

Title IX Coordinator Training

August 26, 2022

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Disclaimer

- The information provided in this document is for informative purposes only and should not be used in place of legal advice for specific situations you encounter.
- These materials are summative only!

Title IX States:

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.

Hierarchy of Rules

- Federal Law/Code
- Federal Register
- State Law
- District Policy
 - Policy ACAA Title IX Sexual Harassment
 - Regulation ACAA-R Title IX Sexual Harassment
 - Policy JB Equal Educational Opportunities
- Guidance Documents
 - Title IX Q&A



First we
Ask: What
do the
Feds Say?

Title IX Definition

The regulations use a definition of sexual harassment that is designed to protect 1st Amendment rights of students and teachers by:

- Distinction between physical conduct and speech
- Speech is largely protected unless it rises to high standard
- Physical conduct is per se actionable

Sexual Harassment = Conduct on the Basis of Sex that is One or More of the Following:

- A school employee conditions the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct;
- Unwelcome sexual conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it “effectively denies a person equal access” to the school's education program or activity; or
- Sexual assault, dating violence, domestic violence, or stalking.

Types of Conduct

Sexual harassment includes

- Unwelcome conduct
- Of a sexual nature or
- Other conduct on the basis of sex

Unwelcome is analyzed using a “reasonable person” standard—standing in the shoes of the complainant.

Definition of Sexual Harassment: Prong 1

Prong 1 is *quid pro quo* harassment

- Does not require a severe, pervasive, and objectively offensive analysis
- By its very terms, it will deny access to the program
Ex: A teacher requires sexual favors for a better grade; a staff member demands sexual favors or s/he will post compromising pictures



Definition of Sexual Harassment: Prong 2

- Harassment including speech

This prong requires the unwelcome sexual conduct to be:

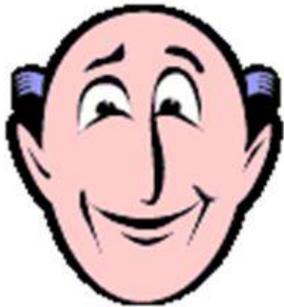
- Severe AND
- Pervasive AND
- Objectively offensive

Such that the victim is denied **equal access** to the school's education programs and activities.

Narrowly tailored to protect 1st Amendment rights

Prong 2

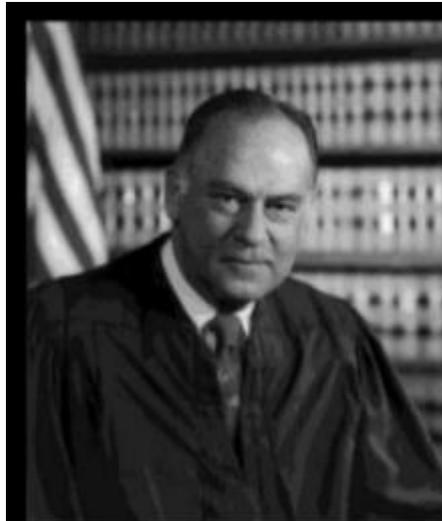
[Reasonable Person Standard



- Imaginary creature
- “the reasonable person of ordinary prudence or carefulness”
- NOT a typical, average individual
- The reasonable person acts the ways a community EXPECTS its members to act, not as they usually do act.

Prong 2 Scenarios

- High and vague standard
- What is something severe to you?
- Pervasive?
- Objectively offensive?



“I know it when I see it.”

-- Supreme Court Justice Potter Stewart to describe his threshold test for obscenity in *Jacobellis v. Ohio* (1964)

Definition of Sexual Harassment: Prong 3

Offenses based on violence (sexual assault, dating violence, domestic violence, stalking):

- Does not require severe and pervasive analysis
- When it occurs, equal access is denied
- Like Prong 1, it is *per se* actionable

What is Per Se?

- SOME CLAIMS REQUIRE NO PROOF OF CAUSATION.
- THESE ARE CALLED “PER SE” VIOLATIONS BECAUSE THE CONDUCT ITSELF IS UNLAWFUL – REGARDLESS OF THE TRUE MOTIVATION.



Prong 3

- Dating violence
- stalking

Stalking

encompasses a wide range of behaviors and actions that can escalate over time.

Recognize the **signs.**

Connect with **resources.**

You are **not** alone.

- Unwanted Gifts
- Persistent Calls and Messages
- Monitoring Social Media
- Showing Up Unannounced
- Following

Education Program or Activity

Schools are only required to address sexual harassment in the education program or activity, which is:

- Any location, event, or circumstance over which the school exhibits **substantial control over both the alleged harasser and the context in which the harassment occurred.**

Is It the Education Program or Activity?

- A cheerleader experiences sexual harassment an away game?
- At an overnight trip sponsored by the German Club?
- At a non-school related party held in a private home on a weekend?
- During a distance learning class?

