Title IX Coordinator & Administrator Training

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Disclaimer

- This presentation and its accompanying materials provide general coverage of its subject area and is presented for informational purposes only.

- The information in this presentation is not a substitute for legal advice as the information may not be suitable in a particular situation.

- Consult your attorney for legal advice. No attorney client relationship is intended or implied by making this presentation.
Title IX Prohibition

• “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.”

• OCR: The U.S. Department of Education Office for Civil Right (“OCR”) is the federal agency responsible for enforcing Title IX
Title IX Prohibition

- Discrimination
  - Sex/Pregnancy
  - Sexual Orientation
- Harassment
  - Quid Pro Quo
  - Hostile Environment
  - Sexual Violence

Title IX Required Training

- Required Participants:
  - Title IX Coordinators, Investigators, Decision-Makers, Appeals Decision-Makers
- Required Topics:
  - Definition of Sexual Harassment
  - Scope of Educational Program or Activity
  - Title IX Formal Complaint Process
  - How to Conduct an Investigation
  - Informal Resolution Process
  - Avoiding Biases & Conflicts
  - No Retaliation
Key Title IX Definitions

Definition: Title IX Roles

- Complainant
- Respondent
- Reporter
- Title IX Coordinator
- Area Title IX Administrator
- Informal Resolution Mediator
- Advisor
- Investigator
- Decision-Maker
- Appeals Decision-Maker
Traits - Title IX Roles

OBJECTIVITY

- No Conflicts & Unbiased
- Working Knowledge of Title IX
- Equitable & Fair
- Strong Analytical Skills
- Excellent Interpersonal Skills
- Active Listener
- Credible & Discreet
- Excellent Interpersonal Skills

Definition: Actual Knowledge

COMPLAINANT
- or Third Party

REPORTER
- Any District Employee

OFFICIAL
- Authority to Correct

TITLE IX PERSONNEL

INCIDENT REPORT

REPORTER

IN person

Verbal
- Written

Other ways

Telephone

Email, Mail
Definition: “Educational Program or Activity”

LOCATIONS AND EVENTS WHERE THE DISTRICT HAS “SUBSTANTIAL CONTROL”

“Substantial control” over harasser & context in which harassment occurs

- School Buildings
- Clubs & Sporting Events
- In-service Programs
- Field Trips
- Headquarters

Educational Programs & Activities

Definition: Consent

- Consent: affirmative, conscious and voluntary agreement to engage in sexual activity, except when the Complainant is a minor and incapable of granting consent

- Consent is:
  - Free from coercion
  - Free from intimidation
  - Free from threats
  - Not assumed
  - Revocable
Definition: Relevance

- **Relevance** - having any tendency to make the existence of sexual harassment more probable or less probable than it would be without the evidence.
  - Must adhere to the rape shield law

Standard of Liability

- **Deliberate Indifference**
  - Clearly unreasonable in light of the known circumstances
  - Once absolute knowledge exists
Standard of Proof

- Preponderance of the evidence - more likely than not that the sexual harassment or violence occurred.

Definition: Sex/Gender Discrimination

- Treating someone (applicant, employee, admitting or current student) unfavorably because of that person’s sex or gender.

- Includes, but is not limited to:
  - Pregnancy discrimination
  - Sexual orientation discrimination
  - Gender identity/expression discrimination
  - Sexual harassment
Definition: Sexual Harassment

Quid Pro Quo

Sexual Violence

HWE Harassment

Educational Program or Activity

Harassment: (Quid Pro Quo)

- **Quid Pro Quo** – Latin, “this for that”
  - Unwelcome sexual conduct
  - Submission to which is made either explicitly or implicitly
  - Affects a term or condition of an individual’s employment or access to educational program or activity
  - Can only be done by employees against students, or managers/supervisors against employees
When is Conduct Unwelcomed?

- Voluntary ≠ Welcome (imbalance of power)
- What may have been welcome on one occasion (e.g. because of a prior consensual relationship) may not be welcome on another occasion.
Harassment (Hostile Work Environment)

1. Unwelcome conduct
   - based on sex

2. Severe, pervasive, and objectively offensive

3. Reasonable Person Standard

4. Denies equal access to education program or activity

Severe, Pervasive and Objectively Offensive

- **Pervasive**: frequency of the conduct
  - generally, a single or isolated incident is not enough to establish harassment

- **Severe**: nature of the conduct
  - a single comment or misconduct may be sufficient to create harassment, particularly when the harassment is physical.

