

Title IX Administrator Training
Region 17

UNDERWOOD

Janet Sobey Bubert
Ronn Garcia
Underwood Law Firm, PC
www.uwflaw.com

1

What's Covered:

Who is OCR and what do they do	Title IX Defined: New terms and changes to some old terms	Identifying new processes and procedures and obligations	Identifying the new players and their roles
Next steps for complying with the new Title IX regulations	The Complaint Process	Conducting Investigations	Determining Responsibility

UNDERWOOD

2

U.S. Dept. of Education, Office of Civil Rights

- Ensure equal access to education and promote educational excellence **through vigorous enforcement** of civil rights in our nation's schools
- OCR investigates complaints that allege discrimination
- OCR conducts "compliance reviews" to determine if policies, procedures and actions are consistent with civil rights laws

UNDERWOOD

3

U.S. Dept. of Education, Office of Civil Rights

- If a covered entity does not comply with regulation or law, OCR will seek corrective action through a voluntary agreement
- Issue Letter of Findings and may require corrective action
- Refer matters to the Department of Justice for investigation, enforcement action and/or to terminate federal funds

UNDERWOOD

4

Title IX: The Law

- Title IX prohibits discrimination on the basis of sex in education programs and activities that receive federal funds

- Congress passed Title IX in 1972

UNDERWOOD

5

Title IX: The Law

No Person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

UNDERWOOD

6

Title IX: Sexual Harassment

- Until recently, neither the statute nor the regulations referred to sexual harassment
- Title IX applied to sexual harassment through the courts

7

UNDERWOOD

“Sexual Harassment” Under Title IX

8

New Regulations Define Sexual Harassment

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

- (1) Quid pro quo sexual harassment;
- (2) Hostile environment sexual harassment; or
- (3) Conduct that meets the criteria of certain federal laws regarding sexual violence.

34 C.F.R. § 106.30(a)

9

UNDERWOOD

Quid Pro Quo Sexual Harassment

- District employee conditions receipt of a benefit or service on an individual's participation in unwelcome sexual conduct
- Applies to employee conduct toward a student

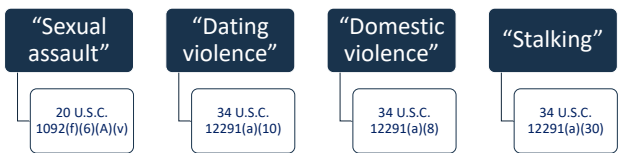
10

Hostile Environment Sexual Harassment

- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity
- Applies to student on student conduct

11

Conduct that Meets the Criteria of Certain Federal Laws Regarding Sexual Violence



12

Terminology for Sexual Harassment Complaints

Complainant:

- Any individual who is alleged to be the victim of sexual harassment

Respondent:

- Any individual who is reported to be the perpetrator of conduct that could constitute sexual harassment

Parent may act on behalf of a minor student who is a complainant or a respondent

13

UNDERWOOD

13

Designating a Title IX Coordinator



Recipients Must Identify and Authorize an Individual to Coordinate the School's Title IX Compliance Efforts



Consider Potential Conflict(s) or Obligations of Employees (for Example, Counselor Has Other Confidentiality Rules)



Authorized to Sign a Complaint that Initiates a Formal Complaint Process (Otherwise Only the Complainant Can Initiate a Formal Complaint)

14

UNDERWOOD

14

Designating a Title IX Coordinator

- Cannot have a bias against alleged victims or perpetrators of sexual harassment
- OCR guidance for designating Title IX coordinator
 - Conflict with duties of Title IX coordinator may occur for "dean of students, superintendent, principal, or athletics director"
 - If superintendent is only option, document consideration of potential conflict and steps taken to protect complainants

15

UNDERWOOD

15

Notice of Title IX Coordinator

- Must be known as the “Title IX Coordinator”
- Notice to parents, students, and employees required with contact information

34 CFR 106.8(e)

16

UNDERWOOD

16

Notice of Title IX Coordinator

Options for providing notice of Title IX Coordinator with contact information include:

- Update Exhibits to Board Policy
- Posters
- Student & Employee Handbooks
- Website
- Employment application materials

