

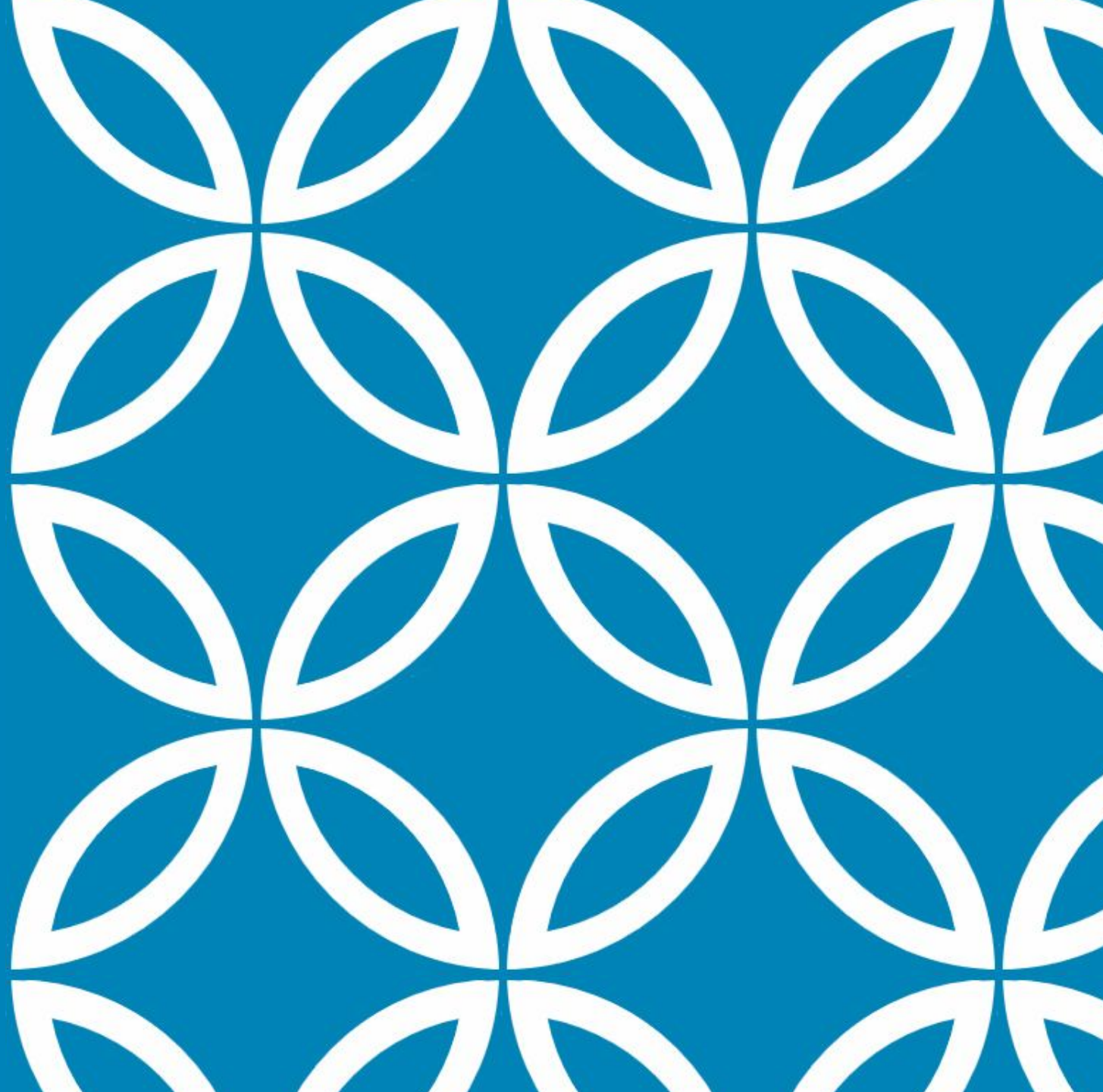
TITLE IX COMPLIANCE

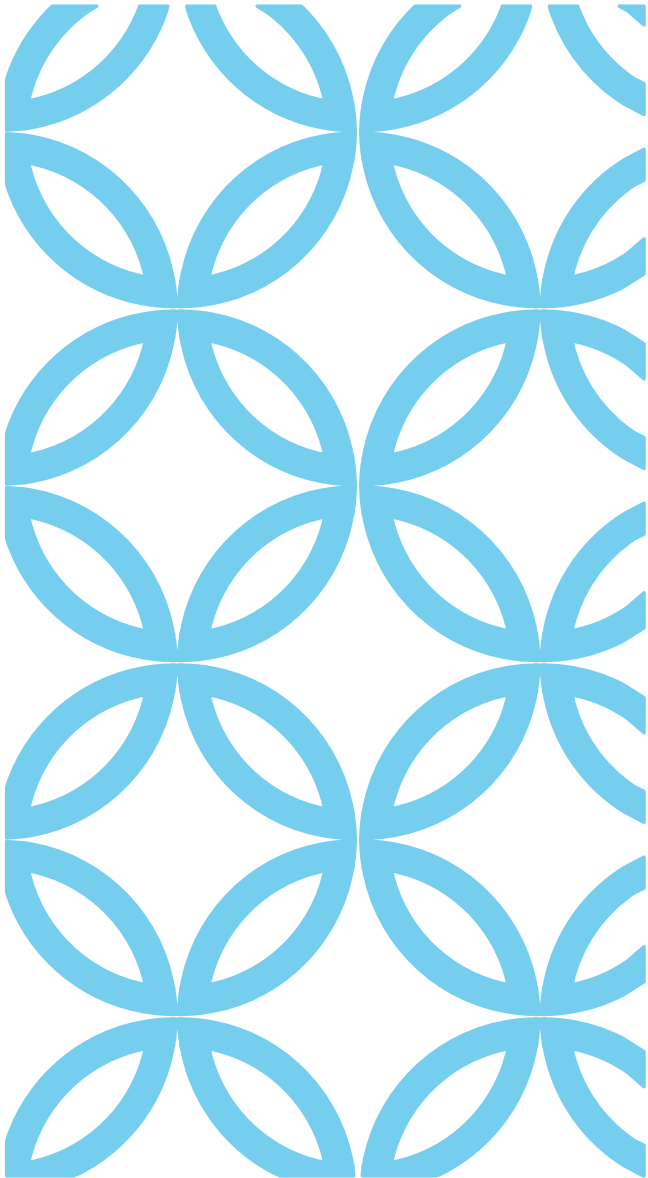
San Mateo County Attorney's
Office

Gina J. Beltramo, Lead Deputy
County Attorney

Lisa Y. Cho, Deputy County
Attorney

Lauren F. Carroll, Deputy County
Attorney





1. Title IX Overview
2. All-employee Reporting Obligations
3. Sex Discrimination
4. Sex-based Harassment
5. Pregnancy and Related Conditions

AGENDA

OVERVIEW OF TITLE IX REGULATIONS

“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 educational program or activity receiving federal financial assistance.”

20 U.S.C. § 1681 and 34 C.F.R. Part 106 (1972)

OVERVIEW OF TITLE IX REGULATIONS

Title IX is a Federal law, passed in 1972

Enacted to prevent discrimination against women in the educational system, including employment and sports. Over the past many years, Title IX protections were expanded, to protect any person against discrimination.

In May 2020, the law codified for the first time many aspects of Title IX, including when and how an LEA must respond to a Title IX sexual harassment complaint.

In April 2024, the regulations were amended, changing the definition of sexual harassment as well as the requirements of the grievance procedure.

OVERVIEW OF TITLE IX REGULATION S

Title IX Final Rule

Issued April 19, 2024

Effective and enforceable August 1, 2024

Applies exclusively to incidents occurring on or after August 1, 2024

2024 is a blend of the 2011 Dear Colleague Letter, 2020 Regulations, and new approaches

1561 pages total (1504 Preamble and 57 Regulations)

More flexibility for Schools/LEAs in how to structure and staff resolution processes

OVERVIEW OF TITLE IX REGULATIONS

No Retroactivity

The 2024 Regulations apply only to sex discrimination alleged to have occurred **on or after** August 1, 2024

For conduct alleged to have occurred **prior** to August 1, 2024, the regulations in place at the time the alleged behavior occurred will apply

Schools/Districts will need to maintain/update policies, procedures, and training that are compliant with the 2020 Regulations and 2024 Regulations

OVERVIEW OF TITLE IX REGULATIONS

Essential Compliance Requirements

The obligation to end any sex discrimination that has occurred, prevent its recurrence, and remedy its effects, ensuring equity and adhere to legal and OCR standards.

WHO IS YOUR TITLE IX TEAM?

