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TITLE IX:
POLICY & PRACTICE FOR SCHOOL ADMINISTRATORS

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I. INTRODUCTION

This outline reflects the current Title IX regulations as of the beginning of the 2026-2027 school year. The regulations are drafted and implemented by the Office for Civil Rights ("OCR"), part of the U.S. Department of Education. The material and Code of Federal Regulations ("CFR") citations in this outline refer to federal regulations first announced in 2020, as a federal district court struck down the Biden administration's attempt to amend the regulations in 2024.

These standards outline comprehensive and onerous notice and procedural requirements schools must follow when responding to sexual harassment claims from both students and employees. These standards have been controversial. Some believe they are unfair to complainants, while others believe they are an appropriate correction of prior OCR guidance that has been criticized for being unfair to the accused. When the standards initially took effect in August, 2020, they required significant alterations to the manner in which schools respond to allegations of sexual harassment.

NOTE: These materials and the corresponding presentation are meant to inform you of interesting and important legal developments. While current as of the date of presentation, the information that is provided may be superseded by court decisions, legislative amendments, rule changes, and opinions issued by bodies interpreting the area of law. We cannot render legal advice without an awareness and analysis of the facts of a particular situation. If you have questions about the application of concepts addressed in this outline or discussed in the presentation, you should consult with your legal counsel. ©2026 Squires, Waldspurger & Mace, P.A.

II. TITLE IX SEXUAL HARASSMENT BASICS

A. **Where do the Title IX regulations apply?** The Title IX regulations extend to:

1. Any "education program or activity," including "locations, events, or circumstances over which the recipient exercised substantial control over both the [subject of a complaint] and the context in which the sexual harassment occurs…" 34 C.F.R. § 106.44(a).

2. One of the only exclusions is conduct that takes place outside of the United States. 34 C.F.R. § 106.8(d).

B. **Key Title IX personnel.** The following individuals play an important role in administering and fulfilling a school district's Title IX obligations.

1. Title IX Coordinator.

a) Title IX Coordinator must be "authorized" to coordinate the district's efforts to comply with Title IX. This is a critical role and should not be taken lightly.

b) Can be any employee but should be an administrator or director-level employee because of the nature of information they will need to access and the responsibilities of the role.

c) A district may designate more than one Title IX Coordinator or "Assistant" or "Deputy" coordinators.

2. Title IX Investigator(s).

a) An investigator assesses allegations of sexual harassment by interviewing witnesses and examining evidence. The investigator prepares a report following the conclusion of the investigation.

b) A Title IX Coordinator may serve as an investigator. An investigator may also serve as an informal resolution facilitator. An investigator may not, however, serve as a decision-maker on a complaint they investigated.

c) Districts may designate multiple individuals to serve as investigators, and multiple investigators may investigate any given Title IX complaint.

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d) A district may utilize non-employees to serve as investigators. If the district utilizes a non-employee, it must be cognizant of its data practices obligations and ensure that it has the ability to control the non-employee's use of data.

3. Title IX Decision-Maker.

a) A decision-maker makes the final determination regarding responsibility with respect to a Title IX complaint.

b) The decision-maker may not be the Title IX Coordinator or the investigator(s).

c) A district may utilize non-employees to serve as the district's decision-maker. However, since the decision-maker determines any disciplinary sanctions or remedies to be issued to a respondent who is determined responsible for sexual harassment, it is often best to assign an administrator to serve as decision-maker. *See* 34 C.F.R. § 106.45(b)(7)(iii)(E).

4. Title IX Appellate Decision-Maker.

a) Any party has a right to appeal a Title IX determination regarding responsibility. Districts must identify a Title IX appellate decision-maker to adjudicate appeals.

b) This individual may not be the same person as the Title IX Coordinator, investigator, or decision-maker in the same complaint.

5. Informal Resolution Facilitator.

a) In some cases, districts may offer to facilitate an informal resolution process, such as mediation, to resolve a Title IX grievance prior to full adjudication. The informal resolution facilitator oversees this process.

