



TITLE IX TRAINING

34 C.F.R. Part 106, Effective August 14, 2020

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FAQs



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- Is today's training being recorded?
- Can I ask questions during the training?
- Should my school keep a training attendance log?
- Will I receive a copy of today's training materials?
- How often do we need to provide training to Title IX team members?

Agenda

- Scope of Title IX, how it applies to charter schools, and recent changes
 - Wait...what happened??
- Definitions
- Personnel on the Title IX Team
- How to serve impartially: avoiding prejudice, conflicts of interest, and bias
- Handling reports of sexual harassment and initial response
- Grievance procedures for formal complaints
 - How to conduct an investigation, relevant evidence, investigative report, appeals, informal resolution process, etc.

Scope of Title IX, how it applies to charter schools, and recent changes



4

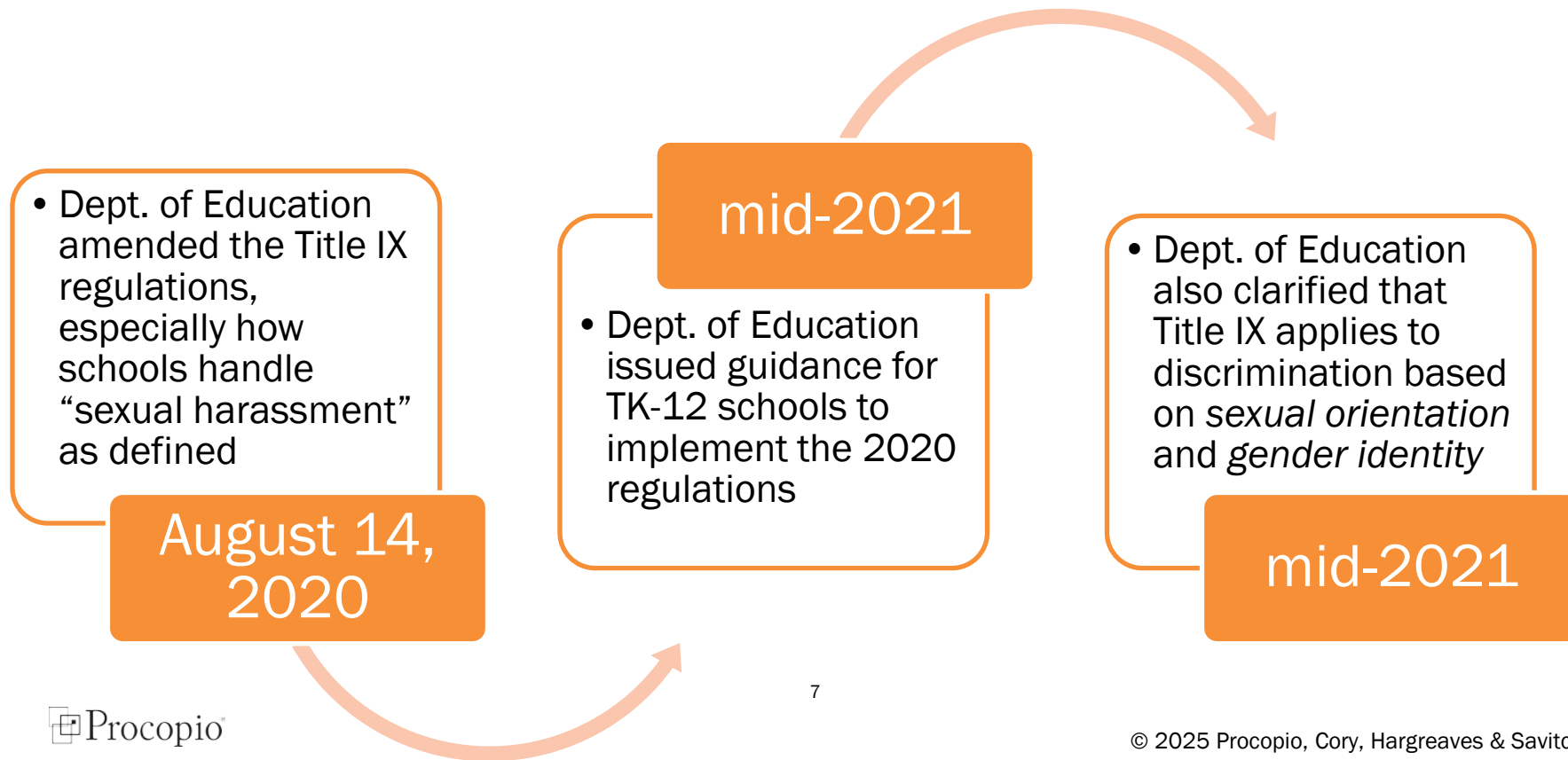
What is Title IX?

