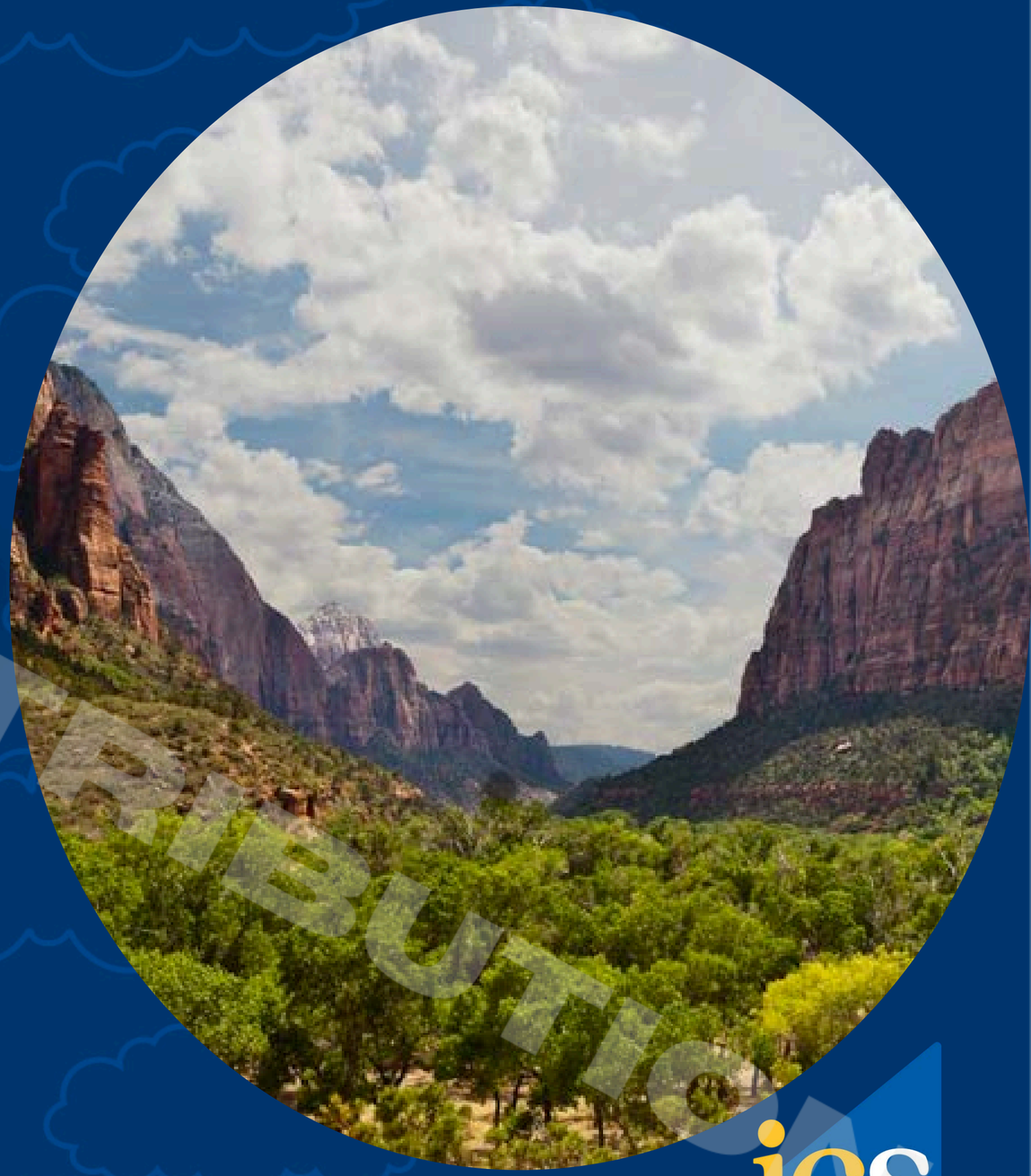
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K12: UTSBE

June 2024

The Journey to Understanding & Compliance (2020 &2024)



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WELCOME



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ABOUT US

OUR MISSION

To provide the best Care and Support for our clients, Community Partners, employees, contractors, collaborators, vendors, and all others who encounter our company.

GOAL

To assist schools and districts in providing a safe and healthy learning and working environment for students, faculty and staff.

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ICS TEAM

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Courtney Bullard
CEO



Betsy Smith
Director of Title IX Services



Celeste Bradley
Director of EEO Services



Tawny Alonzo
Title IX & Equity Specialist



Brittany Gates
Title IX & Equity Specialist



Amy Buck
Title IX & Equity Specialist/Attorney



Lindsay Hatzis
Title IX & Equity Specialist/Attorney



Michaela Bland
Title IX & Equity Specialist/Attorney



Erica D'Agostino
Title IX & Equity Specialist

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TRAINING APPROPRIATE FOR:

- Title IX Coordinators
- Deputies/Designees
- Decisionmakers
- Investigators
- SMRA
- Appellate Decisionmakers
- Others involved with Title IX

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LET'S GET TO KNOW EACH OTHER!

Join at menti.com | use code 6688 8786

Mentimeter

What county do you live in?

155 responses

Weber	Box Elder	San Juan	Davis
Sanpete	Utah	Salt Lake	Davis
Weber	Wasatch	Utah	Salt Lake
Juab	Salt Lake	Utah	Kane
Utah County	Summit	Utah County	Weber

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AGENDA– DAY 1

01 Welcome

02 Background and Overview

03 The Role of the Title IX Coordinator

04 Triage and Evaluation

05 Q&A

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BEFORE WE GET STARTED...

- Not legal advice
- Materials
- Questions
- Style of Training
- Breaks
- Posting Link
- No recording



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BACKGROUND & OVERVIEW

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(UTAH SPECIFIC):

- **HB 257- Prohibits students from accessing sex-specific restrooms, locker rooms, shower rooms, and changing rooms in public schools that do not correspond with a person's biological sex**
- **HB 11- restricts transgender students from joining school sports teams that align with their gender identity**

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WHAT THIS TRAINING DOES AND DOES NOT COVER:

- Training for your Title IX Team under the 2024 Regulations
- Includes Coordinators, Designees, Investigators, etc.

- Employee training
  - YOU are responsible for this

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REMEMBER YOUR WHY...





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WHAT IS TITLE IX?

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



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REMINDER:



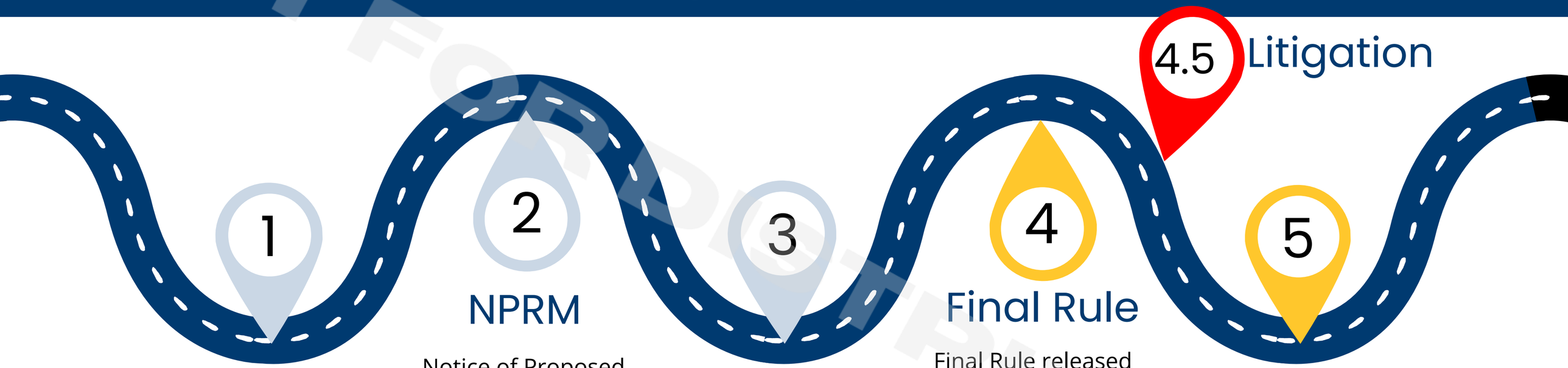
- 2020 Regulations and 2024 Regulations
- Athletics NPRM has been tabled

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2024 TITLE IX REGULATIONS TIMELINE



Feedback

Department seeks feedback on 2020 Title IX Regulations

NPRM

Notice of Proposed Rulemaking (NPRM) July 2022

Comment

Comment Period 240,000+

Final Rule

Final Rule released April 19, 2024

Implementation

Implementation of August 1, 2024

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“The purpose of these amendments is to better align the Title IX regulatory requirements with Title IX’s nondiscrimination mandate. These amendments clarify the **scope and application of Title IX** and the obligations of recipients (schools) of Federal financial assistance from the Department...to provide an educational environment free from discrimination on the basis of sex, including through responding to incidents of sex discrimination. These final regulations will enable all recipients to meet their obligations to comply with Title IX while providing them with appropriate discretion and flexibility to account for variations in school size, student populations, and administrative structures.”

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THE LEGALESE OF IT ALL...



- Unofficial and published versions of the regulations
- 1561 pages and the regulations begin on pg. 1505
- Preamble - what is it?

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Department of Education Resources / Downloads

- Department of Education Press Release
- Final Regulations – Published in Federal Register April 29, 2024
- Final Regulations Including Preamble – Unofficial Version
- Regulations Only
- Fact Sheet
- Summary of Major Provisions
- Resource for Policy Drafting

icslawyer.com

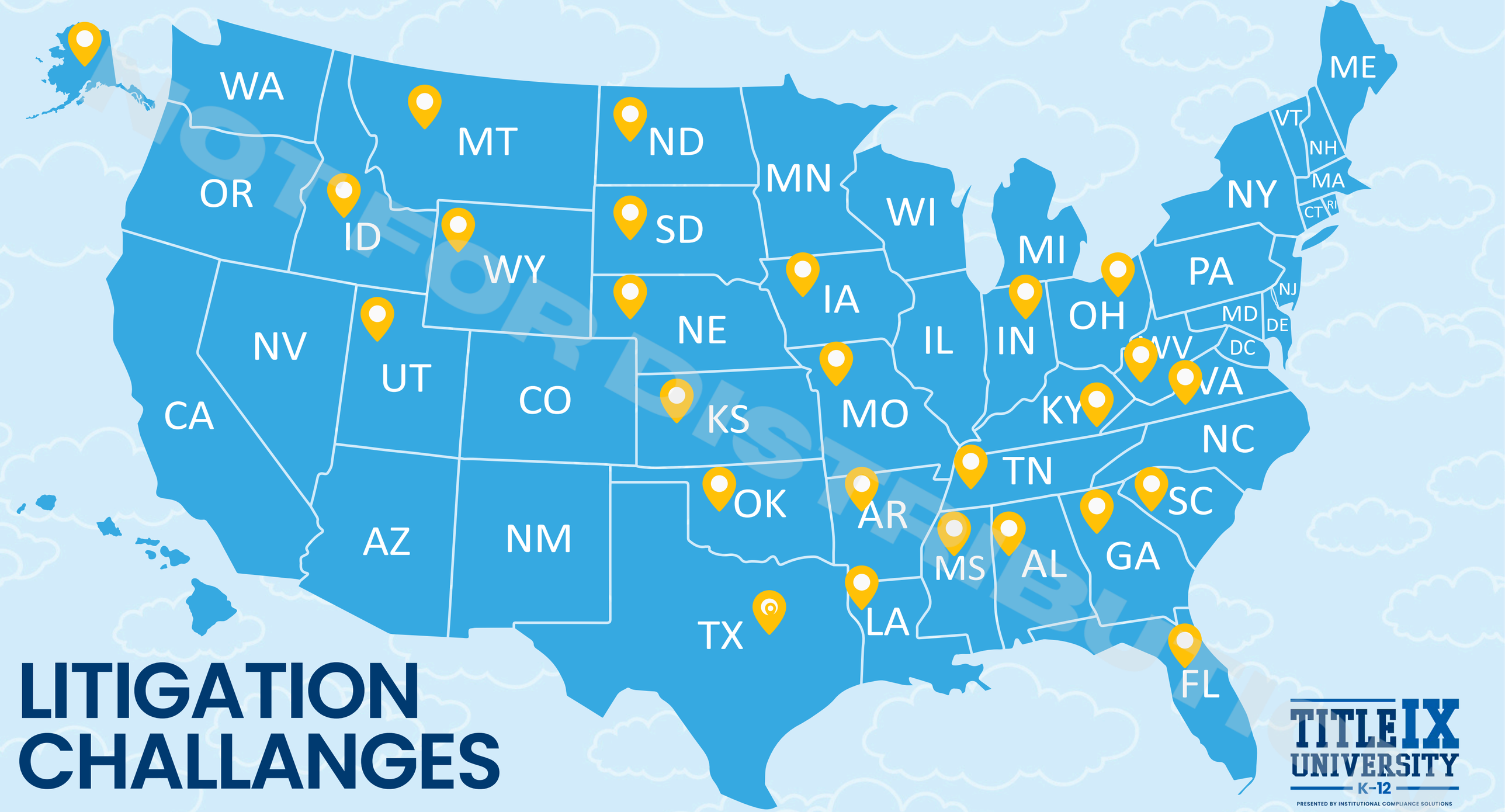
Litigation Challenges

- The State of Louisiana v. U.S. Department of Education (W.D. La. filed April 29, 2024) (joined by Mississippi, Montana, and Idaho)
- State of Texas v. U.S. Department of Education (N.D. Tex. filed April 29, 2024)
- State of Alabama v. U.S. Department of Education (N.D. Ala. filed April 29, 2024) (joined by Florida, Georgia and South Carolina)
- State of Tennessee v. U.S. Department of Education (E.D. Ky. filed April 30, 2024) (joined by Kentucky, Ohio, Indiana, Virginia and West Virginia)
- State of Oklahoma v. U.S. Department of Education (W.D. Okla. filed May 6, 2024)
- The State of Arkansas v. U.S. Department of Education (E.D. Mo. filed May 7, 2024) (joined by Missouri, Iowa, Nebraska, North Dakota and South Dakota)
- State of Kansas v. US Department of Education (D. Kan. filed May 14, 2024) (joined by Alaska, Utah and Wyoming)

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LITIGATION CHALLANGES

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Caution



The placement of commas, colons, semi-colons, and the use of AND/OR is CRITICAL in BOTH regs.

Pause when reading and attempting to understand. The ENTIRE intent of a section can be changed with the misplacement/misunderstanding of punctuation or grammar. Ex: the words “and/or” after the final semicolon in section.

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WHAT NEEDS TO HAPPEN BY THE IMPLEMENTATION DEADLINE UNDER 2024?

