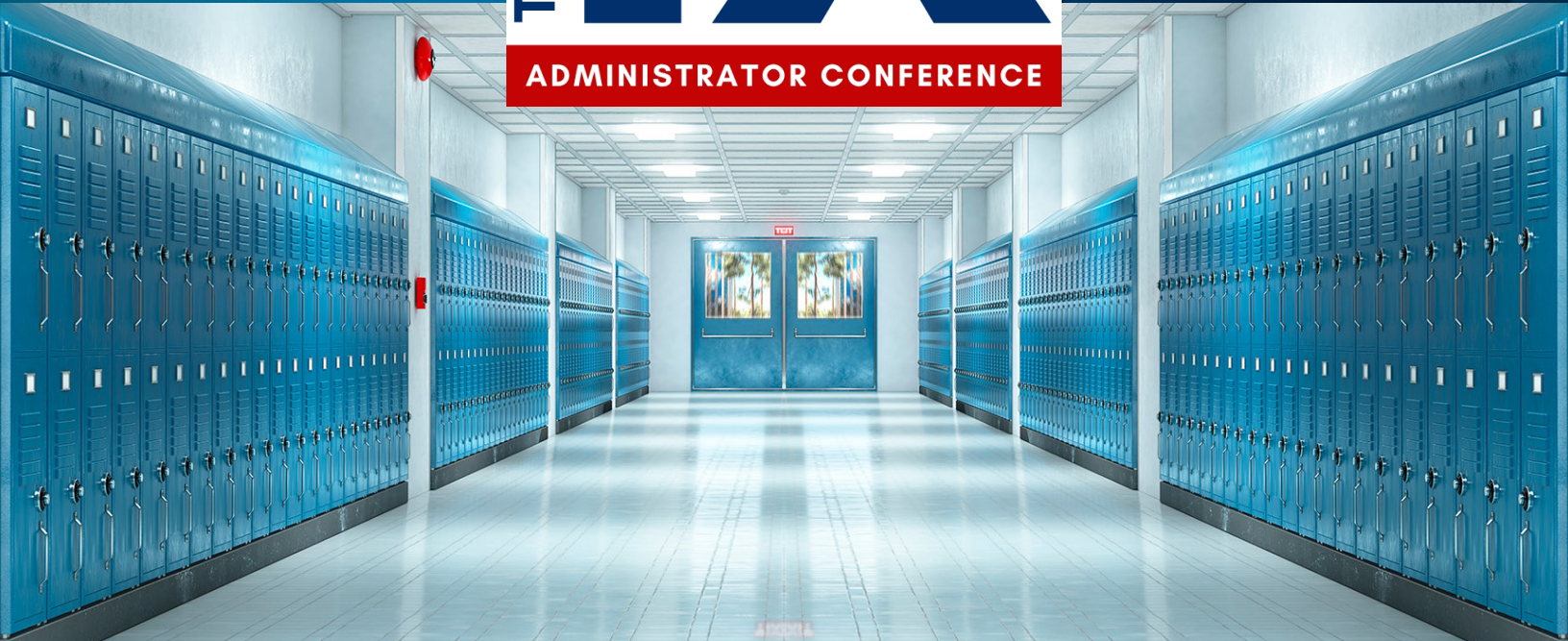




OCTOBER 28-29, 2025



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The Coordinator's Compass: Guiding Compliance Under Title IX

Presented by:
Holly Boyd Wardell

October 28, 2025



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The Compass Framework: Four Points of Effective Coordination



- North: Oversight and Compliance
- East: Intake and Response Management
- South: Training, Education, and Prevention
- West: Leadership Beyond Compliance

2

North: Oversight and Compliance



3

Legal Requirements for Title IX Coordinators



Designation: Each recipient must **designate** and authorize at least one employee to coordinate its efforts to comply with Title IX--referred to as the "Title IX Coordinator."

34 C.F.R. §106.8(a)

4

Legal Requirements for Title IX Coordinators



Notice: Recipients must notify applicants for admission and employment, students, parents/guardians and employees of the Title IX Coordinator's:

- Name or title
- Office address
- E-mail address
- Telephone number

34 C.F.R. §106.8(a)

5

Legal Requirements for Title IX Coordinators



Each recipient must **prominently** display the contact info of the Title IX Coordinator on its website and in each handbook or catalog.

34 C.F.R. §106.8(b)(2)

6



Website Requirements

- There is no requirement that the district's nondiscrimination policy and Title IX Coordinator's contact info be on the homepage or linked to the homepage—only a requirement that it be prominently displayed.
- There is no requirement to have a section of the website dedicated to Title IX requirements.
- There is no requirement that Title IX info be located on multiple pages of a district's website.



7



Make sure your district's policies and documents reflect the current name and contact info for your Title IX Coordinator.

FB, FFH, DIA, Student Handbook, Employee Handbook

8



Developing Policies and Procedures

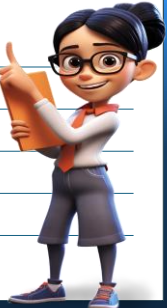
- DAA Equal Employment Opportunity
- DGBA Employee Complaints
- DIA Employees: Freedom from Discrimination, Harassment & Retaliation
- EHAA Required Instruction
- FB Equal Educational Opportunity
- FFG Child Abuse and Neglect
- FFH Students: Freedom from Discrimination, Harassment & Retaliation
- FM Student Activities
- FNE Pregnant Students
- FNG Student & Parent Complaints
- GF Public Complaints
- GRA Relations with Governmental Entities – State and Local Authorities



9

Scope of Compliance Areas

- Sex discrimination
- Education programs and activities
- Sexual harassment
- Athletics
- Pregnancy



10

EQUAL EDUCATIONAL OPPORTUNITY

Nondiscrimination

A district shall provide equal opportunities to all individuals within its jurisdiction or geographic boundaries. Education Code 1-100.09

No officer or employee of a district shall, when acting or purporting to act in an official capacity, refuse to permit any student to participate in any school program because of the student's race, religion, color, sex, or national origin. Civ. Code, & Penal Code 106.001

A district may not deny services to any individual eligible to participate in its special education program, but it shall provide individual students with disabilities special educational services as authorized by law. Education Code 1-100.08

Federal Funding Recipients

No person shall be excluded from participation in, denied the benefits of, or subjected to discrimination by any district that receives federal financial assistance, on the basis of any of the following prohibited characteristics:

- sex
- Race, color, or national origin.
- Disability, or relationship or association with an individual with a disability. [See EHB, GHB, IHB, and GA]
- Age.

20 U.S.C. 1681 (Title IX); 42 U.S.C. 2000d (Title VI); 20 U.S.C. 1412(c)(1) and 1412(c)(2) with Disabilities Education Act; 29 U.S.C. 794 (Section 504); 42 U.S.C. 12132 (Americans with Disabilities Act (ADA)); 42 U.S.C. 19151 et. seq. (Age Discrimination Act of 1975)



11

Sexual harassment - FB

Sexual Harassment

Sexual harassment of students in an education program or activity is discrimination on the basis of sex under Title IX. Franklin v. Gwinnett City Pub. Sch., 503 U.S. 60 (1992)

A district's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX. 34 C.F.R. 106.45(a)

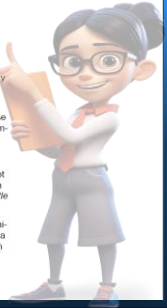
[See also DIA and FFH]

Grievance Procedures

A district must adopt and publish grievance procedures for prompt and equitable resolution of student complaints alleging any action that would be prohibited by these provisions. 34 C.F.R. 106.8 (Title IX); 104.7(b) (Section 504) [See FFH]

Retaliation

A district shall not coerce, intimidate, threaten, retaliate or discriminate against, or interfere with any person who attempts to assert a right protected by the above laws or cooperates with investigation and enforcement proceedings under these laws. 34 C.F.R.



12

Education programs and activities - FB

Discrimination on the Basis of Sex Title IX

No person in the United States shall, on the basis of sex, be excluded from participation in, denied the benefits of, or be subjected to discrimination by any district receiving federal financial assistance. *20 U.S.C. 1681(a)* [See FFH for information regarding Title IX coordinator designation, policy notification, and complaint procedures.]

A district shall not provide any course or otherwise carry out any of its educational programs or activities separately on the basis of sex, or require or refuse participation therein on the basis of sex, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses. *34 C.F.R. 106.34* [See FFH for information on sexual harassment that may constitute discrimination on the basis of sex under Title IX.]

13

Education programs and activities - FB

Separate Facilities

A district may provide separate toilet, locker room, and shower facilities on the basis of sex, but the facilities provided for one sex shall be comparable to the facilities provided for the other sex. *34 C.F.R. 106.33*

Human Sexuality Classes

Portions of classes in elementary and secondary school that deal primarily with human sexuality may be conducted in separate sessions for boys and girls.

Vocal Music Activities

A district may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

34 C.F.R. 106.34

Single-Sex Programs

A district shall not, on the basis of sex, exclude any student from admission to an institution of vocational education or any other school or educational unit operated by the district. *34 C.F.R. 106.35*

14

Physical Education - FB

Physical Education Classes

A district may group students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

Skills Assessment

Where use of a single standard of measuring skill or progress in physical education classes has an adverse effect on members of one sex, a district shall use appropriate standards that do not have such effect.

Contact Sports

A district may separate students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

34 C.F.R. 106.34, .43

15

Athletics - FB

Athletic Programs

A district shall not discriminate, on the basis of sex, in interscholastic or intramural athletics or provide any such athletics separately on such basis.

Single-Sex Teams

A district may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but not for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport.

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Athletics - FB

Equal Athletic Opportunities

A district that operates or sponsors interscholastic or intramural athletics shall provide equal athletic opportunity for members of both sexes. The following factors shall be considered in determining whether a district provides equal athletic opportunities:

1. Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
2. Provision of equipment and supplies;
3. Scheduling of games and practice time;
4. Travel and per diem allowance;
5. Opportunity to receive coaching and academic tutoring;
6. Assignment and compensation of coaches and tutors;
7. Provision of locker rooms and practice and competitive facilities;
8. Provision of medical and training facilities and services;
9. Provision of housing and dining facilities and services; and
10. Publicity.

17

Pregnancy and Marital Status

Pregnancy and Marital Status

A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex. *34 C.F.R. 106.40* [See FND]



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Pregnancy and Marital Status - FNE

The District shall not discriminate against any student or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of the student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the District's program or activity. (See FIE)

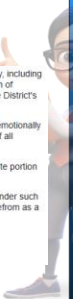
Medical Certification: The District may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity so long as such certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

Separate Program: A district that operates a separate, voluntary program or activity for pregnant students shall ensure that the separate portion is comparable to that offered to nonpregnant students.

Leave of Absence: If the District does not maintain a leave policy for its students, or if a student does not otherwise qualify for leave under such a policy, the District shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence for as long as the student's physician deems medically necessary.

At the end of the leave, the District shall reinstate the student to the status she held when the leave began.

20 U.S.C. 1681; 34 CFR 106.40(b)



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East: Intake and Response Management



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Specific Coordinator Duties from 2020 Regulations – Sexual Harassment Grievances



The Title IX Coordinator is responsible for ensuring that the district develops a **grievance procedure** that comports with 34 CFR Part 106 for responding to **all reports of sexual harassment** and a process for investigating formal complaints.

21

Legal Requirements for Title IX Coordinators



Any person may **report** sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), **in person, by mail, by telephone, or by electronic mail**, using the contact information listed for the Title IX Coordinator, **or by any other means** that results in the Title IX Coordinator receiving the person's **verbal or written report**. Such a report may be made **at any time** (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

34 C.F.R. §106.8(a)

22

Make sure you train your campus administrators to report any suspected sex-based discrimination to the Title IX Coordinator.



Recognizing potential Title IX issues is key.

23

Coordination and Collaboration



- Work with HR, Student Services, Athletics, Campus Safety, and community resources.
- Serve as the central point of contact for Title IX issues institution-wide

24



Responsibilities of Title IX Coordinator in Sexual Harassment Grievance Process (2020)

- Determine the need for **emergency removal** or **administrative leave**
- Promptly contact the complainant to **discuss supportive measures** and consider complainant's wishes
- Inform the complainant of the **right to file a formal complaint** and the right to supportive measures with or without a formal complaint
- Decide whether to file a **formal complaint** if the complainant does not (e.g., improper relationship with staff member)

25



Responsibilities of Title IX Coordinator in Sexual Harassment Grievance Process (2020)

- Decide whether to **dismiss a complaint** (does not constitute sexual harassment, did not occur in a district program/activity, did not occur in the US)
- Provide **notice to parties** of the grievance process if a formal complaint is filed.
- **Assign investigators** and **decision-makers** who are impartial and not biased
- Ensure implementation of **remedies**

26



Recordkeeping and Documentation

Maintain records of reports, supportive measures, investigations, and outcomes for 7 years.

Develop reporting and recordkeeping systems to ensure accountability and transparency.



27



Recordkeeping and Documentation

- Both OCR and reviewing courts will assess the sufficiency of a district's response to determine whether school officials were deliberately indifferent to the harassment.
- Documentation of the district's efforts will be critical to defending against sexual harassment claims, which may be asserted years after the fact.



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Recordkeeping and Documentation

Best practice: Have a record keeping system for all Title IX complaints—not just sexual harassment reports/complaints.

Follow your district's process in FFH(LOCAL) for other types of sex discrimination complaints (e.g., athletics, pregnant student accommodations/discrimination, CTE – STEM).

29



South: Training, Education, and Prevention

30

TRAINING

- Design an annual Title IX training plan
- Ensure training for all employees, investigators, decision-makers, and appeal officers
- Lead awareness and prevention efforts within the school district
- Maintain and post training materials publicly as required



31

TRAINING REQUIREMENTS

- All staff must be trained on the definitions of sex discrimination and sexual harassment and how to make a report.
- Board policies
- Reporting protocol
- Trainings cannot be based on stereotypes



32



Make sure you train all staff to report any suspected sex-based discrimination to the Title IX Coordinator.

"Knowledge" of sexual harassment is imputed to the district if any employee learns of facts that could be sexual harassment.

It is important that all staff are trained on their duty to report suspected sexual harassment and the adverse employment implications for failing to do so.

