



2022-23

Sexual Harassment Staff Training

(for Elementary and Secondary Schools)

Chelsea Canaday
ccanaday@dickinsonwright.com

Disclaimer

- These training materials are informational in nature and should not be construed as legal advice and are not provided to address specific situations.
- Consult with your legal counsel as necessary to address specific Title IX report and grievance situations and investigations.



Agenda

- Title IX Overview
- Sexual Harassment in the Workplace
- Reminders Regarding Inappropriate Conduct
- Licensure Code of Professional Conduct





2022-23

Title IX Training for Staff

(for Elementary and Secondary Schools)

Title IX Agenda

1. Overview of Title IX and when it is applicable;
2. The Title IX grievance process (including appeals, and informal resolution processes, as applicable);
3. Overarching Title IX grievance process requirements; and
4. Responsibilities of staff that *are not* the Title IX Coordinator

This training is not sufficient training for staff members involved in the Title IX grievance process (i.e. Title IX Coordinators, Investigators, or Decision Makers). Such individuals will need specialized training.



Title IX Statute

“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.”



Title IX Regulations

- Provide detailed grievance procedure for Title IX sexual harassment allegations and are adopted by district policy.
- Allegations of all other forms of sex discrimination should be addressed under the organization's applicable procedure/policy for allegations of such discrimination not involving sexual harassment.
- Focus today is on the Title IX sexual harassment regulations and grievance procedure.



Actual Knowledge Responsibilities

- **The school is deemed to have knowledge of sexual harassment allegations if ANY staff member has knowledge.**
- The School is REQUIRED to respond promptly when it has knowledge.
- ACTUAL KNOWLEDGE=Notice of sexual harassment or allegations of sexual harassment **to:**
 - The Title IX Coordinator, OR
 - Any official of the recipient who has authority to institute corrective measures on behalf of the recipient, OR
 - **Any employee of an elementary and secondary school**
- **NOTICE IS NOT JUST A REPORT TO THE TITLE IX COORDINATOR**



Noncompliance regarding reporting will lead to discipline

Reports of Sexual Harassment

- Students may report to any staff member or directly to the Title IX Coordinator.
- **ALL STAFF MUST REPORT any notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator immediately (SAME DAY).**
- Staff to staff, staff to student, student to staff, and student to student sexual harassment all included.
- Be wary of indirect notice as well (e.g. social networking sites, media).
- Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.



Title IX Sexual Harassment Team Members

Position	Scope of Responsibility	Requirements
Title IX Coordinator	Person designated to coordinate and conduct intake reports and complaints, initiate formal complaints if necessary, and implement supportive measures and remedies, as necessary.	Proper Training Contact information online and in all applicable materials
Investigator	Person designated to investigate, gather evidence, and compile an investigation report. Dismisses if mandatory or permissive.	Proper Training May be the Title IX Coordinator.
Decision-Maker	Person who conducts an objective evaluation of all relevant evidence, administers question and answer period and rules on relevancy, issues a written determination regarding responsibility, dismisses if required.	Proper Training Must not be the same person as the Title IX Coordinator or the Investigator.
Appeal Designee	Person designated to handle appeal, if any.	Proper Training Must not be the same person as the Title IX Coordinator, Investigator, or Decision-Maker.

Title IX Sexual Harassment Parties

Complainant	An individual who is alleged to be the victim of conduct that could constitute sexual harassment
Respondent	An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
Advisor	An individual that accompanies the complainant or respondent to any related meeting or proceeding in order to offer them support.
Witness	An individual that have or could potentially have information related and/or relevant to the alleged incident.



Scope of “Educational Program or Activity”

- “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.”
- Jurisdictional trigger
- “locations, events, or circumstances over which the recipient [the school/district] exercised substantial control over both the respondent and the context in which the sexual harassment occurs . . .”



- Whether misconduct occurs on campus or off campus is not dispositive
- Title IX obligations for sexual harassment in K-12 institutions include incidents that occur off campus if:
 - if the off-campus incident occurs as part of the school's "operations" or
 - if the school exercised substantial control over the respondent and the context of alleged sexual harassment that occurred off campus.

