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- Meet your table mates.
- We encourage questions!

Introductions

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October 1 and 2, 2024
 Flagstaff, Arizona
 Presented by
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 Udall Shumway PLC

THE TRUST



Title IX Coordinators

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You are the front line for preventing district liability. You are critical to successful implementation of Title IX regulations.

Title IX Coordinator

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"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance." U.S. Congress, 1972

Title IX

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Learning Objectives

- Review Title IX coverage
- Detail Title IX procedures for Title IX Coordinators
- Practical application of procedures to typical Title IX scenarios

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**Coordinator's Analysis:
Is it Title IX?**

- Is it sex discrimination, sexual harassment, or sexual violence?
- Does it occur in an educational program that is an operation of the District?

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District's Obligations

- Title IX Policies
- Staff trained to recognize potential Title IX violations and importance of reporting to Title IX Coordinator
- Process to report to Title IX Coordinator—and no barriers to reporting (Coordinator's responsibility to monitor for barriers)

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Tips

- Title IX Packet updated
 - Resources
 - Templates
- District Governing Board Policies for Sexual Harassment, Title IX, Bullying

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A school employee conditions the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct

Type 1: Quid Pro Quo

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Title IX Sexual Harassment or Sexual Violence

- 3 Types
- All three require:
 - Unwelcome sexual conduct
 - (no consent)
 - +
 - Conduct effectively denies (or limits) a person's equal access to educational activity

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DOE: Sex Discrimination (2024 Regs)

- Pregnancy or Parental discrimination
- Unequal athletic opportunities
- Sex-based discrimination in STEM courses and programs
- Discriminatory application or enforcement of dress code policies
- Sex-based harassment
- Sexual violence
- Retaliation

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5 Hostile Environment Factors

4. Location of the conduct and context in which the conduct occurred; and
5. Other sex-based harassment in the District's education program or activity.

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5 Hostile Environment Factors (2024 Regs)

1. Degree to which the conduct affected the complainant's ability to access the District's education program or activity;
2. Type, frequency, and duration of the conduct;
3. 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;

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Type 2: Hostile Environment (2024 Regs)

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 recipient's education program or activity (i.e. that creates a hostile environment).

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Is it Title IX?

- At lunch, a 4th grader tells a cafeteria employee that another 4th grade boy has tried to grab his "privates" every day during recess. Her colleague says, "it's just boys being boys." The employee finally tells the assistant principal who calls you two weeks later to report.
- Is it potentially Title IX?
- What are your first steps as Coordinator?

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Is it Title IX?

A female high school student reported to the principal that she was "raped" twice over the summer by a male high school student who was now talking to other students about his "conquest".

- Is it potentially Title IX?
- What are your first steps as Coordinator?

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Type 3: Sexual Assault or Violence

- Sexual assault [20 U.S.C. 1092(f)(6)(A)(v)]
- Domestic violence [34 U.S.C. 12291(a)(8)]
- Stalking [34 U.S.C. 12291(a)(30)]

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A recipient of federal funds violates Title IX where it has notice of an allegation of sex discrimination experienced by an individual in the educational program and the school fails to respond promptly and effectively.

Reminder: District Liability (2024 regs)

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Continued...

- When you are called by the principal, Student A is in her office sobbing that she saw the photo on Student B's phone during her homeroom class. She doesn't want her parents to know about the party or the drinking.
- What do you advise should be done?
- Is it Title IX?

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Is it Title IX?

- Over the weekend, there is a middle school swim party attended by 20 students. The party was not supervised by an adult and the rumor is that a student brought alcohol.
- In the midst of this, Student A's swim top came undone and another student took a photo of her unclothed breast. The photo was shared to other middle school students while at school.

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A male high school student reports an incident of sexual harassment by a male teacher to the school administration. Instead of conducting a thorough investigation, the school retaliates against the student by transferring the student to a different class, effectively punishing him for speaking out against the harassment. The administrators do not call the Title IX.

Prompt and effective response?

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Parents report to the school principal that their daughter has been subject to persistent gender-based cyberbullying by a male student via social media. The principal acknowledges the report but fails to take any substantial action to address the issue, such as involving law enforcement, implementing a plan to protect the targeted student, or consulting with the Title IX Coordinator.

