



K-12 TITLE IX COORDINATOR & ADMINISTRATOR TRAINING & CERTIFICATION COURSE

January 30-31, 2020 | Orlando, FL



KIM PACELLI, J.D., M.ED.

Senior Supervising Associate, TNG

GOALS, PURPOSE, AND LEARNING OUTCOMES

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GOALS, PURPOSE, LEARNING OUTCOMES



- Provide a foundation on Title IX fundamentals.
- Understand the fundamentals of the multifaceted Title IX Coordinator role.
- Provide new tools to support your work to stop, prevent, and remedy harassment that may occur in your schools.
- Support your work to prioritize the work needed in your school or district.
- Provide an opportunity to practice and collaborate together.

CAVEAT REGARDING LANGUAGE



- This presentation utilizes ATIXA vocabulary, such as:
 - “reporting party”
 - “responding party”
 - “report”
 - “complaint”
- These are terms that we use across all K-12 systems and are not intended to be confused with any specific procedure, step, or terminology in the your system or any school procedure.
- Please always ask us for clarification if needed at any time.

OVERVIEW OF TITLE IX

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NOT FOR DISTRIBUTION

TITLE IX



20 U.S.C. § 1681 & 34 C.F.R. Part 106 (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 subjected to discrimination under any educational program or activity receiving federal financial assistance.”

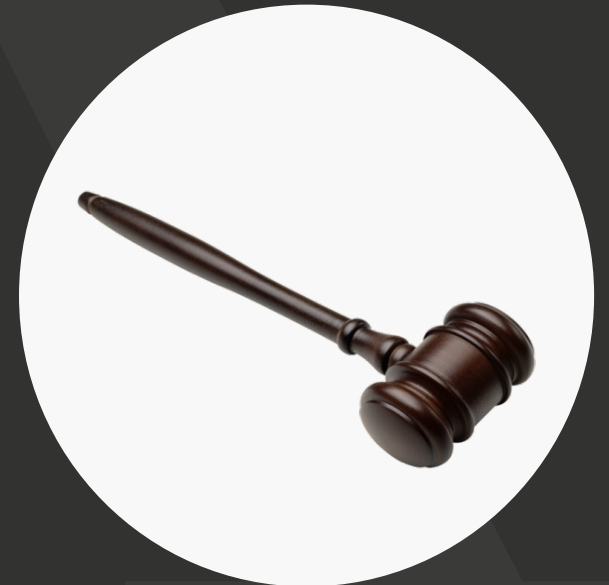
A BRIEF HISTORY OF TITLE IX PRE-1972



- Title VI of the Civil Rights Act of 1964 (42U.S.C. §2000d et seq.)
 - “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” (“Sex” added by Executive Order in 1965)
- Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e-2)
 - Prohibits discrimination in the terms, conditions or privileges of employment on the basis of an individual’s race, color, religion, sex, or national origin.
- 1972: Title IX passed and signed into law by President Nixon
- Department of Health, Education and Welfare (HEW) – Title IX regulations codified in 1975.

SIGNIFICANT CASES & KEY OCR GUIDANCE

- *Franklin v. Gwinnett County Public Schools*
- *Gebser v. Lago Vista Independent School District*
- *Davis v. Monroe County Bd. of Education*
- *Jackson v. Birmingham Bd. of Education*
- *Fitzgerald et al. v. Barnstable School Committee et al*



LAWS, COURTS, AND REGULATIONS



- **Laws** passed by Congress (e.g.: Title IX) – Enforceable by Courts and OCR
 - Federal Regulations – **Force of law**; Enforceable by Courts and OCR
 - Regulatory Guidance from OCR – Enforceable only by OCR (e.g.: 2001 Guidance)
 - Sub-Regulatory Guidance from OCR – Enforceable only by OCR (e.g.: 2011 DCL)
- Federal Caselaw – **Force of law** based on jurisdiction
 - Supreme Court – binding on entire country
 - Circuit Courts of Appeal – binding on Circuit
 - District Court – binding on District
- State caselaw – **Force of law**; binding only in that state based on court jurisdiction

STAY ABOVE THE FLOOR



- Law, Caselaw, and Federal Regulations set the floor
 - OCR Guidance typically elevates the floor
 - States can pass laws that exceed federal requirements (e.g.: New York and California)
- Practicing at the floor = doing the bare minimum
 - Will not address the cycle of inequity and unfairness
- Civil Rights issues demand more than bare minimum
- Industry standards already exceed the floor
 - Regression to the floor increases risk of legal liability

FRANKLIN V. GWINNETT PUBLIC SCHOOLS



- Christine Franklin was a student at North Gwinnett High School in Gwinnett County, Georgia.
- Franklin was subjected to continual sexual harassment beginning in her tenth grade year from Andrew Hill, a sports coach and teacher employed by the district.
- Franklin asserted that Hill:
 - engaged her in sexually-oriented conversations (asked about her sexual experiences with her boyfriend and whether she would consider having sexual intercourse with an older man);
 - forcibly kissed her on the mouth in the school parking lot;
 - telephoned her at her home and asked if she would meet him socially; and
 - on three occasions, Hill interrupted a class, requested the teacher excuse Franklin, and took her to an office where he engaged in forcible intercourse.

FRANKLIN V. GWINNETT PUBLIC SCHOOLS



- The complaint further alleges that, though the school became aware of and investigated Hill's sexual harassment of Franklin and other female students, teachers and administrators took no action to halt it.
- Hill resigned on the condition that all matters pending against him be dropped. The school thereupon closed its investigation.
- The school also discouraged Franklin from pressing charges.

Source: Franklin v. Gwinnett County Public Schools, 503 U.S. 60 (1992).

FRANKLIN V. GWINNETT PUBLIC SCHOOLS



- In 1992, the U.S. Supreme Court decided *Franklin v. Gwinnett County Public Schools*, which established that sexual harassment constituted sex discrimination under Title IX.
- *Gwinnett* also provided a private right for recovery of monetary damages under Title IX.
- *Gwinnett* did not address issues concerning the educational institution's liability.
- What about a statute of limitations?

GEBSER V. LAGO VISTA INDEP. SCHOOL

524 U.S. 274 (1998)



- Alida Gebser was an eighth-grade student at a middle school in respondent Lago Vista Independent School District (Lago Vista); she joined a high school book discussion group led by Frank Waldrop, a high school teacher.
- During the book discussion sessions, Waldrop often made sexually suggestive comments to the students. Gebser entered high school and was assigned to classes taught by Waldrop.
- Waldrop continued his inappropriate remarks to the students, and began to direct more of his suggestive comments toward Gebser, including when they were alone in his classroom.

Source: Franklin v. Gwinnett County Public Schools, 503 U.S. 60 (1992).

GEBSER V. LAGO VISTA INDEP. SCHOOL

524 U.S. 274 (1998)



- Waldrop initiated sexual contact with Gebser in the spring, when, while visiting her home ostensibly to give her a book, he kissed and fondled her.
- The two had sexual intercourse on a number of occasions during the remainder of the school year. Their relationship continued through the summer and into the following year, and they often had intercourse during class time, although never on school property.
- Gebser did not report the relationship to school officials; she realized Waldrop's conduct was improper but she was uncertain how to react and she wanted to continue having him as a teacher.

Source: Franklin v. Gwinnett County Public Schools, 503 U.S. 60 (1992).

GEBSER V. LAGO VISTA INDEP. SCHOOL

524 U.S. 274 (1998)



- In October 1992, the parents of two other students complained to the high school principal about Waldrop's comments in class.
- The principal met with Waldrop, who indicated he did not believe he had made offensive remarks but apologized to the parents and said it would not happen again.
- The principal advised Waldrop to be careful about his classroom comments and told the school guidance counselor about the meeting, but he did not report the parents' complaint to Lago Vista's superintendent, who was the district's Title IX coordinator.
- A couple of months later, in January 1993, a police officer discovered Waldrop and Gebser engaging in sexual intercourse and arrested Waldrop.

Source: Franklin v. Gwinnett County Public Schools, 503 U.S. 60 (1992).

GEBSER V. LAGO VISTA INDEP. SCHOOL

524 U.S. 274 (1998)



- The Supreme Court said you cannot recover monetary damages against the school unless:
 - Three-part standard:
 1. An official of the educational schools/districts must have had “actual notice” of harassment;
 2. The official must have authority to “institute corrective measures” to resolve the harassment problem; AND
 3. The official must have “failed to adequately respond” to the harassment and, in failing to respond, must have acted with “deliberate indifference.”

DAVIS V. MONROE COUNTY BD. OF ED.

526 U.S. 629 (1999)



- Ongoing behavior by fifth-grade boy toward fellow student LaShonda Davis:
 - Made statements such as “I want to get in bed with you” and “I want to feel your boobs.”
 - Attempted to touch her breasts and genitals
 - Stuck a doorstop in his pants and acted in a sexually suggestive manner towards Davis;
 - He rubbed up against her in suggestive manner;
 - Touched her breasts and genitals.

DAVIS V. MONROE COUNTY BD. OF ED.

526 U.S. 629 (1999)



- Davis repeatedly reported conduct to teachers; Davis's mother also contacted teachers multiple times;
- Mother was told the principal was aware of the situation. No disciplinary action was taken.
- Davis's assigned seat was next to the male student throughout the harassing behavior; not allowed to change seats for over three months.

DAVIS V. MONROE COUNTY BD. OF ED.

526 U.S. 629 (1999)



- In May 1993, principal told Davis's mother, "I guess I'll have to threaten him a little harder"; male student not disciplined.
- Davis's grades declined and her father found a suicide note his daughter had written; Davis told her mother she "didn't know how much longer she could keep [the male student] off her."
- Others in class also faced harassment; group of students tried to complain to the principal, but were allegedly prevented from doing so and told, "If [the principal] wants you, he'll call you."
- Parents had complained to three teachers and the principal; student had also complained to three teachers.

DAVIS V. MONROE COUNTY BD. OF ED.

526 U.S. 629 (1999)



- Finding in favor of Davis, the Supreme Court expanded on the *Gebser* ruling:
 - The school/district must have “actual notice” of the harassment; and the school/district must have responded to the harassment with “deliberate indifference.”
 - Deliberate indifference constitutes a response that is “clearly unreasonable in light of the known circumstances.”
 - Additionally, court held that:
 - Harassment must be “severe, pervasive, and objectively offensive,” and the indifference “systemic,” to the extent that the victim is deprived of educational opportunities or services.

JACKSON V. BIRMINGHAM BD. OF ED.

544 U.S. 167 (2005)



- A deeply divided U.S. Supreme Court decided this landmark case in 2005.
- Involved a claim of retaliation for filing complaints of sex discrimination under Title IX.
- Roderick Jackson, a high school teacher and coach, complained to school officials about the school's inequitable treatment of the girls' basketball team.
- Retaliation-based case.
- The federal district court and appellate court ruled against Jackson.

JACKSON V. BIRMINGHAM BD. OF ED.

544 U.S. 167 (2005)



- The Supreme Court overturned lower courts, stating that:
 - Private parties can seek damages for intentional sex discrimination under Title IX.
 - Retaliation against a person who complains about sex discrimination is in itself a form of “intentional discrimination,” even if plaintiff is not an “actual” recipient of gender-based discrimination.
 - It is discrimination based on gender because it is “an intentional response to the nature of the complaint: an allegation of sex discrimination.”

FITZGERALD V. BARNSTABLE SCHOOL CMTE.

555 U.S. 246 (2009)



- This case represents legal challenge brought against a school district by parents of a kindergarten child subjected to student/student sexual harassment.
- Parents challenged the school did not respond adequately, under Title IX requirements, to daughter's allegations of sexual harassment by older student.
- The parents also brought a §1983 claim against the school superintendent and the school committee.

FITZGERALD V. BARNSTABLE SCHOOL CMTE.

555 U.S. 246 (2009)



- Supreme Court ruled on whether Title IX provides the exclusive remedy for addressing gender discrimination in the school, or if a §1983 action could be brought as a means of enforcing the federal rights.
- It held that Title IX is not the exclusive mechanism for addressing gender discrimination, nor a substitute for a §1983 action.
- It stated that Title IX provides for both an administrative remedy (OCR) and civil damages actions against an institution, but not school officials, teachers, or other individuals.

