



OLTON INDEPENDENT SCHOOL DISTRICT

OFFICE OF THE SUPERINTENDENT

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TITLE IX INFORMATION AND CONTACTS FOR OLTON ISD

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**** Coordinators have been trained in current Title IX requirements by its attorney firm. Handout materials are included below.***

**Ten Things to Know About
the New Title IX Regs**

Jim Walsh and Haley Turner

 **WALSH GALLEGOS**
TREVINO RUSSO & KYLE P.C.

1. Some Background is Helpful

- ❑ Title IX of the Education Amendments of 1972
 - ❑ Title IX is all of 37 words.
 - ❑ It prohibits discrimination based on sex in educational institutions that receive federal financial assistance.
- ❑ Harassment based on sex is a form of discrimination based on sex. This has been established in the law for a long time.
- ❑ Specific guidance on compliance has been limited, until now.
 - ❑ No officially adopted regulations addressing sexual harassment or school response
 - ❑ Primary guidance from court interpretations and "Dear Colleague" letters issued by the Department of Education (DOE).

But now....

- ❑ Regulations have been proposed for adoption, published in the Federal Register, commented upon (almost 125,000 comments!). Those comments have been reviewed by the DOE, and the final regs have now been promulgated.
- ❑ **Effective date: August 14, 2020**, unless stopped by court order.
- ❑ There is one suit already pending, filed by the ACLU.

**2. Definitions and Terminology:
34 CFR 106.30(a).**

- Six Kinds of Sexual Harassment
- Complainant
- Respondent
- Formal Complaint vs. "Report"
- Actual knowledge
- Substantial control
- Supportive Measures

Definition: Sexual Harassment

- Six Types of Sexual Harassment
 - Quid pro quo
 - Hostile environment
 - Sexual assault
 - Dating violence
 - Domestic violence
 - Stalking

Definitions: Sexual Harassment: Quid Pro Quo

- Quid pro quo*: When an employee conditions favorable treatment on the acceptance of unwelcome sexual attention.
- This definition applies only to actions of employees.
 - Teacher offers good grades to student....
 - Principal offers promotion to teacher...

Definitions: Sexual Harassment: Hostile Environment

- ❑ Conduct that is so SEVERE, PERVASIVE **AND** OBJECTIVELY OFFENSIVE that it effectively DENIES a person EQUAL ACCESS to the program.
- ❑ What has changed from prior guidance?
 - ❑ OR → AND
 - ❑ LIMITS → DENIES
 - ❑ These changes are consistent with judicial interpretations but a departure from prior OCR guidance.
- ❑ This could be student-to-student conduct, employee-to-student conduct, or employee-to-employee conduct.
- ❑ Note: A lot of things happen in schools that are inappropriate and sexually oriented, but fall short of this definition. More on that later.

Definitions: Sexual Harassment: Four More

- ❑ Sexual assault: Forcible or non-forcible sexual offenses under the Uniform Crime Reporting System of the FBI.
- ❑ Dating violence: Violence done by a person who is, or has been, in a dating relationship with the other person.
- ❑ Domestic violence: Violence by a current or former intimate partner.
- ❑ Stalking: A course of conduct directed at a specific person that would cause a reasonable person to fear for personal safety of self or others; or to suffer emotional distress.

Terminology: Complainant

- ❑ This term always refers to the victim of sexual harassment, even if someone else is the one who made the complaint.
- ❑ Parent complains that Child is being harassed. Parent has made the complaint, but Child is the "complainant."
- ❑ Teacher reports that Student is being harassed. Teacher makes the Report, but Student is the "complainant."

Terminology: Respondent

- This term refers to the person accused of sexual harassment.
- Note: these terms (Complainant, Respondent) apply even when there is a Report, but no Formal Complaint.
- Example: Mom complains that Billy is being harassed by a coach based on his sex. The Title IX Coordinator (T9C) meets with mom and explains the Formal Complaint process. Mom does not want that. T9C also decides not to initiate Formal Complaint process.
- So there is no Formal Complaint, but there is a Report, and Billy is still the Complainant, and Coach is the Respondent.

