

# BEST FOR ALL

We will set all students on a path to success.

## Title IX Coordinator Training

Shaundraya Hersey | Staff Attorney

Rachel Suppé | Deputy General Counsel



# Agenda

- Overview of Title IX
- Review school/district policies
- Discuss the Bullying and Harassment & Title IX sexual harassment grievance processes
- Review required action steps
- Q & A



Please respond to the questions below:

- What is your level of familiarity with Title IX?
- How many years of experience do you have as a Title IX coordinator?

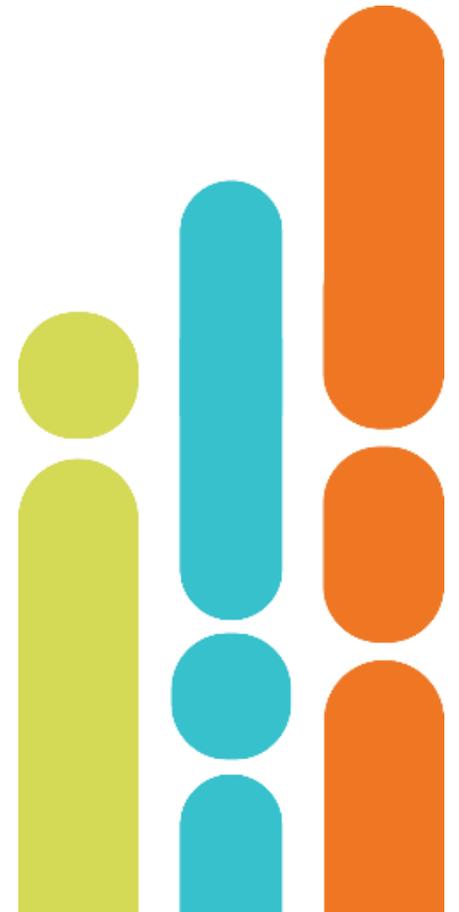


# Title IX Overview



## Title IX Overview

- **Title IX of the Education Amendments of 1972** prohibits discrimination and harassment on the basis of sex and gender in all public schools.
- On August 14, 2020, the Title IX regulations were updated to address complaints of sexual harassment.
  - SSS and ASD policies and procedures were updated to reflect these requirements.
  - These updated policies require mandatory training for all Title IX personnel.



# Sex and gender

- Prohibits discrimination and harassment based on sex
  - e.g., sexual harassment
- Prohibits discrimination and harassment based on gender
  - e.g., gender norms, gender expectations, sex stereotypes



# LGBT Students

- Sexual orientation
- Gender identity
- ALL students—including LGBT students—are protected from harassment based on their sex and gender. This includes sexual harassment and gender-based harassment.



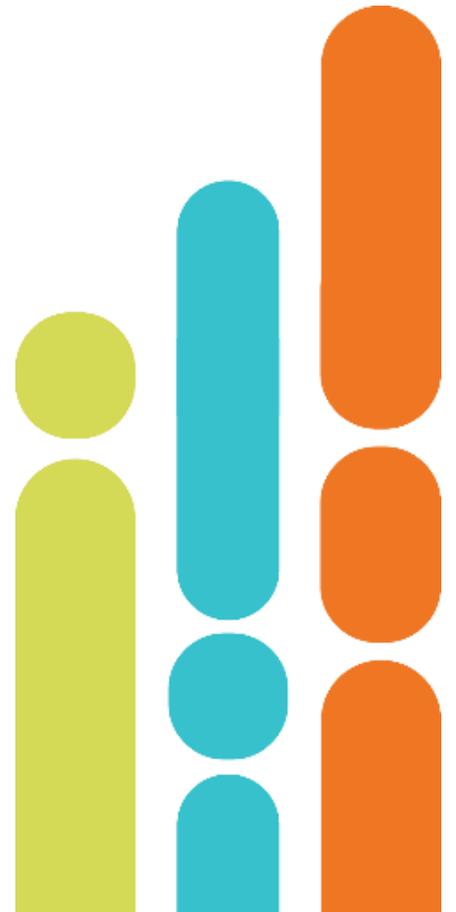
# Title IX

- All persons, regardless of gender, are prohibited from engaging in discrimination and harassment
- All persons, regardless of gender, are protected from discrimination and harassment
- Does not need to involve members of the opposite sex
- Students are protected from harassment from other students, school/district employees, and third parties such as contractors, school visitors, etc.



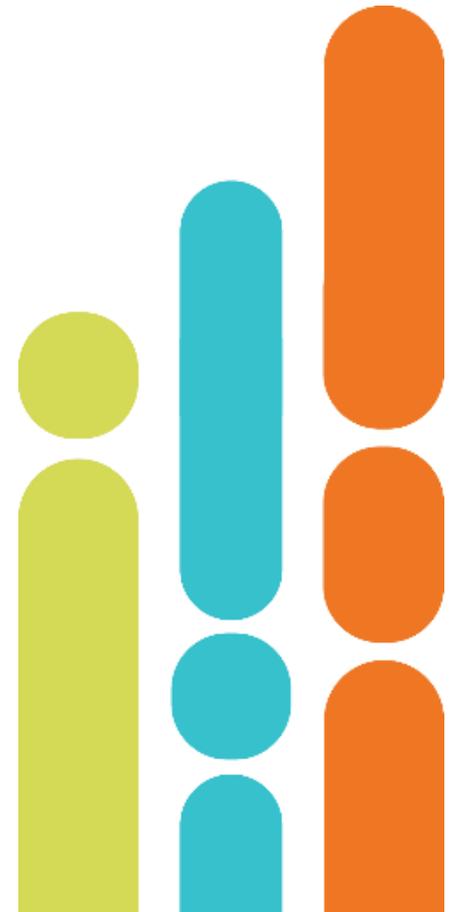
# Scope

- Programs or activities that receive Federal funds from the Department of Education
- **All** program areas (academics, extracurricular, and athletics)
- Applies to **all** activities of a school, even some that occur off campus
- Title IX sexual harassment rules apply to **all** school education programs and activities. This includes **all** locations, events, or circumstances over which the school exercises substantial control over both the respondent and the context in which the sexual harassment occurred.



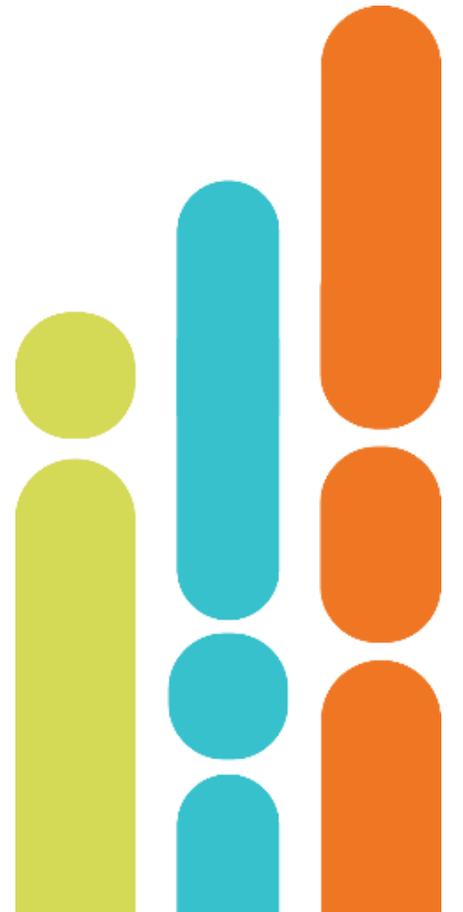
# Definitions

- **Discrimination** – Conduct that deprives a student of the benefit of an educational opportunity on the basis of sex or gender
- **Gender based harassment** – Harassment on the basis of a student’s gender that is sufficiently severe, persistent, **or** pervasive that it creates a hostile environment or interferes with or limits the student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school
  - Note: separate definition of “sexual harassment”



# What is severe, persistent, or pervasive?

- Severe - extreme acts, actions that may include physical assault or severe threat of bodily harm
- Persistent - behavior that happens repeatedly
- Pervasive - the unwelcome behavior is found throughout the school environment (school climate/culture)



# Federal definition of “sexual harassment”

- Sexual harassment under Title IX:
  - A school employee conditioning education benefits on participation in unwelcome sexual conduct (i.e., quid pro quo); **or**
  - 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; **or**
  - Sexual assault, dating violence, domestic violence, or stalking as defined under federal law.
- To be actionable, the school must exercise substantial control over both the respondent and the context in which the sexual harassment occurred



# Examples of sexual harassment

Sexually suggestive remarks

Verbal harassment or abuse

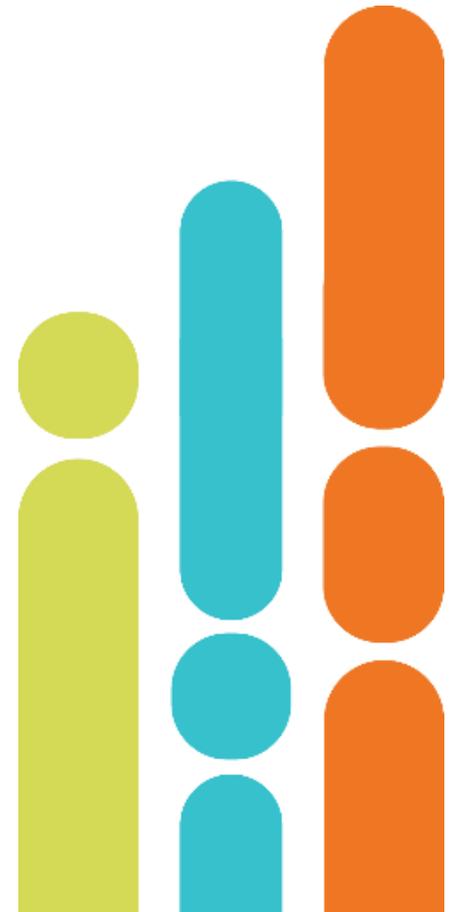
Sexually suggestive pictures

Sexually suggestive gesturing

Harassing or sexually suggestive or offensive messages

Subtle or direct propositions for sexual favors

Touching of a sexual nature



# Types of harassment

- Harassment **does not** have to:
  - Include intent to harm
  - Include an imbalance of power
  - Be directed at a specific target
  - Involve repeated incidents
  - Involve physical touching



# OCR: Obligation to investigate

- A school is responsible for addressing harassment incidents about which it **knows or reasonably should have known**.
- Different standard for sexual harassment:
  - A school is required to respond when it has **actual knowledge** of sexual harassment.
  - Actual knowledge: Notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to **any employee of an elementary and secondary school**.



# Special Note



- While some conduct may not meet the definition of Title IX sexual harassment, **school administrators are still required to investigate alleged conduct under applicable state or federal anti-harassment and bullying laws or school disciplinary policies.**
  - Ex.
    - Tennessee’s Harassment, Intimidation, Bullying and Cyber-bullying law (T.C.A. §49-6-4501 et seq.)
    - Tennessee’s Anti-Hazing Law (T.C.A. §49-2-120)
    - Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d)

# Policies

- 6.304: Discrimination, Harassment, Bullying, Cyberbullying, and Intimidation
- 6.3041: Title IX & Sexual Harassment



# Recap of Discrimination, Harassment, Bullying, Cyber-bullying, and Intimidation Policy

## Scope:

- Bullying, cyber-bullying, discrimination, harassment, intimidation, hazing, or any other victimization of students.
- Covers employees, employees' behaviors, students, and students' behaviors.

## Roles & Responsibilities:

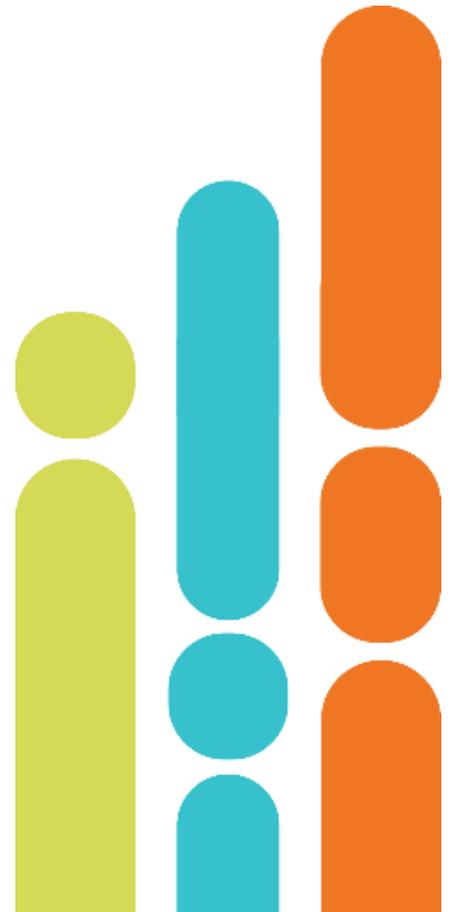
- Director of schools/superintendents must educate and train staff and students and develop forms and procedures.



