



Title IX Investigations

Presented By: Jackie Saxenmeyer

District Title IX Coordinator

2/28/23

What is Title IX?

Title IX of the Education Amendments of 1972 is a federal civil rights laws that prohibits federally funded educational institutions from discriminating against students or employees based on sex.

“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 educational program or activity receiving federal financial assistance.”

The Title IX Team

- Coordinator
- Investigator
- Informal Resolution Facilitator
- Decision Maker
- Appellate Decision-Maker



Title IX Coordinator

❖ Roles & Responsibilities

- Principal or Assistant Principal
- Point of contact for sexual harassment & Sex/GenderBased Discrimination complaints
- Stop, Prevent, and Remedy
- After receiving a report consult with District Title IX Coordinator to determine if Title IX applies
- The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, regardless of whether a formal complaint is filed and explain the process to file a formal complaint
- ****Mandatory Training****

Title IX Investigator

❖ Roles and Responsibilities

- Assistant Principal or Dean
- Neutral fact-finder
- Conducts interviews
- Gathers evidence
- Maintains accurate and thorough investigation records
- Send04 126[[(R)17.9 (oll (i)-3.5 (ac)0.9 oi)1.5 (m)11.7 ()0.6 (f)1vranvreoll (i)-3.5 (an)17(v)-11..



Appellate Decision-Maker

- Both parties have the right to file an appeal to the written determination of responsibility issued by the DM, and the District Title IX Coordinator's dismissal of a formal complaint
- A party must submit a written appeal to the District Title IX Coordinator within **5 days** after receipt of the Decision-Makers determination of responsibility or the Title IX Coordinator's dismissal of a formal complaint
- The Appellate Decision-Maker can not be the coordinator, investigator, or decision-maker in the original grievance process
- ****Mandatory Training****



Due Process: Current Issues

Due Process concerns are at the heart of 2020 regulations:

- Standard of evidence, “preponderance of Evidence”
- Requirements for “Emergency Removal”
- Detailed Notice of Investigation and Allegations (NOIA)
- Providing investigation report and evidence for review/response
- Title IX investigations are an exception to FERPA Rights
- Involvement of an advisor of choice
- Presumption of non-responsibility for Respondent
- Limited ability to take any punitive or disciplinary actions prior to completion or grievance process.
- Required opportunity to appeal for all parties
- Requirement to publicly post all training materials
-



When Does Title IX Apply?

Brevard Public Schools Policy 2266 *Non*discrimination on The Basis of Sex in Education Programs and Activities, outlines the grievance process.

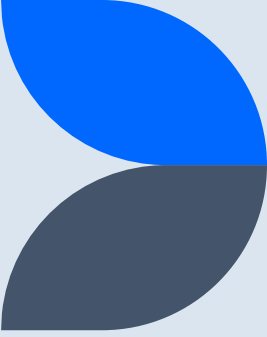
Title IX applies, and BPS Policy 2266 grievance process must be used to resolve allegations of sexual harassment when the District has:

- Control over the Context of the harassment

AND



Control over the Respondent



Personal Jurisdiction

- If the Respondent is not affiliated with the District in any way, the District lacks authority to take disciplinary action.

- Employee of an outside company (e.g., vendor, construction worker)
- Guest of invitee
- Former student
- Former employee
- Student from another institution

- The District has control over the Respondent when the District is able to take disciplinary action to address their behavior. Typically, a Respondent must be a member of the “School District Community” for the school District to have control over the Respondent.

Third Party Respondent

-“Third Party” - third parties include, but are not limited to, guests and/or visitors on School District property (e.g., visiting speakers, participants on opposing athletic teams, parents), vendors doing business with, or seeking to do business with the District, and other individuals who come in contact with members of the School District community at school-related events/activities (whether on or off District Property).

