



K-12 TITLE IX COORDINATOR & ADMINISTRATOR ADVANCED TRAINING & CERTIFICATION COURSE

In Partnership with Spring-Ford School District
August 3-4, 2020

FACULTY



TANYKA M. BARBER, J.D.
Senior Associate, TNG
ATIXA Advisory Board Member



KIM PACELLI, J.D., M.Ed.
Partner, TNG
ATIXA Advisory Board Member

COURSE AGENDA



- I. Title IX Recap
- II. Advanced Jurisdictional Topics
- III. Advanced Topics & Title IX
 - a. Athletics Gender Equity
 - b. Athletics Sexual Harassment
 - c. Pregnancy & Title IX
 - d. Disability & Title IX
 - e. Title IX & Transgender Students
 - f. Bullying & Title IX

- IV. Advanced Skills in Title IX
 - a. Structuring Your Title IX Team
 - b. Leveraging and Empowering Title IX Coordinator Authority
 - c. Developing MOUs
 - d. Policy Development
 - e. Navigating Employee-Based Issues
 - f. Working with Parents/Guardians

SHIFTING TERMINOLOGY



ATIXA IS SHIFTING ITS TERMINOLOGY TO MATCH THE NEW REGS:

- You = Recipient
- Various titles = Title IX Coordinator
- Reporting Party = Complainant
- Responding Party = Respondent
- Resolution = Grievance Process
- ATIXA model policy offenses NCSL/NCSI = sexual assault
- Intimate Partner Violence = Dating and domestic violence

AND OCR DEFINITIONS OF THESE OFFENSES MUST BE ADOPTED:

- Including OCR definition of Sexual Harassment, Clery Act definition of sexual assault, and VAWA definitions of DV/DV and stalking.

TITLE IX RECAP



-
- Key Title IX-Related Issues
 - Obligations Under Title IX
 - Current State
 - Summary of Key Issues in Regs

TITLE IX



20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.”



KEY TITLE IX-RELATED ISSUES



Sex-Based Discrimination

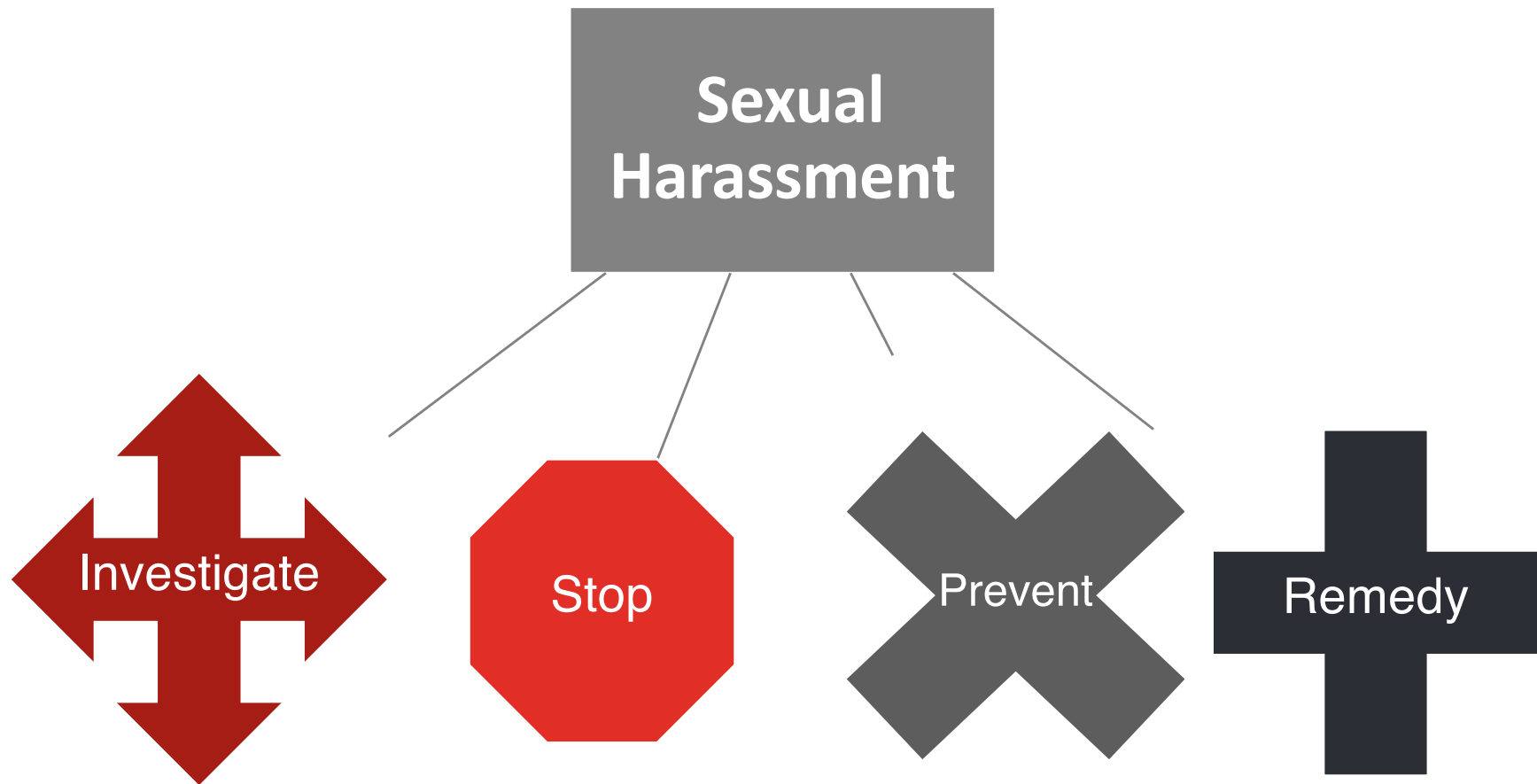
- Program Equity
- Recruitment, Admissions and Access
- Pregnancy
- Athletics
- Employment, Recruitment & Hiring
- Extra-curricular activities
- Housing
- Access to Course Offerings
- Salaries and Benefits
- Financial Assistance
- Facilities
- Funding
- Sex, Gender, Gender Identity

Sexual Harassment

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

Retaliation

SCHOOL/DISTRICT OBLIGATIONS UNDER TITLE IX



CURRENT STATE



- Withdrawn:
 - 2011 Dear Colleague Letter (DCL)
 - 2014 Q&A on Title IX and Sexual Violence
 - 2016 DCL on Transgender Students
- Still in effect:
 - 1975 Regs, as amended
 - 2001 OCR Revised Sexual Harassment Guidance (has force and effect of law; conflicts with 2020 Regs)
 - 2003 DCL on Title IX and Free Speech
 - 2010 DCL on Harassment and Bullying
 - 2013 DCL on Pregnant and Parenting Students
 - 2015 DCL on the role of Title IX Coordinators
 - 2017 Q&A on Campus Sexual Misconduct issued as interim guidance, still in place

CURRENT STATE



- 2020 Title IX Regulations
- Issued May 6, 2020 (Publication date May 19, 2020)
- Effective and enforceable August 14, 2020
 - Amend the Code of Federal Regs. and have force and effect of law
 - Some provisions already mandated by due process case law in some jurisdictions (although primarily focused on higher ed institutions)
 - Intervening variables (litigation and election) may impact enforcement in the shorter or longer term
 - Lawsuits against Regs already filed
- Regulations are significant, legalistic, surprisingly prescriptive, very due-process heavy, and go well beyond what any court has required under 5th/14th Amendment case law.

SUMMARY OF KEY ISSUES IN NEW REGS



- Applies to both public and private recipients, which is a shift in legal paradigm
- Standard of Evidence
- Requirements for “Emergency Removal”
- Required Definition of Sexual Harassment
- Detailed Notice of Allegations/Investigation
- Providing Inv. Report and Evidence for Review/Response
- Live Hearing Optional for K-12 (Cross examination not required)
- Advisor Involvement (including possibly attorneys)
- Attention to bias by Investigators, Hearing Officers, Appellate Officers
- Record-Keeping and Documentation
- Training: Biased Training; Insufficient Training, Transparency

DISCUSSION



- What are your biggest concerns about implementing the requirements under the new Title IX regulations?
- What do you need to be ready for the August 14th implementation date?

ADVANCED JURISDICTIONAL TOPICS

- When Does Title IX Apply?
- Covered Programs & Activities
- Covered Individuals
- Location
- Downstream Effects
- Time
- Dual Enrollment
- Free Speech

WHEN DOES TITLE IX APPLY?



- In ***Davis***, the U.S. Supreme Court set the standard for Title IX jurisdiction.
- Title IX applies when the school has:
 - **Control over the harasser** (the person alleged to be discriminating); AND
 - **Control over the context** of the harassment (the discrimination).

“IS IT A IX?”



Subject Matter

**Covered Programs
and Activities**

Covered Individuals

Location

Time Issues

**Special
Considerations**

COVERED PROGRAMS AND ACTIVITIES



- Locations, events or circumstances under recipient's substantial control.
- Includes all programs run by a federal funding recipient (typically the LEA).
- May include programs/events using facilities of the funding recipient.
 - E.g. camps using your facilities.
- It does not matter whether the specific program receives federal funding or not, all recipient programs are covered.
- Includes all federal funding, even funding that flows through state or local government.

COVERED PROGRAMS AND ACTIVITIES



- Examples:
 - All academic, instructional, special education programs
 - Co-curricular and enrichment programming
 - Before/after school programming
 - Extra-curricular programs and student activities
 - Athletics
 - All school-sponsored trips
 - School-sponsored transportation

COVERED INDIVIDUALS



- Students – In-school/On-campus & online/distance.
- Employees.
 - Teachers.
 - Other instructional staff.
 - Coaches.
 - Staff/Administrators.
- Volunteers.
- Visitors.
- Participants in camps/other programs.

COVERED INDIVIDUALS



- Everyone, however...
- If Responding Party is not affiliated with the school in any way, the school may lack authority to take disciplinary action, but can take responsive or remedial action.
 - Third-party vendors.
 - Parent/guardian.
 - Guest or invitee.
 - Former student or former employee.
 - Student from another school/district.

LOCATION



- United States.
- Property owned or controlled by the school.
- School transportation.
- Off-campus property during a school-sponsored trip or activity.
 - Field trip
 - Athletic competition/activity
- Off-campus behavior that has “downstream effects” in the school setting.
 - Title IX only requires remedial and supportive measures for the downstream effects.

