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EST. 1876

## Title IX – Resolution Officers

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# Informal Resolutions

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# Compliance Date

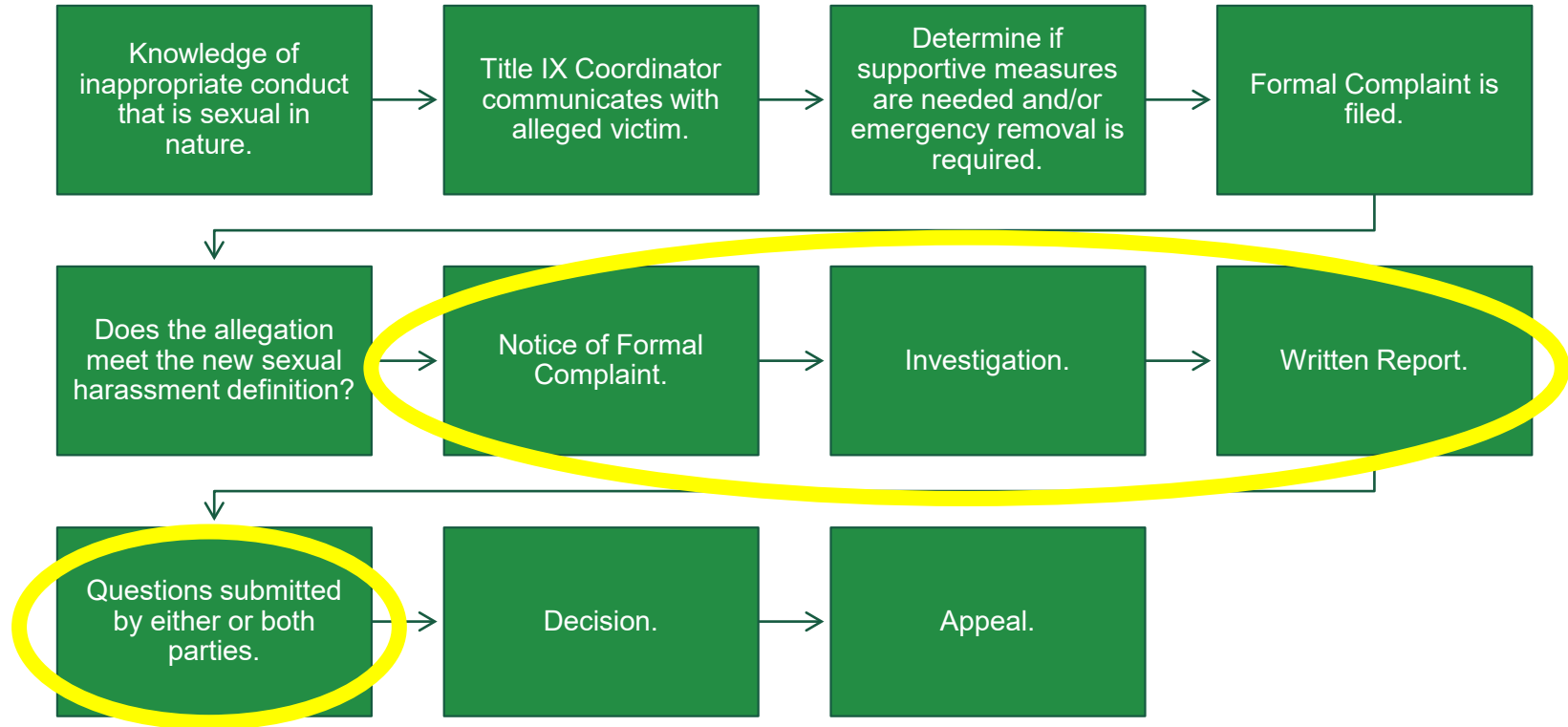
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August 2020						
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**Friday, Aug 14th 2020**

# Title IX Flow Chart

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New Definitions  
Why Informal Resolution  
Voluntary Process  
Impartiality  
Avoiding Bias  
Conflict of Interest  
Resolution Process  
Documentation

New Terminology	
<i>Complainant:</i> Person alleged to be the victim of sexual harassment.	<i>Respondent:</i> Person alleged to be the perpetrator of sexual harassment.