Terminology: Supportive Measures

- Non-disciplinary, non-punitive measures to support the Complainant or Respondent after a Report of harassment is made. These measures must:
 - Be offered at no charge,
 - Be designed to maintain equal access to educational services, and
 - Not unreasonably burden either party.
- The Respondent might be “burdened” but not “unreasonably burdened.”
- More on this below.

3. The Role of the Title IX Coordinator: 34 CFR 106.8.

- Every district must have at least one, and that person must be designated as and identified as the Title IX Coordinator (T9C).
- T9C must have authority as well as responsibility—authority to “coordinate its efforts to comply with its responsibilities.”
- T9C meets promptly with Complainant upon receipt of a Report. More on that later.
- Contact information for the T9C should be prominent on the website and in catalogs and handbooks. These should also contain district policies and grievance procedures for sexual harassment complaints.

**4. What does “actual knowledge” mean?
34 106.30(a).**

- This term is important because the school’s duty to respond arises only when it has “actual knowledge” of sexual harassment, or of allegations of conduct that, if true, would be sexual harassment.
- Under the regs, the school has “actual knowledge” when any employee of the school—*other than the actual perpetrator of the harassment*—has actual knowledge.
- What has changed?
 - Previously, actual knowledge was imputed to the school only when it was known by someone who had the authority to address it.
 - Now, it is **any** employee.

Why the Change?

- The standard for “actual knowledge” at the post-secondary level remains as it was—someone with authority to take corrective action.
- DOE notes that with young children in K-12 schools, an adult is an adult.
 - K-12 students may not understand the distinctions between a para and a teacher, for example.
 - Regulation expanded to put the school on notice if **any** employee has actual knowledge.
- Let’s consider some scenarios....
- SEE NEXT SLIDE!!

Scenarios – Is there “actual knowledge”?

- My fellow teacher and drinking buddy confides in me that he’s been “fooling around” with a student. Makes sure she gets an A and a college recommendation.
- Custodian witnesses an act of sexual harassment in the bathroom.
- Student confides in a teacher’s aide about what happened on the school field trip.
- All three of these are examples of situations that, in the past, did not put the school on notice of “actual knowledge.” Now they do.

5. What does "substantial control" mean?

- The school is not responsible for responding to allegations of sexual harassment unless the school had "substantial control" over the harasser and the "context."
- Consider how this will be applied to:
 - extracurricular activities;
 - field trips;
 - out of town, overnight trips;
 - cyberbullying off campus.
- Scenario: Student engages in cyberbullying off campus and on the weekend.
 - Does the school have "substantial control"?
 - What about state law which gives schools the authority to discipline students for certain off campus cyberbullying?

6. The Duty to Respond: 34 CFR 106.44.

- If the district has "actual knowledge" of "sexual harassment" as those terms are defined here, it "must respond promptly in a manner that is not deliberately indifferent."
- The "response must treat complainants and respondents equitably by offering supportive measures...to a complainant, and by following a grievance process that complies with 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures...against a respondent."

Implications of That.....

- The Respondent (student or employee) cannot be punished for "sexual harassment" unless the school first goes through the lengthy and complicated "grievance process."
- What if the reported conduct doesn't meet the definition of "sexual harassment"?
 - Most Reports of sexual harassment in K-12 schools will not meet the definition of "sexual harassment" under these regulations.
 - Under those circumstances, the district is required to respond promptly and equitably, and to offer "supportive measures" but is not required to provide a "grievance process."

When is the "Grievance Process" Required?

- If a Formal Complaint is filed, the school must use the formal grievance process.
- If the school intends to impose disciplinary sanctions for "sexual harassment" as defined in these regulations, the formal grievance process must be completed before sanctions are imposed.
- What is the difference between a "formal complaint" and "formal grievance"?

