



Title IX Decision-Maker Training

Training Objectives

- Understanding of Title IX & Grievance Procedures
- Role and Responsibilities of Title IX Decision-Maker
- Best Practices for Determination Report
- Conflict of Interest & Bias

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.

Title IX: The What

Access

Sexual
Harassment

Pregnancy

Athletics &
Programming

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.

Quid Pro Quo Example

Mr. Smith, the High School Principal, told Michael, an eleventh grade student, that he would write him a glowing letter of recommendation for college, but that he would have to “earn it.” Mr. Smith winked at Michael and looked him “up and down” when he said those words.

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

Hostile Environment Example

Ms. Johnson is a paraprofessional in the Autism classroom. Another paraprofessional in the same classroom has been making comments to her, including:

- Do you have a boyfriend?
- You look beautiful
- If I was your boyfriend I would treat you right.

In addition to these remarks, the paraprofessional has placed his arm around her shoulders numerous times despite her protests and has grazed her breasts with his hand.

Hostile Environment Example

An eleventh grade student reported that her math teacher, Mr. Lopez, has massaged her shoulders and touched her hair without her consent. Additionally, Mr. Lopez has made several comments about her appearance including:

- You dress mature for your age
- Is that a new dress? I like it on you.
- You should send me pictures when you go dress shopping for prom.

The student feels uncomfortable about these actions and has stopped attending math class.

Bucket 3: Specific Offenses

The Big Four:

- Sexual Assault
 - Rape
 - Fondling
 - 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.
- ***Fondling:** The touching of private body parts (genitals, breasts, buttocks) of another person for the purpose of sexual gratification, without the consent of the victim.
- **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.

Sexual Assault

- **Rape:** During a one-on-one meeting, Mr. Johnson forced Ms. Kelly to perform oral sex against her consent.
- **Fondling:** While walking by her teaching assistant, Ms. Jones brushed her hand across his genital region and told him “you are looking good today.”
- **Incest:** Mr. Davis engaged in sexual intercourse with his nephew during school hours.
- **Statutory rape:** Ms. Brown is in a sexual relationship with one of her ninth grade students.

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.

Dating Violence

Ms. Miller, upon learning that her boyfriend, a science teacher at the same school, was flirting with the Secretary, went to his classroom and threw science textbooks at his head while yelling “cheater.”

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.

Domestic Violence

Ms. Lee, angry that her wife missed an important deadline, walked into her wife's classroom, pushed her wife against the wall and punched the wall next to her wife's head.

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.

Stalking Example

Ms. Moore reported that another staff member has been engaging in the following conduct:

- Leaving handwritten messages in her mailbox complimenting her appearance;
- Waiting for her outside the school building each morning with coffee; and
- Appearing in the breakroom every time she is on lunch.

Ms. Moore shared that she has asked the staff member to cease this conduct, but he persists. Ms. Moore feels uncomfortable by this conduct and does not want to come to school.

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.

Parties

Title IX Coordinator **never** becomes a party,
even if they sign the Formal Complaint!



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

Jurisdiction

No jurisdiction? Select the proper pathway!

