Title IX: What You Need to Know

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“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”

20 U.S.C. §1681(a)

The Political Pendulum of Title IX



1972

Congress concerned with equal access for men and women to **school** admission, **school**-related activities (like sports), and employment in **schools.**

1980s

Courts universally held that sex-based discrimination also includes actions based on sex, including **sexual harassment**, **sexual assault** and **sexual violence.**

1990s-2015

Dear Colleague Letters and Other Policy Guidance expanded Title IX's reach, including LGBTQ individuals**.**

2020

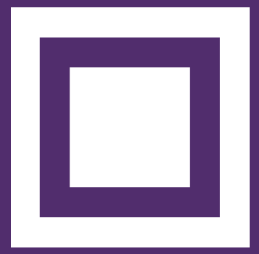
New set of regulations for Title IX adopted. (Trump Regulations.)

2024

New set of regulations for Title IX adopted. (Biden Regulations.)

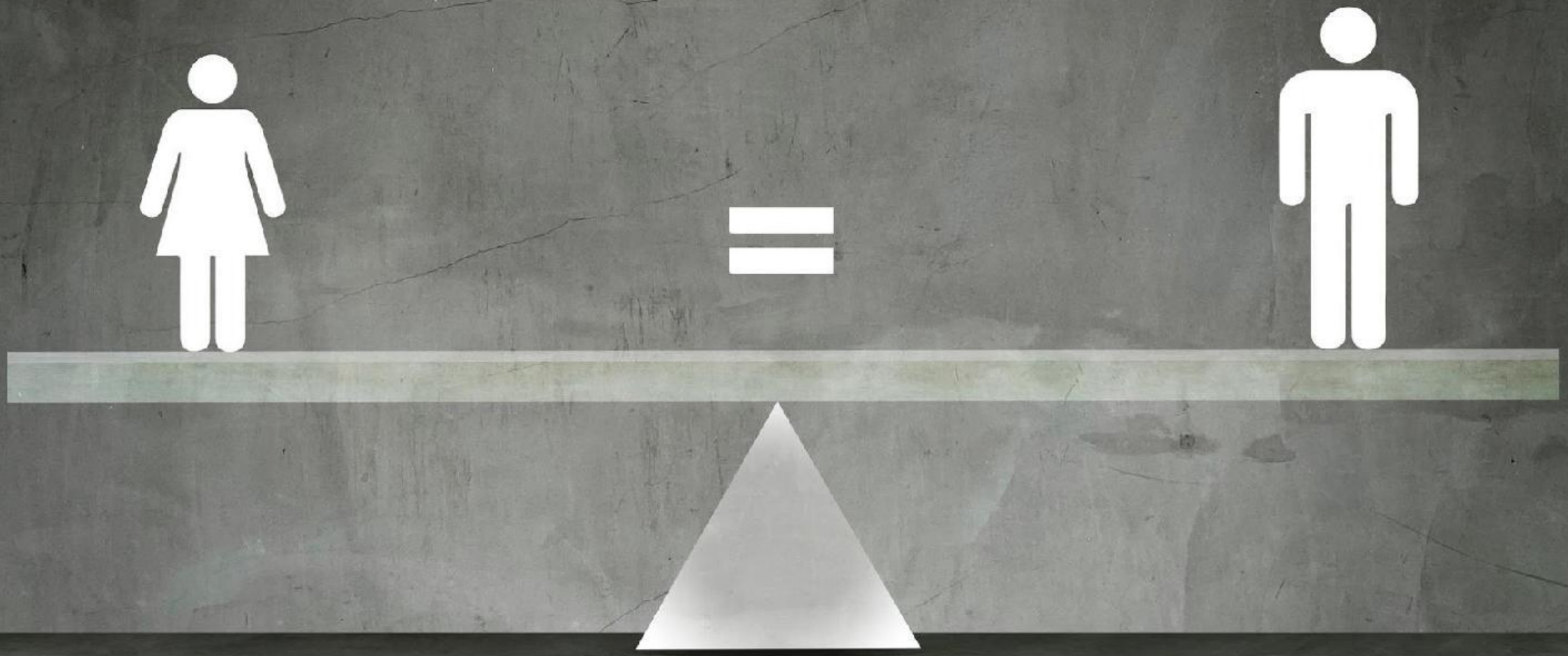
2025

Federal Court injunction against Biden regulations. Trump inauguration and DOE reverts to 2020 regulations. (Trump Regulations.)



Sex Equity

Original Focus: Sex Equity



"It is the policy of the State of Illinois and the State Board of Education that ***no person shall be subjected to discrimination on the basis of sex in any program or activity supported by school district funds***."

Applying the Sex Equity Rules

Sports



Classes



Facilities



How do the Sex Equity Rules and Title IX Apply to Transgender or LGBTQ Students? This is still an open question.

- The IHRA specifically provides protections for gender identity.
- The 7th Circuit decisions support accommodations for transgender students.
- The Department of Education argues that accommodating transgender students violates Title IX, even though the statute and the regulations are silent on the issue.