Against a Person in the United States

- This is a jurisdictional requirement for application of Title IX
- Students in a study abroad program are not protected by Title IX outside the U.S.
- Schools remain free to adopt disciplinary systems to address sexual misconduct committed outside the United States, to protect their students from such harm, and to offer supportive measures such as mental health counseling or academic adjustments for students impacted by misconduct committed abroad.



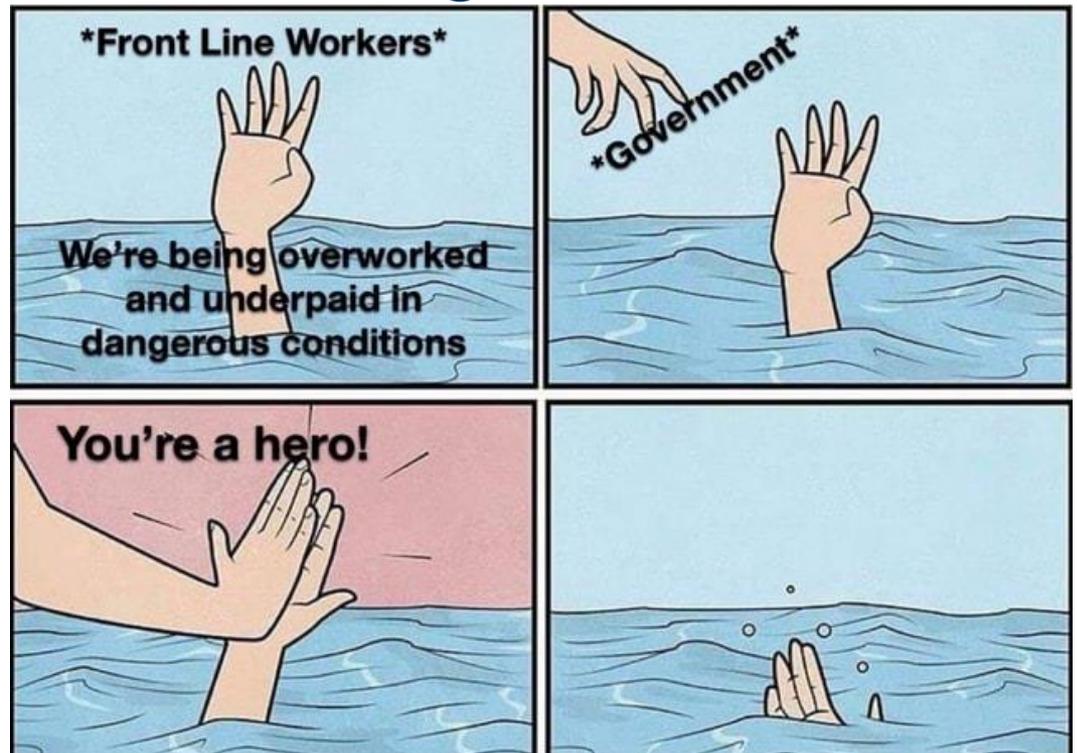
Lean In

- When in doubt - err on the side of conducting Title IX investigation
- If everything you have heard is assumed to be true and it could be sexual harassment - open it



Title IX Coordinator

You are the front line for preventing district liability. You are critical to successful implementation of Title IX regulations.



Mandatory Reporting

Title IX Coordinator will hear things that sometimes obligate the District to take action outside the scope of Title IX

- Staff could have MR obligations
- Coordinator could have MR obligation
- HR
- Police
- DCS
- ADE Certification

Next, What Does the State Say?



Mandatory Child Abuse Reporting Statutes



Reporting Statutes

School personnel are required to report suspected child abuse under two AZ laws:

- A.R.S. § 13-3620
- A.R.S. § 15-514

ADE Reporting Requirements

- Requires a report to ADE whenever there is a reasonable belief that a certificated or non-certificated person has engaged in conduct involving minors that would be subject to the reporting requirements of A.R.S. §13-3620
- Requires a Superintendent to report of acts of immoral or unprofessional conduct by certificated or non-certificated persons that would constitute ground for dismissal or criminal charges by certificated person

A.R.S. §15-514

A.R.S. §15-514 - Who Must Report?

Certificated or non-certificated persons or Governing Board members must report or cause to report*

* If cause to report is used... the initial responsible person must be sure the report was made!

Failure to report constitutes grounds for disciplinary action by the State Board of education

A.R.S. §15-514(A)

When to Report?

- A.R.S. §13-3620(A) reports must be made in writing as soon as practicable, but not later than 3 business days after the person first suspects or receives an allegation of misconduct for conduct involving minors subject to §13-3620(A)

A.R.S. §15-514.B

When to Report?

- No reporting timeline in the statute BUT a report the Board may not accept an employee's resignation under parts A (child abuse) or B (immoral or unprofessional conduct) of the law until a report to ADE has been made.

A.R.S. §13-3620: What You Know As The Mandatory Reporting Statute



A.R.S. §13-3620: Who Must Report?

