

Title IX Compliance Considerations

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Why do we need Title IX
training?


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"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."

August 14, 2020

- Update to Department of Education's 1975 regulations implementing Title IX
- Supersedes existing DOE guidance and "Dear Colleague Letters"

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All employees have obligations under Title IX


- “Eyes and ears”
- Title IX response applies any time the District has *actual knowledge* of sexual harassment or allegations of sexual harassment
- Can be *any* employee
- Extends to activities under District control

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What programs are under District control?

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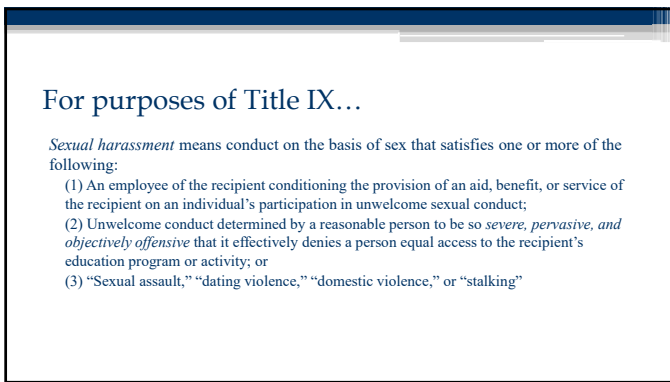
Are electronic networks under District control?

- Yes, if provided by the District
- Yes, if a personal device is used in the school environment

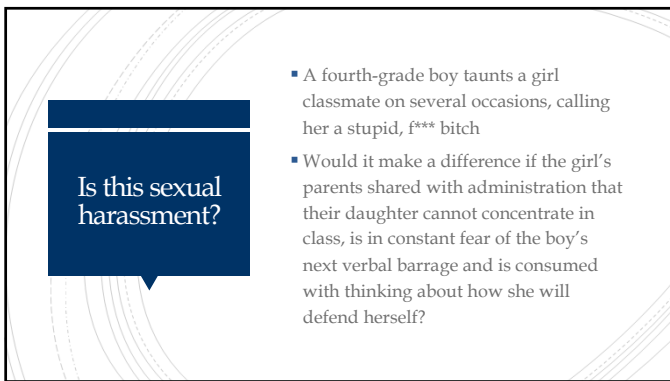
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Is this sexual harassment?

- A kindergartener in the district-run before school care program has made a game of touching older students' private areas

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Is this sexual harassment?

- A high school teacher agrees to provide academic support after school to a student who is struggling in class. The District learns that the teacher starts the sessions by giving the student a relaxing shoulder massage. The student resisted these massages at first, but the teacher told the student that unless the student was in an appropriately "relaxed" state, it was just a waste of the teacher's time to try and provide academic help.

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Sexual Harassment in a Special Education Setting

- A. has ADHD, emotional disturbance, a communication disorder, muscular dystrophy and arthritis
- IEP notes A. craves "any kind of positive attention" and that A. has difficulty reading social cues
- On a nature hike field trip, a group of boys, functioning at a higher cognitive level than A., tell A. to "flash" them and explain it's something girls like to do
- A. asks a teacher why girls like to "flash"
- On a subsequent field trip, the same group of boys talks A. into playing "strip poker" consisting of A. and the boys exposing body parts
- Bus driver notes change in group's behavior and unusual movements

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What is *actual knowledge*?

notice of alleged facts

that, if true, *could* be considered sexual harassment

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Am I on notice of sexual harassment?

- Employee overhears a student mention that another student is absent because her boyfriend beat her up?

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Am I on notice of sexual harassment?

- Students are talking about "sexting" pictures circulating on social media of another student?

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Am I on notice of sexual harassment?

- Student tells bus driver he doesn't want to sit next to another student because she keeps hugging him?

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Am I on notice of sexual harassment?

- Student has cognitive disabilities as a result of a traumatic brain injury
- She complains that four boys are "bothering" her

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WHEN IN DOUBT, REPORT!



