



Northern
California ReLIEF

TITLE IX Training Series

Brought to you by the
Northern California Regional Liability
Excess Fund



Title IX Training for All Employees of K12 School Districts

July 20, 2022

12:00-1:00PM PDT Zoom Training

Title IX Coordinator Training

August 10, 2022

12:00-3:00PM PDT Zoom Training

Title IX Investigator Training

August 17, 2022

12:00-3:30PM PDT Zoom Training

Title IX Decision-maker Training

August 24, 2022

12:00-2:00PM PDT Zoom Training



For more information: <https://ww2.keenan.com/ncr-titleix-training-series>



Title IX Investigator Training

K12 School Districts
2022-2023

August 17, 2022

Welcome!



- Any specific questions you hope to have answered today – please put in chat
- Poll 1





- The information contained herein was developed by Title IX Consult, LLC for the exclusive use of Title IX Consult, LLC, its trainees and its employees. Use of these documents by non-employee and/or outside the education environment requires explicit permission of Title IX Consult, LLC.
- ©Title IX Consult, LLC, 2022. Copyrighted material. Express permission to post training materials for those who attended a training provided by Title IX Consult, LLC is granted to comply with 34 C.F.R. § 106.45(b)(10)(i)(D). These training materials are intended for use by licensees only. Use of this material for any other reason without permission is prohibited.
- This training is intended for educational purposes only and does not contain sample forms for use in Title IX investigation and/or decision-making process.

Overview of Training



- Overview of Title IX
- Title IX Investigation Process
- Important Considerations
- Case Studies



- No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.
- Enforced through the Department of Education, Office for Civil Rights (OCR)



Rescinded Guidance from OCR
under Obama administration

2015

Title IX Coordinator

2011, 2014, 2016

2017

Q&A on Campus Sexual
Misconduct

BINDING GUIDANCE ON TITLE IX

2001

Regulations on Title IX

1998-1999

Supreme Court decisions on
Title IX

2020

Final Rules on Title IX
(effective 8/14/20)

2021

Notice of Interpretation –
sexual orientation/gender
identity

Questions and Answers on
New Regs



Legal Obligation

Educational institution must respond in a manner that isn't deliberately indifferent when it has actual knowledge of sexual harassment occurring in the institution's education program or activity against a person in the United States.

In K-12 institutions, **ALL EMPLOYEES** have obligation to report

Title IX – Parties and Administrators



Parties

- Complainant – alleged victim/survivor
- Respondent – responds to the allegation

Administration of Claims

- Title IX Coordinator
- **Title IX Investigator**
- Title IX Decision-maker
- Title IX Appeal Officer
- Title IX Advisor
- Title IX Informal Resolution Officer

Investigator Responsibility



- Serve objectively, impartially, without bias
 - Conflicts
 - Stereotypes
- Gather all information related to a claim
- Analyze
 - Relevancy
 - Authenticity
 - Credibility
- Connect to parties and witnesses
- Assist in maintaining legitimacy of the process
- Policy should define the INVESTIGATOR role



- Be neutral – neither pro-Complainant nor pro-Respondent
- Consider the evidence as presented
- Confront and understand bias and not allow it to impact decision
- Maintain open mind as to the potential conclusions

Conflicts of Interest



- Relationship to parties or witnesses
- Professional conflicts
- Personal conflicts
- Actual and perceived



- “A fixed, over generalized belief about a particular group or class of people.” (Cardwell, 1996)
- Stereotypes around sexual assault
- Stereotypes around sexual harassment
- Complainant and Respondent





- Conscious/Explicit
 - Discriminatory intent
 - Stated preferences
- Unconscious/Implicit
- For the most part, most people are unaware of these drivers
- Developed over a period time and can influence many factors in hearing
- Short cuts developed by the brain and often play a role in:
 - Immediate response to conflict
 - Often mimics fear responses
- Poll 2

Displaying Bias



Types of Claims Under Title IX



- Athletics, access, parity
- Sex discrimination
- Sexual harassment
- Covers students and employees



Types of Sexual Harassment

Under new regulations



Conduct on the basis of sex:

- **Quid pro quo** - An employee who conditions the receipt of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct.
- **Hostile environment** sexual harassment, defined as unwelcome conduct determined by a reasonable person to be so severe, pervasive **and** objectionably offensive that it effectively denies a person equal access to the school's education program or activity (emphasis added).



