

# TITLE IX

Investigators and Decision Makers Training  
State-wide Training 26 October 2021



Equity Assistance Center | 2021





DIVISION OF ELEMENTARY  
& SECONDARY EDUCATION



# ADE Vision

**Every Arkansan is equitably prepared,  
supported, and inspired to succeed in school,  
career, community, and life.**



DIVISION OF ELEMENTARY  
& SECONDARY EDUCATION



# DESE Mission

The Arkansas Department of Education provides leadership, support, and service to schools, districts, and communities so every student graduates prepared for college, career, and community engagement.



# Equity Assistance Center

Established in 1985

ACA § 6-10-111(a-b)

## Provide Assistance to Districts

- Affirmative Action
- Program Accessibility
- Human Relations
- Awareness
- Desegregation

### Including:

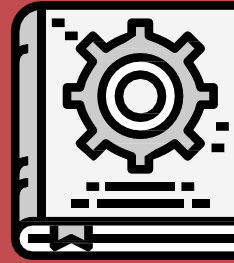
- On Site Visits
- Workshops
- Program Reviews
- Other Activities



# EAC

Shall maintain

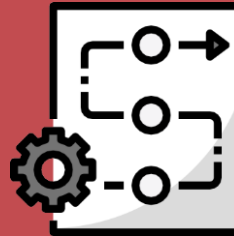
- Civil Rights Requirements & Compliance



Manuals



Guidelines



Procedures



Other Information Materials

# Equity Assistance Center



This training is technical assistance and guidance.

**The EAC cannot provide legal advice.**

*Anything shared in this presentation should be reviewed with the recipient's legal representatives before implementing.*

# USDOE – Office of Civil Rights

## Assist in Compliance

- Letters of Guidance
- Regulations of Compliance

## Enforce Compliance

- Complaint Reviews
- Compliance Investigations



# Every Public School



= EQUITY

**ENVIRONMENT**

**SAFE**

**CONDUCTIVE  
FOR  
LEARNING**

**STUDENT**

**QUALITY  
EDUCATION**

**FREE FROM  
DISCRIMINATION**



# What is Title IX?

Prohibits discrimination on the basis of sex in education programs and activities that receive federal financial assistance.

## Some examples:

- Failure to provide equal opportunity in athletics
- Discrimination in STEM courses and programs
- Discrimination based on pregnancy
- Title IX Sexual Harassment

# History of Title IX

## Education Amendments of 1972

- 1975-US Dept. of Education published 34 CFR Part 106, which implements Title IX

## Guidance documents were used when law had not specifically addressed an issue

- 1997-US Dept. of Education published Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties
- 2001-US Dept. of Education published Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties
- 2011 and 2016-Dear Colleague Letters

## New Regulations are now law: effective August 14, 2020

# TITLE IX SEXUAL HARASSMENT MEANS

CONDUCT ON THE BASIS OF SEX THAT SATISFIES ONE OR MORE OF THE FOLLOWING:



An employee of the recipient\* conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;



Sexual Assault, Dating Violence, Domestic Violence, or Stalking

\* Recipient - institution that receives federal financial assistance

\*\* OCR Q&A on Title IX Regulations on Sexual Harassment - <https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf#page=17>

# SEX OFFENSES AS FORMS OF SEXUAL HARRASSMENT:

## SEXUAL ASSAULT

An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation (FBI).

*20 U.S.C. § 1092(F)(6)(A)(V)*

## DATING VIOLENCE

Violence committed by a person

- a) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- b) where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - i. The length of the relationship.
  - ii. The type of relationship.
  - iii. The frequency of interaction between the persons involved in the relationship.

*34 U.S.C. § 12291(A)(10)*

## DOMESTIC VIOLENCE

Includes felony or misdemeanor crimes of violence committed by

- a) a current or former spouse or intimate partner of the victim,
- b) a person with whom the victim shares a child in common,
- c) a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- d) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or
- e) any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

*34 U.S.C. § 12291(A)(8)*

## STALKING

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

- A. fear for his or her safety or the safety of others; or
- B. suffer substantial emotional distress.

