

Title IX – An Overview

**Principal's Meeting
Fullerwood Training Center
December 7, 2023
8:00 AM – 4:00 PM**



Title IX of the Education Amendments Act of 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 subjected to discrimination under any educational program or activity receiving Federal financial assistance.”

Scope of Training/Training Topics

Definition of Sexual
Harassment

Scope of the District's
Education Program or Activity

The Investigation

The “Hearing” and Appeal

Definition of Sexual Harassment

Sexual harassment means conduct on the basis of sex that satisfies **one or more of the following**:

- (1) An employee of the District conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) 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
- (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

Examples of Sexual Harassment

- Prohibited sexual harassment includes, but is not limited to, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature when:
 - Submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, or progress.
 - Submission to or rejection of the conduct by an individual is used as the basis for employment or academic decisions affecting the individual.
 - The conduct has the purpose or effect of having a negative impact on the individual's academic performance or employment, unreasonably interfering with the individual's education or employment, or creating an intimidating, hostile, or offensive educational or employment environment.
 - Submission to or rejection of the conduct by the individual is used as the basis for any decision affecting the individual regarding any term or condition of employment, employment or academic benefits, or services, honors, programs, or activities available at or through the school.

Examples of Sexual Harassment

- Graphic verbal comments about an individual's body or appearance.
- Sexual jokes, notes, stories, drawings, pictures or gestures.
- Sexual slurs, leering, threats, abusive words, derogatory comments or sexually degrading descriptions.
- Unwelcome sexual flirtations or propositions for sexual activity or unwelcome demands for sexual favors, including but not limited to repeated unwelcome requests for dates.
- Spreading sexual rumors.
- Touching an individual's body or clothes (including one's own) in a sexual way, including, but not limited to, grabbing, brushing against, patting, pinching, bumping, rubbing, kissing, and fondling.
- Cornering or blocking normal movements.
- Displaying sexually suggestive drawings, emails, pictures, written materials, and objects in the educational environment.

What Does it Mean to be “Effectively Denied Equal Access?”

- US DOE examples (<https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>):

- An effective denial of equal access to educational opportunities may include skipping class to avoid a harasser, a decline in a student’s grade point average, or having difficulty concentrating in class.
- Examples of specific situations that likely constitute effective denial of equal access to educational opportunities also include “a third grader who starts bed-wetting or crying at night due to sexual harassment, or a high school wrestler who quits the team but carries on with other school activities following sexual harassment.”
- A complainant does not need to have “already suffered loss of education before being able to report sexual harassment.”
- Effective denial of equal access to education does not require “that a person’s total or entire educational access has been denied.”
- While these examples help illustrate an effective denial of access, “[n]o concrete injury is required” to prove an effective denial of equal access.
- Complainants do not need to have “dropped out of school, failed a class, had a panic attack, or otherwise reached a ‘breaking point’” or exhibited specific trauma symptoms to be effectively denied equal access.
- “School officials turning away a complainant by deciding the complainant was ‘not traumatized enough’ would be impermissible.”

