

Title IX Training: Investigators

Liberty Elementary School District No. 25


November 2023

CANTELME & BROWN, P.L.C.


2020 S. McClintock Drive,
Suite 109

Tempe, Arizona 85282

602.200.0104



This presentation is for informational purposes only and should not be used in place of legal advice.



“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”

-Title IX of the Education Amendments of 1972



Agenda

- Background
- Definitions
- Title IX Team
- Title IX Process
- Additional Topics

Background





Background

- Current regulations effective August 14, 2020
- Regulations include rules stating how schools must respond to notice of “sexual harassment” or allegations of “sexual harassment”
- New Proposed Regulations

Definitions



Sexual Harassment

Conduct **on the basis of sex** that satisfies one (1) or more of the following:

1. A District employee conditioning the provision of aid, benefits, or services of the District on the individual's participation in unwelcome sexual conduct **(Employee Quid Pro Quo)**;
2. Unwelcome conduct determined by a reasonable person to be so **severe AND pervasive AND objectively offensive** that it effectively denies a person equal access to the District's education program or activity; OR
3. **Sexual assault, dating violence, domestic violence or stalking**

Severe AND Pervasive AND Objectively Offensive

Conduct =

- On the basis of sex
- Unwelcome
- Reasonable person
- Severe
- Pervasive
- Objectively offensive
- Effectively denies a person equal access to the District's education program or activity

Sexual Assault

An offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

- **Rape**—(Except Statutory Rape) The carnal knowledge of a person, 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 or physical incapacity.
- **Sodomy**—Oral or anal sexual intercourse with another person, 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 or physical incapacity.
- **Sexual Assault with an Object**—To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, 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 or physical incapacity.

Sexual Assault

- **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 or physical incapacity
- **Incest**—Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law
- **Statutory Rape**—Nonforcible sexual intercourse with a person who is under the statutory age of consent



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:
 - Length of the relationship;
 - Type of relationship; and
 - Frequency of interaction between the persons involved in the relationship.

Domestic Violence

Felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding and, in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who--

- A. is a current or former spouse or intimate partner of the victim, or person similarly situated to a spouse of the victim;
- B. is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- C. shares a child in common with the victim; or
- D. commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.



Stalking

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

- Fear for his or her safety or the safety of others; OR
- Suffer substantial emotional distress.

Sexual Orientation and Gender Identity

- Title IX's prohibition on discrimination "on the basis of sex" includes discrimination on the basis of sexual orientation and gender identity.
- Individuals may not be harassed, disciplined in a discriminatory manner, excluded from, denied equal access to, or subjected to sex stereotyping in academic or extracurricular opportunities and other education programs or activities, denied the benefits of such programs or activities, or otherwise treated differently because of their sexual orientation or gender identity.



Parties

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

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

Quiz

Teacher A reported to the Principal that, for the last 2 months, Teacher B has repeatedly made sexually explicit comments toward him. These comments made Teacher A feel very uncomfortable and he started to avoid certain meetings and take different routes to his classroom. Teacher A asked Teacher B to stop but Teacher B continued making the comments. Today, Teacher B slapped him on his butt as he walked by.

- Does Title IX apply?
- Which type of “sexual harassment” is this?

Quiz

An 8th grade student told her teacher that for a month, she has been receiving anonymous notes in her locker always signed “xoxo your Secret Admirer.” The note writer claimed to be a student at the school. These notes started to contain sexual threats and threats of violence to the student and her friends. Today, the note included graphic violent images and threats. The student tells the teacher that she is scared.

- Does Title IX apply?
- Which type of “sexual harassment” is this?
- What if the notes were sent electronically instead?

Education Program or Activity

Districts must address allegations of sexual harassment that occur in the District's "education program or activity, against a person in the United States."

- **"Education program or activity"** is broadly defined to include locations, events, or circumstances over which the school exercises *substantial* control over both the Respondent **and** the context in which the sexual harassment occurs.
- Examples:
 - On campus
 - School sponsored trips
 - Sporting events
 - School dances
 - Extracurricular programs or activities
 - Virtual learning

Quiz

A 7th grade student told his teacher that his ex-girlfriend yelled at him in his neighborhood last weekend then pushed him, causing him to fall to the ground and hurt his arm, which is bleeding.

