



Title IX Training

NISKAYUNA CENTRAL SCHOOL DISTRICT

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What Will We Cover?

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Introduction: What is Title IX?

Title IX is a federal law that prohibits discrimination based on sex in educational settings or activities that accept federal funding. Title IX is enforced by the Department of Education, Office of Civil Rights.

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See Board Policy 3421 and 3421-R



What is Title IX Sexual Harassment?





Title IX Sexual Harassment

Title IX prohibits various types of sex discrimination including, but not limited to: sexual harassment; the failure to provide equal athletic opportunity; sex-based discrimination in a District's science, technology, engineering, and math courses and programs; and discrimination based on pregnancy.

Under Title IX, 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;
- Sexual assault, dating violence, domestic violence or stalking as defined by Title IX's implementing regulations, at 34 C.F.R. § 106.30.



To which settings do the 2020 Amendments apply?

- Buildings or other locations that are part of the school's operations, including remote learning platforms;
- Off-campus settings if the school exercised substantial control over the respondent and the context in which the alleged sexual harassment occurred (e.g., a school field trip to a museum).
- The factual circumstances of online harassment must be analyzed to determine if it occurred in an education program or activity. A student using a personal device to perpetrate online sexual harassment during class time may constitute a circumstance over which the school exercises substantial control over the respondent.

Title IX Sexual Harassment (Cont'd)

- **Stalking** - 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;
- **Sexual Assault** – includes forcible and nonforcible sex offenses, including:
 - Forcible: forcible rape, forcible sodomy, sexual assault with an object, forcible fondling
 - Nonforcible: incest, statutory rape.

Title IX Sexual Harassment (Cont'd)

- **Dating Violence** - violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim (look at length and type of relationship and frequency of interaction to determine the existence of such a 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.

Definitions Continued

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Complainant: 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.

Formal complaint: a written document, filed and signed by a complainant or a student complainant's parent or legal guardian, or signed by the Title IX Coordinator, that alleges sexual harassment against a respondent and requests that the District investigate the allegation of sexual harassment.

Days means school days. "School Day" means any day, including a partial day that students are in attendance at school for instructional purposes, except during the months of July and August, when "school day" means every day except Saturday, Sunday, and legal holidays.

Definitions Continued

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Report: any oral or written report of sex discrimination, including sexual harassment, made by any individual to the District's Title IX Coordinator, that does not qualify as a formal complaint.

Supportive measures: non-disciplinary, non-punitive individualized services offered without charge to the complainant or respondent following a report of sex discrimination. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas, and other similar measures.

Reporting Requirements

All District employees who witness or receive an oral or written report of sex discrimination must ***immediately*** inform the Title IX Coordinator.

Failure to immediately inform the Title IX Coordinator may subject the employee to discipline.



Supportive Measures

- Upon receipt of a report of sexual harassment, the District's Title IX Coordinator will promptly contact the complainant to inform the complainant that supportive measures are available with or without the filing of a formal complaint and to discuss the complainant's wishes with respect to supportive measures. The Title IX Coordinator will additionally explain the process of filing a formal complaint.
- No disciplinary sanctions or actions that are not supportive measures will be imposed against a respondent under the District Policy pertaining to these procedures and these procedures without the filing of a formal complaint and without following the formal complaint grievance process.



Nothing in the District's Title IX grievance procedures shall preclude action under another applicable District policy, procedure, collective bargaining agreement, or other document such as the District's Code of Conduct.

Emergency Removal and Administrative Leave

- Remove a respondent from the District's programs or activities on an emergency basis where the district determines that, after an individualized assessment, the immediate threat to the physical health or safety of any student or individual justifies such removal. A respondent shall be given notice and an opportunity to challenge the decision immediate after the removal.
 - Place an employee on administrative leave during the pendency of the grievance process.
- *Any such actions shall be taken in accordance with all applicable District policies and collective bargaining agreements and employee and student rights under state and federal law.

