

INTERIM GRIEVANCE PROCEDURES FOR SEXUAL HARASSMENT

HAWAII STATE DEPARTMENT OF EDUCATION
OFFICE OF TALENT MANAGEMENT
CIVIL RIGHTS COMPLIANCE BRANCH
2020

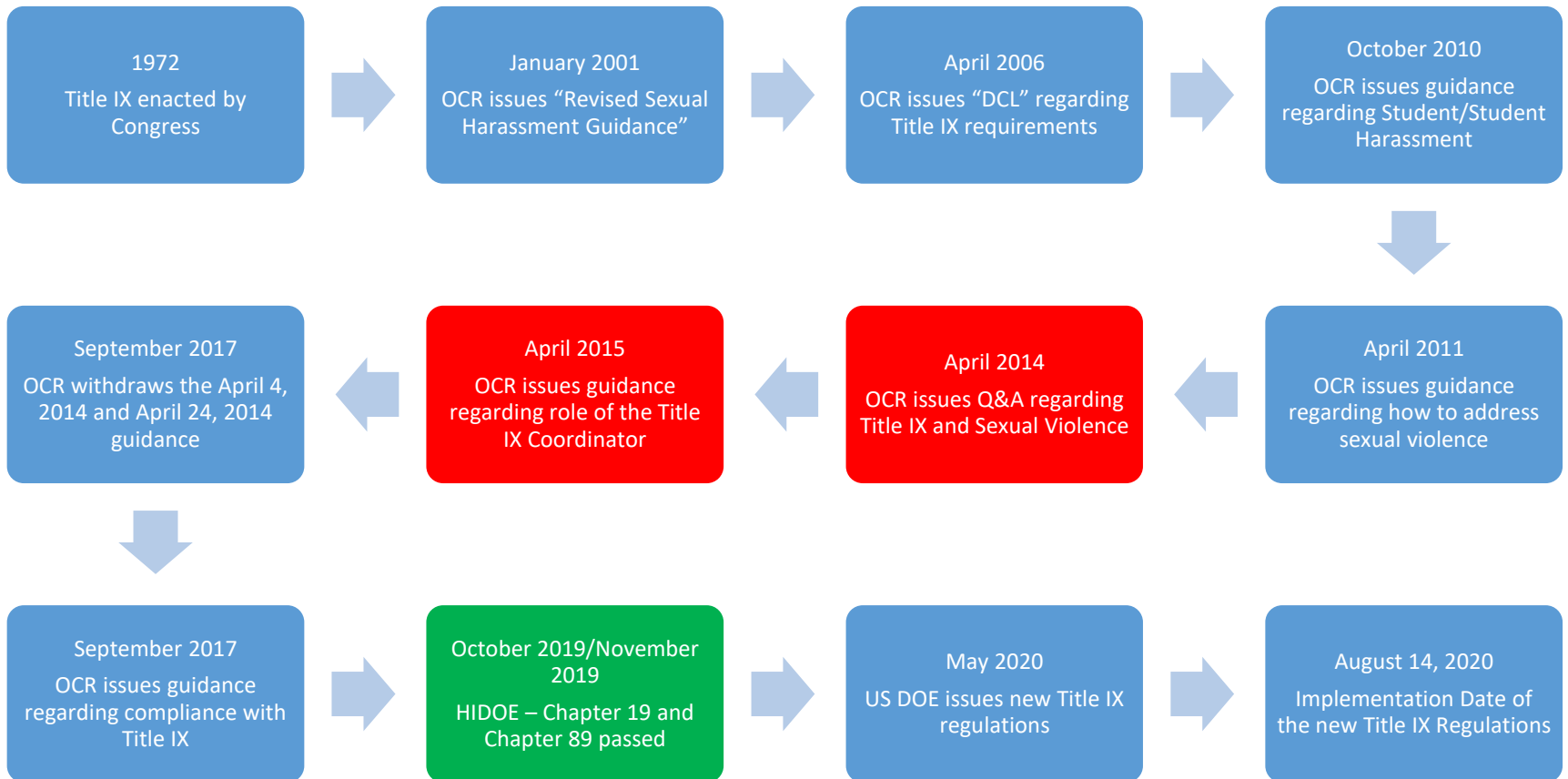
TITLE IX OF THE EDUCATIONAL AMENDMENTS OF 1972

“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 U.S.C. §1681(a)



TIMELINE



NEW TITLE IX REGULATIONS

What does this mean for the HIDOE?

