




Title IX Overview 2020

Sumter County School District

SCSB thanks Keshara Cowans, Esq.
and Orange County Public Schools
for sharing their resources



Title IX

- Title IX of the Education Amendments of 1972
- No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.


Sexual Harassment

- ***Sexual harassment*** is defined as conduct on the basis of sex that satisfies one (1) or more of the following:
 1. A school employee conditioning the provision of aid, benefits, or services on the individual's participation in unwelcome sexual conduct;
 2. Unwelcome conduct that a reasonable person would determine to be so severe, pervasive, and objectively offensive that it denies a person equal access to the education program or activity; or
 3. ***Sexual assault***, as defined in the Clery Act, or dating violence, domestic violence or stalking, as defined in the Violence Against Women Act.

Key Terms

- Complainant
- Respondent
- Parties (Complainant and Respondent)
- Supportive measures
- Remedies
- Formal complaint
- District Title IX Coordinator
- School-based Title IX Coordinator
- Investigator
- Decision-maker
- Appeals decision-maker
- Hearing officer

Scope of Title IX

- Department of Education released new Title IX Regulations on May 6, 2020
 - Title IX applies to allegations that meet the following criteria:
 - The conduct in question meets the definition of sexual harassment;
 - The conduct occurred in an SCSB education program or activity; and
 - Education program and activity includes locations, events, or circumstances over which SCSB exercised substantial control over both the respondent and the context in which the sexual harassment occurs.
 - The conduct occurred against a person in the United States
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Reporting Sexual Harassment

- Any person may report sexual harassment, regardless of whether the reporting person is the alleged victim of the conduct
- A report can be made in person, by telephone, by mail, or by electronic mail to the District Title IX Coordinator or school-based Title IX coordinator
- SCSB is responsible for responding to complaints of which it has notice even if notice is not received within the aforementioned time frame


Knowledge of Sexual Harassment

- All SCSB employees are required to report any allegations of sexual harassment to the District Title IX Coordinator or school-based Title IX Coordinator
- When **any** school-based employee has knowledge of sexual harassment or allegations of sexual harassment, SCSB is obligated to respond
 - This includes food service employees, custodial staff, paraprofessionals, school clerks as well as all professional staff.

Response to Sexual Harassment

- Upon knowledge of sexual harassment the school-based Title IX Coordinator within two (2) days must:
 - Contact the complainant to discuss the availability of supportive measures
 - Consider the complainant's wishes with respect to the supportive measures
 - Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint
 - Explain the process for filing a formal complaint

Notifying Law Enforcement

- If the alleged sexual harassment might constitute a crime the matter **shall immediately** be reported to the School Resource Officer or the appropriate law enforcement agency. Any uncertainty regarding whether the alleged sexual harassment might constitute a crime must be resolved in favor of reporting the incident to law enforcement.
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Notifying DCF

- If the alleged sexual harassment might constitute child abuse the matter **shall immediately** be reported to the Florida Department of Children and Families. Any uncertainty regarding whether the alleged sexual harassment might constitute child abuse must be resolved in favor of reporting the incident

Notifying Human Resources


- When an SCSB employee is the respondent, the school-based Title IX Coordinator or school administrator **shall immediately** notify SCSB Human Resources. If the respondent is a SCSB employee, discipline may be taken, consistent with any applicable collective bargaining agreement provisions or statutory provisions to resolve a complaint of sexual harassment.



Formal Complaint

- Formal complaints can be filed by the complainant, parent or legal guardian, or the Title IX Coordinator
- Once the formal complaint is filed, School Title IX Coordinator must immediately determine the following:
 - Do the allegations meet the definition of sexual harassment?
 - Did the conduct occur in an SCSB educational program or activity?
 - Did the allegations occur against a person in the United States?
- If these requirements are met, schools must follow the grievance process outlined in School Board Policy 2266

