Title IX Sexual Harassment Comprehensive Training



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Training Certification

- This training is intended to satisfy the training requirements for Title IX Coordinators, Investigators, Decision-Makers, and Appeals Officers.
- Review of these slides without the synchronous training may not satisfy training requirements.
- These training materials must be posted on your District's website.

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Agenda:
What is Title IX Sexual Harassment?

- Legal Landscape
- Overview of New Regulations
- Reporting Sexual Harassment under Title IX
- Supportive Measures
- Respondent Removal
- How to Conduct a Grievance Process
- How to Conduct an Informal Resolution Process
- How to Conduct a Title IX Investigation
- Drafting an Investigation Report
- Determination of Responsibility
  - Assessing Witness Credibility
  - Assessing Evidence Relevancy
  - Evidentiary Standards
- Hearings
- How to Process Appeals
- Protecting Student Privacy

Legal Landscape

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Fluid Situation

- 4 pending federal lawsuits seeking to vacate and set aside new regulations
- OCR continues to opine on regulations via OPEN center
- Future guidance or court decisions may affect interpretation of regulations
- Stay tuned!

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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 USC 1681

Title IX Has Broad Application

- Academic
- Extracurricular
- Education
- Athletics
- All school programs, on school transportation, in school-sponsored programs taking place at another location, etc.

Scope of New Regulations

- Published May 6, 2020
- Effective August 14, 2020
- Focus on sexual harassment as subset of sex-based discrimination
- Apply to staff-to-staff, staff-to-student, student-to-staff, and student-to-student sexual harassment
- Schools still obligated to address other forms of sex discrimination and unlawful harassment under other policies and laws

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New Regulations – Big Changes

- **All** K-12 staff have reporting obligation
- Eliminates "single investigator" model; Investigator, Decision-Maker, and Appeals Officer must be different individuals
- Significant changes to investigation process
- 7-year record retention requirement
- New policy, training, and documentation requirements
- Emphasis on due process and constitutional protections

Title IX Timeline

- 1972 – Title IX enacted
- 1974 – Dept. of Health, Education, & Welfare issues regulations
- 1992 – SCOTUS: student right to money damages for sexual harassment
- 1997 – OCR: schools must respond to sexual harassment allegations
- 1998 – SCOTUS: employee-to-student liability is deliberate indifference following actual notice
- 1999 – SCOTUS: narrow definition of student-to-student sexual harassment
- 2020 – New Title IX regulations

Landmark SCOTUS Decisions

***Gebser v Lago Vista Ind Sch Dist* (1998)**

Schools may be liable for money damages following employee-to-student sexual harassment if a school official who has authority to institute corrective action:

- Has actual notice of teacher's misconduct; and
- Is deliberately indifferent to the teacher's misconduct
  - Deliberate indifference = "an official decision by the recipient not to remedy the violation"

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Landmark SCOTUS Decisions

***Davis v Monroe Cnty Bd of Ed* (1999)**

Schools may be liable for money damages following student-to-student sexual harassment if:

- A school official who has authority to institute corrective action has actual notice of the misconduct and is deliberately indifferent to the misconduct;
- The school has substantial control over both the harasser and "context" where the harassment occurs; and
- The harasser's conduct is "so severe, pervasive, and objectively offensive" that it "effectively denies equal access to an institution's resources or opportunities."

OCR 2001 Guidance

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, ***or*** persistent, and to ***interfere with or limit*** a student's ability to participate in or benefit from school services, activities, or opportunities.

Overview of New Regulations

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Constitutional Concerns

Regulations and commentary emphasize protecting Respondent/Complainant's Constitutional rights, including:

- 1st Amendment: freedom of speech
  - Exercising 1A rights doesn't constitute retaliation
  - OCR: Attempts to suppress free speech is *never* an appropriate response to sexual harassment
  - OCR: It's not enough to be offended by content of speech
- 5th Amendment: due process
- 14th Amendment: equal protection of laws

Due Process Concerns

- Title IX can't be interpreted in a manner that denies any person due process
- Respondent presumed not responsible until determination made
- Grievance procedure must be "adequate, fair, and reliable"
  - The regulation's grievance process is "consistent with constitutional due process guarantees and conceptions of fundamental fairness"
- Due process is "critical part of a Title IX grievance process" for Complainants, Respondents, and schools