17

UNDERWOOD

17

Reporting Allegations of Sexual Harassment

18

All District employees should be trained on recognizing and reporting sexual harassment

19

Recognizing Sexual Harassment

Verbal

- Inappropriate statements
- Spreading sexual rumors
- Rating other students as to sexual activity or performance
- Making sexual propositions or pressuring students for sexual favors
- Telling sexual or dirty jokes

Non-Verbal

- Displaying or distributing sexually explicit drawings, pictures, or written materials
- Performing sexual gestures or touching oneself sexually in front of others

UNDERWOOD

20

Recognizing Sexual Harassment

Physical

- Pinches
- Touches
- Grabbing in a sexual way
- Touching of a sexual nature

Online

- Circulating or showing e-mails or web sites of a sexual nature

UNDERWOOD

21

Recognizing Sexual Harassment

Age and maturity level may impact district's response to allegations of harassment, but should not prevent reporting conduct

UNDERWOOD

22

Making a Report

Reports made to someone other than the Title IX Coordinator must be forwarded

Train/notify employees on how to report and document reports

District should develop procedure to receive reports from employees

UNDERWOOD

23

Responding to Sexual Harassment

24

District's Obligation to Respond:

“A recipient (i.e. school district)

- with **actual knowledge** of sexual harassment
- in an **education program or activity** of the recipient
- against a person in the United States
- **must respond promptly** in a manner that is **not deliberately indifferent**”

34 CFR 106.44(a)

25

UNDERWOOD

25

What is “actual knowledge”?

Notice of sexual harassment **or allegations** of sexual harassment to:

- Title IX coordinator;
- Official with authority to institute corrective measures;
- **Any employee of an elementary and secondary school**

34 C.F.R. § 106.30(a)

26

UNDERWOOD

26

Notice requiring a response may result from:

- (1) Informal report (verbal or written) from employee, student, parent, or any other third party
 - Report can be made by anyone
 - Report can be made anytime (24/7) by phone or email – make sure Title IX coordinator information is current
- (2) Receipt of a **formal complaint** of sexual harassment:
 - A document filed by a complainant
 - Complaint signed by the Title IX Coordinator alleging sexual harassment **and** requesting an investigation of alleged sexual harassment

27

UNDERWOOD

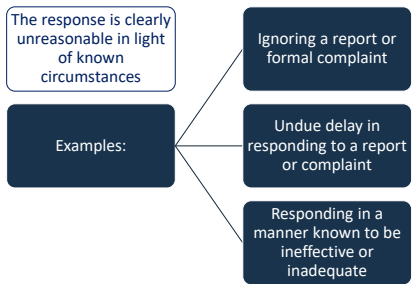
27

What is an “education program or activity” ?

- Any location, event or circumstance where the District exhibits substantial control over both the harasser (respondent) and the context in which the alleged harassment occurred

28

What is “deliberate indifference”?



29

Initial Response by Title IX Coordinator:

- Promptly contact the complainant to discuss the availability of supportive measures and consider the complainant’s wishes with respect to supportive measures;
 - Inform the complainant supportive measures are available with or without the filing of a formal complaint;
 - Explain the process for filing a formal complaint
34 C.F.R. 106.44(a)
- **Note:** the above actions are required **regardless** of whether a formal complaint is filed

30

Initial Response by Title IX Coordinator: Comments to the regulations discuss opportunity for Title IX Coordinator to delegate duties

31

What are “supportive measures”?

- Non-disciplinary, **non-punitive**, individualized services, offered as appropriate and **without charge** to a **complainant** or a **respondent** before or after the filing of a formal complaint, or where no complaint has been filed

34 C.F.R. § 106.30(a)

- Must be designed to restore or preserve equal access to education programs or activities without unreasonably burdening the other party

32 UNDERWOOD

32

What are “supportive measures”?

