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# The 2024 Title IX Team and Process for K-12 Districts

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October 14, 2024

**Presented by:**

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# Title IX


## The 2024 Title IX Team and Process for K-12 Districts

October 14, 2024

 **PASADENA**  
Unified School District  
Our Children. Learning today. Leading tomorrow.

PRESENTED BY:  
Lexie Davidson, Partner

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## Agenda

- Scope of 2024 Title IX Regulations and Definitions
- Title IX Roles and Responsibilities
- Intake Process
- Title IX Grievance Process
- Retaliation
- Record Keeping
- Check for Understanding

# 2024 TITLE IX SCOPE AND DEFINITIONS

## Federal Law - Title IX

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

(Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681 et seq.) and related regulations (34 C.F.R. Part 106).)

## Title IX Regulations – Definitions

- **Complainant**
- **Respondent**
- **Parties**
- **Discrimination**
  - Disparate treatment
  - Harassment
- **Grievance Process**

## Title IX Regulations – Definition of Recipient

**Recipient** means any...public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient **and** which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof.

A public school district that receives Federal financial assistance is a **Recipient** and must comply with the 2024 Title IX regulations.

Throughout this training, we use **District** instead of Recipient.

## 2024 Title IX Regulations

### 1. New Regulations and Guidance

- Text of regulations contained in **34 CFR Part 106** have the full force and effect of law as of **August 1, 2024**, (depending on court injunctions pending in various states)

### 2. Goal to Stop and Prevent Sex Discrimination, Including Sex-Based Harassment

### 3. Expands Scope of Title IX

- Expands “sex-based harassment” to include harassment **based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and/or gender identity**, which includes (1) quid pro quo harassment, (2) hostile environment harassment, or (3) one of four specific offenses, namely sexual assault, dating violence, domestic violence, and stalking

### 4. More Flexibility for District to Tailor its Grievance Process



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## Response to Sexual Discrimination

- A District with knowledge of conduct that reasonably may constitute sex discrimination in its education program or activity must:
  - Respond promptly and effectively; **and**
  - Comply with the 2024 Regulations to address sex discrimination in its education program or activity.



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## Nondiscrimination Policy

- A District must adopt, publish, and implement a policy stating that the recipient does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates as required by Title IX and [these regulations], including in admission and employment.

## Notice of Nondiscrimination

- A District must provide a notice of nondiscrimination to students; parents, guardians, or other authorized legal representatives of elementary school and secondary school students; employees; applicants for admission and employment; and all unions and professional organizations holding collective bargaining or professional agreements with the District.

## Contents of Notice of Nondiscrimination

- Required statements for the notice of nondiscrimination:
  - District does not discriminate on the basis of sex, and it prohibits discrimination in any education program or activity, including admissions and employment
  - Inquiries about Title IX may be referred to TIX Coordinator, OCR, or both
  - Provides the name, title, office address, email address and phone number of TIX Coordinator

## Contents of Notice of Nondiscrimination, Cont.

- The notice of nondiscrimination required statements:
  - How to locate nondiscrimination policy and the grievance procedures
  - How to report information about conduct that may constitute sex discrimination under Title IX, and how to make a complaint
  - Information about any exceptions or exemptions, if applicable to District

## Publication of Notice of Nondiscrimination

- The notice of nondiscrimination must be prominently set forth:
  - On the District's website
  - In each handbook, catalog, announcement, bulletin, and application form that it makes available to persons entitled to notice, as listed above.

## Title IX Training Requirements

- All employees must be trained on:
  - The District's obligation to address sex discrimination in its educational program or activity
  - The scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment
  - All applicable notification and information requirements regarding pregnancy and parenting
  - The scope of the District's required response to discrimination allegations



## Title IX Training Requirements, Cont.

- Investigators, decisionmakers & other persons must be trained on issues listed above as well as:
  - The District's obligations
  - The District's grievance procedures
  - How to serve impartially, including avoidance of prejudgments of facts, conflicts of interest, and bias
  - The meaning and application of "relevance" in relation to questions and evidence
  - What evidence is impermissible



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## Title IX Training Requirements, Cont.

