

**TITLE IX SEXUAL HARASSMENT
TRAINING
INFORMAL RESOLUTION**

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REGULATORY OVERVIEW



KEY CONCEPTS

DEFINITION OF SEXUAL HARASSMENT → Sexual harassment is broadly defined as any of the following:

- Quid pro quo harassment (employee to student),
- Unwelcome conduct so severe, pervasive, **and** objectively offensive that it effectively denies an individual equal access to the school's education program or activity, or
- Sexual assault, dating violence, domestic violence, or stalking (as defined in the Clery Act)

BASIC PROCEDURAL REQUIREMENTS → Jurisdiction must be met: An LEA has jurisdiction over claims of sexual harassment when such conduct occurs in the United States and in its education program or activity. This includes all locations, events and circumstances over which the LEA exercised substantial control and when the alleged conduct meets the definition of sexual harassment (as outlined above).

ACTUAL KNOWLEDGE of sexual harassment obligates an LEA to respond promptly and in a manner that is not deliberately indifferent. In K-12, "actual knowledge" means that a school must respond to sexual harassment allegations when any employee receives notice of the harassment, which includes instances where an employee observes or overhears a conversation about sexual harassment, or when a complaint is received.

INFORMAL V. FORMAL COMPLAINTS → Anyone can make an informal report of sexual harassment. Informal reports can be made to the Title IX Coordinator or other school 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 and can be submitted anonymously.

Once the LEA has received an informal report of sexual harassment, the Title IX Coordinator must then contact the Complainant and: 1. Offer supportive measures to the Complainant and/or Respondent. 2. Determine whether the Complainant wants to file a formal complaint and explain how to do so.

FORMAL COMPLAINT → A formal complaint of sexual harassment initiates the formal grievance process. A formal complaint is a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the LEA investigate.

PRELIMINARY INQUIRY → The first step in the grievance process is to determine whether there is jurisdiction to address the alleged Title IX complaint. *Mandatory Dismissals*: The conduct alleged would not constitute sexual harassment under Title IX; the conduct alleged did not occur in the LEA's education program or activity; or the conduct alleged did not occur in the U.S. (may be referred to another office). *Discretionary Dismissal*: The Complainant withdraw the formal complaint; the Respondent is no longer enrolled in or employed by the District; or specific circumstances prevent the LEA from gathering evidence sufficient to reach a determination.

INFORMAL RESOLUTION (optional) → The parties may agree to attempt resolution through mediation/negotiation. Voluntary and must be in writing. Either party may withdraw and re-engage the grievance process.

INVESTIGATION → The "investigation" phase of the grievance procedure entails interviews, obtaining evidence, and identifying sources of information related to the complaint—must be thorough, impartial, and completed in a timely manner. The parties must have an equal opportunity to present witnesses and evidence.

INSPECTION OF EVIDENCE → Two inspection periods—the first is after the investigation is completed, but before the investigation report is written (10 days). The second inspection period is after the investigation report is drafted, but before the report is given to the decision maker (10 days). An investigative report does not (and cannot) include a determination of responsibility

QUESTION AND ANSWER PERIOD → The Decision-maker will allow the Parties to pose questions to each other or to any witness. The Decision-maker will determine relevance of the questions. Follow-up questions are allowed. Questions and answers become part of the official record.

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.
- Conclusions regarding the application of the LEA'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.

The determination becomes final: If an appeal is not filed, the date on which an appeal would no longer be considered timely or if an appeal is filed, on the date that the LEA 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 that could have changed the outcome of the investigation,
- The Title IX Coordinator, investigator(s) or Decision-maker(s) had a conflict of interest or bias that affected the outcome of the matter.

RETALIATION → Retaliation is specifically prohibited under Title IX's regulations. Retaliation includes intimidation, threats, coercion or discrimination for the purpose of interfering with any right or privilege secured by Title IX. Complaints of retaliation may be submitted through the Title IX grievance process.



AGENDA

- Informal Resolution
- Hypotheticals
- Training and Role
- When a resolution is achieved
- When a resolution is not achieved
- Questions?

INFORMAL RESOLUTIONS

As an alternative to the formal grievance procedure, the District offers parties the option of participating in an informal resolution process.

The Title IX regulations do not require informal resolution options as part of a District's Title IX policy or procedures.

Consider whether informal resolution is appropriate for certain types of claims (e.g., sexual assault).

Parties still have the right to an Advisor during the informal resolution process.

WHEN IS INFORMAL RESOLUTION OFFERED?

Informal resolution may not be offered to the parties *unless a formal complaint of sex harassment is filed.*

Informal resolution *also cannot be offered* in instances when the complaint involves a District employee sexually harassing a student.

