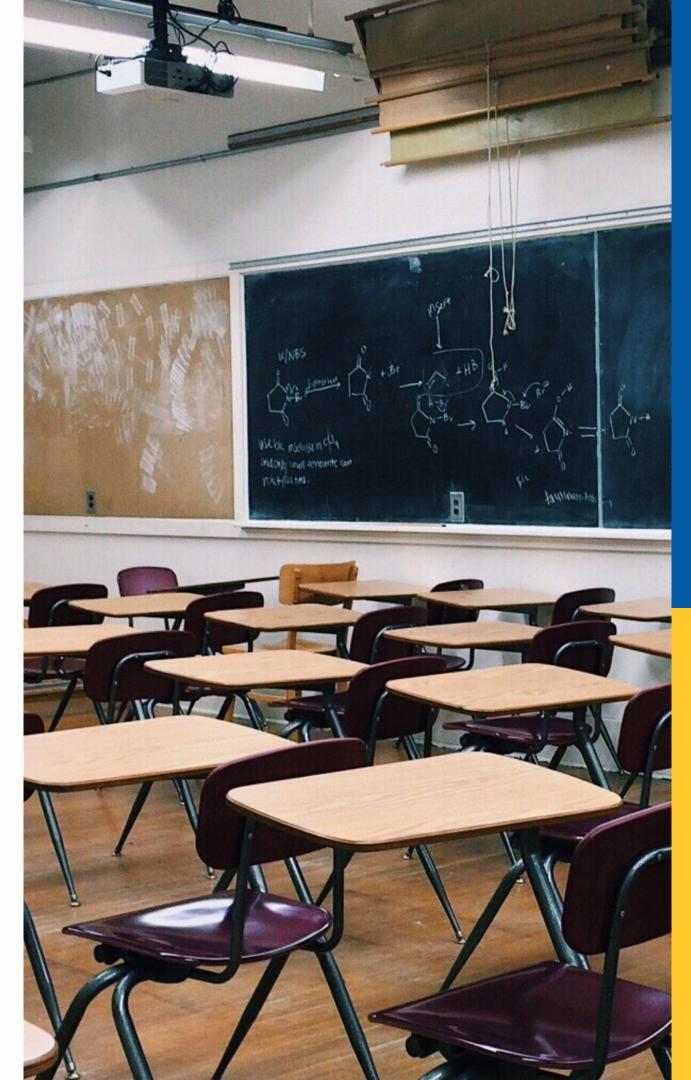
# K-12 Breakdown and Implementation of the New Title IX Regulations







#### INTRO/ HOUSEKEEPING

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### Agenda

K-121CS
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**SESSION 1** 

Overview, Identifying Title
IX Coordinator and Team,
Working Groups,
Information Gathering

**SESSION 2** 

Assessing Your
Policies/ Procedures
and Dissemination of
Information

**SESSION 3** 

Policy Drafting and Implementation on Your Campus

# Overview, Identifying Title IX Coordinator and Team, Working Groups, Information Gathering

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### 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.





## HOW DID WE GET HERE?

- September 2017- New Guidance
- November 2018 Notice of Proposed Rule
- May 6, 2020 New Regulations



# REGULATIONS VS. GUIDANCE

[The] final regulations represent the Department's interpretation of a recipient's legally binding obligations, rather than best practices, recommendations, or guidance... [and] focus on precise legal compliance requirements governing recipients. p. 18





## What the Regulations Tell Us:

Implementation
 by August 14, 2020





#### Discussion with Leadership

- Start NOW!
- Timeline for Implementation and What that Entails
- Budget Concerns/Furloughed Employees
- Community Education

# Action Items





#### **Identify Working Group if Needed**

- Small Group
  - Review and Approve Process
  - Consider Important Procedural Questions
- Possible Considerations for Members
  - Human Resources, School Specific Point Person,
     Principals, Assistant Principals
- Considerations: Time Constraints, Other Job Duties (short deadlines)
- Note: School Board
- Note: Make sure to have a seat at the table, attorneys will need to know how to put these rules into practice
- Note: Governance Process and Emergency Rules

# Action Items Continued



Name

Location Contact Information

## What the Regulations Tell Us:

- Must Identify Title IX Coordinator
- Must notify applicants for admission and employment, students, parents/legal guardians of elementary/secondary schools, and all unions or professional organizations of NAME or Title, Office Address, Email, Telephone Numbers for Title IX Coordinator
- Must promptly display contact information in each handbook or catalog made available to those persons
- Must notify these individuals of non-discrimination
- Must include notice of grievance procedures





#### **Appoint and Update**

- Appoint Title IX Coordinator
- Identify ALL locations/ handbooks that need to be updated & update/publish accordingly
- Update website to include required information
- Update employee and student applications
- Connect with IT to make sure updated on website etc.