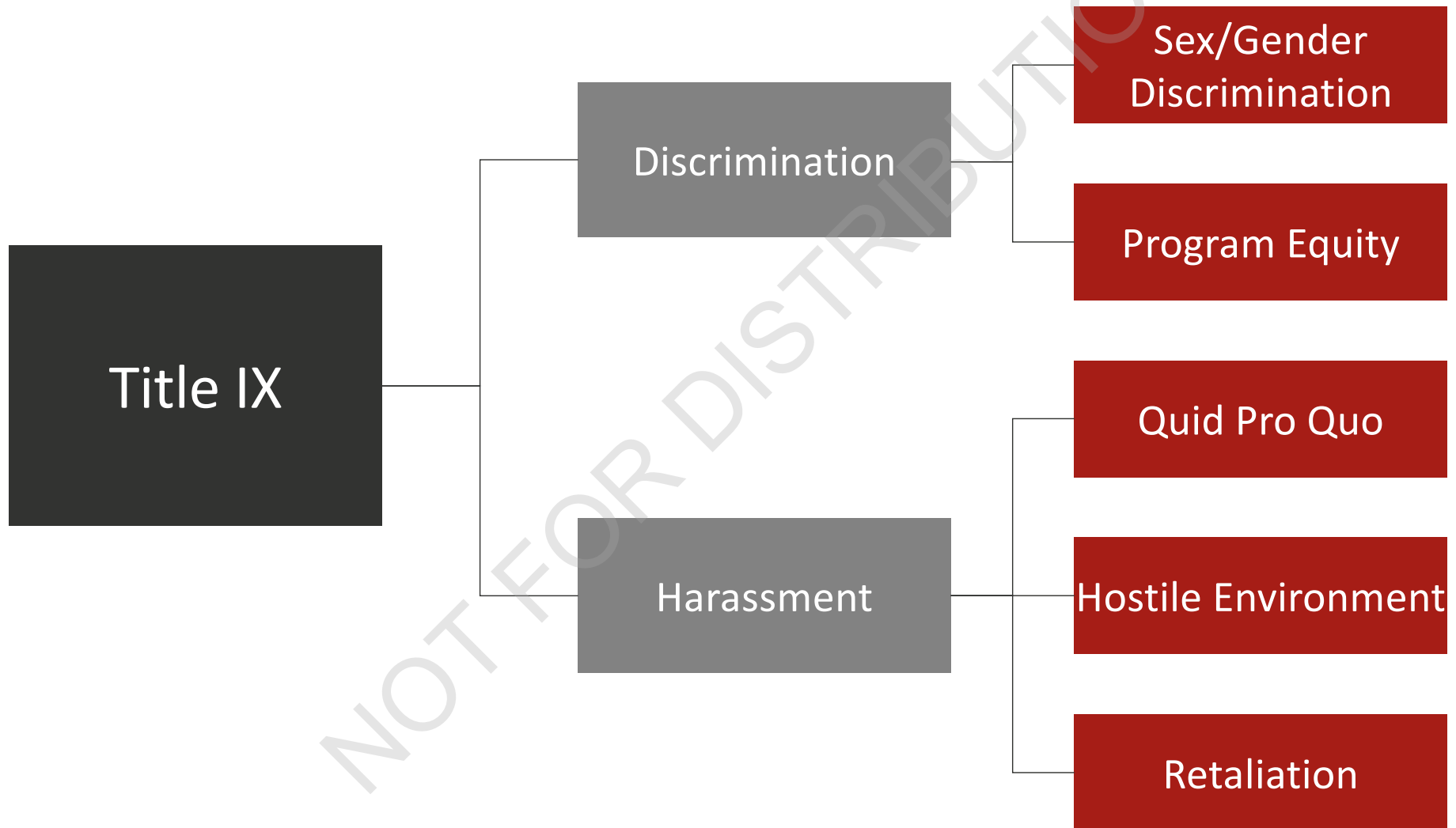
FITZGERALD V. BARNSTABLE SCHOOL CMTE

555 U.S. 246 (2009)



- However, §1983:
 - Provides means to enforce the rights of aggrieved person against school officials, teachers, or other individuals in their **personal capacity**.
 - Creates the path to hold individuals personally liable, providing for award of damages, injunctive relief, **and attorney fees**.
 - Follows that the courts apply school-focused Title IX case law similarly to colleges and universities.

TITLE IX



KEY TITLE IX-RELATED ISSUES



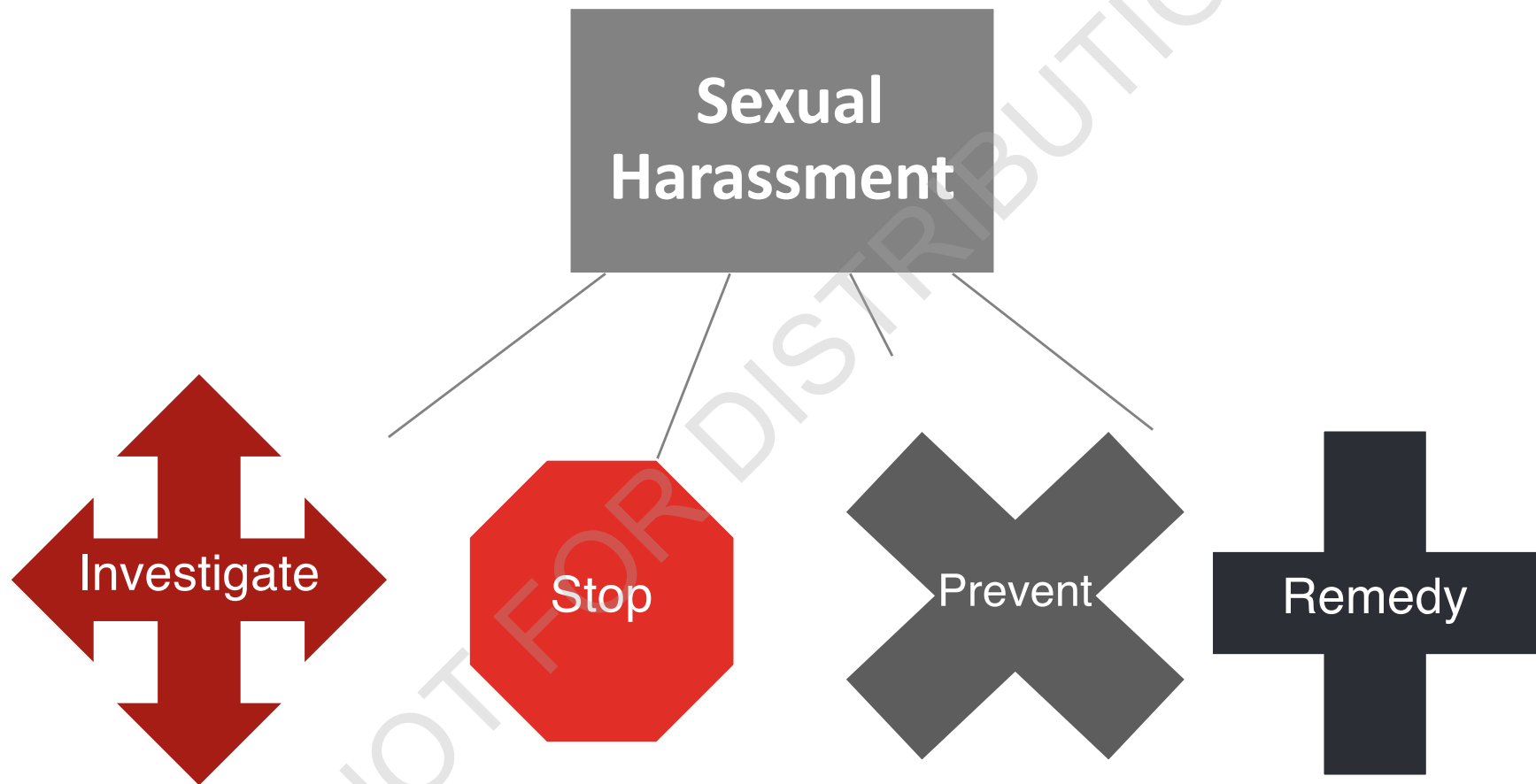
Sex Based Discrimination

- Program Equity
- Recruitment, Admissions and Access
- Pregnancy
- Athletics
- Employment, Recruitment & Hiring
- Extra-curricular activities
- Access to Course Offerings
- Salaries and Benefits
- Financial Assistance
- Facilities
- Funding
- Sex, Gender, Gender Identity

Sexual Harassment

- Stalking
- Domestic Violence
- Dating Violence
- Sexual Assault
- Sexual Violence
- Sexual Exploitation
- Sexual Intimidation
- Sexual Misconduct
- Bullying and Cyberbullying
- Retaliation

SCHOOL/DISTRICT OBLIGATIONS UNDER TITLE IX



THE IX COMMANDMENTS



Thorough	Reliable	Impartial	Investigation
Prompt	Effective	Equitable	Process
End the Discrimination	Prevent its Recurrence	Remedy the effects upon the victim & community	Remedies

EQUITY DEFINED

EQUALITY VERSUS EQUITY



In the first image, it is assumed that everyone will benefit from the same supports. They are being treated equally.



In the second image, individuals are given different supports to make it possible for them to have equal access to the game. They are being treated equitably.



In the third image, all three can see the game without any supports or accommodations because the cause of the inequity was addressed. The systemic barrier has been removed.

SMALL GROUP DISCUSSION



- What are the three biggest challenges or opportunities that you have regarding your role?
- Describe and discuss a recent case you heard about or experienced where you have questions or concerns?
- What is one area you hope to learn more about during this training?

OCR & TITLE IX



ROLE OF OCR & TITLE IX



- The Office for Civil Rights (OCR) under the Department of Education is responsible for establishing the **compliance standards to be applied in investigations and enforcement** of Title IX regarding sexual harassment.
 - Provides regulatory and sub-regulatory guidance.
- OCR standard indicates that upon receipt of **notice**, school/district must immediately take immediate and appropriate steps to **investigate** what occurred and take **prompt and effective action to end the harassment, remedy the effects, and prevent the recurrence**.

- OCR guidelines distinguish the administrative oversight of Title IX from the standards applicable to private litigation for monetary damages.
- OCR standards require the sexual misconduct must rise to the level of **severe, pervasive, or persistent**.
- OCR **administratively** enforces Title IX by:
 - Conducting investigations from complaints filed with the U.S. Dept. of Education.
 - Engaging in voluntary compliance investigations.

REMEDIES UNDER TITLE IX



- An individual may assert a Title IX claim against the school/district by:
 - **Lawsuit**: Suing the school/district in court and seeking monetary damages or injunctive or declaratory relief.

And/Or

- **OCR Complaint**: Filing an administrative complaint, a grievance with U.S. Dept. of Ed. Office for Civil Rights (or other applicable federal agency).

CIVIL LAW SUITS V. ADMINISTRATIVE ACTION



Lawsuit

- File in federal court.
- Monetary damages, injunction.
- Requires:
 - Actual notice.
 - Employee with authority to take action.
 - Deliberate Indifference.

Administrative Action

- Initiated by OCR.
- Voluntary compliance or findings
- Requires:
 - Actual OR constructive notice (“knew or should have known”).
 - Investigate.
 - End harassment.
 - Remedy impact.
 - Prevent recurrence.

2001 REVISED SEXUAL HARASSMENT GUIDANCE



- **The current primary Title IX regulatory compliance document.**
- “Sexual harassment is unwelcome conduct of a sexual nature.”
- “Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.”
- “Sexual harassment of a student can deny or limit, on the basis of sex, the student's ability to participate in or to receive benefits, services, or opportunities in the school's program.”
- “Sexual harassment of students is, therefore, a form of sex discrimination prohibited by Title IX under the circumstances described in this guidance.”

2001 REVISED SEXUAL HARASSMENT GUIDANCE



- The "education program or activity" = all of the school's operations.
- "All academic, educational, extra-curricular, athletic, and other programs of the school" regardless of location.
- Addresses sexual harassment and sex discrimination by the school/district, teachers, employees, students, and third parties.
- Prompt and effective action required upon notice of the harassment/discrimination.

2001 REVISED SEXUAL HARASSMENT GUIDANCE



- Publication of policies and procedures that:
 - Include non-discrimination statement.
 - Offer effective reporting and response protocol.
 - Have appropriate grievance procedures.
 - Ensure fair and equitable investigations.
 - Include equitable remedies.
 - Prevent recurrence.
 - Incorporate preventive training.
 - Designate a Title IX coordinator.

2011 DEAR COLLEAGUE LETTER



Withdrawn by OCR in Sept. 2017; however, it provides helpful guideposts that remain viable and appropriate.

- Centrality of the Title IX Coordinator.
- Sexual violence is a form of sexual harassment.
- *Preponderance of the evidence.**
- Promptness and time frames.
- Equity in process.
- Equity in appeals.
- Possible off-campus jurisdiction.
- Provision of interim and long-term remedies.
- Balancing reporting party requests for confidentiality.
- Training of students, employees, and all involved in TIX resolutions.

2014 Q&A ON TITLE IX AND SEXUAL VIOLENCE



Withdrawn by OCR in Sept. 2017; however, it provides helpful guideposts that remain viable and appropriate.

- Title IX Coordinator role and responsibilities.
- Disciplinary processes – robust investigation.
- Interim measures.
- Remedies.
- Appeals.
- Training, education, and prevention – students, employees, all involved in Title IX resolutions.

2015 DEAR COLLEAGUE LETTER & RESOURCE GUIDE



Remain in full effect. Not impacted by OCR 2017 action.

- Thanks Title IX Coordinators for their vitally-important work.
- Reiterates requirement to designate a Title IX Coordinator.
- Invites superintendents and presidents to ensure support:
 - “Must have the full support of your institution.”
- Must have necessary positional and actual authority to perform their role.
- Significant oversight:
 - Notified of ALL Title-IX reports and complaints; coordinate all responses; monitor all outcomes; identify and address patterns; assess institutional climate.

2015 DEAR COLLEAGUE LETTER



- Independence
 - Should report to senior leadership (e.g. president or superintendent).
 - Avoid conflicts of interest.
- Full-time?
 - “It is critical that the employee has the qualifications, training, authority, and time to address all complaints throughout the institution.”
- Multiple/Deputies
 - Must have “one lead Title IX Coordinator who has ultimate oversight responsibility.”

2015 DEAR COLLEAGUE LETTER



- **Visibility**

- Notice of non-discrimination with Title IX and Coordinator information posted and included in virtually all publications, materials, and websites.
- Encourages Title IX-specific website.

- **Training**

- Institutions must ensure Coordinators are well-trained and up-to-date on all responsibilities and all applicable laws, policies, guidance, regulations, institutional policies, and procedures.

2015 RESOURCE GUIDE



- Broad-ranging, topically-organized summary guide.
 - Grievance procedure requirements and notice of nondiscrimination.
 - Recruitment, admissions, and counseling.
 - Financial assistance.
 - Athletics.
 - Sex-based harassment.
 - Pregnant and parenting students.
 - Discipline.
 - Single-sex education.
 - Employment.
 - Retaliation.