Prompt and effective response?

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A high school student reports to his teacher and principal that he has been harassed by a classmate on multiple occasions, providing specific details of the incidents which include derisive comments about his sexual orientation. The school administration chooses not to investigate the matter, dismisses it as mere teasing, and does nothing to address the reported harassment. The IX Coordinator.

Prompt and effective response?

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Title IX Coordinator

- Must have the actual title and be authorized to initiate the grievance procedure against a respondent
- Must have authority to provide supportive measures that will restore or preserve "equal access"
- Must be trained and is responsible for ensuring that other relevant individuals are trained

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Prompt and effective response?

A transgender student reports frequent verbal and physical harassment by classmates who mock the student's gender identity. Despite repeated complaints and evidence of the harassment, the school does not intervene to address the behavior or create a safe and inclusive environment for the student.

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Prompt and effective response?

Several students complain to the school administration about a hostile environment in the gym locker room, where sexually explicit graffiti and derogatory comments are consistently written on the walls. The school administrators fail to take steps to prevent these incidents from recurring, such as increased supervision or security measures. The administrators also do not contact the Title IX Coordinator.

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Title IX Coordinator

- Decides whether to sign Complaint if a victim refuses
- Issues written notice when there is a Complaint
- Determines whether Complaint must be dismissed or, if dismissal is permitted, whether to dismiss it
- Offers informal resolution where appropriate

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Title IX Coordinator

- Receives notice of allegations of sexual harassment
- Fulfills duties related to "notice" obligations of new regulations
- Coordinates implementation of supportive measures
- Helps draft and accepts Complaints

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Title IX Coordinator

- Cannot have a conflict of interest
- Must ensure others involved in grievance process do not have a conflict of interest
- Trained to act impartially throughout the process
- Does not prejudice the alleged facts
- Thoroughly understands the definition of sex discrimination and sexual harassment under Title IX

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Avoiding Bias is Critical to Implementing Regulations

- Following grievance procedures that meet requirements of the regulations is important step to showing non-bias
- Recognize and acknowledge allegations of sexual harassment no matter who the alleged victim is
- Do not adopt stereotypes about who may or not be subjected to sexual harassment

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AVOIDING BIAS AND PREJUDGMENT

Impartiality is Required by Regulations

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Title IX Coordinator

- May conduct the investigation
- Monitors the implementation of the grievance procedure (tracks deadlines, maintains records, etc.)
- Effectively implements remedies where there has been a determination of responsibility

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An employee whose communications are privileged or confidential under Federal or State Law

–Examples: school nurse, counselor, social worker

Confidential Employees

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Title IX Coordinator's Role

RECEIVE NOTICE OF ALLEGATIONS OF SEX DISCRIMINATION

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Avoiding Bias is Critical to Implementing Regulations

- Recognize that no one is free of implicit bias
 - <https://implicit.harvard.edu/implicit/takeatest.html>
 - Take several of the tests looking at race and gender bias
- Implicit bias training is suggested

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- Confidential employees do not have to report potential Title IX violations to the Coordinator but may do so
- They are still Mandatory Reporters and must report to law enforcement, DCS, and/or the State Board of Education as appropriate
- Some situations may need to be brought to HR's attention

Confidential Employees Still Make Mandatory Reports

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- Inform the person they are not required to report to the Title IX Coordinator
- Tell the person how to contact the Title IX Coordinator and make a complaint of discrimination and obtain supportive measures

If a confidential employee receives information that would constitute sex discrimination, the confidential employee must:

Confidential Employees

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The employee's confidential status is only with respect to information received about sex discrimination in connection with providing those services.

– Confidential employees are not required to report conduct they are told in the scope of their confidential work to the Title IX Coordinator.

Confidential Employees

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Complaint

- 2024 regulations do not require a written complaint—although the best practice would be to get a written complaint
- Your district's forms and see updated forms provided

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All Notice Triggers Responsibility

Contact alleged victim promptly to discuss:

- Whether the Complainant wants supportive measures
- Advise Complainant that supportive measures are available regardless of whether a Title IX complaint is made
- Explain the process for making a complaint

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What is Notice?

