

# Title IX Refresher Part II: Sexual Harassment Procedures

Harry Wright, Jr. , Assistant General Counsel  
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# Title IX Overview

- ▶ “No person in the United States shall, *on the basis of sex*, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education program or activity receiving federal financial assistance.”
  - ▶ Title IX protects students and employees from sex discrimination in their education environments, this includes protection from sexual harassment.
- ▶ Pursuant to regulations adopted by the U.S. Department of Education schools are required to use specific procedures when respond to sexual harassment complaints that are covered under Title IX.

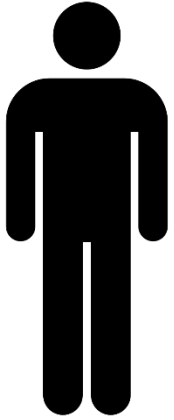
# Regulations Overview

- ▶ Define what falls within Title IX's protections
- ▶ Discuss how a school must respond to formal/informal complaints and the procedures that the school must have in place
- ▶ **Any school district employee's** knowledge of sexual harassment can trigger a duty to respond (not longer limited to professional staff)
- ▶ Outline training schools must provide to personnel involved in the Title IX complaint process
- ▶ Discuss written notices schools must provide as part of the complaint process
- ▶ Require specific anti-retaliation provisions with a complaint process for any retaliation

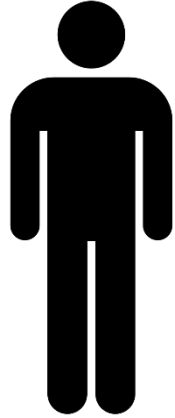
# Regulations Overview

- ▶ Create new, required terms for the parties and requires defined roles for staff:
  - ▶ Title IX coordinator, investigator, decision maker, informal resolution facilitator, hearing advisor, and person reviewing any appeal
  - ▶ 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.

# Title IX Assignments in CFISD



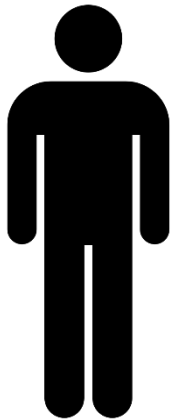
Title IX  
Coordinator(s)  
Assistant Principal  
(Elem)  
Director of  
Instruction  
(MS)  
Associate Principal  
(HS)



