

Walking Through a Title IX Investigation

34 CFR 106.45

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THE PROCESS

See **Flowchart (Form #1)**



Step 1. “Actual Knowledge”*

*Actual knowledge means ANY information that ANY employee has about possible sexual harassment.

There are two ways that this process will be triggered:

1. LEA employee becomes aware of conduct that could amount to Sexual Harassment through report or observation.

- Student/witness reports what he saw or heard
- Complainant/victim reports
- Parent calls with a complaint
- NOTE: **ANY** employee who becomes aware of conduct that COULD amount to Sexual Harassment—either through observation or a personal report—is **REQUIRED** to report to immediate supervisor who then reports to administrator.

OR

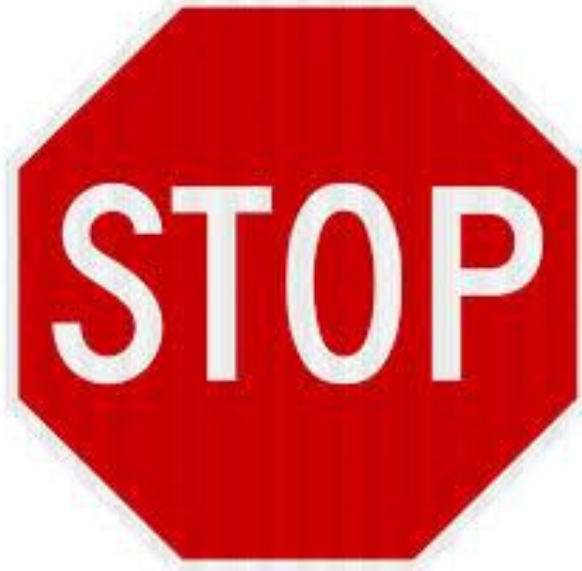
2. Formal Complaint filed

- Student or employee files a Formal Complaint with the Title IX Coordinator or principal, who then forwards it to Title IX Coordinator



STOP EVERYTHING!

- Before proceeding with an investigation of any allegation of a sexual misconduct or a with suspension, STOP, and follow the next few slides.



Step #2: Initial Screening

*This screening process is not required in the regulations but a suggested good practice

- Building Principal conducts screening interview with potential Complainant
 - What's the allegation?*
 - Where did it happen?
 - How many students were involved?
 - Has Respondent done this before? When and where?
 - Is student in a dating relationship with the Respondent?
 - Has student reported to police or Children's Justice Center?
 - Does student intend to? School may have to if student doesn't.
- ****This is NOT an investigative interview. Do not take a written statement. This is just to determine which process we follow.**
- **IMPORTANT:** In consultation with your SRO, determine whether to involve law enforcement.
- These questions should be asked immediately upon receiving information of potential sexual harassment.

Initial Screening, Cont.

(Building Principal, in consultation with supervisor, determine whether to report to Title IX Coordinator (TIXC)--**See Form #3**)

1. Does the allegation involve an employee offering a benefit in exchange for a sexual favor?
If yes→Call TIXC.
If no→Go to next question.
2. Does the allegation involve conduct that is severe*?
If yes→Go on.
If no→Go to question 6
3. Does the allegation involve conduct that is pervasive*?
If yes→Go on.
If no→Go to question 6
4. Does the allegation involve conduct that is objectively offensive*?
If yes→Go on.
If no→ Go to question 6
5. Is the complaint being denied access to educational benefits as a result of the conduct?
If yes→Call TIXC.
If no→Go to next question.
6. Is the alleged conduct sexual assault**?
If yes→Call TIXC.
If no→Go to next question.
7. Is the alleged conduct dating violence?
If yes→Call TIXC.
If no→Go to next question.
8. Is the alleged conduct stalking?
If yes→Call TIXC.
If no→Go to next question.
9. Is the alleged conduct domestic violence?
If yes→Call TIXC.
If no→**HANDLE CONDUCT UNDER CODE OF CONDUCT POLICY. DO NOT IGNORE!!!**

*Severe, pervasive and objectively offensive are not clearly defined. For your purposes, if SOMEONE might think the conduct was severe or objectively offensive, report. If the conduct happened more than once and/or involved more than one person, report.