01 Update policies and procedures

02 Disseminate policies and procedures to your community

03 Title IX team reevaluated/identified

04 Title IX team trained BEFORE they do the work

05 Communication with your school community

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BIG PICTURE

2020 Regulations v. 2024 Regulations

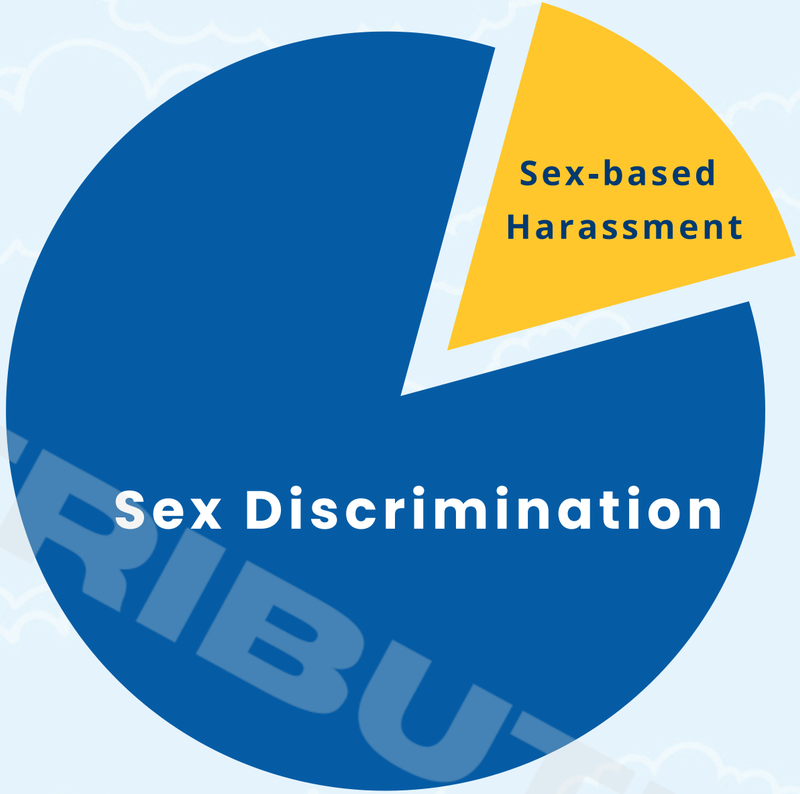


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Sex Discrimination

- 2024, required **grievance procedures** for ALL sex discrimination, more than sex-based harassment (2020 sexual harassment). 34 CFR 106.45
- Includes pregnancy and related conditions, athletics, SOGI, etc.
- Mandatory reporting requirements apply to ALL sex discrimination.



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SOME DIFFERENCES TO NOTE

2020 - 10 day review periods
2024 - no required time period for review and only ONE required review

2024 - Separate Investigator/Decisionmaker **NOT** required

Posting links - (ish) - **2020** Required
2024 - Still must provide training materials if asked



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On the Basis of Sex

This is the big issue surrounding the current litigation, injunctions, and legislation.

2020 - Not Defined in the Regulations (it can be found in guidance).

2024, this is defined to include:

Discrimination on the basis of sex includes discrimination on the basis of:

1. **Sex Stereotypes**
2. **Sex Characteristics**
3. **Pregnancy or Related Conditions**
4. **Sexual Orientation**
5. **Gender Identity**

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2020 Jurisdiction



Education Program or Activity

Locations, events, or circumstances (operations) over which the district exercised substantial control over both the respondent AND the context in which the sexual harassment occurs.





Includes online sexual harassment but it must be analyzed to determine if it occurs in education program or activity.

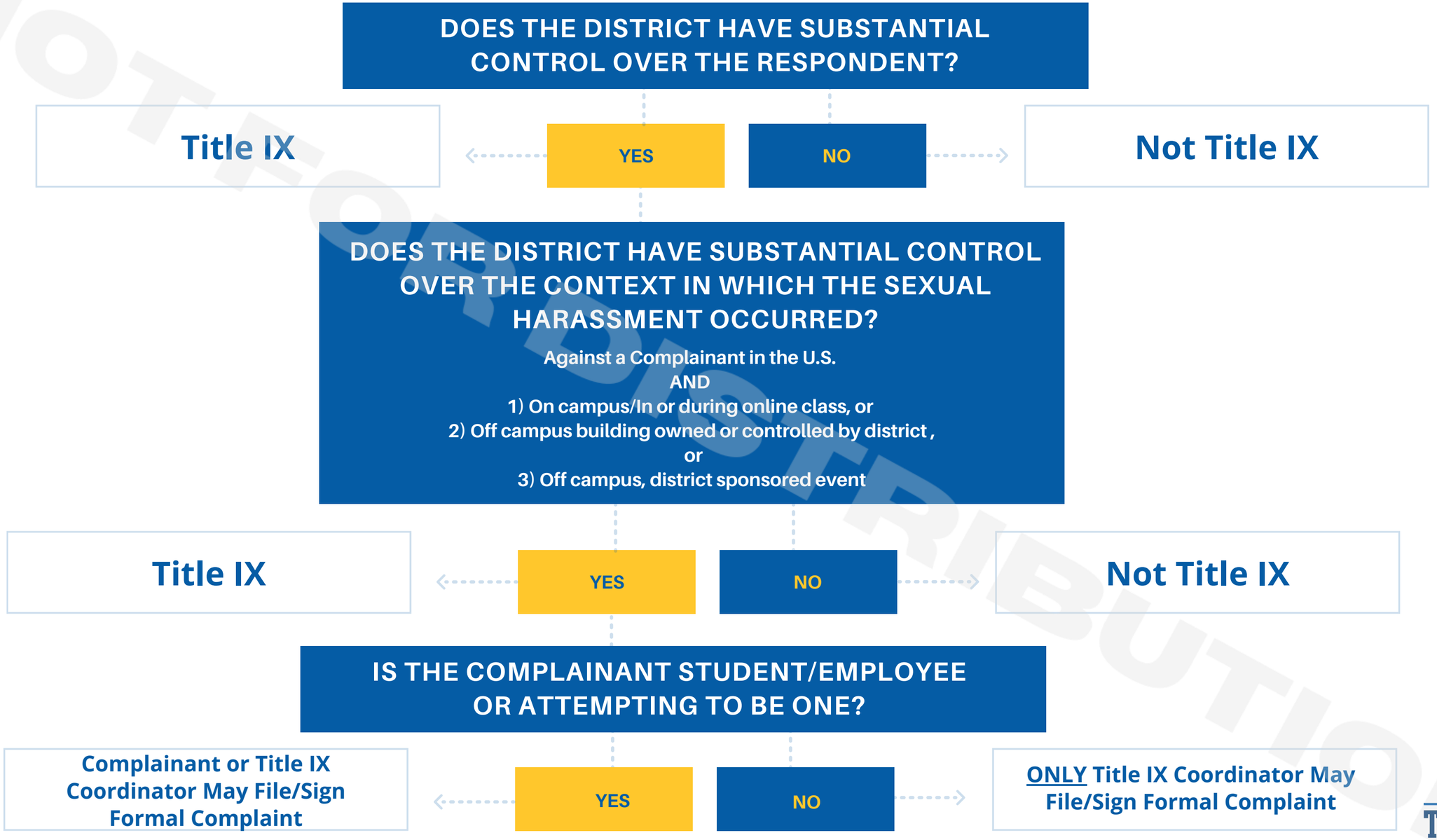
Does not create or apply a geographic test, does not draw a line between “off campus/property” and “on campus/property,” & does not create a distinction between sexual harassment occurring in person vs online.



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2020 Education Program or Activity/Jurisdiction



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APPLICATION

(JURISDICTION – EXPANDED IN 2024)

ALL sex discrimination that occurs under the school's education program or activity in the U.S., including but not limited to:

- Conduct that occurs in a building owned or controlled by a student organization that is officially recognized by the school.
- Conduct that is subject to the school's disciplinary authority. (What is school's jurisdiction for other policies?)
- Even when some conduct alleged to be contributing to the hostile environment occurs outside of the education program or activity or outside of the US.

Consider: Does the behavior OUTSIDE of education program or activity CONTRIBUTE to a sex-based hostile environment INSIDE the education program or activity?

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NOTE: PARTIES

Complainant:

1. A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or this part (Part 106: Nondiscrimination on the basis of sex in education programs or activities receiving federal financial assistance).
2. **(added under 2024**)A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or this part and who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination.

Respondent:

A person who is alleged to have violated the school's prohibition on sex discrimination.

Note: School is NOT a party

Note: It doesn't matter whether individual is still a student or employee of the school.

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WHAT IS DIFFERENT

- Terminology changes
- Training requirements
- Grievance procedure
- Role of Coordinator expanded
- Pregnancy requirements



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Language Changes

2020	2024
Report	Notification
Formal Complaint	Complaint
Formal Grievance Process	Grievance Procedures
Pregnancy Accommodations	Modifications



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Definition Changes

Pages 1505-1515



Complainant: 2024 Adds student or employee who WAS participating or attempting to participate in the education program or activity at the time of the alleged sex discrimination.

Complaint: Oral or Written under 2024, must be written under 2020.

Pregnancy or Related Condition: Extensive.

Relevant: (2024) When it may aid in showing whether the alleged sex discrimination occurred (not defined in 2020).

Student
Student with a Disability
Admission
Applicant
Confidential Employee
Supportive Measures

Consent: NO DEFINITION in 2020 OR 2024.

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STUDENT 2024



Person who has gained admission

Admission: Selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient (school).

Note:
This may be different than other definitions of "student" within your policies and handbooks. Recommend that you update all of them to be the same!

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ESTABLISH REASONABLY PROMPT TIMEFRAMES FOR THE MAJOR STAGES OF THE GRIEVANCE PROCEDURES

Major Stages (2024 language) Include:

01 Evaluation (whether to dismiss or investigate a complaint)

02 Investigation

03 Determination

04 Appeal

Allow for reasonable extension of timeframes on case-by-case basis for good cause and with notice to the parties that includes reason for delay.

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WHAT PROCEDURES/ PROCESS FOR PRE-AUG. 1, 2024 CONDUCT?

- Implementation date of August 1st for 2024 regulations
- 2020 regulations apply for reports that come in before August 1st (even with no injunction)
- “The department will not enforce these final regulations retroactively” p.1354

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Let's get into the details



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THE ROLE AND SCOPE OF THE TITLE IX COORDINATOR

- Make room on your plate
- Title IX Team
- Nondiscrimination Policy and Notice
- Training Requirements
- Prevention
- Recordkeeping
- Supportive Measures
- IDEA and Title IX Overlap
- Emergency Removal
- Retaliation
- Informal Resolution



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Make Room on Your Plate



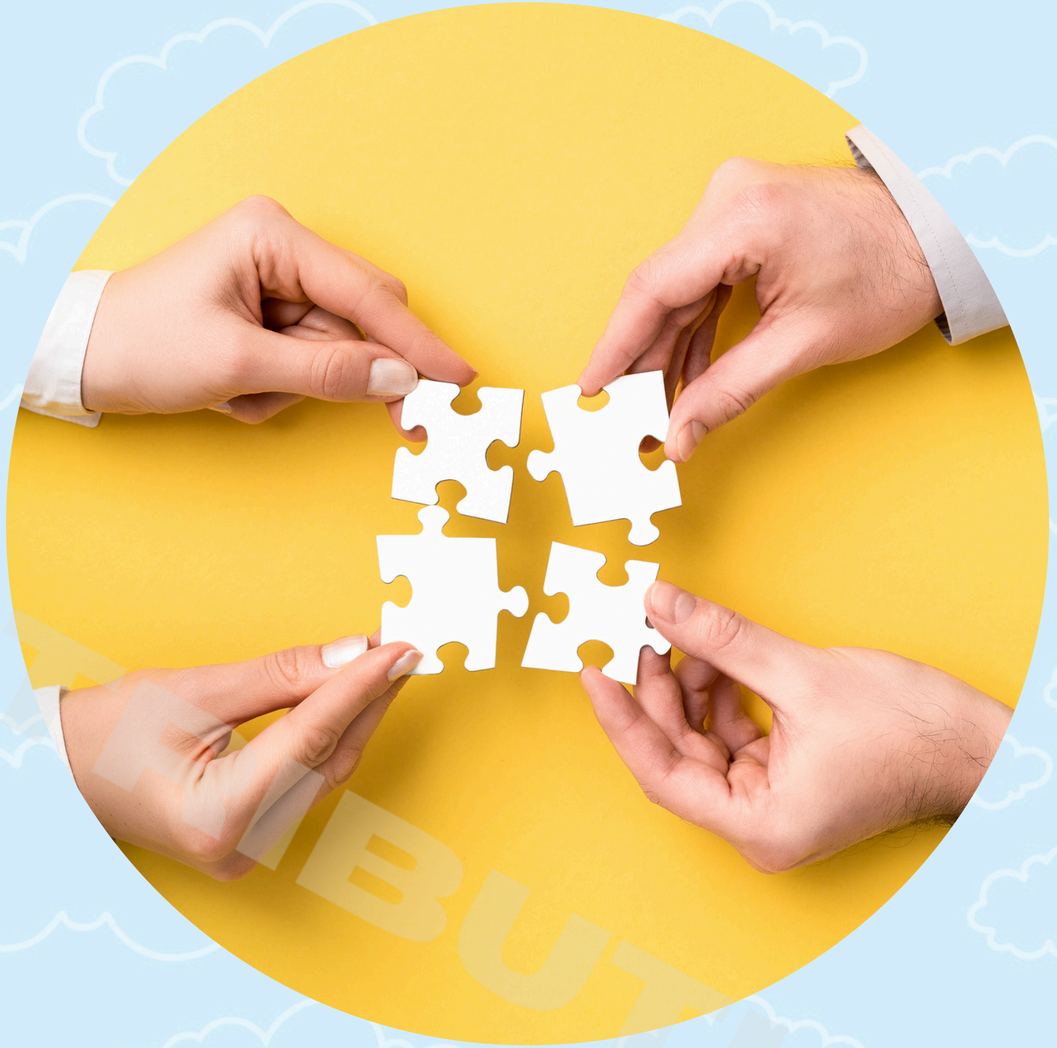
New/Increased Responsibilities Under 2024

- Required trainings
- Publication of information
- More conduct covered under Title IX and grievance procedures
    - Pregnancy & definition of “on the basis of sex”
- New team members/changing roles
- Initiating more complaints
- Monitoring barriers
- Increased recordkeeping

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TITLE IX TEAM



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DESIGNATE A TITLE IX COORDINATOR

Title IX Coordinator must coordinate the school's efforts to comply with its responsibilities under Title IX.
<u>Delegate</u> **Designees may be appropriate and Title IX Coordinator may delegate specific duties to one or more designees.**
<u>Designees (Deputies)</u> **If more than one coordinator, <u>one</u> must be designated as Coordinator with <u>ultimate oversight</u>… and ensure the school has consistent compliance with its responsibilities.**

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Title IX Roles 2020



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Title IX Coordinator

Cannot serve as the Decision-Maker or Appellate Decision-Maker. May serve as an Investigator - though if possible, it is recommended that another individual serve as an Investigator. May serve as an Informal Resolution Facilitator.

