

What You Need to Know About Sexual Harassment and the Title IX Regulations



WALSH GALLEGOS
TREVIÑO KYLE & ROBINSON P.C.

UHG

ABOUT TITLE IX

What is Title IX?

- ❑ Title IX of the Education Amendments of 1972
 - ❑ The law says: “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.”
- ❑ Sexual harassment is a form of sex discrimination. This has been established in the law for a long time.
- ❑ Formal federal guidance on compliance with Title IX as it relates to sexual harassment has been limited, until 2020.



2020 Regulations

- ❑ On August 14, 2020, the Department of Education regulations governing a school's response to sexual harassment became effective.
 - They significantly expanded and changed the role and responsibilities of the Title IX Coordinator with respect to dissemination of information, training, terminology, standards, and conducting investigations.
- ❑ In subsequent guidance in May of 2021, the agency said that sexual harassment on the basis of gender identity or sexual orientation was also a violation of Title IX.

Some Highlights of The Title IX Regulations

- ❑ Detailed Title IX Coordinator Responsibilities.
- ❑ New Title IX roles, some of which cannot be held by the same individual.
 - Investigator
 - Decision Maker
 - Appeal Officer
 - Informal Resolution Facilitator

More Highlights of the Regulations

- ❑ Narrow definition of Sexual Harassment.
- ❑ Standard for when the district “knows” about the conduct.
- ❑ District responsibility to respond to what it knows.
- ❑ Formal complaint process.
- ❑ Special Education considerations.

Revisions to 2020 Regulations are Pending

- ❑ Revised regulations for Title IX were proposed in 2022
- ❑ They change some of what is presented today. As proposed, they:
 - ❑ Address *all sex-based discrimination*, including on the basis of sex stereotypes, sexual orientation, gender identity, and pregnancy.
 - ❑ Revise definitions of sexual harassment
 - ❑ Streamline “formal grievance” procedure
- ❑ Separate athletics regulations to follow
- ❑ The revisions are not final and are unlikely to be until spring of 2023.
- ❑ So the 2020 regulations continue to govern.



UHG

TITLE IX TERMINOLOGY

What Constitutes Sexual Harassment Under the Regulations

- ❑ There are three types of conduct, on the basis of sex, that constitute sexual harassment.
 - ❑ *Quid pro quo* by an employee
 - ❑ Hostile environment: “Unwelcome conduct that is so severe, pervasive and objectively offensive that it effectively denies the person access to an education program or activity.”
 - ❑ Conduct that meets the definition for sexual assault, dating violence, domestic violence, and stalking under federal law.
- ❑ This presentation applies *only to the conduct above*.



Defining Quid Pro Quo

- ❑ *Quid pro quo*: When an employee conditions favorable treatment on the acceptance of unwelcome sexual attention.
- ❑ This definition applies only to actions of employees.
 - ❑ Teacher offers good grades to student in exchange for.....
 - ❑ Maintenance Director offers a promotion or better pay in exchange for.....

Defining Hostile Environment

- ❑ Conduct that it is so severe, pervasive, AND objectively offensive that it effectively denies a person equal access to the school's programs.
 - ❑ This could be student-to-student conduct, employee-to-student conduct, or employee-to-employee conduct.
- ❑ Again, a lot of things happen in schools that are inappropriate and even sexually oriented, but fall short of this definition. They can be addressed under other policies.

Defining Sexual Harassment Under Certain Federal Law

- ❑ The federal Clery Act and the Violence Against Women Act (VAWA) address four types of violence that are each considered forms of sexual harassment under Title IX:
 - ❑ Sexual assault: Forcible or non-forcible sexual offenses under the Uniform Crime Reporting System of the FBI.
 - ❑ Dating violence: Violence done by a person who is, or has been, in a dating relationship with the other person.
 - ❑ Domestic violence: Violence by a current or former intimate partner.
 - ❑ Stalking: A course of conduct directed at a specific person that would cause a reasonable person to fear for personal safety of self or others; or to suffer emotional distress.
- ❑ These would also be alleged criminal conduct so law enforcement or CYFD should be notified.



