

# K-12 INTAKE:

## Process and Policies to Stop Over-Identification of Conduct as Title IX

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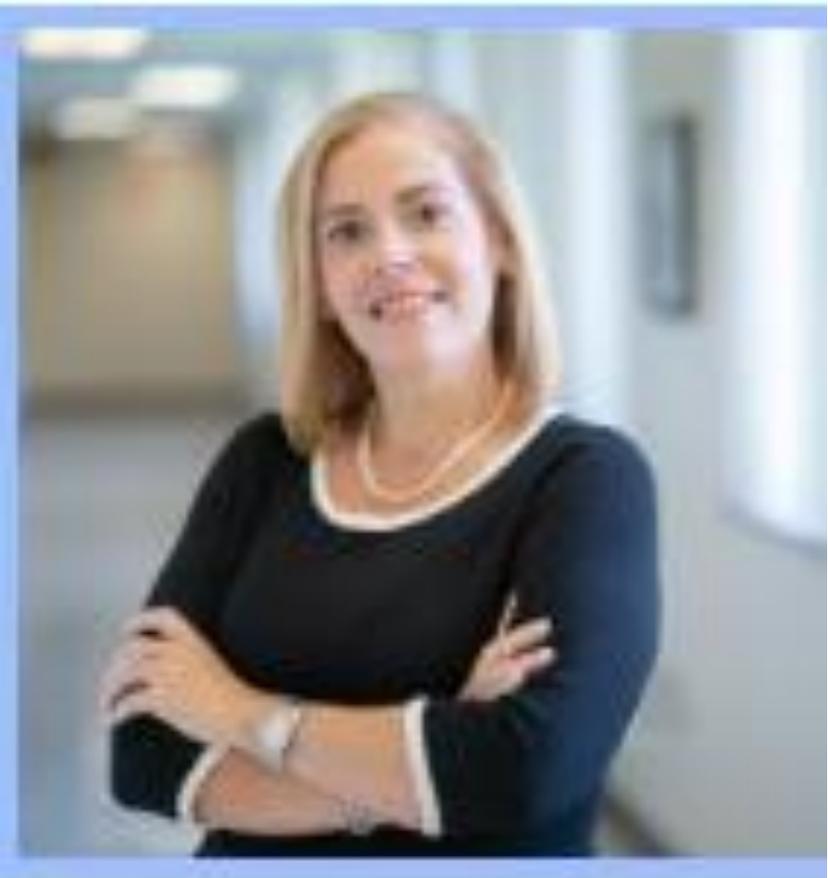
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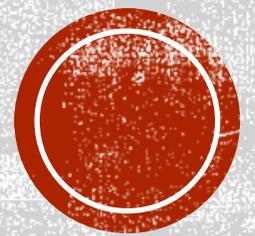
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# WHAT IS INTAKE?

FUNDAMENTALS

# INTAKE — SUMMARY

When the District receives notice of sexual misconduct, it will **evaluate the complaint** to determine if it is covered by Title IX



INTAKE —  
SUMMARY

The purpose of an intake meeting is to **learn more about what is alleged** so that the allegations can be evaluated for Title IX applicability

# ***WHAT IS INTAKE?***

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An opportunity to determine the allegations in a report or formal complaint

Necessary to evaluate the complaint to determine if Title IX applies



# ***ALLEGATION***

“A claim or assertion that someone has done something illegal or wrong, typically one made without proof.”

Oxford Languages

# ***EVALUATION***

“To determine the significance, worth, or condition of usually by careful appraisal and study.”

