

Title IX Training: Running an Investigation

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Introductions

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Title IX Overview & Legal Requirements



Webinar Highlights

- Actual Knowledge
- Deliberate Indifference
- Conflict of Interest
- Sexual Harassment- 3 Prongs
- Sexual Assault, Domestic Violence, Stalking
- Equal Access
- Due Process
- Formal Complaint, Process and Procedures
- Timelines



Formal Complaint Triggers the Investigation

- Formal complaint triggers responsibility to conduct an investigation that complies with the district's grievance procedure
- Upon receipt of a formal complaint, the Title IX coordinator will provide a written notice to parties explaining basic rights during the process and will assign an investigator



Procedural Requirements

- Respondent is presumed not responsible for conduct, and a determination will not be made until the conclusion of the grievance process
- Disciplining Respondent for TIX conduct or conduct directly connected to the TIX conduct = Retaliation.
- Both parties must have equal opportunity to present witnesses and evidence



Procedural Requirements

- Parties may have an advisor of their choice
- Advisor may be an attorney, but doesn't have to be
- Parents of minor students are not advisors, but do have the right to be there for their child



Procedural Requirements

Parties

- have the opportunity to inspect and review evidence collected during the investigation
- should sign a non-disclosure agreement, which does not restrict either party's ability to discuss the allegations or gather and present evidence



Expanding the Investigation

If, during the course of the investigation, additional allegations are brought forward that were not included in the initial notice, alert the Title IX coordinator, who will:

- provide written notice of the additional allegations to the parties
- determine the course of action for the investigation of the addition allegations



Timelines

- You must meet the timelines set out in the district's policy
- The investigation must be reasonably prompt (specific number of days for completion of the process must be established)



Timelines

- If there is a temporary delay for good cause, provide written notice to both parties explaining the reason for the delay
- Coordinator determines delay
- School administrative needs DO NOT create good cause for a temporary delay



Case Study Exercise



Small Group Review Case Study

1. Identify the allegations from Sally.
2. Which prongs for the S.H. definition are implicated?
3. Identify the allegations from Nicole.
4. Which prongs for the S.H. definition are implicated?
5. What evidence do you need?
6. Who must be interviewed?
7. Who else would you want to interview?
8. Brainstorm questions that investigators need to ask Sally, Nicole, and Drew.
9. Brainstorm questions for other witnesses.
10. What other evidence would be useful, if it exists? Documentary? Video?



Investigation of Title IX Formal Complaint



Investigator Reminders

- **Be impartial and avoid bias**
- Presume that the respondent is not responsible for the alleged conduct, but do not let this limit your investigation
- Do not make assumptions about who can experience sexual harassment
- Follow the district's grievance procedure and maintain a list of procedural steps that have been accomplished



Investigations

Gather as Much Information as Possible



Who Investigates?

- Must be trained on Title IX regulations
- May be the Title IX Coordinator
- May not be the Decision-maker
- Can be a third party hired for this purpose
- Must not have a conflict of interest



There Can Never Be Too Much Planning

- Map out a plan for your investigation
- Understand the allegations
- Understand the definition of sexual harassment so that you know what elements must be established



There Can Never Be Too Much Planning

- Whom will you interview?
- What documents must you see?
- Do you need student/staff records?
- Do you need to ask IT to run a server search?
- Do you need to get recordings from surveillance cameras?
- Do you need a police report?
- Do you need to gather other documentation?



Obtain Necessary Evidence

- Do not require or rely on the parties to anticipate and provide you with the evidence you need
- You may not require a party to provide evidence (documentary or verbal) that would be legally protected under attorney-client privilege, doctor-patient privilege, or spousal privilege



Obtain Necessary Evidence

- If the parties do want to provide otherwise privileged information, you must obtain written, voluntary consent (of parent or adult student) allowing the district to include that evidence
- **Even if the school/district has the medical evidence, it may not be used in the investigation without consent**



Activity-Breakout Group

Review case study

Create the investigation plan



Break for 15



Pre-Interview

- Know the timeline to conclude investigation
- Know applicable polices and legal statutes that apply (e.g. sexual harassment; sexual assault)
- Know police involvement and how that may effect the timeline
- Reference your checklist!