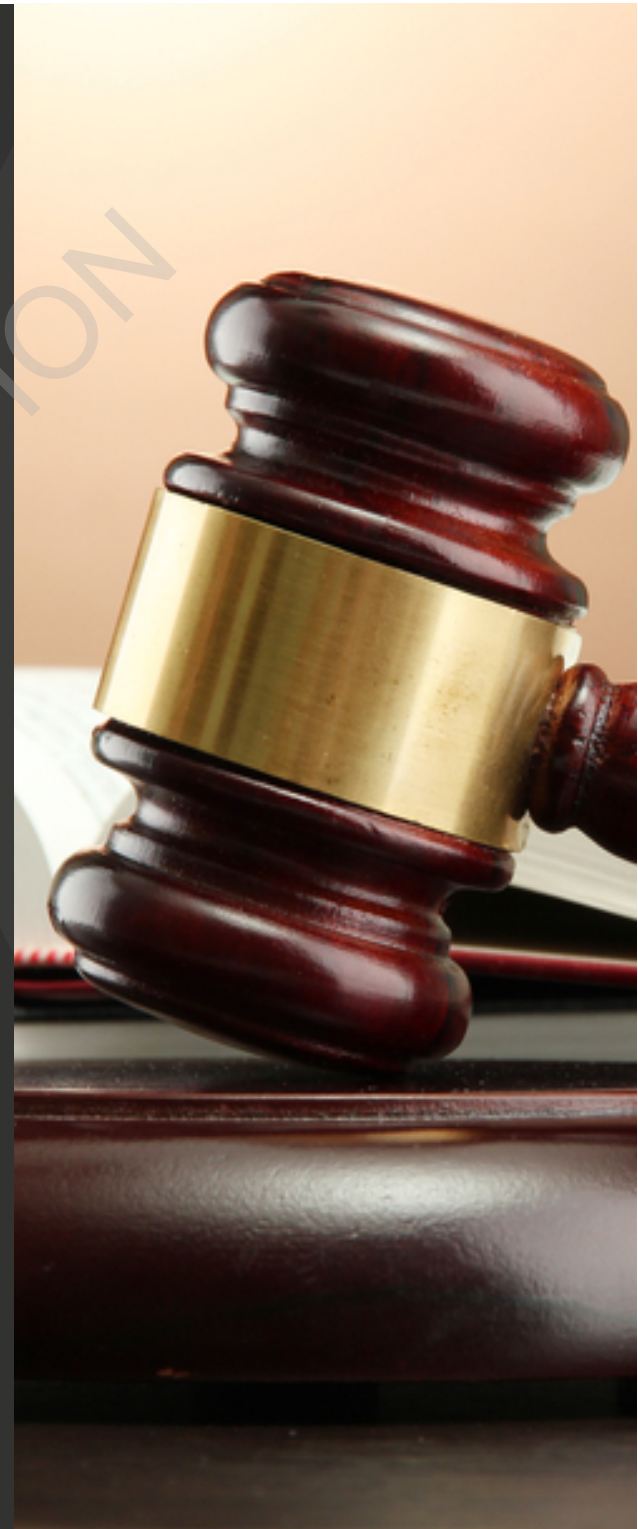
OTHER GUIDANCE REGARDING SEXUAL HARASSMENT & VIOLENCE



- OCR Resolution Agreements.
- October 29, 2010 – Bullying.
- January 25, 2013 – Athletics & ADA.
- April 24, 2013 – Retaliation.
- June 25, 2013 – Pregnancy.
- May 13, 2016 – Title IX and Transgender Students.
- September 2017 – Q&A on Campus Sexual Misconduct.
- Not Alone – White House Task Force to Protect Students From Sexual Assault – April 2014.
- DOJ Title IX Legal Manual.
- *Proposed Regulations.*

DUE PROCESS

- Foundational Case Law
- What is Due Process
- Due Process in Procedure
- Due Process in Decision



GOSS v. LOPEZ

419 U.S. 565 (1975)



- Nine high school students were suspended for 10 days for non-academic misconduct.
- The court held that since K–12 education is a fundamental right, students were entitled to at least a modicum of “due process.”
- Minimum due process is notice and an opportunity for a hearing.
 - Oral or written notice of charges against them
 - Explanation of the evidence
 - Opportunity to present their version

GOSS V. LOPEZ

419 U.S. 565 (1975)



- The court further stated that the hearing could be informal and need not provide students with an opportunity to obtain private counsel, cross-examine witnesses, or present witnesses on their behalf.
- Potential suspensions beyond 10 days or expulsions, however, require a more formal procedure to protect against unfair deprivations of liberty and property interests.

WHAT IS DUE PROCESS?



- Due Process (public institutions):
 - Federal and state constitutional and legal protections against a state institution taking or depriving someone of education or employment.
- “Fundamental Fairness” (private institutions):
 - Contractual guarantee that to impose discipline, the institution will abide substantially by its policies and procedures.

WHAT IS DUE PROCESS?



- Two overarching forms of due process:
 - **Due Process in Procedure:**
 - Consistent, thorough, and procedurally sound handling of allegations.
 - Institution substantially complied with its written policies and procedures.
 - Policies and procedures afford sufficient Due Process rights and protections.
 - **Due Process in Decision:**
 - Decision reached on the basis of the evidence presented.
 - Decision on finding and sanction appropriately impartial and fair.

WHAT IS DUE PROCESS?



- **Due Process in Procedure** – An institution's process should include (at a minimum):
 - Notice of charges and of the hearing/resolution process.
 - Right to present witnesses.
 - Right to present evidence.
 - Opportunity to be heard and address the allegations and evidence.
 - Right to decision made based on substantial compliance and adherence to institutional policies and procedures.
 - Right to a hearing? (probably not for PreK-12)
 - Right to appeal (recommended).

WHAT IS DUE PROCESS?



- **Due Process in Decision** - A decision must:
 - Be based on a fundamentally fair rule or policy.
 - Be made in good faith (i.e., without malice, partiality, or bias).
 - Based on the evidence presented.
 - Have a rational relationship to (be substantially based upon, and a reasonable conclusion from) the evidence.
 - Not be arbitrary or capricious.
 - Sanctions must be reasonable and constitutionally permissible.

IS IT A IX?

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Jurisdictional Issues and Questions

WHEN DOES TITLE IX APPLY?



Subject Matter

- Limitations:
 - Actions/conduct/speech protected by **academic freedom**.
 - Pedagogically appropriate and germane to the subject matter of course that teacher hired to teach/research.
 - Actions/conduct/speech protected by the **First Amendment**.
 - Merely offensive conduct cannot be disciplined at a public school.
 - Must be **severe, pervasive (persistent), and objectively offensive**.
 - Subjectively offensive conduct cannot be disciplined at a public school unless it is also objectively offensive.
- May still provide support and resources to the Reporting Party and the community as appropriate.

WHEN DOES TITLE IX APPLY?



- The *Davis* standard is that Title IX applies and jurisdiction is required when the school has:
 - Control over the harasser (discriminator); AND
 - Control over the context of the harassment (discrimination).
 - When is a student a “student”?
 - When is an employee and employee?
- If Title IX jurisdiction is not present, the behavior could still violate:
 - School/District harassment/discrimination policies.
 - Student Handbook/Conduct policies.
 - Technology/Acceptable Use policies.
 - Employee Handbook/Policies.
 - Professionalism standards.

WHEN DOES TITLE IX APPLY?



Jurisdiction for Off-Campus Incidents:

- For Sexual Harassment and Discrimination cases.
 - There is an expectation that you should exercise SOME discretionary jurisdiction over off-site/off-campus incidents
- When?
 - Whenever your policy says.
 - Nexus.
 - When the behavior occurs on property you own or control.
 - When the behavior occurs in programs/events you sponsor.
 - When the downstream effects of purely off-site conduct cause a discriminatory impact at school/on campus.

WHEN DOES TITLE IX APPLY?



Covered Individuals

- Students – In-school/On-campus & online/distance.
- Dual Enrollment students.
- Teachers.
- Staff.
- Campers.
- Subcontractors, vendors.
- Guests/visitors.

WHEN DOES TITLE IX APPLY?



- If Responding Party is not affiliated with the school/district in any way, the district will generally lack authority to take disciplinary action.
 - Employee of an outside company (e.g.: vendor, construction worker, etc.).
 - Guest or visitors.
 - Prospective student.
 - Former student.
 - Former employee.
 - Student from another district.

WHEN DOES TITLE IX APPLY?



- Examples where institution lacks disciplinary authority:
 - A student is sexually harassed by a student from another district.
 - A student withdraws, or an employee resigns in the midst of an investigation.
- Institution must still:
 - Provide support and resources to the reporting party and the community.
 - Determine if there are patterns or institutional variables that contributed to the alleged incident.
 - Take what action it can (e.g.: trespass the person).

CASE STUDY: JURISDICTION?



- A student attends a party at a friend's house over the weekend.
- At the party, the student is sexually assaulted by another person who attended the party.
- The student reports the sexual assault to the local police department and to the school.
- Does the district have jurisdiction over the sexual assault?

CASE STUDY: JURISDICTION?



- Several female students express objections to the school's policy to not allow transgender students to use the bathroom according to the gender in which they identify.
- The students are subsequently subjected to offensive and threatening anonymous messages posted on social media.
 - The posts refer to the female students as “femicunts, feminazis, cunts, bitches, hoes, and dikes”
 - Includes threats to “euthanize,” “kill,” and “[g]rape” them.
 - Some posts name specific students and notes which school the students attend in hopes that they would be confronted on campus.
- The female students express concern for their safety due to online posts.
- Does the institution have jurisdiction?

TYPES OF SEXUAL HARASSMENT

- Hostile Environment
- Quid Pro Quo
- Retaliatory Harassment

THREE TYPES OF SEXUAL HARASSMENT



1.
Hostile
Environment

2.
Quid Pro Quo

3.
Retaliatory
Harassment

UNDERSTANDING THE THREE TYPES OF SEXUAL HARASSMENT



Sexual Harassment is:

Unwelcome conduct of a sexual nature or that is sex or gender-based

Based on power differentials
(*quid pro quo*),

The creation of a *hostile environment*, or

Retaliation

ATIXA MODEL DEFINITIONS: HOSTILE ENVIRONMENT



- A hostile environment is created when sexual harassment is:
 - Sufficiently *severe*, or
 - *Persistent or pervasive*, and
 - *Objectively offensive* that it:
 - *Unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from the school's/district's educational [and/or employment], social, and/or residential program.*
- From both a subjective (the reporting party's) and an objective (reasonable person's) viewpoint.

ATIXA MODEL DEFINITIONS: HOSTILE ENVIRONMENT



- Totality of the circumstances to consider:
 - The frequency (persistence or pervasiveness), nature, and severity of the conduct.
 - Whether the conduct was physically threatening.
 - Whether the conduct was humiliating.
 - The relationship between the alleged harasser and the subject or subjects of the harassment.
 - The age of the alleged harasser and the subject or subjects of the harassment.
 - The size of the school, location of the incident(s), and context in which conduct occurred.

ATIXA MODEL DEFINITIONS: HOSTILE ENVIRONMENT



- Totality of the circumstances to consider:
 - The effect on the reporting party.
 - Whether the conduct was directed at more than one person.
 - Whether the conduct unreasonably interfered with the reporting party's educational or work performance.
 - If statement, whether it was an utterance of an epithet which was offensive, or offended due to discourtesy or rudeness.
 - Whether the speech/conduct deserves protections of academic freedom or the First Amendment protection.
 - “Constellation of surrounding circumstances.”

“SEVERE”



“The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. Indeed, a single or isolated incident of sexual violence may create a hostile environment.”

—(Q&A: A-3)

- Physical is more likely to be severe without need for repetition:
 - Non-consensual sexual intercourse or contact are almost always sufficiently severe.
 - Consider the circumstances: E.g., the ability for victim to escape the harassment.
- Assess whether accompanied by threats or violence.

(2001 Guidance).

“PERVASIVE”



- Widespread.
- Openly practiced.
- Well-known among students or employees – reputation of a department, person, etc.
- Occurring in public spaces (more likely to be pervasive).
- “Harassment is pervasive when incidents of harassment occur either in concert or with regularity” (2001 Guidance: Footnote 44).
- Frequency of the conduct is often a variable in assessing pervasiveness. (look to intensity and duration)
- Unreasonable interference with school or job.
- A “gauntlet of sexual abuse” *Meritor v. Vinson*, 477 U.S. 57 (1986).

“PERSISTENT”



- Repeated.
 - Intensity.
 - Duration.
 - Welcomeness.
- Defined:
 - Continuing to do something or to try to do something even though other people want you to stop.
 - Continuing beyond the usual, expected, or normal time; not stopping or going away (Merriam-webster.com).

“OBJECTIVELY OFFENSIVE”



- Reasonable person standard in context.
- “I know it when I see it...”
 - Age and relationships of accuser and accused.
 - Number of persons involved.
 - Frequency.
 - Severity.
 - Physically threatening.
 - Humiliation.
 - Intimidation.
 - Ridicule.
 - Abusive.

SEVERE? PERVASIVE? PERSISTENT? OBJECTIVELY OFFENSIVE?



Student-based examples

- Female student “sexts” pictures of herself to a male classmate.
- Sexually explicit graffiti on a wall.
- E-mailed pictures that are revealing, but not nude.
- “Revenge” pictures.
- Viewing porn on a school computer.

SEVERE? PERVASIVE? PERSISTENT? OBJECTIVELY OFFENSIVE?



Teacher-based examples

- Giving a student a back-rub.
- Require students to read the book “Fifty Shades of Gray” and give an assignment to compare their own intimate experiences against those from the film.
- Female faculty teacher repeatedly referring to male students as “stupid.”
- Telling repeated “dirty” jokes in class.

SEVERE? PERVASIVE? PERSISTENT? OBJECTIVELY OFFENSIVE?



Staff-based examples

- Telling dirty jokes: In common area? Staff meeting? To a single individual?
- Sending porn to a colleague.
- Rolling eyes and making masturbation motion with hand at comments during a staff meeting.
- Repeated staring at a colleague of the opposite sex; accompanied by occasional winking.
- Colleague repeatedly mentions how much they like the way a person is dressed.

