



Putting the New Title IX Rules Into Practice



North Allegheny School

District

October 1, 2020



Nondiscrimination

Enacted to avoid the use of federal resources to support discriminatory practices and to provide individual citizens effective protection against those practices.





The final regulations obligate recipients to **respond promptly** and supportively to persons alleged to be victimized by sexual harassment, resolve allegations of sexual harassment promptly and accurately under **a predictable, fair grievance process that provides due process protections** to alleged victims and alleged perpetrators of sexual harassment, and effectively implement remedies for victims.



New Terminology

- **Complainant** A person who is alleged to be the victim of conduct that could constitute sexual harassment
- **Respondent** A person who has been informed to be the perpetrator of conduct that could constitute sexual harassment



Summary of New Rules

New Definitions of Sexual Harassment

- **Quid Pro Quo**- A school employee conditioning an educational benefit or service upon a person's participation in unwelcome sexual conduct
- **Hostile School Environment**- Unwelcome conduct on the basis of sex that is **so severe, pervasive, and objectively** offensive that it effectively denies a person equal access to the school's education program or activity
- **Sexual Assault , Dating Violence, Stalking, Domestic Violence**

New Grievance Process

- Requires schools to investigate and adjudicate formal complaints of sexual harassment
- Treat complainants and respondents equally, giving each a meaningful opportunity to participate in the investigation
- Provide a predictable, consistent, impartial process for both parties

Hostile Environment

- Evaluate under reasonable person standard (from the complainant's perspective)
- Must be all three—severe, pervasive and objectively offensive (look to conduct)
 - Severe—is conduct extreme?
 - Pervasive—generally means a onetime incident is not enough (could be if it impacts several individuals or is widespread)
 - Objectively offensive (from a reasonable complainant's perspective)
 - AND must effectively deny a person equal access to education program or activity (impact on education)



Sexual Assault

- “Sexual assault,” “dating violence,” “domestic violence” or “stalking” under the Clery Act and VAWA any of these can be sexual harassment regardless of severity or the number of times they occur.
- “Sexual Assault”- defined as-Any sexual act directed against another person, forcibly and/or against the person’s will; not forcibly or against the person’s will when the victim is incapable of giving consent. Includes rape, statutory rape, fondling, or attempts to do the same . Sexualized touching must be for purpose of sexual gratification.

Dating Violence

- “Dating violence”- Any act of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of the relationship; and the frequency of the interaction of the persons involved in the relationship.
- Consider the location and context of the incident.



Domestic Violence

- “Domestic violence”- Any felony or misdemeanor act of violence committed by a current or former spouse or intimate partner of the victim; a person with whom the victim shares a child in common; a person who is cohabitating with the victim or who has cohabited with the victim as a spouse or intimate partner; a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or; 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 this jurisdiction.
- Consider the location and context of the incident as it may or may not be in the district’s educational program or activity.

Stalking

- “Stalking” defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.
- Consider location and context of incident.



Actual Knowledge

Old

A school has a responsibility to respond promptly and effectively if a **school knows or should have known** about sexual harassment

New

A school with **actual knowledge** of sexual harassment in a program or activity against a person in the United States must respond promptly and in a manner that is not deliberately indifferent



Deliberate Indifference

OLD

The school must take immediate action to eliminate the sexual harassment or sexual violence, prevent its recurrence and address its effects

New

Failure to respond reasonably in light of **known** circumstances.

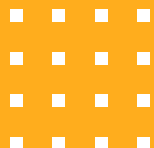


Responsibility to Report

- All employees in k12 setting have an obligation to report instances of sexual harassment / sexual allegations.



Notice results whenever **any** elementary and secondary school **employee**, any Title IX Coordinator, or any official with authority **witnesses** sexual harassment; **hears about** sexual harassment or sexual allegations from a complainant or a third party; **receives** a **written or verbal complaint** about sexual harassment **or** sexual allegations **by another means**.





Reporting – Who, how and when?

- Any person may report sex harassment, regardless of the whether the person is the alleged victim of the reported conduct
- Reports can be made by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinator
- Or by any means that result in the Title IX Coordinator receiving the report
- Report may be made at anytime-no business hours rule

Jurisdiction/Substantial Control

Who and where?

- The complainant **MUST** be a current student or attempting to enroll (does not cover former employees)
- Covers any school event and any location where a school event was taking place (does not cover actions off campus and not school-related)
 - Can include remote/ virtual learning through school resources
- If the respondent is no longer enrolled the school *may* end its investigation
- The complainant may withdraw the complaint and the school *may* end its investigation



Relationship to other Policies

- Important for employee of school district who receives initial report to work with the complainant to identify the problematic behavior
- If misconduct implicates sexual harassment MUST report to Title IX Coordinator



Title IX Coordinator

Role & Responsibility







... a Title IX Coordinator, an official with authority to institute corrective measures on behalf of the recipient, and any employee of an elementary and secondary school may receive notice through an oral report of sexual harassment by a complainant or anyone else, a written report, through personal observation, through a newspaper article, through an anonymous report, or through various other means.”