# Recap of Discrimination, Harassment, Bullying, Cyberbullying, and Intimidation Policy

## Definition:

- Bullying, harassment, or intimidation is an act that substantially interferes with a student's educational benefits, opportunities or performance, and has the effect of:
  - Physically harming a student or damaging a student's property;
  - Knowingly placing the student or students in reasonable fear of physical harm to the student or damage to the student's property;
  - Causing emotional distress to a student or students; or
  - Creating a hostile educational environment.
- **May also include unwelcome conduct based on a protected class that is severe, pervasive, or persistent and creates a hostile environment.**



# Recap of Discrimination, Harassment, Bullying, Cyberbullying, and Intimidation Policy

## Definitions:

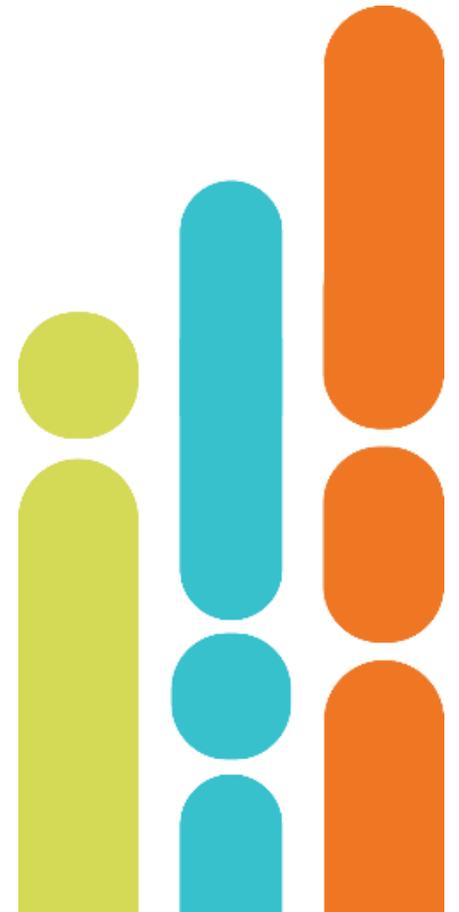
- Cyberbullying is a form of bullying undertaken through the use of electronic devices.
- **Discrimination is conduct that deprives a student of the benefit of an educational opportunity based on a protected class.**
- Hazing is an intentional or reckless act by a student or group of students that is directed against any other student that endangers the mental or physical health or safety of the student or that induces or coerces a student to endanger his/her mental or physical health or safety.
- Retaliation is any adverse action against an individual.



# Recap of Discrimination, Harassment, Bullying, Cyber-bullying, and Intimidation Policy

## Complaints & Investigations:

- Mandatory reporting
- Anonymous reports
- **Report allegations or instances of discrimination or harassment on the basis of race, nationality, origin, color, sex, gender, disability, or religion to the TOCR within one school day.**
- Principal/dean or designee shall investigate all other claims and:
  - initiate an investigation within forty-eight (48) hours of receipt of a report,
  - immediately notify the parent(s)/guardian(s) when a student is involved in an act of discrimination, harassment, intimidation, bullying, or cyber-bullying,
  - provide information on district counseling and support services.
  - complete investigations within twenty (20) calendar days
  - prepare written report and deliver to parties and superintendent/director of schools



# Recap of Discrimination, Harassment, Bullying, Cyberbullying, and Intimidation Policy

## Response & Prevention:

- The principal/dean or designee **shall** consider the nature and circumstances of the incident, the age of the individual, the degree of harm, previous incidences or patterns of behavior, or any other factors.
- A substantiated charge may result in disciplinary action up to and including suspension or termination.



# Recap of Discrimination, Harassment, Bullying, Cyberbullying, and Intimidation Policy

## Physical Harm & Abuse:

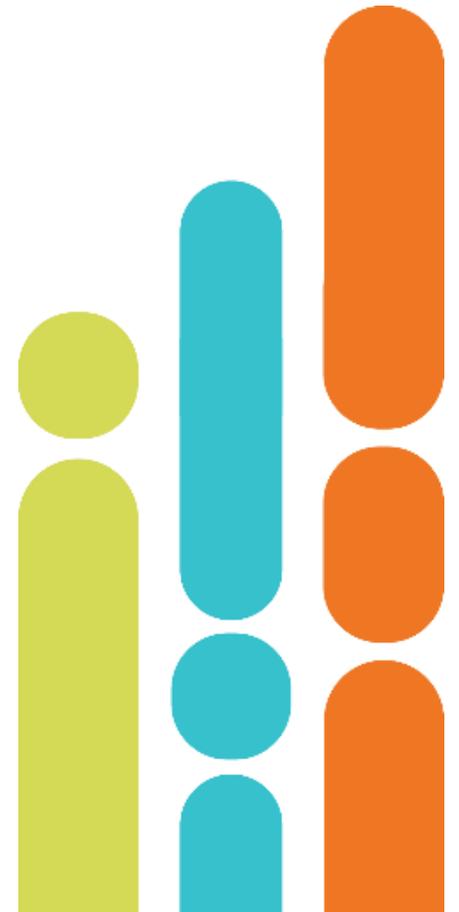
- Principal/dean or designee shall report the findings of physical harm or threat of physical harm and any disciplinary actions taken to the director of schools.
- Some claims may also be reported to the school's Child Abuse Coordinator and/or local authorities

## Annual Reporting:

- Director of schools/superintendent or designee shall prepare an annual report

## Other Prohibited Conduct:

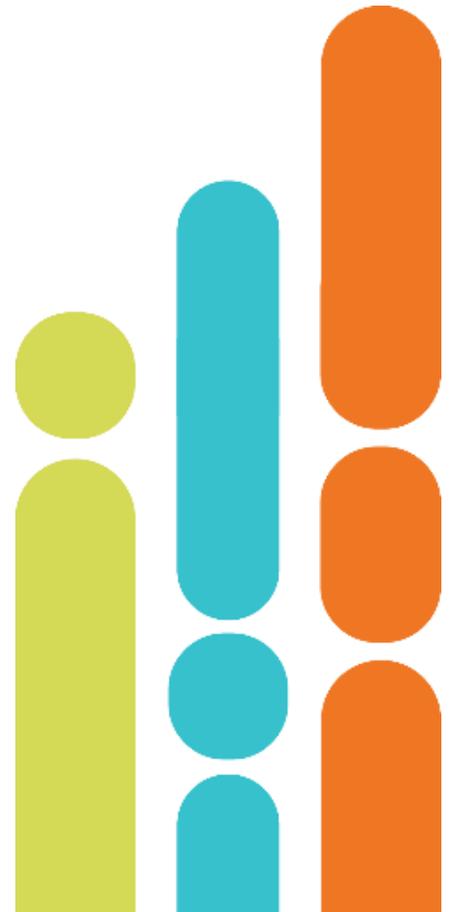
- Retaliation
- False accusations



# Title IX & Sexual Harassment Policy

## General Information

- The policy covers employees, employees' behaviors, students, and students' behaviors while on school property, at any school-sponsored activity, on school-provided equipment or transportation, or at any official school bus stop in accordance with federal law.
- The policy shall be disseminated annually to all school staff, students, and parents and guardians.
- The Title IX coordinator as well as any personnel chosen to facilitate the grievance process shall not have a conflict of interest against any party of the complaint. These individuals shall receive training as to how to promptly and equitably resolve student and employee complaints.
- The director of schools shall appoint a Title IX coordinator.
- All employees shall receive training on complying with the policy and federal law.

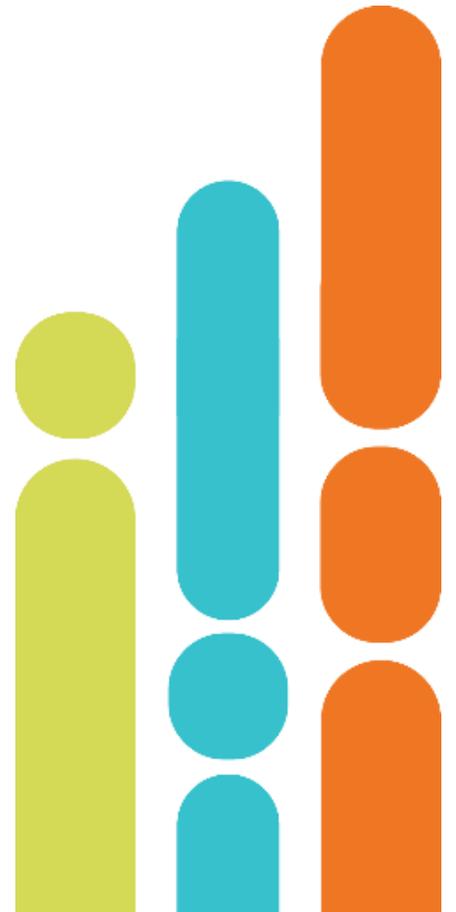


# Title IX & Sexual Harassment Policy

## Title IX Coordinator

- The Title IX coordinator shall respond promptly to all general reports as well as formal complaints of sexual harassment. He/she shall be kept informed by school-level personnel of all investigations and shall provide input on an ongoing basis as appropriate.
- Any individual may contact the school's Title IX coordinators at any time using the information below:

**Your name and contact information should appear here**



# Title IX & Sexual Harassment Policy

## Definitions

- The **Complainant** is an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- The **Respondent** is an individual who is reported to be the perpetrator of conduct that could constitute sexual harassment.



# Title IX & Sexual Harassment Policy

## Definitions

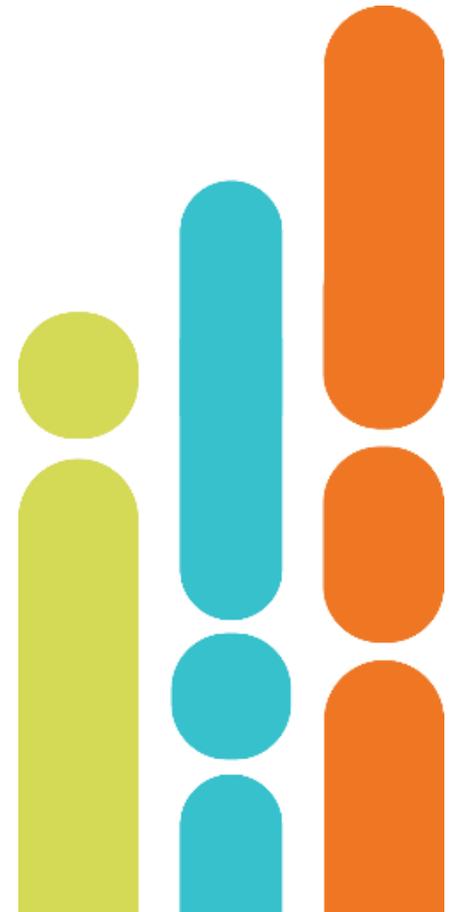
- **Sexual harassment** is conduct on the basis of sex that satisfies one or more of the following:
  - a. A school employee conditioning an aid, benefit, or service of an education program or activity on an individual's participation in unwelcome sexual conduct;
  - b. Unwelcome conduct determined by 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; or
  - c. Sexual assault, dating violence, domestic violence, or stalking as defined in state and federal law.



# Title IX & Sexual Harassment Policy

## Definitions

- Behaviors that constitute sexual harassment may include, but are not limited to:
  - a. Sexually suggestive remarks;
  - b. Verbal harassment or abuse;
  - c. Sexually suggestive pictures;
  - d. Sexually suggestive gesturing;
  - e. Harassing or sexually suggestive or offensive messages that are written or electronic;
  - f. Subtle or direct propositions for sexual favors; and
  - g. Touching of a sexual nature.
- Sexual harassment may be directed against a particular person or persons, or a group, whether of the opposite sex or the same sex.



# Title IX & Sexual Harassment Policy

## Definitions

- “Supportive measures” are **non-disciplinary, non-punitive**, individualized services and **shall** be offered to the complainant and the respondent, as appropriate. These measures **may** include, but are not limited to, the following:
  - a. Counseling;
  - b. Course modifications;
  - c. Schedule changes; and
  - d. Increased monitoring or supervision.
- The measures offered to the complainant and the respondent **shall** remain confidential to the extent that maintaining such confidentiality would not impair the ability of the school to provide the supportive measures.

