LET'S SHINE A LIGHT ON

TITLE IX

A guide about the major provisions of the Final Rule.
The Final Rule

Topics to be Covered

What is Title IX
History of Title IX
Common Words Defined
Major Provisions
How to Serve Impartially
You Need to Decide
Impact of New Requirements
DESE Vision

The Arkansas Department of Education is transforming Arkansas to lead the nation in student-focused education.
DESE Mission

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

Established in 1985

Provide Assistance to Districts

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

Including:

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

Shall maintain

- Setting Civil Rights Requirements
- Describing Compliance

Manuels
Guidelines
Procedures

Other Information Materials
The product of a process that ensures fairness for every child that is in the educational system
Some students may receive differential treatment to achieve fairness within the educational system.
Every Public School

ENVIRONMENT
SAFE
CONDUCTIVE FOR LEARNING

STUDENT
QUALITY EDUCATION
FREE FROM DISCRIMINATION

EQUITABLE
Right Environment

FIRST STEP
SAFE
FREE FROM HARM

SECOND STEP
TRUST
ENCOURAGEMENT
Rules are a necessary part of the school life

Educators

Procedures are a necessary part of compliance with civil rights

U.S. Dept. of Education
Assistant Compliance
- Letters of Guidance
- Regulations of Compliance

Enforce Compliance
- Complaint Reviews
- Compliance Investigations
History of Title IX

Education Amendments of 1972

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

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

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

New Regulations are now law:
effective August 14, 2020
What is Title IX

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

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

Big Picture Law

Title IX
Sexual Harassment
Form of Sex Discrimination
Clarity in Terms & Requirements

TITLE IX OF THE EDUCATION AMENDMENTS OF 1972
Title IX Sexual Harassment Definition

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964
Title VII Sexual Harassment Definition

ARKANSAS CIVIL RIGHTS ACT OF 1993
Court Sexual Harassment Interpretation
TITLE IX SEXUAL HARASSMENT MEANS
CONDUCT ON THE BASIS OF SEX THAT SATISFIES ONE OR MORE OF THE FOLLOWING:

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

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

Sexual Assault, Dating Violence, Domestic Violence, or Stalking

*Recipient - institution that receives Federal financial assistance
34 CFR 106.30(A)(1-3)
SEXUAL ASSAULT
An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation (FBI).


SEX OFFENSES AS FORMS OF SEXUAL HARRASSMENT:

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

34 U.S.C. 12291(A)(10)

DOMESTIC VIOLENCE
Includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

STALKING
Engaging in a course of conduct directed at a specific person that would cause a reasonable person to-(A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.

34 U.S.C. 12291(A)(30)

34 U.S.C. 12291(A)(8)

Equity Assistance Center | 2020
### SEXUAL ASSAULT OFFENSES:

<table>
<thead>
<tr>
<th>RAPE</th>
<th>SODOMY</th>
<th>STATUTORY RAPE</th>
<th>INCEST</th>
</tr>
</thead>
<tbody>
<tr>
<td>The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.</td>
<td>Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.</td>
<td>Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.</td>
<td>The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.</td>
</tr>
</tbody>
</table>

### FONDLING

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

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

34 CFR 106.30(a)(103)

RAPE

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

(NIBRS)

SODOMY

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

SEXUAL ASSAULT WITH AN OBJECT

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

INCEST

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

SODOMY

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

RAPE

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

FONDLING

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

Individual who is alleged to be the victim of conduct that could constitute Title IX sexual harassment.

Respondent

Individual who has been reported to be the perpetrator of conduct that could constitute Title IX sexual harassment.

Recipient

Institution that receives Federal financial assistance.

34 CFR §106.3(A)
The Final Rule

Topics to be Covered

What is Title IX
History of Title IX
Common Words Defined

Major Provisions

How to Serve Impartially
You Need to Decide
Impact of New Requirements
The Final Rule

Sections Covered

§ 106.2
§ 106.6
§ 106.8
§ 106.30
§ 106.44
§ 106.45
§ 106.71

34 C.F.R. Part 106
Title IX Personnel Team

What is their role?

Title IX Coordinator
What is their role?

1. **COORDINATE**
   - recipient's efforts to comply with Title IX responsibilities

2. "AUTHORIZED"
   - to do their job
Title IX Coordinator

What is their role?

1. COORDINATE
   - recipient's efforts to comply with Title IX responsibilities

2. "AUTHORIZED"
   - to do their job

3. MUST BE AN EMPLOYEE OR EMPLOYEES
Title IX Coordinator

What is their role?

1. **COORDINATE**
   - recipient's efforts to comply with Title IX responsibilities

2. **"AUTHORIZED"**
   - to do their job

3. **RESPONSIBLE**
   - for effective implementation of supportive measures and remedies

4. **MUST BE READILY AVAILABLE AND ACCESSIBLE**
   - § 106.44(a) and § 106.8(a)
Title IX Personnel Team

What is their role?

Title IX Coordinator

Investigators
Investigators

What is their role?

1. CONDUCT INVESTIGATIONS
2. CREATE INVESTIGATIVE REPORT
Title IX Personnel Team

What is their role?

- Title IX Coordinator
- Investigators
- Decision-Makers
Decision-Makers

What is their role?

