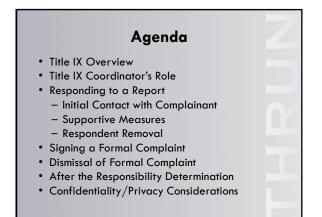


Intent of the Training

- This presentation does not fully satisfy the 2020 Title IX training requirements. Rather, it is designed to supplement the required training and is intended for individuals who desire additional training about the Title IX Coordinator's role.
- Individuals who have not been trained on the 2020 Title IX regulations should not serve as the Title IX Coordinator or in any other role in the new Title IX sexual harassment grievance process until properly trained.
- These training materials must still be posted on your District's website.



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 . . . "

Scope of 2020 Regulations Effective August 14, 2020 Do NOT apply retroactively Focus on sexual harassment as subset of sex-based discrimination

- Apply to staff-to-staff, staff-to-student, student-to-staff, and student-to-student sexual harassment
- Schools still obligated to address other forms of sex discrimination and unlawful harassment under other policies and laws
- Revised regulations are coming soon.



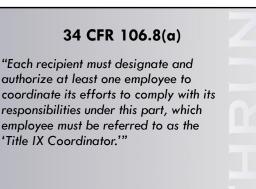
2020 Sexual Harassment Definition

Conduct on the basis of sex that satisfies one or more of the following:

- Employee quid pro quo;
- Sexual assault, dating violence, domestic violence, stalking (definitions from Violence Against Women Act); and
- Hostile Environment (new stricter definition)

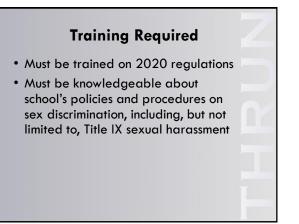






Title IX Coordinator

- Must be district employee(s)
- Authorized to coordinate school's Title IX efforts
- Referred to as "Title IX Coordinator"
- Must serve without bias or conflicts of interest
- May also serve as the investigator but not as the decision-maker or appeals officer in grievance process





Responsibilities

- Oversees process from initial report to conclusion of grievance process, including coordination of the effective implementation of any supportive measures and remedies
- Assists in ensuring school community is aware of Title IX rights and responsibilities

Coordinator's Contact Information

- Notify applicants for employment and admission, students, parents, employees, and unions or professional organizations of name or title, office address, email address, and phone number of Title IX Coordinator
- Must prominently display contact information above on district's website and in employee and student handbooks

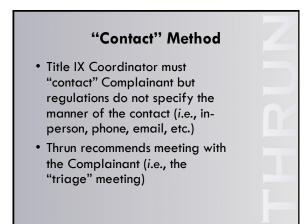
Responding to a Report of Sexual Harassment

THRUN

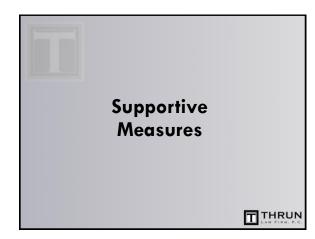
Process Overview

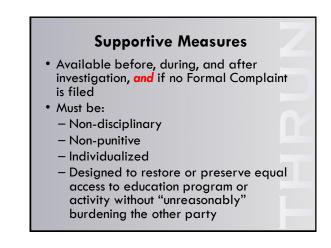
- Report
- Contact with Complainant (i.e., the "Triage Meeting")
- Formal Complaint
- Investigation
- Determination of Responsibility
- Disciplinary Sanctions
- Appeals
- Implementation of any remedies

