

K12 TITLE IX INVESTIGATOR TRAINING



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Overview of Title IX Investigator Training



- Title IX – Law and Regulations
- Title IX – Covered Acts and Definitions
- Title IX Grievance Procedure – Title IX Investigator Role
- Title IX Investigator Other Considerations

Stages of Grievance Procedure



1

Notification of Incident to Title IX Coordinator

2

Initial Evaluation

Supportive Measures

Jurisdiction

Dismissal

Removal

Discussion of Informal

Resolution with Complainant

3

Investigation

Notice to Respondent

Interviews/Review of

Documents, Digital Records

Review of Investigation File by

Parties

Report (Optional)

4

Determination

Questions/Cross Examination

Credibility Assessment

Determination:

-Policy Violation, Discipline

-Remedies

Outcome Notification

5

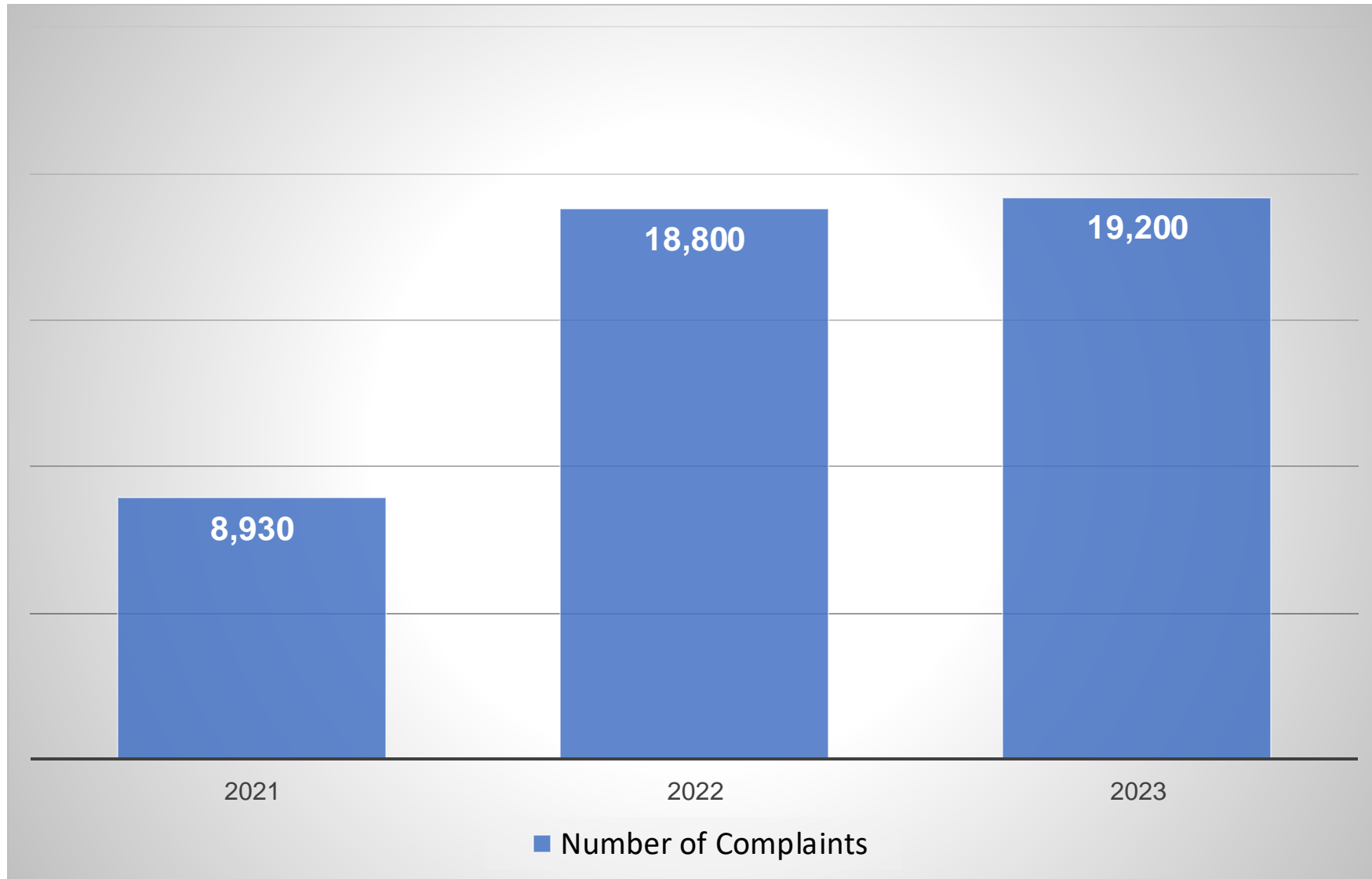
Appeal

*No set timelines; “reasonably prompt” standard



Importance of K12 Districts Following Title IX Grievance Process

Department of Education - OCR Complaints





Tamalpais Union High School District

- OCR found that the District failed to respond in a prompt and equitable manner.
- District permitted the Student to be subjected to a hostile environment that denied or limited her ability to participate in or benefit from the District's program on the basis of sex.
- District's investigation of an incident between the Student and another student, while prompt, did not adequately or equitably investigate if sex-based harassment preceded the incident.



Val Verde School District

- Faulty Title IX process
 - Matter only reached Title IX Coordinator if a parent was unsatisfied
 - Resulted in underreporting to Title IX Coordinator
- Title IX Coordinator lacked “information needed to identify repeat harassers or patterns of harassment or to address such issues to ensure the District’s Title IX compliance”
- State law process (Uniform Complaint Procedures) was not sufficient to satisfy Title IX process requirements



Chino Valley Unified School District

- Response from school staff, including coaches, to incidents of sexual assault and harassment in the locker room was not reasonably calculated to end the harassing conduct or prevent its recurrence.
- The district's response following investigations reflected an inability to address adequately the conduct and a failure to consider interim supportive measures to protect student athletes from sexual harassment.



Mingo County Schools

- Administrators failed to have a Title IX Coordinator in place.
- Failed to conduct an investigation into serial perpetrators who engaged in sexual assaults (fondling).
- Files and record-keeping were inadequate to allow OCR to review the district's response to reports.
- Complainants were advised that without witnesses they could not report sexual harassment (according to pending litigation).
- Respondents' parents also worked at the school and in one instance, one of the parents played a role in the investigation of the matter.



- Failure to adopt a policy and procedure consistent with Title IX
- Failure to follow the appropriate procedures
- Applying state law process to matters that fall under Title IX
- Imposing discipline prior to completion of Title IX investigation
- Failing to document the investigation



