

2024-25



# **TITLE IX TEAM TRAINING**

**For Title IX Coordinators, Investigators, Decisionmakers, and Appeals Officers**

**July 31, 2024**

**Greta A. Proctor and Merrick A. Wadsworth**

**Procopio, Cory, Hargreaves & Savitch**

# Agenda

- Scope of Title IX, how it applies to charter schools, and recent changes
- Overview of a school's Title IX obligations
- Definitions
- Personnel on the Title IX Team
- How to serve impartially: avoiding prejudgment, conflicts of interest, and bias
- New requirements for student pregnancy or related conditions
- Initial response when schools has knowledge of potential sex discrimination
- Grievance procedures for complaints
  - How to conduct an investigation, relevant evidence, appeals, informal resolution process, etc.

# FAQs and Title IX Resources



# FAQs

- Is today's training being recorded?
- Should my school keep an attendance log?
- Do schools need to post the training materials on their website?
- How can schools develop a compliant Title IX Policy and Grievance Procedures
- What about a compliant Title IX website statement?
- Can I ask questions during the training?

# Title IX Resources

- The Title IX regulations are found in 34 CFR Part 106
- U.S. Department of Education's July 2024 Pointers for Implementation: <https://www2.ed.gov/about/offices/list/ocr/docs/pointers-for-implementation-2024-title-ix-regulations.pdf>
- Lots of information on the U.S. Department of Education's website: <https://www.ed.gov/news/press-releases/us-department-education-releases-final-title-ix-regulations-providing-vital-protections-against-sex-discrimination>
  - Info about OCR's enforcement authority
  - Title IX guidance and factsheets
  - More guidance will likely be forthcoming once the dust settles and the new regulations take effect
- Pending cases to watch: *Tennessee v. Cardona*, *Carroll Independent School District v. USDOE*, *Arkansas v. USDOE*, *Kansas v. USDOE*

## Scope of Title IX, how it applies to charter schools, and recent changes



5

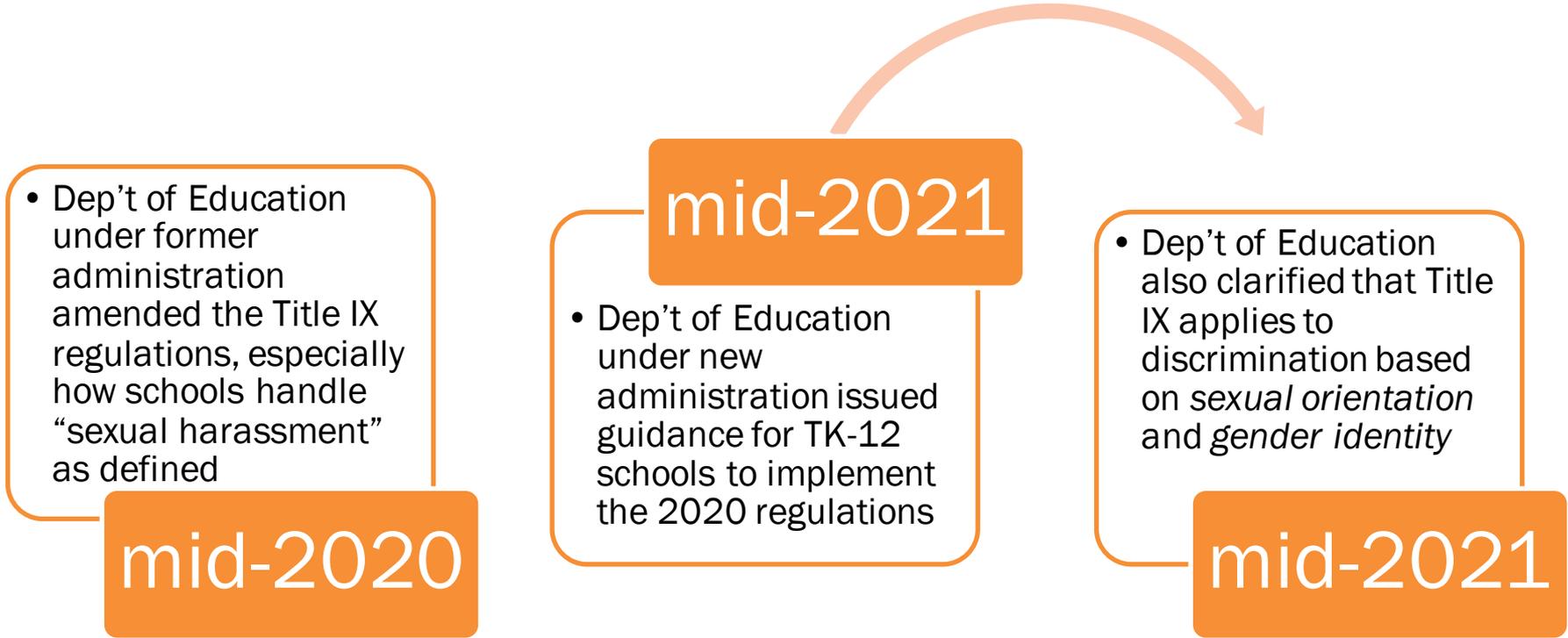
# What is Title IX?

