



Northern  
California ReLiEF

## Title IX Training Series

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Excess Fund

# NCR's Upcoming Title IX Training



## **Title IX Coordinator Training**

July 12, 2023

8:30-12:00PM PDT Zoom Training

## **Title IX Investigator Training**

July 19, 2023

8:30-12:00PM PDT Zoom Training

## **Title IX Decision-maker Training**

July 26, 2023

8:30-11:30AM PDT Zoom Training

<https://ww2.keenan.com/ncr-titleix-training-series>




# Title IX Coordinator Training

K12 School Districts  
2023-2024

NCR Training



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# Importance of Title IX in Today's K12 Schools



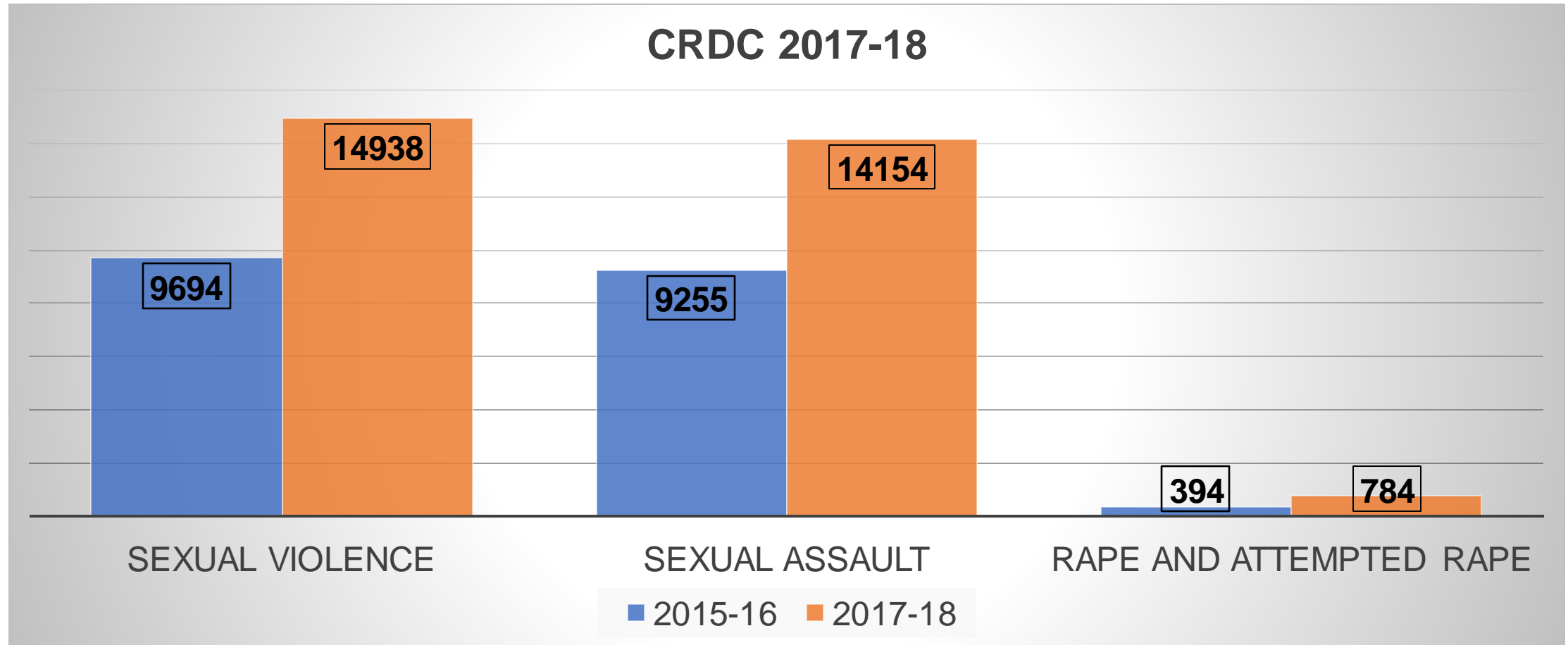
- Sexual violence, harassment and assault
- K12 school climate concerns
- Evolution of Title IX Law
- Intersection of federal law, state law, and other binding and non-binding guidance
- Current Title IX regulations
- Important role of Title IX Coordinator and other key Title IX roles on campus
- Practical application

