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# Trumbull County Title IX Compliance Training

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# Title IX

- Title IX is the Federal civil rights law that protects against discrimination on the basis of sex (including sexual orientation or gender identity) in education programs and activities.
- Covers sexual harassment that occurs within the District's education programs and activities.
- Applies to students, employees and third parties (vendors, contractors, guests, members of the school community).
- Sexual harassment is considered sex discrimination under Title IX – e.g., conduct on the basis of sex.



# Identifying Sexual Harassment

- Sexual harassment under Title IX is any conduct on the basis of sex that is:
  - Unwelcome as determined by a reasonable person
  - To be so severe, pervasive and objectively offensive that it effectively denies a person's equal access to the district's education program and/or activities.
- Examples
  - Physical Harassment (unwanted touching; invasion of personal space; leering/staring).
  - Verbal Harassment (sexual jokes, innuendos; speculation about a person's sexual history; asking about sexual preference or fantasies).
  - Visual Harassment (gestures; sexual suggestive objects, pictures, posters, memes, screen savers, emails).



# Identifying Sexual Harassment

- Unwanted sexual conduct (sexual advances, requests for sexual favors, other verbal, physical or visual conduct) when:
  - Submission to the conduct is made (or threatened to be made) a term or condition of employment or education;
  - Submission to or rejection of such conduct is used (or threatened to be used) as a basis for academic or employment decisions;
- Conduct which constitutes sexual assault, dating violence, domestic violence or stalking.



# Reporting Sexual Harassment

- A school with **actual knowledge** of sexual harassment in a program or activity against a person in the United states must respond promptly and in a manner that is not deliberately indifferent
- Actual knowledge means notice of sexual harassment or allegations of sexual harassment to **any Board employee.**



# Reporting Sexual Harassment

- *ALL* district employees are required to promptly report allegations of sexual harassment to a Title IX Coordinator.
- Take all complaints or rumors of inappropriate behavior seriously;
  - Maintain confidentiality – only discuss with those who have a NEED to know
- If a Board employee fails to report an incident of Sexual Harassment of which the Board employee is aware, the employee may be subject to disciplinary action, up to and including termination.



# Reporting Sexual Harassment

- Any person can report sexual harassment (regardless of whether the person reporting is the alleged victim).
- Report can be made in person, by mail, by telephone, or by electronic mail to a Title IX Coordinator.
- Reports may be made to the Title IX Coordinator at any time (including during non-business hours).





# Responding to Sexual Harassment

- Remember Mandatory Reporting
  - Child Abuse and Neglect
  - Felonies
  - If a school employee engages in sexual conduct with a student, it must be reported, even if the student is 18
  - ODE Misconduct Reporting



# Employees Must...

- Know who the District Title IX Coordinator is.
- Recognize a potential Title IX violation.
- Report any potential Title IX violation to the Title IX Coordinator the same day they receive notice of it.
- Review your anti-discrimination and anti-harassment policies.



# Responding to Sexual Harassment

- Meeting with the Complainant and their family to review and discuss the Title IX grievance process and to discuss supportive measures.
  - Informal and Formal Grievance Process (and their right not to pursue either)
  - **Supportive measures** - Non-punitive, individualized services offered to a complainant or a respondent; Designed to restore or preserve equal access to the educational program or activity without unreasonably burdening the other party. **[REMEMBER, YOU WILL HAVE TO HAVE THIS CONVERSATION WITH BOTH THE COMPLAINANT AND RESPONDENT]**



# Supportive Measures

- Supportive measures may include:
  - counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, school/campus escort services, mutual restrictions of contact between the parties, changes in work locations), leaves of absence, increased security and monitoring of certain areas of the campus (including school buildings and facilities), and other similar measures.



# Supportive Measures

- A supportive measure that completely removes a respondent from an activity would likely be considered punitive, except for “emergency removals” for students (very limited circumstances) and “administrative leaves” for employees who pose an imminent threat.
- Actions such as changing a respondent’s class or activity schedule may fall under permissible supportive measures, and supportive measures must be offered without waiting to see if a grievance process is eventually initiated or not.



