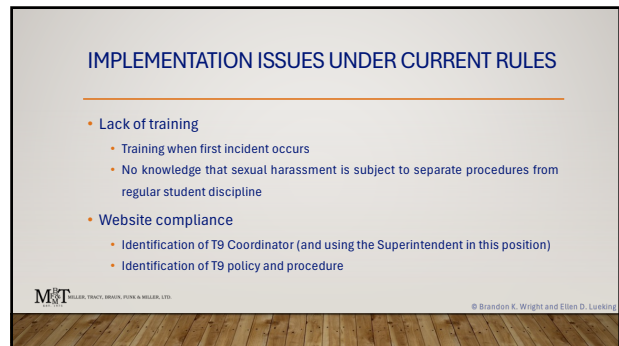
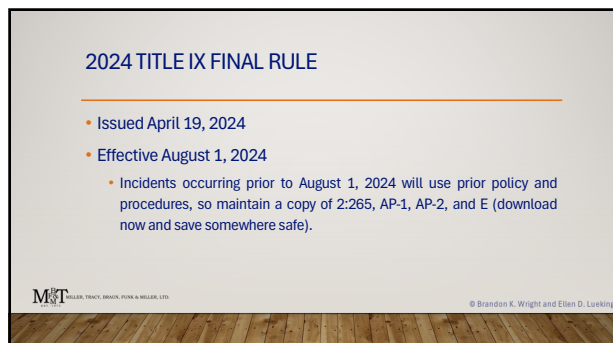




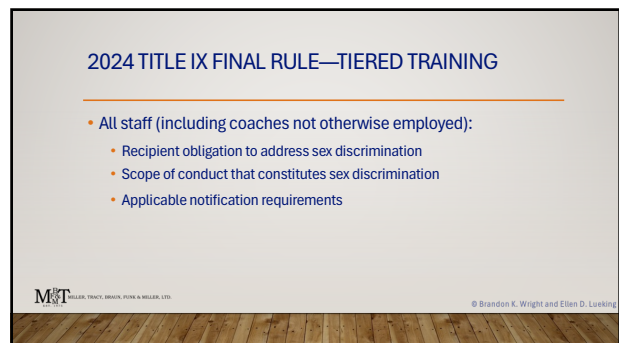
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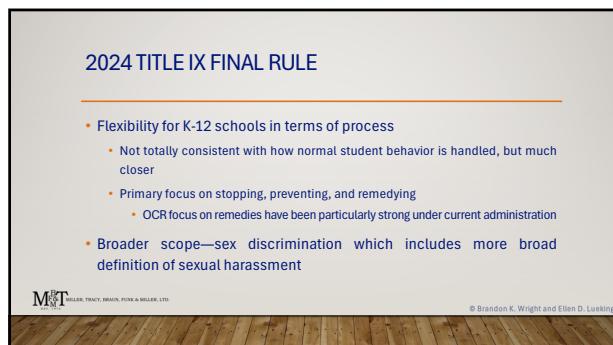
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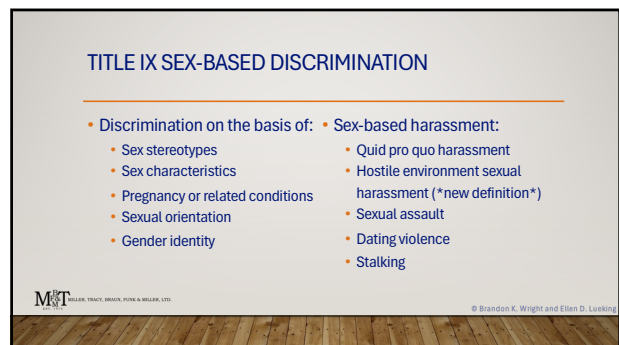
3



4



5



6

HOSTILE ENVIRONMENT

2020 (sometimes called SPOO): conduct, on the basis of sex, that is unwelcome and determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity

2024: unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity

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GRIEVANCE PROCESS MUST BE USED FOR ALL ALLEGATIONS OF TITLE IX SEX-BASED DISCRIMINATION

- Still includes sex-based harassment, but also includes
 - Disparate treatment: instances where someone is alleged to have received different treatment on the basis of sex
 - Disparate impact: where a neutral policy or practice has impact on people, based on sex
 - Retaliation when exercising rights under Title IX (including peer retaliation: retaliation by a student against another student)

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JURISDICTION

- Recipient's education program or activity in the United States:
 - Conduct that is subject to the Recipient's disciplinary authority
 - A sex-based hostile environment under Recipient's education program or activity, even when some alleged conduct occurred outside the Recipient's education program or activity or outside the United States
 - "downstream or in-program effects of external conduct"

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BATHROOMS AND LOCKER ROOMS

- The Title IX 2024 rules require a recipient not separate or treat any person differently based on sex in a manner that subjects them to more than de minimum harm, except in the limited specified circumstances permitted by Title IX (athletics and housing—currently waiting on athletics rules).

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SUPPORTIVE MEASURES

- Must not unreasonably burden either party
- Must be designed to protect the safety of the parties or the educational environment or to provide support during the resolution process
- May not be imposed for punitive or disciplinary reasons
- May be modified or terminated at the conclusion of the resolution process (note: set end dates for supportive measures)
- Parties may challenge a decision to provide, deny, modify, or terminate supportive measures applicable to that party
 - Ability to be heard by an impartial employee with ability to modify or reverse decision on supportive measures

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SUPPORTIVE MEASURES

- Implemented to restore or preserve a party's access to the education program or activity or provide support during a grievance process.
- Also, a great way to take prompt and effective action to end any sex discrimination, prevent recurrence, and remedy effects
 - Educational conversations
 - School-wide messaging and assemblies

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INFORMAL RESOLUTION

- Discretion to offer informal, except in employee on K-12 student sex-based harassment allegations
- Does not require a formal complaint to attempt informal resolution
- Still cannot require parties waive their right to investigation and determination

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TITLE IX PERSONNEL

- Decisionmaker **MAY BE** the Title IX Coordinator and/or Investigator
- Informal Resolution Facilitator may not be the Investigator or Decisionmaker

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“COMPLAINT”

- A 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
 - Athletics complaints
 - Gender identity harassment
 - Pregnancy (or related condition) discrimination
 - Sex-based harassment
 - Sexual assault

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FORMAL COMPLAINT GRIEVANCE PROCESS

- Not required to put notice of allegations in writing (we would recommend having a writing)
 - Must be revised if new allegations are brought
- Equitable treatment of parties
- Reasonably prompt timeframes for major stages
- Reasonable steps to protect privacy of parties and witnesses (does not mean right to be anonymous)
- Presumption of non-responsibility for Respondent

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FORMAL COMPLAINT GRIEVANCE PROCESS

- No mandatory dismissals anymore
- Burden on recipient to gather information
- Equal opportunity to present fact witnesses and other inculpatory and exculpatory evidence that is relevant and not impermissible
- Equal opportunity for parties to access relevant and not otherwise impermissible evidence or an accurate description of evidence (though, if you only provide description, you must provide access if party requests it—faster move is to provide upfront)

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FORMAL COMPLAINT GRIEVANCE PROCESS

- Decisionmaker must be able to question parties and witnesses to adequately assess a party's or witness's credibility when credibility is in dispute and relevant (+1 point for single-investigator model)
- **MAKE A DETERMINATION:** Notify parties in writing as to whether sex discrimination occurred, including rationale, and the appeal rights

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FORMAL COMPLAINT GRIEVANCE PROCESS

- No discipline without following grievance procedures
- Equal opportunity to have an advisor present at any meeting

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BE READY TO BE “PROMPT AND EFFECTIVE”

- Under the 2024 rules, “no magic words” + verbal complaints are complaints + expanded application = **BE READY.**

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WHAT ABOUT LITIGATION CHALLENGING THE RULES?

- Continues to evolve...
- OCR may be enjoined from enforcing in certain states, but individual districts not enjoined from their own policy decisions – yet...
- Maintain course, until required to do otherwise.

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UNDERSTANDING THE 2024 TITLE IX REGULATIONS

TIER 1: WHAT ALL K-12 SCHOOL EMPLOYEES ARE REQUIRED TO KNOW AND DO

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ALL EMPLOYEES MUST BE TRAINED ON:

1. The District's obligation to address sex discrimination in its education program or activity;
2. The scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment; and
3. All applicable notification and information requirements under §§ 106.40(b)(2) and 106.44.

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WHY DO I CARE?

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TITLE IX

- Title IX of the Education Amendments of 1972 protects people from discrimination based on sex in education programs or activities that receive Federal financial assistance. Title IX states:
- 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.*

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A timeline showing the evolution of Title IX regulations across three administrations:

- Obama Administration:** Operated primarily by guidance and Dear Colleague letters.
- Trump Administration:** Implemented the 2020 Regulations with heavy focus on due process for respondents.
- Biden Administration:** Implemented the 2024 Regulations, effective August 1, 2024.

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EFFECTIVE DATES

- 2024 Regulations**
 - Published April 19, 2024
 - Effective August 1, 2024
 - Covers conduct occurring on or after August 1, 2024
- 2020 Regulations**
 - Effective August 14, 2020
 - Covers conduct occurring on or after August 14, 2020 through July 31, 2024

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Figure 6: Title IX Complaint Allegations Received in FY 2023

Category	Count
Access to Courses, SIFE & Single Sex Courses	217
Activities	117
Alcohol	1,736
Designation of Responsible Employee	11
Offense/Unlawful Sexual Activity	764
Sexual Harassment	86
Sexual Assault	2
Sexual Coercion	196
Sexual Exploitation	180
Sexual Intimidation	9
Sexual Offense	29
Sexual Offense	4
Sexual Offense	12
Sexual Offense	100
Sexual Offense	6
Sexual Offense	1,160
Sexual Offense	1,648

Total Number of Complaints Requiring Title IX Issues: FY 2023 = 6,139
Note: A single complaint can raise multiple issues; therefore, the total number of issues listed will exceed the number of complaints received.

OCR Complaint Trends by Year:

- 2021: 8,934 complaints filed
- 2022: 18,806 complaints filed
- 2023: 19,201 complaints filed

**a single individual filed 5,590 complaints raising sex discrimination allegations

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TERMS USED IN REGULATIONS

- Respondent = Accused
- Complainant = Victim/Accuser
- Recipient = School receiving federal funds

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TITLE IX PERSONNEL

- Title IX Coordinator**—may be the Investigator/Decisionmaker
- Informal Resolution Facilitator**
- Investigator/Decisionmaker**—may be the same person or separate
- Appellate Decisionmaker**
- Impartial Employee** (for supportive measures challenges)

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TITLE IX PERSONNEL

- The **Title IX Coordinator** is the individual designated by the school district to coordinate compliance with Title IX, including overseeing all sex-based discrimination complaints.

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TITLE IX COORDINATOR AND NONDISCRIMINATION NOTICES

- **Prominently** on the District website
- In each handbook, catalog, announcement, bulletin, and application form for students, parents, guardians, employees, applicants for admission and employment, and all unions and professional organizations holding collective bargaining agreements with the District.

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TITLE IX COORDINATOR AND NONDISCRIMINATION NOTICES

- District must post its nondiscrimination statement
- That inquiries about the application of Title IX may be directed to the Title IX Coordinator
- The name or title, office address, email address, and telephone number of the Title IX Coordinator
- How to locate the District's nondiscrimination policy and the District's grievance procedures
- How to report information about conduct that may constitute sex discrimination under Title IX and how to make a complaint of sex discrimination

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TITLE IX PERSONNEL

- The **Informal Resolution Facilitator** is the individual who attempts to resolve a complaint of sex-based discrimination without the grievance process.
- Any person designated to facilitate informal resolution cannot be the same person as the investigator or decisionmaker in the grievance process, should the complaint not resolve in informal resolution.

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TITLE IX PERSONNEL

- The **Investigator/Decisionmaker** can either be the same individual or two separate persons.
- This person investigates the complaint and then makes findings of fact and applies the policy to determine whether sex-based discrimination occurred.

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TITLE IX PERSONNEL

- When an appeal of a dismissal or determination is filed, an **Appellate Decisionmaker** reviews the appeal.
- The Appellate Decisionmaker cannot be the Title IX Coordinator, Investigator, or Decisionmaker.
- The Appellate Decisionmaker can be the Board of Education, but the members must receive required training prior to hearing an appeal.

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TITLE IX PERSONNEL

- The **Impartial Employee** is the individual tasked with making a determination as to whether supportive measures should be modified or reversed when a party appeals the District's decision to provide, deny, modify, or terminate supportive measures applicable to that party.
- Cannot be the employee who made the challenged decision and must have authority to modify or reverse the decision.

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WHAT ARE THE TITLE IX RESPONSIBILITIES OF **ALL EMPLOYEES?**

Let's dig in...

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THE DISTRICT'S OBLIGATION TO ADDRESS SEX DISCRIMINATION IN ITS EDUCATION PROGRAM OR ACTIVITY

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OBLIGATION TO ADDRESS SEX DISCRIMINATION IN ITS EDUCATION PROGRAM OR ACTIVITY

- "...A [district] 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."

§106.11

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EDUCATION PROGRAM OR ACTIVITY

C.R. v Eugene Sch. Dist. 4J, 835 F.3d 1142, 1145 (9th Cir. 2016), cert. denied, 137 S. Ct. 2117 (2017).

"Because the harassment happened in such close proximity to the school, administrators could reasonably expect the harassment's effects to spill over into the school environment. Simply seeing their harassers in the hallway could well be disruptive for affected students. Similarly, a student who is routinely subject to harassment while walking home from school may be distracted during school hours by the prospect of the impending harassment. A student's ability to focus during the day could be impaired by intrusive worries about whether she or he would once again face uncomfortable and sexually intimidating comments immediately after school lets out..."

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EDUCATION PROGRAM OR ACTIVITY

Title IX applies to **locations, events, or circumstances** in the United States **over which the District exercised substantial control over both the Respondent and the context** in which the sexual harassment occurred. This extends to off-campus conduct if the off-campus incident occurs as part of the District's operations.

No single factor is determinative of whether the District exercised substantial control or whether an incident occurred as a part of the District's operations.

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WHAT IS THE EDUCATION PROGRAM OR ACTIVITY?

- In addition, Title IX applies to "...conduct that is subject to the [district's] disciplinary authority." § 106.11

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MAHANOEY AREA SCH. DIST. V. B.L., 141 S. CT. 2038, 2045 (2021)

- In *Mahanoy*, the Supreme Court clarified districts' ability to regulate off-campus speech, specifically noting that harassment was conduct that the district generally maintained authority to regulate, even when it occurred-campus.

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MAHANOEY AREA SCH. DIST. V. B.L., 141 S. CT. 2038, 2045 (2021)

"Unlike the Third Circuit, we do not believe the special characteristics that give schools additional license to regulate student speech always disappear when a school regulates speech that takes place off campus. The school's regulatory interests remain significant in some off-campus circumstances. The parties' briefs, and those of amici, list several types of off-campus behavior that may call for school regulation." **These include serious or severe bullying or harassment targeting particular individuals;** threats aimed at teachers or other students; the failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities; and breaches of school security devices, including material maintained within school computers."

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ALL EMPLOYEES MUST REPORT

- "An elementary school or secondary school recipient must require all of its employees who are not confidential employees to notify the Title IX Coordinator when the employee **has information about conduct that reasonably may constitute sex discrimination** under Title IX or this part."

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DEFAULT PRESS POLICY—CONFIDENTIAL EMPLOYEES

Default policy = no confidential employees in K-12 schools

Why?

- K-12 students are minors, unlike college students.
- All employees are mandated reporters.

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NO CONFIDENTIAL EMPLOYEES

- Do not promise students confidentiality.
- Identify to students that you are happy to listen and be a trusted adult and that certain things they share may require you to share with the school to keep them and other students safe.
- There are times when you are required to report under Title IX, but also under state law requirements.

