

K12 TITLE IX TRAINING

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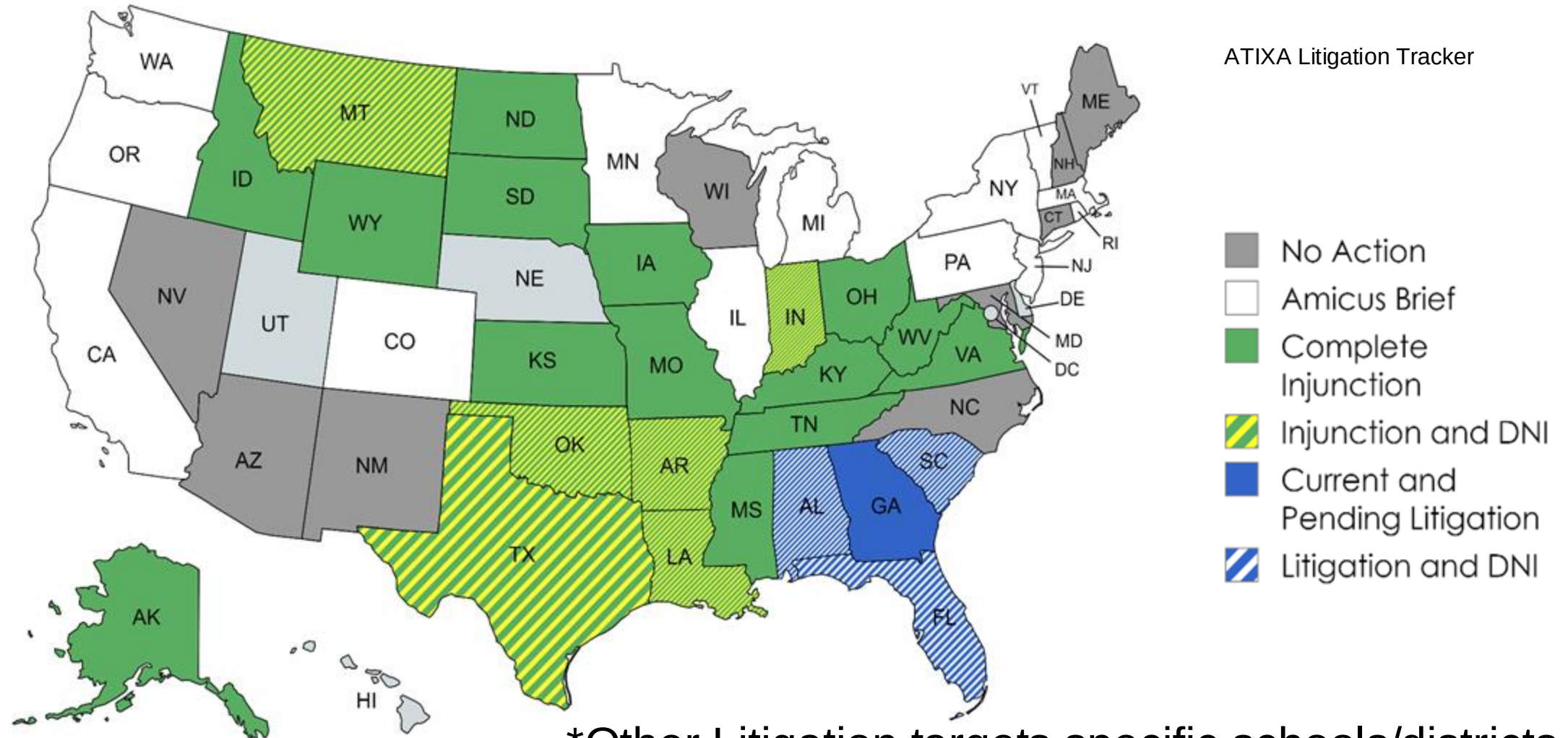


