



SHIPMAN

2024 Title IX Final Regulations:

*Coordinator, Investigator, Decisionmaker
and Informal Resolution Facilitator Training*

Presented by: Jessica Richman Smith, Sarah
Gleason, and Kelsey Scarlett

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Title IX of the Education Amendments of 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.”



Title IX: The Basics



- Applies to programs or activities operated by **schools that receive federal financial assistance**, including elementary and secondary schools, colleges, universities, whether public or private.
- Prohibits schools receiving federal funds from **discriminating on the basis of sex**.

Title IX Enforcement

Note: Injunctions

OCR

- Federal DOE agency responsible for ensuring equal access to education and promoting educational excellence through enforcement of civil rights
- Investigates allegations of discrimination and obtains remedies for complainants to address discrimination

Courts

- Federal government (DOJ)
- Individual legal claims
- Class claims

Title IX History

Prior to August 2020 Final Regulations

No binding federal regulations related to sexual harassment under Title IX, only administrative guidance issued by the Department's Office for Civil Rights (OCR), which enforces Title IX.

August 2020 Final Regulations

- A **new definition** of sexual harassment
- A **detailed grievance process** for formal complaints of sexual harassment - **specific roles** for administrators in grievance process
- A **duty** for schools to investigate complaints of **conduct that occurred within their program or activity**

2024 Federal Regulations

Significant Changes
to August 2020
Final Regulations

Major Highlights – 2024 Federal Regulations

Significantly expands definition of sexual harassment, now termed “sex-based harassment,” and what must be investigated.

One grievance process for K-12, including sex-based discrimination.

Generally eliminates the litigation-type investigation requirements in K-12, but Title IX jurisdiction expands.

Expands coverage to include LGBTQ+ but does not address athletics

Scope of Title IX

- Discrimination on the basis of sex includes discrimination on the basis of
 - ✓ sex stereotypes,
 - ✓ sex characteristics,
 - ✓ pregnancy or related conditions,
 - ✓ sexual orientation, and
 - ✓ gender identity.

When **MUST** A School District Take Action?

A District with knowledge of conduct that **reasonably** may constitute sex discrimination in its **education program** or **activity** **must respond promptly and effectively.**



Reporting Requirement



Title IX mandates that **ALL** elementary and secondary school employees notify the district's Title IX Coordinator (or designee) when the employee has **information** about conduct that **reasonably may constitute sex discrimination under Title IX.**

Reporting Under Title IX



Any person may report sex discrimination, including sex-based harassment, whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sex-based harassment.

All employees of the District have an obligation to report instances of sex discrimination, including sex-based harassment.

“Employee”



Employee means:

- a teacher, substitute teacher, school administrator, school superintendent, guidance counselor, school counselor, psychologist, social worker, nurse, physician, school paraprofessional or coach employed by the District or working in a public elementary, middle or high school; or
- any other individual who, in the performance of their duties, has regular contact with students and who provides services to or on behalf of students enrolled in a public elementary, middle or high school, pursuant to a contract with the District.



This definition is taken from state law and is not included in the Final Regulations.

All Employees Must Know:



- **Title IX Coordinator or designee** responsible for receiving complaints or allegations of sex discrimination, including sex-based harassment
- **Non-discrimination policy**
- **Grievance procedures** for the prompt and equitable resolution of complaints of sex discrimination

“Sex Discrimination”

“

...occurs when a person, because of the person's sex, is denied participation in or the benefits of any education program or activity receiving federal financial assistance.

”

“Sex-based Harassment”

“...is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the bases of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity, that is:
(1) *quid pro quo* harassment; (2) hostile environment harassment; or (3) specific offenses.

”

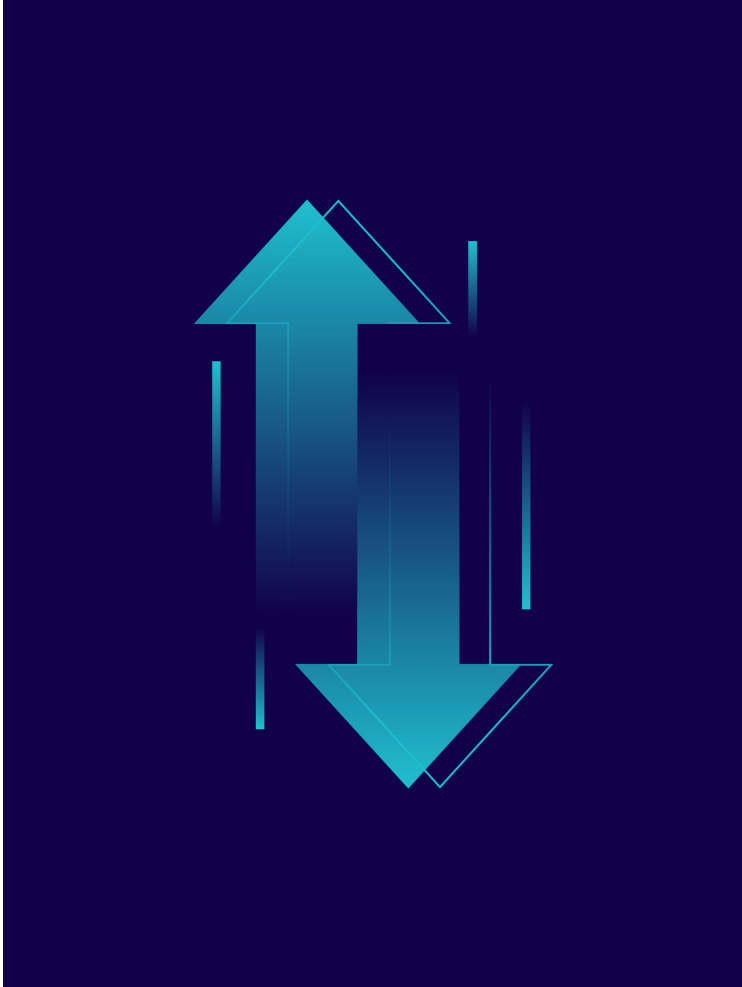
1. Quid Pro Quo Harassment

“

...An employee, agent, or other person authorized by the District to provide an aid, benefit, or service under the District education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

”

Quid Pro Quo – “This for That”



- Submission to such conduct may either be made explicitly or implicitly.
- If this occurs, it does not matter whether the student resists and suffers the threatened harm or submits to and avoids the threatened harm.
- Quid pro quo sex-based harassment can also occur when a District employee or another person authorized by the District conditions a benefit or service on another employee’s submission to **unwelcome conduct**.

2. Hostile Environment Harassment

“...Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the District’s education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:”

Hostile Environment Factors

The degree to which the conduct affected the complainant's ability to access the District's education program or activity;

The type, frequency, and duration of the conduct;

The parties' ages, roles within the District's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

The location of the conduct and the context in which the conduct occurred; and

Other sex-based harassment in the District's education program or activity.

