



Title IX Decision-Maker Training 2023

- Keshara D. Cowans, Esq.
 - Staff Attorney
- District Title IX Coordinator

Title IX

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

-Title IX of the Education Amendments of 1972



Training Objectives

- Understand the definitions of sexual harassment and OCPS education programs or activities
- Understand the Title IX Grievance Process
- Understand the preponderance of the evidence standard
- Understand what information is required in a written determination



Title IX Team

- **District Title IX Coordinator**
 - Responsible for coordinating OCPS & OTC compliance with Title IX regulations
- **School-based Title IX Coordinator/Investigator**
 - Responsible for coordinating Title IX compliance at an assigned school
 - Alternate school-based coordinators are recommended to assist with investigations, in case of absence, and or conflict of interest



Title IX Team Continued

- **Decision-Maker/Principal**

- Reviews the evidence, determines responsibility for all formal complaints, and provides a written determination to the parties
- Cannot be the same person as the Title IX Coordinator/Investigator or appeals-decision maker

- **Appeals Decision-Maker**

- Responsible for reviewing the written determination and issuing a written decision describing the result and rationale for the appeal
- Cannot be the same person as the Title IX Coordinator/Investigator or decision-maker



Role of the Title IX Coordinator/Investigator

- Responsible for coordinating Title IX compliance at their assigned school
- Document all Title IX complaints
- Conduct a fair and impartial investigation of formal complaints that fall within the scope of Title IX
- Implement supportive measures and remedies
- Create an investigative report that fairly summarizes relevant evidence



Role of the Decision-Maker

- Serve as the decision-maker in Title IX matters
- Determine whether the Code of Conduct has been violated based upon the preponderance of the evidence standard
 - Conduct an independent assessment of the evidence
 - Remain free from conflict of interest and bias
- Determine appropriate discipline when a Code of Conduct violation has been found
 - Draft a written determination that outlines the rationale for the finding(s)

Role of the Appeals Decision-Maker

- Make determination on a party's request for an appeal
 - Review written submissions from parties
- Review investigative report and all evidence from the underlying investigation
 - Case review is limited to the grounds listed in the appeal request
- Draft a written determination that outlines the rationale for the outcome



Conflict of Interest & Bias

- Grievance process must treat both parties equitably
- Does the Title IX Coordinator have an additional professional relationship with either the complainant or respondent?
 - Club Sponsor
 - Coach
 - Guidance Counselor
- If so, the Title IX Coordinator should be recused and the alternate Title IX Coordinator should handle the investigation.
- Does the Title IX Coordinator have a familial relationship with either the complainant or respondent?
 - If so, the Title IX Coordinator should be recused and the alternate Title IX Coordinator should handle the investigation.

Conflict of Interest

- The decision-maker must also be free from a conflict of interest or bias toward either the complainant or respondent.
- If the decision-maker has a conflict of interest, they will need to contact the District Title IX Coordinator so that another decision-maker can be appointed to review the Title IX matter.
- Examples of conflict include:
 - Familial relationship
 - Additional professional relationship
- ***Submit Request for Reassignment form***

Complainants and Respondents

Complainant:

- An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Respondent:

- An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.



- 

Advisors

- The following restrictions will be placed on advisors for **both** parties:
- Advisors may attend interviews with their party only at their party's request, unless the advisor is a parent or legal guardian;
 - Advisors shall not restrict access to their party;
 - **Must advise in writing if their party will not participate in the process**
 - **Unable to advise their party to “avoid” the investigation**
- Advisors are only permitted to use the investigative report and evidence received for inspection and review for purposes of the grievance process;
- Advisors will be required to abide by a non-disclosure agreement that complies with both Title IX and FERPA; and
 - Advisors may not request education records that are protected by FERPA
 - (i.e. prior discipline records of either party)

Sexual Harassment

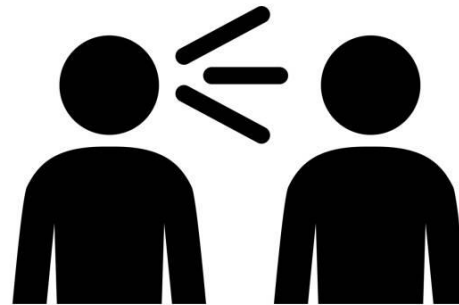
- ***Sexual harassment*** is defined as conduct on the basis of sex that satisfies one (1) or more of the following:
 1. A school employee conditioning the provision of aid, benefits, or services on the individual's participation in unwelcome sexual conduct (**quid pro quo**);
 2. Unwelcome conduct that a reasonable person would determine to be so **severe, pervasive, and objectively offensive** that it denies a person equal access to the education program or activity; or
 3. ***Sexual assault***, as defined in the Clery Act, or dating violence, domestic violence or stalking, as defined in the Violence Against Women Act.