- Any school employee who reasonably believes a minor is/has been the victim of:
 - physical injury
 - abuse
 - child abuse
 - a reportable offense
 - neglect
- That appears to have been inflicted on the minor by other than accidental means or that is not explained by the available medical history as being accidental in nature

Who Must Report?

Supervisor or administrator to any required reporter: Immediate supervisor or next-level supervisor

Supervisors and administrators are not required to report if they reasonably believe report has already been made

Administrators were required to report before, but new law makes this clearer

Personal Responsibility for Ensuring Reports are Made

Administrators cannot rely on school personnel to report; there is an affirmative duty to follow up.

Reporting the suspected abuse to direct supervisor alone does not satisfy the reporting requirements!

A.R.S. §13-3620

Categories of Offenses That Must Be Reported Relevant to Title IX

Abuse

- Inflicting or allowing sexual abuse, sexual conduct with a minor, sexual assault, molestation of a child, commercial sexual exploitation of a minor, sexual exploitation of a minor, incest or child sex trafficking

Reportable Offenses

Reportable Offenses: Offenses such as child prostitution, commercial sexual exploitation of a minor, filming or photographing or viewing a minor, sexual conduct with a minor*, incest, molestation, sexual abuse, sex trafficking, etc. (there are many different reportable offenses contained in the statutes)

**exception for minors both aged 14-17 and consensual*

Reasonable Belief Standard for Reporting

The reporting standard is
“reasonable belief”

If there are *any facts* from which
once could *reasonably* conclude
that a child has been abused or
injured, the person knowing the
facts is required to report

Reasonable Belief Is a Low Bar

- Reasonable belief is a low standard - You don't need proof, just enough facts that cause you to think a minor may be in harm's way
- It is not necessary to have proof or visual evidence of abuse before forming a reasonable belief

What Can You Ask?

If a child does not volunteer the information and you have reasonable suspicion that a child may have been injured/abuse or is being abused, you may **only** ask 4 questions before reporting:

1. Who did this?
2. What happened?
3. When did this happen?
4. Where did this happen?

Administration of Title IX

- Coordinator
- Investigator
- Decision Maker
- Informal Resolution Facilitator
- Appeal



Title IX Coordinators

- Must have the actual title, be employed by school and be authorized to initiate the grievance procedure against a respondent
- Must have authority to provide supportive measures that will restore or preserve “equal access”

Title IX Coordinators, cont.

- Must be trained and is responsible for ensuring that other relevant individuals are trained
- Can contract for investigators and decision makers - but must be trained by District.
 - *Recommend decision maker familiar with District resources and procedures

Title IX Coordinators, cont.

- Can not have a conflict of interest
 - Must ensure others involved in grievance process do not have a conflict of interest
- Be trained to act impartially throughout the process
- Never prejudge the alleged facts
- Thoroughly understand the definition of sexual harassment under Title IX



Impartiality is Required by Regulations

Avoid Bias and Prejudgment

Avoiding Bias is Critical to Implementing Regulations

- Following grievance procedure that meets requirements of the regulations is important step to showing non-bias
- Recognize and acknowledge allegations of sexual harassment no matter who the alleged victim is
- Do not adopt stereotypes about who is, and who is not, subjected to sexual harassment

Avoiding Bias is Critical to Implementing Regulations, cont.

- Recognize that no one is free of implicit bias
 - <https://implicit.harvard.edu/implicit/takeatest.html>
 - Take several of the tests looking at race and gender bias
- Suggested that Title IX Coordinator attend an implicit bias training

Title IX Coordinator, cont.

- Receives notice of allegations of sexual harassment
- Fulfills duties related to “notice”
- Coordinates implementation of supportive measures
- Helps draft and accepts Formal Complaints

Title IX Coordinator, cont.

- Decides whether to sign Formal Complaint where a victim will not
- Issues written notice when there is a Formal Complaint
- Determines whether Formal Complaint must be dismissed or, if dismissal is permitted, whether to dismiss it
- Offers informal resolution where appropriate

Title IX Coordinator, cont.

- Possibly conducts the investigation
- Monitors the implementation of the grievance procedure (track deadlines, maintain records)
- Effectively implements remedies where there has been a determination of responsibility

2 Roles for Title IX Coordinator

**Oversight of
administration
of Title IX**

**Implementation
as Coordinator**

Role #1: Oversight

- Train all staff/subs/volunteers with student interaction on roles and AKR
- Ensure website up to date (policy, grievance procedures, Title IX contact, Formal Complaint form accessible)
- Adding investigators and decision makers

Role #1: Oversight

- Policy and grievance procedure oversight
- Be available for investigators, decision makers and families as primary point of contact (copied on all communications)

Oversight

Actual
Knowledge
is Notice!



What is Notice?

- A report to ANY school employee
 - ALL employees must be trained to immediately communicate any report of conduct that would meet the definition of harassment to administration
- Report to the Title IX Coordinator made at any time via any method of communication

All Notice Triggers Responsibility

Contact alleged victim promptly to discuss:

- Whether the Complainant wants **supportive measures**
- Advise Complainant that supportive measures are available regardless of whether Formal Complaint is filed
- Explain the process for filing a Formal Complaint

District Liability starts with Actual Knowledge

A recipient of federal funds violates Title IX where it has *actual knowledge* of an allegation of sexual harassment experienced by an *individual in the educational program* and the school acts with *deliberate indifference* to that notice.

