

Title IX Coordinator Training

A comprehensive overview of the 2020 Title IX Regulations for
School District Title IX Coordinators

Kaleva Law Office

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Housekeeping

- Consult with legal counsel regarding how best to address a specific situation
- We will send a copy of the slides after this presentation to all who registered their email address when signing in
- We will take questions at the end as time permits

Posting These Training Materials?

- Yes!
- Your Title IX Coordinator is required by 106.45(b)(10)(i)(D) to post materials to train Title IX personnel on its website
- We know this and will make these materials available to your district electronically to post

Agenda

Introduction: Title IX Basics and New Regulations Overview



Role of the Title IX Coordinator Under the New Regulations



Title IX Process: From Report to Hearing and Appeals

INTRODUCTION

Title IX Basics and New Regulations Overview

Title IX Is:

- Federal Law
- Enforced by the Office for Civil Rights (OCR)
- Prohibits discrimination based on sex
- Historically viewed as simply requiring gender equity in athletics

What Is/Is Not Title IX Conduct

Is or may be Title IX

- Discrimination based on gender Sexual Harassment
- Pregnancy discrimination Retaliation
- Bullying/Cyber-Bullying when it involves sexual misconduct
- Hazing when it involves sexual misconduct

Is **NOT** Title IX

- Disability discrimination (ADA) Employment discrimination based on race, religion, or national origin (Title VII)- Note overlap with sex
- Student discrimination based on race, religion, or national origin (Title VI)
- Age Discrimination (ADEA)

Sexual Harassment

- **Sexual harassment** means conduct on the basis of sex that satisfies one or more of the following:
 - **Quid pro quo** – An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct
 - **Hostile environment** – Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
 - **Clery crimes** – Sexual assault, dating violence, domestic violence, or stalking [Clery regulatory definition cites omitted]

Sexual Assault

- **Sexual Assault:** An offense that meets the definition of rape, fondling, incest or statutory rape as used in the FBI's Crime Reporting system. A sex offense is any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
- **Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.

Consent

Consent:

- U.S. DOE chose not require educational institutions to adopt a particular definition of consent with respect to sexual assault.

What does this mean?

- Create/use a definition of consent that makes sense to you and your district. Make sure you can 1) explain it and 2) apply it.
- Make sure to include situations where consent cannot be obtained/given (i.e. coercion, incapacitation) and clearly define those situations.

Domestic Violence

- **Domestic Violence: A felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim;**
- by a person with whom the victim shares a child in common;
- by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Stalking

- **Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to
 - Fear for the person's safety or the safety of others; or
 - Suffer substantial emotional distress.
- **For purposes of this definition:**
- **Course of conduct** means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.
- **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.

Conduct + Education Program or Activity

It is more than the behavior...

Must evaluate location/jurisdiction as well

Jurisdiction

- **Education program or activity**
 - Locations, events, circumstances (operations) over which the district exercised substantial control
 - Over both the respondent AND the context in which the sexual harassment occurs.
- Includes online sexual harassment but it must be analyzed to determine if it occurs in education program or activity.
- Does not create or apply a geographic test, does not draw the line between “off-campus/property” and “on campus/property”, and does not create a distinction between sexual harassment occurring in person versus online.

Definition of “Educational Program or Activity”

- “Educational 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...

The Role of the Title IX Coordinator

What the regulations tell us



Title IX Coordinator

- *OCR has found that some of the most egregious and harmful Title IX violations occur when a recipient fails to designate a Title IX coordinator or when a Title IX coordinator has not been sufficiently trained or given the appropriate level of authority to oversee the recipient's compliance with Title IX.*
- *- 2015 DCL*

Role of the Title IX Coordinator

- Build a Title IX Team
- Coordinate training for Title IX Team and all employees
- Coordinate response to all complaints involving Sexual Harassment
- Provide and track Supportive Measures
- Monitor investigations, resolutions, outcomes, remedies and sanctions
- Monitor patterns and trends
- Avoid Conflicts of Interest and biases Update Policies and Procedures
- Recordkeeping

******The recipient of a report of sexual discrimination must inform the Title IX Coordinator regardless of who will conduct the investigation******

Who else is on the team?

- Title IX Coordinator
- Investigator (s)
- Decision maker (s)
- Appellate Decision Maker (s)
- Informal Resolution Facilitators
- Employees (reporting)

Your job is to:

01

Place good
employees in
the right
positions

02

Make sure each
team member
understands
their role

03

Ensure that the
work is getting
done

04

Track the
process

05

Be Available

Training, Training, Training

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- Title IX Coordinator (robust),
Investigators, Decision-Makers,
Informal Resolution Facilitators,
Appellate Decision-Makers
- All employee training

Coordinating Response

Title IX “Coordinator”!

