

Title IX Sexual Harassment Formal Complaint Training Guide

This guide was prepared and is provided in accordance with the May, 2020 federal training requirement for Title IX coordinators, investigators, decision-makers, and appeal decision-makers (collectively “personnel”).

In addition to this guide, personnel should reference the May, 2020 regulations and district policies and procedures.

Defining Title IX Sexual Harassment

What is Title IX?

Title IX is a federal law which prohibits sex discrimination in the district’s education programs and activities. Both sexual misconduct and sexual harassment are forms of sex discrimination. Title IX of the Education Amendments of 1972 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.

What is Title IX sexual harassment?

Title IX Sexual Harassment is unlawful discrimination and violates district policy 4901 and related regulations. Title IX sexual harassment can take one of three forms, as outlined below:

1. Quid pro quo harassment (employee respondents only)

Quid pro quo harassment means giving, offering, or conditioning a district benefit or service in exchange for sexual conduct. This harassment can be done either explicitly or impliedly. Even one single incident of quid pro quo harassment is an abuse of authority that is inherently offensive and serious enough to jeopardize equal educational access.

2. Unwelcome conduct harassment

Unwelcome conduct harassment includes conduct that is so severe, pervasive, *and* objectively offensive that it effectively denies a person equal access to education.

3. Clery Act / Violence against Women Act harassment

Clery Act / Violence against Women Act harassment includes a single instance of any of the following specific conduct: sexual assault, dating violence, domestic violence, and stalking.

In addition to meeting one of the three definitions identified above, in order for conduct to be considered Title IX sexual harassment, it must also have occurred within the district’s education program or activity, in the United States, and must interfere with a person’s educational access, as discussed below.

What is included in the district's education program or activity?

The district's program or activity includes all of the academic, educational, extracurricular, athletic, and other programs of the school, whether they take place in the facilities of the school, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere if the district exercised substantial control over both the respondent and the context in which the harassment occurred.

The district's program or activity also includes conduct which occurred in the context of school operations, such as over computer and internet networks, digital platforms, and computer hardware or software owned or operated by or used in the operations of the school. A student using a personal device to perpetrate online sex harassment during class time may also constitute a circumstance over which the district exercises substantial control.

In order to make a determination about whether the conduct falls within the scope of the district's program or activity, personnel must consider whether the school provided funding, promoted, or sponsored the event or circumstances where the conduct occurred.

It is important to note that a teacher's sexual harassment of a student is likely to constitute sexual harassment in the program of the school even if it occurs off campus. However, it is also possible that this conduct, though meeting the definition of falling within the school's program or activity, does not meet the definition of Title IX sexual harassment and must be evaluated under the district's policy 4901.

Regardless of whether the conduct occurred within the scope of the district's program or activity, to be considered Title IX sexual harassment, the conduct must occur in the United States.

What does it mean to interfere with a person's educational access?

Prohibited conduct under Title IX requires sexual harassment to meet a seriousness standard involving denial of equal access to education, regardless of whether the sexual harassment is viewed as causing denial of benefits, exclusion from participation, or other interference with the ability of a person to perform his or her academic responsibilities.

Whether conduct interferes with a person's educational access is measured against the access of a person who has not been subjected to harassment. Additionally, the conduct is evaluated from the perspective of a reasonable person, so a victim's individualized reaction, or lack of reaction, is not a point of focus.

Signs of enduring *unequal* educational access due to severe, pervasive, and objectively offensive sexual harassment may include such things as expressing anxiety, skipping class to avoid a harasser, experiencing a decline in grades, having difficulty concentrating in class, dropping out of school, or dropping out of certain activities or sports; however, no manifestation of trauma is required to determine that harassment has occurred.

Personnel may apply these definitions in a common sense manner that takes into account the ages and developmental abilities of the involved parties.

How is Title IX sexual harassment identified?

As noted above, Title IX sexual harassment must meet one of the three prongs of the definition of Title IX sexual harassment, must occur within the district's program or activity, and must deny educational access. Whether conduct constitutes Title IX sexual harassment is determined on a case by case basis.

It is important to note that the May, 2020 regulations specifically state that Title IX is "not a general civility code" and:

Title IX does not stand as a zero-tolerance ban on all sexual harassment, Title IX does not stand as a federal civil rights law to prevent all conduct that "makes me feel uncomfortable." The Supreme court noted in *Davis* that school children regularly engage in insults, banter, teasing, shoving, pushing, and gender specific conduct that is upsetting to the students subjected to it yet a school is liable under Title IX for responding to such behavior only when the conduct is so severe, pervasive, and objectively offensive that it denies its victims the equal access to education that Title IX is designed to protect.

The US Department of Education provided several specific examples and distinctions in its May, 2020 regulations:

Grooming behavior is considered by the federal government as not likely to constitute Title IX sexual harassment. However, this conduct is prohibited under the district's other policies.