*34 U.S.C. § 12291(A)(30)*

## CONSENT:

“

THE ASSISTANT SECRETARY WILL NOT REQUIRE RECIPIENTS TO ADOPT A PARTICULAR DEFINITION OF CONSENT WITH RESPECT TO SEXUAL ASSAULT

*34 CFR 106.30(a)(103)*

”

### 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.

### STATUTORY RAPE

Nonforcible sexual intercourse with a person who is under the statutory age of **consent**.

### 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.

### INCEST

Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

### 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.

# Consent

## **Title IX states the following in relation to consent**

- **These are individuals who cannot give consent**
  - Students when the Respondent is an employee of the recipient.
  - Severely cognitively disabled persons
  - Incapacitated persons
  - Anyone unable to give consent by law
- **The recipient must specify the definition of consent it will apply.**
- **The recipient must consistently apply that definition**
  - To both the complainant and the respondent
  - From one grievance process to another

# TITLE IX SEXUAL HARASSMENT MEANS

CONDUCT ON THE BASIS OF SEX THAT SATISFIES ONE OR MORE OF THE FOLLOWING:



An employee of the recipient\* conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;



Sexual Assault, Dating Violence, Domestic Violence, or Stalking



Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or

\* Recipient - institution that receives federal financial assistance

\*\* OCR Q&A on Title IX Regulations on Sexual Harassment - <https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf#page=17>

# Severe, Pervasive and Objectively Offensive?

“Signs of enduring unequal educational access due to severe, pervasive, and objectively offensive sexual harassment may include:

- skipping class to avoid a harasser
- a decline in a student’s grade point average, or
- having difficulty concentrating in class

however, **no concrete injury is required to conclude that serious harassment would deprive a reasonable person** in the complainant’s position of the ability to access the recipient’s education program or activity on an equal basis with persons who are not suffering such harassment.”

# Severe, Pervasive and Objectively Offensive?

- Courts must bear in mind that schools are unlike the adult workplace and that **children may regularly interact in a manner that would be unacceptable among adults.**
- Whether gender-oriented conduct rises to the level of actionable “harassment” thus **depends on a constellation of surrounding circumstances, expectations, and relationships,** ...including, but not limited to, the ages of the harasser and the victim and the number of individuals involved.
- **Damages are not available for simple acts of teasing and name-calling** among school children, however, even where these comments target differences in gender.

– Davis v. Monroe County Bd. of Ed., 526 U.S. 629 (1999)

# Guidelines

- **COMPLAINANT MUST BE PARTICIPATING IN OR ATTEMPTING TO PARTICIPATE**
  - in the education program or activity of the recipient with which the formal complaint is filed
    - [where] “recipient exercised **substantial control** over both the respondent and the context”
- **PARENT OR GUARDIAN MAY FILE A FORMAL COMPLAINT**
  - on behalf of complainant
- **"DOCUMENT FILED BY A COMPLAINANT" MEANS**
  - a document or electronic submission that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint

34 CFR § 106.30(a); 106.6(g)

## Grievance Process for Title IX Sexual Harassment

34 CFR § 106.45

## Formal Complaint

# Scope of Education Program/Activity

- “...an education program or activity includes locations, events, or circumstances **over which the recipient exercised substantial control over both the respondent and the context** in which the harassment occurs.”

# Complainant

Individual who is alleged to be the victim of conduct that could constitute Title IX sexual harassment.

## Respondent

Individual who has been reported to be the perpetrator of conduct that could constitute Title IX sexual harassment.

## Recipient

Institution that receives Federal financial assistance.

# Is it Title IX Sexual Harassment?

A student grabs another student's rear end in the hallway between classes.

# Is it Title IX Sexual Harassment?

A substitute teacher, hired through a temp agency, is accused of only helping the young women who have low cut shirts and lean forward when working with them.

# Is it Title IX Sexual Harassment?

A teacher who worked at your school last year, but is now employed by another school district is accused of sending text messages this year to many of the students at your school requesting “nudes.”