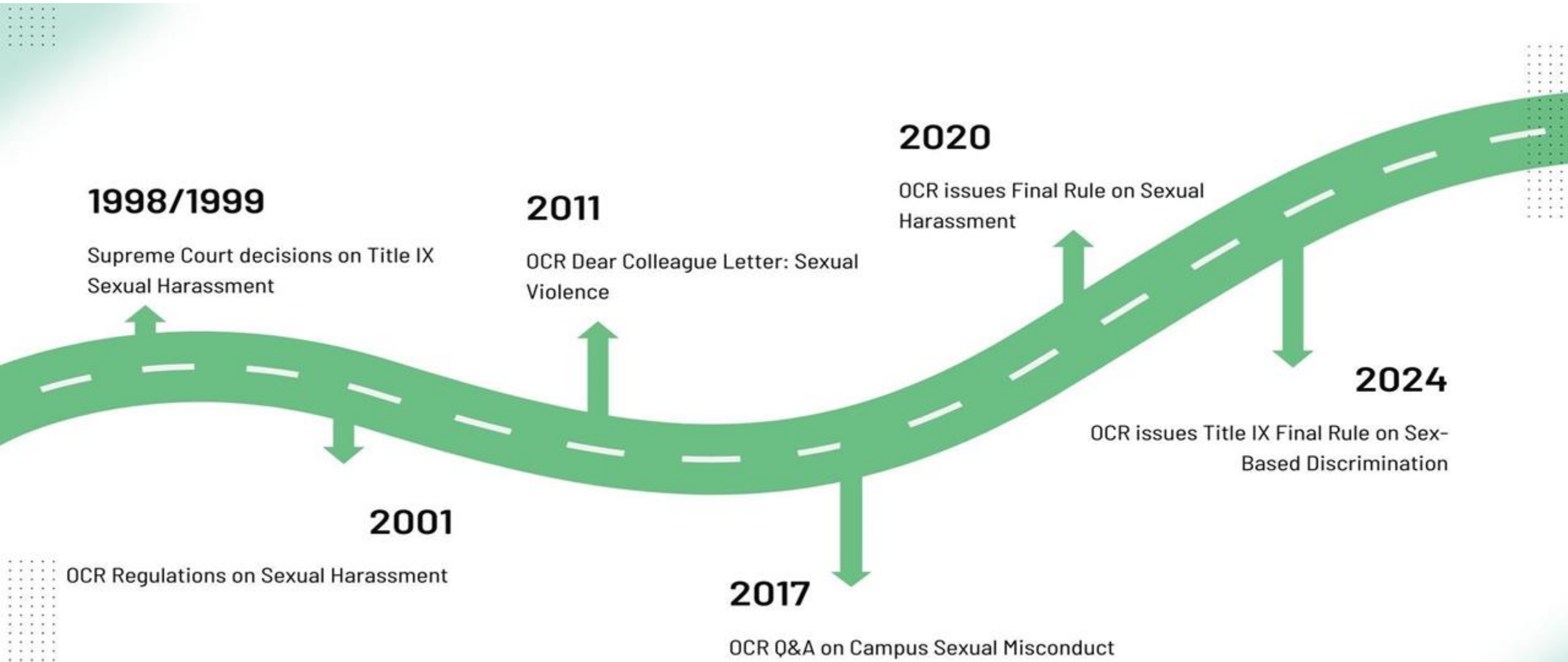
Legal Framework of Title IX



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

- Federal law passed in 1972
- Enforced through the Department of Education, Office for Civil Rights (OCR)

Title IX Regulations Timeline



Title IX Matters Excluded from Coverage under 2024 Regulations



Pre-August 1, 2024, Incidents

Athletics





K12 School Districts' Obligation to Prevent Sex Discrimination

Preliminary Definitions



Complainant

- 1) student or employee who person who has been subject to conduct that could be sex-based discrimination; under Title IX
- 2) person other than a student or employee who is alleged to have been subject to sex-based discrimination and who was participating in the school's education program or activity at the time of the alleged discrimination.

Respondent

person who is alleged to have violated the school's prohibition on sex discrimination.

Complaint

an **oral or written request** to school that can objectively be understood as a request for the school to investigate and make a determination about alleged sex-based discrimination.

Parents/Guardians

permitted to make decisions for minor students related to filing a complaint, accompanying students to interview/hearings/meetings, investigation process, and accessing records.

- Advisors – Parents/guardians can serve in this capacity; policy will define if others can act as advisors to parties in Title IX matter.

Investigator

individual who conducts a fair and impartial investigation on behalf of the district.

Decisionmaker

after investigation concludes, reviews investigation file and makes credibility assessments (if needed), policy violation decision, and discipline/remedies.



Obligation to Respond

K12 school districts have an obligation to take **prompt and effective action** to end any sex discrimination in their educational programs or activities, to **prevent** its recurrence, and to **remedy** its effects.



- Prompt and effective action
- End sex discrimination
- Prevent Recurrence
- Remedy its effects



Notice

In relation to sex discrimination and/or sex-based harassment, the school must **respond to information about conduct that reasonably may constitute sex discrimination**, including sexual violence and other forms of sex-based harassment.

