Title IX Update for CARE Team
August 7, 2020
# Title IX Major Policy Changes

## Definition of Sexual Harassment
- Sexual Harassment under Title IX is defined as 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 "Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.

## Conflicts with DCPS definition and Student Safety Omnibus Act Definition
- Previous definition was an “or” not “and”, limits the conduct that falls under Title IX.

## Renaming of Interim Services to Supportive Measures
- Individualized services provided to a complainant and respondent that are non-punitive, non-disciplinary, and do not unreasonably burden the other party yet that are designed to restore or preserve a person's equal access to education.

## Definition of Jurisdiction
- Assessment of whether school district has substantial control over the context where sexual harassment occurs. Title IX is not applicable when students are traveling abroad.

## Dismissal, Party participation in process and Grounds for appeal
- Allegations that don’t meet the Title IX threshold must be dismissed.
- Expansion of parties involvement in final resolution (including questioning and review of draft reports).
- Appeals require standardized grounds in order to effectuate the appellate process.
Title IX Regulations Training Requirements

- **Title IX Coordinator**
  - Formal training needed
  - Can’t be the decision-maker
  - Can serve as an investigator

- **Employees w/ Actual Knowledge**
  - All DCPS employees, refresher training needed

- **Investigator(s)**
  - 4 staff including the Title IX Coordinator, only 2 have formal training

- **Decision-Maker(s)**
  - 2
  - (formal training helpful)

- **Appellate Member(s)**
  - Instructional Superintendents and CIO—formal training needed

- **Advisors**
  - (pool needs to be created)
DCPS local regulations and the new Federal Title IX regulation will require DCPS to have two resolution tracks for cases where sexual misconduct is involved. Below are changes the CARE team will have to implement in response based on the new regulations:

- Adjustments to intake process to ascertain if a student/parent wants to pursue a formal grievance filing (which must be submitted in writing);
- Prescribing support services for all involves parties;
- Providing each party the opportunity to review the investigative report and provide feedback prior to its finalization; and
- Providing each party the opportunity to pose questions to the other side in lieu of holding hearings.
- Creation of new forms (written complaint, party inquiry, party review, dismissal, notice of allegation, emergency removal)

It is important to note that changes and regulatory nuances will not have any baring on the response and support provided to students.
Sexual Harassment Reported to School District Employee

Supportive Measures

- NO Formal Complaint Signed by Complainant or Parent/Guardian
  - Title IX Coordinator Agrees to Supportive Measures Only
  - Informal Resolution
    - Can Occur at Any Time Following Formal Complaint and Prior to a Finding of Responsibility UNLESS Respondent is an Employee and Complainant is a Student

- Formal Complaint Signed by Complainant or Parent/Guardian
  - Title IX Coordinator Signs Formal Complaint
  - Notice of Allegations
    - Investigation
      - Resolution
        - Appeal
INVESTIGATIVE TIMELINE

1. INVESTIGATE
   - Notice of Allegations
   - Notice of all interviews with sufficient time to prepare

2. Parties inspection and review of evidence and opportunity to provide written response
   - 10 days

3. INVESTIGATIVE REPORT

4. Parties review of final report and opportunity to provide written response
   - 10 days

5. Question and answer period between parties facilitated by Decision Maker

6. APPEAL Based on grounds
SEVEN STEPS TO RESOLUTION

1. Receiving a Report
2. Assessment and Categorization
3. Assignment of Supportive Measures
4. Party Notification
5. Investigation
6. Party Inquiry and Inspection
7. Resolution
WE'RE HERE TO HELP

District of Columbia Public Schools CARE Team
SEXUAL HARASSMENT, SEX DISCRIMINATION, DATING/SEXUAL VIOLENCE (internal flow chart)

Report/CARE AWARE

Assessment complete-Does this incident fall under Title IX?

- **YES**
  - Assistant obtains written complaint, issues initial notice packet to parties, coordinates supportive measures

- **NO**
  - Assistant issues Title IX Dismissal, enters non T9 ticket, assigns to specialist, coordinates supportive measures and sends notice to parties

**Investigator and associate investigator conduct investigation.**
**Full investigations require, fact and evidence gathering, report compilation**
**Information sharing with parties**
**Two-way party inquiry**

**Associate Investigators should attend interviews to support information collection and track information exchange/obtaining signed interview notes/finalizing LOR**

**Assistant closes case and Quickbase and issues finalized LOR**

**Investigator and associate investigator conduct investigation.**
**Preliminary cases can be fully resolved by associate investigator**
**Full investigations require, fact and evidence gathering, report compilation**
CARE IS AWARE
“Reporting”
Receiving a Report

Who can receive a report?

