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# Title IX: An Overview of the 2024 Rules & Grievance Procedures

## *Please Note*

*These materials are for instructional purposes only.*

*This information is not intended as legal advice.*

*If you are in need of a legal opinion on the  
subject matter covered herein,*

*you should contact your local school counsel*

*or an attorney at Stoneman, Chandler & Miller LLP.*

*If you are interested in having other in-service programs on school law presented  
in your school district, please contact*

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# Title IX of the Education Amendments of 1972

Title IX protects people from discrimination based on sex in education programs or activities that receive Federal financial assistance, also known as “Recipients” [of Federal funding].

“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.”

Applies to elementary & secondary schools, post-secondary schools, charter schools, for-profit schools, libraries and museums.

# Title IX in the News

Injury in Massachusetts field hockey game renews debate about co-ed sports

TIME

SUBSC

LOCAL NEWS

## Judge rules against Middleborough student who wore 'there are only two genders' shirt, case may go to Supreme Court

District of Massachusetts Rules Controversial Trump-Era Title IX Regulation "Arbitrary and Capricious"

4 Minute Read | August 5, 2021

HIGH SCHOOL SPORTS

## Independent investigator's report points to lapses in Woburn football assault case

By Bob Hohler | Globe Staff. Updated June 24, 2022, 4:13 p.m.



## Girls sue to block participation of transgender athletes

By PAT EATON-ROBB | February 12, 2020

2 PM EDT Nov 3, 2

## Trump's New Rule Governing College Sex Assault Is Nearly Impossible for Survivors to Use. That's the Point

IDEAS

LAW & COURTS

## Biden's Title IX Rule Is Now Blocked in 14 States

A federal judge in Kansas issued the third injunction putting the rule on hold

## Bypassing MCAD in Student Sexual Harassment Cases in Massachusetts

BY AMY FABIANO • APRIL 8, 2024

In a March 21, 2024, decision in the matter of *Doe v* Court Justice Connolly ruled that students may bring claims against educational institutions in court, without first filing with the Massachusetts Commission Against Discrimination.

LOCAL

## 25 Investigates: Racial disparities, hundreds of students disciplined for sex assaults in MA schools



By Kerry Kavanaugh, Boston 25 News and Marina Villeneuve

December 15, 2023 at 12:15 pm EST

# Recent Title IX Regulation Related Events

- May 2020: New Title IX Sexual Harassment regulations are announced
- June 2020: 18 State Attorney's General sue the DOE over the regulations
- June 2020: Supreme Court rules in favor of plaintiffs in Bostock (employment discrimination case reading Title VII to protect discrimination on the basis of sexual orientation -- had Title IX implications).
- August 12<sup>th</sup>, 2020: Court denies States' attempt to delay new Title IX regulations.
- August 14<sup>th</sup>, 2020: Sexual Harassment regulations take affect. School districts everywhere scramble to update policies and train staff
- January 20, 2021: Biden Executive Order on Gender Identity and Sexual Orientation – Orders the application of Bostock to discrimination laws (including Title IX) to protect discrimination on the basis of gender identity/sexual orientation.

# Recent Title IX Regulation Related Events

- April 6, 2021: DOE announces its review of Title IX – anticipate new guidance documents and a rule change.
- June 2021 and July 2021: DOE Issues 3 Guidance Documents on Title IX Sexual Harassment (interpreting to protect gender identity and sexual orientation discrimination)
- July 2021: Massachusetts Federal District Court strikes down part of grievance hearing regulations related to due process rights.
- February 2023: DOE issues 3 Guidance Documents on Title IX Athletics (interpreting to protect gender identity and sexual orientation discrimination)
- June 2022: DOE Updates Title IX FAQ Sexual Harassment Guidance to align with July 2021 court decision
- April 2024: DOE Issues New Title IX Regulations (effective August 1, 2024)

