

RESPONDING TO TITLE IX SEXUAL HARASSMENT COMPLAINTS

Central Community Unit School District No. 301 • November 4, 2022 Presented by: Michelle Todd • Jessica Nguyen

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TITLE IX OF THE EDUCATION AMENDMENTS
ACT OF 1972

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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.

20 USCA § 1681



TITLE IX: BRIEF HISTORY 1972: Title IX enacted 1974: Title IX regulations issued 1980: Title IX enforcement transferred to the new U.S. Department of Education Office for Civil Rights ("OCR") 1992: U.S. Supreme Court recognized student right to damages for sexual harassment (Franklin v. Gwinnett County Schools) HODGESILOIZZI

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TITLE IX: BRIEF HISTORY

- 1997: OCR issued guidance on sexual harassment recognizing the responsibility of institutions to respond to allegations
- 1998: U.S. Supreme Court set standard for teacher-on-student harassment liability as "deliberate indifference" after "actual notice" of misconduct (Gebser v. Lago Vista School District)
- 1999: U.S. Supreme Court narrowed the definition of "sexual harassment" to require Gebser standard + "severe, pervasive, and objectively offensive" harassment (Davis v. Monroe County Board of Education)

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TITLE IX: GEBSER V. LAGO VISTA INDEPENDENT SCHOOL DISTRICT (1998)

- A school district can be liable for damages under Title IX for employee-on-student sexual harassment if:
 - An official of the school district who at a minimum has authority to institute corrective measures on the district's behalf;
 - Has actual notice of the teacher's misconduct; and
 - Is deliberately indifferent to the teacher's misconduct

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TITLE IX: DAVIS V. MONROE COUNTY BOARD OF EDUCATION (1999)

- A school district can be liable for damages under Title IX for studenton-student sexual harassment if:
 - School board has acted with deliberate indifference to known acts of harassment in its programs or activities (the Gebser standard); and
 - Sexual harassment that is so severe, pervasive, and objectively offensive that it
 effectively bars the victim's access to an educational opportunity or benefit

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TITLE IX: OCR GUIDANCE

- 2001: <u>Revised Sexual Harassment Guidance</u> replaced 1997 guidance to reflect updated U.S. Supreme Court standards
- October 26, 2010: <u>Dear Colleague Letter</u> clarified the relationship between bullying and discriminatory harassment
- April 4, 2011: <u>Dear Colleague Letter</u> (rescinded) reinterpreted Title IX as authorizing the federal government to dictate specific procedures for student-on-student sexual assault on college campuses

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TITLE IX: OCR GUIDANCE

- April 29, 2014: <u>Q&A on Title IX and Sexual Violence</u> (<u>rescinded</u>) provided guidance on legal obligations in addressing sexual violence on college campuses
- April 24, 2015 <u>Dear Colleague Letter</u> and <u>Resource Guide</u> provided guidance on responsibilities of Title IX coordinators
- May 13, 2016: <u>Dear Colleague Letter</u> (rescinded) provided guidance to schools regarding transgender students

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September 22, 2017: Dear Colleague Letter – withdrew April 2011 DCL and April 2014 Q&A September 22, 2017: Q&A on Campus Sexual Misconduct

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PRESIDENT BIDEN EXECUTIVE ORDER

- On March 8, 2021, President Biden issued an <u>Executive Order</u> entitled "Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity"
- The U.S. DOE held a virtual public hearing on Title IX and whether the regulations require changes from June 7-11, 2021

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ADDITIONAL GUIDANCE

- OCR Letter to Students, Educators, and Other Stakeholders (April 2021)
- OCR Notice of Interpretation (June 2021)
 - OCR explained that it will enforce Title IX's prohibition on discrimination on the basis of sex against LGBTQ+ students to include (1) discrimination based on sexual orientation and (2) discrimination based on gender identity
- Dear Educator Letter and Fact Sheet (June 2021)
 - OCR will enforce Title IX to "prohibit discrimination based on sexual orientation and gender identity in educational programs and activities that receive federal financial assistance"
- Questions and Answers on the Title IX Regulations on Sexual Harassment (July 2021) and Appendix (July 2021)

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PROPOSED CHANGES TO TITLE IX REGULATIONS June 23, 2022: U.S. DOE announced proposed changes to Title IX regulations July 12, 2022: Proposed regulations were published in the Federal Register, beginning the 60-day comment period, which closed September 12, 2022 More than 200,000 comments were submitted In the meantime, the 2020 Title IX regulations remain in effect HODGES LOIZZI

