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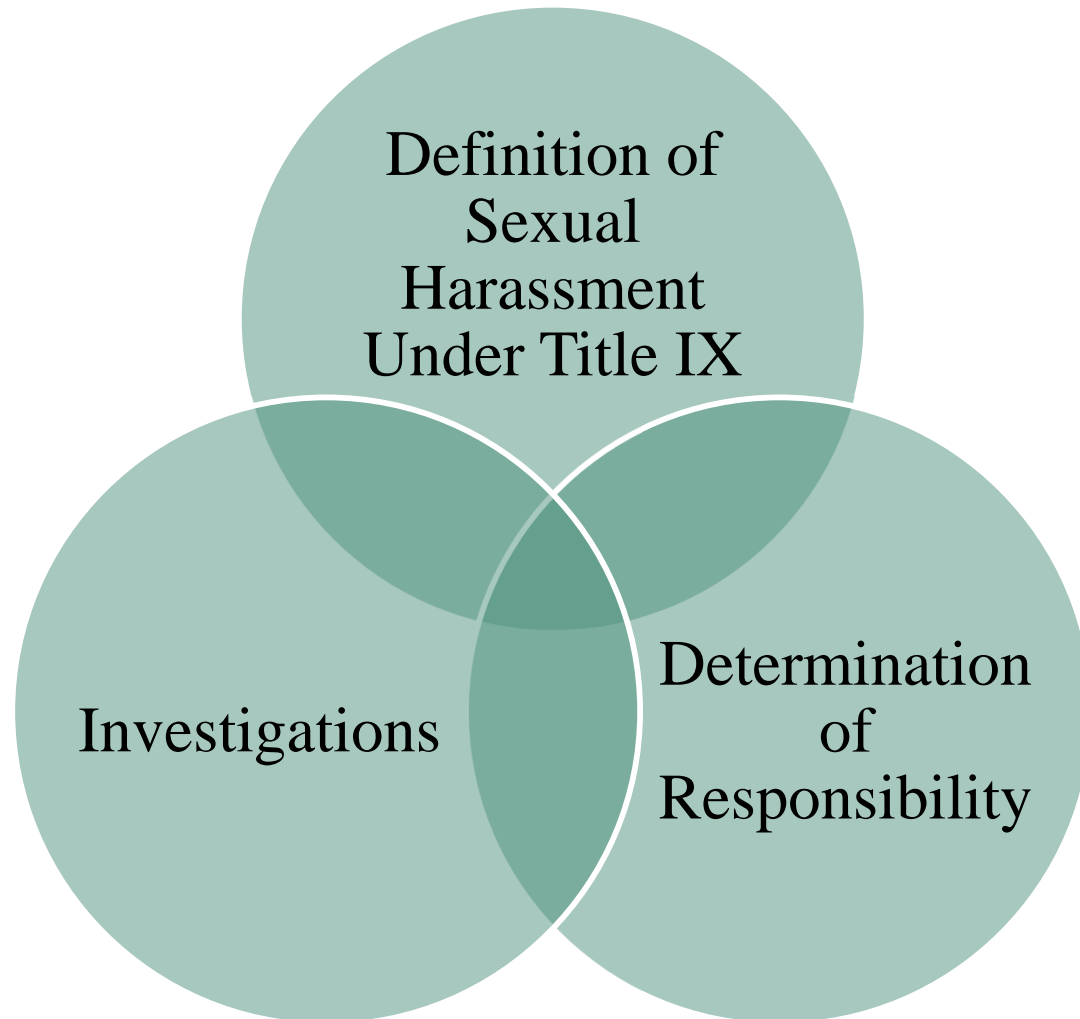
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# Title IX Grievance Process Training

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Milford Public Schools

# AGENDA

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# Title IX of the Education Amendments of 1972

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- “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.”

# How Does Title IX Impact Schools?

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Several ways, but we will focus on:  
**SEXUAL HARASSMENT** (Title IX, as Amended in 2020).



