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TITLE IX COMPLIANCE TRAINING

Practical Solutions for a Complex Process


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"[n]o 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." [20 U.S.C. § 1681\(a\)](#).

GENERAL RESPONSIBILITIES

For Public Elementary/Secondary Schools





- Discrimination includes harassment
- Requires equity in treatment of complainant/respondent

SCHOOLS MUST:




- 1 Have a policy
- 2 Identify Title IX Coordinator
- 3 Offer Supportive Measure
- 4 Have a grievance process




TITLE IX


What do you think of when you think about Title IX?

NEW REGS EFFECTIVE 8/14/2020

-  USDOE ISSUED NEW REGULATIONS IMPLEMENTING TITLE IX
-  NEW DEFINITIONS
-  NEW INVESTIGATION REQUIREMENTS



DEFINITIONS



RESPONSE TO SEX 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**.

SEX HARASSMENT IS...

Conduct based on sex:


1. And a school employee **conditions** receipt of a benefit on participating in unwelcome sexual conduct or
2. Unwelcome conduct determined by a reasonable person to be **sex-based, pervasive, and objectively offensive** that it effectively denies a person equal access to the school's education program or activity, or
3. **Sexual assault**, dating violence, domestic violence, or stalking, as those terms are defined by Federal law.

PERSON IN THE UNITED STATES



RECIPIENT

of Federal Funds



ACTUAL KNOWLEDGE


- If an employee of the school knows of sex harassment or
- Allegations of sex harassment the district has "actual knowledge"

RESPONSE: NOT DELIBERATELY INDIFFERENT

- *Davis v. Monroe County Bd. of Ed.*

SEX HARASSMENT IS...

Conduct based on sex and...



EDUCATION PROGRAM OR ACTIVITY




CASE STUDY

- LeShonda was a fifth grade student
- Reports to parents & teacher three incidents during school by a classmate named Kim
- Mom speaks to teacher
- Eventually parents speak to principal

CASE STUDY CONTINUED...

LaShonda reports to physical education teacher when Kim put a door stop in pants and motions toward LaShonda
 P.E. teacher reports to principal
 Another student asks to speak to principal but is denied
 LaShonda's grades plummet, does not want to attend school, suicide note.

** Davis v Monroe Cty. Bd of Education, 526 U.S. 629 (1999)*

REPORT VS. FORMAL COMPLAINT

Report

- Actual knowledge by school employee of harassment or
- Actual knowledge by employee of reporter
- Complainant reports to Title IX Coordinator but no formal report

Formal Complaint

- By the complainant in writing or
- By the Title IX Coordinator

TITLE IX COORDINATOR

- Understands law and policy – trained
- Must be an employee
- Can also be investigator
- May facilitate informal resolution
- MAY NOT** be decision maker or appeal decision maker
- Responsible for coordination of grievance process & implementation of remedies

DELIBERATELY INDIFFERENT

School is deliberately indifferent if it acted unreasonably in light of the known circumstances

SUPPORTIVE MEASURES

School must offer the complainant supportive measures regardless of formal complaint



INVESTIGATOR

- Understands law and policy-trained to investigate
- May not be biased or have conflict of interest
- Must summarize findings in objective way
- May make recommendation but not required

FORMAL COMPLAINT

Previously, a formal complaint was not required

Now a "formal complaint" is required and means:

- The Complainant files a written complaint or
- The Title IX Coordinator files a written complaint
- No third party complaints

ROLES

New regulations require that each school district have:

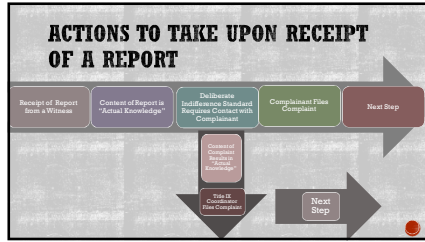
- Title IX Coordinator
- Investigator
- decision-maker
- Appeal Decision-Maker

DECISION-MAKER

- Understands law and policy – trained
- May not be biased or have conflict of interest
- Must issue written report in compliance with requirements
- May not be Title IX investigator and may not decide appeal

APPEAL DECISION-MAKER

- Must allow for written statement
- Be unbiased and have no conflict of interest
- May not be Title IX Coordinator or Decision-Maker



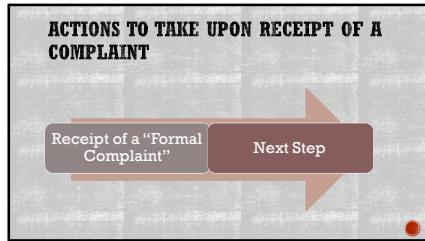
PERMISSIVE DISMISSAL

A formal complaint *may* be dismissed if:

- The complainant notifies the Title IX Coordinator, in writing, that they would like to withdraw the complaint;
- The respondent is no longer enrolled at or employed by the school; or
- Specific circumstances prevent the school or school district from gathering evidence sufficient to reach a determination as to the complaint.

PRACTICALLY SPEAKING...