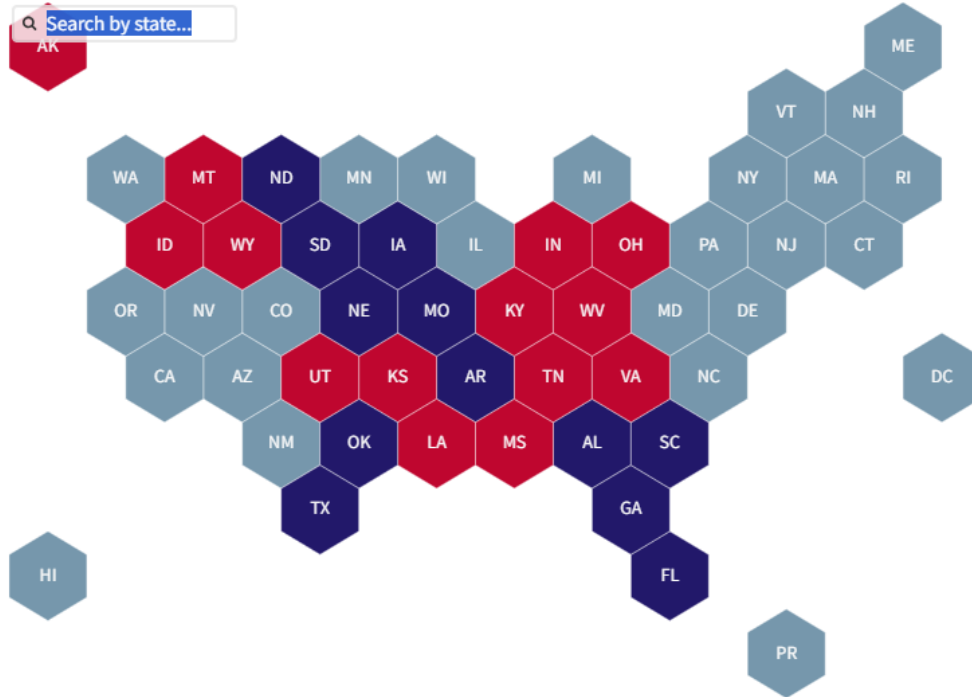
# Recent Title IX Regulation Related Events

- April 6, 2021: DOE announces its review of Title IX – anticipate new guidance documents and a rule change.
- June 2021 and July 2021: DOE Issues 3 Guidance Documents on Title IX Sexual Harassment
- July 2021: Massachusetts Federal District Court strikes down grievance hearing process regulations (doesn't have a big impact in K-12)
- February 2023: DOE issues 3 Guidance Documents on Title IX Athletics
- June 2022: DOE Updates Title IX FAQ Sexual Harassment Guidance to align with July 2021 Court decision
- April 2024: DOE Issues New Title IX Regulations (effective August 1, 2024). Does not include rule on athletics eligibility (plans to issue separately).
  - 26 States challenges the implementation of the regulations in court.
- As of July 12, 2024:
  - Courts: 14 States obtain court order to block implementation of the new regulations (more pending).
  - Congress: House passed bill to block implementation. Identical bill in Senate pending. Biden has indicated he will veto.

### Legal challenges to Biden's Title IX rule and their status

26 states are challenging the Biden administration rule that expands Title IX protections to ban discrimination in schools based on gender identity and sexual orientation

■ Rule challenged ■ Rule on hold ■ No legal challenge



SOURCE: Education Week reporting



A Flourish map



# 2024 – Title IX Final Review

Issued April 19, 2024

Effective and enforceable in MA

August 1, 2024

Incidents before August 1, 2024, must be addressed with the old procedures.

# So... Where are we now?

- Title IX Regulations likely to go into effect in MA on August 1, 2024 and public schools will be required to comply.
- Court decision, Congressional actions and USDOE action could change the regulations and/or interpretation in real time.
- Likely to be a moving target.
- Massachusetts law has been and is still applicable as well. Discrimination (including sexual harassment) on the basis of sex (including pregnancy and related conditions), gender identity and sexual orientation is prohibited in Massachusetts.
- Additionally, federal law (Title VII of the Civil Rights Act of 1964) has and continues to apply, prohibiting sex discrimination (including sexual harassment in the workplace).

