

Title IX Update & Process Refinements - 08/05/22

- **Overview of key terminology and process changes**
- **Exploration of first of five stages of the Title IX Grievance Process**
- **Next Steps**





New Terminology

- Alleged Victim → **Complainant**
- Alleged Perpetrator/Alleged Harasser
→ **Respondent**
- Complaint, Investigation, and Resolution
→ **Grievance Process**
- Educational Institution → **Recipient**
- Interim Measures → **Supportive Measures**



Key Changes

- **All** staff have reporting obligation
- “Single investigator” model eliminated
- Grievance process now includes specific required steps
- Respondent presumed not responsible until responsibility determination is made
- New policy, training, documentation, and record retention requirements
- Due process and constitutional protections emphasized



Key Title IX Roles

- Title IX Coordinator: oversees school's Title IX compliance and is a school employee
- Investigator: Conducts investigation and issues investigation report
- Decision-Maker: Makes determination of responsibility
- Appeals Officer: Hears appeals
- Informal Resolution Facilitator: assists parties in reaching informal resolution, if applicable
- Investigator, Informal Resolution Facilitator, Decision-Maker, and Appeals Officer must be different persons and appropriately trained
- Title IX Coordinator may also serve as investigator or IRF



What is Sexual Harassment?

Conduct **on the basis** of sex that satisfies one or more of the following:

- Employee *quid pro quo*;
- Sexual assault, dating violence, domestic violence, stalking (definitions from Violence Against Women Act); and
- Hostile environment (new stricter definition)



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Hostile Environment

*“Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it **effectively denies** a person’s **equal access** to the recipient’s education program or activity.”*

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Hostile Environment

Unwelcome conduct determined by a reasonable person to be:

Old Definition

Severe, pervasive, or *persistent*, and to *interfere with or limit* a student's *ability to participate* in or benefit from school services, activities, or opportunities.

New Definition

To be so severe, pervasive, and *objectively offensive* that it *effectively denies* a person's *equal access* to the recipient's education program or activity.

= higher standard



Denial of Equal Access

- Reactions to sexual harassment vary and should be assessed from perspective of a reasonable person in Complainant's position
- Denial may include skipping class to avoid harasser, grade decline, difficulty concentrating in class
- No concrete injury required
- Complainant need not drop out of school, fail a class, have a panic attack, or otherwise reach "breaking point"

OCR, *Question and Answers Regarding the Department's Final Title IX Rule*, September 4, 2020



Scope of Education Program or Activity

Consider:

- Location of conduct?
- Relationship to school or school activity?
- Involvement of student, employee, volunteer, contractor?
- Policy/handbook language?
- If no jurisdiction under Title IX, may have jurisdiction to address alleged misconduct under another policy, rule, or law



“Education Program or Activity”

“Includes locations, events or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the harassment occurs...”

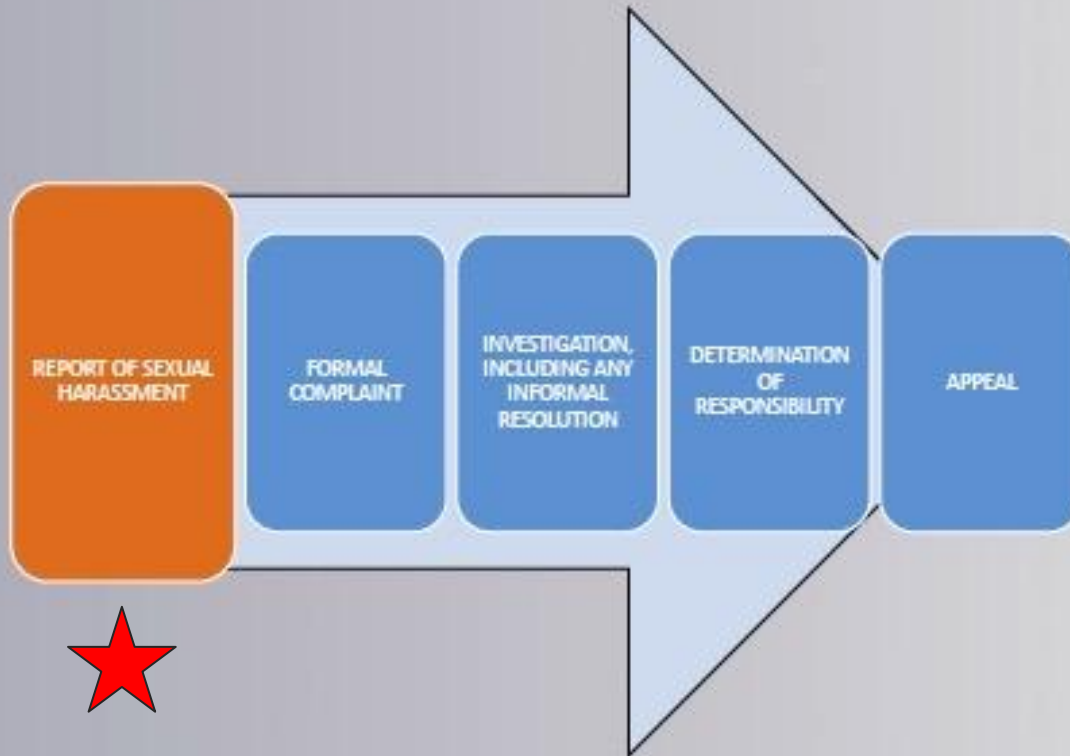
34 CFR 106.44(a)



Questions?



