


**Title IX**  
for  
**K-12 School Districts**



**LYNCH DALLAS, P.C.**  
ATTORNEYS AT LAW  
*Established 1926*

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**TITLE IX OVERVIEW**

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## TITLE IX OVERVIEW



- Title IX of the Education Amendments was signed into law by President Nixon on June 23, 1972.
  - “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 and activity receiving federal financial assistance.” *See* 20 U.S.C. § 1681.

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## TITLE IX OVERVIEW



- Title IX protects students, employees, applicants for admission and employment, and other persons from all forms of sex discrimination, including discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity. *See* U.S.D.E. Office of Civil Rights, *Title IX Resource Guide* (April 2015), available at <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>.

- 78% of K-12 students reported experiencing at least one incident of sexual harassment since starting high school (Carlson, 1995; Potopitz, 1995).

- Female high school students reported, on average, 4.5 incidents of unwanted behavior, while male high school student reported 1.6 incidents.

*See* Nan Stein, Ph.D. *Sexual Harassment in Schools*, available at <https://mainweb.v.musc.edu/vawprevention/research/exharass.shtml>.

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## TITLE IX OVERVIEW



- Title IX was initially enforced by the U.S. Department of Health, Education, and Welfare, which released regulations in 1975.
- Title IX is now enforced by the U.S. Department of Education's Office of Civil Rights (OCR).

- As of July 30, 2021, the U.S. Department of Education's Office of Civil Rights had 1,348 pending Title IX cases currently under investigation.
- 8 complaints were related to Iowa K-12 schools and colleges/universities.

See  
<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/open-investigations/tix.html?perPage=1000>.

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## TITLE IX OVERVIEW



- After its passage in 1972, Courts interpreted and further defined the requirements of Title IX.
  - *Cannon v. University of Chicago*, 441 U.S. 677 (1979)
  - *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992)
  - *Gesber v. Lago Vista Independent School District*, 524 U.S. 274 (1998)
  - *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999)

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## TITLE IX OVERVIEW



- Under Title IX, school districts, in providing any aid, benefit, or service, cannot, *on the basis of sex*:
  - Treat one person differently from another in determining whether the person satisfies any requirement or condition for the provision of any aid, benefit, or service;
  - Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;
  - Deny any person any such aid, benefit, or service; ...

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## TITLE IX OVERVIEW



- Under Title IX, school districts, in providing any aid, benefit, or service, cannot, *on the basis of sex, continued*:
  - Subject people to separate or different rules of behavior, sanctions, or other treatment;
  - Aid or perpetuate discrimination against a person by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to a person; ...

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## TITLE IX OVERVIEW



- Under Title IX, school districts, in providing any aid, benefit, or service, cannot, *on the basis of sex, continued*:
  - Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity; and
  - If a school district does discriminate on the basis of sex, the school district must take remedial action to overcome the effects of the discrimination. See U.S.D.E. Office of Civil Rights, *Revised Sexual Harassment Guidance* (January 2001), available at <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>.

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## TITLE IX OVERVIEW



- On February 26, 2020, the U.S. Department of Education announced new Title IX enforcement initiative at K-12 schools.
  - “This initiative will enhance OCR’s enforcement of Title IX in both elementary and secondary public schools and strengthen the ability of schools to respond to all incidents of sexual harassment and assault.” See U.S. Department of Education, Secretary DeVos Announces New Civil Right Initiative to Combat Sexual Assault in K-12 Public Schools, available at [https://www.ed.gov/news/press-releases/secretary-devos-announces-new-civil-rights-initiative-combat-sexual-assault-k-12-public-schools?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://www.ed.gov/news/press-releases/secretary-devos-announces-new-civil-rights-initiative-combat-sexual-assault-k-12-public-schools?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=).

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## TITLE IX OVERVIEW



- On May 6, 2020, the U.S. Department of Education announced its final Title IX regulations, *to be effective August 14, 2020.*
  - Secretary of Education Betsy DeVos stated “This new regulation requires schools to act in meaningful ways to support survivors of sexual misconduct, without sacrificing important safeguards to ensure a fair and transparent process. We can and must continue to fight sexual misconduct in our nation's schools, and this rule makes certain that fight continues.” See U.S. Department of Education, Secretary DeVos Takes Historic Action to Strengthen Title IX Protections for All Students, available at <https://www.ed.gov/news/press-releases/secretary-devos-takes-historic-action-strengthen-title-ix-protections-all-students>.

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## TITLE IX OVERVIEW



- The final May 6, 2020, Title IX regulations relate to the following:
  - Claims of **sexual harassment**
  - By **students or employees**
  - For conduct that occurs **in the educational environment**

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## TITLE IX OVERVIEW



- The final May 6, 2020, Title IX regulations included the following notable changes:
  - Required school districts to appoint and grant authority to the “Title IX Coordinator.” See 34 C.F.R. § 106.8(a).
  - Updated Title IX notification requirements. See 34 C.F.R. § 106.8.
  - Established new definitions for process and parties, specifically “formal complaint,” “complainant,” and “respondent.” See 34 C.F.R. § 106.30(a).

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## TITLE IX OVERVIEW



- The final May 6, 2020 Title IX regulations included the following notable changes, *continued*:
  - Specified that “sexual harassment” constitutes “sex discrimination” under Title IX and defined “sexual harassment.” See 34 C.F.R. § 106.30(a).
  - Updated sexual harassment reporting requirements. See 34 C.F.R. § 106.8(a).
  - Outlined when and how a school must respond to complaints under Title IX. See 34 C.F.R. § 106.44.

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BUT WAIT...

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- On March 8, 2021, President Biden issued an Executive Order on Title IX.
  - President Biden stated, “It is the policy of my Administration that all students should be guaranteed an educational environment free from discrimination on the basis of sex, including discrimination in the form of sexual harassment, which encompasses sexual violence, and including discrimination on the basis of sexual orientation or gender identity.” See Executive Order 14021, March 8, 2021, available at <https://www.govinfo.gov/content/pkg/FR-2021-03-11/pdf/2021-05200.pdf>.

