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# Student Investigations: *What Administrators Need to Know*

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Clinton Public Schools

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# Agenda



- Investigation Challenges
- Connecticut Bullying Law
- Targeted Harassment
- Investigations
- Police/DCF Involvement

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# Investigation Challenges

# Practical Concerns

- Time constraints
- Knowing (or NOT knowing) students' prior history
- Institutional knowledge (i.e. how has this been handled before?)
- Should we call the police?
- Should we call DCF?
- Diverse populations
- I'm not a trained detective!

# Practical Concerns

- Overlapping Policies
- Ever-changing legal requirements/procedural requirements
- Special education/504 issues
- Communications with parents
- Press/social media attention

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# Connecticut Bullying Law

# 2019 Changes to Bullying Law Effective July 1, 2021 – Public Act 19-166



- No longer a requirement that both the alleged perpetrator and alleged victim be students attending school in the same district.
- Removes requirement that the act be “repetitive”
- Establishes a new harassment-like standard, which requires that the act be “**severe, persistent, or pervasive.**”



# “Bullying” in Connecticut

- “
- An act that is direct or indirect and severe, persistent or pervasive, which (A) causes physical or emotional harm to an individual, (B) places an individual in fear of physical or emotional harm, or (C) infringes on the rights or opportunities of an individual at school.

*This new definition was part of changes to the bullying law in 2019 and became effective on July 1, 2021*

”



# “Bullying” includes:



A written, oral or electronic communication or physical act or gesture



based on any actual or perceived differentiating characteristics, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity or expression, socioeconomic status, academic status, physical appearance, or mental, physical, developmental or sensory disability, or by association with an individual or group who has or is perceived to have one or more of such characteristics.



# “Cyberbullying”

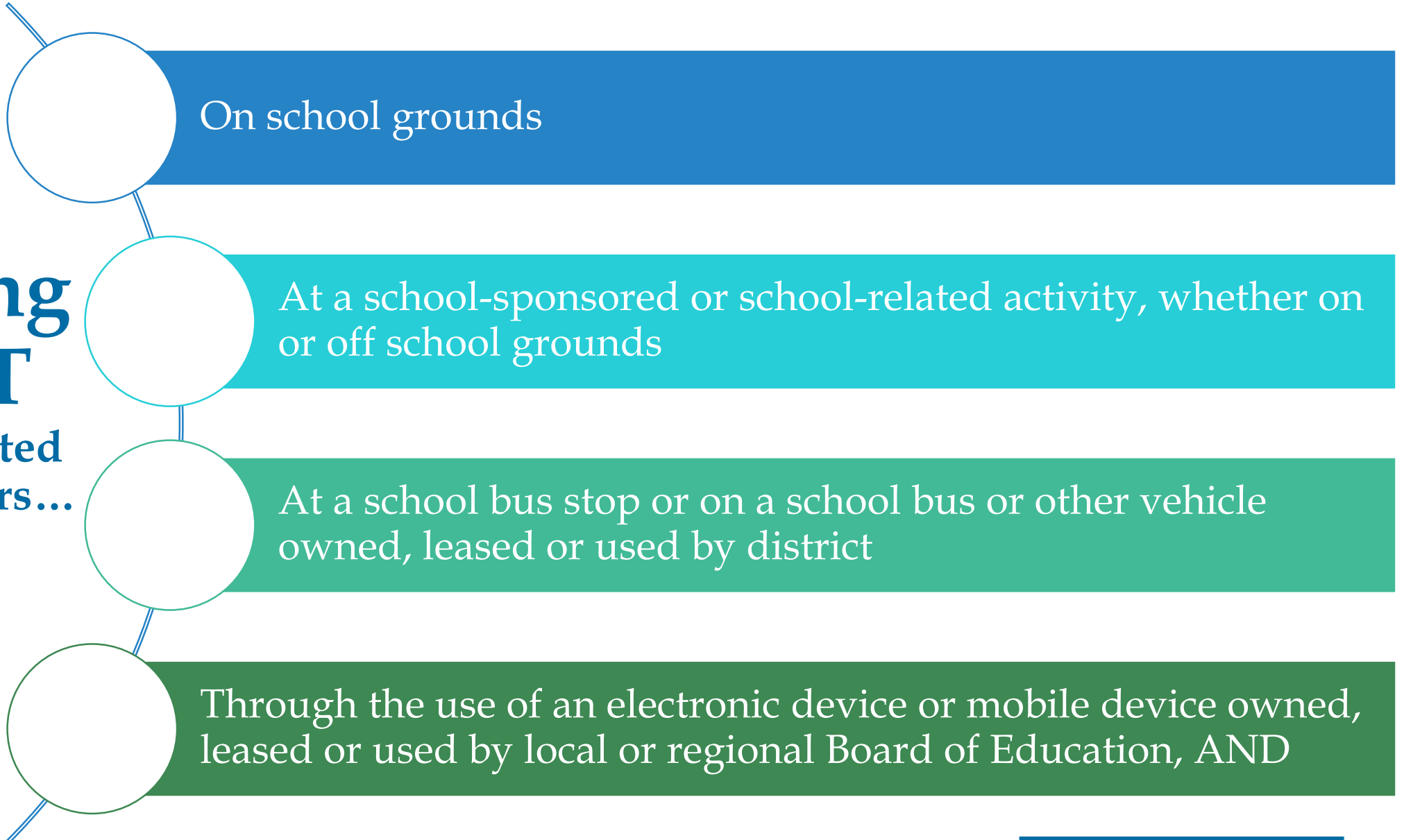
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Cyberbullying is explicitly defined as “...any act of bullying using the internet, interactive and digital technologies, cellular mobile telephone or other mobile electronic devices, or any electronic communications.”