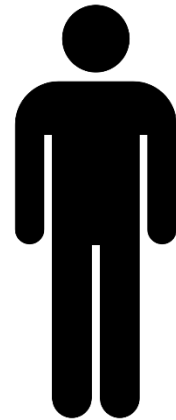
Investigator  
Assistant Principal



Decision maker  
Campus Principal

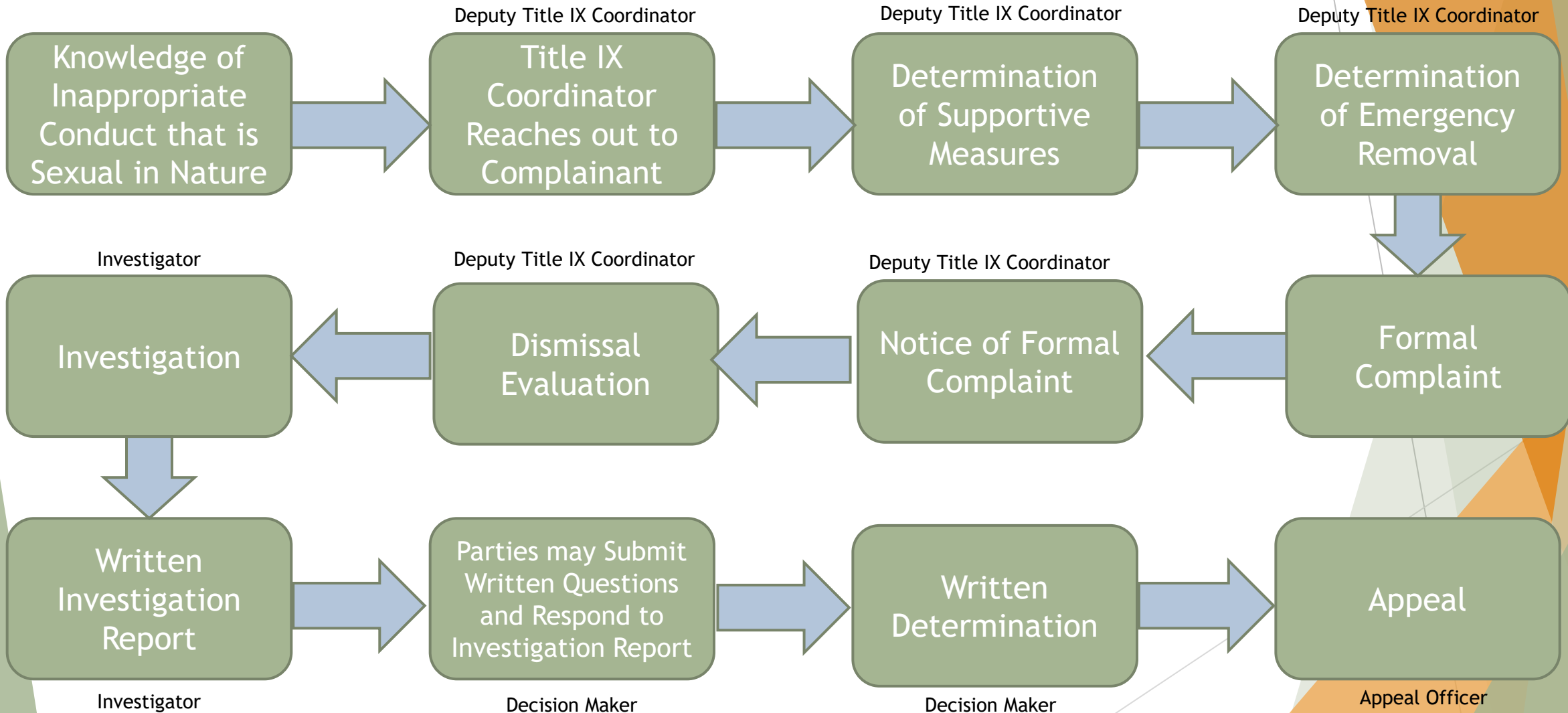


Appeal Officer  
Assistant  
Superintendent



Informal Resolution Facilitator  
Campus Counselor

# Basic Title IX Process



# Schools Response Obligations

- ▶ A school must respond when it has:
  - ▶ Actual knowledge
  - ▶ Of sexual harassment
  - ▶ That occurred within the school's education program or activity
  - ▶ Against a person in the US
- ▶ A school has actual knowledge when:
  - ▶ ANY employee of an elementary or secondary school has notice of sexual harassment or allegations of sexual harassment
    - ▶ Includes teachers, teacher's aide, bus drivers, cafeteria workers, counselors, school resource officers, maintenance staff worker, etc.
- ▶ A school's education programs or activities include any events, or circumstances over which the school exercised **substantial control** over both
  - ▶ the **respondent**; and
  - ▶ the **context** in which the sexual harassment occurs

# What constitutes sexual harassment under Title IX?

- ▶ “Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:
  - ▶ Quid Pro Quo: a school employee conditioning education benefits on participation in unwelcome sexual conduct
  - ▶ Hostile Environment: Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school’s education program or activity
  - ▶ “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).



# What constitutes sexual harassment under Title IX?

- ▶ The definition of sexual assault under Title IX includes:
  - ▶ non-consensual sexual penetration (vaginal, anal, or oral, including with an object);
  - ▶ sexual conduct where the victim is incapable of giving consent because of age or temporary or permanent mental or physical incapacity;
  - ▶ fondling (non-consensual touching of private body parts above or under clothing for sexual gratification);
  - ▶ incest (nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law);
  - ▶ and statutory rape (nonforcible sexual intercourse with a person who is under the statutory age of consent)

# What constitutes sexual harassment under Title IX?

- ▶ The term "dating violence" means violence committed by a person-
  - ▶ (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - ▶ (B) where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - (i) The length of the relationship.
    - (ii) The type of relationship.
    - (iii) The frequency of interaction between the persons involved in the relationship.

