



# **Title IX Training: Requirements of the New Title IX Regulations (Part Two)**

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A Webinar Presented by Sara Leon & Associates, LLC

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## **Part 2: For Title IX Coordinators, Investigators, Decision-Makers and Facilitators under the New Title IX Regulations**



# Title IX Training for Title IX Coordinators, Decision-Makers, Investigators, and Facilitators

## ■ Let's review what we learned in Part I

- ☐ Changes to the definition of sexual harassment
- ☐ The scope of a school district's education program or activity
- ☐ When a district employee has actual knowledge of an allegation of sexual harassment, and
- ☐ District employees must report allegations to the Title IX Coordinator

# Today's Training:

## Why are we here today?

- ❑ New Title IX regulations impose requirements and procedures for public schools
- ❑ Requirements include specific roles:
  - ✓ Title IX Coordinator
  - ✓ Informal Resolution Facilitator
  - ✓ Investigator (discussed in Part III)
  - ✓ Decision-Maker



# **Today's Training: What Will You Learn?**

- ☐ Requirements for adoption and dissemination of new Title IX policy
- ☐ How to respond to a report of sexual harassment
- ☐ District's obligation to provide supportive measures
- ☐ Responsibilities of the Title IX Coordinator, Informal Resolution Facilitator, Investigator, and Decision-Maker
- ☐ An overview of the Title IX grievance process

# **Title IX Coordinator: What Will You Learn?**

- ☐ Responsibilities for coordinating district Title IX efforts
- ☐ Requirements to provide supportive measures
- ☐ An understanding of the Title IX grievance and investigative process
- ☐ Other roles in which Title IX Coordinator may or may not serve

# **Informal Resolution Facilitator: What Will You Learn?**

- ☐ When informal resolution is available to complainants and respondents
- ☐ Availability of supportive measures
- ☐ Approaches to informal resolution of complaints
- ☐ Title IX grievance and investigative process

# **Investigator: What Will You Learn?**

- ☐ How relevant evidence is identified
- ☐ How evidence is objectively evaluated
- ☐ An understanding of the Title IX grievance process
- ☐ Role of parties' advisors

# **Decision-Maker: What Will You Learn?**

- ☐ An understanding of the Title IX grievance process
- ☐ An understanding of what evidence is relevant and what is not
- ☐ How to objectively evaluate evidence and credibility
- ☐ Applying the standard of proof to determine responsibility
- ☐ An understanding of the Title IX appeals process

# Implementing the New Title IX Regulations: First Steps

## Designate Title IX Coordinator



The District must designate Title IX Coordinator(s) “to coordinate its efforts to comply with its responsibilities under this part”

- ☐ May be current Title IX coordinator
- ☐ Can designate more than one coordinator, but must ensure consistent application of policy
- ☐ For smaller districts, need not be full-time position

# Title IX Coordinator Requirements

Districts must have Title IX Coordinator at all times

- ☐ Must be referred to as “Title IX Coordinator” (even if they also have other roles or titles)
- ☐ If current coordinator leaves, is promoted, or retires, must name interim
  - Must also ensure interim coordinator receives training
- ☐ If only one coordinator is named, advisable to have deputy coordinator to serve as backup (and could have other roles, as discussed later)

# Implementing the New Title IX Regulations: First Steps

## **Publish Title IX Coordinator's Information**

- ❑ Notify all the following of the name or title, office address, electronic mail address, and telephone number of the Title IX Coordinator:
  - Applicants for admission and employment
  - Students
  - Parents or legal guardians of elementary and secondary school students
  - Employees
  - All unions or professional organizations holding collective bargaining or professional agreements with the school district

# Implementing the New Title IX Regulations: First Steps

- ❑ Refer to this employee as the “Title IX Coordinator” (plural if there are more than one).
- ❑ The Title IX Coordinator’s role is separate from that of the final Decision-maker in the new formal complaint process, so the District may want to assign this role of Title IX Coordinator to someone other than the Superintendent or other person who may be expected to make a determination as to responsibility or who may hear an appeal of the outcome of the matter.



# Role of the Title IX Coordinator

## What specific responsibilities do the new regulations assign to the Title IX Coordinator?

### 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 EDUCATIONAL PROGRAM OR ACTIVITY RECEIVING FEDERAL FINANCIAL ASSISTANCE.

