



K12 TITLE IX ADMINISTRATOR TRAINING

East Side Union High School District

August 12, 2024



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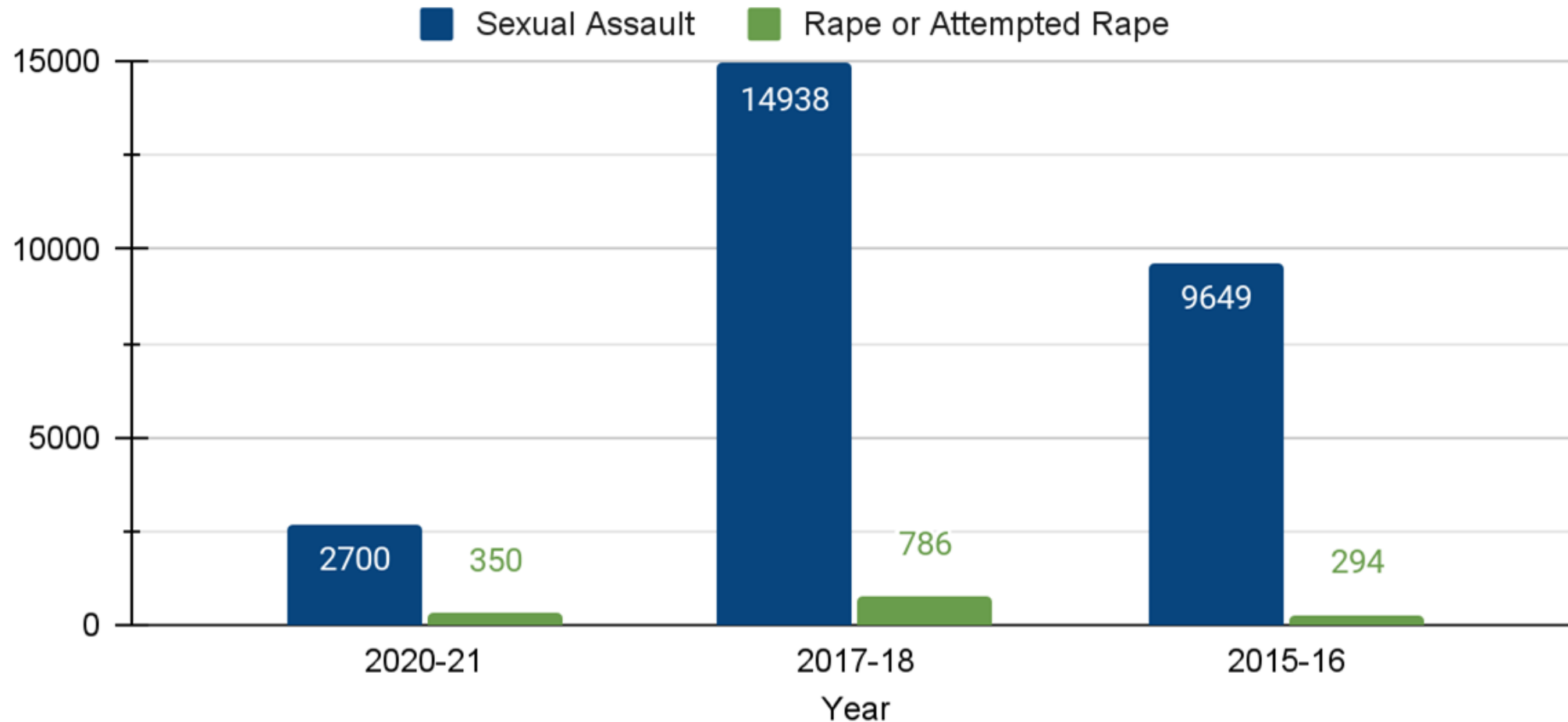


Importance of Title IX

Civil Rights Data Collection Report (CRDC)



U.S. Department of Education's Office for Civil Rights through the CRDC, a mandatory data collection to determine equal access to education. Among a number of categories, CRDC captures information about reports of sexual assault, rape or attempted rape.



Sexual Harassment or Bullying on the Basis of Sex



2020-21

17000 reported harassed/bullied on basis of sex
8200 reported harassed/bullied because of sexual orientation

Girls were reported as being harassed or bullied on the basis of sex at a higher rate than boys.

63% Girls
37% Boys

Boys were more often disciplined for harassment or bullying on the basis of sex.

22% Girls
78% Boys

According to the survey data from 2021 and 2022, the number of teen girls who have reported experiencing sexual violence has increased (from 15% in 2017 to 18% in 2021).

