

# Title IX Compliance: What School Districts Need to Know

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## What is Title IX?

- **Title IX** of the Education Amendments Act of 1972 is a federal law that states:

"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 education program or activity receiving Federal financial assistance."
- Title IX prohibits sex-based discrimination in educational programs and activities



## Discrimination

- Discrimination is the act of treating people differently based on a protected characteristic (or stereotypes based on that characteristic)
  - Focus on access to education opportunities, resources, programs;
  - Disparate treatment in the workplace/school;
  - Disparate impact claims (neutral policies that have discriminatory impacts)





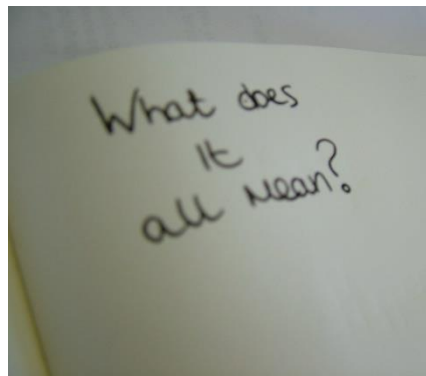
## Title IX – Examples of Discrimination

- Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service
  - *“You can’t do that because you’re a female”*
- Provide different aid, benefits, or services or provide aid, benefits or services in a different manner
- Deny any person any such aid, benefit, or service
  - *“only men can do that”*
- Subject any person to separate or different rules of behavior, sanctions, or other treatment
  - *“women have to...but men don’t”*



## WHAT DOES TITLE IX COVER IN SCHOOLS?

- Discrimination
- Sexual Harassment





# Locker Rooms



## Locker Rooms – Quality

- Locker number, size, and quality relative to team size
- Number, size and quality of shower stalls, restroom facilities, mirrors, chairs, benches.
- Material, paint
- Team rooms- size and amenities, including entertainment





## Locker Rooms – Availability

- Are the lockers available to boys' team all year long but only during the competitive season for girls?
- Compare the locker room proximity for both fields. Are the girls' lockers further away from the field? Are the travel burdens greater on the girls?
- Do the teams have exclusive or shared use of the lockers? Can they leave their gear in the lockers during the season? Is the girls' locker room used to store general equipment, leaving the boys' locker room more spacious?





# Practice & Competitive Facilities



## Facilities – Quality

- Location
- Aesthetics: appearance should be similar in quality from the outside, dimensions
- Playing surface quality, turf, materials used in infields and warning tracks, field surface uniformity.
- Weather related concerns. E.g. did seasonal flooding affect mostly one group?
- Age
- Lighting
- General conditions
- Restroom facilities
- Coaching evaluation locations
- Videotaping locations
- Quality and capacity of score boards, spectator seating, spectator restrooms, concessions, public address systems, press boxes, and media.





## Facilities – Availability

- Is there any limit in using the field that applies more to girls than boys? For example, are the boys able to use their field more often and more freely because it is on campus?
- Does the district provide transportation to both teams? Neither?
- Consider the proximity of practice or work out areas- if any - to the fields. Is shelter available at only one field?
- Do summer camps have equal access?
- In general, compare teams' seasons, schedules, and practice times



## Facilities – Exclusivity

- If the girls' field is also used by others, whereas the boys' field is exclusively for them, this would raise a concern that boys have more access to the field whenever they want.





# Booster Clubs



## Title IX

- Booster group donations may result in Title IX liability for a district if the funds are *not* equally distributed among boys' and girls' teams
- Booster groups often generate and designate money for a specific sport, which leads to an imbalance among sexes
- It is the responsibility of the BOE to correct any imbalance, which may entail allocating its own resources



- OCR states in the *Title IX Athletics Investigator's Manual*:
  - *Where booster clubs provide benefits and services that assist only teams of one sex, the institution shall ensure that teams of the other sex receive equivalent benefits and services. If booster clubs provide benefits and services to athletes of one sex that are greater than what the institution is capable of providing to athletes of the other sex, then the institution shall take action to ensure that benefits and services are equivalent for both sexes*





## ***Daniels v. School Board of Brevard Cty.*** **995 F.Supp. 1394 (M.D. Fla. 1997)**

- Booster group money was used to give high school boys' baseball team an electronic score board, batting cage, bleachers, signs, bathroom facilities, concession stand, press box, announcers booth, and field lighting
- No funds were used for the girls' softball team
- The court issued a preliminary injunction ordering the BOE to provide comparable facilities for the softball team including removal of barriers so the facilities could be accessed by both teams





- Prior to issuing the injunction the Court gave the BOE an opportunity to submit a remedial plan after determination that the BOE violated Title IX
- In issuing the injunction the Court writes:

*... the Court had hoped for constructive input, such as a long-range fiscal plan to remedy the inequities identified in the Court's prior order. Unfortunately the Board's plan leaves much to be desired; it creates the impression that the Board is not as sensitive as it should be regarding the necessity of compliance with Title IX. . . The Board's plan essentially imposes "separate disadvantage," punishing both the boy's and girls' teams, rather than improving the girls' team to the level the boys' team has enjoyed for years.*



## **Additional Title IX Litigation Examples**

- In 2014, the U.S. Dept. of Education directs a Michigan school district to tear down bleachers built by the Plymouth High School Baseball Boosters because the softball team did not receive similar facility renovations.
- In 2013, softball players filed suit against a New York school district because the softball field was not comparable to the boys' baseball stadium.



## What Does This Mean?

- When a BOE notices an inequity exists, it must remedy the problem
  - Give greater amounts from the general fund to the sex that does not receive booster support
  - Seek to control the booster budget to allocate funds equally
  - Reject donations if booster group refuses to provide equitable funds, or the general fund cannot cover the discrepancy





# Harassment & Bullying



## Harassment

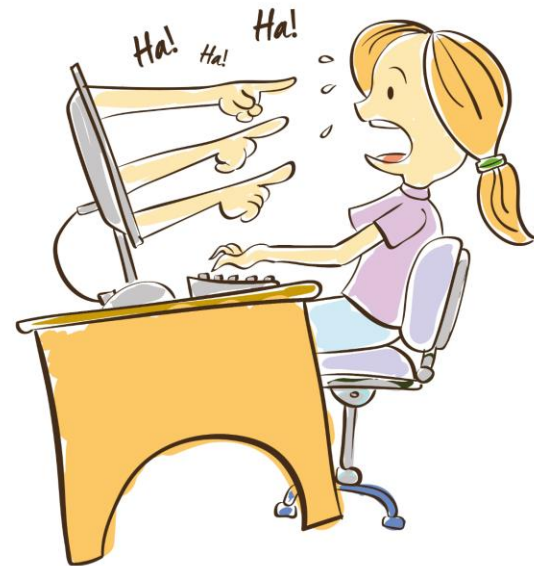
- Ohio R.C. 3313.666(A)(2) defines harassment, intimidation, or bullying as:
  - Any intentional written, verbal, electronic, or physical act that a student has exhibited toward another particular student more than once and the behavior both:
    - Causes mental or physical harm to the other student; (and)
    - Is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for another student.





