K-12 Title IX Coordinator & Administrator Advanced

Training & Certification Course
Any advice or opinion provided during this training, either privately or to the entire group, is **never** to be construed as legal advice. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law, any applicable state or local laws, and evolving federal guidance.
AGENDA

1. Title IX Recap
2. ‘General Title IX Compliance Oversight
3. Athletics: Gender Equity Considerations
4. Athletics: Sexual Harassment Considerations
5. Pregnancy and Title IX
6. Disability and Title IX
AGENDA

7. Transgender Students & Title IX
8. Policy Development
9. Navigating Employee-Based Issues
10. Training & Prevention Initiatives
11. Working with Parents/Guardians
12. Developing Memoranda of Understanding
TITLE IX RECAP

- Key Title IX-Related Issues
- Obligations Under Title IX
- Current State
- Summary of Key Issues in Regulations
“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.”
KEY TITLE IX-RELATED ISSUES

Sex-Based Discrimination
- Program Equity
- Recruitment, Admissions, & Access
- Pregnancy
- Athletics
- Employment, Recruitment, & Hiring
- Extra-curricular activities
- Housing

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

Retaliation
INSTITUTIONAL OBLIGATIONS UNDER TITLE IX

Sexual Harassment

Investigate  Stop  Prevent  Remedy
GENERAL TITLE IX COMPLIANCE OVERSIGHT

- Stop, Prevent & Remedy
- Assessing Compliance
Stop The Discriminatory Conduct:

- Take timely steps to identify and implement appropriate supportive measures for the parties
- Confirm and document that the appropriate supportive measures were implemented. For example:
  - Was the student assigned to a different seat or class?
  - Was the employee provided an alternate supervisor/work assignment/workspace?
  - Was counseling made available?
  - Was a no-contact order issued?
Stop The Discriminatory Conduct (Cont.):

- Regularly re-evaluate the need for any continuing supportive measures (particularly when emergency removal is implemented)
- Enforce any violations (e.g., no contact order)
- Make sure the parties know they should report any difficulties with measures provided
Prevent Recurrence:

- Identify patterns and systemic problems
- Issue school-wide policy statements, informational campaigns, and other messages that harassment and assault will not be tolerated
- Provide regular training on sex/gender-based misconduct for students, employees, and parents/guardians
- Conduct periodic surveys of school climate
- Establish a system for monitoring future incidents and patterns
- Provide technical assistance to school/local law enforcement on Title IX compliance
Prevent Recurrence (Cont.):

- Consider the effect of educational sanctions
- The potential next Complainant is potentially both a Title IX and negligence concern
Remedy the Effects:

- Designed to make Complainant whole and return them to the pre-deprivation status.

- Take timely steps to confirm and document that the appropriate remedies were implemented.

- Make sure the Complainant knows that they should report any difficulties obtaining the remedies and any subsequent harassment.

- Determine what, if any, remedies may need to be provided to the school community as a whole.
ASSESSING COMPLIANCE

- Active, internal reviews/audits/assessments
  - Reporting and resolution processes
  - Policies and procedures up-to-date and compliant
  - Athletics
  - Training content and requirements
  - Policy and non-discrimination notice dissemination
  - Materials, website, and resource guide

- Compliance checklist
  - Departmental self-study audit at regular intervals

- Case/investigation debriefing
Active professional development on issues related to compliance; oversight of compliance plan implementation
- For Title IX Coordinator and/or Deputy Coordinators

Climate surveys.
- Online, in-person, focus groups, school/district committee feedback, etc.
ATHLETICS: GENDER EQUITY CONSIDERATIONS

- Oversight of Athletics
- Title IX Requirements
- The Three-Part Test
- Other Athletic Benefits and Opportunities
- Financial
OVERSIGHT OF ATHLETIC GENDER EQUITY

- The oversight of compliance remains the responsibility of the Title IX Coordinator (TIXC)

- **Day-to-day compliance in athletics** may be delegated to the Athletics Director
  - Need for outside education on the various areas of TIX

- The dangers of being both
Three-Part Test and the 13 program components are typically not as problematic for Intramurals and Club Sports because those programs are typically self-initiated and benefits provided by the school are typically fewer.
Title IX requires an institution to:

- Provide equal opportunities for female and male students to become interscholastic athletes
  - Analyzed by means of a three-part test ("Prongs")
- Provide equitable treatment of participants in the overall girls’ program as compared to the overall boys’ program
  - Analyzed according to thirteen (13) different program components (The “Laundry List”)
Title IX does not require a school to:

- Provide the same funding to the overall girls’ and boys’ programs
- Provide the same funding to girls’ and boys’ teams for the same sport
- Provide specific benefits to teams
- Offer the same number of teams for boys and girls
- Offer the same sports for boys and girls
- Provide the same benefits to boys’ and girls’ teams in the same sport
- Compete at a specific level
THREE-PART TEST (1979)

Effective accommodation of interests and abilities

1. Opportunities for males and females substantially proportionate to their respective enrollments; OR

2. Where one sex has been underrepresented, a history and continuing practice of program expansion responsive to the developing interests and abilities of that sex; OR

3. Where one sex is underrepresented and cannot show a continuing practice of program expansion, whether it can be demonstrated that the interests and abilities of that sex have been fully and effectively accommodated by that present program.
PART 1: PROPORTIONALITY

Opportunities for males and females substantially proportionate to their respective enrollments

- **Substantially proportionate** accounts for natural fluctuations in enrollment and participation rates, but schools must adjust if shifted enrollment or participation shifts persist.

- The OCR uses a case-by-case analysis, rather than a rigid statistical requirement (e.g., within 1% of student body).

- The OCR would also consider opportunities to be substantially proportionate when the number of opportunities that would be required to achieve proportionality would not be sufficient to sustain a viable team.

PART 2: PROGRAM EXPANSION

History and continuing practice of program expansion responsive to the developing interests and abilities of the underrepresented sex

In analyzing a history of program expansion, the OCR considers:

- A school's record of adding interscholastic teams, or upgrading teams to interscholastic status, for the underrepresented sex
- An institution's record of increasing the numbers of participants in interscholastic athletics who are members of the underrepresented sex

PART 2: PROGRAM EXPANSION (CONT.)