- Title IX is a federal civil rights law dating back to 1972 that prohibits discrimination on the basis of sex, including sexual harassment, in all schools that receive federal funding:
 - *“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.”*
- Examples of the types of discrimination that are covered under Title IX include sexual harassment, failure to provide equal athletic opportunity, and sex discrimination in a school’s courses and programs

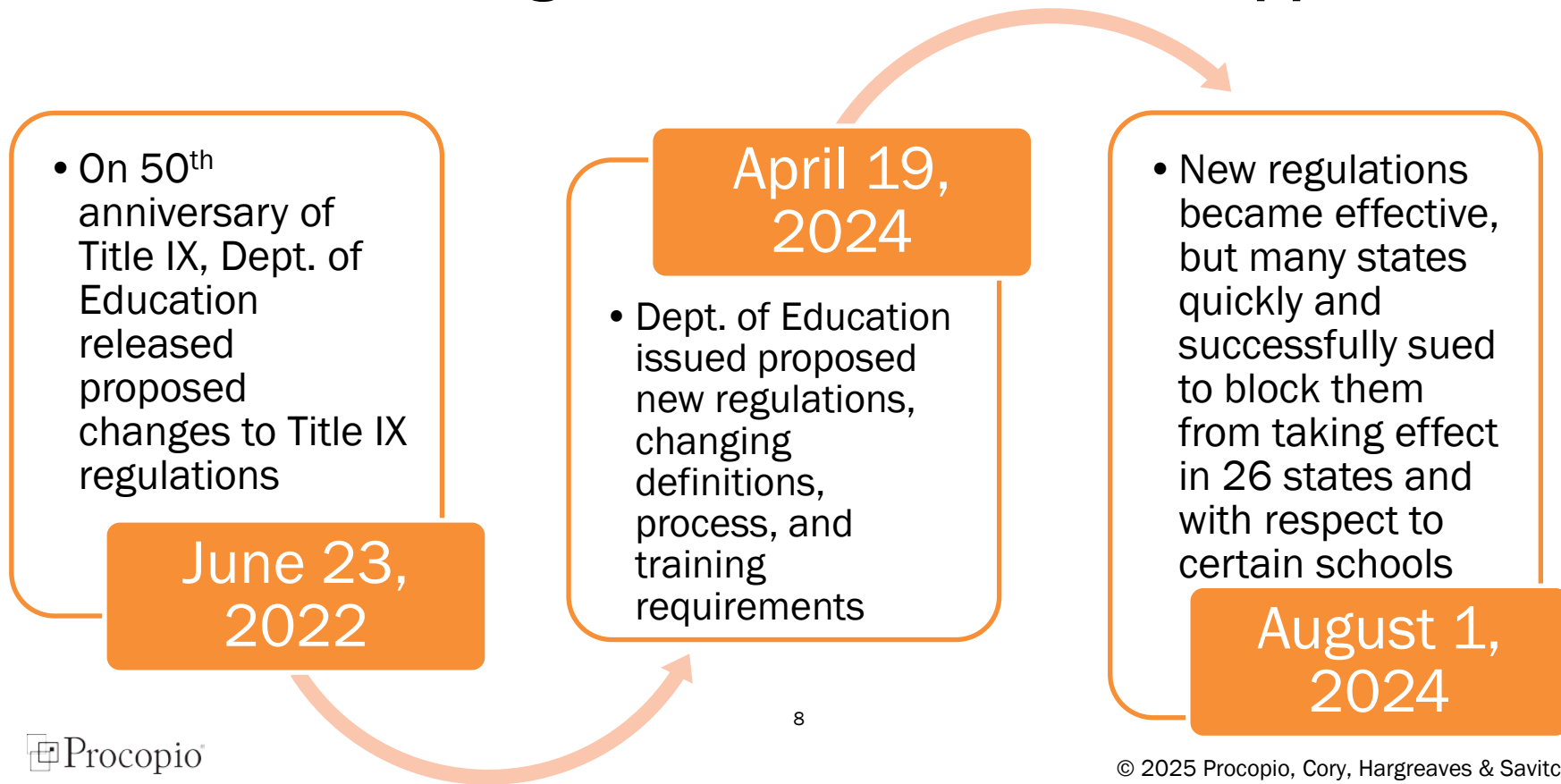
Does Title IX Apply to Charter Schools?

