

TITLE IX SEXUAL HARASSMENT TRAINING: 4 SESSIONS

Puget Sound Educational Service District

June & July 2021

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Thank you for being here!

This training does not provide legal advice.
Laws and regulations frequently change.

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TITLE IX SEXUAL HARASSMENT TRAINING: SESSION 1

Session 1 Road Map

- Title IX's overarching goal
- Legislative beginnings
- Scope of Title IX
- Legislative and caselaw journey
- Major changes in 2020
- Title IX team roles
- Terminology
- Applicability of 2020 requirements
- New Definition of Sexual Harassment
- Actual Knowledge
- Deliberate Indifference
- Basics of formal complaint
- Jurisdiction
- Basics on informal resolutions
- Recordkeeping

Future sessions

- Responsibilities of Title IX Coordinator
- Supportive Measures
- Due Process and Fairness
- Burden of Proof and Burden of Gathering Evidence
- Standard of Proof
- Confronting Biases, Impartiality, Conflicts of Interest
- Working with parties
- Intersection with IDEA, ADA and 504
- Investigative response to formal complaints
- Decision maker training
- Informal resolutions
- Appeals
- Case studies

Training is a resource to be used in conjunction with district policies and practices



Patsy T. Mink Equal Opportunity in Education Act



Basic premise of Title IX

“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.”

20 U.S.C. § 1681(a)

1964 Civil Rights Act



The Godmother of Title IX – Bernice Sandler

LBJ's 1967 Executive Order 11375



Title IX 1972



WHAT IS UNIQUE ABOUT TITLE IX? ITS FOCUS ON THE EDUCATIONAL ENVIRONMENT

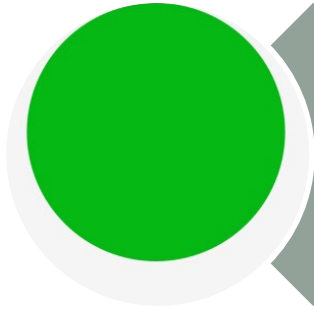
Scope of Title IX

- Prohibits sex discrimination in education programs and activities receiving Federal financial assistance
- What is an “education program or activity”?

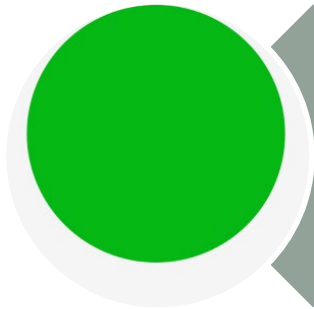
Who is protected by Title IX?

- ☐ Title IX protects all students and employees
 - ☐ Male, female, nonbinary
 - ☐ Regardless of sexual orientation or gender identity
 - ☐ People with disabilities
 - ☐ Undocumented students
- ☐ Title IX covers harassment between members of the same sex

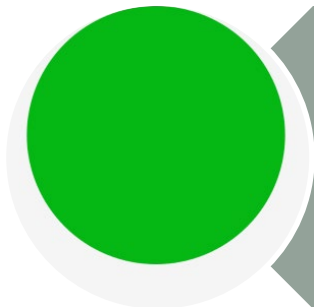
3 Basic Requirements – updated in 2020



Notice of non-discrimination



Title IX coordinator: designate at least 1 and prominently display their contact information



Grievance procedures for sex discrimination complaints. Provide notice of it. Ensure reports can be made even during non-business hours

Title IX over time



Original 1975 regulatory text of Title IX

- Athletics
- Pregnant and Parenting Students
- Employment
- Single Sex education
- General ban on different treatment
- Retaliation

2020 regulations: Sexual harassment



Evolution: Legislative and Supreme Court

- ◆ Signed in 1972 but with limited regulations
- ◆ 1975: President Ford signs Title IX regulations; schools have 3 years to come into compliance
- ◆ 1984: Grove City v. Bell: Supreme Court rules that Title IX only applies to specific programs (i.e. Office of Student Financial Aid) that receive federal funds. Under this interpretation, Title IX usually did not apply to athletics departments
- ◆ 1988 Civil Rights Restoration Act: reverses Grove City. If ANY program or activity at an educational institution receives federal funds, ALL programs and activities must comply with Title IX

Title IX provides a private right of action

- 1979 - Cannon v. University of Chicago
 - A plaintiff in a private lawsuit may receive money damages if a school intentionally discriminated in violation of Title IX
 - This private right of action is available along with administrative remedies provided by OCR
 - Administrative remedies are different than judicial enforcement of Title IX; both types of enforcement help achieve Title IX's purpose

Title VII:

Sexual harassment is sex discrimination

- 1986 - Meritor Savings Bank v. Vinson
 - Title VII employment case
 - Sexual harassment can create a hostile environment which is a form of sex discrimination
 - Sex discrimination is not limited to so-called tangible impacts such as someone receiving a lower salary due to discrimination

Title IX: Sexual harassment fact pattern

You be the judge.

Fact pattern: 8th grade high achieving female student gets invited to a high school book group run by male HS teacher (male teacher's wife is one of student's teachers who recommends her to the group). Teacher makes sexually suggestive remarks to various students. Student arrives to HS the following year and is placed in teacher's advanced social studies class. He directs more sexual comments to her.

You be the judge

- In the spring of student's 9th grade year, teacher comes to her home to "return a book" and kisses her, fondles her breasts and unzips her pants.
- The two have sexual intercourse a number of times in the next several months, during school time, but never on school property. Student does not report the relationship to the school, saying that while she knew it wasn't right, she wasn't sure what to do and she wanted to continue having him as a teacher and stay in the advanced program

You be the judge

- In fall of her sophomore year, the parents of two other students complain to the principal about the teacher's comments. Principal arranges a meeting with the teacher who says he didn't think he made offensive remarks but apologized and said it wouldn't happen again
- In January of the student's sophomore year, she and the teacher are found by police having sex in a wooded area. Teacher is arrested and loses his license. Student later sues the school, saying the district should have done something about the inappropriate sexual relationship

Your turn to analyze

- What type of conduct is it?
- Is this sexual harassment under Title IX?
- Notice: Who at the district knew of the sexual relationship?

Do you think the district is liable for this conduct?

Why or why not?

U.S. Supreme Court on Title IX in K-12

- 1992 - Franklin v. Gwinnett County Public Schools: sexual harassment of a student by a teacher *may* mean the school itself engaged in sex discrimination, but Court does not clarify under what circumstances.
 - Holding: Student may sue for damages.
- 1998 - Gebser v. Lago Vista Independent School District: sets forth the circumstances by which a school may be liable.
 - A school has engaged in discrimination if it has actual knowledge of an employee sexually harassing a student and responds with deliberate indifference

U.S. Supreme Court on Title IX in K-12

1999 - Davis v. Monroe County Board of Education

- 5th grade female student sexually harassed by peer for 5 months until he was arrested; student and her mother had complained repeatedly to the school
- Court held that students subjected to sexual harassment by peer may sue the district for damages under Title IX if the district is “**deliberately indifferent** to sexual harassment, of which they have **actual knowledge**, that is so **severe, pervasive, and objectively offensive** that it can be said to **deprive the victims of access** to the educational opportunities or benefits provided by the school”

Why is there a higher standard for actionable sexual harassment in schools vs. workplaces?

- From the Davis opinion:
- “Courts must also bear in mind that schoolchildren may regularly interact in ways that would be unacceptable among adults.”
- “A single instance of severe one-on-one peer harassment could, in theory, be said to have such a systemic effect, but it is unlikely that Congress would have thought so.”

Consider how these statements feel to you and your community.

The 2020 regulations cite them in the preamble to support the Department’s reliance on the Davis liability standard.

History of Title IX – regulations and OCR guidance

- *Title IX initial regulations in 1975 require there to be a grievance procedure for complaints of discrimination on the basis of sex. Sexual harassment is not specifically identified.*
- 1997: Amidst significant court cases, OCR first issues guidance on schools' responsibilities in addressing sexual harassment
- 2001: Revised Sexual Harassment Guidance (rescinded in 2020)
- 2011: Dear Colleague Letter on Sexual Violence (rescinded in 2017)
- 2014: Q&A on Title IX and Sexual Violence (rescinded 2017)
- 2015: Title IX Resource Guide and associated guidance to TIXCs (rescinded 2020)
- 2017: Updated Q&A "Campus Sexual Misconduct" (rescinded 2020)

History of Title IX – regulations and OCR guidance

- November 2018: ED issues Notice of Proposed Rulemaking and draft Title IX regulations on Sexual Harassment
- May 2020: ED issues final Title IX regulations on Sexual Harassment
 - Some significant differences from draft regulations
- August 14, 2020: new regulations went into effect
 - Regulations don't clearly state this but OCR stated in an OPEN Center response that these regulations are not intended to apply to conduct that occurred prior to August 14, 2020
- How can you get more information from OCR?
 - 2000 page preamble to the regulations (can do word searches)
 - Recent Q&As (As of this training, two in January 2021)
 - OCR's Blog
 - OPEN Center responses

What's next? Biden administration plans public hearings on Title IX



2020 regulations – major changes

- Impetus behind the changes
- Title IX team roles
- Terminology and Definitions
- Actual Knowledge
- Deliberate Indifference
- Supportive measures
- Formal complaint
- Informal response
- Standard of proof
- Training
- Recordkeeping

Note: “Safe Harbors” existed in draft regulations regarding a recipient’s response in absence of formal complaint and provision of supportive measures, but were taken out for final regulations

2020 Title IX Regulations Guiding Principles

- All parties should be treated equitably and receive the same rights
- Grievance process should be transparent
- Respondents should receive adequate due process protections in a grievance process
- Complainants should be adequately protected prior to a determination of responsibility or non-responsibility
- Schools have clear standards to follow that are enshrined in the law, rather than guessing whether guidance is mandatory for them

Title IX Roles in the district

- Title IX Coordinator
- Investigator
 - May be the Title IX Coordinator. Investigator and Decision Maker cannot be the same person.
- Decision Maker(s) (single or panel)
 - cannot be the investigator or Title IX Coordinator
- Informal Resolution facilitator
- Advisor to party (only if the district's policy says this is a role for staff; otherwise parents/guardians/attorney may be an advisor)
- Decision Maker for Appeal

Title IX Terminology

- Recipient = school or entity receiving federal funding.
- Complainant = person or their parent/guardian who files a written complaint alleging they have been harassed OR who provides notice of allegations
 - No 3rd party complainants
 - Includes a parent or guardian for those under 18
- Respondent = person(s) against whom a complaint is filed OR about whom notice of an allegation is provided

Title IX Terminology

- Education program or activity = all district programs

“ ‘Education program or activity’ includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs”

- Not just programs that directly receive the federal funding
- All programs or activities that have a sufficient nexus to the district
 - Does the activity use district property?
 - Does the district advertise the activity?
 - Does the district assist with registration or staffing for the activity?