# Sex Discrimination/Harassment Statutory Framework

- Federal law:
  - U.S. Constitution- Fourteenth Amendment Equal Protection Clause and Fourth Amendment Due Process Clause
  - Title VII: Employment Discrimination/Harassment protections (including sex)
  - Title IX: Sex Discrimination/Harassment protections (applies to students, employees and other persons seeking or engaging in school programs/activities)
- State law:
  - Declaration of Rights (MA Constitution)
  - M.G.L. c. 76, sec. 5 (pertaining to students)
  - M.G.L. c. 151C (pertaining to students)
  - M.G.L. c. 151B (pertaining to employees)

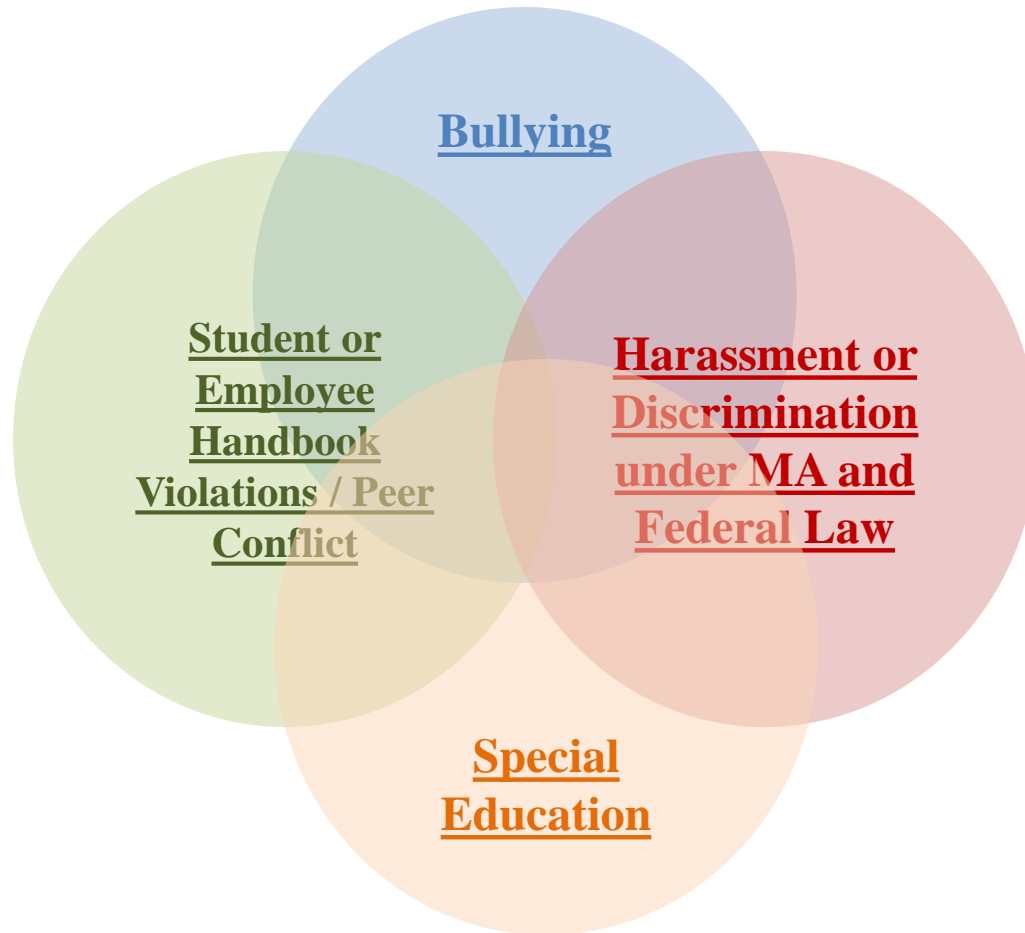
# Consider other authority...

- Regulatory Changes (and subsequent challenges)
- Agency Guidance
  - Q & As
  - Dear Colleague Letters
- Differing But Overlapping Approaches and Obligations between Federal & State Enforcement Depending on Administration
- Local Policy & Procedures

# Consider Other Overlapping or Competing Legal Protections/Obligations

- People with Disabilities (IDEA-students only, Section 504, Title II of ADA)
- Other Civil Rights Protections (e.g. race, religion, national origin, age-employment only, etc.)
- Free Speech Protections
- MA Bullying Law
- Student Discipline Due Process Protections
- Employee Discipline Due Process Protections
- Collective Bargaining Agreements
- Other Contractual Obligations
- Confidentiality (e.g. student and personnel records)