# Is it Title IX Sexual Harassment?

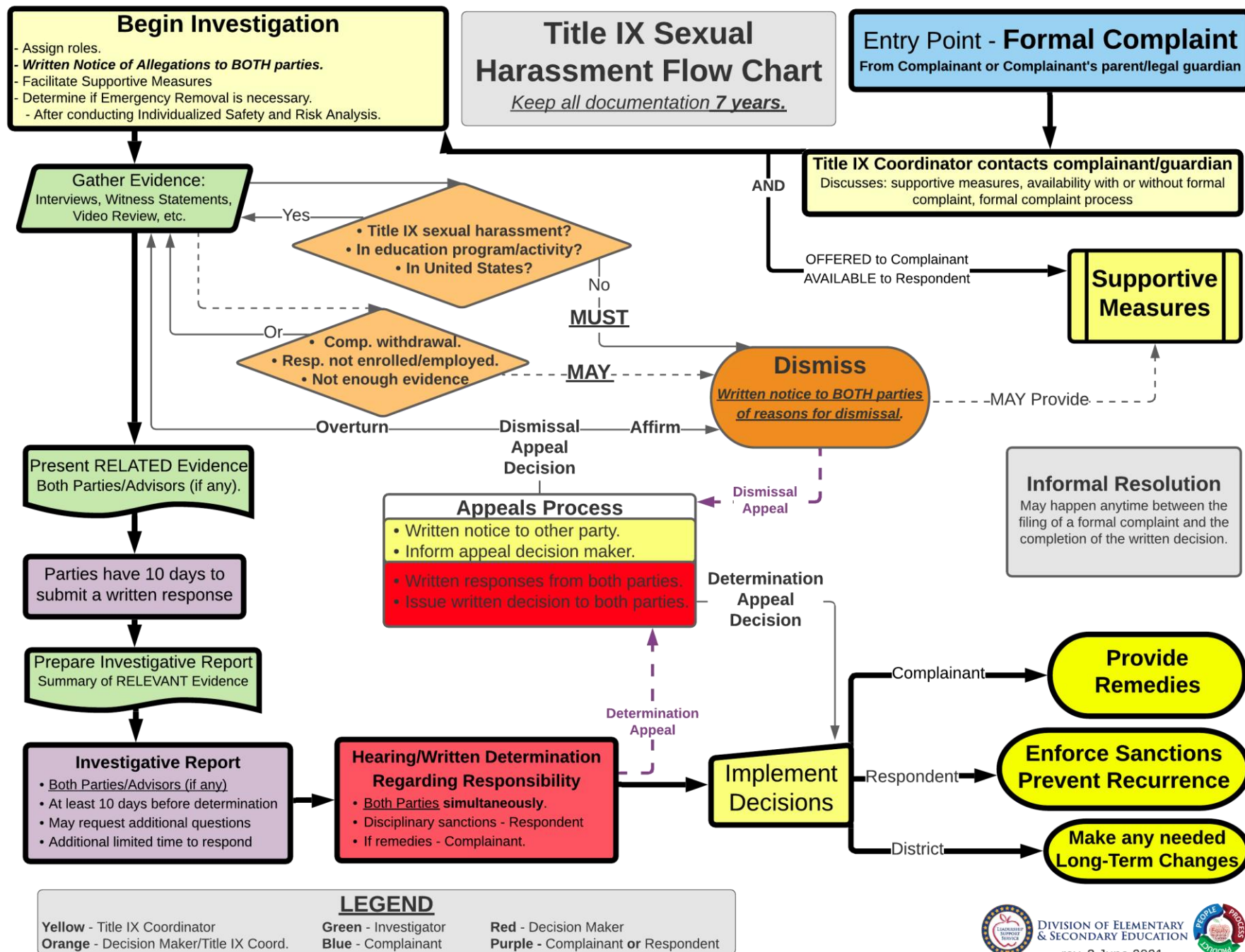
A teacher who worked at your school last year, but is now employed by another school **in your district** is accused of sending text messages this year to many of the students at your school requesting “nudes.”

An investigation of sexual harassment does not occur until a formal complaint is filed.

The recipient must investigate the allegations in a formal complaint.

**Report** puts recipient on notice  
**Formal Complaint** initiates an investigation





# Timeline

- **Gather Evidence**
- **Present Evidence to Parties**
  - Parties have 10 days to submit a written response
- **Create Investigative Report**
- **Send Investigative Report to Parties/Decision Makers**
  - Parties have 10 days to review and provide a written response
  - Response may include additional questions to be asked of the other party
- **Make Decision regarding Responsibility**
  - Written and provided simultaneously to both parties
- **Allow for Appeal**
  - Once the time to appeal has expired, or the appeal decision is made, the process is complete

