

RONALD W. READAN BUILDING

HARRIS COUNTY
DEPARTMENT OF EDUCATION

TITLE IX

Overview and Fundamentals

Harris County Department of Education

2022-2023

TITLE IX – WHAT DOES IT PROHIBIT?

- Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in education programs and activities and employment.
 - Covers equity in athletic programming and all forms of discrimination based on sex;
 - Protects students and employees; and
 - The Office of Civil Rights (OCR) enforces the statute.

Education Programs
and Activities

Admission and
Recruiting

Marital or
Parental
Status

SEX-BASED DISCRIMINATION PROHIBITED

Facilities

Counseling

Financial Aid

Housing

Health Insurance
and Benefits

Athletics

TITLE IX REGULATIONS OF 2020

- Requires institutions to adopt and disseminate a policy including a non-discrimination statement
- Requires institutions to designate a Title IX Coordinator
- Requires institutions to adopt and publish grievance procedures that are prompt and equitable and allow for reliable and impartial investigations of complaints
- Requires institutions to act in addressing and preventing sex-based discrimination

THE KEY TERMS FROM THE TITLE IX SEXUAL HARASSMENT REGULATIONS

Sexual Harassment

Complainant

Respondent

Consent

Actual Knowledge

Program or Activity

Supportive Measures

Formal Complaint

THE “NEW”
TITLE IX SEXUAL
HARASSMENT
REGULATIONS

- Three categories of “Sexual Harassment”
 - *Quid pro quo* harassment by a Department employee
 - Hostile environment
 - Violence and stalking as defined in other federal statutes

Conditioning the provision of an aid,
benefit, or service of the Department on
an individual's participation in unwelcome
sexual conduct

QUID PRO QUO

HOSTILE ENVIRONMENT

- Unwelcome conduct
- Determined by a reasonable person
- To be so severe, pervasive, **and** objectively offensive that it **effectively denies a person's equal access** to the recipient's education program or activity

DEFINITIONS
FROM THE
CLERY ACT
AND THE
VIOLENCE
AGAINST
WOMEN ACT

Sexual Assault

Domestic Violence

Dating Violence

Stalking

Complainant – An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Respondent – An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Consent – Schools are not required to adopt a particular definition of consent with respect to sexual assault.

COMPLAINANT, RESPONDENT, & CONSENT

ACTUAL KNOWLEDGE

When **ANY** HCDE employee learns of alleged sexual harassment

PROGRAM OR ACTIVITY

Any academic, extracurricular, vocational or other education program operated by the Department

A light blue silhouette map of the United States is centered in the background. The top portion of the map is partially obscured by a dark blue horizontal bar. The text 'MORE ABOUT PROGRAM OR ACTIVITY' is centered over the map in a large, bold, blue font.

MORE ABOUT PROGRAM OR ACTIVITY

The complainant must be a person physically located in the United States.

SUPPORTIVE MEASURES



Supportive measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the Department's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the Department's educational environment, or deter sexual harassment.

With or without a formal complaint, institutions with actual knowledge of Title IX sexual harassment occurring in an education program or activity of the Department against a person in the United States must respond promptly in a manner that is not deliberately indifferent and complies with 34 CFR 106.44(a).