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## TITLE IX OVERVIEW



- On April 6, 2021, the U.S. Department of Education announced a comprehensive review of new Title IX regulations.
  - Public Hearing
  - Question and Answer Document
  - Notice of Proposed Rulemaking (Anticipated)
  - August 2020 Title IX regulations *remain in effect*.

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## TITLE IX OVERVIEW



- In June 2021, the U.S. Department of Education issued a public notice clarifying Title IX applies to discrimination on the basis of sexual orientation and gender identity.
  - *Bostock v. Clayton County*, 140 S.Ct. 1731 (2020)

vs.

- Prior guidance on Title IX applicability to discrimination on the basis of sexual orientation and gender identity

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# TITLE IX OVERVIEW



- In July 2021, the U.S. Department of Education issued its **Question and Answer** document. See Questions and Answers on the Title IX Regulations on Sexual Harassment (July 2021), available at <https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf> .
  - **Question 7:** May a school respond to alleged sexual misconduct that does not meet the definition of sexual harassment in the 2020 amendments?
  - **Question 8:** How can a school determine whether sexual harassment “effectively denies a person’s right to equal access to its education program or activity” under the “unwelcome conduct” category in the definition of sexual harassment in the 2020 amendments?
  - **Question 56:** What standard of proof must a school use when deciding whether a respondent is responsible for committing sexual harassment?

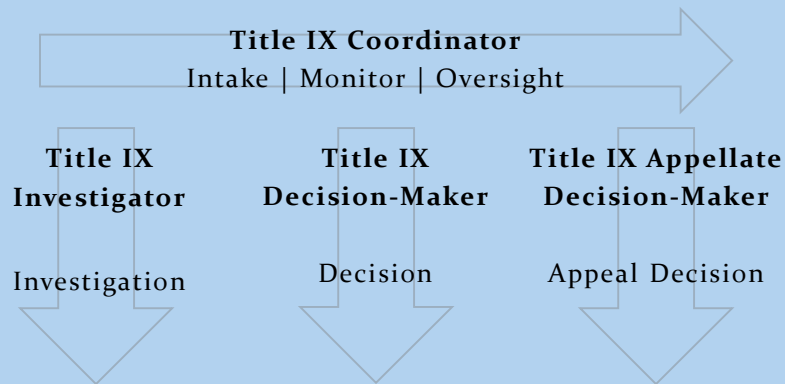
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# TITLE IX OVERVIEW



## Title IX Roles



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A presentation slide with a dark grey header and a light blue body. The header contains the word "OVERVIEW" and the Lynch Dallas, P.C. logo. The logo includes a stylized roof icon, the text "LYNCH DALLAS, P.C.", "ATTORNEYS AT LAW", and "Established 1926". The body contains a bulleted list of topics. The footer contains the text "© Lynch Dallas, P.C. - All Rights Reserved".

**OVERVIEW**

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- Overview of Title IX Coordinator Training:
  - Who is the Title IX Coordinator?
  - What are the Title IX Coordinator’s responsibilities?
  - Title IX Review
    - Discrimination, Harassment, & Retaliation
    - District Knowledge
    - District Response (General and Specific)
  - Title IX Coordinator Response Steps
  - Title IX Implications

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## TITLE IX COORDINATOR



- Who is the Title IX Coordinator?
  - School districts must “designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the ‘Title IX Coordinator.’” *See 34 C.F.R. § 106.8(a).*
    - Title IX Coordinator should be independent and report directly to the school district’s superintendent.

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## TITLE IX COORDINATOR



- What are the Title IX Coordinator’s responsibilities?
  - Primary responsibility is to coordinate the school district’s compliance with Title IX.
    - Coordinating the school district’s response to all complaints involving possible sex discrimination.
    - Monitoring outcomes of complaints.
    - Identifying and addressing patterns related to sex discrimination.
    - Addressing the impacts of sex discrimination within the school district.

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## TITLE IX COORDINATOR



- What are the Title IX Coordinator’s responsibilities, *continued*?
  - Ensure nondiscrimination policies, which include nondiscrimination on the basis of sex in the school district’s education programs and activities, are up to date and the appropriate parties are notified. *See* 34 C.F.R. § 106.8(b).
  - Establish a “Formal Complaint” process (i.e., a grievance process) to handle Title IX complaints that provides for prompt and equitable resolution of sex discrimination. *See* 34 C.F.R. §§ 106.8(c), 106.45(b).

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## TITLE IX COORDINATOR



- What are the Title IX Coordinator’s responsibilities, *continued*?
  - Publish the following:
    - Title IX Coordinator contact information online, in handbooks, and via e-mail. *See* 34 C.F.R. § 106.8(b).
    - Notice of Nondiscrimination online, in handbooks, and via e-mail. *See* 34 C.F.R. § 106.8(b); 106.9.
    - Nondiscrimination policies in handbooks. *See* 34 C.F.R. § 106.8(b).
    - “Formal Complaint” grievance procedures, including annual updates, in handbooks. *See* 34 C.F.R. § 106.8(c).

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## TITLE IX COORDINATOR



- What are the Title IX Coordinator’s responsibilities, *continued*?
  - Make recommendations to the school district related to any increased safety measures that would help address issues with sex discrimination, sexual harassment, and/or sexual assault.
  - Assist in any Title IX training given to the school district community.
  - Coordinate all record-keeping requirements of Title IX – keeping all records for 7 years.

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## TITLE IX COORDINATOR



- What are the Title IX Coordinator’s responsibilities, *continued*?
  - Manage incoming Title IX complaints (informal reports and formal complaints) and provide required notices. *See* 34 C.F.R. §§ 106.8(a), 106.45(b)(2).
  - Coordinate the effective implementation of “supportive measures.” *See* 34 C.F.R. § 106.30(a).
  - Monitor the school district’s response to complaints of sex discrimination. *See* 34 C.F.R. § 106.44(a).

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## TITLE IX COORDINATOR



- What are the Title IX Coordinator’s responsibilities, *continued*?
  - During the processing of any Title IX Complaint, the Title IX Coordinator must be:
    - Impartial
    - Unbiased
    - Open-Minded
    - Free of Conflicts of Interest

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## TITLE IX REVIEW



- Title IX prohibits sex discrimination in educational programs. What does this mean?
  - Considerations of Discriminatory, Harassing, and Retaliatory Conduct
    - Discriminatory conduct
    - Equal treatment of pregnant and parenting students
    - Equal treatment of the sexes in athletic programs
  - Considerations of School District’s Response
    - When does the school district have “knowledge” of sex discrimination?
    - How should a school district respond?

