

TITLE IX

IMPARTIALITY, BIAS & CONFLICTS OF INTEREST

PRESENTED BY

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Regulatory Requirements

The Title IX regulation, at 34 C.F.R. 106.45(b)(1)(iii), requires that any individual designated by a recipient as a Title IX Coordinator, investigator, decision-maker or any person designated by a recipient to facilitate an informal resolution process, receive training on:



*How to serve impartially, including by
avoiding prejudgment of the facts at issue,
conflicts of interest, and bias.*

106.45(b)(1)(iii)

Definition of Impartiality

The fact of not supporting any of the sides involved in an argument.

Definition of Impartiality

The regulations and commentary to the regulations indicate that Title IX considers “impartiality” to be the avoidance of:

**PREJUDGMENT
OF THE FACTS
AT ISSUE**

**CONFLICTS
OF INTEREST**

BIAS

PREJUDGMENT OF FACTS



Prejudgment of the Facts

To judge beforehand without possessing adequate evidence.

<https://www.thefreedictionary.com/prejudgement>

To pass judgment prematurely or without sufficient reflection or investigation.

<https://www.dictionary.com/browse/prejudgement>

Prejudgment of the Facts



Investigators and decision-makers should not immediately assume they know what happened in a case, despite “signs” that suggest one side or the other is telling the truth.

Prejudgment of the Facts

Prejudgment often occurs when investigators and decision-makers adhere to sex-based stereotypes about males and females.

Decisions should be made based on individual facts, not stereotypical notions of what males and females do or do not do.

Prejudgment of the Facts

EXAMPLE

An investigator immediately assumes a female complainant is lying because she is not outwardly displaying emotion.

Prejudgment of the Facts

Studies show that human beings are not good at spotting deception based on body language, especially when we do not spend much time around that individual.

Prejudgment of the Facts

Prejudgment often occurs when allegations involve sexual conduct, sexual history, drugs and/or alcohol use.

Prejudgment of the Facts

EXAMPLE

An investigator or decision-maker:

- Assumes consent because the complainant and respondent had a previous relationship.
- Assumes drug or alcohol use prevents a party from recalling events accurately.

Avoiding Prejudgment of the Facts

- Keep a neutral mindset focused only on the evidence.
- Only make decisions based on supporting evidence – do not speculate or jump to conclusions.
- Leave stereotypes out of your thinking!

CONFLICTS OF INTEREST



Definition of Conflict of Interest

A conflict between the private interests and the official responsibilities of a person in a position of trust

Definition of Conflict of Interest

When an employee's personal interests or relationships conflict with the ability of such employee to act in a neutral manner with regard to a complaint against a faculty member, staff member or student.

Conflicts of Interest

Office of Civil Rights (OCR) has not established any employment relationships or administrative arrangements as *per se* conflicts of interest, deciding instead to give institutions discretion and holding them accountable for the end result of how they use personnel throughout the process.

Final Rule, 34 C.F.R. Part 106, pg. 826

Conflicts of Interest

Even specific professional affiliations (such as being affiliated with a women's rights group) do not automatically constitute a conflict.

Final Rule, 34 C.F.R. Part 106, pg. 826

Conflicts of Interest

A conflict of interest arises when an individual working on a particular Title IX matter is prevented from being **impartial**.

Conflicts of Interest

A conflict may be:

ACTUAL

A direct conflict exists between professional responsibilities and a personal interest.

PERCEIVED

No actual conflict exists but one could reasonably perceive that one does

POTENTIAL

No actual conflicts, but one could develop in the future

Conflicts of Interest

Conflicts can come from a variety of situations:

- Family relationships
- Close friendships or dating relationships
- Adversarial relationship in or out of the workplace
- Legal disputes
- Business relationships
- Possibly some employment relationships

Objective Standard

The Department “encourages” the adoption of objective standards for determining potential biases and/or conflicts of interest. An “objective” standard, according to the Department “is whether a reasonable person would believe bias exists.”

Final Rule, 34 C.F.R. Part 106, pg. 827

Conflict of Interest:

How to Determine

- Do I have anything to personally gain or lose from this set of circumstances?
- Would I feel comfortable if both parties knew about my relationship and the nature of my relationship with this person?
- Would I be comfortable with these circumstances if I were one of the parties?
- Could a reasonable person question my impartiality in this set of circumstances?

BIAS



Definition of Bias

An inclination of temperament or outlook *especially*: a personal and sometimes unreasoned judgment.

Definition of Bias

A bias is a tendency, inclination or prejudice toward or against something or someone.

- Biases are often based on stereotypes, rather than actual knowledge of an individual or circumstance.
- Biases are cognitive shortcuts that can result in prejudgments that lead to rash decisions or discriminatory practices.

Bias

As mentioned above, OCR encourages recipients to apply an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased.

Final Rule, 34 C.F.R. Part 106, pg. 827

Bias

OCR also cautions entities not to apply generalizations that might unreasonably conclude that bias exists, such as assuming that all self-professed feminists, or self-described survivors, are biased against men, or that a male is incapable of being sensitive to women, etc.

Final Rule, 34 C.F.R. Part 106, pg. 827

Avoiding Bias

- Treat people as individuals and not members of a class.
- Do not make assumptions based on the race, national origin, religion, sex, age or disability status of an individual.
- Think about your own biases and do your best to leave them out of your thought process.

Avoiding Bias

- Consider the language you use. Does it include sex stereotypes?
- Do not automatically make assumptions when drugs or alcohol is involved.

INFORMAL RESOLUTIONS

An Overview of the Process



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INFORMAL RESOLUTION

AN OVERVIEW



Informal Resolution

At any time after a complaint is filed but prior to making a determination, a district may offer an informal resolution (IR) process.



However, IR cannot be offered when the allegations are that an employee discriminated against a student on the basis of sex.

The Alternative Process

Alternative process to a formal investigation and decision in which both parties **voluntarily agree** to attempt to “informally” resolve the allegations of sexual harassment.

Flexibility in Process & Remedies

IR is meant to provide more flexibility and the possibility for the parties to agree on any of a wide range of possible outcomes, resulting in a **voluntary agreement** between parties, which would take the place of a “formal resolution.”

School District Discretion

School districts have discretion in determining whether a situation is appropriate to offer IR, and may even decline a party's request for IR.

Circumstances when a school district may decline to allow IR include, but aren't limited to, when the district determines the alleged conduct would present a future risk of harm.

Voluntary!

IR must be *voluntary*.

Both parties must voluntarily agree (in writing) to enter the process, and any final agreement resulting from the process must be voluntarily agreed to (in writing) by ***both parties***.

Voluntary!

Schools cannot:

- Pressure or require the parties to do IR
- Require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right
- Require the parties to waive their right to an investigation and determination of a complaint

IR Facilitator

Cannot be the same person as the decisionmaker.

Must receive training on:

- The definition of sexual harassment in [§ 106.30](#)
- The scope of the recipient's education program or activity
- How to conduct an informal resolution process
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias

Pros & Cons of IR

Pros

- Quicker and simpler process
- Parties are not subjected to months of investigation
- More control of resolution
- Greater flexibility
- Remedies more personalized

Cons

- Delays process if not successful
- May receive lesser consequence than actions deserve
- Must monitor agreement

When is IR appropriate?

Never for allegations of an employee harassing a student.

Less serious or less violent allegations

→ If the allegation would also be a crime, probably not appropriate

When is IR appropriate?

Does the complainant have specific goals in mind that can be accomplished through IR?

At times, a complainant or their parents/guardians have a specific remedy in mind that satisfies the district's thoughts/policy requirements of fair discipline and is a resolution that the respondent would agree to consider.

When is IR appropriate?

- Do the parties have the emotional maturity to handle this process?
- Are the parents/guardians in the appropriate emotional mindset to handle the process?

INFORMAL RESOLUTION

THE PROCESS



Notice

Prior to entering into the IR process, the district must provide the parties notice that explains:

1

**The
allegations.**

2

The requirements of the IR process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations.

3

At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

4

Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

Voluntary Written Consent

The district must obtain the parties' voluntary written consent prior to engaging in the process.

Process

- The process is flexible and allows districts discretion in determining the best approach, although certain formats are recognized as safer and more effective.
- Whatever process is used, the parties should not be forced to meet in person or confront one another.

Process

- There are several recognized processes for resolving disputes between parties, including mediation, restorative justice and arbitration.
- For K-12 schools in Oklahoma that want to use an employee to conduct IR, mediation, in some form, will be the best route (restorative justice requires detailed training, and arbitration is its own animal that requires a third-party arbitrator).

STEP 1

Consideration of Appropriateness

After a formal complaint is filed, consider the allegations and the mindset/characteristics of the parties to determine whether IR should be suggested.

STEP 2

Discuss with Parties

If so, broach the subject with the parties, beginning with the complainant, to determine their willingness to engage in the process.

- *If yes, provide the parties the notice explained above and obtain written consent from both parties.*
- *If no, continue with the investigation.*

STEP 3

Determine Format

Determine how the IR will be conducted, based on the needs of the parties and abilities of the district. Examples include:

- *In-person IR with the parties in separate rooms*
- *In-person IR with parties in the same room*
- *Virtual*
- *Parents or advisors present*
- *Etc.*

STEP 3

Determine Format

For K-12 schools, “shuttle diplomacy” (i.e., parties in different rooms with facilitator moving back and forth between parties) is usually the best way to start.

This gives the parties the chance to tell their story without the presence of the other party and to convey their preferred outcomes.

STEP 4

The IR

At the beginning of the mediation process, meet with each party to discuss the following:

- *What the process will look like*
- *What you will share with the other party*
- *What an agreement could look like*

STEP 4

The IR

Also, speak with the parties to learn the following:

- *What do they hope to achieve through the process?*
 - *Try to get 2-3 primary concerns from each party.*
- *What would make the complainant feel safe at school?*
- *How much are the parties willing to compromise?*
- *What won't either party agree to?*

STEP 4

The IR

The facilitator should document the agreement while still with the parties. This will at least ensure that an understanding was reached during the mediation and may even allow for a signed agreement at that time.

Have each party review the document to ensure that it meets the parties' understandings and have them sign and date the document.

STEP 4

The IR

Parties may take time to consider the agreement, but the district should set a date by which an agreement must be reached, or the district will reinitiate the investigation.

Generally, no more than 5 days from the end of the mediation process.

STEP 5

The Agreement

The agreement should be a written document that accurately reflects the terms agreed to by the parties, and that is signed and dated by both parties.

STEP 5

The Agreement

The agreement can have a wide range of remedies, including:

- *Restrictions on contact, including a no-contact order.*
- *An apology.*
- *Agreement to stop practices that led to complaint.*
- *Discipline under the Student Code of Conduct.*
- *Restrictions on respondent's participation in one or more aspects of program or activity or attendance at specific events.*

STEP 5

The Agreement

Aside from the direct remedies, the agreement may also include:

- *Possible consequences for violating the agreement*
- *Possible consequences for either party sharing the agreement with others*
- *An expiration date*
- *Etc.*

STEP 6

Final Steps

Ensure the parties understand that the agreement resolves the matter, and the investigation will not continue.

Provide the agreement to those responsible for its enforcement.

Confidentiality

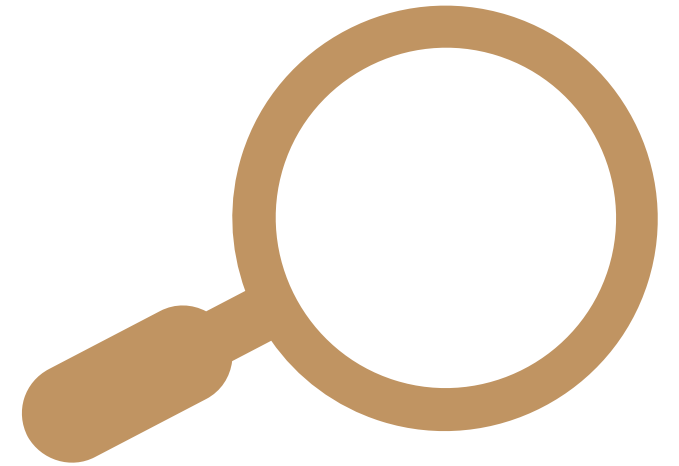
When providing supportive measures, conducting an informal resolution, or investigating, the district must not disclose the identity of a party, witness, or other participant except:

- When the person has provided prior written consent
- When permitted under FERPA
- As required by law
- To carry out the purposes of Title IX

TITLE IX

INVESTIGATING & RESOLVING

SEXUAL HARASSMENT COMPLAINTS



Welcome & Introductions



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WHAT IS SEXUAL HARASSMENT?



High Bar Before Title IX is Implicated

- Lots of behavior may meet the definitions of harassment/sexual harassment under your student code of conduct but not be Title IX issues.
- The Title IX investigation process is only invoked when behavior meets the specific definitions of sexual harassment listed in the Title IX regulations.

Enhanced Process

Under the 2020 regulations, districts must respond differently (i.e., in accordance with the grievance procedures listed in the regulations) when:

1

The district
has "actual
knowledge."

2

Of sexual
harassment as
defined by
the 2020
regulations

3

Within the district's
education
programs or
activities (i.e., very
specific definitions)

4

Against a
person in the
United States

THE BASICS

*WHAT BASIC ELEMENTS
ARE REQUIRED OF
DISTRICTS?*



WHAT ARE SCHOOLS REQUIRED TO DO?

**Section
106.8**

WHAT ARE SCHOOLS REQUIRED TO DO?

Coordinators

Policies

**Section
106.8**

Procedures

WHAT ARE SCHOOLS REQUIRED TO DO?

Coordinators

Designate at least one employee to coordinate compliance with Title IX.

Section 106.8

Policies

Adopt a policy & disseminate to applicants, students, parents & legal guardians, employees, etc.

Procedures

Adopt a grievance procedure in compliance with regulations.

Posting Requirements

Must post the following information on school district website in a prominent location:

- Contact information for the school's Title IX Coordinator(s) (the name or title of the Title IX Coordinator, an office address, a telephone number, and an email address).
 - **OCR seems to prefer name *and* title**
- Non-discrimination policy
- Training materials used to train the school's Title IX personnel.

Title IX Team Structure

- Title IX Coordinator
- Investigator (TIX-C can be investigator)
- Informal Resolution Facilitator
- Decision-maker (cannot be TIX-C or investigator)
- Appeal Decision-maker (cannot be any of the above)

Definition of Sexual Harassment

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

- **Quid Pro Quo**
- **Hostile Environment**
- **Sexual Assault, Dating Violence, Domestic Violence Or Stalking**

Definition 1:

Quid Pro Quo

An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (i.e., Quid Pro Quo).

Definition 2:

Hostile Environment

*Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the recipient's education program or activity (i.e., hostile environment);*

Severe

Conduct must be severe to meet the definition of a hostile environment:

- Egregious or explicit conduct.
- Sex-based comments accompanied by unwanted touching?
- Non-consensual sexual contact that does not rise to the level of sexual assault, domestic violence, or dating violence?
- Was it conduct accompanied by threats of violence?

Pervasive

- Pattern or practice
- Widespread
- Well-known among students and employees
- Occurring in public spaces

Objectively Offensive

To determine whether conduct is objectively offensive, many factors may be considered, including:

- Age and relationships of the claimant and respondent
- Number of persons involved
- Frequency
- Severity
- Humiliation
- Intimidation
- Abuse
- Etc.

Denial of Equal Access

Does not require complete exclusion from an education, but rather denial of “equal access.”

Signs may include:

- Skipping class to avoid a harasser
- A decline in a student's GPA
- Having difficulty concentrating in class

However, no concrete injury is required to conclude that serious harassment would deprive a reasonable person in the complainant's position of the ability to access the recipient's education program or activity on an equal basis with persons who are not suffering such harassment.

Definition 3:

Sexual Assault

An offense that meets the definition of:

- Rape
- Fondling
- Incest or statutory rape as used in the FBI's Crime Reporting System

Definition 4:

Domestic Violence

A felony or misdemeanor crime of violence committed by:

- Current/former spouse or intimate partner
- A person with whom the victim shares a child.
- A person who is cohabitating with, or has cohabitated with, the victim as a spouse/intimate partner.
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.



Definition 5:

Dating Violence

Violence committed in a social relationship of a romantic or intimate nature. The existence of such a relationship shall be based upon the reporting party's statement with consideration of the following factors:

- The length of the relationship.
- The type of relationship.
- The frequency of interaction between those involved.
- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

Definition 6:

Stalking

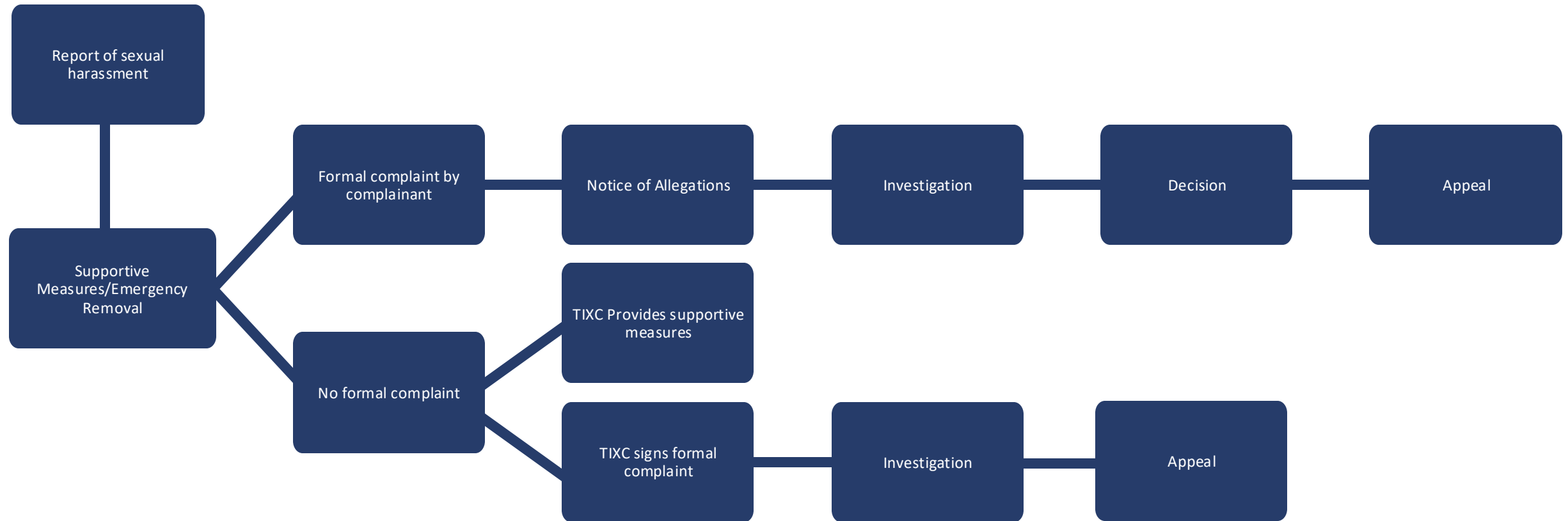
Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for the person's safety or the safety of others.
- Suffer substantial emotional distress.

