



TITLE IX SEXUAL HARASSMENT TRAINING

PART I:
IDENTIFYING
AND ADDRESSING
SEXUAL
HARASSMENT
COMPLAINTS



PURPOSE

- Basic overview of Title IX including its purpose and intent;
 - Review of Final Rules under Title IX enacted in August 2020 up to the Hearing Process to include:
 - Terminology
 - The Implementation Process
 - Evidence gathering
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AGENDA

The Basics

1:00 – 1:15

Terminology

1:15 – 1:45

Implementation
Process

1:45 – 2:15

Grievance &
Evidence
Gathering

2:15 – 3:00

THE BASICS

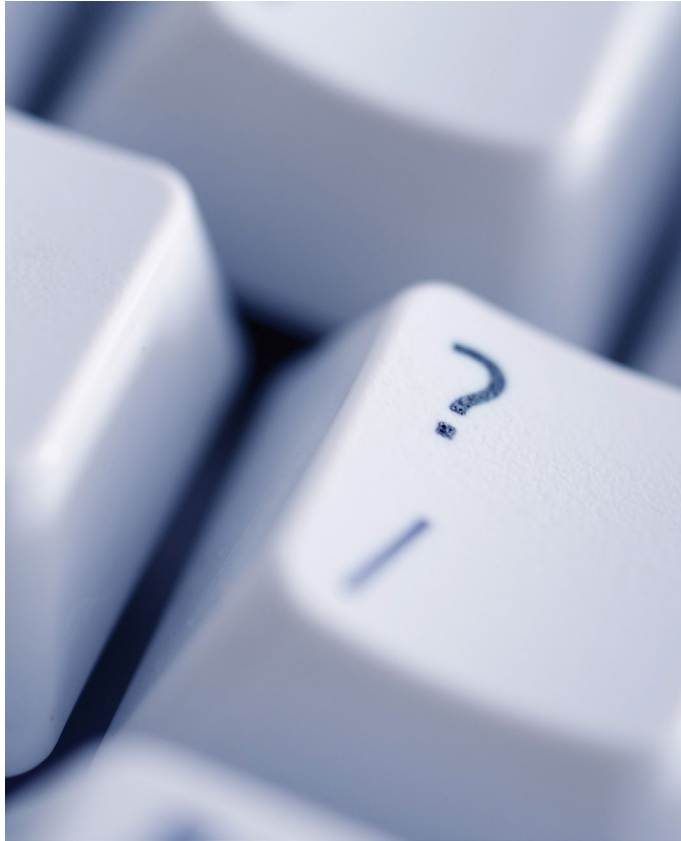


OVERVIEW



- Title IX of the Education Amendment Acts of 1972
 - Sexual Harassment and Sex Discrimination;
 - New Regulations – Effective August 14, 2020
 - FEHA & EEO (Employees)
 - The Office for Civil Rights (Students)
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KEY QUESTIONS



1. What is sexual harassment?
 2. When is a district on notice?
 3. What must a district do to support alleged victims?
 4. What personnel or policies do schools need?
 5. What grievance process must a school generally follow before making findings and discipline?
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TITLE IX VS. VAWA

Title IX Regulations	VAWA
Quid Pro Quo by Employees; VAWA crimes, and other Sex-Based Harassment that is severe and/or pervasive	VAWA Crimes: Domestic Violence, Dating Violence, Sexual Assault, and Stalking
On Campus and in certain Off Campus Programs and Activities. Also, Certain Student Organization Properties. Never applies outside the U.S	On and Off Campus
Provide Resources	Provide Resources
Maximized Due Process for Public and Private Colleges	Standard Due Process/Fair Process
Specific Training for Certain key Staff (no annual)	Annual Training for all who touch a case at all parts of process



DEFINITION: SEXUAL HARASSMENT (3 TYPES)

1. Quid Pro Quo;
 2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive or objectively offensive that it effectively denies a person equal access to the school's education program or activity;
 3. "Sexual assault"; "dating violence"; "domestic violence"; "stalking" that are terms defined under other Federal Law under the Clery Act and Violence Against Women Act ("VAWA")
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EDUCATION PROGRAMS AND ACTIVITIES



