

# TITLE IX TRAINING FOR ADMIN STAFF AT THE WSSD

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## THE AGENDA

This training will cover the following:

- The definition of sexual harassment (**PART I**)
- The jurisdiction/scope of Title IX (**PART II**)
- Conducting a Title IX investigation (**PART III**)
  - ✓ Determining Issues of Relevance/  
Assessing Credibility
  - ✓ Serving Impartially
  - ✓ Engaging in an Equitable Grievance  
Process

**PART I:  
Purpose &  
Scope**  
(40 mins.)

**PART II:  
District Title IX  
Obligations**  
(20mins.)

**BREAK**  
(10mins.)

**PART III:  
Processes &  
Procedures**  
(60mins.)

**PART IV:  
Scenarios/ Q&A**  
(20mins.)

## PART I: PURPOSE & SCOPE OF TITLE IX (IN THE K-12 SETTING)



## WHAT IS TITLE IX?

It is a **federal civil rights law that prohibits discrimination based on sex in education**; Title IX is part of the **Educational Amendments of 1972**.

*"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."*

To enforce Title IX, the U.S. Department of Education maintains an **Office for Civil Rights**, with headquarters in Washington, DC, and regional offices across the United States.

**20 USCA Sec. 1681**

Historically, people have commonly thought of Title IX as addressing gender equity in sports but Title IX has always had a *mandate* to address sex discrimination in hiring, admissions and other aspects of a school's education programs or activities. Today, Title IX's reach is much broader.

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# OVERVIEW OF TITLE IX

## DEFINITION

- Prohibits discrimination on the basis of sex in:
  - Education programs and activities
  - Employment (similar to other federal and state laws)

## CONSEQUENCES

- Incompliance can result in the following:
  - Injury to Student/Complainant;
  - Potential civil liability; Potential loss of some or all of a recipient's federal funding
  - OCR investigation and possible lengthy oversight

## WHO MUST FOLLOW IT

- All recipients of federal financial assistance

## •WHO IT PROTECTS

- Protects students, employees, and third parties from sex discrimination, sexual harassment and violence by any institution employee, another student, or a non-employee third party.

## •WHO CAN MAKE A REPORT

- Any of the following can initiate a report::
  - A harassed student or employee
  - The student's parent or guardian
  - A third party with reasonable knowledge of the incident

# TITLE IX's MANDATE TO SCHOOLS

Educational institutions have a responsibility to protect every student's right to learn in a safe environment free from unlawful discrimination and to prevent unjust deprivations of that right.

- ✓ The Office for Civil Rights (OCA) enforces several federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the Department of Education.
- ✓ It is the mission of the OCA to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights.
- ✓ The OCA drafts regulations that represent the US Department of Education's interpretation of a recipient's legally binding obligations.



# FOUNDATIONAL SUPREME COURT CASES

There are four (4) foundational cases that together not only define the scope of Title IX but also delineate rights and obligations.

1979

*Cannon v. University of Chicago*, 441 U.S. 677

1992

*Franklin v. Gwinnett County Public Schools*, 503 U.S. 60

1998

*Gebser v. Lago Vista Ind. School District*, 524 U.S. 274

1999

*Davis v. Monroe County Board of Education*, 526 U.S. 629

The Department of Education has used these four (4) cases as the backbone for its (current) Final Regulations with respect to how schools should implement Title IX.

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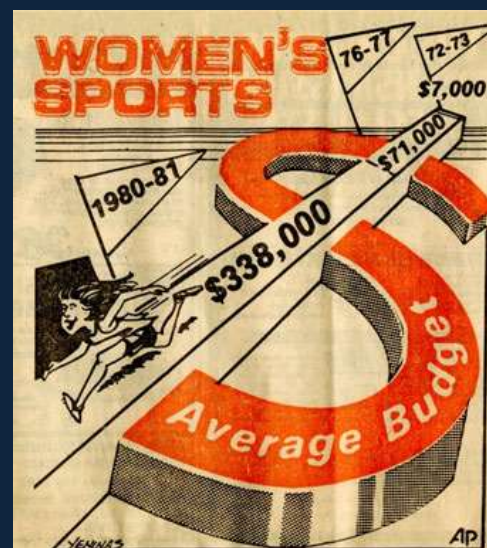
## GANNON & FRANKLIN CASES

In *Cannon*, the Supreme Court declared that Title IX has two primary objectives :

- ✓ To avoid use of federal funds to support discriminatory practices
- ✓ To provide individuals with effective protection against discriminatory practices

Those two purposes are enforced both by administrative agencies that disburse federal financial assistance to recipients, and by courts in private litigation.

