



Title IX Recalibration

Presented by: Carolyn L. Gemma

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Presenter



Carolyn L. Gemma

Carolyn is a Partner in Lozano Smith's Walnut Creek and Sacramento offices. Carolyn advises educational institutions throughout the state on various labor and employment matters including but not limited to processing and investigating complaints, disciplinary proceedings, leaves, reasonable accommodations, the collective bargaining process, and everything in between. Carolyn also advises on various student and governance matters.

Carolyn holds a certificate from the Associate of Workplace Investigators (AWI) and has significant experience conducting prompt, thorough and effective workplace and Title IX investigations. In addition, her trauma-informed training offers clients further expertise in investigating allegations of sexual harassment, sexual assault and other forms of sexual misconduct.

cgemma@lozanosmith.com

925.953.1620



LozanoSmith.com

Topics



- Current Status of Title IX Regulations
- Scope of the 2020 Title IX Regulations
- Key Definitions
- Title IX Jurisdiction
- 2020 Title IX Grievance Procedures
 - Formal Title IX Complaints
 - Separation of Roles and Responsibilities
 - Exchange of Evidence
 - Relevance
 - Standard for Appeals



What is Title IX?

The Plain Language

“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.C. § 1681 *et seq.*

What Does Title IX Cover?

1. Education Programs or Activities
2. Sports
3. Employment
4. Equal Access to Facilities
5. Admissions and Recruitment
6. **Sexual Harassment****

(34 C.F.R. Part 106)





Why Do We Care about Title IX?

Why Title IX is Important: Potential Impact of Sexual Misconduct on Students and Employees

Shame, humiliation,
stress, anxiety,
depression, loss of
sleep

Impaired
learning/poor work
performance

Absenteeism/turnov
er

Culture of
discrimination

Civil liability
(monetary
damages, attorney
fees)

Negative media
attention and public
outcry

OCR Resolution
Agreement

Loss of federal
funds

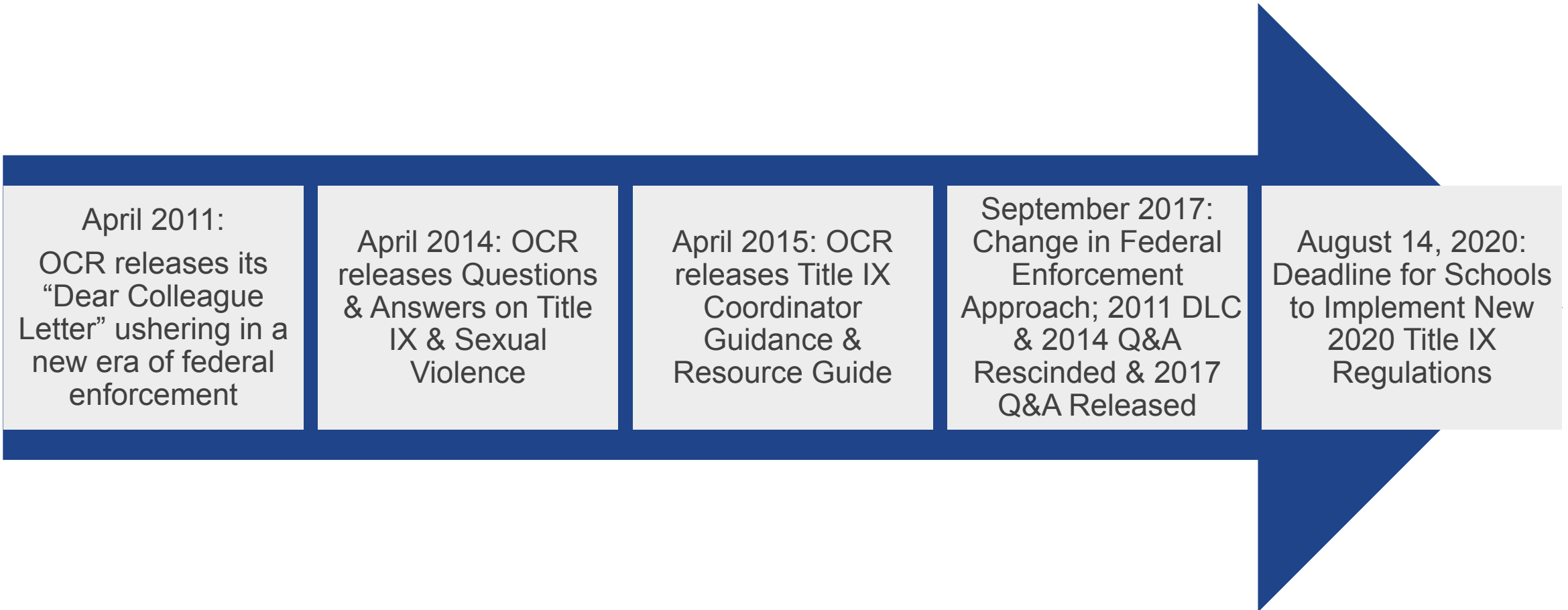


Current Status of the Title IX Regulations

Office of Civil Rights

- The U.S. Department of Education, Office for Civil Rights (“OCR”), is the agency that provides oversight, interpretation, and enforcement of Title IX.
- OCR creates “Regulations.”
- Different presidential administrations have different policy agendas and therefore Title IX Regulations fluctuate significantly.
- See website at:
<https://www.ed.gov/laws-and-policy/civil-rights-laws/title-ix-and-sex-discrimination>

A Brief History of Title IX Regulations



A Brief History of Title IX Regulations (Cont.)