C. **Training for key Title IX personnel.** Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process must be trained on:

1. The definition of sexual harassment under Title IX;

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2. The scope of the district's educational programs and activities;

3. How to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes;

4. How to serve impartially, including by avoiding prejudgment of facts at issue, conflicts of interest, and bias;

5. How to determine whether questions and evidence are relevant;

6. When questions and evidence about a complainant's sexual predisposition or prior sexual behavior are relevant; and

7. How to prepare an investigative report that fairly summarizes relevant evidence.

NOTE: Districts are required to post the training materials used to train their Title IX Coordinator, investigators, decision-makers and individuals authorized to facilitate informal resolution on the school district website. 34 C.F.R. § 106.45(b)(10)(i)(D). These materials must also be maintained by the district for seven years.

D. **Training for other staff.** Districts should ensure that all staff, and not just key Title IX personnel, receive some Title IX training. At minimum, staff should be aware of the definition of sexual harassment and that they must report any allegations of sexual harassment to the Title IX Coordinator immediately.

1. **"Actual knowledge" requirement.**

a) A district's obligations under Title IX are triggered once the district has "actual knowledge" of alleged sexual harassment.

b) **Districts are deemed to have knowledge of sexual harassment if any employee has knowledge.** An elementary or secondary school is deemed to have *actual knowledge* of alleged sexual harassment if ***any employee*** has notice of the allegation. 34 C.F.R. § 106.30(a). This standard is intended to be consistent with mandatory reporting requirements for school staff, although, in practice, it is significantly broader than the Minnesota Maltreatment Reporting Act.

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c) Although not specifically required by the Title IX regulations, an employee who has notice of sexual harassment must promptly notify an administrator or the Title IX Coordinator to ensure the matter is properly addressed.

E. **Title IX administrative requirements.** The Title IX regulations include the following administrative requirements:

1. Districts must designate a Title IX Coordinator to address Title IX complaints. The Coordinator's contact information must be posted "prominently" on the district's website, and must be included in student and employee handbooks.

2. Districts must develop written Title IX grievance procedures, post them on the district's website, and include them in any student and employee handbooks.

3. For every incident of alleged sexual harassment that requires a response, the district must maintain records of the complaint, any discipline or other consequences, and any remedies or supportive measures offered to the complainant for seven years. Similarly, records of any investigation, appeal, or informal resolution must be maintained for seven years.

F. **Prohibition on retaliation.**

1. Districts and individuals are prohibited from intimidating, threatening, coercing, or discriminating against anyone because a person made a complaint or participated in an investigation.

2. Complaints about retaliation should be investigated pursuant to the grievance process.

G. **Data privacy.** The regulations state that schools cannot use the Family Educational Rights and Privacy Act ("FERPA") as a reason for not complying with these regulations. The Minnesota Government Data Practices Act ("MGDPA") similarly does not provide a basis for avoiding a district's Title IX obligations. However, schools should take care to ensure that only essential, required private data is shared as part of these processes.

H. **Nondiscrimination Policy.** Schools are required to have a nondiscrimination policy, but the regulations do not include more detail about what must be included in one.

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1. Schools should review existing policy language, such as policies based on the MSBA Model Policies 413 and 522, to ensure there is no confusion about who serves as the Title IX Coordinator and to ensure that existing policy language does not contradict the new Title IX requirements.

2. Notice of Policy

   a) The regulations require that notice of the non-discrimination policy must be provided to: "applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the [district.]" 34 C.F.R. § 106.8(a) and § 106.8(b).

   b) Notice of the policy must also identify the Title IX Coordinator and include their office address, email address, and telephone number. *Id*. One way to ensure notices remain accurate is to direct Title IX concerns to a centralized email address such as TitleIX@yourdistrict.org.

   c) Notice of the policy and contact information for the Title IX Coordinator must also be "prominently displayed" on a school district's website, and be included in each handbook or catalog made available to "applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the [district.]"

III. SEXUAL HARASSMENT AND DISCRIMINATION FOR TITLE IX DEFINED

A. **What is sexual harassment?** Sexual harassment is conduct on the basis of sex that includes one or more of the following:

1. An employee conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (also called *quid pro quo* harassment);

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

3. ''Sexual assault'' as defined in 20 U.S.C. § 1092(f)(6)(A)(v), ''dating violence'' as defined in 34 U.S.C. § 12291(a)(10), ''domestic violence'' as defined in 34 U.S.C. § 12291(a)(8), or ''stalking'' as defined in 34 U.S.C. § 12291(a)(30). These are definitions from the "Clery Act" and "Violence Against Women Act" ("VAWA").

   a) 20 U.S.C. § 1092(f)(6)(A)(v) defines "sexual assault" as "an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system ("UCRS") of the Federal Bureau of Investigation."