The Title IX Coordinator must:

- ☐ Respond promptly to allegations of sexual harassment
- ☐ Inform a complainant that supportive measures are available (whether a formal complaint is filed or not)
- ☐ Inform a complainant of the right to file a formal complaint
- ☐ Explain to a complainant how a formal complaint may be filed
- ☐ Implement remedies after grievance process

# Implementing the New Title IX Regulations: First Steps

## **Adopt a Grievance Process and Disseminate New Policy**

The new regulations require that the District allow for the reporting of sex discrimination, including sexual harassment:

- ☐ By any person – whether or not the person reporting is the alleged victim.
- ☐ Through a variety of means – in person, by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinator – “or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report.”
- ☐ At any time – including during non-business hours (by telephone, e-mail, or by mail to the address listed for the Title IX Coordinator).

# Adopting Grievance Procedures and Board Policies

## ❑ The new process must provide for:

- the prompt and equitable resolutions of student and employee complaints alleging any action that would be prohibited by Title IX regulations, and
- a grievance process that complies with both the new definition of formal complaint and with the grievance process for such complaints as required by the new Title IX regulations.



# Title IX Grievance Process: Overview

## Overview of Requirements for the Grievance Process

- ❑ Treat complainants and respondents equitably.
- ❑ By providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent:
  - Such remedies must be designed to restore or preserve equal access to the District's education program or activities.
  - “Such remedies may include the same individualized services...described as “supportive measures;” however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.”
  - “And by following a grievance process that complies with this section before the imposition of any disciplinary sections or other actions that are not supportive measures” (as defined in the new regulations) against a respondent.

# Title IX Grievance Process: Requirements

- ☐ “Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the recipient (the District) may implement following any determination of responsibility;”
- ☐ **State whether the standard of evidence to be used to determine responsibility is the preponderance of evidence standard or the clear and convincing evidence standard;**
- ☐ Apply the same standard of evidence for formal complaints against student as for formal complaints against employees;
- ☐ Apply the same standard of evidence to all formal complaints of sexual harassment.

# Title IX Grievance Process: Requirements

- ✓ The Title IX Coordinator, Investigator, an Informal Resolution Facilitator or Decision-maker cannot have “a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.”
- ✓ To ensure compliance with the above requirement will be for the District to ensure that the individuals listed above have the training specifically required of them in the new regulations.

## **The District will be responsible for ensuring as follows:**

- ◆ Anyone who serves in any of the above four capacities receives training on:
  - The definition of sexual harassment;
  - The scope of the District’s education program or activity;
  - How to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, as applicable; and
  - “How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.”

# Title IX Grievance Process: Requirements

- ✓ “Include the procedures and permissible bases for the complainant and respondent to appeal;”
- ✓ “Not require, allow, rely upon, or otherwise use questions or evidence that constitute or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.”



# Title IX Grievance Process: Requirements

## Grievance Process must include Time Frames:

- ❑ Reasonably prompt time frames for the conclusion of the grievance process, including appeals, AND
- ❑ A process that allows for the temporary delay of the grievance process or limited extension of time frames for good cause
- ❑ When delay occurs, the district must provide written notice to the parties of the extension and the reasons for it
- ❑ Good Cause may be:
  - the absence of a party, a party's advisor, or a witness
  - concurrent law enforcement activity
  - the need for language assistance or disability accommodation

# Disseminating the New Policy

The District must also provide notice of the District's new grievance procedures, to all those entitled to notification of the Title IX Coordinator's contact information, including:

- ☐ How to report or file a complaint of sex discrimination;
- ☐ How to report or file a complaint of sexual harassment; and
- ☐ How the District will respond.