- Title IX is a federal civil rights law dating back to 1972 that prohibits discrimination on the basis of sex in all schools that receive federal funding:
  - *“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.”*
- Examples of the types of discrimination that are covered under Title IX include sex-based harassment, failure to provide equal athletic opportunity, sex-based discrimination in a school’s courses and programs, and discrimination based on pregnancy, sexual orientation, and gender identity

# Does Title IX Apply to Charter Schools?

- Yes. All public and private elementary and secondary schools, school districts, colleges, and universities receiving any Federal funds must comply with Title IX
  - *\*note the requirements are different for colleges/universities than TK-12*
- The application of Title IX to charter schools receiving federal funds has not changed. However, in mid-2020, revised Title IX regulations changed the process and requirements for *all* schools significantly, and now they have changed again starting August 1, 2024
  - Before 2020, charter schools used their UCP process to address Title IX complaints, which was recommended by CDE. Since 2020, that is not appropriate, and schools need to have separate Title IX complaint procedures

# Timeline of Changes in Title IX Since 2020



# Timeline of Changes Since 2020 Cont.

- On 50<sup>th</sup> anniversary of Title IX, Dep't of Education released proposed changes to Title IX regulations. More than 235,000 comments received during 60-day comment window!

June 23,  
2022

April 19,  
2024

- After multiple delays and considering all comments, Dep't of Education issued proposed new regulations, changing definitions, process, and training requirements

- Effective date of new regulations.
- **Note: federal courts in multiple states have temporarily blocked the US DOE from enforcing the new regulations in 21 states and with respect to certain schools; check the list and stay tuned for more!**

August 1,  
2024

# FAQs

- ***Given all the changes, how does a school know which version of the Title IX process applies?***
  - Schools must follow the Title IX requirements that were *in place at the time of the alleged incident* (notwithstanding the date of school's response). So retain your old Title IX policy & grievance procedures!
- ***Who will check my school's Title IX compliance?***
  - Typically this occurs when a complaint is made to the federal Office of Civil Rights (OCR). Anyone can make an OCR complaint, alleging the school failed to follow Title IX. Up-to-date Title IX grievance procedures are also now part of CDE's Federal Program Monitoring (FPM) and many authorizers' oversight requirements.

# What's Changing Under New Regulations?

- Compared to the 2020 requirements, some of the changes beginning in the 2024-25 school year are:
  - *Clearly defining “sex discrimination” under Title IX to include discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity*
  - *New term “sex-based harassment” replaces the old term “sexual harassment,” and definition is now broader*
  - *Protections for pregnant and parenting students and staff*
  - *Expanded scope of complaints are now subject to Title IX grievance procedures*



# What's Changing Under New Regulations?

- Compared to the 2020 requirements, some of the changes beginning in the 2024-25 school year are (continued):
  - *Changes to overarching standard for a school's response*
  - *Complaints can be made by former students and employees*
  - *Easier to file a complaint and initiate grievance procedures*
  - *New annual training requirements, including a training for **all** employees*
  - *Smaller Title IX Team and somewhat streamlined grievance procedures*
  - *And more changes...*



# What Does Today's Training Cover?

- Today's training covers the updated regulations that become effective as of August 1, 2024
- Your school's current grievance procedures (i.e. the ones that were updated to meet the 2020 requirements) apply to conduct occurring before August 1, 2024
- Your school's updated grievance procedures (i.e. the ones your Board has or will soon approve) will apply to conduct occurring on or after August 1, 2024