“Substantial Control”

- ❑ Under the Title IX rules, the District does not have any authority over the alleged sexual misconduct if it did not have “**substantial control**” over the harasser and the “context” in which the harassment occurred.
 - ❑ That means the alleged harasser has to have attended school or worked for the District at the time of the conduct alleged.

AND

- ❑ The alleged conduct had to have occurred in a context, in the U.S., over which the district or school has control or authority.
 - ❑ For example, at school, at in-U.S. district sponsored or promoted events or activities.
 - ❑ But not, for example, necessarily at a private party over the weekend, at Sonic, or online during the evening.
- ❑ If there is no substantial control, other law or District conduct rules may apply – cyberbullying, ethical misconduct, or Title VII (for employees) for instance.

Is There “Substantial Control?”

- ❑ Consider how this will be applied to:
 - ❑ extracurricular activities;
 - ❑ out of town, overnight trips;
 - ❑ overseas trips
 - ❑ staff “happy hours;”
 - ❑ cyberbullying off campus.
- ❑ Scenario: Student engages in electronic sexual harassment off campus and on the weekend.
 - ❑ Does the school have “substantial control”?
 - ❑ What about state law which gives schools the authority to discipline students for certain off campus cyberbullying?

Other Title IX Terminology

- ❑ Complainant = individual who was allegedly sexually harassed
- ❑ Respondent = person accused of sexual harassment
- ❑ Report vs. Formal Complaint = report can be verbal or written, can be made by *anyone*; a formal complaint may only be made by the Complainant or Title IX Coordinator and must be a signed writing.
- ❑ Supportive Measures = individualized non-disciplinary, non-punitive services
- ❑ Actual Knowledge = when *any* employee has knowledge of potential sexual harassment
- ❑ Education program or activity = any academic, extracurricular, vocational or other education program operated by a district

Complainant

- ❑ This term always refers to the individual who was allegedly sexual harassed, even if someone else is the one who made the report of sexual harassment.
- ❑ Custodian reports that Student is being harassed. Custodian has made the report, but Student is the “Complainant.”
- ❑ Teacher reports that colleague is being harassed. Teacher makes the report, but the colleague is the “Complainant.”

Respondent

- ❑ This term refers to the person accused of sexual harassment.
 - ❑ Note: these terms (Complainant, Respondent) apply even when there is a Report, but no Formal Complaint.
- ❑ Example: Mom complains that Billy is being harassed by a coach based on his sex. The Title IX Coordinator meets with mom and explains the Formal Complaint process. Mom does not want that, and Title IX Coordinator also decides not to initiate Formal Complaint process.
- ❑ There is a Report, but no Formal Complaint. Billy is still the Complainant and Coach is the Respondent.

Report versus Formal Complaint

- ❑ The regulations distinguish a “report” from a “formal complaint.”
- ❑ A “report” is simply the initial verbal or written notification of the allegations, which can be made by anyone.
- ❑ A “formal complaint” is a printed document or electronic submission which must be made by a Complainant (in person, by email, by mail or other method provided by District) that alleges sexual harassment and requests a school/district undertake the Formal Complaint process which includes an investigation of the allegation.

Supportive Measures

- ❑ Supportive Measures = Non-disciplinary, non-punitive individualized services offered to Complainant and Respondent at no charge.
- ❑ Must be designed to “restore or preserve equal access to...the education program or activity without unreasonably burdening the other party” whether or not a formal complaint is filed.

Slide 19

p8

I would add a slide here about emergency removal and why they can't use the way they might want to and what the standard is (physical vs. emotional/mental threat)

Jenny Hall, 9/9/2021

Admin Leave and Emergency Removal

- ❑ The Title IX regulations allow an employee to be placed on Administrative Leave while a Title IX review or formal complaint process is pending.
- ❑ A respondent student can also be removed on an “emergency” basis, BUT this is a high bar. Also, if the student has a disability, the manifestation determination must also take place.
- ❑ To make an emergency removal of a respondent student, the District must “undertake[] an individualized safety and risk analysis, determine[] that 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 provide[] the respondent with notice and an opportunity to challenge the decision immediately following the removal.”



