



TUETH KEENEY  
COOPER MOHAN JACKSTADT P.C.

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# TITLE IX COMPLIANCE SERIES

## Series 1: The Role of the Title IX Coordinator

*Presented by:*  
Celynda Brasher  
Merry Rhoades

*Date:*  
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The materials available in this Guidance are for informational purposes only. You should contact legal counsel to obtain advice with respect to any particular issue or problem, as student discipline matters are all unique and specific.



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# Presenters

## Michelle Basi

Michelle is a shareholder and practices in the areas of school law, special education, school litigation, and labor and employment law. Michelle represents school districts with respect to employment and termination matters, special education, Section 504, student discipline and student rights, civil rights, and church/state issues. Michelle has successfully represented school districts in student and employment matters before various federal and state courts and administrative agencies, including the EEOC, Missouri Commission on Human Rights, and the Office for Civil Rights. She is a member of the Missouri Council of School Attorneys, Illinois Council of School Attorneys, and is a regular speaker at statewide and regional school law conferences. She has also authored chapter updates for the Missouri Bar School Law CLE Deskbook. As the daughter of a long-time special education teacher and the wife a high school math teacher turned administrator, Michelle is proud to represent schools and be a small part of the good work done for students in schools each day!

Michelle received two bachelors' degrees simultaneously from Saint Louis University, each *summa cum laude*. She earned her J.D., *Order of St. Ives*, from the University of Denver College of Law.

# Presenters

## Celynda Brasher

Celynda is a founding shareholder of the firm. She practices in the areas of education, litigation, and labor and employment law. She represents numerous school districts throughout Missouri. She regularly advises boards of education and administrators on matters involving employee hiring, evaluation, remediation, and termination; student rights and discipline; special education; school finance; civil rights; contracts; the Missouri Open Meetings Act; church/state issues; and other constitutional matters. Celynda also represents school districts in discrimination defense, collective bargaining, union organization, unemployment compensation, wage/hour compliance, and terminations, as well as a variety of other employment law areas.

Celynda has extensive litigation experience in federal and state courts and before federal and state administrative agencies. She is a frequent speaker and author on school law and private employment topics. She is a co-author of the Missouri Bar School Law CLE Deskbook, and has written a number of articles for legal, educational, and school nursing publications.

Celynda is a former tenured teacher and a registered nurse. Celynda has a B.A. in History from Drury University. She also has a B.S. from Saint Louis University School of Nursing. She earned her J.D., *cum laude*, *Order of the Woolsack*, from Saint Louis University School of Law, where she was also Managing Editor of the *St. Louis University Law Journal*.

Celynda is admitted to practice in Missouri and Illinois, and is a member of the Missouri Bar Association, the Bar Association of Metropolitan St. Louis, the National Council of School Attorneys (presenter and former member of amicus committee), the Missouri Council of School Attorneys (former chairperson and frequent presenter), and the Illinois Council of School Attorneys.

# Presenters

## Merry Rhoades

Merry Rhoades has more than 30 years of experience representing Illinois public education institutions. In her practice as an education law attorney, Merry regularly advises clients on all facets of school law, ranging from annexation and detachment matters to the employee/employer relationship to tax and finance matters.

She has been asked to speak for organizations such as the Illinois Association of Administrators of Special Education (IAASE), the Illinois Association of School Administrators (IASA), the Illinois Principal's Association (IPA) and the Illinois School Boards Association (IASB) on special education issues. She also participates in the Illinois Council of School Attorneys' Special Education Concerns Committee. In addition to her work on student-related matters, Merry is also well-versed in the non-renewal of probationary employees, the termination of the educational support person and the dismissal of the long-standing tenured teacher. Her experience includes providing up-to-date advice on employee due process rights when disciplining or terminating the school district employee. Merry has a particular interest in advising clients on the American with Disabilities Amendment Act and the corresponding Illinois Human Rights Act.

Because of Merry's 30-plus years of experience in representing Illinois public school districts, she has key insights regarding the day-to-day operation of the school district. That experience includes school district compliance with the Illinois Open Meetings Act (OMA), the Freedom of Information Act (FOIA), and other laws governing board of education operation. Most recently, Merry represented several school districts in the first court challenge to the 1% School Facility Occupation Tax.