- Does Title IX apply?



Actual Knowledge

When any of the following has notice of sexual harassment or allegations of sexual harassment:

- The Title IX Coordinator,
- Any official who has authority to institute corrective measures, or
- **Any employee of an elementary and secondary school** (e.g., food and nutrition services staff, counselors, teachers, teacher's aides, custodial services staff, bus driver, front office staff, or other school employee)



When Does Title IX Apply

1. “Actual knowledge”
2. Conduct = “Sexual Harassment”
3. Education Program or Activity
4. Against Person in U.S.

Quiz

A student reports to the principal that her teacher told her that he would give her a failing grade unless she engaged in sexual activity with him.

- Does Title IX apply?
- What if this happened during study abroad in Spain?



Title IX Team



Title IX Team

Title IX
Coordinator

Investigator

Decision-
Maker

Appeals
Decision-
Maker

Informal
Resolution
Facilitator

Hearing
Officer



Title IX Team – Key Responsibilities

- **Title IX Coordinator**
 - Coordinates the District's compliance with Title IX
 - Conducts initial meeting with Complainant, including offering supportive measures
 - Implements supportive measures and any remedies
- **Investigator**
 - Investigates allegations of sexual harassment
 - Distributes related evidence
 - Prepares the Investigative Report



Title IX Team – Key Responsibilities

- **Decision-Maker**
 - Facilitates question/answer process
 - Reviews evidence and determines responsibility for each allegation
 - Prepares the Written Determination
- **Appeals Decision-Maker**
 - Reviews Written Determination or Dismissal if an appeal is filed
 - Issues Written Decision describing the result of the appeal and rationale
- **Informal Resolution Facilitator**
 - Facilitates any agreed upon conflict resolution strategies including, but not limited, to arbitration, mediation, or restorative justice.

Title IX Team – Role Restrictions

- **Title IX Coordinator:** may serve as the Investigator.
- **Decision-Maker:** cannot be the same person as the Title IX Coordinator or the Investigator.
- **Appeals Decision-Maker:** cannot be the same person as the Investigator, Title IX Coordinator, or Decision-Maker who reached the initial determination regarding responsibility or dismissal.

Title IX Process



Title IX Process





Title IX Process

- Emergency Removal
- Administrative Leave
- Dismissal
- Informal Resolution

Actual Knowledge

“Actual knowledge”: When the Title IX Coordinator, any official who has authority to institute corrective measures, or **any employee of an elementary or secondary school** has notice of sexual harassment or allegations of sexual harassment (E.g., this includes food and nutrition services staff, custodial services staff, and front office staff). Actual knowledge triggers the District’s response obligations.

- If mandatory reporting duty triggered, immediately report to the appropriate law enforcement agency.
- Then, immediately report to the Title IX Coordinator.
- Schools should NOT start their own investigation or issue any discipline to the Respondent. Schools must follow Title IX procedures.



Initial Meeting

Upon notice of sexual harassment, the Title IX Coordinator must meet with the Complainant and parent(s)/legal guardian(s) (for minor Complainant) and do the following:

1. Discuss the availability of supportive measures;
2. Consider the Complainant's wishes with respect to the supportive measures;
3. Inform the Complainant of the availability of supportive measures with or without the filing of a Formal Complaint; and
4. Explain the process for filing a Formal Complaint.

Supportive Measures

- Non-disciplinary and non-punitive individualized services
- Designed to restore or preserve equal access to the District's education program or activity
- Before/after filing Formal Complaint or if no Formal Complaint is filed
- Provided to all parties throughout the process
- Without unreasonably burdening the other party
- Confidentiality

Supportive Measures

- Examples: 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 or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
- Documentation requirement

Emergency Removal

A school may remove a Respondent from an education program or activity on an emergency basis if the school does **ALL** of the following:

1. Undertakes an individualized safety and risk analysis;
2. Determines 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
3. Provides the Respondent with **notice** and an opportunity to challenge the decision the **same day**.

