

Title IX for Administrators

A link to access a copy of this script should be posted to your district website in compliance with the requirements of Title IX, 34 C.F.R. section 106.45(b)(10). Title IX Coordinators should also have a copy of this script available for inspection upon request.

Section 1 - Introduction and Objective One

Slide 1 - Title IX for Administrators

Welcome to “Title IX for Administrators” created in partnership with Powell Law Group.

Title IX federal legislation has had a huge impact on public education, but recent changes to Title IX implementation will change how your school deals with discrimination based on sex, and sexual harassment. This course is for Title IX Coordinators, Investigators, Facilitators, and Decision Makers and meets training compliance for all Title IX personnel.

Slide 2 - Objectives

When you complete this module, you will be reacquainted with the core purpose of Title IX and be able to identify recent changes to Title IX, perform the steps of an Initial Response, and implement the formal Complaint and Investigation process.

All forms needed are provided in the resources tab in this course. You may also access them via the Resources icon in the navigation bar which is located on the top-right corner of the page and is depicted by 3 bullet points.

Slide 3 - What is Title IX?

Title IX of the Education Amendments of 1972 is a federal law that prohibits discrimination on the basis of sex in educational programs and activities that receive federal assistance, including state and local educational agencies.

Slide 4 - Federal Law

The language in the law is broad. It states that “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

Slide 5 - Implementation in Schools

More specifically, discrimination, based on sex, is banned for any “academic, extracurricular, research, occupational training, or other education program or activity” operated by a federal funding recipient.

Slide 6 - Fill in the Blanks

Use the dropdown arrow to complete the sentences below, then hit submit.

- Title IX is a federal law that prohibits _____ on the basis of sex, including sexual harassment, in _____ programs and activities that receive _____ assistance.

Slide 7 - Enforcement

Title IX is enforced by the United States Department of Education, Office for Civil Rights (or OCR). Any complaints of gender discrimination may be made to OCR, including by persons who are not alleged victims.

A student may bring a civil cause of action for damages under Title IX against the institution, but not individual employees.

Slide 8 - Not Only Athletics

Title IX does not apply only to school athletics. While school athletics is probably the most well-publicized area of the Title IX, the law applies to every aspect of education: courses, tutoring, financial assistance, counseling, student health, and more.

Section 2 - Objective Two

Slide 1 - What Changed with Title IX?

Now that we've conducted a brief overview of the purpose of Title IX, we can focus on the specific changes that have been made, including modifications of the definition of sexual harassment as well as changes to structure of the Title IX Compliance Team.

Slide 2 - Complainants and Respondents

First, two new definitions have been introduced to the portion of Title IX that deals with sexual harassment. Those terms are complainants and respondents.

Complainants are "any individual who is alleged to be the victim of conduct that could constitute sexual harassment." Respondents are "an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment."

Slide 3 - Title IX Compliance Team

In the past, Title IX compliance was coordinated by a single individual, the Title IX Coordinator. Title IX now requires a Title IX Compliance Team, with each member responsible for a key portion of the Implementation Process. Let's look at each of these roles for Title IX compliance. Select the buttons for more information.

Title IX Coordinator

This person is responsible for coordinating the compliance of Title IX within a specific educational entity.

Investigator

The Investigator is responsible for investigating Title IX non-compliance issues (for example, a claim of sexual harassment). If needed, the Investigator and Coordinator can be the same individual. The Investigator is required to provide the Decision-Maker with a written investigative report at the end of the investigation. The Investigator must also provide the parties with a copy of the investigative report at the same time.

Facilitator

Their role will be to oversee the Informal Resolution of a Title IX complaint (as long as the complainant and respondent agree). Any request for an Informal Resolution must be in writing and presented to the Title IX Coordinator. Complaints between students and employees are never allowed to be handled through an informal complaint process, even if all parties agree.

Decision-Maker

If the complainant and respondent do not agree to an Informal Resolution, the process moves to the Decision-Maker. The Decision-Maker will review the evidence gathered by the Investigator and will make a determination of remediation. The Decision-Maker cannot be an individual who has served as the Title IX Coordinator, Investigator, or in any other role of the formal grievance process.

