

Training for YISD personnel involved in handling Title IX sexual harassment claims

Effective as of 8/14/2020

YISD reserves the right to update this training or materials at any time

Applicable to Title IX reports and claims received on or after August 14, 2020

Review in conjunction with:

- Policy FFH (Legal) and FFH (Local)
- New FFH – Regulation. Title IX Sexual Harassment Procedures and Grievance Process
- Title IX Manual
- Handout on Rape Shield Protections

Title IX prohibits discrimination on the basis of sex in educational programs.

When schools do not respond appropriately to claims of sexual harassment, they are discriminating on the basis of sex, putting federal funding at risk.

Students don't violate Title IX, school districts do.

Title IX requires:

When district has actual knowledge of sexual harassment in its educational program against a person in the US, the district must

- respond promptly in a manner that is not deliberately indifferent, and
- treat complainants and respondents equitably.

“actual knowledge” – any employee has knowledge of student against student conduct.

“complainant” – person alleging that sexual harassment occurred.

“respondent” = person against whom the allegation is made.

“deliberately indifferent” means response was clearly unreasonable in light of known circumstances.

“in its educational program” or activity includes locations, events, or circumstances over which the district exercised substantial control over both the respondent and the context in which the sexual harassment occurs

Examples:

At school – yes

During official school trip at hotel – yes

At the school prom - yes

Over summer at student’s home – no

Title IX requires:

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“Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following **3 types**:

1. An employee conditioning an aid, benefit, or service on participation in unwelcome sexual conduct (“Employee Conduct”)
2. Sexual assault, dating violence, domestic violence, or stalking, as defined in federal law. (“Expellable Conduct”)
Note: Under federal law, “sexual assault” includes fondling.

“Sexual harassment” means :

3. 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 education program or activity (“Severe Sex-based Conduct”)

Unwelcome “Sex-based” conduct =
verbal or physical conduct of a sexual nature

Examples: unwanted, unwelcome physical contact, such as touching, bumping, grabbing, or patting; sexually insulting remarks about race, gender, ability, or class; bragging about sexual prowess for others to hear; persistent intimidating or demeaning nicknames, homophobic name calling, cat calls, rating, or embarrassing whistles; graffiti with names; being followed around by another student / being stalked; unwanted emails, texts, messages, videos, or photos of a sexual nature.

“Severe, persistent, objectively offensive”

Courts have held:

mere teasing, name-calling = insufficient

“minor allegations” = insufficient

Title IX requires:

When district has actual knowledge of sexual harassment in its educational program against a person in the US, the district must

- **respond promptly in a manner that is not deliberately indifferent, and**
- treat complainants and respondents equitably.

What to do and not do right away

Everyone

- Make sure reports and claims made to any employee get relayed to Title IX Coordinator immediately – clock has started!
- Can be verbal reports, by staff, victim, parent, student witness

Title IX Coordinator immediately uses judgment to determine

- Taking the report as if true, could it legally be sexual harassment?
- Would a reasonable person consider this “severe and persistent” - not minor?
- Is it “Employee Conduct” or “Expellable Conduct” requiring special procedures?

Examples of reports and sorting

- Bullying with some minor sexual language? No
- Minor teasing based on gender? No
- Daily harassing with sexual words, gestures? Yes
- Sexual advances on a school trip in the US? Yes
- Consensual teen sexual contact at school? No
- Sexual contact at school that is unwelcome? Yes
- Sexual assault at school? Yes, Expellable Conduct
- Sexual conversations with teacher? Yes, Employee Conduct

How treat complainants and respondents equitably? Per Title IX Rules, this means:

- **Staff participants are objective, unbiased, no stereotyping. No conflicts, Separate roles.**
- Complainant gets “supportive measures.”
- Process presumes respondent is innocent and there is no discipline until finding is made.

Examples of subjectivity, bias, stereotyping, conflict of interest

I faced far worse when I was in school and I'm fine.

A member of the Honor Society could never do such a thing.

It's a tradition with this club and no one meant any real harm.

Boys will be boys.

Girls tend to exaggerate these things.

It's just her word against his.

But we need him for the state finals this weekend!

It's a serious allegation, we should err on the side of discipline.

“Supportive Measures” are designed to restore or preserve equal access to the district’s education program or activity without unreasonably burdening the other party,

including measures designed to

- protect the safety of all parties,
 - protect the district’s educational environment,
- or
- deter sexual harassment.

Aimed at *“How can we help you to stay engaged in school – first in the short term during this process”* but without “unreasonably burdening” the respondent

- non-punitive
- for a limited period
- keep confidential to extent that confidentiality won't impair the measure

Title IX Coordinator will contact complainant by next school day to discuss the report and supportive measures. See Title IX Manual for details.

Examples from Title IX rules

“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, changes in work or district-provided housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.”

What if students need protection from ongoing threats?