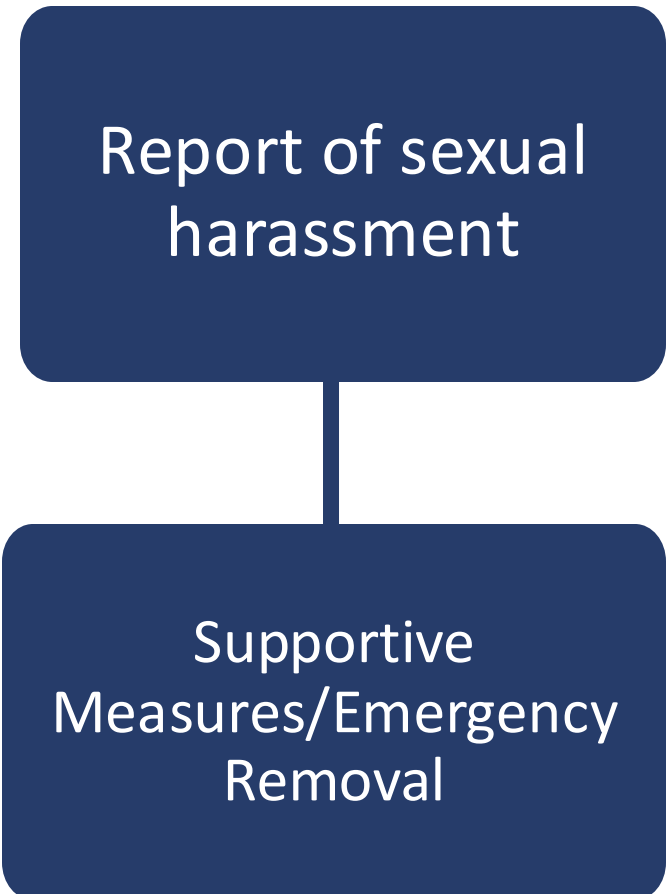


What process do districts follow when a violation occurs?

Overview of Allegation & Investigation Process



Report of sexual
harassment



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graph TD; A[Report of sexual harassment] --> B[Supportive Measures/Emergency Removal]
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Supportive
Measures/Emergency
Removal

DISTRICT RECEIVES NOTICE

(Actual Notice or Actual Knowledge)

K-12 Schools



Any school district employee
having knowledge of the
notice.

Postsecondary Schools



Use the Gebser
definition.

Critical:

A Different Path

When a district has notice of possible sexual harassment, the school must take a different path than any other (i.e., non-sexual harassment) disciplinary incidents.

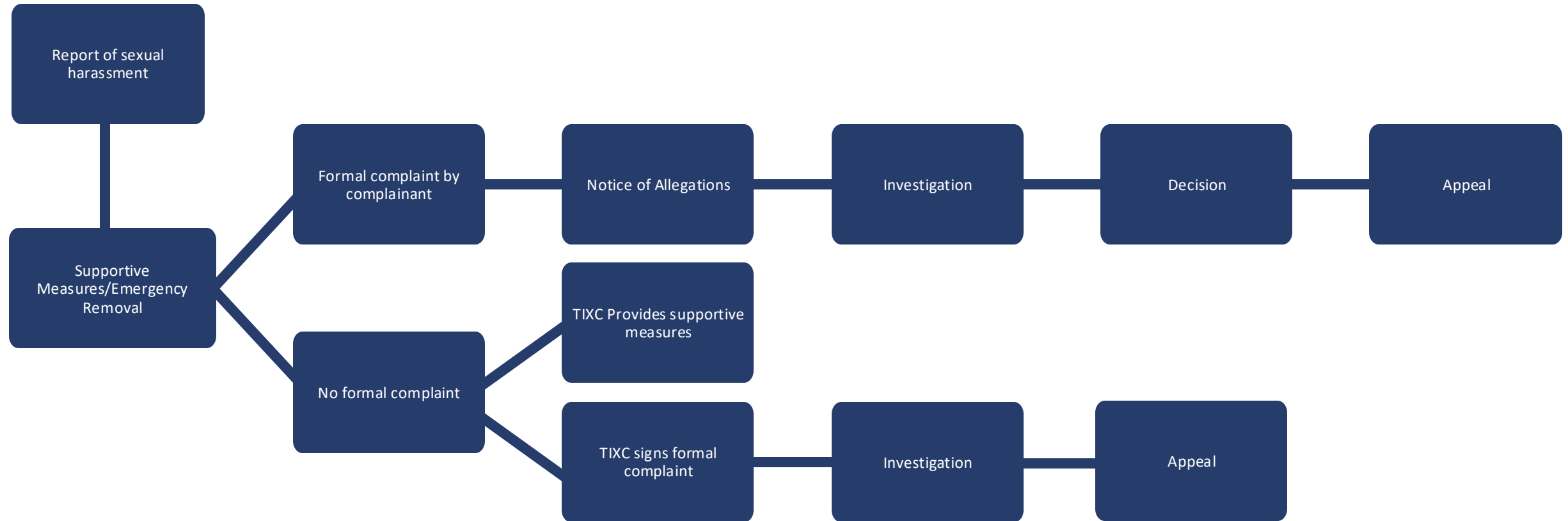
Critical:

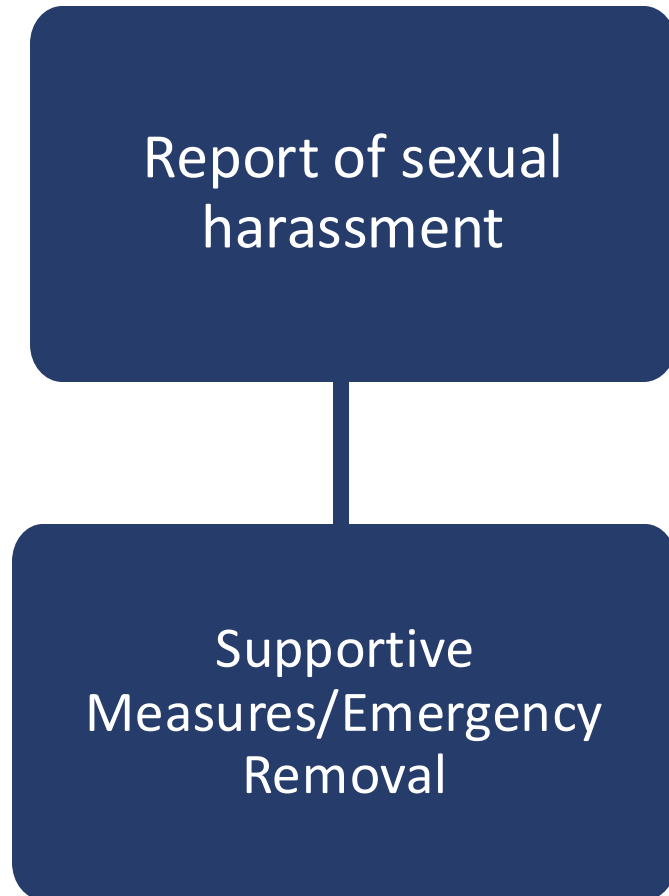
A Different Path

Steps Upon Notice:

- Notify the Title IX Coordinator
- Take non-disciplinary steps to ensure conduct does not continue and both parties are safe. DO NOT discipline yet!
- Facilitate discussion between complainant and Title IX Coordinator as quickly as possible (will determine your next steps).

Overview of Allegation & Investigation Process





1. INITIAL DISCUSSION & SUPPORTIVE MEASURES

Title IX coordinators must contact the alleged victim to:

- Explain how to file a formal Title IX complaint.
- Offer supportive measures, **regardless of whether a complaint is filed.**

Supportive/Interim Measures:

- Must be offered upon actual notice.
- May be offered during or in lieu of a formal complaint.
- To restore or preserve access to program without unreasonably burdening other party.

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graph TD; A[Report of sexual harassment] --> B[Supportive Measures/Emergency Removal];
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Report of sexual harassment

Supportive
Measures/Emergency
Removal

2. CONSIDER EMERGENCY REMOVAL

Before emergency removal of a respondent, district must:

- Perform an individualized risk analysis;
- Determine that an immediate physical threat to the health or safety of any student or other individual arising from the allegations justifies the removal; and
- Provide the respondent with notice and an opportunity to challenge the decision immediately following the removal.

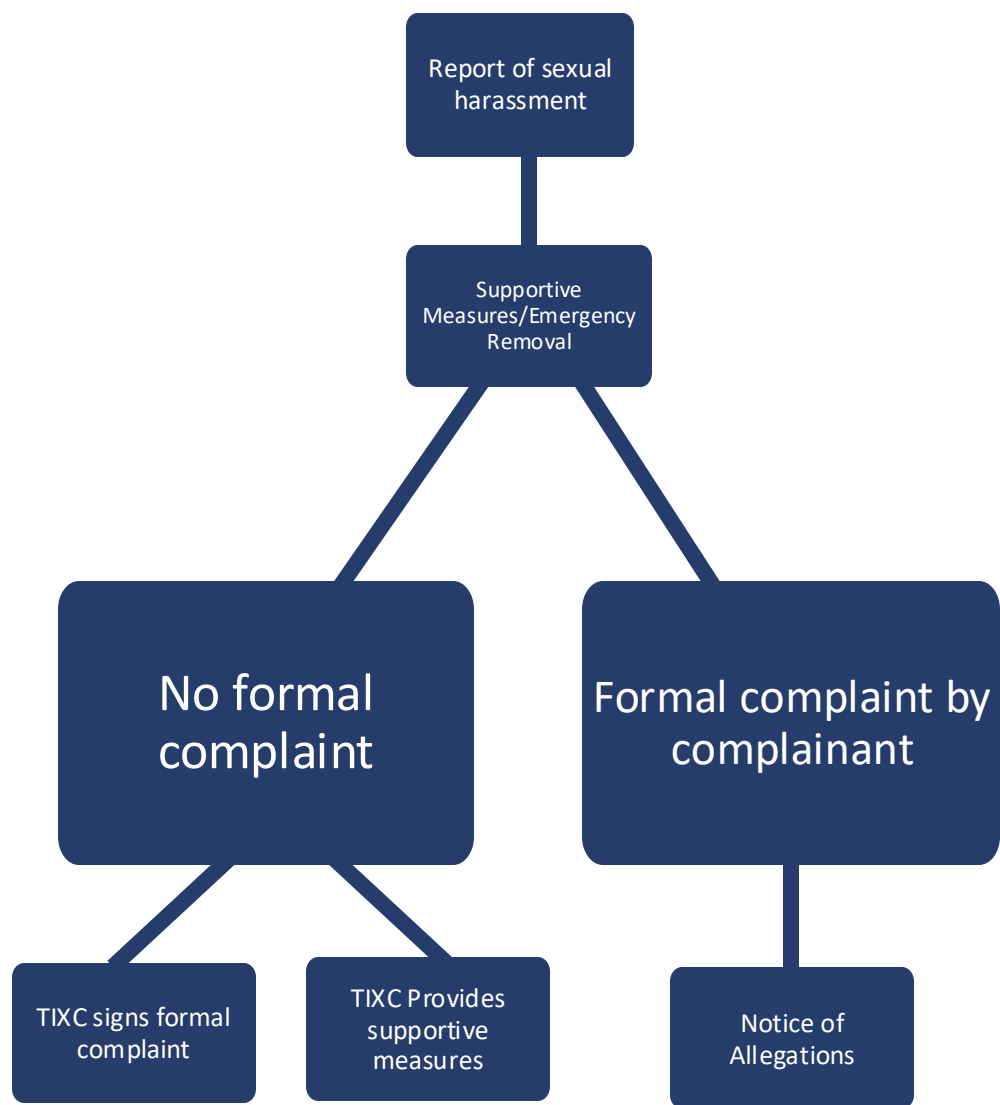
Report of sexual
harassment

Supportive
Measures/Emergency
Removal

3. LAW ENFORCEMENT & DHS REFERRAL



**If the allegations could
constitute a crime or child
abuse, immediately contact
law enforcement and/or DHS.**



4. FORMAL COMPLAINTS

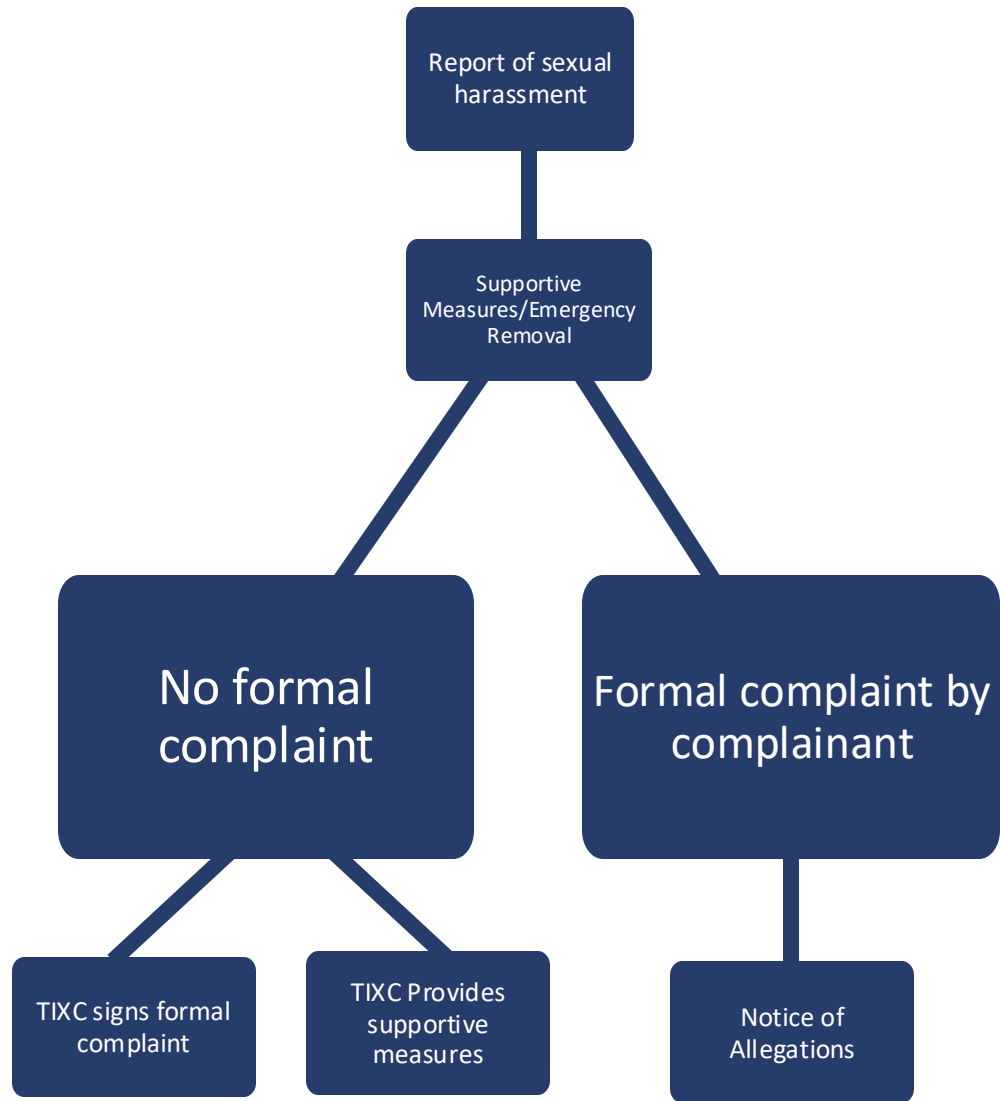
(Only responsible for investigating a formal complaint)

Formal Complaint – Written Document:

- Signed by either the complainant (definition limited to the alleged victim), the complainant's parents or the Title IX coordinator.
- Alleges sexual harassment against a respondent.
- Requesting an investigation.

A formal complaint may be filed:

- In person
- By mail
- Email
- Any additional method designated by the recipient



NO FORMAL COMPLAINTS

1. Provide supportive measures if alleged conduct covered under Title IX.
2. Title IX Coordinator initiates Title IX complaint.
3. If alleged conduct would not be covered under Title IX, address under student code of conduct.



This is a dangerous phase of the process.

