



# Understanding Title IX: New Regulations and Responsibilities

*Presented to the  
Letchworth CSD*

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# Title IX

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- Title IX of the Education Amendments of 1972 (20 U.S.C. §1681(a)):
  - No person in the United States shall, on the basis of sex, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance
- Requires schools to take appropriate steps to address sex discrimination, including sexual harassment
  - Respond promptly and in a manner that is not deliberately indifferent



# Title IX – Recent History

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- 2011 and 2014 – *Dear Colleague Letters* served as guidance
- 2017 – Trump Administration rescinds previous guidance and issues new guidance re: addressing sexual misconduct
- 2018 – US DOE proposes new Title IX Regulations
- May 6, 2020 – new Title IX Regulations are finalized.
  - Most significant changes to Title IX in several years
- August 14, 2020 – new regulations went into effect
- June 16, 2021 – US DOE issues notice of interpretation





# TITLE IX REGULATIONS

## General Overview and Title IX Team

# Sexual Harassment Definition

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- Includes three types of misconduct on the basis of sex:
  - (1) *Quid Pro Quo* harassment by an employee – i.e. conditioning an educational benefit or service upon participation in unwelcome sexual conduct
  - (2) Unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity;
  - (3) Sexual assault, dating violence, domestic violence, or stalking

# School District Obligations: Overview

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- Required to respond whenever an employee has actual knowledge of sexual harassment or allegations of sexual harassment
  - Applies to ANY employee
  - Actual knowledge is when an employee “has notice of sexual harassment or allegations of sexual harassment.”
- Important terms:
  - Complainant = alleged victim, regardless of who reports the conduct
  - Respondent = alleged perpetrator



# Actual Notice, Examples

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- An employee observes or witnesses sexual harassment
- An employee is told that sexual harassment occurred by the complainant, the complainant's parents, or another third party
- An employee receives a voicemail, email or any other written or verbal communication alleging sexual harassment has occurred.

# Reporting: Who and How?

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- Any person may report sexual harassment under Title IX including:
  - The complainant student
  - Employee
  - The complainant's parent or guardian
  - A third party
- Reports can be made in-person or via mail, email or telephone to the Title IX Coordinator
- Reports can be made at any time



# Title IX Team

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- Key players:
  - Title Coordinator(s)
  - Investigator
  - Decision-Maker
  - Informal Resolution Facilitators
  - Appeal Designee
- Appointment of multiple individuals

Letchworth CSD

# Title IX Team

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Position	Scope of Responsibility	Notes
Title IX Coordinator	Responsible for handling initial report, meeting with complainant, initiating formal complaints, implementing supportive measures as necessary, general oversight of policy and grievance process to ensure compliance.	Recommend appointing two Title IX Coordinators, preferably one male and one female, if possible.
Investigator	Investigates, gathers evidence, and drafts investigation report.	As a best practice, the investigator should not be the Title IX Coordinator.
Decision Maker	Evaluates evidence, reviews investigation report and related responses/questions, issues a written determination regarding responsibility.	Cannot be the Title IX Coordinator or Investigator.
Appeal Designee	Responsible for issuing written determination on an appeal, if any.	Cannot be the Title IX Coordinator, Investigator, or Decision Maker.

# Title IX Coordinator

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- At least one employee must serve as the Title IX Coordinator, who ensures compliance with regulations and receives complaints
- Must publish contact information for the Title IX Coordinator(s): name/title, office address, email address, and telephone number
  - District website
  - Student/Employee Handbooks
  - Email to employees/unions
  - Notify parents/guardians



# Duties of Title IX Coordinator

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- Compliance with Title IX and District policy
- Receives reports or formal complaints of sex discrimination/harassment and coordinates response to same
- Identifies and implements supportive measures, as necessary
- Coordinates assignment of persons to fulfill Title IX roles
- Record keeping
- Training



# Investigator

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- Must be trained per Title IX
- District employee, legal counsel, other third party
- Cannot have a conflict of interest or other prohibited bias
- Cannot be part of the decision-making process
- Oversees the prompt, thorough gathering of all facts and evidence in connection with a formal complaint

# Decision Maker

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- CANNOT be the Title IX Coordinator or the investigator
- Responsible for reviewing the “investigative report”
- Responsible for drafting a “written determination regarding responsibility”
- Preponderance of evidence standard
- Must be free from bias and conflicts of interest



# Informal Resolution Facilitator

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- Serves as a mediator and oversees the informal resolution process, if voluntarily agreed to by both parties
  - Note: informal resolution not available for allegations that an employee sexually harassed a student
- Must be impartial, unbiased and free from conflict

# Appeal Designee

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- Cannot be the Title IX Coordinator, investigator or Decision-Maker
- Free of any conflict of interest
- Reviews the appeal, written statements in response to the appeal, and the underlying record in rendering a written decision





# DISTRICT RESPONSE & INVESTIGATIONS

# Initial Response

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- All reports of sexual harassment should be forwarded to Title IX Coordinator
- Upon receipt, Title IX Coordinator must contact Complainant as soon as reasonably possible to discuss:
  - Potential supportive measures, with or without filing a formal complaint, and must consider Complainant's wishes regarding supportive measures
  - Explain process for filing formal complaint
- Evaluate threshold questions under Title IX
- “Formal Complaint” – document containing allegations of sexual harassment and requesting investigation



# Supportive Measures

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- Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonable available, without fee or charge to the parties, with or without filing a formal complaint
- Designed to restore or preserve equal access to education, protect safety, or deter sexual harassment without unreasonably burdening the other party
  - Counseling, extensions of deadlines, modifications of work or class schedules, restrictions on contact between individuals
- Confidential to the extent it will not impair the District's ability to provide supportive measures.



