

TITLE IX



TODAY'S OBJECTIVES

- **Understand** your specific role in the Title IX grievance process.
- Apply the **2020 Title IX regulations**.
- **Practice** making impartial, evidence-based findings using a defined standard of evidence.
- **Recognize** and avoid conflicts of interest, bias, and retaliation.
- **Improve** documentation so decisions are clear, defensible, and student-centered.

BIG PICTURE: WHERE WE ARE LEGALLY

- Title IX prohibits sex discrimination in education programs and activities.
- The **2020** Title IX regulations (34 C.F.R. Part 106) are the governing federal rules.
- The 2024 Title IX rule was issued but later vacated; **it is not in effect.**
- OCR enforces Title IX under the 2020 rule set; state law and district policy may add additional requirements.

Actual Knowledge of Sexual Harassment

Student/Staff Safe?

Law Enforcement/Children's
Division



Informal Investigation Process

Intake (different than formal
complaint)

Supportive Measures/Notice



Formal Investigation Process

Formal Complaint*

Investigation

CORE ROLES IN THE TITLE IX PROCESS

- **Title IX Coordinator** – oversees the district response, intake, supportive measures, and process management.
- **Investigator** – gathers facts and evidence, prepares investigation report; does not make the final decision.
- **Decision-Maker** – reviews the record and issues the written determination of responsibility.

FOUNDATIONAL REQUIREMENTS FOR ALL ROLES

- Presumption of non-responsibility
- Objection evaluation
- Process
- Impartiality
- No conflicts of interest

DEFINITION OF SEXUAL HARASSMENT

- Employee quid pro quo
- Hostile environment (newly defined)
- Violence Against Women Act (VAWA) “Big Four”





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

HOSTILE ENVIRONMENT

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

Violence Against Woman Act “Big Four”

- Sexual Assault
- Domestic Violence
- Stalking
- Dating Violence

SCOPE OF THE EDUCATION PROGRAM OR ACTIVITY

- The 2020 regulations focus on conduct **occurring within the school's education program or activity**.
- Includes locations, events, or circumstances **over which the district exercises substantial control**.
- Can include **off-campus or online conduct** when it creates a hostile environment in the school context.
- Tip: document how scope was evaluated.
- Remember: other district policies may still apply.

FROM REPORT TO FORMAL COMPLAINT

- **Report**: any information suggesting possible sex discrimination or sexual harassment shared with the district.
- **Intake**: Coordinator assesses safety, offers supportive measures, and explains formal complaint options.
- **Formal complaint**: signed by complainant or Coordinator (per policy) to start the grievance process.
- As **investigator/decision-maker**, you should know how the case entered the formal process.

DISMISSALS: MANDATORY VS. DISCRETIONARY

- **Mandatory dismissal** from the Title IX sexual harassment process when:
 - Alleged conduct would not constitute Title IX sexual harassment even if proven; or
 - Conduct did not occur in the education program or activity; or
 - Conduct did not occur in the United States.
- **Discretionary dismissal** may occur for reasons such as withdrawal, inability to proceed, or duplication with another process (see district policy).

SUPPORTIVE MEASURES AND EMERGENCY REMOVAL

- Supportive measures are available **regardless of whether a formal complaint proceeds**.
- They must be **non-punitive, non-disciplinary**, and **not unreasonably burdensome** to either party.
- Emergency removal of a respondent requires an **individualized safety and risk analysis** and due process protections.
- Investigators and decision-makers should understand what measures are in place while the case is pending.
- Avoid imposing what looks like punishment before a finding of responsibility, unless justified by policy and law.

PLANNING AN INVESTIGATION

- **Clarify the scope:** what alleged conduct, time frame, and policies are at issue.
- **Identify** witnesses and foreseeable sources of evidence (documents, messages, video, social media, etc.).
- **Plan** the order of interviews: typically complainant, respondent, key witnesses, then follow-ups.
- **Build** a timeline for notices, interviews, evidence review, and the investigation report.
- **Coordinate** with law enforcement where necessary, but remember: school processes do not have to wait for criminal cases unless specific reasons exist.

INTERVIEWING COMPLAINANTS

- Create a safe, respectful setting; explain your role and the process.
- Use open-ended questions (“Tell me what happened next”) instead of leading questions.
- Clarify details: who, what, when, where, witnesses, communications, prior reports.
- Avoid victim-blaming language or tone; stay neutral and professional.
- At the end, ask what evidence or witnesses they believe are important.

INTERVIEWING RESPONDENTS

- Reinforce presumption of non-responsibility and explain the allegations clearly.
- Provide opportunity to respond fully, including their narrative and perspective.
- Ask for relevant evidence, witnesses, and communications the respondent wishes to offer.
- Maintain neutrality—your role is fact-finder, not advocate for either party.
- Document any procedural concerns or objections raised by the respondent.

INTERVIEWING WITNESSES

- Explain your role and the purpose of the interview.
- Use open-ended questions, then follow up with clarifying questions.
- Avoid sharing more than necessary about other statements or evidence.
- Ask about opportunities for the witness to observe behavior before and after the incident(s).
- Document what they know, how they know it, and any limitations to their memory or perspective.

EVIDENCE COLLECTION AND MANAGEMENT

- Gather all reasonably available evidence: documents, emails, texts, social media, video, photos, and physical evidence.
- Track chain of custody for digital or physical evidence when appropriate.
- Organize evidence logically (by issue, by chronology, or by source).
- Avoid selective collection: do not ignore evidence simply because it complicates the narrative.

