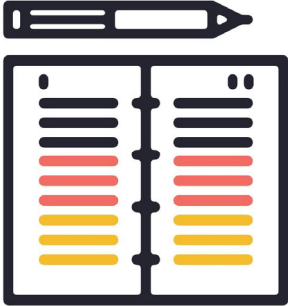




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# AGENDA



- Introduction
- New Sexual Harassment Definition
- Notice and Publication Requirements
- Response after Actual Knowledge
- Response after Formal Complaint
- Formal Complaint Grievance Process
- Record Keeping

2

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## TITLE IX

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*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.*

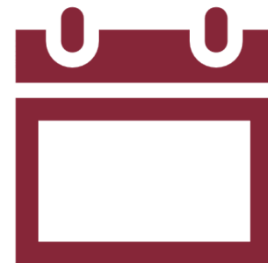
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## THE FINAL RULE WENT INTO EFFECT

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August 14, 2020



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**NEW SEXUAL HARASSMENT DEFINITION**

- “Sexual Harassment” is conduct on the basis of sex that satisfies one of the following:
  - Quid Pro Quo Harassment, or
  - Hostile environment, or
  - Harassment under the Violence Against Women Act & Clery Act

6

## QUID PRO QUO HARASSMENT

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

Does not need to be evaluated for "severity, pervasiveness, and objective offensiveness"

Expressed or implied

7

## HOSTILE ENVIRONMENT

Unwelcome conduct

Reasonable person

So severe, pervasive, and objectively offensive

Effectively denies a person's equal access to education program or activity

8

## HARASSMENT UNDER VAWA & CLERY ACT

Sexual Assault

Dating Violence

Domestic  
Violence

Stalking

9

In an educational program or activity-locations,  
events, or circumstances over which the school  
district exercised substantial control over both the  
Respondent and the context in which the sexual  
harassment occurs

10

## KEY TERMS

### 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

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## KEY TERMS

### RECIPIENT

- Recipients of Federal financial assistance covered by Title IX, include elementary and secondary schools

### ADVISOR

- Parties may have an advisor of their choice, who may be, but is not required to be, an attorney

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### **TITLE IX COORDINATOR**

- Coordinates school district's compliance efforts

### **DECISION-MAKER**

- Weighs the evidence and issues a written determination of responsibility

### **INVESTIGATOR**

- Investigates allegations in a formal complaint and creates investigative report

### **FACILITATOR**

- Facilitates an informal resolution process, upon parties' consent, that does not involve a full investigation

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## **NOTICE AND PUBLICATION REQUIREMENTS**

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## NOTICE OF NON-DISCRIMINATION



### TITLE IX COORDINATOR'S:

- Name or Title
- Office Address
- Email Address
- Telephone Number

### MUST INCLUDE:

- Grievance Procedures
- Grievance Process:
  - How to report or file a formal complaint

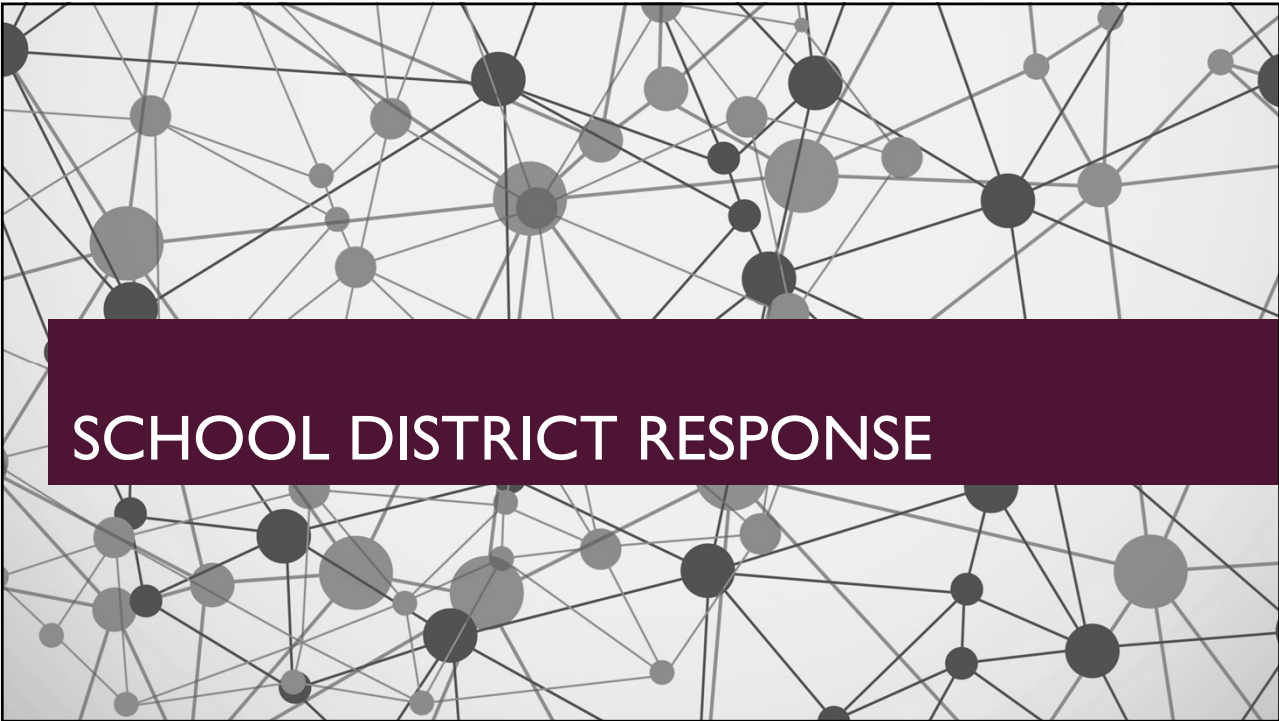
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## DISSEMINATION OF NOTICE | MUST PUBLISH