# Supportive Measures

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- Must document and record actions taken in response to report of sexual harassment, including:
  - Supportive measures provided, if any;
  - Explanation as to why the District's response was not deliberately indifferent;
  - That the District took measures designed to restore or preserve equal access to the District's education program or activity; and
  - If no supportive measures were offered, explanation as to why that was not clearly unreasonable based on the circumstances
- Seven (7) year retention period for the above records



# Emergency Removals

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- Regulations permit removing a respondent student from the education program or activity on an emergency basis if:
  - The District undertakes an individualized safety and risk analysis; and
  - As a result of that analysis, the District determines that an immediate threat to the physical health or safety of any students or other individuals arising from allegations of sexual harassment justifies removal; and
  - District provides respondent with notice and an opportunity to challenge the decision immediately following the removal.
- Must comply with the IDEA and any applicable IEP or 504 plan
- Not considered “disciplinary”
- Respondent employees may be placed on administrative leave



# Formal Complaint

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- A formal complaint is a document filed by a complainant (or parent/guardian acting on behalf of a complainant) or signed by the Title IX Coordinator
- A formal complaint triggers the grievance process
  - Note: Complainant's participation in education program or activity at time of filing
- Once filed, must complete grievance process before imposing disciplinary action
- When should the Title IX Coordinator consider filing a formal complaint?
  - Must balance against the Complainant's wishes



# Formal Complaint & Response

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- If formal complaint is filed, the District must evaluate whether it falls within the scope of Title IX:
  - Did the reported incident occur against a person in the United States?
  - Did the reported incident occur in the context of an “education program or activity”
  - Is the Complainant participating or attempting to participate in the District’s education program or activity at the time of filing?
  - Does the alleged conduct constitute sexual harassment as defined by Title IX?

# “Education Program or Activity”

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- “Includes “locations, events, or circumstances over which the [school district] exercised substantial control over both the respondent and the context in which the sexual harassment occurs”
- On or off campus is not dispositive but should be considered when evaluating whether “substantial control” exists
- Potential basis for dismissal?



# Written Notice of Allegations

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- After formal complaint is received, Title IX Coordinator must provide notice to ALL parties of:
  - The District's grievance process, including any informal resolution process;
  - The allegations potentially constituting sexual harassment – “sufficient details” and “sufficient time” requirements;
  - Respondent is presumed not responsible and determination will be made at conclusion of grievance process
  - Parties are entitled to advisor of their choice;
  - Parties may request to inspect and review evidence;
  - Any provision in the District's Code of Conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

# Additional Obligations Upon Receipt of Formal Complaint

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- Title IX Coordinator must contact Complainant to discuss/offer supportive measures
  - May contact Respondent regarding same
- If not involved in preparing the formal complaint, Title IX Coordinator must contact and discuss allegations with Complainant
  - If amendment is appropriate, must notify parties
- If formal complaint sufficient to sustain a finding of sexual harassment, proceed to designate investigator and decision-maker



# Informal Resolution Process

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- Only AFTER a formal complaint has been filed, District may offer optional informal resolution
- Both parties must give voluntary, informed written consent to participate
- Investigation placed on hold
- Written notice requirements
- A party can decide at any time before final determination to no longer proceed with informal resolution process, and resume grievance process
- Informal resolution NOT available for sexual harassment claims by employees against students
- Cannot require waiver of formal investigation as condition of IRP
- Process must be managed by an Informal Resolution Facilitator who must be trained, unbiased and impartial.
- 15 business days





# Investigations

# Purpose of Investigations

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- Gather relevant facts and relevant evidence
  - What happened?
  - What were the circumstances?
  - Who was involved?
  - Who, what, where, when, why and how?
- Investigation is used to determine whether sexual harassment occurred in violation of Title IX, and to provide basis for determination on responsibility
- Burden to gather evidence and proof rests on the District, not the parties.
- Failure to carry out adequate investigation may lead to potential liability



# Designating Investigator

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- Investigator must be Title IX trained
- Investigator must gather and objectively evaluate all relevant evidence, without prejudgment of facts
  - Complainant's sexual predisposition/prior sexual behavior
- Investigator must be free from conflicts of interest or bias against either party
  - Assess relationship, if any, between the parties and the investigator – will objectivity be compromised?
  - Is there any potential bias, or the appearance of bias?
  - Does investigator have interest in the outcome?
  - Cannot be part of the decision-making process



