

TITLE IX COORDINATORS: ROLES & RESPONSIBILITIES UNDER 2024 REGULATIONS

Renning Lewis & Lacy Attorneys

Tess O'Brien-Heinzen (tobrien-Heinzen@law-rll.com)

Chad Wade (cwade@law-rll.com)

Alana Leffler (aleffler@law-rll.com)

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Effective Date - August 1, 2024

- The 2024 Regulations are not retroactive.
- A district must apply the 2020 regulations to conduct occurring before August 1, 2024.
- If conduct straddles the line (occurs before and after August 1, 2024), consult legal counsel.

Title IX Training Dates

- June 27, 2024 – 90 minutes (Overview)
- July 9, 2024 – 2 hours (Title IX Coordinators)
- August 6, 2024 – 2 hours (Investigators, Decision Makers, Appeal Decision Makers and Facilitators of Informal Resolution)
- August 21, 2024 – 45 minutes (All staff) (*note this is a new date)

*Attention Title IX Coordinators *

To meet extensive training requirements in Title IX regulations, Title IX Coordinators should participate in all four Title IX trainings to understand their specific roles and obligations and the roles of:

- Investigators
- Decision Makers
- Appeal Decision Makers
- Facilitators of Informal Resolution
- All employees

Logistics and Notes

- “School district” and “district” are used throughout this presentation. However, Title IX (and this presentation) is applicable to all K-12 educational institutions that receive federal financial assistance directly or through another recipient including public school districts, private schools, and public charter schools under Wis. Stat. § 118.40.
- This webinar is being recorded and will be provided to all attendees.
- All four Title IX webinars in this series conducted by Renning, Lewis & Lacy are training materials and may be published on school websites and provided upon request to members of the public.
- This will be a two-hour webinar. The presenters will remain online for up to 30 additional minutes to answer questions posed in the chat. The question/answer session will be included in the recording.
- Certificates of completion will be provided to all registrants.

Update on Litigation

State of Kansas v. U.S. DOE, 5:24-cv-04041-JWB-ADM (July 2, 2024).

- Court granted an injunction prohibiting DOE from enforcing Title IX against Kansas, Alaska, Utah, Wyoming, the plaintiff's school, and...
 - "the schools attended by the members of Young America's Foundation or Female Athletes United, as well as the schools attended by the children of the members of Moms for Liberty."
- Plaintiffs were directed to file a notice identifying the schools which their members or their members' children attend on or before July 15, 2024.

Title IX Coordinator

- School districts must designate at least one Title IX Coordinator.
- A district may designate more than one coordinator, but one coordinator must retain ultimate oversight over responsibilities and ensure compliance with Title IX.
- Title IX Coordinator's contact info must be provided on the district's website and in staff and student handbooks.
- Title IX Coordinator must review reporting procedures/practices to identify and remedy any barriers to reporting sex discrimination or harassment.

Title IX Coordinator Training Requirements

- Coordinator training must include training on:
 - District's obligation to address sex discrimination in its programs and activities
 - Scope of conduct that constitutes sex discrimination under Title IX, including definition of sex-based harassment
 - Applicable notification and information requirements related to pregnancy and related conditions, including availability of accommodations and modifications
 - Requirements for responding to reports of conduct that reasonably may constitute sex discrimination
 - Grievance procedures
 - How investigators and decision-makers can serve impartially, avoiding prejudgment, conflicts, and bias
 - Meaning and application of the term "relevant" in relation to questions and evidence and the types of evidence that are impermissible
 - Rules and practices associated with informal resolution processes and how to serve impartially, avoiding prejudgment, conflicts, and bias

Title IX Coordinator Training Requirements

- Coordinator Training must include training on:
 - Ensuring consistent compliance with Title IX.
 - Responding when notified of a student pregnancy.
 - Responding when notified of conduct that reasonably may constitute sex discrimination under Title IX to end, prevent, and remedy the effects of the discrimination.
 - Treat complainant and respondent equitably
 - Offer and coordinate supportive measures
 - Notify complainant of grievance procedures
 - If complaint made, notify respondent of grievance procedures and informal resolution process
 - In response to a complaint, initiate grievance process or informal resolution process
 - Determine whether to initiate a complaint
 - Effectuate remedies
 - Consult with one or more members of IEP team when applicable or one or more 504 team members
- Recordkeeping procedures