## “Electronic Act”

- An act committed through the use of a cellular telephone, computer, pager, personal communication device, or other electronic communication device





## INTERSECTION OF 3313.666 WITH TITLE IX

- Two separate laws with separate policies
- If, during an investigation of alleged bullying, aggressive behavior and/or harassment in accordance with Policy 5517.01 - Bullying and Other Forms of Aggressive Behavior, the Principal believes that the reported misconduct may have created a hostile work environment and may have constituted unlawful discriminatory harassment based on a Protected Class, the Principal shall report the act of bullying, aggressive behavior and/or harassment to one of the Anti-Harassment Compliance Officers who shall investigate the allegation in accordance with this policy. (Some NEOLA policies)
- While the Compliance Officer investigates the allegation, the Principal shall suspend his/her Policy 5517.01 investigation to await the Compliance Officer's written report. The Compliance Officer shall keep the Principal informed of the status of the Policy 5517 investigation and provide him/her with a copy of the resulting written report (NEOLA)



## Title IX Sexual Harassment – Definition Under New Regulations

- 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 (i.e., quid pro quo sexual harassment);
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or







## Title IX Sexual Harassment

- Conduct on the basis of sex that satisfies one or more of the following:
- “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).





## Title IX Sexual Harassment – New Regulations

- An education program or activity is defined as “any location, event, or circumstance over which the recipient exhibits substantial control over both the alleged harasser and the context in which the harassment occurred.”
  - OCR’s commentary states that the “§ 106.30 sexual harassment definition does not make sexual harassment dependent on the method by which the harassment is carried out; use of e-mail, the internet, or other technologies may constitute sexual harassment as much as use of in-person, postal mail, handwritten, or other communications.



## Categories of Harassment

- Quid Pro Quo Harassment
- Hostile Environment Harassment
  - Both are prohibited under the law



## Quid Pro Quo

- Quid Pro Quo (this for that) Harassment occurs when submission to **OR** rejection of sexual advances/requests is used as the basis for participation in an activity or class

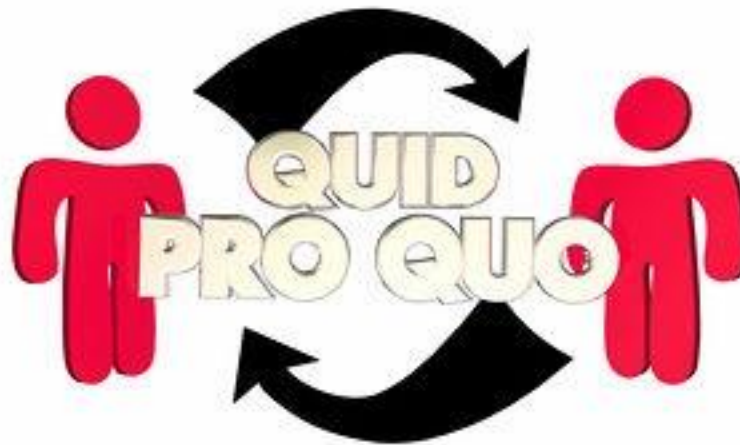
**Example:** Teacher pressures a student into an intimate relationship by suggesting acquiescence will result in good grades. When teacher's advances are spurned, she issues an "F."

**Example:** Superintendent requests sexual attention from elementary school principal with a promise that if she goes out with him, he will recommend the issuance of a new employment contract.



## Quid Pro Quo

- They do/won't do this, so...
- They will/won't put up with this, so...
- If you do/don't...I will/won't...





## Quid Pro Quo

- May involve a power differential
  - “everyone knows that so-and-so...”
- Voluntary conduct between some may put observers in the position of believing that something sexual is necessary to get something favorable



## Hostile Work Environment

To establish unlawful harassment, one must show that the harassment was:

- A. Based on his/her sex;
- B. Unwelcome; and
- C. Sufficiently severe, pervasive or objectively offensive that it effectively denies a person equal access to the recipient's education program or activity.



## Sexual Harassment

- Example: Teacher routinely tells sexual jokes in class, has a reputation for cornering female students and purposefully brushes up against and touches female students in a sexual manner
- Example: A male high school principal routinely inquires about the new female science teacher's "chemistry" with her husband, comments about her appearance and how lucky her husband is to be married to her, shares explicit details regarding his own marriage, and asks her to do the same





## Hostile Environment

### A. Based on protected class status or lack thereof

- Must be based on protected class, i.e. sex
  - If a principal is mean to a teacher because he does not like the teacher's pink clothes, this is not unlawful harassment under the anti-harassment laws.
- Can be the protected class of either the victim or the harasser.
- Verbally harassing conduct need not explicitly mention the protected class status, i.e. jokes may be chauvinist even if they do not mention "women" (or men) specifically



## Hostile Environment

### B. Unwelcome

- Person did not solicit or invite the conduct and regards it as offensive.
- District must evaluate all surrounding circumstances to determine if conduct is unwelcome, i.e. a consensual conversation.
- If the victim complains, that's an obvious indication the conduct is unwelcome, but the district should not wait for a complaint to investigate potentially prohibited conduct.



## “Welcomeness” of Conduct

- In order for conduct of a sexual nature to constitute sexual harassment, it must be “unwelcome.”
  - OCR always views sexual conduct between an adult and an elementary student as unwelcome and OCR strongly presumes that sexual conduct between an adult and secondary student is unwelcome.
  - Whether student-to-student sexual conduct is welcome or unwelcome must be determined on a case-by-case basis.



**C. “Severe or Pervasive” (Objectively Offensive that it effectively denies a person equal access to the recipient’s education program or activity)**

- Generally, a single or isolated incident is not enough.
- However, a single incident of harassment which is egregious or unusually severe may be sufficient, particularly when the harassment is physical.
  - E.g. Assault



**“Severe or Pervasive” (cont’d) (Objectively Offensive that it effectively denies a person equal access to the recipient’s education program or activity)**

- Factors to consider include whether the conduct was: abusive, derogatory, frequent, humiliating, or physically threatening.
- Severe or pervasive prong is met if the conditions of an individual’s employment or education are altered.
  - E.g. student’s semester grade hinges on the submission to a sexual advance by a teacher.



