



# Title IX Training

What Every Board Employee Needs to Know

with Melissa Martinez Bondy



## Disclaimers

- I am not giving legal advice
- Consult with your legal counsel regarding how best to address a specific situation
- I will take questions as time permits
- Members of the Title IX Team (Title IX Coordinator, Investigators, Decision-Makers, or Informal Resolution Facilitators) must receive **additional** training

## Agenda

- Key Concepts
- Conduct prohibited under the Title IX Regulations
- Reporting and Response Obligations
- Grievance Process
- Implications for Discipline



## North Union's Policy and Procedure



Book	Policy Manual
Section	Section A: Foundations and Basic Commitments
Title	Sexual Harassment
Code	ACAA
Status	Active
Adopted	November 16, 2020
Last Revised	December 20, 2021

### Sexual Harassment

The District does not discriminate on the basis of sex in any education program or activity that it operates, including admission and employment. The District is required by Title IX of the Education Amendments of 1972 and the regulations promulgated through the U.S. Department of Education not to discriminate in such a manner. Inquiries about the application of Title IX to the District may be referred to the District's Title IX Coordinator, to the Assistant Secretary for Civil Rights of the Department of Education, or both.

### Board Policy ACAA – Sexual Harassment

For purposes of this policy and the grievance process, "sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:

1. A District employee conditioning the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct;
2. 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 or



Book	Policy Manual
Section	Section A: Foundations and Basic Commitments
Title	Sexual Harassment Grievance Process
Code	ACAA-R
Status	Active
Adopted	November 16, 2020
Last Revised	December 20, 2021

### Sexual Harassment Grievance Process

The Board requires the following grievance process to be followed for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited as sexual harassment by Title IX. The Board directs the process to be published in accordance with all statutory and regulatory requirements.

### Board Policy ACAA-R – Sexual Harassment Grievance Process

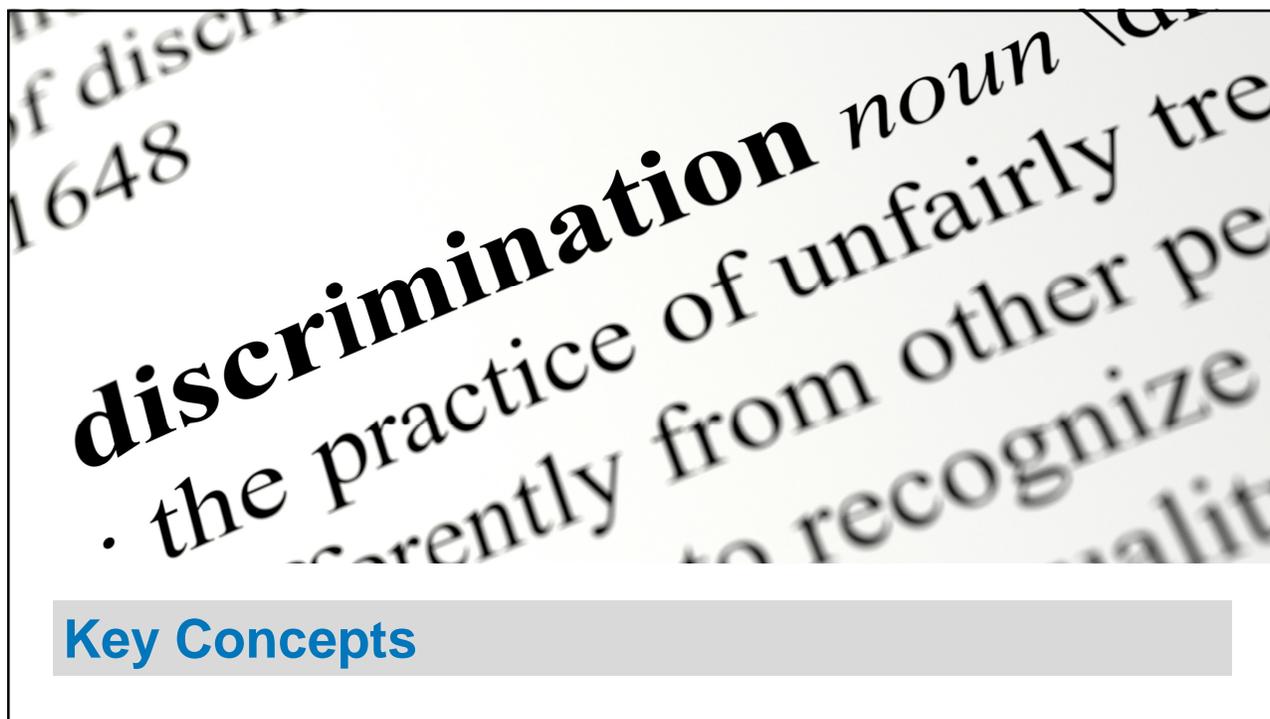
context in which the sexual harassment occurs.