In *Franklin*, Court acknowledged that sexual harassment and sexual abuse of a student by a teacher may mean the **school itself** engaged in intentional sex discrimination. In effect, if the school does not address it, it is sanctioning it.



## GESBER AND LAGO CASES

In *Gebser*, the Court analyzed the conditions under which a school district will be liable for money damages for an employee sexually harassing a student.

- ✓ Building on *Franklin*, *Gebser* held that where a school has **knowledge** of an employee sexually harassing a student **but responds with deliberate indifference** to such knowledge, **the school itself has engaged in discrimination**, subjecting the school to money damages in a private lawsuit.

Deliberate indifference means that if we permit it (whether consciously or otherwise), then we are promoting it!

In *Davis*, the Court had to rule on the application of Title IX in case involving the sexual harassment of a fifth-grade student by another student.

- ✓ The Court **expanded the definition of** sexual harassment under Title IX as conduct that is “severe, pervasive **and** objectively offensive” (the term objectively offensive was the addition).
- ✓ The Court reasoned that “[S]chools are unlike the adult workplace and that children may regularly interact in a manner that would be unacceptable among adults.” Because schools are not workplaces for children, the definition needed to be modified to include “age appropriate” behavioral norms.

## CURRENT TITLE IX REGULATIONS

Current regulations are a combination of rules and guidance issued by Secretaries of Education under the Obama (2008-2016) and Trump (2016-2020) administrations. There is an emphasis on equitable and prompt action.

- ✓ According to the available Civil Rights Data Collection (CRDC) for SY2015-16, there were approximately **9,700 incidents of sexual assault, rape or attempted rape reported in public elementary and secondary schools.**
- ✓ According to the Department, “The number of K-12 sexual harassment and violence complaints filed with OCR is **nearly 15 times greater** than it was a decade ago. This disturbing change is a matter of serious concern and requires immediate attention.”

“Too many students have lost access to their education because their school inadequately responded when a student filed a complaint of sexual harassment or sexual assault...This new regulation requires schools to act in meaningful ways to support survivors of sexual misconduct, without sacrificing important safeguards to ensure a fair and transparent process. We can and must continue to fight sexual misconduct in our nation’s schools, and this rule makes certain that fight continues.”

-Betsy DeVos

## MAIN COMPONENTS OF FINAL REGULATIONS

The final regulations require schools to

1. Respond ***promptly and supportively*** to persons alleged to have been victimized by sexual harassment.
2. Resolve allegations of sexual harassment ***promptly and accurately*** under a ***predictable, fair grievance process*** that provides ***due process*** protections to the alleged victim and alleged perpetrators of sexual harassment.
3. Effectively implement remedies for victims.

Unlike historical *guidance* issued during the Obama years (2011, 2014), the Trump regulations (2020) **have the full effect of law and override any past guidance. They provide the OCR with the authority to prosecute institutions who fail to adhere to these regulations.**

“These Final Regulations impose, for the first time, legally binding rules on recipients with respect to sexual harassment.”

These regulations **hold schools accountable for failure to respond equitably and promptly to sexual misconduct incidents** and **ensure a more reliable adjudication process that is fair to all students.**

## MAIN (K-12) TAKEAWAYS DERIVED FROM THE FINAL REGULATIONS

- Defines **sexual harassment** to include **sexual assault, dating violence, domestic violence and stalking as unlawful discrimination on the basis of sex.**
- Requires schools to offer clear, accessible options for any person to report sexual harassment.
- Requires the school to offer survivors supportive measures, such as class or dorm reassignments or no-contact orders.
- Requires elementary and secondary schools to respond promptly when **any** school employee has notice of sexual harassment
- Requires schools to select one of two standards of evidence (*the preponderance of the evidence standard* or *the clear and convincing evidence standard*) and to apply the selected standard evenly to proceedings for all students and employees, including faculty.
- Provides “rape shield” protections and ensures survivors are not required to divulge any medical, psychological or similar privileged records.
- Requires schools to offer an equal right of appeal for both parties to a Title IX proceeding.
- Permits schools the ability to conduct Title IX investigations and hearings remotely.

