2024-25 TITLE IX PERSONNEL SEXUAL HARASSMENT TRAINING

KANNAPOLIS CITY SCHOOLS

OCTOBER 16, 2024

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POYNER SPRUILL, LLP

OVERVIEW

- A Brief History of Title IX
- Title IX Sexual Harassment Defined
- District Obligations
- The Players: Title IX Personnel
- Title IX Grievance Process
- Investigation Procedures
- Impartiality, Conflict of Interest, & Bias
- Appeals
- Other Requirements
- The Intersection of Title IX & Special Education
- Questions

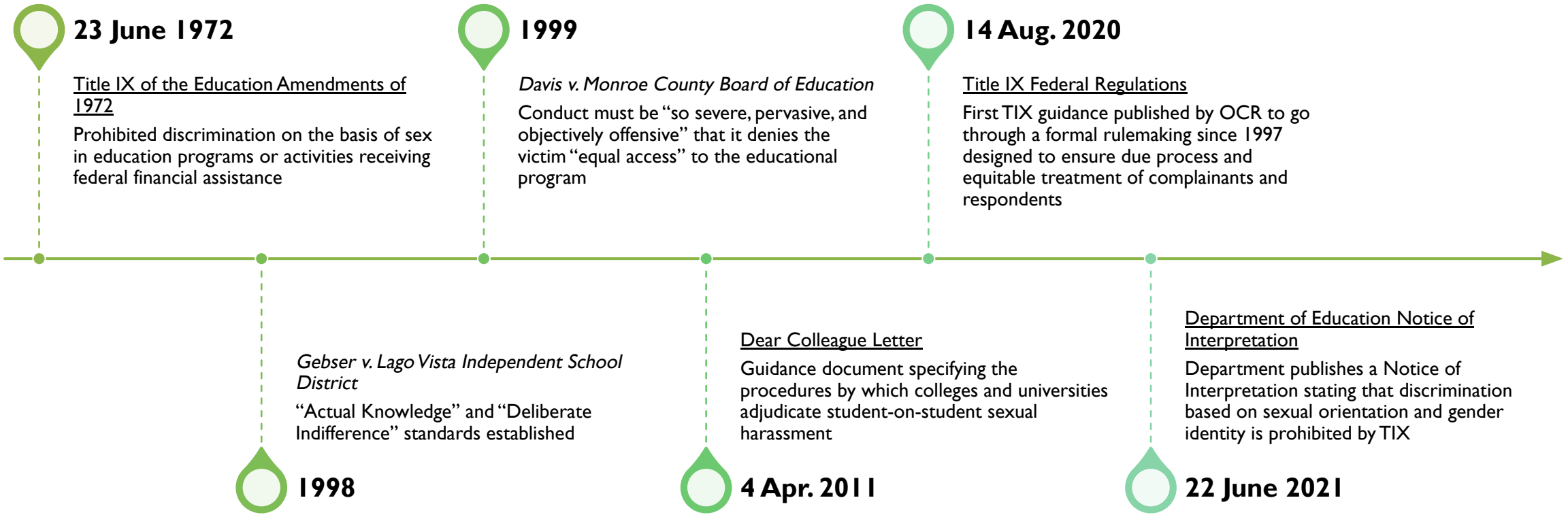
A BRIEF HISTORY OF TITLE IX

WHAT IS TITLE IX?

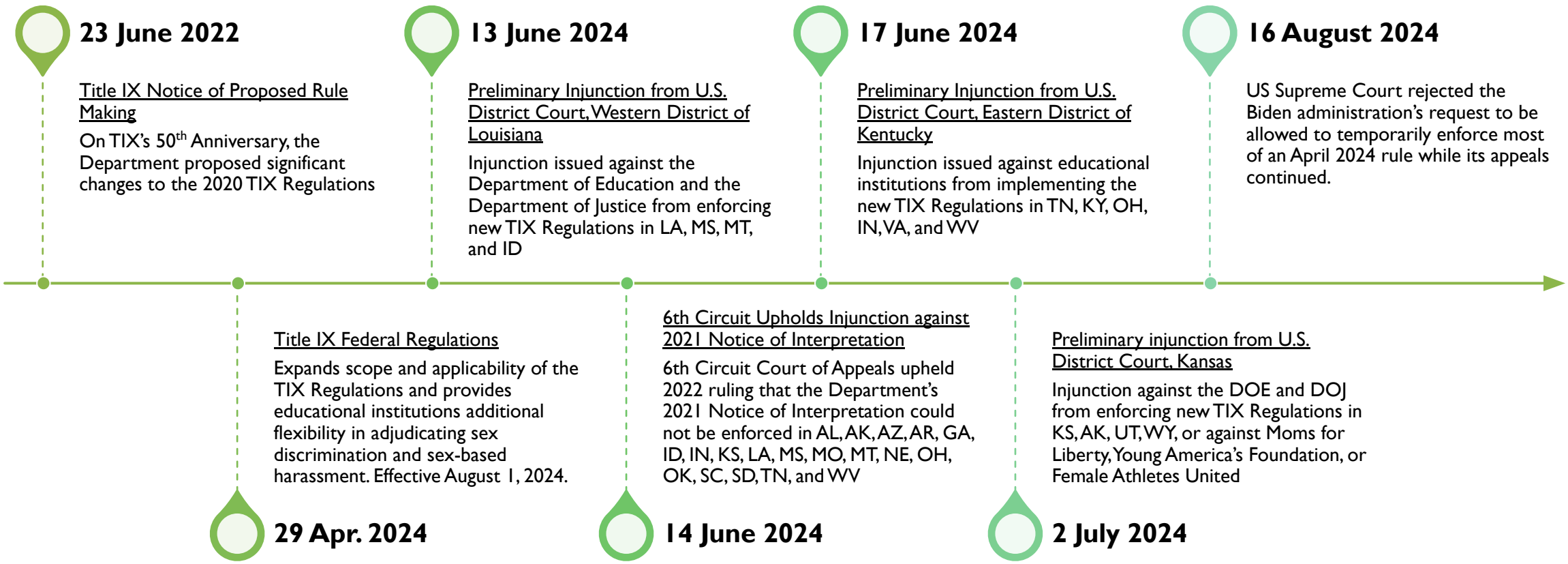
"No person in the United States shall, **on the basis of sex**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance…"

