



METRO  
NASHVILLE  
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SCHOOLS

# Title IX Regulations

Charter Schools

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- Overview: New Title IX Regulations
- Reporting
- Definitions
- Sexual Harassment Defined
- Complaints
- Investigations
- Decision making & Appeals
- Retaliation
- Charter School To-Do List

# AGENDA



# Overview: New Title IX Regulations

May 6<sup>th</sup> USDOE  
issued 2083 pages  
of new Title IX  
Regulations

Implementation date  
was August 14<sup>th</sup>

Each Charter  
School must  
adopt a Title  
IX & Sexual  
Harassment  
Policy



# Title IX

- Title IX encompasses many areas – discrimination on the basis of sex, athletics, gender expression, etc.
- These new regulations only address a small portion of Title IX as it relates to sexual harassment



# Reporting

All staff must report potential sexual harassment to your charter school Title IX Coordinator



# Who Reports?

- **Before**, notice was only triggered by school staff with the ability to institute disciplinary action - like principals.
- **Now**, any and all staff are responsible for reporting potential Title IX sexual harassment violations.



# Definitions

- **Complainant:** alleged to be the *victim* of conduct that could constitute sexual harassment.
- **Respondent:** reported to be the *perpetrator* of conduct that could constitute sexual harassment.



# Definitions: Sexual Harassment

## **Conduct on the basis of sex that satisfies one or more of the following:**

1. A school district employee conditioning an aid, benefit, or service of an education program or activity on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the education program or activity; or
3. Sexual assault, dating violence, domestic violence, or stalking as defined in state and federal law.





# Definition of Sexual Harassment

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Severe, pervasive, *and* objectively offensive is a new, higher standard for harassment.

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Must have all three.

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Other areas of harassment use the “or” standard.



# Severe, Pervasive, and Objectively Offensive

Conduct effectively denies access to education program or activity . . .

Need all three

- **Severe:** subjective analysis that looks at things like whether the act is humiliating or threatening and whether it prevents educational access
- **Pervasive:** means more than a single incident
- **Objectively offensive:** judged by what a reasonable person would find offensive or unwelcome



# Examples of Sexual Harassment

Sexually suggestive remarks

Verbal harassment or abuse

Sexually suggestive pictures

Sexually suggestive gesturing

Harassing or sexually suggestive or offensive messages

Subtle or direct propositions for sexual favors

Touching of a sexual nature





# When to Report to Title IX Coordinator?

## Hypotheticals

Likely Do  
Not Report

- A single instance of inappropriate name calling
- A single instance of inappropriate touching or gesturing

Likely Report

- An incident involving sexual photos or videos, particularly involving students
- Multiple instances of inappropriate touching or gesturing



# No Discipline Without Investigation

**REMEMBER** - If you are considering using a sexual harassment discipline code then PAUSE and consult with your Title IX Coordinator

You cannot discipline or remove for sexual harassment without a formal investigation



# Grievance Process

## This process is all new ...

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After report, the Title IX Coordinator must assess whether conduct potentially rises to the level warranting Title IX investigation

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If a Title IX investigation is necessary, the Title IX Coordinator or designee (principal) will contact the student(s), offer supportive measures, and explain the process for filing a formal complaint

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If student decides to file a formal complaint, or if Title IX Coordinator signs a formal complaint, an investigator will investigate.

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The investigator cannot be the Title IX Coordinator.



# Grievance Process Cont.

- Emergency Removal – only if threat to safety
- Employees can be placed on admin leave or suspension without pay to investigate employee on student misconduct





# Investigations

- Investigation only occurs if a formal complaint is signed by complainant or by the Title IX Coordinator
- 48 hours to initiate the investigation after formal complaint
- All parties receive investigative report and all evidence to review (no confidentiality, FERPA doesn't apply) and have 10 days to respond
- Investigative report summarizing evidence sent to parties, guardians, and decisionmaker



# Determination of Responsibility

**Decisionmakers = Must be different person from Title IX Coordinator and Investigator**

Preponderance Standard (more likely than not)

Parties can submit written cross exam questions

Make decision 10 days after receiving answers

Written report on decision

Substantiated charges can result in disciplinary action including expulsion or termination



# Appeals

- **Appeals officer = Must be different person from Title IX Coordinator, Investigator, and Decisionmaker**
  - Either party may appeal w/in 10 days on one of the following bases:
    1. Procedural irregularity
    2. New evidence
    3. Conflict of interest
  - Written decision within 10 days of the appeal



# Retaliation

Retaliation against any person who makes a report or complaint or assists, participates, *or refuses to participate* in any investigation of an act alleged in this policy is prohibited.