## Harassment

- The *intent* of a harasser does not matter – the test for harassment is from the viewpoint of a reasonable person and victim.
- The prohibition against sexual harassment does **not** extend to legitimate, non-sexual touching (such as a kindergarten teacher's consoling hug for a child with a skinned knee).





## Harassment

- Sexual violence is a form of sexual harassment
  - Sexual acts perpetrated against a person's will; or
  - Sexual acts where a person is incapable of giving consent
- Dating violence is a form of sexual harassment
- Domestic violence is a form of sexual harassment
- Stalking is a form of sexual harassment



## Visual Forms of Harassing Behavior

- Gestures based upon protected class (e.g. sexually oriented gestures);
- Display of sexually suggestive or derogatory objects, pictures, cartoons, posters, drawings, internet images based upon protected class; or
- Looking a person up and down.





## Physical Forms of Harassing Behavior

- Impeding or blocking movements, touching, patting, pinching, or any other unnecessary or unwanted physical contact;
- Touching a person's hair, clothing or body;
- Brushing up against a person; or
- Assault.





## Written Forms of Harassing Behavior

- Unwelcome suggestive, sexually explicit, or obscene letters, texts, notes, emails or invitations;
- Threatening texts, notes, letters, emails or other writings based upon a protected class;
- Sexually suggestive pictures or literature; or
- Derogatory T-shirts, cartoons, images, texts, notes, letters, emails or other writing based upon a protected class.



## Verbal Forms of Harassing Behavior

- Derogatory, or offensive videos, audio recordings, comments, epithets, slurs or jokes based upon a protected class;
- Repeated unwelcome propositions/solicitations or sexual flirtations;
- Direct or subtle pressure or repeated unwelcome requests for dates or sexual activities;
- Insulting sounds/whistles, obscene/prank phone calls; or
- Unwelcome and offensive questions into a person's personal life.



## Definition of Harassment Under Board Policy

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:
  - A. Submission to such conduct is made either implicitly or explicitly a term or condition of an individual's employment, or status in a class, educational program, or activity.
  - B. Submission or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting such individual.
  - C. Such conduct has the purpose or effect of interfering with the individual's work or educational performance; of creating an intimidating, hostile, or offensive working, and/or learning environment; or of interfering with one's ability to participate in or benefit from a class or an educational program or activity
- (Some NEOLA policies)



## Definition of Harassment Under Board Policy

- Sexual harassment may involve the behavior of a person of either gender against a person of the same or opposite gender.
- Examples of the kinds of conduct that may constitute sexual harassment include, but are not limited to:
  - Unwelcome sexual propositions, invitations, solicitations, and flirtations.
  - Unwanted physical and/or sexual contact.

(Other Non-NEOLA Policy examples)



## Definition of Harassment Under Board Policy

- Examples of the kinds of conduct that may constitute sexual harassment include, but are not limited to:
  - Threats or insinuations that a person's employment, wages, academic grade, promotion, classroom work or assignments, academic status, participation in athletics or extra-curricular programs or events, or other conditions of employment or education may be adversely affected by not submitting to sexual advances.
  - Unwelcome verbal expressions of a sexual nature, including graphic sexual commentaries about a person's body, dress, appearance, or sexual activities; the unwelcome use of sexually degrading language, jokes or innuendoes; unwelcome suggestive or insulting sounds or whistles; obscene telephone calls.

(Other Non-NEOLA Policy examples)



## Definition of Harassment Under Board Policy

- Examples of the kinds of conduct that may constitute sexual harassment include, but are not limited to:
  - Sexually suggestive objects, pictures, videotapes, audio recordings or literature, placed in the work or educational environment, which may embarrass or offend individuals.
  - Unwelcome and inappropriate touching, patting, or pinching; obscene gestures.
  - A pattern of conduct, which can be subtle in nature, that has sexual overtones and is intended to create or has the effect of creating discomfort and/or humiliation to another.
  - Remarks speculating about a person's sexual activities or sexual history, or remarks about one's own sexual activities or sexual history.

(Other Non-NEOLA Policy examples)



## Definition of Harassment Under Board Policy

- Examples of the kinds of conduct that may constitute sexual harassment include, but are not limited to:
  - In the context of employees, consensual sexual relationships where such relationship leads to favoritism of a subordinate employee with whom the superior is sexually involved and where such favoritism adversely affects other employees or otherwise creates a hostile work environment.
  - Inappropriate boundary invasions by a Center employee or other adult member of the School Center community into a student's personal space and personal life.
  - Verbal, nonverbal or physical aggression, intimidation, or hostility based on sex or sex-stereotyping that does not involve conduct of a sexual nature

(Other Non-NEOLA Policy examples)





## Sexual Violence (NEOLA)

- Sexual violence, as used in this policy, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the student's age, intellectual or other disability, or use of drugs or alcohol).
- Sexual violence includes rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, other students, or third parties. All such acts of sexual violence are forms of sexual harassment and, in turn, sex discrimination prohibited by Title IX.
- Harassing conduct creates a hostile environment when it interferes with or limits a student's ability to participate in or benefit from the school's program. A single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. For example, a single instance of rape is sufficiently severe to create a hostile environment.



## Other Violations of Anti-Harassment Laws

- **Retaliating** against a person who has made a report or filed a complaint alleging harassment, or who has participated as a witness in a harassment investigation;
- Filing a malicious or knowingly false report or complaint of harassment;
- Disregarding, failing to investigate adequately, or delaying investigation of allegations of harassment, when responsibility for reporting and/or investigating harassment charges comprises part of one's supervisory duties.



## District's Obligations

- Eliminate, prevent, and address
- Designate a Title IX Coordinator and authorize this individual to coordinate compliance efforts
- Interim measures (now called supportive measures and must be provided to both complainant and respondent)
- Mandatory reporting by all school employees
- Train employees (Must retain for 7 years and post any materials used to train Title IX coordinators, investigators, decision makers, and any employee designated to facilitate an informal process, on district website)
- Investigation



## District's Obligations

- Informal resolution (if applicable)
- Formal resolution
- Written report and notice to both parties
- Check your policy (Usually in ACA/ACAA, 9.10/9.11 & 5517/5517.02)



## District's Obligations

- BIG PICTURE LEGAL LANDSCAPE IN LIGHT OF NEW TITLE IX REGULATIONS
- A district is obligated to respond when: (1) the school has actual knowledge of sexual harassment; (2) that occurred within the school's own "education program or activity"; (3) against a "person in the United States."
- "Actual knowledge" includes that of any school employee
- Any individual (victim or a third party) may report allegations at any time and through any means that will result in the school district's Title IX coordinator's receipt
- A school district would be liable under Title IX when its response to a report of sexual harassment is clearly unreasonable in light of the known circumstances.