33

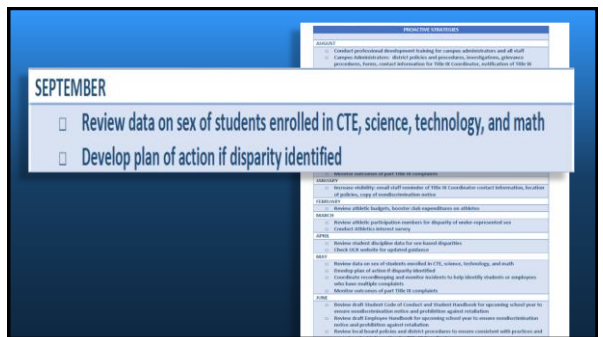


West: Leadership Beyond Compliance

34



35



36

OCTOBER

- Present to Board of Trustees re Title IX policies, procedures, on-going efforts
- Attend Title IX Coordinator Training

Conduct professional development training for campus administrators and all staff

Conduct campus climate survey – whether discriminatory attitudes pervade the culture

Coordinate recordkeeping and monitor incidents to help identify students or employees who have multiple complaints

Monitor outcomes of part Title IX complaints

Review athletic budgets, booster club expenditures on athletes

Review athletic participation numbers for disparity of under-represented sex

Review student discipline data for sex-based disparities

Check title website for updated policies

Review data on use of students' identified in Title IX, violence, technology, and equity

Develop plan of action if disparity identified

Coordinate recordkeeping and monitor incidents to help identify students or employees who have multiple complaints

Monitor outcomes of part Title IX complaints

Review and update handbook for governing school prior to review nondiscrimination notice and prohibition against retaliation

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37

NOVEMBER

- Conduct campus climate survey – whether discriminatory attitudes pervade the culture

38

DECEMBER

- Coordinate recordkeeping and monitor incidents to help identify students or employees who have multiple complaints
- Monitor outcomes of part Title IX complaints

39

JANUARY

- Increase visibility: email staff reminder of Title IX Coordinator contact information, location of policies, copy of nondiscrimination notice

40

FEBRUARY

- Review athletic budgets, booster club expenditures on athletes

Conduct professional development training for campus administrators and all staff

Conduct campus climate survey – whether discriminatory attitudes pervade the culture

Coordinate recordkeeping and monitor incidents to help identify students or employees who have multiple complaints

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41

MARCH

- Review athletic participation numbers for disparity of under-represented sex
- Conduct Athletics interest survey

42

STUDENT ATHLETIC INTEREST SURVEY

Purpose: This survey is being conducted for evaluation, research, and planning purposes and may be used along with other information to determine whether the Independent School District () is effectively accommodating the athletic interests and abilities of its students, including whether to add additional teams.

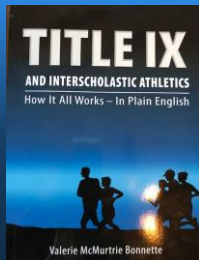
Confidentiality: All responses to this survey as well as any personally identifiable information you provide will be kept confidential. Aggregate survey information will be shared with athletic directors, coaches, and other staff, as appropriate.

Questions: If you have any questions regarding this survey, please contact the Title IX Coordinator, , at / or , TX.

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SELF-EVALUATION AND DESK REFERENCE

- Analyses for Compliance
- Title IX and Money
- Interests and Abilities Survey
- Questionnaires for Coaches
- Facilities Checklists



44

APRIL

- Review student discipline data for sex-based disparities
- Check OCR website for updated guidance

45

MAY

- Review data on sex of students enrolled in CTE, science, technology, and math
- Develop plan of action if disparity identified
- Coordinate recordkeeping and monitor incidents to help identify students or employees who have multiple complaints
- Monitor outcomes of part Title IX complaints

46

JUNE

- Review draft Student Code of Conduct and Student Handbook for upcoming school year to ensure nondiscrimination notice and prohibition against retaliation
- Review draft Employee Handbook for upcoming school year to ensure nondiscrimination notice and prohibition against retaliation
- Review local board policies and district procedures to ensure consistent with practices and correct contact information for Title IX Coordinator

47

JULY

- Coordinate with local law enforcement in preparation for upcoming school year
- Review safety measures, such as monitoring, supervision, or security at locations or activities where harassment has occurred or is likely to occur
- Ensure Title IX Coordinator's contact information is easily found on district website

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The information in this handout was prepared by Eichelbaum Wardell Hansen Powell & Muñoz, P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If special legal advice is sought, consult an attorney.



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PROACTIVE STRATEGIES

AUGUST

- ☐ **Conduct professional development training for campus administrators and all staff**
- ☐ **Campus Administrators: district policies and procedures, investigations, grievance procedures, forms, contact information for Title IX Coordinator, notification of Title IX Coordinator of all complaints, confidentiality, prohibition against retaliation, sexual harassment, LGBT, pregnant students, equity in athletics**
- ☐ **All staff: district policies and procedures, grievance procedures, contact information for Title IX Coordinator, prohibition against retaliation**

SEPTEMBER

- ☐ **Review data on sex of students enrolled in CTE, science, technology, and math**
- ☐ **Develop plan of action if disparity identified**

OCTOBER

- ☐ **Present to Board of Trustees re Title IX policies, procedures, on-going efforts**
- ☐ **Attend Title IX Coordinator Training**

NOVEMBER

- ☐ **Conduct campus climate survey – whether discriminatory attitudes pervade the culture**

DECEMBER

- ☐ **Coordinate recordkeeping and monitor incidents to help identify students or employees who have multiple complaints**

- ☐ **Monitor outcomes of part Title IX complaints**

JANUARY

- ☐ **Increase visibility: email staff reminder of Title IX Coordinator contact information, location of policies, copy of nondiscrimination notice**

FEBRUARY

- ☐ **Review athletic budgets, booster club expenditures on athletes**

MARCH

- ☐ **Review athletic participation numbers for disparity of under-represented sex**
- ☐ **Conduct Athletics interest survey**

APRIL

- ☐ **Review student discipline data for sex-based disparities**
- ☐ **Check OCR website for updated guidance**

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- ☐ **Review draft Employee Handbook for upcoming school year to ensure nondiscrimination notice and prohibition against retaliation**
- ☐ **Review local board policies and district procedures to ensure consistent with practices and correct contact information for Title IX Coordinator**

JULY

- ☐ **Coordinate with local law enforcement in preparation for upcoming school year**
- ☐ **Review safety measures, such as monitoring, supervision, or security at locations or activities where harassment has occurred or is likely to occur**
- ☐ **Ensure Title IX Coordinator's contact information is easily found on district website**



Déjà vu All Over Again: Vacating the 2024 Final Rule and Return of the 2020 Regulations

Presented by:
Andrea L. Mooney

October 28, 2025

DÉJÀ VU ALL OVER AGAIN: VACATING THE 2024 FINAL RULE AND RETURN OF THE 2020 REGULATIONS

Andrea L. Mooney
October 28, 2025



TRUMP'S ORIGINAL 2020 TITLE IX RULE:

- During Trump's first term, sweeping Title IX regulations were enacted in May 2020.
- DOE's first formal revision of the Title IX regulations since the 1970s.
- The regulations significantly pulled back on informal guidance issued under prior administrations through Dear Colleague Letters.

BIDEN'S 2024 OVERHAUL (NOW NULLIFIED)

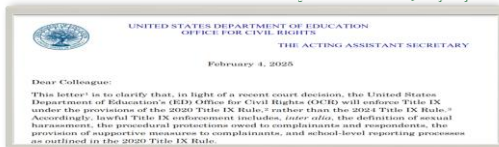
- The Biden administration in April 2024 revised those regulations to recognize gender identity and sexual orientation under "sex discrimination," expanded the definition of harassment, and provided some flexibility for investigations.
- However, the 2024 rules were challenged and struck down by a federal judge in *Tennessee v. Cardona* on January 9, 2025.

RETURN TO 2020 RULE UNDER TRUMP 2.0

- Acting swiftly after the court decision and his inauguration, Trump signed an executive order on January 20, 2025, mandating federal agencies to recognize only "two sexes" based on biology.
- The DOE issued a Dear Colleague Letter on January 31 instructing all federally funded educational institutions to revert immediately to the 2020 Title IX framework.

"TODAY, THE...DEPARTMENT OF EDUCATION ...ADVISE[S] EDUCATORS AND ADMINISTRATORS THAT THE DEPARTMENT'S OFFICE FOR CIVIL RIGHTS WILL ENFORCE THE TRUMP ADMINISTRATION'S 2020 TITLE IX RULE."

— Dep. of Education, 01/25/2025



CORE FEATURES OF THE 2020 RULE (NOW ENFORCED AGAIN)

- | | |
|--|--------------------------|
| -Easy Identification of Title IX Coordinator | -Public Resources |
| -Grievance Procedure | -Documentation Retention |
| -Definition of "Harassment" | -Dismissal Requirements |
| -Training for all Staff | -Discipline |
| -Due Process Emphasis | -Multiple Staff Roles |
| -Supportive Measures | -Formal Complaints |

GUIDELINES: WHERE AM I RESPONSIBLE?

- Title IX covers sexual harassment that happens in a school's "education program or activity."
- Defined as **broader** than "on campus" situations.
- Includes actions in a school program, digital program, or official student group's building.
- That includes locations, events, and circumstances where a school exercises **substantial control over the context of the alleged harassment and the person accused of committing sexual harassment**.
- Includes** any building owned or controlled by a student organization that is officially recognized by a postsecondary institution (fraternity house).

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3-PRONGED "SEXUAL HARASSMENT" DEFINITION

(1) **"Quid Pro Quo" Harassment:** Employee conditioning educational benefits on participation in sexual conduct, **OR...**

(2) **Hostile Environment:** 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 school's education program or activity, OR...**

(3) "Sexual assault," "dating violence," "domestic violence," or "stalking" as those terms are defined under Federal laws called the *Clery Act* and the *Violence Against Women Act*.

34 CFR § 106.30(a)

8

SCHOOLS AND "NOTICE?"

- Once a school has **actual knowledge** of sexual harassment or allegations of sexual harassment, the school **has to** respond and take action.
- A school has "**actual knowledge**" when the school has **notice** that a person may have been victimized by sexual harassment.
- Any person, whether the alleged victim or a parent, friend, or bystander, has the right to report sexual harassment to put the school on notice. Also, a school is on "notice" if any school personnel **witness** sexual harassment.

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Title IX reports may be made by:

1. Filling out Form
2. Verbal
3. Mail
4. Telephone
5. Email

Reports may be made at **any time**, including non-school hours

Schools must address a complaint of sexual harassment which would jeopardize complainant's equal access to an education program or activity. § 106.30(a).

10

ACTUAL KNOWLEDGE BY PERSONNEL

- The Title IX Coordinator for the district or school.
- Other people within the school may have authority to institute corrective measures. This could vary from school to school but **always** includes the Title IX Coordinator.
- In elementary and secondary schools, telling any school employee always puts the school on notice.** Includes cafeteria workers, sub. teachers, bus drivers, custodians, clerks.
- This means we must train **ALL** employees.

11

WHAT KIND OF RESPONSE MUST THE SCHOOL PROVIDE?

The school **can't** be "deliberately indifferent." **Deliberate indifference = liability.** That also means that it can't be "clearly unreasonable" in light of the known circumstances. The clearly unreasonable standard **may** protect districts who "do not do enough, but were not clearly unreasonable"

The Title IX Coordinator **must** provide information to the individual:

The availability of supportive measures;

The right to file a complaint, and

How to file a complaint and the process.

12

WHAT PERSONNEL AND POLICIES DO SCHOOLS NEED TO HAVE?

- **Title IX Coordinator contact information;**
- **Non-Discrimination policy;**
- **Written grievance procedures; AND**
- Information about **how to file a formal complaint** regarding sexual harassment.

13

FORMAL COMPLAINTS

- A **formal** complaint is an official document alleging sexual harassment.
- It's filed **and** signed by the student (or their parent or legal guardian), or in some cases, the Title IX Coordinator.
- In cases where an alleged victim doesn't file a formal complaint, **a Title IX Coordinator might initiate grievance procedures where discipline is appropriate.** Discipline for Title IX will be difficult without using procedure.

14

WRITTEN GRIEVANCE PROCEDURES

Schools' written grievance procedures for dealing with sexual harassment **must** abide by the new regulations.

The grievance procedure **can't** discriminate on the basis of sex, and any additional provisions that a school adds **must apply equally to complainants as respondents.**

Note: Refers to alleged victims as "complainants" and alleged perpetrators as "respondents," **whether or not the grievance process has begun.**

Written grievance procedures **need** to include 10 other specific items. [See next 10 slides]

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REQ. 1: TREAT PARTIES "EQUITABLY"

- The school's grievance process **must** treat complainants and respondents "equitably" **by providing remedies to a complainant if a respondent is found responsible,** and by **following the prescribed grievance process** imposing discipline on a respondent.
- The remedies for a complainant must be designed to **"restore or preserve equal access"** to education programs or activities.
- Unlike supportive measures in place with or without a grievance process pending, **a complainant's remedies CAN be punitive or disciplinary against the respondent.**

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REQ. 2: OBJECTIVE EVALUATION OF EVIDENCE

- The school's grievance process **must** ensure an "objective" evaluation of **all** relevant evidence – including inculpatory and exculpatory evidence.
- Credibility determinations **can't be made on the basis of a person's status as a complainant, respondent, or witness.**

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REQ. 3: TRAINING AND NO CONFLICTS OF INTEREST

- The individuals involved in the process - like the Title IX Coordinator, investigators, decision-makers, or facilitators of informal, voluntary resolution efforts - **must NOT have any bias or conflict of interest.**
- These individuals must also be **trained.**
- The materials used to train Title IX personnel:
 - (1) can't rely on sex stereotypes,
 - (2) must promote impartial investigations and adjudications, and
 - (3) must be posted on each school's website (and if a school does not maintain a website, make them available for public inspection upon request).
- Must have copyright permission to publish.