**This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

Formal Complaint

Document or electronic submission which requests a sexual harassment investigation

- **Who can file a Formal Complainant?** → Complainant, parent/legal guardian (for minors), or the Title IX Coordinator can sign
- If the Complainant or parent/legal guardian files the Formal Complaint, at the time of filing the Formal Complaint, the Complainant **must** be participating in or attempting to participate in an education program or activity of the District.

Written Notice of Formal Complaint

- After a Formal Complaint is filed, the District must provide written Notice of Formal Complaint to all known parties and follow the specified grievance process before the imposition of any disciplinary sanctions against the Respondent.
 - Also send to parent(s)/legal guardian(s) for minor parties

Written Notice of Formal Complaint

The written Notice of Formal Complaint must include:

- The identities of parties involved;
- Conduct allegedly constituting sexual harassment;
- The date and location of the alleged incident(s);
- A statement that the Respondent is presumed not responsible for the alleged conduct;
- The District's grievance process;
- A statement that a determination regarding responsibility is made at the conclusion of the grievance process;
- A statement informing the parties that they may have an advisor of their choice who may be, but is not required to be, an attorney;
- A statement advising parties that they may inspect and review evidence; and
- A statement informing the parties of any provision in the District's Code of Student Conduct that prohibits knowingly making false statements or knowingly submitting false information.

Dismissal

Mandatory: The District **must** dismiss a formal complaint if the alleged conduct falls outside the scope of Title IX (would not constitute “sexual harassment”, did not occur in the District’s “education program or activity”, or did not occur against person in the United States).

- The District may take action under another provision of the Code of Student Conduct if dismissal is mandatory.

Permissive: The District **may** dismiss a formal complaint (i) if the Complainant wishes to withdraw the complaint, (ii) if the Respondent is no longer enrolled or employed by the District, or (iii) if circumstances prevented the school from gathering evidence.

Written Notice of Dismissal (which includes reason(s) for dismissal) must be sent simultaneously to the parties and advisors (if any).

Informal Resolution

A conflict resolution strategy that may include, but is not limited to, arbitration, mediation, or restorative justice.

- At any time before a determination is made, the District may facilitate an informal resolution process (such as mediation) that does not involve a full investigation IF all of the following apply:
 - Parties receive proper notice;
 - Voluntary, written consent to the informal resolution process is obtained; and
 - **The allegations do NOT involve an employee sexually harassing a student.**
- Informal resolution is only available after a formal complaint is filed.
- The parties cannot be pressured/required to participate in informal resolution or waive the right to an investigation.



Informal Resolution

The Written Notice for the Informal Resolution must include the following:

- 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;
- A statement that any party has the right to withdraw from the informal resolution process at any time prior to resolution and resume the grievance process with respect to the formal complaint; and
- Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.



How to Conduct an Investigation

The Investigator must investigate all allegations in the Formal Complaint that could constitute sexual harassment.

- **Send Notice of Interview**: Must be sent at least 2 school days prior to any interview of Complainant or Respondent.

Written Notice of Interview

The District must provide written Notice of Interview to Complainant and Respondent at least 2 school days before their interview date.

Written Notice of Interview must contain:

- Date
- Time
- Location of interview (including address)
- Participants
- Purpose of Interview

**This notice requirement applies to meetings or hearings with the Complainant and Respondent, as well.

Quiz

Student A alleged that Student B sexually assaulted him on campus the previous Friday and just told his teacher. The teacher told the TIX Coordinator the allegations.

- What are the first steps that the investigator might take?
- What information would you include in the Written Notice of Interview?

How to Conduct an Investigation

The Investigator must investigate all allegations in the Formal Complaint that could constitute sexual harassment.

- **Send Notice of Interview**: Must be sent at least 2 school days prior to any interview of Complainant or Respondent.
- **Identify all Allegations of Sexual Harassment**: List each element of each relevant definition.
- **Prepare Questions**: Based on the elements, draft questions for parties and witnesses.
- **Interview Parties**: At least 2 school days after providing proper Notice of Interview, the investigator should interview the Complainant and Respondent (separately) and give each an opportunity to present witnesses and/or other inculpatory and exculpatory evidence.
- **Obtain Evidence**: The investigator should identify and obtain necessary evidence (with special procedures for medical, counseling, or psychiatric documents). Gathering evidence = District's burden, NOT parties' burden.

