

# **Title IX Training**

**Coordinator, Investigators & Decisionmakers**

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# Topics

- Title IX Overview
- What is Sex-Based Discrimination?
- Summary of Title IX Grievance Procedure
- General Duties Under Title IX
- The Role of a Coordinator
- The Role of an Investigator
- The Role of a Decisionmaker

# **Title IX Overview**



## What is Title IX?

- Title IX of the Education Amendments Act of 1972 provides that “[n]o 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.”



# What is Title IX?

- In short, Title IX prohibits sex-based discrimination in a school's **educational program or activity** against any person in the United States.
  - Includes any location/events/circumstance where the school had **substantial control** over the context & the alleged perpetrator
- It is equally applicable to **STUDENTS** and **EMPLOYEES**.
- Failure to meet Title IX requirements can cause civil liability and loss of federal funding.

# What is Sex-Based Discrimination?



# What is Sex-Based Discrimination?

- “Sex-based discrimination” includes any harassment or other discrimination based, in any way, on a person’s sex/gender.
- This includes discrimination based on a person’s pregnancy/parenting status and gender identity.



# What is “Sexual Harassment”?

- Includes 3 types of misconduct on the basis of sex:
  1. Any instance of *quid pro quo* harassment by a school employee;
  2. Any unwelcome conduct that a reasonable person would find severe, pervasive and objectively offensive such that it effectively denies equal educational access;
  3. Any instance of sexual assault, dating violence, domestic violence, or stalking.





# Overview: Definition of “Sexual Harassment”

- Certain conduct is defined by the **Violence Against Women Act** (34 U.S.C. § 12291(a)) and/or the **Clery Act** (20 U.S.C. § 1092(f)).
  1. **Sexual Assault**: Any sexual act directed against another person, forcibly and/or against that person’s will; or not forcibly or against the person’s will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity (or because of his/her youth). This offense includes the forcible rape of both males and females. Sexual assault may include, but is not limited to rape, fondling, incest, and statutory rape.



# Overview: Definition of “Sexual Harassment”

2. **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.
  
3. **Domestic Violence**: Violence committed by a current/former spouse of the victim; person with whom the victim share a child in common; person who is cohabitating with or has cohabitated with the victim as spouse; or person similarly situated to a spouse of the victim.

# Overview: Definition of “Sexual Harassment”

4. **Stalking**: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her safety or the safety of others; or suffer substantial emotional distress. Stalking may be conducted directly or indirectly and may include, but is not limited to, behaviors such as making unwanted calls or following someone.
  
5. **Other Sex-Based Discrimination**: Any conduct based on a person’s sex, pregnancy, gender identity, or gender expression that adversely affects a term or condition of that person’s employment, education, or participation in an educational program/activity.

# **The Grievance Procedure Summarized**



# Summary of Grievance Procedure

## ■ Step 1: Initial Report

- Any person can report an incident that may be sexual harassment or discrimination to you as an employee.
- This “informal reporting” can be in any format.
- You **MUST** report to Title IX Coordinator.

## ■ Step 2: Initial Contact with Complainant by Title IX Coordinator

## ■ Step 3: Formal Complaint submitted to Title IX Coordinator

# Summary of Grievance Procedure

- **Step 4:** Initial Assessment by Title IX Coordinator
- **Step 5:** Written Contact to Parties by Title IX Coordinator
- **Step 6:** Investigator Conducts Investigation

# Summary of Grievance Procedure

- **Step 7:** Preliminary Investigative Report by Investigator
- **Step 8:** Final Investigative Report by Investigator
- **Step 9:** Final Decision by Title IX Council (aka, decision-makers)

# Summary of Grievance Procedure

- **Step 10:** Appeals to Superintendent
- **Step 11:** Imposition of Discipline



# General Duties Under Title IX



# Avoiding Bias

- Implicit vs. Explicit Bias
  - Implicit biases are unconscious biases such as learned stereotypes
  - Cannot be biased against any party generally or specifically
  - Must remain impartial
  
- Beware of “leanings” toward a particular party at the outset
  - Job is not to advocate for or against any party
  - Title IX requires avoiding snap decisions before an investigation has been conducted
  - If unable to reserve judgment until the end, need to be removed from investigation/decision-making process

# Conflicts of Interest

- Notify the Title IX Coordinator of any conflicts – actual or perceived
  - Removal only required for actual conflicts, but advisable for perceived conflicts as well
  - Conflicts can be in favor of or opposed to any party
- *Conflicts are especially likely in complaints involving employees*
  - If necessary, can use outside persons to investigate these types of complaints