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REQ. 4: PRESUMPTION OF INNOCENCE

- Under the school's grievance procedures, **the respondent must be presumed not responsible**, so that any finding of responsibility **only** comes at the conclusion of a grievance process.
- This implies that **before** a conclusion can be reached, therefore as part of the investigation, **there must be a hearing process.**

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REQ. 5: REASONABLY PROMPT TIME FRAMES

- The grievance process **must** include "reasonably prompt" time frames for resolving formal complaints of harassment.
- **Temporary delays** are permitted only for **good cause.**
- Good cause can include:
 - law enforcement activities,
 - the absence of a party or witness,
 - the absence of a party's advisor of choice
 - the need to provide language assistance or accommodation of disabilities.
- District policy and handbooks should include these reasons **along with "any other reason deemed good cause."**

20

REQ. 6: DESCRIPTION OF OUTCOMES

- The grievance process **must** describe/list the range of remedies and disciplinary sanctions that could occur following a determination of responsibility. **This means "the range" should be listed in handbook and policy.**

21

REQ. 7: STANDARD OF EVIDENCE

- The grievance process **must** state which standard of evidence the school will use to reach a determination regarding responsibility.
- Schools can choose between the **preponderance of the evidence** standard and the **clear and convincing evidence** standard.
 - Whichever standard the school chooses, it has to use that standard for **all formal complaints of sexual harassment**, whether the respondent is a student or employee.
- All sexual harassment proceedings must have the **same standard of evidence.**

22

REQ. 8: RIGHT TO APPEAL

The grievance procedures have to contain the **right to appeal the result of a grievance process.** Will need appeal process in policy and handbook.

Schools must **offer an appeal** (details in later slide)

23

REQ. 9: DESCRIPTION OF RANGE OF SUPPORTIVE MEASURES

- The school's grievance process must describe the **range of supportive measures** available to complainants and respondents. The range will need to go into board policy and handbooks.

24

REQ. 9: SUPPORTIVE MEASURES

Supportive measures **may** include:

- (1) individualized services that are **non-punitive, non-disciplinary, and do not unreasonably burden the other party** yet are designed to **restore or preserve a person's equal access to education**;
- (2) placing students immediately in **separate classes** pending the results of the school's investigation;
- (3) notify the complainant of the options to **avoid contact** with the respondent and allow students to **change academic situations** as appropriate; **AND/OR**
- (4) **counseling**.

Must offer even if there is no investigation.

25

REQ. 10: PRIVILEGES

- The school's grievance process **must** explain that no information protected by a legal privilege, such as the attorney-client privilege or the doctor-patient privilege, **can be used during an investigation** unless the person holding that privilege has waived it.
 - Neither a party nor the school is allowed to seek, permit questions about, or allow evidence that is protected by a recognized privilege.*
- Individuals can always opt to waive their own privileges.**

26

WALKING THROUGH THE GRIEVANCE PROCESS

- This is the process **initiated** by a **formal** complaint, either by an individual or the Title IX Coordinator.

27

EMERGENCY REMOVALS

A school **may** remove a respondent from the school's education programs or activities **on an emergency basis...**

...if the respondent poses an "immediate threat to anyone's physical health or safety."

If the respondent is a school employee, the final regulations **don't** **prevent a school from placing that employee on administrative leave** during the investigation.

28

WRITTEN NOTICE TO THE PARTIES

When the school begins an investigation, it has to provide the parties with **written notice** of certain information. This could result in retaliation or intimidation by "respondent."

It has to give notice to the parties of the school's grievance process, which **must comply with the 10 requirements we listed before. Miranda for harassment allegations.**

It also has to include **whether there is an opportunity to engage in informal resolution.**

Schools don't have to offer informal resolution processes, but if they choose to, it's important that they are mentioned in this initial notice. **No informal resolution option for employee-student harassment.**

29

DETAILS OF WRITTEN NOTICE

- The actual allegations and facts that would constitute sexual harassment.
- The presumption of innocence.
- A statement that the parties are entitled to advisor of their choice.
- A statement that the parties can request to inspect and review certain evidence.
- Information regarding the code of conduct and false statements.

30

MANDATORY DISMISSAL

- A school **must** dismiss a complaint:
 - (1) that does not describe conduct that meets the definition of sexual harassment;
 - (2) that alleges sexual harassment that did not occur in the school's education program or activity; and/or
 - (3) that alleges sexual harassment that did not occur in the United States at all. Schools trips out of U.S. excluded.
- Schools can still address these complaints under their code of conduct, even if the misconduct is not sexual harassment under Title IX.

31

DISCRETIONARY DISMISSALS

- A school **may** dismiss a complaint:
 - (1) if the complainant notifies the Title IX Coordinator in writing that he/she wishes to withdraw the formal complaint or some of its allegations;
 - (2) if the respondent is no longer enrolled or employed by the school; **AND/OR**
 - (3) if specific circumstances prevent the school from gathering evidence sufficient to reach a determination about the allegations.
- Whenever a school dismisses a formal complaint, or any allegations in it, **the school has to promptly send written notice of the dismissal and the reasons to the parties.**
- Both parties have the right to appeal a school's dismissal decisions.

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GATHERING EVIDENCE

The school district:

1. must give **both** parties specific, equal rights and protections.
2. is **not** allowed to access a party's personal records if they are maintained by a physician, psychiatrist, psychologist, or other professional for the purpose of treatment to the party, **without consent**.
3. must provide an **equal** opportunity for the parties to present witnesses and evidence.
4. can't restrict the ability of either party to **discuss allegations under investigation, or to gather and present relevant evidence**.
5. has to provide the same opportunities to the parties to have others present during the grievance proceedings, including access to an **advisor of choice** for **any** meetings or hearings. Both complainant and respondent entitled to an "advisor" of their choice.

33

GATHERING EVIDENCE

The school also:

1. has to provide **written notice** of the date, time, location, participants, and purpose of all hearings, interviews, or other meetings, with **sufficient time for the party to prepare**.
2. must also provide **equal opportunities** for the parties and their advisors to **inspect and review the evidence obtained by the school** as part of its investigation, if the information is directly related to the allegations raised in the formal complaint.
3. must give the parties a meaningful opportunity to respond to the evidence **after the school has provided it**.

34

INVESTIGATIVE REPORTS

After gathering evidence, the school needs to prepare an **investigative report** on the allegations of the formal complaint.

1. A school has to give the parties **at least 10 days to respond to the evidence in writing**.
2. If a response is submitted, the school **must** consider that response **before** finalizing the investigative report.
3. That report must be circulated to the parties **at least another 10 days before** any determination of responsibility, or **10 days before a hearing**, if a hearing happens. This means before there can be a conclusion, **we wait at least 20 days**.

35

HEARINGS AND CROSS-EXAMINATION

- For elementary and secondary schools, the school has the **option**, but never the obligation, to hold a hearing.
 - **MUST** still give the parties equal opportunity to submit relevant questions to each other before a determination.
- No party is **EVER** allowed to personally cross-examine.
 - Parties must be permitted an advisor of the party's choosing. If a school offers an advisor for a hearing, solely for the purpose of conducting cross-examination on that party's behalf.
- An advisor chosen by the school does **NOT** need to be a lawyer.

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Every person has the **right to choose to participate**, or not participate, in any part of a grievance process. No one may be forced, threatened, coerced, or discriminated against for choosing not to be part of the process.



If a party or witness chooses not to appear at the live hearing, or not to answer cross-examination questions, **the decision-maker excludes that person's statements** and evaluates any evidence that doesn't involve those statements.



The decision-maker must **never** make inferences about the determination regarding responsibility **based on the fact that a party or witness didn't come to** the hearing or submit to cross-examination.



A school may hold the entire live hearing virtually, **or** a school may allow some participants to appear virtually. **All meetings must be recorded!**

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DECISION-MAKING: OBJECTIVE AND UNBIASED

- The school's decision-maker needs to **objectively** evaluate the relevant evidence and reach conclusions about respondent responsibility.
- A school's decision-maker needs to use their judgment: cannot be the person who conducted the investigations **or** the Title IX Coordinator.
- Decision-makers must be free from conflicts of interest or bias for or against complainants or respondents, and must receive special training about how to be impartial and how to decide relevant evidence.
- The decision-maker will weigh the relevant evidence and decide whether it meets the school's **standard of evidence** for sexual harassment allegations. **They are the judge and jury!!**

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WRITTEN DECISIONS

Must issue a written decision that includes:

- Describes school's **policies** that were violated.
- Describes procedural **steps** taken by the school.
- A findings of **fact** section
- A section that draws **conclusions** and applies facts
- A statement and **rationale** for the determination.
- Any disciplinary **sanctions** that the school will impose on the respondent or whether the school will provide **remedies** to the complainant.
- A statement and **rationale** for any remedies.
- A statement of the recipient's **procedures**, that the parties have a **right to appeal** the determination of responsibility, and the **permissible bases** for appeal.

39

AFTER THE DECISION

- The school must **send the written determination to the parties simultaneously, along with information about how to appeal the determination.**
- A school has discretion to set deadlines for when an appeal must be filed, bearing in mind the obligation to conclude the entire grievance process and bring resolution to the situation for both parties, within a **reasonably prompt time frame.**
- The **Title IX coordinator is responsible for carrying out any remedies rendered.**

40

REMEDIES

Consider:

- training program for those involved in the complaint
- comprehensive education program for the school community
- counseling to the complainant and the respondent who engaged in prohibited conduct
- increasing staff monitoring of areas where conduct has occurred
- reaffirming the District's policy against discrimination/harassment.

Respondents who are employees may be subject to a range of discipline from a written warning up to and including termination.

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APEALS

A school has to offer **BOTH** parties an opportunity to appeal.

*****STAY TUNED!**

42

INFORMAL RESOLUTION

1. Schools can offer informal resolution in most cases.
2. Informal resolution **only** if voluntary by each party.
3. A school can **never** force, threaten, or require informal resolution.
4. If informal resolution proceeds, the school **must** provide a facilitator who is unbiased, and who has received special training.
5. The school still needs to provide complainant and respondents with notice of the allegations, notice of their rights, information about whether an informal process is confidential, and about withdrawing from the process.

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MISCELLANEOUS

- No school or person is allowed to retaliate against anyone for exercising rights under Title IX.
- Any person retaliated against can file a complaint—the school **must** have procedures in place for the “**prompt and equitable**” resolution of such complaints.
- The school should keep the identities of parties and witnesses **confidential**, unless disclosure of someone's identity is required under other laws (e.g. FERPA) or is necessary in order to conduct the grievance process.
- It is retaliation to charge a person with code of conduct violation for the purpose of **discouraging the person from pursuing a sexual harassment report** or formal complaint or exercising any other Title IX rights.
- It may be prohibited retaliation if a code of conduct charge is for a violation unrelated to sexual harassment yet arises from the same facts as an allegation.

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CHECKLISTS FOR DISTRICTS

ADOPTED STANDARD FOR FINDING A VIOLATION:

“PREPONDERANCE OF THE EVIDENCE” **OR**

“CLEAR AND CONVINCING”

ADD/ENSURE APPROPRIATE LANGUAGE IS IN BOARD POLICY AND HANDBOOKS:

- Title IX Coordinator
- Campus Handbooks: Those Who Have Authority To Institute “Corrective Measures”
- The District’s “Grievance” Process
- The District’s Informal Resolution Process
- The District’s Appeal Process
- Range of Remedies and Sanctions for Respondent
- Range of Supportive Measures For Complainant
- Sexual Harassment Complaint Form
- Form Letters

REQUIRED POSITIONS (SHOULD ALREADY HAVE):

- Title IX Coordinator
- Investigators and Decision-makers (**Independent, Unbiased**)
- Facilitators (**Independent, Unbiased**) (Trained in Informal Resolution)

45

THANK YOU



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*The information in this handout was prepared by
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It is intended to be used for general information only and
is not to be considered specific legal advice.
If special legal advice is sought, consult an attorney.*

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Not Your Ordinary Investigation: Special Rules for Title IX Investigations

Presented by:
Heather R. Rutland

October 28, 2025

Not Your Ordinary Investigation: Special Rules for Title IX Investigations

Jennifer A. Powell



1

BASIC TERMS

- **Complainant** is an individual alleged to be the victim of conduct that could be sexual harassment.
- **Respondent** is an individual alleged to have engaged in conduct that could be sexual harassment against the Complainant.
- Each is referred to as a **Party**

2

SEXUAL HARASSMENT*

1. Quid pro quo
2. Hostile environment
3. Sexual assault, dating violence, domestic violence, stalking



Severe, pervasive, and objectively offensive

*In a school program or activity in the United States

3

WE BEGIN WITH DEADLINE ISSUES:

- If the incident could be **child abuse**, it must be reported to CPS or law enforcement (note new definition) within **24 hours**. FFG(LOCAL)
- Do we need to notify TEA/SBEC within **48 hours**?

4

CONFIDENTIALITY

- Pre-2020 OCR guidance instructed schools to investigate even when the Complainant did not want the school to investigate.
- The 2020 regulations obligate schools to initiate the grievance process when a Complainant files or a Title IX Coordinator signs a formal complaint, so that the Title IX Coordinator takes into account the wishes of a complainant and only initiates a grievance process against the complainant's wishes if doing so is not clearly unreasonable in light of the known circumstances.

5

CONFIDENTIALITY OF COMPLAINANT'S IDENTITY

- A Complainant can report anonymously.
- A Complainant cannot file a Formal Complaint anonymously.
- Filing a Formal Complaint means the Respondent will know the Complainant's identity.
- People outside the grievance process should not know the Complainant's identity, unless disclosure is permitted by FERPA (student), required by law, or as necessary to conduct the grievance process.

6

ASSIGNS AN INVESTIGATOR

- Must be someone other than Decision-Maker or Facilitator of Voluntary Resolution
- Title IX Coordinator is not prohibited but not best choice
- Campus administrators
- Central administrators
- Outside investigator
- Train more than one
- Can assign more than one investigator/team

7

WHO SHOULD INVESTIGATE ?

