

Title IX Training

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SERVICE CENTERS IN APPLETON, GREEN BAY AND SHEBOYGAN

Title IX Generally

- ▶ No person in the United States
- ▶ On the basis of sex
- ▶ Shall be excluded from participation in, be denied benefits of, or be subjected to discrimination
- ▶ Under any education program or activity
- ▶ Receiving Federal financial assistance

Standard that Triggers a District's Response

- ▶ A K-12 school covered by Title IX must respond to an allegation of sexual harassment when:
 - ▶ It has actual knowledge of sexual harassment in the district's education program or activity against a person in the United States.
 - ▶ Schools are obligated to address off-campus conduct if there is a nexus to the school environment or if conduct occurs at any location, event, or circumstance where the school had substantial control over the harasser and context in which harassment occurred.
- ▶ The district must respond when any of the following individuals have actual knowledge:
 - ▶ Any elementary or secondary school employee;
 - ▶ Any Title IX Coordinator; or
 - ▶ Any school official with the authority to institute corrective measures.

Key Definitions

▶ Sexual Harassment

- ▶ “Conduct on the basis of sex that satisfies one or more of the following:
 - ▶ A school employee conditioning benefits on participation in unwelcome sexual conduct (i.e. quid pro quo); or
 - ▶ Unwelcome conduct that a reasonable person would find so (a) severe, (b) pervasive, and (c) objectively offensive that it effectively denies a person equal access to the school’s education program or activity; or
 - ▶ Sexual assault (as defined in the Clery Act as rape, fondling, incest, or statutory rape), dating violence, domestic violence or stalking as defined in the Violence Against Women Act.”

Key Definitions

▶ Actual Knowledge

- ▶ “Notice of sexual harassment or allegations of sexual harassment to a school district’s Title IX Coordinator, or any employee of an elementary or secondary school.”
- ▶ Actual knowledge exists if an employee witnesses the alleged conduct, hears about it from the alleged victim or third-party, or received a written or verbal complaint.

Key Definitions

- ▶ Educational Program or Activity
 - ▶ “Any location, event, or circumstance over which a recipient exhibits substantial control over both the alleged harasser and the context in which the harassment occurred.”
 - ▶ Off-campus activities in the United States fall into this definition.
 - ▶ Employment with the recipient also falls into this definition.
 - ▶ If conduct does not occur under this definition (i.e. not in the United States), consider other policies to address conduct.

Key Definitions

▶ Deliberate Indifference

- ▶ “Failure to reasonably respond in light of the known circumstances.”
- ▶ Legal standard to evaluate the school’s response to the allegations.
- ▶ Prohibits instances where the school may permit discrimination.
- ▶ The doctrine of deliberate indifference was established by the Supreme Court in 1976 and adopted in the school Title IX context by the Supreme Court in 1998.
- ▶ Schools can be held financially liable if they are deliberately indifferent to known acts of sexual harassment or discrimination by failing to act based on known circumstances.
- ▶ The harasser must be under the school’s authority and the harassment must be so severe, pervasive, and objectionable that it deprives the victim access to educational programs or activities.

Key Definitions

▶ Formal Complaint

- ▶ “A document that initiates a recipient’s grievance process.”
- ▶ Can only be filed by the complainant or signed by the Title IX Coordinator
 - ▶ Allegations brought forth by third parties or school employees are considered “reports.”
- ▶ Must state that at the time of filing the formal complaint, the complainant is/was participating or attempting to participate in the school’s educational program or activity
- ▶ Must be filed with the Title IX Coordinator in person, by mail, or by electronic mail
- ▶ Must contain the complainant’s physical or digital signature, or otherwise indicates that complainant is filing the complaint.

Key Definitions

▶ Complainant

- ▶ “An individual who is alleged to be the victim of conduct that could constitute sexual harassment.”
- ▶ May be either a student or employee.
- ▶ Third parties and Title IX Coordinators are not considered complainants.

▶ Respondent

- ▶ “An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.”

