Northern
California ReLiEF

TITLE IX Training Series

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NCR's Title IX Training Series

Title IX Training for All Employees of K12 School Districts

Title IX Coordinator Training
December 8, 2022
12:00-3:00PM PDT Zoom Training

Title IX Investigator Training
December 14, 2022
12:00-3:30PM PDT Zoom Training

Title IX Decision-maker Training
January 11, 2023
12:00-2:00PM PDT Zoom Training

For more information: https://ww2.keenan.com/ncr-titleix-training-series

Title IX Coordinator Training

K12 School Districts
2022-2023

December 8, 2022

Disclaimer

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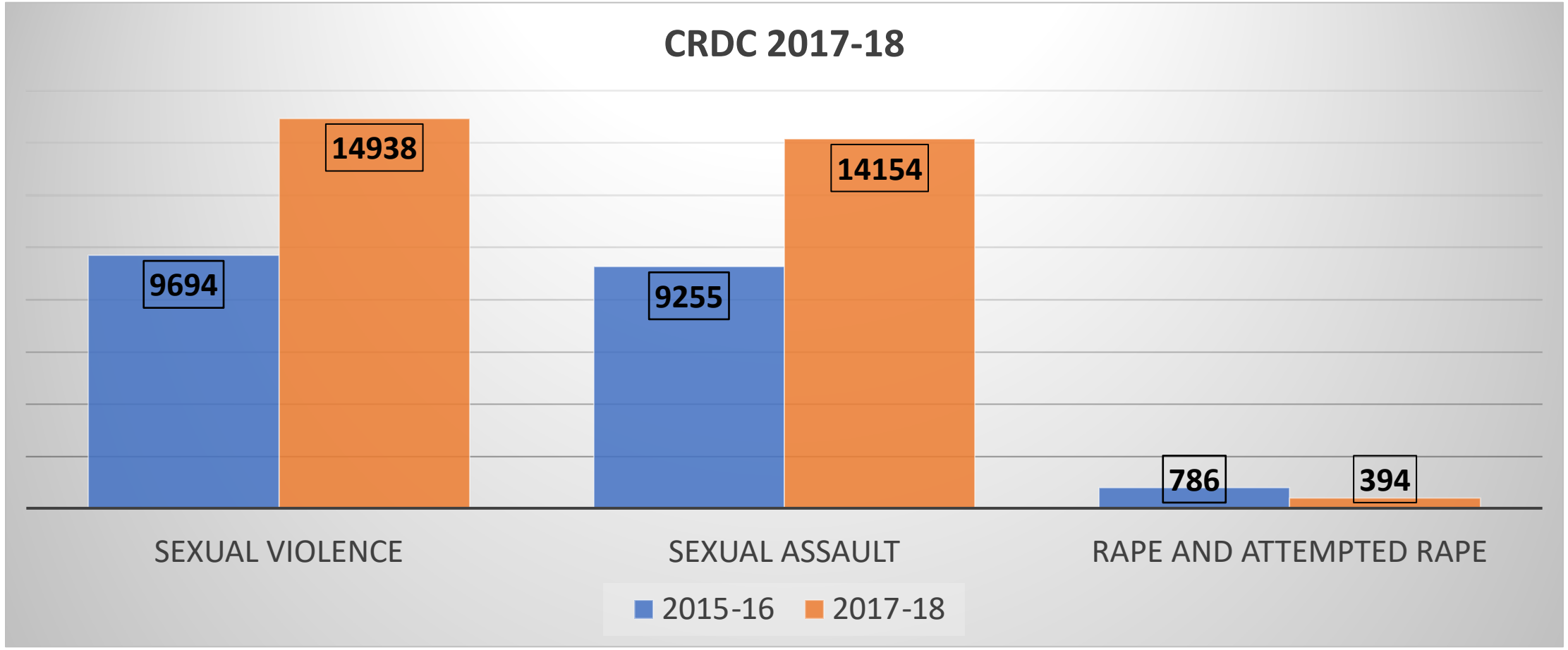
Overview

