




Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter



Dr. Leigh E. Dalton, Esq.



Taylor M. Baublitz, Esq.




Christopher L. Harris, Esq.

Title IX/Policy 218.3 Training for Title IX Coordinators and Team Members

• • • •

March 11, 2021, 1-2:30 p.m.
March 12, 2021, 10-11:30 a.m.



AGENDA

- Pre-test
- Brief Background on 218.3
- Review Policy 218.3
- Explanation of Title IX Implications
- On Campus Scenario Walkthrough
- Off Campus Scenario Walkthrough
- Associated/Supporting Materials
- Post-test
- Questions

• • • •



Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

- Question 1: For any *allegations* that a district student harassed or assaulted another district student on the basis of sex, Board Policy 218.3 is always the policy the Title IX Coordinator should utilize. True or False?
- Question 2
- Question 3
- Question 4
- Question 5

PRE-TEST

*All answers are anonymous

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

- Question 1
- Question 2: The Title IX Coordinator only has to meet with the victim and the convicted/adjudicated student after a formal Title IX complaint is filed. True or False?
- Question 3
- Question 4
- Question 5

PRE-TEST

*All answers are anonymous

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

- Question 1
- Question 2
- Question 3: Supportive measures should always be offered to both the victim and the convicted/adjudicated student. True or False?
- Question 4
- Question 5

PRE-TEST
*All answers are anonymous

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

- Question 1
- Question 2
- Question 3
- Question 4: If a student is convicted/adjudicated of sexual assault there is no need to complete a Title IX investigation because s/he was already determined to be guilty. True or False?
- Question 5

PRE-TEST
*All answers are anonymous

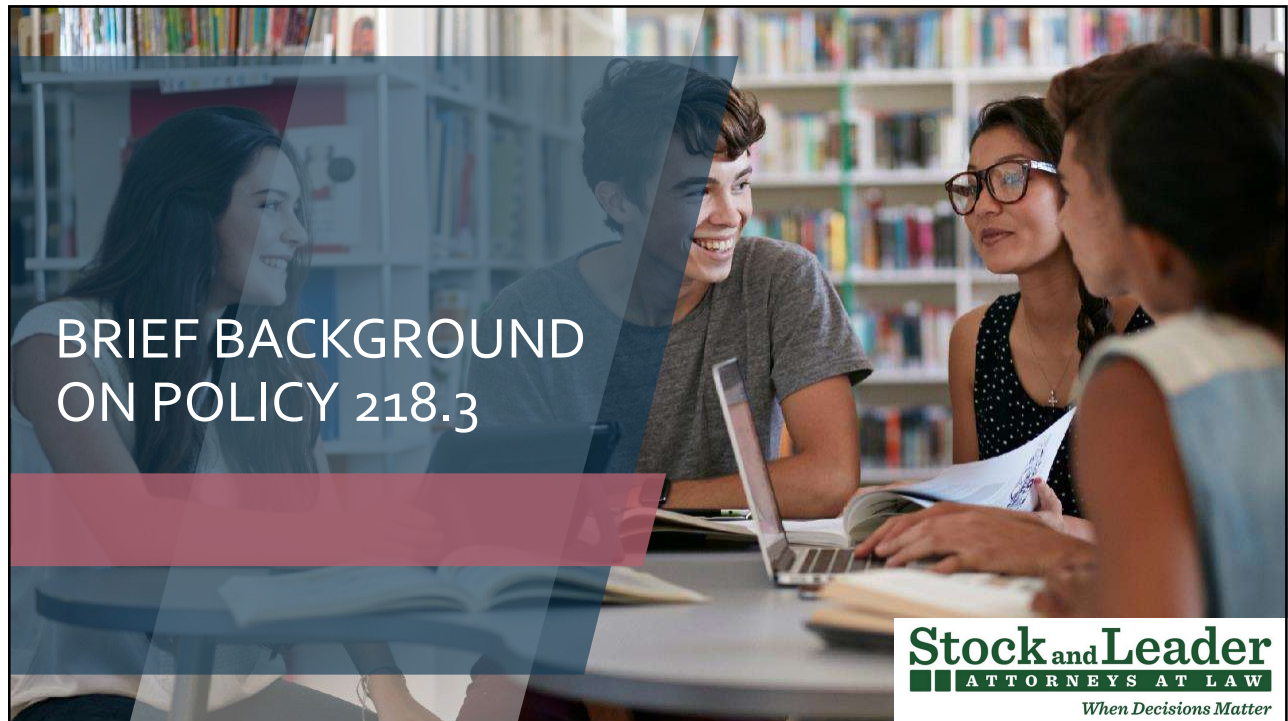
Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

