2020 Updates

Mandatory Training for Title IX Officials

BY PRISCILLA DE MATA, ESQ.







- What is Title IX?
 - Prohibitions
 - Definitions
 - Roles
 - New training requirements
- 2. The Title IX Formal Complaint Process
- 3. How to Conduct a Title IX
 Investigation, Hearing, Appeals and
 the Informal Resolution Process
- 4. How to Serve Impartially and Avoid Biases & Conflicts of Interest
- 5. Prohibited Retaliation
- 6. Recordkeeping, Confidentiality & Mandatory Reporting

Refresher:

What is Title IX anyway?

A federal law that prohibits sex discrimination in any education program or activity receiving federal financial assistance.

Title IX reads...

"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...."

20 USC 1681(a) ("Prohibition against discrimination")

What's prohibited and who's protected?

- Prohibits both Sex Discrimination and Harassment (examples to follow)
- Protects both Students and Employees
- But what constitutes an "education program or activity" for purposes of prohibited Title IX discrimination/harassment?

"Education Program or Activity" Defined The Title IX statute itself defines "education program activity" or effectively to cover all operations of the school. The Final Rule clarifies that "education program activity" or locations, includes events, circumstances over which the school exercises substantial control over both the respondent and the context in which the sexual harassment occurs.

Education programs and activities include

Please note that these are only examples and may include cyber-harassment.

School Campus

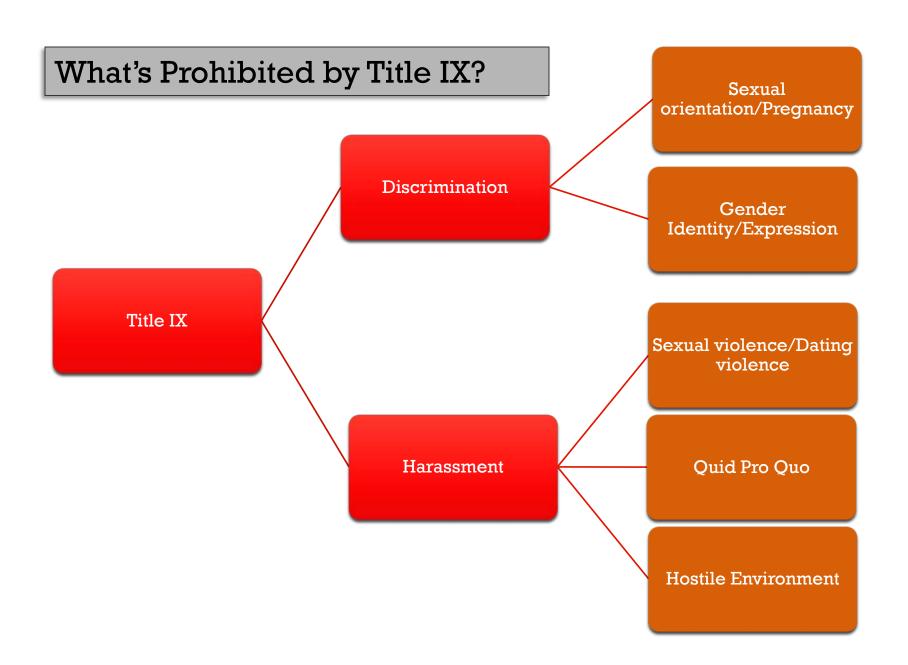
School Bus

District
Buildings/Central Office

Academic conferences

Clubs & Sporting events

Field Trips



Title IX Definitions

- "Complainant" = the alleged victim of sex discrimination/sexual harassment
- "Respondent" = the alleged perpetrator of the discrimination of harassment
- "Sexual harassment" = conduct on the basis of sex that satisfies one or more of the following:



Sexual Harassment, defined

- 1. "Quid Pro Quo" or an employee of the district conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcome sexual conduct.
 - Example: Teacher seeks sexual favor from student in return for a passing grade.
- 2. "Hostile Work/Learning Environment" or 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 district's education program or activity.
 - Example: A student constantly shaming and ridiculing another student during class time for rumors about her sexual promiscuity.
- 3. "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), or "stalking" as defined in 34 U.S.C. 12291(a)(30).
 - Example: Physical abuse between students in or outside dating relationship.



