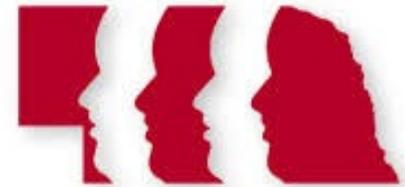


# TRAINING FOR TITLE IX COORDINATOR



NCSA

Nebraska Council of  
School Administrators



WHAT IS A  
TITLE IX  
COORDINATOR?

# WHAT IS A TITLE IX COORDINATOR?

- The Title IX coordinator is responsible for coordinating the recipient's responses to all complaints involving possible sex discrimination including:
  - Monitoring outcomes
  - Identifying and addressing any patterns
  - Assessing effects on the school climate
- *How do you do this?*

## WHAT IS A TITLE IX COORDINATOR?

- Title IX does not specify who should determine the outcome of Title IX complaints or the actions the school will take in response to such complaints
- The recipient must inform the Title IX coordinator of all reports and complaints raising Title IX issues

## WHAT IS A TITLE IX COORDINATOR?

- Must have **knowledge** of the recipient's **policies and procedures on sex discrimination** and should be involved in the **drafting and revision** of such policies and procedures to ensure that they comply with the requirements of Title IX.
- Recipients should provide Title IX coordinators with access to information regarding **enrollment** in particular subject areas, participation in athletics, administration of school discipline, and incidents of sex-based harassment.

# WHAT IS A TITLE IX COORDINATOR?

- Give **regular training for faculty and staff** outlining their rights and obligations under Title IX including:
  - Appropriate responses to reports of sexual misconduct
  - Obligation to report sexual misconduct
  - The extent to which counselors and advocates may keep a report confidential

# WHAT IS A TITLE IX COORDINATOR?

- Give **regular training of students** outlining their rights under Title IX
  - What constitutes sexual misconduct?
  - What is a hostile environment?
  - Definition of consent
  - Reporting options
  - Grievance procedures
  - Disciplinary codes
  - Who at the school to speak to in confidence
  - Protections against retaliation

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# BASICS FOR GRIEVANCE PROCEDURE

- 
- Equity
  - Objective evaluation of all relevant evidence
  - Training
  - Presumption of non-responsibility (for respondent)
  - Reasonably prompt time frames
  - Describe range of possible disciplinary sanctions and remedies
  - Standard of evidence
  - Appeals
  - Supportive measures
  - Privilege recognized

## IMPORTANT DEFINITIONS

- **Complainant:** an individual who is alleged to be the victim of conduct that could constitute sexual harassment
  - A complainant must be participating in or attempting to participate in the education program or activity of the School with which the formal complaint is filed.
- **Respondent:** an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment
- **Formal Complaint:** a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment

## IMPORTANT DEFINITIONS-SUPPORTIVE MEASURES

- **Supportive Measures:** non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent before or after the filing of a formal complaint or where no formal complaint has been filed. **Such measures are designed to restore or preserve equal access to the School's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the School's educational program or activity, or deter sexual harassment**

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# SUPPORTIVE MEASURES EXAMPLES

- 
- Counseling
  - Extensions Of Deadlines Or Other Course-related Adjustments
  - Modifications Of Work Or Class Schedules
  - Campus Escort Services
  - Mutual Restrictions On Contact Between The Parties
  - Changes In Work Or Housing Locations
  - Leaves Of Absence
  - Increased Security And Monitoring Of Certain Areas Of The Campus
  - Other Similar Measures

## SCENARIO I

- Josh comes to the Principal's Office and states that his daughter, Haleigh, was sexually harassed by a classmate. Josh states that Haleigh's boyfriend sent photos of Haleigh to other students in the school.



■ **Complainant:** Haleigh

■ **Respondent:** Haleigh's boyfriend

## SCENARIO 2

- **Greg**, an administrator, goes to the **Superintendent's Office** to inform the Superintendent that his wife, **Jamie**, who is a teacher at the school, is divorcing **Greg** and that **Jamie** has alleged that **Greg** sexually harassed her in school.