1. **EVIDENCE**
   - Evaluate evidence and apply the standard of evidence chosen by the recipient

2. **DECISIONS**
   - Reach conclusions whether respondent is responsible for alleged Title IX sexual harassment
   - Whether remedies will be provided to complainants
   - Appropriate disciplinary consequences for respondents

3. **WRITTEN DETERMINATION**
   - regarding responsibility

4. **WRITTEN DECISION**
   - in an appeal

DETERMINATION

APPEALS
Title IX Personnel Team

What is their role?

Title IX Coordinator + Investigators \( \rightarrow \) Decision-Makers

DETERMINATION

APPEALS
SEX DISCRIMINATION GRIEVANCE PROCEDURE

vs.

TITLE IX SEXUAL HARASSMENT GRIEVANCE PROCESS
REPORTING SEX DISCRIMINATION

ANY PERSON

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

ANY TIME

the report may be made
(during business and non-business hours).

VERBAL OR WRITTEN

may be made in person, by mail, by telephone, or by email
(contact information needs to be on website and in each handbook or catalog made available to required parties).

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

*prominently display

NON-DISCRIMINATION POLICY

*prominently display

TRAINING MATERIALS used to train the Title IX Personnel Team
SEX DISCRIMINATION GRIEVANCE PROCEDURE

vs.

TITLE IX SEXUAL HARASSMENT GRIEVANCE PROCESS
General Response to Title IX Sexual Harassment

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

**RESPOND PROMPTLY**
-in a manner that is not deliberately indifferent

**RESPOND EQUITABLY**
-by offering supportive measures to complainant
-by following a grievance process before imposing any disciplinary sanction or other actions that are not supportive measures against a respondent

**DISCUSS SUPPORTIVE MEASURES**
-discuss the availability with the complainant
-consider the complainant's wishes with respect to supportive measures
 availability with or without a formal complaint

**EXPLAIN FORMAL COMPLAINT**
-document filed by a complainant or signed by the Title IX Coordinator alleging Title IX sexual harassment against a respondent and requesting that the recipient investigate the allegation of Title IX sexual harassment

**EMERGENCY REMOVAL OR ADMINISTRATIVE LEAVE**
-respondent may be removed on an emergency basis under certain conditions
-employees may be placed on administrative leave during pending grievance process
-emergency removal or administrative leave cannot conflict with Disability Laws

Actual knowledge means notice (report) of Title IX sexual harassment or allegations of Title IX sexual harassment to a recipient's Title IX Coordinator or to any employee of an elementary and secondary school.
COMPLAINANT MUST BE PARTICIPATING IN OR ATTEMPTING TO PARTICIPATE
in the education program or activity of the recipient with which the formal complaint is filed

PARENT OR GUARDIAN MAY FILE A FORMAL COMPLAINT
on behalf of complainant

"DOCUMENT FILED BY A COMPLAINANT" MEANS
a document or electronic submission that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint
Such measures are designed to **RESTORE OR PRESERVE EQUAL ACCESS TO THE RECIPIENT'S EDUCATION PROGRAM OR ACTIVITY WITHOUT UNREASONABLY BURDENING THE OTHER PARTY**, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment.
Supportive Measures are

**INDIVIDUALIZED SERVICES**
**TO BE AVAILABLE TO COMPLAINANT AND RESPONDENT**
**NON-DISCIPLINARY AND NON-PUNITIVE**
**OFFERED AS APPROPRIATE,**
as reasonably available, and without fee or charge to complainant or respondent.

**TO BE MAINTAINED AS CONFIDENTIAL**
to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measure.

**THE RESPONSIBILITY OF THE TITLE IX COORDINATOR**
to coordinate the effective implementation.

**TO BE DOCUMENTED FOR 7 YEARS**
(If no supportive measures were provided to the complainant, the reasons must also be documented.)
General Response to Title IX Sexual Harassment

Section 106.44(a)

Report

Grievance Process for Title IX Sexual Harassment

Section 106.45

Formal Complaint
For the purpose of addressing formal complaints of Title IX sexual harassment

Basic Requirements
Notice of Allegations
Dismissal of Formal Complaint
Consolidation of Formal Complaints
Investigation of Formal Complaint
Determination Regarding Responsibility
Appeals
Recordkeeping