7. How does the Formal Complaint process work?

- It's important to distinguish between a Report vs. a Formal Complaint.
- A Report does not have to take any specific form - a person (complainant or other) reports sexual harassment to an employee verbally or in writing.
- The district must respond to a Report promptly and equitably.
 - The T9C must promptly meet with the Complainant.
 - Among other things, the T9C must explain the Formal Complaint Process and consider the wishes of the Complainant about pursuing it or not.
 - The T9C must offer "supportive measures."
- After a Report is made, a Formal Complaint process may be initiated on that Report:
 - Only Complainant and the T9C can initiate.
 - T9C may initiate the process even when the Complainant chooses not to

Benchmarks of the Formal Complaint Process: 34 CFR 106.45.

1. Equal treatment of the parties.
2. Objective evaluation of evidence, including no credibility determinations based on the person's status as Complainant, Respondent or witness.
3. Bias-free training for T9C and others involved in the process. No conflicts of interest.
4. Presumption of innocence for the Respondent until the process is complete. The burden of proof and the duty to gather sufficient evidence is on the school—not on either party.
5. Reasonable time frames.

More Benchmarks

6. Description of possible outcomes, such as disciplinary sanctions and remedies.
7. Standard of proof, either "preponderance of the evidence" or "clear and convincing." District chooses, but must always use the same standard.
8. Appeal available for either party.
9. Description of Supportive Measures.
10. Protection of privileged information.
11. Protection of Constitutional rights of free speech, due process.

What if There is no Formal Complaint?

- If neither the Complainant nor the T9C makes a Formal Complaint, you still have a Report. The district still has a duty to seek a "prompt and equitable resolution."
- Supportive Measures must be offered.
- Let's look at the definition in more detail; SEE NEXT SLIDE!!

Supportive Measures

- Non-disciplinary, non-punitive individualized services offered to Complainant or Respondent with no charge.
- Designed to "restore or preserve equal access to...the education program or activity without unreasonably burdening the other party."
- Examples:
 - counseling,
 - extension of deadlines,
 - modification of schedule,
 - campus escort services,
 - mutual restrictions on contact,
 - leave of absence,
 - increased security/monitoring. 34 CFR 106.30.

8. How does all this mesh with our Code of Conduct?

- ❑ The regulations restrict the use of "emergency removal" of a person from the educational program unless:
 - ❑ 1) there is an individualized safety/risk analysis;
 - ❑ 2) there is an immediate threat to the physical health or safety of the person to be removed or others; **and**
 - ❑ 3) the person removed is given notice and an opportunity to challenge the decision immediately after the removal.
- ❑ "Emergency removal" could include out of school suspension.
- ❑ But remember: This restriction applies only when the removal is based on allegations that meet the definition of "sexual harassment."

Consider this....

- ❑ Dad alleges that his daughter was called a slut, and tapped on the backside by a boy during school hours, at the school. ***This is a Report***
- ❑ T9C offers supportive measures and informs Dad of the Formal Complaint process.
- ❑ Dad files Formal Complaint.
- ❑ "The recipient must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in 106.30 even if proved... then the recipient must dismiss the formal complaint for purposes of sexual harassment under Title IX or this part; such a dismissal does not preclude action under another provision of the recipient's code of conduct." 34 CFR 106.45(b)(3)(i).

Perspective....

- ❑ Most of what is reported as misconduct in school, even if sexual in nature, falls short of the Title IX definition of "sexual harassment."
- ❑ Students may violate the Code of Conduct in ways that justify short term suspension, but not go so far as to be "severe, pervasive and objectively offensive."
 - ❑ Short term removals based on such conduct should be documented as being based on your Code of Conduct.
- ❑ Behavior that meets the Title IX definition of "sexual harassment" would normally call for a more serious penalty—DAEP for example.

9. Training.

- Training will be needed at all levels.
 - All employees** must understand when to report something, and to whom it should be reported.
 - Administrators need training on investigations.
 - Title IX Coordinators need extensive training on their obligations. Possible resource: www.tixa.org. Association of Title IX Administrators.
- We are offering three more On Demand Webinars on Title IX this month.
- When we get back to school, more extensive training is going to be needed.