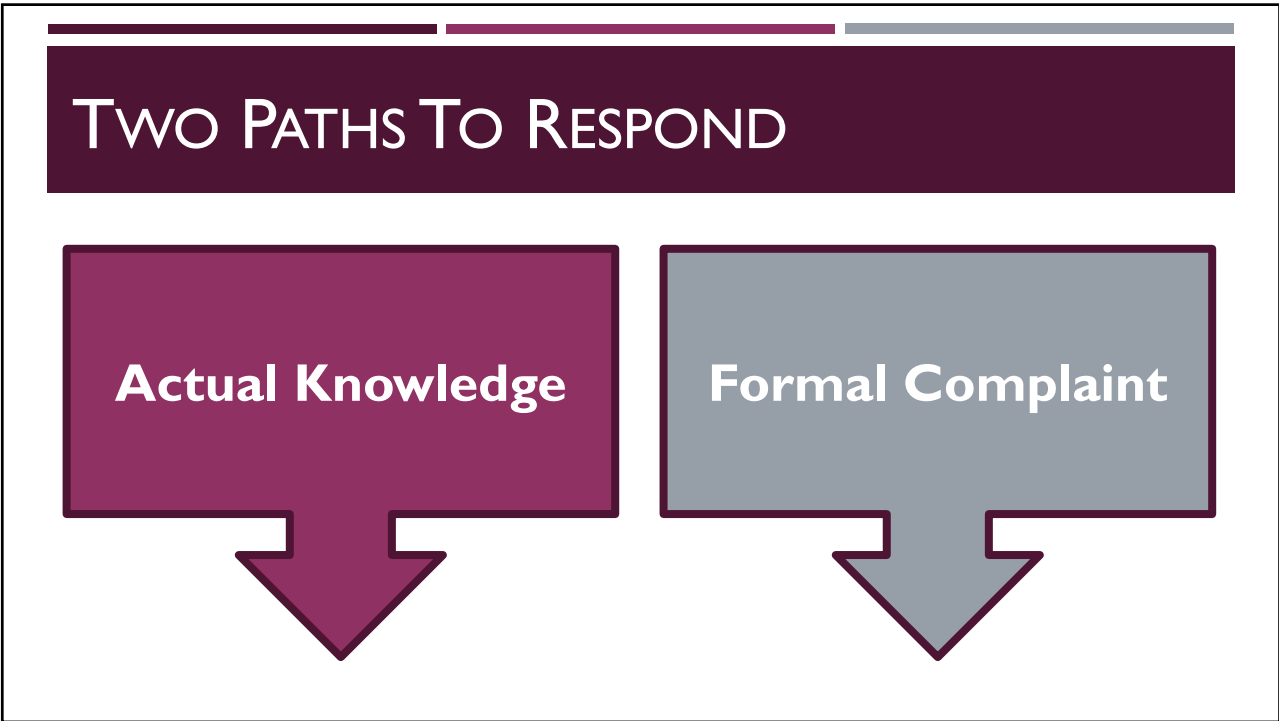
- Students
  - Of all district schools
- Parents
  - Or legal guardians of elementary and secondary school students
- Applicants
  - For admission and employment
- Unions
  - Or professional organizations
- Publications
  - Policy and training materials must be posted

