



Title IX of the Education Amendments of 1972

as amended

COMPLIANCE TRAINING
AUGUST 11, 2020

Publisher Rights and Permission

© Jackson Shields Yeiser Holt Owen & Bryant - 2020

All rights reserved. No part of this publication may be reproduced, published, posted, distributed, or transmitted in any form or by any means, including, but not limited to, printing, photocopying, recording, or any other electronic or mechanical methods, except as otherwise permitted by copyright law, without the prior written permission of Jackson, Shields, Yeiser, Holt, Owen & Bryant. Requests for permission may be addressed to Stephen L. Shields; Jackson, Shields, Yeiser, Holt, Owen & Bryant; 262 German Oak Drive; Memphis, TN 38018.

Permission is hereby granted to seminar attendees to maintain an electronic or print copy of these materials. Permission is further hereby granted to Dyersburg City Schools to post this material on its web site in compliance with 34 C.F.R. § 106.45(b)(10)(i)(D). All other rights are reserved.

...[N]o person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a district which receives Federal financial assistance....

...[I]n providing any aid, benefit, or service to a student, a district shall not, on the basis of sex:

- (1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;**

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

Revised Regulations

- ▶ Effective August 14, 2020,
- ▶ Prior regulations requiring nondiscrimination and equity in programs and activities remain.
- ▶ Amendments add specific requirements for policies governing complaints, grievance procedures and investigations to address sex-based discrimination, including sexual harassment.
- ▶ Conduct that does not constitute sexual harassment under Title IX may be addressed by the district through other policies and procedures.

Training Required

- ▶ All employees must be trained to comply with the law and the district/school policy.
- ▶ Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must receive training on
 - ▶ The definition of sexual harassment.
 - ▶ The scope of the district's education program or activity.

Training Required

- ▶ How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable.
- ▶ How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- ▶ Any technology to be used at a live hearing.
- ▶ On issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.
- ▶ Issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Training Materials

- ▶ Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.
 - ▶ Must not rely on sex stereotypes and
 - ▶ Must promote impartial investigations and adjudications of formal complaints of sexual harassment.
- ▶ Training materials must be available on the district website or, if none, then available on request for inspection by members of the public.

From 30,000 Feet

- ▶ Equitable treatment of complainants and respondents
- ▶ Protection of Constitutional and Civil Rights
- ▶ Impartial, unbiased grievance process

From 30,000 Feet

▶ **Before**

- ▶ Policies
- ▶ Procedures
- ▶ Training

▶ **During**

- ▶ Notice
- ▶ Formal Complaint
- ▶ Investigation
- ▶ Determination & Implementation

▶ **After**

- ▶ Implementation
- ▶ Appeal

Grievance Procedures

- ▶ The district must adopt and publish grievance procedures that provide:
 - ▶ Prompt and equitable resolution of student and employee complaints,
 - ▶ A grievance process that complies with the regulations for formal complaints.

XXX Board of Education			
Monitoring: Review: Annually, in March	Descriptor Term: Title IX & Sexual Harassment	Descriptor Code: 6.3041	Issued Date:
		Rescinds:	Issued:

1 *General*

2 In order to maintain a safe, civil, and supportive learning environment, all forms of sexual harassment
3 and discrimination on the basis of sex are prohibited.¹ This policy shall cover employees, employees'
4 behaviors, students, and students' behaviors while on school property, at any school-sponsored activity,
5 on school-provided equipment or transportation, or at any official school bus stop in accordance with
6 federal law. This policy shall be disseminated annually to all school staff, students, and
7 parent(s)/guardian(s).² The Title IX Coordinator as well as any personnel chosen to facilitate the
8 grievance process shall not have a conflict of interest against any party of the complaint.³ These
9 individuals shall receive training as to how to promptly and equitably resolve student and employee
10 complaints.³

11 All employees shall receive training on complying with this policy and federal law.⁴

Grievance Process

- ▶ A district's grievance process must—
- ▶ Treat complainants and respondents equitably by
 - ▶ Offering supportive measures;
 - ▶ Providing remedies to a complainant where a respondent is determined to be responsible for sexual harassment; and
 - ▶ Following a grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

Grievance Process

- ▶ Providing remedies designed to restore or preserve equal access to the district's education program or activity, which may include supportive measures or disciplinary or measures,
- ▶ Requiring an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness.