August 1, 2024:
Deadline for
Schools to
Implement New
2024 Title IX
Regulations

January 2025:
Tennessee v.
Cardona vacates
the 2024
Regulations

January 2025: EO
Ending Radical
Indoctrination in
K-12 Schooling

February 2025: EO
Keeping Men Out
of Women's Sports

April 2025:
Title IX Taskforce
Created

Where are we now?

- *Tennessee v. Cardona*
 - On January 9, 2025, a Kentucky federal district court ***vacated*** the 2024 Title IX Regulations
- Office for Civil Rights: “*Consistent with the court’s order, the 2024 Title IX regulations and these resources are not effective in any jurisdiction”*”



Where do we go from here?

1. Review policies to ensure accuracy and compliance with 2020 regulations.
2. Refresh knowledge of the 2020 Regulations.
3. Law is currently evolving.





Scope of the 2020 Title IX Regulations

Differences Between 2024 and 2020 Regulations: Scope

2024 Regulations

- Prohibited conduct falling within the **broad** scope of “sex discrimination,” including “sex-based harassment.”
 - Prohibited discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, or gender identity

2020 Regulations

- Prohibits conduct falling within the **narrow** definition of “sexual harassment.”
 - **Conduct on the basis of sex including (1) quid pro quo; (2) hostile environment; or (3) specific offenses.**

2020 Title IX Regulations – Highlights

Duty to identify and promptly investigate and address allegations of sexual harassment

Duty to adopt and publish clear policies on how to file complaints and how complaints will be promptly addressed

Notice to parties of the initiation of the investigation and the outcome of investigation and appeal rights

Duty to prevent recurrence and remedy effects

Obligation to have a Title IX Coordinator

Key Definitions

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Differences Between 2024 and 2020 Regulations: Definitions

2024 Regulations

- Complainants included *persons other than students and employees*
- Hostile environment harassment included unwelcome sex-based conduct that was subjectively and objectively offensive, and was “sufficiently severe **or** pervasive” (Expanded scope)
- Must respond promptly and effectively

2020 Regulations

- Complainants are limited to **students or employees attempting to or actively participating in District programs or activities.**
- Hostile environment harassment includes unwelcome sex-based conduct that is “**severe, pervasive, and objectively offensive**” (Limited scope)
- **Must not be deliberately indifferent**

Key Definitions

Complaint

A document filed by a **complainant** or signed by the **Title IX Coordinator** alleging sexual harassment against a respondent, and requesting that the District investigate the allegation

Complainant

An individual who is alleged to be the **recipient of the alleged conduct** that could constitute sexual harassment

Respondent

An individual who has been reported to be the **one who engaged in the alleged conduct** that could constitute sexual harassment

Key Definitions – Actual Knowledge

Actual Knowledge (K-12)

- When ***any employee*** has notice of sexual harassment or allegations of sexual harassment...

- “Deliberate indifference” standard:

A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

Key Definitions – Sexual Harassment

Sexual Harassment is conduct on the basis of sex that satisfies one or more of the following:

An **employee** conditioning the provision of an aid, benefit, or service of the District on the complainant's participation in unwelcome sexual conduct;

“Quid pro quo”

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

“Hostile Environment”

“Sexual assault” [20 U.S.C. 1092(f)(6)(A)(v)],
“dating violence” [34 U.S.C. 12291(a)(10)],
“domestic violence” [34 U.S.C. 12291(a)(8)], or
“stalking” [34 U.S.C. 12291(a)(30)].

“Specific Offenses”

Key Definitions – Specific Offenses

Sexual assault:

- An offense classified as a sex offense or nonforcible sex offense under the FBI uniform crime reporting system
 - Sex Offenses
 - **Rape**—(Except Statutory Rape)
 - **Sodomy**
 - **Sexual Assault With An Object**
 - **Fondling*** (Now Criminal Sex Contact)**

Title IX Definitions – Specific Offenses

Sexual assault (continued):

- Sex Offenses, Nonforcible—(Except Prostitution Offenses)
 - **Incest**
 - **Statutory Rape**

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.

Title IX Definitions – Specific Offenses

Domestic violence:

- Felony or misdemeanor crimes of violence committed by a qualified person.

Stalking:

- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - Fear for their safety or the safety of others; or
 - Suffer substantial emotional distress.

Hostile Environment: Analyzing the “Severe, Pervasive and Objectively Offensive” Threshold

- All 3 elements required to trigger Title IX
- Pervasiveness is an indispensable element of a Title IX offense
 - Single incident often not enough to meet this element, even if severity and objective offense can be demonstrated
- Objectively offensive and severe are indispensable elements of a Title IX offense
 - Verbal conduct often not enough to meet these elements, unless the frequency and severity of these statements are objectively offensive, and they hinder access to education

Hypothetical

Elizabeth, a female student, regularly sits with Josh, a male student, in Psychology. Elizabeth reported that although she initially would flirt with Josh and liked the attention, Josh recently told Elizabeth that he wanted to have sex with her. After this comment, Elizabeth heard from a friend that Josh “took advantage” of another female student on a prior occasion. Now, Elizabeth fears Josh and does not want to sit next to him anymore.

Does this conduct meet the definition of “Sexual Harassment” under the 2020 Regulations?



Hypothetical

Fred, a student with a disability, rides the bus every afternoon with Sam, a student with a disability. One day, the Transportation Department reviews video footage from bus and sees that Fred has been touching Sam's penis everyday for a week. Sam is nonverbal and in a wheelchair.