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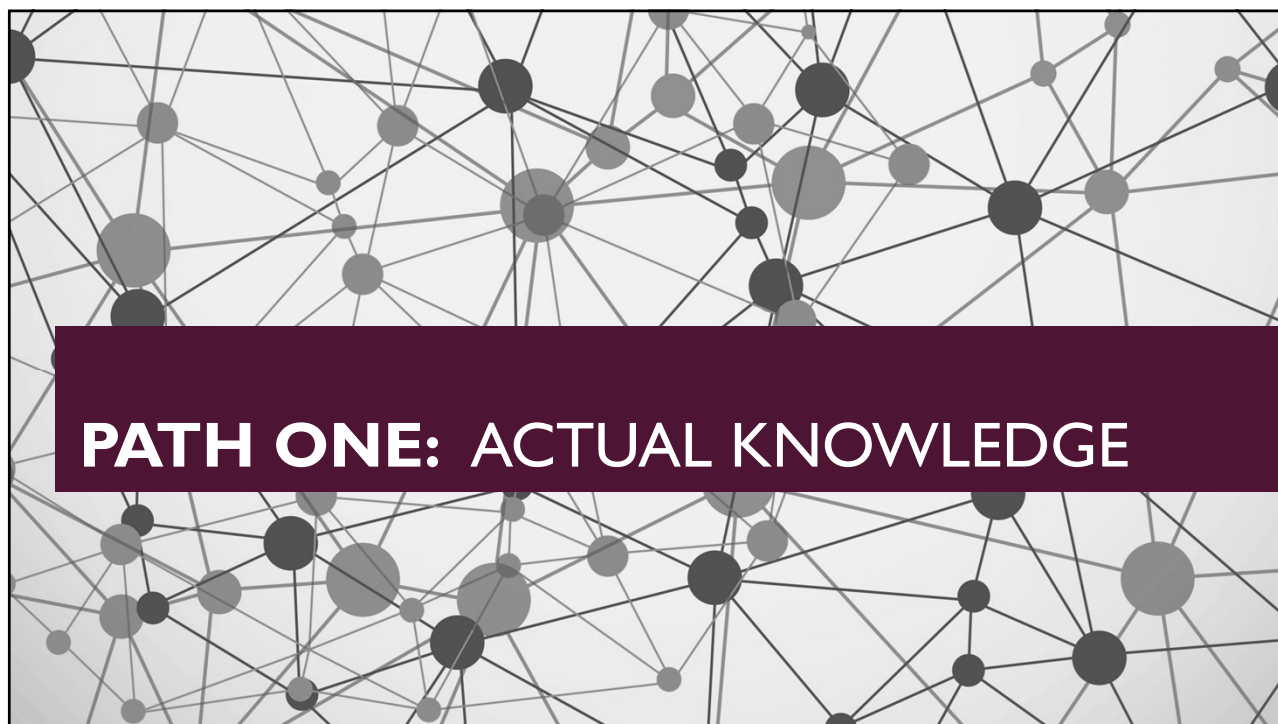




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## ACTUAL KNOWLEDGE

- Any person may report sexual discrimination (alleged victim themselves or any third party)
- May report to Title IX Coordinator in person, by mail, phone, or email
- May be made during non-business hours

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## RESPONSE AFTER ACTUAL KNOWLEDGE

- “Actual knowledge” is notice of sexual harassment or allegations of sexual harassment to:
  1. Title IX Coordinator, **or**
  2. School official who has authority to institute corrective measures, **or**
  3. Any employee of an elementary and secondary school (new)

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## RESPONSE AFTER ACTUAL KNOWLEDGE

- Must promptly contact Complainant to:
  1. Discuss availability of supportive measures
  2. Consider their wishes for supportive measures
  3. Inform them of the availability of supportive measures with or without the filing of a formal complaint
  4. Explain the process for filing a formal complaint

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## GENERAL RESPONSE TIME

- Must respond:
  - Promptly
  - In a way that is not “deliberately indifferent”

“Deliberately Indifferent” = clearly unreasonable in light of the known circumstances

23

## SUPPORTIVE MEASURES



- Available before or after a formal complaint **or** when no complaint has been filed
- Can be offered to Complainant or Respondent, or both
- Non-disciplinary, non-punitive, individualized services
- Free, individualized services

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## SUPPORTIVE MEASURES

B

- Title IX Coordinators are responsible for implementation
- Must record any supportive measures taken
- If supportive measures are not part of school's response, schools must specify why

