



TITLE IX TEAM TRAINING

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HOUSEKEEPING



- We love to see your faces if you can stay on camera with us.
- Feel free to add questions to the chat. Whichever one of us is not speaking will be monitoring the chat. We may hold your question to the part of the training when that is being covered.
- You should be receiving a link to the Toolbox in your email. For those of you who registered others, please share out. We will also put a link in the chat.
- We'll be taking breaks every hour or so.



AGENDA

- 01 Lessons Learned: Recognizing and Avoiding the Pitfalls of the Title IX Regulations
- 02 Title IX Overview – Discrimination, Harassment, Athletics and More
- 03 Team Training under the Sexual Harassment 2020 Regulations

YOUR TITLE IX TOOLBOX



- Contains useful resources we will reference during the training.
- Contains checklists, templates and drafts to use as a starting point when processing a new case.
- Contains a pdf copy of this PowerPoint, which you must publish on your District website.

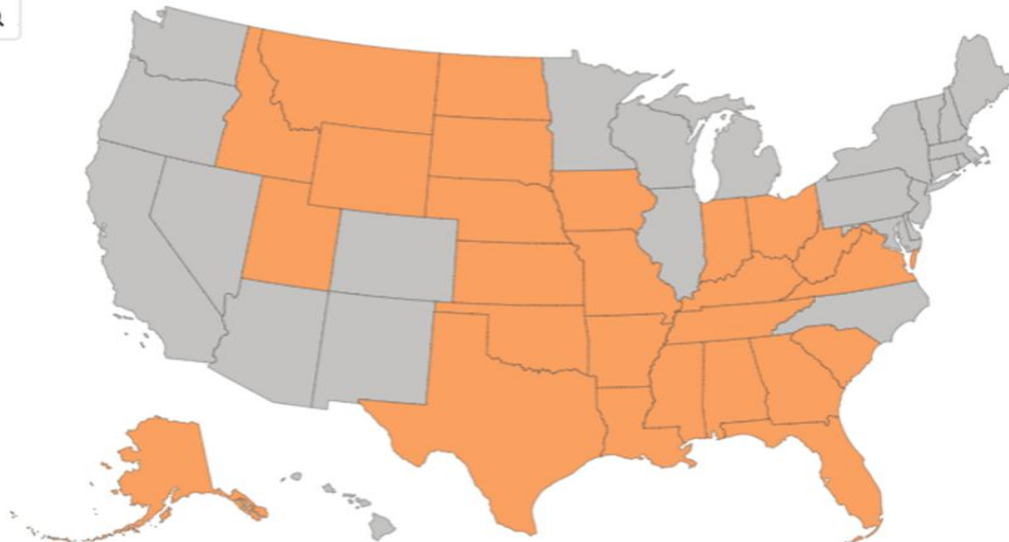
THE 2024 TITLE IX REGULATIONS ARE VACATED



Where Title IX Regulations Are Blocked

Federal judges have temporarily put the Biden administration's new Title IX rule on hold in 26 states, as of July 31, preventing the Education Department from enforcing the changes.

Yes No



In January 2025, a federal district court in Kentucky vacated the 2024 Regulations in their entirety (Ohio was a party to that case), and other federal courts followed suit..

In February 2025, the U.S. Department of Education released a Dear Colleague Letter indicating it would enforce the 2020 Regulations; not the 2024 Regs.

The 2024 Regulations have now been vacated in every state, such that they are not in effect for any recipient of federal funds.

This leaves school districts to continue compliance under the 2020 Regulations for all Title IX cases.



Title IX: Common Pitfalls

Not reporting allegations to the Title IX Coordinator.

Disciplining a student prior to completing the Title IX process.

Failing to provide supportive measures to the complainant and/or the respondent.

Miscommunication and/or misunderstanding of the Title IX process by district staff.

REVIEW OF TITLE IX

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.

20 U.S.C. § 1681(a)



TITLE IX'S APPLICATION



Q: Whom does Title IX protect?

A: Any person participating in an educational program in the United States that receives federal financial assistance.

- Students.
- Staff.
- Applicants for admission.
- Visitors and community members.
- Contractors, such as referees.

EXAMPLES OF SEX **DISCRIMINATION** IN K-12 EDUCATION

- Employment
- **Sex-based Harassment**
- Athletics
- Pregnant and Parenting Students
- Discipline
- Single-Sex Education
- Retaliation
- Treatment based upon Gender Identity

SEX DISCRIMINATION

VERSUS

SEX-BASED
HARASSMENT



TITLE IX SCOPE



Title IX

Sex Discrimination
(Disparate Treatment and
Disparate Impact)

Sexual Harassment
(Quid Pro Quo; Hostile
Environment; Sexual assault,
dating violence, domestic
violence and stalking)

Retaliation

Not TIX
Sex-based or
Sex-related Misconduct
that does not meet the
definitions of Sexual
Harassment

RETALIATION



- Intimidation, threats, coercion, or discrimination against any person.
- For the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

TRANSGENDER STUDENTS



- Dodds v. United States Dep't of Educ., 845 F.3d 217 (6th Cir. 2016).
- SB 104 – Restrooms (in effect)
- SB 68 – Athletics (overturned by Court of Appeals, appeal pending at Ohio Supreme Court)
- HB 8 – Requires notice to parents of a substantial change in the student's services related to any request by a student to identify as a gender that does not align with the student's biological sex.
- Office for Civil Rights – Revised enforcement priorities. *Defending Women from Gender Ideology Executive Order*: OCR will “enforce all sex-protective laws to promote [the] reality’ that there are ‘two sexes, male and female,’ and that ‘[t]hese sexes are not changeable and are grounded in fundamental and incontrovertible reality.’”

