


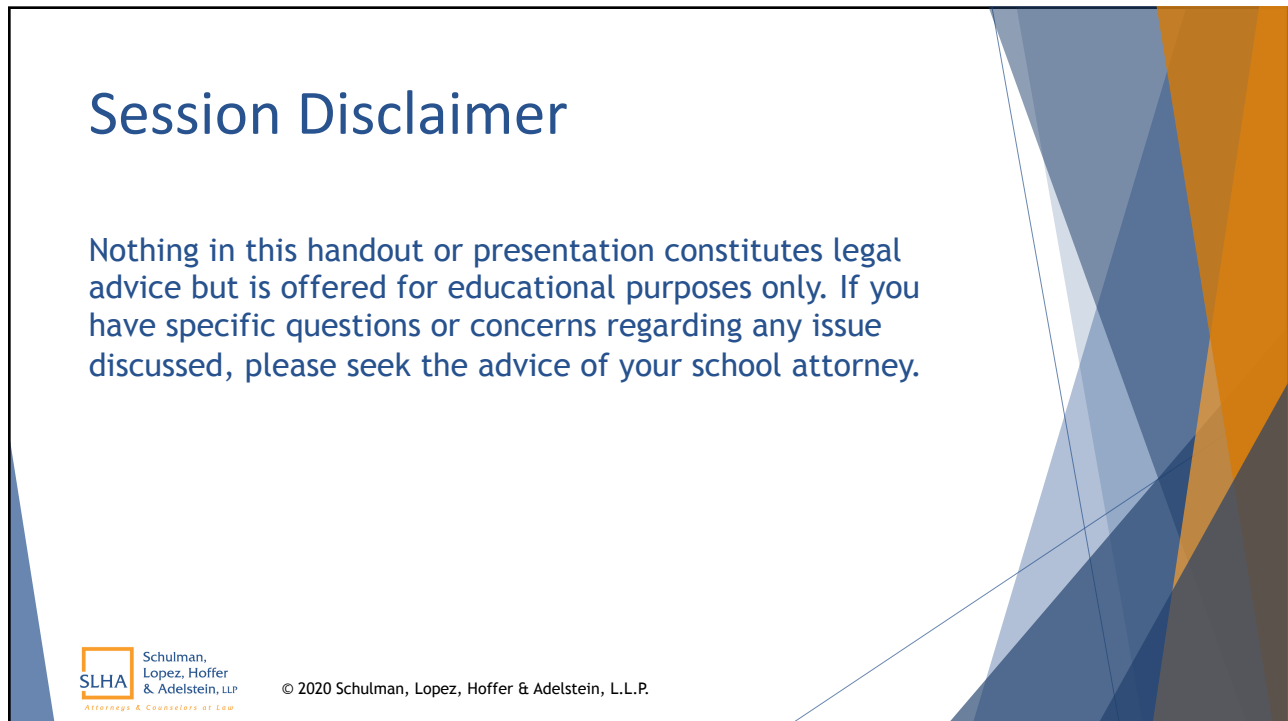
Overview of the Title IX Process



Schulman,
Lopez, Hoffer
& Adelstein, LLP


Attorneys & Counselors at Law

1



Session Disclaimer

Nothing in this handout or presentation constitutes legal advice but is offered for educational purposes only. If you have specific questions or concerns regarding any issue discussed, please seek the advice of your school attorney.



Schulman,
Lopez, Hoffer
& Adelstein, LLP

Attorneys & Counselors at Law

© 2020 Schulman, Lopez, Hoffer & Adelstein, L.L.P.

2

Part 1: Title IX in General and the Final Rule

3

Title IX of the Education Amendments of 1972

- ▶ Prohibits sex discrimination in any education program or activity receiving federal financial assistance.
 - ▶ “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 . . .”
- ▶ Conduct that is so severe, pervasive, and objectively offensive that it denies victims equal access to a school program or activity.

4

Title IX, Cont.

- ▶ Sex discrimination under Title IX can take many forms:
 - ▶ Denying a person admission to the school based on sex.
 - ▶ Declining to hire someone because of their sex.
 - ▶ Providing “better” educational resources to male students than to female students.
 - ▶ Unwelcome sexual comments, advances, name calling, etc. based on sex.