If you believe the alleged conduct would be a Title IX violation, and a complaint is not filed, **you may need to file on behalf of the alleged victim.**

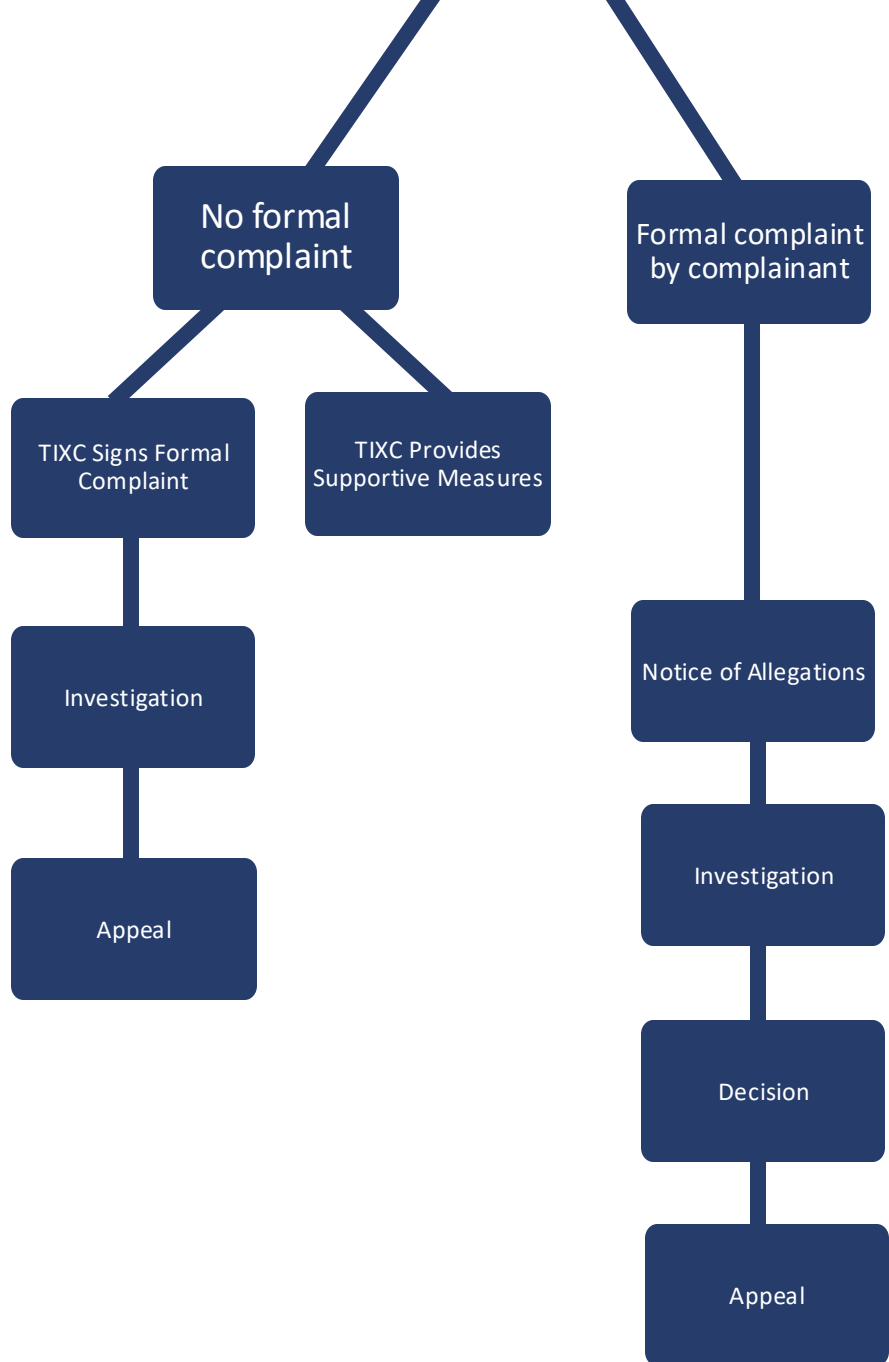
FORMAL COMPLAINTS

— Coordinator Initiated —

Title IX coordinators may file a formal complaint when they determine that “a non-deliberately indifferent response to the allegations requires an investigation...” (Final Rule, pg. 386).

If a grievance process is initiated against the wishes of the complainant, that decision should be reached thoughtfully and intentionally by the Title IX Coordinator, **“not as an automatic result that occurs any time a recipient has notice that a complainant was allegedly victimized by sexual harassment...”** (Final Rule, pg. 387).





5. JURISDICTIONAL DETERMINATION

(Must have jurisdiction to investigate under Title IX)

Respond when having actual knowledge of sexual harassment in:

1. An education program or activity of the recipient
2. Against a person in the U.S.

What is an education program or activity?

Subject Matter

- Do the alleged facts violate any definitions under sexual harassment (106.30(a))?

People

- Claimant/Respondent

Place, Event or Activity

- Does the school have **substantial control** over the context of where the harassment occurred?
- For example: on campus, off-campus locations owned by the district, school-sponsored activities, etc.



- Must be participating, or attempting to participate, in the district's programs or activities.
- Could be a student, faculty or staff, or at least attempting to be (may also need to investigate if complainant is a volunteer or contractor working on school grounds).
- If no, no jurisdiction.

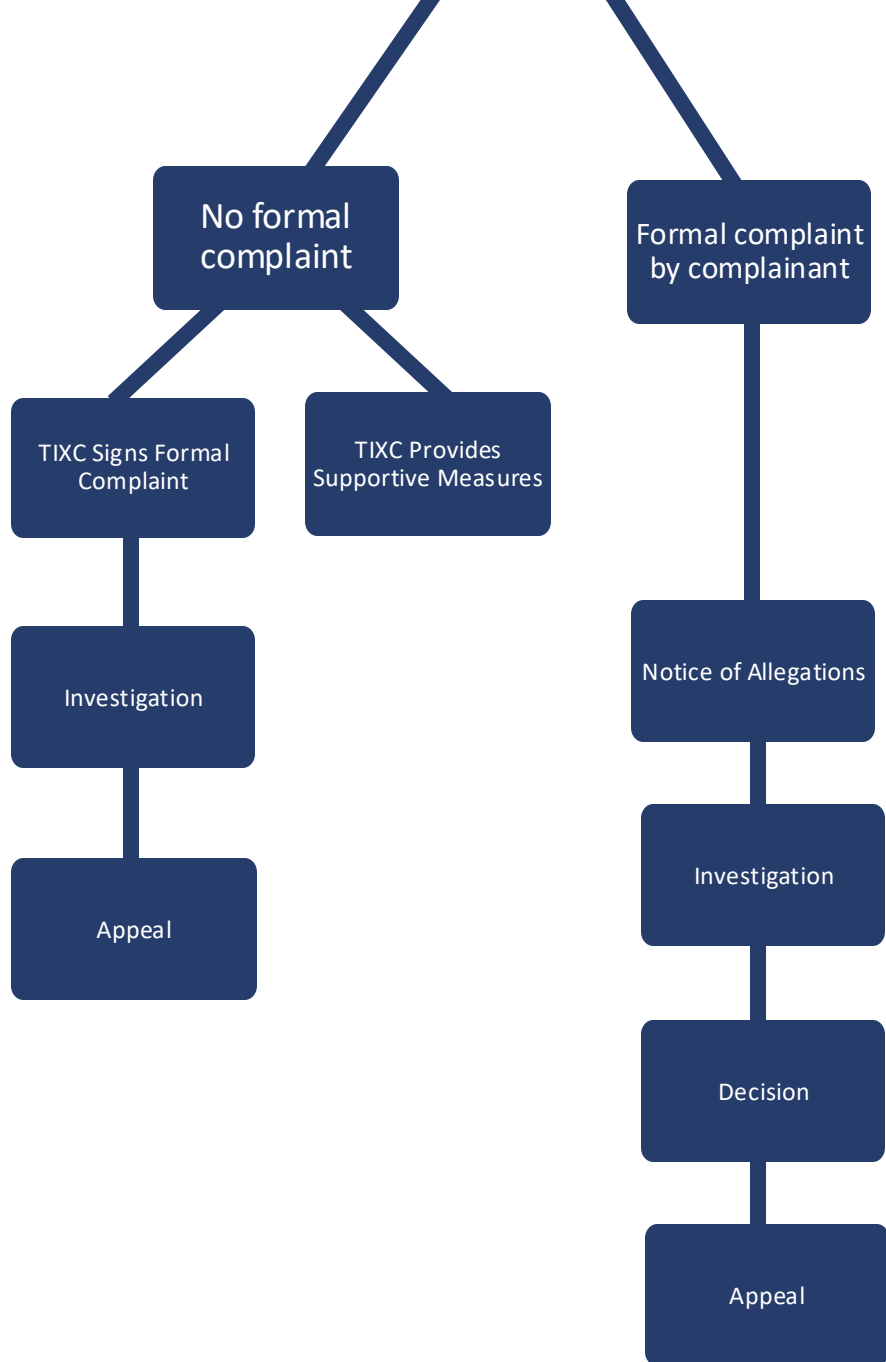


- Does the district have substantial control over the respondent?
 - Student
 - Employee
 - Volunteer on Campus
 - Contractor Working on Campus
 - Etc.
- If no, no jurisdiction (although may need to provide supportive measures).

Downstream Effects

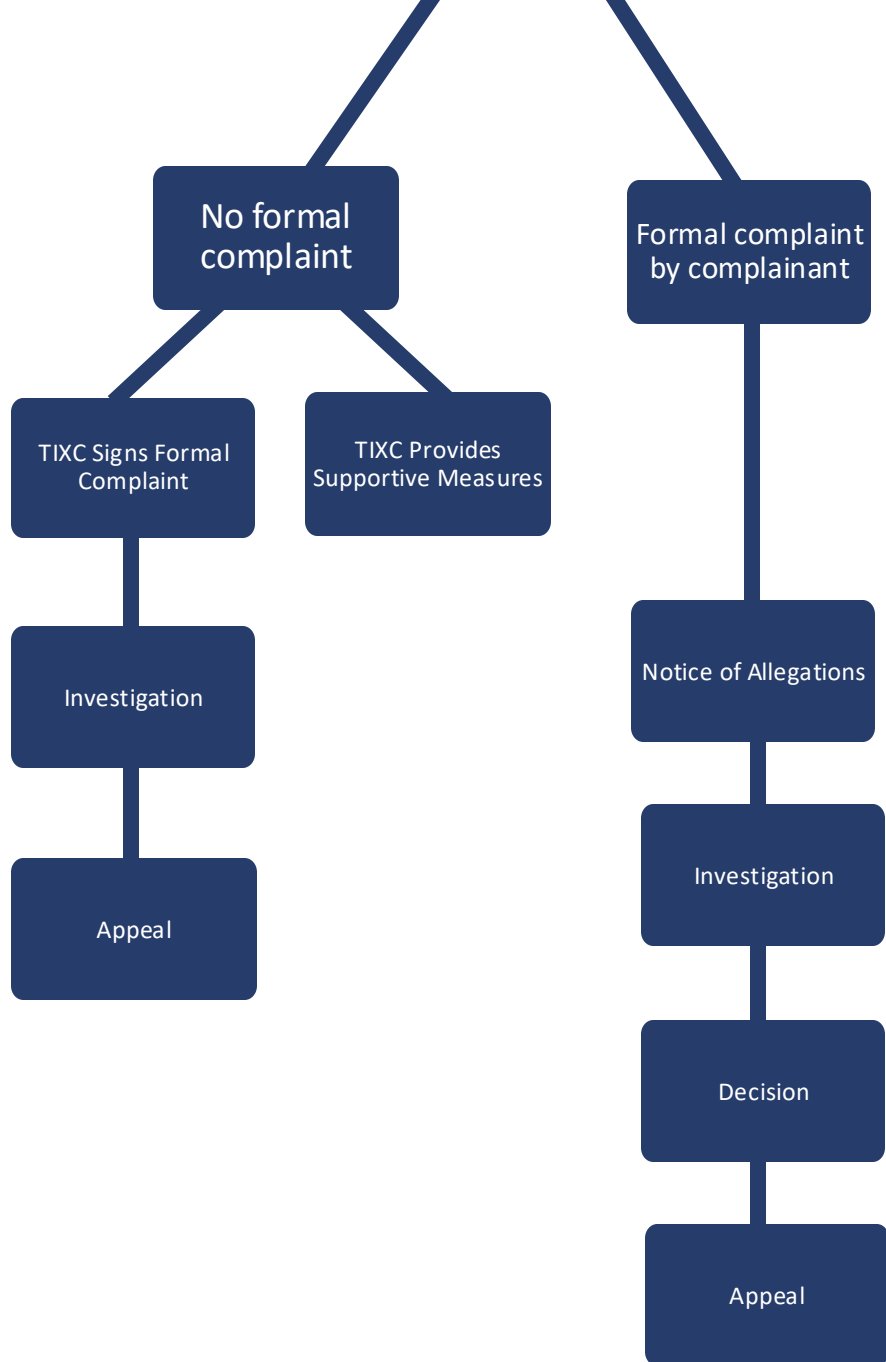
 What about the “downstream effects” of harassment that occurred off-campus?

Although districts cannot address behavior over which they do not have substantial control (e.g., at someone’s home on a weekend), they may be responsible for addressing any carryover of the behavior that occurs in areas in which it does have jurisdiction.



6. DISMISSAL

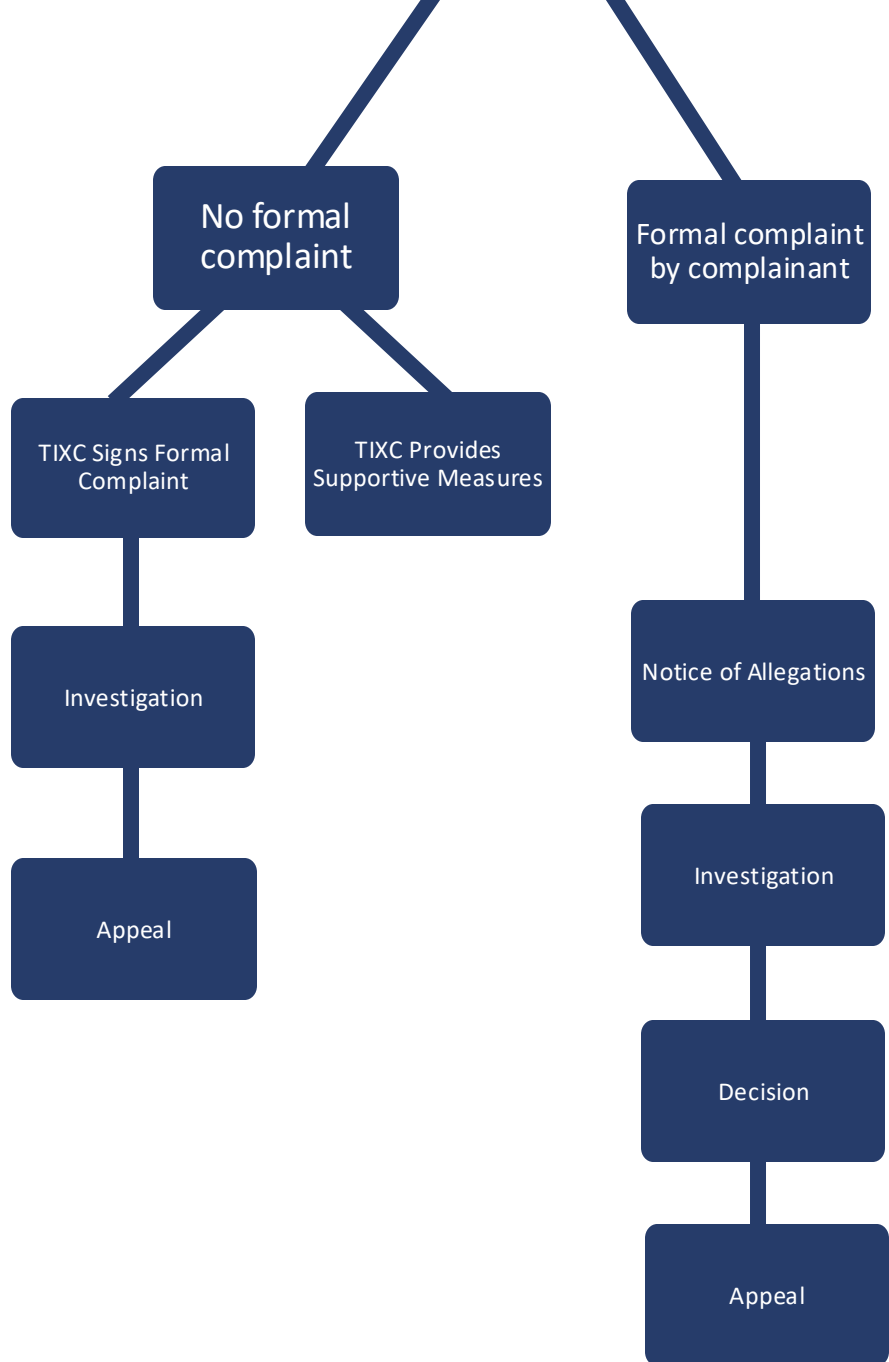
The district *must* dismiss the complaint if any of the jurisdictional requirements in the previous slide are not met.



6. DISMISSAL

The district **may** dismiss the complaint if, at any time during the investigation or hearing:

- The complainant notifies the Title IX coordinator in writing that they would like to withdraw the complaint or any allegation;
- The respondent is no longer enrolled or employed by the district; or
- Specific circumstances prevent the district from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.



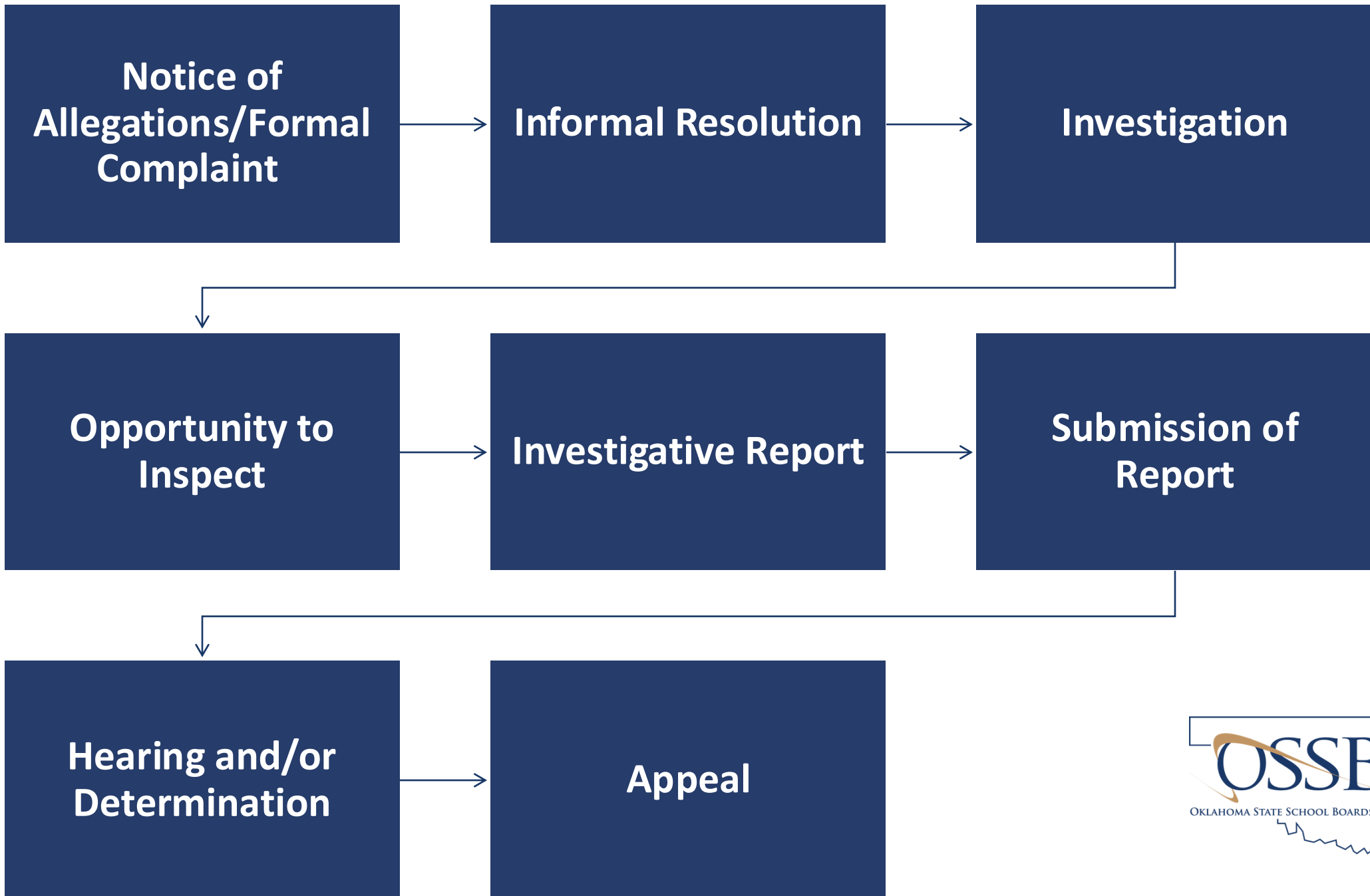
6. DISMISSAL

Upon dismissal either required or allowed in the slides above, the district must send written notice of the dismissal and reasons for the dismissal.

