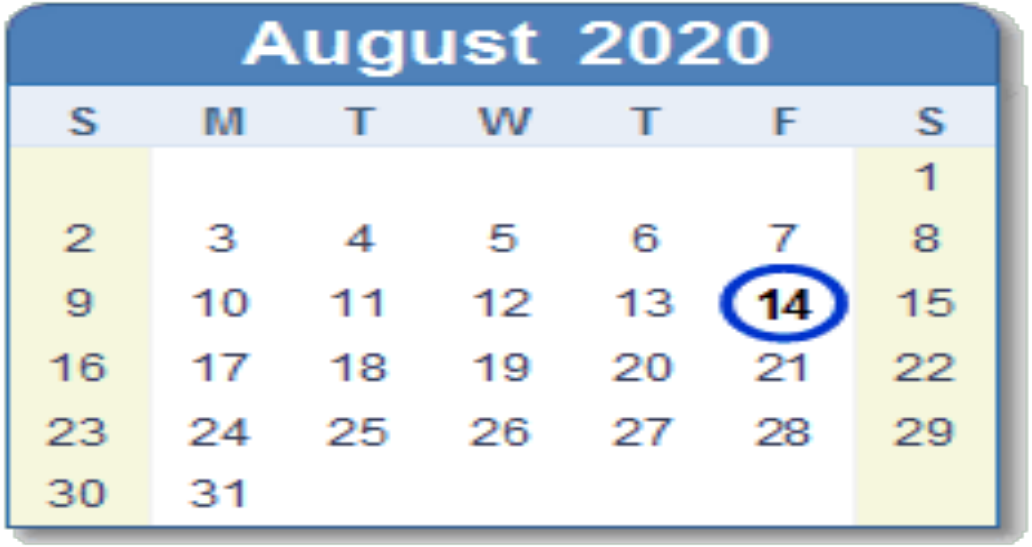
Title IX – Title IX Coordinators

Mari McGowan
Becca Bradley
Sadia Ahmed
Abernathy, Roeder, Boyd & Hullett, P.C.
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069

