



**SCHOOL & COLLEGE LEGAL SERVICES**  
**OF CALIFORNIA**

## Title IX

# Overview and Coordinator Role for Solano County Office of Education

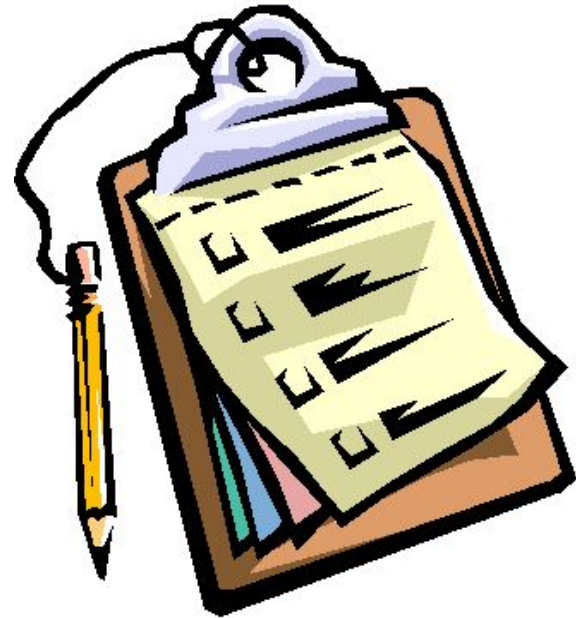
July 25, 2023

**Presented by:**  
**Danielle Houck, Senior Associate General Counsel**

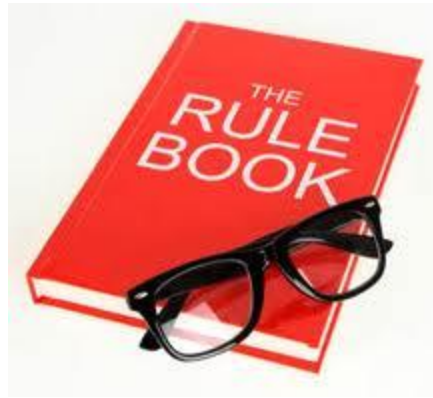


# Agenda

- Overview of Title IX
- Training Requirements
- Title IX Coordinator's Role
- Grievance Process
- Decision-maker's Role
- Appeals Process



# I. Overview of Title IX



# What Is Title IX?

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

20 U.S.C. § 1681 and 34 C.F.R. Part 106



# What Is Title IX?

- Title IX of the Education Amendments of 1972
- Established to combat discrimination against women in the educational system
- Two objectives:
  1. Prevent use of federal resources to support discriminatory practices in education
  2. Provide individuals with protection against those practices
- Title IX protects any “person” against sex discrimination – both males and females

# What Is Title IX?

- Title IX applies to “recipients of Federal financial assistance.”
- Every recipient must ensure that a student is not denied or limited in the ability to participate in or benefit from a school program or activity on the basis of sex.



# Title IX Legal Framework

- Federal law
- Implementing regulations
  - TIX regulations (effective 8/14/20)
- Regulatory Guidance
  - 1997 Guidance on Sexual Harassment
  - 2001 Revised Sexual Harassment Guidance
  - 2015 Dear Colleague Letter, Dear Coordinator Letter & Resource Guide
  - 2017 Interim Guide: Q&A on Campus Sexual Violence

# Where Does Title IX Apply?

- Title IX protects students in connection with all academic, educational, extracurricular, athletic, and other **programs of the district/county office (COE)**.
- Programs can take place in a COE facility, on a school bus, at a program sponsored by the COE at another location, or on a school-sponsored field trip.





# Where Does Title IX Not Apply?

- Sexual harassment that occurs off campus and does not occur in an *education program or activity* of the recipient will not be covered under Title IX.
- When might jurisdiction *not* exist?
  - When conduct occurs off campus via social media
  - When conduct occurs outside of the United States

# Educational Program or Activities

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

# Defined Terms

- ***Complainant*** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- ***Respondent*** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- ***Recipient*** means elementary and secondary schools, as well as postsecondary institutions, that receive Federal financial assistance.