## Policy Notice/Obligations

- The policy must be put in:
  - Student handbooks
  - Any publications that set forth comprehensive rules, procedures, and standards of conduct for schools and students in the district
  - Must include Title IX coordinator's name or title, [email address](#), office address, and telephone number
- Train employees
- Train students annually
- Notify parents annually



## FORMAL COMPLAINT PROCESS – New Regulations

- **Treat parties equitably**
  - Provide remedies to a complainant after a determination of responsibility against a respondent has been made and follow a grievance process before imposing any disciplinary sanctions, or other actions that are not supportive measures, against a respondent.
  - Remedies may include the same actions described as supportive measures, but remedies need not avoid punishing or burdening the respondent.
- **Require an objective evaluation of all available evidence, both inculpatory and exculpatory, and prohibit credibility determinations based on a party's status as complainant, respondent, or witness.**



## FORMAL COMPLAINT PROCESS – New Regulations

- Require that any person designated as a Title IX coordinator, investigator, decision-maker, or any person designated to facilitate an informal process not have a conflict of interest against complainants and respondents generally or against the particular complainant and respondent.
  - These individuals must also receive training on the definition of sexual harassment; the scope of the recipient's education program or activity; how to conduct an investigation and grievance process, including, as applicable, hearings, appeals, and informal processes; and how to serve impartially.





## FORMAL COMPLAINT PROCESS – New Regulations

- Require that any person designated as a Title IX coordinator, investigator, decision-maker, or any person designated to facilitate an informal process not have a conflict of interest against complainants and respondents generally or against the particular complainant and respondent.
  - Investigators must receive training on how to prepare an investigation report, and decision-makers must receive training on any technology to be used at a live hearing and issues of evidence and questioning, including when questions about a complainant's prior sexual history or disposition are not relevant. Training must promote impartial investigations and adjudication of formal complaints and must not be based on sex stereotypes.



## FORMAL COMPLAINT PROCESS – New Regulations

- Include a presumption that the respondent is not responsible for the alleged conduct until a determination has been made at the conclusion of the grievance process.
- Include reasonably prompt time frames for conclusion of the grievance process, including a process for temporary delays based on good cause (e.g., law enforcement involvement, absence of a party, witness, or advisor, translation or accommodation needs) with written notice to both parties explaining the reason for the delay.
- Describe or list the possible disciplinary outcomes and remedies that may be implemented following a determination of responsibility.



## **FORMAL COMPLAINT PROCESS – New Regulations**

- **State whether the recipient uses a preponderance of evidence or clear and convincing evidence standard to determine responsibility. Recipients must use the same standard of evidence for all formal complaints, including complaints against employees.**
- **Include the procedures and permissible reasons for appeal by a respondent or a complainant.**
- **Describe the range of supportive measures available to complainants and respondents.**
- **Not require, allow, or use evidence or questions that constitute or seek legally privileged information, unless the privilege is waived.**



## **FORMAL COMPLAINT PROCESS – Written Notice**

### **- New Regulations**

- Upon receipt of a formal complaint, a recipient must provide written notice to all known parties in sufficient time to give the respondent time to prepare a response before an initial interview.
- Written notice must include:
  - Notice of the grievance process, including any informal resolution process;
  - Notice of the allegations, including sufficient detail (i.e., names of known parties, the conduct alleged to be sexual harassment, and the date and location of the conduct, if known) to allow the respondent to prepare a response;



## **FORMAL COMPLAINT PROCESS – Written Notice - New Regulations**

- **Written notice must include:**
  - A statement that the respondent is presumed not responsible for the conduct and that responsibility will be determined at the conclusion of the grievance process;
  - Notice of the parties' right to have an advisor (who may be, but is not required to be, an attorney) and to inspect and review evidence; and
  - Notice of any provision in the code of conduct that prohibits knowingly making false statements or providing false information in the grievance process.
  - If the investigator decides to investigate allegations about the respondent or complainant that were not included in the original written notice, notice of the additional allegations must also be provided in writing to the known parties.



## **FORMAL COMPLAINT PROCESS – Dismissal - New Regulations**

- The complaint must be dismissed if the allegations would not constitute sexual harassment even if proved, did not occur in the recipient's program or activity, or did not occur against a person in the United States.
  - This does not preclude taking action under other law or local policy.
- The complaint may be dismissed if the complainant notifies the Title IX coordinator at any time that he or she wishes to withdraw the complaint or an allegation, if the respondent's enrollment or employment ends, or if specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination.



## **FORMAL COMPLAINT PROCESS – Dismissal - New Regulations**

- **OCR's commentary alludes to the passage of several years between a formal complaint and the alleged conduct, or a complainant ceasing to cooperate with the grievance process, as examples of "specific circumstances."**
- **If a recipient dismisses a complaint, written notice must be promptly provided to both parties simultaneously, including the reasons for mandatory or discretionary dismissal.**



## **FORMAL COMPLAINT PROCESS – Investigation - New Regulations**

- **Investigator must:**
  - **Ensure that the burden of proof and of gathering evidence rests on the recipient rather than the parties, except that certain treatment records cannot be obtained without voluntary, written consent from the party or parent;**
  - **Provide an equal opportunity for the party to present witnesses and evidence;**
  - **Not restrict either party's ability to discuss the allegations or gather and present evidence;**
  - **Provide the parties with the same opportunities to have others present during interviews or other related proceedings, including an advisor who may but is not required to be an attorney;**





## **FORMAL COMPLAINT PROCESS – Investigation - New Regulations**

- **Investigator must:**
  - **Provide, to a party who is invited or expected to attend, written notice of the date, time, participants, purpose, and location of any investigative interview, hearing, or other meeting with enough time to allow the party to prepare to participate;**
  - **Provide both parties and their advisors, if any, an equal opportunity to review all evidence that is directly related to the allegations in the formal complaint, including evidence on which the recipient does not intend to rely and any exculpatory or inculpatory evidence from any source;**
    - **such evidence must be provided prior to the completion of the final investigation report and in time to give the parties at least 10 days to prepare a written response, which the investigator must consider prior to completing the investigation report; and**



## **FORMAL COMPLAINT PROCESS – Investigation - New Regulations**

- Investigator must:
  - Prepare a written investigation report that fairly summarizes the relevant evidence and provide the report to the parties and their advisors, if any, for their review and written response, at least 10 days before a hearing or other determination of responsibility.
- Hearings
  - K-12 schools are not required to provide live hearings.
  - According to OCR’s commentary, school officials “could determine that their educational community is best served by holding live hearings for high school students, for students above a certain age, or not at all.”



