

TITLE IX TEAM TRAINING

LOS ANGELES COUNTY OFFICE OF EDUCATION

AGENDA

- Title IX Team: Roles and Responsibilities
- New Title IX Definitions and Scope
- Intake Process
- Grievance (Complaint) Process
- Record Keeping Requirements
- Prohibited Retaliation
- Practice Hypotheticals
- Q&A

THE TITLE IX TEAM

ROLES AND RESPONSIBILITIES

THE TITLE IX TEAM

- Title IX Coordinator
- Investigator
- Decision Maker
- Appeals Officer
- Informal Resolution Process Facilitator

*All team members must be impartial, unbiased, and free from conflicts

*All team members must be trained on the new Title IX Regulations

TITLE IX COORDINATOR DESIGNATION OF COORDINATOR

“Each **recipient** must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the Title IX Coordinator.” 34 CFR § 106.8

Recipient refers to the educational institution receiving Title IX funds, i.e. schools.

TITLE IX COORDINATOR DUTIES

- Coordinates Title IX compliance and training
- Conducts intake meeting with Complainant
- Offers supportive measures to Complainant and Respondent
- Explains grievance process, accepts formal complaint & determines mandatory dismissal
- Evaluates emergency removal
- Evaluates use of informal resolution process
- Assigns unbiased investigator free from conflicts
- Sends notices (e.g., Notice of Allegations)
- Considers permissive dismissal of complaint

TITLE IX COORDINATOR DUTIES (CONTINUED)

- Reviews investigative reports, written decision, and appeal decision, but does not make decision about responsibility
- Drafts letter of outcome after written decision issued
- Likely does not determine sanctions
- If applicable, ensures effective implementation of remedies for Complainant, sanctions for Respondent, and overall corrective plan
- May act as a facilitator of an informal resolution process

INVESTIGATOR DUTIES

- Trained and knowledgeable
- Impartial, unbiased, and free from general or specific conflicts of interest
- Investigates formal complaint
 - Reviews complaint
 - Gathers, reviews, weighs, and synthesizes evidence
 - Interviews parties and witnesses
 - Assesses relevance and credibility
- Coordinates two review processes and assesses responses
- Prepares a written investigative report and compiles evidence
- Investigator does not make decision about whether Respondent is “responsible” for violation of sexual harassment policy

DECISION MAKER DUTIES

- Reviews Final Investigative Report de novo to see if any information is missing or incomplete
- Facilitates written “cross-examination” between parties
- Makes conclusions about whether alleged conduct occurred and the decision about responsibility
- Prepares written determination with findings of fact, conclusions, and rationale for the result as to each allegation
- If applicable, recommends sanctions for Respondent and remedies for Complainant

APPEALS OFFICER DUTIES

- Provides written notice of right to appeal to both parties based on three grounds for appeal
- If an appeal is filed, the Appeals Officer evaluates the appeal request(s) to determine if it is within the scope of appeal
- Provides a written Notice of Appeal to both parties
- Reviews both written statements and arguments from the parties
- Renders a written decision on appeal and explains rationale for the result
- Provides the written decision to parties at the same time

INFORMAL RESOLUTION PROCESS FACILITATOR DUTIES

- Obtains *voluntary*, written consent of the parties to resolve the matter anytime before a determination of responsibility is made
- Provides a written notice to the parties disclosing the allegations, the requirements of the process, and notice that the parties can withdraw and resume the grievance process
- Process cannot be used where an employee is alleged to have sexually harassed a student

HOW TO SERVE IMPARTIALLY – HOW CAN THE TEAM AVOID PREJUDGMENT, CONFLICT, OR BIAS?

- From the Preamble to the New Regulations: “The credibility of any party, as well as ultimate conclusions about responsibility for sexual harassment, must not be prejudged and must be based on objective evaluation of the relevant evidence in a particular case.”
- A recipient's grievance process must require that any individual designated by a recipient as a Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. 34 CFR § 106.45(b)(1)(iii).

PREJUDGMENT OF THE FACTS AT ISSUE

- *Prejudgment* refers to passing judgment prematurely or without sufficient reflection or investigation
- Prejudgment often occurs when allegations involve sexual conduct, sexual history, drugs, and/or alcohol use. Sex stereotypes also lead to prejudgment
- Avoid prejudgment during the Title IX process with regards to both Complainants reporting sexual harassment, and Respondents defending against allegations of sexual harassment.

