



**Rockdale County
Public Schools**

**Title IX School-Based Team Training
September 23, 2022
10 am – 11:30 am**

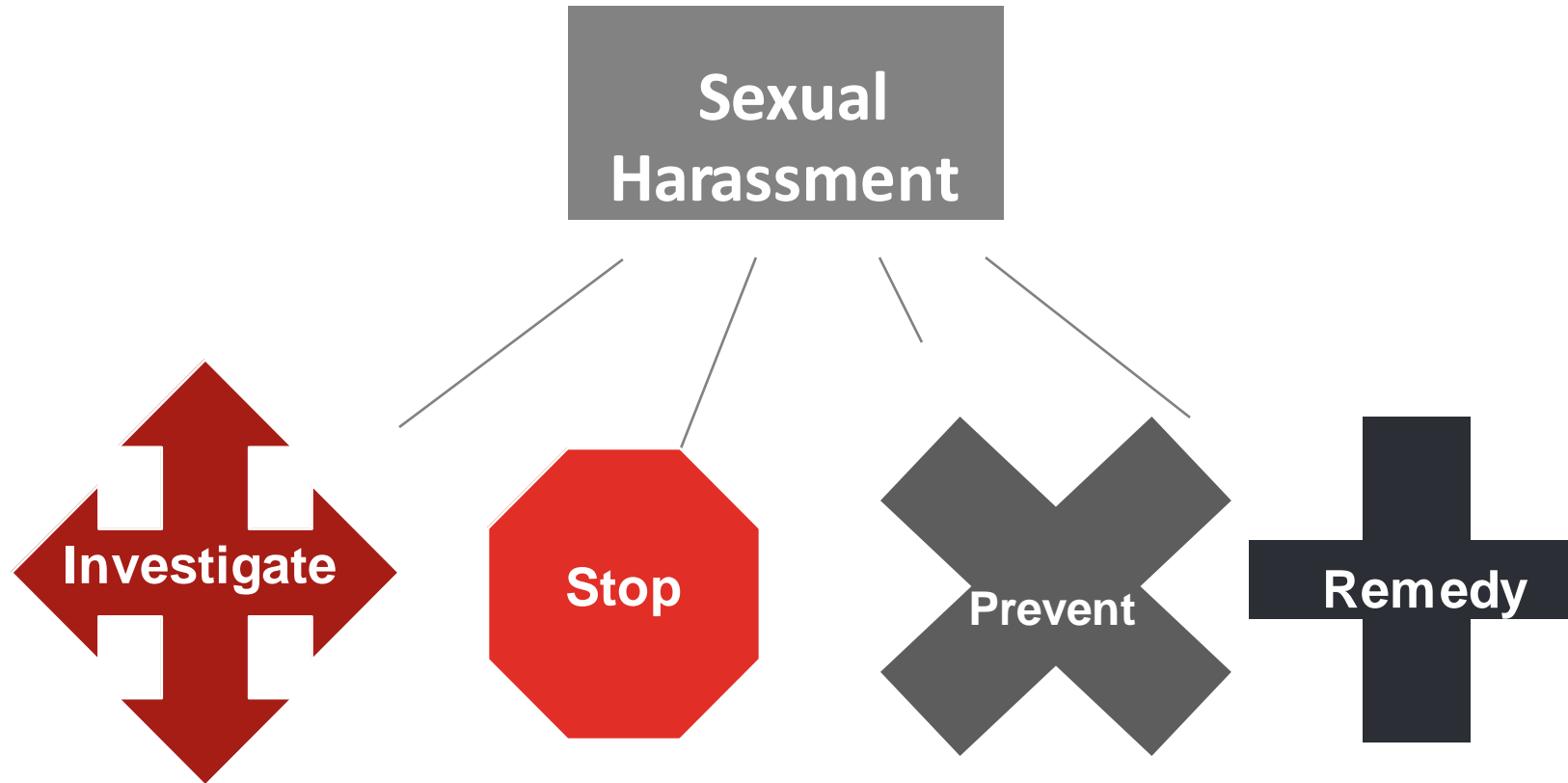
WHAT IS TITLE IX?