What do the regulations generally require?

- District must respond **promptly** and **supportively** to a complainant, even in absence of formal complaint, by offering **supportive measures**
- Must provide a **prompt** grievance process that is predictable and fair to both parties and includes due process protections, before determining remedies and disciplinary sanctions
 - Within grievance process, respond **promptly** by offering **supportive measures to both** complainant and respondent
- District may not treat a respondent as responsible for sexual harassment without providing due process protections.
- If the district determines responsibility for sexual harassment after following a fair grievance process that gives clear procedural rights to both parties, the recipient must provide remedies to the complainant.
 - Ensure that remedies are implemented and effective. Follow up with complainant.

2020 regulations use the Davis standard in several ways

1. Adopts the specific Davis construct of hostile environment as one of three categories of conduct that constitutes sexual harassment:
“Unwelcome conduct that a reasonable person would determine is **so severe, pervasive, and objectively offensive** that it effectively denies them equal access to the program or activity”
2. A district must have “**actual knowledge**” of sexual harassment in order to have notice of it
3. Once a district has actual knowledge of SH, it must respond in a manner that is not **deliberately indifferent**

WHAT TYPE OF CONDUCT DO THE
2020 REGULATIONS APPLY TO?

Sexual Harassment: New 3 part definition

Conduct on the basis of sex that satisfies one or more of the following:

ONE: An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct

Quid Pro Quo: the provision or denial of a benefit related to the acceptance or refusal of unwelcome sexual conduct

TWO: Unwelcome conduct that a reasonable person finds to be so severe, pervasive, and objectively offensive so that it effectively denies a person equal access to the recipient's education program or activity

Hostile environment

Sexual Harassment: New 3 part definition

THREE: Any of the following:

Sexual assault (Clery Act definition)

Dating violence (VAWA definition)

Domestic violence (VAWA definition)

Stalking (VAWA definition)

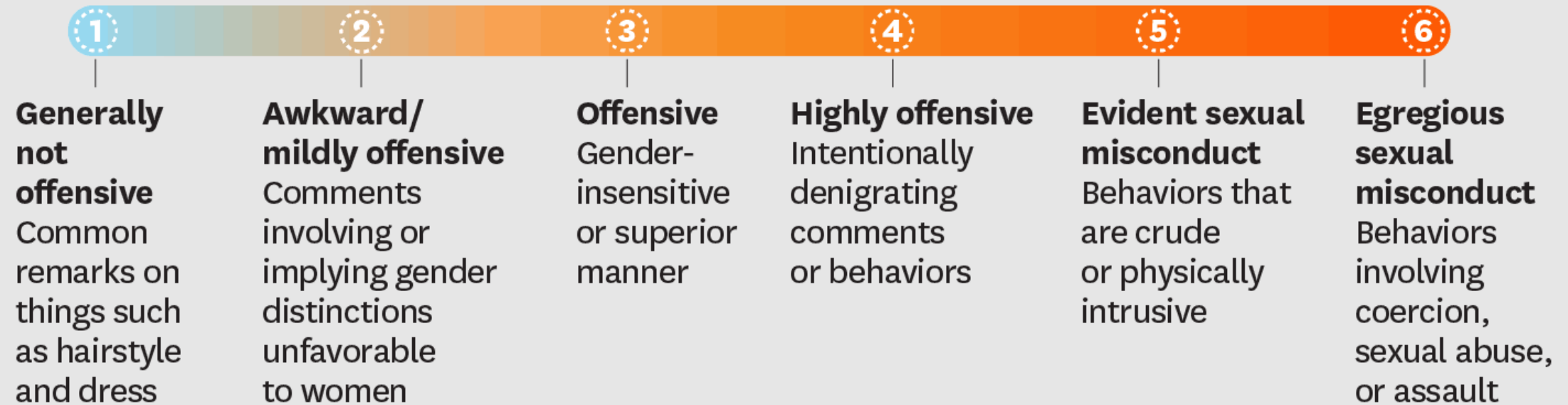
** There is no requirement to determine whether these acts are severe, pervasive, or objectively offensive.*

Types of sexual harassment

- Verbal conduct of a sexual nature – comments; spreading rumors of sexual activity; sexually suggestive sounds
- Nonverbal conduct of a sexual nature – sharing an inappropriate photo via text or online
- Physical conduct of a sexual nature – touching, standing too close, cornering someone, leering, gestures, rape, sexual assault
- Unwelcome sexual advances
- Requests for sexual favors
- Stating or implying that a person will lose something if he or she does not submit to a sexual request
- Penalizing a person for failing to submit to sexual advances
- Some acts of sexual harassment are also crimes

The Spectrum of Sexual Misconduct at Work

Knowing where a behavior falls depends on the situation, history of the relationship, tone of delivery, and nonverbal actions.



FROM "IT'S NOT ALWAYS CLEAR WHAT CONSTITUTES SEXUAL HARASSMENT. USE THIS TOOL TO NAVIGATE THE GRAY AREAS,"
BY KATHLEEN KELLEY REARDON, JUNE 2018

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Sexual assault

☐ Rape

- ☐ The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim

☐ Fondling

- ☐ The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent due to age or permanent/temporary incapacity

☐ Incest

- ☐ sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law

☐ Statutory Rape

- ☐ Sexual intercourse with a person who is under the statutory age of consent (WA = <16)

Includes attempted acts

Dating violence

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.
- Can include, but does not have to include, sexual or physical abuse or the threat of such abuse
- Dating violence does not include acts covered under the definition of domestic violence

Domestic violence

A felony or misdemeanor crime of violence committed:

- By a current or former spouse or intimate partner of the victim
 - By a person with whom the victim shares a child in common
 - By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner
 - By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime occurred
 - By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction where the crime occurred
-
- Includes threats of violence

Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

1. Fear for the person's safety or the safety of others; or
2. Suffer substantial emotional distress.

Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

Retaliation prohibited by Title IX - 106.71

No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual:

- Because the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing, or refused to participate
- For the purpose of interfering with any right or privilege secured by the statutes and regulations enforced by OCR/EEOC

What if?

- What if you don't know up front if something is severe, pervasive and objectively offensive?
- Do the 2020 regulations apply to Title IX issues that are not sexual harassment?

Is this conduct covered under 2020 Title IX or not?

- A male 10th grade student reports that his ELA teacher, a man, makes comments like “girls are better organized” and “girls work harder than boys in this class.” The student checks with male and female classmates and finds that female students are indeed getting better grades than male students in the class. Male students are also disciplined more often by this teacher. The student reports all of this in writing to the TIXC.
- A pregnant 12th grade student requests an extension on a class project due to feeling ill related to her pregnancy. Her teacher says “no extensions, no exceptions” and said that rule applies to all students in the class. The student reports this in writing to the TIXC.

Is this conduct covered under 2020 Title IX or not?

- Male student 8th grade “Student A” reports that another boy, “Student B,” called him “pussy” once in the hallway.
- What if Student B called Student A that name about twice a week while they were in the boys locker room changing for PE, while Student B attempted to and often did snap Student A’s rear end with a towel, and Student B began feigning illness to miss PE?
- What if Student A was female and Student B, a male student, called her that name under his breath in the hallways off and on for 3 months?

What if it is not a Title IX matter?

When the district does not have jurisdiction over an incident under Title IX, it may still have responsibility to address the conduct

- PSESD policies/procedures
 - Policy 1020: Prevention of Harassment, Intimidation, and Bullying
 - Procedure 1020: complaints of harassment of staff or volunteer
 - Policy and Procedure 3207: complaints of HIB of student by student or staff
 - Policy and Procedure 3205: complaints of sexual harassment of a student
 - Policy 5011: sexual harassment of employees
 - Policy and Procedure 4217: Acceptable use of electronic communication
 - Policy and Procedure 1030: Workplace and Learning Environment Safety and Violence Prevention
- CBAs
- Teacher professionalism standards

Actual Knowledge

A district is deemed to have “actual knowledge” of sexual harassment or allegations of sexual harassment when ANY employee of the district has notice of the conduct or allegations

- Someone tells a employee about it, even in passing
 - An employee notices it
 - An employee hears someone talking about it
 - Receives a written or verbal complaint
 - Any other means
-
- Receiving notice of conduct is NOT the same as receiving a formal complaint
 - No longer considered notice: constructive notice or “should have known”

Once the district has Actual Knowledge...

Its Title IX response obligations are triggered

- Must respond promptly
- Must provide supportive measures
- Must keep confidentiality
- Must not be deliberately indifferent
- Must initiate grievance process (even if a formal complaint is not filed)
- May need to conduct an investigation (**depends** whether written complaint was filed alleging conduct that if true would fall under the definition of sexual harassment; status of parties; whether district has jurisdiction)

Deliberate Indifference: liability standard

- A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.
- “...for a recipient with actual knowledge to respond in a clearly unreasonable manner constitutes the recipient committing intentional discrimination”
- a recipient must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the recipient must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity. If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

Formal Complaint

- A document filed by a complainant or their legal guardian OR signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment
 - May be filed with the Title IX Coordinator in person, by mail, or by electronic mail, or any other method designated by the district
 - A “document filed by a complainant” means a document or electronic submission “that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint”
 - 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 recipient with which the formal complaint is filed.”

