

Title IX Investigations

Shawsheen Valley Technical High School
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Title IX of the Education Amendments Acts 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 education program or activity receiving Federal financial assistance.

Title IX Team

1. Title IX Coordinator
2. Investigator(s)
3. Decision-maker
4. Appeal decision-maker

Very General Overview of Process

- Contact the complainant.
- Explain the formal and informal complaint process.
- Discuss supportive measures with the complainant.
- If a formal complaint is filed:
 - Appoint an investigator
 - Provide written notice to all parties
- Conduct investigation and draft report.
 - Offer opportunity to review investigation report.
 - Offer opportunity to ask questions of other party.
- Decision is made.
- Appeal process.

Who is Protected?

Title IX protects all students and school employees from sex-based harassment in education programs or activities that receive federal financial assistance, regardless of the sex of the parties, including when they are members of the same sex.

- Any student or school employee can experience sex-based harassment, including:
 - Male and female students/employees,
 - Students/employees with disabilities, and
 - Students/employees of different races, national origins, and ages.

What is Prohibited?

- Staff on staff misconduct
- Staff on student misconduct
- Student on student misconduct
- Student on staff misconduct
- Third party on student or staff

Sexual Harassment in Education

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

- Any instance of quid pro quo harassment;
- Any instance of sexual assault, dating violence, domestic violence, or stalking as defined by regulations.
- *Unwelcome conduct on the basis of sex that is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to their education (“hostile environment harassment”); or

In order to determine if this is sexual harassment, you must review the how severe, pervasive, the objectively offensive the conduct is, and the denial of the victim’s equal access to their education.

Examples of Sexual Harassment

Unwelcome conduct of a sexual nature:

- unwelcome sexual advances,
- requests for sexual favors,
- verbal, nonverbal or physical conduct of a sexual nature,
- sex discrimination,
- sexual misconduct or physical abuse,
- threats of violence,
- physical assault,
- any form of sexual violence, including but not limited to sexual assault, acquaintance rape, sexual coercion, domestic violence, dating violence or stalking.

School's Responsibility

The school must respond when it has actual knowledge of sexual harassment or allegations of sexual harassment and:

- The conduct occurred in the school's education program or activity (locations, events or circumstances over which the school has substantial control over the respondent and context in which harassment occurs);
- The complainant is participating in or attempting to participate in an education program or activity at the school at the time the complaint is filed; and
- The complainant is in the United States.

Actual Knowledge

Actual knowledge: When any employee of the school has notice of sexual harassment or allegations of sexual harassment, the employee must notify the Title IX Coordinator.

***This is where District must train ALL EMPLOYEES ***

Important: school employees or officials should pay attention to the school environment and not hesitate to respond to sexual harassment.

- Receives a report
- Observes the behavior
- Overhears student talking about it

Report to Title IX Coordinator

- Any employee with actual knowledge of allegations of sex-based harassment must immediately report the incident to the school's Title IX Coordinator.
- Report must be made as soon as practicable, but no later than 24 hours after becoming aware of the incident.
- Title IX Coordinator can serve as the investigator but cannot serve as the decision maker or the appeal decision maker.

First Steps

Once an employee has actual knowledge of the conduct and notifies the Title IX Coordinator, the Title IX Coordinator must contact the complainant within 2 days of receiving the complaint and do the following:

- Discuss and offer supportive measures;
- Consider the complainant's wishes with respect to supportive measures;
- Explain that supportive measures may be received with or without filing a formal complaint;
- Explain to the complainant the purpose of filing a formal complaint; and
- Determine whether the complainant wishes to file a formal complaint. If they decide not to file a formal complaint, document this.
- If there is no formal complaint, document that decision.
- If there is, then have them fill out formal complaint form.

When to Dismiss a Formal Complaint

The Title IX Coordinator may dismiss a complaint if:

- The allegations, even if proven to be true, would not constitute sexual harassment.
- The allegations did not occur in the school district's education program or activity.
- The allegations did not occur against a person in the United States.

