



Title IX Training for K-12 Districts



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Title IX Regulations and Definitions



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.

Title IX of the Education Amendments of 1972



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Davis v. Monroe County Board of Education (1999) 526 U.S. 629

- Issue: Can a school board be responsible under Title IX for student on student harassment?
- Holding: for student on student harassment, an educational institution can be liable when:
 - The institution has actual notice of the harassment AND
 - Has responded to the harassment with deliberate indifference



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Davis, cont.

- Harassment must be severe, pervasive and objectively offensive and the institution's indifference must be systemic so that the victim is deprived of educational opportunities or services
- Deliberate indifference means a response that is unreasonable in light of the known circumstances
- New regulations now apply the *Davis* standard when determining institutional liability



Required Response to Sexual Harassment

- “A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States must respond promptly in a manner that is not deliberately indifferent (clearly unreasonable in light of the known circumstances).”

34 C.F.R. 106.44(a)



What is Actual Knowledge?

- Actual knowledge occurs when any employee has notice of sexual harassment or allegations of sexual harassment



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What is an Education Program or Activity?

- An education program or activity includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs
- Also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution



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Education Program or Activity, continued

- At the time of filing the formal complaint, the complainant must be participating or attempting to participate in the recipient's education program or activity



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What is Sexual Harassment?

- According to the regulations, sexual harassment means conduct on the basis of sex
- Two types



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Quid Pro Quo Harassment

- When an employee conditions the provision of an aid, benefit or service of the recipient on the complainant's participation in unwelcome sexual conduct



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Hostile Environment Harassment

- Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies the complainant equal access to the recipient's education program or activity



Other Sexual Acts Under Title IX

- Additional conduct on the basis of sex:
 - Sexual assault
 - Dating violence
 - Domestic violence
 - Stalking



Sexual Assault

- Forcible
 - Any sexual act directed against complainant, forcibly, against complainant's will, or without consent, including rape, sodomy, sexual assault with an object, and fondling
- Non-forcible
 - Offenses that do not involve force where complainant is incapable of giving consent including statutory rape or incest



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Dating Violence

- Violence, on the basis of sex, committed by respondent:
 - Who is or has been in a social relationship of a romantic or intimate nature with the complainant, and
 - Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - Length of relationship
 - Type of relationship
 - Frequency of interaction between the persons involved in the relationship



Domestic Violence

- Felony or misdemeanor crimes of violence, on the basis of sex, committed by:
 - A current or former spouse or intimate partner of the complainant;
 - A person with whom the complainant shares a child in common;
 - A person who is cohabitating with or who has cohabitated with the complainant as a spouse or intimate partner;
 - A person who is similarly situated to a spouse of the complainant under the domestic or family violence laws of the jurisdiction receiving grant monies; 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 the jurisdiction.



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Stalking

- Engaging in a course of conduct, on the basis of sex, directed at complainant that would cause a reasonable person to:
 - Fear for their safety, or the safety of others; or
 - Suffer substantial emotional distress



The Title IX Team



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Who is the Title IX Team?

- Title IX Coordinator
- Investigator
- Decision Maker
- Appeal Officer
- Informal Resolution Process Facilitator



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Role of the Title IX Coordinator

- Coordinates Title IX compliance and training
- Conducts the intake meeting with complainant
- Offers supportive measures to complainant and respondent
- Explains the grievance process, accepts the formal complaint, and determines mandatory dismissal
- Evaluates emergency removal



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Title IX Coordinator, cont.

- Evaluates the use of informal resolution
- Assigns an unbiased investigator free from conflicts
- Sends out all notices
- Considers permissive dismissal of the complaint
- Reviews the investigation report, written decisions, and appeals
- Drafts outcome letters



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Role of the Investigator

- Impartial, unbiased and free from general or specific conflicts of interest
- Investigates the formal complaint
 - Reviews the complaint
 - Gathers facts
 - Reviews and weighs the evidence
 - Interviews parties and witnesses
 - Assesses relevance and credibility
 - Drafts a written investigation report



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Role of the Decision-Maker

- Reviews the investigation report to see if any information is missing or incomplete
- Facilitates written cross-examination between parties
- Makes conclusions about whether the alleged conduct occurred and the decision about responsibility
- Prepares a written determination with findings of fact, conclusions and rationale for the result as to each allegation



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Role of the Appeals Officer

- Provides written notice of the right to appeal to both parties
- Evaluates the appeal requests to determine if within the scope of appeal rights
- Provides a written notice to both parties
- Reviews written statements and arguments from the parties
- Makes a written decision and provides this decision to the parties



Role of the Informal Resolution Process Facilitator

- Obtains voluntary, written consent from both parties to resolve the matter anytime before a determination of responsibility is made
- If this alternative process is utilized, it does not involve a full investigation or adjudication, but:
 - Includes a written notice to the parties disclosing the allegations,
 - The requirements of the process
 - And notice that the parties can withdraw and resume the grievance process



The Intake Process



Step 1: Meet with the Complainant

- Title IX Coordinator should listen to the Complainant's allegations and draft a written summary of the meeting
- If the Complainant states sexual harassment allegations, the Title IX Coordinator should explain the Grievance Process
- Title IX Coordinator should inform the Complainant of both the right to file a formal and non-formal complaint
 - Should inform Complainant of supportive measures even if a formal complaint is filed



Step 1, cont.

