

# Title IX



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# Laws And Policies

- Title IX
- Title VII
- The ADA
- IDEA
- State laws mirroring the federal laws
- Policy 249
  - Bullying/Cyberbullying
- Policy 103
  - Nondiscrimination
- Policy 103
  - Vol IV 2020
- Policy 248
  - Unlawful Harassment
- Policies 348 and 448
  - Harassment relating to employees



# Read the Policies

- Keep hard copies handy
- There are specific procedures set forth
- There are forms for completion
- Procedure is dependent on which policy violation is being investigated



# Title IX (Policy 103 Vol IV 2020)

- Specifically prohibits gender discrimination in various forms as defined in the policy
- Protects all students and staff no matter the individual's gender identity
- Title IX is an equal access statute



# Title IX Definitions

- Prohibits discrimination on the basis of sex/gender including sexual harassment
- Definition of Sexual Harassment -- Conduct on the basis of sex
  - Quid Pro Quo – School employee conditions education benefit on participation in unwelcome sexual conduct
  - Unwelcome conduct that a reasonable person would determine is so severe, pervasive, **and** objectively offensive that it effectively denies or adversely impacts equal access to school programs
  - Sexual assault, dating violence, domestic violence or stalking



# Where Did The Conduct Occur?

- Schools must investigate and respond when sexual harassment occurs in any school related activity including any location, event or circumstance over which the school exercised substantial control over both the respondent and the context in which the harassment occurs.



# First Step

- Always report any complaint, claim or incident where discrimination or sexual harassment is alleged



# Where to Report

- Director of Secondary Education is the Compliance Officer for complaints about student conduct or affecting a student
  - Under Policy 103, building principals and assistant principals are delegated responsibility for investigation of complaints of student conduct
  - Under Policy 103 Vol IV 2020, the Compliance Officer is charged with investigating a complaint that alleges harassment on the basis of gender
  - Compliance officers have discretion to delegate investigations in other circumstances as well
- The Director of Elementary Education is the Compliance Officer for complaints about curriculum, programs, activities offered by the District
- The Director of Human Resources is the Compliance Officer for complaints regarding an employee's conduct





# Why does this matter?

- The school district can be liable for significant monetary damages if the District is found to have been deliberately indifferent to sexual harassment!



# Deliberate Indifference

- Actual notice - someone who had authority to address alleged discrimination and to institute corrective measures was aware of the alleged harassment
  - Teacher
  - Counselor
  - Coach
  - Principal/Assistant Principal



# “Aware of”

- Witnessed event
- Was told about the event



# Deliberate Indifference

- Failed to respond in a reasonable manner
- Failed to report
- Failed to investigate
- Failed to implement measures designed to prevent future recurrence, protect complainant
- Failed to implement measures designed to allow complainant to participate in programs



# Doe v. North Penn School Dist.

## Case 2:20-cv-05142 (10/22)

- Teacher saw sexual contact – assumed it was consensual and reprimanded both – 6<sup>th</sup> grade
- After second incident – no report to Title IX Coordinator, no investigation, no safety plan developed, no supports
- Complainant's parent requested transfer to another middle school
- Upon return to HS, continued assaults



# Doe v. North Penn

- Numerous other girls complained about inappropriate conduct of same respondent
- No training as required under Title IX
- Teachers were not trained in their responsibilities
  - Not enough to ask them to review policies on their own
  - Must inform them of the procedure



# What makes Title IX Different?

- Limited to allegations of sexual harassment and/or gender discrimination
- Complainants and Respondents both have similar rights.
- Respondent is presumed “not responsible”
- Supportive measures must be offered to both



# Protection Of Both The Complainant And Respondent

- But...if it is determined that there is a material risk of harm to the complainant by the accused, then an emergency removal can be requested
- Prohibition of Retaliation





# Supportive Measures

- Must be designed to restore or preserve equal access to education
- Protection of Complainant without burdening the respondent
  - i.e. – Counseling, course adjustments, changing schedules, restriction on contact, increased security, shadowing
  - Emergency removal – immediate threat to health, safety or welfare of any student or other individual
    - But respondent/accused must be afforded due process



# What makes Title IX Different

- The draft investigation report must be sent to both parties before being sent to the decision maker
- Both parties may submit additional information or request additional investigation
- The decision maker cannot be the investigator