FORMAL COMPLAINT OF SEXUAL HARASSMENT

FORMAL COMPLAINT OF SEXUAL HARASSMENT

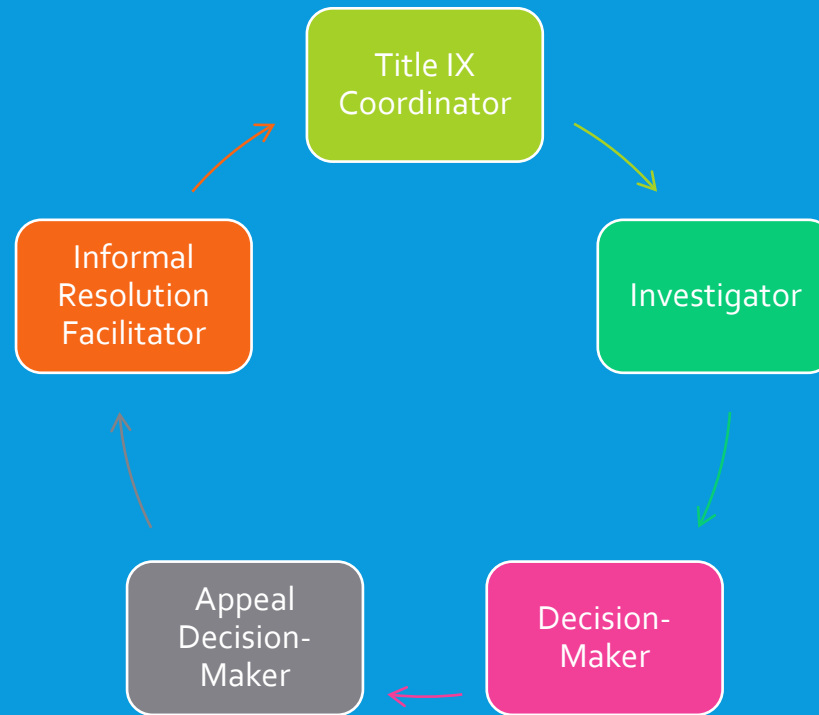
A formal complaint of Title IX sexual harassment means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the Department investigate the allegation of sexual harassment.



KEY TERMINOLOGY

- Complainant – alleged victim sexual harassment
- Respondent – person accused of sexual harassment
- Actual Knowledge – when *any* employee has knowledge
- Substantial Control – over both the alleged harasser and the context in which the alleged harassment occurred
- Education Program or Activity – any academic, extracurricular, vocational or other education program offered by the Department

ROLES IN THE FORMAL COMPLAINT PROCESS



TITLE IX COORDINATOR

Main point of contact regarding Title IX concerns

Must be identified on the Department's website and in handbooks by name, phone number, and email address

More than one person can be designated as a Title IX Coordinator (*e.g.*, Title IX Coordinator-Students and Title IX Coordinator-Employees)

Can designate "deputy" coordinators

Supervises the Process

- Assigns investigators, decision-makers, appeal decision-makers, and facilitators
- Ensures compliance with Title IX

TITLE IX COORDINATOR DUTIES—WHEN A REPORT COMES IN

- Contact the complainant and respondent to discuss supportive measures (available whether or not a formal complaint is filed) and the complaint process
- Ensure no disciplinary action is put in place against the respondent until the grievance process is complete
 - **HOWEVER**, can take emergency measures in limited circumstances regarding students, and employees can be placed on administrative leave with pay.

WRITTEN NOTICE FOLLOWING RECEIPT OF A FORMAL COMPLAINT

- Must provide written notice:
 - Grievance process
 - Allegations of sexual harassment
 - Statement that the respondent is presumed NOT responsible for the alleged conduct until a determination is made at the conclusion of the grievance process
 - Inform parties that they may have an advisor of their choice
 - Inform of policy/student code of conduct that prohibits knowingly making false statements/submitting false information during an investigation

WHAT HAPPENS WHEN A COMPLAINANT DOES NOT WISH TO FILE A FORMAL COMPLAINT?

