



Title IX Informal Resolution Training

Training Objectives

- Understanding of Title IX & Grievance Procedures
- Role and Responsibilities of Title IX Informal Resolution Facilitator
- Conflict of Interest & Bias
- Trauma-Informed Approaches

Title IX

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 assistance.

Sexual Harassment: Three Buckets



Bucket 1: *Quid Pro Quo*

1. A District employee
2. Conditioning the provision of an aid, benefit, or service of the District
3. On an individual's participation in unwelcome sexual conduct.

Bucket 2: Hostile Environment

1. Unwelcome conduct
2. Severe
3. Pervasive, and
4. Objectively offensive
5. Effectively denies a person equal access to the District's education programs or activities.

*Reasonable person standard

Bucket 3: Specific Offenses

The Big Four:

- Sexual Assault
 - Rape
 - Criminal Sexual Contact
 - Incest
 - Statutory Rape
- Dating Violence
- Domestic Violence
- Stalking

Sexual Assault

- **Rape:** The penetration, no matter how slight, of vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without victim's consent.
- **Sexual Contact:** The intentional touching of any body parts (clothed or unclothed) without consent for sexual gratification, degradation, or humiliation. Also includes the victim being compelled to touch the actor without consent for the same purposes.
- **Incest:** Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited.
- **Statutory rape:** Non-forcible sexual intercourse with a person under the age of consent.

Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

The existence of such a relationship is determined by a consideration of the length and type of relationship and the frequency of the parties' interactions during the relationship.

Domestic Violence

Violence committed by a:

- Current or former spouse or intimate partner of the victim
- Person with whom the victim shares a child in common
- Person who is cohabitating or has cohabitated with the victim as a spouse or intimate partner
- Person similarly situated to a spouse of the victim.

Stalking

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

1. fear for their safety or the safety of others, or
2. suffer substantial emotional distress.

Title IX-The Who

Conduct can occur between:

- Student : Student
- Employee : Student
- Student : Employee
- Employee: Employee

Parties-Language Matters!

Complainant:

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

Respondent:

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

Members of the Title IX Team

1. Title IX Coordinator
2. Investigator
3. Decision Maker
4. Appellate Decision Maker
5. Informal Resolution Facilitator
6. Other individuals involved:
 - a. Advisors
 - b. Responsible Employees
 - c. Support Individuals

Title IX-The Where

Jurisdiction: Location, events, or circumstances over which the school or district exercises substantial control over both the Respondent and the context in which the sexual harassment occurs (+ in the US)

Two Questions to Ask:

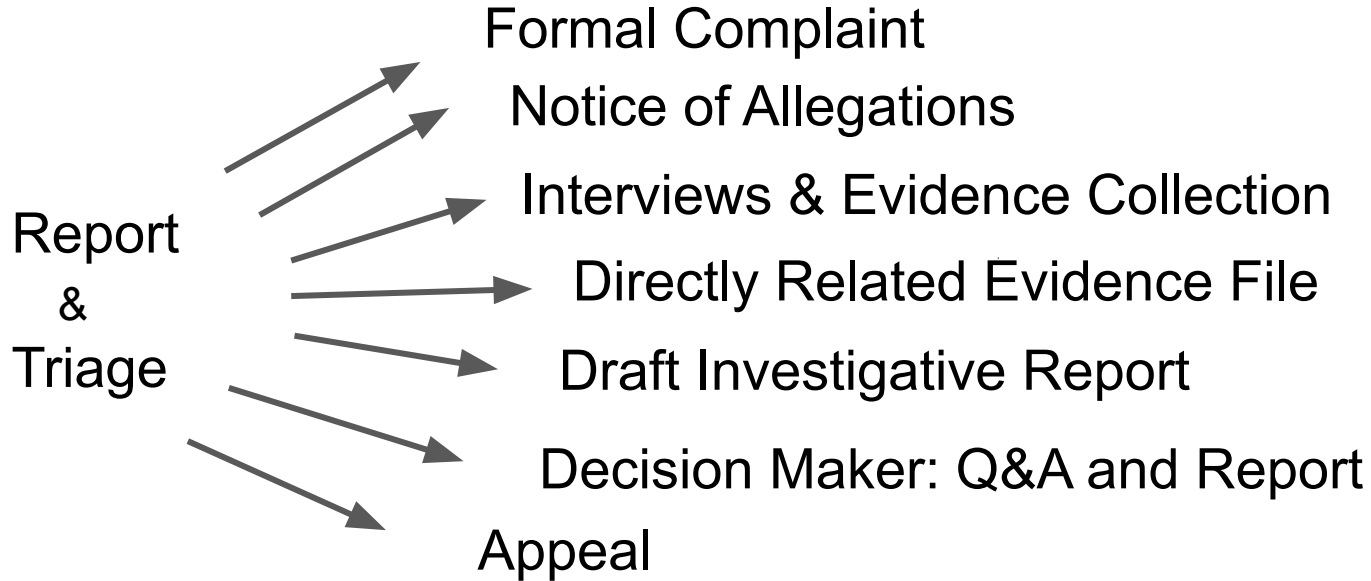
1. Control over location/event
2. Control over the respondent

