Title IX Coordinator: Roles and Responsibilities

Laura Castille, esq.
Certification Training
FAll 2026

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Training Objectives:

1

Understand the history, scope and enforcement of Title IX.

2

Understand the sweeping changes to Title IX: 2020, 2024 and again in 2025, including important definitions and procedural changes.

3

Understand how to determine Title IX jurisdiction and procedural steps when a complaint is received.

4

Understand the critical role of an institution's Title IX Coordinator.

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Title IX - the Law

Title IX is a Federal Civil Rights law stating:

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

36 small words: huge impact.

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History and purpose of TIX

Congress recognized that, in spite of the Civil Rights Act of 1964, women continued to received unequal treatment in schools.

How it started: to remedy a "long and unfortunate history of sex discrimination". *United States v. Virginia. 518 U.S. 515, 531 (1996) quoting Frontiero v. Richardson, 411 U.S. 677, 684 (1973).*

How it is going: improved access to educational opportunities and providing "equal opportunity to aspire, achieve, participate in and contribute to society based on their individual talents and capacities." *United States v. Virginia. 518 U.S. 515, 531 (1996)*

Scope of Title IX

Applies to institutions receiving federal financial assistance from the Department of Education, including state and local educational agencies.

- Approximately 16,500 local school School/ School/ School/ School/ School/ Districts, 7,000 postsecondary institutions, as well as charter schools, for-profit schools, libraries, and museums.

- Also included are vocational rehabilitation agencies and education agencies of 50 states, the School/School/School/School/ School/District of Columbia, and territories and possessions of the United States.

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Scope of Title IX cont.

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

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Who enforces Title IX?

- Title IX is a civil rights law, which falls under the jurisdiction of the U.S. Department of Justice.
- DOJ enforces laws to ensure equal access to education, as well as the Equal Protection Clause of the 14th Amendment.
- DOJ coordinates enforcement of Title IX across agencies to include the Department of Education and Office of Civil Rights (OCR).

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Test Case under Title IX



- ***Cannon v. University of Chicago***
  - 441 U.S. 677 (1979)
  - 39-year old female brought suit alleging gender discrimination in admission to medical programs operated by the Univ. of Chicago.
  - **Lower court**: No private right of action. Only remedy intended is removal of federal funds.
  - **Question**: Whether Congress intended a private right of action/remedy to be implied by Title IX?
  - **SCOTUS: Yes, Title IX allows a private right of action. Women are the protected class here and the language in Title IX mirrors the language of Title VI.**
  - https://www.pbs.org/video/makers-women-who-make-america-title-ix/

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Title IX Scope Case

- ***Grove City College v. Bell***
  - 465 US 555 (1984)
    - College sought to avoid Title IX/federal compliance requirements by refusing federal assistance.
    - Students were receiving opportunity grants from feds.
    - Ordered to sign assurances with feds.
    - College refused and sued.
    - **Lower Court:** Compliance not required.
    - **Question:** Whether the College was subject to federal requirements because *students* accepted federal financial aid? Whether Title IX violated the 1st amendment rights of the College?
    - SCOTUS: Yes, the students' acceptance of federal assistance triggered Title IX compliance, but only for those programs affected (i.e. not for athletics).
      - No, prohibiting discrimination does not infringe on the College's 1st amendment rights.

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More Clarity on Scope of Title IX

- ***Civil Rights Restoration Act (1988)***
  - Overturned *Grove City*
  - Legislative act that specified that recipients of federal funds must comply with civil rights laws in all areas, not just in the particular program or activity that received federal funding.
  - Title IX applied to all programs and activities of any institution receiving federal financial assistance.

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Title IX and the 14th Amendment

- ***Equal Protection Clause of the 14th Amendment***
  - All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; ***nor deny to any person within its jurisdiction the equal protection of the laws***.

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Separate, but Equal under Title IX



- ***United States v. Virginia***
  - Virginia Military Institute case
  - 518 US 515 (1996)
    - U.S. brought suit against VA alleging the school's male-only admissions policy was unconstitutional.
    - **Lower Court:** No problem. Nothing to see here.
    - **Question:** Whether VA's creation of a women's only academy, as a counterpart to the male-only academy satisfies the 14th amendment's equal protection clause?
    - SCOTUS: No, separate was not equal. Women's school could not offer the same benefits that VMI offered to men. Required that all gender-based classifications be evaluated with "heightened scrutiny" instead of previous "substantive comparability" standard.

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Monetary Damages under Title IX



- ***Gebser v. Lago Vista ISD* (1998)**
  - 524 US 274 (1998)
  - Sexual relationship between teacher and student in a high school.
  - Student brought suit against school district.
  - **Lower Court:** Ruled in favor of ISD – no money damages.
  - **Question:** Whether an education program can be required to pay monetary damages to a plaintiff under Title IX?
  - SCOTUS: Yes, money damages are available if Plaintiff meets two-part test:
    - 1. Party must show that a school official, with the ability to institute corrective measures, knew of the conduct.
    - 2. A party must show that despite knowledge of the conduct, the school failed to respond appropriately.