”

# Bullying MUST

be investigated  
when it occurs...





Outside of the school setting if any of such bullying fulfills any of the following 3 characteristics:

**AND  
Bullying  
MUST**  
be investigated  
when it occurs...

Creates a hostile school environment for the victim

Infringes on the rights of the victim at school OR

Substantially disrupts the education process or the orderly operation of a school

# Anonymous Reports By Students

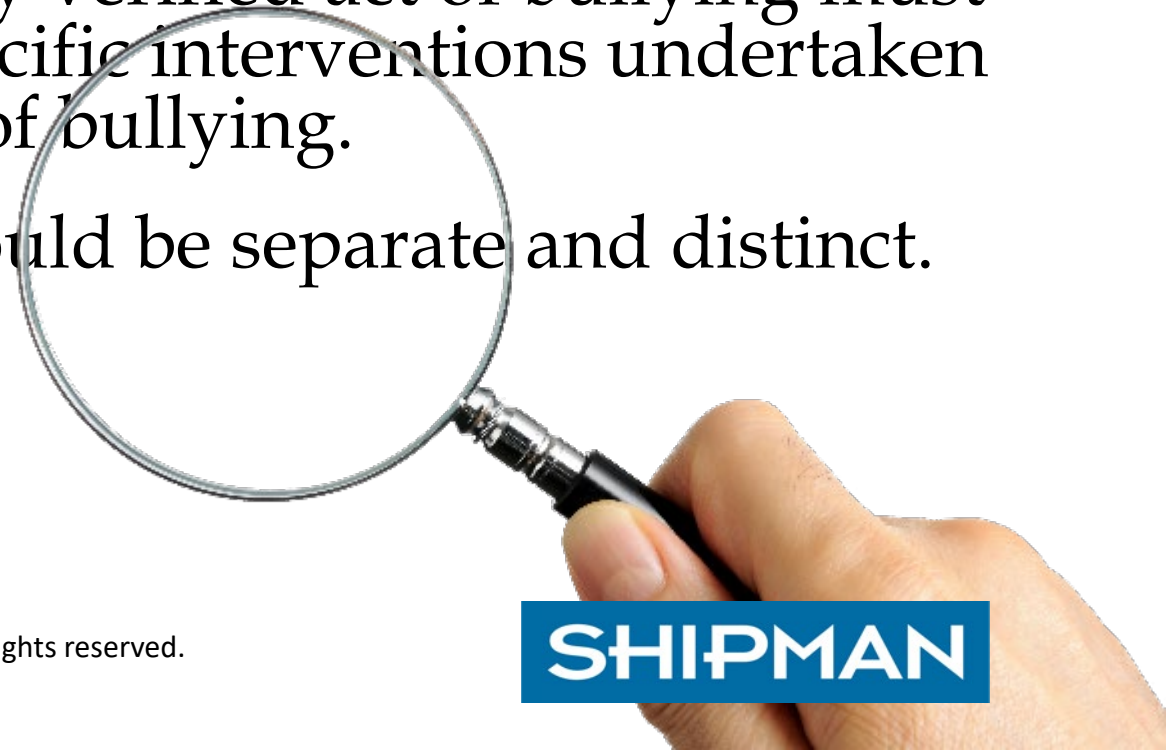
- Must be investigated, while maintaining the student's name and identity confidential
- Investigation may be limited, as appropriate in view of anonymity
- Anonymous victim should be informed of this at start of investigation
- Must be investigated to the extent possible
- No discipline may be implemented based *solely* on an anonymous report