PREJUDGMENT OF THE FACTS AT ISSUE

- The complainant and respondent were previously in a consensual relationship. *The Title IX decision maker assumes the complainant gave consent to the alleged conduct.*
- The respondent is frequently sent to the principal's office for disruptive behavior, and the principal (and district Title IX Investigator) has caught the respondent in lies on several occasions. *The Title IX investigator doubts the truthfulness of the respondent's version of the facts before hearing it.*
- The complainant was drinking at the time of the incident. *The Title IX coordinator presumes the complainant's memory of the incident is inaccurate.*

AVOIDING PREJUDGMENT

- Keep an open mind throughout the investigation process
- Consider all facts prior to reaching conclusions
- Seek out additional facts and/or witnesses if you feel yourself jumping to or unable to form conclusions
- Be cautious of your assumptions

CONFLICTS OF INTEREST

- A conflict of interest occurs when personal or private interests may compromise one's judgment, decisions, or actions
- Conflicts of interest may arise from family, friendships, staff relationships, financial investments, or other social factors
- There are no *per se* conflicts of interest outlined in the Title IX Regulations
 - A conflict of interest that disqualifies an individual from participating in the Title IX process is one that prevents the individual from being *impartial*

CONFLICTS OF INTEREST

- Conflicts of interest may be actual, perceived, or potential:
 - An actual conflict of interest exists when an individual has a personal interest which interferes with or undermines the ability to fulfill official duties and obligations. *The Title IX coordinator's daughter is the respondent in a sexual assault case*
 - A perceived conflict of interest occurs when an individual may reasonably be perceived to have two competing interests that could improperly interfere with or undermine the individual's ability to fulfill their responsibilities in the Title IX process. *The Title IX investigator is a coach on the athletic team the complainant plays on.*
 - A potential conflict of interest occurs when a personal interest may interfere with an individual's ability to fulfill their responsibilities in the Title IX process in the future. *The Title IX decision maker and respondent co-own a tutoring business.*

CONFLICTS OF INTEREST

- In determining whether a conflict of interest exists that disqualifies an individual from participating in the Title IX process, consider:
 - Would I be if comfortable disclosing the conflict to the complainant/respondent, or to my colleagues?
 - Would I be concerned if the conflict and my role in the grievance process came to the Board's attention?
 - How would I feel if someone else with the same potential conflict was participating in the grievance process?

BIAS

- Bias is a prejudice in favor of or against one thing, person, or group, often based on stereotypes rather than actual knowledge of a particular circumstance
- Be aware of and avoid biases throughout the grievance process
 - Pay attention to your language
 - Avoid generalizations
 - Question assumptions
 - Listen

BREAKOUT ROOM ACTIVITY

- In breakout rooms, please take 5 minutes to share how your district plans on assigning the various Title IX Team roles and listen to how other districts are assigning their teams

NEW TITLE IX DEFINITIONS AND SCOPE



NEW SCOPE UNDER TITLE IX REGULATIONS

- Amended definition of sexual harassment
- Amended jurisdiction

NEW DEFINITION OF SEXUAL HARASSMENT

34 CFR § 106.30; CAN ALSO BE FOUND IN AR 5145.71 AND BP 5145.7

- **Sexual harassment** means conduct on the basis of sex under one or more of the following:
 - **Quid pro quo** – An employee of the [school] conditioning the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct;
 - **Hostile environment** – 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 [school]'s education program or activity; OR
 - **Clery crimes** – Sexual assault, dating violence, domestic violence, or stalking

NEW TERMS: “RESPONDENT,” “COMPLAINANT,” “RECIPIENT”

- “**Respondent**” is defined by 34 CFR 106.30 to mean an individual who has been reported to be the perpetrator.
- “**Complainant**” is defined by 34 CFR 106.30 to mean an individual who is alleged to be the victim of conduct that could constitute sexual harassment. of conduct that could constitute sexual harassment.
- “**Recipient**” is the educational institution who receives federal Title IX funds, i.e. “schools.”

REQUIRED RESPONSE TO SEXUAL HARASSMENT

Section 106.44 – Recipient’s response to sexual harassment.

A [school] with actual knowledge of sexual harassment in an education program or activity of the [school] against a person in the United States, must respond promptly in a manner that is not deliberately indifferent (i.e., clearly unreasonable in light of the known circumstances).

WHEN DOES A SCHOOL HAVE ACTUAL KNOWLEDGE?