"Complainant:" an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

"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 District investigate the allegation of sexual harassment.

"Supportive measures:" non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available and



## What is discrimination?

Discrimination is the act of **treating people differently** based on a protected characteristic (or stereotypes based on that characteristic)

- Focus on access to education opportunities, resources, programs
- Disparate treatment in the workplace/school
- Disparate impact claims (neutral policies that have discriminatory impacts)

## Common Types of Protected Traits

- Race
- Color
- Religion
- Sex (gender)
- Military status
- National origin
- Disability
- Age
- Ancestry
- Marital status
- Pregnancy
- Genetic information

## Title IX Prohibition on Sex Discrimination

“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...”

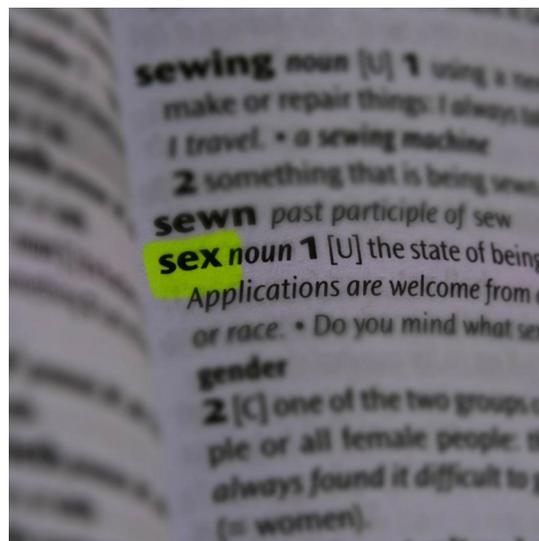


## What constitutes sex discrimination?

- Treating one person **differently** from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service
- Providing **different** aid, benefits, or services, or providing aid, benefits, or services in a different manner
- Denying any person such aid, benefit, or service
- Subjecting any person to separate or **different** rules of behavior, sanctions, or other treatment

## What does “sex” mean?

- Biological sex
- Gender
- Sex stereotyping
- Sexual orientation\*\*
- “Sex” as a verb





## Conduct Prohibited by the Title IX Regulations – Sexual Harassment and Retaliation

### What is sexual harassment under Title IX?

**Sexual harassment** means conduct on the basis of sex that satisfies one or more of the following:

- **Quid pro quo** – An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct
- **Hostile environment** – 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 recipient's education program or activity; or
- **Clery crimes** – Sexual assault, dating violence, domestic violence, or stalking [Clery regulatory definition cites omitted]

## More on *Quid Pro Quo* Harassment

- May involve a power differential
- “Everyone knows that so-and-so...”
- Voluntary conduct between some may put observers in the position of believing that something sexual is necessary to get something favorable
- They do/won’t do this, so...
- They will/won’t put up with this, so...
- If you do/don’t... I will/won’t...

