Title IX in North Carolina Public Schools

Prevention, Response, & Legal Compliance

Administrator Training
July 2026

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LEARNING OBJECTIVES

By the end of today's training you will be able to:

- Recognize conduct that may implicate Title IX.
- Understand your reporting obligations.
- Avoid common mistakes that create district liability.
- Implement supportive measures appropriately.
- Respond confidently to complaints involving students or employees.
- Know the grievance and investigation process for Title IX allegations.

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WHY THIS TRAINING MATTERS

School districts face increasing scrutiny from:

- Parents
- Courts
- OCR investigations
- Media
- Social Media

One poor response can create years of litigation.

THE CURRENT LEGAL LANDSCAPE

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WHAT IS TITLE IX?

"*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[.]"

20 USC Sec. 1681

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THEMES

- Access
- Protect
- Transparency
- Evidence
- Improvement
- No Bias

TITLE IX COORDINATOR

- Coordinate the district's duty to PREVENT / INVESTIGATE / REMEDY
  - ensure policy / grievance procedures are updated
  - ensure notices are given to employees and students
  - ensure formal complaints are investigated
  - ensure appropriate steps to prevent immediate harm
  - ensure investigators are appointed and trained
  - ensure decision-makers are appointed and trained
  - ensure that persons deciding appeals are appointed and trained
  - ensure proper record keeping
  - ensure proper interaction with law enforcement

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WHAT CONDUCT IS COVERED?

- Allegations of *sexual harassment* that occur in an *education program or activity* **located within the United States** and of which the recipient has *actual knowledge*.

- If a person alleges misconduct that fits in the above description, institutions have a duty to respond. The Title IX Final Rule sets out your legal obligations in responding to such allegations.

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THREE QUESTIONS TO ASK

Before worrying about discipline, ask:

1. Could this be Title IX?
2. Do we have "actual knowledge"?
3. What must we do next?

Remember: your first job is not to decide who is right. Your first job is to ensure the district responds appropriately.

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MEET JORDAN AND MORGAN

- Ridgeview High School is a public high school in North Carolina serving approximately 1,400 students in grades 9–12.
- Jordan Davis is a 17-year-old junior at Ridgeview. Jordan is an honors student, plays varsity soccer, and is generally well regarded by teachers and coaches. Jordan has no prior disciplinary history.
- Morgan Lee is a 16-year-old junior at Ridgeview. Morgan is also an honors student and participates in student government and the school's theater program. Morgan has no prior disciplinary history.
- Jordan and Morgan had been dating for approximately five months. Their relationship was known to several friends and at least two teachers. They broke up approximately three weeks before the events described later.

MEET JORDAN AND MORGAN

- The breakup was not entirely amicable. After the breakup, Jordan sent Morgan several text messages asking to talk and suggesting that they should “give it another chance.” Morgan responded that the relationship was over and asked Jordan to stop contacting Morgan.
- Jordan nevertheless continued to send occasional messages. Some were apologetic. Others expressed frustration that Morgan was “ignoring” Jordan.
- Two days before the incident, Jordan sent Morgan a message stating: “I really need to talk to you. Please don’t make me come find you at school.”
- Morgan interpreted the message as threatening. Jordan later explained that Jordan simply meant that it would be difficult to have a conversation if Morgan continued avoiding Jordan.

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ACTUAL KNOWLEDGE: THE TRIGGER

"Actual knowledge" is an objective standard.

Actual knowledge exists when an employee with authority to correct sexual harassment receives information that can objectively be taken to allege sexual harassment.

Actual knowledge is based on **WHAT WAS REPORTED**, not what you believe.

WHAT IS ACTUAL KNOWLEDGE?

- *Doe v. Fairfax County School Board* (4th Cir. 2021)
  - High school student reported that another student sexually assaulted her during an overnight band trip.
  - School administrators interviewed students but concluded discipline was not warranted.
  - Jury found the assault occurred but concluded the school lacked "actual knowledge."
  - Fourth Circuit reversed and ordered a new trial.

- Actual knowledge depends on **what was reported**, not whether school officials believed the allegation.

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WHAT COUNTS AS ACTUAL KNOWLEDGE?

- A student sends an email titled "Need to Report Peer Pressure and Sexual Harassment" to a school counselor, who forwards the email to the principal. The email alleged a student pressured another student into nonconsensual sexual activity.

- A student's parent meets with the Chief Student Services Officer and states her student has been the victim of a sexual assault during a class trip.

- As part of an ongoing investigation into student misconduct (that is not sexually related), the investigator finds, in the submitted material, an email a student sends a faculty member stating another student touched him in a nonconsensual manner.

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DO WE HAVE ACTUAL KNOWLEDGE?

- **Assistant Principal overhears: "Coach keeps sending me inappropriate Snapchats." Student immediately walks away.**

a. No – the student did not file a complaint.

c. Yes – notify the Title IX Coordinator.

b. No – need additional information.

d. Only if the parent complains.

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PRACTICAL LESSONS

1

Take every report of possible sexual harassment seriously.

2

Do not wait until you are convinced misconduct occurred before responding (by notifying the Title IX Coordinator).

3

Conduct a prompt, documented response consistent with Board Policy.

4

Avoid thinking:

- "I don’t think the student is telling the truth."
- "This probably wasn’t sexual harassment."
- "We'll wait until we know more before doing anything."

THE REPORT

The Incident

- On a Thursday afternoon, Ridgeview's junior class attended an athletic event at the school's football stadium.
- After the event ended, students were permitted to leave through several exits. Jordan approached Morgan near the concession stand and asked to speak privately.
- According to Morgan, Morgan said: "I already told you I don't want to talk to you."
- Morgan says Jordan responded: "You're going to talk to me."
- Morgan walked away toward a less crowded area behind the stadium.
- Jordan followed.
- There are no security cameras covering the precise location where the encounter occurred, although a camera captures portions of the walkway leading toward the area.
- The parties' accounts diverge substantially at this point.

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MORGAN'S REPORT

Morgan's Account

- Morgan states that Jordan grabbed Morgan's wrist and said: "You're not leaving until you listen to me."
- Jordan pulled Morgan toward a nearby equipment-storage area.
- Morgan repeatedly told Jordan to let go.
- Jordan eventually released Morgan's wrist but then blocked Morgan from leaving.
- Jordan kissed Morgan without permission.
- Morgan describes pushing Jordan away and saying: "No. Stop."
- Morgan says Jordan responded: "You used to want this."
- Jordan then put an arm around Morgan and attempted to kiss Morgan again.
- Morgan pushed Jordan away, yelled, "Get off me," and walked quickly toward the stadium.
- Morgan did not report the incident immediately.

