

TITLE IX

Coordinator Training and Work Session
12 October 2021



Equity Assistance Center | 2021





DIVISION OF ELEMENTARY
& SECONDARY EDUCATION



ADE Vision

**Every Arkansan is equitably prepared,
supported, and inspired to succeed in school,
career, community, and life.**



DIVISION OF ELEMENTARY
& SECONDARY EDUCATION



DESE Mission

The Arkansas Department of Education provides leadership, support, and service to schools, districts, and communities so every student graduates prepared for college, career, and community engagement.



Equity Assistance Center

Established in 1985

ACA § 6-10-111(a-b)

Provide Assistance to Districts

- Affirmative Action
- Program Accessibility
- Human Relations
- Awareness
- Desegregation

Including:

- On Site Visits
- Workshops
- Program Reviews
- Other Activities

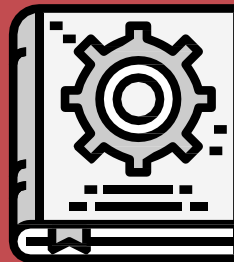


EAC

Shall maintain

- Civil Rights Requirements & Compliance

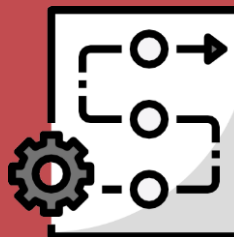
ACA § 6-10-111(c)(1)



Manuals



Guidelines



Procedures



Other Information Materials

Equity Assistance Center



This training is technical assistance and guidance.

The EAC cannot provide legal advice.

Anything shared in this presentation should be reviewed with the recipient's legal representatives before implementing.

USDOE – Office of Civil Rights

Assist in Compliance

- Letters of Guidance
- Regulations of Compliance

Enforce Compliance

- Complaint Reviews
- Compliance Investigations



Every Public School



= EQUITY

ENVIRONMENT

SAFE

**CONDUCTIVE
FOR
LEARNING**

STUDENT

**QUALITY
EDUCATION**

**FREE FROM
DISCRIMINATION**

TITLE IX

Coordinator

Overview

&

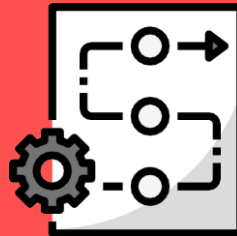
Work Session



Build Relationships



Share Experiences & Resources



Engage in Practical Discussions

Overview & Work Session

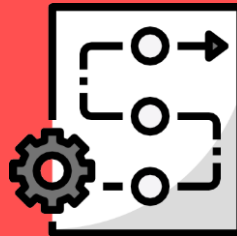
Norms



Introduce Yourself
Get to Know Others



Support One Another
Provide Examples
Offer Suggestions



Ask Questions
Use Chat
Mute & Unmute as Needed



What is Title IX?

Prohibits discrimination on the basis of sex in education programs and activities that receive federal financial assistance.

Some examples:

- Failure to provide equal opportunity in athletics
- Discrimination in STEM courses and programs
- Discrimination based on pregnancy
- Title IX Sexual Harassment

History of Title IX

Education Amendments of 1972

- 1975-US Dept. of Education published 34 CFR Part 106, which implements Title IX

Guidance documents were used when law had not specifically addressed an issue

- 1997-US Dept. of Education published Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties
- 2001-US Dept. of Education published Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties
- 2011 and 2016-Dear Colleague Letters

New Regulations are now law: effective August 14, 2020

Coordinator & District/Charter

Responsible to ensure that the **environment** for students and employees is free from unlawful sex **discrimination** in all aspects of the educational experience, including academics, extracurricular activities, and athletics.

Title IX Coordinator

Must be an **EMPLOYEE** of the district/charter/entity

And **AUTHORIZED** to do their job which is to

COORDINATE recipient's efforts to comply with Title IX responsibilities

Discussion

Build Relationships



In chat, share your **NAME** & the **ROLE** you play in Title IX compliance

- Coordinator, Investigator, Decision-maker, Appeal Decision-maker

In chat, share the **DISTRICT** or **CHARTER** school that you support



Discussion

Build Relationships



Discussion

Build Relationships



How **LONG** have you been in your role?



