

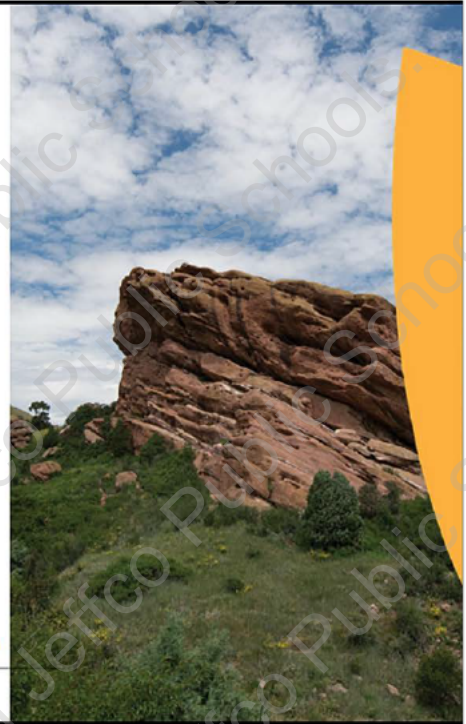


# Title IX Personnel Training

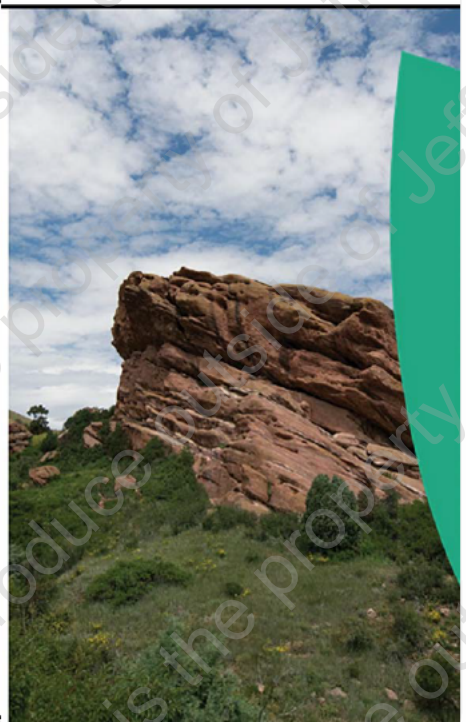
For Title IX Personnel at Jeffco Public Schools under the August 14, 2020 Regulations

Last Updated: May 3, 2021

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# Title IX & Its Regulations



## Sex-Based Discrimination || Title IX of the Education Amendments of 1972

- Title IX protects people from **discrimination based on sex** in education programs or activities that receive Federal financial assistance. Title IX provides:
  - "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."
- The U.S. Department of Education's Office for Civil Rights (OCR) enforces Title IX.



## Sex-Based Discrimination || August 14, 2020 Regulations

- On May 6, 2020, the U.S. Department of Education issued new regulations under Title IX. These regulations became effective August 14, 2020.
- **Points for Discussion:**
  1. What are the key provisions of the August 14, 2020 regulations?
  2. Who are the key players under the August 14, 2020 regulations?



## August 14, 2020 Regulations || Training Requirements

- **Title IX Coordinators, Investigators, Decision-Makers, and Informal Resolution Facilitators** must be trained on:
  - The definition of sexual harassment in 34 CFR § 106.30;
  - The scope of the District's education program or activity;
  - How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable; and
  - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.



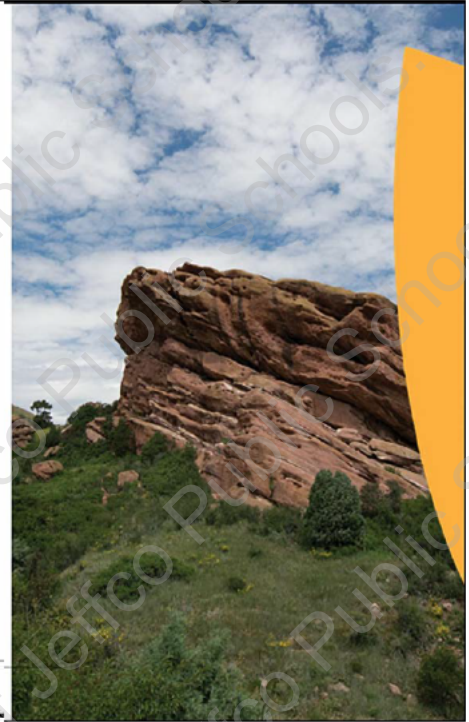
## August 14, 2020 Regulations || Training Requirements

