

Scope of Title IX 2024 Final Rule

Illinois Association of School Administrators

August 20, 2024
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TITLE IX

since 1972

"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 educational program or activity receiving federal financial assistance."

Discrimination

Disparate Treatment =
treating a person unfairly
because of their status or
perceived status in a
protected group

Disparate Impact = a
policy appears neutral
but has an adverse
impact on a protected
group

Harassment =
harassment based on a
protected status /
characteristic

Examples of Where Title IX Sex Discrimination Might Occur

Comparable facilities
Access to classes and schools
Extra-curricular activities
Athletics equity
Student discipline



Scope of
prohibited sex
discrimination
under Title IX
includes:

§106.10

Sex stereotypes

Sex characteristics

Pregnancy or related conditions

Sexual orientation

Gender identity

NEW
2024

Pregnancy or Related Conditions Definition

Pregnancy,
childbirth,
termination of
pregnancy, or
lactation;

Medical conditions
related to
pregnancy,
childbirth,
termination of
pregnancy, or
lactation; or

Recovery from
pregnancy,
childbirth,
termination of
pregnancy,
lactation, or
related medical
conditions

NEW
2024

Pregnancy/Related Conditions **ALL EMPLOYEES'** Obligation

When a student or a person who has the legal right to act on the student's behalf notifies an employee of the student's pregnancy or related conditions:

The **employee shall** promptly share with that person:

- the TIX Coordinator's contact information, and
- that the TIX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access
- *unless* the employee reasonably believes that the TIX Coordinator has been notified

Sex-Based Harassment under Title IX: eff. 8/1/24

1. QUID PRO
QUO

2. SEXUAL
ASSAULT,
VIOLENCE,
STALKING

3. HOSTILE
ENVIRONMENT

#1: QUID PRO QUO

By Employee,

NEW
2024

**Or by Agent, or Other Person
authorized to provide an aid or
benefit of the school**



#2:
Sexual
Assault, etc.

Sexual assault

(20 U.S.C. §1092(f)(6)(A)(v))

Dating violence

(34 U.S.C. §12291(a)(10))

Domestic violence

(34 U.S.C. §12291(a)(8))

Stalking

(34 U.S.C. §12291(a)(30))

#2:

Sexual
Assault,
etc.

Sexual assault (20 U.S.C. §1092(f)(6)(A)(v))

An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation

Dating violence

(34 U.S.C. §12291(a)(10))

#2:

Sexual
Assault,
etc.

Violence committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) 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 relationship; and
- The frequency of interaction between the persons involved in the relationship;

#2:

Sexual
Assault,
etc.

Domestic violence (34 U.S.C. §12291(a)(8))

Felony or misdemeanor crimes committed by a person who: (1) 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 a spouse of the victim; (2) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (3) shares a child in common with the victim; or (4) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction

#2:
Sexual
Assault,
etc.

Stalking

(34 U.S.C. §12291(a)(30))

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (1) fear for the person's safety or the safety of others; or
- (2) suffer substantial emotional distress

#3 Hostile Environment

2020 Amendments

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

2024 Amendments

NEW
2024

Unwelcome conduct that, based on totality of circumstances, is **subjectively and objectively offensive**, and is **so severe OR pervasive** that it effectively denies a person equal access to the recipient's education program or activity

“Offensive”

“Subjectively”

“Objectively”

The Complainant was personally offended

A reasonable person in Complainant’s situation would be offended

“Severe or Pervasive”

“Totality of the circumstances”

The severity varies inversely with the pervasiveness (frequency) of the conduct

Generally, a pattern of repeated behavior is required

How Do You Know If It Is “Hostile Environment”?

Totality of Circumstances

- ❑ Degree to which conduct affected Complainant’s ability to access education program/activity?
- ❑ Type, frequency, duration of conduct?
- ❑ Parties’ ages, roles, previous interactions, other factors?
- ❑ Location / context of conduct?
- ❑ Other sex-based harassment in your education program/activity?

WHERE Must Sex Discrimination Under Title IX?

In an educational program or activity of the recipient



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In the United States



WHAT is an 'Education Program or Activity'?