- No axe to grind with the Complainant or Respondent
- No bias
- Must be trained
- Not involved in any incidents that prompted the investigation
- Not someone under the supervision of the Respondent, if employee

8

ASSIGN AN INVESTIGATOR

Training must cover:

- impartial investigations
- standards of evidence
- how to equitably and meaningfully include both parties in the process including inculpatory and exculpatory evidence
- how to write an investigative report
- the role of expert witnesses
- legal privileges

9

REMEMBER YOUR SCOPE

- Unlike with most investigations, the Title IX Investigator will not be making the decision about whether the prohibited conduct occurred.
- That role is reserved for the Title IX Decision-Maker, which cannot be the Investigator.
- As a result, your investigative report will not contain the ultimate determination.
- So, keep that in mind during the investigation and when writing your report.
- Because the Decision-Maker will be relying on your report, make sure it expresses what it needs to.

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IMPARTIALITY

- Unbiased, disinterested
- No conflict of interest: a real or seeming incompatibility between one's private interests and one's public duties

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STANDARDS FOR RECUSAL OF JUDGES

1. Personal bias or prejudice concerning a party
2. Personal knowledge of disputed evidentiary facts
3. Material witness in the matter in controversy
4. Spouse or minor child residing in household has a financial interest in the subject matter in controversy or in a party
5. Any other interest that could substantially affect the outcome of the proceeding
6. Relative is a party

28 U.S.C. §455
(Disqualification of federal justice, judge, or magistrate).

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STANDARDS FOR RECUSAL OF JUDGES

Recusal is required when, objectively speaking, the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.

Rippo v. Baker, 137 S.Ct. 905 (2017).

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STANDARDS OF EVIDENCE

- The degree or level of proof demanded in a specific case.
- District choice by policy: preponderance of evidence, clear and convincing evidence

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PREPONDERANCE OF EVIDENCE

The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

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CLEAR AND CONVINCING EVIDENCE

- Evidence indicating that the thing to be proved is highly probably or reasonably certain.
- This is a greater burden than preponderance of evidence, the standard applied in most civil trials, but less than evidence beyond a reasonable doubt, the norm for criminal trials.

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EQUITABLE TREATMENT OF PARTIES

- Providing remedies to Complainants where a determination of responsibility for sexual harassment has been made
- Following a grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a Respondent for sexual harassment
- Presumption that Respondent is not responsible for the alleged conduct until the conclusion of the grievance process

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EQUITABLE TREATMENT OF PARTIES

- Not making credibility determinations based on a party's status as a Complainant, Respondent, or Witness
- Not restricting the ability of either party to discuss "the allegations under investigation" or to gather and present relevant evidence

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EQUITABLE TREATMENT OF PARTIES

- Equal opportunities for supportive measures
- Equal opportunity to review evidence
- Equal opportunity to present witnesses and other evidence
- Objective evaluation of evidence
- Considering inculpatory and exculpatory evidence

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EVIDENCE: INCULPATORY & EXCULPATORY

- **Inculpatory evidence:** showing or tending to show one's involvement in a crime or wrong
- **Exculpatory evidence:** tending to establish a person's innocence

20

INVESTIGATOR: Initial Steps

- Confirm whether allegation reported to CPS/law enforcement, if appropriate
- Find out whether there is an on-going criminal/juvenile investigation

21

LAW ENFORCEMENT INVESTIGATION

- The District may abate* its investigation **temporarily**, if requested by law enforcement officials.
- **Document the request.**
- **Get a timeframe.**
- **Check with law enforcement on a weekly basis to determine status of investigation.**



*May also want to temporarily abate for voluntary informal resolution process.

22

INVESTIGATION TIMELINES

- The regulations do not dictate any timelines for initiating or completing investigations.
- They should be initiated and completed **promptly**.
- It will depend on the nature of the allegations and scope of the investigation.

23

NOTICE TO PARTIES

The parties will have been sent a notice from the Title IX Coordinator:

- Grievance process
- Informal resolution options
- Details of allegations
- Identity of the parties
- Date/location of alleged incident(s)
- Statement that Respondent is presumed not responsible
- Right to an Advisor, who may be, but is not required to be, an attorney

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NOTICE OF INTERVIEWS

Party whose participation is invited or expected is entitled to written notice of the following for any meeting in the grievance process, including interviews, with sufficient time to prepare:

- Date
- Time
- Location
- Participants
- Purpose of meeting



25

NOTICE OF INTERVIEWS

- Parties may be accompanied by an advisor to interviews/any meeting in the grievance process that they are expected to participate.
- Students may have a parent and an additional advisor.

26

CONFIDENTIALITY OF PROCESS - PARTIES

- Schools cannot prohibit parties from discussing the “allegations under investigation” or from gathering their own evidence.
- This does not apply to information that does not consist of “the allegations under investigation,” (e.g., the evidence provided to the parties or the investigative report).

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PARTY EVIDENCE

- Parties have the right to submit their own evidence (e.g., text messages, photographs, medical reports, psychological reports).
- Parties should be told that any evidence submitted will be shared with the other party.

28

ROLE OF EXPERT WITNESSES

- Expert witnesses in Title IX K-12 investigations can provide specialized knowledge on the standard of care, federal and state laws, and investigative procedures to help school officials understand complex issues.
- They are more often used in collegiate proceedings

29

LEGAL PRIVILEGES

- You are not permitted to require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under **a legally recognized privilege**, unless the person holding such privilege has waived the privilege.
- So, don't ask questions that will invade:
 - Attorney-client privilege
 - Physician-patient privilege
 - Spousal privilege
 - Clergy-penitent privilege
- And don't press if a Party or a Witness refuses to answer on this basis

30

INTERVIEWING WITNESSES

- No one can be required to participate in an investigation.
- The regulations prohibit retaliation against any person for participating or refusing to participate in a Title IX proceeding.

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WITNESSES

Witnesses are not entitled to written notice before being interviewed or to be accompanied by a parent/advisor.

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RESEARCH BEFORE INTERVIEWING

- Review the policy and be familiar with the burden of proof and definition of sexual harassment
- Who are the parties?
- Employee? History....time with the District?
- Student disciplinary history?
- Relationship between the parties?
- Prior complaints?
- Prior claims made by others?

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But avoid prejudgment of the facts at issue

34

LOOK AT DOCUMENTS YOU HAVE

- Discipline records
- Academic records
- Personnel records
- Correspondence between Complainant and Respondent

35

MAKE DECISIONS ON NOTE-TAKING AND RECORDING

- Who takes the notes?
- Do we sign the notes?
- Do we want to record?
- Be consistent.
- Test your equipment.

36

OPEN YOUR FILE



- **Assign a case number, if not already**
- All notes, memoranda, written statements, letters, policies, and other matters related to the investigation should be in the file.
- File should be marked as “**CONFIDENTIAL.**”
- **Access must be limited.**

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INTERVIEWING

- Generally, meet with the Complainant first.
- Provide enough time.
- Make it a neutral area.
- Do not rush. Remember this may be embarrassing.
- You want as much detail as possible. Provide time to think and opportunity to return.
- Tell them there will be no retaliation and to report any retaliation to you immediately.

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WRITTEN STATEMENT

- Determine whether age/developmentally appropriate to obtain a written statement from a student.
- Written statements:
 - Shows seriousness
 - Helps assure later testimony
 - Solidifies testimony
 - Helps determine requested outcome

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QUESTIONS FOR THE COMPLAINANT

- What happened – exactly?
- When – date and time?
- Where – specific (room, trip, outdoor)?
- Happen online?
- Why were you and this other person together?
- What happened or was said just before?

40

QUESTIONS

- What exactly was said?
- What was the tone?
- Expression when said?
- Gestures or motions?
- Touch you in anyway?
- Did you touch them?

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QUESTIONS

- Can you describe the type of touching?
- What did you say in response to any touching?
- How did the words or conduct make you feel?
- Have you had conversations or interactions with this person before?
- Was the tone or atmosphere different?

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QUESTIONS

- How long have you known the person?
- Was anyone else present?
- Who?
- Have you told anyone else about this?
- Who, and when, and what did you say?
- Has anything similar happened before?
- If yes, ask the same type of questions about each prior incident.

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QUESTIONS

- Do you have any written documentation?
- Anything on social media such as Instagram, Snapchat, Facebook, X, or other evidence for me to review?
- Are there any other individuals you would like me to interview?

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REMEMBER:

- **Do not ask about prior** sexual behavior or sexual predisposition, unless to establish that another person committed the alleged conduct or that the conduct was consensual

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THOROUGHNESS

- **Do not interview only the Complainant and the Respondent.**
- Who else was there? [Corroboration]
- Who else knows about this? How? [Contemporaneous discussions]
- Is there anyone else you would like me to interview about this? [Thoroughness; other victims]
- Are there any other documents you would like me to review?
- Must thoroughly document procedures

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QUESTIONS FOR CORROBORATING WITNESSES

- Where were you at on (fill in the date and time of the incident as alleged)?
- If online – have you seen the online material?
- Who else was there at the time, or does anyone else know about this?
- Did you see the parties in that place or at that time?
- Did you see or hear any interactions/conversations between the parties?

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QUESTIONS FOR CORROBORATING WITNESSES

- Please tell me in your own words what you saw or heard.
- What exactly did you hear – the precise words?
- What exactly did you see – and from how far/angle/obscured?
- How did complainant look?
- Did the respondent make any motions or gestures?
- What response did you see or hear from the complainant?

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QUESTIONS FOR CORROBORATING WITNESSES

- What impressions do you have about what you saw or heard?
- Do you have personal knowledge of prior interactions?
- Do you know either party? How well, and in what capacity?
- How long have you known either?
- Is there any current or former relationship with either?
- Do you have opinions about trustworthiness? What led you to that opinion?

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QUESTIONS FOR CORROBORATING WITNESSES

- Do you know either of the parties?
- How well do you know them?
- How do you know?
- Is there an official relationship?
- Description of their character, personality, nature?
- Know of any similar past events?

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QUESTIONS FOR CORROBORATING WITNESSES

- Have you observed either or both interact with persons of different sex?
- What were your observations or impressions?
- Do you know if either is generally truthful or deceptive?
- Do you know anyone else that may know about any of these issues?
- Have you heard others talking about it – who?

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ISSUES FOR STUDENTS

- Do not need parental consent to interview
- Written consent is needed when recording (A/V) a student interview related to an investigation. See Tex. Educ. Code §26.009.


*Including recording a video conference that is not related to a regular classroom purpose.

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ISSUES FOR STUDENTS

- Consider interviewing in environment comfortable to them
- Classroom or library, other than office
- Who will be present?

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ISSUES FOR STUDENTS

- Involve the professionals on campus when appropriate and able.
- Do not ask leading questions: Isn't it true that you did X because of Y?
- What did you do? Why did you do it?
- Consider audio recording with consent if child cannot write statement.

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ISSUES FOR STUDENTS

- Never interview together
- Always take students one at a time - protects against duplication, false memories
- Provides a clearer picture of events
- If parents present, set the ground rules – silent observer, cannot lead, sits behind student.

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ISSUES FOR STUDENTS

- Start with small talk* – developing trust
- Learn what the student has told others about incident
- Determine how others have reacted
- Ask questions many times in different ways
- Don't have an agenda. Students often say what they think you want to hear.

*The Investigator should assess the credibility of witnesses, so observe how witnesses respond to simple questions to learn the baseline of behavior of a witness.

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INTERVIEWING RESPONDENTS

- Do you know the Complainant?
- How and for how long?
- What type of relationship, conversations, interactions in the past?
- Where were you on the date and time alleged?
- Why were you there?
- Who else was there?

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INTERVIEWING RESPONDENTS

- Was the Complainant there?
- Did you do or say anything in relation to the Complainant?
- What exactly did you say or do?
- Tone of voice?
- Did you make any gestures or motions while speaking? What type? Show me.

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INTERVIEWING RESPONDENTS

- What did the Complainant say or do then?
- Did they make any gestures or motions? What? Demonstrate.
- Did they say or do anything in response to your statements or actions? What?
- Expression on his/her face?
- Did you touch them in any way? Demonstrate how.

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INTERVIEWING RESPONDENTS

- How did the words or conduct overall make you feel?
- Have you talked to anyone else about this matter?
- Who, when, where? Do you mind if I talk to them?
- Do you have anything else that you feel is important for me to know?
- Would you do the same thing if you were in front of your parent/grandparent/the principal?
- How would you feel if something similar happened to your younger sister/brother?

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THINGS TO TELL ALL WITNESSES*

We will try to keep this confidential, but we cannot guarantee.
You should not speak to others about what we have discussed.
Remind all about the anti-retaliation provisions.

*Remember that Parties (as opposed to Witnesses) cannot be prohibited from discussing the allegations raised in the Complaint.

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BODY LANGUAGE

- Read the body language and demeanor
- Rate of speaking
- Volume of speaking
- Stuttering
- Getting sidetracked
- Avoiding questions



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BODY LANGUAGE

- Not answering the question asked
- Hands – moving, still, tapping?
- Feet?
- Playing with anything?
- Arms crossed?
- Standing up? Moving around?



63

BODY LANGUAGE

- Eye contact?
- Head movement when speaking?
- Changes in patterns when changes in subjects or persons?
- Off the baseline?



64

DISCOMFORT SIGNALS

- People under stress give tells:
 - Rubbing neck when asked a question, pulling on collar
 - Touches hair
 - Touches mouth
 - Looks away
 - Touching neck dimple
 - Presses or strokes legs or arms, tapping
 - Chew gum, play with objects, jewelry, play with pencil
 - Yawning can be a sign of stress –dry mouth

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DISCOMFORT SIGNALS

- People under stress give tells:
 - Tightening of jaw muscles
 - Flaring of nose wings
 - Crinkle of nose
 - Squinting of eyes
 - Quivering of the mouth
 - Stiff neck, no head tilt

66

DEALING WITH HOSTILE PEOPLE



- People may become hostile or confrontational when talking about uncomfortable things.
- Appreciate and respect hostility – especially in parents.
- Understand where their concern comes from.
- Also understand that such behavior is ultimately counter-productive.

67

DEALING WITH HOSTILE PEOPLE

- Do not respond in kind
- Think and talk positively
- First impressions are critical
- Show you are listening by repeating
- Speak softly, and they may do the same
- Give praise where you can

68

DEALING WITH HOSTILE PEOPLE

- Acknowledge frustration
- Take time-outs
- Don't allow things to get personal
- Walk away when you need to

69

DEALING WITH HOSTILE PEOPLE

- Acknowledge frustration
- Take time-outs
- Don't allow things to get personal
- Walk away when you need to

70

NEXT STEPS

- After interviewing the witnesses, **re-interview** Complainant for clarification, if necessary.
- Gather **physical evidence**, visit incident site(s), review discipline and other relevant records of parties and witnesses.
- Review statements or reports from **expert witnesses**, if any.
- Allow parties access to **facilities** to gather evidence, if requested.

