

**TITLE IX SEXUAL HARASSMENT
TRAINING: THE FORMAL
GRIEVANCE PROCESS**

**Understanding the Formal Grievance
Process for Complaints Arising
Under Title IX**

(Investigators, Coordinator, Decision-maker)

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ROAD MAP

- Key Concepts
- Basic Procedural Requirements
- Informal Reporting
- Formal Complaint
- Preliminary Inquiry
- Informal Resolution
- Investigation
- Determination Regarding Responsibility
- Appeals
- Retaliation
- Recordkeeping
- Questions?

WHAT CONSTITUTES SEX HARASSMENT?

One of the most important terms you must understand as part of Title IX complaint process is what constitutes ***sexual harassment*** that would give rise to an investigation and potential disciplinary action.

Conduct that does not meet the definition of sexual harassment as defined in the regulations will still be addressed through other District policies.

THE DEFINITION OF SEXUAL HARASSMENT:

Sexual harassment is broadly defined as any of the following:

Quid pro quo harassment (an employee propositioning a benefit in exchange for sex or sexual favors).

Unwelcome conduct so severe, pervasive, and objectively offensive that it effectively **denies** an individual **equal access** to the District's education program or activity (hostile environment).

Sexual assault, dating violence, domestic violence, or stalking (as defined in the Clery Act/VAWA).

KEY CONCEPTS

The District has jurisdiction over claims of sexual harassment when such conduct occurs in its ***education program or activity***

- This includes all locations, events and circumstances over which the District exercised substantial control.

Actual knowledge of sexual harassment obligates the District to respond promptly and in a manner that is not ***deliberately indifferent***

If conduct is not covered under this definition, it can be addressed under other conduct policies.

Now, let's talk about the relevant parties to a potential Title IX grievance proceeding.

KEY DEFINITIONS TO KNOW

Complainant refers to an individual who is alleging to have encountered sexual harassment, and **Respondent** refers to an individual who has been reported as a perpetrator of sexual harassment.

The **Title IX Coordinator** is the official who coordinates the District's efforts to comply with Title IX requirements and handles most of the procedural communication with the Parties.

The **Investigator** is assigned to investigate allegations of sexual harassment.

The **Decision-maker** adjudicates the complaint, makes determinations of responsibility, and issues sanctions.

The **Appeal Officer** reviews appeals of the Decision-maker's determination and sanctions.

BASIC TITLE IX PROCEDURAL REQUIREMENTS

Treat the Complainant **and** Respondent *equitably*; Objectively evaluate all relevant evidence and Conduct the grievance process according to "**reasonably prompt**" time frames, using the preponderance of the evidence standard.

Title IX Coordinator, investigator(s), Decision-maker, or any person who facilitates an informal resolution process may not have a conflict of interest or bias and also must receive requisite training;

Presume that the Respondent is **not responsible** for the alleged conduct until a determination regarding responsibility is made (*e.g.*, avoid terms like "victim" or "survivor");

Inform of the range of possible disciplinary sanctions, remedies, and offer supportive measures;

Inform the parties of the procedures and permissible bases for appeals;

Protect evidence protected under a legally recognized privilege (i.e., attorney-client privilege), unless such privilege is waived;

Communicate with both parties simultaneously.

WHAT DOES IT MEAN TO TREAT THE PARTIES EQUITABLY?

Equitable = fair, balanced, and impartial, ensuring both parties have:

- ✓ Equal opportunity to participate in the process
- ✓ Equal access to evidence
- ✓ Equal right to present witnesses and information
- ✓ Equal access to an advisor
- ✓ Equal notice of meetings, hearings, and outcomes

The process rights must be equal, but the outcomes and supports may differ.

REPORTING SEX HARASSMENT

Now that we have an understanding of the key terms and procedural expectations of the Title IX process, let's discuss how a Title IX sex harassment grievance process.

First is the initiation of the grievance: THE COMPLAINT.

This is done through *reporting* – and the Department of Education's Title IX regulations recognize different types of reports (which trigger different types of required responses).

REPORTING

INFORMAL COMPLAINT

Anyone can make an informal report of sexual harassment

Informal reports can be made to the Title IX Coordinator or other District officials, who must then work with the Title IX Coordinator to respond to the report.

Informal reports can be made verbally or in writing, at any time (including during non-business hours).

Informal reports can also be submitted anonymously.

The parties still have the right to an Advisor even if they elect the informal resolution process.