Merry is an active member of several school related organizations. She is a member of the Illinois Council of School Attorneys Executive Committee and served as a past Chairperson. She serves as an Illinois Association of School Boards (IASB) PRESS advisory committee.

# Your Participation

- Please submit any questions or comments using the Questions panel located on your screen
- Michelle Basi will be monitoring the questions to ensure they are addressed by the presenters

AGAIN, WE THANK YOU FOR YOUR PARTICIPATION. YOU WILL RECEIVE AN EMAIL FOLLOWING THE WEBINAR. PLEASE TAKE TIME TO COMPLETE THE SURVEY. YOUR INPUT IS IMPORTANT TO US.

# Title IX – From 1972 to 2020

Title IX of the Education Amendments of 1972 (Title IX) provides that:

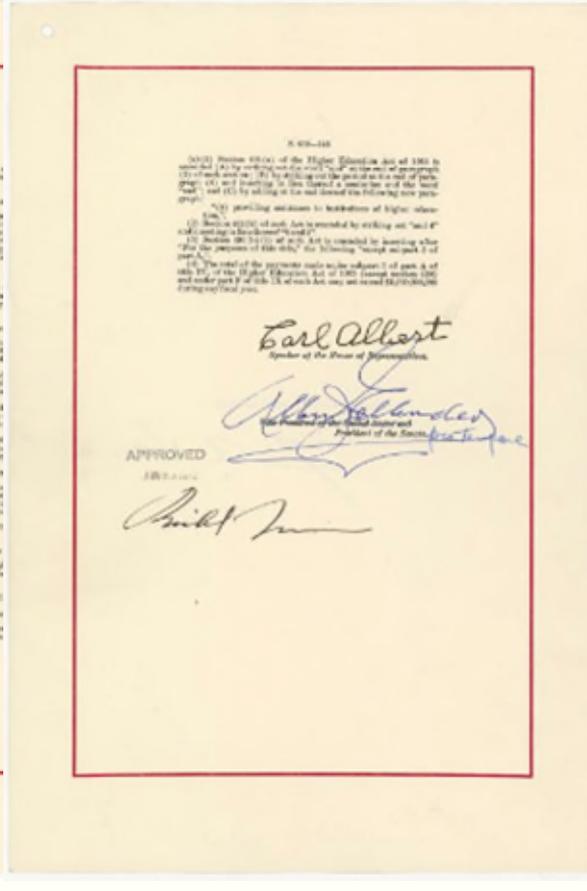
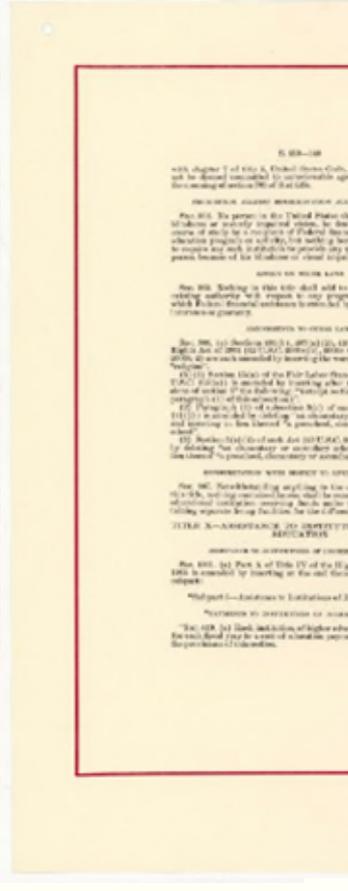
“[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. . . .”

# Title IX – From 1972 to 2020

1972

- Passage of Title IX

# Title IX – From 1972 to 2020



# Title IX – From 1972 to 2020

1979

- *Cannon v. Univ. of Chicago* (May 14, 1979)

# Title IX – From 1972 to 2020

## *Cannon v. Univ. of Chicago*

- Plaintiff claimed she was denied admission to medical school because she was a woman.
- U.S. Court of Appeals for the Seventh Circuit held that plaintiff had “no right of action against respondents that may be asserted in federal court.”
- SCOTUS: “Petitioner may maintain her lawsuit, despite the absence of any express authorization for it in the statute.”

