



Title IX Training: Requirements of the New Title IX Regulations (Part Two)

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A Webinar Presented by Sara Leon & Associates, LLC

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Part 2: For Title IX Coordinators, Investigators, Decision-Makers and Facilitators under the New Title IX Regulations



Title IX Training for Title IX Coordinators, Decision-Makers, Investigators, and Facilitators

■ Let's review what we learned in Part I

- ☐ Changes to the definition of sexual harassment
- ☐ The scope of a school district's education program or activity
- ☐ When a district employee has actual knowledge of an allegation of sexual harassment, and
- ☐ District employees must report allegations to the Title IX Coordinator

Today's Training:

Why are we here today?

- ❑ New Title IX regulations impose requirements and procedures for public schools
- ❑ Requirements include specific roles:
 - ✓ Title IX Coordinator
 - ✓ Informal Resolution Facilitator
 - ✓ Investigator (discussed in Part III)
 - ✓ Decision-Maker



Today's Training: What Will You Learn?

- ☐ Requirements for adoption and dissemination of new Title IX policy
- ☐ How to respond to a report of sexual harassment
- ☐ District's obligation to provide supportive measures
- ☐ Responsibilities of the Title IX Coordinator, Informal Resolution Facilitator, Investigator, and Decision-Maker
- ☐ An overview of the Title IX grievance process

Title IX Coordinator: What Will You Learn?

- ☐ Responsibilities for coordinating district Title IX efforts
- ☐ Requirements to provide supportive measures
- ☐ An understanding of the Title IX grievance and investigative process
- ☐ Other roles in which Title IX Coordinator may or may not serve

Informal Resolution Facilitator: What Will You Learn?

- ☐ When informal resolution is available to complainants and respondents
- ☐ Availability of supportive measures
- ☐ Approaches to informal resolution of complaints
- ☐ Title IX grievance and investigative process

Investigator: What Will You Learn?

- ☐ How relevant evidence is identified
- ☐ How evidence is objectively evaluated
- ☐ An understanding of the Title IX grievance process
- ☐ Role of parties' advisors

Decision-Maker: What Will You Learn?

- ☐ An understanding of the Title IX grievance process
- ☐ An understanding of what evidence is relevant and what is not
- ☐ How to objectively evaluate evidence and credibility
- ☐ Applying the standard of proof to determine responsibility
- ☐ An understanding of the Title IX appeals process

Implementing the New Title IX Regulations: First Steps

Designate Title IX Coordinator



The District must designate Title IX Coordinator(s) “to coordinate its efforts to comply with its responsibilities under this part”

- ☐ May be current Title IX coordinator
- ☐ Can designate more than one coordinator, but must ensure consistent application of policy
- ☐ For smaller districts, need not be full-time position

Title IX Coordinator Requirements

Districts must have Title IX Coordinator at all times

- ☐ Must be referred to as “Title IX Coordinator” (even if they also have other roles or titles)
- ☐ If current coordinator leaves, is promoted, or retires, must name interim
 - Must also ensure interim coordinator receives training
- ☐ If only one coordinator is named, advisable to have deputy coordinator to serve as backup (and could have other roles, as discussed later)

Implementing the New Title IX Regulations: First Steps

Publish Title IX Coordinator's Information

- ❑ Notify all the following of the name or title, office address, electronic mail address, and telephone number of the Title IX Coordinator:
 - Applicants for admission and employment
 - Students
 - Parents or legal guardians of elementary and secondary school students
 - Employees
 - All unions or professional organizations holding collective bargaining or professional agreements with the school district

Implementing the New Title IX Regulations: First Steps

- ❑ Refer to this employee as the “Title IX Coordinator” (plural if there are more than one).
- ❑ The Title IX Coordinator’s role is separate from that of the final Decision-maker in the new formal complaint process, so the District may want to assign this role of Title IX Coordinator to someone other than the Superintendent or other person who may be expected to make a determination as to responsibility or who may hear an appeal of the outcome of the matter.

Role of the Title IX Coordinator

What specific responsibilities do the new regulations assign to the Title IX Coordinator?

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 EDUCATIONAL PROGRAM OR ACTIVITY RECEIVING FEDERAL FINANCIAL ASSISTANCE.

The Title IX Coordinator must:

- ☐ Respond promptly to allegations of sexual harassment
- ☐ Inform a complainant that supportive measures are available (whether a formal complaint is filed or not)
- ☐ Inform a complainant of the right to file a formal complaint
- ☐ Explain to a complainant how a formal complaint may be filed
- ☐ Implement remedies after grievance process

Implementing the New Title IX Regulations: First Steps

Adopt a Grievance Process and Disseminate New Policy

The new regulations require that the District allow for the reporting of sex discrimination, including sexual harassment:

- ☐ By any person – whether or not the person reporting is the alleged victim.
- ☐ Through a variety of means – in person, by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinator – “or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report.”
- ☐ At any time – including during non-business hours (by telephone, e-mail, or by mail to the address listed for the Title IX Coordinator).

Adopting Grievance Procedures and Board Policies

❑ The new process must provide for:

- the prompt and equitable resolutions of student and employee complaints alleging any action that would be prohibited by Title IX regulations, and
- a grievance process that complies with both the new definition of formal complaint and with the grievance process for such complaints as required by the new Title IX regulations.



Title IX Grievance Process: Overview

Overview of Requirements for the Grievance Process

- ❑ Treat complainants and respondents equitably.
- ❑ By providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent:
 - Such remedies must be designed to restore or preserve equal access to the District's education program or activities.
 - “Such remedies may include the same individualized services...described as “supportive measures;” however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.”
 - “And by following a grievance process that complies with this section before the imposition of any disciplinary sections or other actions that are not supportive measures” (as defined in the new regulations) against a respondent.



Title IX Grievance Process: Requirements

- ☐ “Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the recipient (the District) may implement following any determination of responsibility;”
- ☐ **State whether the standard of evidence to be used to determine responsibility is the preponderance of evidence standard or the clear and convincing evidence standard;**
- ☐ Apply the same standard of evidence for formal complaints against student as for formal complaints against employees;
- ☐ Apply the same standard of evidence to all formal complaints of sexual harassment.

Title IX Grievance Process: Requirements

- ✓ The Title IX Coordinator, Investigator, an Informal Resolution Facilitator or Decision-maker cannot have “a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.”
- ✓ To ensure compliance with the above requirement will be for the District to ensure that the individuals listed above have the training specifically required of them in the new regulations.

