

Title IX



Investigator Foundations



Useful Terms

Complainant: The person who has a complaint that they have been subject to sexual harassment or discrimination.

Respondent: The person or entity that the Complainant is reporting having engaged in sexual harassment or discrimination.

Recipient: The institution that receives federal funding to provide services to all individuals within the program. Fargo Public Schools is the recipient.

Overview

“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.”

20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)

Equity

- Enacted as a follow-up to the Civil Rights Act of 1964.
- Began due to the understanding that not all individuals have access to the same resources and opportunities.
- Meant to reduce disparity in access to educational programs.
- Seeks to stop, prevent, and remedy inequities in sexual harassment and sex discrimination.

Compliance: No Deliberate Indifference

- Once ANY school or district employee has actual notice of sexual harassment/sexual discrimination the school/district must:
- Take immediate and appropriate steps to investigate what occurred
 - Investigation can be and is done to varying degrees:
 - Initial determination
 - Formal investigation
- There is no “pass” on the obligation to investigate.
- A complainant does not have to provide the complaint in writing.
 - If the complainant doesn't fill out the information, the Title IX Coordinator or Principal will complete the form given the information from the Complainant.

STOP PREVENT REMEDY

- You will hear these three words as a mantra of Title IX responsibility.
- The school/district must work to:
 - **Stop** immediate instances of sexual discrimination/harassment
 - **Prevent** any further instance of sexual discrimination/harassment
 - **Remedy** any situation that occurred due to sexual discrimination/harassment

THOROUGH

RELIABLE

IMPARTIAL

- The second triad of words that indicate how a school/district must respond to any known instances of sexual harassment/sexual discrimination.
 - Process must be: Thorough, Reliable and Impartial
 - Investigation must be: Prompt, Effective and Equitable
 - Remedies must:
 - Act reasonably to stop discrimination
 - Act reasonably to prevent recurrence
 - Act equitably to remedy effects

Resources

The following presentation utilizes the following resources:

Association of Title IX Administrators, 2023

Scope a.k.a. Range

In order to fall under Title IX the following must be true:

1. The Complainant was trying to access educational programming or activity in the United States.
2. The School/District has control over the Respondent (harasser).
3. The School/District has control over the context of the harassment.
4. Applies to both students and employees.

Harassment Takes Many Forms

- Quid Pro Quo: In order to receive benefit, you must do XYZ.
 - Refers to Respondent in position of power over the Complainant
- Hostile Environment
- Sexual Assault
- Domestic Violence
- Dating Violence
- Stalking

Sexual Discrimination

Sex Discrimination

- Sex/Gender
- Program Inequity

Retaliation

Sex Discrimination Terms

- Disparate Treatment
 - When an institution's policy, practice or procedure INTENTIONALLY discriminates.

- Disparate Impact
 - When an institution's policy, practice or procedure UNINTENTIONALLY discriminates.

Bias and Conflict of Interest

- The investigators have no “side” other than the integrity of the process.
- The regulations prohibit conflict of interest or bias against parties generally, an individual, or the substance of the complaint.
- Investigators who identify a potential conflict of interest or bias should immediately notify and disclose the information to the Title IX Coordinator.

Formal Process Overview

Incident

A complaint is known

Contact TIXC

Initial Assessment

Completed by TIXC

- Enact Supportive Measures to Both Parties
- Possible referral to other process
- Written notification sent to parties

Formal Investigation

TIXC sends notice to parties

Interview of parties and witnesses

Investigator drafts report

Evidence and artifacts are documented and shared with parties

Final report

Decision-Making

Credibility Assessment

Determination and Rationale

Recommend Sanctions
Recommend Remedies

Appeal

3 grounds on which to appeal

Determination and Rationale

Prompt

- Complete without undue delay
 - Example: key party or witness is ill and cannot be interviewed
 - Example: Criminal case is being conducted (delay 2 week max)
- Title IX Regs do not define prompt
 - 30 days: Preferred
 - 60 days: Outer limit

Equitable

Treat all Parties equitably

Ensure both parties have opportunity to fully participate

Respondent is not considered responsible or not responsible until and if the final determination is made (jury is out until the determination is made).