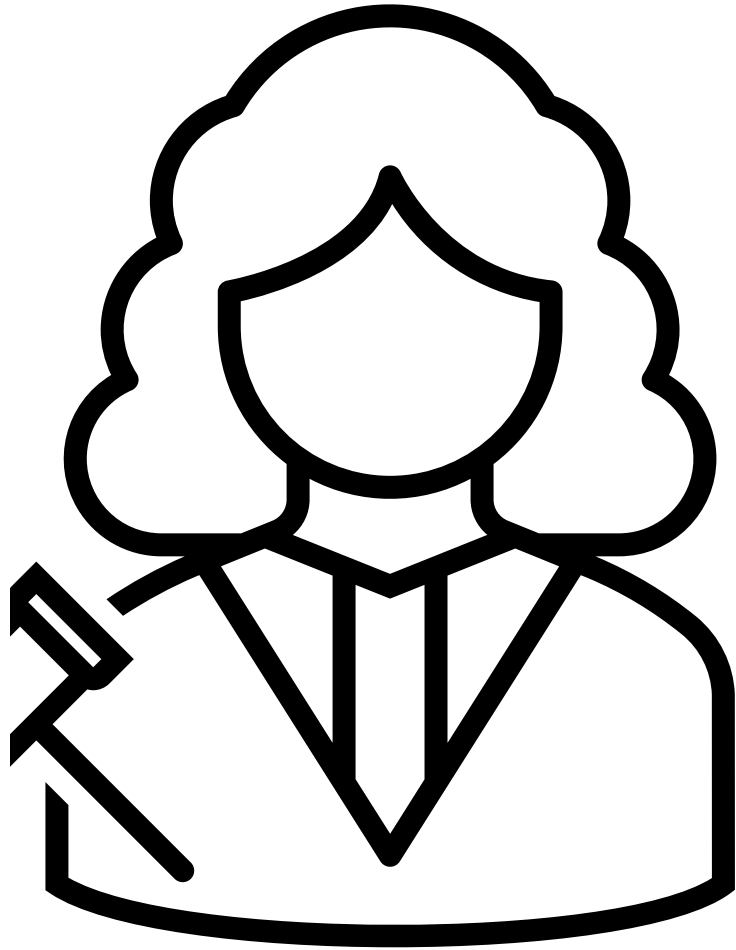
Other Important Definitions

- “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v):
 - The term “sexual assault” means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
- “Dating Violence” as defined in 34 U.S.C. 12291(a)(10):
 - The term “dating violence” means violence committed by a person-- **(A)** who is or has been in a social relationship of a romantic or intimate nature with the victim; and **(B)** where the existence of such a relationship shall be determined based on a consideration of the following factors: **(i)** The length of the relationship. **(ii)** The type of relationship. **(iii)** The frequency of interaction between the persons involved in the relationship.
- “Domestic Violence” as defined in 34 U.S.C. 12291(a)(8):
 - The term “domestic violence” includes felony or misdemeanor crimes 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 receiving grant monies, 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.
- “Stalking” as defined in 34 U.S.C. 12291(a)(30):
 - The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to--**(A)** fear for his or her safety or the safety of others; or **(B)** suffer substantial emotional distress.



Title IX Roles

- Complainant
- Respondent
- Title IX Coordinator
- Investigator
 - Can be the same person as Title IX Coordinator
- Decision-Maker(s)
 - Cannot be the same person(s) as the Title IX Coordinator or the investigator
- Hearing Officer (Post Secondary – does not apply in K-12)
- Appeals Decision-Maker(s)
 - May not be the same person as the investigator, school-based Title IX Coordinator, or decision-maker who reached the initial determination of responsibility or dismissal.



Serving Impartially

- Any Title IX Coordinator, investigator, decision-maker, or any person who facilitates an informal resolution process may not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- Must avoid prejudgment of the facts at issue, conflicts of interest, and bias.
 - Related to parties?
 - Friends?
 - Previous relationship?
 - Financial connections?
 - Prior dealings?
 - Business partners with family?

Title IX Coordinator Obligations

Contact	Consider	Inform	Explain	Refrain
Promptly contact the complainant confidentially to discuss the availability of supportive measures when Title IX issues arise.	Consider the complainant's wishes with respect to supportive measures.	Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint.	Explain to the complainant the process for filing a formal complaint.	Refrain from any discipline against the respondent without following the formal investigative process.

Scope of Title IX

An individual must report under Title IX when the person has:

- **Actual Knowledge** of Sexual Harassment
- Occurring in an **Educational Setting**

Actual Knowledge

When **any** school-based employee has knowledge of sexual harassment or allegations of sexual harassment, schools are obligated to respond.

- This includes food service employees, custodial staff, paraprofessionals, school clerks etc. **Any**.