The District will be responsible for ensuring as follows:

- ◆ Anyone who serves in any of the above four capacities receives 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, appeals, and informal resolution processes, as applicable; and
 - “How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.”

Title IX Grievance Process: Requirements

- ✓ “Include the procedures and permissible bases for the complainant and respondent to appeal;”
- ✓ “Not require, allow, rely upon, or otherwise use questions or evidence that constitute or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.”



Title IX Grievance Process: Requirements

Grievance Process must include Time Frames:

- ☐ Reasonably prompt time frames for the conclusion of the grievance process, including appeals, AND
- ☐ A process that allows for the temporary delay of the grievance process or limited extension of time frames for good cause
- ☐ When delay occurs, the district must provide written notice to the parties of the extension and the reasons for it
- ☐ Good Cause may be:
 - the absence of a party, a party's advisor, or a witness
 - concurrent law enforcement activity
 - the need for language assistance or disability accommodation

Disseminating the New Policy

The District must also provide notice of the District's new grievance procedures, to all those entitled to notification of the Title IX Coordinator's contact information, including:

- ☐ How to report or file a complaint of sex discrimination;
- ☐ How to report or file a complaint of sexual harassment; and
- ☐ How the District will respond.

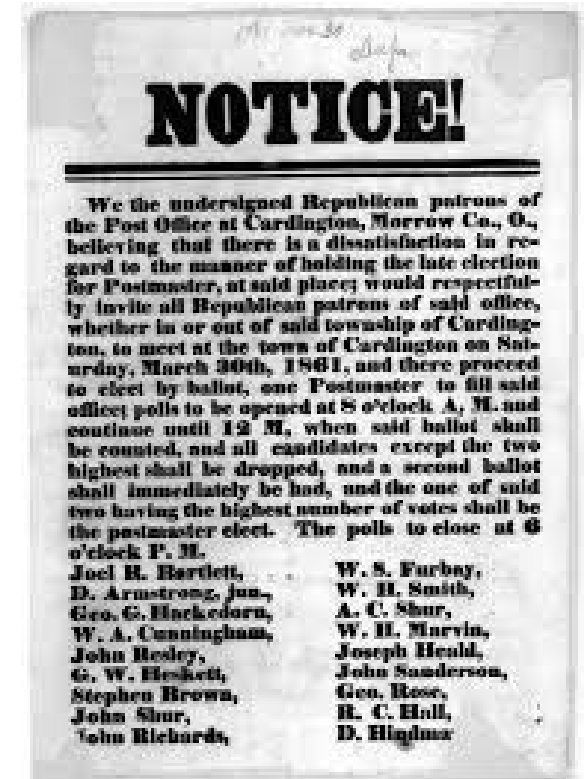


Disseminating the New Policy

Notice Requirements:

School districts must provide notice of their policy of non-discrimination. Notice must include that:

1. The District “does not discriminate on the basis of sex in the education program or activity that it operates,” in accordance with Title IX;
2. The District’s non-discrimination policy includes admissions as well as employment; and
3. Inquiries about Title IX may be referred to either the Title IX Coordinator or to the Assistant Secretary of Education.



Training Program

- ❑ Training for Title IX Coordinators, investigators, decision-makers, and anyone who facilitates an informal resolution process must:
 - Define sexual harassment
 - Explain how to conduct an investigation and grievance process
 - **Promote impartial investigations**
 - Not rely on sex stereotypes



Training Program

- ❑ Materials used to train those in the above roles must be made publicly available on the school district's website
- ❑ If the district does not maintain a website, the district must make these materials available upon request by members of the public



Definition of Sexual Harassment

What is new?

Sexual harassment is expressly recognized as sex discrimination.

❑ As you just heard, starting August 14, 2020, sexual harassment will be defined in regulation as any one of three categories of conduct:

- quid pro quo
- hostile environment
- sexual violence

❑ See 34 C.F.R. §106.30

Definition of Sexual Harassment

“Sexual harassment” is defined in the new regulations as “conduct on the basis of sex that satisfies one or more of the following:”

- 1) **Quid pro quo:** A District employee conditioning the provision of an aid, benefit, or service of the District on an individual’s participation in unwelcome sexual conduct;
- 2) **Hostile environment:** 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
- 3) **Sexual violence under law** [as defined in 20 U.S.C. § 1092(f)(6)(A)(v)].

Two-Part Mandatory Response

PART ONE

Response after actual knowledge
("Report")

PART TWO

Response after "Formal Complaint"



Mandatory Response to Sexual Harassment

A School District with **actual knowledge** of sexual harassment:

- ☐ in **an education program or activity** of the District
- ☐ against a person in the United States
- ☐ must respond ***promptly*** in a manner ***that is not deliberately indifferent***

34 C.F.R. 106.44

So...Where are we in the Response Process?

Part 2: Response After a Formal Complaint

**Report of
Sexual
Harassment**

**Supportive
Measures Offered
to Complainant**

**Offer Formal
Complaint Under
District's Grievance
Policy**

**Either Complainant
or Title IX
Coordinator Signs
Formal Complaints**

**The District Must
Investigate By
Following A Grievance
Process That Complies
With the Title IX**

Report of Sexual Harassment



Responding to Complaints: Supportive Measures

The Title IX Coordinator must offer supportive measures to a complainant before or after a formal complaint is filed, or where no formal complaint is filed

Supportive measures may also be provided to respondents



The new regulations define supportive measures as:

- ☐ Non-disciplinary, non-punitive individualized services
- ☐ Offered as appropriate, as reasonably available, and without fee or charge
- ☐ Designed to restore or preserve equal access to the recipient's (the District's) education program or activity
- ☐ Without unreasonably burdening the other party

Responding to Complaints: Supportive Measures

Supportive measures may include any of the following:

- ☐ Counseling
- ☐ Extensions of deadlines or other course-related adjustments
- ☐ Modifications of work or class schedules
- ☐ Campus escort services
- ☐ Mutual restrictions on contact between the parties
- ☐ Changes in work locations
- ☐ Leave of absence
- ☐ Increased security and monitoring of areas of campus
- ☐ Other similar measures



Title IX Grievance Process: Emergency Removal

Includes in supportive measures where a district believes a respondent poses a threat, it may remove the respondent on an emergency basis, provided the district:

- ✓ Undertakes an individualized safety and risk analysis
- ✓ 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
- ✓ Provides the respondent with notice and an opportunity to challenge the decision



Title IX Grievance Process: Emergency Removal

Generally, emergency removal is a high standard to meet.