Jurisdiction Requirements

Status of complainant

When a formal written complaint is filed, the Complainant must be either participating in or attempting to participate in the education program or activity of the specific Recipient they are filing the complaint with

- This includes a Complainant who is currently employed with the District or a prospective employee
- What counts as “attempting to participate?”

Jurisdiction

Status of respondent: someone over whom the district exercises substantial control

- Consider how a Respondent may be affiliated with the district
 - Student from another institution
 - Contractor/vendor
 - Volunteer
 - Parent
 - Former student
 - Former employee
 - District must take steps so it is not deliberately indifferent even if it lacks the authority to take most disciplinary actions
 - Possible action against non-affiliated Respondent: no trespass order

Jurisdiction

District has jurisdiction over incidents that occur in locations over which the district has substantial control

- Title IX may not require the district to have jurisdiction over an off-campus incident unless:
 - The location is owned or controlled by the school
 - The incident occurs at a location being used for a school-sponsored program or event
- While the district may not have jurisdiction over the initial incident, there may be post-incident issues like retaliation or in-school harassment that may require the district to determine whether the post-incident conduct falls under Title IX prohibited conduct or not

Informal resolution

- The district may offer an informal resolution option but it cannot be offered unless a formal complaint is FIRST filed with the district
- Participation in an informal resolution MUST be optional; district cannot require parties to participate
- Information resolution may be offered at any time prior to reaching a final determination
- Informal resolution may involve a partial investigation but may not involve a full investigation and adjudication
- Informal resolution may not be used to resolve allegations that an employee sexually harassed a student
- More requirements in later session

Recordkeeping

- A recipient is required to maintain certain records for a period of 7 years
 - The time period for retention begins the date that a record is created
 - For ease of recordkeeping, you may keep all records related to a casefile for 7 years from the date of creation of the last record pertaining to that case
- You can maintain the records for longer than 7 years if you wish

Recordkeeping

- What records must be maintained?
 - All records for a formal sexual harassment investigation, including
 - Any determination regarding responsibility
 - Any audio or audiovisual recording, or transcript
 - Any disciplinary sanctions imposed on the respondent
 - Any remedies provided to the complainant
 - Any appeal and the result of the appeal
 - Any actions, including supportive measures, taken in response to a formal or informal complaint of sexual harassment, including the basis for the school's decision that its response to the complainant was not deliberately indifferent
 - What measures a school takes to restore or preserve equal access to the education program or activity
 - If you have not provided supportive measures, then maintain documentation as to why your decision not to do so was not clearly unreasonable in light of the known circumstances

Recordkeeping

- Training Materials
- Maintain for 7 years all training materials used to train Title IX Coordinators, investigators, decision makers, and those who facilitate informal resolutions
- Post the most recent training online

Recordkeeping

- What if you started an investigation then stopped it?
- What if the complainant withdrew a complaint?
- What if you dismissed a complaint?

You still must maintain the records.

QUESTION AND ANSWER

TITLE IX SEXUAL HARASSMENT TRAINING: SESSION 2

Puget Sound Educational Service District

June & July 2021

Amy Klosterman, Trainer

Session 2 Road Map

- Responsibilities of Title IX Coordinator
- Supportive Measures
- Due Process and Fairness
- Standard of Proof
- Confronting Biases, Impartiality, Conflicts of Interest
- Working with parties
- Intersection with IDEA, ADA and 504

RESPONSIBILITIES OF TITLE IX COORDINATOR

Title IX Coordinator – a crucial role

Who can serve as a Title IX Coordinator?

- Must be the district's employee
- Must serve without bias or conflict of interest
 - No bias for or against complainants or respondents generally, or for or against specific complainants or respondents
 - Consider having a conflict check or disclosure be part of your Title IX intake process and retain a written record
- Must receive training
- Publicize the Coordinator's contact information

Must publicize Coordinator's contact information

“The recipient must notify applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, of the name *or* title, office address, electronic mail address, and telephone number of the employee or employees”

34 CFR 106.8(a)

Title IX Roles in the district

- Title IX Coordinator
- Investigator
 - **May be the Title IX Coordinator.** Investigator and Decision Maker cannot be the same person.
- Decision Maker(s) (single or panel)
 - **cannot be the** investigator or **Title IX Coordinator**
- Informal Resolution facilitator – **can be the Title IX coordinator**
- Advisor to party - if the district provides advisors to parties, **cannot be the Title IX coordinator**
- Decision Maker for Appeal – cannot be the Title IX Coordinator
- If the district holds a live hearing for an expulsion and it's a Title IX matter, the TIXC could serve as a non-decision making procedural facilitator

Monitoring Title IX compliance

A TIXC is responsible for monitoring the overall implementation of Title IX for the district and coordinates the district's compliance with Title IX in all areas of Title IX

- Prevention of sexual harassment and sex discrimination
- Education programs and activities such as access to schools operated by the district, counseling, athletics, discipline, student policies and procedures
- Employment in education programs and activities including employment criteria, compensation, benefits, job classification, recruitment

Recommended for Title IX Coordinators

Ensure that every district employee is fully informed of their responsibility in reporting any sexual harassment that they become aware of

- “notice to any elementary and secondary school employee—including a teacher, teacher’s aide, bus driver, cafeteria worker, counselor, school resource officer, maintenance staff worker, or other school employee—charges the recipient with actual knowledge, triggering the recipient’s response obligations”
- All employees must report harassment they witness or receive a report/informal complaint/written complaint about to Executive Director for HR/Title IX Coordinator – PSESD Operating Policy 5011
- This includes counselors: they cannot maintain confidentiality and must report any report that they learn about

When does a Title IX coordinator sign a formal complaint?

- If the district has notice of sexual harassment but has not received a Formal Complaint, there are circumstances when the district would initiate a grievance process in order to attempt to avoid being deliberately indifferent
- The Title IX Coordinator does not become a complainant or party to a complaint
- The Title IX Coordinator may sign a formal complaint to initiate the grievance process for instances including but not limited to:
 - Threat
 - Serial predation
 - Violence
 - Weapons

What must a Title IX Coordinator do during the grievance procedure for a formal complaint?

- Coordinate, implement and follow up on supportive measures for either party
- Offer both parties the option of an informal resolution
- Always presume the respondent is innocent until/unless a determination shows otherwise
 - Reinforce this to investigator and decision maker
- Notify police of sexual assault and other crimes
- Mandatory reporting of child abuse to DCYF
- Ensure TIXC has no bias or conflict
- Assign investigator and decision maker after conducting conflict check

What must a Title IX Coordinator do during the grievance procedure for a formal complaint?

- Determine whether emergency removal is appropriate for student respondent or administrative leave for employee respondent
- Dismiss allegations of conduct that does not meet the Title IX definition of sexual harassment or jurisdictional requirements
 - Ensure all parties receive written notice of dismissal along with reasons for dismissal; dismissal may be appealed
- Oversee the investigative process
 - Make sure both parties receive written Notice of Allegations
 - Make sure both parties have equal opportunity to present facts and evidence
 - Make sure the investigator follows the timeframes that reflect Title IX and district policy

What must a Title IX Coordinator do during the grievance procedure for a formal complaint?

- Once the draft investigative report is ready, the Coordinator should facilitate the process by which the parties (and their advisors) receive and have 10 days to review all directly related evidence used for the report (but not the report itself at this stage)
- Once the final investigative report is complete, Coordinator should facilitate the process by which parties (and advisors) receive and have 10 days to review the final report and all directly related evidence
- Title IX Coordinator should review investigative reports

The district **MUST** dismiss a formal complaint if:

- Conduct does not meet Title IX definition of sexual harassment even if proved to have occurred;
- Conduct did not occur within education program or activity
 - Note that there may be related conduct that did occur within the program or activity
- Conduct did not occur within the United States

The district **may** also dismiss a complaint if:

- The complainant withdraws the formal complaint
- The respondent is no longer enrolled with or employed by the district
- The district is unable to gather sufficient evidence to reach a determination

Conduct still may fall under district policy even if not under Title IX

Written Notice of Allegations is required

- Upon receipt of a formal complaint, the district must provide written notice to known parties that includes:
 - Notice of the recipient's grievance process that complies with Title IX, including any informal resolution process
 - Notice of the allegations that potentially constitute sexual harassment including "sufficient details known at the time" and giving the parties sufficient time to prepare a response before any initial interview
 - Include identities of parties involved
 - The alleged conduct
 - Date and location of alleged conduct
- Notice MUST include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the process

Written Notice of Allegations is required

- Written notice must inform parties that they may have an advisor of their choice who may be an attorney but is not required to be an attorney
- Notice must inform parties that they may inspect and review evidence pertaining to the complaint
- Notice must inform parties if there is any provision in the district's policies that prohibits knowingly making false statements or knowingly submitting false information during the process
- Give policies in hard copy or electronically to students, parents and school personnel alleging sexual harassment or who are named as respondents if there is a formal complaint

Written Notice of Allegations is required

- If additional allegations arise at any point, an updated notice of allegations must be sent to both parties
- Title IX investigator must keep the Title IX Coordinator updated in case of any new allegations

Consolidation of complaints

The district may consolidate formal complaints of sexual harassment where the allegations arise out of the same facts and circumstances

- Allegations against more than one respondent
- Allegations by more than one complainant against one or more respondents
- Allegations by one party against the other party

Formal Complaint – refresher from Session 1

Formal complaint = document filed by a complainant or their legal guardian OR signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment

- May be filed with the Title IX Coordinator in person, by mail, or by electronic mail, or any other method designated by the district
- A “document filed by a complainant” means a document or electronic submission “that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint”
- 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 recipient with which the formal complaint is filed.”

What must the Title IX coordinator do upon receiving actual knowledge of Title IX sexual harassment?

- must promptly contact the complainant to discuss the availability of supportive measures
- consider the complainant's wishes with respect to supportive measures
- inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and
- explain to the complainant the process for filing a formal complaint.

Failure to do any of these specific requirements could be characterized as deliberate indifference.