QUID PRO QUO SEXUAL HARASSMENT



- **Sample Definition**

- *Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature,*
- *By a person having power or authority over another, when*
- *Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational [or employment] progress, development, or performance.*

RETALIATORY HARASSMENT



- ***Sample Definition***

- *Any adverse employment or educational action taken against a person because of the person's participation in a complaint or investigation of discrimination or sexual misconduct.*
- Also includes retaliation against a reporting party by the responding party or responding party's friends.
- Also can include retaliation directed toward a third party because of that party's participation in a grievance process or for supporting a grievant.

BULLYING AND CYBERBULLYING

- Bullying is:
 - Repeated and/or severe
 - Aggressive behavior
 - Likely to intimidate or intentionally hurt, control, or diminish another person, physically, or mentally,
 - That is not speech or conduct otherwise protected by the First Amendment.
- It often:
 - Includes repetitive comments about race, color, national origin, sex, sexual orientation, or disability.
 - Involves an imbalance of power, aggression, and a negative repeated behavior.

BULLYING AND CYBERBULLYING CONSIDERATIONS



- Policy development.
 - Student Handbook/Code of Conduct.
 - Employee manuals/CBAs.
 - Teacher Handbooks.
 - State
- Distribution and dissemination of policy information.
- Early intervention (using your BIT, TAT, etc.).
- Training of faculty, staff, and students.
- Cyberbullying is widespread and is often among the most serious and impactful for students and employees.
 - Pervasive and Persistent

NAVIGATING FIRST AMENDMENT PROTECTIONS



“Congress shall make no law...abridging the freedom of speech...”

- An important concern for all public institutions.
- Impacts policy language regarding expression.
 - Pay heed to vagueness and over-breadth concerns.
 - Avoid incorporating “intent” or “purpose” language.
- ED reaffirms First Amendment protections in Proposed Regs.

NAVIGATING FIRST AMENDMENT PROTECTIONS



- Issues to consider:
 - Time, place, and manner.
 - Type of forum (open, limited open, closed)
 - Confluence with academic freedom (faculty/teachers).
 - Unprotected speech.
 - Incitement of disruption and breach of peace.
 - Defamation.
 - True threat.
 - Obscenity.
 - Outside speakers.
 - Hate speech.

TINKER v. DES MOINES INDEP. COM. SCH. DIST. 393 U.S. 503 (1969)

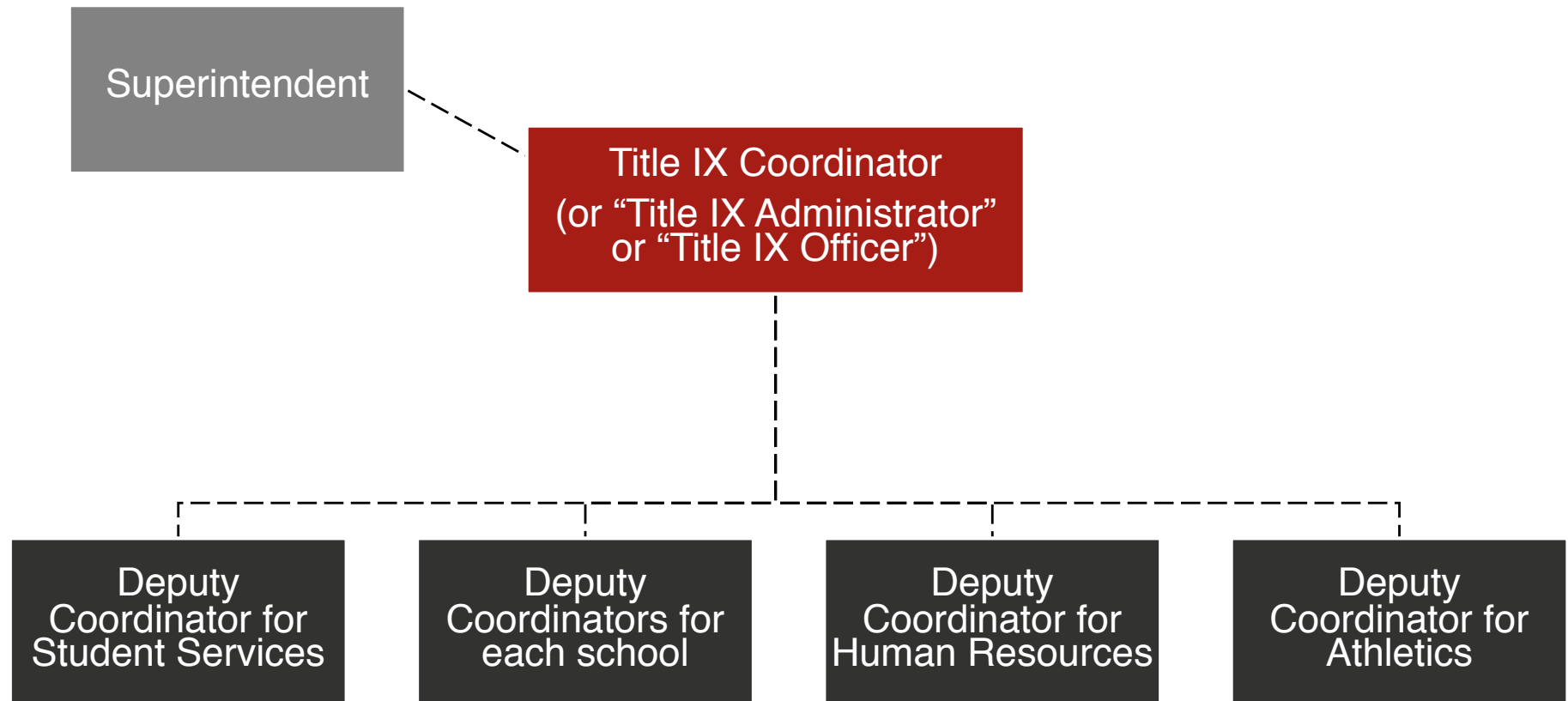


- Free speech rights in public schools
 - Group of students wore black armbands to school in protest of Vietnam war
 - Students suspended after refusing to remove armbands
- Conduct must **“materially and substantially interfere with the requirements of appropriate discipline in the operation of the school”**
 - Actual interference, not based on fear of a potential interference
 - “More than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint”
 - Substantial interference with the school’s work
 - Intrusion upon the rights of other students

ROLES AND RESPONSIBILITIES OF THE TITLE IX TEAM

- Title IX Coordinator
- School-based v. District-based Team Members
- Notice, Reporting, Responsible Employees

SAMPLE TITLE IX TEAM STRUCTURE



TITLE IX COORDINATOR

Title IX Coordinator role

- Description
- Roles



THE TITLE IX COORDINATOR



- Title IX coordinator is an administrator with significant authority and wide-ranging responsibilities.
 - Should have autonomy and independence
 - Should report to Superintendent
 - Must be able to effect change across many departments
- To alleviate the burden on one administrator, Districts and schools may identify multiple deputy coordinators – typically one per school.

THE ROLE OF THE TITLE IX COORDINATOR



- District-wide oversight and assurance of compliance.
- Prevention and remediation of all sex/gender-based discrimination and harassment.
- Contact for government inquiries.
- Point person for reports.
- Creator and implementer of appropriate policies.
- Training oversight: teachers, staff, students, investigators, decision-makers, appellate officers and parents/guardians.

THE ROLE OF THE TITLE IX COORDINATOR



- Oversight and coordination of prompt and equitable grievance procedures (teacher, student, and staff).
- Oversight of investigation and investigators.
- Assurance of compliance with final sanctions.
- Recordkeeping
- Athletics gender equity.

SCHOOL/DISTRICT TEAM



- In coordination with the Title IX Coordinator, school-based administrators, supervisors, and other deputy coordinators may also:
 - Be identified in publications and policies as individuals to whom a report may be made.
 - The Title IX coordinator must create a structure of documentation and reporting by these designated individuals to ensure that the Title IX coordinator is aware of the issue
 - Lead the Title IX-based response protocol.
 - Serve as an investigator.

SMALL GROUP DISCUSSION



- What is the Title IX structure in place within your District?
- What are the three biggest challenges or opportunities you have regarding your role supporting Title IX work (coordinator, investigator, decision-makers, etc.)?

NOTICE, REPORTING, & RESPONSIBLE EMPLOYEES

- Actual and constructive notice
- “Responsible employee”
- Additional reporting requirements
- When do you investigate?

Actual Notice

- Individual files a Title IX grievance.
- Individual notifies the Title IX coordinator or other responsible employee.
- Individual complains to school police or security official.
- Staff member witnesses harassment.

Constructive Notice

- Broader standard
- Knew or should have known

RESPONSIBLE EMPLOYEE



- A **Responsible Employee** includes any employee who:
 - Has the authority to take action to redress the harassment; or
 - Has the duty to report harassment or other types of misconduct to appropriate officials; or
 - Someone a student could reasonably believe has this authority or responsibility;



Schools/districts must ensure that employees are trained regarding their obligation to report harassment to appropriate administrators.

ADDITIONAL REPORTING REQUIREMENTS



- Supervisors and Managers (per Title VII)
 - Mandated to report harassment or other misconduct of which they are aware.
- Abuse or Suspected Abuse of Minors
 - All employees are required to report abuse or suspected abuse of minors consistent with the law of the state. This generally includes reporting immediately to law enforcement and to the state's child welfare agency.
- Additional state reporting requirements

ATIXA'S RECOMMENDED APPROACH



- All employees report
 - Enables school/district to best support those who have experienced harassment or discrimination
 - Better enables tracking patterns
 - Gets information to those trained to handle it

WHY REPORT?



- Focus is often on the legal obligations and the negative consequences of not reporting.
- More effective if we focus on the real reason reports should be made: Providing support and resources.
 - Provide reporting parties with school-wide assistance through a single individual (TIXC or Deputy).
 - Access to the full range of support and resources
 - Long-range view: ATIXA has seen countless cases where reporting parties do not see the negative effects until months later when they are failing their classes, become ill, suicidal etc.
- Also key to tracking patterns.

TRAINING RESPONSIBLE EMPLOYEES



- Responsible Employee Training should include, at a minimum, the following:
 - Background, overview, and purposes of Title IX
 - Scope of Title IX: Applies to students, faculty, staff, visitors, guests, etc.
 - Responsible Employee definition
 - Actual Notice/Knowledge
 - Privilege, Confidentiality, & Privacy
 - Jurisdiction: Geographical, Time, programs, etc.
 - How and When to Report
 - What to report (**everything**)

WHEN DO YOU INVESTIGATE?

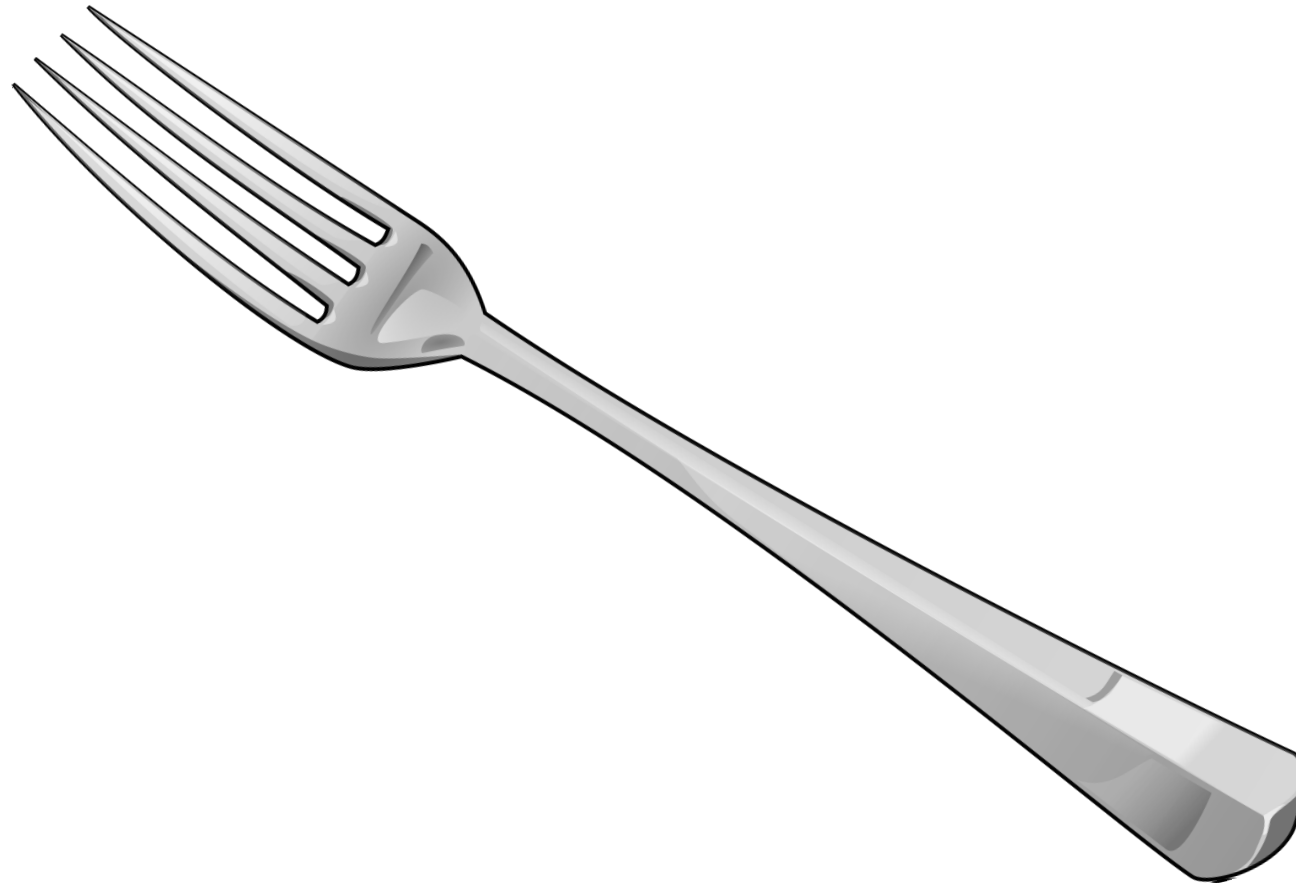


- When you have notice!
- Per proposed Title IX regulations
 - Upon receipt of a formal, written, signed complaint.
 - When the Coordinator deems an investigation is warranted.
- Rumors, gossip, social media, etc. can be notice.
 - Investigating on these bases is discretionary (but often recommended), particularly in light of the proposed regs.
- Once actual notice exists, the duty to investigate is absolute.
 - Small “i” preliminary inquiry.
 - Big “I” comprehensive investigation.

