



COLORADO

Department of Education



An Overview of the New Title IX Rule: What it is and Steps to Take

(webinar will be delivered in 2 parts)

Technology



- This webinar is being recorded
- You have been muted
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- If you cannot hear, raise your hand



- A PDF of the power point can be downloaded in lower left
- If you are having a tech issue, email Alana Foy at Foy_a@cde.state.co.us

Schedule

Webinar part 1:
What It Is, Oct 20,
3:00 pm – 5:00 pm

Webinar part 2:
Steps to Take, Oct 23,
11:00 am – 1:00 pm

Meet the Presenters



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Disclaimer



The information contained in this presentation is for informational purposes only and does not constitute a certified training or legal advice. Districts should work with the district's local counsel to ensure that these, and other Title IX resources, are tailored to the needs of the local district.



Colorado Association
of School Boards



Agenda

Webinar part 1: What It Is

- Title IX of the Education Amendments of 1972
- Essential background information on Title IX
- New Title IX Rule RE: Sexual Harassment
- Top Questions Asked

Webinar part 2: Steps to Take

- Update and adopt exhibit, policies, and procedures
- Distribute and post
- Educate and Train
- Document and Maintain Records
- Questions Received
- Open Q and A

Important Information



- Part 1 of this webinar series may be used to provide some staff level education. The slides are available for your district to use and update, as appropriate.
- Information is not exhaustive, but rather provides options that may be used for training.
- Your district's local context is critically important. Please be sure to supplement with local policies and procedures that are tailored to your district's needs.



Title IX of the Education Amendments of 1972

"No person in the U.S. shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance"



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Title IX Interpretation through Rule & Guidance




Sex-Based Discrimination

Prevent & Respond to Sex-Based Discrimination

- Athletic Opportunities and Benefits
- Pregnant or Parenting Students
- Single Sex Classes and Schools
- STEM
- Gender-Based Harassment & Bullying

Prevent & Respond to Sexual Harassment



Sexual Harassment

**New
Definition of
Sexual
Harassment**

The New Title IX Rule



1. Specific to sexual harassment
 - [Final Rule, Federal Register](#)
2. Amends existing regulations
 - [34 C.F.R. Part 106](#)
3. In addition to guidance documents that have not been rescinded, which address:
 - Athletic opportunities and benefits
 - Pregnant or Parenting Students
 - Single Sex Classes and Schools
 - STEM
 - Gender-Based Harassment & Bullying

Essential Background Information on Title IX

History of the New Title IX Rule

- **June 23, 1972:** Title IX signed into law by President Richard Nixon
 - Follow up to Title VI of the Civil Rights Act of 1964
 - Title VI prohibits discrimination on basis of race, color, or national origin
 - Title VI does not address sex-discrimination
 - Title IX written to fill the gap
- **1975:** limited rule-making, did not include sexual harassment
- **1997: sexual harassment included under Title IX through guidance**
- **1998:** Gebser vs Lago Vista – an educational entity is liable for Title IX teacher-on-student harassment if it is “**deliberately indifferent**” to “**actual notice**” of discrimination
- **1999:** Davis vs. Monroe Board of Education--peer-on-peer harassment is actionable under Title IX
 - school “act[ed] with **deliberate indifference to known acts of harassment in its programs or activities,**” and
 - the harassment at issue was “**so severe, pervasive, and objectively offensive that it effectively bar[red] the victim's access to an educational opportunity or benefit.**”

History of the New Title IX Rule

continued

- **2001:** interim measures issued through guidance
- **2011 and 2014:** additional guidance on sexual harassment
- **Sept 2017:** guidance documents on sexual harassment rescinded and replaced with interim guidance and notice of rule-making
- **Nov 29, 2018:** draft regulations released for 60 days of public comment
 - Over 100,000 comments submitted
- **May 6, 2020:** unofficial copy of Final Rule released
 - 2033 pages
- **May 19, 2020:** official copy published in Federal Register
- **Aug 14, 2020:** regulations took effect



Big Picture Shifts

- Focus on addressing sexual misconduct through specific procedures
- Emphasis on due process and impartiality

What's new?



- Terminology
- New and Amended Definitions
- Roles
- Notification and Posting Requirements
- Policy Requirements
- Procedural Requirements
- Documentation and Maintenance of Records
- Role Specific Training

New Terminology

■ Complainant

- an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- parents and guardians do not become complainants (or respondents)

■ Respondent

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

■ Formal complaint

- a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment

■ Supportive measures

- individualized services reasonably available that are nonpunitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.