Appeal Officer

Finally, if the complainant or respondent are dissatisfied with the determination made by the Decision-Maker, they can make an appeal. This Appeal Officer, or "Appellate Decision-Maker," will again review the evidence gathered by the Investigator and will make a final determination.

Slide 4 - Forming the Title IX Compliance Team

Members of the Compliance Team for an educational entity do not have to be employees of that entity. This will make it easier for smaller schools, who may have limited staff, to form a whole team. A different person, however, should fill each role. The Investigator, the Facilitator, Decision-Maker, and Appeal Officer (or Appellate Decision-Maker) must be different people.

Members of the Compliance Team should be cross-trained so members know how to fulfill multiple roles. For example, the administrator chosen to be the Decision-Maker may need to perform the roles of the Investigator, or the Facilitator may need to act as the Coordinator.

Above all, establish a formal grievance process that is fair, equitable, and without the appearance of conflicts of interest.

Slide 5 - Posting Requirements

Schools are now required to have specific information posted online regarding Title IX compliance. These include:

- The district's non-discrimination policy
- The contact information for the district's Title IX Coordinator
- All training materials used to train Title IX personnel

All training materials, in full, must be available online for public viewing; a summary material is not an acceptable alternative.

In addition, a record of all staff trained to participate on a Title IX Compliance team should be kept. The district should be able to show:

- Who is trained to participate in Title IX compliance.
- What specific training has been used for Title IX training.

Click “View Sample” to reveal suggested language for the district’s website.

In compliance with the requirements of Title IX, 34 C.F.R. section 106.45(b)(10), all materials used to train the District’s Title IX personnel are available here: [insert link to training materials] and are available for inspection upon request by contacting the Title IX Coordinator.”

Slide 6 - Knowledge Check

Which of the following are formal roles in the new Title IX Team? Select all that apply, then hit submit.

Slide 7 - Sexual Harassment

The definition of sexual harassment has changed. It is defined as "unwelcome conduct on the basis of sex that a reasonable person would determine is so “severe, pervasive, and objectively offensive” that it “effectively denies a person equal access to the district’s education program or activity.”

As you can see, the language has changed from "severe, pervasive, or persistent" to "severe, pervasive, and objectively offensive that it effectively denies a person's equal access..." This definition has narrowed the scope of what constitutes sexual harassment. This means, for example, a single instance of a teacher using a sexually-charged slur may not meet the legal threshold of sexual harassment as defined by Title IX. Although the comment may be offensive, it may not have been alleged to be pervasive, creating a hostile environment for the student. This does not mean that the district should ignore the comment—it may mean the conduct will be addressed under another of the district’s grievance processes or code violations.

Slide 8 - Examples of Sexual Harassment

There are still some clear-cut scenarios that are defined as sexual harassment by Title IX.

One is "quid pro quo" harassment, which is defined as when "an employee of the district conditions the provision of an aid, benefit, or service of the district on an individual’s participation in unwelcome sexual conduct." For example, if a teacher offers to change the grade of a student in exchange for a sexual favor, that would be defined as a quid pro quo.

Another clear-cut prohibition is sexual violence as defined in Chapter 22 of the Texas Penal Code. This includes:

- Sexual assault
- Attempted sexual assault
- Dating violence
- Domestic violence
- Stalking

A single act of sexual violence is enough to legally constitute sexual harassment under Title IX. All employees must still comply with mandatory reporting requirements such as reporting sexual conduct to law enforcement and the Department of Family and Protective Services. Nothing in the new regulations exempts employees from regular reporting requirements.

Slide 9 - What Constitutes "Actual Knowledge"?

How the district obtains "actual knowledge" of sexual harassment has been updated, as well. In the past, for a district to have actual knowledge of sexual harassment (which triggers a legal obligation to respond), it required a person who had the authority (for example, a principal) to take corrective action. Now, any employee of the district who reports conduct they observed or allegations that were reported to them imputes "actual knowledge" on the district.

Simply put, if any district employee directly observes or is told about sexual harassment, the district has actual knowledge and a legal obligation to respond. District employees who observe or are told about sexual harassment shall immediately report the allegations to the district's Title IX Coordinator. Failure to report could result in a claim of discrimination against the district.

