



This course is designed to provide an overview of Title IX as it relates to student sexual harassment, a review of the District's Title IX responsibilities and duties, as well as an understanding of the roles of school administrators in implementing and enforcing the District's Title IX process regarding student sexual harassment.

Overview of the Law

E Key Terms, Definitions, & Standards Under New Regulations

- Title IX Coordinators
- New Roles and Terminology
- Complaint and Investigation Process
- Investigation Parameters
- Determination Process and Analyzing Evidence

- Appeals
- Informal Resolution Process
- Recordingkeeping
- Related Documents
- Scenarios

Lesson 1 of 12

Overview of the Law

Title IX is a federal law that was enacted in 1972. Title IX provides that "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."



Title IX:

- Requires equity in athletics;
- Prohibits discrimination in educational settings; and
- Sets parameters for addressing sexual harassment reports.

⁽ⁱ⁾ This training will focus on <u>sexual</u> <u>harassment</u>, as that is the topic

addressed in the new Title IX regulations.

CONTINUE

The law has evolved over the years, with federal regulations and case law clarifying and expanding Title IX's application to public schools.

These changes provide **new information as to what rights students have under Title IX** and **how a school district's response** <u>**can impose**</u> <u>**liability**</u> on it.

CONTINUE

Title IX Overview

Requirements for School Districts

Title IX regulations & underlying enforcement guidance require school districts to:

- Designate persons to coordinate compliance with Title IX & train those persons;
- Adopt and publish procedure for prompt & equitable resolution of student complaints of sexual harassment; and
- Impartially investigate complaints of sexual harassment.



Title IX Overview

Requirement to Respond

School districts with actual knowledge of conduct which may constitute sexual harassment must respond appropriately or face

liability.



Title IX Overview

District Policies and Procedures

The District's internal policies & procedures regarding complaints of sexual harassment are vital to preventing & reducing harm to students, ensuring the well-being of students and the school environment, as well as minimizing potential liability.





CONTINUE

To whom does Title IX apply?

It covers conduct by *employees and students*.



CONTINUE

New Title IX Regulations - the Highlights

- Revises Sexual Harassment definition
- Requires investigation/formal complaint process which includes separation of duties and emphasizes due process
- Requires appeal procedures

- Revises existing notice requirements "actual knowledge"
- New terminology
- Requires additional record keeping and documentation

(i) CAVEAT: These Title IX Regulations likely will be changed somewhat under the Biden Administration, but we don't know how quickly.

CONTINUE

Point of Contact for Process Questions

As we navigate through this course or if you have any process questions when handling a complaint, please contact Carol Joiner, CMCSS General Counsel.

Carol Joiner

Email: carol.joiner@cmcss.net

Phone: 931-920-7941



Carol Joiner, CMCSS General Counsel

CONTINUE

Lesson 2 of 12

Key Terms, Definitions, & Standards Under New Regulations



Definition

Sexual Harassment is defined as conduct on the basis of sex, occurring on District property or at a sanctioned District activity/program (off or on District property) which is subject to control and supervision of the District AND satisfying one or more of the following:

- A school district employee conditioning an aid, benefit, or service of an education program or activity on an individual's participation in unwelcome sexual conduct. (This is known as **Quid Pro Quo** (this for that) – only by District employee, not another student.)
- 2 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 education program or activity. (This is known as a **hostile environment** and will be the majority of the situations addressed in school setting.)

3

"Sexual assault" as defined by 20 USCA 1092(f)(6)
(A)(v), "dating violence" as defined by 34 USCA
12291(a)(10), "domestic violence" as defined by 34
USCA 12291(a)(8), or "stalking" as defined by 34
USCA 12991(a)(30).

CONTINUE

Changes



Click through the slides to see specific changes that were made to key terms, definitions, or standards.



What changed for "hostile environment"?

"Hostile Environment"

Old Definition (Guidance)	New Definition (Final Regs)
 Unwelcome conduct Determined by a reasonable person To be so severe, pervasive, or 	 Unwelcome conduct Determined by a reasonable person To be so severe, pervasive AND
persistent, and to interfere with or limit a student's ability to participate in or benefit from school service, activities, or opportunities.	objectively offensive that it effectively denies a person's equal access to the district's education program or activity.



What changed for "actual knowledge"?

"Actual Knowledge"

Old Definition (Guidance) New Definition (Final Regs)

- A school has a responsibility to respond promptly and effectively if a school knows or should have known about sexual harassment.
- Notice of allegations to employee with certain level authority to trigger actual knowledge
- A school with actual knowledge of sexual harassment in a program or activity against a person in the U.S. must respond promptly and in a manner that is not deliberately indifferent.
- Notice of allegations to ANY district employee is enough to trigger the district's actual knowledge and duty to respond.

3

What changed for "deliberate indifference"?

"Deliberate Indifference"

Old Definition (Guidance) New Definition (Final Regs)

The school must take immediate action to eliminate the sexual harassment or sexual violence, prevent its recurrence, and address its effects. Failure to respond reasonably in light of known circumstances

"In a program or activity against a person in the U.S."

"In a program or activity against a person in the U.S."

- As long as the conduct occurs during a district program or activity in the U.S., it does not have to occur on school premises.
- Is off-campus/online conduct considered "in the school's program or activity"?
 - What device used?
 - Does the district have substantial control over alleged harasser?
 - Is the off-campus conduct impacting the school's operations?
 - Even if not violation under Title IX, it could be misconduct under another part of Student Code of Conduct.

CONTINUE

Lesson 3 of 12

Title IX Coordinators

(i) REMINDER: There is a division of duties with respect to the District's efforts to comply with Title IX.

Student to Student Concerns

Student to Student concerns/complaints or issues regarding athletic opportunities/ benefits are overseen by the Chief of Staff, Dr. Angela Huff.

Email: angela.huff@cmcss.net

Phone: 931-920-7939



Dr. Angela Huff, Chief of Staff

Employee Concerns/Complaints

Employee concerns/complaints are handled by the Chief Human Resources Office (CHRO), Jeanine Johnson.

If employee is alleged respondent, contact the CHRO immediately.