Other Terminology



- **Recipient**

- Elementary and secondary schools, as well as post secondary institutions that receive federal financial assistance

- **Informal resolutions**

- Must start with formal grievance process
- Parties voluntarily participate and provide written consent
- Consent can be withdrawn at any time (either party can choose to go back to a formal process)
- Informal resolution may end in an agreement under which the respondent agrees to a disciplinary sanction without the recipient completing a formal grievance process
- Informal processes are **not** permitted in employee to student allegations

- **Advisor of Choice**

- Assists a party in “navigating the process”
- May be, but does not have to be, an attorney

New Definitions

New Definition of Sexual Harassment



Sexual Harassment

1. **Quid pro quo** by an employee **OR**
2. Davis Court: unwelcome conduct that a **reasonable person** would determine is “**so severe, pervasive and objectively offensive**” that it effectively **denies** a person **equal access to education** **OR**
3. **Sexual assault as defined in the Clery Act**, as amended by the Violence Against Women Act, **a single instance of:**
 - **dating violence**
 - **domestic violence**
 - **stalking**

Who is covered?

- The complainant MUST be a current student, someone who is attempting to enroll, or the Title IX Coordinator
 - If the respondent is no longer enrolled in the school, the school/district may end its investigation
 - If the respondent is no longer an employee of the school/district, the school/district may end its investigation
- If the complainant withdraws the complaint, the school may end its investigation
 - The Title IX Coordinator can continue the investigation if the complaint is severe, and if it makes sense to do so
 - Ex: you have multiple complaints against the same student
 - Ex: the complainant withdrew the complaint out of fear

New Definition of Actual Knowledge

1. A student may report to any employee of an elementary or secondary school
2. Students do not need to report to a specific employee such as a Title IX Coordinator
3. If an employee observes sexual harassment

*** All K-12 employees are obligated to report and considered mandatory reporters under Title IX**

New Definition of Education Program or Activity

1. “all of the operations of” a recipient **OR**
2. “locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the harassment occurs” **OR**
3. Incidents that occur off campus, if any of the above conditions are met

*** Must be in the United States**

What About Off-Campus Activities?

- “Off campus” does not automatically mean that the incident occurred outside the recipient’s education program or activity.
- In situations involving some allegations of conduct that occurred in an education program or activity, and some allegations of conduct that did not, the recipient must investigate the allegations of conduct that occurred in the recipient’s education program or activity.
- Recipient can also choose to address allegations of conduct outside the recipient’s education program or activity.

Example

If a student is sexually assaulted outside of an education program or activity but subsequently suffers Title IX sexual harassment in an education program or activity, then these final regulations apply to the latter act of sexual harassment, and the recipient may choose to address the prior assault through its own code of conduct.

A map of the United States with a light beige background and black state boundaries. A small red dot is located in the western United States, specifically in the state of California. The Great Lakes are shown in blue. An inset map in the bottom right corner shows the states of Alaska and Hawaii. The text "Must be in the United States" is overlaid in the center of the map.

Must be in the United States

What about study abroad programs?

The Department agrees with the rationale applied by a Federal district court in *Phillips v. St. George's University* that regardless of whether a study abroad program is part of a recipient's education program or activity, Title IX does not have extraterritorial application.

- Schools may face difficulties interviewing witnesses and gathering evidence outside the US.

*** However, under Title IX, the school can offer supportive measures for incidents that occur outside the United States**

*** And, a school can choose to address incidents that occur outside the United States through their own student conduct policy**



What About Cyber-Bullying?

Online bullying may have repercussions that could raise to the level of Title IX.

Does the harassment fall under the school/district operations/jurisdiction?

Ask yourself these questions?

- ☐ Is harassment occurring during class time?
- ☐ Is the harassment occurring over a school designated platform or website?
- ☐ Is the harassment occurring using school designated software?
- ☐ Is the device being used owned by the school?
- ☐ Is the harassment occurring using school Wi-Fi?
- ☐ Is the harassment occurring using a school email address?
- ☐ Is the harassment occurring while in the process of completing a school assignment?



Does the cyber-bullying meet the definition of sexual harassment?

➤ Is the harassment so severe, pervasive, and objectively offensive that it is affecting the complainant's ability to engage in school?

- **Also reference:**


- [Oct 26, 2010 Dear Colleague Letter on Harassment and Bullying](#)
- [Harassment and Bullying Background, Summary, and Fast Facts Oct 26, 2010](#)

* Even if a school/district is not required to address certain misconduct under Title IX, these final regulations allow a recipient to address such misconduct under its own code of conduct



Title IX Roles

New Roles

- ❖ Mandatory reporters  all K-12 staff
- ❖ Each party has the right to an Advisor

Title IX Personnel

- ❖ Title IX Coordinator
- ❖ Investigator, Appellate Investigator
- ❖ Decision Maker, Appellate Decision Maker
- ❖ Person who facilitates an informal resolution process

*** Title IX personnel must be free from conflicts of interest or bias for or against complainants or respondents.**

The Role of All K-12 Staff



Every school employee is deemed a “responsible employee.” If a responsible employee is aware of sexual misconduct, then a school has “actual knowledge,” and is therefore obligated to respond.