Investigation Oversight

TIXC will:

- Appoint and train investigators
- Conduct initial determination
- Assign investigators
- Strategize and consult with investigators
- Contact building or district leaders to inform them of need to determine supportive measures
- Ensure timeline compliance
- Review investigation reports
- Oversee record-keeping
- Primary point of contact

Investigator Role

Investigators will:

- Remain impartial and free of bias
- Strategize with TIXC
- Gather all available and relevant information
- Interview parties and witnesses
- Maintain accurate and thorough notes/records
- Share evidence and draft report with TIXC

Investigation Overview

10 Steps of Investigations begins with receiving notice and conducting an initial determination:

1. Receive Notice/Complaint
2. Initial Assessment & Jurisdiction Determination
3. Determine Basis for Investigation
4. Notice of Investigation and Allegations (NOIA)
5. Establish Investigation Strategy
6. Formal Comprehensive Investigation
7. Draft Investigation Report
8. TIXC Reviews Draft Report & Evidence
9. Parties Review Draft Report & Evidence
10. Final Investigation Report

Determine Basis for Investigation

There are 3 bases for civil rights investigation:

1. Incident: a specific incident or period
 - a. Could involve multiple alleged violations
2. Pattern
 - a. Repetitive or similar behaviors or targets by same Respondent over a period of time.
 - i. Often has more than one Complainant
3. Climate/Culture
 - a. Discriminatory policies, practices, processes, and environments

Communicating with Parties

TIXC

- May communicate with families initially.
- Completes all notifications to send to parties
 - Initial determination
 - Notice of Investigation and Allegation (NOIA)
- Responds to any questions by either party.
 - Will communicate with others to determine best way to communicate a response.

Investigator

- Contacts parties to set up interviews
 - Students may have their parents attend
 - Young students' parents should always be informed
- Contacts witnesses to set up interviews.

Record-Keeping

Currently using Google Drive

Will be switching to Guardian program as soon as possible

Investigator provides TIXC with all notes and artifacts/evidence

If use of recording, must provide that as well.

Evidence and Artifacts

These come in many forms:

- Emails
- Screen shots
- Photos*
- Videos

*Investigator shall refrain from viewing any photo that to their knowledge includes possible pornographic image. If such evidence exists, the investigator should interview the SRO or other law enforcement member to get a description of the image.

Title IX and FERPA and IDEA and 504

- Title IX is often in direct conflict with other regulations. Ultimately, Title IX “wins.”
- If it’s an employee, HR is often consulted.
- That said, if there is information about a student that is not relevant to the case, we can refrain from disclosing it.
 - Investigator and TIXC will communicate about any questions in this area. TIXC will decide.

Communication Log

- FPS maintains detailed communication logs for each case.
- This is used by all Title IX members that are on a case plus principal of the building. Other school members may be added as appropriate.
- Any time an investigator contacts a parent, Complainant, Respondent or Witness, a notation should be made in the log.
- Items noted:
 - Date
 - Time
 - Who communicated with
 - Basics of the conversation
 - Any next steps

Evidence Log

All evidence that is used in an investigation requires the following documentation:

- Description
- Date of receipt
- Source
- Method of Receipt

Best method currently is to document within the interview notes at time of receipt.

Title IX Advisors

- Each party is entitled to have an advisor of their choosing. Can include their lawyer.
- In K-12, the party finds and presents their own advisor.
- Investigators should establish ground rules
 - Advisors do not answer interview questions
 - Advisors can ask questions of the other party or witnesses on behalf of their own party

Parent/Guardians

Parents/Guardians are permitted to:

File a complaint on behalf of their student

Accompany their student to all interviews

Submit grievances on behalf of their student

Access student educational records, including Title IX complaint file

Interview Timing

- Do not interview until the TIXC has indicated the NOIA has been sent to both parties.
- Do not interview pre-K-Middle School students before contacting parents.
- High school students may be interviewed without parent being informed, however, best practice is to inform parents.
 - When in doubt, contact TIXC

Order of Interview

For each case the Investigator and TIXC will work together to establish a plan. In general the following order of interviews is fairly standard:

1. Complaint
2. Respondent
3. Witnesses Identified by either party
4. Neutral witnesses

In the case of a possible criminal investigation being conducted for same incident, it may be beneficial to talk with SRO or other relevant law enforcement official before starting with the party and witnesses.

Information Sharing

- It's a balance of transparency, privacy, and strategies as well as the parties' rights.
- Witness may have limited knowledge or no knowledge of the complaint, but some information sharing may be necessary.
 - Parties involved
 - Brief description of the complaint
- Parties get access to all relevant information through notification and reports. Witnesses do not.

Interviewing Participants

- Consider location and time
 - If student is fearful of being in school building:
 - Offer to meet in the school after students' school day
 - Offer to meet at the District Office
 - Just let Shirley LaMont know and she can help find a room
- We cannot mandate interview participation
 - If the Complainant or Respondent refuses to be interviewed, contact TIXC
 - TIXC will contact parent/guardian and explain it is their right not to be interviewed, but the district will make its decision with the available information gathered through investigation.
- Can use video conferencing
 - In person is always preferred, however, use of technology is acceptable
 - Video conferencing is preferred over phone only.

