



Title IX Investigator and Decision-Maker Training

Poudre School District | Student Services





Topics for Today

- What is Title IX?
- Categories of Sexual Harassment and Reporting Obligations
- Overview of the Title IX Process
- Conducting investigations
- Writing the investigation report and written determination



Housekeeping Items-Linked

- [Title IX Forms \(Investigation Report, Supportive Measures, Statements\)](#)
- [Poudre School District Title IX webpage](#)
- [Title IX Role Survey \(Must be Completed by every School\)](#)
- [Sexual Harassment Incident Report](#)
- [ATIXA Institutional Membership](#)
 - The Association of Title IX Administrators is the nation's leading membership organization for Title IX professionals.



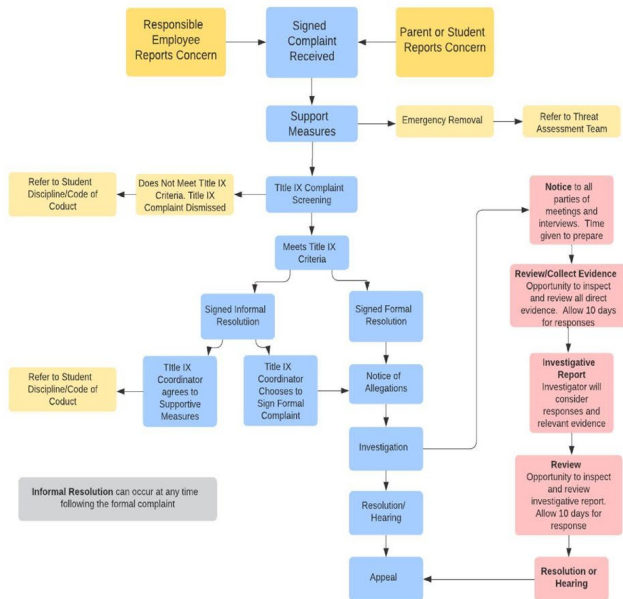
Title IX Flowchart and Forms-Linked

Title IX



Title IX/Sexual Discrimination and Harassment Resolution Process

Title IX Procedure Flow Chart



Title IX Sexual Harassment: Forms

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Title IX General Interview Questioning

Persons with information about the allegation may include:

- **Direct Witnesses:** Those who observed or may have observed the incident(s) or have first-hand personal knowledge of it/them.
- **Outcry Witnesses:** Those who know details of the incident(s) from the parties from the period immediately thereafter.
- **Indirect Witnesses:** Those who were later told about the incident(s) by the Complainant or the Respondent, or by a third party (have more limited value).
- **After-the-Fact Witnesses:** Those who observed the party's reactions or changes in behavior after the alleged misconduct.
- **Character Witnesses:** Witnesses about character are rarely relevant, but can sometimes offer evidence that is probative (e.g., a roommate who testifies that respondent's character is not to accept "no" for an answer, in a complaint where the issue is whether respondent failed to take "no" for an answer).
- **Expert Witnesses:** Witnesses who have training, education, and expertise in a specific area relevant to the reported incident(s) (e.g., a pharmacologist who specializes in alcohol interactions with prescription medications.)

Prepare a list of general questions in advance for each interview. Be prepared to add/delete questions as you learn more from the party or witness during the interview. Many questions or a sequence of questions are likely to be repeated for some or all witnesses. Such questions may include information about:

- The identities of and relationships between the parties
- The identities of and relationships between witnesses and the parties (and often, witnesses and other witnesses. Your witness flowchart can be used to create a pictorial relationship web). You are trying to ascertain whether the witnesses are neutral; have loyalties to one or all parties; or have animus toward one or all parties that may bring bias to their statements, subtly or overtly, consciously or subconsciously.
- Details of the alleged misconduct, including date(s) and time(line), place(s), circumstances, witnesses, and available corroborating and/or triangulating evidence
- Effect of the alleged conduct on the Complainant and others
- Response to the incident by the Complainant before and after filing the formal complaint
- Reasons or motives for the Complainant to make the allegations about the Respondent
- E-mails, text messages, social media communication or postings, photos, audio or video recordings, and conversations between the parties themselves, between the parties and witnesses, and between witnesses
- Reconciling disparities or discrepancies between witness testimony or indications of evidence
- Predation. Patterns or behaviors that suggest grooming, isolation, and/or other indicators of potential predation can be difficult to identify and require advanced analysis skills. If the evidence suggests such patterns or behaviors, predatory indicator questions such as those suggested below can be addressed to the Respondent. They are not litmus tests and the answers do not afford proof of predation but may help an investigator decide that a deeper inquiry may be needed.
 - If the Complainant was here right now, what would you say to them if you could say anything