- A school’s affirmative responses to requests by students or others for addition or elevation of sports
- A school’s current implementation of a nondiscriminatory policy or procedure for requesting the addition of sports (including the elevation of club or intramural teams) and the effective communication of the policy or procedure to students
- A school’s current implementation of a plan of program expansion that is responsive to developing interests and abilities

PART 3: FULL ACCOMMODATION

Whether it can be demonstrated that the interests and abilities of that sex have been fully and effectively accommodated by that present program

The OCR will consider whether:

- There is sufficient unmet interest to support an interscholastic team
- There is sufficient ability to sustain an interscholastic team
- There is a reasonable expectation of competition for the team

OVERSIGHT OF ATHLETICS GENDER EQUITY

Equivalent Treatment of Student Athletes

- Scholarships
- Equipment & Supplies
- Scheduling
- Locker Rooms & Facilities
- Housing & Dining
- Coaching
- Publicity
- Travel & Per Diem
- Support Services
- Tutoring
- Medical and Training Services
UNIQUE CHALLENGES

- Culture of violence and aggressive behavior in sports
- Student-athlete on student-athlete violence/hazing
- Offender coach involvement
- Power dynamics (to include revenue vs. non-revenue sports)
- Body Image and Focus on body
- Male privilege
- Male bonding and group loyalty
- Approval of sexist language and attitudes
- Entitlement
- “Celebrity”/”groupie” status
How to get in the door with compliance in the athletic department:

Build the necessary relationships for future compliance.
CASE STUDY: STUDENT-ATHLETE HAZING

Doe and Roe, freshmen members of the varsity basketball squad, traveled with the team out-of-state for a tournament and stayed together in a cabin for four days and nights.

During the trip, Doe and Roe were hazed and sexually assaulted. Teammates used billiard sticks to penetrate their anuses and yelled, “don’t be a pussy” and “take it like a man.”

Prior to the trip, upperclassmen hazed freshman by “racking,” which consisted of upperclassmen beating freshman players with the lights out. More than once, their coach walked into the locker room during this conduct; he told the students to “knock off the horseplay” and turned on the lights.
On the trip, upperclassmen prodded Doe’s anus so hard over his clothes that the fabric ripped and the billiard stick directly penetrated his anus.

Doe was hospitalized with a perforated rectum and bladder and had to undergo emergency surgery. His recovery took months. Doe never returned to the school.

Roe returned to school but was subjected to harassment from his assailant’s friends and transferred to another school.
CASE STUDY DISCUSSION: STUDENT-ATHLETE HAZING

Questions For Discussion

- Does this hazing fall under Title IX?
- Did the school have notice of the hazing?
- How should the school respond to these allegations?
- What prevention or training efforts might you implement?
PREGNANCY AND TITLE IX

- Covered Issues
- Dear Colleague Letters
- Regulatory Language
- OCR Guidance
- Special Issues for Consideration
- Compliance Strategies
PREGNANCY AND TITLE IX

- Admissions
- Academics
  - Registration
  - Coursework Accommodation and Completion
- Extra-curricular Activities
- Athletics
- Health Insurance Coverage
- Employment
  - Hiring
  - Benefits and bonuses
  - Leave and job protection upon return from leave
“According to a survey conducted by the Bill and Melinda Gates Foundation, a third of young girls who did not finish high school stated that becoming a parent played a major role in their decision to leave. Only about half of young mothers will earn a high school diploma by the age of 22, compared with 89 percent of girls who did not have a child during their teenage years, and one-third of young mothers will never get a G.E.D. or a diploma.”

PREGNANCY AND TITLE IX: 2007 DCL*

- Affirms the application of the pregnancy-related portions of the regulations to athletics departments and summarized a school’s obligations to pregnant student-athletes.

*Dear Colleague Letter from the U.S. Department of Education’s Office for Civil Rights
June 25, 2013 DCL on pregnancy and parenting students:

- Educators must ensure pregnant and parenting students are not discriminated against

- Educators must ensure that pregnant and parenting students are fully supported in preparation for graduation and careers

- Secondary school administrators, teachers, counselors, and parents must be well-educated on the rights of pregnant and parenting students as provided under Title IX

*Dear Colleague Letter from the U.S. Department of Education’s Office for Civil Rights
PREGNANCY AND TITLE IX: 2013 DCL*

- The June 25, 2013 DCL also includes:
  - Information on how to develop programs to support these students
  - An overview of students’ rights under Title IX
  - Guidance on how to share a complaint if an individual feels their rights are not being met

*Dear Colleague Letter from the U.S. Department of Education’s Office for Civil Rights
“A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.”

34 C.F.R. 106.40
PREGNANCY AND TITLE IX:
REGULATORY LANGUAGE

Pregnancy defined:

- “Pregnancy and related conditions”:
  - A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.” (34 C.F.R. 106.40)
Doctor’s Note to Participate

- “Schools cannot require a pregnant student to produce a doctor’s note in order to stay in school or participate in activities, including interscholastic sports, unless the same requirement to obtain a doctor’s note applies to all students being treated by a doctor.”

- “That is, schools cannot treat a pregnant student differently from other students being cared for by a doctor, even when a student is in the later stages of pregnancy; schools should not presume that a pregnant student is unable to attend school or participate in school activities.”

Physician Certification

- A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.”

- “Thus, for example, a student who has been hospitalized for childbirth must not be required to submit a medical certificate to return to school if a certificate is not required of students who have been hospitalized for other conditions.”

Source: 34 C.F.R. 106.40
PREGNANCY, SEC. 504, & TITLE IX: REGULATORY LANGUAGE

Pregnancy as Temporary Disability

- A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan, or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.”

Source: 34 C.F.R. 106.40
Leave Policies

- In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.”

Source: 34 C.F.R. 106.40
“When the student returns to school, she must be reinstated to the status she held when the leave began, which should include giving her the opportunity to make up any work missed.”

“A school may offer the student alternatives to making up missed work, such as:

- Retaking a semester,
- Taking part in an online course credit recovery program, or
- Allowing the student additional time in a program to continue at the same pace and finish at a later date, especially after longer periods of leave.”

“The student should be allowed to choose how to make up the work.”