Title IX Coordinators

Compliance Date

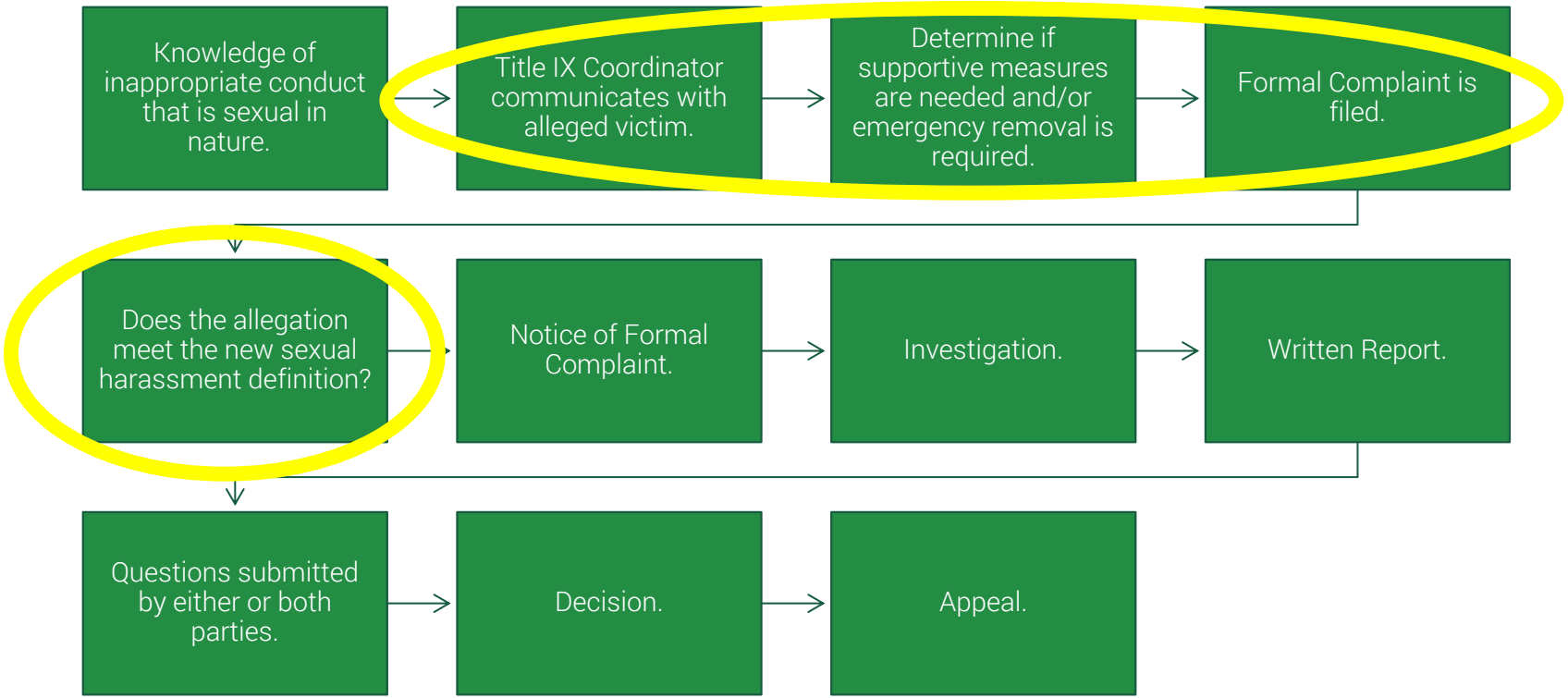


August 2020						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

Friday, Aug 14th 2020

Title IX Flow Chart

Abernathy, Roeder, Boyd & Hullett, P.C.



Presentation Agenda

New Definitions

Jurisdiction

Dismissals

Supportive Measures

Emergency Removals

Formal Complaints

Written Notice

Informal Resolution

Advisors

Record Keeping

New Terminology

New Terminology	
Complainant: Person alleged to be the victim of sexual harassment.	*Respondent:* Person alleged to be the perpetrator of sexual harassment.

A parent may act on behalf of a minor student who is a Complainant or Respondent.

What is Sexual Harassment?

OLD DEFINITION

Previously, the regulations described sexual harassment as "unwelcome conduct of a sexual nature."

Definition – Sexual Harassment

The new Title IX regulation provides for a *narrower definition* of sexual harassment that constitutes sex discrimination. The new definition has (3) types of sex-based conduct which would constitute sexual harassment:

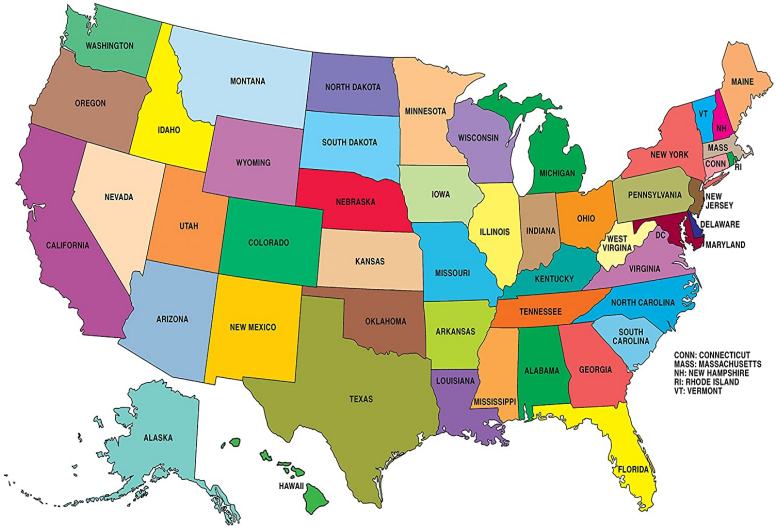
Sexual assault, dating violence, domestic violence, and stalking;	"Unwelcome conduct that is so severe, pervasive and objectively offensive that it effectively denies a person equal educational access; AND	An employee conditioning the aid, benefit or service on participation of unwelcomed sexual conduct (Quid pro Quo).

Definition – Actual Knowledge

- Actual Knowledge
  - Notice of alleged sexual harassment given to any employee of the District.

