



RICHLAND SCHOOL DISTRICT TWO

TITLE IX OVERVIEW

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TITLE IX REMINDERS

- Designate a sufficient number of Title IX coordinators, investigators, and decision-makers.
- Ensure that required training is provided to all of the identified individuals.
- Reinforce with District-level and school-level administrators how to determine whether conduct should fall under the formal Title IX complaint process or whether it should be handled as routine conduct consistent with existing District policies.
- Ensure that all written notice responsibilities and timeline responsibilities are adhered to, particularly with respect to the responsibilities of the investigators and decision-makers.

The District, as required by Title IX of the Education amendments of 1972 and its corresponding regulations (“Title IX”), does not discriminate on the basis of sex in its education programs or activities. Title IX prohibits gender-based harassment, which, may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex even if those acts do not involve conduct of a sexual nature. The District prohibits discrimination and harassment on the basis of sex or gender in all of its programs and activities by its employees, students or third parties.

SCOPE OF POTENTIAL TITLE IX CONDUCT

- Discrimination based on sex/gender
- Sexual Harassment
- Pregnancy discrimination
- Retaliation
- Bullying/Cyber-Bullying when it involves sexual misconduct
- Hazing when it involves sexual misconduct

- A school district must respond ***promptly*** to ***actual*** knowledge of ***sexual harassment*** in an ***education program or activity of the district*** against a person in the United States in a manner that is not deliberately indifferent. The response must treat complainants and respondents equitably.
- A school district must follow the required procedure for responding to a ***formal complaint*** of sexual harassment, which is defined as a document filed by a complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that the district investigate the allegation of sexual harassment. 34 CFR § 106.30(a)



DEFINITION OF SEXUAL HARASSMENT

34 CFR § 106.30(a)

- Sexual harassment is conducted on the basis of sex that satisfies one or more of the following:
 - An employee of the district conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcome sexual conduct;
 - unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity; or
 - "sexual assault" as defined in 20 USC 1092(f)(6)(a)(v), "dating violence" as defined in 34 USC 12291(a)(10), "domestic violence" as defined in 34 USC 12291(a)(8), or "stalking" as defined in 34 USC 12291(a)(30).

(note: use of email, internet or other technologies may constitute "sexual harassment" as much as use of an in-person, postal mail, handwritten or other communications)

SEXUAL ASSAULT

Sexual Assault: An offense that meets the definition of rape, fondling, incest or statutory rape as used in the FBI's Crime Reporting system. A sex offense is any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

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 because of his/her age or because of his/her temporary or permanent mental 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.

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 of violence occurred;
- or
- 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 in which the crime of violence occurred.

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. The existence of such a relationship shall be based upon the reporting party's statement with consideration of the following factors:

- i. The length of the relationship
- ii. The type of relationship
- iii. The frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

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 - 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.

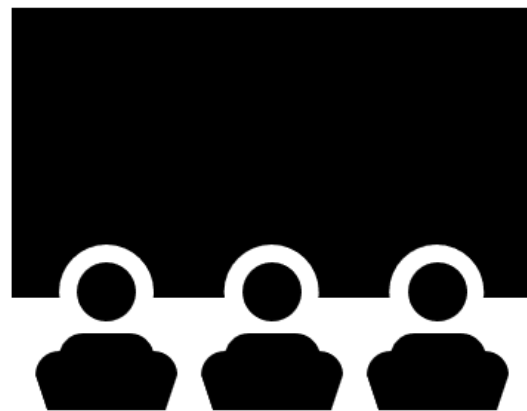
Substantial emotional distress - significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Reasonable person - a reasonable person under similar circumstances and with similar identities to the victim.

DEFINITION OF “EDUCATION PROGRAM OR ACTIVITY”

34 CFR § 106.44(a)

- Includes any locations, events, or circumstances over which the district exercised substantial control over both the alleged harasser (respondent) and the context in which the harassment occurred.



ACTUAL KNOWLEDGE

34 CFR § 106.30(A)

- Actual knowledge of sexual harassment means notice of sexual harassment or allegations of sexual harassment to the district's Title IX coordinator or *any* district employee.