2020 Amendments

Includes locations, events, or circumstances over which the school exercises substantial control over:

1. The respondent, and
2. The context in which the sexual harassment occurs

2024 Amendments

NEW
2024

When conduct is subject to the school's disciplinary authority.

** You must address a sex-based hostile environment even when some conduct alleged to contribute to the hostile environment occurred outside your education program/activity or outside the United States.*

NEW
2024

WHAT is an 'Education Program or Activity'?

34 C.F.R. §106.31

In limited circumstances where different treatment / separation on the basis of sex is allowed, such different treatment or separation must not subject a person to more than **de minimus harm**

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Title IX – What Are My District's Obligations

Presented by:
Merry Rhoades

Date:
August 20, 2024

DIFFERENT
BY DESIGN

OUR FIRM

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Disclaimer

The materials available in this Guidance are for informational purposes only. You should contact legal counsel to obtain advice with respect to any particular issue or problem, as student discipline matters are all unique and specific.



TUETH KEENEY
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DIFFERENT
BY DESIGN

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Practice Areas

Education
Special Education
Labor & Employment

Bar Admissions

Illinois, 1986
Seventh Circuit Court of Appeals
United States District Courts for the Southern and Central Districts
of Illinois

Department of Ed's Stated Goals in Adopting 2024 Final Title IX Regs

U.S. Department of Education's Goals in Adopting the 2024 Regulations:

- Obligation not to discriminate based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation and gender identity
- Provide an educational environment free from discrimination on the basis of sex
- Protection of students, teachers and other employees against **all** forms of sex discrimination, including sex-based harassment and sexual violence
- Help to ensure that all students receive appropriate support when they experience sex discrimination

Department of Ed's Stated Goals in Adopting 2024 Final Title IX Regs

From the comments in the 2024 Final Regulations:

“First, encouraging reporting and facilitating complaints of sex discrimination is a critical part of the recipient’s duty to effectuate Title IX’s nondiscrimination mandate. As a condition of receiving Federal funds, a recipient agrees to operate its education program and activity free from sex discrimination; doing so requires knowing about possible discrimination and investigating it to determine the need for remedy, if any.”

Policies Require Action to Address Sex-Based Discrimination

- PRESS 5:20 – GENERAL PERSONNEL – Workplace Harassment
 - Provides a policy statement prohibiting sex-based discrimination in employment
 - Encourages employees (and other school-related contractors) to report information about violations
 - Identifies who to contact to make a report
 - Advises of ability to use the grievance procedure to process a complaint of sex-based discrimination
 - Places obligation on superintendent to make employees and other school-related contractors of this policy

Policies Require Action to Address Sex-Based Discrimination

- PRESS Policy 7:10 *Equal Educational Opportunities*
 - Provides equal access to programs, services and benefits to school programs, including extracurricular programs and activities
 - Provides statement that any claim alleging access not provided because of sex can submit a grievance under the general grievance procedure
 - Includes accommodating transgender, nonbinary and gender non-conforming students

Policies Require Action to Address Sex-Based Discrimination

- PRESS Policy 7:20 *Harassment of Students Prohibited*
 - Provides that sexual harassment of students is prohibited conduct
 - Encourages students to report information about violations
 - Identifies who to contact to make a report
 - Advises of ability to use the grievance procedure to process a complaint of sex-based discrimination
 - Places obligation on superintendent to make employees and other school-related contractors of this policy

Triggering Title IX Procedures

34 CFR § 106.44 states,

(1) A recipient with *knowledge* of conduct *that reasonably may constitute sex discrimination* in its an education program or activity must respond promptly and effectively; and

(2) A recipient must also comply with this section to address sex discrimination in its education program or activity.

Triggering Title IX Procedures

34 CFR § 106.11 provides

- . . . this part 106 applies to every recipient and to all sex discrimination occurring under a recipient's education program or activity in the United States.
- For purposes of this section, conduct that occurs under a recipient's education program or activity ***includes but is not limited to*** conduct that is subject to the recipient's disciplinary authority.
- A recipient has an obligation to address a sex-based hostile environment under its education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient's education program or activity or outside the United States.

Triggering Title IX Procedures

Complaint means an oral or written request to the recipient that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX or this part.

No longer requires that it be in writing and signed by complainant.