3. Specific Offenses

- **Sexual assault** meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
- **Dating violence** meaning 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 three factors.
- **Domestic violence** meaning felony or misdemeanor crimes committed by a person who fits within one of four possible categories.
- **Stalking** meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) Fear for the person's safety or the safety of others; or (B) Suffer substantial emotional distress.

“Sexual Assault”

“

...an offense classified as forcible or nonforcible sex offense under the uniform crime reporting system of the FBI:

- Rape, forcible sodomy, sexual assault with an object, fondling, incest, statutory rape.

”

20 U.S.C. 1092(f)(6)(A)(v)

Examples of Sex-Based Harassment

- Unwanted sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature including:
 - Statements or other conduct indicating that a student's submission to, or rejection of, sexual overtures or advances will affect the student's grades and/or other academic progress.
 - Unwelcome attention and/or advances of a sexual nature, including verbal comments, sexual invitations, leering and physical touching.
 - Display of sexually suggestive objects, or use of sexually suggestive or obscene remarks, invitations, letters, emails, text messages, notes, slurs, jokes, pictures, cartoons, epithets or gestures.
 - Touching of a sexual nature or telling sexual or dirty jokes.
 - Making sexual comments, jokes or gestures (written or verbal).
 - Distributing sexually explicit images such as drawings or pictures, or written materials (including cyber-distribution).
 - Transmitting or displaying emails or websites of a sexual nature.
 - Calling students sexually charged names.
 - Spreading sexual rumors.

Jurisdiction

- Title IX regulations apply to all sex discrimination occurring under a District's **education program** or activity in the United States.
- Includes conduct that is subject to the District's disciplinary authority.
- The District has an obligation to address a sex-based hostile environment under its education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the District's education program or activity or outside the United States.

CONSIDER: What is the scope of your school's authority to regulate off-campus conduct?

“Pregnancy and Related Conditions”



Pregnancy and related conditions means

- 1) Pregnancy, childbirth, termination of pregnancy, or lactation;
- 2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
- 3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.



Pregnancy and Related Conditions: Notification Requirements

ALL EMPLOYEES must:

- When notified by a student OR a student's parent that the student is pregnant or has a related condition, **PROMPTLY**
 1. provide the student or parent with the Title IX Coordinator's contact information; **AND**
 2. inform the person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the District's education program or activity.

Pregnancy and Related Conditions: Students

- Upon notification of a student's pregnancy or related conditions, the District must take specific action:
 - Inform the student of the rights under Title IX
 - Make reasonable modifications to the District's policies, practices, or procedures as necessary to prevent sex discrimination and ensure equal access. Each reasonable modification must be based on the student's individualized needs and must be done in consultation with the student.
 - Reasonable modifications may include, but are not limited to, breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, drinking, or using the restroom; intermittent absences to attend medical appointments; access to online or homebound education; changes in schedule; extensions of time; counseling; changes in physical space or supplies; elevator access.
 - Provide voluntary access to a separate and comparable portion of program or activity.
 - Provide a voluntary leave of absence.
 - Ensure the students can access a lactation space.
 - Not require supporting documentation unless the documentation is necessary and reasonable.

Pregnancy and Related Conditions: Employees

- For Board employees, the District must treat pregnancy or related conditions as any other temporary medical conditions for all job-related purposes.
- The District must provide **reasonable break time for an employee to express break milk or breastfeed** as needed. The District must also ensure that an employee can access a lactation space, which must be a space other than a bathroom that is clean, shielded from view, free from intrusion from others, and may be used by an employee for expressing breast milk or breastfeeding as needed.
- If no other leave policies available, must provide an employee with a **voluntary leave of absence without pay** for a reasonable period of time.

Pregnancy and Employees: Other Laws

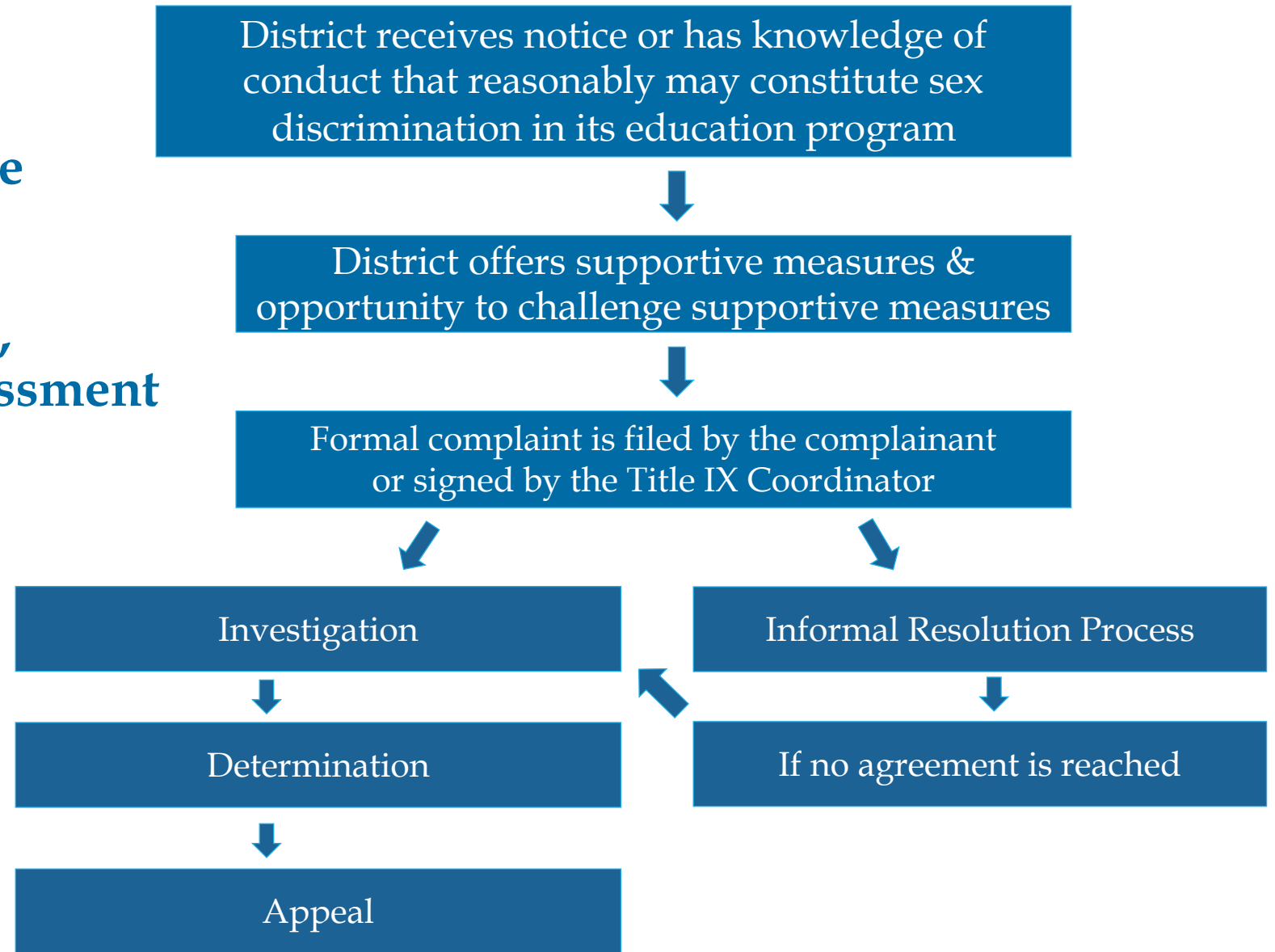
Other laws that apply to employees or applicants affected by pregnancy, childbirth, or related medical conditions include:

- Pregnant Workers Fairness Act (took effect June 27, 2023)
- Title VII
- ADA
- FMLA
- PUMP Act

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Grievance Procedure

Grievance Procedure for Allegations of Sex Discrimination, including Sex-based harassment



“Complaint”



Complaint means an oral or written request to the District that objectively can be understood as a request for the District to investigate and make a determination about alleged discrimination under Title IX.



Who Can Make a Complaint?

1. A complainant
2. A parent, guardian or other authorized legal representative with the legal right to act on behalf of a complainant
3. The Title IX Coordinator, under certain conditions

With respect to claims **NOT concerning sex-based harassment:**

1. Any student or employee; or
2. Any person other than a student or employee who was participating or attempting to participate in the District's education program or activity at the time of the alleged sex discrimination.



“Complainant”



Complainant is

- 1) A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
- 2) A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX and who was participating or attempting to participate in the District’s education program or activity at the time of the alleged sex discrimination.



“Respondent”

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Respondent means a person who is alleged to have violated the District’s prohibition on sex discrimination.

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Students with Disabilities



- If the complainant OR respondent is a student with a disability under Section 504 or the IDEA, the Title IX Coordinator must consult with one or more members of the student's

- Planning and placement team OR
- Section 504 team

to determine how to comply with the IDEA or Section 504, as applicable, throughout the implementation of the grievance procedures AND in the implementation of supportive measures.

When Title IX Coordinator Receives Notice, the Title IX Coordinator Must:

Take the following actions to promptly and effectively end any sex discrimination in the educational program or activity, prevent its recurrence and remedy its effects:

- ✓ Treat the parties equitably;
- ✓ Offer and coordinate supportive measures;
- ✓ Notify the complainant (and respondent, if a complaint has been made) of the grievance procedures;
- ✓ In response to a complaint, initiate the grievance procedures or informal resolution, if available and appropriate;
- ✓ In the absence of a complaint, determine whether to initiate a complaint (and if a complaint is initiated, notify the complainant and address complainant's concerns, if any, **prior** to initiating complaint); and
- ✓ Regardless of whether a complaint is initiated, take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur.

Title IX Coordinator Obligations

Title

- The District must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under Title IX. This is the “Title IX Coordinator.”
- This specific title must be used to identify this individual.

Training

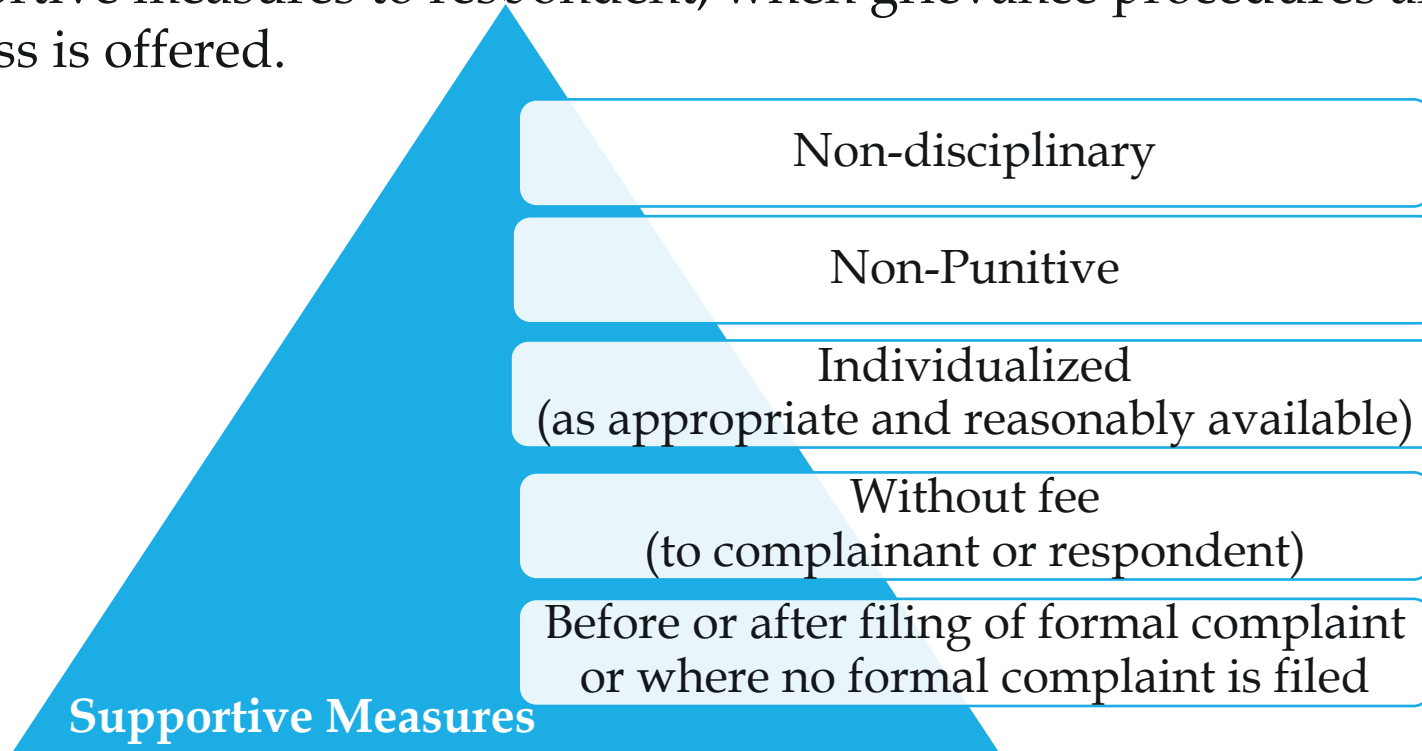
- Must be trained on Title IX policies and procedures.
- Ensure that school employees receive annual training as required by the Final Regulations.