# Scope of Responsibility

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Actual Knowledge  
Of Prohibited  
Conduct

Prohibited Conduct  
Occurring Within  
The School's  
Education Program  
Or Activity

Prohibited Conduct  
Against A "Person  
In The United  
States".

# Prohibited Conduct - Sexual Harassment Defined

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An employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct (e.g. quid pro quo)

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an education program or activity (e.g. hostile environment)

“Sexual Assault”, (as defined by Clery Act), or “dating violence”, “domestic violence” and stalking (as defined by Violence Against Women Act)

# Actual Knowledge

- ❑ “Actual knowledge” means notice of sexual harassment or allegations of sexual harassment to a Title IX Coordinator or any official who has authority to institute corrective measures or any employee of an elementary and secondary school.
- ❑ Standard is not met when the only official of the school with actual knowledge is the respondent.
- ❑ Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge.

# School's "Education Program or Activity"

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- In locations, events or circumstances over which the school exercises substantial control over the respondent and the context in which the sexual harassment occurred.
- Fact- specific inquiry
- And no clear rule distinguishing on/off school premises



# Prohibited Conduct Against A “Person In The United States”.

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Title IX application limited to conduct occurring against a person in the United States.

# Who is a Complainant?

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- “Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- Must be participating in, or attempting to participate in, the institution’s education program or activity at the time of filing a formal complaint.

# Who is a Respondent?

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- “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- May be any person.
- School may dismiss if the Respondent is no longer enrolled or employed.

# School's Response

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- “respond promptly and in a manner that is not deliberately indifferent”
- Cannot act “clearly unreasonable” in light of the circumstances

# School's Response

Upon actual knowledge of allegations of sexual harassment, Title IX Coordinator must promptly contact the complainant irrespective of whether formal complaint is filed or not:

- Discuss and offer supportive measures;
- Consider the complainant's wishes with respect to supportive measures;
- Inform that supportive measures may be received with or without filing a formal complaint;
- Determine whether the complainant wishes to file a formal complaint; and
- Explain to the complainant the process for filing a formal complaint

# What Are Supportive Measures?

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- “Supportive measures” are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to both the Complainant or the Respondent.
- Available to both 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 education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or educational environment, or deter sexual harassment.
- May include counseling, extensions of deadlines or other academic-related adjustments, modifications of work or class schedules, escort services, mutual restrictions on contact between the parties, leaves of absence, etc.
- TIP: Document offered measures.

# Emergency Removal

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- Emergency removal may be appropriate, provided that the school:
  - Undertakes an individualized safety and risk analysis
  - Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations justifies removal
  - Provides the Respondent with notice and an opportunity to challenge the decision immediately following the decision

# Formal complaint

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- Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment and requesting that the district investigate the allegation of sexual harassment.
- If the complainant declines to file a formal complaint, the Title IX Coordinator must consider whether to sign a formal complaint and start an investigation despite the complainant's preference not to file a formal complaint.
  - Consider whether safety or a perceived pattern suggests that the school should investigate.
- A Title IX Coordinator's decision to override the complainant's decision not to file a formal complaint must be documented in writing along with an explanation of why this decision was necessary.



# Dismissal of Formal Complaint

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- MUST dismiss complaint if:
  - Would not constitute sexual harassment as defined even if proven,
  - Did not occur in the school's education program or activity, or
  - Did not occur against a person in the United States.

# Dismissal of Formal Complaint

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- MAY dismiss complaint if
  - A complaint notifies the Title IX Coordinator of a desire to withdraw their complaint
  - A respondent is no longer enrolled or employed by the school district, or
  - Specific incidents prevent the school from gathering evidence sufficient to reach a determination as to the formal complaint or allegations

The school district must send written notice of a dismissal to both parties and explain the basis for dismissal.

# Informal Resolution

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- Only after a formal complaint and written notice has been issued, the Title IX Coordinator can consider offering mediation.
- Informal resolution is entirely voluntary, and the parties must give written consent to engage in this process.
- Informal resolution may not be used if the allegation is against an employee respondent.
- Mediator should not prejudge outcome.