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Preliminary Issues

Litigation Limiting Enforcement of 2024 Regulations



*Other Litigation targets specific schools/districts



Recent Supreme Court Case Potentially Impacting Enforcement

Chevron Decision

Overview of Title IX Coordinator Training



- Title IX – Law and Regulations
- Title IX – Covered Acts and Definitions
- Title IX Grievance Procedure – Title IX Coordinator Lens
- Title IX Coordinator Other Obligations



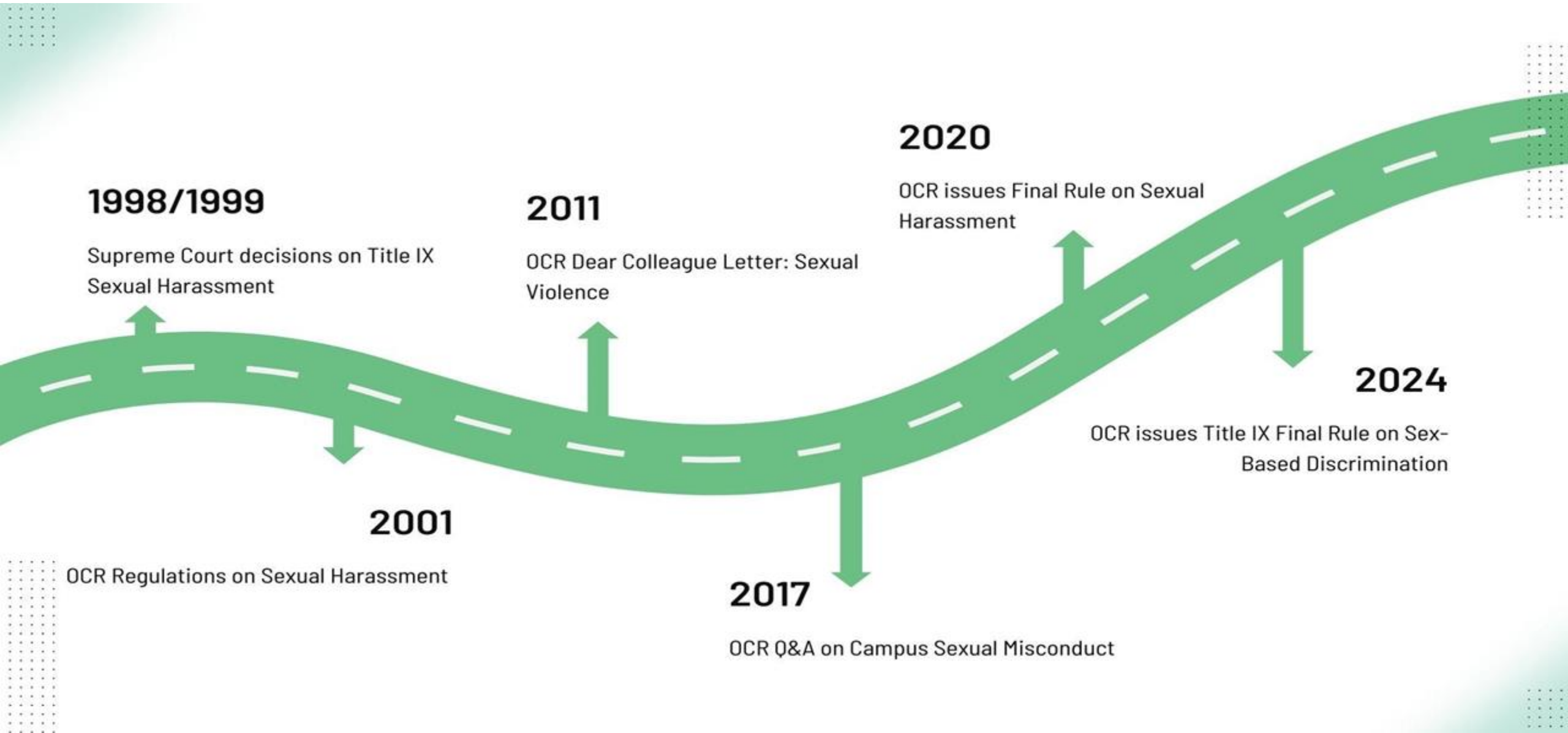
Legal Framework of Title IX



“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.



