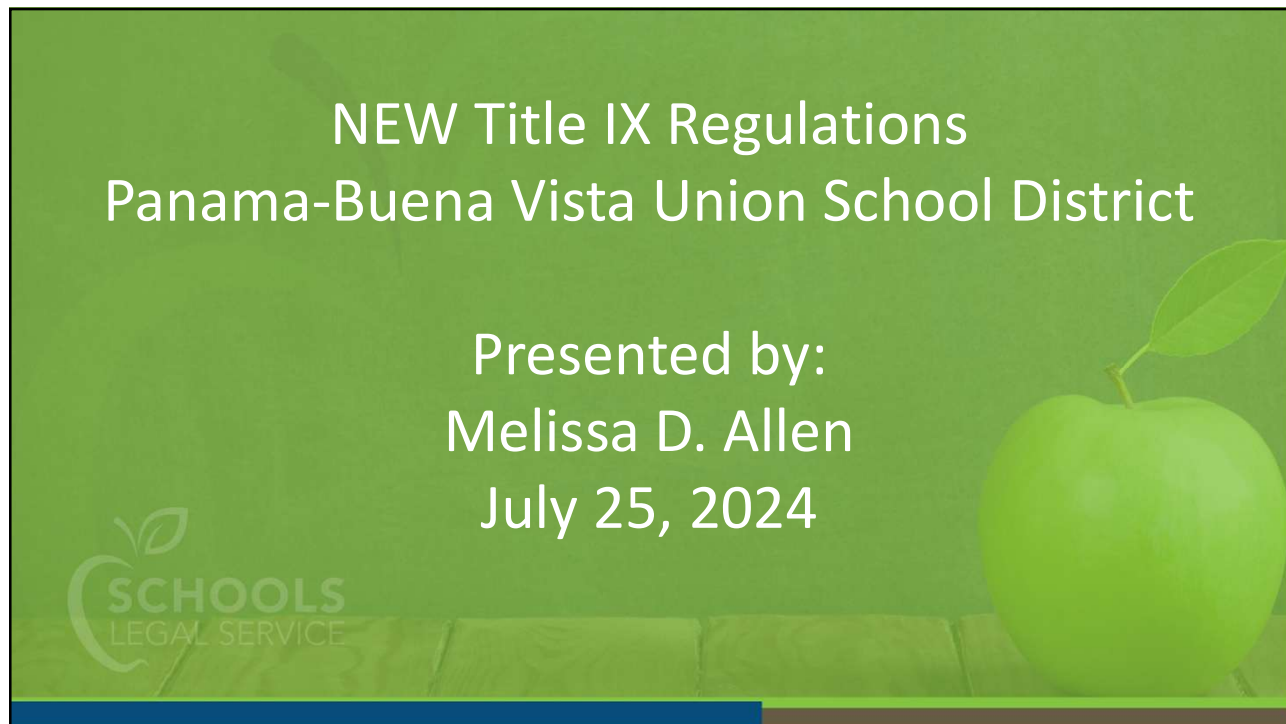
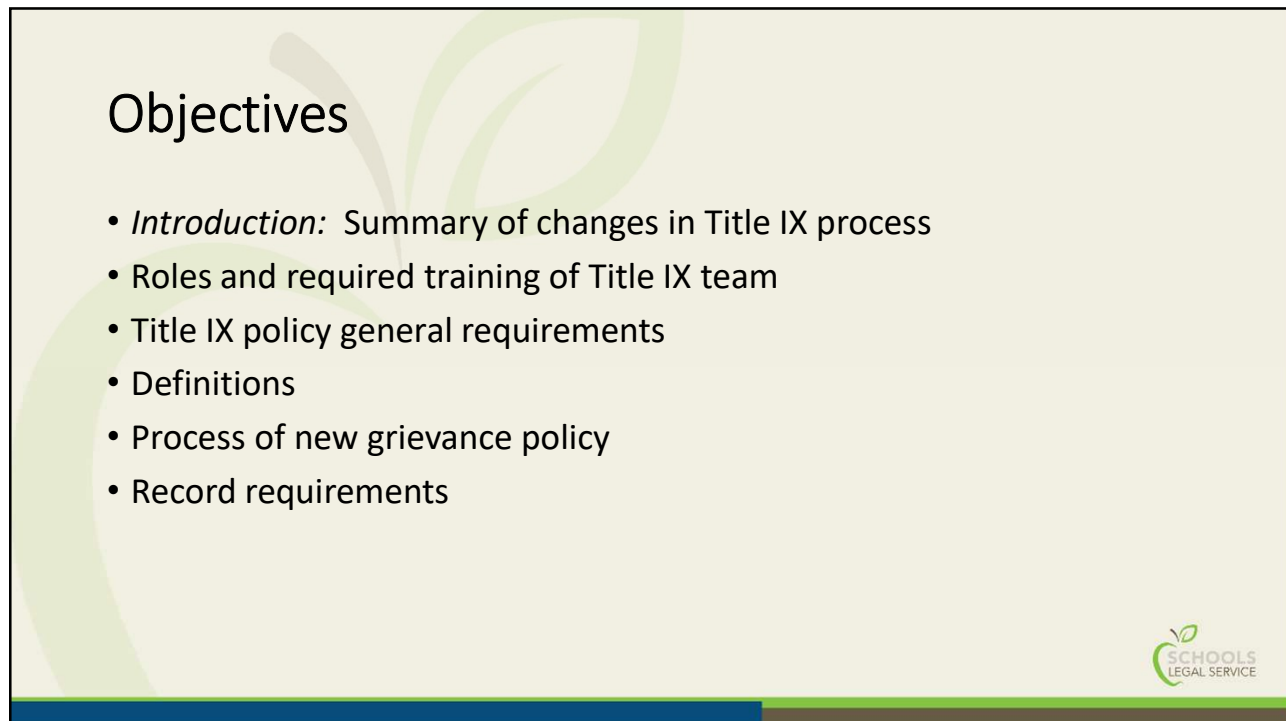




1



2

Introduction

- U.S. Department of Education released 2024 Final Regulations on April 19, 2024
 - Effective August 1, 2024
 - Policies have not yet been released by CSBA
- Broadens definition of sexual harassment/discrimination
- Broadens who a complainant might be
- Broadens duties of Title IX Coordinator
 - Allows for designee to assist
- Broadens the grievance procedure by providing flexibility and made portions less formal
- Broadens privacy rights of parties
- Broadens protections for pregnant students and employees
- Does not specifically address issue of transgender students in sports, will be issued at a later date.



3

Title IX Roles

- Title IX Coordinator
- Investigator
- Decision Maker
- Appeals: Three issues that can be appealed.
- Informal Resolution Facilitator
- *Optional*: Confidential employee to report discrimination or harassment



4

Title IX Coordinator

- Must be an employee of recipient
 - If have more than one Title IX Coordinator, must designate one that has ultimate oversight to ensure compliance with Title IX.
- May also be the Decision Maker
 - *May also be the Investigator:* Not specified in Regulations, but not prohibited
 - May be the Informal Resolution Facilitator if not Decision Maker or Investigator
 - May be the Appeal Decision Maker if not the Decision Maker
 - Exercise caution in assigning any other role to Title IX Coordinator
- Cannot have a conflict of interest
- Coordinate efforts to comply with responsibilities under Title IX
- May delegate one or more specific duties to one or more designees
 - Does not contain any limitations

34 CFR 106.8(a)(1)-(2) and 106.45(b)(2)



5

Title IX Coordinator (Con't.)

Title IX Coordinator’s responsibility in regard to reporting:

- Must monitor for barriers to reporting information about conduct that reasonably may constitute sex discrimination under Title IX; AND
- Take steps “reasonably calculated” to address any barriers to reporting.