Reporting Obligations of Employees



Non-Confidential Employees

All employees, except Confidential Employees, have an obligation to report to Title IX Coordinator upon notice about conduct that reasonably may constitute sex discrimination under Title IX.

Confidential Employees

Designated as Confidential

No Duty to Report

must share with potential Complainants:

- 1) they are confidential and not required to report to Title IX Coordinator;
- 2) how to contact Title IX Coordinator;
- 3) how to file a complaint;
- 4) Title IX Coordinator may be able to provide supportive measures, initiate an informal resolution, and/or start an investigation.

Pregnancy and Related Conditions – Notice



Purpose: To prevent sex discrimination and ensure equal access to its education program or activity.

Response: To take steps to provide **reasonable modifications** for students, reasonable break time for lactation, and lactation space for students and employees.

Documentation: prohibited from requiring documentation from students to obtain reasonable modifications unless documentation is necessary and reasonable.

Upon notification of pregnancy from student, employee must provide student with Title IX Coordinator contact information when they receive notice from student of pregnancy or related condition.



Conduct that occurs under a District's education program or activity in the United States and includes conduct that is subject to the District's disciplinary authority.

Includes

- Conduct that occurs in a building owned or controlled by a student organization that is officially recognized by the school.
- Conduct that is subject to the school's disciplinary authority.

Expansion of Jurisdiction

- ① Sex-based hostile environment allegations even if some of the alleged conduct took place outside the District's education program or activity and/or outside of the United States.
- ② Definition of Complainant also includes a party who is no longer participating in or attempting to participate in the District's education program or activity.



Title IX Definitions

Sex Discrimination and Sex-Based Harassment



K12 school districts have an obligation to take prompt and effective action to end any sex discrimination in their educational programs or activities, to prevent its recurrence, and to remedy its effects. This includes:

- **Sex Discrimination:**

- Sex Stereotypes

- Sex Characteristics

- Sexual Orientation

- Gender Identity

- Pregnancy & Related Conditions

- **Sex-Based Harassment:**

- Quid Pro Quo

- Hostile Environment

- Sexual Assault

- Dating/Domestic Violence

- Stalking

Sex-Based Harassment Definition



Sex-based harassment is a form of sex discrimination and refers to sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

Sex-based harassment includes:

- **Quid Pro Quo**
- **Hostile Environment**
- **Specific Offenses: sexual assault, dating/domestic violence and stalking**

● Quid Pro Quo Harassment

“An employee, agent, or other person authorized by the school to provide an aid, benefit, or service under the school’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.”

- * Contemplates the possibility that a student could be found responsible for quid pro quo harassment under certain circumstances.



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 school’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:

- The degree to which the conduct affected the complainant’s ability to access the school’s education program or activity;
- The type, frequency, and duration of the conduct;
- The parties’ ages, roles within the school’s education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- The location of the conduct and the context in which the conduct occurred; and
- Other sex-based harassment in the school’s education program or activity.”

Specific Offenses: Sexual Assault, Dating/Domestic Violence and Stalking

Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the FBI.

Forcible:

- Any sexual act directed against Complainant, forcibly, against Complainant's will, or without consent, including rape, sodomy, sexual assault with an object, and fondling.

Non-Forcible:

- Offenses that do not involve force where the Complainant is incapable of giving consent, including statutory rape and incest.



Sexual Assault

- Rape
- Sodomy
- Sexual Assault With an Object
- Fondling
- Incest and Statutory Rape

Dating/Domestic Violence

Dating violence meaning violence committed by a person:

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

Domestic violence meaning felony or misdemeanor crimes committed by a person who:

- (1) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the school, or a person similarly situated to a spouse of the victim;
- (2) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- (3) Shares a child in common with the victim; or
- (4) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.



Stalking

Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(1) Fear for the person's safety or the safety of others; or

(2) Suffer substantial emotional distress.