Pre-Interview Scheduling

- Review the formal complaint and understand the specifics of the allegation(s) and details of date(s), time(s), location(s)...
- For all interviews, provide written notice of interview: date; time; location; participants; and purpose of any investigation activity that requires a **party's presence**—provide notice with enough time for the party to prepare to participate



Pre-Interview Scheduling

- Minor students (under age 18): Parents stand in the shoes of the student; however, ensure student adequately understand the process
- Usually best to begin with the complainant, but be strategic in scheduling interviews
- Leave enough time between interviews so you don't have to rush



Pre-Interview, cont'd

Consider:

- Age
- Disability (special education/504)
- Severity
- Order
- Advisors—adult, lawyer, family friend



Pre-Interview, cont'd

- Parents may be present for witness interview of child
- Ground rules for advisors—should be consistent; offer to both
- Language processing
- Interpreter



Pre-Interview: Outlining Questions

- You've identified the allegations and understand what information will be needed to make a determination, so use that to guide interviews
- Plan your interview outlines
 - Go with the flow
 - To the extent reasonable, ask both parties the same questions and then allow the interview to take you down different roads
 - Ask witnesses the same or similar questions



Pre-Interview, cont'd

- Character witnesses
- Recording
- Beware of own bias



<https://www.youtube.com/watch?v=5mwn-WhsBfM>



Bias Tests



Style

Qualities of the interviewer:

- only seek the truth
- be honest
- have integrity
- listen and evaluate responses
- remain emotionally detached
- be authentic



Style

The purpose is to gather as much information as possible.

Guidelines:

- Avoid putting words in mouth of witness
 - ASK: “How did _____’s behavior make you feel?”
 - DON’T ASK: “Did _____’s behavior upset you?”
- Avoid “why” questions
- Avoid conclusion questions
- Avoid compound questions



Phases of an Interview

- Introduction
- Questioning
- Summation
- Closure



Phase 1: Begin Interview

- Summarize Title IX
- Explain process
- Share purpose
- Give the organization's need
- Establish credibility
- Explain investigator role



Phase 1: Begin Interview

- Sense of formality
- Reassure no retaliation for participating
- Caution confidentiality to both parties and the district
- Put interviewee at ease
- Develop rapport
- Remember you are wearing your investigator hat



Phase 1: Expectations

Explain expectations

- Recording by parties
 - you can decide whether you will allow or not
 - realistically can't control
- Tell the truth
- What the rules are for advisors



Phase 1: Expectations

Explain expectations

- If interviewing virtually, confirm who is present with them
- Explain they don't have to provide evidence protected by privilege
- Explain they may not threaten, intimidate, or harass anyone who participates in this process



Phase 2: Questioning A Five-Step Process

- Ask
- Perceive response
- Evaluate response
- Drill down for details
- Record response accurately, with as many quotes as possible



Questioning Pitfalls

- Arguing with what is presented
- Becoming angry
- Showing personal prejudice
- Lying
- Hurrying
- Interrupting
- Making assumptions
- Being dismissive
- Making promises



<https://www.youtube.com/watch?v=1G2U73V4Lul>



Questioning Pitfalls

- Losing track of elements of definition that you must have evidence for
- Leading questions: “When you touched her arm, did you”
- Degrading
- Putting too much value on inconsistencies
- Getting hung up on irrelevant information
- Accepting one-word responses
- Phrasing things negatively



Lunch Break



Questioning Techniques

- Listen actively
 - Paraphrase
 - Repeat back
 - Read notes
 - Brief statements: “Yes,” “Go on,” “I see”...
 - Body language: nod; eye contact...
- Give feedback on quality responses



Questioning Techniques

- Monitor body language
- Take notes
 - Slows process
 - Provides reflection and reference
 - Get an answer



Questioning Techniques

- Systematic order—timeline of events
- One question at a time
- Wait for a response—do not feel need to fill the silence
- Ask in another way later
- Clarify fact from inference
- Use transition to obtain non-disclosed information



Open-Ended Questions

- “Explain what happened third hour”
- “What are some experiences you have had with...”
- Paraphrase/summarize back
- Start broad and narrow down
 - “Tell me more about...”
 - “What are some other details?”