What is Title IX?

Sexual Harassment and Reporting Obligations



What is Title IX?

- Title IX is a federal civil rights law passed as part of the Education Amendments of 1972
- It prohibits discrimination on the basis of sex (including sexual harassment) in education programs or activities (schools) that receive federal financial assistance
- Entities that receive federal financial assistance are called Recipients (school districts, BOCES, charter schools)



Title IX – 20 U.S.C. § 1681

- *“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.”*
- *For many years, Title IX was primarily referenced in the context of women’s athletics at educational institutions, but in recent years, it has also been used to address sexual harassment, sexual violence, and discrimination based on sex and/or gender. Title IX protects all individuals, regardless of their sex, from discrimination and harassment based on sex.*



Title IX - New Regulations

- Narrows the definition of sexual harassment
- Expands the “actual knowledge” standard to include notice to any district employee of alleged sexual harassment
- Creates new formal roles for Investigators & Decision-makers
- Requires formal training for Title IX Coordinator, Investigator, Decision-maker and anyone facilitating informal resolutions
- Creates extensive formal resolution process
- Codifies the “deliberate indifference” standard applicable to a district’s duty to respond



Title IX Sexual Harassment

Title IX requires schools to take steps to prevent and remedy two forms of sex-based harassment: sexual harassment (including sexual violence) and gender-based harassment. Sexual harassment is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual violence is a form of sexual harassment.

Sexual violence, as OCR uses the term, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.

Title IX Gender-Based Harassment

Title IX also prohibits gender-based harassment, which is unwelcome conduct based on a student's sex, harassing conduct based on a student's failure to conform to sex stereotypes.

Sex-based harassment can be carried out by school employees, other students, and third parties. All students can experience sex-based harassment, including male and female students, LGBTQ+ students, students with disabilities, and students of different races, national origins, and ages. Title IX protects all students from sex-based harassment, regardless of the sex of the parties, including when they are members of the same sex.

Sex-based harassment creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the school's program. When a school knows or reasonably should know of possible sex-based harassment, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. If an investigation reveals that the harassment created a hostile environment, the school must take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

Terminology – Response Team Roles

- Title IX Coordinator – the employee designated by the district to coordinate its efforts to comply with Title IX responsibilities. Provide notice, offer supportive measures, consider emergency removals/administrative leave, offer informal resolution.
- Investigator – individual trained to objectively evaluate the credibility of the parties and witnesses, synthesize all available evidence including both inculpatory and exculpatory evidence-and takes into account the unique and complex circumstances of each situation
- Decision-maker – is responsible for reviewing the relevant evidence, including party and witness credibility, to decide if the district met its burden of proof showing the respondent to be responsible for the alleged sexual harassment.

Terminology – Parties

- Complainant – Individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- Respondent – Individual who is alleged to be the perpetrator of conduct that could constitute sexual harassment.
- Advisor – Individual selected by the Complainant and Respondent to advise them during the process. Can be a parent, a lawyer or other person.

Important Roles

Complainant



An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Respondent



An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Investigator



The District-designated individual charged with conducting interviews, gathering evidence, and producing an investigation report.

Decision-maker



The District-designated individual charged with considering the evidence contained in the investigation report, making findings of fact, and analyzing the relevant policy provisions to determine whether the allegations constitute a policy violation.