Merriam-Webster



Investigation

Interrogation

Credibility  
Determinations

Evidence Gathering\*\*

# ***EXCEPTION: EVIDENCE***

- If you become aware of the existence of evidence that could be at risk of loss, can take steps to preserve evidence
- Contact law enforcement immediately where knowledge of illegal or illicit evidence



# WHAT TRIGGERS INTAKE?

REPORT VS. COMPLAINT

## *WHAT TRIGGERS INTAKE?*

- Either a report or a formal complaint by a complainant can trigger intake
- Intake is necessary where it is not clear that the complaint falls under Title IX
- Goal is to collect more information about the allegations to allow evaluation of the complaint

# ***TITLE IX REPORTS***

- Can be made to the Title IX Coordinator or any “Official With Authority”
- Can be made by any person, whether or not the person reporting is the person alleged to be the victim of sexual harassment
- Can be made at any time, including during on-business hours, by using the telephone number or e-mail address, or by mail to the office address, listed for the Title IX Coordinator

# ***FORMAL COMPLAINT***

- A document
- Filed by a complainant or signed by the Title IX Coordinator
- Alleging sexual harassment against a respondent
- Requesting that the school investigate the allegation of sexual harassment

July 2021 Q&A

# WHAT ARE WE EVALUATING?

Is the alleged conduct:

1. **“Title IX Sexual Harassment”**
2. **“in an educational program or activity”**
3. **“in the United States”**

**If yes to **all**: Title IX SH Process**

**If no to **any**: Another process**



# ***SEXUAL HARASSMENT?***

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# **“TITLE IX SEXUAL HARASSMENT”**

**The Title IX  
“Big 5”**      **OR**      **Title IX “Hostile  
Environment”**



# **“TITLE IX SEXUAL HARASSMENT”**

**The Title IX  
“Big 5”**

**OR**

**Title IX “Hostile  
Environment”**



# TITLE IX “BIG 5”

- Employee Quid Pro Quo
- Sexual Assault\*\*
- Domestic Violence\*\*
- Dating Violence\*\*
- Stalking\*\*



\*\*as defined in the federal higher education laws, the Clery Act and the Violence Against Women Act





An employee of the school conditioning an aid, service, or benefit of the school on an individual's participation in unwelcome sexual conduct

### Examples:

Requesting sexual favors for a benefit or service

Threatening to remove a benefit or service unless a person engages in sexual favors

Expecting sexual favors for a benefit or service

**#2 OF THE “BIG  
5”  
SEXUAL  
ASSAULT (CLERY  
DEFINITION)**

**Forcible or nonforcible sex**

**Forcible: without consent,  
including where one cannot  
give consent**

- **Rape, sodomy, assault with an  
object, fondling**

**Non-forcible: Incest,  
Statutory Rape**

# “CONSENT”

Your policy must define

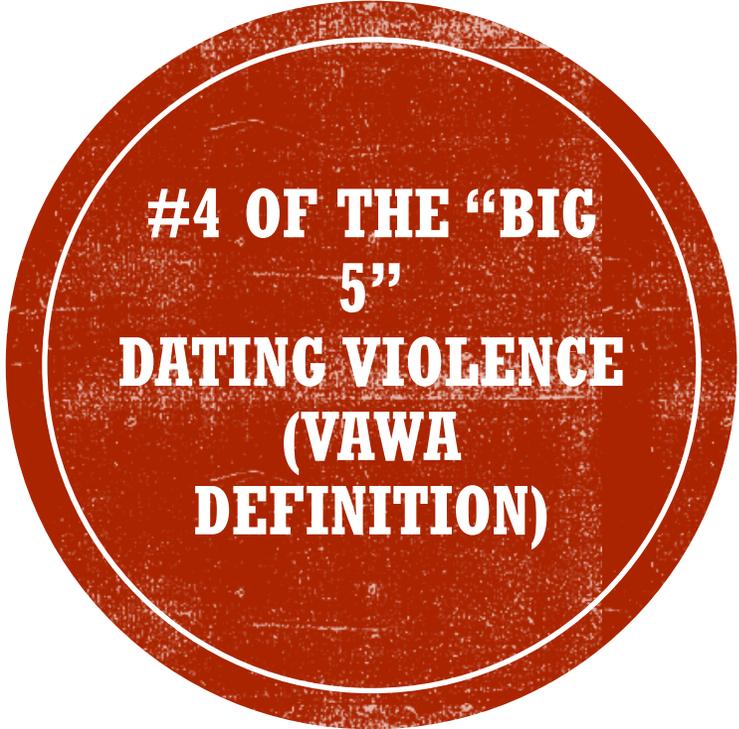
**Example: Consent means the existence of clearly understandable words or actions that manifest a knowing, active, voluntary, and present and ongoing agreement to engage in specific sexual or intimate conduct by one not suffering from incapacitation (as defined below).**





