

# Title IX for Decision- Makers

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# Today's To Do List:

- ▶ History and Scope of Title IX
- ▶ Decision-Maker required training/information
- ▶ Roles and Responsibilities of the Decision-Maker
- ▶ Determining Credibility
- ▶ Case Study - Sample Report and Determination - Practice
- ▶ Impact of Title IX



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# Decision-Maker Training Requirements

- ▶ Definition of sexual harassment
- ▶ Scope of Title IX
- ▶ How to conduct an investigation and grievance process, appeals, and informal resolution processes
- ▶ How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- ▶ Issues of relevance for investigations and hearings



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# Decision makers must be trained

- ▶ on a presumption that the respondent is **not responsible** for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- ▶ Materials used to train Title IX personnel must be posted on websites, if any, or make materials available for members of the public to inspect if no website.



# Title IX

➤ Title IX is a Federal Civil Rights law stating:

“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 financial assistance.”

➤ 37 small words: huge impact.



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## ► Obligation under TIX —

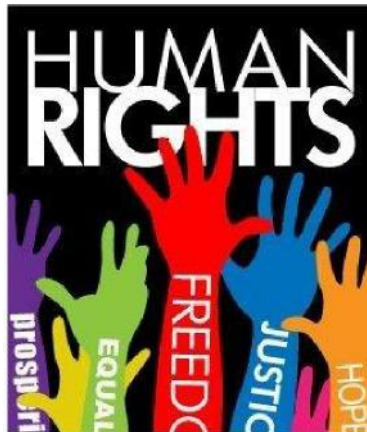
- ☐ **Stop** the Reported Conduct
- ☐ **Prevent** it Recurrence
- ☐ **Remedy** its Effects
  - ☐ **Hold Accountable** through  
Corrective or Disciplinary Action

# History of Title IX



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- **1964 Civil Rights Act**
- prohibits discrimination on the basis of race, color, religion, sex and national origin
  - *42 U.S.C. § 2000d, et seq.*



- **1972 Title IX of the Education Amendments.**

Amended the Civil Rights  
Act of 1964.

*20 USC § 1681 et. Seq.*



# Title IX and Student-to-Student Harassment

- ***Davis v. Monroe County Board of Education (1999)***
  - 526 US 629 (1999)
  - Grandmother sued school district on behalf of her 5<sup>th</sup> grade granddaughter.
  - Claimed school refused to stop harassment that had been reported multiple times.
  - **Lower Court:** School not responsible because it is a student harasser.
  - **Question:** Whether an educational entity can be held responsible under Title IX for student-on-student harassment?
  - **SCOTUS: Yes, the entity can be held responsible. Title IX grants an implied right to education. Established the “deliberate indifference” standard. Damages may be awarded under this standard.**



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# Title IX Prohibits Retaliation



- ***Jackson v. Birmingham Board of Ed.***
- 544 US 167 (2005)
- High school basketball coach claimed he was fired for reporting unequal treatment of girl's basketball team by school district.
- Brought suit under Title IX.
- Lower Court: No private right of action for reporting on behalf of others.
- Question: Whether Title IX provides a right of action for retaliation for reporting unlawful sex discrimination?
- **SCOTUS: Yes, can't protect against discrimination if it does not protect those who report discrimination. Retaliation against Jackson constituted internal discrimination on the basis of sex.**



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# Sex Discrimination = Gender Discrimination?

- *J.L v. Mohawk Consolidated SD* (2010)
- *Pratt v. Indian River CSD* (2010)
- *Putnam v. Somerset ISD* (2010)
- Dept. of Ed negotiated settlement agreements.
- Title IX prohibits discrimination against a student whose appearance/behavior does not conform to gender stereotypes.
- **Title IX protects students who are harassed due to actual or perceived sexual orientation.**
- Premise is that sexual orientation is about sex and notions of gender and protected by Title IX.



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# Scope of Title IX

- Applies to institutions receiving federal financial assistance from the Department of Education, including state and local educational agencies.
- ▶ Approximately 16,500 local school districts, 7,000 postsecondary institutions, as well as charter schools, for-profit schools, libraries, and museums.
- ▶ Also included are vocational rehabilitation agencies and education agencies of 50 states, the District of Columbia, and territories and possessions of the United States.



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# Scope of Title IX cont.