Sexual Violence Against Minors



1 in 9
girls

&

**UNDER THE AGE OF 18
EXPERIENCE SEXUAL ABUSE
OR ASSAULT**

1 in 20
boys

82%

**OF ALL VICTIMS
UNDER 18 ARE
FEMALE**

**FEMALES AGE
16-19 ARE**

**than the general population to be victims
of rape, attempted rape, or sexual
assault.**

4X
MORE LIKELY

The effects of child sexual abuse can be long-lasting and affect the victim's mental health. Victims are more likely than non-victims to experience the following mental health challenges. About:

4X

**MORE LIKELY TO DEVELOP
SYMPTOMS OF DRUG ABUSE**

4X

**MORE LIKELY TO EXPERIENCE
PTSD AS ADULTS**

3X

**MORE LIKELY TO EXPERIENCE A
MAJOR DEPRESSIVE EPISODE AS
ADULTS**

DATA FROM RAINN



Settlements > \$1 million

22 involved sexual violence

K12 Settlements

- Moreno Valley Unified School District in Moreno Valley, Calif., reached a \$27 million settlement with the legal guardians of a 13-year-old boy who was fatally attacked at school in a bullying incident.
- Los Angeles Unified School District reached \$15.1 million in total settlements with four former students at a charter high school who alleged they were groomed and sexually abused between the mid-1990s and 2009.
- Montgomery County Public Schools in Rockville, Md., reached a \$9.7 million settlement with families of four former high school football players who said the students were sexually assaulted by teammates wielding broomsticks in the locker room in 2017 and 2018.
- New Mexico State University reached an \$8 million settlement involving two basketball players who said teammates sexually assaulted them multiple times.



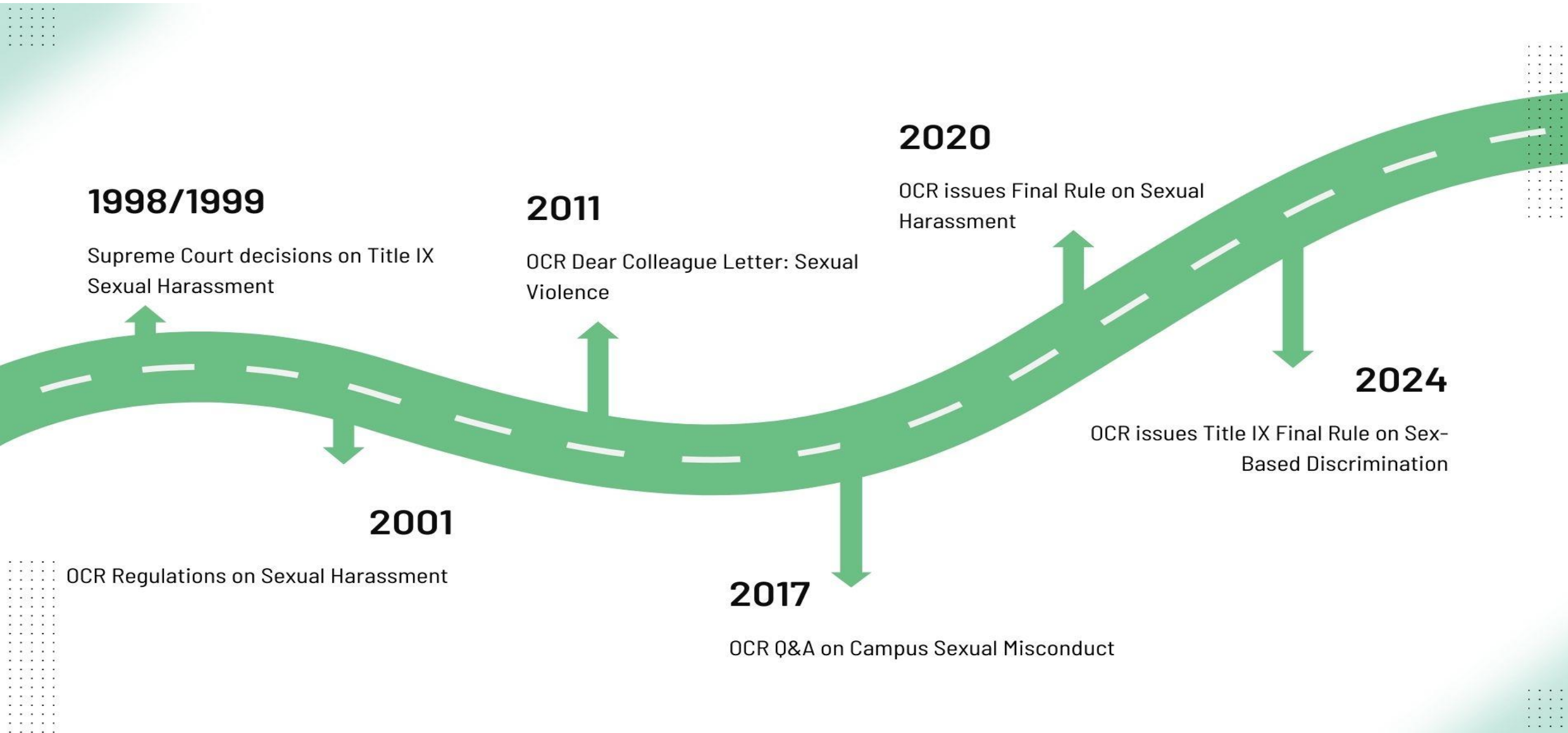
Legal Framework of Title IX



“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.”

