



Supplementary Training for Decision Makers

BRIGHTEN ACADEMY CHARTER SCHOOL

What is Title IX?

- ▶ Title IX of the Education Amendments of 1972
- ▶ Protects people from discrimination based on sex in education programs or activities that receive federal financial assistance.
- ▶ Enforced by the Office of Civil Rights (“OCR”).
- ▶ Protects all persons from discrimination, including parents and guardians, students, and employees.
- ▶ What does Title IX say?
 - ▶ 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.

Sexual Harassment

- ▶ If a school district has actual knowledge of sexual harassment in an education program or activity of the school district against a person in the United States, it must respond promptly in a manner that is not deliberately indifferent.

“Actual Knowledge”

- ▶ “Actual knowledge” means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient or to any employee of an elementary and secondary school.
 - ▶ Administrators
 - ▶ Teaching staff
 - ▶ Clerical staff
 - ▶ Custodial and food service staff

“Education Program or Activity of School District”

- ▶ What is “an education program or activity of the school district”?
 - ▶ Any location, event, or circumstance over which the school district exhibits substantial control over both the alleged harasser and the context in which the harassment occurred.
- ▶ Title IX does not impose a duty to report purely off-campus conduct.

“Education Program or Activity of School District”

- ▶ If conduct occurs in a building owned or controlled by a student organization that is officially recognized by BACS, this qualifies as an “activity of the school district.”
- ▶ If conduct occurs on an international field trip or at any location outside the United States, it is excluded from this definition.
- ▶ What about sexual misconduct that occurred off-campus but has an out-campus effect?
 - ▶ This falls outside the DOE's jurisdictional requirements and would be addressed through other BACS policies.

“Deliberate Indifference”

- ▶ A school district is “deliberately indifferent” if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

Three Categories of Sexual Harassment

- ▶ There are three categories that meet OCR's definition of sexual harassment and must be reported
 - ▶ Quid pro quo
 - ▶ Sexual assault, dating violence, domestic violence, stalking
 - ▶ "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 recipient's education program or activity"

Sexual Harassment: Category 1

- ▶ “Quid pro quo”
- ▶ If an employee of the school district conditions the provision of an aid, benefit, or service of the school district on an individual’s participation in unwelcome sexual conduct, this is sexual harassment.
- ▶ This conduct must be reported.

Sexual Harassment: Category 2

- ▶ “Sexual assault” as defined in 20 U.S.C. § 1092(f)(6)(A)(v)
- ▶ “Dating violence” as defined in 34 U.S.C. § 12291(a)(10)
- ▶ “Domestic violence” as defined in 34 U.S.C. § 12291(a)(8)
- ▶ “Stalking” as defined in 34 U.S.C. § 12291(a)(30)

- ▶ Conduct that falls within any of these definitions must be reported.

Sexual Harassment: Category 3

- ▶ “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 recipient’s education program or activity.”
- ▶ This conduct must be reported.



What Happens upon Report of Sexual Harassment?

BACS GRIEVANCE POLICY MUST BE FOLLOWED

What about other Sexual Misconduct?

- ▶ BACS is committed to providing an education environment that is free from sexual discrimination, misconduct, and harassment.
- ▶ Any sexual misconduct that does not rise to the level of “sexual harassment” (as defined by the U.S. Department of Education) or that does not meet Title IX’s jurisdictional requirements will be investigated and addressed pursuant to Brighten Academy Charter School’s policies

BACS Grievance Process: Definitions

- ▶ Complainant - an individual who is alleged to be the victim of conduct that could constitute sexual harassment under Title IX.
- ▶ Respondent - an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment under Title IX.
- ▶ Supportive Measures - non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent.
- ▶ Formal Complaint - a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the school investigate the allegation of sexual harassment.

Supportive Measures

- ▶ Can be provided to Complainants, Respondents, and any other member of the BACS community who is affected by sexual misconduct.
- ▶ May be sought or provided before or after the filing of a Formal Complaint, or where no Formal Complaint has been filed.
- ▶ Designed to restore or preserve equal access to the school's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the school's educational environment, or deter sexual harassment.
- ▶ Examples: counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, leaves of absence for student Complainants or Respondents, increased security and monitoring of certain areas of the campus, and other similar measures.

