

DICKINSON WRIGHT

K-12 Title IX Training

2024 Regulations

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Disclaimer

- These training materials are informational in nature and should not be construed as legal advice and are not provided to address specific situations.
- Please consult with your legal counsel as necessary to address specific Title IX reports/complaints, and grievance situations and investigations.

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KEEP THESE TRAINING RECORDS FOR AT LEAST 7 YEARS

Keep these training materials for at least 7 years and make them available upon request for inspection by members of the public.

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Agenda

1. Obligation to address sex discrimination in the education program or activity;
2. Obligations to respond to sex discrimination, including applicable notification and information requirements;
 - Reporting Requirement for All Employees
 - Title IX Coordinator Responsibilities/Considerations
 - Supportive Measures
 - Informal Resolution Option
3. The scope of conduct that constitutes sex discrimination under Title IX and its Regulations, including the definition of sex-based harassment;
4. Title IX Grievance procedures;
5. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
6. The meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance;
7. Additional Title IX Coordinator responsibilities; and
8. The requirements regarding recordkeeping.

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Obligation to address sex discrimination in the education program or activity

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Title IX Statute

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

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Title IX Regulations

- Provide detailed grievance procedures for Title IX sex discrimination allegations and are adopted by policy and grievance procedures.

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2020 Regulations Under Prior Administration

- In 2020, Title IX regulations were enacted, with detailed grievance procedures pertaining to sexual harassment.
- The final rule was published May 19, 2020 and went into effect August 14, 2020.

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2024: New Regulations

- In 2024, the regulations were amended and additional provisions added.
- The final rule was published in April of 2024 and with an effective date of August 1, 2024.

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Title IX Team Members		
Position	Scope of Responsibility	Requirements
Title IX Coordinator	Many duties specified in regulations. Responsible for coordinating compliance with obligations under Title IX and its Regulations	May be the Investigator and Decisionmaker.
Investigator	Person who investigates and gathers evidence.	May be the Title IX Coordinator and Decisionmaker.
Decisionmaker	Person who evaluates relevant and not otherwise impermissible evidence and makes a determination whether sex discrimination occurred.	May be the Title IX Coordinator and the Investigator.

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Title IX Definitions
<ul style="list-style-type: none"> Complainant <ul style="list-style-type: none"> A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its Regulations; or A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its Regulations and who was participating or attempting to participate in the education program or activity at the time of the alleged sex discrimination. Respondent <ul style="list-style-type: none"> A person who is alleged to have violated the prohibition on sex discrimination. Recipient <ul style="list-style-type: none"> Any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof.

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Obligation to address sex discrimination in its education program or activity
<ul style="list-style-type: none"> Must adopt, publish, and implement a non-discrimination policy <ul style="list-style-type: none"> Does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and its Regulations, including in admission (for certain entities) and employment. Must adopt, publish, and implement grievance procedures <ul style="list-style-type: none"> Grievance procedures must provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in the recipient's education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited. Must provide a notice of nondiscrimination <ul style="list-style-type: none"> To students; parents, guardians, or other authorized legal representatives of elementary school and secondary school students; employees; applicants for admission and employment; and all unions and professional organizations holding collective bargaining or professional agreements. Prominently include on website and in each handbook, catalog, announcement, bulletin, and application form that it makes available to persons entitled to notice, or which are otherwise used in connection with the recruitment of students or employees. Proper training and recordkeeping <ul style="list-style-type: none"> Promptly upon hiring or change of position that alters their duties under Title IX or its Regulations, and annually thereafter.

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Sample Nondiscrimination Policy

[ABC School] does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX, including in admission¹ and employment.

¹ Title IX's prohibition on discrimination in admission applies to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education. § 106.15(d). Title IX does not require any other recipients to state in their nondiscrimination policy that they do not discriminate on the basis of sex in admission.

Sample Notice of Nondiscrimination

[ABC School] does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and its regulations, including in admission¹ and employment.