# The Big Picture

I just need  
the main ideas



This Photo by Unknown Author is licensed under CC BY

# Overview of a Charter School's Title IX Obligations

- When any school employee has knowledge of conduct that reasonably may constitute *sex discrimination* in the school's *education program or activity*, they must report it to the Title IX Coordinator so the school can respond *promptly and effectively* to address it
  - School must treat *complainant* and *respondent* equitably
  - School must offer *supportive measures*
  - School must determine whether there is a need for *emergency removal*
  - School must explain Title IX *grievance procedures* and informal resolution process
  - School must take other appropriate steps to ensure sex discrimination does not continue
  - Special rules for pregnancy and related conditions
- If school receives a *complaint* of sex discrimination, school must initiate *grievance procedures*

# Definitions



[This Photo](#) by Unknown Author is licensed under [CC BY-SA](#)

# Definition of Sex Discrimination under Title IX

- ***Sex discrimination*** includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity, as well as ***sex-based harassment***
- ***Sex-based harassment*** is a form of sex discrimination and includes any of the following:
  - ***Quid pro quo harassment***: school employee conditions provision of aid, benefit, or service on an individual's participation in unwelcome sexual conduct
  - ***Hostile environment harassment***: Unwelcome sex-based conduct that creates a hostile environment (see next slides)
  - ***Specific offenses***: sexual assault, dating violence, domestic violence, or stalking as defined in federal law (see next slides)



# Definition of Hostile Environment Harassment

- *Hostile environment harassment* is unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the school's education program or activity (i.e., creates a hostile environment).
- *How to apply this definition? Use a checklist.* The conduct must be:
  - (1) unwelcome,
  - (2) sex-based,
  - (3) subjectively and objectively offensive, and
  - (4) so severe or pervasive,
  - (5) that it results in a limitation or denial of a person's ability to participate in or benefit from the education program or activity



# Definition of Hostile Environment Harassment Cont.

- *The regulations specifically say that whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:*
  - The degree to which the conduct affected the complainant’s ability to access the school’s education program or activity;
  - The type, frequency, and duration of the conduct;
  - The parties’ ages, roles within the school’s education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
  - The location of the conduct and the context in which the conduct occurred; and
  - Any other sex-based harassment in the school’s education program or activity.



# Definition of Specific Offenses

- ***Sexual Assault*** can be forcible and nonforcible:
  - Forcible: any sexual act directed against complainant forcibly, against their will or without consent
  - Nonforcible: offenses that do not involve force where complainant is incapable of giving consent

# Definition of Specific Offenses

- ***Dating Violence*** is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim
  - Whether a relationship exists is determined based on a consideration of the following factors:
    - Length of relationship
    - Type of relationship
    - Frequency of interaction between the persons in the relationship

# Definition of Specific Offenses

- ***Domestic Violence*** is violence committed by:
  - Current or former spouse or intimate partner of the victim
  - Person with whom the victim shares a child in common
  - Person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
  - Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state

# Definition of Specific Offenses

- ***Stalking*** is engaging in a course of conduct directed at the complainant that would cause a reasonable person to:
  - Fear for their safety or safety of others; or
  - Suffer substantial emotional distress

# Definition of Conduct Occurring “In Education Program or Activity”

- Conduct occurs within a school’s “*education program or activity*” if the conduct is subject to the school’s disciplinary authority
  - E.g., at a school or resource center, on remote learning platforms, on a field trip, in a mentor program, at school-sponsored activities, etc.
  - Off-campus and online settings may require fact-specific determination
  - Most charter schools can discipline students for conduct that occurs on school grounds, while going to or coming from school, during lunch whether on or off campus, and while going to or coming from a school-sponsored activity



# Definition of Complainant and Respondent

***Complainant*** means a student, employee, or other person who was participating or attempting to participate in the school's education program or activity, who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX

***Respondent*** means an individual who is alleged to have violated the school's prohibition on sex discrimination



# Note on California Law

- California's legal protections are more similar to the protections under Title IX than some other states, e.g. protections related to pregnancy, sexual orientation, etc.
- You may find the definitions of discrimination and harassment and required responses under California law and Title IX overlap, *but they are not the same*
  - Today's training is limited to the federal Title IX requirements
- Complaints alleging unlawful discrimination or harassment on the basis of sex may *also* be eligible to be investigated under the schools' UCP or other process based on California law, but UCP does not supplant Title IX
- Only complaints alleging sex discrimination *as defined under Title IX* may be investigated under the schools' Title IX grievance procedures

