



Tackling Title IX

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1

Introduction

Background

Requirements under the 2024 Title IX Regulations

Practical Application



2



How did we get here?

- Title IX adopted in 1972, signed by President Nixon
 - Prohibited discrimination on the basis of sex in any program receiving federal funds
- For decades, primarily related to athletics
- In 2020, Trump administration Education Department set significant procedural requirements related to allegations of sexual harassment
- Since Biden administration came in, revisions to regulations
 - 2024 Final Rule, 2024 Regulations, New Regulations



3

Scope and Definitions



4

Most Significant Legal Change

2020	2024
• School districts must not act in a manner that is • deliberately indifferent • to sexual harassment	• School districts must • take prompt and effective action • to prevent, eliminate and remedy • sex discrimination



5

Where does Title IX apply?

- School districts are responsible for off-campus conduct if it is “subject to the school district’s disciplinary authority”
 - Includes extracurricular activities and potentially online conduct with a nexus to school
- Includes out-of-country as long as students are subject to school discipline
 - International school trips



6

Discrimination on the Basis of Sex

- Under the 2024 regulations, state that discrimination on the basis of sex includes discrimination based on:
 - sex stereotypes,
 - sex characteristics,
 - pregnancy or related conditions,
 - sexual orientation, and
 - gender identity.

7



Sex Separation

- Sex separation is allowed only in limited circumstances that would cause “no more than *de minimus* harm”
 - Genuinely and objectively non-trivial from the perspective of a reasonable person
- Restroom and locker room facilities are one example
 - Requiring a student to use facilities that do not align with their gender identity causes more than *de minimus* harm

8

Quid Pro Quo	Hostile Environment	Specific Offenses
Employee conditioning an aid, benefit or service on an individual's participation in unwelcome sexual conduct	- Unwelcome and severe, pervasive, and objectively offensive - Degree of effect on complainant's access to school program or activity - Type, frequency, and duration of conduct - Ages, roles, previous interactions and other relevant information about the parties - Location and context - Other sex-based harassment in the school	- Defined by federal law - Sexual Assault - Dating Violence - Domestic Violence - Stalking

Sex-based Harassment

9

Required Policy & Procedures



10

Nondiscrimination Policy

[SCHOOL DISTRICT NAME] does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX, including in employment.



Notice of Nondiscrimination Policy



Notice

Statement of nondiscrimination policy

Statement that inquiries about Title IX may be referred to Title IX Coordinator and/or OCR

Contact information for the Title IX Coordinator

How to locate the nondiscrimination policy and grievance procedures

How to report or make a complaint of sex discrimination



Publication

Notice must be published on district website and in each handbook, catalog, announcement, or bulletin

If full notice won't fit due to size or format of publication, district may include a statement of nondiscrimination, direct reports or concerns to Title IX Coordinator, and provide location of notice on website



Grievance Procedures - Minimum Requirements



Prompt and equitable resolution of student and employee complaints alleging any action prohibited by Title IX

- Treat complainants and respondents equally
- Prohibit conflicts of interest or bias among those involved in administering grievance process
- Respondent must be presumed not responsible for alleged conduct until determination of responsibility is made
- Reasonably prompt timeframe for concluding process
- Must take reasonable steps to protect the privacy of the parties and witnesses during process



13

Minimum Requirements - continued



- Relevant evidence must be objectively evaluated
- Exclude evidence and questions seeking following impermissible evidence (except in defined circumstances):
 - Protected by privilege
 - Records maintained by physician or psychologist
 - Evidence related to complainant's sexual interests or prior sexual conduct
- If more than one grievance process is used, how to determine which procedures apply
- The range of supportive measures and possible disciplinary measures and remedies available for complaints of sex-based harassment



14

Title IX Personnel & Training Requirements



15

Title IX Coordinator

What is this role?

- Plays a critical role in coordinating Title IX compliance efforts
- May serve as investigator and decisionmaker

Who should be the Coordinator?

- Best to designate an administrator or director-level employee
- Can designate by title, rather than name

16

Investigator(s)

What is this role?

- Assesses allegations of sexual harassment by conducting interview and reviewing evidence
- Prepares report at conclusion of investigation

Who can serve in this role?

- Any employee who can fairly and impartially complete investigation, including Title IX Coordinator
- Non-employees with appropriate attention to data privacy obligations
- May designate multiple individuals to serve as investigators

17

Decisionmaker

What is this role?