No sex discrimination. No sexual assault. *Period.*



Student Title IX Policy
and Complaint Procedures

SCHOOL/DISTRICT OBLIGATIONS UNDER TITLE IX



The Title IX Commandments

Thorough	Reliable	Impartial
Prompt	Effective	Equitable
End the Discrimination	Prevent its Recurrence	Remedy the effects upon the student or employee & community

Investigation

Process

Remedies

Student Title IX Coordinator



Thomas Gordon, Student Title IX Coordinator

Coordinator of Special Projects

Office of Student Support Services

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Title IX Sports Equity Coordinator



- Dr. Kechia Seabrooks Rowles, CMAA, LAT/ATC
Director of Athletics/Head Athletic Trainer
- Phone: 404-925-2141
- Email: krowles@rockdale.k12.ga.us

“To ensure we are meeting DOE regulations, it is imperative that Athletic Directors maintain detailed reports of participation and financial data for all athletic programs. Templates are included on pages 46 & 47 of the RCPS Athletic Directors Handbook.”

Employee Title IX Coordinator



Dr. Kim McDermon, SHRM-CP, PHR

Employee Title IX Coordinator/Chief Human Resources Officer

Phone: (770) 918-2685

Email: kmcdermon@rockdale.k12.ga.us

Title IX Coordinator and School-Based Teams

- ▶ The Student Title IX Coordinator has the authority to coordinate the prompt investigation and resolution of formal complaints of sexual harassment, which includes providing supportive measures to the parties.
- ▶ The Student Title IX Coordinator designates school-based teams to assist with this task. Each school-based team will consist of a (1) Deputy Title IX Coordinator, (2) Investigator, and (3) Decision-maker.
- ▶ Members of the school-based team must be impartial and free of bias and conflicts of interest.

School-Based Teams Roles

▶ **Deputy Title IX Coordinator**

- ▶ First point of contact
- ▶ Conducts initial assessment
- ▶ Receives reports and complaints
- ▶ Implements supportive measures and decisions
- ▶ Coordinators communication with the Title IX Coordinator (Mr. Thomas Gordon)

▶ **Title IX Investigator**

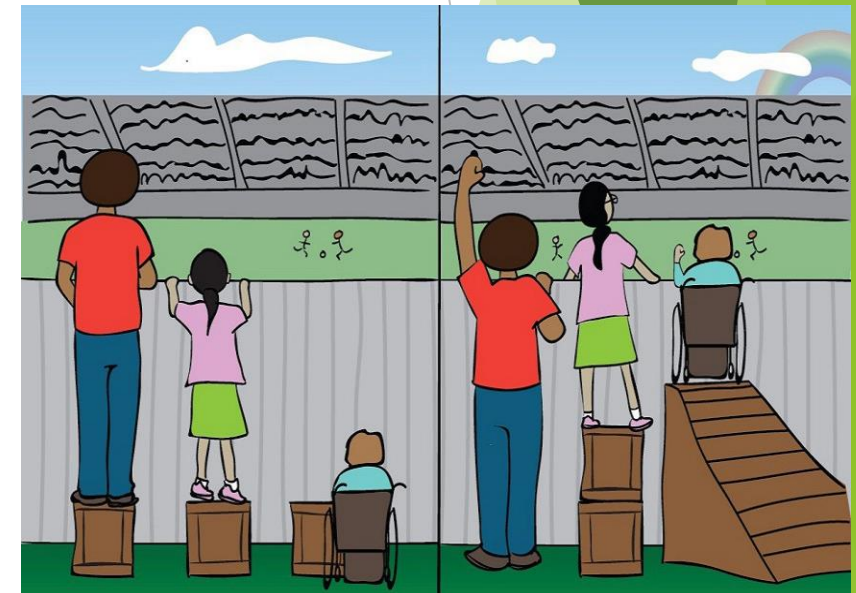
- ▶ Investigates alleged misconduct
- ▶ May assist the coordinator, as appropriate, if there is a conflict of interest

▶ **Decision-Maker (Preferably Principal)**

- ▶ Makes a decision based on the Title IX Investigator's investigative report
- ▶ Cannot be the Title IX Coordinator or Title IX Investigator

Introducing Deputy Title IX Coordinators

- ▶ Deputy Title IX Coordinators work to **ensure equity** for RCPS stakeholders – students, parents, employees, and community members.
- ▶ Deputy Title IX Coordinators are responsible for:
 - ▶ Receiving complaints of **sexual harassment**
 - ▶ Coordinating compliance with **Title IX activities** (training staff and students on sexual harassment, and how/what/when/whom to report)
 - ▶ Receiving, investigating, and resolving complaints of **discrimination**



