

Title IX Coordinators

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THE TRUST

Disclaimer

The information provided in this document is for informative purposes only and should not be used in place of legal advice.

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 financial assistance.”

U.S. Congress, 1972

Title IX Coordinator

You are the front line for preventing district liability.

You are critical to successful implementation of Title IX regulations and management of the grievance process.

Tips

- Title IX Packet
- Resources
 - Templates
- District Governing Board Policies for Sexual Harassment, Title IX, Bullying

District's Obligations

- Title IX Policies
- Staff trained to recognize potential Title IX violations and importance of reporting to Title IX Coordinator
- Process to report to Title IX Coordinator

Coordinator's Analysis: Is it Title IX?

- Is it sex discrimination, sexual harassment, or sexual violence?
- Does it occur in an educational program that is an operation of the District?

Title IX Sexual Harassment or Sexual Violence

- 3 Types
- All three require:

**Unwelcome sexual conduct
(no consent)**

+

**Conduct effectively denies (or limits) a
person's equal access to educational
activity**

Type 1: Quid Pro Quo

An employee of the recipient (school or district) conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct.

Type 2: Severe, Pervasive and Objectively Offensive

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 (school's) education program or activity

Type 3: Sexual Assault or Violence

- Sexual assault as defined in 20 U.S.C. 1092(f)(6)(A)(v)
- Dating Violence as defined in 34 U.S.C. 12291(a)(10)
- Domestic violence as defined in 34 U.S.C. 12291(a)(8)
- Stalking as defined in 34 U.S.C. 12291(a)(30)

Reminder: District Liability

A school will violate Title IX where it has ***actual knowledge*** of an allegation of sexual harassment experienced by *an individual in the educational program* and the school acts with ***deliberate indifference*** to that notice.

Title IX Coordinator

- Must have the actual title and be authorized to initiate the grievance procedure against a respondent
- Must have authority to provide supportive measures that will restore or preserve “equal access”
- Must be trained and is responsible for ensuring that other relevant individuals are trained

Title IX Coordinator

- Cannot have a conflict of interest
 - Must ensure others involved in grievance process do not have a conflict of interest
- Trained to act impartially throughout the process
- Does not prejudge the alleged facts
- Thoroughly understands the definition of sex discrimination and sexual harassment under Title IX

Title IX Coordinator

- Receives notice of allegations of sexual harassment
- Coordinates implementation of supportive measures
- Helps draft and accepts Complaints

Title IX Coordinator

- Decides whether to sign Complaint if a victim refuses
- Issues written notice when there is a Complaint
- Determines whether Complaint must be dismissed or, if dismissal is permitted, whether to dismiss it
- Offers informal resolution where appropriate

Title IX Coordinator

- May conduct the investigation
- Monitors the implementation of the grievance procedure (tracks deadlines, maintains records, etc.)
- Effectively implements remedies where there has been a determination of responsibility

Impartiality is Required by Regulations

**AVOIDING BIAS AND
PREJUDGMENT**

Avoiding Bias is Critical to Implementing Regulations

- Following grievance procedures that meet requirements of the regulations is important step to showing non-bias
- Recognize and acknowledge allegations of sexual harassment no matter who the alleged victim is
 - Do not adopt stereotypes about who may or not be subjected to sexual harassment

Avoiding Bias is Critical to Implementing Regulations

- Appearance of Impropriety (consider prior discipline incidents)
- Small districts and small towns

Title IX Coordinator's Role

**RECEIVE NOTICE OF
ALLEGATIONS OF SEX
DISCRIMINATION**

What is Notice?

- A report to ANY school employee
- Report to the Title IX Coordinator made at any time via any method of communication

All Notice Triggers Responsibility

Contact alleged victim promptly to discuss:

- Whether the Complainant wants **supportive measures**
- Advise Complainant that supportive measures are available regardless of whether a Title IX complaint is made
- Explain the process for making a formal complaint

Formal Complaint

- Document filed by complainant or signed by Title IX Coordinator alleging sexual harassment against a respondent and requesting an investigation.
- Complainant must be participating in or attempting to participate in the education program at the time of filing.
- Document or electronic submission that contains physical or digital signature of complainant.