The school district must send written notice to the parties if it chooses to dismiss the complaint.

Supportive Measures

- “Supportive measures” means non-disciplinary, non-punitive individualized services offered as appropriate.
- 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 Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures

Document Everything

The Title IX Coordinator must document in writing:

- Initial conversation with complainant and respondent
- Difference between formal and informal process and what the complainant decided
- Supportive measures that were offered and if they were accepted or not

A Formal Complaint

A formal complaint is a document completed by the complainant (or the Title IX Coordinator) alleging sexual harassment and requesting that the district investigate the allegation of sexual harassment.

If the complainant declines to file a formal complaint, the Title IX Coordinator may still complete a formal complaint and start an investigation despite the complainant's preferences.

- This may be appropriate when there are safety concerns.
- This must be documented in writing along with an explanation of why this decision was necessary.

Informal Resolution

- Where appropriate, and only after a formal complaint has been filed and written notice has been issued, the Title IX Coordinator should also consider offering the parties an option for informal resolution (e.g., mediation).
- Participation in an informal resolution process may only occur where both parties give voluntary, informed, written consent to attempt informal resolution, and either party has the right to withdraw from the informal process at any time.
- This options is NOT available for reports of employee-on-student sexual harassment.

Informal Resolution

- Title IX coordinator will designate someone who does not have a conflict of interest and/or bias for or against complainants or respondents and who has received proper training.
- Informal resolution is entirely voluntary. Parties may elect to pursue formal procedures and decline informal resolution at any step in the process, even if informal resolution has already begun.
- If the complainant and the respondent feel that their grievances have been sufficiently addressed via informal resolution, then no further action needs to be taken.
- **IMPORTANT:** The results of an informal resolution shall be maintained by the facilitator, in writing.

Written Notice of Formal Complaint

- The Title IX Coordinator sends written notice to the parties, including sufficient details and within sufficient time to prepare a response before any initial interview.
- Sufficient details includes:
 - the identities of the parties involved in the incident, if known
 - the specific section of the code of conduct allegedly violated,
 - the precise conduct allegedly constituting sexual harassment,
 - the date and location of the alleged incident, if known.
- It must provide notice of the school's grievance process, including informal resolution.

Written Notice

The written notice must also:

- include 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.
- inform 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.
- inform the parties of any consequences resulting from participating, including records that will be maintained and could be shared.
- inform the parties that the school's code of conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If additional allegations are added during the course of the investigation, additional written notice must be provided.

Investigation

- The Title IX Coordinator will designate an investigator (the Title IX Coordinator can be the investigator).
- The investigator must be impartial (consider hiring an external person to conduct investigation) and must maintain a presumption that the respondent is not responsible for the alleged conduct.
- The investigator will be responsible for interviewing parties and witnesses, finding facts, and making determinations related to credibility, all of which will go into a written report.
- The investigation will include personal interviews with the complainant(s), the individual(s) against whom the complaint is filed, and others who have knowledge of the alleged incident(s) or circumstance(s) giving rise to the complaint.
- The investigation may also consist of other methods deemed pertinent by the investigator, including but not limited to gathering physical evidence.
- The investigation must be adequate, reliable, thorough and prompt.

Investigation

- Conduct interviews with respondent, complainant, and witnesses
 - Be prepared with sharp, thoughtful questions in advance
- Gather physical evidence– emails, text messages, social media, etc.
- Document everything
- Compile victim/witness statements and physical evidence in a comprehensive report which presents the facts fairly and objectively
- Know the school's policies

Investigation timeline

Make good faith efforts to complete the investigation within 15 school days of the initiation of the formal complaint.

Can be extended for good cause but the reason for extension should be documented in the investigation file.

Where feasible, the formal grievance process will be completed within a ninety (90) day timeframe from the date a formal complaint is filed.

There may be a temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action.