Obligations

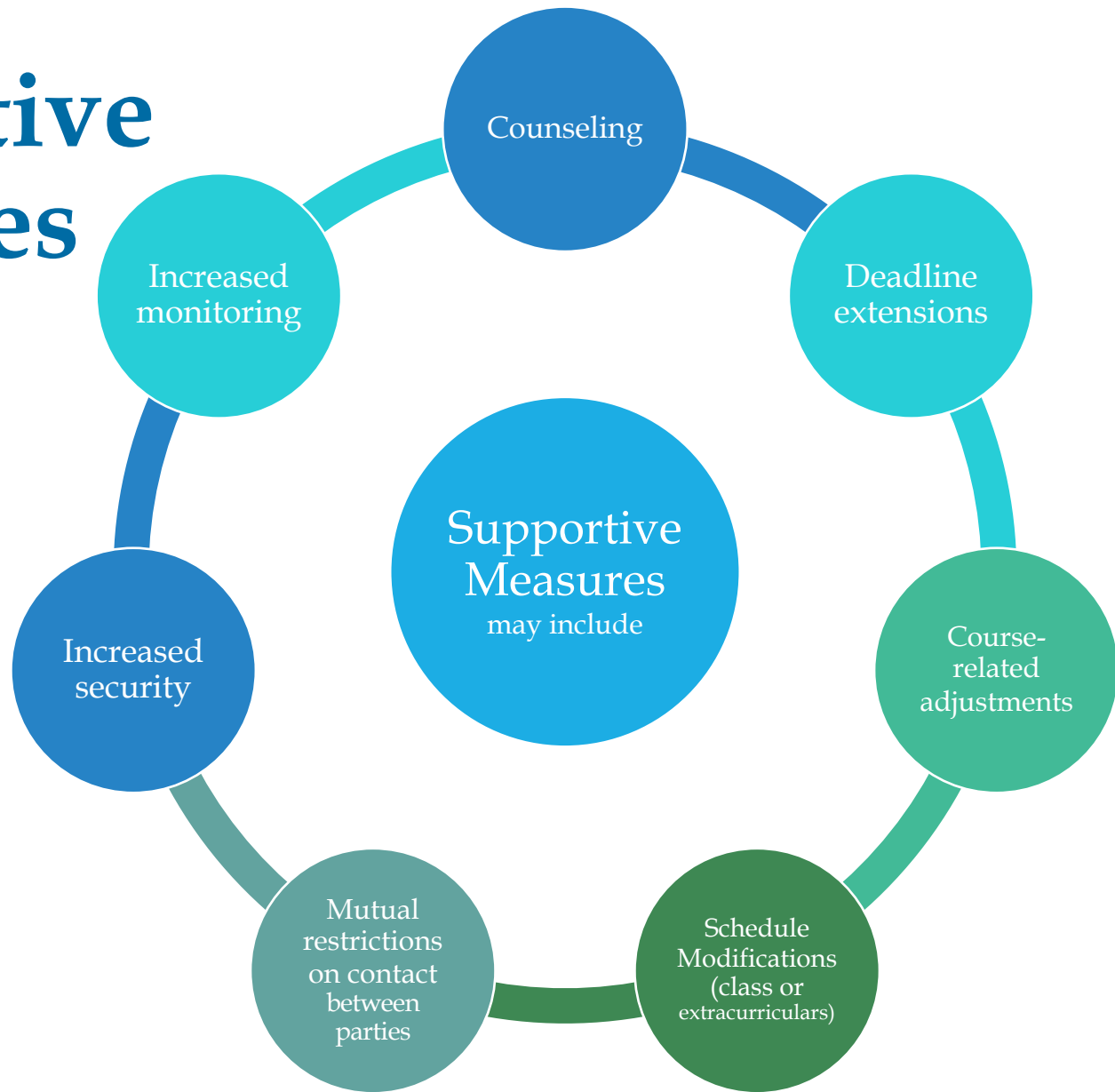
- Monitor the District’s compliance with Title IX.
- Ensure appropriate education and training is provided.
- Offer and coordinate supportive measures.
- Coordinate the response to all reports of sex discrimination and sex-based harassment.

Supportive Measures

The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures *with* or *without* filing a formal complaint, and explain to the complainant the process for filing a formal complaint. Also, offer and coordinate supportive measures to respondent, when grievance procedures are initiated or informal resolution process is offered.



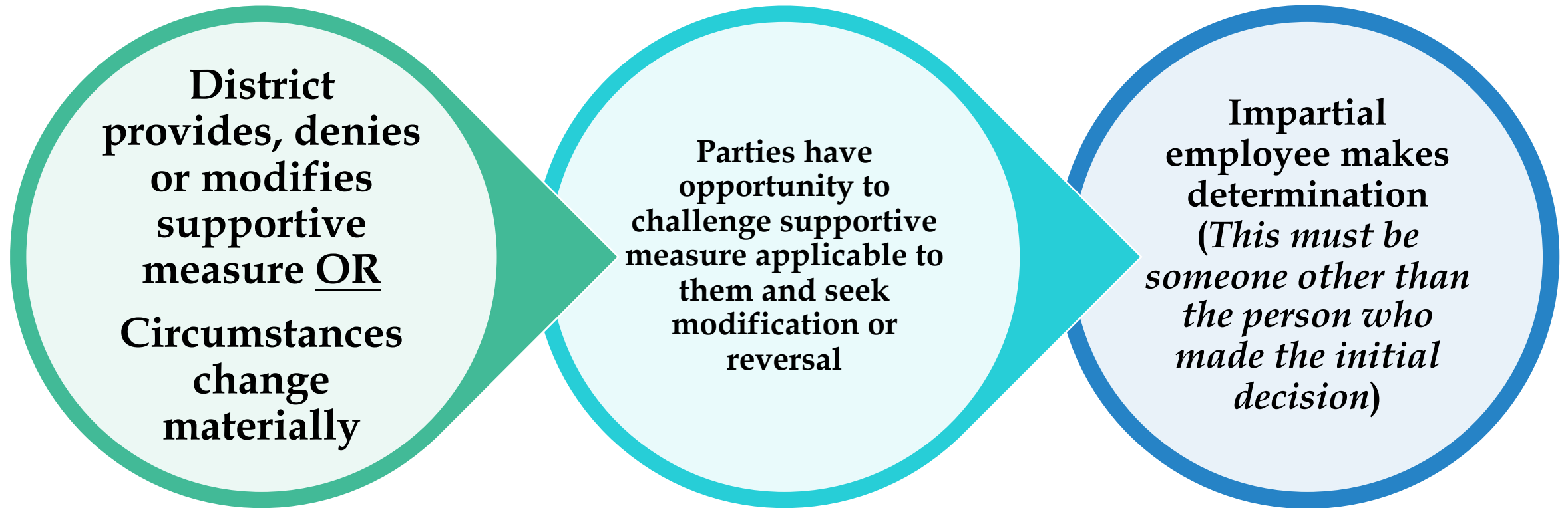
Supportive Measures



The District will keep supportive measures confidential unless it impairs the ability to provide the supportive measures (i.e. a no-contact order).

Supportive measures **must not unreasonably burden** either party and must be designed to protect the safety of the parties or the District's education environment.

