



Idaho K-12 Title IX PLC #3

Decision Makers





Road Map

- Scope of Title IX
- Grievance process
 - Investigation
 - Determination phase:
 - Notice of Decision Maker
 - Admissible Evidence
 - Weighing Credibility
 - Bias avoidance
 - Sexual harassment definitions
 - Consent
- Hearings, or not
- Final Written Decision



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Title IX - Federal Law

- 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.
- Enforced by the Office for Civil Rights (OCR)

Scope of Title IX

1. Programs or activities
 - a. Any property owned.
 - b. Any event organized.
 - c. “locations, events, or circumstances over which [the school/district] **exercised substantial control over both the respondent and the context in which the sexual harassment occurs . . .**”
 - d. Social Media?
 - i. Was it posted while at school?
 - ii. Shared at school?
2. Outside events:
 - a. Allowed to have a separate policy that applies to events that happen outside school programs and activities.



Title IX Investigation Process

- Report of Sexual Harassment
- Written Complaint
- Notice of Allegations
 - Wait 10 days to interview Respondent
- Investigation
- Review Evidence
 - 10 days to respond to evidence
- Investigation Report
- Decision Maker
 - 10 days to respond to report
 - Question and Answer procedure



Roles in Title IX Investigation

- Complainant
- Respondent
- Parent/Guardian
- Advisor
- Witnesses
- Investigator
- Decision Maker
- Title IX Coordinator



Decision Maker Role

Has the Respondent violated policy?
If so, what to do about it.

- Review investigation report and all evidence
- May conduct pre-trial meetings with each party (when necessary and/or at your discretion)
- May question party or witnesses
- Rule on relevance for each question asked
- Manage hearing (if any)
 - Manage advisors during hearing
 - Question and answer process
- Determine if policy was violated
 - If yes, work with Title IX Coordinator and administrators on sanctions
- Draft notice of outcome
 - Procedural History
 - Findings of Fact
 - Credibility Assessment
 - Sanctions



Notice of Assignment of Decision Maker

- Identify Decision Maker
- Timelines and deadlines
- Process
- Right to challenge Decision Maker
- Exchange of questions procedure [or hearing]
- Confidentiality
- Bar on retaliation



Sexual Harassment Defined

Conduct on the basis of sex that satisfies one or more of the following:

1. Quid pro quo
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 recipient's education program or activity; or
3. "Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.



Sexual Assault

- An offense that meets the definition of rape, fondling, incest or statutory rape as used in the FBI's Crime Reporting system.
- A sex offense is any sexual act directed against another person, **without the consent of the victim, including instances where the victim is incapable of giving consent.**



Consent



- **Knowing, voluntary, and clear grant of permission, by word or action, to engage in sexual activity.**
- It is the **responsibility of each party to determine that the other has consented** before engaging in the activity.
- If consent is not clearly provided prior to engaging in the activity, **consent may be ratified by word or action at some point during the interaction or thereafter**, but clear communication from the outset is strongly encouraged.
- **Consent may be withdrawn.**
- A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. **It is a violation of policy if a respondent engages in sexual activity with someone who is incapable of giving consent, or is otherwise incapacitated.**

Federal Definitions of Sexual Assault



- **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.
- **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent under Idaho law.



Federal Definition of Dating Violence

- Violence, on the basis of sex, committed by a person, who **is in or has been in a social relationship of a romantic or intimate nature with the Complainant.**

Federal Definition of Domestic Violence



- Violence, on the basis of sex, committed by
 - a current or former spouse or intimate partner of the Complainant,
 - by a person with whom the Complainant shares a child in common, or
 - by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
 - by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Idaho, or
 - by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Idaho.

Federal Definition of Stalking



- Course of conduct, on the basis of sex
 - 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.
- Course of conduct means two or more acts.

Evidentiary Standard

Check your policy!

- **Discretion of District**, but must be consistent throughout ALL processes - Faculty, Staff and Students
- **Clear and Convincing**
 - highly probable to be true
 - Reasonably certain to be true

OR

- **Preponderance of the Evidence**
 - "more likely than not" to be true
 - 50% plus a feather



Hearings



- **Record**
- **Impartial**
 - Don't prejudge facts
 - No conflict of interest
 - No leading questions
 - Be mindful of implicit bias
- **Hearing officer questions witnesses and parties**
 - Parties may cross examine.
- **Either party allowed to present any evidence they wish, BUT**
- **Limited by relevance.**
- **Parties:**
 - Parents present
 - Counselor present if not a parent
 - Advisor
- **No direct questions between the parties.**
- **Technology - must train Decision Maker**

Relevance and Inadmissible Evidence



- **Relevance:**
 - has any tendency to make a fact more or less probable than it would be without the evidence; and
 - the fact is of consequence in determining the action.
- **Inadmissible Evidence**
 - Incidents not directly related to the possible violation, unless they evidence a pattern
 - The character of the parties
 - Questions and evidence about the complainant's sexual predisposition or prior sexual behavior, unless offered to prove that someone other than the respondent committed the conduct alleged, 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.

Credibility Assessment

When parties present materially conflicting versions of events, the decision-maker weighs the parties' credibility. When determining credibility, the following basic factors are considered:

1. **Inherent plausibility** – Is the party's statement believable on its face? Does it make sense?
2. **Motive to falsify** – Did the party have reason to lie?
3. **Corroboration** – Is there witness testimony or physical evidence that corroborates the party's statement?
4. **Prior history** – Does the party have a history of similar behavior in the past?



Sanctions

Factors to consider:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker and the Administration



Final Written Decision

- Identification of the allegations
- Procedural steps taken
 - notice to parties
 - interviews with parties and witnesses
 - site visits
 - methods used to gather evidence
 - hearings held (if any)
- Findings of fact supporting the determination of each allegation
- Conclusions regarding application of District Policy to the facts for each allegation.
- Sanctions, if any.
- Process and grounds for appeal.
- Send to all parties simultaneously.





Questions?



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Next Training:

Informal Resolution, January 13, 2026

