



HONEYWELL  
LAW FIRM<sub>PLLC</sub>

# Title IX Training

Honeywell Law Firm, PLLC  
187 Wolf Road, Suite 202  
Albany, NY 12205  
(518) 512-4580  
[www.honeywelllawfirm.com](http://www.honeywelllawfirm.com)

# Title IX Key Questions and Answers

- What is Title IX?
  - A federal civil rights law that prohibits discrimination based on sex in education.
- What does Title IX require?
  - That all recipients, including schools, ensure that no student, employee, or third party participating in or attempting to participate in an education activity or program is discriminated against based on sex. This is done by creating or revising Title IX procedures, identifying a Title IX Coordinator and other key personnel, training all key personnel, alerting all members of the school community about Title IX policies, and publishing the name of the Title IX Coordinator, policies, procedures and training materials on their website.
- Who is responsible?
  - Schools need to have the necessary key personnel (Title IX Coordinator, Investigators, Decision-Makers/Adjudicators, Informal Resolution Facilitators) identified, trained, and in place to effectively respond to a Title IX Complaint.
- How do you effectively implement what is required?
  - Ongoing training, publishing, and publicizing to all members of the school community about Title IX

# Roles and Responsibilities

The **Title IX Coordinator** is responsible for effective implementation of Title IX protections and the grievance process.

- Responsibilities:
  - Monitoring the school's compliance with Title IX
  - Ensuring appropriate education and training is provided
  - Coordinating the investigations, responses, and resolutions of all reports under Title IX
  - Ensuring appropriate actions to eliminate sexual harassment, prevent its recurrence, and remedy its effects
  - Reviewing regularly the effectiveness of the efforts of the recipient to ensure that the educational setting is free from sexual harassment
- Duties:
  - Contacts each complainant to discuss supportive measures
  - Considers the complainant's wishes regarding supportive measures
  - Informs the complainant of the availability of supportive measures with or without the filing of a formal complaint
  - Explains to the complainant the process for filing a formal complaint
  - May impose disciplinary sanctions

# District Title IX Coordinator

- Kimberly Nugent, Director of Personnel Development
- 146 Gettle Road, Averill Park, NY 12018
- Phone:  
518-674-7051
- Email: [nugentk@apcsd.org](mailto:nugentk@apcsd.org)

# Roles and Responsibilities

An **Investigator** is assigned by the Title IX Coordinator to gather facts based on the filing of a formal complaint.

Responsibilities:

- Must be impartial, unbiased, and free from conflicts
- Oversees the prompt, thorough gathering of all facts based on the filing of formal complaint
- Effectively communicates with all participants throughout and involved in the investigation
- Provides notice of any good faith delays
- Understands relevance to create an investigative report that fairly summarizes relevant evidence

A **Decision-Maker** oversees the hearing or administrative determination proceeding or, when applicable, reviews appeals

Responsibilities:

- Must be impartial, unbiased, and free from conflicts
- Must receive training on any technology to be used at a live hearing, and on issues of relevance of questions and evidence, including when questions and evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant
- Title IX Coordinator and Investigators cannot serve as the Decision Maker

# Important Definitions

- **Complainant:** an individual who is alleged to be the victim of conduct that would constitute sexual harassment
- **Respondent:** an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment
- **Supportive measures:** non-disciplinary, non-punitive individualized services offered as appropriate to the complainant or respondent designed to restore or preserve equal access to the District's education program without unreasonably burdening the other party
  - Examples: counseling, modifications of schedules, mutual restrictions on contact, changes in location, increased security measures
- **Formal complaint:** a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting the District to investigate the allegation.

# Conduct Covered Under Title IX

- Sexual Harassment
  - Quid pro quo
  - Verbal
  - Physical
  - Electronic
- Sexual Assault
  - Rape
  - Fondling
  - Incest
  - Statutory rape
- Stalking
- Dating violence
  - Includes, but is not limited to, sexual or physical abuse OR the threat of such abuse
- Domestic Violence
- Retaliation

# Definition of Sexual Harassment

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the District conditioning the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct (also known as **quid pro quo** harassment)
- (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 District's education program or activity
- (3) "**Sexual assault**," meaning an offense classified as forcible or nonforcible sex offense defined in the FBI's Uniform Crime Reporting System.
- (4) "**Dating violence**," meaning violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- (5) "**Domestic violence**," meaning a felony or misdemeanor crime 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 violence laws of the jurisdiction in which the crime of violence occurred; by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- (6) "**Stalking**," meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.