Triggering Title IX Procedures

- Person making complaint does need to provide sufficient information so that the district can make an informed decision in moving forward
- If the complainant does not want to proceed forward, district may still has an obligation to process the complaint
- In its comments to the final regulations the U.S. Dept of Ed writes, “the Department agrees with commenters that it is important for a recipient to initiate the grievance procedures when requested by a complainant, and for a recipient not to initiate the grievance procedures if a complainant is not ready or does not want to initiate them, **except in the limited circumstances in which the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of a complainant or other person or prevents the recipient from ensuring equal access based on sex to its education program or activity under § 106.44(f)(1)(v).**” (Emphasis added).

Reporting Obligations - § 106.44(c)

- **Must** report sex discrimination to Title IX Coordinator:
 - **Any employee who is not confidential and either:**
 - Has authority to institute corrective measures, or
 - Has responsibility for administrative leadership, teaching, or advising.
- **May** either report to Title IX Coordinator or provide contact information:
 - **All other employees who are not confidential employees.**



Confidential Employees - § 106.44(d)

- Confidential employees must inform those who report sex discrimination:
 - That the employee is confidential,
 - How to contact the Title IX Coordinator,
 - How to make a complaint, and
 - That the Title IX Coordinator may be able to offer supportive measures, as well as initiate an information resolution or investigation.



CONFIDENTIAL

Informal Resolutions

Does not require the complainant to file a formal complaint to offer informal resolution.

Recipient has discretion to determine when it is appropriate to offer informal resolution.

Cannot require parties to participate in informal resolution.

Must provide **notice** to parties before informal resolution.

Facilitator cannot be the same person as the investigator or decisionmaker in the grievance process.

NOTE: There are many, specific requirements related to informal resolution; institutions should review and prepare for this option.

Title IX Coordinator Responsibilities

- Lists required actions Title IX Coordinator must take when receiving report of sex discrimination:
 - Treat parties equitably,
 - Offer and coordinate supportive measures,
 - Notify complainant of grievance procedures,
 - Initiate grievance procedures when complaint is received,
 - Determine whether to initiate complaint,
 - Other appropriate prompt and effective steps to ensure sex discrimination does not continue or recur.

Title IX Coordinator Responsibilities

- “(2) A Title IX Coordinator is **not required** to comply with paragraphs (f)(1)(i) through (vii) of this section upon being notified of conduct that may constitute sex discrimination **if the Title IX Coordinator reasonably determines that the conduct as alleged could not constitute sex discrimination** under Title IX or this part.”
- One of several places in the regulation that provide **DISCRETION** to the Title IX Coordinator.
- NOTE: With more reports constituting complaints, policies should include a review by the TIX Coordinator before the process proceeds.

Title IX Coordinator Responsibilities

(A) To make this fact-specific determination, the Title IX Coordinator must consider, at a minimum, the following factors:

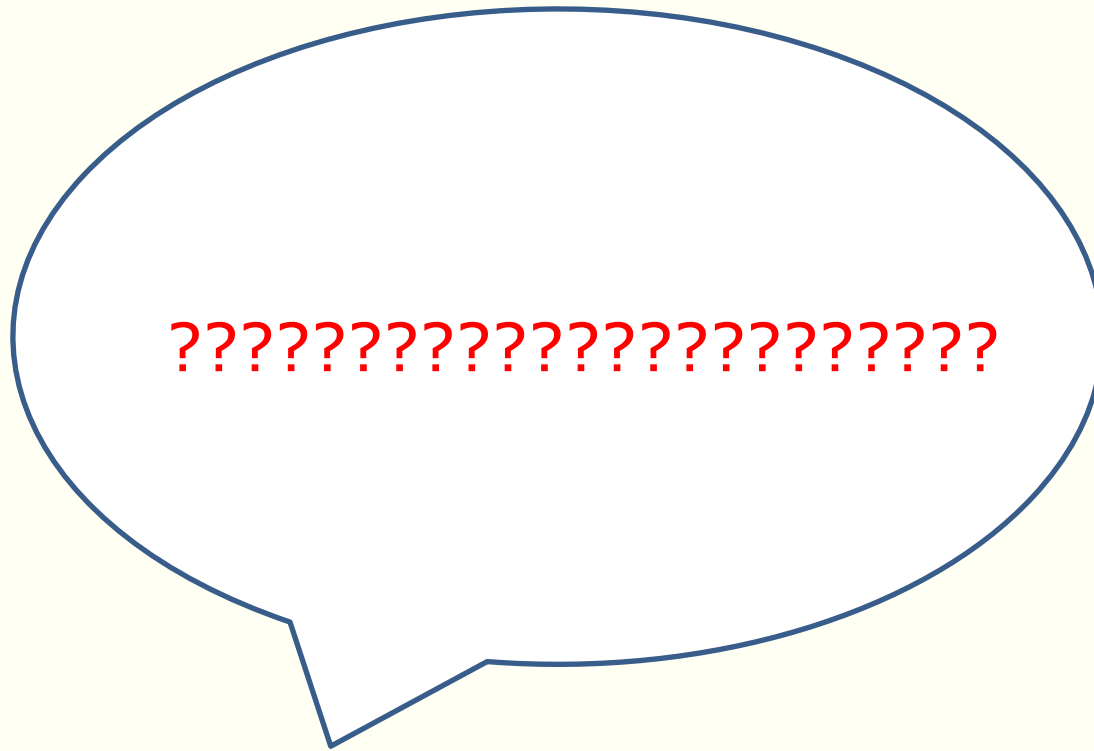
- (1) The complainant's request not to proceed with initiation of a complaint;
- (2) The complainant's reasonable safety concerns regarding initiation of a complaint;
- (3) The risk that additional acts of sex discrimination would occur if a complaint is not initiated;
- (4) The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
- (5) The age and relationship of the parties, including whether the respondent is an employee of the recipient;
- (6) The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;
- (7) The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred; and
- (8) Whether the recipient could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures under § 106.45, and if applicable § 106.46.



Title IX Coordinator Responsibilities

- Similar to requirements from 2020 regulations – the district must offer supportive measures that do not burden either party, free of charge.
- Clarifies that supportive measures can end after grievance process or can be continued.
- New requirement to allow party to appeal decision related to supportive measure applicable to them to an impartial employee.

QUESTIONS?





YOUR 50 STATE PARTNER®

Title IX: Grievance Procedure

IASA Title IX Training

August 20, 2024



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Meet Your Presenter



- Practice focused on student work: special education, student discipline, Title IX, etc.
- Formerly a second grade teacher
- Represent school districts throughout the state
- Lives in Chicago

Meet Your Presenter



- Practice focuses on HR work and Litigation
 - Human Resources: employee discipline, leaves, benefits, grievances, and complaints; policies; handbooks; and training.
 - Litigation: Any type of employment or student issue: Title IX, discrimination, harassment, retaliation, failure to accommodate, etc.
- Prior to returning to private practice, oversaw all federal litigation at Chicago Public Schools and helped to create the district's Title IX department
- Represent K-12 and post-secondary institutions relating to Title IX, employee and student issues



Title IX Statute

20 U.S.C. §§ 1681-1688

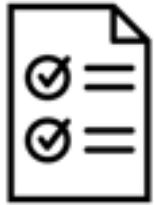
No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.



Title IX Updates: Grievance Process

NEW:

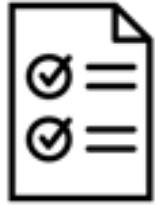
- Districts now have the ability to put a process in place
- No more evidence exchanging timelines
- Can have the same investigator/decision-maker
- Reasonably prompt timelines for all major stages
- Reasonable steps to protect the privacy of parties and witnesses during grievance



Protocol for the Grievance Process

The grievance process must be fair and equitable, without bias or conflict of interest, and not reliant on stereotypes.

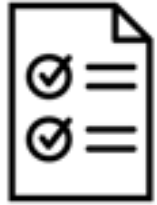
- The school's process must:
 - Presume that the respondent is not responsible until a determination is made
 - Establish reasonably prompt timeframes for the major stages of the grievance procedures, including a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause
 - Require reasonable steps to protect the privacy of parties and witnesses
 - Require an objective evaluation of all evidence that is relevant



Protocol continued

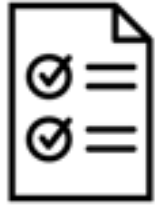
The rule permits schools to use one of two standards of proof:

1. Clear and convincing
 - If the school uses clear and convincing standard of proof in other comparable proceedings, they may use that standard in sex-discrimination proceedings
 - This standard requires a finding that the complaint is highly and substantially more likely to be true than untrue
2. Preponderance of evidence
 - This standard requires that a complaint be more likely true than not true



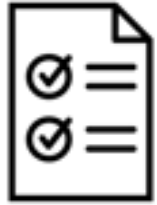
Protocol continued

- The Title IX Coordinator must provide both parties with notice of allegations and notice of any Title IX meetings of procedural processes
- As part of the grievance process, the school district shoulders the burden of gathering evidence
 - Not permitted to violate any constitutional protections
 - In particular, the First Amendment right to freedom of speech
 - The Fifth Amendment right to protection against self-incrimination
 - 14th Amendment protections of due process



Protocol continued

- All parties involved in the grievance process are guaranteed access to the relevant and not otherwise impermissible evidence, and a reasonable opportunity to respond to the evidence
- School must provide a process that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility, to the extent that credibility is both: in dispute and relevant to evaluating one or more allegations of sex discrimination
- Schools will notify the parties in writing of the determination of whether sex discrimination occurred, including the rationale for such determination and the procedures and permissible bases for the complainant and respondent to appeal if applicable
- If there is a determination that sex discrimination occurred, the Title IX coordinator will coordinate the provision and implementation of remedies to a complainant, coordinate the imposition of any disciplinary sanction on a respondent, and take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the school's education program



Protocol continued

- After the final report is issued, both parties have the option to appeal
 - Grounds for appeal included in the final rule are:
 - Procedural irregularity that would change the outcome
 - New evidence that would change the outcome and that was not reasonably available when the determination or dismissal was made
 - A conflict of interest or bias
 - Any other grounds for appeal that are offered equally to the parties
- Schools and individuals are not permitted to participate in any type of retaliation, including retaliation by peers



Discretion to Use Certain Procedures

- Discretion to choose to use certain procedures (e.g., single investigator, live hearings) for some, but not all, complaints of sex discrimination.
 - If a recipient adopts certain procedures that apply to the resolution of some, but not all, complaints of sex discrimination, the 2024 amendments require the recipient to articulate consistent principles for how the recipient will determine which procedures apply.
- A recipient must provide information in its grievance procedures regarding what factors, if any, the recipient will consider when determining under what circumstances or to which types of sex discrimination complaints certain procedures apply
 - (e.g., complaints involving certain forms of sex-based harassment, student-to-student sex-based harassment complaints, complaints involving students of certain ages or education levels).
- A recipient's grievance procedures are permitted to also include additional provisions beyond those required by the 2024 amendments, as long as they apply equally to the parties.
- A recipient's grievance procedures must be in writing and must include the required components set forth in § 106.45.



Basic Requirements of Title IX Grievance Procedures:

- School will treat complainants and respondents equitably.
- School requires that any Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents
 - A decisionmaker may be the same person as the Title IX Coordinator or investigator.
- School presumes that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures.
- School has established the following timeframes for the major stages of the grievance procedures:
 - DESCRIBE REASONABLY PROMPT TIMEFRAMES, for major stages, including for example, evaluation (i.e., the decision whether to dismiss or investigate a complaint); investigation; determination; and appeal, if any.
- School] has also established the following process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay:
 - DESCRIBE PROCESS
- School will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures.
- School will objectively evaluate all evidence that is relevant and not otherwise impermissible



Permissible Evidence

The following types of evidence are impermissible, regardless of whether they are relevant:

- Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless School obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and
- Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment.
 - The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.



Notice of Allegations:

Upon initiation of School's Title IX grievance procedures, School will notify the parties of the following:

- School's Title IX grievance procedures and any informal resolution process; Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);
- Retaliation is prohibited; and
- The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence.
- If School provides a description of the evidence: The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.
- If, in the course of an investigation, School decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the notice provided, School will notify the parties of the additional allegations.



Dismissal of a Complaint:

School may dismiss a complaint of sex discrimination if:

- School is unable to identify the respondent after taking reasonable steps to do so; the respondent is not participating in School's education program or activity and is not employed by School;
- The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and School determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
- School determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, School will make reasonable efforts to clarify the allegations with the complainant.