Challenge to Supportive Measures



Emergency Removal

While the District must go through the grievance procedure before imposing any disciplinary sanctions or other actions that are not supportive measures, the District can remove a student respondent on an emergency basis.



The District must undertake an individualized safety and risk analysis and determine that an imminent and serious threat to the health or safety of any student or other individual arising from the allegation justifies removal.



The respondent must be provided with notice and an opportunity to challenge the decision immediately following removal.

This does not change any rights students have under the IDEA, Section 504, or the ADA.

Outstanding Questions

- How does this impact the student discipline process in Connecticut?
- How does the district preserve the rights of all parties?
- What is the impact on students under the IDEA and Section 504?



Administrative Leave

Similarly, the District may place an employee respondent on administrative leave during the pendency of the grievance procedure.



This does not change any rights employees have under the ADA.



10 Minute Break

Complaint

The filing of a complaint triggers the beginning of the formal grievance procedure:



- Title IX Coordinator will inform complainant about the right to file a complaint
- **But**, will *not encourage or discourage* a person to file a formal complaint

- At the time of filing, the complainant must be participating or attempting to participate in the District's education program or activity.
- Complaint can be filed by a student's parent or the Title IX Coordinator

- When the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is **NOT** the complainant or otherwise a party

When Should Title IX Coordinator Sign a Complaint?

There may be times when a complainant does not want to file a formal complaint. The Title IX Coordinator may respect the complainant's wishes or may determine that they must sign a complaint. Title IX Coordinator must consider, at minimum:

- Complainant's request not to proceed with complaint
- Complainant's reasonable safety concerns regarding initiation of a complaint
- Risk that additional acts of sex discrimination would occur if complaint is not initiated
- Severity of alleged sex discrimination
- Age and relationship of parties
- Scope of alleged sex discrimination
- Availability of evidence to assist decisionmaker
- Whether District could end the alleged sex discrimination and prevent its recurrence without initiating grievance procedures

When Should Title IX Coordinator Sign a Complaint?

After considering these factors, if the Title IX Coordinator determines that the alleged conduct:

1. presents an imminent and serious threat to the health or safety of the Complainant or other person OR
2. prevents the District from ensuring equal access on the basis of sex to its education program or activity

the Title IX Coordinator *may* initiate a complaint.

Query: Under what circumstances may a Title IX Coordinator sign a complaint?

If the Title IX Coordinator Signs a Complaint...

- If the Title IX Coordinator signs a complaint, the Title IX Coordinator **must notify the complainant** prior to doing so and appropriately address reasonable concerns about the complainant's safety or the safety of others, including by providing supportive measures.
- **Regardless of whether a complaint is initiated**, The Title IX Coordinator must take other appropriate prompt and effective steps, in addition to steps necessary to effectuate the remedies provided to an individual complainant, if any, to ensure that sex discrimination does not continue or recur within the District's education program or activity.

Grievance Procedure: Basic Requirements

The filing of a complaint is the first step in the sex discrimination grievance procedure. The process must treat complainants and respondents equitably by:

Providing Remedies to Complainant if/when Respondent is Found Responsible

- Remedies must be designed to restore or preserve equal access to the District's education program or activity
- Remedies may include supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent

Disciplinary Sanctions ONLY Following Grievance Procedure

- Grievance procedure must be followed before any imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent
- Grievance procedure must be **reasonably prompt**
- Presumption that the respondent is not responsible

Grievance Procedure: Basic Requirements

Evaluation of Evidence

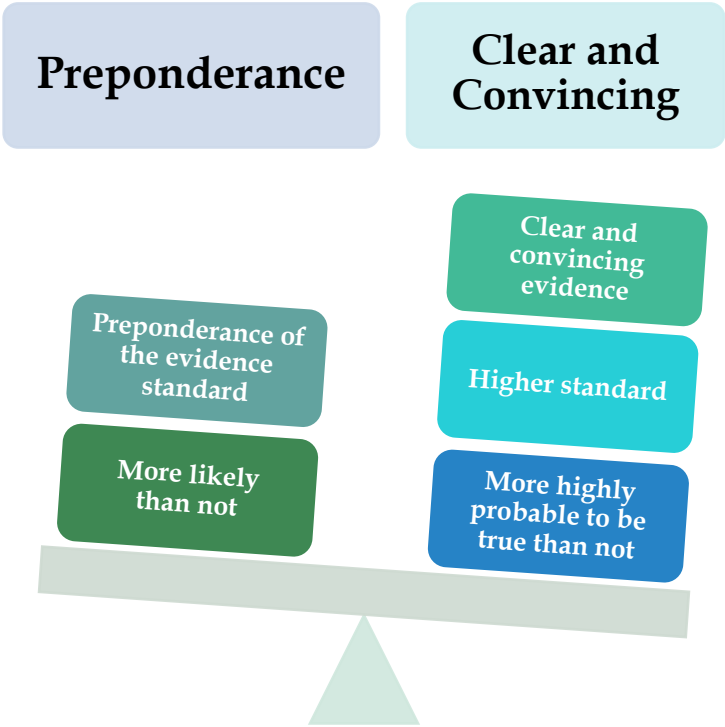
- The grievance procedure requires an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence.
- Credibility determinations may not be based on a person's status as a complainant, respondent, or witness.

Without Bias or Conflict of Interest

- The designated Title IX Coordinator, investigators, decisionmakers, and informal resolution facilitators must not have a **conflict of interest** or **bias** against complainants or respondents generally, or an individual complainant or respondent

Evidentiary Standard

Districts must use the **preponderance of the evidence** standard of proof to determine whether sex discrimination occurred, unless the District uses the clear and convincing evidence standard of proof in other discrimination complaints, in which case the District could use the clear and convincing standard.



Dismissal of a Complaint

The Title IX Coordinator **must** dismiss any complaint if the District does not have jurisdiction.

The Title IX Coordinator **may** dismiss any complaint that:

1. The District is unable to identify the respondent after taking reasonable steps to do so;
2. The respondent is not participating in the District's education program or activity and is not employed by the Board;
3. The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint and the District determines that, without the withdrawn allegations, the conduct that remains in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
4. The District determines that the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX even if proven.