# Title IX – From 1972 to 2020

1979

- Carter signs the “Department of Education Organization Act” (October 17, 1979)

1980

- ED established (May 4, 1980)
- OCR given oversight responsibilities

# Title IX – From 1972 to 2020

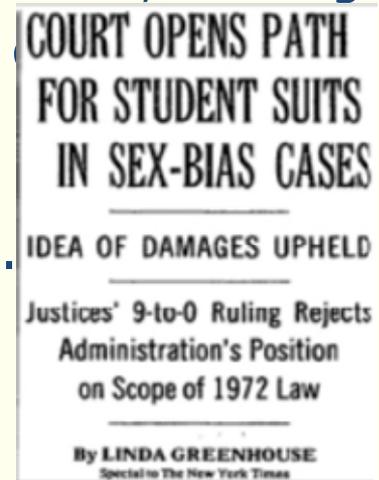
1992

- *Franklin v. Gwinnett County Public Schools*

# Title IX – From 1972 to 2020

## ***Franklin v. Gwinnett County Public Schools***

- Student sued, ***alleging she had been subjected to continual sexual harassment by teacher.***
- Student sought ***money damages*** against the school district.
- District court and Court of Appeals dismissed the case, holding that Title IX did not provide an action for money damages.
- In 9-0 decision, U.S. Supreme Court reversed, ruling that Gwinnett could seek money damages.



# Title IX – From 1972 to 2020

1998

- *Gebser v. Lago Vista Independent School District*

1999

- *Davis v. Monroe County Board of Education*

# Title IX – From 1972 to 2020

## ***Gebser v. Lago Vista Independent School District (1998)***

- Student engaged in a secret sexual relationship with a teacher. The District had no policy in place for investigating sexual harassment complaints. When the relationship was uncovered, the teacher was fired and arrested. The student and her family brought a claim against the District alleging sexual harassment.
- Supreme Ct. ruled that educational institutions may be liable for money damages where employees harass students if school officials had **actual knowledge of harassment**, and are **deliberately indifferent** to the harassment

# Title IX – From 1972 to 2020

## ***Davis v. Monroe Cnty. Bd. of Education (1999)***

- Mother of student sued the Board of Education, claiming the District failed to prevent another student from harassing her daughter.
- Question before the Supreme Court: Can a school be held liable for student on student harassment?
- Yes! Supreme Ct. holds that educational institutions may be liable for ***student-on-student*** harassment if the conditions in *Gebser* are met.
  - deliberate indifference to harassment that is severe enough to prevent victims from enjoying educational opportunities.

# Title IX – From 1972 to 2020

2001

- OCR replaces 1997 guidance regarding sexual harassment of students by other students, employees, or third parties

2005

- *Jackson v. Birmingham Bd. Of Educ.* SCOTUS rules that employee (coach) who complained of sex discrimination on behalf of his team could assert a claim for retaliation under Title IX.

# Title IX – From 1972 to 2020

- The district court had granted the school district's motion to dismiss; the Eleventh Circuit affirmed.
- In 5-4 decision, U.S. Supreme Court reversed.
- *NB*: “[T]he Board should have been put on notice that it could be held liable for retaliation by the fact that this Court's cases since *Cannon* have consistently interpreted Title IX's private cause of action broadly to encompass diverse forms of intentional sex discrimination; by Title IX itself, which expressly prohibits intentional conduct that violates clear statutory terms....; **by the regulations implementing Title IX, which clearly prohibit retaliation and have been on the books for nearly 30 years**; and by the holdings of all of the Courts of Appeals that had considered the question at the time of the conduct at issue that Title IX covers retaliation.”

## *Jackson v. Birmingham Bd. of Educ. (2005)*



# Title IX – From 1972 to 2020

2011

- OCR issues the April 4, 2011 DCL

2013

- VAWA Reauthorization signed into law – codifying portions of the 2011 DCL

# Title IX – From 1972 to 2020

2014

- Creation of “White House Task Force to Protect Students from Sexual Assault.”
- VAWA regulations
- DOE issues 46-page FAQ related to how institutions should address sexual violence.