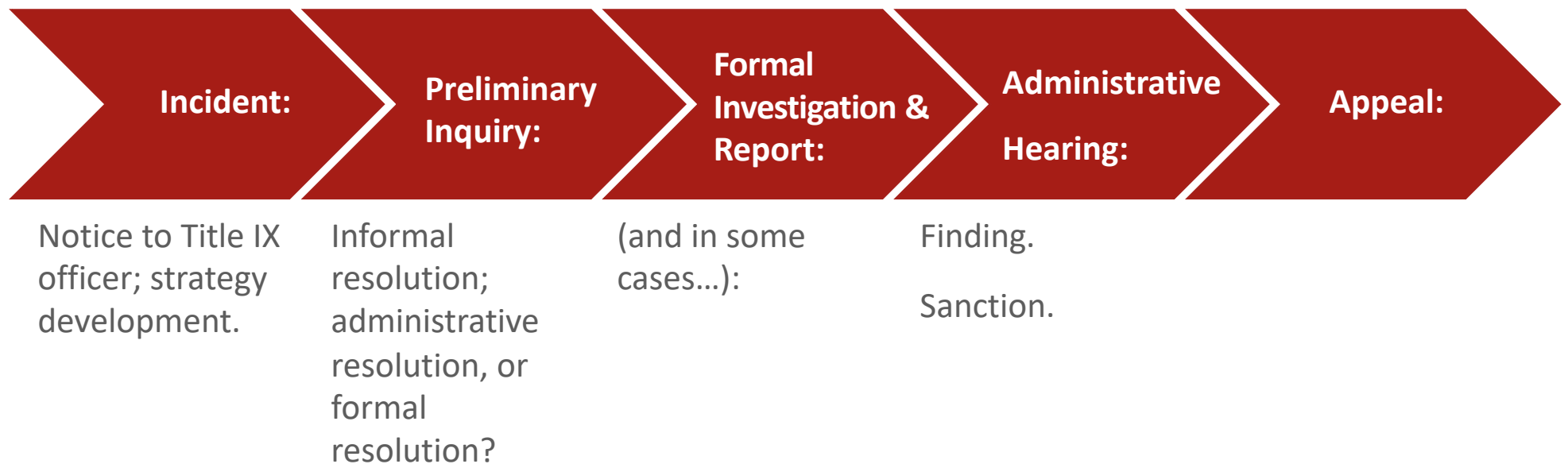
CIVIL RIGHTS INVESTIGATION AND RESOLUTION MODEL: AN OVERVIEW

- Civil Rights Investigation Model
- The Process
- Ten Steps

THE PROCESS



THE PROCESS



INFORMAL RESOLUTION POSSIBILITIES



- Age-appropriate education, facilitated dialogue, and discussion
- Conflict coaching
- Restorative practices methods:
 - Circles
 - Conferences
 - Hearings
- Mediation
- Consider
 - Are policy changes required?
 - Are you providing sufficient staffing and training resources?
- Must still stop, prevent, remedy, and document response

TEN STEPS OF A FORMAL RESOLUTION



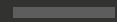
1. Allegation or notice
2. Preliminary inquiry
3. Gatekeeping decision to proceed or not proceed
4. Notice of investigation and/or allegation (NOIA)
5. Strategize investigation (throughout)
6. Formal comprehensive investigation
7. Witness interviews
8. Evidence gathering
9. Analysis
10. Determination

CIVIL RIGHTS INVESTIGATION MODEL



- A civil rights investigation model is different from other student conduct work.
- An active gathering of information by the investigator(s)
 - Not intended to “build a case.”
- Does not impact the implementation of informal or alternative dispute resolution approaches.
- Characterized by an intentional effort to provide equitable procedural and support mechanisms.

PRELIMINARY INQUIRY



Preliminary Inquiry

Gatekeeping

Interim Actions

PRELIMINARY INQUIRY



- This is an initial inquiry to determine if a comprehensive investigation is desired, appropriate, or necessary.
- Checking background, obvious patterns, indicia of predatory, violent, or threatening behavior.
- How much involvement does the Reporting Party want?
- Can this be resolved informally or without discipline?
- Determine if there is reasonable cause to move the process forward, and what allegations the Responding Party should be noticed on.

PRELIMINARY INQUIRY (CONT.)



- Establish a preliminary timeline for the investigation.
- Investigate all allegations to determine:
 - The extent of the harassment.
 - The acuity of the threat it may represent to students or employees.
 - What might be necessary to put an end to any behaviors that are harassing.
- Be able to show that a comprehensive civil rights investigation was completed and documented.
- Responding to anonymous reports:
 - Determine if a trend or pattern may be apparent.
 - You may have a duty to attempt some form of remedial response.



- As investigation unfolds, TIX Coordinator/investigators should determine if there is *reasonable cause* to believe that policy has been violated.
- If threshold is reached, a notice of allegation should be issued.
 - Coordinator must make sure parties have an advisor if desired.
 - Have a clear policy on advisor options and rights. This should be communicated to the parties.
- If investigation does not produce sufficient evidence of reasonable cause, the investigation should end prior to the issuance of the notice of allegation.
 - Still may need to provide interim and supportive measures to reporting party.

WHAT IS THE GATEKEEPING FUNCTION AND WHY IS IT ESSENTIAL?



- It is inappropriate and unfair for a Responding Party to be dragged through a process without substantiating evidence.
- Significant reputational harm can result from mere allegations of sexual harassment, etc.
- An allegation must be supported by *reasonable cause* to permit its **full** pursuit.
- This protects the integrity of the process.

NOTICE OF INVESTIGATION/ALLEGATION



- Prepare and deliver the notice of investigation and allegation (NOIA) on the basis of the initial inquiry.
 - It should provide the details of the allegation(s), applicable policies, applicable procedures, etc.
 - The NOIA is communicated verbally and in writing to all parties.
 - Notice should be given in advance with sufficient time “to meaningfully prepare.”
 - The proposed regulations would limit interviews prior to NOIA.

INTERIM AND SUPPORTIVE MEASURES



- Throughout process:
 - **Investigate.**
 - **Stop** behavior.
 - **Prevent** re-occurrence:
 - Consider what education/training may need to be implemented, changed, etc. to assist the community as well as the parties.

NOTE: Remember to provide support and resources to Reporting and Responding Parties throughout the process.

COMMON INTERIM ACTIONS

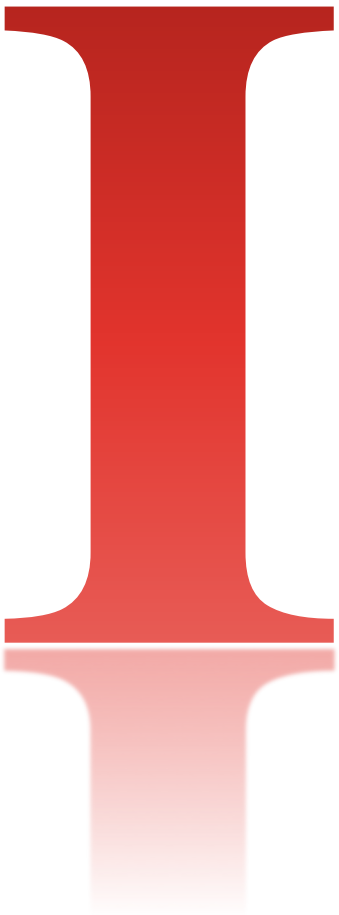


- No-contact orders.
- Minimizing interaction between reporting party and responding party (e.g.: shifting classes, work, etc.).
- Relocating to a different classroom, work space, course group, etc.
- Providing counseling services.
- Referring for medical services.
- Providing academic support services, such as tutoring.
- Extending assignment deadline
- Arranging for the reporting and/or responding party to re-take a class/withdraw from a class without penalty.
- Reviewing any disciplinary actions taken with respect to reporting party to assure they are non-retaliatory.
- Holding school-wide training and education initiatives.
- Interim suspension – in or out of school.
- Alternative placement.
- Change supervisor (employees).

- Reporting and Responding parties should be permitted to have an advisor of their choice.
 - At all meetings/interviews
 - School-based advisors
 - Outside advisors
 - Parents/Guardians
 - Attorneys
 - Union reps
 - Role of advisors – should be equal
 - Limits of participation, if any?
 - Communication between advisor and advisee

FORMAL COMPREHENSIVE INVESTIGATION



- 
- A large, stylized red letter 'I' is positioned on the left side of the slide, serving as a decorative element. It has a thick, solid red top bar and a lighter red, gradient-filled bottom bar.
- Commence a thorough, reliable, impartial, prompt, and fair investigation.
 - Determine the strategy for the investigation.
 - Witness interviews.
 - Evidence gathering.
 - Intended timeframe to complete the investigation.
 - Finding.
 - Presentation of finding.
 - Complete the investigation promptly, without unreasonable deviation from the timeline.

TITLE IX COORDINATOR'S INVESTIGATION OVERSIGHT



- The Title IX Coordinator is responsible for:
 - The appointment of investigators.
 - Training investigators, decision-makers, and appeals decision-makers.
 - Supervision of investigators and investigations.
 - Strategizing investigations.
 - Assurance of initial actions.
 - Timeline compliance.
 - Communication and coordination of investigation teams.
 - Providing institutional memory to investigators.
 - Retaining a record of all activities.

- 5 days to resolution is a good guideline for non-complex student cases.
 - Timeline starts from **notice of the incident**, not from the incident itself.
 - No set requirement, other than to have prompt, designated timeframes in your procedures.
 - Goal is to avoid undue delay.
 - What about police, safety/security, or SRO involvement?
 - What about school vacations/breaks?

- Ensure that all steps in the investigation are conducted according to the timelines in the institution's procedures.
 - Procedures should provide some flexibility to timeframes
- Document and communicate unavoidable delays.
- Provide notice of extensions.
- Ensure communication is equitable.

CONFIDENTIALITY



- Recognizing the difference:
 - **Privacy**
 - School's obligation – not parties' obligation
 - **Confidentiality**
 - Confidential resources
 - Limited confidential reporting
 - Consider circumstances of report
- FERPA considerations
- Issue of parties tendency to discuss...
 - Gag orders – disfavored (ATIXA, courts, proposed regs)

CASE STUDY



SANCTIONS

A large, stylized 'X' graphic composed of several overlapping triangles in various shades of gray, creating a geometric pattern that fills the right half of the slide.

-
- Sanctioning considerations
 - Common sanctions

SANCTIONING IN TITLE IX CASES



- Title IX and case law require:
 - STOP -- Bring an end to the discriminatory conduct.
 - PREVENT -- Take steps reasonably calculated to prevent the future reoccurrence of the discriminatory conduct.
 - REMEDY -- Restore the reporting party as best you can to their pre-deprivation status.
- May clash with solely educational and developmental sanctions of student conduct processes.
- Primary purpose for sanctions related to serious sexual misconduct: stop, prevent, and remedy the misconduct.
 - Developmental goals are not main purpose.

SANCTIONING CONSIDERATIONS



The sanction must be reasonable and proportionate to the severity of the behavior.