Conducting the Interviews

- Speak to all witnesses – establish rapport and make them feel comfortable.
- Victims / witnesses should be interviewed first; in private and confidentially.
- Plan questions to establish good flow to the interview but be prepared to improvise and ask impromptu questions.
- Be an active listener during an interview and reiterate or restate responses to ensure accuracy if necessary.
- Do not interrupt a victim/witness during an interview, allow them to talk (silence between questions will often elicit additional information)
- Ask open-ended questions, such as who, what, where, when and why.
- Take notes of the individuals' answers and note any behavioral observations, when appropriate.
- Remain respectful and non-judgmental.

Role of the Investigator

- Avoid all questions that are protected by legal privilege, unless the privilege has been waived.
- Avoid asking about the complainant's sexual history unless it is directly relevant to prove consent to the conduct at issue or to prove that the conduct was committed by someone other than the respondent.
- Complainants and respondents have a right to have advisors of their choice participate in all aspects of the proceedings.
- During the investigation, each party must be provided an equal opportunity to present both fact and expert witnesses.
- Do not coordinate or collaborate with the decision-maker.

Opportunity to Review Evidence

- All parties will be provided with an equal opportunity to review and respond to evidence gathered during the investigation.
- Prior to completion of the investigative report, the school will send to each party the evidence subject to inspection and review, and the parties will have ten (10) days to submit a written response to the evidence, which the investigator will consider prior to completion of the investigative report.
- Schools may not limit students' and employees' ability to discuss (i.e., speak or write about) the allegations under investigation, for example with a parent, friend, or other source of emotional support, or with an advocacy organization.

Investigation Report

- Findings should be written in a factual way in an investigative report.
- Report should fairly summarize relevant evidence.
- The investigator must avoid making any final determinations of responsibility for sexual harassment.
- Investigative report will be sent to both the complainant and respondent. It will also be sent to the decision-maker.

Respond to Investigation Report

Once the report is sent, the complainant and respondent will be provided with an opportunity to review and respond to the investigative report in writing.

Written responses from the parties will be required within ten (10) days of receipt of the investigative report and will be incorporated into the investigative report.

A school district must think about how a reasonable person would view the conduct when determining whether the conduct constitutes sexual harassment. In making this determination, school districts may consider the age and number of parties involved.

Decision-Maker

A decision-maker must be appointed. This person cannot be the Title IX Coordinator or the Investigator.

The decision-maker(s) will give each party the opportunity to submit written questions for the other parties and witnesses to answer, provide each party with the answers, and allow for additional, limited follow-up questions from each party.

The decision-maker must consider what is relevant, using the same criteria of relevancy as discussed during the investigation.

If any questions are determined irrelevant, the decision-maker may exclude the questions and will explain to the party proposing the questions any decision to exclude questions as not relevant.

Written Decision

The decision-maker will then issue a written determination simultaneously to the parties regarding whether sexual harassment has occurred using a preponderance of the evidence standard.

- A “preponderance of the evidence” means that it is more likely than not that the alleged conduct occurred.
- The decision-maker shall further recommend what action, if any, is required.
 - Detailed information – present facts fairly and accurately
 - Thorough and concise
 - Strong analysis of the evidence
 - Outcome (allegations are not warranted or could not be substantiated; allegations are substantiated and constitute a violation of the policy).
- Notice to parties of the decision.

Written Decision

The written determination must be issued to both parties simultaneously and 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 determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, etc.;
- Account for any actual or perceived procedural issues, including delay for good cause.
- Findings of fact supporting the determination;
- Conclusions regarding the application of the recipient's code of conduct to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
- The school's procedures and permissible bases for the complainant and respondent to appeal.