- Sexual harassment occurs in school’s “education program or activities”;
 - Not just on “on-campus” situation;
 - Includes locations, events, and circumstances where a school exercises substantial control over the context of the alleged harassment and the person accused of committing sexual harassment;
 - Includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.
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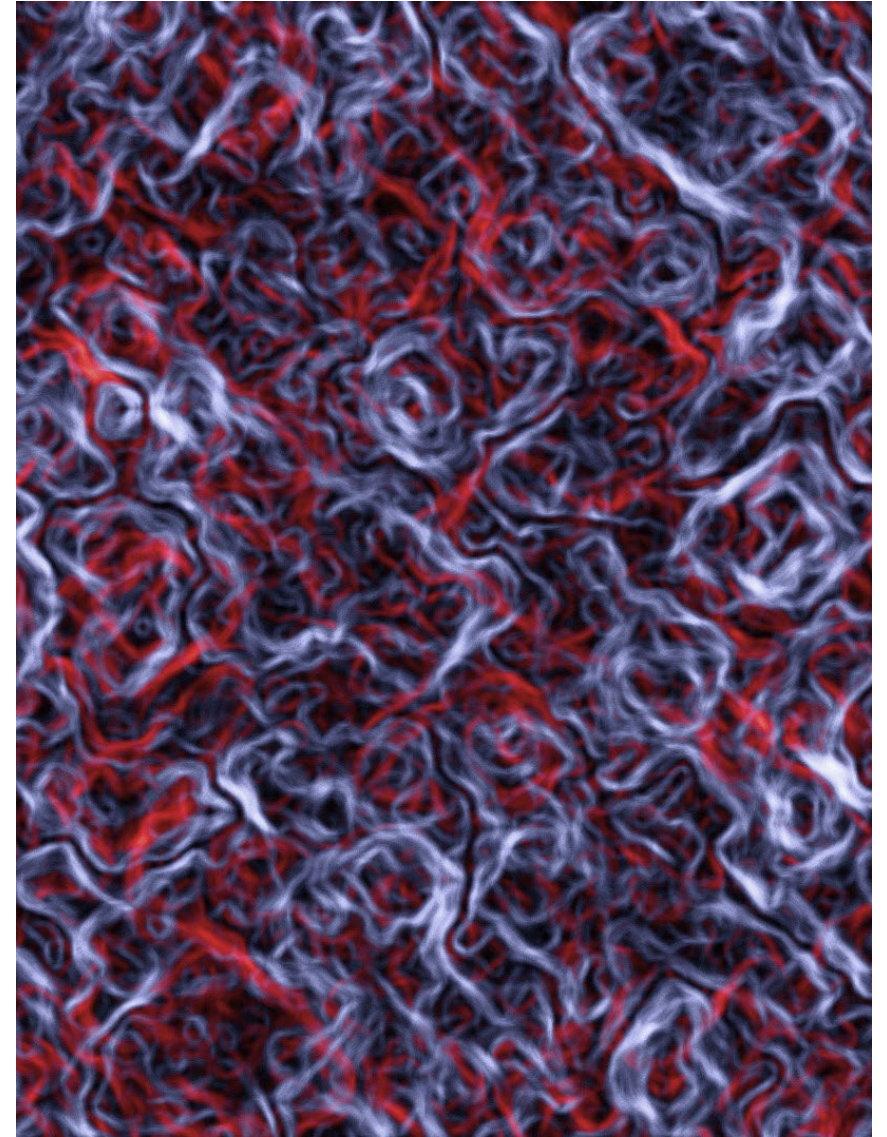
WHAT REMAINED THE SAME?



- Services provided on campus
- Resources provided off campus
- Law Enforcement

RELATED COMPONENTS

- Very specific requirements for *grievance process*
 - Equitable process, equal opportunities for parties
 - Follow your process before issuing sanctions
 - Supportive measures aren't sanctions
 - Evaluate all relevant evidence objectively
 - No conflicts of interest for investigators, decisionmakers
 - Presumption of Not Responsible until determination
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RELATED COMPONENTS CONT.