Inquiries about Title IX may be referred to [ABC School's] Title IX Coordinator, the U.S. Department of Education's Office for Civil Rights,² or both. [ABC School's] Title IX Coordinator is [name or title, office address, email address, and telephone number].

[ABC School's] nondiscrimination policy and grievance procedures can be located at [include link to location(s) on website or otherwise describe location(s)].

To report information about conduct that may constitute sex discrimination or make a complaint of sex discrimination under Title IX, please refer to [include link to location(s) on website or otherwise describe location(s)].

¹ As noted above, Title IX only prohibits institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education from discriminating based on sex in admission, see § 106.15(d), and thus only such institutions must state in their notice of nondiscrimination that they do not discriminate on the basis of sex in admission.

Education Program or Activity

- "this part applies to every recipient and to all sex discrimination occurring under a recipient's education program or activity in the United States."
- "A recipient has an obligation to address a sex-based hostile environment under its education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient's education program or activity or outside the United States."
- "all the operations of"
- "conduct that occurs under a recipient's education program or activity includes but is not limited to . . . conduct that is subject to the recipient's disciplinary authority."

Education Programs or Activities

- “no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity”
- “In the limited circumstances in which Title IX or this part permits different treatment or separation on the basis of sex, a recipient must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm” (except as provided in certain circumstances)
- “Adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person’s gender identity subjects a person to more than de minimis harm on the basis of sex.”



Obligations to respond to sex discrimination, including applicable notification and information requirements

Response to Sex Discrimination

- “A recipient with knowledge of conduct that reasonably may constitute sex discrimination in its education program or activity must respond promptly and effectively”
- “A recipient must also comply with [Section 106.44] to address sex discrimination in its education program or activity.”

Response to Sex Discrimination (Section 106.44)

- Title IX Coordinator must monitor the recipient's education program or activity for barriers to reporting information about conduct that reasonably may constitute sex discrimination and take steps reasonably calculated to address such barriers.
- An elementary school or secondary school **must** require all of its employees who are not confidential employees to **notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX or its Regulations.**
 - (Does not apply to an employee who has personally been subject to conduct that reasonably may constitute sex discrimination)

Response to Sex Discrimination (Section 106.44) (Cont.)

All other recipients must, at a minimum, require:

- Any employee who is not a confidential employee and who either has authority to institute corrective measures on behalf of the recipient or has responsibility for administrative leadership, teaching, or advising in the recipient's education program or activity to notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX or its Regulations, and
- All other employees who are not confidential employees to either:
 - Notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX or its Regulations; or
 - Provide the contact information of the Title IX Coordinator and information about how to make a complaint of sex discrimination to any person who provides the employee with information about conduct that reasonably may constitute sex discrimination under Title IX or its Regulations.

(Does not apply to an employee who has personally been subject to conduct that reasonably may constitute sex discrimination)

Confidential Employee Requirements

- An employee whose communications are privileged or confidential under Federal or State law. The employee's confidential status, for purposes of the Title IX regulations, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies.
- An employee who has been designated as confidential for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about sex discrimination in connection with providing those services.
- Must notify all participants in the education program or activity of how to contact confidential employees, if any.

Confidential Employee Requirements (Cont.)

- **A confidential employee must explain to any person who informs the confidential employee of conduct that reasonably may constitute sex discrimination under Title IX or its Regulations:**
 - (1) The employee's status as confidential for purposes of the Title IX Regulations, including the circumstances in which the employee is not required to notify the Title IX Coordinator about conduct that reasonably may constitute sex discrimination;
 - (2) How to contact the Title IX Coordinator and how to make a complaint of sex discrimination; and
 - (3) That the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate an informal resolution process or an investigation under the grievance procedures.

