

TITLE IX TRAINING

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What will we talk about today?

- What is Title IX
- 2020 Title IX Rules regarding sexual harassment
- What do 2020 Title IX Rules require of all employees
 - Training regarding recognizing and reporting sexual harassment
- What do 2020 Title IX Rules require of specific employees
 - Formal Complaints and Process



Title IX

- 1972
- “No Person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education program or activity receiving federal financial assistance.”
- “A recipient institution that receives Department funds must operate its education program or activity in a nondiscriminatory manner free of discrimination based on sex, including sexual orientation and gender identity. Some key issue areas in which recipients have Title IX obligations are: recruitment, admissions, and counseling; financial assistance; athletics; sex-based harassment, which encompasses sexual assault and other forms of sexual violence; treatment of pregnant and parenting students; treatment of LGBTQI+ students; discipline; single-sex education; and employment.”



What does Title IX cover?

- Sex discrimination
- Gender based discrimination
- Gender based harassment
- Gender based bullying
- Gender based assault
- Sexual harassment
- Sexual assault
- Dating violence
- Domestic violence
- Stalking
- Retaliation



KIPP has policies that cover this too

- Equal Employment Opportunity
- Employee Workplace Conduct
- Anti-Discrimination and Non-Harassment
- Human Rights
- Student Anti-Bullying
- Student Code of Conduct



Failure to comply with Title IX

- OCR Complaints
 - Corrective action plans
 - Could result in a loss of federal funding
- Lawsuits
 - Could result in monetary damages



2020 Title IX Rules



- Effective August 2020
- Apply to allegations of sexual harassment
 - Sexual harassment is a defined term
- Greatly impacts handling by school
- Many important defined terms
- *This presentation will focus on Title IX 2020 regulations



But...

Shortly after taking office, President Biden issued an Executive Order directing a review of Title IX rules



Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity



BRIEFING ROOM

PRESIDENTIAL ACTIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. It is the policy of my Administration that all students should be guaranteed an educational environment free from discrimination on the basis of sex, including discrimination in the form of sexual harassment, which encompasses sexual violence, and including discrimination on the basis of sexual orientation or gender identity. For students attending schools and other educational institutions that receive Federal financial assistance, this guarantee is codified, in part, in Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in education programs or activities receiving Federal financial assistance.

Sec. 2. Review of Agency Actions. (a) Within 100 days of the date of this order, the Secretary of Education, in consultation with the Attorney General, shall review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that are or may be inconsistent with the policy set forth in section 1 of this order, and provide the findings of this review to the Director of the Office of Management and



And...

On June 23, 2022 (the 50th anniversary of Title IX), the Biden Administration proposed new rules.



U.S. Department of Education

Student Loans

Grants

Laws

ARCHIVED INFORMATION

The U.S. Department of Education Releases Proposed Changes to Title IX Regulations, Invites Public Comment

Department Commemorates 50 Years of Protecting and Advancing the Rights of All Students

JUNE 23, 2022

Contact: Press Office, (202) 401-1576, press@ed.gov

Today, in celebration of the 50th anniversary of Title IX – the landmark civil rights law that has opened doors for generations of women and girls – the U.S. Department of Education released for public comment proposed changes to the regulations that help elementary and secondary schools and colleges and universities implement this vital legislation. The proposed amendments will restore crucial protections for students who are victims of sexual harassment, assault, and sex-based discrimination – a critical safety net for survivors that was weakened under previous regulations. The proposed regulations will advance educational equity and opportunity for women and girls across the country to ensure that every student in America, from kindergarten through a doctorate degree, can achieve her dreams.

"Over the last 50 years, Title IX has paved the way for millions of girls and women to access equal opportunity in our nation's schools and has been instrumental in combating sexual assault and sexual violence in educational settings," said U.S. Secretary of Education Miguel Cardona. "As we celebrate the 50th Anniversary of this landmark law, our proposed changes will allow us to continue that progress and ensure all our nation's students – no matter where they live, who they are, or whom they love – can learn, grow, and thrive in school. We welcome public comment on these critical regulations so we can further the Biden-Harris Administration's mission of creating educational environments free from sex discrimination and sexual violence."