-P4 (s)3 Tc 283t. (bus)-94 32[hA9



If TIX Jurisdiction Is Not Present

Behavior may still violate:

- Student Code of Conduct policies
- Technology/Acceptable Use policies
- Employee Handbook/Policies
- Professionalism standards

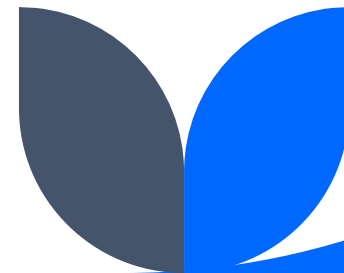
Brevard County, Florida



Elementary and Secondary
Education Code (Florida Statutes)
25 School Year 2022-2023
Board Meeting on September 8, 2022 Approved by Board

Definitions of Sexual Harassment

- Quid pro Quo Sexual Harassment
- Hostile Environment Sexual Harassment
- Sexual Assault
- Domestic Violence
- Dating violence
- Stalking



Quid Pro Quo Sexual Harassment

Quid Pro Quos intended to compel a student to engage in “unwelcome” sexual conduct in order to gain or maintain some type of benefit or favor. It applies to any situation a teacher, faculty member, coach, or any other employee of the District holds control or authority over a student.

Examples:

- In order to receive good grades
- Please the teacher
- Avoid getting in trouble
- Holding position within athletic team



Hostile Environment Sexual



Hostile Environment “Severe”

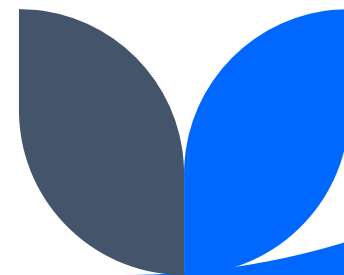
- Physical conduct is more likely to be severe
- Accompanied by threats or violence (Verbal threat to cause physical harm, text, social media)
- Consider the circumstances (The ability of the complainant to remove themselves from the harassment)





Hostile Environment “Objectively Offensive”

- Reasonable person standard
- Age and relationship of complainant and respondent
- Number of person involved
- Frequency
- Physically threatening
- Humiliating
- Intimidating
- Abusive
- Ridiculing



Sexual Assault

- Any sexual act directed against another person, without the consent of the Complainant including instances where the Complainant is incapable of giving consent.

Rape

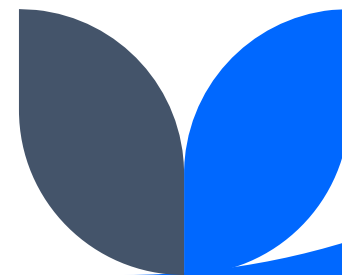
Sodomy

Sexual Assault with an Object

Fondling

Incest

Statutory Rape

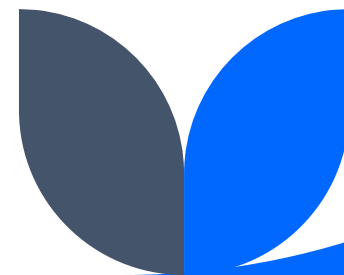


Domestic Violence

- A felony or misdemeanor crime of violence committed by:
 - A current or former spouse or intimate partner of the complainant



Domestic C549e0 -nt1.58.1 (.1.8)



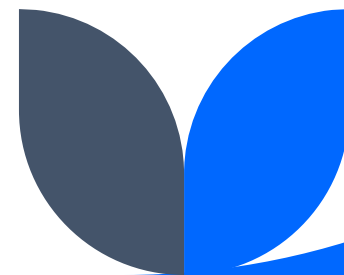
Dating Violence

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition:



Stalking

- Engaging in a



Stalking Cont.

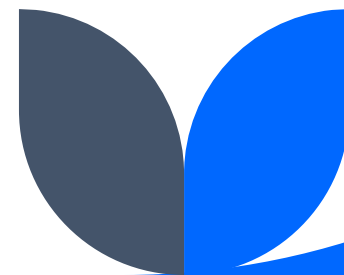
Reasonable Person means a reasonable person under similar circumstances and with similar identities to the Complainant

Substantial Emotional Distress: means significant mental suffering or anguish



Case Study: Is it Title IX?