What To Do Now

- Ensure board policies are enacted by August 1, 2024.
- Ensure notices are published and provided as required by regulations.
- Identify individuals involved in grievance procedure and informal resolution and ensure training of those individuals.
- Ensure training of all staff before school begins.
- Review procedures for:
 - Reporting
 - Documenting supportive measures, remedies, decisions related to complaints and grievance procedure
 - Documenting reports and responses
 - Documenting complaints
 - Record keeping
- Consider student training during the year.

Title IX

Title IX of the Education Amendments of 1972, prohibits all forms of sex discrimination in any education program or activity receiving Federal financial assistance.

20 U.S.C. 1681 et. Seq.

Title IX

General Obligations

- Designate at least one Title IX Coordinator for the District.
- Establish and publish a policy clearly stating the District does not discriminate on the basis of sex in its educational programs and activities.
- Establish and implement a grievance procedure to receive and process complaints of sex discrimination.
- Ensure school does not discriminate on the basis of a student's, employee's or applicant's current, potential, or past parental, family, or marital status.
- Promptly and effectively respond to allegations of sex discrimination.
- Train Title IX Coordinators, decision-makers, investigators, and employees.

Title IX

“On the Basis of Sex”

Title IX prohibits all forms of sex discrimination in federally funded educational programs:

No person in the United States shall, **on the basis of sex**, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. 20 U.S.C. § 1681(a).

Title IX protections apply to students, employees, and third parties (who were participating or attempting to participate in program or activity at the time of the alleged discrimination).

Title IX

“On the Basis of Sex”

Discrimination “**on the basis of sex**” is discrimination based on:

- Sex stereotypes
 - Stereotypes such as men should only be attracted to women.
- Sex Characteristics
 - Discrimination based on variations in anatomy, hormones, chromosomes that differ from expectations generally associated with male and female bodies.
- Sexual orientation
 - Sexual preferences such as lesbian, gay, bisexual
- Gender identity
 - Nonconforming to sex assigned at birth such as transgender and nonbinary
- Pregnancy or related conditions
 - Pregnancy, childbirth, termination of pregnancy, lactation, medical conditions related to pregnancy, childbirth, termination of pregnancy or lactation, recovery from pregnancy, childbirth, termination of pregnancy, lactation or related conditions.

Title IX

Pregnancy Or Related Conditions and Parental Family Or Marital Status

- Prohibits districts from treating students, employees, or applicants differently based on sex in connection with parental, family, or marital status.
- Prohibits discrimination against students, employees, or applicants, based on pregnancy or related conditions.
- Pregnancy or related conditions means:
 - pregnancy, childbirth, termination of pregnancy, or lactation;
 - medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
 - recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

Title IX

Pregnancy or Related Conditions

- Requires recipients to take actions to prevent sex discrimination and ensure equal access to the recipient's education program or activity. Title IX requirements related to pregnancy vary depending on whether the individual is a student or an employee.
- Students
 - Employees must provide Title IX coordinator information
 - Inform students of District obligations including modifications to program, allowing access to separate and comparable program, allowing voluntary leave of absence.
 - Provide reasonable accommodations and modifications for students and lactation space for students.
 - Prohibits schools from requiring documentation from students to obtain reasonable modifications or other actions unless such documentation is necessary and reasonable.
- Employees
 - Requires districts to treat pregnancy or related conditions of employees as any other temporary medical conditions for all job-related purposes, including commencement, duration, and extensions of leave; payment of disability income; accrual of seniority and any other benefit or service; and reinstatement; and under any fringe benefit offered to employees by virtue of employment.
 - If an employee has insufficient leave or accrued employment time to qualify for leave under district's leave policy, district must treat pregnancy or related conditions as a justification for a voluntary leave of absence without pay for a reasonable period of time, at the conclusion of which the employee must be reinstated to the status held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.
 - Requires lactation space and reasonable break time for lactation for employees.