Email: jeanine.johnson@cmcss.net

Phone: 931-920-7913



Jeanine Johnson, Chief Human Resources Officer

CONTINUE



School-based Coordinators

Each School identifies administrator to be building Title IX Coordinator and for reasons discussed in detail later it **MUST be an assistant principal.**

The duties of the school-based coordinator include:

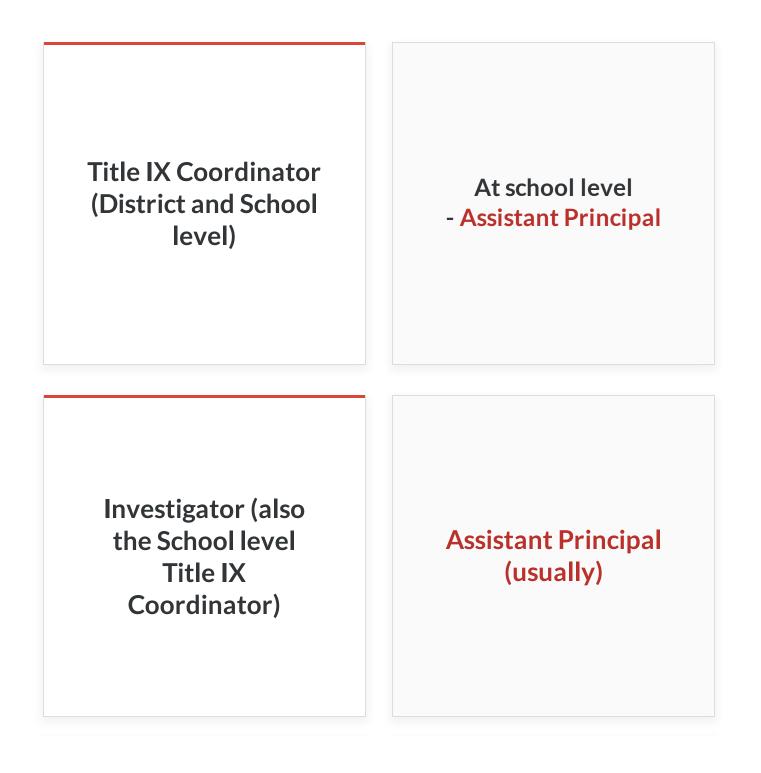
• Answer student and staff questions regarding procedures

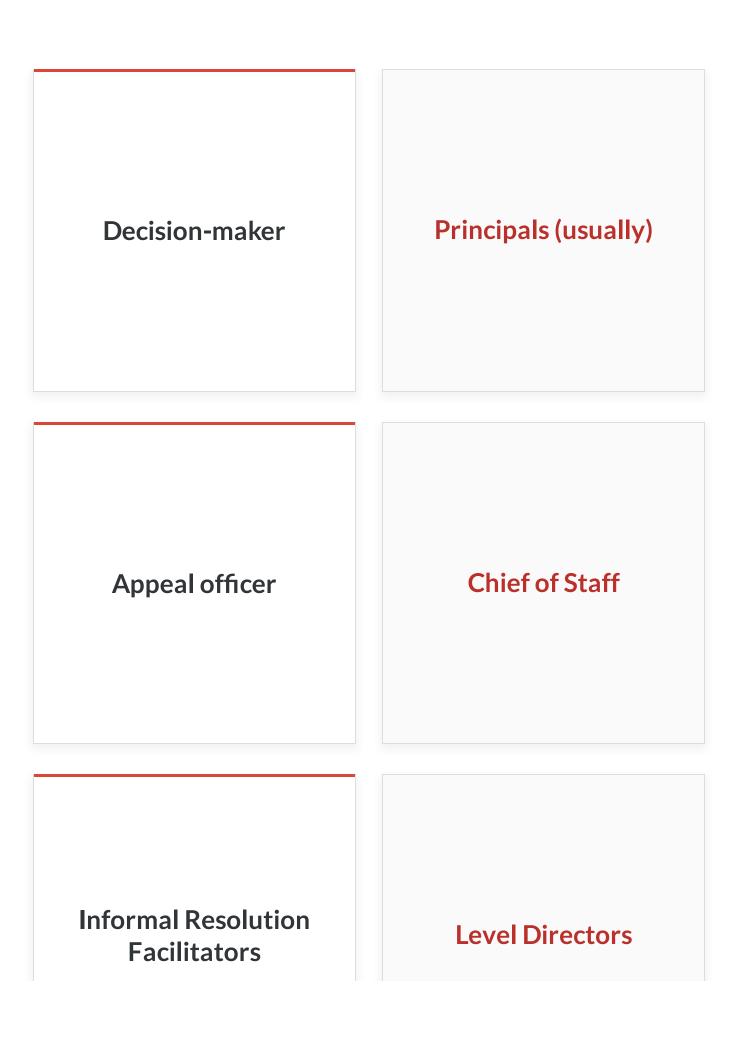
- Coordinate or lead school-based investigations (student-student)
- Determine whether supportive measures (previously called interim measures) should be put into place once report or formal complaint received
- Monitor any supportive measures implemented to determine whether measures need modification or elimination

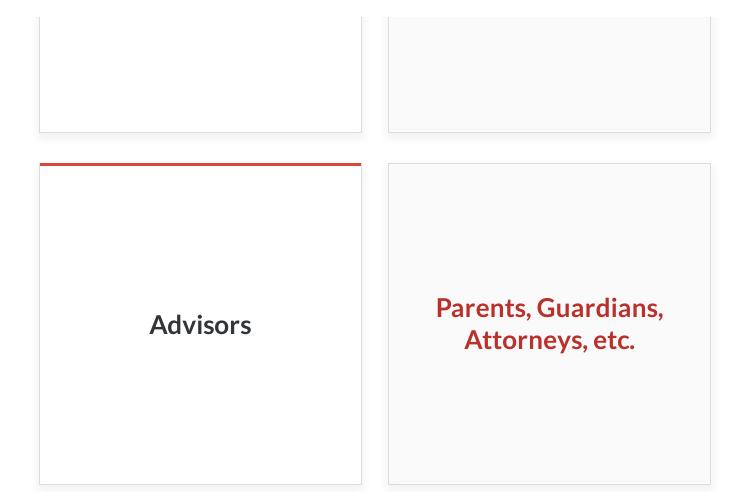
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Lesson 4 of 12

New Roles and Terminology







CONTINUE		
Summary of Roles		
Role	Who fills the Role	
Title IX Coordinator (at school level)	Assistant Principal	

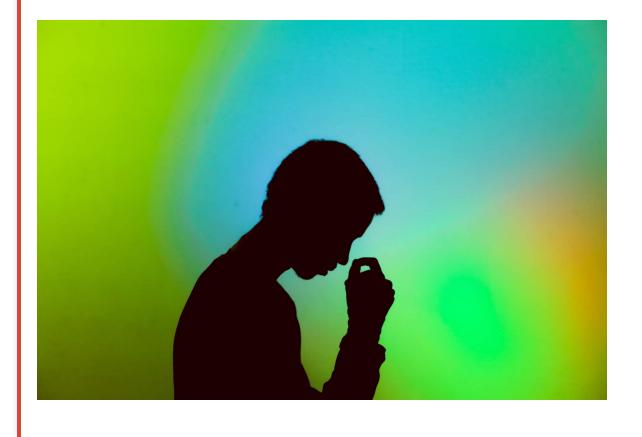
Role	Who fills the Role	
Investigator	Assistant Principal (usually)	
Decision-maker	Principal (usually)	
Appeal Officer	Chief of Staff	
Informal Resolution Facilitators	Level Directors	
Advisors	Parents, Guardians, Attorneys, etc.	
CONTINUE		

New Terminology

Complainant

A person who is alleged to be the victim of conduct that could constitute sexual harassment.