Severe & Pervasive

- Allegations of physical contact are more likely to be considered severe
- Consider the circumstances
 - Did the complainant have the ability to escape the harassment?
- Determine if the conduct was widespread or openly practiced
- Frequency of the conduct is often a variable in assessing pervasiveness
 - **Intensity**
 - **Duration**
- Was there an unreasonable interference with the educational program or activity

Objectively Offensive

- Reasonable person standard
- Age and relationship of complainant and respondent are considered
- Number of persons involved
- Frequency
- Humiliation





Sexual Assault

- An offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation:
- Rape
- Fondling
- Statutory Rape
- Incest




Dating Violence

- 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:
 - Length of the relationship;
 - Type of relationship; and
 - Frequency of interaction between the persons involved in the relationship
- Dating violence includes sexual or physical abuse or the threat of such abuse

Dating Violence

Examples of dating violence:

- Pushing, shoving, biting, spitting, slapping, shaking, punching, scratching, kicking, beating, pinning down, or other similar behavior
- Breaking property, punching holes in the wall, throwing things or throwing things towards a person
- Pushing hands against the face, covering mouth and nose, squeezing the neck causing difficulty in breathing, or grabbing the face to force to look at them
- Using a weapon, threatening to use a weapon, or reminding that a weapon can be obtained or that other people can perpetrate the harm
- Threatening to harm physically or sexually



***All threats
should be
forwarded to
discipline for an
investigation!***

Domestic Violence

- 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

Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for his or her safety or the safety of others; or
- Suffer substantial emotional distress

For the purposes of this definition,

- Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.



Stalking

Examples of Stalking:

- Persistent following around before, during, and after class hours
- Waiting around, showing up, or driving by wherever currently located, such as home, work, or school
- Using social media to track or find out current location
- Constantly calling, texting, or video-chatting
- Using spoofing apps when calling to show up as a different person on caller ID
- Monitoring personal phone calls or computer use with or without personal knowledge of the monitoring
- Sending unwanted letters, cards, emails, or gifts



Education Program or Activity?

Schools must address allegations of sexual harassment that occur in “the school’s education program or activity, against a person in the United States.”

- “Education program or activity” is broadly defined to include locations, events, or circumstances over which the school exercises ***substantial*** control over both the respondent **and** the context in which the sexual harassment occurs.
- **Examples:**
 - School-funded, -sponsored, or -promoted trips
 - Sporting events
 - School Dances
 - Extracurricular programs or activities
 - Virtual Learning

Buildings or other locations that are part of the school’s operations, including remote learning platforms

- The operations of a school may include computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of, the school

Substantial Control

Example scenarios of a school exercising substantial control:

An incident of sexual harassment between two students in a private hotel room which occurred in a context related to a school-sponsored activity, such as a school field trip or travel with a school athletics team.

An incident that occurred in a student's home, such as where a teacher employed by a school visits a student's home ostensibly to give the student a book but in reality to instigate sexual activity with the student.

A student using a personal device to perpetrate online sexual harassment to another student during class time.

Denying Equal Access to an Education Program or Activity

Examples of effectively denying equal access to a school's education program or activity:

- Skipping class to avoid a harasser
- A decline in a student's grade point average
- Having difficulty concentrating in class
- A third grader who starts bed-wetting or crying at night due to sexual harassment
- A high school wrestler who quits the team but carries on with other school activities following sexual harassment

Denying Equal Access to an Education Program or Activity

While the previous examples help illustrate an effective denial of access, **no concrete injury is required** to prove an effective denial of equal access.

- Complainants do not need to have dropped out of school, failed a class, had a panic attack, or otherwise reached a 'breaking point' or exhibited specific trauma symptoms
- A complainant does not need to have already suffered loss of education before being able to report sexual harassment
- Effective denial of equal access to education also does not require that a person's total or entire educational access has been denied

School officials turning away a complainant by deciding the complainant was "not traumatized enough" would be **impermissible**

- 





Emergency Removal

- A school may remove a respondent from an education program or activity on an emergency basis if the school:
 1. Undertakes an individualized safety and risk analysis;
 2. Determines an immediate threat to the physical health or safety of any student or other individual arising from the allegations justifies removal; and
 3. Provides the respondent with notice and an opportunity to challenge the decision within two (2) school days following removal
- This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

Emergency Removal

After individual safety and risk analysis is completed - Parties have two (2) school days to challenge the decision.

NOTE: Immediately convene the School Threat Assessment Team (STAT) to conduct the safety and risk analysis.

The Title IX Process

- Incident
- Staff should **immediately** report sexual harassment allegations to the SRO, DCF, and Professional Standards as needed.
- All sexual harassment allegations should be given to the Title IX coordinator for review.
- **Assessment**
 - Scope of Title IX
 - Dismissal
- Investigation
- Determination
- Appeal



TITLE IX INVESTIGATION PROCESS TIMELINE FOR K-12 SCHOOLS

Timeline to Begin: An investigation must be initiated into any alleged complaint within twenty-four (24) hours or no more than two (2) school days of the complaint being filed or reported. A TITLE IX INVESTIGATION MUST BE CONDUCTED ONLY BY A TITLE IX COORDINATOR WHO HAS ATTENDED THE ANNUAL TITLE IX TRAINING.