5

Title IX Regulations – the “Final Rule”

- ▶ May 2020 – Secretary of Education published new guidance on sex discrimination in the education context (the “Final Rule”), 34, C.F.R. Part 106.
- ▶ The Final Rule:
 - ▶ Defines sexual harassment, including sexual assault, as unlawful sex discrimination;
 - ▶ Holds schools accountable for failing to respond equitably and promptly to sexual misconduct incidents; and
 - ▶ Requires a reliable adjudication process that is fair to all students.

6

What is Sexual Harassment?

Final Rule defines sexual harassment as conduct based on sex that satisfies one or more of the following:

- ▶ A school employee conditions the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct (*quid pro quo* harassment);
- ▶ 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 (hostile environment harassment); or
- ▶ Sexual assault, dating violence, domestic violence, or stalking as those terms are defined in various federal laws (the *Clery Act* and *Violence Against Women Act*) .
 - ▶ Final Rule applies to sexual harassment against a person within the United States.

Jurisdiction Under Title IX

- ▶ K-12 schools have jurisdiction over sexual harassment claims when the conduct at issue occurs in the school'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.

Jurisdiction, cont.

- ▶ Title IX applies to all of a school's education programs or activities, whether they occur on-campus or off-campus.
 - ▶ Extracurricular activities, field trips, study abroad programs, regular instructional activities, etc.
- ▶ If conduct is reported that does not fall under Title IX's jurisdiction or definition, the conduct can still be addressed under non-Title IX policies (general non-discrimination and harassment, bullying, etc.).

Title IX Stakeholders

- ▶ **Title IX Coordinator(s)** – school must designate one or more individuals as the Title IX Coordinator, who is responsible for coordinating the school's efforts to comply with Title IX and will generally handle communications with the parties during a Title IX proceeding.

Title IX Stakeholders

- ▶ **Investigator(s)** – designated to investigate formal complaints of sexual harassment and prepare investigative report.
- ▶ **Decision-maker(s)** – review investigative reports and issue determination on responsibility.
 - ▶ CANNOT be the same person as the Title IX Coordinator and/or investigator.
- ▶ **Appeal Officer** – reviews appeals of a determination on responsibility.
 - ▶ CANNOT be someone with prior involvement in the investigation / decision-making process for the complaint.

11

Notice of Title IX Coordinator(s)

- ▶ Contact information for Title IX Coordinator(s) must be provided to:
 - ▶ Applicants for admission and employment;
 - ▶ Employees;
 - ▶ Parents and legal guardians of elementary and secondary students; and
 - ▶ Unions or other collective bargaining entities who have a relationship with the school (not likely to come up in Texas schools).

12

Notice of Title IX Coordinator(s)

- ▶ Information to provide:
 - ▶ Name or title
 - ▶ Office address
 - ▶ E-mail address
 - ▶ Telephone number
- ▶ Information must be disseminated in the employee and student handbooks, and on the school's website.

Key Title IX Terms

- ▶ **Complainant** – Individual alleged to be the victim of conduct that could constitute sexual harassment.
- ▶ **Respondent** – Individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

General Procedural Requirements

The Final Rule requires that all K-12 recipients of federal funds:

- ▶ Treat complainants and respondents equitably.
- ▶ Presume that a respondent is not responsible for the alleged harassment until a determination regarding responsibility is made (*e.g.*, avoid calling parties “victim” or “perpetrator”).
- ▶ Evaluate all relevant evidence objectively.
- ▶ Ensure that Title IX stakeholders are impartial and free from a conflict of interest or bias, and receive required trainings.

General Procedural Requirements, cont.

- ▶ Conduct a grievance process in a “reasonably prompt” timeframe.
- ▶ Notify the parties of the range of potential disciplinary sanctions, supportive measures, and possible remedies if a respondent is found responsible.
- ▶ Identify a standard of evidence to be used for all formal complaints of sexual harassment.
 - ▶ May choose “preponderance of the evidence” or “clear and convincing” standard; once choice is made, must be used for all formal complaints regardless of whether the respondent is a student or employee.

General Procedural Requirements, cont.

- ▶ Develop procedures for appeals.
- ▶ Recognize evidence protected under a recognized legal privilege (attorney-client privilege, medical privilege, etc.), unless a party waives the privilege.