Title IX-The When

No Statute of Limitations



Title IX Formal Grievance Process



Reporting & Triage

Two Questions to Ask:

1. Does it fit within a bucket?
2. Do we have control of the Respondent and the conduct?

Regardless of outcome, implement supportive measures!

Formal Complaint & Notice of Allegations

Formal Complaint

- Alleging Sexual Harassment
- Request to Investigate
- Signed

Notice of Allegations

- Grievance Process
- Allegations
- Presumed not responsible
- Determination at end of process
- Advisor
- Review and inspect evidence
- False statements Provision

Burdens

- Burden on District to gather evidence
 - Treatment records require voluntary written consent
 - May not restrict ability of parties to discuss allegations or gather/present evidence
- Burden of Proof
 - Preponderance of the evidence: more likely than not standard

Scope of Investigation

Does your investigation include other policies:

- Employee Code of Conduct
- Title VII
- ADEA

Ten Day Review Periods

Directly Related Evidence File: review of an electronic or hard copy of all evidence gathered by the investigator that is directly related to the allegations in the formal complaint, including evidence the investigator does not intend to rely upon in the investigation report.

- Parties may choose to submit a written response
- Redactions where appropriate
- Ten work days

Ten Day Review Periods Cont'd

Investigative Report: summation of the evidence to be submitted to the decision-maker.

- Parties may choose to submit a written response
- Redactions where appropriate
- Ten work days
- Appendix with relevant evidence

Drafting Investigative Report

- Language Matters!
- Components of Report
 - Summary of allegations
 - Jurisdiction
 - Definition of conduct at issue
 - Summary of relevant evidence and information
 - Timeline of investigation
 - Attachments

Determining Relevance

- No definition in the regulations
- Be prepared to explain why you found something relevant or irrelevant and why you included/did not include evidence in your investigation report.

Drafting Investigative Report

Additional Factors to Consider:

- Who is the audience?
- Is it a summary or regurgitation of the information?
- Organization of information
 - By allegations
 - Chronological Order
- Page Numbers
- Footnotes

Decision Maker

- Question and Answer Period
 - Parties shall have the opportunity to submit relevant written questions to one another and to the witnesses
 - Each party shall be provided copies of the questions posed and answers to those questions
 - Limited follow-up
 - Decision-Maker determines relevancy of questions

Determination Report

Components included in Report:

- Allegations
- Procedural steps
- Finding of facts
- Conclusion & rationale
- Sanctions, remedies, & continuation of supportive measures
- Appeal rights

