Might include cyber-harassment if it occurs on a District platform
- Will be fact intensive for each case

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WHAT IS A FORMAL COMPLAINT?

- A document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the recipient (District) investigate the allegation of sexual harassment
 - Can only be submitted by the alleged victim (Complainant), the minor victim's parent, or the Title IX coordinator

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FORMAL COMPLAINT PROCESS FOR TITLE IX COMPLAINTS

- Superintendent must develop complaint process
 - See TASB Sample Title IX Formal Complaint Procedures
- Must be placed on District's website
 - Consider posting with other compliance documents, bullying info page or parent recourses generally, Human Resources
- Process must contain at least 12 basic requirements...

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FORMAL COMPLAINT PROCESS
12 BASIC REQUIREMENTS

1. Equitable treatment of Complainants and Respondents
2. Objective evaluation of all relevant evidence
3. Requirement that Title IX Coordinator, Investigator, Decision-maker, or Informal Resolution Facilitator not have a conflict of interest or bias
4. Presumption that the Respondent is not responsible for the alleged sexual harassment until a determination is made at the conclusion of the Title IX formal complaint process

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FORMAL COMPLAINT PROCESS
12 BASIC REQUIREMENTS, CONT.

- 5. Timeframes that provide a reasonably prompt completion of the Title IX formal complaint process, including time frames for appeals and any informal resolution process, and that allow for temporary delays or the limited extension of time frames with good cause and written notice as required by law
- 6. Description of the possible disciplinary sanctions that may be implemented following a determination of sexual harassment
- 7. A statement of the standard of evidence to be used to determine responsibility for all Title IX formal complaints of sexual harassment

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FORMAL COMPLAINT PROCESS
12 BASIC REQUIREMENTS, CONT.

- 8. Procedures and permissible bases for the Complainant and Respondent to appeal a determination of responsibility or a dismissal of a Title IX formal complaint or any allegation therein
- 9. A description of the supportive measures available to the Complainant and Respondent
- 10. Prohibition on using or seeking information under a legally recognized privilege unless the individual holding the privilege has waived the privilege
- 11. Additional formal complaint procedures required by law including written notice of a formal complaint, consolidation of formal complaints, recordkeeping, and investigation procedures
- 12. Other local procedures as determined by the Superintendent

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COMPLAINT FORM

- Require inclusion of the following elements in the written report
 - Detailed description of allegations
 - Statement that victim believes he/she has experienced sexual harassment
 - Statement that victim wishes to institute formal Title IX grievance process
 - Signature/date of:
 - ✓ Victim/parent
 - ✓ Title IX Coordinator (evidencing date of receipt of grievance)
- * See TASB Sample Formal Complaint Form

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TITLE IX COORDINATOR
WHAT TO DO WHEN A FORMAL COMPLAINT IS MADE

- Must provide written notice to Complainant and Respondent:
 - Explain grievance / complaint process
 - Allegations of sexual harassment including sufficient details known at the time (identity of parties, alleged conduct, date(s), location(s) of the alleged incident(s))
 - Statement that Respondent is presumed NOT responsible for the alleged conduct until a determination is made at the conclusion of the grievance/complaint process
 - Inform parties that they may have an advisor of their choice who may be but is not required to be an attorney

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TITLE IX COORDINATOR
WHAT TO DO WHEN A FORMAL COMPLAINT IS MADE

- Written notice to Complainant and Respondent, cont.
 - Right of each party to inspect and review evidence
 - The standard of evidence that will be used (preponderance of the evidence)
 - Inform of policy/student code of conduct that prohibits knowingly making false statements/submitting false information during an investigation
 - Notification of the formal complaint process including procedures for informal resolution and appeal of final decision
 - May attach a copy of FFH

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FORMAL COMPLAINT PROCESS
EVIDENTIARY STANDARD

- Board Policy FFH (LOCAL)
 - Standard: **Preponderance of the Evidence** or Clear and Convincing?

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INVESTIGATORS

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INVESTIGATORS

- As the title suggests, Investigator's job is to investigate the allegations
- However, Investigator is not the Decision-Maker!
- The Investigator has the burden to gather evidence sufficient to prove or disprove the allegation(s) within the Complaint
- Must be free from bias or conflict of interest; must remain impartial
 - Bias
 - Conflict of interest
 - Impartiality

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INVESTIGATOR
FIRST STEPS

- Confirm Notice to Parties was issued by Title IX Coordinator
 - Written notice of the school's grievance process (NOT FNG!)
 - Whether or not there is an opportunity for informal resolution
 - Actual allegations and facts that would constitute sexual harassment
 - Presumption of innocence
 - Statement that the parties are entitled to advisor of their choice
 - Statement that the parties can request to inspect and review certain evidence
 - Information regarding the code of conduct and false statements

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INVESTIGATORS
 PLANNING THE INVESTIGATION

- Review the evidence that has been provided
- Attack like a research project; identify all factual allegations
- Review allegations **within the context of the definition of sexual harassment**
 - Quid pro quo
 - Hostile environment
- What do you need to know?