How would you describe your **LEVEL of COMFORT** as the Title IX Coordinator from 1 - 5?



(1 being very comfortable)

Title IX Coordinator

- Must have **knowledge** of the district's policies and procedures to comply with Title IX, AND
- Should be involved in the **revision** of the policy and procedures.

Title IX Coordinator

COORDINATES THE IMPLEMENTATION OF DISTRICT PROCEDURES FOR

- Educating the district/charter's community on **how to file a complaint** alleging any violation of Title IX (including sexual harassment)
- **Investigating** and **resolving** Title IX complaints of sex-based discrimination,
- **Investigating** formal complaints of Title IX sexual harassment,
- Working with **law enforcement** when necessary, and
- Ensuring that **grievance** procedures and the grievance process are properly and appropriately followed.

REPORTING SEX DISCRIMINATION

ANY PERSON

may report to the Title IX Coordinator

(whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or Title IX sexual harassment).

ANY TIME

the report may be made

(during business and non-business hours).

VERBAL OR WRITTEN

may be made in person, by mail, by telephone, or by email

(contact information needs to be on website and in each handbook or catalog made available to required parties).*

*The recipient must notify **applicants** for admission and employment, **students**, parents or legal **guardians** of elementary and secondary students, **employees**, and all **unions** or professional organizations holding collective bargaining or professional agreements with the recipient.

DISTRICT/CHARTER WEBSITE



CONTACT INFORMATION

of the Title IX Coordinator

**** PROMINENTLY DISPLAYED ****

NON-DISCRIMINATION POLICY

**** PROMINENTLY DISPLAYED**

TRAINING MATERIALS

used to train the Title IX Personnel Team



DISTRICT/CHARTER WEBSITE

Share Experiences



** PROMINENTLY DISPLAYED **

How many mouse clicks does it take?

- **CONTACT INFORMATION**

- Name and Title
- Phone Number
- Physical Address
- Email Address

- **NON-DISCRIMINATION POLICY**

- Combined or separate?

- **TRAINING MATERIALS**

- Are all materials available?
- Videos vs. presentation slides
- Materials used to train contracted team members

Title IX Coordinator

SHOULD

- Assist the district in developing a method to **survey the school climate** and coordinate the collection and analysis of information from the survey
- Have access to information regarding enrollment in particular subject areas, discipline, policy violations, and incidents of Title IX violations (**data**).
- Ensure that sex discrimination is not causing any **disproportionality** or otherwise negatively affecting a student's access to equal educational opportunities by monitoring students' participation in
 - Athletics
 - Activities
 - Pre-AP/AP

Title IX Coordinator

REGULARLY REVIEWS THE DISTRICT'S PROGRAMS AND RESPONSES TO ALL COMPLAINTS TO

- Monitor **outcomes**,
- Identify **patterns**, and
- Assess effects on the campus **climate**.

DISCUSSION

Share Experiences & Resources



How often do you review all the **program data in the district or charter for Title IX compliance?**

- Athletics
- Activities
- Honors Programs
- Discipline, Attendance, etc.

What were the **results of your last review?**

Title IX Coordinator

Coordinating District Compliance

- Are all procedures, processes and protocols **written in language appropriate for the audience and widely disseminated?**
- What is your **communication process** for:
 - Students
 - With disabilities
 - English language learners
 - Parents/guardians
 - Employees
- Do the grievance procedures have all the elements for the **prompt and equitable** resolution of student and employee complaints under Title IX?

Title IX Coordinator

Recruitment, Admissions, and Counseling

- Ensure that the district does not use different **materials** for students based on sex for counseling
 - Students in terms of class or career selection
 - Counseling applications for admission

- Work with the school administrators to
 - **Remind** the school community that all students must have equal access to all programs
 - **Encourage** involvement in non-traditional fields

Title IX Coordinator

Procedures

- **Notice of Nondiscrimination and Title IX Coordinator Contact Information**
 - Notify?
 - Applicants for admission and employment
 - Students
 - Parents or legal guardians
 - Employees
 - All unions or professional organizations holding collective bargaining or professional agreements
 - District Website
 - Handbooks
 - Catalogs
- **Grievance Procedure** – It is published?