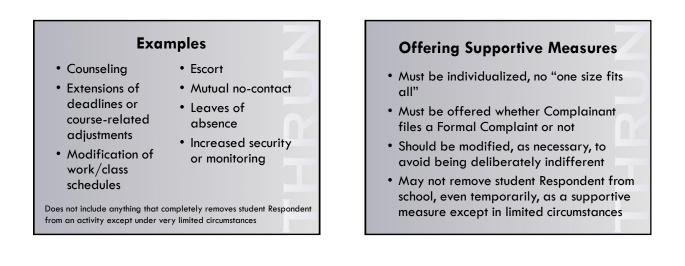




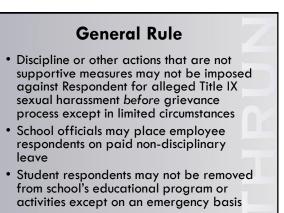














Student Emergency Removal

- School officials must:
 - Conduct individualized safety and risk analysis;
 - Determine that an *immediate* threat to the physical health or safety of students or staff justifies removal; and
 - Provide removed student notice and opportunity to challenge the removal immediately after being removed
- Removal must be consistent with IDEA and Section 504 requirements

Key Points

- Respondent may not be disciplined for conduct that constitutes alleged Title IX sexual harassment unless grievance process is complete and Respondent has been determined responsible
- Building administrators should be reminded regularly of Title IX's student removal provision
- All allegations or incidents of Title IX sexual harassment should be referred immediately to the Title IX Coordinator before any disciplinary action is taken

Hypothetical

- Student A reports to principal that Student B groped Student A in hallway near school gym
- After reviewing school surveillance video, principal suspends Student B pending board hearing
- Student A and B ride the same bus and are in AP Chemistry together and Student A is worried it will happen again
- What if you learn Student B was charged two weeks ago for inappropriately touching Student A at the mall and had threatened to harm Student A if Student A told anyone?

"Triage" Meeting Tips

- Promptly contact Complainant
- Neither encourage nor discourage Complainant to file a Formal Complaint
- Be specific about the supportive measures school is offering
- Get Complainant's input and consider Complainant's wishes about supportive measures
- Document any supportive measures offered, refused, and, if no supportive measures were given, why

Additional Tips Make clear school has obligation to implement Supportive Measures, as appropriate, whether Complainant files Formal Complaint or not Manage expectations, e.g., process, timelines, confidentiality Explain that school will address the allegations to the best of its ability and to the extent permitted by law, including, when warranted, by Title IX Coordinator signing Formal Complaint See Initial Procedures checklist



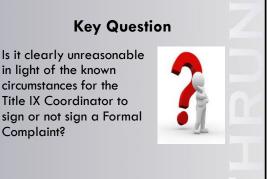


34 CFR §106.30

Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient (district) investigate the allegation of sexual harassment.

Implications of Signing a Formal Complaint

- Initiates the grievance process, possibly against Complainant's wishes
- Complainant may choose not to participate or cooperate in the investigation, resulting in school not being able to gather evidence sufficient to reach determination of responsibility

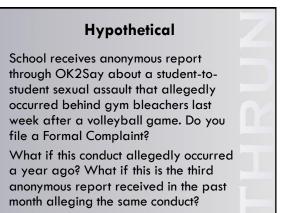


General Considerations

- Does the alleged conduct constitute sexual harassment?
- Did the alleged conduct occur in the recipient's (school) program or activity and in the U.S.?
- Is the Complainant identified?
- Is the Respondent identified?
- Do you have the ability to identify the Reporter? Complainant? Respondent?
- Does the recipient have control over the Respondent?

General Considerations Cont'd

- Is the Respondent a school employee?
- Is there a pattern of alleged sexual harassment by the same Respondent?
- Would it be clearly unreasonable in light of the known circumstances for the Title IX Coordinator to sign or not to sign a formal complaint?
- Does the District want to discipline for harassment if proven?





Anonymous Reporter

"Irrespective of whether a report of sexual harassment is anonymous, a recipient...with actual knowledge of sexual harassment or allegations of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent generally and must meet the specific obligations [in the revised Title IX regulations]."

Commentary to 2020 Title IX Regulations

Implications of Signing when Complainant is Unknown

"When a formal complaint is signed by a Title IX Coordinator rather than filed by a complainant, the written notice of allegations...requires the recipient to send both parties details about the allegations, including the identify of the parties, if known,....However, if the complainant's identity is unknown...then the grievance process may proceed..., even though the written notice of allegations does not include the complainant's identity."