This includes ALL:

- Teachers, paraprofessionals, cafeteria workers, bus drivers, receptionist, secretary, nurse, counselors, janitorial staff
- Collaborators, contractors, outside trainers
- School Resource Officers
- Volunteers
- All other staff

The Role of the Advisor



- Rationale behind the role: ensure fairness by allowing each party to receive advice and assistance navigating the grievance process.
- Must provide all parties with the opportunity to have an advisor present and participate in proceedings. (Note: The recipient may impose equal restrictions on the participation).
- May be, but is not required to be, an attorney
- The party is in the best position to select an advisor. The advisor may be “friends, family members, attorneys, or other individuals with whom the party has a trusted relationship.”
- Advisor must be fully informed throughout the process.

A photograph of a woman with dark hair, wearing a purple cardigan over a white top, holding a green folder. This image is in the top-left quadrant of the slide.A cartoon illustration of a man in a grey suit and yellow tie, sitting in a meditative pose with multiple arms. He is holding various office-related items: a calendar, an envelope, a mug, a clipboard, a smartphone, and a credit card. This image is in the top-right quadrant of the slide.

Title IX Personnel



The Role of the Title IX Coordinator

Must designate and authorize at least one employee to coordinate the recipient's Title IX obligations.

**** Must be called the "Title IX Coordinator"***

Some duties may include:

1. Participate in writing and updating the nondiscrimination policy and grievance procedures for resolving Title IX complaints
2. Provide education and information regarding Title IX requirements
3. Help students, parents/guardians, employees, school law enforcement, volunteers, and contractors at the school understand grievance procedures
4. Coordinate response to all Title IX complaints, including overseeing investigations
5. Monitor outcomes, identify and address patterns, assess effects on the campus climate
6. Maintain records
7. Survey and monitor the school climate

References:

- [April 24, 2015 Dear Colleague Letter to Title IX Coordinators](#)
- [Title IX Resource Guide April 2015](#)



- Final regulations require a “trained investigator” to objectively evaluate the evidence and prepare an investigative report, summarizing relevant evidence
- A recipient may outsource to professionally trained investigators
- The Office for Civil Rights (OCR) does not elaborate on what it means for an investigator to be “trained”
- Investigator *can* be the Title IX Coordinator, but possibly should not be

The Role of the Investigator



The Role of the Decision Maker



- Can not be the Title IX Coordinator or the Investigator
- Must objectively evaluate all of the relevant evidence and avoid credibility determinations based on a person's status as a complainant, respondent, or witness.
- A recipient may outsource to a professionally trained Decision Maker
- Must be trained

The Role of the Person Who Facilitates an Informal Resolution

- Know the process
- Must be free from conflicts of interest, bias, and trained to serve impartially.
- The same training requirements that apply to Title IX Coordinators, investigators, and decision-makers now also apply to any individuals who facilitate informal resolution processes



Who Might Serve in These Roles?

Option A

- Title IX Coordinator - District Employee A
- Investigator – District Employee B
- Decision Maker – Superintendent

Option B

- Title IX Coordinator – District Employee A
- Investigator – Outside Consultant
- Decision Maker – Superintendent

Option C

- Title IX Coordinator – District Employee A
- Investigator – District Employee B or Superintendent
- Decision Maker – Outside Consultant

Option D

- Title IX Coordinator – District Employee A
- Investigator – Outside Consultant A
- Decision Maker – Outside Consultant B

Option F

- Title IX Coordinator – Superintendent
- Investigator – District Employee A
- Decision Maker – Board

Option G

- Title IX Coordinator – Superintendent or District Employee A
- Investigator – Outside Consultant
- Decision Maker – Board

Option H

- Title IX Coordinator – Superintendent or District Employee A
- Investigator – Superintendent or District Employee A
- Decision Maker – Board

A large billboard is mounted on a metal structure over a highway. The billboard has a white background with the text "Required Notifications and Postings" in bold black font. The background shows a highway with several overpasses and a clear sky.