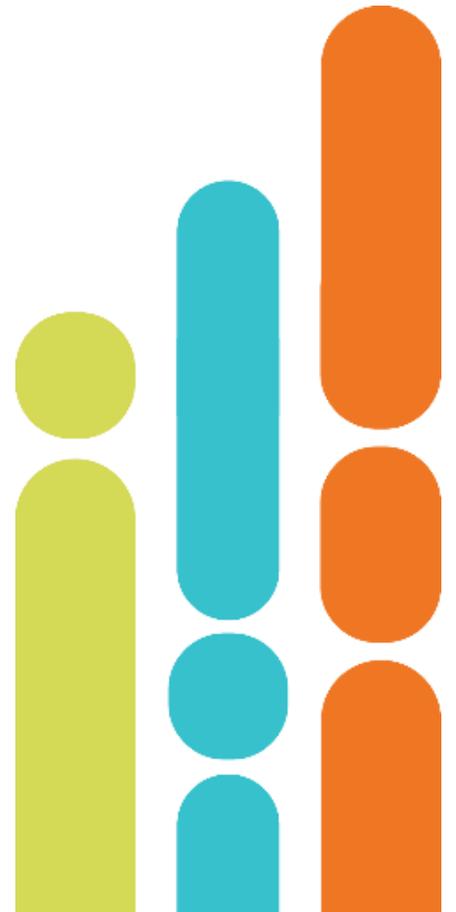


# Title IX & Sexual Harassment Policy

## Grievance Process

Upon learning of an instance of alleged sexual harassment, even if no formal complaint is filed, the Title IX coordinator **shall**:

- (a) Promptly contact the complainant to discuss the availability of supportive measures;
- (b) Consider the complainant's wishes with respect to supportive measures;
- (c) Inform the complainant of the availability of supportive measures;
- (d) Explain the process for filing a formal complaint; and
- (e) Immediately (within 24 hours) contact Shaundraya Hersey, staff attorney, at the Tennessee Department of Education's office for civil rights at (615) 289-1887 or [Shaundraya.Hersey@tn.gov](mailto:Shaundraya.Hersey@tn.gov).



# Title IX & Sexual Harassment Policy Grievance Process

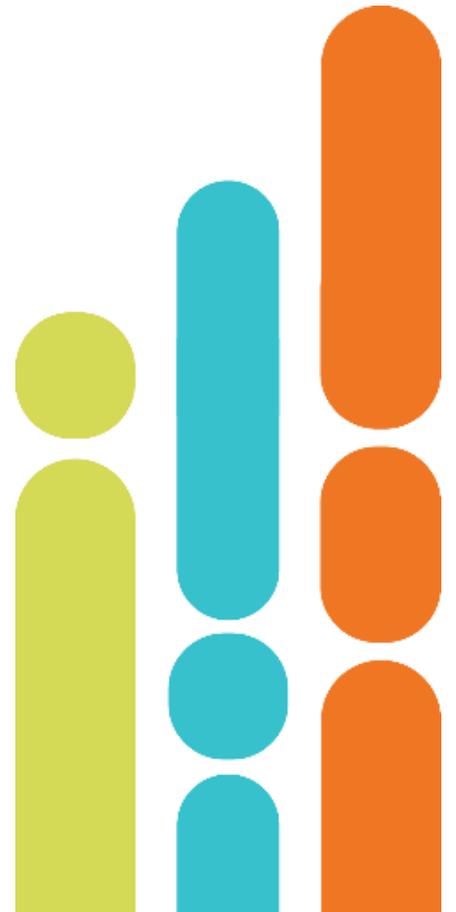
- While the school will respect the confidentiality of the complainant and the respondent as much as possible, some information may need to be disclosed to appropriate individuals. All disclosures shall be consistent with the school's legal obligations and the necessity to investigate allegations of harassment and take disciplinary action.



# Title IX & Sexual Harassment Policy Grievance Process

- **Disciplinary consequences or sanctions shall not be initiated against the respondent until the grievance process has been completed.**

Unless there is an immediate threat to the physical health or safety of any student arising from the allegation of sexual harassment that justifies removal, the respondent's placement shall not be changed. If the respondent is an employee, he/she may be placed on administrative leave during the pendency of the grievance process. The Title IX coordinator shall keep the director of schools informed of any employee respondents so that he/she can make any necessary reports to the State Board of Education in compliance with state law.



# Title IX & Sexual Harassment Policy

## Grievance Process - Complaints

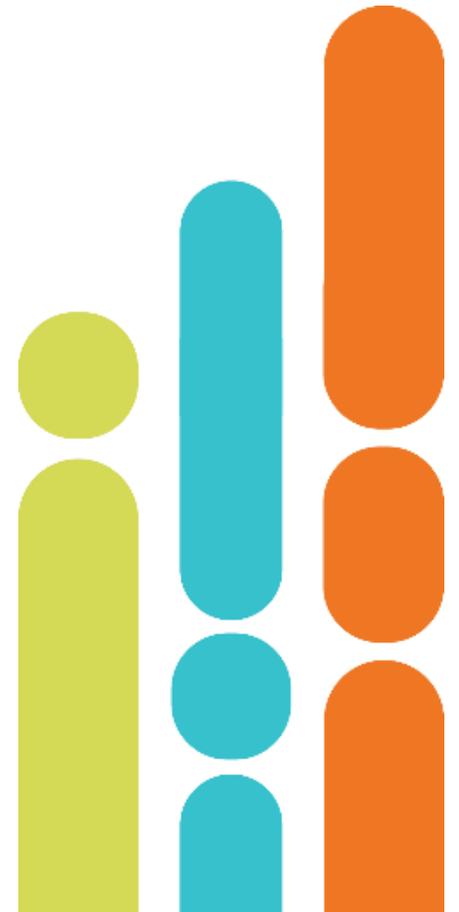
- Any individual who has knowledge of behaviors that may constitute a violation of this policy **shall immediately** report such information to the Title IX coordinator, however, nothing in this policy requires a complainant to either report or file a formal complaint within a certain timeframe. If the complaint involves the Title IX coordinator, the complaint shall be filed with the director of schools.
- If a complaint involves allegations of child abuse, including child abuse on school grounds, appropriate notification **shall** be made per the school policy on reporting child abuse.



# Title IX & Sexual Harassment Policy

## Grievance Process - Complaints

- Upon receipt of a formal complaint, the Title IX coordinator **shall promptly**:
  - (a) Provide written notice of the allegations, and the grievance process to all known parties to give the respondent time to prepare a response before an initial interview;
  - (b) Inform the parties of the prohibition against making false statement or knowingly submitting false information;
  - (c) Inform the parties that they may have an advisor present during any subsequent meetings;
  - (d) Offer supportive measures in an equitable manner to both parties; and
  - (e) Immediately (within 24 hours) contact Shaundraya Hersey, staff attorney, at the Tennessee Department of Education's office for civil rights at (615) 289-1887 or [Shaundraya.Hersey@tn.gov](mailto:Shaundraya.Hersey@tn.gov).
- If the Title IX coordinator dismisses a complaint, written notice, including the reasons for dismissal, shall be provided to both parties simultaneously



# Title IX & Sexual Harassment Policy

## Grievance Process - Investigations

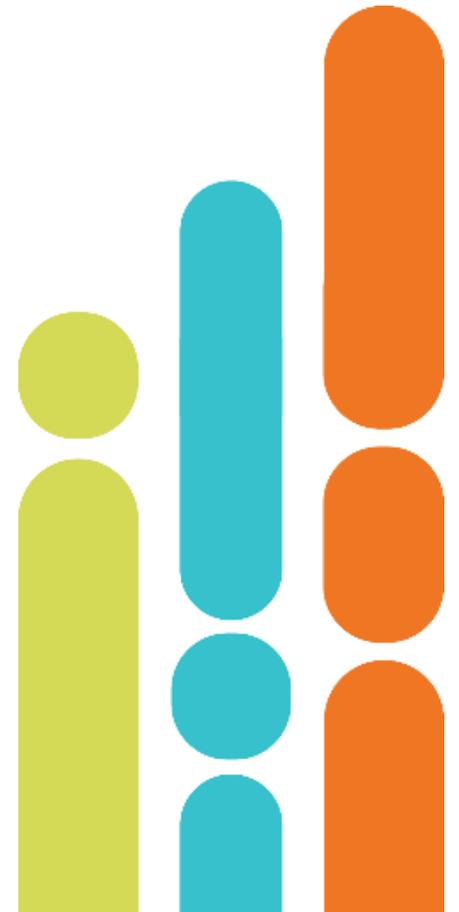
- The Tennessee Department of Education's office of general counsel shall assign an investigator and be responsible for investigating complaints in an equitable manner that involves an objective evaluation of all relevant evidence. The burden for obtaining evidence sufficient to reach a determination regarding responsibility rests on the school and not the complainant or respondent.
- Once a complaint is received, the investigator **shall initiate an investigation within forty-eight (48) hours** of receipt of the complaint. If an investigation is not initiated within forty-eight (48) hours, the investigator shall provide the Title IX coordinator with appropriate documentation detailing the reasons why the investigation was not initiated within the required timeframe.
- All investigations **shall be completed within twenty (20) calendar days** from the receipt of the initial complaint. If the investigation is not complete within twenty (20) calendar days, the investigator shall provide the Title IX coordinator with appropriate documentation detailing the reasons why the investigation has not been completed.



# Title IX & Sexual Harassment Policy

## Grievance Process - Investigations

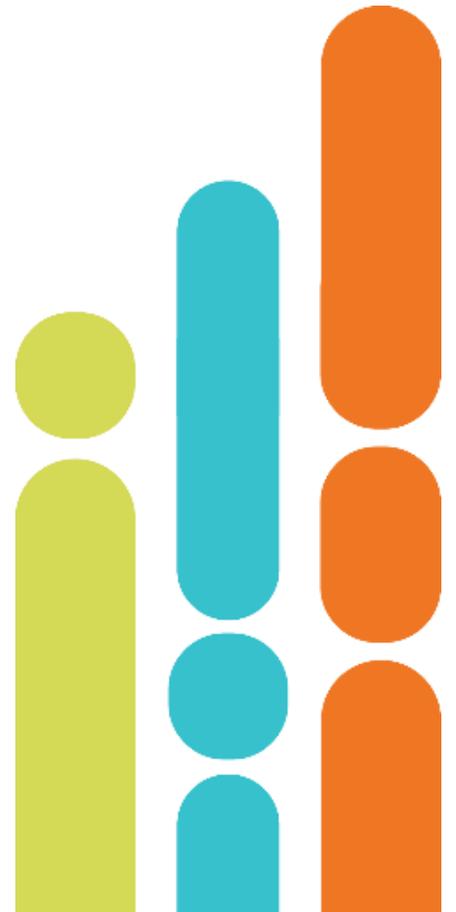
- **All investigations shall:**
  - (a) Provide an equal opportunity for the parties to present witnesses and evidence;
  - (b) Not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant evidence;
  - (c) Refrain from requiring, allowing, relying upon, or otherwise using questions or evidence that seek disclosure of information protected under a legally recognized privilege unless such privilege has been waived;
  - (d) Provide the parties with the same opportunities to have others present during any grievance proceeding;
  - (e) Provide to parties whose participation is requested written notice of the date, time, location, participants, and purpose of all investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
  - (f) Provide both parties an equal opportunity to inspect and review any evidence directly related to the allegations in the formal complaint; and
  - (g) Result in the creation of an investigative report that fairly summarizes relevant evidence.
    - (a) Prior to the completion of the investigative report, the investigator shall send to each party the evidence subject to inspection and review. All parties shall have at least ten (10) days to submit a written response which shall be taken into consideration in creating the final report.



# Title IX & Sexual Harassment Policy

## Grievance Process - Investigations

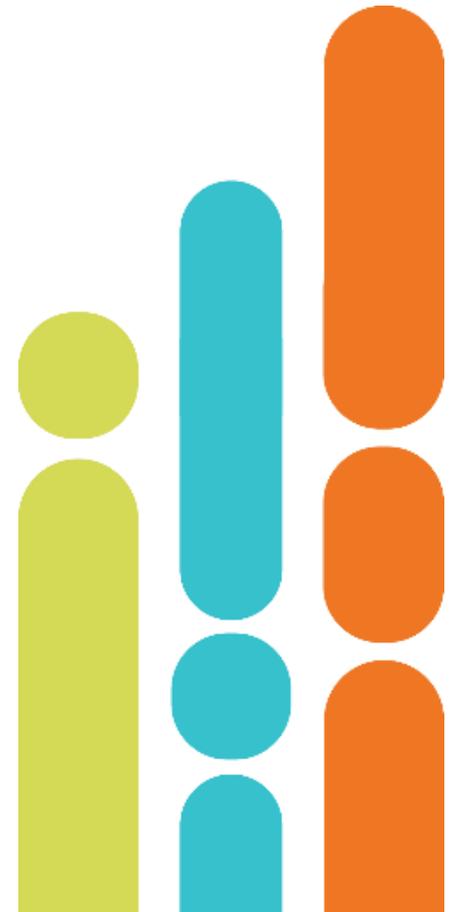
- Within the parameters of the federal Family Educational Rights and Privacy Act, **the Title IX coordinator shall keep the complainant and the respondent informed of the status of the investigation process.** At the close of the investigation, a written final report on the investigation will be delivered to the complainant and respondent (or their parents/guardians if they are minors), to the director of schools, and to the Tennessee Department of Education's Office for Civil Rights.