# Responding to Sexual Harassment

- A formal complaint is a document filed by a Complainant or filed by the Title IX Coordinator alleging sexual harassment and requesting the District conduct an investigation into the allegations.
  - What if someone refuses to submit a complaint in writing?
- Upon receipt of a formal complaint, the Title IX Coordinator must implement the grievance process.



# Mandatory Dismissal

- School's must dismiss allegations of conduct that
  - do not meet the definition of sexual harassment or
  - did not occur in a school's education program
  - or activity against a person in the U.S.
- Such dismissal is only for Title IX purposes and does not preclude the school from addressing the conduct in any manner the school deems appropriate.



# Discretionary Dismissal

- Schools may, in their discretion, dismiss a formal complaint or allegations if:
  - the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations;
  - the respondent is no longer enrolled or employed by the school; or
  - if specific circumstances prevent the school from gathering sufficient evidence to reach a determination.
- Schools must give the parties written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal.
- **Jurisdictional issues can arise at any time, even during the investigation**





# Consolidation of Formal Complaints

- Permissive where allegations arise out of same facts/circumstances (not just the same respondent)



# Informal Grievance Process



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# Informal Resolutions

- District may facilitate informal resolution after formal complaint filed, but must:
  - Provide written notice to both parties with:
    - Allegations
    - Informal resolution process including any provisions that **after** agreeing to a resolution, party cannot withdraw and resume formal grievance process.
    - Consequences of participating including records maintained or shared.
  - Obtain both parties' written and voluntary consent to informal resolution



# Informal Resolutions

- District may not:
  - require informal resolution
  - offer informal resolution until a formal complaint is filed
  - facilitate informal resolution where allegations are by student against employee.
- **May not** be used to resolve employee-student harassment allegations.
- **May not** impose discipline through the informal process unless agreed upon by the Respondent.



# Formal Grievance Process



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# Investigation

- The Title IX Coordinator must provide notice of allegations and designate an investigator.
  - May be one of the District’s own employees or a third-party investigator.
- Review Board Policy
  - Board policy will clearly outline the investigation process.
- **Overview of the key people involved**
  - Title IX Coordinator
  - Investigator
  - Decision-maker
  - Appeal Decision-maker
- Others involved
  - Building administration, at the direction/coordination of the Title IX Coordinator
  - Superintendent (only *if* there is ultimately a remedy requiring action, like discipline)



# Investigation

- **Overview of the Investigation Process**
  - Written Notice of the Allegations
  - Witness Interviews
  - Time to review and respond to the evidence
  - Investigative Report
  - Opportunity to review and respond to the Investigative Report
  - Written determination regarding responsibility
  - Appeals process



# Notice of Allegations

- Notice of the Allegations must include each of the following:
  - 1. Notice of the grievance process, including the District’s informal resolution process. [Include a copy of the policy and administrative guidelines]
  - 2. Sufficient details of the allegation(s) of misconduct: identify the parties; date and location of the incident; witnesses (if any).
    - EX. The FAKE School District has been notified of the following allegations, which are contained in the formal complaint. The allegations potentially constituting Title IX sexual harassment, known at the time of the complaint, include the following: **DETAILED DESCRIPTION OF THE ALLEGATIONS (TAKE FROM THE COMPLAINT)**  
At this time, the known parties involved include **[LIST KNOW PARTIES BY NAME]**
  - 3. Inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence.
    - EX. In connection with the grievance process, you may have an advisor of your choice, who may be, but is not required to be, an attorney. The advisor may inspect and review evidence.





# Notice of Allegations

- 4. Statement that the respondent is presumed not responsible, and that responsibility will be determined at the conclusion of the grievance process.
  - EX. At the conclusion of the grievance process, a written determination regarding responsibility will be made. Until that time, **the Respondent is presumed to not be responsible for the alleged conduct.**
- 5. Notification of Board policies, code of conduct provisions that prohibit knowingly making false statements or false information.
  - EX. Please be aware that Board Policy prohibits knowingly making false statements or knowingly submitting false information during the grievance process in connection with reports of sexual harassment, including intentionally making a false report of sexual harassment or submitting a false formal complaint. **[INCLUDE REFERENCE TO EMPLOYEE CODE OF CONDUCT AND/OR THE STUDENT CODE OF CONDUCT REGARDING FALSE STATEMENTS/INFORMATION, IF APPLICABLE]**
- 6. Include statement about supportive measures.
  - EX. Pursuant to Board Policy, you have a right to receive equitable supportive measures during the pendency of this investigation. “Supportive measures” means non-disciplinary, non-punitive individualized services offered as appropriate and as reasonably available. Please contact me immediately should you wish to further discuss supportive measures that may be available to you (and you will have already discussed this).