- A student attends a party at a friend's house over the weekend.





Case Study: Emily and Travis

- 8th grade student Emily and 8th grade student Travis have been dating one another for approximately one month.
- Over the weekend Travis tells Emily that if she doesn't send nude photos of herself to him via text that he is going to break up with her.
- Emily decides to send the photos to Travis.
- Monday morning when Travis is riding on the bus to school, he air drops the nude photos of Emily to a few of his close friends.
- One of Travis's friends decided to report Travis to the school administration.



Case Study: Amanda and Sean

- 18 year old student Amanda and 17 year old student Sean have been dating one another throughout high school.
- Amanda finds out through friends at school that Sean has been texting another female student and has plans to take that person out on a date.
- Amanda who is upset approaches Sean in school about the rumors. Sean admits to the date he has planned. Amanda begins shoving Sean in his chest and slaps him across the face.
- A school administrator is close by and breaks up the two students.

Which Sexual Harassment Definition applies?



Incident				

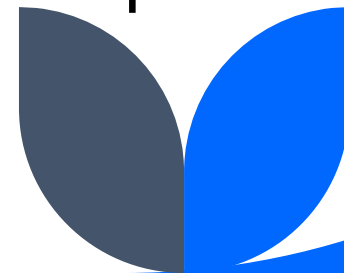
Grievance Process Timeframe

- There is no set requirement in the regulations to complete the investigation other than to have reasonably prompt timeframes for the conclusion of the process.
- BPS Policy 2266, “The District will endeavor to conclude the grievance process within **60 days** of receipt of the Formal Complaint”.
- BPS Policy 2266, “The timeline, however, may be subject to a temporary delay or a limited extension for **good cause** with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action”



Mandatory Reporting

- All school board employees must comply with any mandatory reporting responsibilities regarding suspected abuse, abandonment, or neglect of a child pursuant to F.S. 39.201 and BPS policy 8462 Student Abuse, Abandonment, and Neglect.
- If the reported activity is criminal in nature, you must immediately notify your School Resource Officer/Law Enforcement and the Department of Children and Families (DCF).
- A reporting person may file criminal charges with law enforcement.
- The Title IX grievance process is a separate investigation conducted by the school in order to determine responsibility for a potential violation of BPS policy 2266.



Incident/Report

- Upon receiving a “report” (either from the would-be Complainant, parent/guardian, or third party):
 - Notify Title IX Coordinator
 - Promptly reach out and provide support to the Complainant and Respondent by discussing and offering supportive measures
 - Explain process to file a formal complaint



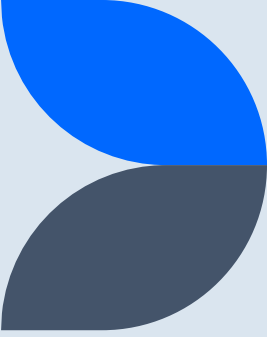
Supportive Measures

- Provided to both parties throughout the process:
 - Non disciplinary
 - Individualized services designed to restore and preserve equal access to education, protect student and employee safety, and deter sexual harassment.
 - A formal complaint is not required to provide supportive measures
- **Examples of supportive measures**

Formal Complaint- TIX Regulations

- A formal complaint can either be a document (student or parent reporting form) or electronic submission (email).
- Filed by the Complainant, preferably the parent/guardian.
- The District Title IX Coordinator has ultimate discretion to file a Formal Complaint “PPTVWM”
- Alleging sex/gender based discrimination or sexual harassment
- Requesting an investigation be completed
- Complainant must be participating or attempting to participate in the District’s education program or activity at the time of filing.