Title IX

Reasonable Modifications for Students

A school district must make reasonable modifications to their policies, practices, and procedures to prevent sex discrimination and ensure equal access to their education programs and activities.

- Modifications that fundamentally alter the nature of an education program or activity are not “reasonable”.
- The student may accept or decline each reasonable modification.
- Reasonable modifications include:
 - Breaks during class to pump, breastfeed, or attend to health needs associated with pregnancy or related conditions.
 - Lactation space (other than bathroom).
 - Leaves of absence/Intermittent absences to attend medical appointments or homebound education.
 - Coursework extensions or testing accommodations.
 - Allowing a student to sit or stand, access to an elevator, or changes in furniture.
- Schools may not require proof of condition unless reasonably necessary to determine the reasonableness of the modification.

Title IX

Prohibited Sex Discrimination

- Title IX prohibits:
 - Separating or treating individuals differently on the basis of sex in a way that subjects the individual to more than de minimus harm.
 - Separating or treating individuals differently on the basis of pregnancy or related conditions and parental family or marital status.
 - Sex-based harassment which includes quid pro quo harassment, harassment that creates a hostile environment, and sexual assault, stalking, domestic violence, and dating violence.

Title IX

Quid Pro Quo Harassment

- **Quid Pro Quo Harassment:** Occurs when an employee, agent, or other person authorized by the school district to provide an aid, benefit, or service either expressly or impliedly conditions the provision of such aid, benefit, or service on a person's participation in unwelcome sexual conduct.
- No sexual conduct needs to occur for quid pro quo harassment.
- **Example(s):** Premising grades, promotions, or enrollment/admission on submission to sexual conduct.

Title IX

Harassment That Creates a Hostile Environment

- Based on the totality of the circumstances.
- Occurs when unwelcome sex-based conduct 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 school district's education program or activity.
- Fact specific inquiry.
 - Degree to which the unwelcome sex-based conduct affected the student's access to education program.
 - Type, frequency, and duration of conduct.
 - Parties' ages, roles within the district's program or activity, previous interactions, and other factors that may be relevant to evaluating the effects of the conduct.
 - Location (off-campus conduct can induce a school's response if off-campus conduct affects the student's access to education programs or activities) and context in which conduct occurred.
 - Other sex-based harassment in the district's program or activity.

Title IX

Specific Offenses That Constitute Sex-Based Harassment

- **Sexual Assault.** Defined by reference to 20 U.S.C. Sec. 1092(f)(6)(A)(v).
 - Forcible or nonforcible (statutory rape) sexual act, without consent, qualifying as a sexual offense, including with the use of objects.
- **Dating Violence.** Violence committed by a person who is or has been in a romantic or intimate relationship with the victim. The existence of a romantic or intimate relationship shall be based on (1) the length of the relationship, (2) the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- **Domestic Violence.** Felony or misdemeanor crimes of violence committed by a current or former spouse/intimate partner of the victim, who share a child or habitation space.
- **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 1. Fear for their safety or the safety of others, or
 2. Suffer substantial emotional distress.

Title IX

Excluded Denied or Subjected to Discrimination

Title IX prohibits all forms of sex discrimination in federally funded educational programs:

No person in the United States shall, on the basis of sex, be **excluded from participation in, be denied the benefit of, or be subjected to discrimination under** any education program or activity receiving Federal financial assistance. 20 U.S.C. § 1681(a).

Title IX

Excluded Denied or Subjected to Discrimination

- Title IX does not prohibit only exclusion from participation or complete denial of access.
- **A limitation on equal access (versus total exclusion) also constitutes a denial of benefits.**
- Individual does not need to demonstrate a particular limitation or denial to show a violation of Title IX.
 - For example, a student may be limited in extracurriculars but may not suffer harm to grades or missed classes.
 - An employee may be dissuaded from applying for a promotion but still retain employment.