# When the Investigation is Complete...

- No written report required. However, district must have procedures to document and maintain records of complaints and investigations.
- Must have list of verified incidents.
- Within *48 hours of the completion of the investigation*, school officials must notify parents of any student who commits a verified act of bullying and the parents of any student against whom such act of bullying was committed.
- Verbally and by electronic mail, if such parents' or guardians' electronic mail addresses are known, that such *parents or guardians may refer to the plain language explanation of the rights and remedies available under sections 10-4a and 10-4b* published on the Internet web site of the local or regional board of education

# When the Investigation is Complete...

- Parents of a student whom such act was directed must be invited to a meeting where the school communicates the measures being taken by the school to ensure student safety and prevent further acts of bullying.
- Parents of a student who commits any verified act of bullying must be invited to a meeting to discuss specific interventions undertaken by the school to prevent further acts of bullying.
- Meetings with each set of parents should be separate and distinct.







# What are my responsibilities for intervention?

- When acts of bullying are verified, school officials must develop “**student safety support plans** for students against whom an act of bullying was directed that address **safety measures** the school will take to protect such students against further acts of bullying.”
- When there are repeated verified acts of bullying against a single individual student or recurrently perpetrated bullying incidents by the same individual, school officials must develop **case-by-case interventions** that may include both counseling and discipline.



# What are appropriate consequences for bullying?

- The notification to parents of a student who committed a verified act of bullying must include **“a description of the response of school employees to such acts and any consequences that may result from the commission of further acts of bullying.”**
- Consider need for:
  - Increased supervision
  - Separation of students involved
  - Computer restrictions/loss of privileges
  - Counseling
  - Formal discipline (ISS, OSS, expulsion)

# Historically Poor School Responses



- **Mere suspension** of students involved
  - Limits student's ability to receive positive support for behavioral changes
  - Likely bullying/harassment will persist
- Schools must take **more proactive preventative approaches** to bullying and harassment
  - Not doing so may **expose districts to liability**

# Hot Topic: Bullying and FAPE

- School administrators must be aware of overlapping responsibilities regarding FAPE and bullying
  - Appropriate topic for discussion at PPT meeting?
  - Impact on FAPE for student victim?
  - Impact on FAPE for student perpetrator?
  - Are more or different supports needed?
  - Placement considerations?

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# Targeted Harassment

# School Climate

Public Act 19-166



Requires school district to post on their internet website training materials for school administrators “regarding the prevention of and intervention in discrimination against and targeted harassment of students” based on such students’ actual or perceived differentiating characteristics.

The discrimination or harassment may also be based on a student’s “association with individuals or groups who have or are perceived to have one or more of [the]

characteristics” defined on the next slide

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# Differentiating Characteristics (actual or perceived) include:

Public Act 19-166

Race

Color

Religion

Ancestry

National Origin

Gender

Sexual Orientation

Gender Identity

Gender Expression

Socioeconomic Status

Physical Appearance

Mental or Physical Disability

Developmental Disability

Sensory Disability



# What is Targeted Harassment?

Targeted harassment includes three elements:

- 1 verbal or physical **act** toward a student **based on such students actual or perceived differentiating characteristics**, or association with individuals or groups with one or more of such characteristics,
- 2 that is **threatening, harmful, demeaning, or humiliating**, and
- 2 creates a **hostile environment** that **interferes with or limits a student's ability to participate** in or benefit from the services, activities, or opportunities offered by a school.

# “Targeted Harassment” Does NOT Require: —



Intent to harm



Harm directed toward a particular student



Repeated incidents\*

\* To meet the “hostile environment” standard, a single incident would have to be sufficiently severe so as to alter the student’s access to education.