LEGAL OBLIGATION

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 and REQUIRED RESPONSE

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 K12 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.

Jurisdiction



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.



Exercises



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 Discrimination Definition



- When an individual is treated differently based on sex, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity and is treated differently based on sex in:
 - Education programs
 - Activities
- Discrimination based on sex in a program:
 - Systematic, due to policy or practice
 - Programmatic discrimination adversely affects persons as a group
 - Programmatic discrimination is usually attributed to the district not to an individual respondent

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.

- 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



Exercises



Grievance Procedure under Title IX



“Fair, Transparent, and Reliable Process”

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

Stages of Grievance Procedure



1

Notification of Incident to Title IX Coordinator

2

Initial Evaluation

Supportive Measures

Jurisdiction

Dismissal

Removal

Discussion of investigation or
informal resolution

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



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.

Analysis of Notice Language



- Oral or written request
- Objectively can be understood
- Request for the school to investigate and
- Make a determination



Is a formal complaint required
to investigate?

2024 Regs say **NO**

*However, an offer of formal
process and formal complaint
form may make sense.*

Title IX Coordinator Initiated Investigation



In the absence of a request to investigate from Complainant, Title IX Coordinator should consider the following:

- Risk that additional acts of sex discrimination would occur
- Severity of alleged sex discrimination, whether it would lead to removal of Respondent if found to be more likely than not true
- Age and relationship between parties – Respondent employee of school
- Scope of alleged sex discrimination and evidence of potential pattern and/or impact on multiple individuals
- Availability of evidence for Decisionmaker to reach a conclusion
- Whether school could end the alleged sex discrimination and prevent its recurrence without an investigation

Title IX Coordinator Initiated Investigation



Coordinator MAY initiate, if, after considering the factors, the Coordinator determines the conduct, as alleged:

presents an imminent and serious threat to the health and safety of the Complainant or other person,

OR

the conduct prevents the school from ensuring equal access.

Notify Complainant prior to the initiation of investigation



Exercises

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

Considerations: Parties with Special Education Services



- Pro-active, mandatory requirement for Title IX Coordinator to consult with Special Education Department when a party is receiving special education services
- Potential modifications to the grievance process may be necessary to accommodate
- Supportive measures should incorporate the knowledge from Special Education team



Parent Role at K12 Districts

Advisor Role at K12 Districts

Supportive Measures



Supportive measures are 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 school's education program or activity, including measures that are designed to protect the safety of the parties or the school's educational environment; or

2

Provide support during the school's grievance procedures or during an informal resolution process.

Examples:

Mental health support, academic support, safety measures on campus and during campus events, restriction on contact between parties, and any other reasonable support for the parties

- New regulations reference restrictions on contact "applied to one or more" parties
- No disciplinary sanctions can be imposed until after the grievance procedure is completed
- Appeal of measures must be allowed; appeal cannot go to the Title IX Coordinator
- Parties MUST be provided with timely opportunity to seek modification or reversal of school's decision to provide, deny, modify, or terminate supportive measures applicable to them

Title IX Coordinator Analysis of Jurisdiction



- For most K12 schools, jurisdiction will not extend beyond school campus
- School events and activities off-campus will be covered
- Inquire into whether school/district ever extends jurisdiction to non-campus, non-school events and activities
 - If so, Title IX jurisdiction may be expanded to include similar types of behavior

Title IX Coordinator Dismissal of Complaint



1 After initial investigation, the school cannot identify Respondent

2 Respondent is no longer participating in a district program or is no longer employed

3 Complainant withdraws complaint

4 Behavior reported if taken as true would not constitute sex-based discrimination

5 Parties must receive notification of the dismissal

6 Parties offered the opportunity to appeal the dismissal based on:

- procedural irregularity*
- new evidence, and/or*
- conflict of interest or bias against parties*

*and this defect would change the outcome (*new requirement*)

Emergency Removal of Students



Institution may remove Respondent prior to the completion of investigation after:

1

Individualized safety and risk analysis;

2

Determination that imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations; and

3

Respondent given notice and an opportunity to challenge the decision immediately following removal decision.