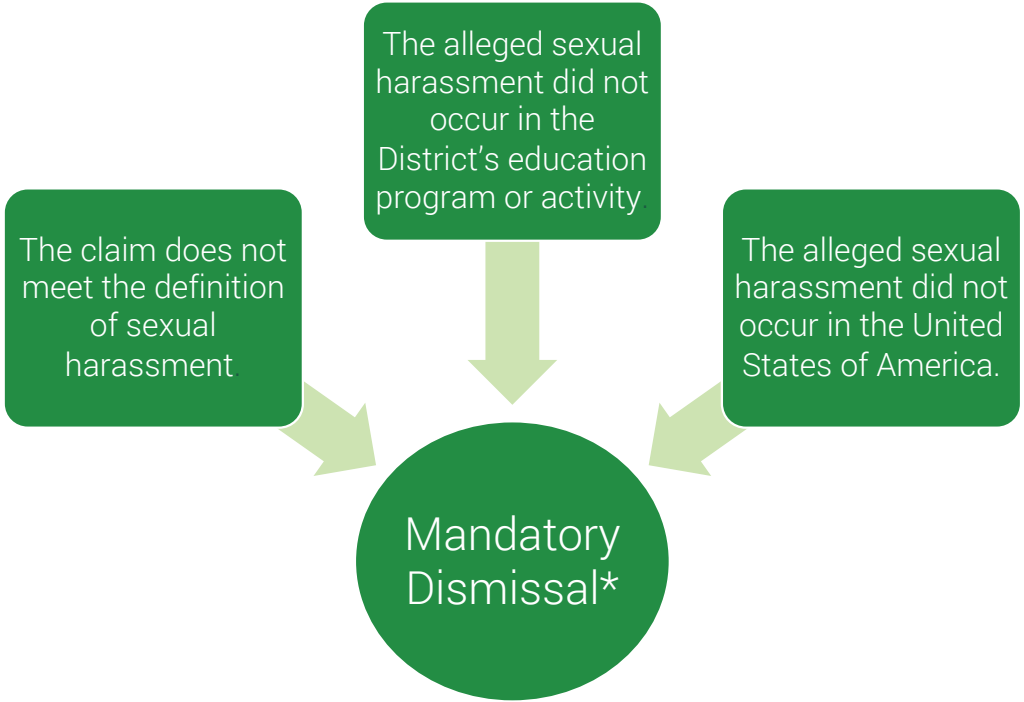
Jurisdiction

- A District has jurisdiction when it has actual knowledge of sexual harassment in the District's educational program or activity.
  - **Education program or activity** includes locations, events or circumstances over which the District exercised substantial control within the United States.
    - Examples include classrooms, field trips, District owned property, and District events.