ADDITIONAL SPECIAL ISSUES TO ADDRESS

- Nursing rooms, mothers’ lounges, etc.
- Children at school and in the classroom…No
- Labs, chemicals, exposure to diseases, etc.
  - Reasonable restrictions for health and safety (as deemed by the student’s physician) are permitted
- Residence halls (if applicable)
  - Cannot remove prior to birth of child
  - Refund
SUPPORTING STUDENTS

- Develop support networks for students
  - E.g.: Pregnant and parenting student organizations (all-comers)
  - Classes: Pre-natal classes, parenting, life-skills, etc.
  - Options for the provision of childcare
  - Harness knowledge and experience from employee programs
  - Parent-Teacher Associations

- Supporting the non-birthing parent
  - Leave and/or excused absences
  - Treat with equal dignity and understanding

- Shift from asking “What do we have to do?” to “What can we do?”
COMPLIANCE STRATEGIES

- Detailed school/district policies
- Establish and follow school/district procedures
- Implement a centralized grievance process
- Highlight Title IX Coordinator’s role in compliance
- Develop a resource guide
- **Train and educate** students, teachers, staff, administrators, coaches, parents/guardians
- Flexibility (when possible) with course tracks
- Posters in student spaces
- Work with Social Worker/Case Manager
- Focus on supportive services
PREGNANCY & TITLE IX
CASE DISCUSSIONS
The Case of Jill
Jill, a student, has had a difficult pregnancy and is six months pregnant. She has been able to maintain solid grades up to this point but has just been informed by her doctor that she must stay in bed for the remainder of her pregnancy.

She went to the principal and asked him what her options are with her coursework.

**How should the school respond?**
DISABILITY CONSIDERATIONS FOR TITLE IX
DISABILITY LAWS

- Section 504 of the Rehabilitation Act
- Americans with Disabilities Act
- Individuals with Disabilities Education Act
- Fair Housing Act
- State Laws
SECTION 504 OF THE REHABILITATION ACT (1973)

- **Prohibits discrimination** on the basis of disability in **all programs or activities** that receive federal financial assistance
- Forbids institutions from excluding or denying individuals with disabilities an **equal opportunity** to receive program benefits and services
- Enforced by the U.S. Dept. of Education, Office for Civil Rights
- Codified at 29 U.S.C. § 701
# TITLE I, TITLE II & TITLE III OF THE ADA (1990)

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<tr>
<th>Title I</th>
<th>Title II</th>
<th>Title III</th>
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<td><strong>Prohibits discrimination on the basis of disability in employment</strong></td>
<td><strong>Prohibits discrimination on the basis of disability by public entities, including K-12 schools, regardless of whether they receive federal financial assistance</strong></td>
<td><strong>Prohibits discrimination on the basis of disability in private education facilities and in the activities of places of public accommodation</strong></td>
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Enforced by the EEOC. Enforced by the Department of Justice & OCR.

The language of the ADA tracks Section 504 and explains that the remedies, procedures, and rights under the ADA are the same as under the Rehabilitation Act.
The IDEA is a four-part piece of legislation that ensures eligible students with a disability receive a **Free Appropriate Public Education (FAPE)** that is tailored to their individual needs and in the **least restrictive environment**.

The overall goal of the IDEA is to provide children with disabilities an **equal education** to students who do not have a disability.

Provides **funding** to state and local education agencies for **special education and related services and early intervention services** for students with specified disabilities.

However, the IDEA is not a civil rights law like Sec. 504 and the **ADA**.

Enforced by Dept of Education’s Office of Special Education Programs.
Under Title IX, schools still have an obligation to adhere to the requirements under Section 504, ADA, and the IDEA.

Will require certain considerations throughout the Title IX resolution process:

- **Emergency Removal**
  - Manifestation Determination required for any removal of more than 10 days during a school year; 10 days advance notice required to parents under IDEA prior to removal

- **Sanctions/Discipline**
  - Manifestation Determination

- Any actions that result in a substantial change in placement for a student will require parental notification/consent and will be subject to appeal process

- Release of 504 Plan or IEP Plan prohibited with consent
INTERSECTIONALITY AND ABILITY

- People with disabilities may experience challenges in navigating the Title IX resolution process
- Visible disabilities receive more recognition than invisible disabilities
- Invisible disabilities are often viewed as inconsequential or as a privilege in comparison to visible disabilities
- Ability status in connection with other identities, such as race, can become diminished
- Some identities create barriers to accessing resources
  - Example: Undocumented immigrants with disabilities may not be eligible for certain services
ACCESSIBILITY

- Ensure that Title IX professionals are trained on how to provide disability accommodations, in collaboration with accessibility professionals/coordinators in the district
  - In reporting processes
  - In utilizing supportive services
  - In disciplinary processes
  - In accessing information about the policy, process, resources, options, etc.

- Provide training to law enforcement/SROs, school counselors, administrators, teachers, and other “first responder” staff regarding disability accommodations in crisis settings
TITLE IX & TRANSGENDER STUDENTS

- Terminology
- Common Concerns and Current Challenges
- Pronouns and Preferred Name
- Athletics
- Restrooms and Locker Rooms
- Housing
TERMINOLOGY

- **Sex**: References chromosomes, hormones, reproductive organs, and genitalia
- **Gender**: Refers to the attitudes, feelings, and behaviors that a given culture associates with biological sex
- **Gender Identity**: Internal sense of gender
- **Gender Expression**: Outward expression of gender, often through clothing, behavior, posture, mannerisms, speech patterns, and activities
- **Sexual Orientation**: Attracted to sexually or romantically, on a continuum (e.g., gay, lesbian, bisexual, heterosexual, asexual, and pansexual)
TERMINOLOGY (CONT.)

- **Queer**: Denoting or relating to a sexual or gender identity that does not correspond to established ideas of sexuality and gender, especially heterosexual norms.

- **Cisgender**: Gender identity is consistent with the sex assigned at birth.

- **Transgender**: Denoting or relating to a person whose sense of personal identity and gender does not correspond with their birth sex.

- **Gender–Variant/Diverse**: Denoting or relating to a person whose behavior or appearance varies or is diverse from prevailing cultural and social expectations about what is appropriate for their gender.
TERMINOLOGY (CONT.)