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## DISTRICT KNOWLEDGE



- The school district has “knowledge” as follows:
  - School district has knowledge when it has “actual knowledge” of sexual harassment in an educational program or activity.
    - Who can have this knowledge on behalf of the school district?
    - What is the definition of “in an educational program or activity”?
  - Also consider the school district’s *response* once they have actual knowledge.

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## DISTRICT KNOWLEDGE



### *Old Definition*

1. *If a school district knows **or should have known** of sexual harassment.*

### *New Definition*

1. *If a school district has **actual knowledge** of sexual harassment in a program or activity.*

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## DISTRICT RESPONSE



- The school district with knowledge of a complaint *generally* must respond as follows:
  - School district must respond “promptly” and “in a manner that is not deliberately indifferent.” See 34 C.F.R. § 106.44(a).

DELIBERATE  
INDIFFERENCE

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## DISTRICT RESPONSE



### *Old Definition*

1. The school district generally must respond “promptly” and “effectively.”

### *New Definition*

1. The school district generally must respond “promptly” and in a manner that is not deliberately indifferent.

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## DISTRICT RESPONSE



- The school district with knowledge of a complaint *specifically* must respond as follows:
  - School district must respond when it:
    - a) Has “actual knowledge” (with an **informal report**) → responds with *informal* procedures.
    - b) Receives a “**Formal Complaint**” → responds with *formal* grievance procedures.
  - Under both informal and formal grievance procedures, must offer “supportive measures.”

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## DISTRICT RESPONSE



- | <i>Old Options</i>   | <i>New Requirements</i>  |
|--|--|
| 1. The school district would provide “ <b><u>interim measures.</u></b> ” | 1. The school district must provide “ <b><u>supportive measures.</u></b> ”           |
| 2. Usually provided these only to complainant.                           | 2. Must be provided to complainant and respondent.                                   |
| 3. Provided these only during the pendency of the investigation.         | 3. Provided before or after the filing of a “Formal Complaint.”                      |
| 4. Unclear on if they could be punitive.                                 | 4. Designed to restore and preserve “equal access to education program or activity.” |
| 5. Not mandated.   | 5. Mandated.   |

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## TITLE IX COORDINATOR RESPONSE STEPS



**STEP 1:** Title IX Coordinator learns of possible sexual misconduct.

- Either based upon “actual knowledge” report or “Formal Complaint.”
- Any person may report sex discrimination under Title IX.
- In any form (written document, telephone call, e-mail) submitted at any time.

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## TITLE IX COORDINATOR RESPONSE STEPS



**STEP 2:** Title IX Coordinator evaluates allegations contained in complaint.

- Outline parties (complainant and respondent) and other individuals involved.
  - Confirm no conflict of interest with parties.
  - *REMEMBER:* Presumption of non-responsibility for respondent until process is complete.
- Determine if consolidation of complaints is appropriate.

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## TITLE IX COORDINATOR RESPONSE STEPS



**STEP 2:** Title IX Coordinator evaluates allegations contained in complaint, *continued*.

- Evaluate whether alternative steps are required:
  - Contacting law enforcement (but still continue with Title IX procedures).
  - Notifying employee of rights under Title VII (in addition to Title IX procedures).
  - Removing student (*rare*) or placing employee on administrative leave pending investigation.

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## TITLE IX COORDINATOR RESPONSE STEPS



**STEP 3:** If a formal complaint, the Title IX Coordinator considers whether there is an opportunity for informal resolution (i.e., mediation).

- The school district is NOT REQUIRED to, but MAY offer mediation or other form of informal resolution in response to a *formal written complaint*.
- Purpose is to assist parties in reaching a voluntary resolution of the complaint.
  - Would not involve a full investigation/adjudication.

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## TITLE IX COORDINATOR RESPONSE STEPS



**STEP 3:** If a formal complaint, the Title IX Coordinator considers whether there is an opportunity for informal resolution (i.e., mediation), *continued*.

- All parties must be provided written notice of rights and must voluntarily consent in writing.
  - Cannot be required/made a condition of any other right.
  - Cannot require waiver of grievance procedure rights.
- Only for some complaints.
- Can commence any time prior to a formal determination.

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## TITLE IX COORDINATOR RESPONSE STEPS



**STEP 4A:** If an informal report, the Title IX Coordinator should follow-up with the parties to make them aware of what has occurred and next steps.

- Generally state the school district has been made aware of alleged improper conduct, state that a Title IX Investigator will be contacting them as part of the investigation, and provide them the Title IX Coordinator's contact information.
- Must make complainant aware of right to file formal complaint.

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## TITLE IX COORDINATOR RESPONSE STEPS



**STEP 4B:** If a formal complaint, the Title IX Coordinator *must* follow the “Formal Complaint” process.

- Must provide written notice to both complainant and respondent upon receipt of written complaint.
- Must be provided in sufficient time to allow the respondent to prepare a response before the initial interview.
- *IMPORTANT:* Must include specific notifications regarding the allegations, the process, and the rights of the parties, including right of complainant to file a formal complaint. See 34 C.F.R. § 106.44(a).

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## TITLE IX COORDINATOR RESPONSE STEPS



**STEP 5:** Title IX Coordinator *must* put in place “supportive measures” to preserve equal access to the education program and activities (*under both*).

- Treat complainant and respondent equitably. See 34 C.F.R. § 106.44(a).
- Offer “supportive measures” to both complainant and respondent. See 34 C.F.R. § 106.44(a).
- Supportive measures are not punitive or disciplinary. See 34 C.F.R. § 106.30(a).
- Must remain confidential when provided. See 34 C.F.R. § 106.30(a).

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## TITLE IX COORDINATOR RESPONSE STEPS



**STEP 6:** If a formal complaint, the Title IX Coordinator should direct a Title IX Investigator to start the formal investigation process.