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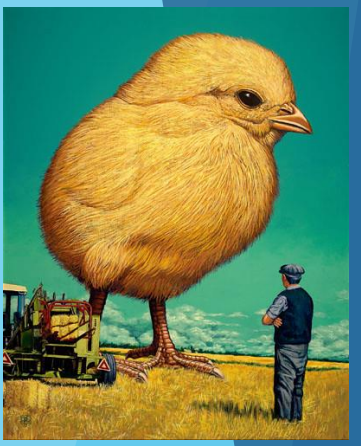


Title IX and Student-to-Student Harassment

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

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Proportionality Test Cases



- **Pederson v. LSU (2000)**
  - F.3d 388 (5th Circuit, Jan 27,2000)
  - 3 female LSU students brought suit alleging discrimination when LSU failed to create a women's soccer team.
  - District Court: Proportionality test appropriate here.
  - Question: Whether the women could represent a class for the lawsuit? Whether the proportionality test was appropriate when discrimination not intentional?
  - 5th Circuit: Yes, the women were all denied the opportunity to participate in collegiate athletics and could certify as a class. Yes, the proportionality test was appropriate because even if LSU discriminated out of ignorance, they still discriminated. Title IX violated.

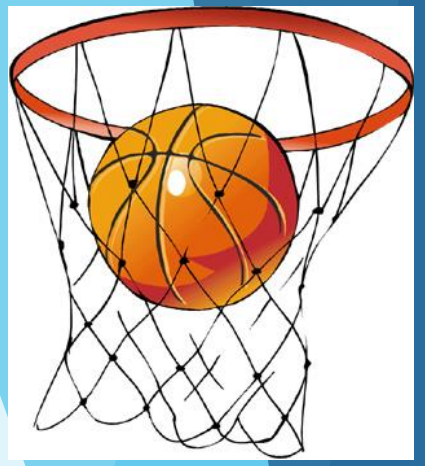
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OCR's Three Part Test for Title IX Proportionality

- A school must pass *one* of the three parts.
- **Proportionality:** The school's number of athletes from each sex should be roughly equivalent to enrollment percentages.
- **Additions:** The schools show a history and continuing practice of adding women's sports.
- **Accommodation:** Schools should be able to show athletic interests and abilities of women on campus are being fully and effectively accommodated. This is done by an extensive survey.

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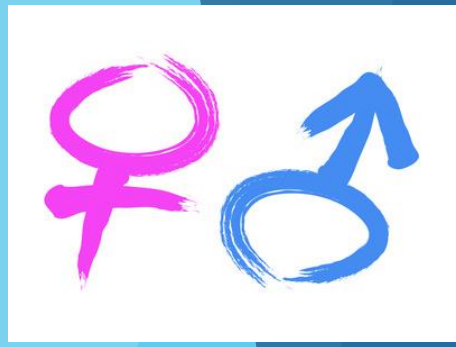
Title IX Prohibits Retaliation



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

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Sex Discrimination = Gender Discrimination?



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

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Obama-Era Changes to Title IX

2011

- April 4, 2011 Dear Colleague letter
  - Love letter to Title IX Coordinators
  - https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf
- This letter signaled an enormous change from the federal government of their expectations for how Universities will handle sexual assault.
- Huge changes in the interplay between Title IX and FERPA
- Changed how Universities were expected to conduct Title IX investigations.

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The 2020/2025 Title IX Regulation Related to Sexual Harassment

- Regulations - **effective beginning August 14, 2020**.
- **Repealed at the implementation of the 2024 regulations.**
- **Back in effect beginning January 2025.**

Changes include:

- New terminology, policy and notice requirements Limitations on jurisdiction
- Optional burdens of proof; must choose. Revised Title IX Coordinator responsibilities Revised investigation procedures
- Expanded hearing rights options for K-12 hearings New Requirements for Decision makers
- New rules for appeals
- Expanded training requirements and record keeping

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The 2024 Title IX Regulation Changes Related to Sexual Harassment: Highlights

Removal of Geographic limitations
34 CFR §106.11

- Title IX recipient should not focus on whether the alleged misconduct happened on or off campus, “but rather on whether the recipient has disciplinary authority over the respondent’s conduct in the context in which it occurred.”

- There is no distinction between discrimination that occurs in person and that which occurs online, and the **final regulations permit schools to exercise their authority under the law to consider some conduct that occurs outside an institution’s educational boundaries.**

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The 2024 Title IX Regulation Related to Sexual Harassment(K-12) Cont.: Highlights

- Broader definition of sexual harassment: Includes conduct that is "sufficiently severe or pervasive".
- Clarification on special education interaction with Title IX.
- Training requirements.
- Clarification of prohibition on discrimination based on pregnancy: Includes current, potential, or past pregnancy or related conditions
- Support for LGBTQ+ students: Confirms protections for LGBTQ+ students
- Improved reporting process: Makes it easier for complainants to report sexual harassment
- Support for parents and guardians: Supports the rights of parents and guardians to file a Title IX complaint on behalf of a minor student.
- Clear communication of nondiscrimination policies: Requires schools to clearly inform key people of their
nondiscrimination policies and procedures
- Prohibition of sharing personal information: Prohibits schools from sharing confidential personal information during the TIX process, except as allowed by law.

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Clarification of Pregnancy-Related Protections & Inclusion of Lactation Issues - Still in Effect

- Title IX recipients must protect students, employees, and applicants from discrimination based on **pregnancy, childbirth, termination of pregnancy, lactation, related medical conditions, or recovery** (§ 106.2)

- Providing reasonable modifications for students (including Section 106.40(b)'s requirement to provide a pregnant student with the Title IX coordinator's contact information)

- **Reasonable break time for employees for lactation** (§ 106.57(e)(1).

