A Uniform Complaint Survival Guide: Mastering Title IX and Uniform Complaint Investigations
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Goals for Today

1. Recognizing Title IX Issues
2. Recognizing Uniform Complaints
3. Discussion of Hypotheticals—real world scenarios
4. Uniform Complaints
   - Definitions of Discrimination, Harassment and Bullying
   - Identifying Issues
   - How to Respond and Options
   - The Investigation Process
   - Best Practice and Tips for Investigation
5. Title IX
   - Title IX Coordinator
   - Complaints and Response
   - Grievance Procedures
   - OCR Case Resolution
Uniform Complaint Procedures
Where does the UCP come from?

CDE regulations define Uniform Complaints
Title 5 of the California Code of Regulations section 4600

Check your Board Policies and Administrative Regulations
BP/AR 1312.3
Does your Uniform Complaint Procedure comply with Title IX?

Or, does your organization use a separate Title IX Grievance Procedure?
Uniform Complaint Procedure

- Many additions and changes have been made to California’s Uniform Complaint Procedure in the last several years.
  - New revised administrative regulation governing the processing of uniform complaints;
  - Compliance responsibilities shared by Various Departments and School sites, and increase in volume and type of complaint often involves hiring outside investigator.

- Was the exception for processing certain unique complaints (e.g. facilities, instructional materials, and teacher mis-assignment), but appears to have become the rule with exception.
Educational Programs and Services Covered by the UCP

- Adult Education
- After School Education and Safety
- Agricultural Vocational Education
- American Indian Education Centers and Early Childhood Education Program Assessments
- Career Technical Education
- Child Care and Development (including State Preschool)
- Child Nutrition
- Discrimination, harassment, intimidation, bullying, student lactation accommodations, and Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) resources
- Foster and Homeless Students

- Local Control Funding Formula (LCFF) and Local Control Accountability Plans (LCAP)
- ESSA and federal programs (Titles I-VII), including improving academic achievement, compensatory education, English learner programs, and migrant education
- Physical Education: Instructional Minutes
- Course Periods Without Educational Content or Previously Completed Courses
- Regional Occupational Centers and Programs
- Special Education
- Tobacco-Use Prevention Education
- Unlawful Pupil Fees
Hypotheticals 1-4
Protected Class and Application of UCP

- Protected characteristics – real or perceived race or ethnicity, color, ancestry, nationality, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity, gender expression, or genetic information, or any other characteristic identified in Education Code 200 or 220, Government Code 11135, or Penal Code 422.55, or based on his/her association with a person or group with one or more of these actual or perceived characteristics (5 CCR 4610).

- The UCP covers alleged violations by local educational agencies (LEAs) (school districts and county offices of education) and local public or private agencies which receive direct or indirect funding from the State to provide any school programs, activities, or related services. Charter schools which receive federal funds are also subject to the UCP or where specified in statute.
Discrimination Defined

- Treating a person differently based on their membership in any protected classification (disability, gender, gender identity, gender expression, nationality, race or ethnicity, nation of origin, religion, sexual orientation) without a legitimate, non-discriminatory reason.
- Prohibited by both state and federal law.

(Cal. Educ. Code § 220; Cal. Code Regs. tit. 5, §§ 4900-4965; Title VI of the Civil Rights Act of 1964 (race, nation of origin); Title IX of the Education Amendments of 1972 (sex); Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 (disability)
Discrimination Defined: Federal Law

- Title VI of the Civil Rights Act of 1964 (Title VI) prohibits discrimination on the basis of race, color, or national origin;
- Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination on the basis of sex; and,
- Section 504 of the Rehabilitation Act of 1973 (Section 504); and Title II of the Americans with Disabilities Act of 1990 (Title II). Section 504 and Title II prohibit discrimination on the basis of disability.
Harassment Defined

▪ Federal and state anti-discrimination laws are also violated where student-on-student harassment creates a hostile environment, the district is on notice, and it does not act to address it.

▪ Harassing conduct may include verbal acts, graphic and written statements, or other conduct that may be physically threatening, harmful, or humiliating, regardless of the form it is transmitted.
Harassment Defined

▪ Harassment does not have to include intent to harm the victim, and need not be directed at a specific person or group of people over a prolonged period of time.