# The Title IX Team



# Roles

- ***Title IX Coordinator*** receives reports and complaints of sex discrimination, coordinates the investigation and resolution process, and monitoring and addressing any barriers to reporting information about potential sex discrimination
  - Title IX Coordinator will be named in the policy
- ***Investigator*** gathers all evidence related to a complaint
  - Investigator does not need to be named in policy but does need to be trained. Investigator can also be the Title IX Coordinator

# Roles

- ***Decisionmaker*** evaluates evidence in order to determine whether sex discrimination occurred
  - *The Decisionmaker may be the same person as the Title IX Coordinator and/or Investigator*
- ***Title IX Appeals Officer*** evaluates an appeal of the Decisionmaker’s final determination (if an appeal is filed)
  - The Title IX Appeals Officer cannot be any individual involved in the dismissal of the complaint or the investigation of the complaint



# Title IX Team Training Requirements



- Title IX Coordinator(s), investigators, decisionmakers, appeals officers, and any person with authority to modify or terminate supportive measures must receive annual training on the schools' obligations to respond to sex discrimination, the schools' grievance procedures, how to serve impartially, conflicts of interest, bias, relevant evidence, and impermissible types of evidence
- Facilitators of informal resolution process must be trained on the rules and practices associated with the schools' informal resolution process and on how to serve impartially, including by avoiding conflicts of interest and bias

# Title IX Team Training Requirements

- Title IX Coordinator(s) must also receive training on:
  - Coordinating the schools' efforts to comply with Title IX
  - Coordinating the schools' actions upon notice of a student's pregnancy or related conditions
  - Coordinating the schools' response to a report or complaint or sex discrimination, including supportive measures
  - The schools' recordkeeping system and the recordkeeping requirements under Title IX

# Training Requirements for All Employees



- All school employees must receive annual training on:
  - The recipient’s obligation to address sex discrimination in its education program or activity
  - The scope of conduct that constitutes sex discrimination under Title IX and this part, including the definition of sex-based harassment
  - All applicable notification and information requirements under 34 CFR §§ 106.40(b)(2) and 106.44

## Serving Impartially



[This Photo](#) by Unknown Author is licensed under [CC BY-SA](#)

# Requirement to be Neutral

- All members of the Title IX Team must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent
  - Must serve impartially and avoid prejudgment of the facts
- How does this work in small school environments?

# Avoid Conflicts of Interest

- There is no definition of a conflict under Title IX
- A conflict of interest generally occurs when an individual has a personal interest in the matter that affects their decision-making
  - Could be a familial interest, financial interest, etc.
- *Example:* the Investigator is related by marriage to the respondent
- *Example:* the Decisionmaker's spouse works at a business owned by the complainant

# Avoid Bias

- Bias is an unfair preference for or dislike of something
  - It's usually a function of experiences we have had or beliefs we have developed over time
- Bias inhibits impartial judgment
  - Our own experiences and perceptions are not universal
  - Perceptions can be as powerful as reality

# Avoid Bias

- Bias is oftentimes implicit, meaning the individual is unaware that their behavior is “discriminatory”
  - It’s often associated with a person’s gender, age, race, etc.
- *Example:* male Decisionmaker who quickly believed witness “Tom” but is skeptical of witness “Chloe”
- You can prevent bias by learning to recognize it, being aware of it, and actively focusing on remaining impartial



## New Requirements for Student Pregnancy or Related Conditions



# Pregnancy or Related Conditions

- When a student or their parent/guardian informs any school employee of the student's pregnancy or related conditions, unless the employee reasonably believes that the Title IX Coordinator has already been notified, the employee must promptly provide the student or their parent/guardian with the Title IX Coordinator's contact information and inform them that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the education program or activity
- *Tip: include this in your all-employee professional development, so employees know*



# Pregnancy or Related Conditions



- Once the Title IX Coordinator has been notified about a student's pregnancy or related conditions, the Coordinator must:
  - Inform the student or their parent/guardian of their rights under Title IX
  - Make reasonable modifications to the school's policies, practices, or procedures necessary to ensure equal access to the program or activity, based on the student's individualized needs
  - Allow the student to access any separate and comparable portion of the education program or activity (e.g., online classes, if available)
  - Allow the student to take voluntary leaves of absence
  - Provide the student with access to a lactation space
  - Not require supporting documentation from the student, with limited exceptions