THE REPORT

The Immediate Aftermath

- Morgan returned home after the event and sent a text message to Morgan's close friend, Taylor.
- The message stated: "Jordan followed me and wouldn't let me leave. Jordan kissed me even after I said no."
- Taylor responded: "Are you okay?"
- Morgan replied: "I'm fine. I just don't want to see Jordan anymore."
- Morgan did not tell a parent that evening.
- The following morning, Morgan went to the school counselor and reported the incident.

You receive Morgan's report – what do you do next?

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JORDAN'S INITIAL RESPONSE

Jordan's Account

- Jordan acknowledges following Morgan but denies grabbing or restraining Morgan.
- Jordan says Morgan initially agreed to talk and voluntarily walked toward the equipment area.
- Morgan became upset during the conversation and began yelling.
- Jordan acknowledges kissing Morgan but says Morgan did not object and initially kissed Jordan back.
- Jordan states: "I thought we were finally working things out."
- Jordan says Morgan pushed Jordan away only after Jordan attempted to kiss Morgan a second time.
- Jordan denies preventing Morgan from leaving.
- Jordan says: "I would never force Morgan to do anything."

DELIBERATE INDIFFERENCE

- *What creates liability?*
  - When a district's response is CLEARLY UNREASONABLE in light of the known circumstances.
- The question is not: Did the district make a perfect decision?
- The question is: Did the district make a reasonable response?

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A REPORT COMES IN…

- Receive Report
- Ensure Immediate Safety
- Notify Title IX Coordinator (and law enforcement)
- Document what was Reported
- Consider Supportive Measures
- Follow District Procedures

Administrators want to solve the problem immediately – focus on safety, notification, and documentation.

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WHAT CONDUCT DOES TITLE IX COVER?

- Quid Pro Quo Harassment
- Hostile Environment
- Specific Criminal Conduct

QUID PRO QUO HARASSMENT

It can happen with just one statement.

A principal tells a teacher: “If you want your contract renewed, you should have dinner with me.”

A coach tells a student: “You’ll start Friday if you’re nicer to me.”

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QUID PRO QUO HARASSMENT

Characteristics

- ✓ Only employees can commit quid pro quo harassment under Title IX.
- ✓ No pattern is required.
- ✓ Does not require severe or pervasive conduct.

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HOSTILE ENVIRONMENT

When does conduct become legally actionable?

Was the conduct…

- ✓ Severe?
- ✓ Pervasive?
- ✓ Objectively offensive?

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HOSTILE ENVIRONMENT

When does conduct become legally actionable?

Then ask…

- ✓ Did the conduct effectively deny equal access to education?

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SEXUAL HARASSMENT: CRIMINAL CONDUCT

Sexual Assault

Fondling

Stalking

Dating Violence

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SCOPE: EDUCATION PROGRAM OR ACTIVITY

"Education Program or Activity”

- All the operations of a district.
- Includes: locations, events or circumstances over which the district exercised substantial control over both the Respondent and the context in which the harassment occurs.

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WHAT DOES "DENIED EQUAL ACCESS" MEAN?

A student does not have to withdraw from school. Examples include:

- Declining grades
- Avoiding a classroom
- Quitting athletics
- Leaving extracurricular activities
- Anxiety affecting attendance
- Difficulty eating or sleeping

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WHAT IS NOT TITLE IX?

Not every inappropriate act constitutes sexual harassment under Title IX.

x. Ordinary teasing

x. Mutual flirting

x. Personality conflicts

x. General bullying unrelated to sex

x. Classroom discipline issues

May still violate Board policy – even if not Title IX.

PRACTICE TIP

Don't Ask…	Instead Ask…
Is this Title IX?	Could this be Title IX?

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THRESHOLD ASSESSMENT

Jordan and Morgan

- Assuming Morgan's account is true, what conduct is alleged?
- Does the alleged conduct potentially fall within the Title IX sexual harassment definition?
- Did it occur within the district's education program or activity?
- Does the district need to resolve consent or credibility before concluding that it could be Title IX?

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MANDATORY REPORTING

- Listen.
- Ensure immediately safety.
- Notify the appropriate official promptly.
- Document what was reported.
- Do **not** promise confidentiality.

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WHAT NOT TO SAY

"Don't worry, I won't tell anyone."

"I'm sure it's just a misunderstanding."

"You need proof before I can do anything."

INSTEAD, SAY

"Thank you for telling me."

"Our priority is your safety."

"I need to share this with the appropriate personnel."

DOCUMENTATION MATTERS

- Date & time of report.
- Who made the report.
- Exact words used when possible.
- Individuals present.
- Immediate actions taken.
- Notifications made.
- Supportive measures offered.

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INITIAL COMPLIANCE STEPS

- Identify your Title IX team.
  - Investigators, decision-makers, appeal entities, informal resolution facilitators.
  - Define roles and identify the required separation between them.

- Consider your policy and procedure options.
  - Informal Resolution;
  - Formal Investigation; and
  - Code of Conduct.

- How will you explain your process to others?

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BEST PRACTICES FOR INTAKE

Explain options to a potential Complainant.

- Option One: do nothing.
- Option Two: file a Formal Complaint and proceed with an Informal Resolution.
- Option Three: file a Formal Complaint and proceed with an Investigation… including information that must be shared with a Respondent.
- Option Four: the complaint does not meet the definition of "sexual harassment" – proceed under different policies.
- Option Five: Complainant does nothing then changes their mind next year.

INTAKE MEETINGS

Did you as the Title IX Coordinator receive a "Formal Complaint" from a "Complainant"?

Allegations against a Respondent?

Alleges Sexual Harassment?

Person is attempting to/participating in an education program or activity?

Person experienced the alleged Sexual Harassment?

The alleged Sexual Harassment occurred within the district's Title IX jurisdiction?

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WHAT ARE SUPPORTIVE MEASURES?

Individualized services designed to:

- ✓ Restore or preserve equal educational access
- ✓ Protect student safety
- ✓ Avoid unnecessary burden on either party

Supportive measures are not punishment.

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WHAT ARE SUPPORTIVE MEASURES?