- Yes. All public and private elementary and secondary schools, school districts, colleges, and universities receiving any federal funds must comply with Title IX
 - **note the requirements are different for colleges/universities than TK-12*
- Whether Title IX applies to charter schools receiving federal funds has not changed in recent years. However, since 2020, the process and requirements for *all* schools have changed significantly (and multiple times)
 - Before August 2020, many charter schools used their UCP process to address Title IX complaints, which was recommended by CDE

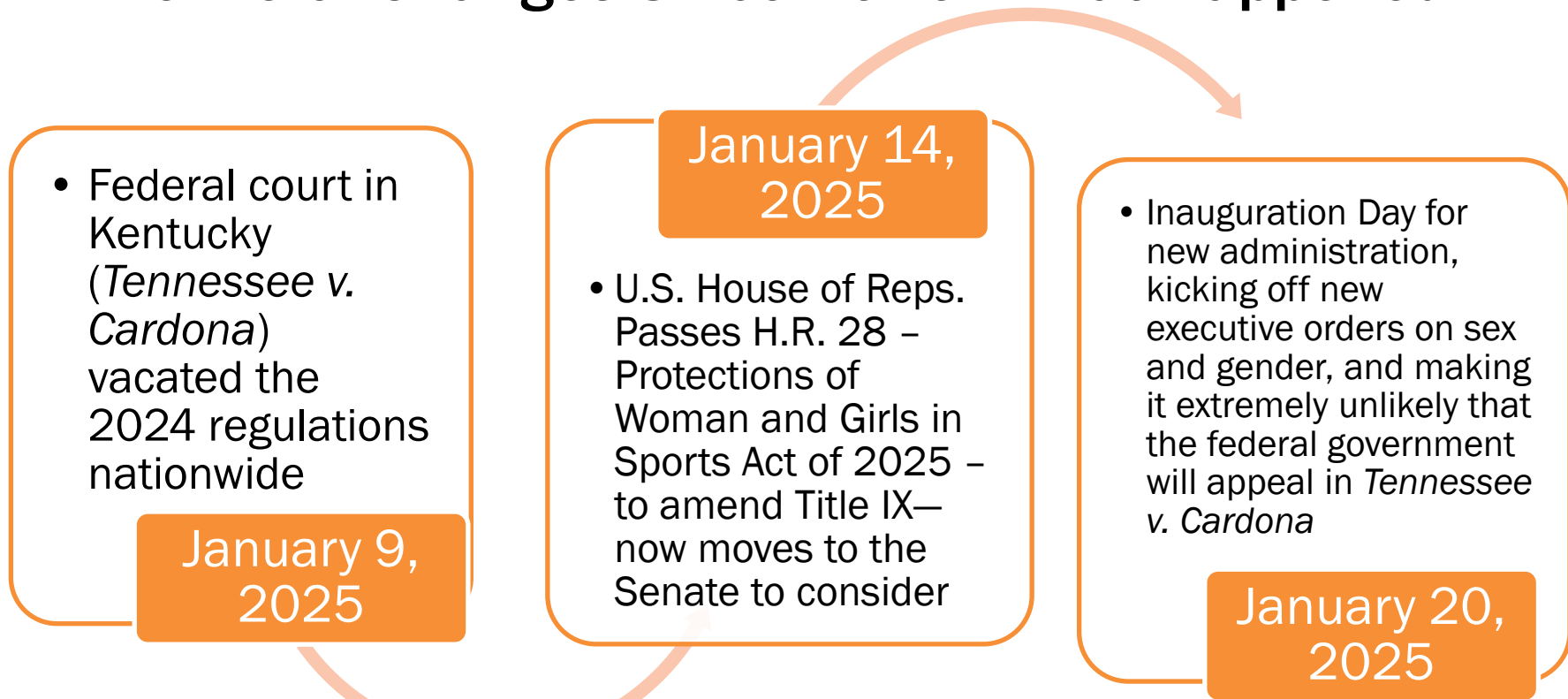
Timeline of Changes Since 2020: What Happened??



