



ABERNATHY ROEDER
BOYD HULLETT

EST. 1876

Title IX – Title IX Coordinators

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Title IX Coordinators

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Compliance Date

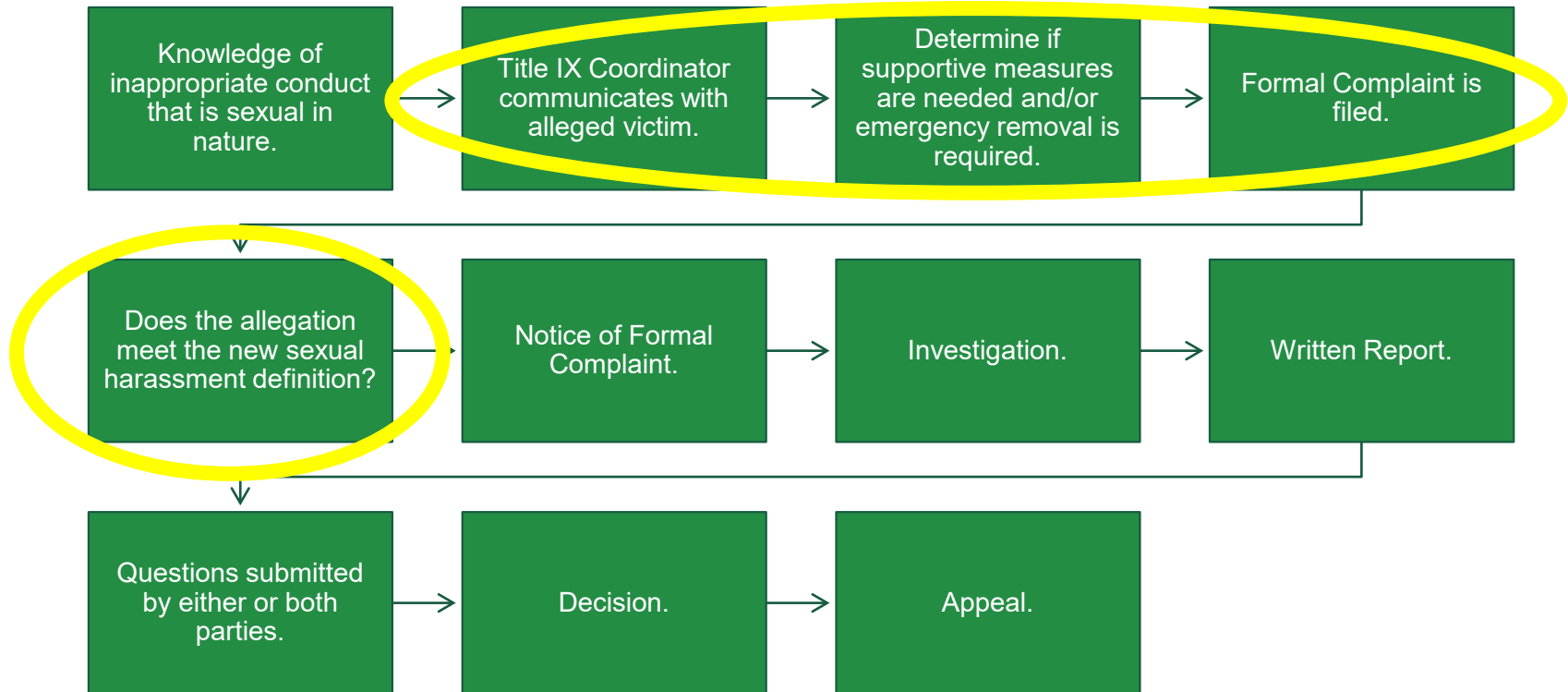
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August 2020						
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Friday, Aug 14th 2020

Title IX Flow Chart

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Presentation Agenda

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New Definitions
Jurisdiction
Dismissals
Supportive Measures
Emergency Removals
Formal Complaints
Written Notice
Informal Resolution
Advisors
Record Keeping

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

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

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).

- Actual Knowledge
 - Notice of alleged sexual harassment given to any employee of the District.