Definition of “Sexual Harassment”

- Conduct **on the basis of sex** that satisfies one or more of the following:
 - (1) An employee of the school conditioning the provision of an aid, benefit, or service of the school on an individual’s participation in unwelcome sexual conduct (quid pro quo sexual harassment);
 - (2) 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 school’s education program or activity; or
 - (3) “Sexual assault”, “dating violence”, “domestic violence”, or “stalking” (as defined under Clery Act)



- Sexual assault” means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
- “Dating violence” means violence committed by a person—
 - (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - (B) where the existence of such a relationship shall be determined based on a 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.

- “Domestic violence” includes felony or misdemeanor crimes 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 receiving grant monies, 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.
- “Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
 - (A) fear for his or her safety or the safety of others; or
 - (B) suffer substantial emotional distress.

Definition of “Sexual Harassment”

- Conduct **on the basis of sex** that satisfies one or more of the following:
 - (1) An employee of the school conditioning the provision of an aid, benefit, or service of the school on an individual’s participation in unwelcome sexual conduct (quid pro quo sexual harassment);
 - (2) 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 school’s education program or activity; or
 - (3) “Sexual assault”, “dating violence”, “domestic violence”, or “stalking” (as defined under Clery Act)



An employee of the school conditioning the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct (quid pro quo sexual harassment)

- Quid pro quo-#1
 - Encompasses situations where the quid pro quo nature of the incident is implied from the circumstances.
 - Ex: if you do or don't do x, I will or won't do x
 - Applies to all of a school's employees
 - May involve a power differential
 - "unwelcome" as used in the first and second prongs of the definition of sexual harassment is a subjective element



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 school's education program or activity

- “Catch-all”-#2
 - Focus factually on the nature of the misconduct itself – not on the victim's response to the misconduct.
 - Determinations of severity, pervasiveness, and objective offensiveness depends on a constellation of factors including the ages and numbers of parties involved, disability status, positions of authority of involved parties etc.
 - Whether harassing conduct is “objectively offensive” must be evaluated under a reasonable person standard, as a reasonable person in the complainant's position.
 - No intent aspect.
 - Does not require that a complainant has already suffered loss of education before being able to report sexual harassment





Schools may continue to address harassing conduct that does not meet the new definition of sexual harassment under other provisions of the school's own code of conduct.

Grievance Procedure for Sexual Harassment Formal Complaints

1. Report
2. Supportive measures and information on formal complaint
3. Formal complaint
4. Written notice to parties
5. Investigation
6. Inspection and review of evidence
7. Investigative report with review and written response
8. Question and Answer period
9. Written determination
10. Appeal on certain bases
11. Notice of appeal and opportunity to respond
12. Final written decision on appeal

Report Received

Title IX Coordinator must promptly reach out to the individual who is alleged to be the victim of conduct that could constitute sexual harassment (aka the complainant) to:

1. discuss the availability of supportive measures,
2. consider the complainant's wishes with respect to supportive measures,
3. inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and
4. explain to the complainant the process for filing a formal complaint.



Supportive Measures

- *Supportive measures*” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent.
- Such measures are designed to restore or preserve equal access to the School’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the School’s educational environment, or deter sexual harassment.
- Supportive measures 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 locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
- The School must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the School to provide the supportive measures.



Grievance Procedure for Sexual Harassment Formal Complaints

1. Report
2. Supportive measures and information on formal complaint
3. Formal complaint
4. Written notice to parties
5. Investigation
6. Inspection and review of evidence
7. Investigative report with review and written response
8. Question and Answer period
9. Written determination
10. Appeal on certain bases
11. Notice of appeal and opportunity to respond
12. Final written decision on appeal



Some Overarching Requirements for Sexual Harassment Grievance Procedure

1. Follow Reasonably Prompt Timelines
2. Removal/Administrative Leave Permitted in Certain Instances
3. Certain Grounds for Dismissal
4. Informal Resolution Process After Formal Complaint Is Optional
5. No Retaliation
6. Maintain Confidentiality

Maintain Confidentiality

- The recipient must keep confidential the identity 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], or as required by law, or to carry out the purposes of [Title IX], including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.