Title IX

Education Program or Activity

Title IX prohibits all forms of sex discrimination in federally funded educational programs:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. 20 U.S.C. § 1681(a).

Title IX

Education Program or Activity

What is an “education program or activity”?

Includes all operations of a school such as:

- Academics
- Extracurriculars (including athletics)
- Employment
- Occupational training
- All other District activities and programs (field trips, concerts, transportation)

Title IX

Conduct Occurring Outside Program or Activity

What about sex-based harassment that occurs outside of a recipient's education program or activity?

A district remains responsible only for discrimination that occurs in a context over which the district has substantial control.

- “The Department therefore reiterates that a recipient should not focus its analysis on whether alleged conduct happened “on” or “off” campus but rather on whether the recipient has disciplinary authority over the respondent's conduct in the context in which it occurred.”
(Comments to Regulations)

Conduct occurring under a recipient's education program or activity would include conduct that occurs in off-campus settings that are operated or overseen by the district, including field trips, online classes, and athletic programs, training programs conducted outside the district.

Title IX

Online Conduct

- **What about online conduct?**
- Conduct prohibited under Title IX may include conduct that takes place via:
 - school-sponsored electronic devices
 - computer and internet networks
 - digital platforms operated by, or used in the operations of, the district, including AI technologies
- “The Department reiterates that the final regulations do not distinguish between sex discrimination occurring in person and that occurring online.”

Title IX

Separation In Facilities, Classes, Teams, Etc.

- **What about separation with respect to district facilities, health classes, athletic teams, etc.?**
- When Title IX permits different treatment or separation on the basis of sex, a school “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.”
- 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.
- 34 C.F.R. § 106.31(a)(2)

Initial Response to Sex Discrimination

Notification Requirements

- **Sex-Based Discrimination:** When an employee has information about conduct that reasonably may constitute sex discrimination (including harassment), the employee must notify the Title IX Coordinator.
- **Pregnancy or Related Condition:** When a student informs an employee of the student's pregnancy or related condition, the employee must:
 1. promptly provide the student with the Title IX Coordinator's contact information, and
 2. inform the student that the Coordinator can offer specific actions to prevent sex discrimination and ensure their equal access to the school's programs and activities.

NOTE: The Title IX Coordinator *must* review district reporting procedures and practices for barriers to optimize reporting of conduct that reasonably may constitute sex discrimination.

Title IX Coordinator's Response

When made aware of sex discrimination or conduct that reasonably may constitute sex discrimination, the Title IX Coordinator must take action to **end** it, **prevent** its recurrence, and **remedy** its effect.

Title IX Coordinator's Response

- Treat the complainant and respondent equitably.
- Offer and coordinate supportive measures to complainant and to respondent (if applicable)
- Notify the complainant or reporter of the school's Title IX grievance procedures and informal resolution process.
- Notify the respondent of the grievance procedures (if a complaint is made).

Supportive Measures

What are Supportive Measures?

- 34 C.F.R. § 106.44(g) provides that a school district must offer “supportive measures” as appropriate.
- Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, before or after the filing of a formal complaint or where no formal complaint is filed, including:
 - Counseling.
 - Coursework extensions.
 - Campus escort services.
 - Contact restrictions.
 - Leaves of absence.
 - Class or extracurricular schedule changes, among others.

Supportive Measures

- Supportive measures may not unreasonably burden any party.
- Supportive measures must be designed to:
 - Protect the safety of the parties.
 - Protect the school district's educational environment.
 - Provide parties with support during the grievance process or during informal resolution.
- The school district may, as appropriate, modify or terminate supportive measures at the conclusion of the grievance or informal resolution process.
 - No requirement to terminate or modify supportive measures.
- Must provide the party subject to supportive measures an additional opportunity to seek additional modification or termination if circumstances materially change.
- Must provide a complainant or respondent with an opportunity to seek modification or reversal of the school district's decision to provide, deny, modify, or terminate supportive measures applicable to them.
 - Must be different than the person who made supportive measure determination originally.

