




Title IX: Sexual Harassment

Annual Training for Title IX Coordinators, Investigators, Decision
Makers, Facilitators of Informal Resolutions

In compliance with 34 C.F.R. 106.45 (b) (10) (i) (D) these training materials are posted on the Auburn
Washburn USD website for public review.



Required Training:

Part One: Required for everyone

Part Two: Required for investigators and decision makers

Part Three: Required for appeals decision maker

*A copy of all training materials is mandated to be posted on the district website.

Part One: General Provisions

Part One: - required for everyone

- Definitions: Discrimination, Sex Discrimination

- Procedural Protections: Prohibitions on Retaliation, Bias, Conflict of Interest, Assumption of Innocence

- Reporting

- Supportive measures

Part Two: Responding to a Formal Complaint

Part Two: - required for investigators, decision makers

Complaints

Supportive Measures

Investigation

Determination

Confidentiality

Bias, Conflict of Interest

Notices

Recordkeeping

Part Three: Appeals

Part Three: - required for appeals decision maker

Appeal

Determination

Notices

Recordkeeping

Part One: General Provisions



U.S. Department of Education

Sex Discrimination

Title IX of the Education Amendments 1972

Title IX prohibits: discrimination and harassment ...on the basis of sex....

- Biological sex
- Gender
- Sex stereotyping
- Sexual orientation and gender identity
- “Sex” as a verb

Sex Discrimination under Title IX

“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...”

- 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.
- Provide **different** aid, benefits, or services or provide aid, benefits or services in a **different** manner.
- Deny any person such aid, benefit, or service.
- Subject any person to separate or **different** rules of behavior, sanctions, or other treatment.
- Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex.

Sexual Harassment under Title IX

Sexual harassment means conduct on the basis of sex that satisfies one of more of the following:

- Quid pro quo - 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,
- Hostile environment - 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
- Clery crimes - sexual assault, dating violence, domestic violence, or stalking.

The school has responsibilities

When notice of alleged sexual harassment or discrimination is provided to:

- Title IX Coordinator, or
- Any school official who has authority to institute corrective measures on behalf of the school, or
- **Any school employee**

Code of Conduct vs Formal Complaint

- We already investigate, make determinations, offer support and apply consequences when harassment or discrimination is reported.
 - This will not change.
 - These measures will now be considered “informal measures” when they apply to sexual harassment.

- The new Title IX procedures will kick in when:
 - A complainant files a formal complaint, or
 - The Title IX Coordinator determines that informal measures are not resolving the report, or are insufficient, and therefore files a formal complaint.

Required positions that should be included in our current practices

1. Investigations, informal and formal, are conducted free of bias and conflict of interest.
2. Respondents are considered not guilty until proven otherwise.
3. The burden of proof is on the school and the complainant.
4. Supportive measures are offered to both complainant and respondent.
5. Retaliation of any kind is prohibited.
6. NEW: The complainant is briefed of the opportunity to file a formal complaint and any consequences of not filing.

Who is involved?

- The district: known as “the recipient” in the regulation...Auburn-Washburn
- The alleged victim: known as “the complainant”...A student or a staff member
- The alleged perpetrator: known as “the respondent”...A student or a staff member
- The Title IX Coordinator(s)...Executive Director of HR (staff) Director of Title Programs (student)
- The Informal Resolution Facilitator...Appointed by the Title IX Coordinator
- The Investigator...Appointed by the Title IX Coordinator
- The Decision Maker...Appointed by the Title IX Coordinator
- The Appeal Decision Maker...Appointed by the Title IX Coordinator

Important Practices

1. Retaliation is prohibited. The school, nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right secured by Title IX, or 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.
2. Supportive measures must be offered: changes in schedule, deadlines, mutual contact restrictions, etc.
3. Informal resolution must be conducted without bias or conflict of interest.
4. Confidentiality must be maintained to the extent possible.
5. Respondents are assumed innocent.

