

Title IX Sexual Harassment Investigations and Responses

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What is Title IX?

Federal civil rights law that prohibits sex discrimination in public educational programs and activities, including:

- Equity in athletics
- Treatment of pregnant and parenting students
- Discriminatory discipline
- Disparate treatment in courses and programs
- Sexual harassment and assault

Requirements for School Systems

- Designate Title IX coordinator
- Publish complaint resolution process
- Determine if complaint rises to level of discrimination
- Conduct prompt and equitable investigation
- Make determination and take appropriate action
- Assist with care and support measures

Selecting a Title IX Coordinator

Each system must designate and authorize at least one employee to be the Title IX Coordinator

There can be multiple coordinators, but one must be chosen to retain ultimate oversight

May delegate specific duties to one or more designees

Title IX Coordinator is responsible for oversight of the grievance procedure, investigation of a formal complaint, decision whether to dismiss or investigate, and the informal resolution process

Coordinator CANNOT make determination as to whether discrimination occurred

Title IX Coordinator Division of Duties

- Athletics
- Pregnancy and parenting
- Disparate treatment in courses and activities
- Informal resolution
- Support services
- Sexual harassment and abuse
- Investigations (one per campus)
- Determine whether sexual discrimination occurred

Training

All employees with designated Title IX responsibilities should receive training in their area of responsibility at least annually

Types of Sexual Harassment

- **Quid pro quo harassment**
- **Hostile environment harassment**
- **Specific Offenses**

Quid Pro Quo

Conditioning benefit/service in the education program on the other person's participation in unwelcome sexual conduct

Hostile Environment

- **Unwelcome sex-based conduct**
- **Subjectively and objectively offensive**
- **So severe or pervasive that it limits or denies person's ability to participate in or benefit from the education program or activity**

Specific Offenses

- **Sexual assault**
- **Dating violence**
- **Domestic violence**
- **Stalking**

When does a school have a responsibility to investigate under Title IX?

When the sexual harassment occurs in the school's educational program or activity

A sex-based hostile environment under school's program, even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient's education program

Who can make a complaint?

- Complainant (Alleged victim)
- Parent, guardian, or other authorized legal representative acting on behalf of complainant
- Title IX Coordinator

What to do when you receive a complaint



Five Steps After Receipt of Complaint

- Decision to dismiss or investigate
- Investigation
- Determination
- Appeal
- Support

NOTICE

- At the initiation of grievance procedures, school must provide notice of the allegations to the parties whose identities are known
- Notice must include:
 - Detailing the grievance procedures
 - Sufficient information available at the time to allow the parties to respond:
 - Identities of the parties involved;
 - Alleged conduct;
 - Dates; and
 - Locations.
 - Statement prohibiting retaliation
 - Statement that parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of the evidence
 - If a description of the evidence is provided, the **parties are entitled to an equal opportunity to access** the relevant and permissible evidence upon request
 - If the school decides additional allegations of sex discrimination by the respondent to the complainant that are not included in the initial notice, the recipient must provide notice of the additional allegations

Decision to Dismiss or Investigate

- Determination is made by Title IX Coordinator
- Consider:
 1. Severity and nature of allegations
 2. Safety of complainant or school community
 3. Complainant's wishes/availability of evidence
 4. Need for formal action
 5. Pattern of misconduct
 6. Age and relationship of parties
 7. Effect on access to educational opportunities of complainant and school community
 8. Respondent's absence/unable to identify
 9. Respondent is not a student/employee/vendor
 10. Complaint withdrawn
 11. Conduct outside scope of policy
 12. Alleged conduct does not constitute sex discrimination
 13. Lack of jurisdiction

- School may consolidate complaints against more than one respondent OR by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances

Complaint consolidation

Other Tools

Emergency removal – for imminent and serious threat to the health or safety of a complainant or any students, employees, or other persons arising from the allegations of sex discrimination

Administrative leave –nothing prohibits a school from placing an employee on administrative leave from employment responsibilities pending the grievance process

Dismissal of a complaint

MINIMUM requirements when school dismisses a complaint:

- Offer supportive measures to the complainant
- For withdrawal or conduct even if proven would not amount to sexual discrimination, offer supportive measures to the respondent
- Require Title IX Coordinator to take other appropriate steps to ensure sex harassment does not continue or recur

Complaint investigation

- Thorough
- Prompt
- Impartial
- Check for conflicts and bias against complainant and respondent (Title IX Coordinator responsibility)



Selecting an Investigator

- Consider:
 - Have they received Title IX training?
 - Are they trained/knowledgeable about handling complaints of sexual harassment under the school's policy/grievance procedures?
 - Are they comfortable talking to all types of students/employees? Could they talk to a jury?
 - Are they trained to talk to a minor and using terms appropriate to their age/education?
 - Can they reliably conduct a conflicts/bias check on the situation at hand?

Conducting an Investigation: Getting Started



Two touchstones:
Thorough and
Prompt



Record
EVERYTHING if
possible. Get
consent for the
recording **ON** the
recording.