Actual Knowledge = Notice of sexual harassment or allegations of sexual harassment to a school's:

- Title IX Coordinator, OR
- Any official of the school who has authority to institute corrective measures on behalf of the school, OR
- To any employee of an elementary or secondary school.

Once the school has notice, it must respond and take action (whether a formal complaint is filed or not).

WHAT IS WITHIN THE EDUCATION PROGRAM OR ACTIVITY?

Section 106.44 – Recipient’s response to sexual harassment.

For the purposes of this section ... “education program or activity” includes locations, events, or circumstances over which the [school] exercised substantial control over both the *respondent* and the *context* in which the sexual harassment occurs...



IF ALL REQUIREMENTS ARE NOT MET, THEN CONDUCT DOES NOT FALL UNDER TITLE IX

From 34 CFR § 106.44:

- “**IF** the conduct alleged in the formal complaint:
 - would not constitute sexual harassment as defined in § 106.30 even if proved, or
 - did not occur in the [school’s] education program or activity, or
 - did not occur against a person in the United States,
- **THEN** the [school] must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under title IX ... such a dismissal does not preclude action under another provision of the [school]’s code of conduct.”

DON'T FORGET THAT MANDATED REPORTER OBLIGATIONS STILL APPLY

- Even if the conduct may fall under Title IX, you are still under your obligations as a Mandated Reporter.
- Your duties as a Mandated Reporter include, but are not limited to, making a report using the procedures provided in AR 5141.4, Child Abuse Prevention and Reporting, whenever, within your professional capacity or within the scope of your employment, you have knowledge of or observe a child who you know or reasonably suspect has been a victim of child abuse or neglect. (See *also* Penal Code 11166).
- For a complete list of duties and definitions as a Mandated Reporter, please refer to Board Policy and Administrative Regulation 5141.1, Child Abuse Prevention and Reporting, as well as the *Child Abuse: Mandated Reporter Training for California (EDU)* training available via Target Solutions.
- Please note that your reporting duties as a mandated reporter are individual and cannot be delegated to another person.

HYPOTHETICAL - IS THIS A TITLE IX COMPLAINT?

A high school age student reports to her counselor that she was at a local cross country meet over the weekend. She reported that one of the boys at the meet touched her legs above the knee and was hitting on her. She told the boy that it made her feel uncomfortable and she avoided the boy for the rest of the meet. She reported the incident to her coach, but, to the best of her knowledge, the coach has not done anything.

- Would this be a possible Title IX complaint?
- What should the counselor's next steps be?

INTAKE PROCESS:

SECTION 106.44: RESPONDING PROMPTLY IN A MANNER
THAT IS NOT DELIBERATELY INDIFFERENT

EMERGENCY REMOVAL – CAN OCCUR AT ANY TIME § 106.44(B)(2)(C)

- § 106.44(c) provides that in situations where a respondent poses an immediate threat to the physical health and safety of any individual before an investigation into sexual harassment allegations concludes (or where no grievance process is pending), a school may remove the respondent from the school's education programs or activities.
- A school may need to undertake an emergency removal in order to fulfill its duty not to be deliberately indifferent under § 106.44(a) and protect the safety of the school's community.
- Emergency removal may be undertaken in addition to implementing supportive measures designed to restore or preserve a complainant's equal access to education.

EMERGENCY REMOVAL - ONLY ON AN EMERGENCY BASIS, § 106.44(B)(2)(C)

- Emergency removal is permitted only when the district:
 - Undertakes an **individualized** safety and risk analysis
 - Determines that an **immediate threat** to the **physical** health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal
 - Provides respondent with notice and an opportunity to challenge the decision immediately after the removal
- § 106.44(c) permits schools to remove respondents in emergency situations that arise out of allegations of conduct that could constitute sexual harassment as defined in § 106.30
- This authority to remove a student does not modify that student's rights under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973. (34 CFR 106.44)
- Can place employee respondents on administrative leave during the pendency of the formal complaint process. (34 CFR 106.44)

OVERVIEW OF INTAKE PROCESS

Title IX Coordinator Meeting with Complainant:

- The Title IX Coordinator must:
 - Contact the complainant;
 - Discuss supportive measures (see § 106.30(a)(3)); and
 - Explain the formal complaint process and the option to file a formal complaint.

Once formal complaint is filed, the grievance process must be followed. (more later)

- Note: only the complainant, parent/guardian, or the Title IX Coordinator may sign a formal complaint.

