

Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Title IX Training
2020 Regulations
Refresher

December 9, 2024
Michele R. Eaddy

 **THRUN**
LAW FIRM, P.C.

1

Caution

These slides reflect general legal standards for the related presentation and are not intended as legal advice for specific situations.

Future legal developments may affect these topics.

This document may not be reproduced or redistributed, in whole or in part, without the express written permission of Thrun Law Firm, P.C.

2

Important Notes

This training is intended to satisfy the training requirements for Title IX Coordinators, Investigators, Decision-Makers, Informal Resolution Facilitators, and Appeals Officers under the 2020 Title IX regulations.

Review of these slides without the synchronous training may not satisfy training requirements.

3

© 2024

Detroit Public Schools Community District

Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Fluid Situation

- 2020 regulations effective 8/14/20
- NPRM issued June 23, 2022
- 2024 regulations released 4/19/24; effective 8/1/2024
- Louisiana Court issued injunction, applying to LA, MS, MT, ID, on 6/14/24
- Tennessee Court issued injunction, applying to TN, KY, OH, IN, VA, WV, on 6/17/24
- Kansas Court issued injunction on 7/2/24 applying to KS, AK, UT, WY...and.....

4

Kansas Injunction Applies as to...

"the schools attended by the members of Young America's Foundation or Female Athletes United, as well as the schools attended by the children of the members of Moms for Liberty."



5

OCR: Current Status

As of November 25, 2024, pursuant to Federal court orders, the Department is currently enjoined from enforcing the 2024 Final Rule in the states of Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming; the Department is also currently enjoined from enforcing the 2024 Final Rule at the schools on the list located <https://www.ed.gov/media/document/list-of-schools-enjoined-2024-t9-rule.pdf>. Per Court order, this list of schools may be supplemented in the future. The Final Rule and these resources do not currently apply in those states and schools. **Pending further court orders, the Department's Title IX Regulations, as amended in 2020 (2020 Title IX Final Rule) remain in effect in those states and schools.**

*Lists of schools subject to injunction continually being updated. So far lists issued on July 15, July 26, July 31, August 28, and November 12

6

© 2024

Detroit Public Schools Community District

Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Where Are We Now?

- 2024 Regulations are effective
- Schools not named in injunction **must** implement 2024 regulations
- Schools named in injunctions must decide how to proceed. Schools named in injunctions **may** implement 2024 regulations (with some risk); or **may** continue to follow 2020 regulations and ensure other policies address discrimination based on pregnancy, gender identity, and sexual orientation
- All schools must respond to sex discrimination, harassment, and retaliation allegations in a manner that is not deliberately indifferent
- Don't forget ELCRA

7

Overview of 2020 Regulations



8

Scope of 2020 Regulations

- Went into effect August 14, 2020
- Do not apply to sexual harassment that allegedly occurred before effective date
- Address sexual harassment as subset of sex-based discrimination
- Apply to staff-to-staff, staff-to-student, student-to-staff, and student-to-student sexual harassment occurring **against persons in the U.S.**

9

© 2024



THRUN
LAW FIRM, P.C.

3

Detroit Public Schools Community District

Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Key Changes

- **All** staff have reporting obligation
- “Single investigator” model eliminated
- Grievance process includes many specific required steps
- Respondent presumed not responsible until responsibility determination is made
- Additional policy, training, documentation, and record retention requirements
- Due process emphasized

10

Key Title IX Roles

1. **Title IX Coordinator:** oversees school's Title IX compliance and is a school employee
2. **Investigator:** Conducts investigation and issues investigation report
3. **Decision-Maker:** Makes determination of responsibility
4. **Appeals Officer:** Hears appeals
5. **Informal Resolution Facilitator (“IRF”):** assists parties in reaching informal resolution, if applicable
 - Investigator, IRF, Decision-Maker, and Appeals Officer must be different persons and appropriately trained
 - Title IX Coordinator may also serve as investigator or IRF

11

Impartiality is Key

- Persons serving in key roles must not have a conflict of interest or bias for or against:
 - Complainants and respondents generally, or
 - An individual complainant or respondent
- Prejudgment of the facts must be avoided

12

© 2024



THRUN
LAW FIRM, P.C.

Detroit Public Schools Community District

Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Constitutional Concerns

Regulations emphasize protecting parties' constitutional rights:

- 1st Amendment (Freedom of Speech)
 - Attempts to suppress free speech by school are not appropriate – No gag orders
- 14th Amendment (Equal Protection)
- 5th Amendment (Due Process)
 - Respondent presumed not responsible until determination made

13

What is Sexual Harassment?