Title IX allows immediate referral to Campus Threat Assessment Team, who can decide if emergency placement is needed

This is for immediate safety – not for discipline

How treat complainants and respondents equitably? Per Title IX Rules, this means:

- Staff participants are objective, unbiased, no stereotyping. No conflicts, Separate roles.
- Complainant is offered “supportive measures.”
- **Grievance Process that presumes respondent is innocent and there is no discipline until finding is made.**

Grievance Process starts with a “formal complaint”

- Specific to Title IX Sexual Harassment claims
- Form filed with Title IX Coordinator
- Sets out the allegations
- Requests school to investigate as sexual harassment
- No deadline to file
- Optional for Complainant, but required in order to trigger any step beyond initial Supportive Measures

What must wait until a “formal complaint” is filed

- ANY investigation as to responsibility
- ANY “unreasonably burdensome” measures or discipline against Respondent
- commencement of any informal process

If complaint is filed, Title IX Coordinator will oversee district handling of the complaint according to FFH Procedures and the assignment of roles of other Title IX personnel

Dismissal of Formal Complaint

- Title IX Coordinator can file dismissal of complaint
- See FFH Procedures for mandatory and discretionary dismissal
- Complainant can immediately appeal dismissal

Formal Complaint filed by Title IX Coordinator

- If no complaint is filed by Complainant, Title IX Coordinator can sign and file to launch process
- Complainant is not required to participate

Title IX Coordinator role where Complainant files Complaint:

- Upon receipt, send written notice to both parties of the allegations
- Must provide Respondent with name of Complainant
- Coordinate providing Supportive Measures as agreed, during process
- Follow FFH Procedures regarding offer of Informal Resolution Process
 - If parties agree to use, there is a stay of the formal complaint process until informal process ends
 - Title IX Coordinator may act as Facilitator of informal process or designate someone else who is trained
- Follow Title IX Manual with checklists and forms

Investigator Role and Investigation Process

- Burden of collecting evidence is on school/district, not parties
- Allegations in Formal Complaint will frame the parameters of the investigation
- Don't make a hypothesis then investigate to confirm
- Cannot restrict parties from discussing allegations during process
- Follow Title IX Manual with checklists and forms, timeline for notices, equal treatment of parties
- Investigate all allegations of sexual harassment
- Look for exculpatory evidence as well as inculpatory

- Disallow comments or evidence about Complainant's sexual history (see additional training on Rape Shield Protections)
- Must provide notice with sufficient time for parties to prepare for interviews
- Must afford each party the opportunity to submit written questions that the party wants asked of the other party or any witness
- Both parties must be given opportunity to review all evidence prior to conclusion of investigation and be given at least 10 days to submit a written response
- Should be ready to share evidence within 15 business days

Investigation report requirements

- Investigation report draft should include description of all evidence gathered - whether or not used
- Specific requirements for content - See Title IX Procedures
- Say which evidence Investigator found to be relevant
- Each party must be provided investigative report for review and written response before final determination
- Provide copy of report to Decision Maker and Title IX Coordinator

How to deal with “He said/ She said” cases

Both Complainant and Respondent are valid witnesses

Presumption of R’s innocence is not presumption of credibility

Do not base credibility on gender or status as C or R
Investigator can comment on inconsistencies and make observations about demeanor, but Decision-maker decides credibility or how much weight to give

Decision Maker:

- Cannot be same person as investigator – keep separate

Follow Title IX Procedures and Manual to

- Evaluate investigative report
- Allow further arguments from parties
- Hold hearings on notice
- Make a written determination as to responsibility based on “Preponderance of the Evidence”

Process should be complete within 60 business days after Complaint is filed (not counting informal or appeal)

Appellate Decision Maker:

- Upon an appeal, make a determination about responsibility
- Any Title IX discipline must wait until appeal is final - either time for appeal has expired or appeal has been decided

Imposition of discipline:

- Campus applies Student Code of Conduct to impose discipline
- Campus may apply “mitigation” criteria

Informal Resolution Process

- Use only after Formal Complaint is filed
- Parties must agree to use – no coercion
- Cannot use with Employee Conduct
- Campus Informal Resolution Process – cannot use with Expellable Conduct
- District Informal Process – can use with any complaint
- Title IX Coordinator can offer, or either party can request use. See FFH Procedures

Campus Informal Resolution Process

- Both C & R must agree to use
- Title IX Coordinator designates investigator, decision maker, and facilitator; these can be from campus if trained in process
- Limit on range of discipline
- Limit on what goes in student record
- Both C & R must agree to outcome
- Facilitator helps parties reach agreement

Why would parties do this informally

- Full grievance process is long and slow, 60+ days.
- If evidence is pretty clear, much less hassle, more is presented orally.
- If evidence is not clear, parties will get to see what quick investigation reveals.
- Under SCOC, sexual harassment is DAEP offense, this informal process limits # of DAEP days.
- Student records are neutral.

For questions about the process or this training,
please contact:

Employee Relations at 434-0415 or 434-0411

Pupil and Parent Services at 434-0741 or 434-0753

To report sexual harassment, please contact:

Ms. Bobbi Russell-Garcia, District Title IX Coordinator,
brussell@yisd.net , phone 915-434-0415