- Facilitators of Informal Resolution must also be trained on the rules and practices associated with the District's informal resolution process and on how to serve impartially, including avoiding conflicts of interest and bias
- Title IX Coordinators must additionally receive training on their specific responsibilities listed in the regulations and the District's recordkeeping system



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## Knowledge & Reporting: Non-Confidential Employees

- **K-12 Educational Institutions** must require all non-confidential employees to notify the Title IX Coordinator when the employee has received information about conduct that reasonably may constitute sex discrimination under Title IX.
- Annual **training of all K-12 employees** is required and must cover the definitions of sex discrimination and reporting responsibilities to the Title IX Coordinator.

## Knowledge & Reporting: Confidential Employees

- **Confidential employees** are employees whose communications are privileged or confidential under Federal or State law.
  - Examples may include counselors, psychologists, and/or psychiatrists who receive information **while performing** privileged or confidential duties
  - However, must report to Title IX Coordinator if received information while performing non-confidential counseling duties
  - Districts must notify students and employees of availability and contact information for confidential employees

## Knowledge & Reporting: Confidential Employees, Cont.

- When a **confidential employee** receives a report of Title IX discrimination, the confidential employee must explain:
  - The employee's status as confidential and when the employee is required or not required to report;
  - How the reporting party can contact the Title IX Coordinator to make a complaint; and
  - Explain how Title IX Coordinator can offer supportive measures, an informal resolution process, and/or an investigation.

## Complaint

- A "complaint" is defined as an **oral or written request** that can **objectively** be understood to be a request for the District to investigate and make a determination about alleged discrimination based on sex, including harassment.
  - Best practice to confirm oral request in writing
- Sex-based discrimination includes discrimination based on **sex stereotypes, sex characteristics, pregnancy, pregnancy related conditions, sexual orientation, and gender identity.**

## Education Program or Activity

- Per **§ 106.11**: Application of this process applies to conduct that occurs under a District's education program or activity *in the United States* and includes *conduct that is subject to the District's disciplinary authority*.
- A District must address sex based hostile environment allegations even if *some* of the alleged conduct took place outside the District's education program or activity or outside of the United States.
- At the time of filing a formal complaint, the Complainant does **not** need to be participating or attempting to participate in the District's education program or activity.

## Discrimination On the Basis of Sex Defined

According to **§ 106.10**, Discrimination **on the basis of sex** includes discrimination based on:

- **Sex stereotypes**
- **Sex characteristics**
- **Pregnancy or Pregnancy related conditions**
- **Sexual Orientation**
- **Gender Identity**

## Sexual Harassment Defined

**Sexual Harassment** is a form of sex discrimination, and includes conduct on the ***basis of sex*** under one or more of following:

### 1. Quid Pro Quo Harassment

- An employee, agent, **or** other person authorized by the District to provide an aid, benefit, or service under the District's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct
- Quid pro quo harassment is not required to be offensive, severe, and/or pervasive.



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## Sexual Harassment Defined, Cont.

### 2. Hostile Environment Sexual Harassment

Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively **and** objectively offensive **and** is so severe **or** pervasive that it limits **or** denies a person's ability to participate in **or** benefit from the District's education program or activity (i.e., creates a hostile environment).



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## Sexual Harassment Defined, Cont.

### 2. Hostile Environment Sexual Harassment, continued:

- Fact-specific inquiry that includes consideration of:
  - The degree to which the **conduct affected the Complainant's ability** to access the District's education program or activity;
  - The **type, frequency, and duration** of the conduct;
  - The parties' ages, roles within the District's education program or activity, previous interactions, and other **factors about each party that may be relevant** to evaluating the effects of the conduct;
  - The **location** of the conduct and the **context** in which the conduct occurred; and
  - Other sex-based harassment in the District's education program or activity.



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## Sexual Harassment Defined, Cont.

### 3. Other Specific Acts on the Basis of Sex

- **Sexual assault** (includes Forcible and Nonforcible Sex Offenses)
- **Dating violence**
- **Domestic violence**
- **Stalking**

No requirement that these other specific acts be offensive, severe, **or** pervasive.