Investigator

Cannot serve as the Decision-Maker or Appellate Decision-Maker. May be the Title IX Coordinator but if possible, it is recommended that this individual be separate from the Title IX Coordinator. It is not recommended that an Investigator serve as the Informal Resolution facilitator in a case that they have started, or later serve, as an Investigator.

Decision-Maker

Cannot be the Title IX Coordinator. Cannot serve as the Investigator or Appellate Decision-Maker. It is not recommended that a Decision-Maker serve as the Informal Resolution facilitator in a case that they may later serve as a Decision-Maker.

Appellate Decision-Maker

Cannot be the Title IX Coordinator. Cannot serve as the Investigator or Decision-Maker. It is not recommended that an Appellate Decision-Maker serve as the Informal Resolution facilitator in a case that they may later serve as an Appellate Decision-Maker.

Informal Resolution Facilitator

May be the Title IX Coordinator. It is not recommended that an individual who has or will serve as an Investigator, Decision-Maker or Appellate Decision-Maker in the same case serve as the Informal Resolution Facilitator.

ADMINISTRATION

ROLE & RESPONSIBILITY OVERLAP (2024)

Team
Coordinator <u>can</u> be investigator/decisionmaker (Caution) *single investigator (hybrid) model is permitted
Investigator <u>cannot</u> be the informal resolution facilitator
Supportive Measure Review Administrator <u>cannot</u> be the Coordinator (be cautious of bias/conflicts here)
Appellate Decisionmaker(s)

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HYBRID INVESTIGATOR/DECISIONMAKER AKA- SINGLE INVESTIGATOR (2024)



Think of it as a Prius... one car, multi functions (electric and gas)

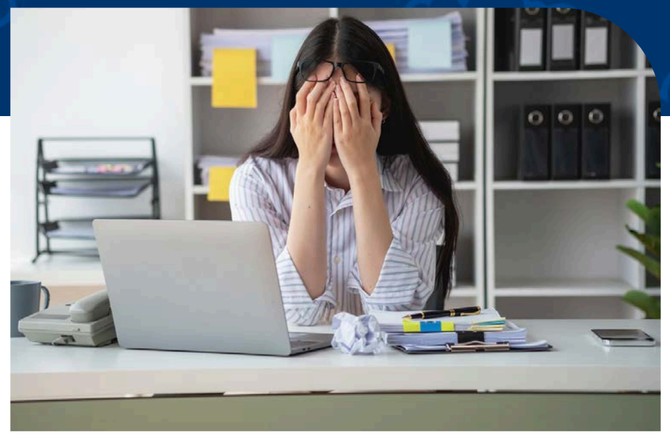
One Human = investigator AND decisionmaker

- Safeguards
  - reviews
  - appeals

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2024 PRACTICAL TIPS/IRL

Should the Coordinator be the Investigator/Decisionmaker?



Consider additional duties on the Coordinator



Coordinator facilitating supportive measures and acting in another role can be confusing for parties



Bias/Conflict of Interest

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2024 PRACTICAL TIPS/IRL

The case for and against single investigator (hybrid) model



Fewer required positions/humans



The strength of your Investigator/Decisionmaker



Procedural guardrails

*Appeal considerations if you decide on single investigator model

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2024 PRACTICAL TIPS/IRL



How should you structure your team to address reports under 2020 versus 2024 regulations?

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ADOPTION, PUBLICATION, AND IMPLEMENTATION 2024 REQUIREMENTS



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NONDISCRIMINATION POLICY (2024)

Must adopt, publish, and implement a policy (really a statement):

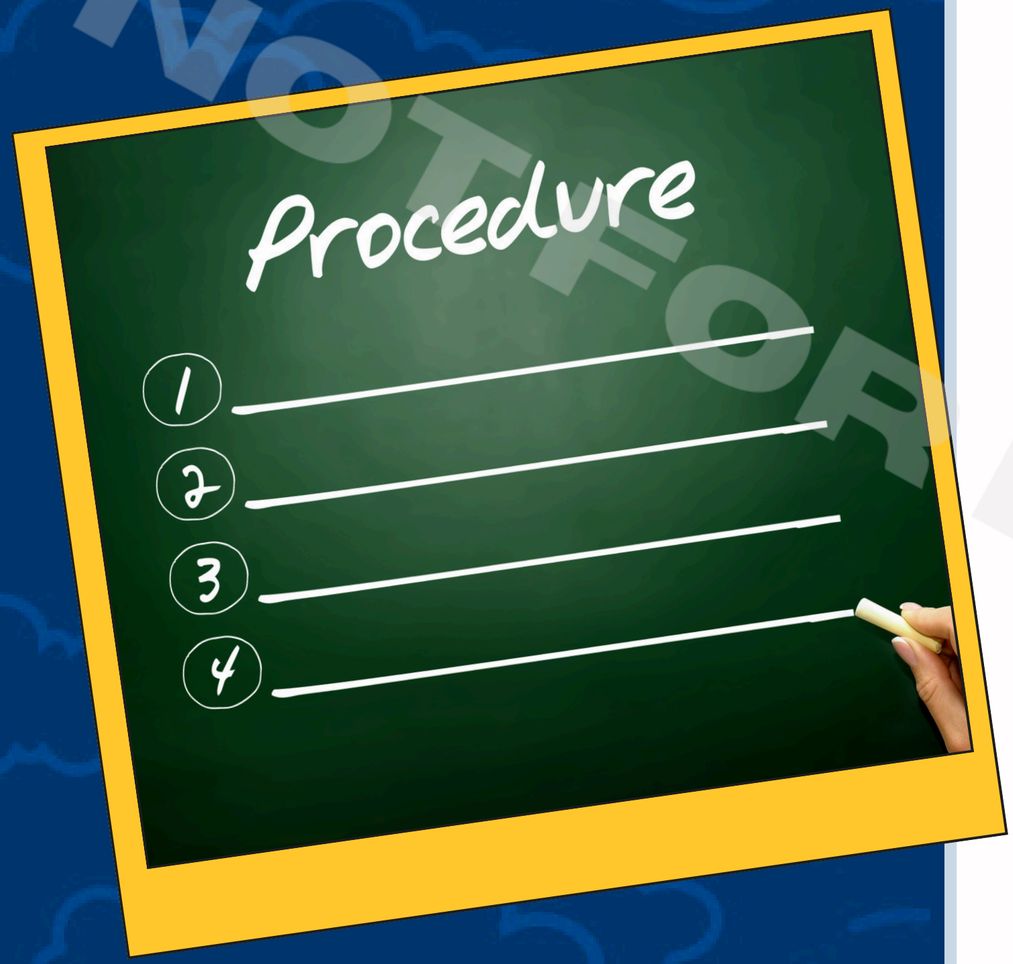
The school does not discriminate on the basis of sex and the school prohibits sex discrimination in any education program or activity that it operates as required by Title IX, including admission and employment.

Policy must be provided to:

- **Students**
- **Parents, guardians or other authorized legal representatives of elementary school & secondary school students**
- **Employees**
- **Applicants for admission & employment**
- **All union & professional organizations holding collective bargaining or professional agreements**

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GRIEVANCE PROCEDURES

Recipient (School) must adopt, publish, and implement grievance procedures consistent with the regulations.

Must provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating in or attempting to participate in the recipient's (school's) education program or activity, or by the Title IX Coordinator alleging any action that would be prohibited by Title IX.

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NOTICE OF NONDISCRIMINATION MUST INCLUDE:

The school does not discriminate on the basis of sex and the school prohibits sex discrimination in any education program or activity that it operates as required by Title IX, including admission and employment. (really nondiscrimination policy)

Title IX Coordinator Contact Information:

- Name/Title
- Office Address
- Email Address
- Telephone #

A statement that inquiries about the application of Title IX to the recipient (school) may be referred to the Title IX Coordinator, the Office for Civil Rights, or both.

How/where to locate non-discrimination policy (link).

How/where to locate grievance procedures.

How to make a complaint about sex discrimination.

How to report sex discrimination.

*May include exceptions or exemptions that apply to recipient (school).

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NOTICE OF NONDISCRIMINATION MUST BE PUBLISHED:

In each:

- handbook,
- catalog,
- announcement,
- bulletin, and
- application form

Made available to students; parents, guardians or other authorized legal representative of elementary school and secondary school students; employees; applicants for admission and employment; all unions and professional organizations holding collective bargaining or professional agreements with recipient (school).



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WEBSITE CHECK

- Google
- Website
- Tiny URL



Note:
Start Planning NOW

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2024 PRACTICAL TIPS/IRL



Grievance procedures must be legally compliant **AND** should reflect your school's culture/structure



This is a massive requirement - need to beef up your website



Consider a QR code to your website for publications, etc.

**Make sure to add accessibility requirements

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TRAINING REQUIREMENTS

*Training on an employee's responsibilities under Title IX needs to occur **PROMPTLY** upon hiring or change of position that alters their duties - and annually thereafter.*

- Plan for THIS year...initial training.
- Plan for new hires throughout the year.
- Plan for supplemental annual training.

**How will you track this?*

**What are consequences if training is not completed?*



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2024 – ALL EMPLOYEES MUST BE TRAINED ON:

*RECOMMENDED FOR 2020



- The school's obligation to address sex discrimination in its education program or activity.
- The scope of conduct that constitutes sex discrimination under Title IX - including sex-based harassment.
- Reporting requirements.
- All applicable notification and information requirements (where they need to add the link to the website or flyers, posters etc.).
- Response to student's pregnancy or related conditions.

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CATEGORIES OF EMPLOYEES FOR REPORTING:



Confidential Employees



Non-confidential employees (responsible employees)

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CONFIDENTIAL EMPLOYEE

Employee whose communications are *privileged or confidential under Federal or State law*. Confidential status is only with respect to information received while employee is functioning within the scope of their duties to which privilege applies. Ex. No counseling privilege when teaching a class.

OR

Employee who has been designated as confidential under Title IX for the purpose of providing services to individuals related to sex discrimination.

- If the employee has a duty not associated with providing those services, the confidential status is ONLY with respect to information received about sex discrimination in connection with providing those services. Ex. trainer who teaches a class.

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CONFIDENTIAL EMPLOYEE REQUIREMENTS

MUST notify all (students and employees) about how to contact confidential employees.

- **Who are they? (How will students, employees, and parents/guardians know?)**
- Email
- Phone
- Location

When a report is made to a Confidential employee, they **MUST:**

- Explain status as a confidential employee.
- Explain how to contact the Title IX Coordinator.
- Explain how to make a complaint about sex discrimination.
- Explain that the Title IX Coordinator may be able to offer and coordinate supportive measures.
- Explain that the Title IX Coordinator may be able to initiate grievance procedures or informal resolution.

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2020 & 2024 RESPONSIBLE EMPLOYEE NOTIFICATION REQUIREMENTS

K-12: **ALL EMPLOYEES** (who are not confidential) **MUST** notify Title IX Coordinator when they have information about conduct that REASONABLY MAY constitute sex discrimination.

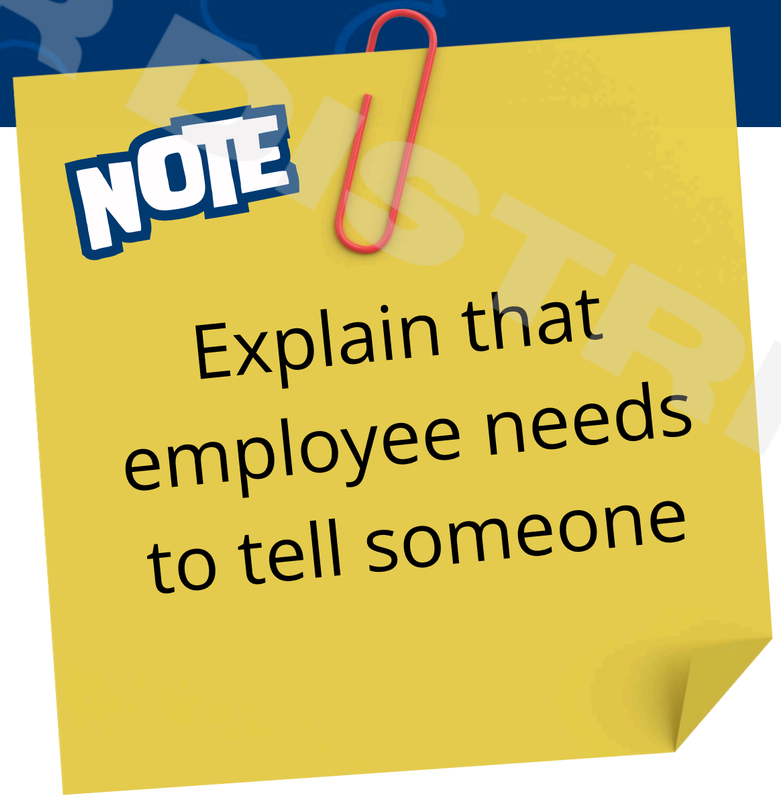
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PRACTICAL TIPS/IRL

Conversation when disclosure occurs



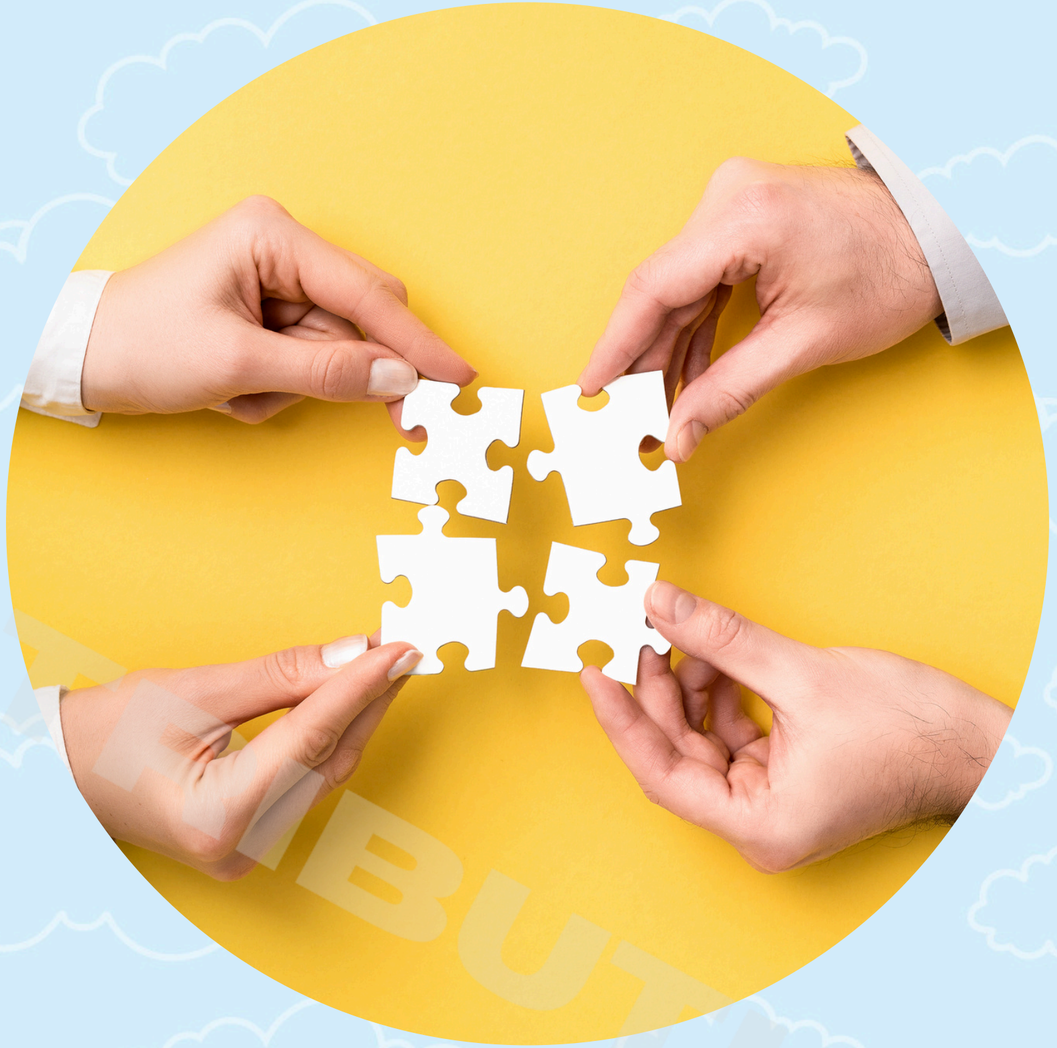
Expectation that Responsible Employee does NOT investigate