- 📚 Academic accommodations
- 🗓️ Schedule changes
- 🚪 No-contact directives
- 🧠 Counseling referrals
- 🚶 Escort between classes
- ⚽ Temporary extracurricular modifications
- 🚌 Transportation adjustments

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INTAKE AND SUPPORTIVE MEASURES

- The Title IX Coordinator, Ms. Reynolds, met with Morgan along with Morgan's mother.
- Morgan became visibly upset during the meeting and stated that Morgan was afraid Jordan would "make everyone think I'm lying."
- Morgan's mother asked whether the school could keep Jordan away from Morgan.
- Morgan also stated: "I don't necessarily want Jordan suspended. I just don't want Jordan anywhere near me."

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INTAKE AND SUPPORTIVE MEASURES

- The Title IX Coordinator discusses supportive measures with Morgan and Morgan's mom.
- Morgan requests:
  - No-contact restrictions between Morgan and Jordan;
  - A schedule adjustment so that Morgan and Jordan are not in the same English class;
  - Permission to leave class five minutes early to avoid encountering Jordan in the hallway;
  - An escort to the parking lot for the next two weeks; and
  - Assistance addressing rumors that Morgan believes are beginning to circulate among students.

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INTAKE AND SUPPORTIVE MEASURES

- **The Coordinator explains that supportive measures are available regardless of whether Morgan files a formal complaint.**
- Morgan initially says: “I don’t know if I want to go through a whole investigation.”
- What should the Coordinator say and do?

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OVERVIEW OF THE PROCESS: FORMAL COMPLAINT

A document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting the district investigate allegations of sexual harassment.

In response to a Formal Complaint, the district must follow a grievance process.

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THE FORMAL COMPLAINT

- Morgan's written complaint states: "Jordan followed me after the football game, grabbed me, wouldn't let me leave, and kissed me even after I told Jordan no. Jordan did it again after I pushed Jordan away."
- The complaint identifies Taylor as a witness to the text messages sent immediately after the incident.
- Morgan also tells the Coordinator that another student, Casey, may have seen Jordan and Morgan talking near the stadium.

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TITLE IX COORDINATOR-SIGNED FORMAL COMPLAINTS

- When should the Title IX Coordinator file a Formal Complaint?
  - When the Coordinator determines a "non-deliberately indifferent response to the allegations requires an investigation."
- Signing a Formal Complaint does NOT make the Coordinator a "complainant".
- Examples:
  - Serial Respondent; and
  - Pattern of alleged sexual harassment by a Respondent in a position of authority.

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CLOSING A REPORT OR COMPLAINT

MANDATORY

- Allegations, even if proven, would not constitute a violation of Title IX Policy.
- Alleged sexual harassment did not occur in an **education program or activity** or in the **U.S.**

PERMISSIVE

- Complainant requests withdrawal.
- Respondent is no longer enrolled or employed by the district.
- District is prevented from gathering sufficient evidence.

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PROCEDURE TO CLOSE A REPORT OR COMPLAINT

Title IX Coordinator must notify parties, including:

- The reason(s) for closure;
- Parties' rights to appeal; and
- Directions to an appropriate district office or department to resolve the report or complaint, if any.

OVERVIEW OF THE PROCESS: NOTICE OF ALLEGATIONS

- A document written by the Title IX Coordinator and sent to the Complainant and Respondent that provides notice of the sexual harassment allegations and the district's grievance process.
- Must give the parties sufficient time to review the Notice before scheduling investigation interviews.
- Must send an additional notification to the parties if new allegations arise during the investigation.

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Title IX Coordinator: Written Notice of Allegations to Parties

- Sufficient details to allow parties to respond and prepare for initial interviews;
- Identity of the parties involved;
- Conduct alleged to be sexual harassment;
- Date and location of alleged incidents;
- Statement that Respondent is presumed not responsible and responsibility determination is made at conclusion of process;
- Parties' right to an Advisor;
- Parties' right to review evidence; and
- Notice that College prohibits making knowingly false statements or submitting false information.

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WHAT IS AN INFORMAL RESOLUTION?

- No definition in the regulations.
  - "unnecessary"
  - "Informal resolution may encompass a broad range of conflict resolution strategies, including but not limited to arbitration, mediation, or restorative justice."

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INFORMAL RESOLUTION

- Informal resolution may not be used for a student's allegations against a district employee.
- Voluntary – parties must provide written consent.
- Independent, neutral person facilitates informal resolution (not the Title IX Coordinator).
- Process may end at any time prior to resolution agreement.

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INFORMAL RESOLUTION

- Title IX Coordinator provides notice to parties of:
  - Allegations of sexual harassment;
  - Requirements of the informal resolution process; and
  - Potential outcomes resulting from participating in the informal resolution process.

- Resolution is concluded only when all parties have signed a written agreement.
  - Agreement is non-revocable and non-appealable.

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REMOVAL/LEAVE

- A district is permitted to remove a Respondent from school on an emergency basis, provided the district:
  - Undertakes an **individualized safety and risk** analysis;
  - Determines an **immediate threat** to the physical health or safety of any person arising from the allegations justifies removal; and
  - Provides the Respondent with **notice and an opportunity** to challenge the decision immediately following the removal.

- A district is permitted to place an Employee-Respondent on administrative leave with pay during the pendency of its grievance process.

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PRESUMPTION OF NON-RESPONSIBILITY

- **An Important Principle**
  - At all times prior to a determination regarding responsibility by the decision-maker, the Respondent is presumed not responsible for the alleged conduct.

- **This Does NOT Mean**
  - ❌ The complaint lacks merit.
  - ❌ The complainant is not believed.

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RETALIATION IS PROHIBITED

Individuals may not be retaliated against because they:

- ✓ Filed a complaint
- ✓ Reported misconduct
- ✓ Participated in an investigation
- ✓ Served as a witness
- ✓ Declined to participate

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CURRENT LEGAL LANDSCAPE

- ✓ United States Supreme Court precedent
- ✓ Fourth Circuit precedent
- ✓ North Carolina statutes
- ✓ 2020 Title IX Regulations
- ✓ OCR guidance
- ✓ Board policy
- ✓ Advice of counsel

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COMMON OCR FINDINGS AGAINST SCHOOL DISTRICTS

OCR frequently identifies:

- ❌ Delayed responses
- ❌ Failure to notify the Title IX Coordinator
- ❌ Inadequate documentation
- ❌ Failure to offer supportive measures
- ❌ Poor communication with the parties
- ❌ Inconsistent application of policy

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COMMON LITIGATION MISTAKES

Mistake #1	Waiting to Report.
Mistake #2	Trying to Investigate Alone.
Mistake #3	Promising Confidentiality.
Mistake #4	Poor Documentation.
Mistake #5	Failing to Offer Supportive Measures.