Responsibilities for Staff that are NOT the Title IX Coordinator

- **CALL THE TITLE IX COORDINATOR IMMEDIATELY**
- Report all knowledge of sexual harassment or alleged sexual harassment or any sex discrimination or alleged sex discrimination
- DO NOT start the investigation yourself
- DO NOT impose discipline for alleged sexual harassment or sex discrimination, without ensuring that the Title IX process is followed or does not apply



Responsibilities for Staff that are NOT the Title IX Coordinator

- If a report is made to you and you are unable to involve the Title IX Coordinator initially as details are given by the reporter, immediately pass on all information received from the reporter to the Title IX Coordinator.
- Be familiar with the Title IX definition of sexual harassment
- Be familiar with the scope of the district's educational program or activity



Responsibilities for Staff that are NOT the Title IX Coordinator *cont.*

- Assist with supportive measures as requested
- Assist with any resolutions from informal resolution agreements
- Assist with remedies as requested
- Keep parties and information confidential
- Direct students/parents to the Title IX policy and Title IX Coordinator when information is requested



Responsibilities for Staff that are NOT the Title IX Coordinator *cont.*

- Report knowledge of allegations of sexual harassment or sex discrimination to the Title IX Coordinator EVEN IF the Complainant/reporter does not want you to
- Know that you may not be told whether a formal complaint is filed or what the final decision is after Title IX proceedings conclude—need to know basis



If you are the witness in a Title IX investigation...

- Be honest
- What you say is being notated and will be shared with the parties and the decision-maker.
- Provide answers based on personal knowledge. Do not guess or give opinions.



In Sum:

- Know that individuals have a right to an environment free from sexual harassment under Title IX
- Understand sexual harassment can include a wide range of conduct
- There is a mandatory reporting obligation for all employees
- You are protected from retaliation for reporting
- Contact your Title IX Coordinator whenever you have notice of or witness sexual harassment or alleged sexual harassment, or anything that you think may be sexual harassment or alleged sexual harassment
- The Title IX Coordinator will review the allegation and determine next steps





Preventing Sexual Harassment in the Workplace Training

Sexual Harassment in employment

It is unlawful to harass a person (applicant or employee) because of that person's sex.

- This includes any unwelcome behavior such as sexual advances, jokes, requests for sexual favors, or inappropriate touching and becomes illegal when one of two things happens:
 1. An employee must submit to the unwelcome behavior as a condition of employment or continued employment.
 2. The behavior is so severe or pervasive that it unreasonably interferes with a persons' ability to do their job.

Quid Pro Quo

- When job benefits, such as hire, continued employment, promotion, pay increases, bonuses, preferred shift or work assignments, performance expectations, or other terms or conditions of employment are made contingent upon the employee providing sexual favors to an employer, supervisor, or agent of the employer who has the authority to make decisions about employment actions affecting the employee.
- When an employee's rejection of a sexual advance or request for sexual favors results in a tangible employment detriment, such as the loss of one of the job benefits described above.

Hostile Work Environment

- Hostile work environment sexual harassment occurs when an employee is subject to unwelcome advances, sexual innuendos, or offensive gender-related language that is sufficiently severe or pervasive such that a reasonable person would consider the work environment to be intimidating, hostile, or abusive.
- **(It's not just about sex.** Harassment does not have to be about sex – a hostile work environment can be created due to offensive jokes, slurs, epithets, threats, objects or pictures related to any protected characteristic.)



PLEASE READ YOUR FULL ANTI-
DISCRIMINATION AND HARASSMENT POLICY
WITHIN YOUR HANDBOOK



All Harassment is Prohibited

- Harassment based on *any* protected characteristic is strictly prohibited.
- All harassment is harmful to the victim, and to the workplace as a whole.
- Even a single incident can constitute harassment or create a hostile work environment if it is serious.
- Respect is the foundation of a positive work environment.

How Can You Determine if Conduct is Harassment

- Your job is not to draw a legal conclusion.
- If conduct seems inappropriate, it probably is.
- Better to err on side of caution.
- If in doubt, treat as inappropriate, report, and have investigated by appropriate administrator
- Often the biggest mistake is to do nothing.
- The School prohibits retaliation.

