



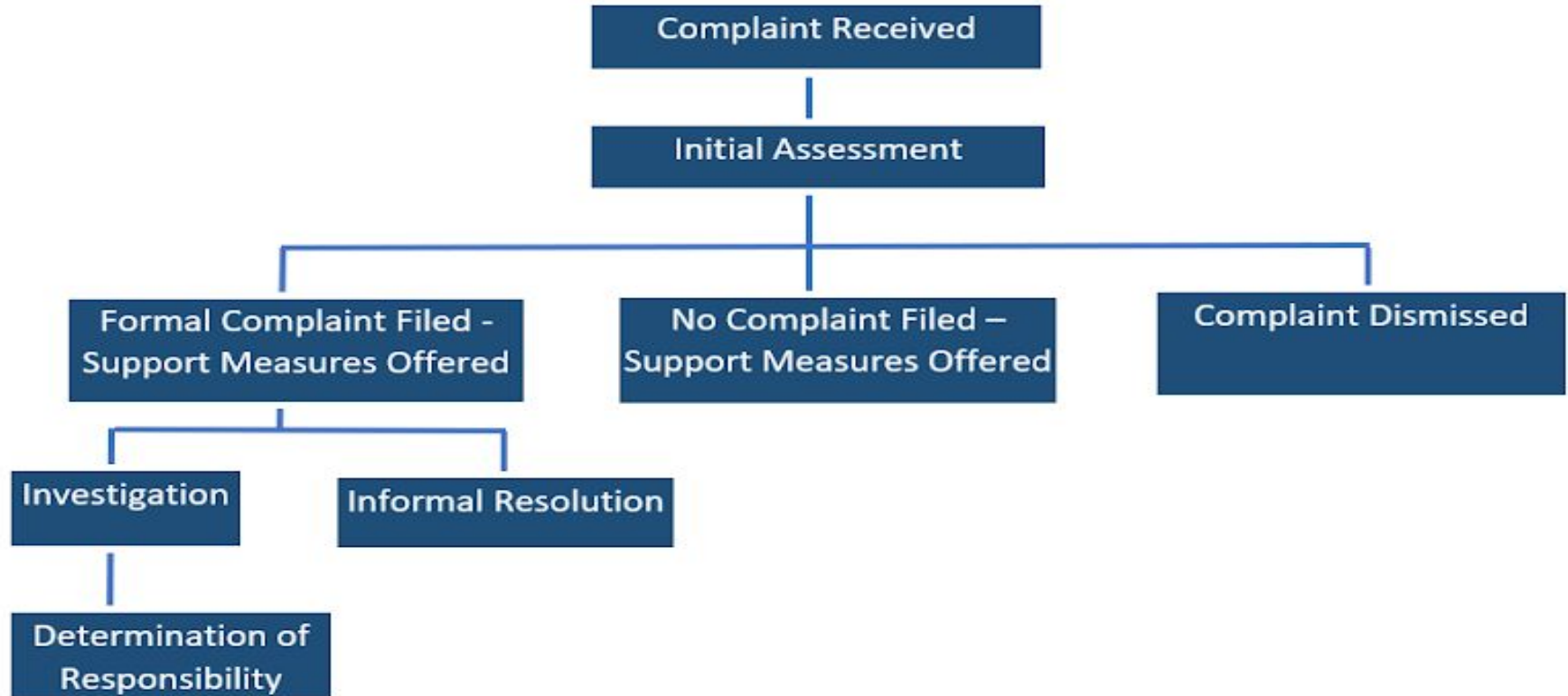
New Title IX Protections Against Sexual Assault

A&S

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October 2020

Grievance Process



Definitions of Terms

New Definition of Sexual Harassment

- Quid pro quo
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity
- Sexual assault, dating violence or stalking

New Terms

Complainant: Alleged victim of the conduct

Respondent: Alleged perpetrator of the conduct

Advisor: An adult of a party's choosing (may be an attorney)

Formal Complaint: Document alleging sexual harassment filed by a student, parent/legal guardian, school staff or in some cases the School Title IX Coordinator

New Title IX Regulations

- Increased procedural rights and timelines
- Provision of supportive measures to restore equal access
- Protection against disciplinary sanctions before conclusion of the grievance process
- Freedom from staff conflict of interest and bias during the grievance process

Greater Transparency of Information:

- Published School Title IX Coordinator contact information
- Published grievance procedures and training materials
- Identification of procedural roles:
 - School Title IX Coordinator
 - Investigator
 - Decision Maker
 - District Title IX Coordinator

School Title IX Coordinator Role

Coordinates a school's efforts to implement and comply with the law under Title IX

Investigator Role:

Gathers information about the allegations

The Decision Maker Role

- Must not be the School Title IX Coordinator, the person who received the complaint, or the investigator
- Must be unbiased in their relationship to both parties
- Must weigh the investigative evidence and makes a determination of responsibility

The Decision Maker Must Know:

- The definition of sexual harassment in §106.30
- The scope of the school's education program or activities
- The investigative, grievance, and appeal process
- How to serve impartially, avoiding prejudgment of the facts, conflicts of interest, and bias

The Decision Maker: Responsibilities

- Wait 10 days after receiving the Investigative Report
- Weigh the evidence and decide whether the Respondent is responsible for the alleged sexual harassment
- Provide parties a written Determination of Responsibility

District Title IX Coordinator Role:

- Coordinates efforts at the district level to implement and comply with the law under Title IX
- Hears appeals of the Decision Maker's Determination of Responsibility
- Maintains Title IX records

Written Notifications

Written Notifications

- Complaint
- Intent to interview
- Preliminary investigative findings
- Investigative Report
- Determination of Responsibility
- How to appeal

Notification Timelines

- Supportive measures - offered immediately
- Interview - allow time for an advisor to be present
- Preliminary findings + 10 days to respond
- Investigative Report + 10 days to respond
- Written Determination of Responsibility + 30 days to submit an appeal

Standard of Evidence

Preponderance of Evidence:

The Complainant's/Respondent's proposition is more likely to be true than not true.



