



Region ESC 8 Title IX Training

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District Compliance Action

- Adopt revised Board Policies in TASB Update 115 (FFH and DIA).
- Designate administrators and provide training.
 - Also train employees regarding reporting sexual harassment.
- Notice to parents, students, and employees.
- Updated record retention requirement (seven years).
 - Publish training on website.



New Terminology

- **Complainant** – Individual alleged to be the victim of sexual misconduct.
- **Respondent** – Individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- **Recipient** - Means elementary or secondary schools, as well as post-secondary institutions, that receive federal financial assistance.
- **Reporter** –Has no role in ongoing ensuing investigations or other resolutions

AFTER Grievance Process and Determination

- **Victim or Survivor**
- **Perpetrator**



The Definition of Sexual Harassment has Changed

The new regulations provide that there are only 3 categories that could constitute sexual harassment under Title IX.

- 1) Quid pro quo harassment – (when an employee of the district conditions the provision of an aid, benefit, or service of the district on an individual’s participation in unwelcome sexual conduct.”).
- 2) Unwelcome conduct on the basis of sex that a reasonable person would determine is so “severe, pervasive, **and** objectively offensive” that it effectively denies a person equal access to the district’s education program or activity (hostile environment),
- 3) A type of sexual violence as defined by federal law. (Clery Act Terms)
 1. Sexual assault
 2. Dating violence
 3. Domestic violence
 4. Stalking



Prohibited Harassment: DIA(Local)

SEX-BASED HARASSMENT OF AN EMPLOYEE

A form of sex discrimination defined as unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or non-verbal conduct; or other conduct or communication of a sexual nature when:

1. Submission to the conduct is either explicitly or implicitly a condition of an employee's employment, or when submission to or rejection of the conduct is the basis for an employment action affecting the employee; or
2. The conduct is so severe, persistent or pervasive that it has the purpose or effect of unreasonably interfering with the employee's work performance or creates an intimidating, threatening, hostile, or offensive work environment.



Prohibited Harassment: FFH (Local)

Sexual Harassment by an Employee – Sexual harassment of a student by an employee includes both welcome and unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature when;

1. A District employee causes the student to believe that the student must submit to the conduct in order to participate in a school program or activity, or that the employee will make an educational decision based on whether or not the student submits to the conduct; or
2. The conduct is so severe, persistent and pervasive that it:
 1. Affects the student's ability to participate in or benefit from an educational program or activity, or otherwise adversely affects the student's educational opportunities; or
 2. Creates an intimidating, hostile, or abusive educational environment.



Prohibited Harassment: FFH (Local)

Sexual Harassment by Others – Sexual harassment of a student, including harassment committed by another student, includes unwelcome sexual advances; requests for sexual favors; or sexually motivated physical, verbal, or nonverbal conduct when the conduct is so severe, persistent, or pervasive that it:

1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;
2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or
3. Otherwise adversely affects the student's educational opportunities.



Sexual Harassment of a Student

- Sexual advances;
- Touching intimate body parts or coercing physical contact that is sexual in nature;
- Jokes and conversations of a sexual nature; and
- Other sexually motivated conduct, contact, or communications, including electronic communication.



Response to Sexual Harassment

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 considering the known circumstances.



Response to Sexual Harassment – Actual Knowledge

- District is required to act when it has “actual knowledge” (not “knows or reasonably should know”).
- “Actual Knowledge” threshold is met when notice or allegations of sexual harassment are reported to:
 - Any district official who has the authority to institute corrective measures on behalf of the district, or
 - Any employee of an elementary or secondary school, or
 - When an employee personally observes conduct that could constitute sexual harassment.



Response to Sexual Harassment – Education Program or Activity

- Includes locations, events, or circumstances over which the district exercised substantial control over both the respondent and the context in which the sexual harassment occurs.



Response to Sexual Harassment – Other Issues

- Sexual harassment that occurs off campus and does not occur in an ***education program or activity*** of the district is not covered under Title IX.
- Title IX no longer applies to acts committed outside of the United States ***even if*** the misconduct occurred in a district's education program or activity.
- Other policies may apply that would require a response.



Retaliation Prohibited

- Against a student alleged to have experience discrimination or harassment, including dating violence.
- Against another student who, in good faith, makes a report of harassment or discrimination, files a complaint of harassment or discrimination, serves as a witness, or participates in an investigation;
- Or against a student who refuses to participate in any manner in an investigation under Title IX.

Examples:

- Threats
- Intimidation
- Coercion
- Rumor spreading
- Ostracism
- Assault
- Destruction of property
- Unjustified punishments
- Unwarranted grade reductions

Note: Unlawful retaliation does not include petty slights or annoyances.



