

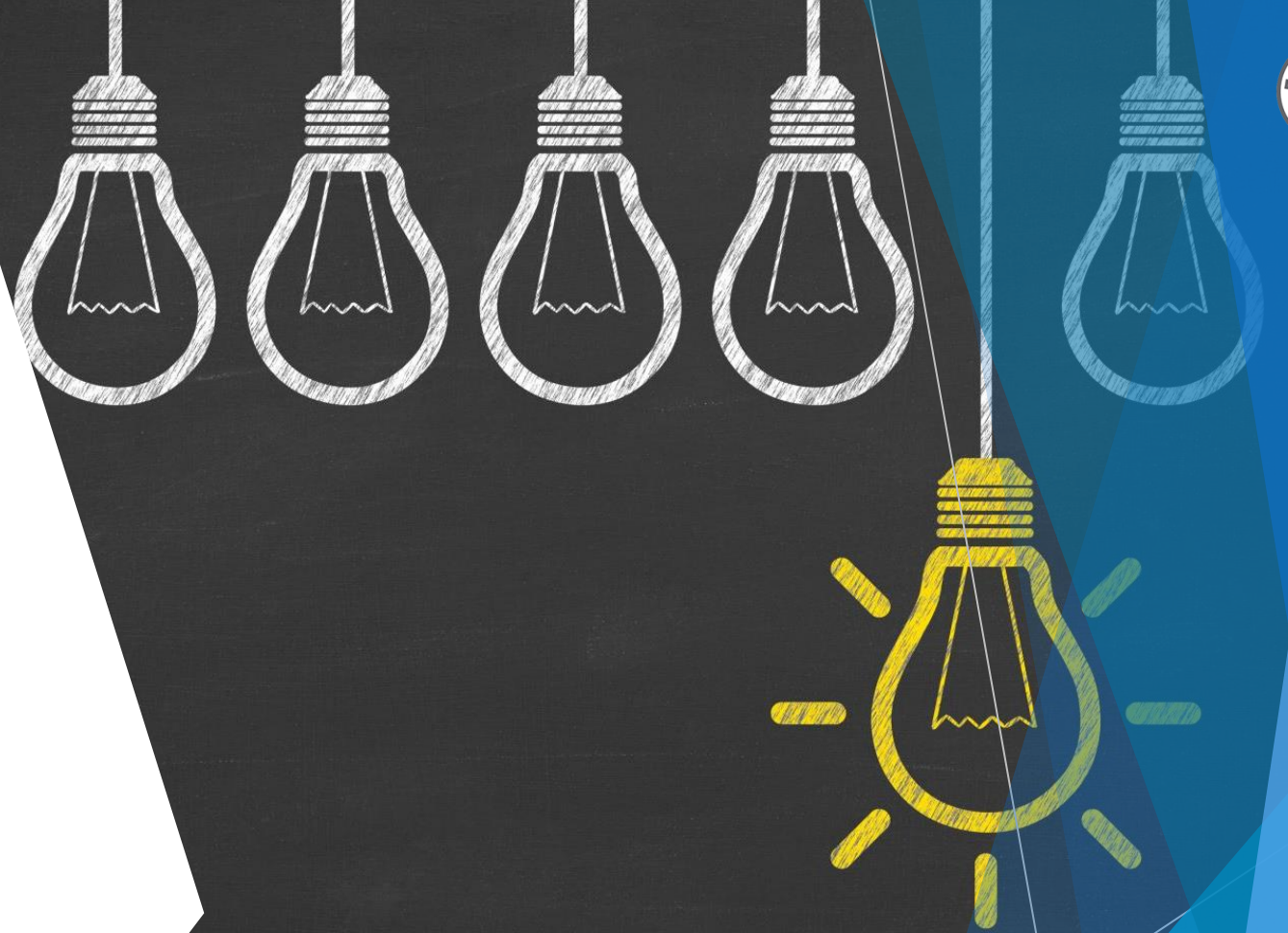


# K-12 Training for Title IX Administrators

November 8, 2023

Presented by Clezel Sewell, Title IX Coordinator  
& Patty McKernan, Title IX Independent Investigator

- ▶ Our goal is to provide a comprehensive foundation that will allow Title IX Administrators to progress into role-specific in-depth training.





# Training Agenda

Title IX Fundamentals

Role and Responsibilities of a Title IX Coordinator

Overview of Title IX Grievance Process and Investigation

Informal Resolution Facilitator's Role in Relation to the Title IX Formal Process

Role of Decision-makers in the Title IX Formal Process

Role and Responsibility of an Appeals Officer



# Title IX Training Fundamentals



“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.”

*20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)*

Title IX

# Required Training

The Title IX Team (including TIXC, Deputy Coordinators, Investigators, Decision-makers, and Informal Resolution Facilitators) are **required to have training on the following topics:**

- Definition of **Sexual Harassment**
- **Scope** of the school/District's education program or activity
- **Title IX Grievance Process** including conducting investigations, decision-making, appeals, and facilitating Informal Resolutions
- **Serving impartially**, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- **Relevance of questions and evidence;** including restrictions on questions and evidence about the Complainant's sexual predisposition or prior sexual behavior
- Creating an **investigation report** that fairly summarizes relevant evidence



# Title IX Definitions and Scope

# Sexual Harassment Definitions

- ▶ Quid Pro Quo
- ▶ Hostile Environment
- ▶ Sexual Assault
- ▶ Dating Violence
- ▶ Domestic Violence
- ▶ Stalking