Timeline to Complete: All investigations into sexual harassment complaints will be completed within thirty-five (35) school days of the investigation being launched or forty-five (45) school days with an appeal, unless additional time is necessary. If any investigation is deemed to require more than the days allotted, an explanation must be filed with the Investigative Report.

*Parties indicate the Complainant(s) and the Respondent(s) only.

Timeline	Explanation
Complaint Received	Schools are required to respond <i>within twenty-four (24) hours or no more than two (2) school days</i> .
Formal Complaint	Reports should be made as soon as possible after the alleged incident. A formal complaint must be filed <i>within ten (10) school days</i> after the alleged incident. OCPS is responsible for responding to complaints of which it has notice, even if notice is not received <i>within the aforementioned period of time</i> .
Scope of Title IX	Before beginning a Title IX Investigation you must complete the Scope of Title IX Determination Form. 1) if the alleged conduct falls within the scope of Title IX, complete the form and email immediately to titleix@ocps.net to obtain a case number. 2) if the alleged conduct does not meet the scope of Title IX, provide the completed form to your school's discipline administrator.
Immediate Reporting Requirements	Alleged sexual harassment that constitutes: 1) a crime <u>must</u> immediately be reported to your SRO or appropriate Law Enforcement Agency; 2) child abuse <u>must</u> immediately be reported to DCF and an A-4 Reporting Form <u>must</u> be completed; and/or 3) involves an OCPS employee, it <u>must</u> immediately be reported to Professional Standards in addition to steps 1 and 2 above.
Notice of Allegation(s)	Within two (2) school days letters MUST be sent: • To the parents of the Complainant and Respondent.
Response to Formal Complaint	Parties have two (2) school days from the date of the written Notice of Allegations to respond.
Separate Investigative Interviews	Initial interviews shall be conducted with both the Complainant and Respondent <i>within five (5) school days</i> . Each individual shall be interviewed separately.
Interview/Meeting Notices	Notices of interview must be sent at <i>least two (2) school days BEFORE</i> meetings.
Evidence Provided	Evidence must be provided to BOTH parties <i>within five (5) school days</i> from initial interviews of Complainant and Respondent, whichever is later.

Rev. 8-10-2022

1 of 2



Incident

- A Title IX Investigation begins with the reporting of an incident that meets the definition of sexual harassment that has occurred in an education program or activity in which the District has substantial control over both respondent and the context in which the harassment occurred.
- When **any** school-based employee (food service employees, custodial staff, paraprofessionals, school clerks, etc.) has knowledge of sexual harassment or allegations of sexual harassment, OCPS is obligated to respond
- There is no requirement that the person be participating or attempting to participate in a school program or activity to report sexual harassment
 - **All OCPS employees are required to report in writing any allegations of sexual harassment to the District Title IX Coordinator, school-based Title IX Coordinator, or appropriate area or district administrator**

Formal Complaint

- Formal complaints can be either written or electronic submissions requesting a sexual harassment investigation
- Formal complaints can be filed by the complainant, parent or legal guardian, or the school-based Title IX Coordinator:
- A formal complaint must be filed within **ten (10) school days** after the alleged incident. Reports should be made as soon as possible after the alleged conduct.
- At the time of filing the formal complaint, the complainant **must** be participating in or attempting to participate in an OCPS education program or activity
- ***Internal vs. External Formal Complaint Form***

<u>Timeline</u>	<u>Explanation</u>
Complaint Received	Schools are required to respond <i>within</i> twenty-four (24) hours or no more than two (2) school days .
Formal Complaint	Reports should be made as soon as possible after the alleged incident. A formal complaint must be filed <i>within</i> ten (10) school days after the alleged incident. OCPS is responsible for responding to complaints of which it has notice, even if notice is not received within the aforementioned period of time.
Scope of Title IX	Before beginning a Title IX Investigation you must complete the Scope of Title IX Determination Form. 1) If the alleged conduct falls within the scope of Title IX, complete the form and email immediately to titleix@ocps.net to obtain a case number. 2) If the alleged conduct does not meet the scope of Title IX, provide the completed form to your school's discipline administrator.

A school-based Title IX Coordinator may file a formal complaint even if the complainant is not associated with the school in any way. This is because the school has a Title IX obligation to provide all students, not just the complainant, with an educational environment that does not discriminate based on sex.