Pregnancy and Related Conditions

Pregnant students (or person who has a legal right to act on behalf of the student) must be promptly informed of the Title IX Coordinator's contact information and informed that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the school's education program or activity.
Reasonable modifications must be permitted.
"Related conditions" are expansive.

Complying with Pregnancy Provisions



Students

- Must NOT discriminate against any student on the basis of the student's current, potential, or past pregnancy or related conditions
- Provide information about school's obligations
- Provide reasonable "modifications"
- Voluntary access to separate and comparable program/activity
- Voluntary leave of absence
- Lactation space
- Comparable to other medical conditions

Employees

- MUST treat pregnancy or related conditions as any other temporary medical conditions for ALL job-related purposes
 - Leave
 - Disability
 - Other Benefits
- Lactation spaces
- Pre-employment questions



Retaliation meaning intimidation, threats, coercion, or discrimination against any person by the school, a student, or an employee or other person authorized by the school to provide aid, benefit, or service under the school's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or its regulations, 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 the Title IX regulations.

- New regulations explicitly include a prohibition against **peer retaliation**
- Schools can require employees to participate in investigations as witness – does not constitute retaliation
- Schools may NOT require students to participate in investigation for either student parties and/or witnesses
- Retaliation allegations follow the Title IX Grievance Procedures

Important Terms Not Defined by Regulations



- Consent
- Peer Retaliation
Example provided



Grievance Procedure/Required Response – Title IX Investigator Role

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-Remedies

Outcome Notification

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Appeal

*No set timelines; “reasonably prompt” standard



“Fair, Transparent, and Reliable Process”

“Flexibility to adopt the regulations’ grievance procedure requirements to their educational communities.”

“Avoiding unreasonable delays.”

Impartial, No Bias, No Conflicts of Interest



Notice of Complaint of Discrimination

Complaint is an **oral or written request** to the school that **objectively can be understood as a request for the school to investigate and make a determination** about alleged discrimination under Title IX or its regulations.



- Policy will define expectations for the Investigator
- Seek clarity about role
 - Investigator OR Investigator-Decisionmaker
 - Information that will be shared
 - Full file OR list of evidence
 - Managed by TIXC or Investigator
- Gather relevant evidence
- Create and maintain the investigation record
- Develop and revisit your investigation strategy
- Collect the investigatory information into the proper format
 - Report OR something else?



- Allegations of sex-based harassment could also be criminal behavior in the district's jurisdiction
- Employees of school district have "Mandatory Reporting" obligations with regard to reporting criminal behavior involving students
- A criminal investigation is separate and apart from the district's Title IX investigation
- If a Title IX investigation is triggered, then the district needs to conduct its own investigation of the facts to determine if the school's policies have been violated



Where to Begin?

Policy Review!

- expectations and timelines

Notice of Allegations

Rights of Parties to Investigation



Treat parties equitably

Provide notice of allegations
(writing not required)

Objective evaluation of
evidence, including relevance

Provide appropriate
supportive measures

Have parent (or advisor)
attend meetings, interviews,
etc.

Receive written outcome

Title IX Administrators with no
conflicts of interest or bias

Ability to provide and respond
to evidence

Completed in a reasonably
prompt timeframe and
explain delays in procedure

Presumption of non-
responsibility for Respondent

Review evidence/receive
description of evidence with
ability to inspect

Offer of appeal (if offered in
other proceedings)

Ability to not participate in
the Title IX grievance process

Take steps to protect
confidentiality of parties and
witnesses

Prohibit retaliation

Notice of Allegations



Description of the incident(s) giving rise to the complaint

Parties' names

Allegations

Dates

Location

The Notice of Allegations must be updated if additional allegations of sex discrimination by Respondent toward the Complainant arise

Notice that the parties will receive equal opportunity to access relevant and “not otherwise impermissible” evidence or an accurate description of the evidence

Notice of Allegations



Written

- Provided to Respondent prior to an interview
- Writing should go to both parties
- May include non-Title IX potential violations

Not Written

- Regulations do not require that the Notice of Allegations be put in writing
- Title IX Coordinator should provide scope to Investigator

The Notice of Allegations (whether in writing or not) must be revised if additional matters are uncovered and become part of the investigation.