# Informal Resolution

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- Mediation can be shuttle mediation or both parties in the room together, depending on the age, maturity, relationship of the parties.
- Set norms for the mediation.
- Provide both sides an opportunity to be heard and hear the other side.
- Mediator can always stop mediation.

# Informal Resolution

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- Facilitators of informal resolution will be designated by the Title IX Coordinator and must not be biased against any of the parties or have a conflict of interest.
- If the complainant and the respondent feel that their grievances have been sufficiently addressed via informal resolution, then no further action needs to be taken. The results of an informal resolution shall be maintained by the facilitator, in writing.

# Grievance Process Requirements

Treats Respondent and Complainant equitably	Ensure Title IX Coordinator, investigator and decision maker are appropriately trained	Cannot rely on sex stereotypes	Process includes presumption that Respondent is not responsible for conduct until a determination regarding responsibility is made at the conclusion of the grievance process	Describes the range of possible disciplinary sanctions and remedies following any determination of responsibility	State the standard of evidence to be used to determine responsibility and apply selected standard in all Title IX grievance processes	Include procedures and permissible bases to appeal	Burden of proof and burden of gathering evidence sufficient to reach a determination regarding responsibility is on the school
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# INVESTIGATIONS

## Assigning An Investigator

The Title IX Coordinator must assign an impartial investigation

Investigator must be appropriately trained on the definition of sexual harassment, scope of school's programs or activities and the investigation and grievance processes

Must be able to conduct a thorough and fair investigation

Must be able to objectively evaluate all relevant evidence -- inculpatory and exculpatory

# Written Notice of Allegations

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- Before any investigation can begin, the district must send written notice to both parties including sufficient details known at the time. Sufficient details include:
  - ❑ the identities of the parties involved in the incident, if known
  - ❑ the conduct allegedly constituting sexual harassment, and
  - ❑ the date and location of the alleged incident, if known
  
- Notice should also inform of the following:
  - ❑ Presumption that respondent is not responsible
  - ❑ Determination made at the conclusion of the grievance process.
  - ❑ Inform of right to have an advisor of their choice involved, who may be, but is not required to be, an attorney, and may inspect and review evidence.
  - ❑ Inform the parties that the District's code of conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
  - ❑ If additional allegations are added during the course of the investigation, additional written notice must be provided.



# Role of Investigator

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- The investigator will be responsible for interviewing parties and witnesses, making factual findings, and making determinations related to credibility, all of which will go into a written report.
- The investigator must give an equal opportunity for both the complainant and respondent to present witnesses and other evidence.
- The investigator cannot restrict the opportunity for either party to discuss the allegations under investigation or to gather and present relevant evidence.

# An Effective Investigator

- Respectful and non-judgmental
- Builds rapport and trust with all parties involved
- Obtains detailed information about difficult subject matters without awkwardness
- Writes thorough and concise reports with strong analysis of relevant evidence
- Steadfast (firm, but fair)
- Knowledgeable of processes

