


Title IX Investigator and District-Based Team Training 2020 Sumter County School District

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



Title IX

“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.”

-Title IX of the Education Amendments of 1972

Training Objectives

- Become familiar with the 2020 Title IX Regulations and changes to SCSB policies and procedures
- Understand the definitions of sexual harassment and SCSB education programs or activities
- Understand the Title IX grievance process
- Understand the preponderance of the evidence standard
- Understand what information is required in a written determination

Title IX 2020

- Department of Education released new Title IX Regulations on May 6, 2020
- Regulations took effect on August 14, 2020
 - Applies to allegations of sexual harassment that occur on or after the effective date
 - Any prior allegations must be handled according to the Title IX regulations in place at the time of the alleged incident
- First significant changes to Title IX since 1975
- SCSB added School Board Policy 2266 to comply with the new regulations

Title IX Team

- District Title IX Coordinator
 - Responsible for coordinating SCSB compliance with Title IX regulations
- Title IX Investigator
 - Responsible for conducting interviews, gathering evidence and writing the investigative report
- School-based Title IX Coordinator
 - Responsible for receiving sexual harassment allegations
 - Responsible for coordinating Title IX compliance at an assigned school
 - Alternate school-based coordinators are recommended to assist with investigations, in case of absence, and or conflict of interest

Title IX Team continued


- Decision-Maker
 - Reviews the evidence, determines responsibility for all formal complaints, and provides a written determination to the parties
 - Cannot be the same person as the Title IX Coordinator/Investigator or appeals-decision maker
- Appeals Decision-Maker
 - Responsible for reviewing the written determination and issuing a written decision describing the result and rationale for the appeal
 - Cannot be the same person as the Title IX Coordinator/Investigator or decision-maker

SCSB Title IX Team

- District Coordinators:
 - Students: Student Services Director
 - Staff: Human Resources Director
- School-based Coordinator: Principals
- Investigators: District Based Administrative Team
- Decision Maker: Assistant Superintendent
- Appeals Decision Maker: Superintendent




Role of the School Based Title IX Coordinator

- Responsible for coordinating Title IX compliance at their assigned school
 - Document all Title IX complaints
 - Implement and monitor supportive measures and remedies
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Role of the Title IX Investigative Team

- A District Administrative Team will serve as the Investigative Team
 - Conduct a fair and impartial investigation of formal complaints that fall within the scope of Title IX
 - Create an investigative report that fairly summarizes relevant evidence
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Role of the Decision-Maker

- The Assistant Superintendent will serve as the decision-maker in Title IX matters
- Determine whether the Code of Conduct has been violated based upon the preponderance of the evidence standard
 - Conduct an independent assessment of the evidence
 - Remain free from conflict of interest and bias
- Determine appropriate discipline when a Code of Conduct violation has been found
- Draft a written determination that outlines the rationale for the finding(s)

Role of the Appeals Decision-Maker

- The Superintendent will serve as the Appeals Decision-Maker
- Make determination on a party's request for an appeal
- Review written submissions from parties
- Review investigative report and all evidence from the underlying investigation
- Case review is limited to the grounds listed in the appeal request
- Draft a written determination that outlines the rationale for the outcome


Conflict of Interest & Bias

- Grievance process must treat both parties equitably
- Does the Title IX Coordinator have an additional professional relationship with either the complainant or respondent?
 - Coach
 - Club Sponsor
 - If so, the Title IX Coordinator should be recused and the alternate Title IX Coordinator should handle the investigation.
- Does the Title IX Coordinator have a familial relationship with either the complainant or respondent?
 - If so, the Title Coordinator should be recused and the alternate Title IX Coordinator should handle the investigation.

Conflict of Interest

- The decision-maker must also be free from a conflict of interest or bias toward either the complainant or respondent.
- If the decision-maker has a conflict of interest, they will need to contact the District Title IX Coordinator so that another decision-maker can be appointed to review the Title IX matter.
- Examples of conflict include:
 - Familial relationship
 - Additional professional relationship

The Title IX Process

- Incident
 - Assessment
 - Scope of Title IX
 - Dismissal
 - Investigation
 - Determination
 - Appeal
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Complainants and Respondents

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.