Other Deputy Title IX Coordinator Responsibilities

- ▶ Advertise their roles to stakeholders
- ▶ Publicize name, contact information, and complaint process
- ▶ Educate staff, students, and community
- ▶ Train staff, including other appropriate persons
- ▶ Conduct initial assessment to determine how to move forward
- ▶ Investigate discrimination complaints

Duties of Deputy Title IX Coordinators (regarding sexual harassment):

- ▶ **The Title IX Coordinator must provide information to the individual:**
 - ▶ The availability of supportive measures
 - ▶ The right to file a complaint
 - ▶ How to file a complaint
- ▶ **The Title IX Coordinator must:**
 - ▶ Receive a formal complaint/file a complaint on school's behalf
 - ▶ Provide written notice if the complaint will be dismissed
 - ▶ Follow through with any decision made by the decision maker and ensure that supportive measures are implemented

Title IX Investigator Responsibilities



- ▶ For every formal complaint filed that is not dismissed, the alleged misconduct must be investigated by a Title IX investigator.
- ▶ Every school has two trained investigators (deputy coordinator and the investigator).
- ▶ Only one investigator can be involved in a Title IX case, but the investigator may be reassigned if there is an alleged bias or conflict.

Investigative Reports



After gathering all evidence, the Title IX Investigator needs to **prepare an investigative report**.



A school has to give the parties at least 10 days to respond to the evidence in writing. If a response is submitted, the school must consider the response before finalizing the investigative report.



The investigative report can then be finalized and provided to the parties. That report must be circulated to the parties at least 10 days before any determination of responsibility.

Initial Decision-Maker Responsibilities

- ▶ The Decision-Maker must:
 - ▶ Objectively evaluate the relevant evidence and reach conclusions about whether the respondent is responsible for the alleged sexual harassment;
 - ▶ Use independent judgment, cannot be the Title IX Coordinator or Investigator;
 - ▶ Must be free from conflicts of interest or bias for or against the parties, and must receive special training on how to be impartial; and
 - ▶ Weigh the relevant evidence and decide whether it meets the definition of sexual harassment.

Decision-Maker Responsibilities

- ▶ After weighing the evidence, the decision maker must produce a written decision that:
 - ▶ Identifies the school policy violated
 - ▶ Provides a description of the procedural steps taken by the school on the way to getting to that point;
 - ▶ Includes a findings of fact section;
 - ▶ Includes a section that draws conclusions after applying the facts to the portion of the school's policy that applies;
 - ▶ Includes statement and rationale for the ultimate determination of responsibility;
 - ▶ Includes any disciplinary action the school will impose, and whether the school will provide remedies to the complainant;
 - ▶ Includes a statement and rationale for any remedies for the complainant, addressing how those remedies will restore or preserve equal access;
 - ▶ Includes a statement of the recipient's procedures, a statement that the parties have right to appeal the initial determination regarding responsibility and the permissible bases for appeal.

Decision Making – Standard of Proof

- ▶ The school has the burden of proving the alleged misconduct by a “preponderance of the evidence.”
- ▶ Under the preponderance standard, the burden of proof is met when the party with the burden convinces the decision maker that there is a greater than 50% chance that the claim is true.





Definitions

- ▶ “Actual Knowledge ” means notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator (or designee), or any employee of the District.
- ▶ “Advisor” means a person chosen by a party to assist the party in the complaint process.
- ▶ “Complainant” means an individual who alleges he/she is a victim of conduct that could constitute sexual harassment as defined by Title IX.

Definitions Cont'd

- ▶ “Respondent” means an individual the complainant reports as being a perpetrator of conduct that could constitute sexual harassment.
- ▶ “Sexual Harassment” is conduct based on sex that satisfies one of the following:
 - ▶ An employee conditions the provision of an aid, benefit, or service on a student’s participation in unwelcome sexual conduct.
 - ▶ Unwelcome conduct determined by a reasonable person to be so **severe AND pervasive, AND objectively offensive** that it effectively denies a person equal access to an education program or activity. Must meet ALL THREE criteria!
 - ▶ “Sexual Assault” as defined by 20 U.S.C. § 1092(f)(6)(A)(v),
 - ▶ “Dating Violence” as defined in 34 U.S.C. § 12291(a)(10),
 - ▶ “Domestic Violence” as defined in 24 U.S.C. § 12291(a)(8)
 - ▶ “Stalking” as defined in 34 U.S.C. § 12291(a)(30).