Slide 10 - Additional Standards for Title IX to Apply

So, for an incident of sexual harassment to trigger a response, the following requirements must be met:

1. The recipient must have "actual knowledge" of sexual harassment.
2. The sexual harassment occurred in an education program or activity of the district.
3. The complainant is a person in the United States.

If these conditions are met, then the recipient (in this case, the school district) must respond promptly in a manner that is "not deliberately indifferent" in light of known circumstances.

Slide 11 - Knowledge Check

Select true or false for the following question, then hit submit. The school district's administration must have "actual knowledge" in order to trigger a response to sexual harassment.

Slide 12 - Social Media and Title IX

Online harassment, particularly through social media, can present a confusing scenario for Title IX Coordinators. It will be up to the Coordinators to determine if a specific, online action falls under the purview of Title IX, or if it should be addressed through a different policy (for example, cyberbullying rules).

Remember, if the harassment took place off campus, if it was not within the scope of a district's program or activity, and if the district does not have substantial control over the alleged harasser or the context in which the harassment occurred, it may not fall under Title IX compliance. The actions, however, may still need to be addressed through your district's other policies.

David's Law requires intervention from public schools when cyberbullying behavior is suspected. The legislation enables law enforcement to unmask anonymous social media users who threaten others. School districts and law enforcement should collaborate on investigations.

Section 3 - Objective Three

Slide 1 - Initial Response

Once the district has received a report alleging sexual harassment, it is the role of the Title IX Coordinator to make an Initial Response. The steps in the Initial Response can help protect complainants, prevent further harm, and help determine the legal responsible of the district.

Initially, the Coordinator should contact the complainant to:

Provide information and discuss availability of supportive measures.

Explain the process of filing a formal complaint under Title IX, and provide a copy of this process, to the complainant. If there are more than one complainants, they all need to be provided with this information.

Slide 2 - Initial Response Requirements

The Initial Response requires documentation by the Title IX Coordinator, including:

- When the Coordinator contacted the parents of the complainant and respondent.
- What supportive services were offered to the complainant and (if applicable) the respondent.
- Whether the complainant or respondent accepted or declined supportive services.

The Title IX Coordinator is allowed to interact with the parent or guardian of the complainant. In certain instances, they legally may be required to do so. For example, when it would be "clearly unreasonable in light of the known circumstances" for the district to not notify the parents or legal guardians of reported sexual harassment. The Department of Education's Office for Civil Rights (OCR) has made it clear in the new regulations that failure to contact a

parent or guardian of the complainant or respondent would be clearly unreasonable in light of the known circumstances. If the district fails to respond or shows indifference in its response, OCR will consider the district's response "clearly unreasonable in light of the known circumstances."

Slide 3 - Supportive Services

As part of the district's Initial Response to allegations of sexual harassment, the Title IX Coordinator must offer supportive measures to the parties involved in a sexual misconduct dispute at school. Click the buttons for specific rules regarding how, when, and to whom supportive services should be offered and their characteristics.

How, When and To Whom

- Supportive measures must be offered to the complainant and (if applicable) the respondent.
- Supportive measures must be offered even if it does not lead to a formal, documented complaint process.
- Supportive measures must be offered, even if the complainant declines to participate in the formal complaint process.
- A complainant does not have to offer proof of allegations to receive supportive services, nor can they be coerced into receiving services they don't want.

Characteristics

- Supportive services must be designed to protect the safety of all parties, to protect the district's educational environment, or to deter sexual harassment.
- Supportive services must be individualized, non-punitive, and offered without cost to the complainant or respondent.
- Supportive services cannot unreasonably burden either the complainant or the respondent.

Slide 4 - Examples of Supportive Measures

There are many supportive services that the Coordinator can offer to complainants and respondents. Supportive services can be as informal as meeting with the principal in their office or changing class schedules, or as strong as establishing "no contact" orders.

There is no "one size fits all" solution. Services should be individualized, and not unreasonably burdensome.

