

Title IX Overview

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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."
 - · Sexual harassment
 - · Failure to provide equal athletic opportunity
 - Sex-based discrimination in STEM courses and programs
 - Discrimination based on pregnancy
- Retaliation

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Gebser/Davis Framework



- Conditions exist that trigger a school's response obligations.
 - · Actionable sexual harassment
 - Actual knowledge
- When a school is required to respond, the school's response must not be <u>deliberately indifferent</u>.
 - The response must not be clearly unreasonable in light of known circumstances.





Title IX Regulations

- A school must respond when the school has <u>actual knowledge</u> of <u>sexual harassment</u> that occurred within the school's education program or activity.
 - "Actual knowledge" means knowledge by any employee in the K-12 setting
- Regulations set forth a formal complaint process for investigating and responding to complaints of sexual harassment.
- Schools may not be deliberately indifferent in their responses to complaints of sexual harassment.

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Prohibited Sexual Harassment

- Any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access
- Quid pro quo (by employees)
- Sexual assault
- Dating violence
- Domestic violence
- Stalking



Prohibited Sexual Harassment (con't)



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Source: United States Department of Justice https://www.justice.gov/file/29836/download

Definitions

- <u>Complainant</u> individual who is alleged to be the victim of conduct that could constitute sexual harassment
- A parent does not become a Complainant but can act on behalf of a student Complainant
- <u>Respondent</u> individual who is reported to be the perpetrator of conduct that could constitute sexual harassment
- Formal complaint a document filed by a complainant or signed by the T9C alleging sexual harassment against a respondent and requesting that the school investigate the allegation
- Supportive measures individualized services reasonably available that are nonpunitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment

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Advisors

- Complainants and Respondents may be represented by an advisor of their choice at any point in the process.
- · Advisors may be, but need not be, an attorney.
- Ensure appropriate FERPA releases for any non-parent advisors.



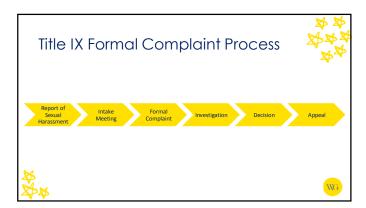
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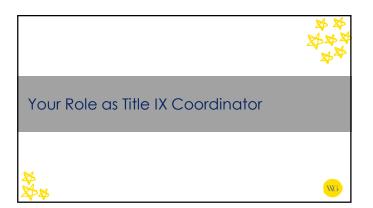
Jurisdiction for Formal Complaint

- <u>Education program or activity</u> locations, events, or circumstances over which the school exercises substantial control over both the respondent and the context in which the harassment occurs
- At the time of the Formal Complaint, the Complainant must be participating in or attempting to participate in the school's education program or activities.
- The fact that the respondent (the accused) is no longer enrolled in or employed by the school does not deprive the school of its ability to process the complaint.









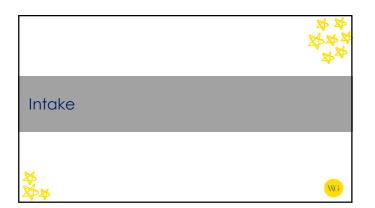
Impartiality in Complaint Process Conflicts of interest Actual or apparent Can arise from conflicting relationships, duties, financial interests, etc. Bias/Prejudice Actual or apparent Positive or negative Can arise from personally held beliefs, ideals, sympathies, stereotypes

Impartially Coordinating Title IX • Ensure that no conflicts of interest exist upon receipt of report. • Verify with all employees involved in process that no conflicts exist before assigning formal complaint. • Discard all preconceived notions and/or stereotypes concerning the parties. • Objectively evaluate allegations in light of mandatory and permissive dismissal protocols. • Implement supportive measures in a fair and equitable manner without presupposing guilt or innocence. • Provide equal communication and access to both parties. • Objectively evaluate and determine appeal eligibility.



Know the Law/Teach the Law • Ensure Title IX is implemented correctly and fairly at all times, including outside of the formal complaint process. • Organize and present training as needed and required. • Maintain adequate documentation and comply with posting requirements. • Ensure training materials are free from bias and prejudice. • Ensure training materials comply with statutory requirements.

