

# Title IX Compliance Considerations

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Why do we need Title IX  
training?

*“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”



## 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 the District control



What programs are under the District control?

Are electronic  
networks under  
the District  
control?



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

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What is sexual harassment?

# For purposes of Title IX...

*Sexual harassment* means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so *severe, pervasive, and objectively offensive* that it effectively denies a person equal access to the recipient's education program or activity; or
- (3) "Sexual assault," "dating violence," "domestic violence," or "stalking"



# What about other District policies?

## Board Policy 7:10

Any person...engages in sexual harassment whenever he or she makes sexual advances, requests sexual favors, and engages in other verbal or physical conduct of a sexual or sex-based nature, imposed on the basis of sex, that...

“Sexual intimidation” means any behavior, verbal or nonverbal, which has the effect of subjecting members of either sex to humiliation, embarrassment or discomfort because of their gender.

The terms “intimidating,” “hostile,” and “offensive” include conduct that has the effect of humiliation, embarrassment, or discomfort. Examples of sexual harassment include touching, crude jokes or pictures, discussions of sexual experiences, teasing related to sexual characteristics, and spreading rumors related to a person’s sexual activities.

# What about other District policies?

## Board Policy 7:20

### Sexual Harassment Prohibited

The District shall provide an educational environment free of verbal, physical, or other conduct or communications constituting harassment on the basis of sex as defined and otherwise prohibited by State and federal law.

### Investigation Process

Any District employee who receives a report or complaint of harassment must promptly forward the report or complaint to the Nondiscrimination Coordinator or a Complaint Manager. Any employee who fails to promptly comply may be disciplined, up to and including discharge.

# What about other District policies?

Board Policy 7:180

Bullying may take various forms, including without limitation one or more of the following: harassment, threats, intimidation, stalking, physical violence, sexual harassment, sexual violence...

# What about other District policies?

## Board Policy 7:190

9. Engaging in hazing or any kind of bullying or aggressive behavior that does physical or psychological harm to a staff person or another student, or urging other students to engage in such conduct. Prohibited conduct specifically includes, without limitation, any use of violence, intimidation, force, noise, coercion, threats, stalking, harassment, sexual harassment, public humiliation, theft or destruction of property, retaliation, hazing, bullying, bullying using a school computer or a school computer network, or other comparable conduct.
10. Engaging in any sexual activity, including without limitation, offensive touching, sexual harassment, indecent exposure (including mooning), and sexual assault. This does not include the non-disruptive: (a) expression of gender or sexual orientation or preference, or (b) display of affection during non-instructional time.

# What about other laws?

Illinois Human Rights Act:

“It is the public policy of this State...[t]o secure for all individuals within Illinois the freedom from discrimination against any individual because of his or her race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, pregnancy, or unfavorable discharge from military service ...”

# What about other laws?

Illinois Human Rights Act (cont.):

“Sexual orientation means actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity, whether or not traditionally associated with the person’s designated sex at birth.”

# What about other laws?

Executive Order 14021 (3/8/21):

- On March 8, 2021, President Biden issued an Executive Order: Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity.
- Notes that “[a]ll persons should receive equal treatment under the law, no matter their gender identity or sexual orientation.”
- Gave the Department of Education 100 days to conduct a review of all existing regulations, orders, guidance documents, policies, and any other similar agency actions, and provide the review findings.

# What about other laws?

Letter to Students, Educators, and other Stakeholders re: Executive Order 14021, 121 LRP 12334 (OCR 4/6/21):

- In response to the President's March 8, 2021 Executive Order, OCR announced its plan to conduct a comprehensive review, including a public hearing.
- ED's Title IX regulations, as amended in 2020, remain in effect, but a new Q&A document will be published to provide additional clarity about how OCR interprets schools' existing obligations.
- OCR plans to publish a notice of proposed rulemaking after collecting information.