2015

- OCR issues guidance regarding obligations to designate a Title IX Coordinator

2017

- OCR withdraws April 4, 2011 DCL and April 29, 2014 Q & A
- OCR issues new Q & A on Campus Sexual Misconduct

# Title IX – From 1972 to 2020

2018

- November 2018: OCR issues draft Title IX regulations regarding sexual harassment and assault.

2019

- Notice and Comment (originally scheduled to end January 28, 2019) draws over 110,000 comments; comment period extended slightly due to technical difficulties.

# Title IX – From 1972 to 2020

2020

- March 13, 2020: President declares national emergency concerning novel coronavirus disease (COVID-19).

2020

- May 6, 2020: Department of ED issues final regulations regarding Title IX; regulations are published in the Federal Register on May 19, 2020.

2020

- August 14, 2020: Implementation date of new Title IX regulations.

# Title IX – 1972 to 2020

## Challenges to August 14, 2020 Regulations

- Several sets of litigation filed in the D.C. Circuit seeking to enjoin the regulations from taking effect on 8/14/20 – TRO denied.
- NSBA has filed a Letter for Clarification with the DOE asking for the Dept. to provide clarity of several issues:
  - Effective date – is it possible to adopt new policies and provide training in three months, during global pandemic?
  - Complaint evaluation standard – how should a coordinator know whether they need to sign a formal complaint if the alleged victim is unwilling?
  - Clarify when confidential information should be released.
- **Best practice – Prepare to be compliant and document efforts.**

# OVERVIEW: August 14, 2020 Title IX Regulations

To quote Assistant Secretary Kenneth L. Marcus of the OCR:

"The new Title IX regulation is a game-changer. It establishes that schools and colleges must take sexual harassment seriously, while also ensuring a fair process for everyone involved. It marks the end of the false dichotomy of either protecting survivors, while ignoring due process, or protecting the accused, while disregarding sexual misconduct. There is no reason why educators cannot protect all of their students – and under this regulation there will be no excuses for failing to do so. In a string of recent major OCR Title IX cases, and in a large number of investigations over the last few years, we have shown that we will hold institutions accountable under federal civil rights laws. This regulation provides important new tools that will strengthen our ability to do so."

# OVERVIEW: August 14, 2020 Title IX Regulations

The DOE explains that the focus of the new Title IX regulations:

- Defines sexual harassment to include sexual assault, dating violence, domestic violence, and stalking, as unlawful discrimination on the basis of sex
- Provides a consistent, legally sound framework on which survivors, the accused, and schools can rely
- Requires schools to offer clear, accessible options for any person to report sexual harassment
- Empowers survivors to make decisions about how a school responds to incidents of sexual harassment

# OVERVIEW: August 14, 2020 Title IX Regulations

- Requires the school to offer survivors supportive measures, such as class or dorm reassignments or no-contact orders
- Protects K-12 students by requiring elementary and secondary schools to respond promptly when *any* school employee has notice of sexual harassment
- Holds colleges responsible for off-campus sexual harassment at houses owned or under the control of school-sanctioned fraternities and sororities
- Restores fairness on college and university campuses by upholding all students' right to written notice of allegations, the right to an advisor, and the right to submit, cross-examine, and challenge evidence at a live hearing
- Shields survivors from having to come face-to-face with the accused during a hearing and from answering questions posed personally by the accused
- Requires schools to select one of two standards of evidence, the preponderance of the evidence standard or the clear and convincing evidence standard – and to apply the selected standard evenly to proceedings for all students and employees, including faculty



# OVERVIEW: August 14, 2020 Title IX Regulations

- Provides "rape shield" protections and ensures survivors are not required to divulge any medical, psychological, or similar privileged records
- Requires schools to offer an equal right of appeal for both parties to a Title IX proceeding
- Gives schools flexibility to use technology to conduct Title IX investigations and hearings remotely
- Protects students and faculty by prohibiting schools from using Title IX in a manner that deprives students and faculty of rights guaranteed by the First Amendment