- Reasonably prompt timeframes
 - Equal-access to appeals process
 - Can have hearings with parties in separate rooms via technology
 - Informal resolution is possible
 - Simultaneous, written outcomes with rationale
 - When results become final
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CHANGES



Step 1: Narrowed definition of actual knowledge (for higher ed; K-12 is different)



No constructive knowledge



Ability or obligation to report \neq actual knowledge



Step 2: Formal Complaint



Complainant must be participating in or attempting to participate in education program or activity at time of complaint



Filed with Title IX Coordinator in person, by mail, e-mail, or other methods of contact



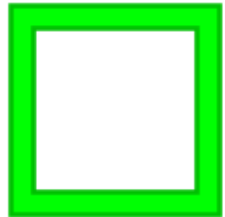
Physical or digital signature or related



COMPLAINT & RESPONDENT

- A **Complainant** is an individual who is alleged to have been a victim of conduct that constitute sexual harassment, as defined by policy.
- A **Respondent** is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment as defined by policy.

EFFECTIVE CONSENT

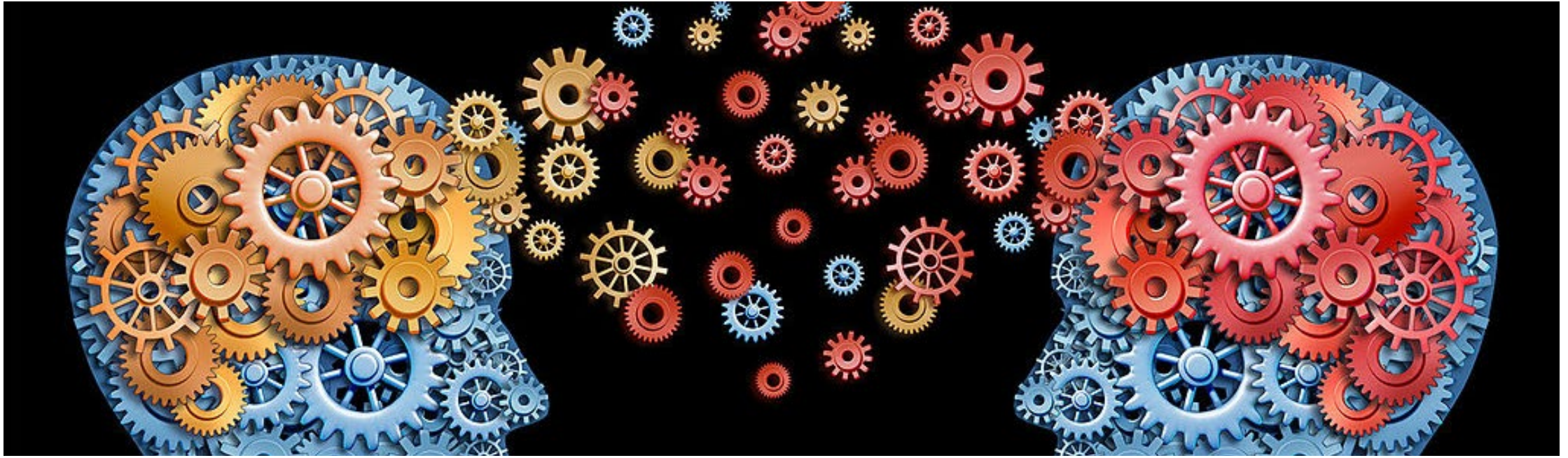


Yes



No

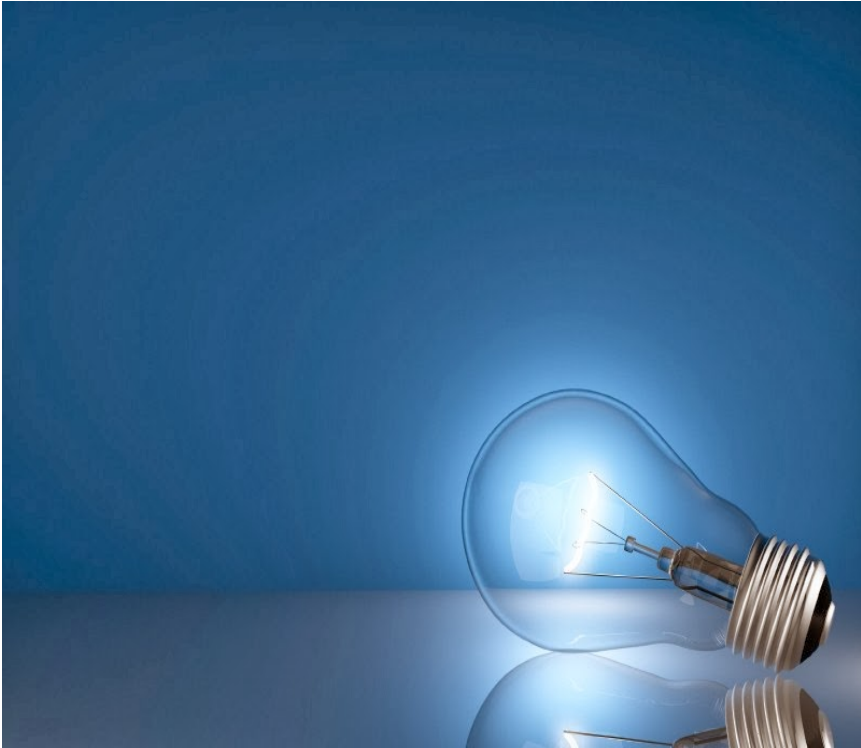
- An affirmative, knowing, and voluntary decision – clearly communicated through mutually understandable words (e.g., saying “yes”) and/or actions – to willingly engage in mutually acceptable sexual activity (e.g., to do the same thing, at the same time, in the same way, with another individual(s).
 - It must be given freely, willingly, consciously, and knowingly by each participant to any desired sexual contact.
 - Consent may be withdrawn by any consent party at any time during the sexual activity.
 - Withdrawal of consent must be demonstrated by words and/or actions that indicate a desire to end sexual activity.
 - Once an individual has communicated withdrawal of consent, all sexual activity must end.
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§ 106.30(A) OF THE
FINAL RULE:
**ACTUAL
KNOWLEDGE**

“Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has the authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school.”

HOW SHOULD A DISTRICT RESPOND TO ACTUAL KNOWLEDGE?



- Once a district has actual knowledge of sexual harassment or allegations of sexual harassment, the district has to respond and take action.
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WHO CAN REPORT SEXUAL HARASSMENT ALLEGATIONS?

- Any person including a friend, parent, or bystander
- School Personnel