May 2020 Title IX Sexual Harassment Regulations

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TITLE IX REGULATIONS AMENDED On May 6, 2020, the U.S. DOE released its long-awaited final rule amending Title IX regulations (34 C.F.R. Part 106) Effective August 14, 2020 Significant changes to the Title IX grievance procedure and, thus, the way schools respond to allegations of sexual harassment under Title IX HODGESILOIZZI



TITLE IX REGULATIONS: GENERAL OVERVIEW A school district can violate Title IX when "sexual harassment" occurs: • In the district's education program or activity; By any person, against any person in the United States; Any district employee has notice of the allegations of sexual harassment ("actual knowledge"); and • The district is deliberately indifferent in its response HODGES LOIZZI 16 WHAT DID NOT CHANGE? HODGES LOIZZI 17 WHAT DID NOT CHANGE? • Obligation to investigate allegations of sexual misconduct Previously, districts investigated allegations under Board Policy 2:260, Uniform Grievance Procedure; or Board Policy 7:180, Prevention of and Response to Bullying, Intimidation, and Harassment • Title IX investigations of allegations <u>not</u> relating to sexual harassment • Rules regarding athletic participation, employment, and single-sex education

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What <u>Did</u> Change?	HODGES LOIZZI		
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WHAT <u>DID</u> CHANGE?			
Terminology and DefinitionsPolicy, Notice, and Website Posting Requirements			
 Grievance Procedure and Investigation Process 			
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Terminology			
TERMINOLOGY	HODGES LOIZZI		
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Previously, Title IX regulations did not refer to or define "sexual harassment" Amended Title IX regulations explicitly define sexual harassment and establish detailed procedures for how school districts must respond to allegations of sexual harassment HODGES LOIZZI

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SEXUAL HARASSMENT Conduct on the basis of sex that satisfies one or more of the following: (1) An employee of the district conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcome sexual conduct (quid pro quo); (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the district's education program or activity (hostile environment), or (3) Sexual assault, dating violence, domestic violence, or stalking as defined under the Clery Act/Violence Against Women Act HODGES: LOIZZI HODGES: LOIZZI ACCEST \$106.30(6)



SEXUAL HARASSMENT **Previous OCR Guidance Amended Title IX Regulations** Unwelcome conduct Unwelcome conduct Determined by a reasonable Determined by a reasonable person person Severe, pervasive, or persistent So severe, pervasive, and and to interfere with or limit a student's ability to participate in objectively offensive that it effectively denies a person's equal or benefit from school services, access to the educational program or activity activities, or opportunities HODGES LOIZZI

SEXUAL HARASSMENT

- "Sexual Assault" defined as forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation (20 U.S.C. 1092(f)(6)(A)(v))
- "Dating Violence" defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, the frequency of interaction between the persons involved in the relationship (34 U.S.C. 12291(a)(10))

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SEXUAL HARASSMENT

"Domestic Violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by 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 (34 U.S.C. 12291(a)(8))

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SEXUAL HARASSMENT

 "Stalking" defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress (34 U.S.C. 12291(a)(30))

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SEXUAL HARASSMENT: EXAMPLES

- Touching
- Crude jokes or pictures
- Discussions of sexual experiences
- Teasing related to sexual characteristics
- Spreading rumors related to a person's alleged sexual activities
- Rape
- Sexual battery
- Sexual abuse
- Sexual coercion

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EDUCATION PROGRAM OR ACTIVITY

- A school district must respond when sexual harassment occurs in its education program or activity, against a person in the United States
 - Example: district-sponsored trip abroad?
- For K-12 purposes, an education program or activity includes any location, event, or circumstance over which the district exhibits substantial control over both the alleged harasser and the context in which the harassment occurred
 - Examples: school, field trip, extracurricular activity

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EDUCATION PROGRAM OR ACTIVITY

- Concern that narrowly defining the scope of district's duty to respond to sexual harassment could ignore impact of technology and impact districts' obligations to address bullying or cyber-harassment based on state legislation
- In response, OCR issued commentary addressing this concern

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[S]exual harassment definition does not make sexual harassment dependent on the method by which the harassment is carried out; use of e-mail, the internet, or other technologies may constitute sexual harassment as much as use of in-person, postal mail, handwritten, or other communications.