What Is Deliberate Indifference?

A response to notice of sexual harassment that is clearly unreasonable in light of the known circumstances

The new regulations set out the required response to notice within the context of:

- Protecting 1st Amendment rights
- A presumption of non-responsibility of the accused
- Provision of supportive measures

Role # 2: Implementation

- Determine how they want to received potential AKR (phone calls)
- If AKR - request in writing ASAP
- Be aware of Mandatory Reporting Obligations
- Once you receive AKR - call complainant
 - offer supportive measures (complainant and respondent)

Role # 2: Implementation

- Offer Title IX formal complaint or other options to manage complaint
- Give them 24 hours - talk it over in family, student etc.
- Emergency Removal

Emergency Removal

Title IX expressly authorizes schools to remove a respondent from the school's education programs or activities on an emergency basis, with or without a grievance process pending, as long as post-deprivation notice and opportunity to challenge the removal is given to the respondent.

A recipient's decision to initiate an emergency removal will also be evaluated under the deliberate indifference standard.

Emergency Removal, cont.

- Must be an individualized safety and risk analysis that determines that respondent poses an immediate threat to **any person's physical health or safety**
 - Does not require a licensed provider to make this determination
 - Does not require objective evidence
 - NOT a threat to mental health

Emergency Removal, cont.

Examples of possible emergency removal scenarios:

- Respondent threatens physical violence against complainant in response to allegation of sexual harassment
- Respondent threatens physical self-harm

If It Does Not Meet Title IX Threshold...

- Hokey Pokey
- In England
- Over summer
- Send back to site admin/supervisor to be dealt with in accordance with District policy
- To be documented by site admin in compliance with district policy
- Do not track as part of your Title IX data

Offering Title IX Formal Complaint

- Form accessible
- Explain the process
- Direct them to the grievance procedures
- Be clear on how the process is different from District discipline procedures

Offering Title IX Formal Complaint

- Witness disclosures public, interviews, timeline
- Cannot dissuade them from Title IX - but you need to ensure they understand the Title IX process. They need to understand additional parties will be involved, 60 days, maybe longer, etc.

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

Formal Complaint, cont.

- At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed.
- A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator and by any additional method designated by the school.

Formal Complaint, cont.

- “Document filed by a complainant” means a document or electronic submission (such as by e-mail or through an online portal provided for this purpose by the school) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.
- Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or a party during a grievance process, and must comply with requirements for Title IX personnel to be free from conflicts and bias.

If They Don't File Formal Complaint

Make sure you (as Coordinator) don't want to make this a formal complaint

When would the Coordinator file a formal complaint?

- When respondent is a staff member
- When conduct is impacting student safety beyond complainant
- When respondent has a history unknown by the complainant

Title IX Coordinator Files Formal Complaint, Because Complainant Won't

- You are not the complainant
- Complaint remains the same and may not participate - that's ok
- You proceed with interviews and the data you have

If Complaint Declines Title IX Process, And Coordinator Decides Not To Open

Have a letter to document decision.

- On [Date], our office received an Actual Knowledge Report of an alleged incident at [School] in which your child is an alleged victim.
- Please know that District takes all accusations of this nature very seriously. Upon review, I have concluded that the allegation reported would not be appropriate to investigate under Title IX because [choose one: (1) the conduct alleged in the formal complaint, if proved, would not constitute sexual harassment as defined under federal law, (2) the conduct did not occur within a District program or activity, or (3) the conduct did not occur against a person in the United States].

If Complaint Declines, cont.

- While a formal complaint under Title IX is not an option, this matter will now be turned back to the school for discipline consideration per District's Student Code of Conduct.
- I would like to make you aware of supportive measures that are available to you. Please let me know how I can help your child access these supportive measures. If you have any questions regarding the contents of this letter, please contact me directly.

If Complaint Declines, cont.

- Make sure you documented AKR in your own spreadsheet
- Consider enclosing original AKR?
- Send it back to site/supervisor - this is why it is good to keep staff engaged at the on site of potential Title IX complaints

If Complainant Chooses Title IX (Or If Coordinator Does)

- The specific incident or activity that is alleged to be in violation of Title IX
- The name of all individuals involved
- Location of incident
- Date of alleged sexual harassment
- Whether you want this Complaint to be formally addressed by the District?
- Respondent Name (This is the person who the complaint is against)
- Today's Date

If Complainant Chooses Title IX (Or If Coordinator Does), cont.

- Once written formal complaint received...
 - Inform respondent - call before sending formal notice letter
 - Offer supportive measures
 - Encourage parents to call if student reports any issues with other students regarding the matter - make sure call comes to coordinator, who can then engage site admin.

