

# IDAHO K-12 TITLE IX PROFESSIONAL LEARNING COMMUNITY #2

## TITLE IX: COMPLIANT GRIEVANCE PROCESS PT 1

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# MEETINGS IN NOVEMBER AND DECEMBER

- ▶ November – 1 meeting only on Tuesday, November 23 at 9 am MT/8 am PT
- ▶ December meeting – 1 meeting only
  - ▶ Move meeting to Tuesday, December 7<sup>th</sup>
  - ▶ Move meeting to Tuesday December 14<sup>th</sup>
  - ▶ Cancel?

# IMPORTANCE OF GRIEVANCE PROCEDURES

# IMPORTANT DEFINITIONS – 34 CFR 106.30

- ▶ **Actual knowledge** - Notice of sexual harassment or allegations there of to the TIX Coordinator OR to ANY employee of an elementary or secondary school
- ▶ **Formal Complaint** – A document filed by the complainant or signed by the TIXC alleging sexual harassment against a respondent requesting the school investigate
  - ▶ Complainant must be participating in or attempting to participate in an educational program or activity

# IMPORTANT DEFINITIONS – 34 CFR 106.30

- ▶ **Sexual Harassment** – conduct on the basis of sex that is:
  - ▶ Quid pro quo by an employee (conditioning of a benefit, help, etc. on participation in sexual contact); OR
  - ▶ Unwelcome conduct that is so severe, pervasive and objectively offensive that it effectively denies access; OR
  - ▶ Sexual assault – forcible or nonforcible sex offense; OR

# IMPORTANT DEFINITIONS – 34 CFR 106.30

- ▶ **Sexual Harassment** (con't)– conduct on the basis of sex that is:
  - ▶ Dating violence – violence committed within an intimate or romantic relationship; OR
  - ▶ Domestic violence - misdemeanor or felony crime; OR
  - ▶ Stalking – a course of conduct directed at a specific person that would cause a reasonable person fear for their safety or other's safety or to suffer substantial emotional distress.

# RESPONSE WITH OR WITHOUT FORMAL COMPLAINT – 34 CFR 106.44

- ▶ When you have **actual knowledge** of **sexual harassment** in an **education program or activity** – must respond in a way that is not deliberately indifferent
- ▶ You must:
  1. Treat complainants and respondents equitably
  2. Follow a 106.45 compliant grievance process BEFORE implementing disciplinary measures or other actions that are not supportive measures
- ▶ What if incident doesn't meet one or all parts of definition but still violates school policy?

# RESPONSE WITH OR WITHOUT FORMAL COMPLAINT – 34 CFR 106.44

Emergency removal can only be done for sexual harassment on an emergency basis that:

1. Uses an individualized safety and risk analysis,
2. Determines an immediate threat from the allegations of sexual harassment that justify removal, and
3. Provides an opportunity of notice and to challenge the decision immediately

Cannot otherwise remove without engaging in compliant grievance process!



# RESPONSE WITH OR WITHOUT FORMAL COMPLAINT – 34 CFR 106.44

- ▶ Title IX Coordinator should promptly contact the complainant to:
  - ▶ discuss the availability of supportive measures,
  - ▶ consider their wishes, and
  - ▶ explain the process for filing a formal complaint
- ▶ Document, document, document!



# RESPONSE UPON RECEIPT OF FORMAL COMPLAINT – 34 CFR 106.45

## ▶ Grievance processes must:

1. Treat parties equitably
  1. Follow compliant, published grievance process
  2. Provide remedies designed to restore or preserve equal access
2. Objectively evaluate all relevant evidence and make non-biased credibility determinations
3. Include non-biased, conflict free, trained Title IX team members

# RESPONSE UPON RECEIPT OF FORMAL COMPLAINT – 34 CFR 106.45

## ▶ Grievance processes must:

4. Make no presumptions as to responsibility
5. Include reasonably prompt time frames
  - ▶ Include filing and resolving appeals, informal resolutions processes, and any allowances for temporary delay of processes
6. Describe possible disciplinary sanctions and remedies
7. State the standard of evidence to be used and apply same standards for complainants against students and employees

# RESPONSE UPON RECEIPT OF FORMAL COMPLAINT – 34 CFR 106.45

## ▶ Grievance processes must:

8. Include procedures and allowed reasons for appeal
  - ▶ Highly recommend limited allowances
9. Describe the range of supportive measures available for both parties
10. Not require, allow or rely upon questions or evidence that is legally protected unless the legal protection is waived
  - ▶ Medical records, discussions with clergy or counselors, etc.

# NEXT MONTH – GRIEVANCE PROCEDURES PT. 2 (AND POSSIBLY PT 3)

- ▶ Notice to parties
- ▶ Mandatory and permissive dismissal of complaints
- ▶ Consolidation of complaints
- ▶ Investigations
- ▶ Opportunity to submit questions or live hearing
- ▶ Determination regarding responsibility
- ▶ Appeals

# WHAT QUESTIONS OR CONCERNS HAVE ARISEN FOR YOU THIS MONTH?

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