- Makes final determination regarding responsibility in a Title IX complaint
- Can be the investigator– no longer required to be separate roles

Who may serve in this role?

- Any employee who can make reasoned decision based on Title IX definitions and policy, including Title IX Coordinator
- Non-employees

18

Informal Resolution Facilitator

What is this role?

- Facilitates the informal resolution process and ensures compliance with the requirements of that process

Who may serve in this role?

- Anyone who is trained in the informal resolution process and can serve impartially in this role, *but not the individual who serves as the investigator or decisionmaker*

19

Appellate Decisionmaker

What is this role?

- Considers appeals of dismissals of Title IX complaints
- Considers appeals of other Title IX determinations, if applicable

Who may serve in this role?

- Any employee who can make a reasoned decision based on Title IX definitions and policy, *but not the Title IX Coordinator or individual who served as investigator or decisionmaker*
- Non-employees

20

Training for Title IX Personnel

Responsibility to coordinate efforts to comply with its Title IX responsibilities

Requirements of the grievance process and implementation of supportive measures

Responsibility to take action to ensure equal access to the school's programs or activities for students who are pregnant

Recordkeeping system and obligations

All elements of training required for other roles

Any other training necessary to coordinate

21

Training – All Employees

When is training required?

- Promptly upon hiring or a change in position
- Annually

What should the training cover?

- District's obligation to address sex discrimination
- The scope of conduct that constitutes sex discrimination
- Employees' responsibility to notify Title IX Coordinator of conduct that reasonably may constitute sex discrimination

All employees?

- Yes, all - ensure training includes food service, hall monitors, bus drivers, coaches, custodians, etc.
- It's the responsibility of all employees to notify Title IX coordinators when the employee has information about conduct that reasonably may constitute sex discrimination



22

Complaints



23

Complaints

An oral or written request to the school district that objectively can be understood as a request for the school district to investigate and make a determination about alleged discrimination under Title IX or this part



24

Who can bring a complaint?

A “complainant”

- Student or employee who alleges to have been subject to sex discrimination
- Another person participating or attempting to participate in the district’s education program or activity and alleges to have been subject to sex discrimination

Complaints of sex-based harassment

- Complainant
- Parent or guardian with the right to act for a complainant
- Title IX Coordinator

Other sex discrimination complaints

- Anyone who can make complaint of sex-based harassment
- Any student or employee
- Any person participating or attempting to participate in district’s education program or activity at the time of the alleged sex discrimination



25

Initial Notice

When grievance process begins, district must provide notice to the parties of the following:

- Grievance procedures and informal resolution process
- Sufficient information to allow parties to respond to allegations
 - Identities of parties involved in incident
 - Conduct alleged to constitute sex discrimination
 - Date and location of alleged incident
- Retaliation prohibited
- Parties are entitled to an equal opportunity to access relevant evidence or accurate description of evidence

26

Consolidation and Dismissal

Complaints of sex discrimination that arise out of the same facts or circumstances may be consolidated

Complaints may be dismissed on certain grounds

- Unable to identify respondent
- Respondent is not participating in education program or activity and isn't employed by district
- Complainant voluntarily withdraws the complaint, the Coordinator chooses not to initiate the grievance procedure, and the district determines that without the withdrawn allegations, the conduct wouldn't constitute sex discrimination
- Even if proven, the conduct alleged in the complaint wouldn't constitute sex discrimination

27

Appeal of Dismissal



A complainant may appeal a dismissal



Grounds

Procedural error changes the outcome
New evidence would change the outcome
Conflict of interest or bias



Appeal process requirements

Notify respondent
Equal implementation of appeal procedures for both parties
Decisionmaker must not have taken part in initial investigation or dismissal
Parties have reasonable and equal opportunity to make a statement
Notice to the parties of result of appeal and rationale



28

After Dismissal	Offer	Offer supportive measures to complainant
	Offer	Offer supportive measures to respondent (if notified of allegations)
	Take	Take other appropriate prompt and effective steps to ensure sex discrimination does not continue or recur

29

Conducting the Investigation



30

Key Requirements



Investigations must be “adequate, reliable and impartial”



Burden of Proof on school district, which must gather evidence (not parties' responsibility)



Equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible



The investigator must review all evidence gathered through the investigation

Determine what evidence is relevant and
What evidence is impermissible regardless of relevance



31

Key Requirements



- Equal opportunity to access evidence
 - Parties may access evidence or an accurate description of it
 - If they receive a description, must be able to access it upon request
 - Reasonable opportunity to respond to evidence or description
 - Reasonable steps to prevent unauthorized disclosure



32

Impartiality: Credibility

Inherent Plausibility

Demeanor

Motive to falsify

Corroboration

Past Record

None of the above factors alone determine credibility



33

Evaluating Evidence

Relevant

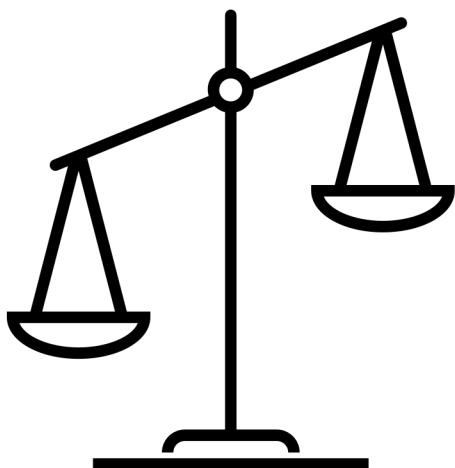
- Related to the allegations of sex discrimination being investigated
- May aid the decisionmaker in determining whether the alleged sex discrimination occurred

Not otherwise impermissible

- Privilege under federal or state law;
- Records of a medical provider unless the party or witness consented to their use; or
- Complainant's sexual interests or prior sexual conduct, unless
 - Offered to prove that someone other than the respondent committed the alleged conduct;
 - Specific incidents of the complainant's prior conduct with the respondent that is offered to prove consent to the alleged sex-based harassment



34



Burden of Proof

- Burden of proof is on school
 - School, not parties, must collect sufficient evidence to support a finding of responsibility
- Preponderance of the evidence:
 - More likely than not that the respondent engaged in the alleged conduct



35



Determining Responsibility

Based on the evidence, did they engage in discrimination based on sex?

- Whether sex discrimination occurred
 - Rationale for decision



36

Remedies

If sex discrimination occurred, Title IX Coordinator must:

- Remedies to complainant and others affected
- Disciplinary sanctions and notice to complainant
- Other prompt and effective steps to ensure that sex discrimination does not continue or recur

Examples

- Counseling
- No contact order
- Adjustments to class schedules
- Escort
- Transportation Changes
- Course adjustments without penalty



37

Discipline



Respondent must not be disciplined until grievance procedures complete and determined to be responsible



No party, witness, or others disciplined for a false statement *solely* based on outcome



38

Appeals

No longer required for determination of responsibility

- Unless offered for similar complaints
- Unlikely that policies offer appeals for similar complaints