Impartiality

Any investigator(s), decision-maker(s), or individual responsible for facilitating an informal resolution must not have a conflict of interest, must be unbiased and impartial and must have received appropriate training.

Presumption that Respondent is Not Responsible

Respondents are presumed not to be responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. While the parties will have an opportunity to provide relevant information and evidence, and review the evidence collected, it is the District's responsibility to conduct a full and fair investigation, including the gathering of evidence, necessary to make a determination of responsibility. All evidence collected during the investigation will be objectively weighed and credibility determinations will not be based on an individual's status as a complainant, respondent, or witness.



Prohibition of Retaliatory Behavior

- The District prohibits retaliation (*i.e.*, intimidation, threats, coercion or discrimination) against any individual for the purpose of interfering with his or her Title IX rights or because the individual made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding under this policy.

1. Formal Complaint – Upon receipt of a formal complaint, the District will appoint an investigator and a decisionmaker (or panel of decision-makers). The investigator will be unbiased, impartial, and appropriately trained.
2. Notice – Within 10 days of receipt of the formal complaint, the District will provide written notice to the identified complainants and respondents of the allegations being investigated, the applicable grievance procedure, and the rights and responsibilities of the parties under these proceedings.
3. Investigation Report – The investigator will complete an investigation report within 60 days.
4. After the investigation report is provided to the parties, each party can submit a written response and submit relevant questions it wants the other party or witness to address.
5. Responses to those submitted questions will be provided within 10 days.
6. The parties then have an additional 5 days to submit any written follow up questions.
7. A decision regarding responsibility will be rendered within 90 days.

Summary of Investigation Process



Complaint

- At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in an education program or activity of the District, including employment.
- Formal complaints are written complaints that describe the incident(s) of sexual harassment and request the District investigate the allegations under its grievance procedures.
- Complaints must be signed (including through electronic means, such as email signatures) by the complainant, a parent or legal guardian who has the right to act on behalf of the complainant, or by the District's Title IX Coordinator.



Notice of Allegations

- Within ten (10) days of receipt of a formal complaint not subject to dismissal, the District will provide written notice to identified complainants and respondents.



Advisors

- Each party may identify an advisor, including an attorney, of their choice to assist the party throughout the grievance process, including accompanying the party to any meeting or proceeding.
- Parties who have selected an advisor and wish to have relevant communications sent to their advisor, should promptly inform the Title IX Coordinator, or other investigator, in writing of their advisor's name and contact information. Once such notice is provided, all documents sent to a party will be also be sent to the party's advisor.



Confidentiality

- Except where disclosure may be permitted or required by law or regulation (e.g., FERPA), or to carry out the purposes of its grievance procedure, the District will 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;
 - Complainant;
 - Individual who has been reported or alleged to be the perpetrator of sex discrimination, including any respondent; and
 - Witness.

Dismissal

The District must investigate all allegations of sexual harassment in a formal complaint under this grievance process unless the formal complaint, or allegations within the complaint, are dismissed.

Formal complaints, or allegations within the complaint, must be dismissed for the following reasons:

- The alleged conduct did not occur in the District's education programs or activities or did not occur against a person in the United States; or
- The alleged conduct, even if proven, would not constitute sexual harassment as defined by Title IX.

Dismissal (cont'd)

Formal complaints, or allegations within the complaint, may be dismissed for the following reasons:

- The complainant notifies the Title IX Coordinator, in writing, that the complainant would like to withdraw the formal complaint or any allegations in such complaint;
- The respondent is no longer enrolled or employed by the District; or
- Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to responsibility.



Informal Resolutions

- After a formal complaint is filed, but before reaching a determination regarding responsibility, the District may offer and facilitate the use of an informal resolution process, such as mediation, that does not involve a full investigation and adjudication of the formal complaint. The District will not require that parties participate in an informal resolution process.



