



Cohasset Public Schools

Title IX Training for Employees

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What is Title IX?

- ▶ Federal law designed to remove barriers to equal benefit/participation in public educational programs.
 - ▶ Note: MA law also prohibits discrimination on the basis of sex
- ▶ “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
- ▶ Prohibits discrimination on the basis of sex, including pregnancy and related conditions, parental and marital status, sexual orientation, and gender identity; sex-based harassment (quid pro quo, relationship violence, hostile environment); and retaliation
- ▶ Applies to students, employees, parents, applicants, or others attempting to access CPS programs/benefits

Title IX Regs. 34 C.F.R. § 106.01 *et seq.*

- ▶ Regulations effectuate Title IX
 - ▶ Recent updates effective August 1, 2024
- ▶ Overview of requirements in regulations (not exhaustive):
 - ▶ Policy, grievance procedures, notifications
 - ▶ Title IX coordinator responsibilities
 - ▶ Training
 - ▶ Respond to and address discrimination on the basis of sex
 - ▶ Equitable treatment of complainant and respondent
 - ▶ Supportive measures
 - ▶ Restore safe and secure environment

Applicability of Title IX

- ▶ Applies to all school district and all sex discrimination under educational program or activity in U.S.
 - ▶ Not limited to in-school conduct; also includes school-sponsored events
 - ▶ Must address sex-based hostile environment, even if some of conduct occurred outside school's program or activity and even if outside of U.S.
 - ▶ Caution: e.g., school trips, social media and effects in school
- ▶ Complainant:
 - ▶ Student or employee alleged to have been subjected to conduct that could constitute sex discrimination OR
 - ▶ Any other person subject to conduct that could constitute sex discrimination while participating or attempting to participate in education program or activity at time of alleged discrimination
 - ▶ Remember: sex-based discrimination includes sexual orientation and gender ID
- ▶ Respondent: person alleged to have violated prohibition on sex discrimination
- ▶ Note: Parents/legal guardians have the right to act on behalf of minor complainant or respondent (including filing complaint)

Non-Discrimination in Employment

- ▶ Title IX prohibits discrimination on basis of sex in employment
 - ▶ Cannot limit, segregate, or classify applicants in way that could adversely affect any applicants' or employee's employment opportunities or status b/c of sex
 - ▶ No contractual or other relationship that subjects employees to discrimination
 - ▶ Exception: bona-fide occupational qualifications; e.g., can consider sex in relation to employment in single-sex locker room or bathroom
- ▶ Applies to recruitment, hiring process, assignments, pay rate, CBAs, fringe benefits (even if administered by 3rd party), employer-sponsored activities or any other term, condition, or privilege of employment.
 - ▶ Can ask applicant to self-identify sex but only if asked of everyone and not used to discriminate
 - ▶ No pre-employment inquiry of marital status (e.g., Miss. or Mrs.?)
- ▶ No discrimination on basis of pregnancy, family, parental, or marital status

Non-Discrimination Policy and Notices

- ▶ District must adopt, publish and implement policy stating District does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity, including admission and employment
- ▶ Must provide notice of non-discrimination to students, parents, guardians, employees, applicants for admission and employment, unions
 - ▶ Post on website, each handbook, catalog, announcement, bulletin, application form
- ▶ Notice must include (in all postings):
 - ▶ Statement that District does not discriminate on the basis of sex
 - ▶ Statement that inquiries may be referred to Title IX Coordinator, OCR, or both
 - ▶ Name or title, office address, email address, phone number of Title IX Coordinator
 - ▶ How to locate non-discrimination policy and grievance procedure
 - ▶ How to report information or make a complaint about conduct that may constitute sex-based discrimination

Title IX Coordinator

- ▶ Responsible for coordinating District's efforts to comply with Title IX responsibilities
- ▶ For 2024-2025 School Year, Title IX Coordinator is:

Dr. Leslie Scollins
Assistant Superintendent
143 Pond Street
Cohasset, MA 02025
781-383-4120
lscollins@cohassetk12.org