- **Objectively Offensive**: surrounding circumstances
  - Would a reasonable person in the position be offended
Reasonable Person

• Judged from the perspective of:
  • Subjectively – from the perspective of the Complainant and
  • Objectively – from the perspective of a reasonable person in the Complainant’s position
• NOT judged from the perspective of the alleged harasser

Sexual Violence

• Sexual assault
  – Any sexual act directed against a person, without consent
  – Ex. rape, fondling, incest, statutory rape
• 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
• Domestic violence
  – Violence committed by a spouse or former spouse, person with whom the Complainant shares a child, with whom the Complainant shares a residence, by persons covered by the domestic or family violence laws of the jurisdiction
• Stalking
  – Persistent watching, following, contacting or observing a person, motivated by what the stalker believes is love, sexual obsession or hostility, but would place a reasonable person in fear
Harassment Includes:

- **Physical**: touching, fondling, hugging, massaging, sexual intercourse, unnecessary closeness
- **Written**: words (spoken or written), emails, social media
- **Verbal**: discriminatory comments, slurs, insults, jokes
- **Visual**: pictures, posters, cartoons, Snapchat, Instagram, indecent gestures or objects
- **Non-verbal**: actions, gestures, staring or leering

Excuses that don’t’ work

- I thought it was consensual
- I didn’t mean to harass anyone
- I was only trying to be funny
- He/she never complained
- I didn’t think anyone else would see that text or e-mail
Title IX Formal Complaint Process

Reporting Protocol

• All employees: all employees must report allegations of sexual harassment to the Title IX Coordinator or Title IX Administrator

• Potential violations of law: the Title IX Coordinator/Title IX Administrators must follow district protocol if the reporting allegations require contacting CPS or law enforcement (HISD PD)

• Anonymous reports – the Title IX Coordinator/Administrators should make a concerted effort to obtain as much information as possible to thoroughly investigate the allegations.
Formal Complaint Process

Reasonably Prompt Time Frames
Allowances for short-term good cause delays

1. Incident Report ➔ Formal Complaint ➔ Notice of Allegations
2. Other Considerations

- **Advisor**
  - A single individual to support Complainant & Respondent during the complaint process

- **Supportive Measures**
  - Actions to restore or preserve equal access to the educational program or activity
  - Without being disciplinary or punitive or unreasonably burdening the other party
  - Fact-specific analysis; consider Complainant’s wishes
  - If not offered to Complainant, must document reason why not in writing

- **No Contact Agreement**
  - Mutually agreed upon
  - To restore or preserve access to the educational program or activity
  - A one-way no contact agreement may be appropriate under certain circumstances

- **Emergency Removal**
  - To remove a party if immediate threat to physical safety or health (after safety & risk analysis)
  - Removed party must receive notice and an opportunity to challenge once removed

3. Formal Complaint Dismissal?

- **Mandatory Dismissal**
  - Does not meet sex discrimination definition
  - Does not involve educational program or activity
  - Conduct did not occur in the U.S.

- **Discretionary Dismissal**
  - At Complainant’s request
  - Respondent no longer enrolled/employed
  - Specific circumstances to prevent gathering sufficient evidence to reach a determination regarding allegations

- Requires written notice of dismissal and reason for dismissal to complainant and respondent

- Does not preclude taking action under the Code of Conduct
# T9C Checklist

## TITLE IX COORDINATOR CHECKLIST

The checklist below is not exhaustive, but includes recommended actions that must likely should be taken during the Title IX grievance process. Additional actions may be necessary, as a Title IX case unfolds.

<table>
<thead>
<tr>
<th>T9C NO.</th>
<th>AFTER RECEIVING NOTIFICATION</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>T9C 1</td>
<td>Obtain a written or oral complaint from the Complainant or Title IX Coordinator and assign a case number.</td>
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<tr>
<td>T9C 2</td>
<td>Determine if the formal complaint requires mandatory Title IX dismissal based on:</td>
<td></td>
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<tr>
<td>T9C 3</td>
<td>- Allegations do not meet the definition of sexual harassment</td>
<td></td>
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<tr>
<td>T9C 4</td>
<td>- Allegations did not occur in the education program or activity</td>
<td></td>
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<tr>
<td>T9C 5</td>
<td>- Alleged conduct did not occur in a Title IX educational setting and the alleged victim notified law enforcement</td>
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</tbody>
</table>

If a mandatory dismissal of a Title IX formal complaint is decided, advise if the allegations indicate a potential Code of Conduct violation and whether further actions are needed.