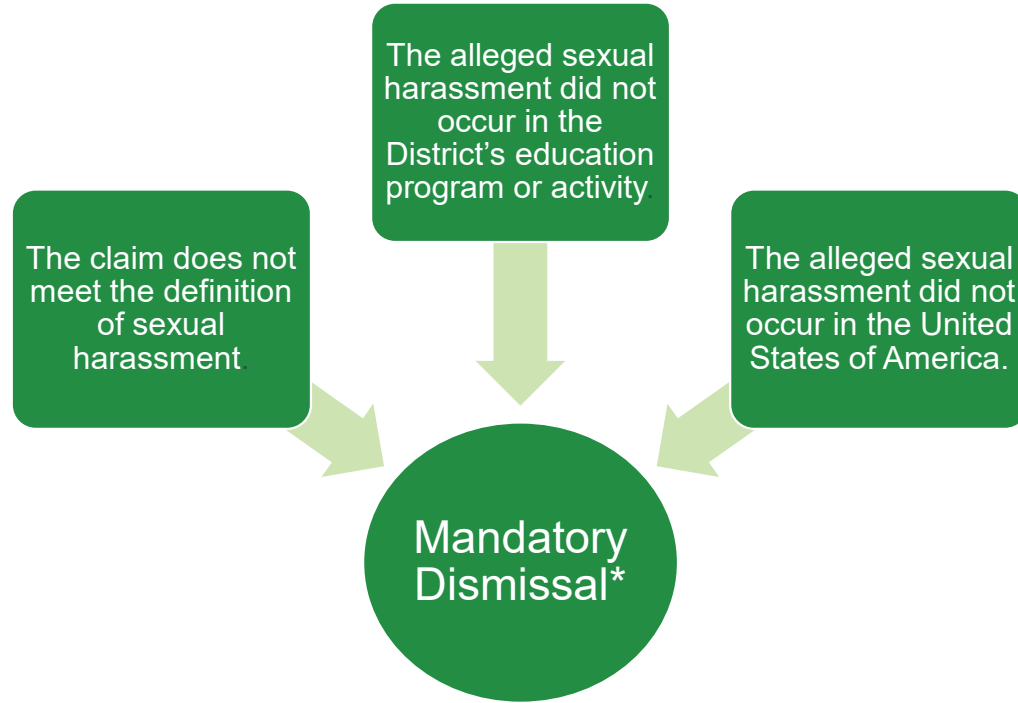
- A District has jurisdiction when it has actual knowledge of sexual harassment in the District's educational program or activity.
 - **Education program or activity** includes locations, events or circumstances over which the District exercised substantial control within the United States.
 - Examples include classrooms, field trips, District owned property, and District events.