# Title IX & Sexual Harassment Policy

## Grievance Process – Determination of Responsibility

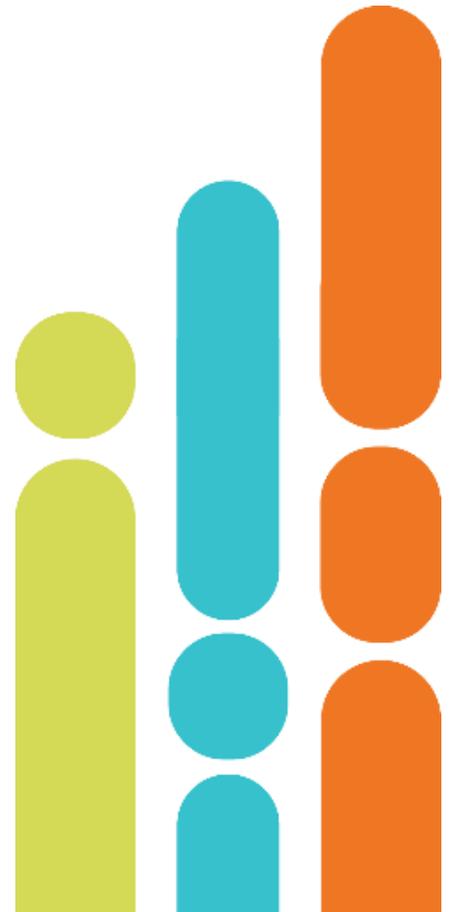
- The respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. The preponderance of the evidence standard shall be used in making this determination.
- An attorney with the Tennessee Department of Education's office of general counsel shall act as the decision-maker. He/She shall receive the final report of the investigation and allow each party the opportunity to submit written questions that he/she wants asked of any party or witness prior to the determining responsibility.



# Title IX & Sexual Harassment Policy

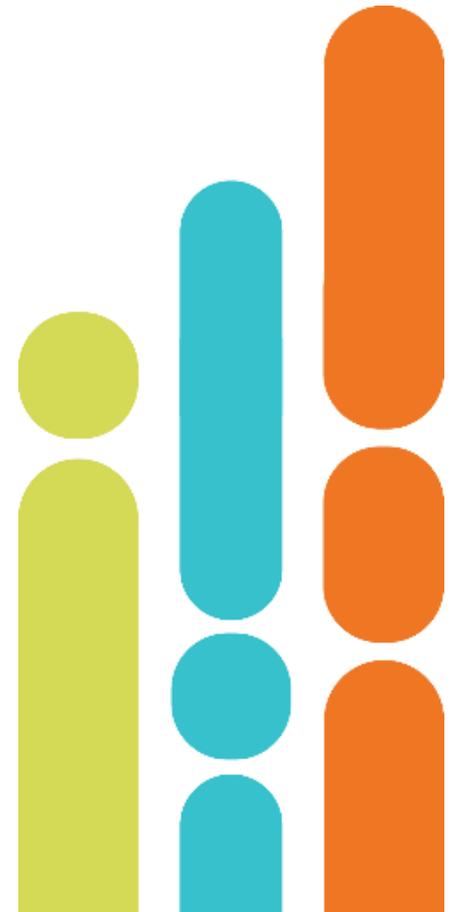
## Grievance Process – Determination of Responsibility

- The decision-maker shall make a determination regarding responsibility and provide the written determination to the parties simultaneously along with information about how to file an appeal.
- A substantiated charge against a student may result in corrective or disciplinary action up to and including expulsion. A substantiated charge against an employee shall result in disciplinary action up to and including termination.
- After a determination of responsibility is made, the Title IX coordinator shall work with the complainant to determine if further supportive measures are necessary. The Title IX coordinator shall also determine whether any other actions are necessary to prevent reoccurrence of the harassment



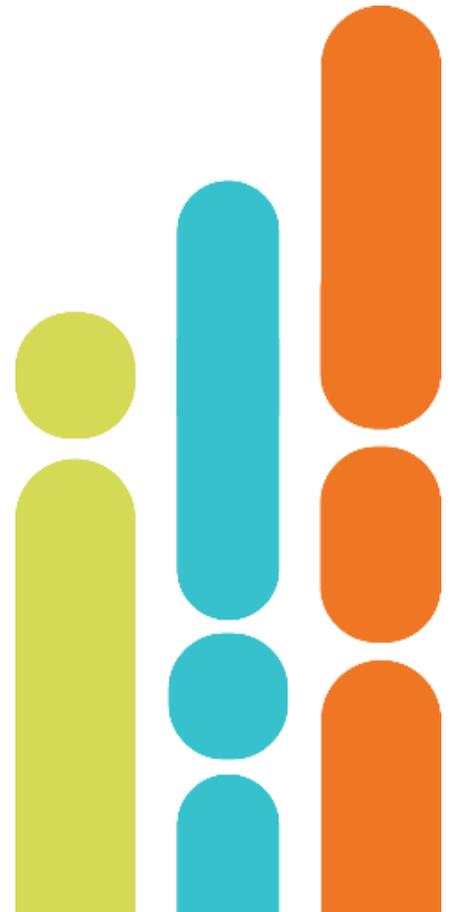
# Title IX & Sexual Harassment Policy Appeals

- Either party may appeal from a determination of responsibility based on a procedural irregularity that affected the outcome, new evidence that was not reasonably available at the time of the determination that could affect the outcome, or an alleged conflict of interest on the part of the Title IX coordinator or any personnel chosen to facilitate the grievance process. **Appeals shall be submitted to the Title IX coordinator within ten (10) days of a determination of responsibility.**
- Upon receipt of an appeal, the Title IX coordinator shall:
  - Immediately (within 24 hours) contact Shaundraya Hersey, staff attorney, at the Tennessee Department of Education's office for civil rights at (615) 289-1887 or [Shaundraya.Hersey@tn.gov](mailto:Shaundraya.Hersey@tn.gov).
  - Notify the parties in writing.



# Title IX & Sexual Harassment Policy Appeals

- The Tennessee Department of Education's office of general counsel shall assign an impartial hearing officer within five (5) days of receipt of the appeal.
- During the appeal process, the parties shall have a reasonable, equal opportunity to submit written statements. Within ten (10) calendar days, the hearing officer shall issue a written decision describing the result of the appeal and the rationale for the result. The written decision shall be provided simultaneously to both parties.



# Title IX & Sexual Harassment Policy

## Retaliation

- Retaliation against any person who makes a report or complaint or assists, participates, or refuses to participate in any investigation of an act alleged in this policy is prohibited.



10 Minute Break



# Title IX Sexual Harassment Grievance Process & Other Requirements



# Expectations of the Title IX Coordinator



Specific expectations during the grievance process:

- Implement and manage the report/complaint intake processes
- Respond when the school has actual knowledge of a report or complaint
- Contact the complainant and respondent regarding supportive measures and monitor any supports provided to parties
- Understand the process from report through resolution in order to shepherd the process and coordinate efforts
- Serve **impartially** and without **bias**

# Grievance Process

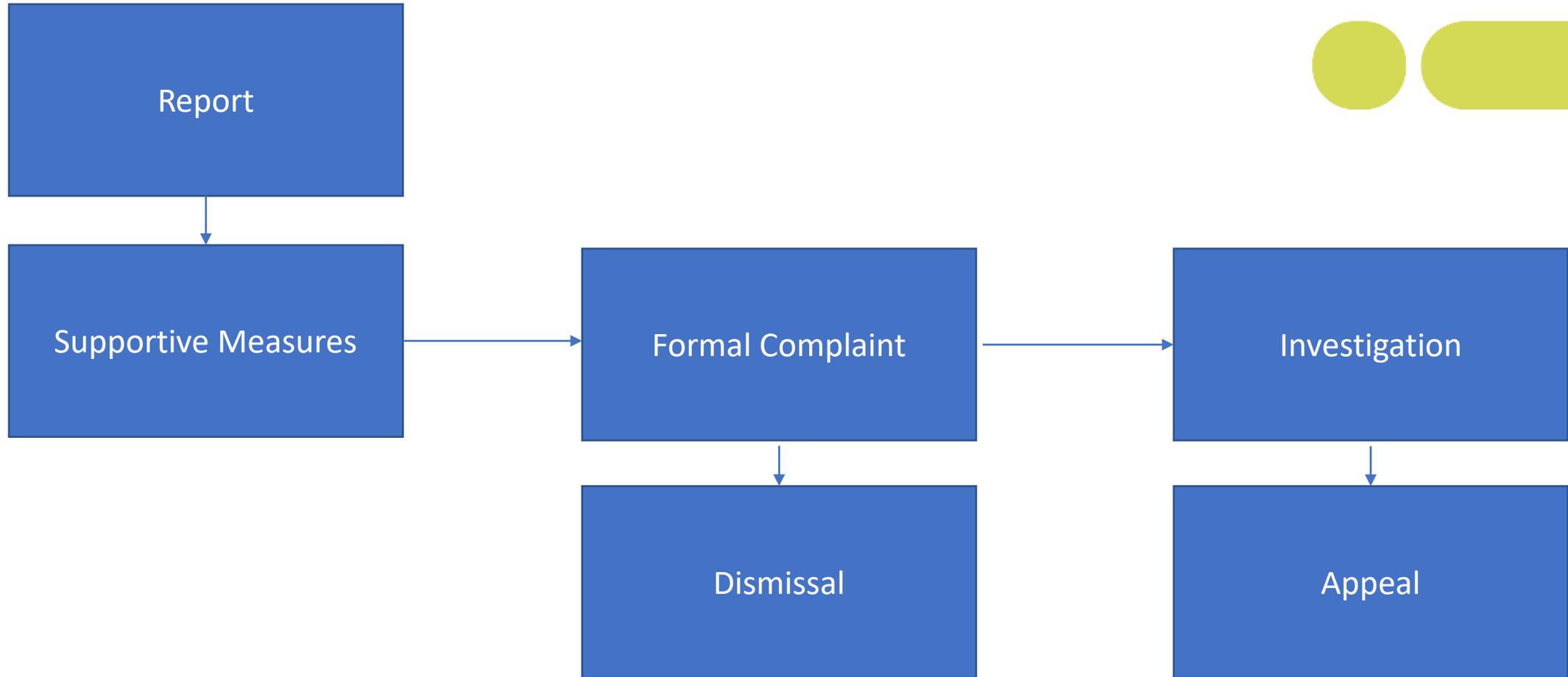
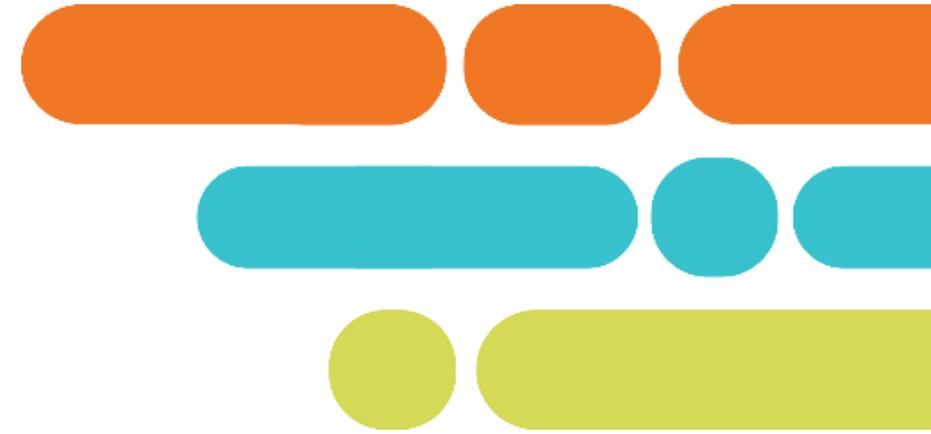
## General Requirements

District/School Title IX Policies and Procedures must:

- Treat complainant/respondent equitably
- Include remedies designed to maintain the complainant's equal access to education
- Include a presumption that respondent is not responsible
- Include reasonably prompt time frames
- Describe the range of remedies and sanctions
- Describe the appeal's process and range of supportive measures
- State the evidentiary standard to be used –Preponderance of Evidence or Clear and Convincing
- Require objective evaluation of all relevant evidence
- Exclude privileged information
- Require Title IX personnel to be trained (training materials must be posted on school's website), no conflicts of interest or bias



# Grievance Process Overview



# Grievance Process

## Reporting

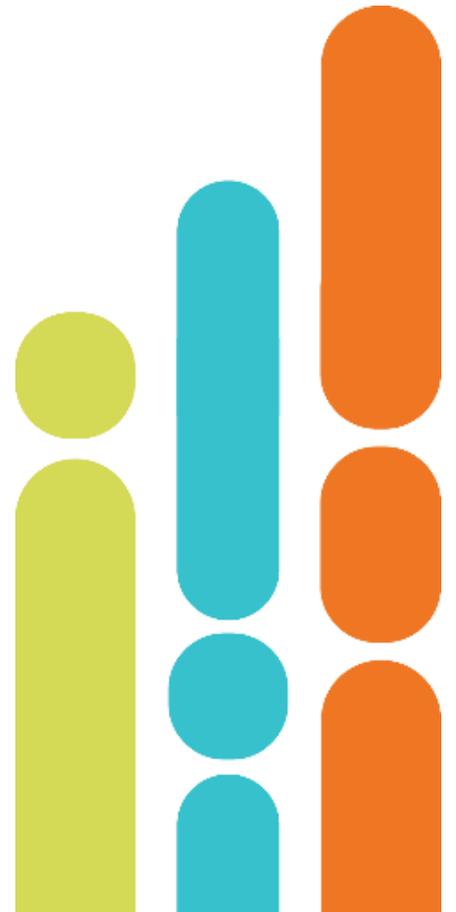
- Schools must prominently display contact information for the Title IX Coordinator on their websites.
- Any person may report sexual harassment (All staff **must** report any acts of sexual harassment).
- Reports may be made in person, by mail, by telephone, or by e-mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.
- Such a report may be made at any time, including during non-business hours.