## **FORMAL COMPLAINT PROCESS – Investigation - New Regulations**

- **Hearings**
  - The OCR commentary states that a Title IX coordinator could determine whether a live hearing is necessary on a case-by-case basis, provided that the K-12 recipient's grievance process clearly indicates the equitable circumstances under which a hearing will or will not be provided.
  - With or without a hearing, the recipient must provide each party the opportunity after the completion of the investigative report to submit written, relevant questions that the party wants asked of another party or witness, provide each party with the answers, and provide for limited follow-up questions.



## **FORMAL COMPLAINT PROCESS – Determination of Responsibility - New Regulations**

- **Determination of Responsibility**
  - The decision maker, who cannot be the investigator or the Title IX coordinator, must apply the recipient's standard of evidence and issue a written determination of responsibility that:
    - Identifies the allegations that potentially constitute sexual harassment;
    - Describes the recipient's procedural steps taken from the receipt of the complaint to the determination;
    - Includes findings of fact supporting the determination;
    - Includes conclusions regarding application of the code of conduct to the facts;



## **FORMAL COMPLAINT PROCESS – Determination of Responsibility - New Regulations**

- **Determination of Responsibility**
  - **The decision maker, who cannot be the investigator or the Title IX coordinator, must apply the recipient’s standard of evidence and issue a written determination of responsibility that:**
    - **Includes a statement of, and a rationale for, the result as to each allegation, including a determination of responsibility, any disciplinary sanctions, and whether remedies to restore or preserve equal access to the recipient’s education program or activity will be provided to the complainant; and**
    - **Includes procedures and permissible basis for appeals.**



## **FORMAL COMPLAINT PROCESS – Appeals - New Regulations**

- Recipients must offer both parties the right to appeal a determination of responsibility, and the recipient's dismissal of a complaint or any allegations therein, for the following reasons:
  - (1) a procedural irregularity that affected the outcome;
  - (2) new evidence that was not reasonably available at the time of the determination and could affect the outcome;
  - (3) conflict of interest on the part of the Title IX coordinator, investigator, or decision maker that affected the outcome.
  - A recipient's grievance procedure may also offer both parties an equal right to appeal for additional reasons.



## **FORMAL COMPLAINT PROCESS – Appeals - New Regulations**

- For all appeals, the recipient must ensure that written notice is provided to both parties of the appeal and provide both parties an equal opportunity to submit a written statement in support of, or challenging, the determination.
- The appeal process must result in a written decision that must be provided to both parties simultaneously.
- In addition, recipients must ensure that the decision maker for an appeal is not the Title IX coordinator, investigator, or initial decision maker, does not have a conflict of interest or bias against complainants and respondents generally or the particular complainant and respondent, and receives training.
  - Unclear if this decision maker can be the Board.



## Policy Procedure – Sexual Harassment

- Check your policies (Usually in ACA/ACAA, 9.10/9.11 & 5517/5517.02)
- Complaints may be filed with any District employee (this is now part of Title IX statute), or directly with the Title IX Coordinator.
  - Any person may file
  - May be verbal or written (or by any other means that results in the Title IX Coordinator receiving the person's report)
  - May be reported during non-business hours





## Policy Procedure – Sexual Harassment

- District employees **are required** to report these incidents to the Title IX Coordinator upon becoming aware of an incident, and failure to do so may result in disciplinary action.
  - Within **2 business days** (Some NEOLA)
  - Check your policy for specific timeframe
    - Can range from none specified to 1-3



## Policy Procedure – Sexual Harassment

- Within two (2) business days of receiving the complaint, the Compliance Officer or a designee will initiate a formal investigation to determine whether the Complainant has been subjected to offensive conduct/harassment/retaliation. (Some NEOLA)
- The investigator shall meet with the complainant within a reasonable period of time from the time of making the complaint. However, the investigator is urged to meet with the complainant as soon as possible. (Other policies may contain this language)
- Following the meeting with the complainant, the investigator shall conduct an adequate, reliable, and impartial investigation to determine if sexual harassment has occurred. (Other Non-NEOLA policies may contain this language).



## Policy Procedure – Sexual Harassment

- The Title IX Coordinator determines whether or not, by “a preponderance of the evidence,” the alleged victim’s allegations are true.
- “A preponderance of the evidence” means that evidence must show the alleged discrimination/sexual harassment was more likely than not to have occurred.



# Policy Procedure – Sexual Harassment

## Confidentiality - New Regulations

- A recipient must keep confidential the identity of a person who complains or reports sexual harassment, including parties and witnesses, except as permitted by law or to carry out the purpose of the regulations.



## Policy Procedure – Sexual Harassment

### Confidentiality

- The right to confidentiality, both of the complainant and of the accused, will be respected consistent with the District's legal obligation, and with the necessity to investigate allegations of misconduct and take corrective action when this conduct has occurred. (Other Non-NEOLA policies)
- The School District will employ all reasonable efforts to protect the rights of the Complainant, the individual(s) against whom the complaint is filed, and the witnesses as much as possible, consistent with the Board's legal obligations to investigate, to take appropriate action, and to conform with any discovery or disclosure obligations. (NEOLA)



## Policy Procedure – Sexual Harassment

### Confidentiality

- All records generated under the terms of this policy and related administrative guidelines shall be maintained as confidential to the extent permitted by law. Confidentiality, however, cannot be guaranteed. All Complainants proceeding through the formal investigation process will be advised that their identities may be disclosed to the Respondent. (NEOLA)
- During the course of a formal investigation, the Compliance Officer or his/her designee will instruct all members of the School District community and third parties who are interviewed about the importance of maintaining confidentiality. Any individual who is interviewed as part of a harassment investigation is expected not to disclose any information that s/he learns or that s/he provides during the course of the investigation.



# Policy Procedure – Sexual Harassment

## Confidentiality

- All records created as a part of an investigation of a complaint of harassment will be maintained by the Compliance Officer in accordance with the Board's records retention policy. Any records that are considered student education records in accordance with the Family Educational Rights and Privacy Act or under Ohio's student records law will be maintained in a manner consistent with the provisions of the Federal and State law. (NEOLA)



# Investigations





## Informal Investigations/Grievance Procedure - **NEOLA**

- A school may facilitate an informal resolution to assist the parties in reaching a voluntary resolution if:
  - If all parties voluntarily agree to participate in an informal resolution that does not involve a full investigation after receiving a full disclosure of the allegations and their options for formal resolution and,
  - if the complaint is filed as an informal complaint. [Under new regs, informal process may only be used if a formal complaint is filed.](#)
  - **The informal process may not be used when the allegations may constitute sexual violence or any other criminal act or where the complaint involves a District employee or any other adult member of the School District community against a student**



## Informal Investigations/Grievance Procedure - **NEOLA**

- Informal solutions may include, but are not limited to:
  - Advising the student about how to communicate the unwelcome nature of the behavior to the alleged harasser.
  - Distributing a copy of the anti-harassment policy as a reminder to the individuals in the school building or office where the individual whose behavior is being questioned works or attends.
  - If both parties agree, the Compliance Officer may arrange and facilitate a meeting between the student claiming harassment and the individual accused of harassment to work out a mutual resolution.