POTENTIAL “NOTICE” SCENARIOS/RED FLAGS

- Student/Aide Helper Of Opposite Sex
- Riding With Coach To Out-Of-Town Game, Competition, Parent Approved
- Window In Classroom Covered Up
- Social Media “Friend” Request/Follow Other Students
- Frequent Lunch in Classroom or Other Alone Time with Teacher
- Frequently writing student excuses to leave class
- Texting Individual Students

Complainant is an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Respondent is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

ROLE OF TITLE IX COORDINATOR

34 CFR § 106.8(A)

- Districts must **designate** a Title IX coordinator and **authorize** the individual to coordinate the district's required efforts under the law.
- Districts must provide notice of the Title IX coordinator's name or title, email address, office address and telephone number on the website and in any handbook provided to employees, students and parents or legal guardians.

NOTICE REQUIREMENT

34 CFR § 106.8

- In addition to providing notice of the Title IX coordinator's name and contact information, districts must provide notice of its nondiscrimination policy and grievance procedures, including how to file or report sexual harassment and how the district will respond to applicants for admission and employment, students, and parents or legal guardians.



TRAINING

34 CFR § 106.45(B)

- Districts must ensure that Title IX coordinators, investigators, decision makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment, the scope of the district's education program or activity, how to conduct an investigation and grievance process, including hearings (if applicable), appeals, and informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The investigators must also receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
- Districts must make training materials publicly available on its website which are used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

REPORTING ALLEGATIONS

34 CFR § 106.8(A)

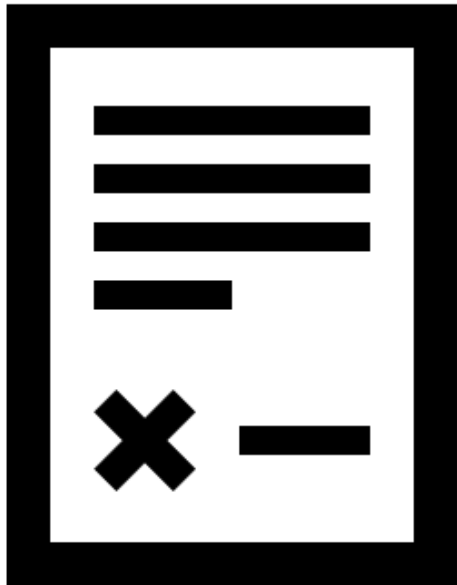
- Any person may report sex discrimination, including sexual harassment, regardless of whether the person is the alleged victim of the reported conduct, *in person, by mail, by telephone, or by email.*
- The report can be made at any time, including during non-business hours, by using the telephone number or email address, or by mail to the office address, listed for the Title IX coordinator.



SUPPORTIVE MEASURES

34 CFR § 106.30(A)

- The Title IX Coordinator must promptly contact the complainant (alleged victim) 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 the process for filing a formal complaint.
- Supportive measures are non-disciplinary, non-punitive, individualized services, offered as appropriate and without charge to a complainant or a respondent before or after the filing of a formal complaint, or where no formal complaint has been filed. Confidentiality of supportive measures must be maintained to the extent that maintaining confidentiality would not impair the ability of the district to provide the measure. (examples include counseling, course modification, scheduling changes, and increased monitoring or supervision).
- The Title IX Coordinator's prompt response (to offer supportive measures) is required regardless of whether a formal complaint is filed.
- Supportive measures offered should be documented.



FORMAL COMPLAINT

34 CFR § 106.30(A)

Is a document filed by a complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that the district investigate the allegations of sexual harassment.

RESPONSE TO A FORMAL COMPLAINT

34 CFR § 106.45(B)(1)

- The district's grievance process must:
 - Treat parties equitably.
 - Require an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence.
 - Require that any person designated as a Title IX coordinator, investigator, decision-maker, or any person designated to facilitate an informal process not have a conflict of interest against complainants or respondents generally or against the particular complainant and respondent. The district must also ensure required training is provided to these individuals.

RESPONSE TO A FORMAL COMPLAINT (CONT.)