Dismissal cont.

- Upon dismissal, School will promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then School will also notify the respondent of the dismissal and the basis for the dismissal promptly
- School will notify the complainant that a dismissal may be appealed and will provide the complainant with an opportunity to appeal the dismissal of a complaint.
- If the dismissal occurs after the respondent has been notified of the allegations, then School will also notify the respondent that the dismissal may be appealed.
- Dismissals may be appealed on the following bases:
 - Procedural irregularity that would change the outcome;
 - New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
 - The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.



Dismissal/Appeal cont.

If the dismissal is appealed, [School] will:

- Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
- Implement appeal procedures equally for the parties; Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations;
- Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the parties of the result of the appeal and the rationale for the result.

When a complaint is dismissed, School will, at a minimum:

- Offer supportive measures to the complainant as appropriate;
- If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within School's education program or activity.



Investigation Basics

- School will provide for adequate, reliable, and impartial investigation of complaints.
- The burden is on School—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.
- School will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible.
 - Sufficient notice of the evidence and an opportunity to respond
- School will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.



Questioning the Parties and Witnesses:

- School will provide a process that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.



Determination whether Sex Discrimination Occurred:

- Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, School will:
 - Use the preponderance of the evidence or, if applicable, clear and convincing standard of proof to determine whether sex discrimination occurred.
 - The standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness.
 - If the decisionmaker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker will not determine that sex discrimination occurred.
 - Notify the parties in writing of the determination whether sex discrimination occurred under Title IX including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal, if applicable;
 - Not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in prohibited sex discrimination.
 - If there is a determination that sex discrimination occurred, the Title IX Coordinator will, as appropriate:
 - Coordinate the provision and implementation of remedies to a complainant and other people [School] identifies as having had equal access to [School's] education program or activity limited or denied by sex discrimination;
 - Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions; and
 - Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within [ABC School's] education program or activity.
- Comply with the grievance procedures before the imposition of any disciplinary sanctions against a respondent.



Appeal of Determinations, if offered:

- This appeal process will be, at a minimum, the same as School offers in all other comparable proceedings, including proceedings relating to other discrimination complaints.



Informal Resolution, if offered:

- In lieu of resolving a complaint through School's Title IX grievance procedures, the parties may instead elect to participate in an informal resolution process.
 - School does not offer informal resolution to resolve a complaint that includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student, or when such a process would conflict with Federal, State, or local law.



Supportive Measures

What are they?

- Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge, to the complainant or respondent before or after the filing of a formal complaint or where no formal complaint filed
- Designed to restore or preserve access to District's education program or activity, without unreasonably burdening the other party; protect the safety of all parties and the recipient's educational environment, and deter sexual harassment
- Must keep confidential
- E.g., 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
 - a person can challenge supportive measures given, denied, etc.



Summary

- Grievance Process under new rules
 - Have a policy and/or grievance procedures that provide effective means for preventing and responding to sexual harassment
 - Provide for prompt and equitable resolution of complaints of discrimination on the basis of sex
 - Employ at least one Title IX coordinator
 - Take prompt and effective action that has been reasonably calculated to end the harassment, prevent recurrence and remedy the effects
 - Address how the victim will be protected from retaliation
 - Train employees in handling complaints, recognizing and responding to harassment and making a report
- Procedural Changes
 - Choice about how to handle grievance process
 - Can have the same investigator and decision maker
- Informal Resolution
 - Participation in informal resolution must be voluntary
 - Informal resolution is not permitted in situations in which an employee allegedly engaged in sex-based harassment of an elementary or secondary student or if such a process would conflict with federal, state, or local law



Summary cont.