# OVERVIEW: August 14, 2020 Title IX Regulations

- Who is protected under by Title IX
  - Students of all genders
  - Staff of all genders
- What institutions are covered by Title IX
  - Must be a recipient of federal financial assistance
  - Public K-12 schools, colleges and universities, charter and non-profit schools, libraries, prisons and museums (if receive federal financial assistance) and athletic associations
- Applies only to sexual harassment as defined by the August 14, 2020 regulations

# OVERVIEW: August 14, 2020 Title IX Regulations

- Institutional procedural changes:
  - Designate an employee to be a “Title IX Coordinator”
  - Adopt Title IX compliant Board Policies
  - Provide notice of Title IX compliance efforts
  - Have a grievance process for Title IX complaints
  - Provide supportive measures to both complainant and respondent while investigation pending
  - CONDUCT INVESTIGATIONS
  - Act on the investigation outcome
  - Provide for an appeal process

# Key Title IX Terms

- Sexual Harassment
- Actual Knowledge
- Deliberate Indifference
- Complainant
- Respondent
- Education program/activity
- Formal Complaint/Grievance
- Supportive Measures
- Emergency Removal
- Formal Resolution
- Informal Resolution

# Key Title IX Terms

***Sexual harassment*** means conduct on the basis of sex that satisfies one or more of the following:

- (1) 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;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it **effectively denies** a person equal access to the recipient's education program or activity; or
- (3) "Sexual assault" as defined in Violence Against Women Act (VAWA) 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

# Key Title IX Terms

***Actual Knowledge*** means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, **or to any employee of an elementary and secondary school.**

(Adopts standard from Supreme Court case law)

- Constructive notice is not sufficient.
- BUT note – **any employee!**
- **MHRA: uses a knew or should have known standard**
- **IHRA: actual knowledge except if the offender is a supervisor – knowledge is imputed to employer**

“Consent” – does not compel a specific definition.

# Title IX Key Terms

***Deliberate Indifference*** means a failure to respond reasonably in light of known circumstances.

***NOTE: This is a significant definitional change from prior OCR guidance:*** The school must take immediate action to eliminate the sexual harassment or sexual violence, prevent its reoccurrence, and address its effects.

# Title IX Key Terms

***Complainant*** is an individual who is alleged to be the victim of conduct that could constitute sexual harassment

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

# Title IX Key Terms

***Education program or activity*** includes locations, events or circumstances where the district has substantial control over both the Respondent and the context in which alleged sexual harassment occurs

# Title IX Key Terms

***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 district investigate the allegation of sexual harassment

# Title IX Key Terms

***Supportive measures*** mean 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 Title IX Sexual Harassment Complaint or where no Formal Title IX Sexual Harassment Complaint has been filed.

# Title IX Key Terms

***Emergency Removal*** is the removal of a respondent from an 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 challenge** the decision immediately upon removal.

# Title IX Key Terms

**Formal Resolution** is the processing of a complaint from intake by the Title IX coordinator, to investigation by an Investigator, to decision by a Decision-Maker and appeal to an Appeals Officer, if requested.

**Informal Resolution** is process to resolve a complaint without resorting to the formal resolution procedures. This may include the use of mediation or other restorative justice measures.

# Role of the Title IX Coordinator

- Ensure compliant policies are adopted and followed
- Provide notice of Title IX compliance
- Ensure training is provided to staff and students
- Make initial determination if a Title IX investigation is required
- Provide required notices to law enforcement and/or child welfare agency
- Coordinate Title IX grievance procedure efforts from:  

Grievance → Investigation → Response → Resolution
- Take appropriate action(s) to eliminate sexual harassment, prevent its recurrence and remedy its effect(s)
- Review effectiveness of institutional Title IX policies and procedures

# Role of the Title IX Coordinator

## *Who should be a Title IX Coordinator*

- Professional employee — typically, a district-level administrator
- Been thoroughly trained in Title IX procedures — as they apply to the Coordinator position, as well as the three other positions required under the new regulations
- Have authority to implement supportive procedures — remembering that supportive measures include interventions pertaining to the respondent that do not constitute any form of discipline (which may not be “popular”)
- “Authority” means the ability to require certain actions and non-actions, and to provide consequences if the requirements are not observed