Title IX Definitions, cont'd

"Actual knowledge" = notice of sexual harassment OR allegations of sexual harassment to a district's Title IX
Coordinator or any official of the district who has authority to institute corrective measures on behalf of the district, or to any employee of an elementary and secondary school. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge.

- This standard is not met when the only official of the district with actual knowledge is the respondent.
- The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of district.

"Actual Knowledge" Actual knowledge of sexual harassment or allegations of sexual harassment occurs when notice is made to any one of the following individuals:

- The **Title IX Coordinator** has notice of sexual harassment or allegations of sexual harassment;
- School personnel with authority to institute corrective measures have notice of sexual; OR
- 3. Any elementary or secondary school employee.

Additional notes on actual knowledge ...

- Anyone can report the sexual harassment to the school/district
- Bystanders, parents, friends have a right to report sexual harassment.
- On occasion, school employees may personally witness sexual harassment

Title IX Definitions, cont'd

"Deliberate indifference" = A district with actual knowledge of sexual harassment in an education program or activity of the district against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. A district is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

Simply put ...

Actual Knowledge + Deliberate
Indifference = Title IX Liability &
Damages

Title IX Definitions, cont'd

"Supportive measures" to restore/preserve equal access to district's education program or activity =

- Nondisciplinary, nonpunitive individualized services...
- offered as appropriate, as reasonably available, and without fee or charge to the complainant OR the respondent ...
- before or after the filing of a formal complaint
 OR where no formal complaint has been filed
- Examples: counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or district-provided housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and and other similar measures.

Supportive Measures

- The District must consider the complainant's wishes/request for supportive measures.
- The District must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the district to provide the supportive measures.
- The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.



Title IX Roles & Responsibilities

(for Employee Matters)











Title IX Coordinator

- Employee designated to

coordinate district efforts to comply with its responsibilities under Title

IX

- Provides complainant with options, supportive measures and information on how to file a formal Title IX complaint

Investigator

- Provides notice to all parties and opportunities to respond;
- Gathers evidence; and
- Prepares a written report for parties and decision maker

Decision-Maker

- -The Title IX "Judge" - Presides over
- hearings, if applicable
 Monitor questioning
- and cross-examination process and identify irrelevant questions
- Weighs the evidence and reaches a determination of guilt or innocence from the investigative process
- Produce a written statement to both parties describing their verdict.

Appeal Officer

- Gives both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- Issues written decision describing the result of the appeal
- and the rationale for the result: and
- Provides the written decision simultaneously to both parties

Informal Resolution Facilitator

- Serves as a type of mediator between the parties to help resolve the complaint without further investigation or a determination

Title IX Roles & Responsibilities (for Student Matters)











Title IX Coordinator

- Employee designated to

coordinate district efforts to comply with its responsibilities under Title

IX

- Provides complainant with options, supportive measures and information on how to file a formal Title IX complaint Investigator -Campus Administrator

- Provides notice to all parties and opportunities to respond;
- Gathers evidence; and
- Prepares a written report for parties and decision maker