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WHAT IS INCLUDED IN "SEX DISCRIMINATION"?

- Discrimination on the basis of sex includes discrimination on the basis of:
 - Sex stereotypes
 - Sex characteristics
 - Pregnancy or related conditions
 - Sexual orientation
 - Gender identity

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SEX STEREOTYPES

"The Department appreciates commenters' support for coverage of harassment based on sex stereotypes and gender identity. The Department has long recognized, consistent with the text and purpose of the statute and courts' interpretations, that Title IX's prohibition on sex discrimination encompasses harassment based on sex stereotypes. See, e.g., 2001 Revised Sexual Harassment Guidance, at 3 (noting that "acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping [is] a form of sex discrimination to which a school must respond, if it rises to a level that denies or limits a student's ability to participate in or benefit from the educational program") & nn.17-19 (citing cases); [85 FR 30179](#) ("sexual harassment . . . may consist of unwelcome conduct based on sex or sex stereotyping")."

- 89 CFR 33516

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SEX CHARACTERISTICS

Discrimination against intersex individuals is similarly motivated by perceived differences between an individual's specific sex characteristics and their sex category (either as identified at birth or some subsequent time). **Additionally, discrimination based on anatomical or physiological sex characteristics (such as genitals, gonads, chromosomes, and hormone function) is inherently sex-based.** Intersex traits, like gender identity and sexual orientation, are "inextricably bound up with" sex. See *id.* at 1742. In other words, it is impossible to discuss intersex status without also referring to sex. *Cf. Grimm*, 972 F.3d at 609. Lastly, discrimination based on intersex traits may also involve sex stereotypes, as intersex people by definition have traits that do not conform to stereotypes about male or female bodies. *Cf. Whitaker*, 858 F.3d at 1048 ("[A] transgender individual does not conform to the sex-based stereotypes of the sex that [they were] assigned at birth.")

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SEX CHARACTERISTICS

- Illinois Human Rights Act also prohibits discrimination on the basis of sexual orientation, which is defined to mean "actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity, whether or not traditionally associated with the person's designated sex at birth." 775 ILCS 5/1-103(O-1)
- Also, consider the applicability of the Illinois bullying statute/policy, the Racism Free Schools Act, and other similar requirements addressing harassment and discrimination.

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SEXUAL ORIENTATION

The Department disagrees with commenters who asserted that the term "sexual orientation" must be defined in the Title IX regulations. Courts routinely use the term without providing an express definition. See, e.g., *Bostock*, 590 U.S. at 653-54, 671; *Grabowski*, 69 F.4th at 1113; *Hively*, 853 F.3d at 340. The term is now well understood as it is used widely in laws and policies. ...describe the sex of a person to whom another person is attracted, as the term sexual orientation is commonly understood to mean.

89 CFR 33810

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PREGNANCY OR RELATED CONDITIONS

- ...because pregnancy is necessarily a condition related to sex characteristics (e.g., uterus, ovaries, fallopian tubes), discrimination based on conditions that arise from pregnancy, including termination of pregnancy, constitutes discrimination on the basis of sex characteristics. Commenters offered no persuasive reason for withdrawing protections for pregnancy discrimination on the basis of the termination of pregnancy.
- 89 CFR 33760

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GENDER IDENTITY

The Department understands gender identity to describe an individual's sense of their gender, which may or may not be different from their sex assigned at birth. Courts have used the term consistent with this understanding, see *Bostock*, 590 U.S. at 660, 669; *Parents for Priv. v. Barr*, 949 F.3d 1210, 1217 (9th Cir. 2020); *Whitaker*, 858 F.3d at 1049, sometimes with only a brief explanation, *Grimm*, 972 F.3d at 594 ("gender identity—or their deeply felt, inherent sense of their gender"); *Boyetown Area Sch. Dist.*, 897 F.3d at 522 ("A person's gender identity is their subjective, deep-core sense of self as being a particular gender"); *Schroer v. Billington*, 577 F. Supp. 2d 253, 295 (D.D.C. 2008). The term is now well understood as it is used widely in laws and policies, and so the Department determined that—consistent with the approach taken by many courts—it is unnecessary to articulate a specific definition of "gender identity" in § 106.10.

89 CFR 33809

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SEX-BASED HARASSMENT

Sex-based harassment prohibited by this part is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the bases described in § 106.10 that is:

1. *Quid pro quo harassment.* An employee, agent, or other person authorized by the [district] to provide an aid, benefit, or service under the [district]'s education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;

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SEX-BASED HARASSMENT

2. *Hostile environment harassment.* Unwelcome sex-based conduct that, based on the totality of the circumstances, is **subjectively and objectively offensive** and is **so severe or pervasive** that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

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SEX-BASED HARASSMENT

- i. The degree to which the conduct affected the complainant's ability to access the [district]'s education program or activity;
- ii. The type, frequency, and duration of the conduct;
- iii. The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

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SEX-BASED HARASSMENT

- iv. The location of the conduct and the context in which the conduct occurred; and
- v. Other sex-based harassment in the recipient's education program or activity.

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SEX-BASED HARASSMENT

3. *Specific offenses:*
 - i. Sexual assault (fondling, rape, etc.)
 - ii. Dating violence
 - iii. Domestic violence
 - iv. Stalking (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)

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RETALIATION

Intimidation, threats, coercion, or discrimination against any person by the [district], a student, or an employee or other person authorized by the recipient to provide aid, benefit, or service under the [district]'s education program or activity, 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...including informal resolution or the grievance procedures.

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RETALIATION

But, nothing in the retaliation definition “precludes a recipient from requiring an employee or other person authorized by a [district] to provide aid, benefit, or service under the [district]'s education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing under this part.”

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EXAMPLES—SEX-BASED HARASSMENT

- Student A sends Student B explicit text messages one evening, while at home. Student B does not respond. The next day, Student A, at school, asked Student B why he did not respond and sends Student A a nude image of herself.

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EXAMPLES—SEX-BASED HARASSMENT

- Student C takes a picture of Student D changing in the locker room. Student C goes home and uploads the picture to his Snapchat story for all of Student D's peers to see.

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EXAMPLES—SEX-BASED HARASSMENT

- Students E and F were in a romantic relationship, but break up. Student E, at lunch, tells Student G and H about the sexual encounters Student F had with Student E. Students G and H retell the story to peers, at school.

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EXAMPLES—SEX-BASED HARASSMENT

- Male high school Student I teases other male high school Student J about his penis size in the locker room.

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EXAMPLES—SEX-BASED HARASSMENT

- Student K, on the bus ride home from school, shows Student L images from a pornographic website. Student L tries to change the subject and asks Student K to stop.

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EXAMPLES—SEX-BASED HARASSMENT

- Student M and Student N are horseplaying in the boys' bathroom and are caught. Student M alleges that Student N pulled down Student N's pants and flashed Student N's private body parts to Student M. The students are not romantically involved.

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EXAMPLES—GENDER DISCRIMINATION

- Teacher O, tells his class that the students have to raise their hands to ask questions. Teacher O let a male student ask a question without raising his hand, and answers the question. Teacher O assigned a female student a lunch detention for doing the same.

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EXAMPLES—GENDER DISCRIMINATION

- Student P mocked and laughed at Student Q for crying over the death of his grandparent and then called him a "sissy" and told him to "quit acting like a girl."

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EXAMPLES—GENDER DISCRIMINATION

- Student R, a girls softball player on the high school team, while standing in the dugout, says to the maintenance worker who mows the outfield and drags the infield, "I am so frustrated that our dugout is always covered in trash. The boys team never has to deal with this because their field and dugouts have that gate that keeps people out of it at night."

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EXAMPLES—PREGNANT STUDENTS

- Student R calls Student S, who becomes pregnant, "a whore" because she became pregnant.

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EXAMPLES—PREGNANT STUDENTS

- Teacher T refuses to let Student U (pregnant) use the restroom when asked “because some students are still taking a test,” when Student U has been granted a reasonable modification to have access to water and the restroom as needed.

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EXAMPLES—LGBTQ+

- Athlete V, on the basketball team, is told by Coach W that he has to go change in the stalls because he is making his teammates uncomfortable, because he is gay.

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EXAMPLES—LGBTQ+

- Student X intentionally calls Student Y by their dead name, repeatedly, with no genuine apology, and snickers when doing it.

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KLUGE V. BROWNSBURG COMMUNITY CORPORATION (S.D. IND., 2024)

Kluge, a teacher, refused to call transgender students by anything other than their last name on the basis of his religious beliefs. The school accommodated him for one year and then changed its policy to require him to use the names in the student information system, which students were permitted to change with parental permission and a medical note. Kluge resigned and sued the school for failure to accommodate his religious beliefs.

In April 2024, the S.D. of Indiana granted summary judgment for the District—Kluge’s use of last names only caused undue hardship for the District. The District was in the business of “educating all students” and students were required to attend school. Kluge using only last names created substantial student harm—students quit or never joined band because of Kluge’s treatment of students who were transgender and Kluge using only last names created liability for the District because it was discriminatory.

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PREVENTION AND RESPONSE

- Without question, the most important solution to issues of sexual harassment is to make efforts to prevent it from happening in the first place.
- *Is there such a thing as a good sexual harassment training?*

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PREVENTION AND RESPONSE

1. Develop, implement and regularly communicate the school district’s sexual harassment policy.
2. Provide training for administrators, all employees, and students on sexual harassment prevention, as well as the Title IX requirements.
3. Ensure clear communication on how to report incidents of sexual harassment or conduct of a sexual nature.

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PREVENTION AND RESPONSE

4. Administrators should monitor their environment to ensure the school is free of sexual harassment – both employee and student.
5. Administrators must lead by example and model appropriate conduct – refrain from engaging in conduct of a sexual nature.

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PREVENTION AND RESPONSE

6. Administrators should ensure that – in addition to training requirements – policy and information about reporting is clearly posted everywhere it should be posted.
7. Ensure that all school employees (all means all) are aware of what to do when they have information regarding an allegation of sexual harassment.

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MANDATED REPORTER

- Don't overlook the potential mandated report to DCFS and/or law enforcement in many of these situations!
 - If there is suspected abuse or neglect → DCFS
 - If there is criminal activity → Law enforcement

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APPLICABLE NOTIFICATION AND INFORMATION REQUIREMENTS UNDER §§ 106.40(b)(2) (PREGNANCY) AND 106.44 (SEX-BASED DISCRIMINATION)

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§ 106.40(b)(2): NOTIFICATION REQUIREMENTS ON PREGNANCY

- *Responsibility to provide Title IX Coordinator contact and other information.* A [district] must ensure that when a student, or a person who has a legal right to act on behalf of the student, informs any employee of the student's pregnancy or related conditions, unless the employee reasonably believes that the Title IX Coordinator has been notified, the employee promptly provides that person with the Title IX Coordinator's contact information and informs that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the recipient's education program or activity.

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REASONABLE MODIFICATIONS

- The recipient, led by the Title IX Coordinator will make “reasonable modifications” to the recipient's policies, practices, or procedures as necessary to prevent sex discrimination and ensure equal access.
- Reasonable modifications must be based on the student's individualized needs.

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REASONABLE MODIFICATIONS

- In determining the reasonable modifications, the student must be consulted.
- The student has discretion to accept or decline each reasonable modification offered. If accepted, it must be implemented.

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POSSIBLE REASONABLE MODIFICATIONS

- Breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions including eating, drinking, or using the restroom;
- Intermittent absences to attend medical appointments;
- Access to online or homebound education;
- Changes in schedule or course sequence;

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POSSIBLE REASONABLE MODIFICATIONS

- Extensions of time for coursework and rescheduling of tests and examinations;
- Allowing a student to sit or stand;
- To carry or keep water nearby;
- Counseling;

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POSSIBLE REASONABLE MODIFICATIONS

- Changes in physical space or supplies (for example, access to a larger desk or a footrest);
- Elevator access;
- Other changes to policies, practice, or procedures.

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NOTIFICATION REQUIREMENTS FOR ALL EMPLOYEES

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§ 106.44 NOTIFICATION REQUIREMENTS

An elementary school or secondary school recipient must require all of its employees who are not confidential employees to notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX or this part.

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TITLE IX OBLIGATIONS FOR ALL EMPLOYEES

1. There is ongoing litigation—the rules have been enjoined in some circuits. With the June 28, 2024 SCOTUS decision overturning *Chevron*, there may be other challenges to the rules. In the meantime, maintain course.

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TITLE IX OBLIGATIONS FOR ALL EMPLOYEES

2. "An elementary school or secondary school recipient **must** require all of its employees who are not confidential employees to notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX or this part."

THIS MEANS CONTACT THE TITLE IX COORDINATOR AS SOON AS SEX-BASED CONDUCT IS REPORTED TO YOU OR WITNESSED BY YOU.

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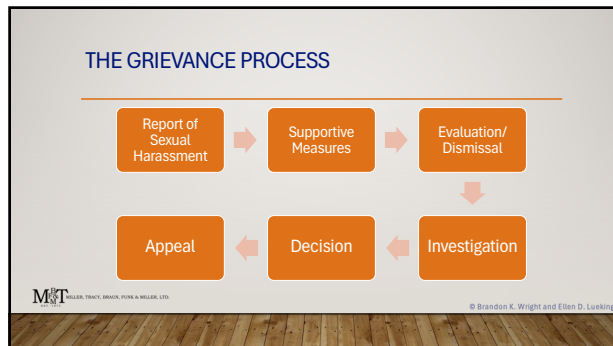
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TITLE IX OBLIGATIONS FOR ALL EMPLOYEES

3. No discipline can be issued and no investigation can occur until the Title IX Coordinator is involved.

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TITLE IX OBLIGATIONS FOR ALL EMPLOYEES

- Supportive measures are an important part of the process. If you have any role in supportive measures, these are the steps taken to prevent the conduct from recurring and to allow the parties to access the educational environment. Take these seriously.

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TITLE IX OBLIGATIONS FOR ALL EMPLOYEES

- Document every action you take—this is a place where you want a paper trail to exist to prove you did something, that you were not deliberately indifferent.

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TITLE IX OBLIGATIONS FOR ALL EMPLOYEES

- Complete annual training requirements.

Employee training under the regulations must be provided "promptly" upon hiring and annually thereafter.