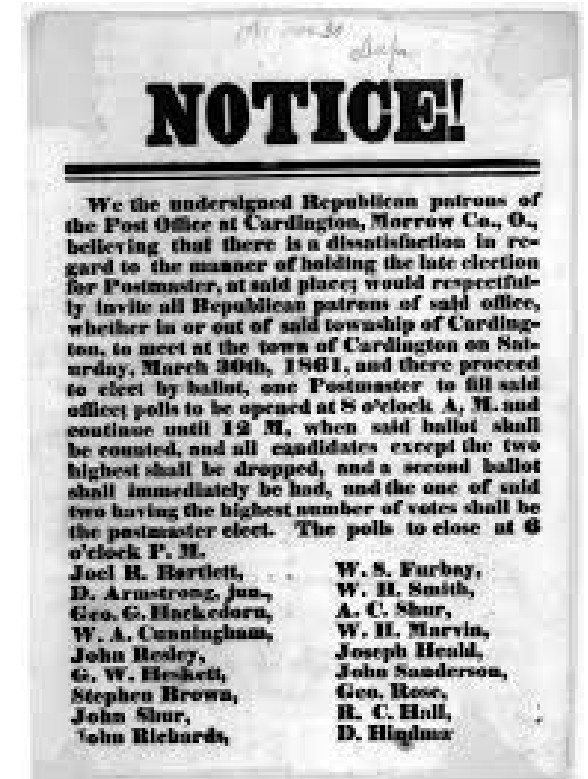


# Disseminating the New Policy

## Notice Requirements:

School districts must provide notice of their policy of non-discrimination. Notice must include that:

1. The District “does not discriminate on the basis of sex in the education program or activity that it operates,” in accordance with Title IX;
2. The District’s non-discrimination policy includes admissions as well as employment; and
3. Inquiries about Title IX may be referred to either the Title IX Coordinator or to the Assistant Secretary of Education.



# Posting Requirements



## POSTING Requirements:

The District is required to post all the contact information required for the Title IX Coordinator and the policy information referenced above as follows:

- ☐ On its website
- ☐ In any handbook that is made available to the persons entitled to a notification
- ☐ Make public its new grievance procedures, e.g., FFH (Local) with regard to student discrimination issues

# Training Program

- ❑ Training for Title IX Coordinators, investigators, decision-makers, and anyone who facilitates an informal resolution process must:
  - Define sexual harassment
  - Explain how to conduct an investigation and grievance process
  - **Promote impartial investigations**
  - Not rely on sex stereotypes



# Training Program

- ❑ Materials used to train those in the above roles must be made publicly available on the school district's website
- ❑ If the district does not maintain a website, the district must make these materials available upon request by members of the public



# Definition of Sexual Harassment

## What is new?

**Sexual harassment is expressly recognized as sex discrimination.**

❑ As you just heard, starting August 14, 2020, sexual harassment will be defined in regulation as any one of three categories of conduct:

- quid pro quo
- hostile environment
- sexual violence

❑ See 34 C.F.R. §106.30

# Definition of Sexual Harassment

“Sexual harassment” is defined in the new regulations as “conduct on the basis of sex that satisfies one or more of the following:”

- 1) **Quid pro quo:** A District employee conditioning the provision of an aid, benefit, or service of the District on an individual’s participation in unwelcome sexual conduct;
- 2) **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 District’s education program; or
- 3) **Sexual violence under law** [as defined in 20 U.S.C. § 1092(f)(6)(A)(v)].

# Two-Part Mandatory Response

## PART ONE

Response after actual knowledge  
("Report")

## PART TWO

Response after "Formal Complaint"



## Mandatory Response to Sexual Harassment

A School District with **actual knowledge** of sexual harassment:

- ☐ in **an education program or activity** of the District
- ☐ against a person in the United States
- ☐ must respond ***promptly*** in a manner ***that is not deliberately indifferent***

34 C.F.R. 106.44

# So...Where are we in the Response Process?

## Part 2: Response After a Formal Complaint

**Report of  
Sexual  
Harassment**

**Supportive  
Measures Offered  
to Complainant**

**Offer Formal  
Complaint Under  
District's Grievance  
Policy**

**Either Complainant  
or Title IX  
Coordinator Signs  
Formal Complaints**

**The District Must  
Investigate By  
Following A Grievance  
Process That Complies  
With the Title IX**

# Report of Sexual Harassment



# Responding to Complaints: Supportive Measures

**The Title IX Coordinator must offer supportive measures to a complainant before or after a formal complaint is filed, or where no formal complaint is filed**

