

IDAHO K-12 TITLE IX PROFESSIONAL LEARNING COMMUNITY #3

TITLE IX: COMPLIANT GRIEVANCE PROCESS PT 2

Annie Hightower, Hightower Consulting, LLC

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Annie Hightower: Hightowerconsultingllc@gmail.com

FUTURE MEETINGS

- ▶ March – June – second Tuesday each month
- ▶ Each meeting is at 8am PT/9am MT for 1 hour

OVERVIEW OF GRIEVANCE PROCEDURES



TITLE IX FORMAL GRIEVANCE PROCESS – MUST PROVIDE FOR “PROMOTE AND EQUITABLE RESOLUTIONS OF STUDENT AND EMPLOYEE COMPLAINTS”

TIX Coordinator

Report

- Voluntary
- Mandatory

Supportive Measures

- Referrals
- Safety plans
- No-Contact
- Class/schedule change
- School escort
- Parking mods
- Academic help
- Education
- Etc.

Formal Complaint

- Intent
- Allegations
- Signature*

- Not sexual harassment;
- Not in United States; or
- Not education program/activity

Dismissal*

- HR
- Supervisor
- Principal
- Counselor

Referral

Notice of Allegations

Investigation

- Interviews
- Evidence
- Preliminary Report
- Final Report

Decision Process

- Written Questions
- Decision
- Sanctions
- Outcome Letter

Appeal

- Paper only
- Uphold
- Change sanctions
- Remand

Sanctions & Remedies

- Only applied after appeal concluded
- May be disciplinary

Notice

Informal Resolution

RESPONSE UPON RECEIPT OF FORMAL COMPLAINT – 34 CFR 106.45

▶ Grievance processes must:

1. Treat parties equitably
 1. Follow compliant, published grievance process
 2. Provide remedies designed to restore or preserve equal access
2. Objectively evaluate all relevant evidence and make non-biased credibility determinations
3. Include non-biased, conflict free, trained Title IX team members

REVIEW

WHEN DEFINITION IS MET, CAN YOU PROCEED? – 34 CFR 106.30

- ▶ **Formal Complaint** – A document filed by the complainant or signed by the TIXC alleging sexual harassment against a respondent requesting the school investigate
 - ▶ Complainant must be participating in or attempting to participate in an educational program or activity

RESPONSE WITH OR WITHOUT FORMAL COMPLAINT – 34 CFR 106.44

- ▶ Title IX Coordinator should promptly contact the complainant to:
 - ▶ discuss the availability of supportive measures,
 - ▶ consider their wishes, and
 - ▶ explain the process for filing a formal complaint
- ▶ Document, document, document!



CONTINUANCE – AFTER RECEIVING FORMAL COMPLAINT – 34 CFR 106.45 PT 2 ET SEQ.

WHEN DO TITLE XI SH GRIEVANCE PROCESSES APPLY? – 34 CFR 106.44

- ▶ When you have actual knowledge of sexual harassment in an education program or activity – must respond in a way that is not deliberately indifferent
- ▶ You must:
 1. Treat complainants and respondents equitably
 2. Follow a 106.45 compliant grievance process BEFORE implementing disciplinary measures or other actions that are not supportive measures
- ▶ What if incident doesn't meet one or all parts of definition but still violates school policy?

MUST FOLLOW REGULATORY GRIEVANCE PROCESS!!

▶ Grievance processes must:

4. Make no presumptions as to responsibility
5. Include reasonably prompt time frames
 - ▶ Include filing and resolving appeals, informal resolutions processes, and any allowances for temporary delay of processes
6. Describe possible disciplinary sanctions and remedies
7. State the standard of evidence to be used and apply same standards for complainants against students and employees

RESPONSE UPON RECEIPT OF FORMAL COMPLAINT – 34 CFR 106.45

▶ Grievance processes must:

8. Include procedures and allowed reasons for appeal
 - ▶ Highly recommend limited allowances
9. Describe the range of supportive measures available for both parties
10. Not require, allow or rely upon questions or evidence that is legally protected unless the legal protection is waived
 - ▶ Medical records, discussions with clergy or counselors, etc.