- Federal law passed in 1972
- Enforced through the Department of Education, Office for Civil Rights (OCR)

Title IX Regulations Timeline



1998/1999

Supreme Court decisions on Title IX Sexual Harassment

2011

OCR Dear Colleague Letter: Sexual Violence

2020

OCR issues Final Rule on Sexual Harassment

2001

OCR Regulations on Sexual Harassment

2017

OCR Q&A on Campus Sexual Misconduct

2024

OCR issues Title IX Final Rule on Sex-Based Discrimination

Title IX Matters Excluded from Coverage under 2024 Regulations

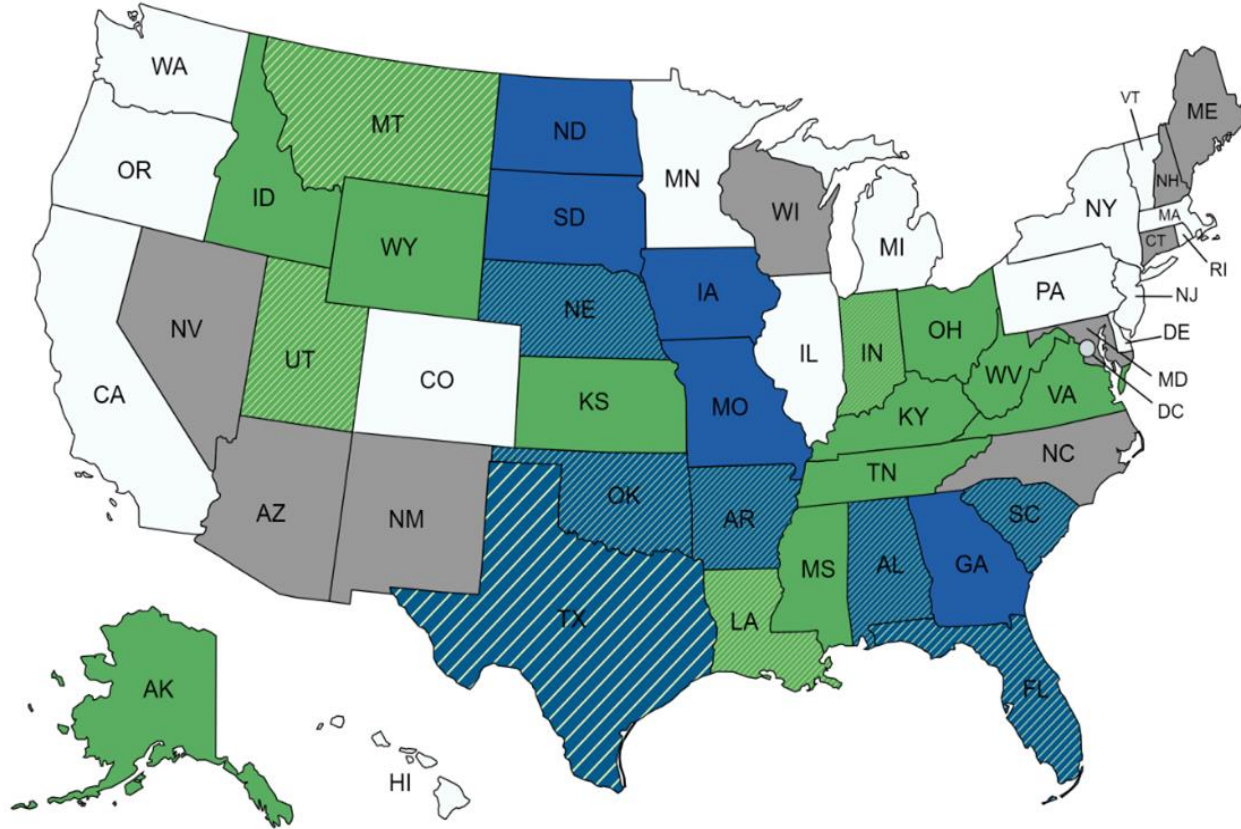


Pre-August 1, 2024, Incidents

Athletics



Litigation Limiting Enforcement of 2024 Regulations



- No Action
- Amicus Brief
- Complete Injunction
- Injunction and DNI
- Current or Pending Litigation
- Litigation & DNI

ATIXA Litigation Tracker

*Other litigation targets specific schools/districts

President's request to Supreme Court



Recent Supreme Court Case Potentially Impacting Enforcement

Chevron Decision



K12 School District's Obligation to Prevent Sex Discrimination



K12 school districts have an obligation to take **prompt and effective action to end** any sex discrimination in their educational programs or activities, to **prevent** its recurrence, and to **remedy** its effects.



- Prompt and effective action
- End sex discrimination
- Prevent its recurrence
- Remedy its effects



NOTICE

In relation to sex discrimination and/or sex-based harassment, the school must **respond to information about conduct that reasonably may constitute sex discrimination**, including sexual violence and other forms of sex-based harassment.

Reporting Obligations of Employees



Non-Confidential Employees

All employees, except Confidential Employees, have an obligation to report to Title IX Coordinator upon notice *about conduct that reasonably may constitute sex discrimination under Title IX.*


Confidential Employees

Designated as Confidential
No duty to report

Confidential employees

must share with potential Complainants:

- 1) they are confidential and not required to report to Title IX Coordinator;
- 2) how to contact Title IX Coordinator;
- 3) how to file a complaint;
- 4) Title IX Coordinator may be able to provide supportive measures, initiate an informal resolution, and/or start an investigation.