## More on Hostile Environment

Be aware of things that are **not** elements:

- “Happened more than once”\*\*
- “Parties weren’t dating at the time”
- “Must involve two people of compatible sexual orientations”
- “Must occur on school property” \*\* (but remember state law restrictions)
- “Must have bad intent”

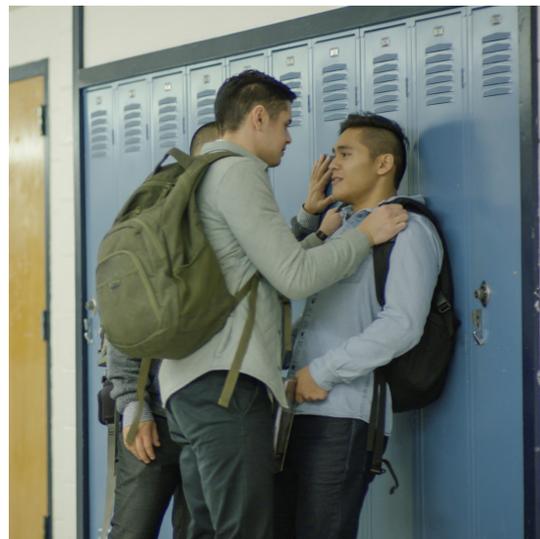
## What is retaliation under the TIX Regulations?

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

## What could retaliation look like?

- Adverse action against an individual
- Abuse
- Violence
- Threats
- Intimidation
- More than just someone expressing their opinion





## Reporting and Response Obligations

### What is the *District's* obligation?

- A recipient with **actual knowledge** of sexual harassment in an **educational program or activity** of the recipient against a person in the United States, must **respond promptly in a manner that is not deliberately indifferent**
- A recipient is only deliberately indifferent if its response to sexual harassment is unreasonable in light of known circumstances

## How does the District fulfill its obligation?

- Updated policies
- Address complainant and provide supportive measures
- Mandatory reporting
- Informal resolution (if allowed under District policy)
- Prompt Investigation
- Compliance with formal grievance process:
  - Notice
  - Report
  - Decision
  - Appeal

## What is “actual knowledge”?

**Actual knowledge** = notice of sexual harassment or allegations of sexual harassment to a recipient’s:

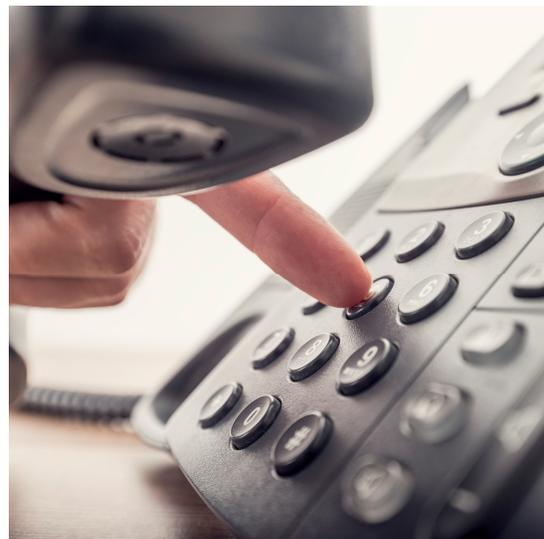
- Title IX Coordinator, or
- Any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or
- **To any employee of an elementary or secondary school**

## Obligations of *ALL* Employees Under Title IX

- Know who the District's Title IX Coordinator is
  - **NU's Title IX Coordinator – Justin Ufferman**
- Know how to recognize a potential Title IX violation
- Report **any** potential Title IX violation to the Title IX Coordinator **the same day** you receive notice of it
- Review the District's anti-discrimination and anti-harassment policies as soon as they are updated

## What if I'm not *sure* something is Title IX?

- You **don't** need to be sure before reporting
- If you think or suspect something **might** be a Title IX violation, **report it right away** to the Title IX Coordinator!