# Spotting the Issues



# Enforcement

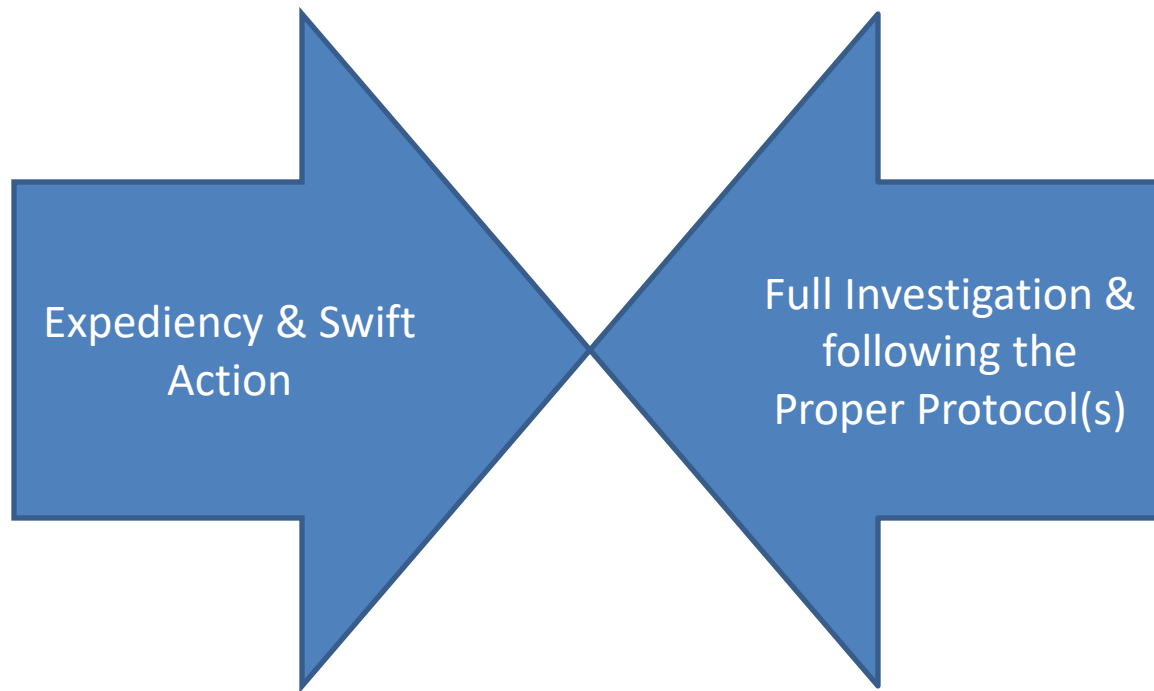
- Office for Civil Rights (OCR) with the U.S. Department of Education is responsible for enforcing federal laws and regulations related to educational institutions.
- Problem Resolution System (PRS) (formerly PQA) with the Department of Elementary & Secondary Education is responsible for enforcing state laws and regulations.
- Massachusetts Attorney General's Office (AGO)
- EEOC and MCAD (state and federal administrative agencies for employment discrimination; MCAD also for other state law discrimination)
- BSEA (state administrative agency for students with disabilities)
- Civil liability & injunction by way of private legal action (state and federal court).

# Major Changes in Title IX Regulations

- New definitions of sex discrimination and sexual harassment
- Significantly broadens scope and access to reporting
- Expanding the scope of what qualifies as sex discrimination under Title IX
- New rules restores some discretion and flexibility on process
- Training, notice, investigation, decision-making, appeals process and “informal resolution” are all impacted by new rules



# Competing Interests



# Title IX: Sex Discrimination

The final regulations clarify that sex discrimination includes discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

Clarifies that a recipient must **not separate or treat any person differently based on sex in a manner that subjects them to more than de minimis harm**, except in the limited specified circumstances permitted by Title IX.

Recognizes that preventing a person from participating in a recipient's education program or activity consistent with their gender identity subjects that person to more than de minimis harm.

Sex discrimination includes Sexual Harassment.

# Title IX: Sex Discrimination

- The regulations explicitly protect students and employees from all forms of “sex discrimination,” including discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
- This includes prohibiting an institution from adopting policies and practices that prevent a person from participating in an institution’s education program or activity consistent with the person’s gender identity.
- The Department will issue a separate rule regarding student eligibility to participate in male or female athletic teams.

# Examples of Sex Discrimination

**Different Treatment:** Individuals being treated differently because of sex.

Example: Girls' soccer team has inferior equipment, fewer coaches, and less resources than boys' basketball team, despite having a similar or greater number of players.