- Question 1
- Question 2
- Question 3
- Question 4
- Question 5: The school administration may discipline a convicted/adjudicated student under Policy 218.3 before a Title IX investigation is complete. True or False?

PRE-TEST

*All answers are anonymous

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter



BRIEF BACKGROUND ON POLICY 218.3



- The title of Board Policy 218.3 is “Discipline of Students Convicted/Adjudicated of Sexual Assault.”
- PSBA introduced this policy in response to a new law which complicates many intersecting laws and policies, 24 P.S. Section 13-1318.1.
- Board Policy 218.3 relates to students who have been convicted or adjudicated of sexual assault and are also enrolled in the same school district as the victim.

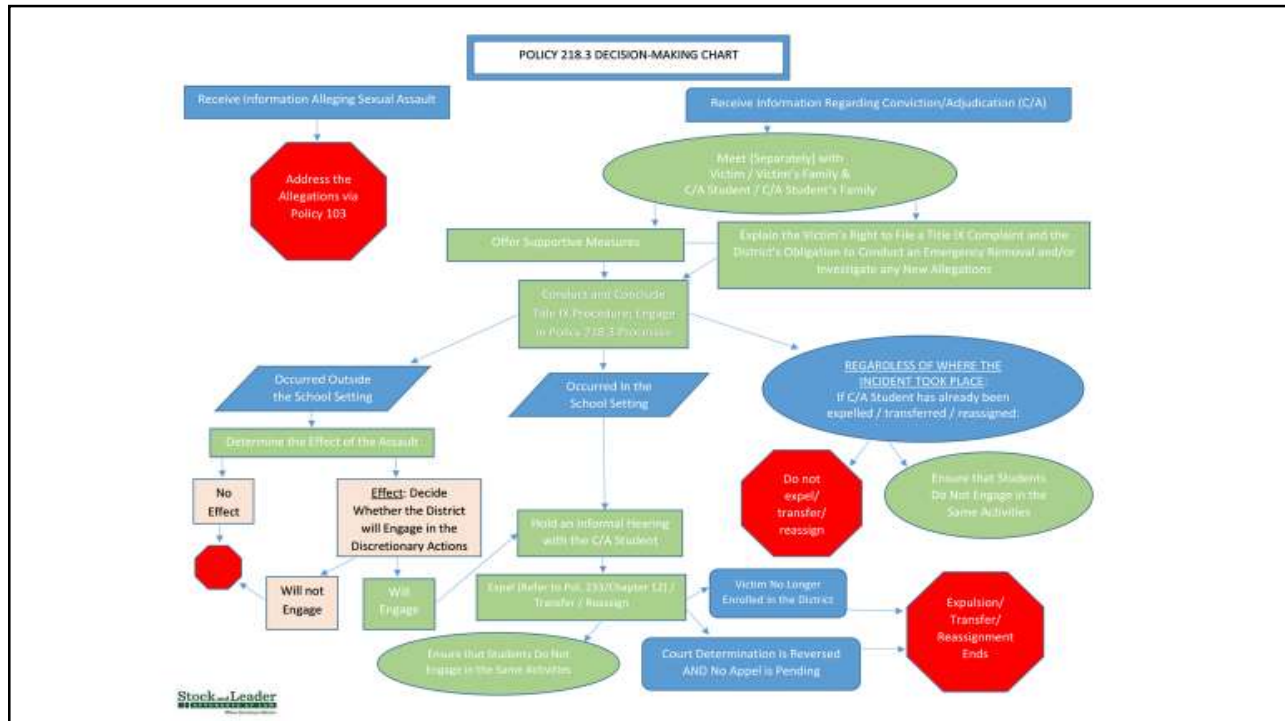


- School districts must have Board Policy 218.3 in place, in accordance with 24 P.S. Section 13-1318.1.
- Prior to 24 P.S. Section 13-1318.1 and its subsequent Board Policy 218.3, school districts and school boards could only address the effects of sexual assault through Title IX procedures, which do not, generally, give school districts jurisdiction in off-campus sexual harassment situations.
- Board Policy 218.3 only applies to convictions/adjudications which occurred any time after the new law went into effect—January 4, 2021.

