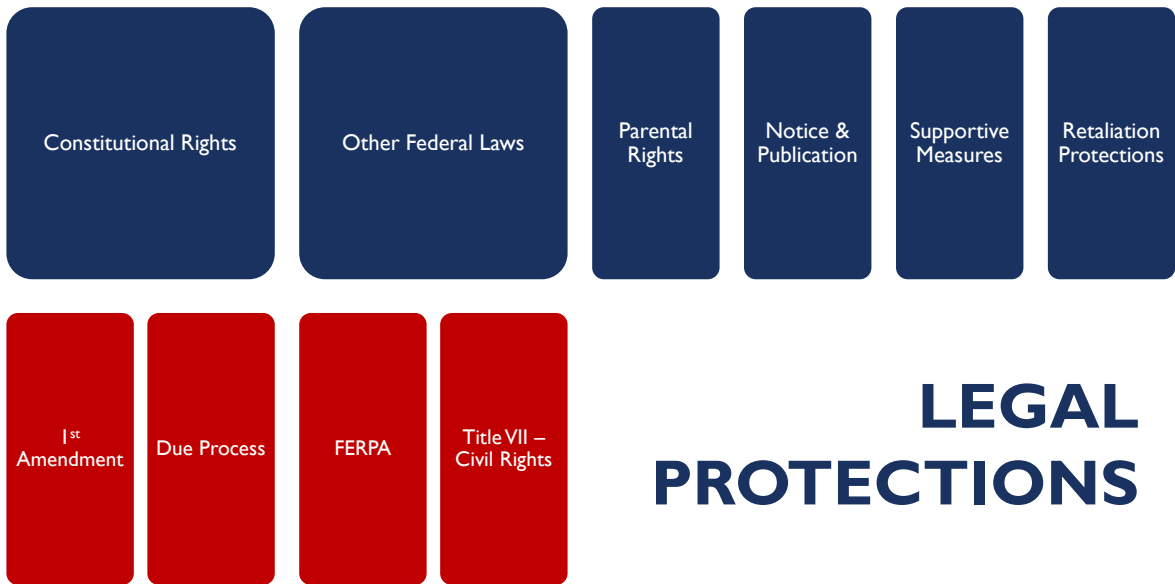




# RIGHTS OF INVESTIGATION PARTICIPANTS

TRAINING FOR TITLE IX COORDINATORS, INVESTIGATORS AND DECISION-MAKERS – AUGUST 6, 2020  
ASHLEY ROHLEDER-WEBB, KASB STAFF ATTORNEY

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## CONSTITUTIONAL RIGHTS

### 1<sup>st</sup> Amendment

Free speech – just like outside of school, free speech has limits, but even in school, students and staff retain their constitutional rights.

### Due Process

Before a state/government actor can deprive an individual of a right or something that has been guaranteed to that person, the government has to provide a basis for the movement.

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## FEDERAL PROTECTIONS

- Federal laws
  - Title VII and other federal laws:
    - Actions could be in violation of more than one law.
    - Must still follow requirements in Title VII.
  - FERPA: Student records and PII may only be shared
    - Clash of required information in investigations

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## PARENTAL RIGHTS

- Parents maintain right to act on behalf of their child, whether complainant, respondent, party, etc.

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## NOTIFICATION

- Districts must notify applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the district, of the name or title, office address, electronic mail address, and telephone number of the Title IX Coordinator.
- Each district must notify persons entitled to a notification that the district does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by Title IX not to discriminate in such a manner.
- Such notification must state that the requirement not to discriminate in the education program or activity extends to admission and employment, and that inquiries about the application of Title IX and this part to such district may be referred to the district's Title IX Coordinator, to the Assistant Secretary, or both.

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## PUBLICATION

- Districts must prominently display the contact information required to be listed for the Title IX Coordinator on its website, if any, and in each handbook or catalog that it makes available to persons entitled to a notification.
- Districts must not use or distribute a publication stating that the district treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by Title IX.
- Districts must adopt and publish formal complaint investigation procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX and a process that complies with the regulations.
- Districts must provide persons entitled to a notification notice of the district's formal complaint investigation procedures, including:
  - how to report or file a complaint of sex discrimination,
  - how to report or file a formal complaint of sexual harassment, and
  - how the district will respond.