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Training Requirements

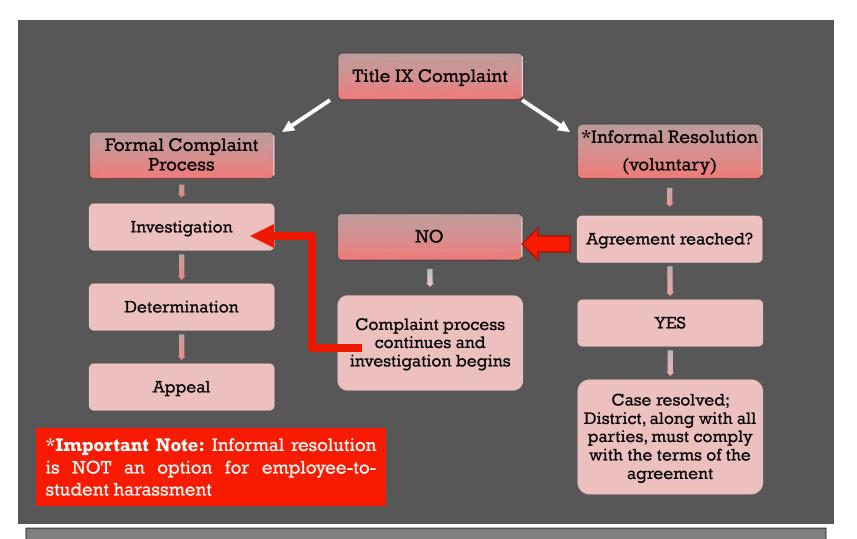
Training Requirements

School districts must provide training for all individuals involved with the district's Title IX compliance, including:

- The Title IX Coordinator(s),
- Investigators,
- Decision-makers,
- Those involved in informal resolution, and
- Those that handle appeals.

Materials used for training purposes must be made publicly available, including on the district's website

The Title IX Formal Complaint Process (and voluntary *Informal Resolution Process)



• Notice of Allegations • Option of Supportive Measures • Right to an Advisor • Emergency Removal • No Contact Agreement

The district has "actual knowledge." What now?

Title IX Coordinator must promptly

- Discuss the availability of supportive measures and inform the complainant that they are available, with or without the filing of a formal complaint;
- Consider the complainant's wishes with respect to supportive measures;
 and
- Explain to the complainant the option and process for filing a formal complaint.



See FFH (Local)

The Title IX Coordinators



(Employee Matters)



(Student Matters)

The Formal Complaint Process

- A formal complaint is the official document alleging sexual harassment.
- The formal complaint process must be impartial and ensure that no conflicts of interest exist.
- The formal complaint may be filed by student, parent or legal guardian or the Title IX Coordinator.
- Even if the complainant does not file a formal complaint, the Title IX
 Coordinator may choose to start a grievance process where discipline would be appropriate.

Time Frame for Formal Complaint Process

- Absent good cause for the District to delay an investigation, the Title IX formal complaint process beginning with filing or signing of the formal complaint and ending with the determination of responsibility <u>should</u> <u>be completed within 60 days</u>.
- Days used for any voluntary informal resolution process do not count towards the time frame for concluding the formal complaint process.
- "Days" means District business days unless otherwise noted by the District.
- The day a document is filed is "day zero" and the next District business day is "day one."

Modifying deadlines

- All time limits shall be strictly followed unless modified by the <u>parties' mutual</u> <u>written consent</u> or extended by the District for <u>good cause</u>.
- If the District grants an extension of time for one party, the same time extension must also be granted to the other party.

Modifying deadlines, cont'd

If the District temporarily delays or extends timelines associated with the formal complaint process, the Title IX Coordinator shall provide a written explanation to the parties of the good cause basis for the delay or extension. Permissible modifications to timelines include the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; the need for language assistance or accommodation of disabilities; or other good cause as determined by the Title IX Coordinator.

Modifying deadlines, cont'd

- urgent nature of Title IX complaints, the District shall make reasonable attempts to schedule meetings at a time mutually agreeable to all parties.
- Extensions should not unnecessarily extend the timeline established below for concluding the formal complaint process.

The Formal Complaint Form

Let's take a minute to review the form, available online at:
https://www.tisd.us/site/handlers/filed
ownload.ashx?moduleinstanceid=2912
&dataid=2137&FileName=Title%20IX%
20IX%
20IX%
https://www.tisd.us/site/handlers/filed
ownload.ashx?moduleinstanceid=2912
&dataid=2137&FileName=Title%20IX%
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The Informal Resolution Officer

Informal Resolution Process

- If a formal complaint has been filed, the Title IX Coordinator may offer participation in a voluntary informal resolution process, such as mediation.
- The district may <u>not</u> require the parties to participate in an informal resolution process.
- At any time <u>prior</u> to reaching a determination regarding responsibility the district may facilitate an informal resolution process that does not involve a full investigation and adjudication.