34 CFR 106.44(b)



6

Designee

- 2024 Title IX Regulations assign several more tasks to the Title IX Coordinator
- Responsibilities may be delegated to one or more designees
 - May be done by the recipient or recipient may permit the Title IX Coordinator to delegate the responsibilities
- Must have the same training as Title IX Coordinator

34 CFR 106.8(a)(2)



7

Investigator

- May be the same person as the Decision Maker
 - New to the 2024 Regulations, referred to as “single-investigator model.”
 - *May be same person as Title IX Coordinator:* Not specifically provided for, but not prohibited.
 - Exercise caution
- Cannot be the same person as the Informal Resolution Facilitator
- Must not have a conflict of interest or bias

34 CFR 106.45(b)(2)



8

Decision Maker

- May be the same person as the Investigator or Title IX Coordinator
 - “Single-investigator model”
 - Exercise caution in using Title IX Coordinator
- Cannot be the same person as the Informal Resolution Facilitator
- Must not have a conflict of interest or bias

34 CFR 106.45(b)(2)



9

Informal Resolution Facilitator

- Must not be the same person as the Investigator or Decision Maker
 - Cannot be the Coordinator if the Coordinator also served as the Decision Maker or Investigator
- Must not have a conflict of interest or bias for or against either party generally or an individual complainant or respondent

34 CFR 106.44(k)(4)



10

Appeal Decision Maker

- 2024 Regulations do not use this specific term as to each type of appeal
- Three issues that may be appealed:
 - *May appeal a dismissal of a complaint:* Cannot be same person that investigated or dismissed complaint.
 - *May “appeal” a supportive measure:* Must be an “impartial employee”
 - Must provide either party a timely opportunity to seek modification or reversal of the recipient’s decision to provide, deny, modify or terminate supportive measures applicable to them.
 - *May appeal determination:* Regulations only state right to appeal to “a person”
 - Should not be same person involved in the investigation
 - Title IX Regulations do not specifically say that cannot be the Decision Maker, but would be excluded if using the single-investigator model
 - May create an appearance of conflict of interest
- Must be trained pursuant to section 106.8(d)(2)

34 CFR 106.45(d)(3)(iii)-(iv)



11

Confidential Employee

- An employee of a recipient whose communications are privileged or confidential under federal or state law.
 - Only applicable when engaged in their duties to which the privilege of confidentiality applies.
- An employee of a recipient whom the recipient has designated as a confidential employee under Title IX for purposes of providing services related to sex discrimination; OR
 - Only applicable when engaged in connection with providing those services.
 - May appoint person, but not required by Regulations.
- An employee of post-secondary institution that is conducting an Institutional Review Board approved research study designed to gather information regarding sex discrimination.
 - Only applicable with respect to information gathered while conducting study.
- *Issue:* Title IX does not make an exception for mandating reporting requirements.

34 CFR 106.2



12

Training: All Employees

Required training:

- Recipient's obligation to address sex discrimination in its education program or activity;
- Scope of conduct that constitutes sex discrimination under Title IX;
- Definition of sex-based harassment; AND
- All applicable notification and information requirements under 106.40(b)(2) (pregnancy) and 106.44 (required response).

34 CFR 106.8(d)(1)



13

Training: Title IX Coordinator and Designees

- Required training:
 - Training for all employees (106.8(d)(1))
 - Training for Investigators, Decision Makers, and "other persons" (106.8(d)(2))
 - Training for informal resolution facilitator (106.8(d)(3))
 - Specific responsibilities:
 - *Section 106.8(a)*: Coordinate recipient's responsibilities under Title IX
 - *Section 106.40(b)(3)*: Pregnancy rights
 - *Section 106.44(f)*: Requirements for coordinating compliance with Title IX
 - *Section 106.44(g)*: Supportive measure
- Recipient's record keeping system
- *Requirements of 106.8(f)*: Record keeping requirements under Title IX
- Any other training necessary to coordinate the recipient's compliance with Title IX

34 CFR 106.8(d)(4)



14

Training: Investigators, Decision Makers, and Others

- *Others*: Those that are responsible for implementing grievance procedures or have authority to modify or terminate supportive measures. (34 CFR 106.6(d)(2).)
- Required training:
 - Training for “all employees” (106.8(d)(1));
 - Obligations under 106.44 (required response);
 - The grievance procedure under 106.45 and if applicable under 106.46;
 - How to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest and bias; AND
 - Meaning of the term “relevant” in relation to:
 - Questions and evidence
 - Types of evidence that are impermissible regardless of relevance under 106.45 and if applicable 106.46.

34 CFR 106.8(d)(2)



15

Training: Informal Resolution Facilitators

Required training:

- Same training as “all employees” (106.8(d)(1));
- Rules and practices associated with the recipient’s informal resolution process; AND
- How to serve impartially.
 - Including avoiding conflicts of interest and bias.

34 CFR 106.8(d)(3)



16

Recipient Must Provide Title IX Training

- Recipient must ensure that training occurs promptly upon hiring or change of position that alters their duties under Title IX **AND** annually thereafter.
- Training must not rely on sex stereotypes.

34 CFR 106.8(d)



17

Title IX Policy

Each recipient must adopt, publish, and implement:

- Non-discrimination policy stating:
 - It does not discriminate on the basis of sex; AND
 - Prohibits sex discrimination in any education program or activity that it operates.
 - This includes in admissions and employment
- Grievance Procedure:
 - Must be consistent with 34 CFR 106.45 and 106.46 (post-secondary) if applicable; AND
 - Must have “prompt and equitable” resolution of complaints.

34 CFR 106.8(b)(1)-(2)



18

Contents of Notification of Nondiscrimination

- Statement that the recipient does not discriminate on the basis of sex and prohibits sex discrimination as required by Title IX;
 - Regulations must specify that includes in admissions and employment.
- Any inquiry regarding application of Title IX may be referred to Title IX Coordinator, Office for Civil Rights, or both;
- Title IX Coordinator’s name **or** title, office address, email address, and telephone number;
 - Be cautious of confidentiality.
- How to locate recipient’s nondiscrimination policies and grievance procedure; AND
- How to report conduct that may constitute sex discrimination and make a complaint of sex discrimination under Title IX.
- *May* include in notification:
 - Information regarding any exceptions or exemptions applicable to the recipient under Title IX.

34 CFR106.8(c)(1)(i)-(ii)



19

Publication of Notice of Nondiscrimination

- Must “prominently” display the notifications on recipient’s website
- Recipient must include the notification to those entitled to receive notification in any of the following if made available:
 - Handbook
 - Catalog
 - Announcement
 - Bulletin
 - Application form
 - May also meet this notification by including it in other items used in connection with the recruitment of students or employees.

34 CFR 106.8(c)(2)(i)



20

Publication of Notice of Nondiscrimination (Con't.)

- If “necessary” due to the format or size of any publication requiring notification, the recipient may instead include a statement in those publications:
 - That the recipient prohibits sex discrimination in any education program or activity;
 - That individuals may report concerns or questions to the Title IX Coordinator; AND
 - The location of the notice on the recipient’s website.
- Must not use or distribute a publication that states that the recipient treats applicants, students, or employees differently on the basis of sex, unless permitted by Title IX.

34 CFR 106.8(c)(2)(ii)-(iii)



21

Notice of Nondiscrimination

Recipient must provide the notice of nondiscrimination to:

- Students
- Parents/guardians/other authorized legal representative of elementary and secondary school students
- Employees
- Applicants for admission and employment
- All unions and professional organizations holding collective bargaining or professional agreements with recipient

34 CFR 106.8(c)



22

Affect of Other Laws

- Does not alleviate obligation to comply with Title IX:
 - State and local laws or requirements
 - *Issue:* Education Code discipline rules and AB 1955
 - FERPA or its implementing regulations
- Title IX does not derogate any legal rights of parent, guardian, or other authorized legal representative to act on behalf of a complainant, respondent, or other person.
 - Includes, but not limited to, making a Title IX complaint of sex discrimination.
 - *Issue:* In California, current opinion is that students have privacy in LGBTQ+ status.
 - AB 1955 passed and goes into affect January 1, 2025.
 - Student’s right to privacy versus parent right to know currently being litigated.
- *Effect of rules or regulations of private organizations:* Applies if organization receives any federal financial assistance.

34 CFR 106.6



23

Affect of Other Laws (Con’t.)

Does not interfere with a person’s rights pursuant to:

- Executive Order 11246 (government contracts over \$10,000)
- Title VII
- Equal Pay Act
- Any other Act of Congress or federal regulations
- Constitutional protections:
 - First Amendment rights;
 - Due Process Clause of the Fifth and Fourteenth Amendments of the U.S. Constitution; OR
 - Any other rights guaranteed against government action by the U.S. Constitution.

