

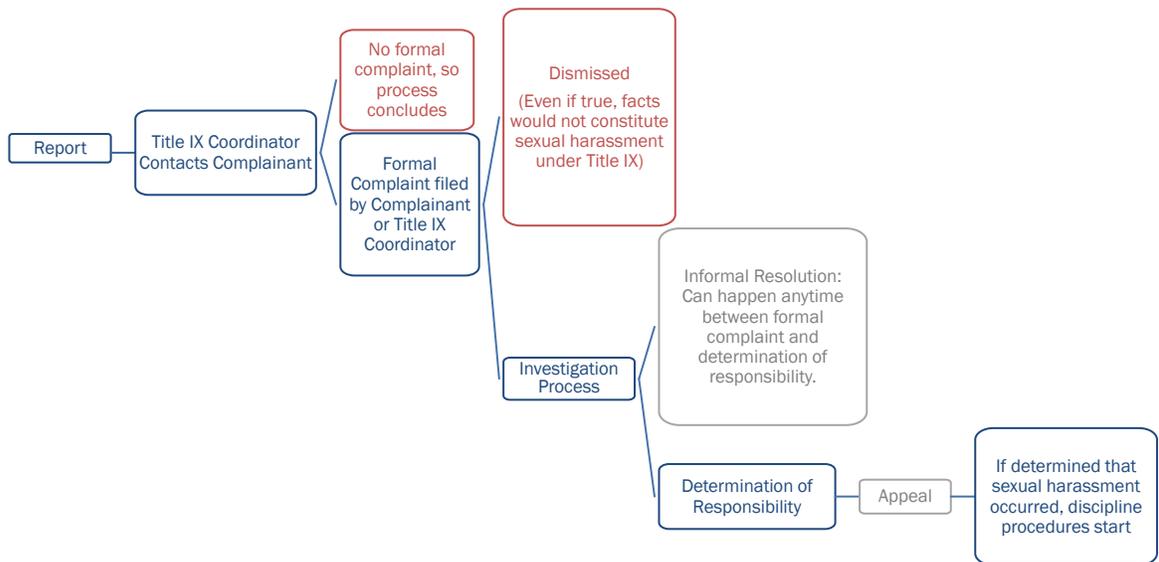


Investigation Process

Angie Stallbaumer
KASB Assistant Executive
Director for Legal Services
August 6, 2020

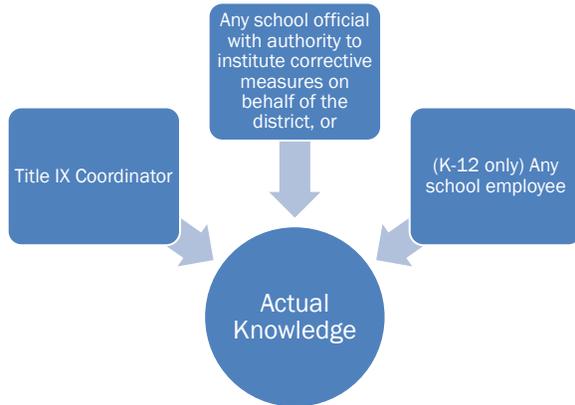
1

Formal Complaint Investigation Process



2

Report of Sexual Harassment



- ▶ District must respond when it has “actual knowledge” of sexual harassment.
- ▶ Actual knowledge:
 - ▶ Notice of sexual harassment, including claims of sexual harassment
- ▶ Other school employees report claims to Title IX Coordinator.

3

What is “actual knowledge?”

-
- The background of this slide features a stack of papers with the word 'NOTICES' printed in large, bold, black letters. The papers are slightly offset, creating a sense of depth.
- ▶ A male high school student tells his basketball coach his female high school math teacher has been sending him flirty SnapChats late at night, but he doesn't have any proof.
 - ▶ Rumor has it that a parent is telling people in the community her daughter is being harassed by other students for being a lesbian.
 - ▶ An anonymous letter sent to your board members alleges your high school principal is sexually harassing a building paraprofessional and teacher.

4

Title IX Coordinator Contacts Complainant

- ▶ Response must not be “deliberately indifferent”
 - ▶ Clearly unreasonable in light of known circumstances
- ▶ Promptly contact complainant, and meet confidentially:
 1. To discuss availability of supportive measures,
 2. Consider the complainant’s wishes with respect to supportive measures,
 3. Inform the complainant of the availability of supportive measures with or without a formal complaint, and
 4. Explain the process for filing a formal complaint.
- ▶ KASB Policy Recommendation: 10 days, unless good cause for delay.
- ▶ Should respect complainant’s wishes regarding whether or not a school investigates, unless the Title IX Coordinator determines that signing a formal complaint over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.