- **Gender Fluid:** Denoting or relating to a person who does not identify themselves as having a fixed gender

- **Nonbinary:** A term used to describe individuals who may experience a gender identity that is neither exclusively woman or man or is in between or beyond both genders

- **Intersex:** Born with genitalia, reproductive systems, and/or sex chromosomes of both males and females

- **Heterosexual:** Attracted to people of a gender other than their own

- **Asexual:** Minimal or no sexual attraction to others

- **Bisexual:** Attracted to people of the same as well as other genders

- **Pansexual:** Attracted to people regardless of gender
TERMINOLOGY (CONT.)

What does it mean to “transition?”

- Social
- Medical
- Legal
The Gender Unicorn

Gender Identity
- Female/Woman/Girl
- Male/Man/Boy
- Other Gender(s)

Gender Expression
- Feminine
- Masculine
- Other

Sex Assigned at Birth
- Female
- Male
- Other/Intersex

Physically Attracted to
- Women
- Men
- Other Gender(s)

Emotionally Attracted to
- Women
- Men
- Other Gender(s)
Genderbread Person Version 4 created and uncopyrighted 2017 by Sam Killermann For a bigger bite, read more at www.genderbread.org
In May 2016, OCR released a Dear Colleague Letter specifically addressing Title IX’s protections for transgender students

In February 2017, OCR revoked the DCL

In February 2017, ATIXA updated and re-released its position statement on Title IX, Gender Identity, and Gender Expression
  - ATIXA believes that Title IX does protect students on the basis of gender identity

June 2020, in *Bostock v. Clayton County*, the U.S. Supreme Court upheld protections for sexual orientation, transgender status, and gender identity under Title VII
Following *Bostock*, several federal circuit courts have extended the decision and its reasoning to hold that Title IX also protects individuals on the basis of sexual orientation, gender identity and/or gender expression. One of these cases may be heard by the U.S. Supreme Court next term.

The Biden administration has issued two executive orders directing the U.S. Department of Education to recommend new federal guidance that would support trans* and non-binary individuals.

In February 2021, OCR ceased and withdrew Trump enforcement action against the Connecticut Interscholastic Athletic Conference (CIAC) and five CT school districts.

Congress could also directly amend Title IX.
In June 2021, OCR issued the “Notice of Interpretation: Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*”

“Consistent with the Supreme Court’s ruling and analysis in *Bostock*, the Department interprets Title IX’s prohibition on discrimination ‘on the basis of sex’ to encompass discrimination on the basis of sexual orientation and gender identity.”

“As numerous courts have recognized, a school’s policy or actions that treat gay, lesbian, or transgender students differently from other students may cause harm.”
Facts

- Gavin Grimm was assigned the sex “female” at birth. Gavin enrolled at Gloucester High School in Virginia as a girl.

- During his freshman year, Grimm came out to his parents as transgender. He began to see a therapist and was diagnosed with gender dysphoria. Grimm’s therapist provided medical documentation that he should present as male in his daily life and be permitted to use restrooms consistent with his gender identity.

- Grimm legally changed his first name and began using male restrooms in public.
Facts (cont.)

- Grimm and his guidance counselor initially agreed he would use the restroom in the nurse’s office. Over time, this situation proved unworkable and he felt anxious, stigmatized and embarrassed.

- Grimm was permitted to use the male restrooms and did so without incident for seven weeks.
Facts (cont.)

- The administration began receiving complaints from members of the community. One student personally complained to the principal and the school board eventually passed a policy requiring students to use restrooms that correspond to their biological sex.

- The board also announced construction of single-stall, unisex restrooms for all students. Grimm was informed that he would face discipline if he continued to use the male restrooms.
Facts (cont.)

- Grimm began hormone therapy and began to present as predominately male before the unisex restrooms were complete. Grimm also encountered times when he could not access a suitable restroom for various reasons. Grimm also had chest reconstruction surgery.

- Grimm changed his license and birth certificate to reflect his male identity. The school refused to change his sex/gender designation on his transcript. Grimm was also admitted to the hospital with suicidal thoughts.
Grimm’s litigation has been underway for years. It was bound for the U.S Supreme Court when the Trump administration rescinded the Department of Education’s 2016 transgender guidance that had previously provided the legal basis for his case.

The Fourth Circuit Court of Appeals, in deciding in an earlier decision in Grimm’s case, said “a plaintiff must demonstrate exclusion from an educational program . . . because of sex . . .”. And, that the school’s discrimination harmed the plaintiff.
In this 2019 decision, therefore, the district court was forced to confront the legal question of whether “on the basis of sex” in Title IX applies to the allegations that the school discriminated against him on the basis of his gender identity and gender expression.

The court reasoned that Title IX does protect a student in Grimm’s circumstances.
Decision (cont.)

- The court stated:
  - “[T]here is no question that the Board's policy discriminates against transgender students on the basis of their gender nonconformity. Under the policy, all students except for transgender students may use restrooms corresponding with their gender identity. Transgender students are singled out, subjected to discriminatory treatment, and excluded from spaces where similarly situated students are permitted to go.”

- Not updating Grimm’s student records was also discrimination under Title IX.

- The Board tried to advance an argument based on concept of physical privacy, but the court was not persuaded.
Updates and Subsequent Decisions

- The school board appealed the District Court’s 2019 decision in favor of Grimm.

- In the interim, the U.S. Supreme Court ruled in favor of LGBTQ plaintiffs in *Bostock*.

- After *Bostock*, the court had “little difficulty holding that a bathroom policy precluding Grimm from using the boys’ restrooms discriminated against him ‘on the basis of sex.’”
Updates and Subsequent Decisions (cont.)

- “As the Supreme Court noted, ‘it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.’”

- The school board has again appealed to the U.S. Supreme Court to challenge the applicability of *Bostock* to Title IX. In June 2021, the Court declined to hear the case.
WHAT THE DATA TELL US ABOUT TRANS STUDENTS

- Transgender students are disproportionately subjected to harassment and discrimination.