## What if the Title IX Coordinator determines the reported conduct doesn't qualify?

“If the conduct alleged in the formal complaint would not constitute sexual harassment... even if proved, did not occur in the recipient's education program or activity, or did not occur against a person in the United States, then the recipient **must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX or this part**; such a dismissal does not preclude action under another provision of the recipient's code of conduct.”

## Don't Forget Your *Other* Reporting Obligations

- Fulfilling your obligation to report potential TIX violations to the Title IX Coordinator **does not fulfill** your obligations as a mandatory reporter under Ohio law
- Don't rely on a supervisor to make the report

### Other Reporting Obligations

- Child Abuse
- Felonies
- If a school employee engages in sexual conduct with a student, it must be reported (even if the student is 18)
- ODE Conduct Reporting

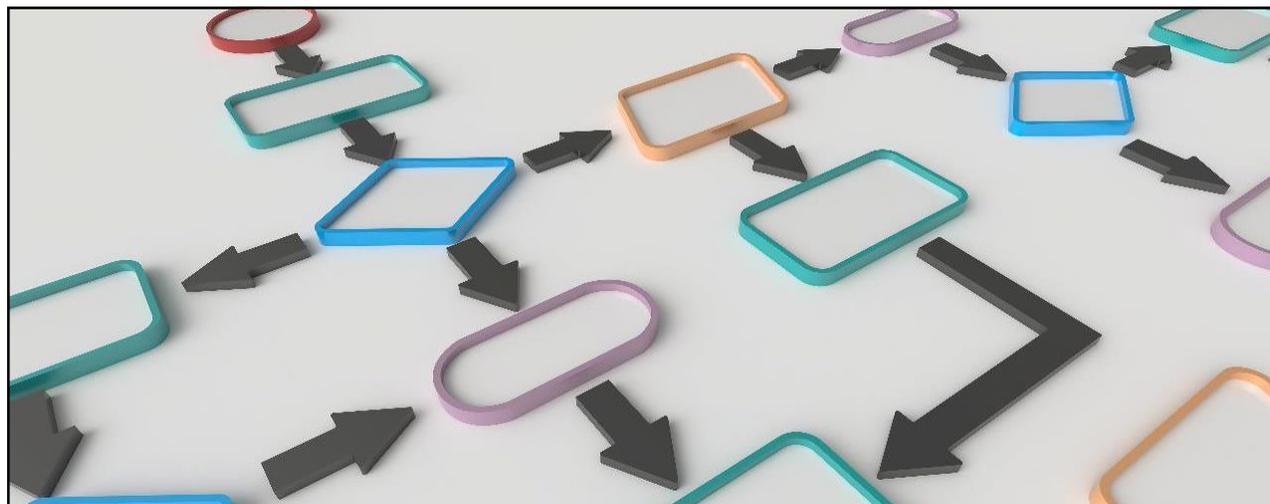
## Informal Resolution

### Procedures may include informal resolution process

- May not be mandatory
- May not be offered unless formal complaint is filed
- May not be offered in allegation by student against employee

### Requirements

- Written notice of: allegations; requirements of process; right to withdraw from process and resume formal grievance process; consequences of participation including the records that will be maintained or could be shared
- Obtain voluntary, written consent from both parties



***What is taking so long?? –  
The Required Title IX Grievance Process***

## Formal Complaint

- **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 recipient investigate the allegation of sexual harassment”
- **Complainant** – “an individual who is alleged to be the victim of conduct that could constitute sexual harassment”

## Due Process/Fundamental Fairness (1/2)

- Treat complainants/respondents equitably; no sanctions until process complete
- No conflict of interest or bias; trained staff
- Presumption that respondent is not responsible
- Reasonably prompt timeframes
- Range of possible sanctions/remedies

## Due Process/Fundamental Fairness (2/2)

- **Evidentiary Standard** – Preponderance or Clear and Convincing
  - Same standard applicable to complaints against students and employees
  - Same standard applicable to all complaints of sexual harassment
- Describe supportive measures
- Exclude privileged information