| T9C 6   | Notify the Complainant and the Respondent of the Title IX decision. |
| T9C 7   | Provide copies of this checklist to the Complainant and Respondent. |

| T9C 8   | Submit a copy of the Title IX checklist to the Complainant, which includes: |
| T9C 9   | - Notice of rights and responsibilities. |
| T9C 10  | - Disclosure of procedures. |
| T9C 11  | - Notice of the opportunity for the Complainant to contact the Title IX Coordinator. |

| T9C 12  | Provide the Complainant an opportunity to submit a written response to the formal complaint. |

| T9C 13  | Complete the Title IX grievance process. |

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## T9C Checklist

### T9C 14
- Explain availability of a Supportive Measures (which are services that support the Complainant and Respondent during the Title IX process).
- Select an Advisor and a Supportive Measure (SOM) advisor to support the Complainant and Respondent during the Title IX process.
- Decide if no contact agreement is necessary (which allows the Complainant and Respondent to have no contact during the Title IX process).
- Determine if Emergency Removal is necessary (after an individualized safety risk analysis is necessary due to an immediate threat to the physical health or safety of any individual arising from the alleged incident). Inform the Complainant when in place.

### T9C 15
- Determine if a leave of absence is necessary for an employee, if any, during the conduct of the Title IX proceeding.
- Notify the formal complaint that a leave of absence is being considered.

### T9C 16
- Determine the formal complaint requires disciplinary Title IX dismissal based on: |
- AComplainant's request |
- AComplainant and Respondent's agreement |
- Specific circumstances to prevent gathering sufficient evidence to reach a determination regarding allegations |
- Confer with legal advisor before any disciplinary actions are taken.

If a disciplinary dismissal of the Title IX formal complaint is decided, decide if the allegations indicate a potential Code of Conduct violation and whether further actions are necessary.
4. Informal Resolution

- Not available for:
  - (1) any allegations of sexual assault, domestic violence, and/or sexual harassment by an HISD employee involving a student;
  - (2) repetitive misconduct found to violate Title IX and HISD’s anti-discrimination and anti-harassment policies; and
  - (3) misconduct that requires a disciplinary action.
- Requires voluntary, written consent from both Complainant and Respondent
- Failure to consent will not result in punitives
- After consent, a mediator will attempt to resolve the complaint, resulting in an informal resolution agreement
- The formal complaint will revert back to the formal complaint process if either party withdraws consent or if mediation is unsuccessful
5. Investigation

- Requires equitable treatment of Complainant and Respondent equitably
- District has the burden of gathering evidence
  - the parties may also gather evidence
- Must provide notice of interviews with sufficient time to prepare
- Investigator:
  - conducts interviews & collect data
  - evaluates relevant evidence,
  - drafts investigation report
  - simultaneously distribute draft report and evidence to Complainant and Respondent
  - allows Complainant and Respondent 10 days to provide a written response
  - review written responses to determine if report should be revised
  - finalize the investigation report after reviewing the written responses
Title IX Investigation

Investigation

1. Investigation Plan
2. Review/Analyze Documents
3. Interview Complainant
4. Interview Witnesses
5. Interview Respondent
6. Finalize Investigation
**Sample Questions**

- What happened? (Describe what was said/done in order of how it was said/done)
- When and where did this happen? Why do you believe it happened?
- What were the circumstances leading up to the incident?
- Was there physical contact? Describe it.
- What did you do in response to the incident? What did you say in response to the incident?
- Did anyone else see or hear what happened? Who? How? What did they do/say?
- Is there any other evidence (documents, text messages, photos, emails, Instagram, etc.) to support your account of what happened?
- Is there anyone else we should talk to who had knowledge of the incident or the circumstances surrounding it?
- Have you talked to anyone about the incident? Who? When? Where? What did you tell them? What was their response?
- Has the incident impacted your job/school activities in any way? How?
- What do you want to see happen as a result of this investigation?
- Is there anything else I need to know?
- Is there anything else you want to tell me that I haven’t asked you?
- Please let me know if you think of additional information that will be helpful in this investigation.

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**T9C Checklist**

**TITLE IX COORDINATOR CHECKLIST**

This document is to assist in conducting the Title IX grievance process. Additional action items may be necessary, on a case-by-case basis.