Grievance Process

- ▶ Require that the Title IX Coordinator, investigator, decisionmaker, informal resolution facilitator not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- ▶ For example, individuals involved in the Title IX grievance process should:
 - ▶ Not be involved in the allegations;
 - ▶ Have no special relationship with either party;
 - ▶ Not be in the “chain of command”;
 - ▶ Be objective and impartial;
 - ▶ Not favor complainants or respondents.

Grievance Process

- ▶ Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process;

Grievance Process

- ▶ Include reasonably prompt time frames but permit temporary delay of the grievance process or the limited extension of time frames
 - ▶ For good cause with written notice to the complainant and the respondent of the delay or extension and
 - ▶ The reasons for the action.
 - ▶ Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities;

Grievance Process

- ▶ Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the district may implement following any determination of responsibility;

Grievance Process

- ▶ State the standard of evidence to be used apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty;
- ▶ Apply the same standard of evidence to all formal complaints of sexual harassment;

Grievance Process

- ▶ Include the procedures and permissible bases to appeal;
- ▶ Describe the range of supportive measures available to complainants and respondents; and
- ▶ Not require, allow, rely upon, or otherwise use questions or evidence protected under a legally recognized privilege unless the person holding such privilege has waived the privilege.

Rights Protected

- ▶ In policy and practice...
 - ▶ An individual's rights under the U.S. Constitution, including the protections of Amendments One, Five and Fourteen, must not be restricted or denied.
 - ▶ An individual's rights under Title VII of the Civil Rights Act of 1964 or any implementing regulations must not be denied.

Doe v. Miami Univ., 882 F.3d 579 (6th Cir. 2018)

“We have recognized, although never explicitly adopted in a published opinion, at least four theories of liability that a student who is “attacking a university disciplinary proceeding on grounds of gender bias”...can potentially assert under Title IX. These theories are: (1) “erroneous outcome,” (2) “selective enforcement,” (3) “deliberate indifference,” and (4) “archaic assumptions.” (Citations omitted.)

Doe v. Miami Univ., 882 F.3d 579 (6th Cir. 2018)

Did the court find gender bias in this case?

Doe v. Oberlin Coll., 963 F.3d 580 (6th Cir. 2020)

Did the court find gender bias in this case?

PROGRAMS, ACTIVITIES AND
PROGRAMS **ALL** OF THE
OPERATIONS OF LOCAL
EDUCATIONAL SYSTEM
OF VOCATIONAL EDUCATION,
OR OTHER PROGRAMS.

Program or Activity

- ▶ If any part of a school district receives any Federal funds for any purpose, all of the operations of the district are covered by Title IX.
- ▶ Programs and activities include, but not limited to, transportation, classes (e.g., CTE, ELL, STEM, general and special education); discipline procedures, athletics, extracurricular clubs, childcare, school nutrition.

Program or Activity

- ▶ For purposes of responding to sexual harassment, “education program or activity” includes locations, events, or circumstances over which the district/school exercised substantial control over both the respondent and the context in which the sexual harassment occurs.

Title IX Coordinator

- ▶ At least one employee must be designated and authorized to coordinate the LEA's efforts to comply.
- ▶ The employee must be referred to as the "Title IX Coordinator."

Notice by District

- ▶ Notice must be provided to:
 - ▶ Applicants for admission and employment,
 - ▶ Students,
 - ▶ Parents or legal guardians,
 - ▶ Employees, and
 - ▶ All unions or professional organizations holding professional agreements.

Notice by District

- ▶ Required notices must be published on the district/school website, if any, and in each handbook or catalog that it makes available to persons entitled to a notification.
- ▶ No publications stating that applicants, students or employees are treated differently on the basis of sex, except as such treatment is permitted Title IX or Title IX regulations, may be used or distributed.