A parent may act on behalf of a minor student who is a Complainant or Respondent.



# What is Sexual Harassment?

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## OLD DEFINITION

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Previously, the regulations described sexual harassment as  
**“unwelcome conduct of a sexual nature.”**

# Definition – Sexual Harassment

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The new Title IX regulation provides for a *narrower definition* of sexual harassment that constitutes sex discrimination. The new definition has **(3)** **types of sex-based conduct** which would constitute sexual harassment:

Sexual assault,  
dating violence,  
domestic  
violence, and  
stalking;

“Unwelcome conduct  
that is **so severe,  
pervasive and  
objectively offensive**  
that it effectively  
denies a person equal  
educational access;  
AND

An employee  
conditioning the  
aid, benefit or  
service on  
participation of  
unwelcomed  
sexual conduct  
(Quid pro Quo).



- Reasons why parties may prefer informal resolutions:
  - Parties have more control over the outcome.
  - The solutions can be tailored to the needs of the parties.
  - Less adversarial.



**INFORMAL RESOLUTIONS ARE ONLY AVAILABLE TO THE PARTIES IF A FORMAL COMPLAINT IS FILED!**



# When?

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Informal resolutions are available any time prior to reaching a determination.



Districts **cannot** offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student. This is because of the power differentials inherent in those circumstances.



Informal resolution cannot be mandated.

It cannot be a requirement for:

- The Respondent or Complainant continuing enrollment at the school;
- As a condition of employment; or
- As a condition to participate in school activities.

This is a voluntary process for both parties.



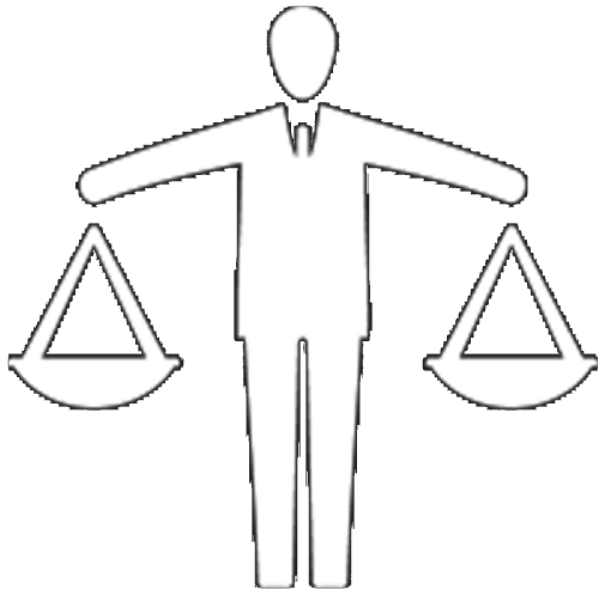
- Do not pressure either party to participate in informal resolution.
- Do not require a full investigative report.
  - Informal Resolution does not require a full investigation to be completed.
- Do not exclude Complainants or Respondents from any activities because they are not participating in the informal resolution process.



# Impartiality

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What does it mean to be Impartial?

- Be neutral.
- Treat all parties equally.
- Keep an open mind until you have all the facts to make a decision.

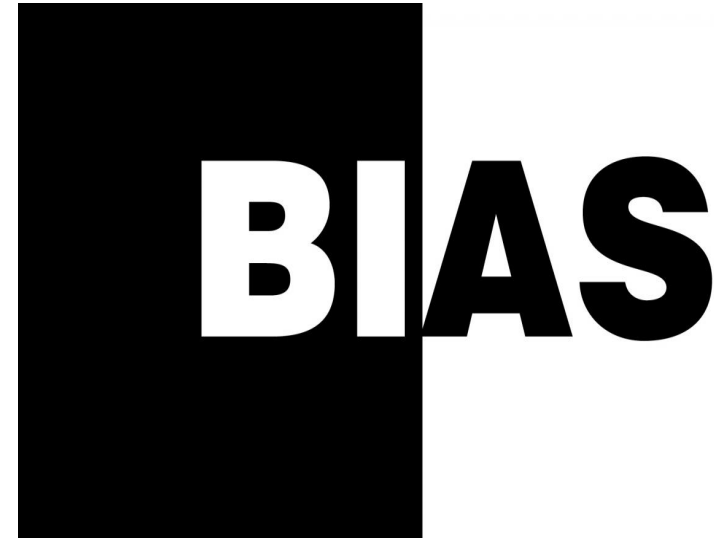


# Bias

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- An Informal Resolution Facilitator has no sides or stake in the outcome.
- Everyone has biases, but an Informal Resolution Facilitator must learn to recognize what those biases are and ensure they do not influence the resolution process.