ANALYZING “DOWNSTREAM EFFECTS”



- In some circumstances you will exercise jurisdiction for off-campus behavior that does not begin in a school-sponsored activity (“discretionary jurisdiction”).
 - Does your policy specify jurisdiction?
- Look for “nexus” to the school setting.
 - When the downstream effects of purely off-site conduct cause a discriminatory impact at school/on campus.
- Even if no Title IX jurisdiction consider if the behavior violates other school policies.

EXAMPLES: “DOWNSTREAM EFFECTS”



- Social media or electronic communication posts spillover to bullying or cyberbullying at school.
- A student experiences a sexual assault over the weekend and is unwilling to return to school on Monday morning.
- Employee is a victim of intimate partner violence and misses work repeatedly as a result.
- One student sexts a revealing photo to a peer; the peer shares it with a group of friends without permission.

TIME CONSIDERATIONS



- Examples where school lacks disciplinary authority:
 - A student is sexually harassed by a student from another school district.
 - A student withdraws, or an employee resigns in the midst of an investigation.
- Institution must still:
 - Provide support and resources to the Complainant and the community.
 - Determine if there are patterns or institutional variables that contributed to the alleged incident.
 - Take what action it can (e.g.: trespass the person).
- For Summers/Breaks: consider downstream effects.

STUDENTS ENROLLED IN HIGHER ED COURSES: ISSUES FOR K-12



- Best Practice: Effective coordination between the Title IX Coordinator at the college/university AND the Title IX Coordinator at the school.
 - What remedies are needed in each setting (if any)?
 - Who should investigate?
 - Who has jurisdiction for purposes of discipline (if any, and if applicable)?
 - For minors: mandated state reporting?

SPECIAL CONSIDERATIONS: FREE SPEECH



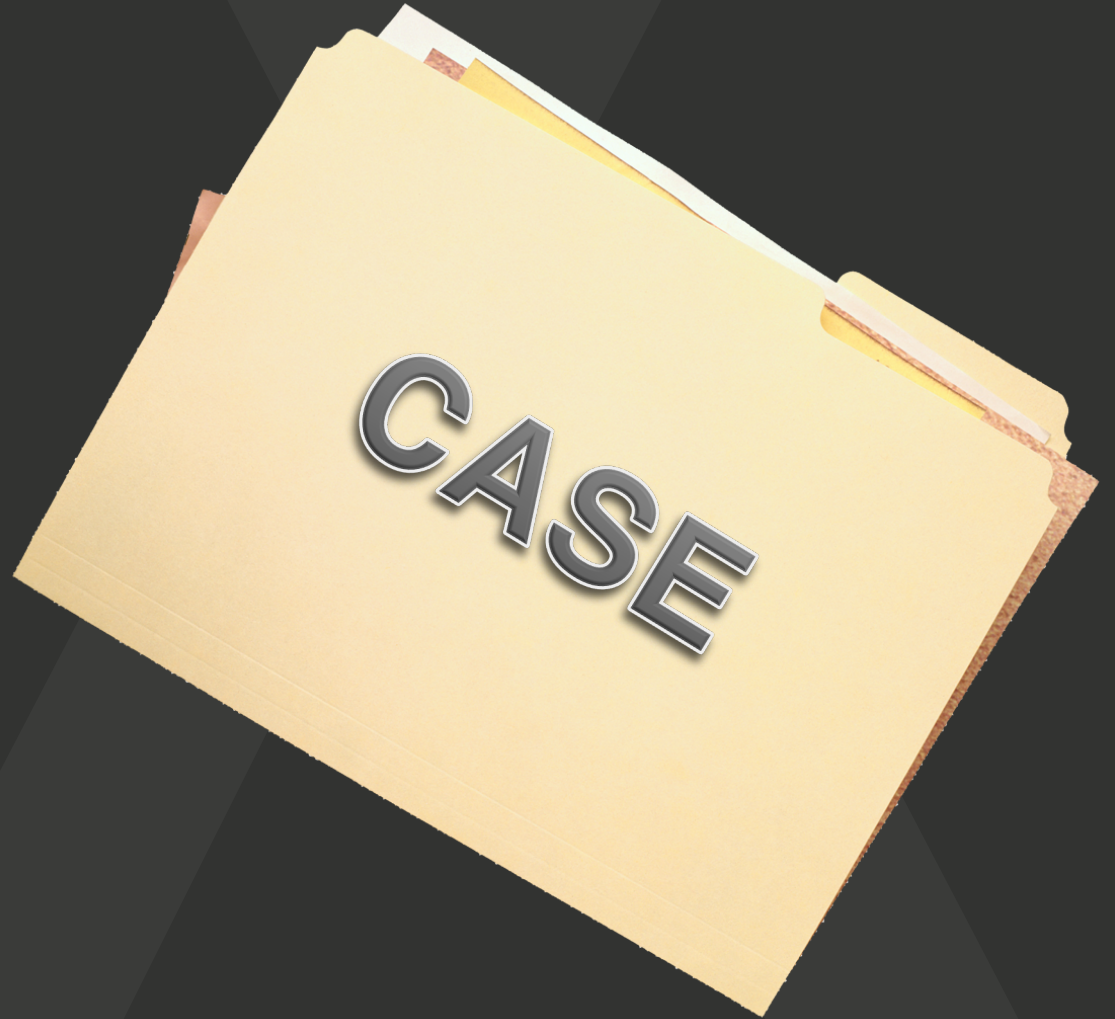
- Is the speech/conduct protected by **academic freedom**?
 - Pedagogically appropriate, germane to the subject matter of the class, and not disruptive to the school environment.
- Is the speech/conduct protected by the **First Amendment**?
 - To be subject to discipline:
 - **Offensive/harassing speech** must be:
 - severe, pervasive, and objectively offensive, and/or
 - **Disruptive speech** must:
 - Materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.
- Still provide support and resources as appropriate.

ALWAYS REMEMBER...



- If Title IX jurisdiction is not present, consider whether the behavior could still violate:
 - Institutional harassment/discrimination policies.
 - Student Handbook/Conduct policies.
 - Technology/Acceptable Use policies.
 - Employee Handbook/Policies.
 - Professionalism standards.

CASE STUDY

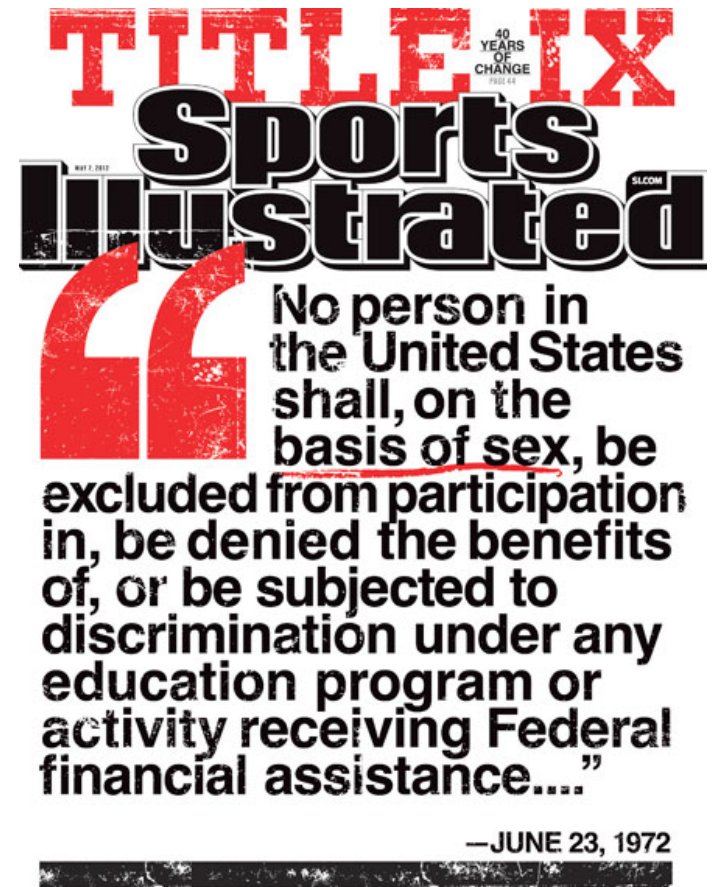


ADVANCED TOPICS

- Athletics
- Pregnancy
- Disability
- Working With Students Across The Gender Spectrum
- Bullying

ATHLETICS GENDER EQUITY CONSIDERATIONS

- Title IX Requirements
- Oversight of Athletics
- Equal Treatment Regulations



OVERSIGHT OF ATHLETICS GENDER EQUITY



- Title IX compliance requirements:
 - Effective accommodation of interests and abilities.
 - Financial assistance proportionality.
 - Treatment of student-athletes.
- Day-to-day compliance may be delegated to the athletics director.
- The oversight of compliance remains the responsibility of the Title IX coordinator.
 - Need for outside education.
- The dangers of being both.

TITLE IX & ATHLETICS



- Applies to:
 - Interscholastic athletics
 - Intramurals
 - Club teams/sports
- However, 3-Part Test and the 13 program components are typically not as problematic for Intramurals and Clubs because those programs are typically self-initiated and benefits provided by the schools are far fewer.

TITLE IX & ATHLETICS



- Title IX DOES require a school to:
 - Provide an equal opportunity for female and male students to become interscholastic athletes etc.
 - Analyzed by means of the three-part test
 - Provide equivalent treatment of participants in the overall girls program as compared to the overall boys program.
 - Analyzed according to 13 different program components.

TITLE IX & ATHLETICS



- Title IX does not require a school to:
 - Provide the same funding to the overall girls and boys programs
 - Provide the same funding to boys and girls teams on 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

Source: Valerie McMurtrie Bonnette (2004), Title IX and Intercollegiate Athletics, p.7.

OVERSIGHT OF ATHLETICS

GENDER EQUITY: THREE-PART TEST (1979)



Effective accommodation of interests and abilities:

- **Part 1:** Opportunities for males and females substantially proportionate to their respective enrollments; OR
- **Part 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
- **Part 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
 - OCR uses a case-by-case analysis, rather than a rigid statistical requirement (e.g.: within 1% of student body)
 - 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

Source: OCR (1996). *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test*.

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, OCR considers:
 - A school's record of adding interscholastic teams, or upgrading teams to interscholastic status, for the underrepresented sex;
 - A school's record of increasing the numbers of participants in interscholastic athletics who are members of the underrepresented sex; and
 - A school's affirmative responses to requests by students or others for addition or elevation of sports.

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 continuing practice of program expansion, OCR considers:
 - 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; and
 - A school's current implementation of a plan of program expansion that is responsive to developing interests and abilities.

Source: OCR (1996). Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test.

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
 - 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.