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

- Employee *quid pro quo*;
- Sexual assault, dating violence, domestic violence, stalking (definitions from Violence Against Women Act); and
- Hostile environment

14

Quid Pro Quo

- Recipient's **employee** conditioning an aid, service, or benefit of the recipient on an individual's participation in unwelcome sexual conduct.
- Only applicable to **employee** Respondents; not applicable to Respondent volunteer, student, etc.

15

© 2024



THRUN
LAW FIRM, P.C.

5

Detroit Public Schools Community District

Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Sexual Violence Definitions

- **"Sexual assault"**: an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
- **"Dating violence"**: violence committed by a person who is or has been in a romantic or intimate relationship with the Complainant. The existence of such a relationship is based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

16

Sexual Violence Definitions

(cont'd)

- **"Domestic violence"**: felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the Complainant, person with whom the Complainant shares a child, person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner, person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Michigan; or 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 Michigan.
- **"Stalking"**: engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress.

17

Consent

- Term not defined in regulations
- District must define term in its policy
- How does your policy define consent?
 - Consider absence or negation of consent, and capacity to consent
- Persons in key Title IX roles must know how to apply your consent definition consistently, impartially, and in accordance with policy
- **REMEMBER:** Staff/student conduct ALWAYS prohibited, regardless of consent

18

© 2024

Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Hostile Environment

*“Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it **effectively denies** a person's **equal access** to the recipient's education program or activity.”*

19

Denial of Equal Access

- Reactions to sexual harassment vary and should be assessed from perspective of a reasonable person in Complainant's position
- Denial may include skipping class to avoid harasser, grade decline, difficulty concentrating in class
- No concrete injury required
- Complainant need not drop out of school, fail a class, have a panic attack, or otherwise reach “breaking point”

OCR, Question and Answers Regarding the Department's Final Title IX Rule, September 4, 2020

20

“Education Program or Activity”

“Includes locations, events or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the harassment occurs,...”

34 CFR 106.44(a)

21

© 2024

Detroit Public Schools Community District

Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Off-Campus Sexual Harassment

- Case-by-case analysis
- Investigate if school doesn't know where misconduct occurred
- Not during school activity? Consider effects of off-campus conduct at school!
- Consider applicable codes of conduct and Revised School Code provisions

22

OCR Guidance on Off-Campus Conduct

- School must make a fact-specific determination
 - Consider "whether the [school] funded, promoted, or sponsored the event or circumstance where the alleged harassment occurred"
 - OCR Examples: Two students in a private hotel room as part of school-sponsored activity (field trip or athletic event) and teacher visiting student's home "ostensibly to give the student a book but in reality to instigate sexual activity with the student"
- No single factor is determinative

"Questions and Answers on the Title IX Regulations on Sexual Harassment," U.S. Department of Education Office for Civil Rights, July 2021

23

Deliberate Indifference

Take complaints seriously.
Schools and school officials must not be **deliberately indifferent** to sexual harassment.

Old Definition

The school must take immediate action to eliminate the sexual harassment or sexual violence, prevent its recurrence, and address its effects.

2020 Definition

Failure to respond reasonably in light of known circumstances.

Must respond in **reasonably prompt** time frame.

24

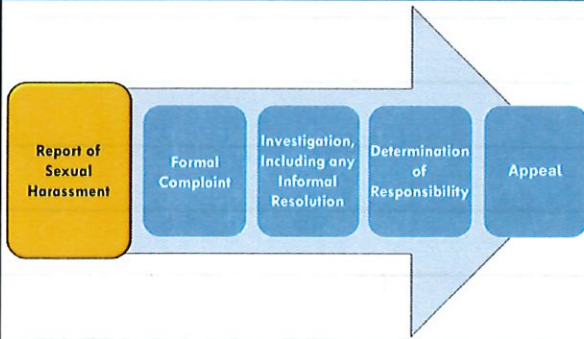
© 2024

Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Reporting Sexual Harassment Under Title IX

25

2020 Title IX Grievance Process



26

Making a Report

- Any person can make a sexual harassment report at any time
- Reports can be made verbally, in writing, or electronically at any time to **any school employee** or the Title IX Coordinator
- Anonymous reports are permissible
- Report of sexual harassment is **NOT** the same as a Formal Complaint

