

Title IX Trainings Specific Roles

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Review in conjunction with

Trainings regarding harassment and sexual harassment

Title IX 2020 Regulations training

Board Policies FFH, FFI, and DIA

This training assumes those trainings/policies have been reviewed and discusses the specific roles of the Title IX Coordinator, Investigators, Decision-Makers, Appeal Decision-Makers, and Informal Resolution Facilitators

Remember to post all trainings on District website

Recommendation: Title IX Page on website

Trainings for Different roles

Title IX Coordinator

Investigator

Decision-Maker

Appeal Decision-Maker

Informal Resolution Facilitator

Sexual Harassment definition (Reminder)

Quid Pro Quo: Employee conditioning the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct

Employee only (cannot be student-student)

Hostile Environment: Unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity

Sexual assault, dating violence, domestic violence, stalking

REPORTING (reminder)

Any person may report at any time

- Any employee with “actual knowledge” must report
- Report can be oral or written

Formal Complaint (Reminder)

After a report is made

The alleged victim (complainant) or the Title IX Coordinator can make a formal complaint which requests that the District investigate the allegation(s) of sexual harassment

Complainant = alleged victim

Respondent = alleged perpetrator

More definitions (reminder)

Education Program or Activity: location, events, or circumstances over which the District exercises substantial control over both respondent and the context in which the sexual harassment occurs

Must be in the United States

Actual knowledge: when a report is made to any employee

Deliberate Indifference: Schools must respond promptly to Title IX sexual harassment in a manner that is not deliberately indifferent, which means a response that is not clearly unreasonable in light of the known circumstances.

Title IX Coordinator

Title IX Coordinator

Main point of contact regarding Title IX

Must designate on website and handbooks with name, number, email

Can have more than one

Can have deputy Title IX Coordinators

Supervises the process (clearinghouse)

- Assigns investigators

- Assigns decision-makers, appeal decisions makers

- Assigns facilitators

- Ensures compliance with final sanctions

Title IX Coordinator

When a report comes in

Contact complainant and respondent to discuss supportive measures

- To both parties

- Available with or without a formal complaint

Explain the complaint process

Ensure no disciplinary sanctions are put in place against respondent until grievance process is complete

- However, can take emergency measures

- Can place an employee on administrative leave with pay (only the Superintendent can make that placement)

Title IX Coordinator

Supportive measures

Individualized services to preserve and restore equal access to education programs/activities

Examples (include)

- Stay away agreements; mutual restrictions

- Increased monitoring; escort

- Counseling

- Extensions of deadlines/course changes

- Schedule changes

Title IX Coordinator

What do when a complaint is made

Complaint received

Unlike Board Policy FNG, there is no deadline to file

Can consolidate

Must provide written notice:

- Grievance process

- Allegations of sexual harassment

- Statement that the respondent is presumed NOT responsible for the alleged conduct until a determination is made at the conclusion of the grievance process

- Inform parties that they may have an advisor of their choice

- Inform of policy/student code of conduct that prohibits knowingly making false statements/submitting false information during an investigation

Title IX Coordinator

Complainant does not wish to file

Even if a formal complaint is not filed, can investigate and respond to prohibited conduct in accordance with Policy and Student Code of Conduct

Except when threat to community → must investigate

As long as we can respond to prevent future harassment of Complainant and others, do not have to investigate if Complainant does not want

And must explain the consequences to the Complainant of not filing a formal complaint

Document if Complainant does not follow

Can sign a formal complaint on behalf of complainant

A Complainant's wishes with respect to whether the school investigates should be respected unless the Title IX Coordinator determines that signing the formal complaint is not clearly unreasonable in light of the known circumstances

Can also initiate grievance procedures where discipline is appropriate

Title IX Coordinator

When a complaint is dismissed

Decides whether to dismiss a formal complaint

Must be dismissed

Allegations do not constitute sexual harassment as defined

Did not occur in District program or activity

Consider in person effects of out of activity/program conduct

Did not occur in the United States

Can (discretionary) be dismissed

Complainant no longer wants to pursue (wants to withdraw)

Respondent is no longer in the District

The investigation cannot be completed

Must provide written notice of dismissal

Dismissal can be appealed

Title IX Coordinator

Complaint process over-seeer

From Formal Complaint to Completion - approximately 60 days

But things may slow it down

- Law enforcement investigation

- Complexity

- Availability of Evidence

- Global Pandemic

- Other temporary delays for good cause

Title IX Coordinator Recordkeeping

Record keeping

Make sure all materials used to train Title IX personnel are publicly available on the school's website

Document and keep records of all sexual harassment reports and investigations and appeals

Maintain any records of informal resolution process

Maintain records of supportive measures taken in response to report or complaint of sexual harassment

7 years

Formal complaint process for TITLE IX COMPLAINTS

Superintendent must develop

Must be placed on District's website

Process must contain at least 12 basic requirements...

