



AGENDA

I. Welcome Becky Tymchuk	5:30 p.m. - 5:35 p.m.	
II. Review of Sexual Harassment Complaint Reporting and Response Process Megan Farrell	5:35 p.m. - 6:25 p.m.	2
III. Adjourn	6:25 p.m.	

Beaverton School District Title IX-Sexual Misconduct Review

I. Introduction

A. Scope

Beaverton School District (BSD) retained Consultant to conduct a review of the policies, procedures, and practices of BSD related to Sexual Misconduct, to include sex/gender discrimination and harassment, prohibited under Title IX of the Education Amendments of 1972 (“Title IX”)¹. This report summarizes the findings of this review and provides recommendations for BSD to ensure ongoing compliance.

B. Documents Reviewed

As part of the process, the following policies were reviewed:

- Sexual Harassment
- Sexual Harassment Procedures
- Nondiscrimination
- Discrimination Complaint/Grievance Procedure
- Hazing, Harassment, Intimidation, Menacing, Bullying, Cyberbullying, Teen Dating Violence and Domestic Violence – Student
- Hazing/Harassment/Intimidation/Bullying/Menacing/Cyberbullying – Staff
- Public Complaints

Aside from the policies, the following BSD documents were also reviewed:

- Code of Professional Conduct and Annual Notices for Education Practitioners (Aug 2018)
- Parent and Family Handbook
- Beaverton School District School Board Handbook
- Student Staff Boundaries – Salem/Keizer Public Schools
- Investigation file for recent investigation at Westview High School
- Title IX Athletics Self-Evaluation Status Report

In addition, Sue Robertson, Chief Human Resource Officer (HR) provided forms and templates developed to assist in Title IX investigations, and these were reviewed:

- Step 1 Protocols-Schools Department
- Warning Letter
- Chronology of Investigation
- Investigation Witness Statement
- Letter of Reprimand

¹ 34 C.F.R. §106.8.

- Memo of Concern
- Process When Disciplinary Investigation Results in Performance Plan
- Staff Interviews

Finally, the Teaching and Learning Department through TOSA, Leslie Rodgers, provided the following information:

- Student Incident Response Committee (“SIRC”) Process System Forms
- SIRC Process Training
- Student Safety Data, 2016-17

C. Interviews Conducted

Interviews of key individuals at BSD were conducted in face-to-face meetings, telephone interviews, and follow-up conversations. The interviews included Board members, the Title IX Officer, district administrators, human resources staff, school principals and assistant principals, and other relevant individuals. Below is a list of interviewees who met with Consultant in person or by phone:

District Offices

Sue Roberston, Chief Human Resource Officer

David Williams, Title IX Officer

High School Administrators

Matt Pedersen, Westview Principal

David Nieslanik, Southridge Principal

Todd Corsetti, Mountainside Principal

Melissa Baran, Beaverton Assistant Principal

Chris Bick, Sunset Assistant Principal

Greg Thierrien, Aloha Assistant Principal

Middle School Administrators

Veronica Galvan, Stoller Principal

Zan Hess, Conestoga Principal

Shirley Brock, Five Oaks Principal

Shannon Anderson, Cedar Park Principal

Thao Do Gwilliam, Stoller Assistant Principal

Amy Henning, Mountain View Assistant Principal

Tina Myers, Whitford Assistant Principal

Human Resource Administrators

Ronda Haun

Susan Rodriguez

Erica Marson

Board Members

LeeAnn Larson

Eric Simpson

Becky Tymchuk
 Donna Tyner
 Anne Bryan

The interviews indicated a broad range of understanding related to Title IX-Sexual Misconduct enforcement at the schools. Many of those interviewed referenced Title IX related to enforcement of equity in sports only. Most of those interviewed who understood the sexual misconduct component of Title IX raised concerns about Title IX matters involving staff and students and did not perceive the risks related to addressing Title IX sexual misconduct involving students (student-on-student sexual discrimination/harassment).

II. Title IX Law and Regulatory Guidance Related to Sexual Misconduct

A. Title IX Overview

Title IX is a federal civil rights law that provides 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.”² Title IX prohibits discrimination and harassment on the basis of sex and/or gender in all of an institution’s education programs and activities and in employment. Title IX applies to sex discrimination, sexual and gender-based harassment, sexual misconduct, and sexual violence.