## Grievance Process for Title IX Sexual Harassment

34 CFR § 106.45

## Investigation

# Guidelines

- **ENSURE**
  - burden of proof and burden of gathering evidence rest on the recipient
- **PROVIDE EQUAL OPPORTUNITY**
  - for parties to present witnesses and other evidence
  - for parties to have others present during any grievance proceeding
  - for parties to inspect and review any evidence
- **DO NOT RESTRICT**
  - the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence
- **PROVIDE WRITTEN NOTICE**
  - to a party whose participation is invited or expected

## Grievance Process for Title IX Sexual Harassment

34 CFR § 106.45

## Investigation

# Single Investigator Model

A process where one person interviews all parties and witnesses, gathers and examines the evidence and makes the final determination regarding guilt or innocence of the respondent. Typically, that person would also determine the actions to be taken against the respondent and/or for the complainant.

## Previous

- Title IX did not specify investigation model
- Previous guidance somewhat encouraged model (2014 WH Task Force report)

## Current

- New rules expressly forbid the single investigator model.



# Investigators

1

## CONDUCT INVESTIGATIONS

2

## CREATE INVESTIGATIVE REPORT

- CANNOT be a decision maker, for this complaint.
- Can be Title IX Coordinator.
  - Consider the other responsibilities of the Title IX coordinator.
- Principals or Assistant Principals?
  - As long as they have received the required training.
- Title IX does not specify who can or cannot be an investigator, as long as they...
  - have received the appropriate training, AND
  - are not the decision maker in the complaint they are investigating.



# Decision Makers

1

WRITTEN DETERMINATION

or

WRITTEN DECISION

- Single individual
- Panel of individuals
- Multiple individuals who each adjudicate specific portions of the grievance process.
- First point of appeal cannot go to the original decision maker.
- School principals may be the decision makers for their buildings, provided they are not involved in any way in collecting evidence.
  - If they have interviewed any witnesses are they investigators?
  - Can they be unbiased if they received the initial report?

# Dismissing a Formal Complaint

## Must Dismiss

- If conduct alleged in a formal complaint would not constitute sexual harassment.
- If conduct did not occur in the recipient's education program or activity.
- If conduct did not occur against a person in the United States.

***"Such dismissal does not preclude action under another provision of the recipient's code of conduct."***

## May Dismiss

- If complainant notifies the Title IX Coordinator in writing that they want to withdraw the formal complaint or any allegation therein.
- If respondent is no longer enrolled or employed by the recipient.
- If specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon dismissal for any reason above, the recipient must promptly send written notice of the dismissal and reason(s) simultaneously to the parties.

# Is it Title IX Sexual Harassment?

A virtual student at another school in your district sends sexually explicit messages and images to a virtual student in your school using the school provided device.

# WHAT ABOUT FERPA?

The obligation to comply with Title IX is not obviated or alleviated by the FERPA statute or FERPA regulations.

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

# WHAT ABOUT FERPA?

The obligation to comply with Title IX is not obviated or alleviated by the FERPA statute or FERPA regulations.

## Notice of Allegations

**IDENTITIES** of the parties involved in the incident.

## Determination

- Given to **both** parties.
- Declaration of responsibility.
- **What sanctions** are imposed on *respondent*.
- **If remedies** are offered *complainant*.

## Supportive Measures

Kept confidential so long as the confidentiality does not deter the ability to provide the supports.

# WHAT ABOUT FERPA?

## Why?

### Fairness

...complainants **need not be identified by name** to a respondent **upon a report** of sexual harassment, including for the purpose of obtaining supportive measures.

...**Formal complaint**...triggers a **grievance process**, and in the **interest of fairness** that process must commence with both parties receiving... pertinent details...

# WHAT ABOUT FERPA?

## How?

### Full name vs. Initials

The Department **disagrees that using only the initials of the parties** (instead of the full names), or withholding the complainant's identity entirely, or requiring both parties to refrain from disclosing each other's personally identifiable information, **sufficiently permits the parties to meaningfully participate** in the grievance process.

# WHAT ABOUT FERPA?

## Why?

### Personally Identifiable Information (PII)

...notice of allegations provision does not require listing personally identifiable information...beyond the “identity” of the parties

notice need not, and should not, for example, contain...dates of birth, social security numbers, or home addresses

nothing in the final regulations precludes a recipient from directing parties not to disclose such personally identifiable information.

