



**Title IX Coordinator
Training
August 10, 2020**

Agenda

- **Roles and Responsibilities**
- **Important Definitions**
- **What Happens Once A Formal Complaint Is Filed?**
- **Appeal Process**
- **Recordkeeping**
- **Q&A**

Roles & Responsibilities

What Does a Title IX Coordinator Do?

- Title IX Coordinators are responsible for overseeing compliance with Title IX at their designated location(s). They facilitate the grievance process and maintain records of sexual harassment investigations. **Title IX Coordinators are not investigators or decision-makers.**
- Title IX Coordinators have the following responsibilities:
 1. Coordinate and ensure timely resolution of all reports of sex discrimination, sexual misconduct, sexual harassment, domestic violence, dating violence, and stalking involving members of the school community.
 2. Monitor compliance with all procedures, requirements, and time frames outlined in the Democracy Prep sexual harassment policy.
 3. Remain unbiased and impartial at all times.
 4. Meet and correspond with complainants and respondents to provide information about the complaint process, grievance procedures, available resources, supportive measures, and reporting and resolution options.
- Title IX Coordinators are required to receive training on the definition of sexual harassment, the investigation and grievance process, due process protections, and promotion of accountability.

Who Are The Title IX Coordinators?

| Region | Title IX Coordinator | Contact Information |
|------------|----------------------|---|
| Louisiana | Jon Harsch | (c) 225.678.4311 (f) 225.400.9487 jon.harsch@democracyprep.org 4005 Prescott Road, Baton Rouge, LA 70805 |
| Nevada | Rachel Cardinal | (c) 702.934.3056 (f) 210.228.3065 rachel.cardinal@democracyprep.org 1201 West Lake Mead Blvd., Las Vegas, NV 89106 |
| New Jersey | Sonny Bozza | (c) 609.519.7489 sonny.bozza@democracyprep.org 1000 Atlantic Avenue, Camden, NJ 08104 |
| New York | Alexa Gonzalez | (c) 347.514.4540 (f) 646.829.9635 agonzalez@democracyprep.org 1767 Park Avenue, 5th Floor, New York, NY 10035 |
| Texas | Rachel Cardinal | (c) 702.934.3056 (f) 210.228.3065 rachel.cardinal@democracyprep.org 1767 Park Avenue, 5th Floor, New York, NY 10035 |

Additional Roles in the Title IX Process

- The legal team, HR, or outside counsel conducts Title IX investigations.
- A decision-maker will be designated for each case. **The decision-maker will not be the Title IX Coordinator or an investigator.** The decision-maker will review the evidence and issue a written determination regarding responsibility. The final decision must be provided to both parties simultaneously and must include:
 - (1) findings of fact;
 - (2) conclusions about whether the alleged conduct occurred;
 - (3) rationale for the result as to each allegation;
 - (4) any disciplinary sanctions imposed on the respondent;
 - (5) whether remedies will be provided; and
 - (6) information on how to file an appeal.
- A decision-maker on appeal will be designated when a party seeks to appeal the outcome of a Title IX investigation. The decision-maker on appeal cannot be anyone that was previously involved with the case.

Important Definitions

What is Sexual Harassment Under Title IX?

Under Federal law, sexual harassment is conduct that meets one or more of the following descriptions:

- 1) “Quid Pro Quo” harassment – Occurs when a school employee conditions an educational benefit or service on an individual’s participation in unwelcome sexual conduct.
- 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.
- 3) Sexual assault, dating violence, domestic violence, or stalking as these terms are defined in certain federal laws (i.e., Clery Act and the Violence Against Women Act).

Under New York state law, sexual harassment need not be severe or pervasive to be unlawful. It can be any harassing conduct that consists of more than petty slights or trivial inconveniences.

What Additional Definitions Do Title IX Coordinators Need To Know?

- 1) Complainant – An individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- 2) Respondent – An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- 3) Formal Complaint – A document filed by a complainant or signed by a Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment.
 - A formal complaint can be a document or electronic submission (i.e., email) that contains the complainant's signature or otherwise indicates that the complainant is the individual filing the complaint.
 - A formal complaint may be filed with the Title IX Coordinator in person, by mail, by email or by fax using the Title IX Coordinator's contact information.