25

## SUPPORTIVE MEASURES | EXAMPLES

B

- Counseling
- Extensions of deadlines
- Modifications of class schedules
- Building escort services
- Mutual restrictions on contact between parties
- Leaves of absence
- Increased security and monitoring of certain areas of the building

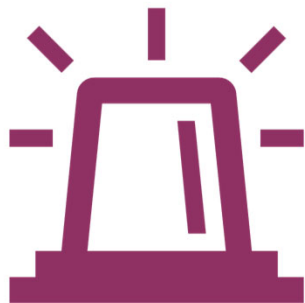
26

## EQUITABLE TREATMENT OF PARTIES

- Must offer supportive measures to the Complainant
- May offer supportive measures to the Respondent
- Grievance process required before any disciplinary or punitive measures
- Supportive measures must not “unreasonably burden the other party”

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## EMERGENCY REMOVAL



Must conduct an individualized safety and risk analysis

Determine an immediate threat to the physical health or safety of any individual

Provide Respondent with:

notice and an opportunity to challenge the decision

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## ADMINISTRATIVE LEAVE

- 
- School districts can place an employee Respondent on administrative leave during the pendency of the grievance process

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## PATH TWO: FORMAL COMPLAINT

30

## FORMAL COMPLAINT

- A document filed by the Complainant or signed by the Title IX Coordinator that alleges sexual harassment against a Respondent requesting that the District investigate the allegation of sexual harassment



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## FORMAL COMPLAINT: BY COMPLAINANT

- May be filed with the Title IX Coordinator in person, by email, by mail, or their listed contact information
- Complainant must be participating in the education program or activity at time of filing



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## FORMAL COMPLAINT: BY PARENT

- Parents and legal guardians have the right to act on behalf of their child with respect to Title IX rights (whether Complainant or Respondent)
- The child remains “The Complainant”
- No other third party can file a formal complaint



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## FORMAL COMPLAINT: BY COORDINATOR

- Title IX Coordinator may sign a Formal Complaint to initiate a grievance process to investigate and adjudicate allegations
- May happen over the alleged victim’s objections



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## INITIAL RESPONSE AFTER FORMAL COMPLAINT

- Similar to response after Actual Knowledge:
  1. Must promptly respond
  2. Availability of supportive measures
  3. Equitable treatment of parties
  4. Option for emergency removal
  5. Option for administrative leave
- Different: must follow a formal grievance process

36

## BASIC ELEMENTS OF GRIEVANCE PROCESS

1. Must Treat Parties Equally
2. Objective Evaluation of Evidence
3. No conflict of interest or bias
4. Presumption of Not Responsible
5. Prompt Time Frames

37

## BASIC ELEMENTS OF GRIEVANCE PROCESS

6. Describe the range or list the possible disciplinary sanctions or remedies
7. State the Standard of Evidence
8. Must Have Procedure for Appeals
9. Do Not Use Legally Privileged Information
10. Describe the Range of Supportive Measures

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# FORMAL COMPLAINT PROCESS



WRITTEN &  
SIGNED  
COMPLAINT



WRITTEN NOTICE



DISMISSAL



CONSOLIDATION



INVESTIGATION



EXCHANGE OF  
QUESTIONS



DETERMINATION  
REGARDING  
RESPONSIBILITY



APEALS

39

## WRITTEN & SIGNED COMPLAINT

- Description of allegation (date, location, witnesses, etc)
- As practical, in Complainant's words



40

# 2

## WRITTEN NOTICE

### Must Provide to Parties:

- Notice of the school districts' grievance process, including informal resolution process
- Notice of the allegations of sexual harassment



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## WRITTEN NOTICE

# 2

### Must Inform Parties:

- That they may have an advisor of their choice- can be a lawyer, but is not required to be
- That they may inspect and review evidence
- Statement that Respondent is presumed not responsible
- Of any provision in school district's code of conduct that prohibits knowingly making false statements or submitting false information during grievance process
- A notice of additional allegations is required to known parties if the school district decides to investigate allegations that are not included in the original notice



42

## 2

### WRITTEN NOTICE

Must include sufficient details:

- Identities of the parties involved
- The conduct allegedly constituting sexual harassment
- Date and location of the alleged incident



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### DISMISSAL

## 3

#### Mandatory Dismissals

- If the conduct alleged would not constitute sexual harassment even if proved
- Did not occur in school district's education program or activity
- Did not occur against a person in the United States