# Response Obligations Under Title IX

- Actual knowledge of sexual harassment or a report of sexual harassment triggers the District's response obligations.
- Responses must:
  - Be prompt
  - Be equitable
  - Not be deliberately indifferent
  - Provide supportive measures
  - Provide due process
  - Be confidential
  - Initiate grievance process
  - Require an investigation

# Actual Knowledge

Actual knowledge means notice of sexual harassment or allegations of sexual harassment to:

- the District's Title IX Coordinator,
- any official of the District who has authority to institute corrective measures on behalf of the recipient, or
- **to any employee of the District.**

# Notice

Notice is whenever any District employee, any Title IX Coordinator, or any official with authority:

- Witnesses sexual harassment
- Hears about sexual harassment or sexual harassment allegations from a complainant (a person alleged to be the victim) or a third party (e.g., the complainant's parent, friend, or peer)
- Receives a written or verbal complaint about sexual harassment or sexual harassment allegations
- By any other means

Failure of a District employee to immediately inform the Title IX Coordinator may subject the employee to discipline up to and including termination.

# Deliberate Indifference Standard

- The District must respond promptly to Title IX sexual harassment in a manner that is not deliberately indifferent, which means a response that is not clearly unreasonable in light of the known circumstances.
  - This includes:
    - Offering supportive measures to both complainants and respondents
    - Following the grievance process that complies with Title IX
    - Conducting the grievance process within a reasonably prompt manner and in line with the time frames established in the policy
    - Investigating all allegations in any formal complaint
- Take complaints seriously when you have notice of them. Do not ignore a complaint or hope that it will just go away on its own.

# Grievance Process

- All participants must be provided notice and meaningful opportunity to be heard.
- Must be completed within a prompt timeframe.
- All parties must be informed of critical information about:
  - the District's procedures including the range of remedies and disciplinary sanctions a school may impose,
  - the standard of evidence applied by the District, which is the preponderance of the evidence standard, which is understood to mean that the party with the burden of persuasion must prove that a proposition is more probably true than false meaning a probability of truth greater than 50 percent,
  - the District's appeal procedures, and
  - the range of supportive measures available to both parties.
- Requires a Decision Maker to reach a determination regarding responsibility by applying the standard of evidence and the school must simultaneously send the parties a written determination explaining the reasons for the outcome.
- Requires schools to offer appeals equally to both parties, on the basis of:
  - Procedural deficiencies
  - Newly discovered evidence
  - Bias or conflict of interest affected the outcome

# Title IX Process: Step by Step

## **Step 1: Report of sexual harassment received by Title IX Coordinator**

- Any person may report sexual harassment regardless of whether they are the victim.
- Reports may be made in any form; initial reports need not be written or made using the District's formal complaint form.

## **Step 2: Contact**

- The Title IX Coordinator will review the report and make contact with complainant, if known, parent/legal guardian if applicable, and/or child abuse reporting agency and/or law enforcement
- The Title IX Coordinator must promptly contact the complainant confidentially to discuss:
  - The availability of supportive measures
  - Consideration the complainant's wishes with respect to supportive measures
  - The availability of supportive measures with or without the filing of a formal complaint
  - The process for filing a formal complaint

# Emergency Removal

At any point after receiving a report of sexual harassment, the District may immediately remove a respondent from the District's education program on an emergency basis, provided that the District:

- Undertakes an individualized safety and risk analysis,
- Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and
- Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

The District should coordinate any removal of a student with a disability with special education staff as the removal may constitute a change of placement under the IDEA or Section 504.

The District may place an employee respondent on administrative leave with or without pay during the pendency of the grievance process in accordance with the law and any other District policy.

# Title IX Grievance Process: Step by Step

## **Step 3: Filing of formal complaint**

- A formal complaint may be filed with the Title IX Coordinator by the complainant, the complainant's parent or legal guardian, or the Title IX Coordinator.
- The filing of a formal complaint initiates the grievance process.

## **Step 4: Notifications**

- The respondent and the respondent's parents must then be notified of the filing of a formal complaint.
- The written notification must:
  - Include all information regarding the District's grievance process, including any informal resolution process
  - State that the respondent is presumed not to be responsible until a determination is made
  - Inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney
  - Include the allegations of sexual harassment which will provide sufficient details known at the time and sufficient time to prepare a response before any initial interview.
    - Sufficient details include the identities of the parties, the conduct alleged, and the date and location of the alleged incident.

