

# Decoding Title IX:

## Rule and Compliance Implications for Charter and Private Schools

(Know the Rule / Know your Role)



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# On the Panel:

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# What is Title IX?

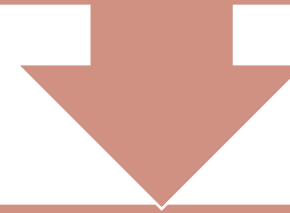
Title IX of the Education  
Amendments Act, 1972:



"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

# What is Title IX's "Final Rule"?

The Final Rule was established to clarify the implementation and enforcement of Title IX of the Education Amendments of 1972.



The Final Rule created the following changes:

Defined sexual harassment

Created a formal grievance process

Mandated live hearings for the grievance process as colleges/universities

Created a Knowledge/Notice standard for schools



# Most Recent Changes in Title IX Law

- ▶ DOE released new Title IX Regulations on May 6, 2020
- ▶ First significant changes to Title IX since 1975
- ▶ Effective date for new regulations was August 14, 2020



# Who does Title IX apply to?



Title IX applies to educational institutions that receive federal financial assistance.



Covers students and employees.



# TITLE IX & Final Rule Requires the following:

Respond

- Schools must respond to complaints/allegations/notices of Title IX related conduct in a timely manner and without deliberate indifference.

Trained People

- Schools must have trained personnel in key roles in order to implement Title IX effectively and correctly and must list training materials on website.

Policy

- Schools must have a Title IX Policy.

Records

- Schools must maintain Title IX records for 7 years.

Follow Process

- Schools must follow the Rule's steps with regard to informal complaints and formal complaints (grievance process) and must offer supportive measures.


# What is defined as Sexual Harassment or Discrimination?

CONDUCT ON THE BASIS OF SEX THAT MEETS ONE OR MORE OF THE FOLLOWING:

A school employee conditioning the provision of aid, benefits, or services on the individual's participation in unwelcome sexual conduct (quid pro quo);



Unwelcome conduct that a reasonable person would determine to be so severe, pervasive and objectively offensive that it denies a person equal access to the education program or activity; or



Sexual assault (as defined in the Clery Act), or dating violence, domestic violence or stalking (as defined in the Violence Against Women Act)



# Easy way to remember...

Quid Pro Quo

S.P.O.O.

Other/Physical  
Acts

# KEY PERSONNEL:

Complainant

Respondent

Recipient

Advisors

Coordinator

Investigator

Decision  
Maker

Appeals  
Decision  
Maker



## Knowledge IS Notice:

When any school-based employee has knowledge of sexual harassment or allegations of sexual harassment, schools are REQUIRED to respond timely and without deliberate indifference.



LET'S  
DISCUSS



*How do you make sure all staff are adequately trained  
on Title IX?*

# *Informal Complaints:*

Any disclosure of Title IX related conduct that is not a signed, written complaint requesting a Title IX investigation.

# *Formal Complaints:*

Signed, written document outlining Title IX related conduct and asking/referencing investigation  
(34 CFR 106.30)



# Responding to Informal Complaints:

## Contact

- Promptly contact the complainant confidentially to discuss the availability of supportive measures

## Consider

- Consider the complainant's wishes with respect to supportive measures and anonymity

## Inform

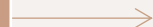
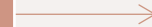
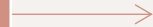
- Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint

## Explain

- Explain to the complainant the process for filing a formal complaint

## Refrain

- Refrain from any discipline against the respondent without following the formal investigative process



## ***Formal Complaints:***

Once the formal complaint is filed, schools must immediately determine the following:

Do the allegations meet the definition of sexual harassment?

Did the conduct occur in an educational program or activity?

Did the allegations occur against a person in the United States?