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TRAINING FOR THE TITLE IX TEAM



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TRAINING FOR COORDINATOR & DESIGNEES

- The school's obligation to address sex discrimination in its education program or activity.
- The scope of conduct that constitutes sex discrimination under Title IX - including sex based harassment.*
- Reporting requirements.
- All applicable notification and information requirements (where they need to add the link to the website).*
- Response procedures after report received (section 106.44).
- Grievance procedures (section 106.45 and if applicable 106.45).
- How to serve impartially:
  - Avoiding prejudgment of facts.
  - Bias/Conflicts of interest.
- Definition of "relevant."*
- Rules and practices associated with the informal resolution process.
- Recordkeeping system.
- Prevention and response requirements regarding pregnancy or related conditions under 106(b)(3).*
- General Coordinator requirements 106.44(f):
  - Response protocol (steps to promptly and effectively end sex discrimination in education program or activity, prevent its recurrence, remedy its effects).
- Responsibilities regarding supportive measures 106.44(g).
- Title IX Coordinator specific responsibilities.
- Other training necessary to coordinate compliance.
  - * new or changed in 2024

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INVESTIGATOR/ DECISIOMAKER/ SUPPORTIVE MEASURE REVIEW ADMINISTRATORS



* new or changed in 2024

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1. The school's obligation to address sex discrimination in its education program or activity.
2. The scope of conduct that constitutes sex discrimination under Title IX - including sex based harassment.*
3. Reporting requirements.
4. All applicable notification and information requirements (where they need to add the link to the website).*
5. Response procedures after report received (section 106.44).
6. Grievance procedures (section 106.45 and if applicable 106.45).
7. How to serve impartially:
   - Avoiding prejudgment of facts and
   - Bias/Conflicts of interest
8. Definition of "relevant."*

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INFORMAL RESOLUTION FACILITATOR

* new or changed in 2024

- Obligations to address sex discrimination in its education program or activity
  - The scope of conduct that constitutes sex discrimination under Title IX - including sex based harassment*
    - Reporting requirements
- All applicable notification and information requirements (where they need to add the link to the website)*
  - Rules and practices associated with the informal resolution process
    - How to serve impartially: Avoiding prejudgment of facts & Bias or Conflicts of interest

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PRACTICAL TIPS/IRL

Massive requirement for training of employees



Mandated training for employees is new; specific requirements for team is not new but different

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AVOIDING CONFLICTS OF INTEREST/BIAS



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Title IX team must serve impartially in their role and avoid prejudgment of the facts as issue, conflicts of interest, and bias.

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Conflict of interest or bias cannot be for or against complainants or respondents generally or the individual complainant or respondent in a matter.

Family friend is a witness in a matter.

Child is a party in a matter.

You are a witness in a matter.

Close relationship with a party.

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WHY IS THIS IMPORTANT?



- Erodes trust in grievance procedures/creates barriers.
- Decreases ability to ensure a fair and reliable outcome.

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IN EVERY CASE:



01

Evaluate whether have a conflict of interest/bias at the outset of a matter.

02

Check biases throughout a matter.

03

Notify the Title IX Coordinator if a bias/conflict of interest arises.

***What if you are the Coordinator?*

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PREVENTION



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2024 – BARRIERS TO REPORTING

2020 – RECOMMENDED



- Must monitor for barriers to reporting information about sex discrimination.
- Must take steps to address the barriers.

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PRACTICAL TIPS/IRL



Data: It is necessary to understand the data related to what is occurring at your school



Assessment: Necessary to understand why individuals are reporting/not reporting



Increased Reporting: Assessing and removing barriers WILL increase reporting/notification

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RECORDKEEPING



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RECORDKEEPING

* new or changed in 2024

Notification

For EACH Notification (Report) of information that may reasonably constitute sex discrimination, the following actions MUST be documented:

- How school responded promptly and effectively.
- Barriers and how they are addressed.*
- Notifications to the Title IX Coordinator.
- Supportive Measures.
- Notification to the Complainant (or reporter)* of the Grievance Procedures.
- Evaluation of whether to initiate Complaint.*
- Steps to effectuate the remedies to ensure that sex discrimination does not continue or recur.

Complaint

For EACH Complaint of sex discrimination, the following actions MUST be documented:

- Records documenting informal resolution process.
- Records documenting grievance procedures.

Training Materials

Training materials must be made available upon request for inspection by members of the public.

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SUPPORTIVE MEASURES



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SUPPORTIVE MEASURES:

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 recipient's (school's) education program or activity, including measures that are designed to protect the safety of the parties or the recipient's (school's) educational environment; OR
- Provide support during the recipient's (school's) grievance procedures, or during the information resolution process.

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SUPPORTIVE MEASURES MAY INCLUDE

but are not limited to:

- COUNSELING
- **RESTRICTIONS ON CONTACT APPLIED TO ONE OR MORE PARTIES***
- EXTENSION OF DEADLINES AND OTHER COURSE RELATED ADJUSTMENTS
- LEAVES OF ABSENCE
- CHANGE IN EXTRACURRICULAR OR OTHER ACTIVITY
- CAMPUS ESCORT SERVICES
- CHANGE IN CLASS WORK
- TRAINING AND EDUCATION PROGRAMS RELATED TO SEX-BASED HARASSMENT
- INCREASED SECURITY AND MONITORING OF CERTAIN AREAS
- CHANGE IN HOUSING (IF APPLICABLE)

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SUPPORTIVE MEASURES CONTINUED

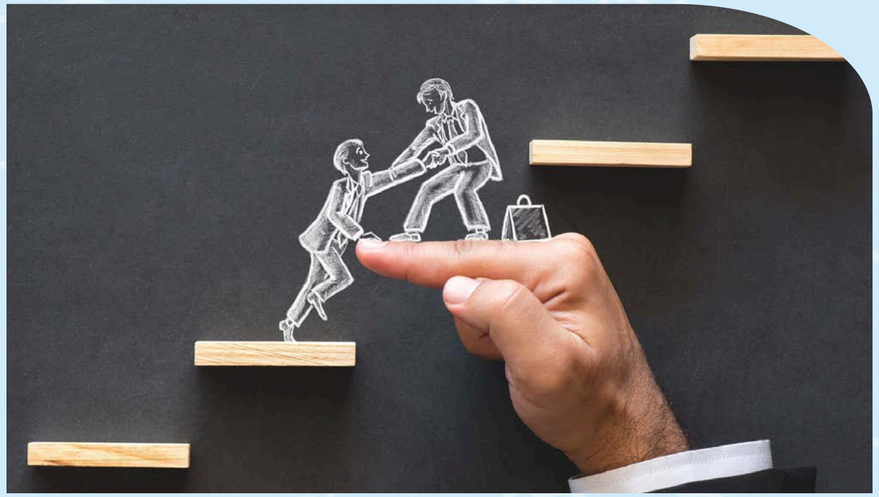
MAY	MAY NOT	MUST	MUST NOT
Be terminated or modified at the conclusion of grievance procedures or informal resolution.	Unreasonably burden a party.	Be designed to protect the safety of the parties or educational environment or to provide support.	Impose supportive measures for punitive or disciplinary purposes.
Continue at the conclusion of grievance procedures or informal resolution.		Provide the opportunity to seek additional modifications of supportive measures if the circumstances materially change.	Disclose information about supportive measures to individuals other than to whom they apply unless necessary to provide the supportive measure or restore or preserve access.
		Consult with IEP or 504 team in the implementation of supportive measures in K-12 if applicable.	

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2024–SUPPORTIVE MEASURES REVIEW

Parties MUST be provided with timely opportunity to seek modification or reversal of school's decision to provide, deny, modify, or terminate supportive measures applicable to them.



- Must be reviewed by an Impartial Employee (**Supportive Measures Review Administrator**).
- SMRA must NOT be employee who made the challenged decision.
- SMRA MUST have authority to deny, modify, or reverse the decision if the SMRA determines that the previous decision was inconsistent with the definition of supportive measures.

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2024 IDEA AND TITLE IX OVERLAP



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STUDENT WITH A DISABILITY



A student who is an individual with a disability as defined in the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705 (9)(B), (20)(B),

or a child with a disability as defined in the Individuals with Disabilities Act, 20, U.S.C 1401(3).

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IF A PARTY (K-12) HAS A DISABILITY THE TITLE IX COORDINATOR...



MUST consult with ONE or MORE members (as appropriate) of the student's IEP team.

OR



Any or one or more members (as appropriate) of the individuals responsible for the student's placement under 504 to determine how to comply with the requirements of the IDEA and Section 504 throughout the implementation of grievance procedures.

and



IEP/504 Team member must also be consulted regarding supportive measures.

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EMERGENCY REMOVAL



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EMERGENCY REMOVAL

May remove student on an emergency basis AFTER undertaking individualized safety and risk analysis.

In order to remove a student, school must determine:

- Imminent and serious threat to the **health or safety*** of a Complainant or other person arising from the allegations of the sex discrimination that justifies removal.
  - Said “physical health or safety“ in 2020

Must provide Respondent an opportunity to challenge the decision IMMEDIATELY following the removal.



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ADMINISTRATIVE LEAVE

May place employee on administrative leave during pendency of the grievance procedures.

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RETALIATION



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RETALIATION:

Must Prohibit Retaliation
(including peer retaliation)



When informed of retaliation, MUST provide supportive measures.



2024 - MUST use grievance procedures or informal resolution to resolve.

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INFORMAL RESOLUTION



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INFORMAL RESOLUTION

- K-12 - NOT when student Complainant and employee Respondent (same for 2020 and 2024)

1	**WHEN**	Any time prior to resolution.
2	**DISCRETION**	Title IX Coordinator has discretion to allow or disallow Informal Resolution.
3	**PARTICIPATION**	May NOT pressure the parties to participate.
4	**CONSENT**	Must obtain VOLUNTARY consent from the parties.
5	**NO WAIVER**	May NOT require a waiver of the right to investigation/ determination as a condition of enrollment or employment.

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COORDINATOR DISCRETION

Coordinator MAY decline Information Resolution when the alleged conduct would present a FUTURE risk of harm to others (or in other circumstances within the Coordinator's discretion).

Consider:

Violence

Prior Behavior

Multiple Complainants

Etc.

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INFORMAL RESOLUTION CONTINUED 2024

Prior to initiation of Informal Resolution, MUST provide the parties:
The allegations.
The requirements of the IR process.
Explanation that prior to agreeing to a resolution, any party has the right to withdraw from the IR process and initiate or resume grievance procedures.
Agreement at the end of the IR process precludes the parties from initiating or resuming grievance procedures arising from the same allegations.
Opportunity to seek additional modifications of supportive measures if the circumstances materially change.
The potential terms that may be requested or offered in an informal agreement.
What information the school will retain.
Whether and how the school could disclose the information if the parties move out of IR and into the grievance process.

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2020- Informal Resolutions



- Cannot be offered as a condition of enrollment or continued employment.
- Cannot be offered to resolve employee on student allegations.
- After a Formal Complaint is filed.
- Prior to decision regarding responsibility.
- Parties cannot be required to participate.

District Must:

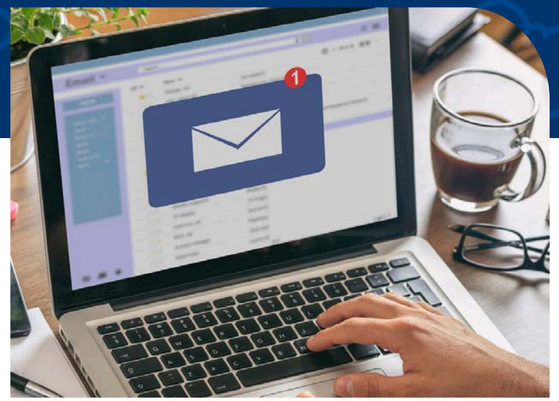
- Provide written notice disclosing allegations, requirements of the informal resolution process including circumstances under which it preclude the parties from resuming a Formal Complaint arising from the same allegations.
- Allow any party the right to withdraw from the informal resolution process and resume grievance process with respect to Formal Complaint.
- Provides consequences resulting from informal resolution process including records maintained or shared.
- Obtain both parties voluntary, written consent to the informal resolution process.

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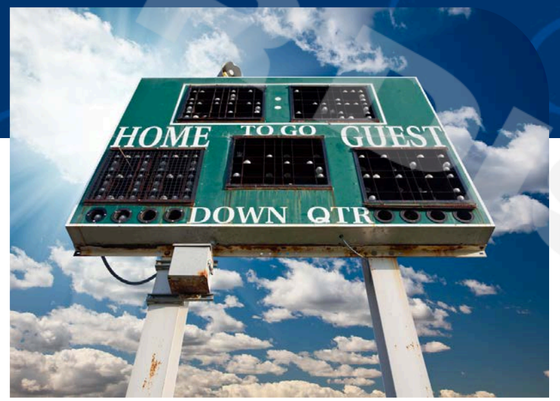
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INFORMAL RESOLUTION POTENTIAL OUTCOMES:

Potential outcomes include but are not limited to:



Restrictions on contact.



Restrictions on Respondent's participation in one or more programs or activities.



Restrictions on attendance at specific events.



Restrictions that could have been imposed as remedies or **disciplinary sanctions** had the grievance process been used and the Respondent found responsible.

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INFORMAL RESOLUTION FACILITATOR

2024 - Facilitator of IR **CANNOT** be the Investigator or Decisionmaker in the grievance procedures.

Must not have conflict or bias (generally toward Complainants or Respondents or an individual party).

