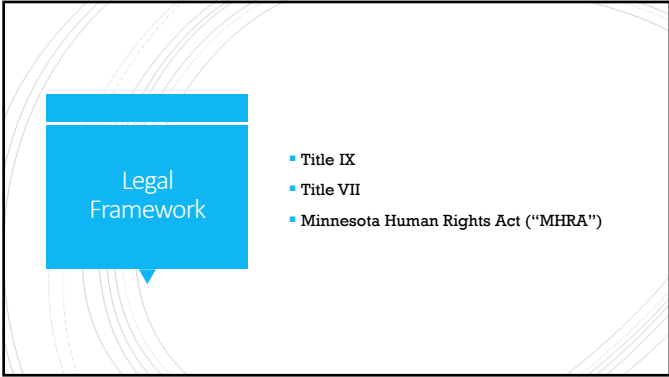


TITLE IX OVERVIEW AND TRAINING

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November 6, 2020



Legal Framework

- Title IX
- Title VII
- Minnesota Human Rights Act (“MHRA”)



Scope of New Regulations

- General discrimination remains unchanged
- Defines sexual harassment
- Applies to employees and students
- Same process in the event of retaliation



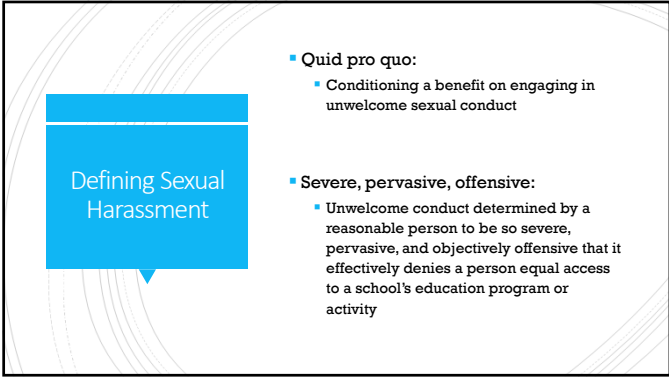
Title IX Personnel

TITLE IX COORDINATOR

- Expanded duties
- Oversees implementation

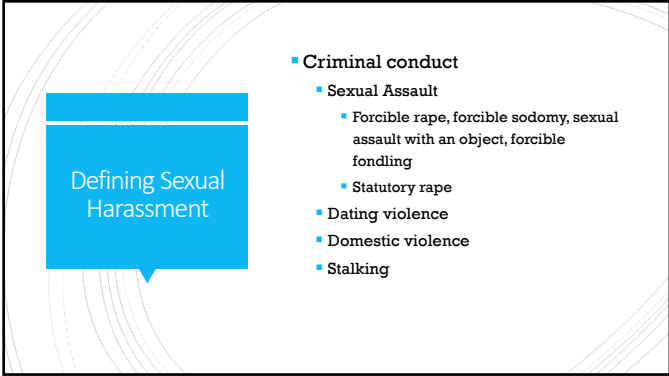
INVESTIGATORS, DECISION-MAKERS

- Requirement to not demonstrate bias
- Receive specific training



Defining Sexual Harassment

- **Quid pro quo:**
 - Conditioning a benefit on engaging in unwelcome sexual conduct
- **Severe, pervasive, offensive:**
 - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a school's education program or activity



Defining Sexual Harassment

- **Criminal conduct**
 - **Sexual Assault**
 - Forcible rape, forcible sodomy, sexual assault with an object, forcible fondling
 - Statutory rape
 - Dating violence
 - Domestic violence
 - Stalking

Where does Title IX apply?

- "Locations, events, or circumstances over which the recipient exercised substantial control over both the [subject of a complaint] and the context in which the sexual harassment occurs..."
- Can include online
- In the U.S.