34 CFR 106.6



24

Definitions

34 CFR 106.2



25

Definitions: General

- *Party:* Complainant or respondent
- *Complainant:*
 - Student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; OR
 - Person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX and who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination.
- *Respondent:* Person who is alleged to have violated the recipient's prohibition on sex discrimination.

34 CFR 106.2



26

Definitions: General (Con't.)

- *Recipient*: Any entity that operates an education program or activity that receives federal financial assistance directly or through another recipient, including any sub-unit, successor, assignee, or transferee thereof.
- *Student*: Person who has gained admission.

34 CFR 106.2



27

Definitions: Disciplinary Sanctions

- Means consequences imposed on a respondent following a determination under Title IX that the respondent violated the recipient's prohibition on sex discrimination.
- Regulations state that must comply with grievance procedure "before the imposition of any disciplinary sanctions against a respondent."
- Regulations also state, "may not impose discipline on a respondent" unless there is a determination that the respondent engaged in "sex discrimination prohibited by Title IX."
- *Issue*: Education Code requirements for discipline.
 - Employees can be placed on administrative leave.

34 CFR 106.2 & 106.45 (h)(3) and (4)



28

Definitions: Program or Activity and Program

Means all of the operations of:

- A department, agency, special purpose district, or other instrumentality of a state or local government;
 - Includes state or local government that distributes such assistance and each department that receives assistance.
- Post-secondary Institutions;
- System of vocational education or “other school system”;
- Corporation, partnership, other private organization, or an entire sole proprietorship that principally engages in the business of providing education, healthcare, housing, social services, or parks and recreation that receive assistance.

34 CFR 106.2



29

Definitions: Educational Institution

- *Education Institution:* Local education agency (“LEA”), preschool, private elementary or secondary school, or secondary education:
 - Secondary education includes undergraduate, graduate, professional learning, or vocational education that serves post-secondary students.
- *Elementary School:* Elementary school and public or private preschool.

34 CFR 106.2



30

Definitions: Pregnancy or Related Condition

- Pregnancy, childbirth, termination of pregnancy, or lactation;
- Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; AND
- Recovery from pregnancy, childbirth, termination of pregnancy, lactation or related medical conditions.

34 CFR 106.2



31

Definitions: Parental Status

As it relates to a person under the age of 18 or who is older than 18, but is incapable of self-care due to physical or mental disability, is:

- Biological parent;
- Adoptive parent;
- Foster parent;
- Stepparent;
- Legal custodian or guardian;
- In loco parentis with respect to such person; OR
- Actively seeking legal custody, guardianship, visitation, or adoption of such a person.

34 CFR 106.2



32

Definitions: Consent

- Title IX Regulations requires the recipient to adopt a definition of consent, but does not provide or require any particular definition.
- Affirmative Consent found in Education Code section 67386(a)(1):
 - “Means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that the person has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.”
- Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity.

34 CFR 106.2

33

Definitions: Sex-based Harassment

A form of sex discrimination is sex-based harassment and means sexual harassment and other harassment on the basis of sex, including what is described in 106.10, that is:

- Quid Pro Quo Harassment:* Explicitly or impliedly conditions the provision of an aid, benefit, or service on a person’s participation in unwelcome sexual conduct.
 - Must be committed by:
 - Employee;
 - Agent; OR
 - Other person authorized by the recipient to provide an aid, benefit, or service under the education program or activity.
 - Students may fall into this definition dependent on the specific circumstances.

34 CFR 106.2

34

Definitions: Sex-based Harassment (Con't.)

2. *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 recipient’s education program or activity.
 - “creates a hostile environment.”

34 CFR 106.2



35

Definitions: Sex-based Harassment (Con't.)

- Whether a “hostile environment” has been created is a fact-specific inquiry. The determination includes consideration of the following:
 - Degree to which the conduct affected the complainant’s ability to access the recipient’s education program or activity;
 - Type, frequency, and duration of the conduct;
 - Parties’ ages, roles within the recipient’s education program, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
 - Location of the conduct and the context in which the conduct occurred; AND
 - Other sex-based harassment in the recipient’s education program or activity.

34 CFR 106.2



36

Definitions: Sex-based Harassment (Con't.)

3. Specific offenses:

- *Forceable or nonforcible sexual assault* under uniform reporting system of FBI:
 - *Forcible*: Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent:
 - Forcible Rape
 - Forcible Sodomy
 - Sexual Assault with an Object
 - Forcible Fondling
 - *Nonforcible*: Unlawful, nonforcible sexual intercourse, except prostitution:
 - Incest
 - Statutory Rape

34 CFR 106.2



37

Definitions: Sex-based Harassment (Con't.)

3. Specific offenses (Con't.)

- *Dating violence* meaning violence committed by a person:
 - Who is or has been in a social relationship of a romantic or intimate nature with the victim; AND
 - Where the existence of such a relationship is determined by the following factors:
 - Length of the relationship;
 - Type of relationship; AND
 - Frequency of interaction between the persons involved in the relationship;

34 CFR 106.2



38

Definitions: Sex-based Harassment (Con't.)

3. Specific offenses (Con't.)

- *Domestic Violence:* Felony or misdemeanor crimes committed by a person who:
 - Is a current or former spouse or intimate partner of the victim under the laws of the jurisdiction of the recipient;
 - Is cohabiting or has cohabitated, with the victim as a spouse or intimate partner;
 - Shares a child in common with; OR
 - Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

34 CFR 106.2



39

Definitions: Sex-based Harassment (Con't.)

3. Specific offenses (Con't.)

Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for the person’s safety or safety of others; OR
- Suffer substantial emotional damage.

34 CFR 106.2



40

Definitions: Discrimination on the Basis of Sex

- *Defined in 34 CFR 106.10 (new):* Discrimination on the basis of sex includes discrimination on the basis of sex stereo types, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
- In limited circumstances that allow different treatment or separation on the basis of sex, recipient must not carry out policy or practice in a manner that subjects a person to more than a de minimis harm.
 - *De minimis harm:* A policy or 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.
 - Example of circumstances that Title IX allows separation by sex:
 - *Restrooms and locker rooms:* Education Code section 221.5 prohibits
 - Classes and activities pursuant to 106.34
 - Appearance codes

34 CFR 106.2 and 106.31(a)(2)



41

Definitions: Discrimination on the Basis of Sex (Con't.)

Title IX allows exceptions to statute's nondiscrimination on basis of sex mandate:

- Educational institutions controlled by a religious organization to the extent application of Title IX would be inconsistent with religious tenets (106.12);
- Educational institutions whose primary function is to train individuals for military service (106.13);
- Membership policies of certain organizations (106.14):
 - Social fraternities and sororities
 - YMCA, YWCA, Boy and Girl Scouts, and Camp Fire girls
 - Voluntary youth groups listed in IRS Code section 501(a)
- Separate housing (dorms) based on sex (106.32(b)(1)); and
- Sports (106.41(b))

34 CFR 106.31(a)(2)



42

Sports

- U.S. Department of Education has stated it will release Title IX Regulations addressing transgender students in sports.
 - Title IX currently permits separate teams for each sex for non-contact sports.
 - Preamble to Title IX Regulations specifically states that 106.31(a)(2), definition of de minimis harm, does not apply to sports.
- Education Code section 221.5(f) requires districts to permit transgender students to play on the team for which they identify:
 - “A pupil shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil’s records.”



43

Discrimination on the Basis of Sex

- If the recipient requires participation in an education program or activity not operated wholly by the recipient, or which facilitates, permits, or considers such participation as part of or equivalent to one operated by the recipient, the non-discrimination on the basis of sex applies.
- The recipient must:
 - Develop and implement a procedure designed to assure itself that the operator or sponsor will not take any action in violation of Title IX’s prohibition of discrimination based on sex.
 - Not facilitate, require, permit, or consider such participation if such action occurs.

34 CFR 106.31(d)



44

Definitions: Retaliation

- Intimidation, threats, coercion, or discrimination against any person by:
 - Recipient;
 - Student;
 - Employee; OR
 - Other person authorized to provide aid, benefit, or service under the recipient’s education or activity.