- 2015 national survey:
  - The majority of respondents who were out or perceived as transgender while in school (K–12) experienced some form of mistreatment, including being verbally harassed (54%), physically attacked (24%), and sexually assaulted (13%) because they were transgender. Further, 17% experienced such severe mistreatment that they left a school as a result.
    - U.S. Transgender Survey, National Center for Transgender Equality
TITLE IX & TRANSGENDER STUDENTS

- Common Concerns and Current Challenges
  - State-based legislation
  - Political changes/waffling OCR
  - Conflict between Title VII (EEOC) and Title IX (OCR)
  - Possible federal legislation
  - Discomfort and the claim of reverse discrimination
  - Educating school communities and constituencies
  - Religious concerns
    - Religious schools, club or group membership and/or leadership, sharing of restrooms, etc.
ISSUES AND BEST PRACTICES

- **Name & Pronouns**
  - Education records
  - Databases and record systems
  - Identification documents
  - Classroom
  - The need to educate our communities

- **Maintaining student privacy**
  - Maintain privacy in relation to gender identity to the extent possible
  - Students’ sex, gender, including transgender status, should not be included as directory information
Where sex-segregated activities and facilities are provided, transgender students should be allowed to both participate and access facilities consistent with their gender identity.

**Restrooms and Locker Rooms**
- Schools should not:
  - Require transgender students to use facilities inconsistent with their gender identity, nor
  - Require use of individual-user facilities where other students are not made to do so
- Individual-user options can be made available to all students voluntarily seeking additional privacy
ISSUES AND BEST PRACTICES
TRANSGENDER ATHLETES

- **K-12** is decentralized and regulated largely by state or district-level policies

- **Two-year/Community Colleges: NJCAA**
  - A trans-male (female to male) student-athlete who has received a medical exception for treatment with testosterone for gender transition may compete on a men’s team but is no longer eligible to compete on a women’s team.
  - A trans-female (male to female) being treated with testosterone suppression medication for gender transition may continue to compete on a men’s team but may not compete on a women’s team until completing one calendar year of documented testosterone suppression treatment.
DCL ON TRANSGENDER STUDENTS (RESCINDED)

- **Athletics**
  - Beware of requirements that rely upon overly broad generalizations or stereotypes
  - Discomfort with transgender students
  - NCAA and other organizations have specific policies regarding participation
  - OCR has rescinded Trump-era enforcement letters that stated that students should compete according to biological sex

- **Single-Sex Classes**
  - Transgender students are to be allowed to participate consistent with their gender identity
**Housing and Overnight Accommodations**

- Schools must allow transgender students access to housing consistent with their gender identity.
- Schools may not require transgender students to stay in single-occupancy accommodations or to disclose personal information when not required of other students.
- Schools can choose to honor a student’s voluntary request for single-occupancy accommodations.
- Consider summer camps, etc.
CASE STUDY: LGBTQ STUDENTS

- Joe and the Baseball Players
CASE STUDY: JOE AND THE BASEBALL PLAYERS

Joe is a junior who is gay and a member of the school cheer team. A group of baseball players repeatedly ridicule Joe about his effeminate mannerisms and clothing. They also threaten to harm Joe if they run into him outside of school. This is done both in person and via group chat messages on which Joe is included.

Joe reports the incident to the Assistant Principal, who speaks with the players and tells them their conduct is inappropriate and gives them a verbal warning about bullying.
CASE STUDY: JOE AND THE BASEBALL PLAYERS

The next day, the players corner Joe in the locker room and tell him he is a “snitch,” “a little girl” and “a pussy.” They tell him he is a freak and to watch his back, especially if he reports them to the school.

Joe becomes very withdrawn, starts skipping cheer practice and eventually resigns from the team. His parents find out what happen and call the school demanding swift and harsh action.

*Is this a Title IX issue?*

*How will you respond?*
POLICY DEVELOPMENT

- Creator and Implementor of Appropriate Policy
- Publication Requirements
- Policy Definitions
- Coordinating the Overlap of Multiple Policies & Procedures
- Taking Inventory of Existing Policies
CREATING AND IMPLEMENTING APPROPRIATE POLICY & PROCEDURES

- The Title IX Coordinator must be an integral part of the policy/procedure development and review process
  - Ensure all policies/procedures related to sex/gender misconduct and discrimination are legally accurate and complete
  - Confirm that new or revised grievance procedures are posted and published promptly and that old procedures are removed from publications and websites (district and school-level)
    - Beware of multiple conflicting or varying versions of published policy
    - Internally maintain copies of old policies and procedures for reference in the event of a lawsuit, etc.
Students and employees should know policy exists, how it works, and how to file a complaint.

2020 Regulations require specific information to be published to the following:
- Students (including applicants for admission)
- Parents or legal guardians of elementary and secondary school students
- Employees (including applicants for employment)
- All unions or professional organizations holding collective bargaining or professional agreements with the school/district
The Title IX Coordinator’s contact information, and the school’s Title IX-based policy, must be prominently displayed on its website, if any, and in each handbook or catalog.

Contact information includes:
- Name/Title
- Office address
- Email address
- Telephone number
The school/district’s non-discrimination notice, must be prominently displayed on its website, if any, and in each handbook or catalog.

- Notice that the school/district does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by title IX and this part not to discriminate in such a manner.
- Must state that the requirement not to discriminate in the education program or activity extends to admission and employment,
- State that inquiries about the application of Title IX may be referred to the school/district’s Title IX Coordinator, to the U.S. Department of Education, or both.
The [School/District] does not discriminate on the basis of race, color, national origin, sex*, disability, or age in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups.

The following person has been designated to handle inquiries regarding the non-discrimination policies:

- [Name and/or Title] [address], [telephone number], [email address]

For further information on this notice of nondiscrimination, you may contact the U.S. Department of Education’s Office for Civil Rights at [insert contact information].

*Add sexual orientation, gender identity, and/or gender expression if applicable under state law and/or district policy.
TITLE IX GRIEVANCE PROCEDURES

- The school/district must adopt **and publish** grievance procedures that provide for the prompt and equitable resolution of student and employee sexual harassment complaints.

- Must include information regarding the following:
  - How to report or file a complaint of sex discrimination
  - How to report or file a formal complaint of sexual harassment
  - How the school/district will respond
POLICY DEFINITIONS

- Sexual Harassment under Title IX
- Consent Construct
- Retaliation
- Sexual Exploitation
Sexual Harassment is conduct on the basis of sex meeting one of the following conditions:

- An employee of the Recipient conditioning the provision of an aid, benefit, or service of the Recipient on an individual’s participation in unwelcome sexual conduct;

- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Recipient’s education program or activity; or

  “Dating violence” as defined in 34 U.S.C. 12291(a)(10)
  “Domestic violence” as defined in 34 U.S.C. 12291(a)(8)
  “Stalking” as defined in 34 U.S.C. 12291(a)(30)
CONSENT

- Informed, knowing, and voluntary (freely given)
- Active (not passive)
- Creates mutually understandable permission regarding the conditions of sexual activity
- No means no, but nothing also means no. Silence and passivity do not equal consent.
- Given immediately prior to or contemporaneously with the sexual or intimate activity
- Consent can be withdrawn at any time, so long as it is clearly communicated verbally or non-verbally
CONSENT (CONT.)