20 U.S. Code §1681

THE EVOLUTION OF TITLE IX



THE EVOLUTION OF TITLE IX

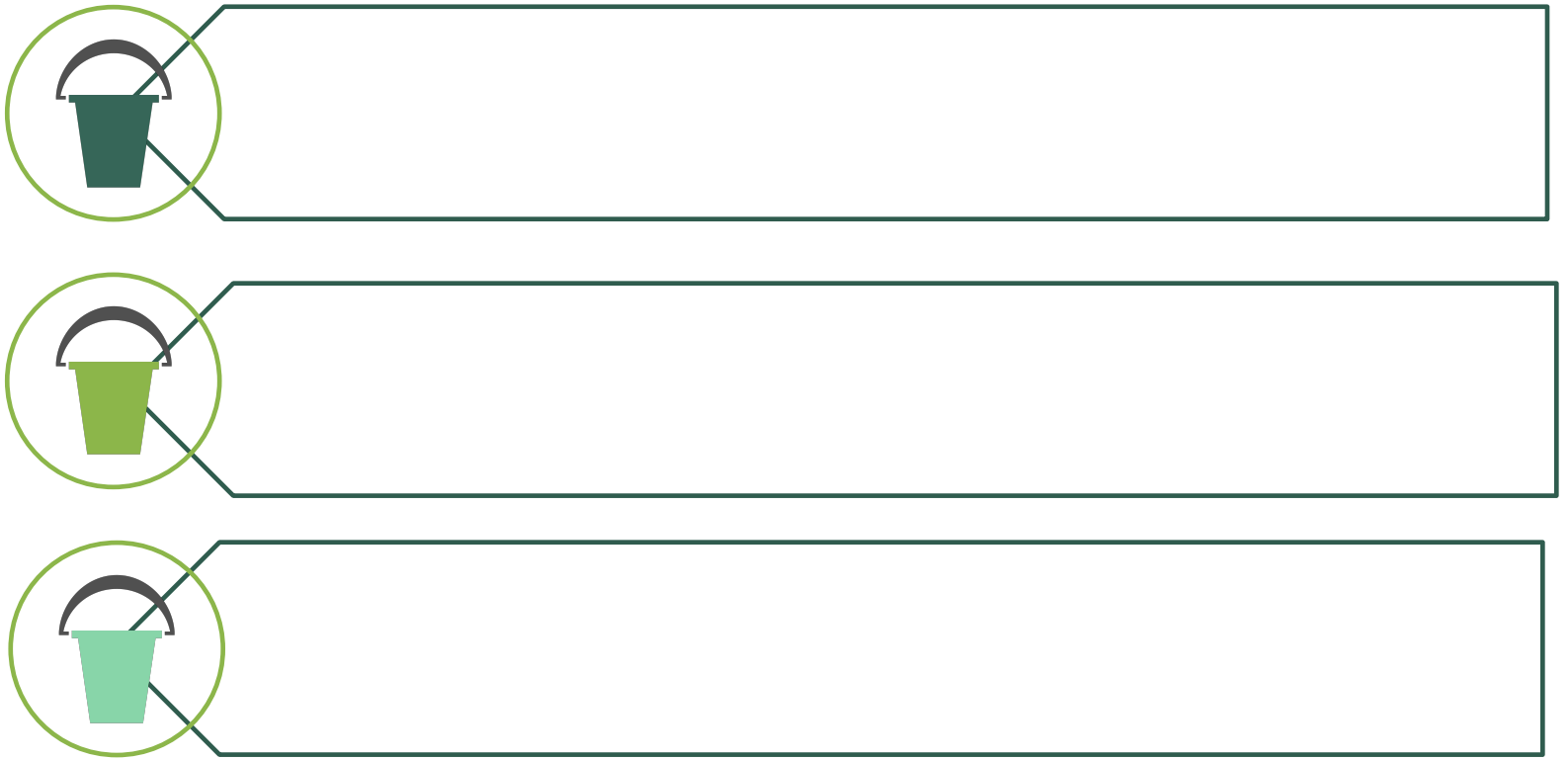


"ON THE BASIS OF SEX"

- A July 2021 U.S. Department of Education Questions and Answers on the Title IX Regulations on Sexual Harassment interprets "on the basis of sex" to include sexual orientation and gender identity.
- N.C. Gen. Stat. § 115C-407.15 prohibits bullying and harassing behavior by employees and students, and includes "acts reasonably perceived as being motivated by any actual or perceived differentiating characteristic, such as race, color, religion, ancestry, national origin, gender, socioeconomic status, academic status, **gender identity**, physical appearance, **sexual orientation**, or mental, physical, developmental, or sensory disability, or by association with a person who has or is perceived to have one or more of these characteristics"
- *Grimm v. Gloucester County School Board (*4th Cir. 2020) held that "on the basis of sex" under Title IX includes sexual orientation and gender identity

SEXUAL HARASSMENT

There are three types ("buckets") of TIX Sexual Harassment:



2024 TIX Regulations

All types of sex discrimination, including sex-based harassment, are prohibited.