- May consider prior misconduct
- The role of precedent – importance of consistency
- Use caution when considering attitude, aggravation, mitigation, contrition, etc.
- Should be educational, but safety is primary consideration
- Remedy for loss or injury to school or persons
- Compliant with laws and regulations (e.g.: Title IX)
- Should consider the impact of education access on the parties

COMMON STUDENT SANCTIONS



- Warning
- Probation
- Loss of privileges
- Counseling
- No contact
- Limited access to school activities
- Service hours
- Online education
- Parental notification
- Alcohol and drug assessment, and counseling
- Discretionary sanctions
- Alternative Placement
- In-School-Suspension (ISS)
- Out-of-School Suspension (OSS)
- Expulsion

COMMON EMPLOYEE SANCTIONS

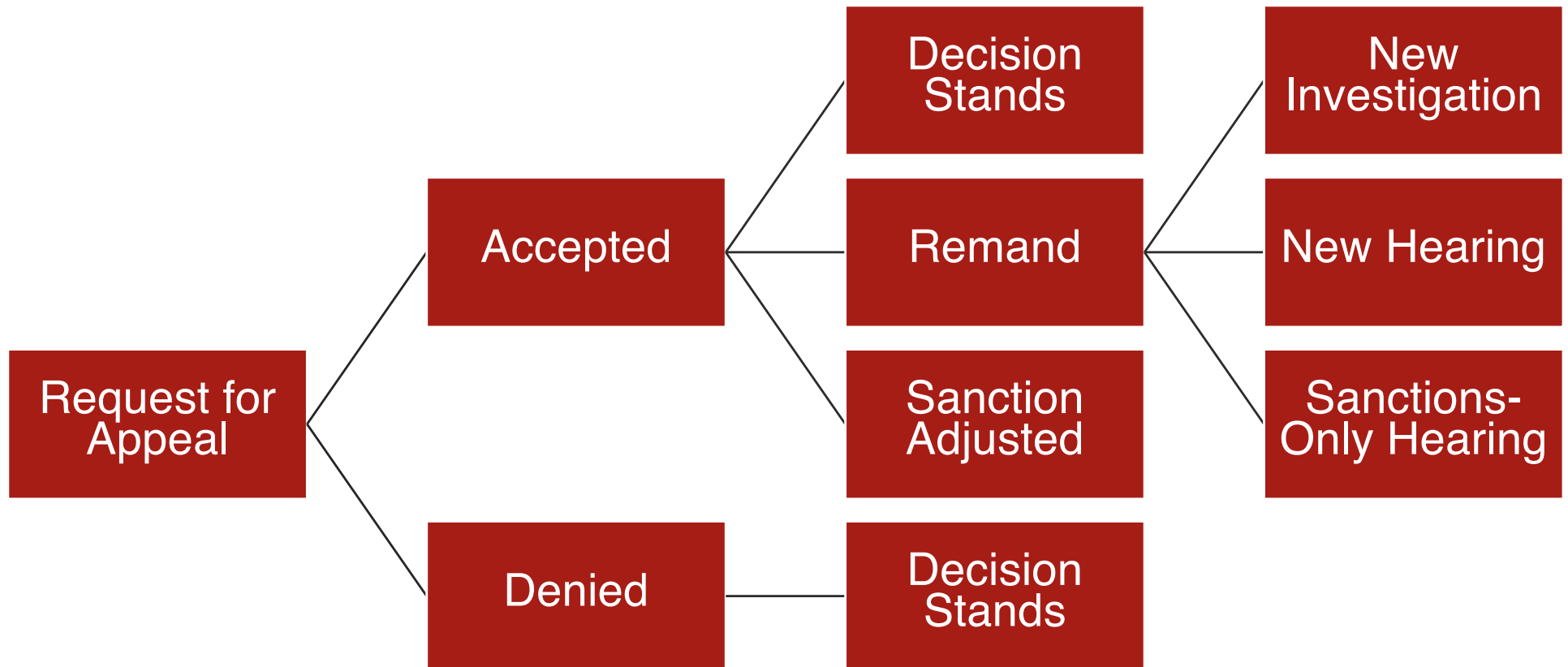


- Warning – verbal; written.
- Probation.
- Performance improvement/management process.
- Training
- Counseling.
- Loss of privileges.
- Reduction in pay.
- Loss of annual raise.
- Discretionary sanctions.
- Loss of supervisory or oversight responsibilities.
- Paid or unpaid leave.
- Suspension.
- Termination.

APPEALS PROCESS

- Process
- Key Elements
- Grounds for Appeal
- Considerations Post-Finding
- Sharing Outcome

THE APPEALS PROCESS



APPEALS: KEY ELEMENTS



- Typically one level of appeal.
 - This may be otherwise governed by District/State mandates
- Limited grounds for appeal (see next slide).
- Deference to original hearing authority.
- Short window to request an appeal.
 - Can always grant an extension if necessary.
- Document-based review.
 - NOT *de novo*.
- Request for an appeal.

APPEALS: GROUNDS FOR APPEAL



- A procedural error or omission occurred that significantly impacted the outcome of the hearing.
 - E.g.: Insufficient evidence to warrant the finding, substantiated bias, material deviation from established procedures, etc.
- To consider new evidence, unknown or unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction.
 - A summary of this new evidence and its potential impact must be included.
- The sanctions imposed are substantially disproportionate to the severity of the violation (or the sanctions fall outside the range of sanctions the school/district has designated for this offense).

CONSIDERATIONS AFTER A CASE



- Ensure remedies are not clearly unreasonable in light of the known circumstances.
- Avoid undue delays.
- Take immediate steps to protect reporting parties even before the final outcome of investigation (e.g. no contact orders, etc.).
- Ensure that long-term actions/remedies are equitable.
- Consider restorative justice as part of remedial process if appropriate.
- Monitor for retaliation; respond immediately to allegations.
- Regularly review policies, procedures, and practices to ensure they are in accordance with best practices, industry standards, and state and federal law.

SHARING OF OUTCOMES



- Title IX requires institutions to apprise parties of the status of investigations **and determinations**.
 - FERPA clash??
 - Provide this information in writing
 - This is a shift in the field, but it is here to stay
 - Not truly possible to stop, prevent and remedy without informing BOTH parties of the finding.

RECORD-KEEPING AND DOCUMENTATION

RECORD-KEEPING AND DOCUMENTATION



- Documentation of all steps throughout the process is essential. Includes, but is not limited to, the following:
 - Notices
 - Interim and support measures
 - Interview transcripts
 - Investigation report and evidence gathered
 - Outcome
 - Sanctions/Remedies
 - Implementation of sanctions/remedies
- Title IX Coordinator should be the final repository for all case documents
- Know your institution's record retention policies/practices
- Case management system to track cases, actions taken, & patterns

WORKING WITH PARENTS/GUARDIANS

ISSUES TO CONSIDER WHEN WORKING WITH PARENTS/GUARDIANS



- Transparency and Clarity Regarding Policy and Process
- Parental Notification
- Engaging Parents/Guardians After Receiving a Report
- Setting and Managing Expectations
- Parent/Guardian Participation in the Process
- FERPA Rights/Access to Records
- Difficult Parent Issues
- Ongoing Engagement
- Role of the Title IX Coordinator

TRANSPARENCY AND CLARITY REGARDING POLICY AND PROCESS



- Engage parents early; Don't wait for an incident to happen
- Helps parents to know what to expect if/when an incident occurs
- Shows district/school commitment to Title IX
- Helps to invite parents to be allies in the process

TRANSPARENCY AND CLARITY REGARDING POLICY AND PROCESS



What?

- Overview of Title IX and what is covered
- District/school policy and procedures
- Title IX Coordinator/Deputy Coordinator(s) information
 - Name, Location, Phone, and Email
- Other reporting options (within district, state and federal)
- Interim and supportive measures
- Investigation/disciplinary processes
- In-school and community resources
- Rights of the parties
- Privacy and confidentiality

TRANSPARENCY AND CLARITY REGARDING POLICY AND PROCESS



How?

- Plain language
- Avoid “legalese”
- Accessible to non-English speakers
 - Offering translation services – may be required by state laws
- Use descriptive language in addition to “Title IX”
 - E.g., discrimination, bullying, harassment
- Clear information portal
- Online and printed materials
 - E.g., online training module, resource sheets, etc.
- Widely disseminated

TRANSPARENCY AND CLARITY REGARDING POLICY AND PROCESS



When?

- Upon student enrollment
- Beginning of each school year
- Orientation sessions/back to school nights
- Available online throughout school year
- In conjunction with “key” notices
 - E.g., with report card, standardized test results, etc.
- Parent volunteer training/orientation
- PTA meetings
- Other

NOTIFYING PARENTS/GUARDIANS OF A REPORTED INCIDENT



- When do you call parents/guardians?
 - Not required under Title IX
 - State law
 - District policy
 - School-specific policy
 - Practice/custom
- No uniform standard
 - Trend to notify parents/guardians early in the process, and especially for younger students
- Pros & cons of standardized notification

NOTIFYING PARENTS/GUARDIANS OF A REPORTED INCIDENT



- Other considerations
 - Concurrent/potential criminal investigation
 - Abuse in household
 - Privacy considerations (E.g., transgender students)
 - Severity of incident
 - Wishes of student
 - Potential disciplinary consequences for responding party
- What about witnesses?
 - Not entitled to an “advisor” like the parties
 - Some of the other considerations above may be applicable

ENGAGING PARENTS/GUARDIANS AFTER A RECEIVING A REPORT



- Review policies, procedures, and key staff who will be involved in resolving report
- Investigation/interview/resolution process including appeal process (if applicable)
- Review effects of any interim measures
- Amnesty/Immunity policy (if applicable)
- Rights and responsibilities of all parties
- Privacy and confidentiality
- Resources at school and in community
- Consider written information sheet tailored to reporting and responding party parents/guardians

SETTING AND MANAGING EXPECTATIONS



- Emphasize obligation to stop, prevent, and remedy
- Discuss the role parents/guardians may play in the process
- Parents/guardians do not have right to demand a particular remedy
- Discuss behavioral expectations
 - Don't be disruptive
 - Can't impede process
 - Can't speak on behalf of their child; adjust according to age of student
- Other

PARENT/GUARDIAN PARTICIPATION



- Possible formal role as “advisor”
- Attend interviews/meetings/hearings
 - Recognize any potential impact on student (e.g. willingness to participate; fear of being forthcoming, etc.)
 - Consider if parent/guardian is a “witness” to events
- Review interview notes, report, evidence, and submit questions
- Participation in any informal resolution process
 - Parent/Guardian approval needed?
- State law versus district/school policy

PARENT/GUARDIAN PARTICIPATION



- Special considerations
 - Age-appropriateness
 - Role in special education processes
 - IEP development and revision
 - Manifestation determination process
 - Due process hearing requests
 - FERPA considerations (more on next slide)

FERPA RIGHTS/ACCESS TO RECORDS



- Right to “inspect and review” education records of their child
- What if education records contain information about other students (e.g. surveillance footage, witness statements, etc.)?
 - Only view the specific information directly related to their child unless the information about the other students cannot be segregated/redacted without destroying its meaning
- When possible, ED recommends obtaining consent of parents/guardians of other student(s) whose information will be disclosed

NAVIGATING DIFFICULT PARENT ISSUES



- Circumvention or undercutting
- Parent as the alleged harasser
- Retaliation
- “Well-connected” parent
- Social media activity

ONGOING ENGAGEMENT WITH PARENTS/GUARDIANS



- Prevention and awareness
- Partner regarding appropriate behavior and physical contact
- Encourage reporting
- Enable various reporting methods

ROLE OF TITLE IX COORDINATOR



- Point person for questions/concerns
- Check-in with parents throughout the process
- Help resolve difficult parent issues
- Send/facilitate sending of notices
- Ensure parent/guardian training
- Facilitate partnerships with parent/guardian groups
- Documentation

WORKING WITH LAW ENFORCEMENT

- Role of Law Enforcement
- Evidence Collection and Concurrent Criminal Action

ROLE OF LAW ENFORCEMENT IN CIVIL RIGHTS INVESTIGATIONS?



- Can law enforcement be the Title IX investigatory arm?
 - Should it be? (not a best practice)
 - Legal standards for criminal investigations are different.
 - Police investigations or reports may not be determinative of whether harassment occurred under Title IX and **do not relieve the school of its duty** to respond promptly and effectively.
 - What about School Resource Officers?
- Establish MOUs with local law enforcement and update annually.
 - The power of the tabletop exercise.

EVIDENCE COLLECTION AND ISSUES OF CONCURRENT CRIMINAL/CIVIL ACTION



- Active accumulation of evidence.
- What if law enforcement requests you delay your process?
- What if law enforcement is the sole source of evidence collection?
 - And they won't release the evidence to you?
- What if there is a pending criminal or civil case?
- What if the responding party threatens to call a lawyer or files a lawsuit?
- What if the reporting party files a lawsuit or complaint with OCR?

PROPOSED AMENDMENTS TO TITLE IX REGULATIONS

OBAMA OCR: (OVER?) ZEALOUS ENFORCEMENT AND EQUITY IMBALANCE



- Dramatically ramped up enforcement; became feared
- Provided extensive sub-regulatory guidance
- Made investigations and outcomes public
- Had a pro-reporting party imbalance to their approach
- Field shifted from an imbalance toward the responding party to an imbalance toward the reporting party
- Resulted in widespread abrogation of due process rights for responding parties

DUE PROCESS OVERVIEW

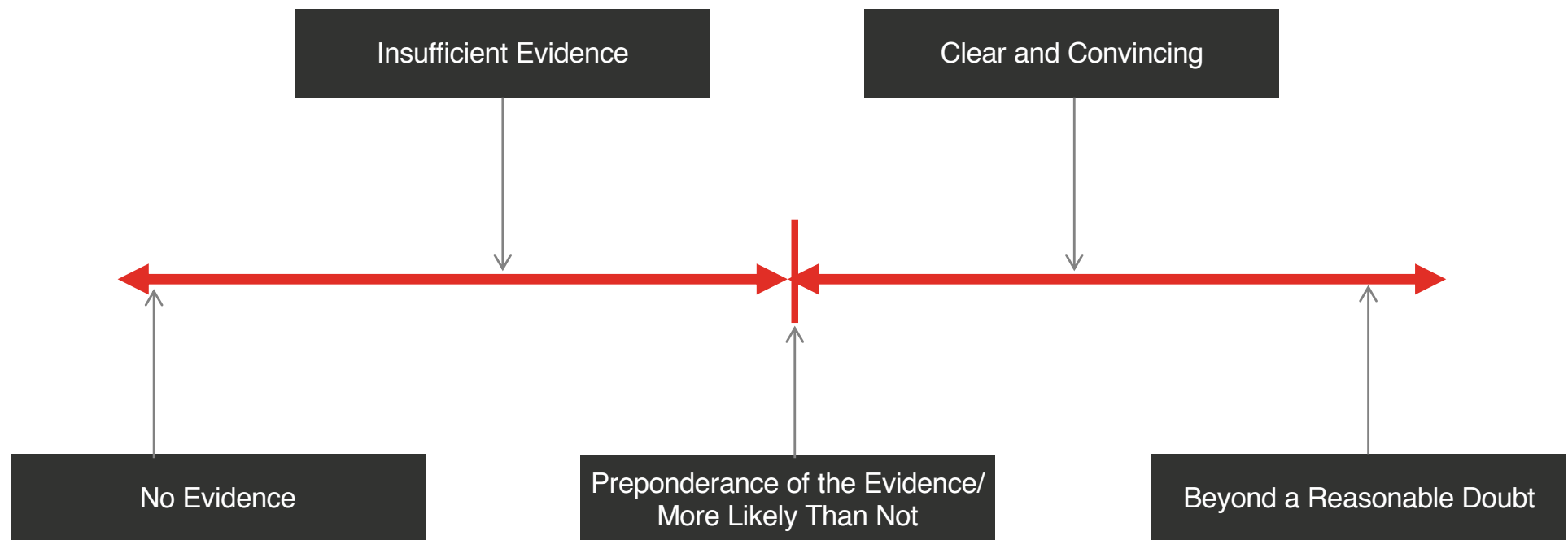


- Proposed regulations place heavy emphasis on due process protections for the responding party
- New standard of evidence mandates
- Notice at various investigation stages
- Collection and production of evidence for review
- Mandate for determination and sanction process
- Live hearings with cross-examination (optional for K-12)
- New emphasis on advisors in process