A large green graphic on the left side of the slide, consisting of a thick diagonal line that forms a downward-pointing arrow shape, with a smaller upward-pointing arrow shape nested within it.

Who are confidential
employees at the
district?

Pregnancy and Related Conditions – Notice



Purpose: To prevent sex discrimination and ensure equal access to its education program or activity.

Response: Take steps to provide **reasonable modifications** for students, reasonable break time for lactation, and lactation space for students and employees.

Documentation: Prohibited from requiring documentation from students to obtain reasonable modifications unless documentation is necessary and reasonable.

Upon notification of pregnancy from student, employee must provide student with Title IX Coordinator contact information when they receive notice from student of pregnancy or related condition.



Conduct that occurs under a District's education program or activity in the United States and includes conduct that is subject to the District's disciplinary authority.

Includes

- Conduct that occurs in a building owned or controlled by a student organization that is officially recognized by the school.
- Conduct that is subject to the school's disciplinary authority.

Expansion of Jurisdiction

1. Sex-based hostile environment allegations even if some of the alleged conduct took place outside the District's education program or activity and/or outside of the United States.
2. Definition of Complainant also includes a party who is no longer participating in or attempting to participate in the District's education program or activity.



Title IX Definitions

Preliminary Definitions



Complainant –

- 1) student or employee who person who has been subject to conduct that could be sex-based discrimination; under Title IX
- 2) person other than a student or employee who is alleged to have been subject to sex-based discrimination and who was participating in the school's education program or activity at the time of the alleged discrimination.

Respondent – person who is alleged to have violated the school's prohibition on sex discrimination.

Complaint – an oral or written request to school that can objectively be understood as a request for the school to investigate and make a determination about alleged sex-based discrimination.

Parents/Guardians – permitted to make decisions for minor students related to filing a complaint, accompanying students to interview/hearings/meetings, investigation process, and accessing records.

- **Advisors** – Parents/guardians can serve in this capacity; policy will define if others can act as advisors to parties in Title IX matter.

Investigator – individual who conducts a fair and impartial investigation on behalf of the district.

Decisionmaker – after investigation concludes, reviews investigation file and makes credibility assessments (if needed), policy violation decision, and discipline/remedies.

Sex Discrimination and Sex-Based Harassment



- Sex Discrimination:

- Sex Stereotypes

- Sex Characteristics

- Sexual Orientation

- Gender Identity

- Pregnancy & Related Conditions

- Sex-Based Harassment:

- Quid Pro Quo

- Hostile Environment

- Sexual Assault

- Dating/Domestic Violence

- Stalking

Sex Discrimination Definition



- Discrimination based on sex against an individual:
 - Education programs
 - Activities
- Discrimination based on sex in a program:
 - Systematic, due to policy or practice
 - Programmatic discrimination adversely affects persons as a group
 - Programmatic discrimination is usually attributed to the school/district, not to an individual Respondent

Sex-Based Harassment Definition



Sex-based harassment is a form of sex discrimination and refers to sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

- Quid Pro Quo
- Hostile Environment
- Specific Offenses: sexual assault, dating/domestic violence and stalking

● Quid Pro Quo Harassment

“An employee, agent, or other person authorized by the school to provide an aid, benefit, or service under the school’s education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person’s participation in unwelcome sexual conduct.”

- * Contemplates the possibility that a student could be found responsible for quid pro quo harassment under certain circumstances.



Hostile Environment Harassment

“Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the school’s education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- The degree to which the conduct affected the complainant’s ability to access the school’s education program or activity;
- The type, frequency, and duration of the conduct;
- The parties’ ages, roles within the school’s education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- The location of the conduct and the context in which the conduct occurred; and
- Other sex-based harassment in the school’s education program or activity.”

Specific Offenses: Sexual Assault, Dating/Domestic Violence and Stalking

Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the FBI.

Forcible:

- Any sexual act directed against Complainant, forcibly, against Complainant's will, or without consent, including rape, sodomy, sexual assault with an object, and fondling.

Non-Forcible:

- Offenses that do not involve force where the Complainant is incapable of giving consent, including statutory rape and incest.

Sexual Assault



- Rape
- Sodomy
- Sexual Assault With an Object
- Fondling
- Incest and Statutory Rape



Dating/Domestic Violence

Dating violence meaning violence committed by a person:

- (1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (2) Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship;
 - The type of relationship; and
 - The frequency of interaction between the persons involved in the relationship.

Domestic violence meaning felony or misdemeanor crimes committed by a person who:

- (1) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the school, or a person similarly situated to a spouse of the victim;
- (2) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- (3) Shares a child in common with the victim; or
- (4) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.



Stalking

Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(1) Fear for the person's safety or the safety of others; or

(2) Suffer substantial emotional distress.



Pregnancy and Related Conditions

Pregnant students (or person who has a legal right to act on behalf of the student) must be promptly informed of the Title IX Coordinator's contact information and informed that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the school's education program or activity.

Reasonable modifications must be permitted.

“Related conditions” are expansive.