Supportive Measures

- Designed to restore or preserve **equal access** to education program or activity
- Equal access is the same access that someone who hasn't experienced sexual harassment has
- What does a loss of “equal access” look like?
 - Does NOT require total loss of educational access

Examples of Loss of Equal Access

- Poor attendance, failing or diminished grades
- Quitting an extracurricular/club to avoid respondent
- Dropping a class
- Being unable to concentrate in a class/activity
- Manifestations of stress (bed-wetting, self-harm, hair loss)

Supportive Measures

- Non-disciplinary
- Non-punitive
- Individualized to the person and situation
- Offered as appropriate and without charge
- Must be offered to Complainant
- May be offered to respondent if appropriate
- Can not unreasonably burden either a complainant or respondent

Examples Of Supportive Measures

- Counseling
- Course modifications
- Extend a deadline
- Allow exam retake
- Schedule changes
- For complainant or respondent
- Allow student to repeat a course
- Increased monitoring or supervision
- Mutual non-contact order
- One-way no contact order
- Cannot include anything that is listed as a potential disciplinary consequence

Supportive Measures

- Can not discipline a respondent in any way as a supportive measure (though can as a remedy upon a determination of responsibility)
- Must continue to be offered during an investigation and whether an investigation is ever done if necessary to ensure equal access

Supportive Measures

- Consider SPED and accommodations in relation to supportive measures
- Ensure no supportive measures interfere with LRE and that accommodations remain available, know when to engage SPED staff (if SPED supportive measures - FBA, BIP)

If Respondent is an Employee

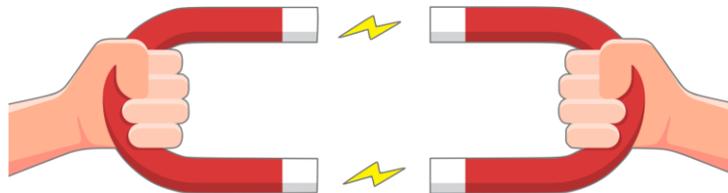
- School may send an employee home on administrative leave as a supportive measure (paid or unpaid is discretionary) “During the pendency of the grievance process”
- Employee may also choose Title VII, as part of the HR process, but remember, if a formal complaint is filed, an investigation may take 60 days or more
- Can reassign the employee to another site

But Wait ... Isn't Title VII for Employees?

- Title IX requires educational institutions to address incidents of sexual assault and sexual harassment involving both students and employees.
- Title IX can apply to employee to employee incidents because Title IX also protects employees of educational institutions, programs, and activities against sex discrimination and harassment.
- Title IX's the deliberate indifference standard is lower than the standard imposed on employers under Title VII.

Title IX & Title VII

- Applies to complaints brought employees by or against , and are not limited to complaints involving students or student-respondents.
- Nothing in the rule diminishes rights available to any individual under Title VII, which prohibits sex discrimination in an employment context.



Title IX v. Title VII

Title IX

- Actual Knowledge
- Responsible if harassment occurs in the U.S. under an education program or activity
- Liability standard: deliberate indifference.

Title VII

- Actual or Constructive Knowledge
- School can be held liable for extraterritorial sexual harassment.
- Plaintiff must also establish that the employer failed to take prompt and appropriate corrective action.



Title IX v. Title VII, cont.

Title IX

- Standard of Proof: schools choose between the lower burden of "preponderance of the evidence," or the higher burden of proof, "clear and convincing." Check the adopted policy.

Title VII

- Schools generally use a preponderance of the evidence as the burden of proof.



Title IX v. Title VII, cont.

Title IX

- Parties' Rights: the investigator must provide all parties an equal opportunity to examine all evidence gathered during the investigation that is directly related to the allegations.

Title VII

- Parties' Rights: the first time the respondent sees a copy of investigation report can be after filing an EEOC Charge
- Only then if the report is included in the employer's response.
- Otherwise, the first time could be if he or she files a lawsuit and receives it during discovery.

Title IX v. Title VII, cont.

Title IX

- Informal Resolution: Schools can offer informal resolution options, such as mediation, to the parties, but both parties must give voluntary, informed, written consent.
- However, schools cannot offer informal resolution for allegations that an employee sexually harassed a student.

Title VII

- Informal Resolution: Title VII does not speak to this, but many schools do allow informal resolution of Title VII complaints.

Title IX v. Title VII, cont.

Severe and Pervasive versus Severe or Pervasive

Title IX

- Title IX sexual harassment defined as actions that are “so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school’s education program or activity.”

Title VII

- The Supreme Court’s legal standard for analyzing Title VII harassment claims—including sexual harassment focuses on whether the alleged conduct is “severe or pervasive”

Title IX and Title VII

- There is some authority suggesting that Title VII and Title IX employment discrimination claims can proceed simultaneously, particularly where the plaintiff seeks equitable relief.
- Title IX may not be “read in derogation of any individual’s rights rather than just any employee’s rights under Title VII.”



