



Title IX Investigator Training

K12 School Districts
2022-2023

February 8, 2023



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Overview of Training



- Overview of Title IX
- Title IX Investigation Process
- Important Considerations
- Case Study



- No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.
- Enforced through the Department of Education, Office for Civil Rights (OCR)



Rescinded Guidance from OCR
under Obama administration

2015

Title IX Coordinator

2011, 2014, 2016

2017

Q&A on Campus Sexual
Misconduct

BINDING GUIDANCE ON TITLE IX

2001

Regulations on Title IX

1998-1999

Supreme Court decisions on
Title IX

2020

Final Rules on Title IX
(effective 8/14/20)

2021

Notice of Interpretation –
sexual orientation/gender
identity

Questions and Answers on
New Regs



Legal Obligation

Educational institution must respond in a manner that isn't deliberately indifferent when it has actual knowledge of sexual harassment occurring in the institution's education program or activity against a person in the United States.

In K-12 institutions, **ALL EMPLOYEES** have obligation to report

Title IX – Parties and Administrators



Parties

- Complainant – alleged victim/survivor
- Respondent – responds to the allegation

Administration of Claims

- Title IX Coordinator
- **Title IX Investigator**
- Title IX Decision-maker
- Title IX Appeal Officer
- Title IX Advisor
- Title IX Informal Resolution Officer

Investigator Responsibility



- Serve objectively, impartially, without bias
 - Conflicts
 - Stereotypes
- Gather all information related to a claim
- Analyze
 - Relevancy
 - Authenticity
 - Credibility
- Connect to parties and witnesses
- Assist in maintaining legitimacy of the process
- Policy should define the INVESTIGATOR role



- Be neutral – neither pro-Complainant nor pro-Respondent
- Consider the evidence as presented
- Confront and understand bias and not allow it to impact decision
- Maintain open mind as to the potential conclusions

Conflicts of Interest



- Relationship to parties or witnesses
- Professional conflicts
- Personal conflicts
- Actual and perceived



- “A fixed, over generalized belief about a particular group or class of people.” (Cardwell, 1996)
- Stereotypes around sexual assault
- Stereotypes around sexual harassment
- Complainant and Respondent





- Conscious/Explicit
 - Discriminatory intent
 - Stated preferences
- Unconscious/Implicit
 - For the most part, most people are unaware of these drivers
 - Developed over a period time and can influence many factors in hearing
 - Short cuts developed by the brain and often play a role in:
 - Immediate response to conflict
 - Often mimics fear responses

Displaying Bias



Types of Claims Under Title IX



- Athletics, access, parity
- Sex discrimination
- Sexual harassment
- Covers students and employees



Types of Sexual Harassment

Under 2020 regulations



Conduct on the basis of sex:

- **Quid pro quo** - An employee who conditions the receipt of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct.
- **Hostile environment** sexual harassment, defined as unwelcome conduct determined by a reasonable person to be so severe, pervasive **and** objectionably offensive that it effectively denies a person equal access to the school's education program or activity (emphasis added).



Sexual Assault

- Rape
- Fondling
- Incest
- Statutory Rape

Dating/Domestic Violence

Stalking



- Age of consent
- Affirmative consent law applies to all institutions of higher education (public and private) in the state
- Important elements of consent
 - Freely given
 - Ongoing
 - Manifested



- Occurring in the institution's education program or activity includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurs
- Against a person in the United States

Dismissal - Mandatory and Permissive



Mandatory dismissal

- Would not constitute sexual harassment as defined in regulations
- Did not occur in education program or activity
- Did not occur against a person in the U.S.

