



McGrath Training Solutions

McGrath Response System™

Sexual Harassment, Misconduct, Discrimination & Bullying

NEW TITLE IX REGULATIONS

**From Rumors through Investigations
Ensuring Title IX Compliance**

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Overview

- Title IX definitions
- Title IX roles
- Title IX investigation requirements
- Case studies
- Checklists
- Updated forms



Title IX

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 of the Education Amendments of 1972 (20 U.S.C. Section 1681 et seq.) and related regulations (34 C.F.R. Part 106)



Title IX: Duty to Provide a Safe Learning Environment

School Districts have a responsibility to:

- Prevent and train
- Continuously monitor the school environment
- Conduct reliable, prompt, fair and impartial investigations
- Provide appropriate remedies that work to end and prevent further harassment, misconduct, discrimination & bullying
- Correct inappropriate behaviors promptly and equitably



New Title IX Regulations

Full Force, Effect of Law, and Compliance Reviews

- Expanded policies and procedures
- Amended sexual harassment definitions
- Clarified jurisdiction
- Due process protections/information sharing
- Increased documentation and record-keeping
- Increased training
- New roles
- Mitigation of bias and conflicts of interest



Remember: Title IX is only one part of your requirements to respond to complaints of sexual harassment and misconduct.

Definitions (Section 106.30)

Quid Pro Quo Harassment

Any instance of quid pro quo harassment by a school's employee;

Hostile Environment Harassment

Any unwelcome conduct that a reasonable person would find so *severe, pervasive, and objectively offensive* that it denies a person equal educational access;

Other Sexual Acts

Any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).



Title IX Jurisdiction

- Applies to persons in the United States with respect to education programs or activities that receive Federal financial assistance.
- Education program or activity includes locations, events, or circumstances over which the school exercised ***substantial control*** over both the respondent and the context in which the sexual harassment occurred
- At time of filing the formal complaint, the Complainant must be participating or *attempting to participate* in recipient's education program or activity.



Actual Knowledge

- Actual knowledge occurs when **any employee** has notice of sexual harassment or allegations of sexual harassment.
- Must respond promptly by offering supportive measures and explain grievance procedures
- Provide annual training to K-12 employees about reporting responsibilities to the Title IX Coordinator or other designated Title IX Team Members.



Liability

- The institution has “actual notice” of the harassment;
- Harassment is “*severe, pervasive, and objectively offensive*,” and the institution’s indifference was “systemic” so that the victim was deprived of educational opportunities or services
- The institution responded with “deliberate indifference” – clearly unreasonable in light of the known circumstances.



CASE STUDY

Scenario 1:

Teacher A, is a well-respected band director at Bellview High School. He gives the drum major a ride home & kisses the student. The next week he brings her to his apartment where kissing and sexual touching occur.

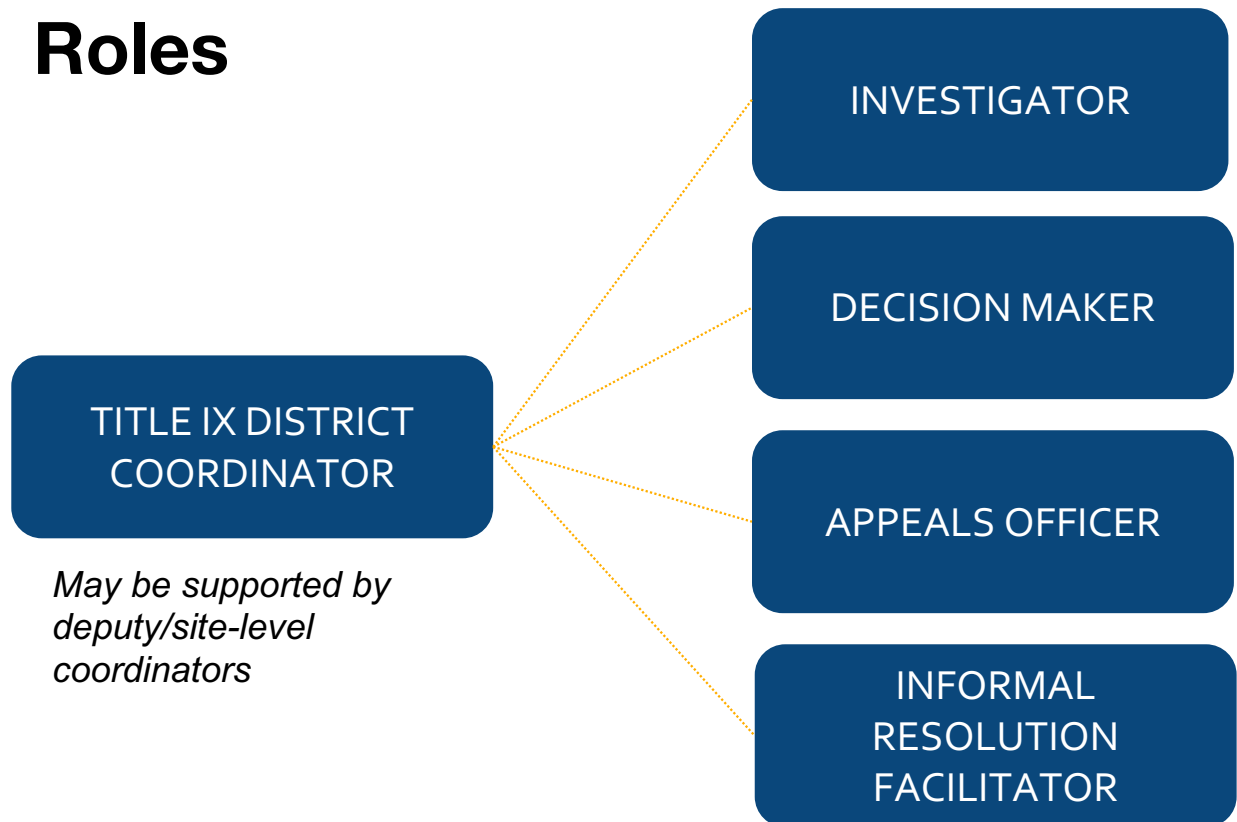
Does this qualify as substantial control?

