OVERVIEW

01 Introduction

02 New Sexual Harassment Definition

03 Notice and Publication Requirements

04 Response after Actual Knowledge

05 Response after Formal Complaint

06 Formal Complaint Grievance Process

07 Record Keeping

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

TITLE IX

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.

FINAL RULE GOES INTO EFFECT ON

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

NEW SEXUAL HARASSMENT DEFINITION

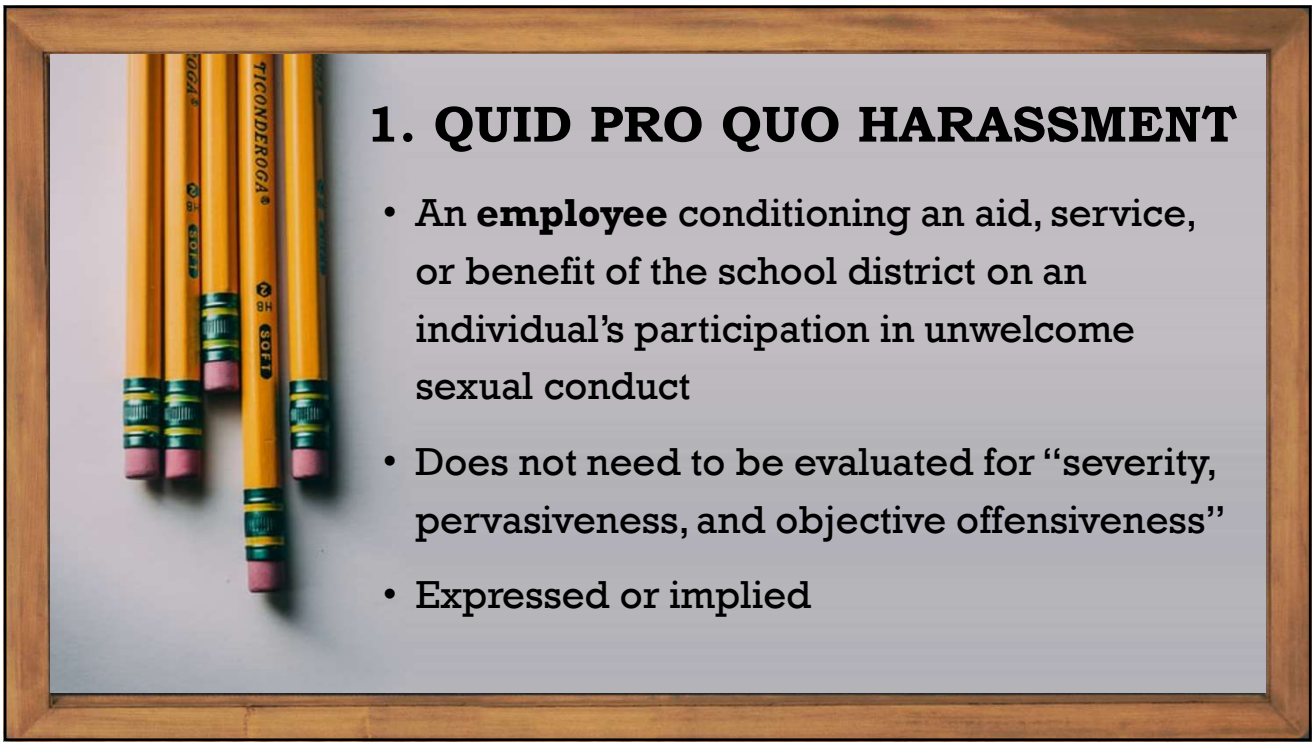
"Sexual Harassment" is conduct on the basis of sex that satisfies one of the following:

01 Quid Pro Quo Harassment, or

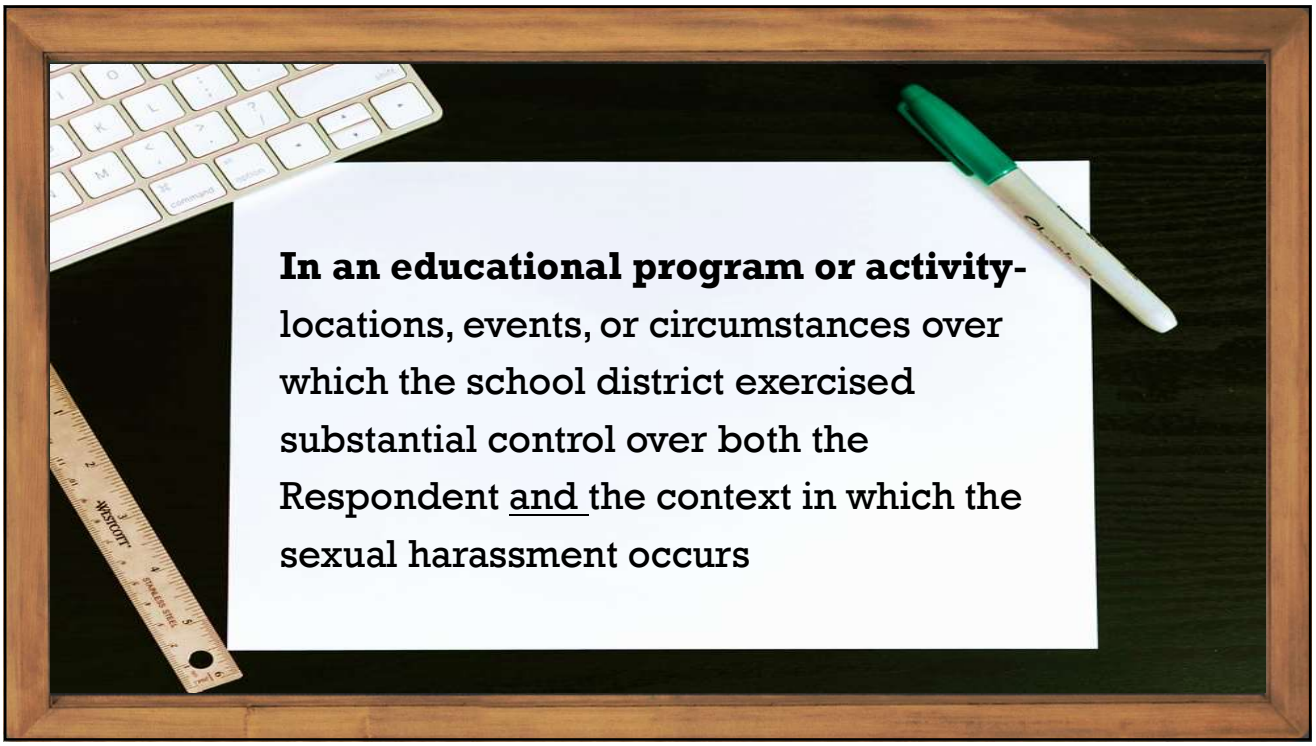
02 Hostile environment, or

03 Harassment under the Violence Against Women Act

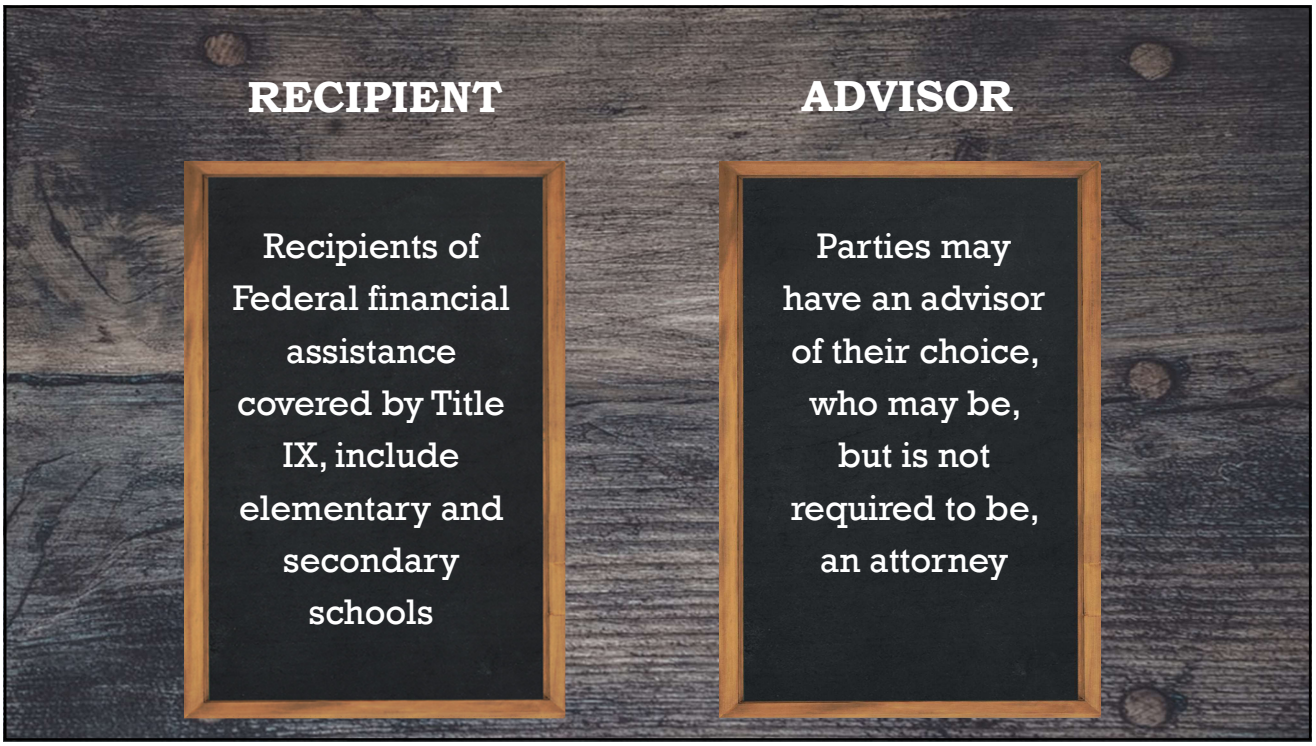
Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.



Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.



Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.



Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

NOTICE OF NON-DISCRIMINATION

Title IX Coordinator's:

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

Must include:

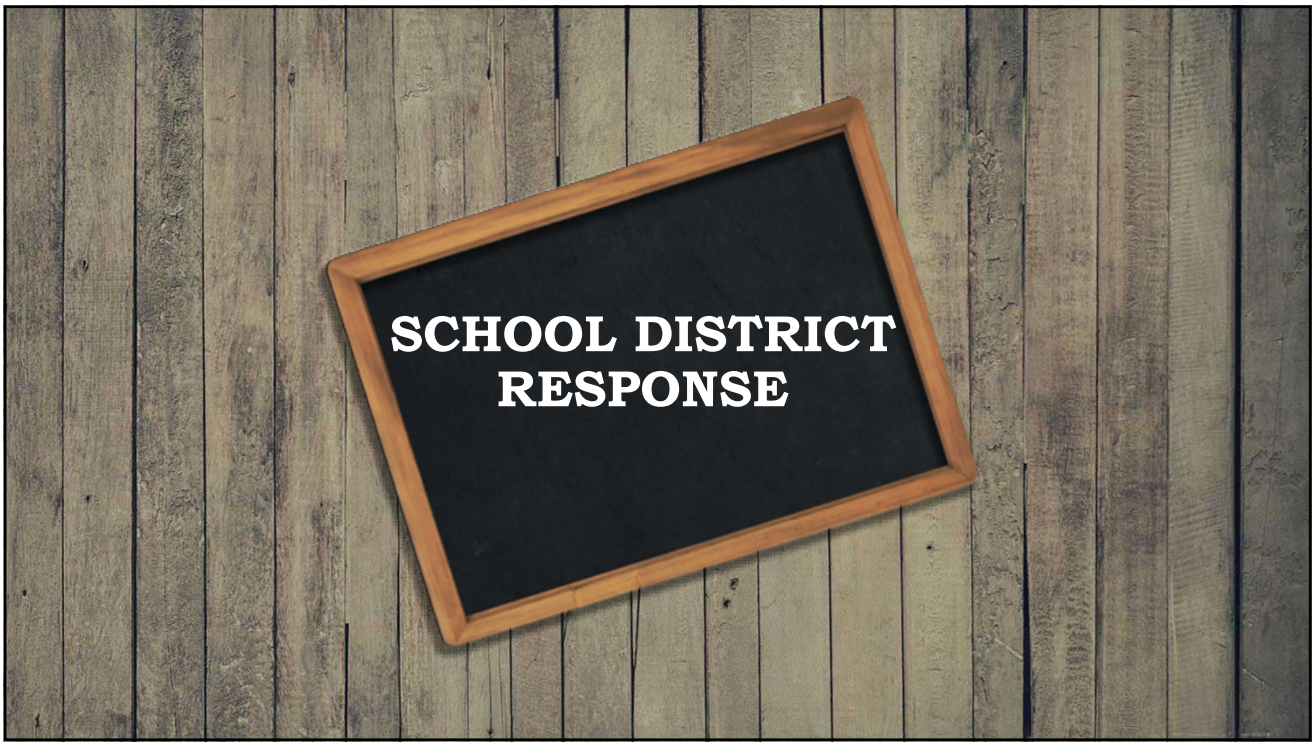
- Grievance Procedures
- Grievance Process: How to report or file a formal complaint