Title IX Coordinator

Procedures

- **Self-evaluation Results - Collection of Data and Survey**
 - Identify programs with disproportionate enrollment based on sex
 - Ensure that sex-based discrimination is not occurring
- **Training based on Survey Results**
 - Staff, Students, and Parents (if needed)
- **Sexual Harassment Training**
 - Title IX personnel (required)
 - Staff (EAC recommended)

DISCUSSION

Share Resources



Do you have published:

- **Notice** of Nondiscrimination & Title IX Coordinator Contact
- **Grievance procedure**
- Self evaluation and survey data conclusions
- Trainings
 - Training based on the survey results
 - Sexual harassment training

What is your communication process for the following?

- Employees
- Students: ELL, w/disabilities
- Parents: ELL, w/disabilities



DIVISION OF ELEMENTARY
& SECONDARY EDUCATION

Combined Nondiscrimination Notice Guidance

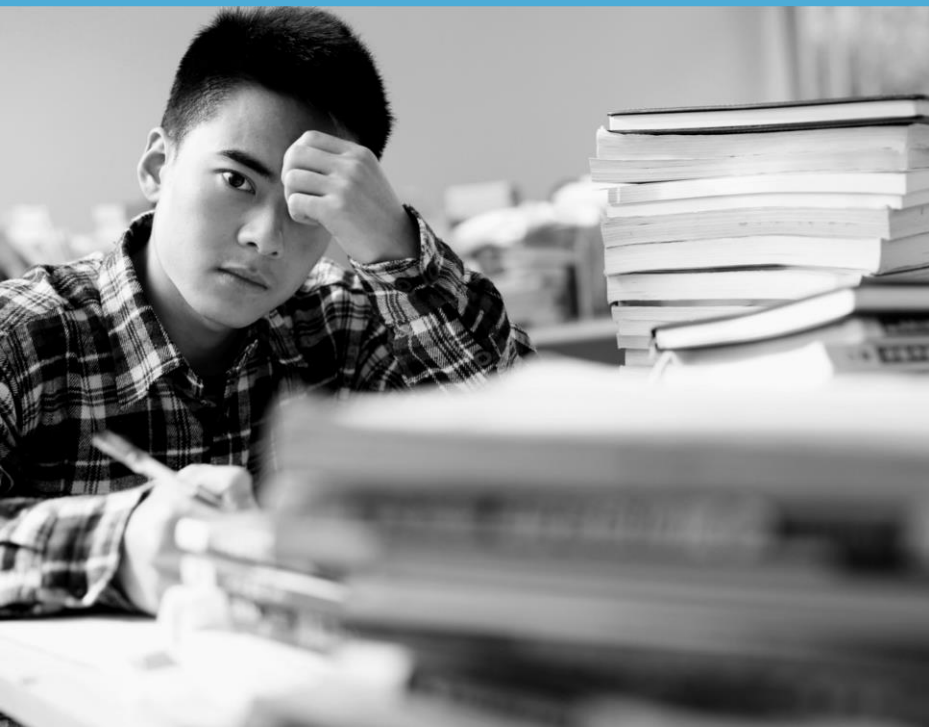
A resource for notice of nondiscrimination compliance for
Arkansas school systems

Equity Assistance
Center Resource

[https://dese.ade.arkansas.gov/Files/
Nondiscrimination Notice Guidance
EAC FINALRV 20210901145440.pdf](https://dese.ade.arkansas.gov/Files/Nondiscrimination%20Notice%20Guidance_EAC_FINALRV_20210901145440.pdf)

Sex Discrimination

Big Picture Law



Athletics

Must not exclude on the basis of sex

- Participation in;
- Be denied the benefits of;
- Be treated differently from another person; OR
- Otherwise be discriminated against

May operate separate teams

- Selection for such teams is based upon competitive skill;
- Or activity involved is a contact sport.
 - Boxing
 - Wrestling
 - Football
 - Rugby
 - Ice Hockey
 - Basketball
 - Other sports where purpose or major activity involves bodily contact.

