

TRAINING FOR THE INVESTIGATOR



IMPORTANT DEFINITIONS

- **Complainant:** an individual who is alleged to be the victim of conduct that could constitute sexual harassment
 - A complainant must be participating in or attempting to participate in the education program or activity of the School with which the formal complaint is filed.
- **Respondent:** an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment
- **Formal Complaint:** a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment

WHAT IS THE INVESTIGATOR'S ROLE?

- Upon Receipt of a Formal Complaint, the Title IX Coordinator shall notify the Investigator
- The Investigator will **promptly Investigate** all complaints of discrimination

WAIT... WHAT EXACTLY AM I INVESTIGATING?

- ****Did the alleged conduct happen?****
- **If not, what did happen?**

WAIT... WHAT EXACTLY AM I INVESTIGATING?

■ ****Did the alleged conduct happen?****

■ **Did sexual harassment occur within an educational program or activity?**



DEFINITION OF SEXUAL HARASSMENT

TITLE IX
SEXUAL
HARASSMENT
DEFINITION

- Employee Quid Pro Quo
- Hostile Environment**
- VAWA “Big Four”

SEXUAL HARASSMENT-QUID PRO QUO

- **Definition:** An employee of the District conditioning an aid, service, or benefit of the District on an individual's participation in unwelcome sexual contact
- In this situation- you do not have to analyze severity or harm. It is presumed.
- This definition only applies to employees (not volunteers, or other students, etc.)

SEXUAL HARASSMENT – VAWA BIG 4

- Sexual Assault 20 U.S.C. 1092(f)(6)(A)(v)
- Domestic Violence 34 U.S.C. 12291(a)(8)
- Dating Violence 34 U.S.C. 12291(a)(10)
- Stalking 34 U.S.C. 12291(a)(30)

SEXUAL ASSAULT 20 U.S.C. 1092(f)(6)(A)(v)

- The term “sexual assault” means an offense classified as forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation

SEXUAL ASSAULT

20 U.S.C. 1092(f)(6)(A)(v)

- **Forcible Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Important Points:	Rape by an object can be as traumatic as penile/vaginal rape
Includes instances in which the victim is unable to give consent because of temporary or permanent mental or physical incapacity	Recognizes that a victim can be incapacitated by drugs or alcohol and thus unable to consent
Physical resistance is not required to demonstrate lack of consent	Rape can occur to any gender
Recognizes legal incapacity to consent because of age	Nebraska: Age of sexual consent is 16. Statutory Rape = person below 15 + person 20 years or older. Sexual Assault of a child includes victim twelve years or younger

DOMESTIC VIOLENCE 34 U.S.C. 12291 (a)(8)

- **Definition:** The term “domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction



DOMESTIC VIOLENCE 34 U.S.C. 12291 (A)(8)

How does “Domestic Violence” occur in a elementary or secondary school setting?

This definition is much more likely to occur in a post-secondary school environment.

DATING VIOLENCE 34 U.S.C. 12991 (a)(10)

- The term “**dating violence**” means violence committed by a person:
 - Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship
 - The type of relationship
 - The frequency of interaction between the persons involved in the relationship
- **Takeaway: Do not dismiss complaints of violence or sexual assault if the victim and alleged perpetrator are “dating”**

STALKING 34 U.S.C. 12291 (a)(30)

- The term “**stalking**” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to
 - Fear for his or her safety or the safety of others; or
 - Suffer substantial emotional distress



**THIS NEXT ONE
IS A BIT
COMPLICATED...**

SEXUAL HARASSMENT-HOSTILE ENVIRONMENT

- **Definition:** 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.

FACTORS TO ANALYZE

- SEVEREITY
- PERVASIVENESS
- OBJECTIVE OFFENSIVENESS

SCOPE OF
THE
EDUCATION
PROGRAM
OR ACTIVITY



SCOPE OF EDUCATION PROGRAM OF ACTIVITY

- **Education Program or Activity Means:**
locations, events, or circumstances over which the School exercised substantial control over both the respondent and the context in which the sexual harassment occurs.

SCOPE OF EDUCATION PROGRAM OF ACTIVITY

- Title IX applies to **all** of a school's operations, including all of the academic, educational, extra-curricular, athletic, and other programs of the school, whether they take place in the facilities of the school, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere within the United States.