- ▶ Title IX obligations apply to:
  - ▶ recruitment, admissions, and counseling;
  - ▶ financial assistance;
  - ▶ athletics;
  - ▶ sex-based harassment;
  - ▶ treatment of pregnant and parenting students;
  - ▶ discipline;
  - ▶ single-sex education;
  - ▶ retaliation;
  - ▶ and employment.



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# New Definitions=Policy changes required

- ▶ 34 C.F.R. Section 106.2 “**sex-based harassment** is a form of sex discrimination, and include both sexual harassment, which is conduct of a sexual nature, as well as other forms of harassment that are not necessarily “sexual” but are based on a person’s sex, such as pregnancy harassment, gender identity, or sex-based stereotypes.”
- ▶ **Revised definition**: 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 your education program or activity.
- ▶ **Retaliation** definition changes now clarifies that nothing in that definition prohibits institutions from requiring employees to participate as a witness in, or otherwise assist with, a Title IX investigation, proceeding, or hearing. 34 C.F.R. Section 106.2
- ▶ *Remember - sexual harassment is evaluated on the manner it was received, not the manner in which it was intended.*



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# Sexual Discrimination/Harassment under Title IX



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- ▶ Any District employee engages in *Quid Pro Quo* harassment;
- ▶ Any instance of **sexual assault** (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA);
- ▶ Any unwelcome conduct that a reasonable person would find so **severe** or **pervasive**, and **objectively offensive** that it denies a person equal educational access.
- ▶ **Retaliation is strictly prohibited by the regulations.**

# SPOO

- ▶ Does the conduct alleged rise to the level of a policy violation:
  - ▶ Severe or
  - ▶ Pervasive and
  - ▶ Objectively Offensive
- ▶ So as to effectively limit or deny a person's ability to participate in or benefit from your education program or activity.
- ▶ If yes, must hold the Respondent responsible for a violation of policy.



# Elements of Sexual/gender-based Harassment

- A form of sex discrimination involving conduct of a sexual nature.
- Unwelcome sexual advance or conduct that creates an intimidating, hostile or offensive workplace.
- May occur when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic progress.
- Sexual harassment does not have to be of a sexual nature - it can include offensive remarks about a person's sex. i.e. dumb ho, stupid bitch
- Includes any retaliatory conduct in response to reporting such conduct.



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# Hostile Environment Analysis under TIX

- Unwelcome conduct determined by
  - a reasonable person, placed in a substantially similar situation,
  - to be so severe or pervasive, and objectively offensive that
  - it effectively denies a person equal access to the recipient's education program or activity.



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# Prohibitions on Retaliation

- ▶ No school or person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX,
- ▶ or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing.



# What Does Not Constitute Retaliation?

- ▶ The exercise of rights protected by the First Amendment does not constitute retaliation. (No party can be prohibited from discussing the allegations or gathering evidence).
- ▶ Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation; provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.



# Mandatory Response to Reports of Sexual Harassment

A District/School **MUST**

- ▶ respond promptly in a manner that is not deliberately indifferent, i.e., in a way that is not clearly unreasonable in light of the known circumstances;
- ▶ Offer supportive measures to the complainant



# Complainant/Respondent



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“Complainant” means an individual who is alleged to be the **recipient of conduct that could constitute sexual harassment**. The Final Rule expressly recognizes the legal rights of parents and guardians to act on behalf of parties (including by filing formal complaints) in Title IX matters.

- ▶ The person who simply reports is not the “Complainant” for purposes of investigation.

“Respondent” means an individual who has been reported to be the perpetrator of conduct that **could constitute sexual harassment**.

- The Title IX Coordinator has the right/obligation to file a complaint on behalf of a complainant(s) if the complainant is unwilling and the Title IX Coordinator determines there is a “substantial risk of the conduct being repeated”.

# Social Media and AI –Included in Harassment

- ▶ Online harassment can include, but is not limited to, unwelcome conduct on social media platforms such as **sex-based derogatory name-calling, the nonconsensual distribution of intimate images (including authentic images and images that have been altered or generated by artificial intelligence (AI) technologies), cyberstalking, sending sex-based pictures or cartoons, and other sex-based conduct** that, based on the totality of the circumstances, is subjectively and objectively offensive and 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.
- ▶ A recipient must evaluate online conduct with the same factors that are used to determine whether in-person conduct creates a hostile environment.