# Notice of Allegations

- 7. Identify the investigator.
  - Ex. The District’s designated investigator, [NAME], will conduct an interview with you and will be in contact with you (and/or your parents) later this week to schedule it.
- 8. Include statement regarding retaliation.
  - EX. You are reminded that you are prohibited from retaliating, intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX, including, among other things, making a report or formal complaint of sexual harassment and/or participating in any manner in an investigation or proceeding pursuant to Board Policy.
- 9. Include statement regarding confidentiality.
  - EX. In addition, you are directed to maintain confidentiality regarding your status as a party in this matter, the identity of the parties, and the identify of any witnesses, except as may be permitted or required by law. If you have any concerns about confidentiality of whether it has been or will be maintained in this matter, please report them to me.



# Amended or Second Notices

- What if new allegations arise during the course of an investigation which weren't in the Notice of Allegations (whether from complainant or another witness)?
  - Investigator informs Title IX Coordinator
  - Coordinator conducts intake process, offers supportive measures, etc. – just like with initial allegations
  - If proceeding with formal complaint of additional allegations, Coordinator should send revised Notice of Allegations



# Title IX Investigator



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# Who is the Investigator?

- The Title IX Coordinator must designate an investigator.
  - May be one of the District's own employees or a third-party investigator.
  - The investigator is **NOT** the Title IX Coordinator or the Superintendent.



# Initial Review

- Review notes and information collected by the Title IX Coordinator
- Review Notices to Complainant and Respondent
- Review Policy/Code of Conduct
- Plan for Scope of Investigation – witnesses and records



# Create Evidence List – Keep it Updated

- Electronic records
- Security information
- Picture, video, audio, text messages
- Police reports
- Personnel files
- Prior complaints against the respondent



# Create Witness List – Keep Updating It

- If there is a criminal investigation, work with law enforcement to ensure permission to question witnesses
- Who should be included? NOT included?
- In what order should the witnesses be interviewed?





# Written Notice to the Parties

- Investigator will provide interested parties with written notice of the date, time, location and purpose of all hearings or interview with **sufficient time for that party to prepare to participate.**
- Before the investigation report is prepared, the investigator will also provide opportunity for the parties to inspect and review any evidence obtained that is directly relevant to the allegations contained in the formal complaint.



# Witness Interviews

- Develop a witness list for interviews and arrange a logical order and method for conducting interviews.
  - General Order: complainant, other witnesses, respondent.
- Develop witness interview outlines
  - Ask general open-ended questions first. Who? What? When? Where? Why?
    - Allow the witness to speak.
  - Attempt to identify other potential witnesses.
  - Ask clarifying and more narrow questions as needed.
  - Make arrangements for follow up if additional information is needed.



# Witness Interviews

- Refer to the policy
- Consider what information they are likely to have related to each element
- Consider what information they are likely to have that may assist the decision maker in determining credibility



# Witness Interviews

- What should you have with you?
  - Allegations
  - Investigation log
  - Investigation notes cover sheet
  - Pre prepared questions
  - Evidence you may need to reference or show witness
  - Policy or Handbook



# Witness Interviews

- Identify yourself, your role, and a general outline of what you're investigating
- Consider requesting the TIX Coordinator check in with those who fail to respond or refuse to participate
- Don't give up on the interview till you've tried at least 3 times, in at least 2 different methods



# Witness Interviews

- Make introductions
- Be hospitable
- Give overview of why they are being interviewed
- Explain retaliation policy
- Explain that records will be provided to **both parties** at the end of the investigation process
- Invite questions



# Witness Interviews

- Elicit a monologue about the incident
  - What happened earlier that day before the incident?
  - What happened with regard to the incident?
  - What happened next?