TITLE IX COORDINATOR'S MEETING WITH COMPLAINANT

1. Title IX Coordinator will promptly contact the Complainant and schedule a meeting.
2. At the meeting, the Title IX Coordinator will listen to the allegations and concerns.
3. If the Complainant describes sexual harassment allegations that fall under the scope of Title IX, the Title IX Coordinator will explain the Title IX grievance process.
4. The Title IX Coordinator will inform the Complainant of the right to file a formal complaint and the right to supportive measures even if a formal complaint is not filed.

PROCEDURE IF COMPLAINANT DECIDES NOT TO FILE A FORMAL COMPLAINT

5. If the Complainant decides not to file a formal complaint,
 - The Title IX Coordinator will inform the Complainant of the right to file a formal complaint at a later time (mention statute of limitations).
 - The Title IX Coordinator will also assess whether to independently initiate a complaint if the failure to investigate would be clearly unreasonable considering the circumstances (i.e. based on a safety threat).
 - In such cases, the alleged victim is not a party to the case, but will receive notices as required by the Title IX regulations at specific points in the complaint process.

SUPPORTIVE MEASURES TO BE OFFERED WHETHER OR NOT A FORMAL COMPLAINT IS FILED

6. Upon receipt of a report of Title IX sexual harassment, even if a formal complaint is not filed, the Title IX Coordinator shall promptly contact the Complainant to discuss the availability of supportive measures which are nondisciplinary, nonpunitive, and do not unreasonably burden the other party. Supportive measures are to be offered to the Respondent after a formal complaint is filed.
7. Such measures may include, but are not limited to, counseling, course-related adjustments, modifications of class schedules, campus escort services, mutual restrictions on contact, increased security, leaves of absence, and monitoring of certain areas of the campus. The school must maintain as confidential any supportive measures provided to the extent that maintaining such confidentiality would not impair the ability to provide the supportive measures.
8. The Title IX Coordinator shall consider the Complainant's wishes with respect to supportive measures. (34 CFR 106.30, 106.44)

PROCEDURE IF A FORMAL COMPLAINT IS FILED

9. If a formal complaint is filed, the Title IX Coordinator will gather the physical or digital signature of the Complainant, parent/guardian, and/or the Title IX Coordinator (as applicable) in person, by mail, by email, or by any other method authorized by the school. 34 CFR 106.30
10. If a formal complaint is filed, the Title IX Coordinator will determine if the complaint falls within the scope of mandatory dismissal.

CONSIDERATIONS AFTER FORMAL COMPLAINT IS FILED: DISMISSAL OF COMPLAINT, 34 CFR 106.45

- **Mandatory Dismissal** – The Title IX Coordinator shall dismiss a formal complaint if the alleged conduct would not constitute sexual harassment as defined in 34 CFR 106.30 even if proved. The Title IX Coordinator shall also dismiss any complaint that did not occur in the education program or activity or did not occur against a person in the United States.
- **Permissive Dismissal** – The Title IX Coordinator may dismiss a formal complaint if:
 - the complainant notifies the school in writing that the complainant would like to withdraw the complaint or any allegations in the complaint,
 - the Respondent is no longer enrolled or employed by the school, OR
 - sufficient circumstances prevent the school from gathering evidence sufficient to reach a determination with regard to the complaint.

CONSIDERATIONS AFTER FORMAL COMPLAINT IS FILED: DISMISSAL OF COMPLAINT, 34 CFR 106.45

- Upon dismissal, the Title IX Coordinator shall promptly, and simultaneously to the parties, send written notice of the dismissal and the reasons for the dismissal. (34 CFR 106.45)
- If a complaint is dismissed on the grounds that the alleged conduct does not constitute sexual harassment as defined in 34 CFR 106.30, the conduct may still be addressed pursuant to a school's UCP or other code of conduct policy.

PROCEDURE IF A FORMAL COMPLAINT IS FILED

- II. After the submission of a formal complaint (and ONLY after), the Title IX Coordinator will inform the Complainant of the right to request an informal resolution process (such as mediation) and the right to exit the informal resolution process at any time.

HYPOTHETICAL – EMERGENCY REMOVAL?

A middle school student reports to his teacher that a group of boys in the class have been bullying him at recess for an extended period of time. This complainant alleges that the group of boys would try to slap his buttocks area and even tried to pull down his pants on several occasions. The complainant goes on to say that this group of boys also does this to several other students, but that they are too scared to come forward.