Must provide equal athletic opportunity for both sexes

- Federal
 - Equality Act-Passed House
 - Executive Order: 14021
 - Executive Order: 13988
- Arkansas
 - Act 461: Fairness in Women's Sports Act
 - Act 953: Gender Integrity Reinforcement Legislation for Sports (Girls) Act

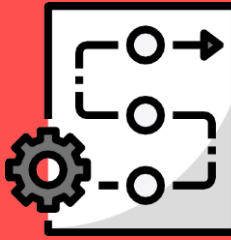
A person wearing a white tennis shirt and skirt is holding a white tennis racket in their right hand and a tennis ball in their left hand. The background is a blurred tennis court.

FACTORS FOR DETERMINING WHETHER EQUAL OPPORTUNITIES ARE AVAILABLE

1. Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes
2. The 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, practice, and competitive facilities
8. Provision of medical and training facilities and services
9. Provision of housing and dining facilities and services
10. Publicity

DISCUSSION

Engage in Practical Discussions



How is your district doing in these areas?

- Selection of sports & levels of competition accommodate the interests & abilities of members of both sexes
- The provision of equipment and supplies
- Scheduling of games and practice time
- Travel and per diem allowance
- Opportunity to receive coaching and academic tutoring
- Assignment and compensation of coaches and tutors
- Provision of locker rooms, practice, and competitive facilities
- Provision of medical and training facilities and services
- Provision of housing and dining facilities and services
- Publicity



**Unequal expenditures will not
constitute noncompliance...**

Three Part Test

Any one can be met for compliance:

- The number of male and female athletes is substantially proportionate to their respective enrollments
- The institution has a history and continuing practice of expanding participation opportunities responsive to the developing interests and abilities of the underrepresented sex
- The institution is fully and effectively accommodating the interests and abilities of the underrepresented sex

Activities

Must not exclude on the basis of sex

- Participation in;
- Be denied the benefits of;
- Be treated differently from another person; OR
- Otherwise be discriminated against

May have single-sex extracurricular activities

- Based on the school's important objective:
 - To improve educational achievement of its students; AND
 - To meet the particular, identified educational needs of its students
 - Implemented in an evenhanded manner
- Completely voluntary.
- Periodic Evaluation - at least every 2 years.

Must provide a substantially equal extracurricular activity to excluded students in the same activity



**May provide separate toilet,
locker room, and shower facilities
on the basis of sex,
but shall be comparable.**




Pregnancy/Parental Status

Shall not apply any rule concerning a student's actual or potential: parental, family, or marital status which treats students differently on the basis of sex.



Shall not discriminate or exclude any student on the basis of student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom.

A woman with dark hair, wearing a colorful orange and red saree, is seated at a wooden podium. She is looking slightly to her right and speaking into a silver microphone. The background is blurred, showing a room with a framed picture on the wall and some greenery.

Must allow student to return to the same extracurricular status as before their medical leave began.

May require the student to obtain a physician certification...

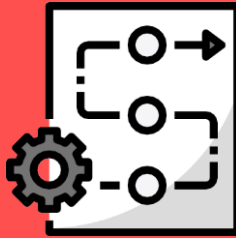
May offer a separate program or activity for pregnant students...

Must treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as any other temporary disability.*

Must protect student from harassment based on pregnancy or related conditions.

DISCUSSION

Engage in Practical Discussions



What is your process for supporting pregnant students or students who are parents?

