

**TITLE IX TRAINING FOR INVESTIGATORS,
COORDINATORS, DECISION MAKERS, AND
APPEAL DECISION MAKERS**

PREREQUISITE

This training should be reviewed after the SafeSchools Title IX Compliance Overview course required of all district employees.

NEW TITLE IX REQUIREMENTS

According to the US Dept of Education, “Training of Title IX personnel must include training on the definition of sexual harassment in the Final Rule, the scope of the school’s education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.”

Protects students, employees, applicants, and all other persons.

DEFINITION OF SEXUAL HARASSMENT IN THE FINAL RULE

Includes any of three types of misconduct on the basis of sex, all of which jeopardize the equal access to education that Title IX is designed to protect:

- Any instance of quid pro quo harassment by a school's employee;
- Any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access;
- Any instance of sexual assault, dating violence, domestic violence, or stalking.

SCOPE

Conduct that occurs in a United Community School District educational program or activity.

ROLES IN TITLE IX PROCESS

Title	Responsibilities	Training	Status
Coordinator	<ul style="list-style-type: none"> • Self check for conflict of interest or bias • Coordinate, Intake reports and complaints, • Initiate formal complaint, Implement supportive measures 	Title IX Overview, Title IX Personnel	May not serve as decision maker or appeal decision maker
Investigator	<ul style="list-style-type: none"> • Self check for conflict of interest or bias • Conduct fair, objective, and impartial investigation 	Title IX Overview, Title IX Personnel	May not serve as decision maker or appeal decision maker
Decision Maker	<ul style="list-style-type: none"> • Self check for conflict of interest or bias • Evaluate evidence • Make and write decision 	Title IX Overview, Title IX Personnel	Cannot serve in any other capacity
Appeal Decision Maker	<ul style="list-style-type: none"> • Self check for conflict of interest or bias • Within appeal grounds, make changes to findings only when clear error or compelling reason 	Title IX Overview, Title IX Personnel	Cannot serve in any other capacity. Should be in reporting upline from decision maker.

ROLES IN TITLE IX PROCESS

Coordinator

- Receives complaint, initiates process by assigning investigator and decision maker
- Responsible for implementation of effective supportive measures, as needed
- Cannot be the Decision Maker or Appeal Decision Maker, can also be an investigator

Investigator

- Collects facts
- Cannot be the Decision Maker or Appeal Decision Maker

Decision Maker

- Makes credibility determination

Appeal Decision Maker

- Cannot be the Title IX Coordinator or any investigators or decision-makers that reached the initial determination of responsibility
- Helps ensure appeal processes are adequately independent and effective in curing possible unfairness or error.

GRIEVANCE PROCESS

Investigate and adjudicate formal complaints of sexual harassment and:

- Give all parties written notice of allegations, an opportunity to select an advisor, and an opportunity to submit and review evidence throughout investigation.
- Provide parties at least 10 days to inspect, review, and respond to all evidence directly related to the allegations prior to the completion of the investigative report.
- Create an investigative report that summarizes the relevant evidence.
- Provide parties at least 10 days to review and provide a written response to the investigative report.
- Provide a written determination with an analysis as to how the conclusion was reached.
- Offer an opportunity to appeal a final determination. An appeal can be filed on the following bases: procedural irregularity, newly discovered evidence, and/or bias of the Title IX personnel that affected or could affect the outcome of the matter. A covered entity may also add other rights to appeal, so long as the other bases are available to all parties.

INFORMAL RESOLUTION

Option to offer and facilitate resolution, such as mediation or restorative justice, in any formal investigation with the parties' voluntary, informed, written consent.

Waiver of the right to a formal investigation or adjudication of a formal complaint of sexual harassment as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, is prohibited.

Informal resolution is not available to resolve allegations where an employee sexually harassed a student.

LIVE HEARING

K-12 educational institutions need not hold a hearing but must provide the parties the opportunity to submit written questions to be answered by the opposite party.

This has been a big change to Title IX for colleges and universities.

INVESTIGATION BASICS

- ▶ Presume that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- ▶ Evidence Gathering: Keep the burden of proof and the burden of gathering evidence on the institution, not the parties.
- ▶ Avoid prejudgment

Investigation Step	Role	Who is Responsible?
1	Ensure Confidentiality	All
2	Provide Interim Protection	Coordinator
3	Select Investigator	Coordinator
4	Create Investigation Plan	Investigator
5	Develop Interview Questions	Investigator
6	Conduct Interviews	Investigator
7	Make Decision	Decision Maker
8	Close Investigation	Coordinator

EVIDENCE

- ▶ Evidence = any information shared or presented with intent to prove what happened.
- ▶ If evidence is considered credible and relevant to prove or disprove a fact or occurrence, it should be considered. *(Credibility determined by decision maker, not investigator)*
- ▶ Looking at both evidence towards credibility of those involved and evidence towards policy violations.
- ▶ Was there evidence of prior planning?

DEFINITIONS: CONFLICT OF INTEREST AND BIAS

Conflict of Interest:

A situation in which the concerns or aims of two different parties are incompatible.

- ▶ a situation in which a person is in a position to derive personal benefit from actions or decisions made in their official capacity.

Bias:

Noun - prejudice in favor of or against one thing, person, or group compared with another, usually in a way considered to be unfair.

Verb - cause to feel or show inclination or prejudice for or against someone or something.

OBJECTIVITY

Require objective evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person's status as a complainant, respondent, or witness.

Avoid prejudgment of the facts at issue.

DECISION

- ▶ Preponderance of Evidence standard - “more likely than not”
- ▶ Assess credibility and weighs the evidence to make a determination.



SUPPORT AND REMEDIATION

During investigation
or after decision

Supportive Measures: Non-disciplinary, non-punitive individualize services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent.

Goal is to restore and preserve access while investigation and resolution process occurs. May also be remedies after final resolution.

After decision

Remediation: Post-determination. May include remedies but can be disciplinary or punitive and can burden the Respondent assuming they were found to violate policy.

RAPE SHIELD PROTECTIONS

If a survivor chooses to participate in a grievance process, the final rule protects survivors from inappropriately being asked about prior sexual history (also known as "rape shield" protections), and the survivor must not be required to divulge any medical, psychological, or similarly privileged records.

Prohibit any inappropriate questioning about prior sexual history and protect the privacy of a party's medical, psychological, or similar treatment records.

RETALIATION

According to the US Dept of Education, “Recipients of federal funds are prohibited from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX.”

Protection for any individual that participates in the process.

RETALIATION CONTINUED

- ▶ New revisions extend retaliation claims, therefore, Complainants and Respondents can bring retaliation claims.
- ▶ Retaliation claim, unlike establishing sexual harassment, retaliation requires proving a motive of the intent to retaliate.
- ▶ Determine if a retaliatory motive can be inferred from the evidence.
- ▶ Gathering details of what occurred is critical.

CONFIDENTIALITY

The school must keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding.

TRAINING REQUIREMENTS

All materials used to train Title IX personnel:

- Must not rely on sex stereotypes,
- Must promote impartial investigations and adjudications of formal complaints of sexual harassment,
- Must be maintained by the school for at least 7 years,
- Must be publicly available on the school's website

FOR ADDITIONAL INFORMATION

Contact United's Title IX Coordinator, Amelia Clark, Director
of Human Resources, 515-432-5219 extension 221, or
aclark@united.k12.ia.us