Sex-based harassment includes

1. Quid Pro Quo,
2. Hostile Environment, and
3. Clery Act & VAWA Offenses

QUID PRO QUO

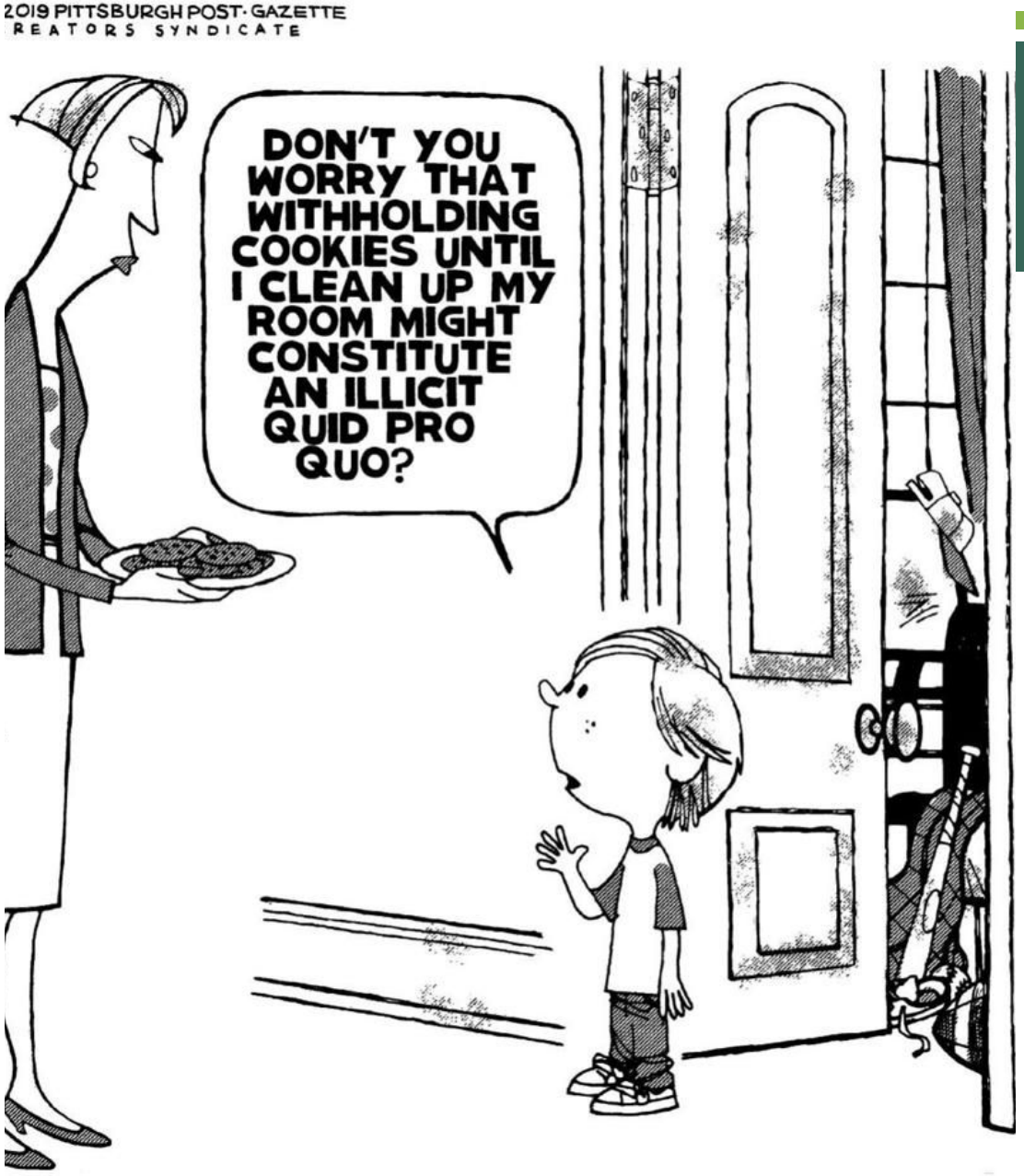


- "This for that"
- Occurs when a **school employee** conditions access to educational benefits on an individual's participation in unwelcome sexual conduct

2024 TIX Regulations

An employee, agent, or other person authorized by the school conditions access, explicitly or impliedly, to educational benefits on a person's participation in unwelcome sexual conduct

Note: A club leader, team captain, band line leader could be persons authorized by a school to provide a benefit, not just employees



EXAMPLES OF QUID

- A teacher tells a student that the student will get an A on the final exam if the student sends the teacher nude photos
- The coach of the varsity soccer team names a student captain of the team with the expectation that the student will provide sexual favors to the coach.
- An assistant principal says that he/she will only provide a college application recommendation letter for a student if the student participates in sexual conduct with the assistant principal.

UNWELCOME CONDUCT



- Unwelcome, sex-based conduct, determined by a reasonable person to be so severe, pervasive, ***and*** objectively offensive that it effectively denies equal access to the education program or activity

2024 TIX Regulations

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 the education program or activity (i.e. creates a hostile environment)

EFFECTIVE DENIAL OF EQUAL ACCESS TO EDUCATION PROGRAM OR ACTIVITY

- Does not require "that a person's total or entire educational access has been denied"
- Examples
  - Skipping class to avoid a harasser
  - Decline in student's GPA
  - Athlete who quits participating in school athletics, but carries on with other school activities following sexual harassment

CLERY ACT & VAWA OFFENSES

- The Clery Act and the Violence Against Women Act (VAWA) are two federal laws that do not apply to K-12 institutions
- What does apply to K-12 in the Title IX context are the following offenses, as defined in Clery and VAWA:
  - Sexual Assault
  - Dating Violence
  - Domestic Violence
  - Stalking



SEXUAL ASSAULT

- Conduct that qualifies as one of the following:
  - Rape
  - Sodomy
  - Sexual assault with an object
  - Fondling
  - Incest
  - Statutory Rape
- Rape, sodomy, and sexual assault with an object are either
  - Without consent, or
  - Victim was incapable of giving consent because of age or temporary/permanent mental or physical capacity

DATING VIOLENCE



- Violence committed by a person who has been in a relationship of romantic or intimate nature with the victim
  - Up to 19% of teenagers in the United States experience sexual or physical dating violence, 65% report being psychologically abused
  - In the age range 14 to 21, 51% of females and 43% of males reported being victims of dating violence

DOMESTIC VIOLENCE

- A misdemeanor or felony crime of violence committed by:
  - Current/former spouse or intimate partner;
  - A person with whom the victim shares a child in common;
  - A person who is cohabitating with or who has cohabitated with the victim as a spouse or intimate partner;
  - By any other person against an adult or youth victim who is protected from that person's act under domestic or family violence laws



STALKING

- A course of conduct that is directed at a specific person and would cause a reasonable person to either:
  - Fear for his/her safety or the safety of others; or
  - Suffer substantial emotional distress

RESPONDING TO SEXUAL MISCONDUCT THAT IS NOT PROHIBITED CONDUCT UNDER TITLE IX

A school has discretion to respond appropriately to reports of sexual misconduct that do not fit within the scope of conduct covered by the Title IX grievance process.

Title IX does not replace a school's more expansive code of conduct and does not prohibit a school from enforcing that code to address misconduct that is not Title IX sex-based harassment



DISTRICT'S OBLIGATIONS

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ACTUAL KNOWLEDGE

- A school must respond to possible sexual harassment occurring in its education program or activity when it has **actual knowledge** of the harassment
- A mandated reporter has notice of sexual harassment or allegations of sexual harassment
- In the K-12 context, **all** employees are mandated reporters

2024 TIX Regulations

All employees (who are not confidential employees) must notify the TIX Coordinator when the employee has **information** about conduct that could reasonably constitute sex discrimination under TIX

EDUCATION PROGRAM OR ACTIVITY

- Locations, events, or circumstances over which the school exercised substantial control over both the Respondent and the context in which the sexual harassment occurs
- Schools are only responsible for responding to allegations of sex discrimination that occur in the U.S.

2024 TIX Regulations

Also requires schools to address sex-based hostile environments in education programs or activities, even when some of the conduct alleged to be contributing to the hostile environment occurred outside the education program or activity or outside the US

The obligation to investigate conduct that occurs under its disciplinary authority is "only ever as broad as its reasonable ability to do so.

SETTINGS WHERE TITLE IX MAY APPLY



Buildings or other locations that are part of the school's operations, including remote learning platforms;



Off-campus settings if the school exercised substantial control over the respondent and the context in which the alleged sexual harassment occurred (e.g., a school field trip to a theater)



Computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of, the school



Student's personal electronic devices if used to perpetrate online sexual harassment during class time may constitute a circumstance over which the school exercises substantial control

DELIBERATE INDIFFERENCE

- A school that has actual knowledge must respond in a manner that is **not deliberately indifferent**
- A school will be deliberately indifferent only if its response to sexual harassment is **clearly unreasonable** in light of the known circumstances

2024 TIX Regulations

Require schools to take prompt and effective action to end any prohibited sex discrimination in its education programs or activities, prevent its recurrence, and remedy its effects

A school's response must be **reasonable in light of known circumstances**

MAKING A REPORT

- A report of Title IX sexual harassment may be made by anyone, not just the alleged victim or a mandated reporter
  - School employees **shall immediately** notify the school's Title IX Coordinator of any report of sexual harassment
  - School administrators **must not** resolve allegations of sexual harassment through normal discipline procedures.
- May be made by phone, mail, email, letter, or by any means that result in the Title IX Coordinator receiving the report
- May be made at any time, including non-business hours

2024 TIX Regulations

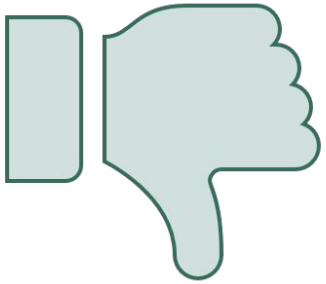
A school may receive "information" of sex-based harassment from any person.