**Sexual assault: unwanted touching with an intent to receive sexual gratification



Step #3: Title IX Coordinator (TIXC)

- TIXC confirms conduct meets the definitional elements of Sexual Harassment on its face (see next slide)
- TIXC confirms the District has jurisdiction under the regulations
 - at school or school program/activity or **in** route to school program/activity where District exercised substantial control over Respondent and the context in which the Harassment occurred.
 - off-campus conduct that has a clear nexus to school and which impacts a Complainant's ability to access and continue in his/her educational program
 - in the U.S.
 - Complainant must be enrolled or employed (or seeking enrollment or employment)
- If the conduct does not meet the definition or if no jurisdiction, TIXC either dismisses (if Formal Complaint has been filed) or sends back to school.
 - **Written Notice of Dismissal (Form #9)**
 - School will handle case under other student code of conduct policies
- If jurisdiction is met, TIXC meets with the Complainant/parent to offer supportive measures and to explain the process of filing a Formal Complaint (See **Formal Complaint Template [Form #4]**)
 - **In order to investigate an allegation that clearly meets the definition of sexual harassment, a formal complaint MUST be filed**
 - Title IX Coordinator can file formal complaint if Complainant does not
- TIXC and school personnel offer Supportive Measures* (see next slide) to Complainant
- TIXC assigns an Investigator
- TIXC sends a **Notice of Allegations (Form #5)** (must include certain provisions) to both parties
- TIXC determines whether Emergency Removal* is warranted (see slide on Emergency Removal)



Figuring out “SPOO”—What Constitutes Severe, Pervasive, and Objectively Offensive?

- This conduct is NOT conduct that would otherwise meet the definition of sexual assault. If the conduct meets the definition of sexual assault, no need to go through this analysis.
- **Severe:** Consider the age, the impact on the Complainant, and the school community at large
- **Pervasive:** Could mean it happened multiple times, could mean something was disseminated to multiple people, or it could mean the impact was widespread
- **Objectively Offensive:** If 9 out of 10 people in a room find it offensive, it probably is.
- SPOO + deprives the Complainant equal access to educational opportunities. = Title IX route.
- **NOTE:** This is typically behavior that is *really* bad (“shocks the conscience”) and would generally result in long-term removal from school.

Supportive Measures

Supportive Measures MAY include:

- counseling,
- extensions of deadlines or other course-related adjustments,
- modifications of work or class schedules,
- altering work arrangements for employees or student-employees,
- school safety plan,
- mutual restrictions on contact between the parties,
- changes in work locations,
- leaves of absence,
- increased security and monitoring of certain areas of the school, and
- other similar measures

Respondent should also be offered Supportive Measures once the investigation begins.

DOCUMENT MEASURES OFFERED TO BOTH PARTIES. (See [Supportive Measures Template \(Form # 21\)](#))

*Not required in the regs, but best practice

Emergency Removal

- **Emergency Removal** is appropriate when it is determined, based on an individualized safety and risk analysis, that an immediate threat to the physical health or safety of any student justifies removal.
- These determinations will be made by _____
 - E.g., the Title IX Coordinator in consultation with the Building Principal and possibly Mental Health Specialist Supervisor on a case-by-case basis.
- The basis for removal must be documented.
- If Respondent is removed under the Emergency Removal Provision, a formal **Notice of Removal (Form #10)** must be sent to Respondent.
- NOTE: An employee may always be removed and placed on paid administrative leave pending the investigation, but be prepared to pay a long-term substitute. (Use **Notice of Administrative Leave [Form #11]**)

Step #4: Investigator(s):

