



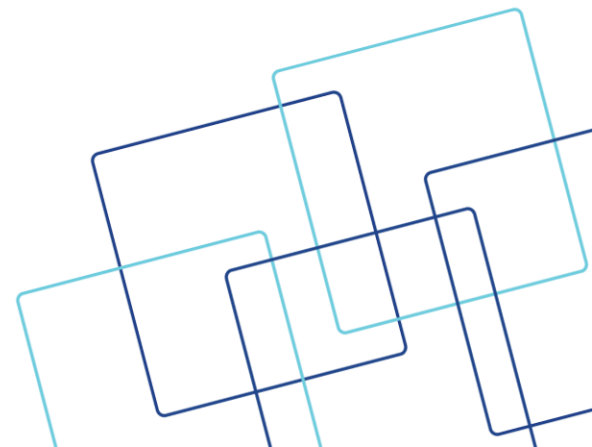
Lozano Smith
ATTORNEYS AT LAW

2024 Title IX Regulations: Title IX Coordinator and Investigator Training

Presented by: Emma J. Sol

SHASTA COUNTY OFFICE OF EDUCATION

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Presenter

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AT LOZANO SMITH

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She also utilizes her knowledge and expertise in the area to present trainings on Title IX topics to assist clients in understanding this complex law.



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Topics

- Overview of 2024 Title IX Regulations
- Definitions to Know
- Responding to Complaints
 - Initial Evaluation
 - Supportive Measures
 - Informal Resolution
 - Investigation Procedures
 - Written Determination
 - Appeals
- Pregnancy and Parenting

The 2024 Regulations are NOT Retroactive

- Only applies to sex discrimination that occurred on or after August 1, 2024.
- All incidents that took place on or before July 31, 2024, must be processed through the 2020 Title IX Regulations.



Knowledge Check

- Before you came to this presentation, you were working on a Title IX investigation from a complaint that came in on June 6.
- Should you adjust your current investigation to comply with the 2024 regulations?





Overview of the 2024 Regulations



Sex Discrimination

- 2024 Title IX Regulations prohibit sex discrimination, including but not limited to sex-based harassment.
- “Sex” = sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
- This is an expanded scope in comparison to the 2020 Title IX Regulations.

34 C.F.R. § 106.10

Sex Discrimination

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graph TD; A[Sex Discrimination] --> B["'Parental, Family, or Marital Status' + 'Pregnancy or related conditions.'"]; A --> C([Sex-Based Harassment]); C --> D["1. Quid Pro Quo<br/>2. Hostile Environment<br/>3. Specific Offenses"];
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“Parental, Family, or Marital Status” +
“Pregnancy or related conditions.”

Examples:

- Not promoting because of pregnancy
- Firing because of gender identity
- Paying employees differently based on their marital status

Sex-Based Harassment

1. Quid Pro Quo
2. Hostile Environment
3. Specific Offenses

Definition of Sex-Based Harassment

- Quid Pro Quo (person authorized by the District)
- Hostile environment harassment (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)
- Sexual Assault, Dating Violence, Domestic Violence, and Stalking

Sex-Based Harassment - HEH

Factors to consider:

- Effect on the complainant's ability to access the district's education program or activity;
- The type, frequency, and duration of the conduct;
- The parties' ages, roles, previous interactions, and other individual factors;
- The location of the conduct and the context in which the conduct occurred; and
- Other sex-based harassment.

Sexual Assault

- Rape
- Sodomy (meaning forcible oral or anal sexual intercourse with a complainant)
- Sexual assault with an object
- Fondling
- Incest
- Statutory rape

Hypothetical

Paige, a 7th grade student, comes to your office and informs you that one of her classmates, Asher, has been making “gross” comments to girls for a couple of weeks. She shows you Asher’s Instagram, which is mostly pictures of guns, scantily clad women, and misogynistic language. Paige says she and her friends are very uncomfortable around Asher, and do not want to be near him.

Is this Title IX?

Do you investigate?

Title IX Jurisdiction

Must address all sex discrimination occurring under the district's education program or activity in the United States. Includes, but is not limited to:

- Conduct that occurs in any building owned or controlled by a student org. that is officially recognized by a postsecondary institution; and,
- Conduct that is subject to the recipient's **disciplinary authority**.