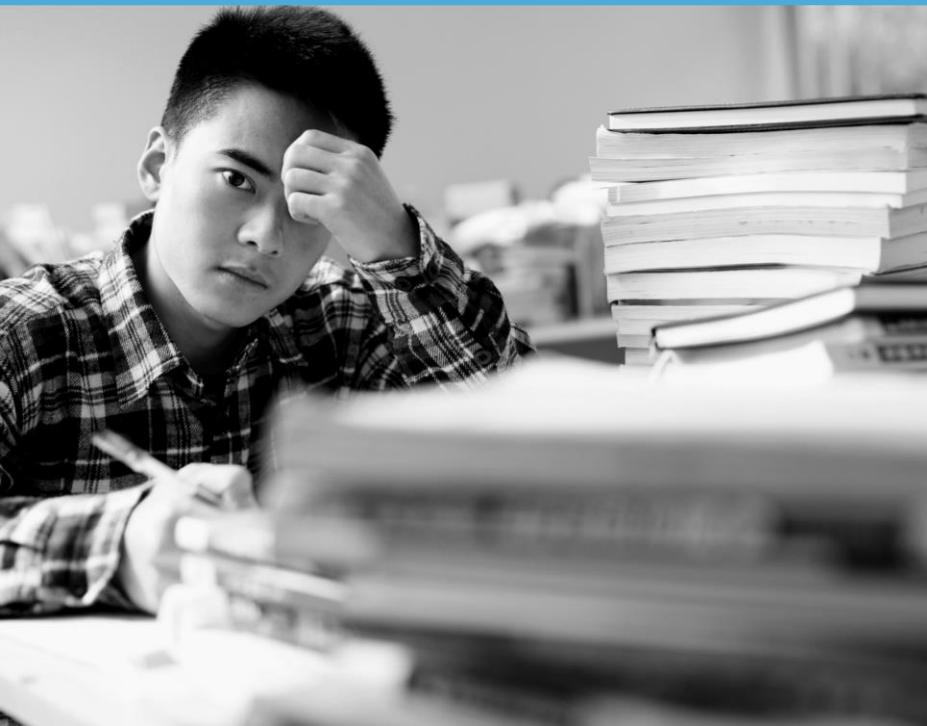
- Are there any teams, groups, clubs, recognitions, etc. that have specific rules addressing pregnancy?
 - Are there practices happening that are not in rules or policies?
- Do you require the student to obtain a physician certification?
- Do you offer a separate program or activity for pregnant students?
- What are the rules for temporary disabilities?
- How do you protect student from harassment based on pregnancy or related conditions?

Activities & Athletics

- **Comparable facilities**
- **Shall not refuse or require participation on the basis of sex**
- **Pregnancy and parental status**
- **Sexual harassment**

Sex Discrimination

Big Picture Law



Title IX Sexual Harassment

Form of Sex Discrimination



Clarity

in
Terms
& Requirements



TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

Title IX Sexual Harassment Definition



TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

Title VII Sexual Harassment Definition



ARKANSAS CIVIL RIGHTS ACT OF 1993

Court Sexual Harassment Interpretation

**SEX DISCRIMINATION
GRIEVANCE PROCEDURE**

VS.

**TITLE IX SEXUAL HARASSMENT
GRIEVANCE PROCESS**

General Response to Title IX Sexual Harassment

34 CFR § 106.44(a)

Actual Knowledge*

* Actual knowledge means notice (report) of Title IX sexual harassment or allegations of Title IX sexual harassment to a recipient's Title IX Coordinator or to **any employee of an elementary and secondary school.**

Grievance Process for Title IX Sexual Harassment

34 CFR § 106.45

Formal Complaint

General Response to Title IX Sexual Harassment

34 CFR § 106.44(a)

Actual Knowledge*

* Actual knowledge means notice (report) of Title IX sexual harassment or allegations of Title IX sexual harassment to a recipient's Title IX Coordinator or to **any employee of an elementary and secondary school.**

- RESPOND PROMPTLY
- RESPOND EQUITABLY
- DISCUSS SUPPORTIVE MEASURES
- EXPLAIN FORMAL COMPLAINT
- EMERGENCY REMOVAL OR ADMINISTRATIVE LEAVE



Supportive Measures

"Such measures are designed to

RESTORE OR PRESERVE EQUAL ACCESS TO THE RECIPIENT'S EDUCATION PROGRAM OR ACTIVITY WITHOUT UNREASONABLY BURDENING THE OTHER PARTY,

including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment."

DISCUSSION

Share Experiences & Resources



What supportive measures have you offered or provided?

How successful were they?

What is your process for determining if an Emergency Removal is necessary?