Grievance Process Continued

- ▶ Status as “Respondent” is not considered a negative factor.
- ▶ Respondents are entitled to presumption that they are not responsible for the alleged conduct until grievance process concludes and determination regarding responsibility is made.
- ▶ Credibility determinations will not be based on a person’s status as a Complainant, Respondent, or Witness.
- ▶ Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process must:
 - ▶ Not have a conflict of interest
 - ▶ Not be biased

Steps in Grievance Process



Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
Formal Complaint	Written Notice	Investigation	Investigative Report	Decision	Appeal

Step 1: Formal Complaint

- ▶ • Must be filed in person, by mail, by email, or through the online portal. • Must contain the Complainant's physical or digital signature.
- ▶ If no Formal Complaint is filed, the grievance process cannot start.
- ▶ **All BACS employees are mandated reporters of child abuse, including sexual abuse. If a BACS employee is aware of sexual harassment, the employee should report it to the appropriate Title IX Coordinator.**

Step 1: Formal Complaint

- ▶ Formal Complaint can be withdrawn at any time, resulting in dismissal of the grievance process.
- ▶ BACS may consolidate Formal Complaints arising from the same factual circumstances IF:
 - ▶ There is more than one Complainant or Respondent; or
 - ▶ A cross complaint has been filed by a Respondent against a Complainant.
- ▶ Mandatory Dismissal
 - ▶ If conduct alleged does not meet the scope requirements for the grievance process, BACS must dismiss the Formal Complaint.
 - ▶ The conduct can be examined pursuant to other BACS policies and procedures.

Step 2: Written Notice

- ▶ Upon receipt of a Formal Complaint, BACS must provide written notice to known parties of the following:
 - ▶ Notice of formal grievance process;
 - ▶ Notice of the allegations potentially constituting sexual harassment, including:
 - ▶ The identities of the parties involved in the incident, if known;
 - ▶ The conduct allegedly constituting sexual harassment; and
 - ▶ The date and location of the alleged incident, if known.
- ▶ The notice must be given as soon as practicable and with sufficient time to prepare a response before any initial investigation interview.
- ▶ If, at any point during the course of the investigation, BACS decides to investigate allegations that are not included in the original notice, it will provide notice of the additional allegations to the parties.

Step 2: Written Notice

- ▶ The written notice must include the following statements:
 - ▶ The Respondent is presumed not responsible for the alleged conduct.
 - ▶ A determination regarding responsibility is made at the conclusion of the grievance process.
 - ▶ The parties may have an advisor of their choice and at their own expense, who may be, but is not required to be, an attorney.
 - ▶ The parties may inspect and review evidence.
 - ▶ The parties are prohibited from knowingly making false statements or knowingly submitting false information during the grievance process.

Step 3: Investigation

- ▶ The investigation may include:
 - ▶ Interviewing the Complainant, the Respondent, and any witnesses;
 - ▶ Reviewing law enforcement investigation documents;
 - ▶ Reviewing relevant student or employment files; and
 - ▶ Gathering and examining other relevant documents, social media and evidence.

Step 3: Investigation

- ▶ The investigator bears the burden of gathering evidence and will attempt to collect all relevant information and evidence.
- ▶ Parties can (and should) present evidence and identify witnesses to the investigator so that they may be considered during the investigation.
- ▶ The investigation file should contain all information gathered during the investigation that is potentially relevant to the alleged misconduct (i.e. the investigator should not filter or exclude evidence or decide the weight or credibility of evidence, unless the evidence is clearly irrelevant or not pertinent to the facts at issue).

Decision Maker

- ▶ The decision maker may in his/her discretion grant lesser weight to last-minute information or evidence introduced through the exchange of written questions that was not previously presented for investigation by the investigator.

Decision Maker

- ▶ BACS employs a preponderance of the evidence standard (i.e. “more likely than not”).
- ▶ Burden of proof and burden of gathering evidence sufficient to reach a determination rests on BACS.
- ▶ Parties must have an equal opportunity to present witnesses and evidence.

Step 3: Investigation

- ▶ The investigator must conduct an objective evaluation of all relevant evidence.
 - ▶ Relevant evidence is any evidence that may tend to make the allegations at issue more or less likely to be true.
- ▶ Parties cannot be restricted from discussing the allegations under investigation or gather/present evidence.
- ▶ Parties may not retaliate against any person because they participate or refuse to participate in any part of the school district's sexual misconduct process.
- ▶ Anyone who receives another person's confidential information as a result of participating in the grievance process is prohibited from using/disclosing such information outside of such forums without express consent or for any improper purpose.