Does this conduct meet the definition of “Sexual Harassment” under the 2020 Regulations?



Hypothetical

Assistant Coach for high school football team recruits female students to be “managers” for the football team. At practices, Assistant Coach compliments the “managers” and touches their arm when speaking to them. In addition, on a few occasions, the Assistant Coach has asked the “managers” about their sex lives.

**Does this conduct meet the definition of
“Sexual Harassment” under the 2020
Regulations?**



Hypothetical

Gianna, a 10th grader, has not been to class in two weeks. Gianna says she was being bullied every day over a rumor that she slept with two seniors. Gianna said she was being bullied in person and on social media. She has deleted all her social media accounts. She feels embarrassed and humiliated and does not want to come back to school.

Does this conduct meet the definition of “Sexual Harassment” under the 2020 Regulations?



Title IX Jurisdiction



Differences Between 2024 and 2020 Regulations: Jurisdiction

2024 Regulations

- Jurisdiction over all sex discrimination under the Recipient's education program or activity in the United States, including: (1) conduct occurring in buildings owned or controlled by a student organization; and (2) conduct subject to the Recipient's disciplinary authority.

2020 Regulations

- Jurisdiction over conduct occurring (1) in the United States; (2) in which the District exercised **substantial control over the respondent** and context in which harassment occurs; and (3) student/employee are **participating or attempting to participate** in the District's education program or activity when the complaint was filed.

Title IX Jurisdiction

The conduct occurs against a person *in the United States*;

The conduct occurs in an education program or activity over which the District exercised **substantial control** over both: (1) the **respondent** and (2) the **context** in which the sexual harassment occurs; and

The complainant was **participating/attempting to participate** in the educational program or activity **at the time the complaint was filed**.

Hypothetical – True or False

The District **must** conduct a Formal Title IX investigation into an incident...

- that occurred between two students over the weekend, at a student's home.
- in which an administrator allows an office manager to leave early and work from home in exchange for the office manager going on a date with the administrator.
- that occurred last year, and the complainant has graduated.



Hypothetical

Marie met her long-distance boyfriend over the summer. Marie's classmate, Parker, found TikTok videos of Marie's boyfriend discussing details about his intimate encounters with Marie. Parker is telling everyone in class about the TikTok videos. Marie reports Parker's behavior.

Is there Title IX jurisdiction?



Hypothetical

Theo disenrolled in the District over the summer. In the fall, Theo files a complaint alleging that three years ago, his teacher was engaging in grooming conduct.

Is there Title IX jurisdiction?





2020 Title IX Grievance Procedure: Basic Requirements

Basic Requirements for Grievance Procedures

- Treat complainants and respondents equitably.
- Remedies must focus on restoring or preserving equal access to District program or activity.
- Objective evaluation of all relevant evidence.
- Training of individuals who fill “Title IX Roles” (i.e. Title IX Coordinator, Investigator, Decision-Maker, Informal Resolution Officer, Appeals Officer)
- Presumption that respondent is not responsible for alleged conduct until after completion of grievance procedures and determination of responsibility is made.



Basic Requirements for Grievance Procedures

- AR must articulate time frames for each stage of the process.
- Articulate range of possible disciplinary sanctions/remedies.
- State standard of evidence.
- Procedure and bases for appeal.
- Range of supportive measures.
- Not use or rely on information that protected under a legally recognized privilege.



2020 Title IX Grievance Procedure: Formal Complaints

Differences Between 2024 and 2020 Regulations: Complaints

2024 Regulations

- Complaints made orally or in writing, so long as the complaint could objectively be understood as a request to investigate.
- Title IX Coordinator must consider certain factors when determining whether to initiate a complaint.

2020 Regulations

- **Complaints made in writing and signed by complainant.**
- **Title IX Coordinator should assess whether to initiate a complaint based on a threat to safety.**

Receiving Complaints

WHERE COMPLAINTS COME FROM

Five empty rounded rectangular boxes stacked vertically, intended for notes on where complaints come from.

FORM OF COMPLAINTS

Four empty rounded rectangular boxes stacked vertically, intended for notes on the form of complaints.

The Golden Rule

Focus on the conduct, not the words used.

Receiving Complaints



- Notify the Title IX Coordinator
- Assess whether a CPS report should be filed (continue to periodically reassess)
- Title IX Coordinator should promptly schedule a meeting with the victim

Do You Have a “Formal” Title IX Complaint?

Document
filed by
Complainant

OR

Signed by
Title IX
Coordinator

What if the Complainant says, “Do Nothing”?

The Title IX Coordinator must inform them of their options

- This includes supportive measures without filing a formal complaint

The Title IX Coordinator can sign a formal complaint on the complainant’s behalf

- Assess the conduct!
- If NOT filing a formal complaint would be deliberately indifferent, the Title IX Coordinator has the discretion to sign a formal complaint on the complainant’s behalf

HYPOTHETICAL

A paraeducator who works in a class that supports students with autism comes to the Principal to complain that two of the students in her class have on multiple occasions touched her between the legs. The paraeducator does not want to file a formal Title IX complaint but would like firm behavior

Is it necessary for the Title IX Coordinator to sign a Title IX formal complaint?



Complaint Dismissals

Mandatory Dismissals

- Does not meet the definition of “sexual harassment”;
- Did not occur in District’s education program or activity; or
- Did not occur in the United States.