# What makes Title IX Different

- There is an appeal process from the decision



# Who is responsible?

- For reporting – everyone!
- Teachers/staff/students to Employees, Principals/AP
- Principals to Title IX Coordinator
- It is the decision of the Title IX Coordinator whether a case involving a claim of sexual harassment/discrimination should be investigated as a Title IX case or under a different policy



# ALL EMPLOYEES MUST REPORT SEXUAL HARASSMENT

- If the employee witnesses action
- If an employee learns from someone else such as a student that conduct may be sexual harassment
- If an employee learns from a parent about an incident
- The report first goes to the principal who must report to the Title IX Coordinator
- The Coordinator determines whether the conduct falls within a definition of sexual harassment or sexual violence



# Who is responsible?

- For Investigation? It depends....
  - The Title IX Coordinator may delegate the investigation to another administrator or outside individual
  - The Title IX Coordinator may investigate



# Who is responsible?

- For Decision –
  - Superintendent

BUT

Can not be the Investigator



# Who is responsible?

- For Decision after an appeal – Solicitor or Outside Counsel?





# Notice

- Must be provided to all known parties
- Content of the notice is contained in Title IX policy but generally:
  - Complainant and respondent may have advisors, including attorneys, who may inspect and review evidence
  - Notice of the penalty for making false allegations or providing false information



# Notice

- What procedure will be followed
- Offer of Supportive Measures
- Request for Information
- Timeline for completion
- Copies of Policies that may apply to alleged conduct should be attached
- Retaliation prohibited!



# Supportive Measures

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# Confidentiality

- To the extent possible, must maintain confidentiality at all stages of the matter
- Complainants and respondents must be advised not to disclose information about the investigation
- FERPA and other statutes mandate confidentiality of records reviewed to the extent possible



# Confidentiality

- But...Under Title IX, the complainant and respondent have the opportunity to review all evidence collected during the course of the investigation and the draft investigation report.



# Formal Complaint Process

- Must be instituted when complainant or parents file a formal complaint
- Title IX coordinator may also institute
  - Depends on whether supportive measures are adequate; or
  - If disciplinary action might be required if the allegations are believed to be true



# Delay of Investigation

- There are timelines for completion of the investigation and issuance of the report
- May be delayed if request received from law enforcement



# Informal Resolution

- After formal complaint filed but before a determination has been made, can offer but not require informal resolution
- Requires written consent by parties
- There are timelines
- Options
  - Mediation
  - Restorative practices
  - Facilitated discussions





# Students with disabilities

- Must notify Director of Special Education
- May require accommodations during investigation



# Other referrals

- Childline
- Law Enforcement



# Investigation

- Begin investigation immediately
- Make a checklist of steps and follow
  - Procedure is dictated by policy



# Interviews

- Draft a set of questions
- Ask the questions and any followups
- Don't allow parents/advisor to do the talking for the witness
- After the interview, prepare a summary of the information and send it to the witness.
- Ask the witness to confirm or correct your summary and to sign document



# Conduct An Investigation (cont.)

- Ask the complainant/respondent/parents/advisors to produce any and all physical evidence such as letters, notes, anecdotal records, correspondence, recordings, photographs, social media posts etc.
- Where the complainant is a student, review education records, including discipline records, health records, academic records and student schedule
  - If an employee, review personnel file



# Investigation

- Review the records of the respondent whether education records or employment records
- DO NOT ASK WITNESSES TO WRITE OUT STATEMENTS
- Repeatedly advise all parties that retaliation in any form is prohibited



# Investigation

- May not ask questions or ask for evidence about the complainant's sexual history
  - Unless to prove someone other than respondent committed the alleged conduct; or
  - If respondent's defense is consent



# Document The Investigation:

Summarize the Complaint and Investigatory Steps

- Prepare and submit to the Compliance Officer a written report within 15 days of completion of the investigation and not later than 60 days after the initial complaint is made
- Summarize the complaint
  - Who/what/when/where/how
- Summarize the steps you took in investigating the complaint
- Summarize the relevant documents
- Summarize the interviews





# Document The Investigation:

## Make Findings of Fact

- State simple, separately enumerated findings of fact
- Assess the credibility of the witnesses
- Describe why a witness is credible or not credible
  - Did other witnesses corroborate their information, or contradict it?
  - Did other evidence gathered in the investigation, documentary or otherwise, corroborate the witness's information?
  - Is the witness's testimony biased or self serving?