Title IX Coordinator Requirements

- The Title IX Coordinator is responsible for coordinating the recipient's compliance with its obligations under Title IX and its Regulations
- The Title IX Coordinator must take actions to promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects.
- Treat the complainant and respondent equitably.
- Offer and coordinate supportive measures, as appropriate, for the complainant. In addition, if the recipient has initiated Title IX grievance procedures or offered an informal resolution process to the respondent, offer and coordinate supportive measures, as appropriate, for the respondent.

Title IX Coordinator Requirements (Cont.)

- Notify the complainant or, if the complainant is unknown, the individual who reported the conduct, of the Title IX grievance procedures and the informal resolution process, if available and appropriate, and if a complaint is made, notify the respondent of the grievance procedures, and the informal resolution process, if available and appropriate.
- In response to a complaint, initiate the grievance procedures or the informal resolution process, if available and appropriate and requested by all parties.
- In the absence of a complaint or the withdrawal of any or all of the allegations in a complaint, and in the absence or termination of an informal resolution process, determine whether to initiate a complaint of sex discrimination that complies with the grievance procedures.

Title IX Coordinator Requirements (Cont.)

- If initiating a complaint, notify the complainant prior to doing so and appropriately address reasonable concerns about the complainant's safety or the safety of others, including by providing supportive measures.
- Regardless of whether a complaint is initiated, take other appropriate prompt and effective steps, in addition to steps necessary to effectuate the remedies provided to an individual complainant, if any, to ensure that sex discrimination does not continue or recur within the education program or activity.

Initiating a Complaint - Considerations for Title IX Coordinators

- **To make this fact-specific determination, the Title IX Coordinator must consider, at a minimum, the following factors:**
 - The complainant's request not to proceed with initiation of a complaint;
 - The complainant's reasonable safety concerns regarding initiation of a complaint;
 - The risk that additional acts of sex discrimination would occur if a complaint is not initiated;
 - The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
 - The age and relationship of the parties, including whether the respondent is an employee;
 - The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;
 - The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred; and
 - Whether the recipient could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures.
- **If, after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the complainant or other person, or that the conduct as alleged prevents the recipient from ensuring equal access on the basis of sex to its education program or activity, the Title IX Coordinator may initiate a complaint**

Supportive Measures

- **Individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:**
 - Restore or preserve that party's access to the education program or activity, including measures that are designed to protect the safety of the parties or the educational environment; or
 - Provide support during the Title IX grievance procedures or during the Title IX informal resolution process.
- **Supportive measures may vary depending on what is reasonably available.**

Supportive Measures (Cont.)

- May, as appropriate, modify or terminate supportive measures at the conclusion of the Title IX grievance procedures or at the conclusion of the informal resolution process, or may continue them beyond that point.
- Must provide a complainant or respondent with a timely opportunity to seek, from an appropriate and impartial employee, modification or reversal of the decision to provide, deny, modify, or terminate supportive measures applicable to them.
 - The impartial employee must be someone other than the employee who made the challenged decision and must have authority to modify or reverse the decision, if the impartial employee determines that the decision to provide, deny, modify, or terminate the supportive measure was inconsistent with the definition of supportive measures.
- Must also provide a party with the opportunity to seek additional modification or termination of a supportive measure applicable to them if circumstances change materially.

Supportive Measures (Cont.)

- Must not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party's access to the education program or activity, or when an exception to prohibited disclosures of personally identifiable information applies.
- If the complainant or respondent is a student with a disability, the Title IX Coordinator must consult with one or more members, as appropriate, of the student's IEP team, if any, or one or more members, as appropriate, of the group of persons responsible for the student's placement decision under 34 CFR 104.35(c), if any, to determine how to comply with the requirements of the IDEA and Section 504, in the implementation of supportive measures.
- For allegations of sex discrimination other than sex-based harassment or retaliation, the provision of supportive measures does not require the provision of an aid, benefit, or service to alter the alleged discriminatory conduct for the purpose of providing a supportive measure.