Emergency removal does not affect student rights under IDEA, Section 504, or the ADA.

Students identified under IDEA or 504 could be removed for up to 10 days without an ARD or 504 committee meeting.

Also consider the district's threat assessment process under SB11.



Responding to Complaints: Scenario

Scenario: AP English Class

Jane and Johnny are both high school seniors taking AP English together in the only AP English class offered. Jane brings a formal complaint that Johnny engaged in dating violence when she told him she wanted to break up. She says she is scared and asks what supportive measures are available.

How should the Title IX Coordinator address supportive measures?

How could the Title IX Coordinator determine whether emergency removal is appropriate?



Title IX Coordinator Offers Complainant Opportunity to File a Formal Complaint



Grievance Process: Formal Complaints

What is a formal complaint?

According to the regulations, a formal complaint is a document that:

- ☐ Alleges sexual harassment against a respondent and **requests that the District investigate the allegation of sexual harassment**
- ☐ Filed by a complainant or signed by the Title IX Coordinator

Grievance Process: Formal Complaints

What are the Requirements for a Formal Complaint?

Important Details Regarding Formal Complaints:

- ☐ Must contain the complainant's signature, or otherwise indicate that the complainant is the person filing the formal complaint
- ☐ Complainant must be participating in or attempting to participate in District's education program or activity
- ☐ A formal complaint may be filed in person, by mail or by email, or "by any additional method designated" by the District

Grievance Process: Formal Complaints

Who May Sign a Formal Complaint?

- ❑ Parents or guardians may file a formal complaint on behalf of a student
- ❑ When complainant declines or refuses to sign a formal complaint:
 - In some instances, Title IX Coordinator may sign a formal complaint
 - Required where not doing so would be “clearly unreasonable in light of the known circumstances”
 - In those instances, the Title IX Coordinator is not considered a complainant

Title IX Grievance Process: Dismissal

The District must dismiss a formal complaint if the conduct alleged:

- ☐ Would NOT constitute sexual harassment, even if proved
- ☐ Did not occur in the District's education program or activity
 - Remember: education program or activity = locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs
 - Texas Law may include cyberbullying that occurs off campus
- ☐ Or did not occur against a person in the United States
 - Then the District must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX
 - Title IX Coordinator in conjunction with Decision-Maker
 - Please: A Decision-Maker should dismiss the complaint

Title IX Grievance Process: Dismissal

BUT: Dismissal does not preclude or excuse the District from taking action under another provision of its Code of Conduct, or other grievance policies.

Permissive Dismissals

District may dismiss the formal complaint or any allegations therein if at any time during the investigation or hearing if:

- a. A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
- b. The respondent is no longer enrolled or employed” by the District; or
- c. “Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.”

Title IX Grievance Process: Dismissal

Notice and Appeal

- a. When dismissing a formal complaint (whether a required dismissal or permitted dismissal), the District must promptly send written notice of the dismissal and reason(s) for it to the parties
- a. A party may appeal dismissal of a formal complaint
- a. Bases for appeal of dismissal include:
 - Procedural irregularity
 - New evidence
 - Bias or conflict of interest
 - Any other bases offered by the district



Title IX Grievance Process: Formal Complaints

Where allegations involve the same set of facts or circumstances, the Title IX Coordinator may consolidate formal complaints:

- ☐ Involving allegations of sexual harassment against more than one respondent, OR
- ☐ by more than one complainant against one or more respondents, or by one party against the other party.

Consolidation of Formal Complaints



Title IX Grievance Process: Notice of Allegations

Notice of Allegations:

**Must Provide Sufficient
Written Notice of the
Allegations**

The Title IX Coordinator must provide:

- ☐ Notice of the allegations potentially constituting sexual harassment;
- ☐ Including sufficient details (known at the time); and
- ☐ Allowing sufficient time to prepare a response before any initial interview.

Sufficient details include as follows:

- ☐ Identities of the parties involved in the incident, if known;
- ☐ The conduct allegedly constituting sexual harassment; and
- ☐ The date and location of the alleged incident, if known.

Title IX Grievance Process: Notice of Allegations

Notice of Allegations:

Other Required Elements

- ☐ State that the respondent is initially presumed not responsible for the alleged conduct.
- ☐ Inform the parties that:
 - they may have an advisor, and
 - may inspect and review evidence.
- ☐ Inform the parties of any code of conduct provision that prohibits knowingly making false statements during the grievance process.
- ☐ If the district, during an investigation, decides to investigate allegations that are not in the initial written notice, the District must provide notice of those new allegations to the parties.

Title IX Grievance Process: Advisors

May a Complainant or Respondent Have an Advisor or Attorney Present?

- ☐ Parties may have advisor of their choosing present during grievance proceeding
- ☐ Districts may not limit the choice or presence of advisor for either the complainant or respondent
- ☐ District restrict the extent to which the advisor may participate in the proceedings
- ☐ Advisor restrictions must apply to both parties

Title IX Grievance Process: Other Issues

Free Speech



Districts **may not restrict** the parties' ability to:

- ☐ Discuss the allegations under investigation;
- ☐ To gather and present relevant evidence.

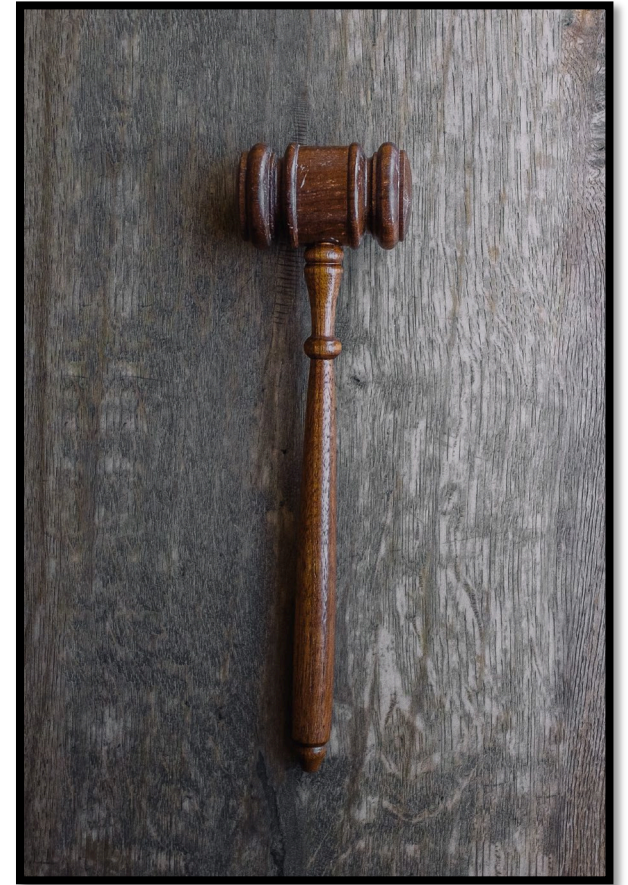
Role of the Decision-Maker



Role of Decision-Maker: Overview

Decision-maker is responsible for:

- ☐ Managing parties' opportunity to ask questions as part of grievance process
- ☐ Evaluating the investigative report
- ☐ Conducting live hearing (if applicable)



Role of Decision-maker: Written Questions

For districts not conducting a hearing:

AFTER the District has sent the parties a copy of the investigative report and BEFORE reaching a determination regarding responsibility,

- ✓ The Decision-maker(s) must:
 - Afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness
 - Provide each party with the answers, and
 - Allow for additional, limited follow-up questions from each party
 - If the Decision-Maker excludes a question as not relevant, he or she must provide an explanation to the party

Role of Decision-Maker: Overview

Decision-maker is also responsible for:

- ☐ Reaching findings of fact and conclusions based on investigative report and parties' questions
- ☐ Determining whether a respondent is found responsible
- ☐ Producing a written determination and providing to both parties at the same time



Role of Decision-Maker: Determining Credibility

When evaluating the credibility of the complainant, respondent, or any witnesses, the Decision-Maker:

- ☐ May not make credibility determinations based on a person's status as complainant, respondent, or witness.
- ☐ Should identify corroboration of relevant details, where possible.
- ☐ Must consider evidence relating to credibility in investigative report:
 - For example, information indicating a party provided differing explanations to the same question successive interviews;
 - Also taking into account that valid reasons may exist for apparent lack of consistency.
- ☐ Evaluate complainant, respondent, and witness statements for internal and external consistency.



Role of Decision Maker: Evaluating Evidence



When evaluating the credibility of the complainant, respondent, or any witnesses, the decision-maker should:

- ☐ Approach investigative report objectively, without prejudging the parties
- ☐ Consider all inculpatory and exculpatory evidence
- ☐ If district is conducting live hearings, the decision-maker would need to receive training on any technology to be used at a live hearing



Role of Decision Maker: Evaluating Evidence



In evaluating the complainant's credibility, the decision-maker should **avoid considering a complainant's prior sexual history**, unless:

- ☐ Questions and evidence are offered to prove that someone other than the respondent committed the alleged conduct, or
- ☐ Questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.



Role of Decision-Maker: Overview

A Written Determination should:

- ☐ Identify allegations
- ☐ Describe procedural steps taken in grievance process
- ☐ Include Statement of facts
- ☐ Apply code of conduct
- ☐ State finding for each allegation, according to adopted standard of proof, **including rationale**
- ☐ Describe bases for appeal



Title IX Grievance Process: Determining Responsibility

The District must provide the written determination to the parties simultaneously.

The determination regarding responsibility becomes final:

- ☐ If an appeal is filed: “on the date that the recipient (the District) provides the parties with the written determination of the result of the appeal.”
- ☐ If an appeal is NOT filed: “on the date on which an appeal would no longer be considered timely.”

Title IX Grievance Process: Informal Resolution

The District may not require parties to participate in an informal resolution process

Districts may not:

- ☐ “Require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section;”
- ☐ “Require the parties to participate in an informal resolution process;” or
- ☐ “Offer an informal resolution process unless a formal complaint is filed.”

However, Districts may:

- ☐ “At any time prior to reaching a determination regarding responsibility the recipient (the District) may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication.”

Title IX Grievance Process: Informal Resolution

- ❑ Districts must provide to the parties a written notice disclosing:
 - the allegations,
 - the requirements of the informal resolution process including:
 - the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations,
 - that at any time prior to agreeing to a resolution, any party has the right to withdraw and resume the grievance process, and
 - any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- ❑ Obtains the parties' voluntary, written consent to the informal resolution process; and
- ❑ Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.



Title IX Grievance Process: Live Hearings

School Districts are **not required** under the new Title IX regulations to hold a live hearing. Should a District choose to provide a hearing, several procedural requirements will be required and the Decision-maker will need to make certain judgments:

- ☐ “The Decision-maker must permit each party’s advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.”
- ☐ Cross-examination at a hearing must be conducted “directly, orally, and in real time by the party’s advisor of choice and never by a party personally.”
- ☐ At the request of either party, a district must provide for a hearing to occur with the parties located in separate rooms, with technology enabling the Decision-maker and parties to simultaneously see and hear the party or witness answering questions.

Title IX Grievance Process: Live Hearings

- Only relevant cross-examination and other questions may be asked of a party or witness.
- BEFORE a complainant, respondent, or witness answers a cross-examination or other question, the Decision-maker(s) must
 - First determine whether the question is relevant and
 - Explain any decision to exclude a question as not relevant.
- If a party does not have an advisor present at a hearing, the district must provide an advisor without fee or charge to conduct cross-examination on behalf of that party.
- Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant,
 - Unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
 - Or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent."

Title IX Grievance Process: Live Hearings

- ✓ A Decision-maker CANNOT rely on any statement of a party or witness that does not submit to cross-examination in reaching a determination regarding responsibility:
 - Hearings may be conducted with all parties physically present in the same geographic location or,
 - At the District's discretion,
 - Any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.”
- ✓ Districts holding hearings must create audio or audiovisual recordings, or a transcript, of the hearing and make it available to the parties.

Title IX Grievance Process: Appeals

Districts must allow for appeal of a grievance process determination by either the complainant or respondent

With all appeals, the District must:

- ❑ “Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- ❑ Ensure that the Decision-maker(s) for the appeal is not the same person as the Decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator; and
- ❑ Ensure that the Decision-maker(s) for the appeal complies with the standards” in the Title IX regulations regarding training requirements and the absence of a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.