ADULT SEXUAL MISCONDUCT

According to estimates from the Government Accountability Office:

- 1 in 10 students will be subjected to adult sexual misconduct during their K-12 academic careers
- Conduct ranges from inappropriate to criminal conduct



A Training Guide for Administrators and Educators on Addressing Adult Sexual Misconduct in the School Setting



EXAMPLES OF POSSIBLE SEX HARASSMENT IN EDUCATION

- Unwelcome physical contact
- Flashing/mooning
- Sexual jokes
- Propositions, suggestive comments, sexual slurs, sexual gestures
- Gossip about someone's personal relationships or sex life
- Sexualized photos or other media shared with students (by students or staff) or displayed where it can be seen
- Social media, texting, group chats, etc., whether it happens at school or not and whether the student saw it directly or not
- Derogatory comments about a person's sexuality, gender, or gender identity or about a certain sex or gender of people as a group
- Using a position of power or authority to receive sexual favors or to punish for refusal
- Staff discussing sex lives with students
- Staff playing matchmaker
- Retaliation

SEX-BASED HARASSMENT



- **Sex-Based Harassment** is a form of sex discrimination and is defined to include any of the following:
 1. Quid Pro Quo Harassment
 2. Hostile Environment Harassment
 3. A “Specific Offense”

QUID PRO QUO SEXUAL HARASSMENT



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 SEXUAL HARASSMENT



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. ("SPOO")

SPECIFIC OFFENSES



- **Sexual Assault:** An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation
 - **Forcible Rape:** The carnal knowledge of a person, forcibly and/or against that person's will and/or in instances where the victim is incapable of giving consent.
 - **Forcible Sodomy:** Oral or anal sexual intercourse with another person forcibly and/or against that person's will and/or in instances where the victim is incapable of giving consent.
 - **Sexual Assault with an Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will and/or in instances where the victim is incapable of giving consent.
 - **Forcible Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will and/or in instances where the victim is incapable of giving consent.
 - **Incest:** Nonforcible sexual intercourse between persons who are related to each other within the degrees where marriage is prohibited by law.
 - **Statutory Rape:** Nonforcible sexual intercourse with a person who is under the statutory age of consent.

SPECIFIC OFFENSES



- **Dating Violence:** Violence committed by a person:
 - Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship;
 - The type of the relationship; and
 - The frequency of interaction between the persons involved in the relationship.

SPECIFIC OFFENSES



- **Domestic Violence:** Felony or misdemeanor crimes committed by a person who:
 - Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to the spouse of the victim;
 - Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
 - Shares a child in common with the victim; or
 - Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

SPECIFIC OFFENSES



- **Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - Fear for the person's safety or the safety of others; or
 - Suffer substantial emotional distress.

A close-up photograph of a person's hand holding a silver pen, writing on an orange sticky note. The hand is positioned in the center-right of the frame. In the background, several other sticky notes in various colors (orange, green, purple, yellow) are visible, some with faint writing. The background is blurred, suggesting an office or meeting environment. A thick orange horizontal bar is at the top of the image, and a dark blue horizontal bar is at the bottom, containing the text.

GROUP EXERCISE



RULE ONE:

DECIDE IF THE
CONDUCT
REPORTED
COULD BE A
TITLE IX ISSUE.



RULE TWO:

IF THE CONDUCT
COULD BE A
TITLE IX ISSUE,
REPORT TO THE
TITLE IX
COORDINATOR
AND DO NOT
DISCIPLINE OR
INVESTIGATE



ATHLETICS COMPLIANCE UNDER TITLE IX

TITLE IX AND ATHLETICS: HOW AN ATHLETICS PROGRAM IS ASSESSED

Title IX compliance is assessed through a total program comparison. In other words, the entire boys' program is compared to the entire girls' program, not just one boys' team to the girls' team in the same sport.

Title IX does not require the creation of mirror image programs. Title IX specifically provides that “[u]nequal aggregate expenditures...will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.”

Title IX provides that legitimate and justifiable discrepancies for nongender related differences in sports could be taken into account (i.e., the differing costs of equipment or event management expenditures).



TITLE IX AND ATHLETICS: FINANCIAL ASSISTANCE

- Must consider District financing and **all money provided by outside sources**, including Booster programs.
- OCR's guidance explains:
 - “The District has a responsibility under Title IX to ensure that boys’ and girls’ programs are provided with equivalent benefits, treatment, services or opportunities regardless of their source. **When determining equivalency, benefits, services or opportunities attained through the use of private funds, such funds are considered in combination with all benefits, services or opportunities.** This interpretation is consistent with the OCR ‘Title IX Athletics Investigator’s Manual,’ pertinent Federal court decisions, and the legislative history of Title IX and the Civil Rights Restoration Act of 1987.”



TITLE IX AND ATHLETICS

- Title IX requires school districts to:
 - 1) offer boys and girls substantially equal participation opportunities to play sports (measured by the “student interests and abilities test”);
 - 2) provide boys and girls equal treatment in their athletic programs (measured by the “benefits and opportunities test”); and
 - 3) give boys and girls their fair share of athletic financial assistance. [higher ed]



ATHLETICS PARTICIPATION: THE STUDENT INTERESTS AND ABILITIES TEST



A school district is compliant under Title IX's requirement to provide **equal participation opportunities** for both boys and girls if it meets any one of the following three prongs:

1. Participation opportunities for boys and girls are provided in numbers substantially proportionate to their respective enrollments; or
2. Where the members of one sex have been, and are, underrepresented among athletes, the District must show a history and continuing practice of program expansion, which is demonstrably responsive to the developing interests and abilities of the members of that sex; or
3. Where the members of one sex are underrepresented among athletes, and the District cannot show a history and continuing practice of program expansion, the District must demonstrate that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

ATHLETICS PARTICIPATION: THE STUDENT INTERESTS AND ABILITIES TEST



When participation is not substantially proportionate to enrollment, demonstrate:

- (1) A history and continuing practice of expanding sports offerings for girls; or
- (2) Girls' athletics interests are adequately accommodated.

Relevant factors:

- A school's recent history and continuing practice of adding girls' teams;
- A school's recent history and continuing practice of monitoring the interests of girls by conducting surveys.
- Review non-interscholastic sports programs to assess any unmet or growing areas of sports interests for girls.
- Review what other schools, leagues, conferences, etc. in your geographical area of competition are doing to meet the growth and trends in athletics interests of female students.

BENEFITS AND OPPORTUNITIES

In determining equal treatment compliance under Title IX, OCR Regulations articulate the specific “benefits and opportunities” that should be considered:

1. The provision of equipment and supplies;
2. Scheduling of games and practice time;
3. Travel and per diem allowance; (N/A)
4. Opportunity to receive coaching and academic tutoring; (N/A)
5. Assignment and compensation of coaches and tutors;
6. Provision of locker rooms, practice and competitive facilities;
7. Provision of medical and training facilities and services;
8. Provision of housing and dining facilities and services; (N/A)
9. Publicity.





Sex Harassment Team Training

TITLE IX TERMS



Recipients: School districts are now referred to as “recipients.”

Complainant: A person alleged to be the victim of conduct that could constitute sexual harassment.

Respondent: A person who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Supportive Measures: These are your “interim measures.”

Determination of Responsibility. Finding whether a person is responsible for sexual harassment.

Advisors: Parties may have an advisor, who may be an attorney, participate in the process.