UNDERSTANDING EVIDENCE THRESHOLDS



EVIDENTIARY STANDARDS



WRITTEN, DETAILED NOTICE



- Proposed regulations require several written, detailed notices to the parties
 - Any reasonable delay for good cause
 - Upon receipt of a formal complaint
 - Sufficient details – identity of parties, alleged violations, date, location
 - Sufficient time to prepare a response
 - Informal process requirements, if applicable
 - All hearings, interviews, and meetings requiring attendance with sufficient time to prepare
 - Upon determination of responsibility, including sanctions
- Notice requirements may affect existing investigation practices and timeframes

SUPPORTIVE MEASURES



- Non-disciplinary, non-punitive individualized services
- Must not unreasonably burden other parties
- Proposed regulations address mutual restrictions, neglect unilateral or individualized restrictions
- Appears to anticipate, but also prohibit, that one party will sometimes be restricted more than the other
- May chill reporting if automatic mutual restrictions limit access to education program

- Advisor can be anyone – no restrictions in proposed regulations.
- If a party does not have an advisor, the school must provide one.
- Advisor must be “aligned with the party.”
 - “Defense” and “prosecution” advisors?
- No prior training required, no mandate for school to train
- Mandate for cross-examination in hearings is for higher education only. K-12 may allow for advisors to conduct indirect cross-examination through decision-maker.

ADDITIONAL REQUIREMENTS IN THE PROPOSED REGS.



- Prior to making a finding, the parties must be provided full and equal access to **all** evidence to be considered
- No restriction on parties discussing case with others
- Inequitable treatment of reporting/responding parties may constitute discrimination
- Must allow an advisor to be present at all meetings, interviews, hearings
 - If the student does not have an advisor, the school must provide one

PROVIDING COPIES OF INVESTIGATION REPORT FOR REVIEW AND COMMENT



- Proposed regulations mandate creation of an investigation report
- Must fairly summarize all relevant evidence
- Provided to parties at least 10 days before hearing or other determination
- Parties may review and submit written responses to report

EFFECTIVE TRAINING & PREVENTION

TRAINING POPULATIONS WITHIN YOUR DISTRICT



- Title IX Administrators (District Title IX staff,, Principals/Vice Principals, etc.)
- Decision-Makers & Appellate Decision-Makers
- Student Services
- Human Resources
- Senior Administration (State and District levels)
- Students
- Parents/Guardians
- Employees
- Public Safety/SROs
- Volunteers

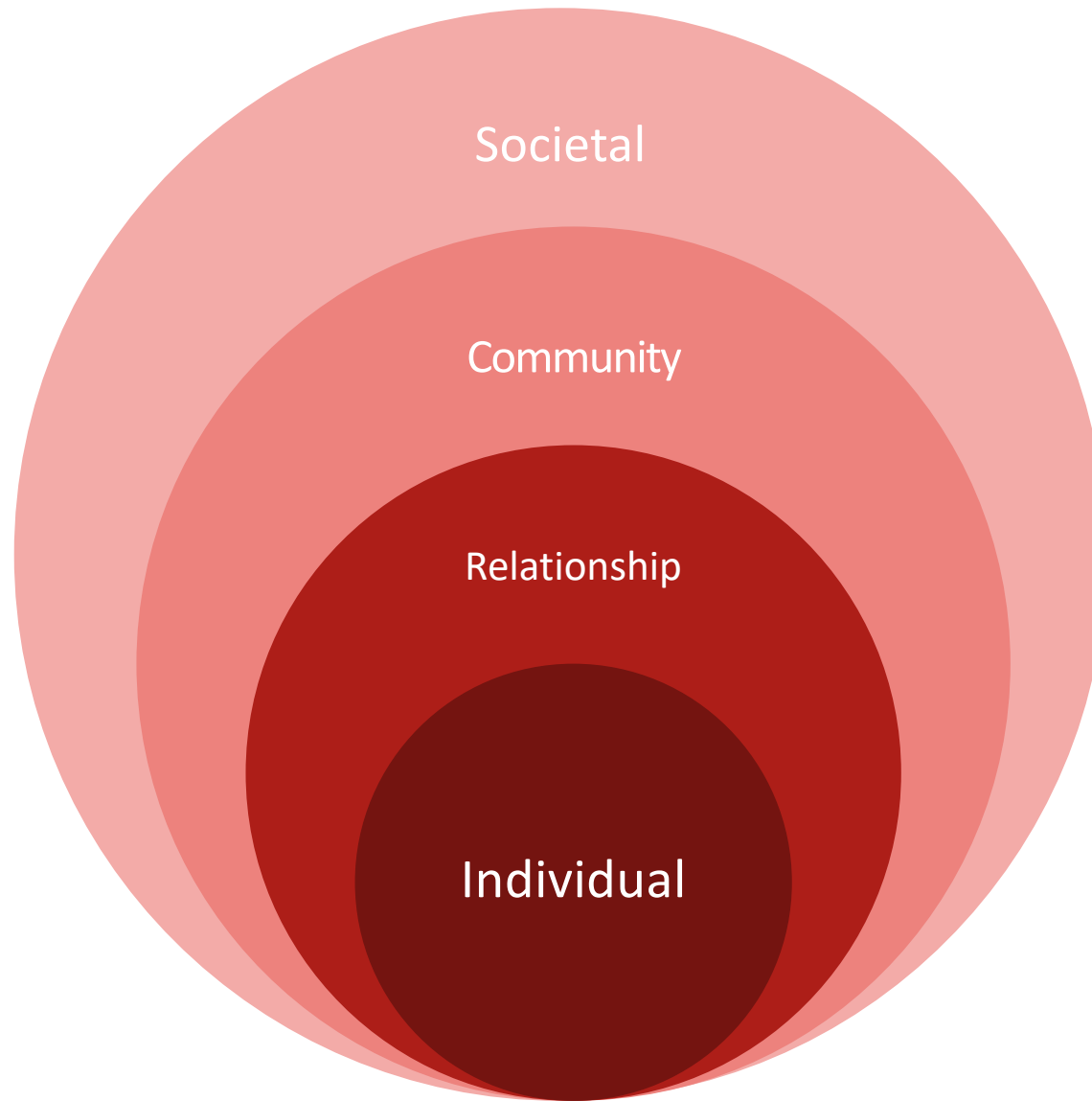
PREVENTION TRAINING: THE SEVEN Cs

- Cogent
- Community-wide
- Collaborative
- Consistent
- Compliant
- Comprehensive
- Centrally-planned

Note: The Seven C's are copyrighted to The NCHERM Group, LLC.

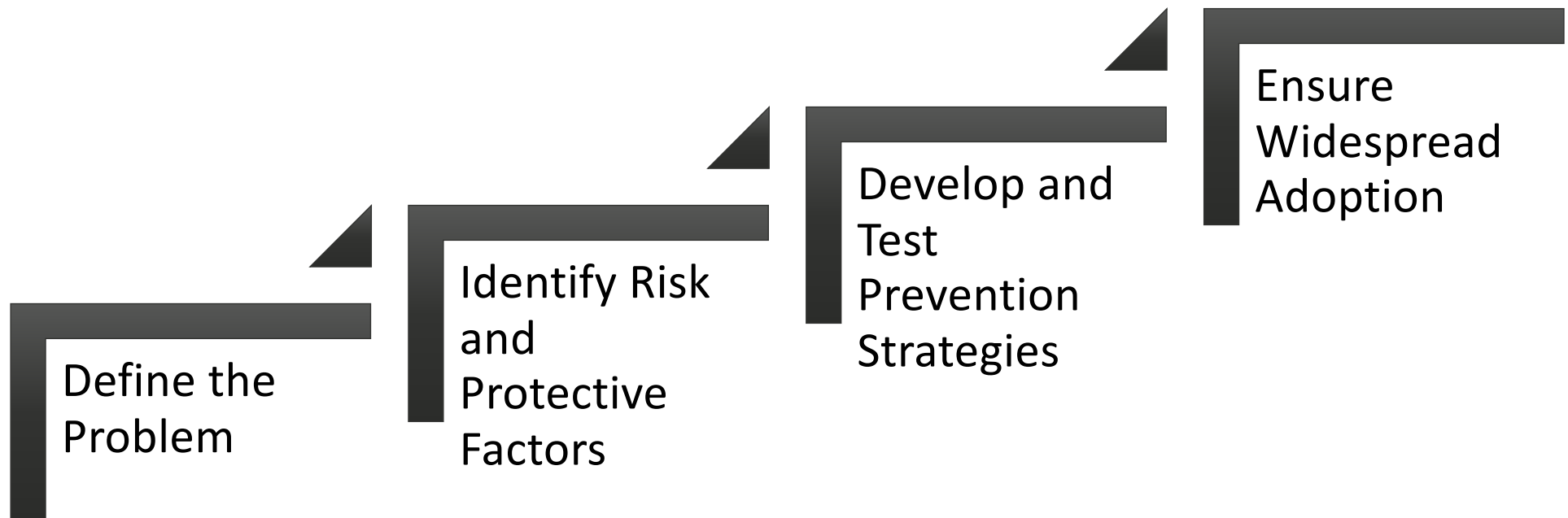
7C's

PREVENTION: SOCIAL-ECOLOGICAL MODEL



[See: www.cdc.gov/ViolencePrevention/overview/social-ecologicalmodel.html](http://www.cdc.gov/ViolencePrevention/overview/social-ecologicalmodel.html)

PREVENTION: PUBLIC HEALTH APPROACH



See: www.cdc.gov/ViolencePrevention/overview/publichealthapproach.html

PREVENTING AND ADDRESSING BIAS

**Title IX administrators (including
investigators and decision-makers),
have no “side” other than the
integrity of the process!**

BIAS AND CONFLICT OF INTEREST



- Conflicts of interest create bias for or against
- Types of conflicts:
 - Wearing too many hats in the process
 - Legal counsel as investigator or decision-maker
 - Decision-makers who are not impartial
 - Biased training materials
- Simply knowing a student or an employee is typically not sufficient to create a conflict of interest
- Also, having disciplined a student or employee previously is often not enough to create a conflict of interest

“SEX” v. “GENDER:” GENDER IDENTITY GENDER EXPRESSION

- Transgender Protections Under Title IX?
- Gender Identity/Gender Expression
- OCR View
- Case Law
- State Law

TERMINOLOGY



- **Sex:** References chromosomes, hormones, reproductive organs, and genitalia.
- **Gender:** Refers to the attitudes, feelings, and behaviors that a given culture associates with biological sex.
- **Gender Identity:** Internal sense of gender.
- **Gender Expression:** Outward expression of gender, often through clothing, behavior, posture, mannerisms, speech patterns, and activities.
- **Sexual Orientation:** Attracted to sexually or romantically, on a continuum (e.g. gay, lesbian, bisexual, heterosexual, asexual, and pansexual).

TERMINOLOGY (CONT.)



- **Queer:** An umbrella term referring to LGBTQI individuals, and/or a nonbinary term used to reflect a fluid gender identity than societal gender “norms”
- **Cisgender:** Gender identity is consistent with the sex they were assigned at birth.
- **Transgender:** Umbrella term referring to a wide range of persons whose gender identity or expression may not match the gender assigned at birth.
- **Bisexual:** Attracted to people of the same as well as other genders.

TITLE IX & TRANSGENDER STUDENTS



- Transgender students are disproportionately subjected to harassment and discrimination.
- 2015 national survey:
 - The majority of respondents who were out or perceived as transgender while in school (K–12) experienced some form of mistreatment, including being verbally harassed (54%), physically attacked (24%), and sexually assaulted (13%) because they were transgender. Further, 17% experienced such severe mistreatment that they left a school as a result.
 - U.S. Transgender Survey, National Center for Transgender Equality

PROTECTIONS FOR TRANSGENDER PERSONS/GENDER IDENTITY AND EXPRESSION



- Title IX
- Court decisions (case law)
- OCR's regulatory guidance (rescinded, but still helpful guidance)
 - 2016 Guidance on Transgender Students*.
- State laws

ACCESS TO FACILITIES AND ACTIVITIES



- Where sex-segregated activities and facilities are provided, students should be allowed to both participate and access facilities consistent with their gender identity.
 - Bathrooms
 - Locker rooms
- Provide access to alternative accommodations for any students who desire additional privacy
- Students may participate in activities that correspond with their gender identity
 - Physical education classes
 - Athletic conference eligibility policy
 - Overnight trips
- Make all-gender restrooms available for all students

NAME, IDENTITY, RECORDS



- Accept a student's consistent and sincerely-held gender identity
- Meet with student to discuss supports and preferences
- Legal name v. preferred name
- Use preferred name and pronouns on informal documents
 - ID cards, class rosters, yearbooks
- State law governs changing legal name and sex for official school records and standardized tests
- Parents/guardians have FERPA rights
- Train all staff and volunteers (e.g., substitute teachers)

PRIVACY AND CONFIDENTIALITY



- Information should be kept private
 - Legal identity
 - Transgender status
 - Sex assigned at birth
- All staff should be trained to avoid inadvertent disclosures
- Be transparent regarding records system limitations
- Parents/guardians have access to education records under FERPA
- State law may provide for heightened privacy vis-à-vis parent/guardian information

DUAL ENROLLMENT



DUAL ENROLLMENT STUDENTS



- Best Practice: Effective coordination between the Title IX Coordinator at the college/university AND the Title IX Coordinator at the high school.
 - What remedies are needed in each setting (if any)?
 - Who should investigate?
 - Who has jurisdiction for purposes of discipline (if any, and if applicable)?
 - For minors: mandated state reporting?