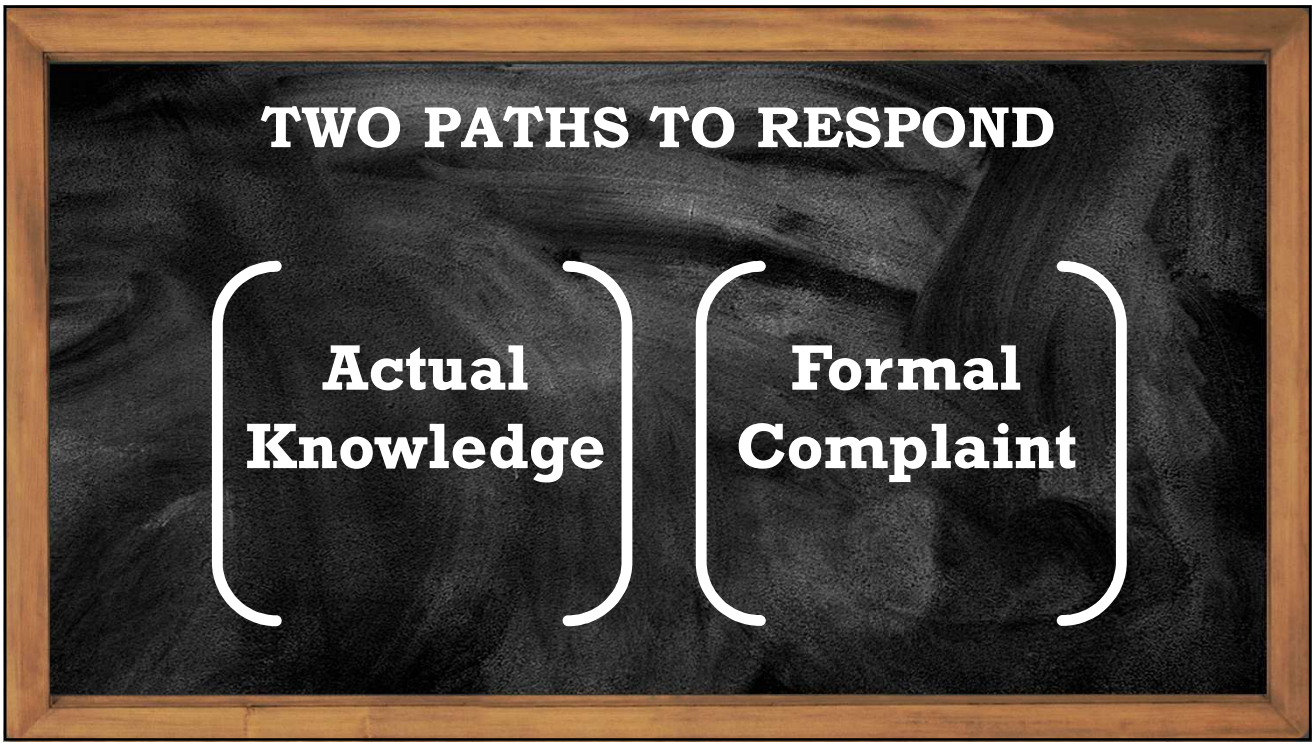
DISSEMINATION OF NOTICE

Must publish to

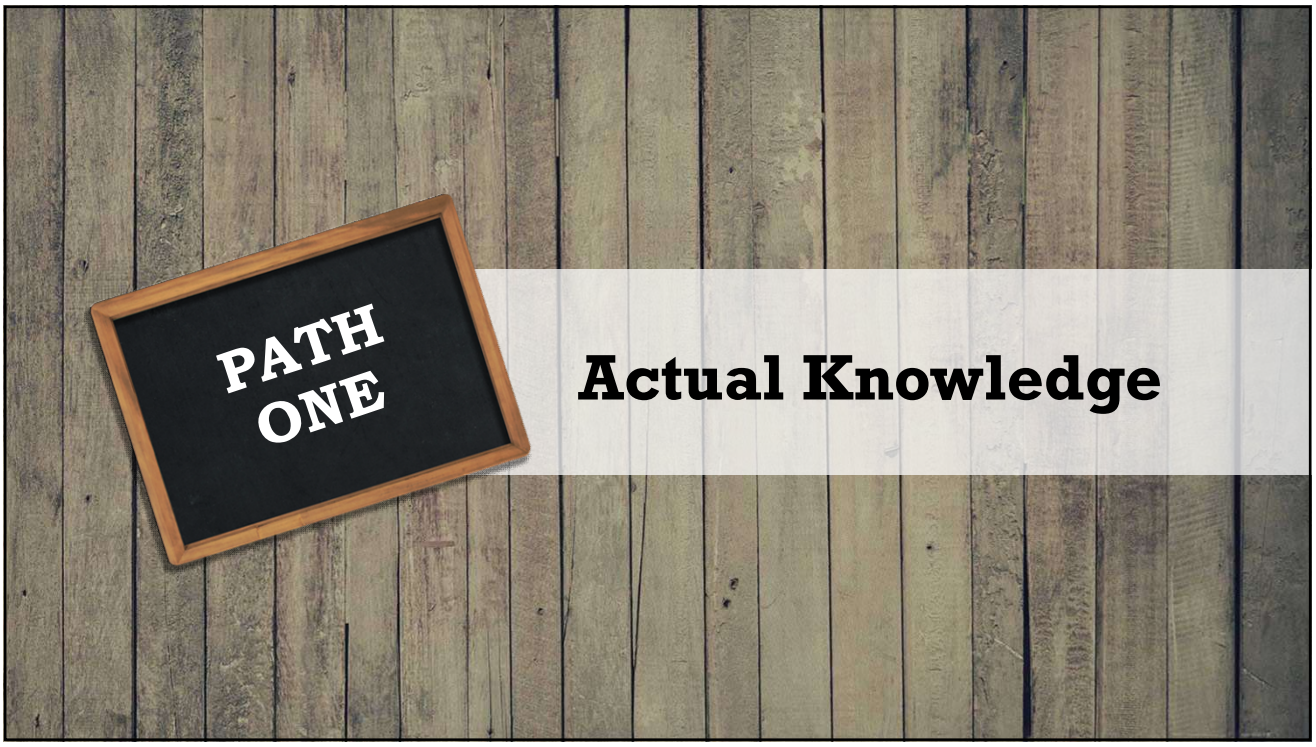
- **Students** — Of all district schools
- **Parents** — Or legal guardians of elementary and secondary school students
- **Applicants** — For admission and employment
- **Unions** — Or professional organizations
- **Publications** — Policy and training materials must be posted

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.





Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.



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

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

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)

RESPONSE AFTER ACTUAL KNOWLEDGE

Promptly contact Complainant to:

1) Discuss availability of supportive measures
2) Consider 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

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

GENERAL RESPONSE TIME

Must respond:

1) Promptly
2) In a way that is not "deliberately indifferent"

"Deliberately Indifferent" = clearly unreasonable in light of the known circumstances

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

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

SUPPORTIVE MEASURES

- 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

SUPPORTIVE MEASURES

Examples:

- 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

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

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"

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:
1) notice and
2) an opportunity to challenge the decision

Remove Respondent on an "emergency basis"