*Reminder** – Any employee with knowledge of conduct which may constitute sexual harassment must report, but reporting on behalf of an alleged student victim does not make the third party reporter the complainant.



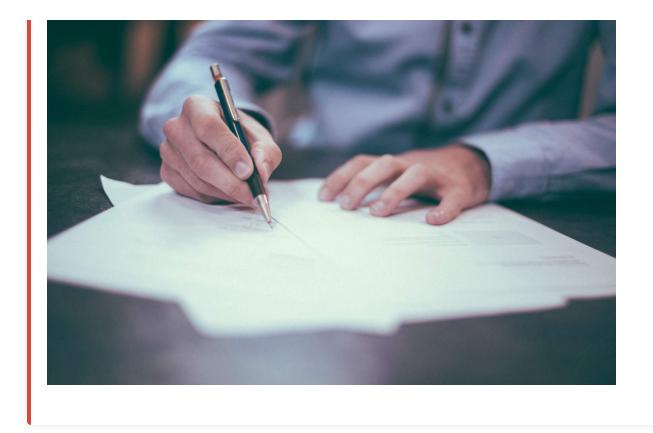
Respondent

A person who is reported to be the perpetrator of conduct that could constitute sexual harassment



Formal Complaint versus Report of Sexual Harassment

- A formal complaint is a document filed by a complainant or signed by school Title IX Coordinator alleging sexual harassment against a respondent which requires a sexual harassment/Title IX investigation.
- A report alleging sexual harassment which does not become a formal complaint does not require a sexual harassment/Title IX investigation; rather it would be addressed as any other alleged misconduct would be.



CONTINUE

Lesson 5 of 12

Complaint and Investigation Process

Complaint & Investigative Process

Here are the steps entailed in the complaint process.

1

Allegation reported

An allegation is reported by Complainant or third party reporter.

AP/Title IX Coordinator talks to Complainant

The Title IX Coordinator will speak to the complainant:

- Use information intake <u>STS-F037</u>
- Ask open-ended questions
- Decide if you need to offer the ability to file a formal complaint or handle it under another part of the Code of Conduct

Filing a Formal Complaint or Not?

- <u>STS-F037</u>
- Complainant/Parent
- AP/Title IX Coordinator- if complainant does not file a formal complaint, you can sign one if in the exercise of good judgment & based upon the information received you believe such a filing is appropriate for the District to comply with its obligation not to be deliberately indifferent to a known allegation of sexual harassment.
- <u>STS-F037</u> must be completed & submitted to Chief of Staff even if no formal complaint is filed.

District Response

District response to allegation of sexual harassment, even if no formal complaint filed initially, must include the School Title IX Coordinator/AP doing the following:

- 1. Promptly contacting the complainant to discuss the availability of supportive measures;
- 2. Considering complainant's wishes with respect to supportive measures;
- 3. Informing complainant of availability of supportive measures with or without filing a formal complaint; and
- 4. Explaining the process for filing a formal complaint.

IMPORTANT NOTE:

There will be an intersection of sexual harassment allegations and child abuse in certain situations.

If a report involves allegations which could be considered as child abuse, the required notification must be made per District policy/ procedure and State law.

Documentation of Formal Complaint

Formal complaint is documented on <u>STS-F037</u> and you must notify Chief of Staff & provide copy of completed formal complaint.

Once receive formal complaint, the School Title IX Coordinator/AP will within 1 day (excl. weekends & District holidays/closures):

- Provide written notice of the allegations and the grievance process to all known parties and their parents/guardians to give the respondent time to prepare a response before an initial interview;
- 2. Inform the parties that the respondent is presumed not responsible for the alleged conduct & that a determination of responsibility will not be made until the conclusion of the grievance process;
- 3. Inform the parties that they may have an advisor present during subsequent meetings;
- 4. Inform the parties of the prohibition against making false statements or knowingly submitting false information;
- 5. Inform parties that they may inspect/review evidence gathered; and
- 6. Offer supportive measures in an equitable manner to both parties.

See <u>STS-F039</u>

Supportive Measures



Non-punitive, individualized, and offered as appropriate to both parties.

Examples include:

- Student counseling;
- Course modifications, to include extensions of deadlines;
- Schedule changes;
- Increased monitoring/supervision;
- Mutual restrictions on contact between parties; and
- Changes to classroom transition routes.

Immediate Threat

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

Emergency removal of a student respondent is permissible if:

- Based on an individualized safety and risk analysis;
- To protect a student or other individual from immediate threat to physical health or safety;
- consider other laws such as "change of placement" under IDEA

Click the continue button below to review some important reminders.

CONTINUE

(i) IMPORTANT REMINDERS:

- If initial intake does NOT indicate that the allegation could be sexual harassment, but possibly another infraction, do NOT indicate in PowerSchool that it is "sexual harassment."
- You should never indicate in PowerSchool that an infraction is "sexual harassment" unless a formal complaint has been filed and the entire grievance process has been completed.

Investigation Parameters

Investigative Parameters

Formal Complaints

An **Assistant Principal** will serve as investigator for formal complaints. See <u>STS-G002</u> (Investigator Guidelines)

Initiate investigation within 2 days.

Unless allegations rise to the level of sexual misconduct or violence (middle & high) – if so immediately contact SRO to determine if law enforcement will investigate. Same steps you've always taken.

Investigative Parameters

Formal Complaints, cont.