# Investigation Process

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- Must provide an equal opportunity for both parties to present witnesses and evidence
  - Follow up on all identified witnesses who may have relevant evidence
- Must allow the parties to have an advisor of their choosing present at any interviews or meetings
- Must provide advance written notice of any meetings or interviews so that the party has sufficient time to prepare

# Conducting Interviews

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- Listen objectively and without personal bias
- Focus on facts and relevant details
- Use open-ended questions:
  - “What happened?” versus “Isn’t it true that \_\_\_\_\_?”
- Ask follow-up questions to get a complete understanding of the relevant facts and information
- Avoid premature conclusions / credibility
- Note-taking



# Conducting Interviews – Errors to Avoid

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- Failure to interview all witnesses with relevant information
- Unreasonable delays
- Failure to listen and engage during interviews
- Hasty interviews
- Advisor participation
- Silence cell phones and put them away

# Potential Dismissal of Complaint

- The investigation may lead to information that **requires** dismissal:
  - Events occurred outside of U.S.
  - Conduct did not occur in educational program or activity
  - Conduct does not constitute Title IX sexual harassment
- May also lead to information that **permits** dismissal:
  - In writing, Complainant withdraws his or her formal complaint
  - Respondent is no longer enrolled in or employed by the school district
  - Specific circumstances prevent the school district from gathering evidence sufficient to reach a determination
- Must provide parties written notice of a dismissal (mandatory or discretionary) and reasons for dismissal
- \*NOTE: district may need to address under other policies or Code of Conduct\*



# Investigative Report

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- Before completing report, Title IX Coordinator must:
  - Send to each party (including advisors, if any) all evidence directly related to the allegations, electronically or hard copy
  - Provide the parties 10 business days to submit a written response
- Investigator must consider any written responses before completing his/her investigative report

# Investigative Report

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- Required contents of investigative report:
  - Fairly summarize relevant evidence directly related to the allegations
  - Identify allegations potentially constituting sexual harassment
  - Describe all procedural steps from receipt of formal complaint
  - Address witness credibility issues, if any
- Once completed, investigative report must be sent to Title IX Coordinator, who then sends it to each party (and advisors, if any) and the decision-maker, and notifies the parties in writing that they have specified time frame in which to:
  - Submit written response to the report
  - Submit written, relevant questions that the party wants asked of any party or witness
  - Submit response or questions to the decision-maker, with his/her contact information

# Decision-Making Process

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- Decision-maker reviews investigative report and any written responses, and handles any questions
- Decision-maker may exclude irrelevant questions but must explain any such decisions
- Cannot make credibility determinations based on status as complainant, respondent or witness
- Respondent must be presumed not responsible until determination regarding responsibility is made
- Preponderance of evidence standard
- Decision-maker must issue written determination within 15 business days after close of period for last round of follow-up questions



# Written Determination re: Responsibility

- Required contents:
  - Identification of the allegations potentially constituting sexual harassment
  - Description of procedural steps
  - Findings of fact supporting the determination
  - Conclusions regarding application of Code of Conduct or other policies to the facts
  - Statement of, and rationale for, the result as to each allegation, including:
    - Whether or not Respondent is responsible for sexual harassment
    - Disciplinary sanctions or remedies to be imposed or recommended
    - Any other remedies designed to restore/preserve equal access to District's education program or activity
  - Procedures/grounds to appeal
- Written determination is provided simultaneously to the parties, Title IX Coordinator and Superintendent



# Appeals

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- Either party may appeal a determination (or dismissal) on the following grounds:
  - 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;
  - 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.



# Appeals

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- 10 business days to file appeal, in writing, to Title IX Coordinator
- Title IX Coordinator notifies all parties in writing of the appeal and related deadlines, as well as the individual who will decide the appeal
- 10 business days to submit written response to the appeal to the Title IX Coordinator and appeal designee
- Appeal designee considers the record and information submitted on appeal
- Written decision by appeal designee:
  - Issued within 15 business days after receiving the parties' written statements in support of, or challenging, the outcome
  - Describe result of appeal and rationale
  - Grant or deny appeal, in whole or in part, or refer appealed issue back to grievance process if appropriate
    - Written decision provided simultaneously to both parties and Title IX Coordinator
- Determination regarding responsibility becomes final upon issuance of appeal decision, or upon expiration of deadline to appeal





# Timeframe of Grievance Process

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- Regulations require “reasonably prompt timeframes for conclusion of the grievance process”
- 60-90 calendar days
- Potential delays or extensions of time
  - “Good cause”
- Any deadline that is extended must be communicated in writing to the parties with the reason for the extension



# Retaliation Prohibited

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- Retaliation against any person for exercising their rights under Title IX is **prohibited**.
- Applies to acts against complainants, witnesses, or any other individual involved with reporting allegations or participating in the investigation that interfere with Title IX rights or privileges
- Cannot discipline an individual for conduct that arises out of the same facts or circumstances as the alleged sexual harassment as a means of interfering with Title IX rights
- BUT, not retaliatory to discipline for submitting materially false statements or information in bad faith during the course of the grievance process
- Confidentiality



# QUESTIONS?

# THANK YOU

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