Formal Complaint



- Once the formal complaint is filed, schools must immediately determine if the allegations fall within the scope of Title IX
- If these requirements are met, schools must follow the grievance process outlined in School Board Policy JB Equal Educational Opportunities
- Formal complaints involving allegations of sexual harassment arising from the same facts or circumstances may be consolidated:
- Against more than one (1) respondent
- If multiple complainants file a complaint against multiple respondents
- If one (1) party files a complaint against the other party

Immediate Reporting Requirements

Alleged sexual harassment that constitutes:

- 1) a **crime** must immediately be reported to your SRO or appropriate Law Enforcement Agency;
- 2) **child abuse** must immediately be reported to DCF and an A-4 Reporting Form must be completed; and/or
- 3) involves an **OCPS employee**, it must immediately be reported to Professional Standards in addition to steps 1 and 2 above.

Notice of Allegation(s)

Within two (2) school days letters **MUST** be sent:

- To the parents of the Complainant and Respondent.

Initial Assessment

- Prior to any discipline being implemented the Title IX coordinator must conduct an initial assessment.
- ***Scope of Title IX Determination form***
- Title IX Coordinator must conduct an initial assessment to determine the following:
- Was a formal complaint filed? Does the Title IX Coordinator need to fill out the complaint form?
- Do the allegations fall within the Scope of Title IX?
 - Does the conduct meet the definition of sexual harassment?
 - Did the incident occur within an OCPS education program or activity?
 - Did the incident occur against a person in the United States?
- Dismissal



SCOPE OF TITLE IX DETERMINATION FORM

PURPOSE: This form should be used to determine whether the allegations presented to a Title IX Coordinator fall within the scope of sexual harassment as defined by Title IX of the Education Amendments Act of 1972 ("Title IX") prior to beginning a Title IX or discipline investigation.

DIRECTIONS: After completing this form, if you have determined that the alleged conduct falls within the scope of Title IX and a Title IX investigation will be initiated; email this form immediately to titleix@ocps.net to obtain a case number. If you have determined that the alleged conduct does not meet the scope of Title IX, provide this form to your school's discipline team for further handling.

Incident Information		
Incident Date: <input type="text"/>	Date Reported: <input type="text"/>	Case No.: <input type="text"/>
School: <input type="text"/>	Learning Community: <input type="text"/>	Location of Incident: <input type="text"/>
Complainant: <input type="text"/>	<input type="checkbox"/> Student <input type="checkbox"/> Employee ID# <input type="text"/>	
Respondent: <input type="text"/>	<input type="checkbox"/> Student <input type="checkbox"/> Employee ID# <input type="text"/>	
Allegations: <input type="text"/>		
Title IX Coordinator: <input type="text"/> Phone: <input type="text"/>		

SCOPE OF TITLE IX

The protections of Title IX extend to all academic, educational, extracurricular, athletic, and other programs of a school district, whether those programs take place in a school or an off-campus event that the school district sponsors. It protects both male and female students, faculty, and staff from sexual harassment by any school employees, non-employee, and other students.

BEFORE YOU BEGIN A TITLE IX INVESTIGATION one (1) of the following criteria MUST be met:

- 1) Did an OCPS employee condition the provision of an aid, benefit, or service of the school on an individual's participation in *unwelcome sexual conduct*?
☐ Yes ☐ No If yes, **immediately** report the incident to law enforcement and DCF. Refer the matter to Professional Standards to handle the investigation.
- OR
- 2) Was the unwelcome conduct determined by a reasonable person to be so 1) severe, 2) pervasive, and 3) objectively offensive that it effectively denies a person equal access to the school's education program or activity?
☐ Yes If yes, complete a full Title IX investigation.
☐ No If no, you **DO NOT** need to complete a Title IX investigation. **HOWEVER**, the school is required to address the allegations pursuant to the OCPS Code of Student Conduct.
- OR
- 3) Did the allegations involve sexual assault, dating violence, domestic violence or stalking?
☐ Yes ☐ No If yes, proceed to #4 below.
- 4) Did the sexual harassment, sexual assault, dating violence, domestic violence, or stalking occur during an OCPS educational program or activity against a person in the United States?
☐ Yes If yes, complete a full Title IX investigation.
☐ No If no, you **DO NOT** need to complete a Title IX Investigation. **HOWEVER**, you are required to address the allegations using a different process, which includes, notifying law enforcement, conducting an investigation pursuant to the OCPS Code of Student Conduct, and completing the A-4 Reporting Form.
- 5) If you answered YES to questions 2, 3 or 4 above, you will need to sign below and complete a full Title IX Investigation.
- 6) If you answered NO to any of the above questions, you will need to explain your reasons in detail below:
 - a) The allegations did not fall within the scope of Title IX as stated above because (explain):
 - b) *Since the allegations did not fall within the scope of Title IX, this matter was referred to the following:
Referral Date: Name: Department:
*A copy of this form must be provided to the person/department.