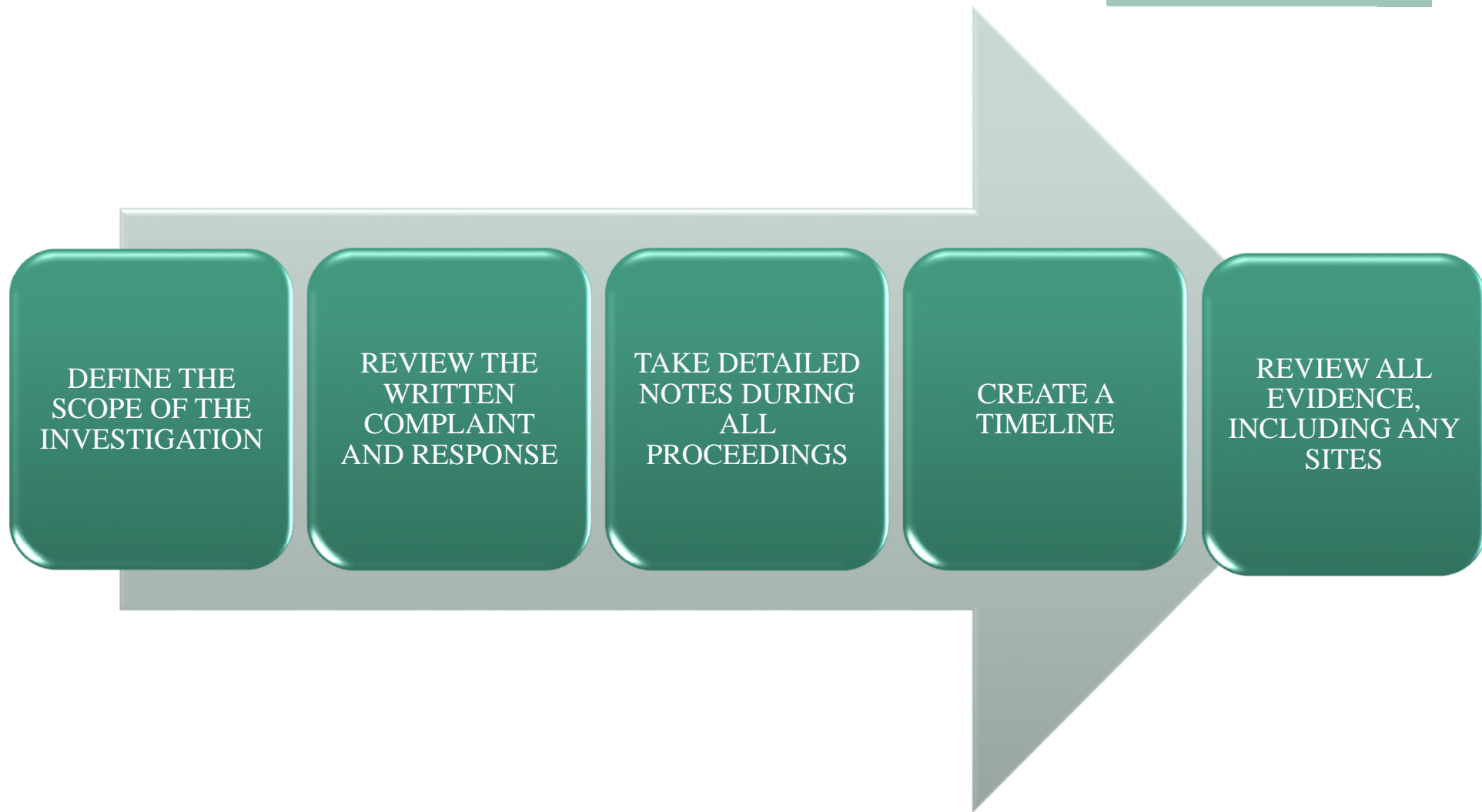
# What Is The Timeframe For Investigating?

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- Must be prompt but can be extended for good cause
- Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

# Conducting a Thorough Investigation

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# Investigating

## Notice

- The investigator must provide to a party whose participation is invited or expected, written notice of the date, time, location participants, and purpose of all interviews or other meetings, with sufficient time for the party to prepare to participate.

## Legal Privilege

- The investigator must avoid all questions that are protected by legal privilege, unless the privilege has been waived, and should avoid asking about the complainant's sexual history unless it is directly relevant to prove consent to the conduct at issue or to prove that the conduct was committed by someone other than the respondent.

## Advisors

- Complainants and respondents have a right to have advisors of their choice participate in all aspects of the proceedings, including interviews.

## Evidence

- During the investigation, each party must be provided an equal opportunity to present both fact and expert witnesses.

# Investigating

Start with an interview of the complainant, then relevant witnesses, and then the respondent

Develop questions in advance of each interview

Gather tangible evidence

# Investigating

## Interviews

- Start with relevant background, including nature of relationship with each party
- Ask an open-ended question (e.g. do you know why you are here?) and just listen
- Circle back for detailed information
- Ask what else they think you should know
- Always ask for tangible evidence
- Be diligent during the meeting

# Investigating

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## Relevant Evidence

- Evidence pertinent to proving whether facts material to the allegations under investigation are likely to be true.