- *REMEMBER:* It is the school district's (not the parties') obligation to investigate the allegations.
- Determine appropriate investigator.
  - Confirm investigator has no conflict of interest.
- Establish timelines with investigator.
- Outline necessary tasks with investigator.
- Assist investigator in having access to information and individuals.

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## TITLE IX COORDINATOR RESPONSE STEPS



**ALTERNATIVE STEP:** If a formal complaint, the Title IX Coordinator should continuously assess situation to determine if there should be an **administrative dismissal** of the complaint.

- Can occur any time during the investigation.
- Mandatory Dismissal vs. Permissive Dismissal
- The Title IX Coordinator must give **written notice** to both parties if there is a dismissal, which outlines the grounds for the dismissal.

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## TITLE IX COORDINATOR RESPONSE STEPS



**STEP 7:** If a formal complaint, the Title IX Coordinator should assist the Title IX Investigator on release of “Investigative Report.”

- Written report must be provided to both parties and their advisors simultaneously.
  - Provided in hard or electronic format
  - Provided at least 10 days prior to any hearing or the Title IX Decision-Maker making his/her decision.
- Parties are allowed to submit questions and a written response to the Investigative Report.

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## TITLE IX COORDINATOR RESPONSE STEPS



**STEP 8:** If a formal complaint, the Title IX Coordinator should direct a Title IX Decision-Maker to review investigation and issue a decision.

- Determine appropriate decision-maker.
  - Confirm decision maker has no conflict of interest.
- Establish timelines with decision-maker.
- Establish authority of decision-maker.
- Establish necessary report documentation to be provided by decision-maker.

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## TITLE IX COORDINATOR RESPONSE STEPS



**STEP 9:** If a formal complaint, the Title IX Coordinator should assist the Title IX Decision-Maker with release of decision.

- Written decision must be provided to both parties and their advisors simultaneously.
  - Provided in hard or electronic format
  - Provided at least 10 days after parties receive final investigative report.

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## TITLE IX COORDINATOR RESPONSE STEPS



**STEP 10 IF APPLICABLE:** *If a party appeals*, the Title IX Coordinator must follow the “Formal Complaint” appeal process.

- Must provide written notice to both complainant and respondent upon receipt of request for appeal.
  - Must provide both parties a “reasonable opportunity” to submit written statement supporting or opposing appeal.

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## TITLE IX COORDINATOR RESPONSE STEPS



**STEP 11 IF APPLICABLE:** *If a party appeals*, the Title IX Coordinator should direct a Title IX Appellate Decision-Maker to review original decision and issue an appellate decision.

- Determine appropriate appellate decision-maker.
  - Confirm appellate decision maker has no conflict of interest.
- Review authority of appellate decision-maker.
- Establish necessary report documentation to be provided by appellate decision-maker.

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## TITLE IX COORDINATOR RESPONSE STEPS



**STEP 12 IF APPLICABLE :** *If a party appeals*, the Title IX Coordinator should assist the Title IX Appellate Decision-Maker on release of appellate decision.

- Written appellate decision must be provided to both parties and their advisors simultaneously.
  - Provided in hard or electronic format

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## TITLE IX COORDINATOR RESPONSE STEPS



- Common Issues for the Title IX Coordinator:
  - What if the conduct could also be considered criminal conduct?
  - What if the conduct involves an employee and there are Level I/Level II implications?
  - How should I handle requests for confidentiality?

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## TITLE IX IMPLICATIONS



- What are the implications if a school district has knowledge and does not respond appropriately?
  - School district could be liable to student/employee in private cause of action.
  - School district could be found to violate Title IX.
  - School district could have to work with OCR to get into voluntary compliance as part of administrative agency action.
  - School district could be denied federal funding after non-compliance with OCR.

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## RESOURCES



### FAQ Regarding the U.S. Department of Education's Final Title IX Rules:

<https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>

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## QUESTIONS?



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TITLE IX INVESTIGATOR

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OVERVIEW

  
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- Overview of Title IX Investigator Training:
  - Who is the Title IX Investigator?
    - MAY be Title IX Coordinator
  - What are the Title IX Investigator’s responsibilities?
  - Title IX Review
    - Sex Discrimination
    - Sexual Harassment
    - Retaliation
  - Title IX Investigation Steps

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## TITLE IX INVESTIGATOR



- Who is the Title IX Investigator?
  - Individual who is tasked with investigating complaints of sex discrimination under Title IX.
    - Title IX Investigator should be independent and report to the Title IX Coordinator on these investigation.
      - Could Title IX Investigator be the Title IX Coordinator?
    - Not a formal appointment, and individual may have other job duties.

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## TITLE IX INVESTIGATOR



- What are the Title IX Investigator's responsibilities?
  - Only responsibility is to investigate complaints of sex discrimination under Title IX.
    - Does NOT handle school district's response once complaint is received.
    - Does NOT make ultimate decision on whether act did or did not occur.
    - Does NOT make decision on appropriate remediating measures after investigation decision.

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## TITLE IX INVESTIGATOR



- What are the Title IX Investigator's responsibilities, *continued*?
  - During any investigation, the Title IX investigator must be:
    - Impartial
    - Unbiased
    - Open-Minded and Without Pre-Judgment
    - Free of Conflicts of Interest
    - Fact-Seeking Only

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## TITLE IX REVIEW



- Title IX prohibits sex discrimination in educational programs.
  - Considerations of Discriminatory, Harassing, and Retaliatory Conduct

THE BIG THREE:  
DISCRIMINATION  
HARASSMENT  
RETALIATION

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## SEX DISCRIMINATION



- “Sex discrimination” is defined as:
  - An individual “be[ing] excluded from participation in, be[ing] denied the benefits of, or be[ing] subjected to discrimination” in any education program or activity because of that individual’s sex.  
See 20 U.S.C. § 1681.
    - Students AND Employees
    - The protected class of “sex” is defined broadly.

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## SEXUAL HARASSMENT



- “Sexual harassment” is defined under the final regulations as:
  - Quid Pro Quo
  - Hostile Environment Sexual Harassment
  - Sexual Violence, including (a) sexual assault, (b) domestic violence, (c) dating violence, and (d) **stalking** (*as outlined in the Violence Against Women Act (VAWA) and the Cleary Act*).