Retaliation may result in disciplinary action.



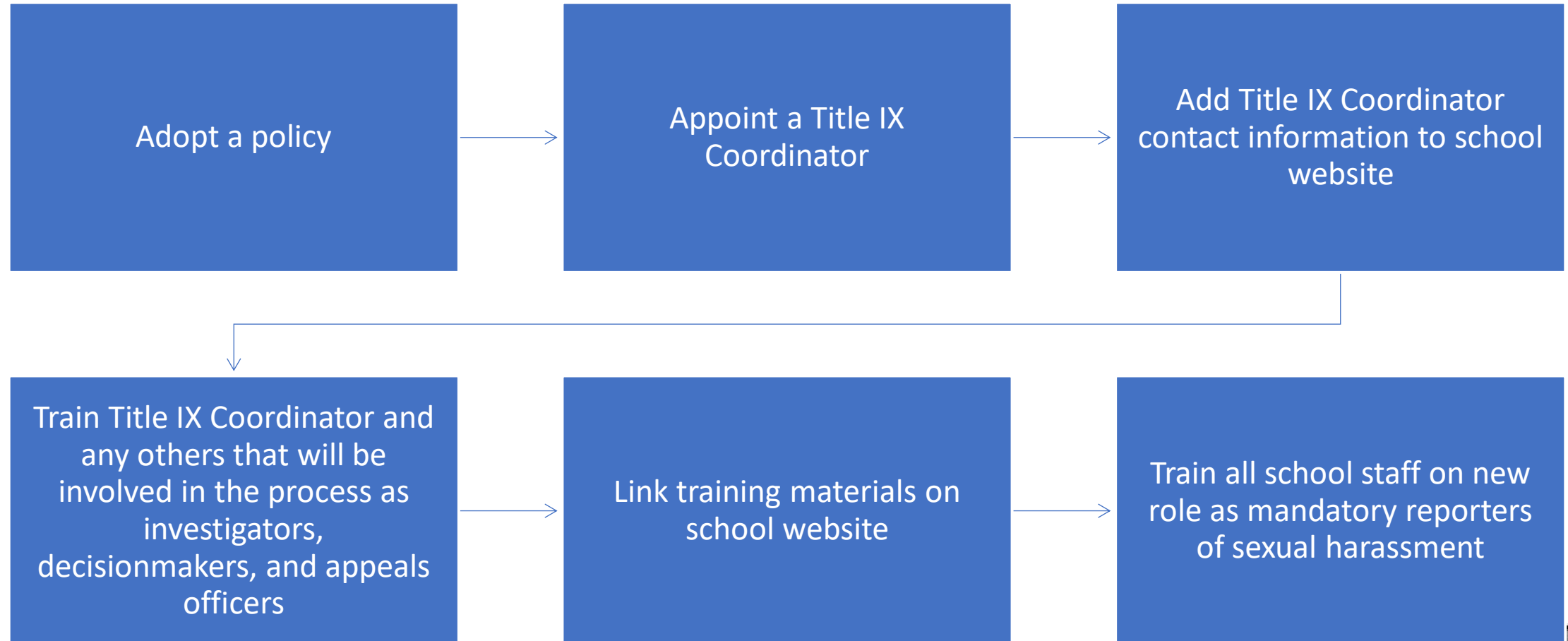
# Executive Director of Civil Rights & Title IX Coordinator

[Carly.elliott@mnps.org](mailto:Carly.elliott@mnps.org)