New Terminology

- Alleged Victim ⟹ **Complainant**
- Alleged Perpetrator/Alleged Harasser ⟹ **Respondent**
- Complaint, Investigation, and Resolution ⟹ **Grievance Process**
- Educational Institution ⟹ **Recipient**
- Interim Measures ⟹ **Supportive Measures**

Key Roles

- Title IX Coordinator: oversees investigation and coordinates school's compliance with Title IX
- Investigator: Conducts investigation process
- Decision-Maker: Makes determination of responsibility
- Appeals Officer: Hears appeals of dismissal and determination of responsibility
- Investigator, Decision-Maker, Appeals Officer must all be different people

Impartiality is Key

Must always:

- Be impartial
- Have no bias
- Have no conflict of interest
- Be cognizant of implicit bias
- Avoid prejudgment of the facts

New Definition of Sexual Harassment

Conduct on the basis of sex that satisfies one or more of the following:

- Employee *quid pro quo*;
- Sexual assault, dating violence, domestic violence, stalking (definitions from Violence Against Women Act); and
- Hostile Environment (new stricter definition)

Quid Pro Quo

- Recipient's *employee* conditioning an aid, service, or benefit of the recipient on an individual's participation in unwelcome sexual conduct.
- **New:** only applicable to employee as Respondent; not applicable to volunteer, student, etc.

Sexual Violence Definitions

- "Sexual assault": an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
- "Dating violence": violence committed by a person who is or has been in a romantic or intimate relationship with the Complainant. The existence of such a relationship is based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Sexual Violence Definitions Cont.

- "Domestic violence": felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the Complainant, person with whom the Complainant shares a child, person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner, person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Michigan; or any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Michigan.
- "Stalking": engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress.

Hot Topic: Consent

- Not defined in regulations, left to schools to define
- How does your policy define consent?
  - Consider absence or negation of consent
- Definition is required!
- Must know how to apply the definition consistently, impartially, and in accordance with policy

Staff/Student Conduct

- Sexual conduct between a District employee and a student is ***always*** prohibited
- Consent is irrelevant
- May result in criminal charges

Hostile Environment

- "Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it **effectively denies** a person's equal access to the recipient's education program or activity."
- "Education program" is any location, event, or circumstance over which the recipient exhibits substantial control over both the Respondent and the context in which the harassment occurred.

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Hostile Environment

Unwelcome conduct determined by a reasonable person to be:

Old Definition	New Definition
Severe, pervasive, ***or persistent***, and ***to interfere with or limit*** a student's ***ability to participate*** in or benefit from school services, activities, or opportunities.	To be ***so*** severe, pervasive, ***and objectively offensive*** that it ***effectively denies*** a person's ***equal access to*** the recipient's education program or activity.

Jurisdiction

Harassment must be:

- Against a person in the United States
- Who is currently participating in a school's educational programs or activities.

What about trips abroad?

- "[R]egardless of whether a study abroad program is part of a recipient's education program or activity, Title IX does not have extraterritorial application."

Deliberate Indifference

Schools must not be ***deliberately indifferent*** to sexual harassment.

Old Definition	New Definition
The school must take immediate action to eliminate the sexual harassment or sexual violence, prevent its recurrence, and address its effects	Failure to respond reasonably in light of known circumstances

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Scope of Education Program or Activity

School Jurisdiction Factors:

- Place of conduct – Remember new regulations define sexual harassment as occurring in the United States
- Relationship to school or school activity
- Involvement of student, employee, volunteer
- Policy/handbook language
- If no jurisdiction under Title IX policy, may have jurisdiction under another policy, rule, or law

Scope of Education Program or Activity

Off-Campus Sexual Harassment:

- Case-by-case analysis
- Don't know where misconduct occurred?
  - Investigate!
- Not during school activity?
  - Consider effects of off-campus conduct!
- Prevent additional harassment or retaliation
- Consider applicable codes of conduct and Revised School Code provisions

Questions?

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Reporting Sexual Harassment Under Title IX

Who Can Make a Report?