5



So, when should the Title IX Coordinator file in absence of a Complainant willing to do so?

- ▶ For liability purposes, it matters:
 - ▶ What do you know?
 - ▶ When did you know about it?
 - ▶ What did you do with that information?

Does anyone have a hypothetical, they are willing to share?

6

Formal Complaint

- ▶ At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the District where the formal complaint is filed.
- ▶ A formal complaint may be filed with the Title IX Coordinator in person, by mail, by email, or by any other means that results in the Title IX Coordinator receiving the report.
- ▶ A formal complaint contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint (unless signed by the Title IX Coordinator).
- ▶ A complaint should be filed as soon as possible after the conduct occurs, but not later than 180 calendar days after the complainant becomes aware of the alleged violation, unless the conduct forming the basis for the complaint is ongoing.

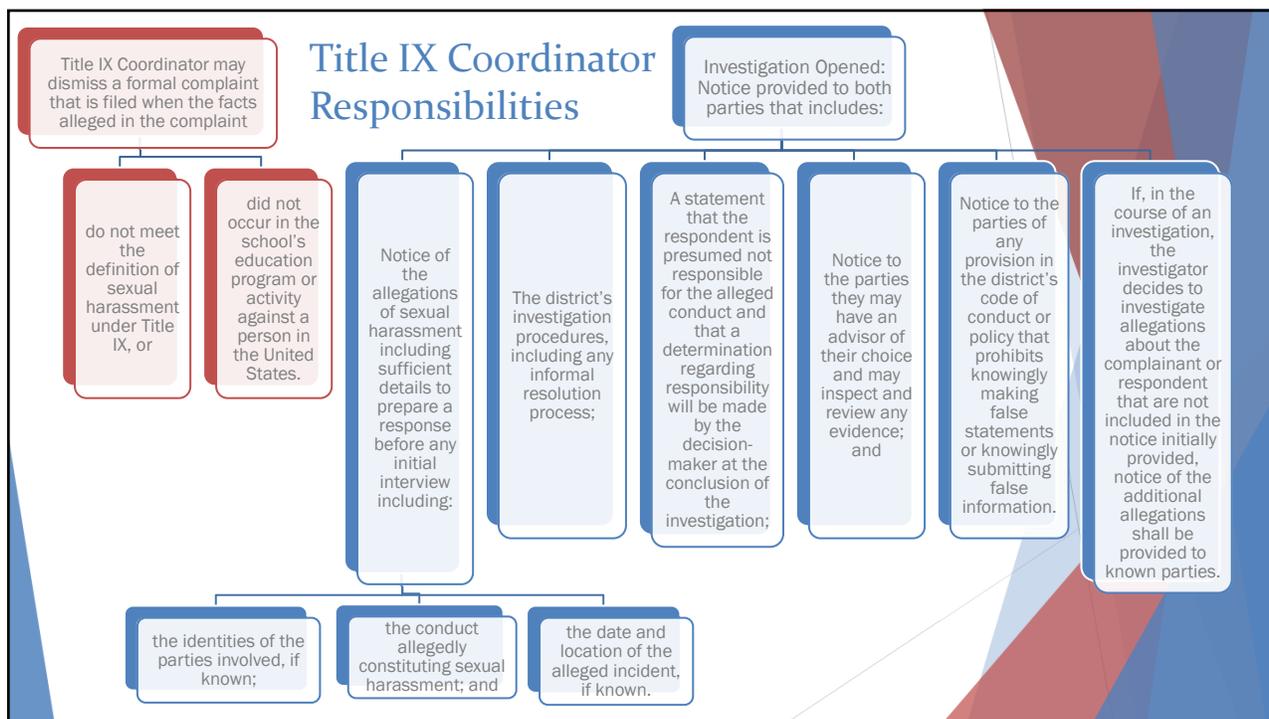
7

What if there is no formal complaint?