Title IX Coordinator

Formal Complaint process

Treat Complainants and Respondents equally

Provide remedies where a determination of responsibility for sexual harassment has been made

Follow grievance process before disciplinary sanctions

Except for emergency actions and removals as necessary

Objectivity in review of evidence

Formal Complaint process

12 basic requirements

1. Equitable treatment of Complainants and Respondents
2. Objective evaluation of all relevant evidence
3. Requirement that Title IX Coordinator, investigator, decision-maker, or informal resolution facilitator not have a conflict of interest or bias
4. Presumption that the Respondent is not responsible for the alleged sexual harassment until a determination is made at the conclusion of the Title IX formal complaint process.
5. Timeframes that provide a reasonably prompt conclusion of the Title IX formal complaint process, including time frames for appeals and any informal resolution process, and that allow for temporary delays or the limited extension of time frames with good cause and written notice as required by law.
6. Description of the possible disciplinary sanctions that may be implemented following a determination of sexual harassment

Formal Complaint process

12 basic requirements

7. A statement of the standard of evidence to be used to determine responsibility for all Title IX formal complaints of sexual harassment
8. Procedures and permissible bases for the complainant and respondent to appeal a determination of responsibility or a dismissal of a Title IX formal complaint or any allegation therein
9. A description of the supportive measures available to the Complainant and Respondent
10. Prohibition on using or seeking information under a legally recognized privilege unless the individual holding the privilege has waived the privilege.
11. Additional formal complaint procedures required by law including written notice of a formal complaint, consolidation of formal complaints, recordkeeping, and investigation procedures
12. Other local procedures as determined by the Superintendent.

Formal Complaint process – evidentiary standard

Board Policy FFH

Standard: Preponderance of the Evidence

Impartiality

Bias

Conflict of interest

Roles

Can use District employees in roles or can outsource

Title IX Coordinator may be investigator but may not be Decision-Maker

Investigator may not be decision-maker

Investigators, Decision-Makers, Appeal Decision-Makers, and Informal Resolution Facilitators must be:

- Impartial

- Free from Bias

- Free from Conflict of Interest

Impartial

This means being free from bias

“Treating all rivals and disputants equally; fair and just”

Neutral

Nondiscriminatory

Example: Avoid sex stereotyping

Decisions based on objective criteria rather than bias, prejudice

Bias

Concern about “cover-ups” or protection of one person or institution based on who the investigator/decision-maker is and their role

“prejudice in favor of or against one thing, person, or group compared with another, usually in a way that is considered to be unfair.”

Perceived does not mean actual

Conflict of interest

Aligned interests

Conflicting interests

Perceived does not mean actual

Bottom LINE...

Go in with an open mind

Go in with a clean slate

Example: Avoid prejudgment of facts, witnesses, and parties

Be free from stereotypes based on anything, including sex stereotypes

Do you have a conflict of interest? Perceived or real?

Keep out all personal beliefs

If you don't think you can do it or should do it... say something!

To Title IX Coordinator

Investigators

Investigator

As the title suggests, your job is to investigate the complaint

However, you are not the Decision-Maker!

The District has the burden of proof and burden to gather evidence

Must be free from bias or conflict of interest, and you must be impartial

- Bias

- Conflict of interest

- Impartiality

Investigator

Notice to Parties

Written notice of the school's grievance process

Whether or not there is an opportunity for informal resolution

Actual allegations and facts that would constitute sexual harassment

Presumption of innocence

Statement that the parties are entitled to advisor of their choice

Statement that the parties can request to inspect and review certain evidence

Information regarding the code of conduct and false statements

Investigator

Review the evidence that has been provided

What are you researching/What are the allegations

Review allegations within the context of the definition of sexual harassment

What do you need to know?