The proposed regulations will advance Title IX's goal of ensuring that no person experiences sex discrimination, sex-based harassment, or sexual violence in education. As the Supreme Court wrote in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), it is "impossible to discriminate against a person" on the basis of sexual orientation or gender identity without "discriminating against that individual based on sex." The regulations will require that all students receive appropriate supports in accessing all aspects of education. They will strengthen protections for LGBTQI+ students who face discrimination based on sexual orientation or gender identity. And they will require that school procedures for complaints of sex discrimination, including sexual violence and other sex-based harassment, are fair to all involved. The proposed regulations also reaffirm the Department's core commitment to fundamental fairness for all parties, respect for freedom of speech and academic freedom, respect for complainants' autonomy, and clear legal obligations that enable robust enforcement of Title IX.

The proposed regulations would:

So...

While the Biden rules are rumored to be released in May 2023 (more on this later), but the DeVos rules are here now.

AND NOW....Final decision (for now) that DeVos rules (2020) are in effect



What is sexual harassment under Title IX

Quid Pro Quo
Sexual
Harassment

Hostile
Environment

Sexual assault,
dating violence,
domestic violence,
or stalking



Quid Pro Quo Sexual Harassment

- School employee conditions an educational benefit, aid, or service on an individual's participation in unwelcome sexual conduct
- Only an employee (not student) can engage in this type of sexual harassment
- There is no such thing as "welcome" sexual conduct by an employee to a student (no matter the age of the student)
- Any sexual conduct from an employee to a student is unwelcome, inappropriate, and unlawful
 - Reminder: In addition to Title IX requirements, call police, call CPS



Hostile Environment

- Unwelcome conduct determined by a reasonable person to be so severe, AND pervasive, AND objectively offensive that it effectively denies a person equal access to the school's educational program or activity.
- Must be based on sex.
- Severe – nature
- Pervasive – frequency
- Objectively offensive – reasonable person
- Must deprive of educational program/activities/benefits
- Even an isolated incident can violate Title IX if sufficiently severe.



Hostile Environment includes Gender Based Harassment

- Physical, verbal, or nonverbal conduct based on the student's gender, the student's expression of characteristics perceived as stereotypical for the student's gender, or the student's failure to conform to stereotypical notions of masculinity or femininity.
- The harassment must be severe AND pervasive AND objectively unreasonable and must affect a student's ability to participate in an educational benefit/program/activity



Sexual Violence

Sexual Assault

Dating Violence under the Violence Against
Women's Act

Stalking

Domestic Violence



Sexual Violence

Sexual Assault

- Offense classified as forcible or nonforcible sex offense under the uniform crime reporting system of the FBI (20 USC 1092(f)(6)(A)(v))
- Does not require physical force
- Turns on consent/lack of consent
- Rape, fondling, statutory rape are examples

Dating Violence

- A person in a current or former dating/marriage relationship uses physical, sexual, or emotional abuse to harm, threaten, intimidate, or control the other person in the relationship



Sexual Violence

Stalking

- Engaging in conduct directed at a person that would cause a reasonable person to:
 - Fear for his/her safety or safety of others
 - Suffer emotional distress

Domestic Violence

- Crime of violence committed by:
 - Current/former spouse or intimate partner
 - Person with whom complainant shares child
 - Cohabiting with as spouse/intimate partner



Title IX Regulations come into play when

- School has Actual Knowledge of Sexual Harassment in an Education Program or Activity in the United States
- Must respond promptly and in a way that is not deliberately indifferent.



What does Title IX require of all employees?

Employees with Actual Knowledge of Sexual Harassment that occurred with the school's Educational Program or Activity against in person in the United States

Must make a report to the Title IX Coordinator.