# Statistics on Sexual Assault



- Somewhere in America, a woman is raped every 2 minutes.
- National surveys of adults suggest that between 9-32% of women and 5-10% of men report that they were victims of sexual abuse and/or assault during their childhood.
- 22% of victims were younger than age 12 when they were first raped, and 32% were between the ages of 12 and 17.
- LGBTQIA+ individuals experience sexual assault at higher rates than CIS-gender students
- Females of color experience sexual assault at higher rates than non-minority students
- The majority of male and female rape victims knew their perpetrator.
- Of surveyed college women, about 90% of rape and sexual assault victims knew their attacker prior to the assault.

# Sexual Violence in Public K12 Schools





# Student Activism and Climate Issues



- Walk-outs
  - Instagram postings with accusations of sexual violence and allegations of school inaction
  - Rape culture
  - Harassment against students accused of wrongdoing
  - College outreach to school districts
- Influenced by COVID, accusations of rape culture, social media postings



# Title IX Law and Regulation

# Title IX Guidance



- Federal Law
- Regulations
- Other sources of mandatory and recommended guidance
  - State law
  - Case law
  - Advocacy
  - Best Practices

# Title IX

*"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."*

**- Title IX of the Education Amendments of 1972**

Enforced by the Office for Civil Rights (OCR)



# Title IX Law & Regulation Timeline



**2011**

OCR issues Dear Colleague Letter changing how campuses handle Title IX

**2017**

Department of Ed withdraws guidance and issues Q&As and starts NPRM process

**2014**

OCR issues additional guidance in response to outcry from schools

**2022**

Guidance and new NPRM process announced

**2020**

New regulations issued and effective August 2020 amidst COVID

# Title IX Regulatory Guidance



- Regulations 2001
- Dear Colleague Letters
  - 2011 Dear Colleague Letter: Sexual Violence, Background, Summary and Fast Facts
  - 2014 Questions and Answers on Title IX and Sexual Violence
  - 2015 Dear Colleague Letter on Title IX Coordinators
  - 2016 Dear Colleague Letter on Transgender Students
  - 2017 Questions and Answers on Sexual Misconduct
- Regulations 2020
  - March 8, 2022 - Executive Order on Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals
- New regulations will be released in October 2023

# Title IX Regulatory Guidance - Report to OCR



- Following a report of sexual harassment to the Office for Civil Rights (OCR)
- OCR initiates an investigation
- OCR may seek an informal resolution
- Negotiated agreement is set forth in a resolution agreement
- OCR may impose fines and penalties against a school if resolution not reached



- Title IX protects against student sexual harassment set forth in Supreme Court decisions
  - Gebser v. Lago Vista Independent School District (1998)
  - Davis v. Monroe County Board of Education (1999)
- Litigation has clarified some of OCR's guidance and in some instances, overturned guidance
  - Examples include use of hearings, cross examination, and exclusion of evidence
- State law addressing specific, and, in some instances, controversial topics related to Title IX enforcement
  - Hearings
  - Transgender rights

