

**TITLE IX COMPLIANCE:  
COORDINATOR BASICS**

FEBRUARY 14, 2022  
1:00 PM – 3:00 PM




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**ROADMAP**

- Overview of Title IX
- Evolution of Title IX
- 2020 Amendments
  - Definitions
  - Personnel
  - Responding to Sexual Harassment – Actual Knowledge vs. Formal Complaint
  - Investigating Complaints
  - Title IX Grievance Process

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**A FEW NOTES...**

- Harassment is a form of discrimination and the terms are used interchangeably throughout these materials.
- Recipient means recipient of federal assistance (i.e., school districts).
- The information included in this presentation is provided for educational purposes only. We recommend that you consult with legal counsel on any specific issues in order to fully understand the available options and potential ramifications.

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**OVERVIEW OF TITLE IX**  
 OVERVIEW OF TITLE IX

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**TITLE IX (20 USC SECTION 1681 ET SEQ)**

***“No person in the United States on the basis of sex shall 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.”***

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**TITLE IX – BREAKING IT DOWN**

- No person in the United States
- On the basis of sex
- Shall be excluded from participation, denied benefits, or subjected to discrimination
- Under any education program or activity
- Receiving federal financial assistance

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### TITLE IX – BREAKING IT DOWN

Who is an “education program or activity receiving federal financial assistance”?

This means school districts (i.e., *you*)



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### EVOLUTION OF TITLE IX

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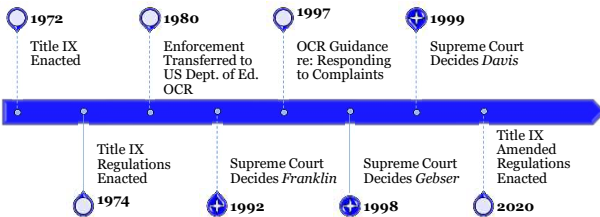
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### EVOLUTION OF TITLE IX



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### TITLE IX & SCHOOL DISTRICTS

- **Franklin v. Gwinnett County Public Schools (1992)** – Supreme Court held that monetary damages available to students subjected to sexual harassment.
- **Gebser v. Lago Vista Independent School District (1998)** – Supreme Court held school district liable for teacher on student sexual harassment where district was deliberately indifferent after actual notice of harassment.
- **Davis v. Monroe County Board of Education (1999)** – Supreme Court held school district liable for student on student sexual harassment where district was deliberately indifferent after actual notice of harassment.

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### 2020 AMENDMENTS

- **May 6, 2020** – US Dept. of Ed., Office of Civil Rights (OCR) released amendments to the Title IX regulations.
- **August 14, 2020** – Amended regulations effective.
  - Prior to the 2020 Amendments the Title IX regulations did not refer to sexual harassment.
  - Established definitions were found in caselaw (e.g., Gebser, Davis, etc.) and OCR guidance.
  - 2020 Amendments define sexual harassment and establish detailed procedures for responding to allegations.

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### 2020 AMENDED REGULATIONS

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## 2020 AMENDMENTS

### Definition of Sexual Harassment:

Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:

- Conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (i.e., quid pro quo);
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to education programs or activities (i.e. hostile environment); or
- Sexual assault, dating violence, domestic violence, or stalking.

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## TYPES OF SEXUAL HARASSMENT

- Quid Pro Quo
- Hostile Environment
- Violence Against Women's Act
  - Sexual Assault
  - Domestic Violence
  - Dating Violence
  - Stalking

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## QUID PRO QUO SEXUAL HARASSMENT

- Something for something in exchange (example – sexual favors given to an employee in exchange for a student receiving a roster spot on a sports team).
- Technical definition: An employee of the recipient conditioning an aid, service, or benefit of the recipient on an individual's participation in unwelcome sexual conduct.

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### HOSTILE ENVIRONMENT DEFINED

- Old Definition:
  - Unwelcome conduct
  - Reasonable person standard
  - To be severe, pervasive or persistent and to *interfere with or limit* a student's ability to participate in or benefit from school services, activities or opportunities
- 2020 Amendments Definition:
  - Unwelcome conduct
  - Reasonable person standard
  - To be so severe, pervasive and objectively offensive that it *effectively denies* a person's equal access to the recipient's education program or activity

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### VIOLENCE AGAINST WOMEN'S ACT OFFENSES

- Sexual Assault – 20 USC section 1092(f)(6)(A)(v)
- Domestic Violence – 34 USC section 12291(a)(8)
- Dating Violence – 34 USC section 12291(a)(10)
- Stalking – 34 USC section 12291(a)(3)

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### WHAT IS "IN A PROGRAM OR ACTIVITY" ?

- Any location, events, or circumstance over which the recipient exhibits substantial control over both the alleged harasser and the context in which the harassment occurred.
- Examples: sports team, school activity, club activities that are not exclusively hosted by a booster club, classroom activities and projects.

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### KEY TITLE IX PERSONNEL

- Title IX Coordinator(s)
- Investigator(s)
- Decision Maker – Initial
- Decision Maker – for the Appeal
- Others -
  - Anyone that facilitates informal resolution.