Definitions of Sex Discrimination

- ▶ “Discrimination on the basis of sex includes discrimination on basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.” 34 C.F.R. § 106.10
- ▶ Sex-based harassment = form of discrimination:
 - ▶ Quid pro quo harassment
 - ▶ Hostile environment harassment
 - ▶ Sexual assault/relationship violence
- ▶ Retaliation prohibited

Quid Pro Quo Harassment

- ▶ Definition: “An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient’s education program or activity explicitly or impliedly conditioning the provision of such aid, benefit, or service on a person’s participation in unwelcome sexual conduct.” 34 C.F.R. § 106.2.
- ▶ Examples (illustrative only):
 - ▶ Teacher tells student they will get an A on a paper if the student performs a sex act on the teacher.
 - ▶ Counselor permits student to spend class time or lunch in office and “massages” student or engaged in explicit discussion on sexual topics. (Not part of student’s IEP or 504.)
 - ▶ Coach invites and waives cost for out-of-state event if student shares advisor’s hotel room/bed.

Hostile Environment Harassment

- ▶ Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and 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. 34 C.F.R. § 106.2
- ▶ Fact-specific inquiry, considering:
 - ▶ Degree conduct affected complainant
 - ▶ Type, frequency, duration of conduct
 - ▶ Parties' roles, ages, prior interactions, and other relevant factors
 - ▶ Location of conduct and context in which it occurred
 - ▶ Other sex-based harassment in education program or activity
- ▶ Note: intent of harasser not relevant

Examples of Hostile Environment Harassment

- ▶ Group of students snap bra strap, cat call in hallway, make repeated references to student's breasts in school, at events, and in social media.
- ▶ Students in locker room make fun of teammate in connection with sexual orientation, using terms like "f*g" and imitating sex acts (regardless of whether the person is gay and even if the aggressors were "just joking").
- ▶ Leaving wig, make up, and skirt in transgender student's locker.
- ▶ Teacher singles out female student, comments on her clothes/appearance, uses derogatory nickname (e.g., "princess"), gives her minor roles in group work, mocks wrong answers.

Sexual Assault/Relationship Violence

- ▶ Sexual assault = an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
- ▶ Dating violence = violence committed by a person:
 - ▶ Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - ▶ Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - ▶ The length of the relationship;
 - ▶ The type of relationship; and
 - ▶ The frequency of interaction between the persons involved in the relationship.
 - ▶ Other specific offenses include domestic violence and stalking.
- ▶ Examples (illustrative):
 - ▶ Rape or attempted rape/coerced sexual conduct.
 - ▶ Boyfriend punches girlfriend (or vice versa).

Retaliation

- ▶ Definition: “Intimidation, threats, coercion, or discrimination against any person by the recipient, a student, or an employee or other person authorized by the recipient to provide aid, benefit, or service under the recipient's education program or 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, or hearing under this part.” 34 C.F.R. § 106.2.
 - ▶ Note: “Nothing in this definition or this part precludes a recipient from requiring an employee or other person authorized by a recipient to provide aid, benefit, or service under the recipient's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing under this part.” *Id.*
- ▶ Examples (illustrative):
 - ▶ Team captain threatens no playing time and no talking to teammate who reports sex-based harassment of another teammate.
 - ▶ Teacher refuses extra help and harshly grades student who was witness in Title IX investigation against colleague.
 - ▶ Student threatened with suspension for refusal to participate in investigation.