Definitions

Actual Knowledge

- Notice of sexual harassment or alleged sexual harassment by ANY employee of an elementary or secondary school

Education Program or Activity

- Location, event or circumstance where school exhibits substantial control over alleged harasser and the context in which harassment occurred
- School property (including transportation)
- Extra-curricular events/school sponsored/school related (sometimes)
- Field trips (in the United States)



Definitions: Deliberate Indifference

School must respond in a manner that is not “deliberately indifferent.”

The school cannot act in a manner that is clearly unreasonable in light of the known circumstances

Must issue a prompt response even if allegation was not timely made.



Actual Knowledge of Sexual Harassment

- Employee must report immediately to Title IX Coordinator
- Title IX Coordinator must begin process of responding in accordance with 2020 Title IX Rules
- This will mean providing supportive measures to alleged victim(s) [called Complainant(s)] and alleged perpetrator(s) [called Respondent(s)]
- This will mean providing information to Complainant about how to file a formal complaint
- Employees should make their report and wait for further direction from Title IX Coordinator.



Title IX Coordinator



- **Title IX Coordinator**
- Employee who is designated and authorized to address concerns or questions regarding discrimination on the basis of sex, including sexual harassment, sexual assault, dating violence, domestic violence, stalking, or gender-based harassment:
- Any individual may report sex discrimination, including sexual harassment, at any time, including during non-business hours, by mail, phone, or email. During business hours, reports may also be made in person.





2020 Title IX Regulations come into play

TRAINING FOR TITLE IX PROCESS

Title IX Coordinator

Investigators

Decision-Makers/Appel
al Decision-Makers

Informal Resolution
Facilitator

Title IX Coordinator

Main point of contact regarding Title IX

Must designate on website, handbooks

Can have more than one

Can have deputies

Supervises the Title IX process

- Assigns role players
- Makes contact with complainant/respondent
- Ensures compliance with final sanctions



Report comes in

- Title IX Coordinator contacts the Complainant
 - Offers supportive measures
 - Explains formal complaint process
- Title IX Coordinator contacts Respondent
 - Offers supportive measures
- Title IX Coordinator ensures no disciplinary sanctions are put in place against respondent until grievance process is complete (if any)
 - However, can take emergency measures
 - Can place an employee on administrative leave



Supportive Measures



- Individualized services to preserve and restore equal access to educational programs/activities
- Examples:
 - Stay away agreements; mutual restrictions
 - Increased monitoring, escorts
 - Counseling
 - Extensions of deadlines/course changes
 - Schedule changes
- These are offered regardless of whether a formal complaint is filed.



Title IX Process begins on receipt of report

Report

- Anyone can make a report
- Triggers Title IX Coordinator to contact alleged victim and explain formal complaint option and process
- Triggers Title IX Coordinator to offer supportive measures to complainant and respondent

Formal Complaint

- Complainant must be given the opportunity to file
- Title IX Coordinator can also file
- Should explain exactly what it entails
- Starts the formal grievance process
- Formal complaint process has 12 basic requirements



Complainant may not wish to file

- If Complainant chooses not to file, should still investigate and respond to prohibited conduct in accordance with Policy and Student Code of Conduct
- Must explain to the Complainant the consequences of not filing a formal complaint
 - And it is important to explain what happens if a Formal Complaint is filed as some Complainants may not want to go through the process knowing all the information
- Should document the conversation
- The Title IX Coordinator can file a formal complaint
 - But is not required to unless there is a threat to the community
 - Should respect the Complainant's wishes unless clearly unreasonable



Formal Complaint Process Requirements

- 1. Equitable treatment of Complainants and Respondents
- 2. Objective evaluation of all relevant evidence
- 3. Requirement that Title IX Coordinator, investigator, decision-maker, or informal resolution facilitator not have a conflict of interest or bias
- 4. Presumption that the Respondent is not responsible for the alleged sexual harassment until a determination is made at the conclusion of the Title IX formal complaint process.
- 5. Timeframes that provide a reasonably prompt conclusion of the Title IX formal complaint process, including time frames for appeals and any informal resolution process, and that allow for temporary delays or the limited extension of time frames with good cause and written notice as required by law.
- 6. Description of the possible disciplinary sanctions that may be implemented following a determination of sexual harassment



Formal Complaint Process Requirements cont...