- Even if a formal complaint is not filed, can investigate and respond to prohibited conduct in accordance with Policy and Student Handbook
 - Except when threat to community → must investigate
 - As long as we can respond to prevent future harassment of Complainant and others, do not have to investigate if Complainant does not want
 - And must explain the consequences to the Complainant of not filing a formal complaint
 - Document if Complainant does not follow
- Can sign a formal complaint on behalf of complainant
 - A Complainant's wishes with respect to whether the Department investigates should be respected unless the Title IX Coordinator determines that signing the formal complaint is not clearly unreasonable in light of the known circumstances
 - Can also initiate grievance procedures where discipline is appropriate

TITLE IX COORDINATOR— DISMISSAL OF A FORMAL COMPLAINT

- Decides whether to dismiss a formal complaint
- Must be dismissed
 - Allegations do not constitute sexual harassment as defined
 - Did not occur in the Department's program or activity
 - Consider in person effects of out of activity/program conduct
 - Did not occur in the United States
- Can (discretionary) be dismissed
 - Complainant no longer wants to pursue (wants to withdraw)
 - Respondent is no longer in the Department
 - The investigation cannot be completed
- Must provide written notice of dismissal
 - Dismissal can be appealed

A NOTE REGARDING DISMISSALS



Dismissal of a formal Title IX does not preclude action under another provision of the Department's code of conduct and policies.

TITLE IX COORDINATOR—RECORDKEEPING

- Record keeping
 - Make sure all materials used to train Title IX personnel are publicly available on the Department's website
 - Document and keep records of all sexual harassment reports and investigations and appeals
 - Maintain any records of informal resolution process
 - Maintain records of supportive measures taken in response to report or complaint of sexual harassment
 - 7 years

TITLE IX CONFIDENTIALITY

The Department must keep confidential the identity of any individual who has made a report or complaint of any form of prohibited sex discrimination, including any reporter, complainant, respondent, or witness, except:

- as may be permitted by FERPA;
- or as required by law; or
- to carry out the Title IX regulations, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

FORMAL COMPLAINT PROCESS— ESSENTIAL REQUIREMENTS

1. Equitable treatment of Complainants and Respondents

2. Objective evaluation of all relevant evidence

3. Requirement that Title IX Coordinator, investigator, decision-maker, or informal resolution facilitator not have a conflict of interest or bias

4. Presumption that the Respondent is not responsible for the alleged sexual harassment until a determination is made at the conclusion of the Title IX formal complaint process.

5. Timeframes that provide a reasonably prompt conclusion of the Title IX formal complaint process, including time frames for appeals and any informal resolution process, and that allow for temporary delays or the limited extension of time frames with good cause and written notice as required by law.

6. Description of the possible disciplinary sanctions that may be implemented following a determination of sexual harassment

7. A statement of the standard of evidence to be used to determine responsibility for all Title IX formal complaints of sexual harassment

8. Procedures and permissible bases for the complainant and respondent to appeal a determination of responsibility or a dismissal of a Title IX formal complaint or any allegation therein

9. A description of the supportive measures available to the Complainant and Respondent

10. Prohibition on using or seeking information under a legally recognized privilege unless the individual holding the privilege has waived the privilege.

11. Additional formal complaint procedures required by law including written notice of a formal complaint, consolidation of formal complaints, recordkeeping, and investigation procedures