Signature of Title IX Coordinator	Print Name	Date
-----------------------------------	------------	------



Reporting Sexual Harassment

- **Any** person may report sexual harassment, regardless of whether the reporting person is the alleged victim of the conduct
- A report can be made in person, by telephone, by mail, or by electronic mail to the District Title IX Coordinator or school-based Title IX coordinator
- A formal complaint must be filed ten (10) days after the alleged incident or the complaint may be deemed abandoned
- OCPS is responsible for responding to complaints of which it has notice even if notice is not received within the aforementioned time frame



Response to Sexual Harassment

- Schools must respond to knowledge of sexual harassment within twenty-four (24) hours or no more than two (2) school days
- Upon knowledge of sexual harassment the schools **must** notify the school-based Title IX Coordinator.
 - Contact the complainant to discuss the availability of supportive measures
 - Consider the complainant's wishes with respect to the supportive measures
 - Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint
 - Explain the process for filing a formal complaint

Actual Knowledge



Actual Knowledge

- All OCPS employees are required to report in writing any allegations of sexual harassment to the District Title IX Coordinator, school-based Title IX Coordinator, or appropriate area or district administrator
- When any school-based employee has knowledge of sexual harassment or allegations of sexual harassment, OCPS is obligated to respond
- This includes food service employees, custodial staff, paraprofessionals, school clerks, etc.
- A school may receive actual knowledge of sexual harassment from any person. There is no requirement that the person be participating or attempting to participate in a school program or activity to report sexual harassment

Supportive Measures

- Non-disciplinary and non-punitive
 - ✓ Change in class or lunch schedule at the request of the complainant or respondent
- Provided to all parties throughout the process
- Without unreasonably burdening the other party
- If supportive measures are not provided the Title IX Coordinator must document the file
- Even if the allegations do not fall under the scope of Title IX, the school-based Title IX Coordinator can still offer supportive measures to the complainant

Examples of supportive measures include, but are not limited to:

- Counseling
- Extensions of deadlines or other course-related assignments
- Modifications of class schedules
- Campus escort services
- Mutual restrictions on contact between the parties
- Leaves of absence
- Increased security and monitoring of certain areas of the campus
- Other similar measures

Supportive Measures

The Hope Scholarship Program

If a K-12 student has been subjected to bullying, harassment, assault, threats, or other violent acts, the student has the opportunity to transfer to another public school or enroll in an approved private school under the [Hope Scholarship](#).



Notifying Law Enforcement

- If the alleged sexual harassment might constitute a crime the matter **shall immediately** be reported to the School Resource Officer or the appropriate law enforcement agency. Any uncertainty regarding whether the alleged sexual harassment might constitute a crime must be resolved in favor of reporting the incident to law enforcement.



Notifying DCF

- If the alleged sexual harassment might constitute child abuse the matter **shall immediately** be reported to the Florida Department of Children and Families. Any uncertainty regarding whether the alleged sexual harassment might constitute child abuse must be resolved in favor of reporting the incident.



Notifying Professional Standards

- When an OCPS employee is the respondent, the school-based Title IX Coordinator or school administrator **shall immediately** notify OCPS Professional Standards. If the respondent is an OCPS employee, discipline may be taken, consistent with any applicable collective bargaining agreement provisions or statutory provisions to resolve a complaint of sexual harassment.

All OCPS employees are mandatory reporters!

An employee who fails to promptly report an incident of sexual harassment which might constitute child abuse, may be subject to disciplinary action!





Dismissal

- OCPS **must** dismiss a formal complaint if the alleged conduct falls outside the scope of Title IX. OCPS may take action under another provision of the Code of Student Conduct even if dismissal is required. Written notice of dismissal must be sent within twenty-four (24) hours or no more than two (2) school days.
 - OCPS **may** dismiss a formal complaint if the complainant wishes to withdraw the complaint in writing, or if circumstances prevented the school from gathering evidence. Written notice of dismissal must be sent within twenty-four (24) hours or no more than two (2) school days.
 - Dismissal decisions are made by the Title IX Coordinators.

Notice of Dismissal

Notice of Dismissal **must** be sent *within twenty-four (24) hours or no more than two (2) school days.*



Appeal of Dismissal

- Parties may request an appeal from a dismissal within two (2) school days of issuance of the dismissal
- Requests for an appeal shall be sent to the decision-maker

The Grievance Process

1. Notice
2. Investigation
3. Evidence
4. Appeal



Basic Requirements for the Grievance Process

During the grievance process, a school must:

- Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility has been made against respondent;
- Require an objective evaluation of all relevant evidence;
- Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the end of the grievance process;
- Ensure the Title IX Coordinator, investigator, decision-maker, appeals decision-maker, and informal resolution facilitator are free from any conflicts of interest;
- Include reasonably prompt time frames for the conclusion of the grievance process; and
- Include a process that allows for the temporary delay of the grievance process or limited extension of time frames for good cause with written notice;
- List the range of possible disciplinary sanctions and remedies that may be implemented;
- Include the procedures and grounds for appeal;
- Describe the range of supportive measures available to parties; and
- Not allow or require questions or evidence that seek disclosure of protected information.