A school must respond promptly and appropriate when it receives notice of alleged facts that, if true, could be considered Title IX sex-based harassment

DO I MAKE A REPORT OF TITLE IX SEXUAL HARASSMENT?

DO I MAKE A REPORT?





Alex reports to the media center coordinator that another student, Mary, another student at your school, is sending him dozens of text messages every night. He said he has not responded to any of the messages.

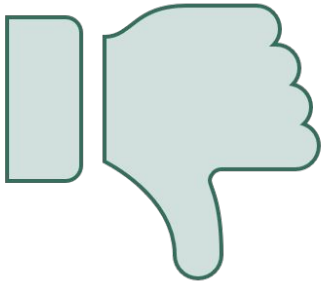
Alex says that some of the messages Mary has been sending include inappropriate memes and sexual jokes.

Alex does not want you to tell anyone.



DO I MAKE A REPORT?

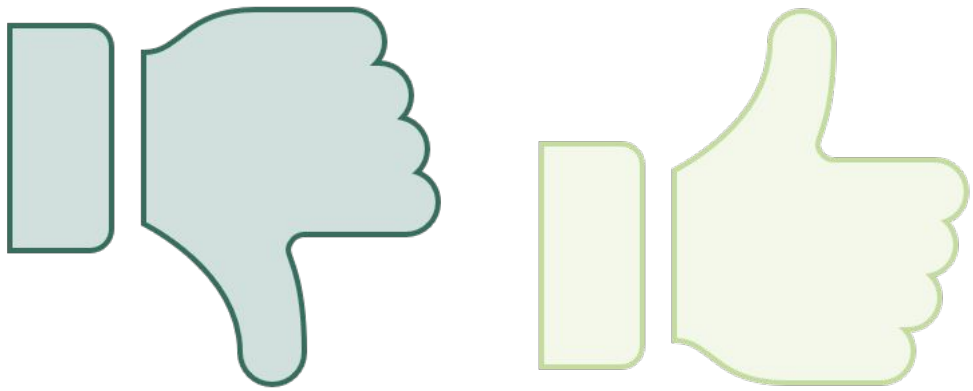




Joey is a Junior in high school. You observe that Joey has been spending a lot of time with his math teacher, Ms. Greene, outside of classroom time.


#FALLONTONIGHT

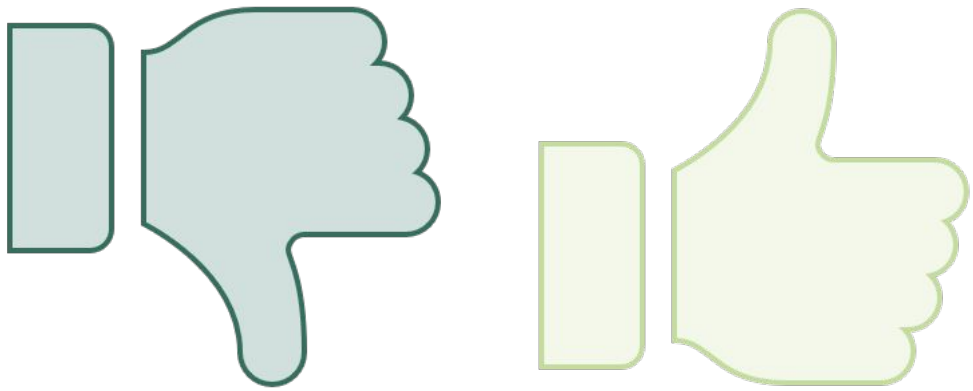
DO I MAKE A REPORT?



You often observe Joey sitting with his mother and Ms. Greene at basketball games.



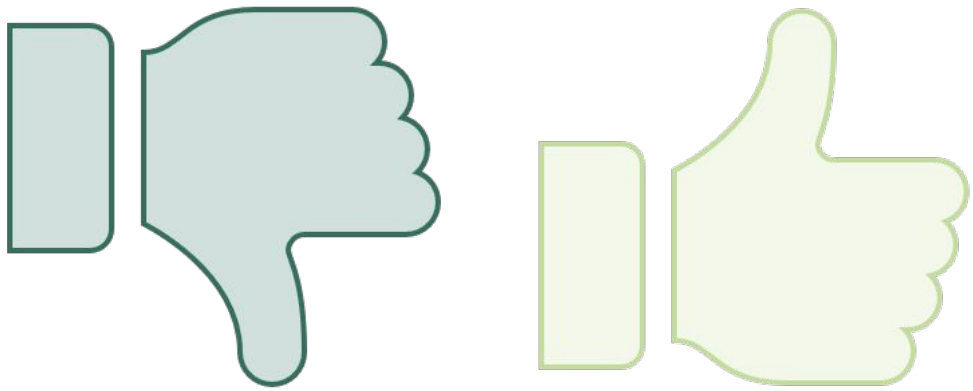
DO I MAKE A REPORT?



You have heard rumors that Joey and Ms. Greene are in a relationship. You speak to Joey's mother about this, and she says that Ms. Greene is just a good family friend.



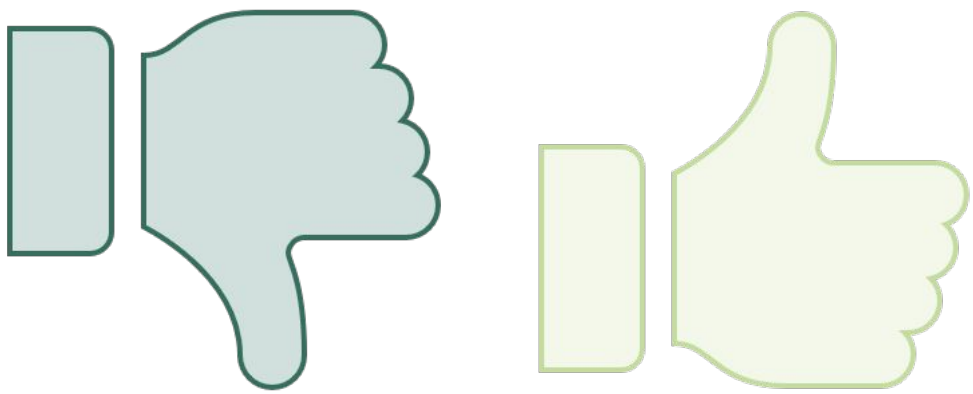
DO I MAKE A REPORT?



You walk by Ms. Greene's classroom one day after school and believe you saw Joey and Ms. Greene holding hands, but you are not 100% sure of what your saw.



DO I MAKE A REPORT?

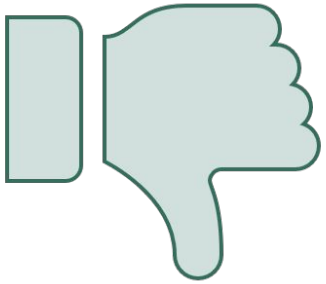


You talk to Joey's friend, Alex, who says Joey and Ms. Greene have kissed according to Joey.