- Counseling
- Escorting parties when on campus
- Sending a student to the Principal's office
- Modifying class or activity schedules
- Change in seating or class assignments
- Implementing mutual or unilateral restrictions on contact between parties
- Increase of security and monitoring certain areas of campus
- Identifying specific campus employees to serve as regular points of contact for each party
- Extension of deadlines for coursework, retaking tests

Slide 5 - Knowledge Check

For the following statements, select true or false. Supportive Measures Must:

1. Be offered to complainant and respondent
2. Be punitive
3. Be unreasonably burdensome
4. Be individualized
5. Be designed to protect the safety of all parties, the district's educational environment, or to deter sexual harassment.
6. Incur a cost to the complainant or respondent

Slide 6 - Anonymous Complaints and Confidentiality

Title IX allows complainants to make a sexual harassment claim without revealing their identity. The coordinator, however, will need to balance the complainant's request for confidentiality and the district's ability to investigate the issues and provide supportive measures.

The Coordinator should keep the complainant's identity confidential if requested by the complainant. Certain supportive measures, however, may require their identity to be known (for example, if a no-contact order is going to be placed, the respondent needs to know who they are not allowed to contact).

If the Coordinator determines that the allegation should trigger a formal complaint process, the identity of the complainant will need to be revealed in the Notice of Allegations. When a complainant desires to initiate a grievance process, the complainant cannot remain anonymous or prevent the complainant's identity from being disclosed to the respondent.

While the complainant and respondent won't be anonymous to each other after a formal complaint process begins, their identities should be kept confidential from unrelated parties. Exceptions to this include anyone who can know as permitted by FERPA, required by law, or as necessary to conduct the grievance process.

Slide 7 - Anonymity and Online Harassment

Online sexual harassment is often done anonymously. While that may make investigating difficult, it does not mean these allegations should be ignored (even if they don't trigger the Formal Complaint process).

Consider the following:

- If the harassment is in the context of social media postings, the district does not have "substantial control." There may be control, however, over the context of the acts reported.
- Determine if the district legally has "actual knowledge?"
- Decide if there is enough information to conduct a thorough, objective investigation.

If unsure whether an allegation falls under Title IX, reach out to legal counsel. Even if you determine that an allegation doesn't fall under Title IX, don't ignore it; it may fall under another policy (like anti-bullying) or specific state laws.

Slide 8 - Removing a Respondent

The final part of the Initial Response is to determine if the district should remove the respondent from campus.

A district can remove a student after a safety and risk analysis is completed. That analysis must show that removal is necessary to eliminate an immediate threat. Once the district determines that removal is necessary, the removal can stay in place as long as the threat remains. Remember that you must comply with the Individuals with Disabilities Education Act (IDEA) as well as Section 504. Efforts must be made to use supportive measures to maintain the status quo between the parties and ensure equal access to education.

Title IX has no regulations outlining when an employee should be placed on Administrative Leave, even if an investigation is pending.

Slide 9 - Review of Initial Response

To review, during the Initial Response, the Coordinator will:

- Offer supportive services, even if there is no formal investigation. Supportive services should be offered to both the complainant and the respondent.
- Determine if a formal Title IX investigation is required. Even if complainants are truly anonymous, Coordinators can proceed with a formal process at their discretion.
- Never ignore allegations, even if they fall outside of Title IX authority.

Once the Coordinator has completed the Initial Response and has determined to move forward, then the Formal Complaint process begins. We'll review that process in its entirety in the next section.

Section 4 - Objective Four

Slide 1 - Formal Complaint and Investigation Process

After the Initial Response is complete, and the Coordinator determines that the allegations fall under the purview of Title IX, then a Formal Complaint process begins.

Slide 2 - Formal Complaint Process

A Formal Complaint – or grievance – process involves:

- The equitable treatment of complainants and respondents,
- An objective evaluation of all relevant evidence,
- All members of the team without conflict of interest or bias,
- A presumption of innocence,
- A reasonable time frame that ensures prompt action,
- A description of the possible disciplinary sanctions and remedies,
- A statement of the standard of evidence to be used (preponderance or clear and convincing), and

- Procedures to appeal a determination or a dismissal of a complaint.

It is imperative that Title IX personnel who are appointed to serve in the Title IX Formal Grievance Process do so without a conflict or bias as it relates to the specific parties, facts, and circumstances surrounding the allegations. The parties may use this for grounds to appeal a final determination.

It is the initial responsibility of the Title IX Coordinator to appoint those individuals who can serve in the Title IX process without bias or conflict of interest. If an individual appointed to serve in the process, however, realizes he or she may have a conflict of interest, that individual has a duty to notify the Title IX Coordinator of the potential conflict.

