

TITLE IX

Decision Maker Training

Presented to



August 2023

Agenda

- **CCPS Title IX Complaint Structure**
- **Title IX History and Background**
- **Title IX – Key Points and Terminology**
- **Grievance Procedure**
- **Investigation Process**
- **Decision**
- **Appeals, Informal Resolution & After**
- **Complaints Involving Employees**

Title IX Complaint Structure

Clayton County Public Schools

Title IX Contacts (Student Complaints)

- Title IX Coordinators:
 - Latasha Lowe (primary); Damaris Garrett (secondary)
- Formal Complaint Investigators:
 - School Level Principal or Appointed Designee (AP)
- Formal Complaint Decision-Makers:
 - Area Superintendent
- Appeal Decision-Makers:
 - Deputy Superintendent
- Informal Resolution Facilitator:
 - Department of Student Discipline, Prevention and Intervention

Title IX Complaint Process

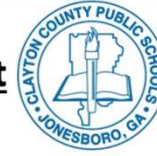
- Concern observed or reported by student, parent, staff or other individual to *any CCPS staff member*
- Initial meeting with Title IX Coordinator
 - Discussion regarding availability of supportive measures; Right to file complaint; How to file complaint
- Employee, Student/Parent or Title IX Coordinator file complaint
 - Formal notice sent to complainant and respondent
- Complaint referred to principal or designated AP for investigation and written investigative report
 - Witness interviews; review of evidence; complainant and respondent access to evidence; written report; opportunity to review, submit written questions

CCPS Title IX Decision, Appeal

- Area superintendent reviews school's complete investigative report and makes written decision
- Student opportunity to appeal either decision or dismissal
- Appeal submitted to Deputy Superintendent for final decision
- At any time in this process after Formal Complaint is filed, voluntary informal resolution may be pursued by contacting Department of Student Discipline, Prevention and Intervention
 - Informal resolution is not an option if an employee is the accused

TITLE IX

Process for Responding to Sexual Harassment



Complaint Under Title IX Regulations

Report is made of alleged sexual harassment to any employee. Employee shall immediately refer complaint to school administration

School administrators forward report to Title IX Coordinators:
Latasha Lowe (primary) and Damaris Garrett (secondary)

Offer supportive measures

If a Formal Complaint is filed...
The District will investigate allegations

Informal Resolution:
Facilitator
Department of Student Discipline, Prevention and Intervention

Determine if **Emergency Removal** is necessary
Respondent has the right to appeal emergency removal

Formal Complaint Investigators: School Level Principals or Appointed Designee (AP) conduct investigation

Dismissal of Complaint
Right to Appeal Dismissal Decision

Option 1

Option 2

3 Resolution Options
Decision Makers

Formal Complaint Decision-Makers: Area Superintendents

Decision
Right to Appeal Decision

Option 3

Appeal Decision-Makers:
Deputy Superintendents

Title IX Resources

- CCPS Title IX policies and resources regarding sexual harassment, see:
 - https://www.clayton.k12.ga.us/departments/equity_and_compliance/title_ix
- US Department of Education information & resources:
 - <https://www2.ed.gov/policy/rights/guid/ocr/sex.html>

Title IX: History & Looking Forward

Title IX of the Education Amendments of 1972

- Enacted in 1972
- Prohibits discrimination on the basis of sex in education programs for recipients of federal funding, including K-12 public school districts.

“no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives ... Federal financial assistance”

Title IX History

- Regulations to implement Title IX were enacted reinforcing its non-discrimination mandate and prohibition on sex discrimination on hiring, admissions, athletics and other aspects of educational programs and activities.
- Historic emphasis on athletics under Title IX.
- Sexual harassment.

Office for Civil Rights (“OCR”)

- U.S. Department of Education
- Federal agency with the responsibility of ensuring equal access to education.
- Includes all public education institutions—i.e., all state education agencies, elementary and secondary school systems, colleges and universities, vocational schools, and proprietary schools.
- Federal laws that OCR enforces prohibit discrimination on the basis of race, color, national origin, sex, disability, or age.

