

Title IX Investigations Training

July 24, 2025



Title IX Training Series – July 2025



July
17

Title IX Coordinator

Thursday, July 17th 9AM - 12PM

July
24

Title IX Investigator

Thursday, July 24th 9AM - 12PM

July
31

Title IX Decision-Maker and Appeal Officer

Thursday, July 31st 9AM - 12PM

Aug
7

Title IX Informal Resolution Facilitator

Thursday, August 7th 9AM - 12PM



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Agenda



- 2024-25 Title IX Updates
- Title IX Law
- Title IX Sexual Harassment under 2020 Title IX Regulations
- Title IX Investigation Requirements
 - Notice of Allegations
 - Investigation
 - Sharing Investigation Information
 - Decision-Maker
 - Outcome Letter
- Investigation Best Practices



Title IX Update

Investigation Review of 2024-25

Title IX – 2024-25 School Year

**2024 Biden administration
Title IX regulations set to take
effect on 08/01/24.**



**Court case decided on 01/09/25
vacated 2024 regulations, finding
that they were unlawful as enacted
(*State of Tennessee v. Cardona*).**



Litigation challenges throughout US

- ❖ **State challenges**
- ❖ **Special interest challenges**
- ❖ **Biden administration proposed multiple revisions to Supreme Court that were rejected**



**US Department of Education
issues a Dear Colleague Letter in
February 2025 explicitly stating
that August 2020 regulations
apply retrospectively and
prospectively.**



Return to 2020 Regulations



- ❖ Detailed process that addresses Title IX complaints of sexual harassment, as further defined in the regulations, ONLY
- ❖ Does not provide required process for other Title IX complaints, such as sex discrimination
- ❖ Does not address some of the areas that were expanded in the 2024 regulations, including pregnancy
- ❖ Prohibitions against sex discrimination are not extended to discrimination/harassment based upon gender identity

Administrative Update:

Department of Education, Office for Civil Rights

- Layoff of significant number of staff in OCR
 - **7 of 12** civil rights offices across the country were closed
 - The U.S. Supreme Court on Monday allowed the Trump administration to proceed with laying off **nearly half** the U.S. Department of Education's staff (Decision dated 7/14/25)
- Special Investigation Team (SIT) specialized team of investigators from across ED and DOJ offices. The establishment of the Title IX SIT will allow personnel to apply a rapid resolution investigation process to the increasing volume of Title IX cases
- From March-June 2025:
 - OCR initiated over **309 investigations**
 - DEI efforts
 - Transgender inclusion
 - Antisemitism
 - OCR **settled 290 matters**
 - OCR **dismissed 3,424 complaints**
- OCR settlements set the tone for civil rights policies, procedures, and enforcement nationally.

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."