Students

- Must NOT discriminate against any student on the basis of the student's current, potential, or past pregnancy or related conditions
- Provide information about school's obligations
- Provide reasonable "modifications"
- Voluntary access to separate and comparable program/activity
- Voluntary leave of absence
- Lactation space
- Comparable to other medical conditions

Employees

- MUST treat pregnancy or related conditions as any other temporary medical conditions for ALL job-related purposes
 - Leave
 - Disability
 - Other Benefits
- Lactation spaces
- Pre-employment questions



Retaliation meaning intimidation, threats, coercion, or discrimination against any person by the school, a student, or an employee or other person authorized by the school to provide aid, benefit, or service under the school's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or its regulations, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the Title IX regulations.

- New regulations explicitly include a prohibition against **peer retaliation**
- Schools can require employees to participate in investigations as witness – does not constitute retaliation
- Schools may NOT require students to participate in investigation for either student parties and/or witnesses
- Retaliation allegations follow the Title IX Grievance Procedures

Important Terms Not Defined by Regulations



- Consent
- Peer Retaliation
Example provided



Grievance Procedure/Required Response



“Fair, Transparent, and Reliable Process”

Impartial, No Bias, No Conflicts of Interest

“Flexibility to adopt the regulations’ grievance procedure requirements to their educational communities.”

“Avoiding unreasonable delays.”

Stages of Grievance Procedure



1

Notification of Incident to Title IX Coordinator

2

Initial Evaluation

Supportive Measures
Jurisdiction
Dismissal
Removal
Discussion of informal
resolution with Complainant

3

Investigation

Notice to Respondent
Interviews/Review of
Documents, Digital Records
Review of Investigation File by
Parties
Report (optional)

4

Determination

Questions/Cross Examination
Credibility Assessment
Determination:
-Policy Violation, Discipline
-Remedies
Outcome Notification

5

Appeal

*No set timelines; “reasonably prompt” standard

Rights of Parties to Investigation



Treat parties equitably

Provide notice of allegations
(writing not required)

Objective evaluation of
evidence, including relevance

Provide appropriate
supportive measures

Have parent (or advisor)
attend meetings, interviews,
etc.

Receive written outcome

Title IX Administrators with no
conflicts of interest or bias

Ability to provide and respond
to evidence

Completed in a reasonably
prompt timeframe and
explain delays in procedure

Presumption of non-
responsibility for Respondent

Review evidence/receive
description of evidence with
ability to inspect

Offer of appeal (if offered in
other proceedings)

Ability to not participate in
the Title IX grievance process

Take steps to protect
confidentiality of parties and
witnesses

Prohibit retaliation

Supportive Measures



Supportive measures are individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:

1

Restore or preserve that party's access to the school's education program or activity, including measures that are designed to protect the safety of the parties or the school's educational environment; or

2

Provide support during the school's grievance procedures or during an informal resolution process.

Examples:

Mental health support, academic support, safety measures on campus and during campus events, restriction on contact between parties, and any other reasonable support for the parties

- New regulations reference restrictions on contact "applied to one or more" parties
- No disciplinary sanctions can be imposed until after the grievance procedure is completed
- Appeal of measures must be allowed; appeal cannot go to the Title IX Coordinator
- Parties **MUST** be provided with timely opportunity to seek modification or reversal of school's decision to provide, deny, modify, or terminate supportive measures applicable to them



- Supportive measures are individualized measures offered as appropriate, as reasonably available, **without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons**, and without fee or charge to the complainant or respondent to:
 - (1) **Restore or preserve that party's access** to the school's education program or activity, including measures that are designed to protect the safety of the parties or the school's educational environment; or
 - (2) **Provide support** during the school's grievance procedures or during an informal resolution process.
- **APPEAL:** Either party may seek modification or reversal of the school's decision to provide, deny, or modify supportive measures if the impartial employee finds that the measures (or lack of measures) are inconsistent with the definition of supportive measures.

Parties with Special Education Services



- Pro-active, mandatory requirement to consult with Special Education Department when a party is receiving special education services and a Title IX matter has arisen
- Potential modifications to the grievance process may be necessary to accommodate
- Title IX Coordinator should manage this outreach, but if it has not taken place, the Investigator should request guidance



Possible Modifications to Process

- Conducting interviews
- Summarizing process
- Sharing information
- Manifestation determinations

Other Considerations

- Tendency to keep matters within the Special Education department
- Advisors from Special Education
- Addressing confidentiality concerns

Title IX Coordinator Initiated Investigation



In the absence of a request to investigate from Complainant, Title IX Coordinator should consider the following:

- Risk that additional acts of sex discrimination would occur
- Severity of alleged sex discrimination, whether it would lead to removal of Respondent if found to be more likely than not true
- Age and relationship between parties – Respondent employee of school
- Scope of alleged sex discrimination and evidence of potential pattern and/or impact on multiple individuals
- Availability of evidence for Decisionmaker to reach a conclusion
- Whether school could end the alleged sex discrimination and prevent its recurrence without an investigation

Title IX Coordinator Initiated Investigation



Coordinator MAY initiate, if, after considering the factors, the Coordinator determines the conduct, as alleged:

presents an imminent and serious threat to the health and safety of the Complainant or other person,

OR

the conduct prevents the school from ensuring equal access.