▪ It is not the label for the conduct that determines whether it is harassment, but whether the conduct creates a hostile environment for the protected class of students.
Harassment Defined

- A district may have “notice” of harassment if a responsible employee *knew*, or in the exercise of reasonable care *should have known*, about the harassment. This includes harassment occurring in plain sight (hallways or classes) and harassment discovered in the context of investigating particular misconduct, which, taken together, may create a hostile environment.

- Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student’s ability to participate in or benefit from the district’s services, activities, or opportunities.
Notice of Harassment

- Once a district has notice of harassment of a student on the basis of race, color, or national origin by another student that took place in a district program, it is responsible for determining what occurred and responding appropriately.

- The District is not responsible for the actions of the student, but for its own discrimination in failing to respond adequately.

- Once a district has notice of harassment, the responsibility to take appropriate and effective action is the school’s responsibility, whether or not the student who was harassed makes a complaint or otherwise asks the school to take action.

- Notice to an agent or responsible employee of the District is notice to the District.
Bullying

- Defined in Ed. Code section 48900(r)(1):
  means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including one or more acts committed by a pupil or group of pupils as defined in:
  - Section 48900.2 [sexual harassment],
  - 48900.3 [hate violence],
  - 48900.4 [harassment, threats, or intimidation]
directed toward one or more pupils that has or can be reasonably predicted to have the effect of one or more of the following:
Bullying

- Placing a reasonable pupil or pupils in fear of harm to that pupil’s or those pupils’ person or property;
- Causing a reasonable pupil to experience a substantially detrimental effect on his or her physical or mental health;
- Causing a reasonable pupil to experience substantial interference with his or her academic performance;
- Causing a reasonable pupil to experience substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school.

(Ed. Code section 48900(r).)
“Reasonable pupil” means a pupil, including, but not limited to, an exceptional needs pupil, who exercises average care, skill, and judgment in conduct for a person of his or her age, or for a person of his or her age with his or her exceptional needs.
Examples of Bullying

- Racial Harassment
- Sexual Harassment
- Hate Violence
- Harassment, Threats, or Intimidation
- Destruction of Property
- Can be verbal, written, physical, emotional and need not be discriminatory
Bullying

- The characteristics included within the definition of hate crimes set forth in the California Penal Code (i.e. disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation) includes a *perception* that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics. (Educ. Code section 210.2)
On October 26, 2010, the U.S. Dep’t. of Educ., Office of Civil Rights Issued a “Dear Colleague” Letter seeking to clarify the interplay between Harassment & Bullying.

The Letter was designed to provide guidance on when student conduct may be addressed through state bullying laws versus federal anti-discrimination laws.
OCR Dear Colleague Letter (2010)

▪ “A school must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.”

▪ These are the duties even if the harassment is covered by an anti-bullying policy and regardless of whether the school was alerted to the misconduct by a student’s complaint.
Bullying can implicate legal obligations under both state and federal antidiscrimination laws when it rises to the level of racial harassment, or any other harassment based on a federally protected status (e.g. race, disability).

While it is important to respond to misconduct that meets the definition of bullying under state law, using only the district’s anti-bullying policy may result in a resolution that does not fully address misconduct that also arises to harassment under federal anti-discrimination law.

Any time bullying or harassment involves a protected classification, the district must not only consider whether the student misconduct amounted to bullying under California law, but also whether it violated federal and state anti-discrimination law.
OCR Dear Colleague Letter (2010)

- While some student on student harassment may constitute “bullying” under state law, if it involves a protected classification or creates a hostile environment, it triggers additional anti-discrimination responsibilities.

- It is important to address the incident of bullying by disciplining or otherwise addressing the perpetrator, but it is also important to address the hostile environment it can create and the impact on the victim or group of victims at school.