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Timeline of Changes Since 2020: What Happened??



Why Were The Regulations Vacated?

- A Federal District Court in Kentucky held that the 2024 regulations:
 - Exceeded the Dept. of Education's authority under Title IX by attempting to redefine discrimination on the basis of "sex" to include "gender identity"
 - Violated the U.S. Constitution by, e.g., requiring school personnel to use names and pronouns associated with a person's gender identity
 - Were vague and overbroad by prohibiting conduct that is "subjectively and objectively" offensive and only "limits" a person's ability to participate in the program
- Among other reasons...

What Does Today's Training Cover?

- Today's training covers the regulations that became effective as of August 14, 2020
- Schools must generally follow the Title IX requirements that were in place at the time of the alleged incident (regardless of the date of school's response)
 - *But this does not include the 2024 regulations, which were vacated (as if they never existed)*
 - Takeaway: for conduct occurring before August 14, 2020, use your school's UCP. For conduct occurring on or after August 14, 2020, use your Title IX grievance procedures under the 2020 regulations

What Does Title IX Now Require: Overview

- Any time a school has actual knowledge of sexual harassment in the school's education programs or activities (whether employees and/or students), the school has an obligation to respond promptly:
 - Contact the complainant and schedule a time to meet;
 - Offer supportive measures;
 - Explain the Title IX grievance procedures and offer the option to file a formal Title IX complaint; and
 - Determine the need for emergency removal of the respondent.
- If a Title IX formal complaint is filed, then follow Title IX grievance process
- *More on this later...*

What Does Title IX Not Expressly Cover?

- Discrimination on the basis of gender identity
- Discrimination on the basis of sexual orientation
- Discrimination on the basis of pregnancy or related conditions
 - Only gender identity was an issue in *Tennessee v. Cardona*, but 2020 regulations are silent as to whether they cover sexual orientation and pregnancy or related conditions

Title IX and California Law

- Only formal complaints alleging sexual harassment as defined under Title IX may be investigated under school's Title IX grievance procedures
- However, complaints alleging unlawful discrimination, harassment, intimidation, or bullying on the basis of gender identity, sexual orientation, or pregnancy may be eligible to be investigated under the school's UCP
 - Some complaints alleging discrimination, harassment, intimidation, or bullying on the basis of sex are eligible under UCP (i.e., those that do not meet the definition of sexual harassment under Title IX)
- Today's training is limited to Title IX requirements

FAQs

- ***Who will check my school's Title IX compliance?***
 - Typically this occurs when a complaint is made to the federal Office of Civil Rights (OCR). Anyone can make an OCR complaint, alleging the school failed to follow Title IX. Up-to-date Title IX grievance procedures are also part of CDE's Federal Program Monitoring (FPM) and many authorizers' oversight requirements.
- ***How can schools develop a compliant Title IX Policy and Grievance Procedures?***
 - You should already have one! We can also help.
- ***What about a compliant Title IX website statement?***

Definitions



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Definition of Sexual Harassment under Title IX

- **Sexual harassment** under Title IX includes any of the following, per 34 C.F.R. 106.30:
 - Quid Pro Quo Harassment: school employee conditions provision of aid, benefit, or service on an individual's participation in unwelcome sexual conduct
 - Denial of equal access to education program: 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 education program or activity
 - How is this standard determined?
 - Other sexual acts: sexual assault, dating violence, domestic violence, or stalking as defined per federal statutes (see next slides)

Sexual Harassment under Title IX (cont.)