Be Accessible Identity of the T9C(s) should be widely shared. District/campus websites Board Policy Employee/student handbooks New employee training Applications for employment Email signature block Include contact information everywhere the T9C's name is shared Title (if other than T9C) Office address Email address Phone number (with voicemail box)



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What constitutes a report?

- For purposes of the formal complaint process, a report is a notification to the Title IX coordinator of conduct that meets the definition of sex discrimination, including sexual harassment.
 - Note: the report may be for any type of sex discrimination, but the formal complaint process is only triggered when a report sounds in sexual barassment
- Reports to other administrators may trigger the District's obligation to respond in a manner that is not deliberately indifferent.



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Who may submit a report?

- Any person may report sex discrimination, whether or not the person reporting is the alleged victim of sex discrimination or sexual harassment.
- Anonymous reports may trigger the formal complaint process or the District's obligation to investigate and respond.



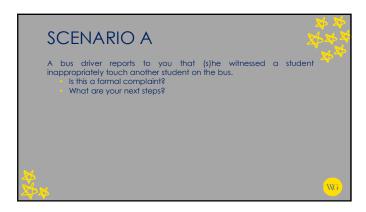


How may a report be submitted?

- Reports may be submitted in person, by mail, by telephone, or by e-mail
- Reports may also be submitted by any other means that result in the Title IX Coordinator receiving the person's verbal or written report.
- Reports may be made at any time, including non-business hours.







Meeting with Complainant

- Upon receipt of report of conduct that may constitute sexual harassment, promptly contact the Complainant to:
 - Discuss the availability of supportive measures and inform Complainant that supportive measures are available outside of the formal complaint process;
 - Consider the Complainant's wishes with respect to supportive measures; and
 - Explain to the Complainant the process for filing a formal complaint.
- T9C must also inform Complainant whether or not the allegations would meet the definition of sexual harassment if a formal complaint is filed.



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Supportive Measures

- Individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.
- The District's selection of supportive measures and remedies must not be clearly unreasonable in light of the known circumstances.
- The Department of Education "does not second guess a school's disciplinary decisions, but requires the school to offer supportive measures, and provide remedies to a Complainant whenever a Respondent is found responsible."



Supportive Measures (cont'd)

- Supportive measures must be offered to both Complainant and Respondent (as appropriate), regardless of whether a Formal Complaint is filed.
- Examples of supportive measures may include:
 - Counseling about inappropriate behavior and educational conversations;
 - Explaining to a Respondent in detail the District's anti-sexual harassment policy and expectations of appropriate conduct;
 - Temporarily sending a student to the principal's office;
 - Changing seating assignments or class assignments;
 - Providing other counseling, to include referral to outside agencies;
 - Extending deadlines or other course-related adjustments including retaking exams or completing makeup work;



Supportive Measures (cont'd)

- · Examples of supportive measures may include (cont'd):
 - · Implementing mutual or unilateral restrictions on contact between parties;
 - Identifying specific campus employees to serve as regular points of contact for each party;
 - · Modifying class or activity schedules;
 - · Escorting parties when on campus;
 - Changing campus assignments;
 - · Increasing security and monitoring of certain areas of the campus; or
 - Other similar measures designed to help a student stay in school and on track academically, protect the safety of a student, or deter sexual harassment.





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Emergency Removal

- Student Respondent may be removed from education programor activity after an individualized safety and risk analysis resulting in a determination that the Respondent poses an immediate threat to the physical health or safety of any student or other individual.
 - Must provide written notice and an opportunity to immediately appeal.
 - Exception for students receiving services under IDEA and Section 504.
- Non-student employees may be placed on administrative leave during Formal Complaint process.
 - Administrative leave for sexual harassment allegations is only available after a Formal Complaint has been filed.



SCENARIO B

You received a report from the Complainant's parent that the Complainant's ex, also a student at EPISD, has been sending embarrassing (non-sexual) images to their classmates and spreading (non-sexual) rumors about the Complainant.

- What do you tell the Complainant and the Complainant's parent
- at the initial meeting? What supportive measures are you prepared to offer? Are there any other follow-up steps to consider?

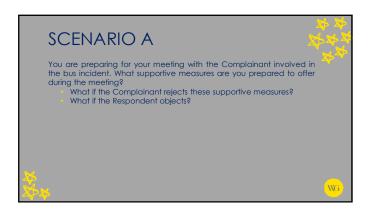
SCENARIO B

After the cyberbullying investigation concludes, the Complaint reports to you that the ex cornered the Complainant in the hallway and said "I'll show you cyberbullying" before pulling the Complainant into a custodial closet and groping the Complainant.