Formal Complaint Triggers the Investigation

- Formal Complaint triggers responsibility to conduct an investigation that complies with the adopted grievance process
- Upon notice of a formal complaint, the Title IX Coordinator will provide a written notice to parties explaining basic rights during the process and will assign an investigator

Supportive Measures

- Designed to restore or preserve equal access to education program or activity
 - Equal access means the same access someone who has not experienced sexual harassment has

Supportive Measures

- Non-disciplinary
- Non-punitive
- Individualized to the person and situation
- Offered as appropriate and without charge
- Must be offered to Complainant
- May be offered to respondent if appropriate
- Do not unreasonably burden either a complainant or respondent

Examples of Supportive Measures

- Counseling
- Increase monitoring or supervision of students
- Modify courses
- Change schedule
- Repeat course
- No contact order (mutual or individual)

Supportive Measures

- If respondent is an employee, you may send employee home on administrative leave as a supportive measure – not considered disciplinary.
- If respondent is a student you ***cannot*** remove them from an educational activity as a supportive measure **UNLESS** there is need for an emergency removal - necessary to protect an individual from IMMEDIATE THREAT TO **PHYSICAL HEALTH OR SAFETY**

When Respondent is an Employee

- School may send an employee home on paid administrative leave as a supportive measure “during the pendency of the grievance process”
- Employee may also choose Title VII, as part of the HR process
- Can reassign the employee to another site (Be careful)

EMERGENCY REMOVAL OF STUDENT

- Requires an individualized safety and risk analysis (threat assessment)
- Requires “immediate threat to the physical health or safety of any student or other individual arising from the allegation of sexual harassment.”
- Consult with your attorney

EMERGENCY REMOVAL OF STUDENT

- Requires “notice and an opportunity to challenge the decision immediately following the removal”
- Emergency removal of a student with an IEP or a 504: Remember that the student still has rights under IDEA or ADA.

Title IX Coordinator's Role **AFTER COMPLAINT**

Complaint

Complaint triggers Coordinator's responsibilities to:

- Provide notice to the Respondent (form)
- Conduct investigation that complies with the District's grievance procedures

If Complainant does not wish to file a complaint, or wants to withdraw complaint, Title IX Coordinator must determine whether to file/continue complaint.

Mandatory Dismissal of Formal Complaints

- The complaint does not state an allegation of **sexual harassment**, even if all facts are found to be true
- The sexual harassment, even if it did occur, did not occur in the **school's program or activity**
- The sexual harassment did not occur against a **person in the United States**

Permissive Dismissal of Formal Complaints

- If the Complainant notifies the Title IX Coordinator that s/he wants to withdraw the complaint
- If the Respondent's employment or enrollment with the school ends
- If circumstances, such as several years between the conduct and the complaint or a complainant's refusal to cooperate, prevents the gathering of evidence sufficient to render a determination

Determining When Title IX Coordinator Proceed w/o Complainant

- The Title IX Coordinator may sign a formal complaint on behalf of the complainant, and/or may decide not to dismiss allegations or a complainant even if complainant requests dismissal.
- Consider whether District would be deliberately indifferent to the notice of potential sexual harassment if you don't proceed.
- Consult with attorney.

Considerations

To make the determination, the Title IX Coordinator may consider:

- Complainant's request not to proceed
- Complainant's reasonable safety concerns regarding initiation of complaint
- Risk that additional acts of sex discrimination would occur if complaint is not initiated
- Severity of the alleged sex discrimination
- Age and relationship of the parties, including whether the respondent is an employee

Considerations Cont.

- Scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination or sex discrimination alleged to have impacted multiple individuals
- Availability of the evidence to assist a decisionmaker
- Whether the recipient could end the alleged sex discrimination and prevent its recurrence without initiating the grievance procedures

If Complainant Declines Title IX Process, and Coordinator Decides Not To Open

- Document (for your records) in writing:
 - Supportive Measures were offered and what was offered/accepted
 - Complaint procedure and grievance process was explained
 - Complainant(s) declined

Written Notice Requirements: Formal Complaint

Provide written notice of the District's grievance procedure to both parties, including information about informal resolution process, if the District adopts one (see templates/forms)

Written notice must:

- Include a statement that the respondent is presumed not responsible for conduct and that a determination will not be made until the conclusion of the grievance process
- Include a copy/reference to the grievance process

Written Notice Requirements: Formal Complaint

- Inform parties that they may have an advisor of their choice
 - Advisor may be an attorney, but doesn't have to be
- Inform parties that they may inspect and review evidence collected during this investigation
- Inform parties of any provision of district policy of conduct that prohibits making false statements or knowingly submitting false evidence

Written Notice Requirements: Formal Complaint

Notice of the allegations of sexual harassment provided to the parties must include sufficient details, and be provided in enough time, to allow preparation of a response prior to initial interview

Sufficient notice includes, if known:

- Identities of the parties involved
- Description of the actual conduct alleged to constitute sexual harassment
- The date(s) and location(s) of the alleged incident

Drafting an Allegation

The allegation(s) should be pared down from what may be written in the formal complaint received.

Each allegation should:

- Be short
- Provide relevant details of the *conduct* alleged
- Provide date(s), time(s), and location of the *conduct* alleged
- Be separated into multiple allegations if necessary
- Exclude extraneous information

Group Activity

Drafting Allegations

Written Notice Requirements: Additional Allegations

If, during the course of the investigation, the District decides to investigate additional allegations about complainant or respondent that were not included in initial notice, Title IX Coordinator must provide written notice of the additional allegations to the parties.

Consolidation of Complaints

- Complaints may be consolidated:
 - Against one or more respondents;
 - By one or more complainants; or
 - By one party against another party
- ***IF*** the allegations of sex discrimination rise out of the same facts or circumstances
- Be careful to assess privacy and confidentiality concerns when determining whether to consolidate

Good Cause Delay

- Reasonable extension of “prompt” timeframes may be allowed on a case-by-case basis for good cause
- Good cause = concurrent law enforcement or DCS activity; unavailability of respondent; school break
 - It is **not** good cause to delay because Coordinator, Investigator, or Decisionmaker are unavailable

Good Cause Delay

- Delay may be needed for:
 - Evaluation of whether to dismiss or investigate complaint
 - Investigation overall or any specific portion
 - Decision of determination of responsibility
 - Appeal
- Must provide written notice to parties if there will be a good cause delay and include the reason for the delay

Title IX Coordinator's Role

**DECIDE WHETHER COMPLAINT
WILL BE INVESTIGATED**

Title IX Coordinator Critical Role in Initial Fact Analysis

When you receive notice of a potential Title IX violation, you will need to determine whether the allegations, as presented, and if presumed to be true, rise to the level of Title IX.

Title IX Sexual Harassment or Sexual Violence

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Severe and Pervasive

- No specific definitions in the regulations, but the more severe the conduct, the less need to show pervasiveness.
- Pervasive means widespread, persistent, and/or exists throughout an entire system or institution.
- They work in tandem so that if something is more severe, it may be less pervasive and still meet Title IX and vice versa.

Objectively Offensive

- Whether a reasonable person in similar circumstances would find it offensive, hostile, or intimidating.
- Subjective feelings or interpretations may not be the sole basis for evaluating whether a Title IX violation has occurred.

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Sexual Violence

- Sexual assault: an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
- Stalking: means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: 1) fear for his or her safety or the safety of others; or 2) suffer substantial emotional distress.