- Race, gender, or disability based harassment should be brought to administrations attention immediately for action and follow up, to ensure the action corrected the behavior and the hostile environment it created.
Safe Place to Learn Act

- Safe Place to Learn Act (2012; CA Assembly Bill 9)
  - AB 9’s sponsor, Equality California, detailed the story of Seth Walsh, a 13-year-old boy in Tehachapi, California who committed suicide in September 2010 after experiencing persistent and long-term bullying due to his sexual orientation and gender expression.
  - Educ. Code section 234 et seq. (“Seth’s Law”)
    - Specifies that it is the policy of the State of California that local educational agencies continue to work to reduce violence, intimidation, and bullying
    - Requires, among other things, that the California Department of Education (“CDE”) to assess whether local educational agencies have adopted a policy to prohibit bullying and a process for receiving and investigating complaints of bullying
Safe Place to Learn Act

- Under Seth’s Law, the complaint process must include, but is not limited to:
  - a requirement that, if school personnel witness an act of discrimination, harassment, intimidation or bullying, he or she shall take immediate steps to intervene when safe to do so
  - a timeline to investigate and resolve complaints of discrimination, harassment, intimidation or bullying
  - an appeal process afforded to the complainant should he or she disagree with the resolution of a complaint filed
  - forms developed for this process must be available in the primary language of students
What are LEA responsibilities?

- Adopts policies and procedures consistent with the 5 CCR Sections 4600–4687, and provide annual notification of them to students, employees, parents or guardians of its students, the district advisory committee, school advisory committees, appropriate private school officials or representatives, and other interested parties.

- Designates knowledgeable staff member(s) to be responsible for receiving, investigating and resolving complaints.
Procedure to Contact Administrator

- At any time a student, parent, staff or community member claims any form of discrimination, harassment or bullying, it should be reported to the school administration immediately.

- Communication can be made in person, e-mail, or a phone call.
What are LEA responsibilities?

▪ Provide complaint form for complaints regarding instructional materials, emergency or urgent facilities conditions that pose a threat to the health or safety of pupils or staff, and teacher vacancies or mis-assignments.

▪ Provide opportunity to present information and/or evidence relevant to the complaint and protect complainants from retaliation.

▪ Resolve the complaint through a written report within 60 calendar days of receipt of the complaint unless extended by written agreement.

▪ Advise the complainant of the right to appeal the LEA’s decision to the CDE within 15 calendar days of receiving the decision.
What Isn’t Covered by the UCP?

- Complaints within school district’s discretion: classroom assignments, common core, grades, graduation requirements, hiring and evaluation of staff, homework policies, provision of core curricula subjects, public meeting laws (such as the Brown Act), student advancement and retention, student discipline, student records, and other general education requirements.

- Complaints against employees not involving educational program or services covered by UCP.
What Isn’t Covered by the UCP?

- Complaints within other agency jurisdiction:
  - Allegations of child abuse are referred to County Departments of Social Services, Protective Services Divisions, or appropriate law enforcement agency.
  - Health and safety complaints regarding a Child Development Program (Department of Social Services for licensed facilities, Child Development regional administrator for licensing-exempt facilities).
  - Employment discrimination sent to the California Department of Fair Employment and Housing.
  - Allegations of fraud are referred to the responsible Division Director at the California Department of Education (CDE).

- Don’t worry, LEAs may use the local complaint procedures to address complaints even when not covered by the UCP.
What are LEA responsibilities?

- District personnel are responsible to report incidents of possible harassment.
- Reporters of discrimination, including harassment (e.g. students, parents, or guardians) must be notified that they can address their complaints through the District’s discrimination complaint procedure, the UCP, and be notified how they can obtain a copy of the UCP forms.

**Important**
What are LEA responsibilities?

- **Even if no report is filed**, the District is responsible under Title VI of the Civil Rights Act of 1964 for responding appropriately to reports of harassment based on race, color, or national origin.
What does the UCP require?

- All UCP complaints must be investigated and resolved within 60 calendar days of receipt unless complainant agrees in writing to an extension. (5 CCR 4631)

- The *compliance officer* (designated by LEA policy) shall maintain a record of each complaint and subsequent related actions, including steps taken during the investigation and all information required for compliance with 5 CCR 4631 and 4633, including written report that complies with requirements.

- All parties notified when a complaint is filed and a decision is made.

