

WAYLAND PUBLIC SCHOOLS
TITLE IX
TRAINING FOR STAFF

What is Title IX exactly?

Title IX is a federal civil rights law passed as part of the Education Amendments of 1972. This law protects people from discrimination based on sex in education programs or activities that receive Federal financial assistance. Title IX states that:

“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.”

Title IX applies to any institution receiving federal financial assistance, such as Wayland Public Schools, from the Department of Education, including state and local educational agencies. Educational programs and activities that receive federal funds from the Department of Education must operate in a nondiscriminatory manner. Also, a recipient may not retaliate against any person for opposing an unlawful educational practice or policy, or because a person made charges, testified or participated in any complaint action under Title IX.

What is the definition of sexual harassment in the **employment** context?

- In the employment context, sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment under Massachusetts law when:
 - Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's advancement (quid pro quo harassment);
 - Submission to or rejection of such conduct by an individual is used as the basis for employment decisions;
 - Such conduct interferes with an individual's job duties; or
 - The conduct creates an intimidating, hostile or offensive work environment.

What is the definition of sexual harassment in the **educational** context?

- In the educational context, sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
 - An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (“quid pro quo harassment”);
 - 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 recipient's education program or activity (“hostile environment harassment”); or
 - “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30)

How we identify the parties involved in a **Title IX** complaint?

- The “Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment
- The “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

How does the district respond to a complaint?

- The District must respond to complaints when it has ‘actual knowledge’
- “Actual knowledge” means notice of sexual harassment or allegations of sexual harassment to any employee of the district, except that this standard is not met when the only official of the district with actual knowledge is the respondent (where the respondent is an employee). Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. Complaints will be addressed whenever the district has actual knowledge of the allegation.

Are there other constraints around responding to a complaint?

- Title IX only applies to locations, events, and/ or circumstances in which the school district exercises substantial control.
 - The district no longer has to investigate or address off-campus conduct over which the school does not exercise substantial control.
 - The complaint must have occurred in the school district program.

- It does not apply to events that were alleged to have occurred outside the United States, such as a field trip abroad.

- There is no time limit or statute of limitation on timing to file a formal complaint. However, at the time of filing a formal complaint, an alleged victim must be participating or attempting to participate in a program or activity of the school district.

What happens when the district receives 'actual knowledge'?

The Title IX Coordinator must contact the complainant upon receiving the complaint and do the following:

- Discuss and offer supportive measures;
- Consider the complainant's wishes with respect to supportive measures;
- Explain that supportive measures may be received with or without filing a formal complaint;
- Determine whether the complainant wishes to file a formal complaint; and
- Explain to the complainant the purpose of filing a formal complaint

What are ‘Supportive Measures’?

- The complainant and respondents must be offered supportive measures even if they do not file a formal complaint.
- “Supportive measures” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the 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 recipient’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient’s educational environment, or deter sexual harassment. Supportive measures may include 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, and other similar measures. The district must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures

What constitutes a 'Formal Complaint'?

- Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment and requesting that the district investigate the allegation of sexual harassment.

- If the complainant declines to file a formal complaint, the Title IX Coordinator must consider whether to sign a formal complaint and start an investigation despite the complainant's preferences.
 - This decision may be appropriate when safety or similar concerns lead the district to conclude it must investigate and potentially sanction a respondent.
 - A Title IX Coordinator's decision to override the complainant's decision not to file a formal complaint must be documented in writing along with an explanation of why this decision was necessary.

What is the timeframe for the district to respond to a complaint?

- The response must be prompt – generally within sixty days, but can be extended for good cause
- Good cause may include considerations such as the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

How does the investigation process start?

- Before any investigation can begin, the district must send written notice to both parties including sufficient details. Sufficient details include:
 - the identities of the parties involved in the incident, if known
 - the conduct allegedly constituting sexual harassment,
 - the date and location of the alleged incident, if known.
- The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- The written notice must 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.
- The written notice must inform the parties that the District's code of conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- If additional allegations are added during the course of the investigation, additional written notice must be provided.

Is there any other form of resolution to a complaint?

- 'Informal Resolution' can be used to resolve a complaint.
- This can only occur after a formal complaint and written notice has been issued.
- The Title IX Coordinator can consider offering mediation.
- Both parties must give written consent to engage in this process.
- Informal resolution may not be used if the allegation is against an employee respondent.
- The Mediator should not prejudge outcome.

How does 'Informal Resolution' work?