Pregnancy, Parental, and Marital Status (Students)

- ▶ Prohibition on discrimination on basis of student's current, potential, or past pregnancy or related condition. 34 C.F.R. § 106.40
 - ▶ Pregnancy-related condition = pregnancy, childbirth, termination of pregnancy, lactation and related medical conditions/recovery
 - ▶ Permissible to allow student based on pregnancy or related condition to voluntarily participate in separate portion of educational program/activity as long as comparable to programs for students not pregnant.
 - ▶ E.g., not allowing student to go to prom when pregnant or refusing to implement reasonable modifications
- ▶ If student or person with legal authority to act on student's behalf informs employee of pregnancy/related condition, unless employee reasonably believes Title IX coordinator already notified, employee **MUST** promptly provide that person with Title IX coordinator's contact information and inform person that the Title IX Coordinator can coordinate actions to prevent sex discrimination and ensure equal access

Actions to Prevent Discrimination and Ensure Equal Access to Pregnant/R.C. Students

- ▶ Reasonable modifications
 - ▶ Individually tailored to student's needs (e.g., lactation/bathroom breaks, permission to eat in class, access to online education, extensions, counseling)
 - ▶ Voluntary on part of student to accept or not
- ▶ Voluntary access to separate and comparable portion of program or activity
- ▶ Voluntary leaves of absence (e.g., for birth and recovery), with reinstatement to academic status and, as practicable, to extracurricular status
- ▶ Lactation space (clean and, shielded from view and intrusions - not bathroom)
- ▶ Cannot require documentation unless necessary and reasonable to determine reasonable modifications (e.g., if obviously pregnant, do not need documentation to allow to use restroom more)
 - ▶ No required fitness to participate unless certified level of physical ability necessary for participation in class/activity, certification required from all students, and information not used as basis for discrimination.
- ▶ Comparable treatment to other temporary medical conditions
- ▶ Title IX Coordinator responsible to coordinate actions.

Pregnancy, Parental, and Marital Status (Employees)

- ▶ Cannot adopt or implement any policy, practice or procedure or take employment action on the basis of sex: (1) concerning the current, potential, or parents parental, family or marital status of employee or applicant which treats persons differently or (2) that is based on whether employee or applicant is head of household or primary wage earner. 34 C.F.R. § 106.57
 - ▶ E.g., cannot deny position to applicant because she is newly married and you expect she will be pregnant soon; cannot grant promotion to male employee because he is the primary wage earner.
- ▶ Similar to rules for students who are pregnant or have related condition:
 - ▶ No discrimination on the basis of pregnancy or related condition
 - ▶ Comparable treatment to other temp medical conditions
 - ▶ Voluntary leave of absence without pay for reasonable time (even if insufficient leave time available)
 - ▶ Lactation time (reasonable breaks) and space (clean and, shielded from view and intrusions - not bathroom)

Recognizing Sexual Harassment

- ▶ No “magic words” or specific actions required
 - ▶ Consider relevant factors like age, relationship, status of parties, frequency, severity, power dynamic, reaction of both parties and witnesses
 - ▶ Ex. Coach putting hands on student to correct form v. sidling up and touching players on bench; kindergartener v. senior touching someone else’s torso; consensual kiss between couple v. one student grabs another, shoves in locker and kisses in MS hallway.
- ▶ BUT some words/actions should be red flag:
 - ▶ Teacher or adult touching student (other than, e.g., as appropriate to redirect student or OT helping student onto equipment); student touching another student and signs not consensual
 - ▶ Be particularly aware if actions described with words like “grooming,” “creepy,” “grope,” or other terms with sexual connotations
 - ▶ Sexual comments/innuendos/jokes (may be coded using slang)
 - ▶ Images, social media, comments targeted at student based on sex, gender ID, or sexual orientation (e.g., group of students forwarding a “sext” without consent)
 - ▶ Beware of individuals being afraid to report for fear of retaliation
- ▶ Severe OR pervasive = some conduct so severe one-time can create hostile environment; sometimes more minor aggressions add up to hostile environment
 - ▶ Subjective and objective = target and “reasonable person”
 - ▶ Does not matter that aggressor “just joking” or did not intend to harass

