TITLE IX Training for Caprock



Meet the Presenter, TRISH MAHRE

- Attorney
- Conducts workplace and Title IX investigations
- Former prosecutor 32+ years
- Extensive litigation experience re: sexual assaults/other

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 educational program or activity receiving federal financial assistance.”
- *Protects people from discrimination based on sex in education programs and activities*
- *Aims to ensure equal opportunities in educational settings*
- *Ensures students are safe to learn and achieve without facing sexual harassment and sexual assault in schools*
- *Applies to all educational institutions that receive federal financial assistance directly or indirectly*

Title IX 101 – The Basics
Primary Goals

- Requires schools to:
  - respond,
  - promptly,
  - effectively to any report of sexual harassment of sexual misconduct, and
  - actively take steps to prevent it.
- Fairness
- Offer options and resources
- Accountability
- Caprock-policies and process to handle

Roles and Responsibilities

Caprock

- Responsible for creating policies and procedures to ensure Title IX Compliance
- Board approves the policy, school leadership ensures successful implementation of the policy

Title IX Coordinator

- Ensures policy is implemented
- Plays a role in the complaint/process
- Coord is not the investigator nor the decision maker

Title IX Related Issues

- **Sex-Based Discrimination**
  - Program Equity
  - Recruitment, Admissions, & Access
  - Pregnancy
  - Athletics
  - Employment, Recruitment, & Hiring
  - Extra-curricular activities
  - Facilities
  - Sex, sexual orientation, & gender identity
- **Sexual Harassment**
  - Quid Pro Quo
  - Hostile Environment
  - Sexual Assault
  - Domestic Violence
  - Dating Violence
  - Stalking
- **Retaliation**

COMPLIANCE WITH TITLE IX-

ELEMENTS AND GOALS:

Take prompt and effective action to:

STOP the harassment

PREVENT the recurrence

REMEDY the effects



SIGNIFICANT TITLE IX COURT DECISIONS

WHEN DOES TITLE IX APPLY?

A school must respond when:

1) the school has actual knowledge of sexual harassment;
2) that occurred within the school's education program or activity (locations, events, or circumstances under substantial control of the school)
3) against a person in the United States.

Investigate
Adjudicate formal complaints
Use a grievance process with due process, treats people fairly and reaches reliable determinations.

If Title IX does not apply, then what?

- Conduct could still violate and be addressed under:
  - Student conduct policies
  - School harassment/discrimination policies
  - Professionalism standards
  - Employee Handbook

- Institution should still:
  - Provide support and resources to the Complainant and school community
  - Determine if there are patterns or institutional variables that contributed to the alleged incident

What does this mean for you?

Areas that may give rise to a claim of deliberate indifference:

- Failing to conduct an investigation
- Includes deferring to law enforcement as the sole investigation
- Inadequate investigation
- Unreasonable delays during the investigation
- Failing to follow school/district policies and procedures
- Lack of documentation to indicate that an investigation was conducted



DEFINITIONS OF SEXUAL HARASSMENT

Sexual Harassment

QUID PRO QUO: An employee conditioning the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct.

SEXUAL HARASSMENT: Unwelcome conduct determined by a reasonable person to be so severe ***and*** pervasive, ***and*** objectively offensive that it effectively denies a person equal access to the recipient's education program or activity.

OTHER SEXUAL VIOLENCE: "Sexual assault," "dating violence," "domestic violence," or "staking" as those terms are defined under the Clery Act and the Violence Against Women Act.

Remember retaliation is also prohibited!

Sexual Harassment - Standard

SEVERE: Physical actions are more likely to be severe without the need for repetition; Non-consensual sexual contact; Accompanied by threats and violence

PERVASIVE: Widespread; Openly practiced; Known to school community; Frequency of conduct; Unreasonable interference with school or job

OBJECTIVELY OFFENSIVE: Reasonable person standard; Age difference and positions of power between complainant and respondent; Aspects of humiliation, intimidation, ridicule

Remember retaliation is also prohibited!

SEXUAL HARASSMENT – Hostile environment

- **Reasonable person standard:**
  - Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same circumstances.
- **Totality of the Circumstances considerations:**
  - Frequency, nature, severity
  - Age
  - Relationship between parties
  - Context in which conduct occurred
  - Interference with school/job
  - Impact on mental or emotional state

- **Sexual Violence**
  - **Rape**
  - **Sodomy**
  - **Sexual Assault with an object**
  - **Fondling**
  - **Incest**
  - **Statutory Rape**
- **Dating violence**
- **Stalking**
- **Sexual Exploitation**

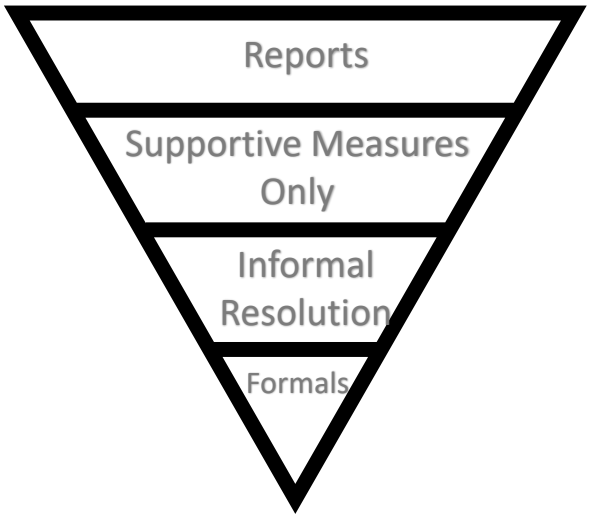
Retaliation

- No Recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or 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 under this part…