Guidelines

- **COMPLAINANT MUST BE PARTICIPATING IN OR ATTEMPTING TO PARTICIPATE**
 - in the education program or activity of the recipient with which the formal complaint is filed
- **PARENT OR GUARDIAN MAY FILE A FORMAL COMPLAINT**
 - on behalf of complainant
- **"DOCUMENT FILED BY A COMPLAINANT" MEANS**
 - a document or electronic submission that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint

Grievance Process for Title IX Sexual Harassment

34 CFR § 106.45

Formal Complaint

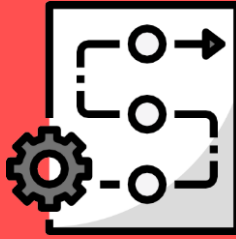
An investigation of sexual harassment does not occur until a formal complaint is filed.

The recipient must investigate the allegations in a formal complaint.

Report puts recipient on notice
Formal Complaint initiates an investigation

DISCUSSION

Engage in Practical Discussions



Do all of your staff understand their roles in Title IX sexual harassment and “Actual Knowledge?”

- Certified
- Classified
 - Child nutrition team
 - Lunch supervisors
 - Security
 - Custodial
- Substitutes
- Other contracted employees

How did you inform/train them?

TITLE IX SEXUAL HARASSMENT MEANS

CONDUCT ON THE BASIS OF SEX THAT SATISFIES ONE OR MORE OF THE FOLLOWING:



An employee of the recipient* conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;



Sexual Assault, Dating Violence, Domestic Violence, or Stalking

* Recipient - institution that receives federal financial assistance

** OCR Q&A on Title IX Regulations on Sexual Harassment - <https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf#page=17>

SEX OFFENSES AS FORMS OF SEXUAL HARRASSMENT:

SEXUAL ASSAULT

An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation (FBI).

20 U.S.C. § 1092(F)(6)(A)(V)

DATING VIOLENCE

Violence committed by a person

- a) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- b) where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - i. The length of the relationship.
 - ii. The type of relationship.
 - iii. The frequency of interaction between the persons involved in the relationship.

34 U.S.C. § 12291(A)(10)

DOMESTIC VIOLENCE

Includes felony or misdemeanor crimes of violence committed by

- a) a current or former spouse or intimate partner of the victim,
- b) a person with whom the victim shares a child in common,
- c) a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- d) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or
- e) any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

34 U.S.C. § 12291(A)(8)

STALKING

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to-

- A. fear for his or her safety or the safety of others; or
- B. suffer substantial emotional distress.

34 U.S.C. § 12291(A)(30)

CONSENT:



THE ASSISTANT SECRETARY WILL NOT REQUIRE RECIPIENTS TO ADOPT A PARTICULAR DEFINITION OF CONSENT WITH RESPECT TO SEXUAL ASSAULT

34 CFR 106.30(a)(103)



RAPE

The carnal knowledge of a person, without the **consent** of the victim, including instances where the victim is incapable of giving **consent** because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

SODOMY

Oral or anal sexual intercourse with another person, without the **consent** of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

STATUTORY RAPE

Nonforcible sexual intercourse with a person who is under the statutory age of **consent**.

SEXUAL ASSAULT WITH AN OBJECT

To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the **consent** of the victim, including instances where the victim is incapable of giving **consent** because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

INCEST

Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

FONDLING

The touching of the private body parts of another *person for the purpose of sexual gratification* without the **consent** of the victim, including instances where the victim is incapable of giving **consent** because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

Consent

Title IX states the following in relation to consent

- **These are individuals who cannot give consent**
 - Students when the Respondent is an employee of the recipient.
 - Severely cognitively disabled persons
 - Incapacitated persons
 - Anyone unable to give consent by law
- **The recipient must specify the definition of consent it will apply.**
- **The recipient must consistently apply that definition**
 - To both the complainant and the respondent
 - From one grievance process to another



Share Experiences & Resources

Discuss

What is your district's definition of consent?

- **In general, definitions discuss**
 - Implicit vs. Explicit
 - Verbal vs. Non-verbal
- **Some examples:**
 - https://docs.google.com/document/d/1zviahcMK_nKYmq75k4LaaRGJX3M8uZsZwqVLxFsgVFs/edit
- **Take a moment and review/discuss your district's definition.**

Dismissing a Formal Complaint

Must Dismiss

- If conduct alleged in a formal complaint would not constitute sexual harassment.
- If conduct did not occur in the recipient's education program or activity.
- If conduct did not occur against a person in the United States.