All investigations of formal complaints must:

 Provide an equal opportunity for all parties to present witnesses & evidence;

- 2. Not restrict the ability of parties to discuss the allegations & gather evidence; (**THIS IS DIFFERENT!**)
- Provide for the parties to have others parents, advisor, or attorney – present during their respective interviews or meetings.
- Provide parties whose participation is requested written notice of the date, time, location and purpose of interview/meeting in time to prepare. (<u>See STS-F040</u>)
 - Not required to give parties notice of witness interviews or to let them attend witness interviews, but could give them opportunity to submit written questions for you to ask witnesses if you deem questions appropriate.
- 5. Provide parties equal access to inspect/review evidence directly related to the formal complaint (either hard or electronic copy) and permit parties at least 10 days to submit a written response to the evidence, which the investigator must consider prior to creating his/her investigative report.
 - Not required to give parties notice of witness interviews or to let them attend witness interviews, but could give them opportunity to submit written questions for you to ask witnesses if you deem questions appropriate.
 - Such inspection/review subject to parties and any advisors executing a nondisclosure agreement. <u>STS-F046</u>
 - **Disclosure of evidence must still comply with FERPA!** Redact student names from witness statements, and in interview notes and investigative report use numbers to identify student witnesses, i.e., "Witness 1," and have a key which correlates the number to the name of the witness. The key would not be provided to parties. Video footage could be viewed by parties/advisors at school but they cannot get copies.
- 6. Result in the creation of an investigative report that summarizes the relevant evidence, including but not limited to, witness credibility, discrepancies and relevant district policies and rules and how the school population was aware of such policies/rules.

- Include your observations of party/witness demeanor, reactions during interview as part of credibility assessment since decision-maker will not see them, i.e., he was sweating profusely, wouldn't look me in the eye.
- Prior to finalizing investigative report, investigator must ensure that he/she has reviewed any written response from the parties regarding the evidence, indicated that it was considered and address whether the written response comports with or contradicts the evidence.

Investigative Parameters

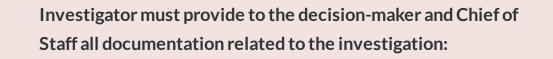
Formal Complaints, cont.

The investigator does NOT make a finding as to responsibility. See <u>STS-F038</u>

(i) The written investigative report is delivered to:

- Decision-maker/Principal;
- Chief of Staff; and
- Parties/parents/guardians, and any advisors.

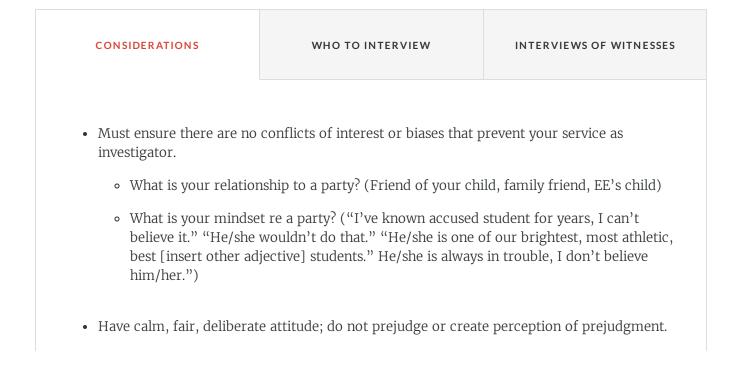
STS-F038 and STS-F042 (Remember FERPA!)



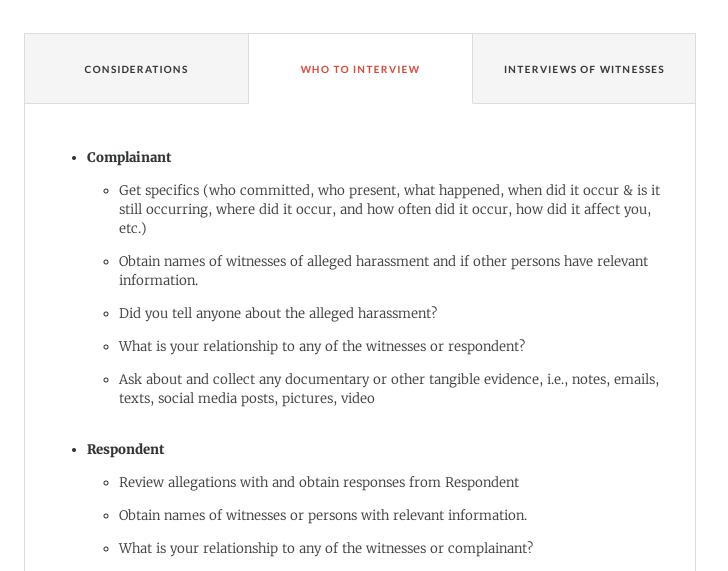
- investigative notes
- witness statements/interviews
- evidence collected including that submitted by the parties
- investigative reports, notices/communications to parties, video clips, etc.

CONTINUE

Regarding Interviews



- Remember your actions could be reviewed or even challenged, so ensure fairness & thoroughness.
- Investigative documentation and related communications created by you likely will be disclosed to others later.
- Do not put anything in writing that you would not want read later by someone else, including texts & emails.
- Confidentiality is vital only persons with need to know should be aware of investigation.



• Ask about and collect any documentary or other tangible evidence, , i.e., notes, emails, texts, social media posts, pictures, videos

• Witnesses identified by complainant and accused or otherwise identified to you.

CONSIDERATIONS	WHO TO INTERVIEW	INTERVIEWS OF WITNESSES
as possible witness.	not in trouble. explain an investigation occurring a s first, then more specific questions	
• What is witness's relation	ship to complainant and/or respond	lent?
• Ask about and collect any	documentary/tangible evidence.	
• Ask if there is anything el	se the witness wants to tell you that	was not asked.
Advise witness to contact you if remembers more information.		
• Advise witness to come to you if threatened/harassed for participating in investigation.		



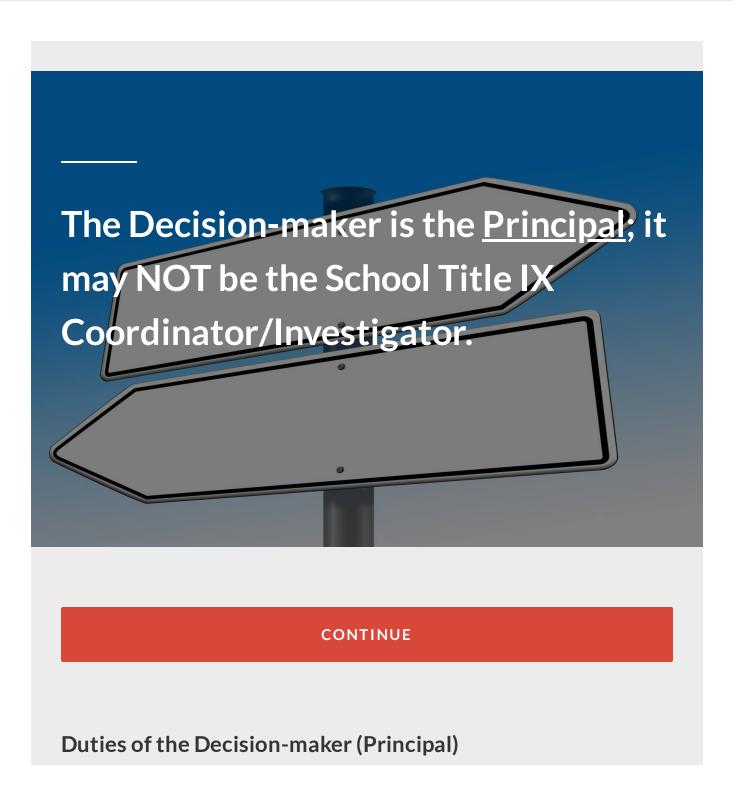
Conducting Interviews - General Guidelines