The Title IX Coordinator *must* then contact the Complainant and:

Offer **supportive measures** to the Complainant and/or Respondent

Determine whether the Complainant wants to file a **formal complaint**, and explain how to do so

FORMAL COMPLAINT

Complainants ***cannot*** remain anonymous if they choose to file a formal complaint.

Even if a Complainant does not want to file a formal complaint, one may be filed by the Title IX Coordinator (duty to ensure safety, comply with federal law).

A **formal complaint** of sexual harassment initiates the formal grievance process.

A formal complaint is a signed document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the District investigate under Title IX.

PRELIMINARY INQUIRY

Upon receipt of the Formal Complaint, the Title IX Coordinator will make the following determinations to decide if the allegation(s) fall within the scope of the applicable Title IX policy:

- Could the alleged facts set forth by the Formal Complaint, if substantiated, constitute Prohibited Conduct under the Title IX Policy?
- Is the Complainant participating in or attempting to participate in an educational program, employment, or other activity at the Jordan School District?
- Did the alleged Prohibited Conduct occur against a person in the United States? and
- Did the Jordan School District exercise substantial control over both the Respondent and the context in which the alleged Prohibited Conduct occurred?

If the answer to any question above is “NO,” then the Policy and this procedure do not apply to the Formal Complaint (Dismissal). If the answer to each question above is “YES,” then the Title IX policy and grievance procedure apply, and the District has the authority to investigate and resolve the Formal Complaint.

GROUNDS FOR DISMISSAL

Mandatory Grounds for Dismissal of a Formal Complaint:

- The conduct alleged would not constitute sexual harassment under Title IX;
- The conduct alleged did not occur in the District's education program or activity; or
- The conduct alleged did not occur in the U.S.

If a complaint is dismissed under this provision, it may be referred for a conduct inquiry.

A notification of the mandatory dismissal will be sent to the Complainant and Respondent.

Discretionary Grounds for Dismissal of a Formal Complaint:

- The Complainant notifies the Title IX Coordinator in writing that he or she would like to withdraw the formal complaint (there may be a referral for a conduct inquiry);
- The Respondent is no longer enrolled in or employed by the District; or
- Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint.
- A notification of the discretionary dismissal will be sent to the Complainant and Respondent.

APPEALING THE DISMISSAL OF A FORMAL COMPLAINT

Districts must offer both parties an appeal from an investigator's dismissal of a formal complaint.

Both parties must be notified in writing of such appeal rights.

Grounds for appeal include:

- a) a procedural irregularity that affected the outcome of the complaint;
- b) new evidence that was not reasonably available at the time the determination regarding responsibility for the Formal Complaint was made that could affect the outcome of the matter;
- c) the Title IX Coordinator, Investigator(s), or Decision-Maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

The forwarding of the allegations to the conduct process will also be outlined in the letter.

NOTICE TO THE PARTIES

If the formal complaint is not dismissed, the District must send the parties a notice containing:

- An explanation of the grievance process
- Notice of the sexual harassment allegations
- A statement that the Respondent is presumed not responsible for the alleged conduct
- Notice that the parties may have an *Advisor* of their choice
- Any provision in the District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information

EMERGENCY REMOVALS

Emergency removal is a narrow, high-risk tool under Title IX of the Education Amendments of 1972 that allows a school to temporarily remove a Respondent from an education program before a final determination—but only if strict requirements are met.

A school may remove a respondent only if:

✓ Individualized Safety/Risk Analysis

AND

✓ Determination of an “immediate threat” to:

- Physical health or
- Safety of any student or other individual

This is a high threshold—not just discomfort, reputational harm, or policy violation.

Before the removal, the school must:

✓ Provide Notice (Inform the respondent of the removal and reason)

✓ Provide an Opportunity to Challenge (Must be prompt and can be informal, e.g., meeting, written submission).

Before removing, consider: no-contact directives, schedule changes, increased supervision

TEST YOUR KNOWLEDGE

Sam's parent sends an email to the Title IX Coordinator saying that last weekend, Sam was sexually assaulted at a friend's house after a school football game. Sam provides the requisite details regarding the events, requests that the District investigate these allegations, and digitally signs the email.

Does this case fit the definition of sexual harassment under the regulations?

ANSWER

No – The conduct does not fall under the definition of sexual harassment under Title IX.

Reasoning: Although the nature of the allegations and the form of his report comply with the requirements for a formal complaint, the conduct reported did not take place in the District's *education program or activity*. The complaint would be dismissed under the mandatory dismissal provision of the regulations.

Sam should be offered supportive measures.