Educational Setting

“Educational setting” refers to any education program or activity, which refers to all operations of the District, including but not limited to, in-person and online educational instruction, employment, extracurricular activities, athletics, performances, and community engagement programs that occur on school grounds or other property owned or occupied by the Board. It also includes locations, events, and circumstances off school grounds where the Board exercises substantial control over both the Respondent and the context in which the sexual harassment occurs.

Reporting Sexual Harassment



- Any person may report sexual harassment, regardless of whether the reporting person is the alleged victim of the conduct.
- A report can be made in person, by telephone, by mail, or by electronic mail to the Title IX Coordinator.
 - Note: The Title IX Coordinator's information must be available on the District's website per the new regulations.
- **All employees with actual knowledge of sexual harassment are required to report sexual harassment.**
 - Failure to do so could lead to discipline up to and including termination of employment.

Child Abuse Reporting Requirement

- If there is an actual or suspected case of child abuse, neglect, or abandonment, School Board employees have the responsibility to report to the state-wide central abuse hotline pursuant to Florida Statute §39.201.
- Also, report to law enforcement if there is an actual or suspected crime so that law enforcement may conduct a criminal investigation.

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.
 - Such measures are 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, campus 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 recipient must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures.
 - The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Supportive Measures

- The Title IX Coordinator promptly contacts the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain the process for filing a formal complaint.

Formal Complaints

Formal complaints can be filed by the complainant, parent or legal guardian, or the Title IX Coordinator



Once the formal complaint is filed, schools must immediately determine the following:

Do the allegations meet the definition of sexual harassment?

Did the conduct occur in an educational program or activity?

Dismissal of Formal Complaints

If the complaint does not meet the definition of sexual harassment or did not occur in an educational setting, schools must dismiss, but may take action according to the Code of Conduct.

Schools must promptly send written notice of the dismissal with the reason(s) for the dismissal simultaneously to the parties.

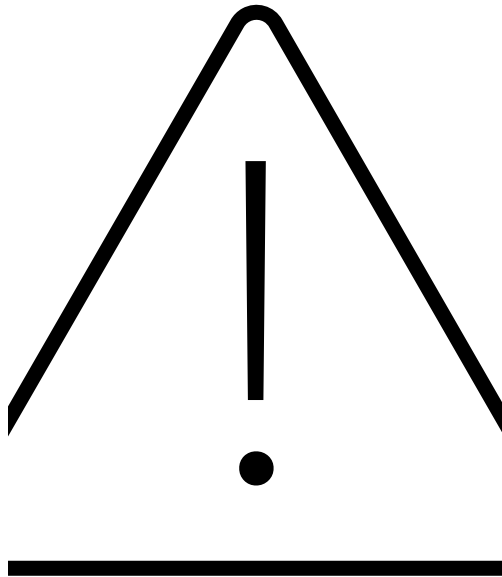
Schools must offer both parties an opportunity to appeal a dismissal of a formal complaint.

Schools may dismiss upon written request of the complainant to withdraw the complaint.

Schools may dismiss if specific circumstances prevent the school from gathering sufficient evidence to reach a determination.

Schools may dismiss if the respondent is no longer enrolled or employed in the school district.

Emergency Removal



A school may remove a respondent from an education program or activity on an emergency basis if the school:

- Undertakes an individualized safety and risk analysis;
- Determines an immediate threat to the physical health or safety of any student or other individual arising from the allegations justifies removal; and
- Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

If the respondent is a non-student employee, the District may place the employee on administrative leave during the pendency of the grievance process.

Written Notice

- Upon receipt of a formal complaint, must provide written notice of the following:
 - identities of parties involved;
 - a description of the conduct allegedly constituting sexual harassment;
 - date and location of the alleged incident;
 - a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
 - the school's grievance process in Board Policy;
 - advises the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence; and,
 - advises the parties of any provisions in the School Board's code of conduct or the superintendent's Standards of Student Conduct that prohibit knowingly making false statements or knowingly submitting false information during the grievance process.
- If during the course of an investigation the school decides to investigate allegations about the complainant or respondent that were not included in the original notice, the school **must** provide written notice of the ***additional allegations*** to the known parties.