HOSTILE ENVIRONMENT: “SEVERE”

“The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. Indeed, a single or isolated incident of sexual violence may create a hostile environment.”
—(Q&A: A-3)

- ▶ Physical is more likely to be severe without need for repetition:
 - ▶ Non-consensual sexual intercourse or contact are almost always sufficiently severe.
 - ▶ Consider the circumstances: e.g., the ability for victim to escape the harassment.
- ▶ Assess whether accompanied by threats or violence.

HOSTILE ENVIRONMENT: “PERVASIVE”

- ▶ Widespread
- ▶ Openly practiced
- ▶ Well-known among students or employees – reputation of a department, person, etc.
- ▶ Occurring in public spaces (more likely to be pervasive)
- ▶ “Harassment is pervasive when incidents of harassment occur either in concert or with regularity” (2001 Guidance: Footnote 44)
- ▶ Frequency of the conduct is often a variable in assessing pervasiveness. (look to intensity and duration)
- ▶ Unreasonable interference with school or job
- ▶ A “gauntlet of sexual abuse” *Meritor v. Vinson*, 477 U.S. 57 (1986)

HOSTILE ENVIRONMENT: “OBJECTIVELY OFFENSIVE”

- ▶ Reasonable person standard in context.
- ▶ “I know it when I see it...”
 - ▶ Age and relationships of accuser and accused. (Elem v HS)
 - ▶ Frequency
 - ▶ Number of persons involved
 - ▶ Severity
 - ▶ Physically threatening
 - ▶ Humiliation
 - ▶ Intimidation
 - ▶ Ridicule
 - ▶ Abusive
 - ▶ Hostile environment analysis requires that you evaluate the “totality of the circumstances”

Examples of Sexual Misconduct

- ▶ Unwelcome sexual advances
- ▶ Sexual jokes, gossip regarding another's sex life, sexual orientation, or gender identity
- ▶ Leering, whistling, obscene gestures
- ▶ Sexual assault, violence, threats, stalking
- ▶ Insults or threats based on sex or gender
- ▶ Change of academic or employment responsibilities based on sex, gender identity or expression, or sexual orientation
- ▶ Quid pro quo: "This for that"
- ▶ Not all reports need to lead to an investigation
- ▶ ***If you are unsure or uneasy, report it (Call Mr. Gordon)***

Definitions Cont'd

- ▶ “Formal Complaint” means a written document filed and signed by a complainant with the Title IX Coordinator (or designee) or signed by the Title IX Coordinator that alleges sexual harassment against a respondent. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in an education program or activity of the District. A complainant may file a formal complaint in-person, by mail, email, or telephone.
- ▶ “Education Program or Activity ” means any location, event, or circumstances within the United States, over which the District exhibits substantial control over both the alleged harasser and the context in which the harassment occurred.

Title IX vs. District Student Handbook

- ▶ Student conduct involving sexual discrimination automatically invokes Title IX and must be handled differently than other conduct matters
- ▶ Must involve your Title IX Deputy Coordinator
- ▶ Must follow Title IX procedures
- ▶ Ex: If Johnny the Bully is bullying students because of their funny hair, that can be handled under the bullying policy.
- ▶ If Johnny is targeting girls, because they are girls, then you need to bring in Title IX procedures.

THE PROCESS



Complaint or
Notice to Title
IX Coordinator
Strategy
development

Jurisdiction?
Dismissal?
Policy violation
implicated?
Reinstatement?
Informal or
formal
resolution?

Notice to parties
Identification of witnesses
Interview scheduling
Evidence collection
Report drafted
Evidence and inv. report
shared
Inv. report finalized

Exchange of
written questions
and responses
Determination
Sanction?

Standing?
Vacate?
Remand?
Substitute?

**Title IX administrators (including investigators and decision-makers),
have no “side” other than the integrity of the process!**

THE PROCESS CONT'D

- ▶ 1. Allegation or notice
- ▶ 2. Preliminary inquiry
- ▶ 3. Gatekeeping decision to proceed or not proceed (**Phone call to Thomas Gordon**)
- ▶ 4. Notice of investigation and/or allegation (NOIA)
- ▶ 5. Strategize investigation (throughout)
- ▶ 6. Formal comprehensive investigation
- ▶ 7. Witness interviews
- ▶ 8. Evidence gathering
- ▶ 9. Analysis
- ▶ 10. Determination