Who can file a report?

How can a report be filed?

What is the time frame for entering and assigning a ticket once a report has been filed?
Receiving a Report

Who can receive a report? **Any DCPS employee can receive a report**

Who can file a report? **Students/parents/third party**

How can a report be filed? **Online, email, telephone, walk-in, social media posting**

What is the time frame for entering and assigning a ticket once a report has been filed? **1 business day**
The RIGHT TRACK
“Assessment”
Assessment of Sexual Harassment and Sex Based Discrimination

Track 1 Title IX
- Requires a formal written complaint
- Must meet the definition of sexual harassment/sex-based discrimination
- DCPS must have jurisdiction

Track 2 Sexual Misconduct Not Title IX
- Does not require a formal written complaint
- A sexual act that does not meet the definition of Title IX sexual harassment/sex-based discrimination
- Location does not remove educational impact
Exercise: Title IX vs. Other Sexual Misconduct Not Title IX

https://www.youtube.com/watch?v=e5dj8E3lFwo
https://youtu.be/e5dj8E3lFwo

Identify instances of sexual misconduct in the video, discuss which track you would categorize it under, explain why.
Supportive Measures for our Students
Supportive Measures

What
- defined term and intentional deviation from "interim measures" individualized services provided to a complainant or respondent that are non-punitive, non-disciplinary, and do not unreasonably burden the other party yet are designed to restore or preserve a person’s equal access to education
  - Non-disciplinary
  - non-punitive
  - individualized services
  - interactive process

Offered
- to complainant and respondent (can be refused)
  - as appropriate
  - as reasonably available
  - without fee or charge

When
- promptly
- before filing of formal complaint OR
- where no formal complaint has been filed

Examples include:
- Counseling referral
- Separation plan
- Schedule changes

Supportive Measure form must be uploaded by IA
Party Notification
“Written Formal Notice”
What is formal written notice?

- Written Notice notifies all parties of the allegations, DCPS jurisdiction, applicable code, their rights and procedural expectations.
- Written notice must be sent to the complainant and respondent
- With support from the Title IX Coordinator the IA will send written notice
“The Investigation”
What is an investigation?

An investigation is a legal and systematic process of identifying, gathering, preserving and evaluating evidence for the purpose of enforcing statutes, rules and regulations in pursuit of justice. Investigators fact find and provide an unbiased account of the facts.

The primary goals of an investigation are to:

• Verify that a violation has been committed

• To collect, preserve and process sufficient evidence in accordance to law and Agency directives to support a finding.
Investigative Steps

1. Case Initiation
2. Assessment of Allegation
3. Development of Investigative Plan
4. Conducting the Investigation Safely and Accurately (interviews, evidence collection)
5. Investigative Report
6. Letter of Resolution/Recommendations
7. Case Closure
Information Sharing
“Party Inquiry and Inspection”
**Information Sharing**

The new Title IX regulations requires school districts to give each party the opportunity to review the evidences and letter of resolution prior to finalization. What does this mean for you?

1. Interview notes should contain questions and responses (record interviews/invite an associate investigator to co-facilitate the interview to capture accurate information.) Complete the new interview template and obtain signature from interviewee to confirm accuracy of content.
2. Fill out the *Evidence Inspection* and *Party Inquiry* forms submit to both parties (Each form has a 10-day review period attached). In the event no response is received by day 10, document the record and proceed with closure.
3. The DRAFT LOR must also be shared with parties prior to issuance, this must be done after OGC approval.
Decision Maker Review
“Issuance of the Letter of Resolution”
The Decision Maker Review and Approval

The new Title IX regulations require the decision maker to review draft letters of resolution and the investigative file. What does this mean for you?

1. Prior to submission of the draft letter of resolution please ensure the case file is update, all documents and communication exchanges between parties are properly labeled and uploaded in the applicable sections of the database.

2. The decision maker will review all information, once approved the decision maker will email the document to the associate investigator for electronic signature, file completion and case closure.
Appellate Procedures
The Appeal Process

The current appeal process still mandates two levels of appeal facilitated by the Office of Integrity.

- Level I appeals are heard by the Instructional Superintendent
- Level II appeals are heard by the Chancellor's panel

The Intake Assistant will provide all documents for review to the requisite appellate party.