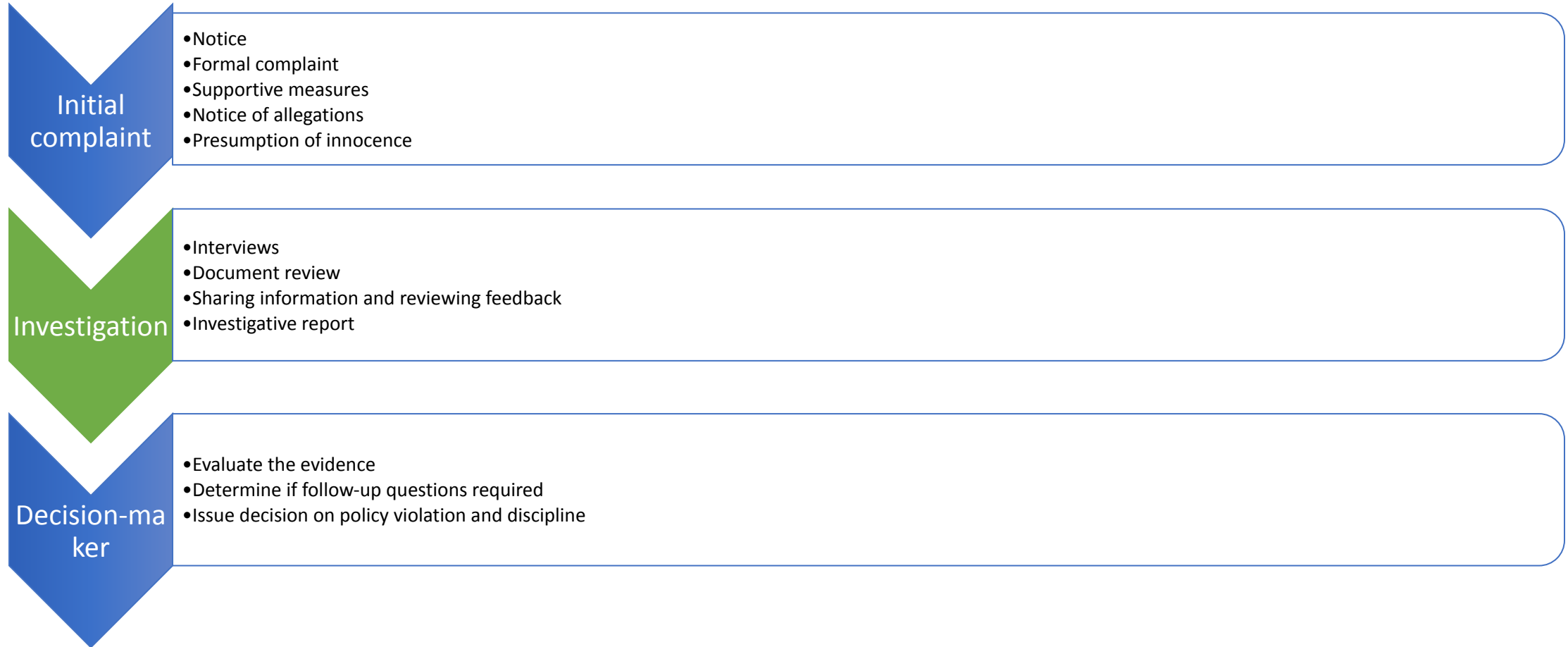
Permissive dismissal

- Complainant notifies Title IX Coordinator in writing that Complainant would like to withdraw formal complaint or allegations
- Respondent is no longer enrolled or employed by school district
- Specific circumstances prevent the school district from gathering evidence sufficient to reach a determination

Overview of Grievance Process



OBLIGATION: Respond promptly in a manner that is not deliberately indifferent





When sexual harassment or allegations of sexual harassment
come to the attention of
ANY EMPLOYEE
of a K-12 district

All employees **MUST** report

Formal Complaint



- Schools are required to investigate formal complaints - filed by a complainant alleging sexual harassment against a respondent and requesting that the school investigate the allegation
 - a complainant must be participating in or attempting to participate in the education program or activity of the school to file formal complaint
- If the complainant does not file a formal complaint, the wishes of the complainant should be respected.
 - Unless the Title IX Coordinator decides to initiate the complaint and it is “is clearly not unreasonable in light of the known circumstances”
 - Title IX Coordinator may file and sign a formal complaint
 - Title IX Coordinator does NOT become complainant



- Mandatory obligations include offering “**supportive measures**” to complainant that must be non-punitive, non-disciplinary, and not unreasonably burdensome on the other party
 - GOAL - provide both parties with equal access to their education, protect safety, and deter sexual harassment.
- No action can be considered “disciplinary” against a respondent at this stage.
- Appropriate supportive measures counter allegations of deliberate indifference
- Supportive measures must be revisited frequently and properly documented



- While standing in line for lunch, Student 1 reported that Student 2, who was directly behind her, inched closer and closer to her as the line continued to grow. Initially, Student 1 thought someone had touched her bottom, and she turned on saw Student 2 standing right behind her grinning. When Student 1 told Student 2 to stop, Student 2 reached out both hands and grabbed Student 1's breasts, over Student 1's clothing.
- An administrator on lunch duty saw this incident and reported it to the principal.

What Happens Next?