If students heckle another student with comments based on the student's sexual orientation, such as "gay students can't sit at this table in the cafeteria," but their actions do not involve conduct of a sexual nature, this conduct does not constitute Title IX sexual harassment. However, this conduct is prohibited under the district's other policies.

If male students repeatedly sabotage female students' work, this could constitute gender based harassment and could be a violation of Title IX which is prohibited under the district's other policies.

Where conduct is sexual in nature, or where conduct references or is aimed at one sex or another, it constitutes conduct "on the basis of sex."

Misunderstandings due to cultural or comprehension differences do not negate whether conduct is considered Title IX sexual harassment, but a genuine lack of understanding may factor into sanctions.

Miscellaneous Provisions

What happens when sexual harassment is reported?

When any district employee observes, experiences, or learns about conduct which might constitute sexual harassment, the employee is required to report the matter to a school leader, their supervisor, or the Title IX coordinator.

All district employees receive training on their reporting obligations. School leaders and supervisors receive training on how to contact the Title IX coordinator with these concerns.

Anytime the Title IX coordinator receives notice of conduct which could be Title IX sexual harassment, the Title IX coordinator must promptly and personally contact the alleged victim to discuss supportive measures and explain the process for filing a formal complaint. The Title IX coordinator has been provided with training on how to respond to conduct which might constitute Title IX sexual harassment.

How is consent proven in a Title IX sexual harassment complaint?

The district does not place the burden of proving consent on a respondent, and does not place the burden of proving the absence of consent on a complainant. The district's investigator will collect all information directly related to allegations of Title IX sexual harassment and a decision will be made by an impartial decision-maker.

Does the district make any presumptions in Title IX sexual harassment cases?

In accordance with federal law, the district presumes that respondents in a Title IX sexual harassment formal complaint are not responsible for the alleged misconduct unless the process outlined in its grievance procedure is completed and a finding of responsibility has been entered. This means that the district does not pre-judge facts, does not draw inferences about credibility based on a party's status as a complainant or respondent, and objectively evaluates all relevant evidence to reach determinations.

Evidence

What does it mean to be impartial and unbiased?

Personnel must be impartial and unbiased in order to work in the area of Title IX sexual harassment. In order to be impartial and unbiased, personnel must review all facts and evidence with an open mind and must not make any pre-determinations about the facts of a specific case. Personnel are expressly prohibited from relying on stereotypes about whether a person is more or less credible because they are a complainant or a respondent.

How must evidence be evaluated?

Personnel must fairly evaluate all evidence reasonably related to a claim of Title IX sexual harassment, including both inculpatory and exculpatory evidence. Inculpatory evidence is evidence which shows or tends to show that a person committed Title IX sexual harassment. Exculpatory evidence shows or tends to show that a person did not commit Title IX sexual harassment.

When conducting a Title IX sexual harassment investigation, investigators are required to prepare a report which includes all evidence which is directly related to an allegation, even if the investigator does not believe the evidence is relevant or credible.

When making a decision in a Title IX sexual harassment complaint, decision makers are required to consider all evidence which is directly related to an allegation, but not provide weight to evidence which is not relevant and/or not credible. Relevant evidence is evidence which helps a decision maker determine if something is more likely to be true or not true. Credible evidence is evidence which is believable.

Can evidence be excluded?

A party can decline to produce evidence which is shielded by a legally recognized privilege. Such protected information can include, but is not limited to, attorney-client communications and medical records.

Questions and evidence regarding a complainant's prior sexual behavior or sexual predisposition will be excluded except (i) where evidence of prior sexual behavior is offered to prove someone other than the respondent committed the alleged offense; or (ii) where prior sexual behavior evidence is specifically about the complainant and respondent and is offered to prove consent.

Grievance Process

How is the grievance process conducted?

The district conducts its Title IX sexual harassment grievance processes in accordance with the procedures specified in its written grievance procedure.

How are decisions entered?

All decisions in Title IX sexual harassment investigations will be made based on an objective evaluation of relevant evidence and will be based on the preponderance of the evidence standard (whether it is more likely than not that the conduct occurred). Decision makers will not draw inferences about responsibility based on a party's failure to answer questions.

How are appeals conducted?

The district conducts appeals in Title IX sexual harassment complaints in accordance with the procedures specified in its written grievance procedure.

How are individuals disciplined for sexual harassment and similar misconduct?

If the misconduct which is alleged would constitute Title IX sexual harassment, that conduct will be responded to under the district's Title IX sexual harassment grievance procedure. Only conduct which meets the strict definition of Title IX sexual harassment will be governed by the Title IX sexual harassment grievance process. All other allegations of misconduct will be responded to under policy 4901, an applicable student conduct code, or other district policy, procedure, or bargaining agreement.