Outcome

- If it is determined that sexual harassment occurred, steps must be taken to prevent the recurrence of the harassment and correct its discriminatory effect on the complainant and, if appropriate, the broader student population. Such remedies may include supportive measures.
- The remedies will be designed to restore or preserve equal access to the educational program or activity for a complainant, end the harassment, eliminate the hostile environment, prevent its recurrence, and remedy its effects.
- Remedies may include, but are not limited to, disciplinary sanctions against the respondent, up to and including termination and/or expulsion, counseling for the respondent, an escort for the complainant, ensuring that complainant and respondent do not share classes or extracurricular activities, providing comprehensive victim services, training or retraining school employees, changes to the school district/charter school's policies and/or services, etc.
- Any disciplinary action will be in accordance with due process rights under State law and any applicable collective bargaining agreement.

Discipline

If the respondent is ultimately found responsible:

- the complainant will be made aware of any sanctions imposed on the respondent that directly relate to the complainant.
- The respondent will not be notified of individual remedies offered or provided to the complainant.

School cannot take disciplinary action under its Title IX policy in the absence of following this formal process. However, this policy does not limit the school from removing a student or employee from a program or activity on an emergency basis based on immediate threats to people's physical health or safety or placing an employee on administrative leave during the pendency of the investigation.

Appeal

- Any party may appeal the decision issued as a result of the investigation, or from the school's dismissal of a formal complaint or any allegations therein, within 15 school days of receipt of the findings of the formal procedure or a dismissal.
- The decision-maker(s) for the appeal cannot be the same person as the decision-maker(s) who reached the determination regarding responsibility or dismissal, the investigator(s), and/or the Title IX Coordinator.
- Parties may appeal on the basis of:
 - procedural deficiencies;
 - bias or conflict of interest of the Title IX Coordinator, investigator(s), or decision-maker(s) ;
 - newly discovered evidence; and/or
 - other good cause.

Appeal Process

- The school will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.
- Both parties will have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
- The appeal decision-maker will review the comprehensiveness and accuracy of the investigation and the conclusions, and issue written findings to both the complainant and respondent within thirty (30) school days of the appeal.

Students with Disabilities

- Regulations do not account for students with disabilities but Title IX Coordinator should be mindful of student's IEP/504 plan when implementing Title IX grievance procedures. Review the IEP to determine if certain accommodations need to be provided to the student during the process (adult support, delivery of questions, etc).
- Remember supportive measures cannot override a student's IEP services or accommodations (principals may need to be reminded of this).
- Remember rights for students with disabilities during discipline process too.

Training

- Title IX Coordinator must be appropriately trained on the school's policy and process. If conducting investigations or even just initial assessments, the Title IX Coordinator should be trained in investigative techniques/best practices.
- Title IX Coordinator should be aware of resources in school and in the community (counseling, mental health, academic, legal and other applicable support services).
- All investigators shall have appropriate and ongoing training regarding issues related to relevant trauma (domestic violence, dating violence, sexual assault, sexual misconduct and stalking).
- Title IX team should be trained on the definition of sexual harassment, Title IX process, investigations, grievance procedure, etc.

Records

- A record will be maintained for a period of seven years of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment and school staff will document the basis for the school's conclusion that its response was not deliberately indifferent.
- The school must notify applicants for employment, parents, employees and all unions of the name or title of the Title IX Coordinator, his or her address, email address and telephone number. The Title IX Coordinator's information must be displayed prominently on the school district's/charter school's website.

Retaliation

- Retaliation includes intimidating, threatening, coercing, or in any way discriminating against the individual because of his/her complaint or participation in an investigation.
- It is unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws.
- If an individual brings concerns about possible civil rights problems to a school's attention, it is unlawful for the school to retaliate against that individual for doing so.

Other Requirements

Schools must post the following on their websites:

- Contact information for the school's Title IX Coordinator(s);
- The School's non-discrimination policy;
- Training materials used to train the school's Title IX personnel.

Do Not Forget

- Contact law enforcement if allegations include potential criminal charges
- File 51A with DCF
- Consult with legal counsel
- Notice to DESE if resignation/dismissal due to misconduct.

- Questions?
- Comments?
- Concerns?
- Was this helpful?