# Title IX Investigation

## Educational Process

### Not Legal/Criminal Proceeding

- “...Title IX grievance processes are **not court trials** and are expected to be **overseen by layperson officials** of a school, college, or university rather than by a judge or lawyer.”
- “...the Department is **not requiring recipients to adjudicate criminal charges or replace the criminal justice system.**”
- “The Department acknowledges that Title IX grievance processes are **very different from criminal proceedings...**”

# Title IX Investigation

## Educational Process

## Presumption of Non-Responsibility ≠ Presumption of Innocence

- “...presumption of non-responsibility is critical to ensuring a fair proceeding
- “...[It is] rooted in the same principle that underlies the constitutional presumption of innocence afforded to criminal defendants.”
- “...presumption of innocence afforded to criminal defendants is not a constitutional requirement in Title IX proceedings...”
- “...the presumption of non-responsibility reinforces that the burden of proof remains on the recipient, not on either party.”

# Is it Title IX Sexual Harassment?

A virtual student sends sexually explicit messages and images to another virtual student on their cell phones during school time.

# What is Impartiality?



- ✓ NEUTRAL
- ✓ EQUITABLE
- ✓ FAIR IN ACTIONS
- ✓ OBJECTIVE CRITERIA

“

*This approach reflects the reality that recipients are not courts, yet do need to apply a fair, truth-seeking process to resolve factual allegations of Title IX sexual harassment.*

”





# Title IX References of Impartiality

“

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Require that any individual designated by a recipient as a **Title IX Coordinator, Investigator, Decision-maker**, or any person designated by a recipient to facilitate an informal resolution process, **not have a conflict of interest or bias**

---

”



# Title IX References of Impartiality

Title IX provisions are rooted in the importance of **an impartial process** before **unbiased officials** to ...

“

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(1) Improve perceptions that Title IX sexual harassment allegations are resolved fairly and reliably,

(2) Avoid intentional or unintentional injection of sex-based biases and stereotypes into Title IX proceedings, and

(3) Promote accurate, reliable outcomes

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”

# Confidence held by others

Failure to be impartial may negatively affect the confidence held by others in the institution's Title IX processes or the District or school as a whole.

*PREAMBLE - A fair grievance process will lend greater legitimacy to the resolution of complainants' allegations, which will improve the environment for complainants rather than perpetuate a hostile environment or increase negative social reactions to complainants, such as disbelief and blame (30259).*

## Ethical expectations

Taking advantage of a conflict of interest might be viewed as poor professional conduct - in violation of ethical expectations.

*AR CODE OF ETHICS Standard 5 - An educator maintains integrity regarding the acceptance of any gratuity, gift, compensation or favor that might impair, or appear to influence professional decisions or actions and shall refrain from using the educator's position for personal gain.*

## Grounds for appeal

Issues related to conflict of interest or bias may be grounds for appeal.

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# Serving Impartially



## DESIGNATED INDIVIDUALS MUST

“

*be trained "how to serve impartially, including by avoiding **prejudgment of the facts at issue, conflicts of interest, and bias**"*

”



## DESIGNATED INDIVIDUALS SHOULD

Be self-aware

State when we cannot be impartial

“

*Recipients **should** have objective rules for determining when an adjudicator (or Title IX Coordinator, investigator, or person who facilitates an informal resolution process) is biased, and the Department leaves recipients discretion to decide how best to implement the prohibition on conflicts of interest and bias...*

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# Serving Impartially



## DESIGNATED INDIVIDUALS MUST

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*be trained "how to serve impartially, including by avoiding **prejudgment of the facts at issue, conflicts of interest, and bias**"*

”



## DESIGNATED INDIVIDUALS SHOULD

Be self-aware

State when we cannot be impartial

- Not have an unfettered duty when they cannot be impartial

# Is it Title IX Sexual Harassment?

A student who left your district in the middle of the last semester alleges that students at your school were constantly grabbing their private body parts whenever an adult was not around last semester.

