TITLE IX TRAINING FOR COORDINATORS, INVESTIGATORS, AND DECISION-MAKERS

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YOUR TITLE IX TOOLBOX

- Contains useful resources we will reference during the training.
- Contains checklists, templates and drafts to use as a starting point when processing a new case.
- Contains a pdf copy of this PowerPoint, which you must publish on your District website.

THE 2024 TITLE IX REGULATIONS ARE VACATED

- April 19, 2024, Dep't of Ed released the 2024 Title IX regulations.
  - Regulations broadened the scope of sex discrimination to include sexual orientation and gender identity discrimination in addition to other tweaks to the regulations.
  - Several states sued and the 2024 regulations were never implemented as the Trump Administration enforced the 2020 regulations.
- September 28, 2026, Dep't of Ed issued a new rule that formally rescinded the 2024 regulations and formally restored the 2020 regulations with four changes.
  - Three adjustments were administrative/clerical changes.
  - One substantive change: Removed the rule that decision makers cannot rely on statement of a party or witness who refuses to submit to cross-examination (questioning by the other party) during a live hearing) and that no adverse inference can be drawn by a party's refusal to answer questions or absence from a live hearing.
- Practically, for most situations the new rule reinforces the status quo of the Title IX regulations and enforcement from the last two years.

DEPARTMENT OF EDUCATION'S STATEMENT ON SEX-SEPARATED FACILITIES

- "Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in any education program or activity receiving federal financial assistance. This includes female students' rights to single sex bathrooms and locker rooms, and competitive athletic competition restricted to biological female athletes."
- Not an official regulation but indicates how the Dep't of Ed. may approach future investigations and enforcement. This approach ultimately aligns with Ohio law.



Title IX: Common Pitfalls

- Not reporting allegations to the Title IX Coordinator.
- Disciplining a student or an employee prior to completing the Title IX process.
- Failing to provide supportive measures to the complainant and/or the respondent.
- Miscommunication and/or misunderstanding of the Title IX process by district staff.

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REVIEW OF 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.

20 U.S.C. § 1681(a)



TITLE IX'S APPLICATION

Q: Whom does Title IX protect?

A: Any person participating in an educational program in the United States that receives federal financial assistance.

- Students.
- Staff.
- Applicants for admission.
- Visitors and community members.
- Contractors, such as referees.

TITLE IX SCOPE

Title IX

Sex Discrimination
(disparate treatment and disparate impact)

Sexual Harassment
(quid pro quo; hostile environment; sexual assault, dating violence, domestic violence and stalking)

Retaliation

<u>Not TIX</u>
Sex-based or sex-related misconduct that does not meet the definitions of sexual harassment

TRANSGENDER STUDENTS
CURRENT STATE OF THE LAW

- Dodds v. United States Dep't of Educ., 845 F.3d 217 (6th Cir. 2016).
- SB 104 – Restrooms, facilities, overnight accommodations (in effect)
- HB 68 – Athletics
- HB 8 – Requires notice to parents of a substantial change in the student's services related to any request by a student to identify as a gender that does not align with the student's biological sex.
- Office for Civil Rights – Revised enforcement priorities. *Defending Women from Gender Ideology Executive Order:* OCR will "'enforce all sex-protective laws to promote [the] reality' that there are 'two sexes, male and female,' and that '[t]hese sexes are not changeable and are grounded in fundamental and incontrovertible reality.'"

SEX DISCRIMINATION

VERSUS

SEX-BASED HARASSMENT



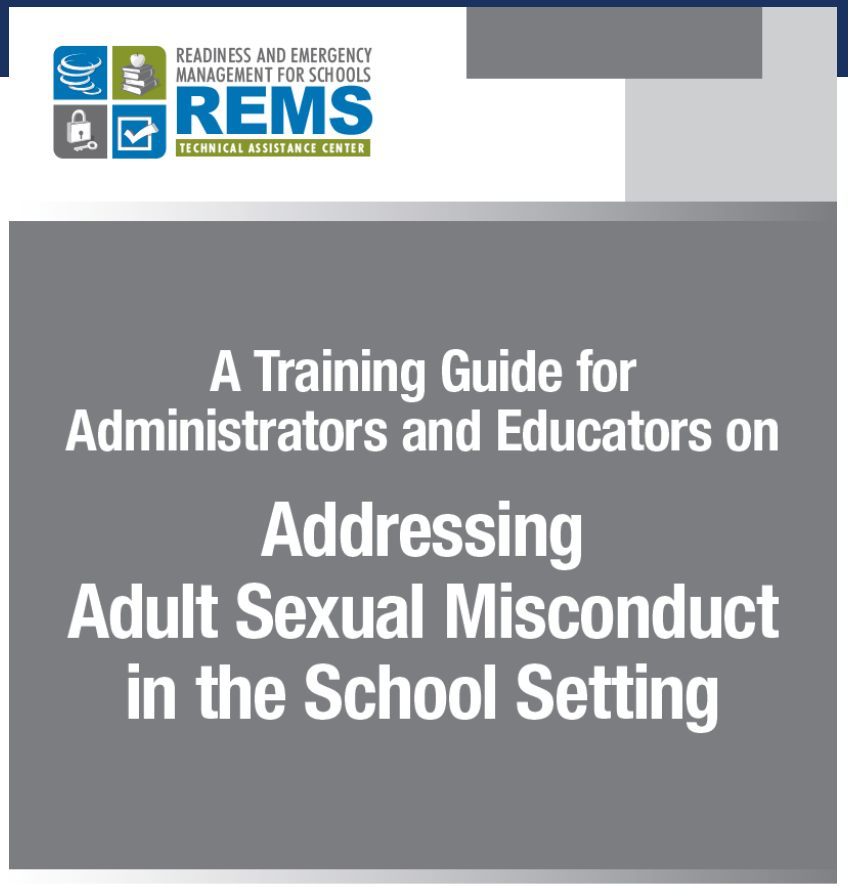
EXAMPLES OF SEX DISCRIMINATION IN K-12 EDUCATION

