

Permissive Grounds for Dismissal

- The School may also dismiss the formal complaint or any allegations therein if at any time during the investigation:
 1. a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
 2. the respondent is no longer enrolled or employed by the School; or
 3. special circumstances prevent the School from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.



Informal Resolution

- Cannot require that the student or employee waive their right to the grievance process.
- Cannot go forward with an informal process for sexual harassment allegations prior to there being a formal complaint.
- Obtain voluntary written consent.
- Not permitted for allegations that an employee sexually harassed a student.
- Written notice to the parties is required, disclosing:
 1. the allegations;
 2. the requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations;
 3. that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and
 4. any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.



Recordkeeping

- Keep for 7 years
- Investigation Records
- Appeal Records
- Informal Resolution Records
- Training Materials
- Response to all reports and formal complaints

No Retaliation Provision Added for All Sex Discrimination Complaints

- 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.
- Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint or sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.
- Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination complaints not alleging sexual harassment.



Maintain Confidentiality

- The recipient must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint or sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by [FERPA], or as required by law, or to carry out the purposes of [Title IX], including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.



Rape Shield Law – Complainants

- Evidence and questions regarding complainants' sexual predisposition or prior sexual behavior are not relevant.
- Unless:
 - Offered to prove someone else committed alleged conduct.
 - Offered to prove past sexual relationship with Respondent to establish consent.





Title IX Coordinator Responsibilities

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- Designations of Title IX team
- Posting notices, contact info, and training docs
- Notice to school community
- Confirm training completion
- Actual knowledge responsibilities
- Review/Update policies and procedures (including CBAs and Handbooks)
- Review form documents
- Timely review/handle reports
- Keep documentation



Title IX Coordinator Responsibilities *Cont.*

- Be available/accessible for reports
- Determine what Policy/Procedure to apply
- Provide details on grievance process and formal complaints
- Discuss availability of and coordinate effective implementation of supportive measures
- Consider signing formal complaint if not filed by Complainant
- Provide Notices to Respondent and Complainant
- Consider Dismissal



Title IX Coordinator Responsibilities *Cont.*

- Consider removal/admin leave
- Informal resolution process management
- Ensure grievance process (as applicable) is followed and all notices provided
- Coordinate the effective implementation of any remedies



Title IX Coordinator *MAY* Also:

- Coordinate notices, party inspection, and review of evidence and investigative report
- Coordinate appeal process
- Perform investigation



Discussion Questions

1. Katie and Sarah are 11th graders who snuck into a party held by Charlie, a 12th grader, on a Friday night. After the party, Katie tells Sarah that Charlie cornered her and touched her in a way that made Katie uncomfortable. Sarah is worried about Katie and, on Monday, tells one of her teachers about the incident.

- What should the teacher do?
- Is this conduct covered by Title IX?
- Should any other actions be taken? If so, what?



2. High school student Tony accuses fellow student Sam of sexual harassment. Tony has a long disciplinary record, multiple suspensions and has, on at least one occasion, falsely accused another student of theft.

- What are some potential concerns that might arise in this scenario?
- What should the Title IX Coordinator do?
- What should the Investigator do?



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3. 11th grader Emmanuel tells a teacher at his school that he was sexually assaulted by a fellow student. The teacher tells Emmanuel that the offense is a crime, so it must be reported to the police.
- What else, if anything, does the teacher need to do?
 - Does this fall under Title IX?

4. High school principal Lisa overhears teachers discussing an incident where a student inappropriately touched another student while on a school bus. Principal Lisa interviews the students. Both students seem dismissive of the incident and deny that they are bothered or hurt by what occurred.

- Should Principal Lisa investigate further?
- Should Principal Lisa inform the students' parents?
- Is there anything else Principal Lisa should do in reference to this incident?
- Is there anyone else who might have Title IX reporting or investigating responsibilities in this scenario? Who?



Lawyerly Disclaimer ... (we can't help it)

- These training materials are informational in nature and should not be construed as legal advice and are not provided to address specific grievance situations.
- Consult with your legal counsel as necessary to address specific Title IX report and grievance situations and investigations.
- Or email your school law attorney, or Aimee Gibbs. or Angelina Delmastro at:
 - agibbs@dickinsonwright.com
 - adelmastro@dickinsonwright.com