YOU ARE IN A NEW ZONE

*THE INVESTIGATION
GRIEVANCE PROCEDURES*





Title IX Grievance Procedures

- If the district answers the jurisdictional questions in the affirmative, the complaint must be investigated in accordance with the grievance process outlined in 34 U.S.C 106.45.
- If the institution follows OCR's procedures, then it will not be found "deliberately indifferent."

The Basics of Grievance Procedures

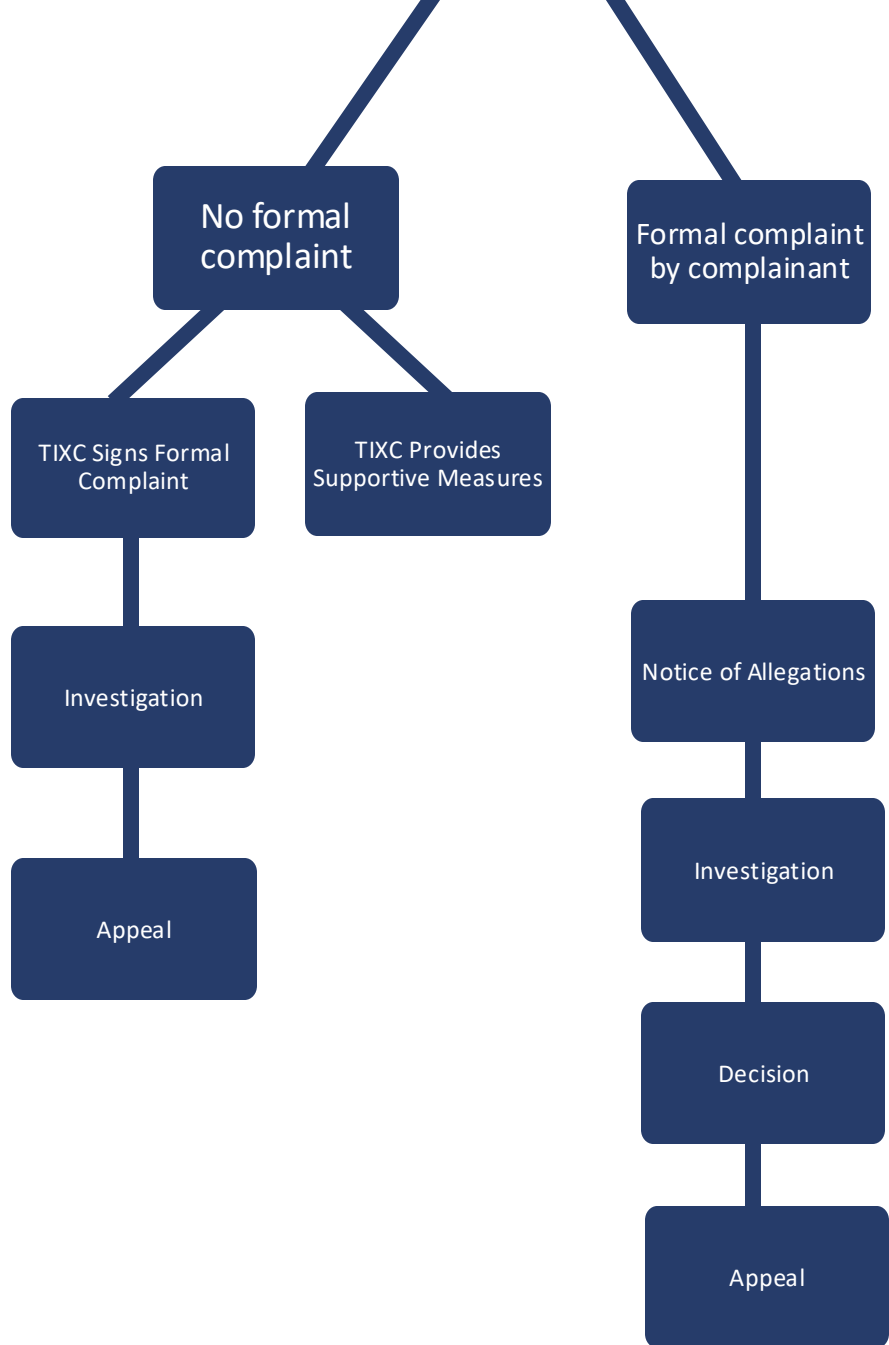
- Treat complainant and respondent equitably, including providing supportive measures to both parties, if necessary.
- Objective evaluation of all evidence, “both inculpatory and exculpatory evidence,” prior to making a determination.
- The Title IX Coordinator, investigator or person making the decision must be free of bias against the complainant/respondent, and appropriately trained on the definition of sexual harassment and how to conduct an investigation.
- Have “reasonably prompt timeframes” for the completion of the investigation (106.45(b)(1)(ii)).

Standard of Proof

Can only use preponderance of the evidence if that standard is used for other violations in the code of conduct with the same maximum penalty.

AND

Must use same standard for employees and students.



7. NOTICE TO PARTIES & ASSIGN INVESTIGATOR

(Written notice provided before discussions/interviews)

Written notice must include:

- Citations to relevant grievance procedures.
- Allegations with sufficient details.
- A statement indicating the responding party is “presumed not responsible” until a determination is made.
- The right to an advisor of their choice who may be an attorney.
- That parties may request to inspect and review relevant evidence.
- Reminder of the institution’s policy not to make false statements or intentionally submit false information.

Notice must also be provided for:

- Reasonable delays for “good cause”
- Additional allegations to be investigated that weren’t in the original complaint



An investigation is now opened
– **what happens next?**



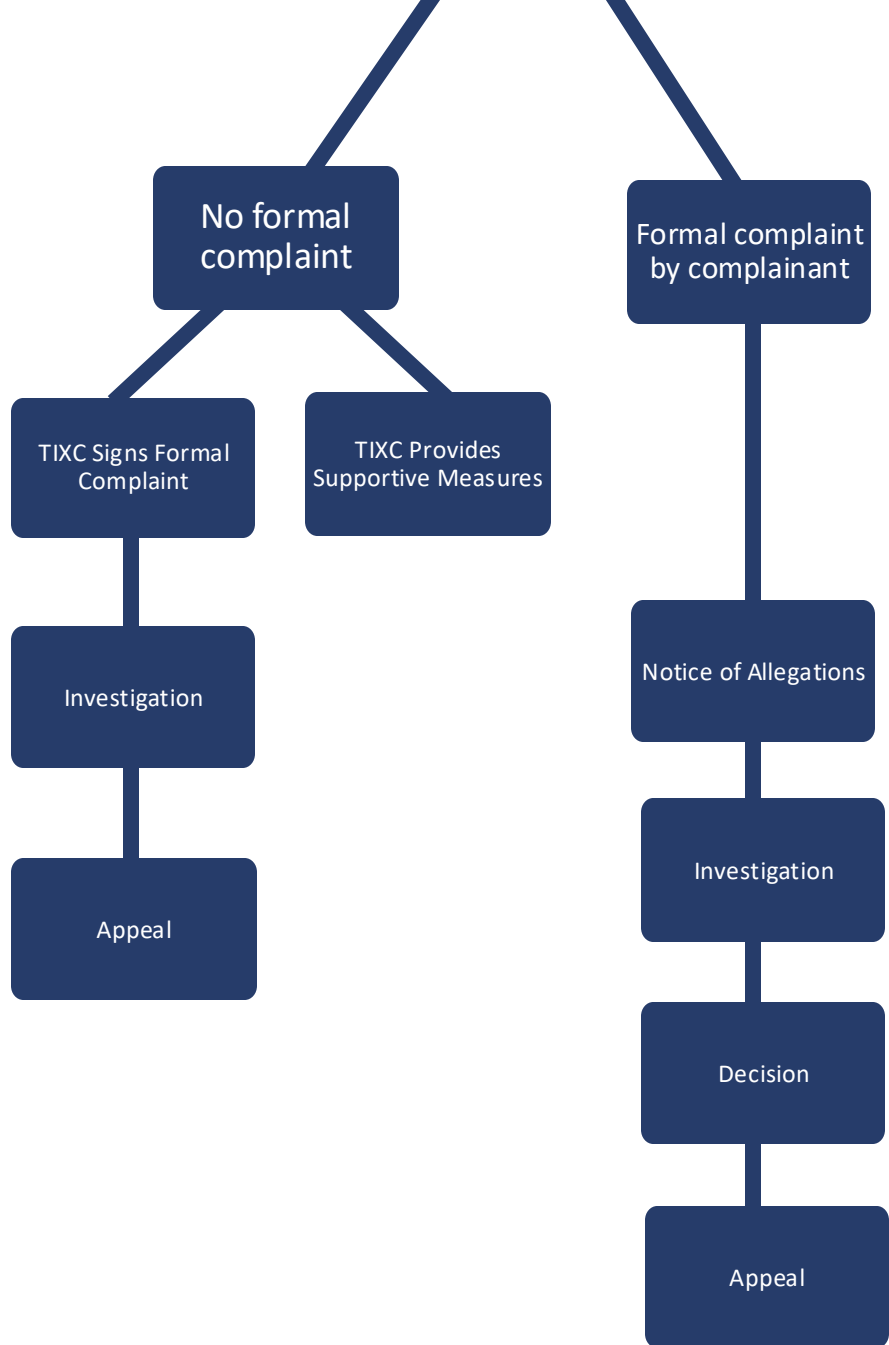
The district has completed steps 1-7 of the process – what happens next?

8. Supportive Measures

Now that you have more information, determine whether initial measures were adequate.

9. Informal Resolution

- School and parties will determine if appropriate
- Allowed at any time prior to a final determination
- Must obtain voluntary, written consent
- Cannot be used if allegation of an employee harassing a student
- Must provide detailed notice to parties of – allegations, requirements of the process, circumstances which would preclude formal resolution & consequences of participation.



10. THE INVESTIGATION

(Written notice provided before discussions/interviews)

In general:

- The burden of gathering evidence is on the institution
- Equal opportunity to present witnesses and evidence
- No restrictions on discussing allegations or gathering and presenting evidence
- Equal opportunities to have others present during the grievance process

Advisors:

- Cannot restrict either party's ability to have an advisor present at all proceedings.
- The advisor can be anyone chosen by the party.

Delays or Extensions

- Temporary delays in the investigation will only be allowed for “good cause”
- Provide notice to parties explaining reasons for action.

Law Enforcement Investigation

Must be:

- Reasonably short – preferably no longer than two weeks.
- Only for the time it takes law enforcement to quickly complete necessary interviewing and evidence gathering.

Also, when such a delay occurs, the institution must provide written notice to the parties of the delay and the reasons for it.



THE INVESTIGATION – GATHERING EVIDENCE

INTERVIEWS

EVIDENCE

SEARCHES

THE INVESTIGATION – GATHERING EVIDENCE

INTERVIEWS

Written notice must be provided far enough in advance to give the parties sufficient time to prepare to participate.

Notice of:

Date

Time

Location

Participants

Purpose of all hearings, investigative interviews or other meetings.

Attach as an exhibit – take notes, record or both to create a usable transcript.

EVIDENCE

SEARCHES

THE INVESTIGATION – GATHERING EVIDENCE

INTERVIEWS

Written notice must be provided far enough in advance to give the parties sufficient time to prepare to participate.
Notice of:

Date

Time

Location

Participants

Purpose of all hearings, investigative interviews or other meetings.

Attach as an exhibit – take notes, record or both to create a usable transcript.

EVIDENCE

When gathering any possible evidence be deliberate to help in making a determination.

SEARCHES

THE INVESTIGATION – GATHERING EVIDENCE

INTERVIEWS

Written notice must be provided far enough in advance to give the parties sufficient time to prepare to participate.
Notice of:

Date

Time

Location

Participants

Purpose of all hearings, investigative interviews or other meetings.

Attach as an exhibit – take notes, record or both to create a usable transcript.

EVIDENCE

When gathering any possible evidence be deliberate to help in making a determination.

SEARCHES

Searching personal electronics devices or other belongings:

- Only after establishing and documenting reasonable suspicion for the search.
- Should comply with any state law or local policy limitations on such searches.

11. Opportunity to Inspect

Prior to the completion of the report, must provide both parties:

- An equal opportunity to inspect all evidence directly related to the allegations, even if the institution does not intend to rely on the evidence
- An opportunity to “meaningfully respond” to the evidence after inspection.

Parties must have at least 10 days to submit written responses to the evidence, which must be considered prior to completion of the final report.

12. Investigative Report

The regulations also require the creation of a written investigatory report that “fairly summarizes relevant evidence.”



12. Investigative Report



- Party Information
- Jurisdiction
- Allegations
- A description of the procedural steps taken from the receipt of the formal complaint through the determination (notices, interviews, methods of evidence gathering, hearings, etc.);
- Analysis of allegations
- Attach exhibits

13. Submit Investigative Report to Parties & Decision-Makers

- The report must be submitted to the parties and their advisors at least 10 days prior to a hearing or determination.
- The parties may provide responses to the report, and the decision-maker should consider the responses prior to making a decision.

14. Live Hearings & Follow Up Questions

K-12 SCHOOLS

*Live hearings are **optional**.*

POSTSECONDARY SCHOOLS

*Live hearings and follow up questions are **mandatory**.*

14. Live Hearings & Follow Up Questions

The decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.

34 C.F.R. 106.45(b)(6)(i).

14. Live Hearings & Follow Up Questions

- At either party's request, parties can be in separate rooms with technology that has audio and visual feeds.
- At institution's discretion, any or all parties or witnesses may appear virtually.
- Must create an audio or audiovisual recording, or transcript, of hearing and make available to parties.

14. Live Hearings & Follow Up Questions

With or without a live hearing, the decision-maker must ask each party and any witnesses any relevant questions and follow-up questions, including those challenging credibility, that a party wants asked of any party or witnesses.

Inappropriate Follow Up Questions

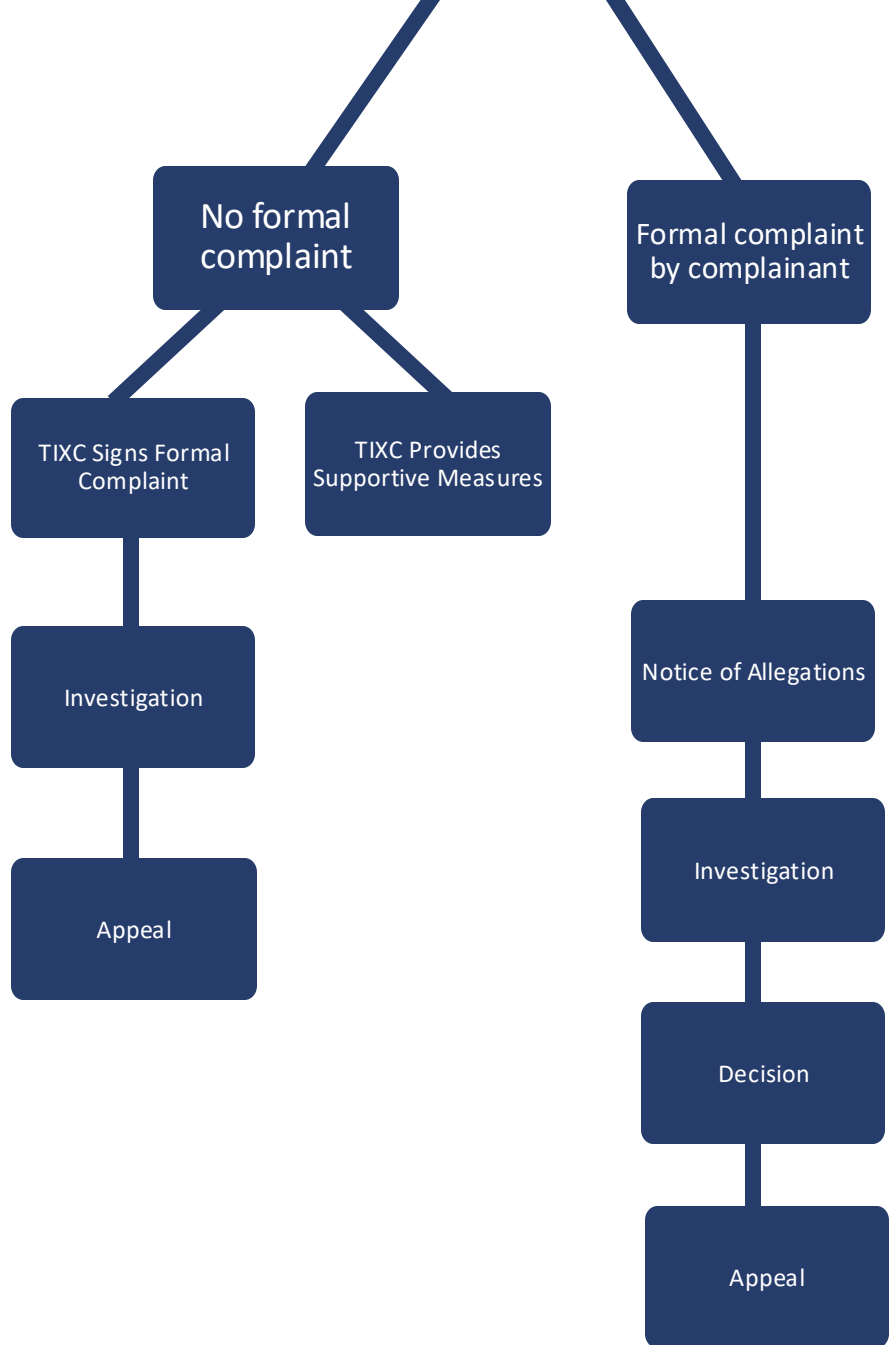
With or without a hearing, all questioning must exclude evidence of the complainant's sexual behavior or predisposition, except in limited circumstances:

- To prove that someone other than the respondent committed the alleged conduct.
- When specific incidents of reporting party's sexual behavior with responding party are offered to prove consent.