- A report to ANY (non-confidential) school employee
- All employees must be trained to immediately communicate any report of conduct that would meet the definition of harassment to administration
- Report to the Title IX Coordinator made at any time via any method of communication

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Supportive Measures

- Non-disciplinary
- Non-punitive
- Individualized to the person and situation
- Offered as appropriate and without charge
- Must be offered to Complainant
- Offered to respondent if grievance procedures or informal resolution initiated, as appropriate
- Cannot unreasonably burden either a complainant or respondent

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Examples of Limitation on Equal Access

- Poor attendance, falling or diminished grades
- Quitting an extracurricular/club to avoid respondent
- Dropping a class
- Being unable to concentrate in a class/activity
- Manifestations of stress (bed-wetting, self-harm, hair loss)

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Supportive Measures

- Designed to restore or preserve equal access to education program or activity
- Equal access is the same access that someone who hasn't experienced sexual harassment has
- What does a limitation of "equal access" look like?
- Does NOT require total loss of educational access

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Supportive Measures

- Do not completely remove a student Respondent from an educational activity as a supportive measure for Complainant
- UNLESS there is need for an emergency removal (explained later)

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Supportive Measures

- Cannot sanction or discipline Respondent in any way until grievance procedure has been followed
- Must continue to be offered during an investigation and whether an investigation is ever done
- If Respondent is an employee, you may send employee home on administrative leave (with pay) as a supportive measure

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Examples of Supportive Measures

- Counseling
- Course modifications
- Extend a deadline
- Allow exam retake
- Schedule changes
- For complainant or respondent
 - Allow exam retake
 - Extend a deadline
 - Mutual non-contact order
 - One-way no contact order
 - Cannot include anything that is listed as a potential disciplinary consequence
- Allow student to repeat a course
- Increased monitoring or supervision

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Appropriate Supportive Measure?

- Judy alleges Tom makes sexual remarks to her everyday when they pass in the halls.
- Supportive Measure: Tom is moved to another math class to avoid traveling down the same hall as Judy.
- Is that an appropriate supportive measure? Why or why not?

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Supportive Measures

- Impartial employee to review and have authority to modify or reverse decision – Cannot be the employee who initially determined the supportive measure(s)

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Supportive Measures

- Provide Complainant and Respondent timely opportunity to seek modification or reversal of supportive measures decisions that apply to them
- Ex: Respondent can challenge a safety plan in place, but cannot challenge counseling offered to complainant

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- School may send an employee home on paid administrative leave as a supportive measure "during the pendency of the grievance process"
- Employee may also choose Title VII, as part of the HR process
- Can reassign the employee to another site (Be careful)

When Respondent is an Employee

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- Supportive Measure: Principal moves Bobby's classes, excludes Bobby from attending the prom, prohibits Bobby from parking on campus to prevent Rebecca from running into him
- Under these facts, what would you provide?

Crafting an Appropriate Supportive Measure

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- Rebecca reports to SRO that Bobby raped her and forced her to fondle him on school grounds. SRO reports to police department and an investigation is initiated. The police report states the sex was consensual. Rebecca, not happy with this, files a Title IX formal complaint.

What would you do?

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**Title IX Coordinator's Role
AFTER COMPLAINT**

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**Emergency Removal
of Student**

- Requires "notice and an opportunity to challenge the decision immediately following the removal"
- Emergency removal of a student with an IEP or a 504: Remember that the student still has rights under IDEA or ADA.

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**Emergency Removal
of Student**

- Requires an individualized safety and risk analysis (threat assessment)
- Requires "imminent and serious threat to the health or safety of a complainant or any students, employees or other persons arising from the allegations of sex discrimination" justifying removal
- 2024 regs removed "physical" threat requirement

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employee including whether the respondent is an

5) Age and relationship of the parties,

4) Severity of the alleged sex discrimination initiated

3) Risk that additional acts of sex discrimination would occur if complaint is not initiated

Assessing Whether to Proceed With Complaint w/o Complainant

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regarding initiation of complaint

2) Complainant's reasonable safety concerns

1) Complainant's request not to proceed

Title IX Coordinator must consider, at a minimum, the following eight (8) factors:

To make this fact-specific determination, the

2024 Regs

Assessing Whether to Proceed With Complaint w/o Complainant

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file/continue complaint.