Employee to student? Conditional benefit?	What was harassing behavior? Was it severe? How many times? Did it impact Complainant's education? How? Grades slip? Attendance drop?
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INVESTIGATORS
 PLANNING THE INVESTIGATION

- Create a list of needed evidence (update along the way)
- Create a list of anticipated witnesses (update along the way)
- Create an outline of questions for each witness (but listen and adjust as necessary)
- ***Notes may be discoverable**
- Allow sufficient time for each witness; i.e. make sure witnesses have space to share information you may not have asked about specifically

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INVESTIGATOR
 MEETING WITH THE PARTIES

- Meet with both parties promptly to conduct initial interviews, gather information, collect evidence
 - Meet individually (not both parties together)
- Give notice of meeting and opportunity to bring advisor
 - Written notice of date, time, location, participants, and purpose of any investigative interview or other meetings with sufficient time to prepare (not just pulling a student out of class)

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INVESTIGATOR

MEETING WITH THE PARTIES, CONT.

- Each party may submit evidence, testimony, witnesses, or other information
- Cannot restrict the ability of either party to discuss allegations or to gather and present relevant evidence
- Require a party's written consent before using the party's medical, psychological, or similar treatment records
- May present fact and expert witnesses (in writing)
- Deadlines you set apply equally to both parties

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INVESTIGATORS

FERPA INFORMATION

- Share with parties that FERPA protected information may be disclosed [to other party, Title IX team members] as part of the Title IX process
- Share with the parties that FERPA protected information cannot be disclosed outside of the process
- Advise parents that Investigation Reports are not redacted for FERPA

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INVESTIGATORS

CONDUCTING INTERVIEWS

- Best practices in questioning the Complainant, Respondent, and Witnesses:
 - Explain the groundwork for conducting the interview and hold all interviewees to the same standards of conduct and decorum
 - Maintain control of the interview, both in the substance of the questions and answers and in the conduct of those in the room (interviewees and their advisors)
- Remember 3 step process for obtaining a good statement
 - Listen without interruption
 - Listen and interrupt with questions
 - Tell story back with invitation to correct

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INVESTIGATORS
CONDUCTING INTERVIEWS, CONT.

- Begin with general, more open-ended questions and work your way to more specific questions
 - Generalized questions can go to the elements of the alleged offense (e.g. number of times it happened)
 - Specific questions should be built off documentary evidence evaluated before the interview, information obtained from prior interviews, and other known facts
- Keep in-mind that interviews are meant to determine disputed issues of fact, and questions should be directed at solving the disputed fact questions

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INVESTIGATORS
NOTES ON EVIDENCE

- **Is it relevant?**
 - OCR's Title IX Guidance provides, "The final regulations do not define relevance, and the ordinary meaning of the word should be understood and applied."
 - Federal Rule of Civil Procedure 401 provides a commonly understood definition of relevance:
 - Evidence is relevant if:
 - (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
 - (b) the fact is of consequence in determining the action
 - Does it help to answer the allegations?
 - Is it about the individuals involved?

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INVESTIGATORS
NOTES ON EVIDENCE

- **Is it allowable?**
 - NO: sexual behavior or predisposition
 - EXCEPT to determine someone other than Respondent committed the behavior
 - EXCEPT specific incidents related to Complainant and Respondent offered to prove consent
 - NO: information protected by legal privilege
 - NO: party's treatment records (absent voluntary consent)


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INVESTIGATORS
NOTES ON EVIDENCE

- What is “inculpatory” and “exculpatory” evidence?
 - Inculpatory evidence shows or tends to show Respondent’s responsibility; e.g. video
 - Exculpatory evidence shows or tends to show the Respondent is not responsible; e.g. alibi

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INVESTIGATORS
HEARING / DRAFT FINDINGS



- A hearing is not required for K-12 institutions.
 - See FFH (LOCAL)
- **INSTEAD**, after gathering all evidence, the Investigator must provide each party written communication identifying evidence directly related to the allegations and obtained as part of the investigation so they can respond; e.g. think Factual Findings, PRELIMINARY stamp
 - Include evidence that the Decision-maker may not rely upon
 - Include inculpatory and exculpatory evidence
- **Must give both parties a meaningful opportunity to respond to evidence**
 - 10 days