How to Conduct an Investigation

- **Interview Witnesses.**
- **Follow-Up Interviews:** With proper notice, schedule follow-up interviews with Complainant and/or Respondent, if necessary.
- **Distribute Evidence:** After all Non-Disclosure Agreements (NDAs) are signed and evidence is properly redacted, distribute all **related** evidence simultaneously to the parties. Then wait 10 days for party responses.
- **Responses:** Consider any responses.
- **Draft and Distribute Report:** Send Investigative Report fairly summarizing **relevant** evidence (inculpatory and exculpatory) to parties, advisors (if any), and Decision-Maker. Parties and advisors may submit a written response to the Investigative Report.

Quiz

In his Formal Complaint, Teacher A alleged that Teacher B has repeatedly made sexually explicit comments toward him. These comments made Teacher A feel very uncomfortable and he started to avoid certain meetings and take different routes to his classroom. Teacher A asked Teacher B to stop but Teacher B continued making the comments. Today, Teacher B slapped him on his butt as he walked by. Teacher A specified that this conduct was not welcome.

- What are the steps that the Investigator should take?
- Which type of “sexual harassment” is this?
- What are the elements?
- What is an example of a question that the Investigator might prepare?

Relevance

- Relevant evidence has some value or tendency to prove or disprove an allegation of sexual harassment.
- Review each allegation of sexual harassment. Then, ask yourself: Does this fact, testimony, or evidence potentially prove or disprove the allegation(s)?
 - If YES → relevant
 - Exception: Rape Shield Protections

Relevance

- **Rape Shield Protections:** 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
 - 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.

Quiz

The Complainant alleged that the Respondent assaulted him in the library. The Complainant and Respondent are currently in a relationship. The Investigator learns that another student may have recorded the incident.

- Is this video evidence relevant?

Quiz

The Complainant alleged that the Respondent sexually assaulted him in the library bathroom last year. In his interview, the Respondent states that the Complainant “likes to sleep around” and “has had sex with many different people”.

- Is the testimony that the Complainant “likes to sleep around” and “has had sex with many different people” relevant?



Additional Allegations

If additional allegations of sexual harassment are introduced during the investigation:

- Immediately send Notice of Additional Allegations to both parties (and parents/legal guardians, if minors)

How to Conduct an Investigation

Investigation requirements:

- Notice of Formal Complaint and Notice of Interview must be sent with sufficient time for the party to prepare;
- Notice of Interview must include the date, time, location, purpose, and participants;
- Both parties be given an equal opportunity to inspect and review all evidence directly related to the allegations in the Formal Complaint;
- District must send each party and their advisor all evidence subject to inspection and review prior to the completion of the investigation;
- Parties be given at least ten (10) days to submit a response to all evidence subject to inspection for the investigator to consider before conclusion of the investigative report;
- The burden of proof and burden of gathering evidence to rest on the District;
- Parties must be provided with an equal opportunity to present witnesses and evidence; and
- Parties must be provided with the equal opportunity to be accompanied to any related meeting or proceeding with an advisor of their choice.

Quiz

In the Formal Complaint, a middle school student alleges that his Teacher forced him to participate in sexual conduct. The Complaint was filed by the student's mother. The Notice of Formal Complaint was distributed today.

- Who is the Complainant?
- What steps should the Investigator take?
- During the interview, the Complainant states that there were additional occasions of sexual conduct and gives details. What should the Investigator do?

Question/Answer Process

- The **Decision-Maker** is responsible for the question/answer process.
- After the Investigative Report is distributed, the Decision-Maker should send notice to the parties informing them (i) of the District's Q&A process + (ii) how to submit a written response to the Investigative Report.

Question/Answer Process

- After the parties submit written questions, the Decision-Maker must:
 - Determine whether a question is **relevant**;
 - If relevant, submit questions to the appropriate individual; and
 - If not relevant, provide written notice explaining reasoning.
- Allow for limited follow-up questions.
- **Rape shield protections** apply.

Written Determination

- At the conclusion of the grievance process, the Decision-Maker must issue a written determination to the parties simultaneously.
- Important timing considerations:
 - Question/Answer Process: The question/answer process must be completed before any hearing or written determination is distributed.
 - 10 Day Rule: Parties must have at least (10) days to review the Investigative Report and submit a written response before any hearing or written determination is distributed.
- The written determination must apply the **preponderance of the evidence standard**.