- This new guidance:
 - Protects against all sex-based harassment and discrimination
 - Requires schools to respond promptly to all complaints of sex discrimination with a fair, transparent and reliable process that includes trained, unbiased decisionmakers to evaluate all relevant and not otherwise impermissible evidence
 - Protects against retaliation
 - Requires schools to communicate their nondiscrimination policies and procedures to all students, employees, and other participants in their education programs
 - Supports the right of parents and guardians to act on behalf of their elementary school and secondary school children
 - Protects against discrimination based on sex stereotypes, sexual orientation, gender identity, and sex characteristics
 - Identifies the types of training required for school administrators



QUESTIONS

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Title IX Roles and Responsibilities

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August 20, 2024



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Policy Compliance – The Board’s Role



Notice of Non-Discrimination must include:

Contact information for Title IX Coordinator
Where to find the policies and procedures
How to make a complaint



Posting Notice on website, handbooks, and bulletin boards



Update Title IX grievance procedure to reflect more stream-lined approach



Rely on Uniform Grievance Procedure as your template



PRESS’s Title IX Policy was released and should be on Board agendas in the fall for review and consideration

Title IX Coordinator Responsibilities

General Responsibilities

- Develop, maintain, and distribute Notice of Nondiscrimination to all students and staff. Include Notice in all handbooks and post prominently in buildings and on website.
- Ensures compliance with Title IX across the School District, including implementing activities to prevent and address sex discrimination.
- Maintains all records associated with complaints of sex discrimination.



Title IX Coordinator Responsibilities

Staff Training

- *All Staff* – Training in identifying and reporting sex discrimination **including**:
 - the definition of sex discrimination under Title IX
 - understanding constructive knowledge of sex discrimination
 - staff obligations to address sex discrimination in the educational environment
 - staff obligations to report constructive knowledge of sex discrimination to the Title IX Coordinator
- *Facilitator of Informal Resolutions* – Training regarding alternative dispute resolution, conflicts of interests, and any other aspects of their role
- *Investigator and Decisionmaker* – Training on the grievance process, acting impartially, the relevancy of evidence, and any other aspects of their role



Title IX Coordinator Responsibilities

Pregnant Students

Upon information or belief that a student is pregnant:

- Inform the student of their rights to be free from discrimination based on pregnancy or parental status
- Offer reasonable accommodations or academic adjustments, including alternative educational programming or voluntary leaves of absence
- Provide lactation space that is clean, shielded from view, and free from interruption
- Explain the grievance procedure and its application to their condition



Title IX Coordinator Responsibilities

Grievance Processing

- Implements the grievance process
- Assists complainants and potential complainants by supporting their filing of a complaint and providing them with information and resources
- Attempts to resolve complaints without resorting to the formal grievance process, if possible
- Informs all parties that the District prohibits any form of retaliation against anyone who brings a complaint or provides information to the individual investigating a complaint
- Receives complaints and notifies all involved of the process
- Files complaints when necessary
- Investigates complaints or appoints a qualified investigator to undertake the investigation, ensuring that the complaint is investigated promptly, thoroughly, and impartially, and as confidentially as possible
- For each formal complaint, ensures the preparation of a comprehensive report describing the complaint, the investigation, and the findings and recommendations
- Processes the request for appeal of the final determination and appoints an appeals decisionmaker
- Monitors implementation of recommendations and disciplinary sanctions



Knowledge of Discrimination – See Something, Say Something

The School District has knowledge of sexual harassment if any employee has a reasonable belief that sexual harassment has occurred.

Knowledge by the School District initiates the obligation by the School District to act promptly and effectively to end the harassment.

Employees with knowledge of sexual harassment must report it – and must be told of their obligation to report it.

Informal Resolution Encouraged – Who is in Charge?



Can agree to informal prior to any complaint being filed



Not available where the allegations include a staff/employee and a student



Still requires agreement by both parties; still can be withdrawn at any time



Facilitator of informal process cannot be the Title IX Coordinator, investigator, or decision-maker.

Record Keeping



Complaints: all records documenting the informal resolution or grievance process and the resulting outcome



Constructive knowledge: documentation of actions taken to comply with Title IX once the Title IX coordinator had knowledge of conduct that may reasonably constitute sex discrimination



Training: All materials used to provide training to staff and the Title IX Coordinator

IEP Team Involvement



Supportive Measures



Outcome of complaint



Remedies

Questions?

