

Checklist for Allegations of Title IX Sexual Harassment (K-12)

This checklist is intended to guide Title IX Coordinators and other administrators in the K-12 environment through the Title IX grievance process for sexual harassment. This checklist does not contain every requirement within each step of the process. The checklist is intended to be used as a quick reference guide, in conjunction with the school district's Title IX policy and administrative regulations. Note that a school district's Title IX policies/procedures may include different or additional steps in the grievance process.

Upon receiving actual knowledge of sexual harassment, the school district must engage in the steps outlined below. We have identified suggested or mandatory individuals to engage in each of the required steps.

1) Explain to the complainant and/or the complainant's parents the process for filing a formal complaint. Mandatory responsible role: Title IX Coordinator

- The Title IX Coordinator should not encourage or discourage a person to file a formal complaint.
- If a person does not want to file a formal complaint, the Title IX Coordinator should determine whether the allegations warrant the Title IX Coordinator signing a formal complaint. A formal complaint must be signed if the district would be deliberately indifferent in not acting on an allegation of sexual harassment.

2) Offer supportive measures. Mandatory responsible role: Title IX Coordinator

- Contact each complainant (defined as a person who is alleged to be the victim of sexual harassment) to discuss supportive measures and inform the complainant of the availability of these measures *with or without filing a formal complaint*.
- Consider the complainant's wishes with respect to supportive measures.
- Supportive measures must be non-disciplinary and non-punitive.

If a formal complaint is filed by the complainant or signed by the Title IX Coordinator, continue to the next step. If a formal complaint is not filed, proceed to step 15.

3) Consider if emergency removal of a student respondent or administrative leave of an employee respondent is appropriate. Suggested responsible role: Title IX Coordinator

- The district can remove a student respondent on an emergency basis while the grievance process proceeds and in accordance with other relevant laws (ex: IDEA, Section 504). The district must undertake an individualized safety and risk analysis

and determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegation justifies removal.

- The student respondent must be provided with written notice and an opportunity to challenge the decision immediately following removal.
- Employee respondents may be placed on administrative leave during the pendency of the grievance process.

4) If a formal complaint is filed, determine if there is Title IX jurisdiction. Suggested responsible role: Title IX Coordinator

- In order to determine if the formal complaint falls within the jurisdiction of Title IX, answer the following questions:
 - Is the complainant a current student or employee or attempting to enroll in the district's programs? This includes a student who has dropped out because of the harassment and wants to participate.
 - Did the sexual harassment occur in a school's "education program or activity?" This includes anywhere on campus, on the school bus, on field trips, at school sponsored-activities (including athletics), academic conferences, and distance learning.
 - Did the sexual harassment occur in the United States?
 - Does the alleged conduct, if proven to be true, constitute sexual harassment as defined by Title IX?

If the answer to all of the above questions is yes, continue to the next step. If the answer to any of the above questions is no, proceed to step 14.

5) Send the written notice of allegations and inform the respondent of the grievance process. Suggested responsible role: Title IX Coordinator

- Upon receipt of a formal complaint of sexual harassment, the district must provide a written notice to the known parties and provide the parties with a copy of the grievance process.
- A sample notice is included in the Shipman & Goodwin model administrative regulations.
- If, in 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 an additional written notice.

6) Consider the informal resolution process. Suggested responsible role: Title IX Coordinator

- Consider if the matter is appropriate for an informal resolution process. The district is not required to offer this process.
- This process cannot be offered when the formal complaint contains allegations that an employee sexually harassed a student.

- The informal resolution process can be offered at any time prior to reaching a responsibility determination, *but only after a formal complaint has been filed.*

If the matter is successfully resolved using the informal resolution process, proceed to step 13. Otherwise, continue to the next step.