Emergency Removal

- Still permitted to remove a respondent from the education program or activity on an emergency basis, provided there is an individualized safety and risk analysis that determines that an imminent and serious threat to the health or safety of a complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal
- Must provide the respondent with notice and an opportunity to challenge the decision immediately following the removal.
- Does not modify any rights under IDEA or Section 504.

Administrative Leave

- Still permitted to place an employee respondent on administrative leave from employment responsibilities during the pendency of the grievance procedures.
- Does not modify any rights under Section 504 or ADA.

Prohibited disclosures of personally identifiable information

- **Must not disclose personally identifiable information obtained except in the following circumstances:**
 1. When the recipient has obtained prior written consent from a person with the legal right to consent to the disclosure;
 2. When the information is disclosed to a parent, guardian, or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
 3. To carry out the purposes of the Title IX Regulations, including action taken to address conduct that reasonably may constitute sex discrimination under Title IX in the education program or activity;
 4. As required by Federal law, Federal regulations, or the terms and conditions of a Federal award, including a grant award or other funding agreement; or
 5. To the extent such disclosures are not otherwise in conflict with Title IX or its Regulations, when required by State or local law or when permitted under FERPA

Discretion to offer informal resolution in some circumstances

- **May offer to a complainant and respondent an informal resolution process at any time prior to determining whether sex discrimination occurred under the Title IX grievance procedure, but**
 - NOT if the complaint includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student
 - NOT if such a process would conflict with Federal, State or local law.
- **Recipient has discretion to determine whether it is appropriate to offer an informal resolution process when it receives information about conduct that reasonably may constitute sex discrimination under Title IX or its Regulations or when a complaint of sex discrimination is made**
- **May decline to offer informal resolution despite one or more of the parties' wishes.**
 - Ex: when the alleged conduct would present a future risk of harm to others.

Discretion to offer informal resolution in some circumstances (Cont.)

- Must not require or pressure the parties to participate in an informal resolution process.
- Must obtain the parties' voluntary consent to the informal resolution process.
- Must not require waiver of the right to an investigation and determination of a complaint as a condition of enrollment or continuing enrollment, or employment or continuing employment, or exercise of any other right.
- If an informal resolution process is provided, the Title IX Coordinator must take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the education program or activity.

Discretion to offer informal resolution in some circumstances (Cont.)

- **Before initiation of an informal resolution process, must provide to the parties notice that explains:**
 1. The allegations;
 2. The requirements of the informal resolution process;
 3. That, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the grievance procedures;
 4. That the parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the parties from initiating or resuming grievance procedures arising from the same allegations;
 5. The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and
 6. What information will be maintained and whether and how such information could be disclosed for use in the Title IX grievance procedures, if grievance procedures are initiated or resumed.

Discretion to offer informal resolution in some circumstances (Cont.)

- **The facilitator for the informal resolution process must not be the same person as the investigator or the decisionmaker.**
- **Any person designated to facilitate an informal resolution process must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.**
- **Any person facilitating informal resolution must receive training.**
- **Potential terms that may be included in an informal resolution agreement include but are not limited to:**
 1. Restrictions on contact; and
 2. Restrictions on the respondent's participation in one or more of the programs or activities or attendance at specific events, including restrictions that could have been imposed as remedies or disciplinary sanctions had the recipient determined at the conclusion of the grievance procedures that sex discrimination occurred.



The scope of conduct that constitutes sex discrimination under Title IX and its Regulations

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Scope

- Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity—includes but is not limited to sex-based harassment.

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Sex-Based Harassment

"Sex-Based Harassment" is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity, that is:

- Quid pro quo harassment
- Hostile environment harassment, or
- Specific offenses
 - Sexual assault
 - Dating violence
 - Domestic violence, or
 - Stalking

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Quid Pro Quo Harassment

- An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

Hostile Environment Harassment

Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment).

Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- The degree to which the conduct affected the complainant's ability to access the education program or activity;
- The type, frequency, and duration of the conduct;
- The parties' ages, roles within the education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- The location of the conduct and the context in which the conduct occurred; and
- Other sex-based harassment in the education program or activity

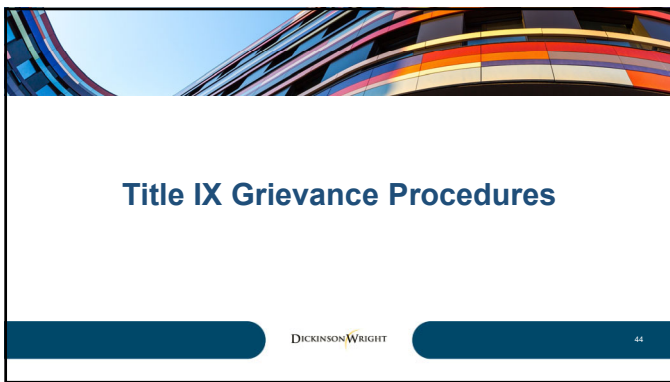
Specific Offenses

- Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;
- Dating violence meaning 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 relationship; and
 - The frequency of interaction between the persons involved in the relationship

Specific Offenses (Cont.)

- **Domestic violence** meaning 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 a spouse of the victim;
 - Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
 - Shares a child in common with the victim; or
 - Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction; or
- **Stalking** meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - Fear for the person's safety or the safety of others; or
 - Suffer substantial emotional distress.

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Title IX Grievance Procedures

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Complaint

- **An oral or written request to the recipient that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX or its Regulations.**
- **Can be filed by:**
 1. A complainant;
 2. A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant;
 3. The Title IX Coordinator;
 4. With respect to complaints of sex discrimination other than sex-based harassment, in addition to the persons listed in (1)-(3):
 - A. Any student or employee; or
 - B. Any person other than a student or employee who was participating or attempting to participate in the education program or activity at the time of the alleged sex discrimination

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Complaint (Cont.)

- A person is entitled to make a complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a complaint.
- May consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances.

Basic Requirements of Title IX Grievance Procedures

- Treat complainants and respondents equitably.
- Any person designated as a Title IX Coordinator, investigator, or decisionmaker shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- The decisionmaker may be the same person as the Title IX Coordinator or investigator.
- Shall be a presumption that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion.
- Objective evaluation all evidence that is relevant and not otherwise impermissible, including both inculpatory and exculpatory evidence.

Basic Requirements of Title IX Grievance Procedures (Cont.)

- Credibility determinations must not be based on a person's status as a complainant, respondent, or witness.
- Exclude impermissible evidence.
- "If a recipient adopts grievance procedures that apply to the resolution of some, but not all, complaints articulate consistent principles for how the recipient will determine which procedures apply."
- In lieu of resolving a complaint through the grievance procedures, the parties may instead elect to participate in an informal resolution process, if provided.

Basic Requirements of Title IX Grievance Procedures (Cont.)

- Reasonably prompt timeframes for the major stages of the grievance procedures:
 - Ex: evaluation (i.e., the decision whether to dismiss or investigate a complaint of sex discrimination); investigation; determination; and appeal, if any.
- There may be a reasonable extension of the timeframes on a case-by-case basis for good cause.
 - Need written notice to the parties that includes the reason for the delay issued promptly by the Title IX Coordinator or their designee.
 - Determined by the Title IX Coordinator or their designee promptly.
- Must take reasonable steps to protect the privacy of the parties and witnesses during the pendency of the grievance procedures, provided that the steps do not restrict the ability of the parties to:
 - obtain and present evidence, including by speaking to witnesses, subject to the retaliation provisions;
 - consult with their family members, confidential resources, or advisors; or
 - otherwise prepare for or participate in the grievance procedures.