➤ Title IX Coordinator responsibility



- Advisor Role at K12 Districts – review your policy
 - Parents' Role
 - Potential Advisor (non-parent)
- ① Invited to/accompany student to all meetings, interviews, and hearings
- ② Make decisions on behalf of the student
- ③ Review of all relevant evidence or receive a description of evidence
- ④ Receive outcome

Parents/Advisors – Suggested Approaches



- 1 Provide all documentation – Policies and Notice of Allegations
- 2 Offer to have a pre-interview meeting to discuss the process
- 3 Include information in your introduction that addresses potential questions
- 4 Remain calm, cool, and collected
- 5 Remind the advisor of the rules and advise that the next violation will end the interview
- 6 Consider allowing the advisor to participate in some fashion before the conclusion of the interview



PURPOSE: Restore or preserve that party's access to the school's education program or activity, including measures that are designed to protect the safety of the parties or the school's educational environment.

During the investigation process, the Investigator may learn important information about how the parties are coping with the investigation and/or interactions between parties.

As Investigator, you do not need to solve these challenges, but you can advise the Title IX Coordinator so the school/district can ensure equal access to its programs and activities.

Parties with Special Education Services



- Pro-active, mandatory requirement to consult with Special Education Department when a party is receiving special education services and a Title IX matter has arisen
- Potential modifications to the grievance process may be necessary to accommodate
- Title IX Coordinator should manage this outreach, but if it has not taken place, the Investigator should request guidance



Possible Modifications to Process

- Conducting interviews
- Summarizing process
- Sharing information
- Manifestation determinations

Other Considerations

- Tendency to keep matters within the Special Education department
- Advisors from Special Education
- Addressing confidentiality concerns



- Parties may select the informal process at any time
- If the process is not successful, parties return to investigation process
- Informal resolution can (re)start at any time before final resolution of the matter
- Investigator access to any information obtained in the informal process will most likely be limited (policy should define if any access is permitted)
- Tread carefully in these areas during interviews



Gathering Evidence



Responsibility to pro-actively seek out information to reach a reasoned conclusion

- Gather documents
- Determine if video is available and secure it
- Emails, messages, pictures, etc.
- Interviews
- Character

➤ **No evidence should potentially violate Child Pornography laws**

Investigation Basic Elements



- ✓ Request information from the parties
- ✓ Determine if campus has relevant information
- ✓ Exclude any information that may have been gathered but runs afoul of Title IX required process
- ✓ Interviews
- ✓ Investigator follow-up interviews
- ✓ Investigation conclusion
- ✓ Sharing of investigation file
- ✓ Decisionmaker steps



- What is in dispute?
- What is the investigation timeline?
- What barriers to gathering information might exist?
- Can a timeline of events be created based on information known now?
- How many interviews will need to be conducted?
- Any special circumstances?
- Keeping the investigation timeline contemporaneously

Preponderance of the Evidence



- More likely than not
- 50% + ?
- Same as standard in civil lawsuits
- Lower than the standard in criminal lawsuits

Interviews – Central to Investigation Process



○ Strategy as to which interviews take place when

○ Flexibility to scheduling concerns

○ In-person or Zoom interviews

○ Location of interviews

○ Preparation

- Introduction
- Questions prepared
- Additional and follow-up –
RESPONSIVE, FLEXIBLE
- Identify other potential witnesses
- Any other information?