TITLE IX TEAM MEMBERS



Title IX Coordinator

Initially contacts and offers supportive measures. Assesses and sometimes files complaints. Documents and manages the process.



Investigator

Person designated to investigate, gather evidence and compile an investigation report.

(May be Title IX Coordinator).



Decisionmaker

Person who issues a written determination regarding responsibility.

Cannot be the same person as the Title IX Coordinator or the Investigator.

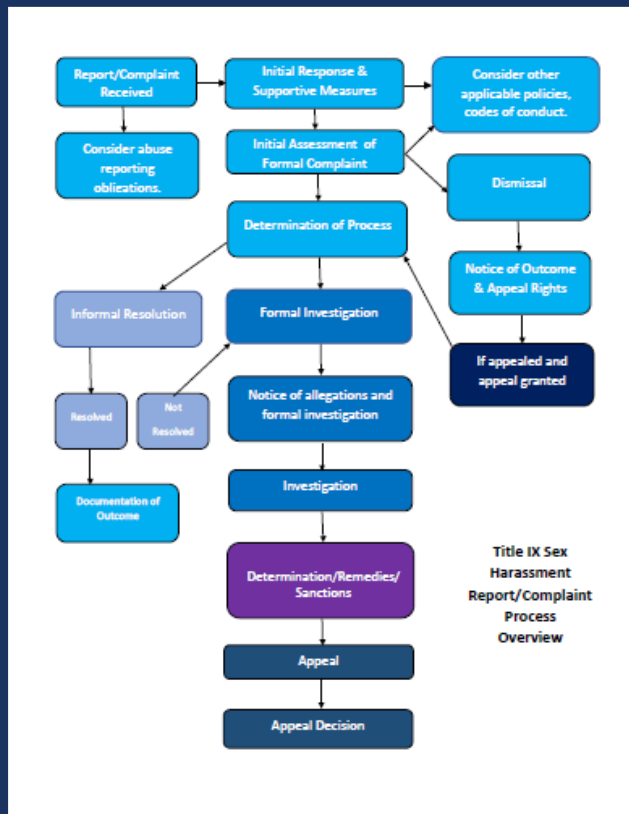


Appeals Designee

Must offer both respondent and complainant an opportunity to appeal.

Cannot be the same person as the Title IX Coordinator, Investigator, or the Decisionmaker.

OVERVIEW OF GRIEVANCE PROCEDURES



- Report of alleged sex harassment
- Supportive measures/Emergency removal
- Formal complaint determination
- Initial assessment/preliminary inquiry
 - Jurisdiction/dismissals
 - Other policies/duty to report/law enforcement
- Informal resolution
- Formal investigation
 - Interviews
 - Sharing evidence
 - Preparation of investigation report
- Written questions/answers
- Determination of Responsibility/Discipline
- Appeals

TITLE IX COORDINATOR RESPONSIBILITIES



All districts must designate a Title IX Coordinator who is responsible for coordinating compliance under Title IX. They must:

- Have knowledge of the district's policies and procedures on sex discrimination and be involved in the drafting and revision of such policies and procedures to help ensure that they comply with the requirements of Title IX.
- Coordinate the district's response to all reports and complaints involving possible sex discrimination, including sexual harassment; monitor outcomes; identify patterns and assess effects on the school climate.
- Provide training and technical assistance on school policies and procedures related to sex discrimination and develop programs to train and educate the school community on their rights and obligations under Title IX.

TITLE IX COORDINATOR RESPONSIBILITIES

RECORD-KEEPING



The district maintains the following records for a period of seven years:

- Documentation of the district's response to a report or formal complaint of sexual harassment. Such documentation must include:
 - Any actions, including supportive measures, taken and designed to restore or preserve equal access to the district's education program or activity.
 - If supportive measures were not provided, documentation of the reasons why such a response was not clearly unreasonable in light of the known circumstances.
 - Documentation for the basis that its conclusion that its response to the report or complaint was not deliberately indifferent.
- Documentation of each sexual harassment investigation, including any determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the district's education program or activity.
- Any appeal and the appeal outcome.
- Any informal resolution and the outcome.
- All materials used to train Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process.

TITLE IX AWARENESS – EVERY EMPLOYEE IS RESPONSIBLE



A School's Obligation to Respond

A school with **actual knowledge** of sexual harassment in a program or activity against a person in the U.S. must respond promptly and in a manner that is **not deliberately indifferent**.



What is Actual Knowledge?

Notice of sexual harassment or allegations of sexual harassment **to any employee**.

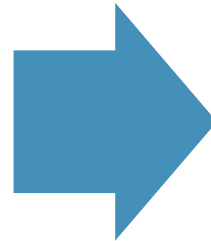


Note on Training

How and when will you discuss/remind staff of their obligations to report?
Correctly discussing the District's Title IX process with families avoids confusion and distrust.

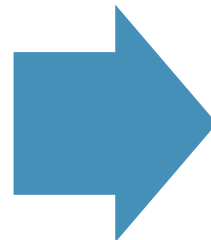


Maybe Title IX



Report to
Title IX Coordinator

Not Title IX



Proceed under
Code of Conduct



Title IX Coordinator's Role:

What happens after a report of possible sex discrimination or sexual harassment?

TITLE IX COORDINATOR'S ROLE

INITIAL ASSESSMENT/PRELIMINARY INQUIRY PHASE



Report of Conduct

- Verbal/Written report of conduct
- Complaint to TIXC

Initial Assessment/ Preliminary Inquiry

- Outreach/intake
- Formal complaint?
- Jurisdiction/Dismissal
- Supportive Measures
- Emergency Removal
- Referral to another policy/process
- Informal Resolution/Formal Investigation

Formal Investigation

- Notice of Allegations
- Interviews
- Evidence Collection
- Share Evidence
- Review/Comment on Evidence
- Final Report

Decision-Making

- Question Exchange
- Determination & Rationale
- Sanctions/Remedies

Appeal

- Appeal Grounds
- Determination & Rationale

TITLE IX COORDINATOR'S ROLE



- What are the specific allegations?
- What policy or policies are implicated?
- Is this Title IX?
- Is this sex-based misconduct or sexual harassment?
- Be ready with a “Maybe TIX?” process and communication.

REPORT VS. COMPLAINT



- Report
 - Notice from a person that an incident that may be covered by TIX has occurred.
 - Triggers the obligation to provide supportive measures and explain the grievance process.
- Formal Complaint
 - Written request for the TIX Coordinator to initiate an investigation into allegations of sexual harassment.
 - TIX Coordinator initiates in some circumstances.