Informal Resolution Process, cont'd In addition, either party may request informal resolution by making a written request to the Title IX Coordinator, who will promptly notify the other party of this request. The other party is not required to agree to participate. If a party declines or at any time withdraws from an informal resolution process, the Coordinator will notify the other party that the informal resolution process has been terminated and resume the formal complaint process.

Informal Resolution Process, cont'd

Prior to facilitating or designating another person to facilitate the informal resolution process, the Title IX Coordinator will provide both parties written notice that contains at least the following information:

- l. Provides to the parties a written notice disclosing:
 - a. The allegations;
 - b. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the Title IX formal complaint process with respect to the formal complaint; and
 - c. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared:
- Obtains the parties' voluntary, written consent to the informal resolution process; and
- 3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

The Investigators





Investigation Objectives

- Investigate in an impartial manner to determine the facts underlying the formal complaint of sexual harassment.
- Ensure that you provide both parties a meaningful opportunity to participate in your investigation.
- Conclude and Report your findings to both parties and the Decision-Maker.

Investigation Process

- The burden of proof and burden of gathering evidence sufficient to reach a determination regarding responsibility rests with the District and not with the parties. All allegations in a formal complaint will be investigated.
- Absent good cause, the investigation should be completed within 30 days from the date that the formal complaint was signed or filed; however, the investigator may take additional time in accordance with law, board policy, or these procedures.

Gathering evidence

- After receiving the written complaint, the investigator will meet promptly with each party to conduct initial interviews, gather information, and collect evidence.
- While the District has the burden of proof for determining responsibility, the parties may submit evidence, testimony, witnesses, or other information that they wish the investigator to consider.
- Parties may also present fact and expert witness testimony in the form of written statements. Any deadlines or other restrictions related to the formal complaint process must apply equally to both parties.

Gathering evidence, cont'd

The investigator must provide to any party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of any investigative interview or other meetings, with sufficient time for the party to prepare to participate.



Each party may be accompanied by an advisor of the party's choice during the interview with the investigator or other meetings during the formal complaint process.

Confidentiality

- In order to preserve the confidentiality of student information protected by FERPA, the District may require the parent of a minor student to sign a release form indicating consent to allow the District to release information related to the allegations to the designated advisor. [See FL.]
- District shall inform any designated advisors that confidential information received during the Title IX formal complaint process, including the evidence received for inspection and review as well as the investigation report, may be used only for purposes of the Title IX formal complaint process and may not be further disclosed or disseminated. Any restriction or requirement regarding an advisor must apply equally to all parties.

Inspection of Evidence

- In order to afford each party the opportunity to respond meaningfully to the evidence prior to the conclusion of the investigation, the investigator will make available evidence submitted by the parties or obtained as part of the investigation that is directly related to the allegations raised in a formal complaint to both parties for inspection and review.
- This includes evidence upon which the District's decision-maker may choose not to rely on when reaching a determination regarding responsibility, as well as inculpatory or exculpatory evidence.

Inspection of Evidence, cont'd.

Prior to completion of the investigative report, the investigator will send to each party and the party's advisor, if any, the evidence subject to review and inspection in an electronic format or hard copy. As required by law, each party must be allowed **10 days** from the date of receipt of the evidence to inspect and review the evidence, and to submit a written response that the investigator will consider when completing the final investigative report.

The Investigation Report

The investigative report will fairly summarize all relevant evidence and may include the following content:

- Identification of the allegations potentially constituting sexual harassment;
- Any procedural steps taken by Title IX personnel from the receipt of the formal complaint through the conclusion of the investigation, including any notifications to the parties, interviews, site visits, and methods used to gather evidence;
- Responses of each party to the allegations in the formal complaint;
- Evidence obtained by the District;
- Relevant evidence considered by the investigator;

The Investigation Report, cont'd

- The parties' responses to the evidence after review and inspection;
- Findings of fact; and
- Identification of any District policies or codes of conduct implicated by the facts, including referrals to FFH for Investigations for Reports Other Than Title IX, FFI, or other District processes initiated as a result of the investigation

The Investigation Report, cont'd

- The investigator will simultaneously provide the investigation report to both parties.
- The investigator also will send a copy of the investigation report to the Title IX Coordinator, who immediately will assign a decision-maker and provide the decision-maker with a copy of the investigation report.