Part 2: Responding to Reports of Sexual Harassment

Responding to Sexual Harassment

- ▶ The Final Rule recognizes different kinds of reports; the nature of a report will determine the school's response obligations.
- ▶ The Final Rule requires a K-12 school to respond whenever there is "actual knowledge" of possible sexual harassment.
 - ▶ Actual knowledge threshold is met when a report of potential sexual harassment is provided to a Title IX Coordinator; a school official with authority to institute corrective measures; or any employee of an elementary or secondary school. If a school employee personally observes sexual harassment, the school must respond and address the sexual harassment as required under the Final Rule.
- ▶ Must respond in a manner that is not deliberately indifferent (not clearly unreasonable in light of the known circumstances).

Informal Complaints

- ▶ **Any person** may report sex discrimination, including sexual harassment, regardless of whether the person making the report is the alleged victim.
- ▶ Reports may be made:
 - ▶ In person
 - ▶ By mail
 - ▶ By telephone
 - ▶ By e-mail
 - ▶ Any other means that result in the Title IX Coordinator receiving the person's written or verbal report
 - ▶ **At any time**, including non-business hours, by using the telephone number or e-mail address, or by mail to the office address, listed for a Title IX Coordinator.

Initial Assessment of Report

- ▶ After receiving notice of a report / complaint of potential sex-based harassment, the Title IX Coordinator must perform an initial assessment.
 - ▶ Determine whether the alleged conduct constitutes sexual harassment under the Final Rule.
 - ▶ Meet the definition of sexual harassment?
 - ▶ Occur in the school's education program or activity?
 - ▶ Against a person in the United States?

Initial Assessment, cont.

- ▶ If the report does not meet the definition of sexual harassment in the Final Rule, or did not occur in the school's education program or activity against a person in the United States, the school is not required to go through the "formal complaint" process outlined in the Final Rule.
- ▶ However, the school should still address the report in a manner consistent with general non-discrimination / harassment policies and procedures.

Initial Response by Title IX Coordinator

- ▶ If the school receives notice of an allegation that, if proved, would meet the Final Rule's definition of sexual harassment, a Title IX Coordinator must promptly and confidentially contact the complainant to:
 - ▶ Discuss the availability of supportive measures;
 - ▶ Consider the complainant's wishes with respect to supportive measures;
 - ▶ Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and
 - ▶ Explain to the complainant the process for filing a formal complaint.
- ▶ Complainant's wishes with respect to whether the school investigates should be respected, unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.

Initial Response by Title IX Coordinator

- ▶ School must treat complainants and respondents equally by:
 - ▶ As appropriate, offering supportive measures to both parties; and
 - ▶ Complying with the school's formal complaint / Title IX grievance process before taking disciplinary action.

What Are Supportive Measures?

- ▶ Individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal education access, protect safety, or deter sexual harassment.
 - ▶ Counseling
 - ▶ Extensions of deadlines or other course-related adjustments
 - ▶ Modifications of work or class schedules
 - ▶ Campus escort services
 - ▶ Mutual restrictions on contact between the parties
 - ▶ Leaves of absence
 - ▶ Increased security
 - ▶ Other similar measures

Supportive Measures

- ▶ School must treat complainants and respondents equitably by offering supportive measures.
 - ▶ No fees may be charged to complainant or respondent.
 - ▶ Supportive measures may be offered before or after a formal complaint is filed.
 - ▶ Designed to maintain equal access to the school's education program or activity.
 - ▶ Supportive measures generally confidential.
 - ▶ Title IX Coordinator responsible for coordinating the effective implementation of supportive measures.
 - ▶ *e.g.*, informing teacher why a student is missing class, obtaining make-up work from teachers, re-arranging student or employee schedule.

Formal Complaints and Grievance Process

- ▶ A formal complaint of sexual harassment initiates a detailed grievance process.
- ▶ Formal Complaint – document filed by a complainant (or signed by the Title IX Coordinator) alleging sexual harassment against a respondent and requesting that the school investigate.
 - ▶ At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the school’s education program or activity.
 - ▶ Formal complaint may be filed with the Title IX Coordinator in person, by mail, or by-email, or any additional method designated by the school.

Formal Complaints, cont.