Each district will choose the evidentiary standard to be used to determine responsibility. Most districts have chosen to use a preponderance of the evidence standard, which means the Fact Finder must believe the evidence more likely than not (51% likely) proves the conduct occurred. Clear and convincing standard is a much stronger burden to meet and closer to the “beyond a reasonable doubt” we see in criminal cases. Clear and convincing would require a finding that the evidence is highly and substantially more likely to be true than untrue. The fact finder must be convinced that the contention is highly probable.

Slide 3 - Equitable Process

The most important element of the Formal Complaint process is that all parties are treated equally. Click to explore each scenario.

Scenario 1

An allegation has been made against the star quarterback, who is well-liked by peers, district staff, and community members. The complainant may be hesitant to file a Formal Complaint against them, since they may feel that an equitable outcome is not possible.

Scenario 2

The star quarterback has made a formal complaint against a student, who is largely unknown by the community and not well-received by his peers. The respondent may feel a determination against them is inevitable, given the social status of the complainant.

Slide 4 - Title IX: Formal Complaint Timeline

All parties should be aware of when a formal complaint officially begins and ends. It officially begins with a signed complaint and ends when a written determination has been issued to all parties and an appeal has been granted, denied, or the window to request an appeal has been denied.

It usually takes about 60 days to go through the full Formal Complaint process: 30 days to do the Fact-Finding process and Investigation Reports, then another 30 days to get through the

decision making and written Final Determination of Responsibility. The Title IX Coordinator may modify these timelines for certain situations for good cause shown. For example, if the Title IX Coordinator is waiting on additional evidence from law enforcement, if there are language barriers that require translation, or for any other reason the Title IX Coordinator believes to be “good cause.”

Slide 5 - How Days are Counted

OCR does not require a specific method for calculating days. For example, the district could decide to use calendar days, school days, or business days. The district has the flexibility to determine what works best for their particular needs.

Slide 6 - Standard of Evidence

The grievance procedures adopted by the Superintendent will include the “standard of evidence” to be used when determining responsibility.

Most districts use the "preponderance of the evidence" standard, which is used in civil court cases. It means the evidence must convince the Fact Finder that there is a greater than 50% chance that the claim is true.

Slide 7 - Disciplinary Sanctions

No disciplinary sanctions can be taken against a respondent before a final determination of responsibility has been made and the parties have had an opportunity to appeal the decision. Only supportive measures can be used prior to a final determination, apart from a removal from campus after a safety and risk analysis.

Slide 8 - Signed Formal Complaint

Districts should have a standard form used to file all formal complaints. This is the beginning of the formal process.

There may be situations where a complainant does not want to proceed with a formal complaint. The Coordinator, however, can sign the complaint and begin the process; this does not require complainant’s consent. Even if the complainant doesn't cooperate with the investigation, they still retain all the rights in the formal process.

Slide 9 - Notice of Allegations

A formal Notice of Allegations must be issued to all concerned parties. This requires several components.

1. The allegations of sexual harassment as defined by law, including known detail such as identity of parties, alleged conduct, and date(s) and location(s) of alleged incident(s).
2. A statement that the district, by law, must presume that the respondent is not responsible for the alleged conduct and a determination regarding responsibility will be made at the conclusion of the Formal Complaint process.
3. Notification that each party may choose an advisor of choice who may be, but is not required to be, an attorney.
4. The right of each party to inspect and review all evidence.
5. The standard of evidence that will be used (District must choose either: preponderance or clear and convincing).
6. Notification about the district's Title IX Formal Complaint process, including procedures for Informal Resolution and appealing the Final Determination.
7. Any provision of a district code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the Formal Complaint process.

Each party may choose an advisor of their choice, who may be an attorney, consultant, family member, or friend. The parties should designate their advisor and notify the Title IX Coordinator of who will serve as an advisor throughout the process. The same advisor should serve throughout the Title IX Formal Grievance process from Initial Response until a decision on appeal is made or the time for requesting an appeal has expired.

Slide 10 - Supportive Services

The Title IX Coordinator will determine whether a complaint should be dismissed. There are certain factors that require a mandatory dismissal, while other factors will be at the discretion of the Title IX Coordinator. Click on each button for more information.