Supportive Measures

- Non-disciplinary, measures meant to:
 - Restore
 - Protect
 - Deter
- Post the range of available supportive measures

Outcomes

Range of Outcomes:

- School must describe or list the range of disciplinary sanctions that could occur following a determination of responsibility

Right to Appeal

- Grievance procedures must contain the right to appeal and information on how to make an appeal
- Schools must offer an appeal to every party

Written Notice

Required Written Notices

- Complaint
- Rights
- Intent to Interview
- Preliminary Investigative Findings
- Investigative Report
- Determination of Responsibility
- Dismissal

Written Notice: Complaint

Must Inform Parties of:

1. The allegations
2. A presumption of innocence
3. Entitlement to an advisor
4. Right to review relevant evidence
5. The prohibition of false statements. (JFDG)

Written Notice: Rights

Provide both parties, guardians, and advisors the Title IX brochure

Written Notice: Intent to Interview

Must provide sufficient time for parties to have an advisor present if they so choose

Written Notice: Preliminary Findings

- Informal written presentation of the facts
- Affords parties 10 days to review and submit additional information

Written Notice: Investigative Report

- Written report sent to both parties and the Decision Maker
- Affords 10 days for parties to submit written responses to the Decision Maker before final determination of responsibility

Written Notice: Determination of Responsibility

- Rendered by the Decision Maker
- Reviews the investigative process, findings, school policy, support measures offered, decision of responsibility and sanctions (if appropriate)
- Includes the appeal process

Written Notice: Notification of Dismissal

- Must send written notice of the dismissal and the reasons for dismissal to both parties
- Both parties have the right to appeal a school's dismissal decision

Mandatory Dismissal

- Behavior does not meet the definition of sexual harassment
- Incident did not occur in the school's educational program or sponsored activity
- Incident did not occur in the United States

Discretionary Dismissal

- Complainant withdraws the formal complaint in writing
- Respondent is no longer enrolled
- Circumstances prevent the gathering of sufficient evidence to reach a determination

When Does A School Have Notice?

- When it has knowledge of sexual harassment allegations
- When sexual harassment is personally witnessed by staff
- When any school employee puts the school on notice

When A Complaint Is Received:

- Promptly contact the complainant and inform them of their right to supportive measures
- Explain that complainants have an option on whether to file or not
- Provide directions on how to file a complaint
- Explain the grievance process
- Investigate every formal complaint

Informal Resolution

Informal Resolution

- May be attempted if each party enters the process voluntarily
- School must provide a facilitator who is free from conflicts of interest or bias, and who has received training

Informal Resolution Requirements

School still needs to provide complainants and respondents:

- Notice of the allegations
- Notice of their rights
- Signed voluntary agreement to pursue informal resolution
- Information about withdrawing from the informal resolution process

Formal Complaint Investigation

Investigative Requirements

- Provide equal opportunity for both parties to present witnesses and evidence
- Do not restrict the ability of either party to discuss allegations or gather evidence
- Provide the same opportunities to parties to have an advisor of choice present for any meeting

Investigative Requirements Continued

- Provide written notice of interviews or meetings with sufficient time for the party to prepare
- Provide equal opportunity for the parties and their advisors to review the evidence if the information is directly related to the allegations in the complaint
- Give parties a meaningful opportunity to respond to the evidence after it has been provided

Investigative Requirements Continued

- Provide a preliminary report of investigative findings
- Give parties at least 10 days to respond to the evidence in writing
- Finalize the report with consideration of party responses
- Provide finalized Investigative Report to both parties and the Decision Maker

Determining Responsibility

Written Determination Must Include:

- Identification of the allegations potentially constituting sexual harassment as defined in § 106.30
- A description of the procedural steps taken from the receipt of the complaint
- Findings of fact supporting the determination

Written Determination Must Include: (Cont'd)

- A statement of rationale for the determination of responsibility
- Disciplinary sanctions that may be imposed
- Statement on the provision of supportive measures to the complainant and how those supportive measures will restore or preserve equal access.
- Statement of the right to appeal and how to appeal

Appeals

When Can Appeals Occur?

- After a dismissal
- After a written Determination of Responsibility

Appeal Criteria

Must offer an appeal to both parties on the bases of:

- Procedural deficiencies
- Newly discovered evidence
- Bias or conflict of interest affected the outcome

Appeal Process

- Must notify parties in writing and implement appeal procedures equally
- Must afford parties equal opportunity to submit a written statement supporting or challenging the outcome

Appeal Process: (Cont'd)

- After considering party written statements, the Decision Maker of the appeal must issue a written decision to both parties simultaneously
- An additional level of appeal may be made to the Office of the Superintendent

Record Keeping

Record Retention

District Title IX Coordinator must retain all records pertaining to the grievance procedure for 7 years

Retaliation

Retaliation: Code of Conduct

- A school may not charge a person with a code of conduct violation for the purpose of discouraging the person from filing a sexual harassment complaint
- Issuing a code of conduct violation on discoveries made during the investigation that are unrelated to the allegation may be considered retaliation

Non-Retaliatory Conduct

- A school may discipline someone for making a bad-faith false statement during a Title IX grievance process in accordance with SMCPS policy JFDG
- A bad-faith statement cannot be based on the outcome of a case

Title IX Materials File

<https://drive.google.com/drive/folders/1HFm5IB2WoZgM7DAEoubocx5UZK6JGsmK?usp=sharing>

Questions?