The Decision Maker

- The decision-maker will make an independent determination regarding a respondent's responsibility for alleged sexual harassment.
- The decision-maker <u>cannot</u> be the District's Title IX Coordinator or the investigator who investigated the complaint at issue.

• In accordance with law, the determination of responsibility may not be issued <u>earlier than 10 days</u> from the date the parties received the final investigation report from the investigator.

• After both parties have received the investigative report and prior to a determination regarding responsibility, the decision-maker will notify each party of the opportunity to submit written, relevant questions that a party wants asked of any party or witness noted in the investigation report.

The decision-maker shall ensure that questioning is relevant, respectful, and non-abusive. In order to maintain a reasonably prompt timeline, the decision-maker may give addressed parties or witnesses a reasonable and equitable deadline to provide answers in response.

• In consultation with the Title IX Coordinator, the decision-maker may also extend the timeline for good cause. A party or witness is not required to respond to any questions posed by the other party. As determined by the decision-maker, the parties may reasonably exchange additional, limited follow-up questions. The Written Determination

The decision-maker will issue a determination regarding responsibility for the alleged conduct in a reasonably prompt manner after the date all questions, answers, and supporting documentation were requested to be submitted to the decision-maker. Absent good cause for the District to delay an investigation, the decisionmaker will issue the written determination of responsibility within the time frame specified in the District's Title IX Administrative Regulation (otherwise known as the District's Title IX Formal Complaint Procedures).

The Written Determination, cont'd

The written determination of responsibility will include:

- Identification of the allegations potentially constituting sexual harassment;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the District's applicable code of conduct or other policy to the facts;

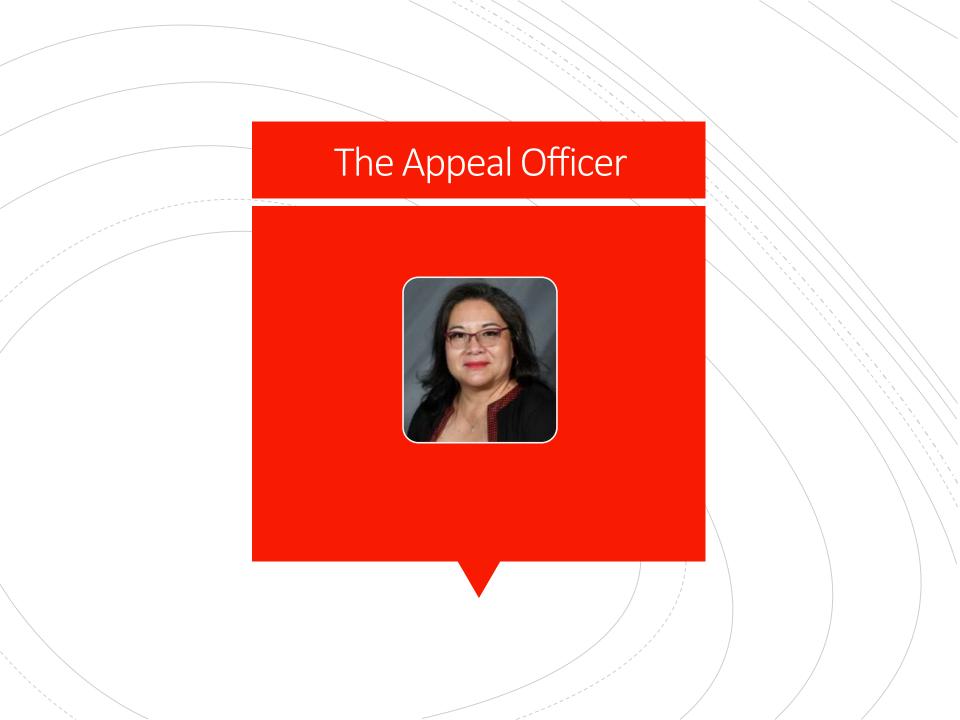
The Written Determination, cont'd

- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any Title IX disciplinary sanctions the District will impose on the respondent, and whether remedies designed to restore or preserve equal access to the District's education program or activity will be provided to the complainant; and
- The procedures and permissible bases for the complainant and respondent to appeal the determination.