34 C.F.R. § 106.11

Title IX Jurisdiction vs. Impact

Location and Impact	Is it Title IX?
Off campus conduct with no impact on campus and the District has no jurisdiction in policy	No Title IX Jurisdiction
Off campus conduct with impact that is not a Title IX violation (i.e., complainant is upset by seeing respondent)	No Title IX Jurisdiction, but District must remedy/provide supportive measures
Off campus conduct with impact that is within Title IX (i.e., hostile environment harassment from rumors, bullying, retaliation, etc.)	Yes , Title IX jurisdiction over HEH
Off campus conduct when District has jurisdiction over off campus conduct in policy	Yes , Title IX jurisdiction

Sex-Based Distinctions or Separation

- Recipients can impose sex-based distinctions or separation in their educational programs **if they do not impose more than a *de minimis* harm.**
- More than de minimis harm is any harm that is **genuine and objectively non-trivial**, from a reasonable person's perspective.
- Prohibiting a student from participating in an education program or activity consistent with their gender identity **violates this standard** and is thus prohibited.

§ 106.31(a)(2)





Definitions To Know

2024 Title IX Definitions

Complainant:

- Includes person(s) other than student(s)/employee(s) who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX *at a time when that individual was participating or attempting to participate* in the district's education program or activity.

Respondent

- A person who is alleged to have violated the recipient's prohibition on sex discrimination.

2024 Title IX Definitions

Knowledge

- Knowledge of conduct that reasonably may constitute sex discrimination requires **prompt and effective response**.

(34 C.F.R. § 106.44)

Evaluation:

- The district's decision to dismiss or investigate a complaint.

(34 C.F.R. § 106.45(b)(4))

2024 Title IX Definitions

Complaint:

- May be oral or written, as long as the complaint can be objectively understood as a request for the district to investigate.
(34 C.F.R. § 106.45(a)(2))

Pregnancy or Related Conditions

- Pregnancy, childbirth, termination of pregnancy, or lactation; medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.
(34 C.F.R. §106.2)

2024 Title IX Definitions

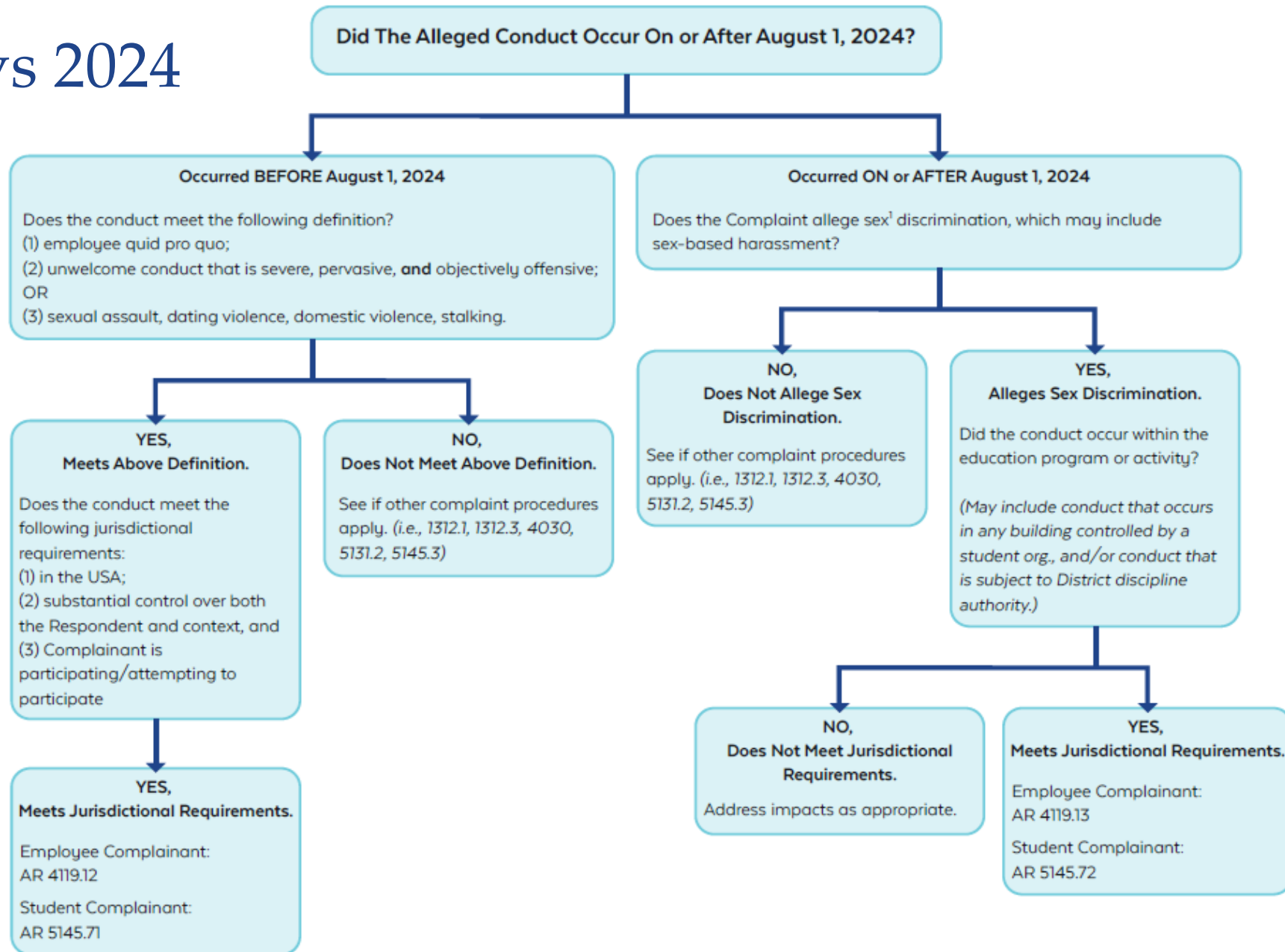
Retaliation:

- Retaliation means intimidation, threats, coercion, or discrimination against any person by the District, a student, or an employee or other person authorized to provide aid, benefit, or service, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has participated in any manner in a Title IX process.

Peer Retaliation:

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

2020 vs 2024



¹Sex includes sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.





Basic Requirements



Basic Requirements

- The district must respond **promptly and effectively** *AND* must prevent the **recurrence** of any sex discrimination and remedy its effects.
- Must treat complainants and respondents equitably.
- Title IX Coordinator, Investigators, and Decision-makers must not have conflicts of interest or bias. Must train these individuals.
- Presumption that respondent is not responsible.
- Can't discipline until grievance procedures are completed and a determination of responsibility is made.

Basic Requirements

- Reasonably prompt timeframes for all major stages.
- Reasonable steps to protect the privacy of parties and witnesses.
- Objective evaluation of all relevant and not otherwise impermissible evidence.
- Consolidation is permitted for complaints arising out of the same facts or circumstances.

Investigator's Duties

- Interviews parties and witnesses
- Gathers and reviews evidence
- Prepares investigation report
- Allows parties to inspect, review, and respond to all relevant evidence
- Considers all parties' responses



May be the Title IX
Coordinator

Responding to Complaints

Initial Evaluations

Responding to Sex Discrimination

- The District must respond **promptly and effectively** *and must* **prevent the recurrence** of any sex discrimination and remedy its effects.
- Title IX reporting is separate from mandated reporting requirements.



34 C.F.R. § 106.44 (c)(2)

Responding to Sex Discrimination

All non-confidential employees must notify the Title IX Coordinator of conduct that could reasonably be considered sex discrimination.

Supervisors must report up to the Title IX Coordinator.



34 C.F.R. § 106.44 (c)(2)

Confidential Employees



An employee whose communications are privileged or confidential under Federal or State law or an employee who has been designated as a confidential employee for the purpose of providing services to persons related to sex discrimination.