REMEMBER
WHY YOU
STARTED



TITLE IX INVESTIGATIONS 2024

PRESENTED BY:
DAWN HINKLE
ABBY ROGERS

ECB&S

Engler Callaway
Baasten & Sraga, LLC

Investigation

- **Occurs after Title IX Coordinator receives report of conduct that reasonably may constitute sex discrimination**
- **Student, Parent/Guardian/Other Legal Representative, or Title IX Coordinator can all make a complaint**
- **Employee can also make complaint of Title IX Sex Discrimination other than sex-based harassment**

Investigation

- **Proposed timeline under PRESS Board Policy 2:265 AP-2 = 30 school business days to complete investigation**
- **Investigator may also be the “Decisionmaker” who determines whether Title IX Sex Discrimination occurred**
- *If Investigator and Decisionmaker are separate roles, allow time in process for follow up questioning by Decisionmaker over issues of credibility*
- *Proposed procedure contemplates appointment of an independent Investigator/Decisionmaker for allegations against the Superintendent or a Board Member*

Investigation

- Investigator assumes burden of gathering sufficient evidence to determine whether sex discrimination occurred
- Investigation provides equal opportunity for parties to present fact witnesses and other evidence
- Review all evidence for relevance/impermissibility
- Provide equal opportunity to access evidence/accurate description
- Provide reasonable opportunity to respond to evidence
- Take reasonable steps to prevent and address unauthorized disclosure of information and evidence

General Rules For Conducting Interviews

Explain process

Full, truthful cooperation is expected

Discuss limits on confidentiality

Explain that you are only interested in information in which they had first-hand knowledge; the interviewee should not provide answers based upon rumor or received from a third party

Remind the interviewee of anti-retaliation protections

Advise the interviewee that if s/he recalls any other pertinent information, report such information to you directly



Investigation Basics



Determine the extent of personal knowledge, as opposed to hearsay.



Have the witness identify any other likely witnesses and any relevant documents.



Ascertain the basis for the concern of any witness who “doesn’t want to get involved.”

Investigation Basics



Take complete and clear notes.



Collect copies of all relevant documents.



Inform individuals who have relevant documents to retain the documents; consider sending a “preservation” memorandum.

Investigation Basics



Do not reach a conclusion until all witnesses have been fully interviewed and all pertinent documents reviewed.



If you are declining to interview a witness, document why.

Maintaining Objectivity

Let
witnesses
tell you:

- What happened?
- When did it happen?
- Where did it happen?
- How did it happen?
- Who else was there or nearby?
- Who said (or did) what? In what order?
- Did you tell anyone about it? Who? What did you discuss? When?

Maintaining Impartiality

Avoid prejudgment of facts at issue

No conflict of interest or bias

- Against complaints or respondents generally
- Against an individual complainant or respondent

Respondent is presumed not responsible until a determination is made

Relevance

- Related to allegations under investigation
- Seeks evidence that may aid in showing whether the alleged sex discrimination occurred
- Aids decisionmaker in determining whether sex discrimination occurred

Considerations in Evaluating Relevance



Does the information relate to the allegations?

Does the witness have personal knowledge of the facts?

Does the version of event corroborate others?

Is there contemporaneous documentation that is consistent with the statement?

Does the witness have a motivation not to be truthful?

Did the witness independently recall details or only after consulting documentation?

Decision

- **Decisionmaker must be allowed to question parties and witnesses to adequately assess credibility if in dispute and relevant to evaluating allegations**
- **Provide written notification of the determination whether sex discrimination occurred and rational for determination**
- **Provide procedures and permissible bases for both parties to appeal**

Decision

Determination made based on consideration of all inculpatory and exculpatory evidence

Evaluation of persuasiveness under burden of proof

***Preponderance of the evidence* = more likely than not**

Decision

Requires objective evaluation of all relevant, not otherwise impermissible evidence

Credibility cannot turn on person's status as complainant, respondent or witness

Impermissible Evidence

Evidence which must not be accessed or considered (except by the District to determine whether: an exception applies, it must not be disclosed, and/or must not otherwise be used), regardless of whether it is relevant because it is (34 C.F.R. §106.45 (b)(7)(i)-(iii)):

1. Evidence that is protected under a privilege;
2. A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party; or
3. Evidence that relates to the Complainant's sexual interests or prior sexual conduct...

Assessing Credibility

How does account compare to others

Level of detail

Internal inconsistencies in details and accounts

Push for more detail--“What makes you think it was 2nd period?” “How do you know it was Student B?”

Determine whether recall is influenced by others-- Did you hear anyone else talk about the situation? What did they say? Did you talk to anyone else about the situation? When? What did you tell them?

THANK YOU!

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