- 7. A statement of the standard of evidence to be used to determine responsibility for all Title IX formal complaints of sexual harassment
- 8. Procedures and permissible bases for the complainant and respondent to appeal a determination of responsibility or a dismissal of a Title IX formal complaint or any allegation therein
- 9. A description of the supportive measures available to the Complainant and Respondent
- 10. Prohibition on using or seeking information under a legally recognized privilege unless the individual holding the privilege has waived the privilege.
- 11. Additional formal complaint procedures required by law including written notice of a formal complaint, consolidation of formal complaints, recordkeeping, and investigation procedures
- 12. Other local procedures as determined by the Superintendent.



When a Formal Complaint is Made: Dismissal

- (1) Consider whether dismissal is mandatory
 - Allegations do not constitute sexual harassment as defined by Title IX
 - Alleged incident(s) did not occur in School's program or activity
 - Alleged incident(s) did not occur in the United States
- (2) Consider whether dismissal is discretionary
 - Complainant no longer desires to pursue
 - Respondent is no longer enrolled in or employed by the School
 - The investigation cannot be completed
- (3) If dismiss, must provide written notice of dismissal
- (4) Dismissal can be appealed



When a Formal Complaint is Made: Notice of Formal Complaint

- Give written notice of formal complaint to Complainant and Respondent** which must contain information regarding:
 - Grievance process
 - Allegations of sexual harassment including sufficient details known at the time (identify of parties, alleged conduct, date(s), location(s) of the alleged incident(s))
 - Statement that the respondent is presumed NOT responsible for the alleged conduct until a determination is made at the conclusion of the grievance process
 - Inform parties that they may have an advisor of their choice who may be but is not required to be an attorney
 - Right of each party to inspect and review evidence
 - The standard of evidence that will be used (preponderance of the evidence)
 - Inform of policy/student code of conduct that prohibits knowingly making false statements/submitting false information during an investigation
 - Notification of the formal complaint process including procedures for informal resolution and appeal of final decision



When a Formal Complaint is Made: Plan out assignments

- Title IX Coordinator
 - Can be investigator but not decision-maker
 - Recommendation: assign a different investigator
- Investigator
 - Cannot be decision-maker
- Decision-maker
- Informal Resolution Facilitator
- Appeal Decision-maker
- *Roles can be School employees or can outsource



When a Formal Complaint is Made: Plan out assignments

- All roles must be
 - Impartial
 - Free from Bias
 - Free from Conflict of Interest
- If you do not believe you can serve impartially, free from bias, and without conflict of interest, tell the Title IX Coordinator immediately upon assignment or immediately upon learning the information that causes your concern
- Point out perceptions even if not actual so Title IX Coordinator has full information upon assignment



Impartial

- This means being free from bias.
- “Treating all rivals and disputants equally; fair and just”
- Neutral
- Decisions based on objective criteria rather than bias, prejudice
- Nondiscriminatory
 - Ex: Avoid sex stereotyping
 - Ex: Avoid prejudging facts
 - Ex: Avoid preconception, assumption, speculation



Bias

- “Prejudice in favor of or against one thing, person, or group compared with another, usually in a way that is considered to be unfair.”
- Favoring one over another
- Perceived does not mean actual; but does perception need to be addressed?
- Concern with “cover-up” or protection of one person or institution based on who the investigator/decision-maker is and their role



Conflict of Interest

- Where the interests of two parties are incompatible
- Assess the relationship with the parties
- Assess the relationship with organizations/programs the parties may belong
- Assess the relationship with the families involved (including potential witnesses)
- Perceived does not mean actual, but does perception need to be addressed?