# Harassment vs. Bullying

## Harassment

- Act directed at protected class
- Need not be directed at a student; no intent to harm required; one act sufficient
- Threatening, harmful, demeaning or humiliating act
- Hostile environment: must be severe, persistent or pervasive

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## Bullying

- Concerns any individual
- Direct or indirect and severe, persistent or pervasive
- Physical or emotional harm
- Or** reasonable fear of harm
- Or** infringes on the rights or opportunities of an individual at school

# Hostile Environment

Depends on "totality of the circumstances," including but not limited to:

- How much of an adverse effect the conduct had on student's education;
- The type, frequency, or duration of the conduct;
- The identity, age, and sex of the harasser(s) and the victim(s), and the relationship between them;
- The number of individuals who engaged in the harassing conduct and at whom the harassment was directed;
- The way in which the incidents occurred; and
- Whether other incidents occurred at the school involving different students

# What does harassment look like?



# Responsible Employees

Employees who are responsible to take immediate and effective corrective action include any employees who:

- Responsible Employees
- 1 Have the authority to take action to redress the harassment, or
  - 2 Have the duty to report to appropriate school officials harassment or any other misconduct by students or employees, or
  - 3 Any individuals who a student could reasonably believe have this authority or responsibility

*OCR Dear Colleague Letter (October 2010)*

# Responsible Employees



**Must immediately report** the misconduct so that the school may begin an investigation.

- Reach out to safe school climate specialist, and district's Title IX and Section 504/Title II coordinators, as appropriate.



**Should report even just one act**, as an investigation may discover additional acts that, together, may constitute a hostile environment.



**Be aware of warning signs**, such as behavior and attendance issues, that may signal that potential harassment is affecting a student's ability to participate in his/her educational program.



# District Liability

## Peer-On-Peer Harassment



Schools may be found liable for *failing to prevent* peer-on-peer harassment.

Responsible employees must *appropriately respond* when they become *aware*, or are provided with *“notice.”*

# Notice of Peer-on-Peer Harassment

- May include obvious signs, such as harassment occurring in hallways, during academic or physical education classes, during extracurricular activities, at recess, on the bus, or through graffiti.
- May be less obvious, such as student misconduct, which triggers an investigation that could lead to the discovery of additional incidents.
- Prior notice of a student's past harassing conduct may trigger a school district's obligation to prevent recurrence of harassment on future victims, but only if the school has actual notice of such prior history.

# Multiple Responsibilities

- Student conduct may trigger responsibilities to investigate and respond under:
  - Bullying law/safe school climate
  - Civil rights laws for protected-class harassment (e.g. Section 504, Title IX, Title VI)
  - Student Discipline Policy (generally)
- Bullying behavior directed toward students with disabilities may trigger additional obligations related to the student's right to a free appropriate public education (FAPE):
  - Section 504, IDEA

# A Word About Title IX

- Prohibits recipients of federal funds from discriminating **on the basis of sex** (but not sexual orientation)
- Prohibits sexual harassment of students by **school employees, other students and third parties** because such conduct denies students the benefits of an educational program
- Most common cause of action among bullying/harassment cases.
  - Much peer-to-peer banter, including that constituting bullying or harassment, involves offensive words with sexual connotations



# New Final Regulations



- New Title IX regulation holds schools **accountable for failure to respond equitably** and promptly to sexual misconduct incidents.
- Final Regulations are a **significant change** to how Title IX is managed and include extensive procedural requirements.

# New Final Regulations: What's New?



A **definition** of sexual harassment



A **duty** for schools to only investigate complaints of **conduct that occurred within their program or activity**



Adoption of an “**actual knowledge**” and “**deliberate indifference**” standard

Under the Final Regulations, if a school district has **actual knowledge** of sexual harassment in a district education program or activity, the district must respond **promptly** in a manner that is not **deliberately indifferent**.



A **detailed grievance process** for formal complaints of sexual harassment – **specific roles** for administrators in grievance process



# “Sexual Harassment”

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

- An **employee** of the District conditioning the provision of an aid, benefit, or service of the District on an individual’s **participation in unwelcome sexual conduct** (i.e., *quid pro quo*);
- **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 District’s education programs or activities; or
- **“Sexual assault”**\* (20 U.S.C. 1092(f)(6)(A)(v)), **“dating violence”**\* (34 U.S.C. 12291(a)(10)), **“domestic violence”**\* (34 U.S.C. 12291(a)(8)) or **“stalking”**\* (34 U.S.C. 12291(a)(30)).