- Does this conduct fall under Title IX?
- What action should the teacher take immediately?
- What action should the Title IX Coordinator take?

GRIEVANCE (COMPLAINT) PROCESS

IMPLEMENTED AFTER A FORMAL COMPLAINT IS FILED

§ 106.45

GRIEVANCE PROCESS

GENERAL REQUIREMENTS: DUE PROCESS/FUNDAMENTAL FAIRNESS

- Treat complainants/respondents equitably; no sanctions until process is complete
- No conflict of interest or bias; trained staff
- Presumption that respondent is not responsible
- Reasonably prompt timeframes
- Range of possible sanctions/remedies
- Evidentiary Standard – Preponderance of Evidence
 - Same standard applicable to complaints against students and employees
 - Same standard applicable to all complaints of sexual harassment
- Describe supportive measures
- Exclude privileged information

GRIEVANCE PROCESS – OVERVIEW

- Filing of Formal Complaint
- Give Notice of Grievance Process
- Dismissal of Formal Complaints Falling Outside Title IX
- Informal Resolution Process
- Investigation
- Determination of Responsibility
- Implementation of Remedies
- Appeals
- Record Keeping

GRIEVANCE PROCESS

NOTICE TO PARTIES ONCE FORMAL COMPLAINT FILED § 106.45(B)(2)

Title IX Coordinator to Provide Written Notice of:

- Grievance Process and Informal Resolution Process – including applicable Board Policies and Administrative Regulations
- Allegations
 - Sufficient details known at the time – Identity of parties; date and location of alleged incident; alleged conduct
 - Sufficient time to prepare response
- If additional allegations are discovered, provide written Notice of Additional Allegations
- Statement that respondent is presumed not responsible and that determination will be made at conclusion of grievance process
- May have advisor of choice (more on this in next slide)
- Inform of Code of Conduct prohibiting false statements
- The preponderance of evidence standard
- May inspect/review evidence
- Identification of potential policy violations (not just Title IX)
- Identification of the range of possible disciplinary sanctions and remedies
- Provide written notice of any changes in the process, including: delays, meetings, interviews, hearings, appeals, decisions, etc.
- For LACOE: The above notice shall also include the name of the investigator, facilitator of an informal process, and decision-maker and shall provide either party with no less than three calendar days to raise concerns of conflict of interest or bias regarding any of these persons. AR 5145.71(d)

GRIEVANCE PROCESS

EACH PARTY MAY HAVE AN ADVISOR OF CHOICE

- The Complainant and Respondent are provided the same opportunities to have others present during any grievance proceeding, including any meeting, interview, and hearing, and may inspect and review any evidence obtained as part of the investigation.
- An advisor may be a parent, family member, attorney, or other person.
- The advisor may assist with a written question and answer process.
- The school may establish restrictions on the extent of an advisor's participation, so long as the restrictions apply equally to both parties.

GRIEVANCE PROCESS: HOW TO CONDUCT AN INVESTIGATION

AFTER FORMAL COMPLAINT IS FILED

GRIEVANCE PROCESS: INVESTIGATION

1. **Presumption** – Respondent is presumed not responsible for the alleged conduct; the determination of responsibility is made at the conclusion of the grievance process
2. **Evidence Gathering** –
 - The Investigator (not Complainant or Respondent) has the burden to gather sufficient evidence

GRIEVANCE PROCESS: INVESTIGATION (CONTINUED)

3. Written Notice with Time to Prepare

- Must provide written notice of any hearings/interviews/meetings with sufficient time to prepare to participate

4. Equal Opportunity for Parties

- To present (fact & expert) witnesses and other inculpatory and exculpatory evidence
- To have others present at any meeting, hearing, or interview, including advisor of choice.
- School may establish restrictions regarding the extent to which the advisor may participate as long as the restrictions apply equally to both parties

5. May not prohibit parties from discussing allegations or gathering/presenting evidence

- But likely can direct parties and witnesses not to tamper with evidence

6. Provide all Evidence to Parties

PREPARATION OF INITIAL INVESTIGATIVE REPORT

Provide evidence

- Includes interview notes, witness statements, photos, videos, text messages
- Whether or not will rely on it
 - Inculpatory and exculpatory evidence

10 day review

Parties to review the evidence and submit a written response before completion of investigative report

Prepare Investigative Report

Investigator to consider responses, finalize report, then provide report to parties