Designate a point
person for
scheduling and
coordinating
interviews



Keep a timeline
and revise it
throughout



Site visits are
invaluable, Go
back if necessary



Gather as much
documentary
evidence as you
can

Policies
Reports
Security Video
Messages/Voicemail
Information from
student/employee
files

Things to Consider as an Investigator

- Investigator is a neutral fact finder, treat complainant and respondent equally
- Complete and careful investigation
- Start with presumption that Respondent is not responsible for sex discrimination
- Criminal case does not relieve the school of the responsibility for an investigation
- Confidentiality: offer it where it can be controlled



Complaint Investigation

- Burden is on the school not the parties, to conduct an investigation which gathers sufficient evidence
- Provide equal opportunity for the parties to present fact witnesses, inculpatory, and exculpatory evidence
- Review gathered evidence and determine what is relevant and what evidence is impermissible, regardless of relevance (privileged, medical records without authorization, previous sexual history/preference with exceptions)
- Provide each party an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible
 - If school elects to provide a description of the evidence, it must further provide parties with equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party
 - School must provide a reasonable opportunity to respond to the evidence or to the accurate description of the evidence
 - School must take reasonable steps to prevent unauthorized disclosures during this procedure

Hostile Environment Inquiry

Requires a fact-specific inquiry that includes consideration of the following:

- Degree to which the conduct affected the complainant's ability to access the system's education program/activity.
- Type, frequency, and duration of the conduct
- Parties' ages, roles within the school, previous interactions, and other factors
- Location of the conduct and context
- Other sex-based harassment in the recipient's education program

Interview With Complainant

Review complainant's statement first

Complainant should be the first interview

- Encourage to be as specific as possible – names, dates, frequency, places, specific behavior
- A thorough written version of the allegations should be prepared, signed by complainant, and placed in the file
- Note the effect of the harassment on the victim

Interview with Respondent

Be prepared to brief them on their due process rights

- Investigation will be conducted in a neutral manner, caution them regarding confidentiality, and warn against retaliation

Review all allegations with the alleged harasser

- Their version of the events should be elicited in the same detail requested of the complainant
- Assertions that complainant had a motive to lie or that conduct was welcome should be explored – request any substantiating documentation
- Have them sign a written statement if not recorded

Questioning Parties and Witnesses to assess credibility and evaluate allegations

School must provide a process that enables a decisionmaker to question parties and witnesses to adequately assess a party's or witnesses credibility to the extent credibility is in dispute and relevant in evaluating the allegations



Determination whether sexual harassment occurred

AFTER investigation

- Preponderance of the evidence standard UNLESS you use clear and convincing evidence standard in other comparable proceedings
- Determination CANNOT be made by Investigator or Title IX Coordinator
- Notify the parties in writing of the determination whether sex discrimination occurred under Title IX including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal, if applicable

If there is a determination that sex discrimination occurred:

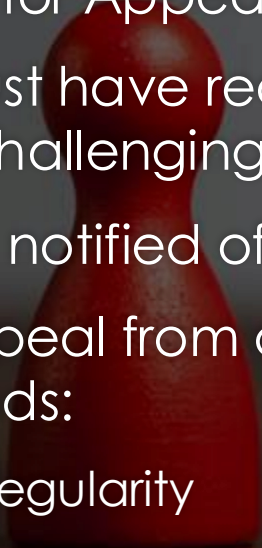
- Require the Title IX coordinator to coordinate the provision and implementation of remedies to the complainant and other persons the school identifies as negatively impacted by the sexual harassment;
- Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions; and
- Require the Title IX Coordinator to take any other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur.

A Note on Discipline

- A school may not impose discipline unless there is a determination at the conclusion of the recipient's grievance procedures that the respondent engaged in prohibited sexual harassment
- May not discipline a party, witness, or others participating in a school's grievance procedures for making false statements or for engaging in consensual sexual conduct based solely on the recipient's determination whether sexual harassment occurred

Appeals

- Can appeal decision to dismiss complaint or final determination
- Decision maker for appeal cannot be investigator or Title IX Coordinator
- Decisionmaker for Appeal must be trained in accordance with Federal Regulations
- Both parties must have reasonable and equal opportunity to make a statement in support of, or challenging, outcome
- Parties must be notified of outcome of appeal and rationale for the result
- Parties may appeal from a determination regarding responsibility ONLY on the following grounds:
 - Procedural irregularity
 - Newly discovered evidence
 - Title IX personnel had a conflict of interest or bias



Informal Resolution Process

- School may offer informal resolution process at any time prior to a final determination
- Both parties must voluntarily consent to the informal resolution process
- This process is not available if the complaint involves allegations of an employee sexually harassing a student
- System must still take appropriate and effective steps to ensure sex discrimination does not continue/recur
- Prior to agreeing to resolution either party may withdraw from the informal resolution process and resume the grievance procedure
- Potential terms for an informal resolution:
 - Restrictions on contact
 - Restriction on respondent's participation in system's programs and activities

What are supportive measures?

- Individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge
- Goal is to:
 - Restore or preserve that party's access to system's education program or activity, also measures that are designed to protect the safety of the parties or the system's educational environment
 - Provide support during system's grievance process

Supportive Measures

Measures may include but are not limited to:

Counseling;

Deadline extension and other course-related adjustments;

School escort services;

Increased security and monitoring of certain areas of campus;

Contact restrictions;

Leaves of absence;

Changes in class/work/housing/extracurricular activity; and

Training and education programs related to sex-based harassment

Students with Disabilities

If the complainant or respondent is a student with a disability, the school must require the Title IX Coordinator to consult with one or more members of the IEP team to comply with the IDEA in the implementation of supportive measures



Questions?