# Definitions: Sexual Harassment

Sexual Harassment is conduct on the basis of sex that satisfies one or more of the following:

- ▶ **Quid Pro Quo:** An employee of the school/district conditioning the provision of an aid, benefit, or service of the Recipient on an individual's participation in unwelcome sexual conduct
- ▶ **Hostile Environment:** 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

# Definitions: Sexual Harassment

- ▶ **Sexual Assault, Rape:** Penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant
- ▶ **Sexual Assault, Fondling:** The touching of the private body parts of the Complainant (buttocks, groin, breasts) for the purpose of sexual gratification, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their *age* or because of a temporary or permanent *mental incapacity*



# Definitions: Sexual Harassment

- ▶ **Sexual Assault, Incest:** Sexual intercourse between persons who are related to each other, within the degrees wherein marriage is prohibited by California law
- ▶ **Sexual Assault, Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent of age eighteen
- ▶ **Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - ▶ Fear for the person's safety or the safety of others, OR
  - ▶ Suffer substantial emotional distress

# Definitions: Sexual Harassment

- ▶ **Dating Violence:** violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim
- ▶ **Domestic Violence:** Violence committed by a person who:
  - ▶ Is a current or former spouse or intimate partner of the victim, or a person similarly situated to a spouse of the victim
  - ▶ Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner
  - ▶ Shares a child in common with the victim, OR
  - ▶ Commits acts against a youth or adult victim protected from those acts under family or domestic violence laws of the jurisdiction



# Definition of Consent

Consent is knowingly and voluntarily giving clear permission to engage in sexual activity through words and/or by actions.

## Consent:

- ▶ Can be withdrawn at any time once clearly communicated
- ▶ Being in a relationship does not mean consent is automatic
- ▶ One sexual act does not imply consent for another act
- ▶ Can never be given if a person is asleep, incapacitated, or unconscious
- ▶ Can never be given by a minor
- ▶ Can never be given by someone with a mental disability
- ▶ Cannot be inferred from silence or lack of resistance
- ▶ Cannot be gained by force, threats, intimidation, or coercion

# Definition of Consent

## ATIXA's Definition:

- ▶ Informed, knowing, and voluntary (freely given)
- ▶ Active (not passive)
- ▶ Creates mutually understandable permission regarding the conditions of sexual activity
- ▶ No means no, but nothing also means no; Silence and passivity do not equal consent
- ▶ To be valid, consent must be given immediately prior to or contemporaneously with the sexual or intimate activity
- ▶ Consent can be withdrawn at any time, so long as it is clearly communicated verbally or non-verbally
- ▶ Consent to one form of sexual activity does not necessarily imply consent to other forms of sexual activity



# Title IX Scope

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# Title IX Covers and Includes

## Prohibition of Sex Discrimination:

- Sexual Harassment
- Equality in Athletics
- Rights of Pregnant Students
- Recruitment, Admissions, Programs



# Title IX Scope

**Sex  
Discrimination**

- Sex/Gender Discrimination
- Program Inequity

**Retaliation**

## Definition: Sex Discrimination

- ▶ **Sex discrimination** encompasses:
  - ▶ Inequitable treatment based on sex or gender
    - ▶ Sex characteristics
    - ▶ Sex stereotypes
    - ▶ Pregnancy or related conditions
    - ▶ Sexual orientation
    - ▶ Gender identity
  - ▶ Exclusion from participating on the basis of sex or gender

# Title IX and Equity

- ▶ Title IX is a gender equity law
- ▶ Enacted as a follow-up to the passage of the Civil Rights Act of 1964
- ▶ Equity refers to the understanding that not all individuals have access to the same resources and opportunities
  - ▶ Equity focuses on providing support and resources to reduce disparities in access to the education program
  - ▶ Title IX seeks to remedy the inequities sexual harassment and sex discrimination create



# Retaliation Defined In Part:

Intimidation, threats, coercion, or discrimination perpetrated by an individual against another person for the purpose of interfering with any Title IX right or privilege because a person made a report or complaint



## Retaliation is Prohibited:

- ▶ Protections for all participants in the Title IX investigation
- ▶ Prohibition against retaliation is required and requires some level of District/school action
- ▶ School Districts must keep confidential the identity of parties *except* as necessary to carry out the investigation to avoid a potential retaliation claim
- ▶ Bringing a code of conduct matter for providing false information in the Title IX process does not constitute retaliation

# Title IX Scope

Education program or activity in the United States



School/District has control over the harasser



School/District has control over the context of the harassment



Applies to both student and employee



# Title IX Grievance Process

# Grievance Process Overview

## Equitable Resolution

- ▶ Treat all parties equitably
- ▶ Ensure that all parties have opportunity to fully participate in the grievance process
- ▶ Make certain that all Title IX team members operate without bias and/or conflict of interest





# Grievance Process Overview

## Rights of the parties during the grievance process:

- Present witnesses
- Present inculpatory and exculpatory evidence
- Discuss the allegations under investigation without restriction
- Gather and present relevant evidence without restriction
- Be accompanied by Advisor of their choice
- Written notice of the date, time, location, participants, and purpose of investigation interviews or other meetings, with sufficient time to prepare
- Inspect and review directly related evidence and investigation report

# Grievance Process Overview

## Prompt Resolution

- ▶ Complete without undue delay
- ▶ Title IX regulations do not define “prompt”
  - ▶ Ideally 30 business days in K-12
  - ▶ 60 business days as an outer limit
- ▶ Grievance process may take longer than expected
  - ▶ Anticipate, mitigate, and document delays
  - ▶ Communicate with parties regarding delays