**Supportive measures may also be provided to respondents**



**The new regulations define supportive measures as:**

- ☐ Non-disciplinary, non-punitive individualized services
- ☐ Offered as appropriate, as reasonably available, and without fee or charge
- ☐ Designed to restore or preserve equal access to the recipient's (the District's) education program or activity
- ☐ Without unreasonably burdening the other party

# Responding to Complaints: Supportive Measures

Supportive measures may include any of the following:

- ☐ Counseling
- ☐ Extensions of deadlines or other course-related adjustments
- ☐ Modifications of work or class schedules
- ☐ Campus escort services
- ☐ Mutual restrictions on contact between the parties
- ☐ Changes in work locations
- ☐ Leave of absence
- ☐ Increased security and monitoring of areas of campus
- ☐ Other similar measures



# Title IX Grievance Process: Emergency Removal

Includes in supportive measures where a district believes a respondent poses a threat, it may remove the respondent on an emergency basis, provided the district:

- ✓ Undertakes an individualized safety and risk analysis
- ✓ Determines that an immediate threat to the physical health or safety of any student or other individual **arising from the allegations of sexual harassment** justifies removal, AND
- ✓ Provides the respondent with notice and an opportunity to challenge the decision



# Title IX Grievance Process: Emergency Removal

Generally, emergency removal is a high standard to meet.

Emergency removal does not affect student rights under IDEA, Section 504, or the ADA.

Students identified under IDEA or 504 could be removed for up to 10 days without an ARD or 504 committee meeting.

Also consider the district's threat assessment process under SB11.



# Responding to Complaints: Scenario

## **Scenario: AP English Class**

Jane and Johnny are both high school seniors taking AP English together in the only AP English class offered. Jane brings a formal complaint that Johnny engaged in dating violence when she told him she wanted to break up. She says she is scared and asks what supportive measures are available.

**How should the Title IX Coordinator address supportive measures?**

**How could the Title IX Coordinator determine whether emergency removal is appropriate?**



# **Title IX Coordinator Offers Complainant Opportunity to File a Formal Complaint**



# Grievance Process: Formal Complaints

## What is a formal complaint?

**According to the regulations, a formal complaint is a document that:**

- ☐ Alleges sexual harassment against a respondent and **requests that the District investigate the allegation of sexual harassment**
- ☐ Filed by a complainant or signed by the Title IX Coordinator

# Grievance Process: Formal Complaints

## What are the Requirements for a Formal Complaint?

### Important Details Regarding Formal Complaints:

- ☐ Must contain the complainant's signature, or otherwise indicate that the complainant is the person filing the formal complaint
- ☐ Complainant must be participating in or attempting to participate in District's education program or activity
- ☐ A formal complaint may be filed in person, by mail or by email, or "by any additional method designated" by the District

# Grievance Process: Formal Complaints

## Who May Sign a Formal Complaint?

- ☐ Parents or guardians may file a formal complaint on behalf of a student
- ☐ When complainant declines or refuses to sign a formal complaint:
  - In some instances, Title IX Coordinator may sign a formal complaint
  - Required where not doing so would be “clearly unreasonable in light of the known circumstances”
  - In those instances, the Title IX Coordinator is not considered a complainant

# Title IX Grievance Process: Dismissal

## The District must dismiss a formal complaint if the conduct alleged:

- ☐ Would NOT constitute sexual harassment, even if proved
- ☐ Did not occur in the District's education program or activity
  - Remember: education program or activity = locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs
  - Texas Law may include cyberbullying that occurs off campus
- ☐ Or did not occur against a person in the United States
  - Then the District must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX
  - Title IX Coordinator in conjunction with Decision-Maker
  - Please: A Decision-Maker should dismiss the complaint

# Title IX Grievance Process: Dismissal

**BUT: Dismissal does not preclude or excuse the District from taking action under another provision of its Code of Conduct, or other grievance policies.**

## **Permissive Dismissals**

District may dismiss the formal complaint or any allegations therein if at any time during the investigation or hearing if:

- a. A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
- b. The respondent is no longer enrolled or employed” by the District; or
- c. “Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.”