- Complaints of retaliation, discrimination, or bullying shall be confidential as appropriate.
Filing of Complaint

- Complaints about student fees, deposits, and charges or any requirement related to the LCAP may be filed anonymously if supports an allegation of non-compliance. (Education Code 49013, 52075)

- Discrimination, harassment, or bullying complaint due six months from date it occurred or the date the complainant first obtained knowledge of the facts; may be extended for up to 90 days by the Superintendent or designee for good cause. (5 CCR 4630)

- Anonymous complaints of discrimination or bullying shall be investigated or responded to as appropriate, depending on the specificity and the seriousness of the allegation.

- When confidentiality requested must inform it may limit ability to investigate and respond to the complaint consistent with the request.

- District staff shall assist in the filing of the complaint. (5 CCR 4600)
Investigations - The Big Picture

- Alleged Misconduct.
- Fact Finding.
- Response/Written Report.
- Possible Corrective Action.
- Legal Challenge and Defense.
Investigations – The Benefits

• Required by Board Policy.
• Required by state or federal law.
• Required under just cause analysis for discipline.
• Proactive manner to manage and lessen liabilities.
• Brings allegations (e.g. bullying) to an end we can all agree upon in future planning decisions.
The Investigation

- School Personnel contact School Administrator or District UCP Compliance Officer within 1 business day of receipt of the Complaint
- Within 10 business days begin investigation
- Within 1 business day of starting investigation, offer complainant the opportunity to provide evidence or information at any time during the investigation
- Collect and review all documents, records, and statements
- Visit site or sites involved
- Interview all witnesses with information “pertinent to the complaint”
Investigation- Making Findings

- Written report must contain factual findings.
- Apply a "preponderance of the evidence" standard.
- Standard is met if the allegation is more likely to be true than not.
- Not the criminal standard – “beyond a reasonable doubt.”
- In reaching a factual determination, the following factors may be taken into account:
  - Statements made by any witnesses
  - The relative credibility of the individuals involved
  - How the complaining individual reacted to the incident
  - Any documentary or other evidence relating to the alleged conduct
  - Past instances of similar conduct by any alleged offenders
  - Past false allegations made by the complainant
Investigation Decision and Report

- Shall prepare and send to the complainant a written report of investigation and decision
- Due 60 calendar days from the district's receipt of the complaint - unless extended by written agreement with the complainant (5 CCR 4631)
- In writing and sent to the complainant, with contents dictated specifically by UCP regulation (5 CCR 4631)
- In consultation with district legal counsel, information about the relevant part of a decision may be communicated to a victim who is not the complainant and to other parties that may be involved in implementing the decision or affected by the complaint, as long as the privacy of the parties is protected
Required Elements of the Decision

Factual finding(s)-REQUIRED COMPONENT OF WRITTEN DECISION

- For complaints of retaliation, discrimination, harassment, or bullying, the disposition shall include a determination for each allegation as to whether it occurred.

- Hostile environment may involve consideration of the following:
  - How the misconduct affected one or more students' education
  - The type, frequency, and duration of the misconduct
  - The relationship between the alleged victim(s) and offender(s)
  - The number of persons engaged in the conduct and at whom the conduct was directed
  - The size of the school, location of the incidents, and context in which they occurred
  - Other incidents at the school involving different individuals
Required Elements of the Decision

Corrective Actions:

- When supported by investigation, the final report must include corrective action permitted by law.

- Appropriate corrective actions that focus on the larger school or district environment may include, but are not limited to, actions to reinforce district policies, training for faculty, staff, and students, updates to school policies, or school climate surveys.

- For complaints involving discrimination, harassment, or bullying, the notice may, as required by law, include:
  - The corrective actions imposed on the individual found to have engaged in the conduct that relate directly to the subject of the complaint
  - Individual remedies offered or provided to the subject of the complaint
  - Systemic measures the school has taken to eliminate a hostile environment and prevent recurrence
Required Elements of the Decision

Corrective Actions (continued):

- For complaints involving discrimination, harassment, or bullying, the notice may, as required by law, include:
  - The corrective actions imposed on the individual found to have engaged in the conduct that relate directly to the subject of the complaint
  - Individual remedies offered or provided to the subject of the complaint
  - Systemic measures the school has taken to eliminate a hostile environment and prevent recurrence
Notice of Right to Appeal