## PART II: THE DISTRICT'S TITLE IX OBLIGATIONS



## THE DISTRICT'S LEGAL OBLIGATIONS

An elementary and secondary school must respond whenever any employee or student makes allegations of sexual harassment and/or has filed a notice of sexual harassment.

**EMPLOYEES:** A school is a workplace and like any other workplace, employees are subject to the same federal legal rights granted to an employee in all workplace environments.

**STUDENTS:** A school is an educational environment and so employees act *in loco parentis* (in the place of parents). Employees, therefore, have a duty to be mandatory reporters and students are not expected to advocate for themselves.

When confronted with an incident, the District must ask itself two (2) questions:

- (1) **Does this misconduct qualify under Title IX?** (Slide 15)
- (2) **Does the District have jurisdiction under Title IX?** (Slide 16)

If the answer to both questions is **YES**, then the District has certain procedural obligations it must meet (Slide 17) that it must meet or face sanctions from the US Department of Education.

# TITLE IX OFFENSES

There are five (5) categories of misconduct that are covered by Title IX:

**SEXUAL HARASSMENT:** Verbal, Physical, *Quid pro quo* - in person or virtual

**SEXUAL ASSAULT:** Rape (including Statutory Rape), Incest, and Fondling

**DOMESTIC/ DATING VIOLENCE:** This includes, but is not limited to, sexual and/or physical abuse and even the threat of such abuse

**STALKING**

**RETALIATION**

**IMPORTANT!** Title IX is only *one* of the ways a District can address allegations of sexual harassment. Just because the allegation does not meet the Title IX (*Davis*) definition of sexual harassment (“severe, pervasive **and** objectively offensive”), does not **preclude** a school from addressing the alleged misconduct under other provisions of the **school’s own code of conduct (set forth in either the employee or student handbook)**.

# THE DISTRICT’S JURISDICTION

Title IX protects any person engaged in an “education program or activity” for conduct that takes place **“in the United States”**.

➤ An “**education program or activity**” includes “locations, events, or circumstances over which the recipient exercised substantial control over **both the respondent and the context in which the harassment occurs**” and also includes “any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.”

Title IX obligations extend to sexual harassment incidents that occur off campus **if any** of three conditions are met:

- ✓ If the off-campus incident occurs as part of the school’s “operations” pursuant to 20 U.S.C. 1687 and 34 CFR 106.2(h)
- ✓ If the school exercised substantial control over the respondent and the context of the alleged sexual harassment that occurred off campus pursuant to §106.44(a)
- ✓ If a sexual harassment incident occurs at an off-campus building owned or controlled by a student organization officially recognized by a postsecondary institution pursuant to §106.44(a)

# THE DISTRICT'S PROCEDURAL OBLIGATIONS

School policy **must state how** to report sex discrimination, sexual harassment or violence.

Once a party has made a report, the District must keep the following obligations in mind:

- ✓ The District must conduct an investigation that is prompt;
- ✓ The District must not exercise deliberate indifference;
- ✓ The District must provide supportive measures;
- ✓ The District must provide an appeal/ grievance process; *and*
- ✓ The investigation must remain confidential.

If an educational institution fails to meet these obligations and/or respect legal rights, then a school's federal financial assistance can be terminated by the USDoE if:

- ✓ The Department advises the school of a Title IX violation;
- ✓ The Department attempts to secure voluntary compliance; *and*
- ✓ The school refuses to come into compliance

**The District must respect the due process of all parties involved.**

# PUBLIC NOTICE OF COMPLIANCE

- (1) Schools must designate at least one employee as the TITLE IX COORDINATOR and "**prominently display**" the Title IX Coordinator's contact information (office address, telephone number and an e-mail address) on the school's website.
- (2) **The school must** also prominently displayed on the school's website the official Non-Discrimination Policy (the school does not discriminate on the basis of sex, and that Title IX requires the school not to discriminate) for public review.
- (3) All training materials used to train the school's Title IX personnel must be provided on the school's website.

**Meeting Our Obligations**  
The Office of Human Resources has created a page (currently under construction) on our website called **COMPLIANCE INFORMATION**.