12. Other local procedures as determined by the Department President.

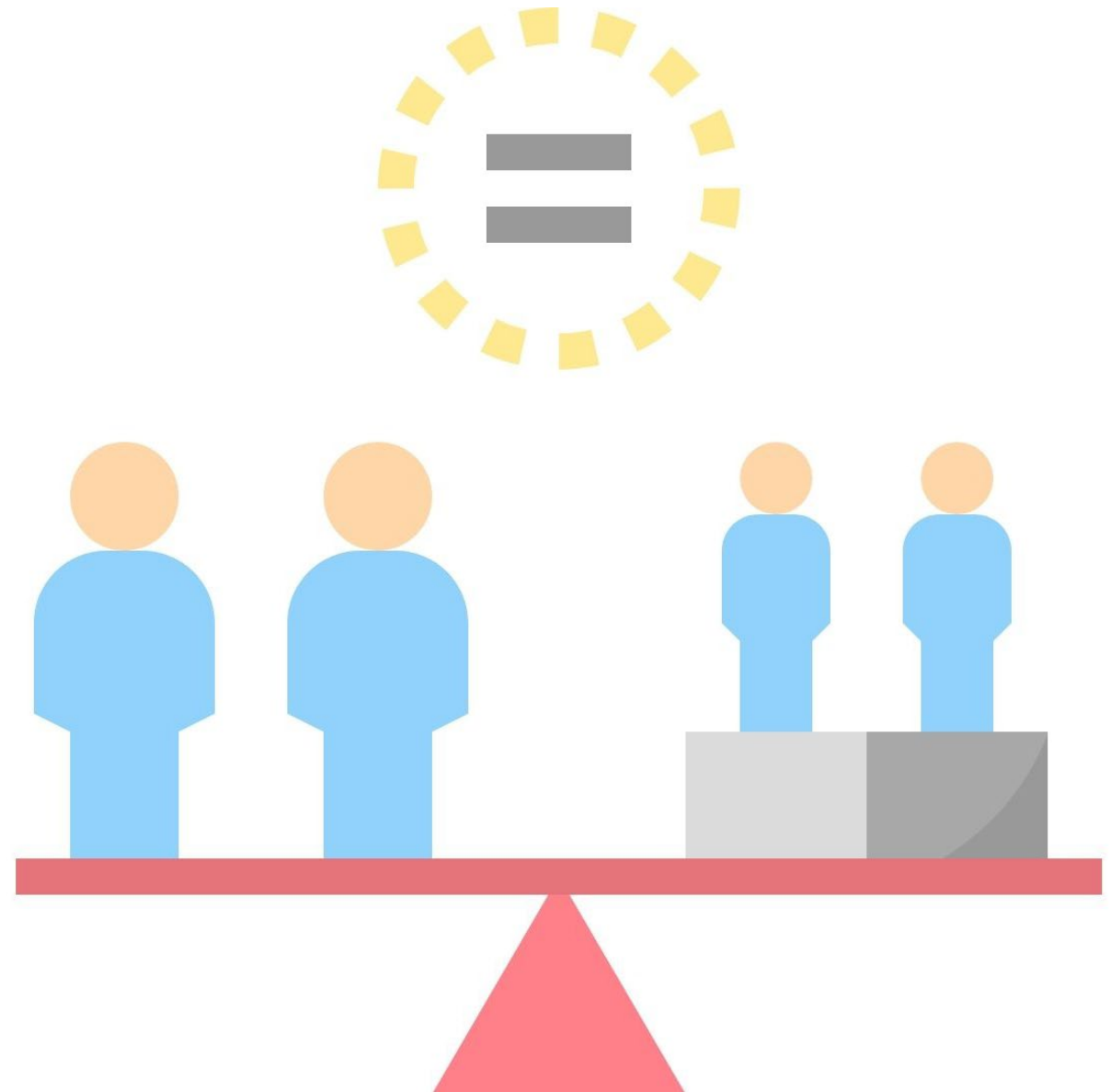
FORMAL COMPLAINT PROCESS—ESSENTIAL REQUIREMENTS

ENSURING IMPARTIALITY AND EQUITY

- Can use Department employees in roles or can outsource
- Title IX Coordinator may be the investigator but may not be Decision-Maker
- Investigator may not be Decision-Maker
- Investigators, Decision-Makers, Appeal Decision-Makers, and Informal Resolution Facilitators must be:
 - Impartial
 - Free from Bias
 - Free from Conflict of Interest

IMPARTIALITY AND EQUITY

- This means being free from bias
- “Treating all rivals and disputants equally; fair and just”
- Neutral
- Nondiscriminatory
 - Example: Avoid sex stereotyping
- Decisions based on objective criteria rather than bias, prejudice