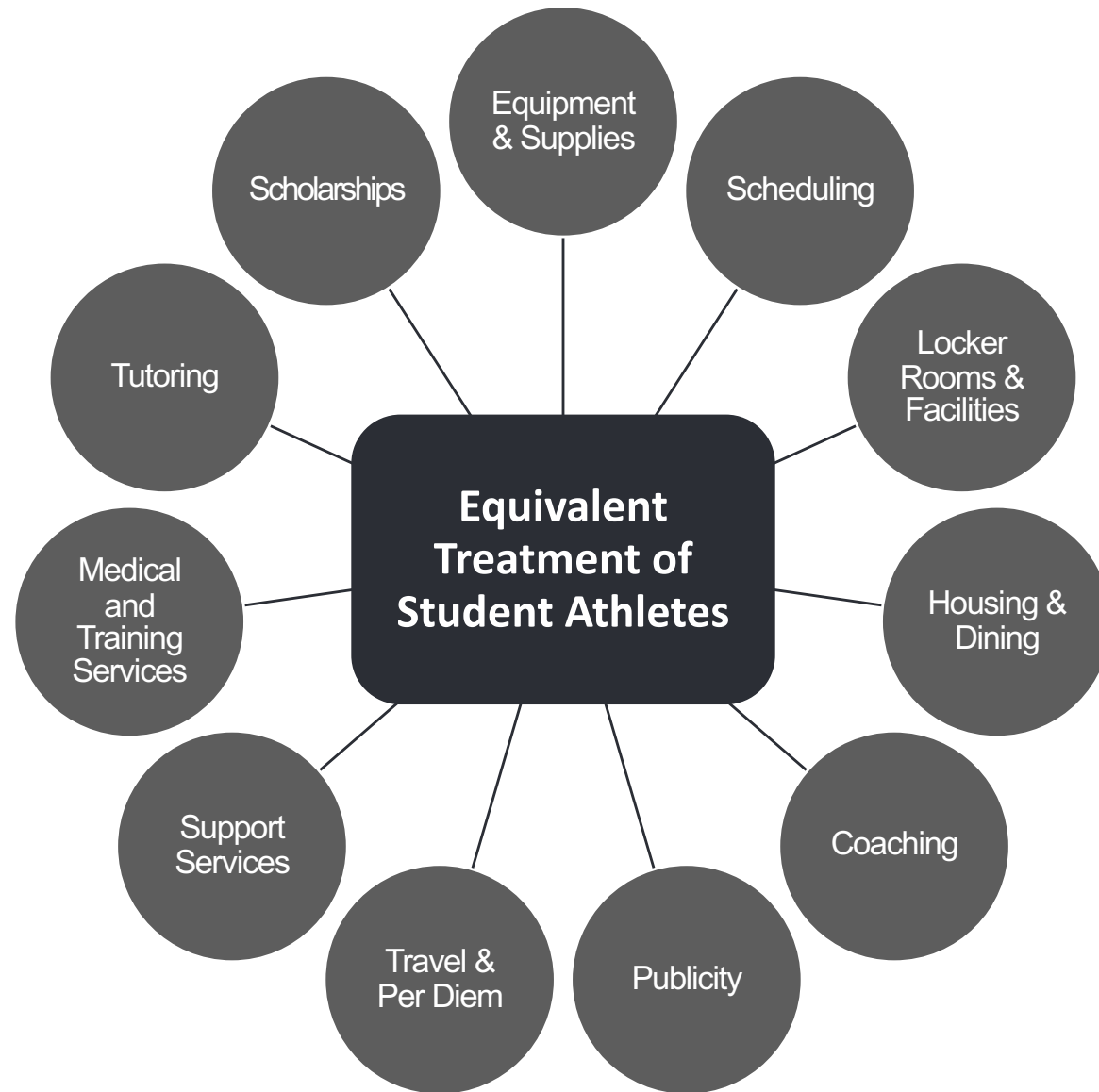
LEVELS OF COMPETITION



OCR assesses compliance by examining:

1. Whether the competitive schedules for boy's and girl's teams, on a program-wide basis, afford proportionally similar numbers of male and female athletes equivalently advanced competitive opportunities; OR
2. Whether the school can demonstrate a history and continuing practice of upgrading the competitive opportunities available to the historically disadvantaged sex as warranted by developing abilities among the athletes of that sex.

OVERSIGHT OF ATHLETICS GENDER EQUITY



EQUIPMENT AND SUPPLIES



Key factors in examining equivalence:

- The quality of equipment and suppliers
- The amount of equipment and supplies
- The suitability of equipment and supplies
- The maintenance and replacement of the equipment and supplies
- The availability of equipment and supplies

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

SCHEDULING OF GAMES AND PRACTICE TIMES



Key factors in examining equivalence:

- The number of competitive events per sport
- The number and length of practice opportunities
- The time of day competitive events are scheduled
- The time of day practice opportunities are scheduled
- The opportunities to engage in available pre-season and post-season competition

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

TRAVEL AND PER DIEM ALLOWANCES



Key factors in examining equivalence:

- Modes of transportation
- Housing furnished during travel
- Length of stay before and after competitive events
- Per diem allowances
- Dining arrangements

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

Key factors in examining coaching:

- Opportunity to receive coaching
 - Relative availability of full-time coaches
 - Relative availability of part-time and assistant coaches
 - Relative availability of graduate assistants
- Assignment of coaches
 - Training, experience, and other professional qualifications
 - Professional standing

Key factors in examining coaching:

- Compensation of coaches
 - Rate of compensation (per sport, per season)
 - Duration of contracts
 - Conditions relating to contract renewal
 - Experience
 - Nature of coaching duties performed
 - Working conditions
 - Other terms and conditions of employment

LOCKER ROOMS, PRACTICE AND COMPETITIVE FACILITIES



Key factors in examining equivalence:

- Quality and availability of the facilities provided for practice and competitive events;
- Exclusivity of use of facilities provided for practice and competitive events;
- Availability of locker rooms;
- Quality of locker rooms;
- Maintenance of practice and competitive facilities; and
- Preparation of facilities for practice and competitive events.

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

MEDICAL AND TRAINING FACILITIES AND SERVICES



Key factors in examining equivalence:

- Availability of medical personnel and assistance.
- Health, accident and injury insurance coverage.
- Availability and quality of weight and training facilities.
- Availability and quality of conditioning facilities.
- Availability and qualifications of athletic trainers.

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

PUBLICITY



Key factors in examining equivalence:

- Availability and quality of sports information personnel;
- Access to other publicity resources for girl's and boy's programs; and
- Quantity and quality of publications and other promotional devices featuring boy's and girl's programs.

ATHLETICS: SEXUAL HARASSMENT CONSIDERATIONS

- Violence Against Women in the Athletic Department
- Unique Challenges

PREVALENCE OF VIOLENCE AGAINST GIRLS IN THE ATHLETIC DEPARTMENT




- Male athletes are more represented in violence against women statistics vs. their non-athlete counterparts.
- Male student athletes = 3.3% of student population.
 - 19% of sexual violence.
 - 35% of domestic violence.

Source: Benedict and Crossett, et al., Male Student Athletes and Violence Against Women: A Survey of Campus Judicial Offices, Journal of Sport and Social Issues, Vol. 19 No. 2, pp. 126-140, 1995.

UNIQUE CHALLENGES



- Culture of violence and aggressive behavior in sports.
- Student-athlete on student-athlete violence/hazing
- Offender coach involvement.
- Power dynamics or revenue vs. non-revenue sports.
- Focus on body.
- Male privilege.
- The power of a coach.
- Entitlement.
- “Celebrity”/”groupie” status.
- Insular.

A 3D-rendered red door with a silver handle is shown slightly ajar, revealing a bright white light source behind it. The door is set against a dark, textured background.

How to get in the door with compliance in the athletic department:

Building the necessary relationships for future compliance

PREGNANCY & TITLE IX

“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

- June 2007 “Dear Colleague Letter”
- June 2013 DCL on Pregnant and Parenting Students
- Regulatory Language
- Case Discussion

OCR, TITLE IX, AND PREGNANCY



- 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

PREGNANCY AND HIGH SCHOOL COMPLETION



- “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.”

(Source: National Women’s law Center: https://nwlc-ci49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/04/Final_nwlc_Gates_PregParenting.pdf)

PREGNANCY & TITLE IX: LEGAL FRAMEWORK

OCR, TITLE IX, AND PREGNANCY



June 25, 2007 “Dear Colleague Letter”

- Affirms the application of the pregnancy-related portions of the regulations to athletics departments, and summarized a school’s obligations to pregnant student-athletes.
- The June 25, 2007 DCL also includes:
 - Information on how to develop programs to support these students;
 - An overview of students’ rights under Title IX; and
 - Guidance on how to share your complaint if you feel your rights are not being met.

PREGNANCY & TITLE IX



- 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.

PREGNANCY & TITLE IX: REGULATORY LANGUAGE

“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 & TITLE IX: 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

PREGNANCY & TITLE IX: TITLE IX REGULATORY LANGUAGE



Physician Certification

- “Pregnancy and related conditions (cont.):

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.**” 34 C.F.R. 106.40

PREGNANCY & TITLE IX: TITLE IX REGULATORY LANGUAGE



Pregnancy as Temporary Disability

- “Pregnancy and related conditions (cont.):

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.” 34 C.F.R. 106.40

PREGNANCY & TITLE IX: TITLE IX REGULATORY LANGUAGE



Leave Policies

- “Pregnancy and related conditions (cont.):

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.”**

34 C.F.R. 106.40

PREGNANCY & TITLE IX: OCR GUIDANCE



- “A school **may require** a pregnant student or student who has given birth **to submit medical certification** for school participation **only if the school also requires such certification from all students with 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.”

PREGNANCY & TITLE IX: OCR GUIDANCE



- **“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.**”

Source: Department of Education (June 2013), Supporting the Academic Success of Pregnant and Parenting Students, p. 8.

PREGNANCY & TITLE IX: OCR GUIDANCE



- “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.”

- NCAA Guidance

- A pregnant student-athlete's physician should make medical decisions regarding sports participation.
- A student-athlete with a pregnancy-related condition must be provided with the same types of modifications provided to other student-athletes to allow continued team participation.
- Pregnant student-athlete cannot be harassed due to pregnancy.
- A student-athlete whose athletic career is interrupted due to a pregnancy-related condition will typically be entitled to a waiver to extend her athletic career.

