



Association of
Title IX Administrators

Title IX Compliance Essentials for K-12 Education

Training and Certification Course

WELCOME!

- Please log in to your ATIXA Event Lobby each day to access the training slides, supplemental materials, and to log your attendance.
- The ATIXA Event Lobby can be accessed by the QR code or visiting www.atixa.org/atixa-event-lobby in your Internet browser.
- Links for any applicable training evaluations and learning assessments are also provided in the ATIXA Event Lobby. You will be asked to enter your registration email to access the Event Lobby.
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Strategic Risk
Management Solutions



Any advice or opinion provided during this training, either privately or to the entire group, is **never** to be construed as legal advice or an assurance of compliance. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law in your jurisdiction, any applicable state or local laws, and evolving federal guidance.

Content Advisory

The content and discussion in this course will necessarily engage with sex- and gender-based harassment, discrimination, violence, and associated sensitive topics that can evoke strong emotional responses.

ATIXA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles including slang, profanity, and other graphic or offensive language. It is not used gratuitously, and no offense is intended.

Introduction



This course focuses on providing Title IX practitioners and school/district leaders with foundational training to understand the scope of their roles and their varied responsibilities under Title IX.



Practitioners will explore the essential components of the Title IX Coordinator role, including detailed responsibilities under the 2024 Title IX Regulations, structuring the Title IX Team, and additional components of Title IX compliance best practices.



Our goal is to provide a comprehensive foundation that will allow Coordinators and district leaders to serve their school/district with the robust skills necessary to excel in their roles and lead and/or support Title IX compliance with confidence.

Review: Title IX Statute and Regulations

Title IX

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

20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)



2024 Title IX Final Rule

- Issued **April 19, 2024**
- Effective and enforceable **August 1, 2024**
- Applies exclusively to incidents occurring **on or after August 1, 2024**
- 2024 is a blend of the 2011 Dear Colleague Letter, 2020 Regulations, and new approaches
- 1561 pages total (1504 Preamble and 57 Regulations)
- More flexibility for Schools/Districts in how to structure and staff resolution processes

Retroactivity

- The 2024 Regulations apply **only** to sex discrimination alleged to have occurred **on or after** August 1, 2024
 - For conduct alleged to have occurred prior to August 1, 2024, the regulations in place at the time the alleged behavior occurred will apply
- Schools/Districts will need to maintain/update policies, procedures, and training that are compliant with the **2020** Regulations and **2024** Regulations



School/District Title IX Obligations

Essential Compliance Elements

The requirement to **Stop, Prevent,** and **Remedy** guides school/district response in assuring equity and compliance with legal and OCR standards

1

STOP discriminatory conduct

2

PREVENT recurrence, on both individual and school/district levels

3

REMEDY the effects of discrimination, on both individuals and the community

School/District Title IX Obligations

- **Designate** at least one employee to serve as the Title IX Coordinator (TIXC)
- **Adopt, publish, and implement a policy statement** that the school/district does not discriminate on the basis of sex and prohibits sex discrimination
- **Adopt, publish, and implement grievance procedures** consistent with 34 C.F.R. Part 106.45
- **Provide notice** of nondiscrimination to current and prospective students, parents/guardians, employees, and any union or collective bargaining agencies
 - TIXC contact information
 - How to report conduct that may constitute sex discrimination or sex-based harassment

School/District Title IX Obligations

- **Train** all employees and the Title IX Team
- **Consult** with a member of the student's IEP/504 team during a Title IX Resolution Process (when applicable)
- **Maintain documentation** related to Title IX notification, training, and complaints

Monitoring & Barrier Analysis

- TIXC has ongoing obligation to **monitor** the program/activity for barriers to reporting
 - Take steps reasonably calculated to address such barriers
- Example Barriers:
 - Reporting process accessibility
 - Confusing or delayed procedures
 - Difficulty finding information or contacting Title IX staff
 - Perceptions of bias