■ Complainant: Jamie

■ Respondent: Greg



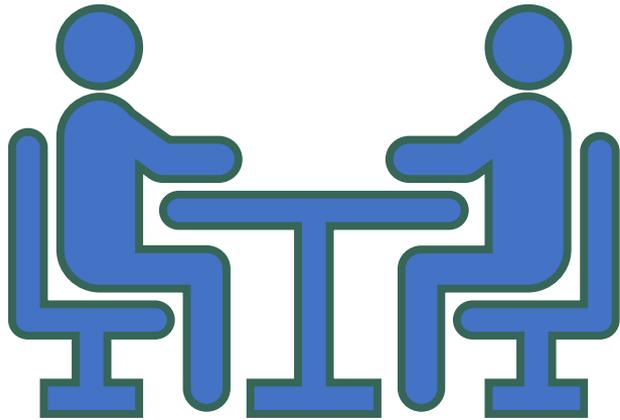
LET'S WALK THROUGH THE PROCESS

# WHERE DO I TAKE MY INFORMATION?

- All allegations or information about Sexual Harassment or Sexual Abuse should go to

The Title IX  
Coordinator

# FIRST STEP OF ALL SEXUAL HARASSMENT ALLEGATIONS



- **Title IX Coordinator** promptly contacts the **complainant** to discuss:
  - the availability of supportive measures
  - consider the complainant's wishes with respect to supportive measures
  - inform the complainant of the availability of supportive measures with or without the filing of a formal complaint
  - and explain the process for filing a formal complaint.

## INITIAL MEETING

- Advise, Don't Dissuade
- Transparency!

## SCENARIO I

- **Title IX Coordinator** talks to **Haleigh** and Josh.
  - **Haleigh** doesn't want to do anything.
  - Josh wants to pursue a formal complaint against **Haleigh's** boyfriend.
- ***What happens now?***

## PARENTS RIGHTS IN TITLE IX

- Parents of Students have the right to bring a formal complaint.
- Josh's wishes to bring a formal complaint will dictate the process

## SCENARIO 2

- Title IX Coordinator talks to **Jamie**.
- **Jamie** is interested in pursuing a formal complaint.

## REMINDER

- Title IX does *not only guarantee students* the right to be free from discrimination on the basis of sex. Title IX *also applies to employees* of the federal recipient.

## SCENARIO I FORMAL COMPLAINT

- Allegation: On Saturday, October 2, 2020, Student Chad, sent a photo of Haleigh to 3 other students via text message. The photo was of Haleigh with the word “slut” over it. On Monday, October 5, 2020, multiple students asked Haleigh about the photo and Haleigh was very embarrassed.

## SCENARIO 2 FORMAL COMPLAINT

- Allegation: In August 2020, during the beginning of the year planning meetings, Greg pulled me aside and pushed me against the wall, held me against the wall, and told me that if I told anyone we were getting divorce that he would make sure I was fired. I had a bruise on my shoulders and arms after this confrontation.

**IF Title IX Sexual  
Harassment then ...**

Follow the remaining  
procedures in this  
power point

**IF NOT Title IX  
Sexual Harassment  
(aka “regular old”  
sexual harassment)**

Follow standard student  
or faculty discipline  
procedure

**DIFFERENCES IN DEFINITIONS**

# DEFINITION OF TITLE IX SEXUAL HARASSMENT

**Sexual harassment** that occurs within  
an **education program or activity**

TITLE IX  
SEXUAL  
HARASSMENT  
DEFINITION

- Employee Quid Pro Quo
- Hostile Environment\*\*
- VAWA “Big Four”

# SEXUAL HARASSMENT-QUID PRO QUO

- **Definition:** An employee of the District conditioning an aid, service, or benefit of the District on an individual's participation in unwelcome sexual contact
- In this situation- you do not have to analyze severity or harm. It is presumed.
- This definition only applies to employees (not volunteers, or other students, etc.)

## SEXUAL HARASSMENT – VAWA BIG 4

- Sexual Assault 20 U.S.C. 1092(f)(6)(A)(v)
- Domestic Violence 34 U.S.C. 12291(a)(8)
- Dating Violence 34 U.S.C. 12291(a)(10)
- Stalking 34 U.S.C. 12291(a)(30)

## SEXUAL ASSAULT 20 U.S.C. 1092(f)(6)(A)(v)

- The term “sexual assault” means an offense classified as forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation

# SEXUAL ASSAULT

## 20 U.S.C. 1092(f)(6)(A)(v)

- **Forcible Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

|  |   |
|--|---|
| <b>Important Points:</b>   | Rape by an object can be as traumatic as penile/vaginal rape  |
| Includes instances in which the victim is unable to give consent because of temporary or permanent mental or physical incapacity | Recognizes that a victim can be incapacitated by drugs or alcohol and thus unable to consent  |
| Physical resistance is not required to demonstrate lack of consent   | Rape can occur to any gender  |
| Recognizes legal incapacity to consent because of age  | Nebraska: Age of sexual consent is 16. Statutory Rape = person below 15 + person 20 years or older. Sexual Assault of a child includes victim twelve years or younger |

# DOMESTIC VIOLENCE 34 U.S.C. 12291 (a)(8)

- **Definition:** The term “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 laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction



# DOMESTIC VIOLENCE 34 U.S.C. 12291 (A)(8)

**How does “Domestic Violence” occur in a elementary or secondary school setting?**

**This definition is much more likely to occur in a post-secondary school environment.**

# DATING VIOLENCE 34 U.S.C. 12991 (a)(10)

- The term “**dating violence**” means violence committed by a person:
  - Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - Where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - The length of the relationship
    - The type of relationship
    - The frequency of interaction between the persons involved in the relationship
- **Takeaway: Do not dismiss complaints of violence or sexual assault if the victim and alleged perpetrator are “dating”**

## STALKING 34 U.S.C. 12291(a)(30)

- The term “**stalking**” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to
  - Fear for his or her safety or the safety of others; or
  - Suffer substantial emotional distress



**THIS NEXT ONE  
IS A BIT  
COMPLICATED...**

# SEXUAL HARASSMENT-HOSTILE ENVIRONMENT

- **Definition:** 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.

# FACTORS TO ANALYZE

- SEVEREITY
- PERVASIVENESS
- OBJECTIVE OFFENSIVENESS

## BUT REMEMBER

- “Determined by a reasonable person to be ...”

# SCOPE OF THE EDUCATION PROGRAM OR ACTIVITY



## SCOPE OF EDUCATION PROGRAM OF ACTIVITY

- **Education Program or Activity Means:**  
locations, events, or circumstances over which the School exercised substantial control over both the respondent and the context in which the sexual harassment occurs.

## SCOPE OF EDUCATION PROGRAM OF ACTIVITY

- Title IX applies to **all** of a school's operations, including all of the academic, educational, extra-curricular, athletic, and other programs of the school, whether they take place in the facilities of the school, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere within the United States.

## LET'S ANALYZE SCENARIO I

- Do the allegations match a definition of sexual harassment?
- Did the allegations, if true, state that sexual harassment occurred within an educational program or activity

# SCENARIO I FORMAL COMPLAINT

Within the scope of an educational program or activity?

- Allegation: On Saturday, October 2, 2020, Student Chad, sent a photo of Haleigh to 3 other students via text message. The photo was of Haleigh with the word “slut” over it. On Monday, October 5, 2020, multiple students asked Haleigh about the photo and Haleigh was very embarrassed.

Severe and Pervasive?

Hostile Environment?

## LET'S ANALYZE SCENARIO 2

- Do the allegations match a definition of sexual harassment?
- Did the allegations, if true, state that sexual harassment occurred within an educational program or activity

## SCENARIO 2 FORMAL COMPLAINT

Substantial control  
over the respondent?

- Allegation: In August 2020, during the beginning of the year planning meetings, Greg pulled me aside and pushed me against the wall, held me against the wall, and told me that if I told anyone we were getting divorce that he would make sure I was fired. I had a bruise on my shoulders and arms after this confrontation.

Domestic  
Violence?

# REQUIRED DISMISSAL OF FORMAL COMPLAINTS

- If the conduct alleged in the formal complaint:
  - Would not constitute sexual harassment, even if proved
  - Did not occur in the recipient's education program or activity
  - Or did not occur in the united states
- Then the recipient **MUST** dismiss the formal complaint
  
- **DOES NOT MEAN** you cannot discipline or proceed with other procedures in codes of conduct

## PERMISSIVE DISMISSAL OF FORMAL COMPLAINT

- Recipient MAY dismiss the formal complaint if at any point during the investigation:
  - The complainant wants to withdraw the formal complaint
  - The respondent is no longer enrolled or employed
  - Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint

## DISMISSAL PROCEDURE

- Promptly sent notices of the dismissal **AND REASONS** to the parties simultaneously

## DISMISSAL OF SCENARIO I?

- Attempts to allege a hostile environment
- Was the conduct severe and pervasive enough to effectively deny Haleigh an educational benefit?
- School may not have had substantial control over the situation
  - Mostly likely scenario in this is a mandatory dismissal\*\*\*

## DISMISSAL OF SCENARIO 2?

- Not at this time.
- The allegations allege conduct which meets the definition of sexual harassment occurring when the school district had substantial control over the respondent.