Grievance Process-Written Notice

- In response to a formal complaint, schools must provide written notice to all known parties and follow the specified grievance process before the imposition of **any** disciplinary sanctions against the respondent
- Written notice must be provided within two (2) school days upon receipt of the formal complaint



Written Notice

- **Written notice must include:**
 - The identities of parties involved;
 - The conduct allegedly constituting sexual harassment;
 - The date and location of the alleged incident;
 - A statement that the respondent is presumed not responsible for the alleged conduct;
 - The school's grievance process;
 - A statement that a determination regarding responsibility is made at the conclusion of the grievance process;
 - A statement informing the parties that they may have an advisor of their choice who may be, but is not required to be, an attorney;
 - A statement advising parties that they may inspect and review evidence; and
 - A statement informing the parties of any provision in the recipient's Code of Student Conduct that prohibits knowingly making false statements or knowingly submitting false information



Additional Allegations

- If during the course of an investigation the school decides to investigate allegations about the complainant or respondent that were not included in the original notice, the school must provide written notice of the additional allegations to the known parties within two (2) school days



Response to Formal Complaint

- Parties **shall** be afforded the opportunity to prepare a response regarding the complaint and provide the response during the initial interview
- Parties **shall** have no less than two (2) school days from the date of the written notice to prepare a response.
- The school-based Title IX Coordinator **shall** conduct the initial interviews with both the complainant and respondent within five (5) school days
- Each individual **shall** be interviewed separately and at no time will the complainant and respondent be interviewed together

Investigation



Investigation of the Formal Complaint

- The investigation must be completed and evidence provided to parties within five **(5)** school days of the initial interviews with the complainant and respondent, whichever interview is later
- **This time frame may be extended for good cause, which includes:**
 - Absence of a party, a party's advisor, or a witness
 - Concurrent law enforcement activity
 - The need for language assistance or accommodation of disabilities
- OCPS has the burden of proof and the burden of gathering evidence
- Schools may not obtain medical records unless given voluntary, written consent
- Schools may not restrict either party from discussing the allegations under investigation

Written Notice for Meetings, Interviews, & Hearings

- Written notice for any investigative interviews or meetings must be sent to all parties whose participation is expected or invited at least two **(2)** school days prior to the interview or meeting
- Applies to witnesses as well



Separate Investigative Interviews

Interview/Meeting Notices

Initial interviews shall be conducted with both the Complainant and Respondent *within five (5) school days*. Each individual shall be interviewed **separately**. Notices of interview **must** be sent *at least two (2) school days* BEFORE meetings.



Evidence

- Both parties must be given an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations
 - Including the evidence upon which the school does not intend to rely in reaching a determination regarding responsibility
- Schools may not restrict the ability of either party to gather and present relevant evidence, including all inculpatory and exculpatory evidence
- Parties shall be given the equal opportunity to present witnesses

Investigation Completed	The Title IX Investigation must be completed <i>within five (5) school days</i> of the initial interviews of the Complainant and Respondent, whichever is later. (See School Board Policy JB Equal Educational Opportunities for any exceptions).
Response to Evidence	Parties have ten (10) school days to submit a written response to the evidence.



Evidence

Schools must send all evidence subject to inspection to each party and their advisor before completion of the investigative report. Evidence shall be sent in electronic format or a hard copy.

Parties may submit a response to all evidence for the investigator to consider before concluding the investigative report. Parties have ten (10) school days to submit a written response, or the non-response will be deemed as a waiver.

The Title IX Coordinator should prepare the investigative report during this time and shall incorporate any responses into the report.



Investigative Report

- The Title IX Coordinator/Investigator will create an investigative report that fairly summarizes all relevant evidence presented
 - The investigative report shall not make any findings about the allegations
- The report must be sent in an electronic form or hard copy to all parties and their advisors ten days prior to any written determination
- Parties are given ten (10) days from receipt of the investigative report to provide a written response
- Any responses received from the parties should be attached to the investigative report

Submitting Questions for Parties & Witnesses

- After the investigative report has been sent to all parties and before a determination regarding responsibility, parties at the K-12 level have two (2) school days to submit written, relevant questions to be asked of any party or witness and provide each party with answers within two (2) school days.
- After the parties submit written questions, the decision-maker must:
 - Determine whether a question is relevant; and
 - Explain to the proposing party any decision to exclude a question as not relevant

Submitting Questions

- Parties then have two (2) school days to provide no more than five (5) follow-up questions in total from all parties and witnesses.
- Parties and witnesses have two (2) school days to respond to follow-up questions.
- Questions and evidence regarding a complainant's sexual predisposition or prior sexual behavior are only relevant if offered to prove someone other than the respondent committed the alleged conduct, or to prove consent (***rape shield***)
 - Fed. R. Evid. 412; Fla. Stat. § 794.022.

Relevant Question(s)

- **MUST** be submitted by the parties *within two (2) school days* after the investigative report is sent.
 - Parties and witnesses have **two (2) school days** to answer any questions submitted.
 - Parties have **two (2) school days** to provide up to five (5) total follow-up question(s).
- Parties and witnesses have **two (2) school days** to respond to any follow-up question(s).