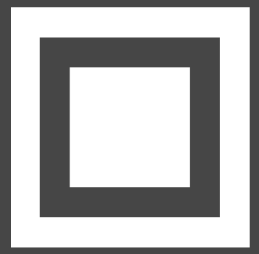
U.S. v. Skrmetti, June 2026

- States can ban the use of puberty blockers for transgender children
- The ban is not based on sex because not all people seeking puberty blockers are transgender

West Virginia v. B.P.A., June 2006

- The Supreme Court held that states can ban biological men from participating in women's sports.
- The Court did not go as far as holding that Title IX required a ban of biological men in women's sports.

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Defining Sexual Harassment Under Title IX

What is Title IX Misconduct Based on Sex?

1. **Quid pro quo offer based on sex:**
   - employee (not student) offers some kind of aid-benefit-service in exchange for unwelcome sexual conduct

2. **Violence based on sex:**
   - sexual assault, dating violence, domestic violence and/or stalking, as defined in the *Clery Act* and the *Violence Against Women Act* (VAWA)

3. **Sexual harassment:**
   - Unwelcome sexual conduct (or conduct based on sex)
   - So severe AND pervasive AND objectively offensive
   - That it effectively denies a person equal access to educational programs or activities

Title IX vs. Illinois Sexual Harassment

Illinois: ***"Sexual Harassment"*** is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

Title IX: ***"Title IX Sexual Harassment"*** is defined as Conduct on the basis of sex that satisfies one or more of the following: (1) A District employee conditions the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct; (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 the District's education program or activity; or; (3) Sexual assault, dating violence, domestic violence, or stalking

Davis v. Monroe County Board of Education
526 U.S. 629 (1999)

- *FACTS:*

A fifth grader told her teacher that a student in her class is trying to touch her chest and her private areas and said things to her like “I want to get in bed with you” and “I want to feel your boobs.” The student said the classmate also put a door stop in his pants and tried to rub up against her in the hallway. This kind of behavior occurred nearly every day over several months. The student told her teacher this is why her grades have dropped, that she is always nervous and anxious in school now. The girl’s mother also met several times with the principal to discuss the behavior. Nothing was done by the school district to stop the behavior.

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Davis v. Monroe County Board of Education
526 U.S. 629 (1999)

- *DECISION:*

School Districts that are deliberately indifferent to peer on peer sexual harassment may be held liable for money damages for their deliberate indifference.

To avoid deliberate indifference, School Districts must respond in a way that is not clearly unreasonable in light of the known circumstances.

The Court is specific that this does not require School Districts to discipline every student accused of sexual harassment.

Is this Title IX sexual harassment?

A female high school student is the only female student on the school's wrestling team. Over the course of about three years that the student was on the wrestling team, the (male) coach made the following comments:

- When the female student was wrestling with a male student, the coach said to him, "How does it feel knowing that's probably one of the only women you'll ever have on top of you?" Another time, while the same two students were wrestling, the coach said to the male student, "she'll be the only girl you'll touch."

- To the female student directly, the coach said, "You'll have to be a 'boy' on the team," at least twice. He also said that she would have to have "strap-ons" [referring to prosthetic penises] at least four times.

- The coach asked the student if she was having her menstrual cycle during a wrestling match, because he could see her "pad" through her singlet, and then laughed about it with another coach.