2020 Title IX Regulations

- Sept. 22, 2017: U.S. Department of Education (“ED”) withdrew major 2011 policy statement regarding sexual harassment and related guidance. It concurrently released interim guidance and announced rulemaking for new Title IX regulations regarding sexual harassment.
- May 6, 2020: ED released new Title IX regulations regarding sexual harassment following a 1.5-year period of review between release of the proposed and final rule.
- Aug. 14, 2020: Effective date of 2020 regulations.¹³

Significant Changes – 2020

- Emphasis on due process
- Definition of sexual harassment under Title IX
- Title IX Coordinator
- Detailed grievance and investigative process
- Right to appeal
- Allowance for informal resolution

Looking forward

- What is next for Title IX?



Title IX

- June 2022 – release of *new* proposed Title IX rule, including protections for LGBTQ students, sex-based discrimination and harassment

"The proposed regulations reflect the Department's commitment to give full effect to Title IX, ensuring that no person experiences sex discrimination in education, and that school procedures for addressing complaints of sex discrimination, including sexual violence and other forms of sex-based harassment, are clear, effective, and fair to all involved." - Catherine E. Lhamon, Assistant Secretary for Civil Rights.

Title IX

- 700 pages of proposed rules.
- Released on the 50th anniversary of Title IX.
- Over 200,000 comments during 60-day comment period.
- Inclusion of sexuality, gender identity and explicit protections for LGBTQ students.
- More protections for pregnant and parenting students.
- Process for reviewing sexual assault and harassment allegations.
- While Title IX doesn't override state and local laws, it does give the federal government the power to remove funding from educational institutions that violate it.
- Now that the public comment period has closed (Sept. 2022), the Education Department review comments and create the final changes. The department has not indicated a timeline for the final rules to go into effect, but it is anticipated it will happen this year (2023).

Title IX: Athletics



- Proposed rule related to transgender students and athletic participation released April 6, 2023
- If a recipient adopts or applies sex-related criteria that would limit or deny a student's eligibility to participate on a male or female team consistent with their gender identity, such criteria must, for each sport, level of competition, and grade or education level:
 - (i) be substantially related to the achievement of an important educational objective, and
 - (ii) minimize harms to students whose opportunity to participate on a male or female team consistent with their gender identity would be limited or denied.

Timeframe for New Regulations



- In May 2023, the US Department of Education announced it will release the final versions of the Title IX changes in October 2023
- <https://blog.ed.gov/2023/05/a-timing-update-on-title-ix-rulemaking/>
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Key Provisions & Terminology

“Sexual Harassment”

- Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
 - Quid pro quo harassment by school employee;
 - Unwelcome conduct that reasonable person would find so severe, pervasive & objectively offensive that it effectively denies equal educational access; or
 - Sexual assault, dating violence, domestic violence or stalking.

1. Quid Pro Quo Harassment

An employee of the District conditioning the provision of a District aid, benefit, or service on an individual's participation in unwelcome sexual conduct;

- "something for something"
- Does not require the elements of severity, pervasiveness, or objective offensiveness

2. Unwelcome Conduct

Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity

- Look for all necessary elements based upon reasonable person standard:
 - Severe;
 - Pervasive;
 - Objectively offensive; and
 - Denial of equal educational access.

3. Sexual Assault, Dating Violence

Sexual assault, dating violence, domestic violence, or sex-based stalking as defined under federal laws.

- “Sexual assault”- an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the FBI
- “Dating Violence”- sex-based violence committed by a person
 - Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship.
 - The type of relationship.
 - The frequency of interaction between the persons involved in the relationship.

3. Domestic Violence

“Domestic Violence” - sex-based violence which includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

3. Sex Based Stalking

“Sex-based Stalking” - engaging in a course of conduct directed at a specific person that would cause a reasonable person to-

- (A) fear for his or her safety or the safety of others; or
- (B) suffer substantial emotional distress.

“Actual Knowledge”

- Actual knowledge means notice of sexual harassment or allegations of sexual harassment to the District’s Title IX Coordinator or to any official or employee of the District. This notice requirement is not met when the only District official or employee with actual knowledge is the respondent.
- "Notice" includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.
- What triggers actual knowledge?
 - At the K-12 level, whenever *any* employee (other than a respondent) has notice of sexual harassment or allegations of sexual harassment.