Jurisdiction Under Title IX

Under the new regulations, you must dismiss the Title IX complaint if the alleged conduct:

- Would not constitute sexual harassment if proved;
 - Occurred outside of the US; or
 - Occurred outside of the District's "***education program or activity.***"

Conduct that does not fall under Title IX can and should still be investigated for violations of Code of Conduct and/or other policies, and discipline may be imposed as appropriate.

Reporting

If any district employee knows about an allegation of sexual harassment, the district knows.

Once the district knows, the regulations require that specific actions be taken.

Reporting suspected sexual harassment allows the district to offer support to our students.



Actual Knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or . . . to any employee of an elementary and secondary school - 34 C.F.R. § 106.30(a)

Reporting

<https://biasreport.psdschools.org/>

Reports shall be submitted no later than twenty-four (24) hours after becoming aware of the alleged behavior.

Reports can be submitted 24 hours a day, 7 days a week, 365 days a year to the Title IX/Non-Discrimination Coordinator or through the online incident report form.

It is encouraged that you also inform your direct supervisor when you report alleged sexual harassment.

Incidents that fall under Policy AC may also trigger your mandatory child abuse reporting responsibilities under state law.

Discrimination and Harassment Reports and Complaints

[Poudre School District](#)

Report an Incident

Poudre School District is committed to maintaining a learning environment for students that is free from harassment based on an individual's race, color, creed, religion, national origin, ancestry, sex, sexual orientation, gender identity, gender expression, or disability. All such harassment by District employees, authorized volunteers, students and third parties is strictly prohibited.

[AC - NONDISCRIMINATION / EQUAL OPPORTUNITY](#)

The district does not unlawfully discriminate on the basis of race, color, creed, religion, national origin, ancestry, sex, sexual orientation, gender identity, gender expression, marital status, veteran status, age or disability in access or admission to, or treatment or employment in, its programs or activities.

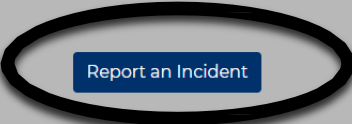
[JBB - HARASSMENT OF STUDENTS](#)

This reporting/complaint form can be completed by any individual who witnesses or believes they have been subjected to unlawful discrimination. Please include as much information as possible. To the extent possible, all reports will be kept private.

[AC-R1 - REPORTING DISCRIMINATION \(Complaint and Compliance Process\)](#)

False Report

Filing a false report is a serious matter. Anyone knowingly making a false complaint against another member of the Poudre School District community is prohibited.



Report an Incident

Retaliation

Includes threats, intimidation, coercion, discrimination, or other adverse action against any person for the purposes of interfering with any right or privilege secured by Title IX or because the person has made a report or complaint, testified, assisted, or participated/refused to participate in an investigation, proceeding, or hearing.



Overview of the Title IX Process



Title IX Flowchart



Title IX/Sexual Discrimination and Harassment Resolution Process

Title IX Procedure Flow Chart



Process Overview

Report

- TIX Coordinator receives report
- TIX Coordinator contacts complainant to discuss options under Policy, including supportive measures

Complaint

- Complainant files formal complaint
- Formal Complaint reviewed by Title IX Coordinator to determine if it falls under Policy AC

Resolution

- Informal Resolution
- Grievance Process

Informal Resolution

Resolution option available when both parties agree.

Not available in the case of an employee who engages in sexual harassment of a student.

Option for a respondent to take responsibility without following a full investigation process.

Overseen by a neutral mediator and both parties have equal opportunity to participate.

Can involve mediation and other restorative justice practices

Supportive Measures

- Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.
- Supportive measures are designed to restore or preserve equal access to the program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment, or deter sexual harassment.
- Supportive measures include: counseling, extensions of deadlines or other course related adjustments, modifications of work or class schedules, mutual restrictions on contact.