# Grievance Process

## Report Intake

- Title IX requires a K-12 school to respond whenever **any** employee has notice of sexual harassment.
- If you become aware of a potential Title IX sexual harassment concern, document the incident in a confidential file on your computer and immediately contact the Tennessee Department of Education Office for Civil Rights (TCOR).
- Contact TDOE Title IX Coordinator Shaundraya Hersey.
  - [Shaundraya.hersey@tn.gov](mailto:Shaundraya.hersey@tn.gov)
  - 615-289-1887
- If Shaundraya cannot be reached, contact Legal Counsel to ASD and State Special Schools, Lee Danley.
  - [Lee.danley@tn.gov](mailto:Lee.danley@tn.gov)
  - 615-253-1550



# Grievance Process

## Report Intake

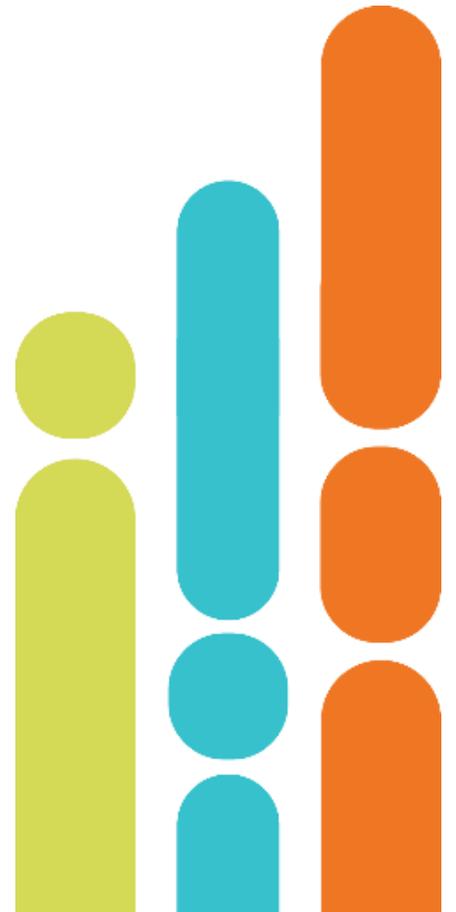
- **REMEMBER** - If a report involves allegations of child abuse or criminal conduct, the school must report these allegations to the proper authorities.
  - The school/district's Child Abuse Coordinator should be notified of allegations of abuse.
- This does not stop school/district's obligation to investigate and correct harassment.



# Grievance Process

## Responding to a Report

- The Title IX Coordinator and TOCR will review the report to determine whether the conduct potentially warrants a Title IX sexual harassment investigation.
  1. Quid pro quo;
  2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, **and** objectively offensive
  3. Sexual assault, dating violence, domestic violence, or stalking as defined under federal law
- If a Title IX sexual harassment investigation is necessary, the Title IX Coordinator and TOCR will contact the complainant, offer supportive measures, and explain the process for filing a formal complaint.
- If the complainant decides to file a formal complaint, or if the Title IX Coordinator signs a formal complaint, an investigation will begin.



# Grievance Process

## Responding to a Report

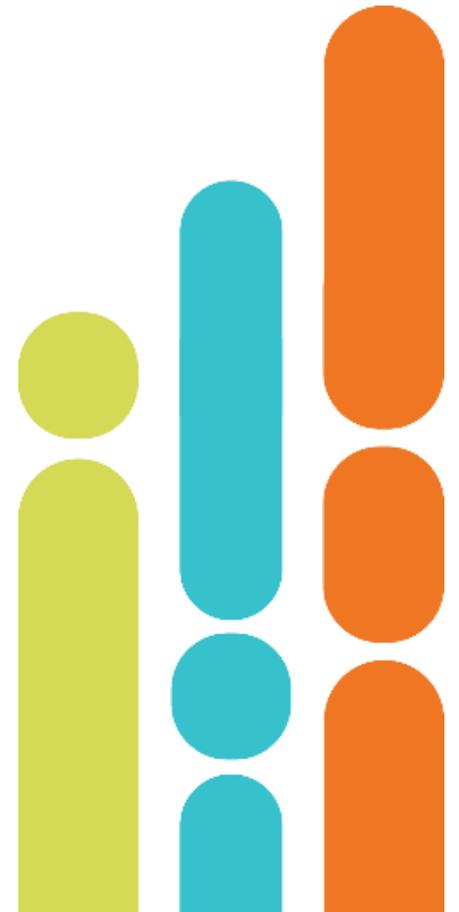
- **REMEMBER** - If the Title IX Coordinator and TOCR determine that a report does not warrant a Title IX sexual harassment investigation, the matter will be sent to the appropriate principal or administrator for review under a different disciplinary policy.



# Grievance Process

## Supportive Measures

- Supportive measures help restore access to a school's educational programs and will be offered to both the complainant and respondent.
  - **REMEMBER** - Students cannot be disciplined or removed until the grievance process is complete unless there is a need for emergency removal.
    - Emergency Removal – only if there is a threat to safety
  - Employees can be placed on admin leave or suspension without pay pending an investigation.
- Measures offered must remain confidential.
- A school/district must consider a party's wishes with respect to supportive measures.



# Grievance Process

## Filing a Complaint

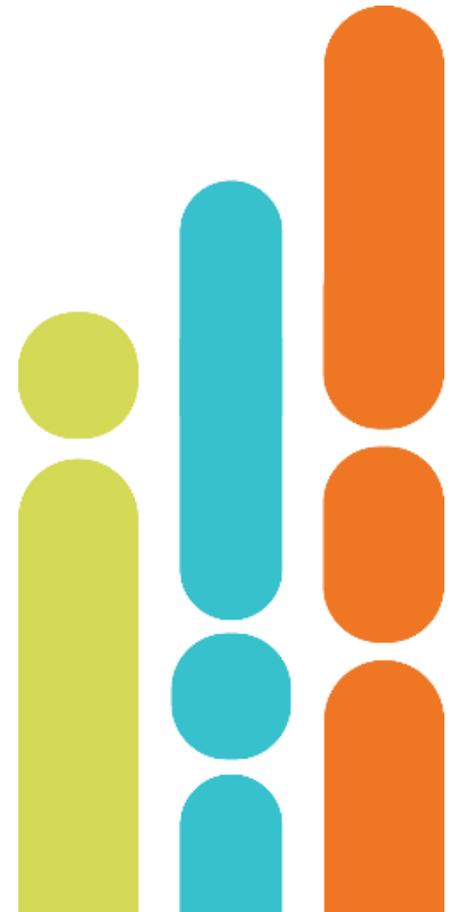
- A complainant may file a formal complaint with the Title IX coordinator.
  - The Title IX regulations define a formal complaint as a document or electronic submission that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.
- The Title IX Coordinator may also sign a report of sexual harassment making it a formal complaint.



# Grievance Process

## Complaints

- Upon receipt of a formal complaint, the Title IX Coordinator and TOCR will promptly:
  - Provide all parties written notice of the allegations, and the grievance process
    - Must include sufficient details known at the time
    - Must provide parties sufficient time to prepare responses to allegations
  - Inform the parties of the prohibition against making false statements
  - Inform the parties that the respondent is presumed not responsible and that a determination will be made at the conclusion of the grievance process
  - Inform the parties that they may have an advisor
  - Inform the parties that they may inspect/review evidence
  - Provide all parties with notice of any additional allegations that may arise
  - Offer all parties supportive measures in an equitable manner



# Grievance Process

## Dismissal and Consolidation

- A complaint can be dismissed after an initial assessment and sent back to school administrators for review under a different disciplinary policy.
- Mandatory Dismissals
  - Alleged conduct, even if proven, would not fall within the scope of Title IX
- Permissive
  - Complainant withdraws formal complaint
  - Respondent is no longer enrolled/employed
  - Specific circumstances prohibit gathering sufficient evidence
- Must provide notice of dismissal to parties
- Consolidation of Formal Complaints
  - Permissive –where allegations arise out of same facts/circumstances



# Grievance Process

## Complaint Intake - Best Practices

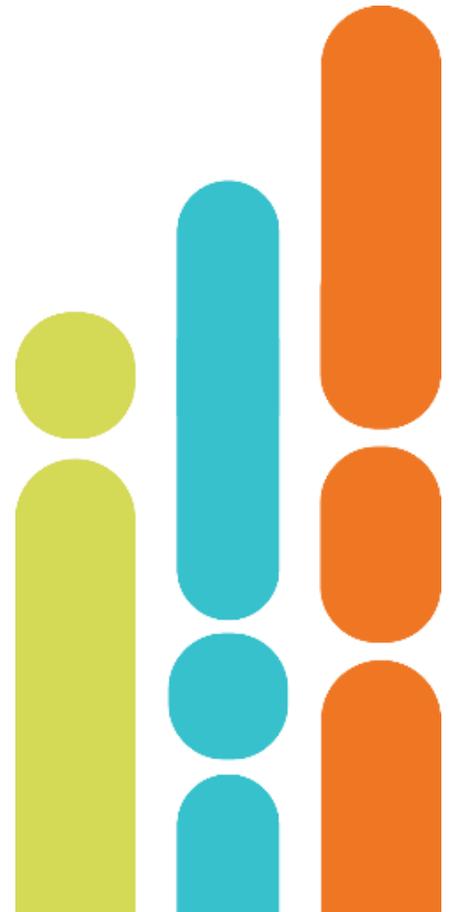
- Determine who to interview
  - Parents are allowed to sit in
- Review prior investigations, complaints, and discipline records
- Determine need for interim action plan during the pending investigation



# Grievance Process

## Investigation - Overview

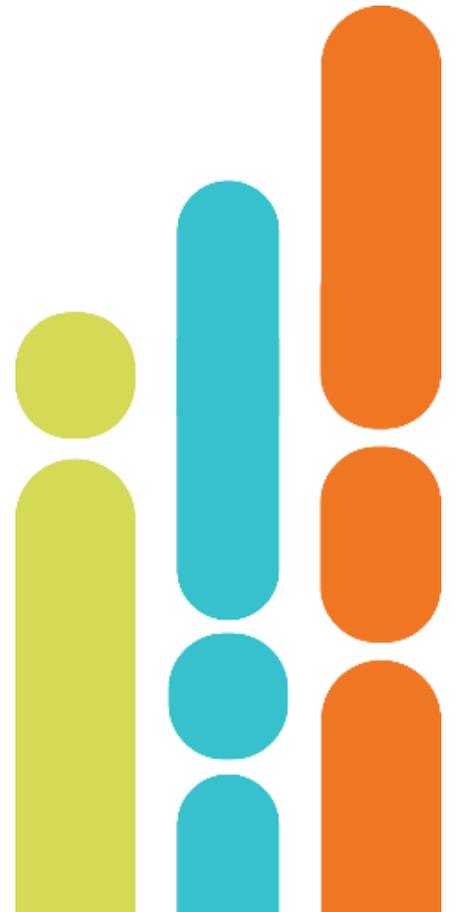
- An investigation only occurs if a formal complaint is signed by the complainant or by the Title IX Coordinator.
- TOCR will assign a Title IX Investigator who will initiate an investigation within 48 hours of receipt of the formal complaint.
- Investigations shall be completed within 20 calendar days.
- All parties will receive all evidence to review and will have 10 days to respond.
- All parties will receive a copy of the investigative report to review and will have 10 days to respond.
- The investigative report summarizing all relevant evidence will be sent to a decision-maker.