Scenario 2:

Teacher A kisses and touches the drum major on campus in a locked office with book shelves that block the view of anyone attempting to look inside.

Does this qualify as substantial control?

Roles



All team members must be impartial, unbiased, knowledgeable and free from conflicts and trained in the New Title IX Regulations.

Title IX Coordinator

Coordinates the responses to all complaints involving possible sex discrimination

- Oversee district compliance
- Ensure policies and procedures are compliant
- Contact information publicly posted
- Be assessible to receive complaints
- Coordinate training
- Prevent and remediate all harassment
- Oversee investigations
- Monitor outcomes
- Identify and address patterns
- Assess effects on the campus climate
- Be the contact for government inquiries
- Stay up to date on laws and regulations



Title IX Coordinator – Continued

- ✓ Conducts Intake meeting with Complainant
- ✓ Provides supportive measures and resources to complainant and respondent
- ✓ Determines mandatory dismissal/emergency removal
- ✓ Determines use of informal resolution process
- ✓ Assigns unbiased/conflict-free investigator
- ✓ Sends notices (e.g., Notice of Allegations)
- ✓ Considers permissive dismissal of complaint



Title IX Coordinator – Continued

- Reviews all reports and decisions
- Drafts letter of outcome after decision issued
- If applicable, ensures effective implementation of remedies for Complainant, sanctions for Respondent, and overall corrective plan
- *May* investigate when needed
- *May* act as facilitator of an informal resolution process
- Does NOT make decision about responsibility
- Does NOT determine sanctions



Make sure the person actually receiving concerns and complaints has been fully trained and is able to fulfill their responsibility.

Investigator Role

- Reviews complaint
- Gathers, reviews, weighs and synthesizes evidence
- Identifies and interviews witnesses
- Assesses relevance and credibility
- Identifies, organizes and compiles relevant information
- Maintains accurate and thorough notes and records
- Shares evidence with parties and their advisors
- Provides notices to parties
- Creates an investigation report
- DOES NOT make a decision



Decision Maker (individual or panel)

- Determines whether a Respondent has violated policy
- A Title IX Coordinator or Investigator may NOT serve in the role of “decision maker”
- Provides “fresh eyes” for an investigation report
- Potentially conducts hearing (optional in k-12)
- Facilitates written “cross-examination”
- Makes conclusions
- Prepares written determination of findings
- If applicable, recommends sanctions for Respondent and remedies for Complainant



Appeals Officer

- Provides written notice of right to appeal
- If an appeal is filed
 - Evaluates the scope
 - Provides a written Notice of Appeal
 - Reviews written statements and arguments
 - Renders written decision on appeal and explains rationale for the result
 - Provides the written decision to parties at same time



Informal Resolution Process Facilitator

- Cannot require the parties to waive the right to an investigation
- Must obtain voluntary, written consent of the parties
- Process does not involve full investigation or adjudication, but includes a written notice to the parties disclosing the allegations, the requirements of the process, and notice that the parties can withdraw and resume the grievance process
- May consider the use of a trained mediator or trained restorative justice facilitator
- Cannot be used where an employee is alleged to have sexually harassed a student



Hearing

- K-12 schools and other federal funding recipients, need not conduct a live hearing, but must provide an opportunity for the parties to submit written questions for the other party/witnesses.
- If a hearing is offered, it does not have to comply with §106.45.