Confidential Employees are NOT REQUIRED to report to the Title IX Coordinator

§ 106.2

Confidential Employees

Under Law

- School counselor
- Licensed psychologist
- Licensed clinical social worker
- School psychologist with credential
- Licensed marriage and family therapist (MFT)
- Licensed professional clinical counselor
- Licensed educational psychologist (Evid. Code 1010.5)

Confidential Employees

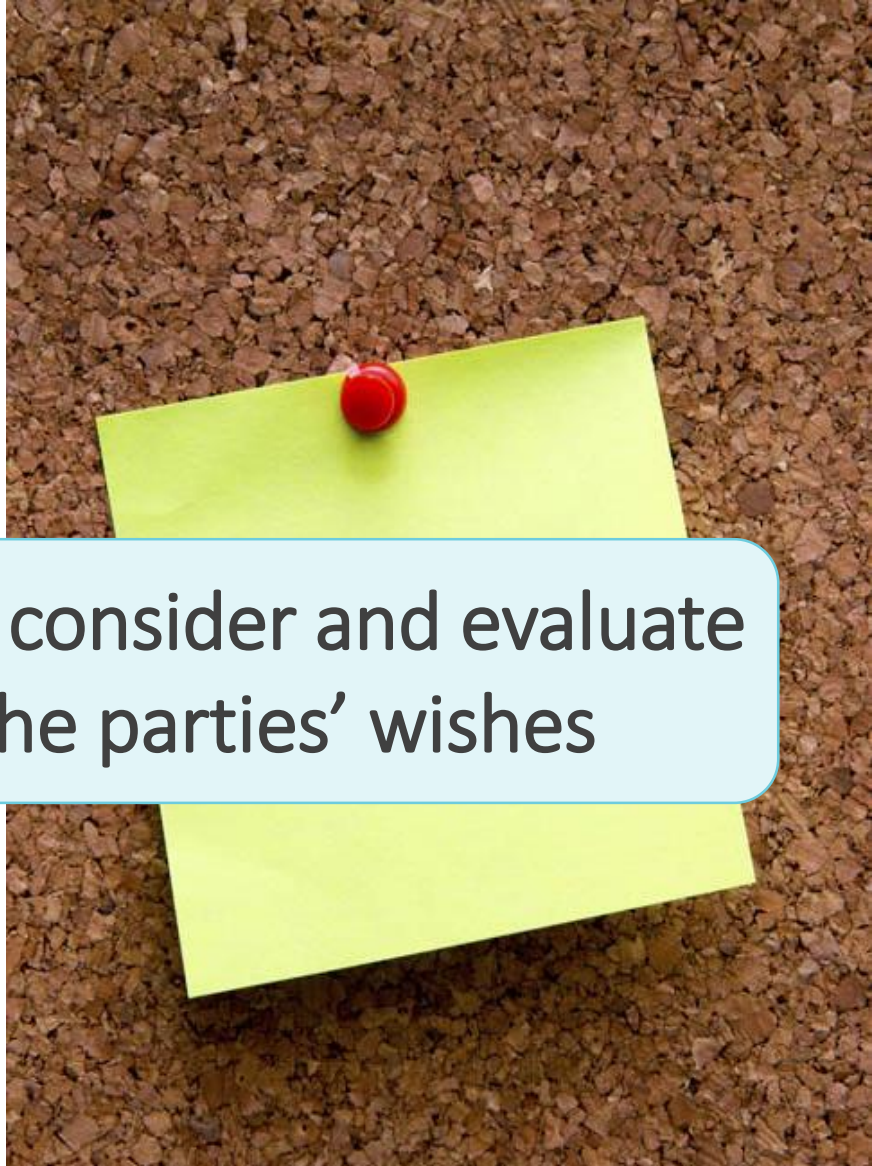
- Only confidential when providing those services.
- Must provide specific training to them about their reporting requirements.



Initial Evaluation

Upon notice, Title IX Coordinator must:

- Treat parties equitably
- Supportive measures
- Inform Complainant of processes
- Initiate process



Must consider and evaluate
the parties' wishes

34 C.F.R. §106.44(f)

Confidentiality

Prohibited from disclosing personally identifiable information, **except:**

- Prior written consent
- Disclosure to parent, guardian, or other authorized legal representative with the legal right to receive disclosures
- To carry out Title IX grievance procedure
- As required by law



Factors to Consider when Complaint is Initiated by Title IX Coordinator

- Complainant request
- Complainant's reasonable safety concerns
- Risk of additional acts
- Severity
- Age and relationship
- Scope (i.e., pattern, ongoing acts, or impact on multiple individuals)
- Availability of evidence
- Whether the alleged sex discrimination can be stopped