If any of the following are proved true, then the Title IX Coordinator must dismiss the complaint:

- If it would not meet the definition of sexual harassment under 34 C.F.R. section 106.30(a);
- If it did not occur against a person in the United States; or
- If it did not occur in the District's education program or activity.

The following factors allow for discretionary dismissal. The coordinator may dismiss the complaint, but may decide to proceed despite these factors being present:

- If, at any time, a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the Formal Complaint or any allegations in the complaint;
- If the respondent is no longer enrolled or employed by the district;
- If specific circumstances prevent the district from gathering evidence sufficient to reach a determination; or
- If the complainant no longer has any involvement with the district.

Even if an employee is no longer employed with the District, an obligation remains to report the conduct to SBEC, or other proper reporting agencies.

Slide 11 - Knowledge Check

For the following statements, select whether the reason given dictates a mandatory dismissal or a discretionary dismissal of complaints.

1. If it would not meet the definition of sexual harassment .
2. If it did not occur against a person in the United States.
3. If it did not occur in the District's education program or activity.
4. If a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the Formal Complaint or any allegations in the complaint.
5. If the respondent is no longer enrolled or employed by the district.
6. If specific circumstances prevent the district from gathering evidence sufficient to reach a determination.
7. If the complainant no longer has any involvement with the district.

Slide 12 - Informal Resolution

Parents may want to resolve a complaint outside of the Formal Complaint process (for example, to save each of the children involved embarrassment). The Title IX Coordinator, however, is obligated to follow the Formal Grievance procedures where required, even though the parents want to work things out informally.

It may be possible for students and parents to reach a resolution through an informal process. Remember, for an informal process to proceed, the following must be met:

- Both the complainant and respondent must agree to an Informal Resolution.
- Either the complainant or the respondent can change their mind and decide to pursue a Formal Complaint process at any time in the Informal Resolution.

If all parties agree to an Informal Resolution, then a Formal Grievance process does not have to be followed. Keep in mind that, at any point during the process, if a party decides they want to proceed with a Formal Complaint, the informal process stops and the district's Formal Complaint procedures must be followed.

You should note that an Informal Resolution is not allowed if the allegation is between a student and an employee of the district.

An Informal Resolution may only be facilitated by the district and serves as a mediation of the issues between the parties. An effort is made by the facilitator to reach a settlement regarding the issues and proper sanctions and remedies.

Parents of the parties may wish to resolve matters at home and outside of district involvement, however, parties should not be allowed to circumvent the process for conduct that meets the definition of sexual harassment under Title IX.

Slide 13 - Informal Resolution, Cont'd

Either the complainant or the respondent can request an Informal Resolution from the other. To do so, the parties must provide the Title IX Coordinator with voluntary, written consent to the Informal Resolution process, and they must do so prior to reaching a determination of responsibility.

The Title IX Coordinator can never require that the parties participate in the Informal Resolution process, but coordinators can offer the option of an Informal Resolution.

Once a determination of responsibility has been reached, the option for an Informal Resolution will no longer be available.

If both parties agree to an Informal Resolution, the process is passed to the Facilitator. The Facilitator cannot be the Title IX Coordinator, Investigator, or Decision Maker.

Section 5 - Objective Four, Cont'd

Slide 1 - Investigation and Decision

Let's now look at the Investigation step, which occurs after the Coordinator determines that the allegation falls under Title IX.

Slide 2 - The Investigator

While the Coordinator can serve as the Investigator, they can also appoint a trained, district employee to serve as the Investigator or work with the Superintendent to appoint an External Investigator, as needed. This may be required in small districts to avoid possible conflicts of interest.

After receiving the written complaint, the Investigator will meet promptly with each party to conduct initial interviews, gather information, and collect evidence.

Slide 3 - Investigation Timeline

The timeline for investigation should be 30 days. Once the investigator makes the evidence available to parties, they have 10 days from the date they receive the evidence to respond. These responses may be used in the investigation report.

The completed investigation report must be distributed to both parties simultaneously.

Remember, the Investigator may extend the timeline for good cause. Examples of good cause may include gathering additional evidence from law enforcement; delays caused by the need for language translation during meetings, written reports, and interviews; and for any other reason the Title IX coordinator considers good cause. Title IX Coordinator cannot unnecessarily delay the timelines and must be prepared to defend any claim of good cause.