LET'S
INVESTIGATE



YOU ARE INVESTIGATING 2 FORMAL COMPLAINTS

- The Title IX Coordinator has already reviewed the formal complaint and determined that it is not subject to mandatory dismissal.
- Formal Complaint 1:
 - Complainant: Haleigh (student)
 - Respondent: Chad (student)
- Formal Complaint 2
 - Complainant: Jamie (teacher)
 - Respondent: Greg (administrator- married to Jamie)

FORMAL COMPLAINT I

- Allegation: On Saturday, October 2, 2020, Student Chad, sent a photo of Haleigh to 3 other students via text message. The photo was of Haleigh with the word “slut” over it. On Monday, October 5, 2020, multiple students asked Haleigh about the photo and Haleigh was very embarrassed. Chad sent three other photos of Haleigh to students during the school day throughout the following week.

FORMAL COMPLAINT I

Did Haleigh see the photo or did she hear about it?

Which other students?

What does “embarrassed” mean?
Did this embarrassment actually effect Haleigh’s access to education?

- Allegation: On Saturday, October 2, 2020, Student Chad, sent a photo of Haleigh to 3 other students via text message. The photo was of Haleigh with the word “slut” over it. On Monday, October 5, 2020, multiple students asked Haleigh about the photo and Haleigh was very embarrassed. Chad sent three other photos of Haleigh to students during the school day throughout the following week.

What was the content of these photos? Were they sexual in nature? Which students received them?

Which students?
How many?

Did Chad send them or did other students forward the photo?

FORMAL COMPLAINT 2

- Allegation: In August 2020, during the beginning of the year planning meetings, Greg pulled me aside and pushed me against the wall, held me against the wall, and told me that if I told anyone we were getting divorce that he would make sure I was fired. I had a bruise on my shoulders and arms after this confrontation.

FORMAL COMPLAINT 2

Did this happen on their own time, or during a school required meeting?

Were there any witnesses?
What is Greg's version of the altercation? Was there even an altercation?

■ Allegation: In August 2020, during the beginning of the year planning meetings, Greg pulled me aside and pushed me against the wall, held me against the wall, and told me that if I told anyone we were getting divorce that he would make sure I was fired. I had a bruise on my shoulders and arms after this confrontation.

Did Jamie take any pictures? Did anyone else see the bruises?

RIGHTS OF THE PARTIES

- The investigator must provide an **equal opportunity** for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- The investigator shall **not restrict the ability** of either party to discuss the allegations under investigation or to gather and present relevant evidence
- The investigator shall provide the parties with **the same opportunities** to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice.
 - *Investigator may establish restrictions on how an advisor participates (but those restrictions must apply equally to both parties' advisors)*

RIGHTS OF THE PARTIES

- Up until the conclusion of the investigation, the parties shall have an **equal opportunity to inspect and review** any evidence obtained in the investigation that is directly related to the allegations raised in the formal complaint.
- *This includes evidence upon which the Investigator does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence obtained from any source*



HOW TO CONDUCT INVESTIGATIONS

TYPES OF EVIDENCE TO LOOK FOR IN INVESTIGATION

- Eyewitness statements
- Third party witnesses (those who the parties spoke to shortly after incident)
- Text messages
- Emails
- Snap chats
- Instagram messages
- Pictures
- Site visits
- And more...

Students: NO

Faculty/Staff: MAYBE

Third Parties: NO

CAN I MAKE
WITNESSES
TALK TO ME?

Students: NO

Faculty/Staff: MAYBE

Third Parties: NO

CAN I MAKE
WITNESSES
GIVE ME
DOCUMENT
S?/CAN I
SEARCH
PHONES OR
EMAILS?

CONDUCTING INTERVIEWS

■ TAKE NOTES

- If possible, have someone else present who can also take notes
 - This person can also serve as a witness if the interviewee later recants.
- Ask the witness not to talk with other witnesses, the respondent or the complainant
- Find out if the witness is also a potential complainant.
- If witnesses are going to guess or give an opinion, make sure they tell you it is guess/opinion.

CONDUCTING INTERVIEWS

- Does the witness know other witnesses?
- Does the witness know of other incidents?
- What does the witness know about the complainant – other incidents/information?
- Advise the witness to come to you if anyone threatens him/her
- Advise the witness to contact you if he/she thinks if anything else
- Is there any documentary evidence?

EXAMPLES OF QUESTIONS TO ASK

- “What happened then,” “then what happened,” “what happened next”
 - Make sure the questions you ask are not leading questions.
- “Anything else ...Anything else ...?”
- Keep linking pronouns to actual proper names- “when you say ‘she’, who do you mean?”