34 CFR 106.2



45

Definitions: Retaliation (Con’t.)

- Intimidation, threat, coercion, or discrimination was done:
 - For the purpose of interfering with any right or privilege secured by Title IX; OR
 - Because the person has:
 - Reported information;
 - Made a complaint;
 - Testified;
 - Assisted, participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX.
 - Includes:
 - Informal resolution process;
 - Grievance procedure;
 - Any other action pursuant to 34 CFR 106.44(f)(1) (Coordinator’s duty to take action to end sex discrimination).

34 CFR 106.2



46

Definitions: Retaliation (Con't.)

- Exception to requiring participation:
 - Nothing in this definition “precludes a recipient from requiring an employee or other person authorized to provide aid, benefit, or service under the recipient’s education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing” pursuant to Title IX.
- *Peer Retaliation*: Retaliations by a student against another student.

34 CFR 106.2



47

Retaliation

- Recipient must prohibit all retaliation, including peer retaliation, in its education program and activity.
- If a recipient has information that may reasonably constitute retaliation, the recipient must respond in compliance with Title IX grievance procedures.
- If a Title IX complaint is made alleging retaliation, recipient must:
 - Initiate grievance procedure; AND
 - As appropriate, initiate informal resolution process.
- May consolidate a complaint of retaliation with a complaint of sex-based harassment.
 - Must comply with grievance procedure, including notifications.

34 CFR 106.2 and 106.71



48

Definitions: Supportive Measures

- Individualized measures offered to complainant and respondent as appropriate and reasonably available;
- Must not unreasonably burden a complainant or respondent;
- May not be for punitive or disciplinary reasons; AND
- May not charge a fee to the complainant or respondent.
- Purpose:
 - To restore or preserve the person’s access to the education program or activity.

34 CFR 106.2



49

Definitions: Remedies

- Measure provided to restore or preserve the complainant’s equal access to the recipient’s education program or activity.
- Provided, as appropriate, to a complainant or any other person once the recipient has determined that sex discrimination has occurred.

34 CFR 106.2



50

Definitions: Students with Disabilities

- *Student with Disability:* A student who is an individual with a disability as defined in:
 - Rehabilitation Act of 1973: 504
 - 29 USC 705(9)(B) and (20)(B): Refers to ADA definition
 - Individuals with Disabilities Education Act, 20 USC 1401(3): Special education student

34 CFR 106.2



51

Students with Disabilities (Con't.)

- If complainant or respondent is a student with a disability in a K- 12 district, the Title IX Coordinator **must** consult with “one or more members, as appropriate” of the IEP team to determine how to comply with the requirements of the IDEA and 504 throughout the recipient’s implementation of the grievance procedure.
 - If post-secondary, Title IX Coordinator may consult, as appropriate, with office designated by recipient to assist students with disabilities.
- *Required Consultation:* Work with IEP team to determine how to comply with 504 and IDEA during implementation of the grievance procedure.

34 CFR 106.8(e)



52

Students with Disabilities (Con't.)

- *Accessibility Issues:* Access evidence, process, participate in interview, etc.
- May have to attend IEP or manifestation meetings
 - Advocates and other members of IEP team may want to access the Title IX records for the IEP meeting, may create confidentiality issues.
- *Supportive Measures:* Title IX Coordinator required to consult with IEP or 504 team regarding implementation. May also need to discuss at IEP or 504 meeting.
- *Emergency Removal:* Manifestation laws apply even though allowed by Title IX
 - Only exception would be “serious bodily injury” exception that would allow 45 days.
- Does the behavior trigger child find or change in placement?
 - Do the actions indicate an FBA, BIP, or other assessment is needed?
- A special education student can seek monetary damages for failure to protect from harassment or assault.



53

Grievance Procedures



54

General Guidelines for Grievance Procedure

- Grievance policy must be in writing.
- Must be written in a manner to achieve a “prompt and equitable” resolution of the matter.
- If the complaint is against the recipient’s policies, the recipient is not a respondent.

34 CFR 106.45(a)(1)



55

Basic Requirements of Grievance Procedure

- Treat complainants and respondents equitably.
- Require that the designated Title IX Coordinator, Investigator, or Decision Maker not have a conflict of interest or bias.
- The respondent has a presumption of not responsible until decision of responsibility is made at end of grievance policy.
- Reasonably prompt time frames for the “major stages” of the grievance procedure.
 - “Major stages” may include evaluation (i.e., recipients’ decision whether to dismiss or investigate a complaint of sex discrimination), investigation, determination, and appeal if any.

34 CFR 106.45(b)(1)-(4)



56

Basic Requirements of Grievance Procedure (Con't.)

- Recipient must take reasonable steps to protect the privacy of the parties and witnesses during the grievance process.
- Require objective evaluation of all evidence that is relevant.
 - Includes inculpatory and exculpatory:
 - *Inculpatory*: Tends to prove responsible or guilty
 - *Exculpatory*: Tends to prove not responsible or not guilty
 - Credibility determinations cannot be determined based on person’s status as complainant, respondent, or witness.
- Exclude evidence that is not permissible.
- If recipient adopts grievance policy that resolves some, but not all complaints, the policy must also clearly state how determination as to which procedure will be followed.

34 CFR 106.45(b)(5)- (8)



57

Basic Requirements of Grievance Procedure (Con't.)

- For sex-based harassment, the recipient’s grievance procedure must include:
 - Range of supportive measures available to complainants and respondents; AND
 - List, or describe range of, possible disciplinary sanctions that the recipient may impose and remedies that the recipient may provide following a determination that sex-based harassment occurred.

34 CFR 106.45(j)



58

Conflict of Interest and Bias

- Have duty to act without a conflict of interest or bias.
- *Conflict of Interest*: Occurs when a person has a personal interest (whether actual, potential, or perceived) that conflicts with the interests of the investigation.
 - Either the complainant, respondent, or witness is related to the Investigator or Decision Maker.
- *Bias*: Allowing a personal feeling or past dealing affect your judgment
 - Dealt with student previous year that lied to you and strongly believe everything student says is a lie regardless of any other evidence.



59

How to Avoid Conflict of Interest and Bias

- Do not allow past behaviors by a party or feelings towards a party affect your judgment.
- Focus on the evidence, not your feelings about any party or issue.
- Avoid showing that you agree or disagree with either party or that you are or not on their side.
 - "Yes, I agree." "I understand what you are going through."
 - "In my opinion this is not sexual harassment, you're overreacting." "She's overreacting."
- Do not allow wishes of others to affect your judgment, focus on the evidence.



60

Hypotheticals

- Your son's friend is the respondent.
 - Your son's best friend who is at your home at least once a week is the respondent.
- The respondent's parents previously filed a complaint against you.
- You have previously punished the female complainant for smoking marijuana with a boy in the bathroom after school.



61

Jurisdiction

- Applies to all sex discrimination occurring under a recipient's education program or activity in the United States.
 - Program or activity includes, but not limited to:
 - Building owned or controlled by a student organization that is officially recognized by a post-secondary institution.
 - Conduct that is subject to the recipient's disciplinary authority.
 - Education Code section 48900(s)
 - Must address any sex-based hostile environment, including when "some conduct alleged to be contributing to the hostile environment occurred outside the recipient's education program or activity or outside the United States."

34 CFR 106.11



62

Who Can Make a Complaint?

- In regard to a sex discrimination complaint:
 - Complainant
 - Parent, guardian or other authorized legal representative with the legal right to act on behalf of a complainant
 - Title IX Coordinator after evaluation of required factors
- In regard to sex discrimination other than sex-based harassment, any:
 - Student
 - Employee
 - Other person that was attempting to or participating in recipient's education program or activity at the time of the alleged sex discrimination.

34 CFR 106.45(a)(2)



63

Title IX Coordinator May File Complaint

- Title IX Coordinator must determine whether or not to file a complaint under these circumstances:
 - In absence of a complaint;
 - Withdrawal of any or all allegations in a complaint; AND
 - Absence or termination of informal resolution process.
- If Title IX Coordinator initiates complaint, must first:
 - Notify complainant;
 - Appropriately address complainant's reasonable concerns regarding their and other's safety; AND
 - Offer supportive measures.
- Comply with mandated reporting requirements.