# Role of the Title IX Coordinator

## *Key Components of a Title IX Policy:*

- General nondiscrimination policy
- Define sexual harassment prohibited by Title IX
- Identify the coordinator to include:
  - Name(s)
  - Contact information
    - Address
    - Telephone number
    - Email address

## **THERE MUST BE CLEAR, ACCESSIBLE OPTIONS FOR REPORTING OF SEXUAL HARASSMENT**

- Provide for policy dissemination

# Role of the Title IX Coordinator

**The Title IX Coordinator will be the front line of defense in the event a complaint is filed with the OCR or a decision is challenged in a court or other applicable venue!**

- Will be responsible for providing information/testimony regarding procedural steps taken by the district
- Explain why certain decisions were made by the Coordinator
- Assignment of an investigator
- Show compliance with public notification
- Verify documents as business records of the district

# Role of the Title IX Coordinator

## ***District must disseminate Title IX Compliant Policies as follows:***

- Post materials used to train Title IX personnel on district websites, if they exist, or make materials available for members of the public to inspect
- Include reasonably prompt time frames for conclusion of the grievance process, including appeals and informal resolutions, with allowance for short-term, good cause delays or extensions of the time frames
- Describe the range, or list, the possible remedies a school may provide a complainant and disciplinary sanctions a school might impose on a respondent, following determinations of responsibility
- State whether the school will use the preponderance of the evidence standard, or the clear and convincing evidence standard, for all formal complaints of sexual harassment (including where employees and faculty are respondents)

# Role of the Title IX Coordinator

## ***District must disseminate Title IX Compliant Policies as follows (continued):***

- Describe the school's appeal procedures, and the range of supportive measures available to complainants and respondents
- State that the grievance process will not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege
- Identify provisions, rules, or practices other than those required by the Final Rule that a school adopts as part of its grievance process for handling formal complaints of sexual harassment, and state that they will apply equally to both parties.

# Role of the Title IX Coordinator

## ***Provide/Oversee Title IX Required Trainings***

- All employees receive required sexual harassment training
  - Definition of sexual harassment
  - Reporting obligations
  - How to make a report
  - Retaliation
- Students are also to receive required sexual harassment training
  - Definition of sexual harassment
  - Reporting sexual harassment
  - Retaliation

# Coordinator's Processing of the Title IX Complaint

*Steps must be taken by the Title IX Coordinator IF:*

- A formal grievance is submitted to the Coordinator, **OR**
- An employee notifies the Coordinator of possible sexual harassment **OR**
- Report made of ANY incident that may constitute sexual harassment under Title IX

# Coordinator's Processing of the Title IX Complaint

*1<sup>ST</sup> Step: No formal complaint is provided*

- Promptly contact the alleged victim
  - Provide information of available supportive measures
- **NOTE: A FORMAL COMPLAINT IS NOT REQUIRED FOR COMPLAINANT TO BE PROVIDED SUPPORTIVE MEASURES**
  - Consider input from Complaint regarding support measures
  - Explain the process for the filing of a Formal Complaint
    - By Complainant, OR
    - Title IX Coordinator
- Inform the complainant that confidentiality will be protected, to the greatest extent possible. **NO ASSURANCES CAN, HOWEVER, BE PROVIDED**

# Coordinator's Process of the Title IX Complaint

## *1<sup>st</sup> Step: No formal complaint is provided*

- Address supportive measures for both a complainant and possible respondent
- **Supportive measures** mean 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 Title IX Sexual Harassment Complaint or where no Formal Title IX Sexual Harassment Complaint has been filed.
  - Designed to restore or preserve equal access, without unreasonably burdening the other party
  - Designed to protect the safety of all parties, or
  - Deter sexual harassment
- To the extent possible, these are to be kept confidential
- Legal counsel may need to be consulted if complaint is in a protected category.