# Title IX Compliance



# Title IX Compliance

- ▶ For K-12, once any school/District employee has actual notice of sexual harassment/sex discrimination, the school/District must:
  - ▶ Take immediate and appropriate steps to investigate what occurred, though the extent of the investigation may vary
    - The obligation to investigate is absolute, even if just an Initial Assessment is completed
  - ▶ This is regardless of whether the Complainant makes a formal complaint or asks the school/District to take action

# Title IX Compliance

- ▶ School/District responses must *not* be **deliberately indifferent** to known sex discrimination or sexual harassment **AND**
- ▶ School/District must act **reasonably in light of known circumstances** to stop, prevent, and remedy
- ▶ A school/District is deliberately indifferent when:
  - ▶ The school/District has actual notice of harassment,
  - ▶ The harassment is **severe, pervasive, and objectively offensive**, and
  - ▶ The indifference is **systemic** in nature

# Title IX Ensures Constitutional Protections

Under Title IX, schools may not restrict the rights afforded under:

- ▶ First Amendment (Free Speech)
- ▶ Fifth Amendment (Protection against Self-Incrimination)
- ▶ Fourteen Amendment (Due Process)



# Title IX Team



- ▶ Title IX Coordinator (TIXC)
- ▶ Deputy Title IX Coordinator(s)
- ▶ Investigator(s)
- ▶ Decision-Maker(s)
- ▶ Appeals Officer(s)/Appellate Decision-Maker(s)
- ▶ Informal Resolution Facilitator(s)
- ▶ Advisor(s)

# Title IX Team



## TIXC Role & Key Responsibilities

- ▶ Role mandated by Title IX regulations
- ▶ Oversees school/District Title IX Compliance
- ▶ May serve as Investigator but may not serve as a Decision-maker
- ▶ Responsibilities fall into two categories:
  - ▶ Responding to reports or complaints of sexual harassment and sex discrimination
  - ▶ Leading efforts to ensure gender equity across the school/District



# TIXC Responsibilities

Coordinate Title IX responses on behalf of a District

Monitor outcomes and identify patterns

Adopt Title IX policy and procedures

Access to relevant data

Ensure information easily found and in designated publications

Conduct investigations permitted

Oversee investigations permitted

Avoid conflicts of interest, not permitted to serve as decision-maker

# TIXC Compliance Responsibilities

- ▶ Recruit, supervise, and train TIX team
- ▶ Point person for all reports and complaints
- ▶ Manage policy and procedures prohibiting sex discrimination and harassment
- ▶ Oversee complaint resolution process and program equity
- ▶ Track systemic issues or patterns
- ▶ Take remedial action to prevent recurrence
- ▶ Assess compliance efforts and program effectiveness
- ▶ Create and disseminate annual compliance report

# TIXC Compliance Responsibilities



Update school/District leadership on Title IX issues



Maintain records



Liaise with school/District legal counsel



Develop and maintain accurate web and print-based Title IX publications



Respond to government inquiries



Respond promptly in a manner that is not deliberately indifferent

Due process and fundamentally fair procedures to adjudicate the allegations

Upon notification, supportive measures offered

- Emergency removal

Offer of formal process

- Complainant files or Title IX Coordinator may file

Both parties receive notice of the allegations

Both parties participate in investigation and can inspect information gathered

Separate Decision-makers

Completed in a prompt time-frame

Retaliation prohibited - explain the retaliation complaint process

# TIXC & The Grievance Process



## Supportive Measures - Mandatory Obligations

Provided to all parties  
throughout the process

- ▶ Individualized
- ▶ Non-disciplinary, non-punitive, and without unreasonably burdening the other party
- ▶ Restore or preserve equal access to the District's education programs/activities
- ▶ **Protect safety of parties or environment, or deter sexual harassment**
- ▶ At no cost to the party
- ▶ Consult with IEP/504 team when appropriate
- ▶ **May be provided without a formal complaint**
- ▶ Avoid unnecessary disclosures about supportive measures
- ▶ **Revisited frequently and properly documented**

# Emergency Removal

## Emergency Removal:

- ▶ Imposed upon student Respondents on an emergency basis only
- ▶ Requires an individualized safety and risk analysis to determine if an immediate threat exists to the physical health or safety of any individual
- ▶ Respondent entitled to immediate notice and opportunity to challenge

# Dismissal

The TIXC may dismiss the complaint (or a portion of it) at any time prior to a determination, if:

- Complainant notifies the TIXC in writing that they would like to withdraw the formal complaint or any portion thereof
- School/District no longer employs or enrolls Respondent
- Specific circumstances prevent the school/District from gathering sufficient evidence for a determination



# Dismissal

- TIXC must dismiss the complaint at any time prior to a determination, if:
- The conduct alleged would not constitute sexual harassment or discrimination as defined in the Title IX regulations even if proved, and/or
- The School/District does not have Title IX jurisdiction
- Parties may appeal

# Key Staff Obligations

- ❑ For K-12 School Districts, ALL staff/employees must report notice of sexual harassment and/or allegations of sexual harassment received to the Title IX Coordinator
- ❑ No employee of the District can promise confidentiality to a party or witness and/or make the decision not to report
- ❑ Understand the definition of sexual harassment
- ❑ Offer Supportive Measures and Re-examine those measures on an ongoing basis
- ❑ Report any potential Title IX violation to law enforcement and/or Child Protective Services



# ▶ BREAK TIME



## ▶ Overview of the Investigation Process

# Formal Investigation

TIXC determines the scope of the investigation, which includes:

- ▶ Allegations
- ▶ Timeframes
- ▶ Parties subject to the investigation
- ▶ TIXC provides the Title IX Initial Notice which includes the notice of investigation and allegations
  - ▶ Sent to all parties, simultaneously



# Title IX Initial Notice

- ▶ The Title IX Initial Notice letter is sent to all parties simultaneously
  - ▶ **The TIXIN includes:**
    - ▶ Notice of the allegations and known details, such as identities or the parties
    - ▶ A description of the alleged conduct and relevant policy provisions
    - ▶ Information about grievance procedures
    - ▶ Presumption that Respondent is not responsible
    - ▶ Supportive measure available
    - ▶ The rights of the parties
    - ▶ Reference to any code of conduct provisions (student or employee) regarding consequences for knowingly providing false statements
    - ▶ Statement prohibiting retaliation

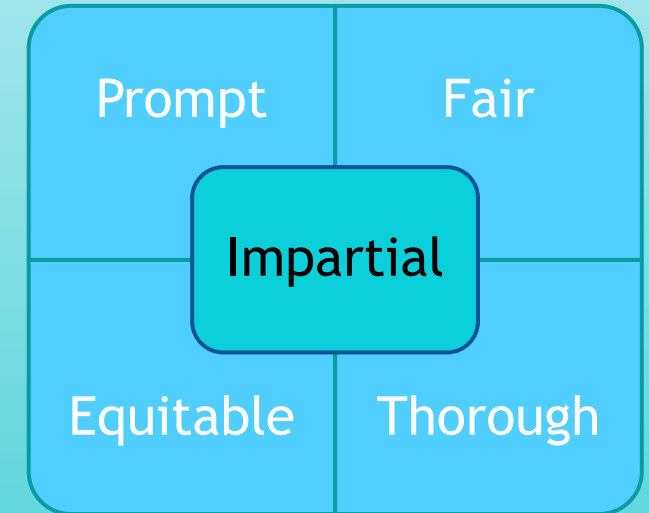


# Title IX Initial Notice

- ▶ The **TIXIN** must outline the parties' rights in the Formal Grievance Process:
  - ▶ To present witnesses
  - ▶ To present inculpatory and exculpatory evidence
  - ▶ To freely discuss the allegations
  - ▶ To be accompanied by an Advisor of their choice
  - ▶ To receive written notice of all details and purpose, with sufficient time to prepare, of any investigation interview or other meeting they are requested to attend
  - ▶ To review all relevant and directly related evidence before the investigation report is finalized
  - ▶ Notice of the allegations and known details, such as identities or the parties

## Investigator Responsibilities:

- ▶ Remaining impartial and free of bias
- ▶ Gathering all available and relevant information
- ▶ Interviewing the parties and witnesses
- ▶ Maintaining accurate and thorough investigation records and notes
- ▶ Sharing the evidence with the parties
- ▶ Creating an investigation report



# Investigators



# Formal Investigation

- ▶ Party interviews
  - ▶ With Advisors, and/or parents/guardians present
  - ▶ Witness interviews
- ▶ All additional evidence is gathered and documented
- ▶ Relevance determination of all statements, witnesses, and evidence
- ▶ Credibility assessment
- ▶ Investigator provides evidence to parties and Advisors for review and comment

# ASK GOOD QUESTIONS

- ▶ Use open-ended questions (Who...When...How...)
- ▶ Use close-ended questions to drill down details. (Did you...Were you...)
- ▶ Do not ask Compound Questions
  - ▶ “I have two questions: First...Second...”
- ▶ Do not ask Multiple Choice Questions
  - ▶ Were you a or b?
- ▶ Avoid suggesting an answer in your question
- ▶ Frame questions neutrally
- ▶ Do not ask blaming or judgmental questions
- ▶ Minimize the re-traumatization potential for all parties

# Understanding Evidence

Decision-makers ultimately determine what is relevant, directly related, or neither

- ▶ Duty to collect relevant evidence
  - ▶ Evidence is any kind of information presented to help determine what occurred
  - ▶ Relevant evidence is evidence that tends to prove or disprove the underlying allegations
    - Inculpatory and exculpatory evidence
  - ▶ Some evidence may only be relevant to assessing credibility
  - ▶ Investigators collect all relevant and reasonably available evidence except if impermissible



# Understanding Evidence Restrictions

- ▶ Directly related evidence: connected to the complaint but neither inculpatory nor exculpatory and will not be relied upon in the investigation report
  - ▶ For example: Evidence of the Complainant's sexual predisposition is explicitly and categorically not relevant
  - ▶ Evidence of the Complainant's prior sexual behavior is not relevant except for two limited exceptions:
    - ▶ Offered to prove that someone other than the Respondent committed the conduct alleged: or
    - ▶ Concerns specific incidents of the Complainant's sexual behavior with respect to the Respondent and is offered to prove consent

# Understanding Evidence Restrictions

- ▶ Even if admitted/introduced by the Complainant
- ▶ Does not apply to Respondent's prior sexual behavior or predisposition

## Heightened privacy and limitations on:

- ▶ Medical records and information
- ▶ Information subject to a privilege
  - ▶ Additional permissions required

# Credibility Assessment

- ▶ Credibility: largely a function of corroboration and consistency
- ▶ Credibility Assessment involves evaluating the extent to which evidence is believable and reliable (accurate or truthful)
- ▶ **Note:** memory errors alone do not necessarily diminish witness credibility, nor does some evasion