Responding to Sex Discrimination

- ▶ “A recipient with knowledge of conduct that reasonably may constitute sex discrimination in its education program or activity must respond promptly and effectively” and must comply with the regs to address sex discrimination in its education program or activity. 34 C.F.R. § 106.44.
 - ▶ Note, change from prior regs’ “actual knowledge” requirement
 - ▶ Title IX Coordinator must monitor and address barriers to reporting
- ▶ Employees required to notify Title IX Coordinator when employee has information about conduct that reasonably may constitute sex discrimination.
 - ▶ Special rules for confidential employees and victims.
- ▶ Once notified of conduct that reasonably may constitute sex discrimination, Title IX Coordinator must coordinate compliance and take actions to “promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects.”
- ▶ District-wide Title IX grievance procedure to be provided and available on website
 - ▶ Note, reports of conduct that do not include Title IX allegations will be investigated and addressed under other applicable procedures (not the Title IX procedures).

Employee Response to Sexual Harassment

- ▶ If witness and safe to do so, intervene/request support from administration or other qualified personnel (e.g., counselor)
- ▶ Promptly notify Title IX Coordinator (limited exceptions for confidential employee and target)
- ▶ Follow grievance procedure
- ▶ Implement applicable supportive measures, as directed (e.g., if student permitted access to A/C, allow it)
- ▶ Cooperate in actions to prevent sexual harassment/sex based discrimination
 - ▶ Do not engage in, condone, or tolerate such actions, even “harmless” jokes
 - ▶ Proper supervision (e.g., in hallways, locker rooms, field trips)
 - ▶ Avoid using sex-based stereotypes in class
 - ▶ Maintain appropriate professional boundaries/relationships
 - ▶ Implement District plans/measures to make/restore safe and supportive environment

Employee Notification Requirements

- ▶ All employees (except confidential/target) **MUST** promptly notify Title IX Coordinator when employee has information about conduct that reasonably may constitute sex discrimination (including harassment and retaliation).
 - ▶ Email, phone call, in-person notification to Title IX Coordinator. (Contact information for Dr. Scollins in previous slide.) Confirm receipt.
 - ▶ Notification requirements do not apply to employees personally subject to conduct that may reasonably constitute sex discrimination under Title IX.
 - ▶ Complaints against Title IX Coordinator may be brought to Superintendent.
- ▶ Notification required even if you believe (but are not certain) someone else reported or if not sure it warrants sex discrimination or if believe may have been resolved. Do not investigate first.
- ▶ Title IX Coordinator tracking trends, climate - all information must flow through her
- ▶ **Rule of thumb: When in doubt, report to Title IX Coordinator**

Requirements of Confidential Employees

- ▶ **Confidential employee** = employee whose communications are privileged or confidential under state or federal law. Confidential status only if information received while employee functioning within scope of duties to which privilege/confidential status applies.
 - ▶ In CPS: school psychologists and adjustment counselors may be C.E.
 - ▶ District must notify all participants in education program or activity how to contact confidential employees
- ▶ If a reporter makes a report to a confidential employee, the confidential employee must:
 - ▶ Explain to the reporter the employee's status as a confidential employee;
 - ▶ Indicate how the reporter can contact the Title IX Coordinator, who can explain supportive measures, the grievance procedure, investigation and, if applicable, the informal resolution process; and
 - ▶ Indicate how the reporter can file a complaint.

Concurrent Reporting Obligations

- ▶ Same conduct may violate multiple laws/policies (e.g., conduct may be bullying, Title IX and Title VI harassment, and warrant filing 51A/criminal referral)
- ▶ Must meet all applicable obligations - e.g., refer to Title IX Coordinator; adhere to bullying plan, file 51A; adhere to applicable due process requirements.
- ▶ **Note: DCF/police involvement does not discharge District of Title IX obligations. District required to conduct a Title IX investigation even if there is concurrent law enforcement/DCF investigation.**
 - ▶ Also note, different standards apply; thus, police/DCF determination not dispositive.