B. Office for Civil Rights Guidance

The Department of Education has tasked the Office for Civil Rights with responsibility for enforcing Title IX.³ The Office for Civil Rights (OCR) issues guidance that provides relevant information about what educational entities should do, what they are prohibited from doing, and what are relevant best practices. Under the recent administrative changes at the both the Department of Education and OCR, some prior guidance has been rescinded, older guidance has been resurrected, and new guidance has been issued. Although some of this guidance has been in flux due to the turnover of leadership at these federal agencies, much of the direction remains unchanged. Currently, OCR is planning to issue new guidelines on Title IX enforcement. As of this report, such guidance is not available. The most relevant guidance has been summarized below and includes the 2001, 2015, and 2017 guidance documents, additional information on the guidance (when appropriate) and a summary of the compliance of BDS related to these provisions.⁴

III. OCR Guidance Compared with BSD Policies, Process, and Practices

² 34 C.F.R. §106.8.

³ 20 U.S.C. §§1681-1688.

⁴ This review will evaluate BSD’s policies, process, and practices using current OCR guidance, summarized below. This report notes that OCR has promised additional guidance in the form of regulations, which are expected in the near future but are not available at this time.

A. 2001 Guidance

The most detailed Title IX guidance today is in the 2001 Revised Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (“2001 Guidance”).⁵ The requirements outlined under this guidance have summarized below.

1. Designation of a Title IX Coordinator

Additional Guidance/Explanation: The requirement for educational institutions to designate a Title IX Coordinator was discussed in this guidance. Additional information about this role was provided in 2015 and is detailed further below.

BSD: BSD is in technical compliance with this requirement, although confusion does exist surrounding the current coordinator and the responsibilities for that role. BSD website lists a Title IX Officer.⁶ While conducting this review, most individuals were unaware of whom at the District has Title IX Coordinator responsibilities. Confusion also seemed to exist about the scope of Title IX Coordinator with many staff, administrators, and Board members, and in many interviews, individuals discussed only the application of Title IX to athletics.

A larger discussion of the Title IX Coordinator role and the 2015 guidance is covered in Section III.B (below).

2. Adopt a grievance procedure that provides for a. prompt and equitable resolution of complaints, b. ending harassment and prevent it recurrence, and c. remedying the effects of harassment.

The analysis will address each of these provisions separately.

a. Prompt and equitable resolution of complaints

Additional Guidance/Explanation: This guidance addressed limitations OCR found around schools responding in a timely way to complaints as well the goal of providing both parties with equitable access to the process.

BSD: The following policies cover allegations of sex and gender discrimination/harassment and could potentially be used to bring an allegation of Title IX:

- Sexual Harassment
- Nondiscrimination
- Hazing, Harassment, Intimidation, Menacing, Bullying, Cyberbullying, Teen Dating Violence and Domestic Violence – Student

⁵ *Revised Sexual Harassment Guidance*, 66 Fed. Reg. 5512, Jan 19, 2001.

⁶ As a minor point, all of the guidance discusses a Title IX “Coordinator” not “Officer.” Because the responsibilities of the Officer seem consistent with Coordinator, it is not necessary to make a change to this title; however, it might be in the best interest of BSD to adopt the language consistent with the guidance.

- Hazing/Harassment/Intimidation/Bullying/Menacing/Cyberbullying – Staff

Of note, there is significant overlap in the topics covered by each of these policies which may lead to confusion about where a complaining party should go to receive “prompt and equitable resolution.”

Further, there are two processes designated in the policies – the Sexual Harassment Complaint Procedure and Nondiscrimination Procedure. Under the Sexual Harassment Complaint procedure, there are potentially four (4) steps until a party reaches final resolution of the matter. The Nondiscrimination Procedure also has four (4) steps, including a required informal process. It is difficult to see how a four-step process could meet the definition of “prompt.”

In relation to the “equitable” portion of this guidance, the policy process identifies only a “next step” and/or appeal in relation to Complainant. Respondent’s right to appeal is not contained herein. While it is possible that Respondent has another avenue outside of the policy to pursue an appeal (an appeal of discipline, for example), it would be helpful to include a reference to this possibility and process within this policy.

b. Ending harassment and prevent it recurrence

Additional Information/Guidance: One of the key ways to end the harassment is to immediately offer Complainant “interim measures” that will effectively end the harassment while the investigation process is pending. One key way to prevent the recurrence of harassment would be include proper anti-retaliation provisions in the policies. Further, appropriate discipline of Respondent could also serve as an adequate deterrent to prevent the recurrence of discrimination/harassment.