15. Written Determinations

School must issue written determination that includes the following:

- A list of the allegations
- A description of the procedural steps taken from the receipt of the formal complaint through the determination (notices, interviews, methods of evidence gathering, hearings, etc.)
- Findings of fact supporting the determination
- Conclusions
- The rationale for the determination regarding each allegation, which should include the disciplinary sanctions imposed and remedies to be provided, if any
- Rights of Appeal.



16. THE APPEAL

Opportunity for appeal must be offered to either party on, at the least, the following bases:

- A procedural irregularity.
- New evidence that was not reasonably available at the time the determination was made and that could affect the outcome.
- The Title IX Coordinator, investigator or decision-maker had a conflict of interest or bias against one of the parties that affected the outcome



A SCHOOL DISTRICT'S OBLIGATIONS

TITLE IX EDUCATION

Title IX Training

Specifically, Title IX Coordinators, investigators and decision-makers, and any individual that facilitates an informal resolution process, must receive training on the following:

- The definition of sexual harassment
- All activities included in the institution's programs or activities
- How to properly conduct an investigation pursuant to the grievance process listed in the regulation, including appeals and informal resolution processes
- Investigating allegations impartially, conflicts of interest, etc.

Title IX Training

- Technology that may be used to conduct a live hearing (in the institution conducts live hearings).
- Issues of relevance with regard to questions, including being able to determine when questions about the reporting parties' sexual predisposition or prior sexual behavior are irrelevant.
- How to create a report that “fairly summarizes the relevant evidence”

Title IX Public Resources

The regulation also requires that all materials used to implement the trainings above must be made available on the institution's website or, if the institution does not maintain a website, upon request “for inspection by members of the public.”

Retaliation

The Title IX regulation prohibits retaliation for filing complaints or otherwise participating, or refusing to participate, in the investigation of an allegation of sexual harassment

It also indicates that it is not considered retaliation for an institution to provide disciplinary consequences when an individual makes “a materially false statement in bad faith in the course of a grievance proceeding.” Must have evidence that it is false and made in bad faith (in other words, knew it was false).

Record Keeping



The following must be created and maintained for seven years:

- Investigation documents including written finding, disciplinary sanctions and remedies implemented.
- Appeal and related results.
- Informal resolution/s implemented.
- Supportive measures implemented.

INVESTIGATIVE INTERVIEWS



THE INTERVIEW



INTERVIEW: *PROCESS*

1

Begin with the complainant/victim to get a full understanding of the allegation

2

Then, if possible, follow with an interview of the respondent/accused

3

Interview witnesses (remember to ask the complainant and respondent for witnesses)

4

You may need to follow-up with the original parties, depending on what you learn during your investigation

INTERVIEW: *SETTING*

**Private
Setting**
(e.g., Office On
District Property)

**One
Interview at a
Time**

**Comfortable
Environment**
(e.g. not too hot
or cold)

**Seating
Arrangements**

**Noise Level
Should Be
Low**

**Feel Free to
Have a
Notetaker
With You**

Basic Interview Tips

RAPPORT

Establish rapport with the witness

WITNESS

Get the witness to talk

SCRIPT

Follow a script but be prepared to deviate, if necessary

CHRONOLOGICAL

Work in a chronological order

NOTES

Take very detailed notes

Basic Interview Tips

LISTENING

Practice active listening

SUMMARIZE

Summarize before moving on

QUESTIONS

Ask one question at a time (no compound questions)

EASY QUESTIONS

Start with easy questions, then move to harder questions

5WS & 1H

Don't forget about who, what, when, where, why and how

Opening the Interview

PURPOSE:

Tell the witness why the interview will be conducted.

STRUCTURE:

Explain the structure of the session

NEEDS:

Explain that if they need anything, like a break, to let you know

CONFIDENTIALITY:

Will protect to the extent possible

RIGHTS:

Cannot be retaliated against participating

Observations During Interviews

**DOCUMENT IN A
FACTUAL MANNER**

**DON'T OVER-RELY ON
BEHAVIORAL OBSERVATIONS**

Observations During Interviews

**DOCUMENT IN A
FACTUAL MANNER**

EXAMPLE:
*"Avoided eye
contact" or "raised
voice" rather than
"seemed to be
lying"*

**DON'T OVER-RELY ON
BEHAVIORAL OBSERVATIONS**

Observations During Interviews

DOCUMENT IN A FACTUAL MANNER

EXAMPLE:
"Avoided eye contact" or "raised voice" rather than "seemed to be lying"

DON'T OVER-RELY ON BEHAVIORAL OBSERVATIONS

Studies have shown that we're not good at detecting lies on behavior

Concluding Interviews

- Have you told us everything you know about this issue?
- Is there anything we did not cover that you think is important?
- Is there anything else you want to tell me?
- Confirm and clarify details
- Provide contact information and request to be contacted if anything else is remembered.
- ***Prepare interview summary as soon as possible***

INTERVIEWING THE COMPLAINANT

GENERAL APPROACH:

- Be respectful and sensitive to their needs, but remain neutral
- If the allegations are sex-based, have a witness or notetaker of the opposite sex
- **DO NOT** provide opinions



INTERVIEWING THE COMPLAINANT



*Begin with open-ended questions:
“Tell me what happened”*



As details emerge, ask more specific open-ended questions – “You alleged that she groped you three times. Tell me about these incidents.”



*Clarify as the story takes shape –
“Did this instance also occur in your office?”*

INTERVIEWING THE COMPLAINANT

Nail down the final details with closed questions:

- *Where specifically did she touch you?*
- *How long did the touch last?*
- *You said you told Tina about her behavior. How long after the third incident did you tell her?*



INTERVIEWING THE COMPLAINANT



Do not finish the interview without getting the specific details of the allegation:

- When did the problem start?
- Establish each specific act to have occurred
- Names, dates, witnesses, locations, times
- Frequency of conduct
- Allegations must be supported with information
- Identify witnesses
- Did the complainant tell others about the behavior?

INTERVIEWING THE COMPLAINANT

Only provide necessary details, do not feed information:

- Begin broadly and become more specific as necessary
- If the witness does not respond to broad-based questions, you may have to become more specific



INTERVIEWING THE COMPLAINANT

Funnel Technique



**"Tell me about interactions
between Jaimie and Lisa
that you've witnessed?"**



**"Have you witnessed any
inappropriate conduct
between Jaimie and Lisa?"**



**"What specifically did you
see?"**



**"Did Lisa seem to object to
the interaction?"**

INTERVIEWING THE COMPLAINANT

Funnel Technique



**“Are you saying that
this happened inside
Jaimie’s cubicle?”**



**“How could you see
the interaction?”**



**“What day and time
did this occur?”**

INTERVIEWING THE RESPONDENT



- Always convey the seriousness of the matter but *remain neutral*
- Explain the allegation and ask them to provide their side of the story

INTERVIEWING THE RESPONDENT



Let them talk but:

- Get the whole story, from beginning to end
- Nail down the specifics
- Challenge, respectfully, when you have conflicting information, or the story seems illogical
- Point out parts of the allegation that have been corroborated, if necessary
- Look for a motive

INTERVIEWING THE RESPONDENT



Example Questions:

- How do you respond to the allegation I just read?
- Are you saying that none of the interactions occurred as alleged?
- Let's go back to the first alleged incident, which the complainant says occurred on the morning of April 25, 2024...
- You said that Lisa has never been inside your cubicle, but three witnesses have independently told us that she was in your cubicle on the afternoon of Wednesday, May 1, 2024. How do you explain the discrepancy.
- Do you have any information that can disprove the complainant's allegation and the witnesses' corroborating testimony?

THE REPORT



THE REPORT

ANALYSIS:

Evidence must be analyzed to determine whether district policies were violated.



“Preponderance of the evidence” or “clear & convincing”, NOT beyond a reasonable doubt.

At the very least, a report should include:



- Preliminary information
 - *Parties, dates of complaint, investigator*
- Procedural History
- Allegations
 - List the specific allegations
- Policies
 - List the relevant policies
- Scope of Investigation:
 - Summary of facts
 - Recommendations (MAYBE)
 - Appendix or attachments

THE REPORT



**PRELIMINARY
INFORMATION**

**PROCEDURAL
HISTORY**

ALLEGATIONS

POLICIES

SCOPE

PRELIMINARY INFORMATION

Parties

- Biographical data of the main parties and witnesses (name, age, school/grade, sex)
- *Throughout rest of report, refer to anonymously (e.g., reporting party, claimant, respondent, witness 1,2,3, etc.)*

Dates

- Incident(s)
- Reported

To whom reported



**PROCEDURAL
HISTORY**

ALLEGATIONS

POLICIES

SCOPE

PROCEDURAL HISTORY

A description of the procedural steps taken from the receipt of the formal complaint through the determination (notices, interviews, methods of evidence gathering, hearings, etc.).



ALLEGATIONS

POLICIES

SCOPE

PRELIMINARY
INFORMATION

ALLEGATIONS

ALLEGATIONS:

Summarize the allegations, with sufficient detail for the parties to understand what is being investigated.



POLICIES

SCOPE

PRELIMINARY
INFORMATION

PROCEDURAL
HISTORY

ALLEGATIONS

Model Allegation

On Jan. 12, 2024, the claimant informed Ms. Davis, high school counselor (“the counselor”), that the respondent made inappropriate comments to her and touched her in an inappropriate manner. Specifically, she stated that the respondent commented on her breasts (“add specific comments”) on several occasions in Mr. Jackson’s 3rd hour Geometry class, while informing her of what sexual acts he would like to perform on her (“add specific comments”). The claimant could not remember specific dates but said this occurred “probably 15 or 20 times” throughout the months of December and January. (The respondent sits one desk behind the claimant in the aisle just to her left.) She also said that on January 11, 2024, the respondent walked up to her as she stood at her locker after 6th hour and grabbed her left breast and rubbed his crotch against her left hip.



POLICIES

SCOPE

**PRELIMINARY
INFORMATION**

**PROCEDURAL
HISTORY**

POLICIES

EXAMPLE:

An investigation of the above-listed allegations was conducted to determine whether Policy FB – Sexual Harassment of Students, was violated.



SCOPE

PRELIMINARY
INFORMATION

PROCEDURAL
HISTORY

ALLEGATIONS

SCOPE

The purpose of the report (fairly summarize the relevant evidence, but not to make conclusions or suggest remedies).



**PRELIMINARY
INFORMATION**

**PROCEDURAL
HISTORY**

ALLEGATIONS

POLICIES

SCOPE

Summary of the Facts/Evidence

- Describe, in a logical sequence, ALL facts relevant to the analysis, conclusion and recommendations.
- Narrative format
- Be detailed but succinct, if possible
- Chronological – start with the claimant’s allegation(s) and work from there
- Cite to evidence, witness statements, interview notes, etc., as labeled in the appendix



**PRELIMINARY
INFORMATION**

**PROCEDURAL
HISTORY**

ALLEGATIONS

POLICIES

SCOPE

Appendix

Use a common-sense labeling system to identify all evidence in the appendix (e.g., A.1, A.2, A.3, etc.)



**PRELIMINARY
INFORMATION**

**PROCEDURAL
HISTORY**

ALLEGATIONS

POLICIES

Analysis & Conclusion

If facts are close or it is a "he said, she said" situation:

- Demeanor – *pay attention to behavior but do not overly rely on it*
- Consistency/logic - *Does the story make sense?*
- Corroborating evidence – *Compare documents and witness statements*
- Circumstantial evidence
- History of this behavior
- Motivations

NOTICE, DUE PROCESS AND REMEDY



Notice & Due Process

Provide written notice of the outcome to both parties:

RESPONDENT

If concluded that they violated district policy:

Explain what policies were violated and the disciplinary action, if any.

COMPLAINANT

If concluded they violated district policy:

State the policies determined to be violated, and any remedial actions that affect the complainant, such as no-contact orders, offers of counseling, etc.

If it doesn't specifically affect the complainant, you cannot provide details of discipline instituted:

Employee discipline: Shall make available any final disciplinary action that results in loss of pay, suspension, demotion of position, or termination.

Due Process

RESPONDENT

If concluded that respondent violated district policy, provide notice of rights to appeal (per your district policy) and timeframe for the request.

COMPLAINANT

Provide the same rights to the complainant if you conclude that you could not substantiate allegations.

DISCIPLINE/ REMEDIES

STUDENTS



DISCIPLINE

- Follow your student code of conduct
- Tailor the discipline to the severity of the offense and respondent's previous disciplinary record

REMEDIES

- Does the victim need counseling, tutoring, etc.?

DISCIPLINE/ REMEDIES

EMPLOYEES



DISCIPLINE

- Institute discipline based on the severity of the offense
- Remember to use progressive discipline, and follow district policies/CBAs

REMEDIES FOR THE VICTIMS?

Have a question?

Contact me!



BRANDON CAREY

OSSBA STAFF ATTORNEY

brandonc@ossba.org

TITLE IX SEXUAL HARASSMENT TRAINING

SCENARIO



BRANDON CAREY
OSSBA STAFF ATTORNEY

UPDATED ON SEPT. 30, 2025

TITLE IX INVESTIGATION STEPS

1. Actual Notice/Report to Title IX Coordinator: If any employee of the district has notice of conduct that may violate Title IX's prohibition against sexual harassment, report it to the Title IX coordinator and building principal.
2. Initial Discussion/Supportive Measures: Title IX coordinator contacts the complainant (i.e., the individual alleged to be the victim of harassment) and:
 - a. offers supportive measures, and
 - b. explains how to file a formal complaint.
3. Law Enforcement/DHS Referral: Does the allegation require a law enforcement or DHS referral?
4. Formal Complaint: To proceed under Title IX, a formal complaint must be submitted by the complainant or the Title IX Coordinator? If no formal complaint, proceed under a different aspect of the student code of conduct.
5. Jurisdictional Determination: Determine whether the district has jurisdiction over the subject matter, the people, and the place, event, or activity at which the conduct allegedly occurred.
6. Notice to Parties/Assign Investigator: Provide written notice to parties that meets the requirements of 34 C.F.R. 106.45(b)(2) and assign an employee to investigate the allegation(s).
7. Supportive Measures: The Title IX Coordinator determines whether supportive measures are necessary for both parties.
8. Emergency Removal: Before an emergency removal, the district must perform an individualized risk analysis, determine that an immediate threat to the health or safety of students or employees justifies removal, and provide the respondent with notice and an opportunity to challenge the decision immediately following removal.
9. Informal Resolution: If the district offers an informal resolution process, determine whether it is appropriate in the matter being investigated. (Informal resolution is not appropriate if the respondent is an employee of the district.)
10. Investigation
 - a. Notice of Interviews: Provide notice of interviews that provides the date, time, place, and purpose.

- b. Interviews: Interview the complainant and respondent, and any witnesses that may have relevant information to contribute.
 - c. Evidence: Obtain any evidence that will help the district make a determination (e.g., text messages, emails, social media posts, surveillance video, medical documentation, etc.). ***This should begin after notice of the possible conduct and continue throughout the investigation.***
11. Opportunity to Inspect: Prior to completion of the investigatory report, provide all evidence directly related to the allegation(s) to both parties and their advisors in electronic or hard copy format, and allow both parties ten (10) days to provide a written response. These responses must be considered before finalizing the investigatory report.
12. Investigative Report: Write a report that contains all relevant evidence and analyzes the issues under investigation. Witness statements, interview notes and other evidence should be attached as exhibits.
13. Submit Report to Parties and Decision-Maker: The report must be submitted to the parties and their advisors at least ten (10) days prior to a hearing or decision. Any responses from the parties should be considered by the decision-maker prior to a final determination.
14. Live Hearing and/or Follow-up Questions: Live hearings are optional for K-12 institutions but mandatory for postsecondary institutions. With or without a live hearing, the decision-maker must ask each party and any witnesses any relevant questions and follow-up questions, including that challenging credibility, that a party wants asked of any party or witnesses.
- a. Afford each party the opportunity to submit written questions;
 - b. Provide each party with the answers; and
 - c. Allow for additional, limited follow-up questions from each party.
15. Written Determination/Outcome Letter: Send a written notice of the determination, that complies with 34 C.F.R. 106.45(b)(7), to both parties.
16. Appeal: Ensure that the parties are aware of their rights to appeal the final determination. If an appeal is filed, follow the steps in district policy.

INVESTIGATION TIMELINE

(formal complaint, notice of investigation/interviews, supportive measures, interviews, written statements, obtaining evidence, inspection of evidence, investigation report, follow-up questions, determination)

<u>Action</u>	<u>Date</u>
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____
10. _____	_____
11. _____	_____
12. _____	_____
13. _____	_____
14. _____	_____
15. _____	_____
16. _____	_____
17. _____	_____
18. _____	_____
19. _____	_____
20. _____	_____

The Complaint

Step 1: Actual Notice

On Monday, March 31, 2025, Leah, a 15-year-old freshman at Jackson High School (JHS), asks to speak to her math teacher, Ms. Craft, after 4th hour. Leah says she needs to tell her about an incident with another student that occurred at the soccer match with Madison High School (MHS) last week. She said she had just bought a Gatorade at the concession stand when she noticed Kayla, another 15-year-old freshman, and a member of the JV soccer team, walking over with tears in her eyes. Leah went up to console her and ask what was going on and, according to Leah, Kayla said that she thought she had just been raped. Leah said that, when she inquired further, Kayla would only say, "I didn't want it to happen."