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Title IX Coordinator

- Receives information from staff and parents about sexual harassment allegations or conduct
- Responds to student who is the target of “conduct that could constitute sexual harassment”

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Title IX Coordinator

- Title IX Coordinator **MUST** offer supportive measures
 - Individualized services
 - Designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party
 - Maintained confidentially
 - Available with or without filing a formal complaint
 - Complainant’s choice

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Title IX Coordinator

- Title IX Coordinator MUST explain the formal complaint procedure
 - Receives the complaint
- Title IX Coordinator will implement any remedial measures following investigation and determination

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Complaint Procedure

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Investigator

- Interviews parties and witnesses to provide a written report for decisionmaker consideration
- Assumes “the burden of gathering evidence sufficient to reach a determination regarding responsibility”

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Investigator

- Provides an equal opportunity for the parties to present witnesses
- Allows parties to have an advisor present in any meetings
- Provides parties written notice of the time and date of investigative interviews
- Provides the parties with the opportunity to review and inspect the evidence and the opportunity to respond prior to conclusion of investigation

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Investigator

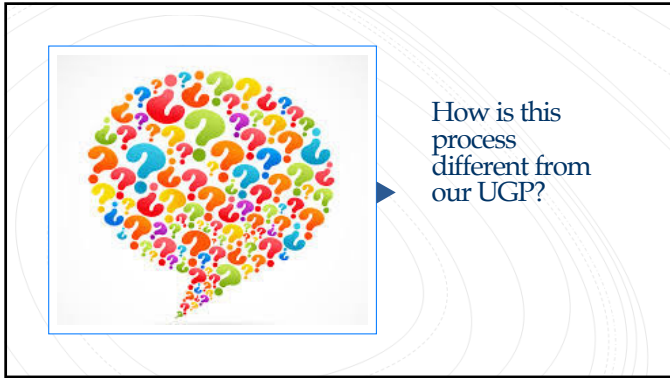
- Sends a draft investigation report to each party and give the parties 10 days to submit a written response
- Sends final investigation report that fairly summarizes relevant evidence to the parties

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A Note on Impartiality

- Investigator (and Decisionmaker) must be free of bias and conflict of interest
 - Do not assume one party is more credible
 - Do not prejudice witnesses or facts
 - Do not assume investigator report is perfect
- Do not rely on stereotypes in place of objective facts
- Do not let personal relationship influence evaluation of facts (or step aside if you cannot accomplish that)
- May be appropriate to consider age and impact of trauma on parties/witnesses in evaluating evidence

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Grievance Procedure

- Consistency with UGP:
 - Need to provide a standard of evidence (UGP provides preponderance of the evidence standard)
 - Need to allow for appeal

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Grievance Procedure

Areas of difference:

- "Reasonably prompt" timeframes
- Describes range or possible disciplinary sanctions and remedies
- Must allow parties to discuss the allegations with others and to gather and present relevant evidence

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Grievance Procedure

- Allows for unilateral dismissal of complaint if conduct alleged would not constitute sexual harassment or occurred outside of the education program
- Allows complainant to withdraw formal complaint

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Grievance Procedure

- Mediation/informal resolution may be offered after a formal complaint had been filed
- Not available if allegations involve an employee
- Parties must agree to participate and can withdraw anytime

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Grievance Procedure

- Provide notice to the parties of the allegations with sufficient detail to allow for response
- Identities of the parties involved
- Conduct allegedly constituting sexual harassment
- Date and location of the incident
- Amend if additional allegations come to light in investigation

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Grievance Procedure

- Include: “Respondent is presumed not responsible for this conduct. A determination regarding responsibility will be made at the conclusion of the grievance procedure.”
- Notify parties of their right to involve an advisor in the investigation

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Investigation Basics

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Investigation Basics

The objective of the investigation is to improve the factual basis of decision making

- The solid foundation to guide application of the policy



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Investigation Basics

- Gather and review all relevant documents prior to beginning interviews.
- Identify key initial witnesses and order of interviews.
- Determine appropriate place for conducting interviews.
- Consider developing a template of interview questions.
- Take copious and clear notes during interviews.

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Investigation Basics

- Determine the extent of personal knowledge, as opposed to hearsay.
- Have the witness identify any other likely witnesses and any relevant documents.
- Ascertain the basis for the concern of any witness who "doesn't want to get involved."

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Investigation Basics

Ask open-ended questions

Who? What? When? Where? How Often?