- Use open-ended questions, not leading questions.
- Interview as promptly as possible while memories fresh (could be a delay in your investigation if criminal investigation occurs).
- Take thorough, accurate notes (include date/time of interviews).
- Preserve any collected tangible evidence.
 - Take care with evidence that may exist on student cell phones. Do not ask to search them, rather ask for copies of screenshots. Call parents if needed for permission. If suspect unlawful content on them, involve SRO.
- Be mindful of where & how interviews conducted to avoid/minimize rumors and speculation.
- Interview all parties and witnesses separately.
- Ask witnesses and parties if they have discussed issue with anyone.
- Keep interviews & investigation confidential & request that witnesses do the same.

• Advise complainant & respondent of policy of no retaliation for filing complaint or participating in an investigation and to report to investigator if concerns arise.

Lesson 7 of 12

Determination Process and Analyzing Evidence



The Decision-maker:

- Receives and reviews the investigative report and evidence;
- Receives and reviews any party response to the investigative report;
- Oversees the question and answer process;
- Issues determination of responsibility and issues any discipline;
- Notifies the parties of the determination and their right to appeal.



See STS-G003 Decision-maker Guidelines



See STS-G003 Decision-maker Guidelines

The Decision-maker must:

- Be objective and unbiased;
- Exercise independent judgment and be free of conflict of interest or bias for or against either party or complainants/respondents in general; and
- Objectively assess/consider only relevant evidence and make decision based on it.
 - What facts do the parties agree on? Disagree on?
 - How do those facts align with the elements of offense?

 What disputed facts must be resolved? Evaluate evidence for each disputed fact and resolve disputed fact.

CONTINUE

Guidance for the Decision-maker

Complainant's Sexual Predisposition

Questions & evidence about complainant's sexual predisposition or prior sexual behavior are **not relevant UNLESS** offered to prove either someone other than the respondent committed the alleged conduct or to prove the conduct was consensual & concern specific incidents between the parties.

Evaluating the Evidence

You must make the decision based upon the **preponderance of the evidence** which means that the amount of evidence that causes you to conclude that an allegation is probably true.

Meeting the Standard

To meet this standard, you must find that the **evidence shows more likely than not the alleged conduct occurred** and **more likely than not the respondent(s) committed the act(s).** If the evidence is equally balanced, that issue has not been proven by a preponderance of the evidence.

CONTINUE

The Written Determination

The written determination must:

- Identify the allegations;
- Describe the procedural steps taken;
- Include findings of fact;
- Apply code of conduct to facts;
- Include a statement of and rationale for the result as to each allegation, which includes:
 - determination of responsibility,
 - any disciplinary sanctions;
 - $\circ\;$ whether further supportive measures are needed, and
 - any other actions necessary to prevent a recurrence.

- Ensure remedies are designed to restore or preserve equal access to the educational program. However, remedies need not be non-disciplinary and need not avoid burdening the Respondent.
- You cannot make an overall determination if several allegations exist.



(i) In making the determination, the Decision-maker must consider:

- The investigative report and evidence;
- Any party's response to the investigative report; and
- Answers to any relevant written questions.

CONTINUE

Dismissal of a Formal Complaint

Within 10 days of receiving answers to relevant written questions & upon ensuring parties had 10 full days to submit response to investigative report, Decision-maker must make a determination regarding responsibility and provide written determination to Chief of Staff and parties, with information about how to file an appeal. See <u>STS-F043</u>

Determination of responsibility is final either:

- when the result of any appeal is released; OR
- if an appeal is not filed, the date on which the right to appeal expires.

MUST DISMISS

MAY DISSMISS

The District **<u>must</u> dismiss** a formal complaint if:

- The alleged conduct, even if proven, would not constitute sexual harassment or
- The alleged conduct did not occur in/on District's education program, activity or premises.
- During the investigation, the Complainant provides written notice of withdrawal of complaint.

The District **<u>may</u> dismiss** a formal complaint if:

- During the investigation, the Respondent is no longer enrolled as a student or employed by District;
- During the investigation, specific circumstances prevented the District from gathering evidence sufficient to reach a determination, i.e., passage of time or lack of cooperation by complainant.

(i) NOTE: The dismissal of a formal complaint does not preclude the District from continuing an investigation or taking action under other Code of Conduct provisions.

Lesson 8 of 12

Appeals

APPELLATE DECISION-MAKER

APPEALS PROCESS

The Chief of Staff will serve as appellate decision-maker only as to the following bases:

1. Procedural irregularity that affected the outcome; **Examples: Not being given reasonable notice of complaint**

or

report; investigator and decision-maker the same person; investigator or decision-maker not trained

2. New evidence that was not reasonably available at the time decision made and such evidence could affect the outcome; OR

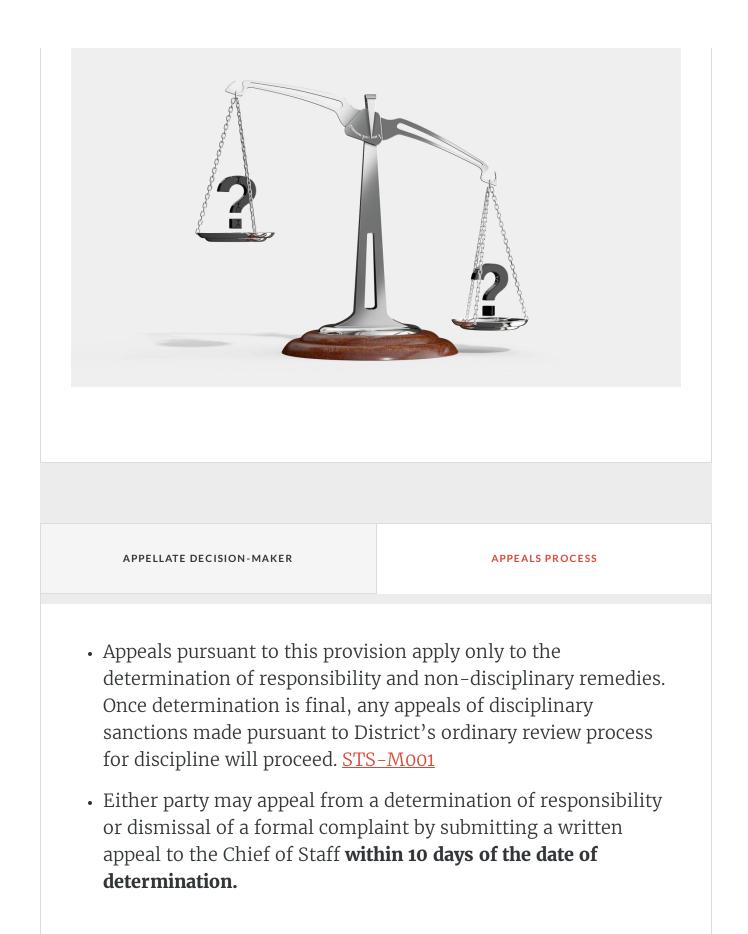
Example: Evidence that would prove the respondent was