Sexual Assault

- Rape
- Fondling
- Incest
- Statutory Rape

Dating/Domestic Violence

Stalking



- Age of consent
- Affirmative consent law applies to all institutions of higher education (public and private) in the state
- Important elements of consent
 - Freely given
 - Ongoing
 - Manifested



- Occurring in the institution's education program or activity includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurs
- Against a person in the United States

Dismissal - Mandatory and Permissive



Mandatory dismissal

- Would not constitute sexual harassment as defined in regulations
- Did not occur in education program or activity
- Did not occur against a person in the U.S.

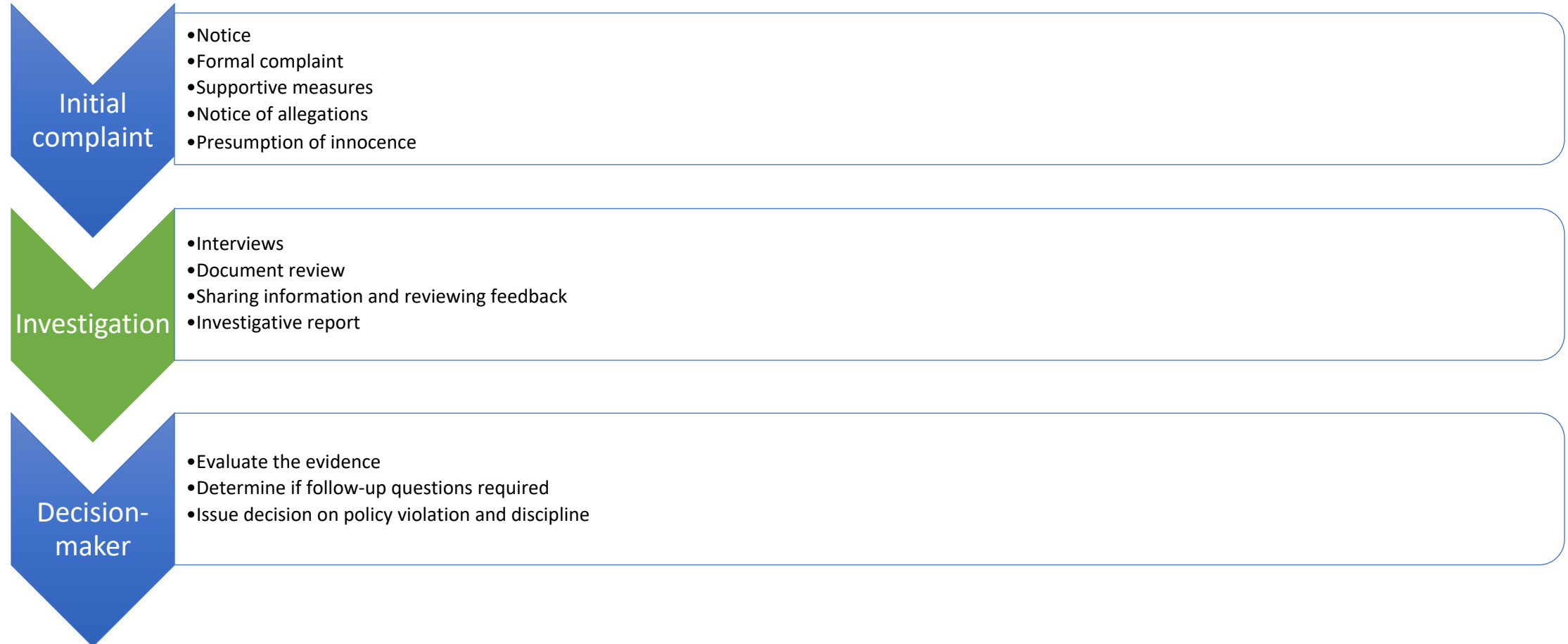
Permissive dismissal

- Complainant notifies Title IX Coordinator in writing that Complainant would like to withdraw formal complaint or allegations
- Respondent is no longer enrolled or employed by school district
- Specific circumstances prevent the school district from gathering evidence sufficient to reach a determination