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Follow up until you are certain you have no more questions

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General Rules For Conducting Interviews

- Explain process
- Full, truthful cooperation is expected
- Discuss limits on confidentiality
- Opportunity to provide his/her side
- Explain that you are only interested in information in which they had first-hand knowledge; the interviewee should not provide answers based upon rumor or received from a third party
- Remind the interviewee of anti-retaliation protections
- Advise the interviewee that if s/he recalls any other pertinent information, report such information to you directly

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Considerations in Evaluating Relevance

- Does the information relate to the allegations?
- Does the witness have personal knowledge of the facts?
- Does the version of event corroborate others?
- Is there contemporaneous documentation that is consistent with the statement?
- Does the witness have a motivation not to be truthful?
- Did the witness independently recall details or only after consulting documentation?

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Investigation Basics

Do not reach a conclusion until all witnesses have been fully interviewed and all pertinent documents reviewed.

If you are declining to interview a witness, document why.

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A Note on Due Process



- Both parties must be given equal opportunity to inspect and review evidence obtained in the investigation
 - Consider at what stage that is appropriate
 - Do you need to test a party's recall or the truth of a statement against information you received from another source? Or can you directly confront the party with the evidence?

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Investigation Basics



Take complete and clear notes.



Collect copies of all relevant documents.



Inform individuals who have relevant documents to retain the documents; consider sending a "preservation" memorandum.

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Investigation Basics

DON'T

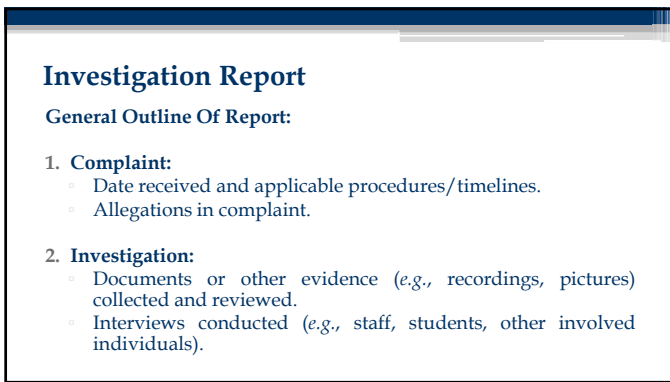
- Doodle or make notes on extraneous matters.
- Summarize interviews with conclusory language in your notes; do write down details given by the interviewees to summarize in the investigation report.
- Memorialize conclusions about credibility and/or findings or make recommendations in your notes; do memorialize conduct or behavior from which you would draw such conclusions or make such recommendations in the investigation report.



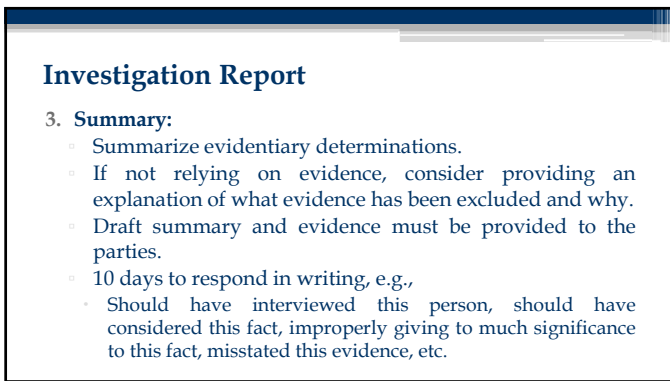
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Investigation Report

4. Final Report:


- Fairly summarizes relevant evidence
- Can be a roadmap for the decision but avoid making findings
- Consider specifically addressing any response from the parties in the final report
- Provide to each party and their advisor

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The Decision

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The Decision



- Allow 10 days from receipt of final report for parties to submit written, relevant questions
- Obtain answers to follow up questions from any party or witness
- Allow limited follow up questions

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The Decision

Must include:


- Identification of the allegations
- Description of procedural steps taken, including notices provided and interviews
- Findings of fact
- Conclusions regarding the policy
- Explanation for findings
- Determination of responsibility and disciplinary sanctions
- Identification of any other remedies for complainant
- Appeal process

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The Decision



Provide to the parties simultaneously



Involve Title IX Coordinator to implement any remedies

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A Note on Appeals

- Basis for appeals include:
 - Procedural irregularity
 - New evidence that was not reasonably available at the time a decision was made that could affect outcome
 - Conflict of interest
 - Other bases as determined by policy
- Available to all parties
- Written process

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A Final Note on Retaliation

- Absolutely prohibited
 - Whether individual reported
 - Whether individual assisted in the process
 - Whether individual refused to participate in the process
- Encourage reporting under UGP
- Separate violation of policy

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QUESTIONS?



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