# What about other laws?

Notice of Interpretation (6/16/21) from OCR notes:

- “...the Department [of Education] interprets Title IX’s prohibition on discrimination ‘on the basis of sex’ to encompass discrimination on the basis of sexual orientation and gender identity.” As such, OCR will enforce Title IX’s prohibition on these bases.

## Is this sexual harassment?

- A fourth-grade boy taunts a girl classmate on several occasions, calling her a stupid, f\*\*\* bitch
- Would it make a difference if the girl's parents shared with administration that their daughter cannot concentrate in class, is in constant fear of the boy's next verbal barrage and is consumed with thinking about how she will defend herself?

The background of the slide features several thin, curved lines in a light gray color, some solid and some dashed, creating a sense of motion or a stylized globe. On the left side, there is a dark blue rectangular area with a speech bubble-like shape at the bottom, containing the text 'Is this sexual harassment?'.

Is this sexual harassment?

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

What is *actual*  
*knowledge*?

notice of alleged  
facts

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

# Am I on notice of sexual harassment?

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

# Am I on notice of sexual harassment?

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

# Am I on notice of sexual harassment?

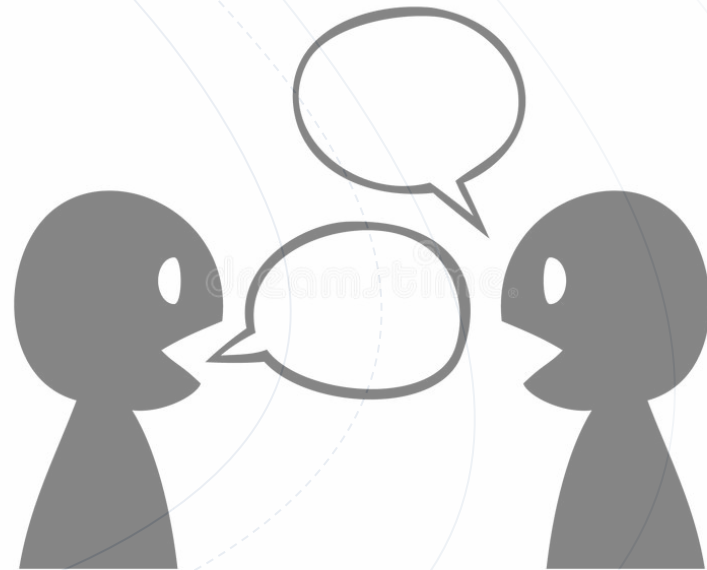
- Student tells bus driver he doesn't want to sit next to another student because she keeps hugging him?


# 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



▼ WHEN IN DOUBT,  
REPORT!





Who can  
I tell?

The Title IX Coordinator

# 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”

# 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

# 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



# Complaint Procedure

# 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”

# 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



# 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

## 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 prejudge 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



How is this  
process  
different from  
our UGP?

# Grievance Procedure

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

# Grievance Procedure

Areas of difference:

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

# 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

# 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

# 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



# 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 Report: Title IX

# Investigation Report

## General Outline Of Report:

### 1. Complaint:

- Date received and applicable procedures/timelines.
- Allegations in complaint.

### 2. Investigation:

- Documents or other evidence (*e.g.*, recordings, pictures) collected and reviewed.
- Interviews conducted (*e.g.*, staff, students, other involved individuals).

# Investigation Report

## 3. Summary:

- Summarize evidentiary determinations.
- If not relying on evidence, consider providing an explanation of what evidence has been excluded and why.
- Draft summary and evidence must be provided to the parties.
- 10 days to respond in writing, e.g.,
  - Should have interviewed this person, should have considered this fact, improperly giving too much significance to this fact, misstated this evidence, etc.