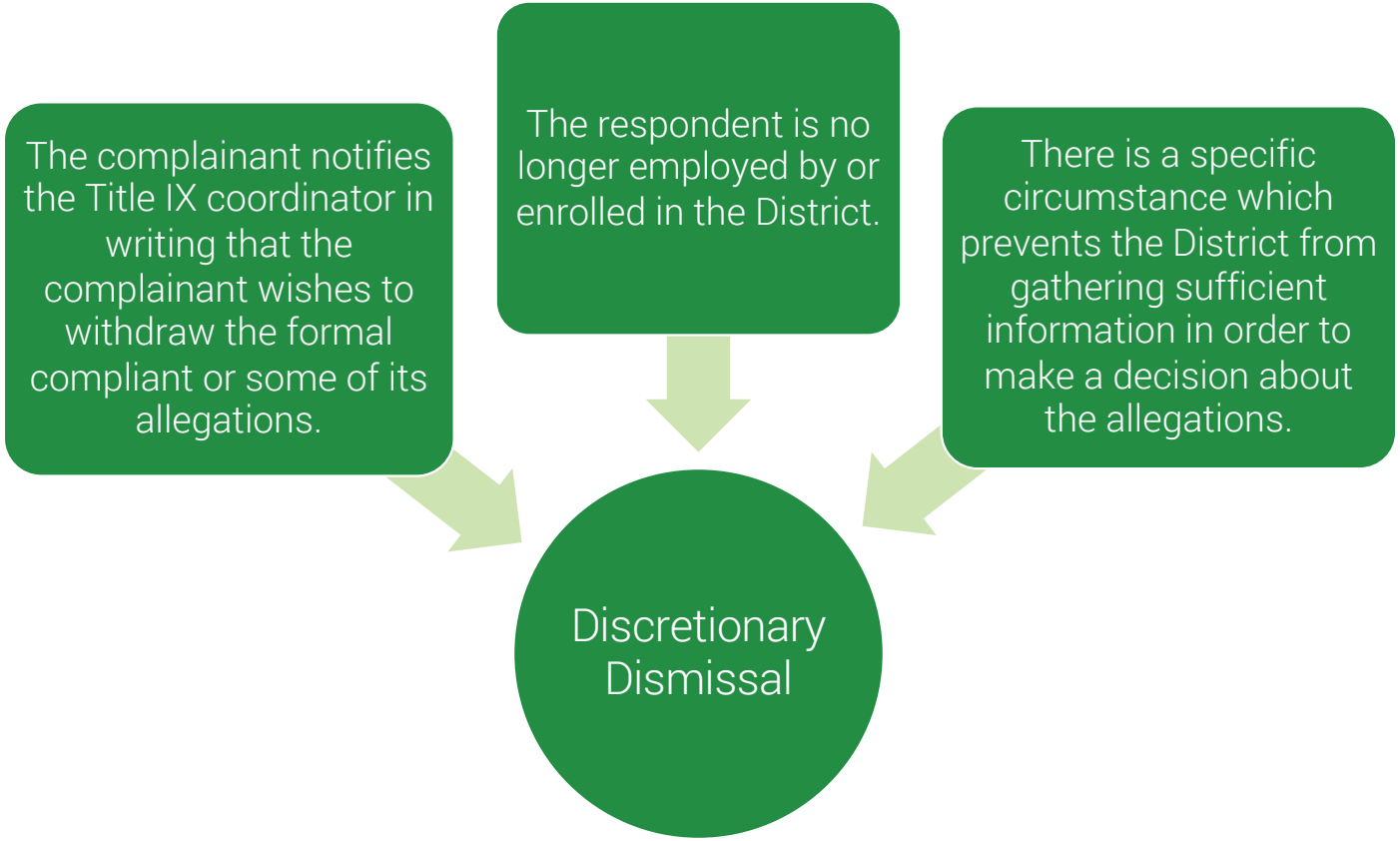
Dismissals

Dismissal



*Districts can still investigate these claims under their Code of Conduct.

Discretionary Dismissals



Dismissals

- Virtual learning considerations:
  - Did the alleged conduct happen on a computer owned by the District?
  - Did the alleged conduct happen on a program or platform owned or used by the District?
  - Did the alleged conduct occur in the United States?

Hypothetical

- Joe and his girlfriend Sally attend the school dance. They leave the dance and get a hotel room. The next day, Sally reports she was sexually assaulted by Joe in the hotel room and requests a Title IX investigation. You are the Title IX Coordinator, what do you do?

What If...?

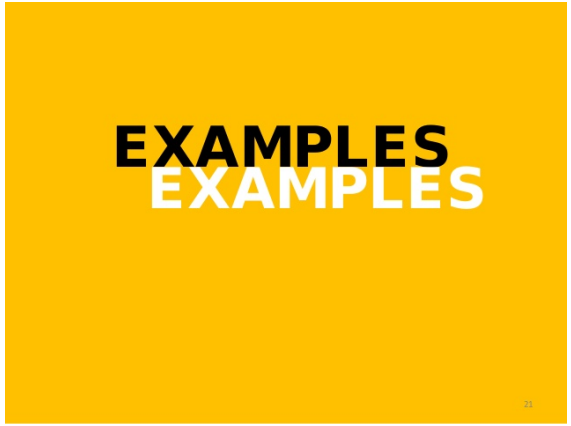
Supportive Measures

Supportive Measures

- Supportive measures are defined as “non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent[.]”
- Supportive measures are designed to restore or preserve access to the recipient’s education program or activity.
- Supportive measures are not punitive.

Supportive Measures

- Examples of supportive measures:
  - Counseling
  - Extensions of deadlines
  - Modification of schedules
  - Provide an escort in the halls
  - Stay away orders



Supportive Measures

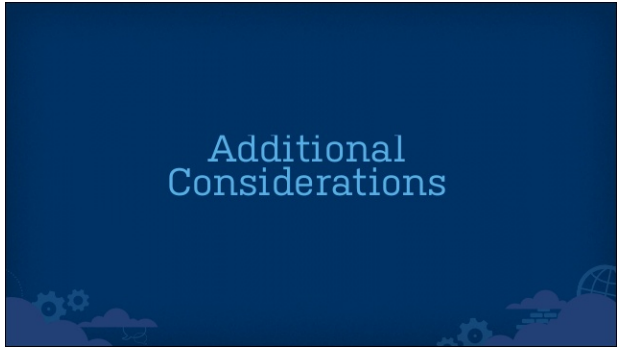
What is your role as the Title IX coordinator?

- Contact the Complainant to discuss the availability of supportive measures.
- Consider the Complainant's wishes with respect to supportive measures.
- Inform the Complainant of the availability of supportive measures with or without filing a formal complaint.
- Document any supportive measures provided. If no supportive measures provided, document why.
  - Districts must maintain this documentation for seven (7) years.

Supportive Measures

Additional considerations for supportive measures:

- Consider the Complainant's wishes.
- Follow up to see how the supportive measure is going.