Slide 4 - Investigation Preparation

An established investigation plan should be part of your formal grievance procedures. The investigation plan should:

- Identify witnesses;
- Determine likely order of witnesses;
- Identify documents and policies to review and collect;
- Determine the location of interviews; and
- Develop opening script and initial questions.

The Superintendent is required to administratively adopt the formal grievance process to be followed by the district.

Slide 5 - Interviews

Investigators are required to interview complainants who allege sexual harassment and respondents against whom allegations are made. Each party, however, shall be given a reasonable time to prepare for an interview with the Investigator.

Most districts have chosen three days as a reasonable time for parties to prepare for an interview. Parties must be given advance notice of the time and date of a scheduled interview.

Law enforcement may be involved in any interview conducted by the district; most agencies, however, choose to conduct their own separate investigation.

Slide 6 - Investigation Tips

There are easy steps to follow to help gather credible information from witnesses. Click to reveal some common tips:

1. Start with open-ended questions, but try to get specific answers from all witnesses.
2. Do not let witnesses give generalizations (look for absolute statements that witnesses are unlikely to change in the future).
3. Look for ways to test the interviewees' honesty and recollection of the facts.
4. If all witnesses are asked similar questions, then their answers should be similar. (If not, start doubting the person who responded differently).
5. Read body language: Is the person fidgeting or are they relaxed?

Slide 7 - Interview Techniques for All Witnesses - The Funnel Technique

The funnel technique is popular for investigative interviews. Start with open questions, then narrow in with probing questions, and make closed questions at the end. Pin the witness on the specifics at the end; this will make it easier to see if they are changing the details of their testimony.

Select each category to see some examples.

Slide 8 - Do's and Don'ts

Interviewing witnesses can feel intimidating, but it is crucial that necessary questions are asked so that an equitable, objective outcome can be reached. Click DO to hear and see more tips about effective interview techniques and click DO NOT to hear and see behaviors or techniques you should avoid.

DO'S

- Be patient and listen.
- Use silence to your advantage.
- Ask the tough questions.
- Be sensitive, but not sympathetic/empathetic (neutral).
- Take thorough notes.
- Conduct in private.

DON'TS

- Interview witnesses in groups.
- Put words in the interviewee's mouth ("But he wasn't abusive in the meeting, was he?").
- Exhibit bias or make promises ("We've received a complaint that is clearly unfounded...I'd like to ask you some questions about it.").
- Express any opinion regarding the truthfulness, accuracy, or legal implications of the allegations.

Slide 9 - Key Questions for the Complainant

One of the primary drivers of the new regulations made to Title IX was because the Office of Civil Rights determined that respondents were not receiving adequate due process. There are key questions that should be asked to the complainant during interviews:

- Determine the who, what, when, where, why, and how of the story. Get as many specific details as possible.
- Identify the reason there was a delay in reporting the allegation (if there was a delay).
- Determine if the complainant made it clear whether the conduct was unwelcomed.
- Identify who else has knowledge or was told of the conduct.

Slide 10 - Key Questions for the Respondent

It is also important to give the respondent clear questions and equitable treatment.

- Ask them to share their version of events.
- Determine the who, what, when, where, why, and how of the story.
- Ask for as many details as possible, including names, dates, witnesses, locations, etc.

- Don't accept blanket denials.
- Is there a reason the complainant would be lying?
- Note the difference between responses like "I don't recall" vs. "That did not happen."
- The respondent should not feel as though you've already made up your mind.
- Probe for possible motive.
- Determine the relationship the accused had with complainant prior to the allegations.
- Allow the accused to respond to each specific allegation made by complainant.

Slide 11 - Investigation: Prior Sexual Behavior

The sexual predisposition of the complainant or their sexual history cannot be used as evidence. There are exceptions to this rule, however, such as:

- Questions and evidence about a complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the alleged conduct charged by the complainant; or
- If the questions and evidence concern specific incidents of the complainant's prior sexual behavior with the respondent and are offered to prove the complainant's consent to the alleged conduct.

Section 6 - Objective Four, Cont'd and Conclusion

Slide 1 - Investigation Report

Once the investigation is complete, the Investigator must present the parties with an Investigative Report.

