



Raleigh Charter High School

What Your Educational Institution Needs to Know About Title IX

August 4, 2023

Q. Shanté Martin
smartin@cshlaw.com

Roadmap

- Purpose of Title IX/Responsibility
- Key Definitions
 - Definition of Sexual Harassment
- Requirements Post Sexual Harassment Allegation
- Roles and Responsibilities
 - *Title IX Coordinator, Investigator, Decision-maker, Appellate Body*



Purpose of Title IX

TITLE IX—PROHIBITION OF SEX DISCRIMINATION

SEX DISCRIMINATION PROHIBITED

SEC. 901. (a) 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, except that:

Who Is Responsible?

In a secondary setting, **ALL** employees have a responsibility to IMMEDIATELY report allegations of Title IX violations to the Title IX Coordinator because Raleigh Charter High School has “actual knowledge” the moment any employee is notified of a potential violation.

Key Title IX Definitions

Definition of “Actual Knowledge”



Notice of or allegations of sexual harassment to the ***Title IX Coordinator*** or any ***school official with the authority to implement corrective measures*** on behalf of the institution

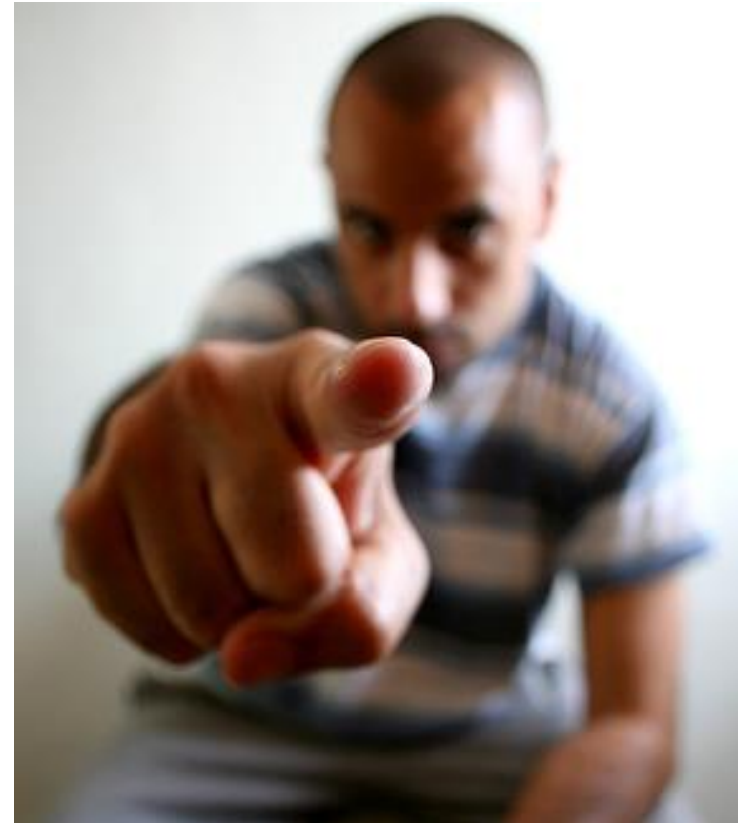
OR

To ***ANY employee*** of an elementary and secondary school

Definition of “Complainant”

Individual who is ***alleged*** to be the victim of conduct that ***could constitute*** sexual harassment.

**No “harassed student” or “victim” terminology before outcome of investigation*



Definition of “Respondent”



Individual who has been ***reported*** to be the perpetrator of conduct that ***could constitute*** sexual harassment

**** No “alleged perpetrator” or “harasser” terminology before outcome of investigation***

Definition of “sexual harassment”

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

- 1) Quid pro quo** - A school employee conditioning provision of an aid, benefit or service of the school on an individual’s participation in *unwelcome* sexual conduct OR
- 2) Hostile Environment** - *Unwelcome* conduct a *reasonable person* determines is so severe, pervasive, and *objectively offensive* that it effectively denies a person equal access to the education program or activity OR



Q. Shanté Martin
smartin@cshlaw.com

Definition of “sexual harassment” cont’d

3) **Clery Act** - Sexual assault, dating violence, domestic violence, or stalking as defined in federal law



Q. Shanté Martin
smartin@cshlaw.com

Role of Title IX Coordinator

1. Initially determines if report falls under Title IX
2. Responsible for initial communication with families, offering & implementing supportive measure, and ensuring case runs properly
3. Main line of communication throughout process for parties
4. Required to store details of cases for 7 years



Sexual harassment allegation made – NOW WHAT?