- Sexual violence, harassment and assault
- K12 school climate concerns
- Evolution of Title IX Law
- Intersection of federal law, state law, and other binding and non-binding guidance
- Current Title IX regulations
- Important role of Title IX Coordinator and other key Title IX roles on campus
- Practical application

Statistics on Sexual Assault

- Somewhere in America, a woman is raped every 2 minutes.
- National surveys of adults suggest that between 9-32% of women and 5-10% of men report that they were victims of sexual abuse and/or assault during their childhood.
- 22% of victims were younger than age 12 when they were first raped, and 32% were between the ages of 12 and 17.
- The majority of male and female rape victims knew their perpetrator.
- Of surveyed college women, about 90% of rape and sexual assault victims knew their attacker prior to the assault.

Sexual Violence in Public K12 Schools

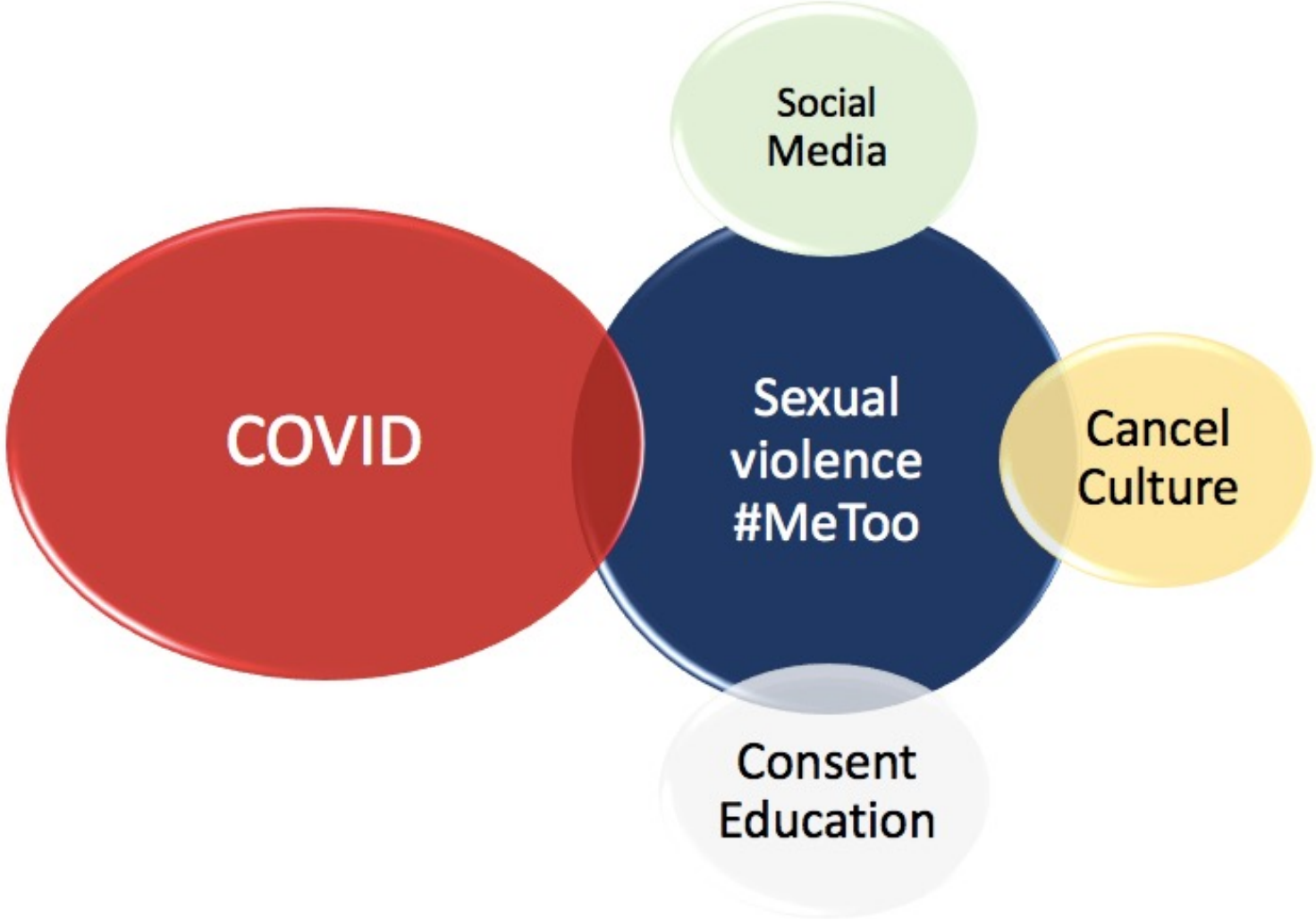


K12 School Climate

Student Activism

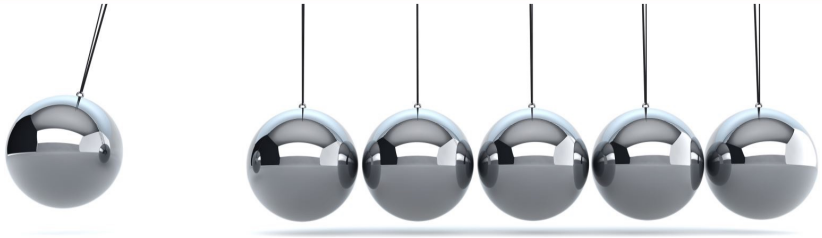
- Walk-outs
- Instagram postings with accusations of sexual violence and allegations of school inaction
- Rape culture
- Harassment against students accused of wrongdoing
- College outreach to school districts

School Climate Issues



Title IX Guidance

Title IX Guidance



- Law
- Regulations
- Other sources of mandatory and recommended guidance
  - Case law
  - Advocacy
  - Best Practices

Title IX Law

- Federal law passed in 1972
- No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.
  - Prohibits sex discrimination and sexual harassment
- Enforced through the Department of Education, Office for Civil Rights (OCR)