**Disparate Impact:** When a facially neutral policy, rule or practice has a disproportionate impact on students of a particular sex and school does not have a substantial legitimate justification for that rule, policy, or practice.

Example: A particular aspect of a dress code has a disproportionate impact toward one sex versus another.

**Pregnancy & Related Conditions:** Failure to provide reasonable accommodations, such as breaks during class or changes in schedule, to a student who is pregnant or has a pregnancy-related condition.

# Title IX: Sexual Harassment

**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 described in § 106.10, when it takes the form of:

- quid pro quo harassment (e.g., when an employee conditions a benefit on a person's participation in unwelcome sexual conduct);
- specific offenses (e.g., sexual assault, dating violence, domestic violence, and stalking); and/or
- hostile environment harassment.

# What is “hostile environment harassment” ?

The final regulations define **hostile environment harassment** as:

- 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.

The 2020 amendments, at § 106.30(a), cover sexual harassment, but do not address other forms of sex-based harassment and prohibit unwelcome sex-based conduct only if it is “so severe, pervasive, *and* objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity.”

# Examples of Sexual Harassment

While it is not possible to list all circumstances that may constitute sexual harassment, the following are examples of prohibited conduct between students, employees, and obviously employees and students:

- Unwelcome sexual advances -- whether they involve physical touching or not;
- Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life; comment on an individual's body, comment about an individual's sexual activity, deficiencies, or prowess;
- Displaying sexually suggestive objects, pictures, cartoons;
- Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
- Inquiries into one's sexual experiences, and
- Discussion of one's sexual activities
- Taking or posting of photographs, videos or images of a sexual nature without consent

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# Titte IX: Retaliation

**Retaliation** is an action by a peer or employee aimed at infringing upon a person's rights under Title IX. For example: intimidation, threats, coercion, or discrimination

Includes: witnesses, complainants, and respondents

Schools must prohibit retaliation, including peer retaliation, and must respond to conduct that reasonably may constitute retaliation using the same procedures it uses for other forms of sex discrimination



# Students w/ Disabilities

If a complainant or respondent is an elementary or secondary student with a disability, the recipient must require the Title IX Coordinator to:

- consult with one or more members, as appropriate, of the student's Individualized Education Program (IEP) team, if any, or one or more members, as appropriate, of the group of persons responsible for the student's placement decision if any,
- to determine how to comply with the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, throughout the recipient's implementation of grievance procedures.

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# Definitions

**Notice:** An elementary school or secondary school recipient must require all of its employees who are not confidential employees to notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX or this part.

**Complainant:** A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or this part; 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 or this part and who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination

**Complaint:** an oral or written request to the recipient that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX or this part.

# Definitions (cont.)

## **Pregnancy or related conditions:**

- (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

**Confidential Employee:** 1) An employee of a recipient whose communications are privileged or confidential under Federal or State law. The employee's confidential status, for purposes of this part, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies; (2) An employee of a recipient whom the recipient has designated as confidential under this part for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about sex discrimination in connection with providing those services

**- Note: Most K-12 schools do not employ confidential employees by law ( under #1) and schools have option to designate other confidential employees (under #2), but are not required to do so.**

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# Title IX Coordinator

**The Title IX coordinator is responsible for:**

- Responding to allegations of sexual discrimination
- Ensuring compliance with Title IX of the Education Amendments of 1972
- Publication of the policy
- Training of employees (which must be made available to public)
- Ensuring compliance with the Grievance Process

**The Title IX Coordinator's information should be published in your policy handbook and on your website.**

# Intake of a Complaint

**Upon notice of sex discrimination allegations, Title IX Coordinator must:**

- Treat parties equitably
- Offer and coordinate supportive measures
- Notify the complaint of procedures, and in the event of a complaint, the Respondent
- Initiate grievance procedures or Informal Resolution

**Title IX Coordinator may initiate a complaint if the alleged conduct:**

- Presents an imminent and serious health or safety threat
- Prevents the recipient from ensuring equal access to its education program or activity on the basis of sex

**Regardless of whether a complaint is initiated, must take other appropriate prompt steps to prevent sex discrimination from continuing .**

# Dismissals & Appeals

**Dismissal of a Complaint:** A school may dismiss a complaint of sex discrimination for any of the following reasons:

- 1) Inability to identify a respondent after taking reasonable steps to do so;
- 2) Respondent no longer participating in the school / programming or employed by the school
- 3) Complainant voluntarily withdraws any or all of allegations and the school determines such withdrawal results in an inability to draw a conclusion that sex discrimination occurred;
- 4) Even if proven, the conduct would not constitute sex discrimination under Title IX. Must make reasonable efforts to clarify the allegations with the Complainant.