- Anyone can make a report – verbal, written, electronic
- Report of sexual harassment differs from Formal Complaint

How to Make a Report

- How?
  - Reports can be made to any K-12 employee or sent to Title IX Coordinator
  - Mail, telephone, or email, or by any means that results in the Title IX Coordinator receiving the person's report
  - Employees should convey report to Title IX Coordinator
- When?
  - Anytime!

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Employee Responsibilities

- An "***appropriate school official***" must have ***actual knowledge*** of a sexual harassment to trigger a school's obligation to investigate under Title IX
- Appropriate School Official = Every K-12 Employee
- Check your policy for employee reporting steps
  - TLF Policy: If employee receives report of sexual harassment, must convey it to Title IX Coordinator

Employee Must Convey Report Promptly

- Check your policy for timelines!
- TLF Policy requires any District employee who receives a report of sexual harassment or has actual knowledge of sexual harassment to convey that information to the Title IX Coordinator **by the end of the next [business] day**.
- If you see something, say something!
- Noncompliance = discipline

TIME FOR A HYPOTHETICAL!

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What about OCR?

- Reports can be made to any school employee, the Title IX Coordinator, and/or OCR

U.S. Department of Education Office for Civil Rights
1350 Euclid Avenue, Suite 325
Cleveland, Ohio 44115
Phone: (216) 522-4970
E-mail: OCR.Cleveland@ed.gov

- Your policy should encourage reports also to be made to the Title IX Coordinator so that you can begin your investigation

Responding to Report

- Title IX Coordinator must, upon receipt of report:
  - Contact Complainant to discuss "supportive measures"
  - Inform Complainant of "supportive measures" available whether Formal Complaint filed or not
  - Explain process for filing Formal Complaint

Bifurcating the Investigation

- New regulations *only* apply to Title IX sexual harassment
- If a report or Formal Complaint includes allegations implicating other harassment/discrimination policies, you can bifurcate the investigation
- BUT Title IX sexual harassment issue must be investigated pursuant to the new regulations

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Supportive Measures

Supportive Measures

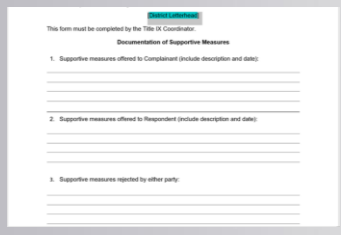
- Available before, during, and after investigation, ***and*** if no Formal Complaint filed
- Must be:
  - Non-disciplinary
  - Non-punitive
  - Individualized
  - Designed to restore or preserve equal access to education program or activity without "unreasonably" burdening the other party

Supportive Measures

- Examples: Counseling, work/class schedule changes, increased monitoring
- Does *not* include anything that completely removes Respondent from an activity except under *very limited* circumstances
  - Removal is considered punitive, except:
    - For students: emergency removal permitted
    - For staff: administrative leave permitted
- Document whether supportive measures were offered and which were taken
- Keep confidential to extent possible while still complying with Title IX requirements

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TLF Supportive Measures Form


[District Letterhead]

This form must be completed by the Title IX Coordinator.

Documentation of Supportive Measures

1. Supportive measures offered to Complainant (include description and date):

2. Supportive measures offered to Respondent (include description and date):

3. Supportive measures rejected by either party:

Respondent Removal

Staff and Student Removal

- School officials may remove a student from an educational program or activity **only on an emergency basis**
- Staff member may be placed on paid nondisciplinary administrative leave pending outcome of investigation

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Student Emergency Removal

- School officials must:
  - Conduct individualized safety and risk analysis;
  - Determine that an immediate threat to the physical health or safety of students or staff justifies removal; and
  - Provide the removed student notice and an opportunity to challenge the removal immediately after being removed
- Consider IDEA and Section 504 requirements

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How to Conduct a Grievance Process

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Formal Complaint

- A document filed and signed by a Complainant or signed by the Title IX Coordinator;
- Alleging sexual harassment by a Respondent; and
- Requesting that the District investigate the sexual harassment allegation

TLF Formal Complaint Form



[District Letterhead]

TITLE IX SEXUAL HARASSMENT FORMAL COMPLAINT FORM

This form is being submitted by:

☐ Complainant ☐ Title IX Coordinator

Complainant Name: _____

Address: _____

Phone: _____ Email: _____

If the Complainant is a student:

School Building Attending: _____ Grade: _____ Birthdate: _____

If the Complainant is an employee:

Job Title: _____ Building: _____

Reporter's Name (if different than Complainant): _____

Relationship to Complainant: _____

Reporter Address: _____

Reporter Phone: _____ Reporter Email: _____

1. Describe the alleged violation of the District's Title IX Sexual Harassment Policy that you are requesting the District investigate. Please be specific. Describe the specific incident(s) and identify the individuals and potential witnesses involved. Describe or attach any evidence you believe is relevant. Attach additional pages if needed.

Formal Complaint: Next Steps

Written notice to both parties that includes:

- Grievance procedures
- Allegation details
- Parties' right to inspect and review relevant evidence
- May have advisor of their choice
- Statement that Respondent is presumed not responsible and determination of responsibility provided at conclusion of grievance process
- Notice must be supplemented if new allegations arise during investigation

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Consolidating Formal Complaints

- If there are multiple Formal Complaints alleging the same facts or against the same Respondent, the Formal Complaints may be consolidated to streamline the grievance process

Formal Complaint Dismissal

Mandatory	Permissive
Must be dismissed if allegations, if proven: • Would not constitute sexual harassment under new definition; • Did not occur in recipient's (school) program or activity; or • Did not occur against a person in the U.S.	***May*** be dismissed if: • Complainant requests withdrawal; • Respondent's enrollment or employment ends; or • Specific circumstances prevent the school from gathering evidence sufficient to reach a determination (e.g., Complainant not cooperating with investigation, many years between alleged misconduct and complaint filing)

REMEMBER: Even if complaint is dismissed under Title IX, it can still be addressed under other policy or Code of Conduct provision

Dismissal Notice

Prompt, simultaneous written notice to both parties that includes:

- Reasons for mandatory or discretionary dismissal; and
- Right to appeal



[District Letterhead]

[Date]

[Name]
[Address]
[City, State, Zip Code]

Re: Mandatory Dismissal of Title IX Formal Complaint

Dear [Name]:

On [DATE], the District received notice of a possible violation of the District's Title IX Sexual Harassment Policy. Upon further review, the Title IX Coordinator has concluded that the Title IX regulations require dismissal of the Formal Complaint because (select all that apply):

☐ The allegations in the complaint, even if proven, would not constitute sexual harassment as defined in the District's Title IX Sexual Harassment Policy.

☐ The allegations did not occur in the school's programs or activities.

☐ The allegations did not occur in the United States.

Questions?

How to Conduct an Informal Resolution Process

Informal Resolution

- What is it?
  - Doesn't require a full investigation
  - May encompass a broad range of conflict resolution strategies, including, but not limited to, arbitration, mediation, or restorative justice
  - **Voluntary**

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Informal Resolution

- When is it available?
  - After a Formal Complaint has been filed, but
  - Before determination of responsibility
  - Not available for a Formal Complaint alleging that an employee sexually harassed a student
- A party is ***not*** required to participate

Informal Resolution

- Title IX Coordinator or Investigator must:
  - Provide both parties written notice of their rights in an informal resolution; and
  - Obtain written, voluntary consent from both parties to enter into the informal resolution process.

Informal Resolution

Written notice must include:

- Allegations;
- Informal resolution requirements, including when informal resolution would preclude resuming a Formal Complaint arising from the same allegations;
- Right to withdraw from informal resolution and resume the grievance process; and
- Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

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Consider Before Investigation or Informal Resolution

- Do both parties agree on how to proceed?
- What conduct has been alleged? What resolution is sought?

TIME FOR A HYPOTHETICAL!

How to Conduct a Title IX Investigation



Beginning the Investigation

- School has burden of proof and burden to "gather evidence sufficient to reach a determination of responsibility"
- Standard of evidence must be same for all complaints (employee and student)
  - Preponderance of evidence recommended
- Reasonably prompt timeframes
- Consider law enforcement and CPS reporting obligations
- Consult your policy for specific procedures!