34 CFR 106.44(f)(1)(v) and (vi)



64

Title IX Coordinator May File Complaint (Con't.)

Determination to file a complaint shall be “fact specific” and the Title IX Coordinator must consider, at a minimum:

- Complainant’s request not to proceed with complaint;
- Complainant’s reasonable safety concerns;
- Risk that additional acts of sex discrimination will occur;
- Severity of alleged sex discrimination:
 - Including whether or not it would lead to a removal from campus of respondent or imposition of discipline to end the discrimination;
- Age and relationship of parties:
 - Including whether respondent is an employee;
- Scope of alleged sex discrimination:
 - Including information regarding a pattern, ongoing, or impacted multiple people;
- Availability of evidence to assist Decision Maker in determination; AND
- Whether or not could end and prevent the discrimination without the grievance process.

34 CFR 106.44(f)(1)(v)(A)



65

Knowledge: Required Response to Sex Discrimination

- Once recipient has knowledge of conduct that “reasonably may constitute” sex discrimination:
 - Must respond “promptly and effectively”; AND
 - Comply with Title IX Regulations.

34 CFR 106.44(a)



66

Knowledge: Non-Confidential Employees

- As to elementary and secondary schools, recipient must require **all of its employees** who are not confidential employees to notify the Title IX Coordinator when the employee has information that may reasonably constitute sex discrimination under Title IX.
 - *Exception:* Employee has personally been subject to sex discrimination; employee would be complainant.
 - Separate obligation from mandated reporting obligations.
- *All other recipients:* Require non-confidential employees and those that have authority to institute corrective measures or has responsibility for administrative leadership, teaching, or advising in the recipient’s education program to notify Title IX Coordinator.

34 CFR 106.44(c)(1) and (4)



67

Knowledge: Confidential Employee

- A recipient must inform students in their educational programs or activities how to contact a confidential employee if the recipient has designated a confidential employee to report to.
- If a person reports conduct that may reasonably constitute sex discrimination, the confidential employee must explain to the person:
 - The employee’s status as confidential for the purpose of Title IX, including when the employee is NOT required to report to the Title IX Coordinator;
 - How to contact the Title IX Coordinator;
 - How to make a complaint of sex discrimination; AND
 - The Title IX Coordinator may be able to offer and coordinate supportive measures, informal resolution process, or investigation.

34 CFR 106.44(d)



68

Requirements Once Recipient Has Knowledge

When notified of conduct that reasonably may constitute sex discrimination, the Title IX Coordinator must take the following actions to “promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects”:

- Treat complainant and respondent equitably;
- Offer and coordinate supportive measures for the complainant;
 - In addition, if recipient has initiated grievance procedure or offered informal resolution to respondent, must offer supportive measure to respondent;
- Notify the complainant or reporting person if complainant is unknown of the grievance procedure;
- Notify the complainant or reporting person if complainant is unknown of the informal resolution process, if available and applicable;

34 CFR 106.44(f)(1)



69

Requirements Once Recipient has Knowledge (Con't.)

- If complaint is made, notify the respondent of the grievance procedure and informal resolution process if available and appropriate;
- In response to a complaint, initiate the grievance procedure or the informal resolution process if available and appropriate;
- Determine if should file complaint if complainant declines to do so or withdraws complaint; AND
- Regardless of whether or not a complaint is filed, take other “appropriate prompt and effective steps, in addition to any remedies provided to complainant, to ensure that the sex discrimination does not continue or recur.”
- *Exception:* Title IX Coordinator does not have to comply with these requirements if the Coordinator determines that the alleged conduct could not constitute sex discrimination pursuant to Title IX.

34 CFR 106.44(f)(1) and (2)



70

Pregnancy

- The 2024 Regulations changed this section and added several responsibilities to the Title IX Coordinator.
- Title IX prohibits a recipient from adopting or implementing any policy that treats a student differently due to their current, potential, or past pregnancy or related conditions.
 - May allow a student to voluntarily participate in a separate education program or activity as long as the separate portion is “comparable to that offered to students who are not pregnant and do not have related conditions.”

34 CFR 106.40(b)(1)



71

Pregnancy: Employee Responsibilities

- If student or person who has legal rights in regard to student, informs *any* employee that a student is pregnant or has related conditions; the employee must:
 - Notify the Title IX Coordinator;
 - Promptly provide student or person with Title IX Coordinator’s contact information; AND
 - Inform student or 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.”
- *Exception:* Employee does not have to report if the employee reasonably believes the Title IX Coordinator has already been notified.

34 CFR 106.40(b)(2)



72

Pregnancy: Title IX Coordinator Responsibilities

- Once informed of pregnancy, the Title IX Coordinator must coordinate the actions required by the Regulations to assure the recipient “promptly and effectively” prevents sex discrimination and assures equal access of student.
- Must inform student of the recipient’s legal obligations by:
 - Obligations under 106.40;
 - Right to privacy in Title IX process (106.44(j)); AND
 - Provide notice of non-discrimination (106.8(c)(1)).
 - This should have already been provided, but must provide again.

34 CFR 106.40(b)(3)(i)



73

Pregnancy: Title IX Coordinator Responsibilities (Con't.)

- Must make “reasonable modifications” after consultation with student to policies, practices, and procedures to meet student’s individualized needs.
 - If recipient can demonstrate that the modification would “fundamentally alter the nature” of the education program or activity, the recipient does not have to make that modification.
 - Student has discretion to accept or decline modifications.
- *Examples of Reasonable Modifications:* Breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, drinking, or using the restroom; intermittent absences to attend medical appointments; access to online or homebound education; changes in schedule or course sequence; extensions of time for coursework and rescheduling of tests and examinations; allowing a student to sit or stand, or carry or keep water nearby; counseling; changes in physical space or supplies (for example, access to a larger desk or a footrest); elevator access; or other changes to policies, practices, or procedures.

34 CFR 106.40(b)(3)(ii)



74

Pregnancy: Title IX Coordinator Responsibilities (Con't.)

- Allow student to voluntarily access separate and comparable portion of program or activity.
- Allow student to take voluntary leave for a period, at a minimum, deemed medically necessary by doctor.
 - If recipient has leave policy that allows longer leave, must allow student to use that leave.
 - When student returns to education program or activity, student must be reinstated to the academic status and, as practicable, to the extracurricular status that the student held when the voluntary leave began.
- Ensure access to a lactation space that is not a bathroom and is:
 - Clean;
 - Shielded from view;
 - Free from intrusions from others; AND
 - May be used as needed.

34 CFR 106.40(b)(3)(iii)-(v)



75

Pregnancy: Title IX Coordinator Responsibilities (Con't.)

- May not require documentation for a reasonable modification when the need for the specific action is "obvious."
 - *Examples in Regulation:* Student needs bigger uniform, previously provided documentation, need to carry water, bigger desk, sit or stand, take breaks to eat or use restroom, or lactation needs.

34 CFR 106.40(b)(3)(vi)



76

Pregnancy: Recipient Responsibilities

- Must treat pregnant student or student with related conditions the same as any other student with any other temporary medical conditions.
- Must not require a pregnant student or student with related conditions to provide certification from a doctor to participate in education program or activities, unless:
 - A level of physical ability or health is necessary to participate;
 - Recipient requires such certification of all students participating;
 - The information is not used as a basis for discrimination.

34 CFR 106.40(b)(4)-(5) 

77

Confidentiality

- Recipient is required to take reasonable steps to protect the privacy of the parties and witnesses during the pendency of the grievance procedure.
- Steps to protect the confidentiality of the parties and witnesses during the pendency of the grievance procedure must not restrict the parties ability to:
 - Obtain and present evidence
 - Speak to witnesses, subject to 106.71 (retaliation)
 - Consult with their family members, confidential resources or advisor
 - Otherwise prepare for or participate in the grievance procedure

34 CFR 106.45(b)(5) 

78

Confidentiality (Con't.)