SCENARIO # 2

Riley stops by the Title IX Coordinator's office to discuss a situation involving Riley's best friend, Lucy, who is involved in dating violence. Riley has noticed bruises and scrapes, and has even seen Lucy's boyfriend shove her in the high school parking lot. Although Riley has talked to Lucy about leaving the dating situation, Riley is concerned that nobody will be able to convince her to do so. As a result, Riley wants to file a ***formal complaint*** of sexual harassment.

Can Riley file a ***formal complaint*** of sexual harassment?

ANSWER #2

No – Riley cannot file a formal complaint because she is not the one who experienced the conduct (though she can lodge an informal complaint).

Reasoning: Only those who experienced the conduct (or their parent/legal guardian) may file formal complaints of sexual harassment. However, the Title IX Coordinator may sign a formal complaint if he or she determines, based on the circumstances, that a formal complaint is necessary to ensure safety and deter future sexual harassment. In this situation, where violence has been observed at school, the Title IX Coordinator may decide to do so.

INFORMAL RESOLUTION

Throughout the course of an investigation, a District may choose to offer the parties an informal resolution process that could potentially resolve a formal complaint without a determination regarding responsibility under the policy. Informal resolution may occur at any time prior to the District reaching a determination regarding responsibility

Both parties must voluntarily agree in writing to attempt informal resolution.

A District ***may not*** offer informal resolution to resolve allegations that an employee sexually harassed a student.

If the parties do consent to informal resolution, the District must provide the parties with written notice disclosing:

- The allegations of the complaint
- Requirements of the informal resolution process

Engaging in the informal resolution process is not an admission of responsibility for the allegation or an admission of the falsehood of the allegations.

The existence of an informal resolution is not viewed as a finding of responsibility against the Respondent. At any time prior to agreeing to a resolution, either party has the right to withdraw from the informal resolution process and resume the formal grievance process.

THE INVESTIGATION

The Title IX Coordinator will appoint an investigator to conduct the fact-finding for the case. The Title IX Coordinator will have the discretion to determine whether the Investigator will be internal (a District employee) or external (a qualified individual outside of the District's community).

The role of the Investigator will be to gather, assess, and synthesize the relevant evidence in a report that sets forth the facts determined to have occurred. The Investigator has the discretion to determine the relevance of any witness or other evidence and may exclude information from the final investigation report if the information is irrelevant, immaterial, or more prejudicial than informative.

The Investigator does not make a final determination as to whether a policy violation has occurred.

The Investigator may include credibility assessments in the final investigation report, where appropriate, based on the Investigator's interviews with the Complainant, Respondent, and witnesses, and review of the material evidence and the basis of those assessments. The credibility assessment may include direct observations, reasonable inferences drawn from the facts, and any consistencies or inconsistencies between the various sources of information.

The parties must have an equal opportunity to present witnesses and evidence during the investigation. Advisors are able to attend all meetings with their Advisee.

INSPECTION OF RECORDS: FIRST REVIEW

At the end of the investigation BUT BEFORE the investigative report is written, the investigators will send to each party and his/her Advisor the evidence collected during the investigation. This information must contain relevant and irrelevant, inculpatory and exculpatory information.

The parties will have ten (10) days to submit a written response to this evidence, which the investigator(s) will consider while finalizing the report.

Once the ten (10) days has passed, the investigators may begin the process of writing the investigative report.

INSPECTION OF RECORDS: SECOND REVIEW

After the investigation, the investigator(s) will prepare and send to the parties an investigative report containing only relevant evidence (inculpatory and exculpatory).

Before this report is finalized, the investigator(s) will send to each party and his/her Advisor the relevant evidence.

The parties will have ten (10) days to submit a written response to this evidence, which the investigator(s) will consider while finalizing the report.

After the ten (10) days has passed, the Investigator will finalize the investigative report.

The Title IX Coordinator will then submit the Final Investigative Report to the Decisionmaker.

The investigative report *does not* include a determination of responsibility.

QUESTION AND ANSWER PERIOD

The Decision Maker manages the Q&A period. This written question-and-answer period serves as a procedural substitute for the cross-examination that occurs in live hearings at colleges and universities. Its primary purpose is to preserve fairness and credibility testing while avoiding the burdens of a formal hearing environment for minors.

The question-and-answer process allows each party to submit written questions that they want asked of the other party or witnesses.

This ensures that both sides have a meaningful opportunity to challenge factual assertions, test credibility, clarify inconsistencies, and address disputed evidence.

During the question process, the decision-maker must determine whether submitted questions are relevant. If a question is excluded, the decision-maker must explain why the question is not relevant and document that determination in writing.