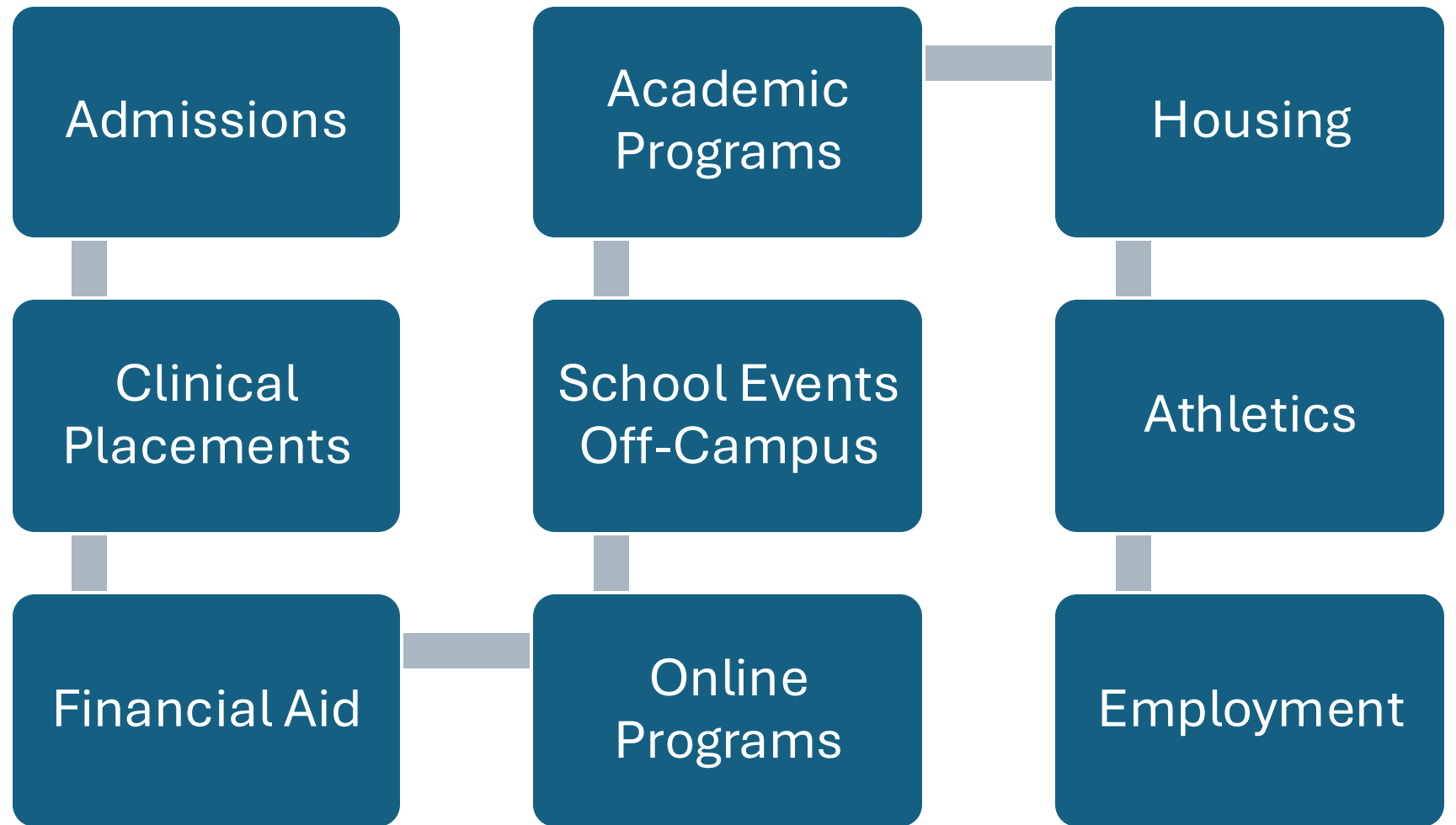
- Title IX of the Education Amendments of 1972

Enforced by the Office for Civil Rights (OCR)



Title IX

- Prohibits sex discrimination in educational programs and activities.



Title IX: Scope of the Education Program or Activity

Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

Off-campus activities covered if one (1) of three (3) requirements are met:

1. The off-campus incident occurs as part of the school's operations;
2. The school exercised substantial control over the respondent and the context of alleged sexual harassment that occurred; or
3. *The incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially recognized by a college.*

TIXGP: Jurisdiction Defined

Occurring in the institution's
education program or
activity

- includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred

Against a person in the
United States

Title IX Jurisdictional Questions

- A reported Title IX incident happened after ended for the day in a gender-neutral bathroom between two students.
- A reported Title IX incident happened when the robotics team was at a competition out-of-state.
- A reported Title IX incident happened between two students when they were off-campus for lunch in an open campus setting.

Educational institutions must respond in a manner that is not **deliberately indifferent** when it has actual knowledge of sexual harassment occurring in the institution's education program or activity against a person in the United States.

Failure to respond to a complaint following the Title IX process could be evidence of deliberate indifference.

Reporting Obligations of K12 Employees



Non-Confidential Employees

All employees, except Confidential Employees, have an obligation to report to Title IX Coordinator upon notice about Title IX complaint