Coordinator: Identify patterns in incidents

- The Title IX Coordinator must be aware of all reports and complaints, including alleged behavior and parties' names
 - TIXC is responsible for identifying any patterns
 - Types of behavior
 - Times of day or year
 - Specific events
 - Specific parties as repeat respondents
- Although the TIXC cannot be the decision maker, the TIXC should still receive sufficient information throughout the process so they may provide guidance, support or information to ensure the district carries out its responsibilities under TIX
 - If additional allegations come up
 - If retaliation is alleged
 - Violation of no contact order

Additional Coordinator duties

- Assist with district policy/procedure changes
- Inform students and staff of district policies and procedures on sexual harassment
- Keep informed of federal and states laws for all equity issues including bullying and harassment, as well as child abuse laws and mandatory reporting requirements for child abuse
- Develop a recordkeeping system for all Title IX documents
 - Trainings
 - Investigations
 - Decisions
 - Informal resolutions
 - Supportive measures

SUPPORTIVE MEASURES

Definition of “supportive measures”

- Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge
- Offered to the **complainant** and/or the **respondent** before or after the filing of a formal complaint or when no formal complaint has been filed
- Are designed to **restore or preserve** equal access to the district’s education program or activity without **unreasonably** burdening the other party
- Includes measures designed to:
 - **Protect** the safety of all parties
 - **Protect** the safety of the district’s educational environment
 - **Deter** sexual harassment

Types of supportive measures: Student

- Counseling or reimbursement for counseling
- Extensions of school deadlines
- Class schedule modifications
- Safety plan
- Escort on campus
- Mutual restrictions on contact between the parties
- Increased security and monitoring of certain areas of the building or district grounds
- Training and education for students
- Climate survey
- Update and/or publicize policies on sexual harassment

Types of supportive measures: Employee

- Counseling or reimbursement for counseling
- Extensions of work deadlines
- Work schedule modifications
- Work location modifications
- Temporary change in supervision
- Safety plan
- Escort on campus
- Mutual restrictions on contact between the parties
- Increased security and monitoring of certain areas of the building or district grounds
- Training and education
- Update and/or publicize policies on sexual harassment

Emergency removal

Since any measures taken prior to a determination of responsibility must not be punitive, you generally cannot remove a respondent from the education program or activity unless the district take steps regarding an **emergency removal**:

- District undertakes an individualized safety and risk analysis
- Such analysis determines that an immediate threat to the physical health or safety of any other student or individual arising from the allegations of sexual harassment justifies removal, and
- District provides the respondent with notice and an opportunity to challenge the decision immediately after removal
- This does not modify any rights under IDEA, Section 504, or the ADA

Administrative leave

The emergency removal requirements do NOT preclude the district from placing a non-student employee respondent on administrative leave during the pendency of a Title IX grievance process

DUE PROCESS AND FAIRNESS

Paramount to Title IX: must treat parties equitably

The district's response must treat complainants and respondents equitably by offering supportive measures to a **complainant** and by following a compliant grievance process before imposing any disciplinary sanctions or other actions that are not supportive measures against a **respondent**

A failure to do this could result in a characterization that the district's response was deliberately indifferent

Grievance process requirements

- Must provide remedies to a complainant where a determination of responsibility has been made against a respondent
 - Remedies must be designed to restore or preserve equal access to the district's education program or activities
 - May include measures similar to supportive measures, but remedies do not have to be non-disciplinary and non-punitive and need not avoid burdening a respondent
- Follow a Title IX-compliant grievance process before imposing any disciplinary sanctions or other actions that are not supportive measures
- Require an objective evaluation of all relevant evidence (evidence that goes to responsibility for conduct or non-responsibility)
- Credibility determinations may not be based on a party's status as a complainant, respondent or witness

Grievance process requirements

- Require that any Title IX coordinator, investigator, decision maker, or informal resolution facilitator not have a conflict of interest or bias for or against complainants or respondents generally or specific individual complainants or respondents
- Ensure that any Title IX coordinator, investigator, decision maker, or informal resolution facilitator receive training on the definition of sexual harassment, scope of district's programs and activities, how to serve in their roles; how to serve impartially
- Include a presumption that a respondent is not responsible for alleged conduct until a determination regarding responsibility is made after a grievance process ends
- Reasonably prompt timeframes with written notice to parties of delays

Grievance process requirements

- Describe or list the range of possible disciplinary sanctions and remedies
- State the standard of evidence to be used to determine responsibility: preponderance of the evidence OR clear and convincing evidence
 - PSESD: OP 3205, preponderance of the evidence
 - Apply the same standard of evidence for formal complaints against students as for formal complaints against employees
- Include procedures for appeal and permissible bases for appeals
- Describe range of supportive measures available to complainants and respondents
- Do not allow, rely upon, or otherwise use or require questions or evidence that is or seeks disclosure of information protected by legally recognized privileges unless privilege is waived

Standard of evidence that district will use to evaluate evidence and make determination

Preponderance of the evidence:

- It is more likely than not that something occurred
- Just over 50%
- a lower hurdle than the clear and convincing standard

Clear and convincing:

- it is highly and substantially more likely that something did occur rather than did not occur
- a higher hurdle than preponderance of the evidence

EXAMINING OUR BIASES

WHAT IS THE GOAL?

A Title IX grievance process that is fair and unbiased for all parties

Serving in Title IX roles impartially

- Avoiding bias against a respondent simply because they have been accused of something
- Avoiding bias against a respondent because their alleged behavior is something you've personally experienced or particularly dislike
- Avoiding bias against a respondent because they say they are innocent or go to great lengths to defend themselves
- Avoiding bias against a complainant because they have personal characteristics that cause you to question their story
- Avoiding bias against a complainant because they did not fight back or take other actions you feel you might have taken in that situation
- Avoiding bias against a complainant because they may have been disciplined in the past for something unrelated
- Avoiding sex stereotypes

Being aware of bias

- Characteristics such as age, race/color/national origin
- Disability
- Homeless and/or limited resources
- Trauma
- Stress
- Degree of parental involvement
- Your unconscious bias
- None of these affect a party's credibility or likelihood of a finding of responsibility

Conflicts of Interest

- Family relationship
- Work relationship
- Friendship/social connections
- If the respondent is an employee: past issues between you personally and that employee
- Something that gives others the impression of a conflict of interest
- Signed documentation regarding lack of conflict of interest

CONSIDERATIONS IN WORKING WITH PARTIES

Talking with parties

- ❑ use the terminology they use rather than technical terms they may not understand
- ❑ if someone uses slang, don't correct them, but you may need to ask clarifying questions with proper words in order to make sure you understand
- ❑ have witnesses repeat your question back to you if you are not sure they understand what you are asking

Effects of trauma

- May affect a party's demeanor (nervous, defensive)
- May affect a party's willingness to report or be interviewed
- May affect a party's level of trust in the process
- A party may feel shame or guilt
- Understanding that someone feels traumatized does not equate to finding that the conduct they alleged must have occurred

Any party in a complaint may be experiencing high stress levels

Brainstorm ideas to help establish rapport with parties and create a safe space for discussions

INTERSECTIONS OF TITLE IX AND DISABILITY

Applicable laws

- Title IX of the 1972 Education Amendments Act
- Individuals with Disabilities Education Act (IDEA)
- Section 504 of the 1973 Rehabilitation Act
- Title II of the Americans with Disabilities Act

Disability can be involved both for reporting party or responding party

Complainant

- Disability may need to be considered in evaluating whether student consented to sexual activity
- Students with disabilities may need certain accommodations in investigation process
- Students may develop disabilities as a result of harassment or different treatment

Respondent

- District needs to adhere to IDEA and Section 504 when disciplining students with disabilities
- District may need to decide whether the responding student's disability has a direct and substantial relationship to the alleged misconduct
- Students with disabilities may need certain accommodations in investigation process

Students with disabilities

- Students receive an IEP if they are determined to need special education and related services
- Students receive a 504 plan if they are determined to need regular or special education or related aids and services
- Change of placement: Schools cannot remove a student with an IEP from their educational placement unless procedural guidelines are met (or unless parents agree)
 - “Stay put”

Disciplining students with disabilities

What is a removal?

- Long-term suspension/removal of more than 10 school days in a row
- Expulsion
- Series of short-term removals for periods less than 10 days, if:
 - They total more than 10 days in the same academic year
 - Involve similar behavior by the child compared to previous incidents that resulted in a series of removals
 - Show evidence of a pattern such as proximity in time to other removals; total time child has been removed

Discipline for students with disabilities

- Schools may discipline students with IEPs and 504 plans just as they discipline general ed students for short-term removals
 - Short-term out of school suspension
 - Short-term in-school suspension
 - Short-term interim alternative educational setting

Manifestation determination

Timing: within ten school days of any decision to change the placement of a student with a disability, the district, parent and relevant members of the IEP or 504 team must review all information to make the determination:

1. if the conduct was caused by, or had a direct and substantial relationship to, the student's disability
2. if the conduct was the direct result of the district's failure to implement the student's IEP or 504 Plan

Special circumstances

Even if the behavior was a manifestation of the student's disability, district may place the student in an interim alternative educational setting if:

1. The student carried a weapon to school or had a weapon at school or at a school function
2. Student has or uses illegal drugs, or sells them
3. Student inflicted serious bodily injury upon another person while at school, on school premises, or at a school function

QUESTION AND ANSWER

TITLE IX SEXUAL HARASSMENT TRAINING: SESSION 3

Puget Sound Educational Service District

June & July 2021

Amy Klosterman, Trainer

Session 3 Road Map

- Conducting Investigations of Title IX Formal Complaints
- Investigation Procedural Requirements
- Burden of Proof and Burden of Gathering Evidence
- Notice of Allegations
- Relevant Evidence for Investigators
- Followup after parties have reviewed evidence
- Investigation Plan
- Confidentiality
- Interviewing
- Credibility Observations
- Writing Investigative Reports
- Interactive case studies

Formal Complaint

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graph TD; A[Formal Complaint] --> B[Initial Evaluation then Investigation]; A --> C[Supportive Measures]; B --> D[Findings]; B --> E[Potential remedial actions]; C --> F[Potential sanctions];
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The diagram illustrates the process of a formal complaint. It begins with a central box labeled 'Formal Complaint'. This box branches into two parallel paths: 'Initial Evaluation then Investigation' on the left and 'Supportive Measures' on the right. The 'Initial Evaluation then Investigation' path leads to two outcomes: 'Findings' and 'Potential remedial actions'. The 'Supportive Measures' path leads to 'Potential sanctions'.