# Title IX Grievance Process: Dismissal

## Notice and Appeal

- a. When dismissing a formal complaint (whether a required dismissal or permitted dismissal), the District must promptly send written notice of the dismissal and reason(s) for it to the parties
- a. A party may appeal dismissal of a formal complaint
- a. Bases for appeal of dismissal include:
  - Procedural irregularity
  - New evidence
  - Bias or conflict of interest
  - Any other bases offered by the district



# Title IX Grievance Process: Formal Complaints

Where allegations involve the same set of facts or circumstances, the Title IX Coordinator may consolidate formal complaints:

- ☐ Involving allegations of sexual harassment against more than one respondent, OR
- ☐ by more than one complainant against one or more respondents, or by one party against the other party.

## Consolidation of Formal Complaints



# Title IX Grievance Process: Notice of Allegations

## Notice of Allegations:

**Must Provide Sufficient  
Written Notice of the  
Allegations**

### The Title IX Coordinator must provide:

- ☐ Notice of the allegations potentially constituting sexual harassment;
- ☐ Including sufficient details (known at the time); and
- ☐ Allowing sufficient time to prepare a response before any initial interview.

### Sufficient details include as follows:

- ☐ Identities of the parties involved in the incident, if known;
- ☐ The conduct allegedly constituting sexual harassment; and
- ☐ The date and location of the alleged incident, if known.

# Title IX Grievance Process: Notice of Allegations

## Notice of Allegations:

## Other Required Elements

- ☐ State that the respondent is initially presumed not responsible for the alleged conduct.
- ☐ Inform the parties that:
  - they may have an advisor, and
  - may inspect and review evidence.
- ☐ Inform the parties of any code of conduct provision that prohibits knowingly making false statements during the grievance process.
- ☐ If the district, during an investigation, decides to investigate allegations that are not in the initial written notice, the District must provide notice of those new allegations to the parties.

# Title IX Grievance Process: Advisors

## May a Complainant or Respondent Have an Advisor or Attorney Present?

- ☐ Parties may have advisor of their choosing present during grievance proceeding
- ☐ Districts may not limit the choice or presence of advisor for either the complainant or respondent
- ☐ District restrict the extent to which the advisor may participate in the proceedings
- ☐ Advisor restrictions must apply to both parties

# Title IX Grievance Process: Other Issues

## Free Speech



Districts **may not restrict** the parties' ability to:

- ☐ Discuss the allegations under investigation;
- ☐ To gather and present relevant evidence.

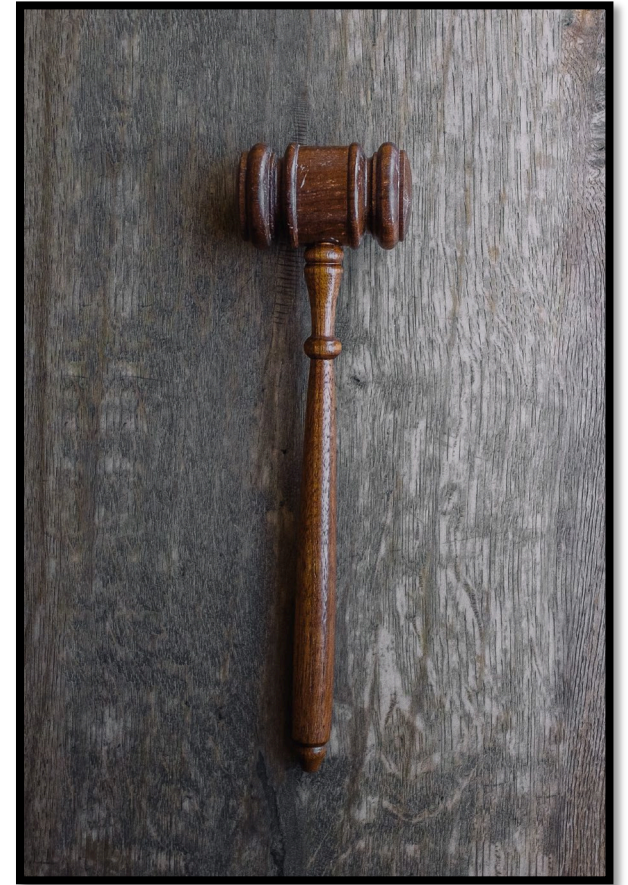
# Role of the Decision-Maker



# Role of Decision-Maker: Overview

## Decision-maker is responsible for:

- ☐ Managing parties' opportunity to ask questions as part of grievance process
- ☐ Evaluating the investigative report
- ☐ Conducting live hearing (if applicable)