DO I MAKE A REPORT?





The middle school students have begun making jokes about each other in the hallways between classes.

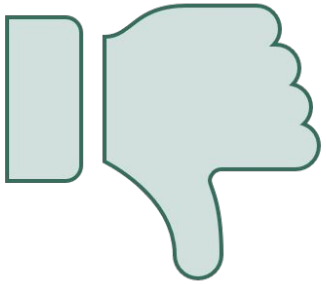
You begin to overhear a joke being made about Ronald, who lives on a farm. Students are saying that Ronald has a favorite goat that he "loves," "kisses," and is "going to marry."

It seems like Ronald is going along with the joke, but you have concerns that it may be secretly upsetting him.


TEAM USA

DO I MAKE A REPORT?



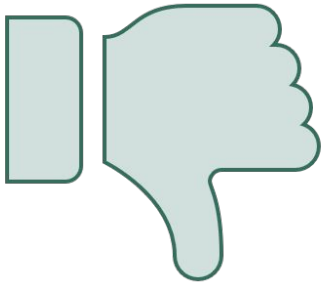


Jaden shows you a video taken at an off-campus party over the summer. The video shows two students sneaking off together during the party and holding hands as they leave.

Jaden tells you the video is being shared with other students via text message. Jaden said that one of the students in the video is being called a "cheater" by some students because she had a boyfriend at the time the video was taken.



DO I MAKE A REPORT?





A custodian comes to you and tells you that, while working in the boys' locker room one evening, he overheard two members of the football team talking about the annual hazing ritual.

One team member states that it was so funny to make the freshman stand naked in line while he hit them with a towel.


peacock

DO I MAKE A REPORT?



Employee A likes to tell dirty jokes at work. Employee A sends text messages that contain sexual innuendo to other employees. Employee A also includes sexual language in her conversations. One day, Employee B makes a sexual joke to Employee A and Employee A files a complaint.



THE PLAYERS

TITLE IX PERSONNEL

Title	Responsibilities	Who?
Complainant	A person who is alleged to be the victim of conduct that could constitute sexual harassment • **NOT** a third party who reports alleged sexual harassment perpetrated against someone else • **NOT** the Title IX Coordinator, even if the TIXC "signs" a formal complaint	• Student, Staff, Third Party
Respondent	A person who has been reported to be a perpetrator of conduct that could constitute sexual harassment	• Student, Staff, Third Party
Title IX Coordinator	• Oversees and coordinates **all** Title IX responsibilities for district • Oversees district's response to Title IX reports and complaints • Implements supportive measures and remedies • Identifies and addresses any pattern or systemic problem revealed by reports and complaints • Evaluates an alleged victim's confidentiality request, if one is made • Files a formal complaint on behalf of a student/employee, if necessary	• Must be employee; • May not serve as decision-maker

Title	Responsibilities	Who?
Investigator	• Conducts a fair, objective, & impartial investigation • Differentiates b/w related & relevant evidence & privilege	• Staff or External Person • May not serve as decision-maker
Decision-Makers	• Evaluates evidence, makes, and writes decision • "Rules" on relevancy during cross examination	• Staff or External Person • Cannot serve in any other capacity
Advisor(s)	• Advises party they represent (not required)	• Staff or External Person
Informal Resolution Facilitator	• Conducts informal resolution process	• Staff or External Person

TITLE IX GRIEVANCE PROCESS

GRIEVANCE PROCESS

The district must ensure its grievance process is consistent, transparent and:

1. Treats complainants and respondents **equitably**;
2. Does **not** make credibility determinations based on/because of a person's status as a respondent or complainant;
3. Requires **objective evaluation of all relevant evidence**, both **inculpatory** and **exculpatory**;
4. Requires Title IX Coordinators, investigators, decision-makers, and informal resolution facilitators to be **free** from **conflicts of interest** and **bias** and trained to serve **impartially**;
5. Presumes the **non-responsibility of respondents until conclusion** of the process;
6. Includes reasonably prompt time frames for the grievance process;
7. Informs all parties of critical information about the district's procedures including the range of remedies and disciplinary sanctions a district may impose, the standard of evidence applied, the district's appeal procedures; and
8. Protects any legally recognized privilege from being pierced during a grievance process.

OVERVIEW OF THE GRIEVANCE PROCESS



INITIATING THE GRIEVANCE PROCESS

REPORTS OF TITLE IX SEXUAL HARASSMENT

KCS SPECIFIC PROCESS

REPORTS OF TITLE IX SEXUAL HARASSMENT

KCS Specific Process

REPORTS OF TITLE IX SEXUAL HARASSMENT

Incident occurs and reported to School TIX Coordinator (STC). STC does initial fact finding, gathers statements, reviews video (if available), contacts parents of those involved, shares TIX policy, applies supportive measures.
(Follow Slide 59)

Parent or student makes a formal complaint STC refers complainant to District TIX Coordinator (DTC).

Together STC and DTC review the incident, artifacts, determine if it warrants TIX. Decision communicated by DTC. If formal is pursued, DTC will manage process

DTC sends letter alerting parties that formal complaint received.
DTC offers informal resolution to all parties.
DTC assigns Investigator.
Investigator reviews findings and gathers additional information.
Investigator communicates draft decision letter.
Decision Maker communicates final decision.
Appeal process managed by DTC.

INITIATING THE GRIEVANCE PROCESS

REPORTS OF TITLE IX SEXUAL HARASSMENT

REPORT OF SEXUAL HARASSMENT

- **Report** is an allegation of sex discrimination (including sexual harassment) made by any person, at any time, and by any means that results in the Title IX Coordinator receiving the person's verbal or written report.
- Not limited to a school's campus community and may come from others, such as on-campus visitors.
- School employees **shall immediately** notify the school's Title IX Coordinator of any report of sex discrimination.
- **Note:** This applies to any and all school employees.

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- **Note:** This applies to any

Do not handle reports of sexual harassment through your school's normal discipline procedures!

DO WE STILL FOLLOW THE GRIEVANCE PROCESS IF...



We have it on video?

YES



We questioned the accused student/teacher and he/she admitted to it?

YES



The potential complainant does not wish to file a formal complaint?

MAYBE

UPON RECEIPT OF A REPORT OF SEXUAL HARASSMENT

The Title IX Coordinator must:

- Contact the alleged victim (i.e., Complainant) if that person can be identified;
- Offer the Complainant supportive measures
- Explain the process of filing a formal complaint;
- Explain the supportive measures can be available with or without a formal complaint;
- Consider the Complainant's wishes regarding supportive measures;
- Contact the Respondent (i.e., alleged perpetrator), who must also be offered supportive measures;
- Document whether supportive measures were provided, including why and why not and if not, how the District is not deliberately indifferent

SUPPORTIVE MEASURES

Offered to both alleged victim and alleged perpetrator

Individualized services

Reasonably available

Nonpunitive, non-disciplinary, and not unreasonably burdensome to the other party

Designed to ensure equal educational access, protect safety, or deter sexual harassment

Supportive measures must be offered regardless of whether the district is informed via a "Formal Complaint" or a "Report"

EXAMPLES OF SUPPORTIVE MEASURES



- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Security and monitoring of certain areas of campus
- Other similar measures

- **Note:** A supportive measure that completely removes a Respondent from an activity (except for "emergency removals" for students and "administrative leave" for employees) would likely be considered punitive.