What is Expected of Employees

- Treat everyone with respect
- No harassment of, or discrimination toward anyone! Follow the School's policies.
- Report any harassment or discrimination immediately - whether directed you or someone else.
- If you are comfortable, tell the person that you believe is harassing you or other employees to stop the offending conduct.
- If an employee makes a complaint of harassment or discrimination you must not retaliate by changing job or pay, or continuing behavior.
- Set a good example for students.



Important Reminders Regarding Inappropriate Conduct

Important Reminders

1. Do not touch (or stand too close to) students or other staff members (this includes shoulders, thighs, lower back etc.).
2. Do not send emails, texts, IMs, chats, images etc. that are personal in nature or are not purely school-related.
3. Be careful regarding your use of compliments, it may make a student or another staff member uncomfortable.
3. Do not make jokes regarding protected characteristics.
4. Do not continue to engage in conduct that someone asks you not to do.



Important Reminders (cont'd)

5. Do not discuss sexual conduct with, or ask questions regarding sexual conduct of, other employees or students.
6. Do not make comments about other people's bodies or physical appearance.
7. Do not fish or probe coworkers for information. Keep workplace conversations work-related or to ordinary conversation such as current events, or family/hobbies/interests if disclosed by another employee.
8. Report inappropriate conduct to admins so that they are aware of the issue and can further investigate if necessary.





Licensure Code of Professional Conduct

Professional behavior

Includes but is not limited to!

- Failing to adhere to the Licensure Code of Professional Conduct for Ohio Educators.
- Assisting another in committing an act of conduct unbecoming, as described in the Licensure Code of Professional Conduct for Ohio Educators.
- Committing any violation of state or federal laws, statutes or rules although the conduct may not have resulted in a criminal charge, indictment, prosecution or conviction. (Except in certain situations, this does not include traffic violations.)
- Disparaging a colleague, peer, or other school personnel while working in a professional setting (teaching, coaching, supervising or conferencing) on the basis of race or ethnicity, socioeconomic status, gender, national origin, sexual orientation, political or religious affiliation, physical characteristics, age, disability or English language proficiency.
- Harassing, intimidating, or retaliating against a colleague, peer, or other school personnel.
- Sexually harassing any student, minor or adult in the school community.



Professional relationships with students

Includes but is not limited to!

- Committing any act of sexual abuse of a student or minor or engaging in inappropriate sexual conduct with a student or minor.
- Soliciting, encouraging, engaging or consummating an inappropriate relationship with any student, minor, or individual who was a student in the preceding twelve months.
- Engaging in grooming a student or minor (befriending and establishing an emotional connection with a student or minor or a student's or minor's family to lower the student's or minor's inhibitions for the purpose of an inappropriate emotional, romantic or sexual relationship).
- Disparaging a student on the basis of race or ethnicity, socioeconomic status, gender, national origin, sexual orientation, political or religious affiliation, physical characteristics, academic or athletic performance, disability or English language proficiency.
- Using inappropriate language, gestures or signs at any school-related activity (such as racial slurs, or biased, lewd or lascivious expressions).
- Knowingly contributing to or failing to intervene in the harassment, intimidation, or bullying of a student.



Confidentiality

Includes but is not limited to!

- Willfully or knowingly violating any student confidentiality required by federal or state laws
- Using confidential student, family, or school-related information in a non-professional way (for example, gossip, malicious talk or disparagement).



Appropriate and responsible use of technology

Includes but is not limited to!

- Using technology, social media, or other electronic communications to promote inappropriate communications with students (for example, excessively, for non-educational purposes or requesting students or minors to conceal communication).
- Knowingly failing to report and/or address instances of electronic or online harassment, bullying, or intimidation of a student.
- Knowingly failing to appropriately intervene when made aware of inappropriate or illegal images or material involving students or minors in electronic forms.
- Using technology, social media or other electronic communications to host, post, or distribute improper or inappropriate material that could reasonably be accessed by the school community (includes, but is not limited to, pornography, obscene material, promotion of drug use or underage consumption of alcohol, promotion of violence, disparagement of students, and disparagement based upon gender, gender identity, race, sex, ethnicity, sexual orientation, disability, military status, or religion).



Disclaimer

- These training materials are informational in nature and should not be construed as legal advice and are not provided to address specific situations.
- Consult with your legal counsel as necessary to address specific Title IX report and grievance situations and investigations.