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INVESTIGATORS
INVESTIGATIVE REPORT

- Investigative Report
 - After gathering evidence and giving an opportunity to review and respond, prepare an **Investigative Report** that fairly summarizes all relevant evidence
 - **But do not reach a conclusion! The Investigator is NOT the Decision-Maker!**

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INVESTIGATORS
INVESTIGATIVE REPORT

- Include:
 - Identification of the allegations
 - Any procedural steps taken (including any notifications to the parties)
 - Responses to each party to the allegations in the formal complaint
 - Evidence obtained by the Investigator/Relevant evidence considered
 - Parties' responses to the evidence after review
 - Findings of Fact
 - Identification of District policies, Student Code of Conduct provisions implicated

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INVESTIGATORS
INVESTIGATIVE REPORT, CONT.

- The purpose of the Investigative Report is to put the Decision-Maker in the best position to make a thorough, well-reasoned, and supported decision
- Organization and clarity are key in the Investigative Report
 - The most natural way for a neutral third-party to understand a story is to present it to them chronologically and fully
 - Show your work! Cite to the sources of information gathered in your investigation
 - Include the evidence you have received and considered
 - Proofread to ensure that the Investigative Report meets the District's standards of professionalism and propriety

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INVESTIGATORS
INVESTIGATIVE REPORT, CONT.

- Simultaneously provide the Investigation Report to both parties
- Send a copy of the Investigation Report to the Title IX Coordinator
- Title IX Coordinator immediately assigns a Decision-Maker

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DECISION-MAKERS

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DECISION-MAKER

- Responsibilities
 - Must be free from conflicts of interest or bias for or against Complainants or Respondents
 - Must be impartial
 - Needs to use independent judgment (should not be subordinate to Investigator)
 - Weigh the relevant evidence, and decide whether it meets the school's standard of evidence for sexual harassment allegations
 - Issue decision in reasonably prompt manner

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DECISION-MAKER
NITTY GRITTY

- Role is to make a determination whether the conduct occurred as alleged
- Can NOT be the person who received the formal complaint or investigated it, including the Title IX Coordinator
- May not issue written determination of responsibility until investigative report has been circulated to parties for 10 days (Investigator circulates...wait 10 days before issuing decision)

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DECISION-MAKER

- Must give each party the opportunity to present written questions **they want asked of the other party or any witness**
- If determined to be relevant, respectful, and not-abusive, must present to other party for response
 - If a question is excluded, must explain to the party proposing the question why it is not relevant
 - Give deadline to parties and witnesses to respond to questions
 - Cannot force an answer
 - Can allow reasonable follow up questions if you determine appropriate

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DECISION-MAKER

- Review evidence
- Assess credibility of evidence/witnesses
 - Be objective in the evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person's status as a Complainant, Respondent, or Witness
- Is there a policy violation?
- Remember standard is **preponderance of the evidence** (more likely than not)
- Cite reasons for conclusion
- Consider punishment/sanctioning

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DECISION-MAKER

- Written Decision must include:
 - Identification of the allegations potentially constituting sexual harassment
 - Description of the procedural steps that were taken by the school on the way to getting to that point (notifications to parties, methods used to gather other evidence, etc.)
 - Findings of fact supporting the determination
 - Conclusions regarding the application of the Code of Conduct (or other policy) to the facts

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- Written Decision must include, cont.
 - Statement of and rationale for the ultimate determination/result of responsibility for each allegation and any disciplinary sanctions imposed on the Respondent
 - Statement of and rationale for any remedies for the Complainant, addressing how those remedies will restore or preserve equal access
 - Statement of the District's procedures and basis for appeal for either party
 - Can set deadlines for appeal (put in decision)
- ****Must be sent to the parties simultaneously**

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APPEAL OFFICER

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APPEAL OFFICER

- Either party may appeal
- Filed with the Title IX Coordinator
- Grounds for appeal
 - Procedural irregularity affected outcome of the matter
 - New evidence has been discovered that was not reasonably available at the time of the determination on responsibility or dismissal
 - Conflict of interest of Title IX Coordinator, Investigator, or Decision-Maker, and the conflict of interest affected the outcome
 - Schools can offer additional grounds for appeal, so long as the grounds apply on an equal basis to the parties

APPEAL DECISION-MAKER

- Can NOT be the Decision-Maker, Investigator, or Title IX Coordinator
- Notify parties in writing and implement appeal procedures equally
- Both parties have equal opportunity to submit written statement supporting or challenging the outcome
- After considering parties' written statements, issue written decision and send it to the parties simultaneously
- Determination about whether the Respondent is responsible for the sexual harassment becomes final after appeal decision