OCR: Part 1: Questions and Answers Regarding the Department's Title IX Regulations (1/15/21)

Hypothetical

Student reports to school counselor that friend was cornered in an empty classroom by another student and touched inappropriately on more than one occasion. Reporting student claims friend says he/she can handle it, it wasn't a big deal, and Complainant does not want to get the Respondent in trouble. What if Respondent is the Complainant's teacher?

Reluctant Complainant

"The decision to initiate a grievance process in situations where the complainant does not want an investigation or intends not to participate should be made thoughtfully and intentionally, taking into account the circumstances of the situation including the reasons why the complainant wants or does not want the recipient to investigate."

OCR: Part 2: Questions and Answers Regarding the Department's Title IX Regulations (1/15/21)

Hypothetical

Complainant transferred to another school district for second semester. After transferring, Complainant reports to the Title IX Coordinator a pattern of alleged sexual harassment by a school employee during first semester until Complainant transferred. What if the Complainant makes these allegations six years later?

Former Student Complainant

- Complainant must be "participating in or attempting to participate" in school's programs or activities to file Formal Complaint
- Students who have graduated may still be "attempting to participate" in the school's programs or activities. For example, does the former student intend to remain involved in the school's activities or would former student return to your school if the harassment is appropriately addressed?
- Remember: Title IX Coordinator may sign Formal Complaint regardless of whether Complainant is "participating or attempting to participate" in school's programs



Document Your Rationale

- Decision to sign Formal Complaint rests with Title IX Coordinator, not other school officials
- Document specific circumstances or factors justifying your decision to sign OR not to sign Formal Complaint
- Decision either way may be challenged as "deliberately indifferent"

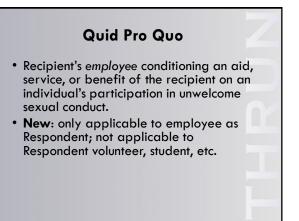
Final Points

- Title IX Coordinator does *not* become the Complainant merely because Title IX Coordinator signed the Formal Complaint
- Grievance process remains the same regardless of who initiated the Formal Complaint
- Because Respondent may argue bias or prejudgment, Thrun recommends, where feasible, that Title IX Coordinator not serve as the investigator on Formal Complaints that the Title IX Coordinator signed





Forms of Sexual Harassment Conduct on the basis of sex that satisfies one or more of the following: Employee quid pro quo; Sexual assault, dating violence, domestic violence, stalking (definitions from Violence Against Women Act); and Hostile Environment (new stricter definition)





Sexual Violence Definitions

- "Sexual assault": an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
- "Dating violence": violence committed by a person who is or has been in a romantic or intimate relationship with the Complainant. The existence of such a relationship is based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Sexual Violence Definitions Cont.

- "Domestic violence": felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the Complainant, person with whom the Complainant shares a child, person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner, person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Michigan; or any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Michigan.
- "Stalking": 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.

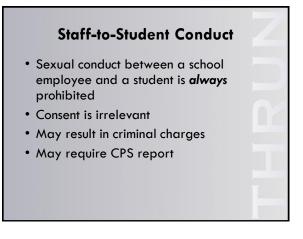
Hostile Environment

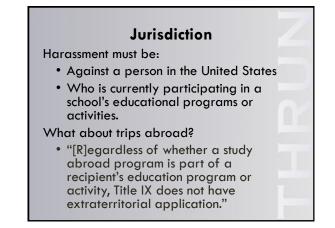
- "Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person's equal access to the recipient's education program or activity."
- "Education program" is any location, event, or circumstance over which the recipient exhibits substantial control over both the Respondent and the context in which the harassment occurred.

