Title IX Coordinator Training

K12 School Districts
2020 Regulations

January 17, 2025

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Preliminary Issues

Election Results

- 2024 election results will return Trump to office in January 2025
- Prior Trump administration authored the 2020 Title IX Regulations that were superseded by the 2024 regulations
- Expected return to the 2020 regulations

Tennessee v. Cardona

- Decision issued on January 9, 2025.
- Final decision, following injunctive action issued in July.
- The 2024 Title IX Final Rule and its corresponding regulations exceeded the Department's authority and violated the Constitution.
- The court granted plaintiffs' motion for summary judgment and denied the Department's motion for summary judgment, ultimately barring the Final Rule from being enforced nationwide.
- ***Vacatur*** is "a rule or order that sets aside a judgment or annuls a proceeding."

Overview of Title IX Coordinator Training
2020 Title IX Regulations

- Title IX – Law and Regulations
- Title IX – Covered Acts and Definitions
- Title IX Grievance Procedure – Title IX Coordinator Lense
- Title IX Coordinator Other Obligations

Title IX Law and Regulation

Title IX Guidance

- Federal Law
- Regulations
- Other sources of mandatory and recommended guidance
  - State law
  - Case law
  - Advocacy
  - Best Practices

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 education program or activity receiving Federal financial assistance."

- Title IX of the Education Amendments of 1972

Enforced by the Office for Civil Rights (OCR)

Title IX Regulations Timeline

1998/1999

Supreme Court decisions on Title IX Sexual Harassment

2001

OCR Regulations on Sexual Harassment

2011

OCR Dear Colleague Letter: Sexual Violence

2017

OCR Q&A on Campus Sexual Misconduct

2020

OCR issues Final Rule on Sexual Harassment

2024

OCR issues Title IX Final Rule on Sex-Based Discrimination

Jan 9, 2025

2024 Regs Barred

Title IX Regulatory Guidance - Report to OCR

- Following a report of sexual harassment to the Office for Civil Rights (OCR)
  - OCR initiates an investigation
  - OCR may seek an informal resolution
  - Negotiated agreement is set forth in a resolution agreement
  - OCR may impose fines and penalties against a school if resolution not reached

Best Practices

- Consider campus needs and culture
- Legal obligations
- Advocacy groups
- Adopting practices not required by regs
  - Trauma informed practices
  - Incorporate school culture
  - Reflect needs of your campus

Title IX Obligations for K12 School Districts

Title IX Covers

Title IX protects BOTH students and employees of K12 Schools

Sex discrimination

Sexual Harassment

Sexual Assault

Athletics

Pregnant Students

Recruitment/Admissions Programs

Legal Obligation

Educational institutions must respond in a manner that is not **deliberately indifferent** when it has actual knowledge of sexual harassment occurring in the institution's education program or activity against a person in the United States.

Actual Knowledge of Sexual Harassment

- When sexual harassment or allegations of sexual harassment come to the attention of **ANY EMPLOYEE** of a K-12 district:
  - All employees **MUST** report to the **TITLE IX COORDINATOR**

- Failure to report could lead to an inadequate response
  - Proof of deliberate indifference
  - Legal responsibility for sexual harassment

Scope of the Education Program or Activity

For Title IX to apply, the behavior must occur in the school's "education program or activity," further defined as:
locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

Off-campus activities covered if one (1) of three (3) requirements are met:

1. the off-campus incident occurs as part of the school's operations;
2. the school exercised substantial control over the respondent and the context of alleged sexual harassment that occurred; or
3. the incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially recognized by a college

Reporting Obligations of K12 Employees

Non-Confidential Employees

All employees, except Confidential Employees, have an obligation to report to Title IX Coordinator upon notice about 2020

Confidential Employees

Mental Health professionals with a license

No duty to report to Title IX Coordinator

Confidentiality

- A licensed mental health professional at the school can maintain confidentiality.
- All other employees are required to report the matter to the Title IX Coordinator.
  - Title IX Coordinator is responsible for ensuring a proper response.
- Failure to report to the Title IX Coordinator could lead to in an inadequate response by the school and could be used to demonstrate deliberate indifference.
- In instances of potential sexual harassment, employees cannot offer to keep the matter confidential and must contact the Title IX Coordinator.