GRIEVANCE PROCESS: INVESTIGATION (CONTINUED)

7. Prepare Investigative Report (without Determination of Responsibility)

- Objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence,
- Determine credibility in a manner that is not based on a person's status as a complainant, respondent, or witness, AND
- Create an investigative report that fairly summarizes relevant evidence

ISSUES OF RELEVANCE SPECIFICALLY RELATED TO CREATING AND DRAFTING AN INVESTIGATIVE REPORT THAT FAIRLY SUMMARIZES RELEVANT EVIDENCE

- The report should be balanced and present the relevant evidence.
- In the Preamble to the Title IX Rule, the United States Department of Education states: “The final regulations do not define relevance, and the ordinary meaning of the word should be understood and applied.”
 - Merriam Webster defines "relevance" as “ having significant and demonstrable bearing on the matter at hand”, and also “affording evidence tending to prove or disprove the matter at issue or the matter under discussion”.
- The Department also states "relevance is the standard that these final regulations require, and any evidentiary rules that a recipient chooses must respect this standard of relevance."
 - For example, a district may not adopt a rule excluding relevant evidence because such relevant evidence may be unduly prejudicial, concern prior bad acts, or constitute character evidence.

GRIEVANCE PROCESS: INVESTIGATION (CONTINUED)

- 8. Provide Investigative Report (without Determination of Responsibility) to parties**
 - At least 10 days prior to the determination of responsibility, send to the parties and their advisors, if any, the investigative report in an electronic format or a hard copy, for their review and written response

GRIEVANCE PROCESS: INVESTIGATION (CONTINUED)

9. Decision Maker to Facilitate Written Question and Answer Process

- After sending the investigative report to the parties and before reaching a determination regarding responsibility, afford each party the opportunity to submit written, relevant questions that the party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party

RELEVANCY AND EVIDENTIARY ISSUES – COMPLAINANT’S SEXUAL PREDISPOSITION

Complainant’s sexual predisposition or prior sexual behavior are not relevant.

Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, unless:

- Such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, OR
- If the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.

RELEVANCY AND EVIDENTIARY ISSUES - OTHER PRIVACY ISSUES

- Privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and federal laws.
- The grievance process must not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- If such records will be used, the school must obtain the party's voluntary, written consent to access, consider, disclose, or otherwise use a party's records that are maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional, which are made and maintained in connection with the provision of treatment to the party.
- If the complaint is against an employee, rights conferred under an applicable collective bargaining agreement shall be applied to the extent they do not conflict with the Title IX requirements.

GRIEVANCE PROCESS: INVESTIGATION (CONTINUED)

I 0. Share New Evidence and Continue Investigation

- Share any new evidence with the parties and continue the investigation related to new information, if needed

I I. Finalize Investigative Report

- Consider and incorporate new information in the Final Investigative Report
- Review the parties' written response to the investigative report, revise if needed, and attach written response to the Investigative Report

GRIEVANCE PROCESS: DETERMINATION OF RESPONSIBILITY

12. Decision-Maker Determines Responsibility

- For LACOE: The written decision shall be issued within 45 calendar days of the receipt of the complaint.
- The timeline may be temporarily extended for good cause with written notice to the complainant and respondent of the extension and the reasons for the action.
 - Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
- For LACOE: In making this determination, LACOE shall use the “preponderance of the evidence” standard for all formal complaints of sexual harassment. The same standard of evidence shall be used for formal complaints against students as for complaints against employees.

GRIEVANCE PROCESS: DETERMINATION OF RESPONSIBILITY (CONTINUED)

12. Decision-Maker Determines Responsibility

- The written decision shall include the following:
 - Identification of the allegations potentially constituting sexual harassment as defined in 34 CFR 106.30
 - A description of the procedural steps taken from receipt of the formal complaint through the written decision, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence
 - Findings of fact supporting the determination
 - Conclusions regarding the application of the school's code of conduct to the facts

(continued on next slide)

GRIEVANCE PROCESS: DETERMINATION OF RESPONSIBILITY (CONTINUED)

I2. Decision-Maker Determines Responsibility

- The written decision shall include the following: (continued)
 - A statement of, and rationale for, the result as to each allegation, including a decision regarding responsibility, any disciplinary sanctions to be imposed on the respondent, and whether remedies designed to restore or preserve equal access to the educational program or activity will be provided to the complainant
 - The procedures and permissible bases for the complainant and respondent to appeal
- The decision-maker shall issue, and simultaneously provide to both parties, a written decision as to whether the respondent is responsible for the alleged conduct.