TITLE IX LAW & REGULATION TIMELINE

2011

OCR issues Dear Colleague Letter chaning how campuses handle Title IX

2014

OCR issues additional guidance in response to outcry from schools

2017

Department of Ed withdraws guidance and issues Q&As and starts NPRM process

2020

New regulations issued and effective Aug 2020 amidst COVID

2022

Guidance and new NPRM process announced

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TITLE IX CONSULT LLC

Title IX Regulatory Guidance

- Regulations 2001
- Dear Colleague Letters
  - 2011 Dear Colleague Letter: Sexual Violence, Background, Summary and Fast Facts
  - 2014 Questions and Answers on Title IX and Sexual Violence
  - 2015 Dear Colleague Letter on Title IX Coordinators
  - 2016 Dear Colleague Letter on Transgender Students
  - 2017 Questions and Answers on Sexual Misconduct
- Regulations 2020
  - March 8, 2022 - Executive Order on Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals

Case Law

- Use of hearings and cross examination
- Separate “judge and jury”
- Coverage for transgender students and athletes

Executive Order

- Gender Identity
- Sexual Orientation
- Extends Bostock v. Clayton County
- Recently “stayed” by federal count in Tennessee

Advocates

- Victims
- Due Process

Best Practices

- Various guidance documents from Office for Civil Rights
- Legal obligations
- Adopting practices
  - Trauma informed practices
  - Incorporate school culture
  - Reflect needs of your campus

Title IX Covers

- Sex discrimination
- Sexual harassment
- Pregnant students
- Athletics
- Sexual assault
- All programs and activities