Notify Complainant prior to the initiation of investigation

Informal Resolution



Instead of resolving a complaint within the grievance process, the parties may elect to participate in an Informal Resolution process, unless complaint is brought by a student against an employee.

Other important provisions:

- Informal Resolution Process does not require filing a formal complaint
- Participation in informal process cannot require a waiver of any rights
- Parties may leave the informal process and return to investigation process
- Resolution of the matter can take place anytime before a determination of responsibility is made
- Never available when Complainant is student and Respondent is an employee

Discretion on part of Title IX Coordinator about whether to use informal or formal and should consider:

- Violence
- Prior Behavior
- Multiple Complainants

Informal Resolution Facilitator may never be Investigator or Decisionmaker in the same matter

Informal Resolution, Cont.



Information must be shared with the parties, including the following:

- Allegations at issue
- Requirements of the process
- Parties advised of right to withdraw from the process and initiate or resume grievance procedures
- What information the school will retain
- If informal resolution concludes, parties may not initiate or resume grievance procedures
- Whether and how the school could disclose the information if informal resolution is not successful

Title IX Coordinator Dismissal of Complaint



1 After initial investigation, the school cannot identify Respondent

2 Respondent is no longer participating in a district program or is no longer employed

3 Complainant withdraws complaint

4 Behavior reported if taken as true would not constitute sex-based discrimination

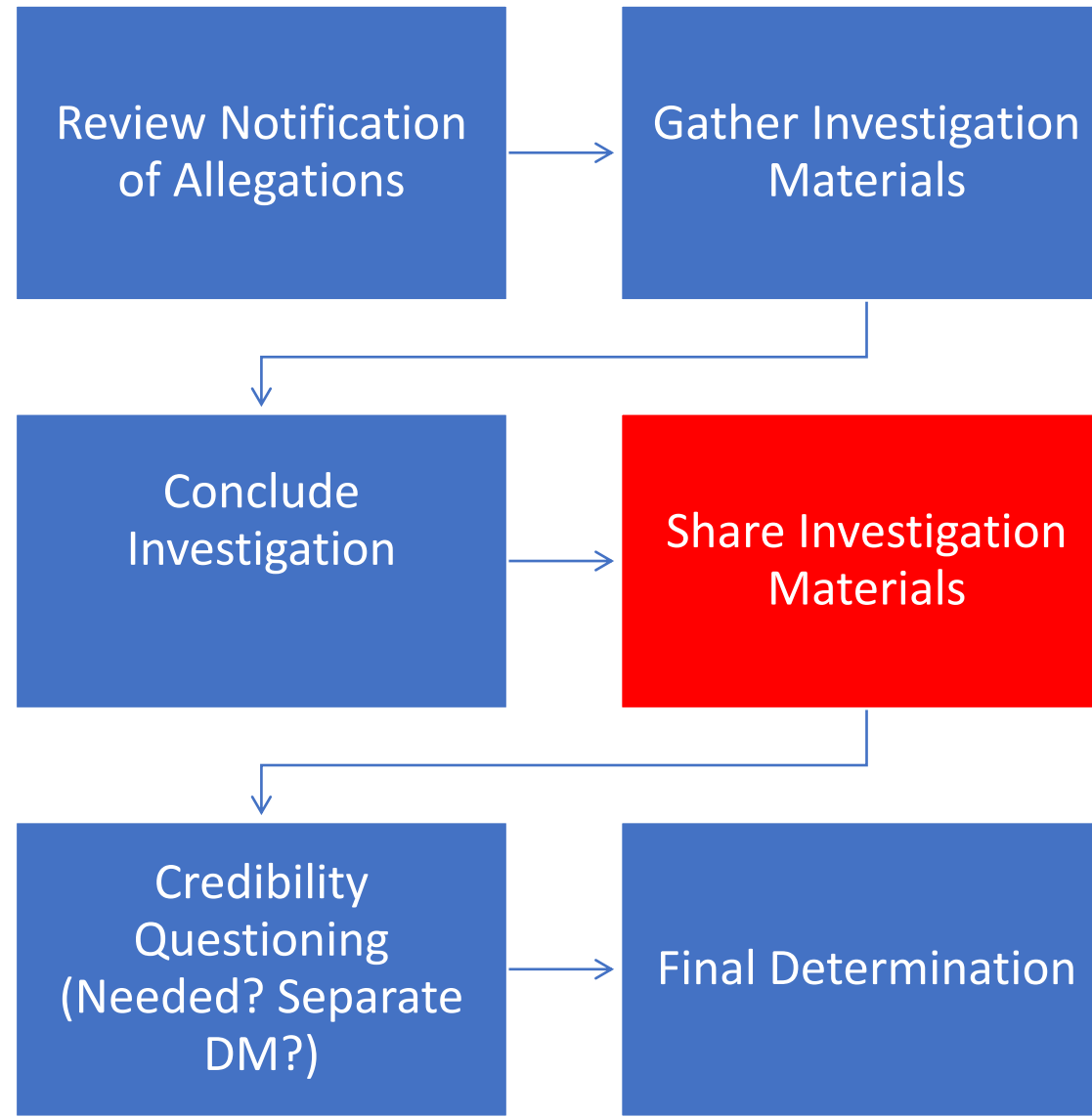
5 Parties must receive notification of the dismissal