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## Sexual Harassment Defined, Cont.

### 1. Sexual Assault

– **Forcible:**

- Any sexual act directed against Complainant, forcibly, against Complainant's will, or without consent, including rape, sodomy, sexual assault with an object, or fondling

– **Nonforcible:**

- Offenses that do not involve force where the Complainant is incapable of giving consent, including statutory rape or incest



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## Sexual Harassment Defined, Cont.

### 2. Dating Violence

Violence (on the basis of sex) committed by Respondent:

- who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and
- where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - (i) The length of the relationship
  - (ii) The type of relationship
  - (iii) The frequency of interaction between the persons involved in the relationship



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## Sexual Harassment Defined, Cont.

### 3. Domestic Violence

Felony or misdemeanor crimes of violence (on the basis of sex) committed by:

- A current or former spouse or intimate partner of the Complainant
- A person with whom the Complainant shares a child in common
- A person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner
- A person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the jurisdiction receiving grant monies, or
- Any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.



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## Sexual Harassment Defined, Cont.

### 4. Stalking

The term “stalking” means engaging in a course of conduct (on the basis of sex) directed at Complainant that would cause a reasonable person to:

- **Fear** for their safety or the safety of others; or
- Suffer substantial **emotional distress**



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## Pregnancy or Related Conditions

- Regulations now prohibit discrimination against students, employees, or applicants, based on **pregnancy or pregnancy related conditions**.
  - To prevent sex discrimination and ensure equal access to its education program or activity, a District should take steps such as providing **reasonable modifications for students, reasonable break time for lactation, and lactation space for students and employees**.
  - Districts are prohibited from requiring documentation from students to obtain reasonable modifications unless documentation is necessary and reasonable.
- Employees must promptly inform a pregnant student (or person who has a legal right to act on behalf of the student) of the Title IX Coordinator's contact information and inform them that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the District's education program or activity.

## TITLE IX ROLES AND RESPONSIBILITIES

## Title IX Roles

1. Title IX Coordinator
2. Supportive Measure Reviewer
3. Investigator/ Decision Maker
4. Informal Resolution Process Facilitator
5. Appeal Officer

**All Title IX team members must be trained** on the obligation to address sex discrimination in its education program or activity, the scope of conduct that constitutes sex discrimination, § 106.45 Grievance Process, and all applicable notification and information requirements, including §106.40(b)(2) (pregnancy related notice) and §106.44 (employee reporting requirements).

**All team members must be impartial, unbiased, and free from conflicts.**

## Title IX Team: Title IX Coordinator(s)

### Title IX Coordinator Duties:

- If District has multiple Title IX Coordinators, **one** coordinator must retain ultimate oversight
- The Title IX Coordinator oversees the coordination of efforts to implement and comply with the Title IX process
  - Title IX Coordinator accepts reports & complaints, sends Notice of Allegations, coordinates supportive measures, initiates grievance procedures and/or informal resolution, assigns investigator-decision maker; considers dismissal, implements training, maintains records, etc.
- Evaluates use of emergency removal of student

## Title IX Role: Title IX Coordinator(s), continued

- The Title IX Coordinator **may**:
  - Facilitate an informal resolution process
  - Consult with special education personnel
  - Investigate & make decision
  - Review and/or oversee process for investigative reports, written decisions, & appeal decisions
  - Draft and/or issue letters of outcome after written decision issued
  - Delegate specific duties to designees
- The Title IX Coordinator *likely does* **not** determine sanctions for respondents
- If applicable, the Title IX Coordinator **ensures effective implementation** of remedies for Complainant, sanctions for Respondent, and overall corrective action plan

## Title IX Team: Supportive Measure Reviewer

### Supportive Measure Reviewer:

- Review requests for modification or reversal of a decision to provide, deny, modify, or terminate supportive measures applicable to the Complainant or Respondent
- Must be impartial employee who did not make the challenged decision
- Must have authority to modify or reverse the decision
- Issue decision to provide, deny, modify, or terminate the supportive measure if it was inconsistent with the definition of supportive measures in § 106.2

