



TITLE IX REGULATIONS & PROTOCOLS

CARTERSVILLE CITY SCHOOLS

JANUARY 4, 2021



WHAT DOES TITLE IX ACTUALLY SAY?

“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.”

Title IX of the Education Amendment of 1972

LEGAL HISTORY

Significant U.S. Supreme Court Cases relative to Title IX

[1972]
Education
Amendment

[1979]
Cannon v.
University
of Chicago

[1992]
Franklin v.
Gwinnett
Co Schools

[1998]
Gebser v.
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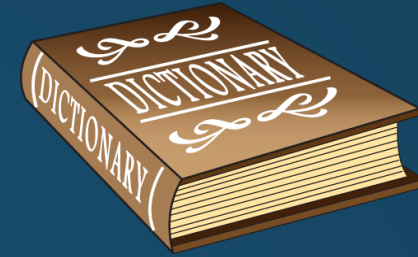
*Plaintiff must establish
that **an official with
authority to institute
corrective measures
had notice and was
deliberately
indifferent***

*Conduct of the
perpetrator must be so
severe, pervasive AND
objectively offensive that
it denies the victim equal
access to educational
opportunities or benefits*

OFFICE OF CIVIL RIGHTS: GUIDANCE & DEAR COLLEAGUE LETTERS

- 2001 Guidance
- 4/2014 Dear Colleague Letter
 - Changed conduct standard to: “severe, pervasive, OR objectively offensive”
 - Changed notice from “known” to “should have known”
- 9/2017 Dear Colleague Letter
 - Withdrew the broad definition of sexual harassment but did not redefine it
- 5/6/2020 New Title IX Regulations ~ effective 8-14-2020

SEXUAL HARASSMENT



In general, sexual harassment is described as unwelcome sexual advances, requests for sexual favors, and/or other verbal or physical *harassment* of a sexual nature.

"Harassment" ~ disturbing, bothering persistently, tormenting, pestering, annoying behavior

- Can include remarks about a person's sex
- Victim and harasser can be either male or female; and they both can be of the same gender

STALKING



Conduct directed at a person that would cause a reasonable person to:

- a. Fear for their own safety, OR
- b. Suffer substantial emotional distress

Including via electronic means

SEXUAL HARASSMENT



Quid Pro Quo

An employee conditioning the provision of aid, benefit, or service on an individual's participation in unwelcome sexual conduct

Hostile Environment

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, AND objectionably offensive that it effectively denies a person equal access to the educational program or activity

Clery Act / Violence Against Women Act

Sexual assault (ex. Seduction, incest, indecent exposure, etc.)



PROGRAM OR ACTIVITY

- “All of the operations” of elementary and secondary schools
- Includes locations, events or circumstances over which the recipient exercised substantial control over both the respondent and context in which the harassment may have occurred
- What about online???

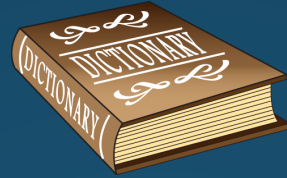
COMPLAINANT



Individual who is alleged to be the victim of conduct that could constitute sexual harassment

- *Any person can report sexual harassment and trigger the recipient's obligation to respond (ex. witness, friend, parent/guardian, employee)*
- *"Complainant" is better term than "victim"*

COMPLAINANT



RESPONDENT

Individual who is alleged to be the victim of conduct that could constitute sexual harassment

- *Any person can report sexual harassment and trigger the recipient's obligation to respond (ex. witness, friend, parent/guardian, employee)*
- *"Complainant" is better term than "victim"*

Individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment

- *"Respondent" is better term than "perpetrator" or "accused"*
- *Must presume innocent until responsibility is determined*

OBLIGATION TO RESPOND



School is obligated to respond when:

1. School has actual knowledge of sexual harassment;
2. The act/conduct occurred within the school's education program or activity

School MUST respond meaningfully to every report of sexual harassment!!!

ACTUAL KNOWLEDGE



Notice of or allegations of sexual harassment to a school's Title IX Coordinator OR any official of the school who has the authority to institute corrective measures, OR to any employee of an elementary or secondary school.