Overview of Grievance Process



OBLIGATION: Respond promptly in a manner that is not deliberately indifferent





When sexual harassment or allegations of sexual harassment
come to the attention of
ANY EMPLOYEE
of a K-12 district

All employees **MUST** report

Formal Complaint



- Schools are required to investigate formal complaints - filed by a complainant alleging sexual harassment against a respondent and requesting that the school investigate the allegation
 - a complainant must be participating in or attempting to participate in the education program or activity of the school to file formal complaint
- If the complainant does not file a formal complaint, the wishes of the complainant should be respected.
 - Unless the Title IX Coordinator decides to initiate the complaint and it is “is clearly not unreasonable in light of the known circumstances”
 - Title IX Coordinator may file and sign a formal complaint
 - Title IX Coordinator does NOT become complainant



- Mandatory obligations include offering “**supportive measures**” to complainant that must be non-punitive, non-disciplinary, and not unreasonably burdensome on the other party
 - GOAL - provide both parties with equal access to their education, protect safety, and deter sexual harassment.
- No action can be considered “disciplinary” against a respondent at this stage.
- Appropriate supportive measures counter allegations of deliberate indifference
- Supportive measures must be revisited frequently and properly documented



Case Study



Jurisdiction, Student Removal

POLL 4

Notice of Allegations



- Notice of the allegations of sexual harassment including sufficient details known at the time including the identities of parties, the conduct alleged, and date and location of the incident
- Provided before Respondent's interview
- Allow for sufficient time to prepare a response before any initial interview
- Includes policies alleged to have been violated and must be supplemented if additional allegations arise
- Notice of informal resolution process
- Must include:
 - Respondent is presumed not responsible for the allegation
 - Parties may have an advisor of their choice

Presumptions

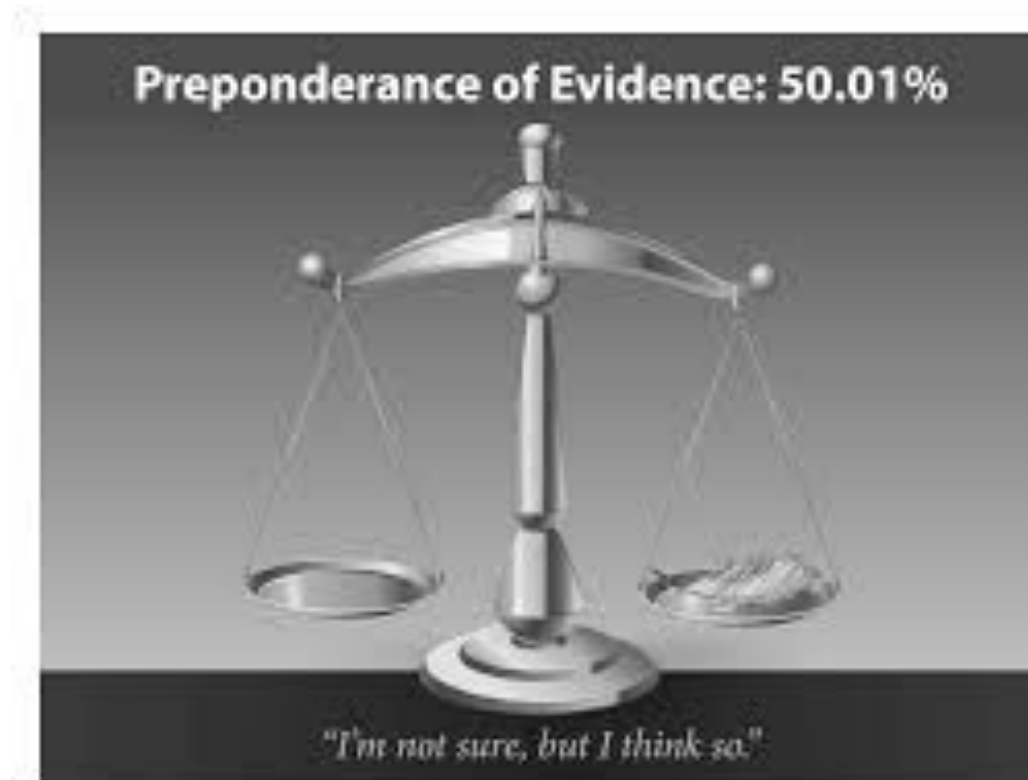


- Not responsible until proven to be responsible
- Stereotypes and bias

Burden of Proof



- Preponderance of the evidence
- Clear and convincing





Conducting Investigations

Basics

Information Gathering



- Types of information
- Background
- Request information from parties
- Proactively seek information
- Requests and refusals
- Information sharing