Law Enforcement Involvement

- Does *not* relieve school of Title IX obligation to investigate because school responsibilities differ from police responsibilities
- Do *not* use police involvement as excuse not to investigate or wait for criminal conclusion
- BUT, can ***briefly*** delay investigation for concurrent criminal investigation

Delays and Extensions

- Temporary delays for "good cause" and with written notice of the delay to parties permitted
- Good Cause:
  - Complexity of the investigation
  - Concurrent law enforcement investigation with time-dependent release of evidence
  - Absence of parties or witnesses
  - Need to provide accommodations for a disability
- **Delays for administrative needs not sufficient**

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OCR: Law Enforcement

"Police investigations may be useful for fact-gathering; but because the standards for criminal investigations are different, police investigations or reports are not determinative of whether sexual harassment or violence violates Title IX. Conduct may constitute unlawful sexual harassment under Title IX even if the police do not have sufficient evidence of a criminal violation."

LaPorte Comm Sch Corp (OCR, 2015)

Advisor

- Parties may be accompanied by an advisor of their choice in any meeting or grievance process proceeding (parent, staff member, attorney)
- May not restrict who serves as advisor
  - However may establish restrictions regarding the extent to which advisor participates in proceedings
  - Restrictions must apply equally to both parties
  - Restriction examples: abusive, disruptive behavior or language will not be tolerated; advisor will not interrupt the investigator to ask questions of witnesses

Investigation Tips

- Interview Complainant to gather all information
- Use that information to determine who to interview next
- Conduct site visits, if applicable
- Secure evidence
  - Physical
  - Documentary
  - Electronic (video, digital, social media)
- Interview Respondent last

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Interview Tips

- Establish guidelines with advisor and interviewee, and anyone else present (i.e., parent/guardian, union representative)
- Explain allegations, if applicable
- Be direct - ask simple, straightforward questions
- Ask awareness of applicable policies, rules, codes of conduct
- Ask who else may have useful information, anything you didn't ask that they think you should know
- Re-interview Complainant, Respondent or witnesses if needed
- Be cognizant of implicit bias or conflicts of interest!

Remember

The District:

- Has the burden of proof and the burden to gather evidence sufficient to reach a DoR
- Cannot, generally, use questions or evidence that constitute, or seek disclosure of, legally-privileged information
- Cannot access, consider, disclose, or otherwise use a party's medical records, including mental health records, unless the District obtains that party's voluntary, written consent to do so

Watch out for bias, prejudgment or conflicts of interest!

Remember

The Investigator:

- Must give parties equal opportunity to present witnesses, inculpatory/exculpatory evidence
- Cannot restrict parties from discussing allegations or gathering/presenting relevant evidence
- Must provide date/time/location, participants, and purpose of all hearings (if any), investigative interviews, and meetings, to party whose participation is invited or expected, in writing
  - Notice must be given a sufficient time in advance so that a party may prepare for interview

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Parties Inspecting and Reviewing Evidence

- Each party must have equal opportunity to inspect and review ***any*** evidence obtained as part of the investigation
- Each party must have the opportunity to meaningfully respond to the evidence before the investigation's conclusion

What Evidence do Parties have Access to?

- **ANY** evidence, including:
  - Evidence upon which the District does not intend to rely in reaching a determination regarding responsibility; and
  - Inculpatory or exculpatory evidence obtained from any source.

Notice of Additional Allegations

- If investigation revealed additional allegations not in the original notice to parties and investigator decides to investigate those allegations, must provide notice of additional allegations to both parties
- Additional Notice must:
  - Identify date notice of the additional allegations given to the parties, and
  - Describe additional allegations
- If additional allegations made or discovered and are ***not*** investigated, investigator must state basis for decision not to investigate in investigation report

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Drafting an Investigation Report

Timelines

- Investigator drafts investigation report summarizing all relevant evidence
- *At least 10 days before* investigation report is finalized: Parties/advisors must be permitted to review and respond to *all* evidence directly related to allegations
- *At least 10 days before* hearing or determination of responsibility: Final report (incorporating feedback as necessary) must be provided to parties