in

another location or that respondent was not the one who committed the offense.

3. Investigator or decision-maker had a conflict of interest or bias for or against the complainant or respondent that affected the outcome.

Example: Past comments or actions showing bias toward one party.



- Within 5 days of receipt of an appeal the Chief of Staff will notify parties of all deadlines in the appeal stage. <u>STS-F044</u>
- **Parties have 5 days to submit written statement** in support of or challenging the outcome.
- Within 10 days following the parties' appellate submissions, the Chief of Staff will issue a written decision describing the result of the appeal and the rationale for the result, and provide the same to the parties, as well as the Director of Schools. <u>STS-F045</u>

For additional guidance regarding appeals, see <u>STS-G004 Appellate</u> <u>Guidelines.</u>

Informal Resolution Process

After a formal complaint is filed and at any time prior to reaching a determination regarding responsibility, an optional informal process, such as mediation or restorative justice, may be offered to the parties.

Informal Resolutions

Requirements

To do offer an informal resolution, the District must:

- 1. Provide written notice to the parties disclosing:
 - a. The allegations of the formal complaint;
 - b. The requirements of the informal complaint process including circumstances under which it precludes the parties from resuming a formal complaint arising out of the same allegations even if there is a breach of the agreement; provided that, at any time prior to agreeing to an informal final resolution, a party may withdraw from the process and resume the grievance process with respect to the formal complaint; and

c. Any consequences resulting from participating in the informal resolution process including records that will be maintained or could be shared.

2. Obtain the parties' voluntary written consent to the informal resolution process. STS-<u>F041</u>

Informal Resolutions

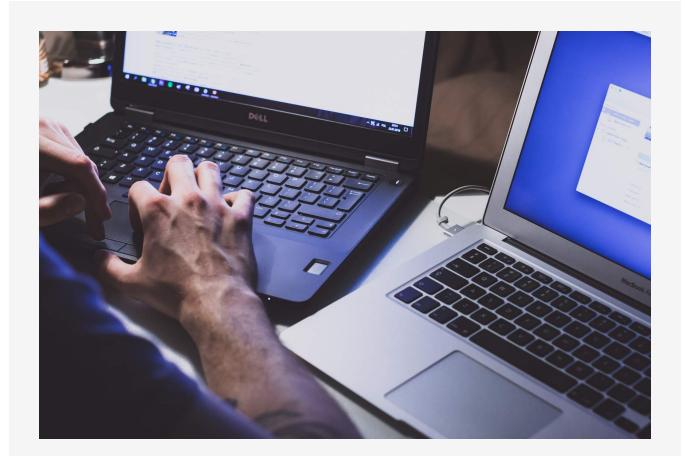
Limitations

Informal Resolution **cannot be offered** or utilized to resolve **alleged employee on student conduct.**

Recordingkeeping

Written records related to reports of alleged sexual harassment must be maintained for at least seven (7) years, to include: investigation records (evidence, investigative report), written notices/communications to parties, written determinations, disciplinary sanctions, remedies, appeals and records of any actions taken to include supportive measures.

(i) REMINDER: All these records must be provided to the Chief of Staff as that office will be the official record keeper.



Training Materials

Materials used to train Title IX Coordinators, Investigators, Decision-makers, Appellate Decision-makers, and employees designated to facilitate an informal process will be maintained for at least seven (7) years.

Related Documents

Relevant District Policies, Procedures, & Forms

Below are direct links to the related documents associated with this course content.

- <u>STS-A007 Sexual Harassment Policy (student)</u>
- <u>STS-P012 Reporting Procedure for Students Subjected to Alleged Sexual</u> <u>Harassment</u>
- STS-F037 Student Sexual Harassment Report Form
- STS-F038 Investigative Report of Sexual Harassment Complaint
- <u>STS-F039</u> Written Notice of Allegation to Parties
- <u>STS-F040 Written Notice of Party Interview</u>
- <u>STS-F041 Written Consent to Informal Resolution</u>
- <u>STS-F042</u> Transmittal of Investigative Report
- <u>STS-F043 Written Determination</u>
- <u>STS-F044</u> Acknowledgement of Appeal & Notice of Appeal Deadlines
- <u>STS-F045</u> Written Appellate Decision

- <u>STS-F046 Non-disclosure Agreement</u>
- <u>STS-G002</u> School Title IX Coordinator/Investigator Guidelines
- <u>STS-G003</u> Decision-maker Guidelines
- <u>STS-G004 Appellate Decision-Maker Guidelines</u>

Scenarios

Scenario 1

Scenario 1

Facts

- High school principal is stopped by Joe, a well known alumni, during a basketball game. According to Joe, his cousin's daughter, Betsy, is being bothered and harassed by some sexcrazed boy at the school. He thinks the boy's name is Billy.
- Betsy has been so upset his cousin is considering home schooling her which upsets Betsy even more because she has always loved school.
 - What should the principal do with this information?
 - What should the school's Title IX Coordinator do?



Scenario 1

Facts continued:

An AP talks to Betsy who admits Billy, who she had been flirting with, began going too far and is really creeping her out. He follows her between classes a lot, touching her bottom or breasts, telling her they belong together and texting her at all hours, and posting on his social media that they are dating. They were friends on SnapChat and Instagram, but his messages made her so uncomfortable, she deleted him. She says she also blocked his cell phone number. She has told him to stop and so have some of her friends. Her parents said to just ignore him and it will get better. On top of all this, she has him in two of her classes.

- Could these allegations be considered sexual harassment?
- What should be discussed next with Betsy and her parents?
- How do you approach or offer supportive measures?
- What if Betsy's parents do not want to file a formal complaint?