DISMISSED

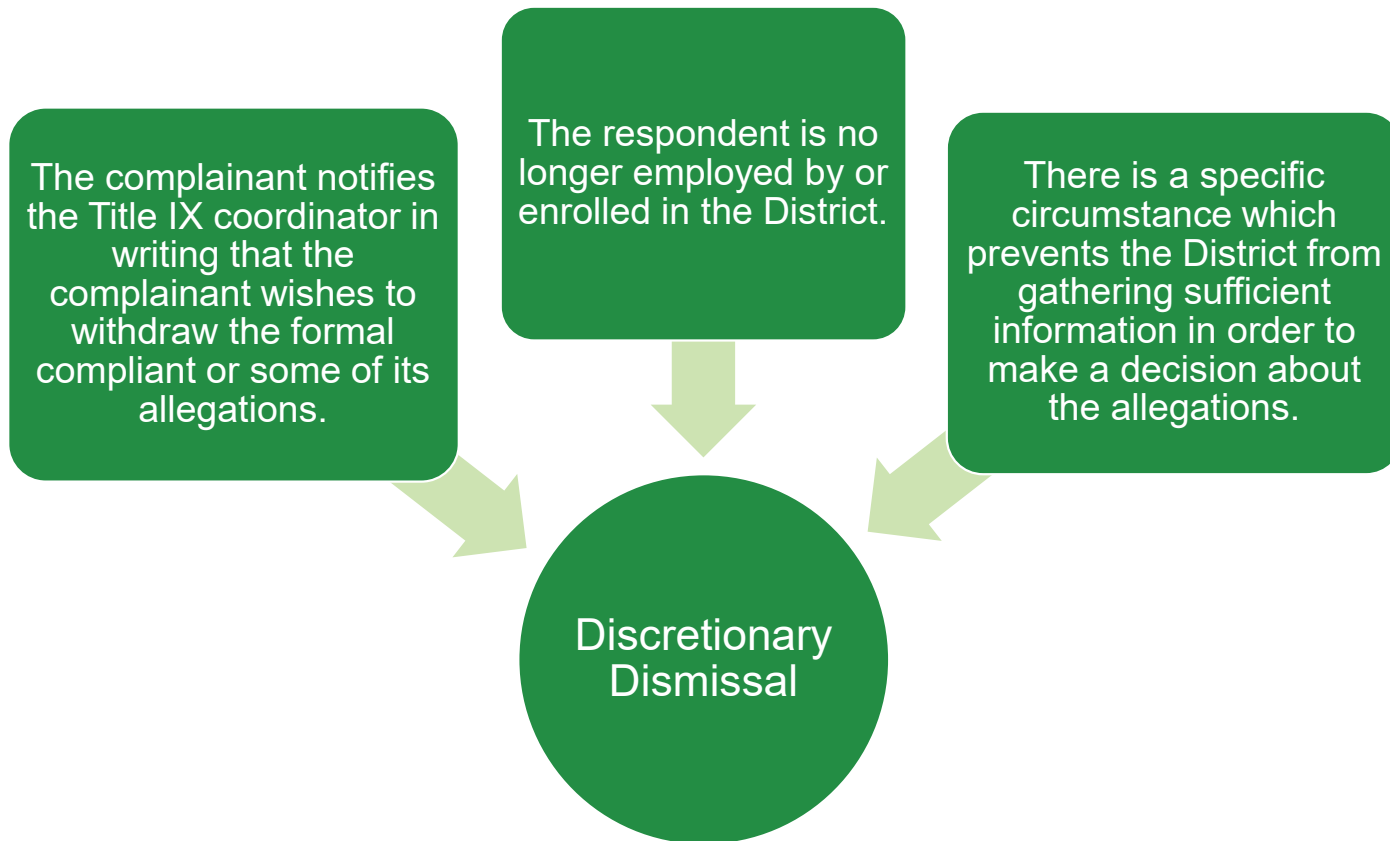




*Districts can still investigate these claims under their Code of Conduct.

Discretionary Dismissals

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- Virtual learning considerations:
 - Did the alleged conduct happen on a computer owned by the District?
 - Did the alleged conduct happen on a program or platform owned or used by the District?
 - Did the alleged conduct occur in the United States?



- Joe and his girlfriend Sally attend the school dance. They leave the dance and get a hotel room. The next day, Sally reports she was sexually assaulted by Joe in the hotel room and requests a Title IX investigation. You are the Title IX Coordinator, what do you do?

What If...?

Supportive Measures

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- Supportive measures are defined as “non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent[.]”
- Supportive measures are designed to restore or preserve access to the recipient’s education program or activity.
- Supportive measures are not punitive.

- Examples of supportive measures:
 - Counseling
 - Extensions of deadlines
 - Modification of schedules
 - Provide an escort in the halls
 - Stay away orders

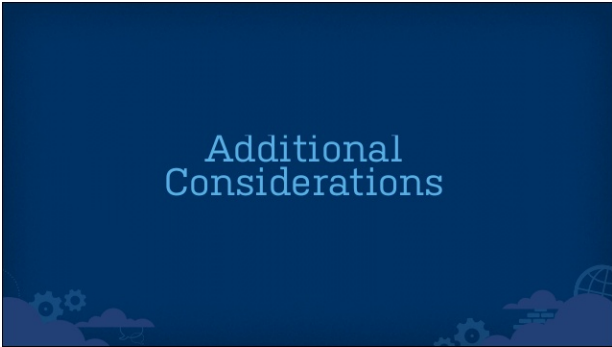
EXAMPLES
EXAMPLES

What is your role as the Title IX coordinator?

- Contact the Complainant 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 filing a formal complaint.
- Document any supportive measures provided. If no supportive measures provided, document why.
 - Districts must maintain this documentation for seven (7) years.

Additional considerations for supportive measures:

- Consider the Complainant's wishes.
- Follow up to see how the supportive measure is going.