Title IX Coordinator

Investigator

Decision maker

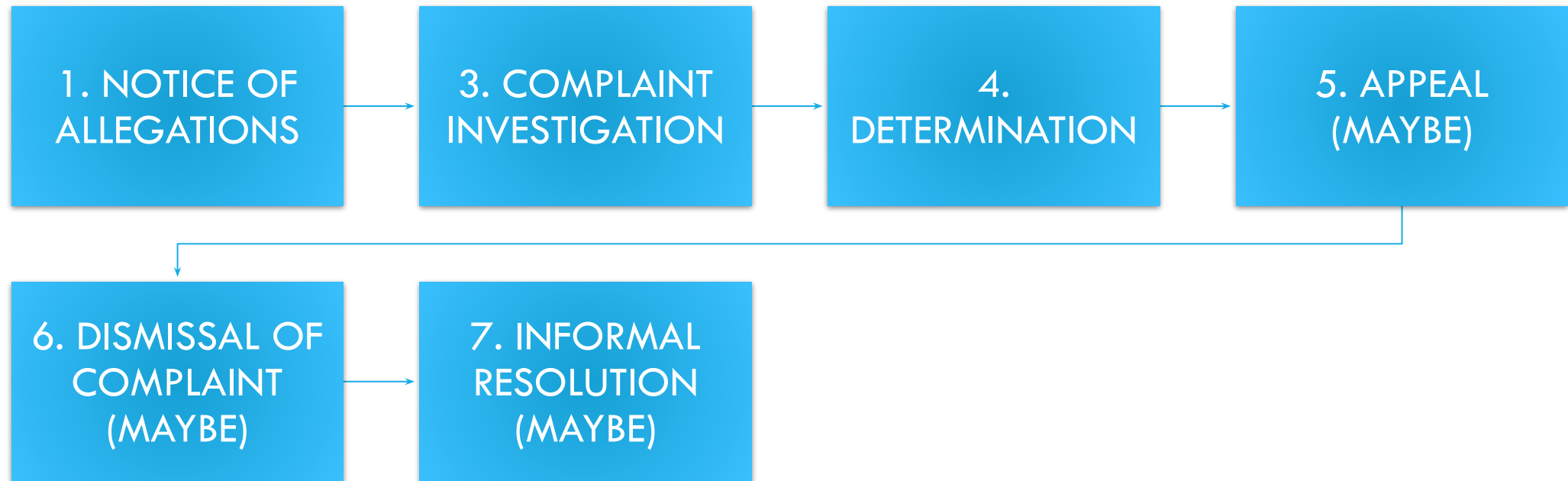
Informal resolution
facilitator

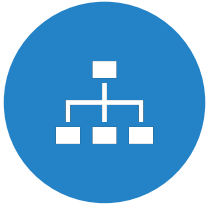
Appeal decision-maker

THE TITLE IX COORDINATOR

1. May delegate duties as appropriate
2. Oversees the implementation of the Title IX Process
3. Is responsible for all Record Keeping Obligations
4. Monitors the offering of and implementation of supportive measures
5. Notifies the parties of the complaint and the complaint process
6. Determines whether to initiate a complaint
7. Oversees that appropriate, prompt and effective steps are taken to ensure sex discrimination does not continue or recur

TITLE IX GRIEVANCE RESOLUTION PROCESS





**APPOINT A
TITLE IX
COORDINATOR**

Assign At Least
One Staff
Member To Take
On The Role Of
Title IX
Coordinator.



**ADOPT,
PUBLISH AND
IMPLEMENT A
NON-DISCRIMI
NATION
POLICY**



**PROVIDE NOTICE
OF
NON-DISCRIMINAT
ION POLICY**



**IMPLEMENT
GRIEVANCE
PROCEDURE
S**

Develop and
apply
procedures for
handling
complaints in
compliance
with 34 CFR
Part 106.45



**PUBLISH
CONTACT
INFORMATION:**
Make The Title IX
Coordinator's
Contact Details
Readily Available.



**PUBLISH
REPORTING
AND
GRIEVANCE
PROCEDURES:**
Offer Clear
Instructions On
How To Report
Behavior That
Could Be
Considered Sex
Discrimination Or
Harassment
Based On Sex.