7) Conduct the investigation. Mandatory responsible role: Investigator(s)

- Assign one or more investigators to gather relevant evidence. This may include documentary evidence, interviews of parties and witnesses, emails, text messages, social media posts, surveillance video, etc.
- Provide an equal opportunity for the parties to present witnesses and other evidence.
- If the parties have an advisor, apply any restrictions on the advisors equally to both parties.
- Provide a written notice to any party or witness whose participation in a meeting or interview is invited or expected and allow sufficient time for participants to prepare prior to the meeting/interview.
- The investigator(s) must keep a record of all evidence, including the investigators' notes from investigation interviews.

8) Provide the parties with the opportunity to review the evidence. Mandatory responsible role: Investigator(s)

- The investigator(s) must send to each party (and the party's advisor, if any) all evidence that is directly related to the allegations in the formal complaint that was obtained as part of the investigation, including evidence upon which the investigator(s) does not intend to rely. The evidence can be sent electronically or in hard copy.
- The parties must have at least 10 days to review the evidence and submit a written response to the evidence.
- The investigator(s) should take steps to ensure the confidentiality of the evidence, as between the parties. This may include but is not limited to including a cover letter explaining the confidentiality requirements; sending the evidence electronically and placing restrictions on access; and including a watermark on PDF documents sent to each party.

9) Draft the investigative report. Mandatory responsible role: Investigator(s)

- Investigator(s) must draft an investigative report that summarizes the relevant evidence. In drafting the report, the investigator(s) must consider the parties' written responses to the evidence. The report should be in narrative form. Shipman & Goodwin offers a template investigative report.
- The investigative report must be sent to each party. Each party can then provide a written response to the investigative report.

10) Provide the parties with the opportunity to submit written questions. Mandatory responsible role: Decision-maker(s)

- Assign one or more decision-maker(s) who is someone other than the Title IX Coordinator or the investigator(s).
- Each party must have the opportunity to submit written, relevant questions that a party wants asked of any other party or witness and then provide each party with the answers and the opportunity for additional, limited follow-up questions.
- A live hearing may be held if permitted by the district's policy.

11) Draft the responsibility determination. Mandatory responsible role: Decision-maker(s)

- The decision-maker(s) must draft a responsibility determination, which includes disciplinary sanctions, if appropriate. Shipman & Goodwin offers a template responsibility determination.
- The determination must include specific information, in accordance with Title IX. This includes explaining the grounds for appeal.
- Parties must be afforded at least 10 days from issuance of the investigative report (or live hearing) before a responsibility determination is issued.
- This written determination must be provided to the parties simultaneously.

If neither party appeals the responsibility determination, proceed to step 13. If a party does appeal the responsibility determination, continue to the next step.

12) Any party has the right to appeal the responsibility determination or the dismissal of a formal complaint. Appeals are limited to three reasons (or more if permitted by the district's policy). Mandatory responsible role: Appeal decision-maker(s)

- Upon receiving the written responsibility determination (or notice of dismissal), any party can submit a formal letter of appeal.
- Assign one or more decision-maker(s) for the appeal, who shall be someone other than the Title IX Coordinator, investigator(s), or initial decision-maker(s).

13) Ensure implementation of the responsibility determination or informal resolution agreement, including remedies designed to restore access to the educational environment for the complainant. Suggested responsible role: Title IX Coordinator

Continue to step 15.

14) Dismiss the formal complaint for lack of jurisdiction. Mandatory responsible role: Title IX Coordinator

- The Title IX Coordinator must dismiss any formal complaint that:
 - Would not constitute sexual harassment under the definition in the Title IX Final Regulations 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.
- If a formal complaint is dismissed, promptly and simultaneously send written notice of the dismissal and the reason(s) to each party.
- Any party can appeal the dismissal. See step 12.
- A formal complaint that is dismissed for lack of Title IX jurisdiction prior to the issuance of a decision may be investigated using the grievances procedure for sex discrimination in the Shipman & Goodwin model policies.

15) Maintain appropriate records for seven years. Suggested responsible role: Title IX Coordinator

- The district must maintain for a period of seven (7) years records of any actions taken in response to a report or formal complaint of sexual harassment, including but not limited to supportive measures, the investigation, the decision, any appeal, any informal resolution process, and training materials.