Formal Complaint

A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the District investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in a District education program or activity.

Deliberately Indifferent

- If a school district has actual knowledge of sexual harassment in an education program or activity of the school district against a person in the United States, it must respond promptly in a manner that is not deliberately indifferent.
- Deliberately indifferent means a response to sexual harassment that is clearly unreasonable in light of the known circumstances.

Where?

- For jurisdiction under Title IX, sexual harassment must occur within the scope of a school’s “education program or activity”
- Education program or activity includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurs
- May include programs or activities that occur either on-campus or off-campus.

Responding to a report of sexual harassment

- Any employee who receives information from a student alleging sexual harassment shall report it to the School Administrator.
- If allegations involve potential violation of criminal law, report to appropriate law enforcement agency or official(s).
- If allegations involve potential child abuse, as defined by OCGA 19-7-5, report to appropriate child welfare agency and law enforcement agency or official(s) per mandatory reporter procedures and protocol.

Response to Initial Report

- The Title IX Coordinator shall promptly:
 - Contact the complainant;
 - Offer the complainant supportive measures;
 - Explain the process of filing a formal complaint;
 - Explain that supportive measures can be available with or without a formal complaint;
 - Consider complainant’s wishes regarding supportive measures;
 - Contact the respondent, who must also be offered supportive measures; and
 - If supportive measures are not provided to a complainant, document why school did not provide complainant with supportive measures and why not providing such measures is not deliberately indifferent.

“Supportive Measures” Defined

Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or 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 recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment.

“Supportive Measures” Examples

- Examples: counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
- Maintain as confidential any supportive measures provided to the complainant/respondent, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures.
- The Title IX Coordinator is responsible for coordinating effective implementation.

The Parties

- **Complainant:** an individual who is alleged to be the victim of conduct that could constitute sexual harassment. If the complainant is under 18, the parent/guardian can file a complaint and act on complainant's behalf.
 - Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or party.
- **Respondent:** an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Filing of a Formal Complaint

- A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed for the Title IX Coordinator in the District's nondiscrimination notice posted on its website. The phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided by the District) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.
- Once a formal complaint is filed, the District's grievance process is initiated.

Confidentiality

The District shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by federal or state law or regulations, or to carry out the purposes of Title IX requirements, including the conduct of any investigation or judicial proceeding arising thereunder.

Title IX
Complaint
Procedures

Report

Reports or complaints may be verbal or written and may be made at any time (including during non-business hours), in person, by mail, by telephone, or by electronic mail using the contact information posted on the school and/or district website.

Initial Report

Any student, employee, parent or other person wishing to report or file a complaint alleging a violation as described above shall promptly notify either the principal or counselor at his/her school or the Title IX Coordinator designated and authorized by the District. Any employee who receives information from a student alleging sexual harassment shall report it to the Principal or Title IX Coordinator.

Report

The Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

Equitable Process

The District shall treat complainant(s) and respondent(s) equitably by following this grievance process before punishing the respondent or providing remedies to the complainant. Remedies will be designed to restore or preserve equal access to the District's education program or activity. Such remedies may include the same individualized services described as “supportive measures.” However, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.

Emergency Removal

Emergency removal of a respondent from an educational program or activity is permitted on an emergency basis **IF** the school district:

- Undertakes an individualized safety and risk analysis,
- Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and
- Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

Still subject to the student's rights under the IDEA, Section 504 and ADA

Written Notice

Within *3 business days* of receipt of a formal complaint, the District shall provide the following information in a written notice to the known **parties**:

- Notice of complaint process
- Notice of allegations to include:
 - Statement that respondent is presumed not responsible and that determination is made at the conclusion of the process
 - Right to advisor of choice (including attorney)
 - Right to inspect and review evidence
 - Code of conduct prohibition on knowingly making false statements or knowingly submitting false information
 - Range of disciplinary sanctions and remedies that may be implemented

Dismissal

- A complainant is NOT required to file a formal complaint.
- Under certain conditions a formal complaint may be dismissed:
 - Mandatory dismissal
 - Discretionary dismissal
- Upon dismissal, the District must promptly send written notice and reason(s) for the dismissal simultaneously to the parties.
- Dismissal may be appealed.