The Written
Determination,
cont'd

Please note: the determination of responsibility, and any recommended Title IX disciplinary sanctions therein, is not final or effective until after the period for appeal is over pursuant to the District's Formal Complaint Procedure.

The Title IX Coordinator is responsible for effective implementation of any remedies issued.





• In accordance with law and local policy, either party may appeal the written determination regarding responsibility or a dismissal of a formal complaint or any allegations therein for the following reasons ...



- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; <u>OR</u>

Appeals, cont'd

The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.



Title IX does not require the District to accept appeals based on any other reasons.



- To initiate an appeal, a party must file a written request for appeal with the Title IX Coordinator within 5 days of a party's receipt of the final determination.
- The Title IX Coordinator will review the request and assign an appropriate appellate decision-maker in compliance with law and policy. If the reason for ap-pealing the dismissal or determination of responsibility is not mandatory, the District may dismiss the appeal.

Appeal Procedures, cont'd

If the request for an appeal is not dismissed, the Coordinator will designate an appellate decision-maker to proceed. The appellate decision-maker may not be the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator who investigated the complaint at issue, or the Title IX Coordinator.

Appeal Procedures, cont'd

The Title IX Coordinator will notify the non-appealing party in writing when an appeal is filed and implement appeal procedures equally for both parties.
Both parties will be provided a reasonable, equal opportunity to submit a written statement in support of, or challenging, the dismissal of a formal com-plaint or determination of responsibility. District Response to Appeal of Complaint Dismissal • In an appeal of dismissal of a complaint or any allegation therein, the District's designated appellate decision-maker will review the request for appeal and issue a written decision explaining why the appeal of the dismissal is granted or denied. The appellate decision-maker may not be the Title IX Coordinator, the investigator, or the decision-maker assigned to the complaint or allegation at issue. District Response to Appeal of Complaint Dismissal, cont'd The written decision of the appellate decision-maker will provide the rationale for the District's response to the complainant's appeal of the District's dismissal of a formal complaint or any allegation therein. The decision will either in-struct the Title IX Coordinator to resume implementation of the Title IX formal complaint process or will inform the appealing party of additional options. A copy of this written response will be provided simultaneously to both parties.

Effect of Appeal of Determination of Responsibility

- If an appeal regarding the determination of responsibility is filed, the determination does not become final, and the District may not proceed with administering Title IX disciplinary sanctions or remedies based on the determination, until the date that the District provides both parties with the written result of the appeal.
- If an appeal is not filed, the determination of responsibility becomes final on the date on which an appeal of the determination would no longer be considered timely.

Effect of Appeal of Determination of Responsibility, cont'd

For an appeal by either party to be fully effective, the District must wait to act on the determination regarding responsibility while maintaining the status quo between the parties through supportive measures designed to ensure equal access to education.

District Response to Appeal of Determination

- The written decision of the appellate decision-maker will describe the result of the appeal of the determination regarding responsibility and the rationale for the result. A copy of the written decision of appeal must be provided simultaneously to both parties.
- Once an appellate decision-maker issues a written decision regarding the appeal of the determination of responsibility, the District will proceed with implementing Title IX disciplinary sanctions or remedies or take other appropriate action.

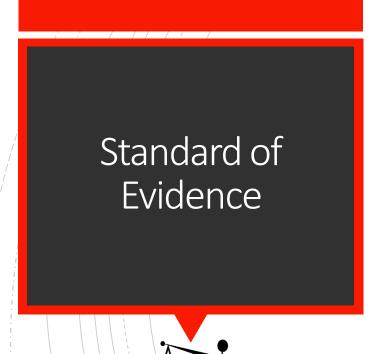


If a respondent has been determined through the formal complaint process to be responsible for the alleged sexual harassment, the District must provide remedies to the complainant that are designed to restore or preserve the complainant's equal access to the District's educational programs and activities. The Title IX Coordinator is responsible for effective implementation of remedies.