Step 3: Investigation

- ▶ Parties must have equal opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied by an advisor of their choice (at the party's expense).
 - ▶ The advisor may be – but is not required to be – an attorney.
 - ▶ Advisors are not permitted to directly participate in any proceeding.
 - ▶ Advisors may advise or support the party and are prohibited from speaking directly to the investigator, adjudicator, other parties, or witnesses.
- ▶ Investigative meetings
 - ▶ Parties must receive written notice at least three calendar days before any such meeting.
 - ▶ The notice must provide the date, time, location, participants, and purpose of the investigative meeting.
 - ▶ The notice can be provided by email.

Step 3: Investigation

- ▶ Both parties must have an equal opportunity to inspect and review any evidence obtained as part of the investigation.
- ▶ BACS will not 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 in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, *unless* the party voluntarily consents in writing to their use in a formal grievance process.

Investigative Report



First	Second	Third
<p>BACS sends draft Report to both parties (and any advisors).</p> <p>Parties have 10 days to submit response.</p>	<p>BACS sends final Report* to both parties (and any advisors).</p> <p>Parties have 5 days to submit response.</p>	<p>Investigator has choice to update Report and send to both parties.</p>

* The final Report should summarize all relevant evidence but should not make recommendations regarding whether a Title IX violation occurred or potential sanctions.

Step 5: Decision

- ▶ The grievance process concludes with a written decision-making process before one or more decision makers, who determine whether a Respondent is responsible for a violation, based on a preponderance of the evidence.
- ▶ There is a presumption that Respondents are not responsible for the alleged conduct until the grievance process concludes and a determination regarding responsibility is issued.

Decision Maker

- ▶ The burden of proof is met and a Respondent may be found responsible for a policy violation if the decision maker determines that it is more likely than not that the Respondent committed the conduct alleged.

Decision Maker

- ▶ The Title IX Coordinator selects the decision maker(s) and may vary based on the enrollment or employment of the Respondent.
 - ▶ Employee-Respondent cases typically will be decided by the Chief Executive for HR/Talent.
 - ▶ Student-Respondent cases typically will be adjudicated by the Assistant Superintendent or Area Superintendent or designee.
- ▶ The decision makers will not be the same person as the Title IX Coordinator or the investigator.

Decision Maker

- ▶ The Title IX Coordinator must identify the decision makers to the parties three business days in advance of the commencement of the decision-making process.

Decision Maker

- ▶ Either party may challenge a named decision maker if believed to have a conflict of interest or bias, which shall be delivered in writing to the Title IX Coordinator at least one day in advance of the commencement of the decision-making process, specifying the reasons for such belief.
- ▶ The Title IX Coordinator has sole discretion to keep or replace the challenged decision maker, and if replaced, shall postpone the decision-making process to allow for a decision maker.

Step 5: Decision

- ▶ The decision is based on all relevant evidence.
- ▶ Credibility determinations cannot be based on status as Complainant, Respondent, or witness.
- ▶ The decision maker will give parties the following opportunities:
 - ▶ Submit written, relevant questions that a party wants asked of any party or witness;
 - ▶ Provide each party with the answers;
 - ▶ Allow for additional, limited follow-up questions from each party.
- ▶ Questions/evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless:
 - ▶ Offered to prove that someone other than the Respondent committed the conduct alleged; or
 - ▶ If the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Decision Maker

- ▶ If any question is excluded by the decision maker as irrelevant, the decision maker must provide an explanation to the party proposing the question.

Step 5: Decision

- ▶ The written determination must include:
 - ▶ Identification of the allegations potentially constituting sexual harassment;
 - ▶ A description of the procedural steps taken;
 - ▶ Findings of fact supporting the determination;
 - ▶ Conclusions regarding the application of the grievance process to the facts;
 - ▶ A statement of, and rationale for, the result as to each allegation, including:
 - ▶ A determination regarding responsibility;
 - ▶ Any disciplinary sanctions the decision maker imposes on the Respondent; and
 - ▶ Whether remedies designed to restore or preserve equal access to BACS' education program or activity will be provided to the Complainant; and
 - ▶ Procedures and permissible bases for the parties to appeal the determination.