Three More!

- June 11: So You Got a Complaint Under Title IX: Now What?
Craig Wood and Katie Payne
- June 15: Title IX and Special Education
Paula Maddox Roalson and Hank Bostwick
- June 16: Title IX Coordinator Training
Robb Decker and Melanie Charleston

Go to www.walshgallegos.com.

10. Record Keeping.

- SEVEN YEAR RETENTION PERIOD for records of:
 - 1) each sexual harassment investigation;
 - 2) any appeal; 3) any informal resolution; and
 - 3) training materials.
- District must retain training materials:
 - Retain any materials used with T9C, investigators, decision makers, and any other person who facilitates an informal resolution process.
 - These materials must be publicly available on the district's website.

Records of Investigations?

"For each response required under 106.44, a recipient must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the recipient must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity. If a recipient does not provide a complainant with supportive measure, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances."
34 CFR 106.45(b)(10)(D)(i).

Let's Remember!

- These regs do not change the standard of liability for schools under Title IX.
- Liability of the district occurs only if:
 - 1) sexual harassment happened;
 - 2) the district knew about it; and
 - 3) the district responded with "deliberate indifference."
- Remember that it's not "sexual harassment" under Title IX unless the district had "substantial control" over the harasser, and the context.
- Most of the lawsuits against districts cannot overcome the "deliberate indifference" hurdle. But this is not a phrase that educators should be using. Set your sights higher than that!

Set the Right Tone....

- We only have liability under the law when things are really bad.
- But the way we keep things from getting really bad is to address the minor incidents that occur along the way.
- Make sure that teachers, coaches, bus drivers, and other employees who have regular interaction with students are setting the right tone, being good role models, and being attentive.

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The information in this presentation was prepared by Walsh Gallegos Treviño Russo & Kyle P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.

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Title IX Coordinator Training

Robb Decker and Melanie Charleston



WALSH GALLEGOS
TREVIÑO RUSSO & KYLE P.C.

Overview

- ❑ The Title IX Coordinator ("T9C") coordinates the district's efforts to comply with Title IX of the Education Amendments of 1972.
- ❑ The new regulations set to take effect on August 14, 2020 significantly expand and change the role and responsibilities of the Title IX Coordinator ("T9C") with regard to dissemination of information, training, setting standards, and conducting investigations.
- ❑ In this session, we will outline the key provisions of the new regulations and emphasize the practical implications for Title IX Coordinators ("T9Cs") at the district or campus level.



Role of Title IX Coordinator (T9C) Overview

- ❑ Every district must have at least one, and that person must be designated as and identified as the "Title IX Coordinator," (T9C).
 - ❑ Must have authority to coordinate the school district's compliance efforts.
 - ❑ May investigate complaints, but may not be the "decision maker."
 - ❑ Must be referred to as the "Title IX Coordinator" in district policies and publications, including website.
 - ❑ A district must notify **all potential reporters** of sexual misconduct of the T9C's contact information: name/title, office and email addresses, and telephone number.

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The District Must Train *All* Employees



- ❑ All employees are potential reporters and **must** report. We must train ALL employees of this responsibility. If you do not use an outside trainer, then the T9C is likely going to be tasked with this training.

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Key Roles Outlined in Regulations

- Title IX Coordinator
- Investigator
- Decision Maker
- Facilitator
- Appeals Decision Maker

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Practical Question: Who Should be the T9C?

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Definitions and Terminology: 34 CFR 106.30(a)

- ❑ Sexual Harassment = 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 (i.e. quid pro quo, hostile environment, sexual assault, dating violence, domestic violence, stalking)

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Definition: Sexual Harassment 34 CFR 106.30(a)

- ❑ Six Types of Sexual Harassment
 - ❑ Quid pro quo
 - ❑ Hostile environment
 - ❑ Sexual assault
 - ❑ Dating violence
 - ❑ Domestic violence
 - ❑ Stalking

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Definitions: Sexual Harassment: Quid Pro Quo

- ❑ *Quid pro quo*: When an employee conditions favorable treatment on the acceptance of unwelcome sexual attention.
- ❑ This definition applies only to actions of employees.
 - ❑ Teacher offers good grades to student.....
 - ❑ Principal offers promotion to teacher....