# Conclusions

- Do the facts support, by a **preponderance of the evidence**, that a violation of District policy has occurred?
  - More likely than not
- State the applicable policy and why the findings of fact support your conclusion that a violation of District policy did or did not occur
- Make a recommendation regarding an appropriate remedy
- Remember that the accused and the victim are entitled to know the results of the investigation, subject to FERPA and other confidentiality considerations
  - This communication will depend on the circumstances of the case.



# Input from the parties

- Before issuing an investigative report, the investigator must send to each party and the party's representative, the evidence they may inspect in electronic or hard copy format
- Provide 10 school days for the parties to submit a written response
- Consider the written response before writing the investigative report



# Delay of Investigation

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- May be delayed if request received from law enforcement



# Written Determination

- The Investigator does not make the final determination as to whether a policy or law has been violated – the Decision Maker is responsible for this.
- The Investigation Report should contain recommendations regarding whether there has been a violation of policy and, if so, what penalty should be assessed
- May not be finalized or issued no less than 10 days after the investigator has provided a copy of the investigative report to all parties
- Decision maker must give each party the opportunity to submit relevant written questions that a party wants to be asked of any party or witness
- There are timelines in the Procedures for submission of the questions and response to any question



# Written Determination

- Decision Maker must make findings of fact and conclusions regarding violation of the District policies
- Disciplinary Sanctions
- Remedies designed to restore or preserve equal access to the complainant if the allegations are determined to be founded by a preponderance of the evidence
- A statement regarding the appeal rights of the parties and the procedure



# Appeal Process

- Scope of appeal is limited to a claim there was:
  - Procedural irregularity that affected the outcome
  - New evidence that was not reasonably available at the time of the decision
  - The investigator or decision maker had a conflict of interest

**APPEAL**



# Appeal

- There are timelines for filing an appeal
- There are procedures and timelines relating to the appeal process
- On appeal, the decision maker will be different - Superintendent





# Record Keeping

- Records of the investigation must be kept for minimum of:
  - 7 years after conclusion of all proceedings or
  - If the complainant or respondent is a minor, until the statutes of limitations for the filing of any civil action after the minor attains the age of 18 have lapsed



# What Records Must Be Kept

- Every document, piece of evidence, video or audio recording accumulated during the investigation, informal resolution, determination and appeal
- A copy of all materials used to train the Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process

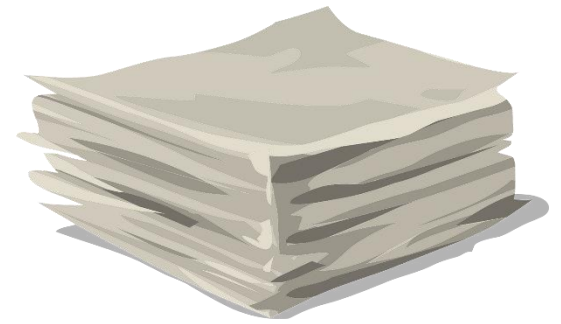


# Training

- The federal Office of Civil Rights has free webinars that will provide training
  - <https://youtu.be/TdfT5R8ibm4>
- You must be trained
  - Investigation
  - Rights
  - Definitions
  - Procedures



# Records



- Records of District action including supportive measures provided to complainant or why not
- Records showing that it was not deliberately indifferent and that District has taken measures to restore or preserve equal access to the education program or activity



# Office of Civil Rights

- Guidance and training materials are free
- Webinars are free and provide good training on Title IX and its complicated procedures and requirements
- <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/crt-ta.html>
  - Has links to many webinars, tutorials, training materials, regulations



# OCR Webinars

- [OCR Webinar: Title IX Regulations Addressing Sexual Harassment. - YouTube](#)
- [The First Amendment and Title IX: An OCR Short Webinar - YouTube](#)
- [OCR Short Webinar on How to Report Sexual Harassment under Title IX - YouTube](#)
- [OCR Webinar on New Title IX Protections Against Sexual Assault - YouTube](#)
- [OCR Webinar: Title IX Regulations Addressing Sexual Harassment. - YouTube](#)
- [OCR Short Webinar on Sexual Violence in Public Schools - YouTube](#)



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