Phases of the Grievance Process

Notification of
formal
complaint

Investigation

Evidence
Review

Investigation
Report
Complete

Review of
investigation
report

Opportunity
to ask
questions

Written
determination

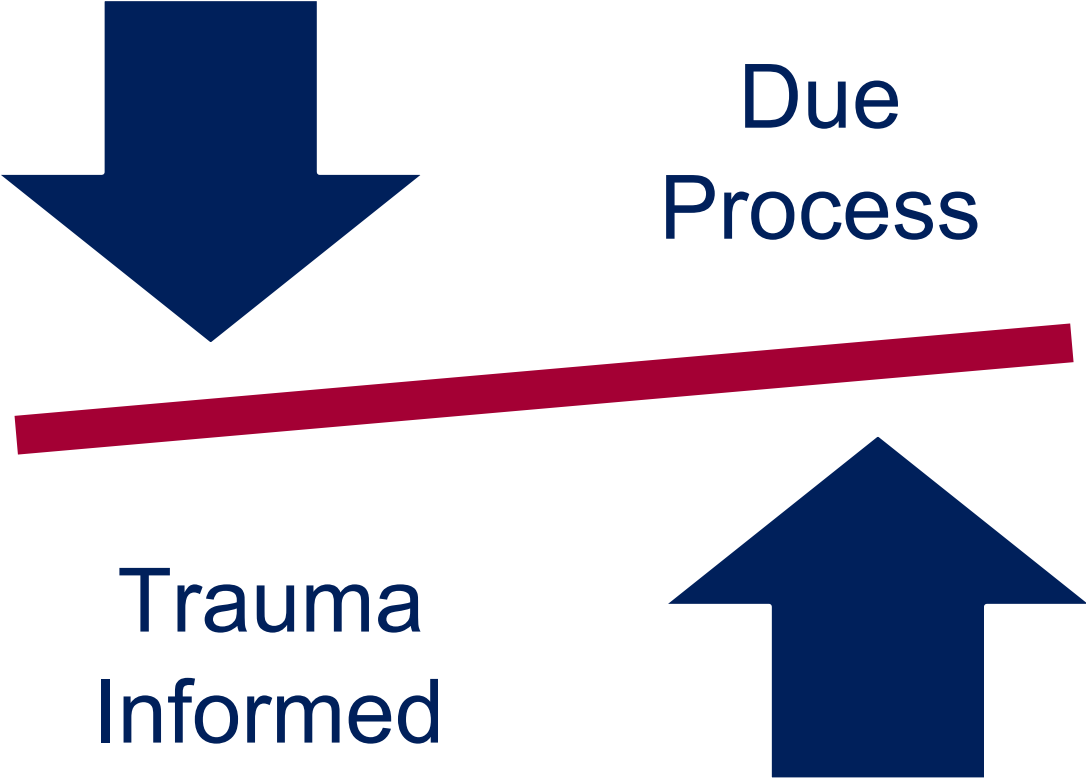
Appeal

Final
notification

Conducting Title IX Investigations



Balancing Needs in the Grievance Process



Working with Law Enforcement

- At times, criminal offenses and Title IX may overlap.
- The regulations require “reasonably prompt time frames for conclusion of the grievance process...”

*“Because the final regulations only permit **temporary** delays or **limited** extensions of time frames even for good cause such as concurrent law enforcement activity, this provision does not result in protracted or open-ended investigations in situations where law enforcement’s evidence collection (e.g., processing rape kits) occurs over a time period that extends more than briefly beyond the recipient’s designated time frames.”*

<https://www.ecfr.gov/current/title-34/subtitle-B/chapter-I/part-106/subpart-D/section-106.45>

Role of the Advisor

Each party is entitled to the adviser of their choice during all stages of the resolution process.

The advisor can be a parent, guardian, friend, or attorney.

The adviser may accompany the parties to all process-related meetings and interviews.

The advisor cannot speak on behalf of the party and can only consulting with and advising the party.

Best Practices in Interviewing

Important to be intentional about how you start the interview.

- Lay out the ground rules
- Explain your role
- Explain the purpose of the interview

Be thoughtful about how your questions may be taken by the interviewee, but make sure to ask the questions you need to in order to

- Ask clarifying questions about slang terms
- Push back when something the person says doesn't make sense
- Ask questions from a different perspective

Interview Considerations

Where interview is conducted

- Private, quiet area with easy exit

Pace of interview

- Allowing for breaks
- Giving person time to consider questions and respond
- Providing opportunity to consult with adviser

Phrasing of questions

- Avoiding “why” questions unless completely necessary

Interview Considerations

Allow interviewee to narrate their accounts in their own words and in their own way.