Title IX Coordinator must determine whether to complain, or wants to withdraw complaint, if Complainant does not wish to file a District's grievance procedures

- Conduct investigation that complies with the
- Provide notice to the Respondent (form)

responsibilities to:

Complaint triggers Coordinator's

Complaint

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Should you File?

- Paul alleges Steven grabbed his testicles during a game of tag. You get this information in an actual knowledge report from gym teacher/principal. You call the parent, who says, "No big deal. Boys will be boys. We know Steven he's a good kid."
- Do you open a Title IX investigation?

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Assessing Whether to Proceed With Complaint w/o Complainant

7) Availability of the evidence to assist a decisionmaker

8) Whether the recipient could end the alleged sex discrimination and prevent its recurrence without initiating the grievance procedures

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Assessing Whether to Proceed With Complaint w/o Complainant

6) Scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination or sex discrimination alleged to have impacted multiple individuals

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If Complaint Declines Title IX Process, And Coordinator Decides Not To Open

- Document (for your records)
 - That you offered supportive measures and what was offered/accepted
 - That you explained Complaint procedure
 - That the Complainant(s) declined

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Should you File?

- Joe Teacher complains to the principal that Sam teacher continues to make unwanted sexual advances toward him. While making the actual knowledge report, the principal tells you that Joe has a reputation for having sex with multiple staff members over the past year.
- When you call Joe to offer supportive measures, he tells you he doesn't want to proceed anymore because he doesn't want his wife to find out about the affairs he's had at school.

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Should you File?

- What if you know four other parents have complained about similar conduct by Steven over the past month, but they also have not wanted to file a Title IX formal complaint?
- What if the gym teacher reported she recently talked to the entire class about why "Nut Tag Tuesday," was not acceptable.

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Written Notice Requirements:

Notice of the allegations of sexual harassment provided to the parties must include sufficient details, and be provided in enough time, to allow preparation of a response prior to initial interview. Sufficient notice includes, if known:

- Identities of the parties involved
- The conduct alleged to constitute sexual harassment
- The date(s) and location(s) of the alleged incident

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Written Notice Requirements:

Inform parties that they may have an advisor of their choice
 – Advisor may be an attorney, but doesn't have to be

- Inform parties that they may inspect and review evidence collected during this investigation
- Inform parties of any provision of district policy of conduct that prohibits making false statements or knowingly submitting false evidence

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Written Notice Requirements:

Provide written notice of the District's grievance procedure to both parties, including information about informal resolution process, if the District adopts one

Written notice must:

- Include a statement that the respondent is presumed not responsible for conduct and that a determination will not be made until the conclusion of the grievance process
- Include a copy/reference to the grievance process

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Good Cause Delay

- Reasonable extension of "prompt" timetables may be allowed on a case-by-case basis for good cause
- Good cause = concurrent law enforcement or DCS activity; unavailability of Respondent; school break
- It is **not** good cause to delay because Coordinator, Investigator, or Decisionmaker are unavailable

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Consolidation of Complaints

- Complaints may be consolidated:
 - Against one or more respondents;
 - By one or more complainants; or
 - By one party against another party
- **If** the allegations of sex discrimination rise out of the same facts or circumstances
 - Be careful to assess privacy and confidentiality concerns when determining whether to consolidate

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Written Notice Requirements:

if, during the course of the investigation, the school decides to investigate additional allegations about complainant or respondent that were not included in initial notice, Title IX Coordinator must provide written notice of the additional allegations to the parties.

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Title IX Coordinator Critical Role in Initial Fact Analysis

When you receive notice of a potential Title IX violation, you will need to determine whether the allegations, as presented, and if presumed to be true, rise to the level of Title IX.