Initial Evaluation
then Investigation

Supportive
Measures

Findings

Potential
remedial
actions

Potential
sanctions

PROCEDURAL REQUIREMENTS FOR TITLE IX INVESTIGATIONS

Overall requirements for investigation

- Treat parties equitably. Any rules, rights, privileges or practices must apply equally to BOTH parties
- Conduct an *unbiased* evaluation and be free from *conflict of interest*
- Perform an objective evaluation of all *relevant* evidence, both exculpatory and inculpatory
- Do not make credibility observations or determinations based on a party's status as a complainant, respondent or witness
 - District can decide whether investigators or decision makers will make credibility determinations; Title IX does not mandate who makes this determination
- Presume that the respondent is not responsible for the allegations. Only the decision maker will opine on this at the conclusion of the process

Overall requirements for investigation

- Investigator's goal is to make findings of fact
- Investigator does NOT make a finding of responsibility
- District is responsible for gathering sufficient evidence to make a determination; this responsibility does not rest with a complainant or respondent (**burden of evidence**)
- District is responsible for the burden of proving that the respondent is responsible or not responsible; this responsibility does not rest with parties (**burden of proof**)
- Do not require, allow, rely upon or otherwise use questions or evidence that constitute or seek disclosure of information protected by a legally recognized privilege

Investigator's responsibilities

- Provide both parties with an equal opportunity to present witnesses, including fact and expert witnesses
- Provide both parties with an equal opportunity to present evidence, including inculpatory and exculpatory
- Do not restrict parties' ability to discuss the allegations being investigated (no "gag orders") or to gather and present relevant evidence

Investigator's responsibilities

- Provide parties with the same opportunities to have someone with them during any part of the process, including having an advisor of their choice at any meeting, who may or may not be an attorney. Students may also have parents/guardians present
- Do not limit the parties in their choice of advisor or limit when the advisor may be present
 - May establish restrictions on the extent to which the advisor may participate, as long as the restrictions apply equally to both parties. Example: addressing when an advisor argues with an investigator or decision maker
- Provide written notice of the date, time, location, participants and purpose of all interviews or meetings to parties, with enough time for parties to prepare to participate

Notice of Allegations

- This may be issued by the Title IX Coordinator at the outset of an investigation or by the investigator. Decide ahead of time what the district's practice will be
- Refresher on what it must include:
 - a description of the conduct allegedly constituting sexual harassment
 - the identities of the parties if known
 - Details such as date and location of alleged incident(s)
 - A statement that the respondent is presumed not responsible for the conduct and that a determination of responsibility will be made at the conclusion of the process
 - May be helpful to make it clear that the investigator does not make the determination

Notice of Allegations

- Notice must also include:
 - Parties have the right to have an advisor who can be but does not have to be an attorney
 - Parties have the right to review and inspect evidence prior to a determination of responsibility
- Parties must be given sufficient time to gather information and prepare a response prior to an initial interview
- District must provide updated notice to all parties if it decides to investigate additional allegations

OBJECTIVE EVALUATION OF ALL RELEVANT EVIDENCE

Focus on “Relevant Evidence”

Investigator must gather all relevant evidence

- At the outset of the investigation, the investigator will not yet know what is relevant and what is not relevant
- Investigators should not prejudge evidence or decline to review evidence that is offered by the parties
 - Exceptions: certain evidence is barred from use by privilege or whether it goes to prior sexual history
- Gather evidence directly related to the allegations even if the district does not ultimately rely on that evidence
- The evidence itself does not need to be objective. The investigator's review of the evidence must be an objective review.
- Throughout an investigation, the investigator must presume that the respondent is *not responsible* for the alleged conduct

What is relevant evidence?

- Generally, relevant evidence aids in proving or disproving a material fact
 - Does the evidence tend to make the existence of a material fact more or less probable?
 - Does it go to the truth of the matter?
- 2020 Title IX regulations do not define “relevance”
 - District does not need to rely on state or federal evidence rules

Definitions: inculpatory and exculpatory

INCULPATORY EVIDENCE

- Shows or tends to show a respondent's responsibility for the conduct at issue

EXCULPATORY EVIDENCE

- Shows or tends to show that a respondent is not responsible for the conduct at issue

Definitions: inculpatory and exculpatory

INCULPATORY EVIDENCE

- Shows or tends to show a respondent's responsibility for the conduct at issue

EXCULPATORY EVIDENCE

- Shows or tends to show that a respondent is not responsible for the conduct at issue

Broad categories of evidence

- Direct evidence (eyewitness; personal observation)
- Circumstantial evidence (inferential; not an eyewitness but could be very relevant)
- Electronic evidence (photos, emails, texts)
- Real evidence (a physical object)
- Documentary or written evidence (whether contemporaneous or after the fact)
- Hearsay
- Character evidence
- Demeanor or behavior during interviews

Sources of evidence

- The complaint and exhibits
- Interviews
- Social media records
 - Screenshots of Snapchats and other ephemeral messages
- Telecom logs
- Calendar entries
- Video footage (cellphones, security cameras, etc)
- Audio recordings
- Basic information like location, time, date, duration of alleged events
- Police reports (may need to make formal request)

Evidence for which the investigator needs to obtain written release from parties: privileged information

- Medical records
 - Therapy records
 - Sexual Assault Nurse Examiner reports
 - Any records maintained by a physician, psychiatrist, psychologist
 - Other types of privilege: attorney/client, marital
-
- Consent must be voluntary and written

Do not use any information protected by a legally recognized privilege (e.g., attorney-client) unless that privilege is waived by written consent

What if evidence is no longer available?

§ 106.45(b)(3)(ii) states that a recipient has the discretion to dismiss a formal complaint where specific circumstances prevent the recipient from meeting the recipient's burden to gather sufficient evidence.

“The passage of time could in certain fact- specific circumstances result in the recipient's inability to gather evidence sufficient to reach a determination regarding responsibility”

Evidence about Prior Sexual Behavior is categorized by Title IX as not relevant, with exceptions

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

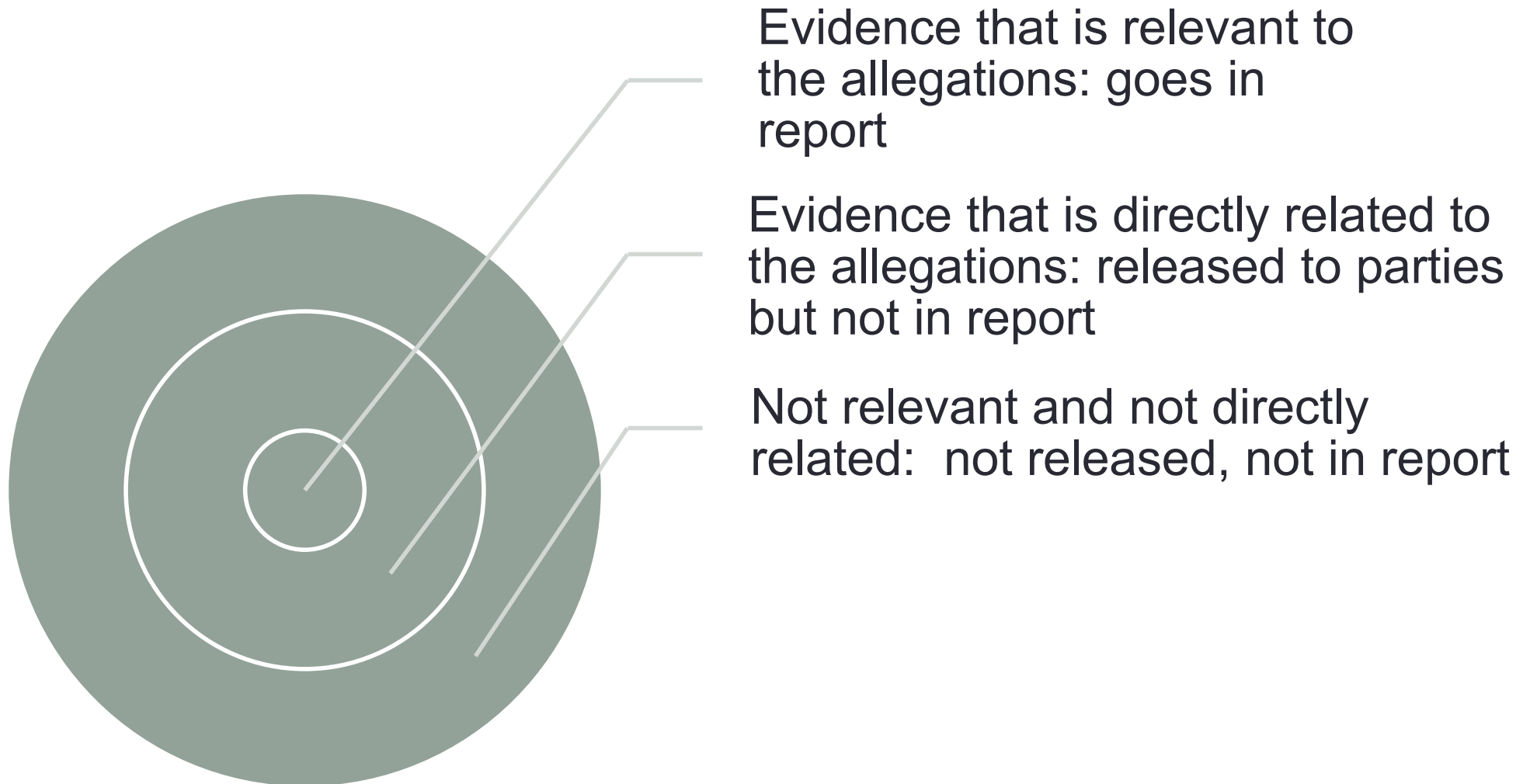
1. The evidence about prior sexual behavior is offered to prove that someone other than the respondent committed the alleged conduct, or
2. If the evidence concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent

****** These protections apply to complainants but not to respondents

Remain objective and impartial

- Keep an open mind until you have reviewed all evidence; make no pre-judgment of parties, witnesses, facts at issue, evidence
- Refrain from commenting whether in person or via email, etc regarding your assessment of the allegations or any piece of evidence

Three categories for evidence in Title IX investigations



2020 Title IX Regulations

- Provide both parties an equal opportunity to review ANY evidence that is *directly related* to the allegations, including the evidence that the investigator does not intend to rely upon in reaching a determination, prior to the conclusion of the investigation.
- Parties must have at least 10 days to review and to submit a written response, which the investigator needs to consider prior to completing the report.
- Regulations do not require the district to also submit the draft report but many schools are doing so

Parties may provide written responses after their 10 day review

- After the investigator has received all responses, they will log them and incorporate the responses as appropriate into the draft report
- The responses may indicate a need for followup or additional investigation
- The investigator may need to revise the report
- At the end of any revisions/additional investigation, the investigator finalizes the report
- Then, the investigator submits the final report along with all directly related evidence to the parties for a 10 day period of review

Organizing information for the parties and the decision maker

- Regulations do not require the investigator to do so, but investigator may identify to the parties which information is “relevant” versus which is “directly related” and may choose to make a log of information that it does not produce for the 10 day review, which allows parties to dispute whether the investigator’s classification
- When sending final report and evidence to the decision maker, it’s highly recommended that the investigator clearly delineate “relevant” evidence versus “directly related”

Can you limit what parties do with the evidence?