Moeck v. Pleasant Valley Sch. Dist., 179 F.Supp.3d 442 (M.D. Penn. 2016

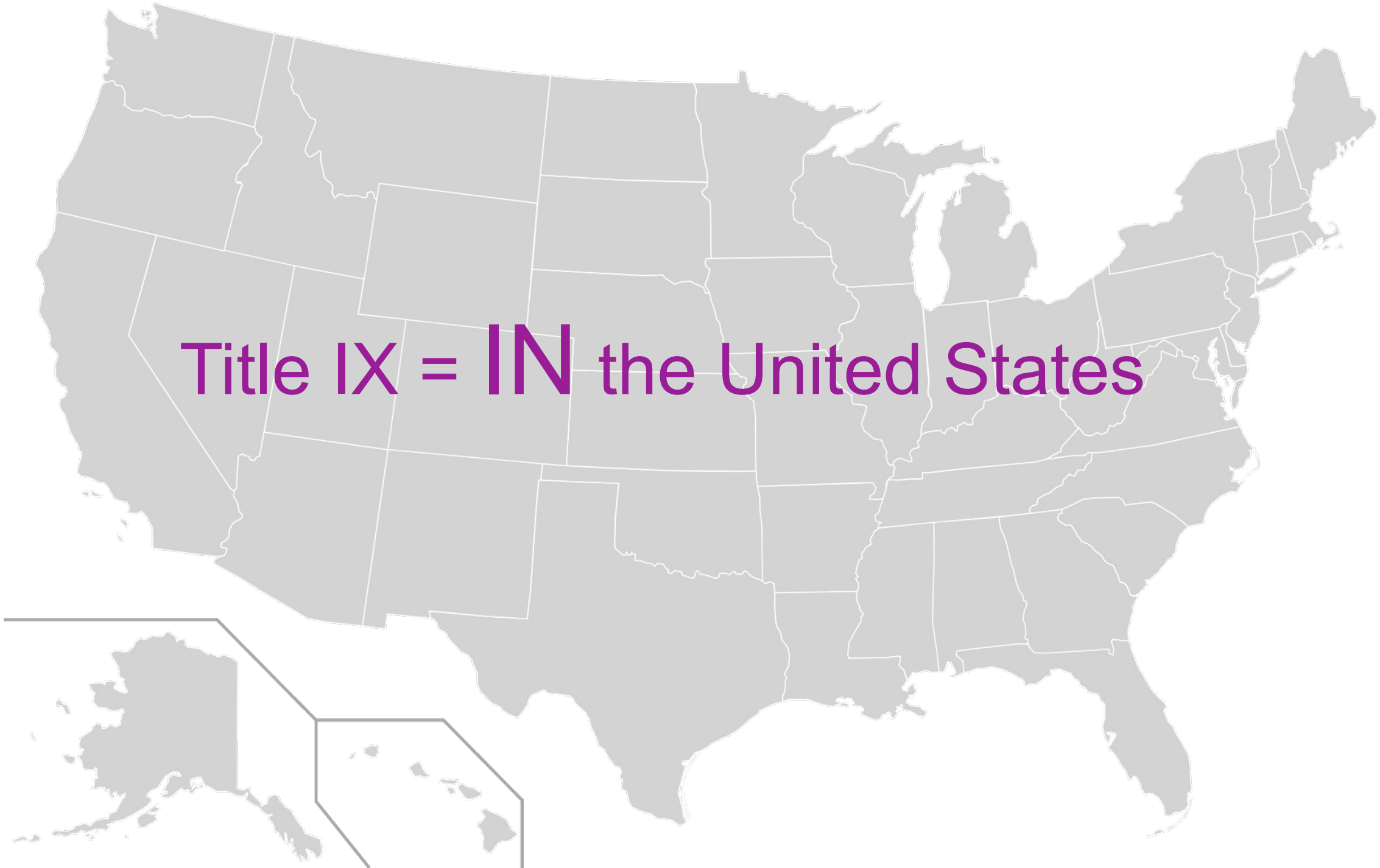
Determining whether a District is responsible under Title IX

When is a district responsible?



- "Actual notice"
- On or off campus
- School exercises substantial control
- School district may provide supportive measures

Handout - Details: Location of the Misconduct


Title IX = IN the United States



Complainant's Enrollment

HOW Do Schools Fulfill Their Title IX Obligations?



34 CFR §§ 106.6(d)-(h), 106.44(a)

Handout - Details:
How do schools fulfill their Title IX obligation?