- ▶ Title IX Coordinator may file a formal complaint.
 - ▶ Multiple reports against the same respondent.
 - ▶ Health or safety issue.
 - ▶ *Example:* Lydia talks to the Title IX Coordinator and reports that her lab partner, Claire, may be a victim of dating violence. Lydia has seen bruises on Claire’s arms, and has heard Claire’s boyfriend yelling at Claire at school and pushing her in the hallway. Lydia asks if she can file a formal complaint; the Title IX Coordinator responds “no,” because Lydia would not be a complainant (Lydia is not a potential victim). Lydia may file an informal complaint, however. And, the Title IX Coordinator may decide to initiate a formal complaint for health and safety reasons (dating violence observed on campus).
- ▶ Title IX Coordinator is not considered a complainant by signing a formal complaint.

Mandatory Dismissal of Formal Complaints

School must dismiss allegations of conduct that:

- ▶ Do not meet the Final Rule’s definition of “sexual harassment”; or
- ▶ Did not occur in the school’s education program or activity against a person in the United States.
 - ▶ The Final Rule does not apply to sexual harassment occurring outside of the school’s education program or activity.
 - ▶ The Final Rule does not apply to acts of sexual harassment occurring outside of the United States, even if the conduct occurred in an educational program or activity of the school.
- ▶ Notice of dismissal must be sent to complainant and respondent.

Dismissal is only for Title IX purposes; school may still address the conduct in other appropriate ways.



© 2020 Schulman, Lopez, Hoffer & Adelstein, L.L.P.

29

Discretionary Dismissal of Formal Complaint

School may dismiss, at its discretion, a formal complaint or allegations if:

- ▶ A complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein;
- ▶ The respondent is no longer enrolled with or employed by the school; or
- ▶ Specific circumstances prevent the school from gathering sufficient evidence to reach a determination.
- ▶ Notice of dismissal must be sent to complainant and respondent.



© 2020 Schulman, Lopez, Hoffer & Adelstein, L.L.P.

30

Appealing Dismissals

- ▶ Both parties must have an opportunity to appeal dismissal of a formal complaint.
- ▶ Both parties must be notified in writing of their appeal rights.

31

Notice of Allegations

If a formal complaint is not dismissed, the Title IX Coordinator must provide written notice of the following to the parties:

- ▶ Notice of the school's Title IX formal complaint process, including potential informal resolution process.
- ▶ Notice of the allegations, including sufficient details known at the time and allow sufficient time for a response, including:
 - ▶ Identities of the parties involved in the incident, if known
 - ▶ Conduct allegedly constituting sexual harassment; and
 - ▶ Date and location of the alleged incident, if known.

32

Notice of Allegations, cont.

- ▶ Statement that the respondent is presumed not responsible, and that a determination regarding responsibility will be made at the complaint of the formal complaint process.
- ▶ Inform parties that they may have an advisor of their choice (but it is not required to be an attorney) and may inspect and review evidence.
- ▶ Inform parties of any policies that prohibit knowingly making false statements or knowingly submitting false information during the formal complaint process.

Emergency Removal

- ▶ School may temporarily remove a respondent from an education program or activity if:
 - ▶ Individualized safety and risk analysis conducted;
 - ▶ Determine there is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment; and
 - ▶ Provide the respondent with notice and an opportunity to challenge the decision.

Emergency Removal, cont.

- ▶ Provide respondent notice and opportunity to challenge the emergency removal.
 - ▶ Written notice not required, but highly recommended.
 - ▶ Describe reasons for finding immediate threat.
 - ▶ Challenge must be filed without delay / as soon as possible after notice of removal is provided.
- ▶ Administrative leave for employees remains available.

Part 3: Investigating Formal Complaints through the Title IX Grievance Process

Formal Complaint Process

The school's formal complaint grievance process consists of the following:

- ▶ Complainants and respondents are treated equitably.
 - ▶ Remedies provided any time a respondent is found responsible.
 - ▶ Do not impose disciplinary consequences prior to completing the grievance process.
 - ▶ However, emergency removals are allowed; discussed later in these materials.
- ▶ Remedies designed to maintain victim's equal access to education.

Formal Complaint Process, cont.

- ▶ Objective evaluation of all relevant evidence (exculpatory and inculpatory).
- ▶ Avoid creditability determinations based on a person's status as a complainant, respondent, or witness.
- ▶ Title IX personnel (Coordinator(s), investigators, decision-makers, etc.) are free from conflicts of interest or bias for or against complainants or respondents.
- ▶ Presumption that a respondent is not responsible until a determination is made at the conclusion of the grievance process.

Formal Complaint Process, cont.