- Clean, private lactation space for both students and employees (§§ 106.40(b)(3)(v) and 106.57(e)(2)).

- Sections106.40(b)(3)(v) and 106.57(e) of the final regulations require Title IX recipients to **assure students and employees have access to a lactation space**, "which must be a space other than a bathroom that is clean, shielded from view, free from intrusion from others,"

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Old Definitions, which are **New** Again

"**Sexual Harassment**" means conduct **on the basis of sex** that satisfies at least one of the following:

- A **school employee conditioning education benefits on participation in unwelcome sexual conduct** (i.e., quid pro quo); **or**
- **Unwelcome conduct** that a reasonable person would determine is so **severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity; or**

- **Sexual assault** (as defined in the Clery Act), **dating violence, domestic violence, or stalking** as defined in the Violence Against Women Act (VAWA).

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The Now OLD Definitions=Policy changes required (check all templates and forms

- 34 C.F.R. Section 106.2 "**sex-based harassment** is a form of sex discrimination, and include both sexual harassment, which is conduct of a sexual nature, as well as other forms of harassment that are not necessarily "sexual" but are based on a person's sex, such as pregnancy harassment, gender identity, or sex-based stereotypes."
- **Now the OLD definition**: Sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively so severe **or** pervasive that it limits or denies a person's ability to participate in or benefit from your education program or activity.
- **Retaliation** definition changes clarify that nothing in that definition prohibits institutions from requiring employees to participate as a witness in, or otherwise assist with, a Title IX investigation, proceeding, or hearing. 34 C.F.R. Section 106.2
- *Remember – sexual harassment is still evaluated on the manner it was received, not the manner in which it was intended.*

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Break Time

(Grab the document from your email entitled “Standard Operating Procedures” for when we return.)



Elements of Sexual/gender-based Harassment

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

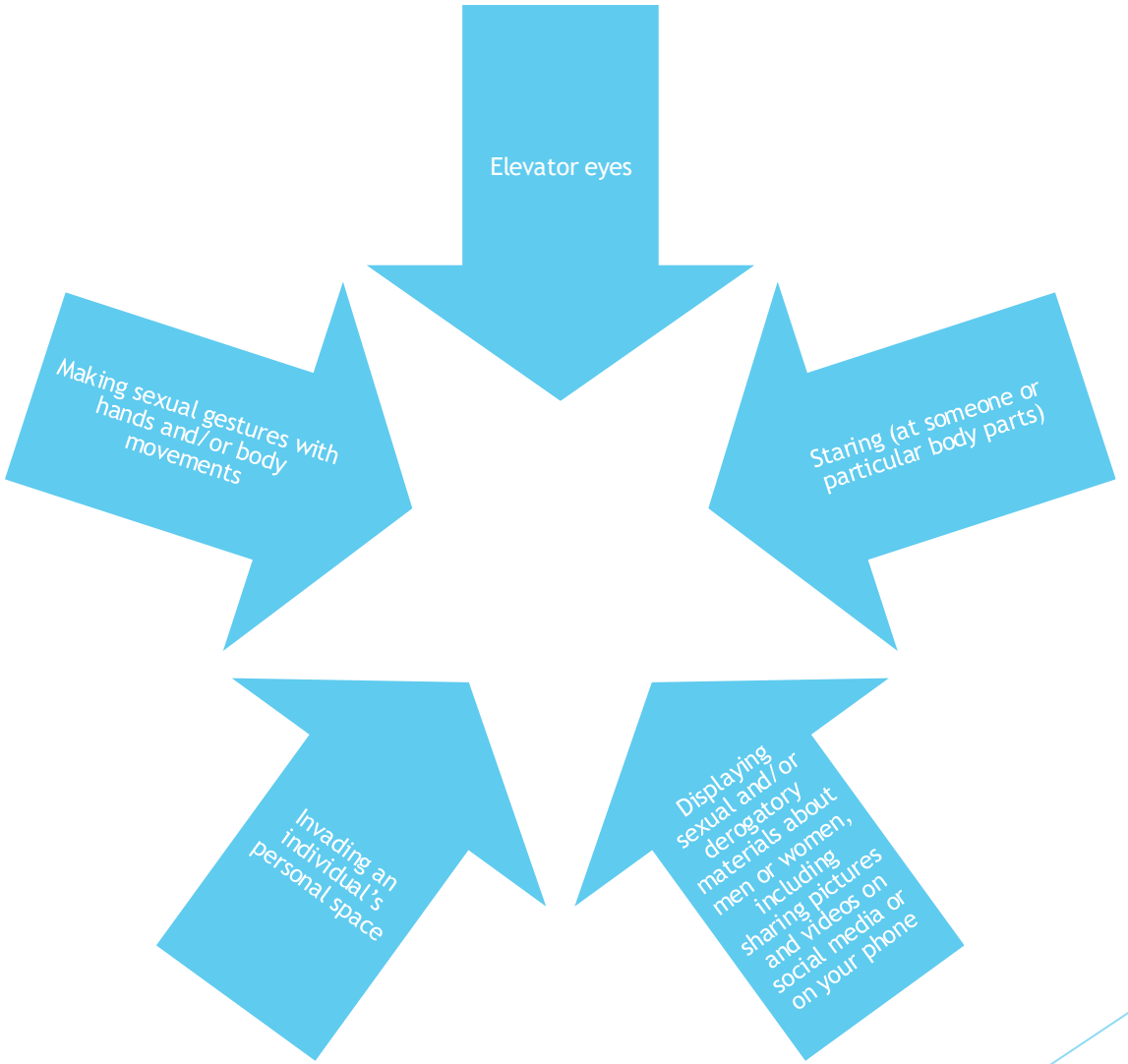
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Examples of verbal sexual harassment