Discretionary Dismissals

- Request in writing to withdraw;
- Respondent is no longer enrolled or employed at the District; or
- Inability to gather sufficient evidence.

Dismissals (Mandatory and Discretionary)

The decision to dismiss a complaint should be made in consultation with the Title IX Coordinator

Notice of dismissal must be issued to both parties in writing

Parties must be informed of their right to appeal the dismissal on the basis of:


- Procedural irregularity;
- New evidence that was not reasonably available earlier; or
- Involved personnel had a conflict of interest or bias.

Hypothetical

You get the following text message from a teacher.

Can you “do nothing”?





2020 Title IX Grievance Procedure: Immediate Interventions/Supportive Measures

Immediate Interventions

- Definition: Immediate actions to take to ensure safety of the Parties.
- Goals:
 - Prevent imminent threat to health and safety.
 - Comply with other legal mandates (CANRA).
- When: Evaluate as soon as receive report of alleged conduct.

Immediate Interventions: Examples

CANRA Report

Emergency
Removal
(Student)

File Police
Report
(if criminal
activity)

Paid
Administrative
Leave
(Employee)

Supportive Measures

- Definition: Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee – TO BOTH PARTIES.
- Goal: restore/preserve equal access to education program or activity.
- When: During the pendency of the grievance procedures and possibly after the procedures are complete.

Supportive Measures: Examples

Counseling

Extension of
Deadlines

Modification
of Schedules

No Contact
Orders

Increased
Security
Measures

Change
locations



2020 Title IX Grievance Procedure: Separation of Roles and Responsibilities

Differences Between 2024 and 2020 Regulations: Roles

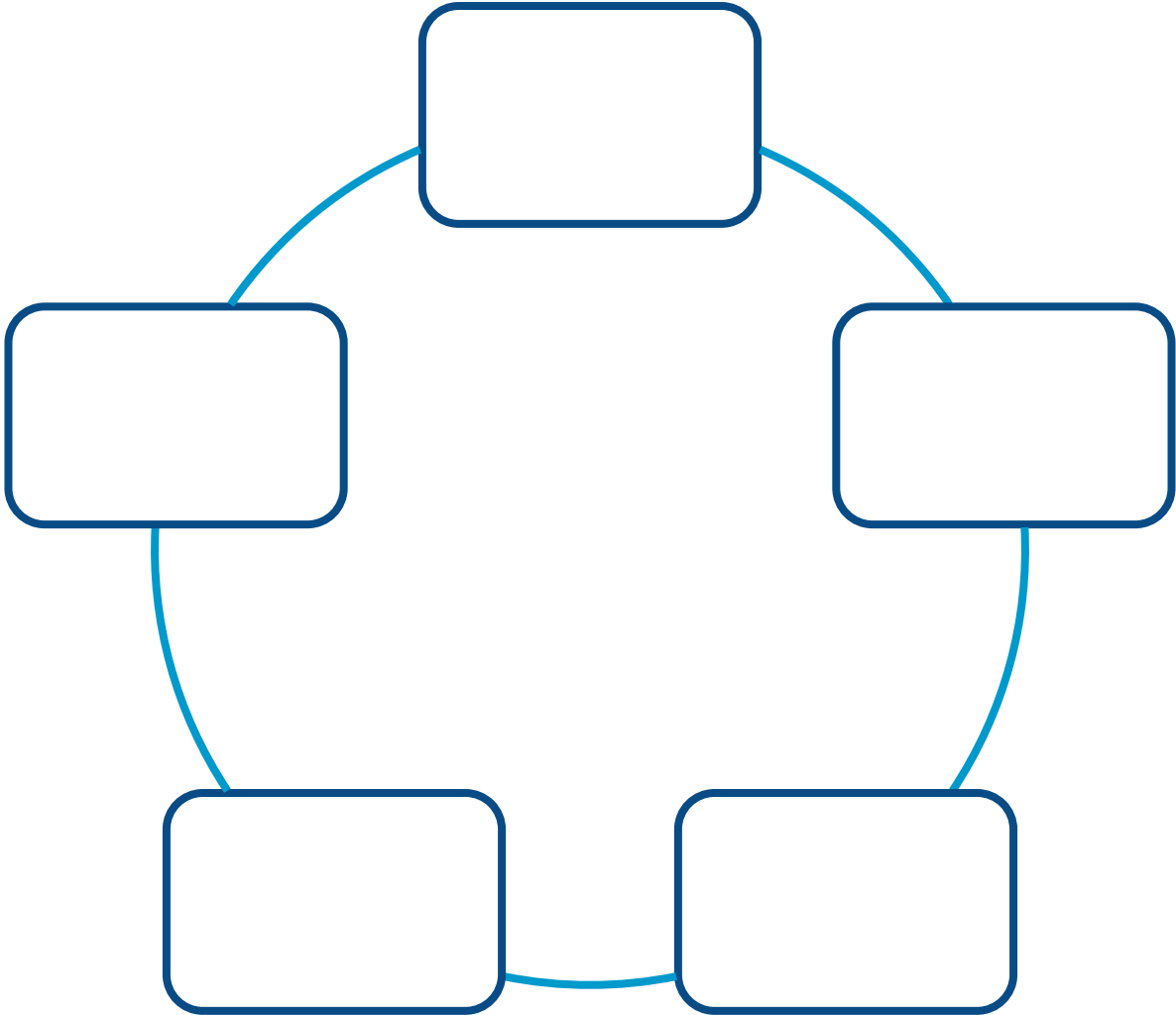
2024 Regulations

- The roles of Title IX Coordinator, Investigator, and Decision-Maker could simultaneously be performed by the same person