SPECIAL TOPICS



- Nursing rooms, mothers' lounges, etc.
- Children at school and in the classroom...No.
- Labs, chemicals, exposure to diseases, etc.
- Online learning/Homebound instruction
- Child Care

SUPPORTING STUDENTS



- Develop support networks for students
 - E.g.: Pregnant and parenting student organizations (all-comers)
 - Classes: Pre-natal classes, parenting, life-skills, etc.
 - Harness knowledge and experience from employee programs
 - Parent-Teacher Associations
- Supporting partners or spouses
 - Leave and/or excused absences
 - Treat with equal dignity and understanding
 - Stop asking “what do we have to do?” and instead shift to “what can we do?”

STRATEGIES FOR COMPLIANCE



- Detailed school/district policies
- Centralized grievance process
- Title IX Coordinator's central role
- Develop a Resource Guide
- **Train and educate** students, teachers, staff, administrators, coaches
- Flexibility (when possible) with courses
- Posters in student spaces
- Work with Case Manager
- Focus on supportive services

TRAINING FOR STUDENTS



- Title IX's requirements and protections
- How to file a complaint
- Who is the TIX Coordinator (and deputies)?
- Online resources and tools
- Online reporting mechanism
- Train students to support each other
- Develop and support programming that targets barriers and problematic social context

TRAINING FOR TEACHERS & STAFF



- Train teachers/staff on Title IX's requirements
- Provide teachers & staff with a resource handout they can provide to students
- Blaming the student is NEVER acceptable
- TIX Coordinator should:
 - Develop working relationships with Department Chairs and district-level curriculum administrators (when possible) in case intervention is needed.
- NOTE: Faculty (IHE) are typically the biggest area of institutional non-compliance with Title IX and pregnancy; athletics (K-12 and IHE) is also a significant area of non-compliance

PREGNANCY & TITLE IX CASE DISCUSSION



- 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.



DISABILITY & TITLE IX OVERLAPS

- ADA/Section 504
- Qualified Individual with a Disability
- Accommodation Process

LEGAL LANDSCAPE OF DISABILITY LAW



- Titles II and III of the Americans with Disabilities Act of 1990 (ADA).
- Section 504 of the Rehabilitation Act of 1973.
- State laws.

SECTION 504 OF THE REHABILITATION ACT, 1973



- A federal civil rights law, 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.
- Codified at 29 U.S.C. § 701.
- Enforced by the U.S. Department of Education.
 - Compliance guidelines by OCR.
- Covers “any program or activity.”
- Individuals with disabilities are also protected from discriminatory harassment directed at them because of their disability.

SECTION 504

SCOPE OF COVERED PROGRAMS



- All of the college's operations, programs, and activities are subject to Section 504 requirements, including:
 - Academics.
 - Athletics.
 - Employment.
 - Housing.
 - Events.
 - Web-based educational services.

SECTION 504/ADA GENERAL COMPLIANCE REQUIREMENTS



- If the institution accepts federal funds or employs more than 50 people the institution **must designate an employee to coordinate all efforts to comply** with and carry out its responsibilities, including:
 - **Ensuring dissemination of notice** of the institution's non-discrimination policy.
 - **Adopting civil rights grievance procedures** that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of discrimination.
 - **Conducting investigations** of complaints regarding noncompliance with the legal mandates of ADA or 504.
 - **Providing notice** of the name, office address, and telephone number of the employee or employees designated to oversee 504/ADA compliance.
- This does not mean the 504/ADA Coordinator is to hold the position of disability coordinator!

TYPICAL 504/ADA COORDINATOR ADMINISTRATIVE REQUIREMENTS



- The Section 504/ADA Coordinator is, at a minimum, responsible for:
 - Coordinating and monitoring compliance with Section 504 and Title I, II or Title III of the ADA;
 - Overseeing state civil rights requirements regarding discrimination and harassment based on disability;
 - Overseeing prevention efforts to avoid Section 504 and ADA violations from occurring;
 - Implementing the institution's discrimination complaint procedures with respect to allegations of Section 504/ADA violations, discrimination based on disability, and disability harassment

TITLES I, II & III ADA, 1990



- **Title I:**

- Prohibits discrimination on the basis of disability in employment

- **Title II:**

- Prohibits discrimination on the basis of disability by public entities, regardless of whether they receive federal financial assistance.

- **Title III:**

- Prohibits discrimination on the basis of disability in private education facilities and in the activities of places of public accommodation (businesses that are generally open to the public and that fall into one of 12 categories listed in the ADA).

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.

WHO IS PROTECTED UNDER SEC 504 & ADA?



- Under this law, **qualified individuals with disabilities** are defined as:
 - Persons with a physical or mental impairment which substantially limits one or more major life activities;
 - Persons who have a record of having a physical or mental impairment; or
 - Persons who are regarded as having a physical or mental impairment that substantially limits one or more major life activities.

WHAT DOES IT MEAN TO BE A “QUALIFIED INDIVIDUAL WITH A DISABILITY”?



- A qualified individual with a disability is someone who, with or without **reasonable modifications** to rules, policies, or practices or provision of auxiliary aids and services, meets the **essential eligibility requirements** to be able to receive the receipt of services or to participate in programs or activities of the educational entity.
- All qualified individuals with a disability **must be provided with aids, benefits, or services that provide an equal opportunity** to achieve the same result or level of achievement as others.

WHAT IS A “PHYSICAL OR MENTAL IMPAIRMENT”?



A “Physical Impairment”

- Is any physiological disorder or condition, cosmetic disfigurement or anatomical loss that affects one or more of the body systems, such as:

Neurological
Musculoskeletal
Special sense organs
Respiratory (including speech)
Cardiovascular

Reproductive
Digestive
Genitourinary
Lymphatic
Skin & Endocrine

Bladder
Circulatory
Immune
Normal cell growth
Bowel

A “Mental Impairment”

- Is a mental or psychological disorder includes mental retardation, emotional or mental illness, and specific learning disorders

EXAMPLES OF A “MAJOR LIFE ACTIVITY”



- Major life activities include caring for one's self, performing manual tasks such as:
 - Walking
 - Seeing
 - Hearing
 - Speaking
 - Breathing
 - Working
 - Learning
 - Concentrating
 - Eating
 - Sleeping
 - Standing
 - Lifting
 - Bending
 - Reading
 - Thinking
 - Communicating
- Non-exhaustive list; greatly expanded under the ADAAA

ACCOMMODATION PROCESS



- If an individual needs an accommodation, they have the initial obligation to provide notice to the institution of a qualifying disability and need for an accommodation.
- Institutions may establish reasonable standards for documentation.
- Institutions should engage in an “interactive process” to determine appropriate accommodations that meet the individual’s needs.
- Aids and adjustments must be provided in a timely manner.

CONSIDERATIONS FOR PROVIDING “EQUALITY” IN OPPORTUNITIES



- What can the institution do to provide students with disabilities equal access to the educational benefits or opportunities provided through technology?
- How do the educational opportunities and benefits provided to students with disabilities compare to those provided to students without disabilities?
 - Are they equally available?
 - Are they available in a timely manner, similar to those provided to students without disabilities?
 - Will it be more difficult for students with disabilities to obtain the educational opportunities than for non-disabled students?

TITLE IX & TRANSGENDER STUDENTS

- OCR...?
- Common Concerns and Current Challenges
- Specific Issues
 - Sexual violence
 - Pronouns, preferred name
 - Athletics
 - Restrooms and locker rooms
 - Fraternities and sororities
 - 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:** An umbrella term referring to LGBTQI individuals, and/or a nonbinary term used to reflect a fluid gender identity than societal gender “norms”
- **Cisgender:** Gender identity is consistent with the sex they were assigned at birth.
- **Transgender:** Umbrella term referring to a wide range of persons whose gender identity or expression may not match the gender assigned at birth.
- **Bisexual:** Attracted to people of the same as well as other genders.

TERMINOLOGY (CONT.)



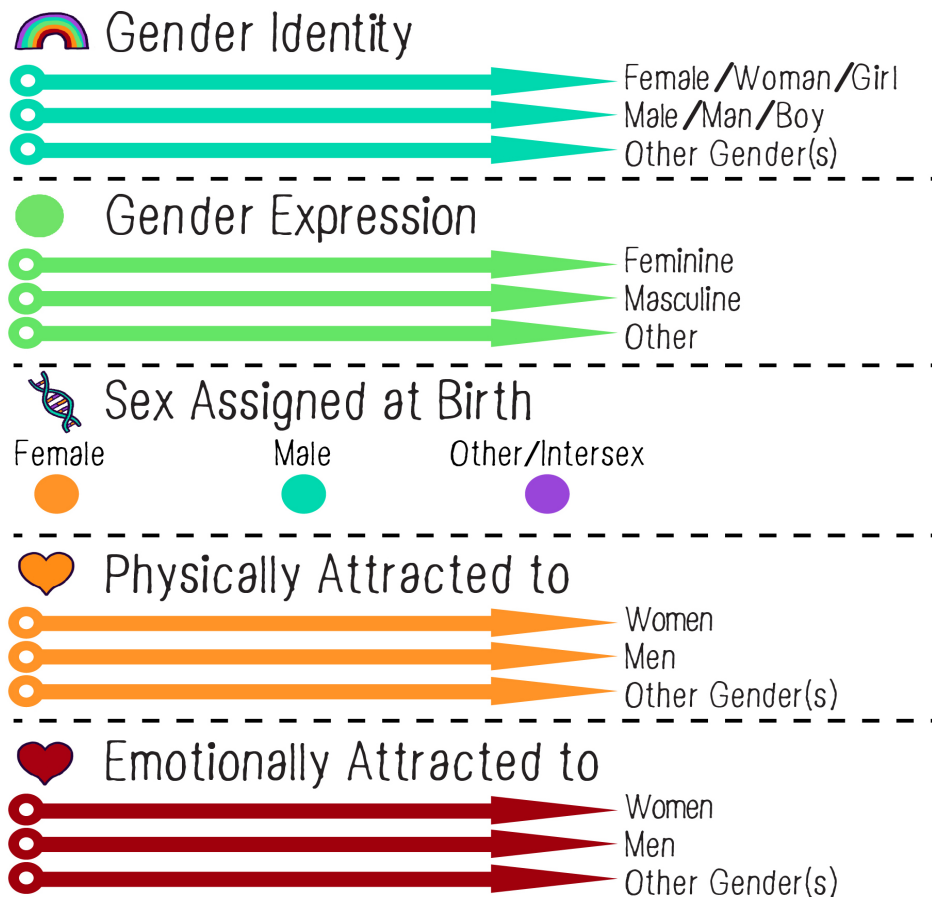
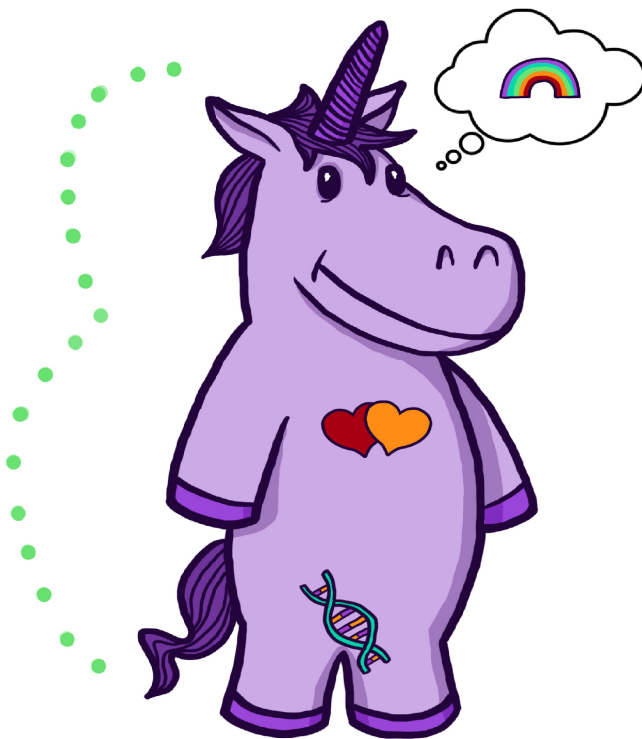
- **Heterosexual:** Attracted to people of a gender other than their own.
- **Asexual:** Minimal or no sexual attraction to others.
- **Intersex:** Born with genitalia, reproductive systems, and/or sex chromosomes of both males and females.
- **Pansexual:** Attracted to people regardless of gender.