# Action Items



# Identify Title IX Coordinator

# Action Items Continued





OCR HAS FOUND THAT SOME OF THE MOST EGREGIOUS AND HARMFUL TITLE IX VIOLATIONS OCCUR WHEN A RECIPIENT FAILS TO DESIGNATE A TITLE IX COORDINATOR OR WHEN A TITLE IX COORDINATOR HAS NOT BEEN SUFFICIENTLY TRAINED OR GIVEN THE APPROPRIATE LEVEL OF AUTHORITY TO OVERSEE THE RECIPIENT'S COMPLIANCE WITH TITLE IX.

2015 DCL



### Responsibility

- Coordinate response to all complaints involving sexual discrimination
- Monitor outcomes
- Identify and address patterns
- Assessing effects on campus climate
- Policy and Procedures
- Access to demographics and participation information





The recipient of a report of sexual discrimination must inform the Title IX Coordinator regardless of who will conduct the investigation.

## What the Regulations Tell Us:

- Separate individuals for various Title IX roles
- Training required
- Implementation of the Regulations including policy and process overhaul, training, IT needs to ensure Title IX Coordinator is visible/training posted/document retention and sharing possible





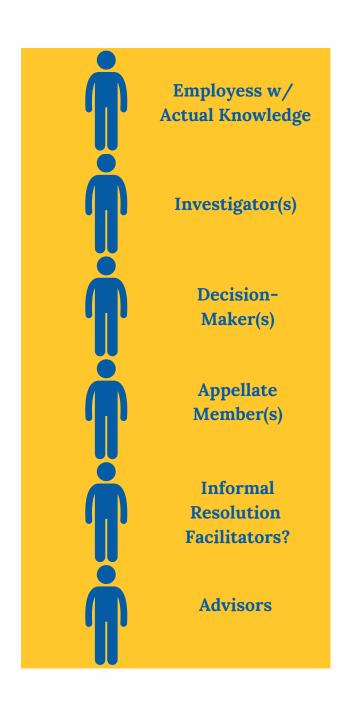
#### Discussion with Leadership

- Timeline for Implementation and What that Entails
- Budget Concerns/Furloughed Employees
- School Boards; Unions

# Action Items







## What the Regulations Tell Us:

- Specific Roles
- Discretion of School District
- No Conflicts of Interest





#### **Identify Title IX Team**

- Considerations:
  - Availability
  - Other WorkAssignments
  - FurloughedEmployees

# Action Items



## Action Items/Other Considerations

- Do you want to put the
   Title IX Coordinator as
   Informal Resolution
   Facilitator or Investigator
- Needs for Overlap





### Questions?

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## Assessing Your Policies, Procedures, and Dissemination of Information

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Assessment



## What the Regulations Tell Us:

 Any person may report sex discrimination, including sexual harassment, in person, by mail, by telephone, or by electronic mail, using the contact information, or by any other means that results in the Title IX Coordinator receiving the verbal or written report





#### Connect

- Connect with IT to ensure that all reporting options are available during and after business hours
- Test each option to make sure it works as desired

# Action Items





## What the Regulations Tell Us:

- "Responsible Employee" is gone, actual knowledge only to Title IX Coordinator or "official with authority"
- ALL employees are responsible for reporting at K-12 level
- Actual Knowledge = NOTICE
- Notice without action= deliberate indifference