The Title IX Coordinator

▶ Duties:

- ▶ Coordinate the school's Title IX compliance efforts; handle any inquiries related to Title IX and nondiscrimination policies
- ▶ Receive reports from any school employee of allegations of sexual harassment at any time, via phone, in-person, mail, or e-mail
- ▶ Receive formal complaints from complainants of allegations of sexual harassment at any time via in-person, mail, or e-mail
- ▶ At his/her discretion, sign a formal complaint if a complainant does not, to initiate the grievance process
- ▶ Contact complainant to offer and discuss "supportive measures," regardless of whether a formal complaint is filed and explain process for filing a formal complaint
- ▶ Contact respondent to offer and discuss "supportive measures" (non-disciplinary/punitive)
- ▶ Provide notice to complainant and respondent that a complaint has been received

The Investigator

- ▶ The Title IX Coordinator can also be the investigator.
- ▶ Duties:
 - ▶ Conduct an impartial investigation and carry out a majority of the grievance process
 - ▶ Conduct interviews of complainant, respondent, witnesses, and gather other evidence
 - ▶ Draft investigation report at conclusion of investigation and deliver to all parties and decision-maker
 - ▶ Investigation report should summarize all relevant evidence and provide recommendations to decision-maker
 - ▶ Relevant evidence includes information from any interviews conducted or any other evidence gathered by the investigator
 - ▶ Relevant evidence does not include evidence of a complainant's sexual history, unless offered to prove someone other than the respondent committed the alleged conduct or to prove consent.*

*Requires training in relevancy determinations to conduct this inquiry.

The Decision-Maker

- ▶ An individual separate from the Title IX Coordinator and investigator
- ▶ Duties:
 - ▶ Apply standard of evidence adopted by the school district in its policy when reviewing investigation report
 - ▶ Must issue a written determination of responsibility that:
 - ▶ Identifies any allegations that constitute sexual harassment;
 - ▶ Describes the procedural steps taken from receipt of the complaint to the determination;
 - ▶ Includes findings of fact that support the determination;
 - ▶ Includes conclusions regarding application of the code of conduct to the facts;
 - ▶ Includes a statement of, and rationale for, the result as to each allegation—determination of responsibility, disciplinary sanctions, and remedies provided to complainant;
 - ▶ Includes procedures and permissible bases for appeals.

Serving Impartially: Title IX Coordinator, Investigator, and Decision-Maker

- ▶ Ensure that there is no conflict of interest or bias against any of the parties-if so, reassign the role for that matter.
- ▶ Treat complainants equitably by providing remedies any time a respondent is found responsible, and treat respondents equitably by not imposing disciplinary sanctions without following the grievance process.
- ▶ Follow the prompt timelines for completing grievance process.
- ▶ Provide written notice to all parties of time and location before all investigatory interviews.
- ▶ Allow equal opportunity for the parties to present witnesses and other evidence.
- ▶ Do not restrict the ability of the parties to discuss allegations or gather evidence.
- ▶ Send the parties all evidence directly related to the allegations and allow at least 10 days for the parties to review and respond.
- ▶ Do not access or use any party's medical, psychological, or similar records in its investigation, unless the party provides voluntary, written consent to do so.

Serving Impartially: Title IX Coordinator, Investigator, and Decision-Maker cont'd

- ▶ Design remedies to maintain the complainant's equal access to education.
- ▶ Objectively evaluate all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on person's status as a complainant, respondent, or witness.
- ▶ Presume that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- ▶ Do not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- ▶ Do not restrict rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment, when complying with Title IX.
- ▶ Apply all provisions, rules, or practices other than those required by Title IX adopted by the District as part of its grievance process, equally to both parties.

Initial Response and Supportive Measures

- ▶ When a report of sexual harassment is received
 - ▶ Contact the Complainant
 - ▶ Offer and discuss availability of “supportive measures” with or without filing a formal complaint.
 - ▶ Consider his/her wishes with respect to “supportive measures.”
 - ▶ Explain the process for filing formal complaint.
- ▶ “Supportive Measures”
 - ▶ Non-disciplinary, non-punitive, individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant and respondent before or after the filing of a formal complaint or where no such complaint has been filed.
 - ▶ Counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, mutual restrictions on contact between the parties, leaves of absence, etc.

Formal Response

- ▶ Basic Requirements
- ▶ Provide written notice that a formal complaint has been filed to include:
 - ▶ A description of the allegations;
 - ▶ A statement that the accused is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made after the grievance process;
 - ▶ A statement that the complainant and the accused may have an advisor of their choice, who may be, but is not required to be, an attorney;
 - ▶ A statement that the complainant and the accused may inspect and review evidence collected during the investigation; and
 - ▶ A reference to a provision in the District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

Dismissal

- ▶ **Mandatory dismissal**
 - ▶ Would not constitute sexual harassment as defined in 34 CFR 106.30 even if proven;
 - ▶ Did not occur in the recipient's education program or activity; or
 - ▶ Did not occur against a person in the United States.