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TITLE IX – SCHOOL DISTRICT OBLIGATIONS

- Update district policies (2:265 and related procedures)
- Address complainant and provide supportive measures
- Mandatory reporting
- Informal resolution
- Investigation
- Formal grievance process: - Notice - Report – Complaint – Investigation and Evidence Sharing – Decision - Appeal

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TITLE IX – EMPLOYEE OBLIGATIONS

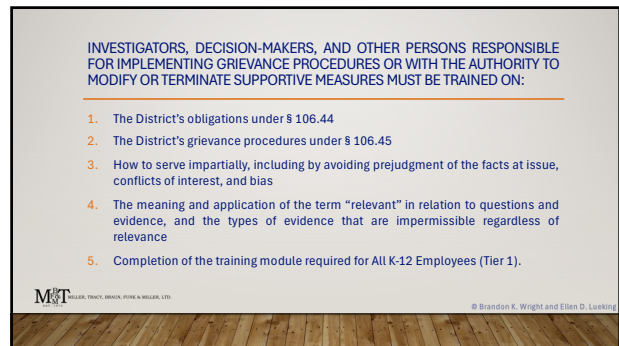
- All employees should:**
 - Know who the District Title IX Coordinator is (their information will be posted on the school's website)
 - Recognize a potential Title IX violation, including sex discrimination and sex-based harassment
 - Report any potential Title IX violation to the Title IX Coordinator immediately upon receiving information which reasonably may constitute sex discrimination or sex-based harassment
 - Review the district's anti-discrimination and anti-harassment policies as soon as they are updated
 - Recognize responsibility to report any acts of retaliation
 - Understand supportive measures you may need to help implement
 - The obligation to prevent and address sex discrimination and/or sex-based harassment

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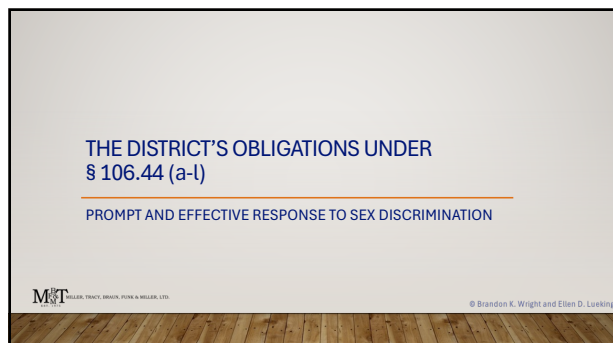
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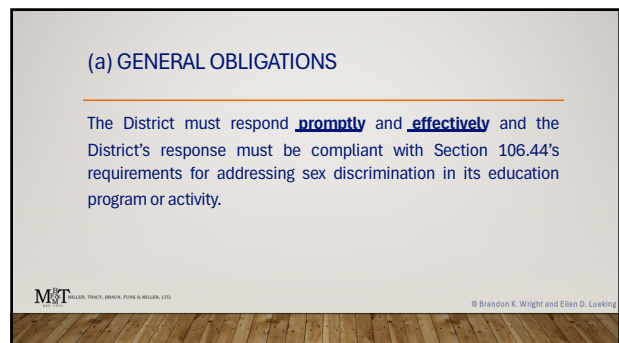
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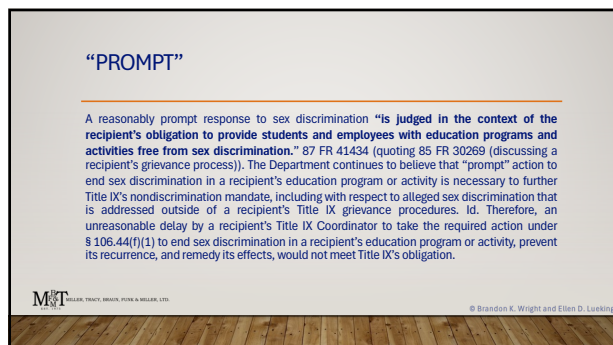
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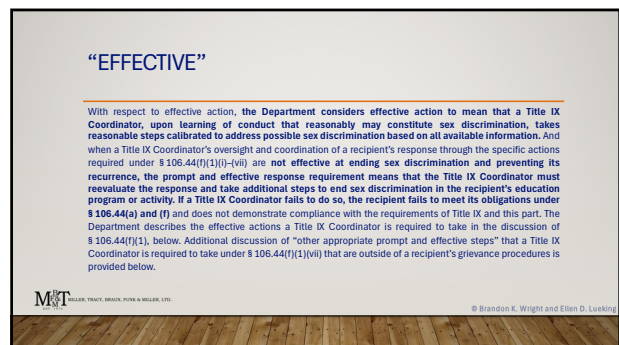
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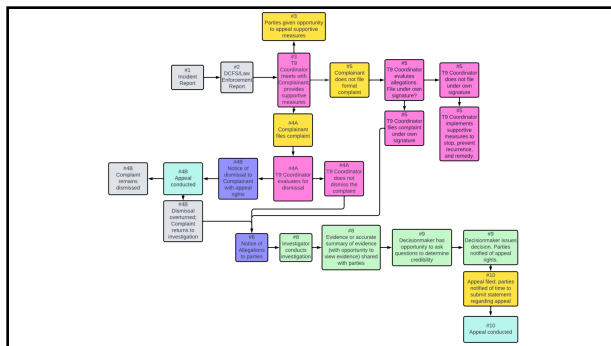
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(h) EMERGENCY REMOVAL

Nothing in Title IX precludes a District from removing a respondent from the recipient's education program or activity on an emergency basis, provided that the recipient undertakes an individualized safety and risk analysis, determines that an imminent and serious threat to the health or safety of a complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

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(h) EMERGENCY REMOVAL

- Emergency removal under Title IX is subject to the requirements of the *Illinois School Code* at Section 10-22.6.
- The emergency removal provision must not be construed to modify any rights under IDEA or Section 504.

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(i) EMPLOYEE ADMINISTRATIVE LEAVE

Nothing in Title IX precludes a District from placing an employee respondent on administrative leave from employment responsibilities during the pendency of the recipient's grievance procedures.

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(i) EMPLOYEE ADMINISTRATIVE LEAVE

“First, if administrative leave is used as a supportive measure under § 106.44(g), the recipient must comply with the procedural protections in that provision. Because § 106.44(g)(2) requires recipients to ensure that supportive measures do not unreasonably burden a party, administrative leave as a supportive measure would generally be paid. Second, if a recipient seeks an emergency removal under § 106.44(h), then those procedural protections apply.”

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(f) TITLE IX COORDINATOR REQUIREMENTS

When notified of conduct which may reasonably constitute sex discrimination, the Title IX Coordinator must take the following actions to promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects:

1. Treat the complainant and respondent equitably

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(f) TITLE IX COORDINATOR REQUIREMENTS

2. Offer and coordinate supportive measures for the complainant. If the grievance process has been initiated, or if informal resolution has been initiated, then the Title IX Coordinator must also offer and coordinate supportive measures for the respondent.

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(f) TITLE IX COORDINATOR REQUIREMENTS

3. Notify the complainant, or the reporter of the conduct, if the complainant is unknown of the grievance process and informal resolution process, if available and appropriate.
4. If a complaint is made, notify the respondent of the grievance procedures and the informal resolution process, if available and appropriate.

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(f) TITLE IX COORDINATOR REQUIREMENTS

5. Initiate the grievance process or informal resolution process.
6. In the absence of a complaint, or if any or all allegations are withdrawn from a complaint, or if informal resolution fails, determine whether to initiate a sex discrimination complaint by considering specific factors.
7. If initiating a complaint, notify the complainant prior to doing so and address reasonable concerns and provide supportive measures.

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(f) TITLE IX COORDINATOR REQUIREMENTS

8. Regardless of whether a complaint is initiated, take appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur and take steps to effectuate remedies to the affected complainant.

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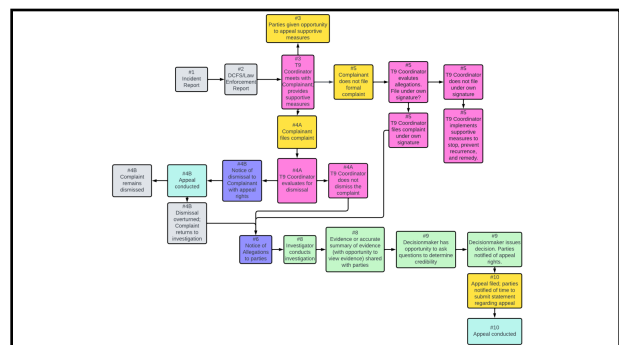
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COMPLAINT

- *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.

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10:04 5G

Maddy Mama
To: angryparent@yourschool.com >
08/12/2024

I've had enough

I am so tired of my kid coming home crying every night becuz the boys at school are touchign her on the bus. She has told them to stop. Someone needs to fix this NOW!!!!@

Is this a complaint?

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IS THIS A COMPLAINT?

Student attends the school board meeting and during public comment she says that the high baseball team has a field all to itself while the high school softball team has to share with junior high girls and the community city league. She also notes that the exclusive baseball field has a two-story press box with a concession stand in the bottom of it, and a closet behind the concession stand where the boys can store equipment. She says the girls high school softball team has to carry things from the school, from down in the basement, and about 600 yards away. She says that there is no press box and that there is no concession stand—spectators have to walk across the street to the baseball field concession stand to get snacks and drinks. She requests the school board look into this.

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IS THIS A COMPLAINT?

Student A comes into class and tells the music teacher that Student B had started a rumor that Student A had sex in her car in the parking lot at school during the football game the prior Friday night. Other students perpetuated the rumor. Student A is in tears and begs the music teacher to help her make it stop.

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IS THIS A COMPLAINT?

Employee emails the Superintendent and copies the entire school board, saying that the Principal evaluated him more harshly than others because he would not agree to go on a date with the Principal. He says that the board cannot keep allowing the Principal to treat employees like this.

The Superintendent knows that the employee has been late to work six times just this semester and that his lesson plans have been late twice. Superintendent tells the board not to worry about it and to just let it go—the employee is just mad because he got a poor evaluation and the Principal would never do anything like that.

Was the employee's email a complaint?

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(g) SUPPORTIVE MEASURES

- The District must offer and coordinate supportive measures, as appropriate.
- Supportive measures must not unreasonably burden either party and must be designed to protect the safety of the parties **or the educational environment** or to provide support during the District's grievance process or informal resolution process.
- Supportive measures may not be disciplinary.

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(g) SUPPORTIVE MEASURE EXAMPLES

- Counseling
- Extensions of deadlines and other course-related adjustments
- Campus escort services
- Increased security or monitoring of certain areas
- Restrictions on contact applied to one or more parties
- Leaves of absence
- Changes in class, work, housing, or extracurricular or other activity, regardless of whether there is or is not a comparable alternative
- Training and education programs related to sex-based harassment

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(g) SUPPORTIVE MEASURES

- The District may, as appropriate, modify or terminate supportive measures at the conclusion of the grievance procedures or at the conclusion of informal resolution. Or, the District may continue the supportive measures after the completion of the processes.

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(g) TERMINATION OF SUPPORTIVE MEASURES

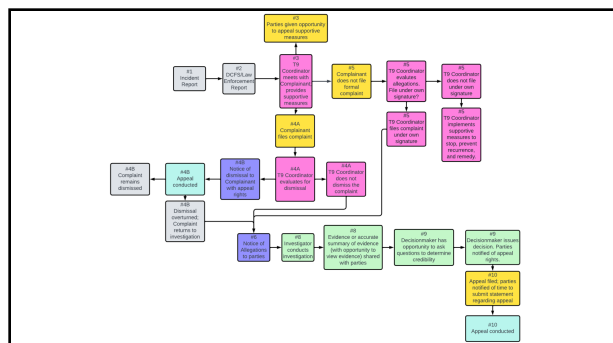
A District must provide a complainant or respondent with a timely opportunity to seek, from an appropriate or impartial employee, modification or reversal of the recipient's decision to provide, deny, modify, or terminate supportive measures applicable to them.

The impartial employee must be someone other than the employee who made the challenged decision and must have the authority to modify or reverse the decision, if the impartial employee determines that the decision to provide, deny, modify, or terminate the supportive measure was inconsistent with the definition of supportive measures.

A recipient must also provide a party with the opportunity to seek additional modification or termination of a supportive measure applicable to them if circumstances change materially.

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(g) CONFIDENTIALITY OF SUPPORTIVE MEASURES

A District must not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party's access to the education program or activity, or when an exception .44(J)(1-5) applies.

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(g) SUPPORTIVE MEASURES FOR STUDENTS WITH DISABILITIES

If the complainant or respondent is a K-12 student with a disability, the District must require the Title IX Coordinator to consult with one or more members, as appropriate, of the student's IEP team, or one or more members, as appropriate, of the persons responsible for the student's placement decision to determine how to comply with the requirements of IDEA and Section 504 in the implementation of supportive measures.

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(j) PROHIBITED DISCLOSURES OF PERSONALLY IDENTIFIABLE INFORMATION

A recipient must not disclose personally identifiable information obtained in the course of complying with this part, except when it has:

- Obtained prior written consent from a person with the legal right to consent.
- When the information is disclosed to a parent, guardian, or other legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue.
- To carry out the purposes of the rules, including taking action to address conduct that reasonably may constitute sex discrimination in the education program or activity;
- As required by federal law; and
- As required by state or local law or when permitted pursuant to FERPA.

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GAG ORDERS ARE BACK?

"Access to the evidence in some format, whether through access to the underlying evidence or access to an accurate description of the evidence, is necessary for fair grievance procedures and required under these regulations. But in order to minimize these impacts, the Department is persuaded that the final regulations must require recipients to **take reasonable steps to prevent and address the parties' unauthorized disclosure of information**, so as to prevent a chilling effect on reporting, fear of retaliation, harassment, or other harmful consequences. The unauthorized disclosure of sensitive information could threaten the fairness of the grievance procedures by deterring parties or witnesses from participating, affecting the reliability of witness testimony, leading to retaliatory harassment, and other consequences. The Department is not proposing specific steps that a recipient must take, as what is reasonable to prevent unauthorized disclosure may vary depending on the circumstances."

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(i) DISCRETION TO OFFER INFORMAL RESOLUTION

At any time prior to determination under the grievance process, a recipient may offer informal resolution to a complainant and respondent, unless the complaint includes an allegation that an employee engaged in **sex-based harassment of a K-12 student** or such a process would conflict with federal, state, or local law.

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(i) DISCRETION TO OFFER INFORMAL RESOLUTION

A district also has discretion to decline to offer informal resolution—such as when the alleged conduct would present a future risk of harm to others.

A district cannot pressure or require the parties to participate in informal resolution.

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(i) DISCRETION TO OFFER INFORMAL RESOLUTION

Before initiation of the informal resolution process, the district must provide to the parties notice that explains:

1. The allegations;
2. The requirements of the informal resolution process;
3. Notice that prior to agreement to resolution, any party has the right to withdraw from informal resolution and to initiate or resume the recipient's grievance process;

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(i) DISCRETION TO OFFER INFORMAL RESOLUTION

Before initiation of the informal resolution process, the district must provide to the parties notice that explains:

4. Notice that agreement to resolution at the conclusion precludes the parties from initiating or resuming the grievance process;
5. Potential terms that may be offered or requested in an informal resolution agreement (including notice that an informal resolution agreement is only binding on the parties); and
6. What information the recipient will maintain and whether and how the recipient could disclose such information for use in grievance procedures. If resumed or initiated.

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(i) DISCRETION TO OFFER INFORMAL RESOLUTION

Informal resolution facilitator cannot be the same person as the decisionmaker or investigator.

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Potential terms to include in an informal resolution agreement include, but are not limited to:

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M^{ET} MILLER, TRACY, BRAUN, PUNK & MILLER, LTD.

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MST MILLER, TRACY, DRAUX, FUNK & MILLER, L^P

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MET MILLER, TRACY, BRAUN, PUNK & MILLER, LTD.

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MT MILLER, TRACY, BRAUN, PUNK & MILLER, L.P.

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- PLESS is drafted to include a 90 school business day grievance process.
 - 10 school business days to evaluate the complaint (as to whether to dismiss or proceed)
 - The investigator/decisionmaker shall make all reasonable efforts to complete the investigation and issue a written determination regarding whether sex discrimination occurred within 30 school business days.
 - 5 school business days for the parties to appeal the determination (or dismissal).
 - 5 school business days for the parties to file statements in support of or challenging the appeal.

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5. Districts must take reasonable steps to protect the privacy of the parties and witnesses during the process, provided the steps do not restrict the ability of the parties to obtain and present evidence, consult with family members, confidential resources, or advisors, or otherwise prepare for or participate in the grievance process;

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6. A requirement for an objective evaluation of all relevant evidence—both exculpatory and inculpatory—that is not otherwise impermissible. Credibility determinations must not be based on a person's status as a complainant, respondent, or witness;

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7. Exclude evidence and questions seeking evidence that is impermissible that:

- i. Is privileged and the privilege has not been waived
- ii. A party's or witness's medical records unless there is voluntary, written consent
- iii. Evidence that relates to complainant's sexual interests or prior sexual conduct unless offered to prove that the alleged conduct was committed by someone other than the respondent or is offered to prove consent, but the fact of prior sexual conduct between complainant and respondent does not alone demonstrate or imply consent or preclude a finding of responsibility.

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8. Articulation of how the district will apply the grievance procedures if they apply to some but not all of the allegations.