- This gatekeeping function protects against:
- harassment through questioning
- irrelevant character attacks
- improper sexual history questions (subject to limited exceptions)

QUESTION AND ANSWER PERIOD

After answers are provided, both parties typically have an opportunity to submit limited follow-up questions.

This mirrors the way cross-examination works in hearings:

Question submitted → Answer provided → Follow-up allowed if needed

This iterative process helps ensure the decision-maker can evaluate credibility and reliability of statements.

The written questions, answers, and relevance determinations become part of the case record.

This serves several functions:

supports the written determination

allows meaningful appeal review

demonstrates procedural fairness if the decision is later challenged

DETERMINATION REGARDING RESPONSIBILITY

The Decision-maker will issue a written *determination regarding responsibility*, which must include:

- The allegations potentially constituting Title IX sexual harassment;
- A description of the procedural steps taken from receipt of the complaint through the determination regarding responsibility;
- Findings of fact supporting the determination.

Additional requirements:

- Conclusions regarding the application of the District's code of conduct to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions and remedies; and
- Procedures and permissible bases for the Complainant and Respondent to appeal the determination.

This written determination regarding responsibility must be sent simultaneously to the parties

- Title IX Coordinator is responsible for effective implementation of any remedies in the determination
- This determination becomes final:
 - If an appeal is not filed, the date on which an appeal would no longer be considered timely
 - If an appeal is filed, on the date that the District provides the parties with the written determination of the result of the appeal

APPEALS

Grounds to appeal a determination regarding responsibility and/or dismissal include:

- A procedural irregularity that affected the outcome
- New evidence that was not reasonably available at the time of the determination
- The Title IX Coordinator, investigator(s) or Decision-maker(s) had a conflict of interest or bias that affected the outcome of the matter

When a Complainant or Respondent appeals, the District must:

- Notify the other party in writing when an appeal is filed;
- Ensure that the appeal officer is not the same person as the person who reached the determination regarding responsibility, the investigator(s), or the Title IX Coordinator;
- Ensure that the appeal officer is not biased;
- Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- Issue a written decision describing the result of the appeal and the rationale for the result; and
- Provide the written decision simultaneously to both parties

Test Your Knowledge: Question #3

After an investigation and the question and answer period, the Decision-maker determines that the Respondent, Charlie, engaged in sexual harassment under Title IX.

As such, the Decision-maker issues a suspension and other disciplinary sanctions. Charlie adamantly denies engaging in such conduct, and claims that the Decision-maker was biased against him because he arrived late to the hearing. Charlie wants to appeal this determination.

Does Charlie have grounds to appeal the determination?

ANSWER #3

Yes – Charlie can argue and present information to demonstrate that the Decision-maker had a bias that affected the outcome of the hearing.

Reasoning: One of the grounds for an appeal is that the Title IX Coordinator, investigator, and/or Decision-maker had a conflict of interest or bias that affected the outcome of the matter.

RETALIATION

Retaliation is intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX or because the individual has made a report or complaint, testified, assisted, participated, or refused to participate in any manner in an investigation under the Title IX Grievance Procedure.

Retaliation includes charges against an individual for other non-Title IX violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX.

Any retaliatory action taken by an individual or the District, directly or indirectly, against a person who has made a report, filed a complaint, or participated in an investigation is prohibited.

This prohibition against retaliation protects Complainants, Respondents, reporting parties, witnesses, Decision-Makers, Advisors, Investigators, and other individuals who provide information relating to a Title IX investigation or participate in a complaint process associated with this policy.

Complaints alleging retaliation may be filed with the Title IX Coordinator.

RECORDKEEPING

The District will document and maintain the following records, in accordance with the District's records retention schedule and the Title IX regulations, for a period of seven (7) years:

- All materials used to train Title IX Coordinator(s), Deputy Title IX Coordinators, Investigator(s), Decision-Maker(s), and Facilitator(s) of Informal Resolution Processes. The District will make these training materials publicly available on the Title IX website;
- Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance of actions taken in response to Title IX reports or formal complaints, the District will document that it has taken measures designed to restore or preserve equal access to the District's education program or activity.
- Supportive measures granted to the parties. If the District does not provide a Complainant in a Title IX case with supportive measures, it must document the reasons why.
- Any informal resolution process and the results therefrom;
- Each formal resolution process investigation (including the report) and any written determination regarding responsibility;
- Any Discipline imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the District's education program or activity; and
- Any appeal and the result therefrom.

WHAT QUESTIONS DO YOU HAVE?