RELEVANCE AND INADMISSIBLE QUESTIONS

- Investigators and decision-makers must determine what evidence is relevant under policy.
- Questions or evidence about a complainant's prior sexual behavior are generally not relevant (rape shield protections), with narrow exceptions.
- Document decisions to exclude or include disputed evidence and your rationale.

WRITING THE INVESTIGATION REPORT

- Summarize the procedural history: notice, interviews, evidence collection steps.
- Lay out relevant facts in a clear, chronological, and neutral manner.
- Include a description of all evidence gathered, both inculpatory and exculpatory.
- Avoid legal conclusions; your role is to present facts and analysis of credibility, not final responsibility (unless policy combines roles).

CREDIBILITY ASSESSMENT

- Assess credibility using observable factors, not gut instinct or stereotypes.
- Consider: detail, consistency over time, corroboration, plausibility, and motive to fabricate.
- Avoid relying on myths (e.g., ‘real victims always report immediately’ or ‘calm demeanor means lying’).
- Note inconsistencies and possible explanations rather than ignoring them.
- Document credibility assessments transparently in the report or determination.

THE DECISION-MAKER'S ROLE

- Review the investigation report and all relevant evidence.
- Apply the district's chosen standard of evidence (preponderance of the evidence or clear and convincing).
- Analyze each allegation element-by-element against the evidence.
- Reach findings of fact and determine whether policy was violated.
- Draft the written determination with clear reasoning tied to the evidence.

STANDARD OF EVIDENCE

- Preponderance of the evidence: more likely than not (greater than 50% likelihood).
- Clear and convincing: highly probable, a higher standard than preponderance.
- The district must use the same standard for all Title IX sexual harassment complaints involving students and employees (depending on policy).
- You must apply the standard consistently across cases.
- In your determination, explain how the evidence meets or does not meet the chosen standard.

WRITTEN DETERMINATION REQUIREMENTS

- Identification of the allegations potentially constituting sexual harassment.
- Procedural history summary (notices, interviews, evidence review opportunities).
- Findings of fact supporting the determination.
- Conclusions regarding the application of policy to the facts.
- Statement of the result for each allegation and any disciplinary sanctions or remedies.
- Information about appeal procedures and grounds.

APPEALS

- District policy specifies which grounds for appeal are available (e.g., procedural error, new evidence, bias or conflict of interest).
- Appeals must be handled by an impartial decision-maker who was not involved in the initial determination or investigation.
- Appeal decisions must be written and provided to both parties simultaneously.
- Document how the appeal grounds were analyzed and why the original outcome was affirmed or modified.

INFORMAL RESOLUTION

- Informal resolution may be available when both parties voluntarily consent and policy allows it.
- It cannot be used to resolve certain allegations if prohibited by law or policy (e.g., staff-on-student sexual harassment).
- Participants must be informed of the process, consequences, and their right to withdraw before conclusion.
- Informal resolutions should still be documented clearly, including agreed-upon terms.
- Any resolution should be consistent with student safety and Title IX obligations.

COORDINATION WITH LAW ENFORCEMENT

- A criminal investigation does not replace the school's Title IX obligation.
- Temporary delays may be appropriate while police gather initial evidence, but the school should not wait indefinitely.
- Use information from law enforcement as appropriate, but do not outsource your factual or policy determinations.
- Maintain clear boundaries: different standards, goals, and timelines apply in school and criminal processes.
- Communicate with families about how the school and law enforcement processes interact, consistent with policy.

CONFLICTS OF INTEREST AND BIAS

- A conflict exists when your personal, professional, or financial interests could influence your judgment.
- Perceived bias can be as damaging as actual bias in undermining trust in the process.
- Disclose potential conflicts early; recuse yourself if appropriate.
- Avoid advocacy roles for either side while serving as investigator or decision-maker.
- Be aware of implicit biases related to gender, race, disability, sexual orientation, and other identities.

RECORDKEEPING AND TRANSPARENCY

- Maintain records of investigations, determinations, appeals, and supportive measures for the period required by law and policy.
- Document rationale for key decisions (dismissals, evidence relevance, sanctions, remedies).
- Ensure training materials and policies are posted as required and updated when revised.
- Good records protect both students and the district if decisions are later challenged.
- If it is not documented, it is difficult to prove it happened.

COMMON PITFALLS IN K-12 TITLE IX CASES

- Delays in providing notice or starting the investigation.
- Informal resolutions that feel coerced or are not documented.
- Over-reliance on credibility impressions instead of evidence.
- Failing to offer or document supportive measures.
- Inconsistent sanctions for similar conduct, creating equity concerns.

CASE STUDY: WALK THROUGH A FULL PROCESS

- Report: student discloses repeated sexual comments and touching by a peer.
- Intake: supportive measures, formal complaint, and jurisdiction analysis.
- Investigation: interviews, evidence, and report drafting.
- Determination: applying the standard of evidence and writing findings.
- Appeal: new evidence alleged; how the appeal decision is crafted.

PROFESSIONALISM AND STUDENT-CENTERED PRACTICE

- Remember the human impact of each decision on both complainants and respondents.
- Communicate clearly and respectfully with all parties and families.
- Manage expectations about timelines, outcomes, and limits of confidentiality.
- Practice self-awareness and seek consultation when needed.
- Continuous learning: laws evolve; so should our practice.

QUESTIONS, HYPOTHETICALS, AND DISCUSSION

- What parts of the process are most challenging in our district?
- Where do timelines or resources create pressure points?
- What supports do investigators and decision-makers need to do this work well?
- Next steps: follow-up trainings, written guidance, and process refinements.

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