27

Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Actual Knowledge

- School's obligation to respond to sexual harassment is triggered when it has "actual knowledge"
- "Actual knowledge" means notice of sexual harassment or allegations of sexual harassment to school's Title IX Coordinator **or any school employee**

28

Employee Reporting Obligation

- Employees must convey reports to Title IX Coordinator **promptly**.
 - Check your policy for employee reporting steps and timelines!
 - TLF Policy requires any District employee who receives a report of sexual harassment or has actual knowledge of sexual harassment to convey that information to the Title IX Coordinator **by the end of the next business day**.
- Messages to all staff
 - If you see something, say something!
 - Noncompliance = discipline

29

Responding to Report

- Title IX Coordinator must, upon receipt of report:
 - Contact Complainant (alleged victim) to discuss "supportive measures"
 - Inform Complainant of "supportive measures" available
 - Explain process for filing Formal Complaint
- Failure to do the above = deliberate indifference

30

© 2024



THRUN
LAW FIRM, P.C.

10

Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Supportive Measures



31

Supportive Measures

- Must be non-disciplinary, non-punitive, and individualized
- Offered as appropriate, as reasonably available, and without fee or charge to parties
- Available before, during, and after Formal Complaint is filed, or when no Formal Complaint is filed
- Designed to restore or preserve equal access to education program or activity without “unreasonably” burdening other party

32

Examples

- Counseling
- Work/class schedule changes
- Extensions of deadlines
- Increased supervision or escorts
- Mutual no-contact order
- **But**, school may not impose discipline or other actions that are not supportive measures against Respondent before completing the grievance process

33

© 2024



11

Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Offering Supportive Measures

- No “one size fits all”
- Must be offered whether Complainant files Formal Complaint or not
- Document whether supportive measures were offered and which were taken, and retain documentation
- Modify, as necessary, to avoid deliberate indifference
- Keep confidential to extent possible except as may be required by law
- Coordinated by Title IX Coordinator

34

Respondent Removal

THRUN
LAW FIRM, P.C.

35

General Rule

Disciplinary sanctions may **NOT** be imposed against respondents before grievance process concludes except:

- Employee Respondents may be placed on nondisciplinary administrative leave pending completion of grievance process
- Student Respondents may be removed from school programs or activities on emergency basis only

36

© 2024



THRUN
LAW FIRM, P.C.

12

Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

**Student
Emergency
Removal**

- Before removing student, school officials must:
 - Conduct individualized safety and risk analysis;
 - Determine that an immediate threat to **physical** health or safety of students or staff justifies removal; and
 - Provide removed student notice and opportunity to challenge removal immediately after being removed
- Consider IDEA and Section 504 requirements governing disciplinary removals of students with disabilities

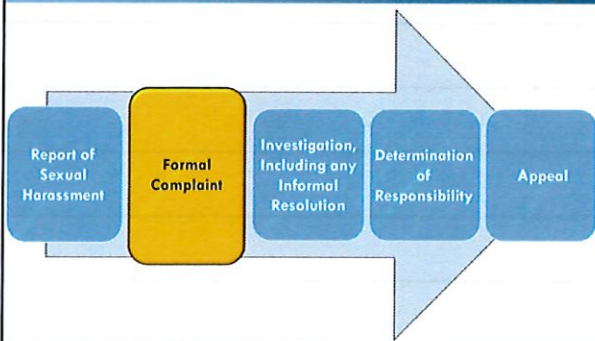
37

**How to Conduct a
Grievance Process**

THRUN
LAW FIRM, P.C.

38

Title IX Grievance Process



39

© 2024

THRUN
LAW FIRM, P.C.

13

Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Formal Complaint

A document filed and signed by a complainant or signed by Title IX Coordinator alleging sexual harassment against a Respondent and requesting that District investigate the sexual harassment allegation.

34 CFR §106.30

40

Complainant's Status

- Complainant must be participating in or attempting to participate in school's education program or activity at the time the Complainant files a Formal Complaint
- But, nothing in the regulations prohibits a Title IX Coordinator from signing a Formal Complaint when the Complainant is not currently participating or attempting to participate in the school's programs

41

Coordinator Signing Complaint

Key Question:

Is it clearly unreasonable in light of the known circumstances for the Title IX Coordinator to sign or not sign a Formal Complaint?



42

© 2024



THRUN
LAW FIRM, P.C.