Can be contacted for consult for Charter School Title IX  
Coordinators



# Charter School Title IX To-do List

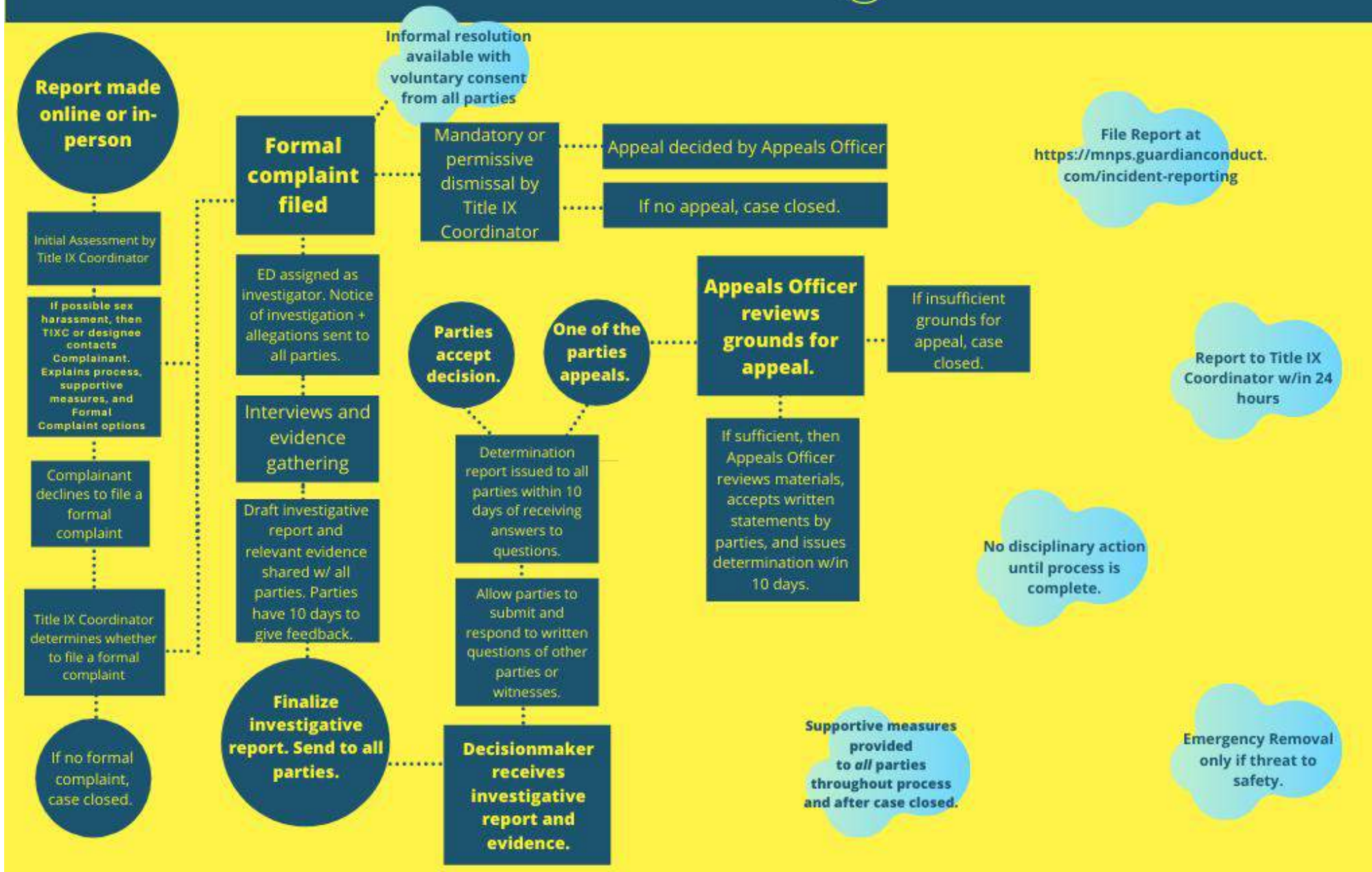


# Title IX Sexual Harassment Process Cheat Sheet

This information is meant to provide a brief overview of the Title IX Sexual Harassment report and investigation process. Please review policy 6.3041 Title IX & Sexual Harassment.



civilrightscomplaints@mnp.org



# Bullying & Harassment Process Cheat Sheet

This information is meant to provide a brief overview of the Bullying & Harassment report and investigation process. Please review policy 6.304 Student Discrimination, Harassment, Bullying, Cyberbullying and Intimidation and SP 6.304.1p Procedure for Reporting and Investigating Bullying, Cyberbullying, Harassment, Discrimination, Intimidation, and Hazing

 [bullying@mnps.org](mailto:bullying@mnps.org)

See Policy 6.3041 Title IX & Sexual Harassment for any incident that may qualify as sexual harassment or sexual assault. **Do not begin investigation.** Complete the MNPS Title IX Incident Report Form and send to Title IX Coordinator [civilrightscomplaints@mnps.org](mailto:civilrightscomplaints@mnps.org).