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PROHIBITED DISCLOSURES OF PERSONALLY IDENTIFIABLE INFORMATION

2024 - Must NOT disclose personally identifiable information except:

When school has obtained prior written consent from the person with a legal right to consent to disclose.

When the information is disclosed to a parent, guardian, or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identified information is at issue.

To carry out the purpose of Title IX.

As required by Federal law, Federal regulations, or the terms and conditions of a Federal award, including a grant award or funding agreement.

When required by state or local law or permitted under FERPA AND not otherwise in conflict with Title IX.

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QUESTIONS

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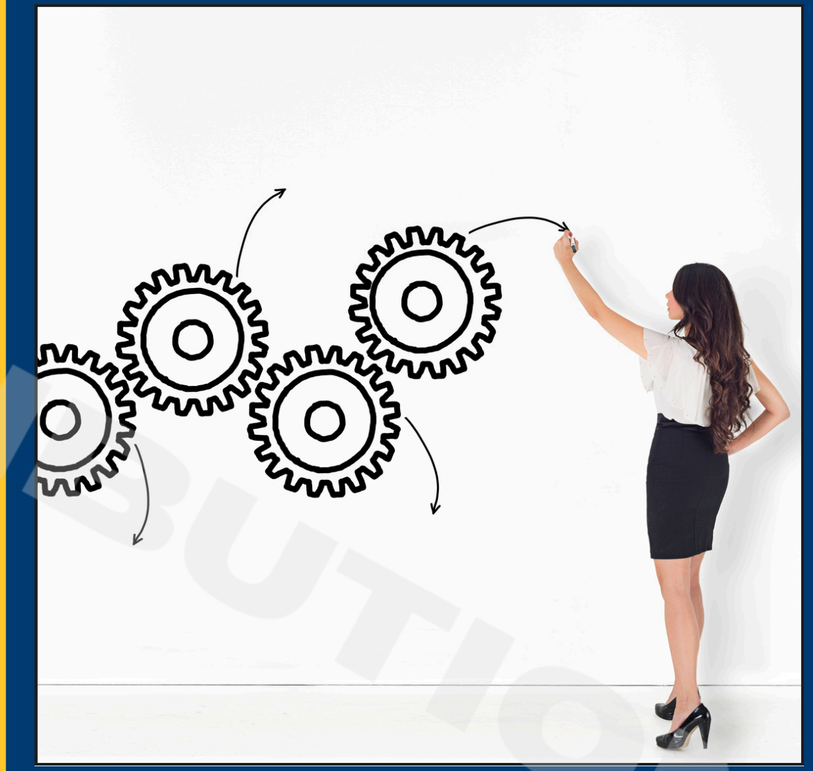
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TITLE IX
"MAJOR STAGES"

- Evaluation
- Investigation
- Determination
- Appeal



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TITLE IX MAJOR STAGES

"Reasonably Prompt Timeframes" Required For Each



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PROHIBITED CONDUCT, APPLICATION & SCOPE



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2024 SEX-BASED HARASSMENT
2020 SEXUAL HARASSMENT

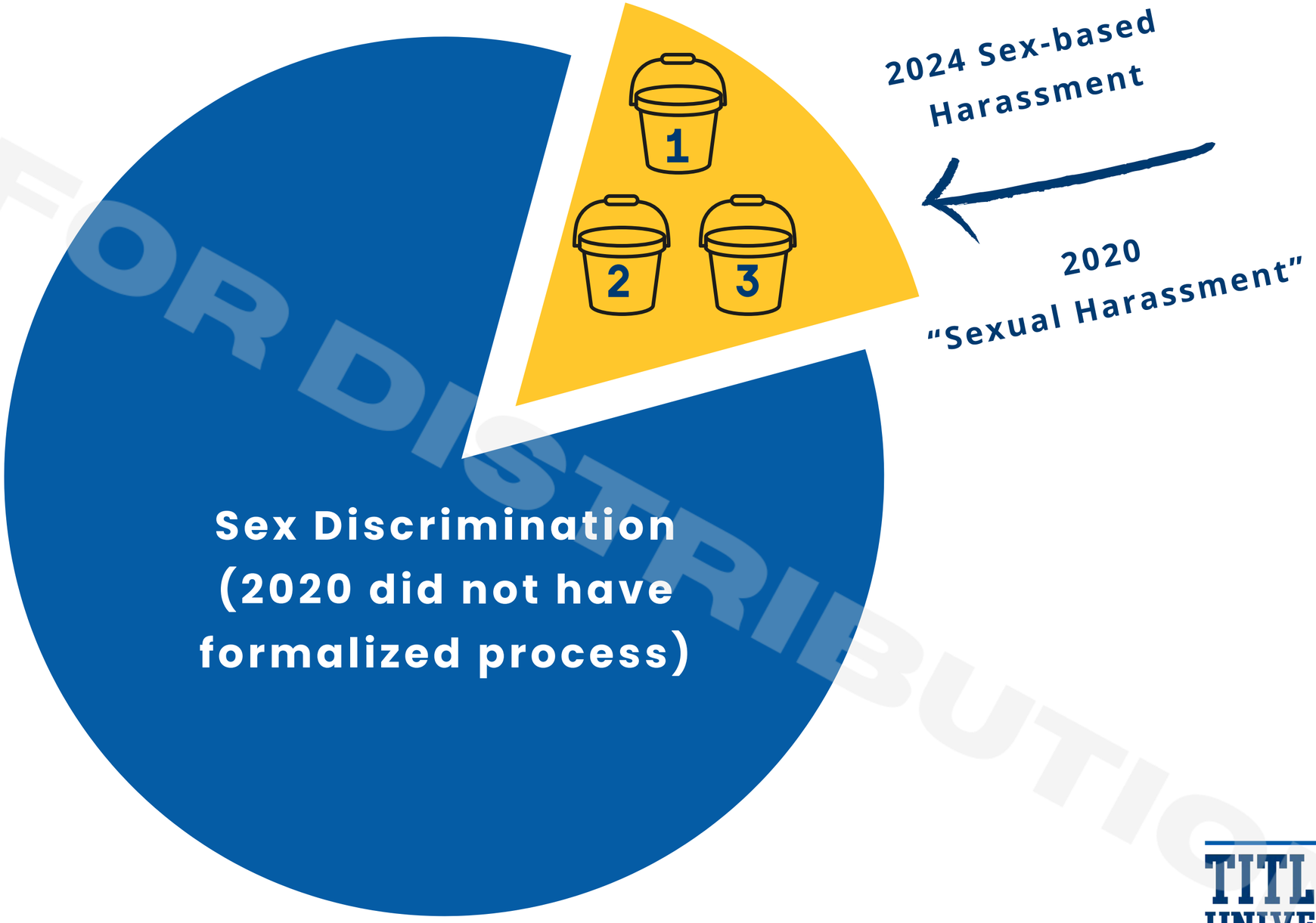


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2020 Sexual Harassment



- Conduct on the basis of sex that satisfies one or more of the following:
  - An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
  - 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 recipient's education program or activity; or
  - "Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.

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Sex Based Harassment

A form of sex discrimination. Sexual harassment and other harassment **on the basis of sex** that is:



Quid Pro Quo Harassment: An employee, agent or other person authorized to provide an aid, benefit, or service, under the school's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit or service, on a person's participation in unwelcome sexual conduct.



Hostile Environment Harassment: Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so **severe or pervasive** that it limits or denies a person's ability to participate in or benefit from the school's education program or activity.



Specific Offenses

a. Sexual Assault
b. Dating Violence
c. **Domestic Violence**
d. Stalking

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QUID PRO QUO



1. **An employee, agent or other person authorized to provide an aid, benefit, or service, under the school's education program or activity**
2. **Explicitly or impliedly* conditioning the provision of such an aid, benefit or service,**
3. **On a person's participation in unwelcome sexual conduct.**

- *only change between 2020 and 2024, 2024 adds "explicitly and impliedly.

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EXAMPLES

- Principal Adams threatens to transfer Trish if she does not continue to provide sexual favors to him.
- Coach Smith promises Maddie a spot on the varsity softball team even though she is not qualified if she provides sexual favors.

Note:
Quid Pro Quo



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2020 Hostile Environment-- Severe, Pervasive, AND Objectively Offensive



UNWELCOME CONDUCT



SEVERE, PERVASIVE, AND OBJECTIVELY OFFENSIVE

- Severe - can be non verbal through sexual assault (touching/fondling)
- Pervasive - how often and how widespread
- Objectively Offensive - behavior that would be offensive to a reasonable person under the circumstances



DENIES EQUAL ACCESS

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2024 HOSTILE ENVIRONMENT HARASSMENT



Hostile Environment Harassment

1. Unwelcome
2. Sex-based Conduct
3. Subjectively AND Objectively Offensive
4. Severe OR Pervasive
5. Limits or Denies Ability to Participate (Access)

Fact Specific Inquiry

1. Degree to which conduct affected access
2. Type, frequency, and duration of conduct
3. Ages, roles, previous interactions, other factors about each party
4. Location of the conduct and context in which it occurred
5. Other sex-based harassment

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Subjective:

How does it make the individual feel?



Objective:

How would it make a reasonable person feel?

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EXAMPLES...

- Thomas, a 5th grader, calls James, another 5th grader, sexually explicit names.
- Linda, a bus driver, constantly comments on how great Amanda looks in her “tight jeans” and “crop tops.” She tells Amanda that her boobs have grown so much this year.
- Every time Thomas sees Ms. Jones, he catcalls her.

Note:
Hostile Environment

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SPECIFIC OFFENSES



Specific Offenses

1. **Sexual Assault**
    a. Rape
    b. Fondling
    c. Incest
    d. Statutory Rape
2. **Dating Violence**
3. **Domestic Violence**
4. **Stalking**

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SEXUAL ASSAULT SAME FOR 2020 AND 2024



RAPE: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.

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CONSENT:



Not Defined under regulations — but you need to have one.

The Assistant Secretary will not require a recipient to adopt A PARTICULAR definition of consent.

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EXAMPLES...

- Cindy, a first grader, puts her pencil up the butt of Courtney, a kindergartner.
- Amy touches James' penis under his clothes and moans. She asks him if it feels good.
- James, an 18 year old senior, has sex with Reba, a 13 year old 8th grader.

Note:
Specific Offenses Sexual Assault

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DATING VIOLENCE:



Violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the victim; **and**

- Where the existence of such a relationship shall be determined based on a consideration of the following factors:
  1. Length of relationship
  2. Type of relationship
  3. Frequency of interaction between the persons involved in the relationship

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EXAMPLES...

- Paxton, a sophomore, is seen in the hallway grabbing his girlfriend Lainey, another sophomore, by the neck and pushing her against the locker.
- Lily, a middle school student, slaps her boyfriend Landry across the face at recess.
- Mr. Jones, the art teacher, punches the wall in Ms. Dulin's classroom, right next to her head because he thinks she is seeing someone else.

Note:
Specific Offenses Dating Violence

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DOMESTIC VIOLENCE 2020:

A FELONY OR MISDEMEANOR <u>CRIME OF VIOLENCE</u> COMMITTED BY A:

- Current or former spouse or intimate partner of the victim.
- Person with whom the victim shares a child in common.
- Person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner.
- Person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred or any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.



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DOMESTIC VIOLENCE 2024:



Felony or misdemeanor crimes committed by a person who:

- Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction* of the recipient (school), or a person similarly situated to a spouse of the victim.
- Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner.
- Shares a child in common with the victim OR
- Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

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EXAMPLES...

- Thomas, a custodian, pushes Linda (his wife), another custodian, in the hallway after school.
- Ms. White and Mr. White are both teachers. They were previously married, but recently got divorced. Ms. White is frustrated with Mr. White because he has not paid child support. She holds a knife to him in the parking lot in an attempt to get the $.

Note:
Specific Offenses Domestic Violence

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STALKING:



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

- Fear for the person's safety or the safety of others OR
- Suffer substantial emotional distress

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EXAMPLES...

- Samantha, a freshman, cannot seem to “shake” Adam. They used to be friends, but Adam began asking Samantha to be in a relationship with him. Samantha told Adam she was not interested. Now, Adam is EVERYWHERE. He watches Samantha’s track practice in the bleachers even though he is not on the track team. He is always near Samantha’s locker. He winks every time he sees Samantha. Samantha has told Adam that he is freaking her out multiple times.

Note:
Specific Offenses
Stalking

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EVALUATION "TRIAGE"



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NOTIFICATION

Notification (report) the Title IX Coordinator receives information about conduct that reasonably may constitute sex discrimination.

Note:
2020 - not defined

Note:
Notification initiates action



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EXCEPTION: PUBLIC AWARENESS EVENTS (2024)

When Title IX Coordinator is informed or notified about sex-based harassment that is provided at a public awareness event:

Coordinator NOT required to act in response UNLESS there is an imminent or serious threat to the health or safety of Complainant or others.

MUST use the information to inform its prevention efforts.

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INTAKE OF REPORTS- AFTER NOTIFICATION



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2020 BASIC TITLE IX PROCESS

1. SEXUAL HARASSMENT REPORTED
2. FORMAL COMPLAINT BY COMPLAINANT/ TITLE IX COORDINATOR
3. NOTICE OF ALLEGATIONS
4. INVESTIGATION
5. Q & A AND RESOLUTION
6. APPEAL

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2024 COORDINATION OF COMPLIANCE

(106.44(f))

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Equitable Treatment	**Offer Supportive Measures**	**Notify Complainant**	**Notify Respondent**	**Initiate Response**
Treat parties equitably.	**Both parties if grievance procedures initiated - Complainant only if no grievance process (notice).**	**Notify Complainant (or reporter if Complainant unknown) of the grievance procedures and informal resolution process.**	**If Complaint - Notify Respondent of the grievance procedures and informal resolution process.** **If no Complaint, coordinator to determine whether to initiate Complaint.**	**If Complaint - initiate response in accordance with grievance procedures.**

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Formal Complaint



✓ In Writing

- Hard copy
- Electronic
- Online submission

✓ Signed by:

- Complainant or Parent/Guardian
- Title IX Coordinator

✓ Alleging Sexual Harassment

✓ Requesting an Investigation

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2024 COMPLAINT

…an **oral or written** request to the recipient that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX or this part.

NOTE: not just informing of incident but "request to investigate"



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WHAT IS A REQUEST TO INVESTIGATE 2024?

How might someone ask you to investigate without saying, “please investigate”?

Documenting “requests to investigate”?

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REGARDLESS OF WHETHER COMPLAINT OR NOT:

Must take appropriate, prompt and effective steps to:

- effectuate the remedies provided to an individual Complainant **and**
- ensure that sex discrimination does not continue or recur within the school's education, program or activity.