# Steps of Investigation

- Plan out the Investigation
- Interview Witnesses
- Present all Related Evidence
- Consider Written Responses
- Write Investigative Report

# Plan out the Investigation

- Review Notice of Allegations
- Gather current evidence
- Determine a preliminary timeline of events
- Develop a proposed interview list
  - Get list of accommodations needed
    - SpEd, 504, ELL, etc.
- Determine the order of interviews

# Notice of Allegations

- You may only investigate the allegations listed in the “Notice of Allegations”
- New allegations require a new “Notice of Allegations”
  - *If, in the course of an investigation, the recipient decides to **investigate allegations** about the complainant or respondent that are **not included in the notice** provided pursuant to paragraph (b)(2)(i)(b) of this section, **the recipient must provide notice of the additional allegations** to the parties whose identities are known.*

# Interview Witnesses

- Provide a written notice to the person being interviewed
  - Location, date, time and who will be present

# Notice of Title IX Investigative Interview

Title IX Forms by Cody Kees

Dear SALUTATION:

As you are aware, the District has received a Formal Complaint alleging a Title IX sexual harassment involving your student. I plan to interview your student at the time and place provided below:

Date:

Time:

Location:

Participants:

You and/or an advisor for the student may accompany the student to the interview to observe the process. However, the student will be expected to respond to questions directly, as developmentally appropriate. While an advisor may attend the meeting, he/she may not question the student, others, or the investigator.

If any person attending the interview has a need for a disability accommodation, please let me know before the date of the interview.

You have the right to submit evidence for consideration. You may submit evidence to me via email, flash-drive, or hard-copy. For all evidence you submit, please retain the original and provide only a copy. Include your student's name and the date on all information submitted. Please keep in mind that before the issuance of my investigative report, both the Complainant and the Respondent will have the opportunity to review all related evidence and an opportunity to submit a written response.

If you have any questions regarding the interview, please contact me at PHONE or EMAIL.

Sincerely,

INVESTIGATOR NAME

Title IX Investigator

cc: Title IX Coordinator

# Interview Witnesses

- **Provide a written notice to the person being interviewed**
  - Location, date, time and who will be present
- **Discuss what information may be shared with others**
- **Explain the prohibition on retaliation**

# Title IX Sexual Harassment Witness Form

Title IX Forms by Cody Kees

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on sex in educational institutions that receive federal financial assistance. Students, employees, volunteers, and others may possess information relevant to making a determination of responsibility of a Formal Complaint of sexual harassment. However, no individual can be forced to participate in a Title IX sexual harassment investigation, nor may the district retaliate against any individual for participating in or refusing to participate in a Title IX sexual harassment investigation.

A witness may complete this form. If it is not developmentally appropriate for a student to complete this form, the investigator may interview the student and complete the form based on the student's responses.

Witness's Name: \_\_\_\_\_ School/ Work Location: \_\_\_\_\_  
If employee, Job Title: \_\_\_\_\_

Please describe what you witnessed, where, and when. If you did not witness the incident, describe what you were told and when. (Identify: Who, What, When, and Where)  
Does any record (physical or electronic) of this incident exist in your possession?

☐ No  
☐ Yes If yes, please describe the record and its location:

Have you spoken to anyone else about what you witnessed?

☐ No  
☐ Yes If yes, please provide their name and phone number:

Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Format (xxx) xxx-xxxx

Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Format (xxx) xxx-xxxx

Witness signature:

I certify that the information provided above is true and correct.

# Impact of Trauma

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From Jeffrey J. Nolan  
“Fair, Equitable Trauma-Informed Investigation Training”

<https://www.hklaw.com/-/media/files/insights/publications/2019/07/fairequitabletraumainformed-investigationtraining.pdf>

## Scientific Research and Critiques

### Research suggests

- Trauma may be a catalyst for gaps in memory
  - Details out of order
  - Not all details remembered
  - Remember more over time
- Trauma may affect how they act when recalling event
  - Laughing
  - Smiling
  - Emotionless

### Critiques claim

- Other things can cause memory gaps
- It could result in a gender based bias
- People assume the presence of gaps as proof of trauma

# Impact of Trauma

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## Items to consider

- Stressful events do not automatically result in strong memories
- Memories are typically not precise and in a well-defined chronological order
- Ask what they remember about the event
  - Do not interrupt
  - Let them finish their version
- Avoid “Why didn’t you...” questions.
  - Instead “Help me understand...”
- Behaviors & memory gaps should not be seen as proof that someone is or is not lying
  - The information given should be reviewed in light of the remainder of the evidence.

# Present all Related Evidence

- Provide an opportunity for both parties to review and inspect the evidence.
  - Include evidence not being relied on to make a determination.
  - Include inculpatory **and** exculpatory evidence.
- Not Federal Rules of Evidence
  - Those are legal rules, this is an educational process.