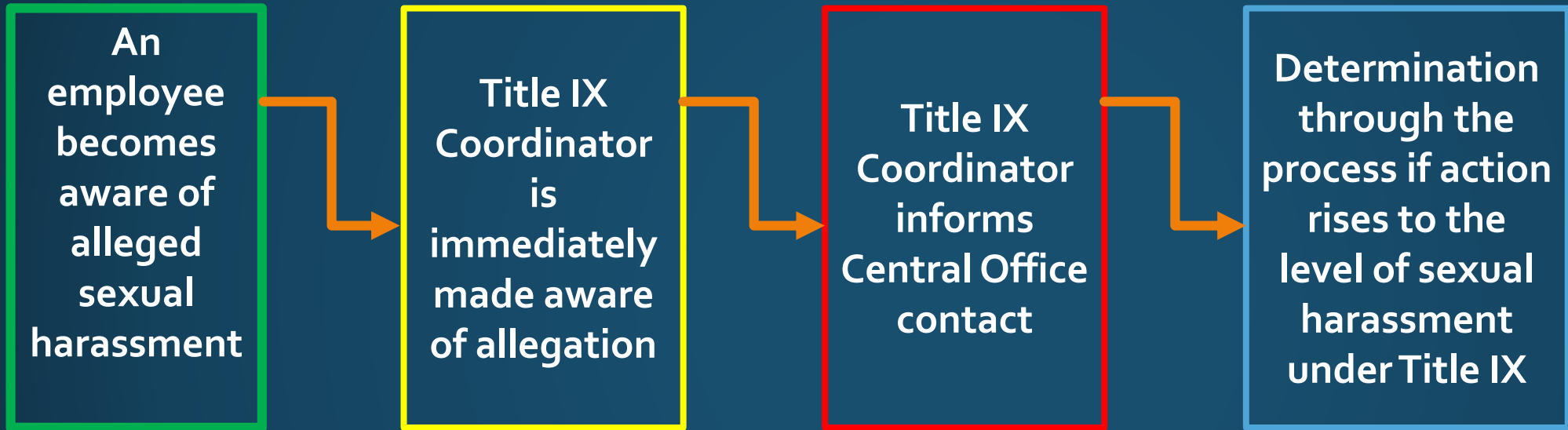
PROCESS IS CRITICAL

- 1. Treat both Complainant & Respondent equally with equal access to evidence**
- 2. Evaluate all relevant evidence objectively**
- 3. Title IX Coordinator, Investigator, and Decision Maker are to be free from conflict of interest, unbiased and trained to be impartial**
- 4. Presume innocence of Respondent**

PROCESS IS CRITICAL (CONTINUED)

- 5. Certain time frames for the various parts of the process**
- 6. Consider a range of remedies and sanctions which may be imposed**
- 7. Standard of proof is a Preponderance of the Evidence**
- 8. Appeal Procedures**

TITLE IX SEXUAL HARASSMENT BASICS



All of this should happen as soon as possible . . .

And BEFORE school level administrator resolves any discipline issue

TITLE IX COORDINATOR



- 1. Must be specifically identified and have contact information publicized (name, email, direct work phone number)**
- 2. Knows & understands the grievance process**
- 3. Makes sure investigator follows process and has no conflict of interest**
- 4. Can be one in the same as the Investigator**
- 5. Cannot be the Final Decision Maker**
- 6. “Trained in impartiality”**



TITLE IX COORDINATOR MUST:

1. Respond promptly upon notice of allegation(s) of sexual harassment
2. Offer supportive measures to Complainant AND Respondent
3. Contact Complainant to discuss [*with or without formal complaint*]:
 - Supportive measures
 - Desired outcome
 - Explain process of filing a Formal Complaint



SUPPORTIVE MEASURES

Individual services designed to restore or preserve equal access to educational programs/activities without unreasonably burdening the other party and available to both Complainant & Respondent

- **Non-disciplinary**
- **Non-punitive**
- **Without fee or charge**
- **Examples: Counseling, deadline extensions, modification of class/work schedules, restricting contact between parties, revised seating or assignments, increased monitoring, emergency removals, exit strategies**

SEXUAL HARASSMENT (TITLE IX)

IF NO . . .