\*These definitions can be found in Appendix A of the Shipman & Goodwin model Administrative Regulations.



# “Actual Knowledge”

“

In elementary and secondary schools, the District is deemed to have **actual knowledge** when notice of sexual harassment or allegations of sexual harassment:

1. is given to the Title IX Coordinator
2. is given to any official of the District
3. is given **to any employee of an elementary or secondary school.**

”

# General Response to Sexual Harassment

If the District has **actual knowledge** of sexual harassment in a District education program or activity...

The District must respond **promptly** and in a manner that is not **deliberately indifferent**.

The District's response must treat complainants and respondents **equitably** by offering supportive measures to the complainant and by following the grievance process outlined here *before* the imposition of any disciplinary sanctions or other actions that are not supportive measures.

The District is **deliberately indifferent** only if its response to sexual harassment is **clearly unreasonable** in light of known circumstances.

# Principles Under the New Final Regulations

## Focus on Due Process

- Treat complainant and respondent equitably
- Fairness to complainant and respondent
- Formal grievance process must be followed before discipline can be imposed

## No Bias – Must be Neutral

- Between men/women
- Between complainants/respondents
- Not based on stereotypes

# Responding to Potential Harassment Claims

## Recognize

that student-on-student conduct may constitute racial, sexual or disability harassment (or other protected-class harassment), and may implicate anti-harassment policies

## Remember

that misconduct need not be directed at a particular student to constitute discriminatory harassment fostering hostile environment

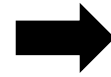
## Involve

relevant District personnel (Title IX, Title VI, or Section 504 Coordinator)

# Harassment Directed Toward Students with Disabilities

May trigger additional obligations related to the student's right to a free appropriate public education (FAPE)

- Section 504
- PPT process




Notify the student's case manager and/or the district's Section 504 coordinator


# Practical Suggestions

When reviewing “bullying” complaints always ask whether the conduct at issue may be based on a protected class. Is the alleged bullying based on:

- Race, national origin or color?
- Sex?
- Disability?
- Other protected classes under state law? (e.g. gender identity or expression, sexual orientation?)



If so, conduct BOTH bullying and discrimination/harassment investigations.



If you observe even just one incident of harassment (calling a student a racial slur), report it; an investigation should occur.

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# Investigations

# Before You Start Investigating

- *Understand the allegations/complaint*
  - What is the question(s) I need to answer?
  - Is how the student characterized it accurate?
- *Prioritize*
  - Any immediate safety issues? Need to call 211? Police? Parents?
- *Identify relevant policies (Title IX, Non-discrimination, 504 etc.)*
  - Contact relevant coordinators
- Does student have *IEP/504 Plan?*



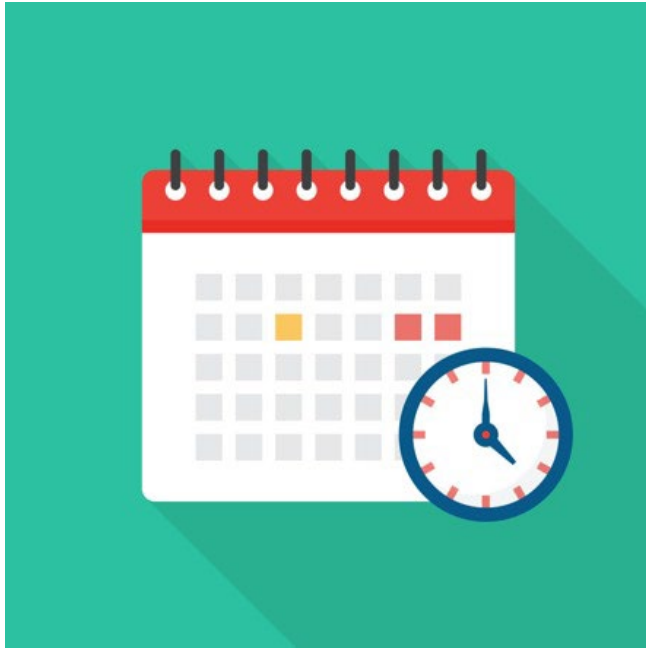


# Elements of Fair Discipline Process

- Prompt, thorough, fair
- Objective
- Opportunity to be heard
- Don't prejudge; don't rush to judgment
- Compile as much "proof" as reasonably possible
- Document (and date)
- Save evidence
- Be a critical thinker – does the information support the conclusion/meet the standards you need to prove
- Be patient