# Pregnancy or Related Conditions



- The schools must treat pregnancy or related conditions in the same manner and under the same policies as any other temporary medical conditions
- The schools may not require a student to provide certification from a healthcare provider that the student is physically able to participate in a class, program, or activity, unless:
  - The certified level of physical ability or health is necessary for participation in the class, program, or activity;
  - The schools require such certification of all students participating in the class, program, or extracurricular activity; and
  - The information obtained is not used as a basis for discrimination
- *Remember that California law also protects pregnant/parenting students, i.e. EC 46015*



## Initial Response When a School has Knowledge of Potential Sex Discrimination in Education Program



This Photo by Unknown Author is licensed under [CC BY-SA-NC](#)

# Overview

- What does it mean for a school to have “knowledge” of conduct that reasonably may constitute sex discrimination? (next slide)
- What are the initial response steps? (next slides)
  - Treat complainant and respondent equitably
  - Offer supportive measures
  - Determine whether there is a need for emergency removal
  - Explain Title IX grievance process (and any informal resolution process)
  - Take other appropriate prompt and effective steps to ensure sex discrimination does not continue or recur in school’s education program
- These apply regardless of whether a *complaint* is made (see next section)
- School must respond “promptly and effectively” to address the alleged sex discrimination



# “Knowledge” of Sex Discrimination



- The schools’ Title IX obligations in this section of the training are triggered whenever any school employee has knowledge of conduct that could reasonably constitute sex discrimination under Title IX
  - Knowledge may come from witnessing something, or from the alleged victim, a student, an employee, a parent/guardian, etc.
  - Knowledge can come in-person, by phone, by mail, by email, etc.
  - Does not include vendors
- All employees are required to notify the Title IX Coordinator when they have such knowledge
  - *The all-employee training is important so that employees are aware of these obligations and know how to recognize conduct covered by Title IX*

# Initial Response: Contact Complainant

- When a school has knowledge of conduct that could reasonably constitute sex discrimination under Title IX, Title IX Coordinator must:
  - Promptly contact the complainant, listen to allegations, and discuss the availability of supportive measures (next slides)
  - Consider the complainant’s wishes with regard to supportive measures
  - Explain the Title IX grievance process that will apply if a *complaint* is made
- A *complaint* is an oral or written request that the school investigate and make a determination about alleged discrimination under Title IX, i.e. under the grievance procedures in the next section



# Initial Response: Supportive Measures



- Supportive measures vary depending on the facts
- These are non-disciplinary, non-punitive individualized services
- Designed to protect safety of a party or school environment, or provide support during grievance procedures, without unreasonably burdening the other party
  - Examples may include wellness check-ins, counseling, extension of deadlines or course-related adjustments, campus escort, increased security and monitoring on campus, no-contact agreements, modifications of work or class schedules, changes in work locations, leaves of absence, etc.
  - For students with disabilities, must consult one or more members of IEP team
- School must allow parties to challenge supportive measures, and if that happens, decision must be made by a different employee
- Supportive measures are confidential except for those who need to know

# Initial Response: Determine Need for Emergency Removal

- Title IX Coordinator will review the facts to determine whether respondent may need to be removed from the school setting to prevent further sex discrimination and/or maintain safety of students, staff, or others
  - If respondent is a **student**, respondent may be removed from educational program based on individualized safety and risk analysis. Respondent shall be provided with notice and opportunity to challenge the decision immediately following the removal.
    - Applicable laws concerning SPED, student discipline and expulsion apply
  - If respondent is an **employee**, respondent may be placed on administrative leave during complaint investigation

# Initial Response: Equitable Treatment and Other Steps

- Title IX Coordinator must treat the complainant and respondent equitably
  - E.g. if a *complaint* is made, the Title IX Coordinator may need to offer and coordinate supportive measures for respondent as well as complainant
- Title IX Coordinator must take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur in education program or activity
- These “Initial Response” steps all apply *regardless* of whether a *complaint* is made, so long as the school has *knowledge* of conduct that may reasonably constitute sex discrimination