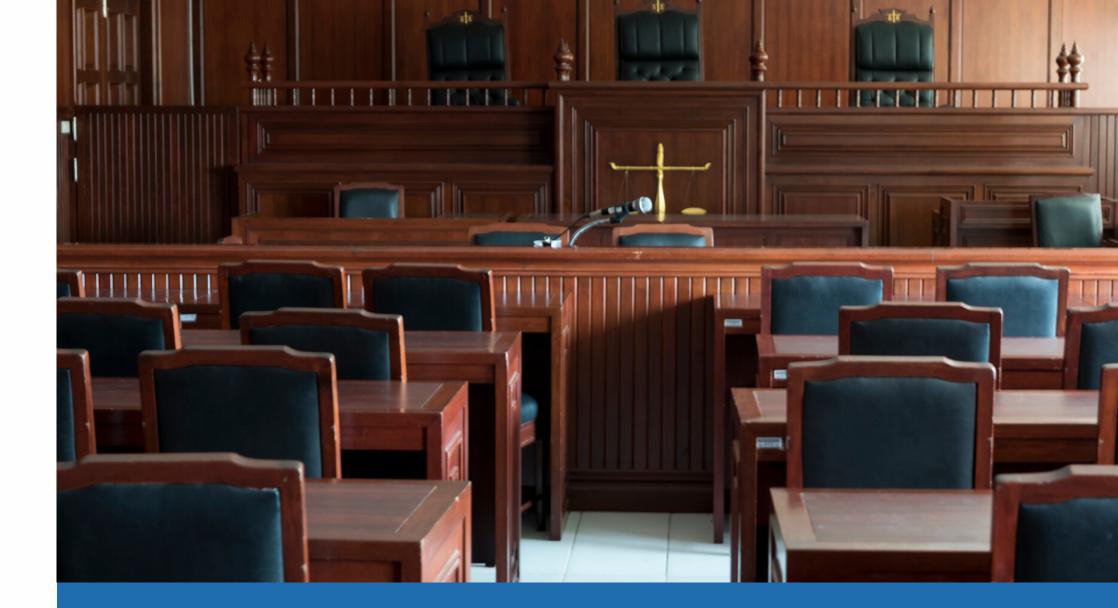
### Evaluate "Officials with Authority" and what, if any, repercussions for not reporting

- Evaluate the status of ALL employees
- Administrators, Teachers, Cafeteria Workers, Bus Drivers, Maintenance Staff, Non-Faculty Coaches
- SROs?, Volunteers?
- Train them on reporting responsibilities

# Action Items



### Deliberate Indifference



"clearly unreasonable in light of the known circumstances"

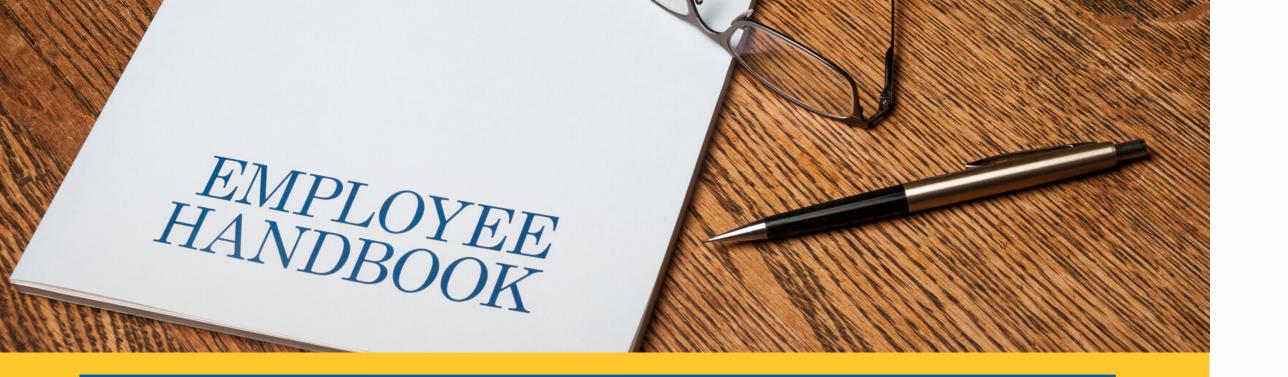




## What the Regulations Tell Us:

Evidentiary
 Standard Must be
 Consistent Across
 the Board

**COMPLIANCE SOLUTIONS** 



## Evaluate Current Policies and Procedures in Place re: Sexual Misconduct/Standard of Proof

- Faculty Handbook
- Code of Conduct
- Employee Code of Conduct- CBA's

# Action Items





## What the Regulations Tell us:

Definition of Sexual
 Harassment MUST go
 through Formal Process





#### Sexual Harassment

- Conduct on the basis of sex that satisfies one or more of the following:
  - An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
  - 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 recipient's education program or activity; or
  - "Sexual Assault," "Dating Violence," "Domestic Violence"
     or "Stalking" as defined in the Clery Act.



### SEXUAL ASSAULT

**Sexual Assault:** An offense that meets the definition of rape, fondling, incest or statutory rape as used in the FBl's Crime Reporting system.

A sex offense is any sexual act directed against another person, without the

A sex offense is any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

**Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

**Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

**Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.

## Domestic Violence

Domestic Violence: A felony or misdemeanor crime of violence committed

- by a current or former spouse or intimate partner of the victim;
- by a person with whom the victim shares a child in common;
- by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.



## Dating Violence

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be based upon the reporting party's statement with 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.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

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### STALKING

Stalking: 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.