- Investigator sends **Notice of Interview (Form #12)** to Complainant and to Respondent, which includes:
 - Notice that an interview will be held within 2-3 days of the notification, including date, time, and location of the meeting, the purpose of the meeting, the participants expected at the meeting, and that an advisor or attorney is allowed, and that the parties may bring any documents, evidence, or other information they would like the Investigator to consider.
- Any time an investigator meets with either party, the parties must receive written notice of the meeting with sufficient time* to prepare for the meeting, with the information listed above

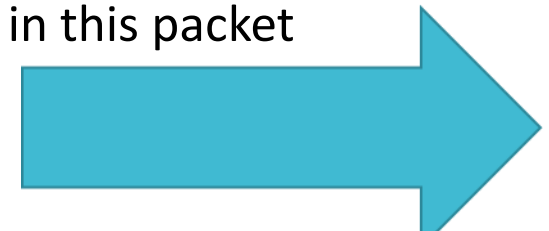
*The regulations do not specify the number of days of advance notice for interviews, but Title IX experts agree 2-3 is likely sufficient.



Investigator(s):

- Meets with Complainant and asks for any documents or witnesses. Takes notes of interview.
- Meets with Respondent and asks for any documents or witnesses. Takes notes of interview.
- Collects all available evidence not submitted by parties (security camera, police reports, past disciplinary action of both parties, if applicable).
- Meets with witnesses. Takes notes of interview.
- Follows up with Complainant and/or Respondent if necessary. (Send follow-Up **Notice of Interview**)
- Compiles all evidence (notes of interviews, camera footage, police reports, past disciplinary actions, etc.) and send to both parties.} (Use **Cover Letter for Parties Receiving Evidence(Form #13)**)
- Allows 10 days for parties to respond to evidence.
- Considers parties' responses, and drafts Investigative Report which summarizes the evidence (Use **Investigative Report Template [Form #14]**. See **Sample Final Investigative Report, Form #15**)
- Send Investigative Report to TIXC who sends the report to both parties and Decision-Makers.*

*The regulations do not specify who sends the report to the parties, but the form in this packet contemplates the report coming from the TIXC.



Step #5: Decision-Maker or Team:

- Allows 10 days for parties to submit cross-examination questions in writing to the Decision-Making Team.
- Upon review for relevance, forwards cross-examination questions to each party and allows opportunity to respond. (You decide how long to allow for responses).
- Reviews responses.
- Writes Final Written Determination (Use **Written Determination Template, Form #16**; see also **Sample Final Written Determination, Form #17**).



Step #6: Appeal

- An appeal must be made in writing to the Title IX Coordinator within 5 days of the Final Decision being issued. (Use **Appeal Request, Form #18**)
 - Title IX Coordinator forwards appeals to appointed Appellate Officer (optional title), and Appellate Officer* sends **Notice of Appeal (Form #19)**.
 - Appeals MUST be granted IF
 - Procedural irregularities that affected outcome
 - Bias or conflict of interest
 - New information that would have changed the outcome
 - Appeals MAY be granted within discretion of the Appellate Officer.
 - If the appeal is granted, both parties submit written statements supporting or challenging the outcome.
 - Appellate Officer will issue written decision affirming, repealing, or remanding the decision-maker's decision. (Use **Appeal Decision Template, Form #20**)
- *The Notice of Appeal can come from the Title IX Coordinator, as well.

Informal Resolution Process

- At any time BEFORE a final decision is reached, the parties may enter an Informal Resolution Process (IRP).
- Since the Notice of Allegations must include a paragraph about the IRP as an option, it is best practice to send information about the IRP with the Notice of Allegations.
- Both parties must provide written consent before moving forward with the IRP. See **Sample of Informal Resolution Process Notice and Consent. (Form #6)**. This Sample is based on one idea for the IRP but may be modified to fit your LEA's process.)
- Allegations of a student Complainant against an employee Respondent DO NOT have the option of going through the Informal Resolution Process.
- The Informal Resolution Process Facilitator will work with the parties to resolve the allegations and document the resolution in an **Informal Resolution Agreement (Form #8)**.