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DECIDE WHETHER COMPLAINT WILL BE INVESTIGATED

Title IX Coordinator's Role

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Good Cause Delay

- Delay may be needed for:
 - Evaluation of whether to dismiss or investigate complaint
 - Investigation overall or any specific portion
 - Decision of determination of responsibility
 - Appeal
- Must provide written notice to parties if there will be a good cause delay and include the reason for the delay

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Is it Quid Pro Quo?

- Jane asks her math teacher for a recommendation letter for her college application. He tells her he would be happy to provide a letter if she agrees to go on a date with him.
- Jane says no, and he writes her the recommendation anyway. Jane files a Title IX complaint the next day.

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Type 1: Quid Pro Quo

A school employee conditions the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (effectively the same under 2020 and 2024 regs)

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Title IX Sexual Harassment or Sexual Violence

- 3 Types
- All three require:

Unwelcome sexual conduct
 +
 Conduct effectively denies (or limits) a person's equal access to educational activity

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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 recipient's education program or activity (i.e. that creates a hostile environment).

Hostile Environment Sexual Harassment

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- Harassment based on unwelcome sexual conduct required to be:
 - Severe AND
 - Pervasive AND
 - Objectively offensive
- Victim is denied **equal access** to the school's programs and activities.
- Narrowly tailored to protect 1st Amendment rights

Definition of Sexual Harassment: Type 2 (2020 regs)

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- Jane asks her math teacher for a recommendation letter for her college application. He tells her he would be happy to provide a letter if she agrees to lie down on a nearby futon with him.
- She does.
- What if she doesn't?

Is it Quid Pro Quo?

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- Jessica tells Jim, in front of a group of their peers, "You have a shrimp dick."
- Matt overhears Jim telling members of the soccer team that Matt's sister is "hot and easy."

Is it Hostile Environment?

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4. Location of the conduct and context in which the conduct occurred; and
5. Other sex-based harassment in the District's education program or activity.

5 Hostile Environment Factors

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1. Degree to which the conduct affected the complainant's ability to access the District's education program or activity;
2. Type, frequency, and duration of the conduct;
3. 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;

5 Hostile Environment Factors (2024 Regs)

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- Sexual assault: an offense classified as forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
- Stalking: means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: 1) fear for his or her safety or the safety of others; or 2) suffer substantial emotional distress.

Sexual Violence

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- Sexual assault [20 U.S.C. 1092(f)(6)(A)(v)]
- Domestic violence [34 U.S.C. 12291(a)(8)]
- Stalking [34 U.S.C. 12291(a)(30)]

(effectively the same under 2020 and 2024 regs)

Type 3: Sexual Assault or Violence

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- During a class discussion about relationships, Alex makes a single comment to Sam, stating, "I don't get why some people are gay. It's just not my thing."

Is it Hostile Environment?

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Violence committed by a current or former spouse or intimate partner of the victim, a person whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Arizona, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction

Domestic Violence

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Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- 1) the length of the relationship;
- 2) the type of relationship;
- 3) the frequency of interaction between the persons involved in the relationship

Dating Violence

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- Mike is goofing around with his friends and hand grazes Sarah breast.
- Mike is goofing around with his friends, and trips. As he tries to avoid the fall, his hand grazes Sarah breast.
- Mike is goofing around with his friends and says, "Check out Sarah's boobs." He friend says, "Why don't you check them out?" and shoves Mike into Sarah. As a result of the shove, Mike's hand touches Sarah's breast.

Is it Sexual Assault?

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(Permissive) Dismissal of Complaints

- Complainant voluntarily withdraws complaint (evaluate 8 factors)
- If circumstances, such as several years between the conduct and the complaint or a complainant's refusal to cooperate, prevents the gathering of evidence sufficient to render a determination (no statute of limitations)

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(Permissive) Dismissal of Complaints

Complaint may be dismissed if:

- Recipient is unable to identify the respondent after taking reasonable steps to do so
- Respondent is not participating in the education program or activity, and is not employed by the school – be careful here!!

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(Mandatory) Dismissal of Complaints

Complaint may be dismissed if:

- The complaint does not state an allegation of **sexual harassment**, even if all facts are found to be true
- The sexual harassment, even if it did occur, did not occur in the school's operations

*Regulations say may, but if either of these is the circumstance you should dismiss.