Other Employee Reporting Responsibilities
Mandatory Reporting

Mandatory Reporting

- Report to the appropriate agency when there is a reasonable suspicion that an ***abuse or neglect of a child*** may have occurred

- Child abuse is defined as physical abuse, neglect, sexual abuse and/or emotional maltreatment. This includes the sexual assault, sexual exploitation, and/or sexual abuse of a child; the willful cruelty or unjustifiable punishment of a child; incidents of corporal punishment or injury against a child; abuse in out-of-home care; and the severe and/or general neglect of a child.

- A child is a person under the age of 18.

Title IX Enforcement and Federal Constitutional Protections

Under Title IX, schools may not restrict the rights afforded under:

- First Amendment (Free Speech)
- Fifth Amendment (Protection against Self-Incrimination)
- Fourteenth Amendment (Due Process)

Title IX Prohibits Retaliation

- Prohibition against retaliation for any participant in the Title IX reporting & investigation process

- Requires some level of school action

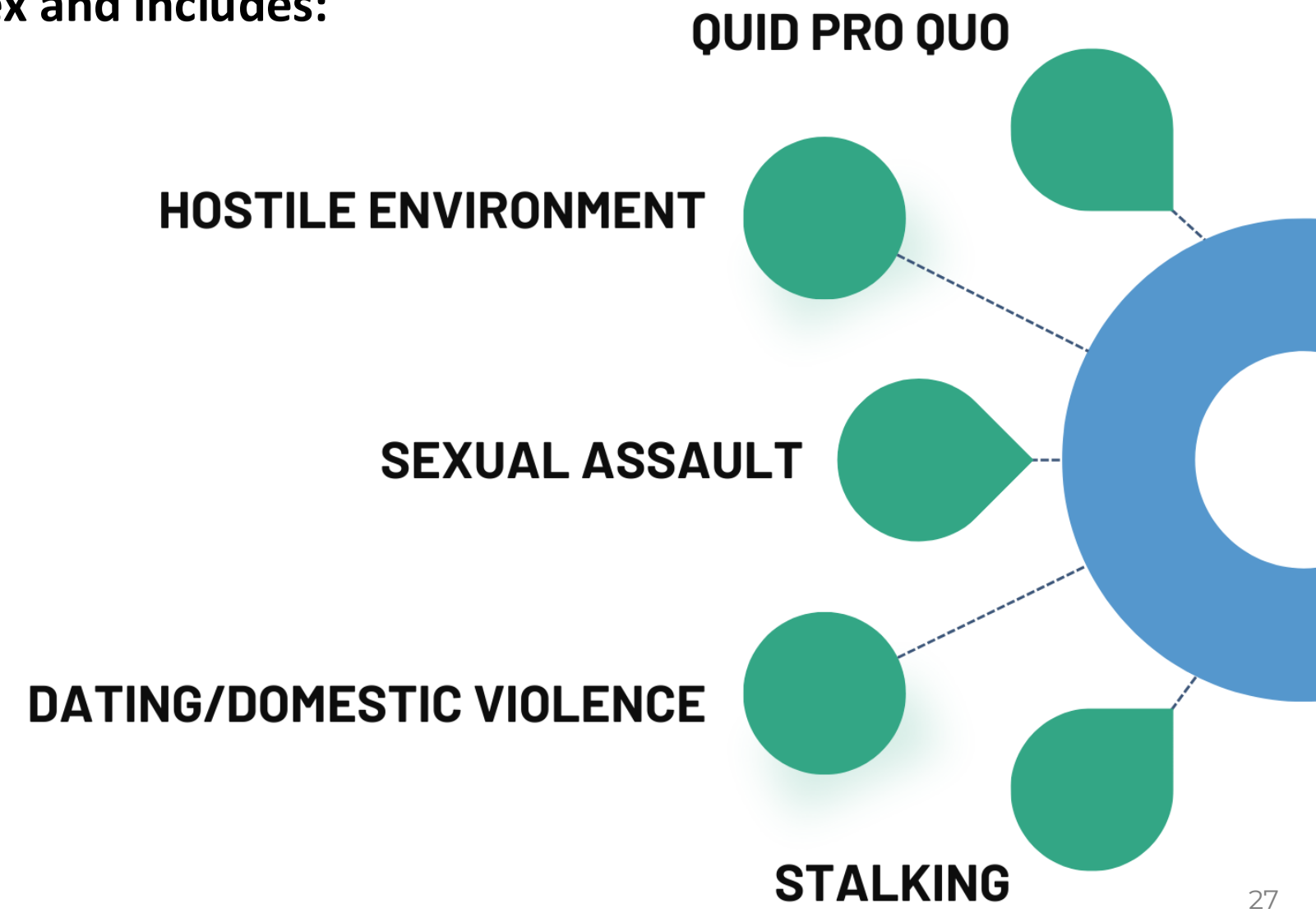
Compare 2024 Regulations (no longer in effect)