The School's Obligations

- Update district policies
- Address complaints and provide supportive measures
- Fulfill mandatory reporting obligations
- Offer informal resolution
- Conduct investigation
- Provide formal grievance processes
 - Notice
 - Report
 - Decision
 - Appeal

Employee Obligations

- Know the District Title IX Coordinator (s) - their contact information will be posted on the district website.
- Recognize potential Title IX violations.
- Report any potential Title IX violation to the building administrator or the Title IX Coordinator the SAME DAY you receive notice of it.
- Review the district's anti-discrimination and anti-harassment policies.

End of Part One.....Questions?

Title IX Coordinators

Brian White,
Executive Director of
Human Resources
and Operations

Heather Burris,
Director of Title
Services

Part Two: Formal Complaints

Definitions:

Complainant: The person against whom the alleged discrimination or harassment is directed.

Respondent: The person who is alleged to have committed the alleged discrimination or harassment, and who is presumed to be NOT responsible until determination otherwise.

Changes to the law

- The investigator and the decision maker cannot be the same person.
- Evidence and witness statements relevant to the determination must be shared with both parties.
- Parties have the right to submit questions to the other regarding evidence.
- The decision maker must follow a strict template in writing the determination of responsibility.
- The written report must be simultaneously shared with both parties.

Informal Resolution

- Not an option if the allegation of misconduct is sexual harassment of a student by an employee.
- Can be used at any time in the process with written consent by both parties. (use the Written Notice of Informal Resolution form)
- The Title IX Coordinator will appoint an Informal Resolution Facilitator.
- If resolution is reached the Title IX Coordinator will contact the complainant no more than 20 days later to see if the resolution is still acceptable.

The Impartial Adjudication of Complaints

Complainants and Respondents have the right to:

- receive supportive measures,
- an informal resolution with written consent of both parties,
- file a formal complaint,
- an impartial investigation and resolution free of bias and conflict of interest,
- a written decision,
- an appeal to be heard by a different decision maker.

Supportive Measures:

Title IX requires the school to offer supportive measures, and provide remedies to a complainant whenever a respondent is found responsible.

- Designed to preserve the complainant's access to the school's programs without unreasonably burdening the respondent.
- Should be coordinated by the Title IX Coordinator, kept confidential to the extent reasonable.
- Should be equitably offered to both the complainant and the respondent.

Supportive Measures:

Individualized services, reasonably available that are

nonpunitive,

non-disciplinary, and

not unreasonably burdensome to the other party

while designed to ensure equal educational access, protect safety, or deter sexual harassment.

Examples:

Counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escorts, mutual contact restrictions, changes in work locations, increased security and monitoring of certain areas of campus, and other similar measures.

Standard of Evidence

The Board Policy stipulates our standard of evidence to be:

Preponderance of evidence.

Defined as: the evidence supports a greater than 50% chance that the allegation is true.

Investigator: “fact finder”

- Maintain impartiality.
- Gather the facts.
- Provide sufficient details to provide context and information on the importance of specific evidence.
- Share evidence, witness statements with both parties.

Investigator Documentation

- Identify the allegations potentially constituting sexual harassment.
- Describe the procedural steps taken, including any notifications to the parties, site visits, methods used to gather evidence, and interviews.
- Explain what questions were asked, what evidence was reviewed, and why the investigator made the choices to ask those questions and review that evidence.
- Explain what evidence the investigator believes is more important, or less important and why.
- Explain why the investigator thinks certain evidence or statements are more or less credible.
- Include the findings of fact supporting the determination.
- Address any district policies and/or conduct rules which apply to the facts.

Investigative Report

- Must be given to both parties.
- Each party has 10 days to review the report and give a written response to the Investigator.
- After considering responses and any additional evidence presented, the report is finalized with an objective evaluation of all the relevant evidence and submitted to the Decision Maker and the parties.