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Informal Resolution

- Cannot be required and either party can withdraw at any time
- Process may include arbitration, mediation, or restorative justice
- Must have reasonably prompt time frame to complete the process
- Pauses the grievance process at the time of request/voluntary agreement

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Informal Resolution

- District is not required to use informal resolution, but if it chooses to use it, then it is appropriate to offer it:
 - Complaint is filed (2020 regs require this; 2024 regs do not)
 - Conduct alleged, but no complaint filed (2024 regs permit this, but 2020 regs do not)
 - Both parties voluntarily agree to participate in writing
 - The Respondent is NOT an employee and the Complainant a student

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INFORMAL RESOLUTION

Title Coordinator's Role

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- Parties may be more satisfied if they had a say in creating the outcome
- Process may be less adversarial
- They can control the outcome
- Resolutions can include creative solutions
- Process is shorter and does not involve a full investigation and determination

Why Parties May Prefer Informal Resolution

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- Suggested that facilitator be trained in mediating sexual harassment situations
- Be aware of power dynamics when implementing an informal resolution
- Should there be a face-to-face meeting?
- Is someone manifesting signs of trauma?
- Should facilitator press parties on facts?

Informal Resolution

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- Decide whether confidentiality can be a term of an informal resolution and include that information in written notice
- If the informal resolution facilitator may be called as a witness in investigation, must disclose that possibility to the parties in the written notice
- Facilitator must not have a conflict of interest, must be trained in these regulations, and must be free of bias

Informal Resolution

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Before the Mediation

- Informal resolution facilitator can reach out to the parties and get a preliminary understanding of what might resolve the matter—confirm what you can share with the other party
- Start with complainant
- Then to respondent
- Prepare a draft agreement from template

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What is Mediation?

- Using a third party to facilitate resolution between the parties
- Recommend written agreement
- Confidential
- Prefer in-person, but back up could be Zoom or email

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What is the Informal Resolution Process?

- Process is voluntary for all parties
- Mediation
- Restorative process = repair harm done (restore access to educational program or activities)
- Consider: issues with apologies
- Have parties sign consent to informal resolution

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- What would make you feel safer?
- What can the school do to make you feel safer?
- What can the other party do to make you feel safer?

Questions Facilitator May Ask Parties

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- Explain the mediation process
- Remind parties that the process is voluntary

At the Mediation

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- Usually keep parties separate—may be exceptional circumstances
- Allow each party to tell "the story" and present that party's perspective on the underlying dispute
- Ask each party what they want from the other party
- Ask each party what they want from the process

"Shuttle Diplomacy"

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How to get Parties "Unstuck"

- Remind the parties that if this goes back to the formal Title IX process, you will not have control over the outcome, and there is a possibility that the Decision Maker will find you in violation of Title IX or determine that no violation of Title IX occurred

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Typical Supportive Measures

- New class schedule
- No contact agreement
- No classes together (ask District about feasibility)
- Counseling
- Training
- Online courses
- Change school
- Particular class seating

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Supportive Measures

- Supportive measures in place—should they continue?
- Should they be modified?
- New class schedule
- No contact agreement
- No classes together (ask District about feasibility)
- Counseling
- Training

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- Have the parties sign at the meeting if at all possible (at minimum provide a clear deadline for signing)
- Make a copy for all parties and appropriate District administrators

Signing the Agreement

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- Use your template
- Anticipate problems of enforcement
- Make sure that the District can implement
- Remember to provide terms for:
 - Who can be told about the agreement?
 - Do you need to set a time to review with parties?

Drafting the Agreement

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- You will need to go back and forth until a resolution can be reached
- Make sure both parties agree to the same terms and that you have their agreement
- Make sure that the District can implement
- Remember to provide terms for:
 - Who can be told about the agreement?
 - Do you need to set a time to review with parties?