71

NEXT STEPS

- Organize evidence to share with parties.
- **Prior to completion of the investigative report**, the Investigator must **send an electronic or hard copy of the relevant evidence** gathered to the parties and the parties' advisors, if any.
- Parties must be provided **at least 10 calendar days** to submit a written **response** that the investigator must consider before completing the investigative report.
- Then you will complete an **investigative report** that summarizes relevant evidence. The report may include proposed findings of fact.
- More to come from Andrea about **report writing**.

72

NEXT STEPS

- Send the investigative report to Decision-Maker, who will send it to the parties and give them an opportunity to ask questions of the other parties.
- The investigative report must be sent to the parties at least 10 calendar days before the Decision-Maker determines responsibility.
- The evidence may be provided using a platform that prevents downloading and copying to protect the confidentiality of information about students or victims of sexual offenses.

THANK YOU



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It is intended to be used for general information only and
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If special legal advice is sought, consult an attorney.*



Decision-Makers with a Hyphen: Title IX's Unique Roles and Responsibilities for Decision-Makers

Presented by:
Jennifer A. Powell

October 28, 2025

Decision-Makers with a Hyphen: Title IX's Unique Roles and Responsibilities for Decision-Makers

Jennifer A. Powell



1

ASSIGN A DECISION-MAKER

- Someone other than Title IX Coordinator, Investigator, or Facilitator of Voluntary Resolution
- Central administrators
- Must have training - train more than one
- Must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

2

IMPARTIALITY

- Unbiased, disinterested
- No conflict of interest: a real or seeming incompatibility between one's private interests and one's public duties

3

STANDARDS FOR RECUSAL OF JUDGES

1. Personal bias or prejudice concerning a party
2. Personal knowledge of disputed evidentiary facts
3. Material witness in the matter in controversy
4. Spouse or minor child residing in household has a financial interest in the subject matter in controversy or in a party
5. Any other interest that could substantially affect the outcome of the proceeding
6. Relative is a party

28 U.S.C. § 455
(Disqualification of federal justice, judge, or magistrate).

4

STANDARDS FOR RECUSAL OF JUDGES

Recusal is required when, objectively speaking, the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.

Rippo v. Baker, 137 S.Ct. 905 (2017).

5

DETERMINATION OF RESPONSIBILITY

34 C.F.R. 106.45(b)(7)

6

DECISION = DETERMINATION OF RESPONSIBILITY

- Decision-maker makes determination of responsibility on a formal complaint
- Must provide the written determination to the parties simultaneously
- Title IX Coordinator is responsible for effective implementation of any remedies awarded by Decision-maker

7

DECISION BASED ON WHAT?

Investigator will provide decision-maker with an investigative report that "fairly summarizes relevant evidence"

- Assume this will occur when the parties receive the report
- Which must be at least 10 days prior to a hearing (if a hearing is required under this section or otherwise provided, which we don't recommend) or other time of determination regarding responsibility
- The parties have the opportunity to provide a written response to the report, which the decision-maker will also review.

8

HEARING V. QUESTIONS

Opportunity for Parties to Submit Questions

- Live hearing with live cross by party advisors required for higher ed, optional for K-12
- We recommend NO live hearing.

9

QUESTIONS

- With or without a hearing, after the investigative report has been sent and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.

10

THE QUESTIONS

- Questions about a complainant's prior sexual behavior or sexual predisposition only possible to establish that another person committed the alleged conduct or that the conduct was consensual.

11

THE QUESTIONS

- Who asks the questions of the parties?
- Decision-maker must exclude questions that are not relevant.
- If the decision-maker refuses to ask a question because it is improper or not relevant, he/she must provide written rationale to the party proposing the question why the question is being excluded.

12

THE QUESTIONS

- The decision-maker may not draw any inference from a party's or witness's refusal to answer the questions.
- Where a party or witness refuses to answer the questions, the decision-maker must disregard statements of that party or witness but must reach a determination without drawing any inferences regarding responsibility based on the party or witness's refusal to answer.

13

THE QUESTIONS

- For example, where a Complainant refuses to answer the questions but video evidence exists showing the underlying incident, a decision-maker may still consider the available evidence in making a determination.

14

**IT'S IMPORTANT NOT TO
PRE-JUDGE THE FACTS UNTIL YOU
HAVE SEEN ALL THE EVIDENCE!**

15

STANDARDS OF EVIDENCE

- The degree or level of proof demanded in a specific case.
- District choice: preponderance of evidence, clear and convincing evidence

16

STANDARDS OF EVIDENCE

The burden of proof and the burden of gathering evidence sufficient to reach a determination of responsibility rests on the District and not on the parties.

17

PREPONDERANCE OF EVIDENCE

The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

18

CLEAR AND CONVINCING EVIDENCE

Evidence indicating that the thing to be proved is highly probably or reasonably certain.

This is a greater burden than preponderance of evidence, the standard applied in most civil trials, but less than evidence beyond a reasonable doubt, the norm for criminal trials.

19

EVIDENCE: INCULPATORY & EXCULPATORY

Inculpatory evidence: showing or tending to show one's involvement in a crime or wrong

Exculpatory evidence: tending to establish a person's innocence

20

EVIDENCE: DIRECT & CIRCUMSTANTIAL

Direct evidence: Evidence that, if believed, proves the fact without inference or presumption.

Circumstantial evidence: Circumstantial evidence, on the other hand, refers to evidence that requires an inference to be made.

Circumstantial evidence and direct evidence can be equally probative, and responsibility can be established by circumstantial evidence alone.

21

EVIDENCE: CREDIBILITY

The investigator should provide information about the credibility of the parties and witnesses.

22

EVIDENCE: HEARSAY

An out-of-court statement offered for the truth of the matter asserted

There are multiple exceptions, e.g., statement of then-existing state of mind.

This isn't a court, and the Rules of Evidence don't apply. But remember, hearsay may be less probative than a non-hearsay statement made directly to the investigator.

23

EVIDENCE: EXPERT WITNESSES

A person who, through education or experience, has developed skill or knowledge in a particular subject, so that he or she may form an opinion that will assist the fact finder.

E.g., medical doctor, psychologist, law enforcement officer/investigator

24

EVIDENCE: PRIVILEGED INFORMATION

Cannot be used unless the party agrees to waive the privilege

25

EVIDENCE: PERSUASIVENESS

The decision-maker should evaluate the relevant evidence for its persuasiveness.

26

ELEMENTS OF DECISION

The decision-maker must issue a written determination simultaneously to the parties addressing:

- Allegations
- Procedural steps taken
- Findings of fact
- Application of code of conduct to facts

27

ELEMENTS OF DECISION

The decision-maker must issue a written determination addressing:

- Statement of and rationale for result **as to each allegation** including:
 - Determination of responsibility
 - Any disciplinary sanctions
 - *Whether* remedies to restore or preserve equal access to the educational program or activity will be provided
- Procedures and permissible bases for either party to appeal.

28

FERPA – SANCTIONS AND REMEDIES

The result at the end of a grievance process under § 106.45, including any sanctions and whether remedies will be provided to a Complainant, impact both parties and can (and should) be part of the written determination simultaneously sent to both parties. The Complainant should know what sanctions the Respondent receives because knowledge of the sanctions may impact the Complainant's equal access to the school district's education program and activity.

29

FERPA – REMEDIES TO COMPLAINANT

- The final decision must state *whether* remedies will be provided to the Complainant but not what remedies will be provided. Thus, the decision may note in the written determination only that a Complainant will receive remedies but should not note in the written determination that the district has done something in particular.
- A Respondent should know whether the district will provide remedies to the Complainant because the Respondent should be aware that the Respondent's actions denied the Complainant equal access to the district's education program or activity. Similarly, the parties should both know the rationale for the result as to each allegation, including a determination regarding responsibility because due process principles require the district to provide a basis for its determination.

30

POSSIBLE REMEDIES

- Remedies are required after a Respondent has been determined responsible under the grievance process
- No list of appropriate remedies in regulations
- Left to discretion of educators
- Designed to restore or preserve the right to equal access to education
- Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent

§ 106.45(b)(1)(i)

31

POSSIBLE REMEDIES

- Remedies may include the same individualized services described as “supportive measures.”
- **Supportive measures:** counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus and other similar measures
- **Other possibilities:** tutoring for student, removal of student from class/team/campus, policy/procedure changes, staff or student training

§ 106.45(b)(1)(i)

32

APPEALS

34 C.F.R. 106.45(b)(8)

33

APPEALS - MUST OFFER BOTH PARTIES AN APPEAL FROM A DETERMINATION REGARDING RESPONSIBILITY, AND FROM A DISTRICT'S DISMISSAL OF A FORMAL COMPLAINT OR ANY ALLEGATIONS THEREIN ON THE FOLLOWING BASES:

- **Procedural irregularity** that affected the outcome of the matter;
- **New evidence** that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a **conflict of interest** or **bias** for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

34

APPEALS

- May offer for other reasons equally to both
- Must have a different decision-maker, but still cannot be investigator or Title IX Coordinator, and same rules about bias apply
- Must give other party reasonable, equal opportunity to submit written statement
- Appellate decision-maker must issue decision in writing and provide simultaneously to both parties

35

APPEALS

The District should establish a deadline for filing an appeal and may require appeals be filed on a form provided by the District.

36

OCR REVIEWS

The Department assures schools that when enforcing these new regulations, it will refrain from second-guessing a school district's determination regarding responsibility based solely on whether the Department would have weighed the evidence differently.

37

A WORD ABOUT DISMISSALS

- A recipient may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:
 - a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
 - the respondent is no longer enrolled or employed by the recipient; or
 - specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
- So, a decision-maker could recommend dismissal if one of these circumstances is met.

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THANK YOU



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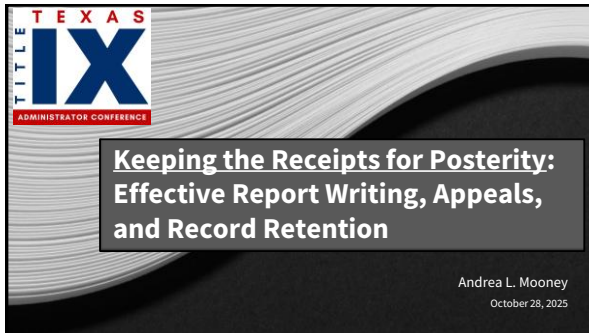
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Keeping the Receipts for Posterity: Effective Report Writing, Appeals, and Record Retention

Presented by:
Andrea L. Mooney

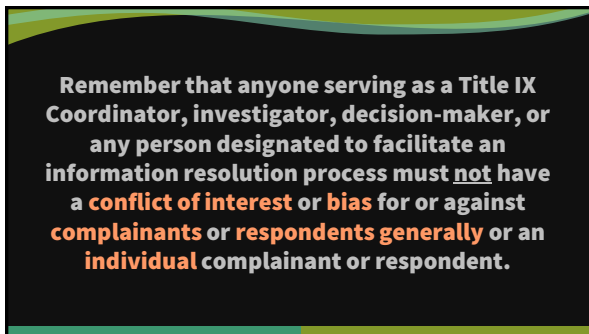
October 28, 2025



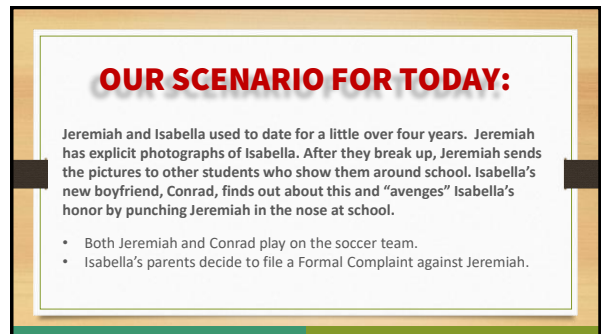
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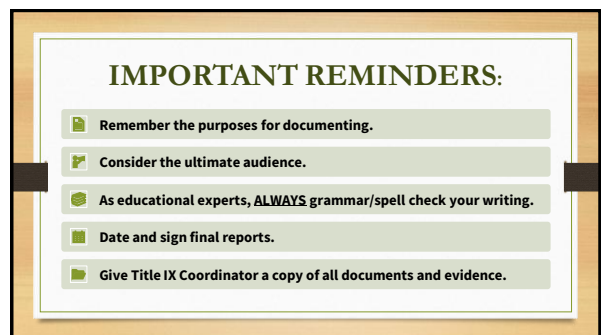
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4



5



6

INVESTIGATIVE REPORT



Prepare an investigative report that **summarizes** relevant evidence.



The report may include proposed findings of fact.

7

INVESTIGATIVE REPORT

Prior to completion of the investigative report, the investigator must **send an electronic or hard copy of the relevant evidence** gathered to the parties **and** the parties' advisors, if any. The parties must be provided **at least 10 calendar days** to submit a written response that the investigator must consider before completing the investigative report. The evidence may be provided using a platform that prevents downloading and copying to protect the confidentiality of information about students or victims of sexual offenses.

8

Let's Dissect!

Title IX Final Investigation Report

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on sex in educational institutions that receive federal financial assistance. The Complainant and Respondent may submit relevant questions that they would like asked of a party or witness to the Decision Maker.

A Formal Complaint was filed on February 17, 2025, by Mr. & Mrs. Conklin on behalf of their minor daughter, Isabella Conklin. This report contains a summary of the evidence gathered through the District's investigation of the Formal Complaint, as part of the District's Title IX grievance process.

The investigation was conducted by High School Principal Indiana Jones from February 17, 2025 to March 1, 2025. The parties have been given the opportunity to inspect and review the evidence gathered in this investigation and an opportunity to provide a written response.

Allegations

Identify the allegations potentially constituting sexual harassment.