Accessible Reporting

- The regulations expand a school's obligation to ensure its educational community knows how to report to the Title IX Coordinator.
- Schools must notify not only students and employees of the district but also applicants for employment, parents and legal guardians of any student.

Any person may report sex discrimination, including sexual harassment (whether or not the reporting person is alleged to be the victim of conduct that could constitute sexual harassment) in person, by mail, by telephone, or by email using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving that person's verbal or written report.

- **Such a report may be made at any time , including during non-business hours.**



Alternative Reporting Procedures

- An individual shall not be required to report prohibited conduct to the person alleged to have committed the conduct.
- A report against the Superintendent may be made directly to the Board. If a report is made directly to the Board, the Board shall appoint an appropriate person to conduct an investigation.



Timely Reporting

To ensure the District's prompt investigation, reports of prohibited conduct shall be made as soon as possible after the alleged act or knowledge of the alleged act.



Notice to Parents

The District official or designee shall promptly notify the parents of any student alleged to have experienced prohibited conduct by a District employee or another adult.



Notice of Allegations

Upon receipt of a formal complaint, a district must provide the following written notice to the parties who are known:

1. Notice of the district's Title IX formal complaint process, including any informal resolution process.
2. Notice of the allegations, including enough details known at the time and with enough time to prepare a response before any initial interview. These details include:
 1. The identities of the parties involved in the incident, if known;
 2. The conduct allegedly constituting sexual harassment; and
 3. The date and location of the alleged incident, if known.



Notice of Allegations, cont.

- The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Title IX formal complaint process.
- The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney and may inspect and review evidence.
- The written notice must inform the parties of any provision in the district's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the Title IX formal complaint process.
- If, during an investigation, the district decides to investigate allegations about the complainant or respondent that are not included in the notice of allegations, the district must provide notice of the additional allegations to the parties whose identities are known.



New Roles in Process

Prior to the changes, districts were already required to have a **Title IX Coordinator** to lead compliance efforts. Now the regulations require districts to designate the following additional positions:

- Investigators
- Decision-makers
- Facilitators

A district must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the following:

- Definition of sexual harassment,
- The scope of the district's education program or activity,
- How to investigate and grievance process, appeals, and informal resolution processes, and
- How to serve impartially, including by avoiding prejudgment of facts at issue, conflicts of interest, and bias.



Initial Assessment

- Upon receipt or notice of a report or complaint, the Title IX Coordinator must conduct an initial assessment.
 - Determine whether the alleged misconduct constitutes sexual harassment as defined under Title IX.
 - Based upon the determination of the person allegedly harassed, follow the process in the appropriate policy.
 - **FFH (LOCAL)** - sex-based harassment against a student, or
 - **DIA (LOCAL)** - sex-based harassment against an employee.
 - Determine whether the alleged misconduct meets the elements of harassment as defined by Title IX.
 - Even if the alleged misconduct does not constitute harassment under DIA or FFH, it may violate another policy.
 - For example, misconduct against a student may violate FFI (bullying).



Emergency Removal

A district may remove a respondent from its education program or activity on an emergency basis, provided that:

- The district undertakes an individualized safety and risk analysis;
- Determines an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal; **and**
- The district provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.



Administrative Leave

Title IX regulations do not preclude a district from placing a nonstudent employee respondent on administrative leave during the pendency of a Title IX formal complaint.



Title IX: General Response

When the District receives notice or an allegation of conduct that, if proved, would meet the definition of sexual harassment under Title IX, the Title IX Coordinator shall promptly contact the complainant to:

- 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.

District's must treat complainants and respondents equitably by:

- Offering supportive measures to both parties, as appropriate, and
- Following the Title IX formal complaint process before taking any other action, including disciplinary sanctions.

If a formal complaint is not filed, the District reserves the right to investigate and respond to prohibited conduct.



Supportive Measures

A district must treat complainants and respondents equitably by offering “supportive measures,” not interim measures.

- Non-disciplinary, non-punitive individualized services
- Without fee or charge to either complainant or respondent.
- Before or after complaint has been filed.
- Designed to restore preserve equal access to the district’s education program.
- May include counseling, extension of deadlines or other course-related adjustments, modifications of work, or class schedules, campus escort services, mutual restrictions on contact between the parties, leave of absence, increased security and monitoring of certain areas of campus.
- District must maintain as confidential any supportive measures provided to either complainant or respondent.
- Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.