Decision Maker

- Continue to presume that the respondent is not responsible for the alleged conduct until a final determination regarding responsibility is made.
- Remember that the burden of proof and the burden of gathering evidence to reach a determination regarding responsibility rests on the DISTRICT, not the complainant or respondent.

- Objectively evaluate all relevant evidence, both inculpatory and exculpatory.
 - Inculpatory is evidence that show a person's involvement in an act, or evidence that can establish responsibility.
 - Exculpatory is evidence that tends to excuse, justify or absolve the alleged fault or responsibility.
- Make credibility determinations that are not based on a person's status as complainant, respondent or witness.
- Consider each allegation of the complaint including a determination regarding responsibility.

Decision Maker Documentation cont.

- Address each allegation and resolution of the complaint including a determination regarding responsibility, the rationale therefore, any disciplinary sanctions imposed on the respondent, and whether remedies designed to restore or preserve access to the educational program or activity will be provided by the district to the complainant;
- The procedures and permissible basis for the complainant and/or respondent to appeal the determination; and
- Outline remedies if any.
- Written documentation must be provided to both parties simultaneously.

Remedies

- The Determination of Responsibility must include a statement of 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.
- Remedies may be the same as supportive measures, but after the Determination of Responsibility becomes final, need not be non-disciplinary or non-punitive, and need not avoid burdening the respondent.

End of Part Two.....Questions?

Title IX Coordinators

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Executive Director of
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and Operations

Heather Burris,
Director of Title
Services

Part Three: Appeals

- Appeals should be directed to the Title IX Coordinator who will:
 - Provide written notification of the appeal to both parties.
 - Appoint an Appeals Decision Maker.

- An appeal is:
 - Not a re-do, rather a review.
 - Confined to the specific issue raised in the appeal.

Appeal

- The following can be appealed:
 - Determination of responsibility; or
 - The district's dismissal of the formal complaint.
- Basis for appeal:
 - A procedural irregularity that affected the outcome;
 - New evidence that was not reasonably available at the time of the determination; or
 - A conflict of interest on the part of the Title IX Coordinator.

Appeal cont.

- If no additional investigation is needed, the Appeals Decision Maker should identify the error, correct it then explain how it changed the determination of responsibility.
- If additional investigation is needed, the Appeals Decision Maker should “remand” the complaint to the Decision Maker with instructions on how to correct the error and appropriately revise the determination of responsibility. The Decision Maker may call for additional information to be collected by the Investigator.
- The Appeals Decision Maker will provide written notice of the decision.

Results of an appeal

- Determination of responsibility is affirmed.
- Determination of responsibility is completely or partially reversed and the Appeals Decision Maker comes to a different final conclusion.
- The complaint is remanded to the Investigator for limited further investigation in accordance with specified instructions from the Appeals Decision Maker.

Appeals cont.

- The district may not impose any additional sanctions or other actions that are not supportive measures against a respondent until the appeal process is completed.
- The Title IX Coordinator is responsible for effectively implementing any sanctions or remedies.

Documents and Notices

- Title IX Coordinator contact info and training materials posted on each school's website and the district website for public review
- Board Policy and Grievance Procedure
- Report of Alleged Sexual Harassment (ODR on IC or Title IX Intake form)
- Formal Complaint
- Written Notice of Formal Complaint
- Written Notice of Investigative Meeting, Interviews or other meetings
- Investigative Report
- Informal Resolution Agreement
- Informal Resolution Report
- Written Determination of Responsibility
- Written Notification of Appeal
- Appeal Decision

Forms are located on the district staff [website](#).

Use of this complaint procedure is not a prerequisite to the pursuit of any remedies, including the right to file a complaint with the Office of Civil Rights of the U.S. Department of Education, the Equal Employment Opportunity Commission, or the Kansas Human Rights Commission.

End of Part Three: Any questions?

- Refer to Board of Education Policy for details in the event of a formal complaint.
- Coordinate building efforts with Title IX Coordinators to ensure proper procedures are followed and required documentation is kept.