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

ADMINISTRATIVE LEAVE

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

PATH TWO

Formal Complaint

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

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

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

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

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

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

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

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

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

BASIC ELEMENTS OF GRIEVANCE PROCESS

01 Must Treat Parties Equally

02 Objective Evaluation of Evidence

03 No conflict of interest or bias

04 Presumption of Not Responsible

05 Prompt Time Frames

BASIC ELEMENTS OF GRIEVANCE PROCESS

06 Describe the range or list the possible disciplinary sanctions or remedies

07 State the Standard of Evidence

08 Must Have Procedure for Appeals

09 Do Not Use Legally Privileged Information

10 Describe the Range of Supportive Measures

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

FORMAL COMPLAINT PROCESS

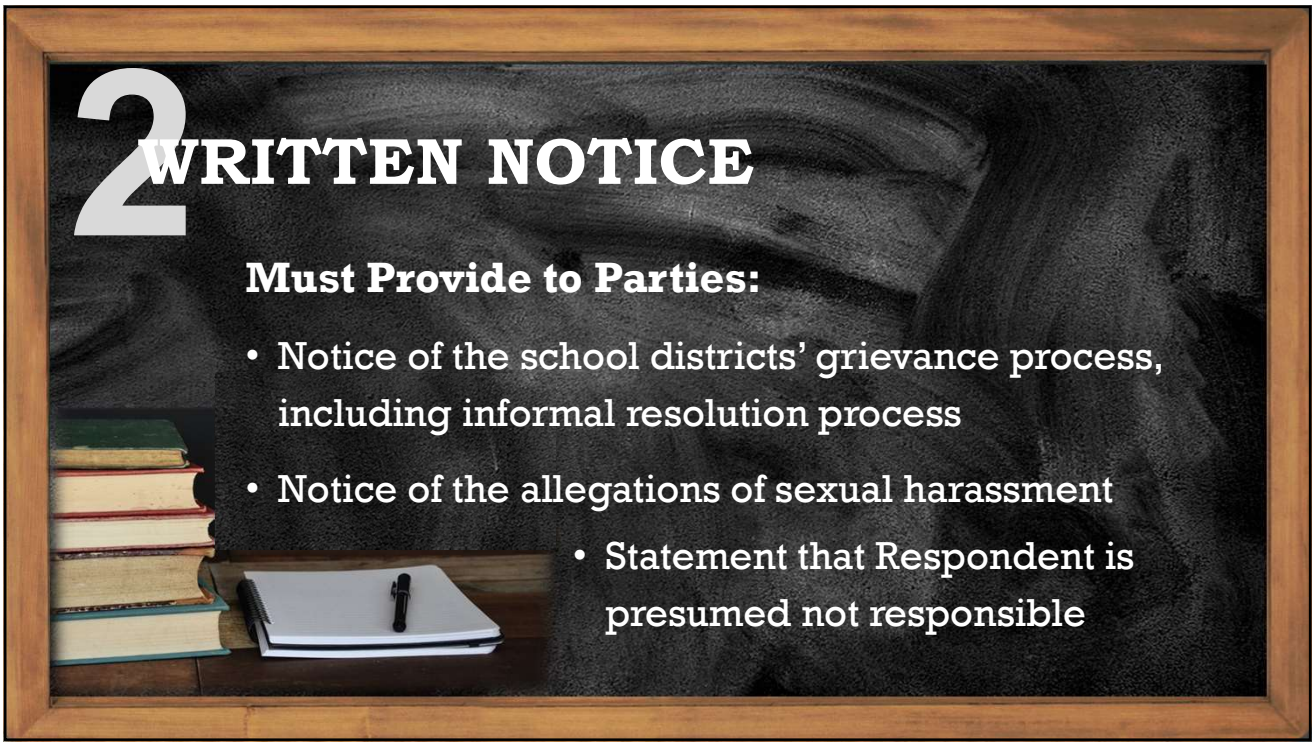
1. Written & Signed Complaint
2. Written Notice
3. Dismissal
4. Consolidation
5. Investigation
6. Exchange of Questions
7. Determination Regarding Responsibility
8. Appeals