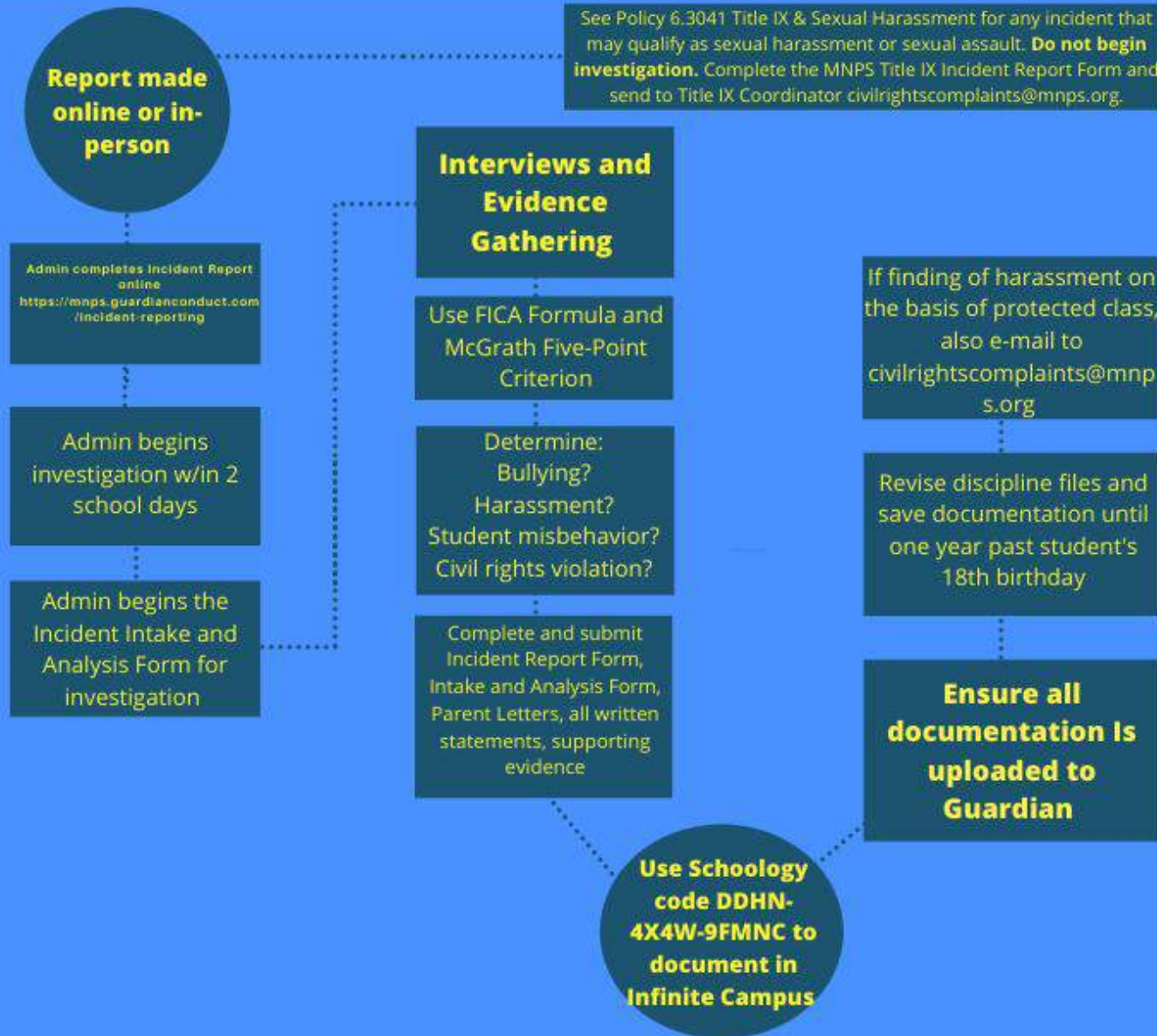
Forms in the MyMNPS Bullying and Harassment Folder

Reports of harassment on basis of protected class emailed to [civilrightscomplaints@mnps.org](mailto:civilrightscomplaints@mnps.org)

Begin investigation w/in 2 school days

Final Resolution saved in Infinite Campus

Separate intake and investigation process for Sexual Harassment reports



If finding of harassment on the basis of protected class, also e-mail to [civilrightscomplaints@mnps.org](mailto:civilrightscomplaints@mnps.org)

Revise discipline files and save documentation until one year past student's 18th birthday