- Recipient must not disclose personal identifiable information obtained during the Title IX process, except:
 - Recipient has obtained prior written consent from a person with the legal right to consent to the disclosure;
 - When disclosed to a parent, guardian, or other legal representative with legal right to receive such disclosures;
 - *Issue:* Student's right to privacy in their LGBTQ+ status (AB 1955)
 - To carry out the purpose of Title IX;
 - As required by federal law, federal regulations, or federal award terms and conditions;
 - To extent does not conflict with Title IX;
 - When required by state or local law; OR
 - When permitted under FERPA or its implementing regulations.

34 CFR 106.44(j)(1) – (5)



79

Delay in Grievance Procedure

- While must have reasonable prompt time frames, must also have a process that allows for a “reasonable extension of timeframes.”
- Must be determined:
 - On a case-by-case basis; AND
 - Must find good cause exists.
- Provide notice to parties as to the reason for the delay.

34 CFR 106.45(b)(4)



80

Supportive Measures

- Recipient must offer and coordinate supportive measures:
 - For allegations of sex discrimination, other than “sex-based harassment” (106.2) and retaliation (106.71), does not require the recipient, its employee, or any other person authorized to provide aide, to alter the alleged discriminatory conduct for the purpose of providing supportive measures.
- Supportive measure may vary, depending on what recipient deems “reasonably available”:
 - *Examples:* 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, housing, or extracurricular or any other activity, regardless of whether or not there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

34 CFR 106.44(g)(1)



81

Supportive Measures (Con’t.)

- Requirements of supportive measures:
 - Must not unreasonably burden either party;
 - Must be designed to protect the safety of the parties or the recipient’s educational environment;
 - Must be designed to provide support during the grievance procedures and/or during the informal resolution process; AND
 - Must not be imposed for punitive or disciplinary reasons.
- Modification or termination of supportive measures:
 - Recipient may modify or terminate at:
 - Conclusion of grievance procedure; OR
 - Conclusion of informal resolution process.
 - Recipient may also continue.

34 CFR 106.44(g)(2) and (3)



82

Supportive Measures (Con't.)

- Must provide an appeal process of the supportive measures:
 - Must provide both parties with a timely opportunity to seek a modification or reversal of the decision to provide, deny, modify, or terminate supportive measures.
 - Must provide an “impartial employee” to make determination:
 - Cannot be the person that made the challenged decision regarding the supportive measures;
 - Must have authority to modify or reverse the decision; AND
 - Impartial employee must determine if the decision was or was not consistent with the definition of supportive measures.
- Must provide a party an opportunity to seek additional modification or termination of a supportive measure if there is a material change to the circumstances.

34 CFR 106.44(g)(4)



83

Supportive Measures (Con't.)

- Cannot disclose supportive measures to persons other than:
 - To whom they apply, including informing one party of supportive measures provided to another party;
 - Those necessary to provide the supportive measure or restore or preserve a party’s access to education program or activity; AND
 - Exceptions in 106.44(j)(1)-(5); confidentiality on previous slide.
- *Students with a Disability*: Requires the Title IX Coordinator to consult with one or more members, as appropriate, of the student’s IEP team to determine how to comply with the IDEA and 504 in the implementation of supportive measures.

34 CFR 106.44(g)(5) and (6)(i)



84

Emergency Removal

- May remove a student from the educational program or activity on an emergency basis if recipient:
 - Performs an individualized safety and risk analysis; AND
 - No specific analysis tool is required by the Regulations, but ensure that it is reliable and results can be defended.
 - Determines that an imminent and serious threat to the health or safety of a complainant, any student, employee, or other person arising from the allegations of sex discrimination justify the removal.
 - 2020 Regulations stated, “physical health,” which excluded mental health.
- Must provide respondent with notice and opportunity to challenge removal immediately following the removal.
 - Respondent retains rights under IDEA, 504, and ADA.
 - Student has right to manifestation or may use 45-day interim placement.

34 CFR 106.44(h)



85

Employees

- May place an employee on administrative leave during the grievance process
 - Does not modify any rights under 504 or ADA
 - Follow Education Code, labor laws and CBA
 - Federal law takes precedent

34 CFR 106.44(i)



86

Informal Resolution

- Recipient *may* offer informal resolution when:
 - Any time prior to determining whether sex discrimination occurred (grievance process completed); OR
 - Recipient received information about conduct that could constitute sex discrimination, but a complaint has not yet been made.
- Recipient has discretion in offering informal resolution and may decline to, despite one or more of the parties wish to do so.
- May decline if recipient determines “alleged conduct would present a future risk of harm to others.”
- May not offer if the allegations are that an employee sexually harassed an elementary or secondary school student.

34 CFR 106.44(k)(1)



87

Informal Resolution (Con't.)

- Requirements:
 - Recipient must not “require or pressure the parties” to participate in informal resolution;
 - Must obtain the parties’ voluntary consent to informal resolution; AND
 - Must not require the waiver of the right to an investigation and determination as a condition of enrollment or continuing enrollment, employment or continuing employment or exercise of any other right.

34 CFR 106.44(k)(2)



88

Informal Resolution (Con't.)

Prior to initiation of informal resolution process, recipient must provide notice to the parties that explain:

- The allegations;
- Requirements of the informal resolution process;
- Each party has the right to withdraw from the process prior to agreeing to a resolution and can initiate or resume grievance process at that time;
- If come to an agreement, parties are prohibited from initiating or resuming grievance procedure;
- Potential terms of an agreement and that the agreement is binding only on the parties; AND
- What information the recipient will maintain and whether and how the recipient could disclose such information if grievance process initiated or resumed.

34 CFR 160.44(k)(3)



89

Informal Resolution Potential Terms

- May include, but not limited to:
 - Restrictions on contact;
 - Restrictions on respondent's participation in one or more of the recipient's programs or activities;
 - Restrictions on respondent's attendance at specific events.
- Restrictions can include remedies or disciplinary sanctions that could have been imposed if determined responsible at the end of the grievance procedure.
- Not required by the Regulations, but recommend having agreement in writing and signed by both parties.

34 CFR 106.44(k)(5)



90

Notification of Allegations

Upon initiation of the grievance procedure, a recipient must provide notice to the parties whose identity is known, and must include:

- Grievance procedure
- Informal resolution process
- Sufficient information available at time of notification to allow parties to respond to allegations:
 - This includes:
 - Identity of the parties involved in the incident(s)
 - The conduct alleged to constitute sex discrimination under Title IX
 - Date of alleged incident
 - Location of alleged incident

34 CFR 106.45(c)



91

Notification of Allegations (Con't.)

- Statement that retaliation is prohibited.
- Statement that the parties are entitled to equal access to the relevant and admissible evidence.
- In the alternative to immediate access, an accurate description of the evidence.
 - If only provide description, must inform parties that they are entitled to equal access to the evidence upon request of either party.

34 CFR 106.45(c)



92

Consolidation of Allegations

- If, during the course of an investigation, additional allegations are discovered, recipient may investigate with the pending investigation.
 - If these allegations are not listed in a previous notice, must provide notice of the additional allegations to the parties whose identities are known.
- May consolidate two complaints of sex discrimination against one or more respondents and/or involving more than one complainant when allegations in the complaint arise out of the same facts or circumstances.

34 CFR 106.45(c)(2) and (e)



93

Dismissal of Complaint: Discretionary

A recipient may dismiss a complaint for the following reasons:

- Recipient is unable to identify the respondent after taking reasonable steps to do so;
- Respondent is not participating in the recipient's education program or activity or is not employed by the recipient.
 - Exercise caution
- Complainant voluntarily withdraws any or all of the allegations in the complaint and:
 - Title IX Coordinator declines to file or proceed after considering factors in 106.44; AND
 - Recipient determines that any remaining allegations would not constitute sex discrimination.

34 CFR 106.45(d)(1)



94

Dismissal of Complaint: Discretionary (Con't.)

- Recipient determines that the alleged conduct, even if proven, would not constitute sex discrimination under Title IX.
 - Prior to dismissing for this reason, recipient must make reasonable efforts to clarify the allegations with complainant.
- Mandated reporting requirements apply.