# Title IX Investigation Report

- ▶ Draft Investigation report and directly related evidence must:
  - ▶ Be sent to each party and Advisor in an electronic format or hard copy
  - ▶ Include evidence upon which the school/district does not intend to rely
  - ▶ Include exculpatory and inculpatory evidence
- ▶ Investigator must:
  - ▶ Allow 10 days for written response
  - ▶ Consider parties' feedback and incorporate where appropriate
- ▶ Investigator sends the final investigation report to the parties and Advisors for review 10 days prior to the hearing

# Decision- making





# Decision Makers

## Responsibilities:

- ▶ Remain impartial and free of bias
- ▶ May not be the TIXC or the Investigator
- ▶ K-12 schools/districts may hold a hearing or Decision-maker may review investigation report, evidence, and facilitate questioning by parties
- ▶ Conduct an independent assessment of the evidence gathered during the investigation, including assessment of credibility of the parties and witnesses
- ▶ Determine whether school/district policy was violated based upon the applicable standard of evidence
- ▶ Determine appropriate sanctions/discipline (if applicable)
- ▶ Draft a written determination outlining the rationale for all finding(s)



# DECISION MAKERS' ROLE

- ▶ REVIEW INVESTIGATION REPORT AND ALL EVIDENCE
  
- ▶ PREPARE WRITTEN DECISION THAT INCLUDES:
  - ▶ Allegations made by the Complainant
  - ▶ Procedural steps taken from receipt of the complaint
  - ▶ Findings of Fact
  - ▶ A determination as to whether your findings of fact constitute a violation of the District's Title IX sexual harassment policy
  - ▶ A statement of the rationale for your decision for each allegation
  - ▶ The disciplinary action to be taken if you determine that a policy violation occurred
  - ▶ Any remedial actions for one or both parties
  - ▶ Notice of right to appeal decision



**THOROUGHLY REVIEW  
ALL DOCUMENTS AND EVIDENCE  
WITH FRESH EYES**

# Decision-makers May ask Clarifying Questions of Investigator

- ▶ The goal is to ensure you understand information and evidence contained in the investigation report:
  - ▶ Relevant evidence about what happened during the incident(s):
  - ▶ Any related events
  - ▶ Any corroborating information
- ▶ Use your questions to elicit details, eliminate vagueness, fill in gaps where information seems to be missing, resolve conflicting information as it relates to the policy elements

# LIST THE PROCEDURAL STEPS TAKEN

- ▶ When and how complaint was received
- ▶ Supportive measures offered and whether accepted
- ▶ Date initial notices sent to parties
- ▶ Date of each interview
- ▶ Date of “shared evidence” letter and whether either party submitted additional evidence
- ▶ Date draft investigation report sent to parties and whether parties submitted a written response to the draft
  - ▶ If a response was submitted, describe the response
- ▶ Date of final investigation report



# DRAFT YOUR FINDINGS OF FACT

You may state that based on your review of the evidence, you are adopting the investigator's findings of fact, but you must explicitly state that you are doing so and include a description of those facts in your written decision.

If you draft findings of fact that are different from those of the investigator, you must cite the specific evidence or absence of evidence supporting your findings and explain why they are different from the investigator's findings

# Relevant Evidence

- ▶ Evidence is generally considered relevant if it has value in proving or disproving a fact at issue, and relevance means the evidence will be relied upon by the Decision-maker
  - ▶ Regarding alleged policy violation and/or
  - ▶ Regarding a party or witness's credibility
- ▶ The investigator will have made initial relevance “decisions” by including evidence in the investigation report
- ▶ Relevance is ultimately up to the Decision-maker, who is not bound by the Investigator's judgment
- ▶ All relevant evidence must be objectively evaluated and considered - both inculpatory and exculpatory

# Relevant Evidence

- ▶ If the Investigator indicates an opinion on credibility, outcome, whether policy was violated, how evidence should be weighed, et cetera, that opinion or recommendation is not binding on the Decision-maker
- ▶ The Decision-maker may consider it, but has to be objective and independent, and is free to accept or reject any recommendation of the Investigator (or ask them not to make one) -- Should you ask for it or ask the Investigator to clarify their recommendations





# Making a Decision

# Burden of Proof

Preponderance of  
the evidence -  
More likely to be  
true

Clear and  
convincing -  
Substantially More  
likely to be true



# DETERMINING WHETHER A POLICY VIOLATION HAS OCCURRED

DO YOUR FINDINGS OF FACT SUPPORT A DETERMINATION, BASED ON A PREPONDERANCE OF EVIDENCE, THAT ANY OF THE FOLLOWING OCCURRED:

- District employee conditioned a District aid, benefit, or service on the student's participation in unwelcome sexual conduct; or
- Respondent engaged in unwelcome conduct so severe, pervasive and objectionably offensive that it effectively denied the Complainant equal access to District's educational program or activity; or
- Sexual assault
- Dating or Domestic violence
- Stalking



# APPLYING THE PREPONDERANCE OF EVIDENCE STANDARD

**Allegation:** Complainant alleges Respondent sexually assaulted her by touching her breast.

**Evidence:** Respondent and credible witnesses state that Respondent tripped and fell and in the process of falling put his hand out and accidentally touched Complainant's breast.

**Factual Finding:** Based on statements from both parties as well as credible witnesses, there was a preponderance of evidence to support the allegation that Respondent touched Complainant's breast. Based on Respondent's statement and credible witness accounts, however, there is a preponderance of evidence to show that the touching occurred accidentally as a result of Respondent's fall and not for sexual gratification.