Investigation Report

- Investigator must objectively evaluate evidence
- Report must fairly summarize relevant evidence
- At least 10 calendar days before a determination of responsibility is issued, the investigation report must be sent to each party for review and written response
- Written responses to the investigation report must be submitted directly to the Decision-Maker

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General Tips

- Cite applicable Board policies, code of conduct provisions, RSC Sections
- Ensure report is clear, concise, and complete
- Assume report may be released by either party
- Use quotes, dates, times, and locations when possible

What to Include in an Investigation Report

Complainant & Respondent Information

- Complainant and Respondent names
- Name of advisor (if any)
- Date notice provided for interview(s)
- Date of interview(s)
- Identify any other contacts with Complainant, Respondent

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Investigator Information

- Investigator name and title
- Statement that investigator does not have conflict of interest or bias against either party, generally or individually, that affected the investigation
- Date investigator sent each party and advisor all evidence subject to inspection and review
- Party responses to evidence, if any
- Any action taken after response(s) received

Complaint and Allegation Information

- Date Formal Complaint filed/signed
- Summary of Formal Complaint
  - Describe allegation, including date, time, place, and nature of the incident(s)
  - Identify any witnesses interviewed
  - Provide interview summaries

Complaint and Allegation Information

- Identify and describe relevant evidence (i.e. surveillance video, social media posts, physical evidence)
- Identify any additional allegations that were made or discovered, whether those were investigated and rationale for investigating or not

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Other Fact-Finding Activities

- Describe any other fact-finding that occurred as part of the investigation (e.g., site visits, record review, or hearing)
- Describe any findings of fact made during the investigation (e.g., statements relied upon, credibility determinations)
- ***The investigator does not make a determination of responsibility.***

Questions?

Determination of Responsibility

Allowing Additional Questions

After the Complainant and Respondent receive the Investigation Report, the Decision-Maker must:

- Allow each party to submit written, relevant questions for the other party or witness(es) to answer
- Provide each party the answers to the questions; and
- Allow for limited follow-up questions from each party
- Update report as necessary

If the Decision-Maker decides to exclude questions as not relevant, the Decision-Maker must explain that decision

Assessing Witness Credibility

- Monitor consistency
- Consider corroboration either from other witnesses or physical evidence
- Consider whether there is a motivation to lie
- Previously consenting does not imply future consent

Assessing Evidence

- Relevant evidence: evidence that makes a fact more or less likely than it would be without the evidence
  - Does this piece of evidence impact the facts? If so, it's probably relevant!
  - Low bar to meet
- Weigh evidence based on credibility and other circumstances

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Complainant Sexual History

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior ***are not relevant*** unless:

- Offered to prove that someone other than the Respondent committed the alleged misconduct; or
- The questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
  - How does your policy define "consent"?

Evidentiary Standards

- Decision-Maker makes finding(s) based on policy's evidence standard
  - District can select the standard, but must be same standard for *all* investigation procedures
  - Recommend: "preponderance of evidence"
    - More likely than not
    - 51%

Final Determination

Determination of responsibility must be in writing and address:

- Allegations
- Procedural process
- Findings of fact
- Implications from the student code of conduct
- Conclusion for each allegation
- Appeal rights

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Final Determination

- Determination of responsibility should:
  - Provide evidence-based rationales
  - Be clear and precise
  - Be nearly identical for both Complainant and Respondent
  - Sent to parties simultaneously
- Title IX Coordinator will have to follow up with parties for remedial measures, if applicable

Remedies

- Must include *whether* Complainant will receive remedial measures in DoR
- Title IX Coordinator should directly communicate with Complainant about specifics
- Remedies should be designed to restore and preserve equal access to the District's education program or activity

Remedies

- Available to more than just Complainant
- Also consider systemic remedies, such as training
- Be aware of involvement of students with disabilities, and convene IEP or Section 504 meetings as necessary

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Remedy Examples

- Providing escort to ensure that the Complainant and Respondent can safely work or attend classes and school activities
- Offering parties school-based counseling services
- Providing parties with academic support services
- Rearranging course or work schedules, to minimize contact between the Complainant and Respondent
- Moving the Complainant's or the Respondent's locker or work space
- Issuing a "no contact" directive between the Complainant and Respondent