Bottom lines



- Go in with an open mind
- Go in with a completely clean slate
- Be free from stereotypes
- Keep out all personal beliefs

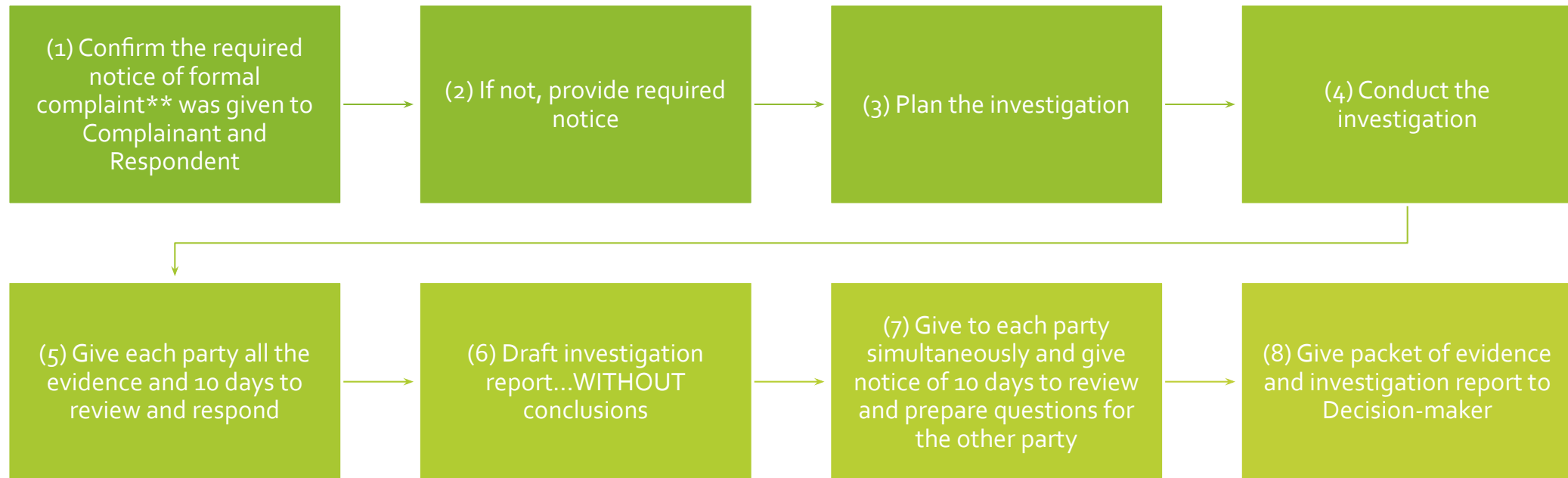


Investigator

- As the title suggests, the investigator investigates the complaint
- However, the investigator does not make a decision
- The School (investigator) has the burden of proof and the burden to gather the evidence



Investigator – Steps



Planning the Investigation

- Review the allegations and the evidence that has been provided
- Review the allegations in the context of the definitions of sexual harassment
- What do you need to know to determine if sexual harassment, as defined, has occurred?
- What do you need to figure that out?
- Create a list of evidence needed (may change along the way)
- Create a witness list (may change along the way)
- Create an outline of questions (but be prepared to adjust as you listen)



Conducting the Investigation

- Give notice to each party that you will meet with them (individually) and they have right to bring an advisor**
 - Written notice of date, time, location, participants, and purpose of investigative interview or other meetings with sufficient time to prepare
- Each party may submit to you evidence, testimony, witnesses, other information
- Cannot restrict the ability of either party to discuss allegations or to gather and present evidence
- Require a party's written consent before using the party's medical, psychological, or similar treatment records
- Any deadlines you set should apply equally to each party