Exercises

Review Process Options with Complainant



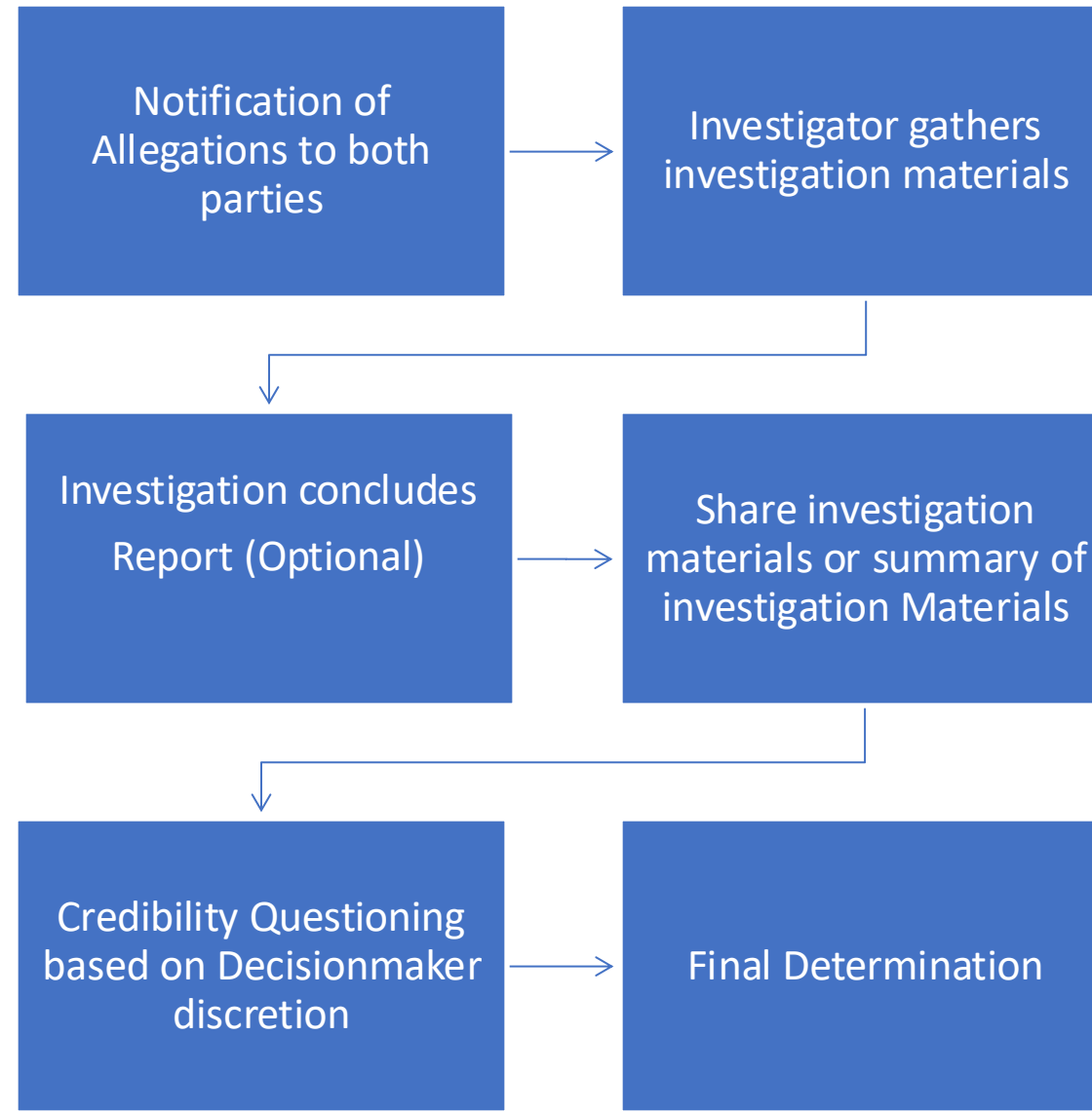
Investigation Process

- Can be handled by any investigator who has been trained
- Title IX Coordinator may fill the role
- Investigator can also be Decisionmaker