- Threats or suggestions of loss of job, academic credit or privileges or withholding of a benefit unless sexual favors are given
- Threats or suggestions that a person will “get ahead” if sexual favors are given
- Repeated requests to have lunch, dinner, a drink or to just “hang out” or “hook up”
- Calling someone “doll,” “babe,” or “honey”
- Making sexual innuendoes
- Telling sexually-oriented jokes or stories
- Making sexually-oriented comments about a person’s appearance, clothing, or body.
- Turning innocent discussions to sexual topics
- Cat-calling

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Examples of non-verbal sexual harassment



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Examples of Physical sexual harassment

Massaging a person's neck, shoulders, etc.	Brushing up against another person	Hugging, kissing, patting, or stroking someone
Pinning someone into a corner	Touching oneself in front of another	Adjusting a person's clothing
Non-consensual sexual contact	If the conduct interferes with a person's ability to access educational or work opportunities – it may be sexual harassment.	The Tix Coordinator makes this determination.

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Hostile Environment Analysis under TIX

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

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Prohibitions on Retaliation

- No school or person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX,

- or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation or proceeding.

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What Does *Not* Constitute Retaliation?

- ✓ The exercise of rights protected by the First Amendment does not constitute retaliation. (No party can be prohibited from discussing the allegations or gathering evidence).

- ✓ Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation; provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.

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TIX Notice and Response - No Change

- When a Responsible Employee is made aware of conduct which may constitute sexual harassment, the School/District must take specific action.

Conduct must be immediately reported to TIXC.

Promptly contact Complainant to discuss available supportive measures.

Supportive Measures: **individualized services to restore or preserve equal access to education, protect student and employee safety, or deter sexual harassment.**

- Supportive measures must be offered even if a complainant does not wish to initiate or participate in a grievance process.
- Explain to Complainant the process of filing a complaint and the TIX investigation process.



Mandatory Response to Reports of Sexual Harassment

A School/District **MUST**

- respond promptly in a manner that is not **deliberately indifferent**, i.e., in a way that is not clearly unreasonable in light of the known circumstances;
- Offer supportive measures to the complainant (and respondent if investigation proceeds).

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Protection for LGBTQ+ Now Codified - Repealed

- Codification of protection against discrimination on the basis of sexual orientation and gender identity.
- **The final regulations**: Protection against all sex- based harassment and discrimination. The final rule protects all students and employees from all sex discrimination prohibited under Title IX, including by restoring and strengthening full protection from sexual violence and other sex- based harassment.
- A note on the NMHRA. Protections still in place in NM.

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Social Media and AI –Included in Harassment

- A recipient's obligation is to address all forms of sex discrimination, including sex-based harassment that occurs within the recipient's education program or activity, whether the conduct takes place online, in person, or both.

- Online harassment can include, but is not limited to, unwelcome conduct on social media platforms such as sex-based derogatory name-calling, the nonconsensual distribution of intimate images (including authentic images and images that have been altered or generated by artificial intelligence (AI) technologies), cyberstalking, sending sex-based pictures or cartoons, and other sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity.

- A recipient must evaluate online conduct with the same factors that are used to determine whether in-person conduct creates a hostile environment.

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Special Education & Title IX

- Section 106.8(e) clarifies that the Title IX Coordinator is not required to consult with a student's full IEP team or Section 504 team.
- However, Section 106.8(e) does provide the recipient must require that the Title IX Coordinator consult with one or more members of a student's IEP team or Section 504 team, as appropriate.
- The purpose of the consultation is to determine how the recipient can comply with relevant special education laws while carrying out the recipient's obligation under Title IX

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Title IX and Confidentiality

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

Title IX trumps FERPA.

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Training Requirements: No Change

Section 106.8(d)(2) requires all investigators, decisionmakers, and other persons responsible for implementing the recipient's grievance procedures or who have the authority to modify or terminate supportive measures to also be trained on the recipient's obligations; the recipient's grievance procedures, and if applicable, how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias…

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Title IX Required Training

Title IX Coordinators, investigators, decision-makers and people who facilitate any informal resolution process, must be free from conflicts of interest or bias for or against complainants or respondents.

Training of Title IX personnel must include:

- ✓ the new rule's definition of sexual harassment and the scope of the school's education program or activity;
- ✓ how to conduct an investigation and grievance process including appeals and informal resolution processes, as applicable;
- ✓ and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
- ✓ decision-makers and investigators must receive training on issues of relevance, including how to apply the rape shield protections provided only for complainants.

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Deadline for Implementation - Now

- ✓ All policies MUST be updated - **again**.
- ✓ All staff trained on new Title IX regulations - **annually**.
- ✓ Update student, staff and parent handbooks, websites, etc. before school starts.