Isabella Conklin (Student) alleges that Jeremiah Fisher (Student) electronically distributed to classmates at school nude pictures of Isabella that Jeremiah obtained while they were in a relationship. Mr. & Mrs. Conklin claim that other students are bullying and making fun of Isabella at school and on social media, causing her to be humiliated and embarrassed to the extent she no longer wants to attend school and is threatening to kill herself.

9

INVESTIGATIVE REPORT: INTRO.

COMPLAINANT: Conklin, Isabella
RESPONDENT: Fisher, Jeremiah
DATE: Mar. 11, 2025
CASE NO.: T9-2025-4 Conklin, I

Title IX Final Investigation Report

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on sex in educational institutions that receive federal financial assistance. The Complainant and Respondent may submit relevant questions that they would like asked of a party or witness to the Decision Maker.

10

INVESTIGATIVE REPORT: BACKGROUND

A Formal Complaint was filed on February 17, 2025, by Mr. & Mrs. Conklin on behalf of their minor daughter, Isabella Conklin. This report contains a summary of the evidence gathered through the District's investigation of the Formal Complaint, as part of the District's Title IX grievance process.

This investigation was conducted by High School Principal Indiana Jones from February 17, 2025 to March 1, 2025. The parties have been given the opportunity to inspect and review the evidence gathered in this investigation and an opportunity to provide a written response.

11

INVESTIGATIVE REPORT: ALLEGATIONS

Allegations

Identify the allegations potentially constituting sexual harassment.

Isabella Conklin (Student) alleges that Jeremiah Fisher (Student) electronically distributed to classmates at school nude pictures of Isabella that Jeremiah obtained while they were in a relationship. Mr. & Mrs. Conklin claim that other students are bullying and making fun of Isabella at school and on social media, causing her to be humiliated and embarrassed to the extent she no longer wants to attend school and is threatening to kill herself.

12

INVESTIGATIVE REPORT: PROCEDURAL STEPS

Procedural Steps

Describe the procedural steps taken from the receipt of the Formal Complaint to date:

- Assistant Principal Coach Beard received a report of alleged sexual harassment on February 15, 2025. Coach Beard notified the Principal, District Title IX Coordinator, and the School Resource Officer (SRO) of the report via email on February 15, 2025.
- The Title IX Coordinator's office contacted alleged victim (Isabella Conklin) and her parents and provided with information about the grievance process and supportive measures on February 16, 2025.
- The Conklin filed a Formal Complaint on February 17, 2025.
- The Title IX Coordinator provided the Complainant and Respondent with written notice of their rights in the grievance process and information about the availability of supportive measures on February 18, 2025.
- By February 19, 2025, the following supportive measures were implemented:
 - For Conklin & Fisher: no contact agreement, opportunity to meet with campus counselor, increased monitoring of students in cafeteria.

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INVESTIGATIVE REPORT: PROCEDURAL STEPS

- For Conklin: one-week extension to take Algebra II test scheduled for February 15, 2025; one-week extension to turn in history project, campus escort to and from lunch; opportunity to eat lunch in front office
- For Fisher: schedule change to different Algebra II class
- On February 18, 2025, the Title IX Coordinator appointed the undersigned (Jones) to investigate the Formal Complaint. I was trained to conduct Title IX sexual harassment investigations in accordance with the May 2020 federal regulations at the Texas Title IX Administrators Conference, October 19-20, 2025.
- This Investigator/I reviewed the Formal Complaint and relevant district policy and student code of conduct provisions beginning February 18, 2025.

14

INVESTIGATIVE REPORT: PROCEDURAL STEPS

- I sent both Complainant and Respondent a letter including written notice of interviews and rights under the Title IX investigation process on February 19, 2025.
- I interviewed the Complainant on February 22, 2025. She was accompanied by her parents.
- I interviewed witnesses provided by Complainant on February 22, 2025 – February 24, 2025. I gave the witnesses an opportunity to provide written statements. For students who declined to provide a written statement, I took notes of their verbal statements. I interviewed all witnesses separately. Dr. Margie Fieldstone observed the interviews and assisted me in the development of my investigation notes.
- I interviewed the Respondent on February 23, 2025. He was accompanied by his mother and an attorney/advisor, Robbie Chadham.
- I interviewed witnesses identified by the Respondent on February 23-25, 2025.
- I gave the parties the opportunity to submit evidence. Complainant submitted text messages, which I reviewed.
- I then completed secondary interviews with the Complainant, witnesses, additional witnesses, and the Respondent.
- The parties were given the opportunity to inspect and review evidence and submit a written response. Specifically, on March 1, 2025, I emailed a secure, password protected and link for the parties to access electronic copies of all evidence collected in this investigation (except the photos).

15

INVEST. REPORT: SUMMARY OF EVIDENCE

Factual information about the parties

On February 14, 2025, Assistant Principal Coach Beard broke-up a fight in the cafeteria between two students: Jeremiah Fisher and Conrad Kent. When investigating the cause of the fight, Coach Beard learned that Conrad was avenging the honor of his girlfriend, Isabella Conklin, who had previously been in a dating relationship with Jeremiah Fisher. Conklin and Fisher are both 15 year old sophomores; they were a couple in a dating relationship during their freshman year of high school. Until February 10, 2025, they were in the same class for Algebra II (5P period). Kent is a senior. Fisher and Kent are both members of the men's soccer team.

The allegations in the Formal Complaint:

Isabella Conklin (Complainant-Student) alleges that Jeremiah Fisher (Respondent-Student) electronically distributed to classmates nude pictures of her that Jeremiah obtained while they were in a dating relationship. Mr. & Mrs. Conklin claim that other students are bullying and making fun of Isabella at school and on social media, causing her to be humiliated and embarrassed such that she no longer wants to attend school and is threatening suicide.

16

INVEST. REPORT: SUMMARY OF EVIDENCE

Relevant sections of board policy and the student of code of conduct

Richmond ISD Board Policy FFH(LOCAL) prohibits discrimination, including harassment, against any student on the basis of race, color, religion, sex, gender, national origin, age, disability, or any other basis prohibited by law. The District further prohibits dating violence. Retaliation against anyone involved in the complaint process is also a violation of District policy and is prohibited. Discrimination, harassment, dating violence, and retaliation as defined in policy are considered "prohibited conduct," even if the behavior does not rise to the level of unlawful conduct. Prohibited conduct also includes sexual harassment as defined by Title IX.

17

INVEST. REPORT: SUMMARY OF EVIDENCE

Whether a CPS report was necessary

The allegations as presented did not indicate child abuse or neglect as defined by the Texas Family Code. The investigation did not yield facts indicating suspected child abuse or neglect.

Whether there is a related criminal/juvenile investigation

The campus SRO was notified of the allegations; local law enforcement will determine whether there has been a penal code violation. Law enforcement did not request that the school district delay or abate its investigation in this situation. Law enforcement did not suggest a forensic interview.

18

Evidence collected or provided by witnesses, including physical evidence:

- Formal Complaint Form completed by Complainant's Parents
- Notice of Rights Letters to Complainant and Respondent
- Complainant's Statement Form
- Student discipline file for Respondent Fisher
- During Complainant's interview, she identified 4 students who reportedly received electronic messages with copies of nude photographs of her: Student A, B, C, and D
- Witness Statement Forms from A, B, C, and D
- Transcription of Statement from Witness D
- Respondent's Statement Form
- During Respondent's interview, he identified 2 students who reported that Complainant allowed Students E and F to have access to her phone to view the nude photographs
- Witness Statements Forms from E and F
- Statement from AP Coach Beard regarding initial report
- Interview Notes of All Witnesses
- Photographs of Complainant
- Beard Policy FFH
- RSD Student Code of Conduct
- Athletic Code of Conduct and Respondent's Signature for same

Examples of What Could Be Collected...

*Photographs in this case were viewed by the undersigned but not maintained as part of the investigative file. The lewd nature of the photographs is not in dispute and maintaining a copy is not necessary for a determination in this matter.

19

INVEST. REPORT: SUMMARY OF EVIDENCE

Consideration of written responses to evidence:

After reviewing the evidence: Respondent Fisher submitted an additional statement to the effect that: 1) Complainant Conklin voluntarily took and sent the pictures to him; 2) no school devices or technology were involved; 3) Complainant sent the pictures to him outside of the school setting and at night when they were in a relationship; 4) at no time did Complainant ask Respondent not to show the pictures to others; and 5) he did not show the pictures to other students at school.

20

INVEST. REPORT: CONCLUDING THE REPORT

This is the final investigative report in this matter. The Decision Maker will allow the parties to submit relevant questions for the other party(ies) or witnesses before making a determination of responsibility for sexual harassment.

July Enser March 11, 2025

Title IX Investigator Date

21

Determination of Responsibility Decision

Title IX Determination of Responsibility - Sexual Harassment Decision

Title IX of the Educational Amendments of 1972 (20 U.S.C. § 10811) is a federal law that prohibits discrimination based on the sex in educational institutions that receive federal financial assistance. This decision must be issued simultaneously to the Complainant and Respondent.

CASE INFORMATION (Please Print)

Case Number: 79-2025-4-Confidential

Complainant: *Juditha Conklin* Campus: *Richmond High School*

Respondent: *Jessiah Fisher* Campus: *Richmond High School*

Type of Complaint:

Sexual Harassment based on (Check all that apply):

☐ Sexual Harassment ☐ Sexual Assault ☐ Gender Based Harassment ☐ Intimidation ☐ Stalking ☐ Retaliation ☐ Other

Nature of Allegations:

☐ A school employee conditioning an educational benefit or service upon a student's participation in sexual conduct

☐ 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 District's education programs or activities

☐ Sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined in the Civil Code, 29 U.S.C. § 10810, and the Violence Against Women Act, 34 U.S.C. § 12291(a))

Allegation Allegations

Identify the allegations potentially constituting sexual harassment.

Allegation: *Complainant "Juditha" alleges that Respondent "Fisher" "voluntarily" distributed to her nude photos of herself at school which pictures of herself that were not intended for her eyes only in a relationship. At a later, Conklin claims that other students are bullying and making fun of "Juditha" at school and on social media, causing her to be harassed and embarrassed by the school and its actions which is alleged sexual and is harassment in all respects.*

22

Determination of Responsibility Decision

1. Identification of the **allegations** that constitute sexual harassment;
2. Description of the **procedural steps** taken since the receipt of the Formal Complaint through the Decision, including notifications, interviews with the parties and witnesses, site visits, methods used to gather other evidence;
3. **Findings of Fact**
4. **Conclusions** regarding the application of the District's Code of Conduct to the facts;

23

Determination of Responsibility Decision

5. A statement of and the **rationale** for the results of **each allegation**, including a **determination of responsibility**;
6. Any **disciplinary sanctions** imposed on the Respondent;
7. A statement **whether remedies** to the Complainant have been designed to **restore or preserve equal access** to the District's education program or activity; and
8. Information about the ability of the parties to **appeal** the decision.

24

Determination of Responsibility Decision

- Note the **burden of proof** standard (e.g., preponderance, clear and convincing). **Describe how your finding meets this burden!**
- You are the “judge,” and this is your “opinion.”
- Note the evidence that is relied upon and **not** relied upon
- Summarize** and assess credibility.
- Make a **separate** finding for **each** allegation.

25

Determination of Responsibility Decision

- Identify any specific sanctions or remedies imposed and **explain the basis for choosing each specific sanction or remedy.**
- Write in active voice (e.g., I determined that...) rather than passive voice (e.g., It was determined that...)
- Write in the past tense (whatever happened, **has** been corrected).
- If there is more than one Respondent, write a separate decision for **each** Respondent (even if redundant).

26

Let's
Dissect!

Form 10 Determination of Responsibility - Sexual Harassment Decision
This form is the final determination of responsibility for sexual harassment based on the facts and circumstances. It is a final decision that cannot be appealed. This decision must be based on the evidence presented in the Complaint and the Response.

Case Information (Please Print):
Case Number: T9-2025-4 Conklin
Complainant: Isabella Conklin Campus: Richmond High School
Respondent: Jeremiah Fisher Campus: Richmond High School

Type of Complaint:
☐ Sexual Harassment ☐ Sexual Assault ☐ Gender Based Harassment ☐ Dating Violence ☐ Stalking ☐ Retaliation ☐ Other

Nature of Allegations:
1. A school employee conditioning an educational benefit or service upon a student's participation in sexual conduct.
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education programs or activities.
3. Sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined in the Clery Act, 20 U.S.C. § 1092(f), and the Violence Against Women Act, 34 U.S.C. § 12291(a)).

Specific Allegations:
Identify the allegations potentially constituting sexual harassment.

Isabella Conklin (Student) alleges that Jeremiah Fisher (Student) electronically distributed to classmates at school nude pictures of Isabella that Jeremiah obtained while they were in a relationship. Mr. & Mrs. Conklin claim that other students are bullying and making fun of Isabella at school and on social media causing her to be humiliated and embarrassed to the extent she no longer wants to attend school and is threatening to kill herself.

27

DETERMINATION OF RESPONSIBILITY: BACKGROUND

CASE INFORMATION (Please Print):

Case Number: T9-2025-4 Conklin
Complainant: Isabella Conklin Campus: Richmond High School
Respondent: Jeremiah Fisher Campus: Richmond High School

Type of Complaint:

Discrimination based on: (Check all that apply)
☒ Sexual Harassment ☐ Sexual Assault ☐ Gender Based Harassment ☒ Dating Violence ☐ Stalking ☐ Retaliation ☐ Other

28

DETERMINATION OF RESPONSIBILITY: ALLEGATIONS

Nature of Allegations:

1. A school employee conditioning an educational benefit or service upon a student's participation in sexual conduct

☒ 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 District's education programs or activities

☒ Sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined in the Clery Act, 20 U.S.C. § 1092(f), and the Violence Against Women Act, 34 U.S.C. § 12291(a))

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DETER. OF RESPONSIBILITY: SPECIFIC ALLEGATIONS

Specific Allegations

Identify the allegations potentially constituting sexual harassment:

Isabella Conklin (Student) alleges that Jeremiah Fisher (Student) electronically distributed to classmates at school nude pictures of Isabella that Jeremiah obtained while they were in a relationship. Mr. & Mrs. Conklin claim that other students are bullying and making fun of Isabella at school and on social media causing her to be humiliated and embarrassed to the extent she no longer wants to attend school and is threatening to kill herself.