- Examples:
 - Counseling
 - Course modifications
 - Schedule changes
 - Increased monitoring or supervision
 - Complete removal of a respondent from an activity would likely be considered punitive, except for an “emergency removal”

33 UNDERWOOD

33

Emergency removal

- Must be based on an individualized safety and risk analysis
- Necessary to protect a student or other individual from **immediate threat to physical health or safety**
- Notice & opportunity to challenge provided “immediately” following the removal

34 CFR 106.44(c)

34

UNDERWOOD

34

Emergency removal

- Emergency removal does NOT modify any rights under:
 - Individuals with Disabilities and Education Act (IDEA),
 - Section 504 of the Rehabilitation Act of 1973, or
 - American with Disabilities Act
- The Office of Civil Rights will provide technical assistance to recipients regarding compliance with all relevant laws
- School must coordinate their compliance efforts with special education staff

35

UNDERWOOD

35

Initial Response by Title IX Coordinator

- Document the supportive measures offered and whether measures are accepted/declined
- Discuss opportunity to allow changes, if reasonable
- Discussion of supportive measures may be with parent of the alleged victim if appropriate based on the allegations
- Title IX Coordinator responsible for ensuring supportive measures are implemented

36

UNDERWOOD

36

Initial Response to Notice of Sexual Harassment

- All parties involved will be treated fairly, with dignity, respect, and sensitivity without bias, prejudice, or stereotypes
- At no time may an individual be treated solely on the basis of sex
- If no formal complaint, District may investigate and respond to prohibited conduct in accordance with board policies and the Student Code of Conduct

37

UNDERWOOD

37

Formal Complaint Process

38

District's Response to Formal Complaint

- Response **MUST** treat complainants and respondents equitably.
- Offer both parties supportive measures
- Follow grievance process that complies with Title IX regulations before the imposition of any disciplinary sanctions that are not supportive measures against a respondent

39

UNDERWOOD

39

Ensuring an Impartial Investigation & Determination

- No conflicts of interest
- No bias against the individual complainant and/or respondent
- No bias against complainants and respondents generally

40

UNDERWOOD

40

No Conflict of Interest

Applies to all Title IX Personnel involved in the formal complaint process

41

UNDERWOOD

41

No Bias

Bias includes bias against an individual's sex, race, ethnicity, sexual orientation, gender identity, disability or immigration status, financial ability, or other such characteristic

42

UNDERWOOD

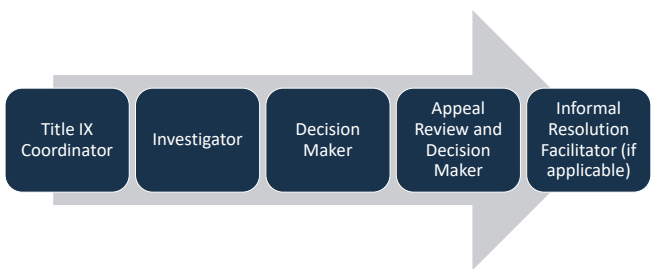
42

Presumption of Non-responsibility

- Respondent should be treated as if he/she is not responsible for the alleged conduct until after a final determination in a formal complaint process
- At conclusion of complaint process, determination of responsibility required to impose a disciplinary action

43

Elements of Grievance Process – Title IX Personnel



44

Revisions to Board Policy FFH (LEGAL)

45

STUDENT WELFARE
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION

FFH
(LEGAL)

Process for Title IX
Formal Complaint

For the purpose of addressing formal complaints of sexual harassment, a district's process must comply with the following requirements. Any provisions, rules, or practices other than those required by this provision that a district adopts as part of its process for handling formal complaints of sexual harassment must apply equally to both parties. 34 C.F.R. 106.45(b)

46 UNDERWOOD

46

STUDENT WELFARE
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION

FFH
(LEGAL)

A district's Title IX formal complaint process must:

1. Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a process that complies with the Title IX regulations before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies must be designed to restore or preserve equal access to the district's education program or activity. Such remedies may include the same individualized services described as supportive measures; however, remedies need not be nondisciplinary or nonpunitive and need not avoid burdening the respondent;

47 UNDERWOOD

47

STUDENT WELFARE
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION

FFH
(LEGAL)

2. Require an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness;
3. Require that any individual designated by a district as a Title IX Coordinator, investigator, decision-maker, or any person designated by a district to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

48 UNDERWOOD

48

STUDENT WELFARE
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION

FFH
(LEGAL)

4. Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Title IX formal complaint process;

49 UNDERWOOD

49

STUDENT WELFARE
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION

FFH
(LEGAL)

