



Title IX Appeal Officer Training

2023-2024

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- Training requirements for Title IX informal resolution facilitators:
 - Definition of Sexual Harassment
 - Scope of a school’s “education programs and activities”
 - Proper completion of the Title IX grievance process
 - Executing the appeal process

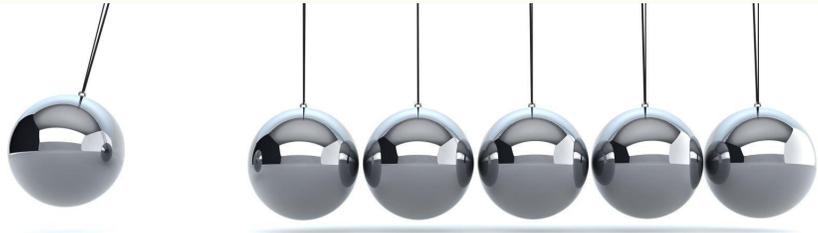
Overview of Today's Discussion



- Title IX law and regulation
- Title IX obligations for educational institutions
 - Scope of program
 - Confidentiality
- Title IX definitions of Sexual Harassment
- Title IX procedure and requirements to start informal resolution process



Title IX Law and Regulation



- 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



- 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



Title IX Obligations for K12 School Districts



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.



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 school 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



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

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)