U.S. Dept of Educ, OCR, Title IX Regulations Addressing Sexual Harassment (Unofficial Copy), (May 6, 2020), www.2.ed.gov/about/offices/list/ocr/docs/viors/fices/list/ocr/docs

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TITLE IX COORDINATOR

- Amended Title IX regulations require districts to designate and "authorize" an employee to coordinate the district's efforts to implement the law
- The employee is to be identified as the "Title IX Coordinator"
 - PRESS policies updated to include "Nondiscrimination Coordinator/Title IX

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TITLE IX COORDINATOR

- Typically, districts do not employ a full-time Title IX Coordinator
- Designated employee(s) usually combine Title IX Coordinator responsibilities with other assigned duties
- Consider adding "Title IX Coordinator" to existing job title of currently designated employee(s) and reviewing job duties to ensure sufficient authority and time to carry out role

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ACTUAL KNOWLEDGE

- A school district with <u>actual knowledge</u> of sexual harassment in its education program or activity against a person in the United States must respond promptly and in a manner that is not deliberately indifferent
- Expanded to notice of sexual harassment or allegations of sexual harassment to <u>any</u> employee for K-12
- Notice also can include report of sexual harassment to Title IX Coordinator

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Previous OCR Guidance A district has a responsibility to respond promptly and effectively if a school knows or should have

known about sexual harassment

Amended Title IX Regulations

- A district with actual knowledge of sexual harassment in the district's program or activity against a person in the United States must respond promptly and in a manner that is not deliberately indifferent
 - For K-12 educational institutions, actual knowledge of sexual harassment is defined as notice of sexual harassment or allegations of sexual harassment to <u>any</u> employee

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DELIBERATE INDIFFERENCE

- A school district with actual knowledge of sexual harassment in its education program or activity against a person in the United States must respond promptly and in a manner that is not deliberately indifferent
- Adopts Gebser/Davis standard, which is a higher legal standard (used in litigation for damages in federal court) than the previous OCR standard

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Previous OCR Guidance The district must take immediate action to eliminate the sexual harassment or sexual violence, prevent its recurrence, and address its effects Amended Title IX Regulations The district is "deliberately indifferent" only if its response is clearly unreasonable in light of the known circumstances HODGESILOIZZI

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DELIBERATE INDIFFERENCE District's response must: Be prompt Treat Complainants and Respondents equitably Inform Complainant of supportive measures and process for filing a Formal Complaint, by Title IX Coordinator Follow Title IX grievance process HODGES ILOIZZI



COMPLAINANT

- An individual who is alleged to be the victim of conduct that could constitute sexual harassment
- May or may not be the individual who reported the allegation of sexual harassment to the Title IX Coordinator or any district employee
- May file Formal Complaint with the Title IX Coordinator

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RESPONDENT

- An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment
- District must have substantial control over the Respondent (alleged harasser) and the context in which the alleged conduct occurred

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REPORT OF SEXUAL HARASSMENT

- Any person may report sexual harassment, whether or not the person reporting is the person alleged to be the victim of the conduct that could constitute sexual harassment
- May be in person, mail, phone, email, or by any means that results in the Title IX Coordinator receiving the report
- May be made at any time, including during non-business hours
- May be verbal or written, and may be anonymous
- To the Title IX Coordinator or <u>any</u> district employee
- District employees must promptly forward all reports of sexual harassment to the Title IX Coordinator

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FORMAL COMPLAINT

- A document filed by a Complainant, or signed by the Title IX Coordinator, alleging sexual harassment against a Respondent and requesting that the district investigate the allegation of sexual harassment
- May be filed with the Title IX Coordinator in person, mail, email, or any other method made available by a district; may be a hard copy or electronic document
- Must contain the Complainant's physical or digital signature, or otherwise indicate that the Complainant is the person filing the Formal Complaint
- If the Title IX Coordinator signs the Formal Complaint, he/she does not become the Complainant or otherwise a party to the complaint
- At the time a Formal Complaint is filed, the Complainant must be participating in or attempting to participate in a district's education program or activity

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SUPPORTIVE MEASURES

- Purpose is to restore or preserve equal access to the district's education program or activity without unreasonably burdening the other party
- Include measures designed to protect safety of all parties or district's educational environment, or deter sexual harassment
- Non-disciplinary, non-punitive measures
 - Removing Respondent from an activity may be considered unreasonably burdensome and punitive, unless an "emergency removal"