Title IX Grievance Process: Appeals

In addition, the district must:

- ☐ Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome of the grievance process;
- ☐ Issue a written decision describing the result of the appeal and the rationale for the result; and
- ☐ Provide the written appeal decision simultaneously to both parties.



Title IX Grievance Process: Appeals

Appeals may be taken:

- ☐ In any of the following instances:
 - a determination of responsibility, or
 - the dismissal of a formal complaint
- ☐ On the following bases:
 - Procedural irregularity that affected the outcome of the matter;
 - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
 - The Title IX Coordinator, investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.”
 - A district may offer appeal on additional bases at its discretion.

Recordkeeping Requirements

(1) The District must maintain for a period of seven years records of:

- A. “Each sexual harassment investigation including
 1. any determination regarding responsibility,
 2. any audio or audiovisual recording or transcript required under” the section on hearings (as required of postsecondary institutions but not elementary and secondary schools);
 3. any disciplinary sanctions imposed on the respondent, and
 4. any remedies provided to the complainant designed to restore or preserve equal access to the recipient’s education program or activity.
- A. Any appeal and the result therefrom;
- A. Any informal resolution and the result therefrom; and
- A. All material used to train Title IX Coordinators, investigators, Decision-makers, and any person who facilitates an informal resolution process.”
 1. The District must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.”

Recordkeeping Requirements

- (2) Also, for each response required of the District under §106.44 (Recipient's Response to Sexual Harassment), the District 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 District “must document:
 - The basis for its conclusion that its response was not deliberately indifferent, and
 - That it has taken measures designed to restore or preserve equal access to the recipient's education program or activity.”
 - If the District “does not provide a complainant with supportive measures, then the recipient (the District) must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the recipient (the District) in the future from providing additional explanations or detailing additional measures.”

Retaliation Prohibited

Districts may not retaliate against any party for complaining, assisting, participating, or refusing to participate in an investigation or grievance process.

Notably, the regulations limit districts from charging students with code of conduct violations when the violation arises from the same facts underlying a complaint of sexual harassment:

“Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts of circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation.”

34 C.F.R. § 106.71

Retaliation Prohibited

The District must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including:

- any individual who has made a report or filed formal complaint of sexual harassment,
- any individual who has been reported to be the perpetrator of sex discrimination,
- any respondent,
- any witness, and
- except as may be permitted by the FERPA statute, 20 USC 1232 g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

Retaliation Prohibited

COMPLAINTS OF RETALIATION:

“Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination required to be adopted under §106.8(c).”

SPECIFIC CIRCUMSTANCES:

- “The exercise of rights protected under the First Amendment does not constitute retaliation prohibited” under this section.
-
- Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute prohibited retaliation,
- However, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.”

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A school hallway with orange lockers on both sides. In the center, there is a whiteboard labeled "INFORMATION". Above the whiteboard, a clock is mounted on the wall. The hallway has a polished floor and a grid ceiling with recessed lights. Doors to classrooms are visible on the right side.

TITLE IX TRAINING: REQUIREMENTS OF THE NEW TITLE IX REGULATIONS

Part III: For Title IX Investigators



A Webinar Presented by Sara Leon & Associates, LLC, July 29, 2020

Meet the Presenters

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Part III: *Required Training for Title IX Investigators*



Title IX Training Requirements for Title IX Investigators

□ Let's Review What You Learned in **Parts One and Two** of the Training

- ✓ The definition of sexual harassment;
- ✓ Reporting requirements;
- ✓ What schools must do to support alleged victims;
- ✓ Title IX grievance procedures; and
- ✓ Requirements and roles of the Title IX Coordinator, Informal Resolution Facilitator, Investigator and Decision-Maker.

We Are Here

Title IX
Coordinator



Investigator



Decision Maker



Appeal
Officer



Informal
Resolution
Facilitator



TODAY'S TRAINING

The new regulations mandate that all individuals serving as Title IX Investigators receive appropriate training per the new regulations.





Training Requirements for Title IX Investigators

☐ What Will You Learn in this Specialized Training for Title IX Investigators?

1. Review the Parties to a Formal Complaint.
2. Review the necessary elements of the investigative process.
3. How to investigate.
4. How to create an investigative report “that fairly summarizes relevant evidence” (as described later in this section).



Review:

Who are the Parties to a Title IX Report or Formal Complaint

Complainant: person alleged to be the victim of sexual harassment. **This does not have to be the same person making the Formal Complaint.**

Respondent: person alleged to be the perpetrator of sexual harassment

Note: A parent may act on behalf of a minor student who is a Complainant or Respondent.

Review:

Necessary Elements of the Investigative Process

- ❑ The final regulations require schools to investigate and adjudicate formal complaints of sexual harassment and to give Complainants and Respondents meaningful opportunity to participate in the investigation to increase the likelihood that the district will reach an accurate, reliable determination regarding the Respondent's responsibility.

Review: The Basic Elements of a Formal Complaint Process Include:

- ☐ An objective evaluation of **inculpatory** (**favorable to Complainant**) and **exculpatory** (**favorable to Respondent**) evidence.
- ☐ A requirement that credibility may not be based on the person's status.
- ☐ The Title IX Coordinator, investigator and decisionmaker(s) must not have a conflict of interest or bias against a party.
- ☐ A presumption Respondent is not responsible until a determination is made at the conclusion of the grievance process.
- ☐ A reasonably **prompt*** time frame for the grievance process and allow for temporary delay of time frames for "good cause."
- ☐ Ensure the standard of evidence – either "**preponderance of the evidence**" (**more likely than not**) or "**clear and convincing**" (**reasonably certain**).
- ☐ Ensure burden on the District, not the parties, to gather evidence, but the District may not breach any privilege (e.g., doctor-patient) without a voluntary waiver.



Basic Elements of a Formal Complaint Process (cont'd)

- ❑ **Witnesses:** parties have equal opportunity to present witnesses.
- ❑ **Free Speech:** district cannot restrict either party from discussing the allegations or gathering evidence.
- ❑ **Advisors:** parties have the right to an advisor.
- ❑ **Written Notice:** must be given to a party whose participation is invited or expected, with sufficient details and enough time to prepare.
- ❑ **Inspection and Review of Evidence:** prior to the completion of an investigative report, *the parties must have at least 10 days to review the evidence and submit a written response.*
- ❑ **Summary of Investigation Report:** the investigator *must create an investigative report, provide copies to the parties and give the parties at least 10 days to respond in writing.*



How To Investigate Formal Complaints

Who May Serve a Title IX Investigator?