Create a list of needed evidence (changes along the way)

Create a list of anticipated witnesses (changes along the way)

Create an outline of questions for witnesses (but listen and adjust as necessary)

*Notes may be discoverable

Make sure witnesses have space to share information you may not have asked about specifically

Investigator

Require a party's written consent before using the party's medical, psychological, or similar treatment records

Must give both parties equal opportunity to present the relevant evidence that they gather

Can't restrict the ability of either party to discuss allegations or to gather and present relevant evidence

Both parties are guaranteed the right to advance notice, in writing, whenever they are invited or expected to participate in an interview, meeting, or hearing

Must provide both parties the opportunity to have an advisor

Must give both parties equal opportunities to inspect and review the evidence obtained in the investigation, if the information is directly related to the allegations

Parties must be allowed to submit written questions to be provided to other party

Must give both parties a meaningful opportunity to respond to evidence

Investigator

Investigative Reports

After gathering evidence, prepare an investigative report on the allegations

But do not reach a conclusion

Must give both parties at least 10 days to respond to evidence in writing

If response submitted, must consider that response before finalizing investigative report

Investigative report finalized and provided to both parties

Still do not reach a conclusion

Investigator

A hearing is not required for K-12 institutions.

However must allow parties to submit written questions

Written, relevant questions must be asked of any party or witness

Answers must be provided

Allow limited, additional follow up questions

Investigator

Best practices in questioning the Complainant, Respondent, and Witnesses:

Explain the groundwork for conducting the interview and hold all interviewees to the same standards of conduct and decorum

Maintain control of the interview, both in the substance of the questions and answers and in the conduct of those in the room (interviewees and their advisors)

Begin with general, more open-ended questions and work your way to more specific questions

- Generalized questions can go to the elements of the alleged offense

- Specific questions should be built off documentary evidence evaluated before the interview, information obtained from prior interviews, and other known facts

Keep in-mind that interviews are meant to determine disputed issues of fact, and questions should be directed at solving the disputed fact questions

Notes on evidentiary standards

What is “inculpatory” and “exculpatory” evidence?

Inculpatory evidence shows or tends to show Respondent’s responsibility

Exculpatory evidence shows or tends to show the Respondent is not responsible

Notes on evidentiary standards

Relevance

OCR's Title IX Guidance provides, "The final regulations do not define relevance, and the ordinary meaning of the word should be understood and applied."

Federal Rule of Civil Procedure 401 provides a commonly understood definition of relevance:

Evidence is relevant if:

- (a)** it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b)** the fact is of consequence in determining the action.

Notes on evidentiary standards

Evidence about the complainant's sexual predisposition or prior sexual behavior is not relevant, unless:

- such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant;

- 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.

Notes on the investigative report

The investigator MUST NOT reach any conclusions—REMEMBER, conclusions in a sexual harassment complaint are reserved for the Decision-Maker

The purpose of the investigative report is to put the Decision-Maker in the best position to make a thorough, well-reasoned, and supported decision

Organization and clarity are key in the investigative report

- The most natural way for a neutral third-party to understand a story is to present it to them chronologically

- Show your work! Cite to the sources of information gathered in your investigation

- Proofread to ensure that the investigative report meets the District's standards of professionalism and propriety

Decision-Makers

Decision-Maker

Can NOT be the person who received the formal complaint or investigated it, including the Title IX Coordinator

May not issue written determination of responsibility until investigative report has been circulated to parties for 10 days

Review evidence

Assess credibility of evidence/witnesses

Be objective in the evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person's status as a Complainant, Respondent, or Witness

Is there a policy violation?

Cite reasons for conclusion

Consider punishments/sanctioning

Decision-Maker

Responsibilities

Must be free from conflicts of interest or bias for or against Complainants or Respondents

Must be impartial

Needs to use independent judgment

Weigh the relevant evidence, and decide whether it meets the school's standard of evidence for sexual harassment allegations

Decision-Maker

How to determine relevant evidence

Does it help to answer the allegations

Is it about the individuals involved

Is it allowable?

NO: sexual behavior or predisposition

EXCEPT to determine someone other than respondent committed the behavior

EXCEPT specific incidents related to complainant and respondent offered to prove consent

NO: information protected by legal privilege

NO: party's treatment records (absent voluntary consent)

Decision-Maker

Presumption of innocence

Standard of evidence (school decides) (must be consistent)

Clear and convincing

Sufficient evidence has been presented to make it highly probably to be true that the Respondent engaged in the alleged sexual harassment

Preponderance of evidence *** (this is our standard of review)

More likely than not that the Respondent committed the alleged sexual harassment

Decision-Maker

Written Decision must include:

Identification of the allegations potentially constituting sexual harassment

Description of the procedural steps that were taken by the school on the way to getting to that point (notifications to parties, methods used to gather other evidence, etc.)