BSD: The policies mentioned in sections a. above dealing with Title IX-Sexual Misconduct do not include information about how to request interim measures and/or the obligation of the school to provide these measures. Speaking with the site administrators, all reported that they take action immediately, often in favor of the complaining party to ensure that the potential for harassment is eliminated during their investigations. Notably, all of the mentioned policies include anti-retaliation provisions. While punishment is often imposed in these matters, it is not clear exactly how the school determines which punishment will be imposed for which violation.

c. Remediating the effects of harassment

Additional Guidance/Explanation: If a complainant has suffered negative impact to their educational pursuits due to a Title IX-Sexual Misconduct violation, the school must take steps to remedy this situation.

BSD: Interviews with administrators indicate that steps are quickly taken to address student-on-student harassment, with most of those matters settling within a few days. HR indicated that steps are often taken to deal with matters that involve harassment.

3. Provide periodic training programs for personnel on sexual harassment

Additional Guidance/Explanation: Training programs for all employees are helpful to ensure a common understanding what behavior is and is not acceptable.

BSD: Most of training of school staff (even external to BDS) has been focused on manager responsibility to prevent employee-on-employee harassment. Employee-student harassment has more often been addressed in Code of Conduct documents. From the interviews conducted, there does not appear to be a regular training schedule related to sexual harassment, and it is possible that such training does not address the risks presented by student-employee sexual harassment. In interviews, there was a sentiment that all behavior that is prohibited should be contained in the Code of Conduct for the sake of clarity. However, it seems unlikely that any document could capture all possibilities of misconduct. Training staff on the letter of the law as well as the undefined areas may better equip them to deal with the known and unknown.

4. Provide support services to Complainants

Additional Guidance/Explanation: OCR's inquiries often focus on the services provided to Complainant after a report. Providing support in the way of counseling, designating contact people, providing ongoing no contact orders, reviewing academic performance, and/or providing regular check-ins may be necessary in order to allow a complainant to continue his/her education.

BSD: In relation to student-on-student complaints, school administrators reported that evaluating the resources needed for students is done almost immediately. The full team of support personnel (administration, guidance, mental health professionals, special education) are called together upon a report of sexual misconduct to respond to the student's potential needs. Of note, the middle school administrators reported same-day or within-a-day team responses. In part, this response is due to the Sexual Incident Response Committee (SIRC) response process, developed in-house at BSD and overseen in real-time by Leslie Rodger, TOSA.

In relation to student complaints against staff, there appeared to be less concerted effort to address the complainant's needs. The disconnect between Human Resources (HR) centralized at the District Offices while a complainant is located at a school site may explain some of this difficulty. While it is evident that HR takes steps to protect complainants, it has been better equipped to address employee-employee harassment. Connecting the District Office with the school site to ensure complainant's safety and security would be an integral that the Title IX Coordinator could serve for BSD.

B. 2010 Notice of Nondiscrimination Guidance

Provide a Notice of Nondiscrimination

Additional Information/Explanation: The Notice of Nondiscrimination requirement that schools adopt this notice and make it available to their community.

BSD: BSD has adopted a Notice of Nondiscrimination that is compliant with prior guidance. Additional provisions for this Notice were provided in the 2015 guidance and are detailed below.

C. 2015 Guidance on Title IX Coordinators

1. Title IX Coordinator Role

OCR's guidance contained in the Dear Colleague Letter on Title IX Coordinators issued in 2015 provided an outline of the key elements of a Title IX Coordinator position and specific responsibilities for this role. The following responsibilities are to be served by the Title IX Coordinator:

1. Exercise independence and authority to fulfill the role
2. Avoid conflicts, and report to senior leadership
3. Have overall responsibility for coordinating the recipient's compliance with Title IX, including the recipient's grievance procedures, and receive all reports and complaints of Title IX issues
4. Coordinate the recipient's responses to all complaints involving possible sex discrimination. This responsibility includes monitoring outcomes, identifying and addressing any patterns, and assessing effects on the campus climate
5. Have knowledge of the recipient's policies and procedures on sex discrimination and should be involved in the drafting and revision of such policies and procedures to help ensure that they comply with the requirements of Title IX.
6. Coordinate the collection and analysis of information from an annual climate survey
7. Access to information regarding enrollment in particular subject areas, participation in athletics, administration of school discipline, and incidents of sex-based harassment.