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Important Title IX Definitions

- **"Actual knowledge" means notice of sexual harassment or allegations of sexual harassment to the School/District's Title IX Coordinator,** or
- any official of the school who has authority to institute corrective measures on behalf of the school,
- **or to any employee of an elementary and secondary school** provided that imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge.

- Teachers, administrators, employees – **MUST** report to Title IX coordinator any conduct which may be sexual harassment.

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Important Title IX Definitions cont'd.

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

- The person who simply reports is not the "Complainant" purposes of investigation.

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

- **The Title IX Coordinator has the right/obligation to file a complaint on behalf of a complainant(s) if the complainant is unwilling and the Title IX Coordinator determines there is a "substantial risk of the conduct being repeated". [Take a look at the template for a TIX Coordinator complaint.]**

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Important Title IX Definitions cont'd.

"Notice" includes, but is not limited to,

- a report of sexual harassment to the Title IX Coordinator
- in person,
- by mail,
- by telephone,
- or by electronic mail,
- using the contact information listed for the Title IX Coordinator,
- or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.
- Such a report may be made at any time (including during non-
- business hours) by using the telephone number or electronic
- mail address, or by mail to the office address, listed for the Title IX Coordinator.
- 34 CFR 106.8

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Important Title IX Definitions cont'd.

- "**Education program or activity**" - locations, events, or circumstances **over which the school exercised substantial control over both the alleged harasser and the context in which the sexual harassment occurs** and **also includes any building owned or controlled by a student organization** that is officially recognized by a postsecondary institution.
- *New regulations include harassment on social media, text, etc., which impact a student's access to educational opportunities.*
- "**Supportive measures**" means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, without fee or charge, **to the parties in a TIX matter.**
- Removing a student from school without a risk assessment is punitive.

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Supportive Measure Requirements

- **Applies to both complainant and respondent, before or after the filing of a formal complaint, or where no formal complaint has been filed.**
- Measures are designed to **restore or preserve access to the recipient's education program or activity**, without unreasonably burdening the other party; protect the safety of all parties and the recipient's educational environment; and deter sexual harassment.
- **May include** counseling, course-related adjustments, modifications of work or class schedules, campus escort services, increased security and monitoring of certain areas of campus, and mutual restrictions on contact between the parties.

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Important Title IX Definitions cont'd.

- "**Formal complaint**" means a document **filed by** a **complainant** or **signed** by the Title IX Coordinator alleging sexual harassment against a respondent **and requesting that the school investigate the allegation of sexual harassment.**
- **At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed.**

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Important Title IX Definitions cont'd.

- "Title IX Coordinator"- **At least one person designated and authorized** by a School/District to coordinate its efforts to comply with Title IX **and must be** designated by that title.
- **Applicants for admission and employment, students, parents or legal guardians of Grades 1-12 students, employees**, and all **unions**, must be annually notified of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator.
- **Website must include the contact information.**

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The Process:
Model Standard Operating Procedures

I. General Overview

- The Title IX Coordinator's name and contact information will be
- published on the School/District's website.
- The process for a student/family/employee to file a Title IX report ("Report") will be published and available on the School/District's website.
- Reports may be made via email to the Title IX Coordinator, by submitting the Title IX complaint form to the Title IX Coordinator or by calling the Title IX coordinator.
- All School/District employees are mandatory reporters.
  - A Report, made to a School/District employee, must be immediately
  - reported to the Title IX coordinator.
    - The Report form may be found on the School/District's website, school and here [insert link to form]

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Model Complaint Form

- Note: If your School/District uses the NMSBA policy service for their policies, there is a form found at A-0331. (Policy is at A-0312 - take a look.)
- Take a look at the model complaint form found with your registration email.

When the Title IX Coordinator reviews a complaint, they must determine:

Who is the Complainant?

- Remember, the *reporter* is not necessarily the *Complainant*.
- The Complainant is the person who ***received*** the allegedly discriminatory conduct – that is not always the person who made the report.

Who is the Respondent?

- Is the Complainant willing to proceed with an investigation?
- Regardless, must offer supportive measures to both parties.

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Procedures for Complaint Intake and Investigation

- **Who Can Complain?- Any person may report sex discrimination, including sexual harassment** (whether or not the person reporting is the person alleged to be the recipient of conduct that could constitute sex discrimination or sexual harassment) but the term "complainant" means the **victim/ recipient.**
- **How? - In person, by mail, telephone, or by electronic mail,** using the contact information listed for the Title IX Coordinator, **or by any other means** that results in the Title IX Coordinator receiving the person's verbal or written report.

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More About Complaints

- A complaint report **may be made at any time (including during non-business hours)** by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.
- The School/District **must treat a person as a "complainant" any time it has notice that the person is alleged to be the recipient of conduct that could constitute sexual harassment**
- regardless of whether the person themselves reported, or a third party reported the sexual harassment,
- **and irrespective of whether the complainant ever chooses to file a formal complaint or participate in an investigation.**

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School/District Policy Requirements (Take a look at your policy now. Does it meet these requirements?)