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Procedural Steps

Describe the procedural steps taken from the receipt of the Formal Complaint to date:

- Assistant Principal Coach Beard received a report of alleged sexual harassment on February 15, 2025. Coach Beard notified the Principal, District Title IX Coordinator, and the School Resource Officer (SRO) of the report via email on February 15, 2025.
- The Title IX Coordinator's office contacted alleged victim (Isabella Conklin) and her parents and provided with information about the grievance process and supportive measures on February 16, 2025.
- The Conklin filed a Formal Complaint on February 17, 2025.
- The Title IX Coordinator provided the Complainant and Respondent with written notice of their rights in the grievance process and information about the availability of supportive measures on February 18, 2025.
- By February 19, 2025, the following supportive measures were implemented:
 - For Conklin & Fisher: no contact agreement, opportunity to meet with campus counselor, increased monitoring of students in cafeteria.
 - For Conklin: one-week extension to take Algebra II test scheduled for February 15, 2025; one-week extension to turn in history project; campus escort to and from lunch; opportunity to eat lunch in front office.
 - For Fisher: schedule change to different Algebra II class.

**DETER. OF RESPONSIBILITY:
DETAILED PROCEDURAL STEPS**

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**DETER. OF RESPONSIBILITY:
DETAILED FINDINGS OF FACT**

Findings of Fact

- Complainant is Isabella Conklin is a 15 year old sophomore at RHS.
- Respondent is Jeremiah Fisher is a 15 year old sophomore at RHS.
- Complainant and Respondent were in a dating relationship during their freshman year of high school, 2024-2025. They are no longer dating.
- During their relationship, Complainant took photos of herself in a state of undress using her personal cell phone and while in her home. In her interview, Complainant stated that Respondent asked for "nudes," which she understood to mean nude photos of herself.

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- In Respondent's interview, he admitted to asking for and receiving "nudes" of Complainant during the 2024-2025 school year. He received them on his cell phone through a text message. He saved the photos to his cell phone. Respondent provided a supplemental statement in which he stated that Complainant voluntarily took and provided him the photos; no school devices or technology were used in the transmission of the photos; Complainant sent the photos outside of the school setting and at night when they were in a relationship; at no time did Complainant ask Respondent to not show the photos to others; and that he did not show the pictures to other students at school.
- Complainant claimed that, after Complainant and Respondent were no longer in a dating relationship, Respondent showed the "nudes" to fellow schoolmates: Students C and D. Complainant was told by Students A and D that Students C and D claimed to have seen the photos.
- Students C and D denied having seen or possessed the photos. Student C provided a written statement denying being shown the photos. Student D declined to write a statement. The investigator interviewed Student D and made notes of the interview.
- Respondent claims that Complainant showed Students E and F the photographs from her own cell phone. Complainant denies this. Students E and F also deny seeing any photographs.
- Neither Complainant nor Respondent identified an adult/employee witness to these events. However, the investigator obtained a statement from English Teacher, Randall Pearson, who overheard students talking about seeing pictures of Complainant.

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- Complainant claims that she did not share the photos or show the photos with anyone other than Respondent and that others must have seen them because details of the photos have been the subject of comments made on social media. Those details included descriptions of Complainant's physique, what Complainant was doing in the photographs, and a specific object Complainant had in her hand. Complainant provided copies of two social media posts that contained these details.
- Complainant provided copies of text messages between Complainant and Respondent in which he apologized for "hurting her" and stated that he has "deleted the pics." This text message exchange occurred after Complainant heard from Students C and D that other students had seen the photos.
- Complainant provided a letter from a private counselor stating the effects this situation has had on Complainant, which include an inability to sleep, loss of appetite, inability to focus and complete schoolwork, and comments about self-harm.

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**DETER. OF RESPONSIBILITY:
DETAILED CONCLUSIONS**

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Conclusion regarding the Code of Conduct and Rationale

Based on a preponderance of the evidence, it is determined that:

Always state the allegation specifically!!

Allegation: Isabella Conklin (Student) alleges that Jeremiah Fisher (Student) electronically distributed, in classrooms, at school, nude pictures of Isabella that Jeremiah obtained while they were in a relationship. Mr. & Mrs. Conklin claim that other students are bullying and making fun of Isabella at school and on social media, causing her to be humiliated and embarrassed to the extent she no longer wants to attend school and is threatening to kill herself.

Always provide support for your determination!!

- I have determined that it is more likely than not that the Respondent engaged in sexual harassment and dating violence under the district's FFH policy and student code of conduct.
- It is undisputed that Complainant provided nude electronic images of herself to Respondent while they were in a dating relationship. Other students had knowledge of specific details about the photos that they would not have, if they had not seen them, as evidenced by the social media posts provided by Complainant. Complainant has been

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consistent in her version of events. Respondent's version of events has evolved or differed slightly. When interviewed Respondent denied having shown the photos or sent the photos to anyone. However, in his post-evidence review statement, Respondent stated that he did not show the pictures to other students at school. I infer from this subsequent statement that he did show the pictures to students away from school. The timing of this matter also corresponds to Complainant's new relationship with another student on campus. I have determined that Respondent showed the photographs in retaliation for Complainant entering a new relationship and that Respondent was jealous of Complainant's new relationship. This matter has had an effect at school by affecting Complainant's ability and desire to participate in school programming, causing disruption by students gossiping about this matter as overheard by at least one teacher, and resulting in this investigation. Respondent's action of sharing nude photos of Complainant with other students in an attempt to embarrass her was unwelcome conduct that was so severe, pervasive, and objectively offensive that it effectively denied equal access to the District's educational programs or activities. I also find that, because Complainant and Respondent had been in a past dating relationship, Respondent's actions constitute emotional abuse to intimidate or control Complainant by subjecting her to ridicule and making her uncomfortable at RHS.

Always apply the legal standards (Title IX, local policy, etc.)!!

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REMEDIES IN DETER. OF RESPONSIBILITY: SANCTIONS?

Remedies Provided

Disciplinary Sanctions

Due to the severity of the impact Respondent's actions have had on Complainant, the following disciplinary sanctions are to be imposed upon the Respondent:

- Respondent will be suspended from the soccer team for the remainder of the 2024-2025 school year.
- A recommendation will be made that Respondent be placed in DAEP for 30 school days.

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REMEDIES IN DETER. OF RESP.: SUPPORTIVE MEASURES FOR COMPLAINANT?

Supportive Measures to Complainant: (Select only those that apply and provide details. Delete the options below that will not be implemented.)

- ☐ Counseling of students regarding appropriate behavior expectations
- ☐ Review of district and code of conduct expectations with students by administrator
- ☐ Change of class schedule/lunch schedule/locker location
- ☒ Campus/class escort
- ☐ Increased school monitoring of [location] for [time period e.g., next 9 weeks]
- ☒ School counseling
- ☒ Stay away agreement/No contact directives
- ☐ Limitation on extracurricular activities
- ☐ Training

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REMEDIES IN DETER. OF RESPONSIBILITY: SUPPORTIVE MEASURES FOR RESPONDANT?

Supportive Measures to Respondent: (Select only those that apply and provide details. Delete the options below that will not be implemented.)

- ☒ Counseling of students regarding appropriate behavior expectations
- ☒ Review of district and code of conduct expectations with students by administrator
- ☒ Change of class schedule/lunch schedule/locker location
- ☐ Campus/class escort
- ☐ Increased school monitoring of [location] for [time period e.g., next 9 weeks]
- ☐ School counseling
- ☒ Stay away agreement/No contact directives
- ☒ Limitation on extracurricular activities: removal from soccer team for remainder of SYr
- ☐ Training

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REMEDIES IN DETER. OF RESPONSIBILITY

The remedies and measures listed above are designed to restore or preserve equal access to the district's educational programs.

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DETER. OF RESPONSIBILITY: OPPORTUNITY FOR APPEAL

Appeal

Either party may appeal this determination of responsibility on a form provided by the District within 10 calendar days of issuance of this decision. The only allowable bases for appeal are:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time of the decision that could affect the outcome; and
- The Title IX Coordinator, Investigator(s), or Decision Maker has a conflict of interest or bias for or against Complainants or Respondents.

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PART 2: APPEALS

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APPEALS FORMS

APPEAL FORM - Submitted by Appellant

Notice Letter - Sent to Appellee

Appeal Decision - Sent to Both Appellee/Appellant

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APPELLATE PROCESS

- The recipient must notify the parties in writing and use procedures **equally**.
- Both parties must have equal opportunity to **submit a written statement** supporting or challenging the outcome
- The person who decides the appeal **CANNOT be the same person who reached the determination regarding responsibility**, or the same person as the investigator or Title IX Coordinator.
- After considering the parties' written statements, the decision-maker on appeal must issue a written decision and send it to both parties.**
- The school's determination about whether the respondent is responsible for the sexual harassment **becomes final after appeal**.

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A school has to offer BOTH parties an opportunity to appeal.

Appeals can be taken from two different steps in the process.

1. **After** a dismissal before the grievance process
2. At the **end** of the grievance process.

The following are the four grounds for appeal:

- A **procedural irregularity** affected the outcome of the matter.
- New evidence** has been discovered that was not reasonably available.
- A **conflict of interest** on the part of a Title IX Coordinator, an investigator who compiled the evidence, or a decision-maker, and the conflict of interest affected the outcome.
- Schools **can** offer **additional grounds for appeals**, if they want to, so long as the grounds apply on an equal basis to the parties.

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The decision-maker for the appeal must follow all the same requirements (applying the burden of proof, reviewing all the evidence, applying applicable policy and code, etc.)



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PART 3: PROPER RECORD KEEPING

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MAINTAIN ALL OF THE FOLLOWING:

Initial Intake Reports	Investigative Reports
Resp. to Report - Any Supportive Measures	Notices of Opportunity for Questions
Filed Formal Complaint Forms	Questions and Submitted Answers
Notice to Parties of Investig./Complaint	Determinations of Responsibility
Emergency Removal Letters	Documentation of Remedies/Sanctions
Administrative Leave Letters	Appeal Documentation
Informal Resolution Letters/Notices	Decisions of Appeal
Notices to Parties of Interviews	All Evidence Submitted to Parties

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How Long Do I Keep These Records?

- The duty of record retention extends for **7 years**, and includes:
 - Records of investigation.
 - Records of any appeal/materials associated with an appeal.
 - Records of any informal resolution process
 - All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution (and remain posted on District's website).
 - Records of the supportive measures that they took in response to a report or complaint of sexual harassment.

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Title IX Complaint Retention and Database

IMPORTANT: Retain a spreadsheet that organizes all completed Title IX investigations!

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Title IX Complaint Retention and Database

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Title IX Complaint Tracking

IMPORTANT: Also create a spreadsheet that tracks all ongoing Title IX investigations!

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Title IX Complaint Tracking

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Title IX Athletics: How it All Started and Where We Unexpectedly Find Ourselves

Presented by:
Jennifer A. Powell

October 29, 2025

TITLE IX ATHLETICS: HOW IT ALL STARTED AND WHERE WE UNEXPECTEDLY FIND OURSELVES

Jennifer A. Powell



1

TITLE IX JUNE 23, 1972

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education programs or activity receiving federal financial assistance."

2

THE RULEBOOK: T9 BASICS

- Enacted in 1972 to prohibit sex discrimination in federally funded education programs
- Applies to all K–12 districts and most colleges/universities
- Enforced through:
 - Private lawsuits
 - Federal agency investigations (primarily DOE's Office for Civil Rights)
 - Regulations allow separate athletic teams by sex, but schools must ensure equal opportunity overall

3

THE RULEBOOK: VIOLATIONS



- Agencies can terminate or suspend funding for violations
- Can refer violations to DOJ for court enforcement
- Funding loss has been rare; most cases resolved via resolution agreements

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DIVIDED PLAYING FIELDS: TRANSGENDER PARTICIPATION

States split between *permissive* and *restrictive* approaches

Permissive: athletes compete consistent with gender identity

Restrictive: participation limited to sex assigned at birth

At least 25 states have enacted restrictive laws

5

CONFLICTING COURT DECISIONS

- Some courts strike down restrictive participation laws as Title IX violations
- Others allow cisgender athletes to challenge permissive policies
- Mixed appellate rulings create national uncertainty
- Constitutional Equal Protection challenges also pending

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RULEMAKING UNDER PRIOR AND CURRENT ADMINISTRATIONS

- 2023: Proposed rule banning categorical bans on transgender participation but allowing narrow limits
- 2024: DOE finalizes new Title IX regulations including gender identity protections
- January 2025: Federal court vacates regulations nationwide
- Notice of Proposed Rulemaking (“NPRM”) withdrawn before implementation

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RULEMAKING UNDER PRIOR AND CURRENT ADMINISTRATIONS (CONT'D)

- Feb. 5, 2025: EO “Keeping Men Out of Women’s Sports” signed
 - Defines sex as “biological and immutable”
- Directs DOE to enforce Title IX against inclusive policies
- DOJ to align all agencies with this interpretation
- OCR staffing reduced by nearly 50% (litigation pending)

8

FLAG ON THE PLAY: CONSEQUENCES FOR NONCOMPLIANCE?

- OCR launches investigations into permissive athletics policies
- April 2, 2025: USDA freezes funds to Maine for alleged Title IX violations
- Court issues TRO: USDA failed to follow notice/hearing requirements
- Settlement: USDA agrees to follow “proper” procedures

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UP IN THE AIR: WHAT’S NEXT?

- Title IX’s application to transgender athletes remains unsettled
- State laws, federal regulations, and court rulings conflict
- Executive Orders rapidly shift enforcement priorities
- Future clarity likely depends on new legislation or Supreme Court review

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SB 12: TRANSGENDER PARTICIPATION AND SOCIAL TRANSITIONING

- New Law: Texas Education Code §§ 11.401 & 11.402 (SB 12, 89th Legislature)
- Prohibition: School boards must adopt a policy barring employees from assisting students with social transitioning (including athletic participation?)

