



Complaint, Grievance & Investigative Process



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Title IX – Complaints

Anyone with knowledge of the relevant actions/behaviors may report those issues and trigger our need to respond.

Title IX – Complaints / Grievances

Who is the Complainant?

- The complainant is the individual who is eligible to file a complaint to report a violation of Title IX.
- It also includes any person who is reported to have experienced a violation in cases where some other person made the first report on that person's behalf.



Title IX – Complaints / Grievances



Allegation Comes
to You

Talk to the
Complainant

Filing a Formal
Complaint or No?

V. Notice of Sexual Harassment

Question 14: Which school employees must be notified about allegations of sexual harassment for a school to be put on notice that it must respond?

Answer 14: In elementary and secondary school settings, a school must respond whenever any school employee has notice of sexual harassment.⁴⁰ This includes notice to a teacher, teacher's aide, bus driver, cafeteria worker, counselor, school resource officer, maintenance staff worker, coach, athletic trainer, or any other school employee.⁴¹



Report Suspected Child Abuse & Neglect

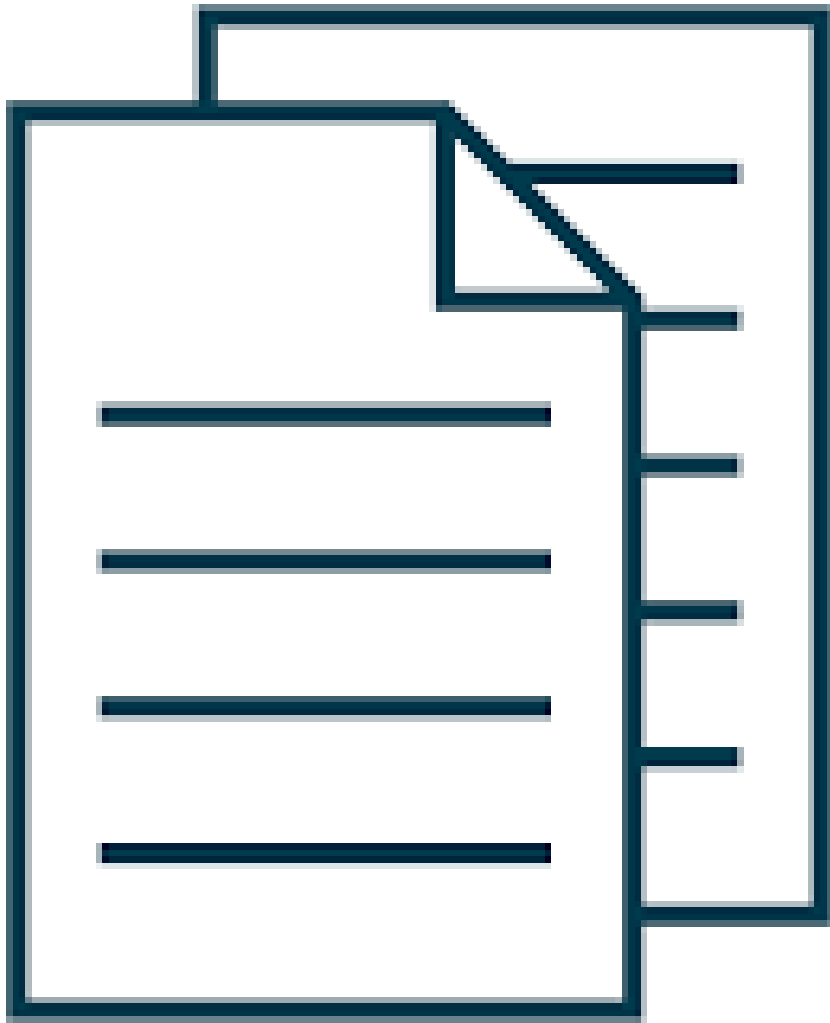
877-237-0004

Call 911 if there is a life-threatening emergency

Title IX – Complaints / Grievances

What if the initial allegations could be considered as child abuse and/or child sexual abuse?

The 2020 amendments permit a temporary delay of the grievance process or the limited extension of time frames, with good cause.¹²² The 2020 amendments provide illustrations of good cause, including considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.¹²³



Title IX – Complaints / Grievances

Upon receiving a formal complaint:

1. Provide written notice of the allegations, and the grievance process to all known parties to give the respondent time to prepare a response before an initial interview;
2. Inform the parties of the prohibition against making a false statement or knowingly submitting false information;
3. Inform the parties that they may have an advisor present during any subsequent meetings; AND
4. Offer supportive measures in an equitable manner to both parties.

Title IX – Complaints / Grievances

Supportive Measures

Non-punitive, individualized, and offered as appropriate and without charge to a complainant or a respondent.