THE PROCESS CONT'D

- ▶ Review any evidence “directly related to the allegations.” Including inculpatory and exculpatory evidence whether obtained from a party or other source.
- ▶ Prior to the completion of the investigative report, the investigator must send to each party, and the party’s advisor, if any, the evidence subject to inspection and review. The parties must have **at least 10 days** to submit a written response, which the investigator will consider prior to the completion of the investigation report
- ▶ Create an investigation report that fairly summarizes relevant evidence and send it to each party and the party’s advisor, if any, for their review and written response.
- ▶ For elementary and secondary schools after the investigative report is sent the parties must have **at least 10 days** to respond before reaching a determination regarding responsibility

Both 10-day review periods apply to all recipients

Supportive Measures

- ▶ “Supportive measures” are **non-disciplinary, non-punitive**, individualized services that the District may offer, as necessary, to the complainant and the respondent.
- ▶ Complainant **MUST** be provided supportive measures, despite the findings of your investigation
 - ▶ Move student(s) from classes (cannot be punitive)
 - ▶ Mental health support
 - ▶ Altered schedules for complainant
 - ▶ Safe room or safe spaces
- ▶ These supportive measures cannot be punitive to any student, complainant or respondent (while the investigation is ongoing)
- ▶ Respondent is considered “innocent” during the investigation and therefore measures cannot be disciplinary against him

Supportive Measures

- ▶ Deputy Title IX Coordinators are responsible for ensuring that supportive measures are implemented.
- ▶ Examples:
 - ▶ Counseling
 - ▶ Extension of deadlines
 - ▶ Modification of work or class schedules
 - ▶ Schedule changes
 - ▶ Increased security or monitoring of parts of campus
 - ▶ Mutual restrictions on contact between individuals (ex. No-Contact Agreement)

“Supportive measures are free, individualized services designed to restore or preserve equal access to education, safety, or deter sexual harassment.”



Supportive Measures

- ▶ Supportive measures can be documented in two ways:
 - ▶ If no formal complaint is filed, document the supportive measures given.
 - ▶ If a formal complaint is filed, the decision maker will also document supportive measures in the findings letter, located in the database.

Procedures for Filing a Formal Complaint for Sexual Harassment

- ▶ All students, employees, and third parties of the District should help to create an environment free of sexual harassment and discrimination based on sex.
- ▶ Employees with actual knowledge of alleged sex discrimination, harassment, sex-based misconduct must report the allegation to the Title IX Coordinator within 24-hours.
- ▶ Complaints can be filed by mail, telephone, or email and the report can be filed at any time (including non-business hours, weekends, or holidays).

Who is Covered (Jurisdiction)?

- ▶ The complainant **MUST** be a current student or attempting to enroll in school (does not cover former employees).
- ▶ Covers any school event and any location where a school event was taking place (does not cover actions off campus and not school-related)
 - ▶ Includes remote/virtual learning
- ▶ If the respondent is no longer enrolled, the school *may* end its investigation.
- ▶ The complainant may withdraw the complaint, and the school *may* end its investigation.

Online Sexual Harassment

- ▶ A student sexually harassing a student online while off campus is not covered under the new rules - no requirement to investigate under Title IX.
- ▶ HOWEVER, if this activity finds its way back to campus, then you have an obligation to investigate
- ▶ You can ALWAYS investigate the matter under your Code of Conduct, even if not required by Title IX.

Basic Elements of a Formal Complaint for Sexual Harassment

- ▶ The District will treat the complainant and respondent equitably and both can expect a prompt, fair, and impartial investigation and resolution by trained representatives that are free of conflicts of interest and bias and are authorized to restore or preserve the parties' access to education programs and activities.
- ▶ The complainant and respondent may ask for a temporary delay based on good cause with written notice to both parties explaining the reason for the delay.
- ▶ The complainant and respondent have a right to discuss the allegations under investigation without restriction and if necessary, the District will take appropriate steps to preserve the parties' rights under applicable federal, state, and local laws.

Elements

- ▶ The respondent is presumed not responsible for the alleged conduct until a determination has been made at the conclusion of the formal complaint process.
- ▶ The District will notify the complainant and respondent of available supportive measures and will implement those supportive measures, as necessary.
- ▶ An impartial investigator that is not the Title IX Coordinator (or Deputy Title IX Coordinator), or decision-maker will make an objective evaluation of available evidence, which includes evidence that may support or disprove a violation.
- ▶ Creditability determinations, if necessary, will not be based solely on a party's status as a complainant, respondent, or witness.