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SUPPORTIVE MEASURES

Previous OCR Guidance

- Used terms such as "interim measures" or "interim steps" to describe measures to help a complainant maintain equal educational access
- Implied only available during pendency of investigation, did not mandate offering them, not clear if could be punitive or disciplinary, and did not clarify if available to respondents

Amended Title IX Regulations

- Now called "supportive measures"
- Non-punitive, individualized services, offered as appropriate and without charge to a Complainant or a Respondent before or after the filling of a Formal Complaint, or where no Formal Complaint has been filed

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SUPPORTIVE MEASURES: EXAMPLES Counseling services Mutual restrictions on contact between parties • Extensions of deadlines or other Changes in work/school locations course-related adjustments Modifications of work or class Leaves of absences schedules Increased supervision of certain Hall escort school areas HODGES LOIZZI 46 **POLICY AND NOTICE REQUIREMENTS** HODGES LOIZZI 47 NOTICE OF POLICIES AND PROCEDURES Must provide notice of the district's nondiscrimination policies and grievance procedures to the following groups: Students · Parents/Legal Guardians Employees Unions or professional organizations holding agreements with the district Applicants for employment Includes notice of Board Policy 2:260, *Uniform Grievance Procedure*; Board Policy 2:265, *Title IX Sexual Harassment Grievance Procedure*; and applicable administrative procedures

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WEBSITE POSTING AND NOTICE REQUIREMENTS

- · Must post policies and grievance procedures on the district's website
- Must post Title IX Coordinator's contact information (name, title, address, phone number, email) on the district's website and print in any handbook to persons entitled to notification (see previous list)
- Must post Title IX training materials on the district's website; if the district does not have a website, must have the training materials available for members of the public to inspect

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TITLE IX POLICIES

- Relevant Board Policies:

- Reievant Board Poicies:
 2:260, Uniform Grievance Procedure
 2:265, Title IX Sexual Harassment Grievance Procedure NEW
 2:265-AP1, Title IX Sexual Harassment Response NEW
 2:265-AP2, Formal Title IX Sexual Harassment Complaint Grievance Procedure
 - NFW

- NEW

 2:265-E, Title IX Sexual Harassment Glossary of Terms NEW

 5:10, Equal Employment Opportunity

 5:20, Workplace Harassment Prohibited

 5:90, Abused and Neglected Child Reporting

 7:10, Equal Educational Opportunities

 7:20, Harassment of Students Prohibited

 7:180, Prevention of and Response to Bullying, Intimidation, and Harassment

 7:185, Teen Dating Violence Prohibited

 7:190, Student Behavior

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TITLE IX SEXUAL HARASSMENT **GRIEVANCE PROCESS** HODGES LOIZZI



TITLE IX GRIEVANCE PROCESS Two-fold District response: (1) Upon "actual knowledge" of allegation (report to any district employee): Title IX Coordinator promptly contacts the Complainant to discuss the availability of supportive measures and explain the process for filing a Formal Title IX Sexual Harassment Complaint (2) Upon receiving/filing Formal Complaint: Title IX Coordinator initiates Formal Title IX Sexual Harassment Complaint Grievance Process

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TITLE IX GRIEVANCE PROCESS: ROLES Title IX Coordinator: Individual authorized to coordinate the district's compliance efforts with Title IX Investigator: Individual designated by the Title IX Coordinator to investigate a Formal Title IX Sexual Harassment Complaint Initial Decision-Maker: Individual designated by the Title IX Coordinator to reach a determination regarding responsibility in a Formal Title IX Sexual Harassment Complaint Appellate Decision-Maker: Individual/group that reviews an appeal of the Initial Decision-Maker's determination of responsibility or the dismissal of a Formal Complaint (or allegations therein) HODGES LOIZZI



Eisenhammer Rodick & Kohn

TITLE IX GRIEVANCE PROCESS: BASIC REQUIREMENTS

- Treat Complainant and Respondent equitably
- Require an objective evaluation of all relevant evidence
- Require that Title IX Coordinator, Investigator, Decision-Maker, or any person designated to facilitate an informal process:
 - Not have a conflict of interest or bias for/against complainants or respondents generally or an individual Complainant/Respondent
 - Receive training on definition of sexual harassment, scope of district's education program or
 activity, how to conduct an investigation and the grievance process, and how to serve impartially
- Individuals in Title IX roles receive required training