**Determination:** Based on the findings of fact, I have determined that there is a preponderance of evidence that no policy violation has occurred.



# INCLUDE DISCIPLINARY/REMEDIAL ACTION

**WRITTEN DECISION MUST INCLUDE APPROPRIATE DISCIPLINE TO BE IMPOSED IF POLICY VIOLATION IS FOUND**

- Decision Maker consults with APA to determine appropriate discipline
- Discipline may not be implemented until Written Decision issued
- Special Education students may require a manifestation determination to be conducted after Written Decision is issued but prior to implementation of discipline
- Remedial measures such as “no contact orders” should be included in Written Decision

# INFORM PARTIES OF APPEAL RIGHTS

Both parties have a right to appeal on any of the following grounds:

- ▶ A procedural irregularity affecting the outcome
- ▶ New evidence is available that could affect the outcome
- ▶ A conflict of interest or bias by the Title IX Coordinator, Investigator or Decision-maker affected the outcome

# Written Decisions

## Written Decisions

- ▶ Authored by Decision-maker(s)
- ▶ TIXC communicates to the parties and parent/guardian simultaneously in writing
- ▶ Written Decisions are considered final on the date that they are provided by the Decision-maker to the parties
- ▶ FERPA cannot be construed to conflict with or prevent compliance with Title IX

## Written Decisions Elements

- ▶ Applicable policy
- ▶ Procedural steps taken
- ▶ Statement of and rationale for the result of each specific allegation
- ▶ Sanctions imposed (if any) and rationale for chosen sanctions
- ▶ Any remedies provided to Complainant
- ▶ Procedures and bases for appeal



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Trained facilitators

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After formal complaint is filed

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Process must be detailed in writing

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Described to both parties

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Parties agree in writing

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Either party may end informal resolution before a formal agreement is accepted

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Parent/guardian signature required

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Never available when complainant is a student and respondent is an employee

# Informal Resolution Facilitators



# Informal Resolution

- ▶ Title IX permits voluntary Informal Resolution (IR)
- ▶ Not available for staff-on-student harassment
- ▶ Not defined by regulations, but procedural requirements apply
- ▶ May be requested by parties at any time during the grievance process prior to a final determination
- ▶ May not be appropriate for all complaints; TIXC makes determination

# Informal Resolution Facilitator(s)

## Responsibilities:

- ▶ Remain impartial and free of bias
- ▶ Review all directly related materials provided by the parties and/or the TIXC
- ▶ Meet individually with all parties to ascertain motivations, goals, and manage expectations
- ▶ Facilitate Informal Resolution process
- ▶ Draft Informal Resolution agreement (or) refer the complaint back to the TIXC



# Informal Resolution ATIXA Sample Consent Form

## CONSENT TO PARTICIPATE IN INFORMAL RESOLUTION

- I understand how the [College/University] informal resolution process works
- I agree to allow the [College/University] to facilitate an informal resolution of the complaint to which I am a party
- I agree to pause the [College/University] formal grievance process for the duration of the informal resolution
- I am making freely and voluntarily making the decision to participate in informal resolution
- I understand that if the informal resolution does not result in an agreement between the parties to resolve the complaint, the formal grievance process will resume
- I acknowledge that I, another party, or the facilitator may choose to end the informal resolution process at any time, for any reason, and resume the formal grievance process
- [I understand that information shared during the informal resolution process may not be disclosed during a formal grievance process for the same complaint]
- Informal resolution meetings will not be audio or video recorded or transcribed. If an agreement is reached, the parties and the facilitator(s) will sign an agreement document which will be provided to the Title IX Coordinator for review and approval.

My signature signifies my acceptance:

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



# Informal Resolution Support Documents - ATIXA Letters

- ▶ Consent Denied for Informal Resolution
- ▶ Consent Granted for Informal Resolution
- ▶ Consent Sought for Informal Resolution
- ▶ Informal Resolution Agreement Implementation Letter from TIXC (Complainant)
- ▶ Informal Resolution Referral to Facilitator
- ▶ Informal Resolution Agreement Implementation Letter from TIXC (Respondent)
- ▶ Informal Resolution Scheduling Notice Letter for all Parties
- ▶ K-12 Consent Denied for Informal Resolution
- ▶ K-12 Consent Sought for Informal Resolution
- ▶ K-12 Informal Resolution Agreement Implementation Letter from the Title IX Coordinator (Complainant)
- ▶ K-12 Informal Resolution Agreement Implementation Letter from Title IX Coordinator (Respondent)
- ▶ K-12 Informal Resolution Agreement Template
- ▶ K-12 Informal Resolution Consent Form
- ▶ K-12 Informal Resolution Referral to Facilitator
- ▶ K-12 Informal Resolution Scheduling Notice to all Parties
- ▶ K-12 Notification of Failure of Informal Resolution to all Parties
- ▶ Notice of Final Determination - No Appeal (Respondent)
- ▶ Process Delay Notice Letter



# Informal Resolution Support Documents - ATIXA Templates

- ▶ Flowchart - Informal Resolution
- ▶ Framework for Informal Resolution
- ▶ Informal Resolution Agreement Template
- ▶ Notification of Informal Resolution Failure/Referral for Formal Grievance Process



# Advisors

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# Advisor(s)

## Responsibilities:

- ▶ Title IX requires school/District to allow all parties to have an Advisor of their choice, including an attorney
- ▶ Assist the Complainant or Respondent in navigating the Title IX grievance process
- ▶ Liaise with the TIXC on behalf of the Complainant or Respondent (as needed)
- ▶ Accompany the Complainant or Respondent to meetings and interviews
- ▶ Pose questions to the Investigator(s) and Decision-makers on behalf of the Complainant or Respondent (as requested)