"Any provisions, rules, or practices other than those required by this section that a recipient adopts as part of its grievance process for handling formal complaints of sexual harassment as defined in §106.30, must apply equally to both parties."
<table>
<thead>
<tr>
<th>Basic Requirements of Grievance Process</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Equitable</strong></td>
</tr>
<tr>
<td>Treat complainants and respondents equitably...</td>
</tr>
<tr>
<td><strong>Standard of Evidence</strong></td>
</tr>
<tr>
<td>Preponderance of Evidence or Clear and Convincing Standard.</td>
</tr>
<tr>
<td><strong>Not Responsible</strong></td>
</tr>
<tr>
<td>Presumption that respondent is not responsible for alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.</td>
</tr>
<tr>
<td><strong>Appeal</strong></td>
</tr>
<tr>
<td>Procedures and permissible bases for the complainant and respondent to appeal.</td>
</tr>
<tr>
<td><strong>Evaluaton of Evidence</strong></td>
</tr>
<tr>
<td>Require an objective evaluation of all relevant evidence.</td>
</tr>
<tr>
<td><strong>Conflcit of Interest or Bias</strong></td>
</tr>
<tr>
<td>Require Title IX Personnel Team to not have a conflict of interest or bias.</td>
</tr>
<tr>
<td><strong>Reasonably Prompt Time Frame</strong></td>
</tr>
<tr>
<td>Include reasonably prompt time frames for conclusion of grievance process...</td>
</tr>
<tr>
<td><strong>Disciplinary Sanction</strong></td>
</tr>
<tr>
<td>Describe the range or list the possible disciplinary sanctions and remedies...</td>
</tr>
<tr>
<td><strong>Supportive Measures</strong></td>
</tr>
<tr>
<td>Describe the range of supportive measures.</td>
</tr>
<tr>
<td><strong>Legally Recognized Privilege</strong></td>
</tr>
<tr>
<td>Do not require information protected under legally recognized privilege...</td>
</tr>
</tbody>
</table>
Notice of Allegations

Provided by the recipient

Provided to the parties who are known

Provided upon receipt of a formal complaint
Notice of Allegations must contain:

NOTICE OF GRIEVANCE PROCESS

NOTICE OF ALLEGATIONS OF SEXUAL HARASSMENT

INCLUDING SUFFICIENT DETAILS KNOWN AT THE TIME

IDENTITIES OF THE PARTIES INVOLVED IN THE INCIDENT

THE CONDUCT ALLEGEDLY CONSTITUTING TITLE IX SEXUAL HARASSMENT

DATE AND LOCATION OF THE ALLEGED INCIDENT

STATEMENT REGARDING RESPONDENT IS PRESUMED NOT RESPONSIBLE...

INFORM PARTIES THAT THEY MAY HAVE AN ADVISOR OF THEIR CHOICE

INFORM PARTIES REGARDING FALSE STATEMENTS OR FALSE INFORMATION
Additional Allegations

“IF, IN THE COURSE OF AN INVESTIGATION, THE RECIPIENT DECIDES TO INVESTIGATE ALLEGATIONS ABOUT THE COMPLAINANT OR RESPONDENT THAT ARE NOT INCLUDED IN THE NOTICE PROVIDED PURSUANT TO PARAGRAPHS (B)(2)(I)(B) OF THIS SECTION, THE RECIPIENT MUST PROVIDE NOTICE OF THE ADDITIONAL ALLEGATIONS TO THE PARTIES WHOSE IDENTITIES ARE KNOWN.

- Section 106.45(b)(2)(ii)
Dismissing a Formal Complaint

Must Dismiss
If conduct alleged in a formal complaint would not constitute sexual harassment.
If conduct did not occur in the recipient's education program or activity.
If conduct did not occur against a person in the United States.
"Such dismissal does not preclude action under another provision of the recipient's code of conduct."

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

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

- 1 Complainant
- 2 or more Complainants
- 1 party

+ 2 or more Respondents
- 1 or more Respondents
- Other party

Where allegations arise out of the same facts or circumstances.
An investigation of sexual harassment does not occur until a formal complaint is filed.

The recipient must investigate the allegations in a formal complaint.

Report puts recipient on notice

Formal Complaint initiates an investigation
ENSURE
burden of proof and burden of gathering evidence rest on the recipient

PROVIDE EQUAL OPPORTUNITY
- for parties to present witnesses and other evidence
- for parties to have others present during any grievance proceeding
- for parties to inspect and review any evidence

DO NOT RESTRICT
the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence

PROVIDE WRITTEN NOTICE
to a party whose participation is invited or expected
INVESTIGATION TIMELINE

Gather Evidence

Present Evidence to Parties
Parties have 10 days to submit a written response

Create Investigative Report

Send Investigative Report to Parties / Decision-Makers
Parties have 10 days for review and written response

Make decision regarding responsibility
Title IX Personnel Team

What is their role?

Title IX Coordinator

Investigators

Decision-Makers

DETERMINATION

APPEALS
DETERMINATION REGARDING RESPONSIBILITY

Issued by Decision-Maker

In written form

Standard of Evidence is applied

Must be provided simultaneously to the parties.
WRITTEN DETERMINATION REGARDING RESPONSIBILITY

MUST INCLUDE

1. Identification of the allegations
2. Description of the procedural steps taken
3. Findings of fact supporting the determination
4. Conclusions regarding the application of the code of conduct to the facts
5. Statement and rationale for the result of each allegation

RECEIPT OF FORMAL COMPLAINT

DETERMINATION
WRITTEN DETERMINATION REGARDING RESPONSIBILITY

MUST INCLUDE

2. Description of the procedural steps taken
3. Findings of fact supporting the determination
4. Conclusions regarding the application of the code of conduct to the facts
5. Statement and rationale for the result of each allegation
6. Procedures and permissible bases for Complainant and Respondent to appeal

Determination regarding responsibility
Any disciplinary sanctions imposed on the respondent
Whether remedies will be provided to the complainant
WRITTEN DETERMINATION REGARDING RESPONSIBILITY