What you need to have lined out

- Complainant/Respondent Who is Investigating Timelines
- Appropriate Notices to Students, Parents, Advisors
- Supportive Measures
- Resolution Process and Outcome Appeals

Supportive Measures Are Mandatory!

- Complainant MUST be provided supportive measures, regardless of any investigation
 - Move student(s) from classes (cannot be punitive)
 - Mental health support
 - Altered schedules for complainant
 - Safe room or safe spaces
- These supportive measures cannot be punitive to any student, complainant or respondent (while the investigation is ongoing)
- Respondent is considered “innocent” during the investigation and therefore measures cannot be disciplinary against him/her

Q: Who makes sure
Supportive Measures
are offered,
implemented, and
recorded?

A: The Title IX Coordinator

- BUT this can be delegated to another staff member who **MUST** be trained
- The coordinator should make sure records are kept regarding when/how/if supportive measures were offered
- If a delegate is assigned to this step (eg. School counselor), they will take over communication with parties regarding available supportive measures.
- This takes communication, coordination and clarity about who will be handling what at a given point.

What are Supportive Measures?

- Supportive Measures means:
 - Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.
 - Measures designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment.
 - Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
 - The district must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that it would not impair the ability of the district to provide the supportive measures.

Tracking Supportive Measures



When was the event reported



When were measures offered to Parties



What measures were offered



Were they accepted



When were they re-evaluated/updated

Supportive Measures: The Bottomline

- The rule defines *supportive measures* as non-disciplinary, non-punitive, individualized services, offered as appropriate and without charge to a complainant or a respondent before or after the filing of a formal complaint, or where no complaint has been filed. 34 C.F.R. § 106.30(a).
- OCR's commentary indicates that it declined to require that a supportive measure place the least possible burden or no burden on a respondent. However, OCR emphasizes that supportive measures should be designed to restore or preserve equal access to the education program or activity without "unreasonably" burdening the other party. In other words, a supportive measure that completely removes a respondent from an activity would likely be considered punitive
- If a recipient does not offer supportive measures in response to a report, the recipient's records should document why the response was not clearly unreasonable under the known circumstances.

Deliberate Indifference

“Clearly unreasonable in light of the known circumstances”

- Must promptly offer supportive measures
- Cannot impose discipline without a formal process
- Must investigate allegations in a formal complaint

Monitor Open Cases: Be available for your team

01

Schedule meetings with investigators (virtual or in person) to discuss status of cases

02

Bring team together regularly to make sure processes are working consistently

03

Monitor outcomes, sanctions and remedies Remain focused on equity

04

Correct in the moment, mistakes will happen Remain as transparent as possible

05

Use a data tracking system if possible

06

If something isn't working, change it

Avoid Conflicts of Interest/Bias

Generally toward
Complainants/Respondents In a
specific case



Legal Definition of conflict of interest

a conflict between the private
interests and the official or
professional responsibilities of a
person in a position of trust

a conflict between competing
duties (as in an attorney's
representation of clients with
adverse interests)

Explicit Bias

- “Explicit bias” refers to the attitudes and beliefs we have about a person or group on a conscious level.
 - Expressed directly
 - Aware of bias
 - Operates consciously
- Example: Statement- "I don't think a woman would make a good CEO...Women are too emotional."

Implicit Bias

- "Implicit bias" refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.
 - Expressed indirectly
 - Unaware of bias
 - Operates subconsciously
- Example: Assuming that a woman entering a hospital room is a nurse instead of a doctor because of her gender

Notification, Dissemination, and Publication of Policies and Procedures

You have policies and procedures...who else needs to have them?

- Applicants for admission and employment
 - Students
 - Employees
 - Unions or professional organizations with collective bargaining or professional agreements
- Publish/promptly display the information policies and procedures:
 - On website
 - In all handbooks/catalogs and make them available to those identified above

Recordkeeping

Districts must maintain the following records for seven years:

- ***Records and action taken in response to a report or Formal Complaint, including:***
 - Supportive measures,
 - The basis for district's conclusion that its response was not deliberately indifferent,
 - Measures taken to restore and preserve equal access to district's education program or activity,
 - Reasons why district's response was not clearly unreasonable in light of the known circumstances if district does not provide a Complainant with supportive measures.
- ***Each Sexual Harassment investigation including:***
 - Any determination regarding responsibility and all audio or audiovisual recording or transcript,
 - Disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant.
- ***Any appeal and result of appeal.***
- ***Any informal resolution and result therefrom.***
- ***All materials used to train Title IX Coordinators, investigators, decision-makers, and informal resolution facilitators.***