# How Should the Complaint Be Investigated?

Be mindful of:



Promptness

Neutral Fact Finding

Identify and Gather Relevant Evidence

FERPA and Confidentiality  
Considerations

**Document the investigation thoroughly!**

# Check Yourself

- Do I have a clear understanding of allegation?
- Am I going in with a preconceived idea as to what happened? Why?
- Do I have any idea “why” this happened?
- Has this happened before? Prior history?
- Who might have relevant information I need to talk to?



# Relevant Questions: Bullying/Harassment

- Was the student's conduct harassment?
  - Was it due to the victim's race, national origin, religion or disability? If so, conduct **BOTH** bullying and discrimination/harassment investigations (applying all relevant policies).
  - Was it sexual harassment – Title IX procedures needed
- What has been the impact? Does the conduct seem to deny or limit the student's ability to participate in or benefit from the educational program?
  - In other words, has the school environment become a hostile environment?



# What Does An Investigation Look Like?

- Who do you talk to (first)?
- What if the student is not in school?
- What evidence do you collect? How?
- Should I collect statements?
- Can a parent prevent you from talking to the student?
- What should be documented?



# Title IX Investigation

Upon a formal Title IX complaint being filed, one or more investigators will be assigned to gather relevant evidence and draft an investigative report.

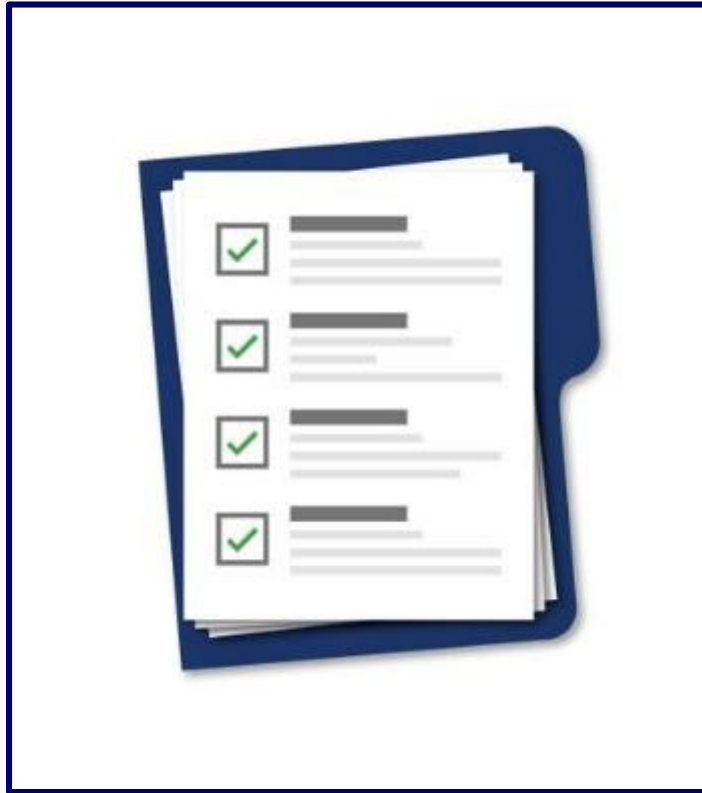


- Burden of proof and of gathering evidence sufficient to reach a responsibility determination rests on the District and not on the parties.
- The District must obtain voluntary, written consent (or consent of a parent/guardian) to obtain medical records to be used in the grievance process.
- The investigator(s) must provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- The investigator(s) may not restrict the ability of either party to discuss the allegations under investigation or to gather and present evidence.

# Title IX Investigation

For any meeting or investigative interview, the investigator(s) must provide a **written notice** to any party whose **participation is invited or expected**.