Scenario 1

Facts continued:

Facts continued: A formal complaint is filed and the Title IX Coordinator/investigator begins the Title IX grievance/investigative process.

- What should investigator do first: Draft a summary of the allegations or immediately call Billy to the office and interview him?
- What if Billy refuses to be interviewed?
- What if Billy's parents tell you his uncle is an attorney and they want him to be present at all the interviews?

Scenario 1

Facts continued:

After hearing from both Betsy and Billy, both identify two witnesses/friends (Gina and Cory) who know about the situation. Billy says Betsy started the flirting and "gave as good as she got" and never told him to stop, but he certainly doesn't want anything to do with her now.

- What must the investigator do before interviewing any witnesses?
- What types of questions might the investigator want to ask those witnesses?

• How do you document those interviews?



Scenario 1

Facts continued:

After the investigator concludes the investigation and issued an investigative report, the decision-maker learns:

- Billy has anger issues & has been in 4 fights in the last two years, but according to the investigative report Billy appeared really calm during his interview.
- Betsy deleted the text messages and neither Betsy or any of the witnesses have screenshots of Billy's alleged harassing social media posts.
- The two witnesses/mutual friends both recall seeing Betsy and Billy flirt and thinking they would start dating. Neither would

admit to seeing Billy inappropriately touch Betsy, but Gina did say Betsy has been crying a lot in the bathroom and wishing Billy would leave her alone.

- Is there anything the Decision-maker should review other than the investigative report?
- What do you think: did sexual harassment occur?

Scenario 1

Facts continued:

Billy's attorney submits some questions he wants the Decisionmaker to ask Betsy, one of which is "when you dated Stan a few months ago didn't you brag about having sex with him often?"

 Should the Decision-maker submit this written question to Betsy, after all Billy has an attorney so he should know what he can and can't ask, right?

Final Facts:

The Decision-maker determines not a Title IX violation, but a no contact agreement exists. Betsy's dad is finally able to get the deleted texts from his cell phone carrier and files a timely appeal to the Chief of Staff citing new evidence.

• Is this permissible?



CONTINUE

Scenario 2	2
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1. FACTS

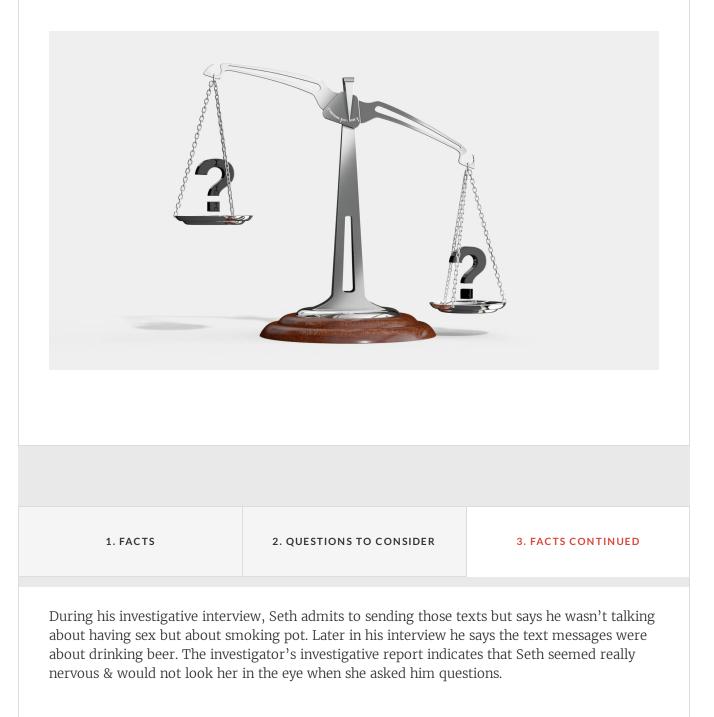
2. QUESTIONS TO CONSIDER

3. FACTS CONTINUED

- Adam and Seth, 8th graders, have been friends for a couple of years, hanging out, playing video games. A few weeks ago, while Adam was at Seth's house, they kissed. Adam stopped it quickly and told Seth he wasn't into stuff like that.
- Ever since then Seth has been telling Adam at school that if he doesn't do more with him, Seth will tell everyone Adam is gay and that Adam hit on him. He even sent texts that said stuff like "you know you want to" "no one will ever know."
- Twice Seth has followed him into the bathroom which made Adam uncomfortable. Both times someone else has come into the bathroom and Adam leaves quickly.
- Adam confided in another friend, George, that he is being pressured to do some things he doesn't want to do but didn't give specifics. George has noticed that Adam tries to avoid Seth now, and has moved to another lunch table and asked Mr. Hankins to change seats in their science class.
- Mr. Hankins witnessed Adam yelling at Seth to "leave him alone" one day after class and asked Adam if everything was okay. Adam told Mr. Hankins that Seth is bugging him to do stuff he doesn't want to do, and Mr. Hankins makes a referral to the middle school counselor.
- Adam shares with the counselor that Seth wants more from their friendship, and has really been harassing and pressuring him to have sex and is threatening to tell people he is gay. Adam tells the counselor that she can't tell his parents. He also shares he wishes he would just die.

1. FACTS	2. QUESTIONS TO CONSIDER	3. FACTS CONTINUED

- Does District have actual knowledge of the existence of possible sexual harassment?
- Can the counselor just talk to Seth and try to work out things between the boys without telling the Title IX Coordinator? Can they work it out with the parents?
- Assuming the counselor reports to the Title IX Coordinator/AP, what supportive measures can be offered to Adam?
- Should a formal complaint be filed even if Adam and his parents don't want to file one?



• Can the Decision-maker consider the investigator's observations that Seth was nervous during the interview and changed his story on what the texts meant?



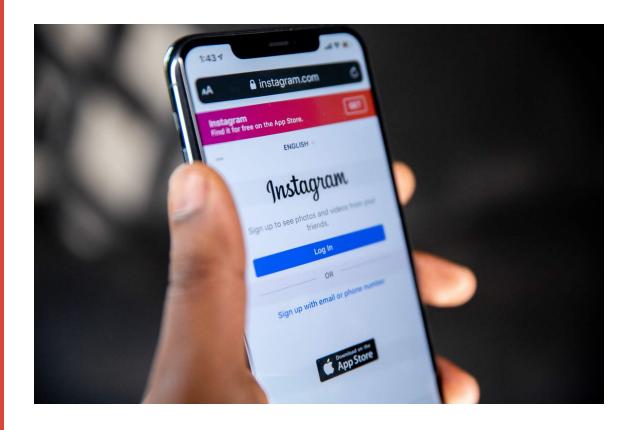
CONTINUE

Scenario 3

Scenario 3 Facts

• Instagram Account of male high school student

- Off-campus, no posting during school hours that can be proven although very likely students looking at and showing posts during the day.
- Misogynistic comments about "girls falsely claiming rape and ruining boys chances of athletic success at college"; "girls ask for it" "women who claim they were raped 20 years ago shouldn't be listened to because they damage successful men's lives."
- Not directed toward specific student at school.
- Several current students and parents report/complain but one girl, Pam reports to her English teacher that she thinks it is directed at her because she filed a sexual harassment claim against the star basketball player.