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# Title IX and Confidentiality

Schools must keep confidential the identity of complainants, respondents, and witnesses, **except as may be permitted by FERPA, or as required by law, or as necessary to carry out a Title IX proceeding.**





## ► Privacy & Confidentiality

- These cases may not be discussed outside your role as Decision-Maker.
- Title IX trumps FERPA, so
- information/evidence/sanctions is required to be shared among the Parties.
- Decision-Makers must recuse if they have a real or perceived conflict of interest.
  - Perceived conflicts may be worse - you can work around real conflicts.

# ► What is a conflict of interest?

► **Any** time that an Decision-Maker has a personal interest (whether actual, potential or perceived) that conflicts with the interests of the Parties.

► **A** conflict of interest challenge to the decision is avoided by not having a conflict or the appearance of a conflict.

► **Be** upfront about any conflicts or perceived conflicts from the beginning of the process.



## ► Supportive Measures

- Offered to both Complainant and
  - Respondent
- Referral to Counseling and/or medical
- No Contact Orders issued
- Academic Accommodations
- Transfer classes/schools
- Job Modification
- Increased Monitoring, Supervision, Security



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# Standard Operating Procedures

## **I. Investigation Process**

- A. If Title IX jurisdiction attaches to the allegations in the Report, the Title IX Coordinator will initiate the Title IX Investigation Process.
- B. The Title IX Coordinator may assign a Deputy Title IX Coordinator, or other designee, to offer and assist in the delivery of Supportive Measures to the Parties.
  - 1. Supportive Measures may include, but are not limited to: counseling, change of class schedule or work assignment, extracurricular changes, excused absences, etc.
  - 2. Supportive measures are offered to both Parties.
- ▶ Must document all supportive measures offered and accepted by the Parties.
- ▶ Parties must be treated equally in the process.



# ▶ Investigation Process

▶ Procedures include:

▶ Complaint;

▶ Intake;

▶ Dismissals of complaints/allegations, *if/when warranted*;

▶ Written Notice of Allegations;

▶ Interviews;

▶ Informal resolution process, *if/when warranted*;

▶ Inspection of evidence/records & draft report;

▶ Process draft report to parties for inspection, questions and response;

▶ Final report and evidence;

▶ Appeals.

▶ Implementation of Sanctions.

▶ Implementation of Remedies.



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# ▶ Notice of Allegations

- ▶ Must be in writing and state all rights afforded to the Parties. (use template)
- ▶ Provided simultaneously to both parties.
- ▶ Parties may respond to the allegations in writing (not mandatory).
- ▶ Notifies parties of right to present relevant witnesses and evidence.
- ▶ Notify parties that the Respondent is presumed not responsible.



## ▶ Standard of Evidence

▶ The **PREPONDERANCE OF EVIDENCE** standard in reviewing evidence and determining if a violation of District Policy has occurred.

▶ “More likely than not”



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# Standard Operating Procedures cont.

- A. A Title IX investigation **commences** upon the investigator serving **written notice of allegations** to Complainant and Respondent (both Parties receive the allegations).
1. Respondent has five (5) days to respond in writing, to the allegations; however, Respondent is not required to respond in writing.
  2. The Parties will be provided with the opportunity to provide witnesses and evidence, relevant to the allegations in the Report.
  3. The investigator will conduct the investigation, according to standard investigatory methods, and adhere to the procedures for Title IX investigations.
  4. The investigator may inform supervisors, or site level administrators, when Parties have been served.



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# Standard Operating Procedures cont.



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A. Upon completion of the investigation, the investigator will draft an investigation report.

1. The Parties will receive a draft copy of the investigation report, and all exhibits.
2. Parties may review the investigation report and exhibits, and respond in writing, should they choose to do so, within ten (10) days.

B. After ten (10) days, the investigator will finalize the investigation report.

1. The final report will include any response that a Party submitted in writing to the draft report.
2. The Final Report will be transmitted to the Title IX Coordinator.
3. Title IX Coordinator transmits the final investigation report, along with all exhibits to the Decision-Maker.

- The Title IX Coordinator is responsible for ensuring that the report is appropriately drafted – you need to review it or send it to your legal counsel for review.
- The Title IX Coordinator is responsible for ensuring that all aspects of the process are followed.

# Standard Operating Procedures cont.

## I. Determination (of responsibility)

- A. The Decision-Maker determines, based on the report and evidence, whether the Respondent should be found responsible for a violation of policy.
  1. The Decision-Maker drafts a written decision (“Determination”) within ten (10) days of receipt of the final investigation report and exhibits.
  2. The Determination is sent to the Title IX Coordinator for distribution to the Parties.
  3. The Title IX Coordinator distributes the Determination to the Parties simultaneously, along with a description of procedural next steps, within five (5) days of receipt.