<table>
<thead>
<tr>
<th>Incident/Complainant Name</th>
<th>Date</th>
<th>Respondent (Name &amp; ID)</th>
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</table>

**YES**

- Select an investigator. Establish the investigator does not have a bias or conflict in conducting the investigation. If there is a conflict or bias, select another investigator. Remember the investigator cannot act as a decision-maker or appeals panel for the same complaint.
- Ensure investigator possesses the following at the outset: Title IX Grievance Process, Incident Report, Formal Grievance Notice of Grievance, Grievance, Investigator Checklist and (as per investigation Report Template)
- Provide the name and contact information of the investigator to the parties and their advisors.
- Periodically check with investigator to determine status. If the timeline is different from what was initially provided to the parties, provide an updated timeline. (Goals for good cases allowed with written notice to the complainand and respondent of the dates and the reasons for the delays. Goals may include considerations such as the presence of a party, a party’s advisor, or a witness, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities)
- Ensure complainant and respondent are provided written notice of any interviews or meetings during the process, including the date, time, location, participants, and purpose of the interview or meeting, with sufficient time for the party to prepare to participate.
- Remind the investigator that (1) he/she may consult with legal if necessary (2) he/she should contact the Title IX office if the advice becomes disruptive to the process.

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6. Determination

- Determination - written decision regarding responsibility, with remedies (including disciplinary sanctions, if appropriate)

- Decision-maker will:
  - Affirm or dispute proposed findings of fact
  - Apply policy to affirmed facts
  - Review relevant evidence under a preponderance of the evidence standard
  - Recommend disciplinary sanctions, if required
  - Simultaneously distribute draft determination to Complainant & Respondent
  - Allow the parties an opportunity to provide a written response within 10 days
  - Finalize Determination
  - Provide information on how to appeal
Evaluate Evidence

- Evidence Analysis
  - Credibility
  - Motive
  - Facts vs. Rumors/opinions
  - Inconsistencies vs. corroborated facts
  - Reasonable & logical conclusions?

Factors to Consider
Report & Determination

- Issue Investigation Report or Determination
- Provide report and determination, basis of outcome to Complainant and Respondent
- Review written response from Complainant and Respondent
- Finalize report and determination

Possible Determinations

- More likely than not the event happened
- More likely than not that the event did happened, for the most-part, as described
- More likely than not that the event did not happen to any reasonable extent as described
- More likely than not the event did not happen
Remedies

To restore/preserve access to educational programs and activities

- Continue with Support Measures
- No contact agreement
- Adjust class/work schedule
- Counseling
- Adjust reporting lines
- Other academic accommodations
- Increased monitoring
- Leave of absence
- Increased security
- Escort services
- Expulsion/Termination
- Other disciplinary sanctions

T9C Checklist

TITLE IX COORDINATOR CHECKLIST

The checklists below are guides only; individual circumstances may require additional steps. All steps should be taken in accordance with applicable laws and regulations.

1. **Complainant/Respondent(s)**
   - Complainant/Respondent Name & Title
   - Date

2. **Remedies**
   - Increased monitoring
   - Leave of absence
   - Increased security
   - Escort services
   - Expulsion/Termination
   - Other disciplinary sanctions

3. **To restore/preserve access to educational programs and activities**
   - Continue with Support Measures
   - No contact agreement
   - Adjust class/work schedule
   - Counseling
   - Adjust reporting lines
   - Other academic accommodations

4. **Remedies**
   - Increased monitoring
   - Leave of absence
   - Increased security
   - Escort services
   - Expulsion/Termination
   - Other disciplinary sanctions

5. **T9C Checklist**
   - The T9C checklist is provided, but includes requirements that may vary depending on the specific Title IX grievance process. Additional action items may be necessary, tailored to each case.

6. **Additional Information**
   - An updated timeline is provided. Necessary steps include:
     - Clarify what is relevant, knowledge of the evidence standard, etc.
     - Review the determination for legal, if needed
     - The original determination file remains in the Title IX Office. If a party requests to appeal, a copy of the determination file in its entirety (with the exception of privileged communications) is maintained in the Title IX Office, unless there is an appeal.
7. Appeals Process

- Mandatory appeal:
  - Procedural irregularity
  - New Evidence
  - Bias or Conflicts
    - Reasonable Person Standard
    BUT ONLY IF IT AFFECTS THE OUTCOME
- Discretionary Appeal
  - By written submission, appealing the remedies (including disciplinary sanctions) only

Appeals Process

- Review Formal Complaint & Respondent's Response
- Review Investigation File (including Investigation Report, the parties' responses and related evidence)
- Review Decision-Maker's File (including Determination, the parties' responses and related evidence)
- Review remedies, including disciplinary sanctions
- Issue Appeals Decision either affirming or rejecting Determination
8. Document Retention