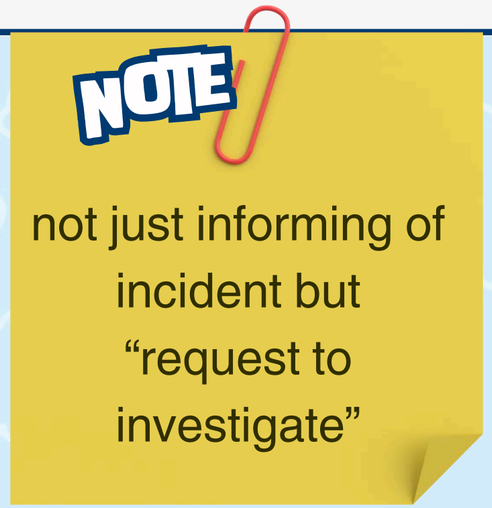


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COMPLAINT 2024

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



- Complaint of Sex Based Harassment can be initiated by:
  - Complainant
  - Parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant
  - Title IX Coordinator (after considering factors)

- If it is for anything OTHER than sex-based harassment:
  - ANY student or employee; OR
  - Any person other than a student or employee who was participating or attempting to participate in the school's education program or activity at the time of the alleged sex discrimination.

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Factors to Determine Whether Coordinator Should Initiate Complaint 2024

Fact Specific Determination

1. The Complainant's request not to proceed with the initiation of a Complaint.
2. The Complainant's reasonable safety concerns regarding initiation of a Complaint.
3. The risk that additional acts of sex discrimination would occur if a Complaint is not initiated.
4. The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence.
5. Whether the school could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures.
6. The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred.
7. The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals.
8. The age and relationship of the parties, including whether the Respondent is an employee of the school.

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FACTORS ++

Coordinator MAY initiate Complaint, if, after considering the factors, the Coordinator determines the conduct, as alleged:

- presents an imminent and serious threat to the health and safety of the Complainant or other person, OR
- the conduct prevents the school from ensuring equal access

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IF COORDINATOR INITIATES COMPLAINT...



- Must notify Complainant before doing so.
- Address reasonable concerns about Complainant's safety or the safety of others.

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Dismissal of Formal Complaint 2020



✓ Required Dismissal

- Would not constitute Sexual Harassment as defined in Title IX regulations.
- Did not occur in education program or activity.
- Did not occur against a person in the U.S.

✓ Permissive Dismissal

- Complainant notifies Title IX Coordinator in writing that Complainant would like to withdraw Formal Complaint or allegations.
- Respondent is no longer enrolled or employed by the district.
- Specific circumstances prevent the district from gathering evidence sufficient to reach a determination.

✓ If Mandatory Dismissal:

- Must Promptly send written notice of dismissal and reasons for dismissal simultaneously to parties.
- May proceed with disciplinary process outside of Title IX.

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DISMISSAL OF COMPLAINT 2024



Complaint MAY be dismissed if:

- Unable to identify the Respondent after taking reasonable steps to identify them.
- The Respondent is NOT participating in the education program or activity and is NOT employed by the school.
- The Complainant VOLUNTARILY withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint, and without Complainant's withdrawn allegations, the conduct that remains in the Complaint, would not constitute sex discrimination under Title IX even if proven.
    - Must obtain withdrawal in writing.
- Even if proven, the conduct would NOT constitute sex discrimination under Title IX.
    - Must make reasonable efforts to clarify the allegations with the Complainant.

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AFTER DISMISSAL

After dismissal, the school **MUST:**



- Promptly notify the Complainant of the dismissal, the basis for dismissal, and the right to appeal.
- **IF** Respondent has already been notified of the allegations, notify Respondent of the dismissal, the basis for dismissal, and the right to appeal.
- Offer supportive measures to the Complainant and Respondent (if Respondent has been notified).
- Require the Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur.

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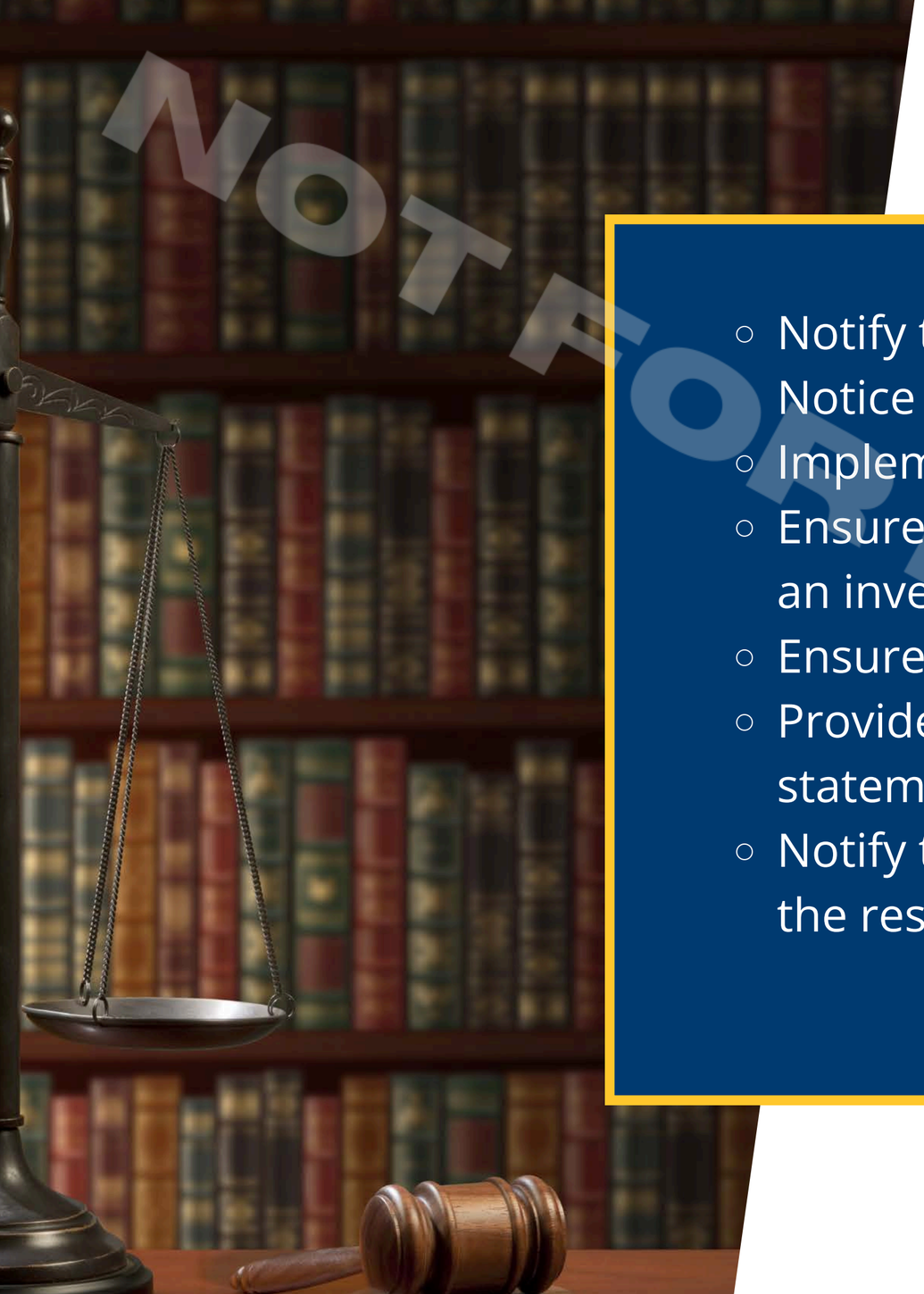
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BASIS FOR APPEAL OF DISMISSAL

- Procedural irregularity that would change the outcome.
- New evidence that would change the outcome and that was not reasonably available when the dismissal was made.
- The Title IX Coordinator, Investigator, or Decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

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IF THE DISMISSAL IS APPEALED, THE SCHOOL MUST:

- Notify the parties of any appeal, including Notice of Allegations if Notice was not previously provided to the Respondent;
- Implement appeal procedures equally for the parties;
- Ensure that the Decisionmaker of the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- Ensure that the Appellate Decisionmaker has been trained;
- Provide parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the parties of the result of the appeal and the rationale for the result.

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CONSOLIDATION OF COMPLAINTS



School MAY consolidate:

- Complaints related to more than one Respondent.
- Complaints related to or more than one Complainant against one or more Respondents.
- Complaints by one party against another party.

NOTE

If higher ed Sex-Based Harassment and one or more of the parties is a student, must use .46 requirements.

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LET'S EVALUATE



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YOUR TURN

Scenario 1

Notification:

6th grade student, Brooks, grabbed Lila's boobs as she was trying to get to her locker.

Note:
Triage/ Evaluation

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YOUR TURN

Scenario 2
Notification: From Guardian of Cindy (a player on the team)
Coach Landers, the coach of the girl's basketball team, calls the girls a bunch of babies, tells them they are not as tough as the boys. She constantly makes fun of them for being weak and calls them "pussies."

Note:
Triage/ Evaluation

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HERE WE GO AGAIN...



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Mentimeter

Have you done triaging in the past?



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AGENDA- DAY 2

00 Finish what we didn't get to yesterday ;)

01 Grievance Procedures: Investigation

02 Grievance Procedures Decisionmaking

03 Pregnancy & Related Conditions

04 Q & A

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DAY 2--LET'S GET IT STARTED... INNNNN HERE!



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What did you do last night?

0 responses

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GRIEVANCE PROCEDURES



Basics

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BASIC REQUIREMENTS OF GRIEVANCE PROCEDURES



- Grievance Procedures MUST be in writing.
- If allegations against a school regarding the school's policy or practice, the school is NOT considered a Respondent.
- Complaint initiates Grievance Process.

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Response to a Formal Complaint (Grievance Process 2020)

- Treat parties equitably.
- Require an objective evaluation of all relevant evidence (inculpatory and exculpatory).
- No conflict of interest or bias by Title IX Coordinator, investigator, decision-maker or facilitator of informal resolution process.
- Trained Title IX Team.
- Presumption that respondent is not responsible.
- Include reasonably prompt time frames for process and appeals with written notice for limited extensions with good cause (may include absence of party, witness, or advisor, law enforcement activity or the need for language/accommodation of disability).
- Describe range of sanctions and remedies.
- Standard of evidence (same for students and employees).
- Procedures and permissible bases for appeals.
- Notice of Allegations containing specific information as outlined in regulations.



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Grievance Procedures 2024 (After Complaint) - Basic Principles

- For: K-12 (All Sex Discrimination)
- Higher Ed (All Employee on Employee Sex Discrimination)
- Higher Ed (Non Sex-Based Harassment for Students and Employees)

- Parties Treated Equitably.
- No Bias or Conflict by Title IX Coordinator, Investigator, or Decsisionaker.
- Presumption of Not Responsible.
- Established reasonably prompt time frames for each major stage (evaluation, investigation, determination, and appeal (if any).
- Reasonable steps to protect privacy of parties.
- Objective evaluation of relevant and not otherwise impermissible evidence.
- Articulate principles for how the school will determine which procedures apply.
- *If K-12 or Employee on Employee AND allegations include sex-based harassment.
    - Grievance procedures must ALSO:
- Describe the range of supportive measures available to Complainants and Respondents.
- List or describe the range of potential disciplinary sanctions that the school may impose and the remedies that the school may provide following a determination that sex-based harassment occurred.

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IF K-12 OR EMPLOYEE ON EMPLOYEE AND ALLEGATIONS INCLUDE SEX-BASED HARASSMENT ++

Grievance Procedures must **ALSO**:

- Describe the range of supportive measures available to Complainants and Respondents.
- List or describe the range of potential disciplinary sanctions that the school may impose, and the remedies that the school may provide following a determination that sex-based harassment occurred.



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GRIEVANCE PROCEDURES

Investigation Phase - After Complaint



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NOTICE OF ALLEGATIONS



Upon initiation of Grievance Procedures (after Complaint), school MUST provide Notice of Allegations to parties (whose identities are known).

NOTE

Notice **MUST** be amended if necessary with additional allegations or needs to be consolidated

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Notice Of Allegations 2024

Upon initiation of Grievance Procedures (after Complaint), school MUST provide Notice of Allegations to parties (whose identities are known). Notice MUST include:

- Grievance Procedures and Informal Resolution Process.
- Sufficient Information available at the time to allow parties to respond.
  - Identities of the parties.
  - Conduct alleged to constitute sex discrimination.
  - Date(s)
  - Location(s)
- Statement that retaliation is prohibited.
- Statement that parties are entitled to equal opportunity to access the RELEVANT and not otherwise impermissible evidence OR an ACCURATE description of the evidence.
  - If description provided, the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.
- Notice MUST be amended, if necessary, with additional allegations or needs to be consolidated.

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NOTE! YOU MUST LIST IDENTITY OF WITNESSES---



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Notice of Allegations Checklist

- [ ] Notice of Grievance Process; Including Informal
- [ ] Allegations Potentially Constituting Sexual Harassment
  - Identities of the Parties
  - Conduct Constituting Sexual Harassment
  - Date of Incident
  - Location of Incident
- [ ] Statement: Respondent Presumed Not Responsible/Responsibility Determined After Process
- [ ] Right to Advisor of Choice
- [ ] Code of Conduct Provision Prohibiting False Statements or False Information in Process

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NOTE: SAFETY CONCERNS/DELAY OF NOTICE (2024)

If REASONABLE concern for the safety of any person as a result of providing notice of allegations, the school may REASONABLY delay providing written notice of the allegations in order to address safety concerns appropriately.

NOTE

These must be based on INDIVIDUALIZED safety and risk analysis (not speculation or stereotypes)



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2020

K-12 INVESTIGATION FLOWCHART



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K-12 Grievance Procedures 2024

Complaint
Oral or written request to investigate





Notice of Allegations

Investigation
Review of report or evidence - if report only, allow for review of evidence upon request





Questions of parties and witnesses assessing credibility

Determination





Appeal - same as any comparable proceeding

p. 1540
§106.45

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INVESTIGATION 2024

1

Burden on school (NOT the parties) to conduct investigation that gathers sufficient evidence.

Preponderance of Evidence Unless Clear and Convincing for all other proceedings.

2

Provide opportunity for parties to present **FACT witnesses** (note, doesn't say character witnesses) that are relevant and not otherwise impermissible.

3

Provide opportunity to present **inculpatory and exculpatory** evidence that is relevant and not otherwise impermissible.

4

Provide **opportunity to access** the relevant and not otherwise impermissible evidence.

- Actual evidence OR an accurate description.
- If accurate description, must provide opportunity to review the evidence upon request.

5

Provide reasonable **opportunity to respond** to the evidence or accurate description.