Sending the NOIA

- The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Complainant and Respondent upon commencement of the Formal Grievance Process.
- State the Title IX Charge

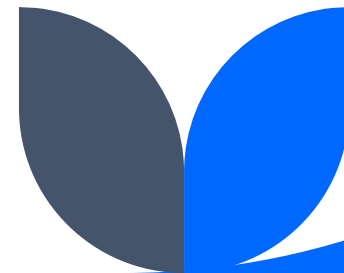
Forms to Complete/Send:

1. BPS Notice 2(a) Notice of Allegations of Title IX Sexual Harassment by a Complainant
2. Advisor Conduct Expectations Letter
3. Advisor Release of Information form
4. Copy of BPS Policy 2266



Advisor of Choice

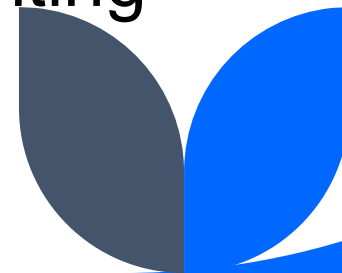
- The Complainant and the Respondent may each have an Advisor of their choice present with them for all meetings, and interviews during the grievance process.
- For students, the Advisor is someone in addition to their parent/legal guardian.
- The Advisor can be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with throughout the grievance process.
- Advisors are present during interviews primarily to assist and support the party being interviewed. The interviewed party is responsible for presenting their own information.
- Advisor Release of Information form- If the party wishes to have the school share documentation and evidence related to the allegations with their Advisor.
- Advisor Conduct Expectations letter- Outlines the role of the Advisor and the school's discretion to remove an Advisor.



Hope Scholarship

- Supportive measure Formal Complaint must be filed first and NOIA sent
- Students subjected to an incident of violence or bullying at school have the opportunity to seek a transfer to another District school with capacity or request a scholarship to attend an eligible private school.
- Contingent upon availability, a student in grade k-12 is eligible for a Hope Scholarship if it is established that the student was subjected to, and subsequently reported to the principal or designee, any of the following incidents per F.S. 1002.40(3):

** Battery; harassment; hazing; bullying; kidnaping; physical attack; robbery; sexual offenses; threat or intimidation; fighting **

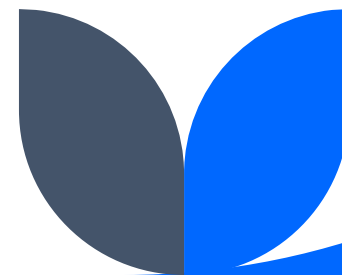


Emergency Removal

The District may remove a student Respondent from the education program or activity on an emergency basis, only after:

*****Must Consult with District Title IX Coordinator*****

1. Threat Assessment Team (TAT) completes an individualized safety risk analysis
2. Determining if an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal
3. Providing the Respondent with notice and an opportunity to challenge the decision immediately following the removal while respecting all rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act, as applicable.



Mandatory Dismissal

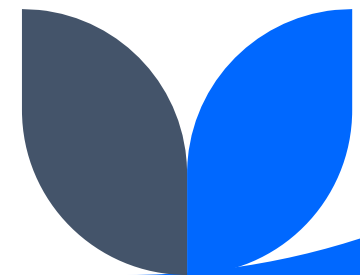
If one of the following preceding circumstances exist, the District Title IX Coordinator shall dismiss the formal complaint and close the Title IX investigation:

The conduct alleged does not constitute sexual harassment even if proven true

Conduct did not occur in an educational program or activity

Conduct did not occur against a person in the U.S.

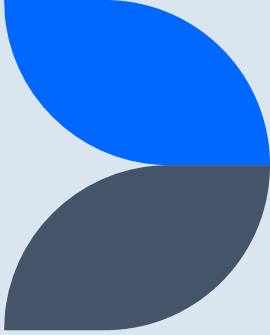
** Both parties have the right to appeal the District Title IX Coordinators dismissal of a formal complaint**



Mandatory Dismissal Cont.