- **Decision-Makers** must be also be trained on:
  - Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in 34 CFR § 106.45(b)(6); and
  - Any technology to be used at a live hearing.
- **Investigators** must also be trained on:
  - Issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in 34 CFR § 106.45(b)(5)(vii).





# Reports of Sexual Harassment



## Sexual Harassment Defined || 34 CFR § 106.30

- **Sexual Harassment:** Conduct on the basis of sex that satisfies one or more of the following:
  - A District employee conditioning the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct;
  - 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 District's education program or activity; or
  - **Sexual assault, dating violence, domestic violence, or stalking.**



## Sexual Harassment Defined || Sexual Assault & Consent

- **Sexual Assault:** Sexual assault is defined as set forth in 20 U.S.C. § 1092(f)(6)(A)(v).
  - Includes forcible rape, forcible sodomy, sexual assault with an object, forcible fondling, incest, and statutory rape.
  - The District's [Title IX Policies and Procedures webpage](#) further defines forcible rape, forcible sodomy, sexual assault with an object, forcible fondling, incest, and statutory rape.
- **Consent:** The District has adopted a definition of consent consistent with the laws of the State of Colorado.



## Sexual Harassment Defined || Dating Violence, Domestic Violence & Stalking

- **Dating Violence:** Dating violence is defined as set forth in 34 U.S.C. § 12291(a)(10).
- **Domestic Violence:** Domestic violence is defined as set forth in 34 U.S.C. § 12291(a)(8).
- **Stalking:** Stalking is defined as set forth in 34 U.S.C. § 12291(a)(30).

*The District's [Title IX Policies and Procedures webpage](#) elaborates on each of these defined terms.*



## Sexual Harassment Defined || Points for Discussion

- **Points for Discussion:**

1. What is the definition of sexual harassment under 34 CFR § 106.30?
2. Do you have any questions about sexual assault, dating violence, domestic violence, or stalking, all of which fall under the definition of sexual harassment?



## Responding to Reports of Sexual Harassment || 34 CFR § 106.44(a)

- The District's response obligations under the August 14, 2020 Title IX regulations are triggered when the District has received **actual knowledge of sexual harassment** in its **education program or activity** against a person in the United States.
- Actual knowledge, sexual harassment, and education program or activity are all defined terms under the Title IX regulations.



## Responding to Reports of Sexual Harassment || Actual Knowledge

- **Actual Knowledge:** Notice of sexual harassment or allegations of sexual harassment to the District's Title IX Coordinator or any official of the District who has authority to institute corrective measures on behalf of the District, or to any employee of an elementary and secondary school.
- **Sexual Harassment:** *Sexual harassment is defined as set forth in 34 CFR § 106.30.*



## Responding to Reports of Sexual Harassment || Education Program or Activity

- **Education Program or Activity:** Includes locations, events, or circumstances over which the District exercised substantial control over both the respondent and the context in which the sexual harassment occurs.
- **Points for Discussion:**
  - What is the scope of the District's education program or activity?
  - What if alleged sexual harassment did not occur in the District's education program or activity?



## Responding to Reports of Sexual Harassment || Deliberate Indifference

- If the District has actual knowledge of sexual harassment in its education program or activity against a person in the United States, the District must respond promptly in a manner that is **not deliberately indifferent**.
- The District is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.



## Responding to Reports of Sexual Harassment || Obligations

- When the District has obtained actual knowledge of sexual harassment in its education program or activity against a person in the United States, the Title IX Coordinator will contact the complainant regarding **supportive measures**. This includes:
  - Discussing the availability of supportive measures with the complainant;
  - Considering the complainant's wishes with respect to supportive measures;
  - Informing the complainant of the availability of supportive measures with or without the filing of a formal complaint; and
  - Explaining to the complainant the process for filing a formal complaint of sexual harassment.