# Title IX Grievance Process: Step by Step

## **Step 5: Determine process to be used; Begin process**

- The District may offer and facilitate the use of an informal resolution process, such as mediation, that does not involve a full investigation and adjudication of the formal complaint.
  - The District cannot require that any party participate in an informal resolution.
  - Informal resolution is not an option when the allegations state that an employee sexually harassed a student.
- If the District offers the use of informal resolution, it must provide notice of the process and any consequences resulting from participating.
- An informal resolution process will only occur with the written and voluntary consent of each party.
- If either party does not consent to informal resolution or the District does not offer it, then the District will begin the formal investigation into the incident.
  - The Title IX Coordinator will identify an impartial, neutral, trained party to serve as the Investigator, or can serve in such position themselves.
  - The name of the Investigator should be provided to the parties to see if either party can state if there is a basis as to why the person selected cannot be fair and impartial or is biased.



# Title IX Grievance Process: Step by Step

## **Step 6: Investigation and Report**

- During the investigation, the Investigator will:
  - Collect, review, and preserve all evidence
  - Interview all relevant persons
  - Create written documentation of the investigation that contains:
    - A list of documents reviewed
    - A list of names of those interviewed
    - A timeline of events
    - A summary of prior relevant incident, reported or unreported
- Prior to completion of the investigative report, the parties will receive the evidence subject to inspection and review. The parties will have at least ten days to submit a written response, which the Investigator will consider prior to the completion of the report.
- At least ten days prior to a hearing or other determination regarding responsibility, the investigative report will be sent to each party for their review and written response.

# Dismissal of a Formal Complaint

The District must dismiss a formal complaint under Title IX if the conduct alleged:

- Would not constitute sexual harassment even if proven;
- Did not occur in the District's education program or activity; or
- Did not occur against a person in the United States.

The District may dismiss a formal complaint or any of its allegations under Title IX, if at any time during the investigation or hearing:

- A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any of its allegations;
- The respondent is no longer enrolled or employed by the District; or
- Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or any of its allegations.

Upon a dismissal of a formal complaint, the District must promptly send written notice of the dismissal and reason(s) for the dismissal simultaneously to the parties.

The dismissal of a formal complaint under Title IX does not preclude action under another related District policy, procedure, collective bargaining agreement, or other document such as the District's Code of Conduct.

# Title IX Grievance Process: Step by Step

## **Step 7: Hearing/Decision Making Process**

- The District will designate a Decision Maker who is unbiased, neutral and trained to either conduct a live hearing on the complaint or render a decision based on their review of the investigation report and all other relevant evidence.
- The grievance process may, but is not required to, provide for a hearing. This determination will be made on a case-by-case basis.
- With or without a hearing, before reaching a determination regarding responsibility, the Decision Maker will afford each party the opportunity to:
  - Submit written, relevant questions that a party wants asked of any party or witness within three business days after the parties have received the investigative report;
  - Provide each party with the answers given by any party or witness within two business days of receiving the questions; and
  - Allow for additional, limited follow-up questions and responses from each party to occur within two business days after the parties have received responses to their initial questions.

# Title IX Grievance Process: Step by Step

## Step 8: Decision

- The Decision Maker will issue a written determination regarding responsibility to the Title IX Coordinator, Superintendent, and all parties. Delivery should be contemporaneous to all parties.
- The written notice of determination will include:
  - identification of the allegations,
  - description of the procedural steps taken and investigatory steps taken,
  - the findings of fact,
  - a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility,
  - any disciplinary sanctions the District is imposing,
  - whether remedies will be provided to the complainant, and
  - the District's procedures and permissible bases for appeal.

# Title IX Grievance Process: Step by Step

## **Step 11: Right to appeal**

- Either party may file an appeal from a determination or a dismissal of a formal complaint or any of its allegations.
- Appeals must be submitted in writing to the Title IX Coordinator within five business days of the written notice of determination or dismissal.
- An appeal may only be based on one or more of the following affecting the outcome of the matter:
  - Procedural irregularity,
  - New evidence that was not available at the time the determination or dismissal was made, and
  - A conflict of interest or bias on the part of any Title IX key personnel.

## **Step 12: Appeal**

- If a timely appeal is filed, a new Decision Maker will be identified and notice must be given to the parties.
- All parties will be given an opportunity to submit a written statement within three business days of the notice of appeal.

## **Step 13: Appeal decision**

- The appeal Decision Maker will issue a written decision describing the result and rationale. The parties will be notified in writing of the decision.