Definitions: Sexual Harassment: Hostile Environment

- ❑ Conduct that it is so SEVERE, PERVASIVE **AND** OBJECTIVELY OFFENSIVE that it effectively DENIES a person EQUAL ACCESS to the program.
- ❑ What has changed from prior guidance?
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 - ❑ LIMITS → DENIES
 - ❑ These changes are consistent with judicial interpretations but a departure from prior OCR guidance.
- ❑ This could be student-to-student conduct, employee-to-student conduct, or employee-to-employee conduct.
- ❑ **Note:** A lot of things happen in schools that are inappropriate and sexually oriented, but fall short of this definition.



Definitions: Sexual Harassment: Four More

- ❑ **Sexual assault:** Forcible or non-forcible sexual offenses under the Uniform Crime Reporting System of the FBI.
- ❑ **Dating violence:** Violence done by a person who is, or has been, in a dating relationship with the other person.
- ❑ **Domestic violence:** Violence by a current or former intimate partner.
- ❑ **Stalking:** A course of conduct directed at a specific person that would cause a reasonable person to fear for personal safety of self or others; or to suffer emotional distress.



Definitions and Terminology: 34 CFR 106.30(a)

- ❑ **Complainant** = victim of sexual harassment
- ❑ **Respondent** = person accused of sexual harassment
- ❑ **Formal Complaint vs. "Report"** = report is verbal or in writing by *anyone* while a formal complaint may be initiated by complainant or T9C
- ❑ ***Actual Knowledge** = when *any* employee finds out
- ❑ **Substantial Control** = over both the alleged harasser and the context in which the harassment occurred
- ❑ **Education program or activity** = any academic, extracurricular, vocational or other education program operated by a district



Definitions and Terminology: 34 CFR 106.30(a)

- ❑ **Supportive Measures** = Non-disciplinary, non-punitive individualized services offered to Complainant or Respondent at no charge designed to “restore or preserve equal access to...the education program or activity without unreasonably burdening the other party” whether or not a formal complaint is filed.
- ❑ Examples:
 - ❑ Counseling.
 - ❑ Mutual restrictions on contact.
 - ❑ Modification of schedule.
 - ❑ Campus escort services.



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Reporting and Responding

- ❑ Any person may report. Not just the alleged victim.
- ❑ A report can be verbal or written.
- ❑ Reports can be made by mail, by telephone, or by email at any time (business or non-business hours) to the T9C.
- ❑ The T9C may also receive a report from an employee of an elementary or secondary school who receives notice of sexual harassment or alleged sexual harassment: what we would consider **actual knowledge**.
- ❑ If the district has “actual knowledge” of “sexual harassment” it “must respond promptly in a manner that is not deliberately indifferent.



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Timeliness and Eligibility

- ❑ Although reports of sexual harassment should be made in a timely manner, unlike other district grievances, a sexual harassment complaint can be made as long as the complainant and respondent are either or both still enrolled in the district or are the beneficiaries of the district's programs.
- ❑ Include years in all documentation to avoid confusion.



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Responding to a “Report”

- ❑ T9C must promptly contact a complainant to discuss:
 1. The Report
 2. Supportive Measures
 3. Process to file Formal Complaint
 4. Make an initial determination if all things are taken as true, does the allegation rise to Title IX Sexual Harassment.



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When Should T9C Consider Emergency Removal?

- ❑ An institution may remove a respondent from educational programs on an emergency basis, provided that the institution:
 - ❑ Undertakes an individualized safety and risk analysis
 - ❑ Determines 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
 - ❑ Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.
- ❑ May have implications in Special Education proceedings; consult your SPED attorney.



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Consider this....