BSD: BSD's website currently lists one Title IX Officer. Many people interviewed who hold high-level positions in BSD could not name who holds this position. The Title IX Coordinator role may not have been properly defined as having "overall responsibility" for Title IX, including Athletics and sex and gender discrimination/harassment. At the current time, the Title IX Coordinator role does not appear to be visible within BSD. The guidance makes particular reference to the Title IX Coordinator receiving all reports and complaints of Title IX violations, including sex and gender discrimination/harassment. While the Title IX structure could designate deputies (i.e., Deputy Title IX Coordinator for Athletics; or, Deputy Title IX Coordinator for High Schools), it is clear that the guidance requires oversight of all of the Title IX enforcement through one central Coordinator. At this time, BSD appears to be without a Title IX Coordinator under the definition set forth above. While there is definitely coordination across different areas when a claim arises, there does not appear to be a concerted attempt to bring Title IX compliance under one umbrella. Without this coordination, key elements of the Title IX Coordinators duties -- monitoring outcomes, identifying and addressing any patterns, and assessing effects on the campus climate -- will not occur. Further, suggested initiatives, such as annual climate surveys, will likely not have an internal champion who will see such a project through to fruition.

2. Notice of Nondiscrimination

Schools must adopt and publish a Notice of Nondiscrimination. There are a number of requirements related to this Notice under Title IX⁷ and schools must do the following:

⁷ See, Title IX Resource Guide and 34 C.F.R. §§ 106.8(a), 106.9.

- Publish a statement in accordance with Title IX that it does not discriminate on the basis of sex in the education programs or activities
- State that questions regarding Title IX may be referred to the recipient’s Title IX coordinator, with appropriate contact information or to OCR, providing the contact information for the local OCR office
- Ensure that this statement is widely distributed to students and parents or guardians of elementary and secondary school students; employees; applicants for admission or employment; sources; and, all unions or professional organizations holding collective bargaining or professional agreements with the recipient;
- Be prominently posted on the recipient’s website, at various locations on campus, and in electronic and printed publications for general distribution; and
- Be included in any bulletins, announcements, publications, catalogs, application forms, or recruitment materials.

BSD: A nondiscrimination notice has been adopted and is available on the BSD website.⁸ It identifies the following individuals as contacts:

Please contact Community Involvement Office at 503-356-4360.

Title II Officer- Ginny Hansmann, 503-356-4328
 Title IX Officer- David Williams, 503-356-4330
 District 504 Manager - Robin Day, 503-356-3900

Technically speaking, the “Title IX Officer” may or may not be the Title IX Coordinator, depending on this job is defined at BSD, but the OCR guidance shows a strong preference for the Coordinator job title. Practically speaking, from my interviews the officer role does not seem to have day-to-day responsibilities for intake of complaints and oversight of Title IX operations

Further, this statement does not include contact for the local OCR office, which is required. Finally, in interviews with staff, few knew what this statement was, and more importantly, where it can be found on their school sites. As far as responsibility for including this statement in publications, no one that I interviewed had insight as to whom held responsibility to ensure this statement was included in the broad scope of publications referenced in the guidance.

D. 2017 Guidance

In 2017, OCR issued its Q&A on Campus Sexual Misconduct (“2017 Guidance”) after rescinding previous guidance issued in 2011 and 2014.⁹ The key takeaways from that guidance are identified below and then analyzed under the current policies and procedures at BSD.

⁸ See, <https://www.beaverton.k12.or.us/about-us/Pages/Nondiscrimination-Policy.aspx>.

⁹ OCR Q&A on Campus Sexual Misconduct, <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>.

1. The process must be equitable for complainant and respondent.

BSD: The process set forth in the policies addresses only complainant’s rights to challenge or appeal the decisions. This distinction could be a violation of the requirement that the process be equitable.

2. Interim measures should be offered and fairly given to either party.

BSD: Based upon conversations with site leaders, schools are putting interim measures in place. The SIRC guidelines, developed internally, provide questions and forms that are helpful in suggesting interim measure at the moment that a matter has been reported related to student-on-student sex and gender discrimination/harassment. However, the policies are silent about the requirement to offer interim measures. Further, it is also important to note that when a complaint involves a student bringing a complaint against a staff member, HR and the school site will need to work closely to ensure that interim measures are in place, are altered as necessary, and are enforced at the site.

3. Timeframe to complete an investigation has a standard of reasonableness.

BSD: The BSD policies do not reference a timeframe for completion of investigations. However, even with the multi-step appeal process (discussed later), it appears that BDS is moving quickly through each stage (5-10 days per stage, as required under the procedures) such that a reasonableness standard is surely being met as long as those timeframes are met.

4. Informal resolutions are permitted.

BSD: Most of the complaints related Title IX-Sexual Misconduct are resolved informally, with the site taking quick action to address student-on-student matters as they arise and reaching a conclusion swiftly. Based on the data reviewed, the rarer student complaint against a teacher has also been reviewed quickly, although questions were presented about whether parties had selected the formal vs. the informal process.