# Metropolitan Nashville Board of Education

Monitoring: <b>Review: Annually, in March</b>	Descriptor Term: <b>Title IX &amp; Sexual Harassment</b>	Descriptor Code: <b>6.3041</b>	Issued Date: <b>07/14/20</b>
		Rescinds:	Issued:

## 1 *General*

2 In order to maintain a safe, civil, and supportive learning environment, all forms of sexual harassment  
3 and discrimination on the basis of sex are prohibited.<sup>1</sup> This policy shall cover employees, employees'  
4 behaviors, students, and students' behaviors while on school property, at any school-sponsored activity,  
5 on school-provided equipment or transportation, or at any official school bus stop in accordance with  
6 federal law. This policy shall be disseminated annually to all school staff, students, and  
7 parent(s)/guardian(s).<sup>2</sup> The Title IX Coordinator as well as any personnel chosen to facilitate the  
8 grievance process shall not have a conflict of interest against any party of the complaint.<sup>3</sup> These  
9 individuals shall receive training as to how to promptly and equitably resolve student and employee  
10 complaints.<sup>3</sup>

11 All employees shall receive training on complying with this policy and federal law.<sup>4</sup>

## 12 **TITLE IX COORDINATOR**<sup>5</sup>

13 The Title IX Coordinator shall respond promptly to all general reports as well as formal complaints of  
14 sexual harassment. He/she shall be kept informed by school-level personnel of all investigations and  
15 shall provide input on an ongoing basis as appropriate.

16 Any individual may contact the Title IX Coordinator at any time using the information below:

17 Title: Carly Elliott

18 Mailing address: 2601 Bransford Ave, Nashville, TN 37204

19 Phone number: 615-259-8587

20 Email: Carly.Elliott@mmps.org

## 21 **DEFINITIONS**<sup>4</sup>

22 “Complainant” is an individual who is alleged to be the victim of conduct that could constitute sexual  
23 harassment.

24 “Respondent” is an individual who is reported to be the perpetrator of conduct that could constitute  
25 sexual harassment.

26 “Sexual harassment” is conduct on the basis of sex that satisfies one or more of the following:<sup>3</sup>

1. A school district employee conditioning an aid, benefit, or service of an education program or activity on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the education program or activity; or
3. Sexual assault,<sup>6</sup> dating violence,<sup>7</sup> domestic violence,<sup>8</sup> or stalking<sup>9</sup> as defined in state and federal law.

Behaviors that constitute sexual harassment may include, but are not limited to:

1. Sexually suggestive remarks;
2. Verbal harassment or abuse;
3. Sexually suggestive pictures;
4. Sexually suggestive gesturing;
5. Harassing or sexually suggestive or offensive messages that are written or electronic;
6. Subtle or direct propositions for sexual favors; and
7. Touching of a sexual nature.

Sexual harassment may be directed against a particular person or persons, or a group, whether of the opposite sex or the same sex.

"Supportive measures" are non-disciplinary, non-punitive, individualized services and shall be offered to the complainant and the respondent, as appropriate. These measures may include, but are not limited to, the following:

1. Counseling;
2. Course modifications;
3. Schedule changes; and
4. Increased monitoring or supervision.

The measures offered to the complainant and the respondent shall remain confidential to the extent that maintaining such confidentiality would not impair the ability of the school district to provide the supportive measures.

## GRIEVANCE PROCESS

1 Upon learning of an instance of alleged sexual harassment, even if no formal complaint is filed, the  
2 Title IX Coordinator shall:

- 3 1. Promptly contact the complainant to discuss the availability of supportive measures;
- 4
- 5 2. Consider the complainant's wishes with respect to supportive measures;
- 6
- 7 3. Inform the complainant of the availability of supportive measures; and
- 8
- 9 4. Explain the process for filing a formal complaint.<sup>10</sup>

10 While the school district will respect the confidentiality of the complainant and the respondent as much  
11 as possible, some information may need to be disclosed to appropriate individuals. All disclosures shall  
12 be consistent with the school district's legal obligations and the necessity to investigate allegations of  
13 harassment and take disciplinary action.