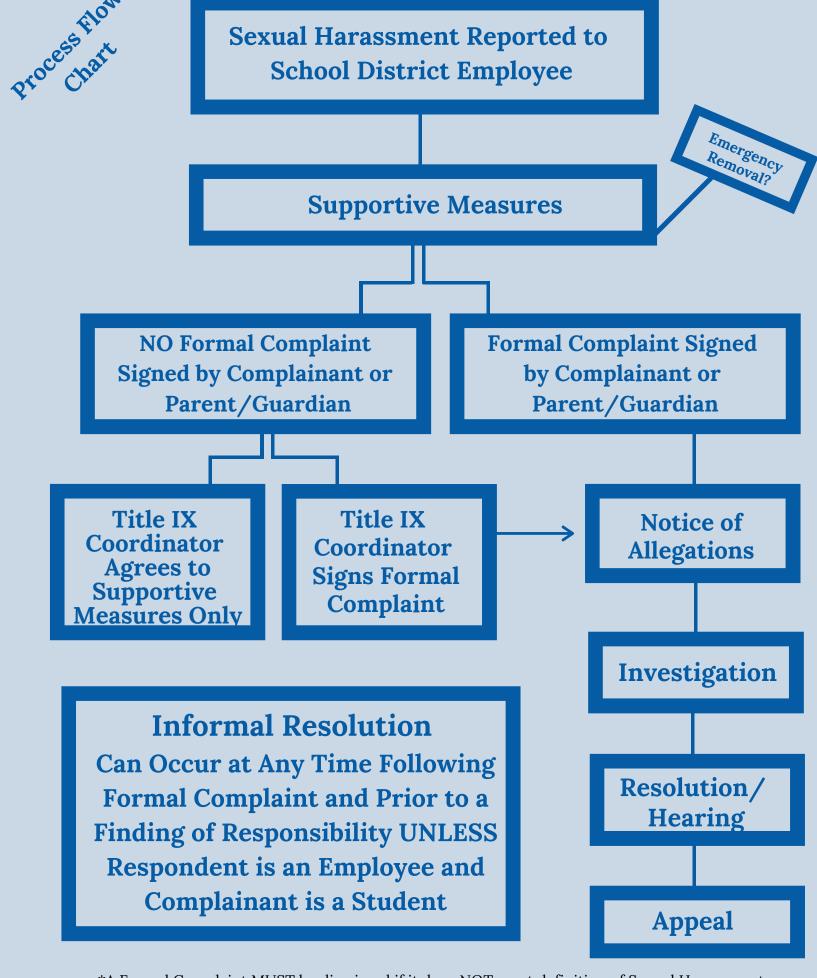
#### For purposes of this definition:

Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

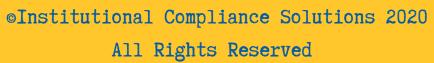
**Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

**Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.

General
R-12
Process
Process
Flow Chart



<sup>\*</sup>A Formal Complaint MUST be dismissed if it does NOT meet definition of Sexual Harassment, occur in education program or activity, or in the U.S.





<sup>\*</sup>A Formal Complaint MAY be dismissed at request of Complainant, if Respondent no longer at school district or school district is prevented from gathering evidence.

#### INVESTIGATIVE TIMELINE

#### **INVESTIGATE**

- Notice of Allegations
- Notice of all interviews with sufficient time to prepare

**OPPORTUNITY TO INSPECT AND REVIEW EVIDENCE DIRECTLY RELATED TO ALLEGATION & PROVIDE** WRITTEN **RESPONSE** 10 days

3

**INVESTIGATIVE REPORT** 



**OPPORTUNITY TO REVIEW FINAL REPORT** AND PROVIDE WRITTEN **RESPONSE** 

5

RESOLUTION/

**HEARING** 

A&Q

10 days



6

**APPEAL** 

#### K-12 INVESTIGATION FLOW CHART







SEXUAL
HARASSMENT
+

SUBSTANTIAL CONTROL

FORMAL TITLE IX PROCESS

**COMPLIANCE SOLUTIONS** 

### WHAT ABOUT NON TITLE IX SEXUAL MISCONDUCT







Not Education Program/Activity
"harassment"