As noted elsewhere, still required for dismissal

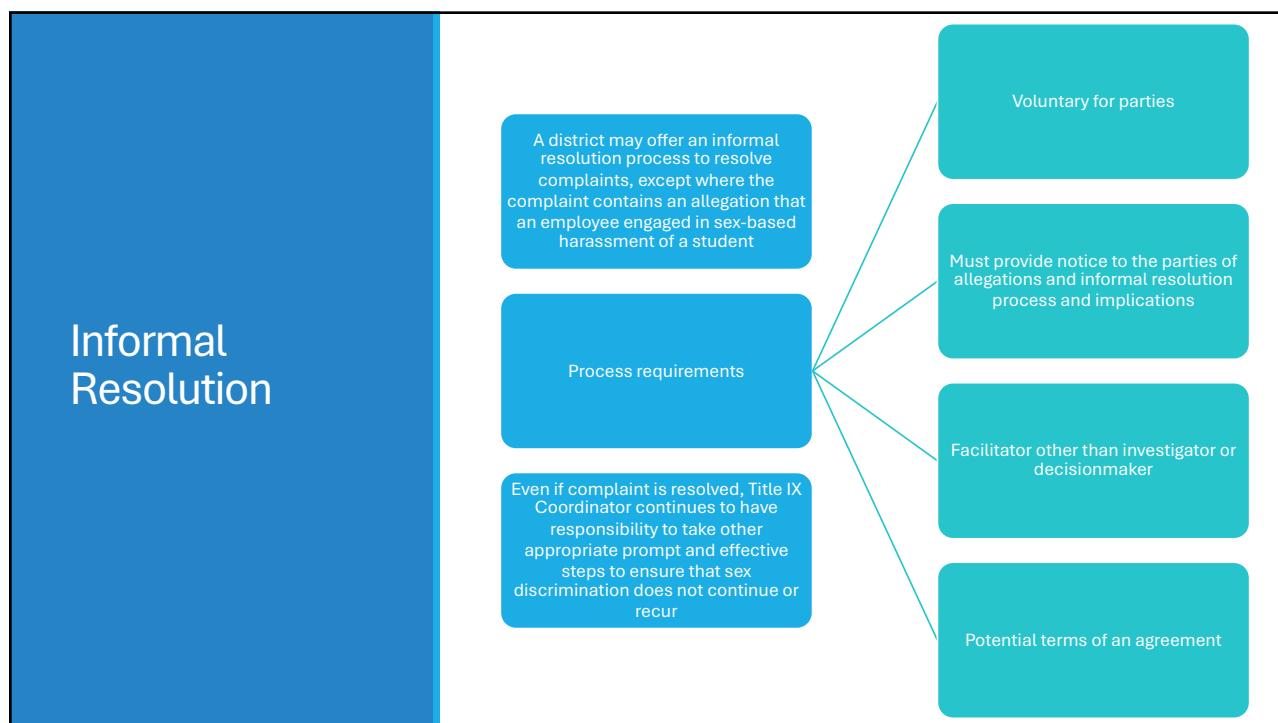


39

Informal Resolution & Supportive Measures



40



41



Supportive Measures - Defined

Individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:

- Restore or preserve that party's access to the school district's education program or activity, including measures that are designed to protect the safety of the parties or the school district's educational environment

OR

- Provide support during the grievance procedures or during the informal resolution process

42

Supportive Measures – Things to Know

Availability: Title IX Coordinator must offer and coordinate for complainant and respondent

Types: District determines what types of supportive measures are “reasonably available”

Purpose: To protect the safety of the parties and offer support, but must not “unreasonably burden” either party

Modifications: District may modify or continue supportive measures at conclusion of grievance procedures or informal resolution process

Review: A party may seek modification or reversal of a district’s decision to provide, deny, modify, or terminate supportive measures applicable to them, with review completed by impartial employee

Privacy: District shouldn’t disclose information about supportive measures, except in limited circumstances

Students with Disabilities: Title IX Coordinator must consult with member of student’s IEP team to determine how to comply with IDEA while implementing supportive measures

43

Examples of Supportive Measures

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Mutual restrictions on contact between the parties
- Increased security and monitoring of certain areas of campus
- Training or education
- Other similar measures



44

Pregnant Students



45

Prohibition on Discrimination

- Only applies to *students* (although staff are separately protected by Title VII and state law)
- “Pregnancy and related conditions”
 - Pregnancy, childbirth, termination of pregnancy, or lactation;
 - Medical conditions related to above; and
 - Recovery from above



46

Notice & Rights regarding Pregnancy

When a student or their parent/guardian informs an employee of pregnancy or related condition, employee must:

- Provide Title IX Coordinator's contact information
- Inform that Coordinator can coordinate actions to prevent discrimination and ensure equal access

Student may voluntarily choose alternative education program

School must allow LOA for time deemed medically necessary

School must have private space for breastfeeding or pumping

- Clean and private
- Not a bathroom
- Could be same space offered for staff

47

Reasonable Modifications

Requirement to make "reasonable modifications"

- Based on individual needs and collaboration with student
- No fundamental alteration
- Student may accept or decline modification
- If student accepts, school district must implement

School may not require documentation for reasonable modifications unless "necessary and reasonable"

- Cannot require certification to participate unless physical ability is necessary and all students are required to provide certification

Examples of reasonable modifications:

- Breaks to pump or attend to health needs
- Intermittent absences for medical appointments
- Access to online education
- Change in courses or sequence
- Allow student to sit/ stand
- Modified desks or seating
- Elevator access



48

Chchchchch...changes

Obligation to
prevent and
remedy sex
discrimination

Streamlined
grievance
procedures

Application to all
sex discrimination,
not only sexual
harassment

Sex separation
must not cause
more than de
minimus harm

Protections for
pregnant students



49

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Questions?

50



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