Handle through discipline process, but don't forget supportive measures

But, still need:

- 1. Documentation of decision, and**
- 2. If formal complaint, will have to follow the process & provide notice to both parties**

GRIEVANCE PROCESS

- **Complaint may be verbal or written and may be made at any time (including during non-business hours), in person, by mail, by phone and/or district or school website.**
- **Any student, employee, parent or other persons wishing to report an allegation of sexual harassment shall promptly notify the principal or counselor &/or designated Title IX Coordinator.**
- **Any employee who receives information from a student alleging sexual harassment shall report it to the principal &/or Title IX Coordinator.**

GRIEVANCE PROCESS (CONTINUED)

- Remedies will be designed to restore or preserve equal access to the education program/activity
- Remedies may include the same individualized services described as “supportive measures”
- Remedies do not have to be non-disciplinary or non-punitive, and need not avoid burdening the Respondent, but only after the process is completed



FORMAL COMPLAINT

Upon receipt of knowledge, the School must provide written notice to the known parties within 10 school days that includes:

- 1) Notice of Grievance Process and Informal Resolution
- 2) Notice of allegations potentially constituting sexual harassment in sufficient detail and time to allow preparation of response PRIOR to initial formal interview
- 3) Identities of known parties, alleged conduct, date & location of conduct (as much as is known)

FORMAL COMPLAINT (CONTINUED)

- 4) Statement of presumption that Respondent is not responsible for alleged conduct, and that determination will be made at the end of the grievance process
- 5) Notice that both parties may inspect and review all evidence
- 6) Notice of any provision in Student Code of Conduct regarding making false statement(s)
- 7) Notice that the parties may have an advisor of their choice, who may be, but is not required to be an attorney

FORMAL COMPLAINT (CONTINUED)

- 8) A description of the range of or list of possible disciplinary sanctions and remedies that the District/School may implement following any determination of responsibility**
- 9) If, in the course of an investigation, the District/School decides to investigate allegations about the Complainant or Respondent, that are not included in the notice provided pursuant to the initial complaint, the District/School shall provide notice of additional allegations to both parties.**

FORMAL COMPLAINT (CONTINUED)

- **The District/School shall not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.**
- **The Decision-Maker shall explain to the party proposing the questions any decision to exclude a question as not relevant.**



INVESTIGATION OF A FORMAL COMPLAINT

After providing written notice to the parties of the receipt of a formal complaint, the District/School shall have 15 days to investigate.

- Assume the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility and not place such burdens on the parties provided the District/School cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional, and which are maintained in connection with the provision of treatment to the party, unless the District obtains that party's voluntary, written consent to do so.

INVESTIGATION OF A FORMAL COMPLAINT (CONTINUED)

- Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses and other inculpatory and exculpatory evidence.
- Do not restrict the ability of either party to discuss the allegations of the investigation or gather and present relevant evidence.
- Provide the parties with the same opportunities to have others present during any grievance proceedings, including the opportunity to be accompanied to and present in any related meeting or proceeding by the advisor of their choice.
- However, the District/School may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.

INVESTIGATION OF A FORMAL COMPLAINT (CONTINUED)

- Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the party to prepare to participate.
- Provide both parties an equal opportunity to inspect and review any non-privileged evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including evidence upon which the District/School does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence regardless of its source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

INVESTIGATION OF A FORMAL COMPLAINT (CONTINUED)

- Prior to the completion of the investigative report, the District/School shall send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties shall have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.
- The District/School shall make all such evidence available at any meeting to give each party equal opportunity to refer to such evidence during the meeting, including for purposes of cross-examination.
- Create within 5 days an investigative report that fairly summarizes relevant evidence, and at least 10 days prior to the determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in electronic format or hard copy for their review and written response.



CONSOLIDATION OF FORMAL COMPLAINTS

The District/School 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.

INVESTIGATION OF A FORMAL COMPLAINT (CONTINUED)

- If at any point in the investigation of reported sexual harassment of a student, the investigator determines that the reported harassment should more properly be termed abuse, the reported incident or situation shall be referred pursuant to established protocol for child abuse investigation.
- Reported sexual harassment determined NOT to be sexual harassment as defined under Title IX may be investigated in accordance with Policy JAA – [Nondiscrimination].

INVESTIGATION OF A FORMAL COMPLAINT (CONTINUED)

- After the District/School has sent the investigative report to the parties and before reaching a determination regarding responsibility, the Decision-Maker shall afford a 10-day period for each party to have the opportunity to
 - submit written, relevant questions that a 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.

INVESTIGATION OF A FORMAL COMPLAINT (CONTINUED)

- **Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions & evidence are offered to prove that someone other than the Respondent committed the alleged conduct; or if the questions/evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.**

EVIDENCE



Burden of proof and gathering evidence is with the District/School

-but be objective & impartial throughout the process

Investigator must gather evidence and send it to each party for review within ten (10) days.

-confidential evidence?

-intimidation of complainant or witnesses

-must follow up with exculpatory witnesses as well



DISMISSAL OF A FORMAL COMPLAINT

If the alleged conduct in a formal complaint would not constitute sexual harassment, as defined in Title IX regulation, even if proved, or did not occur in the District/School's education program/activity, the District/School shall dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX.