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### TITLE IX COORDINATORS

- Must appoint at least one employee to coordinate efforts to comply with Title IX responsibilities.
  - Recommended that Districts appoint two (one of each gender).
- Must be referred to as “Title IX Coordinator.”
- Cannot also be the decision maker.
- Acts without conflict of interest or bias.
- Responsible for effective implementation of supportive measures and remedies.

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### INVESTIGATORS

- Investigate complaints of discrimination or harassment based on sex.
- Prepares report that fairly summarizes relevant evidence.
- Cannot also be the decision maker.
- Acts without conflict of interest or bias.

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### DECISION MAKER (INITIAL)

- Issues written determination regarding responsibility.
- Cannot also be the Title IX Coordinator or Investigator.
- Acts without conflict of interest or bias.

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### DECISION MAKER (FOR THE APPEAL)

- Reviews any appeals and issues written determination describing the results of the appeal.
- Cannot also be the Title IX Coordinator, Investigator, or initial Decision Maker.
- Acts without conflict of interest or bias.

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### TITLE IX PERSONNEL TRAINING

- All Title IX personnel must receive 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 process
  - How to serve impartially, including avoiding pre-judgement, conflicts of interest, and bias
- Any materials used to train Title IX personnel must be publicly available on district's website.

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### DISTRICT OBLIGATIONS

- Ensure Codes of Conduct and training are provided to students and staff that include clear prohibitions on sexual harassment and the reporting and complaint procedures.
- Confirm appointment of Title IX Coordinator(s) and post contact information.
- Provide training to Title IX personnel.
- Post Title IX Coordinator training materials on the District website.
- Promptly review, investigate and potentially settle complaints.
- Retain records for at least 7 years.

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### RESPONDING TO SEXUAL HARASSMENT – ACTUAL KNOWLEDGE

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### RESPONDING TO SEXUAL HARASSMENT – ACTUAL KNOWLEDGE

- Any person can report sex discrimination.
  - Not limited to an alleged victim.
  - Any means can be used to report an incident (e-mail, phone call, mail, etc.).
  - Reports can be made at any time (not limited to school hours).
- Information must be given to the Title IX Coordinator.

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### RESPONDING TO SEXUAL HARASSMENT – ACTUAL KNOWLEDGE

- A recipient with **actual knowledge** of sexual harassment in an education program or activity against a person in the United States, must respond promptly in a manner that is not deliberately indifferent.
  - Actual knowledge – notice of sexual harassment or allegations of sexual harassment to a Title IX Coordinator, or any individual that has the authority to institute corrective measures, or to any employee of an elementary or secondary school.
- A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

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### RESPONDING TO SEXUAL HARASSMENT – ACTUAL KNOWLEDGE

- Title IX Coordinator must:
  - promptly contact the complainant to discuss the availability of supportive measures,
  - consider the complainant’s wishes with respect to supportive measures, and
  - explain the process for filing a formal complaint.
- Recommendation - Document all activity starting with receipt of a complaint or information about an incident.

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### RESPONDING TO SEXUAL HARASSMENT – ACTUAL KNOWLEDGE

- Supportive measures are:
- Non-punitive
  - Offered to Complainant and/or Respondent
  - Individualized services free of charge
  - No formal complaint required
  - Designed to restore or preserve access to the program or activity w/out unreasonably burdening the other party
- Examples of Supportive Measures:
    - Counseling
    - Course modification
    - Schedule change(s)
    - Increased monitoring or supervision
  - Cannot be punitive
    - Complete removal of Respondent is likely punitive
    - Exception – emergency removals and administrative leaves for severe conduct

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### RESPONDING TO SEXUAL HARASSMENT – ACTUAL KNOWLEDGE

- Emergency Removal
  - Safety and risk analysis
  - Done to protect immediate threat to physical safety or health
  - Respondent entitled to immediate notice and opportunity to challenge the removal
- Administrative Leave
  - Not prohibited
  - Consider NY law and regulations, board policy and collective bargaining agreements
  - Consult with labor relations or district’s counsel

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### RESPONDING TO SEXUAL HARASSMENT – FORMAL COMPLAINT

- In addition to responding to actual knowledge:
  - Must treat Complainant (alleged victim) and Respondent (alleged harasser) equitably.
  - Must follow a grievance procedure before disciplining / sanctioning Respondent.

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### RESPONDING TO SEXUAL HARASSMENT – FORMAL COMPLAINT (GRIEVANCE PROCEDURE)

1. Basic Requirements of the grievance process
2. Notice of Allegations
3. Dismissal of a formal complaint
4. Consolidation of formal complaints
5. Investigation
6. Hearings
7. Determination regarding responsibility
8. Appeals
9. Informal Resolution
10. Recordkeeping

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### 1. BASIC REQUIREMENTS

- Treat Complainant and Respondent equitably.
- Objectively evaluate all evidence.
- Verify no conflict of interest of Title IX Coordinator, investigator or decision-maker.
- Respondent presumed innocent.
- Include reasonably prompt timeframes.
- "Preponderance of the Evidence" or "Clear and Convincing."
- Appeal procedure.
- Describe the range of supportive measures.
- Respect legal privileges unless waived.