"Such dismissal does not preclude action under another provision of the recipient's code of conduct."

May Dismiss

- If complainant notifies the Title IX Coordinator in writing that they want to withdraw the formal complaint or any allegation therein.
- If respondent is no longer enrolled or employed by the recipient.
- If specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon dismissal for any reason above, the recipient must promptly send written notice of the dismissal and reason(s) simultaneously to the parties.

Severe, Pervasive and Objectively Offensive?

“Signs of enduring unequal educational access due to severe, pervasive, and objectively offensive sexual harassment may include:

- skipping class to avoid a harasser
- a decline in a student’s grade point average, or
- having difficulty concentrating in class

however, **no concrete injury is required to conclude that serious harassment would deprive a reasonable person** in the complainant’s position of the ability to access the recipient’s education program or activity on an equal basis with persons who are not suffering such harassment.”

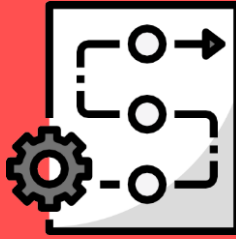
Severe, Pervasive and Objectively Offensive?

- Courts must bear in mind that schools are unlike the adult workplace and that **children may regularly interact in a manner that would be unacceptable among adults.**
- Whether gender-oriented conduct rises to the level of actionable “harassment” thus **depends on a constellation of surrounding circumstances, expectations, and relationships,** ...including, but not limited to, the ages of the harasser and the victim and the number of individuals involved.
- **Damages are not available for simple acts of teasing and name-calling** among school children, however, even where these comments target differences in gender.

– Davis v. Monroe County Bd. of Ed., 526 U.S. 629 (1999)

DISCUSSION

Engage in Practical Discussions



Please share some of your reasons for determining that the conduct alleged in a formal complaint would not constitute sexual harassment even if proven true.

Sexual Harassment GRIEVANCE PROCESS

Basic Requirements

34 CFR § 106.45(b)(1)

- Treat complainants and respondents **EQUITABLY**
- Require an objective **EVALUATION** of all relevant **EVIDENCE**
- Require Title IX Personnel Team have a **NO CONFLICT OF INTEREST OR BIAS**
- Recipient must ensure that Title IX Personnel Team receive **TRAINING**
- **PRESUMPTION** that **RESPONDENT IS NOT RESPONSIBLE** until the conclusion of the grievance process
- Include **REASONABLY PROMPT TIME FRAMES** for conclusion of grievance process
- Describe the range or list the possible **DISCIPLINARY SANCTIONS** and remedies
- Preponderance of Evidence or Clear and Convincing **STANDARD OF EVIDENCE**
- Procedures and permissible bases for the complainant and respondent to **APPEAL**
- Describe the range of **SUPPORTIVE MEASURES**
- Do not require information protected **UNDER LEGALLY RECOGNIZED PRIVILEGE**
- State if you are providing **HEARINGS** or **INFORMAL RESOLUTIONS.**

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- Describe the range of **SUPPORTIVE MEASURES**
- Do not require information protected **UNDER LEGALLY RECOGNIZED PRIVILEGE**
- State if you are providing **HEARINGS** or **INFORMAL RESOLUTIONS.**

Must be provided

- By the recipient
- To the parties who are known
- Upon receipt of a formal complaint

Must

- Contain notice of grievance process
- Contain notice of allegations of sexual harassment
 - Including sufficient details known
 - Identities of the parties
 - The conduct alleged
 - Date and location of the alleged incident
- State the respondent is presumed not responsible
- Inform parties that they may have an advisor of their choice
- Inform parties regarding false statements or false information

Additional Allegations = New Notice of Allegations

Grievance Process for Title IX Sexual Harassment

34 CFR § 106.45

Notice of Allegations

REVIEW

Take out your notice of allegations document or your grievance procedures.

Are all of the items listed?