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 and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- 1) the length of the relationship;
- 2) the type of relationship;
- 3) the frequency of interaction between the persons involved in the relationship

Domestic Violence

Violence committed by a current or former spouse or intimate partner of the victim, a person whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Arizona, or by 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

Mandatory Dismissal of Formal Complaints

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Permissive Dismissal of Formal Complaints

- If the Complainant notifies the Title IX Coordinator that s/he wants to withdraw the complaint
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Title Coordinator's Role

INFORMAL RESOLUTION

Informal Resolution

- District is not required to use informal resolution, but if it chooses to use it, then it is appropriate to offer if:
 - Formal Complaint is filed
 - Both parties voluntarily agree to participate in writing
 - The Respondent is NOT an employee and the Complainant a student

Informal Resolution

- Cannot be required and either party can withdraw at any time
- Process may include arbitration, mediation, or restorative justice
- Must have reasonably prompt time frame to complete the process
- Pauses the grievance process at the time of request/voluntary agreement

Informal Resolution

- Decide whether confidentiality can be a term of an informal resolution and include that information in written notice
- If the informal resolution facilitator may be called as a witness in investigation, must disclose that possibility to the parties in the written notice
- Facilitator must not have a conflict of interest, must be trained in these regulations, and must be free of bias

Informal Resolution

- Suggested that facilitator be trained in mediating sexual harassment situations
- Be aware of power dynamics when implementing an informal resolution
 - Should there be a face-to-face meeting?
 - Is someone manifesting signs of trauma?
 - Should facilitator press parties on facts?

Why Parties May Prefer Informal Resolution

- Parties may be more satisfied if they had a say in creating the outcome
- Process may be less adversarial
- They can control the outcome
- Resolutions can include creative solutions
- Process is shorter and does not involve a full investigation and determination

What is the Process?

- Process is voluntary for all parties
- Mediation
- Restorative process = repair harm done (restore access to educational program or activities)
- Consider: issues with apologies
- Have parties sign consent to informal resolution

Mediation

- Using a third party to facilitate resolution between the parties
- Recommend written agreement
- Confidential
- Prefer in-person, but back up could be Zoom or email

Before the mediation

Informal resolution facilitator can reach out to the parties and get a preliminary understanding of what might resolve the matter—confirm what you can share with the other party

- Start with complainant
- Then to respondent
- Prepare a draft agreement from template

“Shuttle Diplomacy”

- Usually keep parties separate—may be exceptional circumstances
- Allow each party to tell “the story” and present that party’s perspective on the underlying dispute
- Ask each party what they want from the other party
- Ask each party what they want from the process

At the Mediation

- Explain the mediation process
- Remind parties that the process is voluntary

Questions Facilitator May Ask Parties

- What would make you feel safe?
- What can the school do to make you feel safer?
- What can the other party do to make you feel safer?

Supportive Measures

- Supportive measures in place—should they continue?
- Should they be modified?
- New class schedule
- No contact agreement
- No classes together (ask District about feasibility)
- Counseling
- Training

Typical Supportive Measures

- New class schedule
- No contact agreement
- No classes together (ask District about feasibility)
- Counseling
- Training
- Online courses
- Change school
- Particular class seating

How to get Parties “Unstuck”

- Remind the parties that if this goes back to the formal Title IX process, you will not have control over the outcome, and there is a possibility that the Decision Maker will find you in violation of Title IX or determine that no violation of Title IX occurred

Determine Common Ground

- You will need to go back and forth until a resolution can be reached
- Make sure both parties agree to the same terms and that you have their agreement
- Make sure that the District can implement
- Remember to provide terms for:
 - Who can be told about the agreement?
 - Do you need to set a time to review with parties?

Drafting the Agreement

- Use your template
- Anticipate problems of enforcement
- Make sure that the District can implement
- Remember to provide terms for:
 - Who can be told about the agreement?
 - Do you need to set a time to review with parties?