- ▶ **Discretionary dismissal**
 - ▶ The complainant notifies the Title IX Coordinator that they would like to withdraw the complaint or any allegations therein;
 - ▶ The respondent is no longer enrolled or employed by the recipient; or
 - ▶ Specific circumstances prevent the recipient from gathering sufficient evidence to reach a determination. 34 CFR 106.45(b)(3).

Informal Resolution

- ▶ Offer informal resolution options so long as both parties give voluntary, informed, written consent.
- ▶ Train facilitators in informal resolution processes.
- ▶ Do not require a waiver of the right to a formal investigation and adjudication as a condition of enrollment in educational programs or activities or employment.
- ▶ Do not offer an informal resolution process unless a formal complaint is filed.
- ▶ Allow any party the right to withdraw from the informal resolution process and resume the grievance process.
- ▶ Do not offer an informal resolution process to resolve allegations that an employee sexually harassed a student.

Investigatory Stage

- ▶ Provide parties with an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- ▶ Do not restrict parties' ability to discuss the allegations under investigation or gather relevant evidence.
- ▶ Provide parties with the same opportunity to have others present during any grievance proceeding and any related meeting, including an attorney.
- ▶ Provide parties and witnesses with written notice of the date, time, location, participants, and purpose of investigative interviews or other meetings, with sufficient time for the party to prepare.
- ▶ Provide parties with an equal opportunity to inspect and review any evidence obtained as part of the investigation.
- ▶ Prior to completion of the investigative report, the recipient must send to each party and the party's advisor, if any, the evidence subject to inspection in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response.
- ▶ Prepare an investigative report that fairly summarizes relevant evidence. The report must be sent to each party and the party's advisor for review and written response.

Optional Hearings

- ▶ Live hearings are optional for elementary and secondary schools.
- ▶ If conducted, a hearing would occur before a determination of responsibility.
- ▶ Regardless, each party may submit written questions that it wants asked of any party or witnesses, prior to determination of responsibility.
- ▶ Do not allow questions of a party's sexual history, unless offered to prove:
 - ▶ That someone other than the respondent committed the alleged conduct;
or
 - ▶ Consent.

Determination of Responsibility

- ▶ Include:
 - ▶ A description of the allegations potentially constituting sexual harassment;
 - ▶ A description of the procedural steps taken;
 - ▶ Findings of fact supporting the determination;
 - ▶ Conclusions regarding the application of the recipient's code of conduct to the facts;
 - ▶ The decision and rationale as to each allegation, a determination of responsibility, any disciplinary sanctions, whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and the recipient's procedures and permissible bases for the complainant and respondent to appeal.

*Appeal rights and the standard of evidence are set forth by the policy.

The Standard of Evidence

- ▶ When making a determination of responsibility the decision-maker may apply the preponderance of the evidence standard or a clear and convincing evidence standard.
- ▶ Preponderance of the Evidence standard means that the burden of proof is met if it is more likely than not, or a greater than 50% chance that, based on all of the reasonable evidence, the allegations are true.
- ▶ Clear and convincing evidence standard is a higher standard than preponderance of the evidence. The evidence shows that the allegations are substantially more probable to be true.
- ▶ This evidentiary standard should be applied to all allegations of sexual harassment, whether the respondent is a student or an employee.

The Appeals Process

- ▶ Should be made available to both parties simultaneously at the conclusion of the investigation
- ▶ May be offered for a determination regarding responsibility, and from a school's dismissal of a formal complaint or any allegations therein, on the following bases:
 - ▶ Procedural irregularity that affected the outcome of the matter;
 - ▶ Newly discovered evidence that could affect the outcome of the matter; and/or
 - ▶ Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter.

Training

- ▶ Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must receive training on:
 - ▶ The definition of sexual harassment in 34 CFR 106.30;
 - ▶ The scope of the recipient's education program or activity;
 - ▶ How to conduct an investigation;
 - ▶ The grievance process, including hearings, appeals, and informal resolution processes, as applicable;
 - ▶ How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Documentation

- ▶ Document everything throughout grievance process, including:
 - ▶ Why response was not deliberately indifferent;
 - ▶ What measures were taken to preserve or restore equal access to the educational program or activity;
 - ▶ If no supportive measures were offered, why that was not a deliberately indifferent action.
- ▶ Maintain all records for a minimum of 7 years
 - ▶ Complaints/allegations
 - ▶ Notices
 - ▶ Investigation documents
 - ▶ Training documents
 - ▶ Records of any actions taken
 - ▶ Disciplinary sanctions
 - ▶ Appeals