- The **policy must address how notice of the nondiscrimination policy and grievance procedures will be made**, including **how to file or report sexual harassment** and **how the recipient will respond**, and **notice must be given to:**
  - applicants for admission and employment;
  - students;
  - parents or legal guardians;
  - unions or professional organizations holding agreements with the School/District, and
  - notice to the same groups must contain the current Title IX Coordinator's name or title, email address, office address,
  - and telephone number. (Needs to be updated annually.)

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Policy Requirements, cont'd.

Notice of a School/District's non-discrimination policy must include,

- statement that the recipient does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by Title IX and its regulations not to discriminate in such a manner;
- the requirement that prohibition on discrimination in the education program or activity applies to employment;
- Statement that inquiries about the application of Title IX and its regulations to the School/District may be referred to the designated Title IX Coordinator, to the Assistant Secretary of the Federal Department of Education, or both; and
- **both the notice of nondiscrimination and the Title IX Coordinator's contact information must be published on District/School websites and in any handbook provided students, parents/guardians, applicants, unions and professional organizations have agreements with a School/ District.**

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Lunch Break



TIX Coordinator Must determine Jurisdiction

- Does TIX jurisdiction attach?
  - Was the complainant attempting to participate in a School/District-sanctioned program or activity when the conduct occurred?
  - Was the respondent engaging in a School/District-sanctioned program or activity when the conduct occurred?
  - Did the School/District have control over the respondent when the conduct occurred?
  - Did the alleged conduct occur within the jurisdiction of the School/District?

Remember: The regulations still require the School/District to consider conduct that did not occur within the geographical boundaries of the School/District, but impacted a student's access to their educational opportunities. i.e. social media, texting, snapchat, pictures, etc.

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Must Determine SPOO

- Does the conduct alleged, if true, rise to the level of a Title IX investigation:
  - ✓ Severe **and**
  - ✓ Pervasive and
  - ✓ Objectively Offensive
- So as to effectively limit or deny a person's ability to participate in or benefit from your education program or activity.
- If ***yes***, must meet with Complainant to review the investigation process.

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Complainant Considerations

Questions

- Has the Complainant been offered supportive measures?
- Has the Complainant been informed of her right to contact law enforcement?
- Has the Complainant had the Title IX investigation process explained to her?
- Does the Complainant want an investigation into this matter?
- If yes, what are the next steps?
- If no, what are the next steps?
- Should the TIX coordinator consider filing a complaint on behalf of complainant if she is unwilling to move forward? Why or why not?

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Respondent Considerations

- Has Respondent been offered supportive measures?
- Has Respondent been provided with written notice of allegations and advisement of rights?
- Has Respondent been notified of the presumption that they are not responsible for the alleged conduct?
- Has Respondent been notified of their right to provide witnesses and evidence to support their position?
- Has Respondent been notified of their right to respond in writing to the allegations?

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Standard Operating Procedures cont.

I. Handling a Report

A. When a Report is received, the Title IX Coordinator, or Designee, i.e. Deputy Title IX Coordinators, will conduct a preliminary inquiry, when necessary to gather more information to determine Title IX jurisdiction.

B. Based on the allegations, or preliminary inquiry, the Title IX Coordinator will determine if the allegations in the Report fall within Title IX jurisdiction, or if the Report will be referred to another department.

C. When a formal Report is received from a Complainant, and the allegations do not meet the criteria for Title IX jurisdiction, a Notice of Dismissal ("Dismissal") will be sent to the Complainant.

1. If Respondent is aware of the Report, Respondent will also receive the Dismissal.

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Mandatory Dismissal of Formal Complaint

If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in § 106.30 even if proved,

did not occur in the School/District's education program or activity,

or did not occur against a person in the United States,

- Don't forget about social media considerations...

then the School/District **must** dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under title IX or this part;

such a dismissal does not preclude action under another provision of the School/District's code of conduct.

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Permissive Dismissal of Formal Complaint

The School/District **may** dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:

A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;

the respondent is no longer enrolled or employed by the recipient;

or specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

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Standard Operating Procedures cont.

1. Both the Complainant and Respondent ("the Parties") have the right to appeal a Dismissal.
   a. To appeal, a written appeal must be submitted to the Title IX Coordinator, within five (5) days of the issuance of a Dismissal.
   b. The appeal, and any associated documents, will be sent to the Superintendent for review.
   c. If the Superintendent agrees that Title IX jurisdiction does not attach to the Report, the Superintendent will issue a written denial of the appeal.
   d. This denial will be sent to the Title IX Coordinator for distribution to the Party[ies].
   e. If the Superintendent determines that the matter should be investigated through the Title IX process, the matter will be returned to the Title IX Coordinator for assignment and investigation.
2. **If a Dismissal is issued, the Report may be sent to the appropriate site level administrator for sanctions under the student code of conduct, or to the individual's supervisor/HRS for review and sanctions.**

Simply because a matter does not fall within Title IX jurisdiction, does not mean that it cannot be addressed through another conduct process.

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Standard Operating Procedures cont.
InitiatingAn Investigation

I. **Investigation Process**

A. If Title IX jurisdiction attaches to the allegations in the Report, the Title IX Coordinator will initiate the Title IX Investigation Process.

B. The Title IX Coordinator may assign a Deputy Title IX Coordinator, or other designee, to offer and assist in the delivery of Supportive Measures to the Parties.

1. Supportive Measures may include, but are not limited to: counseling, change of class schedule or work assignment, extracurricular changes, excused absences, etc.
2. Supportive measures are offered to both Parties.