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## SEXUAL HARASSMENT



- Definition of “hostile environment:”
  1. Unwelcome conduct,
  2. On the basis of sex,
  3. That a reasonable person would consider to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school district’s education program or activity.

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## SEXUAL HARASSMENT



### *Old Definition*

1. Unwelcome conduct
2. On the basis of “sex”
3. Determined by a reasonable person
4. To be severe, pervasive, **or** persistent, and **interferes with or limits** a person’s ability to participate in/benefit from school services, activities, or opportunities.

### *New Definition*

1. Unwelcome conduct
2. On the basis of “sex”
3. Determined by a reasonable person
4. To be so severe, pervasive, **and** objectively offensive that it **effectively denies** a person’s equal access to the school district’s education program or activity.

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## RETALIATION



- “Retaliation” is defined as:
  - A school district and individuals cannot retaliate against an individual for filing a complaint alleging a violation of Title IX, for participating in (or refusing to participate in) a Title IX investigation or proceeding, or for advocating for another person’s Title IX rights. *See* 34 C.F.R. § 106.71.
  - Any adverse treatment
  - No intimidation, threats, coercion, or discrimination.
  - No processing under another policy/procedure.

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## TITLE IX INVESTIGATION STEPS



**STEP 1:** Title IX Investigator is contacted by Title IX Coordinator regarding Title IX investigation.

- Complaint from “actual knowledge” - either an informal report or “Formal Complaint.”
- Should request the following:
  - Copy of all documentation related to complaint.
  - Contact information for all parties identified in complaint.

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## TITLE IX INVESTIGATION STEPS



### **STEP 2:** Title IX Investigator sets-up investigation file.

- Open separate investigation “file.”
- Review complaint fully and determine if informal report or formal complaint.
- Outline parties (complainant and respondent) and other individuals involved.
  - Confirm no conflict of interest with parties.
  - *REMEMBER:* Presumption of non-responsibility for respondent until process is complete.
- Outline applicable timeline for investigation.

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## TITLE IX INVESTIGATION STEPS



### **STEP 2:** Title IX Investigator sets-up investigation file, *continued.*

- Review the school district’s Equal Educational Opportunities and/or Non-Discrimination Policies.

*DISTRICT’S POLICIES*

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## TITLE IX INVESTIGATION STEPS



### **STEP 3:** Title IX Investigator prepares for interviews.

- Prepare overview of individuals who will be interviewed.
- Determine if any evidence needed before interviews.
- Schedule interviews with sufficient notice.
  - Written notice of date, time, and place of interview.
- Draft questions for individuals being interviewed.
  - Remember elements of the alleged misconduct (i.e., sexual harassment or sexual assault).

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## TITLE IX INVESTIGATION STEPS



### **STEP 4:** Title IX Investigator conducts interviews.

- Remember you **MUST BE IMPARTIAL!**
  - Both parties must be provided an equal opportunity to present evidence and witnesses.
- Explain process to all being interviewed.
  - Follow required Title IX grievance procedures, as applicable.
  - Cannot prohibit parties from discussing allegations or gathering evidence.
- State (multiple times) there will be no retaliation.

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## TITLE IX INVESTIGATION STEPS



### STEP 4: Title IX Investigator conducts interviews, *continued.*

- Checklist for interview:
  - Allow both parties equal access to advisor during interview.
  - Use written notes (name/date/time + credibility comments)
  - Refer to complaint when conducting interview
  - Investigate each allegation in complaint (*see next slide*)
  - Ask direct, non-leading, specific questions
  - Get all the details/evidence
  - Confirm important details
  - Ask about witnesses the person could identify
  - Ask interviewee if there is anything else he/she wants to say

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## TITLE IX INVESTIGATION STEPS



### STEP 4 SIDE BAR: Title IX Investigator conducts interviews – consider interviewing techniques.

- Utilize **trauma informed** investigation techniques.
- Understand how to assess **credibility**.
- Avoid **ambiguous answers** and assumptions.
- Allow the **evidence to guide the questions**.
- Remember you may have to **defend your investigation** to another individual.

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## TITLE IX INVESTIGATION STEPS



**STEP 4 EXAMPLE:** Title IX Investigator conducts interviews based upon a student’s allegations of sexual harassment.

- Requirements for sexual harassment:
  1. Unwelcome conduct
  2. On the basis of sex
  3. That a reasonable person would consider
  4. To be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school district’s education program or activity.

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## TITLE IX INVESTIGATION STEPS



**STEP 4 EXAMPLE:** Title IX Investigator conducts interviews based upon a student’s allegations of sexual harassment, *continued*.

1. Questions about whether the conduct was “unwelcome:”
  - The student did not request or invite the conduct.
  - The student “regarded the conduct as undesirable or offensive.” See *Does v. Covington Sch. Bd. of Educ.*, 930 F.Supp. 554, 569 (M.D. Ala. 1996).
  - Failure to complain or the student’s acquiescence in the conduct does not automatically mean the conduct was welcome.

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## TITLE IX INVESTIGATION STEPS



**STEP 4 EXAMPLE:** Title IX Investigator conducts interviews based upon a student’s allegations of sexual harassment, *continued*.

1. Questions about whether the conduct was **“unwelcome”**, *continued*:
  - Consider the age of the students involved.
  - Consider the authority of the individuals involved.
  - Consider the extent to which the parties claim the relationship was “consensual.” See U.S.D.E. Office of Civil Rights, *Revised Sexual Harassment Guidance* (January 2001), available at <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>.

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## TITLE IX INVESTIGATION STEPS



**STEP 4 EXAMPLE:** Title IX Investigator conducts interviews based upon a student’s allegations of sexual harassment, *continued*.

4. Questions about whether the conduct was **“severe, pervasive, and objectively offensive:”**
  - Consider all relevant circumstances, i.e., “the constellation of surrounding circumstances, expectations, and relationships.”
  - Consider the “type, frequency, and duration of the conduct.”
  - Consider the number of individuals involved.

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## TITLE IX INVESTIGATION STEPS



**STEP 4 EXAMPLE:** Title IX Investigator conducts interviews based upon a student’s allegations of sexual harassment, *continued*.