Additional
Considerations

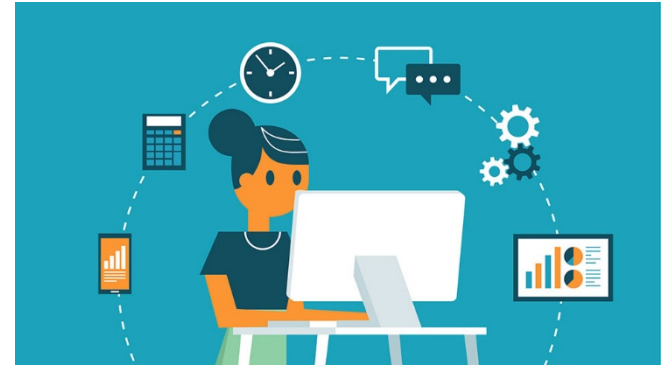
Do you provide supportive measures to the respondent?





- Supportive measures should be available to both Complainant and Respondent.
- Document any supportive measures that were offered and turned down.
- If the Respondent requested a supportive measure and it was not provided, document the reason for the denial.

- Practical Considerations:
 - Be sensitive, both parties may be emotional.
 - Refrain from comments that blame either party or come across as prejudgment (i.e. avoid using words such as perpetrator, victim, etc.)
 - Interactions with each party should be documented in writing.
 - Meet with each party separately.



Emergency Removals

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- Emergency removals are rare and allowed only after you have conducted a safety and risk analysis.
- If the District decides to go forward with an emergency removal, the Respondent is entitled to:
 - Notice; and
 - An opportunity to be heard.
- The Respondent can appeal the emergency removal.



Formal Complaint

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What is a formal complaint?


- A formal complaint is a document filed by the complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting an investigation into the allegations.


- When the Title IX Coordinator signs the formal complaint, he or she is not acting as the Complainant.
- The Title IX Coordinator:
 - Does not participate in the investigation.
 - Does not participate in any questioning by the Investigator.




Written Notice

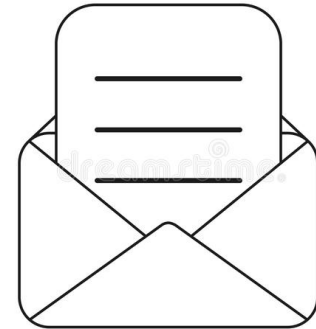
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- Include presumption of innocence at the onset of the grievance process;
 - Inform both parties of the District's grievance process;
 - Include if there is an opportunity for an informal resolution process;

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- Include key details of the allegations of sexual harassment including parties involved, date and location of the alleged incident (if known), and the alleged conduct that constitutes sexual harassment;
 - Include a statement that the parties are entitled to an advisor of their choice;
 - Include notice that the parties can inspect and review certain evidence;

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- Include information regarding any provisions from the Code of Conduct (if one exists) regarding making false statements during the grievance process; and
 - If in the course of an investigation the District decides to investigate allegations about the respondent or complainant that were not included in the original notice, notice of the additional allegations must be provided in writing to the parties.

If new allegations arise during the Title IX process, the written notice must be supplemented, or a new written notice must be sent to both parties.



Informal Resolution

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- Informal resolutions are permitted but not required.
- The only situation where districts **cannot** offer or facilitate an informal resolution process to resolve allegations is when the allegation is that an employee sexually harassed a student. This is because of the power differentials inherent in such circumstances.



- Formal Complaint.
- A facilitator who is trained.
- A facilitator who is free from conflict of interest and bias.
- Either party can withdraw from the process prior to resolution.



- Supportive measures cannot be punitive.
- Informal resolutions may result in disciplinary or punitive actions.





- Advisors can be attorneys, but it is not a requirement.
 - A parent may serve as an advisor.
- Advisors can be present throughout the process including informal resolutions.
- The District cannot limit the choice of advisors but can limit the quantity to 1.

- Update District policies, handbooks, etc.
- Distribute Title IX coordinator contact information.
- Revise the grievance process for Title IX.
- Identify your Title IX team and provide training.
- Establish an informal resolution process.
- Determine the procedure for emergency removals.
- Develop record keeping protocols.
- Post training materials.

Questions?

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THANK YOU!

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