## Case Study - Locate your Title IX policy

1. What concerns do you have with this investigation report?
2. Has the investigator followed Title IX procedures in the course of this investigation?
3. Does the report give the decision-maker enough information to determine responsibility?
4. What concerns do you have with this decision?
5. Does the decision make sense in light of the investigation?





BREAK

# Decision-Maker Checklist

- ▶ Evidence should be relevant.
- ▶ Evidence should directly support your findings.
- ▶ Conclusions must flow from the findings.
- ▶ Conclusions must be supported by law and policy.
- ▶ Sanctions must be appropriate to the severity of the violation.
- ▶ Remedies must repair any damage done by the conduct.



# The Regulations Require a Decision-Maker to

- ▶ Have a process for assessing credibility when credibility is in dispute and relevant. (§ 106.45(g)).
- ▶ Use a preponderance of the evidence standard of proof to determine whether sex discrimination occurred (§ 106.45(h)).
- ▶ Determine remedies for the complainant or others, if it is determined that sex discrimination occurred, disciplinary sanctions for those found responsible; and other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur. (§ 106.45(h)(3)).



# Weighing Credibility

- ▶ A decisionmaker may weigh the credibility of a party or witness, including when a party or witness refuses to respond to relevant and permissible questions.
- ▶ A decisionmaker may not draw an inference about whether sex-based harassment occurred based *solely* on a party's or witness's refusal to respond to relevant and permissible questions. (§ 106.46(f)(4)).
- ▶ Written notice to the parties of the determination that includes a description of the allegations, information about the policies and procedures used to evaluate the allegations, the decisionmaker's evaluation of the relevant and not otherwise impermissible evidence, a determination whether sex-based harassment occurred, disciplinary sanctions and remedies if relevant, and information about appeal procedures. (§ 106.46(h)).
  - ▶ Send to the Title IX Coordinator to distribute to the parties.



# Credibility Analysis and Evidence - Sample Notice and Report

- ▶ Use the sample investigation report to identify examples of:
  - ▶ Evidence that raises issues or questions and why
  - ▶ Evidence that raises credibility questions or concerns and why
  - ▶ Evidence that supports a party's or witness's credibility or corroborates another piece of evidence and why



# ► Credibility Determinations

- **The most reliable credibility factors** (Gold Standard) when you're struggling to decide who is telling the truth:

- **Corroboration** - witness testimony, text message or email exchanges, video or photo evidence, also assessing reliability of testimony with a witness's recollection of events
- **Consistency** - Is there witness testimony or physical evidence that is consistent with the complainant's testimony? Or are there inconsistencies that make you doubt credibility?
- **Inherent plausibility** - Does the testimony make sense? Which version of the events seems more plausible? Is there a plausible reason for inconsistencies (ex., a student has left out part of the story to protect a friend from getting in trouble)?
- **Motive to falsify** - Is there motivation to lie (fear of retaliation, a witness who wants to protect someone, etc.)?
- **Material omission** - Did someone omit something that was important, despite having an opportunity to provide the information?



# Party and Witness Credibility

- ▶ Credibility impacts preponderance
- ▶ Would a reasonable person do the same?
- ▶ Are there more likely alternative versions of these events?
- ▶ Credibility Assessment involves evaluating whether evidence is believable and reliable
- ▶ Refrain from focusing on irrelevant inaccuracies and inconsistencies
- ▶ Note: Recall does not necessarily diminish witness credibility, nor does refusal to answer - there may be legitimate reasons for not answering
  - ▶ Don't want to get a friend in trouble.
  - ▶ Don't want to admit other bad conduct; i.e. drugs, alcohol.



# Now Apply Facts to Policy

- ▶ DM must presume the Respondent is not in violation unless and until the standard of evidence is met
- ▶ The DM analyzes facts against each policy element to determine whether the Respondent violated policy
- ▶ Written rationale will have to cite to specific evidence supporting conclusion that a policy was or was not violated.
- ▶ Assess credibility of evidence and evidentiary weight.
- ▶ Assess statements as factual, opinion-based, or circumstantial
- ▶ Apply evidentiary standard to determine if policy has been violated
- ▶ Based only upon evidence in the investigation report.