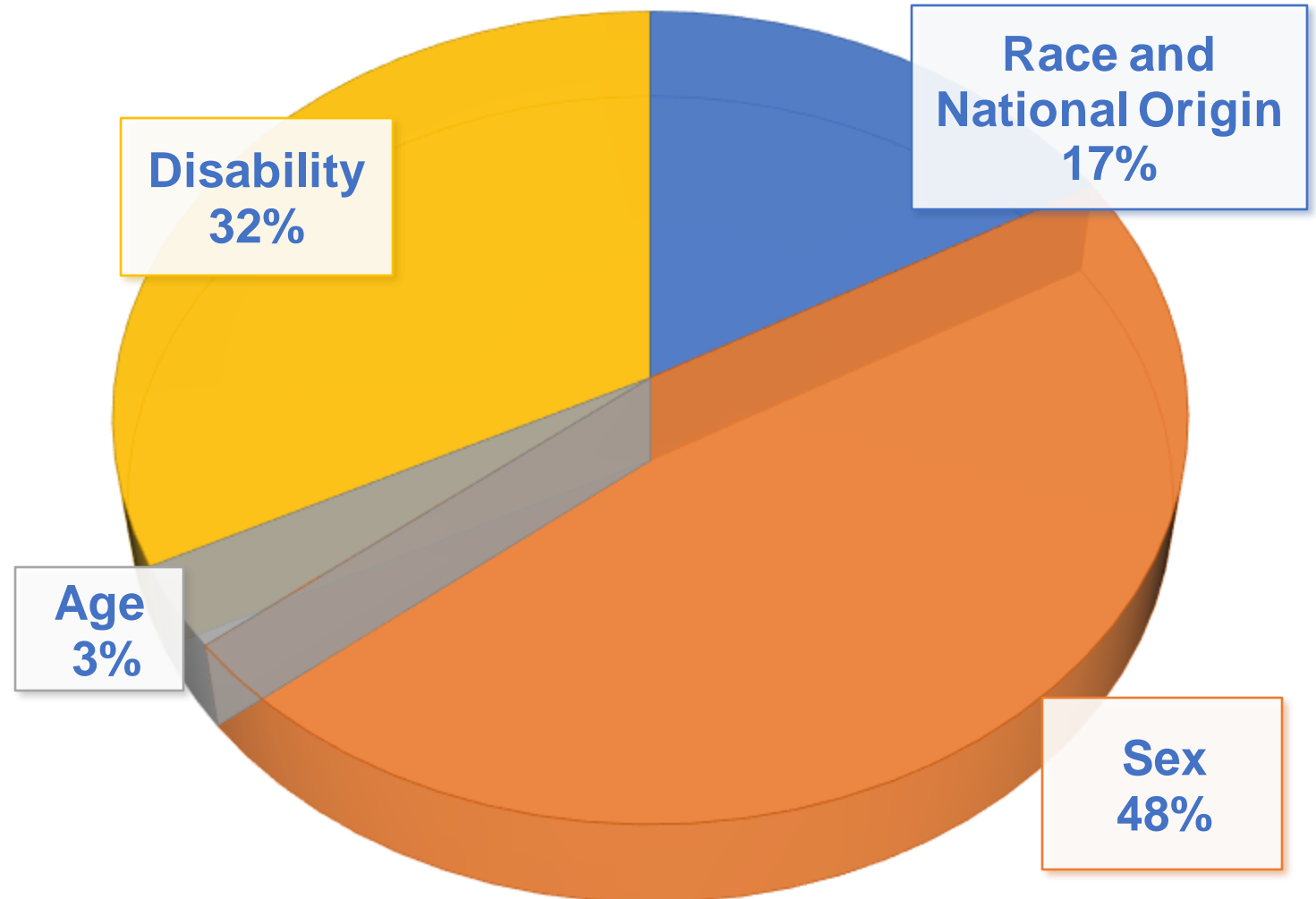




# OCR 2022 Report

Total Reports:  
18,804

PERCENTAGE OF COMPLAINTS



# Best Practices



- Consider campus needs and culture
- Legal obligations
- Advocacy groups
- Adopting practices
  - Trauma informed practices
  - Incorporate school culture
  - Reflect needs of your campus





# Title IX Obligations for K12 School Districts

# Title IX Covers



Title IX protects BOTH students and employees of K12 Schools

**Sex discrimination**

**Sexual Harassment**

**Athletics**

**Sexual Assault**

**Pregnant Students**

**Recruitment/Admissions Programs**

# Legal Obligation

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



# Actual Knowledge of Sexual Harassment



- When sexual harassment or allegations of sexual harassment come to the attention of **ANY EMPLOYEE** of a K-12 district:
  - All employees **MUST** report to the **TITLE IX COORDINATOR**
- Failure to report could lead to an inadequate response
  - Proof of deliberate indifference
  - Legal responsibility for sexual harassment



For Title IX to apply, the behavior must occur in the school's "education program or activity," further defined as:

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

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

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

# Confidentiality



- A licensed mental health professional at the school can maintain confidentiality.
- All other employees are required to report the matter to the Title IX Coordinator.
  - Title IX Coordinator is responsible for ensuring a proper response.
- Failure to report to the Title IX Coordinator could lead to an inadequate response by the school and could be used to demonstrate deliberate indifference.
- In instances of potential sexual harassment, employees cannot offer to keep the matter confidential and must contact the Title IX Coordinator.