Formal Complaint

- Document or electronic submission which requests a sexual harassment investigation
- Formal complaints can be filed by the complainant, parent or legal guardian, or the school-based Title IX Coordinator
- At the time of filing the formal complaint, the complainant **must** be participating in or attempting to participate in an SCSB education program or activity
- Once the formal complaint is filed, schools must immediately determine if the allegations fall within the scope of Title IX
- If these requirements are met, schools must follow the grievance process outlined in School Board Policy PO 2266

Advisors

- The complainant and respondent are entitled to have one (1) advisor of their choosing. The advisor may attend any meeting or interview with their party.
- For example:

Family	Friend	Youth Pastor
Attorney	Coach	
- Advisors may neither testify nor question witnesses or the investigator

Advisors

- The following restrictions will be placed on advisors for **both** parties:
- Advisors may attend interviews with their party only at their party's request;
- Advisors may neither testify or question witnesses or the investigator
- Advisors shall not restrict access to their party;
 - Must advise in writing if their party will not participate in the process
 - Unable to advise their party to “avoid” the investigation
- Advisors are only permitted to use the investigative report and evidence received for inspection and review for purposes of the grievance process;
- Advisors will be required to abide by a non-disclosure agreement that complies with both Title IX and FERPA; and
- Advisors may not request education records that are protected by FERPA
 - (i.e. prior discipline records of either party)

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 (**quid pro quo**);
 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.

Severe


- Allegations of physical contact are more likely to be considered severe
- Consider the circumstances
 - Did the complainant have the ability to escape the harassment?



Pervasive

- Determine if the conduct was widespread or openly practiced
- Frequency of the conduct is often a variable in assessing pervasiveness
 - Intensity
 - Duration
- Was there an unreasonable interference with the educational program or activity

Objectively Offensive

- Reasonable person standard
 - Age and relationship of complainant and respondent are considered
 - Number of persons involved
 - Frequency
 - Humiliation
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Sexual Assault

- An offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Detailed definitions can be found in po2266
- Rape
- Fondling
- Statutory Rape
- Incest
- Sodomy
- Sexual Assault with an object

Dating Violence

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following:
 - Length of the relationship;
 - Type of relationship; and
 - Frequency of interaction between the persons involved in the relationship
- Dating violence includes sexual or physical abuse or the threat of such abuse



Domestic Violence

- Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim,
- By a person with whom the victim shares a child in common,
- By a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or
- By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction

Stalking

- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
- Fear for his or her safety or the safety of others; or
- Suffer substantial emotional distress
- For the purposes of this definition
- Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- 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 that may but does not necessarily require medical or other professional treatment or counseling.



Education Program or Activity

Schools must address allegations of sexual harassment that occur in “the school’s education program or activity, against a person in the United States.”

- “Education program or activity” is broadly defined to include locations, events, or circumstances over which the school exercises ***substantial*** control over both the respondent **and** the context in which the sexual harassment occurs.
- Examples:
 - School sponsored trips
 - Sporting events
 - School Dances
 - Extracurricular programs or activities

Initial Assessment

School-based Title IX Coordinator must conduct an initial assessment to determine the following:

- Was an allegation of sexual harassment received? Was a formal complaint filed? Does the Title IX Coordinator need to fill out the complaint form?
- Does the complaint fall within the Scope of Title IX?
 - Definition of sexual harassment?
 - SCSB education program or activity?
 - Against a person in the United States?
- Is Dismissal required?

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

Actual Knowledge

- All SCSB employees are required to report in writing any allegations of sexual harassment to the District Title IX Coordinator, school-based Title IX Coordinator, or appropriate area or district administrator
- 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 etc, as well as professional staff.