5. Investigators must be trained, emphasis on bias and avoiding stereotypes.

BSD: At the site and district offices, it does not appear that those tasked with conducting investigations receive formal training. The formal training that some reported is related to continuing education and/or personal initiative. There also appears to be a “coaching” investigation education practice, where newer Assistant Principals rely on more seasoned administrators at the site to learn how to conduct a viable investigation.

6. Standard of proof must be adopted consistent with standard used in other misconduct.

Additional Information/Guidance: The rescinded 2011 DCL required that schools use a “preponderance of the evidence” standard for Title IX matters, which lowered the standard from “clear and convincing” for many educational institutions. The recent guidance allows schools to go back to this higher standard, but instructs schools that they should not impose a standard for Title IX matters that is different than the one used for student misconduct.

BSD: The BSD policies are not clear about the standard that is used in determining whether a policy violation has been found. There is a reference to “reasonable cause” in relation to reporting of teachers, but it is not clear that this standard applies to the evidence in the underlying matter. Further, this standard is not defined in the policies.¹⁰

7. **Appeals not required; may be offered to only the respondent, not the complainant; if offered to both, equally offered.**

BSD: Both procedures examined in this review (Sexual Harassment Procedure; Nondiscrimination Procedure) offered appeals only to Complainants. On its face, this appears to be a violation of this guidance. However, it is possible that Respondents have another avenue through which to bring an appeal (an appeal of discipline, for example) that is not referenced in this policy.

IV. RECOMMENDATIONS

A. Focus of Concern

According to interviews conducted with key stakeholders, this review was prompted by an investigation related to an allegation of employee-student misconduct and in recognition of the current climate around Title IX-Sexual Misconduct claims. While it is indisputable that Title IX-Sexual Misconduct incidents involving employees and students can result in liability on the part of the school district, it is also true that such incidents are relatively infrequent. The data nationally as well as the data at BSD indicate that the more frequent Title IX-Sexual Misconduct matters involve students-on-student misconduct. For the most part, it appears that excellent work is being done in this area at BSD led by Leslie Rogers, who has assumed some of Title IX oversight of student matters (monitoring claims at school sites, serving as a resource to school administrators, and developing formalized processes). School sites reported using these resources frequently and fully adopting the SIRC protocol.

Similarly, HR is developing templates and forms to be used at the school site and stored in a shared Google Doc so that HR can oversee and monitor investigations taking place at the school sites.

Based upon my review, I suggest that BSD take a broader look at Title IX-Sexual Misconduct and improve its program to address all of the relevant areas. The student-on-student practices could serve as a roadmap for dealing with other Title IX matters at the District. The forms and templates developed by HR could also be a valuable resource for investigations of employees and students.

While many of these documents have great value, like the use of a Google folder that can be accessed at the school site and at the district office, their utility will be defined by their use at the sites. Training on how best to use these resources could increase the buy-in at the school sites.

¹⁰ Reasonable cause is defined as the following: to have knowledge of facts which, although not amounting to direct knowledge, would cause a reasonable person, knowing the same facts, to reasonably conclude the same thing. The Lectric Law Library, <https://www.lectlaw.com/def2/q015.htm>.

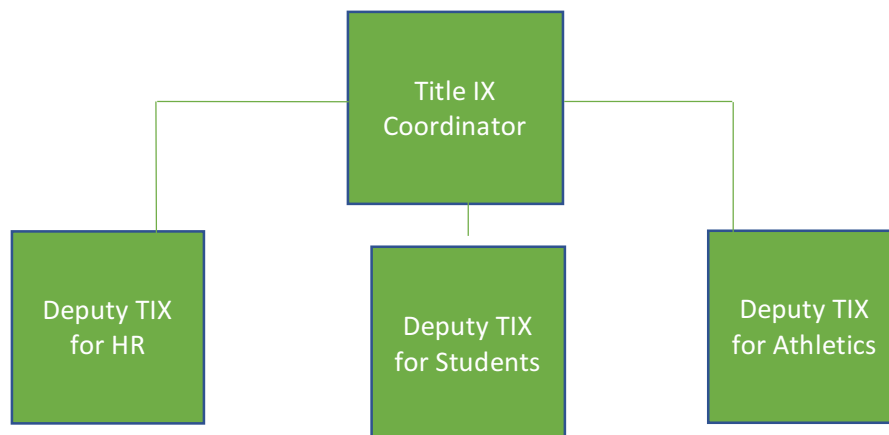
B. Structure of Title IX Office

BSD currently has a structure that is consistent with others in the K12 arena. While there appears to be an effort to identify Title IX roles, BSD does not appear to have defined this role as comprehensively as OCR. For BSD, its community seems focused on the athletics aspect of Title IX, perhaps due to community interest in this area. However, as this report demonstrates, there are extensive other areas that also require regular oversight by the Title IX Coordinator.