- Title IX Coordinator can also be the investigator & facilitate informal resolution
- Title IX Coordinator can't be decision-maker or appeal decision maker
- Each role must be trained
- Who might be one of the three-four roles:
 - Superintendent
 - HR Professional
 - Assistant Principal
 - Athletic/Activities Director
 - Dean
 - Social Worker
 - Counselor etc.



RESPONSIBILITIES WHEN DISMISSING A COMPLAINT

STEP ONE ROLE OF THE TITLE IX COORDINATOR

MANDATORY DISMISSAL

A formal complaint *must* immediately be dismissed if:

- The conduct alleged in the formal complaint, even if proven, does not meet the definition of sexual harassment set by these regulations;
- The conduct alleged in the formal complaint did not occur in the school or school district's education program or activity; or
- The conduct alleged did not occur against a person in the United States.

KEEP IN MIND...

- Conduct that does not rise to the level of a Title IX complaint may still require action



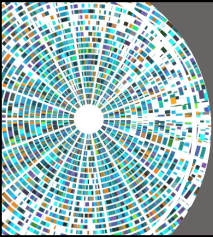
1. Grievance/Informal Resolution Process;
2. Allegations;
3. Presumption Respondent Is Not Responsible;
4. Right to an Advisor; and
5. Code of Conduct Prohibits False Statements or Information.

INTERIM EMERGENCY REMOVAL OF EMPLOYEES

- Non-Applicability of Title IX Procedures
- Factors to Consider
- Possible Directives to Employees



NEW TITLE IX REQUIREMENTS FOR INVESTIGATIONS



INTERIM SUPPORT MEASURES

Supportive measures, offered equally to both parties, are non-disciplinary measures including:

- Counseling
- Modification of deadlines/other adjustments
- Modifications of work or class schedules
- Campus escort services
- Mutual restrictions on contact between parties
- Changes in work or school locations
- Leaves of absence
- Increased security and monitoring



INFORMAL RESOLUTION


- Timing
- Notice
- Non-Applicability to Employees



INTERIM EMERGENCY REMOVAL OF STUDENT RESPONDENTS

- Mandatory individualized safety and risk analysis
- Immediate threat arising from the allegations of sexual harassment
- The threat must relate to the physical health or safety of any individual
- Requires notice to the respondent and an opportunity for challenge immediately following removal
- The respondent bears the burden of proving the removal decision was incorrect
- Not applicable to offenses outside Title IX

STEP TWO ROLE OF THE TITLE IX INVESTIGATOR



THE SCHOOL OR DISTRICT BEARS THE BURDEN OF PROOF NOT EITHER PARTY

SPECIFIC TYPES OF INFORMATION AND DATA CONCERNS IN A TITLE IX INVESTIGATION

- Consideration of privileged information
- Review of external medical records
- Interplay between data privacy laws and Title IX

INVESTIGATION REPORTS



Data Protection

A BRIEF DATA PRACTICES INTERLUDE

PRACTICAL CONSIDERATIONS

- Consolidation of multiple complaints
- All parties must be given an equal opportunity to present witnesses



PLAN AHEAD



TIME FOR REVIEW

NOTICE

REQUIRED NOTICES AND OPPORTUNITY TO REVIEW EVIDENCE

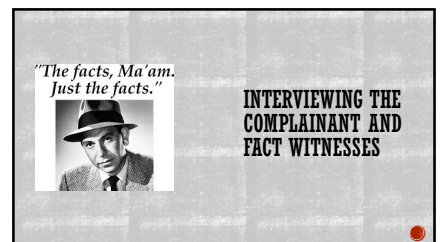
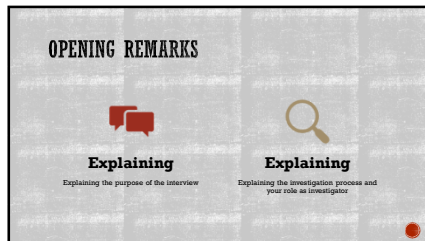
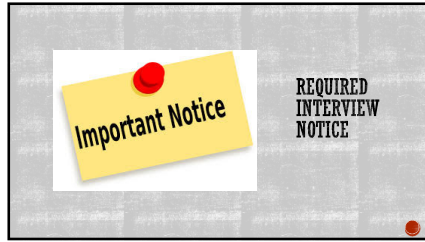
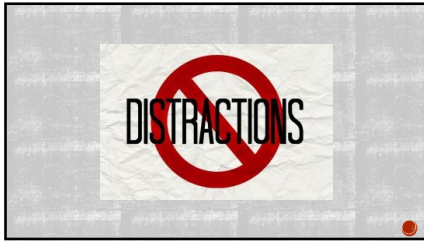


INITIAL CONSIDERATIONS: EXTERNAL REPORTS

1STEP

- Remember to make any mandated reports of maltreatment
- Potential referrals to law enforcement

LASHONDA'S CLAIMS: WHO MIGHT THE INVESTIGATOR WANT TO INTERVIEW?