Elements

- ▶ The District has the burden of proof and the burden of gathering evidence but will give the complainant and respondent an opportunity to present witnesses and submit evidence for review.
- ▶ The District will provide the complainant and respondent with an equal opportunity to review all evidence that is directly related to the allegations in the formal complaint. The opportunity to review available evidence will occur prior to the completion of the final investigation report by the investigator, and the parties will have at least 10 days to prepare and submit a written response to the evidence, which may include questions to the other party or witnesses.
- ▶ An impartial decision-maker who is not the Title IX Coordinator (or Deputy Title IX Coordinator), or investigator will issue a finding of responsibility based on a preponderance of the evidence standard.
- ▶ District representatives involved in the formal complaint or informal resolution process will not have a conflict of interest or bias against complainants or respondents.
- ▶ A person who is invited or expected to attend an interview will be given notice of the date, time, participants, and purpose of the investigative interviews or other meetings, with sufficient time to prepare. The person participating will have an opportunity to have an advisor at the meeting, including an attorney at his/her own expense.

Elements

- ▶ The District has the authority to remove a party if there is an immediate threat to health and safety and the District has completed an individualized risk and safety assessment. A party subject to an emergency removal will have an opportunity to appeal the decision.
- ▶ The complainant and respondent participate in a voluntary informal resolution process if both parties mutually agree to participate.
- ▶ If a formal complaint is filed, then a school **CANNOT** take disciplinary action against a party **until after the formal complaint process conclusions**.
- ▶ Please see Board Policy JCAC (Harassment) and Board Policy GAEB (Discrimination, Harassment, and Retaliation) for the complete Title IX policy.

Responsibility to Respond

- ▶ School must respond to any complaint so it can prove it is not “deliberately indifferent” to a report of sexual harassment.
 - ▶ Cannot put your head in the sand
- ▶ Ideal Investigation
 - ▶ Witness statements
 - ▶ Follow-up
 - ▶ Notifying Parents (remember confidentiality)
 - ▶ Detailed notes by the investigator
 - ▶ Reviewing video footage

After the Decision

- ▶ The school must send written determination to the parties simultaneously, along with information about how to appeal the determination.
- ▶ A school has discretion to set deadlines for when an appeal must be filed, bearing in mind the obligation to conclude the grievance process and bring resolution to the situation for both parties, within a reasonably prompt time frame.
- ▶ While not the decision maker, the Title IX Coordinator is responsible for carrying out the remedies contained in the written decision.

Informal Resolution

- ▶ Can be offered in appropriate cases
 - ▶ Exception: Where the respondent is an employee of the school
- ▶ Informal resolution may only be attempted if both parties enter the process voluntarily. Parties cannot be forced, threatened, or required to participate.
- ▶ Informal resolution proceeds with a trained facilitator, free from conflicts of interest or bias, who has received training.
- ▶ The Title IX Coordinator will still provide parties with notice of allegations, rights, confidentiality statement, and process withdrawal procedures.
- ▶ Before a school decides to pursue informal resolution, the school must consult with the Department of Internal Resolution and Compliance, Title IX, to discuss appropriateness.

Impartiality Expectations

- ▶ Equal treatment of all rivals or disputants; fairness to both complainant and respondent.
- ▶ Impartiality Challenges:
 - ▶ Prior history with any party involved
 - ▶ A parent or party alleges a conflict of interest



Grievance Process

- ▶ This is the District investigative process and subsequent decision
- ▶ Emphasis on “fair, equitable and without bias” process
- ▶ Investigation
 - ▶ The District has the burden of gathering the evidence.
- ▶ The investigator(s) cannot be the decision-makers

Grievance Process

- ▶ BOTH parties get all the evidence collected
- ▶ This may feel uncomfortable, but Title IX requires transparency and overrules FERPA concerns
 - ▶ Very tricky to navigate
 - ▶ Best Practice
 - ▶ **Use initials when possible**
 - ▶ Redact student witness names from final report, but witnesses NEVER get confidentiality
 - ▶ Provide adult witness names
 - ▶ **Notify parents when their student is involved in a Title IX investigation (if under 18)**
- ▶ Hearings for K-12 **are not required** (only colleges)
- ▶ A final report must be issued, and parties advised of their outcomes.
 - ▶ Parties are the complainant and respondent/ accused and their parents.
- ▶ No timeline for completing an investigation, but must be reasonable.

Appeal Process

- ▶ Either party is allowed an appeal
- ▶ Principal is the decider → Superintendent could hear appeal.
- ▶ Superintendent is the decider → Board could hear the appeal.
- ▶ Appeals should be allowed for
 - ▶ Procedural irregularity
 - ▶ Newly discovered evidence
 - ▶ Investigator had a conflict of interest