Must give notice of right to appeal to the California Department of Education

- Any complainant who is dissatisfied with the district's final written decision may file an appeal in writing with the CDE within 15 calendar days of receiving the district's decision. (Education Code 49013. 52075; 5 CCR 4632)
Best Practice

▪ Identify and discuss the problem of bullying, and assess bullying at schools.
▪ Examine basis for bullying and identify appropriate ways to intervene.
▪ Discuss appropriate ways to support both students (the bullied child and the bully).
▪ Develop site level committees, as needed.
Best Practice

- Create a climate where students feel safe reporting bullying/harassment.
  - Review bullying/harassment procedures.
  - Remember, it’s not enough to discipline the bully. Must also eliminate the hostile environment.

- Implement a streamlined investigation process.

- Know your district’s policies and procedures related to discrimination, harassment, and bullying.

- When a complaint is received, refer it to the proper department for handling and don’t stop addressing it until the discriminatory behavior stops.

- Be Proactive and Follow up!! Follow up!! Follow up!!
Tips for Successful Complaint Disposition

- Treat complaints seriously, and investigate as if allegations are true.
- Immediately interview both accuser & accused.
- Investigate both sides, interview all witnesses and ask specifically about contradictions.
- Ask relevant, open-ended, non-leading questions.
- Elicit facts, not opinions or guesses/speculation.
- Keep confidential and interview in private.
- Take good notes of interviews or get written statements, record only with permission.
- Stay objective!
Title IX

- Under Title IX of the Education Amendments of 1972:

  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. (United States Congress, June 23, 1972.)

- Title IX prohibits sex discrimination in educational institutions that receive federal funding

- The law is clear that sexual harassment may constitute sex discrimination under Title IX
Title IX Responsibilities

Agencies shall not:

1. Treat one student differently from another in determining whether the student satisfies any requirement or condition from the provision of any aid, benefit, or service.

2. Provide different aid, benefits or services or provide aid, benefits, or services in a different manner.

3. Deny any student any such aid, benefit, or service.
Title IX Responsibilities

4. Subject students to separate or different rules of behavior, sanctions, or other treatment;

5. Aid or perpetuate discrimination against a student by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to students; and

6. Otherwise limit any student in the enjoyment of any right, privilege advantage, or opportunity.
Title IX Requirements - Bottom Line

- Designate a Title IX Coordinator (34 C.F.R. § 106.8.)
- Adopt a policy to not discriminate in educational programs or activities based on gender or sex and enforce that policy uniformly. (34 C.F.R. § 106.9.)
- Adopt a complaint procedure process. (34 C.F.R. § 106.8)
- Implement specific and continuing steps to notify stakeholders of both genders of the policy. This includes a statement ensuring nondiscrimination in any announcements, bulletins or catalogs, or applications forms which are made in connection to recruitment of students or employees.
Title IX Coordinator
Designation of Title IX Coordinator

▪ All school districts receiving Federal financial assistance must designate at least one employee to coordinate their efforts to comply with and carry out its responsibilities under Title IX of the Education Amendments of 1972 (Title IX), which prohibits sex discrimination in education programs and activities.

▪ School District shall notify all its students and employees of the name, office address and telephone number of the employee(s) appointed.

(34 C.F.R. § 106.8 (a))

(Office for Civil Rights, Dear Colleague Letter (April 24, 2015))
Coordinator Responsibilities

▪ The coordinator’s responsibilities include overseeing all Title IX complaints and identifying and addressing any patterns or systematic problems that arise during the review of such complaints.

▪ The Title IX Coordinator should be available to meet with student’s as needed.
Title IX Coordinator

- Because of the possible that the employee designated to handle Title IX complaints may himself or herself engage in harassment, the school may want to designate more than one employee responsible for handling complaints to ensure students have effective means of reporting harassment.

- If the District designates more than one Title IX coordinator, the notice should describe each coordinator’s responsibilities (e.g., who will handle complaints by students, faculty and other employees).
Complaints and Response
Who Can File a Complaint

- Any person who believes it or any specific class of individuals to be subjected to discrimination may by himself/herself/themselves or by a representative file with the Title IX Coordinator a written complaint.