## Intake

- **Formal Complaint** – “a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that that recipient investigate the allegation of sexual harassment”
- Once a formal complaint is made, the Title IX Coordinator will:
  - Determine whether any **mandatory or permissive dismissal** conditions apply
  - Provide required **notice to parties** of the allegations and grievance process

## Notice to Parties

- Grievance Process
  - Allegations
    - Sufficient details known at the time (identity of parties; date and location of alleged incident; alleged conduct)
    - Sufficient time to prepare response
  - Notice of any additional allegations that may arise
- Statement that **respondent is presumed not responsible** and that determination will be made at conclusion of grievance process
  - May have advisor of choice
  - May inspect/review evidence
  - Inform of Code of Conduct prohibiting false statements
  - Notice of any additional allegations that may arise

## Investigation Process (1/2)

- Burden of proof and burden of gathering evidence is on recipient
- Equal opportunity to present witnesses
- May not prohibit parties from discussing allegations or gathering/presenting evidence
- Provide same opportunity to have others present including advisor of choice
- Written notice of any hearings/interviews/meetings

## Investigation Process (2/2)

### Provide Parties All Evidence

- Allow 10 days to review
- Allow parties to submit a written response before completion of Investigative Report

### Prepare Investigative Report

- Fairly summarizes relevant evidence
- Provide to parties 10 days prior to determination of responsibility
- Allow parties to submit written response

## Decision-Maker Questioning Phase

- Allow parties to submit written questions of other parties/witnesses
- After distribution of Investigative Report; before determination regarding responsibility
- Provide answers and allow limited follow up
- Questions and evidence regarding complainant's sexual predisposition or prior sexual behavior prohibited (very limited exceptions)

## Written Determination of Responsibility

- **Note:** Decision-maker cannot be Investigator or Title IX Coordinator
- Identification of the allegations
- Description of procedural steps
- Findings of fact
- Conclusions
- Statement of result as to each allegation, including determination, sanctions, and remedies
- Procedures and bases for appeal
- Provided to parties simultaneously

## Bases for Appeals

- **Required Bases**
  - Procedural irregularity that affected the outcome
  - New evidence not reasonably available at time determination was made that could affect the outcome
  - Conflict of interest/bias
- **Additional bases permitted** – must be offered to both parties equally

## Appeals Process

- Notify other party in writing when appeal is filed
- New decision maker
- Allow opportunity for both parties to submit written statement
- Written decision with result and rationale
- Provided to both parties simultaneously



## Implications for Student Discipline

## ***Very Different Than What You're Used To***

- Building leaders may be comfortable investigating claims of student misconduct and issuing discipline
- **BUT**, when that misconduct involves **sexual harassment under Title IX**, the regulations **require leaders to respond in a *very different way than they're used to***
- This includes **holding off on imposing any discipline** until a determination is made through the Title IX process

## **So what does this mean in practice?**

- As we just reviewed, the Title IX regulations impose an intensive and lengthy process for intake, investigation, and determination of conduct involving sexual harassment/assault
- **This entire grievance process MUST be completed BEFORE any discipline is imposed**