DISCUSSION – INVESTIGATION DIFFERENCES

In breakout rooms, please discuss how investigations pursuant to the new Title IX regulations differ from the investigations that you have had to conduct in the past.

- What parts are better? Why?
- What parts are worse? Why?
- Where do you still have questions and/or concerns?

GRIEVANCE PROCESS: REMEDIES

When a determination of responsibility for sexual harassment has been made against the respondent, a school shall provide remedies to the complainant. Such remedies may include “Supportive Measures,” but need not be nondisciplinary or nonpunitive and need not avoid burdening the respondent.

GRIEVANCE PROCESS: CORRECTIVE/DISCIPLINARY ACTIONS

- The educational institution shall not impose any disciplinary sanctions or other actions against a respondent, other than “supportive measures,” until the complaint procedure has been completed and a determination of responsibility has been made.
- For LACOE: For students in grades 4-12, discipline for sexual harassment may include suspension and/or expulsion. After the completion of the complaint procedure, if it is determined that a student at any grade level has committed sexual assault or sexual battery at school or at a school activity off school grounds, LACOE shall immediately suspend the student and shall recommend expulsion.

GRIEVANCE PROCESS: CORRECTIVE/DISCIPLINARY ACTIONS

For LACOE: Other actions that may be taken with a student who is determined to be responsible for sexual harassment include, but are not limited to:

- Transfer from a class or school as permitted by law
- Parent/guardian conference
- Education of the student regarding the impact of the conduct on others
- Positive behavior support
- Referral of the student to a student success team
- Denial of participation in extracurricular or cocurricular activities or other privileges as permitted by law
- Disciplinary action, such as suspension or expulsion, as permitted by law
- When an employee is found to have committed sexual harassment or retaliation, LACOE shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law and collective bargaining agreement.
- Note: Title IX Coordinator is responsible for effective implementation of remedies

HYPOTHETICAL – CORRECTIVE/DISCIPLINARY ACTIONS

Through the grievance (complaint) process, it was determined that a male student had sexually harassed a female student on several occasions. The male student was suspended from school as a result. However, the female student's parents are concerned that the male student will be returning to school, as the students share three of the same classes. Two of these classes are only offered at that time.

- What possible additional actions would you take?
- Should the male student be removed from these classes as requested by the female student's parents?

GRIEVANCE PROCESS: APPEALS – EITHER PARTY MAY APPEAL

EITHER PARTY may appeal:

- the decision OR
- dismissal of a formal complaint OR
- any allegation in the complaint,

IF the party believes that:

- a procedural irregularity affected the outcome, OR
- new evidence is available that could affect the outcome, OR
- a conflict of interest or bias by the Title IX Coordinator, investigator(s), or decision-maker(s) affected the outcome

Additional bases are permissive as long as offered equally to both parties (up to school)

GRIEVANCE PROCESS: APPEALS – TIMING

An appeal must be filed in writing within 10 calendar days of receiving the determination, stating the grounds for the appeal and including any relevant documentation in support of the appeal. Appeals submitted after this deadline are not timely and shall not be considered. Either party has the right to file a complaint with the U.S. Department of Education's Office for Civil Rights.

GRIEVANCE PROCESS: APPEALS – SCHOOL'S RESPONSIBILITIES

If an appeal is filed, the educational institution shall:

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties
2. Ensure that the decision-maker(s) for the appeal is trained in accordance with 34 CFR 106.45 and is not the same decision-maker(s) who reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator
3. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
4. Issue a written decision describing the result of the appeal and the rationale for the result
5. Provide the written decision simultaneously to both parties. For LACOE: A written decision shall be provided to the parties within 20 calendar days from the receipt of the appeal.

RECORDKEEPING

MAINTAIN FOR 7 YEARS, § 106.45(B)(10)

RECORDKEEPING – MAINTAIN FOR 7 YEARS, § 106.45(B)(10)

- Investigation Records (including determination, recordings, transcripts, sanctions, remedies)
- Appeal Records
- Record of any Informal Resolution
- Training materials (make such training materials publicly available on web site or available upon request by members of the public if no website)

RECORDKEEPING – SCHOOL’S RESPONSE TO REPORTS AND FORMAL COMPLAINTS

- Documentation of school’s response to all reports and formal complaints
 - Any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment
 - If the school did not provide supportive measures, it must document why that decision was not clearly unreasonable in light of the known circumstances
- In each instance, school must document
 - Why its response was not deliberately indifferent
 - The measures taken which were designed to restore or preserve equal access to the education program or activity

PROHIBITED RETALIATION UNDER TITLE IX



RETALIATION IS PROHIBITED UNDER § 106.71(A)

Retaliation prohibited. No [school] or other 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 an investigation, proceeding, or hearing.