Written Notice for
Meetings/Interviews/Hearings

Written notice for any investigative interviews and meetings must be sent to all parties whose participation is expected or invited.



Written notice must include the date, time, location, participants, and purpose for the meeting with sufficient time for the party to prepare to participate.

The Investigation

Must be thorough,
impartial, and prompt;

Gather all evidence; and,

Free of bias.

The Investigation

- When investigating a formal complaint and throughout the grievance process, **the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the School Board and not on the parties** provided that a party's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party are not accessed, considered, disclosed or otherwise used without the voluntary, written consent of the party's parent, or the party if the party is an eligible student, to do so for this grievance procedure.
- The parties have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- The ability of the parties to discuss the allegations under investigation or to gather and present relevant evidence is not restricted.
- The parties have the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. The choice or presence of advisor for either the complainant or respondent is not limited in any meeting or grievance proceeding.

Evidence

Both parties may inspect and review any evidence related to the allegations.

The investigator provides both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence which will not be relied upon in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to the completion of the investigative report, the investigator must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, **and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.**

Relevance and Credibility

What is relevant?

- Does it prove or disprove a fact?
- Again, what about sexual disposition or prior sexual behavior?
 - Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

How do we weigh credibility?

- Is it reliable?
- Corroborated?
- Consistent?
- Minor or Major Inconsistencies?
- What if they are simply nervous or not wanting to participate?



Investigative Report

- At the conclusion of the investigation, the investigator will create an investigative report that fairly summarizes all relevant evidence.
 - Note: create a standard outline for investigations to ensure all topics and issues addressed?
- The investigator creates an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to the time a determination regarding responsibility is made, sends to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.
- Investigator is not required or prohibited from making recommendations regarding responsibility; however, the decision-maker must be independent and object when examining the evidence. Do not defer to investigator's recommendations.

Decision-Maker Joins the Process

- After the investigator has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker must afford each party the opportunity to submit written, relevant questions that the party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.
- The decision-maker(s) must explain to the party proposing the question any decision to exclude a question as not relevant or duplicative.
- Parent or legal guardian may act on behalf of complainant or respondent.



Written Determination

- At the conclusion of the grievance process, the decision-maker must issue a written determination to the parties simultaneously.
- Preponderance of the evidence standard.
 - 51%
- The school-based Title IX Coordinator is responsible for implementing remedies stated in the written determination.

Written Determination

- The written determination must include:
 - Identification of the allegations potentially constituting sexual harassment;
 - A description of the procedural steps taken from the receipt of the formal complaint through the written determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings;
 - Findings of fact supporting the determination;
 - Conclusions regarding application of the Code of Student Conduct to the facts;
 - The result and rationale as to each allegation;
 - A determination regarding responsibility as to each allegation;
 - Any disciplinary sanctions imposed on the respondent by the school;
 - Whether remedies will be provided by the school to the complainant; and
 - Permissible procedures and grounds for the complainant and respondent to appeal.
- The written determination must be based on evidence presented in investigative report as well as responses to answers/questions after the investigative report.

Appeals



- The only grounds for appeal:
 - Procedural issues affected the outcome;
 - New evidence that was not reasonably available at the time the written determination or dismissal was made becomes available that could affect the outcome; or
 - There was a conflict of interest or bias by the school-based Title IX Coordinator, investigator, or decision-maker, against any complainant or respondent that affected the outcome.

Appeals



- Superintendent may impose any remedy, including disciplinary sanction, while an appeal is pending.
- Each party has the opportunity to appeal from both a dismissal and a written determination.
 - Non-appealing party is to receive notice when an appeal is filed.
 - Procedures must continue to be equitable.
- Parties must be given an opportunity to submit a written statement in support of, or challenging, the outcome of the written determination

Appeals



- The appeals decision-maker must not have a conflict of interest or bias for or against any complainant or any respondent.
- The original decision-maker's determination of responsibly shall stand if the appeal request is not timely or if the appealing party fails to show clear error and/or a compelling rationale for changing the original decision.