MUST INCLUDE

2. Description of the procedural steps taken
3. Findings of fact supporting the determination
4. Conclusions regarding the application of the code of conduct to the facts
5. Statement and rationale for the result of each allegation
6. Procedures and permissible bases for Complainant and Respondent to appeal

DECISION-MAKER

Determination regarding responsibility
Any disciplinary sanctions imposed on the respondent
Whether remedies will be provided to the complainant
WRITTEN DETERMINATION REGARDING RESPONSIBILITY

MUST INCLUDE

2. Description of the procedural steps taken

3. Findings of fact supporting the determination

4. Conclusions regarding the application of the code of conduct to the facts

5. Statement and rationale for the result of each allegation

6. Procedures and permissible bases for Complainant and Respondent to appeal

DETERMINATION REGARDING RESPONSIBILITY

Determination regarding responsibility

Any disciplinary sanctions imposed on the respondent

Whether remedies will be provided to the complainant

CONTAINED IN 1 WRITTEN DETERMINATION

OCR Blog
Remedies

"NEED NOT AVOID BURDENING THE RESPONDENT"

INDIVIDUALIZED SERVICES AS SUPPORTIVE MEASURES

PROVIDED TO COMPLAINANT AND RESPONDENT

NON-DISCIPLINARY AND NON-PUNITIVE

OFFERED AS APPROPRIATE, as reasonably available, and without fee or charge to complainant or respondent.

TO BE MAINTAINED AS CONFIDENTIAL to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measure.

THE RESPONSIBILITY OF THE TITLE IX COORDINATOR to coordinate the effective implementation.

TO BE DOCUMENTED FOR 7 YEARS
Appeals must be offered to both parties on the following bases:

- From a determination regarding responsibility
- From a recipient's dismissal of a formal complaint or any allegations therein
- Procedural irregularity that affected the outcome of the matter
- New evidence that was not reasonably available that could affect the outcome of the matter
- Title IX Personnel Team had a conflict of interest or bias towards complainant or respondent that affected the outcome of the matter

*A recipient may offer an appeal equally to both parties on additional bases.*
APPEAL GUIDELINES

Notify other party in writing when an appeal is filed

Implement appeal procedures equally to both parties

Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
WRITTEN DETERMINATION
regarding responsibility

WRITTEN DECISION
in an appeal

Must describe the result of the appeal and the rationale for the result

Must be provided simultaneously to both parties

At conclusion of investigation

At conclusion of appeal
ACTIVITY

JOIN THE KAHOOT
www.kahoot.it

GAME PIN: ON SCREEN
Serving Impartially

Designated individuals must "not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent."

Neutral ✔
Fair in actions ✔
Objective criteria ✔

× Prejudgement of the facts at issue
× Conflicts of interest
× Bias

34 CFR 106.45(B)(1)(III)
Serving Impartially

DESIGNATED INDIVIDUALS MUST be trained "how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias"

DESIGNATED INDIVIDUALS MUST

Be self-aware

State when they cannot be impartial

Objectively gather and evaluate evidence - including inculpatory and exculpatory evidence

34 CFR 106.45(B)(1)(III)
CONFIDENTIALITY APPLIES EXCEPT EXCEPT EXCEPT

Permitted by FERPA

Required by any law

to carry out the purpose of 34 CFR part 106.

Supportive Measures

Schools Must not Restrict the Ability of Either Party to:

- Discuss Allegations under Investigation
- Gather and Present Relevant Evidence

34 CFR 106.71(A))
Retaliation

"NO RECIPIENT OR OTHER PERSON MAY INTIMIDATE, THREATEN, COerce, OR DISCRIMINATE AGAINST ANY INDIVIDUAL FOR THE PURPOSE OF INTERFERING WITH ANY RIGHT OR PRIVILEGE SECURED BY TITLE IX"

34 CFR 106.71 (a)
You Need to Decide.

Three major items a district must decide:

- Informal Resolutions
- Hearings
- Standard of Evidence
Informal Resolutions

- MAY BE OFFERED
- AFTER COMPLAINT/BEFORE DETERMINATION
- NO WAIVER OF RIGHTS
- NOT EXPPLICITLY DEFINED/FLEXIBILITY
- VOLUNTARY
- NOT EMPLOYEE - STUDENT
- INCLUDED IN NOTICE OF ALLEGATIONS

"YES OR NO?"

You must decide
Hearings

"YES?"

- MUST ALLOW QUESTIONING
  - BY ADVISOR ONLY
  - LEA PROVIDED ADVISOR
  - SEPARATE PARTIES
  - RELEVANT QUESTIONS (INCL. CREDIBILITY)
  - RECORDING/TRANSCRIPT

OR

"NO?"

- ADDITIONAL QUESTIONS
- ALLOW ANSWERS AND FOLLOW-UP
- RELEVANT QUESTIONS

For recipients that are elementary and secondary schools...the recipient's grievance process may, but need not, provide for a hearing.

34 CFR § 106.45(b)(6)
Standard of Evidence

SELECT ONE STANDARD
The standard must be listed in the grievance process.

CONSISTENTLY APPLIED
It cannot be harder to prove an allegation against a teacher than it is to prove an allegation against a student.

PREPONDERANCE OF THE EVIDENCE
The evidence shows that the allegation is more likely to have occurred than to have not occurred. (>50% chance that the allegations are correct.)