The report must identify the allegations and list all procedural steps that have been taken by Title IX personnel from the receipt of the complaint through the conclusion of the investigation. This will include any notifications to the parties; notes from interviews conducted and from any site visits; the methods used to gather the evidence; and evidence obtained by the district.

The Investigation Report will also include:

- Responses of each party to the allegations in the formal complaint after they were given the opportunity to review the evidence.
- Relevant evidence considered by the investigator.
- Findings of fact without determining responsibility.
- Any district policies or codes of conduct implicated by the facts.

The Investigator must provide a copy of the Investigative Report to both parties simultaneously. In addition, the Investigator will send a copy of the report to the Title IX Coordinator (if they are separate individuals), who will immediately assign a Decision-Maker.

Title IX regulations neither prohibit or require the Investigator to make a recommendation with respect to a determination of responsibility.

Slide 2 - Determination of Responsibility

The Decision-Maker will use the Investigative Report and evidence that has been gathered by the district to make an independent determination of responsibility. In other words, deciding whether the respondent is responsible for the alleged conduct. Remember, the Decision-Maker cannot be the same person as the Investigator or the Coordinator.

The Decision-Maker must take a 10-day period before issuing a decision. During that period, involved parties must be allowed to submit written relevant questions that they want the Decision-Maker to ask any other party or witness. After receiving requested questions, the Decision-Maker will determine if the questions submitted are non-abusive and relevant. If questions are appropriate, they are submitted to the intended party or witness.

During this period, the Decision-Maker can establish a deadline for answers, though the questioned party or witness are not required to respond.

Slide 3 - Written Notice of Responsibility

After the 10-day period, the Decision-Maker will prepare the Written Notice of Responsibility. This report must include the following components:

The findings of facts that support the determination (which will include findings of facts in the Investigative Report, as well as any new information that the Decision-Maker discovers)

Each specific allegation in the formal complaint will have a specific determination.

Any Title IX disciplinary sanctions that the district will impose on the respondent, and whether the remedies are designed to restore or preserve equal access to the district's education program or activity.

Permissible bases and procedures for appeal.

The determination is not final until the 5-day window for appeals has passed.

Slide 4 - Appeals

Either the complainant or the respondent has the right to seek an appeal to a determination. The basis for that appeal, however, are limited to three reasons:

If there was a procedural irregularity that affected the outcome of the determination;

New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made and that could affect the outcome of the matter; or

The Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

The Title IX Coordinator is responsible for determining if an appeal is accepted or denied. Outside of these three reasons, the district is not required to accept a request for appeal.

Slide 5 - The Appellate Decision-Maker

If the Title IX Coordinator determines to accept an appeal, they will immediately appoint the Appellate Decision-Maker. The person holding this role cannot be the original Decision-Maker, the Investigator, or the Coordinator.

After determining to accept the request for appeal, the Coordinator will notify the non-appealing party that the determination is being appealed. Then, both parties will have an opportunity to submit written statements to the Appellate Decision-Maker to argue for or against the appeal. The Appellate Decision-Maker will review their written statements, and then provide their own written decision explaining if they have decided to appeal the determination or allow the determination to stand.

If an appeal is granted, the Final Determination is removed, and the entire case will undergo the Formal Complaint process again.

Slide 6 - Remedies

If the Title IX Coordinator denies the request to consider an appeal, or if the Appellate Decision-Maker formally rules that an appeal will not be granted, the determination of responsibility becomes final and remedies may be implemented. The remedies must be designed to restore or preserve the complainant's equal access to the district's educational program or activities. Remedies may include suspension, expulsion, or any disciplinary measures provided by the District's Student Code of Conduct or other remedies listed in the district's Title IX procedures.

The Title IX Coordinator will be responsible for implementing the remedies.

Slide 7 - Conclusion

Congratulations! You've reached the end of the training. Now, you should be able to:

- Describe the fundamentals of Title IX,
- Identify recent changes to Title IX,
- Perform the steps of an Initial Response,
- and implement the Formal Complaint and Investigation process.

Slide 8 - Resources

We have compiled a list of Title IX forms that can be helpful and may assist you with compliance. These are located in the resources tab of this course, or by clicking the Resources button on the Eduhero Navigation Bar.