**There is a right of notice and appeal when dismissal occurs.**

**Appeals.** In addition to an appeal of a dismissal consistent with paragraph (d)(3) of this section, a recipient 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.

# Supportive Measures

- Non-disciplinary, non-punitive individualized services offered as appropriate and reasonably available
- Without fee or charge to the complainant or respondent
- Available regardless of filing of a Formal Complaint
- Designed to restore / preserve equal access to education and activities
- Protect safety and deter sexual harassment
- Do not *unreasonably burden* any other person
- District must maintain confidentiality of supportive measures to the extent possible

# Examples of Supportive Measures

- Counseling
- Deadline extensions
- Course adjustments
- Schedule modifications
- Increased security in areas
- Mutual restrictions on contact



# Implementing Supportive Measures

- School must consider the alleged victims requests
- The school must keep the confidential to the greatest extent possible
- Equally available to complainant and respondent
- Title IX Coordinator must document
- NEW: Must make process available for either party to appeal supportive measures (ask for different or alternative supportive measures from another designated admin/staff member)

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# Informal Resolution

At any time prior to determining whether sex discrimination occurred under and if applicable, a recipient may offer to a complainant and respondent an informal resolution process, unless the complaint includes allegations that an employee engaged in sex based harassment of an elementary school or secondary school student or such a process would conflict with Federal, State or local law.

A recipient that provides the parties an informal resolution process must, to the extent necessary, also require its Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity.

# Informal Resolution (cont.)

**Potential terms that may be included in an informal resolution agreement include but are not limited to:**

- (i) Restrictions on contact; and
- (ii) Restrictions on the respondent's participation in one or more of the recipient's programs or activities or attendance at specific events, including restrictions the recipient could have imposed as remedies or disciplinary sanctions had the recipient determined at the conclusion of the recipient's grievance procedures that sex discrimination occurred.

# Informal Resolution (cont.)

**Not permitted when a K – 12 student alleges sex based harassment against an employee.**

# Responding to Sexual Harassment

- Schools must respond to allegations of sexual harassment upon having “Actual Notice” of sexual harassment.
- A school has “Actual Notice” when *any* employee/agent (who is not a “confidential employee”) learns of sexual harassment.
- The employee could witness the sexual harassment his/herself, learn of it from the victim, or learn of it through a third party.
- Any District employee with knowledge of an allegation of sexual harassment must report it to their supervisor or the Title IX Coordinator.

# Grievance Procedures

## Required when responding to all claims of sex discrimination

- Equitable treatment of complainants and respondents
- Conflict of interest and bias free Title IX Coordinators, investigators, and decision-makers
- Presumption that the respondent is not responsible until determination is made
- Reasonably prompt time frames
- Reasonable steps to protect privacy of all parties
- Objective evaluation of relevant evidence and exclusion of impermissible evidence
- If a recipient adopts procedure that apply to the resolution of only some complaints, articulate how and which procedures apply
- The option for informal resolution process if available.
- Notice of allegations to parties
- Burden on recipient to gather evidence
- Equal opportunity for the parties to present fact witnesses and other evidence
- Equal opportunity for the parties to access the relevant and not otherwise impermissible evidence or access to a description of this evidence.
- A reasonable opportunity to respond and a requirement that the recipient take reasonable steps to prevent unauthorized disclosures.
- A process for assessing credibility when credibility is in dispute
- Preponderance of the evidence standard (unless clear and convincing standard is used)

# Grievance Procedures (cont.)

- If it is determined that sex discrimination occurred, remedies for the complainant or others; disciplinary sanctions for those found responsible; and other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur.
- Equal application of any additional provisions to the parties.
- An appeal process that is at least the same as that offered in comparable proceedings.
- The Title IX Coordinator, Investigator, and Decision-Maker may (but does not have to be) the same person.