## Title IX Role: Investigator and Decision Maker

### Investigator/ Decision Maker

- Must conduct an adequate, reliable & impartial investigation; burden is on the District, not the parties
  - Reviews complaint & interviews parties and witnesses
  - Gathers, reviews, and weighs relevant evidence
  - Assesses relevancy and credibility of evidence
- Compiles evidence and prepares a written investigative report
- Coordinates a review of evidence **or** an accurate description thereof & offers reasonable opportunity to respond

## Title IX Role: Decision Maker

### Investigator/ Decision Maker

- Implement a process to question parties and witnesses in order to evaluate allegations and assess credibility
- Notify the parties in writing (decision/determination)
  - re whether sex discrimination occurred based on a preponderance standard
  - The rationale for the decision
  - Summarize the procedures used for the investigation and decision making
  - Describe appeal procedures and reasons

## Title IX Team: Informal Resolution Process Facilitator

### Informal Resolution Process Facilitator

- Title IX Coordinator decides whether an Informal Resolution is appropriate
- Informal Resolution process can occur **anytime before a determination**
- Informal Resolution does not require filing a formal complaint
- Cannot require or pressure the parties to participate in informal process or waive the right to an investigation
- Cannot be used for student v. employee complaints
- Obtain voluntary consent of the parties
- Issue Informal Resolution Process Notice
- Informal Resolution Process Facilitator must not be the same person as the Investigator and/or Decision Maker

## Title IX Team: Appeals Officer

### Appeal Officer:

- Offer the Complainant and Respondent an appeal of dismissal or decision
- Determine who will handle those appeals

## INTAKE PROCESS

## Meeting with Complainant

### **Title IX Coordinator Duties:**

- The Title IX Coordinator should promptly schedule a meeting with Complainant and listen to allegations and concerns after there is an oral or written request that can objectively be understood to be a request to investigate and prepare a decision regarding responsibility
- If Complainant describes sexual discrimination or sex harassment allegations, the Title IX Coordinator explains the Title IX grievance process
- *Pregnancy Related Complaint.* Promptly schedules a meeting with a pregnant student/employee or student/employee with a pregnancy related condition to review the nondiscrimination policy and the requirement to ensure equal access to its education program or activity, such as by providing reasonable modifications for students

## Meeting with Complainant

### Title IX Coordinator Duties, continued:

- Informs Complainant of:
  - The right to file or not to file a formal complaint
  - The right to supportive measures even if a formal complaint is not filed
  - Right to request an informal resolution process and the right to exit informal resolution process at any time
  - If no formal complaint is filed, inform of the right to file a formal complaint at a later time
- Best practice to provide Complainant a written summary of the intake meeting
- If no formal complaint is filed, the Title IX Coordinator considers whether to independently initiate a complaint
- Monitor District for barriers to reporting information



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## Supportive Measures

### Supportive Measures Defined per §106.2

- **Individualized measures** offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to Complainant or Respondent
- The purpose is to restore or preserve that party's access to the education program or activity, including measures designed to protect the safety of the parties or the District's educational environment, or
- Provide support during the District's grievance procedures under or during the informal resolution process under §106.44(k)
- **Examples of Supportive Measures** may include counseling, course-related adjustments, modified schedule or "partial removal," extended deadlines, campus escort, increased security and monitoring, and/or mutual restrictions on contact between the parties



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## Supportive Measures

### Supportive Measures Defined per §106.2 (cont.)

- If a student has a disability, Title IX Coordinators must coordinate with the department responsible for student supports to determine how to comply with IDEA and Section 504 (29 USC 794) requirements throughout the implementation of the Title IX Grievance Procedures, including, but not limited to, the implementation of Supportive Measures.
- Parties may now **request review** of any decisions regarding supportive measures immediately after the decision and upon a change in circumstances to an **impartial** employee.