34 C.F.R. § 106.44(f)

Complaint Initiated by Title IX Coordinator

May initiate if alleged conduct:

- Presents an imminent and serious health or safety threat
- Prevents the district from ensuring equal access on the basis of sex to its education program or activity

If initiating, must:

- Notify complainant prior to initiation
- Address safety concerns
 - Complainant
 - Others

Responding to Complaints

Supportive Measures

Supportive Measures



Must offer supportive measures to both Complainants and Respondents



Parties have the right to challenge supportive measures

§ 106.44(g)

Supportive Measures

Must be

- Must be designed to protect the safety of the parties or environment
- May be modified or terminated at the end of the resolution process
- May include emergency removal and administrative leave

Must not be

- Must not unreasonably burden either party;
- May not be imposed for punitive or disciplinary reasons

§106.44(g) and (k)

Supportive Measures



- Parties may challenge a decision regarding their supportive measures
- Challenge heard by an impartial employee with the ability to modify or reverse the original decision

34 C.F.R. §106.44(g)

Supportive Measures

Examples:

No-Contact Orders

Change Of Class Or Work Schedules

Modified Lunch Schedules

Campus Escort Services

Change In Work Locations

Increased Security/Monitoring

Extensions Of Deadlines Or Other Course-Related Adjustments

Counseling

Independent Study (Must Be Nonpunitive/Nondisciplinary)

**Emergency Removal &
Administrative Leave**

Hypothetical

A Principal from one of your middle schools calls you after school and tells you that an 8th grade student, June, came to her and told her that a 7th grade student, Cheyenne, has been making her feel uncomfortable at school. June told her that Cheyenne has been staring at her in the locker room, and that one of her friends overheard Cheyenne call her “sexy” when she was changing in the locker room. The Principal is unsure what to do and is looking to you for assistance.

Is this Title IX?

What Supportive Measures Do You Offer?

Students with Disabilities

K-12 district **MUST** consult with a student's IEP/Section 504 team to determine appropriate accommodations.

§ 106.44(g)(6)



Child Pornography

Call School Resource Officer, Police Department, or Safety & Security Department right away before touching anything

Third party witness

Track chain of custody

Warning: It is a state and federal crime to possess and/or distribute child pornography. There's no exception for school administrators or investigators.

Responding to Complaints

Notice of Investigation

Notice to the Parties

- Identify grievance procedure;
- Identify allegations with sufficient details;
- Statement that retaliation is prohibited;
- Parties will be provided access to evidence.
- Prohibition of knowingly making false statements or submitting false information.
- Providing right to an advisor of their choice.

Responding to Complaints

Informal Resolution

Informal Resolution

Expanded discretion for informal resolution

(K-12) Not available when student alleges sex-based harassment against employee

Informal Resolution

Must be Voluntary

Informal resolution officer cannot be investigator or decision-maker

Cannot require a party to waive their right to an investigation & determination

Informal Resolution



- Must provide notice to both parties including:
 - Allegations,
 - Requirements of informal resolution process,
 - Right to withdraw and initiate investigation,
 - Resolution would preclude an investigation,
 - Potential terms of resolution,
 - What information the District will maintain and how the District could disclose such information.

34 C.F.R. § 106.44(k)

Hypothetical

Jordan, a 12th grader, comes to you and says that Noah, an 11th grader, has been sexually harassing them for months in person and via text message. This has occurred both on campus during class and off campus after school. Jordan cannot deal with it anymore and wants it to stop. However, Jordan does not want this to be a big deal and just wants to do informal resolution quickly and get it over with.

Can you offer an informal resolution session?

Discretionary Dismissals

- Title IX Coordinator may dismiss when:
 - District is unable to identify the respondent after taking reasonable steps to do so
 - The respondent is no longer enrolled or employed by the District
 - The complainant voluntarily withdraws any or all allegations
 - The alleged conduct would not constitute sex discrimination, if proven



34 C.F.R. § 106.45(d)

Discretionary Dismissals

- Must still offer supportive measures to complainant (and respondent as appropriate)
- Take prompt and effective steps to stop discrimination and prevent recurrence



Dismissal Appeal

- Must offer appeal of dismissal
- Basis for appeal
 - Procedural irregularity
 - New evidence
 - Conflict of interest or bias