# Coordinator's Processing of the Title IX Complaint

## *2<sup>nd</sup> Step: The Intake Procedure*

- Analyze the complaint using this framework:

A recipient with **actual knowledge** of **sexual harassment** in an education program or activity against a person in **the united states** must respond promptly and in a manner that is not deliberately indifferent.

# Coordinator's Processing of the Title IX Complaint

## *2<sup>nd</sup> Step: The Intake Procedure*

Is there **actual knowledge** of a possible Title IX violation?

**Actual Knowledge** means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school.

(Adopts standard from Supreme Court case law)

- Constructive notice is not sufficient.
- BUT note – any employee!

# Coordinator's Processing of the Title IX Complaint

## *2nd Step: The Intake Procedure*

Is the alleged incident **SEXUAL HARASSMENT** as defined by Title IX?

- (1) 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;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it **effectively denies** a person equal access to the recipient's education program or activity; or
- (3) "Sexual assault" as defined in Violence Against Women Act (VAWA) 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

# Coordinator's Processing of the Title IX Complaint

## *2<sup>nd</sup> Step: The Intake Procedure*

Did the alleged incident occur during an education program or activity?

***Education program or activity*** includes locations, events or circumstances where the district has substantial control over both the Respondent and the context in which alleged sexual harassment occurs

# Coordinator's Processing of the Title IX Complaint

## *2<sup>nd</sup> Step: The Intake Procedure*

Did the alleged incident occur during an education program or activity?

- What was the location of the alleged incident?
- What event was occurring when the alleged incident occurred?
- What were the circumstances when the alleged incident occurred?
- DID THE DISTRICT HAVE SUBSTANTIAL CONTROL OVER BOTH THE RESPONDENT AND THE CONTEXT IN WHICH IT OCCURRED – **THINK NEXUS TO THE SCHOOL ENVIRONMENT**

# Coordinator's Processing of the Title IX Complaint

## *2<sup>nd</sup> Step: The Intake Procedure*

Did the alleged incident occur against a person in **the United States?**

# Coordinator's Processing of the Title IX Complaint

## *Optional Step 2A: Emergency Removal*

**Emergency Removal** is the removal of a respondent from an 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 challenge** the decision immediately upon removal.
- It is **HIGHLY RECOMMENDED** that legal counsel be consulted if considering an emergency removal of an employee or student

# Coordinator's Processing of the Title IX Complaint

## *Optional Step 2A: Emergency Removal*

- If an Emergency Removal is required, be prepared to:
  - Provide notice to the respondent (recommendation that this be in writing)
  - Must be provided immediately, i.e. without undue delay

# Coordinator's Processing of the Title IX Complaint

## *Optional Step 2B: Informal Resolution*

- Requested by either a Complainant or Respondent
  - Cannot be used if Respondent is an employee and Complainant is a student
- Have 30 school business days to seek an informal resolution but can be extended by mutual consent of both the Complainant and Respondent

# Coordinator's Processing of the Title IX Complaint

## *Optional Step 2C: Dismissal of Formal Complaint*

- Determination should only be made if, based on the information provided and through reasonable inquiry that:
  - there is no **actual knowledge** of a possible Title IX violation
  - the alleged incident does not constitute **Sexual Harassment** as defined by Title IX
  - the alleged incident did not occur during an **education program or activity?**
  - the alleged incident occur against a person in **the United States?**
  - Complainant or respondent has 5 school business days to seek an appeal after receiving notice of dismissal

# Coordinator's Processing of the Title IX Complaint

## *3<sup>rd</sup> Step: Initiating a Formal Complaint (if required)*

- **Complainant** asks that the Title IX procedures be followed, and the allegations constitute sexual harassment
  - If the allegations do not constitute sexual harassment other action may be required by law and/or BOE policy
- **Title IX Coordinator** initiated complaint
  - Coordinator is not a complainant
  - Consider filing if allegations sufficient to warrant further investigation
  - ESSA **may require** a Title IX Coordinator to initiate a formal complaint if made against an employee.