## Emergency Removal Option for Students

1. Institution **may** remove Respondent on an emergency basis per §106.44(h) by undertaking an individualized safety & risk analysis, determines that an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal, **and** provides Respondent with notice and an opportunity to challenge the decision immediately following removal.
2. Cannot modify student rights under IDEA, Section 504, and/or ADA
3. Provide education to Respondent while removed based on federal and/or state laws
4. Consider “partial removal” in appropriate circumstances?



## Administrative Leave Option

1. Institution may place an employee Respondent on administrative leave, per §106.44(i) during the pendency of a grievance process
2. This administrative leave option cannot be construed to modify any rights under Section 504 or the Americans with Disabilities Act.

## TITLE IX GRIEVANCE PROCESS

## Grievance Procedure

- |                                |   |
|--------------------------------|---|
| a. General Requirements        | g. Questioning Parties & Witnesses                      |
| b. Basic Requirements          |   |
| c. Notice of Allegations       | h. Determination re Whether Sex Discrimination Occurred |
| d. Dismissal of a Complaint    |   |
| e. Consolidation of Complaints | i. Appeals  |
| f. Complaint Investigation     |   |

**See 34 CFR § 106.45**

## General Requirements

- District must provide for ***prompt and equitable resolution complaints*** of sex discrimination against a person.
- Requirements related to a respondent only apply to sex discrimination complaints alleging that a person violated the prohibition on sex discrimination
- The following persons have a right to make a complaint:
  - Complainant
  - Parent/guardian/authorized legal representative of Complainant
  - Title IX Coordinator
  - For sex discrimination complaints that do not include sex-based harassment: any student, any employee, or any person other than a student or employee who was participating or attempting to participate in the education program or activity at the time of the alleged discrimination

## General Requirements: District Initiated Complaint

- Before filing a Complaint, the Title IX Coordinator must consider:
  - Complainant's request not to proceed with a complaint
  - Complainant's reasonable safety concerns about initiating a complaint
  - Risk that additional acts of sex discrimination would occur
  - Severity of the alleged sex discrimination, including whether Respondent would be removed or disciplined if allegations are sustained
  - Age and relationship of the parties, inc. whether Respondent is an employee
  - Scope of the alleged sex discrimination and availability of evidence
  - Whether the recipient could end the alleged sex discrimination and prevent recurrence without initiating its grievance procedures



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## Basic Requirements

- District must treat Complainants and Respondents equitably, require objective evaluation of all relevant evidence, including inculpatory and exculpatory evidences
- Cannot make credibility decisions based on a person's status as Complainant, Respondent, or witness
- Must presume Respondent is not responsible until a determination is made
- Establish reasonably prompt time frames for stages of process and explain delay
- Take reasonable steps to protect the privacy of the parties and witnesses, without restricting the ability of the parties to obtain and present evidence
- Exclude impermissible evidence and questions
- If have more than one grievance procedure, written grievance procedures shall explain how the district will consistently determine which procedure applies



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## Requirement for Sex-Based Harassment

### **Provisions limited to complaints alleging sex-based harassment**

For complaints alleging sex-based harassment, the Title IX grievance procedures must:

1. Describe the range of supportive measures available to complainants and respondents under 106.44(g), and
2. List, or describe the range of, the possible disciplinary sanctions that the District may impose and the remedies that the District may provide following a determination that sex-based harassment occurred.



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## Notice of Allegations

### **The Notice of Allegations for Identified Parties Must Include:**

- Description of grievance procedures and informal resolution process
- Sufficient information available at the time to allow Parties to respond, such as the identities of the parties, the allegations, dates and locations of the incidents.
- A “no retaliation statement”
- A statement that Parties are entitled to equal opportunity to access relevant and “not otherwise impermissible” evidence or an accurate description of the evidence

The Notice of Allegations must be updated if additional allegations of sex discrimination by Respondent toward the Complainant are investigated



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## Notice of Allegations, Cont.