Mandatory Dismissal

- District must dismiss a formal complaint if:
 - The conduct alleged would not meet the definition of sexual harassment under Title IX;
 - The alleged sexual harassment did not occur in the school's educational program or activity; or
 - The alleged sexual harassment did not occur in the U.S.

Dismissal does not preclude action under another provision of the District's code of conduct.

Discretionary Dismissal

- A school may dismiss a complaint if:
 - The complainant notifies the Title IX Coordinator in writing that the complainant wishes to withdraw the formal complaint or some of its allegations;
 - The respondent is no longer enrolled or employed by the school; or
 - Specific circumstances prevent the school from gathering evidence sufficient to reach a determination about the allegations.

Other Requirements

- Preponderance of the evidence
- Presumption of innocence
- Require an objective evaluation of all relevant evidence.
- Credibility determinations may not be based on a person's status as a complainant, respondent, or witness.
- Title IX Coordinator, investigator, decision-maker, or any person facilitating the informal resolution process may not have a conflict of interest or bias and must receive adequate training.

Investigative Process

Outside Reporting

- If at any point in the reporting or investigation of reported sexual harassment of a student, a staff member, site coordinator or investigator determines that the reported harassment should more properly be termed abuse, the reported incident or situation shall be referred pursuant to the established protocol for child abuse investigation.
- Required reporting will include reports to DFCS, District and outside law enforcement per District reporting procedures for suspected child abuse.

Timeline

- After providing written notice to the parties of the receipt of a formal complaint, the District will have an initial 20 business days to investigate.
- District shall allow for temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action.
 - Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

Timeline

- **3 business days** from filing: written notice to parties
 - Must be updated for other allegations
- **10 calendar days** from notice: parties may submit evidence to investigators
- **20 business days** from filing: initial review of evidence completed by investigator and sent to parties for review.
- **10 calendar days** from evidence receipt: parties' written responses.
- **35 business days** from notice: investigative report finalized, distributed.

Investigators

- School administrators will serve as school investigators of complaints of Title IX sexual harassment complaints.

Non-Bias

- Status as respondent, complainant, witness should not weigh into credibility determinations;
- Respondent presumption of innocence through investigative process;
- Title IX Coordinator, investigators, decision-makers and other facilitators must:
 - Not have a conflict of interest;
 - Be non-biased.

Investigation

- Equal opportunity
- Lack of restrictions
- Right to an advisor
- Written notice of interviews, meetings
- Access to evidence
 - Opportunity to submit written response

Equal Opportunity

- The school must provide an equal opportunity for the parties to present witnesses and evidence, including expert witnesses, as well as inculpatory or exculpatory evidence.
- The school can't restrict the ability of either party to discuss the allegations under investigation, or to gather and present relevant evidence.
- Parties must have same opportunities to have others present during the grievance proceedings, including access to an advisor of choice for any meetings.

Investigative processes:

- Interviews of complainant, respondent, witnesses;
- Review of accessible law enforcement documents;
- Review of relevant student or employee records;
- Gathering and examining other relevant documents and evidence.

Evidence

- Objectively evaluate relevant evidence
- Relevant evidence: evidence that may tend to make the allegations at issue more or less likely to be true.

Party Rights

- Where a party has been invited to or is expected to participate in an investigative interview or other meeting, written notice will be issued to that party:
 - Date;
 - Time;
 - Location;
 - Participants; and
 - Purpose of the meeting
- Minimum 48 hours of notice.

Access/Response to Evidence

- The investigator(s) will send to each party and the party's advisor, if any, any non-privileged evidence subject to inspection and review in an electronic format or a hard copy.
- No later than ten (10) calendar days after the receipt of the initial review of the evidence, each party has the right to submit a written response to the evidence, which the investigator(s) will review and consider prior to the completion of the investigative report

Written Report

- Within 35 business days after notice of formal complaint
- An investigative report that fairly summarizes relevant evidence will be prepared
 - 10 days prior to the determination regarding responsibility, the investigative report, sent to each party and the party's advisor, if any, in an electronic format or a hard copy, for their review and written response.
- Question period

Written Report

- The investigation report should succinctly describe all collected information by investigator
- The investigator's role is *not* to make any recommendation as to whether a Title IX violation has occurred. That is the role of an independent decision-maker.