# FERPA and IDEA Apply During Title IX Process

- FERPA protections apply during the Title IX process. The school may not disclose personally identifiable information (PII) about students obtained during the Title IX process, except:
  - With prior written consent from the student's parent/guardian
  - When the information is disclosed to the student's parent/guardian
  - To carry out the school's obligations under Title IX, including actions taken to address alleged sex discrimination
  - As required by federal law
  - To the extent such disclosure does not violate Title IX, FERPA, or state laws regarding student privacy
- If a complainant or respondent is a student with a disability, Title IX Coordinator must consult with one or more members of IEP team and comply with IDEA

## Grievance Procedures for Complaints of Sex Discrimination



# What is a Complaint Under Title IX?



- Under the previous 2020 regulations, the grievance procedures were only triggered by a “*formal complaint*” that had to be in writing and signed
- Now, the grievance procedures are triggered by any “*complaint*,” but a “*complaint*” is still more than just “knowledge” of conduct that may reasonably constitute sex discrimination under Title IX
  - A *complaint* is an oral or written request that the school investigate and make a determination about alleged discrimination under Title IX
  - A *complaint* as defined above is what kicks off the grievance procedures
  - Schools may encourage but not require the use of a Title IX complaint form

# More about Complaints

- Complainants have the right not to make a ***complaint*** (and therefore not trigger the grievance procedures), and may withdraw a complaint or any allegations in a complaint at any time
- However, in the absence of a complaint or the withdrawal of any or all allegations in a complaint, the Title IX Coordinator is required to make a *fact-specific determination* of whether the schools must initiate the grievance procedures themselves



# More about Complaints Cont.

- To make the *fact-specific determination* of whether to initiate the grievance procedures in absence of complaint, Title IX Coordinator *must consider*, at a minimum:
  - The complainant’s request not to proceed with initiation of a complaint
  - The complainant’s reasonable safety concerns regarding initiation of a complaint
  - The risk that additional acts of discrimination would occur if a complaint is not initiated
  - The severity of the alleged sex discrimination, including whether the discrimination, if established, would require removal of respondent or another serious disciplinary sanction
  - The age and relationship of the parties, including whether respondent is an employee
  - The scope of the alleged sex discrimination, including whether a pattern or effecting multiple individuals
  - The availability of evidence to assist a decisionmaker in determining if sex discrimination occurred
  - Whether the schools can end the alleged discrimination without initiating grievance procedures
- Based on these and other relevant factors, Title IX Coordinator *may* initiate complaint



# Step-by-Step Overview

- Step 0. Initial response when a school has knowledge of sex discrimination, including supportive measures and potential temporary removal (see previous slides)
- Step 1. Initial review of complaint
- Step 2. Send written notice of complaint
- Step 3. Conduct investigation
- Step 4. Parties have opportunity to review evidence
- Step 5. Issue written decision
- Step 6. Provide remedies
- Step 7. Appeals
- Step 8. Recordkeeping

# Step 1: Initial Review



- Title IX Coordinator reviews complaint
  - Your policy will provide a process and timeline for this
- A complaint may be dismissed for any of the following reasons:
  - School is unable to identify the respondent after taking reasonable steps to do so
  - The respondent is not participating in the school’s education program or activity and is not employed by the school
  - The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and the school determines that, without the complainant’s withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven
  - School determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX

55

# Step 1: Initial Review Cont.

- If Title IX Coordinator dismisses complaint:
  - Must send written notice to the complainant
  - State basis for dismissal and inform complainant of their right to appeal
  - If Title IX Coordinator determines another grievance procedure (e.g., UCP) is appropriate, inform parties of school's intent to investigate the complaint through that procedure
- If respondent was already notified of complaint, Title IX Coordinator must send written notice to the respondent as well

## Step 2: Send Written Notice

- Title IX Coordinator must provide parties with notice of complaint
  - Your policy will provide a process and timeline for this
- Notice shall include:
  - Copy of schools' Policy on Title IX including grievance procedures
  - Description of allegations with sufficient detail (e.g., parties involved, specific conduct, date and location of alleged incident, etc.)
  - Statement that retaliation is prohibited
  - Statement informing the parties of an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of the evidence
  - Statement informing the parties that if they are only provided a description of the evidence, they are entitled to an equal opportunity to access the evidence upon request
- If more allegations are added to investigation, separate notice must be provided