Step 5: Decision

- ▶ The written determination will be provided to the parties simultaneously.
 - ▶ Unless extended, BACS intends to issue the written determination no later than 120 days after the date a Formal Complaint is filed or signed.
- ▶ Supportive measures also may be provided to the Complainant.
 - ▶ If the Supportive Measures do not impact the Respondent, they should not be disclosed in the written determination.
 - ▶ Instead, the written determination should simply indicate that “remedies will be provided to the Complainant.”
- ▶ The determination becomes final:
 - ▶ If an appeal is filed, on the date that BACS provides the parties with the written determination of the result of the appeal; or
 - ▶ If an appeal is not filed, the date on which an appeal would no longer be considered timely.

Range of Sanctions and Remedies

Student Respondents	Employee Respondents (subject to Fair Dismissal Act and have tenure)
<ul style="list-style-type: none">• Detention/Saturday School• In-school suspension• Out-of-school suspension/expulsion• Decision-maker may allow for attendance at alternative education program such as Forrest Hill Academy for out-of-school suspensions for periods of 11 school days or longer	<ul style="list-style-type: none">• Demotion to be effective for the subsequent contract term (applicable only to administrative personnel IF tenure was not acquired on or before 4/7/95)• Recommendation for demotion• Recommendation for suspension without pay• Recommendation for termination• Recommendation nonrenewal of contract• Recommendation for a Letter of Reprimand issued by the Superintendent

Range of Sanctions and Remedies

Employee Respondents (subject to Fair Dismissal Act; no tenure)	Other Employee Respondents
<ul style="list-style-type: none">• Demotion for a subsequent contract term• Recommendation for demotion during the current contract term• Nonrenewal of contract• Recommendation for suspension without pay• Recommendation for termination• Recommendation for a Letter of Reprimand issued by the Superintendent	<ul style="list-style-type: none">• If subject to Civil Service Act:• Recommendation for suspension without pay• Recommendation for demotion• Recommendation for termination of employment • All other employees:• Suspension without pay• Demotion• Termination of employment

Decision Maker

- ▶ The grievance process does not limit BACS' ability to apply non-disciplinary actions.
- ▶ Examples: administrative conferences and counseling, restorative practices, letters of concern, letters of direction, requiring professional learning, administration of corrective action and/or professional development plans, referral to the Georgia Professional Standards Commission, referral to law enforcement authorities, and/or referral to child protection agencies.

Step 6: Appeal

- ▶ Both parties may appeal from a determination regarding responsibility, or from a dismissal of a Formal Complaint or any allegations therein, on the following bases:
 - ▶ A procedural irregularity that affected the outcome of the matter;
 - ▶ New evidence that was not reasonably available to the appealing party at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
 - ▶ The Title IX Coordinator, investigator, or adjudicator(s) had a conflict of interest or bias that affected the outcome of the matter.
- ▶ For STUDENT Respondent cases only, an appeal may be filed if the discipline is inappropriate (too harsh, not harsh enough, incomplete, or incorrect).

Step 6: Appeal

- ▶ Appeals must be submitted in writing and received by the Title IX Coordinator within 5 calendar days (including weekends, but excluding days on which BACS is closed due to a holiday) of the date that the written decision is provided to the parties.
- ▶ The written appeal must state:
 - ▶ Grounds for the appeal
 - ▶ Name of the appealing party
 - ▶ Evidence that it was submitted by the appealing party
 - ▶ Sufficient description supporting the grounds for appeal
 - ▶ If applicable, information about new evidence that could affect the outcome of the matter

Step 6: Appeal

- ▶ Upon receipt of an appeal, BACS will:
 - ▶ Notify the other party in writing when the appeal is filed and implement appeal procedures equally for both parties;
 - ▶ Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome of the decision-maker.
- ▶ BACS will provide a copy of the appeal to the non-appealing party.
- ▶ The non-appealing party may submit a written statement that may seek to affirm the initial decision and/or respond to the appeal statement.
 - ▶ Such written statement must be received by the Title IX Coordinator within 5 calendar days* of the date that BACS provided a copy of the appeal to the non-appealing party.
- ▶ * Including weekends, but excluding days on which BACS is closed due to a holiday *

Appellate Decision Maker

- ▶ The appellate decision maker cannot be the same person as the decision maker(s) that reached the original determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator.
- ▶ The appellate decision maker cannot have a conflict of interest or bias.
- ▶ The appellate decision maker must have received appropriate training.

