

What is 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.

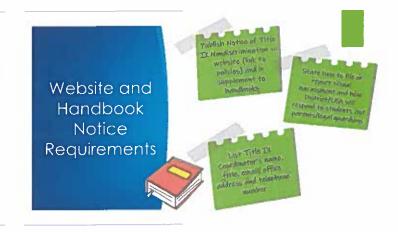
20 U.S.C 1681(a) Title IX Education Amendments of 1972



Major Provisions

- Define Title IX sex harassment
- Specify when schools are obligated to respond to sex harassment altegations
- Impose general standard for sufficiency of response & requirements for response (ex. supportive measures)
- Establish procedural due process protections that must be in grievance process
- Affirm OCR's rote in monitoring Title IX
- Clarify that recipients are not required to deprive individuals of rights guaranteed under U.S. Constitution when responding to sexual harassment claim under Title IX
- Acknowledge intersection of Title IX, Title VII, and FERPA and legal rights of parents to act
- Update Title IX Coordinator designations, notice requirements, and policy distribution
- ✓ Prohibit retaliation

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What you will learn today:

- How to recognize and eliminate bias for or against a complainant or respondent
- How to recognize and eliminate conflicts of interest
- The definition of sexual harassment under Title IX
- The "scope of the Schoot's program or activity"
- How to conduct an investigation and grievance process
- How to prepare an investigation report
- How to be a decision maker both initial and appeal

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Example: Can't assume all complainants are victims or all respondents are wrongly accused. Must listen to all facts presented.

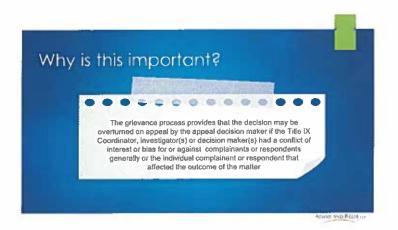


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"whether a reasonable person would believe

bias exists







A training approach that encourages Title IX personnel to "believe" one party or the other would fail to comply with the requirement that Title IX personnel be trained to serve impartially, and violate the regulations precluding credibility determinations based on a party's status as a complainant or respondent.



- parties should be treated with equal dignity and respect by Title IX personnel
- the credibility of any party, as well as ultimate conclusions about responsibility for sexual harossment, must not be prejudged and must be based on objective evaluation of the relevant evidence in a particular case
- In summary, training materials that promote the application of "profiles" or "predictive behaviors" to particular cases would likely run contrary to the regulatory requirements of fairness.



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Members of the Title IX Team Fille IX Coordinator

- DISTRIBUSCUS
- racinal
- Initial Decision Maker (separate person(s))
- Appeal Decision Maker (separate person(s))

But who can handle what?

- Must have a Title IX Coordinator.
- Can outsource one or more of the other jobs.
- Only overlap in duties can occur in Title IX coordinator, dismissals, facilitator, and investigator roles. (Best practice to separate some of these jobs.)

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Definition 1: Quid Pro Quo Harassment



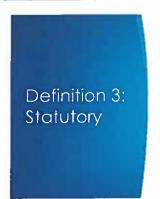
 An employee of the recipient (i.e. educational institution such as a school district/LEA that receives federal funds) conditioning the provision of an aid, benefit or service of the educational institution on an individual's participation in unwelcome sexual conduct; Definition 2: Hostile Environment



 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 educational institution's education program or activity;

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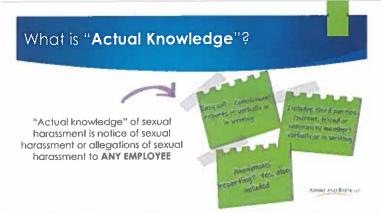


- "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v).
- "dating violence" as defined in 34 U.S.C. 12291(a)(10), "stalking" as defined in 34 U.S.C. 12291(a)(30), or
- "domestic violence" as defined in 34 U.S.C. 12291(a)(8)

Amount you Read up.













Title IX Coordinator

- Has capacity to coordinate School's Title IX program and ensures compliance;
- Receive and coordinate prompt and equitable responses to both reports and formal complaints of sexual horassment;
- Meet with complainants and Inform the parent/guardian once you become aware of allegations of conduct that could constitute sexual horassment as defined in Title IX;
- 4. Identify and implement supportive measures:
- In certain cases, sign formal complaints;
- Engage with the parents/guardians of parties to any formal complaint of sexual parentment.
- 7. Coordinate with Title IX team to ensure that the School atherwise meets its obligations associated with reports and complaints of sexual harassment;



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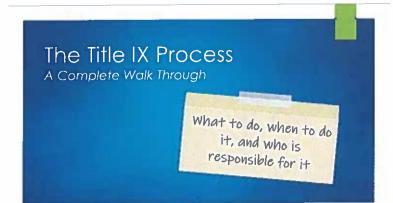


Title IX Coordinator, cont.