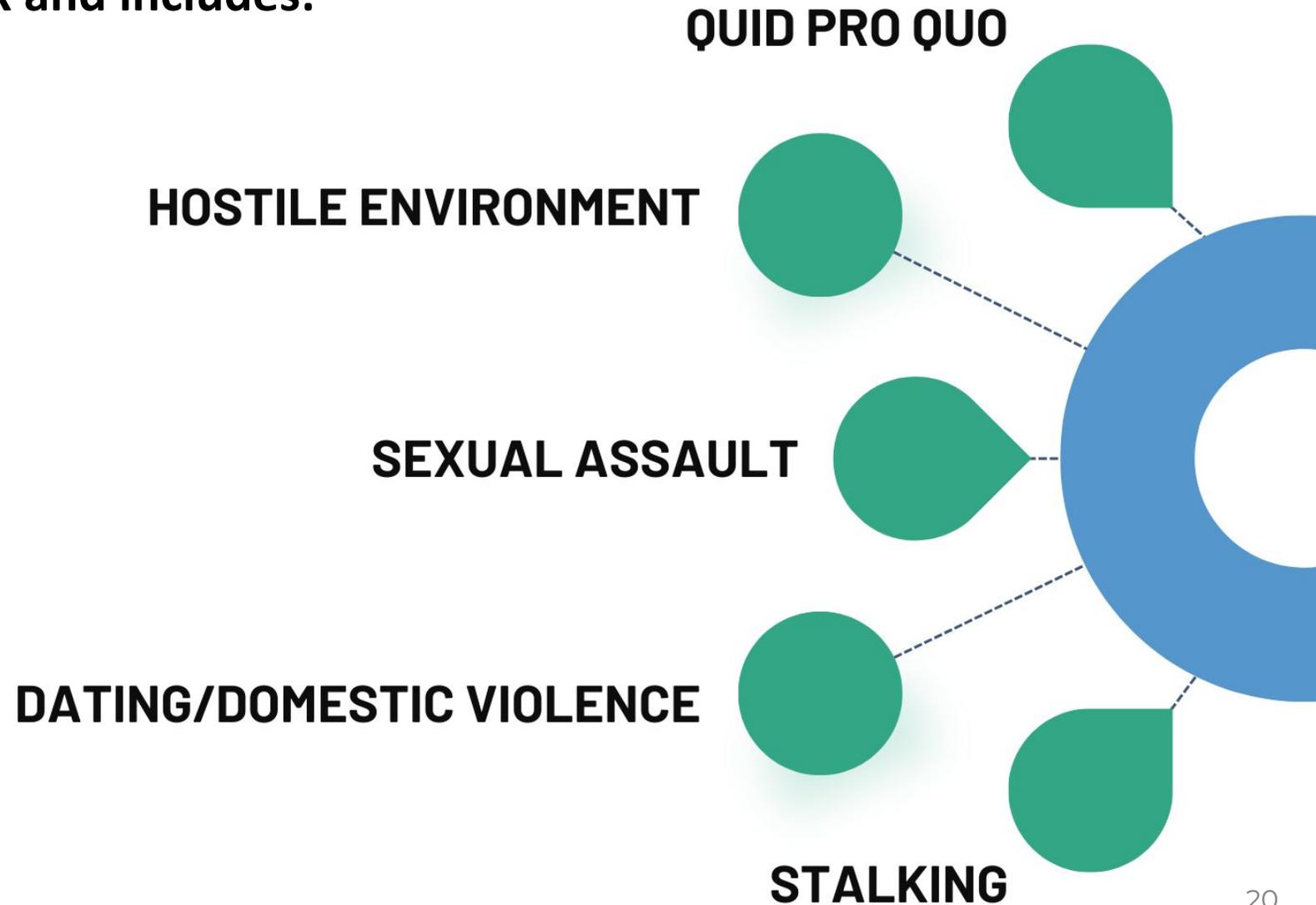


Title IX Sexual Harassment Definitions

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
- FOR APPEAL PURPOSES, you should only be looking at the Title IX issues
 - State law (CA Ed Code) requires an appeal to California Department of Education



Overview of Title IX Grievance Procedure (TIXGP) and Informal Resolution Process



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

TIXGP Formal Process



Initial Complaint – Title IX Coordinator

- Report of incident
- Formal complaint process offered
- Supportive measures
- Complaint filed/investigation initiated
- Potential dismissal (Jurisdiction, Allegation)
- Notice of allegations, includes a presumption of innocence

Investigation – TIX Investigator

- Interviews
- Documents reviewed
- Sharing information with both parties and reviewing feedback
- Completing investigative report
- Gathering feedback from parties on report

Decision-Making – TIX Decision-Maker

- Evaluate the evidence
- Determine if follow-up questions required
- Issue decision on policy violation and discipline
- Avoiding bias, conflict of interest, stereotypes



Review Flow Chart



1. Procedural irregularity affected the outcome;
2. New evidence is available that could affect the outcome; or
3. A conflict of interest or bias by the Title IX Coordinator, investigator(s), or decision-maker(s)

Districts can ADD additional grounds for appeal, at their discretion

Appeal Officer Steps (34 CFR 106.45)



- Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties
- Ensure that the decision-maker(s) for the appeal is trained in accordance with 34 CFR 106.45 and is not the same decision-maker(s) who reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator
- Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
- Issue a written decision describing the result of the appeal and the rationale for the result
- Provide the written decision simultaneously to both parties
 - Outcome remains the same
 - Outcome changes
 - Remand for additional investigation



Student 1 and Student 2 enter a single-stall bathroom and engage in consensual kissing and touching. During the encounter, Student 2's hands go inside Student 1's clothing and Student 2 penetrates Student 1's anus. Student 1 alleges that the penetration was non-consensual.

Procedural Irregularity that Impacted Outcome



- Assume Respondent is found responsible.
- An appeal is filed on the grounds that Respondent was interviewed on the date of the incident
 - Without notice of allegations letter being sent
 - Without an advisor present
- How would you analyze:
 - The procedural irregularity impacted outcome?
 - What are the next steps?

New Evidence that Could Affect the Outcome



- Assume Respondent is found not responsible.
- Appeal filed that video evidence has been found that shows both students entering the restroom together on the date and time that the incident occurred.
- How would you analyze:
 - If this new evidence impacted outcome?
 - What are the next steps

Conflict of interest or Bias by the Title IX Coordinator, Investigator(s), or Decision-Maker(s)



- Assume Respondent was found responsible for violating policy.
- Appeal alleges that the Investigator was biased because the report repeatedly referred to the impact of the alleged assault on Complainant.
- How would you analyze:
 - If the investigator was biased in favor of Complainant/Victim/Survivor?
 - Next Steps

Other Considerations for Appeal Decision – Refer to Policy Language



An appeal must be filed in writing within 10 calendar days of receiving the notice of the decision or dismissal, stating the grounds for the appeal and including any relevant documentation in support of the appeal.

Appeals submitted after this deadline are not timely and shall not be considered.

A written decision shall be provided to the parties within 20 calendar days from the receipt of the appeal.

Other Considerations for Appeal Decision – Refer to Policy Language



- The district's decision may be appealed to the California Department of Education within 30 days of the written decision in accordance with BP/AR 1312.3.

Either party has the right to file a complaint with the U.S. Department of Education's Office for Civil Rights within 180 days of the date of the most recently alleged misconduct.

The complainant shall be advised of any civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders that may be available under state or federal antidiscrimination laws, if applicable.



- **Title IX Thursdays**
 - [First Thursday of Every Month - 12:30-1p Pacific](#)
- **K12 Title IX Decision-Maker**
 - [October 5, 2023 10a-12p Pacific](#)

Online Modules Coming Soon

K12 Title IX Coordinator

K12 Title IX Decision-Maker

Title IX Informal Resolution Facilitator



Thank You!

www.titleixconsult.com

**Sign-up for our newsletter
or ALL Title IX Thursdays!**