# Decision Maker Roles and Responsibilities

- ▶ Decision-makers have no position on the outcome of the case;
- ▶ DM must have a thorough understanding of:
  - ▶ Institutional policy and procedures, including the investigation process
  - ▶ Whether you are addressing an alleged incident(s), a pattern, or a culture/climate complaint, and findings;
  - ▶ Best practices for asking good questions
  - ▶ Decision-making procedures and management
  - ▶ Evidence and how to weigh it and apply it to institutional policy by the standard of evidence
  - ▶ How to analyze credibility
  - ▶ How to make determinations, decide sanctions/remedies, and write a rationale



# Decision-Maker Skill Sets

- ▶ Decision-makers need to be organized:
  - ▶ Effective questioning skills
  - ▶ Strong writing skills
  - ▶ Subject matter expertise
  - ▶ Analytical skills



# Materials Review

- ▶ Review the complaint file, including:
  - ▶ Complaint
  - ▶ Written Notice of Investigation and Allegations (NOIA)
  - ▶ Applicable policies
  - ▶ Investigation report and appendix
  - ▶ Review carefully and thoroughly
  - ▶ May require multiple reads



# Policy Elements and Procedures

## ► Policy

- What policies are alleged to have been violated?
- What are the elements of those policies?
- Weigh and apply relevant evidence to determine whether a policy violation occurred

## ► Procedures

- Review decision-making procedures
- Note any procedural questions to ask legal counsel



# Understanding the Evidence

- ▶ Evaluate all relevant evidence
  - ▶ Evidence is any kind of information presented to help determine what occurred
  - ▶ Relevant evidence is evidence that tends to prove or disprove the underlying allegations
  - ▶ Directly related evidence is connected to the complaint, but is neither inculpatory nor exculpatory



# Types of Evidence

- ▶ Documentary Evidence
  - ▶ Supportive writings or documents
  - ▶ Electronic Evidence
    - ▶ Photos, text messages, and videos
    - ▶ Physical objects
- ▶ Direct or Testimonial Evidence
  - ▶ Personal observation or experience
  - ▶ Circumstantial Evidence Not eyewitness, but compelling
  - ▶ Hearsay Evidence Statement from outside the interview presented as truthful
- ▶ Character Evidence Evidence of a person's character or character traits



# Questions for Decision-Makers

- ▶ Is this evidence relevant?
- ▶ Is this evidence reliable?
- ▶ Will we be able to rely on this evidence to support a finding?



# Relevance

- ▶ Evidence is generally considered relevant when it helps determine:
  - ▶ Whether the Respondent violated policy,
  - ▶ Credibility of any evidence, including a party or witness statement
  - ▶ Investigator initially evaluates relevance, but the DM ultimately decides
  - ▶ All relevant evidence must be objectively evaluated and considered
  - ▶ Inculpatory: tending to suggest a finding of responsible
  - ▶ Exculpatory: tending to suggest a finding of not responsible



# ► Relevant Evidence

- "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.
- Does the evidence provide information that will aid the Decision-Maker in reaching a determination?
- Who/what is the source of the evidence? It is important to determine the credentials of the person/group responsible for the evidence.
  - Is the source of the evidence credible.
  - Does the evidence corroborate a version of events that makes sense?



► Should the Decision-Maker Know that a Party is a Special Education Student?

► **Yes**, if that knowledge is relevant and assists you in making a determination.



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# Prior Sexual Behavior or Sexual Predisposition

- ▶ Rape shield protections & exceptions defined
- ▶ in 34 C.F.R. § 106.45(b)(6)(i).
- ▶ Evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless:
  - ▶ are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
  - ▶ if they concern specific incidents of the Complainant's prior sexual behavior and are offered to prove consent.



## ► Privileged Information

► In NM, individuals with legal privilege may include **medical providers, attorneys, psychologists, clergy, counselors, and social workers.**

► Privileged information may not be used as evidence **unless** the Party (or parent of minor) has given voluntary, written consent for use of those records.

► Information about any Party's medical,  
► psychological, and similar records are **irrelevant** unless the Party has given voluntary, written consent.