# What constitutes sexual harassment under Title IX?

- ▶ Domestic Violence includes Felony or misdemeanor crimes of violence committed by:
  - ▶ (1) a current or former spouse or intimate partner of the victim;
  - ▶ (2) a person with whom the victim shares a child in common;
  - ▶ (3) a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
  - ▶ (4) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state; or
  - ▶ (5) 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 state

# What constitutes sexual harassment under Title IX?

- ▶ The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to-
  - ▶ (A) fear for his or her safety or the safety of others; or
  - ▶ (B) suffer substantial emotional distress.

# What constitutes sexual harassment under Title IX?

► Scenario No. 1:

Mr. Kent pulls Lois aside at the end of his geometry class and tells her that if she wants to get an A in his class this semester, she will need to come to his apartment tomorrow night and have sex with him?

Could this be sexual harassment under Title IX?

Answer: Yes, this quid pro quo sexual harassment. A school employee conditioning education benefits on participation in unwelcomed sexual conduct

# What constitutes sexual harassment under Title IX?

► Scenario No. 2:

Curly reports that he observed Moe pinching Larry on his rear end during recess at their elementary school. When Larry was asked to describe what happened he stated that they were just playing around and that Moe is his friend.

Could this be sexual harassment under Title IX?

Answer: No. While it is alleged that Moe touched Larry inappropriately, the circumstances indicate that it was not done for sexual gratification so it would not meet the definition of fondling.

# What constitutes sexual harassment under Title IX?

- ▶ Scenario No. 3:
- ▶ Amber has alleged that while she was walking down the hall Johnny came up behind her and grabbed her breast. She goes on to state how the incident made her very uncomfortable and upset her.
- ▶ Could this be sexual harassment under Title IX?
- ▶ Answer: Yes. This could be characterized as sexual assault (fondling). Johnny did not have consent to touch Amber's private body part, the contact was not incidental and given the nature of the contact it was likely done for sexual gratification.

# What constitutes sexual harassment under Title IX?

- ▶ Scenario No. 4:
- ▶ Monica has alleged the Bill made a comment to her regarding her breast size while they were sitting in class. Monica is very upset by the comment and states that she is now scared to go back to class.
- ▶ Could this be sexual harassment under Title IX?
- ▶ Answer: No. While Bill's comment was offensive, his one comment by itself was not sufficiently severe and pervasive enough to create a hostile environment.



# What constitutes sexual harassment under Title IX?

- ▶ Scenario No. 4(a):
- ▶ Monica has alleged the Bill made a comment to her regarding her breast size while they were sitting in class. **While making this comment, Monica alleged Bill slowly stroked the side of her thigh. Monica has also stated the Bill has made comments about her body on several other occasions.** Monica is very upset by the comments and states that she is now scared to go back to class.
- ▶ Could this be sexual harassment under Title IX?
- ▶ Answer: Yes. The frequency of Bill's sexual comments along with the uninvited touching serves to create a situation where his actions are so severe, pervasive, and objectively offensive that it could constitute hostile environment harassment.

# What constitutes sexual harassment under Title IX?

- ▶ Scenario No. 5:
- ▶ Ben and Jennifer are seniors who have been dating for three years. They get into an argument while on campus and Jennifer proceeds to punch Ben in the face?
- ▶ Could this be sexual harassment under Title IX?
- ▶ Answer: Yes. This conduct could be considered dating violence.

# What constitutes sexual harassment under Title IX?

- ▶ Scenario No. 5(a):
- ▶ Ben and Jennifer are seniors who have been dating for three years. Another student walks into a bathroom at school and observes Ben and Jennifer engaged in sexual intercourse. When questioned about the incident, Jennifer states that she went into the restroom with Ben just to make out. She went on to state that when Ben began to remove her underwear from beneath her dress she told him to stop but that he continued.
- ▶ Could this be sexual harassment under Title IX?
- ▶ Answer: Yes. Any non-consensual sexual penetration after Jennifer told Ben to stop could be considered sexual assault.

# Initial Response to Allegations of Sexual Harassment

- ▶ Upon receiving any report of misconduct involving sex, gender or gender identity, or sexual orientation campus administration should:
  - ▶ 1.) Immediately notify the Campus and/or District Title IX Coordinator; and
  - ▶ 2.) Complete the Sexual Misconduct Report Intake Form (See Document 1) and forward it to the Campus Title IX Coordinator.
- ▶ Upon receipt of a report of unwelcome sex-based misconduct, the Title IX Coordinator must determine whether the conduct, if proved, implicates Title IX.