- ▶ Reasonable timeline for concluding the formal complaint process, including appeals and informal resolutions.
 - ▶ Goal is to resolve a grievance / formal complaint as quickly as possible to ensure fairness and accuracy.
 - ▶ Short-term delays and extensions for good cause.
 - ▶ Absence of a party, a party's advisor, or a witness.
 - ▶ Concurrent law enforcement activity.
 - ▶ Need for language assistance or accommodation of disabilities.

Formal Complaint Process, cont.

- ▶ Description of range of possible remedies if a respondent is determined to be responsible.
- ▶ School must choose the “preponderance of the evidence” or “clear and convincing evidence” standard.
 - ▶ Chosen standard must be used for all formal complaint investigations, regardless of whether the respondent is a student or school employee.
- ▶ Description of appeal procedures.
- ▶ Description of possible supportive measures.

Investigation Process

- ▶ School must investigate the allegations of any formal complaint (unless complaint has been dismissed / withdrawn).
- ▶ Formal notice must be sent to both parties (complainants and respondents) of the allegations upon receipt of a formal complaint.

Investigation Process, cont.

- ▶ Burden of gathering evidence and burden of “proof” remains on the school, not the parties.
- ▶ Both parties must have equal opportunity to present facts and witnesses (including experts), as well as other exculpatory or inculpatory evidence.
- ▶ School cannot restrict the ability of the parties to discuss the allegations or gather evidence (no “gag orders”).
- ▶ Parties must have the same opportunity to select an advisor (may be, but need not be, an attorney).
- ▶ Provide written notice to the parties of investigative interviews, meetings, or hearings (if applicable), with sufficient time to allow for participation.

Live Hearings?

- ▶ The Final Rule requires postsecondary institutions to provide a “live hearing with cross-examination” as part of the investigation process.
- ▶ The Final Rule provides that live hearings are optional for K-12 schools.

Opportunity to Review Evidence

- ▶ When the investigation is completed, but before the investigative report is written, the investigator(s) must send the parties (and their advisors, if any) evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review, and respond to the evidence.
- ▶ Investigator must consider a party’s response, if any, and begin the process of preparing an investigative report.

Investigative Reports

- ▶ After investigation is completed and parties have had 10 days to review the evidence, the investigator(s) will prepare an investigative report that fairly summarizes relevant evidence.
- ▶ Investigative report must be sent to the parties (and advisors, if any), in electronic format or hard copy, with at least 10 days for the parties to respond.
- ▶ Investigative report cannot make a determination regarding responsibility.

Decision-Maker Review

- ▶ After the investigative report has been sent to the parties, and before the decision-maker makes a determination regarding responsibility, the decision-maker must afford each party the opportunity to:
 - ▶ Submit written, relevant questions that a party wants asked of any party or witness;
 - ▶ Provide each party with the answers; and
 - ▶ Allow for additional, limited follow-up questions from each party.

Determination Regarding Responsibility

- ▶ Decision-maker (who cannot be the Title IX Coordinator or investigator) must issue a written determination regarding responsibility which must include:
 - ▶ Summary of allegations potentially constituting Title IX sexual harassment;
 - ▶ Description of procedural steps taken from receipt of the complaint through the determination;
 - ▶ Findings of fact;
 - ▶ Conclusion regarding application of the school's code of conduct to the facts;
 - ▶ Statement of, and rationale for, the result of each allegation (including determination regarding responsibility), any disciplinary sanctions / remedies; and
 - ▶ Procedures and available bases to appeal.

Determination Regarding Responsibility, cont.

- ▶ Written determination must be sent simultaneously to the parties.
- ▶ Title IX Coordinator is responsible for implementing remedies.
- ▶ Determination becomes final:
 - ▶ If appeal is not filed, when the deadline to appeal has passed; or
 - ▶ If appeal is filed, when a written appeal decision is provided to the parties.

Appeals

- ▶ School must offer both parties an appeal from a determination regarding responsibility, and for a school's dismissal of a formal complaint or any allegations in a formal complaint, for any of the following reasons:
 - ▶ Procedural irregularity that affected the outcome of the matter;
 - ▶ Newly discovered evidence that could affect the outcome of the matter; and/or
 - ▶ The school's Title IX personnel had a conflict of interest or bias that affected the outcome of the matter.
- ▶ School may offer additional bases for appeal that apply equally to both parties.