2020 Title IX Regulations

Coordinate the School's Response

- Receive reports of claims and potential claims
- Provide required notices
- Examine and/or re-examine supportive measures
- Determine appropriateness of a potential removal proceeding
- Act as investigator in some instances,
- Identify proper decision-maker
- Decide who will manage an appeal, if necessary
- Coordinate investigation, sharing of information between the parties, final outcome letter, and offering of appeal options
- Ensure proper documentation
- Provide training

Role and Responsibility of Title IX Coordinator

Overall compliance of the Title IX program and managing the response to report

Central office for reports of sex discrimination and sex harassment

Coordinate an effective response

- Respond to report
- Contact complainant
  - Supportive measures
  - Formal complaint process
- Manage the receipt of formal complaint and initiation of Title IX grievance process
- Determine if investigation is necessary in absence of formal complaint

Title IX Coordinator Responsibilities
Best Practices from 2015 Guidance

- Coordinate the Title IX response on behalf of the school
- Monitor outcomes and identify patterns
- Adoption of Title IX policy and procedure
- Access to relevant data (i.e., participation, budgets)
- Information easily found online and in designated publications
- Permitted to conduct investigations
- Permitted to oversee investigations
- Avoid conflicts of interest, including exclusion from serving as the decision-maker
- Appropriate authority, qualifications, training, and time

Information about Title IX Coordinator

- Who should receive information?

  Must be shared with:

  - Students
  - Parents
  - Employees
  - Applicants for admission
  - Applicants for employment
  - Unions and/or parties to collective bargaining agreements

  Must notify these individuals of non-discrimination

- Which information to share?

  Must include notice of grievance procedure

- Where must it be posted?

  Must promptly display contact information in each handbook or catalog made available to those persons

Title IX Coordinator

Title IX Coordinator

Name

School address, with office address

Phone number

Email

Guidance in Section 106.8(a)

Legal Obligation

- Educational institution must respond in a manner that isn’t deliberately indifferent when it has actual knowledge of sexual harassment occurring in the institution’s education program or activity against a person in the United States.

Actual Knowledge of Sexual Harassment

- When sexual harassment or allegations of sexual harassment come to the attention of **ANY EMPLOYEE** of a K-12 district, all employees **MUST** report to the **TITLE IX COORDINATOR**
- Failure to report could lead to an inadequate response
  - Proof of deliberate indifference
  - Legal responsibility for sexual harassment

- Confidentiality can only be promised by licensed mental health professionals

Other Employee Reporting Responsibilities
Mandatory Reporting

Mandatory Reporting

- Report to the appropriate agency when there is a reasonable suspicion that an ***abuse or neglect of a child*** may have occurred
- Child abuse is defined as physical abuse, neglect, sexual abuse and/or emotional maltreatment. This includes the sexual assault, sexual exploitation, and/or sexual abuse of a child; the willful cruelty or unjustifiable punishment of a child; incidents of corporal punishment or injury against a child; abuse in out-of-home care; and the severe and/or general neglect of a child.
- A child is a person under the age of 18.

Exercise 1 – Is this notice under Title IX?

Grievance Process Requirements

Final Rule on Title IX effective 08/14/20

- Has the force and effect of law
- Set legal standard under Title IX for K12 school districts
- Defined sexual harassment under federal law
- Described compliant grievance process

Title IX – Parties and Administrators

Parties

- Complainant – alleged victim/survivor
- Respondent – responds to the allegation(s)

Administration of Claims

- Title IX Coordinator
- Title IX Investigator
- Title IX Decision-maker
- Title IX Appeal Officer
- Title IX Advisor
- Title IX Informal Resolution Officer

Title IX Definitions of Sexual Harassment

Title IX Definition of Sexual Harassment

Defined conduct on the basis of sex and includes:

- Quid pro quo harassment
- Hostile environment harassment
- Sexual assault
- Dating/domestic violence
- Stalking

Title IX Definition of Sexual Harassment

Defines conduct "on the basis of sex" and includes:

- Quid pro quo - An employee of the school conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;

- Hostile environment - Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the school's education program or activity;

Title IX Definition of Sexual Harassment, continued

The definition includes:

- **Sexual Assault** means any sexual act directed against a Complainant without consent. Sexual Assault includes fondling, incest, rape, sexual assault with an object, sodomy, and statutory rape.