Decision

Division of responsibilities

- Decision-maker will not be the same person as Title IX Coordinator, investigator(s) or appeal decision-maker

Question & Answer Period

- After the investigative report has been sent to parties and before reaching a determination, decision-maker shall afford a 10-day period for each party to submit written, relevant questions for any party/witness, provide each party with the answers and allow for additional, limited follow-up questions.

Question & Answer Period

- Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence 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.
- The District shall not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. The decision-maker(s) shall explain to the party proposing the questions any decision to exclude a question as not relevant.

Determination

- The decision-maker(s) shall, within 10 days of the conclusion of the question and answer period, issue a written determination regarding responsibility.
- Issued simultaneously to both parties.

Decision

- Standard of Review: Preponderance of the evidence.
- Did Respondent commit the alleged violation?
- Presumption: Respondent not responsible for alleged conduct until conclusion of grievance process and determination of responsibility.

Elements of Written Decision:

- Identification of allegations potentially constituting sexual harassment under Title IX;
- Description of procedural steps taken from receipt of formal complaint through determination;
- Findings of fact supporting each determination;
- Conclusions regarding the application of the grievance process to the facts;

Written Decision, continued:

- A statement of, rationale for, the result regarding each allegation, including:
 - Determination regarding responsibility
 - Any disciplinary sanctions imposed upon Respondent
 - Whether remedies designed to restore or preserve equal access to education program or activity will be provided to the complainant
- Procedures and permissible bases for appeal.

Written Decision, continued:

- Provided to parties simultaneously
- Final either on the date the District provides the parties with the written determination of the result of the appeal if filed; or on the date that an appeal would be no longer timely (if none is filed)
- Title IX Coordinator is responsible for effective implementation of remedies.

Decision

- Sample decision

Appeals, Informal Resolution & After the Complaint

Appeal

- The District shall offer *both parties* an appeal from:
 - Determination regarding responsibility, and
 - District's dismissal of a formal complaint or any allegations therein.
- 10 days for filing

Bases for Appeal

- Limited bases for appeal
 - Procedural irregularity that affected the outcome of the matter;
 - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
 - The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Appeal

As to all appeals, the District shall:

- Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- Deputy Superintendent – decision maker
- Each party has five days to submit a written statement
- No consideration of additional evidence, unless it is new evidence that could affect outcome that was not reasonably available before.

Appeal Decision

- Issue a written decision describing the result of the appeal and the rationale for the result;
- Decision will be issued within 10 business days from parties' submission of written statement;
- Decision is final.

Informal Resolution

- Voluntary
- Only available if formal complaint is filed
- Unavailable to resolve allegations that an employee sexually harassed a student

Informal Resolution

- At any time prior to reaching a determination regarding responsibility
- Informal resolution process such as mediation, that does not involve a full investigation and adjudication
- Requires both parties' voluntarily-provided written consent

Record Keeping Requirements

- All Title IX records should be maintained for 7 years
 - Each sexual harassment investigation including any determination regarding responsibility, disciplinary sanctions, remedies;
 - Investigative report, evidence;
 - Decision;
 - Appeal decision;
 - Informal resolution;
 - Training materials.

Retaliation

- No District or person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding under Title IX.
- Exercise of rights protected under the First Amendment does not constitute retaliation.
- Charging an individual with a code of conduct violation for making a materially false statement in bad faith does not constitute retaliation.

Allegations Involving Employees

Employee as Respondent

- Determine if allegations rise to level of child abuse or other criminal misconduct, subject to District and/or outside law enforcement reporting
 - If behavior *does* cross line, make legally-required referral within 24 hours; communicate with Public Safety
- Communications, documentation of findings.

Employee as Complainant

- Title VII and Title IX can apply to employee reports of sexual harassment.
- If an employee is a complainant, separate investigative and decision-making team.

Questions?