<https://www.youtube.com/watch?v=2QVxg-QgmOU>



Open-Ended Questions

Hit a brick wall

- Appeal to senses
 - “Do you remember a smell?”
 - “How did that make you feel?”
 - “Did you hear any sounds?”
- Go back to timeline—fill in the blanks
- Take a break, get a water, “take a call”



Free-Flow Responses

- Let them share
- Get detail
- Minimal interruption
- Limit digression



https://www.youtube.com/watch?v=_UGQx0VCLpQ



Phase 3: Summation of the Interview

- Ensure the pertinence and accuracy of information
- Ask if there is anything else
- Every time more information is given, ask again if there is any else
- Ask if there are others you should to speak with
- Ask for them to share relevant evidence/
documentation



Phase 4: Closure of the Interview

- Reassure regarding any concerns interviewee raised
- Leave door open for another meeting
- Offer to contact later if something comes to mind
- Inform you may be in touch if you need more information
- Thank and express empathy for their time and cooperation
- Provide contact information



Phase 4: Complainant & Respondent

- When you expect concluding interviews and have the evidence sent to them
- Give non-disclosure agreement
- May sign now or return later, before evidence disclosure



Investigation Tips

- Written documentation of all communications
- Update the complainant and respondent periodically as to progress/status (not insight or details of the investigation)
- When possible, copy both parties **separately** on responses or inform the other party
- The need to delay: Notify the Title IX coordinator who will notify both parties



Investigation Tips

- Report any child abuse information not previously reported directly to DCS
- Report possible crimes to Title IX coordinator and law enforcement (e.g. death threat, photos)



Investigation Tips

- Report to the Title IX coordinator:
 - Supportive measures are needed or need changes
 - Additional allegations are brought forward that were not included in the initial notice
 - New mandatory or optional dismissal comes to light
 - Informal resolution—if wanted by either party



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Timelines

- You must meet the timelines set out in the district's policy and the law
- The investigation must be reasonably prompt (specific number of days for completion of the process must be established)



Timelines

- If there is a temporary delay for good cause, provide written notice to both parties explaining the reason for the delay
- School administrative needs DO NOT create good cause for a temporary delay



Good Cause Delay

Non-exhaustive list of reasons that may create a good cause delay in completion:

- Concurrent law enforcement activity
- Witness availability
- Illness
- Unavailability
- School breaks
- Absence of a party
- Availability of a party's advisor
- Need for language assistance or ADA accommodations



Evidence/Documentation

- Attendance records
- Discipline records
- Class schedules
- Medical or counseling information
- Social media
- Screenshots
- Videos
- Compromising evidence(nude photos/videos) should be redacted and summarized



Evidence/Documentation

- Emails
- Technology records
- Police reports
- Photos
- Reasonable standard

Not every stone needs to be turned—but the pertinent ones do



Sexual History

The complainant's sexual predisposition and prior sexual behavior are not relevant, unless:

- they are needed to prove that someone other than the respondent committed the conduct alleged
- there are specific incidents of the complainant's prior sexual behavior with the respondent to prove consent



Break



After the Investigation has Concluded



Evidence/Relevance

- Not your personally created reference materials to complete the report (e.g. personal notes; interview recordings)
- Information that will go into the report for the decision-maker
- Statements
- Documents
- Records



Redaction

- **Check** with Title IX coordinator regarding redaction of witness names
- **Must redact** information protected by privilege unless there is written consent
- **May** redact information in the evidence that is not directly related to the allegations
- **May not** redact confidential information that is directly related and relevant
- **Redact** disability information related to a 504 Accommodation Plan or an Individualized Education Plan, but give summary of relevant facts