Grievance Process

- Equal treatment
- Objective evaluations of relevant evidence
- Investigations by trained, unbiased individuals
- Presumption of no responsibility
- "Reasonably prompt" time frames
- Identify possible disciplinary sanctions
- Standard of evidence
- Describe appeal procedure and bases
- Supportive measures for complainants and respondents
- No requirements to waive legally recognized privilege

Reporting Allegations

- Any person to Coordinator
- May report in person, by mail, by telephone, by e-mail, or other means
- Any time
- Parents may file on behalf of minor child

Notice of Sexual Harassment to District

- Actual knowledge
- An elementary or secondary school is deemed to have *actual knowledge* of alleged sexual harassment of **any employee** has notice of the allegations

Responding to Allegations

- Prompt and not “deliberately indifferent”
- *Only* if the school’s response is “clearly unreasonable in light of the known circumstances.”

Formal Complaint

- Filed by complainant (alleged victim)
- Complainant must participate or attempt to participate in education program or activity
- Title IX Coordinator may also file formal complaint (with or without Complainant’s agreement)
- If formal complaint filed, must follow grievance procedure

Complaints other than Formal Complaints

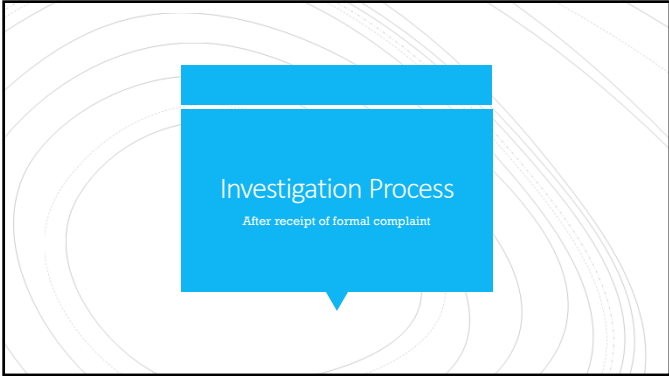
- Require response, but not grievance process
- Deliberate indifference
- If district has actual knowledge, Title IX Coordinator must contact complainant about supportive measures and discuss filing complaint

Supportive Measures

- Non-disciplinary, non-punitive individualized services offered as appropriate
- Before or after a formal complaint is filed or in situations where not formal complaint is filed
- Deter sexual harassment and restore or preserve equal access
- Confidential to the extent possible
- Title IX Coordinator responsibility

Examples of Supportive Measures

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- Mutual restrictions on contact between the parties
- Increased security and monitoring of certain areas of campus
- Other similar measures



Investigation Process
After receipt of formal complaint



Obligation to Investigate or Dismiss

DISMISS IF:

- The conduct alleged in the formal complaint would not constitute sexual harassment, as defined above, even if proven or
- Did not occur against a person in the United States

OTHERWISE, INVESTIGATE



Written Notice of Investigation

- Grievance procedures, including informal resolution
- Notice of the allegations, including:
 - Identities, description of conduct, date and location
- Sufficient time to prepare a response before initial interview

Written Notice of Investigation

- Parties may have advisor of their choice
- Right to inspect and review evidence
- Any provisions of code of conduct prohibiting false statements
- Respondent presumed not responsible

Elements of Grievance Process

- District bears burden of proof
- No access to medical or psychiatric records without consent
- Both parties have opportunity to present fact and expert witnesses, and other evidence
- **No prohibition on talking to others**

Elements of Grievance Process

- Same opportunity for both parties to have others present during proceedings
 - Advisor may be attorney, but not required
 - No limitations on who advisor is, but may impose equal limitations on the participation of the advisor in the process
- Reasonable, advance written notice for any meeting:
 - date,
 - time,
 - location,
 - participants,
 - and purpose

Elements of Grievance Process

- Equal opportunity to review evidence
- Both parties have at least ten days to review evidence and submit written response before investigation report is completed
- Both parties have at least ten days to review investigation report and submit written response before determination is made

Investigation

Data Privacy

- Cannot use FERPA as reason for failure to provide required written notice to parties

Decision-maker's Role

- Decision-maker (not investigator) makes "determination of responsibility"
- Decision-maker is not Coordinator
- Only requirements are impartiality and training