What do you tell the Complainant and the Complainant's parent at the initial meeting?

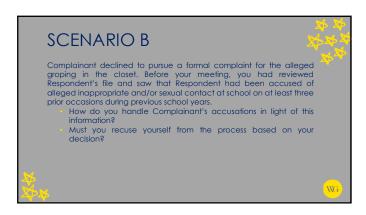
What supportive measures are you prepared to offer?

- What if the Complainant declines to sign a Formal Complaint?



Filing a Formal Complaint The Complainant may choose to submit a formal complaint. A document signed by the Complainant alleging sexual harassment against a respondent and requesting the school to investigate. If the Complainant decides not to submit a formal complaint, the T9C may sign and submit a formal complaint requesting an investigation. The T9C should respect the Complainant's decision not to file a formal complaint unless the T9C determines that filing a formal complaint against the Complainant's wishes is not clearly unreasonably in light of the known circumstances. Signing a formal complaint does not make the T9C a party to the proceedings. Complaints may be consolidated if the allegations arise out of the same facts.





Notice of Allegations • T9C must notify all known parties of the allegations upon receipt of Formal Complaint, before any initial interview. • Identities of involved parties • Conduct allegedly constituting sexual harassment • Date and location of alleged incident • Statement that Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process • Statement that parties may have an advisor of their choice • Statement that parties will be afforded an opportunity to review evidence • Notice of any provision in the SCC/employee handbook that prohibits knowingly making false statements or knowingly submitted false information • Must supplement notice if new allegations are added to investigation



Mandatory Dismissal

- A formal complaint must be dismissed if:
 - The allegations in the complaint do not meet the definition of sexual harassment; or
 - The allegations did not occur in the school's education program or activity.
- Even if a formal complaint is dismissed, the District may address the allegations "in any manner the school deems appropriate under the school's own code of conduct."
- A person may <u>not</u> be disciplined for sexual harassment unless the person is found responsible in the formal complaint process.
- Notice of dismissal must contain information on how to appeal.

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Discretionary Dismissal



- A complaint may be dismissed for the following reasons:
 - · Complainant submits a written request to withdraw the complaint;
 - · Respondent is no longer enrolled or employed by the school; or
 - Specific circumstances prevent the school from gathering sufficient evidence to reach a determination.
- Must provide written notice containing the reason(s) for dismissal.

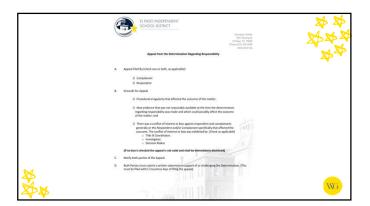


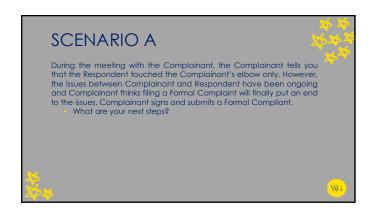




Appealing Dismissal • Either party may appeal a dismissal for any (or all) of the following grounds: • Procedural irregularity that affected the outcome of the matter; • Newly discovered evidence that could affect the outcome of the matter; or • Title IX personnel had a conflict of interest or bias that affected the outcome of the matter. • The appeal and any arguments supporting or opposing the appeal will be submitted to the Appeals Decision Maker at this point. • Depending on the outcome of the appeal, the complaint may come back to the T9C.

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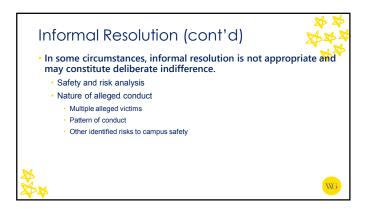


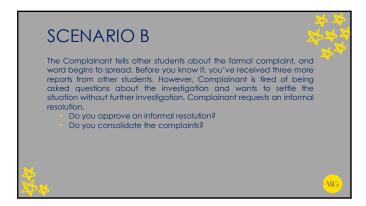
Assigning an Investigator The T9C may serve as the investigator if necessary. Verify in writing that the investigator assigned to any particular complaint is free from conflict. Provide entire complaint file to investigator and assist with coordinating investigation as needed. Be readily available to answer any questions about procedure during the investigation. Check in periodically during process and enforce appropriate investigation timeline. Ensure compliance with notice and production requirements.