Informal Resolution

- At any time during the formal complaint process and prior to reaching a determination regarding responsibility, the parties may participate in an informal resolution process, such as mediation, that does not involve a full investigation and determination of responsibility.
- Parties can agree to toll all deadlines during the informal resolution process.
- Schools may not require informal resolution as a condition of employment, enrollment, or enjoyment of any other right.
- Any person designated to facilitate an informal resolution shall not have a conflict of interest or bias for or against the complainant or respondent.
- Any time prior to agreeing to the resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

Retaliation is Prohibited

- No school or other person may intimidate, threaten, coerce, or discriminate against any individual for the purposes of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding.
- Complaints alleging retaliation may be filed according to the grievance process used for complaints of sexual harassment.
- If founded, retaliation can lead to the imposition of disciplinary sanctions.
- The exercise of rights protected under the 1st Amendment of the U.S. Constitution does not constitute retaliation. Charging an individual for making false statements in bad faith during a grievance proceeding shall not constitute retaliation.

Application of FERPA

- The Board shall keep confidential the identity of an individual who has made a report or complaint of sex discrimination, including an individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual that has been reported to be the perpetrator of sex discrimination, any respondent, any witness, except as may be permitted by the Family Educational Rights and Privacy Act (“FERPA”), or as required by law, or to carry out the purpose of 34 CFR part 106, including the conduct of any investigation.
- The District’s obligation to maintain confidentiality shall not impair or otherwise affect the complainant’s and respondent’s receipt of the information to which they are entitled related to the investigative record and determination of responsibility.

Recordkeeping

- Schools must maintain records related to any investigation for seven (7) years, including records of:
 - Any actions taken in response to a report of sexual harassment;
 - Any actions taken in response to a formal complaint of sexual harassment;
 - Any supportive measures provided;
 - Each sexual harassment investigation;
 - Any determination regarding responsibility;
 - Any audio or audiovisual recording or transcript;
 - Any disciplinary sanctions imposed on the respondent;
 - Any remedies provided to the complainant;
 - Any appeal and written appeal decision; and
 - All materials used to train school-based Title IX Coordinators, investigators, decision-makers, and appeals decision-makers.

Additional Resources

- <https://sites.ed.gov/titleix/policy/>
 - [Title IX Final Rule](#)
 - Title IX Regulations Addressing Sexual Harassment (Unofficial Copy) [PDF](#) (6M)
 - Title IX: U.S. Department of Education Title IX Final Rule Overview [PDF](#) (553K)
 - Summary of Major Provisions of the Title IX Final Rule [PDF](#)
 - [Fact Sheet: Final Title IX Regulation](#)
 - [Questions and Answers Regarding the Department's Final Title IX Rule](#)
 - [OCR Webinar: Title IX Regulations Addressing Sexual Harassment](#) (Length: 01:11:29)
 - [The First Amendment and Title IX: An OCR Short Webinar](#)
 - [OCR Short Webinar on How to Report Sexual Harassment under Title IX](#)
 - [Conducting and Adjudicating Title IX Hearings: An OCR Training Webinar](#)
 - [OCR Webinar on Due Process Protections under the New Title IX Regulations](#)
 - [OCR Webinar on New Title IX Protections Against Sexual Assault](#)
 - OCR Blog: [Effective Date and Retroactivity](#)
 - OCR Blog: Live Hearings, Excluding Reliance on a Party's Statements, and Verbal Conduct
 - OCR Blog: [The Requirement to Update School Websites with Important Title IX Information](#)

Additional Resources

- <https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-20200904.pdf>
 - Questions and Answers Regarding the Department's Final Title IX Rule (September 2020)
- <https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-part2-20210115.pdf>
 - Part 2: Questions and Answers Regarding the Department's Title IX Regulations (January 2021)
- <https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>
 - Questions and Answers on the Title IX Regulations on Sexual Harassment (July 2021)