SEX DISCRIMINATION? SEX-BASED HARASSMENT? SEX-RELATED MISCONDUCT?



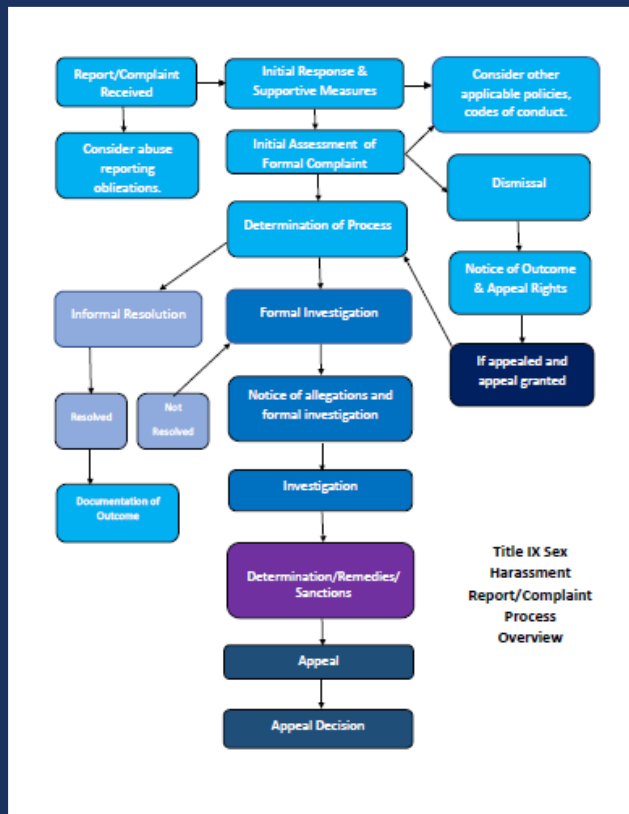
- **Sex discrimination:** A person, **on the basis of sex**, is excluded from participation in, denied the benefits of, or is subjected to discrimination under any education program or activity receiving Federal financial assistance.
- **Sex harassment:** (1) quid pro quo harassment; (2) hostile environment; (3) specific crimes. (If employee on employee, consider Title VII).
- **Sex-related or sex-based misconduct:** Misconduct that is related to sex that does not meet the definitions above.

TITLE IX COORDINATOR'S ROLE SEXUAL HARASSMENT ALLEGATIONS INITIAL ASSESSMENT / PRELIMINARY INQUIRY



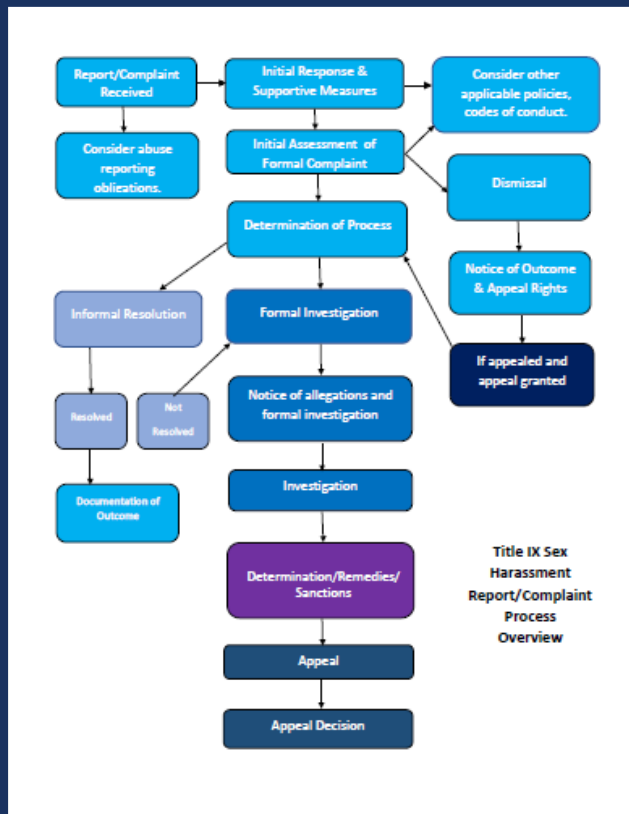
- Consider involvement/coordination with law enforcement.
- Consider other applicable policies, codes of conduct involved.
- Consider jurisdiction and mandatory/permissive dismissal.
- Consider Complainant's wishes regarding a formal complaint.
- Consider Complainant's request for confidentiality or no action.
- Consider whether to initiate a formal complaint and investigation.
- Consider district safety and the obligation to promptly respond in a manner that is not deliberately indifferent.
- Consider whether informal resolution could be appropriate, if a formal complaint is filed.
- Consider emergency removal/administrative leave.
- Consider consolidation of complaints.

OVERVIEW OF GRIEVANCE PROCEDURES



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- Formal investigation
 - Interviews
 - Sharing evidence
 - Preparation of investigation report
- Written questions/answers
- Determination of Responsibility/Discipline
- Appeals

OVERVIEW OF GRIEVANCE PROCEDURES



“A recipient may not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination **at the conclusion of the recipient’s grievance procedures** that the respondent engaged in prohibited sex discrimination.”

34 C.F.R 106.45(h)(3)

SUPPORTIVE MEASURES



- *Supportive measures* means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed.
- Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment.
- Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
- Must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures.
- The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

SUPPORTIVE MEASURES – “SAFETY PLAN”



- Develop a Safety Plan as needed.
- Consider what concerns you have and draft a plan to address them.
- Ask the person accusing and the person being accused what supportive measures would help them continue to access their education. Implement them if they are reasonable.
- You do not need consent to put reasonable measures in place for safety.
- Put the plan in writing. Give a copy of the supportive measures to school employees with a need to know. Make sure the student and parents are aware and they know who to go to with any ongoing concerns.

EMERGENCY REMOVALS



- A school can remove a student from the school's education program or activities on an emergency basis if the Respondent poses an immediate threat to anyone's physical health or safety.
- The district must undertake an individualized safety and risk analysis, determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.
- A school may place an employee on administrative leave during an investigation.

CONFIDENTIALITY

- Recipients cannot restrict either party's ability to discuss the allegations or gather and present evidence. (No gag orders.)
- Recipients must keep confidential the identity of a person who complains or reports sexual harassment, including parties and witnesses, except as permitted by law **or to carry out the purpose of the Title IX regulations.**
- Districts continue to have FERPA obligations.