Step 6: Appeal

- ▶ For STUDENT Respondent cases:
 - ▶ BACS shall schedule an in-person hearing within 5 calendar days* of the deadline for the non-appealing party to submit a written statement.
 - ▶ The in-person hearing shall solely be to allow for the parties to orally present their information in support of or in opposition to the appeal.
 - ▶ If a party is unable or unwilling to attend such a hearing, the appellate decision-maker will rely on that party's written submission.
 - ▶ BACS may utilize a virtual hearing.
- ▶ * Including weekends, but excluding days on which BACS is closed due to a holiday *

Appellate Decision Maker

- ▶ In STUDENT Respondent cases, the appeal is determined based on the existing record and in light of the parties' written appellate submissions and any oral presentation at the appellate hearing.

Appellate Decision Maker

- ▶ In EMPLOYEE Respondent cases, the appeal is determined based on the existing record and in light of the parties' written appellate submissions, if any.
- ▶ There is no in-person hearing.
- ▶ Employees retain all rights under the Fair Dismissal Act and/or Civil Service System, as applicable. Any further procedures shall occur pursuant solely under either the Fair Dismissal Act and/or Civil Service System, as applicable.

Appellate Decision Maker

- ▶ The decision-maker(s) for the appeal must issue a written notice of a decision describing the result of the appeal and the rationale for the result within 5 calendar days following the close of the record (receipt of all appeals materials or following a hearing).
- ▶ The appeal shall determine whether the decision maker made an error on the grounds alleged in the appeal statement.

Step 6: Appeal

- ▶ The appeal decision will be given simultaneously to both parties.
- ▶ No further appeal is available under Title IX.
- ▶ If the appellate decision upholds a student disciplinary sanction of at least 11 days of out-of-school suspension/expulsion and/or assignment to an alternative education program, the student who is subject to the disciplinary sanction may appeal pursuant to O.C.G.A. 20-2- 754(c).

Informal Resolution Process

- ▶ At any time prior to reaching a determination regarding responsibility, BACS may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication.
- ▶ BACS may not offer an informal resolution process unless a Formal Complaint is filed.
- ▶ Both parties must agree to participate in an informal resolution process, and if they do, the formal grievance process stops.
- ▶ Either party may withdraw from the informal process and re-start the formal grievance process at any time before an informal resolution is reached.
- ▶ The parties will not be required to participate in the informal resolution process and will not be required to waive any rights under the formal grievance process.
- ▶ BACS will facilitate an informal resolution process within a reasonably prompt time frame.
- ▶ **The informal resolution process WILL NOT be utilized to resolve allegations that an employee sexually harassed a student.**

Informal Resolution Process

- ▶ Prior to facilitating an informal resolution process, BACS will:
 - ▶ Provide written notice to the parties disclosing the following:
 - ▶ The allegations;
 - ▶ The requirements of the informal resolution process;
 - ▶ The fact that, at any time prior to agreeing to an informal resolution, any party may withdraw from the informal resolution process and resume the formal grievance process; and
 - ▶ Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
 - ▶ Obtain the parties' voluntary, written consent to the informal resolution process.
- ▶ If the parties agree to an informal resolution, the Formal Complaint shall be deemed withdrawn and the formal grievance process will be terminated.
- ▶ The informal resolution shall be considered binding, and its breach may give rise to a new formal grievance process, which may resuscitate the prior grievance process.

Retaliation

- ▶ No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, its regulation, or this grievance process, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding.
- ▶ BACS will keep the identity of any person who has made a report or complaint of sex discrimination confidential.
- ▶ The identity of any Complainant, Respondent, or witness will also be kept confidential except as required by law.
- ▶ The exercise of rights protected under the First Amendment does not constitute retaliation.
- ▶ Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a sexual misconduct grievance proceeding does not constitute retaliation.
- ▶ A determination regarding responsibility alone is not sufficient to conclude that any party made a materially false statement in bad faith.