## Responding to Reports of Sexual Harassment || Supportive Measures

- **Supportive Measures:** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.
  - Designed to restore or preserve equal access to the District's education program or activity without unreasonably burdening the other party.
  - Equal right to supportive measures
  - Confidentiality of supportive measures



## Responding to Reports of Sexual Harassment || Supportive Measures

- **Supportive measures** may include:
  - Counseling
  - Extensions of deadlines or other course-related adjustments
  - Modifications of work or class schedules
  - Mutual restrictions on contact between parties
  - Changes in work or classroom locations
  - Leaves of absences
  - Increased security
  - Monitoring of certain buildings or areas
  - Other similar measures

*Before imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent accused of engaging in sexual harassment, the District must follow the grievance process prescribed by Title IX and its regulations.*

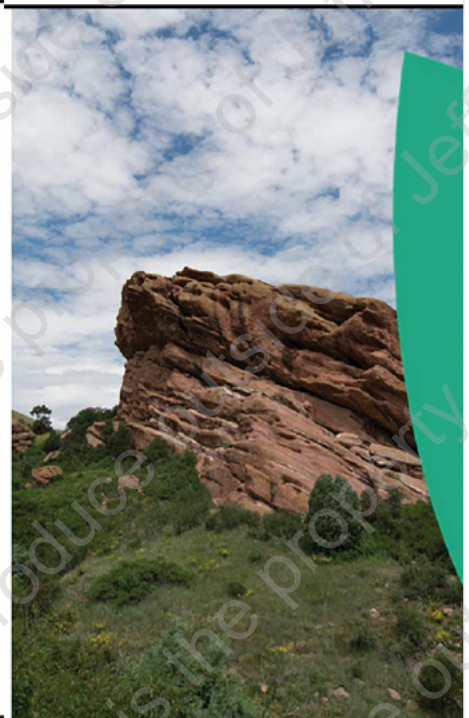


## Responding to Reports of Sexual Harassment || Emergency Removal

- The District has the right to remove a respondent from its education program or activity on an emergency basis. In order to do so, the District must first:
  - Undertake an individualized safety and risk analysis;
  - Determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal; and
  - Provide the respondent with notice and an opportunity to challenge the decision immediately following the removal.
- Subject to the above process, the District may remove a respondent without first having received a formal complaint of sexual harassment.



## Formal Complaints of Sexual Harassment



## Formal Complaints || 34 CFR § 106.30; 34 CFR § 106.44(b)(1)

- Formal complaints of sexual harassment trigger the grievance process prescribed by the August 14, 2020 Title IX regulations.
  - **Formal Complaint:** A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the District investigate the allegation of sexual harassment.
  - **Document filed by a Complainant:** 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.

*At the time of filing a formal complaint, a complainant must be participating or attempting to participate in the District's education program or activity.*



## Formal Complaints || Filing Methods

- The District has established a number of methods for filing complaints of discrimination on the basis of sex (including sexual harassment). They include:
  - Filing a complaint online at <https://forms.gle/F1ZuaqcNsK57LTJm8>
  - Completing a paper complaint form, which is available in each school's counseling office, or speaking to any Administrator
  - Contacting the Title IX Coordinator
- Students and employees may also contact the Office for Civil Rights to report discrimination

*The District may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.*



## Formal Complaints || Jurisdiction and Dismissal

- Under certain circumstances, a formal complaint of sexual harassment may not be subject to the jurisdiction of Title IX and the prescribed grievance procedure.
- A formal complaint must be dismissed if:
  - The conduct would not constitute sexual harassment as defined in the Title IX regulations even if proved;
  - The conduct did not occur in the District's education program or activity (as that term is defined by the Title IX regulations); or
  - The conduct did not occur against a person in the United States.

*Dismissing a formal complaint of sexual harassment for any of these reasons does not preclude action under another of the District's policies prohibiting misconduct.*



## Formal Complaints || Jurisdiction and Dismissal

- A formal complaint may be dismissed if:
  - The complainant submits a written request for withdrawal to the Title IX Coordinator;
  - The respondent is no longer enrolled at or employed by the District; or
  - The specific circumstances prevent the District from gathering evidence sufficient to reach a determination.