## Informal Investigations/Grievance Procedure - **NEOLA**

- While there are no set time limits within which an informal complaint must be resolved, the Compliance Officer or designee will exercise his/her authority to attempt to resolve all informal complaints within fifteen (15) business days of receiving the informal complaint.
- Parties who are dissatisfied with the results of the informal complaint process may proceed to file a formal complaint. And, as stated above, parties may request that the informal process be terminated at any time to move to the formal complaint process.



## Formal Investigations/Grievance Procedure – Sexual Harassment

- The Title IX Coordinator promptly communicates with the reporting party in order to obtain a clear understanding of that party's statement of the alleged facts. The statement is put in writing by the Title IX Coordinator and signed by the reporting party, where possible, as a testament to the statement's accuracy.
- Statement **must (NEOLA)**/should (**many other policies**) include (to the extent it is available):
  - the identity of the individual believed to have engaged in, or be engaging in, offensive conduct/harassment/retaliation;
  - a detailed description of the facts upon which the complaint is based;
  - a list of potential witnesses; and
  - the resolution sought by the Complainant.



## Formal Investigations/Grievance Procedure – Sexual Harassment

- New Regulations - At the time of filing a formal complaint, a 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. The Title IX coordinator may also sign a complaint, which does not make the Title IX coordinator a party in the grievance process.
- The final rule does not authorize a third party reporter to file a formal complaint. OCR's commentary makes clear, however, that a Title IX coordinator may sign a complaint, thus triggering an investigation, in order to ensure that the recipient does not respond to sexual harassment with deliberate indifference.



## Formal Investigations/Grievance Procedure – Sexual Harassment

- In some cases, this may entail implementing a formal grievance procedure over the complainant's objections.
- If the Complainant is unwilling or unable to provide a written statement including the information set forth above, the Compliance Officer shall ask for such details in an oral interview. Thereafter, the Compliance Officer will prepare a written summary of the oral interview, and the Complainant will be asked to verify the accuracy of the reported charge by signing the document.  
(NEOLA mandatory/ Other Non-NEOLA policies best practices)



## Formal Investigations/Grievance Procedure – Sexual Harassment

- The Compliance Officer will inform the individual alleged to have engaged in the harassing or retaliatory conduct, the "Respondent", that a complaint has been received.
- The Respondent will be informed about the nature of the allegations and provided with a copy of any relevant administrative guidelines, including the Board's Anti-Harassment policy. The Respondent must also be informed of the opportunity to submit a written response to the complaint within five (5) business days. (NEOLA)



## Formal Investigations/Grievance Procedure – Sexual Harassment

- The investigator shall provide the complainant with the opportunity to identify witnesses and other evidence. The investigation shall include a conference with the accused and the complainant, as well as any and all other methods which are considered necessary to determine whether harassment has occurred. (Other Policies)
- The investigation will include: 1) interviews with the Complainant; 2) interviews with the Respondent; 3) interviews with any other witnesses who may reasonably be expected to have any information relevant to the allegations; and 4) consideration of any documentation or other information presented by the Complainant, Respondent, or any other witness that is reasonably believed to be relevant to the allegations. (NEOLA)





## Formal Investigations/Grievance Procedure - Sexual Harassment

- The Title IX Coordinator communicates with the parties and witnesses (if any) as necessary to gather all of the relevant facts. **The dates of any meetings and the facts gathered are all put in writing.**
- The investigation is prompt and equitable, and allows both parties an equal opportunity to present witnesses and other evidence.
- At the conclusion of the investigation, the Title IX Coordinator prepares a written report summarizing: the evidence gathered during the investigation and whether the allegations were substantiated; whether any Board policies or student or employee codes of conduct were violated; and any recommendations for corrective action.



## Formal Investigations/Grievance Procedure - Sexual Harassment

- The investigation report indicates if any measures must be instituted to protect the reporting party. Such measures may include, but are not limited to extending any interim/**supportive** measures taken during the investigation. The report also informs the reporting party of available support services, which at a minimum includes offering school counseling services if the reporting party is a student.
- Periodic updates are provided to the parties as appropriate during the investigation.
- Written notice of the outcome of the complaint must be provided to both parties



## Formal Investigations/Grievance Procedure - Sexual Harassment

- At the conclusion of the investigation, the Compliance Officer or the designee shall prepare and deliver a written report to the Superintendent that summarizes the evidence gathered during the investigation and provides recommendations based on the evidence and the definition of unlawful harassment as provided in Board policy and State and Federal law as to whether the Complainant has been subjected to unlawful harassment. The Compliance Officer's recommendations must be based upon the totality of the circumstances, including the ages and maturity levels of those involved. In determining if discriminatory harassment or retaliation occurred, a preponderance of evidence standard will be used. (NEOLA)



## Formal Investigations/Grievance Procedure - Sexual Harassment

- Upon conclusion of the investigation, the investigator shall issue a written report. The report shall include a determination of whether the accused was found to have engaged in harassment, was found not to have engaged in harassment, or whether the investigation was inconclusive. If the complaint is that a hostile environment exists, the District shall use a “preponderance of the evidence” standard to make such determination. The report shall be issued to the complainant, if an employee, or to the complainant’s parents, if a student. A copy of the report shall also be sent to the Superintendent or his/her designee and the accused. (Other Non-NEOLA policies)



## Formal Investigations/Grievance Procedure - Sexual Harassment

- Absent extenuating circumstances, within ten (10) school days of receiving the report of the Compliance Officer or the designee, the Superintendent must either issue a final decision regarding whether the complaint of harassment has been substantiated or request further investigation.
- New Regulations - A written report that fairly summarizes the evidence must be provided to the parties and their advisors for their review and response at least 10 days before a hearing or other determination of responsibility.
- A copy of the Superintendent's final decision will be delivered to both the Complainant and the Respondent. (NEOLA)



## Formal Investigations/Grievance Procedure - Sexual Harassment

- If the Superintendent requests additional investigation, the Superintendent must specify the additional information that is to be gathered, and such additional investigation must be completed within ten (10) school days. At the conclusion of the additional investigation, the Superintendent shall issue a final written decision as described above.
- The decision of the Superintendent shall be final. (NEOLA).
- A finding of no harassment or inconclusive evidence shall end the investigation. (Other Non-NEOLA policies)