There you will find several compliance related notifications (e.g., EEOC, HIPAA, ACA, etc.) including TITLE IX information.

**IMPORANT!** Schools must ensure that reports **can be made at any time, including during non-business hours**, by using the Title IX Coordinator's listed contacted information, "or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report."

## PART III: TITLE IX INVESTIGATORY PROCESSES & PROCEDURES



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## THE DISTRICT'S TITLE IX ENFORCERS

### Main Compliance Officers

**DIRECTOR OF HUMAN RESOURCES** (TITLE IX COORDINATOR)

- **Duties:** (1) Investigate complaints involving one or more adults (workplace allegations); (2) Ensure that the investigatory process respects due process rights for *all* parties involved; (3) Compile all evidence for legal counsel; and (4) File all Title IX reports with USDoE OCR.

**ASSISTANT SUPERINTENDENT** (TITLE IX LIASION)

- **Duties:** (1) Investigate complaints involving students (educational environment allegations); (2) Ensure that the investigatory process respects due process rights for *all* parties involved; (3) Compile all evidence for Title IX Coordinator; (4) Act in place of Title IX Coordinator.

### Decision Makers/ Appeals

**SUPERINTENDENT OF SCHOOLS**  
**ASSISTANT SUPERINTENDENT OF SCHOOLS**

### Student Claim Investigators

**PRINCIPALS** (inc. ASST PRINCIPALS)

### Advisors

**DIRECTORS** (inc. SUPERVISORS)

### Informal Resolution Facilitator

**SCHOOL PSYCHOLOGISTS**  
**SCHOOL COUNSELORS**  
**PBIS COACHES**  
**OTHER BEHAVIORAL SUPPORTS**

## ROLE OF THE TITLE IX COORDINATOR

### The Title IX Coordinator must:

- ✓ Coordinate investigations, responses, and resolutions of all reports;
- ✓ Ensure procedures and protocols are in place to prevent and/or eliminate sexual harassment;
- ✓ Provide relevant parties the appropriate education and training; *and*
- ✓ Monitor overall District Title IX compliance by regularly reviewing District policies and procedures (e.g., Policy Committee, Administrative Regulations)

### The Title IX Coordinator has the authority to:

- ✓ Confidentially communicate with any and all parties that are related to the complaint;
- ✓ Provide supportive measures to the complainant;
- ✓ Impose disciplinary action and/or implement remedies for the complainant; *and*
- ✓ Institute a grievance process that ensures due process rights of all parties are honored;

**NOTE:** The investigatory process is *reactive* (i.e., a complaint must be filed) but the compliance process is *proactive* (i.e., continuous training and review).

## ROLE OF THE INVESTIGATOR/ ADVISOR

The Investigator is authorized (assigned) by the Title IX Coordinator/ Liaison. Said person must be impartial and free from conflict of interest and will need to:

- ✓ Oversee the fact-finding process (the gathering of all facts based on the filing of formal complaint);
- ✓ Determine relevance of the facts for the purposes of the formal investigative report (drafted by the Title IX Coordinator);
- ✓ Effectively communicates with all participants throughout and involved in the investigation; *and*
- ✓ Provide notice of any good faith delays.

### Investigators can request from the Title IX Coordinator/ Liaison:

- ✓ External (people) support that might be needed to support the investigation; *and*
- ✓ Information Technology support that might be needed to support the investigation

An Advisor is any third party that can provide procedural support and/or context regarding the individuals involved.

- ✓ An Advisor should also be impartial and free from conflict of interest and should have some knowledge (either theoretical or experiential) applicable to the situation.
- ✓ Works with the Investigator in reviewing evidence and determining relevance,

# ROLE OF DECISION MAKERS AND INFORMAL FACILITATORS

## Decision Makers

Decision makers are those individuals who oversee the hearing, determination proceeding, and/or the grievance/ appeals process.

- The Superintendent and Assistant Superintendent serve as the District's Decision Makers.
- Decision Makers may consult with legal counsel regarding issues of relevance concerning evidence, history, and outcomes.
- Neither the Title IX Coordinator nor Investigators can serve as Decision Maker(s); they oversee the process and provide the final recommendation to the decision maker(s).