6 Parties offered the opportunity to appeal the dismissal based on:

- procedural irregularity*
- new evidence, and/or*
- conflict of interest or bias against parties*

*and this defect would change the outcome (*new requirement*)

Investigation Flow Chart for Investigator



Notice of Allegations



The Notice to the Parties must include:

Description of the incident(s) giving rise to the complaint

Parties' names

Allegations

Dates

Location

The applicable grievance procedures and informal resolution process

Notice that the parties will receive equal opportunity to access relevant and “not otherwise impermissible” evidence or an accurate description of the evidence

The Notice of Allegations must be updated if additional allegations of sex discrimination by Respondent toward the Complainant arise

Additional items the Notice of Allegations may include:

- Other potential policy violations (not just Title IX)
- Identification of the range of possible disciplinary sanctions and remedies (should be in policy)
- Statement that Respondent is presumed not responsible (previously required)
- Notification that a determination of responsibility will be made at the conclusion of the grievance process
- Notification that each party may have a parent or advisor (depends on policy)

Emergency Removal of Students



Institution may remove Respondent prior to the completion of investigation after:

1

Individualized safety and risk analysis;

2

Determination that imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations; and

3

Respondent given notice and an opportunity to challenge the decision immediately following removal decision.



Single Investigator

- Investigator takes matter from initiation through conclusion
- Makes decisions about policy violation and discipline
- May be “Investigators”
- Credibility determinations
- Questioning
- Still needs to follow full process

Separate Investigator and Decisionmaker

- Investigator concludes investigation
- Investigation information shared
- Decisionmaker steps in to engage in Questioning
- Reaches conclusion about policy violation and discipline

Hearings are permitted



- No restriction on role Title IX Coordinator can play
- Preponderance of evidence standard
- A process to question parties and witnesses to evaluate allegations and assess credibility
- Relevance
 - Relevant means related to the allegations of sex discrimination under investigation as part of these grievance procedures
 - Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred
 - Information that is not relevant is IMPERMISSIBLE under the new regulations
 - Rape Shield Protection - now includes reference to “sexual interests” of Complainant
 - Privileged information, including medical records

Avoid Bias and Conflict of Interest



Impartiality

Address conflicts of interest
as soon as they arise

Equitable process

Not favor Complainant
or Respondent

Initial communications
about participants in
the process

Bias could occur
throughout the
process and needs to
remain checked



- Sharing of investigation information
 - Full investigation file
 - List of investigation file and access upon request
- Report – optional
 - *If using a separate Decisionmaker, information is shared here in order to conclude the process*
- Additional Questioning
- Conclusion – Policy Violation and Discipline
- Determination/Outcome



- Decision about policy violation
- Rationale for decision
- Discipline
 - Scope of discipline should be covered in policy
- Consider including other state-specific requirements

Beyond Discipline – Remedies



- If there is a determination that sex discrimination occurred, the Title IX Coordinator must coordinate remedies to Complainant and other persons who experienced a denial of equal access to the District's education program or activity based on sex discrimination.
- Remedies meaning measures provided, as appropriate, to a Complainant or any other person the school identifies as having had their equal access to the school's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the school's education program or activity after a school determines that sex discrimination occurred.