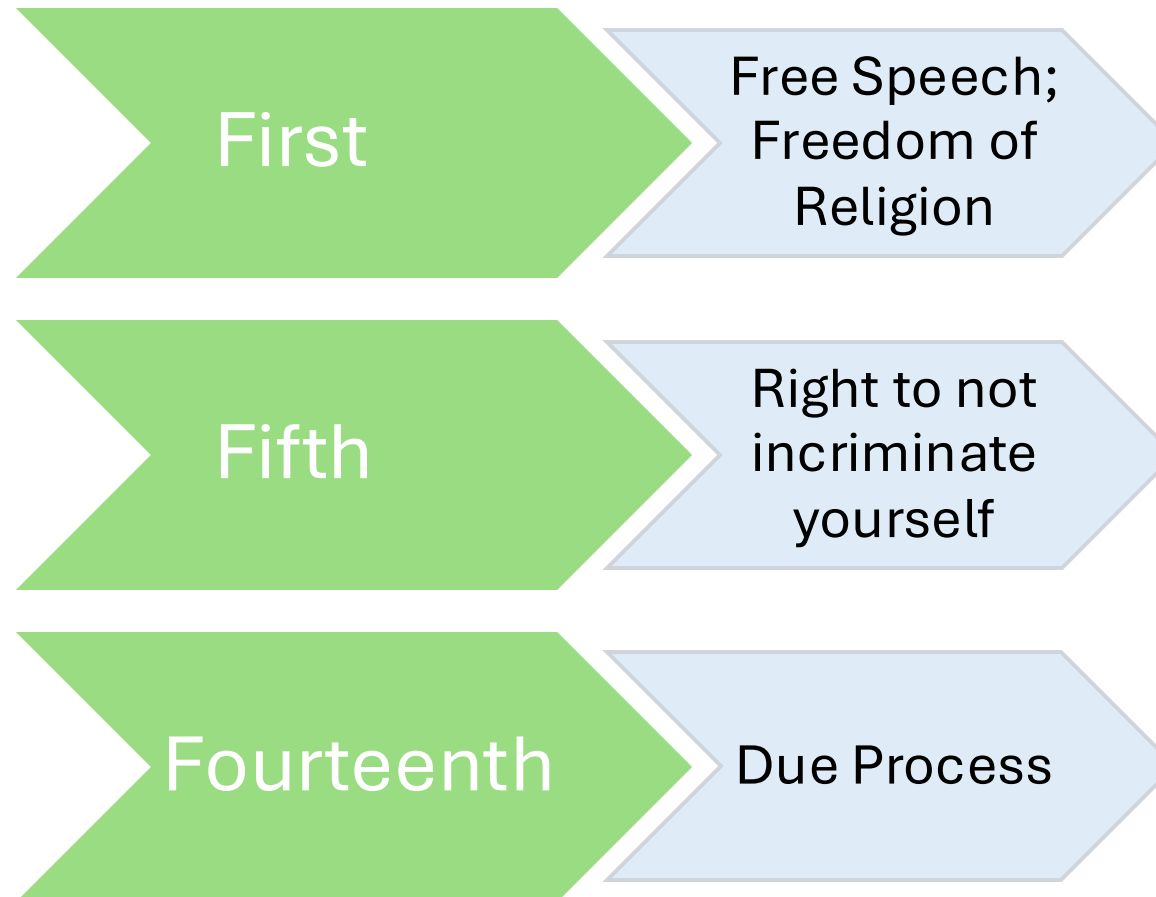
Confidential Employees

Mental Health professionals with a license

No duty to report to Title IX Coordinator

Title IX Enforcement and Federal Constitutional Protections

Title IX process may not limit or restrict constitutional protections

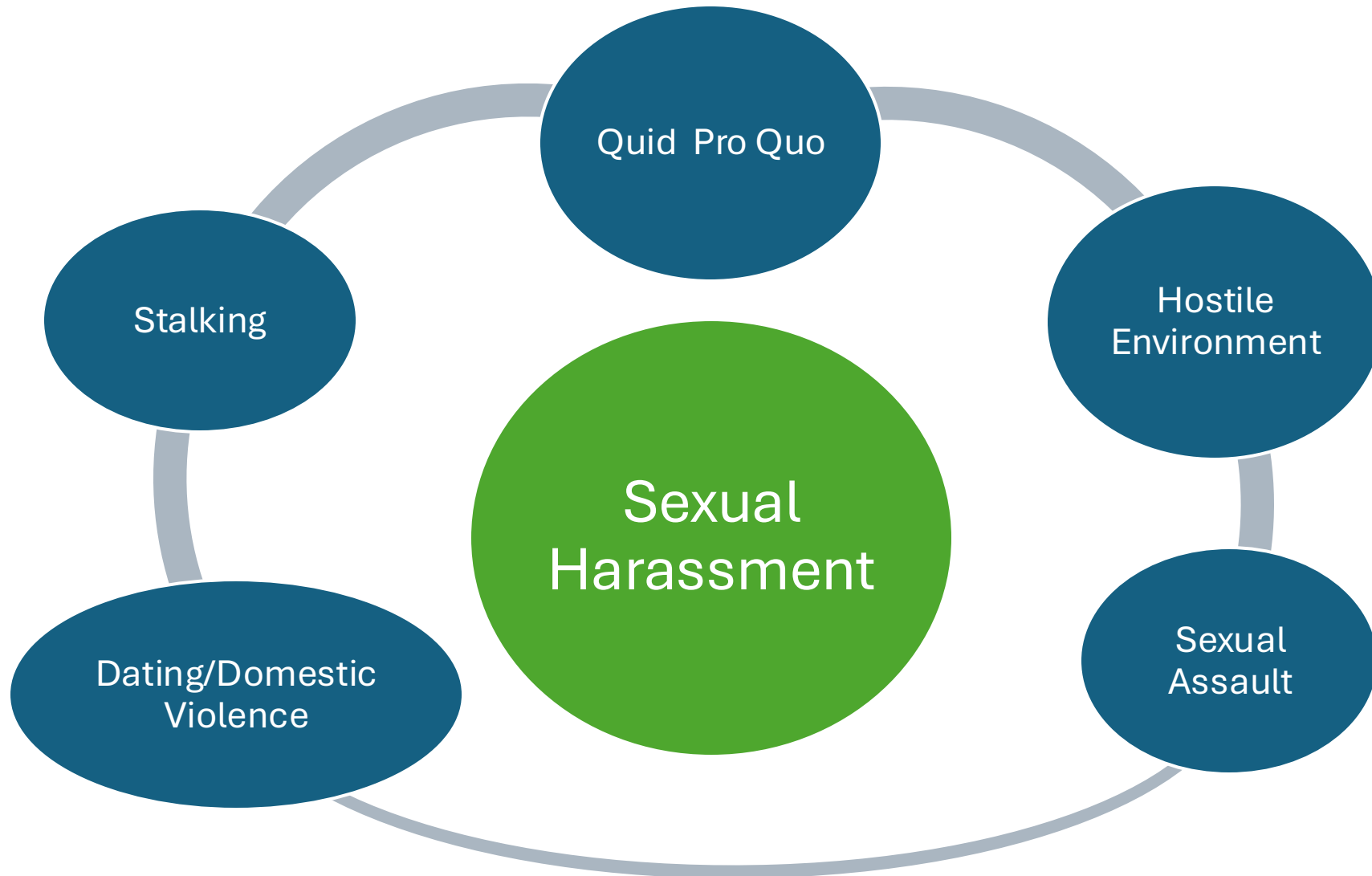




Title IX Sexual Harassment

Important Definitions

Title IX (TIX) Definition of Sexual Harassment



TIx Definition of Sex



- Title IX's definition of "sex" has evolved over the years.
- Recent executive and regulatory guidance has specifically excluded gender identity from this definition.
- Allegations of discrimination/harassment related to non-binary, transgender, and gender non-conforming students and employees are not covered under Title IX.

Quid Pro Quo Harassment



Defines conduct “on the basis of sex” and includes:

- Quid pro quo - An employee of the school conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct.

Hostile Environment Harassment



- 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 school's education program or activity.

Specific Acts



- Sexual Assault
 - Rape
 - Fondling
- Dating Violence
- Domestic Violence
- Stalking

Sexual Assault



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.

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.

Which types of matters do you think K12 districts are most likely to investigate under the Title IX investigation process?

- a) Quid pro quo harassment
- b) Hostile environment sexual harassment
- c) Sexual assault
- d) Stalking

Title IX Prohibits Retaliation



- Prohibition against retaliation for any participant in the Title IX reporting and investigation process
- Requires some level of school action

Question: Does a retaliation complaint related to a Title IX investigation have to follow the Title IX investigation process?



