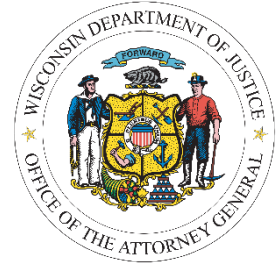


Title IX and the Multidisciplinary Child Abuse Investigation: Best Practice Considerations for a Collaborative Process



Title IX mandates that *“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.”* K-12 schools covered by Title IX(TIX) are obligated to address allegations of child sexual abuse or sexual harassment in a variety of circumstances as outlined in TIX. It is likely that a criminal or human services child abuse investigation may also take place before, during, or after the school’s TIX procedure. A criminal or human services investigation does not replace a TIX investigation. This document is intended to serve as guidance for the professionals involved in the school, criminal, and human service investigations, as well as any interplay or collaboration during the process.

Purpose: To minimize the impact of multiple overlapping investigations on youth experiencing potential victimization within the school environment.

Objectives:

- 1) Increase ongoing collaboration between schools and child abuse response teams.
- 2) Minimize harmful and contaminating effects of duplicative interviewing of children when investigations are concurrent.
- 3) Ensure that all investigative partners receive the most accurate information possible utilizing best practice techniques to maintain the integrity of each type of investigation.

OBJECTIVE #1: INCREASE COLLABORATION

Applicable Title IX Sections

Sharing of information:

Type of Record	Guidance Available	Citation
Law Enforcement Records	<ul style="list-style-type: none"> Investigator may review if applicable. Available via open records request 	Title IX Q & A, p.43
Pupil/Education Records	<ul style="list-style-type: none"> School staff may disclose information to Child Protective Services (CPS) or Law Enforcement (LE) w/o parental consent when making a mandated report of suspected child abuse or neglect. Pupil record information may also be disclosed to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals, Child Abuse Prevention and Treatment Act (CAPTA) supersedes Family Educational Rights and Privacy Act (FERPA) 	Sharing Information Across Systems, p. 1 118.124(2)(p), 20U.S.C. 1232g(b)(1)(l)
CAC Records	<ul style="list-style-type: none"> Information can be shared during Multidisciplinary Team (MDT Case Staffing or upon signed release of information by parent/guardian. Recordings themselves will only be released upon court order or special circumstances Viewing would occur at the CAC 	48.981 (7) (a) (6) and (6m)
Child Welfare Records	<ul style="list-style-type: none"> Information can be shared during MDT Case Staffing 	48.981 (7) (a) (6) and (6m)

Working with Child Welfare Agencies and Law Enforcement

- Mandated Reporting
 - 48.981(2)
 - Requires that any mandated reporter who has reasonable cause to suspect that a child seen by the person in the course of professional duties has been abused or neglected, or who has reason to believe that a child seen by the person in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur, make a report to county CPS or law enforcement.
 - 48.981(6)
 - Penalty: Persons required to report, who intentionally fail to report suspected child abuse, neglect or threats of school violence may be fined not more than \$1,000 or imprisoned not more than 6 months or both.
 - (pg. 42, Title IX Q&A) Example Policy 1:
 - The district must act in accordance with their district's Title IX policy whenever any district employee has been put on actual notice of any sexual harassment or allegations of sexual harassment as defined in this district's policy. This will most often require a report to the district's Title IX or Compliance "Officer". **This mandatory obligation is in addition to the child abuse mandatory reporting obligation under state law.**
 - AVOID Re-traumatization and Interference with Investigations
 - Example Policy 1: (pg. 48, Title IX Q&A)
 - To the greatest extent possible, and subject to Title IX, **the school will make reasonable accommodations in an investigation to avoid potential re-traumatization of a child and to avoid any potential interference with an investigation by the Department of Child and Family Services or a law enforcement agency.**
 - Suspend Timeframes to Avoid Interference and Promote Collaboration
 - (pg. 21, Title IX Q&A) & 2020 Amendments
 - Temporary delay is permitted with good cause.
 - The preamble of Title IX states that "Victims of sexual harassment are entitled to remedies to restore or preserve equal access to education...prompt resolution of a formal complaint of sexual harassment is necessary to further Title IX's nondiscrimination mandate."
 - Each school has discretion to determine its own reasonable prompt timelines.
 - Considerations include:
 - Absence of a party or party's advisor

- Concurrent LE activity
 - Need for accommodations.
- Educators can be part of multidisciplinary teams where county departments share records of cases of child abuse and neglect with the team (Sharing Info Across Systems, pg. 26)

Considerations

- Independent investigations within schools can contaminate LE and CPS investigations.
- It is the duty of all mandated reporters to make timely reports whenever there is **reasonable cause** to suspect that a child seen by the person in the course of professional duties has been abused or neglected, or has been threatened with abuse or neglect, or that abuse or neglect will occur.
- Time gaps between learning of potential abuse and reporting of the abuse impact evidence collection potential.
- Lack of collaboration decreases efficiency and increase the time and resources spent on investigations.