Exchange of Written Questions

- Parties ave the opportunity to submit written questions to any other party or witness
- Decision-maker determines if questions are relevant and time for responding
- May include limited follow-up

Informal Resolution

- Must be voluntary
- Any time before decision, subject to certain requirements
- **May not be used if allegation is employee sexual harassment of student**

Written Decision

- Must include:
 - Allegations
 - Procedure
 - Findings of Fact
 - Conclusions
 - Result of each allegation
 - Procedures for appeal

Appeals

- Any party from determination of responsibility or dismissal
- Three identified grounds, all must affect outcome
- Decision-maker on appeal
 - Someone other than investigator, initial decision-maker, or Coordinator

Removals During Grievance Process

- Not prohibited, if:
 - Individualized safety and risk analysis
 - Determination that there is any immediate threat to the physical health or safety of person based on allegations
 - **Notice and opportunity to challenge after removal**
- Must also comply with IDEA, Section 504, ADA, and Pupil Fair Dismissal Act
 - Given the minimum timelines required by the regulations, suspension for entire period of investigation is unlikely

Mandatory Training Topics

- ✓ Definition of sexual harassment
- ✓ Scope of education programs and activities
- ✓ How to conduct investigation and grievance process
- ✓ How to serve impartially by avoiding prejudgment of facts at issue, conflicts of interest, and bias
- ✓ Determining relevance of questions and evidence
- ✓ How to prepare investigative report

Additional Requirements

- Post training materials on website
- Maintain materials for seven years
- Training for all employees
 - Not required
 - Recommended because of “actual knowledge” standard
 - Need not be extensive

Retaliation

- Prohibition on “intimidating, threatening, coercing, or discrimination against anyone for the purpose of interfering” with Title IX or because of a complaint or participation
- Complaints of retaliation follow grievance process

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Recordkeeping

- For every incident that requires a response, must maintain records of:
 - Complaint
 - Any consequences
 - Remedies
 - Supportive measures
- Seven year retention requirement, including records of every:
 - Investigation
 - Dismissal
 - Appeal
 - Informal resolution

Investigation Report

- Procedural steps and summarize facts
- Inculpatory and exculpatory evidence should be referenced
- Describe conduct, not conclusions
- May include recommended findings of fact and conclusions

Investigation Report

- Unless evidence is irrelevant, the investigator should summarize the evidence in the report.
- Components
 - Summary of allegations
 - Summary of evidence
 - Findings of fact for each allegation

Time to Review

Written Determination

- Identify allegations
- Procedural steps
- Findings of fact
- Conclusions applying policies to facts
- Result of each allegation and rationale
- Appeals
- Provide decision to parties simultaneously

Evaluating Evidence

- **General Relevance Standard**
 - Used to exclude evidence or questions
 - Federal Rule of Evidence 401
 - Is the fact more or less likely?
 - Does the fact matter to the outcome?
- **Prior Sexual Behavior**
 - Rarely will be relevant
 - Only to show someone else committed the conduct or consent
 - Consent likely not relevant to most K-12 investigations

Burden of Proof

- School district's burden to gather evidence
- Presumption that respondents are not responsible
- Refusal to answer questions cannot factor into decision

Standard of Evidence

- Preponderance of the evidence
 - More likely than not

Impartiality:
Bias

- Do not let bias affect outcomes
- Implicit bias
- Complainants and Respondents generally

Impartiality:
Credibility

- Inherent Plausibility
- Demeanor
- Motive to falsify
- Corroboration
- Past Record
- **None of the above factors are determinative as to credibility.**

Conflicts of
Interest

- If it would affect the individual's judgment, it's a conflict
- Avoid family, close friends, and close work relationships
 - Principal and assistant
 - Principal and student
- Financial conflicts

Avoid
Prejudging Facts

- Presumption that respondent is not responsible
- Receive all evidence and hear from all witnesses
- Base findings on the investigation, not generalizations