      (1) The FBI UCRS removed the broad distinction between forcible and nonforcible sex offenses. The following reflect relevant definitions pursuant to Version 2025.0 of the National Incident-Based Reporting System User Manual from the FBI Uniform Crime Reporting Program, dated June 23, 2025.

      (2) **Sex Offenses:** "Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent."

      (3) **Rape:** Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or by a sex-related object. This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.

      (4) **Criminal Sexual Contact:** The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

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The forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

(5) **Statutory Rape:** Nonforcible sexual intercourse with a person who is under the statutory age of consent.

b) 34 U.S.C. § 12291(a)(10) defines "dating violence" as "violence committed by a person…"

(1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(2) where the existence of such a relationship shall be determined based on a consideration of the following factors:

(a) The length of the relationship,

(b) The type of relationship,

(c) The frequency of interaction between the persons involved in the relationship.

c) 34 U.S.C. § 12291(a)(8) defines "domestic violence" as including "felony or misdemeanor crimes of violence committed…"

(1) by a current or former spouse or intimate partner of the victim,

(2) a person with whom the victim shares a child in common,

(3) by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,

(4) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or

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(5) by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

d) 34 U.S.C. § 12291(a)(30) defines "stalking" as engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

(1) fear for his or her safety or the safety of others; or

(2) suffer substantial emotional distress.

B. **What does it mean to "effectively deny" equal access to education?**

1. DOE guidance states the following may be examples of a student who has been effectively denied equal access to an education:

a) skipping class to avoid a harasser;

b) decline in grade point average related to harassment;

c) difficulty concentrating in class as a result of harassment;

d) emotional reactions that occur at home, such as crying or bed-wetting as a result of harassment; or

e) quitting a sports team due to harassment but continuing to participate normally in other school activities.

2. A complainant does not need to have suffered educational loss prior to making a complaint.

3. A complainant does not need to demonstrate that all access to education has been denied; it could be one component such as extreme discomfort attending a specific class or participating in an extracurricular activity.

4. In general, school districts should not screen out complaints of sexual harassment because the complainant "was not traumatized enough." U.S. Dep't of Ed. *Questions and Answers on the Title IX Regulations on Sexual Harassment*, (July, 2021) at Answer 8.

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C. **What about consent?**

1. The regulations expressly decline to adopt a definition of consent and give schools the ability to choose one most appropriate to their circumstances.

2. The MSBA model policy does not include a definition of consent.

IV. TITLE IX GRIEVANCE PROCEDURES.

A. **Districts must implement grievance procedures.** The Title IX regulations require districts to develop and implement a grievance procedure that "provide[s] for the prompt and equitable resolution of student and employee complaints alleging any action prohibited by [Title IX]." The Title IX regulations contain many detailed requirements for the grievance procedure. All grievance procedures must meet the following minimum requirements:

1. Complainants and respondents must be treated equally.

2. All relevant evidence must be objectively evaluated, and credibility determinations must not be solely based on a person's status as a complainant, respondent, or witness.

3. Individuals involved in the Title IX grievance process must be trained and must not demonstrate bias.

4. The respondent is presumed not responsible for the alleged conduct until a determination of responsibility is made after the grievance process.

5. There must be reasonably prompt time frames for conclusion of the grievance process.

6. The range of potential disciplinary sanctions must be outlined.

7. The standard of evidence used must be identified. Options are "preponderance of the evidence" or "clear and convincing evidence." Most districts use "preponderance of the evidence."

8. Appeal procedures and bases for appeal must be outlined.

9. The range of supportive measures available to complainants and respondents must be described.

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10. The procedures must not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding the privilege has waived the privilege.

V. COMPLAINT INTAKE PROCEDURES.

A. Reporting sex discrimination or sexual harassment.

1. Any person may report sex discrimination or sexual harassment to the Title IX Coordinator, regardless of whether the reporter is the alleged victim.