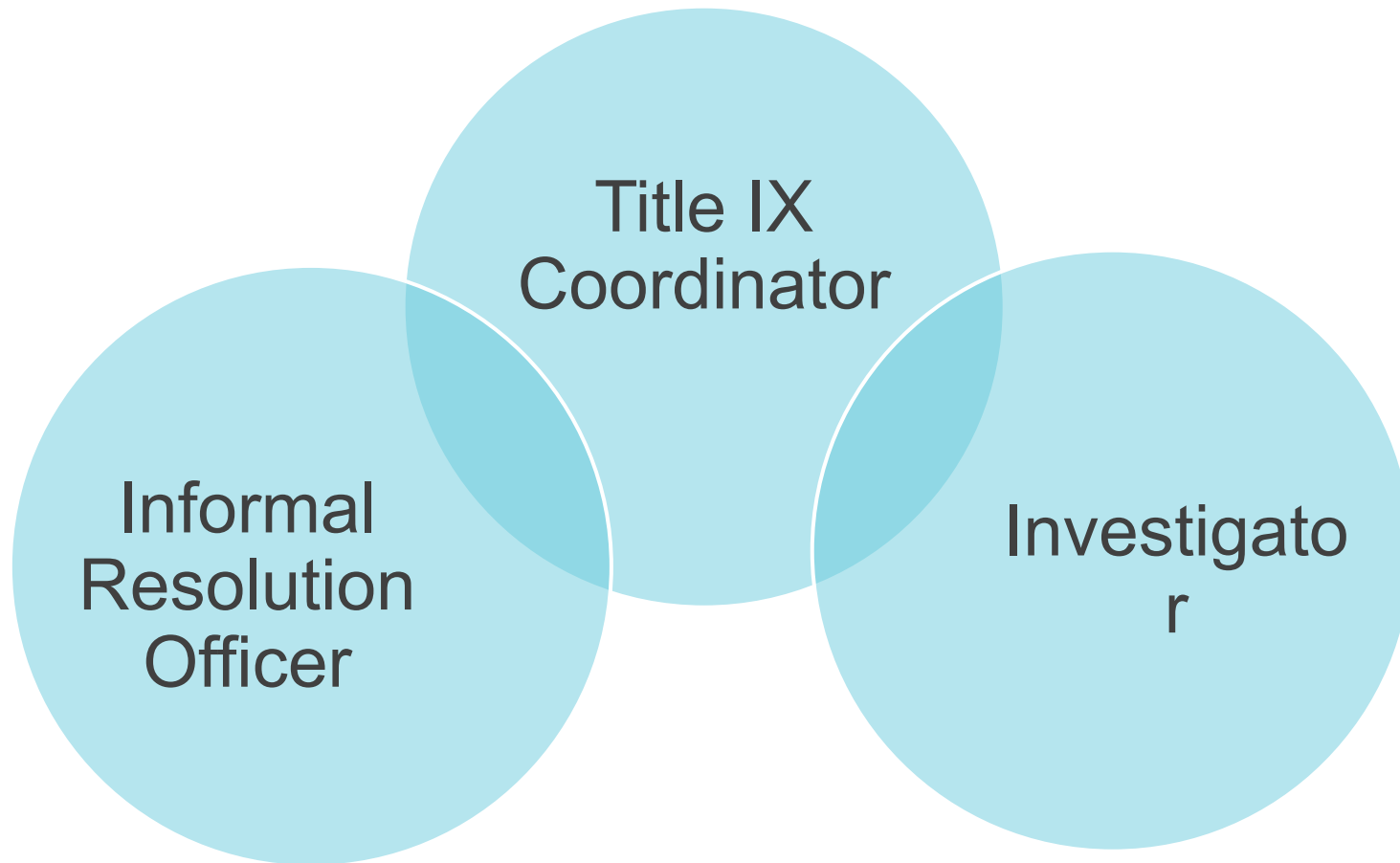
2020 Regulations

- **The Decision-Maker must be a different person from the Title IX Coordinator or Investigator.**

What are the Roles in the Title IX Grievance Process?



What Roles Can Overlap?



Decision
-maker

Appeals
Officer

Title IX Coordinator Duties

Cannot be the
Decision-Maker



- Receives and oversees
- Explains options and process to complainant*
- Offers supportive measures *
- Determines dismissal of complaints
- Evaluates corrective actions*
- Identifies systemic issues
- Ensures overall Title IX compliance

*Role may be designated

Investigator's Duties

Cannot be the
Decision-Maker



- Interview
- Gather evidence
- Parties to review evidence
- Consider responses
- Prepare investigation report



Decision-Maker's Duties (K-12)

- Reviews investigation report
- Facilitates exchange of questions
- Asks relevant questions
 - Explains if questions are irrelevant
- Makes determination about responsibility
- Prepares written

Cannot be the Title IX Coordinator or Investigator

Informal Resolution Officer's Duties



- Facilitates the informal resolution process
- Verifies a complaint meets the criteria
- Verifies voluntary, written consent
- Ensures the parties know their rights