## Informal Facilitators

Any staff member who can be impartial and free from conflict of interest can serve as a facilitator/ mediator. These individuals can:

- ✓ Implement restorative justice practices; *and*
- ✓ Implement mediation/ conflict practices

Note the facilitation order must come from the Decision Maker(s); the Decision Maker(s) may choose disciplinary action (Director of Human Resources), corrective action (Informal Facilitators), or both.

# A NOTE REGARDING IMPARTIALITY

Note that "impartiality" and "free from conflict of interest" are determined with respect to the situation and not the character of the individuals involved.

- Employment relationships (supervisor, peer) do not exclude individuals from participating in the process unless their relationship directly connects to the situation (e.g., an Assistant Principal can investigate another Assistant Principal unless the former has personal ties to the latter).
- Likewise, professional experience and affiliation, formal or informal, do not exclude individuals from participating in the process unless their experience and/or affiliation will have a demonstrable effect on the process (e.g., a self-described feminist can be involved unless she automatically presumes guilt on the part of the male parties)

**YOU should be able to judge your own impartiality** and, if it is impossible to be impartial, it is okay to recuse yourself.

In the event there is a claim made by a party against the investigators and/or decision makers involved, the Title IX Coordinator has the authority to either implement an appeal process or use unaffiliated non-District personnel.

# FROM INCIDENT REPORT TO OUTCOME: A STEP BY STEP GUIDE

## STEP 1

• An Incident Report is submitted to the Title IX Coordinator.

## STEP 2

• The Incident Report is reviewed and the Title IX Coordinator makes contact with: (a) the Complainant, if known; (b) a parent/legal guardian, if applicable; and (c) statewide child abuse reporting agency and/or law enforcement, if applicable.

## STEP 3

• The Title IX Coordinator will provide the following to the Complainant:

- 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 the filing of a formal complaint;
- Review r applicable policy, such as grievance process for employees under employment contract or student code of conduct disciplinary process; *and*
- Provide the complainant with any literature (e.g., brochure, overview sheet) that contains all the information that was explained and/or how to access it on the district's website.

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## STEP 4

• Conduct a team internal assessment (i.e. Title IX Coordinator, Deputy Title IX Coordinator, Compliance Director, Principal or Asst. Principal, School Resource Officer). Determine the following: (a) Is Complainant known or unknown? (b) Is alleged perpetrator/respondent known or unknown? (c) Has Complainant requested confidentiality or anonymity? (d) If Respondent is known, based on content of report, what emergency measures need to be taken to keep parties safe (i.e. no contact order, change of classes)? (e) If no Contract Order is requested by Complainant or determined to be a necessary supportive safety measure, inform the Complainant in advance to note that confidentiality cannot be maintained by virtue of the nature of a no contact directive.

## STEP 5

• Determine jurisdiction/scope by reviewing the complaint to determine whether the allegations meet Title IX definitions (*Slide 15*) and if the school has jurisdiction (*Slide 16*).

• If one or both conditions are false, the Title IX Coordinator will discuss with Complainant (and/or parents) the grievance process and offer the informal resolution process as an option.

## STEP 6

• Assuming the allegations meet jurisdiction and scope, then the Title IX Coordinator will (a) notify the Respondent (and/or the Respondent's parents) of the filing of a formal complaint; (b) explain grievance process and the informal resolution process; (c) offer supportive measures; and (d) discuss no contact directive/orders, if any.

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# A NOTE REGARDING STEP 4

- If a report was made to a child abuse hotline or law enforcement, document if there is any directive or restriction from either entity directing the school to not proceed with outlined procedural next steps under Title IX.
- Notify school personnel who are in “need to know” roles of only the necessary information needed to ensure the safety of the parties and school community.
- Follow up with Complainant in person and via email to check in on their well-being.
- Follow up with the parents of the Complainant via phone, in person, or email to check in on the well-being of the Complainant to receive any further concerns.
- Additional follow-up with Complainant should be at regular intervals and with ongoing consultation with parents to make sure welcomed and not intrusive.

### REPORTING CHILD ABUSE



Abuse can be reported 24/7 to ChildLine: **1-800-932-0313**



Anyone can report child abuse (grocery store worker, neighbor, delivery driver, etc.)