In addition to supportive measures, remedies may include the following sanctions or measures:

- Suspension
- Expulsion
- Any disciplinary measure provided by the District's Student Code of Conduct
- Other (e.g., ineligibility to play sports or serve in student government position, etc.)
- Remedies need <u>not</u> be non-disciplinary, non-punitive, or avoid burdening the respondent.



The standard of evidence used to determine responsibility in a Title IX formal complaint of sexual harassment shall be the preponderance of the evidence.

Preponderance of the evidence = more likely than not that the sexual harassment or violence occurred

49% did 51% likely happened

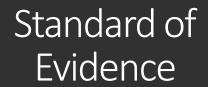
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See FFH (Local)

Standard of Evidence

Consider and analyze the evidence

- Credibility of parties and witnesses
- Motive of parties and witnesses
- Distinguish facts from rumors or personal opinions
- Take note of inconsistencies and corroborated facts
- Does the evidence lead to reasonable & logical conclusions?



Does the evidence meet the "relevance" standard? In other words, does the evidence presented have any tendency to make the existence of sexual harassment more probable or less probable than it would be without the evidence.





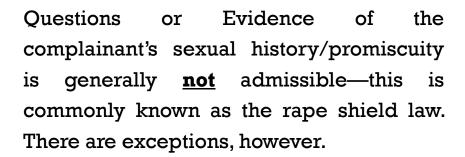
What is relevant?

 Information that is probative of a material fact concerning the allegations.

What is not relevant?

- Information protected by a legally recognized privilege (e.g., attorneyclient privilege, doctor-patient privilege).
- A party's records of treatment from a physician, psychiatrist, or other professional, <u>absent voluntary, written</u> consent.

Evidence Issues: Prior Sexual Behavior and Rape Shield Law



Exceptions:

- The prior sexual behavior is offered to prove that someone other than the respondent committed the conduct, or
- Relates to specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

Evidence Issues:
Prior Sexual
Behavior and Rape
Shield Law, cont'd.

The **decision-maker** must explain to the party proposing the questions any decision to exclude a question as not relevant.



Impartiality of Title IX Officers & Conflicts of Interest



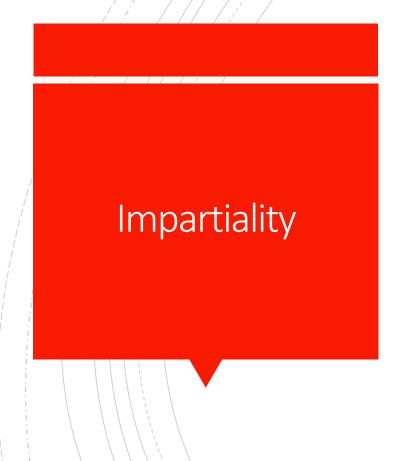


Equitable Treatment

■ The District's treatment of complainants, respondents, witnesses, and any other person involved in a formal complaint process shall not discriminate on the basis of sex. All parties involved will be treated fairly, with dignity, respect, and sensitivity and without bias, prejudice, or reliance on stereotypes.







- All Title IX personnel must serve impartially and free from conflicts of interest or bias against the individual complainant and respondent involved in a formal complaint or against complainants and respondents generally.
- For the purpose of the District's response to allegations of sexual harassment, including the formal complaint process, bias includes but is not limited to bias against an individual's sex, race, ethnicity, sexual orientation, gender identity, disability or immigration status, or financial ability.

Conflicts of Interest

- A conflict of interest arises when a party has competing interests or loyalties because of their duties to more than one person or organization.
- A person with a conflict of interest can't do justice to the actual or potentially conflicting interests of both parties.

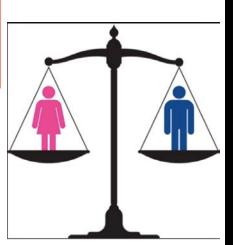
Examples:

- Financial interest (loss or gain) in the outcome of the Title IX complaint
- Familial relationship or close friendship with complainant or respondent
- Good or bad history with one or both of the parties (animosity, social friends, coworkers)

How to Serve Impartially, Avoid Biases and Conflicts of Interest









What is Implicit Bias?