TITLE IX & TRANSGENDER STUDENTS



The Gender Unicorn

Graphic by:
TSER
Trans Student Educational Resources



To learn more, go to:
www.transstudent.org/gender

Design by Landyn Pan and Anna Moore

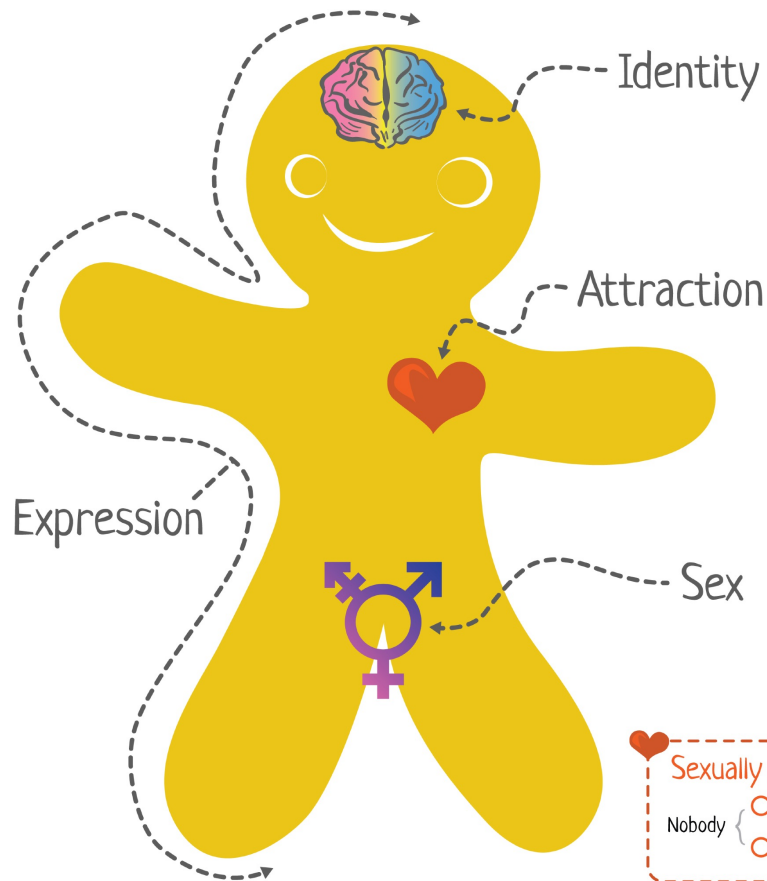
TITLE IX & TRANSGENDER STUDENTS



The Genderbread Person v3.3

Gender is one of those things everyone thinks they understand, but most people don't. Like *Inception*. Gender isn't binary. It's not either/or. In many cases it's both/and. A bit of this, a dash of that. This tasty little guide is meant to be an appetizer for gender understanding. It's okay if you're hungry for more. In fact, that's the idea.

by its pronounced **METROsexual**.com



Plot a point on both continua in each category to represent your identity; combine all ingredients to form your Genderbread

4 (of infinite) possible plot and label combos

Gender Identity

⊘ Indicates a lack of what's on the right

Woman-ness

Man-ness

How you, in your head, define your gender; based on how much you align (or don't align) with what you understand to be the options for gender.

"woman"

"man"

"two-spirit"

"genderqueer"

Gender Expression

Feminine

Masculine

The ways you present gender; through your actions, dress, and demeanor, and how those presentations are interpreted based on gender norms.

"butch"

"femme"

"androgynous"

"gender neutral"

Biological Sex

Female-ness

Male-ness

The physical sex characteristics you're born with and develop, including genitalia, body shape, voice pitch, body hair; hormones, chromosomes, etc.

"male"

"female"

"intersex"

"MtF Female"

Sexually Attracted to

Nobody

(Women/Females/Femininity)

(Men/Males/Masculinity)

Romantically Attracted to

Nobody

(Women/Females/Femininity)

(Men/Males/Masculinity)

In each grouping, circle all that apply to you and plot a point, depicting the aspects of gender toward which you experience attraction.

For a bigger bite, read more at <http://bit.ly/genderbread>

TITLE IX & TRANSGENDER STUDENTS



- 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.
- EEOC and numerous courts have determined gender identity is protected under Title VII.
- ***June 2020, three SCOTUS opinions upholding protections for sexual orientation, transgender, and gender identity under Title VII.***

BOSTOCK V. CLAYTON COUNTY, GEORGIA, 590 U.S. ____ (2020).



- Facts

- *“Each of the three cases before us started the same way: An employer fired a long-time employee shortly after the employee revealed that he or she is homosexual or transgender—and allegedly for no reason other than the employee’s homosexuality or transgender status.”*
- **Bostock**, a child welfare advocate, was terminated by Clayton County for “unbecoming” conduct after he began participating in a gay softball rec. league
- **Zarda**, a skydiving instructor, was terminated from his job days after mentioning he was gay
- **Stephens**, who worked for a funeral home, presented as a male when hired, but was terminated after she told her employer she planned to “live and work as a woman”

BOSTOCK V. CLAYTON COUNTY, GEORGIA, 590 U.S. ____ (2020).



- **Bostock's: 11th Circuit** – Found that law does not prohibit firing on the basis of being gay.
- **Zarda's case: 2nd Circuit** – Sexual orientation discrimination does violate Title VII
- **Stephen's Case: Sixth Circuit** – Title VII bars employers from firing employees because of transgender status

BOSTOCK V. CLAYTON COUNTY, GEORGIA, 590 U.S. ____ (2020).



- *“We must determine the ordinary public meaning of Title VII’s command that it is ‘unlawful . . . for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.’”*
- The parties agreed that when Title VII was written, it referred to biological sex.

BOSTOCK V. CLAYTON COUNTY, GEORGIA, 590 U.S. ____ (2020).



- *“The question isn’t just what ‘sex’ meant, but what Title VII says about it. Most notably, the statute prohibits employers from taking certain actions ‘because of’ sex. And, as this Court has previously explained, ‘the ordinary meaning of “because of” is “by reason of” or “on account of.””*
- Discrimination then and now means, *treating that individual worse than others who are similarly situated.*
- Discrimination under Title VII requires intent.
- Title VII focused on discrimination against individuals, not an entire class of people

BOSTOCK V. CLAYTON COUNTY, GEORGIA, 590 U.S. ____ (2020).



- *“An employer violates Title VII when it intentionally fires an individual employee based in part on sex. It doesn’t matter if other factors besides the plaintiff’s sex contributed to the decision. And it doesn’t matter if the employer treated women as a group the same when compared to men as a group. If the employer intentionally relies in part on an individual employee’s sex when deciding to discharge the employee—put differently, if changing the employee’s sex would have yielded a different choice by the employer—a statutory violation has occurred.”*
- *“Title VII’s message is ‘simple but momentous’: An individual employee’s sex is ‘not relevant to the selection, evaluation, or compensation of employees.’”*

BOSTOCK V. CLAYTON COUNTY, GEORGIA, 590 U.S. ____ (2020).



- *“For an employer to discriminate against employees for being homosexual or transgender, the employer must intentionally discriminate against individual men and women in part because of sex. That has always been prohibited by Title VII’s plain terms—and that ‘should be the end of the analysis.’”*
- *“We agree that homosexuality and transgender status are distinct concepts from sex. But, as we’ve seen, discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex; the first cannot happen without the second.”*

BOSTOCK V. CLAYTON COUNTY, GEORGIA, 590 U.S. ____ (2020).



- The court rejected the argument that a person's sex must be the sole reason for being fired.
- *“Because the law’s ordinary meaning at the time of enactment usually governs, we must be sensitive to the possibility a statutory term that means one thing today or in one context might have meant something else at the time of its adoption or might mean something different in another context.”*

BOSTOCK V. CLAYTON COUNTY, GEORGIA, 590 U.S. ____ (2020).



- *“If we applied Title VII’s plain text only to applications some (yet-to-be-determined) group expected in 1964, we’d have more than a little law to overturn. Start with Oncale. How many people in 1964 could have expected that the law would turnout to protect male employees? Let alone to protect them from harassment by other male employees? As we acknowledged at the time, ‘male-on-male sexual harassment in the workplace was assuredly not the principal evil Congress was concerned with when it enacted Title VII.’”*

BOSTOCK V. CLAYTON COUNTY, GEORGIA, 590 U.S. ____ (2020).



- In Title VII, Congress adopted broad language making it illegal for an employer to rely on an employee's sex when deciding to fire that employee. We do not hesitate to recognize today a necessary consequence of that legislative choice: **An employer who fires an individual merely for being gay or transgender defies the law.**

TITLE IX & TRANSGENDER STUDENTS



- Transgender students are disproportionately subjected to harassment and discrimination.
- Sexual violence statistics from the AAU's 2015 Climate Survey of 150,000 higher education students:
 - Those identifying as TGQN have rates comparable, or in many cases slightly higher, than females.
 - Sexual misconduct involving penetration by force or incapacitation
 - Undergraduates identifying as TGQN had the highest rates (12.4%), followed by undergraduate females (10.8%) and graduate TGQN students (8.3%).