Coordination of Efforts

- This is a team effort
- Delegate and get members of your team on board
- Coordination is critical

Title IX Process

From Report to Hearing and Appeals

Report of Sexual Harassment to Employee

- Is Complainant a Participant in Education Program or Activity?
- Does the report meet the definition of Sexual Harassment?
 - Based on Sex
 - Quid pro quo
 - Severe, pervasive and objectively offensive
 - Sexual Assault
 - Domestic Violence
 - Dating Violence
 - Stalking
- Education Program or Activity/Jurisdiction?
 - Does district have substantial control over the
 - Respondent AND
 - The context in which the conduct occurred (i.e., on district property or during sponsored event)

Initial Meeting with Complainant/ Supportive Measures

- Without Fee or Charge
- Regardless of whether the Complainant wants to file Formal Complaint
- Designed to restore or preserve access to Education Program or Activity
- Without unduly burdening the Respondent
- Including but not limited to:
 - Counseling
 - Extensions of deadlines or other course-related adjustments
 - Modifications of work or class schedules Escort services
 - Mutual no contact directives/restrictions Changes in work locations
 - Leaves of absence
 - Increased security and monitoring of certain areas

Formal Complaint

- In writing
 - Hard copy
 - Electronic
 - Online submission
- Signed by:
 - Complainant or Parent/Guardian
 - Title IX Coordinator
- Alleging Sexual Harassment
- Requesting an investigation

Dismissal of Formal Complaint

- **Required Dismissal**
 - Would not constitute Sexual Harassment under new Title IX regulations
 - Did not occur in education program or activity
 - Did not occur against a person in the U.S.
- **Permissive Dismissal**
 - Complainant notifies Title IX Coordinator in writing that Complainant would like to withdraw Formal Complaint or allegations
 - Respondent is no longer enrolled or employed by institution
 - Specific circumstances prevent the district from gathering evidence sufficient to reach a determination
- **If Dismissed:**
 - Must Promptly send written notice of dismissal and reasons for dismissal simultaneously to parties
 - May proceed with disciplinary process outside of Title IX

Notice of Allegations

- Notice of Grievance Process (including informal resolution process if one exists)
- Allegations potentially constituting Sexual Harassment
 - Identities of the parties
 - Conduct constituting Sexual Harassment
 - Date of incident
 - Location of incident
- Statement: Respondent presumed not responsible and responsibility is determined after Grievance Process
- Right to Advisor of Choice
- Code of Conduct provision(s) prohibiting false statements or false information in process

Notice of Allegations Checklist

- ☐ Notice of Grievance Process including Informal Resolution Process
- ☐ Allegations Potentially Constituting Sexual Harassment
 - ☐ Identities of the Parties
 - ☐ Conduct Constituting Sexual Harassment Date of Incident
 - ☐ Location of Incident
- ☐ Statement: Respondent Presumed Not Responsible/Responsibility Determined After Process
- ☐ Right to Advisor of Choice
- ☐ Code of Conduct Provision Prohibiting False Statements or False Information in Process

Parties in an
Investigation

Complainant

Respondent

Advisor

Witnesses

What the Title IX Coordinator Will Complete if they are Investigator



Interviews with parties and witnesses

Including Notice with sufficient time to prepare for the meeting/interview
Document date of meeting and date notice provided



Collect evidence and information

Document when and how evidence/information was collected



Allow parties and advisors to review "evidence directly related to the allegations" (10 days)



Write investigation report that "fairly summarizes relevant evidence"



Provide opportunity for parties and advisors to review the report (10 days)

What the Title IX Coordinator Will Complete if they are NOT Investigator

**Ensures that
evidence gathered is
shared with
appropriate parties
for review**

**Provides for timely
sharing of
completed
investigation report**

Determination Regarding Responsibility

- So what role does the Title IX Coordinator play in the decision-making process?
 - Overall role is to safeguard the integrity of the process
 - Keep track of who has what information at what time
 - Keep an eye on deadlines for reasonable time frames for response
 - Make sure the right parties have the right information at the right time – written questions/answers, determination of responsibility