Relevance Test

- Closely connected or appropriate to what is being done or considered
- A **relevant question** is one that deals with the real issue of concern to the investigation.
 - Will the question lead to an answer that makes a fact more or less probable?

Scenario # 2

- Parent files a formal complaint and alleges that their child, Student A, is being sent nude photos by Student B during their online English class. The parent says the photos are being sent daily and it disrupts Student A's participation during class. Parent alleges Student A is uncomfortable turning their video on during class because it appears Student B is trying witness Student A's reaction once the photos are received.
- The respondent submits a question to the complainant about an argument the complainant had with respondent's best friend.
- Is this question relevant?



Scenario # 3

- Student A allegedly air dropped a nude photo of Student B during class.
- Student B submits written questions to Students C and D to ask if they overheard Student A threaten to share a nude photo of Student B during an argument at lunch.
- Is this question relevant?
- Yes, this question deals with the real issue of concern in the investigation.

Preponderance of the Evidence

- Preponderance of the evidence is the evidentiary standard used in all OCPS investigations
- Under the preponderance of the evidence standard, the burden of proof is met when the decision-maker is convinced that there is a greater than 50% chance that the claim is true



Assessment for Decision Makers

- Does the alleged conduct meet the Title IX definition of sexual harassment?
 - Severe, pervasive, and objectively offensive; or
 - Sexual assault, dating violence, domestic violence, or stalking
- Was the complainant denied equal access to the education program or activity?
 - Would a reasonable person in the complainant's position be effectively denied equal access to education compared to a similarly situated person who is not suffering the alleged sexual harassment.

It has to be Title IX, right?

- Wrong! Title IX is not the exclusive remedy for sexual misconduct
- If the allegations do not fall within the scope of Title IX, schools have discretion to respond appropriately to reports of sexual misconduct utilizing the code of student conduct
 - This may include sexual misconduct that does not deny a complainant equal access to an OCPS education program or activity
- Schools are permitted and encouraged to offer supportive measures for complainants impacted by sexual misconduct that occurred outside the scope of Title IX

Scenario # 4

- Student C tells a Guidance Counselor that Student D has been making them uncomfortable during class. Student D is constantly making sexually explicit remarks, sending Student C graphic images of naked people and on three separate occasions has attempted to forcefully remove Student C's clothes. Student C informed the guidance counselor they no longer want to come to school because of Student D's behavior.
- Do these allegations meet the Title IX definition of sexual harassment?
- Did the allegations occur within an OCPS Education Program or Activity in the U.S.?
- Was Student C denied equal access to an OCPS Education Program or Activity?
- If you answered yes to all of these questions, then Student D should be found responsible for violating Title IX.



Scenario # 5

- Teacher knows that Student A and Student B are in a relationship. One day in between classes, teacher observed Student A and Student B having what appeared to be an argument in the hallway. Student A slapped Student B in the face, however, Student A immediately apologized and it appeared all was forgiven by Student B.
- Do these allegations fall within the Title IX definition of sexual harassment?
- Did the allegations occur within an OCPS Education Program or Activity?
- Yes, this is a dating violence situation and dating violence falls within the scope of Title IX.



Scenario # 6

- Counselor receives an email from a former student. The email describes how Student A, who is in a relationship with Student B, came on campus and destroyed Student B's car by smashing the windows, slashing the tires, and tearing the seats inside of the car.
- Do these allegations fall within the Title IX definition of sexual harassment?
- Did the allegations occur during an OCPS program or activity?
- Was Student B denied equal access to an OCPS education program or activity?
- Yes, breaking property is an example of dating violence.



Scenario # 7

- Parent files a formal complaint and alleges that their child, Student A is being harassed by Student B. The complaint states that Student B has followed Student A home on multiple occasions, has sent numerous threatening messages throughout the school day, and has even physically assaulted Student A. Parent says that this behavior has made Student A fearful of returning to school.
- Do these allegations fall within the scope of Title IX?
- Did the allegations occur within an OCPS Education Program or Activity?
- Was Student A denied equal access to an OCPS Education Program or Activity?
- Yes, this is a stalking allegation and staking falls within the scope of Title IX.



Written Determination

- At the conclusion of the grievance process, the decision-maker must issue a written determination to the parties simultaneously **within three (3) school days**
- The written determination must apply the preponderance of the evidence standard
- The school-based Title IX Coordinator is responsible for implementing remedies stated in the written determination

Written Determination

The written determination along with a Request for Appeal Form **must** be provided simultaneously to the Parties *within three (3) school days*.

Written Determination

- **The written determination must include:**

- Identification of the allegations potentially constituting sexual harassment, pursuant to the definition in this policy;
- A description of the procedural steps taken from the receipt of the formal complaint through the written determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings;
- Findings of fact supporting the determination;
- Conclusions regarding application of the Code of Student Conduct to the facts;
- The result and rationale as to each allegation;
- A determination regarding responsibility as to each allegation;
- Any disciplinary sanctions imposed on the respondent by the school;
- Whether remedies will be provided by the school to the complainant; and
- Permissible procedures and grounds for the complainant and respondent to appeal.