TITLE IX & TRANSGENDER STUDENTS



- Common Concerns and Current Challenges
 - State-based legislation.
 - Waffling OCR.
 - Conflict between Title VII (EEOC) and Title IX (OCR).
 - Possible federal legislation.
 - Discomfort and the claim of reverse discrimination.
 - Educating campus communities and constituencies.
 - Religious concerns
 - Religious Institutions, club or group membership and/or leadership, sharing of restrooms etc.

TITLE IX & TRANSGENDER STUDENTS



- **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.

TRANSGENDER STUDENTS (UNDER TITLE IX/OCR??)



- 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 may 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.

TITLE IX & TRANSGENDER STUDENTS



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.

OCR CAIC RESOLUTION ON TRANSGENDER STUDENT ATHLETES



- Connecticut Interscholastic Athletic Conference(CIAC) has a policy permitting students to participate consistent with their gender identity.
 - CAIC’s policy is consistent with Connecticut law.
- Students and families from six districts filed an OCR complaint against CIAC.
- Complaint alleged that CAIC’s “Revised Transgender Participation Policy” denied girls opportunities to compete:
 - Including in state and regional meets, and
 - To receive public recognition critical to college recruiting and scholarship opportunities.
 - And that its application denied opportunities to girls competing in interscholastic girl their sex.

OCR CAIC RESOLUTION ON TRANSGENDER STUDENT ATHLETES



- OCR launched an investigation, finding CIAC in violation of Title IX.
- OCR then drafted a “Letter of Impending Enforcement Action” or a “Section 305” Letter.
 - VERY rare to see a 305 letter.
 - Issue is also pending in federal court
 - “OCR issues this Letter of Impending Enforcement Action because the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury have to date failed to voluntarily enter into resolution agreements to remedy the identified violations.”

OCR CAIC RESOLUTION ON TRANSGENDER STUDENT ATHLETES



- “OCR determined that the CIAC, by permitting the participation of certain male student-athletes girls’ interscholastic track in the state of Connecticut, pursuant to the Revised Transgender Participation Policy, denied female student-athletes athletic benefits and opportunities, including advancing to the finals in events, higher level competitions, awards, medals, recognition, and the possibility of greater visibility to colleges and other benefits.”

(<http://www.adfmedia.org/files/SouleDOEImpendingEnforcementLetter.pdf>)

OCR CAIC RESOLUTION ON TRANSGENDER STUDENT ATHLETES



- OCR wrote:
 - CIAC schools “placed female student-athletes in athletic events against male student-athletes, resulting in competitive disadvantages for female student-athletes. The athletic events in which the female student-athletes competed were coeducational; female student-athletes were denied the opportunity to compete in events that were exclusively female, whereas male student-athletes were able to compete in events that were exclusively male. Accordingly, the district’s participation in the athletic events sponsored by CIAC denied female student-athletes athletic opportunities that were provided to male student-athletes.”

(<http://www.adfmedia.org/files/SouleDOEImpendingEnforcementLetter.pdf>)

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 stated that students must compete by their biological sex.
- This is currently being litigated!

- **Single-Sex Classes**

- Transgender students are to be allowed to participate consistent with their gender identity.

DCL ON TRANSGENDER STUDENTS (RESCINDED)



- **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.

BULLYING & TITLE IX



PREVENTION AND REMEDIATION OF BULLYING AND CYBERBULLYING



- **Bullying** is:
 - *Repeated and/or severe*
 - *Aggressive behavior*
 - *Likely to intimidate or intentionally hurt, control, or diminish another person, physically, or mentally,*
 - *That is not speech or conduct otherwise protected by the First Amendment.*
- It often:
 - Includes repetitive comments about race, color, national origin, **sex, gender**, sexual orientation, or disability.
 - Involves an imbalance of power, aggression, and a negative repeated behavior.

PREVENTION AND REMEDIATION OF BULLYING AND CYBERBULLYING



- **Cyberbullying** is:
 - *When an individual is bullied using the Internet, interactive and digital technologies, or mobile phones.*
- Those who are electronically engaged can be cyberbullied at any time or location, making the effect of cyberbullying ubiquitous and acute.
 - Does it make the bullying more pervasive or persistent?
- Harassment, hazing, and stalking are often used to encompass cyberstalking or cyberbullying policy.

PREVENTION AND REMEDIATION OF BULLYING AND CYBERBULLYING



- Policy development.
 - Student Handbook/Code of Conduct.
 - Employee Manuals/CBAs.
 - Faculty Handbooks.
- Distribution and dissemination of policy information.
- Early intervention (using your Behavioral Intervention Team (BIT), Threat Assessment Team (TAT), etc.).
- Training of teachers, staff, and students.

DISCUSSION: BULLYING & THE LAST 4 MONTHS...



- What issues of bullying/cyber-bullying did you see during the COVID-19 Distance Learning shift?
- What approaches did you take?
 - What worked?
 - What did not work?
- Intervening in the online environment.
- Supportive measures?
- Other considerations?

ADVANCED SKILLS IN TITLE IX

- Building & Structing Your Title IX Team
- Levering & Empowering TIX Coordinator Authority
- Developing MOUs
- Policy Development
- Navigating Employee-Based Issues
- Working Collaboratively with Parents and Guardians

BUILDING & STRUCTURING YOUR TITLE IX TEAM

- Sample Core Team Structure
- Extended Team
- Discussion Questions

2020 REGULATIONS & THE TITLE IX COORDINATOR



- Designate a **Title IX Coordinator**.
- *“Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, who must be referred to as the ‘Title IX Coordinator.’”*
- What kind of blended titles might be appropriate to the role?
- More than anything, the breadth and depth of the regs make the case for how vital a Title IX Team will be to achieving compliance.
- Delegation & Oversight are crucial (if possible...)

TITLE IX TEAM

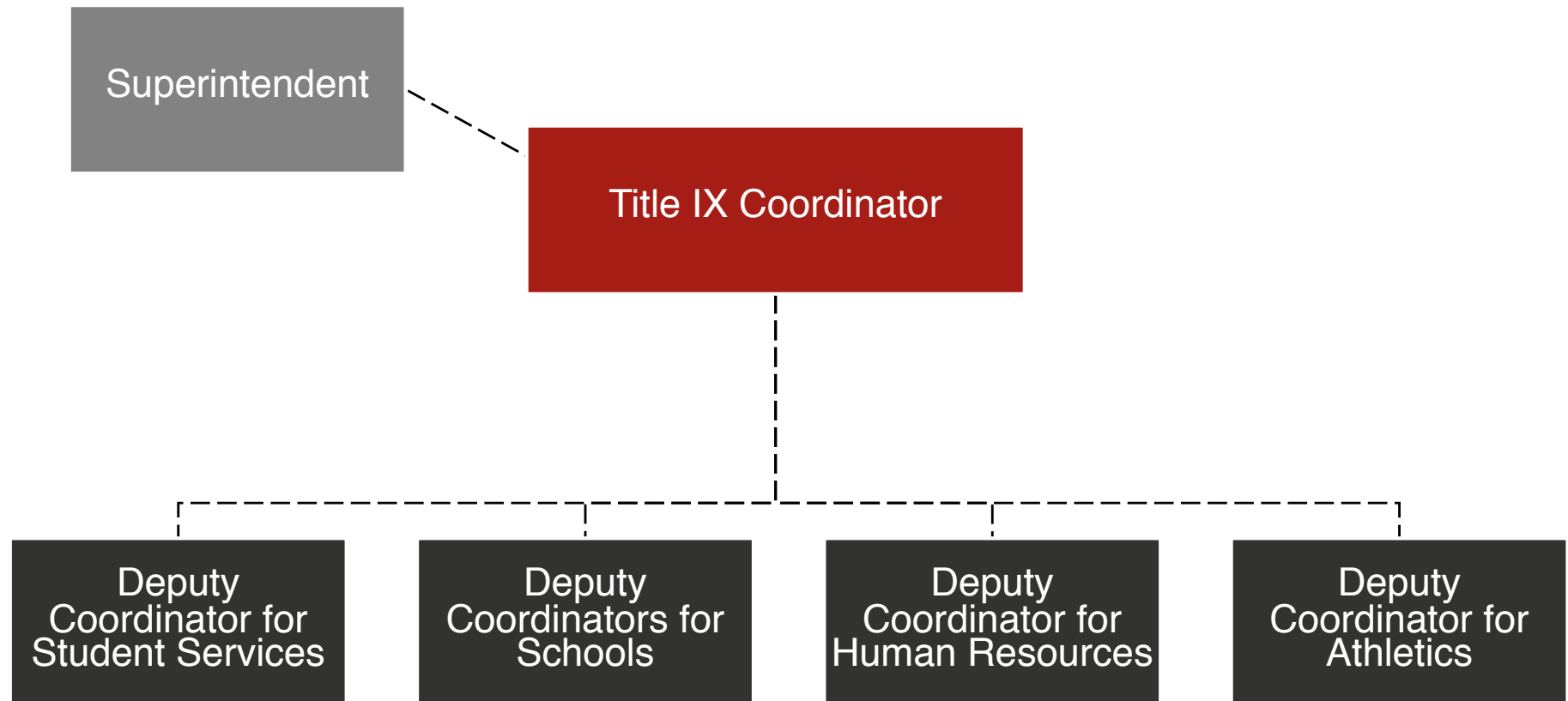


Title IX Teams will vary by school/district.