- **Sexual Assault** can be forcible and nonforcible:
 - Forcible: any sexual act directed against complainant forcibly, against their will or without consent
 - Nonforcible: offenses that do not involve force where complainant is incapable of giving consent

Sexual Harassment under Title IX (cont.)

- **Dating Violence** is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim
 - Whether a relationship exists is determined based on a consideration of the following factors:
 - Length of relationship
 - Type of relationship
 - Frequency of interaction between the persons in the relationship

Sexual Harassment under Title IX (cont.)

- **Domestic Violence** is violence committed by:
 - Current or former spouse or intimate partner of the victim
 - Person with whom the victim shares a child in common
 - Person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
 - Person similarly situated to a spouse of the victim under the domestic or family violence laws of the state
 - Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state

Sexual Harassment under Title IX (cont.)

- **Stalking** is engaging in a course of conduct directed at the complainant that would cause a reasonable person to:
 - Fear for their safety or safety of others; or
 - Suffer substantial emotional distress

Education Program or Activity

- Includes locations, events, or circumstances over which the educational institution exercised substantial control over both the respondent and the context in which the sexual harassment occurs
 - E.g., at a school or resource center, on remote learning platforms, at school-sponsored activities, etc.
 - Off-campus and online settings may require fact-specific determination

Complainant vs. Respondent

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

The Title IX Team



Roles

- **Title IX Coordinator** receives reports and formal complaints of sexual harassment, and coordinates the investigation and resolution process
 - Title IX Coordinator will be named in the policy
- **Investigator** gathers all evidence related to a formal complaint and creates an “Investigative Report” summarizing the relevant evidence
 - Investigator does not need to be named in policy but does need to be trained. Investigator can also be the Title IX Coordinator

Roles

- **Decision-Maker** evaluates evidence in order to make a written determination of findings regarding a formal complaint
 - Decision-Maker cannot be the Title IX Coordinator, the Investigator, or any individual involved in the investigation of the formal complaint
- **Title IX Appeals Officer** evaluates an appeal of the Decision-Maker's final determination (if an appeal is filed)
 - Title IX Appeals Officer cannot be the Title IX Coordinator, Investigator, or any individual involved in the investigation of the formal complaint

Training Requirements

- Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process must receive training on the definition of sexual harassment, the scope of Title IX, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias

Training Content

- Decision-makers must receive training on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant
- Investigators must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence
- Training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment

Serving Impartially



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Requirement to be Neutral

- All members of the Title IX Team must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent
 - Must serve impartially and avoid prejudgment of the facts
- How does this work in small school environments?

Avoid Conflicts of Interest

- There is no definition of a conflict under Title IX
- A conflict of interest generally occurs when an individual has a personal interest in the matter that affects their decision-making
 - Could be a familial interest, financial interest, etc.
- *Example:* the Investigator is related by marriage to the respondent
- *Example:* the Decision-Maker's spouse works at a business owned by the complainant

Avoid Bias

- Bias is an unfair preference for or dislike of something
 - It's usually a function of experiences we have had or beliefs we have developed over time
- Bias inhibits impartial judgment
 - Our own experiences and perceptions are not universal
 - Perceptions can be as powerful as reality

Avoid Bias

- Bias is oftentimes implicit, meaning the individual is unaware that their behavior is “discriminatory”
 - It’s often associated with a person’s gender, age, race, etc.
- *Example:* male Decision-Maker who quickly believed witness “Tom” but is skeptical of witness “Chloe”
- You can prevent bias by learning to recognize it, being aware of it, and actively focusing on remaining impartial

Handling reports of sexual harassment and initial response



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Overview

- Who can make a report of sexual harassment and how? (next slide)
- What are the initial response steps? (next slides)
 - Contact complainant
 - Determine need for supportive measures
 - Explain Title IX grievance process (i.e., reports vs. formal complaints)
 - Determine need for emergency removal
- Overarching standard: school must “respond promptly in a manner that is not deliberately indifferent,” i.e. not clearly unreasonable in light of the known circumstances