Initially, I suggest that BSD write a job description for the Title IX Coordinator and then determine which structure might make the most sense considering the current workload of those involved in Title IX compliance, budgetary constraints, climate/culture, and other relevant considerations. If BSD does not have the financial ability to hire a stand-alone Title IX Coordinator (recommended in the 2015 guidance), then a logical division of the responsibilities should take place.

From my conversations, it appears BSD has strengths in various key areas – Athletics, Human Resources, and Student Service – and it might make sense to name a deputy in each of these areas, and then designate one Title IX Coordinator to oversee the deputies. An integral part of the Title IX Coordinator’s role is to monitor outcomes, identify and address any patterns, and assess effects on the campus climate. This is best achieved with centralized oversight.

PROPOSED TITLE IX STRUCTURE



Based upon my interviews, I would suggest dividing up the responsibilities as set forth above. Name one Title IX Coordinator with ultimate responsibility to oversee Title IX enforcement across the district, and identify at least 3 key individuals to become deputies with specific responsibilities in compliance areas.

C. Policies

1. Nondiscrimination Statement

BSD should adopt a Nondiscrimination Statement that is consistent with the guidance set forth above. While the website Nondiscrimination Statement includes some important information, it is not in technical compliance with OCR guidance on this topic.¹¹ Further, the current statement has not been disseminated to staff, students, and the public as extensively as recommended in the 2015 Title IX Resource Guide.¹² Of note, there appears to be confusion among staff about this federally required Nondiscrimination Statement and other, staff-initiated nondiscrimination initiatives, such as having a statement in the classroom about how students are expected to treat one another. As far as inclusion of the Nondiscrimination Statement in relevant publications, it is noted that the Notice is included in the Parent and Family Handbook; however, it is not included in the Code of Conduct for Educators and/or the Board of Directors Handbook.

2. Title IX - Discrimination/Harassment based on Sex/Gender

The current BSD policies related to Title IX have significant overlap and are not clear about which process applies to which allegation. Of note, the Sexual Harassment, the Nondiscrimination, and the Hazing, Harassment, Intimidation, Menacing, Bullying, Cyberbullying, Teen Dating Violence and Domestic Violence – Student, and the Hazing/Harassment/Intimidation/Bullying/Menacing/Cyberbullying – Staff policies all have overlap and touch on potential Title IX Complaints. Thus, Complainants could select to go under one policy as opposed to another, essentially forum-shopping, and this runs the risk of unequal enforcement and different results. The policies should clarify what is covered and because of the overlap they should also apply exclusions so that only one avenue is available to complainants.

D. Process

1. Policy Inclusion/Exclusion

As stated above, the overlap in policies makes determining which one applies to a situation difficult. It is suggested that language indicating which policy covers which offenses, which it does not cover, and which particular procedure applies should be added to the policies.

2. Address Sexual Violence

None of these Title IX policies explicitly address sexual violence and the types of violence that may occur and be considered a violation. When asked, none of the administrators could point to the proper policy under which a sexual violence would be handled. During the policy review process, it should be determined which policy should best address sexual violence and the proper language should be added.

¹¹ See, <https://www2.ed.gov/about/offices/list/ocr/docs/nondisc.html>.

¹² See, <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>.

3. Complaint Submission and Policy Applicability

Both the Sexual Harassment and the Nondiscrimination Procedures currently require parties to put the allegation in writing. Although there is no current guidance on this topic, it was generally thought that this requirement should not be necessary for allegations of sexual misconduct. The Nondiscrimination Procedure requires a written submission, while the Sexual Harassment Procedure indicates that the complaint must be put in writing, without indicating who is responsible for the writing.

After receipt of the complaint either in writing or verbally, a decision should be made about which policy is at issue. From various interviews, it is clear that administrators are regularly investigating matters that come to their attention, but administrators do not make a determination about which policy applies to the situation. Matters are investigated and concluded. In order to comply with Title IX and also to bring clarity to the process for the parties, the intake officer and the investigator should be clear about what policy has been implicated from the facts gathered at the onset. In many instances, a complaint itself may identify which policy is at issue, but in many instances, administrators are simply given the facts of a situation. Because of the superior level of knowledge of both Title IX and the internal process, administrators should make the determination about policy applicability rather than relying upon the claimants to do so.

4. Notice of Allegations

The policy does not require that Notice of Allegations (see discussion above) be given only to Respondent. The policy should include this requirement in all Title IX matters.