- Formal complaint
- Notice to both parties
- Supportive measures
- Timelines
- Parties (and parents) understand the process
- Other complaints?
 - Criminal matters
 - Similar complaints – consolidation
- Concurrent or parallel investigations
- Record-keeping requirements
- **Documentation at every step!!**

Preliminary Information Gathering



- Documents shared with the parties
- Other records



What Is Next?

Organizing the Investigation

Conducting Interviews



- Introduction
- Questioning – time, space, and effect of silence
- Open-ended versus leading questions
- Direct versus indirect evidence
- Sensory recollection
- Note-taking versus audio/video-recording
- Advisors' role
- Investigator should maintain the control the interview
 - Decorum
 - Responses
 - Concluding the interviews
 - “Anything else”

Gathering Documents and Other Evidence



- Emails, texts, photos
- Legal implications
- Support or contradict testimony
- Character evidence

Weighing and Challenging Evidence



- Authentication
- Relevance
- Credibility



- RELEVANCE – Applying to the matter in question; affording something to the purpose (Black’s Law Dictionary)
- NOT permitted:
 - Sexual history of Complainant (see Rape Shield exception)
 - Privileged communications
 - Medical documentation
- Not repetitive



- Corroboration
- Feasibility
- Motivation for truthfulness/untruthfulness
- Consistent
- Reviewed/coached



- Many Title IX causes of action involve trauma
- Investigators and decision-makers must understand the impact of trauma on:
 - Reaction to trauma
 - Ability to capture memories
 - Recollection of memories
- Expectations around trauma victim



Writing the Report



- Convey relevant information about the allegations to the parties and their advisors
- The Department of Education takes no position on the elements required in the report beyond what is required by final regulations
- The investigative report must fairly summarize relevant evidence



Decision-maker must issue a written determination regarding responsibility that has to include

- Findings of fact
- Conclusions as to all allegations
- Rationale for reaching the decision
- Sanctions if the respondent is found responsible for policy violations must be included in the written determination.

Organizing the Report



- Covering required categories
- Providing the relevant information
- Including applicable policy provisions
- Staying within the parameters of the investigation report (as set forth in policy)
- 20-20 Hindsight

Title IX Report and Information Sharing



Before investigation report issued, all evidence shared



Opportunity to question and provide feedback



Investigation report issued and shared



Opportunity to question and provide feedback on investigation report



Final outcome letter issued by decision-maker(s)



- Review all materials in investigation report
 - Consider challenges/questions submitted by parties
- Question investigation and report
- Respond to questions on report itself from parties
 - Relevancy
- Conclude whether policy violation occurred and determine discipline, if necessary



Other Considerations

Appeal and Non-retaliation

Grounds for Appeal



- Procedural irregularity in the Title IX grievance process affected the outcome;
- Newly discovered evidence that was not reasonably available at the time of the determination of responsibility or dismissal that could affect the outcome; or
- Due to a bias or conflict of interest by the Title IX Coordinator, investigator, or decision-maker that affected the outcome.

Other Important Provisions



- Non-retaliation
- Record-keeping



Case Study

Allegation of Sexual Harassment – State Law Example



- **Title IX hostile environment sexual harassment** - unwelcome conduct determined by a reasonable person to be so severe, pervasive **and** objectionably offensive that it effectively denies a person equal access to the school's education program or activity (emphasis added).

Hostile environment sexual harassment

- Prohibited sexual harassment includes, but is not limited to, unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature made against another person of the same or opposite sex in the educational setting, under any of the following conditions:
 - ...
 - 3. The conduct has the purpose or effect of having a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment.



QUESTIONS?