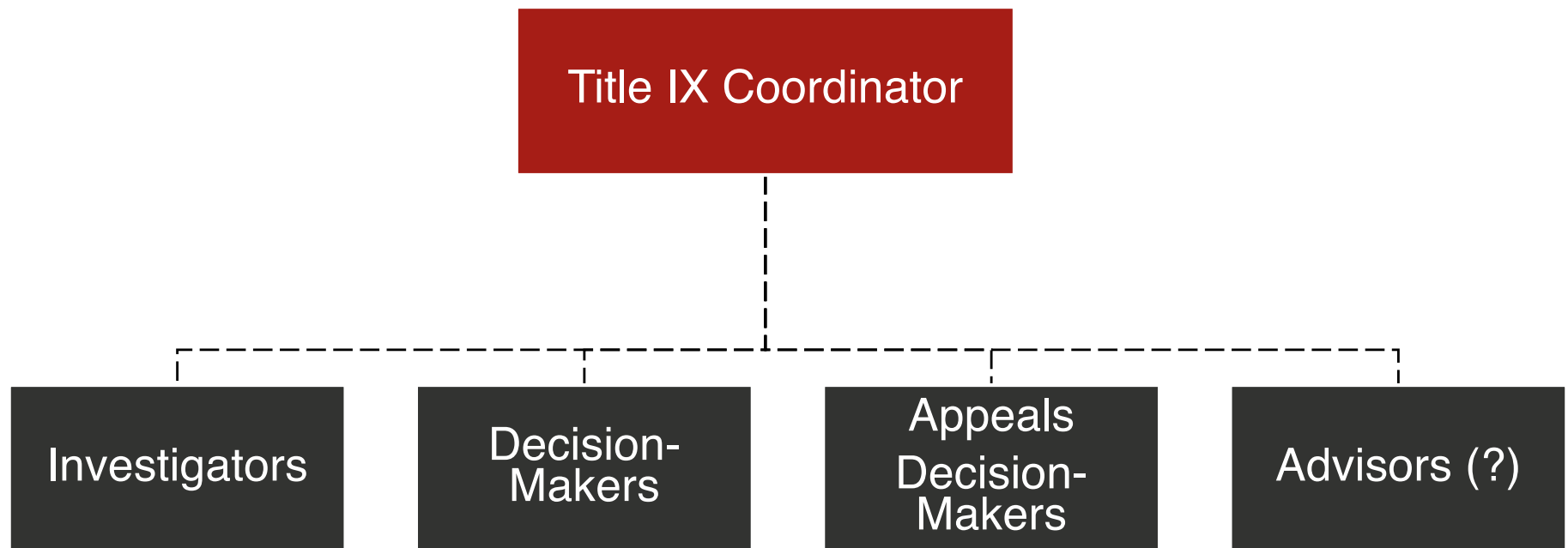
Sample Structures:

- TIXC
 - 3-5 deputies (Compliance & Coordination Team)
 - 1-2 investigators per building*
 - 1-2 decision-makers per building *
 - 1-2 Appeal officers per building*
 - *Recommend district-level as well
- TIXC
 - 1 representative/administrator from each school within the district
 - 3 or more members of the Academic administration staff
 - 3 or more members of Student Services administration
 - 3 or more members of the staff
 - 2 representatives from School Safety
 - 2 representatives from Human Resources
 - 2 representatives from Athletics
 - 2 representatives from Equity and Inclusion Office

SAMPLE TITLE IX COMPLIANCE & COORDINATION TEAM STRUCTURE – K-12



SAMPLE TITLE IX GRIEVANCE PROCESS TEAM



TITLE IX TEAM



- Job responsibilities of Deputy Coordinators?
 - Tailor scope and roles based on culture of recipient.
 - Delegation!
- Extended Title IX Team- Include key constituencies not represented on core team.
 - General Counsel
 - School Resource Officer*
 - School Counselors
 - Special Education
 - Others
- Regular meetings and coordination.
- Training and programming.
- Interaction with BIT.

TITLE IX TEAM DISCUSSION QUESTIONS



- What does your core team look like?
 - Structure.
 - Roles and functions.
- What does your extended team look like (if applicable)?
- What is working?
- What is not working?
- What would improve your team and its functioning?

THE COORDINATOR: ADVANCED QUESTIONS CONFLICTS OF INTEREST?



- **2015 Guidance**: *However, when designating a Title IX coordinator, a recipient should be careful to avoid designating an employee whose other job responsibilities may create a conflict of interest. For example, designating a disciplinary board member, general counsel, dean of students, superintendent, principal, or athletics director as the Title IX coordinator may pose a conflict of interest (2015 DCL on Title IX Coordinators, p. 3).*
- **2020 Regs**: *Require that any individual designated by a recipient as a Title IX Coordinator...not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.*

THE COORDINATOR: ADVANCED QUESTIONS CONFLICTS OF INTEREST?



- Can be the investigator.
- **Cannot** be the decision-maker.
- **Cannot** be the appeal officer.
- Trained in an unbiased fashion.
- Neutrality in title, office location/department, supervisory responsibilities, supervisor.
- Non-partisan (in terms of the grievance process)

THE COORDINATOR: ADVANCED QUESTIONS

FULL-TIME COORDINATOR?



- *Designating a full-time Title IX coordinator will minimize the risk of a conflict of interest and in many cases ensure sufficient time is available to perform all the role's responsibilities. If a recipient designates one employee to coordinate the recipient's compliance with Title IX and other related laws, it is critical that the employee has the qualifications, training, authority, and time to address all complaints throughout the institution, including those raising Title IX issues (2015 DCL on Title IX Coordinators, p. 3).*

THE COORDINATOR: ADVANCED QUESTIONS DEPUTY COORDINATORS



- *Although not required by Title IX, it may be a good practice for some recipients, particularly larger school districts, colleges, and universities, to designate multiple Title IX coordinators. For example, some recipients have found that designating a Title IX coordinator for each building, school, or campus provides students and staff with more familiarity with the Title IX coordinator. This familiarity may result in more effective training of the school community on their rights and obligations under Title IX and improved reporting of incidents under Title IX.*
- *A recipient that designates multiple coordinators **should designate one lead Title IX coordinator who has ultimate oversight responsibility.** A recipient should encourage all of its Title IX coordinators to work together to ensure consistent enforcement of its policies and Title IX (2015 DCL on Title IX Coordinators, p. 3).*

LEVERAGING & EMPOWERING TIX COORDINATOR AUTHORITY

- 2015 OCR Guidance & Resources
 - 2015 Letter to Coordinators
 - 2015 DCL
 - 2015 Resource Guide
- 2020 Regs

2015 LETTER TO TITLE IX COORDINATORS



- Thanks TIX Coordinators for their service and efforts.
- Stresses the centrality and import of the Title IX coordinator's work and responsibilities.
 - “You must have the full support of your institution.”
- Introduces the April 2015 “Dear Colleague Letter” to superintendents and presidents.
- Introduces the Title IX Resource Guide.

APRIL 2015 DEAR COLLEAGUE LETTER: TITLE IX COORDINATORS



- Sent to all K-12 superintendents and all college presidents.
- Targets the responsibilities, function, and centrality of the Title IX coordinator role.
- Reiterates requirement to designate a Title IX coordinator.
- Must have necessary positional and actual authority to perform their role.

2015 DCL: KEY TITLE IX COORDINATOR CONSTRUCTS



- Independence.
 - Coordinator should report to senior leadership (e.g. president or superintendent).
 - Avoid conflicts of interest.
- Full-time?
 - “it is critical that the employee has the qualifications, training, authority, and **time** to address all complaints throughout the institution.”
- Multiple/deputies.
 - Must have “**one lead** Title IX Coordinator who has ultimate oversight responsibility.”

2015 DCL TITLE IX COORDINATOR



- Responsibility and authority.
 - Notified of **ALL** Title IX-related reports and complaints.
 - Coordinate all responses to complaints.
 - Monitor all outcomes.
 - Identify and address patterns.
 - Assess campus climate.
 - May determine outcome or institutional response to complaint.
 - Must be protected from retaliation.

2015 DCL TITLE IX COORDINATOR



- Visibility.
 - Notice of non-discrimination with Title IX and Coordinator information posted and included in virtually all publications, materials, and websites.
 - Encourages Title IX-specific website.
- Training.
 - Institutions must ensure coordinators are well-trained and up-to-date on all responsibilities and all applicable laws, policies, guidance, regulations, institutional policies, and procedures.

TITLE IX RESOURCE GUIDE (2015)



- Broad-ranging, topically-organized summary guide for coordinators.
 - Intended to help coordinators perform their jobs and receive needed support from their institutions.
- Topics addressed:
 - Scope of Title IX (Resource guide vs. 2020 Regs).
 - Coordinator's responsibilities.
 - Administrative requirements and oversight.
 - E.g.: Grievance procedure requirements and notice of nondiscrimination.

TITLE IX RESOURCE GUIDE (2015)



- Topics addressed (cont.):
 - Key Title IX issues:
 - Recruitment, admissions, and counseling.
 - Financial assistance.
 - Athletics.
 - Sex-based vs. Sexual harassment (Resource guide vs. 2020 Regs).
 - Pregnant and parenting students.
 - Discipline.
 - Single-sex education.
 - Employment.
 - Retaliation.
 - Information collection and reporting.

2020 REGS & LEVERAGING AUTHORITY



- Visibility. Recipients must:
 - Notify applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, [of the Title IX Coordinator] including:
 - Name or title
 - Office address
 - Electronic mail address
 - Telephone number
 - Indicate reports can be made to the Coordinator at any time

- Visibility (cont.)
 - Each recipient must **prominently display the contact information** required to be listed for the Title IX Coordinator...and the [Title IX-based] policy...on its website, if any, and in **each handbook or catalog** that it makes available to:
 - Employees
 - Students
 - Parents or legal guardians of elementary and secondary school students
 - All unions or professional organizations holding collective bargaining or professional agreements with the recipient

DISCUSSION

LEVERAGING YOUR AUTHORITY



- What have you or your school/district done to:
 - Leverage your authority and/or empower your position?
 - Enhance your profile within the school/district?
 - Get buy-in from senior leadership?
 - Get more resources:
 - For resolution-based efforts? (e.g. investigators)
 - For programming and education efforts?
 - For training efforts?
- What are you struggling with most?
- What has not worked?

DEVELOPING MOUS

- Local Law Enforcement
- Advocacy Organizations



MOU: LOCAL LAW ENFORCEMENT



- Who should be at the table?
- Interaction with School Police/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



- Investigation
 - Timing; Sharing of Evidence/Information
 - Concurrent Investigations
- Remedies
 - Interim
 - Long-term
- Prevention
- Cross-Training
- Point of Contact

MOU: ADVOCACY ORGANIZATIONS



- Scope
- Confidential Reporting
- Crisis Intervention
- Victim Advocacy/Respondent Support
- Assistance with legal orders or protection, TROs, etc.
- Counseling
- Cross-Training
- Prevention & Educational Efforts
- Point of Contact

POLICY DEVELOPMENT

- Taking Inventory of Existing Policies
- Policy Needs Assessment
- ATIXA Model Policy Definitions
- Advanced Policy Topics

CREATOR AND IMPLEMENTER OF APPROPRIATE POLICY



- The Title IX Coordinator must be an integral part of the policy development and review process.
- Ensure all policies related to sex/gender misconduct and discrimination are legally accurate and complete.
- If the institution has multiple policies (for teachers, staff, students) and procedures, must ensure that these policies are not conflicting, or contain conflicting definitions.
 - A strong argument to consider a single policy!
 - ATIXA's One Policy, Two Procedures Model (1P2P) (More on this later)
 - ATIXA Model Policy and Procedure

SOURCES OF POLICY REQUIREMENTS



- Federal statutes
- Federal regulations
- State statutes
- State regulations
- Collective Bargaining Agreements
- OCR Resolution Agreements
- Best Practices/Risk Management requirements

GETTING A HANDLE ON YOUR DISTRICT'S "POLICY"



- 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

TAKING “INVENTORY”



- Are all of these “policy sources” consistent with each other?
 - Anti-bullying/cyberbullying policy (often required under state law)
 - Harassment and Discrimination policies (required by Title IX, often required under state law)
 - Harassment and Discrimination procedures
 - Transgender and Gender Expansive Students
 - Staff conduct code
 - Staff conduct with students
 - Use of social media by school employees
 - Hazing
 - Student conduct code (including on buses)
 - Disciplinary policies (including removal) of students with disabilities
 - Weapons, violence, and school safety
 - Conduct processes (often defined by state law)
 - Child abuse reporting (and procedures) (often defined by state law)

TAKING “INVENTORY” (CONT.)