# Grievance Process

## Investigation

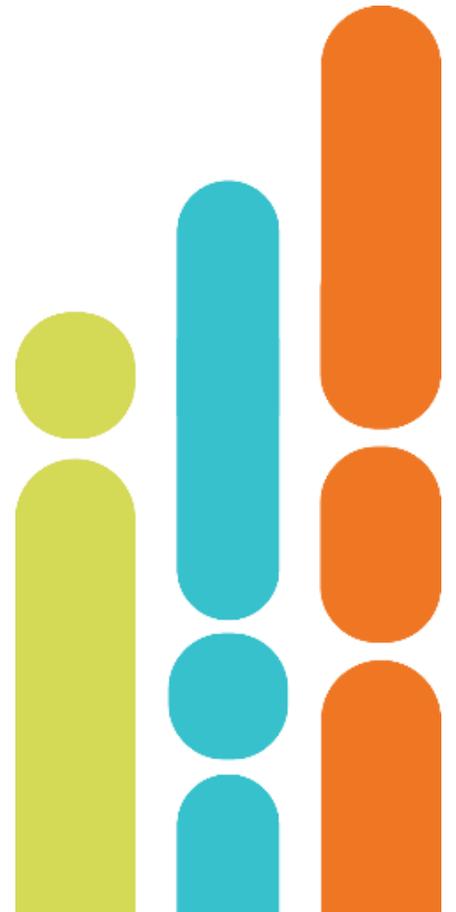
- The burden of gathering evidence and burden of proof must remain on the school.
- All parties must have equal opportunities to present witnesses and evidence.
- Schools must send written notice of any investigative interviews to witnesses and notice of any meetings to all parties.
- All parties must have an opportunity to select an advisor of their choice.
  - May be an attorney, but not required.



# Grievance Process

## Investigation

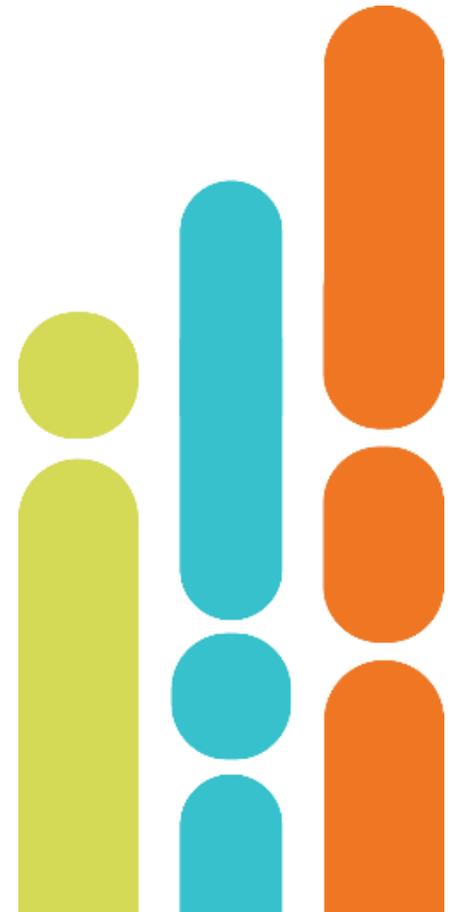
- May not prohibit parties from discussing allegations or gathering/presenting evidence.
- All parties and their advisors will receive all evidence to review and will have 10 days to respond.
- All parties and their advisors will receive a copy of the investigative report to review and will have 10 days to respond.
- All parties are allowed to submit written questions for other parties/witnesses after distribution of the Investigative Report; but before the determination regarding responsibility.
  - Parties will be provided the answers and allowed limited follow up.



# Grievance Process

## Investigation - Best Practices

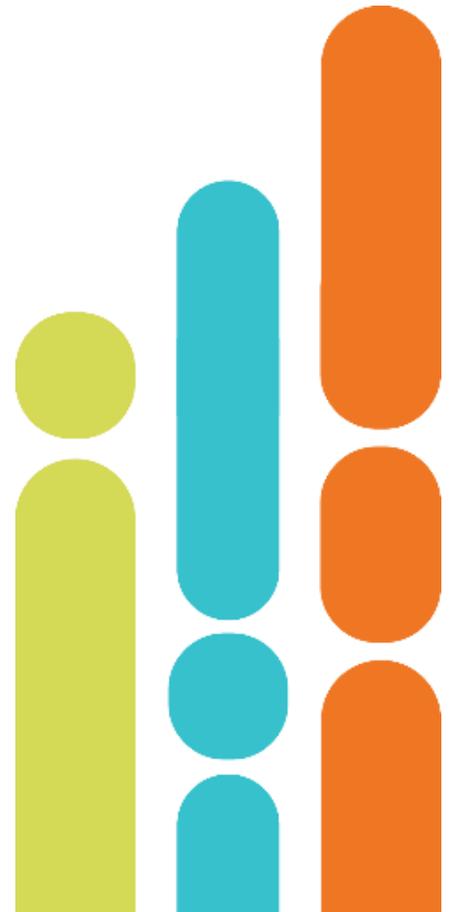
- Interview the parties and witnesses separately
  - Ensure witnesses understand the purpose of the interviews
  - Use preprepared questions, but be flexible
  - Avoid leading questions
    - Watch tone and avoid accusatory language
  - Discuss retaliation
  - Document interviews
    - Recording not recommended (use a note taker)
    - Always have a witness
- Get any other documentary evidence
  - Web pages, emails, chat messages, cell phone records, etc.
  - Follow up on anything identified during interviews
  - Take caution with photos and videos of a sexual nature
- Evaluate evidence
  - Look for corroborating evidence
  - Look for inconsistencies and impossibilities
  - Determine if witnesses need to be re-interviewed or additional evidence gathered



# Grievance Process

## Determination of Responsibility

- A Title IX Decision-maker assigned by TOCR will review the evidence and investigative report using the Preponderance of Evidence Standard (more likely than not).
- Title IX Decision-maker will issue a written determination regarding responsibility.
  - Must include allegations, procedural steps, findings of fact, conclusions about whether the alleged conduct occurred, rationale for the results, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant.
- **Decision-maker cannot be the same person as the Title IX Coordinator and Investigator.**
- Substantiated charges can result in disciplinary action including expulsion or termination.



# Discipline

- Review your discipline policy
- Ensure consistent disciplinary action
- Remember: Discipline may be necessary but is often insufficient



# Remedies

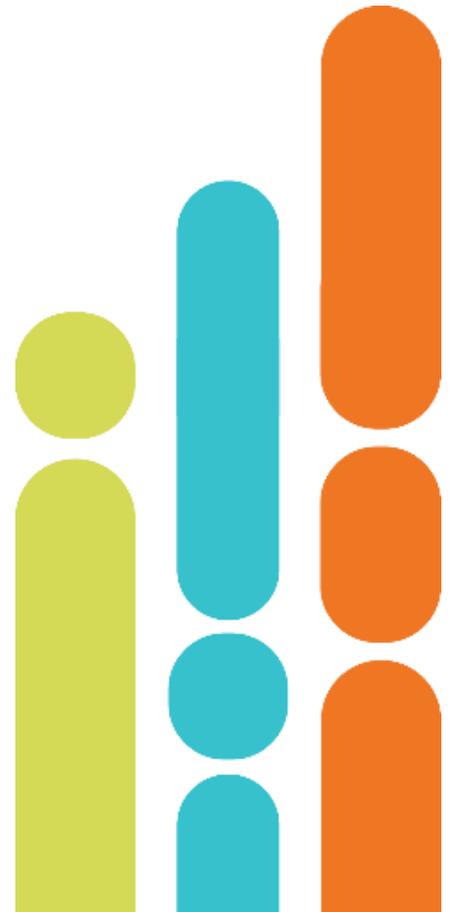
- Take prompt and effective steps reasonably calculated to prevent the harassment from recurring, such as:
  - Safety plan for complainant
  - Support services such as counseling, tutoring
  - Behavior plan for respondent
  - Disseminate notices
  - Additional training for staff and/or students
  - Stronger policies
  - More detailed procedures
  - Creative reporting measures
  - Measure school climate
  - Anti-bullying and harassment initiatives
  - Restorative practices



# Grievance Process

## Appeals

- Either party may submit a request for an appeal to the Title IX Coordinator w/in 10 days, must be based on one of the following:
  1. Procedural irregularity
  2. New evidence
  3. Conflict of interest
- A Title IX Appeals Officer assigned by TOCR will prepare a written decision within 10 days of the appeal.
- **The Title IX Appeals Officer cannot be the same person as the Title IX Coordinator, Investigator, or Decision-maker.**



# Retaliation

- **Retaliation** – Adverse action against an individual for filing a complaint or participating in an ongoing or closed investigation.
- Retaliation against any person who makes a report or complaint or assists, participates, *or refuses to participate* in any investigation of an act alleged in this policy is prohibited.
- Retaliation may result in disciplinary action.



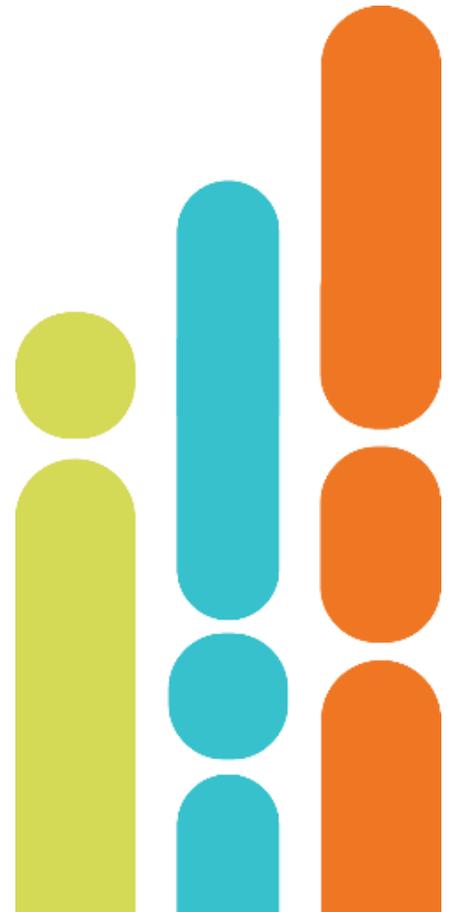
# Confidentiality

- The confidentiality of the complainant, the respondent and any witnesses participating in the investigation will be respected as much as possible.
  - Some information may need to be disclosed to appropriate individuals.
  - Laws and policies such as FERPA and TDOE's Employee Code of Conduct will be honored.



# Recordkeeping

- Investigation records (including investigative reports, investigative evidence, determinations of responsibility, recordings, transcripts, sanctions, remedies) should be maintained for 7 years.
- Appeal Records
- Record of any Informal Resolution
- ❖ This also includes documentation of a school's response to all reports and formal complaints
- Training materials –posted on website/available upon request



10 Minute Break



# Review Action Steps



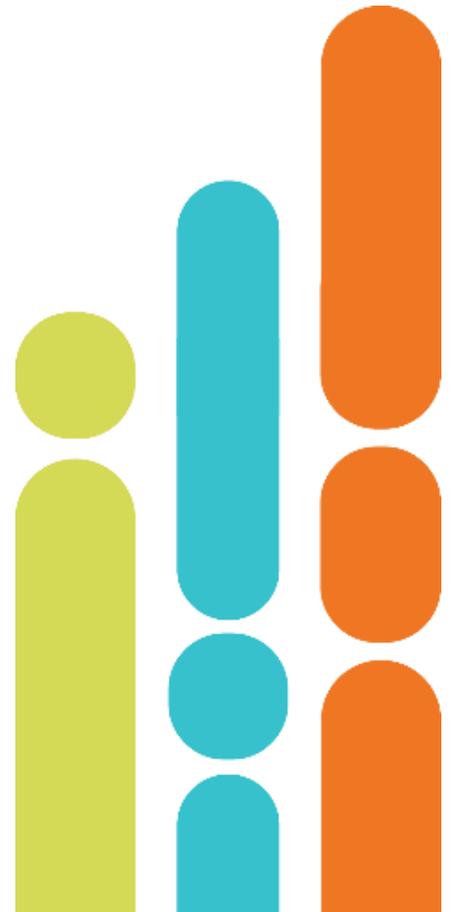
# When to report?

## Scenario 1

A 10<sup>th</sup> grade girl informs her teacher that on Saturday night while headed home after the school's band jamboree, her boyfriend, a 12<sup>th</sup> grade student at the school, hit her and threatened to send indecent pictures of her to all of their friends at school. How should the teacher respond?