**Felony or misdemeanor crimes of violence**

Committed by a current or former romantic partner spouse, former spouse, intimate partner, person who shares a child, person similarly situated to a spouse, adults against a person protected under domestic or family violence laws of the jurisdiction



**#4 OF THE “BIG  
5”  
DATING VIOLENCE  
(VAWA  
DEFINITION)**

Committed by a person who has been in a romantic or intimate social relationship with the victim

Consider the complainant’s description of the length of the relationship, the type of relationship, and the frequency of the interaction between the persons involved in determining the nature of the relationship

Can include sexual, physical, emotional, or psychological violence

**#5 OF THE “BIG  
5”  
STALKING  
(VAWA  
DEFINITION)**

A course of conduct based on sex (2+ times)

Directed at a specific person

That would cause a reasonable person to fear for the person’s safety or the safety of others or to suffer substantial emotional distress

Conduct can be direct or indirect, and does not require professional medical treatment

# **“TITLE IX SEXUAL HARASSMENT”**

**The Title IX  
“Big 5”**

**OR**

**Title IX “Hostile  
Environment”**



**Title IX Hostile Environment**

**=**

**Unwelcome Conduct**

**Effectively Denies Equal Access**

**+**

**+**

**Based on Sex**

**Objectively Offensive**

**+**

**+**

**Severe**

**+**

**Pervasive**



# DICTIONARY DEFINITIONS: SEVERE

- Very bad, serious, or unpleasant; causing a lot of physical pain or suffering; very harsh (Merriam-Webster)
- Strict, austere or intense with disastrous consequences. (Black's Law Dictionary)

# CASE DEFINITIONS: SEVERE

- “Severe” means something more than just juvenile behavior among students, even behavior that is antagonistic, non-consensual, and crass.
- Simple acts of teasing and name-calling are not enough, even where these comments target differences in gender.

Kollaritsch v. Michigan State Univ. Bd. of Trustees, 944 F.3d 613, 620 (6th Cir. 2019), cert. denied, 141 S. Ct. 554, 208 L. Ed. 2d 175 (2020)

# CASE DEFINITIONS: SEVERE

- To establish “severe” harassment, the conduct must be extreme and not merely rude or unpleasant.

Jenkins v. Univ. of Minnesota, 131 F. Supp. 3d 860, 881 (D. Minn. 2015), aff'd, 838 F.3d 938 (8th Cir. 2016)

# DICTIONARY DEFINITIONS: PERVASIVE

Spread over a large area, either metaphorically, or in a literal manner. For instance, rumors can be quite pervasive amongst people. (Black's Law Dictionary)

# CASE DEFINITIONS: PERVASIVE

- “Pervasive” means “systemic” or “widespread.” For sexual harassment under Title IX, it also means multiple incidents of harassment; one incident of harassment is not usually enough.
- Most single incidents could be sufficiently severe that it would result in the articulated injury but a single incident would normally fall short of Title IX’s requirement of “systemic” harassment.