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

REVIEW OF POLICY 218.3

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter



EXPLANATION OF TITLE IX IMPLICATIONS

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

EXPLANATION OF TITLE IX IMPLICATIONS



- It is important to distinguish Board Policy 218.3 from Board Policy 103, Discrimination/Title IX Sexual Harassment Affecting Students. Board Policy 218.3 only applies when a school district has received notice that a current student has been **convicted or adjudicated delinquent** of sexual assault against another student in the same school district.
- **Allegations** of sexual assault by an employee, student, or third-party, affecting a student and occurring within the school district's education program or activity, are addressed under Board Policy 103.



- **IMPORTANT:** Title IX will always be implicated when implementing Board Policy 218.3.

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

EXPLANATION OF TITLE IX IMPLICATIONS

Supportive Measures and the Students' Rights and Responsibilities

If a district were to receive a complaint about **alleged** sexual assault of one district student against another district student, the district would initiate a Title IX investigation to look into and establish the facts surrounding the alleged sexual assault. This process would unfold under Board Policy 103, **not** Board Policy 218.3.

The district must act under Board Policy 218.3 if a judicial determination about a conviction or adjudication of sexual assault occurred on or after January 4, 2021. [**Note:** if a judicial determination occurred prior to January 4, 2021, Board Policy 218.3 would not apply and the district would analyze the incident only under Board Policy 103.]

Once the district learns that a judicial determination has been made that establishes that the district student **did** commit sexual assault against another district student, the district will no longer need to determine if sexual assault, **itself**, occurred.

However, the district has an obligation to engage in the Title IX investigative process to determine if the sexual assault occurred **within the district's education program or activity as defined in Title IX** (not simply in the school setting as defined under the new law).

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

EXPLANATION OF TITLE IX IMPLICATIONS

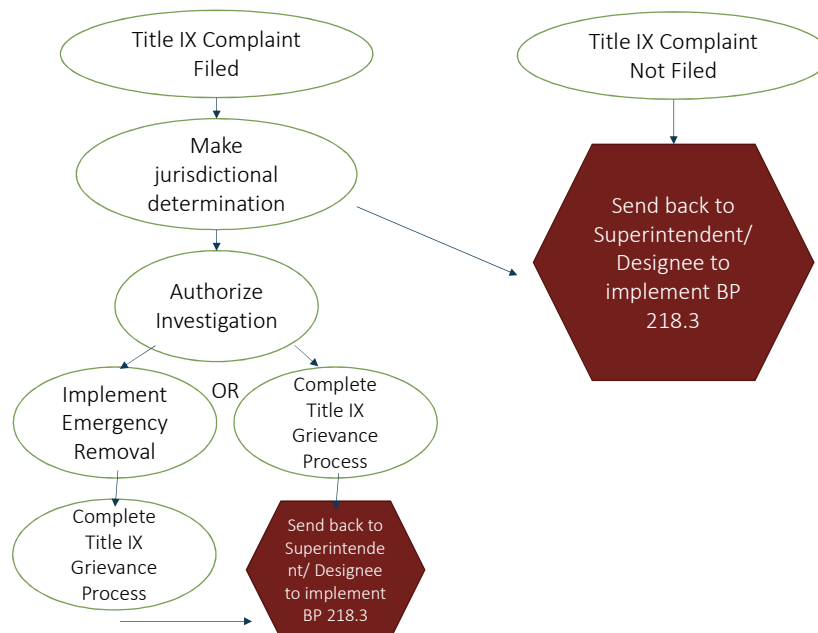
Supportive Measures and the Students' Rights and Responsibilities

Once the district determines that the judicial determination occurred *on or after January 4, 2021*, it must next engage the Title IX Coordinator to ensure the Title IX protections and processes are appropriately implemented. The Title IX Coordinator will need to:

1. Notify and meet with the victim (under Title IX, the Victim is the Complainant) and the victim's parent/guardian to discuss options relative to filing a formal Title IX complaint, remind the student of their right to include in the complaint any other incidents which could be considered sexual harassment under Title IX, and offer and document supportive measures; and
2. Notify and meet with the convicted/adjudicated student (under Title IX, the convicted/adjudicated student is the Respondent) and his or her parent/guardian to discuss the district's obligations and the Title IX implications associated with the conviction/adjudication, also offering and documenting supportive measures.