Appeals



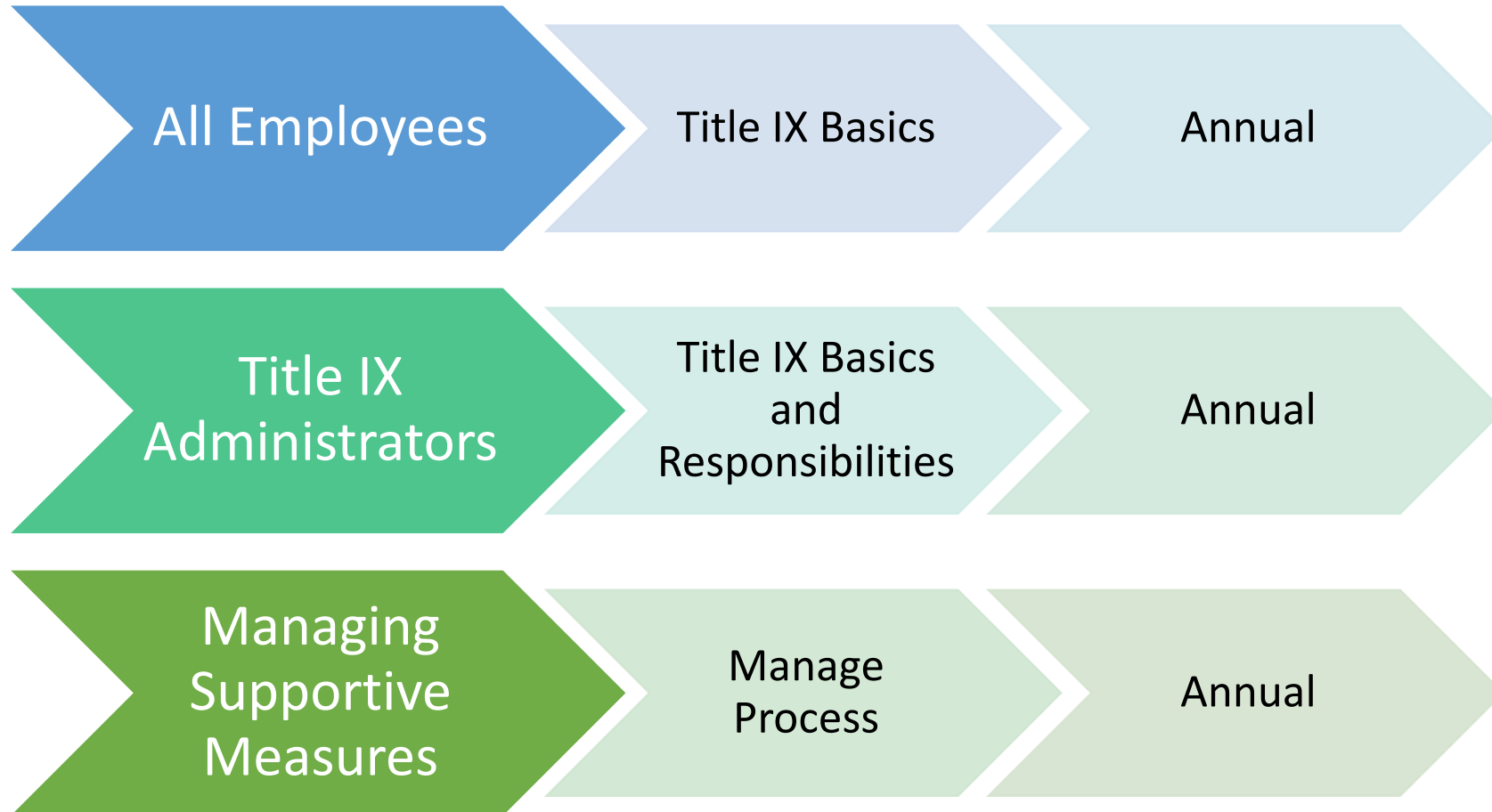
Appeal of Final Outcome

Same appeal school offers in comparable proceedings (other discrimination complaints)

If an appeal is filed:

- Notify the parties of the appeal.
- Provide the parties a reasonable and equal opportunity to make a statement in support of or challenging the outcome.
- Notify the parties of the result of the appeal and the rationale for the result.
- Ensure that the appellate Decisionmaker has been trained.

Training



False Statements



The institution's policy may not allow “discipline of a party, witness, or others participating in a school's grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the school's determination whether sex discrimination occurred.”



- Notice of Nondiscrimination
- Policies
 - New Title IX Policy (2024 Regulations)
 - AR 5145.71 Title IX Procedures (2020 Regulations)
- Impact on multiple other district policies





Prohibit schools from disclosing personally identifiable information that they obtain through compliance with Title IX.

Exceptions

- prior written consent of party
- information disclosed to parent of a minor

Barriers to Reporting Sex Discrimination



-  Pro-active responsibility to monitor barriers
-  Take steps to address barriers



“Show Your Work”

- School responded promptly and effectively
- Notifications to the Title IX Coordinator
- Supportive Measures
- Notification to the Complainant (or reporter) of the Grievance Procedures
- Evaluation of whether to initiate Complaint
- Investigation
- Sharing of Investigation Information
- Outcome Letter
- Steps to effectuate the remedies to ensure that sex discrimination does not continue or recur

Thank You!



www.titleixconsult.com

Megan@titleixconsult.com

Sarah@titleixconsult.com

TIX TRAINING FOR ADMINISTRATORS 08.12.2024 ATTENDEES

District Office

1. Assistant Superintendent Marquez
2. Director Adalat
3. Director Cavallaro
4. Assistant Superintendent Davis
5. Coordinator Mohan
6. Coordinator Carson
7. Director King
8. Coordinator Legrand
9. Coordinator Palmeri Farias
10. Secretary Ceja

13 SCHOOLS:

Independence

1. Principal Berg
2. APA Goltzer
3. APED Landshof
4. APTSS Salgado

Santa Teresa

1. Principal Payne-Alex
2. APA Granados
3. APED Nguyen
4. APTSS Truc

Piedmont Hills

1. Principal Pereira
2. APA Corbett
3. APTSS Campbell
4. APED Tran

Evergreen Valley

1. Principal Edwards
2. APED Johnson

Calero

1. Principal Gutierrez

Yerba Buena

1. Principal Pollett

2. APED Hien
3. APA Osuna
4. APTSS Oliver-Barton

Oak Grove

1. Principal Brazil
2. APA McCoy
3. APED Jochheim
4. APTSS Ramirez

Silver Creek

1. Principal Daugherty
2. APED Hua
3. APA Robison
4. APTSS King

James Lick

1. Principal Gubuan
2. APA Boostani
3. APED Hernandez
4. APTSS Villasenor

Mount Pleasant

1. APED Ngoc-Hung
2. APA Pimentel

Overfelt

1. Principal Chiala
2. APED Castro
3. APA Murillo
4. APTSS Sokacich

Andrew Hill

1. Principal Hernandez
2. APED Schneider
3. APA Truong
4. APTSS Barretto

Foothill

1. Principal Ramirez