# Sex-Based Discrimination

- Title IX prohibits sex-based discrimination
- Sex-based discrimination includes:
  - Sexual harassment
  - Sexual violence
  - Discrimination based on gender stereotypes
  - Gender-based discrimination
  - Sexual Orientation
  - Gender Identity

# Title IX Sexual Harassment

- (1) Unwelcome conduct on the basis of sex that a reasonable person would determine is so “**severe, pervasive and objectively offensive**” that it effectively denies a person equal access to the recipient’s education program or activity;
- (2) **Quid pro quo** harassment; or
- (3) Sexual assault, dating violence, domestic violence, or stalking as defined in the Clery Act/Violence Against Women Act (“VAWA”).

# Clery Act/VAWA Definitions

- (1) Sexual assault** – 20 U.S.C. 1096(f)(6)(A)(v) – “The term “sexual assault” means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.”
- (2) Dating violence** – 34 U.S.C. 12291(a)(10) – “The term “dating violence” means violence committed by a person—**(A)** who is or has been in a social relationship of a romantic or intimate nature with the victim; and **(B)** where the existence of such a relationship shall be determined based on a consideration of the following factors: **(i)** The length of the relationship. **(ii)** The type of relationship. **(iii)** The frequency of interaction between the persons involved in the relationship.”

# Clery Act/VAWA Definitions

- (3) **Domestic Violence** - 34 U.S.C. 12291(a)(8) – “The term “domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with 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 the jurisdiction receiving grant monies, 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.”
- (4) **Stalking** – 34 U.S.C. 12291(a)(8) – “The term “domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with 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 the jurisdiction receiving grant monies, 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”

# General Response to Sexual Harassment

- Once COE has *actual knowledge* of sexual harassment in its education program or activity, it must respond promptly in a manner that is *not deliberately indifferent*.
- Deliberate indifference = the response is *clearly unreasonable in light of the known circumstances*.



# Actual Knowledge

“*Actual knowledge* means notice of sexual harassment or allegations of sexual harassment...

Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the recipient with actual knowledge is the respondent.”

# Actual Knowledge

Actual Knowledge in K-12 is established when employee has knowledge.

## II. Training Requirements



# Title IX Training

Title IX Coordinator must have specified training

Title IX Coordinator is responsible for providing training to staff and students



# Title IX Training

Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must receive training on:

- The definition of sexual harassment
- The scope of the recipient's education program or activity
- How to conduct an investigation
- How to conduct a grievance process including hearings, appeals, and informal resolution processes, as applicable
- How to serve impartially.

# Title IX Training

Additional training for decision-makers and investigators:

***Decision-makers:*** training on any technology to be used at a live hearing and issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.

***Investigators:*** training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

# Trainings Provided by Title IX Coordinators

- ✓ School policies related to sex discrimination, including grievance procedures
- ✓ What constitutes sex- and gender-based harassment
- ✓ How to respond appropriately to reports of sex- and gender-based harassment
- ✓ Assemblies and schoolwide trainings
- ✓ Class, departmental, or smaller group trainings
- ✓ Individual trainings, as appropriate

# Trainings for Staff

- ✓ What constitutes sex-based discrimination and sexual harassment, how to identify it, and how to report it
- ✓ How to respond to student complaints
- ✓ The COE's grievance procedures
- ✓ The COE's obligations toward pregnant and parenting students
- ✓ Awareness of their own (employment) rights under Title IX





# Trainings for Respondents

If an individual is determined to have violated Title IX, training may be an appropriate remedy

Training may be targeted at the individual respondent only, or may encompass specific groups or the entire school community