- Must document all supportive measures offered and accepted by the Parties.
- Parties must be treated equally in the process.

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Standard Operating Procedures cont. Conflict of Interest

A. The Title IX Coordinator will assign an investigator to begin investigation of the Report.
   1. If a conflict, real or perceived, between the assigned investigator and the Parties exists, the investigator will notify the Title IX Coordinator.
   2. The Title IX Coordinator will determine whether an actual conflict exists, and either reassign the Report to another investigator or continue with the assigned investigator.

- MUST be aware of conflicts of interest, or the appearance of a conflict, through the entire process.
- Better to conflict yourself out than have the process questioned due to a real or perceived conflict.
- That said – Parties will always allege bias.
- At this stage – the TIX Coordinator is supervising the process and acting as a neutral liaison for the parties through the process.

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Got Bias?

- Title IX requires anti-bias training for all individuals involved in the Title IX process.
- What are your biases?
- How might these biases impact you in the Title IX investigation process?
- https://implicit.harvard.edu/implicit/takeatouch testv2.html
- Take a test and let's reflect on the results.

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Let's Practice.

On May 1st during theater class, Blake (student) came to me (theater teacher) to report an incident, which had happened during preparation for the show. Blake reported that Sam had touched Blake's genitals without consent. Blake said that initially the contact was consensual, but that changed and Sam did not stop. Blake reported that they had been "talking" but had not interacted since this incident. Blake says it is difficult to attend theater class now and they are not sure what to do. Blake says that they are feeling anxious and struggling with mental health since this incident.

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Test Your Bias.

- What types of bias may be present in this investigation?
- What was your initial thought upon reading this scenario?
- Would your analysis change if both the complainant and respondent were male?
- Would your analysis change if both the complainant and
  - respondent were female?
- What if the respondent were female and the complainant male?
- If you knew that the Respondent was the quarterback of the football team, would that matter?
- What experiences in your own life would impact your biases when evaluating this scenario?
- What supportive measures may be appropriate for the parties?

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Check your own personal bias:

- Test yourself.
- Test your team.
- Develop a consistent intake process.
- Create a truth-telling environment.
- Prepare, prepare, prepare.
- Develop a system to summarize interviews.
- Rely on tools to keep your decisions fair.
- Collect and consider all evidence - the good, the bad and the ugly.
- Use a range to classify misconduct.
- Use a range to select an appropriate fix.
- Track your work at every stage.
- Be conscious of and question your decisions.
- Educate yourself.
- Communicate about it and create systems to reduce it.
- Increase your exposure.
- Co-investigate.

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Break



Standard Operating Procedures Cont.

A. If a Party needs to be placed on interim suspension during the pendency of the investigation, as a result of significant safety concerns, the Title IX Coordinator will conduct a risk assessment prior to a removal.
   1. If it is determined that a Party is to be placed on interim suspension, the Party to be removed has the right to appeal the removal to the school site level administrator (principal/ designee), or to their direct supervisor, if an employee.
      a. The Appeal must be submitted to the Title IX Coordinator within five (5) days of removal.
      b. The Party will be informed in writing from the Title IX Coordinator, within five (5) days of submission of Appeal, of the outcome.

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Interim Suspension

The Regulation does not preclude a School/District from removing a respondent from the recipient's education program or activity on an emergency basis, **provided that**

the recipient undertakes an individualized safety and risk analysis,

determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal,

and provides the respondent with notice and an opportunity to appeal the decision immediately following the removal.

- Who will serve as the appeal authority in your organization?

IDEA, Section 504, ADA may preclude total removal.

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Risk Assessment

Look at the NABITA risk assessment and the documentation form in the drive.

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Employee Administrative Leave

- The Regulation does not preclude a School/District from placing a non- student employee respondent on administrative leave during the pendency of a Title IX grievance process.
- Work with HR on this process.



Title IX Coordinator Responsibility

Title IX Coordinators are *required to ensure* that all of the individuals involved in this process are trained **annually** and training is posted on the website.

- How are you training your staff?



Standard Operating Procedures cont. Title IX Investigation

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

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Standard Operating Procedures cont.

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

B. After ten (10) days, the investigator will finalize the investigation report.
   1. The final report will include any response that a Party submitted in writing to the draft report.
   2. The Final Report will be transmitted to the Title IX Coordinator.
   3. Title IX Coordinator transmits the final investigation report, along with all exhibits to the Decision-Maker.

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

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RECORDS RETENTION

- **All records** must be retained and available to parties to an investigation for seven (7) years.
- Where are you keeping your TIX records?
  - This is minimum required under TIX.
    - State retention records may require a longer time period.
  - All records includes records of training, investigations, hearings, informal resolutions, supportive measures and any other processes.

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Standard Operating Procedures cont.

I. **Determination (of responsibility)**

A. The Decision-Maker determines, based on the report and evidence, whether the Respondent should be found responsible for a violation of policy.

1. The Decision-Maker drafts a written decision ("Determination") within ten (10) days of receipt of the final investigation report and exhibits.
2. The Determination is sent to the Title IX Coordinator for distribution to the Parties.
3. The Title IX Coordinator distributes the Determination to the Parties simultaneously, along with a description of procedural next steps, within five (5) days of receipt.

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More Training

Decision makers must be trained

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

Check your website - is it compliant?