CLEAR AND CONVINCING EVIDENCE
The evidence shows that the allegation is substantially more likely to be true than untrue. (High probability, but still less than “beyond a reasonable doubt”)

"WHICH ONE?"
You Need to Decide.

Three major items a district must decide:

- **Informal Resolutions**
  - Yes
  - No

- **Hearings**
  - Yes
  - No

- **Standard of Evidence**
  - Preponderance of Evidence
  - Clear and Convincing
TRAINING
• In-Depth Training for Personnel Team (Required)
• Basic Sexual Harassment Training for All Employees (Recommended)

PERSONNEL TEAM
• Designate and Authorize at Least One Title IX Coordinator
• Title IX Team Creation
  ◦ Internal Employees vs. Regional Center Model
• Single Investigator Model not Allowed
• Flexibility of Assignments

TIMELINE
• Investigative Time Line
  ◦ Report (at least 10 days)
  ◦ Hearing/Determination (at least 10 days)
• Appeal (additional time)

DISCIPLINE PROCESSES & POLICIES
• FERPA
• Other Considerations
• Comparison of Policies/Definitions
• Is It Title IX Sexual Harassment?
Personnel Team - In-Depth Training

ALL Team Members

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

Investigators

- Issues of relevance
  - Evidence

Decision Makers

- Issues of relevance
  - Evidence
  - Questions
- Technology used in hearings (if conducting hearings)
Basic Sexual Harassment Training

ALL Employees

- Title IX definition of sexual harassment
- Duty to report
- How to report
- Basic grievance process and timeline
Title IX Personnel Team

How Do We Do It?

- Title IX Coordinator
- Investigators
- Decision-Makers
- Informal Resolution Facilitators
Title IX Coordinator

What is their role?

1. **COORDINATE**
   - recipient's efforts to comply with Title IX responsibilities

2. **AUTHORIZED**
   - to do their job

3. **RESPONSIBLE**
   - for effective implementation of supportive measures and remedies

4. **MUST BE READILY AVAILABLE AND ACCESSIBLE**
   - 106.44(a) and 106.8(a)
### Title IX Coordinator

**What is their role?**

1. **COORDINATE**
   - Train Title IX Team Personnel
   - Respond to all actual knowledge of Title IX sexual harassment
   - Oversee implementation of: 
     - Supportive Measures
     - Remedies
     - Sanctions
   - Ensure Recording of:
     - Each investigation
     - Appeals and results
     - Responses
       - Supportive measures
       - Basis for conclusion it was not deliberately indifferent
       - Measures taken to restore or preserve equal access.
       - Reasons for not providing supportive measures
     - Informal Resolutions and results
     - Training Materials
       - Make viewable to public

2. **RESPONSIBLE**

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**34 CFR § 106.8(a); 106.44(a), (b); 106.45(a), (b); 106.45(b)(7)(iv); 106.45(b)(10)**
A process where one person interviews all parties and witnesses, gathers and examines the evidence and makes the final determination regarding guilt or innocence of the respondent. Typically, that person would also determine the actions to be taken against the respondent and/or for the complainant.

**Previous**
- Title IX did not specify investigation model
- Previous guidance somewhat encouraged model (2014 WH Task Force report)

**Current**
- New rules expressly forbid the single investigator model.
• CANNOT be a decision maker, for this complaint.

• Can be Title IX Coordinator.
  ◦ Consider the other responsibilities of the Title IX coordinator.

• Principals or Assistant Principals?
  ◦ As long as they have received the required training.

• Title IX does not specify who can or cannot be an investigator, as long as they...
  ◦ have received the appropriate training, AND
  ◦ are not the decision maker in the complaint they are investigating.

34 CFR § 106.45(b)(1)(iii); 106.45(b)(7); Final Rule Preamble pg. 30367
**Decision Makers**

1. **WRITTEN DETERMINATION** or **WRITTEN DECISION**

- Single individual

- Panel of individuals

- Multiple individuals who each adjudicate specific portions of the grievance process.

- First point of appeal cannot go to the original decision maker.

- School principals may be the decision makers for their buildings, provided they are not involved in any way in collecting evidence.
  - If they have interviewed any witnesses are they investigators?
  - Can they be unbiased if they received the initial report?

34 CFR § 106.45(b)(7); 106.45(b)(8); Final Rule Preamble  pg. 30097, 30367, 30370, 30371
Informal Resolution Facilitators

- Must be trained.

- Decision-maker, Investigator, Title IX Coordinator, someone else?
  - The rules do not delineate any further information regarding the requirements for who can be an informal resolution facilitator.
  - Impartiality/Bias?

- May be called as witnesses in subsequent formal investigations.
  - Recipient makes this decision.
  - If allowed, it must be clearly disclosed to both parties.
**Title IX Personnel Team**

**Who?**

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**Flexibility of assignment**

- It appears that the investigator, decision-maker and informal facilitator can be adjusted on a case-by-case basis.
  - We recommend maintaining as much consistency as possible, but situations may demand flexibility.

- All must receive appropriate training!