Supportive Measures

Confidentiality

- A school district or Title IX Coordinator may not disclose information about supportive measures to persons other than the person to whom they apply, unless:
 - Disclosure is necessary to effectuate the supportive measure.
 - Disclosure is necessary to restore a party's access to an education program or activity.
 - Party consents to disclosure.
 - Disclosure is made to the party's parent or guardian.
 - Disclosure is required under state or federal law.

Supportive Measures

Students with Disabilities

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, or those responsible for the student's placement decisions, to determine how to comply with the both Title IX and the IDEA.

Emergency Removal

The Title IX Coordinator should consider whether emergency interim measures may be needed, which could include emergency removal of the respondent from the education program or activity.

- Requires an individualized safety and risk analysis, and
- A determination 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.
- Immediately following the removal, the district must provide notice and opportunity to be heard.
- If the respondent is a district staff member, the district may place the staff member on administrative leave during the pendency of a grievance process.

The Grievance Procedure

Complainant

- Student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination; or
- A person other than a student or employee allegedly subjected to the same conduct and who was participating or trying to participate in district's program at time of conduct (*i.e., current or former student or employee or applicant*).

Complaint

- **“Complaint”** means an **oral or written** request to the District that can objectively be understood as a request for the recipient to investigate and make a determination about alleged sex discrimination under Title IX.
- **Complaints of sex-based harassment** may be made by:
 - Complainant
 - A parent, guardian or other authorized legal representative with the legal right to act on behalf of a complainant
 - The Title IX Coordinator, when appropriate
- **Complaints of sex discrimination other than sex-based harassment**, may also be made by:
 - Any student or employee
 - Any person other than a student or employee who was participating or attempting to participate in the district’s program or activity at the time of the alleged sex discrimination.

Title IX Coordinator Initiating Grievance Procedure

- In response to a complaint, Title IX Coordinator must initiate the grievance procedures or the informal resolution process, if applicable.
- If a complaint has not been made, Title IX coordinator must determine, based on the likelihood of an imminent and serious threat to the health and safety of any person, whether to initiate a complaint.
- If Title IX coordinator reasonably determines conduct as alleged could not constitute sex discrimination, Title IX coordinator does not need to take these actions.

Title IX Coordinator Initiating a Complaint

- If a complaint has not been made, Title IX Coordinator must determine, based on the likelihood of an imminent and serious threat to the health and safety of any person, whether to initiate a complaint.
- In determining whether to initiate a complaint, the Title IX Coordinator must consider:
 - (1) complainant's desire to not initiate a complaint,
 - (2) safety concerns regarding initiating a complaint,
 - (3) the risk that additional discrimination would occur absent a complaint,
 - (4) the severity of the sex discrimination,
 - (5) the age, relationship, scope, and context of the discrimination,
 - (6) the availability of evidence,
 - (7) whether the school could meet its obligations without initiating a complaint.
- If initiating, notify complainant prior to doing so and address reasonable concerns about complainant's or others' safety, including by providing supportive measures.
- Regardless of a complaint, effectuate remedies.

Permissive Dismissal of Complaint

Permissive Dismissal

A District *may* dismiss a complaint of sex discrimination if:

- The District cannot identify the respondent after taking reasonable steps to do so.
- The respondent is not participating in the District's education program or activity.
 - E.g., no longer enrolled, disciplined on other grounds, etc.
- The complainant voluntarily withdraws the complaint.
 - Title IX Coordinator must analyze whether, regardless of the voluntary withdrawal, the conduct would not constitute sex discrimination under Title IX, and
 - The Title IX Coordinator must analyze whether to initiate a complaint on the complainant's behalf.
- The allegations alleged in the complaint, if true, do not constitute sex discrimination under Title IX.
 - Must seek clarification from complainant prior to dismissal.