Case Study

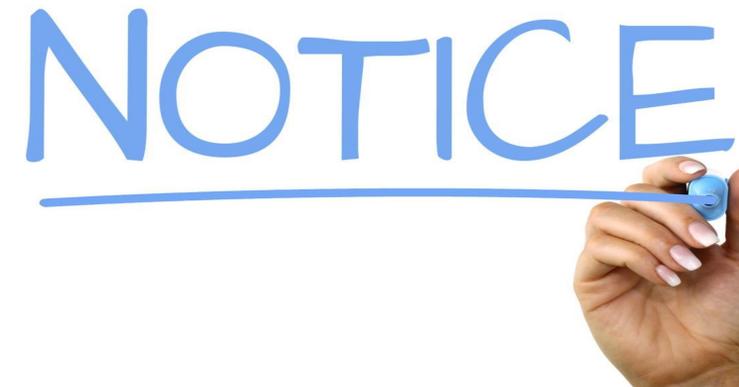
- Maygan is a former student and is currently in college. One day Maygan posts on Instagram that she was sexually assaulted by one of her teachers while she was in elementary school. The teacher still works at the elementary school. Maygan says that she was afraid to speak about it when it happened but now, she wants to open up.
- As a result of Maygan's post, several other graduates come forward with allegations. The students form a group and email you a formal complaint with several allegations about the current teacher.
- Does this fall under Title IX?



Actual Knowledge and Notice Under Title IX

- Once a school has *actual knowledge* of sexual harassment or allegations of sexual harassment, the school has an obligation to respond and take action.
- A school has actual knowledge when the school has notice that a person may have been victimized by sexual harassment.
- **We are on notice whenever *any employee* has notice of sexual harassment, including allegations of sexual harassment.**
- Any person can report sexual harassment. It can be the alleged victim, a parent, a friend or a bystander.

NOTICE



Case Study

Ms. Roberts is a high school art teacher. For years there have been rumors going around the school that she is inappropriate and makes male scholars feel uncomfortable. She has a reputation for staring at student's body parts and has been observed to stand very close when speaking with students. Recently, students have become more vocal about their feelings towards Ms. Roberts. One student loudly called her a pervert during art class last week.

Ms. Roberts' behavior is common knowledge amongst all of the staff and students in the high school. However, no student or teacher has ever filed a complaint.

What should you do?



What Happens Once a Formal Complaint is Filed?

Obligations for Title IX Coordinators

- The Title IX Coordinator must:
 - Ensure that all sexual harassment allegations are investigated.
 - Inform the complainant of their right to file a complaint and how the process to file a formal complaint works.
 - Inform all parties of the availability of supportive measures.
 - Inform all parties of the availability of an informal resolution (if applicable).
 - Follow the grievance process before imposing any sanctions against a respondent.
 - Respect the complainant's wishes with respect to whether the school should investigate, unless you determine that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable.

Supportive Measures

- Supportive measures are free, individualized services designed to restore or preserve equal access to education, protect safety, or deter sexual harassment.
- There does not need to be a formal complaint for an alleged victim or respondent to receive supportive measures.
- Supportive measures are not punitive or disciplinary with respect to another student or staff member.
- Supportive measures don't unreasonably burden any other person.
- Examples of supportive measures:
 - 1) Counseling
 - 2) Extensions of deadlines
 - 3) Modifications of work or class schedules
 - 4) Mutual restrictions on contact between individuals
- Staff can also be directed to the Employee Assistance Program.

Informal Resolution Process

- Schools may choose to offer and facilitate an informal resolution to resolve a formal complaint. Informal resolutions can include mediations or restorative justice.
- Any person who facilitates an informal resolution must be well trained and the school must adhere to the following requirements:
 - Both parties must provide voluntary informed, written consent to attempt informal resolution.
 - Schools may not require the waiver of the right to a formal investigation and adjudication of formal complaints (or the enjoyment of any other right) as a condition of enrollment or continuing enrollment, or the enjoyment of any other right.
 - Schools cannot require parties to participate in informal resolution.
 - Parties have the right to withdraw from the informal resolution process at any time and resume the grievance process for the formal complaint.
 - Schools cannot offer or facilitate an informal resolution process to resolve allegations that an employee harassed a student.

Case Study

Amanda and Larry work in the same building. Amanda comes into your office one day and makes a complaint to you about Larry. Amanda tells you that Larry makes her feel very uncomfortable during work. She also tells you that Larry has been sending her sexual text messages during work. Amanda shows you the messages. You observe that the text messages are explicit and contain sexual images.