- Monitor formal complaint process to ensure proper notices are provided and steps are taken in proper order.
- 10. Determine, in emergency situations, whether an individualized safety and risk analysis is required with regard to a respondent;
- 11. Inform school leaders of any reported employee respondents so that any required reports to Louisiana Dept. of Education may be marker.
- Work with School to ensure appropriate training of all employees and students in accordance with the training requirements under Title IX:
- Develop and implement systems to maintain Title IX records and data for a period of seven years;

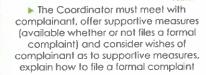


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So you've received a report... now what?





A "report" of sexual harassment is different from a "formal complaint" and each requires different actions on the part of the School.

What are "supportive measures"?

Supportive measures are non-disciplinary, non-punitive, individualized services offered as appropriate and without charge to a complainant or a respondent before or after the filling of a formal complaint or where a complaint has not been filed

counseling, course modifications, schedule changes, increased monitoring or supervision, etc.

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What are "supportive measures"? (Continued)

For example, a supportive measure that completely removes the respondent from an activity could be considered PUNITIVE.

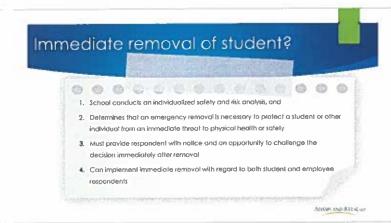
Supportive measures should be designed to restore or preserve equal access to the educational program or activity without unreasonably burdening the other party



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Responding to Reports 000000 School must treat complainants and respondents equitably by: 1. Offering supportive measures to a complainant and respondent, and 2. Following a grievance process BEFORE imposing any disciplinary sanctions on a respondent, and Provide remedies to complainant AFTER determination of responsibility of respondent







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So you've received a formal complaint... now what?

The Coordinator must promptly send written notice to all parties at the same time. The formal grievance procedure must now be followed.

Note

This notice <u>must</u> be provided to parties prior to initial interview by the Investigator so the parties can prepare and/or have a parent/guardian and/or advisor present.

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Written Notice must contain:

- notice of the grievance procedure, including informal resolution process;
- notice of the allegations potentially constituting sexual harassment, including;
 - identity of the parties(if known);
 - conduct allegedly constituting sexual harassment under Title IX
 - date and location of incident (if known):
- 3. a statement that the respondent is presumed not responsible for the aleged conduct and that a determination of responsibility is made at the conclusion of the arievance pracess;
- notice that the parties may have an advisor of their choice (may or may not be an attorney) and may inspect and review evidence;
- identify provisions of code at conduct that prohibit knowingly providing false statements/information.



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The following provisions govern the School's

- Title IX Grievance Process:
- The School freats complainants and respondents equitably by
 - providing remedies to a comptainant after a determination of responsibility for sexual harassment has been made against a respondent, and
 - by following this grievance pracess before imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent.

Remedies must be designed to restore or prestrive equal access to the district's/LEA's education program or activity. Remedies may include supportive measures, but may also include punishing respondent.

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- The School pravides an objective evaluation of all available evidence without making crediblery determinations based on a party's status as compilations, respondent, or witness.
- 3. The School ensures that no member of the Title IX Personnel Team has a conflict of interest or bias for or against either the complainant or the respondent. The School further ensures that training has been provided individuals holding Title IX jobs re: definition of Title IX sexual horassment, scope of the district's/LEA's program or activity, how to conduct an investigation and grievance process, hearings [hearings not required in K12 under TIX process], appeals and informal processes.

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- There is a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility has been made at the conclusion of the grievance process.
- The School provides reasonably prompt time frames for completing the grievance process, including a process to accommodate permissible delays.
- 6. The School Identifies disciplinary sanctions and remedies that may be implemented. Employee sanctions - action up to and including suspension or termination. Student sanctions -student code of conduct consequences, up to and including suspension or expulsion.