Determine Common Ground

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**Title IX Coordinator's Role
OVERSEE INVESTIGATION
AND DECISION**

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Informal Resolution Outcome

- If successful, results in a dismissal of the Complaint without adjudication
- If unsuccessful, grievance process picks up where it was left off

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Closing the Process

- Thank parties for cooperation
- Decide whether it would be productive for parties to get together

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Investigator Procedural Reminders

- Non-disclosure Agreements for Parties
 - Non-disclosures signed
 - Have investigator sign at interviews vs. asking for non-disclosure right before sending evidence
 - Contact before interviewing
- Non-disclosures cannot preclude parties from building or investigating their own case
 - If party does not sign non-disclosure
- Coordinator facilitates their access to review evidence

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Investigator Procedure Reminders

Redact personally identifiable information such as: student ID #, phone #, address, etc.

- Complainant and Respondent names are **never** redacted
- Redact student witness names through creation of a legend – ABC, 123, etc. for aliases
- Determine who gets legend in addition to Coordinator and Investigator (parties or just decision maker - talk to counsel)

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Assignment to Investigator

- If you are not going to investigate, assign to a trained investigator
- Ensure that investigator does not have a conflict of interest
- Continue to monitor deadlines and be a resource to the investigator (definition of sexual harassment, course of investigation, etc.)
- Provide with District's Templates & Forms

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Assign Decision Maker

- If you are not going to be decisionmaker, assign to a trained decisionmaker
- Ensure that decision maker does not have a conflict of interest
- Continue to monitor deadlines and be a resource to the decision maker (definition of sexual harassment, course of investigation, etc.)
- Provide with District's Templates & Forms

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Advise your Investigators to Plan, Plan, Plan

- What documents must be gathered?
- Assist investigator as needed
- Necessary for IT to run a server search? (Coordinator facilitates)
- Need recordings from surveillance cameras? (Coordinator facilitates)

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Advise your Investigators to Plan, Plan, Plan

- Map out a plan for investigation
- Understand the allegations
- Understand definition of sexual harassment to determine what elements must be established
- Who to interview?
- Notification to parent of interview for witness students

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The Regulations provide Parties the opportunity to appeal the following:

- Dismissal of Complaint
- Determination of Responsibility Decision

Appeals

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- If a determination of responsibility, you will oversee implementing remedies
- If a determination of non-responsibility, continue to provide supportive measures as needed
- Continue to be a resource for both parties as needed
- No discipline until time for appeal has run

Remedies

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Title IX Coordinator's Role

REMEDIES AND WRAPPING UP

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Appeals

- A school must:
 - Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
 - Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator or the Title IX Coordinator;
 - Decision-maker(s) for the appeal can be a single Appeal Officer or an Appeal Panel.

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Appeals

- 3. The Title IX Coordinator, investigator(s), and/or Decision Maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.
 - District can include additional bases to appeal in policy

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Appeals

- Three grounds for appeals
 1. A procedural irregularity that would change the outcome;
 2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that would change the outcome; and

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Discipline

- Unless the Respondent waives the appeal, let the time for appeal run before initiating discipline
- If the Respondent has an IEP or 504, depending on the type or length of discipline, a MDR may be required

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Appeals

- The written determination on responsibility and sanctions, if applicable, are postponed until the decision on the appeal is sent to the parties. §106.45(b)(7)(iii).
 - Keep supportive measures in place during appeal period to maintain status quo between the parties and ensure equal access to education.
 - Can revisit emergency removal if necessary.

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Appeals

- If an appeal is filed, ensure that the decision-maker on appeal has no conflict or bias and receives all necessary documents
- Decisionmaker on appeal must be trained in definitions, procedures, etc.
- Monitor timelines and competition of that process and ensure that notices are sent to the parties

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Questions?

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Records Retention

- All records related to Title IX complaints must be maintained for a minimum of 7 years, including records substantiating remedies and supportive measures
- Title IX records retained separately and confidentially—not part of student's cumulative file (nor special education)
- Training materials must be posted on the District's website

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Discipline and IDEA/504

- If discipline would effect a change in placement for more than 10 days (note prior discipline counts), a manifestation determination review (MDR) is required before discipline is imposed
- MDR team can review decision and refer to review but do not make part of SPED records; consider having MDR team members sign an NDA

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