The notice must include:



- Date
- Time
- Location
- Participants
- Purpose



# Conducting a Thorough Investigation

## 1

## Conduct Investigation Interviews

- Interview of the parties
  - What happened? When did it happen? Where did it happen? Have you talked to others about what happened? Did you write down what happened?
- Witness interviews/statements
  - Do you know what is alleged to have happened? Where were you when it happened? Do you know the respondent and/or complainant? For how long and how would you describe your relationship with them (friend, acquaintance, etc.)?
- Listen carefully to answers. Ask follow up questions.
- Start with broad, general questions, then narrow the questions. Avoid yes/no questions.



# Title IX Investigation: Review of Evidence

- The investigator(s) must provide both parties an equal opportunity to inspect and review **any and all evidence** obtained as part of the investigation that is **directly related** to the allegations in the formal complaint.
- This includes any evidence upon which the investigator(s) does not intend to rely and any inculpatory or exculpatory evidence.
- The investigator(s) must send to each party (and the party's advisor, if any), the evidence subject to inspection and review in either electronic format or hard copy.
- The parties must have at least **10 days** (10 school days in the Shipman & Goodwin model Administrative Regulations) to submit a written response.
- The investigator(s) must consider these written responses prior to completing the investigative report.

# Title IX Investigation: Investigative Report



- The investigator(s) must create an investigative report that fairly summarizes the **relevant** evidence and must send the report to each party (and the party's advisor, if any) in electronic format or hard copy.
- Each party can then provide a written response to the investigative report.

# What is Relevant Evidence

Title IX investigators preparing an investigative report and decision-makers allowing questions must determine if the evidence is **relevant**.

- Evidence is relevant if it has a tendency to make something more or less probable than it would be without the evidence and it is of consequence in determining the question of sexual harassment.
  - Relevance is broad and can include questions about the who, what, when, and how of the allegations, as well as issues related to motive or bias, among others.
  - Relevant evidence includes both exculpatory and inculpatory evidence (i.e. must look at evidence that is both favorable and unfavorable to any party).
- Evidence that constitutes or seeks disclosure of information protected under a legally recognized privilege (i.e. attorney-client or doctor-patient) cannot be required, allowed, or relied upon unless the person holding the privilege has waived the privilege.



# Rape Shield

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Title IX investigators and decision-makers are not allowed to ask questions or seek evidence about a complainant's prior sexual acts because such acts are deemed irrelevant. The parties may not ask these questions of each other.

*Unless*... the evidence is used to prove:

- someone other than the respondent committed the alleged offense, or
- specific incidents of past sexual behavior between the complainant and respondent and is offered to prove consent.



# Investigating Cyberbullying



- Were school electronic devices used?
  - On or off campus?
- What is the impact on the victim in school?
- Does the cyberbullying do any of the following:
  - Create a hostile environment for the student at school?
  - Infringe on the rights of the victim at school?
  - Substantially disrupt the educational process or orderly operation of the school?

# Electronic Communications: Side Note



Electronic communications are the “Means” **not the “Conduct”**



Address behaviors for their Content, **not their Form**



Electronic Communications Give:

- Better Documentation
- More Widespread Distribution
- Adverse Effects are Greater





# How to Write a Summary/Report

If a report is needed:



- Include findings of fact
- Include a determination of whether acts of bullying/harassment were verified
- Include recommendation for intervention, which may include disciplinary action
- If NOT found to be bullying/harassment, still appropriate to set forth supports/interventions as needed.
- Avoid making legal conclusions

# Common Pitfalls in Investigations



- Failing to be prompt
- Missing class-based harassment red flags
- Failing to follow appropriate complaint procedures
- Not communicating with parents/sharing findings of the investigation
- Prejudging/incomplete investigation



# Remedial Actions

Vary widely as bullying/harassment takes many forms, but at minimum, MUST:



- Other possible remedial actions:
  - Implementation of positive behavioral interventions and supports process
  - Discipline
  - School-wide seminars/presentations
  - Counseling
  - Adequate adult supervision of outdoor areas, hallways, the lunchroom
  - Inclusion of grade appropriate bullying education and prevention curricula

# Interventions for Victims of Harassment/Bullying

- Intervention strategies for a harassed student may include:



- Counseling
- Increased supervision and monitoring to observe and intervene as appropriate
- Encouragement of student to seek help when victimized or witnessing victimization
- Peer mediation, where appropriate
- Student safety support plan

# Decision Making

In making a decision about discipline, consider:



- Do I have all the facts?
- Is a manifestation determination needed?
- Is there need for referral?
- Is a risk assessment needed?
- How do facts match up to policies and rules?