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### 2. NOTICE OF ALLEGATIONS

- Notice of grievance process.
- Allegations with date, location and identities.
- Respondent presumed not responsible.
- Advisor of their choice (including attorney).
- Right to inspect and review evidence.
- Separate notice of additional allegations required.
- Notice of sections of code or policy that prohibit making false statements or submitting false information.

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### 3. DISMISSAL OF FORMAL COMPLAINT

- Dismissal is **required** when:
  - The conduct is not sexual harassment.
  - The conduct did not occur in the District's program or activity.
  - The conduct did not occur against a person in the U.S.
- Dismissal is **permitted** when:
  - Complainant in writing withdraws the complaint.
  - Respondent is no longer employed by the District.
  - Circumstances prevent the gathering of evidence.
- Written notice of dismissal to both parties.

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**4. CONSOLIDATION**

- Multiple complaints against the same respondent, or complaints arising from the same facts or circumstances can be combined into one investigation.

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**5. INVESTIGATION**

- Investigator assigned by District (cannot be decision maker).
- Both parties can present witnesses and evidence.
- Cannot restrict either party from discussing allegations under investigation or from gathering relevant evidence.

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**5. INVESTIGATION (CONTINUED)**

- Interviews-
  - Written notice of date, time, location, participants and purpose of the meeting (i.e., interview) with reasonable time to prepare to participate.
  - Accompanied to interview by an advisor of their choice (can be an attorney). Note: can establish restrictions regarding extent to which advisor can participate as long as equally applied to both parties.

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### 5. INVESTIGATION (CONTINUED)

- Equal opportunity to inspect and review *any* evidence obtained as part of investigation that is directly related to the complaint in order to meaningfully respond to the evidence prior to conclusion of investigation.
- Prior to completion of the investigative report, the recipient must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy.
- Provide at least 10 days to respond to the evidence in writing and consider any response submitted.

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### 5. INVESTIGATION (CONTINUED)

- Prepare an investigation report that summarizes the relevant evidence.
- Share the investigation report with both parties at least 10 days before the decision maker reaches a determination.

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### 6. HEARINGS

- Required for postsecondary institutions.
- Not required at elementary and secondary schools.
- Question – why hold a hearing?

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### 7. DETERMINATION RE: RESPONSIBILITY

- Decision-maker 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.
- Decision-maker must issue a written determination regarding responsibility.
- Follow the standard in the grievance procedure (either "Preponderance of the Evidence" or "Clear and Convincing").

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### 7. DETERMINATION RE: RESPONSIBILITY (CONTINUED)

- Contents of the investigation report:
  - Allegation(s)
  - Procedural steps taken
  - Findings of Fact
  - Conclusions (apply Code of Conduct to the facts)
  - Statement of, and rationale for, the result as to each allegation
  - Disciplinary sanctions against Respondent
  - Supportive measures for Complainant
  - Procedures and bases for an appeal
- Simultaneous delivery of the report to both parties.

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### 8. APPEALS

- Offered to both parties.
- Bases for Appeal:
  - Procedural irregularity affecting the outcome
  - New evidence
  - Undisclosed conflict of interest
- Notice to other party – opposite party may respond.
- Different decision-maker.
- Written decision presented to both sides simultaneously.

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### 9. INFORMAL RESOLUTION

- Voluntary for both parties.
- Not available unless a formal complaint is filed.
- Can occur at any time before determination is made, provided the parties receive written notice of the informal resolution process and they both provide written consent.
- Right of withdrawal of complaint.
- Not available in staff vs. student situations.

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### 10. RECORDKEEPING

- 7 years.
- Investigation report, appeal and informal resolution documentation.
- Results of each part of the process.
- Materials used to train Title IX Coordinators, investigators, decision-makers and facilitators must be posted on the District's website.
- Documentation is required of the basis for decisions, disciplinary action taken, and supportive measures provided.

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### RETALIATION IS PROHIBITED

- Intimidation, threats, coercion and discrimination against anyone for the purpose of interfering with Title IX protections is prohibited.
- Requires the District to keep Complainant's name confidential except to the Respondent.

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### FOLLOWING UP

- Make sure retaliation has not occurred.
- Review, revise, and/or discontinue supportive measures that were put in place.
- Provide training.
- Tweak policies and procedures.
- Organize files and document investigation status/outcome.

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### STAY TUNED

- **March 8, 2021** – President Biden signed Executive Order 14021 directing review of all existing Title IX regulations, orders, guidance documents, policies, and other similar documents.
- **December 10, 2021** - Biden administration announced that it is planning to unveil major education civil rights proposals that rewrite Trump-era rules on sexual misconduct and create new protections for transgender students in April 2022.
- **April 2022** - ????

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### Questions?

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