#### **Create School District Process**

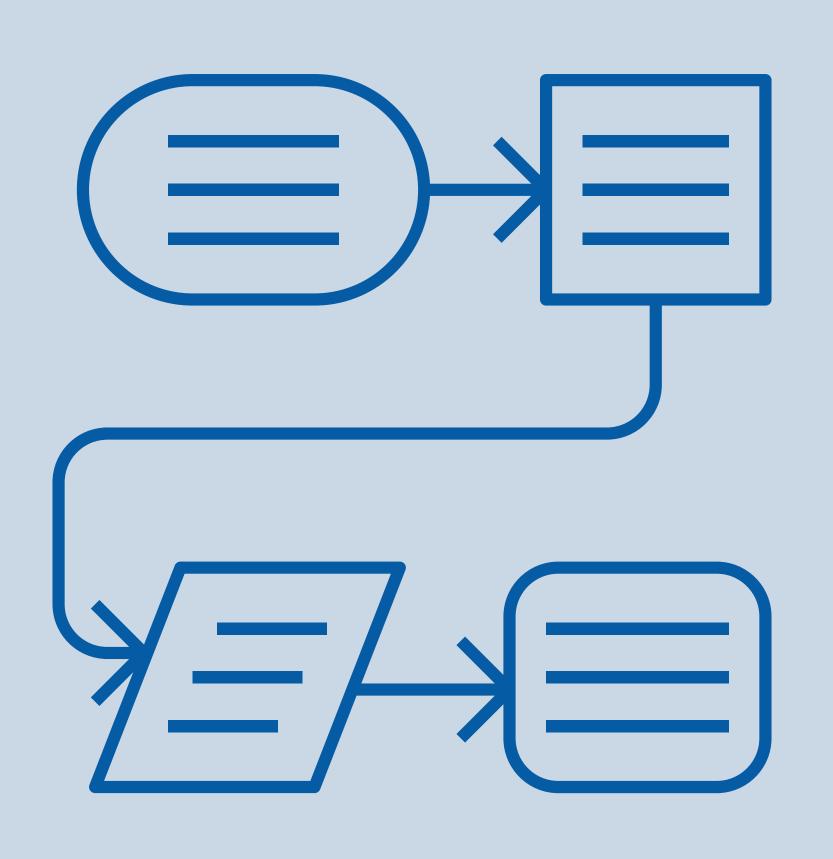
- Supportive Measures
- Emergency Removal
- Investigation Process and Timelinesignificant changes
- Resolution Process- significant changes
- Consider State Laws; IDEA; Manifestation Hearings





#### Emergency Removal

- Conduct individualized safety and risk analysis
- Determine immediate threat to physical health or safety of any student or other individual
- Provide the respondent with notice and an opportunity to challenge the decision immediately following removal



### Map processes for your School District:

- Considerations:
  - number of contacts
  - ease of process for complainants/ respondents
  - resources necessary for each process
- Which is best for you and why?



### What the Regulations Tell Us:

- Informal Resolution
   Process is discretionary
   but must be documented
  - Must not occur until AFTER
     Formal Complaint
  - Not for Employee on Student
     Sexual Harassment



### Articulate Informal Resolution Process in your policies

- Will you have informal resolution?
- Who will facilitate?
- How will you train the facilitator?
- How will it be documented?





#### Questions?

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## Policy Drafting and Implementation



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### What the Regulations Tell Us:

- Defined Terms
- Prescribed Process
- Flexibility with everything outside of the definitions





- Easy Button Item...cut and paste BUT...
- Consider providing language re: factors considered in determining severe, pervasive, and objectively offensive
- Must also consider defining terms not provided in regulations
  - consent
  - incapacitation
  - coercion/force
  - reasonable person (defined in stalking)





SUPPORT

GUIDANCE

### What the Regulations Tell Us:

- Grievance Process is Prescriptive
  - If no Formal Complaint,
     MUST still offer
     supportive measures
  - Failure to do so =deliberate indifference



#### Supportive Measures

#### What

- defined term and intentional deviation from "interim measures" individualized services provided to a complainant or respondent that are non-punitive, non-disciplinary, and do not unreasonably burden the other party yet are designed to restore or preserve a person's equal access to education
- Non-disciplinary
- non punitive
- individualized services
- interactive process