Is this actual notice under the Title IX standards? If so, why?

- _____
- _____

What should Ms. Craft do at this point?

- _____

Step 2: Initial Discussion/Supportive Measures

Ms. Craft informed Leah that it was important that this information be reported to Ms. Mendoza, the Title IX Coordinator and Mr. Howard, the site assistant principal assigned to handle Title IX matters. She escorted Leah to Mr. Howard's office where they contacted Ms. Mendoza by phone.

Once notified, what steps should Ms. Mendoza take?

- _____
- _____
- _____

What steps, if any, should Mr. Howard take?

- _____
- _____
- _____

What types of supportive measures might be helpful?

- _____
- _____
- _____
- _____

As Mr. Howard goes to find Kayla and get her parents on the phone, Ms. Mendoza comes to his office. Ms. Mendoza tells Kayla and her parents what she has learned, speaks to her about supportive measures, and explains how to file a Title IX complaint. After getting over their shock (for Kayla, that the administrators, and now her parents, know about the situation, and for her parents, that their daughter was possibly raped), Kayla asks to speak to her parents alone.

What else, if anything, should Ms. Mendoza explain to Kayla and her parents?

- _____
- _____

Step 3: Contact Law Enforcement/DHS Referral

While Kayla speaks to her parents, Ms. Mendoza contemplates calling the local police department to report an alleged crime.

Should Ms. Mendoza call the police at this point?

- _____

What information should be documented when a report is made?

- _____
- _____
- _____

Should Ms. Mendoza contact DHS?

- _____
- _____

Step 4: Formal Complaint

After 15 or 20 minutes Kayla comes out and reports that she wants to file a complaint, and relays the following:

Last Thursday she was at MHS for the JHS-MHS soccer games (Kayla is on the girls' JV team). After the JV game she went into the stands to sit with friends and watch the varsity play. At some point during the girls' varsity game, she realized she had left her sweatshirt in the visiting girls' locker room, so she went over to the locker room to get it. The door was unlocked so she went into the room and found the shirt on a bench. As she was grabbing the shirt when the door opened and Nathan, a 17-year-old junior at JHS, entered the room, shut the door, and quickly approached her. He started kissing her and she froze. He then pulled down her shorts and underwear and had nonconsensual, unprotected intercourse with her. She never said a word and was scared the entire time.

Ms. Mendoza asks her to write down this information and to indicate that she wants the district to investigate.

Now that Ms. Mendoza has this information, what should she do?

- _____
- _____
- _____
- _____

If Kayla had refused to file a complaint, what steps would the district need to take?

- _____

Step 5: Jurisdictional Determination

Ms. Mendoza determines that, based on the information provided in the complaint, the school has jurisdiction to investigate under Title IX.

- First, the information, if true, would violate Title IX's prohibition against sexual harassment (specifically, the sexual assault element).
- Second, although it did not occur on school grounds, the alleged act occurred at a school sponsored activity.
- Third, the district has jurisdiction over both the complainant and respondent, as they are both students at JHS.

Once Ms. Mendoza has determined that the district has jurisdiction to investigate this allegation under Title IX, what steps should she take?

- _____
- _____
- _____

Step 6: Notice to Parties/Assign Investigator

Ms. Mendoza immediately assigns Mr. Howard as the investigator. This assignment is pursuant to the district's previously determined investigative structure, which assigns deputies at each school site to handle the investigative work.

What should Mr. Howard do upon being assigned to investigate the case?

- _____
- _____

Mr. Howard sent notice letters to both students and their parents. The letters notified both parties of the district's decision to open a Title IX complaint, the specifics of the allegation, and the policies allegedly violated. The notices also contained language required under federal law, such as that the respondent is presumed innocent until a finding is made.

What should Mr. Howard do after sending notices to the parties?

- _____
- _____
- _____
- _____

NOTICE OF TITLE IX INVESTIGATION & INTERVIEW

Date: March 31, 2025

Addressee: Kayla

Dear Kayla:

This letter is in reference to the formal Title IX complaint that you filed alleging conduct that, if true, would violate district policies prohibiting sexual harassment. The policies allegedly violated include:

- BL – Sexual Harassment Policy
- EG-R1-F1 – Student Discipline, Suspension, & Due Process

Specifically, on March 31, 2025, you filed a formal complaint alleging that Nathan (“respondent”) engaged in the following conduct: on March 27, 2025, the respondent sexually assaulted you in the girls’ visiting locker room at Madison High School during the JV soccer matches between Jackson High School and Madison High School.

At this time, the respondent is presumed not responsible for the alleged conduct, as a determination regarding responsibility will not be made until the conclusion of the grievance process. Below, you will find information to help you understand the district’s grievance process and your rights in this matter:

- The district’s applicable procedures are to be found online at _____. If you need a hardcopy or accessible copy of these procedures, you should direct a request to the investigator, Mr. Howard (assistant principal) at the number listed below.
- You have the right to one (1) advisor of your choice to accompany you and assist you throughout the district’s process. The advisor may be, but does not have to be, an attorney.
- You will have the right to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint. Prior to the conclusion of the investigative report, the investigator will submit the evidence to you and the respondent in electronic or hard copy format, and you and the respondent will have ten (10) days to submit a written response. The investigator will consider the responses before finalizing the investigative report.
- The district’s student code of conduct prohibits students from knowingly making false statements or submitting false information during the grievance process.

The individual assigned to investigate this complaint needs to meet you for an interview for the purpose of obtaining your response to the allegations, and to obtain further information and evidence, if any. The details of the interview are as follows:

Fictional scenario created by OSSBA Staff Attorney Brandon Carey on September 30, 2025, for Title IX investigation training purposes.

- Date: April 1, 2025
- Time: 9:00 a.m.
- Location: JHS Principal's Office
- Participants: Mr. Howard, Mr. Manning (assistant principal)

If you have a conflict during this time, please contact the investigator to arrange a different time. Also, if you have materials or other evidence that you believe are relevant to the investigation, please bring them to the interview

Should you have any questions about the process and/or the interview, please contact the Mr. Howard at the number listed below.

Signed,

Jay Howard
Assistant Principal
Jackson High School
Office # (555) 555-5555
Email: jhoward@jhs.com

NOTICE OF TITLE IX INVESTIGATION & INTERVIEW

Date: March 31, 2025

Addressee: Nathan

Dear Nathan:

This letter is to inform you that a formal complaint has been filed alleging that you have engaged in conduct that, if true, would violate district policies prohibiting sexual harassment. The policies allegedly violated include:

- BL – Sexual Harassment Policy
- EG-R1-F1 – Student Discipline, Suspension, & Due Process

Specifically, on March 31, 2025, a formal complaint was filed alleging that you engaged in the following conduct: Kayla _____ has alleged that on March 27, 2025, you sexually assaulted her in the girls' visiting locker room at Madison High School during the JV soccer matches between Jackson High School and Madison High School.

At this time, you are presumed not responsible for the alleged conduct, as a determination regarding responsibility will not be made until the conclusion of the grievance process. Below, you will find information to help you understand the district's grievance process and your rights in this matter:

- The district's applicable procedures are to be found online at _____. If you need a hardcopy or accessible copy of these procedures, you should direct a request to the investigator, Mr. Howard (assistant principal) at the number listed below.
- You have the right to one (1) advisor of your choice to accompany you and assist you throughout the district's process. The advisor may be, but does not have to be, an attorney.
- You will have the right to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint. Prior to the conclusion of the investigative report, the investigator will submit the evidence to you and the complainant in electronic or hard copy format, and you and the claimant will have ten (10) days to submit a written response. The investigator will consider the responses before finalizing the investigative report.
- The district's student code of conduct prohibits students from knowingly making false statements or submitting false information during the grievance process.

The individual assigned to investigate this complaint needs to meet you for an interview for the purpose of obtaining your response to the allegations, and to obtain further information and evidence, if any. The details of the interview are as follows:

Fictional scenario created by OSSBA Staff Attorney Brandon Carey on September 30, 2025, for Title IX investigation training purposes.

- Date: April 2, 2025
- Time: 9:00 a.m.
- Location: JHS Principal's Office
- Participants: Mr. Howard, Mr. Manning (assistant principal)

If you have a conflict during this time, please contact the investigator to arrange a different time. Also, if you have materials or other evidence that you believe are relevant to the investigation, please bring them to the interview

Should you have any questions about the process and/or the interview, please contact the Mr. Howard at the number listed below.

Signed,

Jay Howard
Assistant Principal
Jackson High School
Office # (555) 555-5555
Email: jhoward@jhs.com

Notice of Temporary Delay

April 1, 2025

Dear Nathan:

The purpose of this communication is to provide notice of a temporary delay in the Title IX grievance process in which you are currently involved. The Title IX regulations at 34 C.F.R. 106.45(b)(1)(v) allow for a temporary delay of the investigation timelines for “good cause”. The reason for the current temporary delay is as follows:

- Absence of a party, a party’s advisor, or a witness: _____
- Concurrent law enforcement activity: The JHS campus police have asked the district to delay its investigation while they perform initial fact-finding pursuant to a criminal investigation.
- Language assistance or disability accommodations: _____
- Other reasons: _____

The delay is expected to last until April 14, 2025. At that time, the district plans to resume the investigation. Feel free to contact Mr. Jay Howard at jhoward@jhs.com if you have any questions.

Step 7: Offer Supportive Measures

Supportive measures should be offered to both parties to ensure continued access to the educational environment pending the completion of the investigation.

What supportive measures may be helpful in this situation?

- _____
- _____
- _____
- _____

Title IX Investigation – Supportive Measures

The following supportive measures were provided to Nathan pending the completion of the investigation into a formal Title IX complaint alleging that he violated the district's policies against sexual harassment, which was submitted on March 31, 2025.

- ☐ New seating assignments: _____
- ☐ Increased monitoring of parties/areas: _____
- ☐ No contact order: Put in place for both parties on March 31, 2025
- ☐ Schedule change: _____
- ☐ Referral to counselor: Although Nathan is on suspension he has been given a pass to the counselor's office and may use it at any time.
- ☐ Other: _____

Step 8: Emergency Removal

Mr. Howard had to make a decision about Nathan's status during the investigation. Under the Title IX procedures, a student can only be removed from school after a risk and safety analysis is conducted. To remove the Nathan, Mr. Howard must determine:

- 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
- Provide the respondent with notice and an opportunity to challenge the decision immediately following the removal.

Emergency Removal

On March 31, 2025, you were notified that a formal complaint was filed alleging that you had engaged in conduct that, if true, would violate district policies prohibiting sexual harassment. The Title IX regulations, at 34 C.F.R. 106.44(c), allow school districts to remove a student from the school setting on an emergency basis, as long as the district:

- 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.

The formal complaint alleges that you engaged in the following behavior: Kayla has alleged that on March 27, 2025, you sexually assaulted her in the girls' visiting locker room at Madison High School during the JV soccer matches between Jackson High School and Madison High School. Based on the nature of the alleged behavior, we believe that you pose an immediate threat to the physical health or safety of Kayla and other students, which justifies your removal from the school setting on an emergency basis. Therefore, you are prohibited from being on any school district properties, or attending any school sponsored events, until further notice. Please contact the following individual at one of the listed contact options for information on your educational plan during the time of the emergency removal.

Name: Mr. Jay Howard, Assistant Principal
Email: jhoward@jhs.com
Phone Number: (555) 555-5555
Office Address: 100 School Drive
Office 20
Jackson, OK 55555

You also may challenge this decision by contacting the following individual, in writing, at one of the listed contact options.

Name: Mr. Jay Howard, Assistant Principal
Email: jhoward@jhs.com
Phone Number: (555) 555-5555
Office Address: 100 School Drive
Office 20
Jackson, OK 55555

If you choose to challenge this removal, your written challenge must be received by April 3, 2025.

If you have any questions about this process, feel free to contact me.

Fictional scenario created by OSSBA Staff Attorney Brandon Carey on September 30, 2025, for Title IX investigation training purposes.

Sincerely,
Jay Howard
Assistant Principal
Jackson High School
Office # (555) 555-5555
Email: jhoward@jhs.com

Step 9: Informal Resolution

This process is allowed at any time prior to a final determination.

- Both parties must voluntarily consent in writing
- Cannot be used if allegation involves an employee harassing a student

Based on the allegation, would an attempt at informal resolution make sense?

- _____

Step 10: Investigation

- **Step 10(a) Notice of Interviews**

- For the claimant and respondent, this was part of the notice letter.

At this point, should any other interview notices be sent out?

- _____
- _____

Steps 10(b) & 10(c): Interviews & Evidence Gathering

Prior to formally interviewing Kayla and Nathan, Mr. Howard began evidence gathering and identifying possibly witnesses to interview.

At this time, what evidence should Mr. Howard request?

- _____
- _____
- _____
- _____

What questions should be asked of Kayla in her formal interview?

Interview of Kayla

Mr. Howard and Ms. Johnson, the JHS principal, interview Kayla on April 1, 2025, with Ms. Johnson doing the questioning. They confirm the details above and learn the following:

- Nathan and several friends were at the JV game as spectators;
- Kayla and Nathan were sitting together in the stands;
- Kayla and Nathan had been “talking” and sometimes called and texted each other;
- Another JV soccer player, Sarah, walked into the locker room as the incident was occurring, said “oh, boy” and immediately left.
- After the incident, Kayla saw Leah near the concession stand, who immediately asked her if something was wrong. The two went to a different side of the visitors’ stands and talked about the incident. They stayed there until it was time to get on the bus and go back to campus.

What questions should be asked of Nathan in his formal interview?

Interview of Nathan

The interview of Nathan was scheduled for Friday, April 2, 2025. Nathan brought his mother as his representative. He provided the following information.

- Nathan said that he and Kayla had been “talking” for a while, and early last week had verbally discussed “taking the next step” that weekend (which would have been the weekend of April 3-4). When asked what he meant by “taking the next step” he said they weren’t specific but definitely were talking about some type of sexual activity.
- He said that Kayla knew he was coming to the game and that he was looking forward to hanging out.
- During the game they were holding hands and making flirtatious comments, some of which could be considered sexual innuendo. She even placed her hand on his inner thigh. At some point Kayla said, “I’m cold. I should go to the locker room and warm up. I wouldn’t be mad if you came and warmed up with me.”
- When Mr. Howard asked if Kayla said anything about going to get her sweatshirt, Nathan said “no”, and that she was wearing a sweatshirt when they were in the stands.
- After Kayla left, he waited a minute or so and went to the locker room, where he and Kayla began making out in a corner that was hard to see from the door.
- He said that she made the first move when he walked up to her, and it was “clear” that she wanted to have sex. He said that it was “clear” by the way she was acting. Specifically, she did not object when he placed his hand under her shirt, and she rubbed his crotch over his jeans.
- Nathan admitted to taking off Kayla’s shorts and underwear and having unprotected sex with Kayla but swore that it was completely consensual.
- He also remembered someone walking in and saying something and quickly leaving but he was unsure of who it was because he wasn’t facing the door.

- Finally, he said that afterward he left as Kayla got dressed, and that they did not say much, although they did share a goodbye kiss. He also said that they did not hang out last weekend because she wouldn't answer his calls or text messages.
1. Is there new and/or conflicting information that Mr. Howard should investigate?
Sweatshirt, conversation in stands, verbal conversation.
 2. Based on the conversation with Nathan, should Mr. Howard pursue any new witnesses or evidence?

NOTICE OF TITLE IX INTERVIEW

Date: April 2, 2025

Addressee: Leah

Dear Leah:

You have been identified as a possible witness for an ongoing investigation of alleged violations of district policy. The policies allegedly violated include:

- BL – Sexual Harassment Policy
- EG-R1-F1 – Student Discipline, Suspension, & Due Process

You have not been accused of wrongdoing. Rather, you have simply been identified as someone that may have information relevant to the matter. The individual assigned to investigate this complaint needs to meet you for an interview. The details of the interview are as follows:

- Date: April 4, 2025
- Time: 10:00 a.m.
- Location: Principal's Office – Jackson High School
- Participants: Mr. Jay Howard, Ms. Lisa Johnson
- Purpose: Investigative interview to obtain information and evidence about the matter, if any.

If you have a conflict during this time, please contact the investigator to arrange a different time. Also, if you have materials or other evidence that you believe are relevant to the investigation, please bring them to the interview

Should you have any questions about the process and/or the interview, please contact the investigator listed above at the email or number listed below.

Signed,

Jay Howard
Assistant Principal
Jackson High School
Office # (555) 555-5555
Email: jhoward@jhs.com

NOTICE OF TITLE IX INTERVIEW

Date: April 2, 2025

Addressee: Sarah

Dear Sarah:

You have been identified as a possible witness for an ongoing investigation of alleged violations of district policy. The policies allegedly violated include:

- BL – Sexual Harassment Policy
- EG-R1-F1 – Student Discipline, Suspension, & Due Process

You have not been accused of wrongdoing. Rather, you have simply been identified as someone that may have information relevant to the matter. The individual assigned to investigate this complaint needs to meet you for an interview. The details of the interview are as follows:

- Date: April 4, 2025
- Time: 9:00 a.m.
- Location: Principal's Office – Jackson High School
- Participants: Mr. Jay Howard, Ms. Lisa Johnson
- Purpose: Investigative interview to obtain information and evidence about the matter, if any.

If you have a conflict during this time, please contact the investigator to arrange a different time. Also, if you have materials or other evidence that you believe are relevant to the investigation, please bring them to the interview

Should you have any questions about the process and/or the interview, please contact the investigator listed above at the email or number listed below.

Signed,

Jay Howard
Assistant Principal
Jackson High School
Office # (555) 555-5555
Email: jhoward@jhs.com

What questions should be asked of Leah during her interview?

Interview of Leah

On the morning of April 4, 2025, Mr. Howard and Ms. Johnson interviewed Leah. They verified Leah's initial story and also learned that:

- Leah and Kayla had not spoken about the incident since the night of March 27, 2025;
- She did not remember whether Kayla was wearing a sweatshirt in the stands prior to the incident;
- Leah does not know any further information about the incident.

What questions should be asked of Sarah during her interview?