TITLE IX: DEFINITION OF SEXUAL HARASSMENT



Sexual Harassment: Conduct on the basis of sex that satisfies one or more of the following:

- 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 (i.e., *quid pro quo* sexual harassment);
- 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 by federal law.

THE INQUIRY PHASE:

**A REPORT IS MADE AND COORDINATOR
DECIDES IF TITLE IX APPLIES**



REPORT OF ALLEGED HARASSMENT



- Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.
- Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.
- School employees are mandatory reporters of alleged sex harassment.
- Districts must promptly respond to reports of sex harassment in a manner that is not deliberately indifferent.

***Don't forget about your obligation to report suspected child abuse and/or neglect.**

SCENARIO - EVAN



- Evan, a high school senior, confides in his PE teacher that his intervention specialist is “overly touchy.” He says that he feels like she has a crush on him and pays him way too much attention in class, He shared that she “creeps him out” and has gone out of her way to touch his arms and shoulders.
- Mr. Goodreporter, the PE teacher, reports the conversation to the Principal, who contacts you, the Title IX Coordinator.
- Is this a report of sexual harassment?

SCENARIO - EVAN



- In your meeting with Evan, he describes that his intervention specialist has been paying extra attention to him in class all year. He says that she calls him “honey” and “sweetie” and she doesn’t talk like that to any other boys in the class that he has noticed.
- He said the touching on his arms and shoulders happens on average, once per week. She will be behind him and put both her hands on his shoulders. Or she will reach out and stroke his arm when he is doing one on one work with her.
- He mentions that she has commented on his strong muscles and his physique at least three times. He reports that she said he “was such a strong boy for his age,” he “was going to bust out of his t-shirt his muscles were getting so big” and he “must have worked out really hard that day.”
- Evan feels like he is being singled out with this attention and he wants it to stop. He is very embarrassed and has not said anything to anyone before. He has avoided going to the intervention room for help a couple of times because he did not want to be alone with this teacher.

When the Title IX Coordinator receives a report of sex harassment, they must contact the Complainant and provide specific information:

- ✓ Discuss the availability of supportive measures;
- ✓ Consider the Complainant's wishes with respect to supportive measures;
- ✓ Inform the Complainant of the availability of supportive measures, with or without the filing of a formal complaint.
- ✓ Explain the process for filing a formal complaint.

**Contact
Complainant
Upon Receipt of
a Report or
Complaint**

TITLE IX COORDINATOR- INITIATED COMPLAINT / INVESTIGATION

When required by policy (i.e., where student alleges sexual harassment by an employee).

Where the conduct is an alleged crime.

Where disciplinary action against the employee or student would result if the allegations are true.

Where district safety or the obligation to promptly respond in a manner that is not deliberately indifferent are implicated by failure to pursue a formal complaint/investigation.

JURISDICTION & DISMISSALS



JURISDICTION



- To file a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient.
- “Education program or activity” includes locations, events, or circumstances over which the recipient exercised **substantial control** over both the **respondent and the context** in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

JURISDICTION



- What about off campus conduct?
 - Jurisdiction may still lie if there is control over the Respondent and the context, even if it occurs off campus.
- For off-campus misconduct outside the jurisdiction of the district, there may be in-program effects.
- Even if no jurisdiction under Title IX, a non-disciplinary remedial response would be best practice.
- May also want to look to other policies and code of conduct.

MANDATORY DISMISSAL OF FORMAL COMPLAINT



- Must dismiss a formal complaint if:
 - The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the law/policy, even if proved;
 - If the conduct alleged did not occur in the recipient's education program or activity;
 - If the conduct alleged did not occur against a person in the United States.
- Such dismissal does not preclude other action under the District's code of conduct or other policies.

DISCRETIONARY DISMISSAL OF FORMAL COMPLAINT



- The District may dismiss a formal complaint or any allegations in the complaint if:
 - Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations;
 - The Respondent is no longer enrolled or employed by the District;
 - Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations.
- Upon dismissal, must promptly send written notice of the dismissal and the reasons to the parties.
- Dismissal may be appealed to the appeals decision-maker.

INFORMAL RESOLUTION CONDITIONS



- Districts may not offer an informal resolution process unless a formal complaint is filed.
- Districts may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment.
- Districts may not require the parties to participate in an informal resolution process.
- However, at any time prior to reaching a determination regarding responsibility the district may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the recipient provides written notice disclosing certain items (next slide).
- Prior to informal resolution, the district must obtain the parties' voluntary, written consent to the informal resolution process.
- **Districts cannot offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.**



Investigation of a Formal Complaint

TYPES OF INVESTIGATIONS



Sexual Harassment

Unlawful Harassment/Discrimination

Bullying and Aggressive Behavior

Other Allegations of Misconduct

INVESTIGATIONS UNDER THE 2020 REGULATIONS



- Mandatory separation between the investigation function and decision-making.
- Respondent is not just “innocent until proven guilty,” but must be presumed not responsible for the conduct throughout the entire investigation process.
- Parties are entitled to view all evidence directly related to the allegations of sexual harassment.

SIX ESSENTIALS TO MASTERING INVESTIGATIONS



1. Know what is expected of you under state and federal laws.

2. Understand the factual allegations before starting the investigation.

3. Follow the correct process and/or policy.

4. Investigate fully and without bias.

5. Document your findings and communicate with the complainant.

6. Follow through with remedial measures and a safety plan, as appropriate.



INVESTIGATION STEP ONE: PREPARING TO INVESTIGATE



- ✓ Notice of the grievance process, including any informal resolution process;
- ✓ Notice of the allegations, including sufficient detail (i.e., names of known parties, the conduct alleged to be sexual harassment, and the date and location of the conduct, if known) to allow the respondent to prepare a response before an initial interview;
- ✓ A statement that the respondent is presumed not responsible for the conduct and that responsibility will be determined at the conclusion of the grievance process;
- ✓ Notice of the parties' right to have an advisor (who may be, but is not required to be, an attorney) and to inspect and review evidence; and
- ✓ Notice of any provision in the code of conduct that prohibits knowingly making false statements or providing false information in the grievance process.

Written Notice Start of Formal Complaint

BEGIN WITH AN ORGANIZED FILE

GATHER AVAILABLE RECORDS PRIOR TO INTERVIEWS



- What records should you be asking for?
- Binders. Set up an automatic protocol for each investigation. A binder with pre-determined tabs and a Table of Contents that you can fill in as you go.
- Tabs: Notice of Allegations, Advisor Forms, Complainant Interview, Respondent Interview, Witness Interviews, Text Messages and Social Media, Evidence from Complainant, Evidence from Respondent, Draft Report, Final Report, Correspondence with Complainant and/or Advisor, Correspondence with Respondent and/or Advisor, Notes, etc.
- Start a Timeline and a Witness List to use throughout your investigation.
- Remember that all evidence directly related to the allegations must be provided to the parties eventually, and so keep original copies of things clean.