Required Notifications and Postings

1. Notification of Title IX Coordinator

Must notify:

- ☐ Applicants for admission
- ☐ Applicants for employment
- ☐ Students
- ☐ Parents or legal guardians of elementary and secondary school students
- ☐ Employees
- ☐ All unions or professional organizations holding collective bargaining or professional agreements with the recipient

of the **name** or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator

AND

that “any person” may report sex discrimination in person or by mail, phone, or e-mail, verbally or in writing, at any time 24/7

2. Notification and Dissemination of Nondiscrimination Policy

Must notify all applicants for admission and employment that:

- The school/district does not discriminate on the basis of sex
- This is required under Title IX not to discriminate on the basis of sex
- This requirement extends to admissions and employment
- Inquiries may be referred to the Title IX Coordinator, to the Office for Civil Rights, or to both

Must include in all:

- Catalogs
- Handbooks

*** And on the website**



How to Use CASB Policies



- CASB sample policies cannot simply be adopted “as is.” Districts must make selections for options language, include district specific information, and remove CASB notes and copyright information.
- When receiving the Special Policy Updates, districts should:
 - Review the policies in their entirety, including ‘note boxes.’
 - Make selections for optional language.
 - Fill in information that is highlighted.
 - Add district specific content.
 - Remove note boxes and copyright information.
 - Consult with legal counsel.
 - Present the documents for board review and adoption.

CASB Sample Notice



File: AC-E-1

NOTE: This exhibit does not need to be filed in the Board's policy manual. It is provided as informational only and if applicable, may be kept by the district in another location.

Nondiscrimination/Equal Opportunity (Sample Notice)

In compliance with Titles VI & VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act of 2008, and Colorado law, (Name of School District) does not unlawfully discriminate against otherwise qualified students, employees, applicants for employment, or members of the public on the basis of disability, race, creed, color, sex, sexual orientation, marital status, national origin, religion, ancestry, or need for special education services. Discrimination against employees and applicants for employment based on age, genetic information, and conditions related to pregnancy or childbirth is also prohibited in accordance with state and/or federal law.

CASB Sample Notice AC-E-1 continued



Colorado Association
of School Boards

Complaint procedures have been established for students, parents, employees, and members of the public. The following person(s) have been identified as the compliance officer for the district:

Name(s) of employee(s) designated as compliance officer

Address

Telephone number

Email Address

Name(s) of employee(s) designated as the Title IX Coordinator



Insert district/school notice here



NOTE: Colorado school districts are required by law to adopt a policy on this subject and the law contains some specific direction as to the content or language. This sample contains the content/language that CASB believes best meets the intent of the law. However, the district should consult with its own legal counsel to determine appropriate language that meets local circumstances and needs.

Nondiscrimination/Equal Opportunity

The Board is committed to providing a safe learning and work environment where all members of the school community are treated with dignity and respect. The schools in the district are subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, sex, sexual orientation, marital status, national origin, religion, ancestry or need for special education services. Accordingly, no otherwise qualified student, employee, applicant for employment, or member of the public may be excluded from participation in, be denied the benefits of, or be subjected to unlawful discrimination under any district program or activity on the basis of disability, race, creed, color, sex, sexual orientation, marital status, national origin, religion, ancestry, or need for special education services. Discrimination against employees and applicants for employment based on age, genetic information, and conditions related to pregnancy or childbirth is also prohibited in accordance with state and/or federal law.



Insert district/school nondiscrimination policy here

3. Notification of Grievance Procedures

106.8 (c) A recipient **must provide to persons entitled to a notification...**the recipients **grievance procedures and grievance process**, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the recipient will respond.



NOTE: Colorado school districts are required by law to adopt a policy and regulations (or procedures) on this subject and the law contains some specific direction as to the content or language. This sample contains the content/language that CASB believes best meets the intent of the law. However, the district should consult with its own legal counsel to determine appropriate language that meets local circumstances and needs.

Sexual Harassment Investigation Procedures (Title IX)

The district is committed to maintaining a learning environment that is free from sex-based discrimination, including sexual harassment. It is a violation of policy for any staff member to harass students or for students to harass other students through conduct or communications of a sexual nature, or to retaliate against anyone that reports sex-based discrimination or harassment or participates in a harassment investigation.

Definitions

For purposes of this regulation, these terms have the following meanings:



Insert district/school grievance procedures here

CASB Sample Complaint Form



File: AC-E-2

NOTE: This exhibit does not need to be filed in the Board's policy manual. It is provided as informational only and if applicable, may be kept by the district in another location.

Nondiscrimination/Equal Opportunity (Complaint Form)

Date: _____

Name of complainant: _____

School: _____

Address: _____

Phone: _____

☐ Please check here for allegations of sex-based discrimination and/or sexual harassment. (Note: Investigator will use investigation procedures consistent with allegations of sex-based discrimination and/or sexual harassment).