Interview of Sarah

On the morning of April 4, 2025, Mr. Howard interviewed Sarah, a 16-year-old sophomore who competes on the JV soccer squad. Ms. Howard asked if Sarah had seen anything at the March 27th soccer games at MHS that Ms. Howard should know about. Sarah was somewhat evasive (“not that I can think of”) when Ms. Howard finally asked whether she had witnessed anything in the girls’ locker room during the varsity girls’ game. Sarah lowered her eyes and admitted she had. She provided the following information:

- When she was sitting in the stands watching the girls’ varsity game, she realized she couldn’t find her necklace and decided to go check in the locker room.
- As soon as she opened the door, she heard some moaning sounds to her left, and when she looked left, she saw Nathan and Kayla on the floor near the corner. Nathan was on top of Kayla, and it appeared they were having sex, although it was somewhat hard to see because a couple of benches obstructed her view and the wall in that corner of the locker room went further back than the rest of the wall.
- Sarah said that she said something like, “oh my gosh” or “oh, boy”, quickly exited the locker room and closed the door.
- When asked if it looked like Kayla was uncomfortable or resisting, she said “not from what I could tell. And by the way they were acting in the stands, I wasn’t surprised that it was happening.”
- Sarah said that in the stands she was one row down and a few seats to the left of Kayla.
- She said that Nathan and Kayla were sitting next to each other, holding hands and “acting very close and touchy.” She did not hear the conversation between the two.
- When asked if Kayla was wearing a sweatshirt in the stands, Sarah said that she “thinks so” but wasn’t 100% sure. She did not know why Kayla went to the locker room in the first place.
- She also said that, a few minutes after she returned to the stands, Nathan returned to the stands and began joking with his buddies.

- She did not see Kayla until they got on the bus to return to JHS.
1. Did you learn anything new during this conversation?
 2. What new avenues of inquiry, if any, should you pursue.
 3. What new evidence and/or witnesses should you pursue.

NOTICE OF TITLE IX INTERVIEW

Date: April 8, 2025

Addressee: Kayla

Dear Kayla:

This letter is in reference to the formal Title IX complaint that you filed alleging conduct that, if true, would violate district policies prohibiting sexual harassment. The policies allegedly violated include:

- BL – Sexual Harassment Policy
- EG-R1-F1 – Student Discipline, Suspension, & Due Process

The individual assigned to investigate this complaint needs to meet you for a follow-up interview for the purpose of obtaining your response to the information gathered to date, and to obtain further information and evidence, if any. The details of the interview are as follows:

- Date: April 10, 2025
- Time: 9:00 a.m.
- Location: JHS Principal's Office
- Participants: Mr. Howard, Ms. Johnson (assistant principal)

If you have a conflict during this time, please contact the investigator to arrange a different time. Also, if you have materials or other evidence that you believe are relevant to the investigation, please bring them to the interview

Should you have any questions about the process and/or the interview, please contact the Mr. Howard at the number listed below.

Signed,

Jay Howard
Assistant Principal
Jackson High School
Office # (555) 555-5555
Email: jhoward@jhs.com

NOTICE OF TITLE IX INTERVIEW

Date: April 8, 2025

Addressee: Nathan

Dear Kayla:

This letter is in reference to the formal Title IX complaint that was filed alleging that you engaged in conduct that, if true, would violate district policies prohibiting sexual harassment. The policies allegedly violated include:

- BL – Sexual Harassment Policy
- EG-R1-F1 – Student Discipline, Suspension, & Due Process

The individual assigned to investigate this complaint needs to meet you for a follow-up interview for the purpose of obtaining your response to the information gathered to date, and to obtain further information and evidence, if any. The details of the interview are as follows:

- Date: April 10, 2025
- Time: 11:00 a.m.
- Location: JHS Principal's Office
- Participants: Mr. Howard, Ms. Johnson (assistant principal)

If you have a conflict during this time, please contact the investigator to arrange a different time. Also, if you have materials or other evidence that you believe are relevant to the investigation, please bring them to the interview

Should you have any questions about the process and/or the interview, please contact the Mr. Howard at the number listed below.

Signed,

Jay Howard
Assistant Principal
Jackson High School
Office # (555) 555-5555
Email: jhoward@jhs.com

What follow-up questions should you ask Kayla?

Follow-up Interview - Kayla

On April 10, 2025, Ms. Johnson and Mr. Howard again interviewed Kayla. Ms. Johnson said that the district was taking her allegations seriously, but some new information was presented that contradicted some of her story. She then showed Kayla the video of her entering the locker room with the sweatshirt, and Kayla started crying. Ms. Johnson gave her a tissue and allowed her to collect herself and then presented the information about her and Nathan's interactions in the stands. Kayla eventually said the following:

- She lied about the sweatshirt because she was afraid if she told them what actually happened, they would not believe that Kayla was raped.
- She admitted to snuggling with Nathan and holding his hands in the stands, and she also invited him to meet her in the locker room. When asked what her intentions were, she said she wasn't sure. She was interested in "sexual stuff" but had never had sex and wasn't sure what would happen.
- She said that when Nathan showed up, she got very nervous and scared, so when he walked up to her, she immediately initiated kissing to "get over being scared."
- Kayla said that she "froze" when Nathan began taking off her soccer shorts. She did not want to have sex but was scared to say anything. She said she never once consented, not verbally or physically, and Nathan never asked. She said the experience was painful and scary and she began to cry as soon as he left.
- When asked if they had a goodbye kiss, as Nathan indicated, she said Nathan kissed her, but she was in a daze.
- She said that she knows she did things she shouldn't have but she was sure she did not want to have sex at the moment it happened.

What follow-up questions should you ask Nathan?

Follow-up Interview - Nathan

Nathan was interviewed again on April 10, 2025, and his mother was again present. Mr. Howard asked about the sexual encounter again and why he believed he had consent to have sex with Kayla. Nathan said the following:

- He knew he had consent because they had been flirting in a sexual manner for a couple of weeks, she invited him down to the locker room, and she made the first move in the locker room.
- When asked if she had verbally consented to intercourse he said “no, but her actions definitely showed she wanted to.”
- When asked to explain, he said that he placed his hand under her shirt and she did not push him away, and that she rubbed his crotch over his jeans.
- When asked if Kayla had willingly removed any of his cloths, he said that he removed his own clothes.
- When asked if she seemed upset afterward, he said she seemed normal to him.

Assumptions

Assume that other students identified as sitting near Kayla and Nathan in the stands have been interviewed and roughly testified to the following:

- Kayla and Nathan were definitely holding hands and cuddling.
- They were whispering to each other and sometimes laughing, but nobody heard what they said.
- Most witnesses remember Kayla wearing a sweatshirt in the stands.
- Kayla eventually left, followed shortly thereafter by Nathan.
- Nathan came back to the stands 20 or 30 minutes later, but Kayla never did.

The MHS principal sent surveillance video from outside the locker room that was recorded during the time of the game. The video shows the following:

- Kayla entering the locker room and closing the door behind her at 5:46 p.m., while wearing a blue JHS Soccer sweatshirt, followed at 5:49 p.m. by Nathan, who entered the locker room and closed the door.
- Sarah approaching the locker room door at 6:02 p.m., opening the door, stepping inside, and immediately backing out and closing the door. She walked off hurriedly.
- Nathan exiting the locker room and closing the door at 6:11 p.m.
- Sarah exiting the locker room and closing the door at 6:17 p.m. She seems to wipe her sleeve across her eyes and walk off with her head down.

Step 11: Opportunity to Inspect

After all interviews were conducted and evidence was gathered, Mr. Howard scanned all documentary evidence into a PDF file. This evidence included:

- The written complaint
- The documentation of the report to the police
- The transcripts of all interviews (the parties and witnesses)
- The text messages obtained from Kayla's phone
- Snap shots from the surveillance video

This information was provided to the complainant and respondent, and their advisors (in this situation, their parents), on April 16, 2025. In the email, Mr. Howard explained that both could file a written response to this information, but that it had to be received in his office by **Monday, April 28, 2025**, or it would not be considered in the investigation report.

Step 12: Submit Investigative Report to Parties & Decision-Maker

The investigator must submit the investigation report to the parties and the decision-maker at least 10 days prior to a hearing or determination. The decision-maker cannot make a decision until 10 days have passed, and must ask the parties if they want to ask any final, written questions of the other party and, if so, obtain answers.

- Afford each party the opportunity to submit written questions to the other party,
- Provide each party with the answers, and
- Allow for additional, limited follow-up questions

TITLE IX INVESTIGATION REPORT

Complainant: Kayla, Sophomore, JHS
Respondent: Nathan,
Date of Alleged Incident(s): March 27, 2025
Date of Complaint: March 31, 2025
Date of Report: April 30, 2025
Investigators: Mr. Jay Howard, Assistant Principal, JHS;
Ms. Jill Johnson, Principal, JHS

Background & Allegations

Background

(Background should include when, how & to whom allegation reported, immediate actions taken [discussion with claimant, law enforcement/DHS reports, interim measures, etc.])

On March 31, 2025, immediately following her 4th hour class, Leah (“Student Witness 1” or “SW1”) verbally alleged to Ms. Craft (“teacher”) that Sarah (“the complainant”) was raped by Nathan (“the respondent”). The teacher asked the complainant to accompany her to the Jackson High School (“JHS”) office, where the allegation was relayed to Mr. Howard, the Assistant Principal, and Ms. Mendoza, the JHS Title IX Coordinator. Mr. Howard and Ms. Mendoza then spoke to the complainant and her parents, provided notice of the right to file a Title IX complaint and explained how to do so, and offered supportive measures to the complainant (Exhibit _). The complainant then filed a formal complaint and provided it to Ms. Mendoza on March 31, 2025 (Exhibit 1). Supportive measures were then of provided to the respondent.

Ms. Mendoza also filed a report with the JHS campus police department on March 31, 2025.

See Exhibit 2 of the appendix for the investigation timeline, interim measures and DHS/law enforcement referrals, if necessary.

Allegations

- Allegation 1: The complainant alleged that, on March 27, 2025, she was raped in the female visitors’ locker room at Madison High School (“MHS”) during the girls’ varsity soccer game between JHS and MHS. Specifically, she alleged that she went to the locker room to retrieve a sweatshirt she had left in the area, and as she was in the locker room the respondent entered the room, closed the door, and upon approaching

Fictional scenario created by OSSBA Staff Attorney Brandon Carey on September 30, 2025, for Title IX investigation training purposes.

her began kissing her. The complainant said that she was in fear and froze, and the respondent pulled down her shorts and underwear and had unprotected intercourse with her to which she did not consent.

Applicable Policies

- BL – Sexual Harassment Policy
- EG-R1-F1 – Student Discipline, Suspension, & Due Process

Jurisdiction

Allegation number 1 occurred during a school sponsored event (i.e., a soccer game at MHS) between students that are currently enrolled at JHS. The allegations, if true, would meet the definition of sexual harassment under JHS policy BL. Therefore, the district has jurisdiction based on the location of the alleged events, the fact that the parties are currently enrolled students at JHS, the fact that the allegations, if true, would violate district policy.

Scope of Investigation

Interviews (All interviews notes are at Exhibit 4)

- Complainant
- Respondent
- Sarah (Student Witness 1 or SW1)
- Leah (Student Witness 2 or SW2)
- Etc.

Evidence (All evidence is found at Exhibit 5)

- Text messages from complainant
- Security camera footage from MHS – (stored in investigator's office)

Summary of Facts

Investigator's Note: The information in the sections below is taken from the formal complaint, witness interviews or evidence cited above, which is all found in the exhibits to this report. All language in quotation marks are direct quotes from the specific interviewee. The quotations are provided exactly as said by the relevant interviewee, even if grammatically incorrect.

Allegation 1

On March 31, 2025, the complainant alleged that she was raped by the respondent in the female visitors' locker room at MHS on March 27, 2025. Specifically, she alleged that she had been sitting with friends, and next to the respondent (with whom she had been "talking"), in

Fictional scenario created by OSSBA Staff Attorney Brandon Carey on September 30, 2025, for Title IX investigation training purposes.

the visitors' stands during the varsity girls' soccer game when she realized she had forgotten her sweatshirt in the female visitors' locker room, which was behind the visitors' stands. She said that she went to the locker room, found the door unlocked, and entered the locker room to retrieve the shirt. She then alleged that, as she was retrieving the shirt, the door opened and the respondent entered, closed the door, quickly approached her and began kissing her. The complainant said that she "froze. She said the respondent then pulled down her shorts and underwear and had unprotected intercourse with her, to which she did not consent. She said she never said a word and was scared the entire time. During the April 1, 2025 formal interview, the complainant also said that, at some point during the incident, SW2 opened the locker room door, said "oh, boy" and immediately left. (Exhibits 1 & 4)

Also, during the April 1st interview, the complainant said that, after exiting the locker room, she saw SW1 near the concession stand and they went to a different section of the visitors' stands, where the complainant told SW1 about the incident. During an interview on April 4, 2025, SW1 confirmed this version of events and added that the complainant was in tears and told her that she "thought [the respondent] had just raped her," and that when SW1 asked what happened the complainant would only say "I didn't want it to happen." The complainant and SW1 both indicated that they stayed on the opposite end of the stands for the rest of the night, and the respondent, SW2 and other student witnesses indicated that the respondent did not return to sit in the area she was sitting before the incident. (Exhibit 4)

The respondent was first interviewed on April 2, 2025. He admitted to sitting in the stands with the complainant but also stated that they had been making "sexual, flirtatious comments" as they sat together (all witnesses indicated that they could not hear the conversation between the complainant and respondent). He also said that the complainant was wearing her sweatshirt while in the stands and did not say she needed to go retrieve her sweatshirt. The respondent further stated that the complainant eventually said that she was cold, stated that she should go to the locker room to warm up, and said she "wouldn't be mad" if he came to the locker room and "warmed up with" her. The respondent admitted to entering the locker room a few minutes after the complainant, closing the door and approaching her, but he said she kissed him first. He also indicated that he removed her shorts and underwear and had unprotected intercourse with her on the floor of the locker room. He said that the complainant did not verbally consent but that, to him, her behavior indicated consent because she did not object when he placed his hand under her shirt and because she rubbed his crotch over his jeans. He also said that the complainant did not remove any of his clothes. Finally, the respondent said he did hear someone enter the locker room and make a statement, but that he did not see the individual or make out what she said. (Exhibit 4)

SW2 was interviewed on April 4, 2025. She testified that she saw the complainant and the respondent in the stands holding hands and "acting very close and touchy," and that she thought the complainant was wearing her sweatshirt before heading to the locker room but was not 100% sure. She said that a few minutes after the complainant and respondent left the

stands, she realized she left her necklace in the visitors' locker room. She testified that she opened the door, stepped in, heard "moaning," and looked to her left, where she saw the respondent and complainant on the floor in a corner. SW2 said that the respondent was on top of the complainant, and it looked like they were "having sex," although it was hard to see because a couple of benches obstructed her view and the wall in that corner of the locker room went further back than the rest of the wall and created a nook. She said she immediately said something like "oh my gosh" or "oh boy" and exited the room. She also said that "from what [she] could tell," it did not look like the complainant was uncomfortable or resisting.

On April 1, 2025, the district received from MHS the surveillance camera footage from March 27, 2025, during the time of the soccer games, which recorded the area behind the visitors' stands, including the locker room door. The recording shows the complainant entering the locker room, while wearing a blue JHS Soccer shirt, on March 27, 2025 at 5:46 p.m., and with the respondent entering the door at 5:49 p.m. At 6:02 p.m., SW1 opened the door and entered the room, only to immediately back out and walk away. The respondent then exited and closed the door at 6:11 p.m. The complainant finally exited at 6:17 p.m. The complainant seems to have wiped her sleeve across her eyes and walked away with her head down.

The complainant was also interviewed on Friday, April 10, 2025. When presented with the information about the sweatshirt, she began to cry and admitted that she lied about it. She also admitted to inviting the respondent to the locker room, in the manner testified to by the respondent, and initiating the first kiss in the locker room. She said that she did not tell the truth about those specific elements because, if she did, she believed the investigator "would not believe she was raped." She said that, when she invited the respondent into the locker room, she had planned on engaging in "sexual stuff," although she was not sure she wanted to have sex, stating that she had never had sex before. She said when the respondent entered the locker room, she "got very nervous and scared" and kissed him first to "get over being scared." The complainant admitted that the respondent placed his hand under her shirt, and she did not object, but she vehemently denied rubbing his crotch over his jeans. She said that she "never once consented," neither verbally or physically, and the respondent never asked whether he had consent. She said the experience was painful and scary and that the respondent kissed her afterward, but she was "in a daze." The complainant was adamant that she did not want to have sex with the respondent at that moment.

In his April 10th follow-up interview of the respondent, he said that he believed he had consent because they had been flirting in a sexual manner and she made the first move in the locker room. He admitted that the complainant did not verbally consent, and that he removed his own clothes, but believed her actions showed consent. (Exhibit 4)

None of the other witnesses reporting having any knowledge about the incident in the locker room.

Finally, the Jackson Police Department notified JHS on April 16, 2025 that, based on a lack of evidence, they would not be pressing charges on the respondent.

Analysis & Conclusion

Standard of Evidence

District policy states that reports of sexual harassment or assault will be investigated according to the “preponderance of the evidence” standard. “Preponderance of the evidence” means that the evidence must indicate that the allegation was more probable than not to have occurred. In other words, greater than 50% of the evidence must support the allegation.

Allegation

Both parties admit that the complainant invited the respondent into the locker room and initiated kissing (although the complainant was initially untruthful about these specific elements). Both parties also agree that the respondent placed his hand under the complainant’s shirt, and that she did not object; that the respondent removed the complainant’s shorts and underwear, and she did not verbally consent or object; and that the complainant did not remove any of the respondent’s clothes. Both parties also admit that sexual intercourse occurred. However, the complainant denies that she rubbed the complainant’s crotch over his jeans, and she denies that the intercourse was consensual, as she says she did not consent, verbally or non-verbally, and did not want it to happen. The respondent says that he believed the complainant’s behavior indicated consent (e.g., not objecting to his hand under her shirt and rubbing his crotch over the clothes).

SW2, who witnessed the act for a short time, stated that she did not believe the complainant was uncomfortable or resisting, but she also testified to having trouble seeing the parties because of various obstructions. On the other hand, SW2 interacted with the complainant immediately afterward and testified that she was upset, thought she had been raped, and said she did not want the intercourse to happen. No other evidence was obtained to establish whether or not the intercourse was consented to.