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Standard Operating Procedures cont. Appeal of Determination

A. **Appeal of Determination**
   1. If either Party chooses to appeal the Determination, they may send a written appeal to the Title IX Coordinator within five (5) business days of distribution of Determination.
   2. All Parties will be made aware of an Appeal of the Determination.
B. The Title IX Coordinator will transmit the Appeal, along with the final investigation report and exhibits, to the Superintendent, or Designee, for review and decision.
C. An Appeal of the Determination may be considered only when one of the following criteria is met:
   1. New facts and evidence are presented, that were not available at the time of the investigation, which will *impact* the outcome of the investigation; or
   2. Evidence is produced that demonstrates that the School/School/School/ School/School/District had a conflict of interest, or bias, that *affected* the outcome of the investigation; or
   3. Evidence is produced that the investigation procedures were not followed, which would have *impacted* the outcome of the investigation.

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Grounds For Appeal

A procedural irregularity that affected the outcome.

New evidence that was not reasonably

available at the time the determination or

dismissal of charges were made that could affect the outcome.

Title IX Coordinator, investigator(s), decision-maker(s) had a conflict of interest against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome.

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Qualifications of the Appellate Decision-maker



The appellate "decider" **cannot be** the Coordinator, investigator, or initial decision maker;



Cannot have a conflict of interest or bias against complainants and respondents generally or the particular complainant and respondent, and



Must be trained to same level as Coordinator and Hearing level decision maker.

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Standard Operating Procedures cont. Appeal of Determination

A. The Superintendent, or Designee, will issue a written decision on the Appeal, and transmit the decision to the Title IX Coordinator within ten (10) days of receipt of the Appeal.
   1. The Title IX Coordinator will transmit the written decision to the Parties.
   2. The decision of the Superintendent, or Designee, is final.

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Informal Resolution

- [Check out the sample informal resolution template provided]
  - Cannot be a requirement.
  - May not be offered unless a formal complaint is filed
  - However, at any time before a determination is reached, School/School/School/School/School/ District may facilitate an informal resolution process, like mediation, that does not involve a full investigation and grievance process, so long as parties give voluntary written consent to the informal resolution process.
  - Not allowed when respondent is an employee and complainant a student.
  - Parties must agree to the resolution.

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Let's Review What We Have Learned

For which parts of the Title IX process are Coordinators responsible?



Mandatory Response MUST Do's

Coordinator must

promptly contact the complainant to discuss the availability of supportive measures,	consider the complainant's wishes with respect to supportive measures,	inform the complainant of the availability of supportive measures **with or without the filing of a formal complaint**,	and explain to the complainant the process for filing a formal complaint.

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Coordinator Must Do's

- Determine initial jurisdiction questions - **SPOO**.
- Determine whether complainant has made a formal complaint or if Coordinator will initiate complaint.
- Determine whether there is an obligation to investigate.
- Determine range of policy violations if allegations are true.
- Ensure the provision of written notice to complainant and respondent of allegations and investigation prior to setting formal interviews.

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Coordinator Responsibilities

- **Describe or list the possible disciplinary outcomes and remedies that may be implemented following a determination of responsibility. (Notice of allegations template contains complaint language.)**
- Notify respondent of any provision in the code of conduct that prohibits knowingly making false statements or providing false information in the grievance process.

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Investigator Duties

- Promptly conduct an unbiased investigation
- Provide parties equal opportunity to present witnesses and evidence; allow them to be accompanied by an advisor; give parties written notice of meetings and sufficient time to prepare.
- A decision may not be made sooner than 10 days after the final report is served on the complainant and respondent for their review and written response.
- Provide the complainant and respondent the evidence gathered in the investigation 10 days prior to its finalization and parties must be allowed to respond within this period.

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Administrative Process

Board Policy determines whether in person hearings with cross examination are permitted. Hearings not required by K-12 or post-secondary.

Parties may submit written questions that the party wants asked of any party or witness and be permitted follow-up questions.

The complainant's prior sexual behavior is not relevant unless used to prove consent with respondent or that another person committed the acts complained of.

Burden of Proof – Same for employees as others.

- ✓ Generally – preponderance of the evidence.

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Formal Administrative Decision

- The investigator and the Coordinator **cannot be** the decision maker.
- The written decision must include:
  - ✓ The allegations that could constitute sexual harassment;
  - ✓ All procedural steps from receipt of the complaint to the determination;
  - ✓ The factual findings;
  - ✓ The conclusions applying the facts found to the code of conduct;
  - ✓ A statement of the rationale for the result found for each allegation, the determination of responsibility, any sanctions and any remedy needed to restore or preserve equal access to the educational program or activity for the complainant and
  - ✓ The bases and procedures for an appeal.

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Applicability of State Law Due Process Requirements

- The Title IX Regulations allow the decision-maker to impose sanctions against a respondent determined to be responsible for sexual harassment.
- The NM Public School Code provides specific due process protections, including hearings, for terminating/ discharging certain employees. NMSA 22-10A- 24 thru 28.
- The NM Administrative Code provides specific due process protections, including hearings, for students facing long-term suspension/expulsion. NMAC 6.11.2.
- Does the federal law "preempt" these state law due process requirements? May have to do both.

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Be Great!



Laura M. Castille, Esq.

laura@castillelaw.org

505-670-8361

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