Title IX Coordinator Actions Upon Notice of Potential Sex Discrimination

- ▶ Treat complainant and respondent equitably
- ▶ Offer and coordinate supportive measures to complainant and respondent; take other steps to effect remedies and ensure sex discrimination does not continue
- ▶ Notify complainant (or, if unknown, the reporter) of the grievance process, informal resolution process, if available and appropriate
- ▶ If complaint made, notify respondent of grievance process and informal resolution process, if available and appropriate
- ▶ If complaint made, initiate grievance or informal resolution process (as appropriate)
- ▶ If no complaint or withdrawal of any/all allegations and if informal resolution process not available or done, determine whether to initiate complaint of sex discrimination
- ▶ Note: Need not comply with these steps if Title IX Coordinator reasonably determines conduct as alleged could not constitute sex discrimination.

Title IX Complaints

- ▶ Complaint: “oral or written request” to District “that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX” or its implementing regulations.
- ▶ Following have right to make complaints:
 - ▶ Complainant
 - ▶ Parent, guardian, or other authorized legal representative for complainant
 - ▶ Title IX Coordinator (specific circumstances)
- ▶ For sex discrimination, other than harassment, any student or employee or other person participating or attempting to participate in education program or activity at time of alleged discrimination.
- ▶ Complaints arising out of same facts or circumstances can be consolidated (even if different parties)

Complaints by Title IX Coordinator

- ▶ Title IX Coordinator may initiate complaint.
- ▶ Fact-specific determination, considering at least:
 - ▶ Complainant's request not to proceed with complaint
 - ▶ Complainant's reasonable safety concerns
 - ▶ Risk that additional acts of sex discrimination would occur if complaint not initiated
 - ▶ Severity of alleged discrimination (including need for discipline/removal)
 - ▶ Age and relationship of parties, including if respondent is employee
 - ▶ Scope of alleged discrimination (ongoing, pattern, multiple victims)
 - ▶ Availability of evidence
 - ▶ Whether can end alleged sex discrimination and prevent recurrence absent grievance procedure
- ▶ Must notify complainant and address reasonable concerns.

Supportive Measures

- ▶ Must offer and coordinate for sex-based harassment and retaliation
- ▶ Designed to protect safety of the parties or educational environment or provide support during the grievance or resolution process
 - ▶ Cannot unreasonably burden either party
 - ▶ Not punitive or disciplinary
 - ▶ Emergency removal/admin leave still permissible
 - ▶ Confidential, except as needed to effectuate
 - ▶ Caution: student record confidentiality requirements still apply
- ▶ If student with disability, Title IX Coordinator must consult with Team to determine how to comply with special education requirements in implementing supportive measures.

Supportive Measures Cont.

- ▶ Vary depending on what is reasonably available and appropriate.
- ▶ Per CPS Grievance Process, may include, e.g.:
 - ▶ Extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one or more parties; leaves of absence; changes in schedule, class, work, extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.
- ▶ May be modified or continued during process and after
 - ▶ Notice and opportunity for complainant and respondent to seek from impartial employee (not person who made the challenged decision) modification to or reversal of decision to provide, deny, or modify supportive measures.

Informal Resolution

- ▶ May offer any time before determining whether sex discrimination occurred
 - ▶ Title IX Coordinator discretion to offer (e.g., if concerned risk of future harm); may decline even if parties interested
 - ▶ If necessary, Title IX Coordinator must take other appropriate prompt and effect steps to ensure discrimination does not continue, in addition to I.R.
- ▶ **Not available when employee allegedly engaged in discrimination against student**
- ▶ Both parties must voluntarily consent, without pressure
 - ▶ Cannot require waiver of right to full investigation and determination
- ▶ I.R. Facilitator - not same person as investigator or decision-maker
 - ▶ Cannot have conflict of interest or bias
 - ▶ Must have received training
- ▶ Potential terms for I.R. agreement, e.g.,:
 - ▶ Restrictions on contact
 - ▶ Restrictions on respondent's participation in one or more of District's programs or activities, or attendance at specific events, including restrictions District could have made if followed grievance procedure and determined sex discrimination occurred

Involuntary Resolutions Cont.