Such dismissal does not preclude action under the Student Code of Conduct.

DISMISSAL OF A FORMAL COMPLAINT (CONTINUED)

The formal complaint or any allegation(s) therein may be dismissed at any time during the investigation, if:

- Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint, or any allegations therein; or**
- The Respondent is no longer enrolled or employed by the District; or**
- Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the complaint or allegations**

DISMISSAL OF A FORMAL COMPLAINT (CONTINUED)

Upon a dismissal, the District/School shall promptly send written notice of and the reason(s) for the dismissal simultaneously to the parties.

INVESTIGATION REPORT



- Names of parties
- Allegation(s)
- Explanation of the investigative process
- Clear, plain statements of evidence from each witness for each allegation
- Incorporation of answers to questions posed by parties

INVESTIGATION REPORT (CONTINUED)

- **No opinion of investigator or decision of responsibility**
- **Parties must be given opportunity to review the report and pose questions to witnesses through the investigator**
- **Investigator does not have to change the report based upon feedback from the parties**

DETERMINATION OF RESPONSIBILITY

- The Decision-Maker cannot be the same person as the Title IX Coordinator or the Investigator(s).
- The Decision-Maker shall, within 10 days of the conclusion of the Q&A period, issue a written determination regarding responsibility.
- To reach a determination, the District shall apply the preponderance of evidence standard to all complaints of sexual harassment whether formal or informal.

DETERMINATION OF RESPONSIBILITY (CONTINUED)

The written determination shall include:

- **Identification of the allegations potentially constituting sexual harassment**
- **A description of the procedural steps taken from receipt of the formal complaint through determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence;**
- **Findings of fact supporting the determination;**

DETERMINATION OF RESPONSIBILITY (CONTINUED)

Written determination shall include (continued):

- **Conclusions regarding the application of the District's Code of Conduct**
- **A statement of, and rationale for, the result as to each allegation, including determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and whether remedies designed to restore or preserve equal access to educational program/activity will be provided by the District to the Complainant; and**
- **The District's procedures and permissible bases for the Complainant and Respondent to appeal.**

DETERMINATION OF RESPONSIBILITY (CONTINUED)

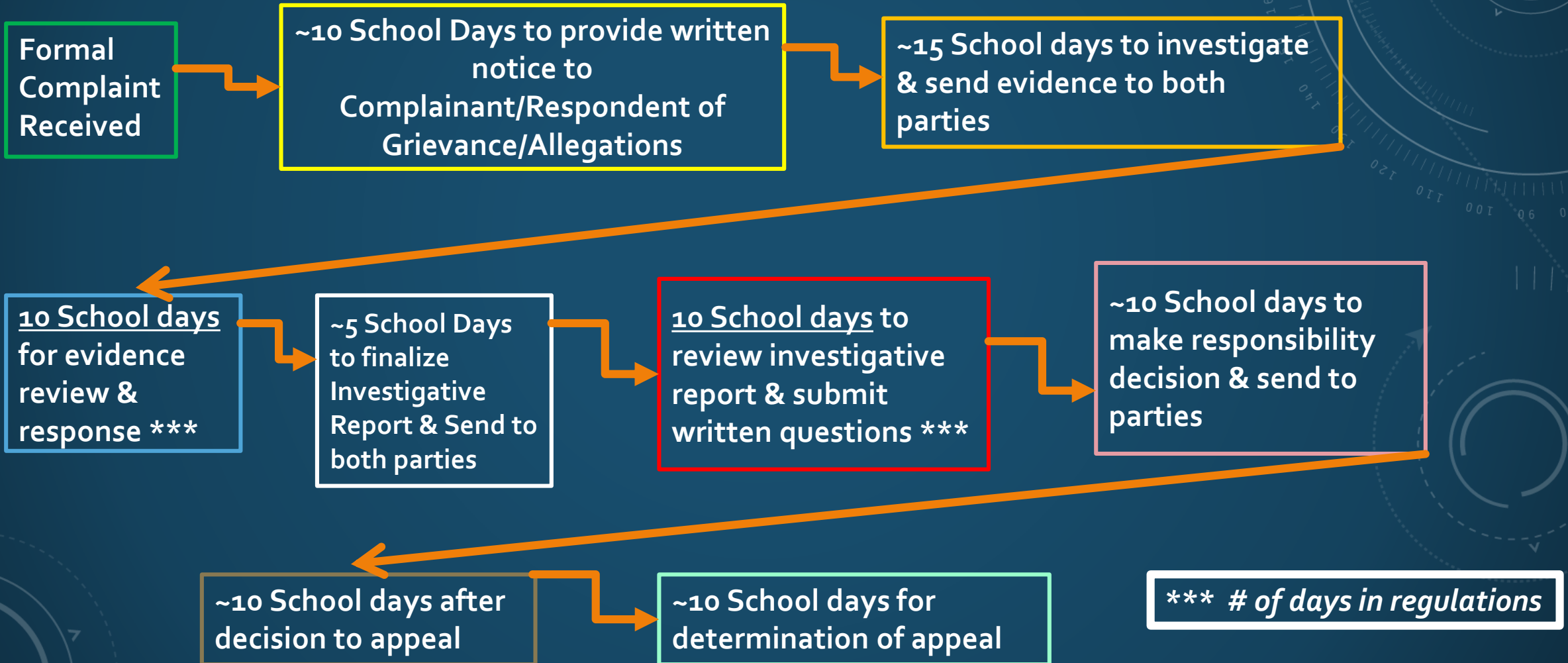
- **The District shall provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the District provides the parties the written determination of the result of the appeal, if an appeal is filed, or if not, then the date on which an appeal would no longer be considered timely.**
- **The Title IX Coordinator is responsible for effective implementation of any remedies.**