Dismissal of a Formal Complaint

- If the conduct alleged would not constitute sexual harassment even if proved, did not occur in the district's education program or activity, or did not occur against a person in the U.S., then the district must dismiss the formal complaint.
 - Such a dismissal does not preclude action under another provision of the district's code of conduct.
- A district may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:
 - A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
 - The respondent is not longer enrolled or employed by the district; or
 - Specific circumstances prevent the investigation or a determination as to the formal complaint or allegations therein.
- A district must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.



Informal Resolution

- Any waiver of the formal complaint process is not valid.
- Must obtain voluntary written consent of parties to participate in the informal resolution process.
- A district may not offer an informal resolution process unless a formal complaint is filed.
- Prior to the informal resolution process, the district must provide to the parties a written notice disclosing;
 - The allegations;
 - The requirements of the informal resolution process;
 - That any party may withdraw from the process at any time prior to agreeing to a resolution of the complaint;
 - Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; and
 - Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.



Title IX: Formal Complaint Process

The Superintendent shall ensure the development of a Title IX formal complaint process that complies with the following basic requirements:

1. Equitable treatment of complainants and respondents;
2. An objective evaluation of all relevant evidence;
3. The Title IX Coordinator, investigator, decision-maker, or facilitator must not have a conflict of interest or bias;
4. A presumption that the respondent is not responsible until a determination is made at the conclusion of the Title IX formal complaint process;
5. Time frames that provide for a reasonably prompt conclusion of the Title IX formal complaint process;
6. A description of the possible disciplinary sanctions and remedies.
7. A statement of the standard of evidence to be used (preponderance or clear and convincing);
8. Procedures to appeal a determination or dismissal of a complaint;



Title IX: Formal Complaint Process, cont.

The Superintendent shall ensure the development of a Title IX formal complaint process that complies with the following basic requirements:

9. A description of the supportive measures available;
10. A prohibition on using or seeking privileged information unless holder has waived the privilege;
11. Additional formal complaint procedures in *34 C.F.R. 106.45(b)(2)*, including written notice of a formal complaint, consolidation of formal complaints, recordkeeping, and investigation procedures;
and
12. Other local procedures as determined by the Superintendent.



Investigation of a Formal Complaint

Throughout the Title IX formal complaint process, a district must:

1. Ensure that the burden of proof and the burden of gathering evidence rests on the district and not on the parties;
2. Equal opportunity for the parties to present evidence and witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
3. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
4. Provide the parties with the same opportunities to have others present during any formal complaint proceeding;



Investigation of a Formal Complaint, cont.

5. Provide written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
6. Provide both parties an equal opportunity to review any evidence directly related to the formal complaint, including the evidence the district does not intend to rely upon.
 - The district must send each party an electronic or hard copy of any evidence gathered during the investigation. The parties must have at least 10 days to submit a written response.
7. Create an investigative report that fairly summarizes relevant evidence and send the report to the parties for review and response at least ten days prior to a determination on the complaint.



Determination Regarding Responsibility

The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility. The written determination must include:

1. Identification of the allegations potentially constituting sexual harassment;
2. A description of all the procedural steps taken from the receipt of the formal complaint through the determination;
3. Conclusions regarding the application of the district's code of conduct to the facts;
4. A statement of, and rationale for any determination as to each allegation, including any disciplinary sanctions or other remedies; and
5. The district's appeal procedures.

The district must provide the written determination to the parties simultaneously.



Confidentiality

Office for Civil Rights (OCR) strongly supports a student's interest in confidentiality in cases involving sexual violence.

- District may override a student's request for confidentiality in order to meet its Title IX obligations.
- District should take requests for confidentiality seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including the student who reported the sexual misconduct.
- If appropriate, a district may pursue disciplinary action that may require disclosure of the student's identity to the alleged perpetrator.
- District should inform the student prior to disclosure of the student's identity.
- District must keep all supportive measures provided to a complainant or respondent confidential to the extent that such confidentiality would not impair the ability of the district to provide supportive measures.



Records Retention

A district must maintain for a period of seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, any remedies provided to the complainant;
2. Any appeal and result therefrom;
3. Any informal resolution and the result therefrom;
4. All materials used to train Title IX Coordinators, investigators, decision-makers, and facilitators.

Notes: A district must make trainings materials publicly available on its website.



Appeals

A district must offer both parties an appeal on the following basis:

1. Procedural irregularity that affected the outcome of the matter;
2. 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; and
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias that affected the outcome of the matter.



Appeals, cont.

As to all appeals, the district must:

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
2. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) for the complaint or the investigator(s), or the Title IX Coordinator;
3. Ensure that the decision-maker(s) for the appeal complies with the standards regarding conflict of interest and bias;
4. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
5. Issue a written decision describing the result of the appeal and the rationale for the result; and
6. Provide the written decision simultaneously to both parties.



THANK YOU! QUESTIONS?

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