*Parties are able to appeal dismissal decisions – we will discuss this in the appeals section of this training.*



## Formal Complaints || Administrative Leave

- Formal complaints of sexual harassment trigger the grievance process prescribed by the August 14, 2020 Title IX regulations.
- During the pendency of the grievance process, the District has the right to place a non-student employee respondent on administrative leave.



## Grievance Process for Formal Complaints of Sexual Harassment



## Sex-Based Discrimination || Grievance Procedures

- The District has two sets of grievance procedures for processing complaints of sex-based discrimination:
  1. Grievance Procedure for Complaints of Discrimination on the Basis of Sex that Do Not Include an Allegation of Sexual Harassment
  2. **Grievance Procedure for Formal Complaints of Sexual Harassment and Complaints including Allegations of Sexual Harassment**
- Both of these grievance procedures provide for the prompt and equitable resolution of student and employee complaints alleging discrimination on the basis of sex, including sexual harassment.



## Grievance Process for Formal Complaints of Sexual Harassment || Phases

1. Investigation Phase
2. Decision-Making Phase
3. Appeals Phase
4. Option for Informal Resolution



## Grievance Process for Formal Complaints of Sexual Harassment || Time Frames

- The grievance process will be completed in a reasonably prompt time frame, which the District designates as 120 school days from receipt of the formal complaint.
  - Temporary delays or limited extensions of time frames may be permitted for **good cause** with written notice to the complainant and respondent of the delay or extension and the reasons for the action.
  - **Good cause** may include considerations such as absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.



## Grievance Process for Formal Complaints of Sexual Harassment || Party Rights During All Phases

- Parties are guaranteed a number of **rights during the grievance process**, including:
  - Presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
  - Equal opportunity to (i) present witnesses and other evidence, and (ii) inspect and review any evidence obtained as part of the investigation that is directly related to the allegations in the formal complaint.



## Grievance Process for Formal Complaints of Sexual Harassment || Party Rights During All Phases

- Privacy protections for records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional unless the District has obtained the party's voluntary, written consent.
- Protections for information covered by a legally recognized privilege, unless waived.
- Not restricting the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- Not being subject to retaliation.



## Grievance Process for Formal Complaints of Sexual Harassment || Party Rights During All Phases

- Credibility determinations that are not based upon a person's status as a complainant, respondent, or witness.
- The right to an advisor of choice, who may be, but is not required to be, an attorney.
- Equal opportunity to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, and not having the District limit the choice or presence of an advisor in any meeting or grievance proceeding.





## Grievance Process for Formal Complaints of Sexual Harassment || Party Rights During All Phases

- Objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence.
- Title IX personnel will not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- Written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings to a party whose participation is invited or expected, with sufficient time for the party to prepare to participate.



## Grievance Process for Formal Complaints of Sexual Harassment || Standard of Evidence

- **Standard of Evidence:** The standard of evidence to be used for determining responsibility under this grievance procedure (and for all formal complaints of sexual harassment, including formal complaints against employees and students) is the preponderance of the evidence standard.
- **Points for Discussion:**
  - What is a “standard of evidence”?
  - What is the “preponderance of the evidence”?



## Grievance Process for Formal Complaints of Sexual Harassment || Notice of Allegations

- **Notice of the Allegations:** Upon receipt of a formal complaint, the Title IX Coordinator will provide the known parties written notice of:
  - The grievance process (including informal resolution)
  - The allegations of sexual harassment potentially constituting sexual harassment as defined in 34 CFR § 106.30, including sufficient details (as defined in the regulations) known at the time and with sufficient time to prepare a response before any initial interview.

*If, in the course of an investigation, the District decides to investigate allegations about the complainant or respondent that are not included in the initial notice of allegations, the District must provide notice of the additional allegations to the parties whose identities are known.*



## Grievance Process for Formal Complaints of Sexual Harassment || Notice of Allegations

- The written notice must:
  - Include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
  - Inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and who may inspect and review evidence as provided under the regulations.
  - Inform the parties of any provision in the District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.