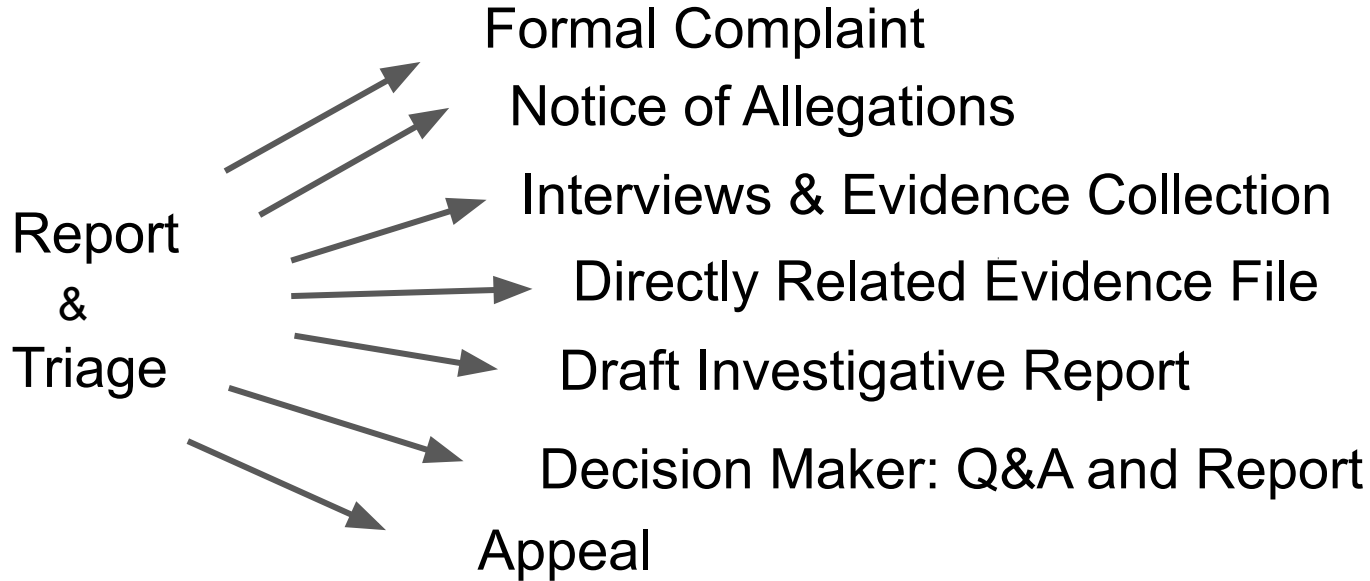


Title IX-The When

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

Role of the Investigator

- Gather evidence
- Conduct interviews
- Maintain impartiality
- Share evidence
- Write an investigative report
- Provide evidence to decision-maker

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

Role of the Decision-Maker

- **Impartial evaluation:** Must be unbiased and free from any conflict of interest or bias against the complainant or respondent.
- **Facilitate Question & Answer Period:** Oversee question and answer period and determine relevancy of questions asked
- **Review evidence:** Review all the evidence gathered during the investigation to make a determination of responsibility.
- **Issue written determination:** Issue a written determination that must include the result for each allegation, the rationale for that result, any disciplinary sanctions imposed, and whether remedies will be provided to the complainant.

Impartial Evaluation

- 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.

Question & 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

How to Determine Relevance

- No definition in the regulations
- Proves or disproves allegations
 - Does the evidence or question tends to make the facts of the case more or less likely to be true?
- Be prepared to explain why you found something relevant or irrelevant

Review of Evidence

- Review Materials:
 - Investigation Report
 - Relevant Evidence
 - Any responses from Question & Answer Period
 - Title IX Policy
- Preponderance of the Evidence Standard

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

Determination Report Cont'd

- Additional Considerations
 - Organization of Report
 - Audience
 - Language Matters

Sanctions & Supportive Measures

- Wide availability of sanctions
 - Discipline
 - Educational component
 - Loss of privileges
- Factors that may influence sanction determination:
 - Severity of the violation
 - Prior disciplinary history
 - Mitigating circumstances
- Continuation of Supportive Measures

Prior to sending Determination Report

Timing matters! Factors to consider before sharing information with Parties:

- What day is it? Information should not be shared on a Friday as the Parties do not have access to their supportive measures.
- How is the information being shared?
- Is any translation required?
- Outreach to Parties before sharing information.

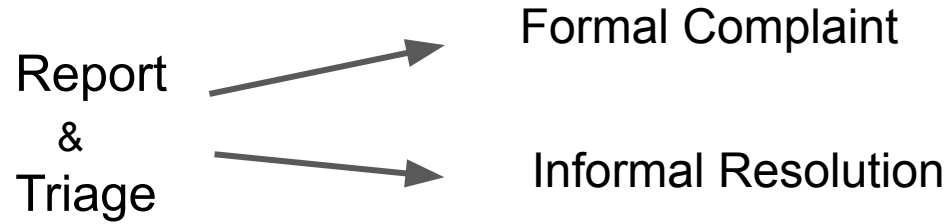
Appeals

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



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
 - Notice of Informal Resolution
 - Informal Resolution Agreement
- Led by a trained Informal Resolution Facilitator
 - Mediation
 - Restorative Justice
 - Facilitated Dialogue
- May result in disciplinary sanctions under District Policy

Title IX: Other things to Consider

- When a determination becomes final:
 - After appeal deadline passes or result of appeal
- May not discipline Respondent unless there is a finding at conclusion of Grievance Process
- Recordkeeping: Seven years
- Administrative Leave (employee)
 - An employee may be placed on administrative leave pending the outcome of the investigation

Title IX: Other things to Consider Cont'd

- Emergency Removal (student)
 - Student may be removed if there is an imminent threat to risk and safety of self or others.
- Retaliation prohibited:
 - Investigated using District Policy

Thank you!