Informal Resolution Process

- Both parties must agree in writing
- Can take many formats
- If unsuccessful, return to the investigation process

Flow Chart for Investigation Process



Informal Resolution Process



Instead of resolving a complaint within the grievance process, the parties may elect to participate in an Informal Resolution process, unless complaint is brought by a student against an employee.

Other important provisions:

- Informal Resolution Process does not require filing a formal complaint
- Participation in informal process cannot require a waiver of any rights
- Parties may leave the informal process and return to investigation process
- Resolution of the matter can take place anytime before a determination of responsibility is made
- Never available when Complainant is student and Respondent is an employee

Discretion on part of Title IX Coordinator about whether to use informal or formal and should consider:

- Violence
- Prior Behavior
- Multiple Complainants

Informal Resolution Facilitator may never be Investigator or Decisionmaker in the same matter

Informal Resolution, cont.



Information must be shared with the parties, including the following:

- Allegations at issue
- Requirements of the process
- Parties advised of right to withdraw from the process and initiate or resume grievance procedures
- What information the school will retain
- If informal resolution concludes, parties may not initiate or resume grievance procedures
- Whether and how the school could disclose the information if informal resolution is not successful



Investigation Procedures

Investigation Procedures – Two Models



Single Investigator

- Investigator takes matter from initiation through conclusion
- Makes decisions about policy violation and discipline
- May be “Investigators”
- Credibility determinations
- Questioning
- Still needs to follow full process

Separate Investigator and Decisionmaker

- Investigator concludes investigation
- Investigation information shared
- Decisionmaker steps in to engage in Questioning
- Reaches conclusion about policy violation and discipline

Hearings are permitted

Notice of Allegations



The Notice to the Parties must include:

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

Parties' names

Allegations

Dates

Location

The applicable grievance procedures and informal resolution process

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

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

Additional items the Notice of Allegations may include:

- Other potential policy violations (not just Title IX)
- Identification of the range of possible disciplinary sanctions and remedies (should be in policy)
- Statement that Respondent is presumed not responsible (previously required)
- Notification that a determination of responsibility will be made at the conclusion of the grievance process
- Notification that each party may have a parent or advisor (depends on policy)



- No restriction on role Title IX Coordinator can play
- Preponderance of evidence standard
- A process to question parties and witnesses to evaluate allegations and assess credibility
- 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

Impermissible Evidence



- Rape Shield Protection –
 - now also includes reference to “sexual interests” of Complainant
- Privileged information, including medical records

Separate Decisionmaker/Decisionmaking



- 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

Conclusion of Investigation



- Sharing of investigation information
 - Full investigation file
 - List of investigation file and access upon request
- Report - Optional
- *If using a separate Decisionmaker, information is shared here in order to conclude the process*
- Additional Questioning
- Conclusion – Policy Violation and Discipline
- Determination/Outcome

Determination/Outcome Letter



Decision about policy violation



Rationale for decision



Discipline

- Scope of discipline should be covered in policy



Consider including other state-specific requirements

Beyond Discipline – Remedies



- If there is a determination that sex discrimination occurred, the Title IX Coordinator must coordinate remedies to complainant and other persons who experienced a denial of equal access to the District's education program or activity based on sex discrimination.
- Remedies meaning measures provided, as appropriate, to a complainant or any other person the school identifies as having had their equal access to the school's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the school's education program or activity after a school determines that sex discrimination occurred.

Appeals



Appeal of Final Outcome

Same appeal school offers in comparable proceedings (other discrimination complaints)

If an appeal is filed:

- Notify the parties of the appeal.
- Provide the parties a reasonable and equal opportunity to make a statement in support of or challenging the outcome.
- Notify the parties of the result of the appeal and the rationale for the result.
- Ensure that the appellate Decisionmaker has been trained.