Avoiding Deliberate Indifference

Interrupt the behavior

+

Respond Promptly

+

Provide Supportive Measures

=

Not Deliberately Indifferent

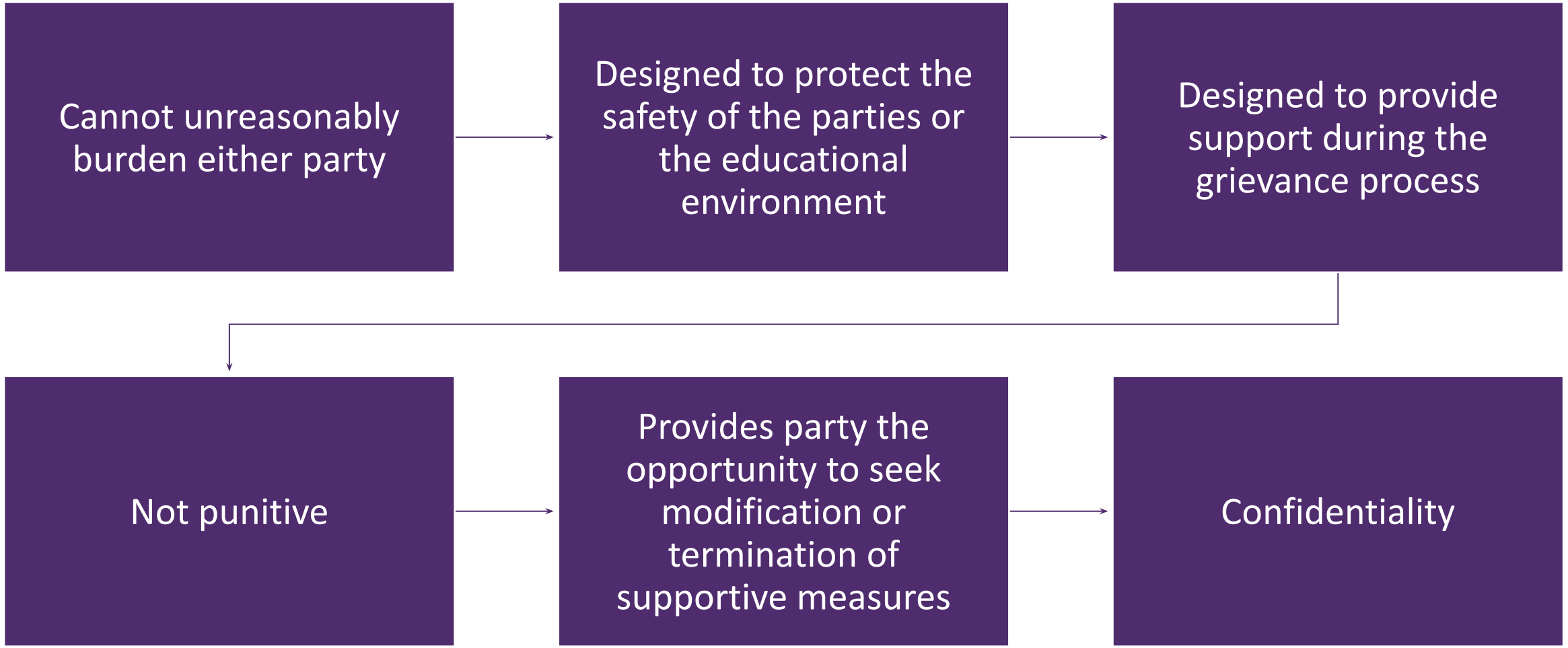
General Response: Supportive Measures



- Counseling
- Extension of deadline
- Modification of work/class schedules
- Campus escort services
- Mutual restrictions on contact
- Changes in housing/ work locations
- Leaves of absence
- Increased security

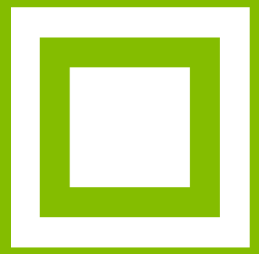
34 CFR §§ 106.30(a),106.44(b)

Considerations for Supportive Measures



Other Legal Obligations

- Notices
- The right to be represented
- The right to review evidence
- Presumption of Innocence



Obligation for Impartiality

Impartiality

Project Implicit®

https://implicit.harvard.edu/implicit/

National Initiative for Building Community TRUST & JUSTICE

https://trustandjustice.org/resources/intervention/implicit-bias

Teaching Tolerance

www.facinghistory.org



Impartiality



Listen.

Really listen.

6 StepTitle IX Process

Who are the parties involved?



6-Step Title IX Process



1. Actual knowledge
2. Formal Complaint
3. Investigation
4. Hearing/ Opportunity to Question
5. Determination re: Responsibility
6. Appeals

Actual Knowledge

Requirements:
- Can't be "deliberately indifferent"

Possible Outcomes:
- Supportive measures; no further action; OR
- Complainant decides to file Formal Complaint; OR
- Title IX Coordinator signs Formal Complaint

Formal Complaint

Requirements:
- Notice of allegations
- Notice of all procedures

Possible Outcomes:
- Supportive measures AND:
- Investigation, OR
- Dismissal of complaint, OR
- Informal resolutions, OR
- Emergency removal + investigation

Investigation

Handout - Details: 6-Step Title IX Process

Requirements:
- Evidence gathering
- Advisors for parties
- Investigative report of facts leading to next phase

Possible Outcomes:
- Complaint withdrawn
- Informal resolutions
- Hearing/questioning

Hearings / Opportunity to Question

Requirements:
- Postsecondary: live hearing(s)

Options:
- K-12: may have live hearing OR opportunity to question other side in written form

Determination regarding Responsibility

Requirements:
- Written determination
- Provided to both parties

Options:
- Standard of proof
- Remedies
- Supportive measures

Appeals

Requirements:
- Both parties have equal opportunity to appeal
- Notice of appeal
- Equal opportunity to respond