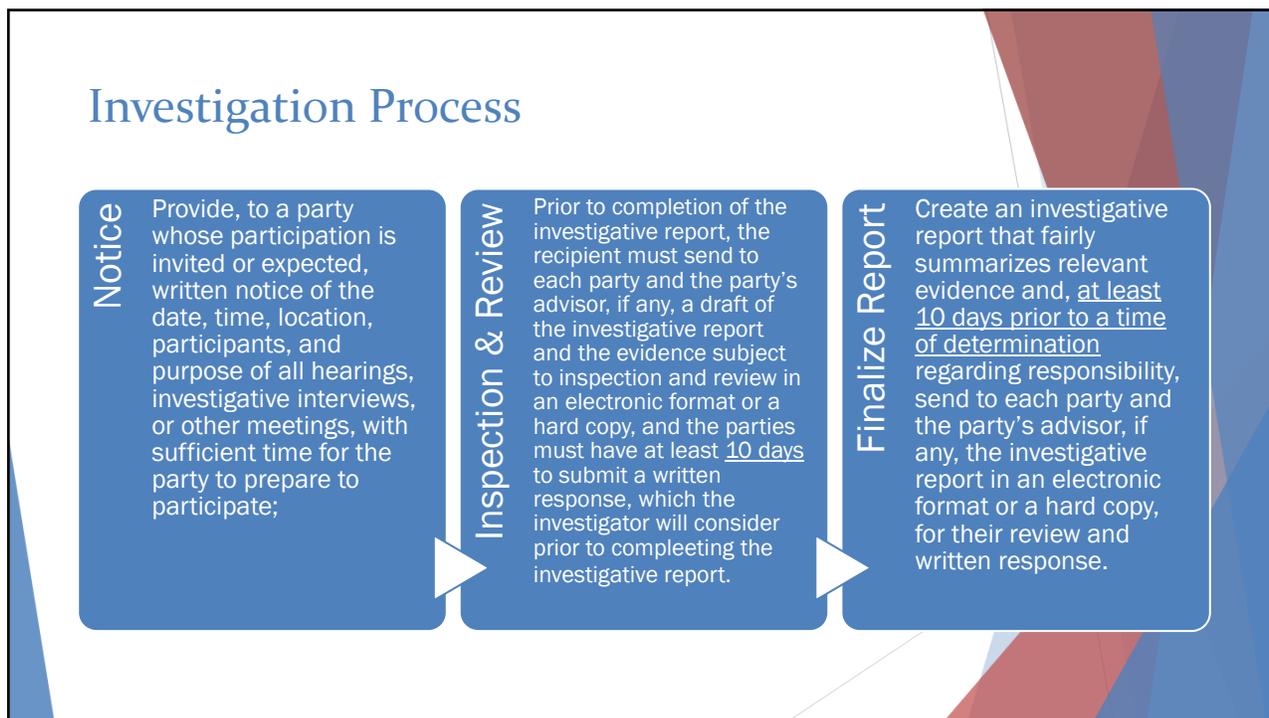
- ▶ Supportive measures may be provided to both parties regardless
- ▶ Document what happened
- ▶ Close the file



8



9



10

Investigative Report

- ▶ The investigator shall prepare an investigative report that fairly summarizes relevant evidence and share the report with the parties and their advisors for review and response.
- ▶ The investigator's written report shall include an objective evaluation of all relevant evidence using a preponderance of the evidence standard to determine responsibility.

11

Decision-Maker Responsibilities

- ▶ Upon receiving the investigator's report, the decision-maker must make a determination regarding responsibility and afford each party the opportunity to submit written, relevant questions that the parties want asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions.
- ▶ The determination of responsibility must be provided in writing to the parties simultaneously.
- ▶ If determined that harassment occurred, disciplinary procedures are triggered.
- ▶ The decision becomes final on the date the parties receive the results of an appeal, if any appeal is filed, or on the date the opportunity for an appeal expires.

12

Informal Resolution Option



- ▶ If an informal resolution is desired, the parties are to be provided written notice disclosing:
 - ▶ The allegations,
 - ▶ The requirements of the informal resolution process (including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations),
 - ▶ That at any time prior to agreeing on a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and
 - ▶ Any consequences resulting from participating in the informal resolution process, including any records that will be maintained or could be shared.

13

- ▶ I'm going to need some volunteers:
 - ▶ Title IX Coordinator
 - ▶ Investigator
 - ▶ Decisionmaker
- ▶ The female manager for one of your junior high football team comes to the counselor (played by yours truly) and says that she needs to talk about something that's been going on between her and the head coach. More details to follow...
- ▶ Let's walk through the timeline together with help from the audience.

Pop Quiz: Let's put our new knowledge to work in a real-life scenario

14

Questions?



If you have additional questions, please send to:
legal@kasb.org
1-800-432-2471