If the District Title IX Coordinator dismisses the Formal Complaint due to one of the proceeding reasons, the District may still investigate and take action with respect to such alleged misconduct pursuant to another provision of any applicable student or employee code of conduct, Board policy, and/or Employee/Administrative Handbook.

Permissive Dismissal



The District Title IX Coordinator may dismiss a Formal Complaint, or any allegations therein, if at any time during the investigation:

The Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations therein;

The Respondent is no longer enrolled within BPS or employed by the Board; or

Specific circumstances prevent BPS from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations contained therein.

** Both parties have the right to appeal the District Title IX Coordinators dismissal of a formal complaint**

Informal Resolution



When to Interview Parties and Witnesses

Complainant → Complainant's requested witnesses → Neutral Witnesses
→ Respondent → Respondent's requested witnesses → Any additional
Witnesses identified by parties → Follow up interviews

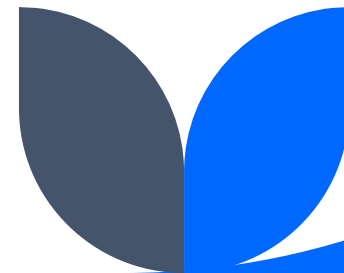
Forms to complete/send:

- "BPS Notice 6(a) Notice of Title IX Interview or Meeting with Title IX Party"
- "BPS Notice 6(b) Notice of Title IX Interview or Meeting with NonParty Witness"



Prepare For Each Interview

- Must receive parent approval before interviewing.
- Parents of witnesses must be made aware that statements collected are not confidential.
- Outline interview questions in advance but be flexible. Be prepared to deviate from your script and insert a logical follow-up question, if necessary.
- Plan the order of interviews.
- Most beneficial to conduct interviews in person, if conditions permit. May interview by phone or virtually.
- Interviews should be conducted in a neutral, quiet, and private setting with no or minimal likelihood of interruptions.
- Let the victim write their account of the incident and then follow up with questions.



Prepare For Each Interview Cont.

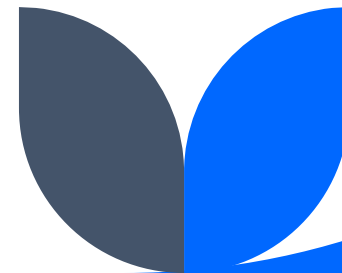


Collecting Evidence



Directly Related Evidence

- Be sent to each party and their Advisor
- Be in electronic format or hard copy
- Include evidence upon which the District does not intend to rely
- Include exculpatory and inculpatory evidence
- Allow **10 days** for written response
- The term “Days” means business day(s) that the Board Office is open. Mon-Fri, excluding state-recognized holidays.
 - 799 (y)198e -1 (r)-7(e)
-



Investigative Report

-At the conclusion of the investigation, the Investigator shall create an investigative report that fairly summarizes relevant evidence.



Determination of Responsibility

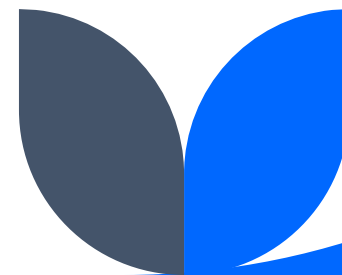


Appeal

- Both parties have the right to file an appeal from a determination regarding responsibility. The request for appeal must be in writing to the District Title IX Coordinator within **5 days** of the delivery of the notice of outcome.
- Disciplinary Sanctions/Remedies can not be enforced until the end of the appeal timeframe is complete.

Grounds for Appeal

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
3. The Title IX Coordinator, Investigator, or Decisionmaker had a conflict of interest or bias for or against the Complainant or Respondent



Questions?

Contact Info: 321-633-1000 ext. 11280

Saxenmeyer.J@brevardschools.org