These are new federal regulations that have the effect of law. All educational programs and activities that receive federal funding must adhere to these new regulations.

NEW TITLE IX REGULATIONS

Creates a process of addressing reports/complaints of sexual harassment where the HIDOE must:

“... respond promptly and supportively to persons alleged to be victimized by sexual harassment, resolve allegations of sexual harassment promptly and accurately under a predictable, fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual harassment, and effectively implement remedies for victims.”

DEFINITIONS – SEXUAL HARASSMENT

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

- (1) An employee of the HIDOE conditioning the provision of an aid, benefit, or service of the HIDOE on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the HIDOE's education program or activity; or
- (3) "Sexual assault," "dating violence," "domestic violence," or "stalking."

DEFINITIONS — ACTUAL KNOWLEDGE

Actual Knowledge

Means notice of sexual harassment or allegations of sexual harassment to any employee of an elementary and secondary school.

- When any HIDOE employee has notice of sexual harassment or allegations of sexual harassment, they must report such knowledge to their administrator or supervisor.
- Administrators and supervisors, must then report to the Civil Rights Compliance Branch (CRCB).

REPORTS OF SEXUAL HARASSMENT

Any individual may make a report of sexual harassment.

Methods of reporting include communication via:

- In-person
- E-mail
- Mail
- Telephone

Reports may be made directly to the Title IX Coordinator or any HIDOE employee, including school administrators, faculty, and staff.

RESPONSE TO SEXUAL HARASSMENT

- When the HIDOE has “actual knowledge” of the sexually harassing conduct, the HIDOE cannot respond in a manner that is deliberately indifferent.

Deliberate indifference = Response to sexual harassment is clearly unreasonable in light of the known circumstances.

- Our response to complaints of sexual harassment must treat complainants and respondents equitably.
 - Offer complainants supportive measures.
 - Follow a grievance process that complies with the interim procedures prior to imposing any sanctions on the respondent.

RESPONSE TO SEXUAL HARASSMENT

Upon receipt of the report, the following steps must be taken:

- 1.The complainant must be contacted to discuss supportive measures;
- 2.The complainant must be informed of the availability of supportive measures with or without filing a formal complaint; and
- 3.The process for submitting a formal complaint must be explained to the complainant.

FORMAL COMPLAINT

- Submittal of a formal complaint initiates the grievance process.
- At the time the formal complaint is submitted, the complainant must be participating in or attempting to participate in an educational program or activity.
- There are no time constraints as to when a complainant may submit a formal complaint.
- Alternatively, the Title IX Coordinator may submit the formal complaint.

FORMAL COMPLAINT

Dismissal of a Formal Complaint

Formal complaints or specific allegations will be dismissed for the following reasons:

- The conduct alleged does not meet the definition of sexual harassment, as defined in the Title IX regulations;
- At the time the alleged conduct occurred, the complainant was not participating in or attempting to participate in an educational program or activity;
- The conduct did not occur in the context of an educational program or activity; or
- The conduct did not occur against a person in the United States.

Written Notice of Dismissal

- When a formal complaint or a specific allegation(s) is dismissed, a written notice of dismissal must be simultaneously sent to the parties.
- Parties may appeal the decision to dismiss the formal complaint or specific allegation(s).
- If a formal complaint or specific allegation(s) is dismissed the HIDOE may address the alleged conduct per other applicable HIDOE rules and/or policies.

INVESTIGATION PROCESS

If the formal complaint meets the required criteria, then an investigator will be assigned and the investigation process will be commenced.

If the formal complaint does not meet the required criteria, the report will be referred to the appropriate office for follow-up, if any. This may include investigation of the allegations under other applicable rules and/or policies.

INVESTIGATION PROCESS

- Both parties have a right to have an advisor, of their choice, who may or may not be an attorney, present with them throughout the grievance process.
- Both parties have an opportunity to inspect and review all evidence that is directly related to the allegation(s) and to submit written responses to such evidence.
- Both parties have an opportunity review and respond to the investigation report.

DECISION-MAKING PROCESS

- Both parties have a right to provide written relevant questions for the other party and any witnesses.
- The decision-makers must objectionably evaluate the evidence, investigation report, and the responses to the written relevant questions, and any other relevant information.
- The decision-makers issues a written notice of determination regarding responsibility.