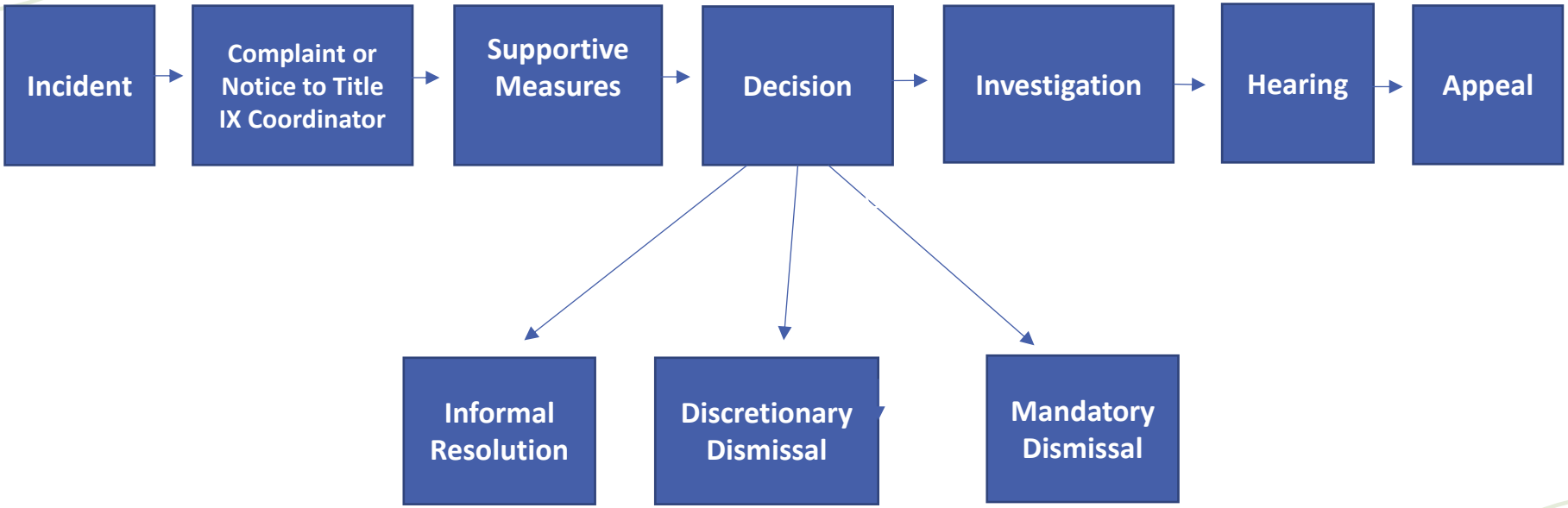
- …Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.

INTAKE AND OUTREACH

The Importance of Intake and Outreach



Title IX Grievance Process



TITLE IX COORDINATOR

Title IX Coordinator

- Coordinate school's responsibilities under Title IX.
- Pubish contact information;
- Explain complaint process;
- Receive and *may* sign formal complaints;
- Coordinate implementation of supportive measures;
- Promptly contact complainant to discuss availability of supportive measures and process for filing a formal complaint.
- Be free from conflict of interest or bias for/against either complainant or respondent.

Supportive Measures- what will help the student feel safe at school?

- Supportive measures are –
  - non-disciplinary, non-punitive individualized services
  - offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent
  - before or after the filing of a formal complaint ***or where no formal complaint has been filed***.

- Purpose of supportive measures –
  - restore or preserve equal access to the education program or activity
  - without unreasonably burdening the other party

- They come into play immediately!

Supportive Measures (examples)

- May include:
- Counseling
- Extensions of deadlines
- Course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- Mutual restrictions on contact between the parties
- Leaves of absence
- Increase security and monitoring of certain areas of the campus

- ***Be creative here!***

TITLE IX INVESTIGATOR

Investigations



An investigation should be "prompt, thorough and impartial."

Title IX Investigator- Duties

- Fact finder
- Prompt, thorough, fair, and impartial
- Identify and interview parties and witnesses
- Collect and review data
- Share evidence with parties and their advisors, if they have them
- Work with Title IX Coordinator
- Understand policies at each institution
- Investigative reports outlining evidence
- Be free from conflict of interest or bias for/against either complainant or respondent.

Role of Law Enforcement and Issues of Concurrent Criminal Action

- Criminal investigations do not relieve the school of its duty to respond promptly and efficiently



DECISION MAKER

Decision Maker- Duties

- Presumption Respondent is not responsible
- Preponderance of evidence standard- did Respondent engage in sexual harassment as defined in Title IX
- Objective Evaluation of all evidence
- Written Findings
- Notice to Parties
- Determine appropriate sanctions//discipline when a policy violation is found
- Be free from conflict of interest or bias for/against either complainant or respondent.

APPEAL

Basis for Appeal

- Schools must offer all parties an appeal from a determination regarding responsibility, and from a district's dismissal of a formal complaint or any allegations in a formal complaint, on the following bases:
  - A procedural irregularity that affected the outcome of the matter;
  - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
  - The Title IX Coordinator, Investigator(s), or Decision Maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.
  - Any other bases, as long as offered equally to both parties

SETTING UP YOUR SCHOOL FOR SUCCESS

Make Information Available

- Adopt and publish necessary policies that are –
  - Easy to find
  - Easy to understand
  - Easy to act on

- Proactively remove barriers to reporting

What not to do

- Have your school principal conduct the investigation immediately upon hearing about the incident
- Discipline Respondent
- Forgetting to call the parents/guardians
- Have three administrators in a meeting with a student
- Failure to contact your Title IX Coordinator
- Accusatory/forceful tone



Questions?

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