# Initial Response to Allegations of Sexual Harassment

## SEXUAL MISCONDUCT REPORT INTAKE FORM

For known misconduct involving **sex, gender or gender identity, or sexual orientation**

### ● What to Do BEFORE Completing This Form ●

<p><b>Assess Safety:</b> If a student is in immediate danger or is an immediate danger to self or others, remove the student from the environment immediately. Move the student to a safe area with adequate supervision and immediately contact the Title IX Coordinator for what to do next.</p>	<p><b>Consider Law Enforcement, Medical, and Parental Contact:</b> If allegations include a serious crime, alleged injury, or evidence that needs to be collected (like photographs on an electronic device), follow standard building procedures to contact police, medical, and parent(s)/ guardian(s).</p>	<p><b>Consider Reporting Abuse, Neglect, or Exploitation:</b> Anyone who has a reasonable cause to believe a child, a person 65 years or older, or an adult with disabilities is being abused, neglected, or exploited must report it to DFPS. If in doubt, report. Report at 1-800-252-5400 or the <b>Texas Abuse Hotline</b>.</p>	<p><b>Consider Contacting Special Education:</b> If a party is a student with a 504 plan or an IEP, contact relevant special education administration to consider impacts on special education placement and services.</p>
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### ⊖ What NOT to Do Until the Title IX Coordinator Decides if Title IX Applies ⊖

<p>Do not conduct investigation interviews (asking for or collecting evidence)—only conduct intake meetings with the reporting party and the complainant/family. An intake meeting means asking what is alleged to have happened, not asking for evidence to support the allegations.</p>	<p>Do not discipline either party, including the alleged perpetrator. See the step above “assessing safety” for immediate steps to take to keep your community safe. Contact the Title IX Coordinator to authorize suspensions or other removals from school or activities.</p>	<p>Do not violate the confidentiality of the alleged victim by telling the alleged perpetrator the alleged victim’s name or that a report has been made. We cannot share such information until the Title IX Coordinator says Title IX is not implicated, a Title IX formal complaint is filed, or the alleged victim and their parent(s)/guardian(s) allow it.</p>
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### Part I: Reporting Party

Name of Reporting Party: \_\_\_\_\_ Grade: \_\_\_\_\_  
 Affiliation with District:  Student  Employee  Parent  Volunteer  
 Other (Describe: \_\_\_\_\_)  
 Date of Report: \_\_\_\_\_  
 Who Reported To (Name/Title): \_\_\_\_\_

### Part II: Complainant

Is Reporting Party Alleged Victim?  Yes  No. If no, complete info about the alleged victim:  
 Alleged Victim’s Name(s): \_\_\_\_\_  
 Affiliation with District:  Student  Parent  Volunteer  
 Other (Describe: \_\_\_\_\_)  
 Minor(s)?  Yes  No

### Part III: Respondent

Alleged Perpetrator’s Name(s): \_\_\_\_\_ Grade(s): \_\_\_\_\_  
 \_\_\_\_\_ (if students)  
 Affiliation with District:  Student  Employee  Parent  Volunteer  
 Other (Describe: \_\_\_\_\_)  
 Minor(s)?  Yes  No

### Part IV: Allegations

What is Alleged to have happened?  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

When Did Conduct First Happen?  
 Did It Happen More Than Once?  Yes  No. If yes, provide known dates.  
 \_\_\_\_\_

When Did Conduct Last Happen?  
 Where Did the Conduct Happen?  At School  At a School Activity  During School Hours  
 Using School Technology  During Remote Learning  
 Near School  Other. If “other” is checked, describe where:  
 \_\_\_\_\_

Were There Any Witnesses?  Yes  No. If yes, provide names/how to contact witnesses.  
 \_\_\_\_\_  
 \_\_\_\_\_