Notice by District

- ▶ The notification must include:
 - ▶ The name or title, office address, electronic mail address, and telephone number of the Title IX Coordinator(s);
 - ▶ A statement of non-discrimination on the basis of sex in all education programs and activities;
 - ▶ A statement that such non-discrimination is required by Title IX and federal regulations;

Notice by District

- ▶ A statement that the requirement not to discriminate extends to admission and employment;
- ▶ A statement that inquiries about the application of Title IX and its implementing regulations to the district may be referred to the Title IX Coordinator, to the Assistant Secretary of Education, or both;

Notice by District

- ▶ Notice of the district's grievance procedures and grievance process, including
 - ▶ How to report or file a complaint of sex discrimination,
 - ▶ How to report or file a formal complaint of sexual harassment, and
 - ▶ How the district will respond.

Sexual Harassment

- ▶ **Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:**
 - ▶ An employee of the district conditioning the provision of an aid, benefit, or service of the district 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 district's education program or activity; or
 - ▶ Sexual assault, dating violence, domestic violence or stalking as defined in federal law (Clery Act, Violence Against Women Act).

Response Required

- ▶ A district with actual knowledge of sexual harassment in an education program or activity of the district—with or without a formal complaint—must respond promptly in a manner that is not deliberately indifferent.
- ▶ A district is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

Response Required

- ▶ The district may be deemed deliberately indifferent if rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment are restricted.
- ▶ A district is not deliberately indifferent solely because the Assistant Secretary of Education would have reached a different determination based on an independent weighing of the evidence.

Notice to District

- ▶ Notice includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.
- ▶ *Actual knowledge* means notice of sexual harassment or allegations of sexual harassment to a Title IX Coordinator or any official who has authority to institute corrective measures on behalf of the district, **or to any employee of an elementary and secondary school.**

Notice to District

- ▶ Authority to institute corrective measures on behalf of the district does not exist when an individual has:
 - ▶ Ability or obligation to report sexual harassment,
 - ▶ Ability to inform a student about how to report sexual harassment,
 - ▶ Training to do so.

Notice to District

- ▶ Knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge.
- ▶ Actual knowledge does not include a situation where the alleged perpetrator alone has actual knowledge.

Notice to District

- ▶ A report of sex discrimination or sexual harassment may be made by any person, including the person alleged to be a victim of sex discrimination or sexual harassment;
- ▶ Parents or guardians retain legal rights including, but not limited to, filing a formal complaint.

Notice to District

- ▶ The report may be made:
 - ▶ In person, by mail, by telephone, or by electronic mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report,
 - ▶ At any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

**Chisholm v. St. Marys City Sch. Dist. Bd. of Educ.,
947 F.3d 342 (6th Cir. 2020)**

***Did the conduct meet the definition of
“sexual harassment”?***

**Jane Doe v. Bd. of Educ. of Chi., 364 F.Supp.3d
849 (N.D. Ill. 2019)**

Did the school have actual knowledge?

***Did the conduct meet the definition of “sexual
harassment”?***

Was the school deliberately indifferent?

The Parties

- ▶ *Complainant* means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- ▶ *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

The Parties

- ▶ A complainant must be participating in or attempting to participate in the education program or activity of the district at the time of filing a formal complaint.
- ▶ A formal complaint may be filed with the Title IX Coordinator in person, by mail, by electronic mail and by any additional method designated by the district.
- ▶ A Title IX Coordinator who signs a formal complaint is not a complainant or party.

Initial Response

- ▶ The Title IX Coordinator must promptly contact the complainant to:
 - ▶ Discuss, confidentially, the availability of supportive measures,
 - ▶ Consider the complainant's wishes with respect to supportive measures,
 - ▶ Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and
 - ▶ Explain to the complainant the process for filing a formal complaint.

NOTE: Supportive measures are also available to the respondent.

Initial Response

- ▶ *Supportive measures* means:
 - ▶ Nondisciplinary, non-punitive individualized services,
 - ▶ Offered as appropriate, as reasonably available,
 - ▶ Without fee or charge,
 - ▶ To the complainant or to the respondent,
 - ▶ Before or after the filing of a formal complaint or where no formal complaint has been filed.