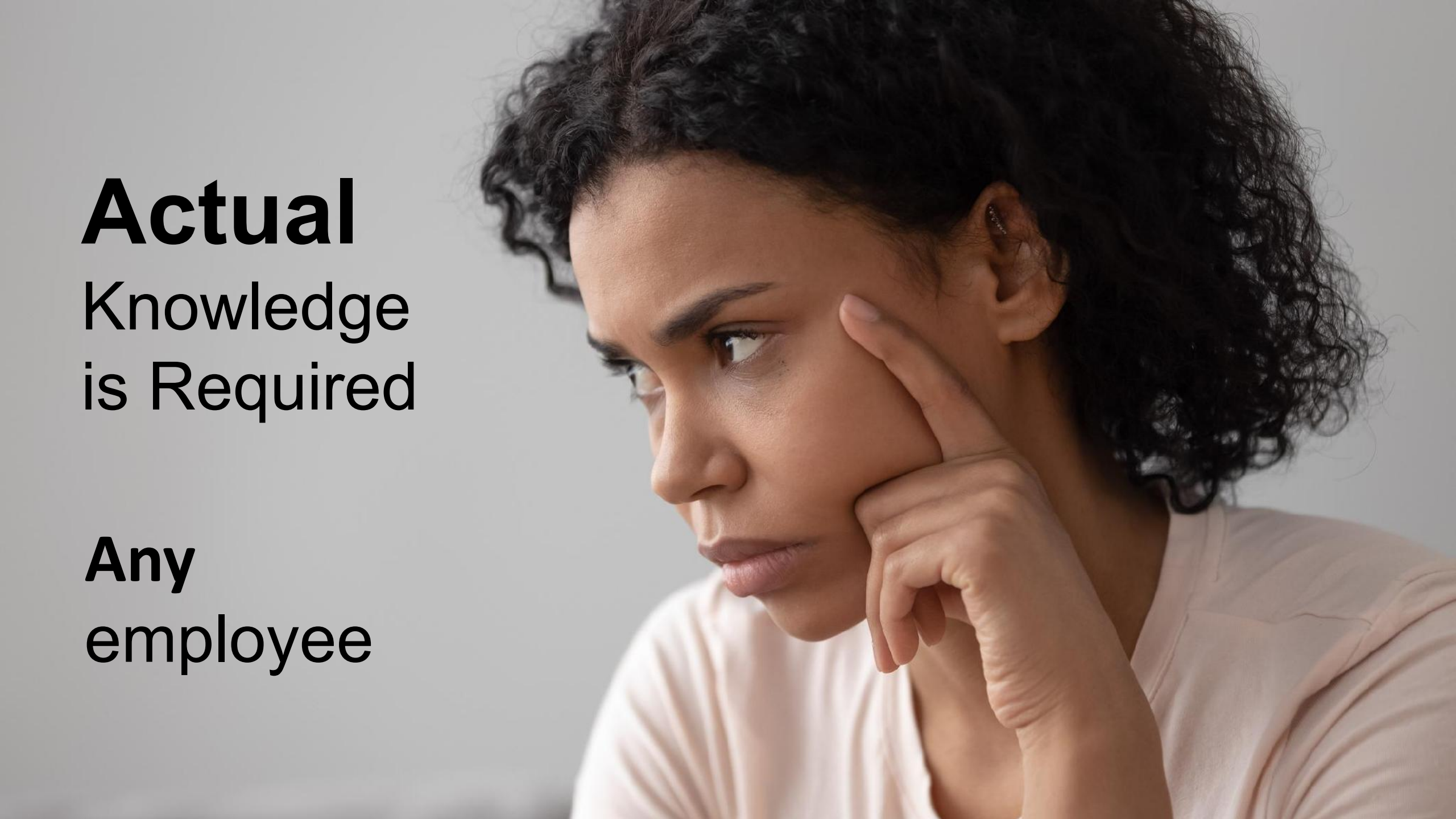
Options:
- Basis for appeal

Step 1

Actual Knowledge

Actual
Knowledge
is Required

Any
employee



Step 2

Formal Complaint

Formal Title IX Complaint

- In writing and signed by the Complainant (parents) or the Title IX coordinator (not anonymous)
- Alleges a violation of Title IX
- Requests and investigation



The Title IX Coordinator can dismiss any complaint that does not meet this standard.

Formal Complaint Signed by Title IX Coordinator



Step 3

Informal Resolution or Investigation (or both)

Informal Resolution is (Sometimes) an Option





Investigations: An Overview

Handout - Details:
Investigation: An Overview

Forensic Interviews by the Child Advocacy Center (CAC)

55 ILCS 80/4.5 new
Effective January 1, 2020

Sec. 4.5. Forensic interviews; electronic recordings.

(a) Parental consent is no longer required for a forensic interview to be electronically recorded by the CAC. Failure to record does not render a forensic interview inadmissible.

(b) The recording of a forensic interview may be provided to school districts in relation to an administrative hearing (teacher dismissal, student expulsion, etc.) to limit re-traumatization of the child victim.

Student Interviews

- Corey's Law requires notice to parents before a student is interviewed by law enforcement, an SRO, or school security personnel
- Must make reasonable efforts to allow parents to be present during the interview if held on school grounds
- 105 ILCS 5/22-85

Investigations:
Tips and Tricks



- Gather artifacts before interviews
- Open-ended questions
- Neutral language
- Allow time for follow-up questions
- Use trauma-informed strategies

Investigations — Unique to Title IX



- Once compiled, send all evidence to complainant and respondent (and their advisors) with plenty of time (at least 10 days) to meaningfully respond
- Consider the Parties' responses when drafting the investigative report
- Refrain at this step from determining the credibility of the parties or their statements, but document details that *do* and/or *do not* align with other parties' accounts and other relevant evidence

Additional Considerations for Witnesses

A. Should you record the interview?
B. Should you have the witness sign a statement?
C. For student witnesses, should parents be involved?
D. For staff witnesses, should union representatives be involved?
E. Should the employee be placed on leave during an investigation?
F. Should you involve law enforcement or DCFS?