IMPARTIALITY AND EQUITY— THE BOTTOM LINE

- Go in with an open mind
- Go in with a clean slate
 - Example: Avoid prejudgment of facts, witnesses, and parties
- Be free from stereotypes based on anything, including sex stereotypes
- Do you have a conflict of interest? Perceived or real?
- Keep out all personal beliefs
- If you don't think you can do it or should do it... say something!
 - To Title IX Coordinator

SCENARIO NO. 1

Johnny Student visits with the Title IX Coordinator and asks to file a formal complaint of sexual harassment. The Coordinator gives Johnny the form, he signs the form, and he submits it to the Coordinator. Johnny alleges that he took a guys' trip to Cancun for Spring Break. Johnny believes one of his friends, who is also a student at the Department, spiked his drink with rohypnol, and he believes he was sexually assaulted in his hotel room.

- (1) Does this scenario meet the definition of "sexual harassment" under the Title IX regulations?
- (2) What are the Title IX Coordinator's responsibilities upon receiving this report?



SCENARIO NO. 2

Sally Student files a formal complaint of sexual harassment alleging that her ex-girlfriend sends her threatening messages and frequently follows her between classes and to the parking lot. Sally's ex is a student of the Department.

- (1) Does this scenario meet the definition of "sexual harassment" under the Title IX regulations?
- (2) What are the Title IX Coordinator's responsibilities?

SCENARIO NO. 3

Mary Student files a formal complaint of sexual harassment accusing Frank Faculty of telling her that she would fail his class unless she submitted to his sexual advances. The Title IX Coordinator reviews the formal complaint and determines that the allegations, if proven, would establish a violation of Title IX. The Title IX Coordinator notifies both parties of the complaint and informs them of the Department's applicable investigation process. The Title IX Coordinator appoints an independent investigator, who upon completing the investigation, provides the investigation report to the Title IX Coordinator. The Coordinator reviews the investigation report, decides that the student's allegations are true, and recommends that the Department terminate Frank Faculty's employment.

- (1) Does this scenario demonstrate compliance with the Title IX Formal Complaint procedure?
- (2) Why or why not?

SCENARIO NO. 4

Barry Basketballplayer meets with the Title IX Coordinator and describes the bullying he suffers by his teammates on the basketball team. For example, his teammates make fun of him because he is 5'6", he has been shoved into and locked in his locker, and, one time, his teammates stole his clothes from his locker, and he was forced to go to the front office only wearing a towel to call his parents to pick him up. Barry does not want to file a formal complaint of sexual harassment.

(1) What are the appropriate steps here?



INVESTIGATION—THE BASICS

- Throughout the investigation, institutions must afford both parties equal opportunity to review and inspect any evidence that:
 - was obtained as part of the investigation; and
 - is directly related to the allegations. This includes evidence upon which the Department does not intend to rely in reaching a determination, and inculpatory or exculpatory evidence, whether obtained from a party or other source.

INVESTIGATION—ACCESS TO INFORMATION

In General	Before Issuing the Report	10 Days Before the Hearing or Other Determination	During Any Hearing
Must provide access early enough that each party can meaningfully respond to the evidence prior to conclusion of the investigation.	Must send parties all evidence subject to inspection and review and afford at least 10 days to submit a written response.	Must send investigative report to parties for review and written response.	Must make all evidence available to parties' and afford equal opportunity to review, including for purposes of cross-examination.

INVESTIGATION— RELEVANCE

- Must consider and equally provide access to inculpatory and exculpatory evidence
- Investigators must create an investigative report that fairly summarizes relevant evidence
 - Evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless:
 - such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant; or
 - if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

- Evidence pertinent to proving whether facts material to the allegations under investigation are more or less likely to be true.

RELEVANT

DEFINITION OF RELEVANCE



Do not reach any conclusions.



Put decision-makers in best position to understand relevant evidence.



Demonstrate to parties that institution took the allegation seriously and responded appropriately.



Understand that the investigation report will likely be "Exhibit 1."

INVESTIGATIONS—GOALS OF THE REPORT



THANK YOU

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