TITLE IX TRAINING FOR TITLE IX PERSONNEL

- Annual training must be provided to Title IX Coordinators, investigators, decision-makers, and those involved in informal resolution.

- Training in the following topics is mandatory:
  - The definition of sexual harassment for Title IX purposes.
  - The scope of education programs and activities.
  - How to investigate.
  - The scope of the grievance process.
  - How to serve impartially.
  - Issues of relevance in creating investigation reports.

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COMPLIANCE REQUIREMENTS

All training materials must be posted on districts' websites.

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FINAL(FIRST SESSION) THOUGHTS

Title IX compliance is not about having all the answers.

It is about:

- Recognizing concerns,
- Responding promptly,
- Treating everyone fairly,
- Documenting carefully, and
- Following district policy.

PART 2
INVESTIGATIONS

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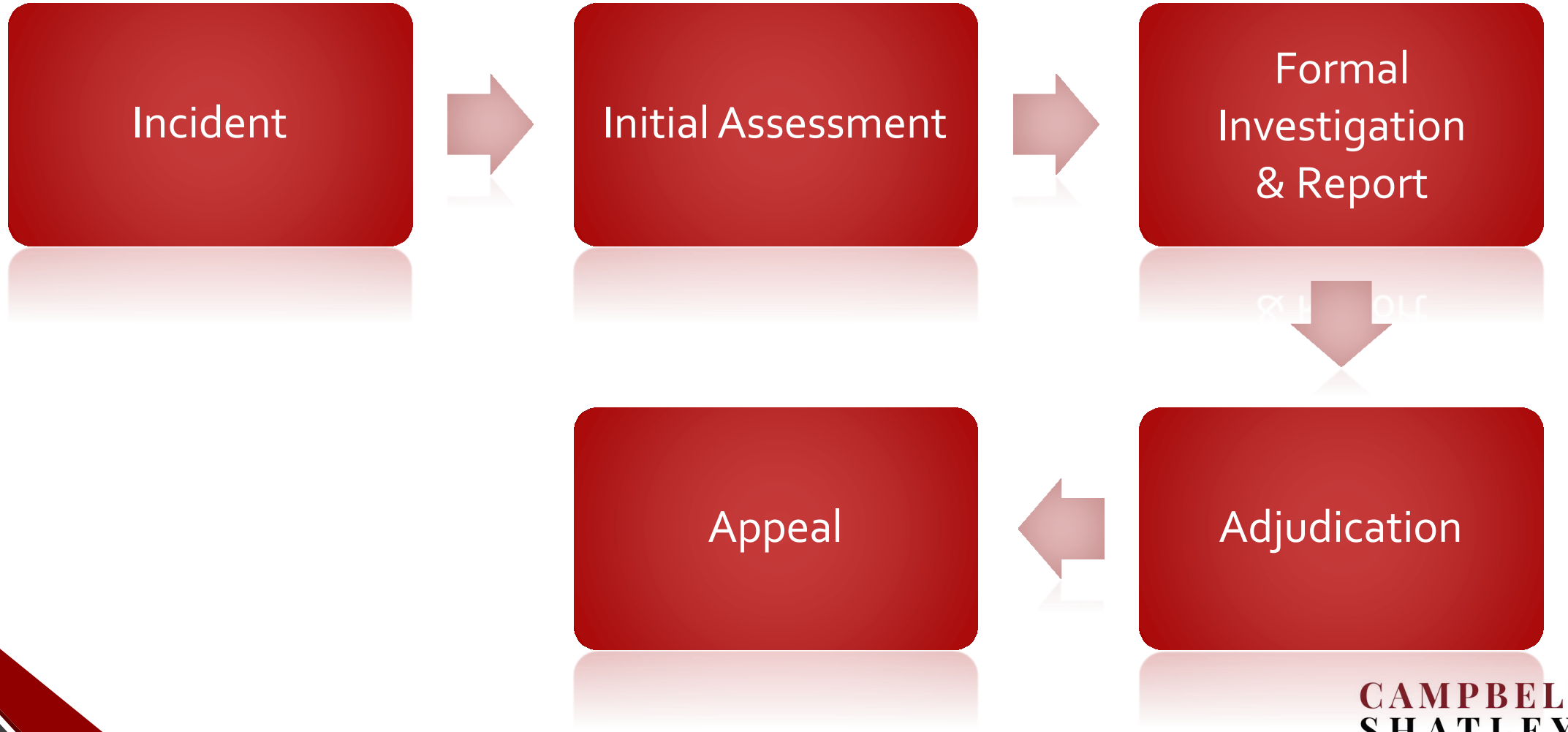
THE PROCESS



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Goal of the Investigation

To reach a determination as to whether a Respondent violated one or more Board policies prohibiting sexual harassment.

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OVERVIEW

- *When* to investigate?
- *Who* investigates?
- Elements of an Investigation
- Intersections with Criminal Investigations/Proceedings
- Conducting the Investigation
- Collecting & Analyzing Evidence/Relevance
- Advisors
- Written Investigative Report

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WHEN TO INVESTIGATE

- After the receipt of a Formal Complaint by the Title IX Coordinator.
- Title IX Coordinator appoints a trained investigator & provides written notice to the parties about rights and responsibilities during the investigation.

WHEN TO **INVESTIGATE**

Do the allegations as stated (i.e. if true) constitute a violation of Board policy?

- Including whether the alleged conduct occurred in an education program or activity, located within the US, of which the District has actual knowledge.
- If yes, does Complainant want to pursue a formal investigation?
  - If yes, investigate.
  - If no, are the allegations of the type that the District must investigate regardless of Complainant's wishes?
    - Requires Title IX Coordinator to submit complaint.

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MORGAN AND JORDAN

- The Formal Complaint
- Morgan's written complaint states:

"Jordan followed me after the football game, grabbed me, wouldn't let me leave, and kissed me even after I told Jordan no. Jordan did it again after I pushed Jordan away."

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WHEN TO **INVESTIGATE**

Factors to consider if a Complainant **does not** want an investigation:

- The more **serious** the conduct, the higher need to investigate (e.g., **one** instance of rape).
- The more **frequent** the conduct, the higher the need to investigate (e.g., widespread behavior against multiple victims).

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FORMAL COMPLAINTS

- May only be initiated/submitted by Complainant, Complainant's Parent, or Title IX Coordinator.
- Should include:
  - Name and address of Complainant
  - Description of alleged sexual harassment
  - Request to investigate
  - Signature of Complainant

*Practice Tip: Districts should use a standard template for the Complaint form.