- Can be verbal or written



ACTUAL KNOWLEDGE: SCHOOL PERSONNEL



Title IX Coordinator must be known and always a part of process; Must be put on website and notice must be sent to student, employee parent, union.



Other people who can institute corrective measures (also includes Title IX Coordinator);



Telling any employee always puts district on notice.

DELIBERATE INDIFFERENCE

Response cannot be “clearly unreasonable” in light of known circumstances.

Title IX Coordinator must provide information to the individual that includes:

Availability of supportive measures

The right to file a complaint

How to file a complaint

FORMAL COMPLAINT



- Formal Complaint (document filed by complainant or signed by Title IX Coordinator alleging harassment and requesting investigation)
 - Complainant must be participating in or attempting to participate in education program or activity at time of complaint
 - Filed with Title IX Coordinator in person, by mail, e-mail, or other methods of contact
 - Physical or digital signature or otherwise indicates complainant is person filing.
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DEFINITION: SUPPORTIVE MEASURES

- Free, individualized services designed to preserve equal access to education, protect safety, or deter sexual harassment
 - A formal complaint is not required for a victim to receive supportive measures;
 - They are not punitive or disciplinary but neutral in intent;
 - The supportive measures don't unreasonably burden any other person.
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WHAT ARE SUPPORTIVE MEASURES?



- Counseling;
- Extension of deadlines;
- Modifications of work or class schedules;
- Campus escort services;
- Changes in housing location;
- Increased security or monitoring of parts of campus;
- Mutual restrictions on contact between individuals.

IMPLEMENTATION PROCESS



IMPLEMENTATION: SUPPORTIVE MEASURES

- Title IX Coordinator is charged with implementing supportive measures
- The District has to always consider the alleged victim's wishes when it comes to requests for supportive measures;
- Supportive measures must be confidential;





IMPLEMENTATION: FORMAL COMPLAINTS

- Official document alleging complaint
- Filed by student (parent or legal guardian) or Title IX Coordinator
- In cases where victim does not file a formal complaint, the Title IX Coordinator might initiate grievance procedures where discipline is appropriate.
- Grievance procedures must meet ten (10) specific requirements.