APPEAL

Must offer opportunity of both parties the right to appeal:

- ❖ **Determination of Responsibility**
- ❖ **Dismissal of the Complaint (as to the following basis)**
 - **Procedural irregularity that affects the outcome**
 - **New evidence not reasonably available at time of determination**
 - **Conflict of interest on part of the Title IX Coordinator, investigator, or decision-maker**

TITLE IX SEXUAL HARASSMENT TIMELINE – FORMAL COMPLAINT



BULLYING

- 1. Any willful attempt or threat to inflict injury on another person, when accompanied by an apparent present ability to do so;**
- 2. Any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm;**
- 3. Any intentional written, verbal, or physical act, which a reasonable person would perceive as being intended to threaten, harass, or intimidate, that:**

BULLYING (CONTINUED)

Any intentional written, verbal, or physical act, which a reasonable person would perceive as being intended to threaten, harass, or intimidate, that:

- a) Causes another person substantial physical harm or visible bodily harm**
- b) Has the effect of substantially interfering with a student's education;**
- c) Is so severe, persistent, OR pervasive that it creates an intimidating or threatening educational environment; or**
- d) Has the effect of substantially disrupting the orderly operation of the school.**

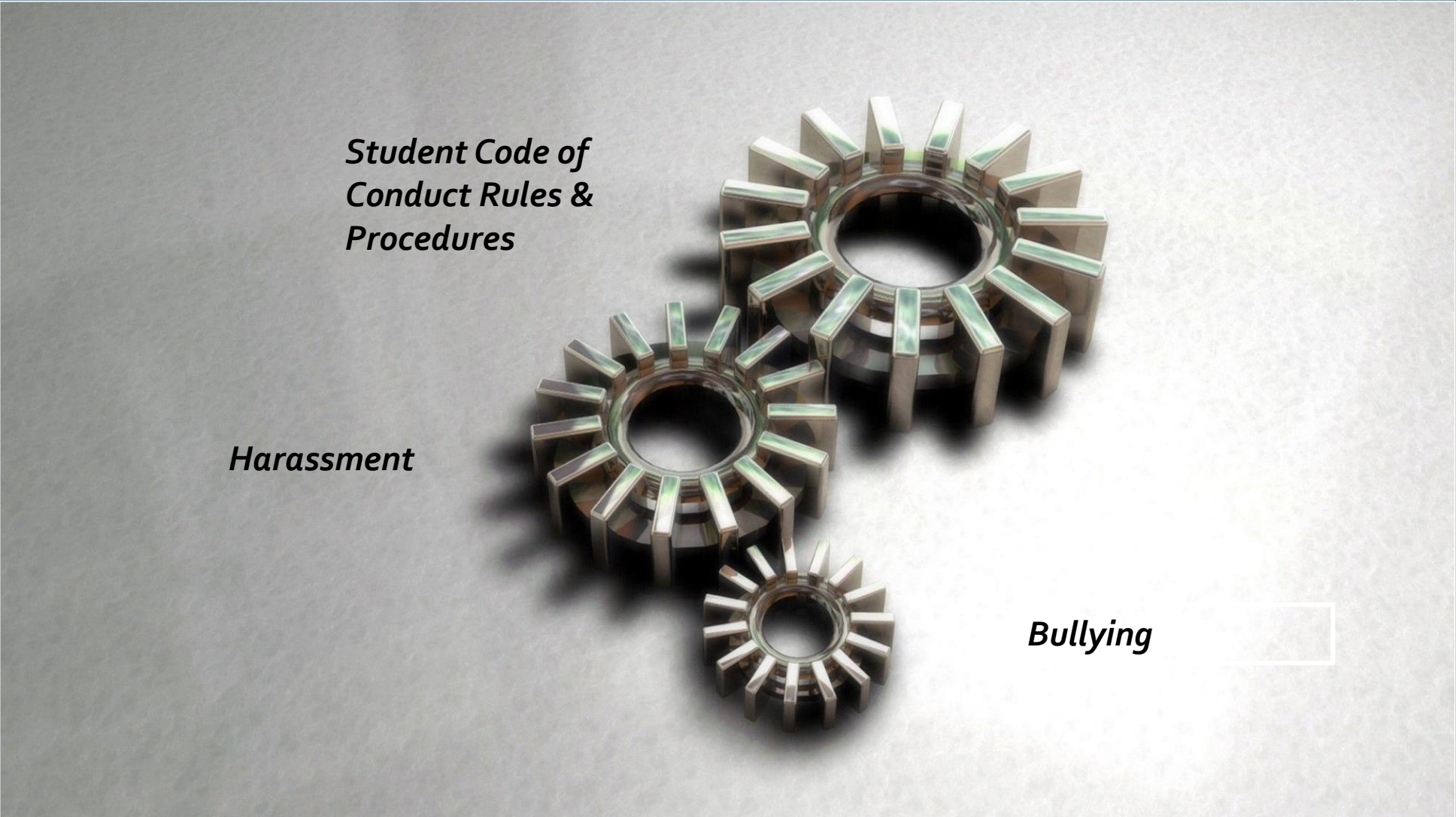
BULLYING (CONTINUED)

- 4. Also applies to acts of cyberbullying which occur through the use of electronic communication, whether or not such electronic acts originated on school property or with school equipment, IF**
- a) Directed specifically at students or school personnel;**
 - b) Maliciously intended for the purpose of threatening the safety of those specified or substantially disrupting the orderly operation of the school, AND**
 - c) Creates a reasonable fear of harm or has a high likelihood of succeeding in that purpose.**

BULLYING (CONTINUED)

- **Prohibition of bullying is contained in our Student Code of Conduct**