5. Include reasonably prompt time frames for conclusion of the Title IX formal complaint process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the district offers informal resolution processes, and a process that allows for the temporary delay of the Title IX formal complaint process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities;

50 UNDERWOOD

50

STUDENT WELFARE
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION

FFH
(LEGAL)

6. Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the district may implement following any determination of responsibility;

51 UNDERWOOD

51

STUDENT WELFARE
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION

FFH
(LEGAL)

7. State whether the **standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard**, apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment;

52

UNDERWOOD

52

STUDENT WELFARE
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION

FFH
(LEGAL)

8. Include the **procedures and permissible bases for the complainant and respondent to appeal**;

9. Describe the **range of supportive measures available to complainants and respondents**; and

10. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a **legally recognized privilege**, unless the person holding such privilege has waived the privilege.


34 C.F.R. 106.45(b)(1)

53


UNDERWOOD

53


FFH (LOCAL) – Considerations for Formal Complaint Procedures




Assigning roles for formal complaint process



Standard of Evidence



Informal resolution process (optional)



Opportunity for live hearing (optional)

54

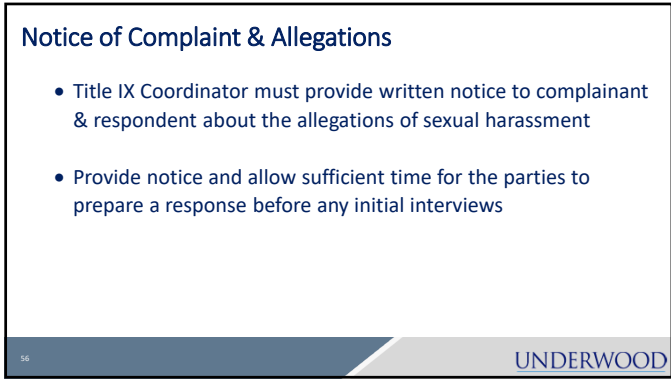
UNDERWOOD

54



Implementing the Formal Complaint Process

55

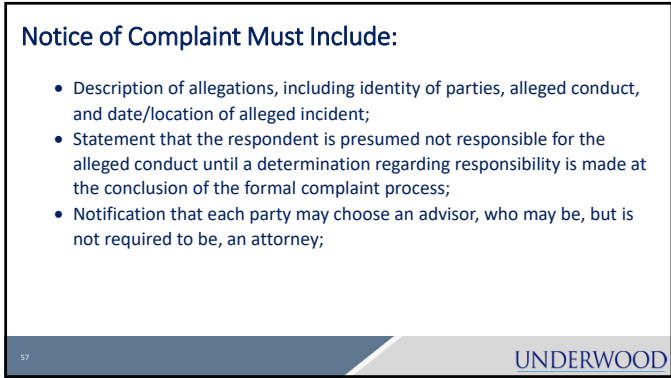


Notice of Complaint & Allegations

- Title IX Coordinator must provide written notice to complainant & respondent about the allegations of sexual harassment
- Provide notice and allow sufficient time for the parties to prepare a response before any initial interviews

56 UNDERWOOD

56



Notice of Complaint Must Include:

- Description of allegations, including identity of parties, alleged conduct, and date/location of alleged incident;
- Statement that the respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the formal complaint process;
- Notification that each party may choose an advisor, who may be, but is not required to be, an attorney;

57 UNDERWOOD

57

Notice of Complaint Must Include:

- The right of each party to inspect and review evidence;
- The standard of evidence that will be used;
- Notice of the formal complaint process, including informal resolution and appeal; and
- Code of conduct provision that prohibits knowingly making false statements or knowingly submitting false information during the formal complaint process
- Additional notice must be provided if new allegations arise during the investigation

58

UNDERWOOD

Notice of Complaint Recommendation

Include notice regarding anti-retaliation provisions

59

UNDERWOOD

Review of Formal Complaint

60

Review of Complaint

- Title IX Regulations provide criteria for mandatory and discretionary dismissal of a formal complaint
- Additionally, District must consider if other complaint/investigation procedures may apply to the allegations presented:
 - FFI (bullying)
 - FFH (other forms of harassment)
 - Code of Conduct