WHO INVESTIGATES

- Who?
  - Title IX Coordinator cannot conduct the investigation but still oversees the process. *
  - **Title IX Coordinator must be completely informed of any complaints.**
  - Conflicts of interest? Title IX Coordinator must choose a ***neutral*** investigator.

*For districts that have two Title IX Coordinators: one coordinator may serve as an investigator so long as they do not act in any other capacity for that complaint/investigation.

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WHO INVESTIGATES

- Who?
  - School administrators, district administrators, contracted parties (lawyer) may all serve as investigators.
  - For student investigations – usually school administrator
  - For employee investigations – usually district administration or outside party
- All investigators must be trained

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MORGAN AND JORDAN

- Who should investigate Morgan's complaint?

  a. Title IX Coordinator
  b. Assistant principal
  c. Assistant Student Services Director
  d. Media Coordinator

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GENERAL EQUITABLE PRINCIPLES

- Evidence must be evaluated objectively.
- Both parties have opportunity to have Advisor present in any meeting, interview, or decision-making process.
- Supportive measures should be offered to both parties.
- Respondent is presumed not responsible for alleged conduct.
- Written notice of any meeting, interview, or hearing must be provided to parties.
- Burden of proof and gathering of evidence rests on the District.

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ELEMENTS OF INVESTIGATION

- Purpose: A fact-finding process to determine:
  1) whether the Respondent violated Board policies prohibiting sexual harassment; and if so,
  2) what steps the District will take to end the sexual harassment/ violence, eliminate the hostile environment, and prevent recurrence.

- **Investigations must be *prompt, thorough and equitable*.**

- **Investigation may include (but is not limited to):**
  - **Conducting interviews with the parties and witnesses.**
  - **Reviewing law enforcement investigation documents.**
  - **Reviewing student and/or personnel files.**
  - **Gathering and examining relevant documents and evidence.**

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INTERSECTION WITH CRIMINAL INVESTIGATIONS

- State law requires the district to report any sexual assault or abuse to law enforcement.
- The District should inform alleged victim of their right to make a criminal report and not dissuade an alleged victim from making a criminal report.
- Evidence obtained in a criminal investigation may be used by the District as source of fact-finding.

INTERSECTION WITH CRIMINAL INVESTIGATIONS

- The District ***may not*** wait for the conclusion of a criminal investigation to act under Title IX.
- However, the District may need to [slightly] delay an investigation during the law enforcement/ criminal investigation.
  - If the District does delay, the District still must offer supportive measures to the parties.
  - The District should **update** the parties on the status of the matter during any delay.

INTERSECTION WITH CRIMINAL INVESTIGATIONS

- **OCR Advice**: The District should seek a Memorandum of Understanding (MOU) with local law enforcement regarding concurrent criminal and Title IX investigations.
  - The MOU must allow the District to meet its Title IX requirements.
  - The MOU must also recognize student FERPA-based rights (i.e., no sharing of student information from the District to law enforcement unless properly subpoenaed or otherwise allowed by law).

CONDUCTING THE INVESTIGATION

- Investigations must be **prompt, thorough, and equitable**.
- The District aims to bring all investigations to resolution within ***30 business days*** from the date the Title IX Coordinator determines an investigation should commence.
- Extensions of this timeframe allowed for "good cause":
  - Complexity or number of allegations;
  - Severity and extent of alleged misconduct;
  - Number of parties, witnesses, and other evidence involved;
  - Availability of the parties;
  - A request by a party to delay an investigation;
  - Effect of a concurrent criminal investigation or proceeding;
  - Intervening holidays, breaks, or other closures;
  - Good faith efforts to reach a resolution; or
  - Other unforeseen circumstances.

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Investigation Hack #1

- At the beginning of the investigation, create a system to organize evidence to assist in final report, including:
  - A list of potential witnesses
  - An inventory document for all evidence collected, including:
    - Documents
    - Audio/Video Recordings
    - Messages
    - Other artifacts from the investigation
  - Note taking document
  - Document summarizing witness interviews
  - Create two timelines:
    - Investigation procedure timeline
    - Timeline of events relative to the complaint

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MORGAN & JORDAN

- How do you begin to organize this investigation
  - Potential witnesses
    - Morgan
    - Jordan
    - Taylor (Morgan's friend who she sent a text message to)
    - Casey (possible eye witness)
    - Staff at the stadium event
    - Jordan's witnesses?
    - Other students?
  - Written evidence
    - Text messages between Morgan and Taylor
    - Messages between Morgan and Jordan?
  - Other evidence
    - Video surveillance?

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CONDUCTING THE INVESTIGATION

- Conducting Interviews
  - Typically, the Complainant, Respondent, & any witnesses
  - A party's Advisor may be present during their interview
  - Written Notice to the parties
- Recordings
  - Interviews may be recorded by the District
  - Should you use AI recording/transcribing services?
- **Parties may refuse to participate – even students.**

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WITNESS INTERVIEWS

You have interviewed Morgan and Jordan during your investigation. You left two voicemails for Casey to schedule an interview but have not heard back. You were scheduled to meet with Taylor last week but received an email that she had a test and needed to reschedule and that they were going on a trip out of state for a week after that.

How should the investigator proceed?

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CONDUCTING THE INVESTIGATION

- Advisors:
  - During investigation
    - Role limited to advice, guidance, and support for a party
    - May be **present** at all stages of investigation but may not **participate/advocate** in the interview
    - Must maintain privacy of records shared
    - Expected to refrain from interfering with investigation
  - Discipline:
    - One warning
    - Advisor who continues to disrupt or overstep limits of role will be asked to leave
    - **Title IX Coordinator** will determine whether they may return or be replaced

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Interview Best Practices

Interview Best Practices

- Take your time and be thorough. (Time, interviews, seriousness of the matter builds pressure.)
  - Always get the WWWHW
- Be thorough in who you speak to and what you ask them. Do not solely rely on written statements from witnesses.
- Do not be afraid to conduct follow-up interviews with the parties/ witnesses (i.e., interview same person more than once)
- Do not make promises to parties about the potential findings of your investigation or whether someone will have to testify at a hearing.

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Investigation Hack #2

Summarize interview notes immediately after the meeting. It may help some people to dictate the notes into your phone recorder and then transcribe later.