Reports of Sexual Harassment

- Any individual (e.g., the alleged victim, a student, an employee, a parent/guardian, etc.) may report sexual harassment directly to the Title IX Coordinator, or to any other available school employee who shall immediately inform the Title IX Coordinator
 - Reports can be made by any means (e.g., in-person, by phone, by mail, by email, etc.)
- Timing of report

Initial Response: Contact Complainant

- Title IX Coordinator must:
 - Promptly contact the complainant, listen to allegations, and discuss the availability of supportive measures regardless of whether a formal complaint is filed (see next slides)
 - Consider the complainant's wishes with regard to supportive measures
 - Explain the Title IX grievance process for filing a formal complaint
 - Definition of formal complaint

37

Initial Response: Supportive Measures

- Non-disciplinary, non-punitive individualized services available free of charge at any point during the Title IX investigation
- Designed to restore or preserve equal access to school's education program or activity without unreasonably burdening the other party
 - Examples include wellness check-ins, counseling services, extension of deadlines or course-related adjustments, modifications of work or class schedules, changes in work locations, leaves of absence, etc.

Initial Response: Determine Need for Emergency Removal

- Title IX Coordinator will review the facts to determine whether respondent may need to be removed from the school setting to prevent further sexual harassment and/or maintain safety of students and staff
 - If respondent is a **student**, respondent may be removed from educational program based on individualized safety and risk analysis. Respondent shall be provided with notice and opportunity to challenge the decision immediately following the removal
 - Applicable laws concerning student discipline and expulsion apply
 - If respondent is an **employee**, respondent may be placed on administrative leave during formal complaint investigation

Grievance Procedures for Formal Complaints of Sexual Harassment



Step-by-Step Overview

- Step 0. Report and initial response, including consideration of supportive measures and potential temporary removal (see previous slides)
- Step 1. Initial review of formal complaint
- Step 2. Send written notice of formal complaint
- Step 3. Conduct investigation
- Step 4. Prepare and share investigative report
- Step 5. Issue written decision
- Step 6. Provide remedies
- Step 7. Appeals
- Step 8. Recordkeeping

Step 1: Initial Review

- School reviews complaint
 - Your policy will provide a process and timeline for this
- Mandatory and discretionary dismissals of a formal complaint
 - **Must** dismiss complaint if the alleged conduct:
 - Does not constitute sexual harassment under Title IX; or
 - Did not occur in school's educational program/activity or against individual in U.S.
 - **May** dismiss complaint if:
 - Complainant has notified school in writing of desire to withdraw complaint/allegations;
 - Respondent is no longer enrolled in or employed by school; or
 - Specific circumstances prevent school from gathering evidence to reach a determination

Step 1: Initial Review (cont.)

- If Title IX Coordinator dismisses complaint:
 - Must send written notice simultaneously to both parties
 - State reason for dismissal and inform parties of their right to appeal
 - If Title IX Coordinator determines another school grievance procedure (e.g., UCP) is appropriate, inform parties of school's intent to investigate the complaint through that procedure

Step 2: Send Written Notice

- School must provide parties with notice of formal complaint
 - Your policy will provide a process and timeline for this
- Notice shall include:
 - Copy of school's Policy on Title IX
 - Description of allegations with sufficient detail (e.g., parties involved, specific conduct, date and location of alleged incident, etc.)
 - Statement that respondent is presumed not responsible and determination made at end of process
 - Statement informing parties of opportunity to have advisor of their choice throughout grievance process and ability to inspect and review evidence
 - Statement informing parties that they must not knowingly make false statements or submit false information

Step 3: Conduct Investigation

- Timelines and extensions
- Presumption of innocence
 - School must presume respondent is **not** responsible for alleged conduct
- Evidence gathering
 - Investigator has burden to gather sufficient evidence
 - Cannot gather privileged information without voluntary, written consent (e.g., medical records)
 - Must provide written notice for all interviews with sufficient time for the individual to prepare to participate
 - School has discretion to permit parties to appear virtually
 - No live hearing requirement for TK-12
 - Q&A process

Step 3: Conduct Investigation (cont.)