Conducting the Investigation - Meeting with Witnesses

- Best practices in questioning the Complainant, Respondent, and Witnesses:
 - Explain the groundwork for conducting the interview and hold all interviewees to the same standards of conduct and decorum
 - Maintain control of the interview, both in the substance of the questions and answers and in the conduct of those in the room (interviewees and their advisors)
 - Begin with general, more open-ended questions and work your way to more specific questions
 - Generalized questions can go to the elements of the alleged offense
 - Specific questions should be built off documentary evidence evaluated before the interview, information obtained from prior interviews, and other known facts
- Keep in-mind that interviews are meant to determine disputed issues of fact, and questions should be directed at solving the disputed fact questions



Conducting the Investigation – Relevant Evidence

- Relevance
 - OCR's Title IX Guidance provides, "The final regulations do not define relevance, and the ordinary meaning of the word should be understood and applied."
 - Federal Rule of Civil Procedure 401 provides a commonly understood definition of relevance:
 - Evidence is relevant if:
 - **(a)** it has any tendency to make a fact more or less probable than it would be without the evidence; and
 - **(b)** the fact is of consequence in determining the action.



Conducting the Investigation- Relevant Evidence

- Does it help to answer the allegations
- Is it about the individuals involved
- Is it allowable
 - NO: sexual behavior or predisposition
 - EXCEPT to determine someone other than respondent committed the behavior
 - EXCEPT specific incidents related to complainant and respondent offered to prove consent
 - NO: information protected by legal privilege
 - NO: party's treatment records (absent voluntary consent)



Conducting the Investigation – Notes on Evidence

- What is “inculpatory” and “exculpatory” evidence?
 - Inculpatory evidence shows or tends to show Respondent’s responsibility
 - Exculpatory evidence shows or tends to show the Respondent is not responsible



Conducting the Investigation – FERPA information

- Share with parties that FERPA protected information may be disclosed as part of the Title IX process
- Share with the parties that FERPA protected information cannot be disclosed outside of the process
- Investigation reports are not redacted for FERPA. Parents/students need to be aware of that.



Conducting the Investigation – Your notes

- Your notes may be discoverable
- Write down facts
- Put quotes in quotation marks



After you have collected the evidence

- A hearing is not required for K-12 institutions.
 - We will not hold hearings.
- After you have gathered all the evidence, you must give each party evidence directly related to the allegations provided and obtained as part of the investigation so they can respond.
 - Including evidence that the decision-maker may not rely upon.
 - Including inculpatory and exculpatory evidence
- Must give both parties a meaningful opportunity to respond to evidence
 - 10 days



Investigation Report



- After gathering the evidence and giving the parties an opportunity to review and respond, review any additional evidence from the parties
- Then prepare an investigation report
- But DO NOT reach a conclusion
- The goal of the investigation report should be to put the Decision-maker in the best position to make a thorough, well-reasoned and supported decision



Investigation Report

- Investigative Reports** will fairly summarize all relevant evidence and *may* include the following:
 - Identification of the allegations
 - Any procedural steps taken (including any notifications to the parties)
 - Responses to each party to the allegations in the formal complaint
 - Evidence obtained by the School/Relevant evidence considered
 - Parties' responses to the evidence after review
 - Findings of Fact
 - Identification of School Policies, Student Code of Conduct provisions implicated
- *should*



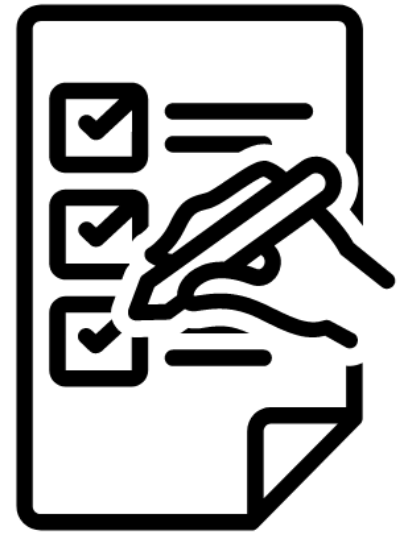
Investigation Report

- Organization and clarity are key in the investigative report
 - The most natural way for a neutral third-party to understand a story is to present it to them chronologically and fully
 - Show your work! Cite to the sources of information gathered in your investigation
 - Include the evidence you have received and considered.
 - Proofread to ensure that the investigative report meets the School's standards of professionalism and propriety