Informal resolution can be offered at any stage in the grievance process **BEFORE** there is a resolution on allegations.

Informal resolution **CANNOT** be offered when student Complainant and employee Respondent.

REQUIREMENTS

To the extent the District provides informal resolution options, they will typically involve a mediation-style facilitated discussion with a restorative justice mindset. This process does not end in a determination regarding responsibility for a Title IX violation.

Very Important: Both parties must provide *informed, written, voluntary consent* to attempt informal resolution of a formal complaint (informed consent).

Without such consent, informal resolution ***is not an option!***

WHAT DOES INFORMED CONSENT MEAN?

For consent to be informed and the process equitable, both parties must be notified (in writing) of:

- The allegations made in the formal complaint;
- The requirements of the informal resolution process; and
- What elements of the process will remain confidential (or not confidential) if the parties choose to participate.

RESTRICTIONS

Either party can withdraw consent *at any time*

- If consent is withdrawn, the formal grievance process steps must be followed.

Informal resolution options *cannot be made mandatory* by the District. Thus, if a party does not wish to participate in informal resolution, the party cannot be required to do so.

You **MAY NOT** require a waiver of the right to investigation/determination as a condition of enrollment or employment.

WHO CAN FACILITATE AN INFORMAL RESOLUTION?

If you offer mediation as an informal resolution process, the District must ensure:

- The facilitator does not hold another role in the Title IX process (i.e., is not the investigator, proposed decision-maker, etc.);
- That the facilitator is trained on the District's Title IX procedures;
- That the facilitator has received training on Title IX requirements, including conflicts of interest, bias, prejudgment of facts, etc.

HYPOTHETICAL

Mark's father contacts the District's Title IX Coordinator over the phone and reports that his child, Sam, is being sexually harassed by a classmate, Alex. , Mark notes that he intends to file a formal complaint on behalf of his student. The Title IX Coordinator suggests that, prior to filing the formal complaint, they should try mediation with a third-party mediator provided by the District.

Is this permissible?

ANSWER

No – informal resolution options can only be offered to a party *after* a formal complaint has been filed by the complainant. Because Mark has not yet filed a formal complaint, the Title IX Coordinator cannot offer him the option to participate in an informal resolution option such as mediation.

HYPOTHETICAL

Lindsey files a formal Title IX complaint alleging that her social studies teacher subjected her to sexually harassing comments throughout the prior term.

Prior to the completion of the investigation, the Title IX coordinator offers both parties the opportunity to participate in the informal resolution process and they provide written consent to move forward informally.

Is this permissible?

ANSWER

No – Informal resolution ***cannot*** be offered in cases where a student has filed a Title IX complaint against an employee of the District due to the power differential.

Even though the parties both consented to participate in the informal resolution process, the Title IX Coordinator should not have offered informal resolution as an option based on the nature of the case.

TRAINING AND ROLE

The facilitator must be:

- Trained
- Impartial
- Not the decision-maker

Their role is to:

- Guide the process
- Ensure fairness
- Help parties reach agreement

WHEN RESOLUTION IS ACHIEVED

When an informal resolution is successful, the signed written resolution agreement becomes the final outcome of the Title IX matter, and the school must implement, maintain, and retain it as an official record.

- * The agreement is binding once signed by both parties;
- * It resolves the formal complaint;
- * The Title IX process is concluded.

There is no further investigation or determination of responsibility.

- School must implement the terms: Ensure all agreed-upon actions occur (e.g., no-contact orders, schedule changes, educational measures) and assign responsibility for monitoring compliance
- Document Compliance: Track whether the terms are completed and the conditions are maintained over time.
- Maintain the Record: The agreement must be retained for at least 7 years and stored as part of the Title IX case file.

Mark the complaint as resolved via informal resolution and no finding of responsibility is issued.

WHEN A RESOLUTION IS NOT ACHIEVED

If informal resolution is not successful, the matter will resume under the formal Title IX grievance process. Information shared during informal resolution will not be used as evidence in the formal process, except as permitted by law or with the parties' mutual agreement.

you are not required (and generally should not) keep substantive informal-resolution communications in the Title IX investigative file.

You SHOULD keep documentation that:

Informal resolution was offered

Parties provided written consent (signed agreement)

The process occurred (start/end dates)

Outcome not resolved (signed withdrawal)

You SHOULD NOT keep in the investigative file:

Facilitator notes

Settlement discussions

Draft proposals/agreements

Admissions or statements made during negotiation

Internal negotiation strategy communications

WHAT QUESTIONS DO YOU
HAVE?