**Internal Employees vs. Regional Center Models**

- Districts can contract out investigative and adjudication duties.
  - Educational Cooperatives may be able to provide these services.
  - District to district agreements.
    - *Must ensure all training used is available publicly.*

- [https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-20200904.pdf#page=5](https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-20200904.pdf#page=5)

- **Cannot contract out Title IX coordinator**
Title IX Timelines

"Reasonably Prompt"

Investigation Timeline
No less than 20 days

Appeals Timeline
Not specified

34 CFR § 106.45(b)(v)(vi), (vii); 106.45(b)(8)
INVESTIGATION TIMELINE

Gather Evidence

Create Investigative Report

Make decision regarding responsibility

Present Evidence to Parties

Parties have 10 days to submit a written response

Send Investigative Report to Parties / Decision-Makers

Parties have 10 days for review and written response

Investigator must consider the responses prior to completion

Only relevant evidence included

Electronic or Hard Copy

Hearing?

ALL evidence collected that is related to the allegations.

34 CFR § 106.45(b)(5); 106.45(b)(6)(ii)

Written, relevant questions to any party or witness.
Allowed additional, limited follow-up questions.
Appeals Timeline

Must be filed and resolved in a “reasonably prompt” time frame. Recipient decides and specifies in grievance process.

- Commonly used in education policies
  - SpEd/504/Expulsion/Title IX Investigations
- Up to 10 days to file?
- 10 days for parties to respond/resolution?
WHAT ABOUT FERPA?

The obligation to comply with Title IX is not obviated or alleviated by the FERPA statute or FERPA regulations.

**Notice of Allegations**

**IDENTITIES** of the parties involved in the incident.

**Determination**

Given to **both** parties.

Declaration of responsibility.

**What** sanctions are imposed on **respondent**.

**If** remedies are offered **complainant**.

**Supportive Measures**

Kept confidential **so long as** the confidentiality **does not deter the ability** to provide the supports.

[34 CFR § 106.6(d)(3)(e); 106.45(b)(2)(i)(B); 106.45(b)(7)(ii)(E); 106.45(b)(7)(iii); 106.30(a)]
### Other Considerations/Questions

#### LOCATIONS
- School
- Field Trips
- Dances
- Student Events
  - Sports, performances, plays, etc.
  - Home/Away?
- Chromebooks/iPads

#### DATING VIOLENCE
- School Dance?
- School Event?
- Effectively deny access?

#### STALKING
- Students can stalk other students.
- When is it stalking vs. annoyance?
- Reasonable person clause?

#### DOMESTIC VIOLENCE
- Staff on child who is also a student at your school?
- Does it have to happen at school?

#### DUAL-ENROLLMENT
- K-12 Rules?
- Post-Secondary Rules?
- Both?
"Sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:

- A District employee:
  - Conditions the provision of an aid, benefit, or service of the District on an individual's participation in sexual conduct; or uses the rejection of sexual conduct as the basis for academic decisions affecting that individual;
- The conduct is:
  - Unwelcome; and
  - Determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity; or
  - Constitutes:
    - Sexual assault;
    - Dating violence
    - Domestic violence; or
    - Stalking.

- Depending upon such circumstances, examples of sexual harassment include, but are not limited to:
  - Making sexual propositions or pressuring for sexual activities;
  - Unwelcome touching;
  - Writing graffiti of a sexual nature;
  - Displaying or distributing sexually explicit drawings, pictures, or written materials;
  - Performing sexual gestures or touching oneself sexually in front of others;
  - Telling sexual or crude jokes;
  - Spreading rumors related to a person's alleged sexual activities;
  - Discussions of sexual experiences;
  - Rating other students as to sexual activity or performance;
  - Circulating or showing emails or Web sites of a sexual nature;
  - Intimidation by words, actions, insults, or name calling; and
  - Teasing or name-calling related to sexual characteristics or the belief or perception that an individual is not conforming to expected gender roles or conduct or is homosexual, regardless of whether or not the student self-identifies as homosexual or transgender.
**Discipline Policy Definitions**

**District B**

"Sexual harassment" means conduct that is:

- Of a sexual nature, including, but not limited to:
  - Sexual advances;
  - Requests for sexual favors;
  - Sexual violence; or
  - Other personally offensive verbal, visual, or physical conduct of a sexual nature;
- Unwelcome; and denies or limits a student's ability to participate in or benefit from any of the District's educational programs or activities through any or all of the following methods: Submission to the conduct is made, either explicitly or implicitly, a term or condition of an individual's education; Submission to, or rejection of, such conduct by an individual is used as the basis for academic decisions affecting that individual; and/or such conduct has the purpose or effect of substantially interfering with an individual's academic performance or creates an intimidating, hostile, or offensive academic environment.

The terms “intimidating,” “hostile,” and “offensive” include conduct of a sexual nature that has the effect of humiliation or embarrassment and is sufficiently severe, persistent, or pervasive that it limits the student's ability to participate in, or benefit from, an educational program or activity.

Within the educational environment, sexual harassment is prohibited between any of the following: students; employees and students; and non-employees and students.