# Present all Related Evidence

- **Inculpatory**
  - Evidence that is used to show the respondent was involved in the alleged harassment.
- **Exculpatory**
  - Evidence that is used to show the respondent was NOT involved in the alleged harassment.

# Present all Related Evidence

- **Include evidence related to the investigation**
  - Redact protected information if no written consent is given.
  - May redact unrelated evidence.
  - May NOT redact information just because it is confidential.

# Present all Related Evidence

## Protected Information

- **Must have written consent to include:**
  - Records maintained by:
    - Physician
    - Psychologist
    - Psychiatrist
    - Other professional/paraprofessional acting or assisting in professional/paraprofessional capacity
  - And are maintained in connection with treatment of party

# Title IX Complaint – Opportunity to Review Evidence

Title IX Forms by Cody Kees

Dear Mr./Ms. \_\_\_\_\_ :

You have the right to review any evidence obtained as part of the investigation of a Title IX sexual harassment allegation involving your student. Please contact me at (XXX) XXX-XXXX or [email] by [date] if you would like the opportunity to inspect and review the evidence.

The evidence may be provided in a format that prevents copying or downloading in order to protect the confidentiality of information in education records for any student involved.

You may submit a written response within 10 days of reviewing the evidence. I will consider your written response before I draft the investigative report.

Sincerely,

[Name]  
Title IX Investigator

cc: Title IX Coordinator

# Consider Written Responses

- Both parties have 10 days to review related evidence and provide a written response
  - Question missing evidence
  - Argue relevance
- Investigator must **consider written responses before** creating the Investigative Report

# Write Investigative Report

- Fairly summarize **relevant** evidence
- Present to both parties simultaneously
- Electronic or hard copy
- 10 days prior to hearing or written determination

# Include all Relevant Evidence

- **Not Relevant**
  - Complainant's
    - Sexual predisposition
    - Prior sexual behavior
    - Unless:
      - To prove someone else committed the allegation
      - To prove consent

# TITLE IX FINAL INVESTIGATION REPORT TEMPLATE

Title IX Forms by Cody Kees

A Formal Complaint was filed on [date] by [Name of Complainant or Title IX Coordinator]. This report contains a summary of the relevant evidence gathered through the District's investigation of the Formal Complaint, as part of the District's Title IX grievance process.

This investigation was conducted by [name of investigator] from [date] to [date]. The parties have been given the opportunity to inspect, review and provide a written response to the evidence gathered in this investigation that was related to the allegation.

## Allegations

The allegations potentially constituting Title IX sexual harassment are as follows:  
[identify the allegations]

Procedural Steps <Clip – Not required in investigative report but okay to include>

## Summary of Relevant Evidence

- I. Information about the parties
- II. The allegations in the Formal Complaint
- III. Timeline/dates of allegations and procedural steps
- IV. Relevant sections of board policy and the student of code of conduct
- V. Whether a Child Abuse Hotline report was necessary
- VI. Whether there is a related criminal/juvenile investigation
- VII. Evidence from interviews
- VIII. Physical or other evidence
- IX. Consideration of written responses to draft investigative report (relevant evidence only)

This is the final investigative report in this matter. The decision-maker will allow the parties to at least 10 days submit relevant questions for the other party(ies) or witnesses and allow additional limited time for the parties to respond to the new questions and responses before making a determination of responsibility for a Title IX violation.

# Is it related? Is it relevant?

**Respondent vandalized the bathroom immediately prior to the alleged harassment.**

# Is it related? Is it relevant?

**Complainant has had a previous sexual relationship with the respondent.**

# District Grievance Process

- Scope of Education Program or Activity
- Definition of Consent
- Informal Resolution
- Hearing
- Other Investigation Report Specifics
- Other District Specific Items



# Scope of Education Program/Activity

- “...an education program or activity includes locations, events, or circumstances **over which the recipient exercised substantial control over both the respondent and the context** in which the harassment occurs.”

# Scope of Education Program/Activity

- “The Department reiterates that the final regulations **do not** impose a geographic test or **draw a distinction between on-campus misconduct and off-campus misconduct.**”

# Scope of Education Program/Activity

- “...a recipient is **not required** by these final regulations **to inefficiently extricate conduct occurring outside an education program or activity** from conduct occurring in an education program or activity...”