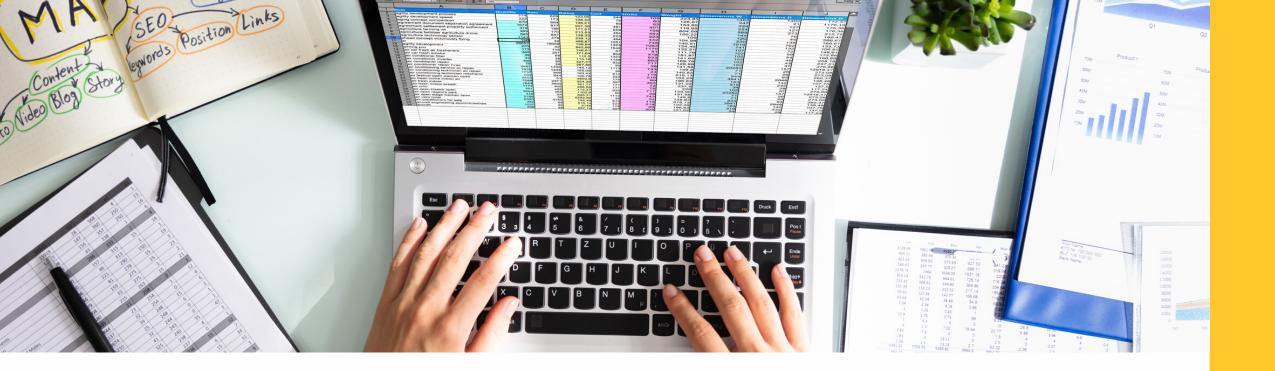
#### **Offered**

- to complainant and respondent (can be refused)
- as appropriate
- as reasonably available
- without fee or charge

#### When

- promptly
- before or after the filing of formal complaint **OR**
- where no formal complaint has been filed





- Documentation- Consider how Title IX Coordinators will document.
  - Compliance log
  - Continue to re-evaluate and re-address
- Not Offering= Deliberate
   Indifference





## What the Regulations Tell Us:

#### **MUST Dismiss if:**

- 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.
  \*May act under another provision of code of conduct

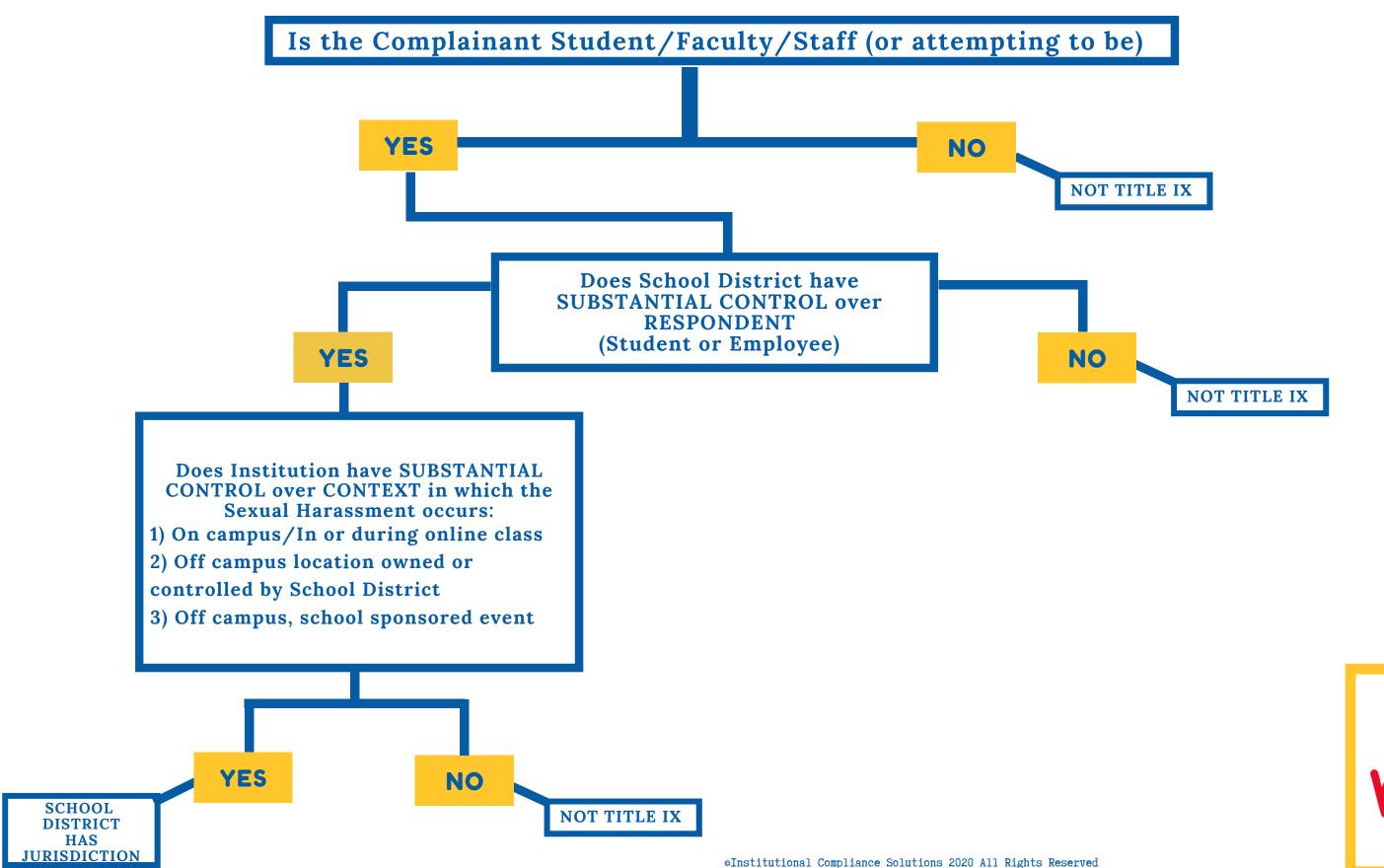
#### May Dismiss if:

- Complainant notifies Title IX Coordinator in writing that Complainant would like to withdraw formal complainant 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

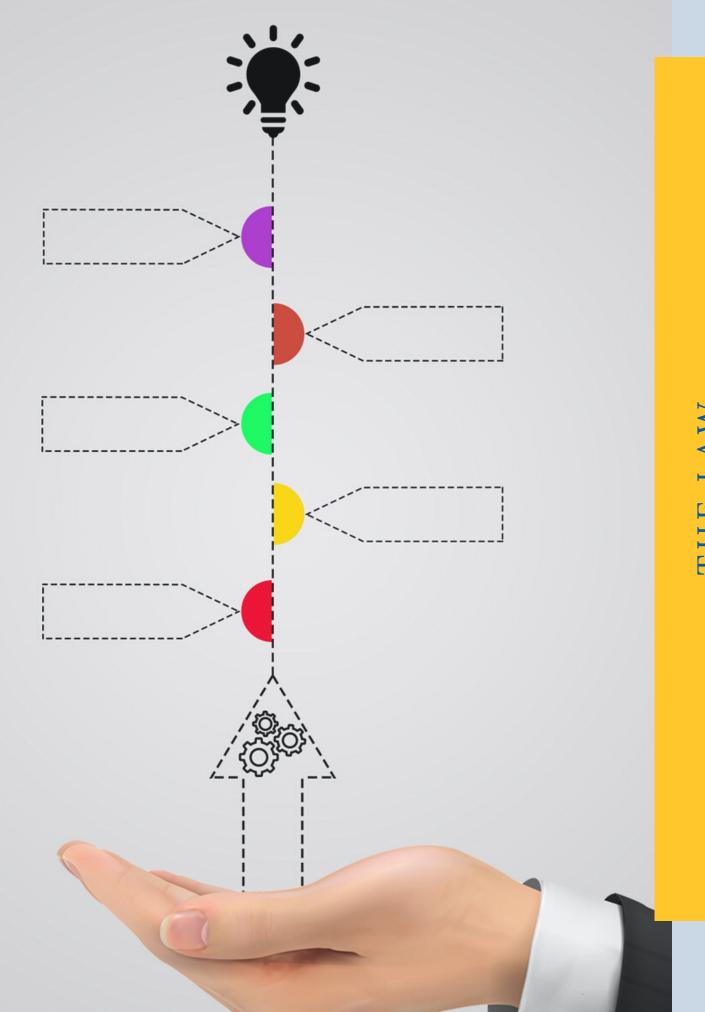
\*Must promptly send written notice of dismissal and reasons for dismissal simultaneously to parties



#### Jurisdiction/Education Program or Activity



COMPLIANCE SOLUTIONS



## What the Regulations Tell Us Continued:

- Formal Complaint
   Process- prescriptive
- Includes timelines





- Process flow charts
- Forms for each state of process
  - Referring Formal Complaint to Title IX Investigator
  - Notice of Allegations
  - Notice of meetings
  - Referral to Informal Resolution
  - Decision maker determinations





## WHAT THE REGULATIONS TELL US:

- Parents/Guardians potentially have a legal right to act on behalf of minor Complainants, Respondents, and/or Witnesses during a Title IX grievance process
- Entitled to an advisor regardless of whether parents or guardians are supportive/involved.