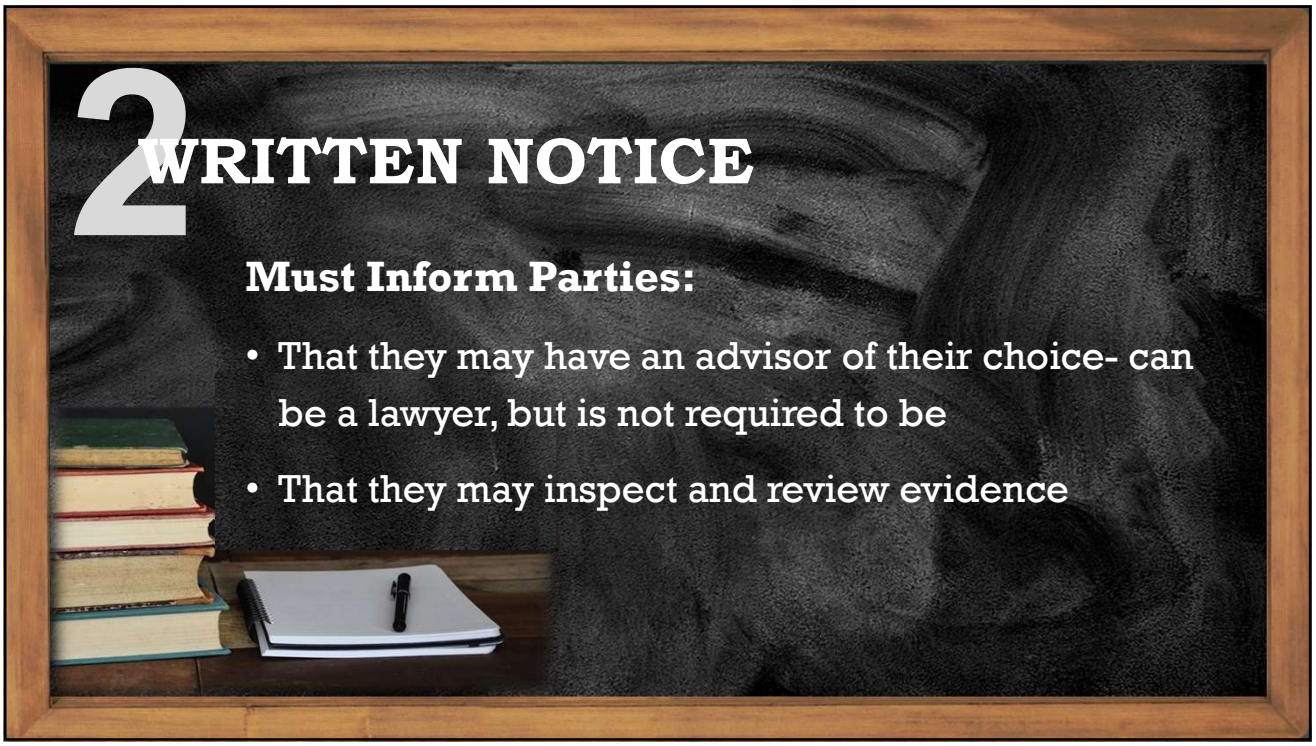
1 WRITTEN & SIGNED COMPLAINT

Description of allegation (date, location, witnesses, etc)