Appeals, cont.

- ▶ Notify the other party in writing when an appeal is filed.
- ▶ Decision-maker(s) for the appeal portion cannot be the initial decision-maker(s). Also cannot be the initial investigator(s) or the Title IX Coordinator.
- ▶ Decision-maker(s) for appeal process must be free from bias and conflict of interest.
- ▶ Provide both parties a reasonable, equal opportunity to submit a written statement related to the appeal.
- ▶ Written decision detailing decision on appeal and rationale for the decision.
- ▶ Appeal decision provided simultaneously to both parties.

Retaliation Prohibited

- ▶ Final Rule prohibits retaliation.
 - ▶ Retaliation includes actions related to a report or investigation of sexual harassment for the purpose of interfering with any right or privilege secured by Title IX.
- ▶ Complaints of retaliation may be submitted through the school's procedures for reporting retaliation.
- ▶ Referring a person for code of conduct violations related to making materially false statements during a Title IX grievance process does not constitute retaliation.
 - ▶ However, the fact that a respondent is found not responsible does not automatically mean that a complainant acted in bad faith or made a materially false statement.

Recordkeeping

- ▶ Schools must maintain for a period of seven years records of:
 - ▶ Each sexual harassment investigation, including any determination regarding responsibility, disciplinary sanctions imposed on the respondent, remedies provided to the complainant.
 - ▶ Any appeal and the result therefrom.
 - ▶ Any informal resolution and the result therefrom.
 - ▶ All materials used to train Title IX Coordinators, investigators, decision-makers, and persons who facilitate an information resolution process.

Recordkeeping, cont.

- ▶ Schools must maintain for a period of seven years records of:
 - ▶ Records of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment.
 - ▶ Basis for the conclusion that a response was not deliberately indifferent.
 - ▶ Document measures taken to restore or preserve equal access to the school's education program or activity.
 - ▶ If supportive measures are not provided to a complainant, document the reasons why.

Part 4: Informal Resolution Process

Informal Resolution

- ▶ School has discretion to offer and facilitate an informal resolution process.
 - ▶ Mediation, restorative justice, etc.
- ▶ Give parties option to try informal resolution rather than go through full formal complaint process.
- ▶ The Title IX Final Rule *does not* require schools to offer informal resolution.

Informal Resolution, cont.

- ▶ Informal resolution may *only be offered when a formal complaint* of sexual harassment has been filed.
- ▶ The school **CANNOT** offer informal resolution to resolve allegations that an employee has sexually harassed a student.
- ▶ **Both** parties **must** provide informed, written, and voluntary consent to try informal resolution of a formal complaint.

Informal Resolution, cont.

- ▶ In order to obtain informed consent for informal resolution, the school must provide both parties with written notice of:
 - ▶ The allegations made in the formal complaint.
 - ▶ The requirements of the informal resolution process, including situations under which it precludes the parties from resuming a formal complaint arising from the same allegations.
 - ▶ Caveat that, at any time prior to agreeing to a resolution, any party has the right to withdraw from informal resolution process and resume the grievance process.
 - ▶ Consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

Informal Resolution, cont.

- ▶ Either party can withdraw consent for participating in involuntary resolution at any time before process is completed.
- ▶ The school cannot require the parties to try informal resolution.
 - ▶ Cannot require informal resolution as a condition of enrollment or continuing enrollment, employment or continuing employment, enjoyment of any other right, or waiver of the right to an investigation and adjudication of formal complaints.

Informal Resolution, cont.

- ▶ The person facilitating the informal resolution:
 - ▶ Cannot hold another role in the Title IX process (cannot be a Title IX Coordinator, or an investigator, decision-maker, appeal officer, etc. serving in the complaint at issue).
 - ▶ Must be trained on:
 - ▶ The definition of sexual harassment under Title IX;
 - ▶ The scope of the school's education program or activity;
 - ▶ How to conduct an investigation and the school's grievance process, including hearing (if applicable), appeals, and the informal resolution process; and
 - ▶ How to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Part 5: Serving Impartially and Avoiding Prejudgment, Conflicts of Interest, and Bias

Overview

- ▶ Impartiality is a key component of the school's formal grievance process under Title IX.
- ▶ Title IX Stakeholders must avoid:
 - ▶ Prejudging the facts at issue;
 - ▶ Conflicts of interest; and
 - ▶ Bias.