- Implicit bias is the attitudes, stereotypes, and beliefs that we hold that unconsciously affect how we see and treat others. By definition, these biases are not intentional. However, they can still negatively affect how we make decisions by impacting how we judge other people based broadly on their race, gender, other features ability, instead considering who they are individually or examining the specific situation at hand. Implicit bias can affect school discipline. Discipline is often based on whether children's behavior seems disruptive or challenging. Implicit bias can change how providers/teachers administrators and perceive children's behaviors and lead to unfair labels, judgments, and consequences. For example, a provider/teacher may discipline a Black boy and a White girl acting the same way differently because of his/her implicit biases.
- Maryam Adamu and Lauren Hogan, Pre-School to Prison Pipeline, Center for American Progress, 2015



- Follow applicable District investigation policies and procedures
- Maintain documentation of the investigation and evidence relevance decisions.
- Do not make pre-determined conclusions. Your conclusion should be based on the evidence. Do not piece the evidence together to "fit" a certain conclusion.
- As more evidence comes to light, be sure to update and revise your chronology and documentation.
- Engage in more self-awareness to avoid personal biases.
- If it is not documented, you did not do the work. Be sure your documentation shows your work, investigation, analysis of evidence, impartiality and absence of conflict.
- Evaluate source, content, and plausibility in light of other evidence.
- Be thorough in your investigation; it should not be limited to either party's witnesses or evidence.

Retaliation Prohibited

- No district or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX.
- Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

See FFH (Legal)

Retaliation Prohibited, cont'd

- 3. Complaints alleging retaliation may be filed according to the Process for Title IX Formal Complaint.
- The exercise of rights protected under the First Amendment does <u>not</u> constitute retaliation prohibited by Title IX.
- 5. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX formal complaint proceeding does not constitute retaliation prohibited by Title IX, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Record Retention

Records related to complaints of sexual harassment prohibited by Title IX must be retained for 7 years.

This rule applies to all records related to the following events or Title IX requirements or procedures:

- Investigations
- Appeal
- Informal Resolution
- Title IX Training Material
- Supportive Measures taken in response to a Title IX report/complaint of sexual harassment.

See FFH (Legal)

Record Retention, cont'd All assigned Title IX personnel must comply with this recordkeeping requirement.



Confidentiality

- The District must keep information confidential as required by law except as necessary to provide supportive measures, to conduct proceedings under the formal complaint process, when disclosure is required by law, or when permitted by the District in compliance with the Family Educational Rights and Privacy Act (FERPA) and state law, or to otherwise carry out the purposes of 34 C.F.R. Part 106. However, the District may not restrict the ability of the parties to discuss the allegations under investigation or to gather and present relevant evidence.
- A complainant's identity, if known, must be disclosed to the respondent once a formal complaint is filed by a complainant or signed by the Title IX Coordinator.

Required Reporting

• At any point during a District's investigation that evidence is uncovered that requires reporting to law enforcement, Child Protective Services, State Board of Educator Certification, or another entity, District employees <u>must</u> take the necessary actions to do so in compliance with law or board policy.



- US Department of Education: https://sites.ed.gov/titleix/
 - Fact Sheet https://sites.ed.gov/titleix/policy/#fact-sheet
 - Q&A Regarding the Department's Final Title IX Rule https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-20200904.pdf
 - OCR Webinar: Title IX Regulations Addressing Sexual Harassment https://www.youtube.com/watch?v=TdfT5R8ibm4
 - Conducting and Adjudicating Title IX Hearings: An OCR
 Training Webinar
 https://www.youtube.com/watch?v=yO4 S5 Jahw&feature=youtu.be&utm_content=&utm_medium=
 email&utm_name=&utm_source=govdelivery&utm_term=
- Texas Association of School Boards:
 https://www.tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/incorporating-new-title-ix-regulations-into-policy.pdf
- American Progress, https://cdn.americanprogress.org/wpcontent/uploads/2015/10/08000111/PointOfEntryreportUPDATE.pdf

Stay safe and healthy!



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