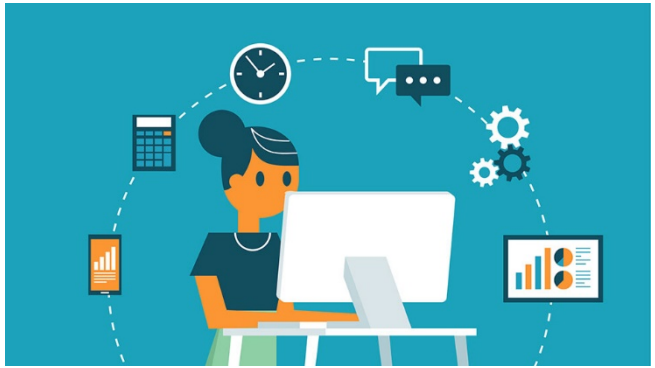
Do you provide supportive measures to the respondent?

Supportive Measures

- Supportive measures should be available to both Complainant and Respondent.
- Document any supportive measures that were offered and turned down.
- If the Respondent requested a supportive measure and it was not provided, document the reason for the denial.

Supportive Measures

- Practical Considerations:
  - Be sensitive, both parties may be emotional.
  - Refrain from comments that blame either party or come across as prejudgment (i.e. avoid using words such as perpetrator, victim, etc.)
  - Interactions with each party should be documented in writing.
  - Meet with each party separately.



Emergency Removals

Emergency Removals

- Emergency removals are rare and allowed only after you have conducted a safety and risk analysis.
- If the District decides to go forward with an emergency removal, the Respondent is entitled to:
  - Notice; and
  - An opportunity to be heard.
- The Respondent can appeal the emergency removal.

Formal Complaint

What is a formal complaint?

- A formal complaint is a document filed by the complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting an investigation into the allegations.

Signing a Formal Complaint

- When the Title IX Coordinator signs the formal complaint, he or she is not acting as the Complainant.
- The Title IX Coordinator:
  - Does not participate in the investigation.
  - Does not participate in any questioning by the Investigator.

Written Notice

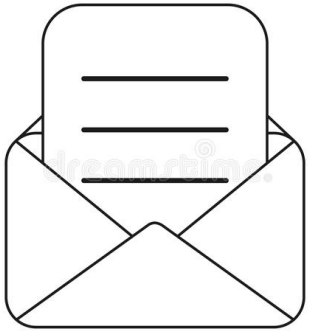
- Include presumption of innocence at the onset of the grievance process;
- Inform both parties of the District's grievance process;
- Include if there is an opportunity for an informal resolution process;

- Include key details of the allegations of sexual harassment including parties involved, date and location of the alleged incident (if known), and the alleged conduct that constitutes sexual harassment;
- Include a statement that the parties are entitled to an advisor of their choice;
- Include notice that the parties can inspect and review certain evidence;

- Include information regarding any provisions from the Code of Conduct (if one exists) regarding making false statements during the grievance process; and
- If in the course of an investigation the District decides to investigate allegations about the respondent or complainant that were not included in the original notice, notice of the additional allegations must be provided in writing to the parties.

Written Notice

If new allegations arise during the Title IX process, the written notice must be supplemented, or a new written notice must be sent to both parties.



Informal Resolution

Informal Resolution

- Informal resolutions are permitted but not required.
- The only situation where districts <u>cannot</u> offer or facilitate an informal resolution process to resolve allegations is when the allegation is that an employee sexually harassed a student. This is because of the power differentials inherent in such circumstances.

Requirements for an Informal Resolution

- Formal Complaint.
- A facilitator who is trained.
- A facilitator who is free from conflict of interest and bias.
- Either party can withdraw from the process prior to resolution.

Informal Resolution v. Supportive Measures

- Supportive measures cannot be punitive.
- Informal resolutions may result in disciplinary or punitive actions.

Advisors

Advisors

- Advisors can be attorneys, but it is not a requirement.
  - A parent may serve as an advisor.
- Advisors can be present throughout the process including informal resolutions.
- The District cannot limit the choice of advisors but can limit the quantity to 1.

Checklist for Title IX

- Update District policies, handbooks, etc.
- Distribute Title IX coordinator contact information.
- Revise the grievance process for Title IX.
- Identify your Title IX team and provide training.
- Establish an informal resolution process.
- Determine the procedure for emergency removals.
- Develop record keeping protocols.
- Post training materials.

Questions?

THANK YOU!

A | R | B | H

ABERNATHY ROEDER
BOYD HULLETT

EST. 1876