61

UNDERWOOD

61

Mandatory Dismissal of Formal Complaint

- Allegations, even if true, would not meet the definition of sexual harassment under Title IX;
- Allegations, even if true, did not occur against a person in the United States; or
- Allegations, even if true, did not occur in a District education program or activity

62

UNDERWOOD

62

Discretionary Dismissal of Formal Complaint

- At any time during the investigation, a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations in the complaint;
- Respondent is no longer enrolled or employed by the District;
- Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein; or
- The complainant no longer has any involvement with the District

63

UNDERWOOD

63

Dismissal of Formal Complaint

- Both parties must receive written notice identifying the reason for dismissal
- Dismissal of a formal complaint does not alleviate obligation to offer supportive measures
- Dismissal only applies to Title IX complaint procedures

*Failure to take appropriate action could be proof of deliberate indifference for a future incident

64

UNDERWOOD

64

Appeal of Dismissed Complaint

Complainant may appeal the dismissal of a formal complaint (or any allegations) by submitting a written request for appeal based on:

- **Procedural irregularity** that affected the outcome of the matter;
- **New evidence** that was not reasonably available at the time of the dismissal and could affect the reason for dismissal; or
- Title IX Coordinator, investigator, or decision-maker had a **conflict of interest or bias for or against complainant or respondent** that affected the outcome of the matter

65

UNDERWOOD

65

Appeal of Dismissed Complaint

- Decision-maker for appeals will review and issue a written decision stating why the appeal is granted or denied
- Decision may require formal complaint process to resume or inform the appealing party of additional options
- Both parties receive the written decision

66

UNDERWOOD

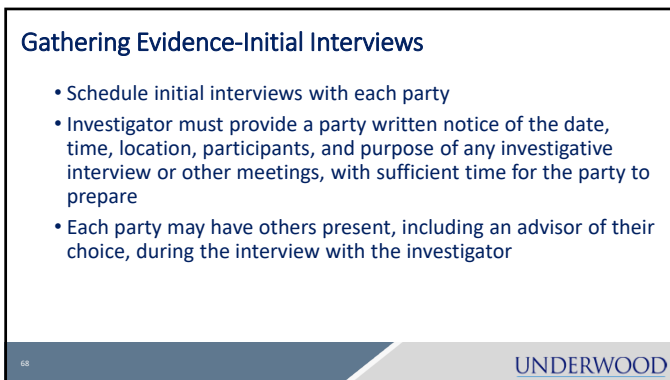
66



67

Conducting the Investigation

67



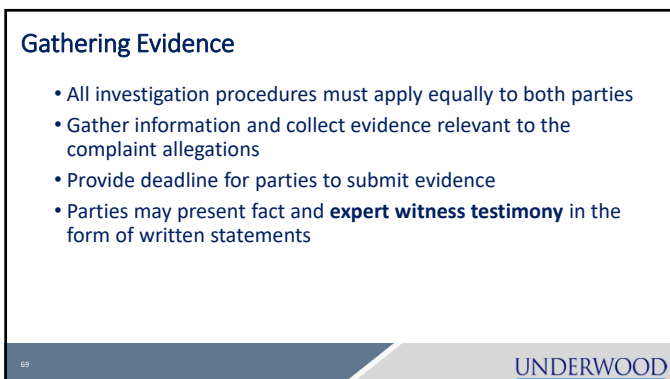
68

Gathering Evidence-Initial Interviews

- Schedule initial interviews with each party
- Investigator must provide a party written notice of the date, time, location, participants, and purpose of any investigative interview or other meetings, with sufficient time for the party to prepare
- Each party may have others present, including an advisor of their choice, during the interview with the investigator

UNDERWOOD

68



69

Gathering Evidence

- All investigation procedures must apply equally to both parties
- Gather information and collect evidence relevant to the complaint allegations
- Provide deadline for parties to submit evidence
- Parties may present fact and **expert witness testimony** in the form of written statements

UNDERWOOD

69

Gathering Evidence

- Consider need to preserve evidence that may be destroyed
- Preserve the chain of evidence custody
 - Student records
 - Photos/videos
 - Social media posts

70

UNDERWOOD

70

Confidentiality of Title IX Proceedings

- District should maintain confidentiality to the extent required by law, except as may be necessary to provide supportive measures, to conduct proceedings under the formal complaint process, or when disclosure is otherwise required or allowed by law (i.e. exceptions under FERPA).
- District may not restrict either party's ability to discuss allegations under investigation or to gather or present relevant evidence.