4. Questions about whether the conduct was “**severe, pervasive, and objectively offensive**,” *continued*:
  - Consider the age and sex of the respondent (the alleged harasser) and the complainant (the subject/subjects of the harassment).
  - Consider the size of the school, location of the incidents, and context in which they occurred.
  - Consider other incidents. See U.S.D.E. Office of Civil Rights, *Revised Sexual Harassment Guidance* (January 2001), available at <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>.

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## TITLE IX INVESTIGATION STEPS



**STEP 5:** Title IX Investigator gathers all physical evidence.

- Accept evidence from any source.
- Cannot require evidence subject to a legal privilege.
  - Cannot access or consider medical or mental health records of a party with out appropriate consent.
- ***Must* provide both parties a copy of all evidence gathered directly related to the allegations in the complaint at least 10 days before submitting Investigative Report so parties can submit a written response.**

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## TITLE IX INVESTIGATION STEPS



**STEP 6:** If a formal complaint, the Title IX Investigator compiles all evidence and prepares “Investigative Report.”

- Remember you **MUST BE OBJECTIVE AND IMPARTIAL** when reviewing evidence.
  - Consider only relevant evidence.
  - Consider exculpatory *and* inculpatory evidence.
  - Credibility not based upon person’s status.
  - Set aside any sex stereotypes.

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## TITLE IX INVESTIGATION STEPS



**STEP 6:** If a formal complaint, the Title IX Investigator compiles all evidence and prepares “Investigative Report,” *continued*.

- Compile the following evidence:
  - Complaint
  - Any physical evidence obtained
  - All notes from investigation
- Create “Investigative Report” that “fairly summarizes the relevant evidence.”

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## TITLE IX INVESTIGATION STEPS



**STEP 7:** If a formal complaint, the Title IX Investigator communicates with Title IX Coordinator on release of “Investigative Report.”

- Written report must be provided to both parties and their advisors simultaneously.
  - Provided in hard or electronic format
- **Must be provided *at least 10 days before* Title IX Decision-Maker makes decision so parties can submit questions for parties/witnesses and a written response for decision-maker to consider.**

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## TITLE IX INVESTIGATION STEPS



- **Common Issues for the Title IX Investigator:**
  - What if the complainant requests to remain anonymous?
  - How do I handle requests for confidentiality?
  - What if the respondent is making allegations that comments made are protected by free speech?

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## TITLE IX INVESTIGATION STEPS



- Common Issues for the Title IX Investigator, *continued*:
  - What if the accusations in the complaint aren't even considered sexual harassment?
  - What if, upon starting the investigation, there are additional accusations?
  - What if, upon starting the investigation, the allegations go nowhere?

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## RESOURCES



FAQ Regarding the U.S. Department of Education's  
Final Title IX Rules:

<https://www2.ed.gov/about/offices/list/ocr/docs/2021-07-qa-titleix.pdf>

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QUESTIONS?



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TITLE IX DECISION MAKER

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## OVERVIEW



- Overview of Title IX Decision-Maker Training:
  - Who is the Title IX Decision-Maker?
    - CANNOT be Title IX Coordinator or investigator.
  - What are the Title IX Decision-Maker's responsibilities?
  - Title IX Review
    - Sex Discrimination
    - Sexual Harassment
    - Retaliation
  - Title IX Decision-Making Steps

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## TITLE IX DECISION-MAKER



- Who is the Title IX Decision-Maker?
  - Individual who is tasked with making conclusion related to investigations into complaints of sex discrimination under Title IX.
    - Title IX Decision-Maker should be independent and report to the Title IX Coordinator on any decisions/conclusions related to Title IX.
    - Not a formal appointment, and individual may have other job duties.

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## TITLE IX DECISION-MAKER



- What are the Title IX Decision-Maker's responsibilities?
  - Only responsibility is to evaluate all of the evidence and make decisions regarding complaints of sex discrimination under Title IX.
    - Does NOT handle school district's response once complaint is received.
    - Does NOT investigate and gather facts related to allegations in complaint.

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## TITLE IX DECISION-MAKER



- What are the Title IX Decision-Maker's responsibilities, *continued*?
  - During the assessment of evidence, the Title IX decision-maker must be:
    - Impartial
    - Unbiased
    - Open-Minded and Without Pre-Judgment
    - Free of Conflicts of Interest
    - Only Considers Facts Presented

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## TITLE IX REVIEW



- Title IX prohibits sex discrimination in educational programs.
  - Considerations of Discriminatory, Harassing, and Retaliatory Conduct

THE BIG THREE:  
DISCRIMINATION  
HARASSMENT  
RETALIATION

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## SEX DISCRIMINATION



- “Sex discrimination” is defined as:
  - An individual “be[ing] excluded from participation in, be[ing] denied the benefits of, or be[ing] subjected to discrimination” in any education program or activity because of that individual’s sex.  
See 20 U.S.C. § 1681.
    - Students AND Employees
    - The protected class of “sex” is defined broadly.
    - Consider how someone was treated compared to “similarly situated” individuals.

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## SEXUAL HARASSMENT



- “Sexual harassment” is defined under the final regulations as:
  - Quid Pro Quo
  - Hostile Environment Sexual Harassment
  - Sexual Violence, including (a) sexual assault, (b) domestic violence, (c) dating violence, and (d) stalking (*as outlined in the Violence Against Women Act (VAWA) and the Cleary Act*).

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## SEXUAL HARASSMENT



- Definition of “hostile environment:”
  1. Unwelcome conduct,
  2. On the basis of sex,
  3. That a reasonable person would consider to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school district’s education program or activity.

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## SEXUAL HARASSMENT



### *Old Definition*

1. *Unwelcome conduct*
2. *On the basis of "sex"*
3. *Determined by a reasonable person*
4. *To be severe, pervasive, **or** persistent, and **interferes with or limits** a person's ability to participate in/benefit from school services, activities, or opportunities.*

### *New Definition*

1. *Unwelcome conduct*
2. *On the basis of "sex"*
3. *Determined by a reasonable person*
4. *To be so severe, pervasive, **and** objectively offensive that it **effectively denies** a person's equal access to the school district's education program or activity.*

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## RETALIATION



- "Retaliation" is defined as:
  - A school district and individuals cannot retaliate against an individual for filing a complaint alleging a violation of Title IX, for participating in (or refusing to participate in) a Title IX investigation or proceeding, or for advocating for another person's Title IX rights. *See 34 C.F.R. § 106.71.*
    - Any adverse treatment
    - No intimidation, threats, coercion, or discrimination.
    - No processing under another policy/procedure.