(34 C.F.R. § 100.7 (b))
When Must a Complaint Be Filed

- The complaint must be filed no later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the Title IX Coordinator.

(34 C.F.R. § 100.7 (b))
Does a Complaint Have to Be Filed?

- A school can receive notice of harassment in many different ways.
  - A student may have filed a grievance or complained to a teacher or other responsible employee about harassment.
  - A student, parent, or other individual may have contacted other appropriate personnel.
  - A teacher or other responsible employee of the school may have witnessed the harassment.
Informal Notice

- The school may receive notice of harassment in an indirect manner, from sources such as a member of the school staff, a member of the educational or local community, or the media and it therefore has a duty to respond to harassment about which it should have known.

- If a school otherwise knows or reasonably should have known of a hostile environment and fails to take prompt and effective corrective action, a school has violated Title IX, even if the student has failed to use the school’s existing grievance procedures or otherwise inform the school of the harassment.
School’s Response

- Once a school has notice of possible harassment of students, whether carried out by employees, other students, or third parties, it should take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps to end any harassment, eliminate hostile environment, if one has been created, and prevent harassment from occurring again.

- This is a school’s responsibility whether or not the student who was harassed makes a complaint.
School’s Response to Student or Parent Reports

- If a student or a parent of an elementary or secondary student provides information or complains about harassment of the student, the school should:
  - Initially discuss what actions the student or parent is seeking in response to the harassment.
  - Explain the avenues of informal and formal action, including a description of the grievance procedure that is available and how it works.
Student’s Request for Confidentiality

- What if student and/or parent of a minor student reporting harassment ask for student’s name to be kept confidential from harasser and/or that the school do nothing about the alleged harassment?
  - In all cases, a school should discuss confidentiality standards and concerns with the complainant initially.
  - The school should inform the student that a confidentiality request may limit the school’s ability to respond.
Student’s Request for Confidentiality

- The school should inform student that Title IX prohibits retaliation, and that if student is afraid of reprisals, the school will take steps to prevent retaliation.

- If student continues to request confidentiality, the school should take all reasonable steps to investigate and respond to the complaint consistent with student’s request, so long as doing so does not prevent the school from responding effectively to the harassment and preventing of same.
Student’s Request for Confidentiality

- What should a school consider if the harassed student requests confidentiality?
  - Seriousness of the alleged harassment
  - The age of the student harassed.
  - Whether there have been other complaints or reports of harassment against the alleged harasser.
  - The rights of the accused individual to receive information about the accuser and the allegations if a formal proceeding with sanctions may result.
  - Pattern of harassment based on claims by different students that they were harassed by the same individual.
Student’s Request for Confidentiality

Because the Office of Civil Rights (OCR) enforces Title IX consistent with the federally protected due process rights of public school students and employees, if for example, a student, who is the only student reporting such harassment, insists that their name be kept confidential, and the alleged harasser does not have the opportunity to respond without that information, OCR would not expect disciplinary action to be taken against the alleged harasser.
School’s Response to Direct Observation of Harassment by a Responsible Employee

- If a responsible school employee has directly observed harassment of a student, the school should:
  - Contact the student who was harassed (or the parent).
  - Explain that the school is responsible for taking steps to correct the harassment.
  - Explain the avenues of informal and formal action, including a description of the grievance procedure that is available and how it works.
School’s Response from a Third Party

- If a school learns information about harassment from a third party (witness to an incident, anonymous letter, or telephone call) different factors would affect the school’s response. These factors include:
  - Source and nature of the information
  - Seriousness of alleged incident
  - Specificity of Information
  - Objectivity and credibility of the source
  - Whether individuals who were subjected to harassment be identified
  - Whether those individuals want to pursue the matter
School’s Response from a Third Party

School’s Response from a Third Party

- Scenario: A Parent visits a school and observes a student harassing a group of female students and reports this to school officials.