School must respond *promptly* in a manner that is not deliberately indifferent



“Deliberate indifference” –
response to sexual harassment is clearly unreasonable in light of the known circumstances

Sexual harassment allegation made – NOW WHAT? cont'd

- School must offer *supportive measures* to complainant and to the respondent equitably with or without the filing of a formal complaint
- Title IX coordinator **MUST**
 - 1) Promptly discuss supportive measures to complainant with or without filing a formal complaint;
 - 2) Consider complainant's wishes for supportive measures; and
 - 3) explain process to file formal complaint



Definition of “Supportive Measures”

Non-disciplinary, non-punitive individualized services offered *as appropriate, as reasonably available,* and without fee or charge to the complainant or respondent



Definition of “Supportive Measures” cont’d

“Supportive Measures” designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties, protect the educational institution or deter sexual harassment

Extension of deadlines

Counseling

Other course-related adjustments

Modification of work or class schedules

Campus escort services

Changes in work or housing locations

Mutual restrictions on contact between parties

Other similar measures

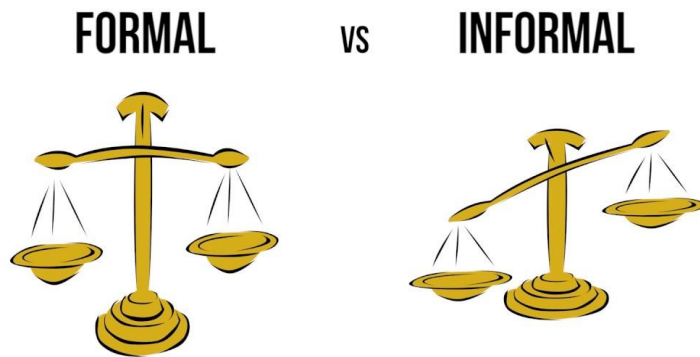
Increased security & monitoring

Leaves of absence

Two Outcomes for Complaint

FORMAL

- Supportive measures offered
- Investigation begins



INFORMAL

- Supportive measures offered
- Parties may choose:
 1. Supportive measures only resolution
 2. Respondent accepts responsibility & agrees to sanctions
 3. Both parties agree to resolve with mediation, restorative practices, etc.

Definition of “Formal Complaint”



Document filed:

- 1) By a complainant or
- 2) Signed by the Title IX Coordinator alleging sexual harassment against a respondent AND requesting that the recipient investigate the allegation of sexual harassment

“Formal Complaint” Requirements

At the time of filing a formal complaint, complainant must be participating or attempting to participate in the educational program or activity of the school



“Formal Complaint” Requirements

cont’d

Document filed by complainant -

Contains complainant’s physical or digital signature OR otherwise indicates that the complainant is the person filing the formal complaint

REQUIRED

* No anonymous formal complaints

Dismissal of “Formal Complaint”

Raleigh Charter High School is **required** to dismiss a formal complaint when:

- 1) Alleged conduct does not meet the definition of *sexual harassment*, even if conduct is true
- 2) Alleged conduct did not occur in Raleigh Charter High School’s *education program or activity*
- 3) Alleged conduct did not occur against a person in the United States



Definition of “Education Program or Activity”

Locations, events, or circumstances over which Raleigh Charter High School exercises **substantial control** over both the respondent AND the context in which the sexual harassment occurs, and also includes any building **owned or controlled by a student organization** that is **officially recognized** by a postsecondary institution



Investigation of Formal Complaint

Raleigh Charter High School must conduct an investigation of a formal complaint. The **Investigator** gathers statements, video footage, emails, text messages, pictures, and any other relevant evidence.



Q. Shanté Martin
smartin@cshlaw.com

Investigation of Formal Complaint cont'd



The **Investigator** shares evidence collected with both parties and advisors to allow them time to review and respond in writing to it within ten (10) days of receiving the evidence.

The **Investigator** provides an investigative report fairly summarizing the evidence at least ten (10) days prior to the consideration

Hearing Decision



Since Raleigh Charter High School is a secondary school, while you have the option to do so, you all do NOT have to conduct live hearings. It is advisable NOT to conduct live hearings.