- If the formal complaint route is taken by the Complainant, the Title IX Coordinator must:
 - Procure signature of Complainant, parent or guardian and Title IX Coordinator
 - Determine if the complaint falls within the scope of mandatory dismissal and if so, inform both the Complainant and Respondent
 - Inform Complainant of their right to request an informal resolution process even after submission of the formal complaint and the right to stop this process at any time



Step 2: Offer Supportive Measures

- Under the regulations, Supportive Measures must be offered to the parties
- These measures must be non-punitive, non-disciplinary and not unreasonably burdensome to the other party
- They must ensure equal educational access, protect safety and deter sexual harassment



Step 3: Consider an Advisor for the Parties

- The regulations allow both parties to have “others present” during any type of Grievance Procedure
 - Advisor can be a parent, family member, attorney or other person
 - Advisor can be present at any meeting, interview or hearing
 - Advisor may inspect and review the evidence obtained in the investigation
 - Advisor may assist with written cross-examination and may ask the cross-examination questions if a live hearing is opted for



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Step 4: Consider Emergency Removal Options, if Appropriate

- According to the Regulations, an institution may remove the Respondent
 - Must undertake an individualized safety and risk analysis which must determine if there is an immediate threat to the physical health or safety of any student or other individual arising from the allegations
- Must provide notice to the Respondent
- Must allow Respondent the opportunity to respond



Step 5: Consider Administrative Leave Options, if Applicable

- According to the Regulations, an institution may place a non-student Respondent on administrative leave during the pendency of the Grievance Process



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The Grievance Process



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Overview and Basic Requirements

- The Complainant and Respondent must be treated “equitably” during the process
- Must be an objective evaluation of all relevant evidence
- Credibility cannot be assessed based on a party’s status alone
- Presume Respondent is innocent until a determination is made
- Be aware of and follow time frames
- State and use the applicable standard of evidence



The Notice Requirements

- Certain Notices must be provided to each party and must contain:
 - A Notice of the institution's grievance process and informal resolution process
 - A Notice of the allegations with sufficient details



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The Notice Requirements, cont.

- Additional considerations:
 - Identify additional policy violations (outside of Title IX)
 - Identify the range of possible disciplinary considerations and sanctions
 - Include a statement of the Respondent's presumption of innocence
 - Notify that responsibility will be determined at the conclusion of the grievance procedure
 - Notification of choice of advisor
 - Prohibition against false statements or evidence



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Dismissal of Formal Complaint

- Required Dismissal: Recipient must dismiss the formal complaint if the conduct alleged:
 - Would not constitute sexual harassment even if proven
 - Did not occur in the recipient's education program or activity
 - Did not occur against a person in the United States



Dismissal, cont.

- Permissive dismissal: recipient may dismiss the formal complaint or allegations at any time during the investigation or hearing, if:
 - The complainant notifies the Title IX Coordinator in writing to withdraw the complaint
 - The Respondent is no longer enrolled or employed
 - Additional special circumstances



Consolidation

- An institution may consolidate formal complaints of sexual harassment where the allegations arise out of the same facts or circumstances
- This could be:
 - Against more than one respondent
 - By more than one complainant against one or more respondents, or
 - A cross-claim by one party against another



The Investigation Process

- Begin with the presumption of no responsibility
- The Investigator carries the burden to gather evidence
- The Investigator must provide both parties with a written notice and time to prepare



The Investigation, cont.

- Must provide an equal opportunity to both parties to present witnesses, evidence and other information
- Must provide an equal opportunity for the parties to inspect and review all evidence and information
- Cannot restrict the ability of the parties to gather or present evidence



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The Investigation, cont.

- Before completing the Investigation Report, the Investigator must prepare a draft Report of the Evidence and the right to review and respond
- The Investigator then prepares an Investigation Report which is provided to the parties



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The Written Questions

- Before making a decision, the Decision-Maker must facilitate written questions between the parties
 - Each party has the opportunity and ability to submit written relevant questions that a party wants asked of any party or witness



The Determination of Responsibility

- The Decision-Maker must determine responsibility based upon the standard of evidence
- The Decision-Maker must provide a written decision with findings of fact, conclusions and overall rationale for the decision



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The Appeal

- Each party has the ability to appeal
- Basis for appeal can be:
 - Procedural
 - New evidence
 - Conflict of interest or bias



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The Alternative Route

- The Informal Resolution Process:
 - Optional
 - Requires informed mutual consent
 - Right to withdraw at any time
 - NOT available if an employee is alleged to have harassed a student



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Document! Document! Document!

Required Recordkeeping

- An institution must maintain records for 7 years for the following:
 - Investigation
 - Appeal and final result
 - Informal resolution and result
 - All training materials
 - Any actions taken



Questions?