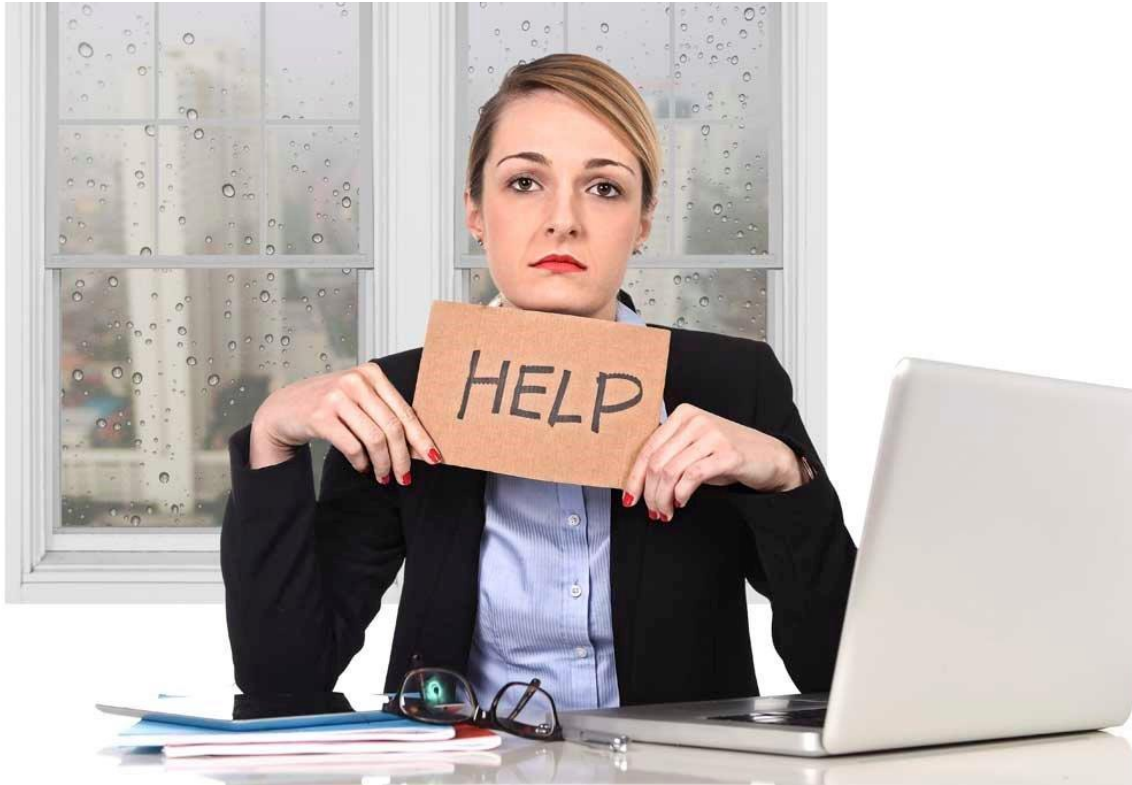
May be the Title IX
Coordinator

Appeals Officer's Duties

- Evaluates any appeal
- Makes a decision on the appeal
- Issues a written decision

Cannot be the Title IX Coordinator,
Investigator, or Decision-Maker

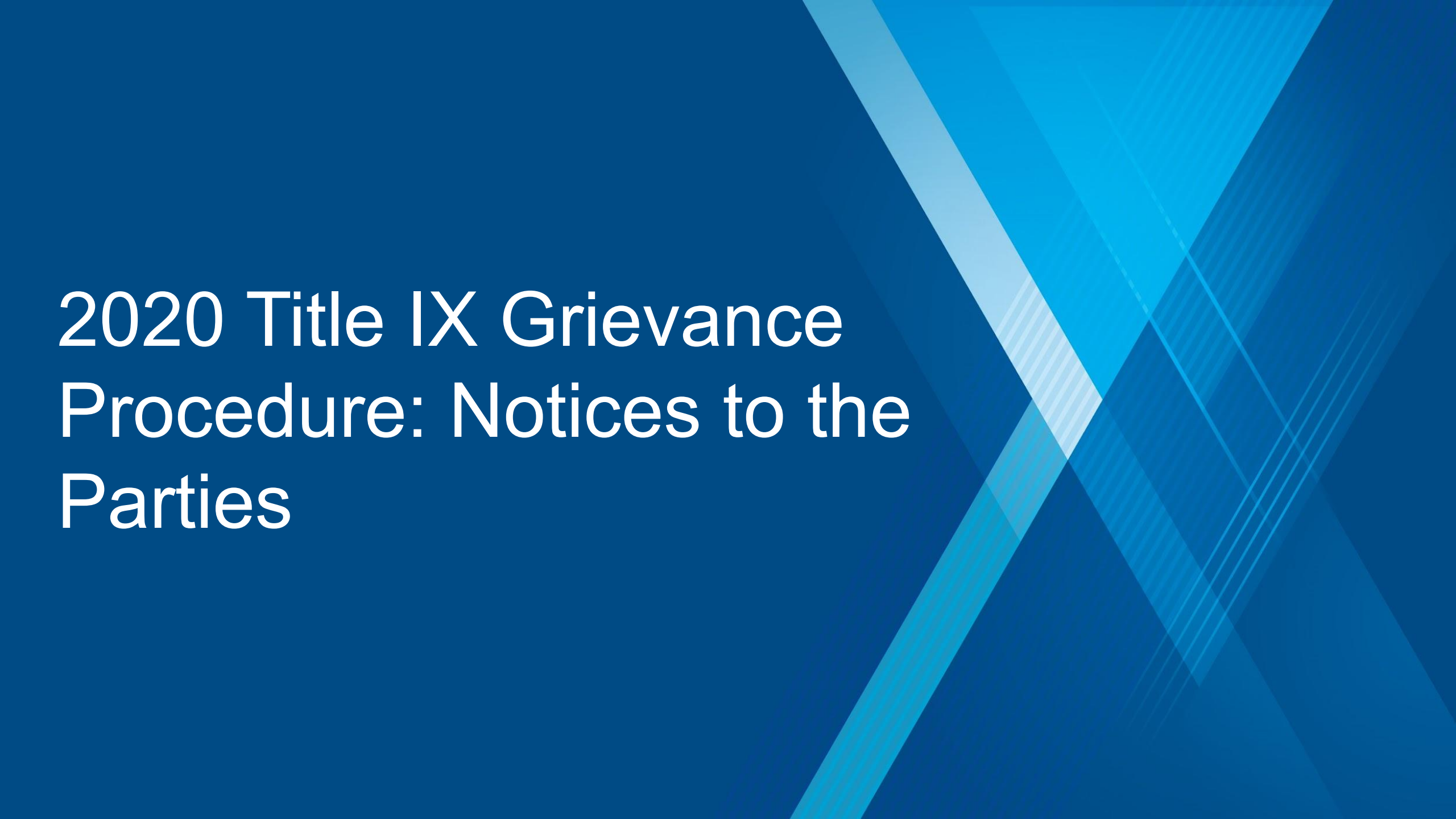
Responsibilities of All Employees:



- Report to the District's Title IX Coordinator, as well as any additional designated individuals (school site administrators), any known claims of potential sexual harassment.

All employees should be trained on how to identify potential sexual harassment issues and report it.

This does not relieve an employee of their mandated reporter duties!



2020 Title IX Grievance Procedure: Notices to the Parties

Written Notices to the Parties

- Summary of allegations (sufficient detail)
- Applicable grievance procedures
- Option for informal resolution
- Statement that respondent is presumed not responsible until determination of responsibility is made
- Right to an advisor of choice
- Right to inspect evidence during evidence exchange
- Statement that the parties are prohibited from **knowingly** making false statements or providing false information.





2020 Title IX Grievance Procedure: Informal Resolution

Informal Resolution: Basic Requirements

- Can't require the parties participation.
- Only offer if a formal complaint is filed.
- Can offer at any time prior to reaching a final determination of responsibility.
- Must provide parties with written notice of rights to informal resolution.
- Cannot offer where an employee sexually harassed a student.
- If parties want to participate, must provide written consent.



2020 Title IX Grievance Procedure: Exchange of Evidence

Differences Between 2024 and 2020 Regulations: Exchange of Evidence

2024 Regulations

- Parties given one period of time to review and respond to evidence before a determination was made
 - Duration of the period chosen by the Recipient

2020 Regulations

- **Parties given two separate 10-day periods of time to review and respond to evidence before a determination of responsibility is made.**

Exchange of Evidence: Minimum Requirements

- District has the burden of gathering evidence.
- District cannot access or use a party's medical, psychological or other privileged records **unless they obtain the party's voluntary, written consent.**
- District cannot restrict parties from discussing allegations or gathering and presenting relevant evidence.
- District must provide an opportunity for parties to present fact and expert witnesses and other exculpatory or inculpatory evidence.

Exchange of Evidence: Draft Report of Evidence

- Provide parties access to all evidence directly related to the allegations raised in the formal complaint. Includes evidence the District does not intend to rely on in reaching its decision regarding responsibility. *In form of Draft Report of Evidence.
- Provide Parties at least 10 days to respond to the Draft Report of Evidence.

Note: The Investigator should work with the Title IX Coordinator to securely transmit the Report of Evidence to the parties, and to assess whether redactions may be appropriate.

Exchange of Evidence: Final Report of Evidence

- The Final Report of Evidence report should be prepared by the Investigator and must summarize relevant evidence.
- The Investigator must provide the Final Report of Evidence to the Decision-Maker to determine responsibility.