**Kollaritsch v. Michigan State Univ. Bd. of Trustees, 944 F.3d 613, 620 (6th Cir. 2019), cert. denied, 141 S. Ct. 554, 208 L. Ed. 2d 175 (2020)**

# DICTIONARY DEFINITIONS: OBJECTIVELY OFFENSIVE

- “Objective”: Existing independently of perception or an individual's conceptions (Reverso)
- “Offensive”: Unpleasant or disgusting, as to the sense (Reverso)

# EFFECTIVE DENIAL

- Don't get caught up in whether there is an “effective denial” for intake purposes
- If severe, pervasive, and objectively offensive, it's likely ok to proceed as if the contact meets the “hostile environment”

# HOSTILE ENVIRONMENT: CONSIDER

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the degree to which  
the conduct affected  
the alleged victim's  
education

the type, frequency,  
and duration of the  
conduct

the relationship  
between the alleged  
victim and  
perpetrator

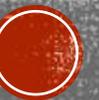
the number of  
individuals involved

the age and sex of  
the participants

size of school,  
location of incidents,  
and context

other incidents of  
sex-based  
harassment





# EDUCATION PROGRAM OR ACTIVITY

The sexual harassment must occur within the school's educational program or activity

- This can be on or off campus
- Includes the District's "operations"
- It "includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurs."

# EDUCATION PROGRAM OR ACTIVITY

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Includes situations where the off-campus incident occurs as part of the school's "operations" pursuant to 20 U.S.C. § 1687 and 34 CFR 106.2(h)

"Operations" can include computer and internet networks, digital platforms, and computer hardware or software owned or operated by or used in the operations of the school

# EDUCATION PROGRAM OR ACTIVITY

Title IX applies to electronic, digital, or online harassment regardless of the method by which the conduct is perpetrated; if the sexual harassment occurred in an education program or activity or the educational institution has substantial control over the alleged harasser and the context of the harassment, it is covered

Factors such as whether the school funded, promoted, or sponsored the event or circumstance where the alleged harassment occurred may be helpful or useful for schools to consider to determine the scope of a school's program or activity, but no single factor is determinative

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## **EDUCATION PROGRAM OR ACTIVITY**



Conduct that begins outside of an education program or activity may continue into the education program or activity (“downstream effects”)



# IN THE UNITED STATES



The Title IX rules do not apply extraterritorially (such as study abroad programs)

As with any other conduct that falls outside Title IX, other code of conduct provisions can be used to address such conduct

# SO THAT IS WHAT WE ARE EVALUATING!

Is the alleged conduct:

1. **“Title IX Sexual Harassment”**
2. **“in an educational program or activity”**
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# HOW DO I CONDUCT INTAKE?

FUNDAMENTALS



- Who
- What
- When
- Where
- Why
- How

# **INTAKE QUESTIONS**

- What happened that you believed was sexual harassment?
- What was done? What was said?
- If physical conduct occurred, ask for the details (in what ways were you touched, where were you touched?)

# **INTAKE QUESTIONS**

- Where did it occur? (Get details for every situation)
- When did it occur? At what time of the day?
- How often did it occur? Is it ongoing?

# **INTAKE QUESTIONS**

- Are you alleging any other violations of policy/sexual harassment or otherwise?
- Go over what happened—ask “Anything else?”

**WHAT IF THE  
ALLEGATION IS  
NOT TITLE IX?**



# Remember...

Not every isolated comment, inappropriate touch, or other sex-based misbehavior by a student or employee will be covered by Title IX

# If it's *NOT* Title IX...

That does not mean you ignore the conduct  
You can *and should* pursue investigation or discipline

Instead of using complex Title IX rules, **you can use your district's Code of Conduct or other processes**

**WHAT IF THE  
ALLEGATION IS  
TITLE IX?**



# Overview: T9 SH Grievance Process

For any Title IX Sexual Harassment in a program or activity and in the United States of which the school has actual knowledge, the Title IX Coordinator or their designee must

- **Step 1:** Supportive Measures/Formal Complaint Meeting
- **Step 2:** Consider Emergency Removal/Administrative Leave

Only if a Title IX Formal Complaint is filed or signed by the Title IX Coordinator or designee