- Employment
- **Sex-based Harassment**
- Athletics
- Pregnant and Parenting Students
- Discipline
- Single-Sex Education
- Retaliation
- Treatment based upon Gender Identity

ADULT SEXUAL MISCONDUCT

According to estimates from the Government Accountability Office:

- 1 in 10 students will be subjected to adult sexual misconduct during their K-12 academic careers.
- Conduct ranges from inappropriate to criminal conduct.



EXAMPLES OF POSSIBLE SEX HARASSMENT IN EDUCATION

- Inappropriate unwelcome physical contact
- Flashing/mooning
- Sexual jokes
- Propositions, suggestive comments, sexual slurs, sexual gestures
- Gossip about someone's personal relationships or sex life
- Sexualized photos or other media shared with students (by students or staff) or displayed where it can be seen
- Social media, texting, group chats, etc., whether it happens at school or not and whether the student saw it directly or not
- Derogatory comments about a person's sexuality, gender, or gender identity or about a certain sex or gender of people as a group
- Using a position of power or authority to receive sexual favors or to punish for refusal
- Staff discussing sex lives with students
- Staff playing matchmaker
- Retaliation

SEX-BASED HARASSMENT

- **Sex-Based Harassment** is a form of sex discrimination and is defined to include any of the following:
  1. Quid Pro Quo Harassment
  2. Hostile Environment Harassment
  3. A “Specific Offense”

QUID PRO QUO SEXUAL HARASSMENT

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.

HOSTILE ENVIRONMENT SEXUAL HARASSMENT

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. ("SPOO")

SPECIFIC OFFENSES

- **Sexual Assault:** An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation
  - **Forcible Rape:** The carnal knowledge of a person, forcibly and/or against that person's will and/or in instances where the victim is incapable of giving consent.
  - **Forcible Sodomy:** Oral or anal sexual intercourse with another person forcibly and/or against that person's will and/or in instances where the victim is incapable of giving consent.
  - **Sexual Assault with an Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will and/or in instances where the victim is incapable of giving consent.
  - **Criminal Sexual Contact:** The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. The forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. This offense includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication for the purpose of sexual degradation, sexual gratification, or sexual humiliation.
  - **Incest:** Nonforcible sexual intercourse between persons who are related to each other within the degrees where marriage is prohibited by law.
  - **Statutory Rape:** Nonforcible sexual intercourse with a person who is under the statutory age of consent.

FONDLING – NEW DEFINITION FOR 2025

- **FORMER DEFINITION – Forcible Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will and/or in instances where the victim is incapable of giving consent.

- **NEW DEFINITION – Criminal Sexual Contact:** The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. The forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. This offense includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

SPECIFIC OFFENSES

- **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:
    - The length of the relationship;
    - The type of the relationship; and
    - The frequency of interaction between the persons involved in the relationship.

SPECIFIC OFFENSES

- **Domestic Violence:** 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, or a person similarly situated to the 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.

SPECIFIC OFFENSES

- **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.

RETALIATION

- Intimidation, threats, coercion, or discrimination against any person.
- For the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.



RULE ONE:

DECIDE IF THE CONDUCT REPORTED COULD BE A TITLE IX ISSUE.



RULE TWO:

IF THE CONDUCT COULD BE A TITLE IX ISSUE, REPORT TO THE TITLE IX COORDINATOR AND DO NOT DISCIPLINE OR INVESTIGATE.



Sex Harassment Team Training

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TITLE IX TERMS

Recipients: School districts are referred to as “recipients.”

Complainant: A person alleged to be the victim of conduct that could constitute sexual harassment.

Respondent: A person who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Supportive Measures: These are your “interim measures.”

Determination of Responsibility. Finding whether a person is responsible for sexual harassment.

Advisors: Parties may have an advisor, who may be an attorney, participate in the process.

TITLE IX TEAM MEMBERS



Title IX Coordinator

Initially contacts and offers supportive measures.

Assesses and sometimes files complaints.

Documents and manages the process.



Investigator

Person designated to investigate, gather evidence and compile an investigation report.

(May be Title IX Coordinator).



Decisionmaker

Person who issues a written determination regarding responsibility.

Cannot be the same person as the Title IX Coordinator or the Investigator.