Title IX Grievance Process



Making a Report

- Any person can make a sexual harassment report
- Reports can be made verbally, in writing, or electronically at any time to any school employee or the Title IX Coordinator
- Anonymous reports are permissible
- Report of sexual harassment \neq Formal Complaint



Actual Knowledge

- School's obligation to respond to sexual harassment is triggered when it has "actual knowledge"
- "Actual knowledge" means notice of sexual harassment or allegations of sexual harassment to school's Title IX Coordinator **or any school employee**



Responding to Report



- Title IX Coordinator must, upon receipt of report:
 - Contact Complainant (alleged victim) to discuss “supportive measures”
 - Inform Complainant of “supportive measures” available
 - Explain process for filing Formal Complaint
- Failure to do the above = deliberate indifference



Supportive Measures

- Must be non-disciplinary, non-punitive, and individualized
- Offered as appropriate, as reasonably available, and without fee or charge to parties
- Available before, during, and after Formal Complaint is filed, or when no Formal Complaint is filed
- Designed to restore or preserve equal access to education program or activity without “unreasonably” burdening other party

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Examples

- Counseling
- Work/class schedule changes
- Extensions of deadlines
- Increased supervision or escorts
- Mutual no-contact order
- **But**, school may not impose discipline or other actions that are not supportive measures against Respondent before completing the grievance process



Offering Supportive Measures

- No “one size fits all”
- Must be offered whether Complainant files Formal Complaint or not
- Modify, as necessary, to avoid deliberate indifference
- Document whether supportive measures were offered and which were taken, and retain documentation
- Keep confidential to extent possible except as may be required by law
- Coordinated by Title IX Coordinator



General Rule

Disciplinary sanctions may **not** be imposed against respondents before grievance process concludes except:

- Employee Respondents may be placed on nondisciplinary administrative leave pending completion of grievance process
- Student Respondents may be removed from school programs or activities on emergency basis only



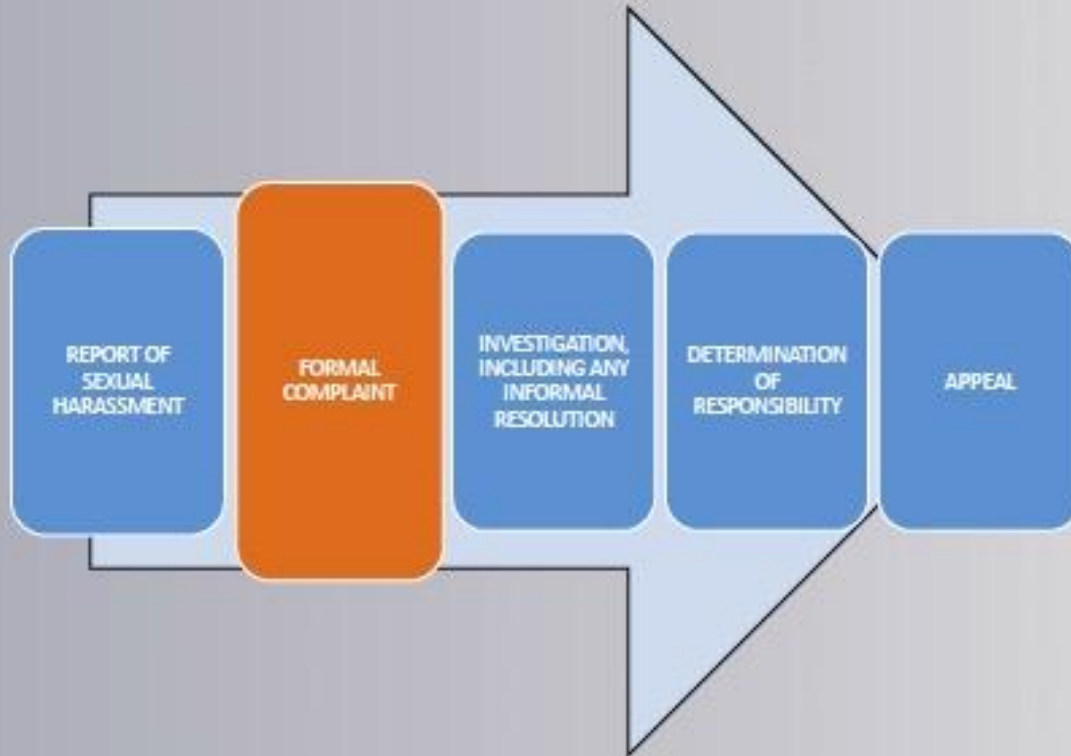
Student Emergency Removal

- Before removing student, school officials must:
 - Conduct individualized safety and risk analysis;
 - Determine that an immediate threat to **physical** health or safety of students or staff justifies removal; and
 - Provide removed student notice and opportunity to challenge removal immediately after being removed
- Consider IDEA and Section 504 requirements governing disciplinary removals of students with disabilities

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Title IX Grievance Process



Formal Complaint

A document filed and signed by a complainant or signed by Title IX Coordinator alleging sexual harassment against a Respondent and requesting that District investigate the sexual harassment allegation.

34 CFR §106.30



Next Steps

- **Finish document templates to support robust documentation of reporting phase.**
- **Update Title IX video for all staff in Vector Training (Safe Schools) video training platform.**
- **Schedule Grievance Process training for all possible investigators and decision makers.**