Evidence-Sharing

Non-disclosures signed and returned

- Send the copy of the signed NDA with evidence
- Provide parties an equal opportunity to inspect and review (with necessary redactions) evidence gathered as part of the investigation that is ***directly related*** to the allegations raised in the formal complaint; include evidence on which you do not intend to rely in drafting your report



Evidence-Sharing

- Send the evidence to the parties in an electronic and/or hard copy format and allow the parties 10 days to submit a written response
- Send to both parties at the same time
- May begin **drafting** report



Evidence-Sharing

Non-disclosure agreement **not** signed or returned

- Inform Title IX coordinator
- Provide opportunity for physical review of evidence
- No copies or photographs of evidence permitted



Additional Evidence: Post-Evidence Sharing

The district's Title IX coordinator will decide whether parties must provide all evidence PRIOR to the disclosure of evidence for review has been provided by the investigator OR whether to allow parties to provide additional evidence after disclosure evidence has been shared



Review Written Responses

- Consider the written responses to be evidence provided by the parties
- Consider additional post evidence shared after disclosure if allowed

Questions submitted should be given to the decision-maker to manage



Report

- All evidence directly related whether relevant or not.
- The more information, the more comprehensive, the more transparent



Report

- **Be thorough**
 - Include observations of witnesses—can report on credibility assessment
 - Details and witness observations
 - This is the only document the decision-maker will have; if you were the decision-maker, what would you **NEED** to know?
- Decision-maker should not need to contact investigator for clarification



Decision-maker

- Preponderance—50% + a feather
- More probable that it happened than not
- Plausibility
- Consistency
- Validity



Report Submission

- Email to Title IX coordinator
- Email separately (read receipt) to both parties and copy Title IX coordinator on each and/or
- Mail hard copies
- Send at same time



FYI...

Procedurally—After Report Submission

- Each party has at least 10 days to review the investigation report and provide a written response; district can decide whether to allow additional time or limit it to 10 days
- Decision-maker will consider the written response in addition to the investigation report



FYI...

Procedurally—After Report Submission

- TIX Coordinator may choose whether the ten days should be business days, calendar days, or school days.
- Must give at least 10 days, may give more as long as grievance process can still be concluded within timeline set forth in grievance procedures.



Procedurally—After Report Submission

The district will not hold in-person hearings; however, after the investigation report is completed and before a determination is made, the parties must have the opportunity to review the investigation report and submit written, relevant questions to the decision-maker that the party wants asked of the other party or witnesses



Procedurally—After Report Submission

- Each party may submit relevant questions to the decision-maker
- If a question is excluded by the decision-maker, he/she must explain why the question is not relevant
- Each party will be provided answers to its questions and then have a limited opportunity to ask limited follow-up questions



Analysis of Investigator Reports

- Evaluation Investigation Report A
- Evaluation of Investigation Report B



Role Plays

- Ideal-3
- Shy Student-3
- Non-cooperative Student-3
- Staff-3
- Self-Inserting Parent-4
- Lawyer Present-4
- Special Needs Student-4



Interviewing Strategies

- Paraphrase; repeat back
- Read notes aloud
- Brief statements: “Yes,” “Go on,” “I see” ...
- Give feedback on quality responses
- Body language: nod; eye contact
- Monitor interviewee body language;
- Timeline of events
- One question at a time
- Wait for a response
- Ask in another way later
- Clarify fact from inference
- Open ended questions
- Appeal to senses;
- Take break; get water; “take a call”



Questions/Comments/Concerns



Resources for Review

- [Summary of Major Provisions of the Department of Education's Title IX Final Rule](#)
- [Questions and Answers on the Title IX Regulations on Sexual Harassment \(July 2021\)](#)
- [TIX Federal Register](#)



Resource Forms & Templates

- Investigator Checklist
- Interview Notice
- Summary of Interview Template
- Medical and Counseling Consent
- Non-Disclosure Letter Agreement Template
- Investigative Report Template