- Are all of these “policy sources” consistent with each other?
 - Abuse of students by employees
 - Computer, Network, and Technology Acceptable Use
 - Student use of cellular telephones and other electronic devices
 - Student dress code
 - School-sponsored travel
 - Parental 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)
 - Security camera policy (including buses)
 - Questioning and searches of students
 - Speaker policy
 - Public right to know-freedom of access issues
 - Visitors to the schools

POLICY COLLEAGUES



- May need “orientation” to Title IX requirements, intersection with existing policies, need to implement new policies or procedures:
 - Superintendent
 - Assistant Superintendent
 - Board’s Policy Committee
 - General Counsel (if applicable)
 - Risk Management (if applicable)
 - Principals/Vice-principals
 - Are statements in student/parent handbooks consistent with Board-level and other District-level policies?
 - What about school-level websites?
 - Are descriptions of procedures accurate and up-to-date?
 - Beware of inadvertently creating new “policy” through handbook language

NOTICE OF NON-DISCRIMINATION REQUIREMENT



- Title IX regulations **require** that schools provide notice to students, parents, and others that they do not discriminate on the basis of race, color, national origin, sex, disability, and age, and if applicable, that they provide equal access to the Boy Scouts of America and other designated youth groups. 34 C.F.R. Section 106.9.
- Notification must state that the requirement of non-discrimination in educational programs and activities extends to employment and admissions, and that questions may be referred to the Title IX Coordinator, or to the Office for Civil Rights at the U.S. Department of Education.
- Methodology may include posting notices, publishing in local newspapers and magazines, distributing memos or other written communications to students and employees.
- Include a statement in all publications, application forms, or recruitment materials.

<https://www2.ed.gov/about/offices/list/ocr/docs/nondisc.pdf>

OCR'S SAMPLE NON-DISCRIMINATION NOTICE LANGUAGE



- 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 No.
 - Name and/or Title2
 - Address
 - Telephone No.
- For further information on notice of nondiscrimination, visit <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm> for the address and phone number of the office that serves your area, or call 1-800-421-3481.

*Add sexual orientation, gender identity, and/or gender expression if applicable under your state law and/or district policy.

<https://www2.ed.gov/about/offices/list/ocr/docs/nondisc.pdf>

NAVIGATING EMPLOYEE BASED-ISSUES



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, national origin in employment
- **Title IX:** prohibits discrimination on the basis of sex in programs and activities receiving federal financial assistance
 - Applies to students and employees



INTERSECTION OF TITLE VII AND TITLE IX



- 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 as to nature of prompt, fair and equitable

Title VII

- Applies only employees
- 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 victim

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

TITLE VII AND TITLE IX IN INVESTIGATIONS



- Consider:
 - Role of school equity/AA/EOP officer.
 - Human resources.
- Oversight of deputy coordinators/investigators.
- Ability to merge/combine investigatory and hearing processes.
- Additional rights afforded to employees under Title IX

WORKING COLLABORATIVELY WITH PARENTS AND GUARDIANS



ISSUES TO CONSIDER WHEN WORKING WITH PARENTS AND GUARDIANS



- Transparency and Clarity Regarding Policy and Process
- Parental 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 Issues
- Ongoing Engagement
- Role of the Title IX Coordinator

TRANSPARENCY AND CLARITY REGARDING POLICY AND PROCESS



- Engage parents early; Don't wait for an incident to happen
- Helps parents to know what to expect if/when an incident occurs
- Shows district/school commitment to Title IX
- Helps to invite parents to be allies in the process

TRANSPARENCY AND CLARITY REGARDING POLICY AND PROCESS



What?

- Overview of Title IX and what is covered
- District/school policy and procedures
- Title IX Coordinator/Deputy Coordinator(s) information
 - Name, Location, Phone, and Email
- Other reporting options (within district, state and federal)
- Interim and supportive measures
- Investigation/disciplinary processes
- In-school and community resources
- Rights of the parties
- Privacy and confidentiality

TRANSPARENCY AND CLARITY REGARDING POLICY AND PROCESS



How?

- Plain language
- 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

TRANSPARENCY AND CLARITY REGARDING POLICY AND PROCESS



When?

- Upon student enrollment
- 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 volunteer training/orientation
- PTA meetings
- Other

NOTIFYING PARENTS/GUARDIANS OF A REPORTED INCIDENT



- When do you call parents/guardians?
 - Not required under Title IX
 - Regs defer to legal rights of parents/guardians
 - 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

NOTIFYING PARENTS/GUARDIANS OF A REPORTED INCIDENT



- Other considerations
 - Concurrent/potential criminal investigation
 - Abuse in household
 - Privacy considerations (E.g., transgender students)
 - Severity of incident
 - Wishes of student
 - Potential disciplinary consequences for responding party
- What about witnesses?
 - Not entitled to an “advisor” like the parties
 - Some of the other considerations above may be applicable

ENGAGING PARENTS/GUARDIANS AFTER A RECEIVING A REPORT



- Review policies, procedures, and key staff who will be involved in resolving report
- Investigation/interview/resolution process including appeal process (if applicable)
- Review effects of any interim measures
- 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 reporting and responding party parents/guardians

SETTING AND MANAGING EXPECTATIONS



- Emphasize obligation to stop, prevent, and remedy
- 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; adjust according to age of student
- Other

PARENT/GUARDIAN PARTICIPATION



- 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
- Participation in any informal resolution process
 - Parent/Guardian approval needed?
- State law versus district/school policy

PARENT/GUARDIAN PARTICIPATION



- Special considerations
 - Age-appropriateness
 - Role in special education processes
 - IEP development and revision
 - Manifestation determination process
 - Due process hearing requests
 - FERPA considerations (more on next slide)

FERPA RIGHTS/ACCESS TO RECORDS



- Right to “inspect and review” education records of their child
- What if education records contain information about other students (e.g. surveillance footage, witness statements, etc.)?
 - Only view the specific information directly related to their child unless the information about the other students cannot be segregated/redacted without destroying its meaning
- When possible, ED recommends obtaining consent of parents/guardians of other student(s) whose information will be disclosed

NAVIGATING DIFFICULT PARENT ISSUES



- Circumvention or undercutting
- Parent as the alleged harasser
- Retaliation
- “Well-connected” parent
- Social media activity

ONGOING ENGAGEMENT WITH PARENTS/GUARDIANS



- Prevention and awareness
- Partner regarding appropriate behavior and physical contact
- Encourage reporting
- Enable various reporting methods

QUESTIONS?



CONTACT INFORMATION

Tanyka M. Barber, J.D.

Tanyka.Barber@tngconsulting.com

Kim Pacelli, M.Ed., J.D.

[*Kim.Pacelli@tngconsulting.com*](mailto:Kim.Pacelli@tngconsulting.com)

LIMITED LICENSE AND COPYRIGHT. BY PURCHASING, AND/OR RECEIVING, AND/OR USING ATIXA MATERIALS, YOU AGREE TO ACCEPT THIS LIMITED LICENSE AND BECOME A LICENSEE OF PROPRIETARY AND COPYRIGHTED ATIXA-OWNED MATERIALS. THE LICENSEE ACCEPTS ALL TERMS AND CONDITIONS OF THIS LICENSE, AND AGREES TO ABIDE BY ALL PROVISIONS. NO OTHER RIGHTS ARE PROVIDED, AND ALL OTHER RIGHTS ARE RESERVED. THESE MATERIALS ARE PROPRIETARY AND ARE LICENSED TO THE LICENSEE ONLY, FOR ITS USE. THIS LICENSE PERMITS THE LICENSEE TO USE THE MATERIALS PERSONALLY AND/OR INTERNALLY TO THE LICENSEE'S ORGANIZATION FOR TRAINING PURPOSES, ONLY. THESE MATERIALS MAY BE USED TO TRAIN TITLE IX PERSONNEL, AND THUS ARE SUBJECT TO 34 CFR PART 106.45(B)(10), REQUIRING ALL TRAINING MATERIALS TO BE POSTED PUBLICLY ON A WEBSITE. NO PUBLIC DISPLAY, SHARING, OR PUBLICATION OF THESE MATERIALS BY A LICENSEE/PURCHASER IS PERMITTED BY ATIXA. YOU ARE NOT AUTHORIZED TO COPY OR ADAPT THESE MATERIALS WITHOUT EXPLICIT WRITTEN PERMISSION FROM ATIXA. NO ONE MAY REMOVE THIS LICENSE LANGUAGE FROM ANY VERSION OF ATIXA MATERIALS. LICENSEES WILL RECEIVE A LINK TO THEIR MATERIALS FROM ATIXA. THAT LINK, AND THAT LINK ONLY, MAY BE POSTED TO THE LICENSEE'S WEBSITE FOR PURPOSES OF PERMITTING PUBLIC ACCESS OF THE MATERIALS FOR REVIEW/INSPECTION, ONLY. SHOULD ANY LICENSEE POST OR PERMIT SOMEONE TO POST THESE MATERIALS TO A PUBLIC WEBSITE OUTSIDE OF THE AUTHORIZED MATERIALS LINK, ATIXA WILL SEND A LETTER INSTRUCTING THE LICENSEE TO IMMEDIATELY REMOVE THE CONTENT FROM THE PUBLIC WEBSITE UPON PENALTY OF COPYRIGHT VIOLATION. THESE MATERIALS MAY NOT BE USED FOR ANY COMMERCIAL PURPOSE EXCEPT BY ATIXA.

—