Scenario #1

- A school cafeteria worker overhears Student A tell Student B that Student A was sexually abused by Student A's significant other in a classroom last weekend after band practice.
- Does the cafeteria worker have to report this incident?
- Yes, this matter should be reported to the school-based Title IX Coordinator
- Even though the employee is not an actual witness to the sexual harassment, because they overheard the allegation, they are obligated to report it

Scenario #2

- Teacher knows that Student A and Student B are in a relationship. One day in between classes, teacher observed Student A and Student B having what appeared to be an argument in the hallway. Student A slapped Student B in the face, however, Student A immediately apologized and it appeared all was forgiven by Student B.
- Does Teacher have an obligation to report this matter?
- Yes, Teacher should report this matter to the school-based Title IX Coordinator because it is an alleged dating violence violation

Response to Sexual Harassment


- Schools must respond to knowledge of sexual harassment within two (2) school days
- Upon knowledge of sexual harassment the school-based Title IX Coordinator 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

Supportive Measures

- Non-disciplinary and non-punitive
 - Change in class or lunch schedule
- Provided to all parties throughout the process
- Without unreasonably burdening the other party
- If supportive measures are not provided the Title IX Coordinator must document the file



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.



Scenario #3

- Student A tells the Title IX Coordinator they were forced to perform a sex act on Student B in the bathroom.
- What should the Title IX Coordinator do next?
- Stop the interview
- Immediately notify the SRO
- Contact DCF
- Offer supportive measures to Student A (without any further inquiry into the facts)


Failure to Report

- All SCSB employees are mandatory reporters
- An employee who fails to promptly report an incident of sexual harassment may be subject to disciplinary action

Scenario #4


- Parent files a formal complaint and alleges that their child, Student A, is being sent nude photos by Student B during their online English class. The parent says the photos are being sent daily and it disrupts Student A's participation during class. Parent alleges Student A is uncomfortable turning their video on during class because it appears Student B is trying to witness Student A's reaction once the photos are received.
- What steps should you take as the Title IX Coordinator?

Consolidation

- Formal complaints involving allegations of sexual harassment arising from the same facts or circumstances may be consolidated:
 - Against more than one (1) respondent
 - If multiple complainants file a complaint against multiple respondents
 - If one (1) party files a complaint against the other party
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Dismissal

- 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 by SCSB, or if circumstances prevented the school from gathering evidence. Written notice of dismissal must be sent within two (2) school days.
 - Dismissal decisions are made by the Title IX Coordinators
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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 made 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, schools 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 upon receipt of the formal complaint
- Written notice should be sent by email if there is an email address for the parent/legal guardian on file

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 regarding the complaint and provide the response during the initial interview
 - Parties shall have no less than two (2) school days from the date of the written notice to prepare a response.
 - The District Title IX Investigator shall conduct the initial interviews with Complainant, Respondent, and witnesses within five (5) school days
 - Each individual shall be interviewed separately and at no time will the complainant and respondent be interviewed together
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Basic Requirements for the Grievance Process

- Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility has been made against respondent;
 - Require an objective evaluation of all relevant evidence;
 - Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the end of the grievance process;
 - Ensure the Title IX Coordinator, investigator, decision-maker, and appeals decision-maker are free from any conflicts of interest;
 - Include reasonably prompt time frames for the conclusion of the grievance process;
 - Include a process that allows for the temporary delay of the grievance process or limited extension of time frames for good cause with written notice;
 - List the range of possible disciplinary sanctions and remedies that may be implemented;
 - Include the procedures and grounds for appeal;
 - Describe the range of supportive measures available to parties; and
 - Not allow or require questions or evidence that seek disclosure of protected information.
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Investigation



Investigation of the Formal Complaint

- The investigation must be completed and evidence provided to parties within five (5) school days of the initial interviews

This time frame may be extended for good cause, which includes:

- Absence of a party, a party's advisor, or a witness
 - Concurrent law enforcement activity
 - The need for language assistance or accommodation of disabilities
- SCSB has the burden of proof and the burden of gathering evidence
 - Schools may not obtain medical records unless given voluntary, written consent
 - Schools 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 whose participation is expected or invited at least two (2) school days prior to the interview or meeting





EVIDENCE


Evidence

- Both parties must be given an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations
 - Including the evidence upon which the school does not intend to rely in reaching a determination regarding responsibility
- Schools may not restrict the ability of either party to gather and present relevant evidence, including all inculpatory and exculpatory evidence
- Parties shall be given the equal opportunity to present witnesses

Evidence

- 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
- The Title IX Investigator should be preparing the investigative report during this time and shall incorporate any responses into the report.