- Cannot be obtained by use of:
  - Physical force, threats, intimidation, or coercion
- Cannot be given by someone known to be — or who should be known to be — mentally or physically incapacitated
OVERVIEW OF THE THREE QUESTIONS

1. Was force used by the Respondent to obtain sexual or intimate access?

2. Was the Complainant incapacitated?
   a. If so, did the Respondent know, or
   b. Should the Respondent have known that the Complainant was incapacitated

   **Note:** The intoxication of the Respondent can not be used as a reason they did not know of the Complainant’s incapacity.

3. What clear words or actions by the Complainant gave the Respondent permission for each specific sexual or intimate act that took place as it took place?
CASE STUDY: CONSENT

- Elizabeth & Hugh
CASE STUDY: ELIZABETH AND HUGH

Hugh is a senior on the debate team and Elizabeth is a sophomore on the team. The team travels out of town for a team event. Some members of the team come to Elizabeth’s hotel room to watch a movie. Hugh and Elizabeth, who have never met before, are attracted to each other.

After the movie, everyone leaves, and Hugh and Elizabeth are alone. They hit it off and begin to make out. Hugh verbally expresses to Elizabeth that he wants to have sex. However, Elizabeth isn’t ready to have sex with him because they just met.
CASE STUDY: ELIZABETH AND HUGH

At the same time, Elizabeth likes Hugh and doesn’t want to scare him off, so she decides to perform oral sex, hoping they can get to know one another better before engaging in vaginal intercourse.

Perceiving the oral sex to be foreplay, Hugh stops Elizabeth, lays her back on the bed, takes off her clothes, and engages in intercourse with her. Elizabeth is unresponsive during the intercourse.

Did Elizabeth consent to the sexual activity?
§ 106.71 Retaliation

- *Retaliation prohibited.* No Recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part...
(Cont.)...Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.
§ 106.71 Retaliation.

- The Recipient must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder...
(Cont.)…Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination required to be adopted under § 106.8(c).

- **Specific circumstances.**
  - (1) The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under paragraph (a) of this section.
  - (2) Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation prohibited under paragraph (a) of this section, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.
Sexual Exploitation (non-Title IX sexual harassment)

- Occurs when one person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses.

- Examples of sexual exploitation include, but are not limited to:
  - Invasion of sexual privacy
  - Non-consensual digital, video, or audio recording of nudity or sexual activity
ATIXA MODEL DEFINITIONS:
SEXUAL EXPLOITATION (CONT.)

- Examples (continued):
  - Unauthorized sharing or distribution of digital, video, or audio recording of nudity or sexual activity
  - Engaging in voyeurism
  - Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex)
  - Knowingly exposing someone to or transmitting an STI, STD, or HIV to another person
  - Intentionally or recklessly exposing one’s genitals in non-consensual circumstances or inducing another to expose their genitals
  - Sexually-based bullying may also be a form of sexual exploitation
COORDINATING THE OVERLAP OF VARIOUS POLICIES
If the school/district has multiple policies and procedures (for teachers, staff, students), school must ensure that these policies are not conflicting, or do not contain conflicting definitions

- A strong argument for a single policy!
  - ATIXA’s K-12 Model Policy and Procedure (AMPP)
  - ATIXA’s One Policy, Two Processes Model (1P2P)

Although live hearings are not required for K-12 schools under Title IX, a live hearing is required when seeking to remove a student for longer than 10 days. This needs to be incorporated into your Title IX resolution process.
SOURCES OF POLICY REQUIREMENTS

- Federal/State Case Law
- Federal/State statues
- Federal/State regulations
- Collective Bargaining Agreements
- OCR Resolution Agreements
- Best Practices/Risk Management requirements
COORDINATING THE OVERLAP OF VARIOUS POLICIES AND PROCEDURES

- Board-level Policy
  - e.g., Equal Opportunity/Non-Discrimination Policy
- Board-level Administrative Procedure
  - e.g., Harassment Grievance Procedures
- Employment/Human Resources Policy and Procedures
- Employee/Staff Handbooks
- School-level Policy and/or procedures
  - e.g., Conduct Code
- Student/Parent Handbooks
- Informal protocols
  - e.g., interaction with SROs, search processes
Are all of these “policy sources” consistent with each other?

- Harassment and Discrimination policies and procedures (required by Title IX, often required under state law)
- Anti-bullying/cyberbullying policy (often required under state law)
- Transgender and Gender Expansive Student policy/procedures
- Staff conduct code/HR policies and procedures
- Staff conduct with students
- Collective Bargaining Agreements
- Employment Contract terms
TAKING “INVENTORY” (CONT.)

- Hazing policies
- Student conduct code and processes (often defined by state law)
- Disciplinary policies and procedures (including removal) for students with disabilities
- Weapons, violence, and school safety protocols
- Child abuse reporting (and procedures) (often defined by state law)
- Computer, Network, and Technology Acceptable Use
- Athletics policies and procedures
TAKING “INVENTORY” (CONT.)

- Student use of cellular telephones and other electronic devices
- Student dress code
- School-sponsored travel
- Parent/guardian involvement
- Education records (defined by FERPA and sometimes state law)
- Personnel records (often defined by state law)
- Wellness policy (required under federal law; only applicable if district chooses to include sex- and gender-based wellness items)
TAKING “INVENTORY” (CONT.)

- Security camera policy (including buses)
- Questioning and searches of students
- Speaker policy
- Public right to know-freedom of access issues
- Visitors to the schools
May need “orientation” to Title IX requirements, intersection with existing policies, and/or need to implement new policies or procedures:
- Board’s Policy Committee
- Superintendent/Head of School
- Assistant Superintendent
- School-Based Administrators
- Law enforcement/SROs (if applicable)
- General Counsel (if applicable)
- Risk Management (if applicable)
NAVIGATING EMPLOYEE-BASED ISSUES

- Intersection of Title IX and Title VII
- Impact on Employees
- Investigations
INTERSECTION OF TITLE VII AND TITLE IX

- **Title VII of the Civil Rights Act of 1964**: prohibits discrimination on the basis of race, color, religion, sex, or national origin in employment.