STUDENTS ENROLLED IN HIGHER ED COURSES: ISSUES FOR K-12



- Jurisdictional Issues:
 - When is a student a “student?”
 - Upon application to the institution?
 - Once admitted to the institution?
 - Once registered for class(es)?
 - Upon matriculation?
 - Governed by institutional policy.
 - Student must be on notice.
- VAWA/Clery Act considerations.
- FERPA rights belong to the student when attending a postsecondary institution (not the parent/guardian).

TITLE IX & ATHLETICS

- Title IX Requirements
- Oversight of Athletics
- Equal Treatment Regulations



A BRIEF HISTORY OF TITLE IX & ATHLETICS, 1972-PRESENT



- **1975:** Memo to Chief State School Officers: Title IX Obligations in Athletics
- **1979:** Policy Interpretation: Title IX and Intercollegiate Athletics (also covers “interscholastic programs”)
- **1996:** Clarification of Intercollegiate Athletics Policy Guidance: the Three-part Test
- **2003:** Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance
- **2008:** Title IX Athletics Three-Part Test
- **2010:** “Dear Colleague” Letter on Three-part Test.

EQUITY



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OVERSIGHT OF ATHLETICS

GENDER EQUITY: 3-PRONG TEST (1979)



- Effective accommodation of interests and abilities:
 - Part 1:** Opportunities for males and females substantially proportionate to their respective enrollments; OR
 - Part 2:** Where one sex has been underrepresented, a history and continuing practice of program expansion responsive to the developing interests and abilities of that sex; OR
 - Part 3:** Where one sex is underrepresented and cannot show a continuing practice of program expansion, whether it can be demonstrated that the interests and abilities of that sex have been fully and effectively accommodated by that present program.

EQUAL OPPORTUNITY



A recipient which operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the director will consider, among other factors:

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; and
10. Publicity.

PREGNANCY & TITLE IX

“A recipient 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.”

34 C.F.R. 106.40

- June 2007 “Dear Colleague Letter”
- June 2013 DCL on Pregnant and Parenting Students
- Regulatory Language
- Case Discussion

OCR, TITLE IX, AND PREGNANCY



- Academics
 - Coursework Accommodation and Completion
 - Excused Absences
- Extra-curricular Activities
- Athletics
- Employment
 - Hiring
 - Benefits and bonuses
 - Leave and job protection upon return from leave
- Health Insurance Coverage

PREGNANCY & TITLE IX



- June 25, 2013 DCL on pregnancy and parenting students:
 - Educators must ensure pregnant and parenting students are not discriminated against.
 - Educators must ensure that pregnant and parenting students are fully supported in preparation for graduation and careers.
 - Secondary school administrators, teachers, counselors, and parents be well educated on the rights of pregnant and parenting students as provided under Title IX.

PREGNANCY & TITLE IX: TITLE IX REGULATORY LANGUAGE



Pregnancy defined

- “Pregnancy and related conditions:
 1. A recipient 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 such 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 program or activity of the recipient.” 34 C.F.R. 106.40

PREGNANCY & TITLE IX: TITLE IX REGULATORY LANGUAGE



Physician Certification

- “Pregnancy and related conditions (cont.):
 2. A recipient **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 a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.”** 34 C.F.R. 106.40

PREGNANCY & TITLE IX: TITLE IX REGULATORY LANGUAGE



Pregnancy as Temporary Disability

- “Pregnancy and related conditions (cont.):
 3. A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom **in the same manner and under the same policies as any other temporary disability** with respect to any medical or hospital benefit, service, plan, or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.”

34 C.F.R. 106.40

PREGNANCY & TITLE IX: TITLE IX REGULATORY LANGUAGE



Leave Policies

- “Pregnancy and related conditions (cont.):
 4. In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as **a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.”** 34 C.F.R. 106.40

PREGNANCY & TITLE IX: OCR GUIDANCE



- “A school **may require** a pregnant student or student who has given birth **to submit medical certification** for school participation **only if the school also requires such certification from all students with physical or emotional conditions requiring the attention of a physician.**”
- “Thus, for example, a student who has been hospitalized for childbirth must not be required to submit a medical certificate to return to school if a certificate is not required of students who have been hospitalized for other conditions.”

Source: Department of Education (June 2013), Supporting the Academic Success of Pregnant and Parenting Students, p. 6.

PREGNANCY & TITLE IX: OCR GUIDANCE



- **“Schools cannot require a pregnant student to produce a doctor’s note in order to stay in school or participate in activities,** including interscholastic sports, unless the same requirement to obtain a doctor’s note applies to all students being treated by a doctor.”
- “That is, schools cannot treat a pregnant student differently from other students being cared for by a doctor, even when a student is in the later stages of pregnancy; **schools should not presume that a pregnant student is unable to attend school or participate in school activities.**”

Source: Department of Education (June 2013), Supporting the Academic Success of Pregnant and Parenting Students, p. 8.

PREGNANCY & TITLE IX: OCR GUIDANCE



- “When the student returns to school, **she must be reinstated to the status she held when the leave began**, which should include giving her the opportunity to make up any work missed.”
- “A school may offer the student alternatives to making up missed work, such as:
 - Retaking a semester
 - Taking part in an online course credit recovery program, or
 - Allowing the student additional time in a program to continue at the same pace and finish at a later date, especially after longer periods of leave.
- The student should be allowed to choose how to make up the work.”

Source: Department of Education (June 2013), Supporting the Academic Success of Pregnant and Parenting Students, p. 10.

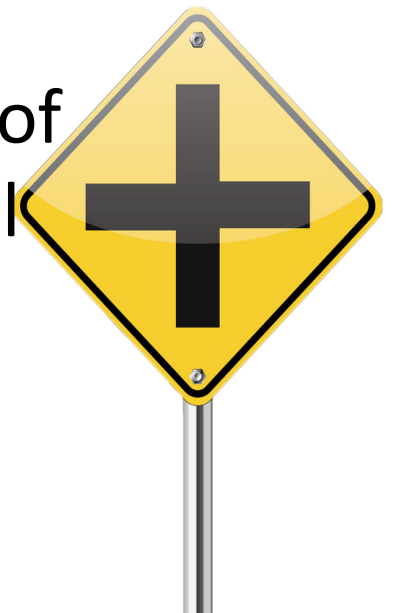
INTERSECTION OF TITLE VII AND TITLE IX



INTERSECTION OF TITLE VII AND TITLE IX



- **Title VII of the Civil Rights Act of 1964:** prohibits discrimination on the basis of race, color, religion, sex, national origin in employment
- **Title IX:** prohibits discrimination on the basis of sex in programs and activities receiving federal financial assistance
 - Applies to students and employees



TITLE IX vs. TITLE VII



Title IX

- Applies to students and employees
- Covers sex
- Covers pregnancy
- Hostile Environment, QpQ, Retaliation
- OCR
- “Prompt”
- More directive as to nature of prompt, fair and equitable

Title VII

- Applies only employees
- Covers sex, race, color, national origin, religion
- Covers pregnancy
- Hostile environment, QpQ, Retaliation
- EEOC
- No timeframe set.
- Fewer equity-based guarantees in a process for victim

INTERSECTION OF TITLE VII AND TITLE IX



- Title IX consciously modeled on Title VI and borrowed heavily from Title VII.
- Courts generally apply standards established under Title VII for guidance in how to establish a Title IX violation.
- Employees can use both Title VII and Title IX to pursue the same violations.



TITLE VII AND TITLE IX IN INVESTIGATIONS



- Consider:
 - Role of institutional equity/AA/EOP officer.
 - Human resources/faculty/teachers.
 - Coordinator of school/campus conduct.
- Oversight of deputy coordinators/investigators.
- Ability to merge/combine investigatory and hearing processes.
- Additional rights afforded to employees under Title IX

CASE STUDIES



CASE STUDY: SEXTING



- You have just learned that police arrested three students at the middle school between the ages of 12 and 15 for creating and distributing pornographic images of themselves online, via text message, and snapchat. The images and videos are of the creators themselves (i.e.: nude selfie pictures and videos).
- The local news media just picked up the story and is clamoring for a comment. Parents have also started calling the school and district offices demanding to know what is being done to protect their children.

CASE STUDY: SEXTING



- The criminal charges are misdemeanors and felonies for child pornography creation and distribution. Police inform the school that they received reports that nude photos of students from the middle school and the high school were shown by the three students to others at the school and were distributed via text and email.
- All the students involved are minors and many of the pictures and videos had the location setting on their phones activated, which means people could have allowed predators to locate the homes of those in the pictures and videos.

CASE STUDY: SEXTING



- Is this a Title IX issue?
- What are the possible violations?
- Who are the reporting and responding party(ies)?
- Who should investigate?
- What interaction do you have with law enforcement?
- How do you handle the media?
- How do you handle the parents?
- What other issues do you see?

CASE STUDY: GROOMING- ELEMENTARY SCHOOL

- Karina, a 4th-grader, tells you that she overheard Ana, talking to a group of students about her teacher who often looks at her while she is doing her work in class. Whenever the teacher checks her work, he gets close to her, praising her for her good work, and he once patted her shoulder. She also noticed that whenever the teacher asks for volunteers to distribute materials, Ana always gets chosen. Karina is worried about her friend because she knows that the staring, and the one touch are not welcomed by Ana.

CASE STUDY: GROOMING- ELEMENTARY SCHOOL

- Is this a Title IX issue?
- What potential policy violation(s)?
- What additional information would you want to know?
- What, if any, support should be provided to Ana?
- Would your response change if the teacher was a female?

CASE STUDY: GROOMING- HIGH SCHOOL



- Ms. Jones is a physical education teacher and coach of the girls' basketball team, Ms. Jones would supervise a 10th grade study hall period. Sue is a 15-year-old student on the girls' basketball team and also in Ms. Jones's study hall. Sue's parents had been divorced for two years, and Sue struggled emotionally since that time.
- One day after basketball practice, Ms. Jones struck up a conversation with Sue during which Ms. Jones was very complimentary of Sue's athletic ability. The conversation lasted several hours and they talked about many topics including Sue's post-high school plans. The conversation eventually led to a discussion of how Sue was coping with her parent's divorce.

CASE STUDY: GROOMING- HIGH SCHOOL



- The following week, Ms. Jones gave Sue permission to leave study hall and go to a nearby coffee house so she could bring back coffee and pastries for Ms. Jones. Over the following months, their after-practice conversations became routine, as did the special permission to leave study hall.
- Ms. Jones and Sue began meeting on the weekends for extra technique and strength training at a local gym. This progressed to regular lunches afterward. Sue told her mother that Ms. Jones believed she could win a basketball scholarship to college but that it would require more intensive, private training. Sue's mother was happy and relieved to see her daughter's self-esteem and mood improving and encouraged her daughter to invite Ms. Jones over for dinner one evening. After meeting Ms. Jones, Sue's mother began to view her as a welcome friend and tutor to her daughter.

CASE STUDY: GROOMING- HIGH SCHOOL



- Ms. Jones next invited Sue to a sports training seminar that was out of town and required an overnight stay. Sue's mother was not at all concerned when she learned that her daughter and Ms. Jones would be sharing a hotel room.
- The following week, Sue came home with a brand new iPhone that Ms. Jones had given her as a gift. This puzzled Sue's mother, who then called Ms. Jones, mostly with concerns that she should offer to repay Ms. Jones for giving her daughter such an expensive gift. Ms. Jones explained that no payment was necessary, as she had obtained the phone at half price through a college female basketball recruiter she knew.
- Ms. Jones and Sue continued to spend increasing amounts of time together outside of school hours. Sue's mother finally became quite concerned when a friend informed her that her daughter had seen Ms. Jones and Sue embracing each other in an empty classroom.

CASE STUDY: GROOMING- ELEMENTARY SCHOOL

- Is this a Title IX issue?
- What potential policy violation(s)?
- What actions should you take to address this issue?
- Are you concerned with Sue's mother's reaction?
- What remedies would you put in place for Sue and the school community?

CASE STUDY: EMPLOYEE ISSUES



- An employee reports to her supervisor that a colleague, Janet, is being physically abused by her partner, Robert, a full-time employee in Facilities Management.
- The employee indicates that Janet seems noticeably withdrawn lately and that Janet recently came to work late, had red puffy eyes and looked as though she had been crying.
- The employee says Janet was walking with a limp last week and, when asked about it, told people she twisted her knee after slipping on some ice in her driveway.
- Later that same day the employee said someone overheard Janet on the phone saying, “But I’m scared of what he would do if I tried to leave him.”

CASE STUDY: EMPLOYEE ISSUES



- According to the employee, Janet missed a few days of work last month and returned to work wearing a sling. Janet claimed that she sprained her shoulder while working in the yard.
- Yesterday Janet showed up over an hour late to work and had some swelling around her eye and her bottom lip. When asked, Janet said she got up to the bathroom last night in the dark and walked right into the edge of her open closet door.
- The employee says that yesterday afternoon, Robert and Janet got into a loud argument in the parking lot and that Janet was crying in the bathroom afterwards.
- Is this a Title IX issue the employer needs to address?

CONTACT INFORMATION

Kim Pacelli, J.D., M.Ed.

kim.pacelli@tngconsulting.com

www.atixa.org