- A. Student 1 should be called to the office to sign a statement
- B. Student 2's parents should be called
- C. Student 2 should be put on school suspension immediately
- D. Administrator and/or principal should contact the Title IX Coordinator



Title IX Coordinator Initial Review and Decisions:

Jurisdiction

Student Removal



- Offer of Formal Complaint Process Letter
- Title IX Formal Complaint Form
 - Most districts use their Uniform Complaint Procedure form
- Supportive Measures for Complainant Form

Offer of Process



•INITIAL REPORT

[INSTITUTION] received a report concerning your child, (“Complainant”), which was provided to the Title IX Office on [DATE OF TITLE IX REPORT]. The report identified Complainant as a victim of conduct that, if true, could constitute Title IX Sexual Harassment and/or state law sexual harassment, as defined in federal or state law as well as [POLICY #] [POLICY TITLE].

•OFFER OF FORMAL PROCESS

[INSTITUTION] takes this matter very seriously and would like to offer Complainant the opportunity to file a Formal Complaint. To initiate the Formal Complaint process, we ask that you fill out the attached Formal Complaint Form and forward it to my attention. If you are unable to fill out this form or need assistance, please reach out to me directly. As an educational institution subject to Title IX of the Education Amendments of 1972, [INSTITUTION] must respond without deliberate indifference and follow the Title IX Complaint Procedures outlined in [INSTITUTION]’s [POLICY #] [POLICY TITLE].

This offer to file a Formal Complaint in no way implies that [INSTITUTION] has made a decision on the merits of Complainant’s allegations. Should Complainant file a Formal Complaint, [INSTITUTION] will appoint individual(s) to serve as the investigator, who will gather the evidence, and a decision-Maker who will assess the evidence and make a final decision about policy violation and discipline, if appropriate. A determination of responsibility will not be made until the conclusion of the Title IX Complaint Procedures.

•In the event Complainant does not choose to file a Formal Complaint, [INSTITUTION]’s Title IX Coordinator may decide, based on allegations, to initiate an investigation. If the Title IX Coordinator decides to initiate an investigation, you will be contacted and advised of the investigation process.

•OFFER OF SUPPORTIVE MEASURES

As the Title IX Coordinator, I would also like to provide Complainant with Supportive Measures that will allow the Complainant to continue in their education program and activities. Supportive Measures are individualized to the needs of the student and are

•PROHIBITION AGAINST RETALIATION

Retaliation is prohibited under [POLICY #] [POLICY TITLE]. No person may retaliate against any individual because the person filed a report or complaint or participated or refused to participate in the investigation or resolution of a formal complaint.

•INSTITUTION’S POLICIES

Enclosed with this letter is [INSTITUTION]’s Title IX policies and procedures and the Formal Complaint form for your review. These materials can also be accessed on our website at [WEBSITE URL]. If you have any questions, please contact me at [CONTACT INFORMATION].

Supportive Measures



SUPPORTIVE MEASURES

Supportive measures are individualized to the needs of the parties and are intended to deter sexual harassment, promote the safety of the parties, and restore or preserve equal access to [INSTITUTION]'s education program or activities. Supportive measures are available before, during, or after the filing of a formal complaint under [INSTITUTION]'s Title IX Policy. These measures are available even if a complainant does not initiate a formal investigation with [INSTITUTION] or file a report of the alleged incident with law enforcement authorities.

Examples of supportive measures are:

- Campus escort services
- Course accommodations that may include reasonable adjustments to coursework or class schedules
- Issuance of a No-Contact Order, involving mutual restrictions on contact between the parties
- Leave of absence
- Increased security or monitoring of areas at school location
- Referrals to counseling or support services

- (Form included in Handbook)

Notice of Allegations



- Notice of the allegations of sexual harassment including sufficient details known at the time including the identities of parties, the conduct alleged, and date and location of the incident
- Provided before Respondent's interview
- Allow for sufficient time to prepare a response before any initial interview
- Includes policies alleged to have been violated and must be supplemented if additional allegations arise
- Notice of informal resolution process
- Must include:
 - Respondent is presumed not responsible for the allegation
 - Parties may have an advisor of their choice