# Schoolwide Trainings

- If through a Title IX investigation the school determines that a hostile environment exists, it may need to provide special training to impacted students
- May encompass a class, a club, a team, a grade level, department, or the entire school
- Purpose is to repair the educational environment
- Training may also need to be provided to the larger student body to ensure that harassment or discrimination does not recur

# Regular Assessment

Title IX Coordinator should regularly assess the adequacy of current training opportunities and programs

- Campus Climate Survey
- Review of Institutional Data



# III. Title IX Coordinator's Role



# Title IX Coordinator

**Title** must include “Title IX Coordinator”

Policy, website, other relevant communications must identify the Coordinator with:

- ✓ **name or title**
- ✓ **office address**
- ✓ **electronic mail address and**
- ✓ **telephone number**

# Title IX Coordinator

- ❑ Promoting gender equity in education
- ❑ Overseeing the response to Title IX reports and complaints
- ❑ Determining if jurisdiction exists under Title IX
- ❑ Training students, staff, and faculty
- ❑ Drafting and revising Title IX policies and regulations
- ❑ Ensuring proper posting of notices
- ❑ Identifying and addressing patterns of gender inequity revealed by reports and complaints



# County Office Obligations

- Ensure Title IX Coordinator has the COE's full support
- Grant Title IX Coordinator authority to oversee compliance with Title IX
- In the COE's organizational structure, Title IX Coordinator should report directly to senior leadership, such as the superintendent
- OCR recommends that the Title IX Coordinator be a full-time position

# IV. Grievance Process





# Title IX Grievance Procedures

Grievance procedures **MUST** include:

1. Treat complainants and respondents equitably.
2. Impose disciplinary sanctions only after following a grievance process that complies with the new regulations.
3. An objective evaluation of all relevant evidence.
4. No conflict of interest or bias by the Title IX Coordinator, investigator or decision-maker.
5. Training for Title IX Coordinator, investigator and decision-maker

## Title IX Grievance Procedures, Cont'd.

6. Presumption of respondent's innocence until conclusion of grievance process.
7. Reasonably prompt time frames, to include limited extension of time frames for good cause.
8. Range of possible disciplinary sanctions and remedies.
9. Standard of evidence used.
10. Appeal rights.
11. Range of supportive services available.
12. Not use or require evidence that is legally privileged, unless privilege is waived.

# Mandatory and Permissive Dismissal

## Mandatory

- Even assuming allegation is true, conduct does not meet definition of sexual harassment
- Conduct didn't happen in COE program or school
- Conduct did not occur in US

## Permissive

- Complainant makes written request to withdraw complaint
- Respondent's enrollment or employment ends
- Circumstances prevent gathering of sufficient evidence to reach a determination

# Investigation Process

1. Provide **written notice** of allegations to the parties.
2. Offer an **informal resolution** process, if applicable.
3. Determine if an “**emergency removal**” is appropriate.
4. Provide an **equal opportunity to present evidence**.
5. **Send parties (and advisors) all evidence** directly related to allegations for the parties to meaningfully respond at least 10 days before the final report.
6. **Send parties (and advisors) an investigative report** that fairly summarizes relevant evidence with at least 10 days for the parties to respond.

# V. Decision-maker's Role



# Who?

- Title IX Coordinator or Investigator cannot be the decision-maker.
- Can be a single person or a panel of decision-makers.
- Cannot have a conflict of interest or bias that affects the outcome of the matter.
- Decision-maker on appeal must not have been previously involved.

# How to Serve Impartially

- ✓ Avoid intentional or unintentional bias and stereotypes.
- ✓ Treat complainants and respondents equitably.
- ✓ Objectively evaluate all relevant evidence.
- ✓ Do Not make credibility determinations based on a person's status as complainant, respondent, or witness.
- ✓ Uphold the presumption of respondent's innocence until conclusion of the grievance process.
- ✓ Avoid prejudgment of the facts.