Duty to Avoid Bias and Conflict of Interest

DEFINING BIAS & CONFLICT



- The Title IX Team must not be biased or conflicted.
 - Black's Law Dictionary: “Bias” is a mental inclination or tendency; prejudice; predilection.
 - Black's Law Dictionary: “Conflict of interest” means a real or seeming incompatibility between one’s private interests and one’s public duties.
- May not be biased for or against complainants or respondents generally.
- May not be biased for or against the individual complainants or respondents involved in the formal complaint.

DUTY TO AVOID BIAS AND CONFLICTS OF INTEREST



- Your focus is the integrity of the process. Never an outcome.
- Learn to recognize your biases so that you can put them aside.
- Consider this before every interview; remind yourself of your obligations to the process.

BIAS LITERACY: RECOGNIZE YOUR BIAS. ACTIVELY AVOID IT.

Affinity Bias

Conformity
Bias

Halo Effect

Horns Effect

Attribution
Bias

Confirmation
Bias

AFFINITY BIAS OCCURS WHEN WE SEE SOMEONE WE FEEL WE HAVE AN AFFINITY WITH; MAYBE WE ATTENDED THE SAME COLLEGE, WE GREW UP IN THE SAME TOWN, OR THEY REMIND US OF SOMEONE WE KNOW AND LIKE.

AFFINITY BIAS

BIAS CAUSED BY GROUP PEER
PRESSURE

**CONFORMITY
BIAS**

Occurs when we see one great thing about a person and we let the halo-glow of that aspect affect our opinions of everything else about that person.

HALO EFFECT

The direct opposite of the halo effect. We see one bad thing about a person and we let it cloud our opinions.

HORNS EFFECT

When we reach conclusions regarding the cause or reason for someone else's behavior based upon what we would have done or how we would have reacted. This does not always accurately reflect reality.

ATTRIBUTION BIAS

When we make a judgment about another person, we subconsciously look for evidence to back up our own opinions of that person.

**CONFIRMATION
BIAS**

INVESTIGATION STEP TWO: GATHERING EVIDENCE



GATHERING EVIDENCE – COMPLYING WITH THE REGULATIONS



- Burden of proof rests on the Recipient at all times.
- Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- Cannot restrict the parties from discussing the allegations under investigation or from gathering and presenting relevant evidence.
- Must provide to any party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

GATHERING EVIDENCE – INTERVIEWS



- Be thorough, but consider necessity and/or relevance of duplicative testimony.
- Typically interview Complainant first and Respondent last. Conduct follow-up interviews with the Parties as needed.
- Never promise confidentiality. Instead, explain the safety precautions the District will take (e.g., no disclosure of personally identifiable information in public records).
- Begin by allowing the witness to tell the story in their own words, first in general, then more specifically.
- Follow up to get specific facts, not generalities.
- Don't forget "anything else?"

SPECIAL WITNESS CONSIDERATIONS: CONDUCTING A TRAUMA-INFORMED INTERVIEW



Trauma-informed investigating and interviewing include the following key components:

- 1) understanding the impact of trauma on a neurological, physical, and emotional level;
- 2) promoting safety and support;
- 3) knowing positive ways to respond that avoid re-traumatization (no “why did you” or “why didn’t you” questions); and
- 4) providing choice with a goal of empowerment.

INVESTIGATION STEP THREE: PROVIDING THE PARTIES WITH EVIDENCE



OBLIGATION TO PROVIDE EVIDENCE



- Must provide both parties an equal opportunity to inspect and review any evidence obtained as a part of the investigation that is **directly related to the allegations raised in a formal complaint**, including the evidence upon which the recipient does not intend to rely in reaching a determination.
- Must do this at this time so that each party can “meaningfully respond to the evidence prior to the conclusion of the investigation.”
- You must provide the evidence in an electronic format or hard copy and give the parties at least 10 days to submit a written response. If a written response is provided, consider it in completing your final report.



Report Writing: The Investigation Report

- ✓ Fairly summarize relevant evidence.
- ✓ Evaluate all relevant evidence objectively, including both inculpatory and exculpatory evidence.
- ✓ Make credibility determinations that are not based on a person's status as a Complainant, Respondent, or Witness.
- ✓ "Show your work" for all of the above in order to have a complete report.

Written Investigation Report

THE INVESTIGATION REPORT: EVALUATING THE RELEVANT INFORMATION



- The investigator is the finder of fact.
- The report should answer the question of whether the conduct occurred as alleged. Did the respondent do what they are accused of doing?
- Apply common sense and consider credibility.
 - Consider the witnesses' opportunity to observe what happened versus hearsay.
 - Note any relationships a witness has with either party, or motives they may have.
 - Consider whether testimony matches up with hard evidence such as texts, photographs, videos, social media, etc.
 - Describe inconsistencies/areas of mistakes in memory, etc.

THE DECISION-MAKING PROCESS



THE DECISION-MAKING PROCESS: BEGINS WITH A QUESTION EXCHANGE



- Must give the final investigative report to both parties at least 10 days prior to a hearing, or determination, for their review and written response.
- The decision-maker either conducts a hearing or a question exchange.
- **Question Exchange:** After receiving the investigation report and before reaching a determination of responsibility, the decision maker must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.
 - **Tip:** Include information about how to submit questions in the final investigative report.

DECISION MAKING PROCESS – ALLOWING QUESTIONING



- The decision maker may only allow relevant questions.
- What is a relevant question?
 - “Relevance” is not generally defined in the regulations.
 - Under the Federal Rules of Evidence, evidence is relevant if:
 - It has any tendency to make a fact more or less probable than it would be without the evidence; and
 - The fact is of consequence in determining the action.

OFF-LIMITS QUESTIONS



- Throughout the grievance process, the investigator(s) and decision-maker(s) may not require, allow, rely upon or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege in writing.
- Examples: Attorney-client privilege, counselor-patient privilege, doctor-patient privilege.

OFF-LIMITS QUESTIONS



- Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that:
 - **Someone other than the respondent committed the conduct** alleged by the Complainant, or
 - If the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are **offered to prove consent**.

Billy is a sophomore student who has struggled academically. With his parents' permission, he meets regularly with his Algebra teacher in her classroom after school. After two months of tutoring, Billy files a Title IX complaint alleging that the teacher sexually assaulted him during their tutoring sessions.