Consolidation & Dismissal

- Formal complaints against a respondent or multiple respondents may be consolidated if the allegations arise from the same facts or circumstances
 - SCSB must dismiss a formal complaint if the alleged conduct falls outside the scope of Title IX. SCSB may take action under another provision of the Code of Student Conduct even if dismissal is required. Written notice of dismissal must be sent within two (2) school days
 - SCSB may dismiss a formal complaint if the complainant wishes to withdraw the complaint, if the respondent is no longer enrolled or employed SCSB, or if circumstances prevented the school from gathering evidence. Written notice of dismissal must promptly be sent
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Appeal of Dismissal

- Parties may request an appeal from a dismissal within two (2) school days of receipt of the dismissal
- Requests for an appeal shall be sent to the decision-maker

Emergency Removal


- A school may remove a respondent from an education program or activity on an emergency basis if the school:
 - 1) Undertakes an individualized safety and risk analysis;
 - 2) Determines an immediate threat to the physical health or safety of any student or other individual arising from the allegations justifies removal; and
 - 3) Provides the respondent with notice and an opportunity to challenge the decision within two (2) school days following removal
- This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.



Grievance Process-Written Notice

- In response to a formal complaint, the Title IX Coordinator must provide written notice to all known parties and follow the specified grievance process before the imposition of **any** disciplinary sanctions against the respondent
- Written notice must be provided within two (2) school days both parties upon receipt of the formal complaint


Written Notice

- Written notice must include:
 - The identities of parties involved;
 - The conduct allegedly constituting sexual harassment;
 - The date and location of the alleged incident;
 - A statement that the respondent is presumed not responsible for the alleged conduct;
 - The school's grievance process;
 - A statement that a determination regarding responsibility is made at the conclusion of the grievance process;
 - A statement informing the parties that they may have an advisor of their choice who may be, but is not required to be, an attorney;
 - A statement advising parties that they may inspect and review evidence; and
 - A statement informing the parties of any provision in the recipient's Code of Student Conduct that prohibits knowingly making false statements or knowingly submitting false information
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Additional Allegations

- If during the course of an investigation the school decides to investigate allegations about the complainant or respondent that were not included in the original notice, the school must provide written notice of the additional allegations to the known parties within two (2) school days

Response to Formal Complaint

- Parties shall be afforded the opportunity to prepare a response
 - Each individual shall be interviewed separately and at no time will the complainant and respondent be interviewed together
 - Parties shall have no less than two (2) school days from the date of the written notice to prepare a response and conduct the initial interview, this time frame shall not exceed five (5) school days
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Investigation of the Formal Complaint

- The investigation must be completed and evidence provided to parties within five (5) school days of the initial interviews with the complainant and respondent, whichever interview is later
- This time frame may be extended for good cause
- Investigations may not be video or audio taped
- SCSB has the burden of proof and the burden of gathering evidence
- SCSBs may not obtain medical records unless given voluntary, written consent
- SCSBs may not restrict either party from discussing the allegations under investigation

Written Notice for Meetings and Interviews

- Written notice for any investigative interviews or meetings must be sent to all parties, including witnesses, whose participation is expected or invited at least two (2) school days prior to the interview or meeting



Investigation



Evidence

- Both parties may inspect and review any evidence related to the allegations
- Schools must send all evidence subject to inspection to each party and their advisor before completion of the investigative report. Evidence shall be sent in electronic format or a hard copy. Parties may submit a response to all evidence for the investigator to consider before concluding the investigative report. Parties have ten (10) school days to submit a written response, or the non-response will be deemed as a waiver
- Schools may not restrict the ability of either party to gather and present relevant evidence
- Parties shall be given the equal opportunity to present witnesses

Investigative Report

- The investigator will create an investigative report that fairly summarizes all relevant evidence and send the report to all parties and their advisors for their review and written response.
- Parties are given ten (10) days from receipt of the investigative report to provide a written response.



Submitting Questions for Parties & Witnesses

- After the investigative report has been sent to all parties and before a determination regarding responsibility has been made by the Decision Maker, parties have two (2) school days to submit written, relevant questions to be asked of any party or witness and provide each party with answers within two (2) school days.
- Parties then have two (2) school days to provide no more than two (2) follow-up questions each from parties and witnesses. Parties and witnesses have two (2) school days to respond to follow-up questions.
- The decision-maker must determine whether submitted questions are relevant and explain any decision to exclude a question as not relevant.