REQUIREMENT 1: TREAT PARTIES EQUITABLY



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

REQUIREMENTS 2: OBJECTIVE EVALUATION OF EVIDENCE



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

REQUIREMENTS 3: TRAINING; NO CONFLICT OF INTEREST



- The individuals involved in the process – like the Title IX Coordinator, investigators, decision-makers, or facilitators of formal, voluntary resolution efforts.
- These individuals must also be trained.
- Materials must promote impartial investigations and adjudications and must be posted on each school's website (and if a school does not maintain a website, make them available for public inspection upon request).



REQUIREMENTS 4: PRESUMPTION OF INNOCENCE

- Under the district's grievance procedures, the respondent must be presumed not responsible, so that any finding of responsibility only comes at the conclusion of the grievance process.

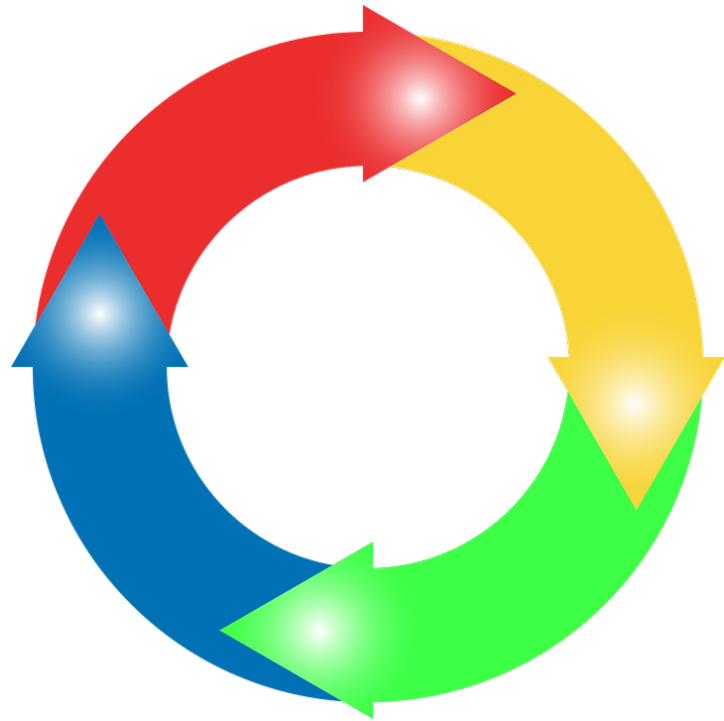


REQUIREMENTS 5: REASONABLY PROMPT TIME FRAMES



- The grievance process must include reasonably prompt time frames for resolving formal complaints of sexual harassment.
- Temporary delays are permitted only for good cause. Good cause can include law enforcement activities, the absence of a party or witness, the absence of a party's advisor of choice, or the need to provide language assistance or accommodation of disabilities.

REQUIREMENT 6: DESCRIPTION OF RANGE OF OUTCOMES



- The grievance process must describe or list the range of possible remedies and disciplinary sanctions that could occur following a determination of a responsibility.

REQUIREMENT 7: STANDARD OF EVIDENCE

- The grievance process must state which standard of evidence the school will use to reach a determination regarding responsibility, to be used for all sexual harassment proceedings.
 - Districts can choose between the preponderance of the evidence standard and the clear and convincing evidence standard.
 - Whichever standard the district chooses, it has to use the standard for all formal complaints of sexual harassment, whether the respondent is a student, or employee, including a faculty member.
 - All sexual harassment proceedings must have the same standard of evidence.
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REQUIREMENT 8: RIGHT TO APPEAL



- The grievance procedures must contain the right to appeal the result of a grievance process, and information about how to invoke the right to appeal;
- Districts must offer an appeal to every party on certain bases;
- Districts also have the option to expand the bases on which an appeal may taken, as long as they apply those bases equally to both parties.

REQUIREMENT 9: DESCRIPTION OF RANGE OF SUPPORTIVE MEASURES

- The districts's grievance process must describe the range of supportive measures available to complainants and respondents.