Appeal of a Dismissal of a Complaint

- Upon dismissal, the District must promptly notify the complainant of the basis for the dismissal (and also notify the respondent if previously notified) and provide notification about the opportunity to appeal the dismissal. A dismissal may be appealed for the following reasons:
 - Procedural irregularity that would change the outcome
 - New evidence that would change the outcome and that was not reasonably available when the dismissal was issued
 - Bias or conflict of interest of Title IX Coordinator, investigator or decisionmaker that would change the outcome

Appeal of a Dismissal of a Complaint

- If a dismissal of a complaint is appealed, the District must:
 - Notify the parties
 - Implement appeal procedures equally for the parties
 - Ensure the decisionmaker for the appeal did not take in an investigation of the allegations of dismissal of the complaint
 - Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome
 - Notify the parties of the result of the appeal and the rationale for the result

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Grievance Procedure:
How to Complete the Process

Notice of Allegations

SAMPLE WRITTEN NOTICE FOR FORMAL COMPLAINTS OF SEXUAL HARASSMENT

[LETTERHEAD]

NOTICE OF SEXUAL HARASSMENT ALLEGATIONS

In accordance with the Board's Policy and Administrative Regulations Regarding Title IX of the Education Amendments of 1972 - Prohibition of Sex Discrimination and Sexual Harassment (Students), a formal complaint of sexual harassment has been filed with the Title IX Coordinator.

Identities of the parties involved, if known: _____

(Complainant(s))
(Respondent(s))

The conduct allegedly constituting sexual harassment: _____

The date and the location of the alleged incident, if known: _____

The Title IX Coordinator or designee will contact the parties regarding the next step in the grievance process. Questions can be directed to the Title IX Coordinator. [INSERT CONTACT INFORMATION FOR TITLE IX COORDINATOR]

The respondent is presumed not responsible for the alleged conduct. A determination regarding responsibility is made at the conclusion of the grievance process.

All parties involved may have an advisor of their choice who may be, but is not required to be, an attorney. This advisor may inspect and review evidence as permitted by the Board's Administrative Regulations Regarding Title IX of the Education Amendments of 1972 - Prohibition of Sex Discrimination and Sexual Harassment (Students).

It is a violation of the Board's Student Discipline Policy to lie to school officials or otherwise engage in dishonest behavior, which includes knowingly making false statements or knowingly submitting false information during the grievance process. Any student who knowingly makes false statements or knowingly submits false information during this grievance process will be subject to sanctions pursuant to the Board's Student Discipline Policy. Any employee who knowingly makes false statements or knowingly submits false information during this grievance process is subject to discipline, up to and including termination.

A copy of the Board's Policy and Administrative Regulations Regarding Title IX of the Education Amendments of 1972 - Prohibition of Sex Discrimination and Sexual Harassment (Students) is included with this notice.

Upon receipt of a complaint of sex discrimination, the District must provide a **notice** to the known parties and provide the parties with a copy of the grievance procedure.

- The information to be included in the notice can be found in the Final Regulations

If, in the course of an investigation, the District decides to investigate allegations about the complainant or respondent that are not included in the notice, the District must provide an **additional notice**.

Investigation Model

- In conducting the investigation and making a determination about the alleged conduct, the District may implement one of the following:
 - Unified investigative model – investigator and decisionmaker are the same individual(s); or
 - Bifurcated investigative model – investigator and decisionmaker are different individuals.

If the District will use both models, District policy must indicate when each model will be used.

Investigation

Upon a complaint being filed, one or more investigators will be assigned to gather relevant evidence. The District must provide for adequate, reliable, and impartial investigations of complaints.



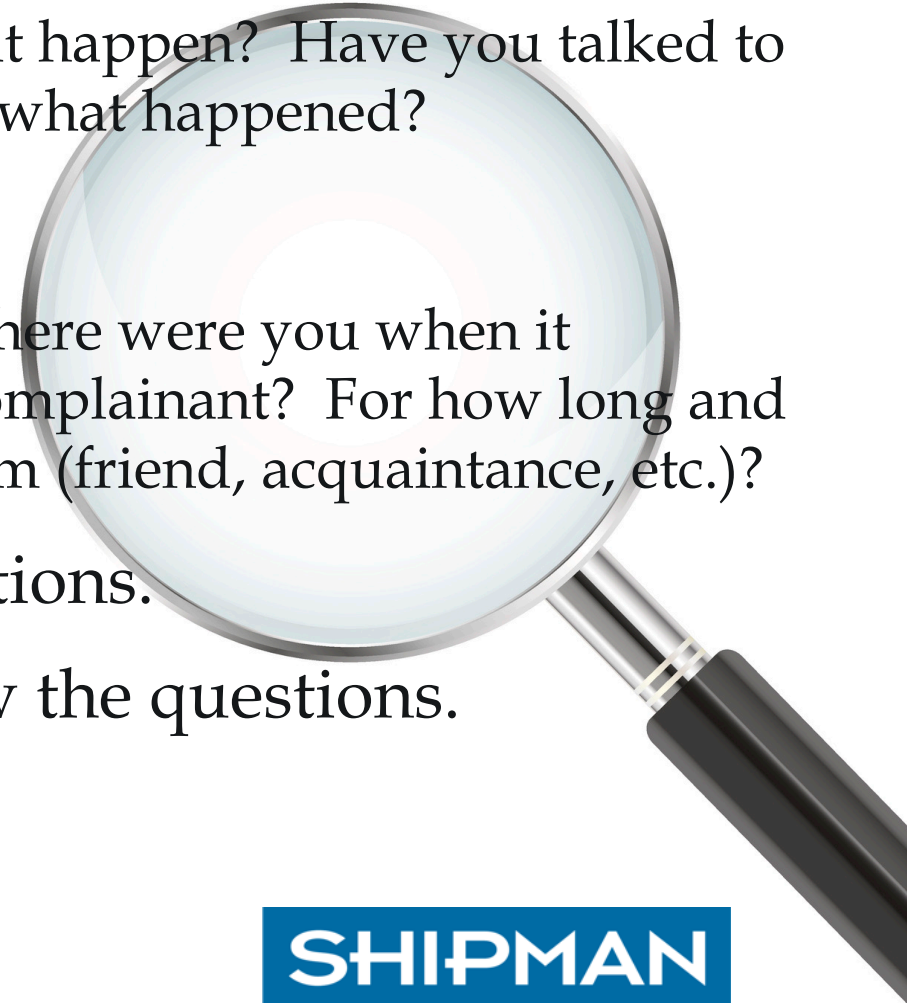
- Burden of proof and of gathering evidence sufficient to reach a determination rests on the District and not on the parties.
- The District must obtain voluntary, written consent (or consent of a parent/guardian) to obtain medical records to be used in the grievance procedure.

- The investigator(s) must provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible.

- The investigator(s) must review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

Conducting a Thorough Investigation

- Interview of the parties
 - What happened? When did it happen? Where did it happen? Have you talked to others about what happened? Did you write down what happened?
- Witness interviews/statements
 - Do you know what is alleged to have happened? Where were you when it happened? Do you know the respondent and/or complainant? For how long and how would you describe your relationship with them (friend, acquaintance, etc.)?
- Listen carefully to answers. Ask follow up questions.
- Start with broad, general questions, then narrow the questions. Avoid yes/no questions.



How to Serve Impartially

- Everyone designated as an investigator, decisionmaker, informal resolution facilitator, or Title IX Coordinator must serve impartially and must avoid prejudgment of the facts at issue, conflicts of interest, and bias.
- Investigators and decisionmakers cannot evaluate or collect evidence in a way that is based on stereotypes or that favors complainants over respondent or men over women.