Respondent to Complainant: Were you suspended last year for plagiarizing a paper then lying about it?

QUESTION EXCHANGE
HYPOTHETICAL:

Determining relevance.

MAKING A DETERMINATION OF RESPONSIBILITY AND DRAFTING THE WRITTEN REPORT



INVESTIGATIVE REPORT VS. DETERMINATION OF RESPONSIBILITY

Investigative Report

- The investigator should be a **fact finder**.
 - Gather the facts.
 - Provide sufficient details to provide context and information on the importance of specific evidence.
 - Explain what questions were asked, what evidence was reviewed, and why the investigator made the choices to ask those questions and review that evidence.
 - Explain what evidence the investigator believes is most important and why. Explain what evidence the investigator believes is unimportant and why.
 - Explain why the investigator thinks certain evidence or statements are more or less credible.

Determination of Responsibility

- The decision maker should be a **decision maker**.
 - Make credibility determinations, including whether parties and witnesses were telling the truth.
 - Make determinations about what happened and when.
 - Make determinations about the relative importance of facts and evidence.
 - ***Make a determination regarding whether the Respondent sexually harassed the Complainant that is supported by the facts, as presented by the investigative report and reviewed by the decision maker.***
 - ***Make a determination about whether the Respondent violated any other District rules.***
 - ***Make determinations regarding appropriate sanctions and remedies.***

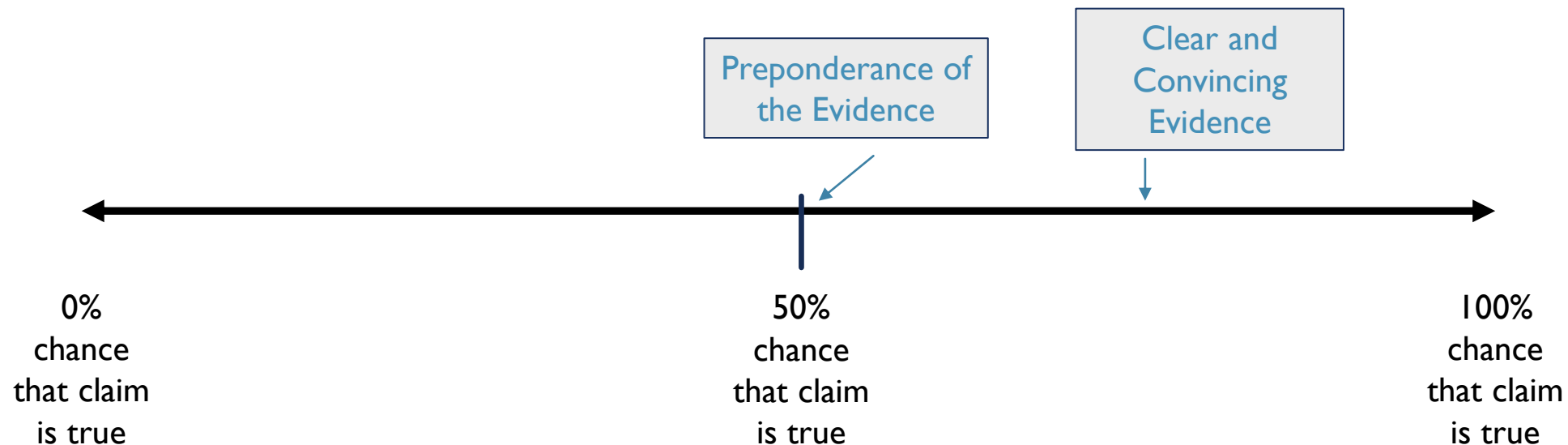
MAKE A DETERMINATION REGARDING RESPONSIBILITY



- Apply the standard of evidence the District has chosen:
 - Preponderance of the Evidence.
 - ~~Clear and Convincing Evidence.~~
- The same standard of evidence must be used for all formal complaints of sexual harassment against students and employees.

REVIEWING THE STANDARD OF EVIDENCE

- “Preponderance of the Evidence” means there is greater than 50% chance that the claim is true.
- “Clear and Convincing Evidence” means the claim is highly and substantially more likely to be true than untrue.



WHAT RULES APPLY TO THE DECISION MAKER'S CONSIDERATION OF THE EVIDENCE?



- Objectively evaluate all relevant evidence, both inculpatory and exculpatory.
 - “Inculpatory evidence” is evidence that shows, or tends to show, a person’s involvement in an act, or evidence that can establish responsibility.
 - “Exculpatory evidence” is evidence that tends to excuse, justify, or absolve the alleged fault or responsibility as a Respondent.
- Make credibility determinations that are not based on a person’s status as a complainant, respondent, or witness.
- Continue to presume that the Respondent is not responsible for the alleged conduct until a **final** determination regarding responsibility is made.
- Remember that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the **District**, not the Complainant or Respondent.

DECIDING THE ULTIMATE QUESTION: IS IT SEXUAL HARASSMENT?



- Determine whether the respondent has engaged in “sexual harassment” in violation of Title IX and its regulations.
 1. A district employee conditioning the provision of an aid, benefit, or service on the 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 recipient’s education program or activity; or
 3. “Sexual assault” as defined the Clery Act, or “dating violence,” “domestic violence,” or “stalking” as defined in the Violence Against Women Act (VAWA).
- Conduct may fall under more than one category, so make sure to consider that possibility.

WHAT IS SEXUAL HARASSMENT?

QUID PRO QUO HARASSMENT ANALYSIS



1. A district employee **conditioning** the provision of an aid, benefit, or service on the individual's participation in **unwelcome** sexual conduct.
 - Whether *quid pro quo* harassment exists may be implied from the circumstances; the exchange need not be explicit.
 - *Quid pro quo* harassment need not be severe, pervasive, and objectively offensive. Even a single instance is “inherently offensive and serious enough to jeopardize equal educational access,” even when only verbal conduct is at issue.

WHAT IS SEXUAL HARASSMENT?

QUID PRO QUO HARASSMENT ANALYSIS



- What is “unwelcome conduct”? Subjective standard.
 - OCR: “The Complainant’s subjective statement that the Complainant found the conduct to be unwelcome suffices to meet this ‘unwelcome’ element.”
 - Does not require an explicit statement to the Respondent that the conduct is unwelcome.
 - A sexual relationship between an employee and a student will constitute unwelcome sexual conduct regardless of whether the student nominally consented or welcomed the sexual activity.