INVESTIGATING

- Adopt a calm, impartial, fair, and deliberate mindset; do not prejudge the allegations or create that perception
 - Open ended questions
 - Be the calm one in the storm; no witch-hunts.
 - Your actions will be reviewed and challenged
 - The materials you develop, and your communications may be subject to later disclosure

INVESTIGATING WHEN POLICE ARE INVOLVED

- Remember –OCR says you cannot rely on outcome of police investigation
- Important not to interfere with police investigation ... BUT
- Not the best practice to wait for police investigation to end before taking action.



INVESTIGATING WHEN POLICE ARE INVOLVED

TALK TO POLICE ABOUT TITLE IX REQUIREMENTS FOR CONCURRENT INVESTIGATION

Models for Concurrent Investigation

Independent: Each investigator works on their own. Information is shared only through formal process as investigations reach certain stages

Joint: Investigators communicate frequently through informal and formal methods with status updates

Simultaneous: Investigators work together by coordinating efforts

DIFFERENCE BETWEEN POLICE INVESTIGATION AND ADMINISTRATIVE INVESTIGATION

Police Investigator

- Trying to establish probable cause for arrest
- Uses a wide lens
- Employs a variety of tactics
- Works for society and in the interest of justice

Administrative Investigator

- Concerned with equity-civil right issue
- Looks only at the reported case
- Generally straight forward approach
- Works for school to ensure compliance

A 3D rendering of a puzzle with one black piece standing out among white pieces. The puzzle pieces are arranged on a white surface, and the black piece is the central focus, standing out prominently. The lighting creates soft shadows, giving the pieces a three-dimensional appearance.

I FINISHED THE
INVESTIGATION

NOW WHAT?

AFTER THE INVESTIGATION



- **PRIOR** to the conclusion of the investigation, the investigator shall send each party and the party's advisor, if any, the evidence that is subject to inspection and review in an electronic format or hard copy.
- **THEN**, the parties shall have at least 10 days to submit a written response, which the Investigator must consider
- **THEN**, the investigator will complete the investigative report and send to the parties, their advisors, if any, and the decision-maker.

INVESTIGATIVE REPORT TIPS

- Keep it to the facts
- No opinions
- No advocacy
- Make it clear which facts are first hand knowledge
- Include body language if it seems relevant
- Keep it to relevant facts

COMPARE

- Upset
 - Heard rumor
 - Photos
 - Said Chad did it
 - Lots of people talking
- Sally said that Haleigh talked to her shortly after she heard about the first photo. Haleigh was very upset and said that Chad sent the photo. Sally has heard from three other people about the photo.

COMPARE

- Brenda said that Greg pushed Jamie against the wall.
- Brenda said that *she heard from Jamie* that Greg pushed Jamie against the wall.

COMPARE

- Greg is a sexual predator.

- Jamie *believes* Greg is a sexual predator.

COMPARE

■ Jenny said that Chad is really nice and would never do something mean to Haleigh.

■ Jenny said that Chad is really nice and would never do something mean to Haleigh. *While saying this, Jenny seemed very timid. She took a big pause before answering the question and kept her eyes down the whole time.*

A photograph of a classical building's roofline against a blue sky with light clouds. The central focus is a large white marble statue of Justice, standing and holding a pair of scales. To the left, another white marble statue is seated, looking towards the Justice figure. The building's facade below the roofline is partially visible, showing intricate carvings and architectural details.

IMPARTIALITY

IMPARTIALITY

- Impartial means that you do not have any **prejudice** towards the complainant or respondent i.e. lack of bias
- Impartial means that you will render a decision based **ONLY** on the **evidence**
- Impartial means you do not opine about the facts before considering **ALL** the **facts**
- Impartial means you avoid **conflicts of interest**: an investigator or decision maker should recuse themselves from a particular case if they have a conflict of interest

AVOIDING BIAS



Confirmation Bias: placing more value on information that supports our existing belief



Anchoring Bias: being overly influenced by the first piece of evidence/information we receive



Misinformation effect: the tendency for post-event information to interfere with the memory of the original event. Knowledge of this effect has led to a mistrust of eyewitness information.



Halo effect: your overall impression of a person influences how you feel and think about their character. This especially applies to physical attractiveness influencing how you rate their other qualities.

FEDERAL RULES OF EVIDENCE 401: TEST FOR RELEVANT EVIDENCE

- Evidence is relevant if:
 - (a) it has a tendency to make a fact more or less probable than it would be without the evidence; and
 - (b) the fact is of consequence in determining the action.

SEXUAL PREDISPOSITION

- Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are **NOT** relevant
- UNLESS:
 - Offered to prove that someone other than the respondent committed the conduct alleged by complainant
 - Concern specific incidents of the complainant's prior sexual behavior with respect to the respondent AND are offered to prove consent