EXAMPLES OF PROHIBITED RETALIATION

Retaliation includes:

- Intimidation, threats, coercion, or discrimination
- Avoiding the Title IX process – Proceeding under the student code of conduct process when the alleged behavior falls under Title IX in order to avoid the rigorous Title IX grievance procedures may constitute retaliation.
- Improper release of confidential information – The school must keep confidential the identity of Complainant, Respondent, and witnesses EXCEPT as required by law or to carry out Title IX proceedings (including the investigation or written cross examination)
- Complaints alleging retaliation are filed according to the same grievance procedures for sex discrimination.

EXAMPLES OF CONDUCT THAT DO NOT CONSTITUTE RETALIATION

- The exercise of First Amendment rights does not constitute retaliation.
 - Offensiveness of a particular expression as perceived by some students, standing alone, is not a legally sufficient basis to establish a sexually hostile environment under Title IX. In order to establish a violation of Title IX, the harassment must be sufficiently serious to deny or limit a student's ability to participate in or benefit from the education program.
- Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX grievance proceeding does not constitute retaliation

HYPOTHETICALS



EXAMPLE #1

Chelsea purposefully touches Amy's crotch area during class on one occasion.

ASK:

- Is this based on sex?
 - Is it quid pro quo? Hostile environment? A felony crime such as sexual assault, dating violence, domestic violence, or stalking?
 - Is it occurring in the education program or activity and in the U.S.?
- 

EXAMPLE #1

Chelsea purposefully touches Amy's crotch area during class on one occasion.

- This is considered sexual assault. This is automatically considered sexual harassment. You do not need to ask whether it was severe, pervasive, and objectively offensive.
- It does not matter that they are of the same sex, and it does not matter that the perpetrator is a female. Anyone can be a sexual harasser.

EXAMPLE #2

Emily, the Associated Student Body President, tells Kevin during an ASB meeting at school that she will make him the Vice President of the ASB if he goes out on a date with her.

ASK:

- Is this based on sex?
- Is it quid pro quo? Hostile environment? A clery crime such as sexual assault, dating violence, domestic violence, or stalking?
- Is it occurring in the education program or activity and in the U.S.?

EXAMPLE #2

Emily, the Associated Student Body President, tells Kevin during an ASB meeting at school that she will make him the Vice President of the ASB if he goes out on a date with her.

- This is not an example of quid pro quo sexual harassment because Emily is not an employee of the school.
- It may be hostile environment sexual harassment if Emily has taken additional actions that together may be considered severe, pervasive, and objectively offensive, and if the conduct occurred within the education program or activity. More information is needed.

EXAMPLE #3

John and Mary are classmates. They see each other in the hallway almost every day at school. For months, John would walk up to Mary anytime he saw her and would brush her hair aside and whisper in her ear about sexual acts he wanted to perform on her. He would also make sexually explicit gestures toward her when they sat near each other during class. Mary did not say anything to John about what he did because she was afraid to say anything, but she would turn her head or walk in the other direction every time she saw him.

ASK:

- Is this based on sex?
- Is it quid pro quo? Hostile environment? A clery crime such as sexual assault, dating violence, domestic violence, or stalking?
- If hostile environment – is it unwelcome conduct? Is it severe, pervasive, and objectively offensive such that it denies Mary equal access to the education program?
- Is it occurring in the education program or activity and in the U.S.?

EXAMPLE #3

John and Mary are classmates. They see each other in the hallway almost every day at school. For months, John would walk up to Mary anytime he saw her and would brush her hair aside and whisper in her ear about sexual acts he wanted to perform on her. He would also make sexually explicit gestures toward her when they sat near each other during class. Mary did not say anything to John about what he did because she was afraid to say anything, but she would turn her head or walk in the other direction every time she saw him.

- This is likely hostile environment sexual harassment. It is arguably severe, pervasive, and objectively offensive. This should be reported to the Title IX Coordinator.

QUESTIONS?