Grievance Process

- Treat complainant and respondent equitably
- Do not impose discipline without following the grievance procedures
- Provide support to the complainant(s), respondent(s), and school community
- Remedies must be designed to maintain the complainant's equal access to education
- Objective evaluation of all evidence
- Presumption of innocence
- Establish time frames for grievance process, possible remedies, and appeals procedures



Supportive Measures

Supportive measures must be offered to the complainant as soon as notice is received and to the respondent after the complaint is filed. Supportive measures should be:

- Non-punitive, non-disciplinary, and not unreasonably burdensome to the other party
- Must ensure equal educational access, protect safety, and/or deter sexual harassment
- May include counseling, course-related adjustments, schedule modifications, deadline extensions, campus escorts, increased security and monitoring, and/or mutual restrictions on contact between the parties



Due Process

- Impartial and fair
- Made in good faith without conflict or bias
- Based on rule or policy
- Reasonable conclusions
- Written notice of allegations
- Opportunities to present witnesses and evidence
- May have others present during any meetings
- May ask questions of other party and witnesses through an advisor



Evidentiary Standard

School's must state/choose whether the standard of evidence to determine responsibility is the **preponderance of the evidence** standard or the **clear and convincing** evidence standard.



CASE STUDY

Scenario: Brooke

Brooke is a 7th grade Black female student at Kings Middle School. One day she comes into the school office and complains of Brad, an 8th grade Caucasian male student, who wrote “I’d really like me some chocolate right now” on social media during computer lab. She is upset and afraid to see him on campus. When you ask her if this has happened before, she says something similar happened once last week, but she thought it was an accident.

You are the Title IX Coordinator. Please answer the following:

Do you believe this incident falls under Title IX? If so, explain why?

What would you do to respond to the incident? What do you need to know?

Outline the actions you would take when responding to the report to determine if you need to complete a full investigation.

Investigations

- Burden of proof remains with school district
- Written notice of interviews, meetings, or hearings with at least 10 days to inspect, review and respond
- Dismiss allegations that occur out of jurisdiction
- May dismiss complaint if complainant provides written request or is no longer enrolled
- Written notice of dismissal
- Protect privacy of party's medical, psychological and any treatment records
- Determine if there are patterns or other variables that contributed



Steps of Investigation

- ☐ Receive notice/complaint
- ☐ Initial assessment and jurisdiction determination
- ☐ Basis for investigation
- ☐ Notice of investigation to both parties
- ☐ Establish investigation strategy
- ☐ Formal investigation
- ☐ Draft Report
- ☐ Investigator meets with Title IX coordinator to review
- ☐ Provide all evidence to both parties with 10 days for response
- ☐ Complete final report



Emergency Removal Option

- If there is a threat to the physical health or safety of any student, an institution may remove a Respondent
- The school must provide notice to Respondent of Emergency Removal
- Provide an opportunity for Respondent to challenge decision immediately following the removal



Retaliation

Retaliation is prohibited

- No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose 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 an investigation, proceeding, or hearing.



Record Keeping

- Record must be created and retained for *at least 7 Years*
 - Investigation
 - Appeal and results
 - Informal resolutions
- Document why the response was not deliberately indifferent & rationale for determination
- Document measure to restore access to education programs/activity.



Bias

- No sides!
- Don't wear too many hats
- Non-partisan: Don't have pre determined outcomes
- Recuse yourself if you have a conflict of interest
- Rape Shield Protection



CASE STUDY

Scenario: Miss Meyers

Miss Myers, 22, is a first year English teacher at Eagle Rock High School. As a new teacher, she wanted to be well liked by her students, so she accepted many of their friend requests on Facebook. At first, online communication with Todd, a 17-year-old student, focused on school-related topics. After a few months, their conversations became more personal, especially once Todd's girlfriend broke up with him. Miss Myers began writing passes so he could visit during study hall and bought him a few small gifts. Mrs. Smith, a teacher who notices Todd and Miss Myers alone in an empty classroom after school, completes form A.

You are the Investigator. Please answer the following:

Outline how you would investigate the incident.

Who would you consider interviewing?

What evidence would you consider collecting?