Investigation: The Written Report



Handout - Details: The Written Report

Step 4

Hearing or Opportunity to Question

Hearing / Opportunity to Question

K-12

- Live hearing permitted, but not required
- If no live hearing, then must provide opportunity to question other party

College/ University

- Live hearing required



Formal Hearing

- Questions by advisors only (appoint an advisor if a party does not have one)
- Exclude evidence if a witness refuses cross examination
- Use technology for witnesses at the District's discretion

Opportunity to Question



ONLY **relevant** questions

K-12 “funneling”

Handout - Detais: Opportunity to Question

Step 5

Decision Making Process: Determining Responsibility

Standard of Review

The decision-maker applies the school district's chosen standard of evidence for Title IX investigations:

- **Option 1**: "preponderance of the evidence" standard
- **Option 2**: "clear and convincing" standard

Each school district must choose one of these standards for ALL sexual harassment investigations (those involving just students, just employees, and both students and employees)

34 CFR § 106.46(b)(1)(vii)

Decision Maker

reviews investigative report, all evidence, all statements/ answers from parties and witnesses during any live hearings or opportunity to question



weighs the credibility of all relevant evidence and statements.

Next phase:
Determination regarding Responsibility.

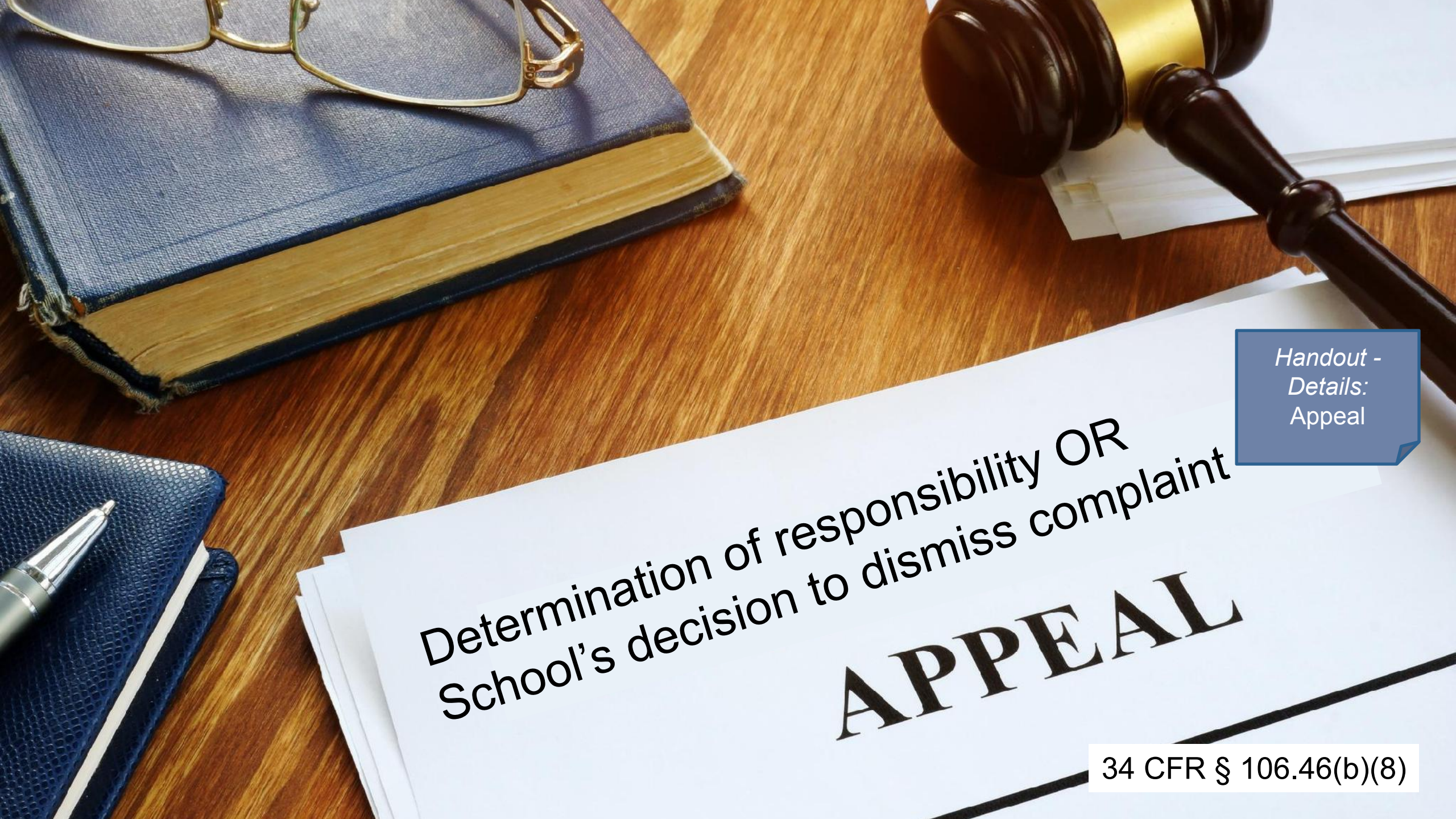
The Written Decision

- The decision-maker issues a written determination regarding responsibility that includes:
  - Identification of allegations of sexual harassment that meet Title IX definition
  - Description of all procedural steps
  - Findings of fact supporting the determination
  - Conclusions regarding application of school's disciplinary code to the facts
  - Rationale for the decision regarding *each* allegation and determination regarding responsibility
  - Any disciplinary sanctions imposed upon a party
  - Any other remedies and supportive measures recommended or warranted
  - Procedures and permissible basis for appeal
- School must provide written determination to parties simultaneously
- Title IX Coordinator implements remedies / coordinates disciplinary consequences

Handout - Details: The Written Decision

Step 6

Appeals



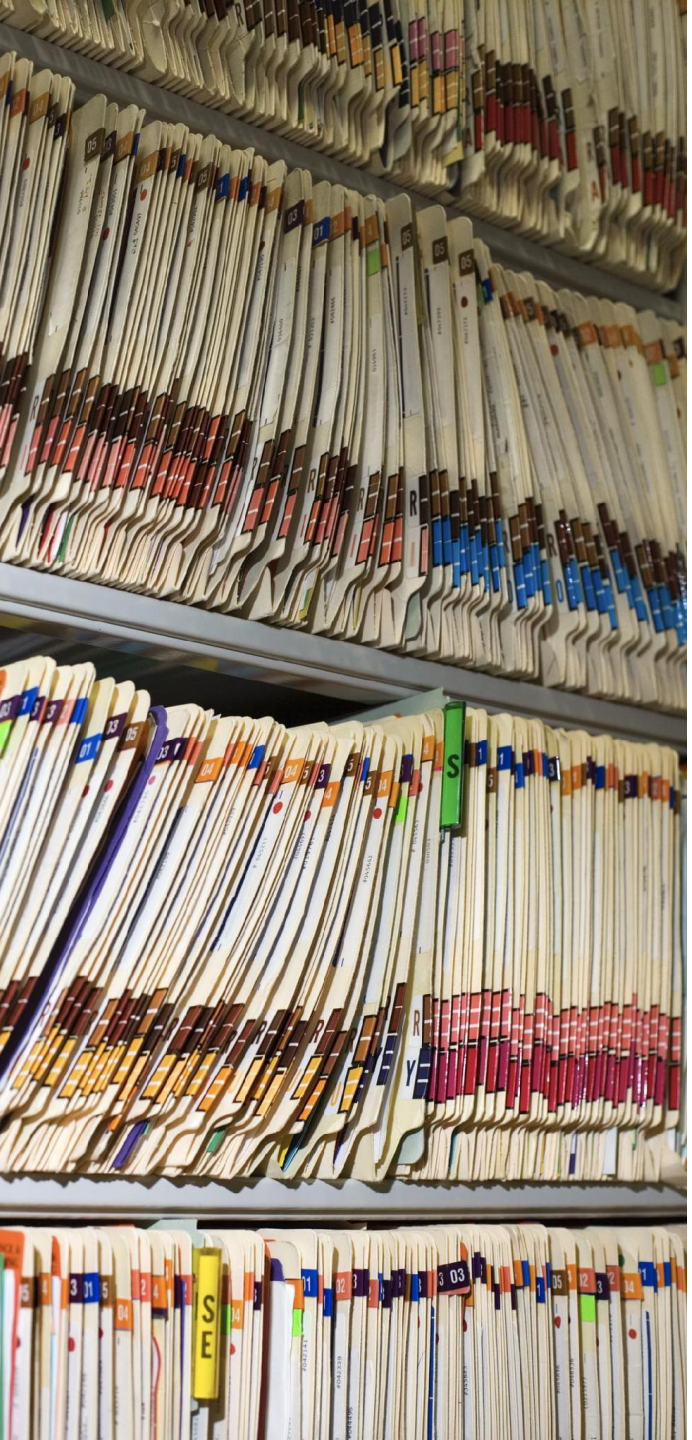
Handout - Details: Appeal

34 CFR § 106.46(b)(8)

Schools must do the following for an appeal:

Notify the other party in writing when an appeal is filed and on what basis
Implement appeals procedure equitably
The appeals decision-maker must not have been involved in the Title IX complaint process thus far
The appeal decision-maker must be trained and is neutral/impartial
Give both parties a reasonable, equal opportunity to submit a written statement about the outcome of the investigation phase
Issue a written decision describing the result (final decision) and rationale
Provide decision simultaneously to all parties

Other Matters



Recordkeeping

The Title IX Coordinator must keep written records for 7 years of all the following.