Establish Rapport

Goal: That the interviewee trusts the investigator in neutral and impartial.

Set the tone

Remain professional

Be transparent about expectations and process

Be neutral, but show compassion

As questions in a straightforward and non judgemental manner

Follow up timely when needed

Use trauma informed approach with all parties and witnesses

Basic Spiel

Introduce yourself and explain your role

Let them know the purpose of the investigation

If there is an advisory, let them know they can ask questions, but not answer them

Let them know you are taking notes

Let them know your commitment to privacy

Show relevant policy

Acknowledge this might be difficult

Remind all about retaliation and consequences (i.e. disciplinary action) that could ensue

Interviewing Tips

- Listen carefully/try not to interrupt the flow of the interviewee
- Seek clarification especially with ambiguous words and phrases
 - Example: She was acting weird.
 - Clarification statement: What did the weird action look like?
 - Example: He was inappropriate.
 - Clarification: Exactly what did he do that was inappropriate. Be specific
- Avoid the following:
 - Accusatory or argumentative questions or tone
 - Confusing questions (those with embedded phrases)
 - Double-barreled (two or more in one question)
 - Evaluative responses (i.e., that was good)
 - Ambiguous words or phrases
 - See above
 - Sanitizing language
 - Example: Did she touch you on your privates?
 - Clarification: Did she touch your penis?

The Reluctant, Resistant and Possibly Lying Interviewee

Things you can do to mitigate difficult interviewees:

- Remind them that you are a neutral party. Tell them this means you will not be the one making the decisions, you are reporting what you learn from both parties and witnesses.
- Make use of rapport-building and non-accusatory phrasing:
 - Help me understand...
 - I think I am missing something...
 - Tell me more about...
- If you think that a party or witness is being untruthful, remind them about policy (especially retaliation) and the expectations about truthfulness and how that helps keep a safe learning environment.

Final Interview Questions

Is there anyone else that you think would have information about the complaint?

Is there anything you can think of that I might have missed?

Are there any questions you thought I'd ask that I didn't?

FOR THE COMPLAINANT AND RESPONDENT ONLY

Are there any questions that you'd like me to ask the other party or witness?

Housekeeping

- Make sure you documented the statements so they can be understood by others
- If you used abbreviations, go back and write out fully
- If you skipped a question, state that on your notes.
 - Provide rationale for skipping a question

Credibility

You will be required to make credibility statements on the report. This means you will indicate whether you find a Complainant credible or not as well as the Respondent.

You will need to provide your rationale for your credibility statement.

The Decision-Maker does not have to solely rely on your credibility statement, but it is beneficial to them for you to provide it.

Reasons you might find someone lacks credibility:

- Corroborating evidence shows they are not being truthful

- Inherently not plausible

- Clear motive to falsify

- Less common, but still could consider: past record and demeanor

Fargo Public Team Members Involved

Other than the Investigator, there are other team members for each case.

Patty Cummings, Title IX Coordinator or Lori Nappe, Deputy Coordinator

- Although we review cases weekly, do not interchange the coordinators. We will notify you if we are not able to continue with a case due to illness or other reason.
- We manage timelines, keep relevant people posted, submit formal notifications and reports.
- You may converse with the coordinator about anything at any time without causing a possible bias issue.

Bob Grosz, Decision Maker for Pre-K and Elementary or Missy Eidsness, Decision Maker for Middle and High Schools

- The Investigator should NOT contact these people. Doing so may impart bias.

Bill Westrick, Appeals Decision Maker

- The Investigator should NOT contact the Appeals Decision Maker. Doing so may impart bias.

A word about speaking with building leader: You may interview the building leader, but do so with formal notes. Refrain from talking about the case with the building principal unless they are a relevant person to the case.

A word about interviewing staff: Staff may have representation with them at anytime. It should not be their building leader. If they are a member of FEA make sure they know that representative can be present. If staff is the Respondent, we will work closely with HR.

Party Review of Draft Investigation Report

Both parties are provided the draft investigation report. They are have 10 calendar days to look through and ask for adjustments based on specific rationale. They may have information that wasn't asked for or there is new information that has been learned. They may want to clarify their statement.

A party cannot ask to have the other party or a witness statement changed.

If a change is requested by either party, the TIXC will contact the investigator to determine next steps. Not all requests end in a change to the report.

Questions?