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- The School adopts an allowable standard to determine responsibility. IERher the prepanderance of the evidence standard OR the clear and convincing standard.
- The School provides an appeal option. Either party may appeal.
- 9. The School identifies a range of supportive measures.
- The School disallows evidence or questions that constitute or seek legally privileged information, unless the privilege is waived.



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Dismissal of Formal Complaints

The person what handles this job evaluates the allegations to determine whether the formal complaint <u>Must</u> be dismissed or <u>May</u> be dismissed. The job could be held by a separate person or by the Title IX coordinator or the investigator.





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A Formal Complaint may be dismissed if:

- complainant notifies the Title IX Coordinator at any time that he/she wishes to withdraw the complaint or an allegation,
- if the respondent's enrollment or employment ends, or
- If specific circumstances prevent the educational institution from gathering evidence (e.g. passage of several years between complaint and alleged conduct, non-cooperation of complainant, etc.)

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Notice of dismissal must be provided to both parties, including the reasons for dismissal and chance to appeal.

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A Formal Complaint must be dismissed If

- the allegations do not constitute sexual harassment as defined.
- \checkmark did not occur in the School's program or activity of
- ✓ did not occur against a person in the United States
- The same Notice of dismissal must be provided to both parties, as with discretionary dismissal

Note

Dismissal for Title IX purposes doesn't proclude possible action under another provision of the School's code of conduct.

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Informal Resolution Facilitator

The person who conducts the informal resolution process. Also referred to as a mediator. This job could be handled by a separate person, by the Title IX coordinator or by the investigator. If the investigator handles the informal resolution, remember that either party can withdraw from informal resolution and resume the grievance process wherever it was left, which could be in the investigation stage.

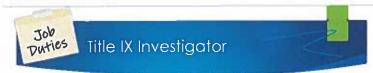


What is "informal resolution"?



- School may offer to facilitate an informal mediation that does not require a full investigation. This can be offered at any point after a formal complaint has been filed.
- Both parties receive written notice of their rights and provide written, voluntary consent.
- Cannot require the waiver of the right to formal process as a condition of employment, continuing employment, enrollment or continuing enrollment.
- Cannot be offered if allegations are made against an employee by a student.
- Right to withdraw from the informal resolution process and resume the grievance process at any time.





- 1. Ensuring that the burden of proof and gathering evidence rests on the School (I.e. you) rather than the parties:
- 2. Providing an equal opportunity for both parties to present witnesses and evidence:
- Making sure that both parties have the ability to discuss the allegations or gather and present evidence - for example, can't prohibit the parties from taking to witnesses to obtain evidence in support of their
- 4. Ensuring that the parties have the same opportunity to have an advisor (who may be an attorney) present during all interviews and proceedings. A student may have both a parent and advisor present;
- Providing written notice to a party who is invited or expected to attend any interview or meeting, including the date, time, participants, purpose, and location, with enough time to allow the party and advisor (if obtained) to prepare to participate;

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As the person with the "burden of proof," the investigator has a duty to prove or disprove a disputed fact. Neither of the parties has to prove anything in the Title IX process - this is your duty.

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The standard of evidence (whether "preponderance" or "clear and convincing") established by School policy is what you are required to prove meet the burden of proof.

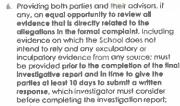
What do you mean "both parties have the ability to discuss the allegations or gather and present evidence"?

> No gag orders!

- You cannot tell parties not to discuss the Title IX investigation, allegations, or evidence.
- The parties must be able to discuss the investigation, allegations, or evidence for the purpose of gathering additional evidence.
- You can still warn parties not to discuss or disseminate the allegations in a manner that constitutes retaliation or unlawful tortious conduct (ex. defamation, libel, slander).

706 Duties

Title IX Investigator, cont.

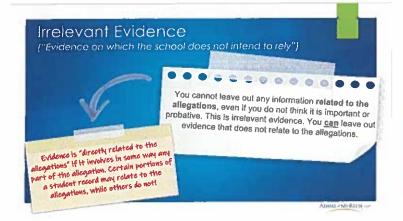


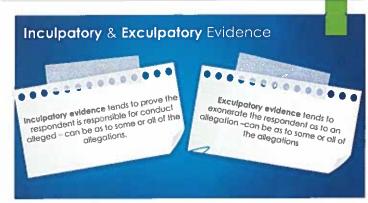
7. Preparing a written investigation report that fairly summarizes the relevant evidence and providing the report to the parties and their advisors at least 10 days before a determination of responsibility for review and written response.