## ▶ Responsibility Determinations & Sanctions

- ▶ The Decision-Maker may be provided with documentation of the Respondent's conduct history, prior to the Decision-Maker issuing a decision.
- ▶ The Decision-Maker will issue a written decision to include:
  - ▶ A determination that a violation of policy has or
  - ▶ has not occurred; and
  - ▶ A list of the allegations;  
and



# Responsibility Determinations and Sanctions

- ▶ A description of the procedural steps taken from the receipt of the formal complaint through determination; and
- ▶ Findings of fact supporting the determination; and
- ▶ Conclusions regarding application of policies to the facts; and
- ▶ A statement of and rationale for the results of each allegations, including sanctions to be imposed on Respondent; and any remedies afforded to the Complainant



# Sanctions and Remedies

- ▶ After making a determination of responsibility, DM must decide sanctions and remedies
- ▶ There must be a nexus between the sanctions and the misconduct.
- ▶ Sanctions must be proportionate to the severity of the violation, taking progressive sanctions/history into account.
- ▶ DM may consider:
  - ▶ Impact statements from the parties.
  - ▶ Precedent, prior misconduct, proven pattern (if charged), attitude, collateral violations, or multiple violations.
  - ▶ Aggravating or mitigating circumstances.
  - ▶ Primary purpose should not be developmental or educational, but equitable and remedial.
  - ▶ Each sanction must have a rationale



# ▶ **SANCTIONS**, if policy violation is found:

## ▶ **Employees:**

- ▶ Reprimand/Warning (oral/written),
- ▶ Training,
- ▶ Suspension, demotion, or involuntary termination/dismissal.

## ▶ **Students:**

- ▶ Warning (verbal or written),
- ▶ Disciplinary Probation,
- ▶ Restricted Privileges or Activities,
- ▶ Community Service,
- ▶ Counseling, training
- ▶ Suspension, Expulsion



► **REMEDIES**, if policy violation is found:

► District must implement any steps or actions designed to restore or preserve equal access to the District's educational programs.

► **May** including individualized services.

► Imposed as deemed appropriate to the individual facts and circumstances of each case.



# Can Parties Appeal?

## ► YES

- When a Title IX complaint or allegation in a complaint is dismissed; and/or
  - From the Decision-Maker's determination;
  - Both Parties have the right to appeal.
- Time periods & requirements specified in SOPs.



# Standard Operating Procedures cont.

## Appeal of Determination



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### A. Appeal of Determination

1. If either Party chooses to appeal the Determination, they may send a written appeal to the Title IX Coordinator within five (5) business days of distribution of Determination.
2. All Parties will be made aware of an Appeal of the Determination.

B. The Title IX Coordinator will transmit the Appeal, along with the final investigation report and exhibits, to the Superintendent, or Designee, for review and decision.

C. An Appeal of the Determination may be considered only when one of the following criteria is met:

1. New facts and evidence are presented, that were not available at the time of the investigation, which will *impact* the outcome of the investigation; or
2. Evidence is produced that demonstrates that the District had a conflict of interest, or bias, that *affected* the outcome of the investigation; or
3. Evidence is produced that the investigation procedures were not followed, which would have *impacted* the outcome of the investigation.

# ▶ Allowable Basis for Appeal

- ▶ New facts and evidence, not reasonably available at the time of the determination, which may impact the outcome of the investigation.
- ▶ Evidence that the Investigator or Decision-Maker had a **conflict of interest or bias** for, or against a party, which affected the outcome of the investigation.
- ▶ Evidence that **investigation procedures** were not followed during the course of the investigation.



# Impact of Title IX

## •1970

- 8% of women age 19 and older were college students.
- 14% of men were college students
- 59% of women were high school grads.



# Impact of Title IX cont.



## ► 2009

- 87% of women were high school grads
- 28% of women had a college degree

## ► 2011

- Title IX covered 49 million students in elementary/secondary schools
- 20 million in post-secondary schools (not including employees)

## ► 2018

- Women represented 51% of matriculants from U.S. medical and law schools.



# Effects of Title IX cont.

- **1971-72**

- Approximately 250,000 women participated in high school sports.
- Approximately 3,750,000 men participated.



# Effects of Title IX cont.

- **2010-2011**

- Approximately 3,250,000 women participated in high school sports.
- Approximately 4,500,000 men participated in high school sports.



## Effects of Title IX cont.

- NCAA has tracked women in college sports since 1981-82.
- Male NCAA student-athletes now number 278,614 nationwide, or 56 % of the student-athlete population.
- Women total 216,378, or 44 %.
- Women's NCAA teams now make up 54 % of NCAA teams, compared with 46 % for the men.





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thank you!