NOTE: Different treatment of complainants and respondents due to sex-based stereotypes about how men and women behave with respect to sexual violence violates Title IX.

“Conflict of Interest”

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A conflict of interest occurs when it is proven that the Title IX Coordinator, investigator(s), and/or decisionmaker(s) have personal, financial and/or familial interests that affected the outcome of the investigation.

”

Definition of “conflict of interest” is not included in the Final Regulations. This definition is taken from other areas of the law and is intended to be illustrative of the concept.

“Bias”

“

Bias occurs when it is proven that the Title IX Coordinator, investigator(s), and/or decision-maker(s) demonstrate actual bias, rather than the appearance of bias. Actual bias includes, but is not limited to, demonstrated personal animus against the respondent or the complainant and/or prejudgment of the facts at issue in the investigation.

”

Definition of “bias” is not included in the Final Regulations. This definition is taken from other areas of the law and is intended to be illustrative of the concept.

Investigation: Relevant Evidence



Relevant means related to the allegations of sex discrimination under investigation.

- Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.



Investigation: Impermissible Evidence

The following types of evidence, and questions seeking that evidence, are **impermissible**, *regardless* of whether they are relevant:

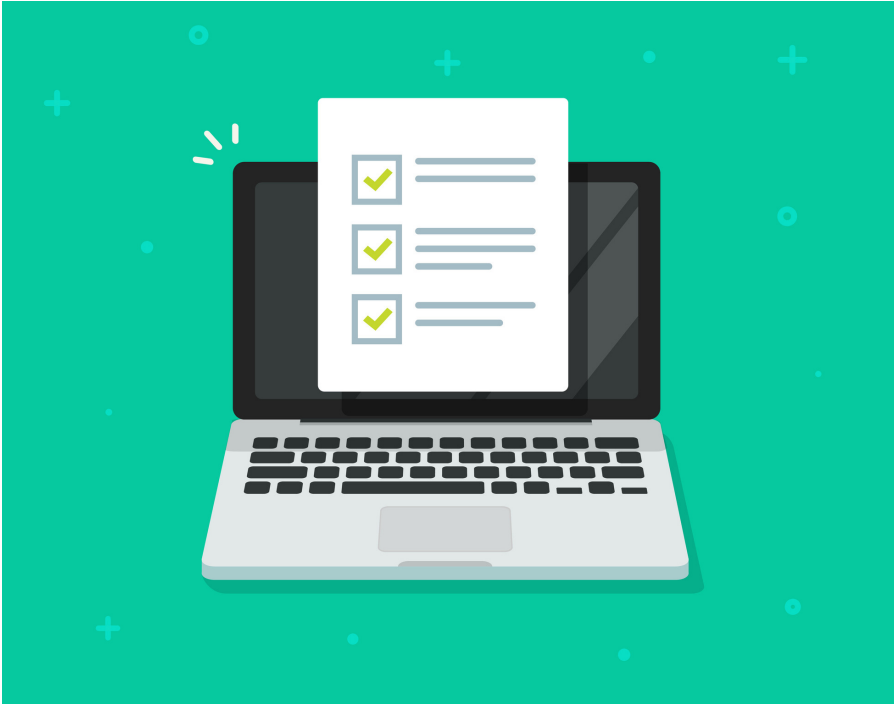
1. Evidence that is protected under a privilege recognized by Federal or Connecticut law, unless the person voluntarily waives the privilege;
2. A party's or witness's medical records, unless the District obtains voluntary, written consent; and
3. Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless it is offered to prove that someone other than the respondent committed the alleged conduct or offered to prove consent. *The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.*

Investigation: Review of Evidence

- The investigator(s) must provide both parties an equal opportunity to inspect and review **any and all evidence** obtained as part of the investigation that is **relevant** to the allegations in the complaint.
- The investigator(s) must provide the parties with a description of such evidence **or** the actual relevant and not otherwise impermissible evidence.
 - If a description is provided, the parties may request to the actual relevant and not otherwise impermissible evidence.
- The parties must have a **reasonable opportunity** to submit a written response.



Investigation: Investigative Report



- A written report for the investigation is *not* required.
- If the District is using a bifurcated investigative model where the investigator and decisionmaker are different individuals, a written investigative report is *recommended*.

Decisionmaker: Credibility Assessment

- The decisionmaker must question parties and witnesses to adequately assess the credibility of a party or witness, to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.
- Credibility may be considered to be in dispute where the decisionmaker must choose between competing narratives to resolve the complaint.
- The decisionmaker, at their discretion, may conduct individual meetings with the parties or witnesses to evaluate credibility.

Decisionmaker: Credibility Assessment

- While not required under Title IX, the decisionmaker may choose to consider the following factors in making this evaluation:
 - **Plausibility** – Whether the testimony is believable on its face; whether the party or witness experienced or perceived the conduct firsthand; and/or whether there are any inconsistencies in any part of the party’s or witness’s testimony;
 - **Corroboration** – Whether there is other testimony or physical evidence that tends to prove or disprove the party’s or witness’s testimony;
 - **Motive to Falsify** – Whether the party or the witness had a motive to lie; whether a bias, interest or other motive exists; and/or whether there is a fear of retaliation;
 - **Demeanor** – Evaluating the party’s or witness’s body language, including whether there is a perceived nervousness and/or they make tense body movements.

Consent



- Title IX does not define “consent”
- Department of Education intentionally silent on this issue. Districts must provide a definition of consent and use the definition consistently.
 - Coordinators, investigators, decisionmakers must be trained on the District’s definition of consent.

Affirmative Consent



- Affirmative Consent means an **active, clear** and **voluntary** agreement by a person to engage in sexual activity with another person.
- When determining whether consent for sexual activity was given, consider the following:
 - Was consent given by **all** persons who engaged in the sexual activity?
 - Consent may be revoked at any time.
 - It is the responsibility of each person to ensure that they have the consent of all persons engaged in the sexual activity throughout the entirety of the sexual activity.
 - The existence of a prior or current dating/sexual relationship between the parties, in and of itself, is not determinative of consent

Decisionmaker: Determination



Decisionmakers must weigh the relevant evidence and decide whether it meets the standard of evidence to demonstrate that sex discrimination occurred.

- Preponderance of the evidence standard = more likely than not responsible.



The decisionmaker must evaluate the relevant evidence for its persuasiveness.



Decisionmakers need to use independent judgment and be free from conflict of interest and bias.

Decisionmaker: Determination



- Notify the parties in **writing** of the determination whether sex discrimination occurred under Title IX including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal.

Decisionmaker: Disciplinary Sanctions

Student Respondents

- Student respondents found responsible may be subject to discipline up to and including expulsion.

Employee Respondents

- Employee respondents found responsible may be subject to discipline up to and including termination of employment.

Other Respondents

- Other respondents may be subject to exclusion from the District's programs, activities and/or property.