Title IX Roles and Responsibilities

Title IX Roles



Administration of Claims

- Title IX Coordinator
- Title IX Investigator
- Title IX Decision-Maker
- Title IX Appeal Officer
- Title IX Informal Resolution Officer

Training required for all of these administrators of Title IX matters

Parties

- Complainant – alleged victim/survivor
- Respondent – responds to the allegation(s)
- Advisor to parties

Other Participants

- Fact Witnesses
- Expert Witnesses

Advisors to the Parties

- Parties must be advised that they can have an advisor present for the entire investigation process including the interview.
- Parties select an “advisor of choice.”
- Advisor may be, but need not be, an attorney.
- Advisor provides advice and counsel to the party during the process.
- Advisor has a more active role in cross-examination if a hearing takes place.
 - K12s are not required to hold hearings.

Conflicts of Interest

Relationship
to parties or
witnesses

Professional
conflicts

Personal
conflicts

Actual and
perceived

Impartiality



- Be neutral – neither pro-Complainant nor pro-Respondent
- Consider all of the evidence as presented
- Maintain an open mind regarding potential conclusions

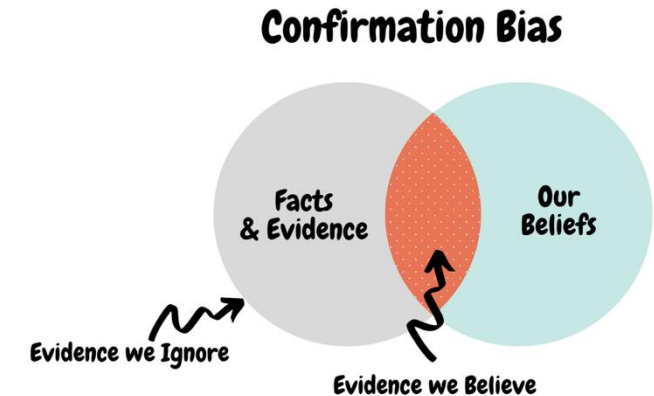
Stereotypes



- “A fixed, over generalized belief about a particular group or class of people.” (Cardwell, 1996)
 - Stereotypes around sexual assault
 - Stereotypes around sexual harassment
 - Complainant and Respondent
-
- No administrator in the Title IX process can rely on stereotypes to reach a conclusion

Bias

- Over 800 types of bias
- Conscious/Explicit
 - Discriminatory intent
 - Stated preferences
- Unconscious/Implicit
 - For the most part, most people are unaware of these drivers
 - Developed over a period of time and can influence many factors in hearing
 - Shortcuts developed by the brain and often play a role in:
 - Immediate response to conflict
 - Often mimics fear responses





Title IX Investigation Process

Overview of Title IX Grievance Process (TIXGP)



- 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 (upon signing of Formal Complaint)
 - 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-maker(s)
- Completed in a prompt time-frame
- Retaliation prohibited - define the retaliation complaint process

TIXGP: How Matters Can Proceed



Formal Complaint
Process



Title IX Initiated
Investigation



Informal Resolution
Process

TIXGP: Dismissal - Mandatory and Permissive



Mandatory dismissal

- Would not constitute sexual harassment as defined in regulations
- Did not occur in education program or activity
- Did not occur against a person in the U.S.

Permissive dismissal

- Complainant notifies Title IX Coordinator in writing that Complainant would like to withdraw formal complaint or allegations
- Respondent is no longer enrolled or employed by school district
- Specific circumstances prevent the school district from gathering evidence sufficient to reach a determination

Analysis: Does not Meet Title IX Definition- Hostile Environment Harassment



- **Allegation:** Respondent on at least four (4) occasions sought out Complainant on campus and stared at her body, including her breasts and buttocks, making Complainant uncomfortable.
- Title IX Definition - 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 school's education program or activity.
 1. Will allegation be dismissed?
 2. What happens next?
- Any dismissal from Title IX requires that the parties are given the opportunity to appeal the decision.

California Education Code Definition



Sexual harassment includes, but is not limited to, ***unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature made against another person of the same or opposite sex in the educational setting***, under any of the following conditions: (Education Code 212.5; 5 CCR 4916)

1. Submission to the conduct is explicitly or implicitly made a term or condition of a student's academic status or progress.
2. Submission to or rejection of the conduct by a student is used as the basis for academic decisions affecting the student.
3. ***The conduct has the purpose or effect of having a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment.***
4. Submission to or rejection of the conduct by the student is used as the basis for any decision affecting the student regarding benefits and services, honors, programs, or activities available at or through any district program or activity.