14 Disciplinary consequences or sanctions shall not be initiated against the respondent until the grievance  
15 process has been completed. Unless there is an immediate threat to the physical health or safety of any  
16 student arising from the allegation of sexual harassment that justifies removal, the respondent's  
17 placement shall not be changed.<sup>11</sup> If the respondent is an employee, he/she may be placed on  
18 administrative leave or suspension without pay consistent with Tenn. Code Ann. 49-5-511(a)(3) during  
19 the pendency of the grievance process.<sup>12</sup> The Title IX Coordinator shall keep the Director of Schools  
20 and the Chief of Human Resources informed of any employee respondents so that he/she can make any  
21 necessary reports to the State Board of Education in compliance with state law.<sup>13</sup>

## 22 **Complaints**

23 Any individual who has knowledge of behaviors that may constitute a violation of this policy, shall  
24 report such information to the Title IX Coordinator, within 24 hours. Nothing in this policy requires a  
25 complainant to either report or file a formal complaint within a certain timeframe. If the complaint  
26 involves the Title IX Coordinator, the complaint shall be filed with the Chief of Human Resources.

27 If a complaint involves allegations of child abuse, including child abuse on school grounds, appropriate  
28 notification shall be made per the board policy on reporting child abuse.

29 Upon receipt of a formal complaint, the Title IX Coordinator shall promptly:<sup>14</sup>

- 30 1. Provide written notice of the allegations, and the grievance process to all known parties to give  
31 the respondent time to prepare a response before an initial interview;
- 32
- 33 2. Inform the parties of the prohibition against making false statement or knowingly submitting  
34 false information;
- 35
- 36 3. Inform the parties that they may have an advisor present during any subsequent meetings; and
- 37
- 38 4. Offer supportive measures in an equitable manner to both parties.

1 If the Title IX Coordinator dismisses a complaint, written notice, including the reasons for dismissal,  
2 shall be provided to both parties simultaneously.<sup>15</sup>

### 3 **Investigations**<sup>16</sup>

4 For complaints of student on student harassment the Executive Directors (Division of Schools) for the  
5 tier or the principal, as determined by the Title IX Coordinator, shall serve as the investigator and be  
6 responsible for investigating complaints in an equitable manner that involves an objective evaluation  
7 of all relevant evidence. For complaints of employee on student or employee on employee harassment,  
8 the Employee Relations Department will investigate. The burden for obtaining evidence sufficient to  
9 reach a determination regarding responsibility rests on the school district and not the complainant or  
10 respondent.

11 Once a complaint is received, the Investigator shall initiate an investigation within forty-eight (48)  
12 hours of receipt of the complaint. If an investigation is not initiated within forty-eight (48) hours, the  
13 investigator shall provide the Title IX Coordinator with appropriate documentation detailing the  
14 reasons why the investigation was not initiated within the required timeframe.

15 All investigations shall be completed within twenty (20) calendar days from the receipt of the initial  
16 complaint. If the investigation is not complete within twenty (20) calendar days, the investigator shall  
17 provide the Title IX Coordinator with appropriate documentation detailing the reasons why the  
18 investigation has not been completed.

19 All investigations shall:

- 20 1. Provide an equal opportunity for the parties to present witnesses and evidence;
- 21
- 22 2. Not restrict the ability of either party to discuss the allegations under investigation or gather  
23 and present relevant evidence;
- 24
- 25 3. Refrain from requiring, allowing, relying upon, or otherwise using questions or evidence that  
26 seek disclosure of information protected under a legally recognized privilege unless such  
27 privilege has been waived;<sup>17</sup>
- 28
- 29 4. Provide the parties with the same opportunities to have others present during any grievance  
30 proceeding;
- 31
- 32 5. Provide to parties whose participation is requested written notice of the date, time, location,  
33 participants, and purpose of all investigative interviews, or other meetings, with sufficient time  
34 for the party to prepare to participate;
- 35
- 36 6. Provide both parties an equal opportunity to inspect and review any evidence directly related to  
37 the allegations in the formal complaint; and
- 38
- 39 7. Result in the creation of an investigative report that fairly summarizes relevant evidence.
- 40

- 1 a. Prior to the completion of the investigative report, the investigator shall send to each  
2 party the evidence subject to inspection and review. All parties shall have at least ten  
3 (10) days to submit a written response which shall be taken into consideration in  
4 creating the final report.

5 Within the parameters of the federal Family Educational Rights and Privacy Act,<sup>18</sup> the Title IX  
6 Coordinator shall keep the complainant and the respondent informed of the status of the investigation  
7 process. At the close of the investigation, a written final report on the investigation will be delivered to  
8 the parent(s)/guardian(s) of the complainant, parent(s)/guardian(s) of the respondent, and to the  
9 Director of Schools, and the Chief of Student Services (student to student investigations) or Chief of  
10 Human Resources (employee to employee; employee to student).