Duties After Dismissal

- The Title IX Coordinator must promptly notify the complainant of the basis for the dismissal.
- If the respondent has been notified prior to dismissal, notify the respondent of the dismissal and the basis for the dismissal.
- The Complainant, and the respondent (if notified of the complaint prior to dismissal) must be notified that the dismissal may be appealed, and the Title IX Coordinator must provide the complainant for an opportunity to appeal dismissal.
- The Title IX Coordinator shall offer supportive measures to the complainant, as appropriate.
- The Title IX Coordinator shall take prompt and effective steps to ensure that sex discrimination does not continue or recur.
 - Complaints, regardless of dismissal, may indicate a policy or practice requires attention to prevent future sex discrimination.
- No mandatory dismissal requirements.

Appeal of Dismissal

Appeal of Dismissal

Upon appeal from the original complainant, the Title IX coordinator must:

- Notify all parties of the appeal.
- Ensure the appeal decisionmaker for the appeal did not take part in the original dismissal determination.
- Provide the parties with the opportunity to make a statement in support of, or challenging, the outcome.
- Notify all parties of the final decision on appeal.

Title IX Coordinator Informal Resolution

Any time prior to determining whether sex discrimination occurred, a district may offer the option to use an informal resolution process.

- Must obtain both parties' voluntary consent.

Must provide notice to both parties that explains:

- The allegations.
- The requirements of the informal resolution process.
- That, prior to agreeing to a resolution, any party has the right to withdraw and may initiate formal grievance procedures.
- That, upon agreement of an informal resolution, parties are precluded from initiating formal grievance procedures for complaints arising out of the same conduct.
- Terms that may be offered or requested in an informal resolution agreement.
- The scope of disclosure for information pertaining to the informal resolution process's use in the formal grievance process.

Title IX Coordinator Informal Resolution

- The informal resolution facilitator may not be the same person as the investigator or decision-maker used for the school's formal grievance process.
- Informal resolution process may not be used for complaints between students and employees.

Possible Resolutions: The informal resolution agreement may provide for measures, including but not limited to:

- Restrictions on contact.
- Restrictions on the respondent's participation in school programs or activities.
- Admissions of responsibility or false allegations.
- Disciplinary or punitive sanctions.
- Counseling.

Investigation Procedures

Investigators

Who Will Serve as the Investigator?

The Title IX Coordinator, decision-maker, or third-party may be the investigator.

If the investigator is a third party, consider:

- Procedure for naming a third-party investigator.
- Experience.
- Impartiality and objectivity.
- Future role needs.
- Availability & cost.
- Internal vs. external.
- Support needed for the third party (e.g. space for interviews, access to district resources, identifying relevant persons).

- Must be free of bias or conflicts of interest.
- Must receive training on how to conduct investigations, including the relevance of evidence to create an investigative report that fairly summarizes evidence.
- It's helpful to have several trained investigators available to avoid bias or conflict of interest, depending upon the parties involved.

Investigation Procedures

Investigation Obligations

- Be free from bias and impartial throughout the course of the investigation.
- Adequately investigate allegations.
- The district has the burden to investigate and gather evidence.
- Provide parties equal opportunity to present fact witnesses and other relevant evidence.
- Review all evidence gathered, and determine what evidence is relevant and what evidence is impermissible to consider.
- Provide each party with an opportunity to access relevant evidence or an accurate description of relevant evidence.
 - Opportunity to respond to the evidence or description thereof.
- The district must take reasonable steps to prevent unauthorized disclosure of information and evidence obtained through grievance procedures.
 - Disclosure for administrative proceedings of litigation related to the complaint are permitted disclosures.

Decision-Making

Decision-Makers

Selecting a Decision-Maker

- Title IX Coordinator or investigator may serve as the decision-maker but is not required to do so.
- Consider potential or perceived conflicts of interest.
- What is the district's policy, if any, for selecting a Title IX decision-maker?
- In addition to the above, the district should also consider:
 - The legal complexities of the decision-making process.
 - The competency and training of the potential decision-maker.
 - The interests of the community (e.g., a high-profile complaint may be best decided by a 3rd-party decision-maker).
 - The potential of the decision-maker serving as a witness in future legal proceedings (court/arbitration).