Questions to Consider

- Could conduct constitute sexual harassment?
- Conduct occurring on school property or during program or activity?
- What should Title IX Coordinator/AP do with Pam's report? Other student/parents' reports?
- Can supportive measures be offered to Pam?

CONTINUE

Scenario 4

Facts:

- Julie, a middle school student, emails a middle school counselor about another girl, Lee, receiving sex- based emails
 - Graphic mocking comments such as "Your Instagram page should say "I'm Lee and I love to have sex with random people." "Everyone knows you're such a whore" and "you're worthless" "why don't you just go kill yourself", etc.
- Occurs almost daily during school day, during remote learning and on school technology but through a personal email account.
- Lee knows who is sending the emails and it is a boy, Jordan, who has told her he likes her but she told him she isn't interested right now.

Questions to Consider:

- Does District actual knowledge exist?
- Could the conduct constitute sexual harassment?
- In the school's program or activity?
- Should Title IX Coordinator offer supportive measures?
- Should Title IX Coordinator explain process for formal complaint?

- What if Lee doesn't want to file a formal complaint?
- Is Julie the complainant?
- Can conduct be both sexual harassment and bullying?



CONTINUE



FACTS

QUESTIONS TO CONSIDER

- Rachel, a 5th grade girl who is very popular and well liked by other students, seems to have developed a crush on Daniel, also a 5th grader. They ride the same bus and are in the same classes except for when he is pulled out for special services.
- In the last few weeks, every time Daniel passes her on the bus, she smacks his bottom. It really embarrasses him and when the girls who sit near Rachel see it they giggle.
- In the classroom, playground, cafeteria, Rachel is always beside him when possible, trying to hold his hand, hugging him, and talking to him. His friends have started teasing him and calling Rachel his girlfriend.
- The teacher has noticed Rachel and Daniel seem to be together a lot, and has even had to tell Rachel to go to her seat a few times and to keep her hands to herself. Rachel always complies. Daniel has never told the teacher that he is bothered by Rachel, but he has asked twice not to go to the playground at recess, claiming he has a headache. He also asked to be moved to another group (without Rachel) when they did a group project.
- Daniel hates riding the bus now, and begs his parents to let him walk to/from school but they think he's too young. His parents have noticed that he doesn't seem to like school as much as usual, and he isn't hanging out with the neighborhood boys anymore. When they try to talk to him, he just says kids in his class are dumb and he doesn't like them.



FACTS

QUESTIONS TO CONSIDER

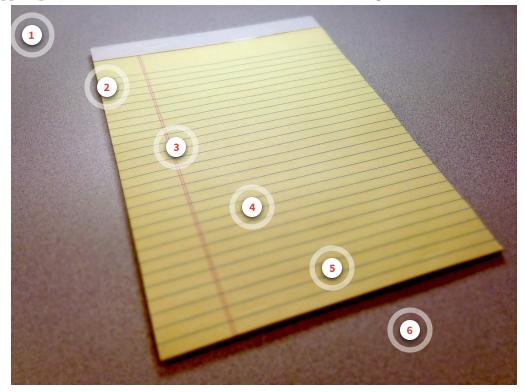
- Does District actual knowledge exist at this point?
- What should the teacher do?
- What if Daniel's parents emailed the teacher, telling her the information in the last bullet point and asking for her help? "Daniel hates riding the bus now, and begs his parents to let him walk to/from school but they think he's too young. His parents have noticed that he doesn't seem to like school as much as usual, and he isn't hanging out with the neighborhood boys anymore. When they try to talk to him, he just says kids in his class are dumb and he doesn't like them."
 - What should teacher do now?
- Should Title IX Coordinator offer supportive measures? What kind? To both students?
- Could the conduct constitute sexual harassment?



CONTINUE

Appeals

Is an appeal possible in each of these situations? If so, on what grounds?

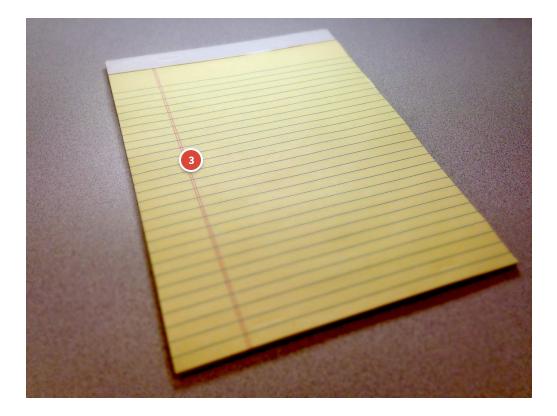




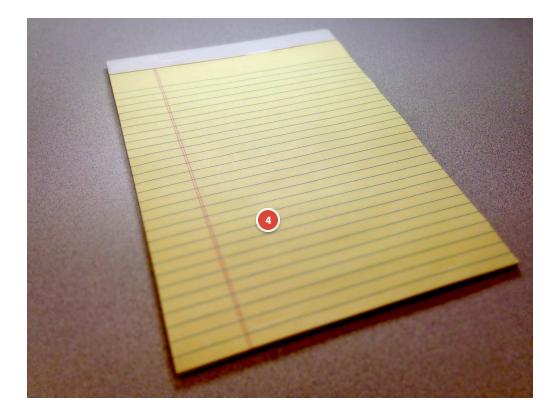
Throughout the process school personnel communicate with the respondent in a manner indicating guilt, i.e., "why did you do this?" "you're just like your brother was when he was a student here."



Decision-maker indicates that he/she has not read the report.



Investigator publishes an opinion piece on ClarksvilleNow discussing sexual harassment & stating he always believes the complainants and would have a very hard time finding that a respondent was innocent?



Investigator uses evidence to prove pre-conceived ideas about the outcome instead of letting the evidence guide the process.



Decision-maker determined respondent committed sexual harassment. She goes to church with the complainant and her family.



Investigator talked to the respondent alone before sending the written notice of his formal interview to respondent and his parents.