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

Title IX Flow Chart



EXPLANATION OF TITLE IX IMPLICATIONS

If a Title IX Complaint is Filed:

If the victim or victim's parent/guardian decide to file a formal Title IX complaint, the district must conclude the Title IX grievance procedure or conduct an emergency removal protocol **prior to** the implementation of any Board Policy 218.3 action. Thus, in essence, the district must put the provisions of Board Policy 218.3 **"on hold"** during the Title IX process. In addition, the victim or parent/guardian could have additional allegations of sexual harassment to file under the Title IX Complaint, aside from the judicially determined sexual assault.

Should the victim or victim's parent/guardian elect to file a Title IX Complaint, the district should **not** take disciplinary action under this new state law and policy unless and until the:

1. Emergency removal provisions under Title IX have been met (individualized safety and risk analysis); or
2. Entire Title IX grievance process is concluded through to mandatory/discretionary dismissals or determination of responsibility.

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

EXPLANATION OF TITLE IX IMPLICATIONS

If a Title IX Complaint is Filed:

The Title IX Coordinator will need to ensure that an individualized safety and risk analysis is conducted before:

1. Engaging in an emergency removal of a student, which is the removal of a convicted/adjudicated student from the district's education program or activity; and
2. Implementing any of the required or discretionary measures under Board Policy 218.3.

Conducting the safety and risk analysis requires an inquiry into whether the presence of the convicted/adjudicated student in the school setting poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment .

The reality is: the convicted/adjudicated student will almost always pose an immediate threat to the physical health or safety of the victim when the convicted/adjudicated student is educated in the same building, or attends/participates in the same school activities as, the victim.

Regardless of how "obvious" the outcome may be, the district must always conduct the safety and risk analysis and make a determination. Even though the district must then comply with Board Policy 218.3, which could result in the removal of the convicted/adjudicated student, the district must still FIRST comply with Title IX by engaging in the safety and risk analysis.

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

EXPLANATION INDIVIDUALIZED SAFETY AND RISK ANALYSIS

An emergency removal is the act of removing the convicted/adjudicated student from the district's education program or activity on an emergency basis **while the Title IX process is unfolding**. Using Board Policy 218.3 terms – expulsion, transfer, and reassignment would be considered emergency removals.

Prior to engaging in an emergency removal of a student under Title IX, the district must conduct an individualized safety and risk analysis to determine whether the:

- Convicted/adjudicated student poses an immediate threat;
- Threat is to the physical health or safety of any student or other individual; and
- Emergency situation arises from the allegations of the sexual harassment.

If it is determined that the convicted/adjudicated student poses such an immediate threat, the district must provide the convicted/adjudicated with notice and an opportunity to challenge the decision immediately following the removal.

The regulations do not outline how to engage in an individualized safety and risk analysis, other than the three bullets, above. An absence of detail, in this regard, ensures local discretion **to an extent**. Discretion should be limited, and the district must ensure the procedures it utilizes to conduct individualized safety and risk analyses are implemented consistently. Similar in nature to conducting a Threat Assessment of a student.

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

EXPLANATION OF TITLE IX IMPLICATIONS

If a Title IX Complaint is Filed:

Should the Title IX Coordinator determine, for whatever reason, that the convicted/adjudicated student will **not** pose an immediate threat to the physical health or safety of any student or other individual arising from the report of conviction/adjudication of sexual harassment/sexual assault, the district **cannot** remove the student from the district's educational program or activity (the district cannot impose any of the required or discretionary acts under policy 218.3) **until** the Title IX Grievance Process is completed.