# Decision Making

In making a decision about discipline, consider:



Age, grade, developmental stage

Severity of misconduct (frequency, intensity)

Discipline history

Pattern and intent

Culture and communication factors

# Decision Making

In making a decision about discipline, consider:



- Standard for removal, ISS, OOS, Expulsion
- Legal restrictions on OOS Suspensions
- District responses in other similar cases
- Is response discretionary or mandatory?
- Are alternatives available that might be effective?

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# Police/DCF Involvement

# When to call DCF

## *DCF Criteria for Reporting Sexual Activity Involving Minors*

- Criteria were designed to serve as examples of situations that should be reported and are not meant to serve as an exhaustive list.
- The relative ages of the child and the sexual partner should always to be considered when determining whether or not a report is warranted.

# When to call DCF

## *DCF Criteria for Reporting Sexual Activity Involving Minors*

- Children under 13 years of age who are engaging in sexual intercourse, have a sexually transmitted disease, are pregnant or who are engaging in sexual activity that is developmentally inappropriate,
- Children of any age who are engaging in sexual activity with a member of their family regardless of the age of the individuals,
- Children of any age that are in a condition that is the result of sexual molestation or exploitation, and/or



# When to call DCF

## *DCF Criteria for Reporting Sexual Activity Involving Minors*

- Children of any age who are engaging in sexual activity and:
  - the relationship is non-consensual, hostile, contains the use of force or threatening, and one individual is being exploited, degraded or humiliated,
  - the child has emotional, psychological, or intellectual disabilities that may preclude him/her from consenting or understanding the consequences of consenting regardless of the child's age, and/or
  - the child is under the age of 16 years and the partner is 21 years of age or older.

## If DCF called

- Report to superintendent
- If neglect, abuse or assault by a school employee, parent must be called
- Report filed with DCF within 24 hours
- School officials are “pencils down” on district investigations

# When to call the police

- Student safety requires police intervention
- If meets criteria for DCF call, law permits you to call the local police OR DCF
  - Oral or electronic report as soon as practicable, but not later than twelve (12) hours
  - Even if police called, report must be filed with DCF within 24 hours

# When to call the police

- Principal of a school, or the principal's designee, is required to notify the appropriate local law enforcement agency when such principal, or the principal's designee, *believes that any acts of bullying constitute criminal conduct*
- If the Board *expels a student* for possession of a firearm, as defined in 18 U.S.C. § 921, or deadly weapon, dangerous instrument or martial arts weapon, as defined in Conn. Gen. Stat. § 53a-3, the Board shall report the violation to the local police.

# Role of SRO

- What standards apply?
- What standard is used if the SRO performs a search or seizure?
- What is a proper search?
- When is a student seized (e.g. detained) for 4<sup>th</sup> Amendment purposes in the school setting?
- What about questioning students

# Different Standards

- School officials held to different standard than police when conducting student searches, seizures and questioning students
- Police must have probable cause to search
- School officials are held to a reasonableness standard, no requirement of probable cause
- In most jurisdictions, reasonableness standard applies to an SRO, but not an outside law enforcement agent. Some jurisdictions always hold an SRO to a probable cause standard or hold the SRO to the standard when he or she is acting pursuant to an investigation

# School Officials – the Reasonableness Standard

- School officials conducting student searches must use reasonableness inquiry
- School search must be:
  - ❖ Reasonable at its inception.
  - ❖ Reasonably related to the purpose of the search.
  - ❖ Not excessively intrusive in light of the age and sex of students involved.

New Jersey v. T.L.O. 469 U.S. 325 (1985)



# Questioning Students in School

- Miranda rights are required when a person is interrogated while in custody
- When are students in “custody” for purposes of Miranda?
- Do school administrators need to Mirandize students?
- What about SROs? Outside law enforcement?
- Miranda v. Arizona, 384 U.S. 436 (1966)

# Recommendations

- SRO should not initiate any student searches, seizures or questioning
- If any action taken by SRO, should be at the explicit direction of a school administrator
- SRO presence for safety
- Disciplinary interactions with students conducted by and directed by school administration
- Communications with parents conducted by and directed by school administration

# Questions?