- Equal opportunities
 - Both parties must have equal opportunity to present witnesses and evidence
 - Both parties may have an advisor of their choice present for any meeting, hearing, interview
 - School can restrict advisors' participation in the proceedings if equal
 - Both parties must be provided with all evidence that is directly related to the allegations in the complaint and at least 10 calendar days to submit a written response, which must be considered by the Investigator

Step 4: Prepare and Share Investigative Report

- Investigator must prepare an investigative report that fairly summarizes **all** relevant evidence, including both inculpatory and exculpatory evidence
 - “Relevant evidence” is not defined under Title IX
- With limited exception, evidence of complainant’s prior sexual behavior is not relevant
- Evidence is generally considered relevant when it has any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action

Step 4: Prepare and Share Investigative Report (cont.)

- Investigator must share the investigative report with both parties and their advisors at least 10 calendar days before school issues a written decision
- Both parties may submit a written response

Step 5: Issue Written Decision

- ***Before*** making decision, the Decision-Maker must:
 - Inform each party of the right to submit written, relevant questions that a party wants asked of any party or witness, and allow for additional limited follow-up questions from each party (Q&A process)
 - Provide responses to the questions or explain any decision to the party to exclude questions as irrelevant

Step 5: Issue Written Decision (cont.)

- Decision-Maker must use either “preponderance of evidence” standard or “clear and convincing evidence” standard
 - Check your policy
- Written decision should be issued to both parties simultaneously
 - Your policy will provide a reasonable timeline for this
- Written decision must include the specific allegations, description of the investigation process, findings of fact, conclusions, rationale, any disciplinary sanctions for respondent, whether remedies will be provided to the complainant, and procedures/bases for either party to appeal

Step 6: Provide Remedies

- If school determines that respondent engaged in sexual harassment, the Title IX Coordinator will provide appropriate remedies to complainant
- School is free to make disciplinary and remedial decisions, but remedies must be designed to restore or preserve equal access to educational program
- Examples include supportive measures, change of class schedule, parent/student conference(s), positive behavior support, warnings, and/or formal discipline (e.g., suspension, expulsion, etc.)
 - Remedies may be the same individualized services the school provided to the complainant as supportive measures
- If employee is found to have engaged in sexual harassment, school will take appropriate disciplinary action (e.g., termination)

51

Step 7: Appeals

- Either party may appeal the written decision, or dismissal of a formal complaint or allegation in a complaint
 - Your policy will provide a process and timeline for this
- Bases for appeal:
 - Procedural irregularity that affected the outcome
 - New evidence that was not reasonably available and could have affected outcome
 - Conflict of interest or bias by Title IX Coordinator, Investigator, or Decision-Maker
- School must provide written notice to the other party and give both parties a reasonable, equal opportunity to submit a written statement
- Title IX Appeals Officer must issue a written decision simultaneously to both parties
 - Your policy will provide a timeline for this

Step 8: Recordkeeping

- School must maintain records for seven years, including records of:
 - Each sexual harassment investigation
 - Any appeal and result of the appeal
 - Any informal resolution and result of the resolution
 - All materials used to train the Title IX Team (materials must be publicly available on website)
 - Any actions taken in response to a report or formal complaint of sexual harassment

Consider Informal Resolution Processes

- Any time after a formal complaint has been filed, but before reaching a determination, the school may offer an informal resolution process (e.g., mediation, restorative justice, etc.) to complainant and respondent
 - Both parties must voluntarily consent
 - Exception: Informal resolution process is not available where complainant alleges that an employee harassed a student

Title IX Resources

- The Title IX regulations are found in the Code of Federal Regulations at 34 CFR Part 106
 - **Make sure you are looking at the version that became effective on August 14, 2020**
- Department of Education's website is still outdated; check back regularly for updated guidance
- Lots of other websites and resources (e.g., articles on JDSupra.com)
 - Make sure you are using resources related to the 2020 regulations, but not necessarily the previous Department of Education's interpretation of the regulations

Questions? Feel free to reach out!



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