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INFORMAL RESOLUTION FACILITATORS

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INFORMAL RESOLUTION PROCESS

- Informal resolution may be of interest to some Complainants
- Both parties have to agree
- Must file Formal Complaint first
- Can engage in informal process anytime before Decision-Maker makes final determination
- Can never do informal resolution when the allegation is sexual harassment of a student by an employee

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FACILITATOR

- Impartial
- Free from bias
- Free from conflict-of-interest

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FACILITATOR

- Who should informal facilitators be?
- Trained in mediation?
- Trained in conflict resolution?
- Trained in restorative practices?
- Counselors would be good for this role

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FACILITATOR

- Do you meet together in the same room or separate rooms?
- Give space to tell story
- Give space to share what they want to get out of process
- Be prepared to share lists of supportive measures
- Remain neutral; do not push
- Require confidentiality

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FACILITATOR

- If an agreement is reached
 - Put in writing
 - Be specific with the terms so there is not room for misinterpretation
 - Require confidentiality
 - Insert consequences for breach of terms or breach of confidentiality
 - Student Code of Conduct
- Include check-in provisions to monitor compliance

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RECORD KEEPING

- Training required for Title IX Coordinator, investigators, and decision makers (both decision and appeal)
- District must maintain records of each response to report or complaint for 7 years and post all training materials on District website
 - Investigation records;
 - Disciplinary sanctions;
 - Remedies;
 - Appeals; and
 - Records of any action taken, including supportive measures.
- Must document for every instance:
 - Why response was not deliberately indifferent;
 - That measures were taken to restore or preserve equal access to the educational program or activity; and
 - If no supportive measures were provided, why that was not deliberately indifferent

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LIABILITY

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SAMPLE TITLE IX COMPLAINT PROCEDURES, PAGE I

District Response to Allegations of Sexual Harassment

The District's Title IX Coordinator will respond promptly and equitably to any verbal or written report or disclosure of alleged sexual harassment received from any source, including personal observation, that provides a District employee notice of the alleged conduct. The Coordinator will address anonymous reports if there is an identifiable party.

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STANDARD OF LIABILITY

- A recipient (the District):
 - With actual knowledge of sexual harassment
 - In an education program or activity of the recipient
 - Against a person in the United States
 - Must respond promptly in a manner that is not deliberately indifferent
- 34 C.F.R. § 106.44(a)

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ACTUAL KNOWLEDGE

- Notice of sexual harassment or allegations of sexual harassment to:
 - Title IX Coordinator
 - An official with authority to institute corrective measures
 - **ANY EMPLOYEE** of an elementary or secondary school
 - This could be a custodian, teacher, bus driver, etc.


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CONCLUSION? EVERYONE HAS A DUTY

- Think of Title IX reporting duty like CPS!
- Elementary:
 - Even though the kiddos are young, if based on sex, it's discrimination and not mere bullying

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DELIBERATE INDIFFERENCE

- **OLD DEFINITION** (OCR Guidance):
 - The school must take immediate action to eliminate the sexual harassment or sexual violence, prevent its recurrence, and address its effects
-  **NEW DEFINITION** (Final Rule):
 - Failure to respond reasonably in light of known circumstances

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2 PART RESPONSE

- Response after actual knowledge (i.e. initial report to Title IX Coordinator)
 - Even if no formal, written complaint, MUST document response
- Response after "Formal Complaint" (generally investigative findings report)

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RETALIATION ... (REMINDER)

- District or any person may not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX because the individual has:
 - Made a report or complaint
 - Testified
 - Assisted
 - Participated in or refused to participate in any manner in an investigation, proceeding, or hearing

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KEY TAKEAWAYS

- Investigations will require more people
 - Title IX Coordinator, Investigator, Decision-Maker (used to all be the same person), Appeal Decision-Maker, Appeal Officer
- **Rapid Supportive Measures remain key**
- “Actual Knowledge” is attributed to ALL EMPLOYEES. If a bus driver, custodian, aide, teacher, etc. knows, the Superintendent knows in the eyes of the DOE (this requires constant training)
- Title IX dismissal does not negate application of the SCOC
- Use templates created by TASB and/or legal counsel

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ADDITIONAL TITLE IX RESOURCES

- OCR's Title IX Blog will provide updates on an ongoing basis
 - <https://www2.ed.gov/about/offices/list/ocr/blog/index.html>
- Summary of Major Provisions of the Department of Education's Title IX Final Rule
 - <https://www2.ed.gov/about/offices/list/ocr/docs/titleix-summary.pdf>

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**THANK
YOU!**

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