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[illegible]

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NOTICE OF ALLEGATIONS

Upon initiation of the grievance procedures, a district must provide notice of allegations to the known parties.

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NOTICE OF ALLEGATIONS

Notice must include:

- Grievance procedures and any informal process offered
- Sufficient information available at the time to allow the parties to respond to the allegations (identities, conduct alleged to constitute sex discrimination, date, time, location, to the extent known)
- A prohibition on retaliation
- A statement that the parties are entitled to an equal opportunity to access relevant evidence or an accurate description of this evidence. If only providing a description, then the parties are entitled to an equal opportunity to access the relevant evidence upon request.

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UPDATING NOTICE OF ALLEGATIONS

If, during the course of the investigation, the District decides to investigate additional allegations not included in the initial notice of allegations, it must provide notice of the additional allegations to the parties whose identities are known.

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PERMISSIBLE REASONS FOR DISMISSAL

1. The district is unable to identify the respondent after taking reasonable steps to do so;
2. The respondent is not participating in the district's education program or activity and is not employed by the district;
3. The complainant voluntarily withdraws either the complaint or allegations in the complaint and the Title IX Coordinator evaluates and determines not to file a complaint under their own signature;
4. The conduct alleged, even if proven true, would not constitute sex discrimination. Prior to dismissal, the district must make reasonable efforts to clarify allegations with the complainant.

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DISMISSAL PROCEDURE

1. If dismissing a complaint or allegations therein, the district must notify the complainant of the basis for dismissal. If respondent has received notice of allegations, respondent must also receive the notice of dismissal, including the basis for dismissal. **If in writing**, it must be simultaneous. If verbal, complainant first, then respondent.
2. Dismissals must provide the parties with notice that the dismissal can be appealed. If prior to notice to respondent, only need to notify complainant. If respondent has been notified of complaint, then also need to provide notice to respondent.

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DISMISSAL APPEAL PROCEDURE

If appeal is filed:

1. Notify the parties of the appeal;
2. Implement appeal procedures equally for parties;
3. Ensure the appeal decisionmaker did not take part in investigation of the allegations or dismissal of the complaint;
4. Ensure the appeal decisionmaker is compliant with training;

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DISMISSAL APPEAL PROCEDURE

If appeal is filed:

5. Provide the parties with a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome;
6. Notify the parties of the result of the appeal and rationale;

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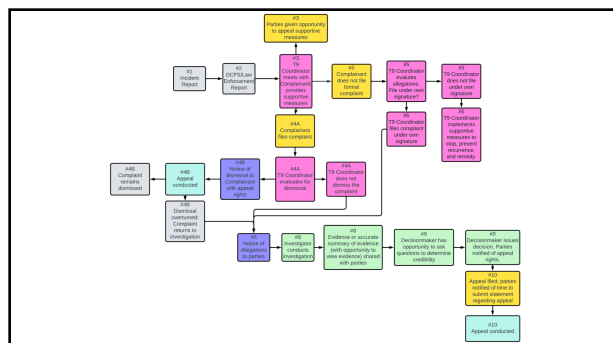
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IF DISMISSED, STILL NEED TO:

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

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CONSOLIDATION OF COMPLAINTS

A district may consolidate complaints of sex discrimination:

- Against more than one respondent;
- By more than one complainant against one or more respondents;
- By one party against another party;
- When the allegations of sex discrimination arise out of the same facts or circumstances.

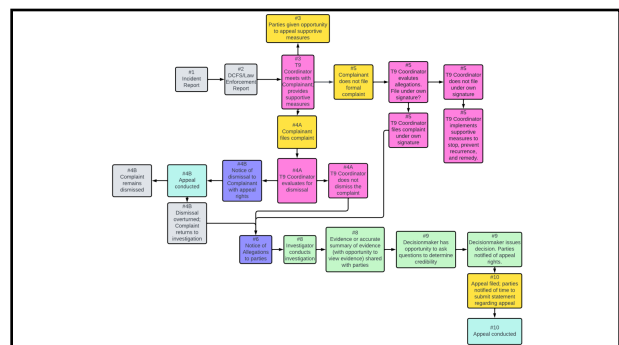
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HOW TO SERVE IMPARTIALLY, INCLUDING BY AVOIDING PREJUDGMENT OF THE FACTS AT ISSUE, CONFLICTS OF INTEREST, AND BIAS

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INVESTIGATION

A district must provide for adequate, reliable, and impartial investigation of complaints by:

1. Ensuring the burden is on the district, not the parties, to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred;
2. Provide an equal opportunity for the parties to present fact witnesses and other inculpatory or exculpatory evidence that is relevant and not otherwise impermissible;

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INVESTIGATION

A district must provide for adequate, reliable, and impartial investigation of complaints by:

3. Review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance;
4. Provide each party with an equal opportunity to access the relevant evidence to the allegations, that is not otherwise impermissible;

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INVESTIGATION

A district must provide for adequate, reliable, and impartial investigation of complaints by:

5. When providing parties an equal opportunity to access the relevant and not otherwise impermissible evidence, can provide an accurate description of the evidence, but must also then provide the opportunity for parties to access the actual relevant evidence that is not otherwise impermissible;

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INVESTIGATION

A district must provide for adequate, reliable, and impartial investigation of complaints by:

6. Providing a reasonable opportunity for the parties to respond to the evidence or to the accurate description of the evidence;
7. Take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence **obtained solely through the grievance process**.

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INVESTIGATION

- Understand and use trauma-informed techniques
 - Understand and be mindful of re-traumatization.
 - Promote safety and support.
 - Provide choice:
 - "What can you tell me about what happened?"
 - "Can you tell me more?"
 - "Can you help me understand?"

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INVESTIGATION

- Considerations: Potential responses to trauma:
 - Delayed reporting
 - Difficulty remembering specifics
 - Reluctant reporting
 - Remaining in a relationship or living arrangement with an alleged abuser
 - Failure to identify the accused

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INVESTIGATION

- Do **not** assume that because there are signs of trauma that the respondent caused trauma or violated the policy.
- Do **not** assume that because there are not signs of trauma that nothing happened.

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INVESTIGATION TONE

- Maintain a non-judgmental tone in interviews and summaries of evidence.
- Stay away from charged words of advocacy:
 - Clearly/obviously
 - Innocent/guilty
 - Victim/perpetrator
- Watch adjective and adverb use unless they are in quotes.

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IMPARTIALITY

Impartiality is integral to the Title IX formal grievance process.

- Serving impartially includes avoiding the following:
 - Prejudgment of the facts at issue
 - Conflicts of interest
 - Bias
- But what do each of these things mean (and how do you avoid them)?

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IMPARTIALITY

Prejudgment refers to passing judgment prematurely or without sufficient reflection or investigation. For example:

A Complainant was crying while making a sexual harassment report. You conclude that because the Complainant was crying when describing the conduct at issue, the Complainant must be telling the truth and the Respondent must be responsible for the actions alleged.

Neither Complainants reporting sexual harassment, nor Respondents defending against allegations of sexual harassment, should be met with prejudgment throughout the Title IX process.

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IMPARTIALITY

Prejudgment often occurs when allegations involve sexual conduct, sexual history, drugs, and/or alcohol use. Examples of prejudging the facts:

- *The Complainant was drinking at the time of the incident so the investigator presumes his/her recollection of an event is not accurate.*
- *The Respondent and Complainant were in a consensual relationship previously so the Title IX coordinator assumes consent to particular conduct was given.*

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IMPARTIALITY

Sex stereotypes also often lead to prejudgment – for example:

- *Men are sexually aggressive and/or likely to perpetrate sexual assault.*
- *Women have regret about sexual experiences and are likely lying about sexual assault.*
- *Men cannot be sexually assaulted.*
- *Women complaining about sex harassment are just jumping on the "MeToo" bandwagon*

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IMPARTIALITY

How do you avoid prejudging facts?

- ✓ Keep an open mind throughout the investigation process.
- ✓ Wait to hear all of the facts (there are two or more) sides to every story.
- ✓ Seek out additional facts and/or witnesses if you feel yourself jumping to conclusions – facts matter, assumptions do not!

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IMPARTIALITY

Ms. Jones is an investigator who conducts Title IX investigations for the school district. Ms. Jones frequently makes statements to her colleagues regarding how provocatively female students on campus dress and that they are “asking” for others to catcall and give them attention. In the case at hand, a female Complainant, who was wearing a crop top during class, reported that her lab partner made sexually harassing comments to her during a lab.

- In terms of prejudgment of the facts, would you be concerned about Ms. Jones impartiality?

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IMPARTIALITY

- The decision-maker(s) should not be the subordinates of the Title IX Coordinator.
 - This stems from a concern about pressure to accept investigator recommendations because of the inherent authority of the employment relationship.

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IMPARTIALITY

- A “conflict of interest” occurs if, within a particular decision-making context, an individual is subject to two coexisting interests that are in direct conflict with each other and the decision-making process is disrupted or compromised in a manner that affects the integrity or the reliability of the outcomes.

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IMPARTIALITY

- Conflict of interests may arise from family, friendships, employment relationships, financial investments, or other social factors.
 - Let’s discuss if the following potential conflicts may affect impartiality:

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IMPARTIALITY

- The Title IX Coordinator is close family friends with a Complainant’s parents.
- The Investigator and Respondent attend the same church.
- The Decision-Maker is on the Board of the local SAFE (Sexual Assault and Family Emergencies) Board of Directors.
- The Investigator shares news articles on their personal social media with their own commentary that women lie for attention about sexual assault.

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IMPARTIALITY

- An **actual** conflict of interest is a direct conflict between one's official duties and responsibilities, and a competing personal interest or obligation.
- A **perceived** conflict of interest is a situation where it could reasonably be perceived that a competing interest could improperly influence the performance of one's official duties and responsibilities.
- A **potential** conflict of interest arises where a personal interest or obligation could conflict with one's official duties and responsibilities in the future.

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IMPARTIALITY

- **Actual Conflict:** *The Title IX Decision-maker's daughter is the Respondent in a sexual assault case.*
- **Perceived Conflict:** *The Title IX investigator previously had a relationship with the family member of the Respondent.*
- **Potential Conflict:** *The Title IX Coordinator and Complainant co-chair a community organization and socialize outside of work on occasion.*

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IMPARTIALITY

- A **bias** is a tendency, inclination, or prejudice toward/against someone.
 - Biases are often based on stereotypes, rather than actual knowledge of an individual or a particular circumstance.
 - They are frequently based on a person's gender, race, or sexual orientation.
- In effect, biases are "shortcuts" our mind makes that can result in prejudgments, which lead to improper decisions or potentially discriminatory practices.

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IMPARTIALITY

- Examples of Bias:
 - *When talking with Title IX Complainants, the Title IX Coordinator begins each initial meeting by asking who the Respondent is and what "he" did to the Complainant (assuming the Respondent is a male).*
 - *A Title IX Decision-maker finds a Respondent in a case more credible than a Complainant because the Respondent speaks "perfect English" while the Complainant, who only knows English as a second language, does not.*

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IMPARTIALITY

- Ways to combat bias:
 - Pay attention to your language
 - Avoid generalizations
 - Question your thinking and challenge your assumptions
 - Listen!

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IMPARTIALITY

- Understanding bias is particularly important in the Title IX context because:
 - Most evidence is circumstantial rather than direct
 - There are social stigmas associated with sex, alcohol, and drugs
 - Improper sex-based bias is prevalent and prevents reliable outcomes
 - There are also potential biases related to economic status, gender, race/ethnicity, and academic standing

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IMPARTIALITY

- Illinois “Sample” Jury Instructions:
- *It is your duty to resolve this case by determining the facts based on the evidence and following the law. Your decision must not be based upon speculation, prejudice, or sympathy. Each party should receive your same fair consideration.*

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IMPARTIALITY

- Illinois “Sample” Jury Instructions:
- *Facts may be proven by evidence or reasonable inferences drawn from the evidence. Evidence consists of the testimony of witnesses you will hear and of exhibits you will read. You should consider all the evidence without regard to which party produced it. You may use common sense gained from your experiences in life, in evaluating what you see and hear during the investigation.*

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IMPARTIALITY

- Illinois “Sample” Jury Instructions:
- *In evaluating the credibility of a witness, you may consider that witness’ ability and opportunity to observe, memory, manner, interest, bias, qualifications, experience, and any previous inconsistent statement or act by the witness concerning an issue important to the case.*

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IMPARTIALITY

- Illinois “Sample” Jury Instructions:
- *You should not do any independent investigation or research on any subject relating to the case. What you may see or hear outside the investigation is not evidence.*

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IMPARTIALITY

- Treat all informal reports of sexual harassment equally, regardless of the form of the report or the demographics of the Complainant or Respondent.
- Make no assumptions about the allegations based on the demographics of the Complainant or Respondent.
- Offer supportive measures to Complainants and Respondents equally.

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IMPARTIALITY

- Keep an open mind and actively listen to all the facts presented.
- View all relevant evidence objectively.
- Remember that each case is unique.

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IMPARTIALITY

John, a Title IX Coordinator, is a self-professed feminist, a former victim advocate, and regularly blogs about issues of sexual assault. His Twitter bio includes the phrase "Believe all women." He has supported organizations that work to prevent sexual assault for years.

- Issue?

Prejudging
Facts

Conflict
of
Interest

Bias

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IMPARTIALITY

Betty is an assistant principal who conducts informal resolution for parties that elect it under the formal grievance process. Betty also serves as the school's athletic director, and was previously the school's volleyball coach for 15 years. Betty remains an active fundraiser and supporter of the volleyball team. A student (who is a current volleyball player) made a formal complaint alleging that a classmate (the high school starting quarterback with a major scholarship) sexually harassed them in the school library while completing work on a group assignment. The two elect informal resolution.

Prejudging
Facts

Conflict
of
Interest

Bias

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CONDUCTING A GOOD INVESTIGATION

- DOWNLOAD video camera footage that might be relevant IMMEDIATELY upon receiving a report (even if it has not turned into a complaint yet).
- Interview Complainant first—sometimes they start adding items, sometimes they share information that is directly contradictory to their complaint causing dismissal to be available.
- Ask parties for copies of relevant messages.
- Ask parties for names of potential witnesses and what those witnesses are likely to know.

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CONDUCTING A GOOD INVESTIGATION

- Approach investigative interviews with an outline of information that individual may have that you want to discuss. But, do not approach it with a script only.
 - Ask follow up questions, rephrase the questions in other ways, and re-ask questions later in the interview to see if the responses change.
 - If you notice inconsistency—"Earlier, I believe you said X and now I hear you saying Y. Can you reconcile those for me?"

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CONDUCTING A GOOD INVESTIGATION

- Start with open-ended questions:
 - Do you know why I asked to speak with you?
 - Are you aware that I'm conducting an investigation?
 - Who made you aware? What do you know about my investigation?
 - Did any person ask you to make sure you shared any particular information with me?
- Narrow the questions as you move through the interview.
 - Avoid disclosing new information to the witnesses unless necessary to get answers.

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§106.45(g) QUESTIONING PARTIES AND WITNESSES TO AID IN EVALUATING ALLEGATIONS AND ASSESSING CREDIBILITY

A recipient 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 credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.

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CREDIBILITY ASSESSMENT

Major inconsistencies in testimony would likely detract from credibility. Minor inconsistencies might not, and may even be the result of trauma or self-protection. The job, as an investigator, is to determine if someone is lying, why? Lying about alcohol consumption to avoid an alcohol violation does not prove or disprove an underlying interpersonal violence allegation.

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CREDIBILITY ASSESSMENT

A delay in reporting harassment does not detract from credibility. Individuals may delay reporting over fear of retaliation, because they don't know or trust the policy or administration, over fear of being blamed for causing the harassment or incident, or due to a lack of understanding that it was harassment.