Notice of Allegations

- Upon initiation of the grievance procedures, must provide notice of the allegations to the parties whose identities are known. (if additional allegations added later, provide notice of additional allegations to the parties)
- The notice must include:
 1. The grievance procedures, and any informal resolution process;
 2. Sufficient information available at the time to allow the parties to respond to the allegations.
 - The identities of the parties involved in the incident(s).
 - The conduct alleged to constitute sex discrimination under Title IX or its Regulations, and
 - The date(s) and location(s) of the alleged incident(s), to the extent that information is available;
 3. A statement that retaliation is prohibited; and
 4. A statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence
 - If the recipient provides a description of the evidence, the parties are entitled to an equal opportunity to access to the relevant and not otherwise impermissible evidence upon the request of any party.

Dismissal

- May dismiss a Complaint for any of the following reasons:
1. Unable to identify the respondent after taking reasonable steps to do so;
 2. The respondent is not participating in the education program or activity and is not employed;
 3. The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and the recipient determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX or its Regulations even if proven; or
 4. The conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX or its Regulations. Prior to dismissing the complaint for this reason, must make reasonable efforts to clarify the allegations with the complainant.

Dismissal (Cont.)

- **Upon dismissal, must promptly notify the complainant of the basis for the dismissal.**
 - If the dismissal occurs after the respondent has been notified of the allegations, then must also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.
- **Must notify the complainant that a dismissal may be appealed and provide the complainant with an opportunity to appeal the dismissal of a complaint.**
 - If the dismissal occurs after the respondent has been notified of the allegations, then must also notify the respondent that the dismissal may be appealed.
- **When a complaint is dismissed, at a minimum:**
 1. Offer supportive measures to the complainant as appropriate;
 2. For dismissals for reasons (1) or (3) in which the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
 3. Require its Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the education program or activity.

Dismissal (Cont.)

- **Dismissals may be appealed on the following bases:**
 1. Procedural irregularity that would change the outcome;
 2. New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
 3. The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.
- **If the dismissal is appealed, must:**
 1. Notify the parties of any appeal, including notice of the allegations consistent with the notice of initiation of the grievance procedure if notice was not previously provided to the respondent;
 2. Implement appeal procedures equally for the parties;
 3. Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
 4. Ensure that the decisionmaker for the appeal has been trained appropriately;
 5. Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
 6. Notify the parties of the result of the appeal and the rationale for the result.

Investigation

- Provide for adequate, reliable, and impartial investigation of complaints.
- The burden is on the recipient—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.
- Provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible.
- Review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

Investigation (Cont.)

Provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible under the grievance procedure, in the following manner:

1. Provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence.
 - If the recipient provides a description of the evidence, it must further provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.
2. Provide a reasonable opportunity to respond to the evidence or to the accurate description of the evidence; and
3. Take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures.
 - Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.

Questioning of the Parties and Witnesses

- “[M]ust provide a process that enables the decisionmaker to question parties and witnesses to adequately assess a party’s or witness’s credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.”

Determination Whether Sex Discrimination Occurred

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence:

- Use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred, unless the recipient uses the clear and convincing evidence standard of proof in all other comparable proceedings, including proceedings relating to other discrimination complaints, in which case may elect to use that standard of proof in determining whether sex discrimination occurred.
- Evaluate relevant and not otherwise impermissible evidence for its persuasiveness; if the decisionmaker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker must not determine that sex discrimination occurred.

Determination Whether Sex Discrimination Occurred (Cont.)

- **Notify the parties in writing of the determination whether sex discrimination occurred under Title IX or its Regulations including:**
 - The rationale for such determination, and
 - The procedures and permissible bases for the complainant and respondent to appeal, if applicable
- **If there is a determination that sex discrimination occurred, as appropriate, the Title IX Coordinator will:**
 - Coordinate the provision and implementation of remedies to a complainant and other persons identified as having had equal access to the education program or activity limited or denied by sex discrimination.
 - Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions, and
 - Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the education program or activity.

Determination Whether Sex Discrimination Occurred (Cont.)