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TITLE IX GRIEVANCE PROCESS: BASIC REQUIREMENTS

- Presumption that the Respondent is not responsible for the alleged conduct until conclusion of grievance process
- Reasonably prompt timeframes for conclusion of the grievance process
- Including for filing and resolving appeals and informal resolution processes
- · Provide written notice to both parties explaining delay
- PRESS 2:265-AP2 requires grievance procedure completed within <u>90 school business</u>

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TITLE IX GRIEVANCE PROCESS: BASIC REQUIREMENTS

- Describe the range of all possible disciplinary outcomes and remedies that may be implemented following a determination of responsibility
 - Examples: detention, in-school suspension, out-of-school suspension, alternative placement, expulsion (Board Policies 7:190, 7:200, 7:210); suspension with or without pay (consistent with applicable Board Policy and CBA)
- State whether the district uses a preponderance of evidence or clear and convincing evidence standard to determine responsibility
 - PRESS Policy 2:265 uses the preponderance of evidence standard (greater weight of
 the evidence, not necessarily established by the greater number of witnesses testifying
 to a fact but by evidence that has the most convincing force); boards have the option
 as to which standard to use

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TITLE IX GRIEVANCE PROCESS: BASIC REQUIREMENTS

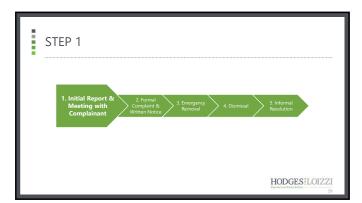
Identify appeal procedures for Complainant and Respondent

Describe available supportive measures available to Complainant and Respondent

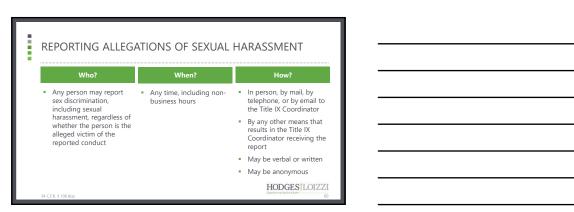
Prohibit the use of evidence or questions seeking legally privileged information, unless privilege waived

Examples: attorney-client privilege, doctor-patient privilege

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REPORTING ALLEGATIONS OF SEXUAL HARASSMENT REMEMBER: District has actual knowledge of sexual harassment once any employee receives a report of alleged sexual harassment Train all employees (staff, contractors, volunteers) to notify the building administrator and Title IX Coordinator immediately upon receiving report of alleged sexual harassment Failure to make or forward a report up the chain of authority may result in employee discipline Immediately report to DCFS if allegation raises suspicion of child abuse or neglect HODGESILOIZZI

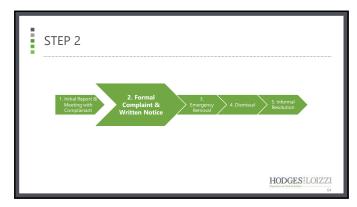
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INITIAL RESPONSE District must treat Complainants and Respondents equitably Offer supportive measures to both Complainant and Respondent Follow grievance process before imposing disciplinary measures on Respondent HODGES LOIZZI

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INITIAL MEETING WITH COMPLAINANT Upon notice/report of the sexual harassment allegation, Title IX Coordinator must promptly: Contact the Complainant (alleged victim) to discuss the availability of supportive measures Consider the Complainant's wishes with respect to supportive measures Inform the Complainant of the availability of supportive measures with or without the filing of a Formal Complaint Explain the process for filing a Formal Complaint HODGES!LOIZZI





PORMAL COMPLAINT At time of filing a Formal Complaint, Complainant must be participating in or attempting to participate in the district's education program or activity Complainant may file a Formal Complaint with the Title IX Coordinator in person, by mail, by email, or other method made available by the district, at any time May be a hard copy or electronic document; must contain the Complainant's physical or digital signature, or otherwise indicate that the Complainant is the person filing the Formal Complaint HODGESILOIZZI