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SB 12: PARTICIPATION AND SOCIAL TRANSITIONING

- Definition: Social transition = moving from biological sex at birth to the opposite sex via:
 - New name
 - New pronouns
 - Other gender expressions that deny or encourage denial of biological sex at birth

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SB 12: PARTICIPATION AND SOCIAL TRANSITIONING

- Enforcement:
 - Parents or employees may report suspected violations to the school board
 - Board investigates and makes a determination
 - Violations must be reported immediately to the Commissioner
- Parent Remedies: Parents may file a grievance to seek relief under the law

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SB 8 – SECOND SPECIAL SESSION – 89TH

- Covered more in-depth during the TX v. T9 session.
- But, as a reminder, district must prevent individuals of opposite sex from entering a restroom, **locker room, changing room, or shower room**, with only limited exceptions.
- So, challenges to this law may very well arise in athletics.

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SB 8 – SECOND SPECIAL SESSION – 89TH

- Athletic directors should post clear, durable signage at every locker room entrance.
- Train staff on the requirement and specific statutory exceptions (custodial, maintenance, emergency, disability, children ≤9).
- May need to retrofit facilities, e.g., convert seldom-used coach offices to single-occupancy changing rooms.
- Establish a written accommodation request protocol for students needing privacy or disability assistance.
- Maintain an incident log for any opposite-sex entry, citing the relevant SB 8 exception.

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SB 8 – SECOND SPECIAL SESSION – 89TH

- **Scenario:** A PE student whose birth certificate lists male but who lives and as female asks to change with the girls.
- **Legal impact**
 - Request must be denied; offering a single-occupancy changing area is permissible (§3002.052(a)(2)).
 - Allowing the student to use the girls' facility would violate law and expose district to a \$25,000 first-day penalty and \$125,000 per day thereafter.

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SB 8 – SECOND SPECIAL SESSION – 89TH

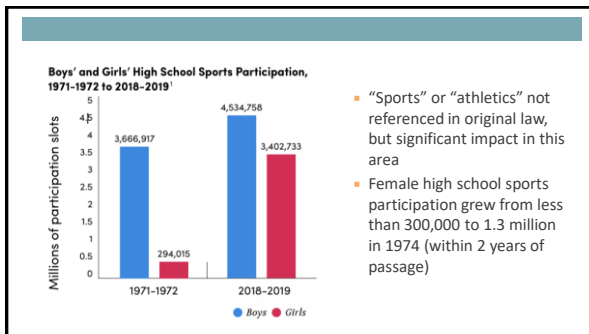
- **Scenario:** A male athlete with limited mobility needs help dressing after practice; his assigned aide is female.
- **Legal impact:** The aide may lawfully enter the boys' locker room because SB 8 makes an explicit exception for someone "accompany[ing] and provid[ing] assistance to an individual who needs assistance."

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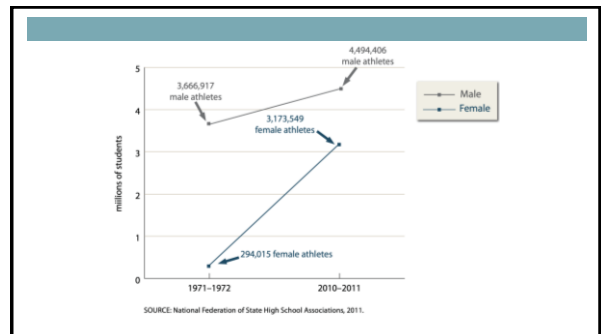
SB 8 – SECOND SPECIAL SESSION – 89TH

- **Scenario:** A female athletic trainer must render immediate aid to a concussed male swimmer in the team shower.
- **Legal impact:** Emergency medical entry is expressly allowed.
- Documentation of the incident and purpose of entry should be kept for any future complaint.

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WHAT TITLE IX PROVIDES FOR

- Equal Access to the program
- Equal Treatment once in the program

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Title IX does **NOT** require an institution to provide:

- An athletics program **at all**
- A **good** athletics program—programs need not be equally good or equally pathetic for male and female students
- The **same** funding:
 - to the overall women's and men's programs
 - to men's and women's teams in the same sports (funding source cannot justify disparities)

Courtesy of: Valerie McMurtrie Bonnette, *Title IX and Interscholastic Athletics: How it all Works – In Plain English*

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Title IX does **NOT** require an institution to provide (cont'd):

- Specific benefits such as coaching, facilities, equipment
- Same number of teams or same sports for men and women
- Same benefits to men's and women's teams in the same sport
- Compete at a specific level or join a specific conference

Courtesy of: Valerie McMurtrie Bonnette, *Title IX and Interscholastic Athletics: How it all Works – In Plain English*

23

EQUAL ACCESS TO THE PROGRAM

- OCR addresses this by looking at accommodation of interests and abilities, which includes what is known as the **three-part test**.

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THREE-PART TEST

Institutions must meet ONE of the following:

1. Test One – Proportionality
2. Test Two – Program Expansion – underrepresented sex
3. Test Three – Full Accommodation – underrepresented sex

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TEST ONE - PROPORTIONALITY

- Provide male and female students with interscholastic participation opportunities at rates substantially proportionate to their respective rates of enrollment.
 - Step 1: Count the athletes participating in the athletics program
 - Step 2: Compare whether opportunities are proportionate for men and women

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TEST ONE - PROPORTIONALITY

- **Step one:** Calculate the rate of enrollment.
- Example: A district has 74 students, 45 girls and 29 boys, so the girl's enrollment rate is .61.

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TEST ONE - PROPORTIONALITY

- **Step two:** Calculate the rate of participation
- Who to count?
 - Anyone on the squad list as of the first countable contest, those who join after
 - Count the same individual more than once – once for each team
 - Count all levels of participation, not just varsity
 - If someone quits or is cut after first contest, they still count
 - Don't count academically ineligible
 - Don't count student managers
- Ex: there are 116 participants, 54 girls and 62 boys, so the girls' rate of participation is .47

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TEST ONE - PROPORTIONALITY

- **Step three:** Compare the rate of participation to the rate of enrollment.
- Ex.: the girls' rate of enrollment compared to participation (.61 - .47) is a difference of .14

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TEST ONE - PROPORTIONALITY

- OCR deems opportunities substantially proportionate when "the additional number of participants required to achieve proportionality would not be sufficient to sustain a viable team."

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TEST ONE - PROPORTIONALITY

- **Step four:** Is the rate of participation substantially proportionate to the rate of enrollment?
- OCR will generally tolerate differences between two and five percentage points with the smaller differential tolerated for programs with the largest participation numbers.
- Ex.: 14 percentage points is not close enough – the rates are not substantially proportionate – girls are underrepresented so test one is not met.

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TEST TWO – PROGRAM EXPANSION

- Must demonstrate a history of and continuing practice of program expansion for the underrepresented sex
- **Expansion is:**
 - adding teams that increases opportunities for participation
 - adding opportunities on existing teams
- **Expansion is not:**
 - increasing the rate of participation
 - improving benefits for existing team (equipment, scheduling, travel)

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TEST TWO – PROGRAM EXPANSION

- A school cannot meet this prong merely by:
 - Reducing opportunities for the overrepresented sex, or
 - Doing so to a greater proportional degree than for the underrepresented sex
- Compliance requires active, ongoing expansion, not just adjustment by subtraction

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TEST THREE – FULL AND EFFECTIVE ACCOMMODATION

- Must show that you are fully and effectively accommodating the interests and abilities of the underrepresented sex.
- That means offering every sport and team for girls for which there is sufficient **interest** and **ability** for a viable team and sufficient interscholastic **competition** for that team in the school's normal competitive region.
- All three factors must exist before a school is obligated to offer a team under test three.

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TEST THREE – FULL AND EFFECTIVE ACCOMMODATION

- For interest – look at on-campus programs and off-campus programs.
- On campus
 - Participation in intramural sports, recreation programs, or elective PE courses can be evidence of interest on campus.
 - Surveys can be used to identify interest levels for a team not currently offered to the underrepresented sex.
- Off campus
 - Participation at other schools in the local community can be evidence of potential interest in that sport.
 - Participation in community and regional recreation programs can also be evidence of interest.

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TEST THREE – FULL AND EFFECTIVE ACCOMMODATION

- For ability OCR looks at students' athletic experience and accomplishments in on-campus and off-campus programs.
- However, at interscholastic level, lack of ability is unlikely to justify failure to offer a team.

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TEST THREE – FULL AND EFFECTIVE ACCOMMODATION

- For competition there must be sufficient interscholastic competition in the school's normal competitive region.
- Normal competitive region can be identified by looking at miles from campus or geographic area.
- Once the region is identified, all schools within that region offering interscholastic sports for girls that are currently not offered at the school should be identified.
- At that point you can analyze whether there is sufficient competition at an appropriate competitive level for that sport
- It can make sense to start with this analysis rather than interest and abilities because if there is not sufficient competition, then the school complies with test three regardless of interest or ability levels.

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RELATED CONSIDERATIONS

- Financial constraints are not a justification for noncompliance with Title IX.
- In some situations, girls must be allowed to tryout for boys' teams:
 - no girls' team for the sport
 - noncontact sport
 - girls' athletic opportunities have been limited previously
- UIL sponsorship not required to add sports.

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RELATED CONSIDERATIONS

- "Roster management" may be used to achieve compliance with Test One.
 - Can avoid the expense of adding a girls' team and the difficulties of eliminating a boys' team.
 - It involves boys' teams cutting participants while girls' teams retain more participants.

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RELATED CONSIDERATIONS

- Cheerleading and dance teams generally don't count.
 - OCR considers them extracurricular activities, not athletic teams.
 - OCR will recognize a competitive cheer team if they schedule enough contests to form a reasonable competitive schedule and don't perform at events for other sports.
- Stephen F. Austin University currently involved in Title IX litigation, arguing that competitive cheer and dance teams should be included in "the count."

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TWO-PART TEST – LEVELS OF COMPETITION

- Schools must meet ONE part:
 - Equivalently Advanced Competitive Opportunities
 - Continuous Upgrades of Competitive Opportunities

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TEST ONE – EQUIVALENTLY ADVANCED COMPETITIVE OPPORTUNITIES

- This test involves calculating the percentage of female and male participants competing at each level such as varsity, junior varsity, and freshman levels and comparing those percentages.
- As a general rule, differences within five percentage points are not significant.

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TEST TWO – CONTINUOUS UPGRADES OF COMPETITIVE OPPORTUNITIES

- Must demonstrate a history and continuing practice of upgrading of opportunities.
- This means that opponents from higher competitive levels have been scheduled more over time.

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OTHER ATHLETIC BENEFITS AND OPPORTUNITIES

- | | |
|--|---|
| 1. EQUIPMENT AND SUPPLIES | 7. MEDICAL AND TRAINING FACILITIES AND SERVICES |
| 2. SCHEDULING OF GAMES AND PRACTICE TIMES | 8. HOUSING AND DINING FACILITIES AND SERVICES |
| 3. TRAVEL AND PER DIEM ALLOWANCES | 9. PUBLICITY |
| 4. TUTORING | 10. SUPPORT SERVICES |
| 5. COACHING | 11. RECRUITMENT OF STUDENT-ATHLETES |
| 6. LOCKER ROOMS, PRACTICE AND COMPETITIVE FACILITIES | |

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REVIEW OF COMPONENTS

- Analyze compliance in the overall program, not by comparing individual sports.
- Offsetting benefits are recognized.
 - Where students of one sex are provided an advantage in some aspect of the program, while students of the other sex are provided an advantage in a different aspect of the program.
 - If the benefits are of equivalent weight or importance, they may offset each other or provide a balance of benefits.

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EQUIPMENT AND SUPPLIES

- **QUALITY**
suitability, replacement schedules
- **AMOUNT**
number of items
- **MAINTENANCE**
storage
professional and student managers
laundry

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SCHEDULING OF GAMES AND PRACTICE TIMES

- | | |
|-------------------------------------|---|
| ▪ Number of competitive events | ▪ Opportunities for pre-season and post-season events |
| ▪ Time of day of competitive events | ▪ Length of season |
| ▪ Number and length of practices | ▪ Season of sport |
| ▪ Time of day of practices | ▪ Number of sports per season |

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TRAVEL AND PER DIEM ALLOWANCES

- Modes of transportation
- Housing and dining furnished during travel
- Length of stay before and after competitive events
- Per diem allowances

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COACHING

Opportunity to receive coaching:

- Availability of coaches
- Number of coaches per team
- Length of contract
- Association with school -
on-campus versus off-campus

Assignment of Coaches:

- Qualifications
- Years of experience
- Success as coach

Compensation of Coaches:

- Total dollars proportionate to participation

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LOCKER ROOMS, PRACTICE AND COMPETITIVE FACILITIES

Practice and Competitive Facilities

- Quality
- Availability
- Exclusivity
- Focus on facilities used by just one gender
- Calculate proportions using each facility

Locker Rooms

- Number of Locker Rooms
- Quality of Locker Rooms
- Exclusivity

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MEDICAL AND TRAINING FACILITIES AND SERVICES

- Medical Personnel and Assistance
- Qualifications/Availability of Trainers
- Training Rooms
- Weight Rooms
- Insurance

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PROBLEMS WITH MONEY

- Booster Clubs
 - Any benefits provided by booster clubs are subject to Title IX.
 - If booster club provides benefits that create a disparity under Title IX, then the school is responsible for offsetting that disparity.
 - Example: If a booster club's contributions provide football athletes with benefits superior to those provided to all female athletes, the school may reallocate the funds it would have spent on football to girls' teams as necessary to provide equivalent benefits and achieve compliance.
- Donations
 - It is not the money itself that Title IX is concerned with; it's the benefits that money buys.
 - If the benefits are disparate, look at ways to offset the disparities.

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PROBLEMS WITH MONEY

- Fundraising
 - No specific Title IX requirements
 - Opportunities cannot be limited or imposed discriminatorily.
 - Priority for more lucrative fundraisers cannot be based on sex.
 - Giving benefits to boys' teams that girls' teams must pay for through fundraisers creates compliance problems.
 - Athletes may not receive lesser benefits on the basis of sex because of their coach's inability to fundraise.
 - Disparate benefits on the basis of sex cannot be the result of coaches' differing abilities to fundraise.
 - Funds raised by the students themselves don't have to be offset.

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THANK YOU



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The information in this handout was prepared by Eichelbaum Wardell Hansen Powell & Muñoz, P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If special legal advice is sought, consult an attorney.