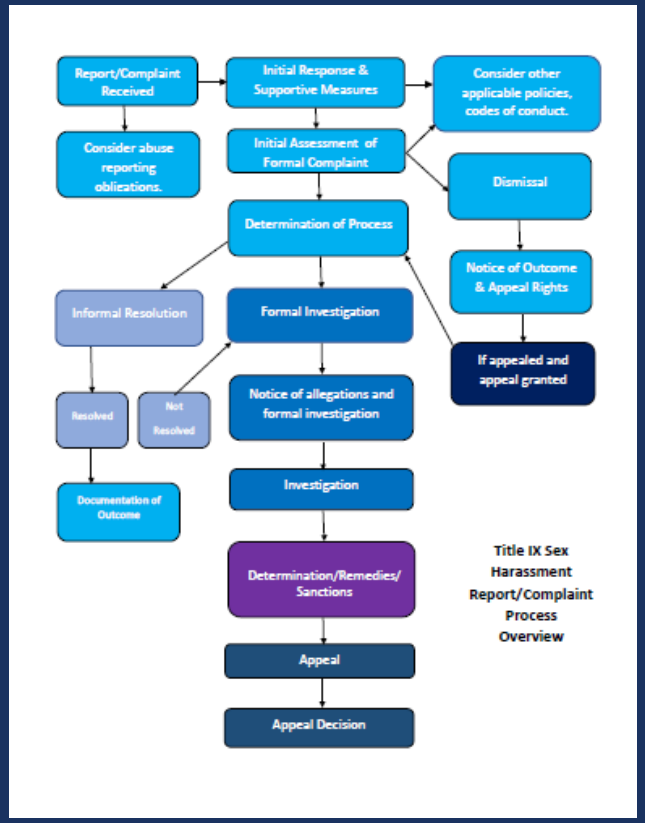


Appeals Designee

Must offer both respondent and complainant an opportunity to appeal.

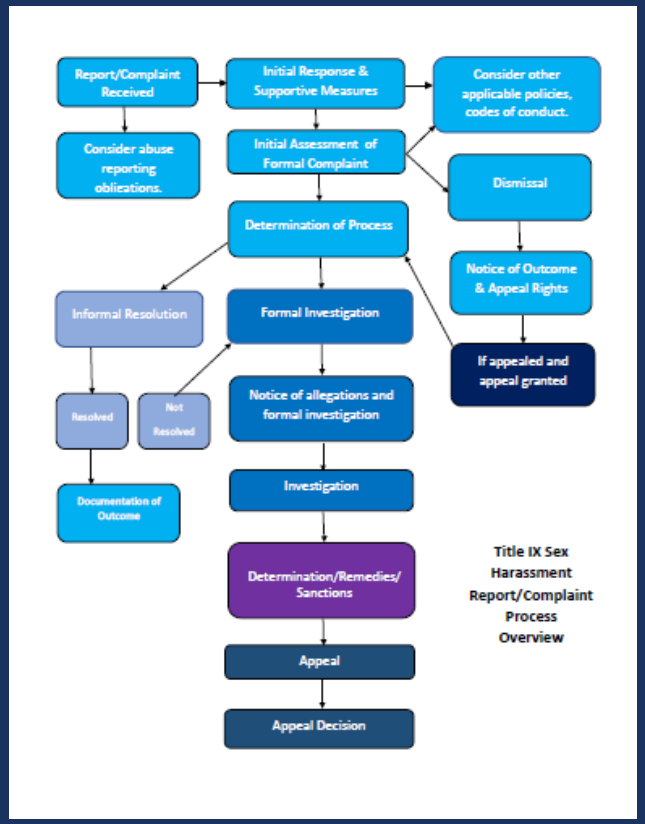
Cannot be the same person as the Title IX Coordinator, Investigator, or the Decisionmaker.

OVERVIEW OF GRIEVANCE PROCEDURES



- Report of alleged sex harassment
- Supportive measures/Emergency removal
- Formal complaint determination
- Initial assessment/preliminary inquiry
  - Jurisdiction/dismissals
  - Other policies/duty to report/law enforcement
- Informal resolution
- Formal investigation
  - Interviews
  - Sharing evidence
  - Preparation of investigation report
- Written questions/answers
- Determination of Responsibility/Discipline
- Appeals

OVERVIEW OF GRIEVANCE PROCEDURES



"A recipient may not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination **at the conclusion of the recipient's grievance procedures** that the respondent engaged in prohibited sex discrimination."

34 C.F.R 106.45(h)(3)

TITLE IX COORDINATOR RESPONSIBILITIES

All districts must designate a Title IX Coordinator who is responsible for coordinating compliance under Title IX. They must:

- Have knowledge of the district's policies and procedures on sex discrimination and be involved in the drafting and revision of such policies and procedures to help ensure that they comply with the requirements of Title IX.
- Coordinate the district's response to all reports and complaints involving possible sex discrimination, including sexual harassment; monitor outcomes; identify patterns and assess effects on the school climate.
- Provide training and technical assistance on school policies and procedures related to sex discrimination and develop programs to train and educate the school community on their rights and obligations under Title IX.

TITLE IX COORDINATOR RESPONSIBILITIES RECORD-KEEPING

The district maintains the following records for a period of seven years:

- Documentation of the district's response to a report or formal complaint of sexual harassment. Such documentation must include:
  - Any actions, including supportive measures, taken and designed to restore or preserve equal access to the district's education program or activity.
  - If supportive measures were not provided, documentation of the reasons why such a response was not clearly unreasonable in light of the known circumstances.
  - Documentation for the basis that its conclusion that its response to the report or complaint was not deliberately indifferent.
- Documentation of each sexual harassment investigation, including any determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the district's education program or activity.
- Any appeal and the appeal outcome.
- Any informal resolution and the outcome.
- All materials used to train Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process.