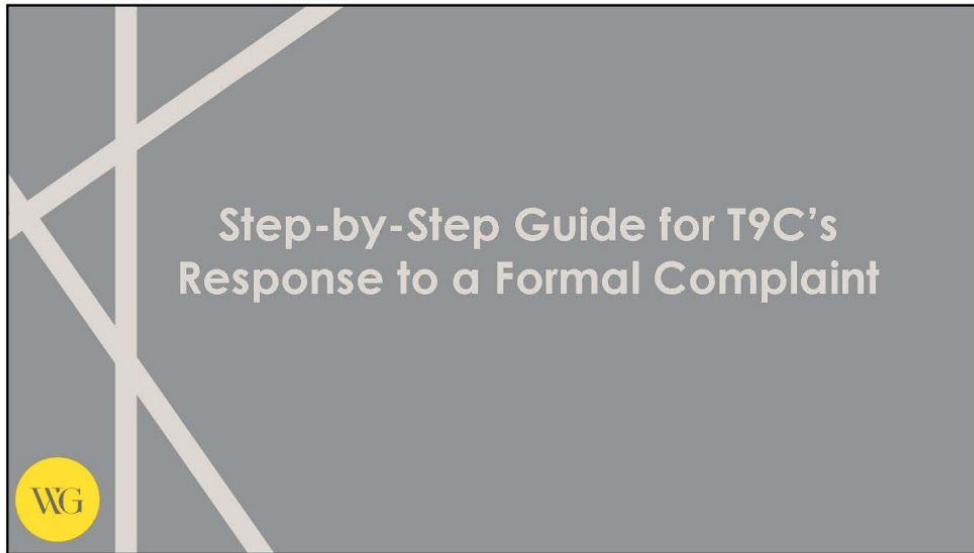
- ❑ Dad calls A/P alleging his daughter was called a slut, and tapped on the backside by a boy during school hours, at the school. *This is a Report of conduct that is sexual in nature.*
- ❑ T9C offers supportive measures and informs Dad of the Formal Complaint process. (Could be campus level)
- ❑ Dad just wants the behavior stopped and does not file a Formal Complaint.
- ❑ Boy admits conduct, but conduct falls short of the Title IX definition of "sexual harassment."
- ❑ Stop Title IX actions and issue "no-finding" report. Discipline in accordance with Student Code of Conduct but do not call it sexual harassment.

But What if....

- ❑ Dad calls A/P alleging his daughter was called a slut, and tapped on the backside by a boy during school hours, at the school. *This is a Report of conduct that is sexual in nature.*
- ❑ T9C meets with and offers supportive measures and informs Dad of the Formal Complaint process.
- ❑ Dad decides to file a Formal Complaint.
- ❑ "The recipient must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in 106.30 even if proved.... then the recipient must dismiss the formal complaint for purposes of sexual harassment under Title IX or this part; such a dismissal does not preclude action under another provision of the recipient's code of conduct." 34 CFR 106.45(b)(3)(i).

But What if the Conduct Went Further....

- ❑ Dad calls A/P alleging his daughter was called a slut, and tapped on the backside by a boy during school hours, at the school. *This is a Report of conduct that is sexual in nature.*
- ❑ T9C meets with and offers supportive measures and informs Dad of the Formal Complaint process. During this meeting it is alleged that the boy is also leaving sexually explicit notes in the student's notebook, sending sexually suggestive text messages and tweets.
- ❑ Dad is not satisfied that supportive measures are enough and decides to file a Formal Complaint.



Formal Complaint

- ❑ We are distinguishing a “report” from a “formal complaint.”
- ❑ A “formal complaint” is a printed document or electronic submission filed by a complainant that alleges sexual harassment and requests the recipient school investigate the allegation.
- ❑ 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 recipient with which the formal complaint is filed.
- ❑ The T9C may also sign a complaint, which does not make the T9C a party in the grievance process.
- ❑ A third party reporter may not file a formal complaint, but the T9C can and often may need to do so to protect the District.