- ▶ Required notice before initiation, explaining:
 - ▶ Allegations
 - ▶ Requirements of I.R. process
 - ▶ Prior to agreeing to resolution, either party can withdraw and initiate/resume grievance procedure
 - ▶ Parties' agreement to resolution would preclude them from initiating/resuming grievance procedure
 - ▶ I.R. terms binding only on the parties
 - ▶ What information the District will maintain and whether/how could be disclosed for use in grievance procedure if initiated/resumed.

Grievance Procedure

- ▶ Must adopt, publish, and implement grievance procedure that provides for prompt and equitable resolution of complaints
- ▶ Copies to be distributed and available on website
- ▶ Employees: Review and follow grievance procedure

Requirements for Grievance Procedure

- ▶ Must treat complainant and respondent equitably
- ▶ Require Title IX Coordinator, investigator, decision-maker not have a conflict of interest or bias
 - ▶ Note: Decision maker *MAY* be the same person as the Title IX Coordinator or investigator (but I.R. facilitator separate)
- ▶ Includes presumption respondent not responsible for alleged discrimination until decision made at conclusion of grievance procedure
- ▶ Establish reasonably prompt timeframes for major stages of grievance procedures (e.g., evaluation, investigation, determination, appeal),
 - ▶ Option for reasonable extension for good cause
 - ▶ If extension, notify both parties, including reason for delay

Requirements of Grievance Procedure Cont.

- ▶ Require reasonable steps to protect privacy of parties and witnesses during grievance procedures, as long as they do not restrict ability of parties to:
 - ▶ Obtain and present evidence (including by speaking to witnesses)
 - ▶ Consult family members, confidential resources, or advisors, or
 - ▶ Otherwise prepare for grievance procedure
- ▶ Require objective evaluation of all evidence that is relevant and not impermissible, including exculpatory and inculpatory, and provide credibility determinations not based on status as complainant, respondent, or witness
- ▶ Exclude impermissible evidence
- ▶ If grievance procedure apply to some but not all complaints, articulate consistent principals of how District will determine which procedures apply

“Relevant” and “Impermissible” Defined

- ▶ Relevant evidence/question = related to the allegations of sex discrimination investigated
 - ▶ Questions are relevant when they seek evidence that may aid in showing whether alleged sex discrimination occurred
 - ▶ Evidence is relevant when it may aid a decision-maker in showing whether alleged sex discrimination occurred
- ▶ Impermissible questions/evidence (even if otherwise relevant)
 - ▶ Protected by privilege recognized under state/federal law
 - ▶ Medical/psych records, unless waived/consent provided
 - ▶ Info re complainant’s sexual interests or prior sexual conduct, unless to show consent or someone other than respondent committed the alleged conduct.
 - ▶ Note: prior consensual sexual conduct between complainant and respondent does not, by itself, demonstrate or imply consent or preclude determination sex-based harassment occurred

Grievance Procedure: Notice of Allegations

- ▶ Upon initiation of grievance procedure, must provide notice of allegations to parties whose identities are known.
- ▶ Notice must include:
 - ▶ Grievance procedures and informal resolution process, if available
 - ▶ Sufficient information available at time to allow parties to respond to allegation, including (if available to District):
 - ▶ Identities of parties involved in incident(s)
 - ▶ Conduct alleged to constitute sex discrimination
 - ▶ Date(s) and location(s) of alleged incident(s)
 - ▶ Statement that retaliation prohibited
 - ▶ Statement parties entitled to equal opportunity to access relevant and not impermissible evidence or an accurate description of it
- ▶ Provide new/updated notice if learn of and decide to investigate additional allegations of sex discrimination

Dismissal of Complaint

- ▶ May dismiss complaint made through grievance procedure if:
 - ▶ District is unable to identify respondent after taking reasonable steps to do so
 - ▶ Respondent not participating in education program or activity or employed by District
 - ▶ Complainant voluntarily withdraws allegations in complaint, Title IX Coordinator declines to initiate complaint, and District determines any alleged conduct not withdrawn would not constitute sex discrimination
 - ▶ Determine respondent's conduct, even if proven, would not constitute sex discrimination
 - ▶ Must make reasonable efforts to clarify allegations with complainant before dismissal.
- ▶ Must notify complainant (and respondent if already notified of complaint) of dismissal and option to appeal
- ▶ If complaint dismissed, offer supportive measures to complainant and respondent, as appropriate and Title IX Coordinator take other steps to end and prevent sex discrimination.