TITLE IX AWARENESS – EVERY EMPLOYEE IS RESPONSIBLE

A School's Obligation to Respond	A school with **actual knowledge** of sexual harassment in a program or activity against a person in the U.S. must respond promptly and in a manner that is **not deliberately indifferent.**
What is Actual Knowledge?	Notice of sexual harassment or allegations of sexual harassment **to any employee.**
Note on Training	How and when will you discuss/remind staff of their obligations to report? Correctly discussing the District's Title IX process with families avoids confusion and distrust.

Maybe Title IX → Report to Title IX Coordinator

Not Title IX → Proceed under Code of Conduct



Title IX Coordinator's Role:

What happens after a report of possible sex discrimination or sexual harassment?

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TITLE IX COORDINATOR'S ROLE
INITIAL ASSESSMENT/PRELIMINARY INQUIRY PHASE

We are here



Report of Conduct	Initial Assessment/ Preliminary Inquiry	Formal Investigation	Decision-Making	Appeal
• Verbal/Written report of conduct • Complaint to TIXC	• Outreach/intake • Formal complaint? • Jurisdiction/Dismissal • Supportive Measures • Emergency Removal • Referral to another policy/process • Informal Resolution/Formal Investigation	• Notice of Allegations • Interviews • Evidence Collection • Share Evidence • Review/Comment on Evidence • Final Report	• Question Exchange • Determination & Rationale • Sanctions/Remedies	• Appeal Grounds • Determination & Rationale

TITLE IX COORDINATOR'S ROLE

- What are the specific allegations?
- What policy or policies are implicated?
- Is this Title IX?
- Is this sex-based misconduct or sexual harassment?
- Be ready with a "Maybe TIX?" process and communication.

REPORT VS. FORMAL COMPLAINT

- Report
  - Notice from a person that an incident that may be covered by TIX has occurred.
  - Triggers the obligation to provide supportive measures and explain the grievance process.
- Formal Complaint
  - Written request for the TIX Coordinator to initiate an investigation into allegations of sexual harassment.
  - TIX Coordinator initiates in some circumstances.

REPORT OF ALLEGED HARASSMENT

- Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), 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.
- School employees are mandatory reporters of alleged sex harassment.
- Districts must promptly respond to reports of sex harassment in a manner that is not deliberately indifferent.

***Don't forget about your obligation to report suspected child abuse and/or neglect.**

FORMAL COMPLAINT OF ALLEGED HARASSMENT

- Document filed or signed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that district 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 recipient with which the formal complaint is filed.
- A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator, and by any additional method designated by the recipient.
- As used in this paragraph, the phrase “document filed by a complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the recipient) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.
- Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under the regulations.

TITLE IX COORDINATOR'S ROLE
SEXUAL HARASSMENT ALLEGATIONS
INITIAL ASSESSMENT / PRELIMINARY INQUIRY

- Consider involvement/coordination with law enforcement.
- Consider other applicable policies, codes of conduct involved.
- Consider jurisdiction and mandatory/permissive dismissal.
- Consider Complainant's wishes regarding a formal complaint.
- Consider Complainant's request for confidentiality or no action.
- Consider whether to initiate a formal complaint and investigation.
- Consider district safety and the obligation to promptly respond in a manner that is not deliberately indifferent.
- Consider whether informal resolution could be appropriate, if a formal complaint is filed.
- Consider emergency removal/administrative leave.
- Consider consolidation of complaints.

Contact Complainant Upon Receipt of a Report or Complaint

When the Title IX Coordinator receives a report of sex harassment, they must contact the Complainant and provide specific information:

- ✓ 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.
- ✓ Explain the process for filing a formal complaint.

SUPPORTIVE MEASURES

- The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.
- *Supportive measures* means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed.
- Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment.
- Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
- Must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures.

SUPPORTIVE MEASURES – "SAFETY PLAN"

- Develop a Safety Plan as needed.
- Consider what concerns you have and draft a plan to address them.
- Ask the person accusing and the person being accused what supportive measures would help them continue to access their education. Implement them if they are reasonable.
- You do not need consent to put reasonable measures in place for safety.
- Put the plan in writing. Give a copy of the supportive measures to school employees with a need to know. Make sure the student and parents are aware and they know who to go to with any ongoing concerns.
- Title IX Coordinator: Monitor supportive measures and ensure they are being implemented and are effective.

EMERGENCY REMOVALS

- A school can remove a student from the school's education program or activities on an emergency basis if the Respondent poses an immediate threat to anyone's physical health or safety.
- The district must undertake an individualized safety and risk analysis, determine 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 challenge the decision immediately following the removal.
- A school may place an employee on administrative leave during an investigation.

CONFIDENTIALITY

- Recipients cannot restrict either party's ability to discuss the allegations or gather and present evidence. (No gag orders.)
- Recipients must keep confidential the identity of a person who complains or reports sexual harassment, including parties and witnesses, except as permitted by law **or to carry out the purpose of the Title IX regulations**.
- Districts continue to have FERPA obligations.

TITLE IX COORDINATOR-INITIATED COMPLAINT / INVESTIGATION

- When required by policy (i.e., where student alleges sexual harassment by an employee).
- Where the conduct is an alleged crime.
- Where disciplinary action against the employee or student would result if the allegations are true.
- Where district safety or the obligation to promptly respond in a manner that is not deliberately indifferent are implicated by failure to pursue a formal complaint/investigation.