— YEAR —
ANNIVERSARY

A Word About “Actual Knowledge”

- ❑ This term is important for all staff. Why?
- ❑ Because the school’s legal duty to respond arises when it has “actual knowledge” of sexual harassment, or of allegations of conduct that, if true, would constitute sexual harassment.
- ❑ Under Title IX regulations, the district/school has “actual knowledge” when any employee of the school—*other than the perpetrator of the harassment*—has actual knowledge.
- ❑ This is new:
 - ❑ Previously, actual knowledge was imputed to the school only when it was known by someone who had the authority to address it.
 - ❑ Now, it is if *any* employee is aware of the conduct.



This means District should train *all* employees



- ❑ All employees are potential reporters and **must** report.
- ❑ Volunteers and contractors are **NOT** mandatory reporters under the rules, but can be provided training and given the expectation to report.
- ❑ Districts should train **ALL** employees on this responsibility. If you do not use an outside trainer, then the Title IX Coordinator is likely going to be tasked with this training.

Is there “actual knowledge”?

- A. A fellow teacher and drinking buddy confides in another teacher that he’s been “fooling around” with a student. He makes sure she gets an A and a college recommendation.
- B. Custodian witnesses an act of sexual harassment between students in the bathroom after school.
- C. A teacher’s aide confides in another aide about something that happened on the school field trip.

Is there “actual knowledge”?

All three of these are examples of situations that, in the past, did not put the school on notice of “actual knowledge.” Now they do.

UHG

TITLE IX COORDINATOR

Overview

- ❑ The Title IX Coordinator coordinates the district's efforts to comply with Title IX of the Education Amendments of 1972.
- ❑ The 2020 regulations significantly expanded and changed the role and responsibilities of the Title IX Coordinator with regard to dissemination of information, training, setting standards, and handling reports and conducting investigations of alleged sexual harassment or other sexual misconduct.

Title IX Coordinator

- ❑ Each district must have one, must identify this person as the Title IX Coordinator, and must make their contact information public (on the web site, in policy, etc.).
 - ❑ There can be more than one.
- ❑ The Title IX Coordinator must have authority to coordinate “a district’s efforts to comply with its responsibilities” under Title IX.
- ❑ The Title IX Coordinator also has defined responsibilities in the rules.
- ❑ A district must notify **all potential reporters** of sexual misconduct of the Title IX Coordinator’s contact information: name/title, office and email addresses, and telephone number.



More on Title IX Coordinator

- ❑ One of the main responsibilities of the Title IX Coordinator: making contact with a Complainant after a report of possible sexual harassment is made, and initiating and coordinating the district's response to that reported conduct.
- ❑ Will ask: is what is alleged, if true, sexual harassment as defined by Title IX?
- ❑ If so, does the Complainant (or Title IX Coordinator) wish to initiate a formal complaint process?

UHG

Step-by-Step Guide for Responding to a Title IX Complaint

Regulations Set Out “Benchmarks” for Formal Complaint of Sexual Harassment

1. Equal Access/Treatment
2. Objective Evaluation of all Relevant Evidence
3. Impartiality - Bias Free
4. Presumption of Innocence
5. Reasonable Time Frames
6. Description of Possible Outcomes
7. Use Designated Standard of Evidence – Preponderance of Evidence or Clear and Convincing?
8. Supportive Measures
9. Protection of Privilege
10. Appeal Process Available

1. Responding to a Report

- ❑ A report of sexual harassment may be verbal or in writing by the reporting party; a receiving administrator should document a verbal report.
- ❑ The written report must go to the District's Title IX Coordinator.