Actionable sexual harassment is generally established when an individual is exposed to a pattern of objectionable behaviors or when a single, serious act is committed. What is, or is not, sexual harassment will depend upon all of the surrounding circumstances and may occur regardless of the sex(es) of the individuals involved. Depending upon such circumstances, examples of sexual harassment include, but are not limited to:

- Making sexual propositions or pressuring for sexual activities;
- Unwelcome touching;
- Writing graffiti of a sexual nature;
- Displaying or distributing sexually explicit drawings, pictures, or written materials;
- Performing sexual gestures or touching oneself sexually in front of others;
- Telling sexual or crude jokes;
- Spreading rumors related to a person's alleged sexual activities;
- Discussions of sexual experiences;
- Rating other students as to sexual activity or performance;
- Circulating or showing emails or Web sites of a sexual nature;
- Intimidation by words, actions, insults, or name calling; and
- Teasing or name-calling related to sexual characteristics or the belief or perception that an individual is not conforming to expected gender roles or conduct or is homosexual, regardless of whether or not the student self-identifies as homosexual or transgender.

**Sexual harassment**, as governed by policy 4.27, is also a form of bullying.
**Sexual Harassment**  Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct of a sexual nature. It also includes conduct that is not sexual in nature, but that is engaged in because of the gender of the victim. It includes conduct that is also criminal in nature such as rape, sexual assault, stalking, and similar offenses. Under this policy, sexual harassment is prohibited regardless of the sex of the harasser, i.e., sexual harassment may occur even if the harasser and the person being harassed are the same sex.

**Sexual Orientation Harassment**  Harassment on the basis of sexual orientation is unwelcome verbal, written, physical conduct directed at the characteristics of a person's sexual orientation or gender identity or expression such as negative name-calling and imitating mannerisms.

**Sexual Misconduct**  to engage in or attempt to engage in a sexual act with another person, to touch in a sexually offensive manner or send sexually explicit pictures/sexting on District property or a school related activity is prohibited.

**Sexual Harassment**  unwelcome sexual advances, request for sexual favors, sexually motivated physical conduct or the verbal/physical conduct of a sexual nature.
**Sexual Harassment** is unwanted verbal, written or physical behavior of a sexual nature; physical intimidation and mockery or scorn based on perceived sexual orientation. Such behavior is illegal if it created an environment that is hostile or intimidating.

**Sexual Activity or Sexual Misconduct** to include possession of or distribution of pornographic media. Students shall not touch other students in a sexual manner.

**Sexual harassment** is any unwelcome sexual advance, request for sexual favors and other verbal or physical conduct of a sexual nature.

**Public Display of Affection** - A public display of affection is inappropriate school behavior. Refusal to comply with reasonable expectations of school staff will lead to disciplinary action. Students shall not touch other students in a sexual manner.
“Sexual harassment” means conduct that is:

- Of a sexual nature, including, but not limited to:
  - Sexual advances;
  - Requests for sexual favors;
  - Sexual violence; or
  - Other personally offensive verbal, visual, or physical conduct of a sexual nature;
- Unwelcome; and
- Denies or limits a student’s ability to participate in or benefit from any of the District’s educational programs or activities through any or all of the following methods:
  - Submission to the conduct is made, either explicitly or implicitly, a term or condition of an individual’s education;
  - Submission to, or rejection of, such conduct by an individual is used as the basis for academic decisions affecting that individual; and/or
  - Such conduct has the purpose or effect of substantially interfering with an individual’s academic performance or creates an intimidating, hostile, or offensive academic environment.

Immorality  Students shall abstain from any indecent or immoral act, this shall also include possessing, viewing, distributing, or electronically transmitting sexually explicit or vulgar images or representations, whether electronically, on a data storage device, or in hard copy form. A student guilty of such conduct will face a minimum punishment of suspension and a maximum punishment of expulsion.
**Discipline Policy Definitions**

**District F**

**Sexual harassment**: Any unwanted and unwelcome sexual behavior (physical or verbal). Examples can include: petting, pinching, grabbing, indecent gesture, sexual remarks, jokes, innuendoes, photographs, illustrations, cartoons, or making someone the target of sexual rumors.

"Sexual harassment" means conduct that is:
- Of a sexual nature, including, but not limited to:
  - Sexual advances;
  - Requests for sexual favors;
  - Sexual violence or other personally offensive verbal, visual, or physical conduct of a sexual nature;
  - Unwelcome; and denies or limits a student's ability to participate in or benefit from any of the District's educational programs or activities through any or all of the following methods: Submission to the conduct is made, either explicitly or implicitly, a term or condition of an individual's education; Submission to, or rejection of, such conduct by an individual is used as the basis for academic decisions affecting that individual; and/or such conduct has the purpose or effect of substantially interfering with an individual's academic performance or creates an intimidating, hostile, or offensive academic environment.

The terms "intimidating," "hostile," and "offensive" include conduct of a sexual nature that has the effect of humiliation or embarrassment and is sufficiently severe, persistent, or pervasive that it limits the student's ability to participate in, or benefit from, an educational program or activity. Within the educational environment, sexual harassment is prohibited between any of the following: students; employees and students; and non-employees and students.

**Sexual Misconduct**: Any act of sexual gratification involving the touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female.