- Title IX complaints, including:
  - Supportive measures provided
  - If no supportive measures provided, document why not warranted
  - Basis for school's conclusion that its response was not deliberately indifferent
  - Documentation of measures designed to restore or preserve equal access for the complainant
- Investigation reports and records
- Recordings/transcripts of hearings (if any)
- Written determinations regarding responsibility
- Disciplinary consequences (if any)
- Appeals
- Informal Resolutions

34 CFR § 106.46(b)(10)

Training & Training Materials

Training must include:

- Title IX regulations
- How to use technology
- How to avoid prejudgment
- How to serve impartially
- How to determine issues of relevance of questions or evidence

All training materials used to train:

- Title IX coordinator
- Investigator(s)
- Decision-maker(s)
- Appeals decision-maker(s)

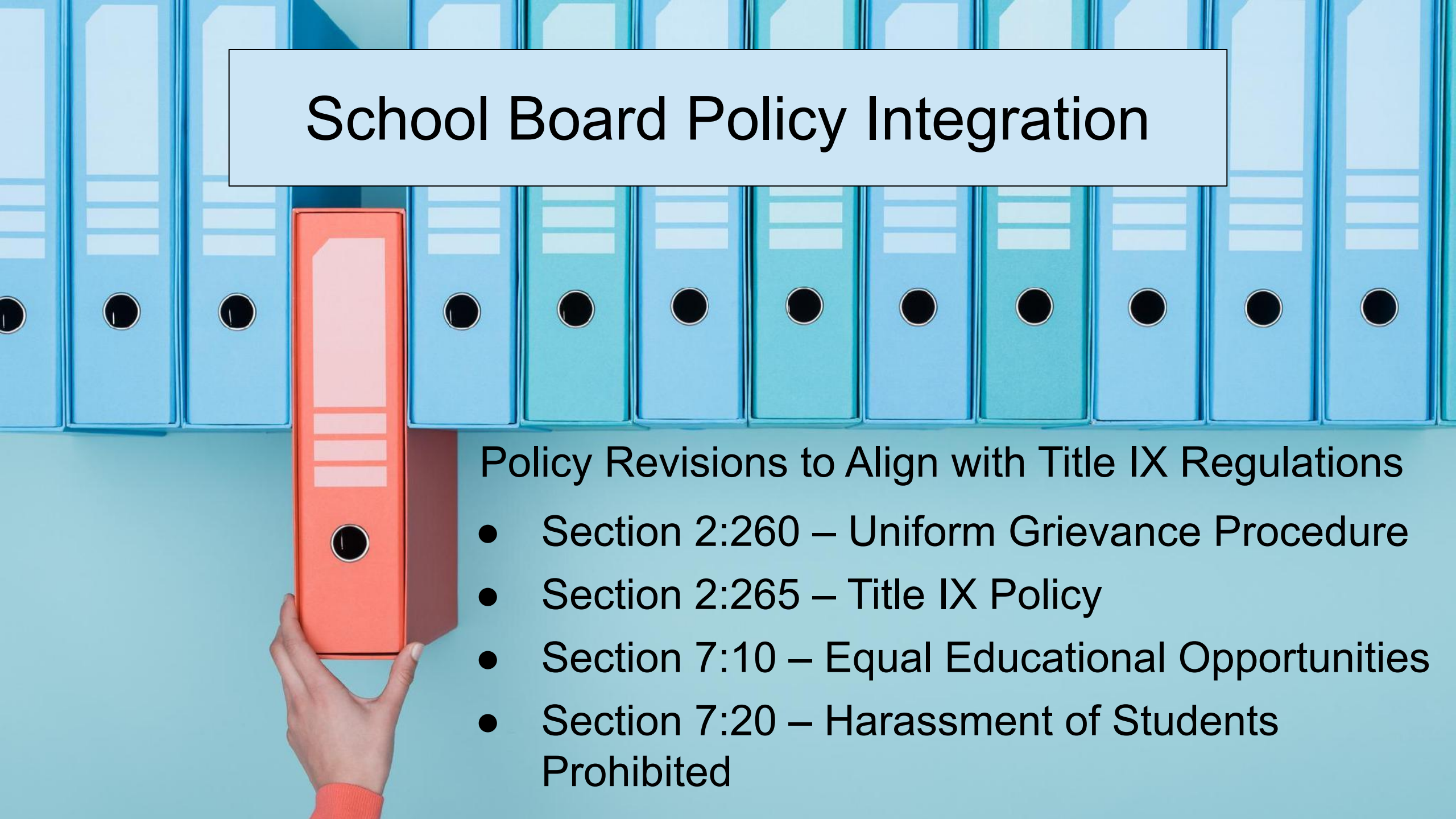
Training materials must be kept for seven years AND posted publicly to school's website for public review.

34 CFR § 106.46(b)(10)(i)(D)

Retaliation is Prohibited



School Board Policy Integration



Policy Revisions to Align with Title IX Regulations

- Section 2:260 – Uniform Grievance Procedure
- Section 2:265 – Title IX Policy
- Section 7:10 – Equal Educational Opportunities
- Section 7:20 – Harassment of Students Prohibited

Thank you

For more information, please contact:

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