Insert district/school grievance complaint form here

Posting Requirements

1. Notice of Nondiscrimination
2. Title IX Coordinator's name, address, phone number, & email
3. Grievance Procedures
4. Title IX training materials used

1 & 2: Post Policy & Title IX Contact

106.8 (b) Each recipient **must prominently display the Notice of Nondiscrimination Policy and the Title IX Coordinator's required contact information on its website and in each handbook or catalog** to the person's entitled to a notification

3. Post Grievance Procedures

106.8 (b) A recipient shall **adopt and publish grievance procedures** providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

Post Grievance Procedures continued

“A grievance procedure...cannot be prompt or equitable unless students know it exists, how it works, and how to file a complaint.”

“Distributing the procedures to administrators or including them in the school’s administrative or policy manual **may not by itself be an effective way of providing notice, as these publications are usually not widely circulated to and understood by all members of the school community.**”

[January 2001 Revised Sexual Harassment Guidance](#)

4. Post Training Materials



106.45(b)(10)(D) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. **A recipient must make these training materials publicly available on its website**, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.

Post Training Materials



- For proprietary material, the Department advises a recipient in that situation to secure permission from the consultant to publish the training materials.
- For proprietary materials purchased from the Association of Title IX Administrators (ATIXA), this link explains their policy on how to publicly post ATIXA's training materials.
 - <https://atixa.org/2020-regulations-requirement-posting-of-training-materials/>



“the recipient’s non-discrimination statement, designation of a Title IX Coordinator, policy, grievance procedures, and training materials should be **readily accessible to all students** pursuant to 106.8 and 106.45(b)(10(i)(D)).”

Suggestion

Create a page on the website that includes:

- Title IX Coordinator’s contact information
- Nondiscrimination Policy
- Grievance Procedures
- Training Materials
- Any other Title IX related resources

** Directly link to this page from the “prominently posted” notice of nondiscrimination/nondiscrimination statement*



Insert link to district/school website with all Title IX information, including training materials here

Obligation to Respond



How to Prevent and Respond



Prevent



Investigate



STOP



Remedy

A Recipient's Obligation to Respond to Complaints

- A school must respond promptly in a manner that is “**not deliberately indifferent**” or “**clearly unreasonable in light of the known circumstances.**”
- **The Title IX Coordinator must promptly contact the complainant confidentially to discuss the availability of supportive measures**
 - consider the complainant's wishes with respect to supportive measures
 - inform the complainant of the availability of supportive measures with or without the filing of a formal complaint
 - explain to the complainant the process for filing a formal complaint
- Schools must follow a grievance process that complies with the Final Rule before imposing any disciplinary sanctions or other actions that are not supportive measures, against a respondent.
- A school must investigate sexual harassment allegations in any formal complaint

Supportive Measures



What

- Non-disciplinary
- Non-punitive
- Individualized
- As private as possible

Offered

- To both parties
- As reasonably available
- Free of charge

When

- Promptly
- No formal report required

*** Must be documented**



Examples of Supportive Measures

- Counseling
- Increased supervision
- Course related adjustments
 - opportunities to retake classes or exams
 - adjusting an academic transcript
 - deadline extensions
- Schedule changes

A supportive measure that removes the respondent from an activity would likely be considered punitive, except for “emergency removals” for students and “administrative leave” for employees

Emergency Removals

106.44 (c): Nothing in this part precludes a recipient from removing a respondent from the recipient's education program or activity on an emergency basis, provided that the recipient:

- Undertakes an individualized safety and risk analysis
- Determines an immediate threat
- Provides respondent with notice and an opportunity to challenge the decision following the removal





Rights and
Procedures to
Protect Those
Rights

The Rights of Both Parties

- Prompt, effective, and unbiased process
- Right to an advisor, offered to both parties
- Supportive measures offered to both parties
- Equitable treatment for both parties
- Impartial investigation
- Presumption of innocence
- Due process
- Equal access to review evidence
- Impartial decision maker
- Confidentiality, to the extent permitted by law
- Right to appeals, offered to both parties
- Protection from retaliation



Grievance Process Must Be:

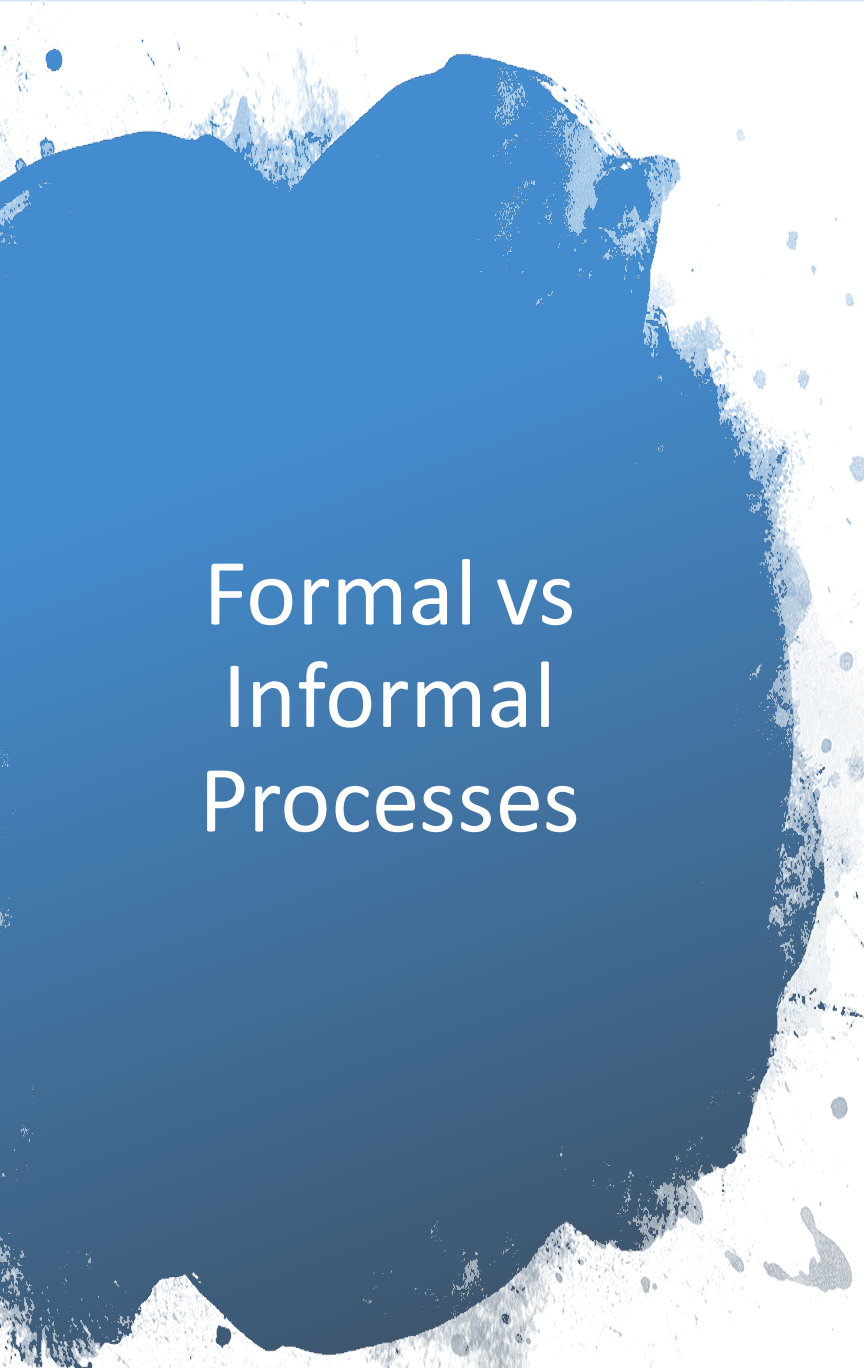
- Prompt
- Effective
- Equitable



Procedural Requirements



- Must start with formal process, can later move to informal, under certain conditions
- Written notice sent to complainant and respondent (or their parent/guardian, if the student is a minor)
- Presumption of innocence
- Prompt timeframe
- Certain required timelines
- Objective evaluation of evidence
- Optional Hearings for K-12
- Standard of Evidence
- Written report provided to both parties and advisors
- Remedies and sanctions



Formal vs Informal Processes

1. Must start with formal grievance process
2. Can move to informal, if both parties voluntarily provide written consent
3. Consent can be withdrawn at any time (either party can choose to go back to a formal process)

*** Informal processes are not permitted in employee to student allegations**

Formal Grievance Process



snapshot

1. Title IX Coordinator receives and signs formal complaint
2. Title IX Coordinator must offer supportive measures to both parties
3. Title IX Coordinator sends written notice to both parties (or their parent/guardian, if the student is a minor)
4. Investigator interviews each party, witnesses, and collects and reviews evidence
5. Investigator sends written report to both parties
6. Each party has 10 days to review and present further evidence prior to determination (or hearing, if applicable)
7. Investigator revises report, as needed, and sends report to Decision Maker
8. Decision maker determines outcome
9. Decision maker writes and sends final written report to both parties



Written Notice of Allegations Must Include

- Procedures for formal and informal processes
- Allegations (names of known parties, conduct alleged, date and location of conduct, if known)
- Presumption that the respondent is not responsible
- Right to an advisor
- Opportunity to review and inspect evidence
- Any provision in the code of conduct that prohibits knowingly making false statements or knowingly submitting false information

Investigation Must Be:

- Thorough
- Reliable
- Impartial



Due Process During Investigation

- Ensure the burden of proof is on the school/district, not the parties
- Provide equal opportunity to present witnesses and evidence
- Can not restrict ability of either party to discuss the allegations or present evidence (no gag orders)
- Must provide written notice of all interviews or hearings with sufficient time to prepare
- Must provide equal opportunity to inspect and review evidence
- Must follow a grievance process before disciplining or sanctioning respondent

Considerations for Sharing Evidence

Protect	Protect student information to the extent possible
Provide	Provide adult witnesses' names
Notify	Notify parents when their child is involved in a Title IX investigation (if child is under 18)
Document	Document what evidence you have, when you share what and to whom

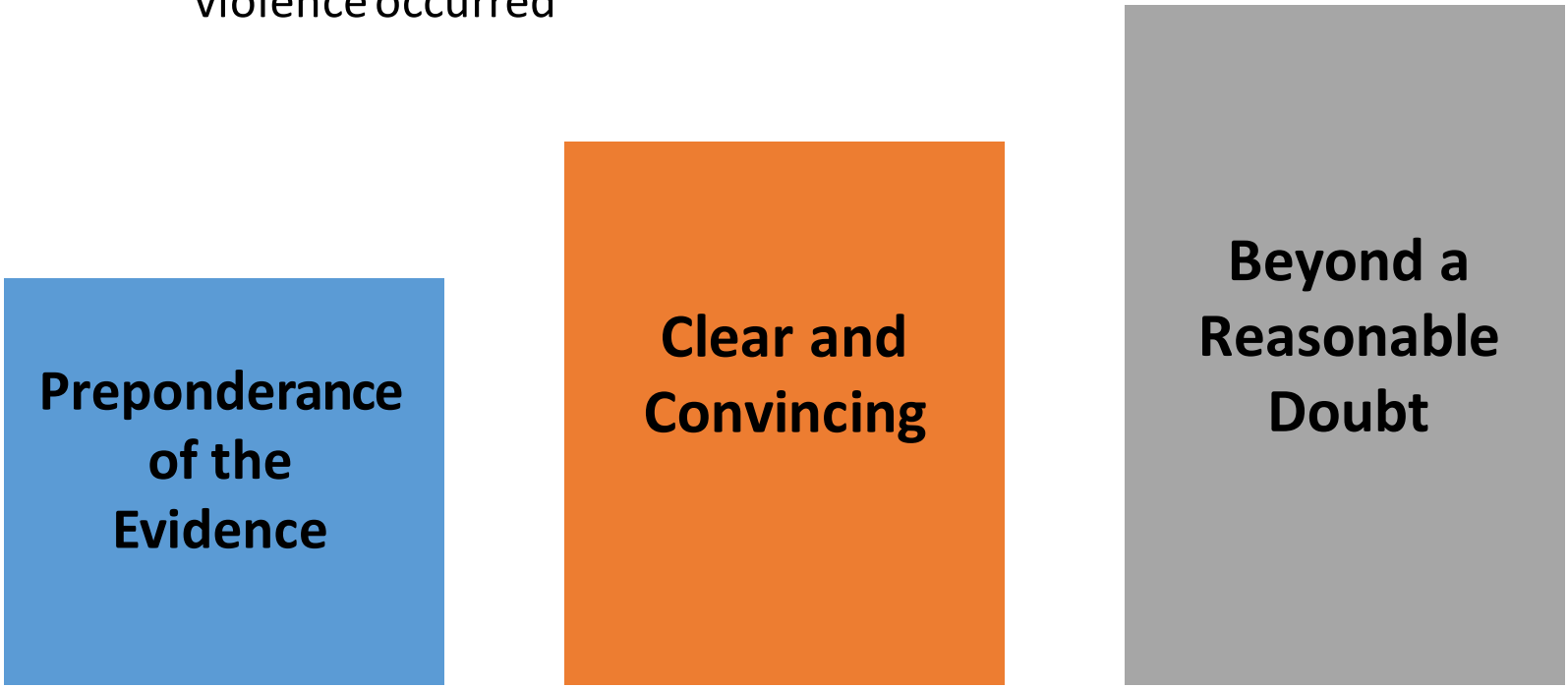
Standard of Evidence

Recipient may adopt either:

- The “**preponderance of the evidence**” standard
 - It is **more likely than not** that sexual harassment or violence occurred

OR

- The “**clear and convincing**” standard
 - It is **highly probable or reasonably certain** that the sexual harassment or violence occurred



Preponderance
of the
Evidence

Clear and
Convincing

Beyond a
Reasonable
Doubt

Standard of Evidence

- **Must use the same standard of evidence for complaints against students as it does for complaints against employees**
 - Requiring a higher standard of evidence for a student's complaint against an employee than a student's complaint against another student is "unfair," especially due to the power differential between student and employee.
 - **Must state in grievance process and in written notice** whether the standard of evidence used is the preponderance of the evidence standard or the clear and convincing standard
- * **Must apply the same standard of evidence to all formal complaints of sexual harassment**