**Actionable sexual harassment** is generally established when an individual is exposed to a pattern of objectionable behaviors or when a single, serious act is committed. What is, or is not, sexual harassment will depend upon all of the surrounding circumstances and may occur regardless of the sex(es) of the individuals involved. Depending upon such circumstances, examples of sexual harassment include, but are not limited to:
- Making sexual propositions or pressuring for sexual activities;
- Unwelcome touching;
- Writing graffiti of a sexual nature;
- Displaying or distributing sexually explicit drawings, pictures, or written materials;
- Performing sexual gestures or touching oneself sexually in front of others;
- Telling sexual or crude jokes;
- Spreading rumors related to a person's alleged sexual activities;
- Discussions of sexual experiences;
- Rating other students as to sexual activity or performance;
- Circulating or showing emails or Web sites of a sexual nature;
- Intimidation by words, actions, insults, or name calling; and
- Teasing or name-calling related to sexual characteristics or the belief or perception that an individual is not conforming to expected gender roles or conduct or is homosexual, regardless of whether or not the student self-identifies as homosexual or transgender.
**Sexual Harassment**  Is when a student engages repetitively in behavior that involves unwelcome sexual advances, unwelcome touching that is sexual in nature, unwelcome requests for sexual favors from or offers sexual favors to another student such that the conduct has the purpose or effect of interfering with the other's performance in the school environment.

**Sexual Behavior**  Mutual sexual acts including sexual intercourse, fondling, nudity, etc...

**Sexual Misconduct**  Engaging in sexual activity; possession or distribution of pornographic materials.
Title IX Preamble

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

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

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

Is it Title IX Sexual Harassment?

Landmark Supreme Court case. 1999. It stated that for Title IX offenses it must be:

- Severe Pervasive – AND
- Objectively Offensive - THAT
- Denies Equal Access to Education

Courts must bear in mind that schools are unlike the adult workplace and that children may regularly interact in a manner that would be unacceptable among adults.

It is thus understandable that, in the school setting, students often engage in insults, banter, teasing, shoving, pushing, and gender-specific conduct that is upsetting to the students subjected to it.

Whether gender-oriented conduct rises to the level of actionable “harassment” thus “depends on a constellation of surrounding circumstances, expectations, and relationships, including, but not limited to, the ages of the harasser and the victim and the number of individuals involved.

Damages are not available for simple acts of teasing and name-calling among school children, however, even where these comments target differences in gender.
A young man repeatedly grabs and rubs his crotch whenever a young woman enters into their English class.
Is it Title IX Sexual Harassment?

A student yells across the cafeteria calling another student a "THOT."
A student from another school in the district is at a evening extracurricular activity at your school. The student meets a student from your school and repeatedly sends text messages and calls asking for sexual favors.
Is it Title IX Sexual Harassment?

You receive a call from the parent of a student in a neighboring school district. The parent states that one of your students is constantly texting their child inappropriate pictures during the school day.
Is it Title IX Sexual Harassment?

A student grabs another student’s rear end in the hallway between classes.
A substitute teacher, hired through a temp agency, is accused of only helping the young women who have low cut shirts and lean forward when working with them.
A teacher who worked at your school last year, but is now employed by another school district is accused of sending text messages this year to many of the students at your school requesting “nudes.”
A virtual student sends sexually explicit messages and images to another virtual student using the school provided device.
Is it Title IX Sexual Harassment?

A virtual student sends sexually explicit messages and images to another virtual student on their cell phones during school time.
If it is not sexual harassment as defined by Title IX and you must dismiss the complaint, remember that “a dismissal does not preclude action under another provision of the recipient's code of conduct.”

34 CFR § 106.45(b)(3)(i)
The U.S. Department of Education recently released new Title IX requirements that will become effective Friday, August 14, 2020. The Final Rule defines sexual harassment (including sexual assault, dating violence, domestic violence, and stalking) as unlawful sex discrimination, and imposes important legal obligations on school districts and charter schools.

**Title IX Sexual Harassment: Getting Started Checklist**

**Superintendent and Principal:**
- Develop
  - Process for responding to sexual harassment
  - Process for filing a formal complaint
  - Process for responding to formal complaints
  - Grievance process
  - Appeal process
- Determine
  - The supportive measures the school will use
  - If school will conduct hearings
  - Standard of Evidence
  - If school will offer informal resolution option

**Title IX Coordinator:**
- Appoint and authorize a Title IX Coordinator
- Display the Title IX Coordinator's contact information on School's Website
- Notify the following groups of the Title IX Coordinator's contact information:
  - Students
  - Parents or Legal Guardians
  - Employees
  - Applicants for Admission and Employment
  - Unions

**Title IX Personnel Team:**
- Appoint a Title IX Personnel Team
  - Title IX Coordinator
  - Investigators
  - Decision-Makers
- Train the Title IX Personnel Team
  - Definition of Sexual Harassment
  - Scope of school's education program or activity
  - "How to" of school's processes
  - How to serve impartially
  - Confidentiality Training
- Train Decision-Makers and Investigators on issues of relevance
- Post materials used to train the Title IX Personnel Team on the school's website

**Schools must determine whether they will use the preponderance of evidence standard or the clear and convincing standard for all formal complaints of sexual harassment.**

**The Title IX Coordinator's contact information needs to include name or title, office address, e-mail address, and telephone number.**

**The Title IX Coordinator and the Investigators cannot be Decision-Makers.**
EQUITY ASSISTANCE CENTER TEAM

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