Criminal Referrals

- In appropriate circumstances, the District may make a criminal referral.

Remedies

- Remedies must be designed to restore or preserve equal access to the District's education programs or activities.

Appeals

“...must offer the parties an appeal process that, at a **minimum**, is the **same** as it offers in all other **comparable proceedings**, if any, including proceedings relating to other discrimination complaints.”

CONSIDER:

Need to **review your other nondiscrimination policies** and the appeals process offered in those policies.

Informal Resolution Process

At any time prior to reaching determination, the District may offer to the parties an informal resolution process, such as mediation, whenever the school receives information about conduct that reasonably may constitute discrimination under Title IX, even if no complaint is made. The District is **not required** to offer this process. Prior to facilitating an informal resolution to a formal complaint, Title IX Coordinator will:

Provide parties written notice disclosing allegations and information about the process

Note requirements of informal resolution process

Note any consequences from participating in the informal resolution process

Obtain voluntary, written consent from both parties to engage in informal resolution

Examples of Informal Resolutions

Suggest having an **intake meeting** with each party to determine the appropriate path for resolution. During the intake meeting(s), each party will have the opportunity to share their perspective on the allegations, and the informal resolution facilitator will ascertain the party's goals and motivation in pursuing an informal resolution process.

Facilitated Dialogue

- Parties engage in a direct conversation about the alleged sex discrimination with the assistance of the informal resolution facilitator. In a facilitated dialogue, the parties are communicating directly and sharing the same space (virtually or in-person). During a facilitated dialogue, the parties will have the opportunity to discuss their individual experiences and listen to the experiences of others with the intention of reaching a mutually agreeable resolution.

Mediation

- Parties will engage in back-and-forth communication to reach an agreed-upon resolution. Mediation may take place electronically or in-person or virtually, with the parties in different locations (e.g. not face-to-face). The parties will have the opportunity to speak with the informal resolution facilitator, and the informal resolution facilitator will communicate each party's perspective to the opposing party. Mediation may be completed in one session or may require multiple sessions.

Informal Resolution Process

- The informal resolution facilitator must be someone other than the investigator or decisionmaker (if already assigned) and must be free from conflicts of interest, bias, and must serve impartially.
- May be the Title IX Coordinator.
- Prior to agreeing to any resolution, any party has the right to withdraw from the informal resolution process and resume the grievance procedure with respect to the formal complaint.
- If a satisfactory resolution is reached through this informal process, the matter will be considered resolved. If these efforts are unsuccessful, the formal grievance procedure will continue.

NOTE: This process is not available to resolve a formal complaint that an employee engaged in sex-based harassment against a student.

Retaliation



- **All retaliation is prohibited.**
- **Retaliation** means intimidation, threats, coercion, or discrimination against any person by a student or an employee or other person authorized by the District to provide aid, benefit, or service under the District's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or its regulations or Connecticut law, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, hearing or informal resolution process conducted pursuant to federal Title IX regulations. This also includes **peer retaliation**, which means retaliation by a student against another student.

Record Keeping

- The District must maintain for a period of seven (7) years records of:
- For each complaint of sex discrimination, records documenting the informal resolution process or the grievance procedures and the resulting outcome;
- For each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX, records documenting the actions the District took in response; and
- All material used to train Title IX Coordinators, investigators, decisionmakers, and any person who facilitates an informal resolution process. Also, training materials for all employees. The District will make these training materials available upon request for inspection by members of the public.



Required Trainings

- The District must provide the following training promptly upon hiring or change of position that alters their duties, and **annually** thereafter:
 - All employees
 - All employees shall be annually trained on the District's obligation to address sex discrimination in its education program or activity; the scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment; and all applicable notification and information requirements related to pregnancy and related conditions and the District's response to sex discrimination
 - Investigators, decisionmakers, and other persons who are responsible for implementing the District's grievance procedures or have the authority to modify or terminate supportive measures
 - Informal Resolution Facilitator
 - Title IX Coordinator



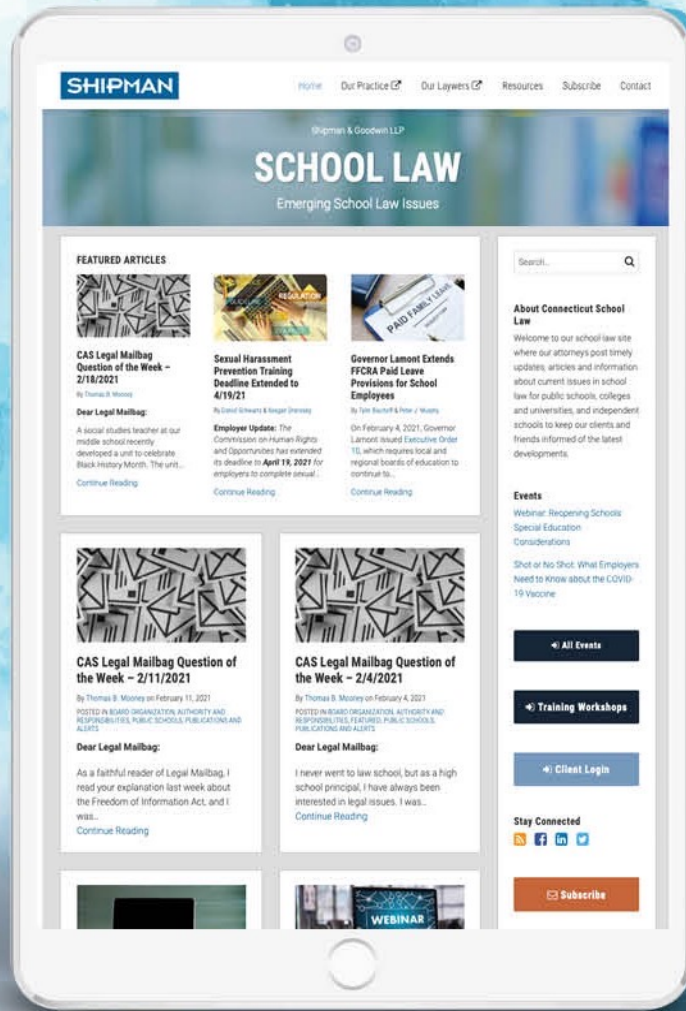
Final Thoughts

- ✔ **Review** district policies and grievance procedures concerning the new federal regulations.
- ✔ **Ensure** all required trainings are conducted.
- ✔ **Know** your district's Title IX Coordinator (and designee, if applicable).
- ✔ **Understand** your notification obligations.
- ✔ **Do not dismiss or ignore** sex-based behavior – REPORT CONDUCT.
- ✔ Remember that sex discrimination is a **broad definition** and includes discrimination based on, among other things, pregnancy, sexual orientation and gender identity.
- ✔ **Review and implement** Safe School Climate Plan and other curricula to prevent incidents of sex-based harassment.

Questions?



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