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FILING A FORMAL COMPLAINT Third party reporter cannot file a Formal Complaint However, Title IX Coordinator may sign a complaint to trigger investigation to ensure district is not responding with "deliberate indifference" If the Title IX Coordinator signs the Formal Complaint, s/he does not become the Complainant or otherwise a party to the complaint May entail implementing the formal grievance process over the Complainant's objections HODGES LOZZI



CONSOLIDATION OF FORMAL COMPLAINTS Title IX regulations provide wide latitude to districts to consolidate Formal Complaints where the allegations arise out of the same facts or circumstances: Against more than one Respondent By more than one Complainant against one or more Respondents By one party against another party HODGES|LOIZZI

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WRITTEN NOTICE OF FORMAL COMPLAINT • Upon receipt of (or signing) a Formal Complaint, the district must provide written notice to all known parties in sufficient time to give the Respondent time to prepare a response before any initial interview HODGESILOIZZI

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WRITTEN NOTICE OF FORMAL COMPLAINT Written notice must include: Notice of grievance process, including any informal resolution process Notice of allegations, including sufficient detail to allow Respondent to prepare a response: Identities of parties, if known Conduct alleged to be sexual harassment Date and location of conduct, if known WICHA 1 106-45(8)(2) WRITTEN NOTICE OF FORMAL COMPLAINT NOTICE OF FORMAL



WRITTEN NOTICE OF FORMAL COMPLAINT

- Statement that the Respondent is presumed not responsible for the conduct and that responsibility will be determined at the conclusion of the grievance process
- Notice of the parties' right to have an advisor of their choice (may be an attorney) and to inspect and review evidence
- Notice of any provision in the district's code of conduct (e.g., Board Policy 7:190) that prohibits knowingly making false statements or providing false information in the grievance process

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34 C.F.R. § 106.45(b)(

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WRITTEN NOTICE OF FORMAL COMPLAINT

- District must provide additional written notice(s) to all parties if, during the investigation, the district decides to investigate allegations not included in the first written notice
- Decide whether the district will conduct investigation or appoint a qualified investigator (best practice: provide written notice of investigator if appointed)

34 C.F.R. § 106.45(b)(2

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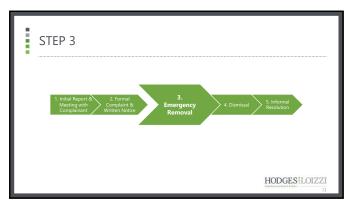
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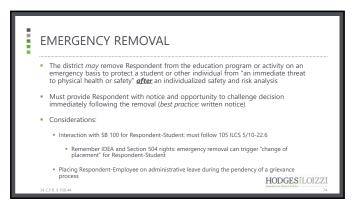
COMPLAINANT/RESPONDENT IDENTITY UNKNOWN

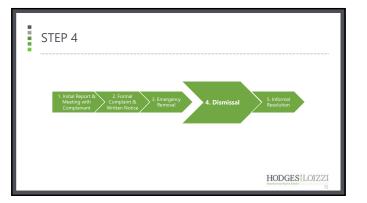
- Possible scenarios:
 - Third party reports allegation of sexual harassment but does not reveal Complainant's identity
 - Complainant reports allegation anonymously
 - Complainant does not know Respondent's identity
- If unknown, written notice need not include the Complainant's or Respondent's identity
- If Complainant's or Respondent's identity later discovered, provide another written notice to all parties

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DISMISSAL OF FORMAL COMPLAINT Amended Title IX regulations establish mandatory and discretionary reasons a Title IX sexual harassment Formal Complaint, or an allegation therein, may be dismissed during or after an investigation HODGESILDIZZI

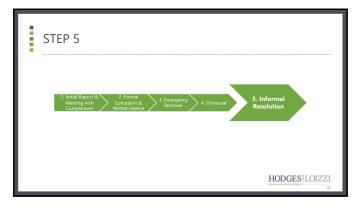
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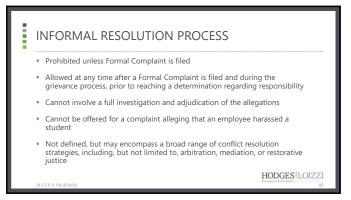
DISMISSAL OF FORMAL COMPLAINT Mandatory Dismissal If the conduct would not constitute sexual harassment as defined by the Title IX regulations, even if proved If the conduct did not occur in the district's program or activity If allegations did not occur against a person in the United States The Complainant notifies the Title IX Coordinator at any time that s/he wishes to withdraw the formal Complain to any allegation therein If Respondent is no longer enrolled in or employed by the district. If specific circumstances prevent the district from gathering evidence sufficient to reach a determination as to the Formal Complaint or any allegation therein (e.g., passage of several years between Formal Complaint and alleged conduct; Complainant ceases to cooperate with grievance process) SECENTIAL SOLUCIONAL SOLUCIONAL