Receipt of Notice/Initial Report

- Acknowledge receipt of Report
- Establish tracking system/file for reports
- Assign investigator
- Schedule Initial Contact with Complainant



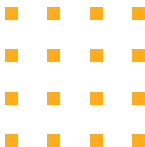

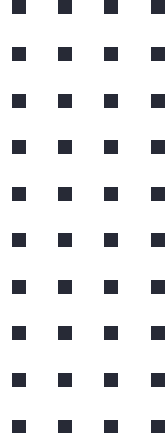


The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint,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

Supportive Measures

“...[D]esigned 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

- Free, individualized services designed to **restore or preserve equal access** to education, protect safety, or deter sexual harassment
- Designed to support student, **cannot be punitive or disciplinary** with respect to another student
- Cannot unreasonably burden another person



Title IX Coordinator is responsible for determining appropriate supportive measures and effectively implementing the supportive measure.

When is a school required to investigate?

- An investigation is not required absent a Formal Complaint

Parent/guardian

Rule allows parents/guardians to act on behalf of student and sign a Formal Complaint

Must be informed of student either filing complaint or when student is named as respondent



Notice of Complaint

- Contact with respondent
- Must include specific information in order for the responding party to prepare before interview
 - Who, what, where, when and description of conduct alleged to be sexual harassment
 - Avoid generalizations

Dismissal of a Formal Complaint-Mandatory

- Conduct alleged does not constitute sexual harassment even if proved, or
- Conduct did not occur in the recipient's education program or activity, or
- Conduct did not occur against a person in the United States.



Permissive Dismissal

- Complainant seeks to withdraw complaint
- Alleged respondent is no longer a student or employee
- Specific circumstances prevent the District from gathering evidence to reach a determination

Special Circumstances Dismissal

- When no complainant is identified during the investigation .
- When a formal complaint contains allegations that are precisely the same as allegations already investigated and adjudicated.
- When substantial length of time elapsed between an incident of alleged sexual harassment and the filing of a formal complaint
- When the complainant is no longer participating in the investigation and has not withdrawn complaint

Special Circumstances

- Must prevent the recipient from meeting its responsibility to gather sufficient evidence to reach a determination.

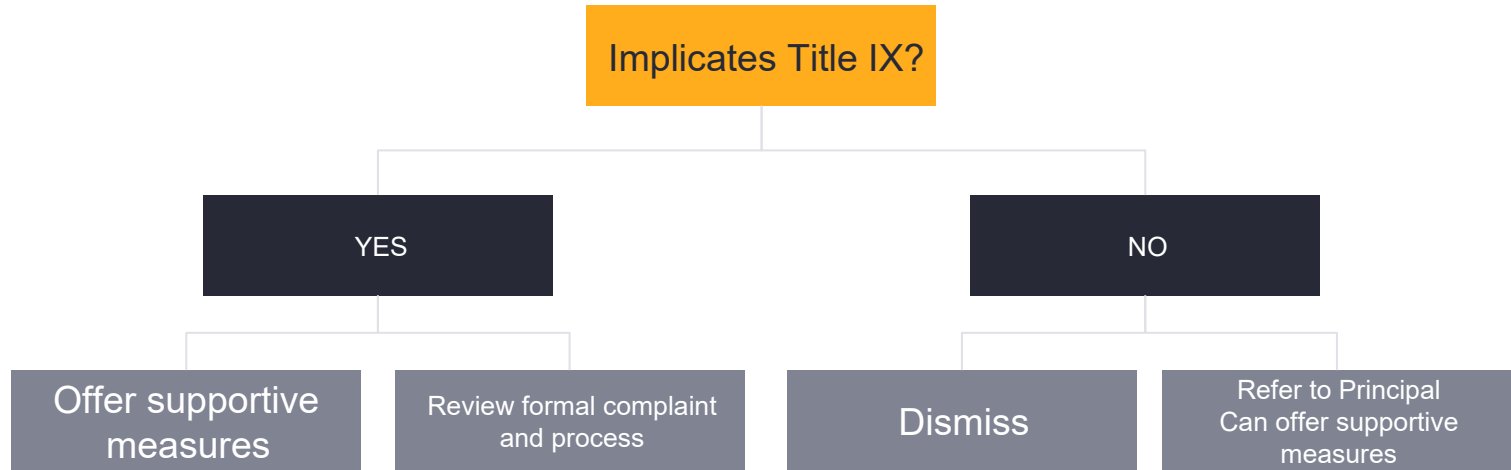


Required Action following Dismissal

- Must send written notice of the dismissal and reasons to both Complainant and Respondent and Notice of Right to Appeal



Receive Report of Sexual Misconduct Allegations



Emergency Removal

- Before removing a student, district must:
 - Undertake an individualized safety and risk assessment
 - Determine if an immediate threat to the physical safety of any student or individual arising from the allegations of sexual harassment justifies removal
 - Provide notice of right to appeal following removal