Grievance Procedure: Investigation

- ▶ Provide for adequate, reliable, and impartial investigation = must:
 - ▶ Ensure burden on District (not parties) to conduct investigation and gather sufficient evidence to determine if sex discrimination occurred
 - ▶ Provide equal opportunity to parties to present witnesses and evidence
 - ▶ Review all evidence and determine what is relevant and impermissible
 - ▶ Allow parties equal access to relevant and not impermissible evidence or accurate description of evidence.
 - ▶ Note: If CPS provides a description of the evidence, a party, upon request, will be provided access to the evidence.
 - ▶ Provide parties equal opportunity to respond to evidence
 - ▶ Take reasonable steps to prevent unauthorized disclosure information obtained solely through grievance procedure
 - ▶ Note: disclosure for purposes of administrative proceedings or litigation related to complaint are authorized
- ▶ Must have process that allows decision-maker to question parties and witnesses to assess credibility if in dispute and relevant

Grievance Procedure: Determination

- ▶ Following investigation and evaluation of evidence, District must make determination.
- ▶ Preponderance of the evidence standard used in CPS
 - ▶ Decision-maker must evaluate relevant (not impermissible) evidence for persuasiveness.
 - ▶ If not persuaded under applicable standard, regardless of quantity of evidence, must not determine sex discrimination occurred.
 - ▶ But may be violation of other law or policy.
- ▶ Notify parties in writing of determination of whether discrimination occurred, rationale for determination, and options for appeal.
- ▶ If determined sex discrimination occurred, Title IX Coordinator coordinates remedies to complainant and sanctions on respondent, and takes prompt and effective steps to ensure sex discrimination does not continue or recur.
 - ▶ Remedies may include, e.g., coaching, mentoring, training, monitoring, schedule adjustments, counseling support or referrals and/or escorts.
 - ▶ Discipline may include, e.g., restorative justice measures, detention, out of school removal, verbal or written reprimand, reinforcement of expectations, adjustment of performance evaluation components, training, demotion, suspension or dismissal.

Grievance Procedure: Discipline

- ▶ If there is a determination that sex discrimination occurred the Title IX Coordinator will, as appropriate, coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant as appropriate of any such disciplinary sanctions
- ▶ Must comply with grievance procedure before implementing discipline.
- ▶ May not discipline respondent for sex discrimination under Title IX unless determination at conclusion of grievance process that respondent engaged in prohibited sex discrimination.
- ▶ No discipline of parties, witnesses, or other participants for false statements or consensual sex based solely on determination whether sex discrimination occurred.
- ▶ Note: these requirements in addition to due process or other requirements/limits for student/employee discipline

Grievance Procedure: Appeals

- ▶ If dismissal of Complaint appealed, District must:
 - ▶ Notify parties of appeal
 - ▶ If not previously done, provide notice of allegations to respondent
 - ▶ Implement appeal procedures equally for parties
 - ▶ Ensure decision-maker in appeal did not take part in investigation or dismissal of complaint
 - ▶ Ensure decision-maker for appeal received required training
 - ▶ Provide parties reasonable and equal opportunity to make statements re outcome
 - ▶ Notify parties of result of appeal and rationale
- ▶ In addition, grievance procedure must include appeal process that, at minimum, is same as offers in all other comparable proceedings, including other discrimination complaints

Grievance Procedure: Additional Items

- ▶ For complaints of sex-based harassment, procedures must:
 - ▶ Describe range of supportive measures available to parties
 - ▶ List or describe range of possible disciplinary sanctions and remedies
- ▶ Retaliation prohibited
 - ▶ If info about conduct that reasonably may constitute retaliation, must respond in same manner as to reports of sex discrimination
 - ▶ If complaint - grievance procedure or informal resolution
 - ▶ Can be consolidated with related sex discrimination complaint(s)
- ▶ Notice of I.R. process
- ▶ If District adopts additional provisions as part of grievance procedure, must apply equally to parties