1. Responding to a Report

- ❑ Upon receipt of a Report, the Title IX Coordinator must promptly contact the Complainant, and if under 18, their parent/guardian to:
 - ❑ Discuss the Report;
 - ❑ Explain the Formal Complaint Process and provide the Complainant with a copy of the District's Title IX Formal Complaint Process;
 - ❑ Provide information about and availability of supportive measures; and
 - ❑ Consider the Complainant's wishes concerning supportive measures and whether to make a Formal Complaint.

Supportive Measures

- ❑ Supportive Measures are non-punitive, non-disciplinary services that are offered by the Title IX Coordinator, as available and without a fee, to both the Complainant and the Respondent.
- ❑ Supportive Measures are available regardless of whether the report is elevated to the level of a Formal Complaint.
- ❑ Supportive measures cannot “unreasonably burden” either party.

More About Supportive Measures

- Supportive Measures should be documented, kept confidential, and may be changed as the situation warrants or as the Complainant and Respondent request.
- Can include:
 - Counseling.
 - Mutual restrictions on contact.
 - Modification of schedule(s).
 - Campus escort services.
 - Emergency removal of a student per the regulations
 - Which the student can challenge
 - Administrative leave with pay for an employee

2. First Things First: Is It Sexual Harassment?

- ❑ The Title IX Coordinator must determine if what is alleged constitutes sexual harassment as defined by that law.
 - Is an employee of the District conditioning the provision of an aid, benefit, or service of the District or school on a student or employee's participation in unwelcome sexual conduct (*Quid pro quo*);
 - Is the alleged conduct "based on sex" so "severe, persistent, pervasive AND objectively offensive" that it "denies" the Complainant access to the educational program or activities; or
 - Does the behavior rise to the level of sexual assault, dating violence, domestic violence or stalking as defined in the Definitions section?

3. Dismiss or Formal Complaint?

- ❑ If the conduct **does not** meet the definition of sexual harassment, the report will normally be dismissed.
 - ❑ The conduct at issue can then be investigated and addressed under other policies and regulations.
- ❑ If the conduct **does** meet the definition of sexual harassment, the claim must be discussed with the Complainant.
 - ❑ Complainant decides whether to elevate the report to a Formal Complaint (or not).
 - ❑ Title IX Coordinator can also elevate the allegations to a Formal Complaint if it would be necessary to do so to ensure the District/School is not deliberately indifferent.

Reasons for Dismissal

- ❑ Mandatory Dismissal:
 - ❑ When the conduct does not meet the regulatory definition of sexual harassment.
 - ❑ When the allegations did not occur against a person in the United States; or
 - ❑ When the allegations did not occur in the District's education program or activity.
- ❑ Discretionary Dismissal:
 - ❑ If a Complainant notifies the Title IX Coordinator in writing that s/he would like to withdraw the Formal Complaint or any allegations in the complaint;
 - ❑ If the Respondent is no longer enrolled in or employed by the District;
 - ❑ If circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations; or
 - ❑ If the Complainant no longer has any involvement with the District.



Even if the Title IX Coordinator Dismisses

- ❑ The Complainant can also still make a Formal Complaint, which may be dismissed by the assigned Investigator.

Employees: Title IX or Title VII

- ❑ Title IX says that no person, on the basis of sex, shall be excluded from participation in, denied the benefits of, or be subjected to discrimination by the district.
- ❑ Title VII says it is an unlawful employment practice for a district to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of that individual's sex.
- ❑ These two laws prohibit sex discrimination, but define sexual harassment differently. Title VII's definition is broader.
 - ❑ So, if the alleged conduct between two employees does not rise to the level of sexual harassment under Title IX, or the employee does not want to make a formal complaint, it can be investigated and addressed under Title VII, as set out in policy.



4. Provide Written Notice of Formal Complaint

- ❑ Upon receiving a Formal Complaint, Title IX Coordinator must provide written notice to the known parties which includes:
 - ❑ Description of the process, including informal resolution process
 - ❑ Allegations involved – must supplement the notice each time new allegations are opened for investigation.
 - ❑ Statement of presumed innocence of the respondent
 - ❑ The parties' right to an advisor of their choice (who may be an attorney)
 - ❑ Parties' right to inspect evidence relevant to the allegations
 - ❑ Notice any provision in the code of conduct that prohibits knowingly making false statements or providing false information.