Imposing Sanctions

- Any disciplinary action taken against the Respondent must be outlined in the DoR
- Sanctions should be consistent with applicable codes of conduct, policies, and law
- If Board approval is required for discipline, consider indicating respondent is suspended/on paid leave pending a hearing or other action

Hearings

Hearings

- Live hearing and cross-examination ***NOT*** required for K-12 (unless your policy provides otherwise)
- Hearing is opportunity for parties to tell their side of the story through witness testimony, documentation, recordings, video, audio, photos, and any other relevant evidence

Setting Up a Hearing

- Allow advisors to be present, may ask questions if party chooses
- Create space for all parties to view testimony and evidence equally
- Ensure student privacy
- If using any technology (e.g., video, audio, digital) this training is ***not sufficient***
  - Get training from IT Director or other person on use of technology
  - Post those training materials on website

Hearing Procedures

- Introduction of Decision-Maker, parties, advisors and anyone else present
- Decision-Maker describes previous steps of grievance process (notice provided to parties, opportunity to review evidence etc.)
- Describe allegations
- Explain evidentiary standard
- Both parties have opportunity to present testimony and evidence
- No strict rules of evidence, but Decision-Maker determines relevancy of testimony and evidence
- Statement that Decision-Maker has no bias or conflict of interest and can be impartial

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Hearing Procedures (cont.)

- Opening Statements
- Each party presents testimony and evidence
- Each party must be permitted to ask the other party and all witnesses relevant questions and follow-up questions
  - Including questions challenging credibility
  - Questions related to complainant's prior sexual history are not relevant except in ***very limited*** circumstances
- Questions can be asked directly to witnesses or indirectly through Decision-Maker, except that cross-examination must be handled by only advisor or Decision-Maker, not party
- Closing Statements

How to Process Appeals

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Appeal Process

- All parties have right to appeal on specific bases
- Check your policy for required time frames to file and decide appeal
- Written notice of appeal must be provided to parties
- Appeals Officer cannot be same person as Investigator or Decision-Maker

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Bases for Appeal

1. Procedural irregularity that affected the outcome;
2. New evidence that was not reasonably available at the time of the determination and could affect the outcome;
3. Conflict of interest on the part of the Title IX Coordinator, Investigator, or Decision-Maker that affected the outcome
4. ?? - Schools can create additional bases for appeal- check your policy!

Appeal Process

- Parties notified of appeal rights in dismissal decision or determination of responsibility
- Party submits appeal to Appeals Officer
- Appeals Officer provides written notice of appeal to both parties
- Parties have opportunity to submit written statement to Appeals Officer in support of, or challenging, determination
- Appeals Officer issues written decision to parties simultaneously

Retaliation

Retaliation is Prohibited

No recipient 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 this part, 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 this part.

Clarifying the Definition

- Retaliation includes threats, intimidation, coercion against person who makes a report, files a Formal Complaint, participates in, or refuses to participate in a Title IX proceeding
- Exercise of First Amendment rights does not constitute retaliation prohibited by Title IX
- Charges for "collateral misconduct" may be retaliation (e.g., charging Complainant with underage drinking to interfere with Complainant reporting sexual harassment)

Protecting Student Privacy

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Confidentiality

- Schools must keep confidential the identity of a person who reports sexual harassment or files a Formal Complaint
  - Includes: parties and witnesses
  - Supportive measures must also be kept confidential
- Exception: As permitted or required by law or to carry out any provision of Title IX

Record Keeping

- Records relating to Title IX reports must be maintained for at least seven years
  - Applies to investigation records, disciplinary sanctions, remedies, appeals, and records of any action taken (i.e. supportive measures
- Must retain any materials used to train Title IX Coordinators, Investigators, Decision-Makers, Appeals Officers, and any person designated to facilitate an informal resolution process
  - This PowerPoint!

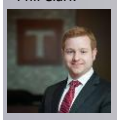
Questions?

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#TeamThrun Title IX Attorneys

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Phil Clark*



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Michele Eaddy



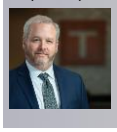
Tim Gardner*



Meg Hackett



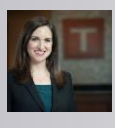
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THANK YOU!

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