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CREDIBILITY ASSESSMENT

Changes in behavior of the reporting party after an incident might add to credibility. For example, after being harassed, the reporting party cried, was visibly upset, avoided a class (or meetings, certain areas) that they normally enjoyed or spent time, or their academic performance deteriorated.

But, absence of these does not mean that the allegation is not credible.

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CREDIBILITY ASSESSMENT

The following are likely **irrelevant** to credibility:

- Character witnesses (*He's such a good guy; I know he would never do that.*)
- Popularity with staff and other students (*Everybody likes her; I just don't believe she would do that.*)
- No history of past problems (*She's never been in trouble before.*)
- Academic performance (*He's a really good student. His teachers like him a lot.*)

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CREDIBILITY ASSESSMENT

Factors to consider:

- Cooperation
- Level of detail
- Reliability of recollections
- Plausibility of accounts
- Motive to falsify information
- Consistency of account over times and with other available evidence
- Corroboration of information, including where it is lacking and should logically exist
- Demeanor

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DETERMINATION

Following investigation and evaluation of the relevant and not otherwise impermissible evidence, the recipient must:

1. Use the preponderance of the evidence standard to determine whether sex discrimination occurred (unless the district uses the clear and convincing standard for comparable proceedings).
2. Notify the parties **in writing** of the determination, including **the rationale**, and the **permissible bases for appeal**.

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DETERMINATION

Following investigation and evaluation of the relevant and not otherwise impermissible evidence, the recipient must:

3. If there is a finding that sex discrimination occurred, the Title IX Coordinator must coordinate the provision of and **implementation of remedies to complainant and other persons whose equal access was limited or denied**, coordinate the imposition of any disciplinary sanctions on a respondent **including notification to the complainant of any such disciplinary sanctions** and require the Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur.

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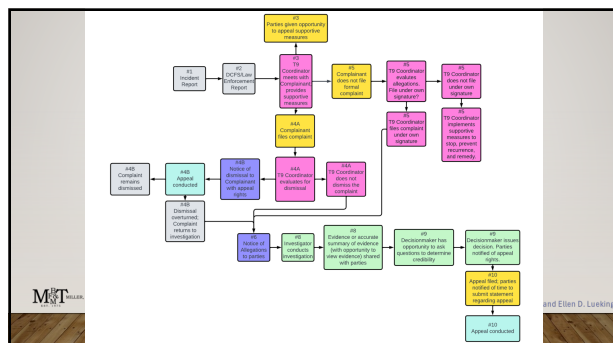
DETERMINATION

Following investigation and evaluation of the relevant and not otherwise impermissible evidence, the recipient must:

4. Use the grievance process before imposing disciplinary sanctions against a respondent.
5. Not discipline a party, witness, or others participating in a recipient's grievance process for making a false statement or for engaging in consensual sexual conduct based solely on the recipient's determination whether sex discrimination occurred.

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RECITING THE EVIDENCE IS NOT A DETERMINATION

Complainant said Respondent groped his butt, over his pants twice in one week when entering science class. Respondent said she did not remember doing that. Complainant suggested two witnesses who saw him immediately after and both testified he was upset and that he told them immediately upon entering the classroom what happened with Complainant. The science teacher also identified that Complainant looked upset when coming into class but stated she did not see any touch. Respondent suggested one witness who testified that Respondent is a good person and would never do that. The hallway cameras aren't angled to record the area where the incident allegedly occurred.

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RECITING THE EVIDENCE IS NOT A DETERMINATION

- Make a finding and explain how you got there!
- It is rare for something to be truly inconclusive.
- No video and no adult witness is not a reason to not make a finding.
- If you don't make a finding (and conclude the grievance process), you risk OCR or a court doing so for you.

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OCR ON FAILURE TO DISCIPLINE IN ACCORDANCE WITH STUDENT CODES OF CONDUCT

- "Although the record indicated the District completed its investigation within nine days, the District took no disciplinary action until 35 days after the complaining parties made their reports..." *Garland Independent School District*, OCR Compliance Review No. 06205001, July 26, 2023.
- "Similarly, the District also failed to put in place a safety plan at MS 2, where Student N was involved in several incidents of sexual harassment during the time period under review, including Incident 10. While the information provided to OCR indicated that the District explored options for increased discipline and other interventions specific to Student N, OCR did not find evidence that the District took steps to prevent further harassment from occurring through, for example, increased monitoring of Student N or coordination with Student N's teachers, or other reasonable steps that could have prevented the repeated incidents." *Val Verde Unified School District*, OCR 09-15-5001, June 8, 2023.

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“In addition, OCR’s review of the District’s responses to findings of sexual harassment by students raises a concern that the District may not have made individualized determinations about what action was needed to prevent further harassment. Specifically, the records and interviews indicated that the District typically imposed a four-day suspension for incidents of confirmed sexual harassment despite differences in their nature, severity, and frequency, and staff were unable to explain why that disciplinary sanction was imposed despite the differences in circumstances. The incident logs also indicated that the District imposed the same disciplinary sanctions for incidents that appeared inconsistent with its Code of Conduct, including that the District did not impose any suspension for five or more days for sexual harassment across three school years of data, regardless of the severity of the incident.” *Newark Public Schools*, OCR Case No 02-20-5001, August 28, 2023.

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PRESS 2:265 states that when an appeal is filed, notice of appeal and an opportunity for the parties to provide a statement in support of or challenging the appeal must be given.

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PRESS 2:265 provides that the Appellate Decisionmaker must make a decision within 30 school business days and issue the determination to affirm, reverse, or amend the determination within 5 school business days of that.