# Coordinator's Processing of the Title IX Complaint

*3<sup>rd</sup> Step: Initiating a Formal Complaint (if required)*

## **Components of a Complaint:**

- Identity of Complainant
- Identity of Respondent
- Summary of Incident

# Coordinator's Processing of the Title IX Complaint

## *Step 3: Initiating Formal Complaint (if required)*

- Provide written notice to both Complainant and Respondent that a Title IX investigation will occur
  - Ask if the informal resolution process can be utilized
  - Include notice that no retaliation is to occur because a Title IX complaint as been made
- Notify parents if the student is not an “eligible student” under FERPA

# Coordinator's Processing of the Title IX Complaint

## *4<sup>th</sup> Step: Investigation*

Referral to a designated **Investigator** (*Coordinator can also serve as an Investigator*)

- Cannot have a bias, either explicit or implicit
- Consider complainant's request for a specific investigator

**NOTE: COORDINATOR IS TO MONITOR THE INVESTIGATION PROCESS TO ENSURE:**

- Complete and thorough investigation within specified timelines
- There is no bias, either explicit or implicit during the investigation
- Applicable Title IX policies are followed by the Investigator

# Coordinator's Processing of the Title IX Complaint

*Step 4 – Referring matter to decision-maker after investigation is complete*

- Decision-maker cannot be the Title IX Coordinator or the Investigator
- Issues a written determination regarding
  - Findings of fact
  - Conclusion about whether the alleged conduct occurred
  - Rationale for the result as to each allegation
  - Disciplinary sanctions

# Coordinator's Processing of the Title IX Complaint

## *Step 5 – Appeal*

- After notifying both Complainant and Respondent of the decision (and consequences, if any), the Title IX Coordinator notifies parties of the right to an appeal
- Notice of appeal to be provided within 5 school business days after receipt of the decision from the decision-maker
- The appeal officer will have 10 school business days to provide a written decision to both complainant and respondent
- If no appeal is submitted, the decision is final 5 school business days after receipt of the decision from the decision-maker

# The Title IX Coordinator – Other Duties as Assigned by the DOE

- The Title IX Coordinator is responsible for overseeing the maintenance of records related to Title IX complaints.
  - Records related to alleged sexual harassment must be maintained for at least 7 years and includes:
    - Investigation records
    - Discipline/Remedies
    - Appeal records
    - Supportive measures
- For every claim, document:
  - Proof that response was not deliberately indifferent
  - What measures were taken to restore or preserve equal access to education
  - If no supportive measures, why that was not deliberate indifference

# The Title IX Coordinator – Other Duties as Assigned by the DOE

- Take appropriate action(s) to eliminate sexual harassment, prevent its recurrence and remedy its effect(s)
  - Oversee all staff trainings
    - Is there an adequate definition of sexual harassment
    - Is Coordinator information readily available
  - Pay attention to the school environment
  - Respond in a manner that reasonable and with commonsense
  - **FOLLOW THE TITLE IX PROCEDURES**

# The Title IX Coordinator – Other Duties as Assigned by the DOE

- Review effectiveness of institutional Title IX policies and procedures
  - Are policies written with a non-bias view
  - Analyze complaints filed for:
    - Effectiveness of process used
    - Any implicit or explicit bias present in the process
    - Effectiveness of resolution
  - Is additional training needed

# Title IX Coordinator – Other Duties as Assigned by the DOE

## Retaliation is specifically prohibited in Final Rule

- “For the purpose of interfering with Title IX rights” or
- “because a person has participated or refused to participate in any in a proceeding under Title IX regulations.”
- District 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 these regulations
- The Title IX Coordinator should remind all parties throughout the grievance process that retaliation is specifically prohibited.

# Additional Title IX Trainings

## Investigator Training

October 2<sup>nd</sup>

*Moderator: Margaret Hesse*

*Presenters: Christine Self*

*Aigner Carr*

## Decision-Maker Training

October 16<sup>th</sup>

*Moderator: Kylie Piatt*

*Presenters: Merry Rhoades*

*Michelle Basi*

## Appeals Officer Training

October 30<sup>th</sup>

*Moderator: Kylie Piatt/Michelle Basi*

*Presenters: Margaret Hesse*

*Christine Self*

# Questions?