### 11 **Determination of Responsibility**<sup>19</sup>

12 The respondent is presumed not responsible for the alleged conduct until a determination regarding  
13 responsibility is made at the conclusion of the grievance process.<sup>20</sup> The preponderance of the evidence  
14 standard shall be used in making this determination.<sup>21</sup>

15 The Executive Director of Student Support Services or the Human Resources Legal Liaison shall act as  
16 the decision-maker. He/she shall receive the final report of the investigation and allow each party the  
17 opportunity to submit written questions that he/she wants asked of any party or witness prior to the  
18 determining responsibility.

19 Within 10 days of receiving answers to all written questions, the decision-maker shall make a  
20 determination regarding responsibility and provide the written determination to the parties  
21 simultaneously along with information about how to file an appeal.

22 A substantiated charge against a student may result in corrective or disciplinary action up to and  
23 including expulsion. A substantiated charge against an employee shall result in disciplinary action up  
24 to and including termination.

25 After a determination of responsibility is made, the Title IX Coordinator shall work with the  
26 complainant to determine if further supportive measures are necessary. The Title IX Coordinator shall  
27 also determine whether any other actions are necessary to prevent reoccurrence of the harassment.

### 28 **APPEALS**<sup>22</sup>

29 Either party may appeal from a determination of responsibility based on a procedural irregularity that  
30 affected the outcome, new evidence that was not reasonably available at the time of the determination  
31 that could affect the outcome, or an alleged conflict of interest on the part of the Title IX Coordinator  
32 or any personnel chosen to facilitate the grievance process. Appeals shall be submitted to the Title IX  
33 Coordinator within ten calendar(10) days of a determination of responsibility.

34 Upon receipt of an appeal, the Title IX Coordinator shall:

- 35 1. Inform the Chief of Student Services or the Chief of Human Resources] within five (5) days of  
36 receipt of the appeal; and  
37

- 1           2. Notify the parties in writing.
- 2    During the appeal process, the parties shall have a reasonable, equal opportunity to submit written
- 3    statements. Within ten (10) calendar days, the Chief of Student Services or the Chief of Human
- 4    Resources shall issue a written decision describing the result of the appeal and the rationale for the
- 5    result. The written decision shall be provided simultaneously to both parties.

## 6    **RETALIATION**<sup>23</sup>

- 7    Retaliation against any person who makes a report or complaint or assists, participates, or refuses to
- 8    participate in any investigation of an act alleged in this policy is prohibited. Retaliation may result in
- 9    further disciplinary action being warranted.

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### Legal References

1. 34 CFR § 106.1
2. 34 CFR § 106.8(b),(c)
3. 34 CFR § 106.45(b)(1)(iii); 34 CFR § 106.45(b)(10)(D)
4. 34 CFR § 106.30(a)
5. 34 CFR § 106.8(a)
6. 20 USCA 1092(f)(6)(A)(v); TCA 36-3-601(10); TCA 71-6-302
7. 34 USCA 12291(a)(10)
8. 34 USCA 12291(a)(8); TCA 40-14-109
9. 34 USCA 12291(a)(30); TCA 39-17-315; TCA 36-3-601(11)
10. 34 CFR § 106.44(a)
11. 34 CFR § 106.44(c)
12. 34 CFR § 106.44(d)
13. TRR/MS 0520-02-03-.09(2); TCA 49-5-417(c)
14. 34 CFR § 106.45(b)(2)
15. 34 CFR § 106.45(b)(3)
16. 34 CFR § 106.45(b)(5); 34 CFR § 106.45(b)(1)(v)
17. 34 CFR § 106.45(b)(1)(x)
18. 20 USCA § 1232g
19. 34 CFR § 106.45(b)(7)
20. 34 CFR § 106.45(b)(1)(iv)
21. 34 CFR § 106.45(b)(1)(vii)
22. 34 CFR § 106.45(b)(8)
23. 34 CFR § 106.71

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### Cross References

Section 504 and ADA Grievance Procedures 1.802  
 Discrimination/Harassment of Employees (Sexual, Racial,  
 Ethnic, Religious) 5.500  
 Staff-Student Relations 5.610  
 Code of Conduct 6.300  
 Student Discrimination, Harassment, Bullying, Cyber-  
 bullying, and Intimidation 6.304  
 Child Abuse and Neglect 6.409