### **Additional Items the Notice of Allegations may include:**

- Identification of other potential policy violations (not just Title IX)
- Identification of the range of possible disciplinary sanctions and remedies
- Statement that Respondent is presumed not responsible
- Notification that a determination of responsibility will be made at the conclusion of the grievance process
- Notification that each party may have an advisor of choice, who may be an attorney
- Prohibition against parties knowingly making false statements or knowingly submitting false information



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## Dismissal of Complaint

- **District may dismiss a formal complaint or allegations any time during the investigation or hearing *if* :**
  - (1) the respondent is unidentifiable after reasonable attempts to identify
  - (2) the respondent is not participating in the educational program or activities and/or is not employed by the District
  - (3) the complainant voluntarily withdraws any or all allegations, and any remaining allegations would not constitute discrimination under Title IX; or
  - (4) the allegations, even if proven, would not violate Title IX after reasonable efforts have been made to clarify the allegations with the complainant



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## Dismissal of Complaint, Cont.

- Must promptly notify Complainant of the basis for the dismissal
- If Respondent has already been notified of the allegations, District must also notify Respondent of the dismissal, the basis of the dismissal, and appeal options at the same time as Complainant or promptly after notifying Complainant
- Dismissal may be appealed for procedural irregularity, new evidence, or conflict of interest or bias against parties that would ***change the outcome***

## Consolidation of Formal Complaints

- **District may consolidate formal complaints as to allegations of sexual discrimination or sexual harassment where the allegations arise out of the same facts or circumstances**
  - Against more than one Respondent;
  - By more than one complainant against one or more respondents; or
  - By one party against the other party (cross-claims)

## Complaint Investigation

1. District has burden to Conduct Investigation and Make a Determination
2. Provide equal opportunity for parties to present witnesses and present relevant and permissible inculpatory & exculpatory evidence
3. Review all evidence and determine relevancy and whether impermissible
4. Provide equal opportunity to access relevant, permissible evidence, including:
  - Opportunity to access the evidence or an accurate description of the evidence with opportunity to access the evidence upon request
  - Opportunity to respond to evidence or to the accurate description of the evidence
  - Take reasonable steps to prevent and address the parties' unauthorized disclosure of information or evidence obtained solely through the Title IX process



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## Common Types of Impermissible Evidence

**Privileged Documents** without voluntary, written consent

### **General Rape Shield Protections**

- Evidence that relates to the complainant's sexual interests or prior sexual conduct is not relevant unless:
  - evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or
  - is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment.
- The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the sexual activity



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## Questioning Parties and Witnesses

After the investigation, the District must provide a process where the decisionmaker can:

1. Ask questions of the Complainant
2. Ask questions of the Respondent
3. Ask questions of the Witnesses, if any
4. Assess Credibility of all participants “to the extent” that:
  - Credibility is in dispute, and
  - Credibility is relevant to evaluating one or more allegations of sex discrimination



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## Determination Whether Sex Discrimination Occurred

The decision maker must:

- Use the ***preponderance of the evidence*** standard of proof to determine whether sex discrimination occurred
- Notify the Parties in writing of the determination, the rationale for the determination, and the appeal procedures and permissible bases for filing an appeal
- If there is a determination that sex discrimination occurred, the Title IX Coordinator must coordinate remedies to complainant and other persons who experienced a denial of equal access to the District’s education program or activity based on sex discrimination.



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## Determination Whether Sex Discrimination Occurred

The Title IX Coordinator role after the decision :

- If the Respondent is found to be responsible, the Title IX Coordinator may coordinate disciplinary sanctions for Respondent, consistent with federal and state laws
- Title IX Coordinator may notify Complainant of disciplinary sanctions, as allowed by federal and state laws
- Title IX Coordinator must take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur in the District's education program or activity
- Discipline for Respondent may only occur after there is a determination that Respondent engaged in prohibited sex discrimination



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## Appeals

- Appeal of Dismissal
  - May be appealed for procedural irregularity, new evidence, or conflict of interest or bias against parties that would **change the outcome**
- Appeal of Determinations/Decisions
  - The District must offer the Parties an appeal process that, at a minimum, is the same as it offers in all other comparable proceedings, if any (e.g. comparable discrimination proceedings)