False Statements



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.”



Exercises



TIX Coordinator Responsibilities

Overall Title IX Compliance



- Coordination of efforts to comply with Title IX
- If multiple Coordinators, ONE must have ultimate/final oversight responsibilities
- Evaluates whether emergency removal is appropriate
- Can act as Informal Resolution Facilitator, Investigator, Decisionmaker and/or oversee the process
- Ensure outcome letters are issued
- Ability to delegate some responsibilities
- Puts in place effective remedies for parties



Compliant Policies:

Title IX Coordinator plays a role in policy development and related matters, i.e. Notice of Nondiscrimination, Complaint forms

Policy Must be Provided to:

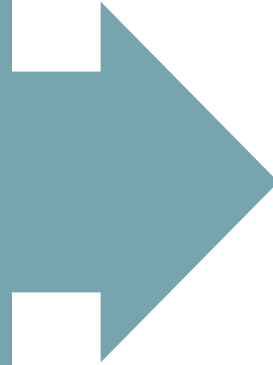
Students, parents/guardians, employees, applicants for admissions and employment, unions

Published in: handbook, catalog, announcement, bulletin, and application form

When different treatment is permitted:



A school must NOT carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than “de minimus” (minimal) harm.



Adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person’s gender identity subjects a person to more than “de minimis” harm on the basis of sex.

Other Title IX Coordinator Duties



Title IX Coordinator may:

- Initiate an investigation in the absence of Complainant's request to investigate;
- Consolidate pending complaints;
- Dismiss complaints that may not meet the standard
 - Jurisdiction
 - Definition
 - Other

Pregnancy



- When a student, parent of minor, or other authorized legal representative informs a school employee of a student's pregnancy or related condition, the employee must provide the individual with information about the school's obligation to prevent discrimination and ensure equal access.
- School is prohibited from sharing personally identifiable information it obtains when complying with this Title IX provision with limited exceptions.

Notice of Nondiscrimination



Specific language about prohibition against discrimination based on sex

Contact information for Title IX Coordinator



Name/Title



Office Address



Email Address



Telephone Number

Inquiries about application of Title IX can go to Title IX Coordinator or OCR

Link to nondiscrimination policy (policies)

How to report and/or make a complaint

Grievance procedures

Exceptions that apply to the school

Published in:
handbook, catalog, announcement, bulletin, and
application form



“Show Your Work”

- ✓ School responded promptly and effectively
- ✓ Notifications to the Title IX Coordinator
- ✓ Supportive Measures
- ✓ Notification to the Complainant (or reporter) of the Grievance Procedures
- ✓ Evaluation of whether to initiate Complaint
- ✓ Investigation
- ✓ Sharing of Investigation Information
- ✓ Outcome Letter
- ✓ Steps to effectuate the remedies to ensure that sex discrimination does not continue or recur

Training



All Employees

Annual training
required

Title IX Designated
Individuals

Title IX Coordinator
Title IX Investigator
Title IX Decisionmaker/
Appeal Officer
Annual training required

Employees with
Authority over
Supportive Measures

Annual training
required



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

Barriers to Reporting Sex Discrimination



Pro-active responsibility to monitor barriers



Take steps to address barriers

Next Steps in Compliance



1

Attend required trainings

2

Revise policies and procedures

3

Train staff in new obligations

4

Outreach to your community – staff, parents, students

5

Document, document, document your efforts



Exercises

Join Us!



Title IX Investigator Training – August 23, 2024

Title IX Decisionmaker and Appeal Officer Training – August 30, 2024

Title IX Informal Resolution Training – October 18, 2024

Title IX Consult, LLC Newsletter

First of each month

Title IX Thursdays

First Thursday of each month 12:30PM Pacific Time

www.titleixconsult.com

megan@titleixconsult.com

Sarah@titleixconsult.com