○ Participation by student parties and student witnesses cannot be compelled – could be deemed retaliation

- Employees can be compelled

Interview Questions



Party or witness must answer directly

Start broad, get more narrow

Avoid being repetitive

Look for gaps in the information provided

Ask for definitions of terms – “hooking-up”

Focus in on what you need to know

Reflect on policy and what a decisionmaker will need to reach a conclusion





Notes and Summary



Transcript

- Either (or both) will have to be produced and reviewed



- Relevant versus irrelevant – now called “impermissible”
- Burden of proof
- Specifically excluded under Regulations

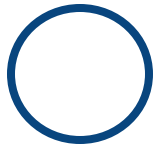


Relevance

Relevant means related to the allegations of sex discrimination under investigation as part of these grievance procedures



Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and **evidence is relevant** when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred



Specifically Excluded Under Regulations

Evidence protected under privilege

- Medical professionals (doctors, therapists)

Rape shield protection

- Prior sexual conduct not relevant, except
 - Prove that someone other than Respondent committed the act
 - Prior sexual conduct with Respondent, if offered to prove consent to the act

**N
E
W**

Evidence related to Complainant's sexual interests is never relevant

**N
O
T
E**

Impermissible, even when offered by Complainant



- Hearsay
- Documents (paper, digital) no longer exist
- No one has admitted the behavior
- Not “convinced” this happened
- Credibility and honesty
 - Investigator or Decision Maker assessment
- Expert testimony
 - Policy will advise whether experts are permitted
 - Expert testimony will require unique preparation
 - Qualifications, Expected Testimony, Reliance/Challenges



- Procedure must allow for a credibility assessment of parties and witnesses
 - Even when Investigator and Decisionmaker are the same person
 - Policies may refer to “Questioning” phase
 - Allow for this to be done in writing or in-person
 - Follow-up may be required
- The process must END at some point

Avoid Bias and Conflict of Interest



Impartiality

Address conflicts of interest as soon as they arise

Equitable process

Not favor Complainant or Respondent

Initial communications about participants in the process

Bias could occur throughout the process and needs to remain checked



○ Sharing of investigation information

- Full investigation file
- List of investigation file and access upon request
 - Practical advice and tips?

○ Investigation Report

- Draft or Final?



Report:
Optional

Suggestions to include:

- Introduction
- Allegations
- Jurisdiction
- Timeline for investigation
- Policy provisions
- Summary of documents
- Summary of testimony
- Credibility assessment
- Conclusion – may include Recommended Conclusion as to Policy Violation



Decisionmaker Stage Additional Questioning



Decision about policy violation



Rationale for decision



Discipline

- Scope of discipline should be covered in policy



Consider including other state-specific requirements



The institution's policy may not allow “discipline of a party, witness, or others participating in a school's grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the school's determination whether sex discrimination occurred.”



Prohibit schools from disclosing personally identifiable information that they obtain through compliance with Title IX.

Exceptions

- prior written consent of party
- information disclosed to parent of a minor



- A school must take reasonable steps to prevent and address the parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through the grievance procedures.
- Parties may not share the school's "work product" that may be disclosed during the resolution process.

Exception

May share evidence gathered in investigation with parties and parents.

Trauma-Informed Approach



Location of the interview



Impact of trauma on memory



Non-judgmental



Acknowledge that some of content might be awkward or uncomfortable



Breaks and conclusion



“Show Your Work”

- ✓ School responded promptly and effectively
- ✓ Investigation File
- ✓ Outreach to request interviews, documents, digital records, videos AND responses
- ✓ Dates of interviews, meetings, etc.
- ✓ Outreach to parties regarding delays
- ✓ Responses to questions about process
- ✓ Summary of investigation information
- ✓ Investigation file
- ✓ Responses from parties to investigation file
- ✓ Additional steps in investigation (if taken) after file review
- ✓ Outcome Letter



Conclusion



- Certificate will be emailed to participants
- No requirement under the current regulations to post the training materials
- Consider Decisionmaker training on 8/30/24
 - Act as single investigator
 - May act in decisionmaker role

Questions?



Title IX Consult, LLC Newsletter

First of each month

Title IX Thursdays

First Thursday of each month 12:30PM Pacific Time

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