

Idaho K-12 Title IX PLC # 3

Decision Makers

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. Program or activities
 - a. Any property we owned
 - b. Any event organized.
 - c. “locations, Event, or Circumstance over which (the school/district) **exercised substantial control over both the respondent and the context in which the sexual harassment occurs . . .**”
 - d. Social Media?
 2. Outside events:
 - a. Allowed to have a separate policy that applies to events that happen outside school programs and activities.
- Grievance Process

Title IX Investigation Process

- Report of Sexual Harassment
- Written Complaint
- Notice of Allegations
 - Waiting 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 answers process
- **Determine if policy was violated**
 - If yes, work with the Title IX Coordinator and administrator on sanctions
- **Draft notice of outcome**
 - Procedural history
 - Funding of fact
 - Credibility assessment
 - Sanctions

Notice of Assignment of Decision Maker

- Identify Decision Maker
- Timelines and Deadline
- Process
- Right to Challenge Decision Maker
- Exchange of question procedures [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. **Unwelcomed conduct determined by reasonable person to be 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.
- 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.
- **Fondling** – The touching of the private body parts of another person.
- **Incest** – sexual intercourse between person 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 a 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.
- A current or former spouse or intimate partner of 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
- Fear of person's safety
- or the safety of others
- or suffer substantial emotional distress.

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 conflicts of interests
 - No leading questions
 - Be mindful of implicit bias
- Hearing officer questions witnesses and parties
- Parties may cross examine
- Limited by relevance
- Parties
 - Parent present
 - Counselor present if not a parent
 - Advisor

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

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.