71

UNDERWOOD

71

Witness Interviews


- **NOTE:** Interview witnesses separately
- Goals for witness interviews:
 - Gather information
 - Test credibility and perspective
 - Identify who else might know something

72

UNDERWOOD

72


Witness Interviews



IMPORTANT NOTE:
Do NOT promise confidentiality!
(names of witnesses and statements may need to be disclosed)

73

Witness Interviews



TIPS:

- Consider having someone else present or nearby (same sex, if needed)
- Treat all interviewees in the same manner
- Be professional

74

Witness Interviews

- What is the best setting?
 - Does interviewee intend to bring someone?
 - Tape recording?
 - Parents involved?
- Explain why they are being questioned
- Advise of anti-retaliation and protection, if needed

75 UNDERWOOD

75

Witness Interviews

Listen to the witness's whole story first, if possible

76

UNDERWOOD

76

Witness Interviews

- Do not lead the witness; *i.e.*, use open-ended questions first, then follow-up to get specific answers from all witnesses, and especially the Complainant and Respondent
- Prepare questions in advance targeted to the goal of the investigation

77

UNDERWOOD

77

Witness Interviews

- Start broad and ask follow up questions:
- Have you even seen [Respondent] and [Complainant] together?
 - If yes, how did they interact with each other?
- Do not let witness give generalizations or draw conclusions without supporting facts; drill down

78

UNDERWOOD

78

Witness Interviews

- Look for ways to test the witness's honesty and recollection of the facts; re-ask in a different way
- If everyone is asked similar questions, then the answers should be similar
 - If not, start doubting the person who responded differently

79

UNDERWOOD

79

Witness Interviews

- Keep an open mind; avoid premature conclusions that can taint your investigation
- Re-interview witnesses as needed for follow up questions

80

UNDERWOOD

80

Witness Interviews Questions

- Describe what you saw/heard
- What did [Respondent] do?
- How did he/she behave?
- How did he/she react?

81

UNDERWOOD

81

Witness Interview Questions

- Do you know [Respondent]? [Complainant]?
- How do you know her/him?
- How long have you known her/him?
- Do you talk to her/him much?
- Who else was there when you saw _____ act improperly?

82

UNDERWOOD

82

Witness Interview Questions

- How did that make you feel?
- Did you think that behavior was okay?
- Did you say or do anything to [Respondent or Complainant]?
- What exactly did you say or do?
- Did you tell anyone?
- What did [Respondent or Complainant] say or do?
- Please describe or demonstrate what you saw and heard

83

UNDERWOOD

83

Witness Interview Questions

- Did anyone else see or hear this/these incident(s)?
 - If so, who?
- Have you talked to anyone else about this/these incident(s)?
 - Who? When?
- Have you seen [Respondent] act like this at any other time?
 - If so, please describe what you saw and when
- Is there anything else you think I should know or that you want to tell me?

84

UNDERWOOD

84

Written Statements

- Ask witness to complete a written statement in his/her own words of what he/she observed and make sure it is legible, signed and dated
- Again, do not promise confidentiality

85

UNDERWOOD

85

Written Statements

- Focus on facts, get them all, and avoid unsubstantiated conclusions by the witness
- Witness should only address facts within personal knowledge or clearly state if knowledge is from another source
 - “she told me that . . .”
- Written in the first person
- Be sure to have witness sign and date the statement

86

UNDERWOOD

86

Consideration of Relevant Evidence

87

Establishing the Burden of Proof

- A standard of proof determines the amount of evidence the plaintiff or defendant needs to provide in order to reach a particular determination
- Preponderance of the Evidence
 - When all the relevant evidence is considered the event was more likely than not to have occurred
 - Some scholars define the preponderance of the evidence standard as requiring a finding that at least 51 percent of the evidence favors the plaintiff's outcome