Written Notice Start of Formal Complaint

- ✓ Notice of the grievance process, including any informal resolution process;
- ✓ Notice of the allegations, including sufficient detail (i.e., names of known parties, the conduct alleged to be sexual harassment, and the date and location of the conduct, if known) to allow the respondent to prepare a response before an initial interview;
- ✓ A statement that the respondent is presumed not responsible for the conduct and that responsibility will be determined at the conclusion of the grievance process;
- ✓ Notice of the parties' right to have an advisor (who may be, but is not required to be, an attorney) and to inspect and review evidence; and
- ✓ Notice of any provision in the code of conduct that prohibits knowingly making false statements or providing false information in the grievance process.

JURISDICTION & DISMISSALS



JURISDICTION

- To file a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient.
- "Education program or activity" includes locations, events, or circumstances over which the recipient exercised **substantial control** over both the **respondent 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.

JURISDICTION

- What about off campus conduct?
  - Jurisdiction may still lie if there is control over the Respondent and the context, even if it occurs off campus.
- For off-campus misconduct outside the jurisdiction of the district, there may be in-program effects.
- Even if no jurisdiction under Title IX, a non-disciplinary remedial response would be best practice.
- May also want to look to other policies and code of conduct.

MANDATORY DISMISSAL OF FORMAL COMPLAINT

- Must dismiss a formal complaint if:
  - The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the law/policy, even if proved;
  - If the conduct alleged did not occur in the recipient's education program or activity;
  - If the conduct alleged did not occur against a person in the United States.
- Such dismissal does not preclude other action under the District's code of conduct or other policies.

DISCRETIONARY DISMISSAL OF FORMAL COMPLAINT

- The District may dismiss a formal complaint or any allegations in the complaint if:
  - Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations;
  - The Respondent is no longer enrolled or employed by the District;
  - Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations.
- Upon dismissal, must promptly send written notice of the dismissal and the reasons to the parties.
- Dismissal may be appealed to the appeals decision-maker.

SCENARIO I - CARLOS

- Carlos, a 9th-grade, 14-year-old student reports to his PE teacher that an “inappropriate video” involving him has been shared among students on social media. He explains that he’s upset about the video.
- Mr. Goodreporter, the PE teacher, reports the conversation to the Principal, who contacts you, the Title IX Coordinator.
- Is this a report of sexual harassment?

SEX DISCRIMINATION?
SEX-BASED HARASSMENT?
SEX-RELATED MISCONDUCT?

- **Sex discrimination:** A person, **on the basis of sex**, is excluded from participation in, denied the benefits of, or is subjected to discrimination under any education program or activity receiving Federal financial assistance.
- **Sex harassment:** (1) quid pro quo harassment; (2) hostile environment; (3) specific crimes. (If employee on employee, consider Title VII).
- **Sex-related or sex-based misconduct:** Misconduct that is related to sex that does not meet the definitions above.

SCENARIO I - CARLOS

- During your meeting with Carlos, he provides additional information. He says the video is of him and another student, Jenny, having sex at Jenny's home over summer break. Carlos says he didn't want to have sex with Jenny or to create a recording of it, but Jenny was really persistent, so he finally said yes. Right before school started, Carlos gathered the courage to break up with Jenny.
- Carlos says that when school started again this fall, someone (Carlos thinks it's Jenny) posted it on multiple anonymous social media accounts (on Tik Tok, Instagram, and Twitter). Several students have confronted Carlos about the video and have made fun of him. He also hears other students talking about the video in the hallways. Certain students (Jenny, Josh, and Sarah in particular) have been bringing up and resharing the video to other students pretty much every day since the start of the school year. Those same students also recently started spreading a rumor that Carlos has an STI and he gave it to Jenny.
- Is this a report of sexual harassment? Is this a formal complaint?

INFORMAL RESOLUTION CONDITIONS

- Districts may not offer an informal resolution process unless a formal complaint is filed.
- Districts may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment.
- Districts may not require the parties to participate in an informal resolution process.
- However, at any time prior to reaching a determination regarding responsibility the district may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the recipient provides written notice disclosing certain items (next slide).
- Prior to informal resolution, the district must obtain the parties' voluntary, written consent to the informal resolution process.
- **Districts cannot offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.**



Investigation of a Formal Complaint

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INVESTIGATIONS UNDER THE 2020 REGULATIONS

- Mandatory separation between the investigation function and decision-making.
- Respondent is not just “innocent until proven guilty,” but must be presumed not responsible for the conduct throughout the entire investigation process.
- Parties are entitled to view all evidence directly related to the allegations of sexual harassment.

INVESTIGATION STEP ONE: PREPARING TO INVESTIGATE



Written Notice Start of Formal Complaint

- ✓ Notice of the grievance process, including any informal resolution process;
- ✓ Notice of the allegations, including sufficient detail (i.e., names of known parties, the conduct alleged to be sexual harassment, and the date and location of the conduct, if known) to allow the respondent to prepare a response before an initial interview;
- ✓ A statement that the respondent is presumed not responsible for the conduct and that responsibility will be determined at the conclusion of the grievance process;
- ✓ Notice of the parties' right to have an advisor (who may be, but is not required to be, an attorney) and to inspect and review evidence; and
- ✓ Notice of any provision in the code of conduct that prohibits knowingly making false statements or providing false information in the grievance process.