# Witness Interviews

- Gather facts to assist **decision-maker (that is not you)**
- Ask questions to test memory
- Identify where the witness may corroborate or contradict their testimony, or other witnesses, and physical evidence
- Be sensitive to potential trauma experienced by witnesses





# Prior Acts

- Questions about a complainant's prior sexual behavior or sexual predisposition only permitted to establish that another person committed the alleged conduct or that the conduct was consensual.



# Closing Witness Interviews

- Closing questions
  - Request copies of all evidence potentially available to the witness
  - Discuss confidentiality - but do not prohibit a party from discussing allegations
  - Inform the witness of next steps and how to reach you



# After Each Witness Interview

- Update investigation log
- Review notes, make corrections/clarifications
- Update witness list
- Update list of evidence to be obtained
- Write down questions to ask other witnesses



# Create An Interview Summary

- Write your interview summaries in narrative form so you can easily use them in your report
- Include how the interview, was conducted, disclaimers given, and who was there
- Include background information
- Include Q and A, and evidence provided or requested
- **Be sure these summaries are included in the evidence packet**



# Responding to the Evidence

- After all witness interviews have been completed, the investigator must send the evidence to each party in electronic or hard copy.
- Provide ALL Evidence to both parties and advisors
- **Include everything directly related to allegations, even if you don't expect decision maker to rely on it**
- The parties are given ten (10) days to submit written responses.
- The Investigator must then consider responses to the evidence in completing the investigation report.
- Purpose: allow each party to meaningfully respond to the evidence prior to conclusion of the investigation.



# Investigation Report

- After the parties have been given an opportunity to respond to the evidence, the investigator drafts an investigative report.
  - Fairly summarizes relevant evidence
  - **No determination**
  - The report must be finalized and provided to the parties ten (10) days prior to a hearing or written determination as to responsibility.
  - Parties are allowed time to review and respond to the report.
  - They will be given the opportunity to provide written, relevant questions.



# Report Contents

- Explain the parties/complaint
- Describe the charges
- Describe the witnesses interviewed (or not interviewed and why)
- Procedural issues
- Include policy language
- Ways to arrange facts (explain your structure)
  - Chronologically
  - By witness summary
  - By allegation/topic
- Cite the record; number your evidence packet pages for easy reference!



# Title IX Decision Maker



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# Overview

- After the school has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision maker(s) must afford **each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow up questions from each party.**
- The decision-maker(s) must explain to the party proposing the questions any decision to exclude questions as not relevant.
  - Again, questions and evidence regarding complainant's sexual predisposition or prior sexual behavior prohibited (very limited exceptions)



# Determination of Responsibility

- Decision-maker must issue a written determination regarding responsibility simultaneously to both parties.
  - May not be the investigator or Title IX Coordinator.
- **Preponderance of the evidence** - you must determine whether it is more likely than not true that the respondent engaged in the alleged misconduct.
- **Must begin with a presumption of no violation by Respondent**



# Objectively Evaluating Relevant Evidence

- Decision maker should be looking at consistency, accuracy, memory, credibility, implausibility, inconsistency, unreliability, ulterior motives, lack of credibility
- Standard of proof (preponderance) and using it to guide decision



# Objectively Evaluating Relevant Evidence

- You must make a decision based solely on the relevant evidence obtained in this matter
- The quality of evidence is not determined by the volume of evidence or the number of witnesses or exhibits.
  - It is the weight of the evidence, or its strength in tending to prove the issue at stake that is important.
- Look to all the evidence in total, make judgments about weight and credibility, and then determine whether or not the burden has been met.



# Determination of Responsibility

- What is included in the written determination?
  - Allegations of sexual harassment
  - Description of complaint procedures
  - Findings of fact regarding whether the conduct occurred
  - Conclusion applying code of conduct and relevant Board policy provisions
  - Disciplinary sanctions against the respondent (if any)
  - Remedies (if any)
  - Procedures for appeal



# Remedies

- Potential Remedies may include:
  - Providing an escort to the complainant to move safely through school premises
  - Re-arranging schedules or assigned duties
  - Providing medical, counseling, academic supports
  - Extra time for students to take tests or allowing students the opportunity to re-take tests
  - Evaluations for special education or accommodations
  - Imposing disciplinary sanctions/consequences
  - Other global remedies



# Determination

- Becomes final after appeal time has passed or when appeal result is provided.
- Title IX Coordinator responsible for implementing remedies.