88

Establishing the Burden of Proof

- Clear and Convincing Evidence
 - A heightened burden of proof used to determine that a particular fact is substantially more likely than not to be true
 - Some courts have described this standard as requiring that there is a high probability that a particular fact is true
 - This standard sets a higher threshold than the preponderance of the evidence standard, but it does not quite rise to the widely recognized standard used in criminal cases, known as "beyond a reasonable doubt"

89

Preponderance of the Evidence

- Unless the District chooses to adopt a different standard, determinations of responsibility will be made based on the preponderance of evidence
- This standard will be used to determine responsibility for all formal complaints of sexual harassment under Title IX – regardless of whether the Respondent is an employee or a student

90

Evaluating relevant evidence:

- "Relevant evidence" is evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.
- Regardless of whether the evidence is inculpatory (supports finding of responsibility) or exculpatory (supports lack of responsibility), an investigator and decisionmaker must remain objective. Credibility determinations may not be based on an individual's status as a complainant, respondent, or witness

91

UNDERWOOD

91

Privileged Information:

- If a party seeks or uses information protected under a legally recognized privilege, the party must provide written documentation indicating that the individual holding the privilege has waived the privilege and consents to use for the purpose of the formal complaint process
- Examples:
 - Protected medical information
 - Psychiatrist/psychologist

92

UNDERWOOD

92

Consideration of Past Sexual Behavior

- The Rule:

The decision-maker will not consider any questions and evidence about the complainant's sexual predisposition or prior sexual behavior to be relevant

93

UNDERWOOD

93

Consideration of Past Sexual Behavior

- The Exception:

Unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if 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.

94

UNDERWOOD

94

Preliminary Investigation Report

95

Preliminary Investigation Report

- Document the investigation
 - Summarize the allegations
 - Describe the scope of the investigation
 - Include list of documents reviewed, evidence examined, persons interviewed and polices implemented
 - Summarize the Respondent's response/explanation
 - Summarize witness statements, interviews, documents, testimony, etc.

96

UNDERWOOD

96

Preliminary Investigation Report

- Each party must have opportunity to inspect and review evidence submitted by the parties or obtained as part of the investigation that is directly related to the allegations raised in a formal complaint
- Includes inculpatory or exculpatory evidence
- This may include evidence that is ultimately not relied upon by the District's decision-maker when reaching a determination regarding responsibility

97

UNDERWOOD

97

Preliminary Investigation Report

- Prior to finalizing the investigative report, investigator will send copies of the preliminary report to each party and advisor, if any, as well as the evidence that may support or not support the allegations investigated
- Each party must be allowed 10 days from the date of receipt of the evidence to inspect and review the evidence, and 10 additional days to review and respond to the report by submitting a written response that the investigator will consider before finalizing the investigation report

98

UNDERWOOD

98

Final Investigation Report

99

Final Investigation Report

- Identify the allegations investigated;
- Describe the procedural steps taken throughout the investigation, including any notifications to the parties;
- Interviews with parties and witnesses;
- Site visits;
- Methods used to gather other evidence;

100

UNDERWOOD

100

Final Investigation Report

- Responses of each party;
- Evidence obtained by the District;
- Relevant evidence considered by the investigator;
- Finding of facts that relate to the allegations; and
- Identify District policies or codes of conduct that may apply to findings, including referrals to Policy FFH for “Investigations for Reports Other Than Title IX”, Policy FFI, Policy DIA, or other District processes initiated as a result of the investigation

101

UNDERWOOD

101

Final Investigation Report

- Final investigation report is provided to both parties and the Title IX Coordinator
- Upon receipt, Title IX Coordinator will immediately assign a decision-maker and provide the decision-maker with a copy of the final investigation report

102

UNDERWOOD

102

Determination of Responsibility

103

An in-person hearing is not required, but there is still an opportunity for more due process from the Decision-Maker...

104

Determination by Decision-Maker

- Decision-maker will make the determination regarding a respondent's responsibility for alleged sexual harassment
- Determination of responsibility may not be issued earlier than 10 days from the date the parties received the final investigation report or before the parties have been provided an opportunity to exchange questions and answers

105

Determination by Decision-Maker

- After receiving the final investigation report, the decision-maker will notify each party of the opportunity and deadline to submit written, relevant questions that a party wants asked of any party or witness noted in the investigation report.
- A party or witness will have a specified amount of time to provide answers in response. The decisionmaker may allow the parties to request additional, limited follow-up questions.