Example Measures

- ~ Schedule changes;
- ~ Student counseling;
- ~ Actual monitoring;
- ~ Academic accommodations.

Question 33: What are the supportive measures a school must offer to complainants?

Answer 33: A school must offer supportive measures that “are designed to restore or preserve equal access to the [school’s] education program or activity.”¹⁰⁰ The 2020 amendments add that these include “measures designed to protect the safety of all parties or the [school’s] educational environment, or deter sexual harassment.”¹⁰¹ A school also must consider the complainant’s wishes in determining which supportive measures to provide and may not provide supportive measures that “unreasonably burden[] the other party.”¹⁰²

A school has discretion and flexibility to determine which supportive measures are appropriate. The preamble states that a school must consider “each set of unique circumstances” to determine what individualized services would be appropriate based on the “facts and circumstances of that situation.”¹⁰³

Examples of supportive measures include “counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.”¹⁰⁴

VI. Response to Sexual Harassment

Question 20: How must a school respond to allegations of sexual harassment?

Answer 20: When a school has actual knowledge of sexual harassment in any of its programs or activities that take place in the United States, it must “respond promptly in a manner that is not deliberately indifferent.”⁶³ This includes schools that serve any age, grade, or level of students, from pre-K through postsecondary.

The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, regardless of whether a formal complaint is filed, and to explain the process for filing a formal complaint.⁶⁴ For more on supportive measures, see Questions 32-34.

In addition, if a formal complaint is filed, either by the complainant or the Title IX Coordinator, a school must:

- offer supportive measures to the respondent, and
- follow the Title IX grievance process specified by the 2020 amendments.⁶⁵ For more on this process, including the requirement to offer supportive measures to the respondent, see Question 26 and Section IX.

In addition to setting out these requirements, the regulations provide that a school is deliberately indifferent “only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.”⁶⁶

Title IX – Complaints / Grievances

What if there is a possible *immediate threat* to the physical health/safety of a student arising from the allegations?

What can you do with the accused student?

What can you do with the accused employee?

Question 35: May a school remove a respondent from campus while a Title IX grievance process is pending if the school determines that the respondent is a threat to others?

Answer 35: Yes. The 2020 amendments specify that a school may remove a respondent from its education program or activity on an emergency basis.¹⁰⁶ The school must “undertake[] an individualized safety and risk analysis, determine[] that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provide[] the respondent with notice and an opportunity to challenge the decision immediately following the removal.”¹⁰⁷ A school must also meet its obligations to students under federal disability laws.¹⁰⁸

A school may also place non-student employee respondents on administrative leave while a Title IX grievance process is pending.¹⁰⁹ Again, the school must comply with federal disability laws, as applicable.¹¹⁰



Title IX – Investigations

After a formal complaint has been filed, an investigator needs to be assigned.

- *Has he/she been properly trained?*
- *Does he/she have any conflicts?*

Title IX – Investigations

All investigations must...

Provide an equal opportunity for all parties to present/identify witnesses and evidence.	Provide the parties with the freedom to discuss the allegations and/or gather relevant evidence.	Provide for the parties to have others – parents, advisors, attorneys – present during the grievance process.
Provide for the parties to have dates, times, locations, etc. related to investigative interviews, and with time to prepare for the same.	Provide for the parties to have equal access to inspect/review evidence directly related to the complaint.	Provide the parties with a draft of the investigative report with 10 days to submit a written response, which must be taken into account by the decider.