34 CFR § 106.45(B)(1)

- Include a presumption that the respondent is not responsible for the alleged conduct until a determination has been made at the conclusion of the grievance process.
- Include reasonably prompt time frames for conclusion of the grievance process.
- Describe or list the possible disciplinary outcomes and remedies that may be implemented following a determination of responsibility.

RESPONSE TO A FORMAL COMPLAINT (CONT.)

34 CFR § 106.45(B)(1)

- State that standard of evidence used by the district to determine responsibility is the ***preponderance of evidence*** standard.
- Include the procedures and permissible reasons for appeal by a respondent or a complainant.
- Describe the range of supportive measures available to complainants and respondents.
- Not require, allow or use evidence or questions that constitute or seek legally privileged information, unless the privilege is waived.

WRITTEN NOTICE

34 CFR § 106.45(B)(2)

- Upon receipt of a formal complaint, the district must provide written notice to all known parties in sufficient time to give the respondent time to prepare a response before an initial interview. Written notice must include:
 - Notice of grievance process, including any informal resolution process;
 - Notice of the allegations, including sufficient detail (i.e., names of known parties, the conduct alleged to be sexual harassment, and the date and location of the conduct, if known) to allow the respondent to prepare a response;
 - Statement that the respondent is presumed not responsible for the conduct and that responsibility will be determined at the conclusion of the grievance process;
 - Notice of the parties' right to have an advisor (who may be, but is not required to be, an attorney) and to inspect and review evidence; and
 - Notice of any provision in the code of conduct that prohibits knowingly making false statements or providing false information in the grievance process.

DISMISSAL OF COMPLAINT

34 CFR § 106.45(B)(3)

- The district must investigate the allegations in a formal complaint.
- The complaint **must** be dismissed if the allegations:
 - would not constitute sexual harassment as defined in § 106.30, even if proved;
 - did not occur in the district's program or activity; or
 - did not occur against a person in the United States.
- The complaint **may** be dismissed:
 - if the complainant notifies the Title IX coordinator in writing at any time that he or she wishes to withdraw the complaint or an allegation;
 - if the respondent's enrollment or employment ends, or;
 - if specific circumstances prevent the district from gathering evidence sufficient to reach a determination.
- The district must promptly send written notice of dismissal and reasons for dismissal simultaneously to parties.

INVESTIGATION PROCESS

34 CFR § 106.45(B)(5)



- When investigating a complaint, the district must:
 - Ensure that the burden of proof and of gathering evidence rests on the district rather than the parties, except that certain treatment records cannot be obtained without voluntary, written consent from the party or parent;
 - Provide an equal opportunity for the parties to present witnesses and evidence;
 - Not restrict either party's ability to discuss the allegations or gather and present relevant evidence;
 - Provide the parties with the same opportunities to have others present during interviews or other related proceedings, including an advisor who may, but is not required to be, an attorney;

INVESTIGATION PROCESS (CONT.)

34 CFR § 106.45(B)(5)

- When investigating a complaint, the district must:
 - Provide to a party who is invited or expected to attend, written notice of the date, time, participants, purpose and location of any investigative interview or other meeting with enough time to allow the other party to prepare to participate;
 - Provide both parties and advisors, if any, an equal opportunity to review all evidence that is directly related to the allegations in the formal complaint, including evidence on which the district does not intend to rely and any inculpatory or exculpatory evidence from any source; such evidence must be provided prior to the completion of the final investigation and in time to give the parties at least 10 days to prepare a written response, which the investigator must consider prior to completing the investigation report; and
 - Prepare a written investigation report that fairly summarizes the relevant evidence and provide the report to the parties and their advisors, if any, at least 10 days before a hearing or other determination of responsibility.

DECISION MAKER RESPONSIBILITIES

34 CFR § 106.45(b)(6)

- ***After*** the district has sent the investigative report to the parties, and ***before*** a determination has been made regarding responsibility, the ***decision maker*** must:
 - provide each party ten days to respond to the investigative report and the opportunity to submit written, relevant questions that the party wants asked of another party or witness;
 - provide each party with the answers to written questions; and
 - provide for limited follow-up questions from each party.