Advisors

- Parties may have one (1) advisor of their choosing
- Advisors may attend all meetings or interviews with their party. Restrictions will be placed on advisors for both parties.
- Advisors may neither testify or question witnesses or the investigator





Determination




Written Determination

- At the conclusion of the grievance process, the decision-maker must issue a written determination to the parties simultaneously within three (3) school days
- The school-based Title IX Coordinator is responsible for implementing remedies stated in the written determination

Written Determination

The written determination must include:

- Identification of the allegations potentially constituting sexual harassment, pursuant to the definition in this policy;
 - A description of the procedural steps taken from the receipt of the formal complaint through the written determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings;
 - Findings of fact supporting the determination;
 - Conclusions regarding application of the Code of Student Conduct to the facts;
 - The result and rationale as to each allegation;
 - A determination regarding responsibility as to each allegation;
 - Any disciplinary sanctions imposed on the respondent by the school;
 - Whether remedies will be provided by the school to the complainant; and
 - Permissible procedures and grounds for the complainant and respondent to appeal.
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Appeals




Appeals

Opportunity:

- Each party has the opportunity to appeal both a dismissal and a written determination
- Requests for an appeal should be sent to the decision-maker
- A request for an appeal must be made within two (2) school days of the receipt of the written determination
- If an appeal is not filed, the determination regarding responsibility becomes final on the date after the two (2) school days to file an appeal has passed
- If an appeal is filed, the determination regarding responsibility becomes final on the date the SCSB provides the written appeals decision

Appeals

Appeal Reasons:

- Procedural issues affected the outcome;
 - New evidence that was not reasonably available at the time the written determination or dismissal was made becomes available that could affect the outcome; or
 - There was a conflict of interest or bias by the Title IX Coordinator, investigator, or decision-maker, against any complainant or respondent that affected the outcome
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Appeals

Timelines:

- Schools must notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties
- Parties must be given three (3) school days to submit a written statement in support of, or challenging, the outcome of the written determination
- If a written statement is not received within three (3) school days, the appeals decision-maker will deem the non-response as a waiver and continue with the appeals process

Appeals

Decision:

- The appeals decision-maker may not be the same person as the investigator, school-based Title IX Coordinator, or decision-maker who reached the initial determination of responsibility or dismissal
 - The appeals decision-maker must not have a conflict of interest or bias for or against any complainant or any respondent
 - The original decision makers' determination of responsibility will stand if the appeal request is not filed in a timely manner or the appeal party fails to show clear error and /or a compelling rational for the overturning or modifying the original determination.
 - The written appeals determination describing the result and rationale for the decision must be provided to both parties within five (5) school days
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Retaliation

- No school or other person may intimidate, threaten, coerce, or discriminate against any individual for the purposes of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing
- Complaints alleging retaliation may be filed according to the grievance procedures for sexual harassment as outlined in School Board Policy 2266

FERPA

- SCSB should interpret Title IX and FERPA in a manner to avoid any conflicts
- Where a true conflict exists, the obligation to comply with Title IX is not prevented or alleviated by the FERPA statute or federal regulations

Training

- Training is mandatory for all school-based Title IX Coordinators, investigators, decision-makers, and appeals decision-makers
- All training materials must be made available to the public on the SCSB website



Recordkeeping

- Schools must maintain records related to any investigation for seven (7) years, including records of:
- Any actions taken in response to a formal complaint of sexual harassment;
- Any supportive measures provided;
- Each sexual harassment investigation;
- Any determination regarding responsibility;
- Any disciplinary sanctions imposed on the respondent;
- Any remedies provided to the complainant;
- Any appeal and written appeal decision; and
- All materials used to train school-based Title IX Coordinators, investigators, decision-makers, and appeals decision-makers.

Publication

- SCSB must prominently display the name, office address, electronic mail address and telephone number of the District Title IX Coordinator on the SCSB website
- SCSB must prominently display the name, office address, electronic mail address and telephone number of the District Title IX Coordinator in each handbook or catalog made available to students, parents or legal guardians of elementary and secondary school students, employees, applicants for admission and employment, and all unions or professional organizations which hold collective bargaining or professional agreements with SCSB