BEGIN WITH AN ORGANIZED FILE
GATHER AVAILABLE RECORDS PRIOR TO INTERVIEWS

- What records should you be asking for?
- Binders. Set up an automatic protocol for each investigation. A binder with pre-determined tabs and a Table of Contents that you can fill in as you go.
- Tabs: Notice of Allegations, Advisor Forms, Complainant Interview, Respondent Interview, Witness Interviews, Text Messages and Social Media, Evidence from Complainant, Evidence from Respondent, Draft Report, Final Report, Correspondence with Complainant and/or Advisor, Correspondence with Respondent and/or Advisor, Notes, etc.
- Start a Timeline and a Witness List to use throughout your investigation.
- Remember that all evidence directly related to the allegations must be provided to the parties eventually, and so keep original copies of things clean.



Duty to Avoid Bias and Conflict of Interest

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DEFINING BIAS & CONFLICT

- The Title IX Team must not be **biased** or **conflicted**.
  - Black's Law Dictionary: "Bias" is a mental inclination or tendency; prejudice; predilection.
  - Black's Law Dictionary: "Conflict of interest" means a real or seeming incompatibility between one's private interests and one's public duties.
  - May not be biased for or against complainants or respondents generally.
  - May not be biased for or against the individual complainants or respondents involved in the formal complaint.

DUTY TO AVOID BIAS AND CONFLICTS OF INTEREST

- Your focus is the integrity of the process. Never an outcome.
- Learn to recognize your biases so that you can put them aside.
- Consider this before every interview; remind yourself of your obligations to the process.

BIAS LITERACY: RECOGNIZE YOUR BIAS. ACTIVELY AVOID IT.

Affinity Bias

Conformity Bias

Halo Effect

Horns Effect

Attribution Bias

Confirmation Bias

AFFINITY BIAS

AFFINITY BIAS OCCURS WHEN WE SEE SOMEONE WE FEEL WE HAVE AN AFFINITY WITH; MAYBE WE ATTENDED THE SAME COLLEGE, WE GREW UP IN THE SAME TOWN, OR THEY REMIND US OF SOMEONE WE KNOW AND LIKE.

BIAS CAUSED BY GROUP PEER PRESSURE

CONFORMITY BIAS

HALO EFFECT

Occurs when we see one great thing about a person and we let the halo-glow of that aspect affect our opinions of everything else about that person.

HORNS EFFECT

The direct opposite of the halo effect. We see one bad thing about a person and we let it cloud our opinions.

When we reach conclusions regarding the cause or reason for someone else's behavior based upon what we would have done or how we would have reacted. This does not always accurately reflect reality.

ATTRIBUTION BIAS

When we make a judgment about another person, we subconsciously look for evidence to back up our own opinions of that person.

CONFIRMATION BIAS

INVESTIGATION STEP TWO: GATHERING EVIDENCE



GATHERING EVIDENCE – COMPLYING WITH THE REGULATIONS

- Burden of proof rests on the Recipient at all times.
- Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- Cannot restrict the parties from discussing the allegations under investigation or from gathering and presenting relevant evidence.
- Must provide to any party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

GATHERING EVIDENCE – INTERVIEWS

- Be thorough but consider necessity and/or relevance of duplicative testimony.
- Typically interview Complainant first and Respondent last. Conduct follow-up interviews with the Parties as needed.
- Never promise confidentiality. Instead, explain the safety precautions the District will take (e.g., no disclosure of personally identifiable information in public records).
- Begin by allowing the witness to tell the story in their own words, first in general, then more specifically.
- Follow up to get specific facts, not generalities.
- Don’t forget “anything else?”

SPECIAL WITNESS CONSIDERATIONS: CONDUCTING A TRAUMA-INFORMED INTERVIEW

Trauma-informed investigating and interviewing include the following key components:

1) understanding the impact of trauma on a neurological, physical, and emotional level;
2) promoting safety and support;
3) knowing positive ways to respond that avoid re-traumatization (no "why did you" or "why didn't you" questions); and
4) providing choice with a goal of empowerment.

INVESTIGATION STEP THREE: PROVIDING THE PARTIES WITH EVIDENCE



OBLIGATION TO PROVIDE EVIDENCE

- Must provide both parties an equal opportunity to inspect and review any evidence obtained as a part of the investigation that is **directly related to the allegations raised in a formal complaint**, including the evidence upon which the recipient does not intend to rely in reaching a determination.
- Must do this at this time so that each party can “meaningfully respond to the evidence prior to the conclusion of the investigation.”
- You must provide the evidence in an electronic format or hard copy and give the parties at least 10 days to submit a written response. If a written response is provided, consider it in completing your final report.



Report Writing: The Investigation Report

Scott Scriven

Written Investigation Report

- ✓ Fairly summarize relevant evidence.
- ✓ Evaluate all relevant evidence objectively, including both inculpatory and exculpatory evidence.
- ✓ Make credibility determinations that are not based on a person's status as a Complainant, Respondent, or Witness.
- ✓ "Show your work" for all of the above in order to have a complete report.

THE INVESTIGATION REPORT: EVALUATING THE RELEVANT INFORMATION

- The investigator is the finder of fact.
- The report should describe all facts relevant to the conduct occurred as alleged. Did the respondent do what they are accused of doing?
- Apply common sense and consider credibility.
  - Consider the witnesses' opportunity to observe what happened versus hearsay.
  - Note any relationships a witness has with either party or motives they may have.
  - Consider whether testimony matches up with hard evidence such as texts, photographs, videos, social media, etc.
  - Describe inconsistencies/areas of mistakes in memory, etc.