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graph TD
    A[1.1 Dataset preparation  
CIFAR-100 dataset] --> B[1.2 Dataset split  
Train and test sets]
    B --> C[1.3 Data augmentation  
Random crop, horizontal flip, color jitter]
    C --> D[1.4 Model training  
ResNet-18]
    D --> E[1.5 Model evaluation  
Accuracy, F1 score]
    E --> F[1.6 Model deployment  
Edge devices]
    F --> G[1.7 Adversarial attack  
FGSM, PGD]
    G --> H[1.8 Adversarial defense  
Gradient clipping, L2 regularization]
    H --> I[1.9 Adversarial detection  
Feature-wise perturbation analysis]
    I --> J[1.10 Adversarial mitigation  
Adaptive thresholding]
    J --> K[1.11 Model retraining  
With adversarial examples]
    K --> L[1.12 Model evaluation  
With adversarial examples]
    L --> M[1.13 Model deployment  
Edge devices]
    M --> N[1.14 Adversarial attack  
FGSM, PGD]
    N --> O[1.15 Adversarial defense  
Gradient clipping, L2 regularization]
    O --> P[1.16 Adversarial detection  
Feature-wise perturbation analysis]
    P --> Q[1.17 Adversarial mitigation  
Adaptive thresholding]
    Q --> R[1.18 Model retraining  
With adversarial examples]
    R --> S[1.19 Model evaluation  
With adversarial examples]
    S --> T[1.20 Model deployment  
Edge devices]
  
```

The flowchart illustrates the proposed system architecture for the detection of adversarial perturbations in the CIFAR-100 dataset. The process begins with dataset preparation (1.1) and splitting (1.2), followed by data augmentation (1.3) and model training (1.4) using ResNet-18. The model is then evaluated (1.5) and deployed (1.6) on edge devices. An adversarial attack (1.7) is performed using FGSM and PGD, and the model is defended (1.8) using gradient clipping and L2 regularization. Adversarial detection (1.9) is achieved through feature-wise perturbation analysis, leading to mitigation (1.10) via adaptive thresholding. The model is then retrained (1.11) with adversarial examples and evaluated (1.12) again. This cycle repeats, with the model being retrained (1.18), evaluated (1.19), and deployed (1.20) on edge devices, while the adversarial attack (1.21) and defense (1.22) are continuously refined. The final output is the model's performance (1.23) on the edge devices.

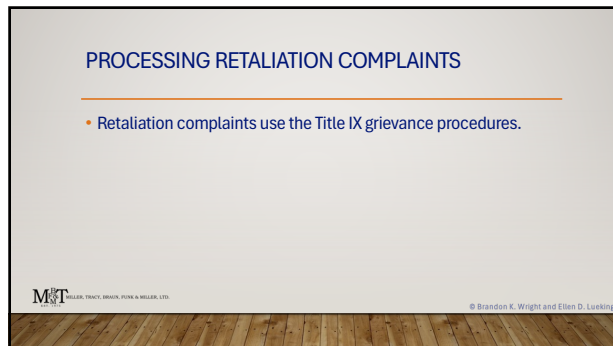
- **Retaliation** means intimidation, threats, coercion, or discrimination against any person by the recipient, a student, or an employee or other person authorized by the recipient to provide aid, benefit, or service under the recipient's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or this part, 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 under this part, including in an informal resolution process under § 106.44(k), in grievance procedures under § 106.45, and if applicable § 106.46, and in any other actions taken by a recipient under § 106.44(f)(1). Nothing in this definition of this part precludes a recipient from requiring an employee or other person authorized by a recipient to provide aid, benefit, or service under the recipient's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing under this part.

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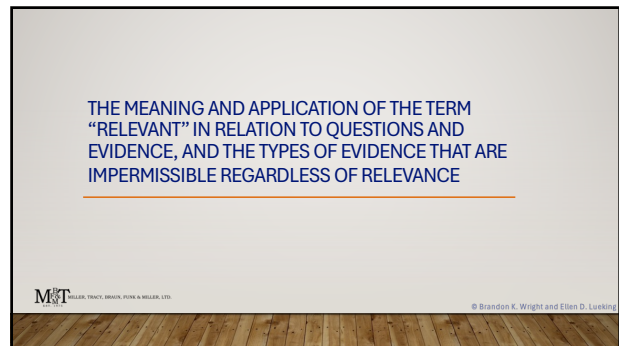
- *Peer retaliation* means retaliation by a student against another student.

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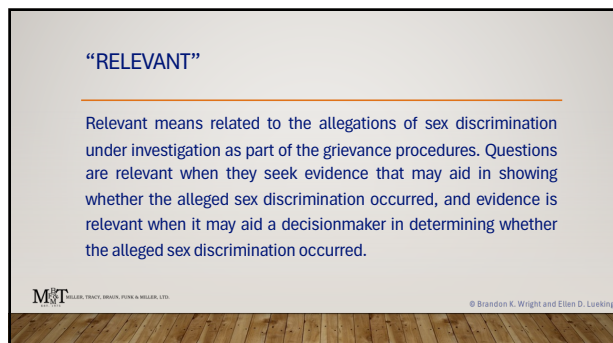
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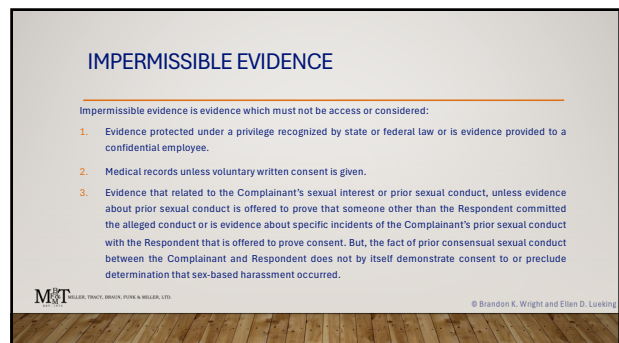
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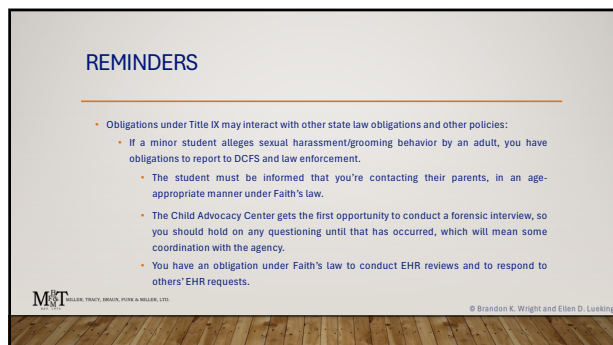
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FACILITATORS OF THE INFORMAL RESOLUTION PROCESS MUST BE TRAINED ON:

1. The District's rules and practices associated with the recipient's informal resolution process and how to serve impartially, including by avoiding conflicts of interest and bias.

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THE DISTRICT'S RULES ON INFORMAL RESOLUTION

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SUPPORTIVE MEASURES

Districts must provide supportive measures during the informal resolution process.

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WHAT IS REQUIRED TO ENTER INTO INFORMAL RESOLUTION?

- Written, voluntary consent to participate in informal resolution is required.
- Notice (not required to be written) to the parties that includes:
 - The allegations,
 - The requirements of the informal resolution process,
 - That a party can withdraw from informal resolution at any time and resume or initiate the grievance process
- Agreement to an informal resolution agreement precludes resuming or initiating the grievance process,
- Potential terms of agreement (like that the agreement is not binding on third parties),
- What information from informal resolution will be maintained and how it could or will be disclosed in the grievance process if initiated or resumed.

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WHAT IS REQUIRED TO ENTER INTO INFORMAL RESOLUTION?

- Cannot be used for employee on student sex-based harassment complaints.
- Written complaint is not required.

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BEST PRACTICE

- Keep detailed records of the informal resolution process.
 - Offers made and responses to those offers;
 - Times and dates of meetings or communications;
 - Email communications;
 - Notes from phone calls.

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- Synchronous or asynchronous?
- Shuttle diplomacy or bringing parties together?
 - (Do not require the parties to come together in the same room.)
- How much evidentiary discussion?

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- No contact orders
- Any discipline or suspensions from extracurriculars that could have been available if respondent was found responsible for the conduct alleged

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- Both parties have to agree—reduce to writing and get the signatures.

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- Districts should not agree to language that binds them unless willing to own the administrative burden and cost:
 - That Respondent will not be placed in any of Complainant's classes
 - That Respondent will not be in Complainant's lunch hour
 - That Respondent will not be in Complainant's presence
 - That Respondent must receive counseling services from the District

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[illegible]

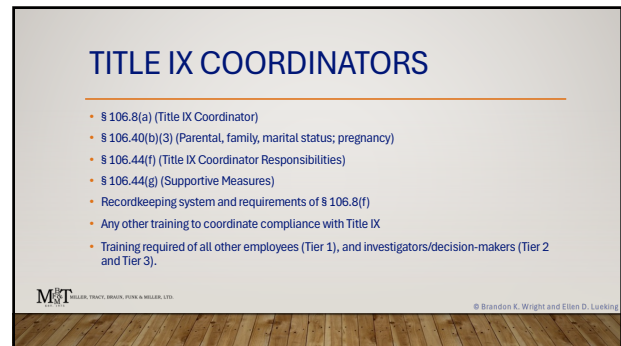
The District must respond promptly and effectively and the District's response must be compliant with Section 106.44's requirements for addressing sex discrimination in its education program or activity.

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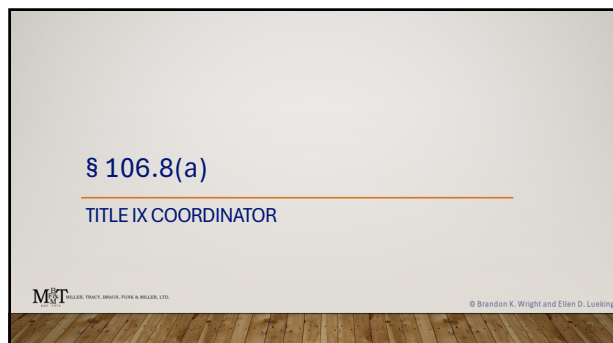
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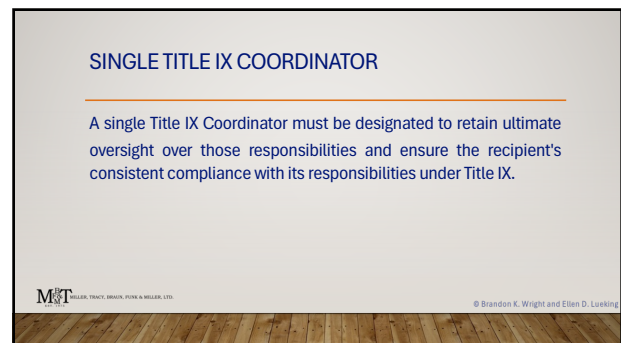
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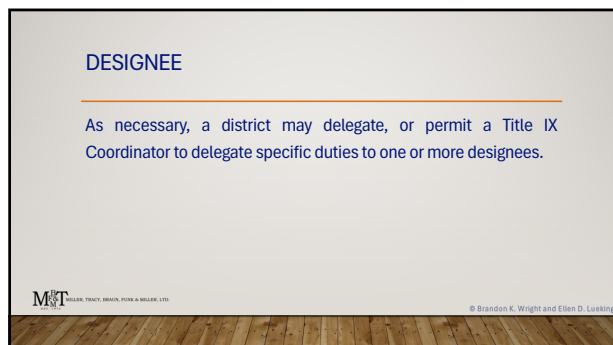
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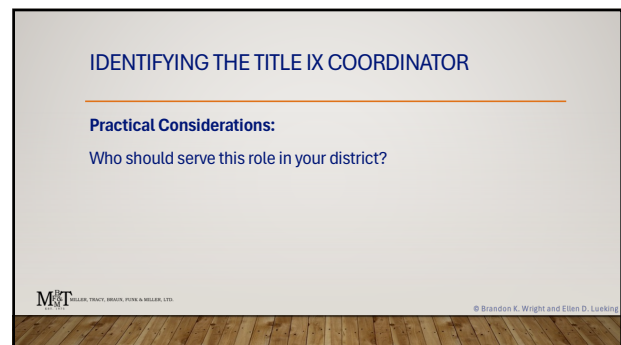
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§ 106.40(b)(3)

PARENTAL, FAMILY, MARITAL STATUS; PREGNANCY

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PREGNANCY

A District must take specific actions to promptly and effectively prevent sex discrimination and ensure equal access to the education program or activity once a student or person who has a legal right to act on behalf of a student notifies the Title IX Coordinator of a student's pregnancy or related condition.

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UPON NOTICE OF PREGNANCY...

1. The recipient must inform the student (or person who notified the Title IX Coordinator and has a legal right to act on behalf of the student) of the recipient's obligations not to discriminate against students because of their pregnancy status or related condition.
2. The recipient must provide the student or person with legal right right to act on behalf of the student, of the Title IX Coordinator's contact information and that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure equal access.

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UPON NOTICE OF PREGNANCY...

3. The right to reasonable modifications, and that those can be accepted or rejected
4. The right to voluntarily access any separate and comparable portion of the education program.
5. The right to a voluntary leave of absence.
6. The right to lactation space.

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REASONABLE MODIFICATIONS

- The recipient must make reasonable modifications to the recipient's policies, practices, or procedures as necessary to prevent sex discrimination and **ensure equal access** to the recipient's education program or activity.
- In determining reasonable modifications, the District must consult with the student. A modification that the District can demonstrate would **fundamentally alter the nature of its education program or activity is not a reasonable modification.**

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REASONABLE MODIFICATIONS

- A student may accept or decline reasonable modifications offered.
- If accepted, those must be implemented.

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REASONABLE MODIFICATIONS

- Breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, or using the restroom;
- Intermittent absences to attend medical appointments;
- Access to online or homebound education;
- Changes in schedule or course sequence;
- Extensions of time for coursework and rescheduling of tests and examinations;
- Allowing a student to sit or stand or carry or keep water nearby;
- Counseling;
- Changes in physical space or supplies (larger desk or footrest);
- Elevator access;
- Or other changes to policies, practices, or procedures.

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VOLUNTARY ACCESS TO SEPARATE AND COMPARABLE PORTIONS OF THE PROGRAM OR ACTIVITY

- A student must be allowed to take a voluntary leave of absence which is required to cover, at minimum, the period of time determined to be medically necessary by the student's licensed healthcare provider.
- If the District has student leave policy allowing for a greater than medically necessary period of time, the student must be permitted to take leave under that policy, if the student chooses. When the student returns, the student must be reinstated to the academic status, and to the extent practicable, to the extracurricular status the student held when the leave began.

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HOMEBOUND INSTRUCTION—ILLINOIS STATE LAW

- The *Illinois School Code* provides for a pregnant student to be provided with up to three months of homebound instruction after the birth of a child, and homebound instruction prior to birth, if medically certified.
- There is a July 2025 change coming that will expand Illinois protections for pregnant students under Article 26A of the *Illinois School Code*.

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LACTATION SPACE

- The District must ensure a lactation space, which must be space other than a bathroom, which is clean, shielded from view, free from intrusion of others, and may be used by a student for expressing milk or breastfeeding as needed.

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LIMITATION ON SUPPORTING DOCUMENTATION

- The District must not require supporting documentation for reasonable modifications, voluntary access to separate and comparable portions of the program or activity, voluntary leaves of absence, or lactation space unless the documentation is necessary and reasonable for the District to be able to determine what reasonable modifications to make.

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LIMITATION ON SUPPORTING DOCUMENTATION

- It is not reasonable to request supporting documentation when the need is obvious, such as when the student needs a larger uniform; when the student has previously provided sufficient supporting documentation; when the reasonable modification at issue is allowing a student to carry or keep water nearby and drink, use a bigger desk, sit or stand, or take breaks to eat, drink, or use the restroom; when the student has lactation needs; or when the reasonable modification is available to students for reasons other than pregnancy or related conditions without submitting supporting documentation.

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CERTIFICATION TO PARTICIPATE

- A District may not require a student who is pregnant or who has related conditions to provide certification from a healthcare provider or any other person that the student is physically able to participate in the District's class, program, or extracurricular activity unless:
 - The certified level of physical ability or health is necessary for participation in the class, program, or extracurricular activity;
 - The recipient requires such certification of all students participating in the class, program, or extracurricular activity; and
 - The information obtained is not used as a basis for discrimination.

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§ 106.44(f)

TITLE IX COORDINATOR RESPONSIBILITIES

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RECEIPT OF NOTIFICATION OF CONDUCT

- When the Title IX Coordinator is notified of conduct which may reasonably constitute sex discrimination, the Title IX Coordinator must take the following actions to **promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects**:

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FORGOTTEN FOLKS

- Contractors
- Substitute Employees
- Coaches (who are not otherwise employed by the school)

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RECEIPT OF NOTIFICATION OF CONDUCT

- Treat the Complainant and Respondent equitably;
- Offer and coordinate supportive measures, as appropriate, for the Complainant. If the Respondent has been notified of the allegations either through the grievance process or the informal resolution process, also coordinate supportive measures for the Respondent;

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RECEIPT OF NOTIFICATION OF CONDUCT

- Notify the Complainant or the reporting party (if the Complainant is not known) of the grievance process and informal resolution process, if available and appropriate, and if a complaint is made, notify the Respondent of the grievance process and informal resolution process, if available and appropriate;
- If a complaint is made, initiate the grievance procedures or the informal resolution process

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RECEIPT OF NOTIFICATION OF CONDUCT

5. In the absence of a complaint, in the withdrawal of a complaint or the allegations therein, or in the absence or termination of informal resolution, determine whether to initiate a complaint of sex discrimination through the grievance process based on an analysis of at minimum, the following eight factors:

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FACTORS FOR TITLE IX COORDINATOR TO CONSIDER REGARDING INITIATING THE GRIEVANCE PROCESS

i. The Complainant's request not to proceed with initiation of a complaint;	v. The age and relationship of the parties, including whether the Respondent is an employee of the District;
ii. The Complainant's reasonably safety concerns regarding initiation of a complaint;	vi. The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;
iii. The risk that additional acts of sex discrimination would occur if no complaint was initiated;	vii. The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred; and
iv. The severity of the alleged sex discrimination, including whether if the allegations were established, whether the Respondent would be subject to removal or imposition of other disciplinary sanction to end the discrimination and prevent its recurrence;	viii. Whether the District could end the sex discrimination and prevent recurrence without initiating the grievance procedures.

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IF INITIATING A COMPLAINT...

- Notify Complainant prior to doing so to:
 - Address reasonable concerns about Complainant's safety or safety of others;
 - Provide supportive measures;

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REGARDLESS OF WHETHER A COMPLAINT IS INITIATED...

- Take other appropriate prompt and effective steps, in addition to steps necessary to effectuate the remedies provided to an individual Complainant, if any, to ensure that sex discrimination does not continue or recur within the education program or activity.

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IF THE ALLEGATIONS COULD NOT CONSTITUTE SEX DISCRIMINATION, EVEN IF PROVEN...

- There is no need to conduct the analysis as to whether initiate the grievance procedure or to take other prompt and effective steps to end sex discrimination and prevent its recurrence.

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§ 106.44(g)

SUPPORTIVE MEASURES

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SUPPORTIVE MEASURES

Individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to:

1. Restore or preserve that party's access to the District's education program or activity, including measures that are designed to protect the safety of the parties or the District's educational environment; or
2. Provide support during the grievance process or informal resolution process.

Supportive measures may vary depending on what the District deems to be reasonably available.

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SUPPORTIVE MEASURES

Supportive measures may vary depending on what the District deems to be reasonably available. These measures may include, but are not limited to:

- Counseling;
- Extensions of deadlines and other course-related adjustments;
- Campus escort services;
- Increased security and monitoring of certain areas of the campus;
- Restrictions on contact applied to one or more parties;
- Leaves of absence;
- Changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and
- Training and education programs related to sex-based harassment.

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SUPPORTIVE MEASURES

Supportive measures, as may be appropriate, can be modified or terminated at the conclusion of the grievance process or the informal resolution process, or the District can continue supportive measures beyond the process.

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SUPPORTIVE MEASURES TIP

- Put an end date or triggering event on supportive measures and communicate that with the individual receiving the supportive measure.

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SUPPORTIVE MEASURES CHALLENGE

- The District must provide a Complainant or Respondent with a timely opportunity to seek, from an appropriate and impartial employee, modification or reversal of the recipient's decision to provide, deny, modify, or terminate supportive measures applicable to them.
- The District must also provide a party with the opportunity to seek additional modification or termination of a supportive measure applicable to them if circumstances change materially.

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SUPPORTIVE MEASURES CHALLENGE

- The impartial employee must be someone other than the employee who made the challenged decision and who has the authority to modify or reverse the decision, if the impartial employee determines that the decision to provide, deny, modify or terminate the supportive measure was inconsistent with the definition of supportive measure.

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SUPPORTIVE MEASURES CHALLENGE

- A District must not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party's access to the education program or activity, when there is written consent, or as required by law.

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SUPPORTIVE MEASURES FOR STUDENTS WITH DISABILITIES

- If the Complainant or Respondent is a K-12 student with a disability, the District must require the Title IX Coordinator to consult with one or more members, as appropriate, of the student's IEP team, if any, or one or more members, as appropriate, of the group of persons responsible for the student's placement decision under 34 CFR 104.35(c), if any, to determine how to comply with IDEA or Section 504, in the implementation of supportive measures.

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SUPPORTIVE MEASURES TIP

- Choose the IEP team member carefully—Special Education Director, administrator, etc., not parent, general education teacher, service provider.
- Consultation with one IEP team member does not allow changes to a student's IEP. Consider whether an IEP team meeting is necessary.

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RECORDKEEPING SYSTEM AND REQUIREMENTS OF § 106.8(f)

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RECORDKEEPING

- For seven years, the District—through the Title IX Coordinator—must maintain:
 - EACH** complaint of sex discrimination, records documenting informal resolution or the grievance procedures, and the resulting outcome.

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RECORDKEEPING

- For seven years, the District—through the Title IX Coordinator—must maintain:
 - EACH** notification received of information about conduct that reasonably may constitute sex discrimination under Title IX and records documenting the actions the recipient took to meet its obligations to promptly and effectively stop sex discrimination, prevent it from recurring, and to provide remedies to those affected.

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RECORDKEEPING

- For seven years, the District—through the Title IX Coordinator—must maintain:
- 3. **All materials** used to provide training to its employees.

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RECORDKEEPING TIP

- Make sure you can quickly find **ALL DOCUMENTS** related to a specific case or incident report. Everything goes in a single file.
- Do not store 50% of them in a Title IX file, another 25% of them in a student's file, and the last 25% only in the Title IX Coordinator's email.

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OTHER RESPONSIBILITIES

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EVALUATE BARRIERS TO REPORTING

A Title IX Coordinator must:

- Monitor the recipient's education program or activity for barriers to reporting information about conduct that reasonably may constitute sex discrimination under Title IX
- Take steps reasonably calculated to address such barriers.

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EVALUATING BARRIERS TIPS

- Conduct climate surveys
- Seek targeted feedback from students and employees who have reported sex discrimination
- Participate in public awareness events to receive feedback from student and employee attendees
- Regularly publicizing and monitoring an email address designated for receiving anonymous feedback about barriers to reporting.

87 Fed. Reg. 41436