## Grievance Process for Formal Complaints of Sexual Harassment || Investigation Phase

- **Investigative Process:** The specific steps of the investigation will vary based on the nature of the allegations and other factors. The investigation may include, but is not limited to, the following:
  - Interviews of the parties and/or witnesses;
  - Requests for written statements from the parties and/or witnesses; and/or
  - Review and collection of relevant documentation or information.
- The burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the District and not the parties.
- The District's inquiry will be prompt, thorough, and impartial.



## Grievance Process for Formal Complaints of Sexual Harassment || Investigation Phase

- **Reviewing Evidence:** Both parties will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint.
  - This includes evidence upon which the District does not intend to reply in reaching a determination of responsibility and inculpatory or exculpatory evidence.
  - The District will send to each party (and their advisor(s), if any) the evidence subject to inspection and review. The parties will have 10 school days to submit a written response to the evidence, which the investigator will consider prior to conclusion of the investigation and completion of the investigative report.



## Grievance Process for Formal Complaints of Sexual Harassment || Investigation Phase

- **Investigative Report:** The investigator will then create an investigative report that fairly summarizes the **relevant evidence**.
  - The investigative report will be advisory in nature and will not bind the decision-making panel to any particular decision, course of action, or remedial measure.
  - The investigator will send the final investigative report to each party (and advisor(s), if any) for their review and written response at least 10 days prior to providing a copy of the final investigative report to the decision-making panel.



## Grievance Process for Formal Complaints of Sexual Harassment || Investigation Phase

- **Relevant Evidence:** The regulations deem the following evidence and information to be not relevant or otherwise precludes the District from using it:
  - A party's treatment records, without the party's prior written consent;
  - Information protected by a legally recognized privilege, unless waived;
  - Evidence about a complainant's sexual predisposition;
  - Evidence about a complainant's prior sexual behavior unless such evidence is offered to (1) prove that someone other than the respondent committed the conduct alleged by the complainant, or (2) if the evidence concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.



## Grievance Process for Formal Complaints of Sexual Harassment || Investigation Phase

- **Points for Discussion:**

1. How do you conduct an investigation?
2. What is relevant evidence for purposes of creating an investigative report that fairly summarizes the relevant evidence, as set forth in 34 CFR § 106.45(b)(5)(vii)?



## Grievance Process for Formal Complaints of Sexual Harassment || Decision-Making Phase

- **Decision-Making Panel:** The District uses a three-member decision-making panel to reach a determination regarding responsibility. The decision-makers cannot be the same people as the Title IX Coordinator or investigator.
- **Decision-Making Process:** After receiving a copy of the investigative report and the parties' written responses (if any), the decision-making panel will:
  - Give each party the opportunity to submit written, relevant questions that the party wants asked of any other party or witness; and
  - Provide each party with the answers to those questions and will allow for additional, limited follow-up questions from each party.



## Grievance Process for Formal Complaints of Sexual Harassment || Decision-Making Phase

- **Relevant Questions and Evidence:** Only relevant questions and evidence are permitted.
  - Questions and evidence about the complainant's sexual predisposition are not relevant.
  - Questions and evidence about the complainant's prior sexual behavior are not relevant, unless:
    - They are offered to prove that someone other than the respondent committed the alleged conduct; or
    - They concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- **Excluding Irrelevant Questions and Evidence:** The decision-making panel must explain to the party proposing the questions any decision to exclude a question as not relevant.



## Grievance Process for Formal Complaints of Sexual Harassment || Decision-Making Phase

- **Written Determination:** The decision-making panel will issue a written determination regarding responsibility using the preponderance of the evidence standard.
  - The written determination must be provided to the parties simultaneously.
  - The written determination regarding responsibility becomes final either on the date that the District provides the parties with the written determination of the result of the appeal (if an appeal is filed) or the date on which an appeal would no longer be considered timely (if an appeal is not filed).
  - The Title IX Coordinator is responsible for effective implementation of any remedies.