Concluding the Investigation

- Provide the investigative report simultaneously to both parties.
- Send a copy of the investigative report and all evidence simultaneously to the Title IX Coordinator
 - Package it up nicely
- Title IX Coordinator immediately assigns a Decision-maker and sends report and all evidence



Decision-maker

- Role is to make a decision regarding allegations
 - Must be free from conflicts of interest, bias; must be impartial
 - Must use independent judgment
- Can NOT be the person who received the formal complaint or investigated it, including the Title IX Coordinator
- What is the standard of evidence: At KIPP, the standard of evidence is preponderance of the evidence (more likely than not)
- Decision-maker weighs the relevant evidence and decides whether it meets the preponderance of evidence standard
- Issue decision in a reasonably prompt manner



Decision-maker

- May not issue written determination of responsibility until investigative report has been circulated to parties for 10 days (investigator circulates...wait 10 days before issuing decision)
- Must give each party the opportunity to present to you written questions they want asked of the other party or any witness
- You must present the questions to the other party if you determine them to be relevant, respectful, and not-abusive.
 - If you exclude a question, you must explain to the party proposing the question why it is not relevant
 - Give deadline to parties and witnesses to respond to questions
 - Cannot force an answer
 - Can allow reasonable follow up questions if you determine appropriate



Considering the Evidence – Relevant Evidence

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Considering the Evidence – Notes on Evidence

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 - Inculpatory evidence shows or tends to show Respondent’s responsibility
 - Exculpatory evidence shows or tends to show the Respondent is not responsible



Decision-maker



- Review evidence
- Assess credibility of evidence/witnesses
 - Be objective in the evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person's status as a Complainant, Respondent, or Witness
- Is there a policy violation?
- Remember standard is preponderance of the evidence (more likely than not)
- Cite reasons for conclusion
- Consider punishments/sanctioning



Decision-maker: Concluding the decision

- Written Decision must include:
 - Identification of the allegations potentially constituting sexual harassment
 - Description of the procedural steps that were taken by the school on the way to getting to that point (notifications to parties, methods used to gather other evidence, etc.)
 - Findings of fact supporting the determination
 - Conclusions regarding the application of the Code of Conduct (or other policy) to the facts
 - Statement of and rationale for the ultimate determination/result of responsibility for each allegation and any disciplinary sanctions imposed on the respondent
 - Statement of and rationale for any remedies for the Complainant, addressing how those remedies will restore or preserve equal access
 - Statement of the School's procedures and basis for appeal for either party
 - Can set deadlines for appeal (put in decision)
- **Must be sent to the parties simultaneously



Appeal Decision-maker

- Either party may appeal
- Filed with the Title IX Coordinator
- Grounds for appeal
 - Procedural irregularity affected outcome of the matter
 - New evidence has been discovered that was not reasonably available at the time of the determination on responsibility or dismissal
 - Conflict of Interest of Title IX Coordinator, Investigator, or Decision-Maker, and the conflict of interest affected the outcome
 - Schools can offer additional grounds for appeal, so long as the grounds apply on an equal basis to the parties



Appeal Decision-maker

- Can NOT be the Decision-maker, Investigator, or Title IX Coordinator
- Notify parties in writing and implement appeal procedures equally
- Both parties have equal opportunity to submit written statement supporting or challenging the outcome
- After considering parties' written statements, issue written decision and send it to the parties simultaneously
- Determination about whether the Respondent is responsible for the sexual harassment becomes final after appeal decision