EMERGENCY REMOVAL

Students

- An accused student can be removed from the education program or activity on an emergency basis. **Only the District Title IX Coordinator (DTC) can conduct an emergency removal.**
- DTC must conduct an individualized safety and risk assessment and determine that there is:
  - An **immediate threat** to the **physical health or safety** of any student or other individual arising from the allegations of sexual harassment; and
  - This immediate threat justifies removal from the education program/activity.
- The accused student must be provided with **notice** and an **opportunity to challenge** the decision "immediately" following the removal.

Employees

- The final regulations do not limit an institution's ability to place an employee on administrative leave during the pendency of a complaint.
- Whether such leave is paid or unpaid is at the institution's discretion.

Note: Title IX does not modify rights under IDEA (e.g., "change in placement"), §504, or the ADA.

FORMAL COMPLAINT PROCESS

SIGNING AND FILING OF A FORMAL TITLE IX COMPLAINT

FORMAL COMPLAINT OF SEXUAL HARASSMENT

- A document filed by a complainant or signed by the Title IX Coordinator (STC and DTC) alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment
- Only individuals participating in or attempting to participate in the education program or activity of the school may file a "Formal Complaint"
- May be filed with the Title IX Coordinator (STC or DTC) in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator and by any additional method designated by the school
- Must contain the complainant's physical or digital signature, or otherwise indicate that the complainant is the person filing the formal complaint
- Triggers the school's duty to initiate the grievance process

RESPONDING TO FORMAL COMPLAINTS

- Upon receipt of a Title IX Formal Complaint, the District Title IX Coordinator (DTC) must:
  - Provide written notice of the allegations to the known parties
  - Assign investigator to conduct investigation and adjudicate the complaint using a grievance process that complies with the final regulations
- An institution may **not** impose discipline on a respondent without going through its grievance process.

INFORMAL RESOLUTION

- After a formal complaint has been filed, an informal resolution process (mediation) may be used, but only if all parties agree to participate
  - Informal Resolution does not involve a full investigation and adjudication
- The District Title IX Coordinator will appoint an informal resolution process facilitator who is free from conflicts of interest or bias and who has received specialized training for the role
- Any party may decline or terminate an informal resolution process at any time prior to agreeing to a resolution, without penalty
- **Note**: The informal resolution process may not be used to resolve allegations that an employee sexually harassed a student

DISMISSAL OF FORMAL COMPLAINTS

An institution **must** dismiss a complaint if the conduct alleged:

- Would not constitute sexual harassment even if proven;
- Did not occur in the institution's education program or activity; or
- Did not occur against a person in the United States.

Additionally, an institution **may** dismiss a complaint where:

- The complainant notifies the Title IX Coordinator in writing that they wish to withdraw the complaint or allegations;
- The respondent is no longer enrolled/employed by the institution; or
- Specific circumstances prevent an institution from gathering evidence sufficient to reach a responsibility determination.

Institutions **must** provide the parties with written notice of a dismissal **and** the reasons for the dismissal.

Note: Dismissal of the formal complaint under Title IX does not preclude action under another policy or code of conduct. Dismissals may be appealed.

INVESTIGATION PROCEDURES

CONDUCTING A TITLE IX INVESTIGATION

INVESTIGATION PROCEDURES



The investigator should gather information by interviewing both parties and other witnesses and by collecting additional evidence.



The investigator should gather all evidence, inculpatory and exculpatory, directly related to the allegations.



The investigator should provide written notice in advance to parties who will be interviewed or requested to attend a meeting with sufficient time for the parties to prepare to participate.

This written notice will include date, time, location, participants, and purpose of the interview or meeting.

INVESTIGATION PROCEDURES

- If the parties decline an informal resolution process, reported sexual misconduct of any kind will be adequately, reliably, and thoroughly investigated, regardless of whether the incident is the subject of a separate criminal investigation.
  - The filing of a criminal complaint will not replace or hinder the district's investigation of a sexual misconduct violation.
- District Title IX Coordinator will appoint an investigator who will thoroughly search for facts and evidence relevant to the claims made in the initial report or complaint.
  - The investigator must be properly trained and free from conflicts of interest or bias.
  - Throughout the course of an investigation, both parties should have an equal opportunity to discuss the allegations or gather evidence and to present the relevant evidence that they gather.

INVESTIGATION PROCEDURES

At the conclusion of the investigation, the parties will be allowed **10 days** to inspect and review copies of any evidence directly related to the allegations.

- Information **directly related** to the allegation may not be redacted regardless of whether it is sensitive, confidential, or prejudicial.
- The parties may submit a written response to the investigator. The investigator must consider the written response prior to completing the final report.