- **Title IX**: prohibits discrimination on the basis of sex in programs and activities receiving federal financial assistance.

- Title IX consciously modeled on Title VI and borrowed heavily from Title VII.

- Courts generally apply standards established under Title VII for guidance in how to establish a Title IX violation.

- Employees can use both Title VII and Title IX to pursue the same violations.
TITLE IX VS. TITLE VII

Title IX
- Applies to students and employees
- Covers sex
- Covers pregnancy
- Hostile Environment, QpQ, Retaliation
- OCR
- “Prompt”
- More directive: prompt, fair, and equitable

Title VII
- Applies to employees only
- Covers sex, race, color, national origin, religion
- Covers pregnancy
- Hostile environment, QpQ, Retaliation
- EEOC
- No timeframe set
- Fewer equity-based guarantees in a process for Complainant
IMPACT ON EMPLOYEES

- Wholesale revision of employee resolution/grievance processes may be necessary
- Union employees – diminished right to an Advisor because of union representation?
- Extends significant due process protections for at-will employees accused of misconduct
- Potential inequity in employee processes for Title VII-based sexual harassment
When an employee is a party in a Title IX complaint, the following should be considered:

- Role of school equity/AA/EOP officer
- Role of Human resources
- Oversight of Deputy Coordinators/Investigators
- Ability to merge/combine Investigation and hearing processes
- Required disclosure of employee information (e.g. outcome and any discipline taken) that typically would remain confidential
- Additional rights afforded to employees under Title IX
TRAINING AND PREVENTION INITIATIVES

- Training Checklist
- Building A Prevention Program
- Bystander Intervention
- Child Sexual Abuse Prevention
- Climate Surveys
TITLE IX TRAINING CHECKLIST

Who?

- Title IX Team Members
  - TIX Coordinator and Deputies, Investigators, Decision-Makers, Advisors (if applicable), and Informal Resolution Facilitators
- Mandatory Reporters
- All Teachers & Staff
- All Students
- Parents/Guardians
- School Resource Officers/School Safety
What?

- Overview of Title IX and what is covered
- District/school policy and procedures
- How to report
  - Title IX Coordinator/Deputy Coordinator(s) information
  - Name, Location, Phone, and Email
- Other reporting options (within district, state, and federal)
- Identifying sexual harassment
- Supportive measures
- Investigation/disciplinary processes
- In-school and community resources
- Rights of the parties
What?
- Privacy & Confidentiality
- Remedies
- Consent, substance abuse, and bystanders
- Athletics Compliance

Train members of the Title IX Team on the required topics per the Title IX regulations
TITLE IX TRAINING CHECKLIST (CONT.)

- **How?**
  - Combination of modalities (e.g. in-person, online, etc.)
  - Plain language and age-appropriate
  - Avoid “legalese”
  - Accessible to non-English speakers
    - Offering translation services – may be required by state laws
  - Use descriptive language in addition to “Title IX”
    - e.g., discrimination, bullying, harassment
  - Clear information portal
  - Online and printed materials
    - e.g., online training module, resource sheets, etc.
  - Widely disseminated
When?

- Upon student enrollment/hire
- Beginning of each school year
- Orientation sessions/back to school nights
- Available online throughout school year
- In conjunction with “key” notices
  - e.g., with report card, standardized test results, etc.
- Parent/guardian volunteer training/orientation
- PTA meetings
- Change in role/responsibility
- Change in law/policy
- Other
BUILDING A PREVENTION PROGRAM

- The first key to prevention is recognition
  - Bystander intervention example

- There are many ways that Sexual Harassment/Stalking/Sexual Violence can manifest, but rarely does it do so in isolation

- The context is one of an entire continuum, including bullying and stalking
PREVENTION METHODOLOGIES

Prevention is:

- Age-appropriate
- Integrated across disciplines and therefore collaborative
- Holistic and addresses multiple areas of wellness (physical, emotional, spiritual, intellectual, etc.).
- Evidence based and/or able to demonstrate efficacy
- Strategic in design and implementation
- Multi-targeted: directed at the individual, the community, and the society/environment
LEVELS OF PREVENTION FRAMEWORK

- **Primary**
- **Secondary**
- **Tertiary**
Primary prevention aims to prevent the harm *before* it occurs

Reduces the prevalence and occurrence of sexual violence, gender-based violence, or discrimination

Examples:
- Bystander Intervention
- Programs teaching healthy and respectful relationships
- Risk-reduction programming
- Programs addressing boys’ role in preventing sexual violence
- Discussion groups with high-risk of perpetration populations
- Social norming campaigns
BYSTANDER INTERVENTION

- Shift the onus of preventing sexual assault from the victim to the perpetrator
- Focus is on fixing the problem rather than teaching individuals to not become victims
- Create safe places to gather and collectively place responsibility for maintaining a safe environment on the community
- Encourage the community to address inappropriate behavior by not tolerating sexist jokes, misogynistic behavior, etc. and train on intervening when there are risk behaviors present
A positive bystander and prevention model takes a wider, community-based approach that shifts cultural norms and expectations of behavior rather than simply targeting individuals as potential victims or perpetrators.

**Barriers to Helping**
- Believe others think the behavior is okay
- Afraid to act in a way that is socially unacceptable
- Believe it is not our business
- Believe someone else will help
- Not in tune with surroundings
- Not sure what to do

**Promoting Helping**
- Creation of a culture that values respect, helping others, wellness, empowerment, etc.
- Training on red flags and what to look for in identify a problematic situation
- Development of a community approach to responsibility
- Having the confidence and ability to know how and when to intervene
SECONDARY PREVENTION STRATEGIES

- Secondary prevention targets a problem that already exists; often immediately after injury has occurred.
- Provides short-term remedies to minimize the impact of the incident and address consequences of the harm.
- Examples:
  - Interim/supportive measures and victim services
  - Deterrence-based programs
  - Awareness programming
  - Social norming campaigns (can be primary or secondary depending on focus)
TERTIARY PREVENTION STRATEGIES

- Tertiary prevention provides treatment and longer-term remedies when harm has already occurred
- Addresses lasting or longer-term responses for those already impacted by the incident
  - Remedies for Complainants
  - Respondent services
  - Policies and procedures to address sexual harassment, sexual assault, dating and domestic violence, and stalking
  - Circles of support and accountability
CHILD SEXUAL ABUSE PREVENTION

Prevention and detection – sexual abuse of minors:

- Policies
- Screening and selection
- Training
- Monitoring and supervision
- Consumer participation – educate parents and guardians
- Reporting systems and mechanisms
- Response – prompt, effective, and compliant with laws
- Administrative practices
Climate surveys provide opportunities to better understand your school’s community experiences with sexual harassment, sexual assault, stalking, and intimate partner violence.