- **Dating violence** means violence committed by a person— (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship. (ii) the type of relationship. (iii) the frequency of interaction between the persons involved in the relationship.

Definitions, continued

- **Domestic violence** includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim
  - It includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior,
  - By a person who— (A) is a current or former spouse or intimate partner of the victim; (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (C) shares a child in common with the victim; or (D) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

Definitions, continued

- **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
  - fear for his or her safety or the safety of others; or
  - suffer substantial emotional distress.

Overview of Grievance Process (GP)

- Respond promptly in a manner that is not deliberately indifferent
- Due process and fundamentally fair procedures to adjudicate the allegations
- Upon notification, supportive measures offered
  - Emergency removal
- Offer of formal process
  - Complainant files or Title IX Coordinator may file
- Both parties receive notice of the allegations
- Both parties participate in investigation and can inspect information gathered
- Separate decision-maker(s)
- Completed in a prompt time-frame
- Retaliation prohibited - define the retaliation complaint process

GP: Jurisdiction Defined

Occurring in the institution's education program or activity

- includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred

Against a person in the United States

GP: Dismissal - Mandatory and Permissive

Mandatory dismissal

- Would not constitute sexual harassment as defined in regulations
- Did not occur in education program or activity
- Did not occur against a person in the U.S.

Permissive dismissal

- Complainant notifies Title IX Coordinator in writing that Complainant would like to withdraw formal complaint or allegations
- Respondent is no longer enrolled or employed by school district
- Specific circumstances prevent the school district from gathering evidence sufficient to reach a determination

Exercise 2 -Does the School Have Jurisdiction?

GP: Emergency Removal Procedure

Step 1	Step 2	Step 3	Step 4	Step 5
Conduct a prompt and individualized safety and risk analysis	Immediate threat to the safety the physical health or safety of any student or other individual arising from the allegations of sexual harassment	Evaluate the applicability of disability laws to the removal decision	Consider the appropriateness of supportive measures in lieu of an emergency removal	Provide the respondent with notice and an “immediate” opportunity to challenge the emergency removal

GP: Supportive Measures

- Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent and are designed to restore or preserve equal access to the District's education programs or activities without unreasonably burdening either party, including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment

GP: Offer of Formal Process

- Complainant offered formal process
- Complainant must file and request an investigation
- Wishes of complainant are to be respected

GP: No Formal Complaint Filed

Title IX Coordinator may decide to proceed with investigation

Title IX Coordinator does not become Complainant

Exercise 3 – Removal, Supportive Measures, and District-Initiated Investigation

GP: Informal Resolution

- Trained facilitators
- Offered after formal complaint is filed
- Process must be detailed in writing
- Described to both parties
- Parties agree in writing
- Either party may end informal resolution before a formal agreement is accepted

- Never available when complainant is student and respondent is employee

Formal Complaint Process

GP: Receipt of Formal Complaint

Form completed

Verbal report

Phone call

Email

Other

GP: Notice of Allegations

- Detailed allegations against respondent
- Supportive measures offered to respondent
- No supportive measure can appear disciplinary

GP: Separate Investigator and Decision-Makers

- Title IX Coordinator may serve as investigator
- Title IX Coordinator may NOT serve as decision-maker to determine policy violation and discipline
- Hearing panels permitted for K-12s but not required

GP: Investigation

- Investigation gathers relevant and irrelevant information
- All information must be shared with both parties
- Parties have ability to review investigation report and outcome, provide comments/written questions and provide answers and limited follow-up