If you suspect child abuse, you can file a report, even if it feels like you don't have enough info



Trained staff are still working to address reports during COVID-19

SUSPECT IT? REPORT IT. 1-800-932-0313

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## STEP 7

- If Complainant or Respondent wants to pursue the informal resolution process, determine if the other party wants to voluntarily engage in the informal resolution process as well.
- If so, then identify an impartial, neutral, trained party to serve as the informal resolution facilitator and assign the matter.
- Provide the name and information about the informal resolution facilitator to see if either party can state if there is a basis as to why the person selected cannot be fair and impartial or is biased

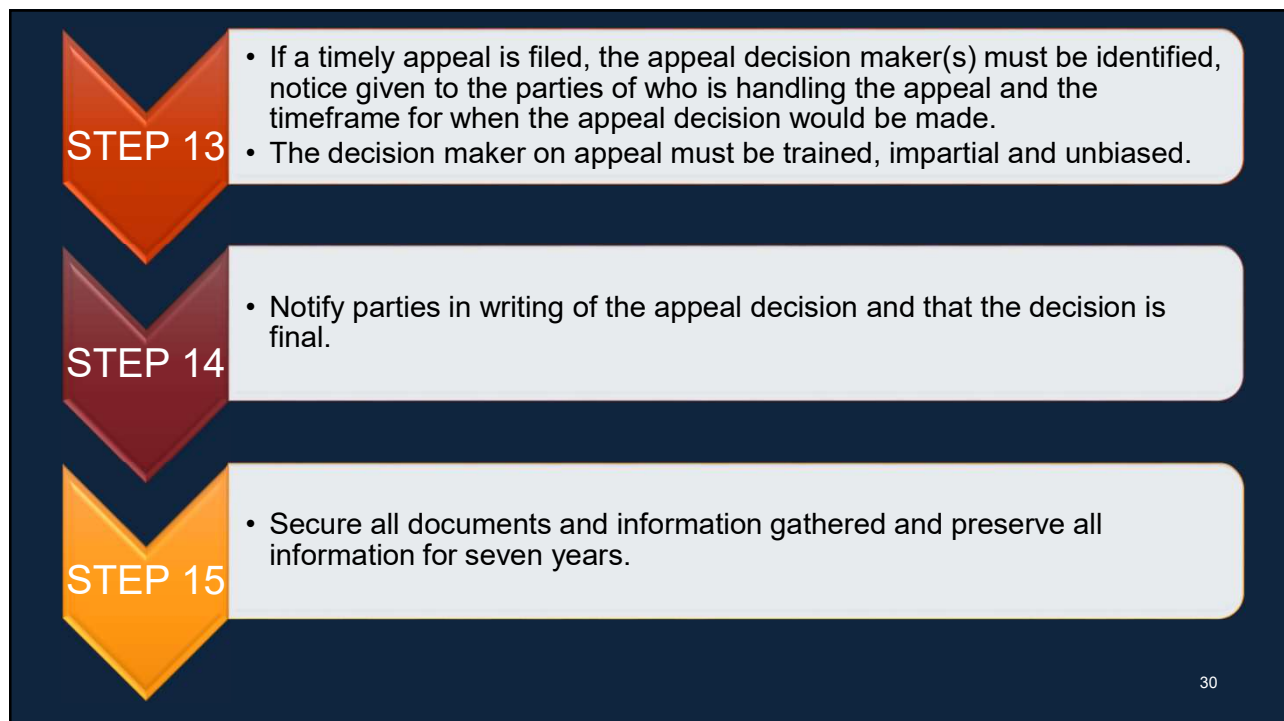
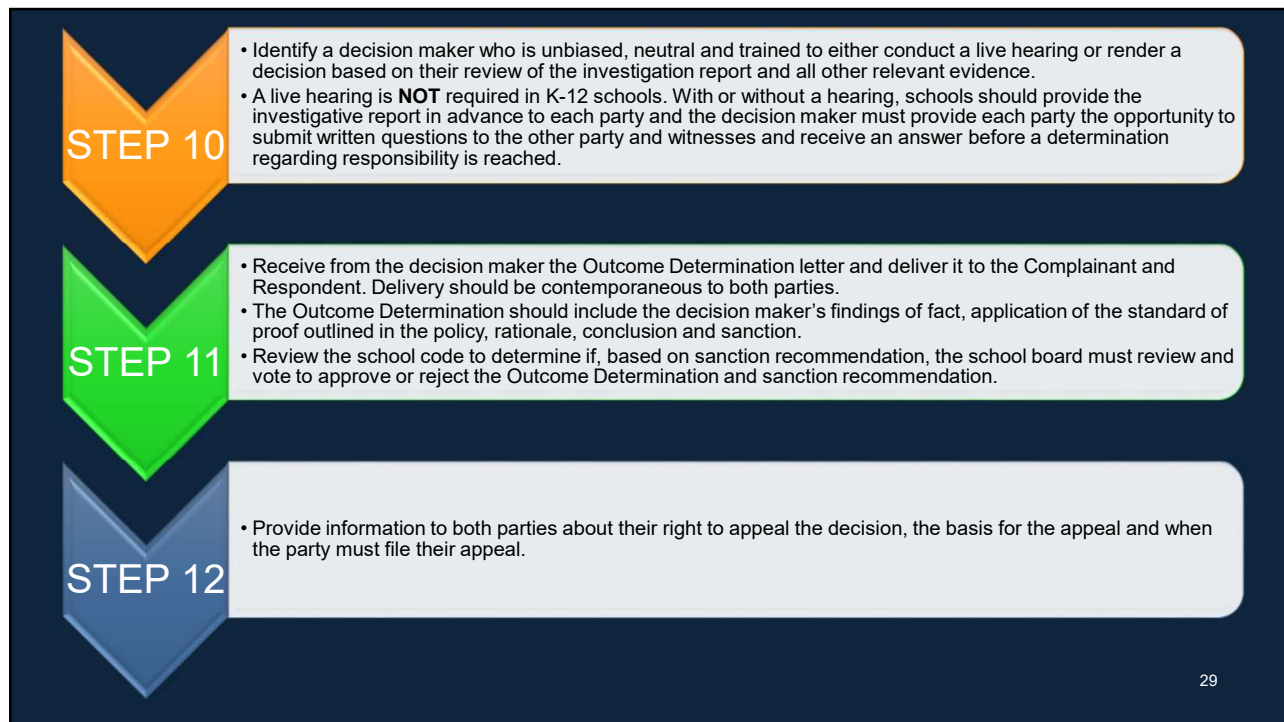
## STEP 8