Investigative Report

- The Title IX Investigator will create an investigative report that fairly summarizes all relevant evidence presented
 - The report must be sent in an electronic form or hard copy to all parties and their advisors ten days prior to any written determination
 - Parties are given ten (10) days from receipt of the investigative report to provide a written response
 - Any responses received from the parties should be attached to the investigative report
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Submitting Questions for Parties & Witnesses

- After the investigative report has been sent to all parties and before a determination regarding responsibility, parties at the K-12 level 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.
- After the parties submit written questions, the decision-maker must
 - Determine whether a question is relevant; and
 - Explain to the proposing party any decision to exclude a question as not relevant

Submitting Questions

- Parties then have two (2) school days to provide no more than five (5) follow-up questions in total from all parties and witnesses.
- Parties and witnesses have two (2) school days to respond to follow-up questions.
- Questions and evidence regarding a complainant's sexual predisposition or prior sexual behavior are only relevant if offered to prove someone other than the respondent committed the alleged conduct, or to prove consent (***rape shield***)
 - Fed. R. Evid. 412; Fla. Stat. § 794.022.



Relevance Test

- Closely connected or appropriate to what is being done or considered
- A **relevant question** is one that deals with the real issue of concern to the investigation.
- Will the question lead to an answer that makes a fact more or less probable?



Scenario #5

- Parent files a formal complaint and alleges that their child, Student A, is being sent nude photos by Student B during their online English class. The parent says the photos are being sent daily and it disrupts Student A's participation during class. Parent alleges Student A is uncomfortable turning their video on during class because it appears Student B is trying to witness Student A's reaction once the photos are received.
- The respondent submits a question to the complainant about an argument the complainant had with respondent's best friend. Is this question relevant?

Scenario #6

- Student A filed a formal complaint and alleged last week on Monday and Tuesday Student B pulled their pants down on the playground and showed Student A their private area. Student A alleged that Students C and D witnessed the act.
- The complainant submits a question to the witnesses and asks if the complainant yelled stop when the respondent started to take their pants down. Is this question relevant?

Interviews & Report Writing




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 written determination must apply the preponderance of the evidence standard
- The school-based Title IX Coordinator is responsible for implementing remedies stated in the written determination

Preponderance of the Evidence

- Preponderance of the evidence is the evidentiary standard used in all SCSB investigations
- Under the preponderance standard, the burden of proof is met when the decision-maker is convinced that there is a greater than 50% chance that the claim is true

Written Determination

- 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 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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Remedies

- Issued at the conclusion of the grievance process
- Designed to restore or preserve equal access to the school's education program or activity.
- Similar to supportive measures
- Includes disciplinary action





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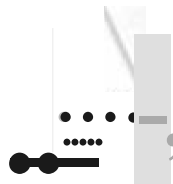
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Appeal



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Appeals

- Each party has the opportunity to appeal from 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 issuance 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 school provides the written appeals decision

Appeals

- Decision-maker will notify the Title IX Coordinator once a Request for Appeal form was received
- Title IX Coordinator will send Notice of Appeal to both parties
- Parties must be given two (2) 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 two (2) school days, the appeals decision-maker will deem the non-response as a waiver and continue with the appeals process
- Title IX Coordinator will submit the evidence, investigative report, written determination and all appeals documents to the appeals decision-maker


Appeals

Appeals may take place for the following 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 school-based Title IX Coordinator, investigator, or decision-maker, against any complainant or respondent that affected the outcome



Appeals

- 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 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

Family Educational
Rights and Privacy Act

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 obviated or alleviated by the FERPA statute or federal regulations

Training

- Training is mandatory for all school-based Title IX Coordinators, investigators, decision-makers, hearing officers, 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 report of sexual harassment;
- 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 audio or audiovisual recording or transcript;
- 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.

District Title IX Coordinators

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