GP: Burden of Proof

- Preponderance of the evidence
- Clear and convincing

GP: Decision-Maker

- Decision-maker must determine:
  - Policy violation
  - Discipline

- In K-12, discipline decisions against students with disabilities may require a manifestation determination

  - A **Manifestation Determination** is a process, required by the Individuals With Disabilities Education Act (IDEA 2004), which is conducted when considering the exclusion of a student with a disability that constitutes a change of placement

GP: Appeal

Procedural irregularity in the Title IX grievance process affected the outcome;

Newly discovered evidence that was not reasonably available at the time of the determination of responsibility or dismissal that could affect the outcome; or

Due to a bias or conflict of interest by the Title IX Coordinator, investigator, or decision-maker that affected the outcome.

Exercise 4: Title IX Intake

Avoiding Running Afoul of Title IX

Impartiality

- Be neutral – neither pro-Complainant nor pro-Respondent
- Consider the evidence as presented
- Confront and understand bias and not allow it to impact decision
- Maintain open mind as to the potential conclusions

Conflicts of Interest

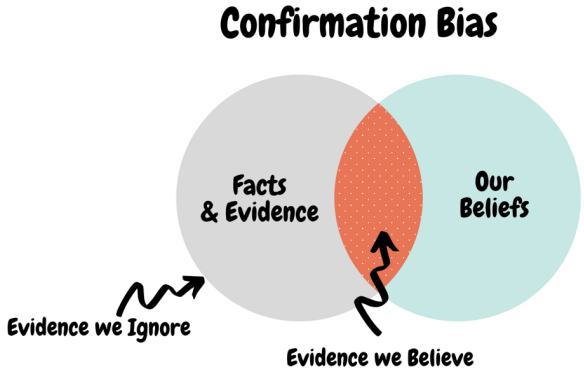
- Relationship to parties or witnesses
- Professional conflicts
- Personal conflicts
- Actual and perceived

Stereotypes

- “A fixed, over generalized belief about a particular group or class of people.” (Cardwell, 1996)
- Stereotypes around sexual assault
- Stereotypes around sexual harassment
- Complainant and Respondent

Bias

- Conscious/Explicit
  - Discriminatory intent
  - Stated preferences



- Unconscious/Implicit
  - For the most part, most people are unaware of these drivers
  - Developed over a period time and can influence many factors in hearing
  - Short cuts developed by the brain often play a role in:
    - Immediate response to conflict
    - Often mimics fear responses

Trauma

- Many Title IX causes of action involve trauma

- Title IX Coordinators should understand the impact of trauma on:
  - Reaction to trauma
  - Ability to capture memories
  - Recollection of memories

- Expectations around trauma victim

Training Program

Training

- Required
- Voluntary

Groups to Consider

- Title IX Office staff
- Administrators
- Teachers
- Classified Staff
- Volunteers
- Students

Title IX Training Formats

- Vendor or in-house
- Online, asynchronous
- Zoom, synchronous
- Face-to-face

Title IX Changes on Horizon

Notice of Proposed Rulemaking from Office for Civil Rights (OCR)

NPRM – July 23, 2022

- Provides insight into how the regulators want to change Title IX
- 60-day notice and comment period after publication in the federal register
  - Comments due 9/12/22
- Review of all comments by OCR
- Final version of regulations issued with specific effective date

Key Proposed Changes

- Legal obligation of educational institutions
- Jurisdiction
- Definitions
- Grievance process
- Informal resolution

Pregnancy

Sex-based discrimination

Severe or pervasive

Subjective and Objective

Involuntary changes

Peer retaliation

What Else?

- Responding to complaints
- Employee obligations
- Gender identity and sexual orientation
- New appeal rights
- Flexibility in response
- Training

Final Questions

Email with:

1. Slides to be posted on your Title IX page
2. Training evaluation link – short survey!

Thank You!

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