- If neither party wants to pursue the informal resolution process, then begin the formal investigation into the incident and issue a Notice of Investigation that states the nature of the complaint, when the complaint was received, what school district policies are alleged to have been violated and who is conducting the investigation.
- Identify an impartial, neutral, trained party to serve as the investigator and assign the matter.
- Provide the name and information about investigator to see if either party can state if there is a basis as to why the person selected cannot be fair and impartial or is biased.

## STEP 9

- Provide the Investigator with access to all relevant information and contact information for witnesses.
- Make sure the Investigator, if external, has all necessary child abuse/FBI clearances in order to meet with students and be in the school building.
- Get periodic updates from Investigator and update parties and their parents at the same time as to the status of the investigation.
- Issue the investigation report that fairly summarizes the relevant evidence, hard copy or electronic format, contemporaneously to the parties at least 10 days prior to a hearing or administrative outcome proceeding.

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# WHEN IN DOUBT, DOCUMENT, DOCUMENT, DOCUMENT...

The importance of keeping **DETAILED** and **ACCURATE** records cannot be overstated! Make sure to note:

- ✓ **WHO** received the report;
- ✓ **WHO** made the report;
- ✓ **WHEN** was the report received and when any other steps were taken;
- ✓ **WHAT** steps were taken (e.g. Notice to Title IX Coordinator, call to parents/legal guardians of student, call to law enforcement, call to Childline);
- ✓ **WHAT** support was provided to the complainant (person reporting)

Schools **must** also document their reasons why each response to sexual harassment was not deliberately indifferent – clearly unreasonable in light of known circumstances.

**A school must maintain for a period of seven years records** of each sexual harassment investigation including (1) any determination regarding responsibility, (2) any required audio or audiovisual recording or transcript, (3) any disciplinary sanctions imposed on the respondent, (4) any remedies provided to the complainant, (5) any appeal and the result therefrom, (6) any informal resolution and the result therefrom, and (7) any guidelines/ training materials used at the time of the investigation.

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## Questions?

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