# Prohibition of Retaliatory Behavior

- The District prohibits retaliation against any individual for the purpose of interfering with his or her Title IX rights or because the individual made a report or complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing under Title IX.
- All complaints alleging retaliation will be handled in a manner consistent with the District's policies and procedures regarding the investigation of discrimination and harassment complaints.
- If the Title IX Coordinator is unavailable, including due to a conflict of interest or other disqualifying reason, the report will be directed to another Title IX Coordinator.

# Confidentiality

Except where disclosure may be permitted or required by law or regulation, the District will keep confidential the identity of any:

- Individual who has made a report or complaint of sex discrimination;
- Individual who has made a report or filed a formal complaint of sexual harassment;
- Complainant;
- Individual who has been reported to be the perpetrator of sex discrimination;
- Respondent; and
- Witness.

## How To Serve Impartially

- Always remain neutral
- Do not be partial to any complainant or respondent, or complainants or respondents in general
- Serving impartially includes avoiding the following:
  - Prejudgment of the facts
  - Conflicts of interest
  - Bias



# Avoid Prejudgment of the Facts at Issue

- Prejudgment refers to passing judgment prematurely or without sufficient reflection or investigation.
- A common prejudice in Title IX matters are sex stereotypes.
- How to avoid prejudging facts:
  - Keep an open mind throughout the process
  - Wait to hear all facts and sides of the story before making decisions
  - Seek out additional facts and/or witnesses
  - Be cautious about your assumptions in situations involving sexual assault, drugs, or alcohol use

# Avoid Conflicts of Interest

- A conflict of interest occurs when personal or private interests may compromise one's judgment, decisions, or actions.
- Conflicts of interest may arise from family relationships, friendships, faculty member relationships, financial investments, or other social factors.
- There are no per se or automatic conflicts of interest outlined in the Title IX regulations.
  - Nonetheless, certain relationships or affiliations may result in the appearance of a conflict of interest that prevents the investigator from serving.

# Conflict of Interest Disqualifications

- A conflict of interest that disqualifies a Title IX team member from the process is a conflict that prevents the member from being able to impartially participate.
- 3 Types of Conflicts of Interest
  - An *actual* conflict of interest is a direct conflict between one's official duties and responsibilities and a competing personal interest or obligation.
  - A *perceived* conflict of interest is a situation where it could reasonably be perceived that a competing interest could improperly influence the performance of one's official duties and responsibilities.
  - A *potential* conflict of interest arises where a personal interest or obligation could conflict with one's official duties and responsibilities.
- How to determine if a conflict is present that should disqualify a team member from involvement in a particular Title IX grievance- Ask yourself:
  - Would I feel comfortable if my colleagues became aware of the conflict?
  - Would I feel comfortable if the conflict appeared in the media with respect to the grievance process?
  - If I saw someone else with the same potential conflict, would I think they should be barred from participating?

# Avoid Bias

- A bias is a tendency, inclination, or prejudice toward or against someone.
  - Biases are often based on stereotypes, rather than actual knowledge of an individual or a particular circumstance.
  - Biases are frequently based on a person's gender, race, or sexual orientation.
- Biases can be, and are often, implicit, meaning that certain attitudes and stereotypes can affect understanding, actions, and decisions in an unconscious manner.
- Ways to combat bias:
  - Pay attention to your language and word choice
  - Avoid generalizations
  - Question your thinking and challenge your assumptions
  - Listen
- Understand bias is particularly important in the Title IX context because:
  - Most evidence is circumstantial rather than direct
  - There are social stigmas associated with sex, race, ethnicity, academic standing, employment status, and economic status
  - Improper sex-based bias is prevalent and prevents reliable outcomes

# Treat Complainants and Respondents Equally

- Equitable treatment of the parties:
  - Equitable treatment of a complainant
    - Providing remedies where a respondent has been determined to be responsible
  - Equitable treatment of a respondent
    - Imposing disciplinary sanctions only after following the grievance process
- Presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- Any provisions, rules, or practices that a school adopts as part of its grievance process for handling formal complaints of sexual harassment must apply equally to both parties.
- Investigative techniques and approaches that apply sex stereotypes or generalizations may violate Title IX and should be avoided so that the investigation proceeds objectively and impartially.

# Final Tips

- Treat all reports of sexual harassment, whether formal or informal, equally and seriously
- Make no assumptions about the allegations based on the demographics of or your personal knowledge of the complainant or respondent
- Keep an open mind and actively listen to all the facts presented
- Respect all confidentiality
- Remember that each case is unique