# 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: Title IX

# 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

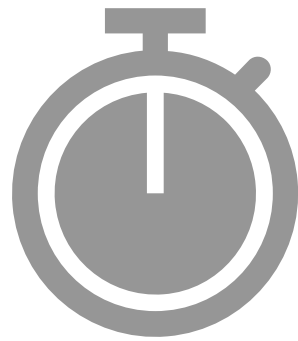
# The Decision

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



# The Decision



Provide to the parties  
simultaneously



Involve Title IX Coordinator  
to implement any remedies

## 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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# Investigation Requirements: Bullying

# BULLYING AND HARASSMENT

**1 in 3 U.S. students say they have been bullied at school, according to the Department of Health and Human Services.**

**There is no single risk factor for bullying; however lesbian, gay, bisexual, transgendered students or students with disabilities may be at increased risk.**

# Bullying Response

- Notify parents of all students involved in the alleged bullying and for discussing, as appropriate, the availability of social work services, school psychological services, other interventions, and restorative measures – consistent with federal and State student records and confidentiality laws;

# Bullying Response

- Procedures for investigating and addressing reports of bullying, including:
  - making all reasonable efforts to complete complaint investigation within 10 school days;
  - involving appropriate school support personnel and other staff with knowledge, experience, and training on bullying prevention;

# Bullying Response

- notifying the principal or school administrator or designee of the bullying report without delay; and
- providing parents of students who are parties to the investigation information about the investigation and an opportunity to meet with the principal or school administrator or designee to discuss the investigation, findings, and actions taken – consistent with federal and State student records/confidentiality laws;

# Bullying Response

- intervention that can be taken to address bullying which may include things like school social work or psychological services, restorative measures, social-emotional skill-building, counseling and community-based services;
- a statement prohibiting retaliation against anyone who reports bullying and the consequences and appropriate remedial actions for someone who engages in reprisal or retaliation;
- consequences and appropriate remedial actions for a person who falsely accuses another of bullying as a means of retaliation or bullying



# Bullying Response

- Note that “restorative measures” were expanded to mean a continuum of school-based alternatives to exclusionary discipline that:
- Are adapted to the particular needs of the school and community
- Contribute to maintaining school safety
- Protect the integrity of a positive and productive learning climate
- Teach students personal and interpersonal skills they will need to be successful in school and society
- Serve to build and restore relationships among students, families, schools, and communities
- Reduce the likelihood of future disruption by balancing accountability with an understanding of students' behavioral health needs in order to keep students in school
- Increase student accountability if the incident of bullying is based on religion, race, ethnicity, or any other category that is identified in the Illinois Human Rights Act.

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# Investigation Basics

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

- The solid foundation to guide application of the policy



# Investigation Basics

Ask open-ended questions

Who?

What?

When?

Where?

How Often?



Follow up until you are certain you have no more questions

# 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?



## Considerations in Evaluating Relevance

- A middle school student is accused by a fellow student of sexual harassment. The accuser is a student with a long discipline record, multiple in- and out-of-school suspensions, and has, on at least on one occasion, falsely accused another student of theft.

# 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.”

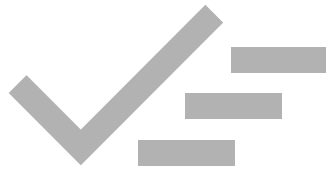


# General Rules For Conducting Interviews

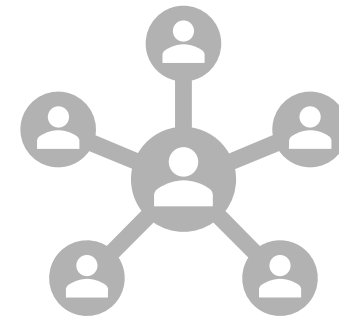
- Explain process
- Full, truthful cooperation is expected
- Discuss limits on confidentiality
- Explain that you are only interested in information in which they had first-hand knowledge; the interviewee should not provide answers based upon rumor or received from a third party
- Remind the interviewee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



# 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.

# A Note on Due Process



- Both parties must be given equal opportunity to inspect and review evidence obtained in the investigation
  - Is this embedded in the investigation process?
  - 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?

# 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.

# 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.



# 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

QUESTIONS?



**ECB&S**

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