Sent simultaneously to both Parties

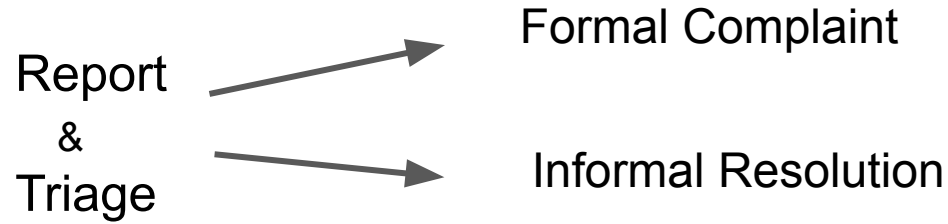
Appeals

Either party may appeal to the Superintendent within five (5) days of receiving the Determination Report.

Grounds for appeal:

- Procedural irregularity that affected the outcome of the grievance process;
- New evidence that was not reasonably available at the time the determination regarding the existence of a policy violation was made that could affect the outcome of the grievance process; and/or
- The Title IX/Nondiscrimination Coordinator, the investigator, or the decision-maker had a conflict of interest or bias that affected the outcome of the grievance process

Title IX: Informal Resolution



Role of Informal Resolution Facilitator

- Not an Investigator!
- Guide parties to a mutually agreeable solution
- Help parties communicate, identify issues, and find a resolution that addresses their concerns, rather than making a decision for them.
- Maintain Neutrality

Conflict of Interest or Bias

- Conflict of Interest: personal or private interests compromise ability to perform duties impartially.
 - Actual
 - Perceived
 - Potential
- Bias: Regarding specific parties or Complainants/Respondents in general.

Informal Resolution

- Not available in the case of an employee who allegedly engages in sexual harassment of a student
- Available after Formal Complaint is filed and prior to resolution
- Voluntary Participation: both Parties must agree and TIXC must deem it appropriate
- Not a waiver of right to investigation or condition of employment
- Right to withdraw

Informal Resolution Cont'd

- Required Documents
 - Written Consent to Participate
 - Notice of Informal Resolution
 - Informal Resolution Agreement
- Led by a trained Informal Resolution Facilitator
 - Mediation
 - Restorative Justice
 - Facilitated Dialogue
 - Educational Conversation

Informal Resolution Process: Step 1

- Consent to Participate
 - Both Parties must agree to participate in writing
- Language should include
 - Both Parties Agreed
 - Allegations
 - Requirement of Informal as set forth in Policy
 - What happens when a resolution is reached
 - Outcomes available
 - Withdrawal rights
 - What happens if informal fails
 - Use of statements
 - Record retention

Step 2: Notice of Informal Resolution

- Written confirmation that both parties have agreed to Informal Resolution
- Cite to Policy
- Right to Withdraw
- Notice of Meeting/Method
- Who will be Present

Step 3: Methods of Informal Resolution

1. Mediation

- A neutral third party (the mediator) helps the parties communicate and negotiate to reach their own agreement.

2. Facilitated Dialogue

- A structured conversation between parties, guided by a neutral third party who helps them work toward an agreed-upon solution.

3. Restorative Justice

- A process that brings together those affected by a conflict to collectively address the harm and decide how to move forward.

4. Educational Conversations

- Discussions designed to educate a person about their conduct and its impact.

Step 4: Informal Resolution Agreement

- Written Agreement signed by Both Parties
- Binding Agreement
- Agreement is Final & No Appeal
- What can be included in an Agreement:
 - Admission of responsibility, admission of false allegations, disciplinary sanctions, counseling, and involvement in educational program, etc.

Trauma Informed Practices

Factors to Consider:

- Environment
 - Setting of Interview
 - Importance of Privacy
 - Seating choice
- Communication
 - Tone
 - Use of Language
- Process
 - Explanation of Process
 - Answering Questions
 - Breaks

Trauma Informed Practices

Factors to Consider:

- Understanding how trauma can manifest
 - Flexibility
 - Adapt approach to accommodate reponses
- Avoid judgmental questions
 - Example: Why did you do that?
 - Example: Why didn't you leave?

Questions?

Thank you!