Students with Disabilities

- ▶ If complainant or respondent is student with a disability, Title IX Coordinator must consult with one or more members of IEP/504 Team or persons responsible for student's placement decision to determine how to comply with special ed laws, e.g., IDEA/504
- ▶ Consultation with Team in course of grievance procedure, implementing supportive measures, and informal resolution
- ▶ In addition to, not in lieu of manifestation determination, as required, for disciplinary removals of student with disabilities

Single-Sex Activities

- ▶ May have separate locker rooms and rest rooms but must be comparable
 - ▶ Remember, under MA law, students can use facilities that align with gender ID
- ▶ Activities that may be divided by sex:
 - ▶ Contact sports in PE
 - ▶ Ability grouping in PE - assessed by objective standards of individual performance, not based on sex (standards should not have adverse effect on members of one sex)
 - ▶ Human sexuality classes
 - ▶ Choruses - e.g., based on vocal range
- ▶ Classes and extra-curricular activities if:
 - ▶ Each single-sex class/activity is based on District's important objective need to improve educational achievement or to meet educational needs of students
 - ▶ Implemented in objective and even-handed manner
 - ▶ Voluntary for students
 - ▶ Substantially equal coeducational class/activity also available; may also require class for excluded sex
 - ▶ Must conduct periodic evaluations (at least every 2 years)

Athletics

- ▶ No person excluded on basis of sex from participation in, denied benefits of, treated differently in interscholastic, intercollegiate, club, or intramural athletics and such athletics cannot be offered separately
- ▶ EXCEPT: may operate separate teams for each sex, where selection based upon competitive skill or for contact sport
 - ▶ If only a single-sex sport available, members of excluded sex allowed try out, unless contact sport (boxing, wrestling, rugby, ice hockey, football, basketball or other sport involving bodily contact)
 - ▶ Must offer equal athletic opportunity for members of both sexes, considering, e.g., option available, practice time, publicity, equipment and resources
- ▶ DOE indicated intent to publish separate rule re athletics

Additional Obligations

- ▶ District record keeping obligations
 - ▶ Must maintain for 7 years
 - ▶ For each complaint, records documenting informal resolution or grievance procedure and outcome
 - ▶ For each notification about conduct that could reasonably constitute sex discrimination, records documenting actions taken to meet obligations
- ▶ Training:
 - ▶ Employees trained at least annually
 - ▶ Additional training for Title IX Coordinator, designees, facilitators, decision makers, and investigators
 - ▶ Cannot be based on stereotypes
 - ▶ All training materials must be made available upon request to the public

DOE Office of Civil Rights (“OCR”)

- ▶ OCR enforces Title IX (among other civil rights laws)
- ▶ Investigates and addresses complaints of discrimination under Title IX and performs periodic compliance reviews on its own
 - ▶ Online complaint form available at:
<https://ocrcas.ed.gov/>
- ▶ More information on OCR available at:
<https://www2.ed.gov/about/offices/list/ocr/index.html>

OCR Contact Information

OCR Main Office

- ▶ Email: OCR@ed.gov
- ▶ Phone: 800-421-3481
- ▶ Fax: 202-453-6012
- ▶ Mailing address:
U.S. Department of Education
Office for Civil Rights
Lyndon Baines Johnson Department
of Education Bldg
400 Maryland Avenue, SW
Washington, DC 20202-1100

OCR Office for MA

- ▶ Email: OCR.Boston@ed.gov
- ▶ Phone: 617-289-0111
- ▶ Fax: 617-289-0150
- ▶ Mailing Address:
Office for Civil Rights
US Department of Education
9th Floor
5 Post Office Square
Boston, MA 02109-3921

Questions?