Initial Response

- ▶ 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 or the district's educational environment, or deter sexual harassment.
 - ▶ May include 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 housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

Initial Response

- ▶ Any supportive measures provided to the complainant or respondent must be confidential unless confidentiality would impair the ability of the district to provide the supportive measures.
- ▶ The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Formal Complaint

- ▶ A *formal complaint* must contain:
 - ▶ The complainant's physical or digital signature or otherwise indicate that the complainant is the person filing the formal complaint, or
 - ▶ The signature of the Title IX Coordinator alleging sexual harassment against a respondent.
- ▶ A *formal complaint* must request that the allegation of sexual harassment be investigated.

Formal Complaint

- ▶ To address formal complaints, the district's grievance process must comply with the regulations.
- ▶ Any other provisions, rules, or practices that a district adopts as part of its grievance process for handling formal complaints of sexual harassment must apply equally to both parties.

Prohibited Acts

- ▶ A district may not
 - ▶ Require a waiver of the right to an investigation and adjudication of formal complaints of sexual harassment;
 - ▶ Require the parties to participate in an informal resolution process;
 - ▶ Offer an informal resolution process unless a formal complaint is filed.

Response to Formal Complaint

- ▶ Upon receipt of a formal complaint, a district must provide the following written notice to the parties who are known:
 - ▶ Notice of the district's grievance process, including any informal resolution process, if offered.

Response to Formal Complaint

- ▶ Notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.
 - ▶ Identities of the parties involved in the incident, if known,
 - ▶ The conduct allegedly constituting sexual harassment, and
 - ▶ The date and location of the alleged incident, if known.

Response to Formal Complaint

- ▶ A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- ▶ Statements informing the parties that they may
 - ▶ Have an advisor of their choice, who may be, but is not required to be, an attorney, and
 - ▶ May inspect and review evidence.

Response to Formal Complaint

- ▶ Inform the parties of any provision in the district's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- ▶ If, during the course of an investigation, the district decides to investigate allegations about the complainant or respondent that are not included in the notice, the district must provide notice of the additional allegations to the parties whose identities are known.

Removal of Respondent

- ▶ A district may remove a respondent from the district's education program or activity on an emergency basis if:
 - ▶ An individualized safety and risk analysis is undertaken,
 - ▶ A determination that an immediate threat to the physical health or safety of any student or other individual justifies removal, and
 - ▶ The respondent is provided notice and an opportunity to challenge the decision immediately following the removal.

Note: Rights under the IDEA, Section 504 or the ADA are not modified.

Removal of Respondent

- ▶ A non-student employee respondent may be placed on administrative leave during the pendency of a grievance process provided any rights under Section 504 or the ADA are protected.
- ▶ A district's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX.

Dismissal

- ▶ The district must investigate the allegations in a formal complaint but must dismiss the complaint if the alleged conduct
 - ▶ Would not constitute sexual harassment, even if proved;
 - ▶ Did not occur in the district's education program or activity, or
 - ▶ Did not occur against a person in the United States,
- ▶ Such a dismissal does not preclude action under another provision of the district's code of conduct.

Dismissal

- ▶ The district may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:
 - ▶ A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
 - ▶ The respondent is no longer enrolled or employed by the district;
 - ▶ Specific circumstances prevent the district from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Dismissal

- ▶ Upon any dismissal, the district must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.
- ▶ The decision to dismiss is subject to appeal.
- ▶ A district may consolidate formal complaints where the allegations of sexual harassment arise out of the same facts or circumstances.

**Doe v. Univ. of Kentucky, 959 F.3d 346 (6th
Cir. 2020)**

***Under the new regulations, would a hearing
be held in this case?***

Informal Resolution

- ▶ At any time prior to reaching a determination, the district may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, if the district—

Informal Resolution

- ▶ Provides to the parties a written notice disclosing:
 - ▶ The allegations,
 - ▶ The requirements of the informal resolution process, including:
 - ▶ The circumstances that will preclude resuming a formal complaint arising from the same allegations,
 - ▶ That at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint,
 - ▶ Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

Informal Resolution

- ▶ Obtains the parties' voluntary, written consent to the informal resolution process; and
- ▶ Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

NOTE: individuals who facilitate any informal resolution process must be free of bias or conflicts of interest for or against complainants or respondents and must be trained on how to serve impartially.