- Expanded definition of Complainant
- Explicitly referred to parental rights
- Defined complaint as:
  - an oral or written request to school that can objectively be understood as a request for the school to investigate and make a determination about alleged sex-based discrimination.
- Defined obligation as:
  - to take prompt and effective action to end any sex discrimination in their educational programs or activities, to prevent its recurrence, and to remedy its effects.
- Defined notice as;
  - the school must respond to information about conduct that reasonably may constitute sex discrimination
- Confidential employees
  - Allowed for designee
- Jurisdiction
- Pregnancy

Title IX Sexual Harassment Definitions

Title IX (TIX) Definition of Sexual Harassment

Defined conduct on the basis of sex and includes:



TIX Definition of Sexual Harassment

Defines conduct "on the basis of sex" and includes:

- Quid pro quo - An employee of the school conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;

- Hostile environment - Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the school's education program or activity;

2020 - Sexual Assault, Dating/Domestic Violence and Stalking

Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the FBI.

Forcible:

- Any sexual act directed against Complainant, forcibly, against Complainant's will, or without consent, including rape, sodomy, sexual assault with an object, and fondling.

Non-Forcible:

- Offenses that do not involve force where the Complainant is incapable of giving consent, including statutory rape and incest.

Stalking

Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(1) Fear for the person’s safety or the safety of others; or

(2) Suffer substantial emotional distress.

State Laws Prohibiting Sexual Harassment

- Aside from obligations under Title IX, K12 schools must also enforce state laws prohibiting sexual harassment
- Definitions of sexual harassment may be different
- In most instances, an incident will be analyzed under both Title IX and state law

Compare 2024 Regulations (no longer in effect): Sex Discrimination and Sex-Based Harassment

K12 school districts have an obligation to take prompt and effective action to end any sex discrimination in their educational programs or activities, to prevent is recurrence, and to remedy its effects. This includes:

- **Sex Discrimination:**
  - Sex Stereotypes
  - Sex Characteristics
  - Sexual Orientation
  - Gender Identity
  - Pregnancy & Related Conditions
- **Sex-Based Harassment:**
  - Quid Pro Quo
  - Hostile Environment
  - Sexual Assault
  - Dating/Domestic Violence
  - Stalking

Title IX Coordinator Role and Responsibilities

Designate a Title IX Coordinator

- Schools are **required** to designate at least one Title IX Coordinator for the school.
- The Title IX Coordinator is responsible for coordinating the school's effective response to instances of discrimination and harassment on the basis of sex.

Title IX Coordinator

Key Responsibilities

Overall Title IX compliance of programs/activities and report response

Central office for reports of sex discrimination and sexual harassment

Coordinate an effective response

- Respond to report
- Contact complainant
  - Supportive measures
  - Formal complaint process
- Manage the receipt of formal complaint and initiation of Title IX grievance process
- Determine if investigation is necessary in absence of formal complaint

TIX Obligations for TIX Coordinator - Coordinate the School's Response (2020 Regs)

- Receive reports of claims and potential claims
- Provide required notices
- Examine (and/or re-examine) and implement supportive measures
- Determine appropriateness of a potential removal proceeding
- Act as investigator in some instances
- Identify proper decision-maker
- Decide who will manage an appeal, if necessary
- Coordinate investigation, sharing of information between the parties, final outcome letter, and offering of appeal options
- Ensure proper documentation
- Provide training

Title IX Coordinator Responsibilities - Best Practices

- Coordinate the Title IX response on behalf of the school
- Monitor outcomes and identify patterns
- Adoption of Title IX policy and procedure
- Access to relevant data (i.e., participation, budgets)
- Information easily found online and in designated publications
- Permitted to conduct investigations
- Permitted to oversee investigations
- Avoid conflicts of interest, including exclusion from serving as the decision-maker
- Appropriate authority, qualifications, training, and time

Information about the Title IX Coordinator

Contact information for the Title IX Coordinator must be shared far & wide and include at minimum the following information:

Name of Title IX Coordinator

School address (with office address)

Phone Number

Email Address

Information about Title IX Coordinator

- Must be shared with:
  - Students
  - Parents
  - Employees
  - Applicants for admission
  - Applicants for employment
  - Unions and/or parties to collective bargaining agreements