Presumptions

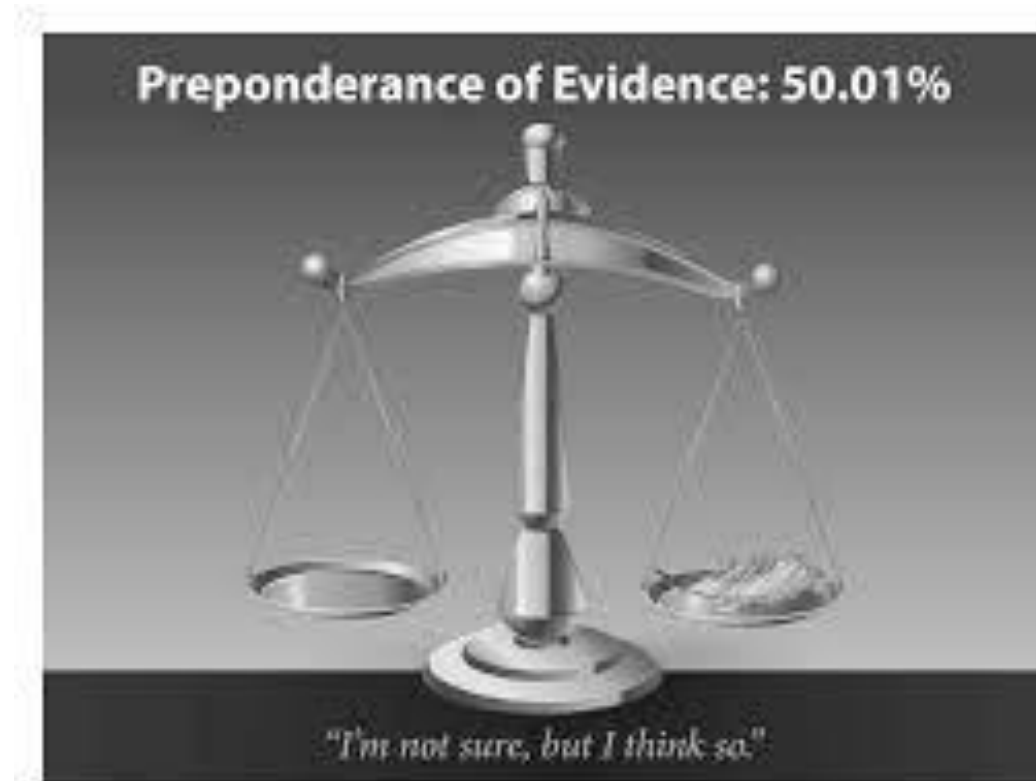


- Not responsible until proven to be responsible
- Stereotypes and bias

Burden of Proof



- Preponderance of the evidence
- Clear and convincing



Section II – Respondent Letters and Forms



- Notice of Allegations Letter
- Offer of Supportive Measures for Respondent Letter
- Supportive Measures for Respondent Form (same as Complainant's form, just customized for Respondent)
- Dismissal from Title IX Process Letter

Notice of Allegations – Copy to Parties



INTRODUCTION

This letter is to inform you that on [DATE], a Formal Complaint was filed by [COMPLAINANT] (“Complainant”) against [RESPONDENT] (“Respondent”). [IF TITLE IX COORDINATOR SIGNED FORMAL COMPLAINT, REPLACE THE PREVIOUS SENTENCE WITH: “This letter is to inform you that [INSTITUTION] initiated a Formal Complaint against [RESPONDENT NAME] (“Respondent”) on [DATE].”] The INSTITUTION initiated a formal investigation into this matter on [date].

ALLEGATIONS

The Formal Complaint alleges:

[FOR EACH ALLEGATION, DESCRIBE ALLEGED CONDUCT AND INCLUDE DATE(S), TIME(S), LOCATION(S).]

[NOTE: THIS LETTER SHOULD INCLUDE ONLY THOSE ALLEGATIONS THAT MAY, IF TRUE, CONSTITUTE TITLE IX SEXUAL HARASSMENT]

SCHOOL’S OBLIGATION UNDER TITLE IX

As an educational institution subject to Title IX of the Education Amendments of 1972, [INSTITUTION] intends to respond without deliberate indifference and follow the Title IX Complaint Procedures outlined in [INSTITUTION]’s [POLICY #] [POLICY TITLE]. This includes investigating Formal Complaints alleging sexual harassment under [POLICY #] [POLICY TITLE]. The opening of a Formal Title IX investigation does not mean that [INSTITUTION] has made a decision on the merits of Complainant’s allegations. For the purposes of the initiation of this investigation, the Respondent is presumed not responsible for the alleged conduct. A determination of responsibility will be made at the conclusion of the grievance process.