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## Appeals

- Appeal of Dismissal
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- Appeal of Determinations/Decisions
  - The District must offer the Parties an appeal process that, at a minimum, is the same as it offers in all other comparable proceedings, if any (e.g. comparable discrimination proceedings)

## RETALIATION

## Retaliation

- The District must prohibit Retaliation, including peer retaliation.
- **Retaliation means:**
  - Intimidation, threats, coercion, **or** discrimination against any person
  - By the District, a student, an employee **or** other person authorized by the District to provide an aid, benefit, or service in the education program/activity
  - **For the purpose** of interfering with any right or privilege secured by Title IX or this part, **or** because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, hearing under this part, including an informal resolution process, in grievance procedures, and if applicable any other actions taken by the District.



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## Retaliation, continued

- When the District has information about conduct that reasonably may constitute retaliation under Title IX, the District is obligated to
  - Investigate under Section 106.45 **or**
  - If appropriate, engage in an informal process under Section 106.44(k)/106.45(k).



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## RECORD KEEPING

### Record Keeping

- Keep records for period of seven years including:
  - Records of the informal resolution process and resulting outcome for matters resolved informally
  - Records of the actions taken to meet the District's obligations under the 2024 Regulations after all notifications that the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination, and
  - All training materials. Members of the public are allowed to request inspection of training materials.

## CHECK FOR UNDERSTANDING

## Hypotheticals

1. A male student reported to his teacher that while on the playground another male student poked him, through the clothing, in the “butt.” Does this fall under Title IX?
  - a) What if this conduct has occurred almost every day for the past two weeks and the student considers the conduct unwelcome?
  - b) What if a group of male students held down the student while the respondent poked the reporting student in the “butt”?

## Hypotheticals

2. A female student has come to report to you, the Title IX Coordinator, that during PE class a male student has grabbed her breast and smacked her “butt.” The conduct has occurred at least three times over the last two months. Does this fall under Title IX?
  - a) What if the male student responds that this can’t be sexual harassment because he is gay?
  - b) If the conduct is reported to a counselor instead of the Title IX Coordinator, what should the counselor do? Does it matter whether the counselor is a mental health professional or an academic counselor?



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## Hypotheticals

3. Student P mentions to a counselor that Student P is worried about the Advanced Placement Chemistry class because Student P is pregnant, and the pregnancy will require Student P to miss several classes and the final exam.
  - a) What should the counselor do? Does it matter whether the counselor is a mental health professional or an academic counselor?
  - b) What Supportive Measures and/or modifications might be available to the student? Who is responsible for overseeing Supportive Measures and/or modifications?



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## Hypotheticals

### 3. Student P (cont.)

- c) Can the counselor recommend that Student P drop the AP Chemistry and enroll in a program for pregnant students?
- d) Can the school require that Student P drop the AP Chemistry and enroll in a program for pregnant students?

# Question & Answer Session

# Thank You

For questions or comments, please contact:

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Alexandria Davidson represents California public school districts as general counsel. She has experience with employment-related matters, including certificated and classified employee discipline, reductions of force, certificated layoffs, and collective bargaining agreement interpretation. Ms. Davidson's practice also includes student discipline and general student matters, complaint processes, including Title IX, and well as general governance issues, the California Public Records Act, and the Brown Act. She has represented employers before the Public Employment Relations Board, Department of Fair Employment and Housing, California Department of Education, Office for Civil Rights, and the Office of Administrative Hearings. Ms. Davidson is an experienced trainer, including in FRISK, PROOF, and Title IX.

While attending Chapman University, Ms. Davidson received the CALI Award of Excellence in Client Counseling.

### Events & Speaking Engagements

Ms. Davidson has spoken at CSBA (California School Boards Association) conferences and has conducted PROOF® and FRISK® trainings.

### Publications

Ms. Davidson contributes to the firm's publications and blog posts.

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### EDUCATION

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### ADMISSIONS

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### PRACTICE AREAS

Contract Enforcement & Collective  
Bargaining  
Education  
Investigations  
Labor & Employment Law  
Litigation