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Witness/Party Interviews

- Interview witnesses separately
- Ask a lot of questions
  - Start broad and make questions narrower – don't lead a witness (until you need to)
  - "Tell me what happened yesterday" v. "I know what happened yesterday, and want to hear it in your own words"
  - Come back to clarify, multiple times if necessary
  - Ask specific question to clarify and test credibility
- Using a prepared list of questions is fine – **but don't be afraid to deviate from the list.**
  - Ask follow-up questions (again, deviate from the list of prepared questions)

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MORGAN & JORDAN

- Jordan's interview:
  - Jordan says the relationship had been "complicated" and that the two had discussed getting back together.
- What's your next question?
  - When did you have these discussions?
  - How? Text? In person, etc.?

Investigation Hack #3 – Witness Interviews

- Be a blank slate: never assume you know anything!
  - When interviewing the parties, always corroborate what they put in writing (ex. the formal complaint document); what they told the Title IX Coordinator, and what they told other witnesses.
  - This tests credibility and is a regular interview technique to gain further information.

The Respondent Interview

- Give the Respondent the opportunity to tell his/her side and to respond to all allegations
  - Don’t "beat around the bush" with questions that are too broad
  - ex. "Tell me what happened on April 5th"
  - Instead: "It is alleged on April 5th you approached the complainant and…. Tell me what happened?"

- Be upfront with the Respondent on the allegations and other important evidence
  - Know what to release and what to hold back
  - Hold back facts to determine if Respondent can corroborate them

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Respondent Interview

- Do not be afraid to ask the hard questions (ask leading questions when necessary)
  - Did you/employee have a sexual relationship with the Complainant?
  - Did you ask the Complainant to have sex with you?
- Do not let assumptions stop you from asking a question?

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HYPO: Teacher Accused of Sexually Harassing Student Via Disappearing Text Messages

- Have you sent personal text messages to any of your students? Have you texted with any students?
- Are your text messages personal or class related?
- Which students? When? How many times? (Break this down by each student.)
- (Assume Employee doesn't mention the student in question.) Have you ever exchanged text messages with Jamie Fisher?

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Employee Accused of Texting with a Student; Allegation that the Text May Have Been Inappropriate

- Jamie has provided screen shots of the following text messages? Did you send these messages?
  - Why would you send Jamie text messages about . . . ?
  - Why would you send Jamie text messages late at night?
  - Have you had any physical/romantic contact with Jamie?
  - Have you met with Jamie outside of class?
  - Other than sending Jamie text messages outside of class, any other contact outside of school?
  - May I see whether these messages are on your phone? Now?

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MORGAN & JORDAN
Getting the Evidence

- Do you have additional text messages between you and Morgan?
  - **Can you show me your phone? Show me the text messages?**
  - Well, when did you discuss getting back together?
  - If you're not going to allow me to see these photos, I am going to think there is something you are hiding and that concerns me.
- Do you have messages between you and your witnesses/friends about this complaint?

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Collection and Preservation of Evidence

- Collect and preserve all evidence in an investigation.
  - E-mails, text messages, videos, recordings
  - Employee Documents – contracts, evaluations, personnel file material
  - Written Statements – ***dated, signed, sealed and delivered*!**
    - Focuses on Who, What, When, Where, How, and Why
  - Interview Notes (yes – your notes)
  - Everything!!!!!

- Consider that **all** evidence will be turned over to the parties.

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Hack #4 – DON’T LET THIS BE YOU

EVIDENCE

Investigator should objectively evaluate all physical, documentary, or other evidence as appropriate and available.

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STANDARDS OF EVIDENCE

Standard of Evidence	Level of Proof
Beyond a Reasonable Doubt	Highest standard of evidence; used in criminal law; facts of the case lead to only one reasonable conclusion
Clear and Convincing	Hybrid; proof that a particular fact or event was highly and substantially more likely than not to have occurred
Preponderance of Evidence	Civil standard; proof that a fact or event was **more likely than not** to have occurred

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EVIDENCE

- No person acting on behalf of the District may rely upon or otherwise use questions or evidence that seek disclosure of information protected under a legally recognized privilege, unless the privilege is waived.
  - Attorney-Client
  - Healthcare Provider-Patient (G.S. 8-53, -53.3, -53.5, -53.13)
  - Agents of rape crisis centers and domestic violence programs-Victim (G.S. 8-53.12)

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Evidence is generally considered relevant if it has value in proving or disproving a fact at issue:

- Alleged policy violation
- A party or witness' credibility

The investigator makes initial relevance "decisions" by including a summary of evidence in the investigation report

But relevance is ultimately up to the decision-maker, who is not bound by the investigator's judgment

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MORGAN & JORDAN
ISSUES OF RELEVANCY

- The Investigator interviews one of the witnesses, Taylor. At the end of the interview, Taylor reads back through their text messages with Morgan, on the evening after the incident. **Are these text messages relevant? What should the investigator do?**

- During an investigation, Morgan shows the Investigator copies of text messages Jordan sent the days and morning before the alleged incident that have since been deleted by Jordan. **Are these text messages relevant? What should the investigator do?**

- In your interview with Jordan, Jordan states Morgan voluntarily followed Jordan toward the equipment area. **What can the investigator do to investigate this assertion?**

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WHAT IS CREDIBILITY?

- Credibility assessment may not be based on a person's status as a Complainant, Respondent, or Witness
- Accuracy and reliability of information
- Primary factors: corroboration and consistency
- Avoid too much focus on irrelevant inconsistencies
- Source + content + plausibility

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MORGAN & JORDAN – CREDIBILITY

- What credibility considerations are legitimate, and which are not?
- Who has credibility issues? Morgan or Jordan?
  - Jordan told a friend he “messed up”
    - No support for the couple trying to get back together
  - Morgan’s post on social media (“sometimes you have to stop protecting those that hurt you”)
- Does their previous sexual relationship have any impact on their credibility?
  - Does Jordan raising the previous relationship tarnish his credibility?

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INVESTIGATIVE REPORT

- At the conclusion of the Investigation, Investigator must provide all parties equal opportunity to review evidence obtained during the investigation that is directly related to the allegations – **even evidence upon which the District does not intend to rely**.
- Parties may submit written responses to the Investigator regarding the evidence obtained (generally a 10-day timeline).
- The Investigator must receive and consider the parties written responses, including whether to conduct further interviews, prior to the submission of the Investigative Report.
- Investigator submits the Investigative Report to the parties that "fairly summarizes relevant evidence," including a summary of the allegations and responses; a summary of investigative steps taken; and a summary of the evidence relevant to a determination.