- **Step 3:** Notice of Allegations
- **Step 4:** Consider Dismissal
- **Step 5:** Consider Informal Resolution
- **Step 6:** Investigation
- **Step 7:** Decision-Making Process
- **Step 8:** Appeal

**NOTE: ALL STEPS include strict detailed requirements from the Title IX rules**

# SUPPORTIVE MEASURES

If the conduct falls under Title IX, there must be a “supportive measures/formal complaint process” communication **in every case**

# **SUPPORTIVE MEASURES**

**If the conduct does not fall under Title IX, supportive measures are still a good practice, but are not required.**



It is not recommended that the Complainant be directed to file a formal complaint if the conduct alleged, if proved, would not be covered by Title IX



Why not? Because the formal complaint **will just have to be dismissed**, but its filing **triggers responsibilities** under Title IX, including the requirement to provide notice **to both parties** of the allegations and, if dismissal occurs, of the dismissal and reasons therefore



In most cases you will not have enough information in the first instance to decide whether Title IX applies—so it is recommended that you hold **an intake meeting**

# INTAKE & SUPPORTIVE MEASURES

Because providing supportive measures is best practice **even for non-Title IX complaints**, the “intake meeting” can also be a “supportive measures meeting”

# INTAKE – SUMMARY

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Don't hide the ball –  
always a fan of giving a  
copy of sexual  
harassment and  
procedures to anyone  
who contacts the office

But don't lead a party  
down the "Title IX"  
path if you don't think  
their allegation is of  
Title IX conduct

# WHAT IF...

## **The Complainant does not want to file a formal complaint?**

- General rule: They decide
- Limited exception: Title IX Coordinator signs a formal complaint
- Will be required to share Complainant's name and details
- Complainant still has all rights in process

# **SIGNING A COMPLAINT**

- Pattern of behavior by same alleged perpetrator
- Alleged perpetrator used position of authority to engage in sexual harassment
- Predatory behavior toward minors, disabled individuals
- Threats of violence where risk is ongoing
- Use of extreme violence or weapons

# WHAT IF...

**The Complainant does not want to file a formal complaint and we don't sign a complaint?**

- We can't discipline the perpetrator
- If we must discipline the perpetrator we should file a formal complaint
- Just because you can't discipline doesn't mean you can't do anything



# SCENARIOS

PRACTICE

65



## **SOUTHERN EXPOSURE**

**A student runs into your office, weeping. She says that her classmate exposed himself to her on the bus to school this morning.**

# **BAD NEWS**

**A photographer on the school newspaper reports that the editor in chief of the paper, also a student, offered to publish the photographer's photo on the front page of the paper if the photographer would agree to date the editor in chief.**



# MISPRONOUNING MISCHIEF

**A student who identifies as non-binary tells their teacher that a group of classmates refuse to call the student by their preferred pronoun.**





# TOO CLOSE AT THE CARNIVAL

**A community carnival sponsored by your town is well-attended by school leaders including numerous teachers, your principal, and your superintendent, who speaks at the event.**

**A student shares that a teacher touched the student's crotch over the clothing at the carnival.**



# TOO CLOSE AT THE CARNIVAL

**A community carnival sponsored by your town is well-attended by school leaders including numerous teachers, your principal, and your superintendent, who speaks at the event.**

**A student shares that another student touched the student's crotch over the clothing at the carnival.**

# TIKTOK TREND

**A recent Tik Tok trend involves sharing photos of one's ex over sad songs. One student uses intimate, personal photos of his ex, and the video circulates through the student body. The parent of the subject of the photos calls you and demands you immediately expel the alleged perpetrator.**



## **TEACHER TREATMENT**

**A group of boys from 6<sup>th</sup> grade math have shared that their math teacher refuses to provide homework assistance to boys in the class. She only reviews homework of the girls in the class. She calls the boys “little devils” and refuses to answer their questions. This has been happening since the start of the semester, and it is October.**



**QUESTIONS?**