Findings of fact supporting the determination

Conclusions regarding the application of the Code of Conduct to the facts

Statement of and rationale for the ultimate determination of responsibility for each allegation and any disciplinary sanctions imposed on the respondent

Statement of and rationale for any remedies for the Complainant, addressing how those remedies will restore or preserve equal access

Statement of the District's procedures and basis for appeal

Can set deadlines for appeal (put in decision)

**Must be sent to the parties simultaneously

APPEAL DECISION MAKER

Appeal Decision-Maker

Grounds for appeal

Procedural irregularity affected outcome of the matter

New evidence has been discovered that was not reasonably available at the time of the determination on responsibility or dismissal

Conflict of Interest of Title IX Coordinator, Investigator, or Decision-Maker, and the conflict of interest affected the outcome

Schools can offer additional grounds for appeal, so long as the grounds apply on an equal basis to the parties

Appeal Decision-Maker

Can NOT be the Decision-Maker, Investigator, or Title IX Coordinator

Notify parties in writing and implement appeal procedures equally

Both parties have equal opportunity to submit written statement supporting or challenging the outcome

After considering parties' written statements, issue written decision and send it to the parties simultaneously

Determination about whether the Respondent is responsible for the sexual harassment becomes final after appeal decision

Retaliation (reminder)

District or any person may not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX because the individual has:

- Made a report or complaint

- Testified

- Assisted

- Participated in or refused to participate in any manner in an investigation, proceeding, or hearing

Informal resolution facilitators

Informal Resolution Process

Applies after a formal complaint is filed

Both parties must consent

Cannot use if employee - student

Facilitators

Impartial

Free from bias

Free from conflict-of-interest

Facilitators

Informal resolution may be of interest to some complainants

Both parties have to agree

Must file formal complaint first

Can engage in informal process anytime before decision-maker makes final determination

Can never do informal resolution when the allegation is sexual harassment of a student by an employee

Facilitators

Who should informal facilitators be?

Trained in mediation?

Trained in conflict resolution?

Trained in restorative practices?

Facilitators

Give space to tell story

Give space to share what they want to get out of process

Be prepared to share lists of supportive measures

Do you meet together in the same room or separate rooms?

Remain neutral; do not push

Require confidentiality

Facilitators

If an agreement is reached

- Put in writing

- Be specific with the terms so there is not room for misinterpretation

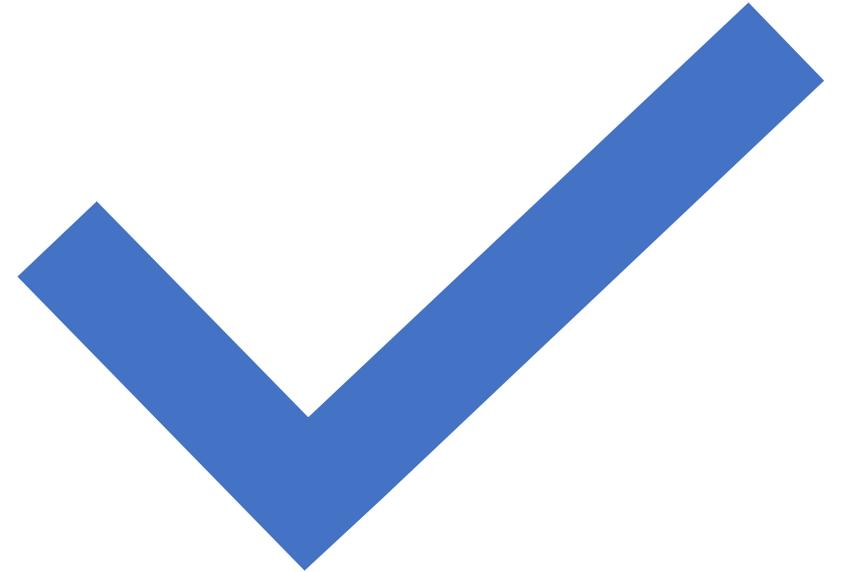
- Require confidentiality

- Insert consequences for breach of terms or breach of confidentiality

 - Student Code of Conduct

- Have check in provisions?

Additional Title IX Resources



additional title ix resources

OCR's Title IX Blog will provide updates on an ongoing basis

<https://www2.ed.gov/about/offices/list/ocr/blog/index.html>

Summary of Major Provisions of the Department of Education's Title IX Final Rule

<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-summary.pdf>

TASB's Title IX Basics

<https://www.tasb.org/services/legal-services/tasb-school-law-resource/students/documents/title-ix-basics.pdf>

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