Amanda tells you that she does not want to file a formal complaint, she just wants Larry to stop.

What do you do?



Next Steps

- Once a formal complaint is received an investigation will commence. **Before the respondent is interviewed the Title IX Coordinator must provide the parties with written notice of certain information.** Written notice must include:
 - 1) An explanation of the grievance process.
 - 2) Whether there is an opportunity to engage in informal resolution.
 - 3) Who was involved in the incident, the date and location of the incident (if known), and the alleged misconduct that constitutes sexual harassment.
 - 4) A statement that the respondent is presumed not responsible and that they can only be found responsible at the conclusion of the grievance process.
 - 5) A statement that the parties are entitled to an advisor of their choice
 - 6) A statement that the parties can request to inspect and review certain evidence.
 - 7) Information regarding the code of conduct and false statements.

Once written notice is provided the respondent must be given time to prepare before an initial interview.

What Happens if a Complaint Does Not Meet the Requirements for Sexual Harassment Under Title IX?

- We *must* dismiss allegations under Title IX if:
 - the alleged conduct does not meet the federal government's definition of sexual harassment
 - the alleged conduct did not occur in the school's education program or activity
 - the alleged conduct did not occur in the United States
- We *may* dismiss allegations under Title IX if:
 - A complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or related allegations.
 - The respondent is no longer enrolled or employed by the school
 - If specific circumstances prohibit the school from gathering sufficient evidence to make a determination.
- The Title IX Coordinator must give the parties written notice of dismissal, with the reasons for the dismissal. Parties must then have an opportunity to appeal the dismissal.

What is the Evidentiary Standard for Title IX Complaints?

- Democracy Prep uses the clear and convincing evidentiary standard in investigations of complaints of sexual harassment and any related violations. Clear and convincing means that the investigation determines whether the allegations are highly and substantially more likely to be true than untrue.
- This standard *applies to all formal complaints of sexual harassment*, regardless of whether the respondent is a student or employee.

How Are Investigations Conducted?

- The burden of gathering evidence and the burden of proof (clear and convincing evidence) is on the school, not the parties.
- Both parties must have equal opportunity to present fact and expert witnesses, along with inculpatory and exculpatory evidence.
- Schools may not restrict the ability of the parties to discuss the allegations or gather evidence (i.e., no “gag orders”).
- Schools must send written notice to parties (and their advisors) of any investigative interviews, meetings, or hearings (if applicable).
- The privacy of a party’s medical, psychological, or treatment records are protected. Schools cannot access or use such records unless first obtaining the party’s voluntary, written consent.

What Happens After the Investigation?

- After an investigative report is sent to the parties (and their advisors) and before reaching a determination about responsibility, each party must be provided the chance to submit written, relevant questions that they would like to ask any party or witness.
- The Title IX Coordinator must share the submitted questions, provide each party with submitted answers, and allow for additional limited follow up questions from each party.
- Questions and evidence about a potential victim's' prior sexual behavior are not permitted, unless offered to prove that someone other than the respondent committed the alleged misconduct or to prove consent.

Appeal Process

When Can Parties Appeal?

- Parties may appeal a determination for the following reasons:
 - After a mandatory or discretionary dismissal;
 - A procedural irregularity affected the outcome of the matter;
 - New evidence has been discovered that was not reasonably available at the time of the determination; or
 - If there is a conflict of interest on the part of the Title IX Coordinator, an investigator who compiled the evidence, or a decision-maker, and the conflict of interest affected the outcome of the case.

How Do Parties Submit An Appeal?

- A request to appeal the outcome of a sexual harassment investigation may be made in writing to the Title IX Coordinator, providing the basis for the request and any evidence to support the request.
- Upon receipt, the Title IX Coordinator will inform the other party of the request and provide the other party with 7 days to respond, including the submission of evidence if desired.
- After considering the parties' written statements, the decision-maker on appeal will issue a written decision and send it to the parties simultaneously.

Recordkeeping

What are the Recordkeeping Requirements Under Title IX?

- Schools are required to keep the following records for 7 years:
 - Sexual harassment investigation documentation, including:
 - any determination regarding responsibility
 - any audio or audiovisual recording or transcript
 - any disciplinary sanctions imposed on a respondent
 - any remedies provided to a complainant
 - any supportive measures offered to parties (even if they are declined)
 - Appeals and results therefrom
 - Informal resolution(s) and results therefrom
 - All training materials

Q&A