# Bias and Conflict of Interest





# Bias and Conflict of Interest

Title IX administrators have no “side” other than the integrity of the process

Title IX Regulations prohibit conflict of interest or bias with Coordinators, Investigators, and Decision-makers against parties generally, an individual party, or related to the substance of the Complaint

Training materials cannot include sex stereotypes and should promote impartiality



# Appeals Officers



# Appeals Officer

- ▶ **The Appeal Decision-maker may be an individual or panel**
  - Cannot be the Title IX Coordinator
  - Cannot be the Investigator or Decision-maker in the original grievance process
  - When an appeal is filed, the Recipient must notify the other party and implement appeal procedures equally for all parties and give parties a reasonable, equal opportunity to submit a written statement in support of or challenging the outcome
  - Recipient may have a pool of Decision-makers who sometimes serve as policy or Appeal Decision-makers
  - Recipient may have dedicated Appeal Decision-makers



# APPEAL RIGHTS

Either party may appeal the District's decision or dismissal of a formal complaint or any allegation in the complaint

- An appeal must be filed in writing within 10 calendar days of receiving the determination, stating the grounds for the appeal and including any relevant documentation in support of the appeal.

# Three Bases For Appeals

Must offer appeals on one or more of the following grounds:  
(Schools/Districts have the discretion to add additional appeal grounds)

01

Procedural irregularity that affected the outcome in the Title IX Grievance Process

02

Newly discovered evidence that was not reasonably available at the time of the determination that could affect the outcome

03

Bias or conflict of interest by the Title IX Coordinator, Investigator, or Decision-maker that affected the outcome



# REVIEW REQUEST FOR APPEAL

APPEALS OFFICER DETERMINES WHETHER THE REQUEST ASSERTS PERMISSIBLE GROUNDS FOR APPEAL AND WHETHER IT WAS SUBMITTED WITHIN THE 10 CALENDAR DAY TIMELINE



# APPEALS OFFICER'S ROLE

- Notify the other party in writing when an appeal is filed
- Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
- Share any new evidence with both parties
- Within 20 calendar days, issue a written decision describing the result of the appeal and the rationale for the result
- Provide the written decision simultaneously to both parties

# Appeals Determinations

Appellate Decision-maker must complete a written determination with rationale

Determinations may include:

- **Upholding** the original determination and sanctions (if any)
- **Remanding** the complaint back to the Decision-maker for reconsideration or to the Investigator for further investigation
- **Modifying** the original determination and/or sanctions (if any)
- **Overturing** the determination (not recommended)



# APPEAL DECISION

Appeal Decision must include:

- Result of the appeal
- **Rationale for the decision**
- If the original decision is upheld, a statement that the appeal decision is the District's final action and the matter is considered resolved
- If not upheld, describe next steps (i.e. investigation will be re-opened, or decision remanded to consider new evidence)
- Send copies of Appeal Decision to both parties simultaneously



# Pregnancy and Related Conditions



- ▶ Schools/Districts are required to:
  - ▶ Prohibit sex discrimination
  - ▶ Provide, coordinate, and document reasonable modifications and supportive measures
  - ▶ *Allow access to separate and comparable program*
  - ▶ Allow for voluntary leave of absence
  - ▶ **Provide lactation time and space**
  - ▶ Provide grievance procedures for sex discrimination complaints
  - ▶ Provide comparable treatment to temporary disabilities or conditions

# Pregnancy and Related Conditions

# Pregnancy and Related Conditions

TIXC is responsible for coordinating and overseeing necessary supportive measures and modifications for those experiencing pregnancy and related conditions

Schools/Districts should publicize supports available for pregnancy and pregnancy related conditions, including how to request support