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## TITLE IX DECISION-MAKING STEPS



**STEP 1:** Title IX Decision-Maker is contacted by Title IX Coordinator about the conclusion of a Title IX investigation.

- Initial complaint either based upon “actual knowledge” report or “Formal Complaint.”
- Should request the following:
  - Copy of all documentation related to complaint.
  - Copy of all documentation from investigation, including Investigative Report.
  - Copy of the parties’ responses to Investigative Report.

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## TITLE IX DECISION-MAKING STEPS



**STEP 2:** Title IX Decision-Maker sets-up case file.

- Open separate case “file” for each complaint.
- Review complaint fully.
- Outline parties (complainant and respondent) and other individuals involved.
  - Confirm no conflict of interest with parties.
  - *REMEMBER:* Presumption of non-responsibility for respondent until process is complete.
- Outline applicable timeline for issuing decision.

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## TITLE IX DECISION-MAKING STEPS



**STEP 2:** Title IX Decision-Maker sets-up case file,  
*continued.*

- Review the school district's Equal Educational Opportunities and/or Non-Discrimination Policies.

*DISTRICT'S POLICIES*

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## TITLE IX DECISION-MAKING STEPS



**STEP 3:** Title IX Decision-Maker reviews questions and written responses submitted by parties and follows-up appropriately.

- Ask requested questions of parties/witnesses.
- Provide answers to questions to both parties.
- Ask any limited, follow-up questions posed by parties.
- Consider questions and written responses as part of decision-making.

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## TITLE IX DECISION-MAKING STEPS



**STEP 4:** Title IX Decision-Maker reviews and analyzes all evidence from investigation.

- Remember you **MUST BE OBJECTIVE AND IMPARTIAL** when evaluating evidence.
  - Consider only relevant evidence.
  - Consider exculpatory *and* inculpatory evidence.
  - Credibility not based upon person's status.
  - Set aside any sex stereotypes.

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## TITLE IX DECISION-MAKING STEPS



**STEP 4:** Title IX Decision-Maker reviews and analyzes all evidence from investigation, *continued*.

- Follow required Title IX grievance procedures, as applicable.
- Always consider the elements of the alleged misconduct **AND** the standard of review of the evidence.

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## TITLE IX DECISION-MAKING STEPS



**STEP 4 EXAMPLE:** Title IX Decision-Maker assesses evidence based upon a student’s allegations of sexual harassment.

- Requirements for sexual harassment:
  1. Unwelcome conduct
  2. On the basis of sex
  3. That a reasonable person would consider
  4. To be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school district’s education program or activity.

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## TITLE IX DECISION-MAKING STEPS



**STEP 4 EXAMPLE:** Title IX Decision-Maker assesses evidence based upon a student’s allegations of sexual harassment, *continued*.

1. Questions about whether the conduct was “unwelcome:”
  - The student did not request or invite the conduct.
  - The student “regarded the conduct as undesirable or offensive.” See *Does v. Covington Sch. Bd. of Educ.*, 930 F.Supp. 554, 569 (M.D. Ala. 1996).
  - Failure to complain or the student’s acquiescence in he conduct does not automatically mean the conduct was welcome.

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## TITLE IX DECISION-MAKING STEPS



**STEP 4 EXAMPLE:** Title IX Decision-Maker assesses evidence based upon a student’s allegations of sexual harassment, *continued*.

1. Questions about whether the conduct was **“unwelcome”**, *continued*:
  - Consider the age of the students involved.
  - Consider the authority of the individuals involved.
  - Consider the extent to which the parties claim the relationship was “consensual.” See U.S.D.E. Office of Civil Rights, *Revised Sexual Harassment Guidance* (January 2001), available at <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>.

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## TITLE IX DECISION-MAKING STEPS



**STEP 4 EXAMPLE:** Title IX Decision-Maker assesses evidence based upon a student’s allegations of sexual harassment, *continued*.

4. Questions about whether the conduct was **“severe, pervasive, and objectively offensive:”**
  - Consider all relevant circumstances, i.e., "the constellation of surrounding circumstances, expectations, and relationships."
  - Consider the “type, frequency, and duration of the conduct.”
  - Consider the number of individuals involved.

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## TITLE IX DECISION-MAKING STEPS



**STEP 4 EXAMPLE:** Title IX Decision-Maker assesses evidence based upon a student’s allegations of sexual harassment, *continued*.

4. Questions about whether the conduct was “**severe, pervasive, and objectively offensive**,” *continued*:
  - Consider the age and sex of the respondent (the alleged harasser) and the complainant (the subject/subjects of the harassment).
  - Consider the size of the school, location of the incidents, and context in which they occurred.
  - Consider other incidents. See U.S.D.E. Office of Civil Rights, *Revised Sexual Harassment Guidance* (January 2001), available at <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>.

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## TITLE IX DECISION-MAKING STEPS



**STEP 5:** Title IX Decision-Maker drafts decision.

- Checklist/format for *written* decision:
  1. Summarize information contained in complaint.
    - Specifically identify each allegation.\*
  2. Overview of all procedural steps, notices, and investigatory methods.\*
  3. Discuss evidence.
    - “Totality of Circumstances”
  4. Outline standard of review of evidence.
    - “Preponderance of Evidence”

*\*Specifically required under the Title IX final regulations.*

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## TITLE IX DECISION-MAKING STEPS



**STEP 5:** Title IX Decision-Maker drafts decision,  
*continued.*

- Checklist/format for *written* decision:
  6. Outline applicable elements for each allegation.
  7. Apply evidence to elements for each allegation (based upon the standard of review) (“findings of fact”).\*
  8. Determine conclusion *for each allegation* (responsible/not responsible) and outline rationale.\*
  9. State any disciplinary or remedial measures imposed.\*
    - Must be consistent with Board policy.
  10. Outline appeal procedure and appealable grounds.\*

*\*Specifically required under the Title IX final regulations.*

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## TITLE IX DECISION-MAKING STEPS



**STEP 5 SIDE NOTE:** Title IX Decision-Maker must consider the “**totality of the circumstances.**”

- Statements by any witnesses to the alleged incident.
- Evidence about the relative credibility of the complainant and the respondent. Consider whether corroborating evidence exists.
- Prior allegations of discrimination/harassment by the complainant and/or against the respondent.