2. A report may be made in person, by mail, by telephone, by e-mail, using the Title IX Coordinator's designated contact information, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

3. A report may be made at any time, including non-business hours.

4. A "report" is merely providing information that alleged sexual harassment occurred. It is not the same as a formal complaint.

B. The "deliberate indifference" standard.

1. At a minimum, the school must respond promptly and in a manner that is not "deliberately indifferent."

2. A school is "deliberately indifferent" *only* if the school's response is "clearly unreasonable in light of the known circumstances." 34 C.F.R. § 106.44(a).

C. Complaints of sexual harassment.

1. A "**formal complaint**" is a written document filed by an individual who is the victim of alleged sexual harassment (called the "complainant" under the Title IX regulations) alleging sexual harassment against a respondent and requesting that a school investigate the allegation of sexual harassment. The Title IX Coordinator may file a formal complaint following an oral report.

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2. The Title IX Coordinator may file a formal complaint over the objection of a complainant if it is "reasonable" to do so.

    a) If the Title IX Coordinator signs a complaint, the Title IX Coordinator is not considered a "complainant" or party to the matter.

    b) The Title IX Coordinator is the only school official under the Title IX regulations with authority to initiate a formal complaint.

3. A parent of a dependent child may also file a formal complaint on behalf of their child.

4. Once a formal complaint is filed, a school must follow the grievance process.

D. **Providing "supportive measures."**

1. "Supportive measures" are non-disciplinary, non-punitive individualized services offered as appropriate and reasonably available to the complainant or the respondent. They must be offered at no cost.

2. Supportive measures may be offered before or after a formal complaint is filed or in situations where no formal complaint is filed.

3. Supportive measures are designed to deter sexual harassment and to restore or preserve equal access to an education program or activity by *both parties* without reasonably burdening the other party, which includes protecting the safety of all parties and the educational environment.

4. Examples of supportive measures include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, increased security and monitoring of certain areas of the campus, and other similar measures.

5. Supportive measures offered to a party must be kept confidential to the extent doing so does not impair the ability of a school to provide the supportive measures.

6. The Title IX Coordinator is responsible for coordinating the implementation of supportive measures.

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E. **Removals pending completion of the grievance procedures.**

1. **Students.** The regulations do not prevent a school from removing a student from an education program or activity on an emergency basis, as long as the school does an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. Any such removal would be subject to any rights the student may have under the Individuals with Disabilities Education Act, Section 504, the ADA, or Minnesota's Pupil Fair Dismissal Act.

2. **Employees.** An employee can be placed on a paid suspension during an investigation, subject to any requirements in an applicable collective bargaining agreement. Because the suspension would be paid, it would generally not be considered disciplinary.

F. **Notice to parties.**

1. When a formal complaint is filed, a school must provide the following written notice to the known parties:

a) Notice of the grievance process, including any informal resolution process;

b) Notice of the allegations potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and the location of the alleged harassment, if known. The notice must also include:

(1) A statement that the respondent is presumed not responsible for the alleged conduct;

(2) A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney;

(3) A statement that the parties may inspect and review evidence;

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(4) Notice of any provision in the school's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

2. If, in the course of an investigation, the school decides to investigate allegations about the complainant or respondent that are not included in the initial notice, notice of the additional allegations must be provided to the parties whose identities are known.

VI. CONDUCTING A TITLE IX INVESTIGATION.

A. Obligation to investigate or dismiss.

1. A formal complaint must be dismissed if: (1) the conduct alleged in the formal complaint would not constitute sexual harassment, as defined above, even if proved, (2) did not occur in the school district's programs or activities, or (3) did not occur against a person in the United States.

2. A formal complaint may be dismissed if: (1) the complainant notifies the Title IX Coordinator that the complaint is withdrawn, (2) the respondent is no longer enrolled or employed by the school district, or (3) if there are specific circumstances that prevent a school district from gathering evidence sufficient to reach a determination as to the formal complaint or any allegation in the complaint.