Signing the Agreement

- Have the parties sign at the meeting if at all possible (at minimum provide a clear deadline for signing)
- Make a copy for all parties and appropriate District administrators

Closing the Process

- Thank parties for cooperation
- Decide whether it would be productive for parties to get together

Informal Resolution Outcome

- If successful, results in a dismissal of the Complaint without adjudication
- If unsuccessful, grievance process picks up where it was left off

Title IX Coordinator's Role

**OVERSEE INVESTIGATION
AND DECISION**

Assignment to Investigator

- If you are not going to investigate, assign to a trained investigator
- Ensure that investigator does not have a conflict of interest
- Continue to monitor deadlines and be a resource to the investigator (definition of sexual harassment, course of investigation, etc.)
- Provide with District's Templates & Forms

Investigator Procedure Reminders

Redact personally identifiable information such as: student ID #, phone #, address, etc.

- Complainant and Respondent names are **never** redacted (but what if District files the Complaint?)
- Redact student witness names through creation of a legend – ABC, 123, etc. for aliases
- Determine who gets legend in addition to Coordinator and Investigator (parties or just decision maker - talk to counsel)

Investigator Procedural Reminders

- Non-disclosure Agreements for Parties
 - Non-disclosures signed
 - Have investigator sign at interviews vs. asking for non-disclosure right before sending evidence
 - Contact before interviewing
 - Non-disclosures cannot preclude parties from building or investigating their own case
 - If party does not sign non-disclosure Coordinator facilitates their access to review evidence

Advise your Investigators to Plan, Plan, Plan

- Map out a plan for investigation
- Understand the allegations
- Understand definition of sexual harassment to determine what elements must be established

Advise your Investigators to Plan, Plan, Plan

- Who to interview?
 - Notification to parent of interview for witness students
- What documents must be gathered?
 - Assist investigator as needed
- Necessary for IT to run a server search?
(Coordinator facilitates)
- Need recordings from surveillance cameras?
(Coordinator facilitates)

Assign Decision Maker

- Assign to a trained decisionmaker
- Ensure that decision maker does not have a conflict of interest
- Continue to monitor deadlines and be a resource to the decision maker (definition of sexual harassment, course of investigation, etc.)
- Provide with District's Templates & Forms

Title IX Coordinator's Role

REMEDIES AND WRAPPING UP

Remedies

- If a determination of responsibility, you will oversee implementing remedies
- If a determination of non-responsibility, continue to provide supportive measures as needed
- Continue to be a resource for both parties as needed
- No discipline until time for appeal has run

Appeals

The Regulations provide Parties the opportunity to appeal the following:

- Dismissal of Complaint
- Determination of Responsibility Decision

Appeals

- Three grounds for appeals
 1. A procedural irregularity *that would change the outcome*;
 2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, *that would change the outcome*; and
 3. The Title IX Coordinator, investigator(s), and/or Decision Maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent *that would change the outcome*.

Appeals

- District can include additional bases to appeal in policy

A school must:

- Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator or the Title IX Coordinator;

Appeals

- Decision-maker(s) for the appeal can be a single Appeal Officer or an Appeal Panel
- If an appeal is filed, ensure that the decision-maker on appeal has no conflict or bias and receives all necessary documents
- Decisionmaker on appeal must be trained in definitions, procedures, etc.
- Monitor timelines and competition of that process and ensure that notices are sent to the parties

Appeals

- The written determination on responsibility and sanctions, if applicable, are postponed until the decision on the appeal is sent to the parties. §106.45(b)(7)(iii).
 - Keep supportive measures in place during appeal period to maintain status quo between the parties and ensure equal access to education.
 - Can revisit emergency removal if necessary.

Discipline

- Unless the Respondent waives the appeal, let the time for appeal run before initiating discipline
- If the Respondent has an IEP or 504, depending on the type or length of discipline, a MDR may be required

Discipline and IDEA/504

- If discipline would effect a change in placement for more than 10 days (note prior discipline counts), a manifestation determination review (MDR) is required before discipline is imposed
- MDR team can review decision and refer to review but do not make part of SPED records; consider having MDR team members sign an NDA

Records Retention

- All records related to Title IX complaints must be maintained for a minimum of 7 years, including records substantiating remedies and supportive measures
- Title IX records retained separately and confidentially—not part of student's cumulative file (nor special education)
- Training materials must be posted on the District's website

Questions?



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