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Idaho K-12 Title IX PLC #5

Advisors

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Title IX Procedure in General

- Sexual Harassment reported
- Formal complaint
- Notice of allegations
- Investigation
- Informal Resolution Process
  - Agreement in Writing
  - …or not
- Decision Making Process (hearing or not)
- Notice of Outcome

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Roles in Title IX

- Complainant
- Respondent
- Parent/Guardian
- Advisor
- Investigator
- Informal Resolution Facilitator
- Decision Maker
- Title IX Coordinator

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Who can be an Advisor?

- Anyone NOT connected to the claim
  - No training necessary
  - Family
  - Friend
  - Counselor
- Lawyer?
  - Yes, but…

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Title IX - Federal Law

- 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 financial assistance.

- Enforced by the Office for Civil Rights (OCR)

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Scope of Title IX

1. Programs or activities
   a. Any property owned.
   b. Any event organized.
   c. "locations, events, or circumstances over which [the school/district] **exercised substantial control over both the respondent and the context in which the sexual harassment occurs . . .**"
   d. Social Media?
      i. Was it posted while at school?
      ii. Shared at school?

2. Outside events:
   a. Allowed to have a separate policy that applies to events that happen outside school programs and activities.

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Sexual Harassment Defined

Conduct on the basis of sex that satisfies one or more of the following:

1. Quid pro quo
2. 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
3. "Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.

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Advisor's Role

- Support person
- Understand the process
- Assure supportive measures work
- Point of Contact
- Present for interviews if requested
- Review all evidence
- Participate in informal resolution if sought by parties
- Cross examination if hearing

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Supportive Measures

- Fluid
- Bilateral
- Preserve equal access to education
- No Contact Orders
- Change of Classes
- Counselling
- Can't be Discipline
- Removal from School?
  - Immediate threat of physical health or safety to others
  - Individualized safety and risk analysis
  - Right to appeal

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What can’t an Advisor do?

- Parties may bring an advisor of their choice to any meeting with an investigator or a hearing,
- Advisor **may not actively participate in the meeting**.
  - This is a fine line.
  - The party has to answer the questions, not the advisor.
  - The advisor may ask questions, engage, but not drive the meeting.
  - Advisors may not interrupt an interview/hearing
- Advisors cannot be parties (including witnesses) to a case.
- **Lawyers love to lawyer - short leash!**

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Relevance and Inadmissible Evidence

- **Relevance:**
  - has any tendency to make a fact more or less probable than it would be without the evidence; and
  - the fact is of consequence in determining the action.

- **Inadmissible Evidence**
  - Incidents not directly related to the possible violation, unless they evidence a pattern
  - The character of the parties
  - Questions and evidence about the complainant's sexual predisposition or prior sexual behavior, unless offered to prove that someone other than the respondent committed the conduct alleged, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

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Potential Resolution?

- Voluntarily unenroll
- Transfer schools
- No Contact Orders
- No classes together
- Non disparagement agreement
- Counselling
- Education
- Restorative Practices

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Decision Making Stage

- Help prepare written comment on evidence
- Help prepare written comment on investigation report
- Help prepare impact statement
- If a hearing, cross examination
- If no hearing, help facilitate exchange of questions
- Appeal?

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Appeal?

- **Procedural irregularity** that affected outcome.
- **New evidence** that was not reasonably available at the time of the determination that could affect outcome.
- **Conflict or Bias** by Title IX Coordinator, Investigator, or Decision-Maker.

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Questions?

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Next Training:

Appeals - March 10, 2026