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## TITLE IX DECISION-MAKING STEPS



**STEP 5 SIDE NOTE:** Title IX Decision-Maker must consider the “totality of the circumstances,” *continued*.

- Evidence of the complainant’s reaction or behavior after the alleged discrimination/harassment.
- Evidence about whether the complainant filed a complaint or otherwise protested the conduct. However, consider complainant’s fear of retaliation.
- Other contemporaneous evidence.

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## TITLE IX DECISION-MAKING STEPS



**STEP 5 SIDE NOTE:** Title IX Decision-Maker must evaluate whether the “**preponderance of the evidence**” shows responsibility or no responsibility.

- Evidentiary standard or burden of proof.
- Considers the greater weight of the evidence.
- Is it more likely than not that it happened?
- > 50%

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## TITLE IX DECISION-MAKING STEPS



**STEP 6:** Title IX Decision-Maker confers with Title IX Coordinator on release of decision.

- Written decision prepared by Title IX Decision-Maker must be provided to both parties and their advisors simultaneously.
  - Provided in hard or electronic format

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## TITLE IX DECISION-MAKING STEPS



- Common Issues for the Title IX Decision-Maker:
  - What happens in he-said/she-said (etc.) situations?
  - What happens when it is impossible to know who to believe?

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## RESOURCES



### FAQ Regarding the U.S. Department of Education's Final Title IX Rules:

<https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>

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## QUESTIONS?



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# TITLE IX APPELLATE DECISION MAKER

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## OVERVIEW



- Overview of Title IX Appellate Decision-Maker Training:
  - Who is the Title IX Appellate Decision-Maker?
    - CANNOT be Title IX Coordinator, investigator, or the original decisionmaker.
  - What are the Title IX Appellate Decision-Maker's responsibilities?
  - Title IX Appeal
  - Title IX Appellate Decision-Making Steps

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## TITLE IX APPELLATE DECISION-MAKER



- Who is the Title IX Appellate Decision-Maker?
  - Individual who is tasked with deciding appeals of decisions reached by a Title IX decision-maker regarding investigations into complaints of sex discrimination under Title IX.
    - Title IX Appellate Decision-Maker should be independent and report to the Title IX Coordinator on any appellate decisions related to Title IX.
    - Not a formal appointment, and individual may have other job duties.

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## TITLE IX APPELLATE DECISION-MAKER



- What are the Title IX Appellate Decision-Maker's responsibilities?
  - Only responsibility is to evaluate the appeal of the original decisions regarding complaints of sex discrimination under Title IX.
    - Does NOT handle any elements of the investigation or decision-making prior to the appeal.
    - Does NOT re-investigate or re-evaluate facts.
    - **ONLY evaluates under the appellate standard of review.**

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## TITLE IX APPEAL



### *Old Requirements*

1. *NOT REQUIRED*
2. *If provided, provided to both parties.*
3. *No requirement regarding appellate decision-maker.*
4. *If provided, no specific grounds for appeal.*

### *New Requirements*

1. *REQUIRED for dismissals and final determinations*
2. *Provided to both parties.*
3. *Must have different appellate decision-maker.*
4. *THREE Specific grounds for appeal.*

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## TITLE IX APPELLATE DECISION-MAKING STEPS



**STEP 1:** Title IX Appellate Decision-Maker is contacted by Title IX Coordinator about an appeal of a Title IX decision.

- Should request the following:
  - Copy of original complaint.
  - Copy of final decision from Title IX Decision-Maker.
  - Copy of any documentation provided as part of appeal.
  - Confirmation from Title IX Coordinator regarding scope of appellate decision.

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## TITLE IX APPELLATE DECISION-MAKING STEPS



**STEP 2:** Title IX Appellate Decision-Maker sets-up appeal file.

- Open separate appeal “file” for each complaint.
- Review complaint and final decision fully.
- Outline parties (complainant and respondent) and other individuals involved.
  - Confirm no conflict of interest with parties.
- Outline applicable timeline for issuing appellate decision.

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## TITLE IX APPELLATE DECISION-MAKING STEPS



**STEP 2:** Title IX Appellate Decision-Maker sets-up appeal file, *continued*.

- Review the school district’s Equal Educational Opportunities and/or Non-Discrimination Policies.
- Remember you **MUST BE OBJECTIVE AND IMPARTIAL** when reviewing the original decision.

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## TITLE IX APPELLATE DECISION-MAKING STEPS



**STEP 3:** Title IX Appellate Decision-Maker reviews and analyzes original decision.

- Grounds for appeal:
  1. Procedural irregularity that affected the outcome (“harmful error”)
  2. New evidence that wasn’t reasonably available at time of decision or dismissal and would affect outcome.
  3. Title IX Coordinator, investigator, or decision-maker had a conflict of interest or general bias.
  4. Other grounds ONLY IF outlined in Board policies/procedures.

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## TITLE IX APPELLATE DECISION-MAKING STEPS



**STEP 4:** Title IX Appellate Decision-Maker drafts appeal decision.

- Checklist/format for *written* appeal decision:
  1. Overview of date of final decision/dismissal and request for appeal.
  2. Outline standard of appellate review.
    - Grounds for appeal
  3. State result of appeal (founded/unfounded).
  4. Outline rationale for result of appeal.

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## TITLE IX APPELLATE DECISION-MAKING STEPS



**STEP 5:** Title IX Appellate Decision-Maker confers with Title IX Coordinator on release of appeal decision.

- Written appellate decision prepared by Title IX Appellate Decision-Maker must be provided to both parties and their advisors simultaneously.
  - Provided in hard or electronic format

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## QUESTIONS?



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