2020 Title IX Grievance Procedure: Relevant Evidence

Differences Between 2024 and 2020 Regulations: Relevance

2024 Regulations

- Complainant's sexual interests

2020 Regulations

- **Complainant's
predisposition**

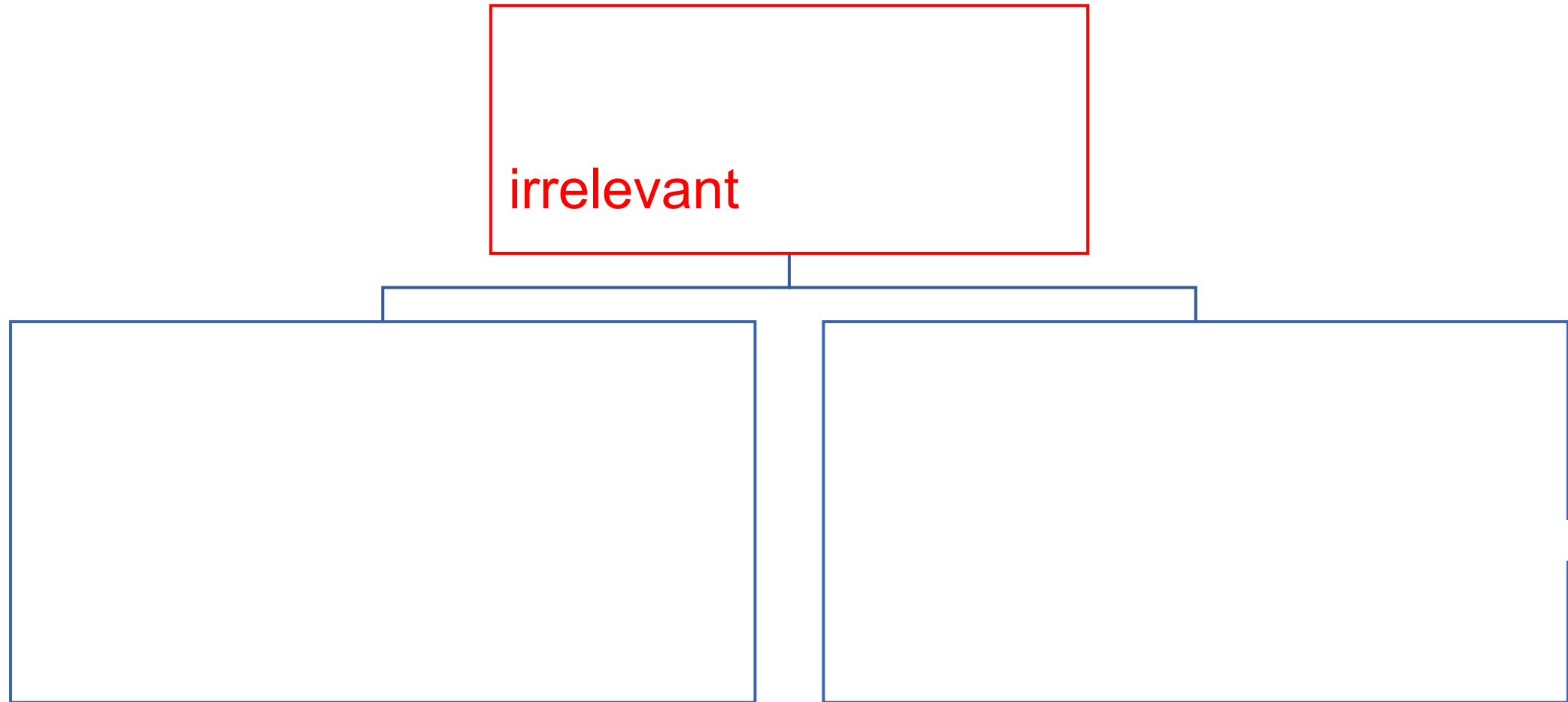
What is Relevant Evidence?

- Evidence is relevant if the information helps to prove or disprove a fact at issue and should be admitted
- Evidence cannot be excluded because such evidence may
 - be unduly prejudicial,
 - concern prior bad acts, or
 - constitute character evidence

Limitations on Relevance

- Information protected by any **legally recognized privilege** cannot be used; no party's treatment records may be used without that party's voluntary, written consent.
- When evidence is duplicative of other evidence, it may be deemed not relevant.
- A complainant's predisposition is never relevant.

Limitations on Relevance





2020 Title IX Grievance Procedure: Determination of Responsibility

Opportunity to Submit Questions

- Upon receipt of the Final Report of Evidence, the Decision-Maker must afford each party with a copy of the Final Report of Evidence.
- Follow Up Questions: Upon receipt of the Final Report of Evidence, each party has at least 10 days to review the Final Report of Evidence and submit questions to the Decision-Maker that the party would like asked of others (either party or witness).
- The Decision-Maker must then provide each party with the answers, and allow for additional, limited follow-up questions from each party.
- If a Decision-Maker determines that a proposed question is irrelevant then the Decision-Maker must explain to the party proposing the question, why the question is not being asked (i.e. why its not relevant).



Preponderance of the Evidence Standard

- “More likely than not”
- 50% + a feather.



Written Determination: Basic Requirements

- ❑ Summary of alleged conduct;
- ❑ Description of procedural steps taken;
- ❑ Determination of responsibility and rationale for the same;
- ❑ Summary of disciplinary sanctions imposed on respondent, if any;
- ❑ Summary of other remedies provided to complaint, if any; and
- ❑ Summary of appeal rights/procedures;



2020 Title IX Grievance Procedure: Standard for Appeals

Differences Between 2024 and 2020 Regulations: Appeals

2024 Regulations

- Appeal process required to be the same as offered in comparable proceedings.
- That would change the outcome.

2020 Regulations

- **Parties may appeal the written determination based on:**
 - **Procedural irregularity;**
 - **New evidence;**
 - **Conflict of interest/bias.**
- **That may affect the outcome.**

Appeal Rights for Both Parties

Parties may appeal the written determination on the following bases:

Procedural irregularity;

New evidence that was not reasonably available earlier;
or

Title IX personnel had a conflict of interest or bias.

Complaint filed with:
OCR, CDE, CRD,
EEOC

Hypothetical

Mr. Smith is found responsible for inappropriate touching that constitutes sexual harassment under Title IX. He appeals the determination. Which of the following can serve as the Appeals Officer?

1. Title IX Coordinator
2. Investigator
3. Decision-Maker





2020 Title IX Grievance Procedure: Checklist

Did Meet Requirements for Grievance Procedure?

- Meet Definition of Sexual Harassment under 2020 Title IX Regulations?
- Have jurisdiction?
- Immediate Interventions? Supportive Measures?
- Notices?
- Investigate
- Prepare Report of Evidence

Did Meet Requirements for Grievance Procedure?

- Exchange of Evidence
- Draft Investigation Report
- Decision-Maker prepare Final Investigation Report
- Offer Appeal?
- Follow Record Keeping Protocols?

Questions?

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contact:



Carolyn L. Gemma

Attorney at Law

925.953.1620

cgemma@lozanosmith.com

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