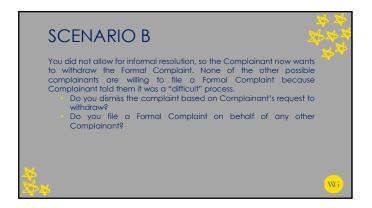
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Continued Involvement	
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Informal Resolution • T9C may offer, but may not require, informal resolution at any point after a Formal Complaint is filed. • Both parties must give voluntary, informed, written consent to attempt informal resolution. • Informal resolution is <u>not</u> available to resolve allegations that an employee sexually harassed a student. • Either (any) party has the right to withdraw from informal resolution process prior to agreeing to a resolution. • Set expectations regarding timeline to resolve

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Breach of Resolution Agreement

- If either party breaches the terms of an agreed-upon resolution agreement, coordinate with the appropriate campus administrator regarding appropriate consequences for the breach.
- If the breach results in new concerns regarding alleged sexual harassment, the Title IX process will start over.





Evidence Review

- T9C should review all evidence at the same time as the parties to ensure Investigator has made correct determinations as to relevance.
- Relevant evidence is evidence that has some probative value for purposes of determining whether the conduct alleged actually occurred.
 - 1. Does the evidence tend to make a fact more or less probable than it would be without the evidence?
 - 2. Is that fact of any consequence in determining the existence of sexual harassment?





Evidence Review (cont'd)

- Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant <u>unless</u>:
 - 1. The questions/evidence are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or
 - 2. The questions/evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
- T9C should be available to consult with Investigator as needed during evidence gathering/production and while the investigative report is being prepared.





Decision Phase

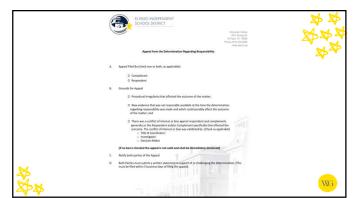
- After investigation report is sent to all parties and advisors, assign a Decision Maker and forward entire investigative file.
- Oversee exchange of written questions and answers in conjunction with Decision Maker.
- Ensure Determination of Responsibility is not issued before the parties have had an opportunity to exchange written questions and answers.
- Consult with Decision Maker as needed during the question and answer process and preparation of the Determination of Responsibility.

Appealing Determination

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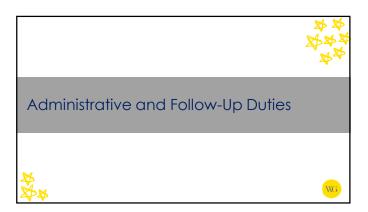
- Either party may appeal the Determination for any (or all) of the following grounds:
 - · Procedural irregularity that affected the outcome of the matter;
 - Newly discovered evidence that could affect the outcome of the matter; or
 - Title IX personnel had a conflict of interest or bias that affected the outcome
 of the matter.
- The appeal and any arguments supporting or opposing the appeal will be submitted to the Appeals Decision Maker at this point.
 - Depending on the outcome of the appeal, the complaint may go back to the Investigator or the Decision Maker.







Appealing Determination (cont'd) Receive appeal form and issue notice of appeal to all parties. Invite parties to submit arguments in favor of or in opposition to appeal. Assign Appeals Decision Maker Provide entire grievance file—including appeals arguments—to Appeals Decision Maker





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Follow-Up

- Ensure that all remedies, supportive measures, and discipline are appropriately administered.
- Document and correct any concerns that arise during the grievance process
 - · Implement remedial training if necessary
- Follow up with parties within a reasonable time to ensure all remedies and supportive measures are effective and offer additional supports as needed.







EPISD Title IX Resources

- Title IX Portal (https://www.episd.org/Page/10346)
- Title IX Coordinators

Students
Kelly Ball, Section 504 Coordinator
3700 Thomason Ave.
El Paso, Texas 79904
klball@episd.org
(915) 230-2856

Employees Rosa Ramos 1100 N. Stanton El Paso, Texas 79902 ryparga@episd.org (915) 230-2031

General Counsel (https://www.episd.org/domain/193)