5. Investigate Formal Complaint

- ❑ Investigator must:
 - ❑ Identify the allegations under investigation and gather relevant evidence.
 - ❑ Provide parties with equal opportunity to have others present during any complaint proceeding.
 - ❑ Provide to any involved party advance written notice of all interviews, meetings or other proceedings, with sufficient time for the party to prepare.
 - ❑ Draft preliminary investigation report.

5. Investigate Formal Complaint

- ❑ Prior to completion of the investigation report, the investigator must:
 - ❑ Send copies of the preliminary investigation report to both parties (and their advisors, if any)
 - ❑ Provide equal opportunity to both parties to inspect and review evidence obtained as part of the investigation (including evidence which the institution does not intend to rely on).
 - ❑ Each party has 10 days from receipt of the evidence to inspect it and 10 more days to submit a written response to the investigator.
 - ❑ In investigator must then complete the investigation report summarizing relevant evidence.



5. Investigate Formal Complaint

- ❑ Finally, Investigator must send the investigation report to the Title IX Coordinator, and simultaneously to the parties.
- ❑ The Title IX Coordinator will provide the investigation report to the Decision-Maker.
- ❑ Remember, the Decision-Maker in a Title IX proceeding cannot be the Title IX Coordinator or the Investigator of the allegations.

6. Written Questions from Decision-Maker

- ❑ The Decision-Maker must:
 - ❑ Provide each party the opportunity to submit written questions to be asked of another party or witness;
 - ❑ Provide each party with the answers to those questions;
 - ❑ Provide for limited written follow-up questions.
- ❑ Irrelevant questions can be rejected, but that rejection must be explained.

About the “Rape Shield” Provision

- ❑ Questions and evidence about a Complainant’s sexual predisposition or behavior are categorically not relevant to a Title IX Investigation, unless:
 - Evidence is offered to prove someone other than the Respondent committed the alleged conduct
 - Evidence concerns the Complainant’s prior sexual history with the Respondent and is offered to prove consent.

NOTE: What About Live Hearings?

- ❑ In the decision-making process, *postsecondary institutions* are required to hold live hearings in which the parties and their representatives are present, and ask question one another.
- ❑ But for K-12 settings, live hearings are optional. The process here is based on no live hearing being held.

7. Determination of Responsibility

- ❑ The decision-maker must issue a written determination of responsibility that contains:
 - ❑ Findings of fact;
 - ❑ Conclusions about whether the alleged misconduct occurred;
 - ❑ Explanations of each conclusion; and
 - ❑ Any disciplinary sanctions or remedies being enacted
- ❑ Written copy of determination must be sent simultaneously to the parties, and it must include information about filing an appeal.
- ❑ Title IX disciplinary action or remedies cannot be implemented until: 1) the deadline for an appeal passes; or 2) the District provides both parties with the written result of any appeal.

8. Appeal

- ❑ Written notice must be given to both parties of the opportunity to appeal a determination of responsibility, but only based on:
 1. Procedural irregularity that affected the outcome of the matter;
 2. Newly discovered evidence that could affect the outcome of the matter; and/or
 3. An employee involved in the investigation process had a conflict of interest or bias that affected the outcome of the matter.
- ❑ A school may offer additional bases for appeal (should be in policy), as long as the appeal opportunity is offered equally to both parties.
- ❑ An appeal must be heard by a new decision-maker.

9. Notice of Appeal

- ❑ If an appeal is filed, the District must:
 - ❑ Notify the other party that an appeal was filed;
 - ❑ Implement the same appeal procedures for both parties;
 - ❑ Ensure the Decision Maker for the appeal is not the same person as the original Decision Maker, the Title IX Coordinator or the Investigator.
 - ❑ Allow both parties to submit written statements in support of or opposition to the Determination.