# Other Employee Reporting Responsibilities

## Mandatory Reporting



### Mandatory Reporting

- Report to the appropriate agency when there is a reasonable suspicion that an ***abuse or neglect of a child*** may have occurred
- Child abuse is defined as physical abuse, neglect, sexual abuse and/or emotional maltreatment. This includes the sexual assault, sexual exploitation, and/or sexual abuse of a child; the willful cruelty or unjustifiable punishment of a child; incidents of corporal punishment or injury against a child; abuse in out-of-home care; and the severe and/or general neglect of a child.
- A child is a person under the age of 18.

# Title IX Enforcement and Federal Constitutional Protections



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

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

# Title IX Prohibits Retaliation



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

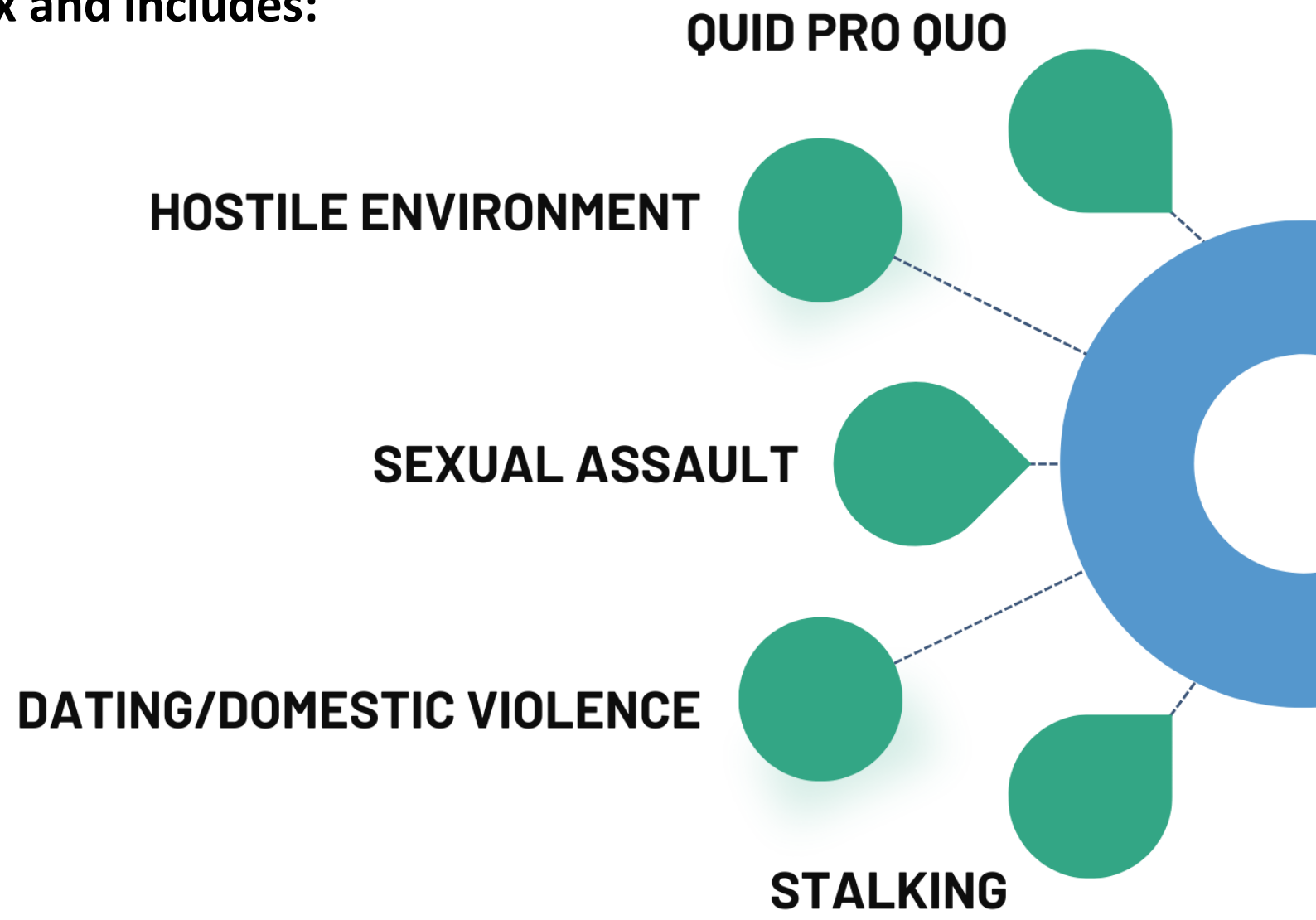


# Title IX Sexual Harassment Definitions

# Title IX (TIX) Definition of Sexual Harassment



Defined conduct on the basis of sex and includes:





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

- Quid pro quo - An employee of the school conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct;
- Hostile environment - Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the school’s education program or activity;



The definition includes:

- **Sexual Assault** means any sexual act directed against a Complainant without consent. Sexual Assault includes fondling, incest, rape, sexual assault with an object, sodomy, and statutory rape.
- **Dating violence** means violence committed by a person— (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship. (ii) the type of relationship. (iii) the frequency of interaction between the persons involved in the relationship.



- **Domestic violence** includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim
  - It includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior,
  - By a person who— (A) is a current or former spouse or intimate partner of the victim; (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (C) shares a child in common with the victim; or (D) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.





- **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
  - fear for his or her safety or the safety of others; or
  - suffer substantial emotional distress.

# State Laws Prohibiting Sexual Harassment



- Aside from obligations under Title IX, K12 schools must also enforce state laws prohibiting sexual harassment
- Definitions of sexual harassment may be different
- In most instances, an incident will be analyzed under both Title IX and state law



# Title IX Coordinator Role and Responsibilities

# Designate a Title IX Coordinator



- Schools are **required** to designate at least one Title IX Coordinator for the school.
- The Title IX Coordinator is responsible for coordinating the school's effective response to instances of discrimination and harassment on the basis of sex.



# Title IX Coordinator

## Key Responsibilities

Overall Title IX compliance of programs/activities and report response

Central office for reports of sex discrimination and sexual harassment

Coordinate an effective response

- Respond to report
- Contact complainant
  - Supportive measures
  - Formal complaint process
- Manage the receipt of formal complaint and initiation of Title IX grievance process
- Determine if investigation is necessary in absence of formal complaint

# TIX Obligations for TIX Coordinator - Coordinate the School's Response (2020 Regs)



- Receive reports of claims and potential claims
- Provide required notices
- Examine (and/or re-examine) and implement supportive measures
- Determine appropriateness of a potential removal proceeding
- Act as investigator in some instances
- Identify proper decision-maker
- Decide who will manage an appeal, if necessary
- Coordinate investigation, sharing of information between the parties, final outcome letter, and offering of appeal options
- Ensure proper documentation
- Provide training

# Title IX Coordinator Responsibilities - Best Practices



- Coordinate the Title IX response on behalf of the school
- Monitor outcomes and identify patterns
- Adoption of Title IX policy and procedure
- Access to relevant data (i.e., participation, budgets)
- Information easily found online and in designated publications
- Permitted to conduct investigations
- Permitted to oversee investigations
- Avoid conflicts of interest, including exclusion from serving as the decision-maker
- Appropriate authority, qualifications, training, and time

# Information about the Title IX Coordinator



Contact information for the Title IX Coordinator must be shared far & wide and include at minimum the following information:



Name of Title IX  
Coordinator



School address  
(with office address)



Phone Number



Email Address



# Information about Title IX Coordinator



- Must be shared with:
  - Students
  - Parents
  - Employees
  - Applicants for admission
  - Applicants for employment
  - Unions and/or parties to collective bargaining agreements
- Notify the above individuals of non-discrimination statement of the school
- Information must include notice of grievance procedure
- Information must promptly display contact information on the school's website (if applicable) and in each handbook or catalog made available to those persons

# Title IX – Parties and Administrators



## **Parties**

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

## **Other Participants**

- Fact Witnesses
- Expert Witnesses

## **Administration of Claims**

- Title IX Coordinator
- Title IX Investigator
- Title IX Decision-maker
- Title IX Appeal Officer
- Title IX Advisor
- Title IX Informal Resolution Officer