OFFER OF INFORMAL RESOLUTION

The parties may, at any time prior to a final determination, agree to participate in [INSTITUTION]’s Informal Resolution Process. In Informal Resolution, a trained facilitator helps both parties find a mutually acceptable resolution to the Formal Complaint. If you are interested in learning more about the Informal Resolution Process, please reach out to the Title IX Coordinator for additional information.

TITLE IX ADMINISTRATORS AND POTENTIAL CONFLICTS OF INTEREST

The following individuals will serve as the Title IX team for this Formal Complaint:

Title IX Coordinator: [NAME AND CONTACT INFORMATION]

Title IX Investigator: [NAME AND CONTACT INFORMATION], who will serve as a neutral fact-finder and will gather and assess evidence.

Title IX Decision-Maker: [NAME AND CONTACT INFORMATION], who will determine if a policy violation took place after the investigation process concludes and will impose discipline, if appropriate.

[NOTE: IF THE TITLE IX COORDINATOR AND INVESTIGATOR ARE THE SAME PERSON, PLEASE NOTE BOTH TITLES FOR SAME PERSON. TITLE IX COORDINATOR MAY NOT SERVE AS THE DECISION-MAKER]

If you have any concerns regarding bias or conflict of interest involving any of these individuals, please notify me within three (3) calendar days of receiving this notice.

APPLICABLE SCHOOL POLICIES

[INSTITUTION]’s Title IX Complaint Procedures contains a full summary of Complainant’s and Respondent’s rights and responsibilities during the investigation. The parties have the right to inspect any evidence directly related to the allegations. The parties also have the right to an advisor who may be, but is not required to be, an attorney. If a party does not have an advisor, but would like one, [INSTITUTION] can provide one.

ANTI-RETALIATION

Retaliation is prohibited under [POLICY # TITLE]. No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has filed a report or complaint or participated or refused to participate in the investigation.

Notice of Dismissal from Title IX



INTRODUCTION

As you know, a Formal Complaint was filed by [COMPLAINANT] (“Complainant”) against [RESPONDENT] (“Respondent”). [IF TITLE IX COORDINATOR SIGNED FORMAL COMPLAINT, REPLACE THE PREVIOUS SENTENCE WITH: “This letter is to inform you that [INSTITUTION] initiated a Formal Complaint against [RESPONDENT] (“Respondent”) on [DATE].”]

ALLEGATIONS

The Formal Complaint alleges:

[FOR EACH ALLEGATION, DESCRIBE ALLEGED CONDUCT AND INCLUDE DATE(S), TIME(S), LOCATION(S).]

DISMISSAL FROM TITLE IX PROCESS

For the purposes of evaluating this matter under Title IX and the [INSTITUTION’S POLICY] at this time, the allegations of sexual harassment set forth above are taken as true.

[DISMISSAL BECAUSE OF LACK OF JURISDICTION]

The INSTITUTION is dismissing this matter because the INSTITUTION lacks jurisdiction over this matter. Specifically, the INSTITUTION has determined that the allegations [SELECT WHICH APPLIES]

did not occur in an educational program or activity

did not occur in the United States

Respondent is no longer attending or is employed by the INSTITUTION

specific circumstances prevent the school district from gathering evidence sufficient to reach a determination

[DISMISSAL BECAUSE ALLEGATIONS DO NOT RISE TO TITLE IX SEXUAL HARASSMENT]

The allegations set forth above do not implicate a potential violation of [Select proper provision: QUID PRO QUO HARASSMENT, HOSTILE ENVIRONMENT HARASSMENT] under Title IX, as set forth in [INSTITUTION’S POLICY]. As stated in Title IX regulations, [QUID PRO QUO or HOSTILE ENVIRONMENT] harassment under Title IX is defined as:

[ADD RELEVANT INFORMATION FROM THE POLICY]

Taking the allegations submitted as true for this analysis, if Respondent engaged in the behavior set forth above, it does not meet the definition of [QUID PRO QUO or HOSTILE ENVIRONMENT] under Title IX because this allegation taken alone does not present behavior [EXPLAIN WHY BEING DISMISSED USING TITLE IX AND/OR POLICY LANGUAGE]. Accordingly, this matter is dismissed from the process set forth in [INSTITUTION’S TITLE IX POLICY] [*Note: if matter is moved to state law include the following language:* and will proceed using the [STATE LAW POLICY AND PROCESS] and the investigation will commence as of this date].