- Does past advocacy for a survivor's rights group or respondent's right group show a bias?
- Does prior work as a victim advocate show a bias?
- Do past statements or social media statements show a bias?
  - Hot button issue during Justice Kavanaugh's confirmation.

## Ways to avoid bias:

- Keep an open mind during the resolution process;
- Avoid pre-judging the facts before the resolution; and
- Remember that each case is unique.

Things to consider for conflict of interest:

- Should the District look at the hierarchy of the roles? Who does the Informal Resolution Facilitator report to?
- Does past advocacy for a survivor or respondent's right group create a conflict?



You are the designated Informal Resolution Facilitator for your District. You receive a request for an informal resolution from your District's Title IX Officer. You look at the complaint and recognize the name of the Respondent from an informal resolution you were a part of last year.

- What should you do?

What If...?

You receive a request for an informal resolution. You review the complaint and realize you are familiar with the Respondent's mother. You see each other socially a few times a month but don't maintain an individual friendship.

what if?

- What should you do?

## Bias/Conflict of Interest – Hypothetical 3

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You are a part of a survivor's group. You also frequently post to social media advocating for survivor's rights and advocate to believe survivors. You have commented on most cases of sexual harassment that make the news on your social media.



- What should you do?





# Resolution Process

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The Title IX regulations do not provide specific guidance as to what informal resolution should look like. Here are some resolution techniques to use for the informal resolution process:

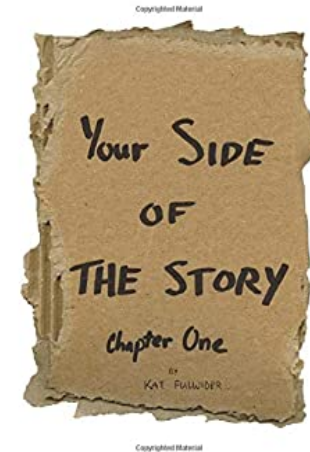
- Provide an overview of the process.
  - The Informal Resolution Facilitator should provide an overview to the parties.
  - This helps set expectations of the process.
  - Consider a script so you don't miss anything.



- Keep the parties separate.
  - Title IX issues can be emotional. Keeping the parties separate during the resolution process may make for a more successful resolution.



- Provide each party an opportunity to tell their story.
- Each party should feel they have been heard.
  - Review what is important to them.
  - Identify areas of flexibility.



- Determine what each party wants out of the resolution process.
  - Ask each party what they are looking for.
  - Make a list and review it with the parties.
  - Be clear with each party what you can share with the other party.



- Know what supportive measures you can offer. Examples include:
  - Counseling
  - Escorts in the halls
  - Adjusting schedules
  - Training
  - Virtual classes



# Facilitating a Resolution Process

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- Look to see if there is anything the parties have in common on their lists.
- Go back and forth between the parties until you can reach a resolution or are at an impasse.
- If you do reach an agreement, make sure both parties agree to the same terms.







- If you reach an agreement, write it out!
- Have both parties sign the agreement.
  - Have a template easily accessible.
- Have a policy in place if parties want time to think about the resolution before signing.
  - Have a deadline to agree to the informal resolution before it returns to the formal process.



- The written agreement should include:
  - Names of both parties.
  - Names of advisors present.
  - Name of the Informal Facilitator.
  - Specific terms of the agreement.
  - General description of the process that led to the resolution.
  - Specify that the informal resolution process was used instead of the formal process and both parties volunteered to participate.
  - Acknowledgement of all the terms in the agreement by the Parties.
  - Confidentiality provisions.

- The terms of the agreement should be on a need to know basis.
- The agreement should include penalties for a party sharing or publishing the agreement.
- Agreements are protected by FERPA.



# Questions?

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THANK YOU!

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