Title IX – Investigations

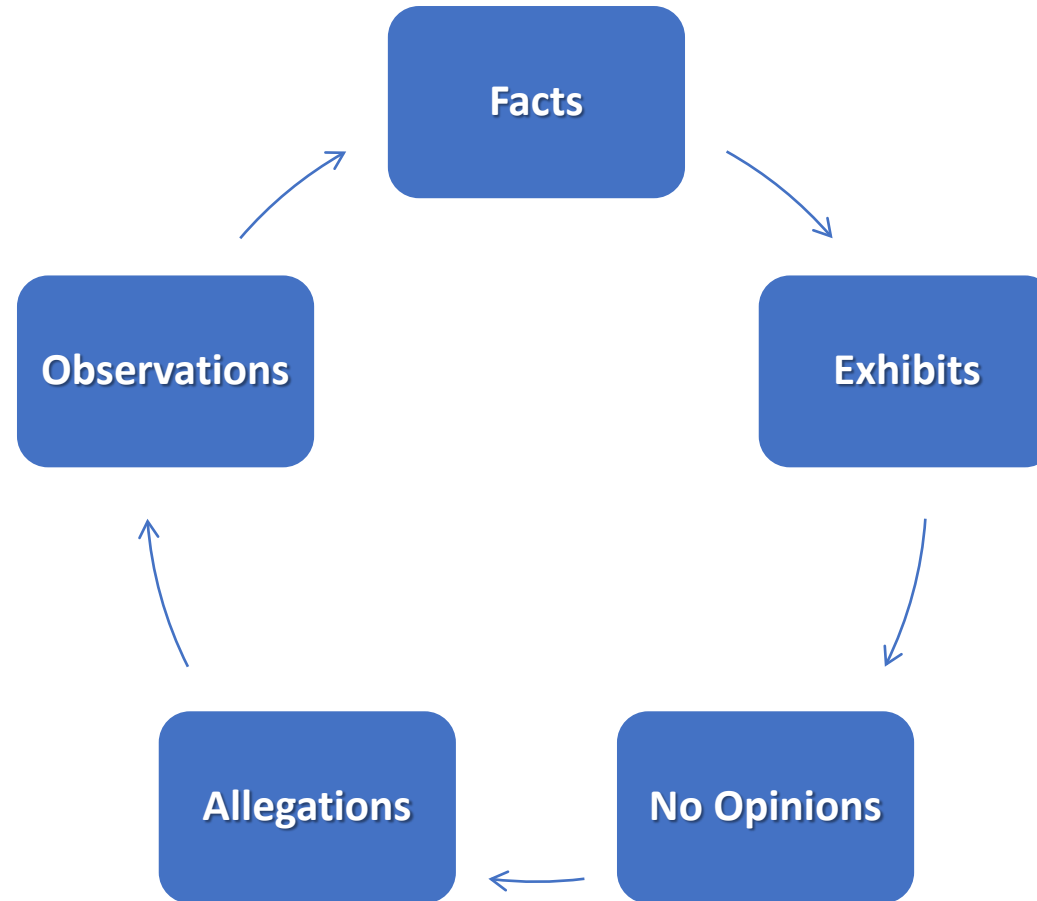
Questions to Complainants	Questions to Respondents
<ul style="list-style-type: none">• Who, what, when, where, and how:✓ Who committed the alleged harassment?✓ What exactly occurred or was said?✓ When did it occur and is it still ongoing?✓ Where did it occur?✓ How often did it occur?✓ How did it affect you?• Are there any persons who have relevant information?• Was anyone present when the alleged harassment occurred?• Did you tell anyone about it?• Are there any notes, e-mails, texts, pictures, videos or other items related to the incident(s)?	<ul style="list-style-type: none">• (Briefly summarize what has been alleged.)✓ What is your response to those allegations?• Why would the Complainant lie?• Are there any persons who have relevant information?• Are there any notes, e-mails, texts, pictures, videos or other items related to the incident(s)?• Do you know of any other relevant information that you think I should be aware of? <div data-bbox="1340 972 2308 1162" style="border: 1px solid black; padding: 5px;"><p><i>Remember: You will have to share evidence – including interview notes/write-ups – with both parties and/or their advisors.</i></p></div>

Title IX – Investigations

Investigative Reports:

Remember :

All Title IX complaint/grievance documentation must be stored for 7 years.



Title IX – Investigations

Investigative Report Samples

Good	Bad
<p><i>9/8/20 – Interview of Sam Smith</i></p> <p>I met with Sam, a 7th grader, at 9:00 AM at SHS, and I was accompanied by a guidance counselor, Ms. Anderson. Sam remained respectful and calm during the interview. He did not hesitate when answering questions. Though Sam could not provide specific dates, he had seen the Respondent slap the Complainant’s rear end in the hallway “several” times.</p>	<p><i>9/8/20 – Interview of Sam Smith</i></p> <p>Met with Sam in morning. Joined by another adult. I had Sam in 8th grade as a teacher, and always found him to be a poor student. His father is in jail, which also makes me question anything Sam says. Sam told us that he saw a few slaps on the behind, but he had no idea when, and I find it hard to believe anything this kid says anyway.</p>

Title IX & the Biden Administration

Reinstates the prior definition of “sexual harassment” under Title IX:

Trump Admin Era	Biden Admin Era
<i>“severe, pervasive, and objectively offensive”</i>	<i>“sufficiently severe or pervasive”</i>

Title IX & the Biden Administration

Requires a lower burden of proof:

Trump Admin Era	Biden Admin Era
Preponderance of Evidence OR Clear and Convincing Evidence (<i>School System's Choice</i>)	Preponderance of Evidence (<i>Mandated by Feds</i>)

Preponderance of Evidence: Scales tip slightly in favor that facts are true - "more probable than not"

Clear and Convincing: Evidence is substantially more likely to be true - "highly probable"

Beyond a Reasonable Doubt: Highest standard - beyond doubt there is no other reasonable explanation of the facts



Any
Questions?