# Standard of Review

- Preponderance of the Evidence
  - Same standard for students and employees
  - Just “more likely than not” that alleged conduct occurred
  
- The Investigator bears the burden of proof
  - Complainants and respondents are not required to prove or disprove anything
  - Think of it as a truth-finding exercise

# Role of Coordinator



# General Duties of Title IX Coordinators

- Compliance
- Training
- Recordkeeping
- Avoiding Bias
- Coordinating District's Response to Complaints
- Notify Superintendent of Patterns or Issues

# Compliance

- Take the time to learn the ins and outs of the policies, procedures, and requirements of Title IX
- Understand that Title IX is not just about equality in sports!
- Ensure that the District stays in compliance with Title IX
- Be prepared to answer in-depth questions from other personnel

# Training

- Every employee who participates in Title IX procedures must receive training.
- All employees should receive basic training to ensure they know they are **MANDATORY REPORTERS** at the K-12 level
- At a minimum, training should teach all personnel:
  - The definition of sexual harassment and sex-based discrimination
  - What it means to be within the scope of the school’s “educational programs & activities”
  - What to do if receiving an informal report of potential prohibited conduct



# Training

*(This is what we are doing today)*

- Additionally, training for decision-makers and investigators should include:
  - The grievance procedure steps
  - How to conduct an investigation
  - Requirements of impartiality, bias, conflicts of interest, and prejudgment of facts
  - Applying the rape shield protections
  
- *Training material used for Title IX personnel must be posted on the website or otherwise made available for the public to inspect.*

# Recordkeeping

- Keep meticulous records – even where a formal complaint is not filed
  - **When a District has “actual knowledge” of conduct that violates Title IX, the District still has an obligation to not act deliberately indifferent to the situation. These records help document this.**
- Records that must be kept include not only for formal complaints, but training records and materials too
- When in doubt, put it in the file!

# Coordinating Responses

- Ensure the investigators and decision-makers are properly following the grievance procedure
- Serve as point of contact between parties and the District
- Be prepared to answer questions
- Keep everyone on as tight a timeline as possible

# Grievance Procedure Responsibilities

## ■ Step 1: Initial Report

- This is an informal report and can be made to any employee
- But K-12 employees **MUST** in-turn report to you
- Any person can opt to instead come directly to you
- Any format can be accepted so long as it results in the information being received
- Includes reports made outside normal business hours
- Can be anonymous, but failure to identify victim will prevent formal investigation from moving forward

# Grievance Procedure Responsibilities

- **Step 2: Initial Contact with Purported Victim**
  - Must be PROMPT and CONFIDENTIAL
  - Must offer supportive services
    - *These must be offered regardless of whether the complainant moves forward with a complaint (remember deliberate indifference standard).*
  - Must explain the grievance procedure **in full**, including standards and possible discipline
  - Be careful to remain neutral – do not dissuade
  - Good to note that the Title IX procedure is independent from other policies, like the usual Code of Conduct

# Grievance Procedure Responsibilities

## ■ Step 3: Obtain Formal Report/Complaint

- No specific format required – but see sample form
  - Try to get the “who”, “what”, “when”, & “where”
- MUST be in writing and signed by either complainant or Title IX Coordinator
- Only sign a formal complaint over objection of complainant where not “clearly unreasonable”:
  - Best example: where you have received multiple reports against the respondent in question.
  - The initiating of an investigation likely needed to prevent a hostile environment on campus or address unsafe conditions
  - No cross examination where there is no complainant signature

# Grievance Procedure Responsibilities

## ■ Step 4: Perform Initial Assessment

Answer to all 3 questions must be YES – otherwise inform complainant that Title IX does not apply:

1. Is the accused (the “respondent”) a person covered by the Board’s policy (i.e., a student or employee)?
2. Did the alleged conduct occur in an educational activity or program as defined in the Board’s policy?
3. Do the facts set forth in the complaint, assuming they are true, constitute prohibited conduct that violates Title IX?