In a situation that implicates Board Policy 218.3, the Title IX Coordinator will need to instruct the Superintendent/Designee to not engage in Board Policy 218.3 procedures until the Title IX Grievance Process is completed.

Stock and leader recommends completing the Title IX process, instead of engaging in an emergency removal process, for the majority of cases in order to ensure full Title IX protections.

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

EXPLANATION OF TITLE IX IMPLICATIONS

If a Title IX Complaint is not Filed:

If a Title IX complaint is **not** filed, the Title IX Coordinator still has to offer supportive measures to both the victim and the adjudicated student, as required by Title IX. Then the Superintendent or Designee can proceed with implementing the rest of Board Policy 218.3.

Remember, though, that even if the victim chooses not to file a Title IX complaint, the Title IX Coordinator must determine whether s/he finds it necessary to file a complaint on the victim's behalf.

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter



SCENARIO WALKTHROUGHS

1. On Campus
2. Off Campus

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

ON CAMPUS SCENARIO:

Based off of a real OCR investigation from San Francisco, CA in 2013



- School District decides to host its annual Fall 2021 homecoming dance in the high school's gymnasium. Sophomore Sally decides she is tired from dancing and needs some air. After leaving the dance, Junior Jason and his friend Senior Saul confront Sally after they'd been partaking in some underage drinking. Saul assaults Sally on school property over a period of hours. Jason witnesses the assault, and he also photographs and records the assault. He does not, however, report the incident to police or school officials. Dance chaperones find Sally outside after cleaning up the gymnasium visibly shaken, upset, and crying. They rush to her side while she tells them what happened, in essence describing that Saul just sexually assaulted her while Jason stood and watched.



- What are the next steps? Please analyze this scenario in conjunction with Board Policy 218.3 and we will then discuss as a group.

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

ON CAMPUS SCENARIO, CONTINUED



- Sophomore Sally's parents press charges against Junior Jason and Senior Saul after the incident at the homecoming dance. Saul is convicted of sexual assault, however, Jason is not. The District receives the legal determination confirming Saul's conviction.



- What are the next steps? Please analyze this scenario in conjunction with Board Policy 218.3 and we will discuss as a group.

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

ON CAMPUS SCENARIO:

Based off of a real OCR investigation from San Francisco, CA in 2013



- While Jason was not convicted of sexual assault, he continues to harass Sally in the high school hallways and at her locker making inappropriate comments and inappropriately touching her. Witnesses notice the frequent nonconsensual sexual touching to which Jason exposes Sally. It occurs most frequently during periods between classes and lunch periods where Jason gropes, grabs, hugs, and blows kisses at Sally.



- Sally is too embarrassed to report the misconduct, however, district employees are aware of the situation. What are the next steps? Please analyze this scenario and we will discuss as a group.

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

OFF CAMPUS SCENARIO



- School district receives word that one of its middle school students, Hope, has recently been adjudicated of sexual assault against another middle school student, Pat. The two students are neighbors and the sexual assault took place in Hope's bedroom. Hope and Pat ride the same bus to school everyday. Hope is a special education student.



- What are the next steps? Please analyze this scenario in conjunction with Board Policy 218.3 and we will discuss as a group.

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

OFF CAMPUS SCENARIO



- Several years go by and Hope and Pat are now high school students. Hope and Pat are both stand out swimmers hoping to get recruited for a college swimming program and receive athletic scholarships. Both want to join the swim team. What steps need to be taken here? Can both students be on the team?
- Hope and Pat both want to attend the senior prom. At this time, it has been 6-7 years since Hope was first adjudicated of sexual assault. Can Hope attend the prom? What steps need to be taken here?

ASSOCIATED/SUPPORTING MATERIALS



- Board Policy 218.3
- 218.3 Flow Chart
- Board Policy 218.3 Administrative Regulations
- Questions and Answers for Board Members
- Sample Title IX/218.3 Letters
- Prohibitions on Participation Letters

TITLE IX / 218.3 LETTERS

VICTIM: Explain:

- Act 110
- Right to File a Complaint
- Obligation for the District to File a Complaint
- Presumptions under Title IX
- Obligation to Offer Supportive Measures
- Title IX Grievance Process
- Alternative Dispute Resolution Options
- No Disciplinary Action, yet