Recommendations for Meeting Objective #1

- Invite school staff members or administrators to participate in MDTs and Advisory Boards
 - Schools can provide valuable information for investigation.
 - Timelines
 - Behaviors surrounding abuse or disclosure.
 - Corroborating evidence
 - Schools can support children better when they have some information about adversities.
 - No contact orders
 - Court dates
 - Coordination with other advocates or support people
- Attend Investigations of Suspected Maltreatment Training
 - Learn about the roles of CPS and LE investigations.
 - Learn about the forensic interview.
 - Learn how to minimize the impact of information gathering.
- Invite other investigative partners to participate in policy development around Title IX requirements.

OBJECTIVE #2: MINIMIZE HARMFUL AND CONTAMINATING EFFECTS OF DUPLICATION

Applicable Title IX Sections:

- A school may use **trauma-informed approaches** to respond to a formal complaint of sexual harassment.
- 2020 amendments do not preclude a school “from applying trauma-informed techniques, practices, or approaches”.
- Use of such approaches must be consistent with the requirements of 34 C.F.R. § 106.45, particularly 34 C.F.R. § 106.45(b)(1)(iii).

Considerations

- Duplication is inherently suggestive. Children may change responses over time due to an unlimited number of perceptions about the repeated interviews, including:
 - That people don’t believe them.
 - That they need additional detail in order to be believed.
 - That the original disclosure wasn’t what adults wanted to hear.
 - That they did something wrong by telling.
- Authoritarian interviewing increases suggestibility.
- Statements in writing are not a comprehensive substitute for a developmentally sensitive forensic interview.
- Repetitious questioning is not trauma informed, because feelings of guilt or shame may be perpetuated by duplicative interviews.
- Child’s age and developmental level
- Other resources are available and accessible (See Objective #3)

Recommendations for Meeting Objective #2

- Make mandated reports as soon as reasonable cause exists and without delay.
- Ensure all employees receive training provided by the Department of Public Instruction within six months of initial hiring and, minimally, at least every five years thereafter, Wis. Stat. sec. 118.07(5).
- Consider reports to multiple entities (law enforcement and human services)
- Ensure that reports contain information about the best school contact for collaboration.
- Wait until speaking with CPS and LE before determining next steps in information gathering.
- Gather as much information as possible from adults out of the presence of the involved children.

- If questioning is unavoidable:
 - Identify a neutral and private setting.
 - Identify individuals trained to gather information.
 - DOJ, CACs of WI, and local CACs are always available to help vet appropriate training.
 - Ensure that information is properly documented.

OBJECTIVE #3: ENSURE ACCURACY AND MAINTAIN THE INTEGRITY OF THE INVESTIGATIONS

Applicable Title IX Sections:

106.45 (2) (B) and (5) (vi) Discovery and Information Sharing

- “Must provide an equal opportunity to inspect and review any evidence” in electronic version or hard copy.
- 10+ days before the hearing and at the hearing.
- Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in § 106.30, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.
- The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and **may inspect and review evidence** under paragraph (b)(5)(vi) of this section.

106.45 (5) (i) Confidentiality of Records

- School cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that parent/guardian's voluntary, written consent to do so for a grievance process under this section.

106.71 Confidentiality of the identities of the parties and witnesses

- A school must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the Family Educational and Privacy Rights (FERPA) statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

106.45 (10) (ii) Record Keeping Requirements

- Only recordings of live hearings related to SH at post-secondary institutions are required to be kept.

- 106.45 (6) (ii) Live hearings are not required for elementary and secondary institutions
 - Recipient is required to document “**basis for its conclusion**” for file for 7 years.
 - No prohibitions from utilizing information kept securely at a CAC or PD
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Considerations

- Attorneys for the recipient must have an opportunity to inspect and review evidence, unless that evidence is related to treatment.
- Communities should have a process for ensuring that evidence relied upon, including the forensic interview, can be documented as the basis for conclusion of the Title IX investigation.
- Duplication increases the appearance of inconsistencies and reduces accuracy of findings.
- Interviews of children can be difficult to summarize, particularly with close-ended, leading, or suggestive questioning techniques.
- Video and audio recording is most accurate way to capture information.
 - Forensic Interview
- Forensic interviewers are trained to increase accuracy while minimizing contamination.
- To avoid accidental disclosure of pupil record information not permitted under statutes, schools may wish to obtain written authorization from a parent/legal guardian related to the exchange of information between Child Advocacy Centers, law enforcement, and other agencies.

Recommendations for Meeting Objective #3

- Partner with the nearest Child Advocacy Center and any Forensic interviewers in your community to:
 - Establish policies on viewing forensic interviews in lieu of conducting separate interviews.
 - Have an MDT meeting for all cases involving sexual abuse that occurred on school grounds prior to interviews.
 - Include school in MDT case staffing.
 - Meet with any investigator before interview to determine additional pieces of information needed for Title IX
 - Allow “recipients” and any attorneys/”advisors” to view onsite at police department or CAC
 - Obtain release of information (ROI) from parent if CAC to share information with the school.
 - Ensure that interview is made available to Office of Civil Rights (OCR) and Department of Public Instruction (DPI) upon request.

- Have release signed by parents at Forensic Interview.
- Develop policies to govern the release of information to DPI or OCR
 - Returned after use or stored securely.
 - Sealed
 - Not further copied or distributed.
- Ensure that LE summaries are kept as “basis for conclusion” rather than the recordings themselves, but make sure to note that video recordings are available upon request but subject to regulations that protect the child’s privacy.
- Ensure that recordings are kept and stored as evidence or onsite at CAC for 7 years minimum.