Preponderance
of the
Evidence

Clear and
Convincing

Rape Shield Protection



- Purpose: Protect complainant from being asked about or having evidence considered regarding sexual behavior
- Questions about a complainant's prior sexual behavior or sexual predisposition are not permitted, with two exceptions:
 - Unless to establish that another person committed the alleged conduct; or
 - Offered to prove the conduct was consensual

Conducting Remote Investigations

- Is the behavior so severe, pervasive, and objectively offensive, that it denies equal access to the education program or activity?
- Cannot wait until after COVID to begin or conclude an investigation or to make a determination
 - Can postpone only if both parties agree to postpone
 - Document!!!
- The Association of Title IX Administrators (ATIXA) has some information on conducting remote interview, visit their website

<https://atixa.org/>



When Title IX and Law Enforcement Intersect

- The criminal justice system and the Title IX grievance process serve distinct purposes
- School grievance process occurs independently of any criminal investigation that may occur concurrently
- School grievance process must be concluded in a “reasonably prompt” time frame
- Flexibility to temporarily delay the grievance process due to concurrent law enforcement activity
- Only permits ‘temporary’ “brief” delays or “limited” extensions of time frames
- Must have “good cause”
- Delays based only on law enforcement request or due to a memorandum of understanding with law enforcement are not permitted
- Recipients’ obligations under Title IX are independent of recipients’ obligations to cooperate or coordinate with law enforcement
- Any delay requires written notice to the parties and an explanation for the delay or extension
- Still implement supportive measures while grievance procedures are pending.

Investigative Report

-
- Must fairly summarize the relevant evidence
 - Must be provided to both parties and advisors at least 10 days before a hearing or other determination of responsibility



Determination of Responsibility

- Hearings are optional for K-12
- Even without a hearing, each party is permitted to submit written, relevant questions to be asked of another party or witness
- Decision Maker will provide each party with the answers and the opportunity to ask follow-up questions
- **Rape Shield:** Questions about a complainant's prior sexual behavior or sexual predisposition are not permitted unless to establish that another person committed the alleged conduct or that the conduct was consensual



Written Determination Must Include

- Allegations
- Steps followed
- Determination
- Findings supporting determination
- Conclusions and statements of rationale for the determination of each allegation
- How to file an appeal
- Sanctions and remedies
- Retaliation prohibited



Remedies

- Must end the discrimination
- Must prevent its recurrence
- Must restore or preserve equal access to the educational program or activity
- Must remedy the effects on the victim and the educational community
- Must protect the victim from retaliation





Must offer appeals process based on:

1. Procedural irregularities that affected the outcome
2. New evidence not previously available
3. Conflict of interest or bias (on the part of the Title IX Coordinator, Investigator, or Decision Maker) that affected the outcome

*** A school may offer an appeal equally to both parties on additional bases.**



Retaliation is prohibited.

“No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part.”



“...charging an individual with a code of conduct violation that does not involve sexual harassment but arise out of the same fact or circumstances as sexual harassment allegations, for the purpose of interfering with rights under Title IX, constitutes retaliation.”

*** A complaint of retaliation re-initiates the grievance procedures.**

Resources

- [Press Release: Historic Action to Strengthen Title IX Protections for All Students](#)
- [U.S. Department of Education Title IX Final Rule Overview](#)
- [Summary of Major Provisions of the Department of Education's Title IX Final Rule](#)
- [Summary of Major Provisions of the Department of Education's Title IX Final Rule and Comparison to the NPRM](#)
- [Final Rule](#)

[Western Educational Equity Alliance Center](#)

- Checklist for Evaluating Title IX Policy
- Checklist for Evaluating Grievance Procedures
- Checklist for Informal Resolution
- Checklist for Formal Investigations

Prerecorded Webinars

- [OCR webinar: New Title IX Protections Against Sexual Assault](#)
- [OCR webinar: How to Report Sexual Harassment Under Title IX](#)
- [OCR webinar: Due Process Protections Under the New Title IX Regulations](#)
- [OCR webinar: Title IX Regulations Addressing Sexual Harassment](#)
- [ATIXA webinar: Ten Things to Know About the New Title IX Regulations](#)
- [K-12 ICS webinar: New Title IX Regulations](#)
- [WEEAC webinar: An Overview of the New Title IX Regulations](#)

Next Time



The journey towards implementation

Top Questions Received

- What are some resources available for training and investigations?
- What are the different roles and associated responsibilities?
- What are the changes in the new rules?



Contact Us



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