34 CFR 106.45(d)(1)



95

Notification of Dismissal

- Recipient must promptly notify complainant of the basis for dismissal.
- If dismissal is after respondent has received notification of the allegations, then recipient must also notify respondent of the dismissal and the basis for it promptly following notification of the complainant.
 - Notification can be done simultaneously if notification is in writing.
- Recipient must notify complainant that a dismissal may be appealed and provide an opportunity to appeal pursuant to 106.46(i)(1).
 - If respondent has already been notified of the allegations, recipient must also notify respondent that the dismissal may be appealed.

34 CFR 106.45(d)(2)-(3)



96

Requirements: Complaint Dismissed

If complaint is dismissed, at a minimum, recipient must:

- Offer supportive measures to complainant.
- If respondent has been notified and dismissal was for one of the following basis, must offer supportive measures to respondent:
 - Complainant withdraws any or all of the allegations; OR
 - Even if proven, conduct would not constitute sex discrimination.
- Require Title IX Coordinator to take “appropriate prompt and effective steps” to ensure sex discrimination does not continue or recur.



97

INVESTIGATION



98

Investigation Process

A recipient must provide “adequate, reliable, and impartial investigations of complaints.” Requirements:

- Burden is on the recipient, not the parties, to conduct investigation that gathers sufficient evidence to determine whether or not sex discrimination occurred.
- Provide equal opportunity for parties to:
 - Present fact witnesses.
 - Present other inculpatory or exculpatory evidence that is relevant and not otherwise impermissible.
- Review all evidence gathered during the investigation to determine what is relevant and permissible. (106.2 and 106.45(b)(7).)



99

Investigation Process (Con’t.)

- Provide each party an equal opportunity to access the relevant and permissible evidence in the following manner:
 - Provide access or a description of evidence.
 - If provide description, must also provide parties with an equal opportunity to access.
 - Do not recommend providing copies of evidence.
 - Must provide both parties a “reasonable opportunity” to respond to the evidence.
 - Must take reasonable steps to prevent and address the parties’ unauthorized disclosure of information and evidence obtained solely through the grievance procedure.
 - Exceptions:
 - Evidence used for administrative proceedings.
 - Evidence used for litigation related to the complaint of sex discrimination.

34 CFR 106.45(f)(4)



100

Relevant Evidence

- *Relevant defined:* Related to the allegations of sex discrimination under investigation as part of the Title IX grievance process.
 - Questions are relevant when they may aid in showing whether the alleged sex discrimination occurred.
 - Evidence is relevant when it may aid a Decision Maker in determining whether the alleged sex discrimination occurred.
 - May include questions and evidence that assist Decision Maker in determining credibility.

34 CFR 106.2



101

Relevant Evidence

- Types of evidence not relevant and must be excluded:
 - Evidence protected under a privilege recognized by federal or state law.
 - Includes information provided to a confidential employee.
 - *Exception:* The person voluntarily waived the privilege or confidentiality.
 - *Examples:* Martial privilege
 - Records maintained by a physician, psychologist, or other recognized professional or paraprofessional that is related to the treatment of a party or witness.
 - *Exception:* Party or witness voluntarily provided written consent to allow evidence to be used.
 - Evidence that relates to a complainant’s sexual interests or prior sexual conduct.

34 CFR 106.45(b)(7)



102

Relevant Evidence

- Regulations do not adopt the Federal Rules of Evidence definition of relevance.
- Supportive measures and emergency removal are not relevant evidence that can be considered in reaching a determination of responsibility.



103

Determining Relevance of Sexual Conduct

- Evidence of a complainant's sexual conduct and history is generally not relevant and should be excluded. Examples:
 - She had sex with Sam; therefore, she had consensual sex with John.
 - Evidence regarding a reputation for being promiscuous.
- Evidence can be considered if it is directly relevant to an issue. Examples:
 - Complainant previously consented to an act with respondent; therefore, respondent believed the complainant consented during the current incident (state of mind).
 - The evidence will explain an injury the complainant has or other evidence.
- Title IX specifies the only two conditions that sexual conduct/history evidence may be presented and considered:
 - To prove someone other than respondent committed the alleged conduct.
 - Specific incidents between respondent and complainant to prove consent.
 - This fact, alone, does not demonstrate or imply consent or prove that harassment occurred.

34 CFR 106.45(b)(7)



104

Determining Relevance of Sexual Conduct (Con't.)

The following restrictions apply:

- Only the recipient may access this evidence to determine whether an exception applies.
- Must not be disclosed.
- Must not otherwise be used if determined to not be relevant to the allegations.

34 CFR 106.45(b)(7)



105

Conducting an Investigation: Interviews

- If involves potential criminal conduct, do not have to advise a student of *Miranda* rights (Fifth Amendment right to remain silent). *Miranda* only applies if a peace officer is conducting a custodial interrogation designed to elicit an incriminating statement.
- Statements of complainant, respondent, and witnesses
 - Whether or not to record interview
 - *May NOT secretly record*
 - Decide order of interviews
 - Use words that the witness uses
- *Rapport building*: Do not be immediately confrontational
- Understand the person's capabilities:
 - Does person have disability?
 - Is the person an English language learner
- Ask open ended questions
- Trauma Informed Care



106

Conducting an Investigation: Interviews (Con't.)

Employee Interviews:

- *Weingarten Rights*: If it reasonably appears employee could be subject to discipline, employee has right to have union representative present.
 - Representative cannot be intrusive or unduly adversarial
- Employee that is mere witness to events and non-suspected of being culpable do not typically have *Weingarten* right unless required by personnel rules, collective bargaining agreement or past practice.
- *Spielbauer Warning*: If the employee invokes their Fifth Amendment right to remain silent, he or she can be ordered to answer questions. The statements may not be used in a criminal proceeding, but may be used in a discipline proceeding. Must give a *Spielbauer* warning:
 - You do not have a right to refuse to answer these questions. Should you refuse, you may be guilty of insubordination, an offense that can and will lead to discipline up to and including termination. Any information you provide to us, however, will not be used against you in any criminal proceeding.



107

Conducting an Investigation

- Review records that are legally accessible
- Surveillance cameras at location
- Social media of those involved
- Notes/letters/photos of those involved. Most likely electronic, such as cell phone, iPad, computer, etc. Be sure to consider search and seizure rules.
- Photographs:
 - Area of occurrence
 - *Those involved*: Damage to clothing, injuries, etc.
 - Only photograph what you have consent to photograph
- Schedules and attendance of those involved, including witnesses
- Any evidence going to credibility of any witness
- If involves student, contact parents – anything relevant going on at home?
 - Consider confidentiality issues prior to contacting parents



108

Determination of Responsibility

- Recipient's grievance process must allow for the Decision Maker to have an opportunity to question the parties and witnesses in order to assess their credibility to the extent credibility is in dispute.
- The Decision Maker determines whether the respondent is responsible or not using the chosen standard after evaluation of the relevant and permissible evidence for its persuasiveness. If the Decision Maker is not "persuaded" by "whatever the quantity of evidence is," must find respondent not responsible.
- Provide written notification to parties of the determination.
- Hearing is no longer an option for K-12.
- The investigation is where parties can submit evidence, ask questions, etc., no longer required of the Decision Maker.

34 CFR 106.45 (g) and (h)(1)



109

Standard of Evidence for Determination of Responsibility

- Two types of standards:
 - *Preponderance of the Evidence*: It is more likely than not that the allegations are true.
 - *Clear and Convincing Evidence*: Evidence is of such a convincing force that it demonstrates a high probability that the allegations are true. A higher standard than preponderance of the evidence.
- Title IX requires use of preponderance of the evidence, unless the recipient uses clear and convincing standard on other comparable proceedings recipient *may* chose to use clear and convincing.



110

Evaluating Evidence

Considerations in determining what weight to give evidence?

- Was the person offering the evidence credible?
- How is the evidence relevant to the issues?
 - Does it go to a party's credibility?
 - Did that person have any motive for coming forward?
 - Does it tend to prove or disprove a material fact?
- How many levels of hearsay?
 - Hearsay: A statement, reported by another person (not the declarant), offered to prove the truth of the matter asserted
 - Example: Jane testifies, "Mary told me that John slapped her."
- Does it tend to show the respondent has committed similar acts in the past?