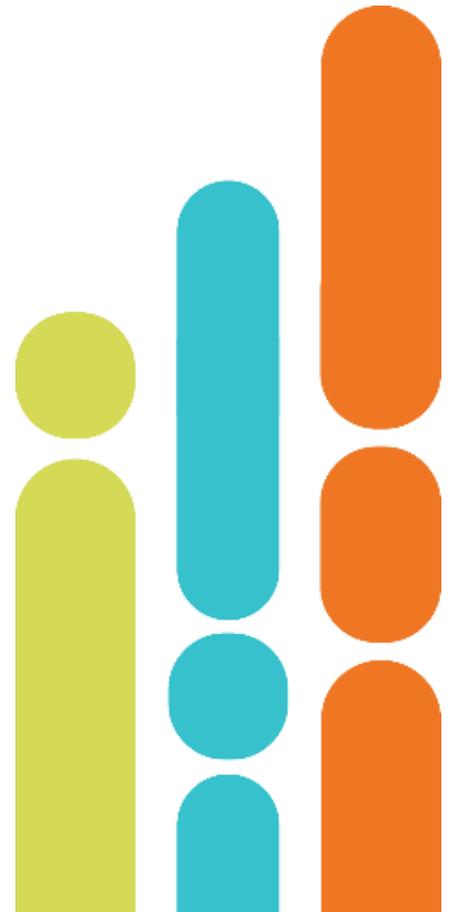
## Scenario 2

It is the end of the school day and students are reporting to the meeting areas for their sports teams and afternoon activities. Two male students approach Mr. Lee, the middle school's assistant basketball coach, to tell him about what happened in the hallway as they were walking to the gym. The two students explain that Michelle, a 7<sup>th</sup> grade cheerleader, approached them from behind and hugged them, making them feel uncomfortable. How should Mr. Lee respond?



# Notice of Sexual Harassment

- In both scenarios, the teachers should report these incidents to the school's administration and Title IX Coordinator.
- If you become aware of a potential Title IX concern related to **sex (including sexual harassment), gender, sexual orientation, or gender identity**, immediately contact TDOE's Title IX coordinator, Shaundraya Hersey.
  - [Shaundraya.hersey@tn.gov](mailto:Shaundraya.hersey@tn.gov)
  - 615-289-1887
- If Shaundraya cannot be reached, contact Lee Danley, Legal Counsel to ASD and State Special Schools.
  - [Lee.danley@tn.gov](mailto:Lee.danley@tn.gov)
  - 615-253-1550
- ❖ Both claims may also require reporting to the school's Child Abuse Coordinator and/or local authorities.



# Who should report?

## **Scenario 3**

A district's technology coordinator is asked to repair a 15-year-old high school freshman's school issued laptop. Upon logging onto the computer and into the student's email account, the technology coordinator finds an email exchange between the male student and a female teacher in which the teacher threatens to fail the student if he attempts to end their romantic relationship. Is the technology coordinator required to report this information?



# Mandatory Reporting

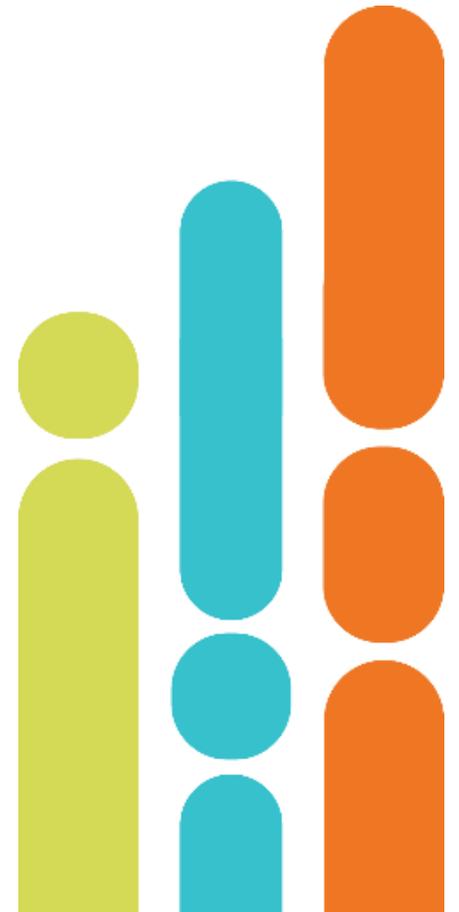
- Any school employee who has knowledge of a potential Title IX issue **MUST** report the matter immediately.
- This is a change:
  - Before, notice was only triggered by school staff with the ability to institute disciplinary action - like principals.
  - Now, any and all staff are responsible for reporting potential Title IX sexual harassment violations.
- If you are unsure whether something constitutes sex or gender-based harassment, err on the side of caution and consult Shaundraya!



# How to respond?

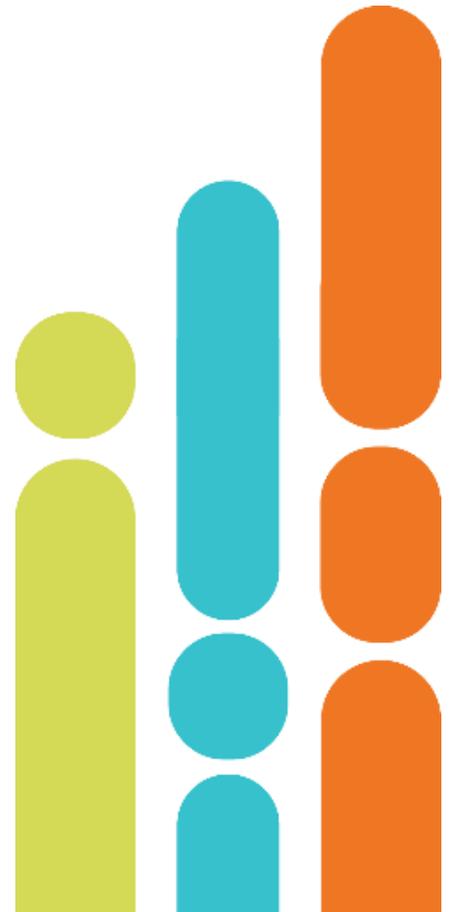
## Scenario 4

An elementary school teacher emails her principal sharing information about an incident that occurred between her students earlier that day. The teacher explains that one of her male students reported to her that during recess, the other students in the class began referring to him as a girl and started using a traditionally feminine sounding name when speaking to him. The teacher asked for guidance on how to respond to this incident and the principal explained that the matter should be reported to the school's Title IX Coordinator. The teacher reported the matter to the Title IX Coordinator and asked for additional guidance. How should the Title IX coordinator respond?



# Notice of Gender-Based Harassment

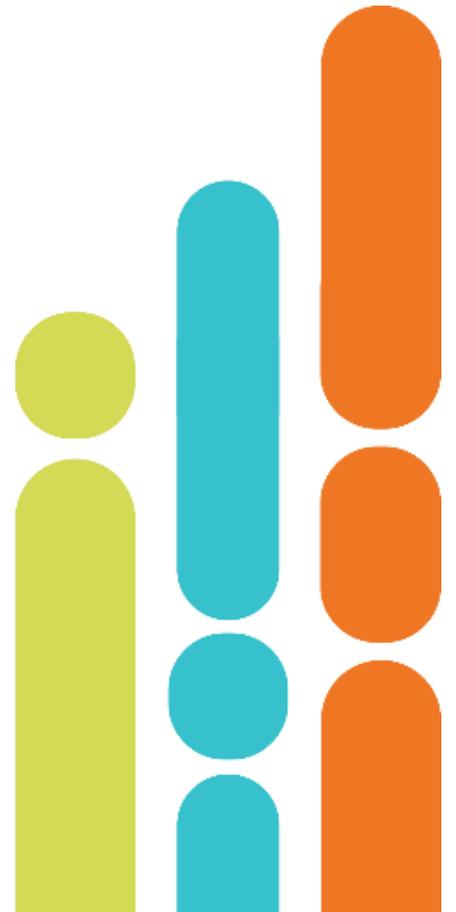
- The Title IX Coordinator will need to explain that the report will be reviewed.
- The Title IX Coordinator will need to immediately contact TOCR If they become aware of a potential Title IX concern related to **sex (including sexual harassment), gender, sexual orientation, or gender identity.**
- Shaundraya Hersey.
  - [Shaundraya.hersey@tn.gov](mailto:Shaundraya.hersey@tn.gov)
  - 615-289-1887
- Lee Danley
  - [Lee.danley@tn.gov](mailto:Lee.danley@tn.gov)
  - 615-253-1550



# How to respond?

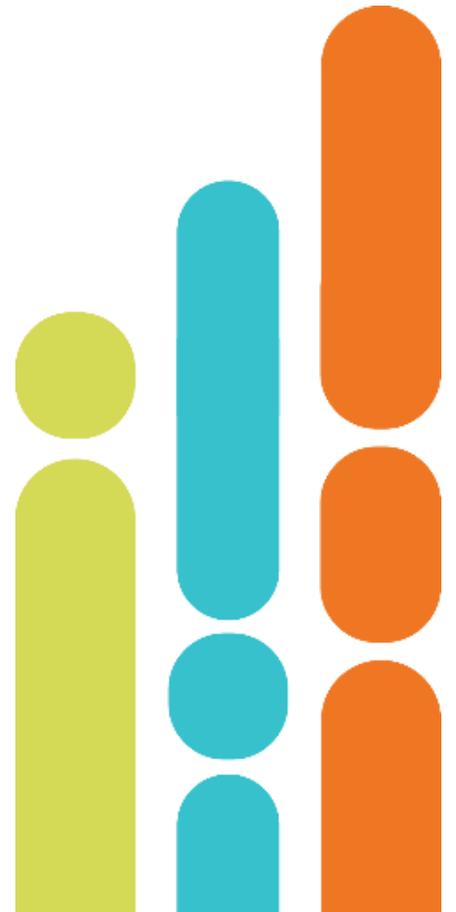
## Scenario 5

A high school student makes a report to the school's Title IX Coordinator that her friend was allegedly sexually assaulted in the boy's locker room after last week's basketball game. The student's friend does not want to be identified and she does not want to file a formal complaint for the matter for fear of retaliation. How should the school respond?



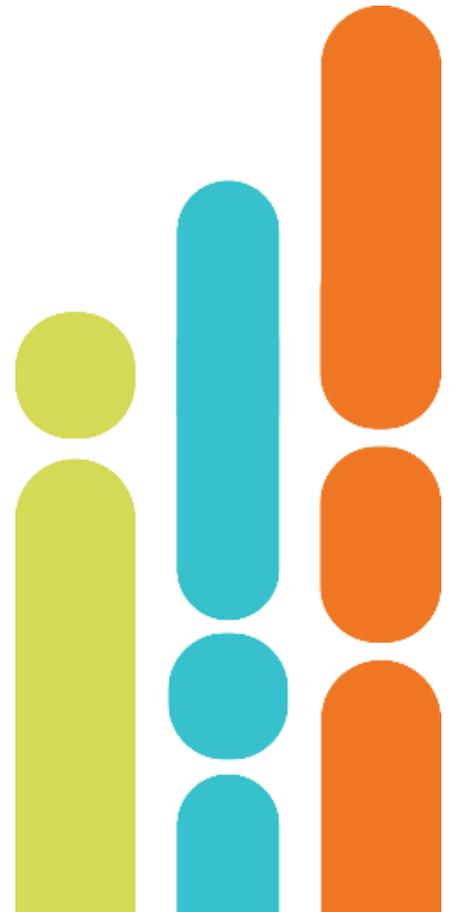
# Report/Complaint Intake

- The Title IX Coordinator will need to review the report to determine if it will need to be elevated to a formal complaint.
- A complainant may file a formal complaint with the Title IX Coordinator.
  - The Title IX regulations define a formal complaint as a document or electronic submission that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.
- The Title IX Coordinator may also sign a report of sexual harassment making it a formal complaint.



# Await instruction from the Office for Civil Rights

- Document the incident in a confidential file on your computer.
- Before opening a Title IX investigation, await instructions from TOCR regarding next steps. Together we'll develop a plan regarding the investigation, safety planning, discipline, supportive measures, FERPA, and more.