- May not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in prohibited sex discrimination.
- Comply with the grievance procedure, before the imposition of any disciplinary sanctions against a respondent.
- Do not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.

Appeal of Determination, If Offered

- In addition to an appeal of a dismissal, "must offer the parties an appeal process that, at a minimum, is the same as it offers in all other comparable proceedings, if any, including proceedings relating to other discrimination complaints."

Additional Provisions

- "If a recipient adopts additional provisions as part of its grievance procedures for handling complaints of sex discrimination, including sex-based harassment, such additional provisions must apply equally to the parties."
- For complaints alleging sex-based harassment, the grievance procedures must:
 1. Describe the range of supportive measures available to complainants and respondents; and
 2. List, or describe the range of, the possible disciplinary sanctions that may be imposed and remedies that may be provided following a determination that sex-based harassment occurred.
- *Disciplinary sanctions* means consequences imposed on a respondent following a determination under Title IX that the respondent violated the recipient's prohibition on sex discrimination
- *Remedies* means measures provided, as appropriate, to a complainant or any other person the recipient identifies as having had their equal access to the recipient's education program or activity limited or denied by sex discrimination.
 - These measures are provided to restore or preserve that person's access to the recipient's education program or activity after a recipient determines that sex discrimination occurred

Retaliation

- A recipient must prohibit retaliation, including peer retaliation, in its education program or activity. When a recipient has information about conduct that reasonably may constitute retaliation under Title IX or its Regulations, the recipient is obligated to comply with 106.44.
- Upon receiving a complaint alleging retaliation, a recipient must initiate its grievance procedures, or, as appropriate, an informal resolution process.
- *Peer retaliation* means retaliation by a student against another student.
- *Retaliation* means intimidation, threats, coercion, or discrimination against any person by the recipient, a student, or an employee or other person authorized by the recipient to provide aid, benefit, or service under the recipient's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or its Regulations, 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, including in an informal resolution process, in grievance procedures, and in any other actions taken by a recipient under § 106.44(f)(1). Nothing in this definition or this part precludes a recipient from requiring an employee or other person authorized by a recipient to provide aid, benefit, or service under the recipient's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing under the Title IX Regulations.



How to Serve Impartially

Emphasis on Impartiality

1. You must treat parties equitably
2. You must avoid prejudgment of the facts at issue.
3. You must avoid conflicts of interest and recuse yourself when conflicts occur.
4. You must avoid bias in the process in favor of either Complainants or Respondents.

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Being Impartial

<p>DO . . .</p> <ul style="list-style-type: none"> • treat parties equitably • acknowledge unfair societal biases • acknowledge unfair personal biases • have awareness of your own biases • ensure that the evidence is considered in its entirety, without outside influence or preconceived notions. 	<p>DON'T . . .</p> <ul style="list-style-type: none"> • act in favor of either party • base credibility determinations on a person's status as complainant, respondent, witness, etc. • base credibility determinations on a person's demographic or personal characteristics
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Avoiding Prejudgment of the Facts at Issue

- Do not pass judgment prematurely or without sufficient reflection or investigation.
- Avoid rumors and speculation regarding alleged incident.
- Keep an open mind and listen to all the facts presented.
- Let the evidence and standard of proof guide your determination.
- Avoid filling in evidentiary gaps with statistics, personal beliefs, or information about trauma.
- Each case is unique and different.

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Title IX Personnel Must be Conflict of Interest And Bias Free

"Any person designated by a recipient . . . must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent."

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Avoiding Conflicts of Interests

- Conflicts of interests are not specifically defined in the regulations.
- A situation in which the concerns or aims of two different parties are incompatible, such as when a person could derive a financial, professional, personal, or other benefit from his official actions or decisions.
- If there are any potential or actual conflicts of interests, the impacted designee should recuse themselves or be removed.