Informal Resolutions (cont'd)

- Parties' voluntary, written consent to the informal resolution process must be obtained.
- 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.
- Most informal resolutions will be completed within thirty (30) days.
- During any informal resolution process, any investigation and applicable timelines for the grievance process will be suspended.



Investigation

- The District may consolidate formal complaints by one or more complainants or against one or more respondents where they arise out of the same facts and circumstances.
- Following notice of the allegations to both parties, the investigator will gather evidence and conduct necessary interviews of the parties and witnesses.

Investigation (cont'd)

- During the investigation, both parties will have an equal opportunity to present evidence and witnesses and have the same opportunity to have others present during any grievance procedure. The ability of either party to discuss the allegations under investigation or to gather and present relevant evidence will not be restricted.

Investigation (cont'd)

- Written notice of the date, time, location, participants, and purpose of all investigative interviews, or other meetings, will be provided to any party whose participation is invited or expected with sufficient time for the party to prepare to participate.

Investigation (cont'd)

- The District will not require, allow, rely upon or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding the privilege has waived the privilege.
- Further, the District will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the District obtains that party's voluntary, written consent to do so for the grievance process.



Review of Investigative Report

- Prior to completion of the investigative report, the District will send to each party and the party's advisor, if any, the evidence gathered during the investigation that is directly related to the allegations in the formal complaint in an electronic format or a hard copy. The parties will have ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigative report.
- At the end of the investigation, an investigative report will be created that fairly summarizes all relevant evidence. Such report will be sent to each party and the party's advisor, if any, in an electronic format or a hard copy, for their review and written response.

Procedures Prior to a Determination Regarding Responsibility

- The District will designate an individual decision-maker or a panel of decision-makers to issue a written determination regarding responsibility. A decision-maker can either be a District employee or, where appropriate, a third-party, but cannot be the same individual as either the Title IX Coordinator or the investigator(s).

Procedures Prior to a Determination Regarding Responsibility (cont'd)

- Each party will have ten (10) days from the date the investigative report is provided to the parties to submit a written response to the report, and to submit any relevant questions that the party wants asked of any other party or witness;
- Any responses to the questions provided by a party or witness will be provided to each party within ten (10) days;
- Parties will then have an additional five (5) days to submit any written follow up questions; and
- Parties will be provided with any responses to their follow up questions within ten (10) days of receiving the questions.

Procedures Prior to a Determination Regarding Responsibility (cont'd)

- Questions and evidence about a complainant's sexual predisposition or prior sexual behavior will not be considered, unless the questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker(s) will explain to the party proposing the questions any decision to exclude a question as not relevant.

Determination

- The determination will include:
 - Identification of the allegations;
 - Description of the procedural steps taken from formal complaint through determination;
 - Findings of fact that support the determination;
 - Conclusions regarding application of District policy, procedure, CBA, Code of Conduct, etc. to the facts of the circumstances;
 - Statement as to the determination of responsibility as to each allegation, including the rationale;
 - Any disciplinary sanctions the District will impose;
 - Notice of the process and procedures of an appeal.



Standard of Proof

- The District's grievance process states that the standard of evidence or proof to be used to determine responsibility is the “**preponderance of the evidence**” standard, which means that the decision-maker must determine whether alleged facts are more likely than not to be true.

Appeals

- Either party can file an appeal of the decisionmaker's decision or dismissal in writing to the Title IX Coordinator within 10 days of written notice of the decision.
- Appeals must be based on (1) a procedural irregularity that affected the outcome, (2) new evidence that was not available at the time the decision was made that could affect the outcome, or (3) a conflict of interest or bias was present against the complainants or respondents, generally or specifically, by the Title IX Coordinator, investigator, or decisionmaker.
- The District will notify the other party of the appeal and give all parties 5 days after the submission of the appeal to submit a written statement in support or opposition of the outcome.
- The written decision of the appeal will be provided to the parties, Title IX Coordinator, and the Superintendent of Schools within 14 days of receiving the written statements in support or opposition.