## Formal Investigations/Grievance Procedure - Sexual Harassment

- If harassment is found to be occurred, the investigator shall recommend what steps are necessary to ensure that the harassment is eliminated for the victim and other individuals affected by the sexual harassment and to correct its discriminatory effects on the complainant and others, if appropriate. (Other Non-NEOLA policies)
- A substantiated charge against a student in the School District shall subject that student to disciplinary action, including suspension or expulsion, consistent with the Student Discipline Code. (Other Non-NEOLA policies)



## Formal Investigations/Grievance Procedure - Sexual Harassment

- The Board shall vigorously enforce its prohibitions against unlawful harassment by taking appropriate action reasonably calculated to stop the harassment and prevent further such harassment. While observing the principles of due process, a violation of this policy may result in disciplinary action up to and including the discharge of an employee or the suspension/expulsion of a student. (NEOLA)
- When imposing discipline, the Superintendent shall consider the totality of the circumstances involved in the matter, including the ages and maturity levels of those involved. (NEOLA)





## Formal Investigations/Grievance Procedure - Sexual Harassment

- In those cases where unlawful harassment is not substantiated, the Board may consider whether the alleged conduct nevertheless warrants discipline in accordance with other Board policies, consistent with the terms of the relevant collective bargaining agreement(s). (NEOLA express in policy/Other Non-NEOLA policies best practices)



## Formal Investigations/Grievance Procedure - Sexual Harassment

### Allegations Constituting Criminal Conduct: Child Abuse/Sexual Misconduct

Any reports made to a county children's services agency or to local law enforcement shall not terminate the Compliance Officer or a designee's obligation and responsibility to continue to investigate a complaint of harassment. While the Compliance Officer or a designee may work cooperatively with outside agencies to conduct concurrent investigations, in no event shall the harassment investigation be inhibited by the involvement of outside agencies without good cause after consultation with the Superintendent. (NEOLA express in policy/applies also to other Non-NEOLA policies under OCR guidelines)



## Interim / Supportive Measures - Sexual Harassment

- Board policy and new Title IX regulations require interim/supportive measures to be taken during the investigation of a complaint
- This must be done regardless of whether a formal complaint is filed
- Must be provided to both complainant and respondent
- Cannot be punitive or disciplinary
  - a supportive measure that completely removes a respondent from an activity would likely be considered punitive
- Must be provided without charge



## Interim/Supportive Measures - Sexual Harassment

- Interim/supportive measures should be individualized and appropriate based on the information gathered by the Title IX Coordinator, making every effort to avoid depriving any student of her or his education
  - The measures needed by each student may change over time, and the Title IX Coordinator should communicate with each student throughout the investigation to ensure that any interim measures are necessary and effective based on the students' evolving needs
- Supportive measures should be designed to restore or preserve equal access to the education program or activity without “unreasonably” burdening the other party.
- A supportive measure that completely removes a respondent from an activity would likely be considered punitive.



## Interim/Supportive Measures - Sexual Harassment

- Interim/*supportive* measures are individualized services offered to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct, prior to an investigation or while an investigation is pending
- Interim/*supportive* measures include:
  - counseling, District enforced no-contact order, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations



## Interim/Supportive Measures - Sexual Harassment

- Tread carefully with unilateral no-contact orders
- If a recipient does not offer supportive measures in response to a report, the recipient's records should document why the response was not clearly unreasonable under the known circumstances.



## What time frame constitutes a prompt investigation?

- No fixed time frame under Title IX under which a school must complete a Title IX investigation
- Board policy states that the investigation and resolution of complaints should “preferably” occur within 45 days (Other Non-NEOLA policies)/ 15 days (NEOLA) of when the incident was reported to the Title IX Coordinator
- OCR will evaluate a school’s good faith effort to conduct a fair, impartial investigation in *a timely manner* designed to provide all parties with resolution





## What constitutes an “equitable” investigation?

- **Burden** is on the school, not the parties, to gather sufficient evidence to reach a fair, impartial determination as to whether sexual misconduct has occurred and whether a hostile environment has been created and must be redressed
- A person without any perceived conflicts of interests and biases for or against any party must lead the investigation on behalf of the school
  - Institutional interests should not interfere with impartiality





## What constitutes an “equitable” investigation?

- Requires a trained investigator to:
  - Analyze and document the available evidence to support reliable decisions,
  - Objectively evaluate the credibility of parties and witnesses,
  - Synthesize all available evidence, and
  - Take into account the individual circumstances of each case



## What constitutes an “equitable” investigation?

- Any rights or opportunities made to one party should be made to the other during the investigations



## What constitutes an “equitable” investigation?

- School should provide written notice to the responding party of the allegations constituting a potential violation of the school’s sexual misconduct policy, including sufficient details and sufficient time to prepare a response before any initial interview
  - Sufficient details include:
    - Identities of parties involved, the specific section of the code of conduct allegedly violated, the precise conduct that allegedly occurred, the date and location of the alleged incident
- Each party should receive written notice in advance of any interview or hearing



## What constitutes an “equitable” investigation?

- The investigation should result in a written report summarizing the relevant exculpatory and inculpatory evidence
- Reporting and responding parties and appropriate officials must have timely and equal access to any information that will be used during informal and formal disciplinary meetings and hearings





## DISCIPLINE

- Any disciplinary action is carried out in accordance with Board policies, student and employee codes of conduct, State and Federal law, and, when applicable, the negotiated agreement.
- The Title IX Coordinator considers the totality of the circumstances involved, including the ages and maturity levels of those involved.
- The Title IX Coordinator and the Superintendent determine if a recommendation for expulsion for responding student or discharge for responding employee should be made.



## Title IX Complaint Procedures – Sex

### Discrimination – Other Policies – Non-NEOLA

- Complaints involving alleged discrimination on the basis of sex in any program or activity that receives federal financial assistance shall be handled in accordance with the following procedure unless a policy has been adopted to deal with the specific discrimination. If a more specific policy exists, that policy shall be followed.

#### Step 1:

- Any student or employee who has a complaint of alleged sex discrimination shall attempt promptly to resolve the complaint by discussion with the building principal or immediate supervisor in case of classified employees.
- If the building principal or immediate supervisor is the subject of the complaint, the complaint should be filed with the Title IX officer. If the Title IX officer is the subject of the complaint, the complaint can be filed directly to the Board.



## Title IX Complaint Procedures – Sex

### Discrimination – Other Non-NEOLA Policies

- The complaint should be in writing and describe, in as much detail as possible, the facts of the situation. The principal or supervisor shall keep a written record of the discussion and provide a copy to the student or employee involved.