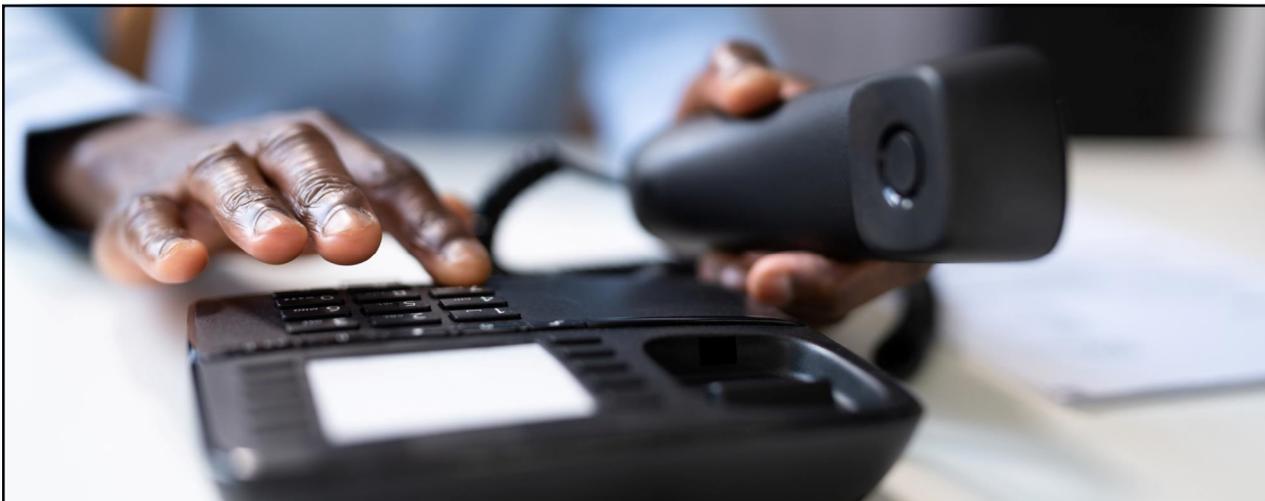
## District Leaders Who Handle Discipline

- If you're a District leader who handles student discipline, know that if the conduct does (or seems like it might) implicate Title IX, **STOP** and call the Title IX Coordinator **BEFORE** investigating and **BEFORE** imposing any discipline
- This is true *even if* the respondent **admits** to the alleged conduct, or *even if* there's other **"proof"** (e.g., video footage of the respondent committed the alleged conduct)
- **Not sure if it's Title IX?** The Title IX Coordinator will decide!

## What happens if the process isn't followed?

*What if the principal has already investigated the matter and issued discipline to the student before it ever gets to the Title IX Coordinator? Should the District redo the investigation and follow the Title IX process?*

- District **can't** issue new/different discipline if it's already been served
- If discipline hasn't occurred yet, could be held in abeyance
- Consider: Is investigation necessary to identify underlying issues?
- Provide supportive measures
- Consult Title IX Coordinator



## **Testing Your Knowledge – *Would You Call the Title IX Coordinator?***

### **Mr. Smith and Josie**

- Mr. Smith is a well-loved chemistry teacher
- He's well known for commenting on how attractive his female students are
- Josie, a student, is his lab helper and comes to his room during fourth period study hall to help set up the lab benches
- Josie shares with her mom that sometimes Mr. Smith touches girls' shoulders in class and he had shared funny text messages with her
- Mom shares with you some of Mr. Smith's text messages to Josie – they're not sexual in nature

***Would you call the Title IX Coordinator?***

## Tommy and Lisa

- Tommy, a student you regularly chat with, approaches you after class and mentions that he was at a party last Friday night
- Tommy tells you that he was kissing another student in his class, Lisa, at the party, and Lisa reached down his pants and touched him in a way that made him uncomfortable after he told her to stop
- Tommy then asks you not to tell anyone, saying he “doesn’t want to make a big deal out of it”

***Would you call the Title IX Coordinator?***

## Enrique and the Team “Welcome”

- While walking near the boys’ locker room, you overhear Enrique, a student who just joined the soccer team, talking to one of his friends
- Enrique tells his friend that he’s worried about the annual “welcome” of new team members that happens in the locker room
- When his friend asks what he means, Enrique says he’s “dreading getting hit in the junk with towels”

***Would you call the Title IX Coordinator?***

## The Viral TikTok Pantsing

- While scrolling on TikTok on your lunch break one day, you come across a video of a few teenagers chasing others down and “pantsing” them
- When you watch more closely, you recognize the teens – they’re students in your building, who appear to be backstage during rehearsal for the spring musical

***Would you call the Title IX Coordinator?***

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