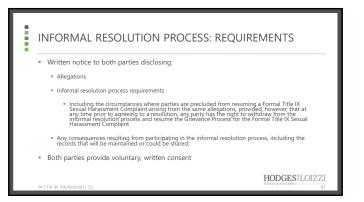
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DISMISSAL OF FORMAL COMPLAINT If the district dismisses a Formal Complaint, or allegation(s) therein, written notice must be promptly provided to both parties simultaneously Must include the reason(s) for mandatory or discretionary dismissal, and the right to appeal the dismissal If dismissing a Formal Complaint, but investigating allegation(s) under different process (e.g., Board Policy 2:260 or 7:180), include in the written notice The district must document its rationale for dismissal to show that it is not acting in a deliberately indifferent manner HODGESILOIZZI

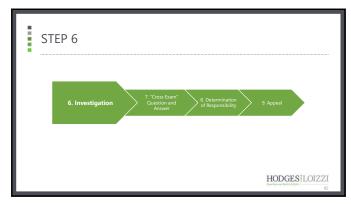














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TITLE IX INVESTIGATION REQUIREMENTS Provide the parties with the same opportunities to have others present during interviews and other parts of the grievance process, including an advisor/attorney of their choice Provide, to a party who is invited or expected to attend, written notice of date, time, participants, purpose, and location of any investigative interviews or other meetings, with sufficient time to allow the party to prepare to participate HODGES LOIZZI



TITLE IX INVESTIGATION REQUIREMENTS

- Provide the parties (and their advisors/attorneys, if any) an equal opportunity to inspect and review any evidence obtained during the investigation that is directly related to the allegations in the Formal Complaint
- Including evidence the district does not intend to rely on in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence

34 C FR § 106 45/b)/5

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TITLE IX INVESTIGATION REQUIREMENTS

- Prior to the completion of the investigation report, send to each party (and the party's advisor/attorney, if any) the evidence subject to inspection and review in an electronic format or a hard copy
- Provide each party with 10 days to submit a written response
- Upon receipt of a party's written response to the evidence, review the response and send a copy to the other party

34 C.F.R. § 106.45(b)(5)(f); Note: PRESS 2:265-AP2 specifies 10 school business days so all days within the policy and procedures are "school business days"

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TITLE IX INVESTIGATION REQUIREMENTS

- Prepare an investigation report that fairly summarizes all relevant evidence
- Send the investigation report to each party (and the party's advisor/attorney, if any) the investigation report, in an electronic format or hard copy, for their review and written response
- The investigation report must be sent to the parties 10 days before the Initial Decision-Maker's determination regarding responsibility

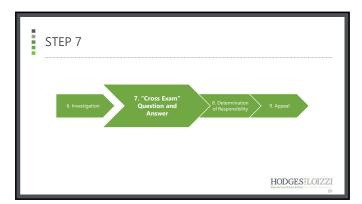
34 C.F.R. § 106.45(b)(5)(g); Note: PRESS 2:265-AP2 specifies 10 school business days so all days within the policy

HODGES LOIZZI

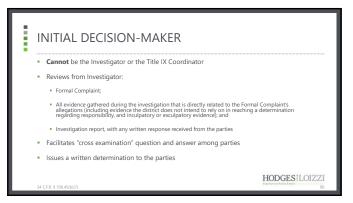


TITLE IX INVESTIGATION REQUIREMENTS At the conclusion of the investigation, Investigator sends to the Initial Decision-Maker in an electronic format or hard copy: Formal Complaint; All evidence gathered during the investigation that is directly related to the Formal Complaints allegations (including evidence the district does not intend to rely on in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence); and Investigation report with any written response received from the parties HODGES ILDIZZI

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HEARINGS Districts are not required to conduct live hearings Instead, districts must provide each party the opportunity, after the completion of the investigation report, to submit written, relevant questions that the party wants asked of another party or witness, provide each party with the answers, and provide for limited follow-up questions HODGESILOIZZI