TITLE IX OBLIGATIONS FOR SCHOOLS/LEAS (§ 106.8)

§106.2 NOTABLE DEFINITIONS

Complainant

Complaint

Confidential Employee

Parental Status

Peer Retaliation

Relevant

Remedies

Respondent

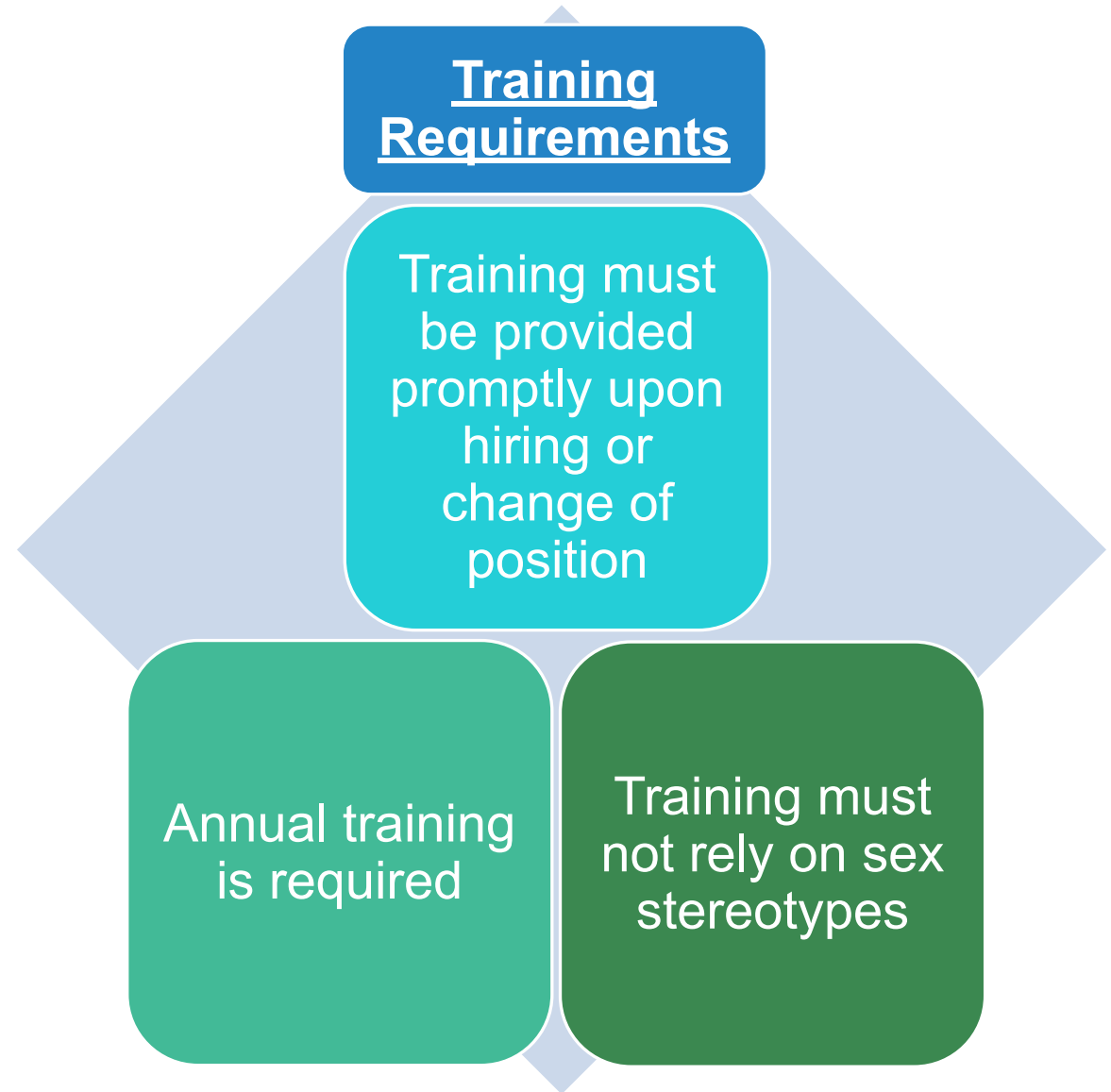
Supportive Measures

Sexual Harassment

Pregnancy

Related Conditions

TRAINING



TRAINING (106.8D)

ALL EMPLOYEES must be trained on:

The obligation to address sex discrimination

The scope of conduct that constitutes sex discrimination

All applicable notification and information requirements under §§ 106.40(b)(2) and 106.44.

INVESTIGATORS, DECISIONMAKERS, AND OTHERS WITH AUTHORITY must be trained on:

- “all employee” requirements plus
- LEA’s obligations under §106.44;
- Grievance procedures under § 106.45;
- How to serve impartially; and
- Meaning and application of “relevant” evidence



TRAINING

INFORMAL RESOLUTION FACILITATORS AUTHORITY must be trained on:

“All employee” requirements, plus
Informal resolution rules and practices; and
How to serve impartially

TITLE IX COORDINATORS AND DESIGNEES must be trained on:

All other training requirements;
Specific responsibilities associated with the role;
Record keeping system; and
Additional training as necessary to coordinate compliance with Title IX.