- A school must not restrict the ability of either party to gather and present relevant evidence
- A school cannot restrict the ability of parties to discuss the allegations with others
- But you may require a non-disclosure agreement re parties' *review and use of evidence*, as long as it does not violate the regulations or other applicable laws.

Protecting certain information from release during parties' review of evidence

- An investigator or another staff person will almost always need to redact information that is confidential or irrelevant (or both) from documents that are released for review; best to have a standard redaction practice
- District should be clear about which district staff will do the redactions
- District may choose to make a log containing a description of the information that was redacted

2020 Title IX Regulations: Issuing the Investigative Report

The district must send both parties an investigative report that summarizes all relevant evidence, prior to reaching a determination regarding responsibility at least 10 days prior to a hearing (if any) OR any other time of determination regarding responsibility, so they may review and provide a written response

District must provide this in an electronic format or hard copy

Investigators must take parties' responses into consideration

- District may choose to provide parties with each other's written responses
- Investigator must review all responses and take them into consideration
- Investigator should log the responses and account for them in the report, even if the investigator does not change anything in the report based on those responses

Planning the Investigation

- As you plan the investigation, consider ahead of time what evidence may be relevant
- How do you get a sense of what may be relevant information that you need to obtain?
 - Use the complaint, the applicable policies/procedures, and any other information available to you at the outset of the investigation
- Do you have to know before conducting the investigation what evidence will ultimately be the most relevant?
 - No, because you have not made up your mind about the investigation yet. Have a plan, but keep an open mind
- Keep track of evidence collected

Crucial information to gather during investigation

Always read the applicable district policies and procedures before interviews and know the elements of sexual harassment per your policy

- What evidence will you need to prove a policy violation?
 - Information that goes to the elements of conduct as stated in your policy which could include welcomeness, severity, pervasiveness, offensiveness, impact on parties
- What records do you need?
- What questions do you have for interviewees, including questions about specific pieces of evidence?
- An investigator will not know until the end of the investigation what is ultimately relevant, but still needs to plan ahead

Gather information that helps to determine Hostile Environment

Title IX: Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity

Welcomeness

- What makes conduct unwelcome?
- What if someone acquiesces to the conduct or fails to complain about it?
- What if someone willingly participated in the conduct once but on later occasions was not willing to participate?

Severity

- Was it physical conduct?
- Was it physical conduct in conjunction with verbal or written or other conduct?
- Did the complainant feel they were trapped with no ability to get away from the respondent?
- Were there threats?
 - Threats of violence toward the complainant, whether at that moment or in the future
 - Threats to tell others something false or true that could be harmful or negative
 - Threats for the respondent to do self-harm
 - Threats to harm someone else

Pervasiveness

- How often did it happen?
- How long did any incident last?
- Over what period of time did the incidents occur?
 - Seconds, minutes, hours, days, weeks, etc
- Was it widespread or common?
- Was it known to others; was it widely known?
- Was it done openly or in public?
- To what degree did it interfere with complainant's education or job?
- Could a complainant get away from it or avoid it completely?

Witnesses may answer these questions with general or broad answers. While maintaining neutrality and a respectful demeanor, an investigator will need to ask followup questions to get as specific an answer as a witness can provide

Objectively Offensive

- Standard for evaluating is what a reasonable person would think, in that situation/context
- Consider the other factors in pervasiveness and severity like frequency, duration, type/severity of conduct, threats
- Ages of complainant and respondent
- Relationship between complainant and respondent
- Number of complainants and/or respondents
- Consider how and to what degree it was humiliating, abusive, intimidating

Effectively denying equal access

- To what extent has the student's access to education program or activity been affected?
 - Examples: Missing class, missing school, lowered grades, quitting sports or activities, anxiety, depression, suicidal ideation/attempts
 - A student does not have to quit school for their education access to be effectively denied
- Similar analysis for employees: how has their ability to come to work and do their job been affected?

Confidentiality

- Schools must maintain confidentiality of the identity of anyone who makes a report or formal complaint, including complainants, reporters, respondents, and witnesses, except when:
 - Identification of parties is necessary to conduct the investigation and grievance process, including any hearing
 - As permitted under FERPA
 - As required by law
- District must keep supportive measures confidential to the extent that maintaining confidentiality does not impair the ability of the district to provide supportive measures

Interviewing parties

- Offer a safe, comfortable space free of distractions
- Offer that they may take a break, whether on Zoom or in person, when needed
- Recommended to start by asking what in particular the party/witness wants you to know
- A party may have a particular place in the order of events that they want to begin their account with, even if that is not where you as the interviewer would have thought the account began
- Don't be so focused on your question list that you are inflexible or shut down a witness
 - Yet keep focused on what information you need to get from a party/witness

Interviewing parties

- Ask broad questions first – when, what, where, who
 - Then drill down to specific questions
 - Always follow up if the party gives an incomplete answer or alludes to additional information
 - Take a break for yourself if you need to review your notes and synthesize information
- Determine how they know the information – eyewitness, hearsay, etc
- How do they know the other parties/witnesses (length of relationship, would ytheyou consider them a friend, a close friend, an acquaintance...)
- Have they communicated to others about what happened? Who, when, what did they tell them; do they have copies of emails or texts
 - Get contact information for other potential witnesses during interview

Interviewing parties

- You may wish to repeat back to a witness what you hear them saying, so that you can either get their confirmation that is what they meant or they can correct you
- Ask parties to use any explicit language or spell it out. Don't be stuck with euphemisms in your interview notes. If you don't understand a term used, make sure to get clarity
- Ask questions about how what happened affected them: Mentally, physically, their grades, their participation in sports or activities, their willingness to come to school or work, their social circle

Advisors in interviews

- Parties are entitled to the advisor of their choice
- The district may not limit the choice or presence of an advisor
- However, the district may impose requirements or limits on advisors
 - Limits on interrupting or arguing

Credibility observations

- Credibility factors include, but are not limited to: corroboration, reasonableness considering other information, physical evidence, past record, bias or motive to lie, probability or improbability of the person's account
- District should decide whether investigators will put credibility *observations* only in the report and not credibility *determinations*, in which case the decision maker would make the credibility determinations
- Investigators may make credibility determinations; that role is not limited to decision makers

Writing the investigative report

A report should include the following:

- The applicable policies and procedures
- A description of the grievance procedure steps taken including dates
- A description of relevant evidence, both corroborating and non-corroborating
 - Exhibits and appendices
- A summary, including findings of fact

A report should NOT include any recommendation of responsibility or finding of responsibility

Writing the investigative report

- Be exceptionally clear in your description of what happened
- If there are inconsistencies in accounts, note them
- Recall your audience: the parties and the decision maker. Make your review of evidence as clear as possible so the decision maker may understand what is relevant
- Remember that the report may be referenced in administrative agency complaints or litigation

HYPOTHETICALS

Student on student hypothetical

Male 7th grader Devon gets in trouble at school for skipping PE. After he gets in trouble, he tells his mother that female 7th grader Kayla has been bothering him at school and on the bus. A few months ago, Kayla wanted Student A to like her and told all her friends they were “talking.” Devon felt embarrassed because it wasn’t true. Devon told Kayla, in front of her friends, that he did not like her. Kayla got upset. She began pinching his rear end in their shared classes (science and PE). She would reach out and pinch him as he walked by her desk or as they did PE. They also rode the same bus home in the afternoons. If Kayla was already on the bus when Devon got on, she would swat his rear end as he passed by her seat on his way to the rear of the bus. Devon didn’t tell any of his teachers and doesn’t think they noticed anything. He has started “missing” his bus home and calling his parent for a ride home or asking a friend’s parent for a ride. Devon’s mother files a written complaint with TIXC.

What steps does the district take?

List out a plan for investigating

- What information can you seek?
- Who will you interview?
- Write down some questions for each party

Employee hypothetical

A male science teacher, Mr. Yates, frequently visited Ms. Alagna, the female school counselor, at her school office and called her at home to discuss his failed relationships and intimate details of his personal life. Frequently, Yates ended these conversations by touching Alagna's arm and telling her that he loved her and that she was very special. He often told her, "You look very nice today, Ms. Alagna." However, he never discussed sexual activities related to his relationships, never sexually propositioned Alagna and never touched her anywhere other than her arm. Ms. Alagna is uncomfortable and reports it to the principal.

What steps does the district take?