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INVESTIGATIVE REPORT CONTENT

1. Summary of Allegations/Response
2. Summary of Procedure, including investigative steps
3. Cite the Standard of Review
4. Summary of Evidence
    a. Summary of testimony/interviews – include credibility
    b. List and explanation of documentary evidence
5. Analysis of the evidence
6. Conclusion
7. Recommendations on responsibility and, if relevant, disciplinary action (optional)

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MORGAN & JORDAN – THE REPORT

- Whether Jordan grabbed Morgan's wrist;
- Whether Jordan prevented Morgan from leaving;
- Whether Morgan verbally communicated a lack of consent before the first kiss;
- Whether the first kiss was consensual;
- Whether Jordan attempted a second kiss after Morgan objected;
- The significance, if any, of the parties' prior consensual sexual relationship;
- Whether Jordan's post-incident text message is evidence of consciousness of wrongdoing;
- Whether Alex's testimony corroborates Morgan's account;
- Whether the social-media post affects Morgan's credibility; and
- Whether Sam's interaction with Morgan constitutes retaliation.

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REPORT ANALYSIS
Hack #5

Apply the language in policy to the findings

- What is "sexual harassment" and do your findings support a conclusion the Respondent violated the policy

Ex. *Board policy states that sexual harassment is defined as. . . .*
I find the Respondent's actions of. . .constitute sexual harassment under board policy and Title IX. Therefore, it is more likely than not that the Respondent's actions violate Title IX and Board policy.

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INVESTIGATIVE REPORT CONCLUSION

- Typically, there is going to be a menu of options that will be available to the investigator in finalizing their report:
  - **Option 1**: Respondent committed *some or all* of the alleged sexual violence/misconduct.
  - **Option 2**: Respondent did not commit any of the alleged sexual violence/misconduct.
  - **Option 3**: Evidence is inconclusive (In other words: "I can't figure out who is being truthful.")
    - May prevent a remedy but does not prevent the District supporting the Complainant.

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RECOMMENDATIONS

- Recommend discipline or referral to appropriate disciplinary person/ body, if appropriate
  - Ex. This Investigation Report should be referred to the Decision-Maker to make a final determination.
  - Ex. Although I made a finding that the Respondent did not violate Title IX, the Respondent's actions violate the student code of conduct and the Respondent should be referred to the principal for appropriate consideration of discipline.
- Recommend other potential supportive/safety measures
  - No-contact order
  - Counseling

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POST REPORT

- Provide a copy of the report to the parties, and their advisors, and parents.
- Provide the parties 10 more days to provide a written response to the report, along with the party's initial questions (see Adjudication section).
- Investigator provides report, evidence and written responses and questions to the decision-maker.

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Adjudications

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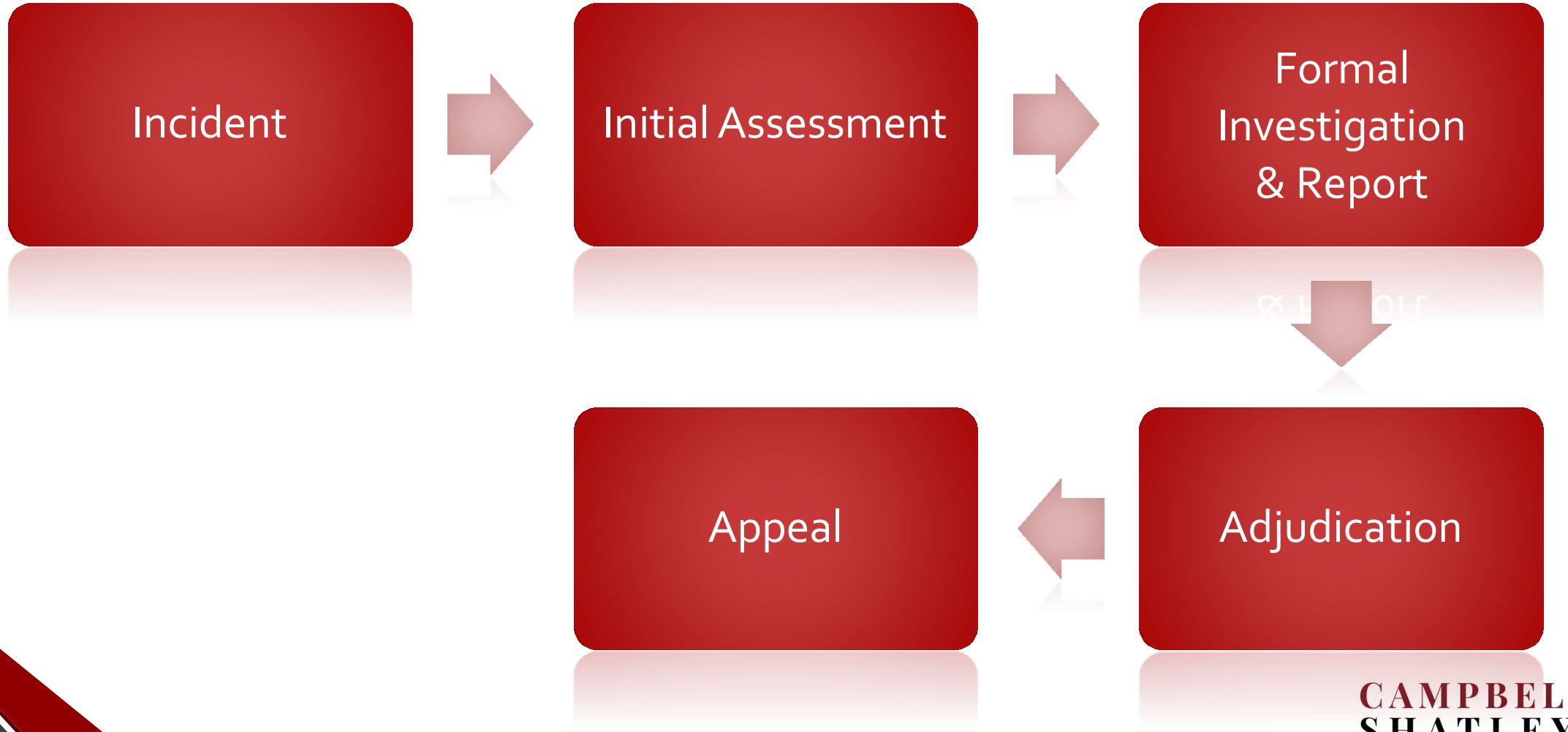
THE PROCESS



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DECISION-MAKERS

Decision-makers have no side other than the integrity of the process. And decision-makers represent the District's process.

Remember that the burden of proof and the burden of gathering evidence sufficient to reach a determination rests on the District, not on the parties.