Informal Resolution

- Cannot be used for complaints alleging employee/student sexual harassment
- Must have consent of both parties
- Must keep records of any informal resolutions for 7- year period

Grievance Process

- Requires an objective evaluation of all evidence
- Requires that any person involved in the Title IX process not have a conflict of interest
- Requires Presumption of Innocence
- Requires Reasonably prompt timeframes
- **Requires a description of potential outcomes and remedies****
- Requires a standard of evidence-Description of standard for determining responsibility-clear and convincing or preponderance of the evidence.
- Cannot use/rely upon evidence protected by privilege unless waived
- Requires procedures for appeal by respondent or complainant



Investigator

Role & Responsibility



Burden of Proof

- Burden of gathering evidence on school district



Advisor

- Must provide the parties with the same opportunities to have others present during any proceeding under grievance process, to include meetings, who may be, but is not required to be an attorney

Investigation

- Interview techniques
 - What do you mean by ____?
 - I need you to clarify_____
 - Can you explain_____?
 - I need to make sure I understand_____

Investigative Report

- Summary of evidence
- Shared with parties/advisors
- Shared with decision-maker
- Considered in final determination



Investigative Report

- Easy to read
- Factually accurate
- Neutral tone
- Avoid editorial comments or opinions



Investigative Report

- Overview-parties, receipt of report
- Statement of Jurisdiction
- Identity of Investigator and properly trained
- Objective—Form language from policy
- Alleged Conduct
- Witnesses
- Summary of Evidence



Decision-Maker

Role & Responsibility



Prior Sexual Behavior/Sexual Predisposition

- Questions and evidence about the prior sexual acts or complainant's sexual predisposition are not relevant UNLESS
 - Offered to prove that someone other than respondent is responsible
 - Or if to prove consent with respect to specific incidents between complainant and respondent

Cross-Examination

- Parties through advisors will submit to decision-maker written cross-examination questions
 - Decision-Maker will assess relevance of questions



Relevance

- Tends to make a fact more or less probable than it would be without the proffered evidence
- Related to a fact at issue





Standard of Evidence

Preponderance or Clear and Convincing

Preponderance of the Evidence

- In civil cases this is the lowest degree of proof
- More likely than not inquiry
- Fact-finder finds the existence of a contested fact more probable than its nonexistence

Clear and Convincing

- Highest standard of proof for civil claims
- Evidence that is so clear, direct, weighty and convincing to enable the trier of fact (decision maker) to come to a clear conviction without hesitation of the truth of the precise fact at issue.

Weight of evidence

- Value decision-maker assigns to the piece of evidence
 - What is relationship between the parties?
 - Any bias?
 - Demeanor of witness?

Privilege

- Grievance process must not require, allow, rely upon or otherwise use questions or evidence that constitute a legally recognized privilege, unless the person holding the privilege has waived the privilege.

Written Determination of Responsibility

- Identification of allegations constituting sexual harassment
- Description of procedural steps—notices to parties, interviews
- Findings of fact supporting the determination
- Conclusion regarding application of code of conduct to the facts

Written Determination

- A statement /rationale for each factual allegation and a determination of responsibility
- Statement of disciplinary sanctions
- Statement of remedies designed to restore or preserve equal access to the program or activity
- Notice of Appeal

Sanctions and Remedies

- Disciplinary decisions enforce code of conduct
- Proportionate response to the violation





Appeal



Appeals

- Most likely heard before Board of School Directors
- Appeals should be allowed for
 - Procedural irregularity
 - Newly discovered evidence
 - Investigator/Decision-maker had a conflict of interest

Impartial Process

- Any individual designated by a recipient as a Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, [must] not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.



Fair and Impartial Proceeding

- Relies upon evidence that is:
- RELEVANT
- RELIABLE
- TRUSTWORTHY



Fair and Impartial Process

Avoid-

Prejudgment

Gut feelings

Stereotypes

Rumors

Facts not in evidence

Bias

Focus-

Reliable

Legitimate

Impartial

Accurate

Truth seeking

.

Bias

- Personal and unreasoned judgment
- Prejudice
- Focused on characteristics of a party rather than the evidence



Let's review some concepts

Reporting

Obligation of all employees

Investigate

District responsibility to collect evidence, follow all leads, treat both equitably and provide access to evidence

Respond Promptly

Offer supportive measures
Explain Formal Complaint and Grievance Process

Determination

Based on relevant evidence. No bias in decision-making.
Reasoned and objective. Support conclusions with fact. Apply standard of evidence.

Notice

Inform Respondent sufficient detail
Inform sufficient time before meetings

Appeal

Must provide notice and timeframes

Scenarios

Student approaches principal and reports overhearing at a party a situation of unwanted sexual contact between two other students during school field trip.

Receive anonymous report of sexualized communication occurring between teacher and former student. Report includes copies of text and social media messages.

Receive a report from a colleague of unwanted attention and gifts from another employee. Shares the individual approaches them throughout the day.



Issues

- Safe to Say Reports
- Out of school social media
- Police
- Confidentiality





Thanks!

Any questions?

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