Decision-Making Process

The **Decisionmaker** reviews and evaluates the investigation report and any written responses received. The **Decisionmaker** receives relevant questions from parties for any party or witness; receives answers to those questions; and allows limited follow-up questions and answers.



Decision-Making Process

The **Decisionmaker** completes the **written determination** regarding responsibility for *each individual allegation made*. Written determination **MUST** contain following components:



1. Specification of allegations potentially constituting sexual harassment
2. Description of procedural steps taken from receipt of formal complaint through written determination
3. Findings of fact supporting conclusion
4. Conclusions regarding application of Raleigh Charter High School's Code of Conduct to the facts
5. Statement of and rationale for result to each allegation; determination regarding responsibility for each allegation; disciplinary sanctions imposed on respondent; whether remedies designed to restore and preserve equal access will be provided to complainant AND
6. Raleigh Charter High School's procedures and permissible bases for complainant and respondent to appeal

Decision-Making Process

The **Decisionmaker** sends written determination to the parties and the advisors. The **Decisionmaker** should also send a copy to the Title IX Coordinator and to the principal (if the principal is not going to decide the appeal).



Rules for the Roles

	Title IX Coordinator	Investigator	Decision-maker	Appellate Body
Title IX Coordinator	N/A	YES	NO	NO
Investigator	YES	N/A	NO	NO
Decision-maker	NO	NO	N/A	NO
Appellate Body	NO	NO	NO	N/A



Q. Shanté Martin
smartin@cshlaw.com

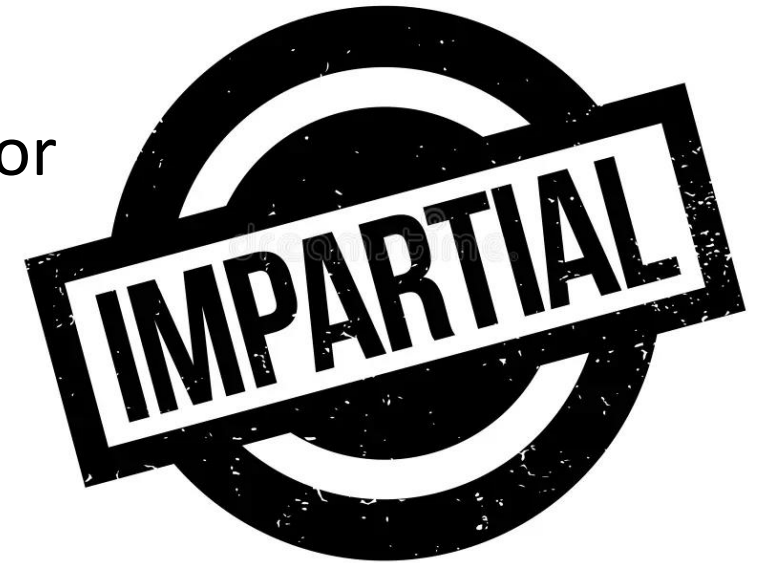
Qualifications for Appellate Body

1. Can't be Title IX Coordinator, Investigator, or Original Decision Maker
2. Can't be biased for or against party generally or individual party
3. Must be trained



Qualifications for Appellate Body cont'd

- Board members must serve in this role impartially
- Board members must avoid “pre-judging” or making automatic assumptions based on relationships or prior experiences
- Can't be *pre-disposed* to believe complainant over respondent or to believe respondent over complainant



Title IX Processes Eligible for Appeal

Under Title IX, parties are only allowed to appeal the following three processes:



1. A determination regarding responsibility
2. Raleigh Charter High School's dismissal of a formal complaint
3. Raleigh Charter High School's dismissal of specific allegations within a formal complaint

Bases for Appeal



Title IX requires institutions to adopt the following three (3) minimum bases for appeal:

* more bases can be adopted by the Board

1. Procedural irregularity *that affects the outcome*
2. New Evidence
 - a. *not reasonably available at the time written determination of responsibility was issued*
 - b. *that could affect the outcome*
3. Conflict of Interest/Bias of *Title IX Coordinator, investigator(s), or decision-maker(s)*

Questions?



Attorney Q. Shanté Martin