# Conducting an Effective Investigation

**Remember it is the burden of the school to investigate the allegations. Be proactive. Document what you find and *even what you did not find.***

- Keep the Complaint as a handy reference
- Plan your interviews (and give proper notice)
  - Who needs to be interviewed?
  - What should the order be?
  - What questions are necessary?
  - Do we need assistive technology / translators?
- Leave time for follow up.
- Avoid promises of confidentiality – you may not be able to keep it. The District does have to take reasonable steps to protect the privacy of parties and witnesses as well as the unauthorized disclosure of evidence but they can't infringe on parties' rights to:
  - Obtain and present evidence (including talking to witnesses)
  - Consult with others
  - Otherwise prepare for or participate in the grievance process



## Interviews

- Ensure that witness understands the grievance process (voluntary nature, retaliation, definition of sexual harassment, etc.)
- Make the person feel comfortable.
- Ask open ended questions—what, when, who, and where.
- Avoid leading questions.
- Interview one witness at a time.
- Remain engaged and interested, but objective.
  - Be careful not to affirm or reject a statement with your words or body language.

# Interviews

- Avoid asking about the allegations right away
- Allow parties to explain who they are outside of their role in the process
- Ask if the witness knows why they are there
- Let the witness finish answering questions
  - Circle back for the necessary details
  - Identification
  - Dates / Times
- Determine what the witness observed themselves directly, and what they have heard from others
- Ask if there is anyone else that you should speak with.
- Give them an opportunity to close out the interview by asking “Is there anything else I need to know?”
- Transition out of the interview. Talk about unrelated or “lighter” topics.

# Conducting an Investigation

- Ask for and review documents, electronic records, or other physical evidence. Use the interview as an opportunity to do so.
- It is important to preserve all relevant **physical evidence** or at least take a **photograph** if maintaining it is not practical or appropriate.
- Maintain a “chain of custody.” Document who has handled an examined the evidence and on what date.

# Assessing the Evidence

- Each party is afforded the same consideration without bias.
- Consider the presentation of witnesses—candid, guarded, responsive, evasive.
- Were the statements reasonable or unreasonable in light of the other evidence
- Did the witness have a good opportunity to observe?
- Consider potential motives for testimony and statements.
- Excluded questions, statements, answers are not evidence.
  - For example: information about prior sexual behavior
- Do not make up your mind until all of the evidence is presented.

# Finding of Responsibility

- Any respondent found by a *preponderance of the evidence* to have committed sexual harassment shall be subject to discipline, including:
  - Detention
  - Exclusion of extracurricular activities
  - Suspension
  - Expulsion
  - Termination of employment
- Decision will simultaneously issue a written decision to both parties.

# Written Determination

The written report needs to state whether or not there was sex discrimination and the rationale for that decision, disciplinary sanctions and other steps to prevent recurrence as well as the procedures and bases for appeal.

# Emergency Removals

- A school can remove a respondent from the school's education programs or activities on an emergency basis if the administrator undertakes an individualized safety and risk analysis and determines that an **imminent and serious threat to the health or safety of persons** (including students or employees) arises from the allegations of sex discrimination (including harassment) that justifies removal and provides the respondent with notice and opportunity to challenge the decision immediately following the removal. There are additional state and federal requirements for emergency removal proceedings that schools should consider if they institute this process.
- If the respondent is a school employee, the final regulations do not prevent a school from placing an employee on administrative leave during the investigation.
- Additional due process protections for eligible students with disabilities pursuant to IDEA and Section 504 still apply.

# Training

- Training materials must be preserved and posted on the school's website.
- All employees need to receive training on the District's obligation to address sex discrimination, scope of conduct that constitutes sex discrimination, and the applicable notification and information requirements.
- All Title IX Coordinators, mediators, decision-makers, and investigators must be trained on the District's obligations, grievance process, supportive measures, and requirements of Title IX.
- If school has confidential employees, must train them on those obligations.
- Employees responsible for informal resolution must be trained on that process as well.



# What should schools do next?

- Evaluate who your Title IX experts are? Do we need to train up or redesignate some staff?
- What policies, procedures, and documents need to be revised?
- Be sure Title IX is addressed at upcoming professional development for all staff.
- Ongoing obligation to evaluate whether or policies, procedures, or practices are Title IX compliant.
- Examine existing materials and resources.
- Do forms need to be reviewed / updated?
- Have we trained staff in each building how to use these?
- Be sure Title IX is considered during student discipline professional development.