- ☐ Administrators?
- ☐ HR?
- ☐ Central Office Staff?
- ☐ Internal Security?
- ☐ In House Counsel?
- ☐ Outside Investigator?
 - Non-Attorney
 - Attorney

Remember: the Title IX **Decision Maker** may not be the Title IX Investigator.





Requirements for Title IX Investigator under the New Title IX

- ❑ An individual serving as Title IX Investigator must have completed all the training as required by the new Title IX regulations.
- ❑ **The regulations do not prohibit the Title IX Coordinator from serving as Investigator or Facilitator**, but there may be reasons to separate these roles, if possible.
- ❑ Like the Title IV Coordinator, the Investigator may not have a conflict or be biased either for or against:
 - Complainants or Respondents generally, or
 - An Individual complainant or Respondent.





The Investigator May Not Have a Conflict of Interest or Bias

Q: How can you determine whether the investigator has a conflict of interest or improper bias?





How to Determine a Conflict of Interest or Bias

- A. I've known the Respondent for years; he goes to my church and I know his family.
- B. I can't believe the Respondent would do something like that.
- C. The Complainant tends to be dramatic and exaggerate.
- D. I know this student and she has a history of lying.
- E. All the above.



How to Determine a Conflict of Interest or Bias

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- D. I know this student and she has a history of lying.
- E. All the above.



Investigation of Formal Complaints:

Remember: It is not the Investigator, but rather it is the Decision-Maker who will decide as to responsibility for Title IX purposes after the investigation.

In other words, **the Investigator is the fact gatherer.** The Decision-Maker will make the conclusions based on the facts gathered by the investigator.



The Investigator Only Investigates

Title IX
Coordinator



Investigator



Decision Maker



Appeal
Officer



Informal
Resolution
Facilitator



The Decision Maker Decides

Title IX
Coordinator



Investigator



Decision Maker



Appeal
Officer



Informal
Resolution
Facilitator





The Investigator's Role:

- ☐ To be neutral.
- ☐ To interview witnesses.
- ☐ To gather information (e.g., written statements, documents, video, audio).
- ☐ To present information gathered to the parties and the Decision-Maker.
- ☐ **To give the parties an opportunity to review and respond to the evidence.**
- ☐ To prepare the required investigative report.
- ☐ **To provide the parties with the investigative report and an opportunity to review and respond to the investigative report.**
- ☐ To provide the investigative report to the Decision-Maker.





If You Are The Investigator:

- ☐ Be respectful of all parties (Complainant, Respondent, and the witnesses).
- ☐ Be neutral.
- ☐ Use common sense (**pay attention to signals and document them**).
- ☐ Do not tolerate retaliation and remind witnesses about anti-retaliation policy.
- ☐ Document, document, document!



Documentation

- ☐ Notes may be evidence. Write as if the Jury is reading over your shoulder.
- ☐ Do not add editorial comments.
 - ✓ “The witness seemed credible.”
 - ✓ “The complainant was nervous.”
- ☐ Only include factual observations that may be evidence.
 - ✓ “The Respondent would not look me in the eye.”
 - ✓ “The Respondent refused to tell me about previous misconduct allegations.”
- ☐ Prepare notes while information is fresh.
- ☐ Edit for accuracy and completeness.





Typical Steps of an Investigation

1. Provide Interview Notices to Complainant and Respondent.
2. Interview the Complainant.
3. Interview the Respondent.
4. Interview Witnesses.
- 5. Provide the evidence to the parties and allow at least 10 days to review and respond in writing.**
6. Prepare investigative report.

Typical Steps of an Investigation (cont'd)

7. Provide Parties a copy of the draft investigative report. Give them at least 10 days to review and respond to the investigative report in writing.
8. Provide the investigative report to the Decision-Maker.
9. A decision is made by the Decision-Maker (**note: DM must give parties opportunity to submit written questions before reaching a decision**).
10. The Decision-Maker makes findings and conclusions and takes remedial action if necessary.

Written Notice Regarding Pending Title IX Investigation

NOTICE OF SEXUAL HARASSMENT ALLEGATIONS

TO: _____, RESPONDENT

Pursuant to 34 CFR § 106.45(b)(2)(B) (relating to Title IX of the Education Amendments of 1972) and District policy FFH, please take notice a formal complaint of sexual harassment has been filed against you with the Title IX Coordinator for the school district.

I. PARTIES AND ALLEGATIONS. The parties, alleged conduct, and date and location of the incident, if known, are as follows:

The allegations in the pending investigations are that:

The parties involved in the allegations are: _____

The conduct allegedly constituting sexual harassment is:

_____.

And the alleged date and location of the incident(s) is:



Written Notice Regarding Pending Title IX Investigation

II. COMPLAINT PROCESS. All formal complaints of sexual harassment are investigated as a matter of school district policy and federal regulation. The district formal complaint process and investigation procedure is described in detail in district FFH policy and the District's Student/Parent Handbook.

Please take notice that the respondent to this complaint is presumed not responsible for the conduct. A determination regarding responsibility will not be made until the conclusion of this grievance process.

Please be advised that for purposes of this grievance process, both you and the complainant each may have an advisor of your choice, who may be, but is not required to be, an attorney. Your advisor may accompany you to any meeting or proceeding, and you or your advisor may inspect, and review evidence collected in the investigation process.

If you decide to have an advisor, please notify the Title IX Coordinator of the name and contact information of the advisor.

Please also take notice that the school district's code of conduct _____prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If the course of this investigation the district decides to investigation additional allegations about either the complainant or respondent that are not in this notice, the district will provide additional notice to the parties known of the new allegations to be investigated.

TITLE IX COORDINATOR:

_____ DATE: _____

Method/Date of Delivery to Respondent:

cc: Complainant



1. Send Interview Notices to Complainant and Respondent

- ❑ Prior to an interview, written notices **MUST** be sent to Complainant and Respondent (and to their advisors, if any) regarding:
 - interview(s), hearing(s), or meeting(s),
 - **in which they are expected and invited to participate.**
- ❑ Notice must include:
 - Time.
 - Location.
 - Purpose.