# Is it related? Is it relevant?

**Respondent used similar language/took similar actions one week prior in relation to another individual.**

# Definition of Consent

- Cannot give consent
  - Student to employee
  - Severely cognitively disabled persons
  - Incapacitated persons
  - Anyone unable to give consent by law
- Must be consistently applied to complainant and respondent and from one grievance process to another
- District will define further

# Informal Resolutions & Hearings

- District determines if they are offering/providing
- Hearings
  - Decision-maker must be trained on any technology used in hearings
- District will define further

# Other Investigation Report Specifics

- Do they want the investigator to give a recommendation?
- Should certain evidence get weighed differently?
- Include all details of the process?
- Any other specifics for the Investigative Report?
- District will define further when contracting.

# Other District Specific Items

- What remedies and disciplinary sanctions are available
- Additional basis for appeal
- The Title IX Personnel

# Is it related? Is it relevant?

**The complainant has had an abortion before.**



# Retaliation

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NO RECIPIENT OR OTHER PERSON MAY INTIMIDATE, THREATEN, COERCE, OR DISCRIMINATE AGAINST ANY INDIVIDUAL FOR THE PURPOSE OF INTERFERING WITH ANY RIGHT OR PRIVILEGE SECURED BY TITLE IX

34 CFR § 106.71 (a)

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# Decision Maker Responsibilities

- Review the investigative report
- Allow 10 days for written responses
- Consider relevance of additional questions
- Allow additional days as needed for parties to respond to the relevant questions presented
- Apply standard of evidence

# Standard of Evidence

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## **SELECT ONE STANDARD**

The standard must be listed in the grievance process.

## **CONSISTENTLY APPLIED**

It cannot be harder to prove an allegation against a teacher than it is to prove an allegation against a student.

### **PREPONDERANCE OF THE EVIDENCE**

The evidence shows that the allegation is more likely to have occurred than to have not occurred. (>50% chance that the allegations are correct.)

### **CLEAR AND CONVINCING EVIDENCE**

The evidence shows that the allegation is substantially more likely to be true than untrue. (High probability, but still less than “beyond a reasonable doubt”)

# Written Determination Regarding Responsibility

- Decision can be made by multiple decision makers
- Must be one document
- Presented to both parties simultaneously
- Include all items required by the regulations

# Written Determination of Responsibility

- **Identification of the allegations**
- **Description of the procedural steps taken**
  - From receipt of formal complaint – written determination
- **Findings of fact supporting the determination**
- **Conclusions regarding the application of the code of conduct to the facts**
- **Statement and rationale for the result of each allegation**
  - Determination regarding responsibility
  - Any disciplinary sanctions imposed on the respondent
  - Whether remedies will be provided to the complainant
  - May have multiple decision makers but ONE written determination
- **Procedures and permissible bases for Complainant and Respondent to appeal**

# Remedies

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**"NEED NOT AVOID  
BURDENING THE  
RESPONDENT"**

MAY INCLUDE THE SAME INDIVIDUALIZED SERVICES AS  
SUPPORTIVE MEASURES

PROVIDED TO COMPLAINANT

OFFERED AS APPROPRIATE,  
as reasonably available, and without fee or charge to complainant

TO BE MAINTAINED AS CONFIDENTIAL  
to the extent that maintaining such confidentiality would not impair  
the ability of the recipient to provide.

THE RESPONSIBILITY OF THE TITLE IX COORDINATOR  
to coordinate the effective implementation.

TO BE DOCUMENTED FOR 7 YEARS

# Is it related? Is it relevant?

**Complainant has had relationships with multiple students previously.**



# • Appeals must be offered to both parties

From a determination regarding responsibility

From a recipient's dismissal of a formal complaint or any allegations therein

on the following bases:

Procedural irregularity that affected the outcome of the matter

New evidence that was not reasonably available that could affect the outcome of the matter

Title IX Personnel Team had a conflict of interest or bias towards complainant or respondent that affected the outcome of the matter

# APPEAL GUIDELINES

**Notify other party in writing when an appeal is filed**

**Implement appeal procedures equally to both parties**

**Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome**

# INVESTIGATION TIMELINE



# EQUITY ASSISTANCE CENTER TEAM

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