106

UNDERWOOD

106

Written Determination Includes:

- Identification of the allegations potentially constituting sexual harassment;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the District's applicable code of conduct or other policy to the facts;

107

UNDERWOOD

107

Written Determination Includes:

- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any recommended Title IX disciplinary sanctions the District should impose on the respondent, and whether remedies designed to restore or preserve equal access to the District's education program or activity will be provided to the complainant; and
- The procedures and permissible bases for the complainant and respondent to appeal the determination

108

UNDERWOOD

108

Finality of Determination

The determination of responsibility, and any recommended Title IX disciplinary sanctions therein, is not final or effective until after the period for appeal is over in accordance with the District's appeal procedures

109

Appeal Process

110

Appeal of Determination

- Either party may appeal the written determination regarding responsibility based on:
 - **Procedural irregularity** that affected the outcome of the matter;
 - **New evidence** that was not reasonably available at the time the determination regarding responsibility was made, that could affect the outcome of the matter; or
 - The Title IX Coordinator, investigator, or decision-maker had a **conflict of interest or bias** for or against a complainant or respondent that affected the outcome of the matter.

111 UNDERWOOD

111

Appeal of Determination

- District may but is not required to consider other grounds for appeal of the determination of responsibility
- Appeals are filed with the Title IX Coordinator
- Title IX Coordinator will review the request and assign an appropriate appellate decisionmaker
- Title IX Coordinator provides notice of the appeal to the non-appealing party

112

UNDERWOOD

112

Appeal of Determination

- An appeal prevents the District from proceeding with any disciplinary action or remedies identified in the Determination of Responsibility until the appeal is resolved and a decision is issued by the appellate decision-maker

113

UNDERWOOD

113

Records of Title IX Compliance

114

Record Retention

- All records documenting the District's compliance with Title IX, including the District's response and implementation of any formal complaint procedures, must be maintained in accordance with the District's record retention policies or a minimum of seven (7) years, whichever is longer.

115

UNDERWOOD

115

Training on Title IX Regulations

116

Training on Title IX Regulations

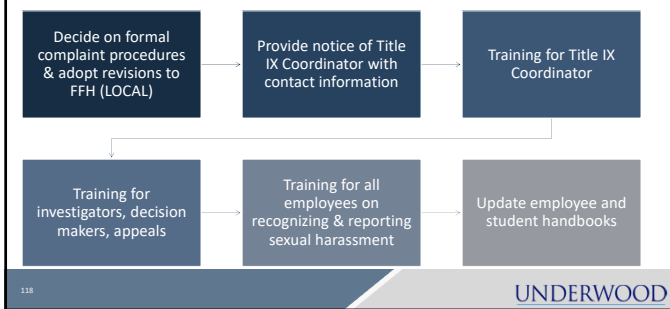
- All staff must know how to identify and report sexual harassment
- Title IX Coordinator, investigators & decision makers must be trained on investigation procedures, definitions and standards identified in the regulations, how to consider and apply evidence, and maintaining impartiality

117

UNDERWOOD

117

Title IX – Next Steps for Compliance



118

Summary of Training Requirements

- Title IX Coordinators, Investigators and Decision Makers:
 - Definition of sexual harassment
 - Identifying the district's education program or activity (to establish jurisdiction)
 - How to conduct an investigation
 - Title IX formal complaint procedures including hearings, appeals, and informal resolution processes (if applicable)
 - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias

119

Additional Training for Decision-Makers:

- Technology to be used at a live hearing, if district allows live hearings
- Considering issues of relevance for both questions and evidence presented (including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant)

120

Additional Training for Investigators: Consideration of relevance of evidence, including creating an investigative report that fairly summarizes relevant evidence

121

Requirement for Training Materials

- Must be posted on District website
- Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment

122 UNDERWOOD

122

Title IX Administrator Training
Region 17

UNDERWOOD

Janet Sobey Bubert
Ronn Garcia
Underwood Law Firm, PC
www.uwlaw.com

123