#### Step 2:

- If the complaint is not resolved in Step 1, the complainant may, within ten (10) calendar days after receiving an answer, file the complaint in writing with the Title IX Coordinator and mail a copy to the principal or supervisor involved. The Title IX Coordinator shall arrange a meeting to discuss the complaint within ten (10) calendar days after receiving the written complaint, and subsequent meetings may be scheduled as agreed to by both parties. The Title IX Coordinator shall give a written answer to the complainant by certified mail, return receipt requested, within ten (10) calendar days after the final meeting regarding the complaint.



## Title IX Complaint Procedures – Sex Discrimination – Other Non-NEOLA Policies

### Step 3:

- If the decision rendered by the Title IX Coordinator does not resolve the complaint to the satisfaction of the complainant, such person can, within ten (10) calendar days, appeal in writing to the Board. The Superintendent shall place the matter on the agenda for the next meeting of the Board of Education to be held within thirty (30) days, and the complainant shall be advised in writing of the time, place, and date of the meeting.
- The complainant shall receive written notice of the meeting no less than five (5) calendar days in advance of the meeting. The Board shall act upon such appeal officially no later than its next regular meeting following the meeting with the complainant. Copies of the final decision shall be sent to the complainant, Title IX Coordinator, and building principal or supervisor. The decision of the Board shall be final.





## Title IX Complaint Procedures – Sex Discrimination – Other Non-NEOLA policies

Step 3:

- If the grievance cannot be resolved through the above procedure, a request for an official interpretation may be filed with the U.S. Department of Education - Office for Civil Rights, Bank One Center, Room 750, 600 Superior Avenue East, Cleveland, Ohio 44114-7650.



## Investigation Dos and Don'ts





## Investigator Dos

- Be open and receptive to the complaint.
- Take the complaint seriously even if it sounds far-fetched or frivolous.
- Reserve judgment on whether you believe the complainant.
- Follow Board procedures for gathering evidence and conducting interviews.
- Respond promptly. Do not wait to undertake an investigation.
- Take steps to prevent threats or acts of violence even if the investigation is pending.



## Investigator Don'ts

- Make light of a complaint.
- Show bias when conducting witness interviews.
- Promise that all information will be kept confidential. It is appropriate to state that information will be kept as confidential as possible given the obligation to respond to the complaint.
- Discuss the investigation with individuals who do not have a “need to know”.



## Tips for Investigation Interviews

- Interviews should be conducted promptly, ideally the day a complaint is made or the next day.
- Ask open-ended questions so the interview is more like a discussion. Ask more direct follow-up questions if necessary.
- Get precise details – not vague statements
  - Mr. Jones makes me feel uncomfortable vs. Mr. Jones brushes up against me between classes and told me I'd get higher performance ratings if I'd go to dinner with him.



## Retaliation

- Adverse action against an individual
- Abuse, violence, threats, intimidation
- More than just someone expressing their opinion





# Compliance Officer Duties



## Dear Colleague Letter, April 24, 2015

- “OCR has found that some of the most egregious and harmful Title IX violations occur when a recipient fails to designate a Title IX coordinator or when a Title IX coordinator has not been sufficiently trained or given the appropriate level of authority to oversee the recipient’s compliance with Title IX.”





## Title IX Coordinator/Compliance Officer

- Under Title IX, at least one employee must be designated to coordinate efforts to comply with and carry out responsibilities under Title IX
- At least one person must be designated **and actually serving** as the Title IX coordinator at all times



## Considerations

- Title IX coordinator's role should be independent and should report directly to the senior leadership
- Designating a full-time Title IX coordinator will minimize risk of conflict of interest and ensure sufficient time is available to perform all the responsibilities
- Although not required by Title IX, multiple coordinators may be good practice for larger school districts
  - If there are multiple Title IX coordinators, one should be designated as the lead Title IX coordinator who will have ultimate oversight responsibility



## Responsibilities and Authority

- Coordinate the school's compliance with Title IX
  - This includes grievance procedures for resolving Title IX complaints
- Coordinate and oversee the school's responses to all complaints and reports involving possible sex discrimination
- Obtain knowledge of school policies and procedures on sex discrimination
  - Should be involved in the drafting and revision of such policies and procedures



## Responsibilities *cont'd*

- Provide or facilitate ongoing training, consultation, and technical assistance on Title for all students, faculty, and staff
- Oversee investigations of reports and complaints of sexual misconduct
  - Determines whether report/complaint constitutes sexual misconduct
  - Appoint an investigative team
  - Ensure complaints are handled properly
  - Inform all parties of grievance process
  - Maintain information and documentation related to investigation in a secure manner
  - Monitor compliance with timeframes



## Responsibilities *cont'd*

- Monitor and advise in ways such as:
  - Regularly reviewing all reports and complaints
  - Conducting an annual climate survey
  - Organize and maintain files
  - Regularly assess the school's compliance with Title IX
  - Regularly consult with the senior leadership to promote awareness and discussion



## **A student should contact the Title IX Coordinator in order to:**

- Get information or training about student rights and to resolve reports or complaints
- File a complaint or make a report of sex discrimination
- Notify the school of an incident or policy
- Get information about available resources and support services



## Visibility of Title IX Coordinator

- Must be visible in the school community
  - Notice of nondiscrimination posted
    - Note that questions should be directed to the Title IX coordinator
    - Via bulletins, announcements, application forms etc.
  - Students and employees must be notified of the name, office address, telephone number, and email address of the current Title IX coordinator
    - Contact information must be widely distributed and easily found on the website or in various publications



# **FERPA's Confidentiality Rule & Title IX's Notice Requirement**





## Civil Rights Laws and FERPA *Letter to Soukup (FPCO 2/9/15)*

- Resolves potential clash between FERPA's confidentiality rule and Title IX notice requirement
- FERPA generally prohibits disclosure of student's personally identifiable information without parental consent, but Title IX's discrimination complaint procedures require notification to the victim's family of the consequences taken against the perpetrator that relate to victim



## Civil Rights Laws and FERPA *Letter to Soukup (FPCO 2/9/15)*

- FPCO determined an exception to FERPA exists in the case of unlawful discriminatory harassment
- FPCO clarified that it did not interpret FERPA as prohibiting districts from complying with the notice outcome provisions of Title IX



## Civil Rights Laws and FERPA *Letter to Soukup (FPCO 2/9/15)*

- Disciplinary action that directly relates to the harassed victim include: orders prohibiting harasser from contact with victim, harasser's removal from school, or transfer to another class
- FPCO also stated that any conflict between FERPA and other civil rights laws, the latter override conflicting provisions in the former



## Overall

- Think broadly to eliminate the harassment, prevent its recurrence, and remedy its effects



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