

TITLE IX FORMAL INVESTIGATIONS

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Title IX Coordinator

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Title IX Coordinator Responsibilities

- Oversight of Investigations
 - Strategy meetings
- Support Measures discussed and implemented
- Timeline Compliance
- Status reports
- Training

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Investigator

- Formal Complaint
 - Jurisdiction
- Appointed by Principal or Superintendent
 - Trained, Unbiased, no Conflicts of Interest
- Internal, District, or External 3rd party
- Standing panel – CSD Policy #414
- Title IX Coordinator COI

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Concurrent Investigations

- Concord Police Department (MOU)
 - Criminal
- Division for Children, Youth and Families
 - Abuse & Neglect

- Title IX Investigation
 - Administrative (Stop, Prevent & Remedy Discrimination)
 - Maintain equal access to education

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Investigation Guiding Principles

- Equitable, thorough, prompt, and transparent
- Presumption that the respondent is not responsible
 - objective evaluation of all relevant evidence
- Respect Confidentiality, Privacy, and FERPA
- Due Process for both parties
- Burden of gathering evidence and burden of proof is on the school
- Equal opportunity to present evidence
 - Fact & Expert witnesses
 - Inculpatory evidence
 - Exculpatory evidence
- No restriction on either party's ability to discuss allegations or gather evidence
- Selection of an Advisor of choice
 - Attorneys allowed
- Written notice of any investigative interviews, meetings, or hearings with enough time to prepare
- Provide each party, and their advisors evidence directly related to the allegations with ten (10) days to inspect, review, and respond
- Provide each party, and their advisors, an investigative report that fairly summarizes relevant evidence with ten (10) days to respond
 - Determinations of responsibility on each allegation

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Investigative Strategy

- Identify possible violations
 - Undisputed & Disputed facts
- Identify who and in what order to interview witnesses
- Timeline
- Logistical Considerations

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Rape Shield Protections

Questions and evidence about the complainant's prior sexual behavior is irrelevant unless:

- Offered to prove that someone other than the respondent committed the alleged misconduct
- Offered to prove consent

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Restrictions regarding Medical Records

The recipient cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional:

- Acting or assisting in their professional capacity
- Made and maintained in connection with treatment to the party
 - **Exception** - voluntary, written consent is obtained

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Witnesses

- Time, Place, and Manner
- Advisor, parent, or Union Representative present
- Advisements & Purpose of the interview
 - Duty to investigate & ensure the safety & well-being of all
 - Fair, unbiased, independent investigation
- Do not share substantive information with witnesses
 - Not at liberty to discuss
- Ask questions in chronological order
- Take notes and clarify as needed
- Ask about additional info/witnesses the witness feels are important
- Discuss Privacy (need to know)
- Retaliation

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Interviewing the Complainant

- Time, Place, & Manner
- Advisor, Union Representative, Parent, and/or comfort animal
 - Limitations on home interviews
- Support Measures status

- Advisements & purpose of the interview
 - Duty to investigate & ensure the safety and well-being of all
 - Fair, unbiased, & independent
- Victim Centric/Trauma informed
- No promises
- Open ended questions in chronological order
 - No cross-examination, victim blaming, or leading questions
- Verify where & when conduct occurred
 - Educational Program, or Activity
- Impact of the behavior on the complainant
 - Skipped class, quit the team, absent, stopped taking the bus
 - How often did the conduct occur? (i.e. severe, pervasive, objectively offensive)
 - Limitation on ability to participate in or benefit from a school program or activity – how?
- How did the conduct make the complainant feel?
- Gifts, rides, \$, meals, favors, or other things the respondent did
- Sexually explicit questions:
 - Go slow
 - Ensure understanding by the witness (what does (term) mean to you?)
 - Do not react to embarrassing or distasteful information
- Questions related to Ethics, Conduct, or Policy violations
- Threats
- Witnesses the complainant wants interviewed
- Evidence (pictures, texts, emails, videos, journals)
- Did they confide in anyone (who and when?)
 - Information the complainant feels is important that you have not asked about
- Retaliation and how to report

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Interviewing the Respondent

- Normally the last person interviewed
- Time, Place, & Manner
 - Advisor and/or union representative
- Advisements (same with one additional)

- Presumption that the respondent is not responsible
- Ensure an understanding of the allegations
- Support Measures status
- Note taker
- Preparation is key
- Ask questions in chronological order
 - Open ended
 - Tell me about, what happened next
 - Can you tell me whyhelp me understand...
 - Ask clarifying questions
- Questions regarding Code of Conduct & Ethics violations
- CSD Policy Violations
 - Knowledge
 - Training (when)
- Ask about rides, favors, \$, gifts, pictures, texts, emails, etc.
 - Context
 - Additional information he/she would like to share
- If the Respondent admits an act occurred
 - Inquire about location, school program, or activity
 - Circumstances surrounding
 - Witnesses the respondent would like you to interview
- Important information not asked about
- Address any inconsistencies
 - Don't be accusatory
- Discuss Retaliation and how to report

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Investigative Report

- Addresses all allegations
- Review process
- Notifications to parties
- Personnel contacted
- Evidence reviewed
 - Site visits or searches
- Summary of Interviews
- Corroboration and Consistency of the Evidence
- Credibility of the witnesses

- Any past incidence of similar misconduct
- Findings of fact supporting any determination

- Retaliation
- **Prior to completion** of the report
 - Evidence will be provided to each party with ten (10) days to review and submit questions
- Determinations of responsibility based on:
 - Totality of the specific facts and surrounding circumstances
 - Preponderance of the Evidence
- Possible Findings
 - Substantiated
 - Unsubstantiated for sexual harassment
 - Inappropriate under Code of Ethics or Conduct
 - CSD Policy violations
 - Unsubstantiated
 - Unfounded
 - False Report