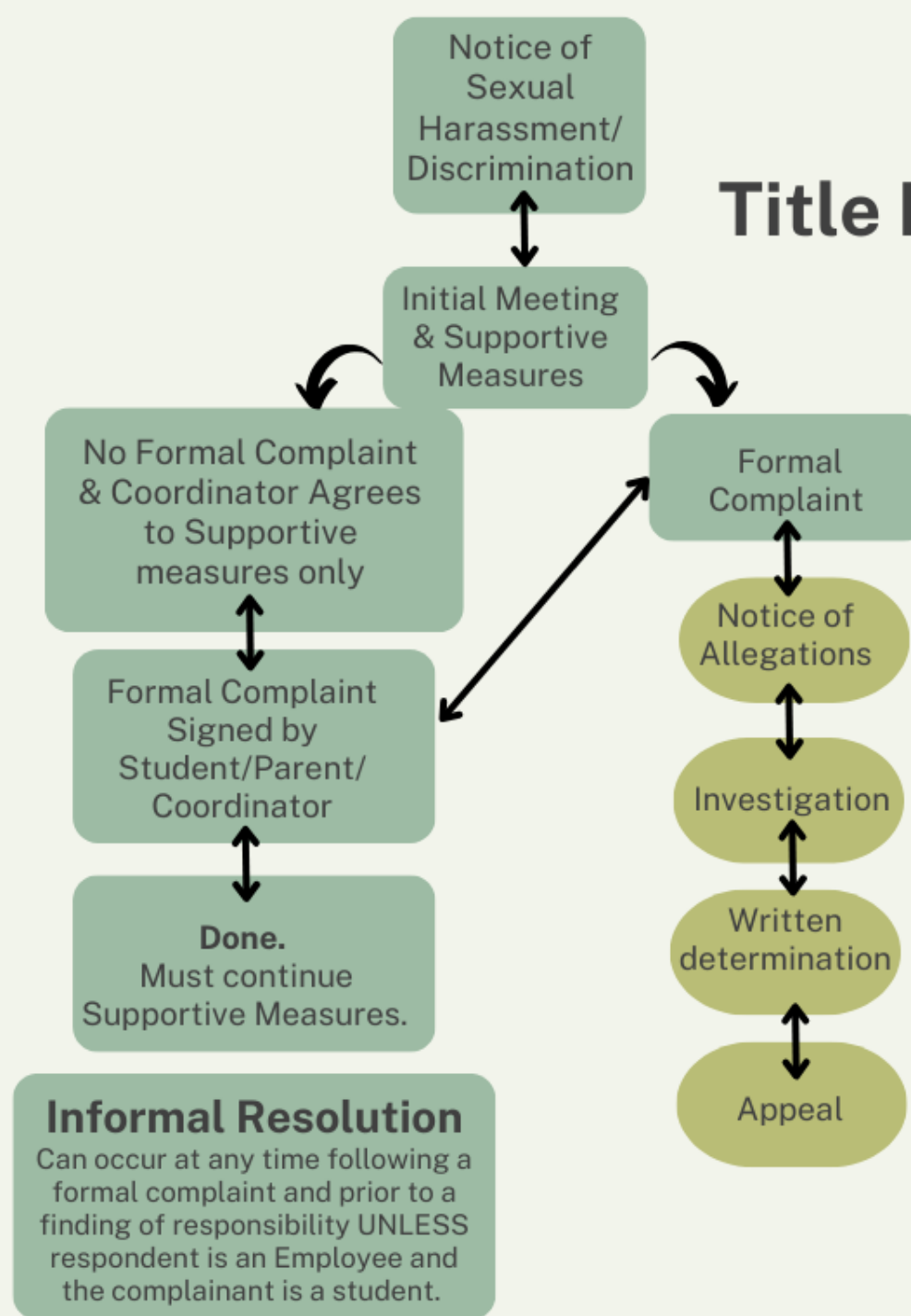
If all three requirements are met, then schools must follow the grievance process







# Title IX K-12 Process



**Informal Resolution**  
Can occur at any time following a formal complaint and prior to a finding of responsibility UNLESS respondent is an Employee and the complainant is a student.



# What are Supportive Measures?



Things a School can do to ensure complainant has equal educational access.

May **not** be punitive in nature.

Reasonably available to school (free/low cost).

Protect/Provide safety.

Examples: changing class schedules, no contact contracts, make up work, excused absences, counseling, etc.

Must be tracked, implemented, and monitored by Coordinator.

*How can Schools best  
provide supportive  
measures to  
Complainants?*



# Grievance Process:



Specific obligations are outlined in 34 U.S.C. 106.45



**WARNING**: A recipient's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX.



Process must be adhered to **prior** to any disciplinary action.

# Grievance Process Requires:



Treat all parties equitably and fairly.

Objective evaluation of all relevant evidence.

Trained personnel who are conflict and bias free.

Presumption of innocence (non-responsibility).

Prompt timeframes for resolution.

Notice regarding possible disciplinary sanctions for conduct (if determined).

Standard of Evidence (clear and convincing vs. preponderance of evidence).

Procedure for appeal.

Supportive measures.

# INVESTIGATIONS (Grievance Process)

SPECIFIC OBLIGATIONS FOR INVESTIGATIONS  
ARE OUTLINED IN 34 CFR 106.45(B)(5)

# Investigations Require:



Burden of Proof is on School.



Equal opportunity for all parties to present witnesses.



Equal opportunity for parties to discuss investigation, gather/present evidence, inspect evidence.



Allow for parties to have advisors present.



Notice of related proceedings/interviews.



Investigative Report that fairly summarizes relevant evidence.