44

# 3

## DISMISSAL

### Discretionary Dismissals

1. A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint
2. The Respondent is no longer enrolled or employed
3. The specific circumstances prevent the school district from gathering evidence



45

## CONSOLIDATION

# 4

- Can consolidate formal complaints when:
  - Allegations against more than one Respondent, or
  - Allegations by more than one Complainant against one or more Respondents, or
  - By one party against the other party,
- AND the allegations arise out of the “same fact or circumstances”

46

## INVESTIGATION

5

School districts must:


1. Ensure that the burden of proof and the burden of gathering evidence rest on the school district and not on the parties, except certain records
2. Provide an equal opportunity for parties to present witnesses and evidence
3. Not restrict the ability of either party to discuss the allegations or gather and present evidence

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## INVESTIGATION

5

School districts must:

4. Provide the parties with the same opportunity to have others present during the proceeding
-  5. Provide written notice to a party who is invited or expected to participate
6. Provide the parties an equal opportunity to inspect and review any evidence

48



## INVESTIGATION

5

Before the investigative report is complete, school districts must:

- G** ■ Send each party the evidence subject to inspection and review
  - Allow the parties 10 days to submit a written response
  - Consider the parties' response prior to completion

49

## INVESTIGATION

5

- School districts must create an investigative report that “fairly summarizes relevant evidence”
- H** ■ Send to each party the investigative report 10 days prior to a determination of responsibility
  - Allow parties to review and respond to investigative report

50

# 6

## EXCHANGE OF QUESTIONS

- The decision- maker must allow each party the opportunity to submit written, relevant questions
- Provide each party with answers and allow for limited follow-up questions

51

## DETERMINATION

# 7

- School districts must create an investigative report that “fairly summarizes relevant evidence”
- Send to each party the investigative report 10 days prior to a determination of responsibility
- Allow parties to review and respond to investigative report



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## DETERMINATION

# 7

### Written Determination Must Include:

1. Identification of the allegations
2. Description of the procedural steps taken
3. Findings of fact supporting the determination
4. Conclusions regarding the application of the school district's Code of Conduct to the facts



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## DETERMINATION

# 7

5. Statement and rationale for result of each allegation
  - Determination regarding responsibility
  - Any disciplinary sanctions
  - Future remedies
6. The procedures and bases for the Complainant and Respondent to appeal



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## APPEALS

8

Must offer both parties an appeal from a determination or a dismissal of a formal complaint or an allegation therein based on:

1. Procedural irregularity
2. New evidence
3. Conflict of Interest or Bias



55

## APPEALS

8

For appeals, the school district must:

- K** ■ Notify the other party in writing when an appeal is filed
- Decision-maker for the appeal cannot be the same person as the original decision-maker, the investigator, or the Title IX Coordinator

56

# 8

## APPEALS

For appeals, the school district must:

- Give both parties an opportunity to submit a statement supporting or challenging the outcome
- Issue a written decision simultaneously to both parties

57

## INFORMAL RESOLUTIONS

- Only available when a formal complaint is filed
- Written notice to the parties:
  - The allegations
  - The requirements of the process
  - The right to withdraw

58

## INFORMAL RESOLUTIONS

- Need written, voluntary consent
- Not available for complaints alleging an employee harassed a student

59

## RETALIATION

- **Must remain confidential:**
  - Individuals who made a report
  - Complainant
  - Respondent
  - Witnesses



### **CONFIDENTIALLY EXCEPTIONS:**

To conduct an investigation, hearing, or judicial proceeding

60

## RETALIATION

- District or other person may not intimidate, coerce, or discriminate:
  1. For the purpose of interfering with any right under Title IX, or
  2. Because the individual participated or refused to participate
- Retaliation complaints are addressed under the Title IX grievance process

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## RECORD KEEPING

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# RECORD KEEPING



Records of investigations



Results of Appeals



Results of Informal Resolutions



Records of actions taken



All Title IX training material

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# RECORD KEEPING: RESPONSE

Record of school district's response must include:

1. Actions taken in response to a report or formal complaint
2. Why their response was not "deliberately indifferent"
3. Measures to restore or preserve equal access to education

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# TRAINING

## Must Receive Training On:

- The new definition of sexual harassment
- Scope of the education program or activity
- How to conduct an investigation and grievance process
- How to serve impartially

65

# TRAINING

- Training for **all staff** on how to identify and report sexual harassment
- Training for Title IX Coordinator, investigators, and decision-makers, including those in charge of decisions and appeals
- Maintaining records for 7 years and posting the materials on the school district's website

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