# Recent Title IX Cases

- Doe et al v. City of Boston, No. 22-10917 (D. Mass. May 3, 2023)
- Doe v. North Andover, No. 20-10310 (D. Mass. May, 3, 2023)
- Cummings v. Premier Rehab Keller, P.L.L.C., 142 S. Ct. 1562 (2022)

# Doe v. Boston (2023)

Facts: Off-campus Christmas party in December 2017. Unsupervised party was hosted at the home of the alleged perpetrator (P). Both students attend Boston Arts Academy. Doe sues Boston claiming that she was forced to be present in school with (P) every day. She was subject to harassment and bullying everyday. (P) alleged to have bragged about the assault, saying it was “not a big deal” and to “avoid ruining his life over it.”

Doe reported the assault to her teacher in 2018 and again in 2019, requesting that her schedule be changed so that she did not have to be in class with student everyday. No actions were taken. She suffered severe emotional distress and quit school without graduating.

# Doe v. Boston (2023)

Title IX Claims. Boston files a Motion to Dismiss Title IX claims. Under Title IX, a student cannot be excluded from or subjected to discrimination in any educational program or activity receiving federal financial aid on the basis of sex. A claim for student-on-student harassment must establish that the offensive conduct is **severe, pervasive, and objectively offensive** sexual harassment, and that the school was deliberately indifferent to it such that the school's response is clearly unreasonable.

- Was this a single incident?
- What about ongoing in-school exposure to (P) ?
- How is the school based conduct “severe, pervasive, and objectively offensive” ?

# Doe v. Boston (2023)

- Citing a set of Connecticut cases – **attending in the same building as an attacker could be distressing enough to require a transfer to another school**, ongoing encounters could give rise to a hostile environment, preventing equal access.
- Actionable conduct under Title IX can be discerned by reviewing a “constellation of surrounding circumstances, expectations, and relationships” Davis v. Monroe City Bd. Of Educ. (1999)
- **Motion to Dismiss Denied**

# Doe v. North Andover (2023)

Facts: April 2017, Doe reports to mother that she was assaulted by a fellow student (P) while off campus. Following a writing exercise, the student's English teacher reports to the school guidance counselor suspicion that Doe had been assaulted. Months later, Doe is assaulted by (P) again off campus. The next day, Doe reports the incident to adjustment counselor. The school files a 51A, reports the matter to police. School does not initiate a Title IX investigation, arguing Title IX does not extend to off-campus activity.

# Doe v. North Andover (2023)

Facts (cont.): January 2018 - Months later, second student reports assault by (P). Here, Title IX investigation and referral were made. In April 2018, a third student makes a report. Safety plans were created. Written expectations for behavior. Criminal charges had been filed. According to Doe, none of these prevented ongoing contact / encounters.

# Doe v. North Andover (2023)

- Doe claims violation of Title IX – deliberate indifference in their efforts to prevent contact.
- North Andover’s Motion to Dismiss also fails. A jury will need to decide whether the measures were deliberately indifferent.



# Cummings v. Premier Rehab Keller (2022)

- Facts: Cummings has been deaf since birth and legally blind. Premier Rehab refused to treat her chronic back pain and provide an ASL interpreter. Cummings sued Premier for disability discrimination under the ADA, Rehab Act of 1973, and Patient Protection and Affordable Care Act.
- She sought injunctive relief and damages.
- Question: Do the compensatory damages available under Title VI of the Civil Rights Act of 1964 and the statutes that incorporate its remedies for victims of discrimination, such as the Rehabilitation Act and the Affordable Care Act, include compensation for emotional distress?

# Cummings v. Premier Rehab Keller (2022)

- Analysis. Beyond dispute that case law supports a private right of action to enforce Civil Rights Claims (such as Title IX); however, the scope of plaintiffs remedies were not established before this case.
- The Supreme Court uses the analogy of contract law to decide whether a remedy is available in these situations.
- Under this approach, a particular remedy is available “only if the funding recipient is on notice that, by accepting federal funding, it exposes itself to liability of that nature.”
- Ruling. Because damages for emotional distress are not usually available under contract law and serious emotional disturbance is not a particularly likely result of violation of these statutes, federal funding recipients have not consented to be subject to such damages.

Questions?