Review Dismissal Language

The background of the slide is composed of several geometric elements. On the left, there is a solid green rectangular area. To its right, a series of parallel diagonal stripes in green and dark blue run from the bottom-left towards the top-right. On the right side of the slide, a large, solid dark blue triangle is positioned, pointing towards the top-right corner.

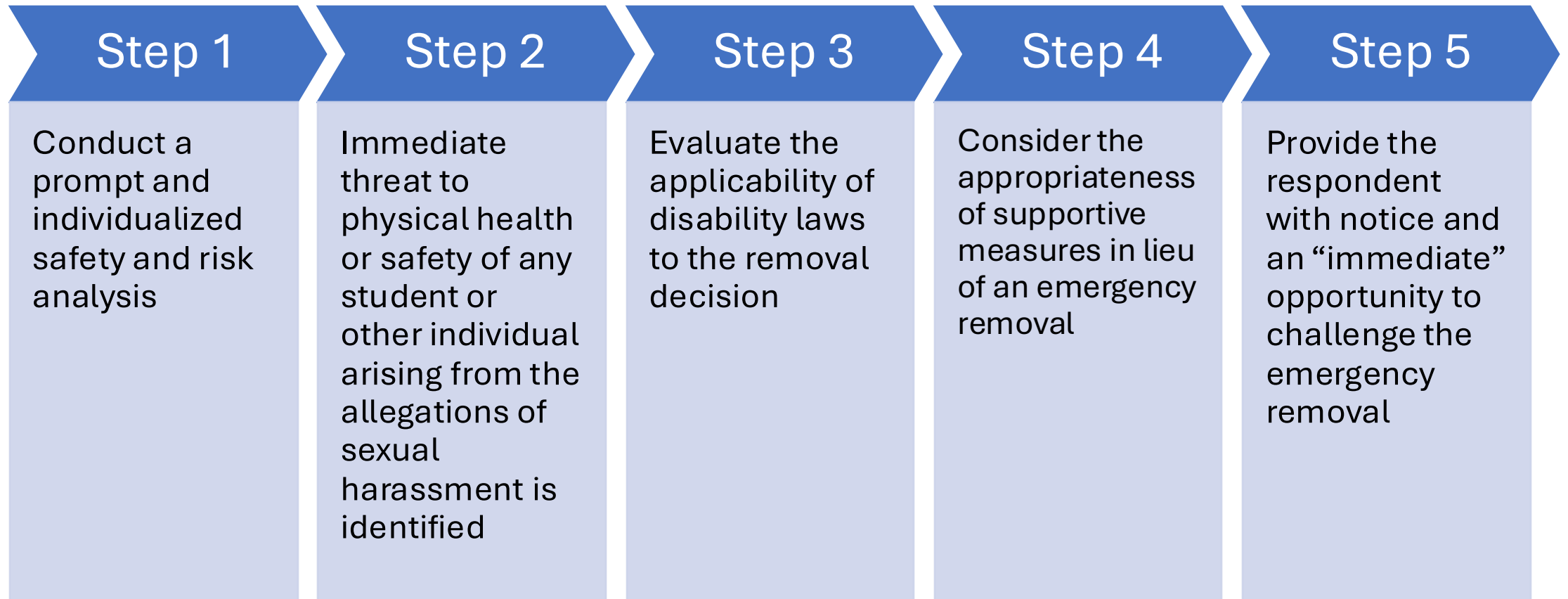
TIXGP: Supportive Measures



Supportive measures are:

- **non-disciplinary, non-punitive** individualized services offered as appropriate, as reasonably available
- without fee or charge to the complainant or the respondent
- are designed to **restore or preserve equal access** to the District's education programs or activities
- without unreasonably burdening either party, including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment.

TIXGP: Emergency Removal Procedure



TIXGP: Receipt of Formal Complaint



Form
completed



Verbal report



Phone call



Email



Other

**SEE SOMETHING?
SAY SOMETHING!**

TIXGP: No Formal Complaint Filed



Title IX Coordinator may decide to proceed with an investigation

-evidence of deliberate indifference if investigation not initiated

NOTE: Title IX Coordinator does not become Complainant

TIXGP: Notice of Allegations

- Detailed allegations against Respondent and includes important investigation information.
- Normally, this letter will be drafted by the Title IX Coordinator.