# Title IX Grievance Process Requirements

# Overview of Title IX Grievance Process (TIXGP)



- Respond promptly in a manner that is not deliberately indifferent
- Due process and fundamentally fair procedures to adjudicate the allegations
- Upon notification, supportive measures offered
  - Emergency removal
- Offer of formal process (upon signing of Formal Complaint)
  - Complainant files or Title IX Coordinator may file
- Both parties receive notice of the allegations
- Both parties participate in investigation and can inspect information gathered
- Separate decision-maker(s)
- Completed in a prompt time-frame
- Retaliation prohibited - define the retaliation complaint process



# Executing the Title IX Grievance Process

# TIXGP: Jurisdiction Defined

Occurring in the institution's  
education program or activity

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

Against a person in the United  
States





## **Mandatory dismissal**

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

## **Permissive dismissal**

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

# TIXGP: Emergency Removal Procedure



## Step 1

Conduct a prompt and individualized safety and risk analysis

## Step 2

Immediate threat to physical health or safety of any student or other individual arising from the allegations of sexual harassment is identified

## Step 3

Evaluate the applicability of disability laws to the removal decision

## Step 4

Consider the appropriateness of supportive measures in lieu of an emergency removal

## Step 5

Provide the respondent with notice and an “immediate” opportunity to challenge the emergency removal





Supportive measures are:

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

# TIXGP: Offer of Formal Process



- Complainant offered formal process
  - Offer should be made to parents of minors
- Investigation process should be explained to complainant and parents
- Complainant must request an investigation
- Wishes of complainant are to be respected

# TIXGP: Receipt of Formal Complaint



Form  
completed



Verbal report



Phone call



Email



Other

**SEE SOMETHING?  
SAY SOMETHING!**

# TIXGP: No Formal Complaint Filed



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Title IX Coordinator may decide to proceed with an investigation

- evidence of deliberate indifference if investigation not initiated

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NOTE: Title IX Coordinator does not become Complainant



# TIXGP: Notice of Allegations



- Detailed allegations against respondent
- Supportive measures offered to respondent
- No supportive measure can appear disciplinary or punitive in nature

# TIXGP: Separate Investigator and Decision-Makers



- Title IX Coordinator may serve as investigator
- Title IX Coordinator may NOT serve as decision-maker to determine policy violation and discipline, or as the appeal officer
- Hearing panels permitted for K-12s but not required



# TIXGP: Investigation



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

# TIXGP: Burden of Proof



- Preponderance of the evidence
- Clear and convincing





# TIXGP: Sharing of Investigation Information



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

# TIXGP: Decision-Maker



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



## Procedural Review

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

## New Information

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

## Conflict of Interest or Bias

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

# TIXGP: Informal Resolution



- **Trained facilitators**
- Offered after formal complaint is filed
- Process must be detailed in writing
- Described to both parties
- Parties agree in writing
- Either party may end informal resolution before a formal agreement is accepted
- **Never** available when complainant is student and respondent is employee



# Other Title IX Obligations and Considerations

# Conflicts of Interest



Relationship  
to parties or  
witnesses

Professional  
conflicts

Personal  
conflicts

Actual and  
perceived

# Impartiality



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



# Stereotypes



- “A fixed, over generalized belief about a particular group or class of people.”  
(Cardwell, 1996)
- Stereotypes around sexual assault
- Stereotypes around sexual harassment
- Complainant and Respondent





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





- Many Title IX cases involve trauma
- Title IX Coordinators should understand the impact of trauma on:
  - Reaction to trauma
  - Ability to capture memories
  - Recollection of memories
- Expectations around victim/survivor of trauma



# Campus Title IX Training Programs



- Required
- Voluntary
- Vendor or in-house
- Online, asynchronous
- Zoom, synchronous
- Face-to-face



## Groups to Consider

Title IX Office

Administrators

Teachers

Classified Staff

Specific Groups: Mental Health Professionals, Special Ed

Students

Volunteers

# Conclusion



- The obligations for Title IX compliance in K12 school districts are vast, complicated, and frequently changing.
- An effective and empowered Title IX Coordinator is integral to achieving Title IX compliance for districts.
- A healthy and dynamic Title IX compliance program ensures that all students will continue to have access to their education programs and activities, even in the aftermath of sexual harassment.
- Title IX Coordinators engage in valuable efforts to reach this goal.



Thank You!

[www.titleixconsult.com](http://www.titleixconsult.com)