Preponderance of the Evidence Standard

- Preponderance of the evidence is the evidentiary standard used in District investigations.
- Under the preponderance of the evidence standard, the burden of proof is met when the Decision-Maker is convinced that there is a greater than 50% chance that the claim is true.

Written Determination

The written determination must include the following:

- Identification of the allegations potentially constituting “sexual harassment”
- A description of the procedural steps taken from the receipt of the formal complaint through the written determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings
- Findings of fact supporting the determination
- Conclusions regarding application of the District’s Code of Conduct to the facts
- A statement of, and rationale for, the result as to each allegation, including:
 - A determination regarding responsibility,
 - Any disciplinary sanctions imposed on the Respondent, and
 - Whether remedies will be provided to the Complainant
- The District’s procedures and permissible bases for the Complainant and Respondent to appeal

Remedies

- If the Respondent is found responsible, **remedies** must be offered to the Complainant.
- The Title IX Coordinator is responsible for implementing any remedies.
- Remedies = measures that a District provides a Complainant after a determination of responsibility for sexual harassment has been made against the Respondent
- Must be designed to restore or preserve equal access to the District's education program or activity.
- Remedies may include the same individualized services as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

Appeals

- Each party has the opportunity to appeal from both a **dismissal** and a **written determination**.
- If an appeal is not filed, the determination regarding responsibility becomes final on the date on which an appeal would no longer be considered timely.
- If an appeal is filed, the determination regarding responsibility becomes final on the date the District provides the written determination of the result of the appeal.

Appeals

Appeals may take place for the following reasons:

1. Procedural issues affected the outcome;
2. New evidence becomes available
 - that was not reasonably available at the time of the written determination or dismissal and
 - that could affect the outcome of the matter;
3. There was a conflict of interest or bias by the Title IX Coordinator, Investigator, or Decision-Maker, for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome.



Appeals

- The District will notify the other party in writing when an appeal is filed.
- Appeal procedures will be implemented equally for both parties.
- Parties must be given a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome of the written determination or dismissal.

Appeals

- The Appeals Decision-Maker may not be the same person as the Investigator, Title IX Coordinator, or Decision-Maker who reached the initial determination of responsibility or dismissal.
- The Appeals Decision-Maker must not have a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent.
- The Appeals Decision-Maker must serve impartially and treat the parties equitably.
- The written decision describing the result of the appeal and rationale for the result must be provided simultaneously to both parties.

Additional Topics



Basic Requirements for Grievance Process

During the grievance process, a school must:

- Treat Complainants and Respondents equitably by providing remedies to a Complainant where a determination of responsibility has been made against Respondent;
- Require an objective evaluation of all relevant evidence;
- Include a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the end of the grievance process;
- Ensure the Title IX Coordinator, Investigator, Decision-Maker, Appeals Decision-Maker, and Informal Resolution Facilitator are free from any conflicts of interest;
- Include reasonably prompt time frames for the conclusion of the grievance process;
- Include a process that allows for the temporary delay of the grievance process or limited extension of time frames for good cause with written notice;
- List the range of possible disciplinary sanctions and remedies that may be implemented;
- Include the procedures and grounds for appeal;
- Describe the range of supportive measures available to parties; and
- Not allow or require questions or evidence that seek disclosure of protected information

How to Serve Impartially

Title IX Coordinators, Investigators, Decision-Makers, Appeals Decision-Makers and any Informal Resolution Facilitator, **must serve impartially**, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

- Prejudgment of the facts at issue
- Conflict of Interest
- Bias
 - (Including bias against an individual's sex, race, ethnicity, sexual orientation, gender identity, disability or immigration status, financial ability, or other characteristic)



How to Serve Impartially

- Do not draw inferences about credibility based on a party's status as a Complainant or Respondent.
- Grievance process (including investigations and adjudications) must treat both parties equitably and impartially.



Advisors

Each party may have an advisor of their choice.

- The advisor may be but is not required to be, an attorney.
- Advisors may accompany parties to any meeting or grievance proceeding.
- The District may not limit the choice or presence of advisor for either the Complainant or Respondent in any meeting or grievance proceeding.
- The District may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.