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Remember to Make an Initial Determination

- ❑ Does the formal complaint meet the definition of “sexual harassment” pursuant to Title IX?
 - ❑ Formal Complaint **must** be dismissed if it does not meet definition. That is:
 - ❑ If reported conduct alleged is not “sexual harassment” even if the allegations are true.
 - ❑ If reported conduct did not occur in the school’s program or activity.
 - ❑ If reported conduct did not occur in the United States.
 - ❑ (Dad’s initial formal complaint must be dismissed.)



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Formal Complaint Considerations


- ❑ **Must** dismiss a Formal Complaint if the conduct alleged does not constitute “sexual harassment.”
 - ❑ Does not preclude action under another provision of the district’s code of conduct.
- ❑ **May** dismiss a Formal Complaint if:
 - ❑ Complainant notifies T9C in writing that the complainant wishes to withdraw the Formal Complaint.
 - ❑ Complainant is no longer enrolled or employed by the district.
 - ❑ Circumstances prevent the district from gathering sufficient evidence to make a determination.



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Scenario 1: A paraprofessional tells a teacher that she was offered a promotion by the principal in return for a backrub during a school-sponsored team building retreat.



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Scenario 2: A senior high school student confides in his good friend, "the lunch lady" as she's affectionately known, that his girlfriend, a fellow student at the same high school, punches him in the groin at football games when he looks at the cheerleaders. They have been to every football game this season and he looks at the cheerleaders at least once a game (by accident). It's hard for him to watch the games after getting punched. Student is adamant he does not want to file a complaint.



Notice Requirements



Responding: Benchmarks for Response to Formal Complaint of Sexual Harassment

1. Equal Access/Treatment
2. Objective Evaluation
3. Bias Free Training
4. Presumption of Innocence
5. Reasonable Time Frames
6. Description of Possible Outcomes
7. Standard of Evidence – Preponderance or Clear and Convincing
8. Appeal
9. Supportive Measures
10. Protection of Privilege



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Provide Written Notice

- Upon receiving a formal complaint, an institution (likely the T9C) must provide written notice to the known parties, including:
 - Description of the process, including availability of informal resolution.
 - Allegations involved including identities of the parties.
 - Statement respondent is presumed not responsible.
 - The parties' right to an advisor of their choice (who may be an attorney).
 - Parties' right to inspect evidence relevant to the allegations.
 - Notice any provision in the code of conduct/handbook that prohibits knowingly making false statements or providing false information.



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Provide Written Notice

- ❑ Must allow sufficient amount of time for respondent to prepare a response before any initial interview.
- ❑ Must be supplemented each time new allegations opened for investigation.



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Investigation of Complaints

- ❑ Investigations of Title IX complaints come with additional requirements. Investigations must:
 - ❑ Place the burden of proof and responsibility to gather evidence on the institution, not on the parties; and
 - ❑ Present an equal opportunity for parties to present witnesses and other evidence.
- ❑ **Note:** The investigation must provide opportunities for the parties to present evidence, but the burden of proof remains on the institution to gather and present evidence.



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Investigation of Complaints

- ❑ Permit parties to discuss allegations under investigation and gather relevant evidence.
- ❑ Provide parties with equal opportunity to have others present during any grievance proceeding.
- ❑ Provide advance written notice of all hearings, interviews, or other meetings to any involved party, with sufficient time for the party to prepare.
- ❑ These provisions do not mean that a party has the right to attend interviews of others.



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Investigation of Complaints

- ❑ Provide equal opportunity to both parties to inspect and review evidence obtained as part of the investigation (including evidence which the institution does not intend to rely on), and send to each party the evidence at least 10 days before completion of the investigative report.
- ❑ After 10 days and after reviewing any new information provided by either party, create an investigative report summarizing relevant evidence and submit a copy of the final report to both parties and to the decision maker.