3. **The dismissal of the complaint for Title IX purposes does not prevent a school from taking action under another provision of the code of conduct for students, the MHRA, or Title VII for employees.**

4. If a complaint is not dismissed, the district has an obligation to investigate.

B. Investigation Process.

1. The district's designated investigator(s) completes the investigation process.

2. Exactly how an investigation will be conducted is subject to each district's grievance procedures. The Title IX regulations require that the following elements be addressed in the grievance process:

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a) School districts bear the burden of proof and are responsible for gathering evidence.

b) A school district cannot access, consider, disclose, or otherwise use a party's records from a physician, psychiatrist, psychologist, or similar professional that are made and maintained in connection to the treatment of that party, unless the party (or a parent) provides voluntary, written consent.

c) Both parties must have an opportunity to present fact and expert witnesses, as well as other evidence.

d) Parties cannot be prohibited from discussing the allegations with others.

e) The school district must provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied by an advisor of their choice, who may be an attorney, and not limit the party's choice or presence of advisor (a school may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties).

f) The school district must provide reasonable advance written notice of the date, time, location, participants, and purpose for any meetings, including hearings or investigative interviews, to any invited or expected participant.

g) Both parties must be allowed to review all evidence.

h) Prior to completing the investigative report, the investigator must send all evidence to the parties or their advisors, if any, and provide the parties **ten days to submit a written response**.

i) The investigator must prepare an investigation report that fairly summarizes relevant evidence and provide a copy of the investigation report to each party and the party's advisor, if any, **at least ten days before a determination of responsibility is made by the decision-maker**. "Days" may be measured as calendar days, business days, school days, or any other reasonable method that works best with the school's administrative operations. The

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investigator may include recommendations for the decision-maker in the investigation report.

3. **Drafting an Investigation Report**

a) The purpose of an investigation report is to document the actions the investigator has taken and summarize the evidence they received. In other words, the investigator should follow a math teacher's advice and show the investigator's work.

b) Title IX requires that both parties be provided an opportunity to present inculpatory and exculpatory evidence. Unless evidence is irrelevant (explained in more detail below), the investigator should summarize the evidence in the report.

c) The investigation report should describe the behavior that occurred, rather than relying on conclusory statements.

d) An investigation report may include "recommended" findings of facts and conclusions, but the decision-maker will reach the final conclusion.

e) A good investigation report will include the following elements:

(1) Summary of the allegations;

(2) Summary of the documents reviewed and witnesses interviewed;

(3) Findings of fact as to what occurred with respect to each allegation.

VII. DETERMINATION OF RESPONSIBILITY.

A. Decision-Maker's obligation to make an independent determination. The decision-maker has an independent obligation to evaluate the relevance of available evidence, including evidence summarized in the investigative report, and to consider all other relevant evidence. The decision-maker should take the investigator's report into account, but must make his or her own independent determination regarding responsibility based on a review of the evidence.

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B. Opportunity to submit written questions

1. After the investigation report is provided to the parties, the decision-maker must allow each party to submit written questions to any party or witness. The decision-maker determines whether the questions are relevant and, if so, the decision-maker must send the questions to the party or witness, allow time for a written response, and provide the written response to the party who submitted the question.

2. The decision-maker must also allow "limited follow-up" questions from each party.

3. The regulations do not impose requirements for how much time must be allowed for the submission of written questions. Schools have the ability to determine how much time should be allowed. One option is to allow the decision-maker to address the amount of time on a case-by-case basis depending on the complexity of an investigation.

4. ***Relevance.***

   a) To exclude evidence or decline to provide a written question to another party or witness, an investigator or decision-maker must determine that the evidence is not relevant or that the proposed question is not designed to gather relevant evidence.

   b) If the decision-maker determines that a question submitted by a party is not relevant, the decision-maker must explain the decision to exclude the question to the party that asked it.

   c) The Title IX regulations do not adopt any specific legal definition of relevance, but Federal Rule of Evidence 401 is useful. That rule says evidence is relevant if:

      (1) it has any tendency to make a fact more or less probable than it would be without the evidence; and

      (2) the fact is of consequence in determining the action.

5. ***Questions and Evidence Regarding Prior Sexual Behavior***

   a) Questions and evidence about the complainant's prior sexual behavior will be relevant only in exceedingly rare circumstances.