# How to respond?

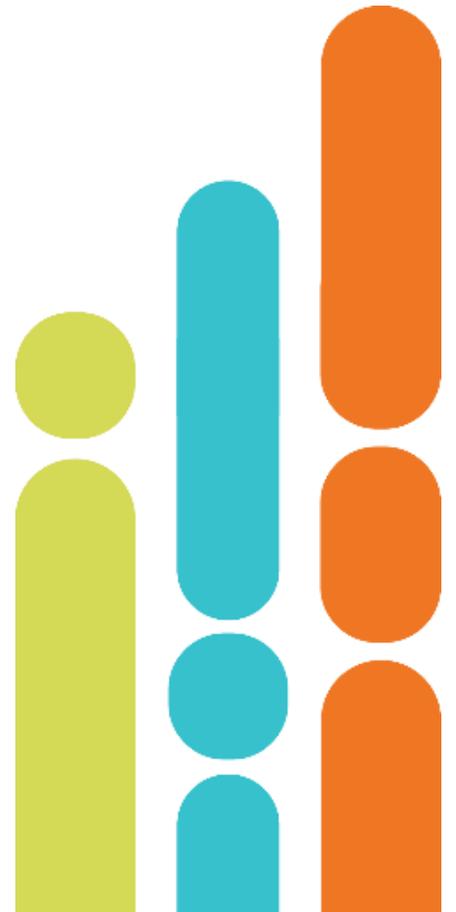
## Scenario 6

During a meeting with the school's counselor, a female student reports that she has been teased by a group of students in her class because she often wears ties to school and because she wears a very short haircut. After speaking to the student, the guidance counselor interviews each of the students accused of the bullying and asks that they all apologize for their conduct. Was the guidance counselor's investigation appropriate?



# Notice of Gender-Based Harassment

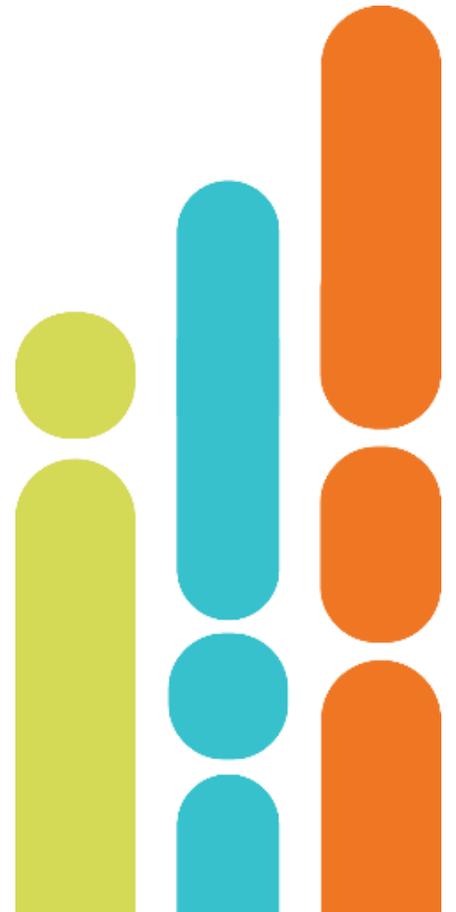
- Any reports of gender-based harassment should be reported to the school's Title IX Coordinator.
- The Title IX Coordinator will need to immediately contact TOCR if they become aware of a potential Title IX concern related to **sex (including sexual harassment), gender, sexual orientation, or gender identity.**
- Shaundraya Hersey.
  - [Shaundraya.hersey@tn.gov](mailto:Shaundraya.hersey@tn.gov)
  - 615-289-1887
- Lee Danley
  - [Lee.danley@tn.gov](mailto:Lee.danley@tn.gov)
  - 615-253-1550
- TOCR will conduct a Title IX investigation if needed.



# How to respond?

## Scenario 7

A middle school teacher submits a disciplinary report for a male student in her class indicating that she witnessed him touch a female student in an inappropriate manner. The school's principal discusses the report with the teacher to confirm the details and informs the school's Title IX coordinator of the incident. The principal then meets with the accused (the respondent) and the alleged victim (the complainant). After meeting with the two students, the principal decides to suspend the respondent for 10 days. Was the principal's investigation appropriate?



# Conducting Investigations and Determining Discipline

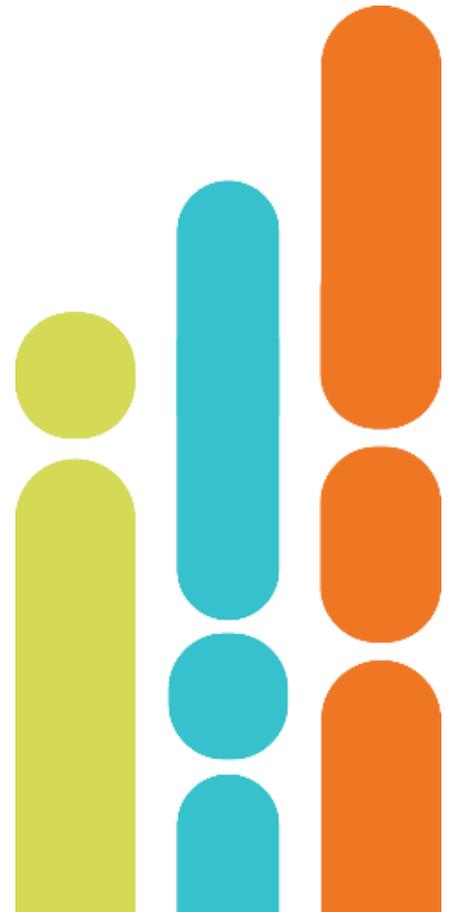
- Upon learning of a report of sexual harassment, the Title IX Coordinator will need to contact TOCR.
- TOCR will assign an investigator and decision-maker to review the allegations.
- Because this is a confusing area of law, do NOT issue discipline on a Title IX matter without first consulting TOCR.



# How to respond?

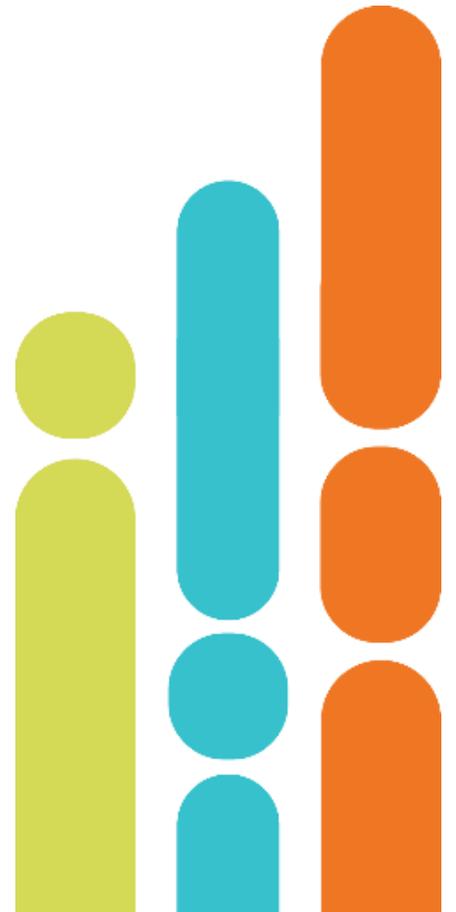
## Scenario 8

A parent of a 3<sup>rd</sup> grade student emails the school's Title IX Coordinator explaining that she would like to file a sexual harassment complaint against the school's nurse. Her email contains details about the alleged incident including the date, time, and location of the event, a description of the allegations, and the name of the accused (respondent). The Title IX Coordinator contacts the parent to explain the process for filing a formal complaint and asks the parent to submit her complaint on the school's formal complaint form so that the school can open an investigation. The parent refuses to complete the form and asks that the coordinator consider her email as a formal complaint. The Title IX Coordinator insists that the formal complaint form be submitted. How should the Title IX Coordinator resolve this issue?



# Report/Complaint Intake

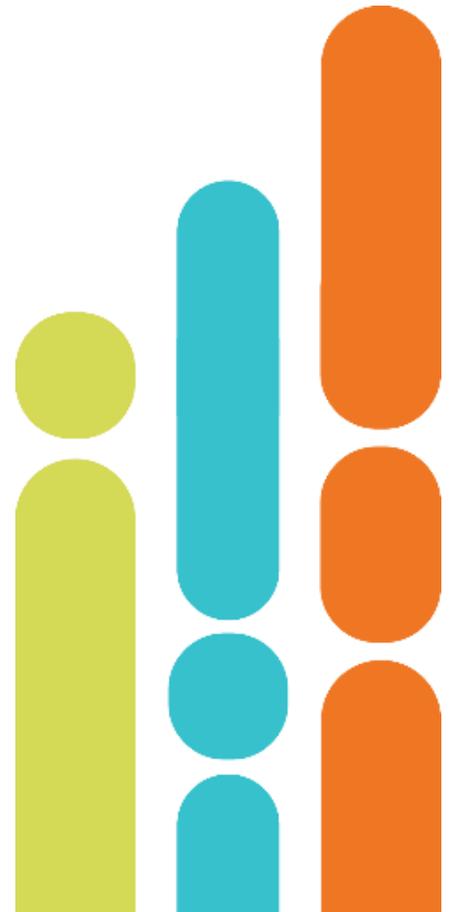
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# How to interact with the parties?

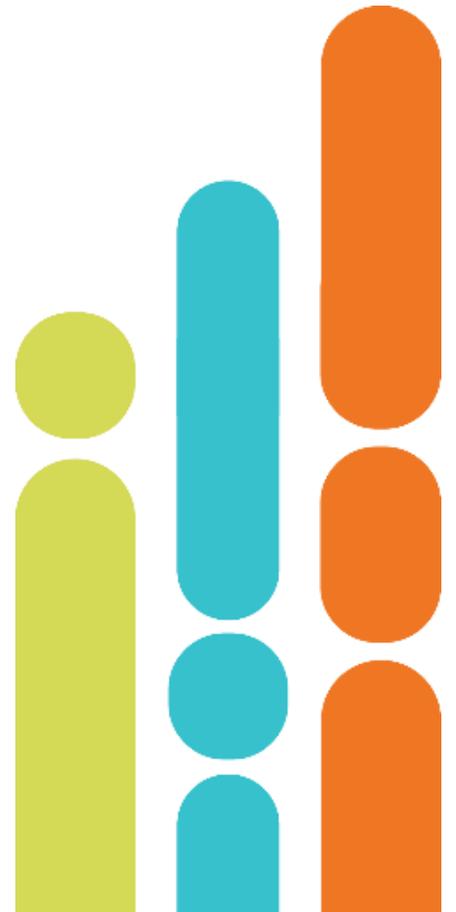
## Scenario 9

The Respondent in a pending Title IX investigation contacts the Title IX Coordinator explaining that several of his classmates have called him derogatory names after learning that he was accused of raping a female student. The matter has been reviewed and closed by the local police department, but the Title IX investigation of the claims is still pending. The Respondent explains that the name calling has made it difficult for him to attend school and that he has contemplated hurting himself. How should the school respond?



# Providing Supportive Measures

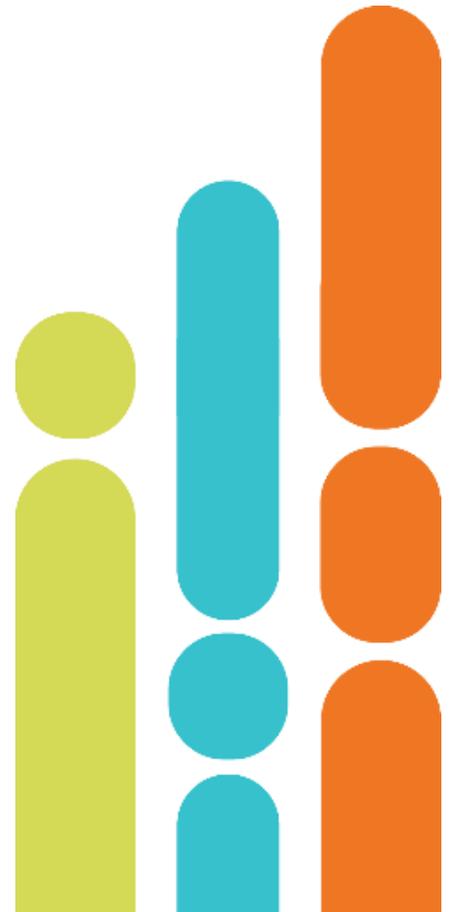
- The Title IX Coordinator and TOCR should discuss supportive measures with the student.
- Supportive measures help restore access to a school's educational programs and will be offered to both the complainant and respondent.
- Measures offered must remain confidential.
- A school/district must consider a party's wishes with respect to supportive measures.



# How to interact with the parties?

## Scenario 10

The advisor of the Complainant in a pending Title IX investigation contacts the Title IX Coordinator inquiring about the timeline for completion of the investigative process. The investigation stage of the process has ended, and the parties have been given an opportunity to review the evidence and investigative report and to propose questions for witnesses. The Title IX Coordinator responds explaining that the investigation is still pending, however, the advisor replies requesting an official date for the conclusion of the investigation. How should the Title IX Coordinator respond?



# Addressing Concerns From Parties

- If a date for completion is available, the Title IX Coordinator may share this information, but be sure to consult TOCR first.
- The Title IX Decision-maker is assigned by TOCR.
- The Title IX Decision-maker will issue a written determination regarding responsibility.
- **The Decision-maker cannot be the same person as the Title IX Coordinator and Investigator.**



Questions?