Recommendations

Step 13: Outcome Letter

Letter must include:

- A list of the allegations
- Descriptions of the procedural steps taken
- Findings of fact supporting the determination
- Conclusions
- The rationale for the determination and disciplinary sanctions/remedies imposed
- Rights of Appeal

Date

CONFIDENTIAL

Dear Nathan,

Jackson Public Schools has completed the investigation of the alleged violations of the district's *Sexual Harassment of Students* policy, which were made on March 31, 2025. After reviewing the investigative report submitted to this office on April 30, 2025, I have determined that the evidence supports a finding that you violated the above-referenced policy (*or, that the evidence is insufficient to support a violation of the above-referenced policy*). The relevant facts, conclusions, and disciplinary decisions are outlined below. **FOR THE COMPLAINANT, YOU WILL NOT PROVIDE DISCIPLINARY DECISIONS BUT RATHER ANY REMEDIES THAT AFFECT HER/HIM.**

Allegations

- Allegation 1:
- Allegation 2:

Applicable Policies

- Policy _____ – Nondiscrimination
- Policy _____ – Sexual Harassment of Students
- Regulation _____ – Grievance Procedures
- Policy _____ - Student Code of Conduct

Procedural Steps

YOU MAY OUTLINE THE PROCEDURAL STEPS, AS DONE BELOW, OR SIMPLY ATTACH AND REFER TO THE COMPLETED INVESTIGATION TIMELINE

On March 31, 2025, the complainant filed a formal complaint making the above-listed allegations. After making a determination that the district had jurisdiction to investigate the complaint, the district Title IX Coordinator then referred the allegations to _____ ("the investigator"). The investigator immediately provided both parties notice of the investigation and the need to schedule interviews. During the investigation, the investigator did the following:

- Conducted interviews of the respondent, the complainant, and the witnesses listed in the investigation report;
- Gathered several pieces of evidence, which are listed in the investigation report;
- Provided both parties a copy of all evidence on _____, 2025, and provided ten (10) days to provide responses to the evidence;
- Submitted the final investigation report to both parties on _____, 2025, which was at least ten (10) days before this decision was made.

Fictional scenario created by OSSBA Staff Attorney Brandon Carey on September 30, 2025, for Title IX investigation training purposes.

Also, after receiving the investigation report, I sent emails to both parties on _____, 2025, which provided each of you an opportunity to ask any final questions of the other party and receive responses.

Findings of Fact

INSERT THE FACTS DETERMINED BY THE INVESTIGATOR AND/OR DECISION-MAKER. DESCRIBE THE RELEVANT FACTS OF EACH ALLEGATION, SEPARATELY. DO NOT JUST REGURGITATE ALL INFORMATION OBTAINED, BUT ONLY THE FACTS THAT ARE RELEVANT TO THE FINAL DECISION.

Analysis & Conclusions

EXPLAIN WHY OR WHY NOT THE DISTRICT BELIEVES THE ALLEGATIONS OCCURRED, USING YOUR STANDARD OF REVIEW (EITHER PREPONDERANCE OF THE EVIDENCE OR CLEAR AND CONVINCING EVIDENCE) AND THE DISCIPLINARY SANCTIONS FOR THE VIOLATIONS (CITING TO THE CODE OF CONDUCT). IF MORE THAN ONE ALLEGATION, EXPLAIN EACH ON SEPARATELY.

Right to Appeal

Within ten (10) days of a determination of responsibility, dismissal of a complaint or any allegations therein either party may appeal for one of the following reasons:

1. A procedural error affected the outcome.
2. New evidence that was not reasonably available at the time of the determination and could affect the outcome;
3. Conflicts of interest on the part of the Title IX coordinator, investigator or decision maker that affected the outcome.

The appeal must be submitted in writing to _____, and must be received within ten (10) days of the date of this determination. If an appeal is made, the school district will provide written notice to both parties of the appeal. Both parties will be provided an equal opportunity to submit a written statement in support of or challenging the determination within ten (10) days of the written notice to both parties of the appeal being filed. The appeal will be heard by an appeal decision maker who is not the Title IX coordinator, the investigator or the original decisionmaker. The decision of the appeal decisionmaker will be final and non-appealable. The written decision of the appeal decisionmaker will be provided within ten (10) days of the deadline for written statements supporting or challenging the initial determination. The written decision will be provided

Step 14: Appeal

An opportunity for appeal must be provided to either party on, at least, the following bases:

- A procedural irregularity
- New evidence that was not reasonably available prior to the determination that could affect the outcome
- Conflict of interest

A background image showing a police officer in a grey uniform with a 'PEACE OFFICER' patch on the sleeve, smiling and interacting with a group of diverse students in a classroom. The students are also smiling and looking towards the officer. The text 'TITLE IX & LAW ENFORCEMENT' is overlaid in large, bold, dark blue letters.

TITLE IX & LAW ENFORCEMENT



BUILDING EFFECTIVE RELATIONSHIPS & PROCEDURES

Welcome & Introductions



BRANDON CAREY

OSSBA STAFF ATTORNEY

brandonc@ossba.org



Who is responsible for reporting?



Every person is responsible for reporting:

Every person having reason to believe that a child under the age of eighteen (18) years is a victim of abuse or neglect shall report the matter immediately to the Department of Human Services. Reports shall be made to the hotline provided for in subsection A of this section. **10A O.S. 1-2-1-1**

School Employees Are Specifically Responsible

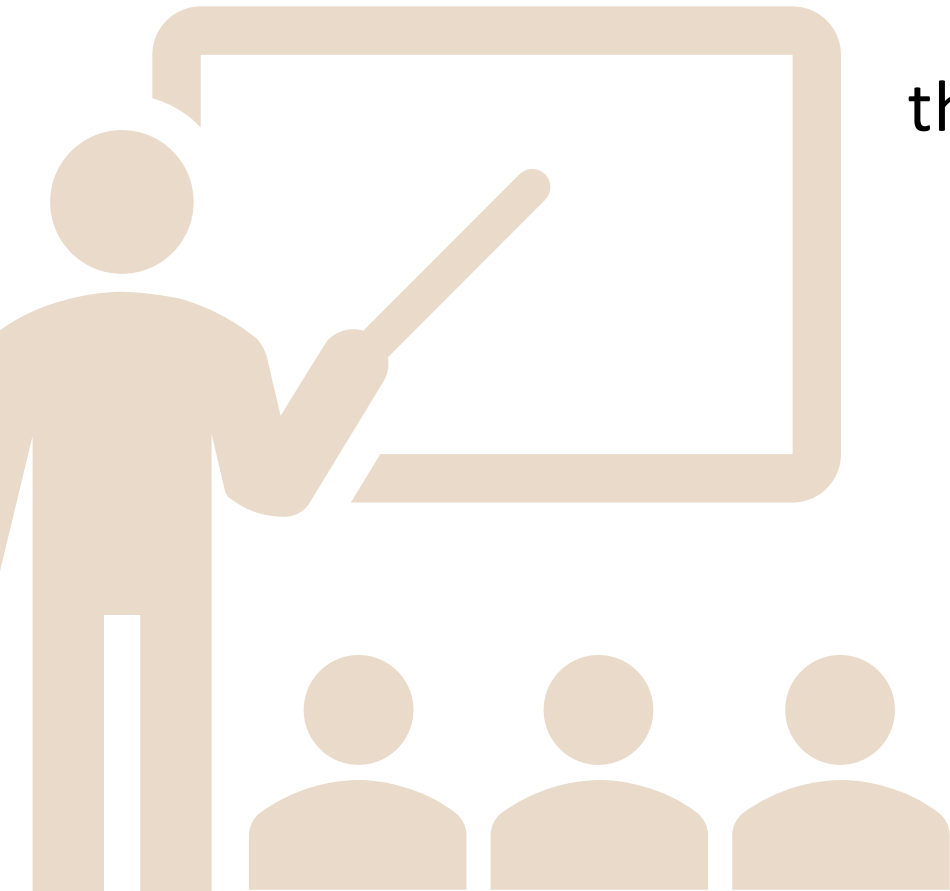
Every school employee having **reason to believe** that a student under the age of eighteen (18) years is a victim of abuse or neglect **shall report** the matter **immediately** to the Department of Human Services and local law enforcement.

10A O.S. 1-2-101 (B)(2)(a) & 70 O.S. 1210.163



School Employees Are Specifically Responsible

Every school employee having **reason to believe** that a student aged eighteen (18) years or older is a victim of abuse or neglect **shall report** the matter **immediately** to local law enforcement.



10A O.S. 1-2-101 (B)(2)(b) & 70 O.S. 1210.163



LAW ENFORCEMENT INTERACTION BASICS





LAW ENFORCEMENT ARRIVES WITH WARRANT

Students must be released to police officers who have proper arrest authority and a valid arrest warrant.

- Record name and badge number

- Notify parents/guardians



LAW ENFORCEMENT REQUESTS

INTERVIEW WITHOUT WARRANT

School employees cannot force students to submit to law enforcement interview.

For law enforcement interviews without a warrant, interview should not commence until minor student and the parents, guardian, attorney, adult relative, adult caretaker or legal custodian have been fully advised of the constitutional and legal rights of the minor student, including the right to be counsel, and the right to have counsel appointed if the parties are without sufficient financial means.

INTERSECTION OF TITLE IX & CRIMINAL PROCESS



Allegations of Crimes

Some allegations of sexual harassment would, if true, also violate criminal laws (e.g., sexual assault, domestic or dating violence, statutory rape, etc.).

When this happens, the school district and law enforcement agency ***both*** have investigation responsibilities.

Duty to Investigate

Title IX, which is a federal law, requires school districts to respond to allegations of sexual harassment promptly, and in a manner that is not deliberately indifferent, ***regardless of whether the allegation may also constitute a crime.***

Different Processes & Evidence Standards



SCHOOL DISTRICT

The school district is trying to determine whether a respondent is "responsible" for committing sexual harassment against a complainant, using either the ***preponderance of the evidence*** or ***clear and convincing evidence*** standards.



LAW ENFORCEMENT

Law enforcement is trying to determine whether it can be proven, ***beyond a reasonable doubt***, that a defendant committed acts that constitute a crime.

Evidentiary Standards

Schools will use either:

Preponderance of the Evidence (Lowest Standard):

Greater than 50% chance that the allegation is true.

Clear & Convincing Evidence:

Highly and substantially more likely to be true than untrue (higher than “preponderance of the evidence”, but lower than “beyond a reasonable doubt”).

Evidentiary Standards

Law enforcement uses beyond a reasonable doubt:
evidence must leave jurors or judge firmly convinced of the defendant's guilt.

Parallel Investigations

- Police investigations do not relieve a school district of their Title IX duty to respond to allegations of sexual harassment promptly and in a manner that is not deliberately indifferent.
- The investigations must run parallel, to the extent practicable.

Delays or Extensions

- The Title IX regulation allows for temporary delays in the investigation process, but only for “good cause”.
- The parties must be notified in writing of the reason for the delay and the expected date the investigation will resume.

Delays for Law Enforcement

Must be

- *Reasonably short* – preferably no longer than two weeks. If longer, ask for request in writing.
- Only for the time it takes law enforcement to quickly complete necessary interviewing and evidence gathering.

Also, when such a delay occurs, the institution must provide written notice to the parties of the delay and the reasons for it.

Supportive Measures During Delay

- Remember, if investigating under Title IX, the district can only “emergency suspend” a respondent in certain situations. This is further complicated by Oklahoma’s 10-day limit on short-term suspensions.
- May have to get creative.

PREPARING FOR COORDINATION WITH LEA



FIRST

***Establish
Relationship &
Understanding***

→ **Relationship
Building**

→ **Education
Regarding Legal
Obligations**

NEXT

Clarify (and Document) the Protocols, Preferably in an MOU

Once you've begun building a relationship with local law enforcement, and explained the federal obligation to investigate, you should clarify the protocols regarding:

- Legal obligations of parties to investigate
- Jurisdictional explanations
- Information sharing and privacy
- Conducting simultaneous/parallel investigations

Legal Obligations to Investigate



SCHOOL DISTRICT

Title IX, a federal law, requires district to investigate alleged violations of sexual harassment policy.



LAW ENFORCEMENT

State and local obligations to investigate crimes

Jurisdiction of Parties



SCHOOL DISTRICT

School district jurisdiction under Title IX:

- Definitions of sexual harassment
- People that must be involved
- Geographical jurisdiction



LAW ENFORCEMENT

Crime in the municipality or county of jurisdiction.

Information Sharing

School to LEA

FERPA

- Written consent of parent/guardian or adult student.
- Directory Information: Information designated by school policy as “directory information”.
- Law Enforcement Records
- Imminent Threat
- School Official

Warrant

FERPA DISCLOSURES

CONSENT

FERPA requires that the parent or eligible student “provide a signed and dated written consent” before a school or LEA discloses personally identifiable information from a student’s education record.

Model Consent Form for Disclosure

[https://studentprivacy.ed.gov/resources
/model-form-disclosure-parents-dependent-
students-and-consent-form-disclosure-parents](https://studentprivacy.ed.gov/resources/model-form-disclosure-parents-dependent-students-and-consent-form-disclosure-parents)

Model Form for Disclosure to Parents of Dependent Students and Consent Form for Disclosure to Parents

To: Registrar, [Postsecondary Institution]

From: _____

Student’s First Name	Middle Initial	Last Name	
Permanent Street Address		City	State Zip Code

Under the Family Educational Rights and Privacy Act (FERPA), the [Postsecondary Institution] is permitted to disclose information from your education records to your parents if your parents (or one of your parents) claim you as a dependent for federal tax purposes. Please indicate whether your parents claim you as a tax dependent.

Please check the appropriate box:

- ☐ Yes. I certify that my parents claim me as a dependent for federal income tax purposes.
- ☐ No. I certify that my parents do not claim me as a dependent for federal income tax purposes.

Signature: _____ Date: _____

If you are not claimed as a dependent or you do not know whether you are claimed as a dependent for federal income tax purposes, but you agree that [Postsecondary Institution] may disclose information from your education records to your parents, please sign the following consent:

I consent to the disclosure of any personally identifiable information from my education records to my parent(s), for reasons determined by the [Postsecondary Institution] as appropriate. This authorization will remain in effect for the [2008-2009] school year.*

Signature: _____ Date: _____

If parents live at the same address, please list both in # 1.

1. _____ Name(s)	2. _____ Name(s)
_____ Address	_____ Address
_____ City, State, Zip	_____ City, State, Zip
_____ Telephone	_____ Telephone

*Students cannot be denied any educational services from the [Institution] if they refuse to provide consent.

FERPA Directory Information

Schools may disclose, without consent, "directory" information:

- Student's name
- Address
- Telephone number
- Date and place of birth
- Honors & awards
- Dates of attendance



However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them.

Directory Information

- Degrees/Awards Earned
- Study Abroad Participation (No Location)
- University Sponsored Activities/Sports Participation
- Athlete Height & Weight
- Name
- Local Address
- Phone
- UI Email Alias
- Hometown/State
- FT/PT Enrollment
- College
- Class or Year
- Major
- Dates of Attendance
- Most recent institution attended
- Scholarships earned (not \$ amount)

FERPA

Law Enforcement Record

Some districts specifically designate SROs as “law enforcement units” for purposes of school records.

Records created by SROs, for a law enforcement purpose, and maintained by the SROs are **NOT** education records and may be shared freely with the law enforcement agency. This also means that students and/or parents may be denied access to these records.

- Criminal investigation reports
- Witness statements
- Body camera footage
- Depending on who creates and maintains security cameras, possibly footage from security camera

If the record is **ALSO** maintained by the school, then the record is considered BOTH a law enforcement unit record AND an education record.

Emergency Disclosure

FERPA permits school officials to disclose, without consent, education records, or personally identifiable information from education records, to appropriate parties in connection with an emergency, if knowledge of that information is necessary to protect the health or safety of the student or other individuals.

This exception is limited to the period of the emergency and generally does not allow for a blanket release of personally identifiable information from the student's education records.

FERPA Disclosures

School Officials

An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by § 99.30 if the disclosure meets one or more of the following conditions:

- Disclosure to a school official who is determined to have a legitimate educational interest
- Disclosure to a contractor/consultant/volunteer or other party if:
 - They perform an institutional service or function that would otherwise use employees;
 - Are under the direct control of the agency or institution with respect to the use and maintenance of education records; and,
 - Abide by the disclosure requirements of FERPA.

FERPA Disclosures

School Official

Is a School Resource Officer a school official for purposes of disclosure?

- FERPA specifically allows school officials to share education records without parental consent.
- Depending on the MOU and the relationship between the SRO and the school, SROs may also be considered school officials. Therefore, SROs can have access to student information including electronic information, security cameras and actual paper files.
- A school must have direct control over an SRO's maintenance and use of education records in providing SRO services in order for the SRO to be considered a school official.
- An SRO may ONLY access and utilize school educational records for legitimate and necessary purposes related to their SRO duties. (i.e. school safety and security).
- SROs may NOT use confidential student information for other **purposes or provide student information to other law enforcement units or officers.**

FERPA Disclosures

Judicial Order or Subpoena

District may disclose protected student information to LEAs in response to a judicial order (warrant) or subpoena.

However, a subpoena or subpoena duces tecum purporting to compel testimony or disclosure of such information or record shall be invalid (10A O.S. § 1-6-102(C)).

Applicable in criminal, civil and administrative proceedings.



TITLE 10A

SUBPOENA



**CONTACT ISSUER OF
THE SUBPOENA**



**FILE MOTION TO
QUASH**



**LETTER TO
PARENT/STUDENT**

Information Sharing

LEA to School

Police sharing with district in accordance with state law and department procedure.

Reporting



Should the law enforcement agency (LEA) designate a point person to receive reports from the district, and should the school designate such a person to receive information from the LEA?

Investigation Timelines

- State both parties' responsibility under applicable law to timely investigate complaints.
- District will only delay the investigation upon request of LEA, and delay should only be for a couple of weeks.
 - Longer delays should only be considered after receiving a written request from LEA.

Investigation Procedures

How can the parties operate collaboratively?

- Delay request procedure
- Interviews
- Evidence sharing, if possible
- Points of Contact

Have a question?

Contact me!



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