APPEALS PROCESS

- Both parties have a right to appeal a determination regarding responsibility, as well as the dismissal of a formal complaint.
- An appeal can only be submitted if it meets one the following applicable criteria:
 1. Procedural irregularity that affected the outcome of the matter;
 2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
 3. The Title IX Coordinator, investigator(s), and/or the decision-makers had a conflict of interest or bias for or against the complaints or respondents generally or the individual complainant or respondent that affected the outcome.

ROLES AND RESPONSIBILITIES

Civil Rights Compliance Branch:

- Contact the complainant to do an initial assessment, discuss supportive measures, and explain the formal complaint process.
- Investigate formal complaints of sexual harassment that fall under the Interim Procedures.
- Be part of a Decision-Making Panel regarding formal complaints of sexual harassment that fall under the Interim Procedures.

Administrators and Supervisors:

- Be part of the Decision-Making Panel regarding formal complaints of sexual harassment that fall under the Interim Procedures.
- Be a designated decision-maker for appeals that fall under the Interim Procedures.

STUDENT/STUDENT SITUATIONS

INTERSECTION WITH
CHAPTER 19

STUDENT/STUDENT: INTERIM PROCEDURES AND DISCIPLINE

- If, under the Interim Procedures, the allegations are not substantiated, or no findings of responsibility are made, then, no disciplinary actions will be taken.
- If, under the Interim Procedures, the allegations are substantiated, and findings of responsibility are made, then disciplinary actions will need to be imposed.

STUDENT/STUDENT: INTERIM PROCEDURES AND DISCIPLINE

- If the allegations are substantiated and the determinations of responsibilities are made, discipline will need to be imposed on a student/student complaint that was addressed through the Interim Grievance procedures:
 - Conduct a Chapter 19 discipline investigation
 - Make sure to notify the respondent's parents of the Chapter 19 discipline investigation.
 - Follow the process for determining discipline per Chapter 19, *e.g.*, the Five Factors.
 - The disciplinary actions to be taken need to be determined prior to the Written Determination being sent to the parties.
 - The Written Determination must include the disciplinary actions to be taken and the rationale for such decision.
 - Send out the Chapter 19 discipline investigation findings and action forms to parents.

STUDENT/STUDENT: INTERIM PROCEDURES AND DISCIPLINE

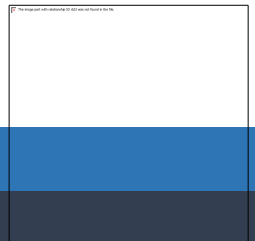
- Under the Interim Procedures, parties have an opportunity to appeal the outcome of the matter.
- In situations where there are findings of responsibility and disciplinary actions will be taken, the respondent can appeal both the outcome and the discipline imposed.
- The appeal's process regarding the outcome is per the steps indicated in the Interim Procedures.
- The appeal's process regarding discipline is per the steps indicated in Chapter 19.

STUDENT/STUDENT: FORMAL COMPLAINT DISMISSED

- In situations where a formal complaint for a student/student sexual harassment is submitted, but is then dismissed the complaint should be addressed through normal Chapter 19 procedures.
- The basis of the conduct, however, should NOT be sexual harassment. Rather, the general harassment option should be used.

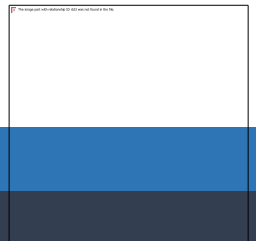
Chapter 89: Civil Rights Policy and Complaint Procedure for Student Complaints Against Adults

- Formalizes the procedure used by the Civil Rights Compliance Branch (CRCB) to resolve complaints of protected class discrimination, harassment, and bullying against students by employees, volunteers, or third parties.
- Individuals can submit protected class complaints to any department employee with supervisory authority or to CRCB. Complaints can be made against:
 - Employees
 - Volunteers
 - Third parties
- Forward complaints as soon as possible to the CRCB.
- Failure to report these complaints may result in discipline
- Anti-Harassment, Anti-Bullying, and Anti-Discrimination Against Student(s) Policy Complaint Form
 - Written/oral complaints also accepted
- Investigations are conducted by the CRCB



Chapter 89: Civil Rights Policy and Complaint Procedure for Student Complaints Against Adults

- Parents must be notified by school administration at the beginning of an investigation.
- Immediate interventions are available
- **No informal resolution**
- Final Investigation Report will be forwarded to the Decision Maker
 - Stop → Prevent → Remedy
- Investigations completed within 60 calendar days, notice of status after Day 60 and every 30 days thereafter
- No retaliation



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