## Grievance Process for Formal Complaints of Sexual Harassment || Decision-Making Phase

- The written determination must include the following:
  1. Identification of the allegations potentially constituting sexual harassment as defined in 34 CFR § 106.30;
  2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notification to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  3. Findings of fact supporting the determination;
  4. Conclusions regarding the application of the District's code of conduct to the facts;



## Grievance Process for Formal Complaints of Sexual Harassment || Decision-Making Phase

5. A statement, and rationale for, the result as to each allegation, including:
  - a. A determination regarding responsibility;
  - b. Any disciplinary sanctions the District imposes on the respondent; and
  - c. Whether remedies designed to restore or preserve equal access to the District's education program or activity will be provided by the District to the complainant
6. The District's procedures and permissible bases for the complainant and respondent to appeal.



## Grievance Process for Formal Complaints of Sexual Harassment || Decision-Making Phase

- **Points for Discussion:**

1. How do you conduct the decision-making process?
2. Do you have questions about relevant questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in 34 CFR § 106.45(b)(6)?



## Grievance Process for Formal Complaints of Sexual Harassment || Appeals Phase

- **Right to Appeal:** Any party can appeal the decision-making panel's determination regarding responsibility within 10 school days of its issuance. Parties also have the right to appeal the District's mandatory or discretionary dismissal decision.





## Grievance Process for Formal Complaints of Sexual Harassment || Appeals Phase

- **Bases for Appeal:** Parties can appeal a determination regarding responsibility on the following bases:
  1. Procedural irregularity that affected the outcome of the matter;
  2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
  3. The Title IX Coordinator, investigator, or decision-making panel had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.



## Grievance Process for Formal Complaints of Sexual Harassment || Appeals Phase

- **How to File an Appeal:** Any party may file an appeal by making a written request to the Title IX Coordinator detailing the reason for the appeal.
  - Upon receipt of a timely appeal, the Title IX Coordinator will notify the parties in writing that an appeal has been filed.
  - The Title IX Coordinator will also appoint a reviewer to consider the appeal and notify the parties of the selected reviewer.
  - The appeals reviewer cannot be the same person as the Title IX Coordinator, investigator, or decision-making panel.



## Grievance Process for Formal Complaints of Sexual Harassment || Appeals Phase

- **Appeal Procedures:** The reviewer will notify the parties of the appeal procedures and set a schedule for the parties to submit a written statement in support of, or challenging, the decision-making panel's determination.
  - The reviewer will give both parties a reasonable, equal opportunity to submit their written statement in support of, or challenging, the outcome.
  - Upon reviewing both parties' statements, the reviewer will issue a reasoned written decision describing (1) the result of the appeal; and (2) the rationale for the result.
  - The reviewer's decision will be provided to the parties simultaneously.
  - The reviewer's decision will be final and binding on the parties.



## Grievance Process for Formal Complaints of Sexual Harassment || Remedies

- Remedies must be designed to restore or preserve equal access to the District's education program or activity.
  - For students, the range of possible remedies may include but is not limited to: restorative conversations, safety escorts, or change of classes.
  - For employees, the range of possible remedies may include but is not limited to: restorative conversations, no-contact order, or change of work assignment.
- The Title IX Coordinator is responsible for effective implementation of any remedies.



## Grievance Process for Formal Complaints of Sexual Harassment || Remedies

- The grievance procedure may also provide for discipline where a determination of responsibility for sexual harassment has been made against the respondent.
  - For students, the range of possible discipline may extend from verbal counseling up to and including expulsion.
  - For employees, the range of possible discipline may extend from verbal counseling up to and including termination.
- Discipline must align with other applicable law and applicable District policies and procedures.



## Grievance Process for Formal Complaints of Sexual Harassment || Informal Resolution

- **Option for Informal Resolution:** At any time after a formal complaint has been filed (but before a determination regarding responsibility), the District may offer the parties the opportunity to engage in informal resolution of the formal complaint.
- **Consent to Informal Resolution:** The District must obtain the parties' voluntary, written consent to the informal resolution process.

*Informal resolution may not be offered or utilized where the allegations involve an employee sexually harassing a student.*



## Grievance Process for Formal Complaints of Sexual Harassment || Informal Resolution

- **Written Notice:** The parties must receive a written notice disclosing:
  1. The allegations;
  2. The requirements of the informal resolution process, including the circumstances under which the informal process precludes the parties from resuming a formal complaint arising from the same allegations; and
  3. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared
- **Right to Withdraw:** At any time prior to agreeing to a resolution resulting from an informal resolution process, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.