DETERMINATION OF RESPONSIBILITY

34 CFR § 106.45(B)(7)

- The decision maker, ***who cannot be the investigator or the Title IX coordinator***, must apply the district's standard of evidence and issue a written determination of responsibility that:
 - Identifies the allegations that potentially constitute sexual harassment;
 - Describes the district's procedural steps taken from the receipt of the complaint through the determination;
 - Includes findings of fact supporting the determination;
 - Includes conclusions regarding the application of the district's code of conduct to the facts;
 - Includes a statement of, and a rationale for, the result as to each allegation, including a determination of responsibility, any disciplinary sanctions, and whether remedies to restore or preserve equal access to the district's education program or activity will be provided to the complainant; and
 - Includes procedures and permissible bases for the complainant and respondent to appeal.

APPEALS PROCESS

34 CFR § 106.45(b)(8)

- Districts must offer both parties the right to appeal a determination of responsibility, and a district's dismissal of a formal complaint or any allegations therein, for the following reasons:
 - A procedural irregularity that affected the outcome;
 - New evidence that was not reasonably available at the time of determination and could affect the outcome;
 - Conflict of interest on the part of the Title IX Coordinator, investigator, or decision maker that affected the outcome.

APPEALS PROCESS

34 CFR § 106.45(b)(8)

- For all appeals, the district must provide written notice to both parties of the appeal and provide both parties an equal opportunity to submit a written statement in support of, or challenging, the determination.
- The appeal must result in a written decision that must be provided to both parties simultaneously.
- The decision maker for the appeal cannot be the Title IX Coordinator, investigator, or initial decision maker, cannot have a conflict of interest, and must receive training (outlined in 34 CFR § 106.45(b)(1)(III)).



INFORMAL RESOLUTION

34 CFR § 106.45(b)(9)

- The district cannot offer to facilitate an informal resolution process unless a formal complaint of sexual harassment is filed.
- At any point during the formal complaint process, the district may offer to facilitate an informal process that does not require a full investigation, provided both parties are given the required notice of rights, and they consent. This process cannot be used in the context of a complaint that an employee harassed a student.

EMERGENCY REMOVAL/ADMINISTRATIVE LEAVE

34 CFR § 106.44

In cases in which an employee is a respondent, the District may place that employee on administrative leave during the pendency of an investigation and grievance process.

In cases in which a student is a respondent, the District may remove, on an emergency basis, the respondent from the District's educational program or activity provided the District: (i) undertakes an individualized safety and risk analysis and determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal and (ii) provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision does not modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

RECORDKEEPING

34 CFR § 106.45(B)(10)

- The District will maintain records related to this policy for seven years. Specifically, the District will maintain records pertaining to: (i) each investigation and determination; (ii) any disciplinary sanctions imposed on respondent; (iii) any remedies provided to the complainant; (iv) any appeal and the result thereof; (v) any informal resolution and result; (vi) any materials used to train Title IX coordinators, investigators, decision makers, and any person who facilitates an informal resolution process.

RETALIATION

34 CFR § 106.71

- Neither the District nor any other person may intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege under Title IX or because the individual made a report, a complaint, testified, assisted, participated in, or refused to participate in any manner in an investigation or proceeding under this policy.
- The District shall keep confidential the identity of any individual who made a report or complaint of sexual discrimination or sexual harassment, any complainant, any individual reported as a perpetrator, any respondent and any witness except as permitted under FERPA or as required to carry out the purposes of this policy and its procedures thereunder.
- Charging someone with making a materially false statement in bad faith, does not amount to retaliation, provided that a determination regarding responsibility alone is not sufficient to conclude that any party made a materially false statement in bad faith.

DELIBERATE INDIFFERENCE

A District acts with deliberate indifference only when it responds to sexual harassment in a manner that is “clearly unreasonable in light of the known circumstances”

- Must promptly offer supportive measures
- Cannot impose discipline without a formal process
- Must investigate allegations in a formal complaint

CRIMINAL JUSTICE PROCESS *V.* TITLE IX GRIEVANCE PROCESS

- Similarities *v.* Differences
- Law enforcement investigation is not an automatic reason for delay
- Any delay must be documented and you must be able to clearly articulate reason for delay and provide notice to the parties

ADDITIONAL TOPICS

- Parents/Guardians
- Advisors
- Conflicts of Interest/Bias