6

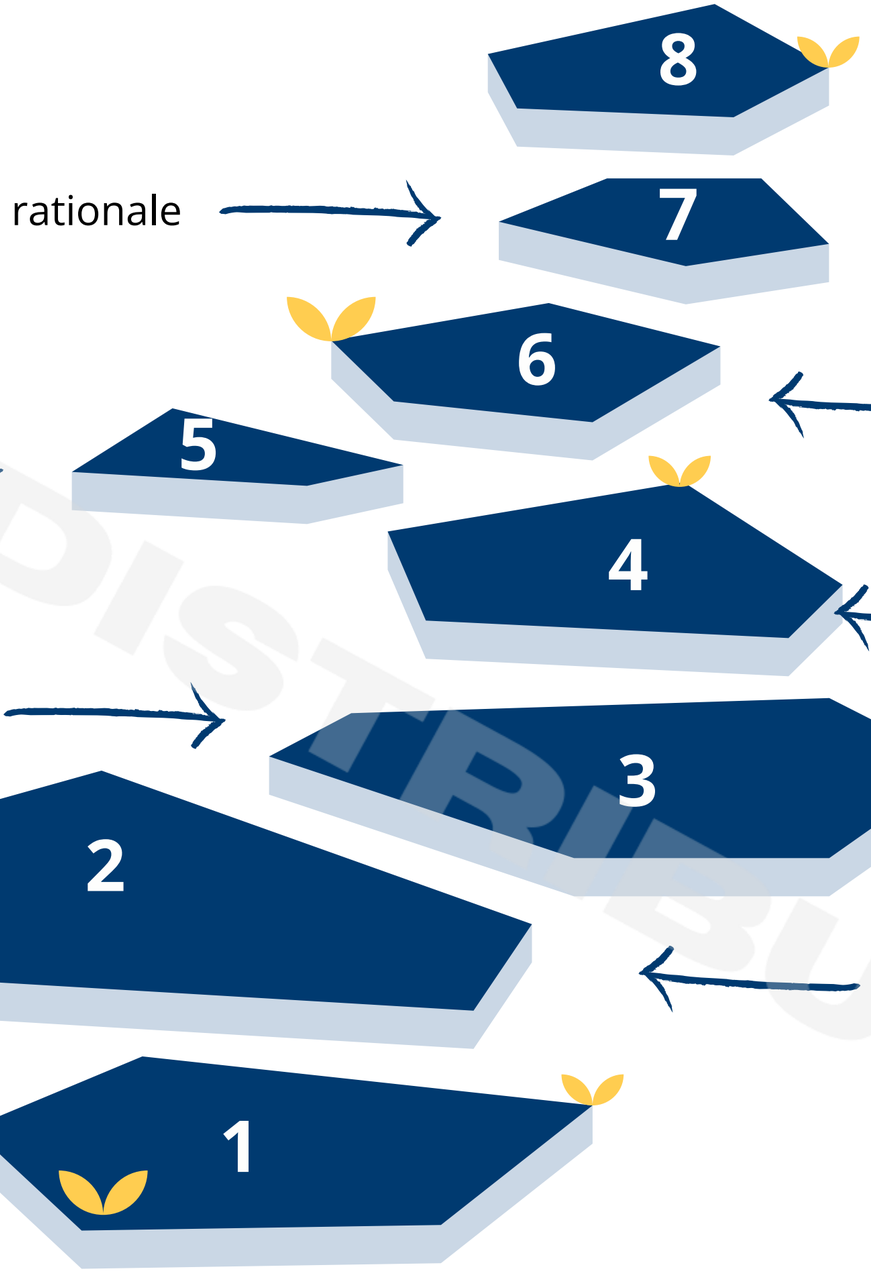
Take reasonable steps to **prevent** and address the parties' **unauthorized disclosure** of evidence.

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2024



Notification:
Notice that sex discrimination allegedly occurred.

Investigation:
Meetings with parties and witnesses
Collection of evidence

Complaint:
Request for investigation from party or initiated by Title IX Coordinator

Decisionmaking:
Including sanctions and rationale

Appeal:
Of evidence and/or report*

Review:
Of evidence and/or report*

Notice of Allegations:
Sent to both parties

Evaluation:
Supportive measures
Is it Title IX?

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RELEVANT 2024

Relevant: related to the allegations of sex discrimination.



Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred.

Evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

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The choice of investigator is one of the MOST critical decisions you, as coordinator, will make.



NOTE

What are you looking for in an investigator?

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WHO ARE YOU LOOKING FOR?

- Organized
- Reliable
- Consistent
- Kind
- Non biased
- Articulate
- Critical thinking

- Ability to break down complex situations
- Capacity
- Attention to detail
- Not afraid to make a decision
- Trauma informed

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Questioning the parties and witnesses:

- Notice for parties.
- Notice for witnesses?
- In person or virtual?
- Support before and/or after.

Challenges:

- Preventing retaliation.
- Connection with guardians.

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TURNING OVER STONES

But how deep do you need to dig beneath them?
ex. unrelated information and rabbit holes

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Curiosity

VS

Nosiness

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ORGANIZATION OF INVESTIGATION

01 Collect evidence that may disappear (video, social media, photos)

02 Order of meetings (parties, witnesses, follow ups?)

03 Store information collected in an organized manner

04 Share for review

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RAPPORT

How do you develop?

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CREDIBILITY... WHAT IS IT?

Must provide a process that allows the decisionmaker to question the parties and witnesses to adequately assess credibility to the extent credibility is in dispute and relevant to evaluating the allegations.

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TYPES OF QUESTIONS



- Opening Questions
- Open ended
- Who, what, when, where, how… why?
- Circling techniques
- Clarity on timelines/who is involved, etc.
- Repeat, repeat, repeat
- Closing questions
- Opportunity to provide clarification after interview

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How will you take notes?

- Notetaker
- Handwritten and transfer over
- Typed



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YOUR TURN

Leah reports that Jack has been calling her sexually explicit names and talking about her body. They share a class together. She is uncomfortable going to school. She has reported to her teacher, Ms. Lidvall, multiple times but nothing has happened previously…

Interview Leah.

Note:
Investigation

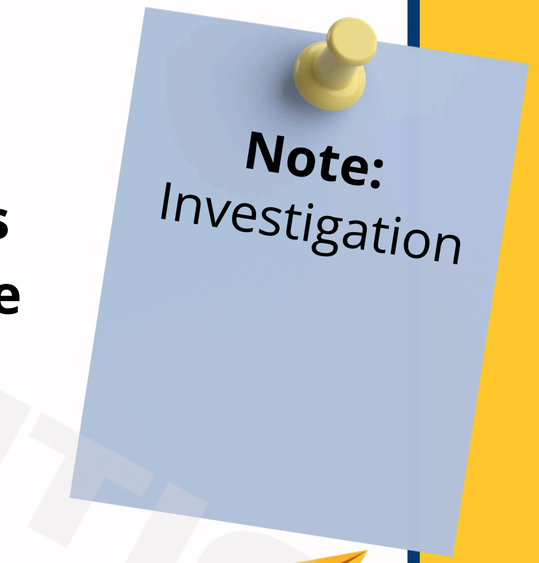
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YOUR TURN

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Landry reports that every day they are in the locker room changing for baseball practice, Jonathan touches Landry's penis. He has done this over Landry's clothes, under Landry's clothes, and used a stick to "poke" Landry in the butt.

Landry is unable to meet with you for 2 weeks because his family is going out of town. In order to move the process along, you schedule a meeting with Jonathan.
Interview Jonathan...



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Require objective evaluation of ALL RELEVANT evidence and not otherwise impermissible	Relevant	Exclude the following types of evidence (Impermissible evidence)
Include inculpatory and exculpatory evidence.	Questions are relevant when they seek evidence that may aid in knowing whether the alleged sex discrimination occurred.*	Evidence protected under privilege as recognized by Federal or State law OR evidence provided to a confidential employee – unless the person with whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality.
Credibility determinations MUST NOT be based on status as Complainant, Respondent, or witness.	Evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.*	A party's or witness' records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with treatment to the party or witness — unless the school obtains the party's or witness' voluntary, written consent for use in the grievance procedures.
	*Specific to 2024	Evidence that relates to the COMPLAINANT'S sexual interests or prior sexual conduct – UNLESS: ◦ Evidence about the Complainant's prior sexual conduct is offered to prove that someone OTHER than the Respondent committed the alleged conduct OR ◦ Evidence about specific incidents of the Complainant's prior sexual conduct WITH THE RESPONDENT that is offered to PROVE CONSENT to the alleged sex-based harassment. ▪ Prior consensual sexual conduct between the parties does NOT, by itself, demonstrate or imply consent to the alleged sex-based harassment OR preclude determination that sex-based harassment occurred.

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GRIEVANCE PROCEDURES

Investigation: Review of Evidence and/or Report



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Review of Evidence 2020



- ✓ **Interviews with parties and witnesses.**
  - Including Notice with sufficient time to prepare for the meeting/interview.
  - Document date of meeting and date notice provided.
- ✓ **Collect evidence and information.**

  Document when and how evidence/information was collected.
- ✓ **Allow parties and advisors to review "evidence directly related to the allegations" (10 days).**
- ✓ **Write investigation report that "fairly summarizes relevant evidence."**
- ✓ **Provide opportunity for parties and advisors to review the report (10 days).**

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REVIEW OF EVIDENCE 2024

Must provide an equal opportunity to access evidence that is:

- Relevant to the allegations of sex-based harassment and
- Not otherwise impermissible.

Must provide as either the evidence or an accurate summary in an investigative report.

- If providing the report, must also allow equal opportunity to access the evidence upon the request of either party.

Must provide the parties with a reasonable opportunity to review and respond to the evidence or the investigative report.

Must take reasonable steps to prevent the unauthorized disclosure of information and evidence obtained solely through the grievance procedure.

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REPORT

Organization of Report (if you draft)

- Only include **“relevant”** evidence
- Information from each party and witness
- Description of physical or digital evidence
- Timeline
- Consistencies/Inconsistencies



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EVIDENCE

ONLY relevant and not otherwise impermissible.

- Separate folders/digital drive
- Appendix to the report
- One attachment

Consider redactions and protected information

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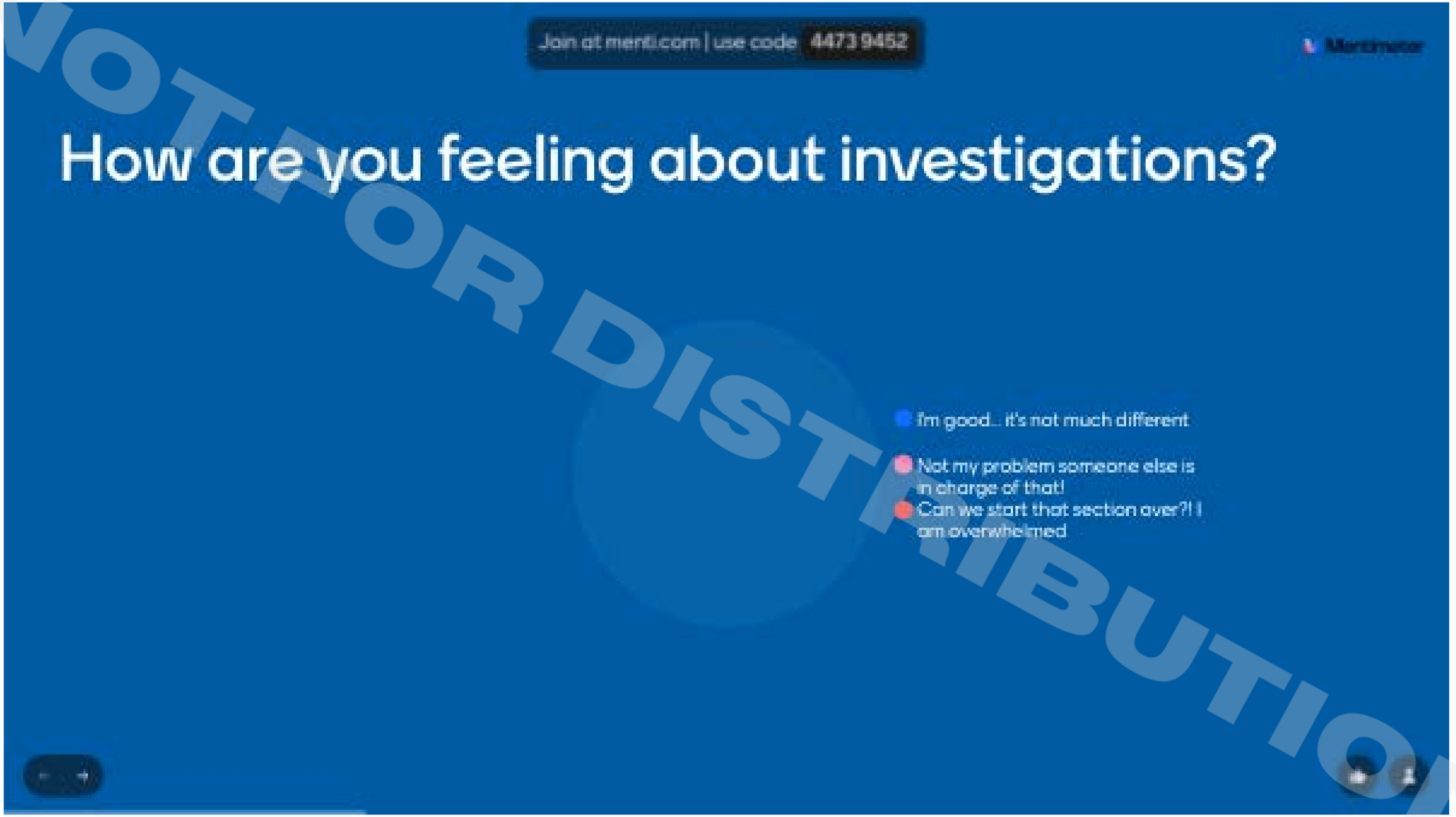
HOW YOU DOIN?!



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GRIEVANCE PROCEDURES



Determination

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No Bias or Conflict of Interest to specific parties or toward Complainants or Respondents generally



NOTE

Decisionmaker MAY be Coordinator or Investigator

Hybrid

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REFUSAL TO RESPOND:

Decisionmaker MAY choose to place less or no weight on statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible.

Decisionmaker MUST NOT draw an inference about whether the sex-based harassment occurred based SOLELY on a party's or witness' refusal to respond.

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Include (and follow) a presumption that Respondent is not responsible for the alleged conduct UNTIL a determination is made at the conclusion of the grievance procedures.

Challenges:

- already have a lot of information,
- know the parties,
- have video,
- etc.

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REQUIRE REASONABLE STEPS TO PROTECT THE PRIVACY OF THE PARTIES AND WITNESSES DURING THE GRIEVANCE PROCEDURES. 2024

Cannot restrict the party to:



Obtain and present evidence (including by speaking to witnesses).



Otherwise prepare for or participate in grievance procedures.

- However: must provide notice, information, evidence, etc.



Consult with family members, confidential resources, or advisors.

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2020

Decision-Maker

Determination Regarding Responsibility Checklist:

- [ ] **Identification of the Allegations**
- [ ] **Description of Procedural Steps Taken**
  - Notifications to the Parties
  - Interviews with Parties and Witnesses
  - Site Visits
  - Methods Used to Gather Other Evidence
  - Hearings Held
- [ ] **Findings of Fact Supporting Determination**
- [ ] **Conclusions Regarding the Application of the Code of Conduct to the Facts**
- [ ] **Result of Each Allegation Including Rationale**
  - Determination Regarding Responsibility
  - Disciplinary Sanctions
  - Whether Remedies Designed to Restore or Preserve Equal Access to Education Program or Activity Provided to the Complainant
- [ ] **Procedures and Permissible Basis for Appeal**

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2024 DETERMINATION



Must use preponderance of the evidence — unless school uses clear and convincing standard in ALL other comparable proceedings.