Appeals

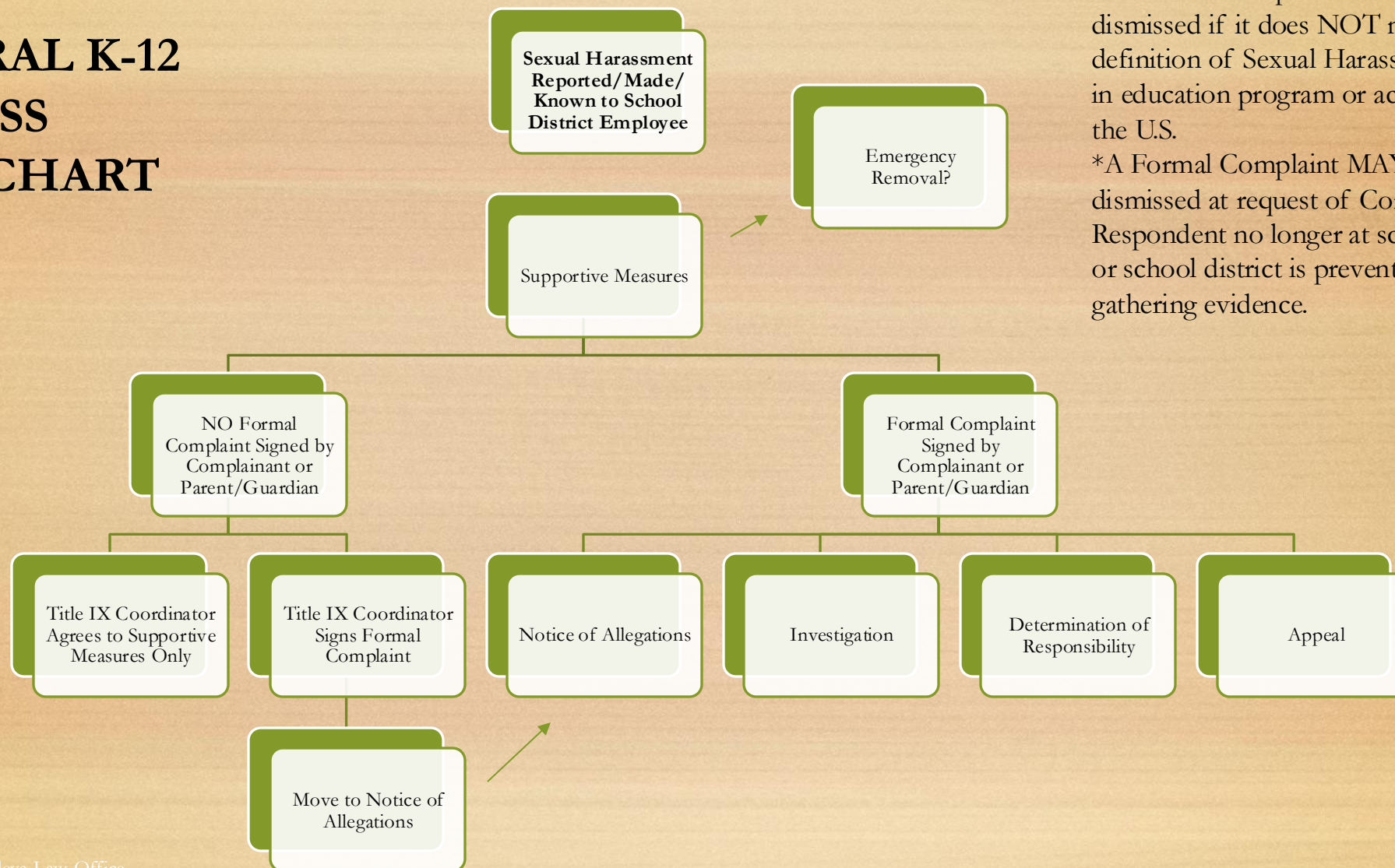
- What about the appeal process?
 - Again, overall role is to safeguard the integrity of the process
 - Keep track of who has what information at what time
 - Keep an eye on deadlines for reasonable time frames for response
 - Make sure the right parties have the right information at the right time

Informal Resolution

- If you are going to offer an informal resolution option after a formal complaint, you must:
 - Provide written notice disclosing allegations, requirements of the informal resolution process including circumstances under which it preclude the parties from resuming a Formal Complaint arising from the same allegations
 - Allow any party the right to withdraw from the informal resolution process and resume grievance process with respect to Formal Complaint
 - Provides consequences resulting from informal resolution process including records maintained or shared
 - Obtain parties voluntary, written consent to the informal resolution process

Coordinator can be the informal resolution facilitator or this can be delegated --NOTE: the delegate MUST be trained**

GENERAL K-12 PROCESS FLOW CHART



*A Formal Complaint **MUST** be dismissed if it does NOT meet definition of Sexual Harassment, occur in education program or activity, or in the U.S.

*A Formal Complaint **MAY** be dismissed at request of Complainant, if Respondent no longer at school district or school district is prevented from gathering evidence.

Questions?

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