14

Detroit Public Schools Community District

Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

TLF Formal Complaint Form

TITLE IX SEXUAL HARASSMENT FORMAL COMPLAINT FORM

The form is being submitted by:
☐ Complainant ☐ Title IX Coordinator

Complainant Name: _____
 Address: _____
 Phone: _____ Email: _____

If the Complainant is a student:
 School Building/Meeting: _____ Grade: _____ Building: _____
 If the Complainant is an employee:
 Job Title: _____ Building: _____
 Requester's Name at place of work/Complaint: _____
 Relationship to Complainant: _____
 Requester Address: _____ Requester Email: _____

4. Describe the alleged violation of the District's Title IX Sexual Harassment Policy that you are reporting to the District investigator. Please be specific. Describe the specific incident(s) and identify the individuals and potential witnesses involved. Describe or attach any evidence you believe is relevant. Attach additional pages if needed.

43

Notice to Parties

Upon receipt of Formal Complaint, provide written notice to the parties (if known) that includes:

- Notice of grievance process, including any informal resolution process
- Notice of allegations
 - Must be detailed!
 - Include dates, locations, names, and other specifics alleged in complaint
- Statement that Respondent is presumed not responsible and that a determination of responsibility is made at conclusion of grievance process

44

Notice to Parties (cont'd)

- Right to have advisor of their choice, including an attorney
- Right to inspect and review evidence
- Notice of any code of conduct provision that prohibits knowingly making false statements or submitting false information

If, during the investigation, it is determined that additional allegations will be investigated, notice of additional allegations must be sent to the parties

45

Detroit Public Schools Community District

Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Consolidation of Complaints

If there are multiple Formal Complaints arising out of the same facts and circumstances (e.g., several complaints alleging similar behavior by one Respondent), the Formal Complaints may be consolidated to streamline the grievance process.

46

Bifurcation of the Investigation

- New regulations only apply to Title IX sexual harassment
- If a report or Formal Complaint includes allegations implicating other harassment/discrimination policies, you can bifurcate the investigation
- BUT Title IX sexual harassment must be investigated pursuant to the new regulations

47

Formal Complaint Dismissal

| Mandatory | Permissive |
|---|--|
| Must be dismissed if allegations, if proven: <ul style="list-style-type: none"> • Would not constitute sexual harassment under new definition; • Did not occur in recipient's (school) program or activity; or • Did not occur against a person in the U.S. | May be dismissed if: <ul style="list-style-type: none"> • Complainant requests withdrawal; • Respondent's enrollment or employment ends; or • Specific circumstances prevent the school from gathering evidence sufficient to reach a determination (e.g., Complainant not cooperating with investigation, many years between alleged misconduct and complaint filing) |

REMEMBER: Even if complaint is dismissed under Title IX, school may address complaint under another policy or code of conduct provision in some circumstances.

48

© 2024



THRUN
LAW FIRM, P.C.

16

Detroit Public Schools Community District Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Dismissal Notice

Prompt, simultaneous
written notice to both
parties that includes:

- Reasons for
mandatory or
discretionary
dismissal, and
- Right to appeal



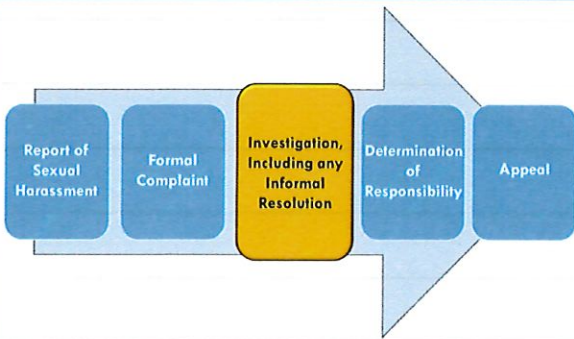
49

Informal Resolution Process



50

Title IX Grievance Process



51

© 2024



17

Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

What is Informal Resolution?

- After Formal Complaint is filed but before determination of responsibility is made, school *may (but is not required to)* offer parties the opportunity to informally resolve the complaint without a full investigation
- May encompass a broad range of conflict resolution strategies, including arbitration, mediation, or restorative justice - direct interaction between the parties is not required
- Not available for Formal Complaints alleging an employee sexually harassed a student

52

Voluntary Process

- Neither party should be pressured to participate
- Schools cannot require parties to participate or otherwise waive their right to an investigation and adjudication of the Formal Complaint
- Parties may withdraw from the informal resolution process and resume the investigation at any time before resolution is reached

53

Notice and Consent Required

Title IX Coordinator or Investigator must:

- Provide both parties written notice of their informal resolution rights; and
- Obtain written, voluntary consent from both parties to enter into the informal resolution process.

