



NORTHSIDE INDEPENDENT SCHOOL DISTRICT

TITLE IX

THE HISTORY

Discrimination based on sex
(1964)

Title IX Sexual Harassment
(1972)

**Formal Complaint of
Title IX Sexual Harassment
(August 14, 2020)**

Requires an Institution to act
once a formal complaint is
received.

What is Title IX and who does it protect?

- Title IX of the education amendments of 1972 prohibits discrimination based on **SEX** in education programs and activities that receive federal financial assistance.

We are protected by Title IX

- Students
- Teachers
- Staff
- Parents
- Legal guardians
- District vendors

Examples of the discrimination covered under Title IX.

- Failure to provide equal opportunity in athletics.
- Discrimination in a school's science, technology, engineering and math (STEM) courses.
- ✓ Sexual harassment
 - Discrimination based on pregnancy.

Terminology

- Complainant = party alleged to be the victim of sexual harassment.
- Respondent = party against whom the complaint was made.

What is Sexual Harassment ?

1. Unwelcomed conduct determined by a reasonable person to be :
 - a) Severe
 - b) Pervasive, and
 - c) Objectively offensive that it **effectively denies a person equal access to the school's education programs or activities.**
2. An employee of the school conditioning the aid, benefit, or service of the school on an individual's participation in the unwelcomed sexual conduct.
3. "Sexual assaults", "dating violence", "domestic violence", or "stalking" as defined by the Clery Act and the Violence Against Women Act.

Note: Under Title IX an allegation of sexual harassment must meet at least one of the above criteria to qualify as sexual harassment and the District must have substantial control over the conduct at issue and the actions of the Respondent.

Key Concepts to remember

1. Treat Complainants and Respondents equitably. Remedies must be designed to restore or preserve equal access to the school's program or activity.
2. Understand the presumption that the Respondent **is not** responsible for the alleged conduct until a determination is made at the end of the grievance process by the Decision Maker.
3. There must be an objective evaluation of all facts – no prejudging.
4. Presumption of innocence.
5. Ensure prompt time frames for resolutions are followed.
6. Appeals may be granted for a procedural irregularity, new evidence or a conflict of interest.

Key Concepts to remember

7. Both the Complainant and Respondent shall receive “Supportive Measures”. Supportive measure could include the following :

- * Counseling
- * Change of class schedule.
- * Increase monitoring in the halls, cafeteria, busloop, etc.
- * Mutual restrictions between the parties (stay away contract).

8. Legal privilege – The schools process must NOT seek information protected under a legally recognized privilege.

Examples : Attorney – Client
Doctor – Patient

Note: The school may accept privileged information if the person holding the privilege has waived the privilege.

The Title IX process, who's involved?

- The Title IX coordinators – *coordinate ALL efforts to comply with Title IX.*
- Investigators – *collect the evidence.*
- Decision Makers – make a determination regarding the complaint.
- Appeals (DM) – make a determination regarding the appeal.

Note: For the duration of an investigation, the respondent is **presumed innocent** and should be treated as such. Determining responsibility will be made at the end of the grievance process by the “Decision-maker”.

Breakdown of the Roles

Elementary

Vice-principal = *Investigator and campus Title IX Coordinator*

Principal = *Decision Maker*

Exec. Dir. of Elementary Administration = *Appeal (DM)*

Secondary

Assistant Principal = *Investigator and campus Title IX Coordinator*

Vice-Principal = *Decision Maker*

Principal = *Appeal (DM)*

When is a school put on notice?

- Any person, whether the alleged victim or a parent, friend, or a bystander has the right to report sexual harassment to put the school on notice.
- A school has actual knowledge when any employee of the district has noticed that a person may have been victimized by sexual harassment.

Note : Once a school has actual knowledge or allegations of sexual harassment, **the school must respond and take action. It's the law.**

Who within a school could be notified?

- ❖ The Campus Title IX Coordinator or any school employee.
- ❖ All employees will get training that they must report to the Title IX Coordinator any information which could qualify as sexual harassment.

Sexual Harassment

Reporting

Vs

Filing a Formal Complaint

Reporting sexual harassment requires the school to offer supportive measures to the complainant. If the initial investigation meets Title IX, inform the complainant on how to file a formal complaint. If it does not meet Title IX refer to Student Code of Conduct for discipline. Simply reporting sexual harassment will not start a formal complaint investigation.

The complainant, a legal guardian or the Title IX Coordinator can file a formal complaint. If the complaint does not meet the definition of Title IX you must dismiss. If the complaint meets the threshold for Title IX, follow the district's checklist for "responding to sexual harassment".

Remember, anyone can report sexual harassment!