10. Decision Maker for an Appeal

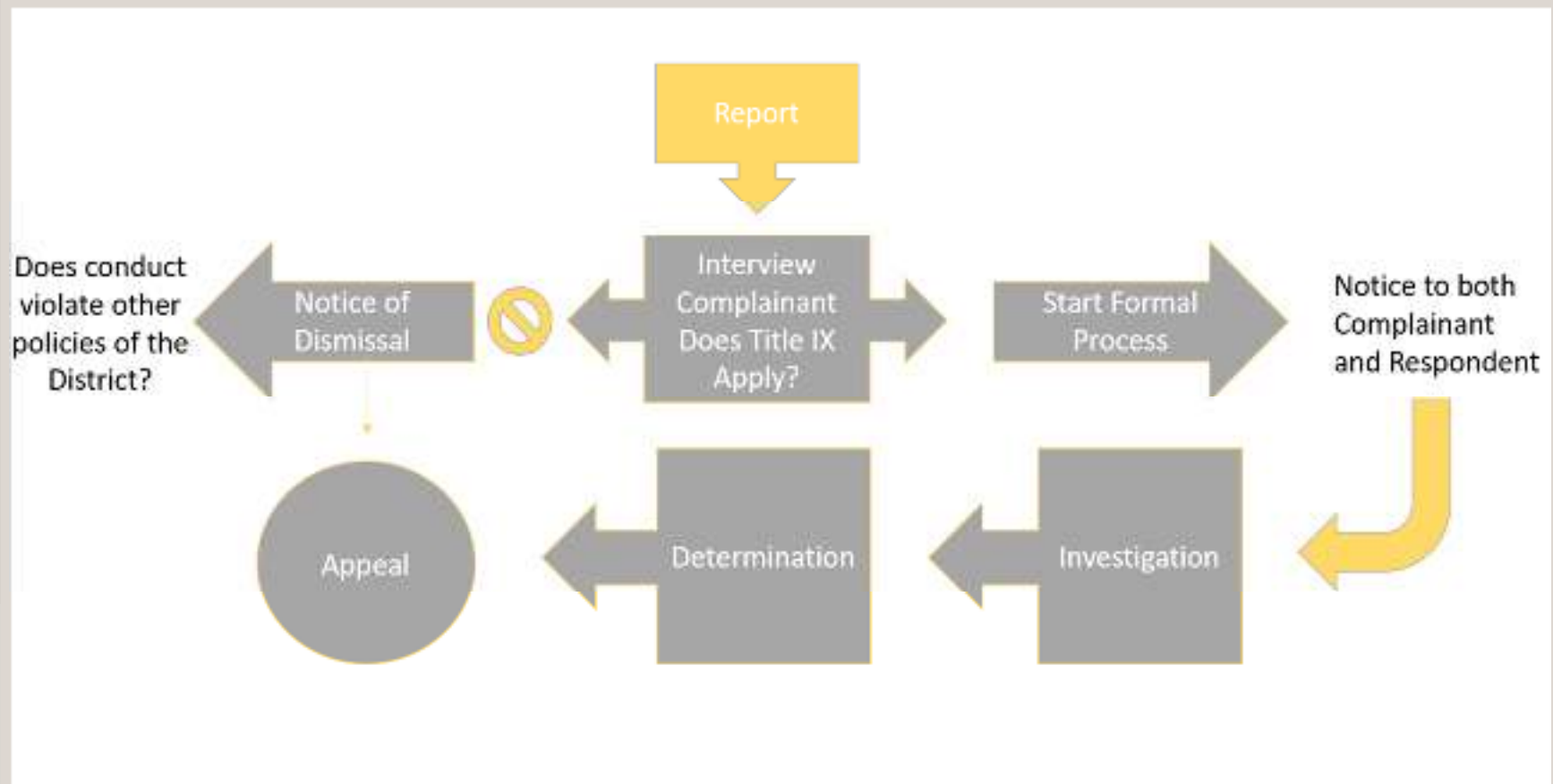
- ❑ School/District must ensure that the decision maker in an appeal is not the Title IX Coordinator, the Investigator, or initial Decision Maker; AND
- ❑ The Decision Maker for an appeal cannot have a conflict of interest or bias against Complainants or Respondents generally or against the involved Complainant or Respondent specifically; AND
- ❑ The Decision Maker in an appeal must have received the Title IX training set out in the regulations.
- ❑ In the K-12 context, it is customary for boards of education to decide grievance appeals under local policies and procedures. So Districts and their attorneys will need to determine whether it is feasible, given the unique training requirements and prohibition on conflicts of interest above, for a school board to serve in this capacity for purposes of Title IX.