2. Interview The Complainant

- ❑ Review Formal Complaint with the Complainant and pin down dates.
 - Who, what, where, when, why, how?
 - Any witnesses?
 - Did you confide in anyone?
 - Any threats or promises carried out by Respondent?
 - Any other complaints about Respondent?
 - **Anything else** I should know? **Any documents?**

Closing With The Complainant

- ☐ Inform the Complainant you will be speaking to the Respondent,
- ☐ Instruct the Complainant to report anything new,
- ☐ Thank the Complainant for the report,
- ☐ Tell the Complainant the District will get back to them soon (likely next to review the evidence),
- ☐ **Tell Complainant the District prohibits retaliation, and**

Closing With The Complainant (cont'd)

❑ Prepare notes:

- ✓ Best to prepare simultaneous notes.
- ✓ Review with witness/check in.
- ✓ Do not change their words.
- ✓ Only record facts.
- ✓ Make no reference to yourself in the first person. (Don't say, "I noticed the Complainant did not make eye contact." Say, "The Complainant did not make eye contact.")
- ✓ Avoid the word "evidence." You are only fact gathering.



Reluctant Complainants

- ☐ Explain the district must investigate (show policy).
- ☐ Reassure that the district will take appropriate action.
- ☐ Reassure retaliation will not be tolerated.
- ☐ Confidentiality – do not guarantee but will limit information to need-to-know basis. Keep as confidential as possible.



3. Interview The Respondent

- ❑ Do not make accusations.
 - ✓ State the concerns/allegations in the Formal Complaint.
- ❑ Do not suggest the Respondent apologize to the Complainant.
- ❑ Do not delay interviewing the Respondent.
 - ✓ Must interview most critical witnesses promptly!



Interview Questions for the Respondent

- ☐ Who, what, where, when, why, how?
 - ✓ Any witnesses?
- ☐ Was the conduct welcomed?
- ☐ Any recent or anticipated personnel actions against the Complainant?
 - ✓ If so, What ? Why?
- ☐ Could Complainant be misunderstanding?
- ☐ Why would Complainant make a false accusation?
- ☐ **Take notes.**
- ☐ **Ask the Respondent to write down what happened.**



Instructions To The Respondent

- ❑ Explain that retaliatory actions violate the law and policy.
- ❑ Explain the importance of remaining professional and avoiding statements like:
 - “I feel targeted.”
 - “I don’t want the Complainant in my class anymore.”
 - “I’m not going to meet alone with anyone anymore.”



First Amendment Rights

- ❑ For investigation under the Title IX grievance process, the District cannot instruct the Complainant or Respondent not to talk to other witnesses or not to discuss the allegations under investigation.
- ❑ However, Title IX does prohibit retaliation.
- ❑ Therefore, abuse of First Amendment rights to intimidate, threaten, or coerce for the purpose of chilling Title IX rights, is prohibited retaliation.



4. Interview Other Witnesses

- ❑ You will learn from Complainant and Respondent if there are witnesses.
- ❑ Interview only if necessary.
 - e.g., you may not need to interview if Respondent admits to allegations. However, may need to interview witnesses if witness(es) may have their own claims.



4. Interview Other Witnesses (cont'd)

- ❑ Try to start with the witnesses who knows the most.
 - Explain that a concern has been expressed– start broad.
 - Assure that the district will not retaliate against witnesses.
 - Phrase questions to give as little information as possible. (“Are you aware of anyone making offensive language in the lunchroom?”)
- ❑ **When you have sufficient information, evaluate whether further witness interviews serve a purpose.**

Remember: The standard is not perfection. The issue is whether the employer reasonably believes the allegation and acted in good faith. The issue is not truth or falsity.



Documents?

- ❑ If witnesses have documents, ask them to provide a copy (or location if the witnesses do not have them readily available).
- ❑ Ask them to report any new information.
- ❑ Remind them of the anti-retaliation policies.

Note: the documents, video and audio may reveal more witnesses that may need to be interviewed!



Are There Any Other Accusations Against Respondent?



- ☐ It is prudent to review whether similar complaints have ever been made against Respondent.
- ☐ Remember, your role is to be neutral, it is not to be hostile to the Respondent.
- ☐ Nonetheless, it is your duty to investigate and gather facts.



Review Complaint History of Complainant



- ☐ Be careful of duty to be objective and neutral. Only report any complaint history similar to or related to the complaint you are investigating.
- ☐ Remember, your role is to be neutral, it is not to be hostile to the Complainant.
- ☐ Nonetheless, it is your duty to investigate and gather facts.

Medical Information?

- ❑ When investigating a formal complaint and throughout the grievance process” the District must:

not access, consider, disclose, or otherwise use a party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional’s or paraprofessional’s capacity, unless the District obtains that party’s voluntary, written consent.



5. Give Parties Opportunity to Inspect and Review Evidence “Directly Related” to the Allegations

- ❑ Prior to the completion of the investigative report, the District:
 - ✓ **must send to each party and the party’s advisor, if any, the evidence that is directly related to the allegations to inspect and review in an electronic format or hard copy.**
 - ✓ **the parties must have at least 10 days to submit a written response, which the investigator **MUST** consider prior to completion of the investigative report.**

Purpose: to give parties equal access to the evidence obtained “directly related” to the allegations, **even if the district does not intend to rely on the information.**



“Directly Related” to the Allegations

- ☐ This is not defined.
- ☐ Encouraged to use, “plain and ordinary meaning.”
- ☐ It is up to the investigator to decide.
- ☐ Would include “inculpatory” and “exculpatory” evidence.

Example: if the investigator reviews the Respondent’s personnel file and there is nothing there related to the allegation, would not likely need to provide the entire personnel file to the Complainant.

Rule of thumb: if it is information you have gathered as part of the investigation, the parties should have an opportunity to inspect. Therefore, include notes that you reviewed Respondent’s personnel file.



“Directly Related” to the Allegations (Cont’d)

- ☐ The regulations allow the parties to meaningfully respond with arguments based on the information gathered that further each parties’ view of the case, or present additional relevant facts and witnesses that the DM should objectively evaluate.
- ☐ The right to inspect all evidence directly related to the allegations is an important procedural right for both parties.
- ☐ For example, although the district does not intend to rely on the Respondent’s personnel file, the Complainant may provide information that there is a separate investigation file, which includes similar complaints against the Respondent.