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Avoiding Bias

- Prejudice in favor of or against one thing, person, or group compared with another.
- No bias against a particular complainant or respondent.
- No bias against complainants or respondents generally.
- Must not rely on gender, racial, economic, other stereotypes.

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Duty to Avoid Prejudgment, Bias, And Conflicts of Interest

- Your focus is the integrity of the process.
- Truth-seeking objective.
- Focus is not on reaching an outcome.
- Disclose all potential and actual conflicts.
- Recognize and understand what your biases are so that you can put them aside.
- Cultural competency – understand your unconscious bias.



Relevancy

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What is Relevant? (NOT based on Rules of Evidence)

- Related to the allegations of sex discrimination under investigation as part of the grievance procedures.
- Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred
- Evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.
- Under preponderance of the evidence standard, ask does this fact, testimony, or evidence help me determine whether there was more likely than not a violation?

Impermissible Evidence or Questions

Exclude the following types of evidence, and questions seeking that evidence, as impermissible regardless of whether they are relevant

– Must not be accessed or considered, except by to determine whether an exception applies; must not be disclosed; and must not otherwise be used

1. Evidence that is protected under a privilege as recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
2. A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the recipient obtains that party's or witness's voluntary, written consent for use in the grievance procedures; and
3. Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

Also remember prohibited disclosures of personally identifiable information

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Additional Title IX Coordinator Responsibilities

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Designation of Title IX Coordinator

- Recipient must designate and authorize at least one employee as a Title IX Coordinator, to coordinate efforts to comply with responsibilities under Title IX and its Regulations.
- "If a recipient has more than one Title IX Coordinator, it must designate one of its Title IX Coordinators to retain ultimate oversight over those responsibilities and ensure the recipient's consistent compliance with its responsibilities under Title IX and this part."
- "As appropriate, a recipient may delegate, or permit a Title IX Coordinator to delegate, specific duties to one or more designees."

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Coordination relating to pregnancy or related conditions

Once the student, or a person who has a legal right to act on behalf of the student, notifies the Title IX Coordinator of the student's pregnancy or related conditions. The Title IX Coordinator must coordinate specific actions to promptly and effectively prevent sex discrimination and ensure equal access to the recipient's education program or activity:

1. Responsibility to provide information about recipient obligations and notice of nondiscrimination
2. Reasonable modifications
3. Voluntary access to separate and comparable portion of program or activity
4. Voluntary leaves of absence
5. Lactation space
6. Limitation on supporting documentation

Students with Disabilities

- If a complainant or respondent is an elementary or secondary student with a disability, the Title IX Coordinator must consult with one or more members, as appropriate, of the student's Individualized Education Program (IEP) team, 34 CFR 300.321, if any, or one or more members, as appropriate, of the group of persons responsible for the student's placement decision under 34 CFR 104.35(c), if any, to determine how to comply with the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 *et seq.*, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, throughout the implementation of grievance procedures.

Recordkeeping

Recordkeeping

Maintain for a period of at least seven years.

1. Each complaint of sex discrimination, records documenting the informal resolution process or the grievance procedures, and the resulting outcome;
2. Each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX or its Regulations, including notifications by employees to the Title IX Coordinator, records documenting the actions the recipient took to meet its obligations in responding to sex-discrimination; and
3. All materials used to provide training under this policy.
 - **Make these training materials available upon request for inspection by members of the public.**

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Chelsea focuses her practice primarily in the areas of education and employment law. She provides legal services to community schools, management companies, community school sponsors, career-technical schools, and other educational institutions, on a variety of issues, including but not limited to:

- Title IX;
- Employee leaves of absence and accommodations;
- Discrimination, harassment, and retaliation allegations and investigations;
- Employment contracts;
- Civil litigation matters;
- School policies, procedures, and handbooks;
- State and Federal laws and regulations, and Ohio Department of Education and Workforce oversight;
- Public ethics and board governance;
- Student discipline;
- Special education; and
- Unemployment and workers' compensation.

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