11. Written Decision in an Appeal

- ❑ For all appeals, the Decision Maker can reach a decision based on the investigation evidence and any appeal documentation.
- ❑ Written notice must be provided to both parties of the appeal and both must be provided an equal opportunity to submit a written statement in support of, or challenging, the determination.
- ❑ The appeal process must result in a written decision that must be provided to both parties simultaneously.

A Basic Flow Chart



Let's Talk About Informal Resolution

- ❑ Informal resolution of allegations of sexual harassment by an employee against a student *can never be offered*.
- ❑ Informal resolution cannot be offered until a formal complaint is filed.
- ❑ Once a formal complaint has been filed, informal resolution options, like mediation, can be offered and provided as long as both parties give voluntary, informed, written consent.
- ❑ Cannot require a party waive their right to investigation or to participate in informal resolution as a condition of enrollment or employment.
- ❑ Any party may withdraw from the informal resolution process and resume the formal complaint process at any point before an agreement is reached.

Retaliation

- ❑ Retaliation is prohibited against any individual if it would interfere with their Title IX rights or because an individual has made a complaint or has been involved with a Title IX investigation.
- ❑ Improper conduct by a student or employee that is directed toward any person who makes a good faith report of sexual harassment, or who participates in a related investigation is prohibited. Examples of retaliation could include threats, intimidation, rumor spreading, assault, coercion, destruction of property, name-calling, ostracism, or unwarranted punishments.
- ❑ Conduct that would reasonably discourage a person from making a report of sexual harassment, or participating in an investigation, is also unacceptable retaliation.
- ❑ Charging an individual with a code of conduct violation for making a materially false statement in bad faith during a Title IX complaint proceeding does not constitute retaliation.



UHG

Overview and Tips for Addressing Title IX Sexual Harassment Reports

Investigation vs. Investigation

- ❑ Report Investigation: Initial fact finding
 - A preliminary process to identify who made the Report, determine the contents of the report, and whether the alleged conduct could constitute “sexual harassment” as defined by Title IX.
 - Could be conducted by a campus administrator.
 - Will determine how to respond to the Report.
- ❑ Formal Complaint Investigation: Title IX investigation process
 - An investigation that follows the filing of a Formal Complaint
 - The following slides will focus on the how-to of conducting a formal Title IX investigation following a Formal Complaint.

Key Investigation Steps

- ❑ Once there is a Formal Complaint, determine who will investigate
- ❑ Review board policies related to the alleged conduct
 - *Title IX, Discrimination, Harassment, Retaliation*
 - *Student Code of Conduct*
 - *Employment policies/employee handbook/CBA*
- ❑ Consider whether interim actions are necessary to protect any person or to preserve the integrity of the investigation.
 - *Such actions likely would have been taken by Title IX Coordinator following receipt of initial Report.*
 - While no discipline can occur, an accused employee can be placed on administrative leave with pay, and a student's emergency removal may be warranted.

Key Investigation Steps

- Interview the Complainant first, if possible
 - Get a clear understanding of what is being alleged, including who, what, where, when, why.
 - Serves as road map for rest of investigation
- Interview the person who made the report, if different than Complainant.
- Interview witnesses
- Interview the Respondent

Key Investigation Steps

- ❑ Obtain written, signed and dated statements from each person interviewed.
- ❑ Gather any relevant documentation or evidence:
 - Emails, texts, or other correspondence or notes
 - Surveillance video, cell phone video, photos
 - Electronic messages, posts to social media
- ❑ Prepare investigation report that will be provided to parties.
- ❑ Report to law enforcement, CYFD, PED, etc., if required.

p10



Slide 59

p10

Maybe talk about FERPA and privacy here with respect to witness names, etc that are in the report.