Review Notice of Allegations Letter

TIXGP: Separate Investigator and Decision-Makers



TIXGP: Investigation



- Investigator gathers relevant and irrelevant information
- All information must be shared with both parties
- Parties have ability to review investigation report and outcome, provide comments/written questions, and provide answers and limited follow-up

TIXGP: Burden of Proof



Preponderance of the evidence



Clear and convincing

TIXGP: Sharing of Investigation Information



- Both parties are given the FULL investigation file to review
- Documents shared or document inspection
 - 10 days for parties to respond to the information
- Investigator prepares a draft investigation report and shares it with both parties
 - 10 days for the parties to respond to the investigation report
- Investigator prepares final investigation report and shares it with both parties and the Decision-Maker

TIXGP: Decision-Maker

- Decision-Maker provides the parties with the opportunity to send questions or comments
 - 10 days to respond
 - Decision-Maker must determine:
 - Policy violation
 - Discipline (if found in violation of policy)
 - Decision-Maker issues an outcome letter to the parties
-
- In K-12, discipline decisions against students with disabilities may require a manifestation determination
 - A **Manifestation Determination** is a process, required by the Individuals With Disabilities Education Act (IDEA 2004), which is conducted when considering the exclusion of a student with a disability that constitutes a change of placement

TIXGP: Appeal Grounds

Procedural Review

Procedural irregularity in the Title IX grievance process that materially affected the outcome.

New Information

Newly discovered evidence that was not reasonably available at the time of the determination of responsibility or dismissal that could materially affect the outcome.

Conflict of Interest or Bias

Due to a bias or conflict of interest by the Title IX Coordinator, investigator, or decision-maker that materially affected the outcome.

TIXGP: Informal Resolution



- **Trained facilitators**
- Offered after formal complaint is filed
- Process must be detailed in writing
- Described to both parties
- Parties agree in writing
- Either party may end informal resolution before a formal agreement is accepted, and the matter returns to the Title IX investigation process
- **Never** available when complainant is student and respondent is employee
- Violation of an informal resolution agreement does not return you to investigation process



Best Practices in Investigations

Important Investigation Fundamentals

- Know what you are investigating
- Know the process you are following
- Document each step of the process
- Make reasoned decisions
- Don't let perfection get in the way of best investigative efforts
- Conclude the investigation properly in line with your responsibilities under applicable policy/process

Initial Review



- Formal complaint
- Notice to both parties – required?
- Supportive measures
- Timelines
- Parties (and parents) understand the process
- Other complaints?
 - Criminal matters
 - Similar complaints – consolidation
- Concurrent or parallel investigations

Organizing Your Investigation

- Gather what you can
- Determine what else you need
- Organize the interviews
 - Key element in most sexual harassment investigations
 - Strategy as to who and when interviews are taken
 - Follow-up interviews may be necessary

Gathering Documents and Other Evidence



- Emails, texts, photos, screenshots, video
- Legal implications
 - Child Pornography laws are broad
 - Differing levels of enforcement
- Support or contradict testimony
- Character evidence

Weighing and Challenging Evidence



- Authentication
- Relevance
- Credibility

Evidentiary Review



- RELEVANCE – Applying to the matter in question; affording something to the purpose (Black’s Law Dictionary)
- NOT permitted:
 - Sexual history of Complainant (see Rape Shield exception)
 - Privileged communications
 - Medical documentation
- Not repetitive
- Title IX requires the sharing of investigation materials that are “directly related” to the allegations.