- The facilitators of informal resolution will be designated by the Title IX Coordinator and must not be biased against any of the parties or have a conflict of interest (a conflict of interest would typically be a personal financial interest or personal interest that would prevent someone from being impartial).
- Informal resolution is entirely voluntary.
- If the complainant and the respondent feel that their grievances have been sufficiently addressed via informal resolution, then no further action needs to be taken. This voluntary conversation must occur within five (5) school days after receiving the complaint of discrimination or harassment, unless both parties agree otherwise. The results of an informal resolution shall be maintained by the facilitator, in writing.

What happens when an investigation is necessary?

- The Title IX Coordinator designates an investigator and a decision maker, who may not be the same person.
- The investigator must not be biased against any of the parties at the outset of the investigation.
- The investigator will be responsible for interviewing parties and witnesses, finding facts, and making determinations related to credibility, all of which will go into a written report.

Investigation

- Prior to completion of the investigative report, the school district will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report (**this is not the 'live hearing..cross examination' the colleges and universities are now permitted to conduct**)
- School districts may not limit students' and employees' ability to discuss (i.e., speak or write about) the allegations under investigation, for example with a parent, friend, or other source of emotional support, or with an advocacy organization.

How is the investigation reported to parties involved?

- The findings of the investigator will be written in a factual way in an investigative report. Credibility determinations may not be based on an individual's status as complainant, witness, or respondent.
- The investigator must avoid making any final determinations of responsibility for sexual harassment.
- The investigative report will be sent to both the complainant and respondent. It will also be sent to the decision-maker.

What is the role of the Decision Maker?

- The decision-maker must not be biased against any of the parties at the outset of this process.

- The decision-maker will offer both the complainant and respondent the opportunity to submit proposed relevant, written questions to ask of any party or witness, to respond to questions posed by another party, and to offer additional limited follow-up.
 - Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such 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) must explain to the party proposing the questions any decision to exclude a question as not relevant.
 - The decision-maker must consider what is relevant, using the same criteria of relevancy as discussed during the investigation.

What is the decision-making process?

- After this process is complete, the decision-maker will create a written determination regarding whether sexual harassment has occurred using a preponderance of the evidence standard.
- A school district must think about how a reasonable person would view the conduct when determining whether the conduct constitutes sexual harassment. In making this determination, school districts may consider the age and number of parties involved.
- Everything about best practices stated during investigation section applies here, such as not prejudging.

What will be in the decision-making report?

- The written determination must be issued to both parties simultaneously and must include:
 - Identification of the allegations potentially constituting sexual harassment;
 - A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
 - Findings of fact supporting the determination;
 - Conclusions regarding the application of the recipient's code of conduct to the facts;
 - A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
 - The district's procedures and permissible bases for the complainant and respondent to appeal (a copy of, or direct reference to, this policy will suffice).

What else do I need to know about ‘decision making’?

- The term a “preponderance of the evidence” means that it is more likely than not that the alleged conduct occurred.
- The decision-maker shall further recommend what action, if any, is required.
- If there is a finding that sexual harassment occurred, the school district will provide remedies to the complainant designed to restore or preserve equal access to the school district’s education program or activity. Such remedies may include supportive measures.
- Formal disciplinary actions may be imposed in the event that the preponderance of the evidence indicates a violation of this policy, up to and including expulsion or termination. Any disciplinary action will be in accordance with due process rights under State law and any applicable collective bargaining agreement.
- The School district cannot take discipline in the absence of following this formal process. It does not limit the District from removing a student or employee from a program or activity on an emergency basis based on immediate threats to people’s physical health or safety or placing an employee on administrative leave during the pendency of the investigation.

Is there an appeal process?

- Any party may appeal the decision in writing to the Superintendent within fifteen (15) school days of receipt of the findings of the formal procedure or a dismissal on the following bases:
 - 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(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

What happens after an appeal is filed?

- The school district will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.
- Both parties will have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
- The Superintendent or designee, as a further impartial decision-maker, will review the comprehensiveness and accuracy of the investigation and the conclusions, and issue written findings to both the complainant and respondent within thirty (30) school days of the appeal.

Retaliation is prohibited

- Complainants and those who participate in the complaint resolution process or who otherwise oppose in a reasonable manner an act or policy believed to constitute discrimination are protected from retaliation by law and District policy.
- The coordinator or designee will inform all involved individuals that retaliation is prohibited, and that anyone who feels that they have experienced retaliation for filing a complaint or participating in the resolution process should inform the coordinator.
- The coordinator will investigate reports of retaliation and, where retaliation is found, take separate remedial and disciplinary action.

**Thank you for reviewing this
Title IX training document.**

**If you have further questions please contact
the Title IX District Coordinator**

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