When Respondent is a Student

- Do not completely remove a student respondent from an educational activity as a supportive measure for complainant
- UNLESS there is an **emergency removal** necessary because a respondent poses an immediate threat arising from the sexual harassment allegations

Written Notice Requirements: Formal Complaint

Provide written notice of the District's grievance procedure to both parties, including information about informal resolution process, if the District adopts one.

Written notice must:

- Include a statement that the respondent is presumed not responsible for conduct and that a determination will not be made until the conclusion of the grievance process

Written Notice Requirements: Formal Complaint

- Inform parties that they may have an advisor of their choice
 - Advisor may be an attorney, but doesn't have to be
- Inform parties that they may inspect and review evidence collected during this investigation
- Inform parties of any provision of the code of conduct that prohibits making false statements or knowingly submitting false evidence

Written Notice Requirements: Formal Complaint

- Notice of the allegations of sexual harassment provided to the parties must include sufficient details, and be provided in enough time, to allow preparation of a response prior to initial interview
- Sufficient notice includes, if known:
 - The conduct alleged to constitute sexual harassment
 - The date and location of the alleged incident

Written Notice Requirements: Formal Complaint

- If, during the course of the investigation, the school decides to investigate additional allegations about complainant or respondent that were not included in initial notice:
 - Title IX Coordinator must provide written notice of the additional allegations to the parties.

Title IX Coordinator Checklist

Initial Report (no Formal Complaint):

| <i>Date Complete</i> | <i>Task</i> |
|----------------------|---|
| | Contact Complainant and discuss: <ul style="list-style-type: none">• Supportive measures available• His/her wishes for supportive measures• Inform that supportive measures are available with or without the filing of a formal complaint; and• The process for filing a Formal Complaint |
| | Provide supportive measures and document what was provided |

Mandatory Dismissal of Formal Complaints

- The complaint does not state an allegation of sexual harassment, even if all facts are found to be true
- The sexual harassment, even if it did occur, did not occur in the school's program or activity
- The sexual harassment did not occur against a person in the United States

Title IX Coordinator Checklist

Formal Complaint Received:

| <i>Date Completed</i> | <i>Task</i> |
|-----------------------|--|
| | Issue written notice of the Formal Complaint to both Complainant and Respondent |
| | Does the Complaint require dismissal? <input type="checkbox"/> Yes <input type="checkbox"/> No Mandatory if any of the following apply: <ul style="list-style-type: none">• The Complaint does not state an allegation of sexual harassment, even if all facts are found to be true• The sexual harassment, even if it did occur, did not occur in a School program or activity• The sexual harassment did not occur against a person in the United States |

Title IX Coordinator Checklist

- Permissive Dismissal Criteria
 - NCAA requirements for reporting records - what does this mean for District exposure?
 - Complainant withdraws
 - Respondent no longer employed to withdraws
 - Other circumstances - can't obtain evidence
 - Generally - call your counsel if considering a permissive dismissal.

Title IX Coordinator Checklist

| | |
|--|---|
| | <p>Does the Complaint need to be dismissed for another permissive reason?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>May dismiss if:</p> <ul style="list-style-type: none">• Complainant wishes to withdraw the formal Complaint• Respondent is no longer employed or enrolled in the School/District• Other circumstances prevent the gathering of sufficient evidence as described below. <p>Explain:</p> |
|--|---|

Permissive Dismissal of Formal Complaints

- If the Complainant notifies the Title IX Coordinator that s/he wants to withdraw the complaint
- If the Respondent's employment or enrollment with the school ends
- If circumstances, such as several years between the conduct and the complaint or a complainant's refusal to cooperate, prevents the gathering of evidence sufficient to render a determination

Title IX Coordinator - Assign Roles and Calendar Timelines

- Informal Resolution - Assign facilitator (check regs for qualifications)
- Assign investigator
 - Train in redaction (student #, phone, address, grade, witnesses)
 - Student A B C legend, who gets legend (parties of just decision maker - talk to counsel)

Title IX Coordinator - Assign Roles and Calendar Timelines

- Non-disclosures signed (have investigator sign at interviews vs. asking for non-disclosure right before sending evidence) Contact before interviewing



Title IX Coordinator - Assign Roles and Calendar Timelines

- Assign decision maker (at beginning)
- Provide each with District template and forms for use

Assignment to Investigator

- If you are not going to investigate, assign to a trained investigator
- Ensure that investigator does not have a conflict of interest
- Continue to monitor deadlines and be a resource to the investigator re: definition of sexual harassment, course of investigation
- Provide each with District template and forms for use

Plan, Plan, Plan

- Map out a plan for your investigation
- Understand the allegations
- Understand definition of sexual harassment so that you know what elements must be established
- Who will you interview? What documents must you see? Do you need to ask IT to run a server search? Do you need to get recordings from surveillance cameras?