C/A STUDENT: Explain

- Act 110
- Right for the Victim to File a Complaint
- Obligation for the District to File a Complaint
- Presumptions under Title IX
- Obligation to Offer Supportive Measures
- Title IX Grievance Process
- Alternative Dispute Resolution Options
- No Disciplinary Action, yet

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

PRIOR TO PARTICIPATION ON PROHIBITION LETTERS

- ON CAMPUS: Automatic restrictions
- OFF CAMPUS: Explain effect of the assault (substantially interfering with the victim's education; creating a threatening or hostile educational environment; or substantially disrupting the orderly operation of the school)
- Disciplinary Action: Expulsion; Transfer to an alternative education program; Reassign to another school or educational program within the district
- Before taking any of the above actions, schedule an informal hearing with the C/A student and parents/guardians to provide them with the opportunity to present the district with the action *they* propose to be taken by the district, and why.

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

PARTICIPATION ON PROHIBITION LETTERS

- Not allowed to be transported on the same school vehicle or participate in the same school-sponsored activity as the other district student
 - Officially been reassigned to Bus #____
- Not allowed to participate in the same school sponsored activities as the victim of the sexual assault. Activities include assemblies, field trips, class trips, graduation ceremonies, athletics, extracurricular activities, clubs, groups, teams, or any activities sponsored, held, or approved by the District.
- What does this look like?
 - Location of activities
 - Location of meet/games regardless of whether student is attending school off campus, distance Learning, etc.
 - Off campus events and interactions: school sponsored?

Stock and Leader
 ATTORNEYS AT LAW
When Decisions Matter

PARTICIPATION ON PROHIBITION LETTERS, CONTINUED

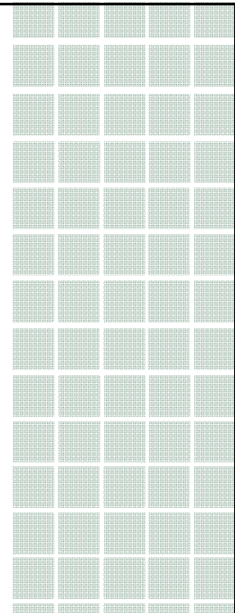
- If at any point the district learns that the convicted/adjudicated student has violated these prohibitions, the convicted/adjudicated student shall be subject to further disciplinary action, up to and including permanent expulsion from the district.
- Should, at any point moving forward, the victim of the sexual assault unenroll from the district, or the conviction/adjudication be reversed with no pending appeal, the prohibitions shall be lifted.

Stock and Leader
 ATTORNEYS AT LAW
When Decisions Matter

CHANGES ARE ON THE HORIZON



- President Biden's Executive Order on March 8, 2021



Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

QUESTIONS AND DISCUSSION



Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

- Question 1: For any *allegations* that a district student harassed or assaulted another district student on the basis of sex, Board Policy 218.3 is always the policy the Title IX Coordinator should utilize. True or False?
- Question 2
- Question 3
- Question 4
- Question 5

POST-TEST

*All answers are anonymous

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

- Question 1
- Question 2: The Title IX Coordinator only has to meet with the victim and the convicted/adjudicated student after a formal Title IX complaint is filed. True or False?
- Question 3
- Question 4
- Question 5

POST-TEST

*All answers are anonymous

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

- Question 1
- Question 2
- Question 3: Supportive measures should always be offered to both the victim and the convicted/adjudicated student. True or False?
- Question 4
- Question 5

POST-TEST

*All answers are anonymous

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

- Question 1
- Question 2
- Question 3
- Question 4: If a student is convicted/adjudicated of sexual assault there is no need to complete a Title IX investigation because s/he was already determined to be guilty. True or False?
- Question 5

POST-TEST

*All answers are anonymous

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

- Question 1
- Question 2
- Question 3
- Question 4
- Question 5: The school administration may discipline a convicted/adjudicated student under Policy 218.3 before a Title IX investigation is complete. True or False?

POST-TEST

*All answers are anonymous



THANK YOU



Dr. Leigh Dalton, Esq.

Taylor Baublitz, Esq.



Chris Harris, Esq.



Email

ldaton@stockandleader.com

tbaublitz@stockandleader.com

charris@stockandleader.com