INTERVIEWING THE COMPLAINANT AND WITNESSES

- Short, open-ended questions



SOME SPECIFIC TIPS FOR INTERVIEWING WITNESSES AND COMPLAINANTS



OPENING REMARKS


- Explaining the role of the investigator as a neutral factfinder
- Establishing ground rules
- Provision of similar initial statements that were provided to the Complainant

THE INVESTIGATOR MIGHT HAVE TO DEFEND THE INTERVIEW QUESTIONS, SO...



“Ahhh... Just one more thing...”

SPECIAL CONSIDERATIONS FOR INTERVIEWING THE RESPONDENT



WHAT IF THE COMPLAINANT REFUSES TO ANSWER?



...WATCH OUT FOR BIASES!

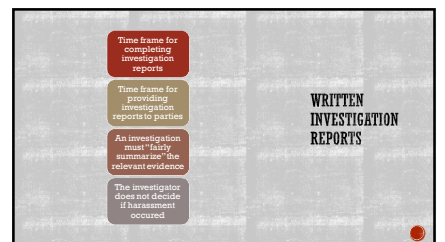
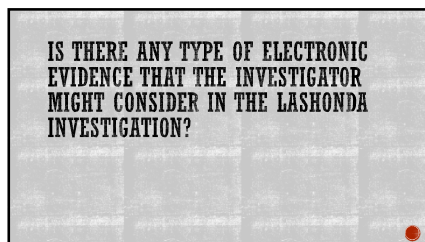
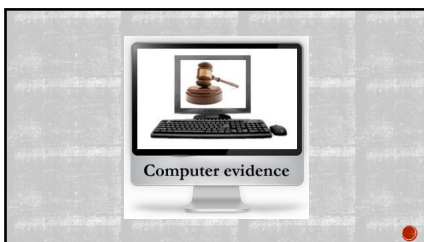
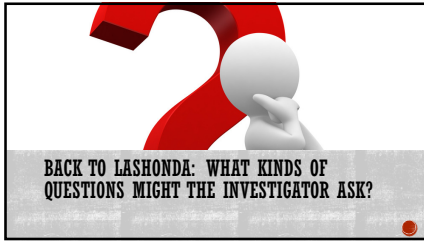


WATCH OUT FOR BIAS IN THE COMPLAINANT INTERVIEW TOO!




SPECIFIC STRATEGIES FOR INTERVIEWING THE COMPLAINANT






STRATEGIES FOR WRITING AN INVESTIGATION REPORT



Helpful Tips



**STEP THREE
ROLE OF THE TITLE IX
DECISION MAKER**

SUBMISSION OF WRITTEN QUESTIONS

All schools must allow for an exchange of written relevant questions, regardless of whether a live hearing is also offered.




AVOIDING CONFLICTS OF INTEREST

CONFLICT OF INTEREST

SELECT A STANDARD OF REVIEW


Preponderance of the Evidence
 "Preponderance of the evidence" means that the respondent will be found responsible only if it is more likely than not that he or she engaged in the conduct constituting sexual harassment.

Clear and Convincing Evidence
 "Clear and convincing evidence" means that the respondent will be found responsible only if it is highly more likely to be true that the respondent engaged in the conduct constituting sexual harassment.




RELEVANCY

"Relevant evidence" means evidence having any tendency to make the existence of any fact more probable or less probable than it would be without the evidence.



ONE MORE WORD ABOUT BIASES



PROCEDURES REQUIRED PRIOR TO A DECISION

- Opportunity for Parties to Respond to the Report
- Notification of the Right to a Hearing and/or Written Questions

WHAT EVIDENCE MAY BE APPROPRIATE TO EXCLUDE OR ALLOW IN LASHONDA'S CASE?

LIVE HEARINGS



Recording



**Appointment of
Advisor**



Questioning

POTENTIAL
REMEDIES

May include but are not limited to:

- Education
- Continued supportive measures
- Discipline
- Restorative Justice



OR ANY OTHER BASIS FOR APPEAL

• As long as both parties have the right to appeal on that basis



THE DETERMINATION

- Identification of the allegations
- Description of the procedural steps taken
- Findings of fact
- Conclusions applying the code of conduct/policy
- Assignment of responsibility, rationale, sanctions and remedies
- The procedure for appealing the determination of responsibility



APPEAL

- Either party may appeal:
 - Determination of Responsibility or
 - Dismissal

-  Dismiss appeal decision unless it is the investigator or Title IX Coordinator. And employer must reproduce in decision maker
-  Provide notice to both parties
-  Ensure each party has reasonable opportunity to submit written statement
-  Issue a written decision

SCHOOL MUST....



STEP FOUR
IMPLEMENTATION OF THE DECISION AND THE APPEALS PROCESS
(ROLE OF THE APPELLATE DECISION-MAKER)

APPEAL ON THE
BASIS OF...

- Procedural irregularity that impacted outcome
- New evidence not available at the time of investigation that could impact outcome
- Conflict of Interest or Bias on part of investigator, Title IX Coordinator or...

TRAINING MATERIALS

- Must train the three roles at a minimum
- Must ensure employees know their responsibility to report = actual knowledge
- Must retain training materials for 7 years
- Must retain complaints, investigation, decision, appeal decision for 7 years
- Must review policy annually