Denial of Equal Access

- Reactions to sexual harassment may vary
- Assess from perspective of reasonable person in Complainant's position
- Denial may include skipping class to avoid harasser, grade decline, difficulty concentrating in class
- No concrete injury required
- Do not have to show that Complainant dropped out of school, failed a class, had a panic attack, or otherwise reached "breaking point"

OCR, Question and Answers Regarding the Department's Final Title IX Rule, September 4, 2020







Scope of Education Program or Activity

- **School Jurisdiction Factors:**
- Place of conduct new regulations define sexual harassment as occurring in the United States
- Relationship to school or school activity
- Involvement of student, employee, volunteer
- Policy/handbook language
- If no jurisdiction under Title IX policy, may have jurisdiction under another policy, rule, or law

Off-Campus Sexual Harassment

- Case-by-case analysis
- Don't know where misconduct occurred?
 Investigate!
- Not during school activity?
 Consider effects of off-campus conduct!
- Prevent additional harassment or retaliation
- Consider applicable codes of conduct and Revised School Code provisions

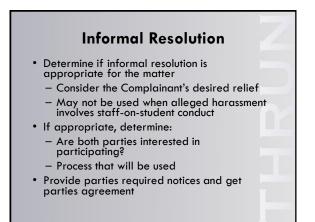
Hypothetical

Student A files a Formal Complaint alleging that Student B made vulgar, sexual comments and touched Student A inappropriately while they were on the end-of-year school choir trip in Germany. Student also alleges that Student B did it again after choir class this fall. Once Title IX Coordinator receives the report, the Coordinator learns Student B's parents recently informed the school registrar that Student B will either be transferring schools or travelling abroad for the rest of the semester.



Coordinator's Responsibilities

- Oversee the grievance process
- Know board policy and relevant timelines and follow-up with investigator and decision-maker as necessary
- Provide investigator with party's/witness's contact information, secure evidence at investigator's request
- Be mindful of bias/conflicts of interest
- Manage expectations
- Consider informal resolution if appropriate

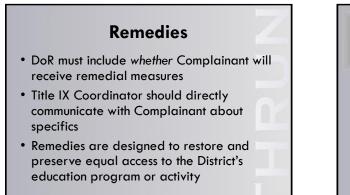






Coordinator's Responsibilities

- Provide written determination to parties simultaneously
- Notify the other party in writing if appeal is filed, implement appeal procedures equally for both parties, and provide appeal decisions to parties simultaneously
- Implement any remedies "effectively"





Confidentiality

- Schools must keep confidential the identity of a person who reports sexual harassment or files a Formal Complaint
 - Includes: parties and witnesses
 - Supportive measures must also be kept confidential
- Exception: As permitted or required by law or to carry out any provision of Title IX

Confidentiality of Evidence

"Recipients may require parties and advisors to refrain from disseminating the evidence (for instance, by requiring parties and advisors to sign a non-disclosure agreement that permits review and use of the evidence only for purposes of the Title IX grievance process), thus providing recipients with discretion as to how to provide evidence to the parties that directly relates to the allegations raised in the formal complaint."

85 Fed Reg 30297-30298 (May 19, 2020)



Record Keeping

- Records relating to Title IX reports must be maintained for at least seven years
 - Applies to investigation records, disciplinary sanctions, remedies, appeals, and records of any action taken (i.e. supportive measures)
- Must retain any materials used to train Title IX Coordinators, Investigators, Decision-Makers, Appeals Officers, and any person designated to facilitate an informal resolution process
 - This PowerPoint!

Additional Resources

- OCR September 4, 2020 guidance: <u>https://www2.ed.gov/about/offices/list/ocr/d</u> <u>ocs/qa-titleix-20200904.pdf</u>
- OCR January 15, 2021 guidance

 Part 1: <u>https://www2.ed.gov/about/offices/list/ocr</u>/docs/ga-titleix-part1-20210115.pdf
 - Part 2:

https://www2.ed.gov/about/offices/list/ocr /docs/qa-titleix-part2-20210115.pdf