- Review State Specific rules/laws for parent involvement/ability to act on behalf of students
- Create forms and reminders to copy parents on communications/invite to interviews





### What the Regulations Tell Us:

- You have a choice regarding resolution and determination
- No Hearing?
- Live Hearing?
- Live Hearing under Regulations





- Decide on your resolution process
- Consider State Laws and Regulations
- Decision-Maker must be separate from Investigator





### What the Regulations Tell Us:

- Q & A is REQUIRED
  - Before reaching determination
  - By the Decision-Maker
  - Submit Written, RelevantQuestions
  - Provide each party with the answers
  - Allow for limited follow up questions



# RELEGIS

### What the Regulations Tell Us:

Relevancy
 Determinations





- Reflect the Q & A Process in your Resolution Option of choice/Policy
- Flow charts are extremely helpful





### What the Regulations Tell Us:

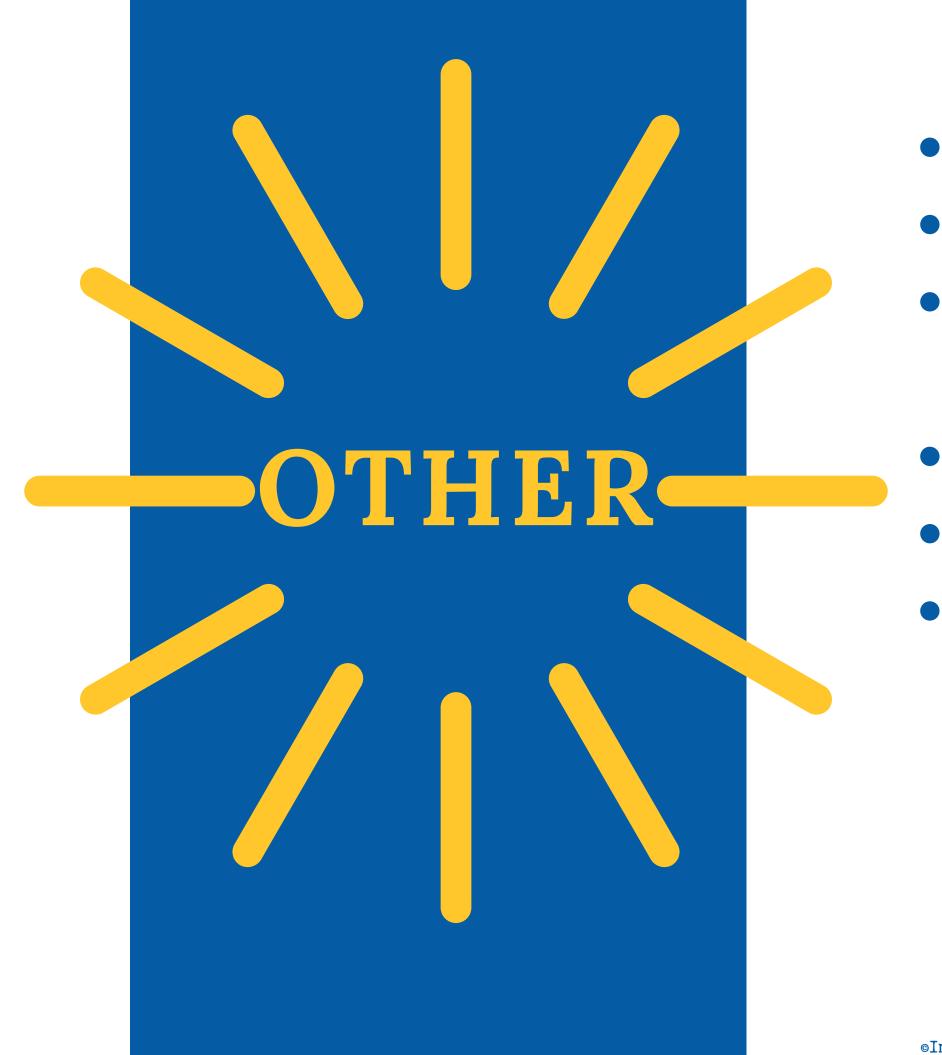
Training, Training,
 Training





- Individuals with Authority
- Train Title IX Coordinator, investigators, decision maker(s), advisors
- Maintain information on school district's website
  - o How will this look?
  - Third parties, on site, or both





- Retaliation
- ADA/IDEA/504 and Title IX
- Delay of Investigations Due to Law Enforcement
- Title VII and Title IX
- Online Harassment
- First
  Amendment/Academic
  Freedom





#### Questions?

#### How Can We HELP?

- Community Access
- Proposals for Policy
  Review/Drafting/Implementation
- Employee Training on LMS Platform
- Virtual Trainings
  - Title IX Coordinator
  - Investigator/Decision Maker
- K-12 Title IX Coordinator Facebook Group

#### DID YOU KNOW?

• There is Federal Grant Funding Available to help cover Title IX Training