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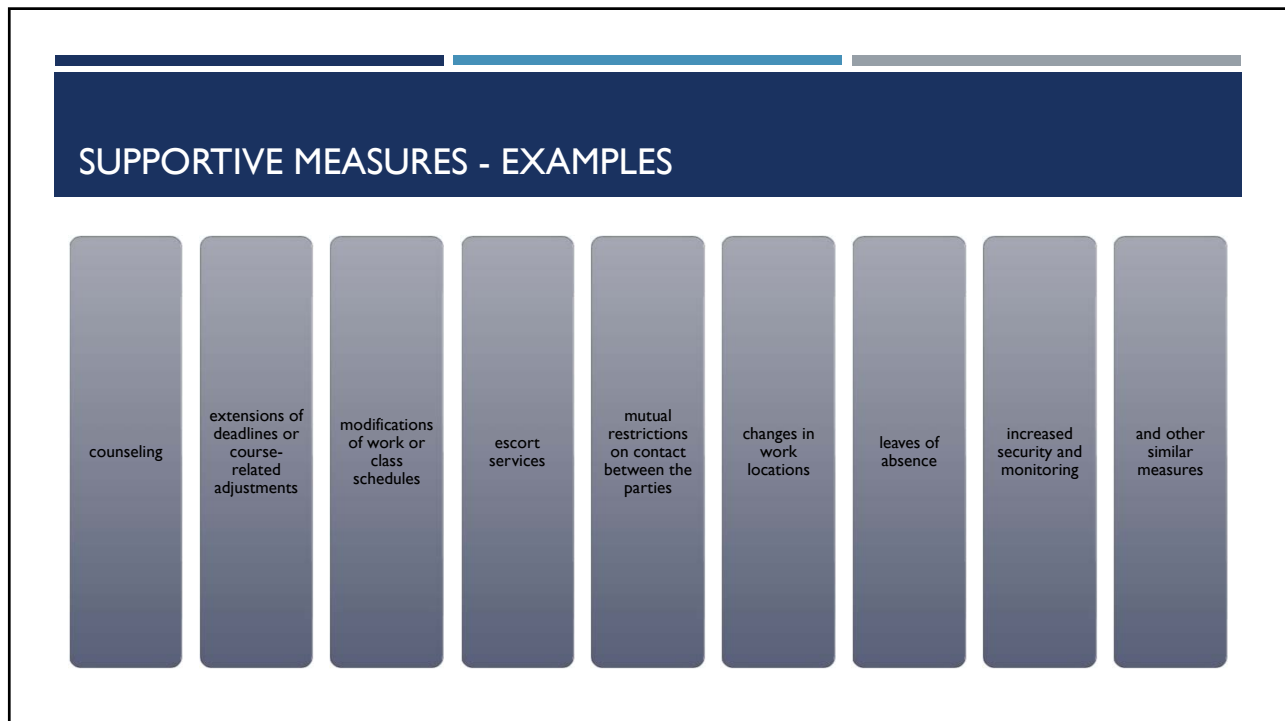
## NOTIFICATION & PUBLICATION SUMMARY

- Provide notice of
  - Nondiscrimination Policy,
  - Formal Complaint Investigation Process,
  - Title IX Coordinator's Contact Information, and
    - Name/Title, Office Address, Phone Number, Email
  - that inquiries about the application of Title IX may be referred to the Title IX Coordinator, to the Assistant Secretary, or both.
  - Training Materials must be shared on website – or otherwise be available if no website.
- On website, in handbooks or other materials available to:
  - applicants for admission and employment,
  - students,
  - parents or legal guardians of elementary and secondary school students,
  - employees,
  - and all unions or professional organizations holding collective bargaining or professional agreements with the district

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Complaints alleging retaliation may be filed according to the formal complaint investigation procedures for sex discrimination.

- No district or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.
- Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation.
- The district must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA, as required by law, or to conduct any investigation, hearing, or judicial proceeding arising thereunder.

**RETALIATION  
PROHIBITED**

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- The exercise of rights protected under the First Amendment does not constitute retaliation prohibited by Title IX.
- Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a formal complaint investigation proceeding does not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

**RETALIATION  
PROHIBITED**

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## DON'T FORGET THE RIGHTS GRANTED IN THE PROCESS

- Ensure that the preponderance of the evidence burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the district and not the parties;
- Provide an equal opportunity for the parties to present witnesses and evidence;
- Not restrict either party's ability to discuss the allegations under investigation or to gather and present relevant evidence;
- Allow the parties to be accompanied with an advisor of the party's choice;
- Provide written notice of the date, time, location, participants, and purpose of any interview, meeting, or hearing at which a party is expected to participate;
- Provide the parties equal access to review all the evidence collected which is directly related to the allegations raised in a formal complaint, including the investigative report, and the opportunity to respond to that evidence before a determination is made;
- Be impartial and objectively evaluate all relevant evidence without relying on sex stereotypes;
- Not have conflicts of interest or bias for or against complainants or respondent;
- Not make credibility determinations based on the individual's status as complainant, respondent, or witness.
- Providing parties with reports/decisions at the same time.

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# Questions?



TO PROVIDE FEEDBACK ABOUT TODAY'S TRAINING,  
PLEASE COMPLETE THE EVALUATION:  
[HTTPS://KASB.ORG/TITLE\\_IX\\_20200806](https://kasb.org/title_ix_20200806)

IF YOU HAVE ADDITIONAL QUESTIONS, PLEASE SEND TO:  
[LEGAL@KASB.ORG](mailto:LEGAL@KASB.ORG)  
1-800-432-2471

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