# Written Decision

Written determination regarding responsibility (“Determination”) issued simultaneously to the parties. The Determination must include:

- ✓ Summary of allegations
- ✓ Procedural steps taken from the receipt of the formal complaint through the determination
- ✓ Findings of fact supporting the determination
- ✓ Conclusions regarding the application of the recipient’s code of conduct to the facts
- ✓ Rationale for the result as to each allegation
- ✓ Any disciplinary sanctions imposed on the respondent
- ✓ Whether remedies will be provided to the complainant
- ✓ Appeal process and bases for appeal.



# Issuing the Decision

- Be mindful of the timeline to issue a written determination.
- Allow the parties at least 10 days to submit written, relevant questions to any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions.
- Limit questions of the parties and witnesses to relevant questions only.

# Relevancy

All relevant evidence, inculpatory and exculpatory, must be admitted.

Relevant = If the information helps to prove or disprove a fact at issue, it should be admitted.

# Evidence Deemed Irrelevant

Title IX Regulations deem certain evidence not relevant:

- Evidence of the Complainant's sexual predisposition.
- Evidence of the Complainant's prior sexual behavior except for two limited exceptions:
  1. Offered to prove that someone other than the Respondent committed the conduct alleged, or
  2. Concerns specific incidents of the Complainant's sexual behavior with respect to the Respondent and is offered to prove consent
- A party's treatment records without the party's voluntary, written consent.
- The use of information protected by any legally recognized privilege (e.g., attorney-client).

# Determining Relevance

Admissible relevant evidence must be evaluated for weight or credibility by a decision-maker.

The weight assigned to evidence depends on the type of evidence and its credibility:

- Direct evidence (personal observation or experience)
- Physical evidence (knife)
- Documentary evidence (emails, texts, photos, videos)
- Circumstantial evidence (not direct observation, but compelling)
- Hearsay evidence (something heard from another person)

# Assessing Credibility

## Factors to consider:

- Complainant telling another person about the discrimination
- Other complaints against same respondent
- Witnesses' conduct during interviews, including body language, eye contact, tone, nervous behaviors, sweating
- Consistent/inconsistent information
- Corroboration (other witnesses, documents, other evidence)
- Motive to lie

## Factors that aren't as relevant:

- delay in reporting,
- minor inconsistencies in story,
- that complainant and respondent once had a consensual relationship

# Totality of the Circumstances

1. Whether conduct was verbal or physical, or both;
2. How frequently it occurred;
3. Whether conduct was hostile and patently offensive;
4. Whether alleged harasser was a co-worker or a supervisor;
5. Whether others joined in perpetuating the harassment; and
6. Whether the harassment was directed at more than one individual.

# Due Process Considerations During Decision-making

- Is the decision free of bias?
- Is the decision made in good faith?
- Is the decision based on a fair and thorough investigation?
- Did the investigation process give the parties an equal opportunity to present evidence and have access to the evidence?
- Did the COE procedurally follow its grievance process?
- Was the process fair?

## VI. Appeals





# Appeals Process

COE must:

- ✓ Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- ✓ Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- ✓ Ensure that the decision-maker(s) for the appeal is unbiased and meets training requirements under Title IX;

# Appeals Process

- ✓ 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/dismissal
  - the investigator(s) or
  - the Title IX Coordinator;
- ✓ Issue a written decision describing the result of the appeal and the rationale for the result; and
- ✓ Provide the written decision simultaneously to both parties.

# Appeals

COE must offer both parties an appeal from a determination regarding responsibility...on the following bases:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

# Questions?



Information in this presentation, including but not limited to PowerPoint handouts and presenters' comments, is summary only and not legal advice. We advise you consult with legal counsel to determine how this information may apply to your specific facts and circumstances.

Danielle Houck, Senior Associate General Counsel  
[dhouck@sclscal.org](mailto:dhouck@sclscal.org)

School & College Legal Services of California  
5350 Skylane Boulevard  
Santa Rosa, CA 95403  
(707) 524-2690  
[www.sclscal.org](http://www.sclscal.org)