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Informal Resolution/Facilitator

- ❑ At any time prior to reaching a determination, a school may choose to offer informal resolution options like mediation, as long as both parties give voluntary, informed, written consent to attempt informal resolution.
- ❑ Cannot require a party waive their right to investigation as a condition of enrollment or employment, and also may not require parties to participate in informal resolution.
- ❑ Schools cannot offer informal resolution until a formal complaint is filed and cannot ever offer informal resolution of allegations that an employee sexually harassed a student.
- ❑ Any party may withdraw from the informal resolution process and resume the grievance process at any point before an agreement is reached.



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Hearings

- ❑ Postsecondary institutions are required to hold live hearings as a component of the grievance process, **but for K-12, live hearings are optional.**



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Decision Maker/Determination of Responsibility

- ❑ The school's decision-maker in a Title IX proceeding cannot be the T9C or any investigator of the allegations.
- ❑ Receives investigation Report.
- ❑ The decision-maker must provide each party the opportunity after completions of the investigative report to submit written, relevant questions that the party wants asked of another party or witness.
- ❑ The decision-maker must provide each party with the answers and provided for limited follow-up questions with the exception of questions listed on the next slide.



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“Rape Shield” Provision

- ❑ Questions and evidence about a complainant's sexual predisposition or behavior are categorically not relevant to a Title IX Investigation, unless:
 - ❑ Evidence is offered to prove someone other than the respondent committed the alleged conduct.
 - ❑ Evidence concerns the complainant's prior sexual history with the respondent and is offered to prove consent.



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Determination of Responsibility

- ❑ The decision-maker must use the standard of evidence selected by the district (preponderance of the evidence or clear and convincing).
- ❑ The decision-maker must issue a written determination of responsibility with:
 - ❑ Findings of fact;
 - ❑ Conclusions about whether the misconduct occurred;
 - ❑ Explanations of each conclusion; and
 - ❑ Any disciplinary sanctions or remedies being enacted
- ❑ Written copy of determination must be sent simultaneously with information on filing an appeal.



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Appeals/Appeals Decision Maker

- ❑ A school must offer both parties an opportunity to appeal a determination of responsibility based on:
 - ❑ 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.
- ❑ A school may offer an appeal on additional bases, as long as the appeal is offered equally to both parties.




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Record-Keeping

- ❑ Maintain all documents from the Formal Complaint for seven (7) years:
 - ❑ The Determination;
 - ❑ Any Disciplinary Sanctions issued;
 - ❑ Remedies provided to the Complainant;
 - ❑ Any appeal; and
 - ❑ Any Supportive Measures implemented or if none were provided, the reasons why.



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Important Role of the T9C: Summary

- Duty to respond to report.
- Must determine if allegations meet definition of sexual harassment.
- Formal complaint? Must give written notice to parties.
- Must promptly meet with complainant and discuss "supportive measures."
- Must contemplate emergency removal.
- Investigate or appoint a trained, independent investigator to conduct an investigation into the sexual harassment allegations.
- Must dismiss or provide investigation report to decision maker.
- Implement Remedies.

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Retaliation

- ❑ Retaliation is prohibited against any individual for the purpose of interfering with Title IX rights or because an individual has made a complaint or been involved with a Title IX investigation.
- ❑ Cannot charge an individual with a code of conduct violation not involving sex discrimination or sexual harassment but arising out of the same events as a report of sexual harassment, for the purpose of interfering with Title IX rights.
- ❑ An individual's exercise of a First Amendment right will not constitute retaliation.
- ❑ Charging an individual with a code of conduct violation for making a materially false statement in bad faith during a Title IX grievance proceeding does not constitute retaliation.



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Other State Reporting Requirements

- ❑ This presentation is specific to Title IX, but do not forget about other reporting requirements, including mandatory reporting related educator misconduct under Texas Education Code §21.006 and Texas Administrative Code §249.14 (inappropriate relationships with students).



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Protection of Constitutional Rights

- ❑ No requirement under Title IX can require an institution to restrict any person's rights under the First Amendment, the Due Process Clauses of the Fifth and Fourteenth Amendments, or any other rights protected from federal abridgement.
 - ❑ The U.S. Constitution
 - ❑ Federal laws like FERPA or the Civil Rights Act of 1964



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Questions?



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