Procedures

- ▶ When investigating a formal complaint and throughout the grievance process, a district —
 - ▶ Retains responsibility for the burden of proof and the burden of gathering evidence sufficient to reach a determination,
 - ▶ May not use or disclose a party's treatment records without that party's voluntary, written consent.
 - ▶ Must provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
 - ▶ Must not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;

Procedures

- ▶ Must provide the parties with the same opportunities to have others present during any grievance proceeding, including
 - ▶ The opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney,
 - ▶ Not limit on the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding;
 - ▶ Restrictions regarding the extent to which the advisor may participate in the proceedings are permissible as long as the restrictions apply equally to both parties.

Procedures

- ▶ Must provide written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;

Procedures

- ▶ Must provide both parties an equal opportunity to inspect and review evidence to enable each party to meaningfully respond to the evidence prior to the conclusion of the investigation:
 - ▶ Any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint,
 - ▶ Any evidence upon which the district does not intend to rely in reaching its determination.
 - ▶ Any inculpatory or exculpatory evidence whether obtained from a party or other source.

Procedures

- ▶ An investigative report must be created that fairly summarizes relevant evidence.
- ▶ Prior to completion of the investigative report, the district must
 - ▶ Send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy,
 - ▶ Provide the parties at least 10 days to submit a written response, which must be considered by the investigator prior to completion of the investigative report.

Procedures

- ▶ After receipt of the investigation report, either party must have at least 10 days prior to a final determination (or hearing, if any) to:
 - ▶ Submit written, relevant questions that a party wants asked of any party or witness,
 - ▶ Provide each party with the answers, and
 - ▶ Allow additional, limited follow-up questions from each party.

NOTE: Unlike postsecondary institutions, the district is not required, but may, provide for a hearing. Additional rules apply if a live hearing is permitted.

Procedures

- ▶ Decision-maker(s) who receive the investigation report cannot be the same person(s) as the Title IX Coordinator or the investigator(s).
- ▶ Decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.
 - ▶ Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless offered to prove that someone other than the respondent committed the alleged conduct; or
 - ▶ They concern specific incidents of the complainant's prior sexual behavior and are offered to prove consent.

Relevant Evidence

- ▶ Federal Rule of Evidence 401: Evidence is relevant if:
 - (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
 - (b) the fact is of consequence in determining the action.
- ▶ Tennessee Rule of Evidence 401: “Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable.

**T.C. ex rel. Child v. Metro. Gov't of Nashville &
Davidson Cnty., 378 F.Supp.3d 651 (M.D. Tenn.
2019)**

Was the video evidence relevant?

Determination

- ▶ The decision-maker(s) must issue a written determination regarding responsibility that includes—
 - ▶ Identification of the allegations potentially constituting sexual harassment;
 - ▶ A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
 - ▶ Findings of fact supporting the determination;

Determination

- ▶ 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 the district imposes on the respondent, and whether remedies designed to restore or preserve equal access to the district's education program or activity will be provided by the district to the complainant; and
- ▶ The district's procedures and permissible bases for the complainant and respondent to appeal.

Determination

- ▶ The district must provide the written determination to the parties simultaneously.
- ▶ The determination regarding responsibility becomes final either on the date that the district provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.
- ▶ The Title IX Coordinator must effectively implement any remedies.

Appeal Process

- ▶ A district must offer both parties an appeal from a final determination and from a district's dismissal of a formal complaint or any allegations therein, on the following bases:
 - ▶ Procedural irregularity that affected the outcome of the matter;
 - ▶ New evidence that was not reasonably available at the time the determination or dismissal was made, that could affect the outcome of the matter; and
 - ▶ Conflict of interest or bias of the Title IX Coordinator, investigator(s) or decision-maker(s) for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
- ▶ Additional bases offered equally to both parties

Appeal Process

- ▶ For any appeal, the district must:
 - ▶ Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
 - ▶ Ensure that the decision-maker(s) for the appeal is not the same person as the initial decision-maker(s), the investigator(s), or the Title IX Coordinator;
 - ▶ Ensure that the decision-maker(s) for the appeal complies with the standards set forth in the regulations;

Appeal Process

- ▶ 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.