## FIRST STEP (OF FORMAL COMPLAINT)



- The Title IX Coordinator sends the formal notices to all parties (i.e. the Complainant and Respondent, if known) which includes:
  1. The grievance procedure of the school; and
  2. A notice of the allegations which includes:
    - a. The identities of all known parties involved
    - b. The conduct allegedly constituting sexual harassment; and
    - c. The date and location of the alleged incident.

## SECOND STEP

### INVESTIGATION



- The School must designate an Investigator who shall promptly begin an investigation into the allegations.

## SECOND STEP- INVESTIGATIONS

### RIGHTS OF THE PARTIES

- The investigator must provide an **equal opportunity** for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- The investigator shall **not restrict the ability** of either party to discuss the allegations under investigation or to gather and present relevant evidence
- The investigator shall provide the parties with **the same opportunities** to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice.
  - *Investigator may establish restrictions on how an advisor participates (but those restrictions must apply equally to both parties' advisors)*

## SECOND STEP- INVESTIGATIONS

### RIGHTS OF THE PARTIES

- Up until the conclusion of the investigation, the parties shall have an **equal opportunity to inspect and review** any evidence obtained in the investigation that is directly related to the allegations raised in the formal complaint.
- *This includes evidence upon which the Investigator does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence obtained from any source*

## RIGHTS OF THE PARTIES DURING THE INVESTIGATION

During the investigation the District retains the right to place a non-student employee respondent on **administrative leave** during the investigation

The district also retains the right to remove a student from the District's educational program prior to the conclusion of the investigation. **BUT**, in the event of a removal, the respondent shall have the opportunity to challenge the decision for removal.

## THIRD STEP

### AFTER THE INVESTIGATION



- PRIOR to the conclusion of the investigation, the investigator shall send each party and the party's advisor, if any, the evidence that is subject to inspection and review in an electronic format or hard copy.
- THEN, the parties shall have at least 10 days to submit a written response, which the Investigator must consider
- THEN, the investigator will complete the investigative report and send to the parties, their advisors, if any, and the decision-maker.

## FOURTH STEP

## DECISION OF RESPONSIBILITY



- THEN the decision maker shall consider all relevant evidence, including the inculpatory and exculpatory evidence.
- Prior to coming to a determination- the decision maker shall provide **10 days** for each party to submit written relevant questions. Decision maker provides answers.

## FOURTH STEP

### DECISION OF RESPONSIBILITY



- FINALLY the decision maker will send the written determination to both parties simultaneously, along with the appeal procedures.



# APPEALS

Procedural irregularity that affected the outcome of the matter



New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and



The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against the complainant or respondent generally or the individual complainant or respondent that affected the outcome of the matter.

## THREE REASONS FOR APPEAL

# STEPS FOR APPEAL

First Step: Party in writing sends Title IX Coordinator its reason for the appeal and briefly states why their case should be appealed. This is within 15 days of notice by the Decision-Maker



Second Step: The other party is notified of the appeal. They have 15 days to respond to the opposing party's written statement.



Third Step: Who ever is in charge of appeals reviews the investigative report, the decision-makers' determination and the written statements of the parties. Then they issue a written decision describing the result of the appeal and the rationale for the result. The written decision is sent to the parties simultaneously



THE APPEAL PROCESS REPRESENTS THE FINAL DECISION OF THE DISTRICT AND THE PARTIES ARE NOT ENTITLED TO ANY FURTHER APPEALS



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# INFORMAL RESOLUTION PROCESS

## INFORMAL RESOLUTION

- A School may not require, as a precondition condition to enjoyment of any employment right, the waiver of the employee's right to a proper grievance procedure
- A School may not require or offer that the parties participate in an informal resolution process until a formal complaint is filed
- At any time prior to reaching a determination, the School may facilitate an informal resolution process that does not involve a full investigation

# REQUIREMENTS FOR INFORMAL RESOLUTIONS

Before beginning the informal process, School must:

1. Provide written disclosures to the parties
  - Disclosing allegations, requirements of the informal resolution process
  - Circumstances which may preclude the parties from resuming the formal complaint
  - The party has the right to withdraw from the informal process and resume the formal process
  - Any consequences resulting from participating in the informal process (including that records will be maintained or could be shared)
2. Obtain both parties' voluntary, written consent
3. Note offer the informal process for allegations between employees and students

# INFORMAL RESOLUTION

- The following still apply during the informal resolution process
  - Confidentiality
  - Impartiality
  - Equal opportunities

# INVESTIGATING WHEN POLICE ARE INVOLVED

- Remember –OCR says you cannot rely on outcome of police investigation
- Important not to interfere with police investigation ... BUT
- Not the best practice to wait for police investigation to end before taking action.