34 C.F.R. § 106.45(d)

Dismissal Appeal Procedures

If dismissal is appealed, the District must:

- Notify parties of the appeal
- Implement appeal procedures equally for all parties
- Ensure decision-maker for appeal did not take part in the investigation
- Ensure decision-maker for appeal is trained
- Provide parties a reasonable opportunity to make a statement in support of or challenging the outcome
- Notify the parties of the result of the appeal and rationale for result

Hypothetical

The District receives an email alleging that Mr. Cromwell had a sexual relationship with a student during the summer school program at Hypo High School. You take the initial steps to evaluate the claim and decide to initiate Title IX. You provide a notice letter to Mr. Cromwell. The following day Mr. Cromwell resigns effective immediately.

Do you dismiss the complaint?

Do you take other steps?





Responding to Complaints

Investigation Procedures



Grievance Procedures

Apply to all complaints of sex discrimination.

No longer requires two separate ten-day periods to review and respond to evidence.

Exchange of evidence is still required but can be summary of evidence.

34 C.F.R. § 106.45

Title IX Team

- Title IX Coordinator (& designees)
- Investigator
- Decision-maker
- Appeals Officer
- Informal Resolution Facilitator

Will you have Title IX Coordinator designees at each site?

Potential Investigator Models

Name of Model	Process	Options
Single Investigator	T IX Coordinator = Investigator = Decision-maker	Can have someone else sign off on decision
Single Investigator +	T IX Coordinator = Investigator → Decision-maker	Inv. makes recommended findings
Title IX Coordinator/ Decision-Maker	T IX Coordinator → Investigator → T IX Coordinator/Decision-maker	Have Inv. make recommended findings
2020 Regs	T IX Coordinator → Investigator → Decision-maker	Have DM collaborate with Investigator regarding questions DM may have

Investigation Procedures

- Exchange of Evidence
 - Method of exchange
 - Description or access
 - If using a description, must offer access if requested
 - Investigation report
 - Five (5) business days to review and respond.
- Confidentiality
 - District must take reasonable steps to prevent unauthorized disclosure of information obtained solely through investigation (34 C.F.R. § 106.45(f)(4)(iii))
- Questioning the parties and witnesses to evaluate credibility by decision-maker

Understand the Scope - Frame the Allegations

- Prepare clear and concise “yes or no” questions or statements that the investigation will answer or address.
- Do not include legal terms such as “discriminated,” “harassed,” or “retaliated.”
- Avoid ambiguous and subjective words such as “inappropriate” and “unfair.”
- Make sure all relevant claims are included in the allegations. (Or, if you excluded something, be prepared to explain why.)

Hypothetical

Julie, a middle school student, reports to you that Bryan, an instructional aide, inappropriately touched her shoulders and chest when she went to him for homework assistance.

What investigation model would be best?

Recognize Trauma-related Dissociation

- Some complainants may express fears and concerns
- Some complainants may exhibit signs of detachment and disconnection (dissociation)
- Triggering past trauma can result in severe forms of dissociation include losing time, forgetting who/where you are, going blank
- Signs of dissociation include:
 - glazed/fixed gaze
 - no eye contact
 - crying
 - confusion
 - rapid speech
 - sudden mood changes
 - flat affect
 - change in tone
 - monotonous voice
 - silence for long periods of time
 - loss of time
 - “I’m so ashamed...”
 - “This is all my fault...”
 - “People won’t believe me...”
 - “How can I trust anyone again...”
 - “I’m overwhelmed and afraid...”
 - “What are my parents/teachers/supervisors/friends going to think...”
- Reporting students/employees need to be heard without skepticism or judgment

Responding to Complaints

Drafting the Report

Report of Evidence

- Provide the parties with a report of the relevant and permissible evidence to the allegations
- This should include a cover letter explaining:
 - Parties have [#] days to review and respond to the evidence.
 - Parties must send their responses to the Investigator.