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b) They can only be admitted if offered to prove someone other than the respondent committed the alleged conduct, or if they relate to prior conduct between the complainant and respondent and are used to prove consent. Consent is likely not relevant if there is an allegation of sexual contact between an employee and student.

C. Informal resolution procedures.

1. Informal resolution is allowed so long as it is completely voluntary for the parties.

2. At any time before a decision is made, a school may facilitate an informal resolution process, such as mediation, that does not involve a full investigation or decision regarding responsibility.

3. Prior to agreeing to an informal resolution, the parties must receive written notice of the following:

   a) The allegations;

   b) The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations;

   c) That at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint;

   d) Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

4. The school must obtain the parties' voluntary, written consent to the informal resolution process.

5. A school must not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

D. Written decision required.

1. A decision must be in writing and must contain the following elements:

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a) Identification of the allegations potentially constituting sexual harassment;

b) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

c) Findings of fact supporting the determination;

d) Conclusions regarding the application of the school district's code of conduct to the facts;

e) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the school district's education program or activity will be provided by the school district to the complainant; and

f) The school district's procedures and permissible bases for the complainant and respondent to appeal.

2. **Burden of Proof**

a) The burden of proof is always on the school district. This means it is the district's duty to gather evidence in support of any finding of responsibility.

b) Respondents are entitled to a presumption that they are not responsible. This means if the district does not find evidence of any specific fact required for a finding of responsibility, the decision-maker cannot conclude the respondent was responsible.

c) If a respondent refuses to answer questions asked by the complainant, the decision-maker cannot take the respondent's failure to answer into account in making the decision.

3. **Standard of Evidence.** Districts must designate a standard of evidence in their grievance procedures. We recommend "preponderance of the evidence," which means that it is more likely than not that something

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occurred. If you think in terms of percentages, anytime it is over 50% likely that the conclusion is true would meet the preponderance standard.

VIII. IMPARTIALITY AND BIAS IN INVESTIGATIONS

A. Bias

1. All persons participating in the Title IX process on behalf of the district should take care not to let bias affect their participation in the process. A district representative should not serve as an investigator or decision-maker if there are any potential issues regarding bias.

2. Individuals involved in Title IX investigations should also be aware of implicit bias, which can cause attitudes and stereotypes to unconsciously affect decisions. The Harvard Implicit Association Test (https://implicit.harvard.edu/implicit/takeatest.html) is a great individual resource for individuals to start exploring their own perceptions.

3. The Title IX regulations specifically state that credibility determinations cannot be based on a person's status as a complainant, respondent, or witness. This means that it is inappropriate for someone to let someone's mere status as an alleged "victim" or "perpetrator" influence how that person's credibility is measured.

B. **Credibility Determinations.** Although it is not binding in Title IX investigations, the EEOC has provided guidance on factors to consider in determining whether a witness is credible in a workplace investigation. Many of those factors are relevant regardless of the topic of the investigation. They include:

1. ***Inherent Plausibility:*** Is the testimony believable on its face? Does it make sense?

2. ***Demeanor:*** Did the person seem to be telling the truth or lying?

3. ***Motive to falsify:*** Did the person have a reason to lie?

4. ***Corroboration:*** Is there witness testimony (such as testimony by eye-witnesses, people who saw the person soon after the alleged incidents, or people who discussed the incidents with him or her at around the time that they occurred) or physical evidence (such as written documentation) that corroborates the party's testimony?

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5. ***Past record:*** Did the respondent have a history of similar behavior in the past?

6. ***None of the above factors are determinative as to credibility.*** For example, the fact that there are no eye-witnesses to the alleged conduct by no means necessarily defeats the complainant's credibility, since sexual harassment often occurs behind closed doors. Furthermore, the fact that the respondent engaged in similar behavior in the past does not necessarily mean that he or she did so again.

   *EEOC Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisor*s; June 18, 1999.

C. **Conflicts of Interest**

1. Individuals should not participate in a grievance process as an investigator or decision-maker if they have a conflict of interest that would affect their judgment in the outcome. The regulations do not specifically define conflicts of interest.