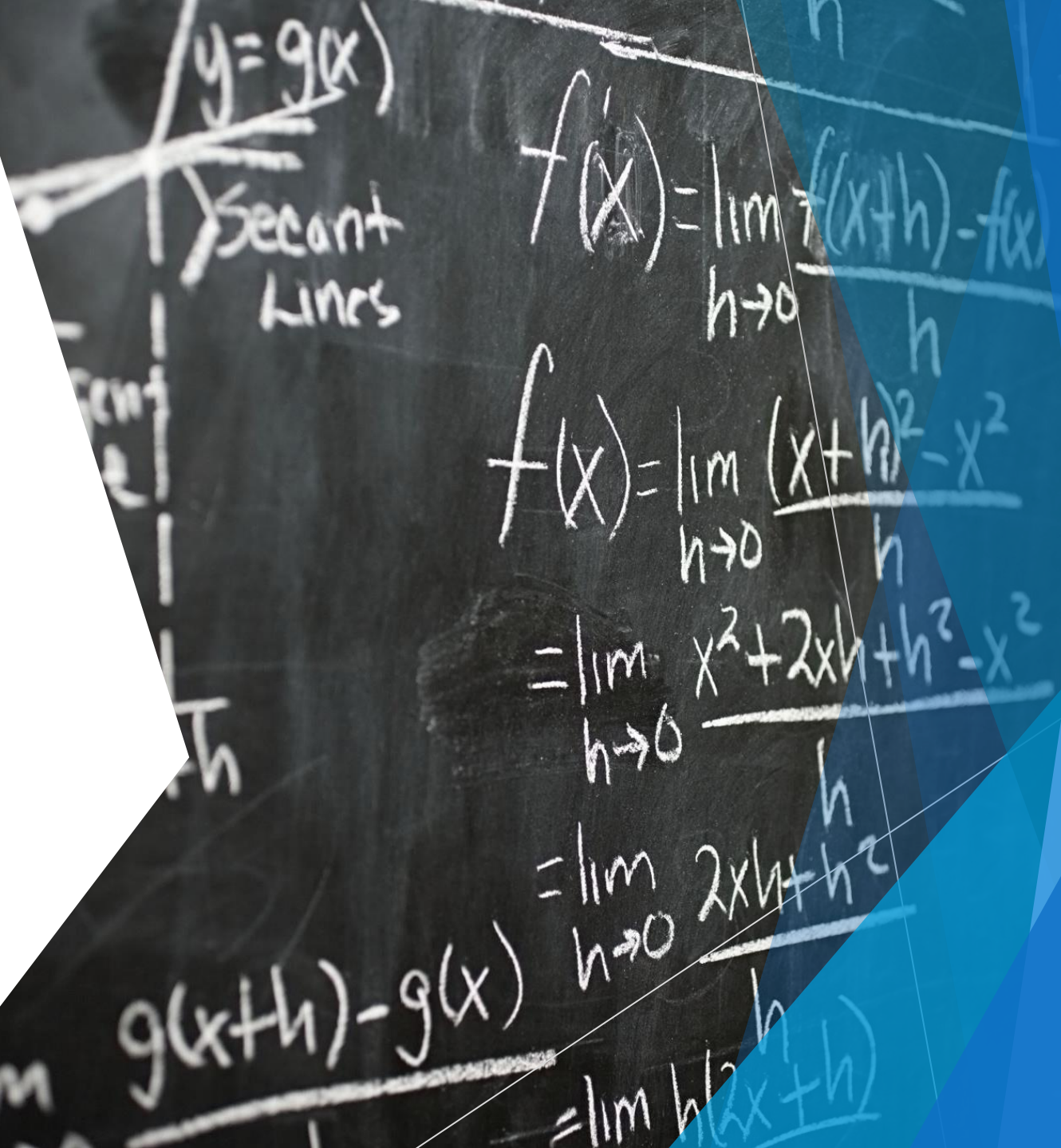
Pregnancy includes:

Pregnancy, childbirth, termination of pregnancy, or lactation

Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation

Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or their related medical conditions

# K-12 Factors to Consider



$y = g(x)$   
Secant Lines

$$f'(x) = \lim_{h \rightarrow 0} \frac{f(x+h) - f(x)}{h}$$
$$f'(x) = \lim_{h \rightarrow 0} \frac{(x+h)^2 - x^2}{h}$$
$$= \lim_{h \rightarrow 0} \frac{x^2 + 2xh + h^2 - x^2}{h}$$
$$= \lim_{h \rightarrow 0} \frac{2xh + h^2}{h}$$
$$= \lim_{h \rightarrow 0} \frac{g(x+h) - g(x)}{h}$$
$$= \lim_{h \rightarrow 0} h \cdot \frac{1}{h} (x+h)$$

## Working with Parents/Guardians

File

File a complaint on behalf of their student

Seek

Seek supportive measures on behalf of their student

Attend

Attend all interviews/meetings/hearings with their student, regardless of whether they are serving as the student's Advisor

Make

Make decisions throughout the grievance process, such as whether to pursue Informal Resolution

Access

Access their student's education records, including Title IX Complaint File

# Interacting with Law Enforcement

Site administration should assist Complainants in reporting incidents to law enforcement



Criminal investigations do not relieve a school/district of its duty to respond promptly and effectively:

Criminal investigation process is separate from Title IX grievance process

Applies different laws/policies and a different standard of evidence

# Family Education Rights and Privacy Act

- ▶ Parents have the right to “inspect and review” education records of their students
- ▶ Title IX grievance process protects privacy, but avoid promising “confidentiality”
- ▶ Recommend obtaining consent of the parents/guardians of other student(s) whose information will be disclosed, especially student witnesses
- ▶ **FERPA cannot be construed to conflict with or prevent compliance with Title IX, including requirement to notify both parties of the outcome**



# RECORDKEEPING AND DOCUMENTATION

- ▶ School/District must maintain records for a *minimum* of seven years:
  - Sexual Harassment and discrimination complaints, including determination and discipline and/or remedies
  - Appeals and results
  - Rationales for all determinations
  - Informal Resolution
  - Supportive measures
  - Measures taken to preserve/restore access
  - All training materials
- Document how response was not deliberately indifferent



# Related Policies

Title IX Sexual Harassment  
Complaint Procedures (AR  
5145.71)

Sexual harassment allegations  
that do not meet the Title IX  
guidelines are investigated  
through the Uniform  
Complaint Procedures (UCP)  
outlined in BP/AR 5145.7 and  
BP/AR 1312.3.



# Questions



# Title IX Administrators of Claims

- ▶ The following ESUHSD Title IX Administrators were trained on November 8, 2023
  - ▶ **Investigator:**
    - ▶ Sharon Cavallaro
  - ▶ **Decision Makers:**
    - ▶ Paul Landshof
    - ▶ Aaron J. Lott
    - ▶ Marco Osuna
    - ▶ Mary Pollett
  - ▶ **Informal Resolution Officers:**
    - ▶ Ngoc-Hung (“JD”) Do
    - ▶ Lyra Hua
    - ▶ Nancy Pereira
    - ▶ Anna Thomas
    - ▶ Sandrino LeGrand
  - ▶ **Appeals Officer:**
    - ▶ Teresa Marquez