Retaliation – Reminder

- The school or any person may not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX because the individual has:
 - Made a report or complaint
 - Testified
 - Assisted
 - Participated in or refused to participate in any manner in an investigation, proceeding, or hearing



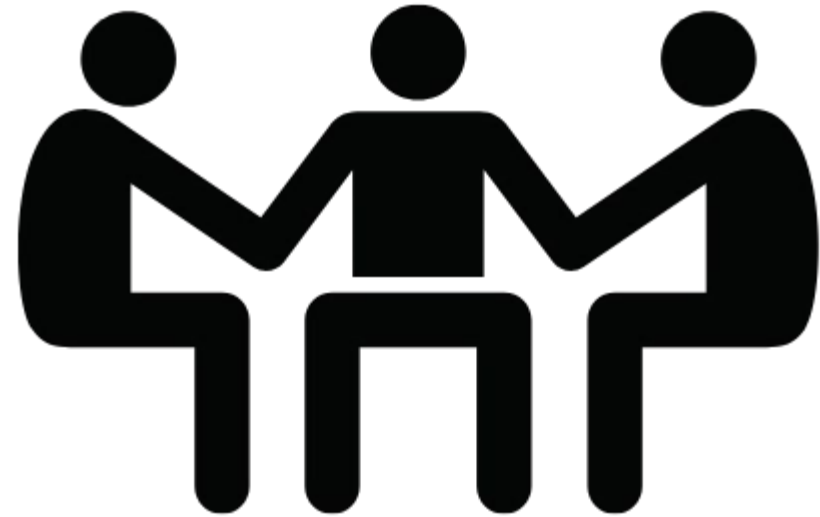
Informal Resolution

- Once a formal complaint is received, a Title IX Coordinator **may** offer informal resolution to the parties
 - Cannot offer until formal complaint is filed
 - Can occur anytime before decision-maker makes final determination
- Informal resolution is NOT permitted in employee-student sexual harassment cases
- This must be permissive and not mandatory and cannot come with a required waiver of formal complaint procedures
- Title IX Coordinator or Informal Resolution Facilitator can choose the informal resolution format
- Both parties must consent



Informal Resolution Facilitator

- Oversees the Informal Resolution process
- Can be a school employee or outside
- Must be trained on
 - Sexual harassment
 - School programs and activities
 - Title IX formal complaint process
 - How to serve impartially



Informal Resolution

- Give each party space to tell his/her story to you
- Give each party space to share what he/she wants to get out of the process
- Do the parties need to meet together, separately, or a combination of both
- Be prepared to share a list of supportive measures with each
- Be prepared to take some time (maybe even more than one day)
- Remain neutral; do not push
- Require confidentiality



Informal Resolution

- If an agreement is reached:
 - Put in writing
 - Be specific as to terms so there no room for misinterpretation
 - Require confidentiality
 - Insert consequences for breach of terms or breach of confidentiality
 - I.e., Student Code of Conduct
 - Have check in provisions
 - Ask a colleague to review



Tougher Situations - FERPA

- Must provide the parties an equal opportunity to inspect and review evidence
- Evidence may contain FERPA protected information
 - Of multiple students (not just the parties involved)
- DOE finds no conflict between FERPA and Title IX
 - “A recipient should interpret Title IX and FERPA in a way to avoid conflicts”
- Title IX allows non-disclosure agreements
- Work toward consent
- Is it an education record?
- Can some information be redacted?





Tougher Situations – Law Enforcement

- Criminal Justice System and Title IX serve different purposes
- Regulations allow a school to provide for a “short-term” delay of Title IX process for “good cause”
 - Law enforcement investigation may be good cause
 - Can not have a long or indefinite delay
- Must still respond
 - Contact with complainant and respondent
 - Supportive measures
 - Do not be deliberately indifferent





THE FOREGOING PRESENTATION WAS CREATED BY



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