# Grievance Procedure Responsibilities

## ■ Step 5: Send Written Notice to Both Parties

- Must be in writing
- Inform respondent that he or she is not required to provide evidence

## ■ Required components of notice:

1. Explain allegations in detail;
2. list remedies and/or disciplinary actions available if responsibility found;
3. Explain burden of proof and that school bears that burden;
4. Describe the grievance procedure step-by-step;
5. Outline any appeal procedures;
6. List supportive measures available;
7. Respondent may, but not required to, submit statement; and
8. Parties can have an advisor help them



# Role of Investigators



# Running Investigations (Step 6)

## ■ Interviewing Parties

- Because parties will have advance notice, there is potential for witness tampering and intimidation
- Cannot impose a gag order, but can take that type of negative conduct into consideration (i.e., when determining credibility)
- Cannot begin with the “believe victims” approach – respondents cannot be presumed responsible
- Be aware that victims may be sensitive, especially with respect to specific topics
- Do not phrase questions in a way that implies blame
- Seeking written statements or using written questions may reduce issues that arise in live-interviews

# Running Investigations (Step 6)

## ■ Managing Confidentiality

- Parties are permitted to have advisors present during Title IX proceedings
  - Advisors may be friends, family, attorneys, or other trusted individuals
  - These persons **MUST** be permitted to participate, and thus will potentially see sensitive or otherwise confidential information
- Title IX is to be interpreted to be consistent with FERPA
  - Generally, investigative information **MUST** be shared with the parties, but they are not permitted to use that information outside the grievance procedure
  - A nondisclosure agreement can be used to ensure confidentiality

# Running Investigations (Step 6)

## ■ Potential Witnesses

- Cannot be forced to provide evidence
- Title IX does not include the right to depose parties or witnesses, nor compel such participation
- Cannot penalize students or employees for their participation or lack thereof

## ■ Questions from Parties

- Ensure the questions are not unnecessarily adversarial – avoid retraumatizing parties
- Check for relevance to issue at hand and appropriateness
- May need to reword questions before sending to other party

# Running Investigations (Step 6)

## ■ Impartially Determining Credibility & Weighing Evidence

- Consider whether statements are internally consistent
- Can statements be corroborated by other evidence?
- Did parties or witnesses have their own bias or prejudice?
- Has a pattern become apparent?
- Are the allegations inherently plausible?
- What level of detail has been provided?

# Preliminary Investigative Report (Step 7)

## ■ Provide all information to both parties

- Parties must be permitted to review and respond to the evidence
- Preliminary report need ONLY outline the allegations & evidence
- May be simplest to send and receive information through the Title IX Coordinator

## ■ Follow up questions

- Once parties have had a chance to review the preliminary report outlining all evidence, the parties may submit written questions or further statements/evidence
- The investigator should submit these questions to the other party – but review them for relevance first
  - Consider rape-shield
  - Need be relevant to complaint
  - Can be reworded so long as gist of question remains intact

# Final Investigative Report (Step 8)

## ■ Draft after reviewing all evidence

- Relevant information and facts
  - Direct observations and reasonable inferences drawn
  - Note consistencies or inconsistencies between sources
  - Credibility assessments of witnesses and evidence
  - May exclude general opinions regarding reputation of parties
- Provide to Title IX Coordinator for dissemination to parties and decisionmaker
- ***MUST NOT MAKE A RECOMMENDED DECISION***

# **Role of Decision-Makers**





# Decision-making (Step 9)

## ■ Review the Investigator's Final Report

- Follow up with any questions
- Consider the credibility and weight determinations made
- Determine whether the accused student should be found “responsible” based on the totality of the evidence presented in the report

# Decision-making (Step 9)

## ■ Draft a Written “Opinion” for the Parties

- Must include:

- Findings of fact;
- Conclusions about whether the alleged conduct occurred;
- Rationale for the result as to each allegation;
- The disciplinary sanction, if any, to be imposed on the respondent;
- Whether additional supportive services will be made available; and
- Information about filing an appeal.

## ■ Further questions about the process should go through Title IX Coordinator

# **Role of All Employees**



# Don't Forget: Mandatory Reporting

- All public and private K-12 employees are mandatory reporters under Alabama law. Alabama Code § 26-14-3.
- Teachers and administrators must report suspected abuse or neglect of a child to law enforcement or DHR.
- It is a crime to knowingly fail to make a required report. Alabama Code § 26-14-13.

# Your Duty Under Title IX

- All K-12 employees are ***MANDATORY*** reporters of any potential incident of sex-based discrimination/harassment under Title IX.
- Your duty is to listen and ***REPORT*** – any time you hear about conduct that potentially violates Title IX you should report it to the Title IX Coordinator.

# Your Duty Under Title IX

- Important things to consider:
  - Trust of students is important, so explain that you may have to report what they tell you to the coordinator
  - Students maintain their right to privacy, but no “gag orders” can be put in place
  - Title IX applies to employee-employee and student-employee incidents equally
  - Any concerns should be directed to your administrator/supervisor and the Title IX Coordinator
  - Training & reporting are of vital importance!

# NEXT STEPS

- Conduct professional development for faculty and staff
- Require attendance and take roll
- Turn in roll as proof of training to Title IX Coordinator

# Questions?

- Contact:
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