Medical Evidence

- Can not require party to provide medical evidence
- If they do want to provide it, must obtain written, voluntary consent (of parent or adult student) allowing district to use that evidence in grievance process
- Even if we already have the evidence, we can't use it in investigation without that consent

Investigating the Complaint

- Interview both parties (required)
- Interview any witnesses identified by the parties and anyone else you identify as potentially having information
- Request documents from district, parties, and witnesses

Is Informal Resolution Appropriate?

| | |
|--|--|
| | <p>Is the Complaint acceptable for informal resolution?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes:</p> <ul style="list-style-type: none">• Must obtain written voluntary consent from both parties and provide the parties with written notice of their rights |
|--|--|

ments

| | |
|--|---|
| | <ul style="list-style-type: none">• Assign facilitator, ensuring no conflict of interest exists <p>If no, proceed with assigning investigator</p> |
|--|---|

Informal Resolution

- School is not required to use informal resolution, but if it chooses to use it, then it is appropriate to offer if:
- Formal Complaint has been filed
- Both parties voluntarily agree to participate in writing
- The Respondent is NOT an employee and the complainant a student

Informal Resolution, cont.

- Cannot be required and either party can withdraw at any time prior to...
- Process may include arbitration, mediation, or restorative justice
- Decide what process the District will use and include that information in written notice of Formal Complaint
- Must have reasonably prompt time frame to complete the process

Informal Resolution, cont.

- Decide whether confidentiality can be a term of an informal resolution and include that information in written notice
- If the informal resolution facilitator may be called as a witness in investigation, must disclose that possibility to the parties in the written notice
- Facilitator must not have a conflict of interest, must be trained in these regulations, and must be free of bias

Informal Resolution, cont.

- Suggested that Coordinator train in informal resolution
- Suggested that facilitator be trained in mediating sexual harassment situations
- Be aware of power dynamics when implementing an informal resolution
- Should there be a face-to-face meeting?
- Is someone manifesting signs of trauma?
- Should facilitator press parties on facts?

Informal Resolution, cont.

Outcome of a successful informal resolution may include:

- Continuation of supportive measures
- Discipline for a Respondent
- Other agreements made between the parties

Informal Resolution, cont.

- Terms of resolution should be negotiated in good faith, be in writing, and include language regarding enforceability
- If successful, IR results in a dismissal of the Formal Complaint without adjudication
- Consult counsel to review documentation

Proceeding with the Interview



Interview Phase

- Recommendation is to start by interviewing complainant and then the respondent
- Provide written notice of the date, time, location, participants, and purpose of any investigation activity that requires a **party's presence** and provide notice with enough time for the party to prepare to participate in the activity.

Interview Phase, cont.

- You've identified the allegations and understand what information will be needed to make a determination, so use that to guide interviews
- Plan your interview outlines
- To extent reasonable, ask both parties the same questions
- Ask witnesses the same or similar questions

Conducting Interviews: Opening Exchange

- Explain purpose of interview:
 - Important part of the investigation into the allegation of sexual harassment that the District received
- Provide reassurances:
 - No retaliation for participating
 - Will maintain confidentiality except as between the parties and the District personnel who are required as part of the Title IX process

Conducting Interviews: Opening Exchange

- Explain expectations
 - No recording (you can decide whether you will allow or not)
 - Tell the truth (District Policy for False Report)
- Rules for advisors
 - You don't have to provide evidence protected by privilege
 - You may not threaten, intimidate, or harass anyone who participates in this process

Conducting Interviews

- If interviewing virtually, ask witness to confirm who is present with them
- Ask open ended questions
 - Use the answers to ask more pointed questions to drill down into the detail you need
- Document the responses in a reliable and consistent fashion

Conducting Interviews, cont.

- Use evidence
- Get campus map or classroom lay out
- Identify location
- Note perceptions (as facts)
- All the decision maker has to go on is what you provide

Open Ended vs. Closed Questions

How do you get to work?

Tell me about your relationship with your boss.

What did you manage to accomplish on your trip?

What happened in the meeting?

Do you get to work by driving, riding the bus or walking?

Do you get along well with your boss?

Was your trip successful?

Did you have a good meeting?

Open Ended vs. Closed Questions

Open ended questions begin with:

What...?

Why...?

How ...?

Closed-ended questions begin with:

Is/are ...?

Do/did ...?

Would/will ...?

Could/can ... ?

Was/were ...?

Have/has ... ?

Conducting Interviews

At the end:

- Ask both parties and any witnesses to provide any documents they think are relevant
- Ask both parties and any witnesses who else they think you should talk to and then interview the witnesses identified by the **parties** and consider whether anyone identified by witnesses should be interviewed

Providing the Evidence

- Get a signed non-disclosure agreement
- Provide both parties an equal opportunity to inspect and review all evidence gathered as part of the investigation that is *directly related* to the allegations raised in the formal complaint
 - Including evidence on which you do not intent to rely on it in drafting an investigation report by sending the evidence to the parties in an electronic or hard copy format and allowing the parties 10 days to submit a written response

10 & 10

Parties Right to Inspect Evidence and Report



10 & 10

Parties Right to Inspect Evidence and Report

- The parties may then inspect and review the evidence directly related to the allegations.
- The investigator must take into consideration the parties' responses and then determine what evidence is relevant and summarize the relevant evidence in the investigative report

10 & 10

Parties Right to Inspect Evidence and Report, cont.