Ask open-ended follow-up questions as necessary.

If interviewee has issues with recall, phrasing questions so that they focus on sensory details – smells, sounds, touch, etc.

Trauma Informed Considerations

- Important to focus on two concepts:
 - What are you able to tell me about your experience?
 - Where would you like to begin?
- Provide space to allow Complainant to begin where he/she wants.
- If Complainant has a run-on statement, let it run.
- Use follow-up questions (non-leading) for example, "You mentioned that you told him/her "no", can you tell me what you were experiencing at the time?"

Physical and documentary evidence

Police report

Surveillance
footage

Photos/videos
from phones

Texts,
voicemails,
recorded call

Social media
screenshots

Prior
disciplinary
actions

Properly-
obtained
medical records
ex. SANE

Evidence

Not all the evidence you gather will be included in the investigation report.

You must provide the parties with all the evidence that is “directly related” to the allegations, but you don’t have to include all that evidence.

Only “relevant evidence” will be included in the investigation report that is submitted to the decision-maker.

If a party contests the relevancy of a piece of evidence, you must explain your decision in writing.

Determining Relevancy of Evidence

- While there are many types of evidence that may be presented during the course of Title IX sex harassment investigation, only relevant evidence should be considered when issuing a determination regarding a Title IX complaint.
- Relevant Evidence: Facts that potentially describe or explain an event or incident under investigation.
- Irrelevant Evidence: Facts that do not have the potential to describe or explain an incident under investigation.

Writing The Investigation Report and Written Determination



Evidence Review

When the investigator concludes fact finding, all of the evidence that is “directly related” to the allegations must be provided to the parties for their review.

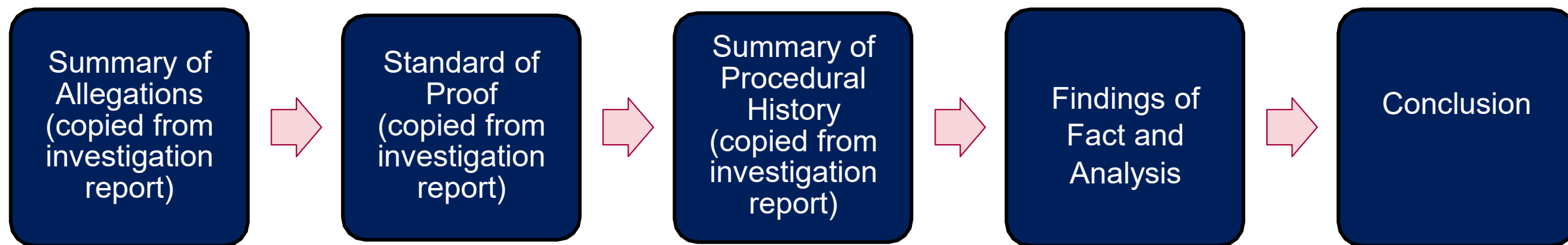
The parties may choose to respond to the evidence.

If response is provided, investigator must consider it when preparing

Putting Together The Investigation Report

- **Scope of the investigation**
- **Summary of allegations**
- **Investigation summary**
- **Interview summary**
- **District Policy AC**
- **Credibility assessment**
- **Recommendation**

The Written Determination



Findings of Fact

- The first part of the written determination must be a series of findings of fact.
- Any fact you intend to rely upon in your policy analysis must be found by a preponderance.



Questions?



Contact Information

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PSD Website: [Title IX \(Sexual Harassment\)](#)

If you have students who choose not to report, but need support:

Support for Victims of Sexual Assault

The Sexual Assault Victim Advocate (SAVA) Center provides crisis intervention, advocacy and counseling for all those affected by sexual violence in Northern Colorado while also providing prevention programs through community outreach and education.

Miranda Bateman

(Pronouns: She, Her, Hers)

Sexual Assault Resource Team (SART) Program Coordinator

Poudre School District | SAVA Center (970) 218-4519 | mbateman@psdschools.org