- **May overlap with Title IX**
- **Alternative school assignment for grades 6-12 after tribunal finding of 3rd bullying offense**
- **Notification to parents of bully and victim**
- **No retaliation**

COORDINATING DISCIPLINE WITH TITLE IX INVESTIGATION



COORDINATING DISCIPLINE WITH TITLE IX INVESTIGATION

- Immediate contact with Title IX Coordinator and central office before any letter, email, decision; contact with attorney may be necessary
- Is there a Formal Title IX Complaint?
- Does it fit Title IX, Bullying, Code of Conduct definitions?
- Clearly identify everyone's role
- No inconsistent findings
- The Title IX Coordinator must “coordinate”

THINGS TO AVOID

- Determining or sending a discipline notice indicating sexual harassment without knowing how Title IX will be handled
- Suspending a student before knowing what the long term plan is – starting the 10-day tribunal clock
- Using terminology loosely rather than specifically referencing bullying and sexual harassment definitions
- Getting law enforcement involved when not necessary or not getting them involved when required
- Forgetting that if student is IDEA (&/or 504) there still has to be manifestation decision within 10 days of Change of Placement, but not before

OTHER HARASSMENT, DISCRIMINATION

- Policy JAA – Harassment & Discrimination on the basis of race, color or national origin [Title VI], sex (except Title IX), disability (Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act
- Policy JCAC – Title IX Sexual Harassment

OTHER HARASSMENT, DISCRIMINATION

- Other Sexual Offenses
 - Consensual Acts ~ make sure they stay consensual once students go home
 - Sexual Misconduct ~ doesn't rise to the level of Title IX Harassment but still punishable; may or may not have a victim
 - Sexually Inappropriate Language ~ rarely alone rises to the level of Title IX Harassment

Were there other offenses committed that can be disciplined?

"Developing the skill to determine & be able to treat potentially explosive situations different – that is leadership."

Any
Questions