54

© 2024



THRUN
LAW FIRM, P.C.

18

Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Informal Resolution Notice

The written notice must include:

- Allegations being investigated;
- Informal resolution requirements, including when informal resolution would preclude resuming a formal complaint arising from same allegations;
- Right to withdraw from informal resolution and resume the grievance process; and
- Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

55

How to Conduct a Title IX Investigation

 **THRUN**
LAW FIRM, P.C.

56

General Considerations

- School has burden of proof and burden to “gather evidence sufficient to reach a determination of responsibility”
- Parties must be treated equally
- Standard of evidence must be same for all complaints (employee and student)
- Reasonably prompt timeline
- Respondent presumed not responsible
- Consult your policy for specific procedures!

57

© 2024

 **THRUN**
LAW FIRM, P.C.

19

Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Initial Steps

- If students are involved – contact parents/guardians
- Consider Mandatory Reporting Requirement and report to law enforcement
- Don't promise confidentiality!
- Secure evidence
 - Physical
 - Documentary
 - Electronic & Video

58

CAUTION:

Photos and Videos of Students

- If allegation involves sexting or other photos or videos of students that could possibly be considered child pornography,
CALL LAW ENFORCEMENT
- Do not view, save, copy, disseminate, handle or maintain photos and videos of students that could be considered child pornography
- Legal exposure for employee & school

59

Law Enforcement Involvement

- Does **not** relieve school of Title IX obligation to investigate
- Do **not** use police involvement as excuse not to investigate
- Do **not** wait for criminal conclusion
- Can **briefly** delay Title IX investigation for concurrent criminal investigation

60

© 2024



THRUN
LAW FIRM, P.C.

20

Detroit Public Schools Community District

Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Delays and Time Extensions

- Temporary delays for “good cause” are permitted with written notice to parties
- “Good cause” examples:
 - Complexity of investigation
 - Concurrent law enforcement investigation with time-dependent release of evidence
 - Absence of parties or witnesses
 - Need to provide accommodations for party or witness with a disability
- **Delay for administrative convenience is not “good cause”**

61

Advisors

- Parties may be accompanied by an advisor of their choice in any meeting or grievance process proceeding
- Advisors can be parents, staff members, attorneys, friends, or other persons -- the party is in the best position to decide who serves in this role
- School may not restrict who serves as advisor

62

Notice of Interviews

- Must provide date/time/location, participants, and purpose of all hearings (if any), investigative interviews, and meetings, to party whose participation is invited or expected, **in writing**
- Notice must be given a sufficient time in advance so that a party may prepare for interview

63

© 2024

Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Establish Ground Rules

- May set ground rules for interviews so long as rules apply equally to both parties
- Examples:
 - Be honest and forthright
 - Abusive, disruptive behavior or language will not be tolerated
 - Advisor may not interrupt the interview but will be given an opportunity to provide additional information at end of interview
- Cannot restrict parties from discussing allegations or gathering/presenting relevant evidence

64

Do's and Don'ts



DO: Give parties equal opportunity to present witnesses, evidence



DON'T: Use questions or evidence that constitute, or seek disclosure of, legally-privileged information



DON'T: access, consider, disclose, or otherwise use a party's medical records, including mental health records without voluntary, written consent to do so

65

Notice of Additional Allegations

- If investigation reveals additional allegations not in original notice to parties and investigator decides to investigate those allegations, must provide notice of additional allegations to both parties
- Additional notice must:
 - Identify date notice of the additional allegations given to the parties, and
 - Describe additional allegations
- If additional allegations will not be investigated, investigator must state basis for decision not to investigate in investigation report

66

© 2024



THRUN
LAW FIRM, P.C.

22

Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Evidence Review

- Before the investigation report is completed, the investigator must send (in electronic or hard copy) the parties and their advisors **ALL** evidence obtained in investigation for response before investigator finalizes report
- Parties must be given **at least 10 calendar days** to submit written response to evidence
- Investigator must consider any responses received before completing the report
- Consider reminder to parties that redisclosure of evidence outside of Title IX grievance process is prohibited

67

What to Include in an Investigation Report

 **THRUN**
LAW FIRM, P.C.

68

Parties' Information

- Name of Party
- Name of advisor (if any)
- If student: age, grade level, and building
- If employee: job, title, and building

69

© 2024

 **THRUN**
LAW FIRM, P.C.

23

Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Investigator's Information

- Investigator name and title
- Training verification
- Statement that investigator does not have conflict of interest or bias against either party, generally or individually, that affected the investigation