**ALL EMPLOYEES
ARE OBLIGATED
TO REPORT
CONDUCT
THAT MAY
CONSTITUTE SEX
DISCRIMINATION
(§106.44)**

Every elementary and secondary school employee, excluding confidential employees, must notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX.

Upon receiving such a report, the Title IX Coordinator is required to take immediate and effective steps to stop the sex discrimination, prevent it from happening again, and address any harm it has caused.

LEA has obligation to respond to sex discrimination regardless of whether it has received a formal complaint or even a complaint. Report of the conduct is sufficient to trigger an obligation to assess and respond.

SCOPE OF TITLE IX (§106.10)

Sex discrimination includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

Title IX applies to all sex discrimination occurring under a recipient's education program or activity in the United States.

SCOPE OF CONDUCT THAT CONSTITUTES SEX DISCRIMINATION (§106.11)

- ❑ Conduct alleged to be contributing to a sex-based hostile environment in the educational program
- ❑ Conduct that occurs under a recipient's education program or activity and is subject to the recipient's disciplinary authority.
- ❑ Conduct that occurred outside the educational program or activity or outside the United States, if it results in a sex-based hostile environment in the educational setting.
- ❑ Sex discrimination includes but is not limited to sex-based harassment



Sex
Discrimination

Sex-Based
Harassment

§106.2 SEX-BASED HARASSMENT T (formerly sexual harassment)

Sex-Based Harassment

A form of sex discrimination. Is sexual harassment or other harassment on the basis of sex.

Consider sex-based harassment as a subset of sex discrimination

Other subsets of sex discrimination include unequal treatment in sports; inequality in facilities; differential treatment in performance evaluations based on sex

TYPES OF SEX-BASED HARASSMENT

1. **Quid Pro Quo Harassment:** Conditioning the provision of an educational benefit or service on participation in unwelcome sexual conduct.
2. **Hostile Environment Harassment:** Unwelcome sex-based conduct that is severe or pervasive enough to limit or deny a person's ability to participate in or benefit from the recipient's education program or activity.
3. **Specific Offenses:**
 - Sexual Assault: An offense classified as a forcible or nonforcible sex offense.
 - Dating Violence: Violence committed by a person in a romantic or intimate relationship with the victim.
 - Domestic Violence: Crimes committed by a current or former spouse, intimate partner, or other individuals defined under family or domestic violence laws.
 - Stalking: Engaging in conduct directed at a specific person that causes fear or substantial emotional distress

TYPES OF SEX-BASED HARASSMENT

QUID PRO Quo Case Scenario

Mr. Johnson, a high school history teacher, tells one of his students, Jamie, that if they agree to help him after school with his dating profile, he will give Jamie extra credit to improve their grade. Jamie feels uncomfortable and isn't sure what to do. They are worried that if they say no, Mr. Johnson might give them a bad grade or treat them unfairly in class.

TYPES OF SEX-BASED HARASSMENT

QUID PRO Quo Case Scenario

Ms. Davis, a second-grade teacher, is hoping to receive a favorable schedule change for the upcoming school year to better accommodate her family responsibilities. Mr. Lee, the head of the scheduling committee and a fifth-grade teacher, has significant influence over the schedule assignments. During a staff meeting, Ms. Davis approaches Mr. Lee to discuss her request for a different schedule. Mr. Lee hints that he could arrange the schedule change if Ms. Davis agrees to accompany him to the Back to School Night social. When Ms. Davis hesitates, Mr. Lee says, "Come on, it'll be fun! Show me you're a good colleague, and I'll show you I am, too." Feeling uncomfortable and pressured, Ms. Davis doesn't know how to respond. She worries that refusing Mr. Lee's advances will negatively impact her schedule request and possibly other opportunities at the school.

TYPES OF SEX-BASED HARASSMENT

Hostile Environment 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 educational program or activity (i.e., creates a hostile environment).

Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- (i) The degree to which the conduct affected the complainant's ability to access the educational program or activity;
- (ii) The type, frequency, and duration of the conduct;
- (iii) The parties' ages, roles within the educational program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- (iv) The location of the conduct and the context in which the conduct occurred; and
- (v) Other sex-based harassment in the educational program or activity;

TYPES OF SEX-BASED HARASSMENT

Hostile Environment Case Scenario

Jordan, a sophomore on the school's basketball team, recently came out as non-binary. Since then, a few teammates have been making inappropriate comments in the locker room, using offensive language, and calling Jordan derogatory names. Some of the teammates have even started posting mocking comments and memes about Jordan on social media. Despite Jordan telling them to stop, the behavior continues. Jordan feels uncomfortable and unwelcome, dreading going to practice and struggling to focus in school.

TYPES OF SEX-BASED HARASSMENT

Hostile Environment Case Scenario

Mr. Carter, a new kindergarten teacher, has been experiencing inappropriate behavior from Mr. Thompson, a long-time physical education teacher at the school. During staff meetings and interactions in the hallway, Mr. Thompson frequently makes sexist remarks, commenting on the idea that men shouldn't be kindergarten teachers because it's a "woman's job." He often makes jokes about Mr. Carter's masculinity and suggests that he is "too soft" for the job. Despite Mr. Carter's requests for him to stop, Mr. Thompson continues to make these comments, sometimes in front of other staff members, who laugh awkwardly or remain silent. Mr. Carter feels uncomfortable, embarrassed, and increasingly isolated, leading him to avoid the staff room and dread interactions with Mr. Thompson.

TYPES OF SEX-BASED HARASSMENT

Specific Offense Case Scenario:

Jamie and Alex, both sophomores, have been dating for a few months. They care about each other and enjoy spending time together. One day at school, Alex asks to take a photo of Jaime's rearend. Jamie feels uncomfortable and says they aren't sure they want a photo like that taken. Alex responds by saying, "If you really loved me, you'd want to do this." Feeling pressured and not wanting to upset Alex, Jamie reluctantly agrees, even though they feel unsure and uncomfortable. Afterward, Jamie feels confused and upset about what happened. They confide in a friend, who suggests that what happened wasn't right and that Jamie might consider talking to a school counselor or reporting it.

DE MINIMIS HARM (§106.31)

In certain situations where Title IX allows for different treatment or separation based on sex, schools and districts must ensure that such treatment does not cause more than “*de minimis*” harm to the individual involved.

Adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex, and therefore, generally violates Title IX's nondiscrimination mandate.

□ Exceptions exist for athletics

POSSIBLE SUPPORTIVE MEASURES

counseling

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 class, work,
or extracurricular or any
other activity, regardless
of whether there is or is
not a comparable
alternative

training and
education programs
related to sex-based
harassment

ALL EMPLOYEES MUST PROVIDE TITLE IX INFO WHEN...

When a student or a person with the legal right to act on behalf of the student informs **any employee** of the student's pregnancy or related condition, the employee must:

Promptly provide that person with the Title IX Coordinator's contact information

Inform that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the recipient's education program or activity.

§106.2 PREGNANCY AND RELATED CONDITIONS

Pregnancy and related conditions

(1) - Pregnancy, childbirth, termination of pregnancy or lactation;

(2) - Medical conditions related to pregnancy, childbirth, termination of pregnancy or lactations; or


(3) - Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

PERSONALLY IDENTIFIABLE INFORMATION

Personally identifiable information (PII) is information that would tend to reveal the identity of an individual



An LEA may not disclose PII obtained in the course of complying with Title IX regulations, aside from certain exceptions



After reporting conduct that may constitute sex discrimination, do not discuss with others unless required as part of the Title IX process.

CONFIDENTIAL EMPLOYEE (§106.44)

All participants of the educational program must be notified of how to contact a confidential employee

All confidential employees are required to explain to any person who informs them of conduct that reasonably may constitute sex discrimination

Of their status as a confidential employee

That they are not required to notify the Title X Coordinator of conduct that may constitute sex discrimination

How to contact the Title IX coordinator and make a complaint

That supportive measures, informal resolution process and an investigation are options

RETALIATION (§106.71)

- Intimidation,
 - Threats, or
 - Coercion, or
 - Discrimination
by LEA, student, or employee
-
- When the LEA has information that conduct may reasonably constitute retaliation, the LEA must comply with the Title IX resolution process
 - Note: a complaint of sex discrimination and retaliation may be consolidated
 - Note: The 2024 regulations do not include the “free speech” provision found in the 2020 regulations. This removal suggests that LEAs must address any retaliatory conduct, even if the individual claims that conduct is protected by the First Amendment



QUESTIONS
?