THE DECISION-MAKING PROCESS

THE DECISION-MAKING PROCESS: BEGINS WITH A QUESTION EXCHANGE

- Must give the final investigative report to both parties at least 10 days prior to a hearing, or determination, for their review and written response.
- The decision-maker either conducts a hearing or a question exchange.
- **Question Exchange:** After receiving the investigation report and before reaching a determination of responsibility, the decision maker must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.
  - ***Tip***: Include information about how to submit questions in the final investigative report.

DECISION MAKING PROCESS – ALLOWING QUESTIONING

- The decision maker may only allow **relevant** questions.
- What is a relevant question?
  - "Relevance" is not generally defined in the regulations.
  - Under the Federal Rules of Evidence, evidence is relevant if:
    - It has any tendency to make a fact more or less probable than it would be without the evidence; and
    - The fact is of consequence in determining the action.

OFF-LIMITS QUESTIONS

- Throughout the grievance process, the investigator(s) and decision-maker(s) may not require, allow, rely upon or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege in writing.
- Examples: Attorney-client privilege, counselor-patient privilege, doctor-patient privilege.

OFF-LIMITS QUESTIONS

- Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that:
  - **Someone other than the respondent committed the conduct** alleged by the Complainant, or
  - If the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are **offered to prove consent**.

Billy is a sophomore student who has struggled academically. With his parents' permission, he meets regularly with his Algebra teacher in her classroom after school. After two months of tutoring, Billy files a Title IX complaint alleging that the teacher sexually assaulted him during their tutoring sessions.

Respondent to Complainant: Were you suspended last year for plagiarizing a paper then lying about it?

QUESTION EXCHANGE HYPOTHETICAL: Determining relevance.

MAKING A DETERMINATION OF RESPONSIBILITY AND DRAFTING THE WRITTEN REPORT

INVESTIGATIVE REPORT VS. DETERMINATION OF RESPONSIBILITY

Investigative Report

- The investigator should be a **fact finder**.
  - Gather the facts.
  - Provide sufficient details to provide context and information on the importance of specific evidence.
  - Explain what questions were asked, what evidence was reviewed, and why the investigator made the choices to ask those questions and review that evidence.
  - Explain what evidence the investigator believes is most important and why. Explain what evidence the investigator believes is unimportant and why.
  - Explain why the investigator thinks certain evidence or statements are more or less credible.

Determination of Responsibility

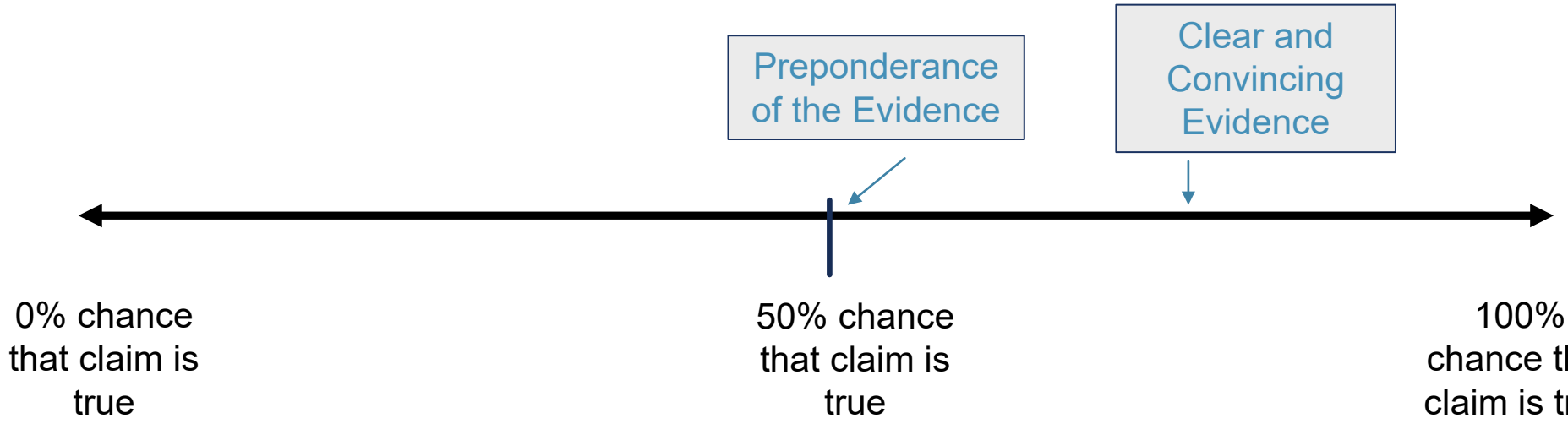
- The decision maker should be a **decision maker**.
  - Make credibility determinations, including whether parties and witnesses were telling the truth.
  - Make determinations about what happened and when.
  - Make determinations about the relative importance of facts and evidence.
  - ***Make a determination regarding whether the Respondent sexually harassed the Complainant that is supported by the facts, as presented by the investigative report and reviewed by the decision maker.***
  - ***Make a determination about whether the Respondent violated any other District rules.***
  - ***Make determinations regarding appropriate sanctions and remedies.***

MAKE A DETERMINATION REGARDING RESPONSIBILITY

- Apply the standard of evidence the District has chosen:
  - Preponderance of the Evidence.
  - ~~Clear and Convincing Evidence.~~
- The same standard of evidence must be used for all formal complaints of sexual harassment against students and employees.