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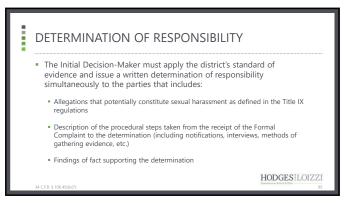
"CROSS EXAMINATION" QUESTION & ANSWER The Initial Decision-Maker: Provides the parties with written notice of the opportunity to submit written, relevant questions that a party wants asked of any party or witness; include description of the process and timelines Determines which questions to forward to any party or witness for answers If any proposed questions are excluded as not relevant, provides the proposing party with a written explanation of the decision to exclude a question as not relevant Questions regarding a Complainants prior sexual behavior or sexual predisposition are not relevant, unless such questions and evidence are offered to establish that another person committed alleged conduct or that conduct was consensual

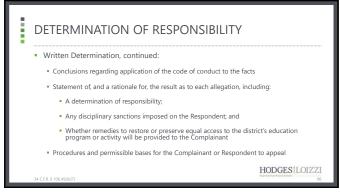
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"CROSS EXAMINATION" QUESTION & ANSWER Forwards relevant questions to any party or witness with instructions to submit answers to the Initial Decision-Maker Upon receipt of answers to questions, provides each party with copies of the answers Follows the same process for the additional, limited follow-up questions from each party Timelines are not specified in the Title IX regulations; PRESS 2:265-AP2 uses 5 school business days for each step











EVALUATING EVIDENCE

- Review all evidence from investigation, including the investigation report and responses from the parties, as well as additional information from the "cross examination" question and answer process
- Is there a pattern of conduct that would tend to support the allegations?
- Do not end the inquiry simply because no corroborating evidence can be found
- Make reasoned conclusions as to the evidence, including making reasoned judgments as to the parties' credibility

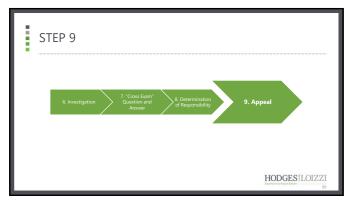
HODGES LOIZZI

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REPORTING DETERMINATION OF RESPONSIBILITY

- Depending on the severity of the allegation(s), the determination of responsibility report should be prepared with the help of legal counsel
- Be aware that the report may become discoverable in subsequent litigation
- Keep the report, investigation file, and related documents as confidential as much as possible
- Disclose the report on a need-to-know basis; but must be sent to all parties simultaneously
- Title IX Coordinator is responsible for effective implementation of any
 remedies.

HODGES LOIZZI





APPEAL Must offer to both parties for dismissal of Formal Complaint, or allegations therein, and determinations of responsibility in specified circumstances: Procedural irregularity New evidence now available that could affect the outcome and was not reasonably available at the time of the determination Conflict of interest or bias of the Title IX Coordinator, Investigator, or Decision-Maker District may offer other bases for appeal HODGESILOIZZI

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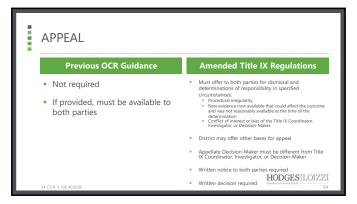


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APPEAL Appellate Decision-Maker: Board of Education or Board-appointed examiner (individual or group) Must be different from Title IX Coordinator, Investigator, and Initial Decision-Maker Decides whether to affirm, reverse, or amend the Initial Decision-Maker's written determination regarding responsibility or the dismissal Issues written decision describing the result of the appeal and the rationale for the result Written decision must be provided simultaneously to both parties HODGES ILOUZZI MACER \$ 106.450(8023)











Prohibits retaliation by district or any other person against any person for the purpose of interfering with Title IX rights or because the person has participated or refused to participate in any manner in a proceeding under Title IX regulations Complaints of retaliation may be addressed under Title IX grievance process (not the Title IX sexual harassment grievance procedures; see PRESS Policy 2:260) District must keep confidential the identity of a person who made a report or complaint of sexual harassment, including parties and witnesses HODGESILOIZZI

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RECORDKEEPING • Must keep records for a minimum of <u>Tyears</u>: • Investigation records • Written determination of responsibility • Disciplinary sanctions • Appeal records and written decision • Any informal resolution records and the result • All Title IX training materials (posted on website) HODGES: LOIZZI