- Notify the above individuals of non-discrimination statement of the school
- Information must include notice of grievance procedure
- Information must promptly display contact information on the school's website (if applicable) and in each handbook or catalog made available to those persons

Title IX – Parties and Administrators

Parties

- Complainant – alleged victim/survivor
- Respondent – responds to the allegation(s)

Other Participants

- Fact Witnesses
- Expert Witnesses

Administration of Claims

- Title IX Coordinator
- Title IX Investigator
- Title IX Decision-maker
- Title IX Appeal Officer
- Title IX Advisor
- Title IX Informal Resolution Officer

Title IX Grievance Process Requirements

Overview of Title IX Grievance Process (TIXGP)

- Respond promptly in a manner that is not deliberately indifferent
- Due process and fundamentally fair procedures to adjudicate the allegations
- Upon notification, supportive measures offered
  - Emergency removal
- Offer of formal process (upon signing of Formal Complaint)
  - Complainant files or Title IX Coordinator may file
- Both parties receive notice of the allegations
- Both parties participate in investigation and can inspect information gathered
- Separate decision-maker(s)
- Completed in a prompt time-frame
- Retaliation prohibited - define the retaliation complaint process

Executing the Title IX Grievance Process

TIXGP: Jurisdiction Defined

Occurring in the institution's education program or activity

- includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred

Against a person in the United States

TIXGP: Dismissal - Mandatory and Permissive

Mandatory dismissal

- Would not constitute sexual harassment as defined in regulations
- Did not occur in education program or activity
- Did not occur against a person in the U.S.

Permissive dismissal

- Complainant notifies Title IX Coordinator in writing that Complainant would like to withdraw formal complaint or allegations
- Respondent is no longer enrolled or employed by school district
- Specific circumstances prevent the school district from gathering evidence sufficient to reach a determination

TIXGP: Emergency Removal Procedure

Step 1	Step 2	Step 3	Step 4	Step 5
Conduct a prompt and individualized safety and risk analysis	Immediate threat to physical health or safety of any student or other individual arising from the allegations of sexual harassment is identified	Evaluate the applicability of disability laws to the removal decision	Consider the appropriateness of supportive measures in lieu of an emergency removal	Provide the respondent with notice and an "immediate" opportunity to challenge the emergency removal

TIXGP: Supportive Measures

Supportive measures are:

- **non-disciplinary, non-punitive** individualized services offered as appropriate, as reasonably available
- without fee or charge to the complainant or the respondent
- are designed to **restore or preserve equal access** to the District's education programs or activities
- without unreasonably burdening either party, including measures
- designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment.

TIXGP: Offer of Formal Process

- Complainant offered formal process
  - Offer should be made to parents of minors
- Investigation process should be explained to complainant and parents
- Complainant must request an investigation
- Wishes of complainant are to be respected

TIXGP: Receipt of Formal Complaint

Form completed

Verbal report

Phone call

Email

Other

TIXGP: No Formal Complaint Filed

Title IX Coordinator may decide to proceed with an investigation

- evidence of deliberate indifference if investigation not initiated

NOTE: Title IX Coordinator does not become Complainant

TIXGP: Notice of Allegations

- Detailed allegations against respondent
- Supportive measures offered to respondent
- No supportive measure can appear disciplinary or punitive in nature

TIXGP: Separate Investigator and Decision-Makers

- Title IX Coordinator may serve as investigator
- Title IX Coordinator may NOT serve as decision-maker to determine policy violation and discipline, or as the appeal officer
- Hearing panels permitted for K-12s but not required

TIXGP: Investigation

- Investigator gathers relevant and irrelevant information
- All information must be shared with both parties
- Parties have ability to review investigation report and outcome, provide comments/written questions and provide answers and limited follow-up

TIXGP: Burden of Proof

- Preponderance of the evidence
- Clear and convincing

TIXGP: Sharing of Investigation Information

- Both parties are given the FULL investigation file to review
- Documents shared or document inspection
  - 10 days for parties to respond to the information
- Investigator prepares a draft investigation report and shares it with both parties
  - 10 days for the parties to respond to the investigation report
- Investigator prepares final investigation report and shares it with both parties and the decision-maker

TIXGP: Decision-Maker

- Decision-maker provides the parties with the opportunity to send questions or comments
  - 10 days to respond

- Decision-maker must determine:
  - Policy violation
  - Discipline (if found in-violation of policy)

- Decision-maker issues an outcome letter to the parties

- In K-12, discipline decisions against students with disabilities may require a manifestation determination
  - A **Manifestation Determination** is a process, required by the Individuals With Disabilities Education Act (IDEA 2004), which is conducted when considering the exclusion of a student with a disability that constitutes a change of placement

TIXGP: Appeal Grounds

Procedural Review

Procedural irregularity in the Title IX grievance process that materially affected the outcome.