Surveys typically consist of questions which will take 10–20 minutes for participants to respond to with information regarding their perspective and experiences.

ATIXA suggests shifting away from the temptation of viewing climate surveys as a source of liability for the institution, or an otherwise unpleasant task.

Could be required by state law.
Climate surveys are something we *get to do*, not something we should fear

Effective climate surveys shed light on areas of our schools that need improvement. Think of them as a bridge inspection or elevator inspection; they offer critical data so we can improve and ensure safety

In a perfect world with no funding limitations and an aspirational focus, climate surveys should be offered to three groups: faculty/teachers, staff, and students

Each survey would have slightly different questions to assess the particular group’s experience with sexual harassment, sexual assault, stalking, and IPV
WORKING COLLABORATIVELY WITH PARENTS AND GUARDIANS
CONSIDERATIONS WHEN WORKING WITH PARENTS AND GUARDIANS

- Engage parents/guardians early; Don’t wait for an incident to happen
- Parental/guardian notification
- Engaging parents/guardians after receiving a report
- Setting and managing expectations
- Parent/guardian participation in the process
- FERPA rights/access to records
- Difficult parent/guardian issues
- Ongoing engagement
- Role of the Title IX Coordinator
• When do you notify parents/guardians?
  • Title IX regulations recognize legal rights of parents/guardians to act on behalf of minor
    – Therefore, OCR has indicated schools should notify parents/guardians when receiving a report or complaint
  • State law
  • District policy
  • School-specific policy
  • Practice/custom

• No uniform standard
  • Trend to notify parents/guardians early in the process, and especially for younger students

• Pros & cons of standardized notification
Other considerations
- Age of student
- Concurrent/potential criminal investigation
- Abuse in household
- Privacy considerations (E.g., transgender students)
- Severity of incident
- Wishes of student
- Potential disciplinary consequences for Respondent

What about student witnesses?
- Not entitled to an “Advisor” like the parties
- Some of the other considerations above may be applicable
ENGAGING PARENTS/GUARDIANS AFTER RECEIVING A REPORT

- Review policies, procedures, and key staff who will be involved in resolving report
- Investigation/interview/resolution process including appeal and informal resolution process
- Review effects of any supportive measures and/or emergency removal
- Amnesty/Immunity policy (if applicable)
- Rights and responsibilities of all parties
- Privacy and confidentiality
- Resources at school and in community
- Consider written information sheet tailored to Complainant and Respondent parents/guardians
SETTING AND MANAGING EXPECTATIONS

- Emphasize obligation to stop, prevent, and remedy
- Discuss anticipated timeline for resolution process
- Discuss the role parents/guardians may play in the process
- Parents/guardians do not have right to demand a particular remedy
- Discuss behavioral expectations
  - Don’t be disruptive
  - Can’t impede process
  - Can’t speak on behalf of their child (will vary based on age of student)
- Other
PARENT/GUARDIAN PARTICIPATION

- Ability to make decision whether to file a formal complaint
- Possible formal role as “Advisor”
- Attend interviews/meetings/hearings
  - Recognize any potential impact on student (e.g., willingness to participate; fear of being forthcoming, etc.)
  - Consider if parent/guardian is a “witness” to events
- Review interview notes, report, evidence, and submit questions
- Approval needed for participation in any informal resolution process
PARENT/GUARDIAN PARTICIPATION (CONT.)

- Special considerations
  - Age-appropriateness
  - Role in special education processes
    - IEP development and revision
    - Manifestation determination process
    - Due process hearing requests
  - FERPA considerations
NAVIGATING DIFFICULT PARENT/GUARDIAN ISSUES

- Circumvention or undercutting
- Parent/Guardian as the alleged harasser
- Retaliation
- “Well-connected” parent/guardian
- Social media activity
DEVELOPING MEMORANDA OF UNDERSTANDING

- Local Law Enforcement
- Dual Enrollment Sites
- Advocacy Organizations
MOU: LOCAL LAW ENFORCEMENT

- Who should be at the table?
- Interaction with School Resource Officers/School Safety
- Scope
  - What crimes/type of incidents are covered
- Communication
  - Reporting – When, How, What, to Whom
  - Progress updates
- Jurisdiction
  - Patrols, response, dual jurisdiction, arrests, referrals, maps
MOU: LOCAL LAW ENFORCEMENT (CONT.)

- Investigation
  - Timing of school-based investigation
  - Sharing of evidence/information
    - Address the retrieval of potential child pornographic images
  - Concurrent investigations

- Supportive Measures and Remedies
  - Interim
  - Long-term

- Prevention

- Cross-Training

- Point of Contact
MOU: DUAL ENROLLMENT SITES

- Effective coordination between the Title IX Coordinator at the college/university AND the District Title IX Coordinator
  - What support measures are needed in each setting (if any)?
  - Who has jurisdiction?
    - Personal jurisdiction
    - Covered programs
    - Geographic jurisdiction
    - Subject matter jurisdiction
  - Who should investigate?
  - Mandated state reporting required?
  - Note: Higher Ed- FERPA rights belong to the student
The lack of confidential reporting options in the K-12 setting underscores the necessity to partner with external/community-based organizations to support students.

- **Scope of services**
- **Confidential Reporting**
- **Crisis Intervention**
- **Victim Advocacy/Respondent Support**
- **Assistance with legal orders or protection, TROs, etc.**
- **Counseling**
- **Cross-Training**
- **Prevention & education efforts**
- **Point of Contact**
Questions?
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