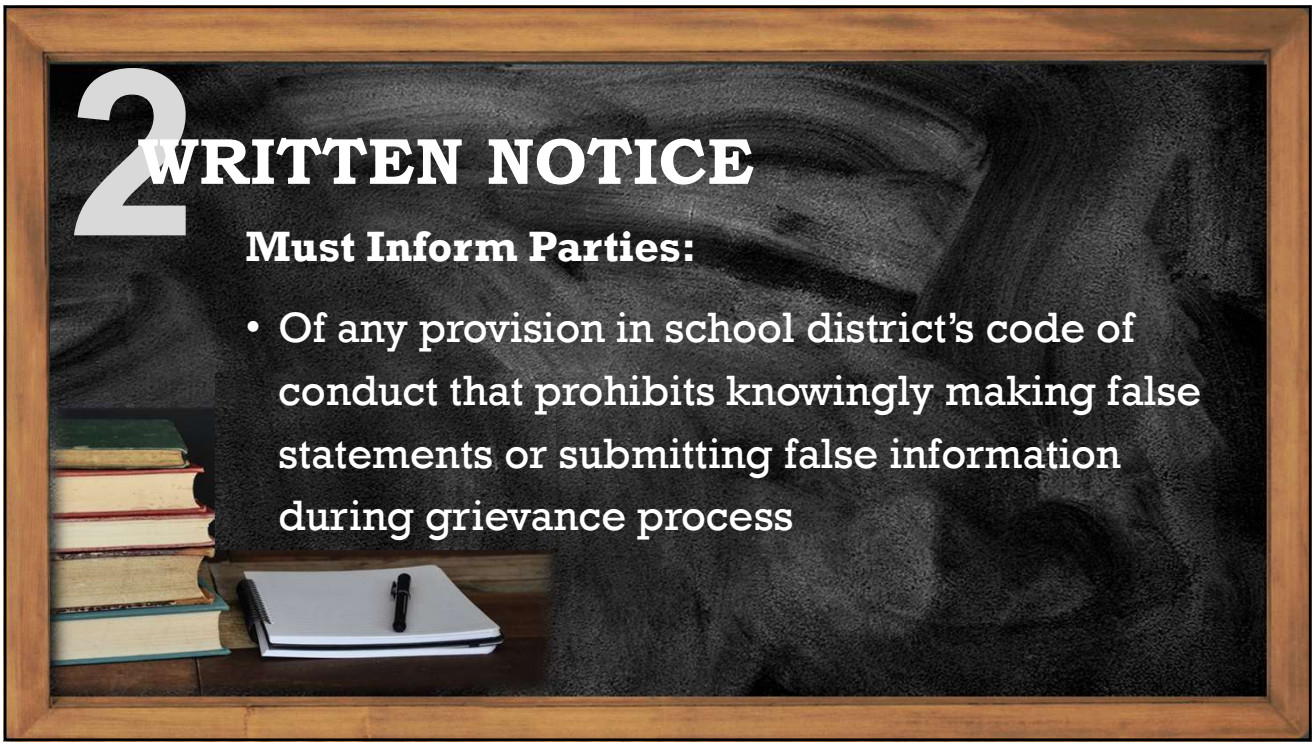
As practical, in Complainant's words

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.





Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.



Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

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

3 DISMISSAL

Mandatory Dismissals

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

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

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

4 CONSOLIDATION

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"

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

5 INVESTIGATION

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

5 INVESTIGATION

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

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

5 INVESTIGATION

Before the investigative report is complete, school districts must:

- 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

5 INVESTIGATION

- 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

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

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

7 DETERMINATION

- The decision-maker cannot be the Title IX Coordinator or the investigator
- Decision-maker must apply the standard of evidence and issue a written determination regarding responsibility

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

7 DETERMINATION

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

7 DETERMINATION

Written Determination Must Include:

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

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

8 APPEALS

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

8 APPEALS

For appeals, the school district must:

- 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

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

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

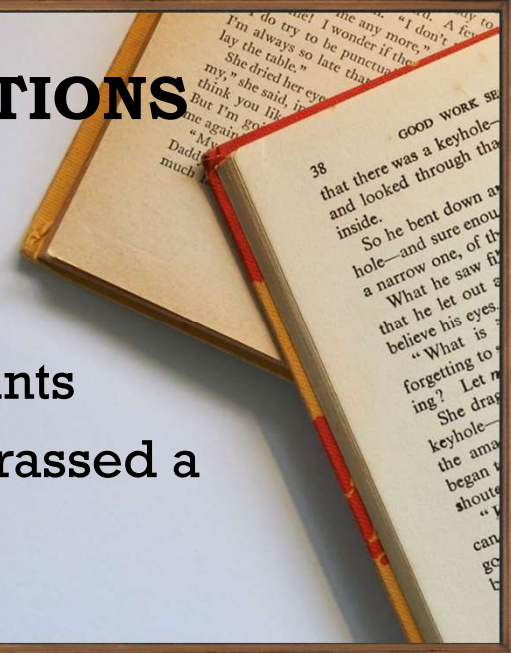
INFORMAL RESOLUTIONS

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

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

INFORMAL RESOLUTIONS

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



RETALIATION

- Must remain confidential:
  - Individuals who made a report
  - Complainant
  - Respondent
  - Witnesses
- Confidentiality exceptions: to conduct an investigation, hearing, or judicial proceeding

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

RECORD KEEPING

- Records of investigations
- Results of Appeals
- Results of Informal Resolutions
- All Title IX training material
- Records of actions taken

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

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.

TRAINING

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

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

Copyright © 2020. All rights reserved. May not be reproduced or used in any manner without express written persmission of the publisher.