# WRITTEN DETERMINATION

See 34 CFR  
(b)(7).

Required to  
conclude the  
grievance  
process.

Must contain  
very specific  
information.



# WRITTEN DETERMINATION MUST INCLUDE:

Identification of the allegations potentially constituting sexual harassment as defined in § 106.30

A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

Findings of fact supporting the determination;

Conclusions regarding the application of the recipient's code of conduct to the facts;

A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and

Procedures and permissible bases for the complainant or respondent to appeal.

# APPEALS:



See 34 CFR  
106.45(b)(8)

Appeal must be offered to either party for any determination of responsibility OR from any dismissal of a formal complaint (or any allegations therein).

May only appeal on grounds of procedural irregularity, new evidence, or conflict of interest/bias.

Grounds for appeal (see above) must be something that could have affected the outcome of the matter.  
Inconsequential or insignificant will not suffice.

## Emergency Removal:

*A school may remove a respondent from an education program or activity on an emergency basis if the school:*

Undertakes an individualized safety and risk analysis (threat assessment);

01

Determines an immediate threat to the physical health or safety of any student or other individual arising from the allegations justifies removal; and

02

Provides the respondent with notice and an opportunity to challenge

03

This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act.



**Emergency**

# Informal Resolutions:

Prior to reaching a determination, School may have an informal resolution process (such as mediation) to try and resolve issue.

Notice must be provided to the parties (along with the allegations), and parties have the knowledge that they can withdraw at any time and continue with the grievance process.

Must obtain the parties' voluntary, written consent.

May not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.





**LET'S  
DISCUSS**

*When is Informal  
Resolution  
appropriate?*



# Obligations for Record Keeping

Schools must maintain records related to any investigation for seven (7) years, including

records of:

- Any actions taken in response to a report of sexual harassment;
- Any actions taken in response to a formal complaint of sexual harassment;
- Any supportive measures provided;
- Each sexual harassment investigation;
- Any determination regarding responsibility;
- Any audio or audiovisual recording or transcript;
- Any disciplinary sanctions imposed on the respondent;
- Any remedies provided to the complainant;
- Any appeal and written appeal decision; and
- All materials used to train school-based Title IX Coordinators, investigators, decision-makers, and appeals decision-makers.

LET'S  
DISCUSS





*What are some best  
practices for  
documentation?*



# Retaliation



- No school or other person may intimidate, threaten, coerce, or discriminate against any individual for the purposes of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

Process must be  
conflict and  
bias free...




A conflict of interest is defined as a conflict between the private interests and the official or professional responsibilities of a person in a position of trust..



Explicit bias refers to attitudes and beliefs we have about a person or a group on a conscious level.



Implicit bias refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.

A hand holding a white rectangular note with the text "Let's Discuss" written in black cursive. The hand is wearing a blue and white striped shirt cuff and a dark suit sleeve. The background is a light blue gradient with a white reflective surface below the note. The entire image is framed by a light beige background with a pattern of small grey dots in the top right and bottom right corners.

Let's  
Discuss

*Scary Stories  
involving Title IX:*

*How have schools been  
affected for  
noncompliance?*



# Avoiding Litigation



- The Final Rule was made effective in August of 2020 (during the COVID-19 pandemic). The pandemic delayed (in our opinion) both complaints and investigations of those complaints by OCR.
- OCR is slow in its response and investigation of complaints, however, we are starting to see OCR investigations involving Title IX (and expect them to grow).
- Implied private right of action under Title IX (meaning you can get sued). Note that 34 CFR Section 106.45 states that ***“A recipient's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under title IX”***.
- In other words - careful how you implement the policy and respond to Title IX complaints. We expect litigation.

# Tips to Avoid Litigation?

Document  
Everything!

Follow the  
Process.

Keep Track of  
the Timeline.

Do **NOT**  
Retaliate.

Take Informal  
and Formal  
Reports  
Seriously.

Ask for Help if  
you Need it.



**CHANGE  
COMING**








Biden's proposed amendments to Title IX that are set to be finalized in May of 2023...or October of 2023...or Spring of 2024...or some point?

Some changes coming include:

- Sexual harassment now defined as "sufficiently severe ***or*** pervasive"; both objective and subjective analysis
- New definition of sexual harassment codifies protections against discrimination based on gender identity, sexual orientation, sexual characteristics stereotyping, and pregnancy.
- All staff must receive training; additional training for others.
- Formal complaint will no longer required before informal resolutions can be used.
- Supportive Measures that burden respondent would be permissible.
- Coordinators must identify possible impediments that hamper or prevent students from reporting and take reasonable steps to address barrier.



SO.....

ANY QUESTIONS?