Jenny Hall, 9/9/2021

Documentation Tips

- Notes should be thorough and detailed
- Include date, start/end times, location and names of people present
- Use exact quotes where possible
- Label rumors as rumors
- Avoid opinions of interviewer
- Recap notes with witness to confirm understanding
- Obtain a signature of any statement made by witness

Interview Tips

- ❑ To Record or Not?
 - ❑ Probably NOT required to record but check your local policy and know local practices.
 - ❑ But no secret recordings! Keep recorder in plain view and advise the witness you are recording.
 - ❑ State the date, time, location and identify individuals present.
 - ❑ Label and secure the recording.

Interview Tips

- Be professional.
- Address concerns or reluctance of interviewee.
- Ask open-ended questions in a non-judgmental way.
- Ask witness to be clear about what is rumor or speculation and what was seen/heard.
- Ask witness to identify other witnesses.
- Discuss concerns about on-going interaction with the Respondent, if any.
- Encourage complainant to provide additional information as it becomes available.
- Obtain a written statement.
- Have another administrator or employee present to witness the interview where possible, especially in regard to Complainant and Respondent.



Interview Tips

- Obtain copies of any documents identified or referenced by witness.
- Make no promises regarding confidentiality or the outcome of investigation.
- Interview all witnesses separately.
- Explain the process and reason for meeting.
- Be factual, avoid any implication that Respondent is guilty or innocent, or that a decision has already been made.
- Ensure witness knows s/he has right to be free from retaliation.
- Don't identify other witnesses/discuss the merits of the complaint.

Interviewing the Respondent

- ❑ Generally, interview the Respondent last, after interviewing the Complainant, the reporting individual, and any witnesses named by the Complainant.
- ❑ Make a checklist of the specific allegations to cover in the interview with the Respondent.
- ❑ If the allegations are of a criminal nature and the accused refuses or has been advised not to respond, document efforts to interview the Respondent.
- ❑ Interview any witnesses named by Respondent.

UIG

Other Considerations

Record Keeping - Seven Year Retention for:

- ❑ Records of:
 1. each sexual harassment investigation of a Formal Complaint, to include any documented dismissal and the reasons for same;
 2. any appeal;
 3. any informal resolution; and
 4. training materials.
- ❑ Also, retention and publication of training materials:
 - ❑ Retain any materials used for training Title IX Coordinator, investigators, decision makers, and any other person who facilitates an informal resolution process.
 - ❑ These materials must be publicly available on the district's website.



More on Record-Keeping

- ❑ Documents from the Formal Complaint include:
 - ❑ The Determination;
 - ❑ Any Disciplinary Sanctions issued;
 - ❑ Remedies provided to the Complainant;
 - ❑ Any appeal; and
 - ❑ Any Supportive Measures implemented or offered, if none were provided, the reasons why.



A Word About Policy

- ❑ Review your policy. If it is not up-to-date, it is essential to update district policies and procedures to reflect the new Title IX regulation requirements.
- ❑ Remember, this will include both student policies and employee policies.
 - ❑ NOTE: For employees, the protections provided by Title IX are more limited, but they are in addition to the broader protections for employees under Title VII.

Karla Schultz

kschultz@wabsa.com



WALSH GALLEGOS
TREVÍÑO KYLE & ROBINSON P.C.

500 Marquette Ave. NW, Suite 1310

Albuquerque, NM, 87102

Phone: 505-243-6864

Fax: 505-843-9318

The information in this presentation was prepared by Walsh Gallegos Treviño Kyle & Robinson P.C. It is intended to be used as general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.



WALSH GALLEGOS
TREVINO KYLE & ROBINSON P.C.