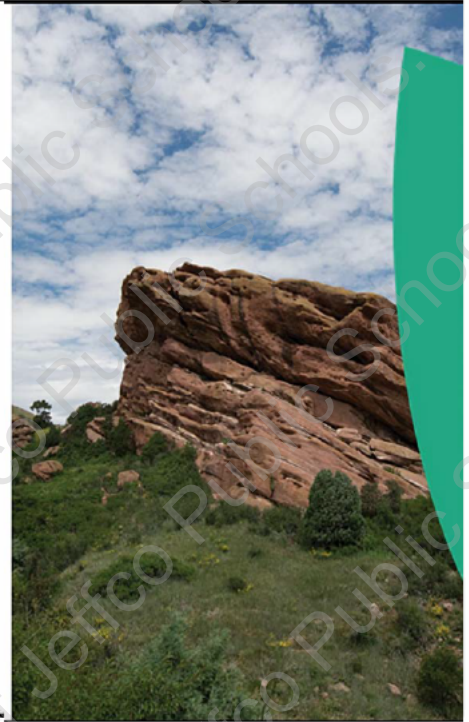
## Grievance Process for Formal Complaints of Sexual Harassment || Questions

- **Points for Discussion:**
  1. How do you conduct an appeal?
  2. How do you conduct an informal resolution process?
  3. Do you have any questions about the grievance process for formal complaints of sexual harassment as a whole?





## Additional Topics



### Bias & Conflict of Interest || How to Service Impartially

- **Serving Impartially:** Serving impartially includes avoiding prejudgment of the facts of issue, avoiding conflicts of interest, and avoiding bias.
  - No complainant reporting Title IX sexual harassment or respondent defending against allegations of sexual harassment should be ignored or met with prejudgment.
  - Remain from free bias, including bias against an individual's sex, race, ethnicity, sexual orientation, gender identity, disability, immigration status, financial ability, or other characteristic.
  - Every individual is entitled to impartial, unbiased treatment regardless of personal characteristics.



## Bias & Conflict of Interest || Credibility Determinations and Points for Discussion

- **Credibility Determinations:** The Title IX regulations preclude credibility determinations based on a person's status as a complainant, respondent, or witness.
- **Points for Discussion:**
  - How do Title IX personnel serve impartially?
  - How do Title IX personnel avoid prejudgment of the facts at issue?
  - How do Title IX personnel avoid conflicts of interest?
  - How do Title IX personnel avoid bias?
  - How do Title IX personnel make credibility determinations?



## Confidentiality || 34 CFR § 106.71(a)

- The District shall keep confidential the identify of any individual who has made a report or complaint of **sex discrimination**, including:
  - Any individual who has made a report or filed a formal complaint of sexual harassment;
  - Any complainant, respondent, or witness; and
  - Any individual who has been reported to be the perpetrator of sex discrimination;
- ...except as may be permitted by FERPA and its regulations, or as required by law, or to carry out the purposes of 34 CFR § 106 (Nondiscrimination on the Basis of Sex in Education), including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.



### Retaliation || 34 CFR § 106.71(a)

- The District prohibits intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX or its regulations, or because the individual has made a report of complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX of its regulations.
- Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or its regulations, constitutes retaliation.



### Retaliation || 34 CFR § 106.71(a)-(b)

- Charging an individual with a code of conduct violation for **making a materially false statement in bad faith** in the course of a grievance proceeding does not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.
- Complaints alleging retaliation may be filed according to the District's grievance procedures for sex discrimination.



## Recordkeeping || 7-Year Requirement

- The District must maintain records of the following for a period of 7 years:
  - Each sexual harassment investigation, including any determination regarding responsibility and any audio or audiovisual recording or transcript required by the regulations, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the District's education program or activity;
  - Any appeal and the result therefrom;
  - Any informal resolution and the result therefrom; and
  - All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.



## Recordkeeping || Response to Sexual Harassment

- For each response required under 34 CFR § 106.44 (Recipient's Response to Sexual Harassment), the District must create, and maintain for a period of 7 years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.
  - In each instance, the District must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to its education program or activity.
  - If the District does not provide a complainant with supportive measures, then it must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.







Questions?