- Appropriate Response: School personnel can speak to female students to confirm whether the conduct occurred and whether they view it as unwelcome. If the school determines the conduct created a hostile environment, it should take reasonable steps to address the situation. If, students were to ask that their names not be disclosed or indicate they do not want to pursue the matter, the request for confidentiality discussed before should shape the school’s response.
School’s Response

- Regardless of whether the student who was harassed, or his or her parent, decides to file a formal complaint or otherwise request action on student’s behalf (including in cases involving direct observation by a responsible employee), the school must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation and ensure it does not happen again.
Grievance Procedures
Title IX Complaint Procedures

- District shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited under Title IX.

  (34 C.F.R. §106.8 (b))

- The responsible Department official or designee shall from time to time review the practices of the District to determine whether they are in compliance.

  (34 C.F.R. §100.7 (a))
Grievance Procedures

- Title IX does not require that the District provide separate grievance procedures depending on the type of complaint (e.g. sexual harassment and sexual violence complaint), and may use student disciplinary procedures or other separate procedures to resolve Title IX complaints.

- However, the procedure must meet Title IX requirements of affording a complainant a prompt and equitable resolution.
Grievance Procedures

- Grievance procedures may include voluntary informal mechanisms (e.g., mediation) for resolving some complaints (including sexual harassment).
- However, Office of Civil Rights (“OCR”) has advised that it is improper for a student who complains of harassment to be required to work out a problem directly with the alleged perpetrator.
- Additionally, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process.
- In cases involving sexual assault, mediation is not appropriate even on a voluntary basis.
Grievance Procedures

The following elements are critical in a school’s grievance procedures to achieve compliance with Title IX:

- Notice to students, parents of elementary and secondary students, and employees of the procedure, including where complaints may be filed;

- Application of the procedure to complaints alleging harassment carried out by employees, other students, or third parties;

- Adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
Grievance Procedures

– Designated and reasonably prompt timeframes for the major stages of the complaint process;

– Notice to parties of the outcome of the complaint; and

– An assurance that the school will take steps to prevent recurrence.
Notice of Grievance Procedures

- A grievance procedure cannot be prompt or equitable unless students know it exists, how it works, and how to file a complaint.

Therefore:
- The procedures should be written in language appropriate to the age of the school’s students, easily understood, easily located, and widely distributed.
- OCR recommends that the procedures be posted on school websites, emailed to school community, available on location at schools, summarized in handbooks.
- It should also identify individuals who can explain how the procedures work.
Adequate, Reliable, and Impartial Investigation of Complaints

- In cases involving allegations of sexual violence, the District should notify a complainant of the right to file a criminal complaint, and should not dissuade the victim from doing so either during or after the school’s Title IX investigation.
- Schools should not wait for the conclusion of a criminal investigation or criminal proceeding to begin Title IX investigation.
- It may be appropriate for a school to take interim measures during the investigation of a complaint.
Adequate, Reliable, and Impartial Investigation of Complaints

- Although a school may need to temporarily delay the fact-finding portion of the investigation, while police gather evidence, once the school district is notified that the police has completed its gathering of evidence, the school must promptly resume and complete its fact-finding for its investigation.
Adequate, Reliable, and Impartial Investigation of Complaints

- In order for a school’s grievance procedures to be consistent with Title IX standards, the school must use preponderance of the evidence standard (i.e., it is more likely than not that sexual harassment or violence occurred).

- The parties must have an equal opportunity to present relevant witnesses and other evidence, throughout the investigation, including at any hearing.

- Complainant and Perpetrator must be afforded similar and timely access to any information that will be used at the hearing.

- While OCR does not require that schools permit parties to have lawyers at any stage of the proceedings, if school chooses to allow the parties to be represented by counsel, it must equally do so for both parties.

- OCR discourages schools from allowing the parties personally to question or cross-examine each other during the hearing.
Designated and Reasonably Prompt Time Frames

- Grievance Procedures should specify the time frame within which:
  - the school will conduct a full investigation of the complaint,
  - both parties receive a response regarding the outcome of the complaint; and,
  - the parties may file an appeal, if applicable
- Parties should be given periodic status updates.
- Based on OCR experience, a typical investigation should take approximately 60 calendar days following receipt of the complaint.
Notice of Outcome

- Both parties must be notified, in writing, about the outcome of both the complaint and any appeal.
- OCR recommends that schools provide the written determination of the final outcome to the complainant and the alleged perpetrator concurrently.
- Title IX does not require that perpetrator to be notified of the outcome before the complainant is notified.
Information to be Disclosed

- Due to the intersection of Title IX and FERPA requirements, OCR recognizes that there may be confusion regarding what information a school may disclose to complainant.