70

Relevant Chronology

- Date of Formal Complaint
- Date notice letters sent
- Date Complainant(s) and Respondent(s) were notified of interviews
- Dates interviews conducted
- Date evidence submitted to parties/advisors for review
- Date each party's response was due and whether response received
- Date investigation report submitted to Decision-Maker

71

Nature of Allegations

- Describe each allegation, including date, time, place, and nature of the incident(s)
- Additional allegations?
 - If not in original notice to parties and investigator decides to investigate those allegations, identify date notice of additional allegations was given and describe the additional allegations
 - If the additional allegations won't be investigated, state basis for decision

72

© 2024



THRUN
LAW FIRM, P.C.

24

Detroit Public Schools Community District

Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Fact Finding Activities

- Summarize Complainant's and Respondent's interviews, noting date and who attended
- Identify any other contacts with Complainant, Respondent, or their advisors, noting date, contact method, purpose
- Summarize all other witness interviews, noting date and who attended
- Identify and describe any relevant evidence, including who submitted it or how obtained
- Describe any other fact-finding activities (e.g., site visits, record review, or video review)

73

Findings of Fact

Investigator may:

- Make specific findings of fact for review by the Decision-Maker
- Make credibility determinations

But, may **NOT** make the determination of responsibility

74

Final Tips

- Report must fairly summarize relevant evidence
- Use witness quotes, specific dates, times, and locations in the report when possible
- Check for correct spelling of names
- Cite other applicable Board policies, code of conduct provisions, RSC Sections
- Ensure report is clear, concise, and complete
- Assume either party may release report

75

© 2024

Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Transmittal of Final Report

- Investigator, Coordinator, or Decisionmaker must send (electronic or hard copy) investigation report to the parties and any advisors for review and response
- Report also should be sent to:
 - Title IX Coordinator
 - Decision-Maker
- Receipt of the report by the parties starts the Decision-Maker's timelines
- Parties must have 10 calendar days to review report

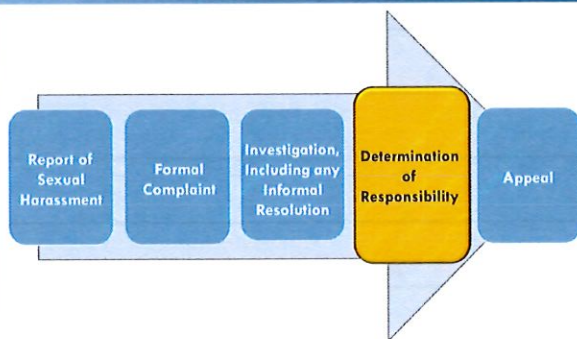
76

Determination of Responsibility

THRUN
LAW FIRM, P.C.

77

Title IX Grievance Process



78

© 2024



THRUN
LAW FIRM, P.C.

26

Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Decision-Maker's Role

- Has independent obligation to:
 - Evaluate relevance of available evidence including evidence summarized in investigation report, and
 - Consider all relevant evidence
- Make determination of responsibility

79

Right to Submit Questions

After the parties receive the investigation report but before the Decision-Maker makes the responsibility determination, the Decision-Maker must:

- Allow each party **the opportunity** to submit written, relevant questions for any party or witness to answer;
- Provide each party the answers to the questions; and
- Allow for limited follow-up questions from each party
- Explain to party submitting question basis for excluding any questions

80

Complainant's Sexual History

Questions and evidence about Complainant's sexual predisposition or prior sexual behavior **are not relevant** unless:

- Offered to prove that someone other than the Respondent committed the alleged misconduct; or
- 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.

81

© 2024

Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Assessing Relevance

- Not defined in the regulations; use ordinary meaning of the word
- Relevant – does it deal with the issue of concern? Does the evidence impact facts?
- Duplicative or repetitive questions may be excluded as not relevant
- BUT relevancy does not determine weight, credibility, or persuasiveness
- Weigh evidence based on credibility and other circumstances

82

Evidence Standard

Decision-Maker makes finding(s) based on policy's standard of evidence or proof

- District may select the standard, but must use same standard for *all* Title IX sexual harassment investigations
- Recommend: "preponderance of evidence"
 - More likely than not
 - 51%

83

Determination of Responsibility

Must be in writing and address:

- Allegations
- Procedural steps taken
- Findings of fact
- Student code of conduct or Board policy implications
- Conclusion for each allegation and rationale
- Disciplinary sanctions imposed and whether remedies provided
- Appeal rights

84

© 2024



THRUN
LAW FIRM, P.C.