- Seven Years
  - Investigation records
  - Determinations
  - Remedies provided
  - Disciplinary sanctions imposed
  - Appeal records
  - Training Materials
Break

Retaliation
Retaliation

<table>
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<tr>
<th>Three Prongs in Retaliation Claims</th>
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<tbody>
<tr>
<td><strong>Phase 1</strong></td>
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<tr>
<td><strong>Phase 2</strong></td>
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<td><strong>Phase 3</strong></td>
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Discipline for materially false information is not retaliation

- Punishing a party for false statement solely on the determination may be retaliation
- Charging a code of conduct violation that do not involve sex discrimination or sexual harassment, but arise out of the same fact or circumstances as the formal complaint
- Charging a code of conduct violation for making a materially false statement in bad faith in the course of the formal complaint process does not constitute retaliation.
- Punishing a party for making false statements in the course of the formal complaint process would constitute retaliation where the conclusion that false statements were made is based solely on the determination regarding responsibility.
Conflicts & Biases

Definition: Conflicts of Interest

• When an individual has a personal interest (whether actual, potential or perceived) that compromises or conflicts with the interests of his or her responsibilities in the Title IX process or with the district

• Eliminate conflicts to avoid compromising the integrity of the formal complaint process

• Some COI examples:
  – The complainant or respondent is or was a supervisor or friend
  – The complainant or the respondent is a family member, dating a family member or married to a family member
  – You were hired by the complainant or respondent
  – Your best friend is dating the complainant or respondent
  – You have a personal stake in the outcome
Types of Conflicts

- **Direct**
  - an interest directly tied to the individual, his or her family or career

- **Indirect**
  - the interest of a group, person or business the employee is or was closely connected to (ex. a friend of a friend, the employee’s fraternity, the employee’s previous employer)

- **Financial**
  - monetary gain or loss

- **Non-financial**
  - favoritism or prejudice resulting from friendship, animosity, or other personal involvement with another person or group

Conflicts

- Failure to immediately disclose a conflict may result in disciplinary action, up to and including termination.

- Title IX Coordinator is required to immediately disclose conflicts to the Superintendent

- Other Title IX personnel are required to immediately disclose conflicts to the Title IX Coordinator

- If there is a conflict, transfer the formal complaint to Title IX personnel without a conflict
Implicit Bias

- The brain takes in 11 million bits of information at any one point in time but
- The brain can process only 40 bits of information per second
- Therefore, we take mental shortcuts (or make quick judgments) based on our experiences
- No one is immune from bias

Implicit Bias

- I can't believe that I could actually understand what I was reading. According to research at Cambridge University, it doesn't matter in what order the letters in a word are, the only important thing is that the first and last letter be in the right place. The rest can be a total mess and you can still read it without a problem. This is because the human mind does not read every letter by itself, but the word as a whole. Aaznmig, huh?
Implicit Bias

• What might we use to fill in the blanks?
  • Family history
  • Personal experiences
  • Personal values
  • Educational experiences
  • Historical influences
  • Cultural influences – e.g., in media

• In some cases, the filters may be helpful
  • (i.e. smoke may mean fire)

• In some cases, the filters may be harmful
  • (stereotyping)
Types of Implicit Biases

- Confirmation
- Halo
- Horn
- Authority
- Stereotyping
- Anchor
- Affinity
- Attribution
- Conformity
- Status Quo

Implicit Bias
Implicit Bias

- A man buys a new car and goes home to tell his wife. He goes the wrong way up a one-way street, nearly runs into 7 people, goes on the sidewalk, and takes a shortcut over the median. A policeman sees all this and still doesn’t arrest him. Why not?

- One house is made of red bricks, one of blue bricks, one of yellow bricks, and one of purple bricks. What is the green house made of?

- You drive past a bus stop and see 3 people waiting for the bus: an old lady who is about to die, an old friend who saved your life, and your perfect partner. Knowing you can only have one passenger in your car, what would you do?

- How much dirt is there in a hole 3 feet deep, 6 feet long, and 4 feet wide?

- Your friend says he can predict the exact score of every football game before it begins. He’s right every time. How is that possible?
Implicit Bias

Bias Busters

- Avoid snap judgments – put first impressions aside
  - If I put aside my first impressions, would I make the same decision?
- Focus on the facts
  - Make conclusions after you have explored the facts
- Challenge yourself to slow down and make measured decisions
- Harvard Implicit Association Test ([implicit.harvard.edu](http://implicit.harvard.edu)).
  - 76% associate men with career and women with family
  - 75% prefer white people over black people (half are black)
Thank you!