5. Balance for Complainant and Respondent

The policies that cover Title IX types of actions provide an appeal only for Complainants. In order to be in compliance with current guidance, BSD must offer the option to Respondent as well. Recent guidance in 2017 made it clear that schools could offer an appeal option on to Respondents.

6. Advisors

The policies are silent with regard to whether individuals in the Title IX process are entitled to have advisors attend their interviews and for other key stages in the process. For K12 students, parents would normally be invited to participate in an interview of their children. Employees who are in a collective bargaining group would normally invite union representative to fulfill this role. The most recent OCR guidance (2017) references the fact that if an Advisor is permitted for one party, then the other party should have the opportunity to also have an Advisor. As a best practice, most educational institutions offer an advisor of choice to the parties. Assuming BSD wants to adopt this practice, the policies should reflect that Advisors are permitted for parties who are in a Title IX investigation.

7. Burden of Proof

The Sexual Harassment Procedure, Nondiscrimination Procedure, and Public Complaint Procedure do not set forth a standard of evidence for the determination of whether a policy violation has taken place. Prior guidance required Title IX process to utilize a preponderance of the evidence standard, but

current guidance permits the use of the preponderance of the evidence or the clear and convincing standard. Whichever standard is selected, it should be added explicitly to the policies. Further, current guidance would suggest that the standard used should not deviate from the standard used in other misconduct matters. In other words, the Title IX process should not have a higher or lower standard of evidence than other student conduct processes.

8. Exhaustion of the Informal Process

The Nondiscrimination policy requires parties to utilize an informal process prior to utilizing the formal process. Although the recent guidance is supportive of informal resolutions, all parties must agree to the informal process, which does not appear to be required in the BSD process. It is commonly thought that a party should not need to utilize the informal process in order to access the formal process. Further, concerns regarding a victim of discriminatory (sexual) violence being required to confront the offending party in an informal process would also tend to indicate that a party should have the option to utilize the formal process upon election.

9. Outcome Notices

Both procedural policies require a written notice of findings and the requirement to share this document with the Complainant only. For the purposes of equality of treatment of parties and evaluating whether a party wants to appeal, a written notice of outcome to both parties should be sent, with guidance about how to file an appeal.

10. Appeals

Both the Sexual Harassment Complaint Procedure and the Discrimination Complaint/Grievance Procedure offer a series of appeals after decisions. This process seems unnecessarily complex and not designed to offer a prompt resolution to the parties. It is suggested that BSD consider changing this process and offering one appeal option. Further, the appeal process is only offered to Complainants. As mentioned previously, an appeal options must also be offered to the Respondent. If a different process for Respondents to follow in order to appeal the decision exists, both policies should reference such process.

E. Practice

1. Intake form

The current intake complaint form available on BSD's website allows a complaining party to indicate the type of action that they are filing. It does not appear that this form is 1) required for initiating a complaint investigation, or 2) is used by the BSD community to redress issues that arise at school.

Interviews of staff indicate that most of the complaints received come through informal methods – a student reports an incident, a parent calls the office, a staff member observes a situation and reports it. The administrators move promptly to investigate the matter at that site and conclude it. This process seems to operate to everyone's (parties, administrator) satisfaction.

However, there may be situations where the more formal process makes sense due to the nature of the allegations, the threat of future litigation, and/or other circumstances. Additional information about how to access the formal process should be readily available to potential complainants. Further, this formal process should incorporate additional rigor, including identifying the focus of the investigation (with administrator input), the proper policy at issue in an investigation (determine with complainant), formal investigation documentation, and proper outcome letters for both parties.

2. Flow Chart from Filing to Appeal

In order for claimants and respondents to properly understand the process in place at BSD, it is recommended that some infographics be used in the policy, on the website, and/or with materials describing the process.

3. Use of Trained Investigators

In the future, BSD should ensure that everyone investigating Title IX claims receives training in how to conduct a Title IX investigation, and this training should be provided annually. The 2017 Guidance reiterated the requirement that school use trained investigators to reach a reliable decision. Currently, the investigations taking place at the school sites are conducted by Principals and Assistant Principals who have learned how to do conduct these investigations through on-the-job training. A more formal training would be valuable for these employees.

In Human Resources, there appears to be a broad range of training on investigations received by the staff. A more formal professional development plan for staff conducting investigations both at the school sites and in HR would be helpful to raise the skill level of these individuals.

When external investigators are used for Title IX matters, a vetting process should ensure that the individuals have been properly training in conducting Title IX investigations. Experience as a prior school administrator should not be deemed sufficient training to conduct such investigations.