# Title IX Appeal Process



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# Appeals Process

- The District must allow both parties an opportunity to appeal.
- Grounds for an appeal:
  - Procedural irregularity affecting the outcome
  - New evidence not reasonably available to the decision-maker at the time of the determination
  - Conflict of interest or bias



# Appeals Process

- If the written determination is appealed by one of the parties, the Title IX Coordinator must:
  - Notify the opposing party
  - Implement the appeals process outlined in Board policy
  - Appoint a new decision-maker (cannot be Title IX coordinator, investigator, or previous decision maker).
- Both parties must be afforded an opportunity to submit a written statement challenging the outcome.
- Appeals decision-maker issues a written decision with accompanying rationale simultaneously to both parties.



# Additional Considerations



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# Title IX - Discipline

- When you are a school employee who has actual knowledge of alleged sexual harassment under Title IX, Title IX requires you to behave in a very different way than you are used to, including holding off any further investigation or imposing any discipline
- The district must presume innocence throughout the process.
- The burden is on the district to show that discipline is warranted.
- It is critical you are aware that Title IX regulations require that the school district follow the Title IX grievance process BEFORE imposing any disciplinary sanctions or taking other actions against the respondent.



# Title IX - Discipline

- Based on this, it is imperative that school staff, including administrators, report incidents involving alleged sexual harassment to the district's Title IX Coordinator.
- Once a Title IX Coordinator is notified of these allegations, they are responsible for making a determination of whether the alleged conduct rises to the level of sexual harassment, requiring implementation of the District's Title IX grievance process; or whether the allegations of sex-based discrimination or harassment do not rise to that level.
- If a Title IX Coordinator determines the allegations do not meet the definition of sexual discrimination/harassment and, therefore, do not warrant initiation of the district's Title IX grievance process, the Administration may proceed with evaluating the allegations pursuant to other Board policies and/or the student code of conduct.



# Emergency Removal

- Districts may emergency remove student if individualized safety and risk analysis determines that sexual harassment allegations pose immediate threat to student physical health or safety such that removal is justified.
- Notice and opportunity to challenge the decision must be provided immediately after removal.
- Comply with all laws and regulations (federal and state) related to emergency removals and students with IEPs and 504 Plans.



# Retaliation

- Retaliation defined in part: “No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, 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 under this part...”



# Retaliation

- Report this immediately to the Title IX Coordinator
- Is there already a no contact order and, if not, do you want one?
- Adverse action against an individual
- Abuse, violence, threats, and intimidation
- Must be more than just someone expressing their opinion





# Retaliation

- Charging an individual with code of conduct violations that do not involve sexual harassment, but arise out of the same facts or circumstances as a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX constitutes retaliation.
- Complaints alleging retaliation may be filed according to board policy.



# Impartiality and Avoiding Bias, Conflict of Interest and Prejudgment of Facts

- Be neutral
- Do not be partial to a complainant or a respondent, or complainants and respondents generally
- Do not judge - memory is fallible [and judging is contrary to your neutral role]
- A good way to ensure impartiality and avoid bias:
  - Keep an open mind and actively listen
  - Each case is unique and different



# Record Keeping

- Coordinator will want to develop a process for required recordkeeping, including:
  - Maintaining all investigatory and appeal records for a period of seven years
  - Collecting and publicly posting on its website all materials used to train Title IX Team



# Takeaways

- Ensure **ALL** employees are aware of reporting obligations.
- Respond to reports or allegations of sexual harassment in a prompt and meaningful manner.
- Follow Board policy and ensure compliance with applicable due process rights.
  - Follow grievance process before issuing discipline
  - Presumption of innocence during the grievance procedures
- Avoid bias and conflicts of interest.
- Document.. Document.. Document!!!





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