# Step 3: Conduct Investigation

- Timelines and extensions
- Presumption of innocence
  - School must presume respondent is **not** responsible for alleged conduct
- Evidence gathering
  - Investigator has burden to gather sufficient evidence (not the parties)
  - Cannot gather privileged information without voluntary, written consent (e.g., medical records)
  - No live hearing or Q&A requirements



## Step 3: Conduct Investigation Cont.

- Both parties must have equal opportunity to present witnesses and evidence
- There is no longer a right for a party or witness to have a non-parent/guardian advisor present during a Title IX interview
  - A minor student’s parent/guardian has a right to be present
  - Schools can still allow an advisor, but this should apply equally to both parties in the complaint



## Step 4: Opportunity to Access Evidence



- Both parties must have an equal opportunity to review the relevant (and not otherwise impermissible) evidence, either by providing the evidence itself or a description of the evidence, and to provide a written response
  - Your policy will provide a reasonable timeline for this
- The Investigator must remind the parties that any information about another party, witness, or other individual obtained solely through the grievance process is confidential and any unauthorized disclosures are prohibited

# Step 5: Issue Written Decision

- The Decisionmaker will objectively evaluate all *relevant* evidence (see next slide)
- If the Decisionmaker is not the same person as the Investigator, the Decisionmaker will, at this point in the process, be able to question parties and witnesses to adequately assess a party's or witness's credibility, to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.
- Decisionmaker must use “preponderance of evidence” standard
  - Whether there is greater than 50% chance the allegations are true



# Step 5: Issue Written Decision



- What is *relevant* evidence?
  - *Relevant* means related to the allegations of sex discrimination under investigation as part of the grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the conduct occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the conduct occurred.
- The following types of evidence must be excluded even if relevant:
  - Privileged information, unless privilege is waived
  - Physician, psychologist or other treating professional records, unless waived
  - Evidence of prior sexual conduct unless offered to prove that someone other than respondent committed the alleged conduct or to prove consent for the alleged conduct

## Step 5: Issue Written Decision (cont.)

- Written decision must be issued to both parties simultaneously
  - Your policy will provide a reasonable timeline for this
- Written decision must include the determination whether sex discrimination occurred under Title IX, the rationale for such determination, and the procedures and permissible bases for appeal

# Step 6: Provide Remedies

- If the school determines that sex discrimination occurred, the Title IX Coordinator will provide appropriate remedies to complainant (and others, if appropriate), including supportive measures
- Remedies may be disciplinary and/or punitive and may burden respondent, but remedies must be designed to restore or preserve equal access to educational program
- For sex-based harassment, remedies may include transfer from a class; parent/student conference(s); positive behavior support; warnings; detention; and/or formal discipline, such as suspension and expulsion, including notification to complainant of any such disciplinary sanctions.
- If employee is found to have engaged in sex-based harassment, the school will take appropriate disciplinary action (e.g., termination)

# Step 7: Appeals

- Either party may appeal the written decision, or dismissal of a complaint or allegation in a complaint
  - Your policy will provide a process and timeline for this
- Bases for appeal:
  - Procedural irregularity that would change the outcome
  - New evidence that was not reasonably available and would change outcome
  - Conflict of interest or bias by Title IX Coordinator, Investigator, or Decisionmaker
- School must provide written notice to the other party and give both parties a reasonable, equal opportunity to submit a written statement
- Title IX Appeals Officer must issue a written decision to both parties
  - Your policy will provide a reasonable timeline for this



## Step 8: Recordkeeping

- Schools must maintain records for seven years, including:
  - Records documenting the actions taken by the school in response to knowledge of conduct that may reasonably constitute sex discrimination
  - For each complaint, records documenting the informal resolution process or grievance procedures and, if applicable, the outcome
  - All training materials

# Consider Informal Resolution Processes

- Any time after a complaint has been filed, but before reaching a determination, the school may offer an informal resolution process (e.g., mediation, restorative justice, etc.) to complainant and respondent
  - Both parties must voluntarily consent
  - Exception: Informal resolution process is not available where complainant alleges that an employee harassed a student
- The facilitator must not be the same person as the Investigator or the Decisionmaker

# Questions? Feel free to reach out!



**Greta A. Proctor**  
**Partner**  
**Greta.Proctor@Procopio.com**  
**(310) 382-5321**



**Merrick A. Wadsworth**  
**Senior Counsel**  
**Merrick.Wadsworth@Procopio.com**  
**(619) 906-5753**