Confidentiality

- ▶ The district must keep confidential the identify of:
 - ▶ Any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment,
 - ▶ Any complainant,
 - ▶ Any individual who has been reported to be the perpetrator of sex discrimination,
 - ▶ Any respondent, and
 - ▶ Any witness, except as may be permitted by FERPA, the FERPA regulations, or as required by law

Confidentiality

- ▶ Any supportive measures provided to the complainant or respondent must be confidential unless confidentiality would impair the ability of the district to provide the supportive measures.

Record-Keeping

- ▶ A district must maintain for a period of seven years records of—
 - ▶ Each sexual harassment investigation including
 - ▶ Any determination regarding responsibility;
 - ▶ Any audio or audiovisual recording or transcript required;
 - ▶ Any disciplinary sanctions 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;
 - ▶ Any appeal and the result therefrom;
 - ▶ Any informal resolution and the result therefrom; and
 - ▶ All materials used to train Title IX Coordinators, investigators, decisionmakers, and any informal resolution facilitator.

Record-Keeping

- ▶ Records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.
- ▶ Documentation that basis for its conclusion that its response was not deliberately indifferent,
- ▶ Documentation that it has taken measures designed to restore or preserve equal access to the district's education program or activity.
- ▶ Documentation that the reasons for a decision not to provide a complainant with supportive measures was not clearly unreasonable in light of the known circumstances.

***Retaliation is
prohibited.***

Retaliation

- ▶ No district or other person may intimidate, threaten, coerce, or discriminate against any individual
 - ▶ For the purpose of interfering with any right or privilege secured by Title IX or the regulations,
 - ▶ Because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

Retaliation

- ▶ Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct 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 or its regulations, constitutes retaliation.

Retaliation

- ▶ Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination.
- ▶ The exercise of rights protected under the First Amendment does not constitute retaliation.

Retaliation

- ▶ Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation.
- ▶ A determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

OCR Training Materials

<https://www2.ed.gov/about/offices/list/ocr/blog/20200723.html>



OCR

Office for Civil Rights

- Home
- Programs/Initiatives
- Office Contacts
- Reports & Resources
- News
- About OCR
- Reading Room
- Frequently Asked Questions
- Careers/Internships
- Blog

Office for Civil Rights Blog - 2020723

TRAINING WEBINAR FOR TITLE IX DECISION MAKERS AND HEARING OFFICERS

July 23, 2020



OCR's Center for Outreach, Prevention, Education, and Non-discrimination (OPEN Center) is pleased to release its latest webinar, *Conducting and Adjudicating Title IX Hearings: An OCR Training Webinar*, addressing the role and responsibilities of the people who conduct and adjudicate grievance proceedings involving an allegation of sexual harassment under the Department's new Title IX Regulations (generally, that person is called a "decision maker" in the Rule). The webinar includes topics such as who may serve as a decision maker, the training required for an individual to serve as a decision maker, the role of the

decision maker in the grievance process (including a live hearing), and the requirements of the written determination issued by the decision maker.

The webinar is available here: https://youtu.be/yQ4-S5_Jahw

OCR's recent Title IX webinars include:

New Title IX Protections Against Sexual Assault

Due Process Protections under Title IX

OCR Webinar: Title IX Regulations Addressing Sexual Harassment

If you have questions or require technical assistance, please contact T9questions@ed.gov. Also, please let us know

How Do I Find...

- Student loans, forgiveness
- College accreditation
- Every Student Succeeds Act (ESSA)
- FERPA
- FAFSA
- 1098, tax forms

Mo

Information About...

- Transforming Teaching
- Family and Community Engagement
- Early Learning

Related Topics

- [How to File a Complaint](#)
- [Topics A-Z](#)
- [Civil Rights Data Collection \(CRDC\)](#)
- [Other Civil Rights Agencies](#)
- [Recursos de la Oficina Para Derechos Civiles en Español](#)
- [Resources Available in Other Languages](#)

Debra D. Owen
Stephen L. Shields

Jackson, Shields, Yeiser, Holt, Owen & Bryant
262 German Oak Drive
Memphis, Tennessee 38018
Phone: 901-754-8001
Fax: 901-754-8524
jsylawfirm.com

Thanks for listening!

- *This presentation does not constitute legal advice.*
- *Receipt of this training and/or these training materials does not create an attorney-client relationship.*