REVIEWING THE STANDARD OF EVIDENCE

- “Preponderance of the Evidence” means there is greater than 50% chance that the claim is true.
- “Clear and Convincing Evidence” means the claim is highly and substantially more likely to be true than untrue.



WHAT RULES APPLY TO THE DECISION MAKER'S CONSIDERATION OF THE EVIDENCE?

- Objectively evaluate all relevant evidence, both inculpatory and exculpatory.
  - "Inculpatory evidence" is evidence that shows, or tends to show, a person's involvement in an act, or evidence that can establish responsibility.
  - "Exculpatory evidence" is evidence that tends to excuse, justify, or absolve the alleged fault or responsibility as a Respondent.
- Make credibility determinations that are not based on a person's status as a complainant, respondent, or witness.
- Continue to presume that the Respondent is not responsible for the alleged conduct until a **final** determination regarding responsibility is made.
- Remember that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the **District**, not the Complainant or Respondent.

Written Determination of Responsibility

The Written Determination of Responsibility Must Include:

- Allegations potentially constituting sexual harassment;
- Description of procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- **Findings of fact supporting the determination;**
- **Conclusions regarding the application of the district's code of conduct to the facts;**
- **A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, disciplinary sanctions for the Respondent, and remedies designed to restore or preserve equal access to the district's education program or activity to be provided to the Complainant.**
- Procedures and permissible bases for the Complainant and the Respondent to appeal.

PROVIDING THE WRITTEN DETERMINATION TO THE PARTIES

- The District must provide the written determination simultaneously to the parties.
  - Must actually give the written determination to the parties, either electronically or physically.
  - Cannot just show them the report, as was often the practice in the past.
- The written determination becomes final on either:
  - The date that the District provides the parties with the written determination of the result of an appeal, if an appeal is filed; or
  - If an appeal is not filed, the date on which an appeal would no longer be considered timely.

APPEALS

BASIS FOR APPEALS

- The District provides parties an appeal right from a determination regarding responsibility, and from a dismissal of a formal complaint or any allegations in a formal complaint, on the following bases:
  - A 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; and
  - The Title IX Coordinator, Investigator(s), or Decision Maker(s) 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.



WHO SHOULD THE APPEALS DECISION MAKER BE?

- The Appeals Decision Maker must not be:
  - Biased.
  - Conflicted.
  - The Title IX Coordinator, the Investigator, or the Decision Maker.
- The Appeals Decision Maker must be:
  - Appropriately trained.
  - Capable of timely reviewing the Determination of Responsibility and deciding the issue on appeal.
  - Able to impose discipline on the Respondent.



Appeal Decision

- Identify the basis/bases for appeal.
- Describe the **relevant** procedural steps taken from the receipt of the formal complaint to the issuance of the Determination of Responsibility.
- Describe the **relevant** findings of fact and **relevant** conclusions in the Determination of Responsibility.
- Include a statement of, and rationale for, the result as to each basis for appeal.
- Describe the result of the appeal.

THE WRITTEN APPEAL DECISION

- What are possible results of the appeal?
  - The Determination of Responsibility is “affirmed.”
  - The Determination of Responsibility is completely or partially “reversed,” and the Appeals Decision Maker comes to a different conclusion.
  - The complaint is “remanded” to the Investigator for limited further investigation in accordance with specific instructions from the Appeal Decision.



PROCEDURES FOR APPEALS – NOTIFYING PARTIES OF THE RESULT

- Issue a written appeal decision describing the result of the appeal and the rationale for the result.
- Simultaneously provide the written appeal decision to both parties.

SANCTIONS

SANCTIONS

- The district may not impose any disciplinary sanctions or other actions that are not supportive measures against a Respondent until the grievance process has concluded.
- The Determination of Responsibility becomes final either on the date the appeal is resolved or the date the appeal is no longer timely.
- The sanctions must be among those listed or described in the grievance process as within the range of possible disciplinary sanctions and remedies.
- The Title IX Coordinator is responsible for effectively implementing any sanctions and/or remedies.

REMEDIES

REMEDIES

- The Determination of Responsibility must include a statement of whether remedies designed to restore or preserve equal access to the district's education program or activity will be provided by the district to the Complainant.
- Remedies may be the same as supportive measures, but after the Determination of Responsibility becomes final, need not be non-disciplinary or non-punitive, and need not avoid burdening the Respondent.

AFTER THE INVESTIGATION AND OUTCOME: REMEDIAL MEASURES

- How does the District keep track of multiple incidents? The District has a comprehensive record for staff within Human Resources. How will this be addressed for students?
- What are some basic changes you may make to prevent opportunity for misconduct? (e.g., closet doors are locked from student access; teachers must have doors open; after school meetings cannot take place in classrooms, etc.).
- Consider training for staff and/or students.
- **The District must implement intervention strategies to protect a victim or other person from new or additional harassment, intimidation, or bullying and from retaliation following such a report.**

SEXUAL HARASSMENT
TOP TIPS FOR 2026 – 2027

- Do train all employees at the beginning of the school year on the definition(s) of sexual harassment and their obligation to report and address sex discrimination and harassment.
- Do ensure all new members of the Title IX team receive training specific to their roles.
- Don’t discipline for sexual harassment without following the grievance procedure.
- Don’t use other policies/procedures to investigate allegations of sexual harassment.
- Do collaborate on whether conduct meets the definitions of sexual harassment in policy.



THANK YOU!

Scott Scriven LLP