# INVESTIGATING WHEN POLICE ARE INVOLVED

**TALK TO POLICE ABOUT TITLE IX REQUIREMENTS FOR CONCURRENT INVESTIGATION**

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## **Models for Concurrent Investigation**

Independent: Each investigator works on their own. Information is shared only through formal process as investigations reach certain stages

Joint: Investigators communicate frequently through informal and formal methods with status updates

Simultaneous: Investigators work together by coordinating efforts

## Police Investigator

- Trying to establish probable cause for arrest
- Uses a wide lens
- Employs a variety of tactics
- Works for society and in the interest of justice

## Administrative Investigator

- Concerned with equity-civil right issue
- Looks only at the reported case
- Generally straight forward approach
- Works for school to ensure compliance

DIFFERENCE BETWEEN POLICE INVESTIGATION AND ADMINISTRATIVE INVESTIGATION



IMPARTIALITY

# IMPARTIALITY

- Impartial means that you do not have any **prejudice** towards the complainant or respondent i.e. lack of bias
- Impartial means that you will render a decision based **ONLY** on the **evidence**
- Impartial means you do not opine about the facts before considering **ALL** the **facts**
- Impartial means you avoid **conflicts of interest**: an investigator or decision maker should recuse themselves from a particular case if they have a conflict of interest

# AVOIDING BIAS



**Confirmation Bias**: placing more value on information that supports our existing belief



**Anchoring Bias**: being overly influenced by the first piece of evidence/information we receive



**Misinformation effect**: the tendency for post-event information to interfere with the memory of the original event. Knowledge of this effect has led to a mistrust of eyewitness information.



**Halo** effect: your overall impression of a person influences how you feel and think about their character. This especially applies to physical attractiveness influencing how you rate their other qualities.



RELEVANCE  
& BURDEN  
OF PROOF

## DECISION-MAKER'S REPORT INCLUDES:

- The portion of the school's policies that was violated
- A description of the procedural steps that were taken by the school on the way to getting to the decision
- A findings of fact section
- A section that draws conclusions after applying the facts to the portion of the school's policy that applies
- A statement of rationale for the ultimate determination of responsibility
- Any disciplinary sanctions that the school will impose on the respondent, and state whether the school will provide remedies to the complainant
- A statement of rationale for any remedies for the complainant, addressing how those remedies will restore or preserve equal access; and
- A statement of the recipient's procedures, a statement that the parties have a right to appeal the initial determination regarding responsibility, and the permissible bases for appealing.

# BURDEN OF PROOF- PREPONDERANCE OF THE EVIDENCE

**“More likely  
than not”**

**“Greater  
Weight of  
Evidence”**



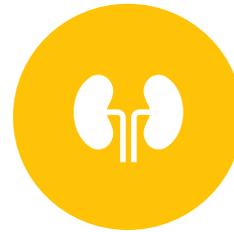
Evidence that is highly and substantially more likely to be true than untrue



The fact finder must be convinced that the contention is highly probable



Closer to beyond a reasonable doubt than preponderance of the evidence



“85 to 90 percent certainty” versus “51 percent certainty”

## BURDEN OF PROOF- CLEAR AND CONVINCING EVIDENCE

# FEDERAL RULES OF EVIDENCE 401: TEST FOR RELEVANT EVIDENCE

- Evidence is relevant if:
  - (a) it has a tendency to make a fact more or less probable than it would be without the evidence; and
  - (b) the fact is of consequence in determining the action.

# SEXUAL PREDISPOSITION

- Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are **NOT** relevant
- UNLESS:
  - Offered to prove that someone other than the respondent committed the conduct alleged by complainant
  - Concern specific incidents of the complainant's prior sexual behavior with respect to the respondent AND are offered to prove consent