Decision-Makers

Decision-Makers

- May be the same person as the Title IX Coordinator or Investigator.
 - Single Investigator Model.
- Must be free of bias or conflicts of interest.
- Must receive training on how to conduct the formal grievance process, including issues of relevant evidence, and application of rape shield laws.
- It's helpful to have several trained decision- makers available to avoid bias or conflict of interest, depending upon the parties involved.

Decision-Making Process

- Decision-maker must have ability to question parties and witnesses to assess credibility if needed. (If investigator is decision-maker, opportunity is already provided).
- Use preponderance of evidence standard (unless district uses clear and convincing in all other comparable processes) to evaluate all relevant and not otherwise impermissible evidence.
- Notify parties in writing of determination including rationale and procedures and permissible bases for appeal.
- If a determination is made that discrimination occurred, Title IX coordinator:
 - Coordinates the provision and implementation of remedies.
 - Coordinates imposition of disciplinary sanctions and notifies complainant of same.
 - Take all other steps necessary to prevent recurrence.
 - Disciplinary sanctions cannot be imposed before the end of the grievance procedure.
- May not discipline for making a false statement or engaging in consensual sexual conduct based solely on decision-maker's determination whether sex discrimination occurred.

What is Relevant Evidence?

- Only relevant evidence may be considered by the decision-maker in reaching their determination.
- Evidence is “relevant” if, upon consideration of that evidence, the allegation of sex-discrimination is more or less likely to be true.
 - Any shift in the likelihood that the allegation is more or less likely to be true means evidence is “relevant”.
- Relevant evidence may not be considered if the evidence:
 - Is privileged under state or federal law.
 - Is a medical or treatment record of a party or witness.
 - Relates to the complainant’s prior sexual conduct, unless offered to prove the issue of consent.

Decision-Making

Making a Determination of Responsibility

- To find one culpable of the alleged conduct in a Title IX Complaint, the decision-maker must find culpability by a preponderance of evidence, unless all other similar proceedings require a higher standard of proof.
 - “more likely than not that the conduct occurred”.
- The District Administrator will consider the determination, severity of incident, and previous infractions to ultimately determine appropriate disciplinary sanctions or consequences, up to expulsion or suspension.
- Title IX Coordinator is ultimately responsible for effective implementation of remedies.

Appeals

Appeals

- Not required unless offered in other discrimination complaint processes.
- Available to both parties.
- May be made after a dismissal or final determination.
- Decision-maker for the appeal must not be the Title IX Coordinator, investigator or decision-maker of the initial determination.
- Provide notice of appeal to both parties and provide an equal opportunity to submit a written response.

Grounds for appeal – not prescribed by the regulations. From 2020 regulations:

- Procedural irregularity;
- New evidence that was not reasonably available at the time of determination or dismissal;
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias.

Retaliation

- Retaliation is intimidation, threats, coercion, or discrimination against any person by the district, a student, or an employee or other person authorized by the district to provide aid, benefit, or service under the district's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, informal resolution process, grievance procedure and in any other actions taken by a district.
- A district may require an employee or other person authorized by a district to provide aid, benefit, or service under the district's education program or activity to participate as a witness in, or otherwise assist with, an investigation or proceeding under Title IX.
- District must prohibit retaliation, including peer retaliation in its education program or activity.
- If the district has information about conduct which may constitute retaliation, the response should be the same as a response to a report of sex discrimination.
- Upon receipt of a complaint, follow grievance procedure.

Recordkeeping

New regulations require that a school district keep the following records for at least seven (7) years:

- Complaints of sex discrimination.
- Records documenting the informal resolution process and the grievance procedures used.
- Records of the outcome or determination from a complaint, if applicable.
- Records of each notification the Title IX Coordinator receives information about conduct that reasonably may constitute sex discrimination, including:
 - Records of mandatory employee notifications reported to the Title IX Coordinator.
 - Records documenting the actions the recipient took to respond to the allegations of sex discrimination or harassment.
- All materials used for training. A school district is responsible for providing training materials to the public upon request.

As a matter of best practice, **Title IX Coordinators should maintain up-to-date and comprehensive record systems.**

THANK YOU



RENNING
LEWIS & LACY