# Investigating

## COHERENCE

Does the account make sense?

## CORROBORATION

Is there evidence supporting the account?

## CONTRADICTION

Is there evidence refuting the account, or how does the account compare to irrefutable evidence?

## CONSISTENCY

Evaluate the account in the context of other accounts the individual made have given previously.

# CREDIBILITY DETERMINATIONS

# Investigating

## Evidence

- Prior to completion of the investigative report, the school district must send to both the Respondent and Complainant, and their advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.

# Investigation Report

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- The investigative report must fairly summarize relevant evidence and, at least 10 ten days prior to a determination of responsibility, must be sent to each party and the party's advisor, if any, for their review and written responses.
- Findings within the investigative report should be written in a factual manner.
- Credibility determinations may not be based on an individual's status as complainant, witness, or respondent.
- The investigator must avoid making any final determinations of responsibility for sexual harassment.
- The investigative report must be sent to the decision-maker upon each party having at least 10 days to review and respond.

# Determination of Responsibility

- The decision-maker cannot be the same person as the investigator or the Title IX Coordinator.
- Must not be biased against any of the parties at the outset of this process.
- The decision-maker must afford both the complainant and respondent the opportunity to submit written, relevant questions that the party wants asked of any party or witness, provide each party with the answers, and allow for additional limited follow up questions from each party.
  - Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
  - The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

# Determination of Responsibility

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- After this process is complete, the decision-maker will create a written determination regarding whether sexual harassment has occurred using the standard of evidence adopted by the school district.
  - ❖ Preponderance of the evidence
  - ❖ Clear and convincing evidence
- The decision-maker must think about how a reasonable person would view the conduct when determining whether the conduct constitutes sexual harassment.

# Determination of Responsibility

The written determination must be issued to both parties simultaneously and must include:

Identification of the allegations potentially constituting sexual harassment;

A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

Findings of fact supporting the determination;

Conclusions regarding the application of the recipient's code of conduct to the facts;

A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and

The district's procedures and permissible bases for the complainant and respondent to appeal (a copy of, or direct reference to, this policy will suffice).

# Determination of Responsibility

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- The decision-maker shall further recommend what action, if any, is required.
- If there is a finding that sexual harassment occurred, the school district will provide remedies to the complainant designed to restore or preserve equal access to the school district's education program or activity. Such remedies may include supportive measures.
- Formal disciplinary actions may be imposed if respondent is determined to be responsible. Disciplinary action will be in accordance with due process rights under State law and any applicable collective bargaining agreement.
- School district cannot take discipline in the absence of following this formal process.

# Appeal

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



# Appeal

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- The school district will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.
- Both parties will have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
- The decision maker for the appeal will review the comprehensiveness and accuracy of the investigation and the conclusions, and issue written findings to both the complainant and respondent.

# Prohibition on Retaliation

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- Complainants and those who participate in the grievance process are protected from retaliation by law and District policy.
- Title IX Coordinator or their designee must inform all involved individuals that retaliation is prohibited, and that anyone who feels that they have experienced retaliation for filing a complaint or participating in the grievance process should inform the Title IX Coordinator.
- Title IX Coordinator will investigate reports of retaliation and, where retaliation is found, take separate remedial and disciplinary action.

# Recordkeeping/Notice

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- A record will be maintained for a period of seven years of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment and district staff will document the basis for the district's conclusion that its response was not deliberately indifferent.
- The school district must notify applicants for employment, parents, employees and all unions of the name or title of the Title IX Coordinator, his or her address, email address and telephone number. The Title IX Coordinator's information must be displayed prominently on the school district's website.

# Training Requirement

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- Any materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of sexual harassment.
- Training materials must be posted on website and should include:
  - ❖ How to conduct hearings virtually (primarily applicable to post-secondary institutions)
  - ❖ Definitions of prohibited conduct
  - ❖ Inform of the processes –formal or informal
  - ❖ Inform that process is impartial, free of bias and conflicts, and will not prejudice the facts for either

# Questions?

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