

# Title IX: Overview Training for Investigators

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# People, Functions, Impartiality

- ▶ Title IX Coordinator
  - ▶ Name and contact information must be posted on school's website and provided to students, parents/guardians, employees, applicants for admission and employment, and all unions
  - ▶ Responsible for education, notice requirements, coordination of supportive measures
- ▶ Investigators
- ▶ Decision-Makers
  - ▶ "Determination" decision-maker, "Appeal" decision-maker
  - ▶ Decision-makers cannot be the same person as the Title IX Coordinator or an investigator
- ▶ Impartiality
  - ▶ Individual designated as the Title IX Coordinator, investigator or decision-maker must not have any conflict of interest or bias

# Definitions

- ▶ Sexual harassment definition narrowed to include types of sex-based conduct:
  - ▶ **“Quid pro quo”** – employee conditions access to educational benefits on unwelcome sexual conduct (does not apply to conduct by students)
  - ▶ **Unwelcome** conduct that a **reasonable** person would determine is so severe, pervasive, **and** objectively offensive that it effectively denies equal access (raises threshold from Obama-era rules and matches Supreme Court rulings)
  - ▶ **Sexual assault, domestic violence, dating violence and stalking** (from Clery Act and Violence Against Women Act) – intended to clarify that one particularly severe incident (even if not “pervasive”) qualifies as harassment if it falls within any of these definitions
- ▶ School districts must apply this definition, the same procedural protections, and the same standard of proof (in LCSD, “preponderance of the evidence”) to employee/employee sexual harassment claims as to student claims



# Is it, or isn't it? Importance of deciding immediately.


- ▶ If the alleged conduct would, **if true**, meet the definition of “sexual harassment” under Title IX, then the obligations under Title IX are triggered immediately – as soon as any such alleged conduct has been reported (by anyone) to the Title IX Coordinator or to any LCSD K-12 employee
- ▶ If not, then the allegation must be dismissed as a Title IX sexual harassment complaint, but ...
- ▶ **If the conduct would, if true, be prohibited by other LCSD conduct rules**, then other obligations are triggered, e.g., bullying/cyber-bullying
  - ▶ “Immediate action” tasks for bullying/cyber-bullying begin on the day the report is received (e.g., notice to parents, ensure safety [‘the safety plan’])
  - ▶ Investigation completed within 2-3 days; 5 for cyber-bullying; no specific timeline for sexual assault (if it fits Title IX definition, must use Title IX grievance process)
  - ▶ Dissemination of report within 24 hours of completion
  - ▶ 10-day follow-up meeting with reported victim/aggressor



# Considerations for Three Prongs

- PRONG 1: ***Quid pro quo*** (this for that ... )
- PRONG 2: ***Hostile environment***
  - Unwelcome
  - Severe
  - Pervasive
  - Objectively offensive
- AND**
- Effectively denied equal access
- PRONG 3: **Clery/VAWA Crimes**





# Liability – Actual Knowledge & Deliberate Indifference


- ▶ “Actual knowledge” – notice to Title IX Coordinator, any other official with the “authority to institute corrective measures, and for K-12, any LCSD employee
- ▶ **Every K-12 employee must report knowledge of sexual harassment or allegations of sexual harassment**
- ▶ No liability unless school acts with “deliberate indifference” defined as actions that are “clearly unreasonable in light of the known circumstances”
  - ▶ Promptness, impartiality, freedom from conflicts of interest, adherence to published policies and procedures
  - ▶ Offering supportive measures
- ▶ Upon receipt of any report or formal complaint, school must offer **“supportive measures”** – required in every case
  - ▶ Non-disciplinary, non-punitive individualized services, designed to preserve complainant’s access to education without unreasonably burdening the respondent (e.g., counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual contact restrictions, leaves of absence, increased security measures)