### Did the Conduct Involve Any of the Following?

- |  |   |
|--|---|
| <input type="checkbox"/> Yes <input type="checkbox"/> No | <b>Nonconsensual sexual penetration</b> (vaginal, anal, or oral, including with an object)  |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | <b>Sexual conduct where the victim is incapable of giving consent</b> because of age or temporary or permanent mental or physical incapacity  |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | <b>Fondling</b> (nonconsensual touching of private body parts above or under clothing for sexual gratification)   |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | <b>Incest</b> (nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law)   |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | <b>Statutory Rape</b> (nonforcible sexual intercourse with a person who is under the statutory age of consent)  |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | <b>Employee Quid Pro Quo</b> (an employee conditioning an educational aid or benefit to or for a student on the student’s participation in sexual conduct)  |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | <b>Dating Violence</b> (violence by a person who has or has been in a social relationship of a romantic or intimate nature with the alleged victim)   |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | <b>Domestic Violence</b> (felony or misdemeanor crimes of violence between people in or who have been in a legally recognized domestic relationship)  |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | <b>Stalking</b> (a course of conduct based on sex and directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress) |

For Title IX Office Use Only:  Matter implicated Title IX/Title IX Office supervision commenced  
 Matter did not implicate Title IX/clearance to use building discipline code. If this box is checked, describe the final discipline imposed: \_\_\_\_\_

# Initial Response to Allegations of Sexual Harassment

- ▶ Until the Title IX Coordinator or Campus Title IX Coordinator decides if Title IX applies:
  - ▶ Do not conduct investigation interviews (asking for or collecting evidence)—only conduct intake meetings with the reporting party and the complainant/family. An intake meeting means asking what is alleged to have happened, not asking for evidence to support the allegations.
  - ▶ Do not discipline either party, including the alleged perpetrator. Contact the Title IX Coordinator to authorize suspensions or other removals from school or activities.
  - ▶ Do not violate the confidentiality of the alleged victim by telling the alleged perpetrator the alleged victim's name or that a report has been made. We cannot share such information until the Title IX Coordinator or the Campus Title IX Coordinator says Title IX is not implicated, a Title IX formal complaint is filed, or the alleged victim and their parent(s)/guardian(s) allow it.

# Initial Response to Allegations of Sexual Harassment

- ▶ If the alleged conduct, even if proved, would not be Title IX “sexual harassment”, campus staff may proceed with disciplining the student in accordance with the Code of Conduct.
- ▶ If the alleged conduct does constitute Title IX sexual harassment, a school only impose punitive or disciplinary consequences against the alleged perpetrator by going through the formal Title IX Complaint process.
- ▶ If the alleged victim decides not file a Title IX complaint, the Campus Title IX Coordinator may still elect to file a complaint.

# Interim Options to Address Conduct: Supportive Measures

- ▶ While you may not immediately discipline a student if the alleged conduct constitutes sexual harassment under Title IX, you have several options to address the conduct.
- ▶ If a parent or student makes allegations that could amount to sexual harassment, the campus Title IX Coordinator is required to offer supportive measures
- ▶ Examples of supportive measures include:
  - ▶ Counseling
  - ▶ Course related adjustments
  - ▶ Modifications of work or class schedules
  - ▶ Campus escort services
  - ▶ Leaves of absence
  - ▶ Increased security and monitoring of certain areas of campus, and
  - ▶ Mutual restrictions on contact between the parties



# Interim Options to Address Conduct

## Emergency Removal

- ▶ If the Campus believes there is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Title IX sexual harassment the alleged Respondent may be subject to emergency removal.
- ▶ If appropriate the emergency removal can be done through the traditional Student Discipline process for removal to ALC/JJAEP.
- ▶ Please consult with the Title IX Coordinator and Student Services prior to making any such decision.
- ▶ If no formal complaint has been filed, during the emergency removal process do not share the Complainant's name or any details that would identify them without consent from the Complainant and, if they are a minor, their parent(s)/guardian(s).
- ▶ IDEA/504 Rules still apply (MDRs).
- ▶ Respondent has alleged to have engaged in lower level sexual misconduct that does not warrant removal to ALC/JJAEP, the Respondent may not be placed in ISS, suspended, or subjected to any other punitive measures until a Formal Complaint has been filed and determination has been made imposing such measures.
- ▶ Administrative leave for employees during an investigation is permitted. Must follow state law, Board policy, and normal district procedure

# Questions?