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BEFORE ADJUDICATION – QUESTIONS

- Superintendent or designee is the Decision-Maker (D-M)
- D-M shall take any written questions provided in the responses to the appropriate party or witness.
  - Questions about complainant's sexual predisposition or prior sexual behavior is not relevant unless proved to demonstrate someone other than Respondent committed the alleged conduct
  - D-M must explain why any questions are excluded
  - Provide each party with the answers to those questions.
  - If necessary, provide additional time for follow-up questions.

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ADJUDICATION

- D-M reviews all evidence, investigation report, and party responses and questions.
- D-M make determinations regarding:
  - Responsibility;
  - Any disciplinary action or recommended disciplinary action;
  - Supportive or other appropriate measures
- Determination must be an objective evaluation of the evidence using the evidentiary standard adopted in policy (e.g. preponderance of evidence).

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DETERMINATION OF RESPONSIBILITY: LOGISTICS

- Decision-maker should author the written determination. (Who reviews?)
- Written determination should be provided to parties simultaneously.
- Determination becomes final either on the date the District provides the parties with the appeal result, or if an appeal is not filed, the date on which an appeal would not be timely.
- FERPA cannot be construed to conflict with or prevent compliance with Title IX.

WRITTEN DECISION

- D-M issues written decision and sends to both parties
  - identification of the allegations potentially constituting sexual harassment under board policy;
  - a description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  - findings of fact supporting the determination;
  - conclusions regarding the application of board policy and/or the Code of Student Conduct or expected standards of employee behavior to the facts including whether, the respondent engaged in prohibited sexual harassment or other proscribed conduct;

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WRITTEN DECISION

- D-M issues written decision and sends to both parties
  - a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the respondent (which may be a recommendation to the board for discipline that is beyond the authority of the superintendent or other decision-maker), and whether remedies designed to restore or preserve equal access to the school system's education program and activities will be provided to the complainant;
  - the procedures and permissible bases for the complainant and respondent to appeal; and
  - any other notices that are required to accompany the decision under state law, such as when the superintendent imposes a long-term suspension or recommends dismissal of an employee.

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COMMON SANCTIONS

- Warning
- Probation
- Loss of privileges
- Counseling
- No contact
- Limited access to campus
- Service hours
- Online education
- Alcohol and drug assessment
- Suspension
- Expulsion
- Termination

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MORGAN & JORDAN – THE DECISION

- What facts have been established?
- What facts remain disputed?
- What evidence is more persuasive?
- Does the evidence establish that the conduct occurred?
- Was there consent?
- Does the conduct meet the applicable Title IX definition?
- Does the conduct constitute sexual harassment under the school's policy even if it does not constitute Title IX sexual harassment?
- What standard of evidence applies?
- What findings should be made?
- What information should be considered in determining sanctions or remedies?

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APPEALS

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APPEAL

- Either party may appeal to the Board of Education; and may appeal the responsibility determination and/or disciplinary sanction
- No hearing unless a hearing is otherwise required by law [or your policy]
  - Teacher dismissal hearing
  - Long-term suspension hearing
- Must provide notice to both parties when appeal is filed.
- Must provide both parties a chance to submit a written statement supporting or challenging the initial decision.
  - NCSBA policy = 10 days after notice of appeal to submit statements

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APPEAL

- Grounds for appeal
  - **Procedural irregularity** that affected the outcome;
  - **New evidence** that was not reasonably available at the time the determination was made that could have affected the outcome; and/or
  - The Title IX Coordinator, investigator, or decision-maker had a **conflict of interest** or **bias** that affected the outcome.
  - Disciplinary Sanction is inappropriate or unreasonable

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APPEAL

- Board determines whether the grounds for the appeal have been substantiated
- Board provides written decision within 30 days after receiving the appeal unless good cause delay
- Board's decision is final, unless it remands the matter back for further investigation

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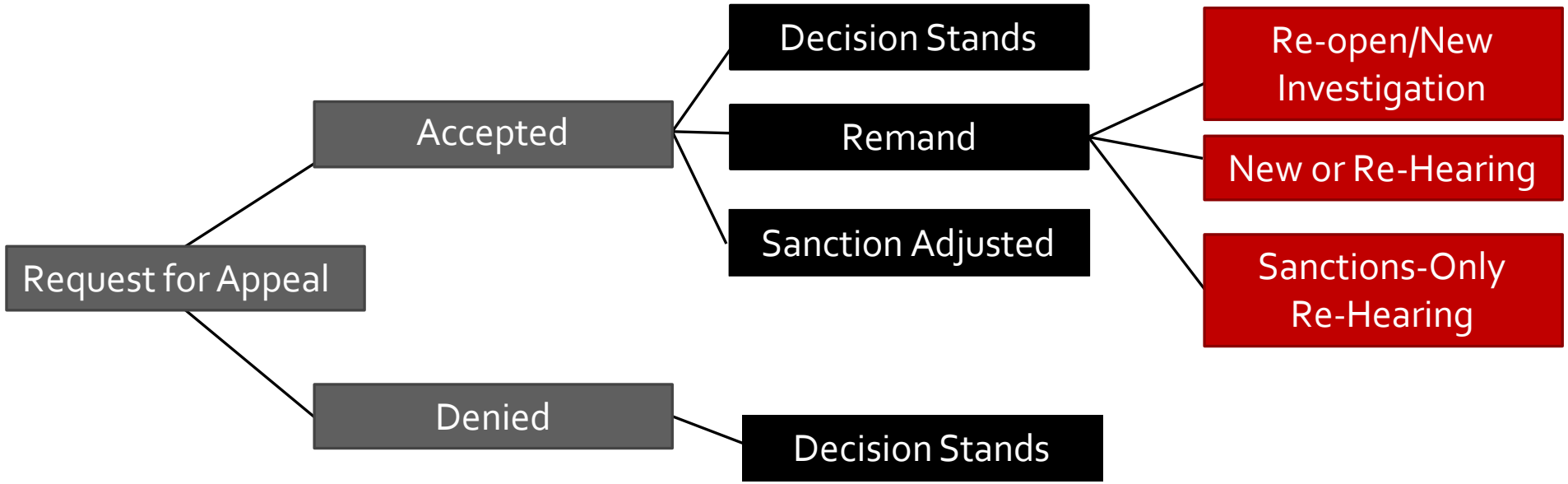
APPEAL PROCESS



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MORGAN & JORDAN - FINALE

- Do you believe Jordan violated the Board's Title IX policy?
- **Reasonable decision-makers may disagree about the ultimate factual findings while still following a fair and legally compliant process**.

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THANK YOU!
QUESTIONS?

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