2. **Relationships.** Of course, individuals should not participate in a grievance process that includes a family member, but there may be other types of relationships that could affect an investigator or decision-maker's ability to effectively evaluate the claims.

   a) For example, if the investigator and complainant have a close working relationship and will need to continue to work closely together, that could (consciously or unconsciously) affect the investigator's decision in order to preserve a good working environment.

   b) However, merely having a prior interaction with that person is not a disqualifying conflict of interest, so long as those interactions were in a work/educational context. Thus, a principal would not have a conflict of interest in investigating a student, even if the principal had other interactions with a student. And an HR Director who met an employee once when they interviewed for the position would not have a conflict of interest with that person.

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3. **Avoid Prejudging Facts**

a) The Title IX regulations specifically state that a respondent is to be presumed innocent.

b) Investigators and decision-makers should not reach their conclusions until they have received all of the evidence and heard from all of the witnesses.

c) Investigators and decision-makers should base their findings on facts obtained during the investigation process, not on generalizations or reputations of the people involved.

IX. APPEALS.

A. **Any party may appeal.** Any party may appeal from a determination regarding responsibility or a dismissal of a formal complaint.

B. **Grounds for appeal.** An appeal may be based on any of the following:

1. Procedural irregularity that affected the outcome of the matter;

2. New evidence that was not reasonably available at the time the determination regarding responsibility or a dismissal was made and that could affect the outcome of the matter; and

3. The Title IX Coordinator, investigator(s), or decision-makers(s) had a conflict of interest or bias for or against complaints or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

C. **Decision-maker on appeal.** The person who presides over an appeal must not be the initial "decision-maker," the Title IX Coordinator, or the investigator(s).

X. SIGNIFICANT CHANGES FROM 2024 REGULATIONS.

A. **Back to the Future.** Following the status of the Title IX regulations has been difficult. The standards discussed above were first announced in 2020. During the administration of President Biden, the Department of Education attempted to amend the regulations. These amendments were announced in 2024, and were immediately subject to litigation. In early 2025, a federal district court judge struck down the 2024 amendments in their entirety. This means the 2020 standards are back in effect.

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B. **Sexual Harassment vs. Sex Discrimination.** The 2024 regulations applied grievance procedures to all sex discrimination. The regulations currently in effect apply to a more narrow class of behavior. And sexual harassment is more narrowly defined because it must be "so severe, pervasive, and objectively offensive that it effectively denies a person equal access" to an education program or activity.

C. **Mandatory Time Periods.** The 2024 regulations did not include mandatory times. In the effective regulations, parties must have at least 10 days to review evidence and submit a written response prior to completion of the investigation report and receive the investigation report 10 days before the decision is made. Parties also have the limited right to exchange written questions.

D. **Formal Complaint.** Complainants must be informed of their right to file a formal complaint if they allege sexual harassment. If a formal complaint is filed, the school district must either investigate the complaint or dismiss it.

E. **Deliberate Indifference.** When a school has knowledge of suspected sexual harassment, the school must respond in a manner that is not deliberately indifferent. This is a change from the 2024 regulations which required schools to "take prompt and effective action to end" sex discrimination.

XI. OTHER LAWS CONCERNING SEX DISCRIMINATION AND HARASSMENT.

A. Minnesota Human Rights Act ("MHRA").

1. The MHRA prohibits discrimination against students or employees based on certain characteristics, including sex, sexual orientation, and gender identity.

2. In the context of educational institutions, the MHRA specifically prohibits discrimination "in any manner in the full utilization of or benefit from any educational institution, or the services rendered thereby."

3. To "discriminate" under the MHRA means to "segregate or separate."

4. The MHRA also creates liability for individual employees who aid and abet violations of the MHRA.

B. Title VII.

1. Title VII protects *employees* from discrimination on the basis of sex.

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2. It is unlawful for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex . . . ."

3. Prior to the new regulations, the Office for Civil Rights at the U.S. Department of Education had been interpreting the Title IX and Title VII sexual harassment standards to be essentially the same. The 2020 regulations establish a specific definition of Title IX sexual harassment that is narrower than many Title VII workplace harassment standards. Title IX applies to students and employees in an educational institution, so when an employee files a complaint, districts should be aware that the Title VII and Title IX standards for sexual harassment are not the same.

   a) For Title VII, sexual harassment is defined as:

      Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

      (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,

      (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or

      (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

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