APPEAL OF DECISION TO DISMISS UNDER TITLE IX

If you disagree with this dismissal under Title IX and [INSTITUTION’S TITLE IX POLICY], you may submit an appeal of this decision to [IDENTIFY WHO REVIEWS THE APPEAL AND CONTACT INFORMATION] within [POLICY SHOULD DESIGNATE NUMBER OF DAYS- Most policies give 3 business days] of the date of this letter.

NEXT STEPS - [ARTICULATE ANY NEXT STEPS IN THE STATE LAW PROCESS]



Conducting Investigations

Basics

Information Gathering



- Types of information
- Background
- Request information from parties
- Proactively seek information
- Requests and refusals
- Information sharing



- Formal complaint
- Notice to both parties
- Supportive measures
- Timelines
- Parties (and parents) understand the process
- Other complaints?
 - Criminal matters
 - Similar complaints – consolidation
- Concurrent or parallel investigations
- Record-keeping requirements
- **Documentation at every step!!**

Preliminary Information Gathering



- Documents shared with the parties
- Other records



What Is Next?

Organizing the Investigation

Conducting Interviews



- Introduction
- Questioning – time, space, and effect of silence
- Open-ended versus leading questions
- Direct versus indirect evidence
- Sensory recollection
- Note-taking versus audio/video-recording
- Advisors' role
- Investigator should maintain the control the interview
 - Decorum
 - Responses
 - Concluding the interviews
 - “Anything else”

Gathering Documents and Other Evidence



- Emails, texts, photos
- Legal implications
- Support or contradict testimony
- Character evidence

Weighing and Challenging Evidence



- Authentication
- Relevance
- Credibility



- RELEVANCE – Applying to the matter in question; affording something to the purpose (Black’s Law Dictionary)
- NOT permitted:
 - Sexual history of Complainant (see Rape Shield exception)
 - Privileged communications
 - Medical documentation
- Not repetitive



- Corroboration
- Feasibility
- Motivation for truthfulness/untruthfulness
- Consistent
- Reviewed/coached



- Many Title IX causes of action involve trauma
- Investigators and decision-makers must understand the impact of trauma on:
 - Reaction to trauma
 - Ability to capture memories
 - Recollection of memories
- Expectations around trauma victim



Writing the Report



- Convey relevant information about the allegations to the parties and their advisors
- The Department of Education takes no position on the elements required in the report beyond what is required by final regulations
- The investigative report must fairly summarize relevant evidence



Decision-maker must issue a written determination regarding responsibility that has to include

- Findings of fact
- Conclusions as to all allegations
- Rationale for reaching the decision
- Sanctions if the respondent is found responsible for policy violations must be included in the written determination.

Organizing the Report



- Covering required categories
- Providing the relevant information
- Including applicable policy provisions
- Staying within the parameters of the investigation report (as set forth in policy)

- 20-20 Hindsight

Title IX Report and Information Sharing



Before investigation report issued, all evidence shared

Opportunity to question and provide feedback

Investigation report issued and shared

Opportunity to question and provide feedback on investigation report

Final outcome letter issued by decision-maker(s)

Section III - Investigation Process



- Interview Notetaking Form
- Sharing of all Investigation Materials Letter
- Title IX Investigation Report Form
- Delivery of Investigation Report and Opportunity to Respond Letter

Decision-Maker Role



- Review all materials in investigation report
 - Consider challenges/questions submitted by parties
- Question investigation and report
- Respond to questions on report itself from parties
 - Relevancy
- Conclude whether policy violation occurred and determine discipline, if necessary



Other Considerations

Appeal and Non-retaliation

Grounds for Appeal



- Procedural irregularity in the Title IX grievance process affected the outcome;
- Newly discovered evidence that was not reasonably available at the time of the determination of responsibility or dismissal that could affect the outcome; or
- Due to a bias or conflict of interest by the Title IX Coordinator, investigator, or decision-maker that affected the outcome.

Other Important Provisions



- Non-retaliation
- Record-keeping



Case Study

Allegation of Sexual Harassment – State Law Example



- **Title IX hostile environment sexual harassment** - unwelcome conduct determined by a reasonable person to be so severe, pervasive **and** objectionably offensive that it effectively denies a person equal access to the school's education program or activity (emphasis added).

Hostile environment sexual harassment

- Prohibited sexual harassment includes, but is not limited to, unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature made against another person of the same or opposite sex in the educational setting, under any of the following conditions:
 - ...
 - 3. The conduct has the purpose or effect of having a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment.



QUESTIONS?