List out a plan for investigating

- What information can you seek?
- Who will you interview?
- Write down some questions for each party

QUESTION AND ANSWER

TITLE IX SEXUAL HARASSMENT TRAINING: SESSION 4

Puget Sound Educational Service District

June & July 2021

Amy Klosterman, Trainer

Session 4 Road Map: Decision Maker Training, Appeals, Informal Resolutions

- Review of 2020 Title IX Principles, grievance process, definition of sexual harassment, jurisdiction
- Decision Making
- Avoiding bias
- Procedural requirements
- Writing Determinations
- Determining Relevancy
- Evidence
- Credibility Determinations
- Sanctions
- Remedies
- Retaliation
- Appeals
- Informal Resolutions

2020 Title IX Regulations Guiding Principles

- All parties should be treated equitably and receive the same rights, including during decision making process
- Grievance process should be transparent
- Respondents should receive adequate due process protections in a grievance process
- Complainants should be adequately protected prior to a determination of responsibility or non-responsibility
- Schools have clear standards to follow that are enshrined in the law, rather than guessing whether guidance is mandatory for them

What do the regulations generally require?

- District must respond **promptly** and **supportively** to a complainant, even in absence of formal complaint, by offering **supportive measures**
- Must provide a **prompt** grievance process that is predictable and fair to both parties and includes due process protections, before determining remedies and disciplinary sanctions
 - Within grievance process, respond **promptly** by offering **supportive measures to both** complainant and respondent
- District may not treat a respondent as responsible for sexual harassment without providing due process protections.
- If the district determines responsibility for sexual harassment after following a fair grievance process that gives clear procedural rights to both parties, the recipient must provide remedies to the complainant.
 - Ensure that remedies are implemented and effective. Follow up with complainant.

Title IX Roles in the district

- Title IX Coordinator
- Investigator: **May be the Title IX Coordinator.** Investigator and Decision Maker cannot be the same person.
- Decision Maker(s) (single or panel): **cannot be the** investigator or **Title IX Coordinator**
- Informal Resolution facilitator – **can be the Title IX coordinator**
- Advisor to party - if the district provides advisors to parties, **cannot be the Title IX coordinator**
- Decision Maker for Appeal – cannot be the Title IX Coordinator
- If the district holds a live hearing for an expulsion and it's a Title IX matter, the TIXC could serve as a non-decision making procedural facilitator

Grievance process requirements

- Must provide remedies to a complainant where a determination of responsibility has been made against a respondent
 - Remedies must be designed to restore or preserve equal access to the district's education program or activities
 - May include measures similar to supportive measures, but remedies do not have to be non-disciplinary and non-punitive and need not avoid burdening a respondent
- Follow a Title IX-compliant grievance process before imposing any disciplinary sanctions or other actions that are not supportive measures
- Require an objective evaluation of all relevant evidence (evidence that goes to responsibility for conduct or non-responsibility)
- Credibility determinations made by decision maker may not be based on a party's status as a complainant, respondent or witness

Sexual Harassment: New 3 part definition

Conduct on the basis of sex that satisfies one or more of the following:

ONE: An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct

Quid Pro Quo: the provision or denial of a benefit related to the acceptance or refusal of unwelcome sexual conduct

TWO: Unwelcome conduct that a reasonable person finds to be so severe, pervasive, and objectively offensive so that it effectively denies a person equal access to the recipient's education program or activity

Hostile environment

Sexual Harassment: New 3 part definition

THREE: Any of the following:

Sexual assault (Clery Act definition)

Dating violence (VAWA definition)

Domestic violence (VAWA definition)

Stalking (VAWA definition)

** There is no requirement to determine whether these acts are severe, pervasive, or objectively offensive.*

Types of sexual harassment

- Verbal conduct of a sexual nature – comments; spreading rumors of sexual activity; sexually suggestive sounds
- Nonverbal conduct of a sexual nature – sharing an inappropriate photo via text or online
- Physical conduct of a sexual nature – touching, standing too close, cornering someone, leering, gestures, rape, sexual assault
- Unwelcome sexual advances
- Requests for sexual favors
- Stating or implying that a person will lose something if he or she does not submit to a sexual request
- Penalizing a person for failing to submit to sexual advances
- Some acts of sexual harassment are also crimes

Title IX Terminology

- Recipient = school or entity receiving federal funding.
- Complainant = person or their parent/guardian who files a written complaint alleging they have been harassed OR who provides notice of allegations
 - No 3rd party complainants
 - Includes a parent or guardian for those under 18
- Respondent = person(s) against whom a complaint is filed OR about whom notice of an allegation is provided

Jurisdiction Requirements: Complainant

When a formal written complaint is filed, the Complainant must be either participating in or attempting to participate in the education program or activity of the specific Recipient they are filing the complaint with

- This includes a Complainant who is currently employed with the District or a prospective employee

What counts as “attempting to participate?”

Jurisdiction: Respondent

Status of respondent: someone over whom the district exercises substantial control

- Consider how a Respondent may be affiliated with the district
 - Student from another institution
 - Contractor/vendor
 - Volunteer
 - Parent
 - Former student
 - Former employee
 - District must take steps so it is not deliberately indifferent even if it lacks the authority to take most disciplinary actions
 - Possible action against non-affiliated Respondent: no trespass order

Jurisdiction: Type of activity

Education program or activity = all district programs

It includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs”

- Not just programs that directly receive the federal funding
- All programs or activities that have a sufficient nexus to the district
 - Does the activity use district property?
 - Does the district advertise the activity?
 - Does the district assist with registration or staffing for the activity?

Jurisdiction: Geographic

- Title IX can only be used in instances where someone “in the United States” was harassed
 - Some courts have held that Title IX applies to a higher education institution’s study abroad program
 - Even if Title IX does not apply, a school may still be liable under another basis if it controls where students live during study abroad programs, etc.

DECISION MAKING

Remaining bias free – review from Session 2

- Avoiding bias against a respondent simply because they have been accused of something
- Avoiding bias against a respondent because their alleged behavior is something you've personally experienced or particularly dislike
- Avoiding bias against a respondent because they say they are innocent or go to great lengths to defend themselves
- Avoiding bias against a complainant because they have personal characteristics that cause you to question their story
- Avoiding bias against a complainant because they did not fight back or take other actions you feel you might have taken in that situation
- Avoiding bias against a complainant because they may have been disciplined in the past for something unrelated
- Avoiding sex stereotypes

Be aware of potential for bias

- Characteristics such as age, race/color/national origin
- Disability
- Homeless and/or limited resources
- Trauma
- Stress
- Degree of parental involvement
- Your unconscious bias
- None of these affect a party's credibility or likelihood of a finding of responsibility

Decision Maker responsibility prior to determination: Issuing the Investigative Report

:

The district must send both parties an investigative report that summarizes all relevant evidence, prior to reaching a determination regarding responsibility at least 10 days prior to a hearing (if any) OR any other time of determination regarding responsibility, so they may review and provide a written response

District must provide this in an electronic format or hard copy

Decision maker responsibilities

- After the district has sent the final investigative report to the parties for their 10 day review, the decision maker must provide each party with the opportunity to submit written, relevant questions that it wants to ask of any party or witness, then provide each party with the answers that are provided, and then allow for additional “limited” followup questions from each party
- This can happen during the 10 day period of review
- The Decision maker must explain to the party proposing the questions any decision to exclude a question as not relevant

Decision maker responsibilities

- Decision maker must objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence
- Decision maker may not base credibility determinations on a person's status as a complainant, respondent, or witness
- Ultimately, the decision maker must issue a written determination regarding whether or not the respondent is responsible for the alleged conduct, using the standard of evidence found in the district's policy

Decision maker responsibilities

- The district can choose to have a process by which parties can challenge the selection of the decision maker. Even if the district does not have such a process, parties may challenge the choice of decision maker
- The burden of proof and burden of gathering evidence that is sufficient to make a determination rests with the district, not with the parties
- The district must provide parties with an equal opportunity to present witnesses and evidence
- For K-12, Title IX does not require a live hearing for decision making
- If the district does hold a live hearing, Title IX does not require that K-12 institutions follow the regulations on hearings for post-secondary institutions that include cross examination (106.45(b)(6)(i))

Advisors to parties

- Parties may have advisors during the decision making process
- If there are advisors, they must be knowledgeable about the district's Title IX policies and procedures and understand their role
- The 2020 Title IX regulations do not require that they be trained

Required to be in written determination

- List of all allegations that could constitute sexual harassment
 - Do not include any dismissed allegations
- A description of the procedural steps taken throughout the entire process
 - Start with receipt of complaint
 - Notice to parties including date and method of notice
 - All interviews with parties and witnesses including followup interviews
 - All of the ways in which evidence was gathered or received including any site visits
 - A description of any hearing that occurred

Required to be in written determination

- Findings of fact supporting the determination
 - State whether the evidence supports that the respondent did or did not do the alleged conduct
 - Note any consistencies and inconsistencies
- Conclusions
 - For each allegation, state whether or not the respondent's conduct violated district policy under the district's standard of proof (preponderance of the evidence or clear and convincing) AND provide a rationale for each element of sexual harassment that is addressed. This is the determination of responsibility.
 - May include credibility determinations
 - Include any disciplinary sanctions that the district will impose on the respondent
 - State whether any remedies will be provided to the complainant (actual remedies may be confidential and do not have to be listed)
- Recommended to include the district's prohibition against retaliation

Rationale writing

Rationale: the decision maker's explanation for why they do or don't find the respondent responsible for the alleged conduct

State what standard of evidence is being used (preponderance of the evidence or clear and convincing)

Identify all elements of sexual harassment per district policy

State whether evidence does or does not support each individual policy element

Credibility

Identify the facts that support whether or not the evidence supports each individual element

Identify undisputed facts

For disputed facts, determine which is the more likely version and explain why

- Written decision does not need to include ALL evidence
- Include any admission or partial admission that was made during the resolution process

Evaluating facts and evidence

- A decision maker should complete an objective and unbiased evaluation of all facts presented to them
- Determine whether any followup questions need to be asked
- A decision maker should not be left feeling like there is still information they need to get. Document attempts to get information if there are holes or missing information.
- Make sure the evaluation is based on facts and not the decision maker's personal opinion

What is relevant evidence?