- The parties then have equal opportunity to review the investigative report; if a party disagrees with an investigator's determination about relevance, the party can make that argument in the party's written response to the investigative report

Redacting Evidence

TEXT:

[REDACTED] UNIDENTIFIED FLYING OBJECTS
(UFO) ON [REDACTED] AWARE OF
VARIOUS UNIDENTIFIED OBJECTS IN [REDACTED]
[REDACTED] AN
UNIDENTIFIED SILENT LIGHT MOVING [REDACTED]
[REDACTED] THE LIGHT WAS A SATELLITE NOT AN AIRCRAFT [REDACTED]
[REDACTED] AN
UNIDENTIFIED LIGHT [REDACTED]
THE LIGHT WAS SUBSEQUENTLY IDENTIFIED AS AT LEAST ONE AIRCRAFT.
[REDACTED]
THREE STRANGE LIGHTS (NFI) [REDACTED] ONE WAS A STATIONARY, BLINKING
LIGHT; THE TWO OTHER, MOVING, LIGHTS CROSSED PATHS. [REDACTED]
[REDACTED]
[REDACTED] THE UFO WAS AT AN ALTITUDE OF APPROXIMATELY 300 [REDACTED]
METERS [REDACTED] AIRCRAFT
IN THE AREA.]

Redacting Evidence

The District may permit or require the investigator to redact information that is not directly related to the allegations contained within documents or other evidence that are directly related to the allegations, before sending the evidence to the parties for inspection and review.

Redacting Evidence

- The District may impose on the parties and party advisors:
 - restrictions or
 - require a non-disclosure agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX grievance process
- *As long as doing so does not violate these final regulations or other applicable laws.*

Redacting Evidence

- You may not redact confidential information that is directly related and relevant
- Then what if party won't sign NDA?

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"This just says you won't reveal anything about our nondisclosure agreement."

Investigation Report

- Draft a written investigation report that summarizes the relevant evidence
- Can include observations and even recommendations
- Provide the report to the parties AND their advisors, if any, at the same time it is sent to the decision maker for review and opportunity to provide another written response prior to the decision maker rendering a determination.

Once the Report Makes it to the Decision Maker

- Investigator issues report to decision maker and parties
- Parties have 10 days to submit written response/questions to decision maker
- Decision Maker will determine how to address any additional responses received.

Written Determination

- Address each sexual harassment allegation
- Grievance procedures-steps taken
- Findings-cite relevant evidence that supports determination of responsibility
- Rationale for evidence dismissed
- Conclusions of respondent's behavior in relationship to the code of conduct
- Each allegation dismissed or substantiated regarding responsibility of the code of conduct violation
- Respondent's disciplinary sanctions-consequences
- Complainant remedies to restore equal access
- Appeal procedures

Determining Sanctions

- Considerations:
 - Founded=Consequence(s)
 - Context
 - Age
 - Disability (special education/504)
 - Prior history
 - Severity
 - Resources district has
 - Resources district doesn't have

Sanction Examples

- Change bus
- No classes or lunch together
- Restrict extra-curricular participation
- No Contact Agreement
- Behavior contract (e.g. required supervision; no discipline referrals)
- Counseling
- Threat assessment
- Community service
- Short-term suspension
- School reassignment (another, alternative, online)
- Referred for long-term suspension
- Referred for expulsion

Title IX Coordinator Checklist

Following Determination of Responsibility:

| <i>Date Completed</i> | <i>Task</i> |
|-----------------------|--|
| | Written Determination of Responsibility sent to all parties |
| | Was the determination <u>that Respondent</u> was responsible? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes: determine the remedies needed to restore or preserve equal access to the education program/activity |
| | Create record to add to file that: <ul style="list-style-type: none">• Documents basis for why the response was not deliberately indifferent• Outlines measures taken to restore or preserve equal access to program/activity• If did not provide supportive measures to Complainant, document the reasons why that was not clearly unreasonable |
| | Safely preserve all evidence and records related to the Formal Complaint to meet record keeping requirements |

Appeals

- If an appeal is filed, ensure that the appeal decision-maker receives necessary documents
- Monitor timelines and competition of that process and ensure that notices are sent to the parties

Title IX Isn't Just Responsive - It's Preventative

- The 2020 amendments focus on “setting forth requirements for [schools’] responses to sexual harassment.”
- However, the preamble also says that “the Department agrees with commenters that educators, experts, students, and employees should also endeavor to prevent sexual harassment from occurring in the first place.”
- OCR encourages schools to undertake prevention efforts that best serve the needs, values, and environment of their own educational communities.

Preventing Sexual Harassment in Schools

- Maintain accurate data regarding AKR/Notice
- Maintain data regarding formal complaints and their resolutions
- Review data at least annually and look for actions the District can take to mitigate or address any recurring patterns.



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