New Information

Newly discovered evidence that was not reasonably available at the time of the determination of responsibility or dismissal that could materially affect the outcome.

Conflict of Interest or Bias

Due to a bias or conflict of interest by the Title IX Coordinator, investigator, or decision-maker that materially affected the outcome.

TIXGP: Informal Resolution

- **Trained facilitators**
- Offered after formal complaint is filed
- Process must be detailed in writing
- Described to both parties
- Parties agree in writing
- Either party may end informal resolution before a formal agreement is accepted

- Never available when complainant is student and respondent is employee

Other Title IX Obligations and Considerations

Conflicts of Interest

- Relationship to parties or witnesses
- Professional conflicts
- Personal conflicts
- Actual and perceived

Impartiality

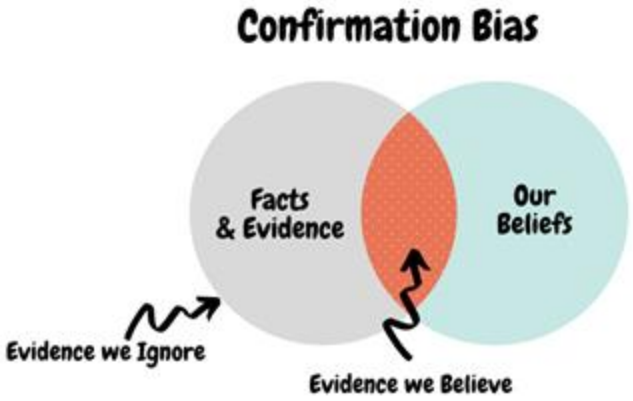
- Be a neutral – neither pro-Complainant nor pro-Respondent
- Consider all of the evidence as presented
- Maintain open mind regarding potential conclusions

Stereotypes

- “A fixed, over generalized belief about a particular group or class of people.” (Cardwell, 1996)
- Stereotypes around sexual assault
- Stereotypes around sexual harassment
- Complainant and Respondent

Bias

- Conscious/Explicit
  - Discriminatory intent
  - Stated preferences



- Unconscious/Implicit
  - For the most part, most people are unaware of these drivers
  - Developed over a period time and can influence many factors in hearing
  - Short cuts developed by the brain and often play a role in:
    - Immediate response to conflict
    - Often mimics fear responses

Trauma

- Many Title IX cases involve trauma

- Title IX Coordinators should understand the impact of trauma on:
  - Reaction to trauma
  - Ability to capture memories
  - Recollection of memories

- Expectations around victim/survivor of trauma

Campus Title IX Training Programs

Training

- Required
- Voluntary

- Vendor or in-house
- Online, asynchronous
- Zoom, synchronous
- Face-to-face

Training Program

Groups to Consider

- Title IX Office
- Administrators
- Teachers
- Classified Staff
- Specific Groups: Mental Health Professionals, Special Ed
- Students
- Volunteers

Conclusion

- The obligations for Title IX compliance in K12 school districts are vast, complicated, and frequently changing.
- An effective and empowered Title IX Coordinator is integral to achieving Title IX compliance for districts.
- A healthy and dynamic Title IX compliance program ensures that all students will continue to have access to their education programs and activities, even in the aftermath of sexual harassment.
- Title IX Coordinators engage in valuable efforts to reach this goal.

Final Points

1. Your certificate of completion will be sent to you within the week, along with all the other resources shared during the program.
2. Keep and post a copy of slides from the training on your website.
3. Reach out with any follow-up questions:

office@titleixconsult.com

Upcoming Title IX Events from Title IX Consult, LLC

- **K12 Title IX Coordinator**
  - Friday, January 17, 2025
- **K12 Title IX Investigator**
  - Friday, January 24, 2025
- **K12 Title IX Decision-Maker and Appeal Officer**
  - Friday, January 31, 2025

- **Title IX Thursdays** –
  February 6, 2025

Thank You!

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Sign-up for our newsletter or ALL Title IX Thursdays!