Report of Evidence (Recommended Content)

- Identify the date the investigation commenced
- Identify the investigator
- Identify supportive measures offered to and accepted by the parties
- Summary of the investigation process
- Admonish the parties regarding confidentiality
- Identify the legal standard
- Identify number of/identity of witnesses
- Evidence – documents and witness statements

Responding to Complaints

Relevancy

Relevancy

- Evidence is relevant if the information helps to prove or disprove a fact at issue and should be admitted.
- Recipients cannot exclude relevant evidence because such evidence may be unduly prejudicial, concern prior bad acts, or constitute character evidence.
- All relevant evidence must be objectively evaluated and considered – inculpatory and exculpatory.



Relevancy Considerations

- Recipients have discretion governing how admissible, relevant evidence must be evaluated for weight or credibility by the decision-maker.
- The weight assigned to evidence depends on the type of evidence and its credibility:
 - Direct evidence (personal observation or experience)
 - Real evidence (weapon)
 - Documentary evidence (emails, texts, photos, videos, etc.)
 - Circumstantial evidence (not direct observation, but compelling)
 - Hearsay evidence (something heard from another person)

Limitations On Relevance

- Evidence protected by any legally recognized privilege
- Evidence provided to a confidential employee
- Records maintained by a physician, psychologist, or other recognized professional for treatment
- When evidence is duplicative of other evidence, it may be deemed not relevant

Limitations on Relevance

A complainant's sexual interests or prior sexual conduct is irrelevant, unless prior sexual conduct evidence is offered to prove:

that someone other than the respondent committed the conduct alleged by the complainant, or

consent (evidence about specific incidents of complainant's prior sexual conduct with respondent)

Responding to Complaints

Written Determination

Writing the Analysis

Summarize Complainant's version of events (address credibility)

Summarize Respondent's version of events (address credibility)

Summarize independent evidence (witness statements, documents, etc.) and explain how it corroborates or contradicts the parties' version of events.

Address the not-so-good facts.

Factual Finding (i.e., sustained, not sustained, partially sustained.)

Legal Framework

Preponderance of the Evidence



Factual Findings v. Legal Conclusions

Factual Findings

Focus on whether or not the alleged conduct occurred.

Policy Violation

Apply the factual finding to the policy/legal conclusion.

Responding to Complaints

Appeals

K-12 Appeal Procedures



- Optional for determinations
- Must be offered if offered in comparable hearings

**Check your District's Title IX
Board Policies and
Administrative Regulations for
the Appeal Process**



Recordkeeping



Record Keeping

Keep the following for 7 years:

1. A record of the informal resolution process for formal investigation procedures; and resulting outcome for all complaints of sex discrimination under Title IX;
2. Record of any actions, including supportive measures, taken in response to each notification the Title IX Coordinator or designee receives of information about conduct that reasonably may constitute sex discrimination under Title IX; and
3. All Title IX trainings materials.

Record Keeping

For complaints containing allegations of childhood sexual assault, keep the following indefinitely:

1. A record of the allegation(s);
2. A record of the investigation procedures followed;
3. A record of the written determination;
4. A record of corrective action implemented, if any;
5. A record of any appeals and outcome of the same; and
6. All training materials addressing the prohibition and investigation of childhood sexual assault.



Pregnancy and Parenting



Discrimination Based on Pregnancy or Related Conditions



- Discrimination based on a person's parental, family, or marital status or a person's current, potential or past pregnancy is prohibited.
- The District is required to make modifications to educational programs/schedules to ensure equal access for all students and employees.
- Employees must provide all students and/or persons with the legal right to act on behalf of a student with the Title IX coordinator's information.

Pregnancy and Related Conditions – Students



- Reasonable modifications according to policies, practices or procedures
 - Cannot fundamentally alter the education program or activity
 - Student can accept or decline
- Limitation on requiring supporting documentation

Pregnancy and Related Conditions – Students



- Voluntary access to a separate and comparable portion of the education program or activity
- Voluntary leaves of absence
- Lactation space
- Certification to participate

Pregnancy and Related Conditions - Employees

- Comparable treatment to other temporary medical conditions for all job-related purposes
- Voluntary leaves of absence
- Lactation time and space



34 C.F.R. § 106.57

Takeaways

- Doing nothing is not an option, if there is suspected harassment or discrimination, you must act.
- Even if conduct does not fall under Title IX, it will still need to be addressed.
- 2020 regulations are still in place for conduct which occurred before August 1, 2024.
- Ask for help! Don't go at it alone, seek help from your Title IX response team.



Questions



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