WHAT IS SEXUAL HARASSMENT?

QUID PRO QUO HARASSMENT ANALYSIS (STUDENT/TEACHER)



- What does it mean to condition something on participation in sexual conduct?
 - K-12 students are generally expected to submit to the instructions and directions of teachers, such that if a teacher makes a student feel uncomfortable through sex-based or other sexual conduct (e.g., back rubs or touching students' shoulders or thighs), it is likely that the students will interpret that conduct as implying that the student must submit to the conduct in order to maintain the educational benefits (e.g., not getting in trouble or continuing to please the teacher and earn good grades).
 - In situations where an employee did not intend to commit quid pro quo harassment (e.g., where the teacher did not realize that what the teacher believed were friendly back rubs had sexual overtones and made students feel uncomfortable), the District may take the specific factual circumstances into account in deciding what remedies are appropriate for the complainants and what disciplinary sanctions are appropriate for the respondent.

WHAT IS SEXUAL HARASSMENT?

HOSTILE ENVIRONMENT ANALYSIS



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 recipient's education program or activity.
 - Unwelcome conduct.
 - Severe and pervasive and objectively offensive.
 - Effectively denies equal access to the education program or activity.

WHAT IS SEXUAL HARASSMENT?

SEX CRIMES ANALYSIS



3. “Sexual assault” as defined the Clery Act, or “dating violence,” “domestic violence,” or “stalking” as defined in the Violence Against Women Act (VAWA).
 - “Sexual Assault” means “any sexual act directed against another person, without the consent of the victim including instances when the victim is incapable of consent” or “unlawful, nonforcible sexual intercourse.” “Sexual act” includes forcible rape, forcible sodomy, sexual assault with an object, forcible fondling (the touching of private body parts of another person for the purpose of sexual gratification), incest, or statutory rape.
 - “Dating Violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship is determined based on a consideration of the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in a relationship.
 - “Domestic Violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under applicable domestic or family violence laws, or by any other person against an adult or youth victim who is protected by applicable domestic violence laws.
 - “Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

The Written Determination of Responsibility Must Include:

- Allegations potentially constituting sexual harassment;
- Description of procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- **Findings of fact supporting the determination;**
- **Conclusions regarding the application of the district's code of conduct to the facts;**
- **A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, disciplinary sanctions for the Respondent, and remedies designed to restore or preserve equal access to the district's education program or activity to be provided to the Complainant.**
- Procedures and permissible bases for the Complainant and the Respondent to appeal.

Written Determination of Responsibility

REVIEW A REPORT



PROVIDING THE WRITTEN DETERMINATION TO THE PARTIES



- The District must provide the written determination simultaneously to the parties.
 - Must actually give the written determination to the parties, either electronically or physically.
 - Cannot just show them the report, as was often the practice in the past.
- The written determination becomes final on either:
 - The date that the District provides the parties with the written determination of the result of an appeal, if an appeal is filed; or
 - If an appeal is not filed, the date on which an appeal would no longer be considered timely.

APPEALS



BASIS FOR APPEALS

- The District provides parties an appeal right from a determination regarding responsibility, and from a dismissal of a formal complaint or any allegations in a formal complaint, on the following bases:
 - A procedural irregularity that affected the outcome of the matter;
 - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
 - The Title IX Coordinator, Investigator(s), or Decision Maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.



WHO SHOULD THE APPEALS DECISION MAKER BE?

- The Appeals Decision Maker must not be:
 - Biased.
 - Conflicted.
 - The Title IX Coordinator, the Investigator, or the Decision Maker.
- The Appeals Decision Maker must be:
 - Appropriately trained.
 - Capable of timely reviewing the Determination of Responsibility and deciding the issue on appeal.
 - Able to impose discipline on the Respondent.



- Identify the basis/bases for appeal.
- Describe the **relevant** procedural steps taken from the receipt of the formal complaint to the issuance of the Determination of Responsibility.
- Describe the **relevant** findings of fact and **relevant** conclusions in the Determination of Responsibility.
- Include a statement of, and rationale for, the result as to each basis for appeal.
- Describe the result of the appeal.

Appeal **Decision**

THE WRITTEN APPEAL DECISION

- What are possible results of the appeal?
 - The Determination of Responsibility is “affirmed.”
 - The Determination of Responsibility is completely or partially “reversed,” and the Appeals Decision Maker comes to a different conclusion.
 - The complaint is “remanded” to the Investigator for limited further investigation in accordance with specific instructions from the Appeal Decision.



PROCEDURES FOR APPEALS – NOTIFYING PARTIES OF THE RESULT

- Issue a written appeal decision describing the result of the appeal and the rationale for the result.
- Simultaneously provide the written appeal decision to both parties.



SANCTIONS



SANCTIONS



- The district may not impose any disciplinary sanctions or other actions that are not supportive measures against a Respondent until the grievance process has concluded.
- The Determination of Responsibility becomes final either on the date the appeal is resolved or the date the appeal is no longer timely.
- The sanctions must be among those listed or described in the grievance process as within the range of possible disciplinary sanctions and remedies.
- The Title IX Coordinator is responsible for effectively implementing any sanctions and/or remedies.

REMEDIES



REMEDIES



- The Determination of Responsibility must include a statement of whether remedies designed to restore or preserve equal access to the district's education program or activity will be provided by the district to the Complainant.
- Remedies may be the same as supportive measures, but after the Determination of Responsibility becomes final, need not be non-disciplinary or non-punitive, and need not avoid burdening the Respondent.

AFTER THE INVESTIGATION AND OUTCOME: REMEDIAL MEASURES



- How does the District keep track of multiple incidents? The District has a comprehensive record for staff within Human Resources. How will this be addressed for students?
- What are some basic changes you may make to prevent opportunity for misconduct? (e.g., closet doors are locked from student access; teachers must have doors open; after school meetings cannot take place in classrooms, etc.).
- Consider training for staff and/or students.
- **The District must implement intervention strategies to protect a victim or other person from new or additional harassment, intimidation, or bullying and from retaliation following such a report.**

SEXUAL HARASSMENT TOP TIPS FOR 2025 - 2026



- Do train all employees at the beginning of the school year on the definition(s) of sexual harassment and their obligation to report and address sex discrimination and harassment.
- Do ensure all new members of the Title IX team receive training specific to their roles.
- Don't discipline for sexual harassment without following the grievance procedure.
- Don't use other policies/procedures to investigate allegations of sexual harassment.
- Do collaborate on whether conduct meets the definitions of sexual harassment in policy.



THANK YOU!