- Contain notice of grievance process
- Contain notice of allegations of sexual harassment
 - Including sufficient details known
 - Identities of the parties
 - The conduct alleged
 - Date and location of the alleged incident
- State the respondent is presumed not responsible
- Inform parties that they may have an advisor of their choice
- Inform parties regarding false statements or false information

Guidelines

- **ENSURE**
 - burden of proof and burden of gathering evidence rest on the recipient
- **PROVIDE EQUAL OPPORTUNITY**
 - for parties to present witnesses and other evidence
 - for parties to have others present during any grievance proceeding
 - for parties to inspect and review any evidence
- **DO NOT RESTRICT**
 - the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence
- **PROVIDE WRITTEN NOTICE**
 - to a party whose participation is invited or expected

Grievance Process for Title IX Sexual Harassment

34 CFR § 106.45

Investigation

Timeline

- Gather Evidence
- Present Evidence to Parties
 - Parties have 10 days to submit a written response
- Create Investigative Report
- Send Investigative Report to Parties/Decision Makers
 - Parties have 10 days to review and provide a written response
 - Response may include additional questions to be asked of the other party
- Make Decision regarding Responsibility
 - Written and provided simultaneously to both parties
- Allow for Appeal
 - Once the time to appeal has expired, or the appeal decision is made, the process is complete

Grievance Process for Title IX Sexual Harassment

34 CFR § 106.45

Investigation

REVIEW

Review your investigation procedures.

Are you following the guidelines?

- ENSURE burden rests on the recipient
- PROVIDE EQUAL OPPORTUNITY for witnesses/evidence, advisors, inspection of evidence
- DO NOT RESTRICT either party discussing the allegations or gathering/presenting relevant evidence
- PROVIDE WRITTEN NOTICE to a party whose participation is invited or expected

Is your timeline correct?

Written Determination of Responsibility

- **Identification of the allegations**
- **Description of the procedural steps taken**
 - From receipt of formal complaint – written determination
- **Findings of fact supporting the determination**
- **Conclusions regarding the application of the code of conduct to the facts**
- **Statement and rationale for the result of each allegation**
 - Determination regarding responsibility
 - Any disciplinary sanctions imposed on the respondent
 - Whether remedies will be provided to the complainant
 - May have multiple decision makers but ONE written determination
- **Procedures and permissible bases for Complainant and Respondent to appeal**

REVIEW

Look at a recent written determination (or your documents if you have not completed an investigation)

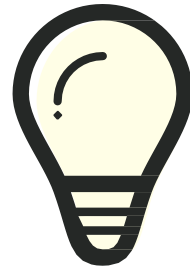
Does it include all the required information?

- Identification of the allegations
- Description of the procedural steps taken
- Findings of fact supporting the determination
- Conclusions regarding the application of the code of conduct to the facts
- Statement and rationale for the result of each allegation
- Procedures and permissible bases for Complainant and Respondent to appeal



Share Resources

Who are your: Title IX Personnel Team



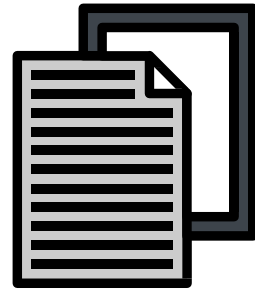
Title IX Coordinator

<Enter Name>



Investigators

<Enter Name(s)>



Decision-Makers

WRITTEN DETERMINATION

<Enter Name(s)>

APPEALS

<Enter Name(s)>



Informal Resolution Facilitators

<Enter Name(s)>



Share Experiences & Resources

Have you had the Required Trainings?

Personnel Team - In-Depth Training

ALL Team Members

- Title IX definition of sexual harassment
- Scope of the education program/activity
- Conducting an investigation
- Grievance process
- Hearings *(If conducting hearings)*
- Appeals
- Impartiality
 - Prejudging facts
 - Conflicts of interest
 - Bias
- Informal resolution *(If offering informal resolution)*

Investigators

- Issues of relevance
 - Evidence

Decision Makers

- Issues of relevance
 - Evidence
 - Questions
- Technology used in hearings *(if conducting hearings)*

EQUITY ASSISTANCE CENTER TEAM

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Feedback Link: <https://bit.ly/DESE-EAC-Feedback>