- In Title IX investigations, the Decision-Maker has ultimate responsibility for credibility determinations and may explore credibility issues with parties after your investigation report is complete
- However, in the course of an investigation, investigators are gathering important information that may impact credibility determinations, including:
 - Corroboration
 - Feasibility
 - Motivation for truthfulness/untruthfulness
 - Consistency
 - Reviewed/coached testimony

Credibility Considerations

1. Inherent plausibility
2. Motive to lie (based on the existence of a bias, interest or other motive)
3. Corroboration
4. Extent a witness was able to perceive, recollect or communicate about the matter
5. History of honesty/dishonesty.
6. Habit/consistency
7. Inconsistent statements
8. Manner of testimony
9. Demeanor

<https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2017/06/DFEH-Workplace-Harassment-Guide.pdf>

Keep in Mind: At the Conclusion of an Investigation

- After the investigation is complete but prior to issuing a draft report, the parties are given access to the full investigation file
- Parties are invited to provide comments about the extent of the investigation file
- Investigation file should include information upon which the Investigator will rely
- 10 days to inspect and submit comments
- Investigator reviews and prepares a draft report

Title IX Investigator Required Information Sharing



Before investigation report issued, all evidence shared

Opportunity to question and provide feedback

Draft investigation report issued and shared

Opportunity to question and provide feedback on investigation report

Final investigation report issued

TIX Investigator: Sharing of Investigation Information TIMING



- Both parties are given the FULL investigation file to review
- Documents shared or document inspection
 - 10 days for parties to respond to the information
- Investigator prepares a draft investigation report and shares it with both parties
 - 10 days for the parties to respond to the investigation report
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Writing the Draft and Final Report

Investigation Report



- Convey relevant information about the allegations to the parties and their advisors
- The Department of Education takes no position on the elements required in the report beyond what is required by final regulations
- The investigative report must fairly summarize relevant evidence

Organizing the Report



- Covering required categories
- Providing the relevant information
- Including applicable policy provisions
- Staying within the parameters of the investigation report (as set forth in policy)
- 20-20 Hindsight

Investigation Report Sections



- Allegations
- Applicable Policies
- Procedural History
- Interview Summaries
- Factual Findings/Recommended Factual Findings (*might be allowed/required, check policy*)
- Recommended Findings of Policy Violation (*might be allowed/required, check policy*)

Analysis: Investigation Report

- Case Study Allegations:
- ALLEGATION 1 - In December 2024, Respondent engaged in three separate incidents of unwelcome sexual touching of Complainant's breasts and buttocks while at school as the two passed each other between classes in the Main Building, at the end of the school day near the cafeteria, and during Ceramics class.
- ALLEGATION 2 - Respondent engaged in retaliatory behavior when he messaged Complainant during school hours and questioned her about reporting his behavior.

Case Example: Allegation of Sexual Harassment – Title IX and State Law Analysis (CA Example)



Sexual Harassment under Title IX includes Sexual Assault-Fondling

- Fondling is the touching of another person's private body parts for sexual gratification
- Fondling can be forcible or non-forcible
- Fondling can occur when the victim is unable to give consent due to age or mental incapacity

Under CA Education Code, Sexual Battery is defined as:

Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. See, *California Penal Code § 243.4(a)*.

CA Education Code - Hostile environment sexual harassment

- [U]nwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature made against another person of the same or opposite sex in the educational setting, under any of the following conditions:
...
- 3. The conduct has the purpose or effect of having a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment.



Review Investigation Report Form

Investigation Report Sections



- Allegations
- Applicable Policies
- Procedural History
- Interview Summaries
- Factual Findings/Recommended Factual Findings (*might be allowed/required, check policy*)
- Recommended Findings of Policy Violation (*might be allowed/required, check policy*)



Decision-Maker Process

TIXGP: Decision-Maker

- Decision-Maker provides the parties with the opportunity to send questions or comments
 - 10 days to respond
- Decision-Maker must determine:
 - Policy violation
 - Discipline (if found in violation of policy)
- Decision-Maker issues an outcome letter to the parties
- In K-12, discipline decisions against students with disabilities may require a manifestation determination
 - A **Manifestation Determination** is a process, required by the Individuals With Disabilities Education Act (IDEA 2004), which is conducted when considering the exclusion of a student with a disability that constitutes a change of placement.

TIXGP: Investigator in Decision-Maker Process and Beyond



- Parties may submit questions to decision-maker for Investigator.
- Decision-Maker may have independent questions for Investigator.
- Revisions and reviews to the report may be necessary, although unlikely.
- Future challenges to the investigation could be filed through DoE, California Department of Education, and/or litigation.
- REMEMBER: Keep adequate records and share all information with Title IX Coordinator for record-keeping purposes.

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