Remedies

- Issued at the conclusion of the grievance process
- Designed to restore or preserve equal access to the school's education program or activity.
- Similar to supportive measures
- Includes disciplinary action
 - Changing a respondent's class schedule
 - Removing a respondent from a team or extra curricular activity





- 



Appeals

- Decision-maker will notify the Title IX Coordinator once a Request for Appeal form was received
- Title IX Coordinator will send Notice of Appeal to both parties
- Parties must be given three (3) school days to submit a written statement in support of, or challenging, the outcome of the written determination
- If a written statement is not received within three (3) school days, the appeals decision-maker will deem the non-response as a waiver and continue with the appeals process
- Title IX Coordinator will submit the evidence, investigative report, written determination and all appeals documents to the appeals decision-maker

Appeals

Appeals may take place for the following reasons:

- Procedural issues affected the outcome;
- New evidence that was not reasonably available at the time the written determination or dismissal was made becomes available that could affect the outcome; or
- There was a conflict of interest or bias by the school-based Title IX Coordinator, investigator, or decision-maker, against any complainant or respondent that affected the outcome

Written Determinations will be overturned if....

- The allegations do not meet the Title IX definition of sexual harassment
- The allegations did not occur within an OCPS education program or activity
- The complainant was not denied equal access to an OCPS education program or activity
- If the Title IX coordinator and/or Decision Maker did not properly follow the Title IX procedures outlined in School Board Policy JB Equal Educational Opportunities
 - Including failure to recuse a Title IX Coordinator or Decision Maker from an investigation due to a conflict

Appeals

- The appeals decision-maker may not be the same person as the investigator, school-based Title IX Coordinator, or decision-maker who reached the initial determination of responsibility or dismissal
- The appeals decision-maker must not have a conflict of interest or bias for or against any complainant or any respondent
- The written appeals determination describing the result and rationale for the decision must be provided to both parties within five (5) school days

Retaliation

- No school or other person may intimidate, threaten, coerce, or discriminate against any individual for the purposes 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, proceeding, or hearing
- Complaints alleging retaliation may be filed according to the grievance procedures for sexual harassment as outlined in School Board Policy JB
 - ***All threats should be forwarded to discipline for an investigation***



FERPA

Family Educational Rights & Privacy Act

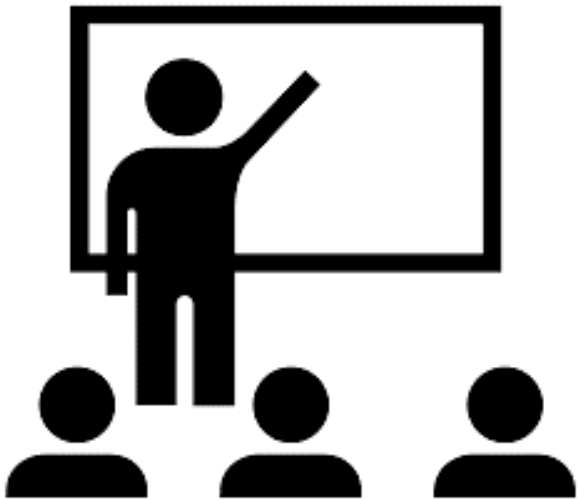
OCPS should interpret Title IX and FERPA in a manner to avoid any conflicts

Where a true conflict exists, the obligation to comply with Title IX is not
obviated or alleviated by the FERPA statute or federal regulations



Training

- Training is mandatory for all school-based Title IX Coordinators, investigators, decision-makers, hearing officers, and appeals decision-makers
- All training materials must be made available to the public on the OCPS website



Recordkeeping

- Schools must maintain records related to any investigation for seven **(7)** years, including records of:
- Any actions taken in response to a report of sexual harassment;
- Any actions taken in response to a formal complaint of sexual harassment;
- Any supportive measures provided;
- Each sexual harassment investigation;
- Any determination regarding responsibility;
- Any audio or audiovisual recording or transcript;
- Any disciplinary sanctions imposed on the respondent;
- Any remedies provided to the complainant;
- Any appeal and written appeal decision; and
- All materials used to train school-based Title IX Coordinators, investigators, decision-makers, and appeals decision-makers.



Recordkeeping

Title IX records are required to be maintained for **seven (7) years**.

Our Promise. Your Support. Their Success.

Our Promise. Your Support. Their Success.

Our Promise. Your Support. Their Success.

Keshara D. Cowans, Esq.
Staff Attorney
EEO & Equity Officer
District Title IX Coordinator
Office of Legal Services
445 W. Amelia Street Orlando, FL 32801
(407) 317-3411
Keshara.Cowans@ocps.net



Orange County
Public Schools