# Role of Decision-maker: Written Questions

## For districts not conducting a hearing:

AFTER the District has sent the parties a copy of the investigative report and BEFORE reaching a determination regarding responsibility,

- ✓ The Decision-maker(s) must:
  - Afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness
  - Provide each party with the answers, and
  - Allow for additional, limited follow-up questions from each party
  - If the Decision-Maker excludes a question as not relevant, he or she must provide an explanation to the party

# Role of Decision-Maker: Overview

## Decision-maker is also responsible for:

- ☐ Reaching findings of fact and conclusions based on investigative report and parties' questions
- ☐ Determining whether a respondent is found responsible
- ☐ Producing a written determination and providing to both parties at the same time



# Role of Decision-Maker: Determining Credibility

When evaluating the credibility of the complainant, respondent, or any witnesses, the Decision-Maker:

- ☐ May not make credibility determinations based on a person's status as complainant, respondent, or witness.
- ☐ Should identify corroboration of relevant details, where possible.
- ☐ Must consider evidence relating to credibility in investigative report:
  - For example, information indicating a party provided differing explanations to the same question successive interviews;
  - Also taking into account that valid reasons may exist for apparent lack of consistency.
- ☐ Evaluate complainant, respondent, and witness statements for internal and external consistency.



# Role of Decision Maker: Evaluating Evidence



When evaluating the credibility of the complainant, respondent, or any witnesses, the decision-maker should:

- ☐ Approach investigative report objectively, without prejudging the parties
- ☐ Consider all inculpatory and exculpatory evidence
- ☐ If district is conducting live hearings, the decision-maker would need to receive training on any technology to be used at a live hearing



# Role of Decision Maker: Evaluating Evidence



In evaluating the complainant's credibility, the decision-maker should **avoid considering a complainant's prior sexual history**, unless:

- ☐ Questions and evidence are offered to prove that someone other than the respondent committed the alleged conduct, or
- ☐ Questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.



# Role of Decision-Maker: Overview

## A Written Determination should:

- ☐ Identify allegations
- ☐ Describe procedural steps taken in grievance process
- ☐ Include Statement of facts
- ☐ Apply code of conduct
- ☐ State finding for each allegation, according to adopted standard of proof, **including rationale**
- ☐ Describe bases for appeal



# Title IX Grievance Process: Determining Responsibility

The District must provide the written determination to the parties simultaneously.

The determination regarding responsibility becomes final:

- ☐ If an appeal is filed: “on the date that the recipient (the District) provides the parties with the written determination of the result of the appeal.”
- ☐ If an appeal is NOT filed: “on the date on which an appeal would no longer be considered timely.”

# Title IX Grievance Process: Informal Resolution

**The District may not require parties to participate in an informal resolution process**

**Districts may not:**

- ☐ “Require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section;”
- ☐ “Require the parties to participate in an informal resolution process;” or
- ☐ “Offer an informal resolution process unless a formal complaint is filed.”

**However, Districts may:**

- ☐ “At any time prior to reaching a determination regarding responsibility the recipient (the District) may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication.”

# Title IX Grievance Process: Informal Resolution

- ❑ Districts must provide to the parties a written notice disclosing:
  - the allegations,
  - the requirements of the informal resolution process including:
  - the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations,
  - that at any time prior to agreeing to a resolution, any party has the right to withdraw and resume the grievance process, and
  - any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- ❑ Obtains the parties' voluntary, written consent to the informal resolution process; and
- ❑ Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

# Title IX Grievance Process: Live Hearings

School Districts are **not required** under the new Title IX regulations to hold a live hearing. Should a District choose to provide a hearing, several procedural requirements will be required and the Decision-maker will need to make certain judgments:

- ❑ “The Decision-maker must permit each party’s advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.”
- ❑ Cross-examination at a hearing must be conducted “directly, orally, and in real time by the party’s advisor of choice and never by a party personally.”
- ❑ At the request of either party, a district must provide for a hearing to occur with the parties located in separate rooms, with technology enabling the Decision-maker and parties to simultaneously see and hear the party or witness answering questions.