# Reports & Formal Complaints

- ▶ Report can be made by any person, at any time, by any means that results in the Title IX Coordinator receiving the person's verbal or written report
- ▶ On receiving a report, Title IX Coordinator must promptly:
  - ▶ Contact the complainant, i.e., the alleged victim
  - ▶ Offer supportive measures
  - ▶ Explain process of filing a formal complaint
  - ▶ Explain that supportive measures can be available with/without formal complaint
  - ▶ Consider complainant's wishes with regard to supportive measures
  - ▶ Contact respondent and offer supportive measures
  - ▶ If supportive measures are not provided to a complainant, the school must document why it did not provide and why not providing is not deliberately indifferent
- ▶ "Formal Complaint" is complaint filed by alleged victim/parent or signed by the Title IX Coordinator, requesting that recipient investigate allegation of sexual harassment – receipt of formal complaint triggers grievance process unless complainant and respondent opt to participate in informal resolution (e.g., mediation)



## Once school receives “formal complaint” ...

- ▶ School must provide simultaneous written notice to complainant and respondent
  - ▶ Sufficient detail and time to allow parties to prepare a response before any initial interview
  - ▶ Notice must include identities of parties, conduct alleged to constitute sexual harassment, date/location of alleged incident, statement that respondent is presumed not responsible and that a determination regarding responsibility will be made at the conclusion of the grievance process
  - ▶ Right to advisor of their choosing, including attorney, throughout the process
  - ▶ Right to inspect and review all evidence
  - ▶ Any provisions in school's code of conduct that prohibit knowingly making false statements during the grievance process
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# Grievance Process – “Must Include”

- ▶ Presumption that respondent is not responsible for the alleged conduct until an official determination is made
- ▶ Reasonable timeframe for completing investigations
- ▶ Range of possible sanctions/remedies
- ▶ Define **standard of evidence – preponderance of the evidence** in LCSD
- ▶ Appeal process
- ▶ Range of supportive measures available to complainants and respondents



# Investigation, Hearing & Appeal

## Investigation

- ▶ Each party has equal access to provide witnesses, including expert witnesses, and evidence
- ▶ School cannot restrict either party from discussing allegations or gathering and presenting relevant evidence (no “gag rule”)
- ▶ Each party is allowed to be accompanied by an advisor of their choosing, including an attorney
- ▶ Investigator must provide each party with copies of all evidence directly related to the allegations in the complaint to allow the party to meaningfully respond
- ▶ Investigator must create an investigative report that fairly summarizes the evidence and send it to each party at least 10 days before any determination of responsibility for the party's review and written response
- ▶ Detailed training for conducting an investigation and preparing an investigation report will be provided in another forum
- ▶ For now, overview of basic timelines and principles



## Hearing, AKA “Determination of Responsibility”

- ▶ After sending the investigative report, and before determining responsibility, decision-maker must allow each party the opportunity to submit relevant questions the party wants asked of any party or witness, provide the party with the answer and allow for additional, limited follow up questions from each party
- ▶ K-12 does not require in-person hearings (optional)
- ▶ Determination of responsibility must be made by a “decision-maker” who cannot be the same person as the Title IX Coordinator or investigator
- ▶ Determination of responsibility must be issued in writing, including findings of fact, conclusions and a statement of rationale for the decision
- ▶ Determination must be sent to all parties simultaneously

## Appeal

- ▶ School must have an appeal process
- ▶ Decision-maker on the appeal cannot be the original decision-maker, the Title IX Coordinator or the investigator



# Training & Records

- ▶ Extensive training required for Title IX Coordinators, investigators, decision-makers, and those involved in informal resolution process, topics:
  - ▶ Definition of sexual harassment
  - ▶ Scope of education “program or activity” under Title IX
  - ▶ How to conduct an investigation and grievance process including hearings, appeals, informal resolution process
  - ▶ How to serve impartially including avoiding prejudgment of facts at issue, conflicts of interest, and bias
  - ▶ Relevance of questions and evidence, including rape-shield limitations
  - ▶ Creating an investigative report that fully summarizes relevant evidence
- ▶ All training materials must be posted on website
- ▶ All records must be maintained for seven years