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MISTAKES OCR WILL NOTICE!

PRACTICAL THOUGHTS ON HANDLING DISCRIMINATION AND HARASSMENT CLAIMS

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NASH COUNTY PUBLIC SCHOOLS (NC), SEPT 2023.

- OCR's investigation reflects that during the first week of the 2022-2023 school year, an individual posted on social media an anonymous threat of sexual violence against freshman girls at a district high school; and that staff members at the high school were generally aware of potentially harassing social media posts, including posts of a sexual nature, as early as February 2022. Based on its investigation to date, **OCR is concerned that the district did not respond as required by Title IX to notice that students at the school may have been sexually harassed in a manner that impeded their access to the school's education program and activities and that the district selectively enforced its dress code based on sex stereotypes, inconsistent with Title IX.**

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NASH COUNTY PUBLIC SCHOOLS (NC), SEPT 2023.

- The district's commitments in the resolution agreement include: (1) reviewing and, as necessary, revising its dress code to ensure it does not discriminate based on sex and informing people that they may contact the district's Title IX coordinator if they believe the dress code has been administered in a discriminatory manner; (2) **training staff at the high school about their Title IX obligations including with respect to responding to reports of sexual harassment, enforcing the dress code,** and not separating students based on sex except as permitted by Title IX; and (3) **reviewing and, where necessary, investigating reports of sexual harassment at the high school in accordance with Title IX and the district's grievance procedures.**

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NEWARK PUBLIC SCHOOLS (NJ), AUG 2023.

- OCR determined that the district discriminated against students based on sex by failing to respond to incidents of sexual harassment and assault and that it **failed to coordinate its responses through its designated Title IX Coordinator.** Specifically, OCR found that the Title IX Coordinator did not, and currently does not, coordinate the district's efforts to comply with its responsibilities under Title IX. Additionally, OCR found that the district failed to investigate confirmed Title IX concerns about employees' sexually harassing students and deferred its Title IX obligations to respond to such sexual harassment to a state agency for several years without ensuring those obligations were met. **OCR further found that the district repeatedly failed to respond to incidents of student-to-student sexual harassment, to address its effect on targeted students, to prevent its recurrence, and to notify the parties of investigation outcomes. OCR also determined that the district did not consistently notify employees, students, and their parents of its designated Title IX Coordinator and that its notice of nondiscrimination and grievance procedures did not comply with Title IX. Lastly, OCR identified concerns about the district's recordkeeping of sexual harassment incidents.**

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NEWARK PUBLIC SCHOOLS (NJ), AUG 2023.

- The district's commitments in the voluntary resolution agreement include: ensuring that the Title IX coordinator coordinates all of the district's efforts to comply with Title IX moving forward; developing a program to assess the effectiveness of the district's Title IX anti-discrimination efforts; revising policies and procedures to comply with the Title IX regulations; training staff and students regarding the district's Title IX procedures regarding sexual harassment; maintaining required records about reports of sexual harassment; reviewing case files for reported incidents of sexual harassment of district students from school years 2017-2018 through 2021-2022 to determine if further action is needed to resolve each incident equitably; disseminating a notice of nondiscrimination that complies with Title IX; and administering an annual school climate survey to district employees and students at each district school.

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GARLAND ISD (TEXAS), JULY 2023.

- OCR determined the District violated Title IX by routinely delaying its investigation of Title IX complaints when law enforcement was involved, and, in some instances, **failing to conduct a Title IX investigation and instead relying on law enforcement findings.** OCR had a concern regarding the District's **lack of a centralized system for tracking and maintaining Title IX complaint files, which resulted in significant gaps in its recordkeeping.** OCR also identified a concern regarding the District's failure to provide adequate Title IX training for its Title IX Coordinator, administrators, and staff. Additionally, **OCR is concerned about the Title IX Coordinator's ability to coordinate the District's efforts to comply with its Title IX responsibilities while holding multiple positions in the District.** Lastly, OCR also found Title IX violations and had concerns related to the District's Title IX policies and grievance procedures.

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GARLAND ISD (TEXAS), JULY 2023.

- The resolution agreement provides that the District will: (1) take the necessary steps to ensure the District does not discriminate on the basis of sex by reviewing and revising its Title IX grievance procedures and its notice of nondiscrimination, to secure compliance with the Title IX regulation; (2) develop and implement a centralized record-keeping system and procedures that adequately and accurately document and preserve all complaints of sexual harassment and sexual assault; (3) provide OCR with information regarding the District's processing of each formal complaint of sexual harassment and sexual assault filed with the District during the previous and upcoming school years; (4) provide Title IX training to District staff and age-appropriate education or other resources to students; and (5) conduct a climate survey to be distributed to its students and staff regarding sexual harassment, including sexual assault.

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RHINELANDER SCHOOL DISTRICT (WIS.), JULY 2023.

- Based on the evidence in the investigation to date, OCR is concerned that the District response to the persistent harassment limited the student's participation in school activities. OCR is also concerned that the District records **miscode sex-based harassment, including the use of a slur for gay people, as "peer mistreatment"**; did not document the multiple complaints of sex-based harassment brought by the student and their parent; and did not adequately document the District's responses. Moreover, the District Title IX Coordinator reported that she was unaware of reports of sex-based harassment of the student until after the complainant filed with OCR and therefore had not coordinated a response consistent with Title IX.

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RHINELANDER SCHOOL DISTRICT (WIS.), JULY 2023.

- The District's commitments in the voluntary resolution agreement include evaluating whether compensatory services or other services are necessary for the harassed student due to the instructional time the student missed when attending in-person classes on an only part-time basis; providing training to all District administrators and staff regarding the District's obligation to respond to complaints of sex-based harassment; providing age-appropriate information programs for students to address sex-based harassment, including what students should do if they believe they or other students have experienced such harassment; and conducting a climate survey to assess the prevalence of sex-based harassment and obtain suggestions for effective ways to address harassment.

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ALPINE SCHOOL DISTRICT (UTAH), 123 LRP 29859 (OCR 09/20/23)

OCR reviewed evidence obtained during an investigation and identified multiple compliance issues relating to Title IX:

- It did not coordinate Title IX compliance **through the designated Title IX coordinator**.
- It did not notify employees and students of the **name and contact information** of the Title IX coordinator.
- It did not adopt and publish grievance **procedures that comply with the Title IX regulations** in effect during the review period.
- It did not take appropriate steps to **investigate reports** of employee-to-student sexual assaults.

(continued)

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ALPINE SCHOOL DISTRICT (UTAH), 123 LRP 29859 (OCR 09/20/23)

OCR reviewed evidence obtained during an investigation and identified multiple compliance issues relating to Title IX (continued):

- It did not investigate some student-to-student sexual assaults, including whether they created a **hostile environment** for the harassed students.
- It did not provide **interim measures** to students alleged to have been sexually assaulted by employees & students.
- It did not take steps to **prevent the recurrence** of substantiated sexual assaults and remedy the resulting hostile environment.
- It did not consistently notify harassed students and parents of investigation **outcomes**.

➤ The agreement requires the district to address the identified violations and show proof of ongoing compliance.

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ALPINE SCHOOL DISTRICT (UTAH), 123 LRP 29859 (OCR 09/20/23)

Example 1

According to District records, in 2018, Teacher 1 performed a "sexual act" on Student 1 in Teacher 1's classroom at HS 2, immediately after school. [Redacted content]. Student 1 told a third party, who reported the incident to law enforcement. Law enforcement questioned and arrested Teacher 1, who later pleaded guilty to unlawful sexual conduct with a [redacted content]-year-old. The District learned of the matter and reported it to the UPPAC but allowed Teacher 1 to resign without conducting a Title IX investigation to determine whether this conduct created a hostile environment for Student 1 or whether other District students were subjected to an ongoing hostile environment.

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ALPINE SCHOOL DISTRICT (UTAH), 123 LRP 29859 (OCR 09/20/23)

Example 3

In 2017, a parent complained to the District about an employee who hugged and kissed on the cheek several ES 2 female students as they exited the school bus on several occasions. The only record the District produced of its investigation of this complaint was a letter from the Director of Transportation to the employee, stating, "Video footage from days prior revealed that you have hugged and kissed students on other occasions." OCR found no evidence that the District conducted any interviews or contacted the parents of other female students to determine if a hostile environment existed for them on the school bus. On the basis of the video footage and the employee's admission to the conduct, the Director of Transportation informed the employee that he would recommend to Human Resources to suspend the employee without pay for four days, place him on probation, and move him to a new bus route. The District could not confirm whether the recommended disciplinary action was imposed on the employee. In addition, the District produced no evidence that it offered any remedies to the female students whom the employee hugged and kissed.

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ALPINE SCHOOL DISTRICT (UTAH), 123 LRP 29859 (OCR 09/20/23)

Example 5

According to District records, in 2017, Student 4 reported to her parent and a school counselor that Student 5 raped her in the school's parking lot. The counselor notified the assistant principal, who notified law enforcement. Law enforcement interviewed Student 4 and arrested Student 5, but the case was never adjudicated. The alleged rape was [redacted content]. Another school employee notified the assistant principal that Student 5 was bragging to others student about having had sex with a female student in the parking lot. When the assistant principal notified the principal of this, the principal told the assistant principal that Student 5 would not be returning to the school. OCR did not find evidence that the District conducted an investigation to determine if Student 5 raped Student 4 in the school's parking lot and if the alleged rape created a hostile environment for Student 4, or took any steps to remedy its effects on Student 4. Even if Student 5 was not returning to the school and law enforcement did not prosecute the alleged rape, the District had obligations under Title IX to determine if the rape occurred and created a hostile environment for Student 4, so that the District would know what remedies to provide Student 4 and whether Student 5 posed a risk to students in other schools.

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ALPINE SCHOOL DISTRICT (UTAH), 123 LRP 29859 (OCR 09/20/23)

Example 7

In January 2020, Student 8's parents notified Teacher 4, via email, that after multiple days of Student 8 crying after school and struggling to sleep, he finally revealed that Student 9 had been grabbing his penis at school. Student 8's parents requested a meeting with school personnel and interventions to prevent further harassment. Teacher 4 forwarded the email to the principal. The principal wrote in Student 9's discipline report, "I talked with parents who were supportive but out of town on vacation. I also talked to [Student 9]. He neither confirmed or [sic] denied touching the other student." The District's records do not indicate that the District took any additional measures in response to the January 2020 report, including offering interim measures to Student 8.

(continued)

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ALPINE SCHOOL DISTRICT (UTAH), 123 LRP 29859 (OCR 09/20/23)

Example 7 (continued)

In May 2020, Student 10's parents notified Teacher 4 and the principal, via email, that: (a) Student 9 had repeatedly grabbed Student 10's penis. The parents shared with the teacher and principal that Student 10 had become depressed and started saying things like, "I feel hollow," "I feel like I'm nothing," "I hate my life," and "I should just die." The principal wrote in Student 9's discipline report, "I called [Student 9]'s parents about the reported incidents. I also notified them that DCFs would be reaching out to them about the report." The District's records do not reflect that the District continued investigating Student 9's conduct to determine whether he assaulted any other students. Nor do the records reflect the offer or provision of supports such as counseling services to Student 10.

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ALPINE SCHOOL DISTRICT (UTAH), 123 LRP 29859 (OCR 09/20/23)

Example 10

The District's discipline records reflect that in 2018, Student 14 held down Student 15, kissed her, and followed her home. The District gave Student 14 a one-day out-of-school suspension. The records do not indicate that the District took any further actions to protect Student 15 from further harassment (e.g., ensuring she could travel home safely) or to address any hostile environment that resulted from the assault by offering her counseling or other supports.

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ALPINE SCHOOL DISTRICT (UTAH), 123 LRP 29859 (OCR 09/20/23)

Example 11

The District's discipline records reflect that in 2019, the District found that Student 16 put his hand down Student 17's pants three times in a school library. Student 16's discipline records stated, "The young lady was so scared and numb by the advance that she just didn't know what to do." The assistant principal who handled the incident told OCR that Student 17 broke down crying during his interview of her. OCR did not find evidence that the District offered any support services to Student 17. The assistant principal told OCR that Student 17 "seemed to be okay" after discussing the incident and the school did not follow up with her.

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ALPINE SCHOOL DISTRICT (UTAH), 123 LRP 29859 (OCR 09/20/23)

Example 13

According to District records, in 2018, Student 20 initiated "intimate sexual contact" with a female student with a disability on at least three occasions while on the school bus, including fondling her breasts and attempting to put his hand down her pants. The records reflect that the Transportation Department observed video footage of the incidents and notified the students' school; and that an assistant principal talked to Student 20 about his behavior, suspended him for two days, and reassigned him to another bus. However, the records do not indicate that the District communicated the outcome of its investigation with the female student or her parent.

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ALPINE SCHOOL DISTRICT (UTAH), 123 LRP 29859 (OCR 09/20/23)

Resolution Agreement (in summary):

- ✓ Additional training and resources for Title IX Coordinator (sufficient time, training, authority, etc.).
- ✓ Update and publish policies, and send to all students and parents.
- ✓ Additional training for administrative personnel (OCR approves training materials and trainer).
- ✓ Additional training for all employees (OCR approves training materials and trainer).
- ✓ Training for all students (OCR approves training materials and trainer).
- ✓ Creation of a new tracking system and records maintenance system for all reports and complaints.
- ✓ Must report to OCR every report or complaint of sexual harassment "until OCR closes its monitoring of this Agreement".
- ✓ Annual age-appropriate climate surveys of all students, parents, and employees (OCR must approve content).

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MISTAKES OCR WILL NOTICE!

PRACTICAL THOUGHTS ON HANDLING DISCRIMINATION AND HARASSMENT CLAIMS

• What should we be focusing on, as we consider both OCR's expectations and the specific requirements of the Illinois School Code?

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MISTAKES OCR WILL NOTICE!

- Failing to acknowledge current policy (including failing to remove outdated policy from website, handbooks, etc.).

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MISTAKES OCR WILL NOTICE!

- Failing to acknowledge current policy (including failing to remove outdated policy from website, handbooks, etc.).
- *Key tip: Don't let your Handbook Committee sabotage the required legal elements of your bullying policy, procedures, and implementation.*

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MISTAKES OCR WILL NOTICE!

- Failing to complete an actual, robust investigation when a complaint of discrimination or harassment is mentioned.

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MISTAKES OCR WILL NOTICE!

- Failing to complete an actual, robust investigation when a complaint of discrimination or harassment is mentioned.
 - *Investigation must seek truth (not presume it)*
 - *Investigation must follow the facts (not be restrained by process)*
 - *Investigation must have a target (not devolve into fishing)*
 - *Investigation must follow process (not seek to prove preordained result)*

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MISTAKES OCR WILL NOTICE!

- Failing to complete an actual, robust **investigation** when a complaint of discrimination or harassment is mentioned.
- **An investigation is going to include:**
 - Evidence from interviews/testimony
 - Evidence from documents or electronic sources
 - Evidence via witness statements
 - Findings of fact, conclusions, and recommendations

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MISTAKES OCR WILL NOTICE!

- Failing to complete an actual, robust **investigation** when a complaint of discrimination or harassment is mentioned.
- **Conclusions should be reached based on a preponderance of the evidence:**
 - You must make credibility determinations.
 - "He said/she said" or "He said/he said" are not an acceptable basis for a conclusion – you can't wimp out on that basis!
 - The facts are either going to support a finding or they will not.

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MISTAKES OCR WILL NOTICE!

- Failing to have the **appropriate personnel** handle the issue.

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MISTAKES OCR WILL NOTICE!

- Failing to have the **appropriate personnel** handle the issue.
- **Are the personnel handling the matter:**
 - Appropriately trained (practically and legally)?
 - The individuals designated by policy?
 - Free from bias or conflicts of interest?
 - Do **all** personnel understand their obligation to report?

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MISTAKES OCR WILL NOTICE!

- Failing to **fully document** the response to the complaint and **notify the parties** of the outcome.

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MISTAKES OCR WILL NOTICE!

- Failing to **fully document** the response to the complaint and **notify the parties** of the outcome.
- Under Section 27-23.7 of the Illinois School Code, each school must have procedures, consistent with federal and State laws and rules governing student privacy rights, for providing parents and guardians of the students who are parties to the investigation information about the investigation and an opportunity to meet with the principal or school administrator or his or her designee to discuss the investigation, **the findings of the investigation, and the actions taken to address the reported incident** of bullying.

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MISTAKES OCR WILL NOTICE!

- Failing to **fully document** the response to the complaint and **notify the parties** of the outcome.
- In *Letter to Soukup*, 115 LRP 18668, 18 FAB 33 (FPCO 2015), the Family Policy Compliance Office noted that districts may disclose to the parents of a harassed student information about the disciplinary sanctions imposed on the students who engaged in the harassment if the sanction "directly relates" to the harassed student. The letter clarified that FERPA does not conflict with civil rights laws such as Title IX, which require districts to notify the parents of a harassed student of the outcome of a harassment investigation.

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MISTAKES OCR WILL NOTICE!

- Failing to **fully document** the response to the complaint and **notify the parties** of the outcome.
- *What kind of disciplinary actions would be considered "directly related" to the harassed student? FPCO provided a few examples:*
 - An order that the harasser stay away from the harassed student.
 - The harasser being prohibited from attending school for a period of time.
 - The harasser being transferred to other classes.

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MISTAKES OCR WILL NOTICE!

- Failing to see **patterns** by treating all matters as isolated instances.

