



EducationAdminWebAdvisor
Online Training for Educational Professionals

Title IX Boot Camp for Higher Education (With Updates)

Session 2: Addressing and Investigating Sexual Harassment Under Title IX

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Overview



»»» Response to Allegations

- Supportive Measures
- Emergency Removal
- Administrative Leave

»»» Formal Complaint

»»» Grievance Process

- Basic Requirements
- Dismissal
- Informal Resolution
- Consolidation
- Investigation

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Response to Sexual Harassment Allegations



Title IX Coordinator must promptly:

- Contact 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 support measures, **and**
- Explain to the complainant the process for filing a formal complaint.





Response to Sexual Harassment Allegations– Emergency Removal



Nothing precludes the institution from removing a respondent from the education program or activity on an emergency basis.

- The institution must undertake an individualized safety and risk analysis, determine that immediate threat to health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provide the respondent with notice and opportunity to challenge following the removal.
- This provision may not be construed to modify any rights under Section 504 and ADA.



Response to Sexual Harassment Allegations– Administrative Leave



Nothing precludes the institution from placing a non-student employee respondent on administrative leave during the pendency of a grievance process.

These provisions may not be construed to modify any rights under Section 504 or the ADA.

Formal Complaints



Formal complaint

- A document filed by the complainant or signed by the Title IX Coordinator (1) alleging sexual harassment against a respondent and (2) requesting the institution investigate the allegation of sexual harassment
- A document filed by complainant means a document or electronic submission that contains complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.



Formal Complaint

Complainant

- An individual who is alleged to be the victim of conduct that could constitute sexual harassment
- The complainant must be participating in or attempting to participate in the education program or activity of the recipient 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 Complaints



Formal complaint

- Complainant must be participating or attempting to participate in the education program or activity of the institution with which the formal complaint is filed.
- Complaints may be filed with Title IX Coordinator in person, by mail, or by email, by using contact information, or by another method designated by the institution.
- Institution must follow the grievance process.
- Supportive measures must be offered as appropriate.





Grievance Process



Grievance process components

- Basic requirements
- Notice of allegations
- Dismissal of formal complaint
- Consolidation
- Informal resolution
- Investigation
- Hearing
- Determination regarding responsibility
- Appeals
- Recordkeeping

Grievance Process– Basic Requirements



Must treat complainants and respondents equitably

- Provide remedies to a complainant where a determination of responsibility has been made against the respondent.
- Follow a grievance process that complies with this part before the imposition of any disciplinary sanctions or other actions against a respondent.



Require an objective evaluation of all relevant evidence and provide that credibility determinations may not be based on person's status.



Require that any individual designated by an institution as a Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution process, not have a conflict of interest or bias.



Grievance Process– Basic Requirements



Includes a presumption that the respondent is not responsible for the alleged conduct until a determination of responsibility is made at the conclusion of the grievance process



Includes reasonably prompt time frames for conclusion of the grievance process

- Must include process that allows for temporary delay for good cause with written notice to complainant and respondent of the delay and the reasons for action
- Good cause may include considerations such as absence of a party, a party's advisor, or witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.



Grievance Process– Basic Requirements

- Describe the range of (or list) possible disciplinary sanctions and remedies that the institution may implement following determination of responsibility.
- State whether the standard of evidence to be used to determine responsibility is preponderance of the evidence or clear and convincing evidence.
 - Must apply same standard for formal complaints against students as for formal complaints against employees
 - Must apply same standard to all formal complaints of sexual harassment



Grievance Process– Basic Requirements



- » Include the procedures and permissible bases for the complainant and the respondent to appeal.
- » Describe the range of supportive measures available to complainants and respondents, and
- » Do not require, allow, rely upon, or otherwise use questions or evidence that constitute information protected under a legally recognized privilege, unless person has waived privilege.

Grievance Process– Dismissal



Dismissal of complaint

- If conduct, if proved, would not constitute sexual harassment
- If conduct did not occur in the education program or activity
- If conduct did not occur against a person in the U.S.

- Institution must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX or this part.

- Such a dismissal does not preclude action under another provision of the recipient's code of conduct.



Upon dismissal, the institution must promptly send written notice of the dismissal and reasons for dismissal.



Grievance Process– Dismissal



»» Dismissal of complaint

- The institution may dismiss the formal complaint or any allegations therein, 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 allegations therein;
 - The respondent is no longer enrolled or employed by the institution;
or
 - Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

»» **Upon dismissal, the institution must promptly send written notice of the dismissal and reasons for dismissal.**



Grievance Process– Informal Resolution

-  An institution may not require (as a condition of enrollment, employment, or another right) waiver of the right to an investigation and adjudication of a formal complaints of sexual harassment consistent with this section.
-  An institution may not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed.



Grievance Process - Informal Resolution

- At any time, prior to reaching a determination regarding responsibility, the institution may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication.
- Informal resolution requires an institution to follow certain requirements, including (1) providing the parties a written notice disclosing certain information (described below); (2) obtaining the parties voluntary, written consent to the informal resolution process; and (3) ensuring that it does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.



Grievance Process– Informal Resolution



The written notice to the parties must disclose: (1) the allegations; (2) the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations (provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint); and (3) any consequences resulting from participating in the informal resolution process, including records that will be maintained and could be shared.



Grievance Process– Consolidation

- » **An institution may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.**



Grievance Process– Investigations

- » Upon receipt of formal complaint, an institution must provide written notice to parties who are known.
- » Written notice must include:
 - Notice of recipient’s grievance process
 - Notice of allegations of sexual harassment, including sufficient details known at that time (i.e., identities of the parties involved in the incident if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident)



Grievance Process– Investigations



Written notice must also:

- 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
- Inform the parties that they may have an advisor of their choice who may be an attorney and that they may inspect and review evidence
- Inform the parties of any provision in the institution's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process



Grievance Process– Investigations

- »» Written notice must be provided with sufficient time to prepare a response before any initial interview.
- »» If other allegations are investigated later, notice must be provided of the additional allegations to the parties whose identities are known.



Grievance Process– Investigations



An institution must:

- Ensure that the burden of proof and burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the institution and not on the parties.
- The institution cannot access, consider, disclose, or otherwise use a party's records that are made and maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent to do so for the grievance process.



Grievance Process– Investigations



An institution must:

- Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- Not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant evidence; **and**
- Provide parties with the same opportunities to have others present during any grievance proceeding, including an advisor of their choice, but may establish reasonable restrictions regarding participation.



Grievance Process– Investigations



Investigation objectives

- Conduct a prompt, impartial, and thorough investigation to determine what happened.
- Steps may vary depending on the allegations.
- Identify appropriate witnesses and order of questioning.
- Consider types of questions and manner of interviews.
 - Who was involved or present?
 - What happened? Times, dates, places
 - What happened before or after?
- Request to see documentary evidence.
- Refrain from making conclusions or promising results.



Grievance Process– Investigations



Investigation objectives

- Carefully document all steps in the investigation.
- Consider credibility of witnesses, including inconsistent statements, body language, and reasons for statements.
- Warn individuals to be honest and forthcoming and that failure to do so may result in discipline.
- Written statements may be necessary for certain individuals.






Conclusion





Conclusion

-  Need to change policies to include a formal complaint
-  Need to include a grievance process in your policies
-  Need to identify different individuals to serve as investigator and follow process

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