Title IX Informal Resolution Facilitator Training

K-12 ICS
INSTITUTIONAL COMPLIANCE SOLUTIONS

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ABOUT US

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HOUSEKEEPING

- Chat bar
- Breaks
- Understanding
TODAY

- Overview of the Law and Regulations – Definition of Sexual Harassment/Scope of Program or Activity
- Overview of the Title IX Process and IR Process
- Break
- Your Role as an IR Facilitator/Types of IR – Including Serving Impartially
• Not Legal Advice
• Designed to provide you with options so that you can make the decisions that make the most sense for you/your campus and community
• Most decisions will be campus specific and the regulations allow for flexibility
• NO ONE HAS DONE THIS BEFORE
• We love when our participants bring information to us and provide their perspectives
• We are all in this together!
THE LAW

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in educational programs or activities operated by recipients of Federal financial assistance.
MAY 6, 2020

The Day Everything Changed

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Title IX Applies to...

- Student on Student Sexual Harassment
- Employee on Employee Sexual Harassment
- Employee on Student Sexual Harassment
- Student on Employee Sexual Harassment
Title IX Team

- Informal Resolution Optional for School Districts
- No one way to conduct an IR

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Important Terms

Complainant: Individual who is alleged to be the victim of conduct that could constitute sexual harassment

Respondent: Individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment
Sexual Harassment + Education Program or Activity
Title IX
Sexual Harassment

- Domestic Violence
- Sexual Assault
- Dating Violence
- Stalking

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Sexual Harassment

- Conduct on the basis of sex that satisfies one or more of the following:
  - An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
  - Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
  - "Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.
SEXUAL ASSAULT

**Sexual Assault:** An offense that meets the definition of rape, fondling, incest or statutory rape as used in the FBI’s Crime Reporting system. A sex offense is any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

**Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

**Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

**Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.
Domestic Violence: A felony or misdemeanor crime of violence committed
• by a current or former spouse or intimate partner of the victim;
• by a person with whom the victim shares a child in common;
• by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or
  intimate partner;
• by a person similarly situated to a spouse of the victim under the domestic or family
  violence laws of the jurisdiction in which the crime of violence occurred; or
• by any other person against an adult or youth victim who is protected from that person's
  acts under the domestic or family violence laws of the jurisdiction in which the crime of
  violence occurred.
Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be based upon the reporting party's statement with consideration of the following factors:

(i) The length of the relationship

(ii) The type of relationship

(iii) The frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
STALKING

Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to

(1) Fear for the person’s safety or the safety of others; or
(2) Suffer substantial emotional distress.

For purposes of this definition:
Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person’s property.

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
Conduct + Education Program or Activity

IT'S MORE THAN THE BEHAVIOR... MUST EVALUATE LOCATION/ JURISDICTION AS WELL
JURISDICTION

Education Program or Activity

- Locations, events, or circumstances (operations) over which the district exercised substantial control
  - over both the respondent AND the context in which the sexual harassment occurs

- Includes online sexual harassment but it must be analyzed to determine if it occurs in education program or activity

- Does not create or apply a geographic test, does not draw a line between “off campus/property” and “on campus/property,” and does not create a distinction between sexual harassment occurring in person versus online.
Informal Resolution Facilitator's Role
General K-12 Process Flow Chart

Sexual Harassment Reported to School District Employee

Supportive Measures

NO Formal Complaint Signed by Complainant or Parent/Guardian

Formal Complaint Signed by Complainant or Parent/Guardian

Title IX Coordinator Agrees to Supportive Measures Only

Title IX Coordinator Signs Formal Complaint

Notice of Allegations

Investigation

Resolution/Hearing

Appeal

Informal Resolution Can Occur at Any Time Following Formal Complaint and Prior to a Finding of Responsibility UNLESS Respondent is an Employee and Complainant is a Student

* A Formal Complaint MUST be dismissed if it does NOT meet definition of Sexual Harassment, occur in education program or activity, or in the U.S.

* A Formal Complaint MAY be dismissed at request of Complainant, if Respondent no longer at school district or school district is prevented from gathering evidence.
TITLE IX INFORMAL RESOLUTION PROCESS

1. Report of Title IX Sexual Harassment
2. Formal Complaint w/Notice of Allegations including Informal Resolution Process Option
3. Notice of Informal Resolution Process (if parties and Title IX Coordinator Agree)
4. Informal Resolution Process*
5. Agreement or Transition Back to Formal Grievance Process
6. Notice of Outcome

*Not allowed in Employee on Student cases
POTENTIAL PARTIES

- COMPLAINTANT
- RESPONDENT
- ADVISOR
- PARENT/GUARDIAN
What is Your Role?

- Establish expectations
  - For you
  - For the parties
- Define goals/objectives
- Listen
- Document
- Receive permission before sharing
- Stay flexible
- Remain neutral
- Serve as the "go between"
Informal Resolutions Will Take Significant Time

- Discussion between parties/parents-guardian through you in person or in writing
- Be patient, don't rush
- Set deadlines
If parties request and agree to this process they will have to put in the work...and so will you.

Every outcome will look different.

It may get messy.

Give breaks during meetings with either or both parties.

Parties may put up walls—therefore, you may have to resume the Formal Grievance Process.
• Be Kind
• Be Patient
• Be Understanding
• Include/ Update Supportive Measures
Serving Impartially

- Avoiding Conflicts of Interest and Bias
- Reserving Judgment
CONFLICTS OF INTEREST/BIAS

- Generally toward Complainants/Respondents
- In a specific case
- Legal Definition of conflict of interest
  - a conflict between the private interests and the official or professional responsibilities of a person in a position of trust
  - a conflict between competing duties (as in an attorney's representation of clients with adverse interests)
“Explicit bias” refers to the attitudes and beliefs we have about a person or group on a conscious level.

- Expressed directly
- Aware of bias
- Operates consciously

Example: Statement- "I don't think a woman would make a good CEO... Women are too emotional."
Implicit Bias

- "Implicit bias" refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.
  - Expressed indirectly
  - Unaware of bias
  - Operates subconsciously
- Example: Assuming that a woman entering a hospital room is a nurse instead of a doctor because of her gender.
Suspend Your Mind

Withhold/Reserve Judgment

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Resolution Agreement

- Respondent accepts responsibility
- Title IX Coordinator recommends sanction and remedies
- Parties agree to sanctions and remedies as recommended
Facilitated Dialogue

Structured conversation between the Complainant and Respondent led by a facilitator with the possibility of reaching an agreeable outcome.
Mediation

Procedure in which the parties discuss disputes with the assistance or aid of an Informal Resolution Facilitator who helps them in reaching settlement.

- Parties talk privately about their thoughts, feelings and experiences
- Consider what actions could meaningfully resolve the situation
- Explore mutually agreeable solution
- Negotiate an agreement
Shuttle Negotiation/Conversation

Conversation that is indirect and facilitated by Informal Resolution Facilitator.
Restorative Justice Practices

- Emphasis on repairing the harm caused by the behavior
- Best accomplished through cooperation
- Can lead to transformation or people, relationships, and communities
- Can be used in any type of resolution
REMINDERS!!

- Cannot be done in an Employee on Student Case
- Can only occur after Formal Complaint and before a determination as to responsibility if conduct rises to level of Title IX and occurred within Program/Activity
REMINDERS!!

- No one way to do IR
- This is an introductory course – a lot to being a neutral – seek out learning opportunities!
- Revisit and explain your role often
- No one has done this before!
Questions?
How Can We Help?

1. COMMUNITY ACCESS
2. TAILORED TRAINING
3. ONGOING SUPPORT