Non-Disclosure Agreements

If the District chooses, all parties, advisors, and parents may sign NDAs before receiving a copy of the evidence or the investigative report.

- Distribute NDAs during the interviews of Complainant and Respondent. Be sure to have extra copies for parents and an advisor.
- Explain that the purpose of the NDA is to maintain confidentiality and protect both parties in the Title IX grievance process.
- If either party, parent, or advisor would like additional time to review the NDA, do not pressure them to sign the NDA during the interview.

Consolidation

Formal Complaints which allege sexual harassment **arising out of the same facts or circumstances** may be consolidated when the Formal Complaint is against:

- More than one (1) Respondent;
- By more than one (1) Complainant against one (1) or more Respondents;
or
- By one (1) party against the other party.



Retaliation

No school or other person may intimidate, threaten, coerce, or discriminate against any individual for the purposes of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

Confidentiality

Schools shall keep the identity of the following individuals confidential:

- a) Any individual who makes a report or complaint of sex discrimination;
- b) Any individual who makes a report or filed a formal complaint of sexual harassment;
- c) Any Complainant;
- d) Any Respondent;
- e) Any individual reported to be the perpetrator of sex discrimination; and
- f) Any witness.

However, Disclosure of the aforementioned individuals may be permitted according to FERPA, as required by law, or to carry out the purposes of the grievance process.



Training

- Training is mandatory for all Title IX Coordinators, Investigators, Decision-Makers, Appeals Decision-Makers, Informal Resolution Facilitators, and Hearing Officers.
- All training must be made available to the public on the District website.

Recordkeeping

- The District must maintain records relating to any sexual harassment investigation for seven (7) years.
- All records related to each sexual harassment investigation must be maintained including:
 - Any actions, including supportive measures, taken in response to report/Formal Complaint of sexual harassment;
 - Any determination regarding responsibility;
 - Any disciplinary sanctions;
 - Any remedies provided to the Complainant;
 - Informal Resolution and result;
 - Appeals and result;
 - Audio or audiovisual recording or transcript required at post-secondary hearings;
 - All materials used to train Title IX Coordinators, Investigators, Decision-Makers, Hearing Officers, Informal Resolution Facilitators, and Appeals Decision-Makers.



Violation of Title IX

The District violates Title IX when:

- The District has actual knowledge of allegations of sexual harassment occurring in the District's education program or activity against a person in the United States and
- The District responds in a manner that is **deliberately indifferent** (i.e., clearly unreasonable in light of the known circumstances)



Equitable Treatment

- The District must treat Complainants and Respondents equitably
- Complainants must be offered remedies when a Respondent is found responsible
- No disciplinary sanctions to Respondents without following the Title IX grievance process



IDEA / Section 504 / ADA

The District must meet all Title IX obligations while also meeting all obligations under applicable disability laws including the IDEA, Section 504, and ADA.

- If IDEA, Section 504, or ADA is relevant for a Complainant or a Respondent, contact the Title IX Coordinator immediately for advice and guidance to ensure that the District meets all obligations.



Time Frame

- The District must have a “reasonably prompt” time frame for conclusion of the grievance process.
- Temporary Delays:
 - If there is “good cause,” there may be a temporary delay of the grievance process or limited extension of time frames.
 - Examples of good cause: the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
 - Written notice to the parties.

Quiz

A transgender boy recently moved to the District and started fifth grade. On the first day of school, he introduced himself as Mark and told his classmates he uses he/him pronouns. One month ago, one of his former classmates from his old school “outed” him to his new classmates. Every day since, a group of students have called him transphobic slurs in person and via text and called him by his former name. They’ve kicked him and shoved him consistently while mocking him. This morning, they shoved him and made his arm bleed. The student told his Bus Driver this morning who immediately reported this to the Title IX Coordinator.

- Does Title IX apply?
- What is the first step for the Investigator?
- What elements will the Investigator be looking for when drafting the questions?
- What are some ideas for questions that the Investigator might ask the parties?

CANTELME & BROWN, P.L.C.

2020 S. McClintock Drive,
Suite 109

Tempe, Arizona 85282

602.200.0104