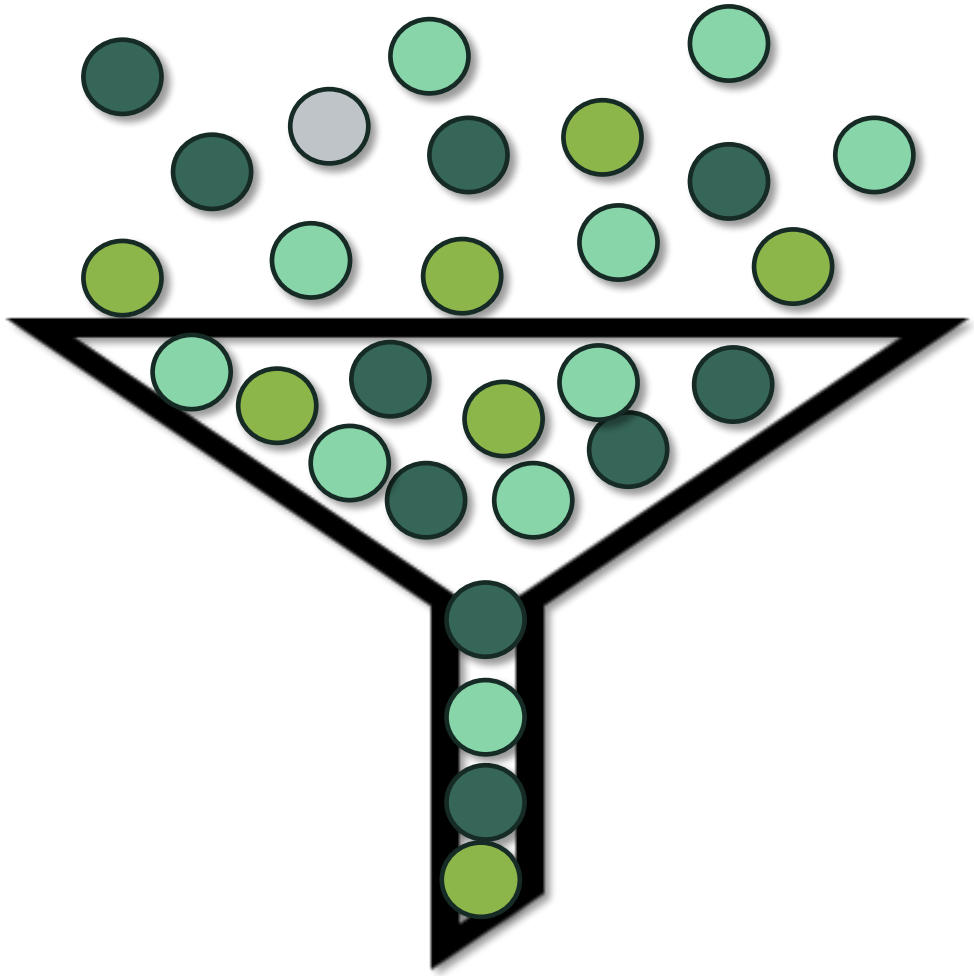
CONDUCTING THE INVESTIGATION

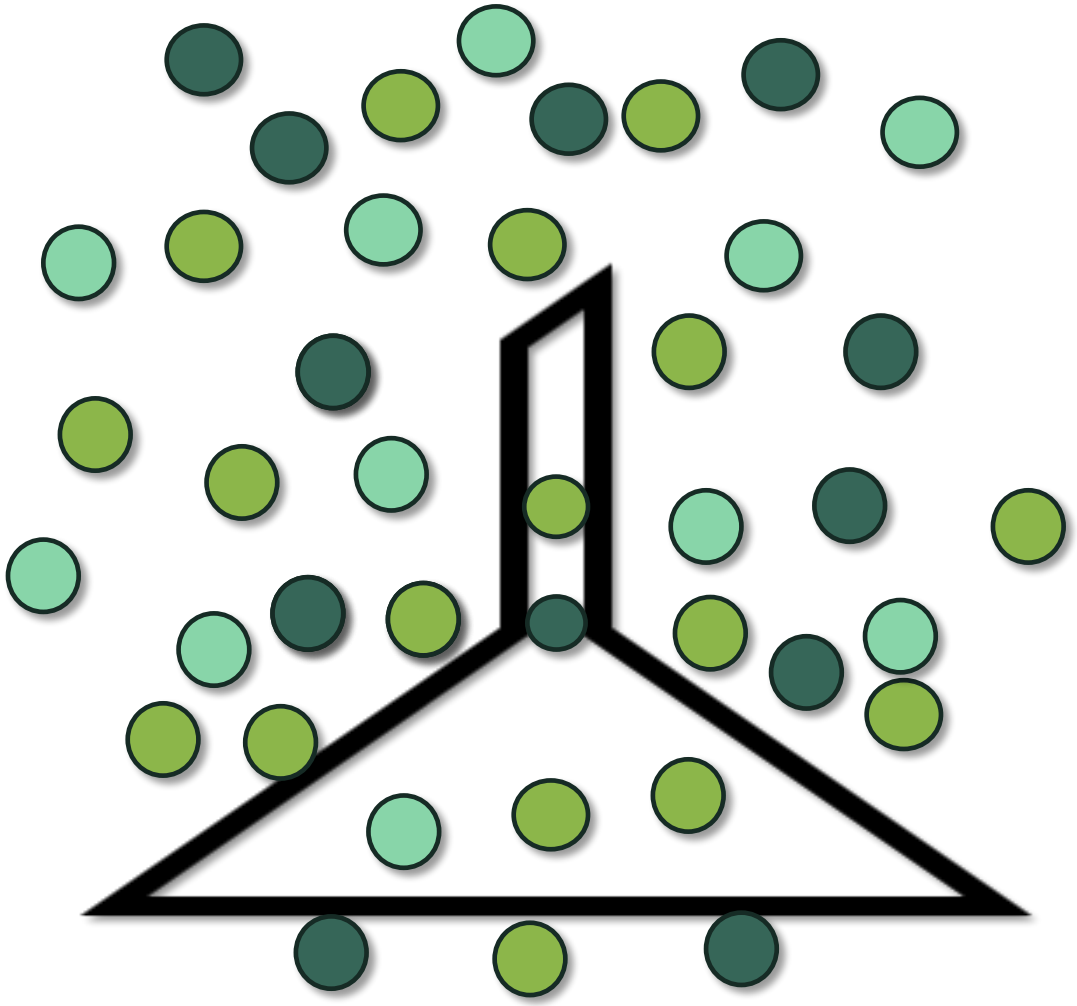


CONDUCTING INVESTIGATORY INTERVIEWS

Determine order of interviews	Prepare an outline of questions, but be prepared to deviate	Interview complainant and respondent separately, and interview witnesses separately	Obtain current and accurate contact information for all individuals interviewed	Both complainant and respondent are entitled to an advisor during interviews, advance notice of interviews, and access to any available evidence
Determine how to record the interview(s) (handwritten notes, audio recording)	Explain that retaliation is prohibited	Remind individual of duty to maintain confidentiality and cooperate	Ask open-ended questions	Disclose to individual only what is necessary to question him/her and/or required by policy
Do not interrupt an individual during an interview	Practice active listening and reiterate or restate responses to ensure accuracy, if necessary	Ask for documents/records to extent the individual refers to them during the interview	Assess individual's credibility	If confused, repeat what you think you have heard, then ask the individual to confirm your understanding

THE "FUNNEL" TECHNIQUE





CONDUCTING INVESTIGATORY INTERVIEWS

- Employee Interviews
  - Duty to cooperate
  - Garrity Warning
    - You are required to cooperate with our investigation and answer our questions without waiving any Fifth Amendment privilege against self-incrimination that might apply. If there is any investigation conducted by law enforcement into this situation, the information obtained from this interview could not be used against you by such authorities
- Student Interviews
  - No duty to cooperate
  - Subject to Board Policy
  - Parental Notification?

COLLECTING EVIDENCE: TYPES OF EVIDENCE



Photographs and videos



Roster and seating charts



Schedules



Attendance records



Student records



Personnel records



Desk contents



Investigation documents and other records



Written reports



Project files



Computer history logs



Emails, social media posts, text messages



Letters or written messages



Court documents

COLLECTING EVIDENCE: IMPORTANT CONSIDERATIONS

- Chain of Custody
- Search and Seizure
  - Fourth Amendment
  - Board Policy

IMPARTIALITY, BIAS, & CONFLICT OF INTEREST

IMPARTIALITY, BIAS, & CONFLICT OF INTEREST

- Title IX Coordinators (school and district), investigators, decisionmakers, and persons who facilitate informal resolutions are prohibited from having conflicts of interest or bias against complainants or respondents generally, or against an individual complainant or respondent.
- General Principles:
  1. Objective evaluation of all relevant evidence – inculpatory and exculpatory
  2. Credibility determination may not be based on a person's status as a complainant, respondent, or witness
  3. Complainants and respondents must be treated equitably
  4. Respondent is presumed not responsible for alleged conduct until a determination of responsibility is made at the conclusion of the grievance process
  5. Uniform application of the selected evidentiary standard