F. Training

Interviews of staff indicated that the level of training that most receive in Title IX topics is inconsistent. Many of those interviewed referred to self-selected, professional development topics rather than any required, regular training on these topics. It is recommended that Title IX-specific training be offered annually to staff with such training being required for staff in certain roles.

1. Title IX Basics

Training for all staff about Title IX should be made available on an annual basis. Staff who have been identified as responsible employees¹³ should be required to attend this training annually.

¹³ OCR has defined “responsible employees” as an employee with authority to take action to redress sexual violence, or who have been deemed mandated reporters by their institutions, or who students reasonably could believe have authority or responsibility over such matters, are required to report discrimination.

2. Title IX Coordinator on Role and Responsibilities

The Title IX Coordinator should be trained in the role's various responsibilities in order to effectively manage this multi-faceted position. Aside from a deep knowledge of Title IX, the Coordinator should also receive training on other key responsibilities:

- a. Oversight for all Title IX areas;
- b. Monitoring outcomes;
- c. Identifying trends (use of technology could facilitate this process); and
- d. All other Title IX responsibilities (see Section C.1. above).

In order to demonstrate overall Title IX compliance, the Title IX Coordinator should report annually to Superintendent and/or Board on current state of Title IX at the District.

3. Title IX Investigators

a. How to Conduct Investigation – Investigation Basics

Title IX guidance requires that investigators should be regularly training to conduct Title IX investigations. Schools should ensure that their investigators, internal and external, have been trained in how to perform Title IX investigations and receive this training on an annual basis. Further, those who are currently being informally trained at the school sites by experienced administrators on how to conduct investigations need to have this training supplemented by formal investigation training.

Topics that should be covered in this basic investigation training include:

- Interviewing
- Note taking
- Making credibility determinations
- Finding corroborating evidence
- Writing reports

b. Title IX Specifics – Trauma-informed Techniques, Cultural Sensitivities, Stereotypes, and Bias

Also, individuals performing these investigations should also be trained on the following Title IX-specific topics:

- Trauma-informed interview techniques
- Cultural issues
- Stereotypes
- Bias

Title IX investigation training should be required annually for individuals who conduct Title IX investigations. BSD could offer this training or support individuals attending external trainings on these topics.

G. Conclusion

BSD is not meeting the technical requirements of Title IX in relation to some of the basic policy and procedural requirements. Policy revisions are necessary to meet the current requirements. With the assistance of outside counsel, these policies can be promptly reviewed and revised so that they meet all of the requirements outlined herein.

In practice, BSD is taking great steps to effectively implement the Title IX-Sexual Misconduct process as required by OCR. The administrators with the lead for student complaints against students (Teaching and Learning) and student complaints against staff (Human Resources) have pro-actively addressed the Title IX-Sexual Misconduct risks and developed processes and supporting documents (forms, templates) to assist administrators who undertake the investigations. For on-site investigations into students-respondents, the SIRC forms and training have solidified these practices such that administrators use them immediately upon notice of an event. The HR forms appear to be newer additions to this process and have the promise of providing a great format for administrators to use while also giving HR at the District Office the chance to oversee the process. Additional training may be necessary for the HR steps to be adopted at each site and used with the same level of immediacy as those for student-respondents.

After making the necessary policy revisions, the sites should add Title IX process rigor to their formal investigations (intake, policy violation analysis, outcome letters), with oversight by the Title IX Coordinator/Deputy Coordinator. This formal process should act as guidance for how the smaller, less troublesome Title IX matters are handled at the sites in the future.

The biggest challenge that BSD faces is identifying and supporting a centralized Title IX Coordinator. Currently, the responsibilities of the position have been distributed to various individuals, and no central oversight exists. BSD needs to not only appoint this person but also provide him/her with the time to carry out all of the various responsibilities of Title IX enforcement, including monitoring outcomes and undertaking pro-active Title IX initiatives. This person should become readily known to the school community, staff, and students as the central location for Title IX matters.

And finally, training for staff and investigators-specific training should be put in place as soon as possible. There is sufficient misunderstanding about the scope of Title IX, and it would be helpful if all staff were working with a basic understanding of the risks and responsibilities posed by Title IX. Further, there is a need to develop the investigation skills of individuals investigating Title IX matters and add rigor to the Title IX investigation process.

With a dedicated and concerned administration and staff, it is clear that BSD stands ready to accept the challenges presented by Title IX-Sexual Misconduct enforcement at their sites. This review provides insight into the next steps in achieving compliance for BSD while recognizing that many efforts have already been undertaken in this regard by administrators throughout the district.