61

Prejudgment of Facts at Issue

- ▶ Prejudgment means passing judgment prematurely or without conducting a sufficient investigation or review of evidence.
- ▶ *Examples:*
 - ▶ A complainant cries during an interview; the investigator decides that the complainant is telling the truth, or else there would be no reason to cry.
 - ▶ The complainant and respondent had a consensual relationship prior to the complaint's filing. Title IX stakeholders should not assume there was consent to any conduct simply because there was a consensual relationship between the parties.
 - ▶ Complainant acknowledged smoking marijuana prior to an incident reported as a formal complaint. Title IX stakeholders should not assume the complainant's statements are false based on this acknowledgment.

62

Avoiding Prejudgment

- ▶ Avoid misconceptions and stereotypes about sexual harassment, such as:
 - ▶ Men are physically aggressive, and therefore more likely to engaged in unwelcome sexual conduct.
 - ▶ Only a woman can be sexually harassed.
 - ▶ Sexual harassment can only occur between a man and a woman.
 - ▶ There was no physical contact, so there couldn't be sexual harassment.
 - ▶ It only happened once, so it can't be harassment.
 - ▶ The complainant was "asking for it" by wearing those clothes.

Avoiding Prejudgment, cont.

- ▶ Keep an open mind.
- ▶ Gather the facts before reaching a conclusion.
 - ▶ Get information from multiple sources / witnesses.
 - ▶ More than one side to a story.

Conflicts of Interest

- ▶ Be aware of actual, perceived, or potential conflicts of interest.
 - ▶ Is there a personal or private interest that could compromise your judgment, decisions, or steps taken during a Title IX investigation?
 - ▶ Is there a family, social, professional, or other relationship that may be a conflict of interest?

Conflicts of Interest, cont.

- ▶ **Actual Conflict** – Direct conflict between official duties and responsibilities, or a competing personal interest.
 - ▶ *Investigator's daughter is the complainant in a formal complaint.*
 - ▶ *Decision-maker's son is named as respondent in a formal complaint.*

Conflicts of Interest, cont.

- ▶ **Perceived Conflict** – Someone involved in the process could reasonably perceive that a competing interest may improperly influence conduct during investigation.
 - ▶ *Respondent plays on a youth soccer team, and the Title IX Coordinator is a coach on the team.*
 - ▶ *Decision-maker has been close family friends with the complainant's parents for many years.*
 - ▶ *Investigator's wife teaches piano lessons to the respondent.*

Conflicts of Interest, cont.

- ▶ **Potential Conflict** – Personal obligation or interest may conflict with duties and responsibilities in the future.
 - ▶ *Title IX Coordinator supervises a group of teachers; potential conflict if one of the teachers supervised by the Title IX Coordinator is named as a respondent in a formal complaint?*

Recognizing Conflicts of Interest

- ▶ Can I impartially participate in this complaint and the investigation process?
 - ▶ What would others think if they became aware of the conflict? Would the respondent or complainant have reasonable concerns that I could not conduct myself impartially?
 - ▶ If someone else had the same potential conflict, would I feel that they should not participate in the investigation process?
 - ▶ How would I feel if the potential conflict was reported to the media?

Recognizing Bias

- ▶ Bias is an inclination, tendency, or possible prejudice toward / against someone.
- ▶ Stereotypes based on gender, sexual orientation, race, etc.
- ▶ Examples:
 - ▶ Decision-maker finds a respondent is more credible than the complainant because the respondent is a native English speaker, while the complainant is a native Korean speaker and does not speak “perfect” English.
 - ▶ Investigator ends every interview with “Boys will be boys, right?”

Recognizing Bias, cont.

- ▶ Important to guard against bias in the Title IX context.
 - ▶ Most evidence will be circumstantial.
 - ▶ Social and other stigmas associated with gender / sex.
 - ▶ Possible biases based on race, economic standing, academic history, social standing of complainant or respondent.
 - ▶ “Nerd” versus “jock,” head cheerleader, star basketball player, in the running for valedictorian, department chair, etc.

Avoiding Bias

- ▶ Watch your language.
- ▶ Listen to what people are saying, stick with the facts, and avoid generalizations.
- ▶ **TREAT COMPLAINANTS AND RESPONDENTS EQUALLY, REGARDLESS OF DEMOGRAPHICS OR OTHER FACTORS.**