Title IX and Student Discipline

- Many of the Title IX Coordinators will also be handling student discipline. Per the new Title IX regulations you cannot discipline a Respondent until the entire Title IX process is completed. You will see on the following slides that the process can be very long.
- Based on most situations, you very well may believe you have enough information to issue a disciplinary placement against the Respondent for his/her conduct.
- You must avoid using any sexual misconduct provisions within the Student Code of Conduct to issue discipline.

Department of Education Final Rule

(Investigations)

- The burden of gathering evidence and burden of proof must remain on the schools, not the parties.
- Schools must provide equal opportunity for the parties to present facts and witnesses.
- ✓ Schools must not restrict the abilities of the parties to discuss the allegations or gather evidence.
- ✓ Schools must send to both parties, **evidence directly** related to the allegations, in electronic format or hardcopy, with at least 10 days for the parties to inspect, review, and respond to the evidence prior to closing the investigation and submitting it to the Decision Maker.

✓ = Denotes a change in investigative procedure.

Department of Education Final Rule

(Investigations)

- ✓ Prior to closing the investigation and submitting to the Decision Maker, schools must send the **investigative report** to both parties in electronic format or hardcopy with at least 10 days for the parties to respond.
- Schools must dismiss allegations of conduct that do not meet the definition of “sexual harassment”. *Remember, such dismissal is only for Title IX purposes. You should address the underlying conduct under the Student Code of Conduct.*
- ✓ In addition to dismissing a complaint based on the allegations made not meeting the definition of sexual harassment under Title IX, schools may, in their discretion, dismiss a formal complaint if:
 - A) *The Title IX Coordinator receives in writing a desire to withdraw the formal complaint from the complainant.*
 - B) *The respondent is no longer enrolled at the school.*
 - C) *Specific circumstances prevent the school from gathering sufficient evidence to reach a determination.*

✓ = Denotes a change in investigative procedure.

Department of Education Final Rule

(Investigations)

- ✓ Schools must give the parties written notice of the dismissal (*mandatory or discretionary*) and the reasons for the dismissal.
- ✓ At the conclusion of the investigation, the investigator must provide a complete investigative report to the complainant and respondent simultaneously, as well as submitting it to the Decision Maker.

✓ = Denotes a change in investigative procedure.

Ready to start the investigation?

- If the Title IX Coordinator receives a “formal” complaint, you need to review the complaint as written to make an initial determination on whether the facts as alleged, if taken as true, rise to a Title IX event. If it does not, an many will not, then you need to dismiss the Title IX complaint. The notice of dismissal will be sent to both parties.

Ready to start the investigation?

- If the “formal” complaint does allege facts which supports a Title IX violation, an official letter will be sent out to the complainant and respondent regarding the Title IX investigation. The letter will include details about the allegations, their rights as Complainant and Respondent, and the contact information for the campus Title IX Coordinator.

The Decision Maker

- After receiving the investigative report from the Title IX Coordinator, the Decision Maker must wait at least 10 days from the date the parties received the final investigative report or have been provided the opportunity to exchange questions and answers.
- The Decision Maker must allow both parties to submit written, relevant questions to be asked of witnesses, provide both parties with the answers, and allow for additional follow up questions. *Follow up questions should be limited.*
- If the Decision Maker excludes a question as not being relevant, the Decision Maker must explain to the requesting party why the question is to be excluded.

Note: Questions or evidence about the Complainant's prior sexual behavior is not allowable unless offered to prove consent or that someone other than Respondent committed the alleged acts.

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The Decision Maker

(Reaching the Determination)

- Once all information is collected from the parties and witnesses, the Decision Maker will use the “Preponderance” of the evidence standard to reach a determination.
- Upon finalization of the Determination, the Decision Maker will provide copies simultaneously to the Complainant, Respondent, and the district Title IX Coordinator. (Review [FFH](#) Regulations for timelines)

Definition: Preponderance of evidence – *proof that a particular set of facts or event was more likely than not to have occurred.*

The Appeal

- The Complainant and the Respondent must be offered the opportunity to appeal a Determination or a Dismissal. *(This also applies for a Formal Complaint or an allegation that was not elevated to a Formal Complaint.)*
- Appeals can be requested by either party for one of the following:
 - A) *Procedural irregularity that affected the outcome;*
 - B) *New evidence that could affect the outcome; or*
 - C) *The Title IX Coordinator, Investigator, or Decision Maker had a conflict of interest or bias that affected the outcome.*

The Remedy

- If the Respondent has been determined through the Formal Compliant Process to be responsible for the alleged sexual harassment, the school must provide remedies to the Complainant that are **designed to restore or preserve the Complainant's equal access to the school's education programs or activities.**
- The Respondent may also now be disciplined for the sexual harassment finding per the Student Code of Conduct.