111

Hypotheticals

- Samantha files a complaint alleging that Mr. Smith, her PE teacher, makes comments to her about her physical appearance every day and tells her he wishes she was 18. Mr. Smith presents evidence that Samantha lied earlier in the year about why her homework in a different class was not completed.
 - Mr. Smith presents evidence that two months prior, Samantha falsely reported that a student named Mark had slapped her buttocks during PE class.
- Sally files a complaint alleging that Tom has been verbally sexually harassing her and that it has caused her to have severe anxiety prior to class. Tom seeks to gain access to her therapy records that show she had been treated for severe anxiety the prior year.



112

Written Notice of Determination Requirements

- Decision Maker's written determination must include:
 - Determination of responsibility.
 - If determine responsible, must provide rationale for such determination.
 - The procedures and permissible bases for either the complainant or respondent to appeal.
- No longer have to include every step that was taken in the investigation.

34 CFR 106.45(h)(2)



113

Remedies

- Does not clearly state who determines the remedies, but it is listed under the determination of responsibility subdivision.
- Regulations require the Title IX Coordinator to:
 - Coordinate the provision and implementation of remedies to:
 - Complainant
 - Other persons that recipient identifies as having their access to the educational programs and/or activities limited or denied.
 - Coordinate imposition of any disciplinary sanctions on respondent.
 - Includes notifying complainant.
 - Take other appropriate prompt and effective steps to ensure discrimination stops and does not recur.
- Cannot impose discipline unless there has been a finding that respondent engaged in sex discrimination.

34 CFR 106.45(h)(3)



114

Appeals

- Must provide an appeal process for both parties.
 - Includes dismissal and determination.
- Regulations do not provide specific grounds for appealing a determination. It only provides that the appeal process must be “at a minimum, ... the same as it offers in all other comparable proceedings, if any, including proceedings relating to other discrimination complaints.” Consider:
 - UCP or any other discrimination process district might have.
 - The appeal grounds that were previously provided for in the 2020 Title IX Regulations:
 - Procedural irregularity that would change the outcome;
 - New evidence that would change the outcome and was not reasonably available prior to dismissal; AND
 - Title IX Coordinator, Investigator, or Decision Maker had a conflict of interest or bias for or against complainant(s) or respondent(s) that would have changed the outcome.

34 CFR 106.45(i)



115

Appeal of Dismissal

If dismissal of a complaint is appealed, recipient must:

- Notify parties of any appeal;
 - If respondent had not yet received notification pursuant to subdivision(c), must provide notice of allegations consistent with those notice requirements.
- Ensure Decision Maker for the appeal did not take part in the investigation or dismissal of the complaint;
- Implement appeal procedures equally for the parties;
- Ensure appropriate training required for “others” above;
- Provide the parties a reasonable and equal opportunity to make a statement in support of or challenging the outcome; AND
- Notify the parties of the result of the appeal and the rationale for the result.

34 CFR 106.45 (d)(3)



116

Discipline of Parties, Witnesses, or Others

Title IX Regulations prohibit disciplining a party, witness, or others participating in the process based solely on the recipient's determination whether or not sex discrimination occurred for either of the following:

- Making a false statement; OR
- Engaging in consensual sexual conduct.

34 CFR 106.45 (h)(5)



117

Standard of Review

Assistant Secretary will not find that a recipient violated Title IX solely because they would have reached a different determination of responsibility.

34 CFR 106.47



118

Records Retention

The following must be maintained for seven years:

- Records documenting the informal resolution process or the grievance process for each complaint and if applicable, the resulting outcome.
 - Complaint can be oral or written request to investigate.
 - What does that include:* The complaint form, documentation of the oral report, investigation report, resolution agreement/records, determination report, appeal determination report, and all evidence collected during the investigation.

34 CFR 106.8(f)



119

Records Retention (Con't.)

The following must be maintained for seven years (con't.):

- Records documenting notifications of suspected sex discrimination to Title IX Coordinator and the actions taken to meet its obligations under 106.44 (grievance process).
 - Reports include all notifications of suspected sex discrimination.
 - Section specifically references reports pursuant to 106.44(c)(1) and (2), which is employees' obligations to report.
- All materials used to provide training.
 - Must make these training materials available for inspection upon request by members of the public.

As of January 1, 2024, there is no longer a statute of limitations for a civil suit involving childhood sexual assault. Due to the possibility of having to defend the district more than seven years from now, SLS suggests the district maintain those types of files indefinitely.

34 CFR 106.8(f) & Code of Civil Procedure 340.1



120

Summary of Title IX Coordinator's Duties

Title IX Coordinator may delegate to designee, as long as had the same training:

- Coordinate efforts to implement and comply with Title IX
 - Regulations primarily assign duties to the "recipient," which falls to the Coordinator in implementing.
 - Includes monitoring outside programs the recipient requires participation in
- Coordinate responsibilities of persons involved in Title IX process
- *Training:* Anyone that is part of the Title IX team, staff, and "others"
- Monitor barriers to reporting and take "reasonably calculated steps" to address barriers
- Notification of policy
- Implementing protections and rights of pregnant students and staff



121

Summary of Title IX Coordinator's Duties (Con't.)

- Implement supportive measures
 - Provide appeal process
 - Determine if should be modified or terminated at conclusion of grievance process
- Determine if sufficient evidence to move forward or if case should be dismissed
 - If dismissed, ensure appeal process is followed
- Evaluate information to determine if should file complaint and follow procedure if file complaint
- Emergency removal
- Coordinate with students IEP or 504 team
 - Includes for grievance process and implementation of any supportive measures



122

Summary of Title IX Coordinator's Duties (Con't.)

- Take reasonable steps to assure parties' confidentiality
- Determine if informal resolution is appropriate and if it is, offer and provide appropriate notice.
- Implement remedy and discipline
- Take appropriate and effective steps to ensure discrimination stops and does not recur.
- Assure records are maintained in compliance with Regulations, including understanding recipient's record keeping system.



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Summary of Grievance Process

- Develop and implement policy
- Provide training
- Designate Title IX team
 - Determine if will have a confidential employee to report to
- Receive notice of conduct that potentially constitutes sexual harassment
- Determine if informal resolution is appropriate and offer
- If no complaint, Title IX Coordinator determines if will file complaint
- Receive complaint; determine if informal resolution is appropriate
- Once receive notification of information or complaint, must respond promptly and effectively
- Provide notice of allegations and grievance procedure
 - Includes offer of supportive measures



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Summary of Grievance Process (Con't.)

- Implement supportive measurements
 - Must provide appeal process
- Investigation
 - May consolidate
- Complaint may be dismissed
 - Must provide appeal process
- Determination of responsibility
- Appeal
- If no appeal or it is not granted, implement remedies and discipline



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Hypotheticals

- A female general education student reports that a male student with down syndrome is constantly hugging and sometimes kisses her cheek. She has tried nicely to tell him to stop and avoiding going through the hallway that he is in, but he still finds her at lunch time to hug her.
- Sally attends a dance with friends at a school outside of her school district. While at the dance, John repeatedly asks her to dance. His words and actions become more aggressive as the evening goes on. In hopes of him leaving her alone, she relents and agrees to dance with him. While dancing John grabs her buttocks. Sally files Title IX complaint with John's school.



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Hypotheticals

- Tom and Jane meet at a party the weekend before school starts. At that party, Tom makes several rude, inappropriate comments to Jane about her body, that he like her, and wants to be with her. Jane verbally asked Tom to leave her alone. At one point, Tom "corners" Jane and touches her breasts and buttocks.
- Prior to school starting and during the first week of school, but outside of school hours, Tom makes several demeaning comments about Jane and posts photographs of her in a bathing suit. Several people make comments to his posts.
- At school Tom makes demeaning comments, including calling her a "slut." Other boys laugh at the comments, with a few students (boys and girls), making additional comments.
- After several weeks of this, Jane tells her parents what had been happening and that she could no longer take it. Jane's parents file Title IX complaints against Tom and the other students that made comments to Jane.
- During the first week of school, the janitor was cleaning the hallway and witnessed several students making these comments to Jane, including calling her a "slut" and saw Tom slap Jane on the buttocks.



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Thank You For Your Attention

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