REQUIREMENT 10: PRIVILEGES



- The district's grievance process must explain that no information protected by a legal privilege, such as the attorney-client privilege or the doctor-patient privilege, can be used during an investigation unless the person holding that privilege has waived it.
- Individuals can always opt to waive their own privileges if they want, but they don't have to.

GRIEVANCE PROCESS & EVIDENCE GATHERING

EMERGENCY REMOVALS



- A district can remove a respondent from the school's education programs or activities if the respondent poses an immediate threat to anyone's physical health or safety. There are additional requirements for emergency removal proceedings that schools should consider if they institute this process.
 - If the respondent is an employee, the Final Rules do not prevent a school from placing that employee on administrative leave during an investigation.
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WRITTEN NOTICE TO THE PARTIES



- When the district begins an investigation, it has to provide the parties with written notice of certain information.
 - It has to give notice to the parties of the district's grievance process, which must comply with the 10 requirements previously listed.
 - It also has to include whether there is an opportunity to engage in informal resolution. Districts don't have to offer informal resolution processes, but if they choose to, it's important that they are mentioned in this initial notice.
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DETAILS OF WRITTEN NOTICE



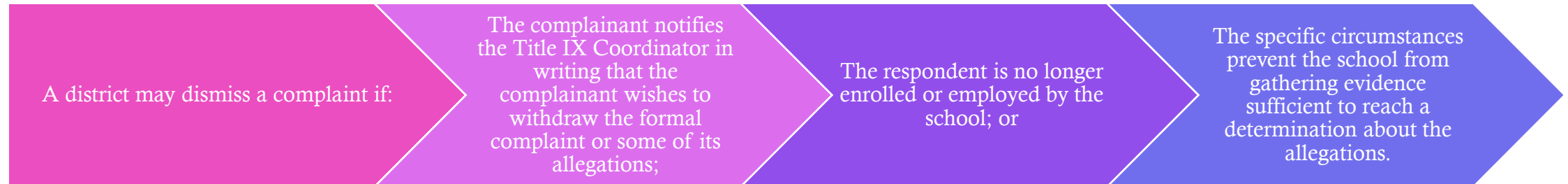
- The actual allegations and facts that would constitute sexual harassment.
- The presumption of innocence
- A statement that the parties are entitled to adviser of their choice.
- A statement that the parties can request to inspect and review certain evidence.
- Information regarding the code of conduct and false statements.

MANDATORY DISMISSAL

- A district must dismiss a complaint if:
 - It does not describe conduct that meets the definition of sexual harassment;
 - Alleges sexual harassment that did not occur in the district's education program'
 - Alleges sexual harassment that did not occur in the United States at all;
 - Districts can still address these complaints under their code of conduct, even if the misconduct is not sexual harassment under Title IX.



DISCRETIONARY DISMISSAL



DISMISSAL PROCEDURES



Whenever a district dismisses a formal complaint, or any allegations in it, the district has to promptly send written notice of the dismissal and the reasons to the parties.



Both parties have a right to appeal a school's dismissal decisions.

GATHERING EVIDENCE



- The district must give both parties specific, equal rights and protections.
 - The district is not allowed to access a party's personal records if they are maintained by a physician, psychiatrist, psychologist, or other professional for the purpose of treatment to the party, without consent.
 - The district must provide an equal opportunity for the parties to have witnesses and evidence, including expert witnesses, as well as inculpatory and exculpatory evidence.
 - There are no restrictions placed on either party for gathering evidence.
 - The parties can have an adviser of choice.
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GATHERING EVIDENCE CONT.

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

- An investigative report must be prepared following the fact-finding process
 - The district must provide the report in advance to both parties and provide ten (10) days to respond to the report and must take it into consideration prior to finalizing the investigation report.
 - The investigative report can then be finalized and provided to both parties.
 - The report must be circulated to the parties for another ten (10) days before any determination of responsibility or ten (10) days before a hearing, if a hearing happens.
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WRAP-UP & CLOSURE



- Basic overview of Title IX including its purpose and intent;
- Review of Final Rules under Title IX enacted in August 2020 up to the Hearing Process to include:
 - Terminology
 - The Implementation Process
 - Evidence gathering