- Generally, relevant evidence aids in proving or disproving a material fact
 - Does the evidence tend to make the existence of a material fact more or less probable?
 - Does it go to the truth of the matter?
- 2020 Title IX regulations do not define “relevance”
 - District does not need to rely on state or federal evidence rules
- Decision makers consider relevancy when reviewing questions that parties have for each other, and in writing the decision

Definitions: inculpatory and exculpatory

INCULPATORY EVIDENCE

- Shows or tends to show a respondent's responsibility for the conduct at issue

EXCULPATORY EVIDENCE

- Shows or tends to show that a respondent is not responsible for the conduct at issue

Evidence about Prior Sexual Behavior is categorized by Title IX as not relevant, with exceptions

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

1. The evidence about prior sexual behavior is offered to prove that someone other than the respondent committed the alleged conduct, or
2. If the evidence concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent

****** These protections apply to complainants but not to respondents

Evidence for which the investigator needs to obtain written release from parties: privileged information

- Medical records
 - Therapy records
 - Sexual Assault Nurse Examiner reports
 - Any records maintained by a physician, psychiatrist, psychologist
 - Other types of privilege: attorney/client, marital
-
- Consent must be voluntary and written

Do not use any information protected by a legally recognized privilege (e.g., attorney-client) unless that privilege is waived by written consent

What if the investigation report or other evidence includes privileged information that was inappropriately disclosed or is not relevant?

- Decision makers may encounter evidence cited in the investigation report or included as exhibits, which has not been properly disclosed, or the investigation report may include irrelevant evidence
- Decision makers may not consider improperly disclosed or irrelevant information
 - They may state that evidence was included that they are not using to make the decision

Standard of evidence when making determinations

Preponderance of the evidence:

- It is more likely than not that something occurred
- a lower hurdle than the clear and convincing standard

For the decision maker: Does the evidence support that there is just over a 50% chance that a fact or claim is true?

Clear and convincing:

- it is highly and substantially more likely that something did occur rather than did not occur
- a higher hurdle than preponderance of the evidence

For the decision maker: Does the evidence support that the fact or claim is highly probable to be true?

Credibility determinations

- Assessing credibility is the decision maker's way of expressing how much weight they put on someone's statement or a piece of evidence
- Explain your credibility determinations in the findings, and base them only on relevant evidence, not a party's status as a complainant, respondent, or witness
- If someone was unwilling to talk to the investigator, that does not inherently make them not credible
- If the investigation report contains credibility determinations, the decision maker may review, but should make their own determination

Credibility determinations

- Whose account is credible or not credible, and why?
- Look for corroboration and consistency in accounts
- Does a particular account make sense, is it believable?
- Does anything suggest that a witness was/was not lying?
- Did a witness have a motivation to lie?
- What was the past record of the respondent; any similar behavior to the current allegations? Or a history of non-truthfulness?

Once the decision is completed

- The decision maker must produce a written determination of responsibility and the district must deliver it simultaneously to both parties
- The decision must provide information to both parties about their right to appeal the decision, the bases for appeal, and appeal deadlines
- Determine who will be responsible for implementing and documenting discipline
- Title IX Coordinator is responsible for implementing remedies for the complainant
 - Keep careful records of how remedies are implemented and make sure the complainant knows who to contact with any problems

When is a determination considered to be final?

When either:

1. The date on which an appeal is no longer timely, or
2. If an appeal has been filed, the date on which the district provides the parties with the written appeal decision

Sanctions

The district must not issue disciplinary sanctions until the end of the grievance process (this does not apply to supportive measures)

Student sanctions: Detention, in-school or out of school suspension, expulsion, restriction on activities or time on school grounds

Employee sanctions: Recommendation/order for demotion, suspension without pay, termination, nonrenewal of contract, letter of reprimand, coaching

Remedies

What is the purpose of a remedy?

Designed to restore or preserve equal access to the district's education program or activity

- class or work schedule changes
- escort in hallways
- buddy in hallways or activities
- one-way no contact order
- schedules for access to certain parts of building
- counseling
- change in work duties

Remedies may burden respondents (supportive measures may not burden respondents)

Student on student hypothetical

Male 7th grader Devon gets in trouble at school for skipping PE. After he gets in trouble, he tells his mother that female 7th grader Kayla has been bothering him at school and on the bus. A few months ago, Kayla wanted Student A to like her and told all her friends they were “talking.” Devon felt embarrassed because it wasn’t true. Devon told Kayla, in front of her friends, that he did not like her. Kayla got upset. She began pinching his rear end in their shared classes (science and PE). She would reach out and pinch him as he walked by her desk or as they did PE. They also rode the same bus home in the afternoons. If Kayla was already on the bus when Devon got on, she would swat his rear end as he passed by her seat on his way to the rear of the bus. Devon didn’t tell any of his teachers and doesn’t think they noticed anything. He has started “missing” his bus home and calling his parent for a ride home or asking a friend’s parent for a ride. Devon’s mother files a written complaint with TIXC.

Investigation report tells you:

- Devon says that Kayla pinched him on the rear end in their shared classes about 3 times a week for 2 weeks. Kayla denies this fully.
- Devon says that Kayla swatted him on the rear end 4 times over 4 weeks as he boarded the school bus at the end of the day. Kayla says she did it once and that her friend Cheyenne did it twice.
- Cheyenne denies swatting Devon, and did not see whether Kayla swatted Devon on the bus, but she did see Kayla reach behind Devon a couple times in their shared ELA class. She isn't sure if Kayla actually pinched Devon's rear end or not.
- Teachers and bus driver saw nothing.

You are the decision maker

Consider the standard of review (preponderance of the evidence or clear and convincing)

Consider the elements of sexual harassment:

Unwelcome conduct that a reasonable person finds to be so severe, pervasive, and objectively offensive so that it effectively denies a person equal access to the recipient's education program or activity

APPEALS

When must the district offer the right to appeal?

The district must offer **both parties** the right to appeal both of the following:

1. A determination of responsibility
2. The dismissal of a formal complaint or partial dismissal of allegations

If a party files an appeal

- Check that it falls within district's deadline for appeal
- Select an appeal decision maker who is unbiased, conflict free, neutral, and trained
 - The appeal officer cannot be the decision maker, investigator, or Title IX Coordinator
- Give notice to the other party that an appeal was filed
- Give notice to both parties who the appeal decision maker will be and the timeframe for the process

Appeal officer responsibilities

- Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
- Issue a written decision that provides the result of the appeal and the rationale for the result
- Provide the written decision simultaneously to both parties

Grounds for Appeals

Under Title IX, the district must offer appeals on these bases at a minimum:

1. Procedural irregularity that affected the outcome
2. New evidence that was not reasonably available at the time the initial determination of responsibility or dismissal was made, that could affect the outcome
3. The Title IX Coordinator, investigator, or decision maker had a conflict of interest or bias for or against complainants or respondents generally, or the individual complainant or respondent, that affected the outcome

District may offer additional appeal bases if it offers them equally to both parties

While an Appeal is Pending

What can the district do regarding supportive measures or sanctions while an appeal is pending?

1. Supportive measures should remain available for either party
2. Given the presumption of non-responsibility until the conclusion of the grievance process, the district should not implement sanctions until the appeal is determined

Appeal exercises

- What if a respondent refuses to talk to the investigator during the investigation, is then found responsible by the decision maker, and submits an appeal with their statement of what occurred, which is information that could affect the outcome?
- What if a respondent did talk to the investigator during the investigation, but refused to answer some of the questions, then is found responsible, and submits an appeal with the answers to some of the questions, and the information could affect the outcome?

INFORMAL RESOLUTIONS

When might an informal route be right or wrong?

On the plus side:

- A complainant may prefer not to go through the formal complaint process
- More flexibility to address issues
- Possible increase in autonomy for parties who choose this route

Maybe not:

- May not be the right venue for allegations of sexual misconduct
- Does not offer the array of procedural safeguards found in the formal process
- It may provide less assurance to parties that the situation is being properly addressed

Informal Resolutions

- The district may offer an informal resolution option but it cannot be offered unless a formal complaint is FIRST filed with the district
- Participation in an informal resolution MUST be optional; district cannot require parties to participate
- Information resolution may be offered at any time prior to reaching a final determination
- Parties can decide to withdraw from the informal process at any time before the process is complete, at which point a formal investigation would resume
- Informal resolution may involve a partial investigation but may not involve a full investigation or adjudication
- Informal resolution may not be used to resolve allegations that an employee sexually harassed a student

Informal Resolutions

District must provide a written notice disclosing:

- The allegations
- The requirements of the district's informal resolution process including if it precludes the parties from resuming a formal complaint based on the same allegations
- That parties may withdraw at any point prior to informal resolution and resume the formal resolution
- Any consequences that may result from participation in the informal process, including records that will be maintained or shared
- Whether the district has informal resolution facilitators serve as witnesses in subsequent formal processes (district has the choice to have them serve as witnesses or not)

*District must obtain the parties' voluntary, written consent
to the information resolution process*

Informal Resolutions

Who may facilitate an informal resolution?

- Title IX coordinator may do it; Decision Maker and Investigator may not

May an informal resolution result in disciplinary or punitive measures?

- Yes

Informal Resolution exercises

- A 12 year old student who filed a complaint wants to participate in an informal resolution but his parents don't want to do that.
- A respondent employee who is accused of sexually harassing a student wants to do an informal resolution.
- Take a few minutes to think over how you would conduct an informal resolution if you were facilitating one, after you got the formal written consent from parties.

Additional training required by Title IX not provided in this series

Training on any technology that the district uses in carrying out its Title IX grievance process

Technology related issues to consider:

- Will you hold meetings in person or virtually?
- Will you record meetings in any way?
- What will you do with the recordings?
- How will parties access documents during meetings?
- Safeguarding documents

Recommended training: Community Education on Sexual Harassment, including Bystander Intervention

- ❑ *Awareness*
- ❑ *Collective responsibility*
- ❑ *Empowerment*
- ❑ *Address Impact on staff after findings of student or staff misconduct*
 - ❑ *Support morale*
- ❑ *Resources*
 - ❑ District's Employee Assistance Program
 - ❑ Rebuilding Hope/Sexual Assault Center of Pierce County
 - ❑ <https://sexualassaultcenter.com/>

QUESTION AND ANSWER