Confidential Information

- ☐ The District may permit or require the investigator to redact information that is not “directly related” to the allegations or information that is protected by privilege (e.g., medical information if the party has not given written consent).
- ☐ However, information that is confidential, sensitive or private may still be “directly related to the allegation” and thus subject to review by both parties.
- ☐ Consider non-disclosure agreements before disseminating certain information.



6. Prepare Investigative Report

- ❑ The investigator **MUST** fairly summarizes **relevant evidence** in an investigative report.



What is relevant to an investigation?

- ✓ Formal Complaint.
- ✓ Board Policy, FFH, possibly others.
- ✓ What Complainant said in his interview.
- ✓ What the Accused said in his interview.
- ✓ What witnesses said in their interview.
- ✓ Ages of Parties and Witnesses.
- ✓ Documents, Audiotapes, Recordings.
- ✓ Personnel/School file of Complainant that relate to allegations.
- ✓ Personnel/School file of Respondent that relate to allegations.



What is Relevant?

- ✗ Sexual/Disciplinary History of Complainant
- ✗ Popularity of Complainant
- ✗ Popularity of Accused
- ✗ Questions and evidence about a complainant's prior sexual history are not relevant evidence, unless exceptions are met.



Elements of an Investigative Report

- ❑ The summary report should summarize the following:
 - ✓ Employer policies/guidelines and their applicability to the investigation.
 - ✓ The incident or issues investigated, including dates.
 - ✓ Parties involved.
 - ✓ Steps taken to investigate.
 - ✓ Summary of Investigation.
- ❑ The Investigator is only required to report the facts, not make findings.
- ❑ Avoid making legal conclusions.



Sample Investigative Report

Sample Investigative Report

To: Dr. Decision Maker

From: Anna Investigator

Date:

Re: Formal Complaint of Complainant Jane Doe

Refer to Policy

Sample School District prohibits discrimination, sexual harassment, against any employee or student on the basis of sex or gender.

Acknowledge Anti-Retaliation Policy

Retaliation against anyone Involved in the complaint process is a violation of College District policy.

Short Summary of Complaint, including parties and dates

On December 20, 2020, student Jane Doe submitted a formal complaint because of a meeting on December 10, 2020, with the Athletic Joe Smith.

In the complaint, Ms. Doe alleges that Mr. Smith intentionally exposed himself to her at the meeting.

Summary of Investigation

As part of my investigation:

- I conducted interviews with student Jane Doe, and Athletic Director Joe Smith and Jane Doe's friend Abby who Jane says she told immediately after the incident. I also interviewed Jane Doe's mother who submitted the formal complaint.
- I reviewed the video recording of the time when Jane Doe entered Mr. Smith's office.
- I reviewed all documentation from HR regarding Ms. Smith and the student records of Jane Doe.



Sample Investigative Report

Investigative Report (You may want to do this chronologically and attach notes)

Interview of Complainant Jane Doe

In interviewing Ms. Jane Doe, She said she was asked by the Athletic Director not to "tell anyone," and that his exposure was an accident. She claimed that there should be video tape of her entering and exiting the Athletic Director's office on December 10, 2020. She also said she immediately reported the incident to her friend Abby and that she and Abby immediately told Jane's mother.

Interview of Respondent Athletic Director Joe Smith

In interviewing Mr. Smith. He admitted the incident occurred but said it was an accident and due to the fitting of his basketball shorts that caused the incident. He said he had never had anything like this happen in his career.

Review of Mr. Smith's Personnel File.

I checked Mr. Doe's personnel records and there were two similar complaints against him in 2017-2018 but it was determined that Mr. Doe had not violated District policy, and that the incidents were likely accidents. Both previous complaints involved Mr. Doe asking female students to come to his office after hours. I have included the prior complaints and determinations. Mr. Smith did not mention these incidents. When I re-interviewed me. He said he did not mention the previous complaints because I did not ask him about them. He then smiled and said I was vindicated from those complaints.

Interview and Written Statement from Abby

I spoke with Abby and she confirmed Jane Doe told her Joe Smith had just exposed himself to her. I asked Abby to write a statement and she submitted a detailed 3 page statement of what happened that day.

Interview of Jane Doe's Mother.

Jane Doe's mother also submitted a detailed statement.

Review of Surveillance Video from December 10, 2020

I reviewed the video and it shows Jane Doe entering Coach Smith' office at 6 p.m. and running out at 6:05. She is crying. In the video you can see Mr. Smith walking away with his gym bag. He stops and talks to a student.

I interviewed the student seen talking with AD Smith shortly after the alleged incident. The student said was not aware of any alleged incident that happened on December 10, 2020 and said Coach Smith appeared normal.

Sincerely,



7. Provide Report to Parties

- ❑ The investigator **MUST** fairly summarizes relevant evidence, and
 - ✓ **at least 10 days prior to** a hearing (if a hearing is provided) or “**other time of determination of responsibility**”, **send to each party and the party’s advisor, if any, the investigative report in an electronic format or hard copy**, for their review and written response.
 - ✓ The final regulations do not prescribe a process for the inclusion of additional information or for amending or supplementing the investigative report in light of the parties’ responses after reviewing the report.
 - ✓ Any rules or practices a District adopts must apply equally to both parties and must be mindful of the recipient’s obligation to conclude the entire grievance process within the designated time frame.

8. Provide the Investigative Report to the Decision-Maker

- ❑ The investigative report should contain relevant evidence including exculpatory and inculpatory evidence, whether obtained from the parties or other sources.
- ❑ The investigator is not prohibited from making ***recommended findings***.
- ❑ **However, the Decision-Maker is under the independent obligation to objectively evaluate relevant evidence, and this cannot simply defer to the recommendations made by the Investigator.**



9. The Decision Maker Decides

Title IX
Coordinator



Investigator



Decision Maker



Appeal
Officer



Informal
Resolution
Facilitator



10. Decision Make Takes Appropriate Disciplinary Action/Prepares Written Report of Factual Findings and Conclusions



Appendix

Attachment A	Template for Interview Notes of Complainant
Attachment B	Template for Interview Notes of Respondent



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Part III of Title IX Training (for Title IX Investigators):

What did you learn?

- ✓ You learned how to investigate.
- ✓ You learned your duty to gather information objectively and to be impartial.
- ✓ You learned how to document an investigation.
- ✓ You learned how to create an investigative report “that fairly summarizes relevant evidence.”

Questions?

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