Notify the parties IN WRITING of the determination.

- Include a rationale in the determination.
- Include permissible basis for appeal (if applicable).
- If determination that sex discrimination occurred, MUST require Title IX Coordinator to:
  - Coordinate the provision and implementation of remedies to Complainant and others who had access denied.
  - Coordinate disciplinary sanctions.
  - Take other appropriate, prompt and effective steps to ensure that sex discrimination does not continue or recur.



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YOUR TURN

What's your why?!

- **Douglas punches Lydia in the face. They are dating (at least Lydia says so).**
- **There is video of her crying in the hallway, but NOT the incident.**
- **Douglas can be seen attempting to console her. She tries to get away from him.**
- **She has a mark on her face.**
- **Douglas refuses to talk to the investigator.**

Note:
Investigation



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GRIEVANCE PROCEDURES

Appeals



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Appeals 2020



- ✓ Offered to both parties.
- ✓ Can appeal dismissal of Formal Complaint or any allegations therein or determination regarding responsibility.
- ✓ On the Following Basis:
  - Procedural irregularity that affected the outcome of the matter.
  - New Evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter.
  - Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.
  - Additional basis if offered equally to both parties.
- ✓ Written decision describing the result and rationale for the result.
- ✓ Notify the other party in writing when an appeal is filed.
- ✓ Provide written decision simultaneously to both parties.
- ✓ Give both parties a reasonable opportunity to submit a written statement in support of or challenging the outcome.

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APPEALS

2024

MUST offer appeal that **AT A MINIMUM** is the same as the school offers in ALL OTHER COMPARABLE PROCEEDINGS (including other discrimination complaints)

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IF A PARTY APPEALS 2024:

01 **Notify the parties of the appeal.**

02 **Provide the parties a reasonable and equal opportunity to make a statement in support of or challenging the outcome.**

03 **Notify the parties of the result of the appeal and the rationale for the result.**

04 **Ensure that the appellate decisionmaker has been trained.**

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Who will serve as your appellate officer?!

- Building Level (not recommended)
- Central/District Office Level
- Superintendent/Director of Schools

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GRIEVANCE PROCEDURES

A few more things...



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DETERMINATION BECOMES FINAL

The date the parties are provided with the written determination of the result of any appeal.

OR

The date when an appeal would no longer be considered timely (day after appeal deadline).

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Any additional procedures a school adopts must be applied equally to all parties.

Use caution here. It's already complicated.



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MAY NOT discipline Respondent for sex discrimination UNLESS there is a determination AT THE CONCLUSION OF THIS PROCESS that Respondent engaged in sex discrimination.

MAY NOT discipline a party or witness for a false statement, or for engaging in consensual sexual conduct based SOLELY on determination of whether sex discrimination occured.

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A FEW MORE QUESTIONS



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Mentimeter

What do I absolutely NEED to do while I am here?!

0 responses

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QUESTIONS

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PREGNANCY OBLIGATIONS 2024

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PREGNANCY OBLIGATIONS

Students



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PARENTAL, FAMILY, OR MARITAL STATUS:

Must NOT adopt or implement policy, practice or procedures concerning student's current, potential, or past parental, family, or marital status that treats students differently on the basis of sex.

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ADMISSIONS (106.21)

When determining whether a person satisfied policy or criterion for admission, or in making offer of admission:

School **MUST** treat pregnancy or related conditions the same as any other temporary medical conditions.

School **MUST NOT**:

- Implement policy, practice or procedure concerning the current, potential, or past parental, family, or marital status of a student or applicant that treats a person differently on the basis of sex;
- Discriminate against any person on the basis of the current, potential, or past pregnancy or related conditions, or adopt or implement any policy, practice or procedure that so discriminates; and
- Make a pre-admission inquiry as to the marital status of an applicant for admission (including Miss or Mrs.).
    - May ask to self identify their sex but ONLY if the question is asked of ALL applicants AND if response is NOT used as a basis for discrimination.

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PREGNANCY OR RELATED CONDITIONS (106.40)

Must NOT discriminate against any student on the basis of the student's current, potential, or past pregnancy or related conditions.

It is NOT discrimination when a student is allowed to voluntarily participate in a separate portion of the education program or activity provided the school ensures that the separate portion is comparable.

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PREGNANCY OR RELATED CONDITION (P.1510)



- Pregnancy, childbirth, termination of pregnancy*, or lactation; (*note Utah abortion laws may impact this)
- Medical conditions related to pregnancy, childbirth, termination of pregnancy*, or lactation;
- Recovery from pregnancy, childbirth, termination of pregnancy*, lactation, or related medical condition.

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NOTIFICATION, PREGNANCY

When a student (or person who has the legal right to act on behalf of the student) informs ANY employee of the student's pregnancy or related conditions, the employee must:



Promptly provide that person with the Title IX Coordinator's contact information and



Inform the person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access

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COORDINATOR RESPONSE TO PREGNANCY OR RELATED CONDITIONS NOTIFICATION P. 1526

- Provide information about the school's obligations.
- Provide reasonable modifications. Note – called modifications not supportive measures.
- Voluntary access to separate and comparable portion of program or activity.
- Voluntary leaves of absence.
- Lactation space.
- Limitation on supporting documentation.
- Comparable treatment to other temporary medical conditions.
- Certification to participate.

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COORDINATOR RESPONSE TO PREGNANCY OR RELATED CONDITIONS NOTIFICATION

PROVIDE INFORMATION ABOUT THE SCHOOL'S OBLIGATIONS

Explain Obligations

&

Provide Notice of Nondiscrimination (Website)

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COORDINATOR RESPONSE TO PREGNANCY OR RELATED CONDITIONS NOTIFICATION

PROVIDE REASONABLE MODIFICATIONS

Make reasonable modifications to school's policies, practices or procedures to prevent sex discrimination and ensure equal access.

Modifications must be individualized.

Consult with the student to determine appropriate modifications.

- A modification is not reasonable if school can demonstrate it would fundamentally alter the nature of its education program or activity. (High bar)

Student may accept OR decline each modification offered. If accepted, school MUST implement it.

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Examples of modifications:

- Breaks during class to express breast milk.
- Breastfeed or attend to health needs associated with pregnancy or related condition including:
  - Eating/Drinking.
  - Using the restroom.
  - Intermittent absences to attend medical appointments.
  - Access to online or homebound education.
  - Changes in schedule or course sequence.
  - Extensions of time for coursework or rescheduling of tests and exams.
  - Allowing the student to sit or stand.
  - Allowing the student to keep water nearby.
  - Counseling.
  - Changing in physical space or supplies.
    - Ex: Access to a larger desk or footrest.
  - Elevator Access.
  - Other.

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MUST ALLOW OR ENSURE:



- Must allow the student to **voluntarily access any separate and comparable portion** of the education program or activity.
- Must allow the student to **voluntarily take a leave of absence** to cover, at the minimum, the period of time deemed medically necessary by the student's licensed healthcare provider.
  - If the student qualifies for a leave under a leave policy by the school that allows a greater time than medically necessary, the school must allow the student to take leave under that policy instead, if the student chooses.
  - Upon return, the student must be reinstated to the academic status and, as practicable, to the extracurricular status that the student held when the leave began.
- Must ensure that the student can **access a lactation space** that may be used by a student for expressing breast milk or breastfeeding and MUST:
  - Not be a bathroom;
  - Be clean;
  - Be shielded from view;
  - Be free from intrusion from others.

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Limitation on supporting documentation

- **Must NOT require supporting documentation unless:**
  - The documentation is necessary and reasonable for the school to determine the reasonable modifications to make or whether to take additional specific actions.
- **NOT NECESSARY WHEN :**
  - A student's need for a specific modification is obvious (such as when a student may need a bigger uniform or desk etc.).
  - A student has previously provided sufficient supporting documentation.
  - When the reasonable modification is allowing the student to carry or keep water nearby, sit or stand, take breaks to eat, drink or use the restroom.
  - When the student has lactation needs.
  - When the specific action is available to students for reasons other than pregnancy or related conditions without submitting supporting documentation.

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EQUAL TREATMENT & CERTIFICATION TO PARTICIPATE

- **Must** treat pregnancy or related condition in the same manner and under the same policies as any other temporary medical conditions with respect to medical or hospital benefit, service, plan or policy.
- **Must NOT** require a student who is pregnant or has related conditions to provide certification from healthcare provider or other person that they are physically able to participate in class, program, or extracurricular UNLESS:
  - The certified level of physical ability or health is necessary for participation;
  - The school requires certification of ALL students participating in the class, program, or extracurricular activity; AND
  - The information obtained is NOT used as a basis for discrimination.

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PREGNANCY OBLIGATIONS

Employees



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EMPLOYEE (106.57)



Parental, family, or marital status: (General Rule)

Must NOT adopt or implement a policy, practice, or procedure, or take employment action on the basis of sex:

- Concerning the current, potential, or past parental, family, or marital status of an employee or application for employment which treats persons differently OR
- That is based on whether an employee or application for employment is the HEAD OF HOUSEHOLD or principal wage earner in the applicant's family unit.

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EMPLOYEE PREGNANCY OR RELATED CONDITIONS

MUST treat pregnancy or related conditions as any other temporary medical conditions for ALL job-related purposes.

- Commencement
- Duration and extensions of leave
- Payment of disability income
- Accrual of seniority and any other benefit or service
- Reinstatement
- Other fringe benefits offered to employees

MUST NOT discriminate against employee or applicant on basis of current, potential, or past pregnancy or related conditions.

If no leave policy or if employee has insufficient leave or accrued time to qualify for leave under the policy, a school **MUST** treat pregnancy or related conditions as a justification for a voluntary leave of absence without pay for a reasonable period of time, at the conclusion, the employee shall be reinstated to the status held when the leave began or a comparable position, without decrease in rate of pay or loss of promotional opportunities or privileges.

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LACTATION SPACE



MUST provide a reasonable time for employee to express breast milk or breastfeed as needed.

MUST ensure access to lactation space:

- Other than bathroom
- Clean
- Shielded from view
- Free from intrusion

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PRE – EMPLOYMENT INQUIRIES –

Marital Status: No pre-employment inquiries as to marital status — including whether applicant is Miss or Mrs.

- Sex: May ask to self identify their sex but only if this question is asked of ALL applicants and if the response is NOT used as a basis for discrimination.

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REMINDER

Title IX Coordinator can appoint a designee for these obligations but the ultimate responsibility is with the Title IX Coordinator.

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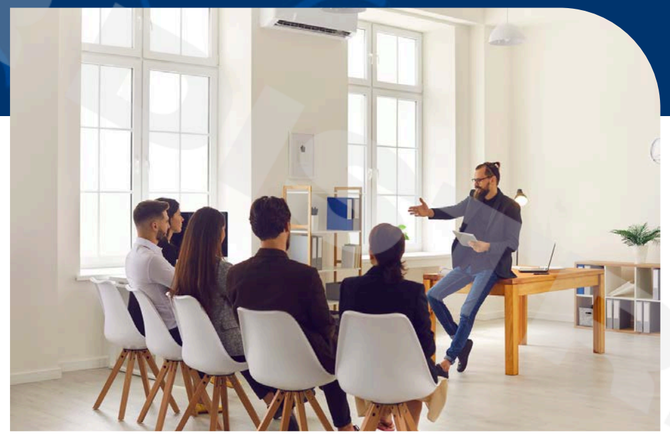
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PRACTICAL TIPS/IRL



Make new friends - coordination with other offices imperative



New training requirement for employees



Do not forget the recordkeeping implications

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QUESTIONS



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FERPA AND TITLE IX

Title IX requirements are not alleviated by FERPA

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THE DEVIL IS IN THE DETAILS



- Definitions
- Placement of Commas and Other Punctuation
- Language Changes/Additions

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FINAL THOUGHTS



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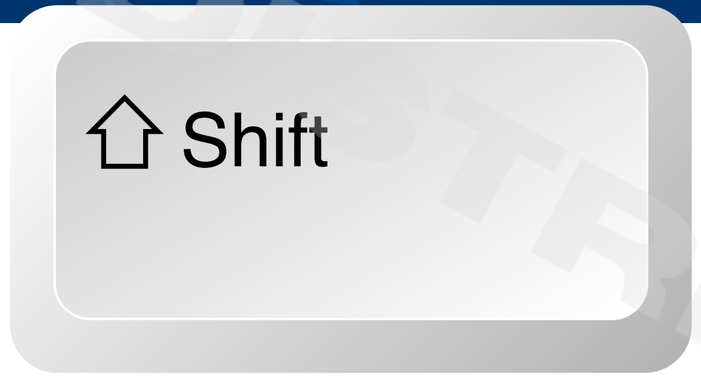
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REMEMBER!



This is a lot!



Requires a shift in thinking



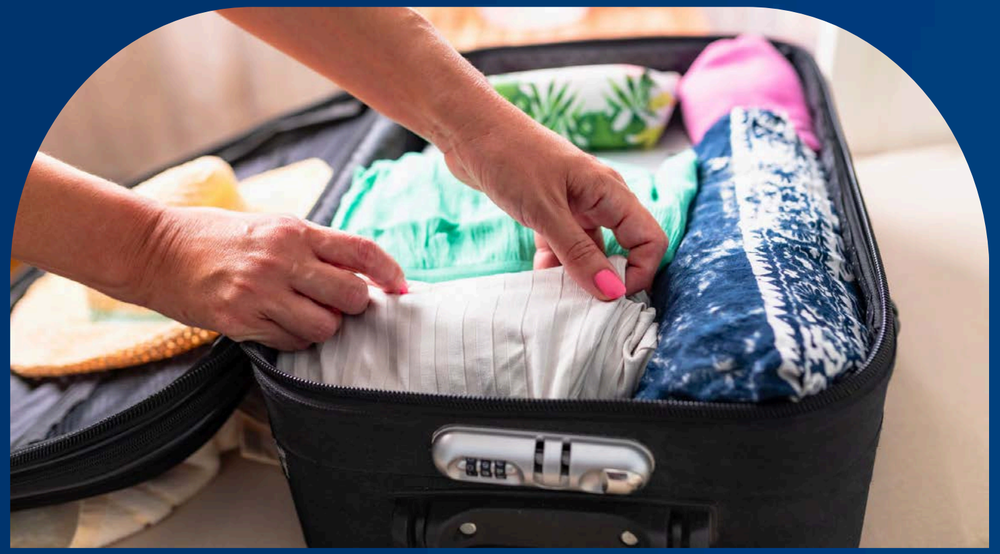
Revert back to the webinar overarching themes

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The BIG Themes "unpacked"



- The Devil is in the Details
- Make Room on Your Plate
- The What and Where Expanded
- Training, Training and A LOT More Training
- Publish it EVERYWHERE
- Make New Friends
- Grievance Procedures ++
- Finish Strong

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CONTINUE THE JOURNEY WITH US!

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YOUR ICS IMPLEMENTATION FORMULA



SMOOTH IMPLEMENTATION!

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