You think you've completed your investigation... now what?

- You must categorize the evidence as "relevant" or "irrelevant," and "inculpatory" and "exculpatory,
- At least 10 days before finalizing the investigation report. you must provide all of this evidence – anything that is directly related to the allegations – to both parties and their advisors.
- Farties are given 10 days to provide written responses to this evidence, which must be incorporated into the final investigation report

Title IX requires transparency and must be balanced with FERPA concerns. Establish best practicesi







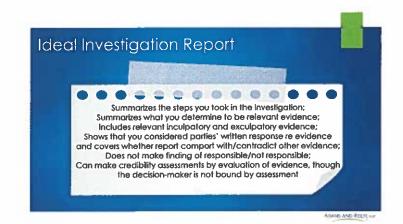
- ▶ Follow up on witness statements that don't contain Information initially stated in the interview
- Follow up with parties/witnesses if you learn information from a later witness about which you need to ask someone you've already interviewed
- Notify parents/guardians parents/guardians have the "right to act" on behalf of all students who are parties



- Detailed notes of all interviews
- ► All investigation notes should include correct dates, times, locations, page numbers
- ▶ Pretend that someone who does not know anything about the matter can read your notes and be able to understand all the information obtained
- Immediately save any potentially applicable video footage
- ▶Be prepared to handle issues related to evidence on phones and legally securing phone evidence

10 days have passed since submitting the evidence... now what?

- ▶ The Investigator finalizes the formal investigation report.
- The investigation report should fairly summarize all relevant evidence.
- ▶ Evidence is relevant if:
 - It has any lendency 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.





Title IX Initial Decision Maker

The Initial Decision-Maker receives the final written investigation report from the Investigator, and makes a decision regarding the determination of responsibility.

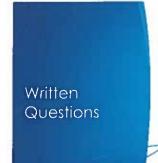
Before the Initial Decision-Maker determines whether the respondent is responsible, the parties have ten days to review the investigation report and prepare a written response to be provided to the Initial decision-maker. The porties are also permitted to submit written questions.

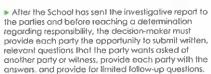




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You may place reasonably limits of written questions, as long as limitations are applied equitably.



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After the exchange of written questions and receiving written responses from the parties. The Initial Decision Maker issues a final determination of responsibility.



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Written Determination of Responsibility



The written Determination of Responsibility

- Identify the allegations that potentially constitute sexual harassment as defined in the amendments;
- Describe the School's procedural steps taken from the receipt of the complaint to the determination;
- Include findings of fact supporting the determination;
- 4. Include conclusions regarding application of the code of conduct to the facts;
- 5. Include a statement of, and a rationale for, the result as to each allegation, including a determination of responsibility, any disciplinary sanctions imposed upon the respondent, and whether remedies to restore or preserve equal access to the School's education program or activity will be provided to the complainant; and
- 6. Includes procedures for appeals

Decision
Maker
Reminders!

Show Your Work!

The decision-maker has to:

►Make an independent decision.

Address the things that came AFTER the investigation report

Written responses of the Parties come after the investigation report

Written questions come after the investigation report

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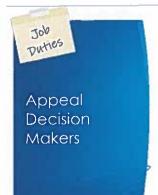
Both parties have the right to appeal a determination of a processor of the control of the contr

responsibility and

2) the School's dismissol of a formal complaint

for the following reasons:



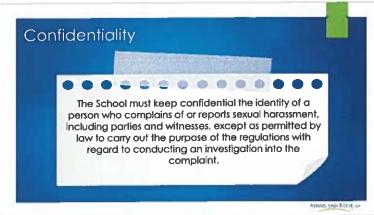


The Appeal Decision Maker:

- ▶ Reviews the determination of responsibility and receives the notice of appeal.
- Provides both parties written notice of the appeal.
- ▶ Provides both porties an equal opportunity to submit a written statement in support of, or challenging, the determination of responsibility.
- Provides a written determination on appeal simultaneously to both parties.
- ▶ The Appeal Decision Maker can overturn, affirm, or modify the final written determination.

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The Coordinator is responsible for record keeping;

Records should reflect that the School's response was not deliberately indifferent and that measures were taken to restore or preserve equal access to the education program or artibits.

If the School does not provide a complainant with supportive measures, the School must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

►The School must also retain for seven years any materials used to train Title IX Coordinators, investigators, decisionmakers and any employee designated to facilitate an informal process.

The School must post training materials on the School's

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