28

Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Disciplinary Sanctions

- Determination of Responsibility letter must include any disciplinary action taken or recommended against the Respondent
- Sanctions should be consistent with applicable codes of conduct, policies, law
- If Board approval required for discipline (e.g., tenure hearing, expulsion hearing), Determination of Responsibility will include a recommendation that Superintendent prepare and present tenure charges, or that appropriate Administrator prepare and present a recommendation for long-term suspension or expulsion, to the Board

85

Remedies

- Determination of responsibility must include whether Complainant will receive remedial measures
- Title IX Coordinator should directly communicate with Complainant about specifics
- Remedies should be designed to restore and preserve equal access to the District's education program or activity

86

Remember!

- Supportive measures are available to more than just Complainant
- Also consider systemic remedies, such as training
- For students with disabilities, convene IEP or Section 504 meetings as necessary

87

© 2024

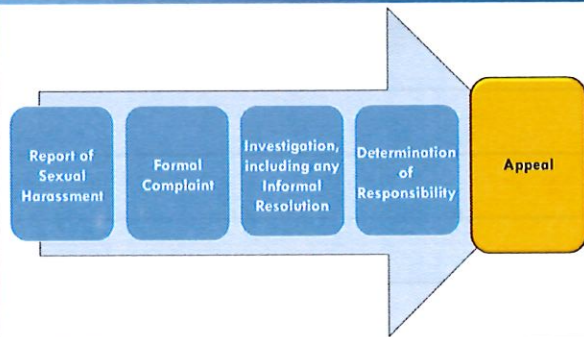
Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Final Reminders

- Determination of responsibility should:
 - Provide evidence-based rationales
 - Be clear and precise
 - Be nearly identical for both Complainant and Respondent
 - Be sent to parties simultaneously
- Title IX Coordinator is responsible for effective implementation of any remedies

88

Title IX Grievance Process



89

How to Process Appeals

 **THRUN**
LAW FIRM, P.C.

90

© 2024

 **THRUN**
LAW FIRM, P.C.

30

Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Appeal Bases

1. Procedural irregularity that affected the outcome;
2. New evidence that was not reasonably available at the time of the determination and could affect the outcome;
3. Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest that affected the outcome

Schools can create additional bases for appeal-
check your policy!

91

General Considerations

- Both parties may appeal a dismissal or determination of responsibility
- Check your policy for time frames to file and decide appeal
- Appeals Officer cannot be same person as Title IX Coordinator, Investigator, Informal Resolution Facilitator, or Decision-Maker, and must not have a conflict or bias

92

Appeal Process

- Determination of responsibility or dismissal includes parties' appeal rights
- Party submits appeal to Appeals Officer or Title IX Coordinator as applicable
- Appeals Officer provides written notice to both parties that appeal filed
- Parties may submit written statement to Appeals Officer in support of, or challenging, determination
- Appeals Officer issues written decision to parties simultaneously