NOTICE OF ALLEGATIONS

- ▶ After receipt of formal complaint
- ▶ Must provide WRITTEN notice to parties who are known
 - ▶ Grievance process
 - ▶ Statement of no presumption of guilt and determination made at end of process
 - ▶ Info re false statements
 - ▶ Right to an advisor of choice

NOTICE OF ALLEGATIONS

- ▶ Right to review and inspect evidence
- ▶ Notice of allegations of sexual harassment potentially constituting sexual harassment under 106.30
 1. Sufficient details known at time
 2. Sufficient time to prepare a response

DISMISSAL OF A FORMAL COMPLAINT

- ▶ Must investigate allegations in formal complaint
- ▶ Mandatory Dismissal
 - ▶ MUST dismiss if definitional and jurisdictional components not met
 - ▶ Dismissed as to conduct for the purposes of TIX
 - ▶ Does not preclude charges under other provisions of your student policies

DISMISSAL OF A FORMAL COMPLAINT

▶ Permissive Dismissal

- ▶ MAY dismiss all or part of complaint at any time during the investigation, if:
 - ▶ Complainant requests withdrawal
 - ▶ Respondent is no longer enrolled with the recipient
 - ▶ Circumstances prevent recipient from gathering evidence sufficient to reach a determination
- ▶ Permissive dismissal does not necessarily allow for alternative methods of adjudication

NOTICE OF DISMISSAL

- ▶ If matter is dismissed must provide notice
 - ▶ Written
 - ▶ Include reason(s) for dismissal
 - ▶ Must provide to all parties at the same time

CONSOLIDATION OF COMPLAINTS

- ▶ Formal complaints against more than one respondent OR by multiple complainants against one or more respondents
- ▶ Can only consolidate (process through same investigation/decision making process) if:
 - ▶ Allegations of SH arise out of same facts or circumstances

INVESTIGATION

- ▶ Baseline considerations
 - ▶ Parties are not responsible for proving the claim or defending their innocence
 - ▶ Must provide equal opportunity to present witnesses and evidence
 - ▶ Cannot restrict either party from discussing the allegations or from gathering evidence

INVESTIGATION

- ▶ Baseline considerations
 - ▶ Provide same opportunities to have people present
 - ▶ Provide WRITTEN notice of date, time, location, involved people, and purpose for all hearings, interviews, and other meetings
 - ▶ Provide equal opportunity to inspect and review evidence DIRECTLY related to allegations in complaint
 - ▶ Must have at least 10 days to review and respond
 - ▶ Must consider responses prior to finalization of report

INVESTIGATION

- ▶ Baseline considerations
 - ▶ Create a final investigation report
 - ▶ Fairly summarize all RELEVANT evidence
 - ▶ Send to the party and advisor at least 10 days before determination
 - ▶ This may be a longer time period if no hearing will be held

NEXT MONTH – GRIEVANCE PROCEDURES

PT. 3

- ▶ Investigation (continued if needed)
- ▶ Opportunity to submit questions or live hearing
- ▶ Determination regarding responsibility
- ▶ Appeals
- ▶ Informal resolution
- ▶ Record keeping

WHAT QUESTIONS OR CONCERNS HAVE ARISEN FOR YOU THIS MONTH?

hightowerconsultingllc@gmail.com

(208) 389-8050

NEXT MONTHS – GRIEVANCE PROCEDURES CONTINUED

- ▶ Notice to parties
- ▶ Mandatory and permissive dismissal of complaints
- ▶ Consolidation of complaints
- ▶ Investigations
- ▶ Opportunity to submit questions or live hearing
- ▶ Determination regarding responsibility
- ▶ Appeals

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