- FERPA permits a school to disclose to the harassed student information about the sanction imposed upon a student who was found to have engaged in harassment when the sanction directly relates to the harassed student.
Information to be Disclosed

- This includes an order that the harasser stay away from the harassed student, or the harasser is prohibited from attending school for a period of time, or transferred to other classes or another residence hall.
- Disclosure of other information, may result in a violation of FERPA.
Steps to Prevent

▪ In addition to ensuring full compliance with Title IX, schools should take proactive measures to prevent Title IX violations.

▪ OCR recommends that all schools implement education programs and make victim resources, including comprehensive victim services, available.

▪ Schools may want to include these education programs in their:
  – Orientation programs for new students, faculty, staff, and employees;
  – Training for students who serve as advisors in residence halls;
  – Training for student athletes and coaches; and,
  – School assemblies and “back to school nights.”
Steps to Prevent

- Programs should include a discussion of what constitutes sexual harassment and sexual violence, school’s policies, and disciplinary procedures, and consequences of violating these policies.
- The education programs should include information aimed at encouraging students to report incidents to the appropriate school and law enforcement authorities.
- Schools should also assess student activities regularly to ensure that the practices and behavior of students do not violate the school’s policies.
Remedies and Enforcement

- If the Title IX coordinator determines that a violation occurred, the school must take immediate action to eliminate the hostile environment, prevent its recurrence and address its effects.
- If the school has notice of sexual harassment or violence allegation, the school should notify the complainant of his or her options to avoid contact with alleged perpetrator.
- The school may prohibit the alleged perpetrator from having any contact with the complainant pending results of school’s investigation.
Remedies and Enforcement

- The schools should have policies and procedures in place to protect against retaliatory harassment by the alleged perpetrator and/or his/her associates.
- School should notify complainant and their parent, how to report any subsequent problems and continue to follow up with complainant.
- If the harassment has affected the entire school/community, the school may need to provide training for the larger school community to ensure that students, parents, and teachers can recognize harassment if it recurs and how to respond.
- Schools should proactively consider specific remedies when determining how to proceed with sexual harassment or violence.
Remedies and Enforcement

- These are the same type of remedies OCR would seek in its cases:
  - Providing an escort to ensure that the complainant can move safely between classes and activities;
  - Ensuring that the complainant and alleged perpetrator do not attend the same classes;
  - Moving the complainant or alleged perpetrator to another school within the district;
Remedies and Enforcement

- Providing counseling services;
- Proving medical services;
- Providing academic support services, such as tutoring;
- Arranging for complainant to re-take course or withdraw without penalty;
- Review any disciplinary actions taken against complainant to see if there is a casual connection between the harassment and the misconduct that may have resulted in him/her being disciplined.
OCR Case Resolution
OCR Case Resolution

- If OCR is asked to investigate or otherwise resolve incidents of harassment of students, including incidents by employees, other students, or third parties, OCR will consider whether
  - The school has disseminated policy prohibiting sex discrimination under Title IX and effective grievance procedures
  - The school appropriately investigated or otherwise responded to allegations of sexual harassment
  - The school has taken immediate and effective corrective action responsive to the harassment, including effective actions to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects
OCR Case Resolution

- If the school has taken, or agrees to take, each of the steps listed above, OCR will consider the case against the school resolved and will take no further action, other than monitoring compliance with an agreement, if any, between the school and OCR.

- If a complaint with OCR has been filed, a school is not relieved of its responsibility to respond to a sexual harassment complaint filed under its grievance procedure.
OCR Case Resolution

- Will the school risk losing its federal funding when OCR identifies a violation?
  - A school does not risk losing its Federal funding solely because discrimination occurred. Because Title IX requires OCR to attempt to secure voluntary compliance, the school has the opportunity to take reasonable corrective action before OCR issues a formal finding of violation.
Any Questions?