BIAS

Types of Bias

- Explicit/Conscious Bias
- Implicit Bias
  - Attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner
- Actual vs. Appearance
  - Avoid applying generalizations that may lead someone to "unreasonably conclude" that bias exists
    - Assumption that all "self-professed feminists" or "self-described survivors" are "against men
    - Assumption that "a male is incapable of being sensitive to women"

Examples

- When talking with Title IX Complainants, the Title IX coordinator begins each initial meeting by asking who the Respondent is and what "he" did to the Complainant (assuming the Respondent is a male)
- A Title IX Decision-maker finds a Respondent in a case more credible than a Complainant because the Respondent speaks "perfect English" while the Complainant, who only knows English as a second language, does not

CONFLICT OF INTEREST

Actual

Direct conflict between one's official duties and responsibilities, and a competing personal interest or obligation

Example: The Title IX Decision-maker's daughter is the Respondent in a sexual assault case

Perceived

A situation where it could reasonably be perceived that a competing interest could improperly influence the performance of one's official duties and responsibilities

Example: The Title IX investigator previously had a relationship with the family member of the Respondent

Potential

Where a personal interest or obligation could conflict with one's official duties and responsibilities in the future

Example: The Title IX Coordinator and Complainant's father co-chair a faculty committee and socialize outside of work on occasion

AVOIDING BIAS AND CONFLICTS OF INTEREST

Bias

- Consider the relationship between and among the investigator, decision-maker(s), and the parties, if any
  - Coach/Player, Teacher/Student
- Prior Involvement in Title IX Complaints
- If either part has a history of conflict with the district, consider a third-party investigator

Conflicts of Interest

- Adhere to investigation policies and procedures
- Avoid pre-determined conclusions
- Conscious awareness of personal biases

INVESTIGATION PROCEDURES (CONT'D)

WRITTEN INVESTIGATION REPORT

INVESTIGATION REPORT

At the conclusion of the investigation, the investigator must prepare a written investigative report that fairly summarizes all directly related and relevant evidence, including inculpatory and exculpatory evidence.

INVESTIGATION REPORT

- Drafting the investigative report:
  - Fairly summarize all relevant evidence
  - Provide contact for evidence
  - Analyze the evidence and, if necessary, weigh credibility of witnesses
  - Address any need for confidentiality with regard to complainants, witnesses, etc. Within the report. It may be advisable to use pseudonyms and a key be maintained in a separate document
  - Apply the appropriate evidence standard (preponderance of the evidence)

CONTENTS OF THE INVESTIGATION REPORT

- Date
- Recipients
- Allegations
- Timeline and chronology of the investigation
- Relevant policies, procedures, ordinances, handbook provisions, etc.
- Review of evidence
- Findings of fact
- Conclusions
- Recommendations

INVESTIGATION REPORT

The investigator will simultaneously provide both parties with a written copy of the investigative report, and they will have **at least 10** days before a determination regarding responsibility.

- The report can be provided electronically or in hard copy but must be presented to both sides simultaneously.

RESPONSIBILITY DETERMINATION

DECISION MAKER'S WRITTEN DETERMINATION

RESPONSIBILITY DETERMINATION



The independent, trained, decision-maker(s), **who cannot be the same person(s) as the Title IX Coordinator or the investigator(s)**, must issue a written determination regarding responsibility.

RESPONSIBILITY DETERMINATION

With or without a hearing, after the investigative report has been sent to the parties, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.

RESPONSIBILITY DETERMINATION

The decision maker, before reaching a determination regarding responsibility, must:

1) Afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness;
2) Provide each party with the answers; and
3) Allow for additional, limited follow-up questions from each party.
4) Allow questions about a complainant's prior sexual behavior or sexual predispositions only to establish that another person committed the alleged conduct, or if they concern specific incidents of complainant's prior sexual behavior with respondent and are offered to prove consent.

RESPONSIBILITY DETERMINATION



The decision maker will then issue a written determination regarding responsibility, which must also be provided to both parties simultaneously.



The decision-maker(s) ***cannot*** be the same person(s) as the title IX coordinator or the investigator(s).



Note: The burden of proof is on the school.

APPEALS PROCESS

APPEALS PROCESS

A school must offer both parties the opportunity for an appeal from a determination regarding responsibility, and from a school's dismissal of a formal complaint or any allegations therein, on the following bases:

1. procedural irregularity that affected the outcome of the matter;
2. newly discovered evidence that could affect the outcome of the matter; and/or
3. Title IX personnel (i.e., Title IX Coordinator, investigator or decision-maker) had a conflict of interest or bias, that affected the outcome of the matter.

Note: A school may add additional bases for appeals, offered equally to both parties.

OTHER REQUIREMENTS

RETALIATION

No district or other person may intimidate, threaten, coerce, or discriminate against any person because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

NOTICE REQUIREMENTS

- Each district must designate at least one employee to coordinate its efforts to comply with Title IX, and that employee must be referred to as the "**Title IX Coordinator**."
- The district must notify all applicants for admission and employment; students, parents or legal guardians of elementary and secondary school students; and employees of the "name or title, office address, electronic mail address, and telephone number of the employee or employees" designated as the Title IX Coordinator.
- The district also must provide notice that the district does not discriminate on the basis of sex in education programs or activities that it operates, including admission or employment, and that inquiries may be referred to the Title IX Coordinator or the U.S. DOE's Assistant Secretary for Civil Rights, or both. This non-discrimination statement and the contact information for the Title IX Coordinator must be prominently displayed on the district's website and in each handbook and catalog.

TRAINING

Training required for all staff on how to identify and report sexual harassment

Training required for all Title IX investigators, decision-makers, coordinators, and facilitators of an informal resolution to instruct on how to be:

1) impartial and unbiased;
2) objectively evaluate all relevant evidence, including inculpatory and exculpatory evidence



RECORD KEEPING

Maintain for seven years every **report** and **formal complaint** of sexual harassment. Records to be maintained include:

- Investigative records;
- Disciplinary sanctions;
- Remedies;
- Appeals;
- Actions taken; and
- Supportive measures.

If complainant is not provided supportive measures, then the reasons why must be documented.

Document the basis for the school system's conclusion that its response was not deliberately indifferent.

Document that it has taken measures designed to restore or preserve equal access to the education program or activity.

A record of all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must also be maintained and published on the website.

THE INTERSECTION OF TITLE IX & SPECIAL EDUCATION

IDEA, 504, & TITLE IX

The Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 and Title IX are all **federal law**.

Importantly, the IDEA and 504 both afford students with disabilities with protections before they can be **removed** from school for disciplinary reasons.

Those involved in the investigation process should not be analyzing which law takes precedence, but rather should be reading these laws together.

INVOLVING THE IEP/504 TEAM

- If a Complainant or Respondent is a student with a disability, Title IX personnel should consult with the student's IEP or 504 team to discuss what supports might be appropriate based on the student's needs in the context of the Title IX process as there may be IDEA/504 implications
- 2 examples of supportive measures set forth in 34 CFR § 106.30 include "changes in work or housing locations [and] leaves of absence," which may be considered a change in the student's placement and should be discussed with the student's IEP or 504 team

QUESTIONS?