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MISTAKES OCR WILL NOTICE!

- Failing to see **patterns** by treating all matters as isolated instances.
- Same offender, different victims?
- Same victim, different offenders?
- Different incidents, same building/classroom/setting?

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MISTAKES OCR WILL NOTICE!

- Failing to **remediate** the victim.

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MISTAKES OCR WILL NOTICE!

- Failing to **remediate** the victim.
- While the investigation is pending, the school must provide **supportive measures**, are individualized services provided that are **non-punitive, non-disciplinary, and not unreasonably burdensome to the other party** while designed to ensure **equal educational access, protect safety, or deter harassment**.

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MISTAKES OCR WILL NOTICE!

- Failing to **remediate** the victim.
- Discipline may only follow an investigation and a finding of responsibility.
- Remedies are required to be provided to a complainant when a respondent is found responsible. The remedies must be designed to maintain the complainant's equal access to education and may include the same individualized services described as supportive measures.
- Remedies after a finding of fault may be disciplinary, punitive, and may burden the respondent.

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MISTAKES OCR WILL NOTICE!

- Failing to **remediate** the victim.
- The School Code requires that the school's policy includes "the interventions that can be taken to address bullying, which may include, but are not limited to, school social work services, **restorative measures**, social-emotional skill building, counseling, school psychological services, and community-based services."

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MISTAKES OCR WILL NOTICE!

- Failing to **remediate** the victim.
- The point is to solve the problem. How can we marshal resources to accomplish this?

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MISTAKES OCR WILL NOTICE!

- Failing to convene the **IEP team/504 team** when disability is involved.

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MISTAKES OCR WILL NOTICE!

- Failing to convene the **IEP team/504 team** when disability is involved.
- Schools have an obligation to ensure that a student with a disability who is the target of bullying continues to receive FAPE in accordance with his IEP or Section 504 plan.
- The school should, as part of its appropriate response to the bullying, convene the IEP or Section 504 team to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the IEP or 504 plan is no longer designed to provide FAPE. *Dear Colleague Letter*, 61 IDELR 263 (OSERS/OSEP 2013); and *Dear Colleague Letter: Responding to Bullying of Students with Disabilities*, 64 IDELR 115 (OCR 2014).

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MISTAKES OCR WILL NOTICE!

No reports of harassment?

That probably means you aren't doing it right – no school is Perfectville.



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IN SUMMARY

- Effectuate reasonable modifications for pregnant students.
- Ensure all staff have requisite training.
- Receive incident reports of sex discrimination.
- Address supportive measures.
- Initiate and facilitate the grievance process as necessary.
- Maintain records.
- Evaluate barriers for reporting.

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TITLE IX

LET'S PRACTICE

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TITLE IX PRACTICE

Nicole, 16, is a cheerleader on the Marble Hills High School cheer team. Nicole has a boyfriend. Mandy, 17, is on the girls' basketball team. Neither Nicole nor Mandy are students with IEPs or 504 Plans. Mandy is openly a lesbian at school. Nicole and Mandy are seemingly very close friends. Nicole and Mandy, after a girls' basketball game on Tuesday night, are in the parking lot in Mandy's car. The pair apparently begin kissing and another cheerleader, Olivia, unbeknownst to both Nicole and Mandy, takes a picture of the two kissing in Mandy's car.

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TITLE IX PRACTICE

Olivia posts the picture to her snapchat story (which all of her Snapchat friends can see) and she sends it to the "Barstool Marble Hills" twitter account which posts it publicly. Nicole does not attend school on Wednesday or Thursday because she is so distraught. When her dad calls her in on Wednesday morning he asks what the school is going to do about this—sharing that there was a picture of his daughter kissing another girl posted online and that Nicole is being ridiculed and being called a lesbian (along with some slurs for lesbian) online.

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What should the attendance assistant do?

Does your attendance assistant have enough training to know to report this to the Title IX Coordinator?

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The attendance assistant reported the issue to the Title IX Coordinator.

What should the Title IX Coordinator do?

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The Title IX Coordinator calls Dad back and asks if he can get Nicole to join them on the phone to talk about their options and supportive measures. She explains that they have a couple of options. She says that Nicole and Dad can decide to go the route of an investigation instead. She also says that if they choose not to do anything, she, as the Title IX Coordinator will need to evaluate the allegations and decide if she must initiate an investigation based on a number of factors. Dad emails a screenshot of Olivia's snapchat story to the Title IX Coordinator after the conversation, as well as a screenshot of the "Barstool Marble Hills" post. Dad and Nicole ask for time through Friday to make a decision and ask the Title IX Coordinator to excuse the absences for Nicole through Friday.

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Should the Title IX Coordinator excuse the absences?

Yes—this is a very reasonable supportive measure to grant.

Should the Title IX Coordinator consider any other supportive measures?

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SUPPORTIVE MEASURES

- Class/Schedule Changes?
- Classwork Extensions/Rescheduling Tests?
- Counseling?
- Temporary Remote Attendance?
- No Contact Order?
- Educational Conversation?

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If the Title IX Coordinator implements other supportive measures without agreement, there is an affirmative duty to offer the party a timely opportunity to seek reversal or modification of the decision to provide, deny, modify, or terminate supportive measures applicable to them.

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Dad calls back on Friday and says they decided they want to try informal resolution.

What does the Title IX Coordinator need to do?

- Ensure that the Complainant knows this means she allegations and her name will be disclosed to the Respondent.
- Check whether Respondent is willing to participate in informal resolution and if yes, get written, voluntary consent.
- Take other steps to end sex-based discrimination.

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Olivia agrees to participate in informal resolution. She and her parent gives written, voluntary consent to participate.

Now what?

Who should be the informal resolution facilitator?

What notice are the parties entitled to?

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INFORMAL RESOLUTION WRITTEN NOTICE

- The allegations;
- Informal resolution process requirements;
- That at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the grievance process;
- That if the parties agree to a resolution at the conclusion of the informal resolution process, the parties' agreement precludes the parties from initiating or resuming the grievance process arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding; and
- The information that will be maintained and whether and how the information could be disclosed for use in the grievance process if the grievance process is initiated or resumed.

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NEXT STEPS

The Informal Resolution Facilitator, assigned to the case by the Title IX Coordinator gets in contact with Nicole and her dad and asks if they have any thoughts about potential items they are interested in. Nicole says she wants Olivia to delete the picture and get it taken down from social media. She also says she wants a written apology from Olivia that she can post on social media if she wants to and for Olivia to miss the next cheer event—the last basketball game.

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NEXT STEPS

The Informal Resolution Facilitator then gets in touch with Olivia and her parents and asks if those terms are agreeable. Olivia says she can ask the "Barstool Marble Hills" page to take the post down, but she cannot promise that the page will agree. She agrees that an apology is fair. She hesitates to agree to the last basketball game, because she really wants to cheer for the seniors' last night. The Facilitator reminds her that the consequences, should the allegations be founded do include consequences up to and including expulsion. She agrees to the one game suspension. Olivia asks if the Informal Resolution Facilitator would ask Nicole if evidence that she requested "Barstool Marble Hills" to take down the post would be okay, because she does not have control over their posts.

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The Informal Resolution Facilitator contacts Nicole and lets her know Olivia's offer. Nicole accepts. The Informal Resolution Facilitator drafts an Informal Resolution Agreement:

To resolve the complaint of sex discrimination made by Nicole against Olivia on 2/1/2025, the parties have participated in informal resolution and have come to agreement on the following terms:

Olivia will delete all copies, both digital and physical, of the photograph of Nicole and Mandy kissing, including copies that may be present in any messages Olivia sent.

Olivia will request that "Barstool Marble Hills" remove the post which includes the image she sent. Olivia will share a screenshot of the message asking the post to be taken down with the Informal Resolution Facilitator who will provide it to Nicole.

Olivia will not participate, nor will she be present at, the basketball game at Marble Hills High School on 2/6/2025.

Should Olivia fail to comply with the above provisions, Olivia agrees that she will be suspended from school for ten days and will be suspended from cheer for the next school year.

Signature

Signature

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LET'S PRACTICE

SCENARIO #2

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JASON

Jason is an 18 year old student and he has eligibilities in the categories of autism and SLD in the areas of reading and math.

- His IEP places him in a self-contained special education setting for more than half of his day.
- He has, in the past, received direct instruction on social interactions and relationships due to sexualized and aggressive behaviors.
 - Demonstrated significant improvement in age-appropriate interactions.

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KYLIE

Kylie is a 15 year old student with a TBI causing low cognitive functioning, memory issues, and limited communication skills.

- Data shows Kylie's communication progress is greatest when she is provided with opportunities to develop through peer interaction.
- She spends nearly all of her day in the special education classroom for instruction.
- Kylie's parents have a history of making claims of peer harassment and bullying that have always been unfounded.

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THE SPECIAL EDUCATION TEACHER

The special education teacher, Mr. Bennett, has received four emails from Kylie's mom, each with increasing intensity, between yesterday and today. Yesterday the messages expressed that Jason was "preying upon" Kylie with no details.

Today the emails says that Jason "touched Kylie" and demands that the teacher kick Jason out of the class and that Kylie be placed in a 1:1 classroom until Jason is expelled.

What does Mr. Bennett need to do?

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Mr. Bennett shares the emails with the Title IX Coordinator and reports that he is not aware of any time that Jason and Kylie have been unsupervised.

What does the Title IX Coordinator need to do?

The Title IX Coordinator calls in Kylie's mom and Kylie for a meeting. The Title IX Coordinator describes the grievance process but not the informal resolution process, because she feels it is inappropriate for this circumstance.

Is it appropriate to not offer informal resolution?

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Yes, that is a discretionary decision. There is a significant age difference between the parties and substantially different ability levels between the parties.

Kylie's mom requested Kylie be removed to a 1:1 placement and for Jason to be expelled. Should the Title IX Coordinator just grant those things?

Mom made a request for a supportive measure—a 1:1 placement—that was denied. The District must offer Kylie and her mom the timely opportunity to challenge.

Who has the authority to override the decision and grant the supportive measure of a 1:1 placement?

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Is there a right by Kylie to challenge the decision of the Title IX Coordinator to **NOT immediately expel Jason?**

Probably yes. She needs to be able to appeal to an impartial employee that decision to not immediately expel Jason. The response though, should be fairly simple: the threat assessment team should conduct the emergency removal analysis.

Kylie's mom asks the Title IX Coordinator for an investigation into whether Jason sexually assaulted Kylie by fondling her breasts and whether he engaged in sexual harassment with alleged comments to her that "she was so hot" and "he wanted to touch her boobs."

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What does the Title IX Coordinator need to do now that the grievance process is being initiated?

- Send notices of investigation to both parties. Must include:
 - The District's grievance procedures
 - Sufficient information available at the time, to allow the parties to respond to the allegations, which includes: the identities of the parties, the conduct alleged to constitute sex discrimination, the dates and locations of the alleged incidents, to the extent that information is available
 - A prohibition on retaliation
 - A statement that 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 using an accurate description, the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon request.
- Assign an investigator.

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Do we have concerns about potential investigators' ability to remain neutral, knowing Kylie's mom has made many unfounded complaints?

Yes. This might be a time to consider looking to another trained administrator from a building that Kylie has not attended to prevent any perceived bias or impartiality.

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BACK TO KYLIE AND JASON...

An investigator is assigned—a newer principal at the elementary school who had the appropriate Title IX training. The principal is also designated to serve as the decisionmaker.

Over the next two days, the investigator interviews both parties, the special education teacher, the teacher's aide, another student's 1:1 aide, and three other students that sit near Jason and Kylie were interviewed.

The investigator takes notes from each of the meetings, with the help of an administrative assistant serving as a notetaker. The investigator opens every interview by asking if the witness knows why she asked to talk to them. The investigator closes every interview with three questions:

- (1) Is there anyone else that you think I should talk to about what we have discussed today?
- (2) Is there anything that you have that might help me decide what happened here? (messages, videos, pictures, or anything else) and
- (3) Is there anything else you want to tell me or that you think I should know?

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All witnesses, except the special education teacher who made the incident report and one student say they are unaware of why they were asked to participate in the investigation. The student shares that she is friends with Complainant and Complainant told the student "what Jason did to her" four days after it happened.

Reminder: We cannot mandate students participate in Title IX investigations or discipline them for declining to do so.

At the end of the second day, after all of the interviews were conducted, the investigator considered whether there might be any other evidence that would exist or anyone else to speak to. She believes the investigation is complete, so she prepares the evidence to be shared the next day.

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When she shares the evidence, she puts a watermark specific to Complainant and a watermark specific to Respondent on the papers. Both parties have expressed that they are comfortable using email. She places all of her notes with watermarks into password protected Dropbox where neither party may download the documents—they may only view them. There are only ten pages of notes, total.

Dear Party:
Below, please find a hyperlink to a Dropbox folder where you can view the evidence in your Title IX case. As a reminder, you are not permitted to share any information you learn only through the course of this investigation. Unauthorized disclosures may subject students to discipline, up to expulsion, employees to discipline, up to termination, and third-parties to denied admission at school events for up to one year. You have two school business days to review the evidence and submit a written response, if you choose.

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When she shares the evidence, she puts a watermark specific to Complainant and a watermark specific to Respondent on the papers. Both parties have expressed that they are comfortable using email. She places all of her notes with watermarks into password protected Dropbox where neither party may download the documents—they may only view them.

TIP: There is no longer a set number of days that the parties have to provide a written response to the evidence. The more evidence that exists, the more likely you need to increase the number of days to review and respond to the evidence.

Dear Party:
Below, please find a hyperlink to a Dropbox folder where you can view the evidence in your Title IX case. As a reminder, you are not permitted to share any information you learn only through the course of this investigation. Unauthorized disclosures may subject students to discipline, up to expulsion, employees to discipline, up to termination, and third-parties to denied admission at school events for up to one year. You have two school business days to review the evidence and submit a written response, if you choose.

When Respondent is an employee, there is also a likelihood you need to increase the review and response time.

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Respondent submits a written response where he restates that he did not touch Complainant. He also points out that Complainant and the one student witness are very good friends and the student witness admitted to speaking with Complainant prior to the interview.

Complainant does not submit a written response.

The investigator/decisionmaker does not need to engage in any questioning to be able to make credibility determinations, unless she has further questions, because she was the person who questioned the parties in the first place.

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NEXT STEPS FOR DECISIONMAKER...

She begins drafting her determination:

1. Summary: summarizes who the parties are and what is generally alleged. She includes the notices of allegations as an Exhibit.
2. Policies: recite the definition of sex discrimination as written in policy, as well as any other policies that were included on the notice of allegations. Add the standard of evidence.
3. Findings of fact: consider every one of the factual allegations of Complainant. Make a finding, individually, as to whether each happened or did not happen, based upon the preponderance of the evidence. Make credibility determinations.

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NEXT STEPS FOR DECISIONMAKER...

She begins drafting her determination:

4. Analysis: review, individually, the factual findings you made, and make a determination as to whether the policy was violated. Here, she is looking at hostile environment sex-based harassment and sexual assault by fondling.
 - Hostile environment sex-based harassment: unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the District's education program or activity.
 - Fondling: the touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

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NEXT STEPS FOR DECISIONMAKER...

Drafting her determination:

5. Conclusion: Summarize whether there was a violation of policy. Identify the sanctions to the Respondent if there is a finding. Identify the remedies to the Complainant if there is a finding. If there is no finding, will supportive measures continue?
6. Appeal: Copy the appeal language from the policy into the final section of the Title IX Written Determination. Parties have five school business days after the Determination to file an appeal.

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APPEAL

An appeal is filed:

- The Title IX Coordinator must inform both parties that an appeal has been filed and that they can submit a statement in support of or challenging the appeal.
- All materials are sent to the appellate decisionmaker to consider the appeal. The appellate decisionmaker has 30 school business days to make that determination and then five school business days to notify the parties in writing of the result of the appeal.

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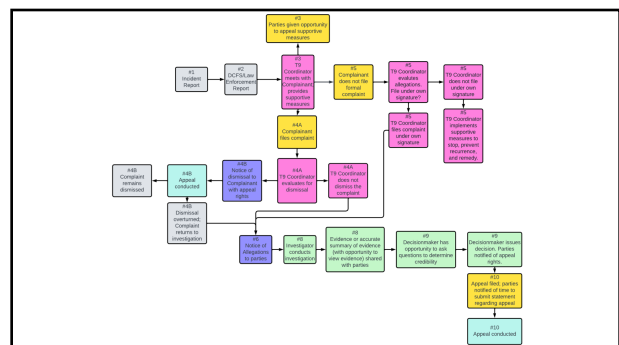
APPEAL

- By PRESS policy, there are three bases for appeal that the appellate decisionmaker must analyze. If one of these bases does not exist, the written determination is affirmed.
- If one does exist, the appellate decisionmaker analyzes how that exists, and then can affirm, reverse, or amend the determination.

1. Procedural irregularity that would change the outcome.
2. New evidence now available that would change the outcome but that was not reasonably available at the time of the determination.
3. The Title IX Coordinator or Investigator/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.

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