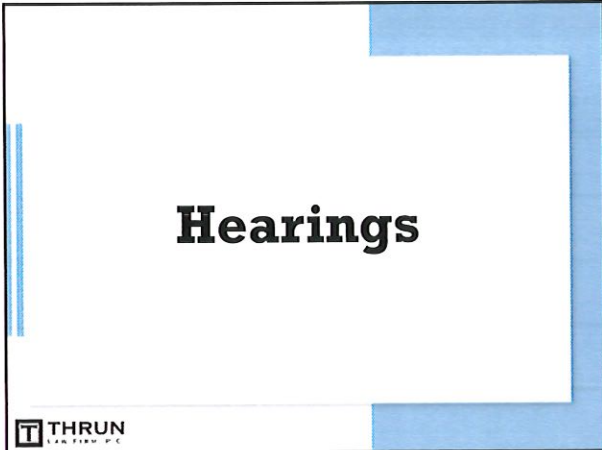
93

© 2024

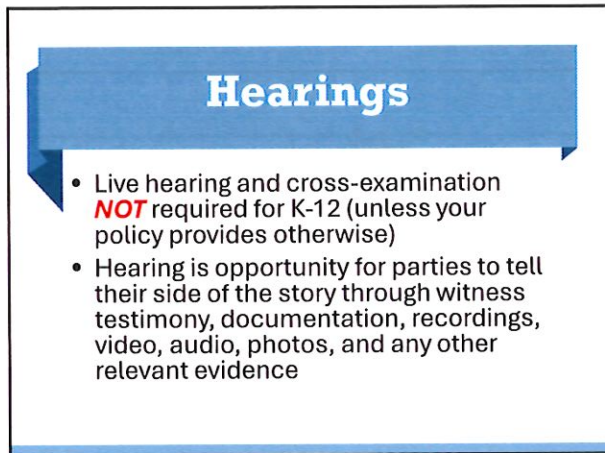


31

Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations



94



95



96

© 2024



32

Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Opening the Hearing

- Introduction of Decision-Maker, parties, advisors and anyone else present
- Decision-Maker describes previous steps of grievance process (notice provided to parties, opportunity to review evidence etc.)
- Describe allegations
- Explain evidentiary standard
- Both parties have opportunity to present testimony and evidence
- No strict rules of evidence, but Decision-Maker determines relevancy of testimony and evidence
- Statement that Decision-Maker has no bias or conflict of interest and can be impartial

97

Hearing Format

- District determines hearing format
- Typical hearing format includes:
- Opening statements
- Presentation of evidence by Complainant, with cross examination
- Presentation of evidence by Respondent, with cross examination
- Rebuttal, if any
- Closing statements

98

Hearing Rules

- Each party's advisor must be permitted to ask the other party and witnesses relevant questions and follow-up questions
 - Including questions challenging credibility
 - Questions related to Complainant's prior sexual history are not relevant except in very limited circumstances

99

Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Hearing Rules

(cont'd)

- Cross examination must be conducted directly, orally, and in real time by party's advisor and never by party personally
- Decision-Maker/Hearing Officer determines relevance and must explain decision to exclude any question

100

Retaliation

THRUN
LAW FIRM, P.C.

101

Retaliation Prohibited

No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.

34 CFR 106.71(a)

102

© 2024



THRUN
LAW FIRM, P.C.

34

Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Clarifying the Definition

- Retaliation includes threats, intimidation, coercion against person who makes a report, files a Formal Complaint, participates in, or refuses to participate in a Title IX proceeding
- Exercise of First Amendment rights does not constitute retaliation prohibited by Title IX
- Charges for “collateral misconduct” may be retaliation (e.g., charging Complainant with underage drinking to interfere with Complainant reporting sexual harassment)

103

Student Privacy



104

Confidentiality

- Schools must keep confidential the identity of reporter, person who files Formal Complaint, and the parties and witnesses except as permitted or required by law or to carry out any provision of Title IX
- Supportive measures must also be kept confidential

105

© 2024



35

Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations

Confidentiality of Evidence

“Recipients may require parties and advisors to refrain from disseminating the evidence (for instance, by requiring parties and advisors to sign a non-disclosure agreement that permits review and use of the evidence only for purposes of the Title IX grievance process), thus providing recipients with discretion as to how to provide evidence to the parties that directly relates to the allegations raised in the formal complaint.”

85 Fed Reg 30297-30298 (May 19, 2020)

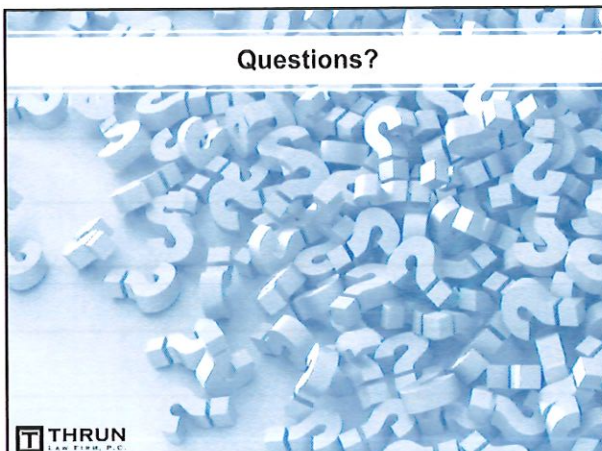
106

Record Keeping

- Records relating to Title IX reports must be maintained for at least seven years
 - Applies to investigation records, disciplinary sanctions, remedies, appeals, and records of any action taken (i.e., supportive measures)
- Must retain any materials used to train Title IX Coordinators, Investigators, Decision-Makers, Appeals Officers, and Informal Resolution Facilitator
 - This PowerPoint!

107

Questions?



108

© 2024



36

Detroit Public Schools Community District
Comprehensive Title IX Training Refresher – 2020 Title IX Regulations



109