# Title IX Grievance Process: Live Hearings

- Only relevant cross-examination and other questions may be asked of a party or witness.
- BEFORE a complainant, respondent, or witness answers a cross-examination or other question, the Decision-maker(s) must
  - First determine whether the question is relevant and
  - Explain any decision to exclude a question as not relevant.
- If a party does not have an advisor present at a hearing, the district must provide an advisor without fee or charge to conduct cross-examination on behalf of that party.
- Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant,
  - Unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
  - Or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent."

# Title IX Grievance Process: Live Hearings

- ✓ A Decision-maker CANNOT rely on any statement of a party or witness that does not submit to cross-examination in reaching a determination regarding responsibility:
  - Hearings may be conducted with all parties physically present in the same geographic location or,
  - At the District's discretion,
  - Any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.”
- ✓ Districts holding hearings must create audio or audiovisual recordings, or a transcript, of the hearing and make it available to the parties.

# Title IX Grievance Process: Appeals

**Districts must allow for appeal of a grievance process determination by either the complainant or respondent**

With all appeals, the District must:

- ❑ “Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- ❑ Ensure that the Decision-maker(s) for the appeal is not the same person as the Decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator; and
- ❑ Ensure that the Decision-maker(s) for the appeal complies with the standards” in the Title IX regulations regarding training requirements and the absence of a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.



# Title IX Grievance Process: Appeals

In addition, the district must:

- ☐ Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome of the grievance process;
- ☐ Issue a written decision describing the result of the appeal and the rationale for the result; and
- ☐ Provide the written appeal decision simultaneously to both parties.



# Title IX Grievance Process: Appeals

## Appeals may be taken:

- ☐ In any of the following instances:
  - a determination of responsibility, or
  - the dismissal of a formal complaint
  
- ☐ On the following bases:
  - Procedural irregularity that affected the outcome of the matter;
  - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
  - The Title IX Coordinator, investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.”
  - A district may offer appeal on additional bases at its discretion.

# Recordkeeping Requirements

(1) The District must maintain for a period of seven years records of:

- A. “Each sexual harassment investigation including
  1. any determination regarding responsibility,
  2. any audio or audiovisual recording or transcript required under” the section on hearings (as required of postsecondary institutions but not elementary and secondary schools);
  3. any disciplinary sanctions imposed on the respondent, and
  4. any remedies provided to the complainant designed to restore or preserve equal access to the recipient’s education program or activity.
- A. Any appeal and the result therefrom;
- A. Any informal resolution and the result therefrom; and
- A. All material used to train Title IX Coordinators, investigators, Decision-makers, and any person who facilitates an informal resolution process.”
  1. The District must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.”

# Recordkeeping Requirements

- (2) Also, for each response required of the District under §106.44 (Recipient's Response to Sexual Harassment), the District must create and maintain for a period of seven years.
- ✓ Records of any actions, including any supportive measures, taken in response to:
    - a report, or
    - formal complaint of sexual harassment.
  - ✓ In each instance, the District “must document:
    - The basis for its conclusion that its response was not deliberately indifferent, and
    - That it has taken measures designed to restore or preserve equal access to the recipient's education program or activity.”
  - If the District “does not provide a complainant with supportive measures, then the recipient (the District) must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the recipient (the District) in the future from providing additional explanations or detailing additional measures.”

# Retaliation Prohibited

Districts may not retaliate against any party for complaining, assisting, participating, or refusing to participate in an investigation or grievance process.

Notably, the regulations limit districts from charging students with code of conduct violations when the violation arises from the same facts underlying a complaint of sexual harassment:

“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 of 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.”

34 C.F.R. § 106.71

# Retaliation Prohibited

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 formal complaint of sexual harassment,
- any individual who has been reported to be the perpetrator of sex discrimination,
- any respondent,
- any witness, and
- except as may be permitted by the FERPA statute, 20 USC 1232 g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

# Retaliation Prohibited

## COMPLAINTS OF RETALIATION:

“Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination required to be adopted under §106.8(c).”

## SPECIFIC CIRCUMSTANCES:

- “The exercise of rights protected under the First Amendment does not constitute retaliation prohibited” under this section.
- 
- Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute prohibited retaliation,
- However, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.”

# Questions?

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