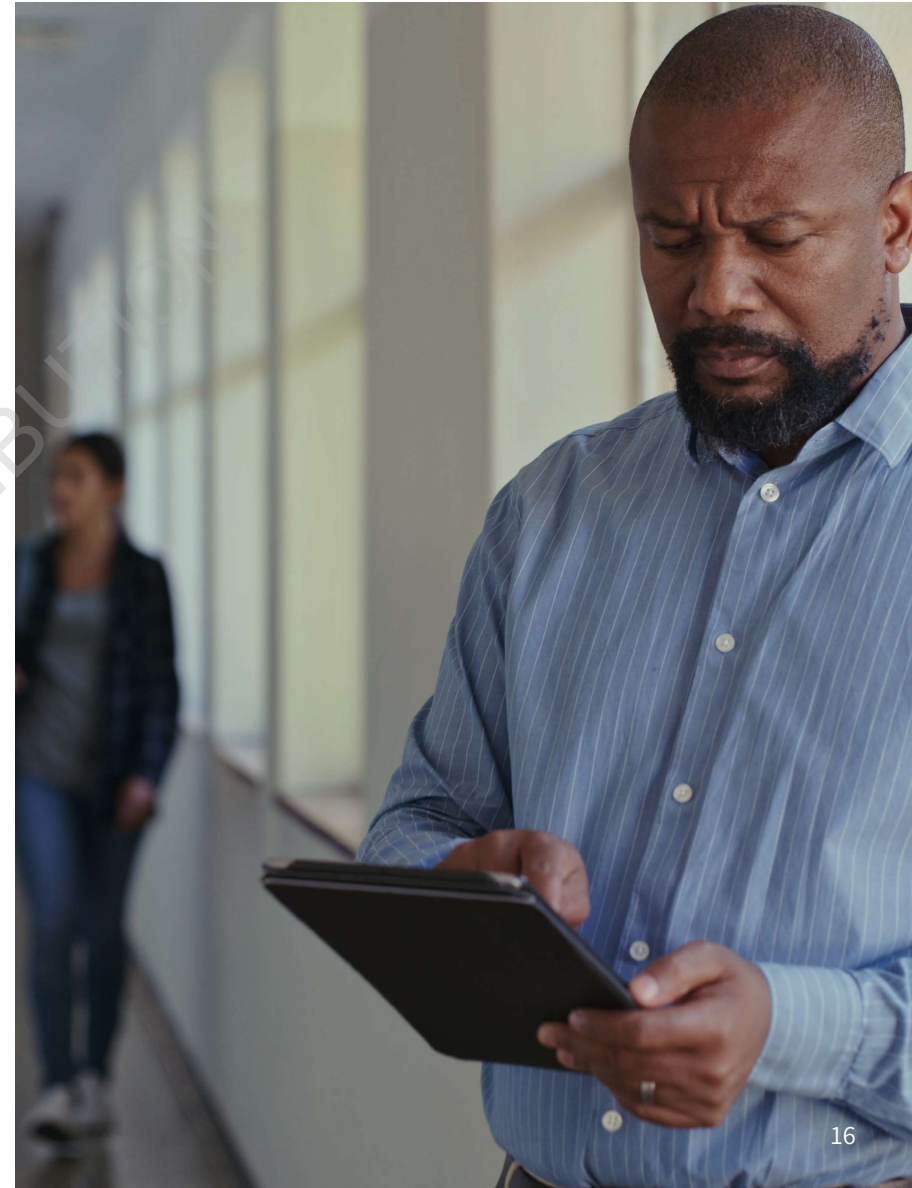
Mandatory Reporting

- **School/District must require all non-confidential employees to notify the TIXC** when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX
- Once notified, the TIXC must take actions to **promptly and effectively** end any sex discrimination, prevent its recurrence, and remedy its effects



Confidential Employees

- Schools/Districts may have confidential employees by law and may designate other employees as confidential
 - Notify all employees and students of confidential employees' identities
- Must explain their confidential status to parties
- Mandated to provide the following:
 - TIXC contact information
 - How to file a report
 - TIXC may be able to offer supportive measures
- **Confidential employees MUST still report suspected child abuse under state law**



Employee Training Requirements

- **All employees upon hiring, change in role, and annually on:**
 - School/District obligation to address sex discrimination
 - Scope of conduct that constitutes sex discrimination
 - Reporting and information sharing requirements
- **Training must be completed, not just made available**
- May be in-person, online/virtual, asynchronous, and conducted by internal or external trainer(s)



Review: Title IX Scope and Definitions

Applicability

- Education program or activity in the United States
- Downstream effects of external misconduct
- School/District has disciplinary authority over the context of the behavior
- Identity of the Complainant
- Applies to both students and employees
- Per the 2024 preamble, OCR will consider almost all off-site sexual misconduct by School/District employees toward students to be within the school program/activity



Sex Discrimination

- Discrimination on the basis of sex includes:
 - Sex Stereotypes
 - Sex Characteristics
 - Pregnancy or Related Conditions
 - Sexual Orientation
 - Gender Identity
- “More than *de minimis* harm”
- Sex-Based Harassment



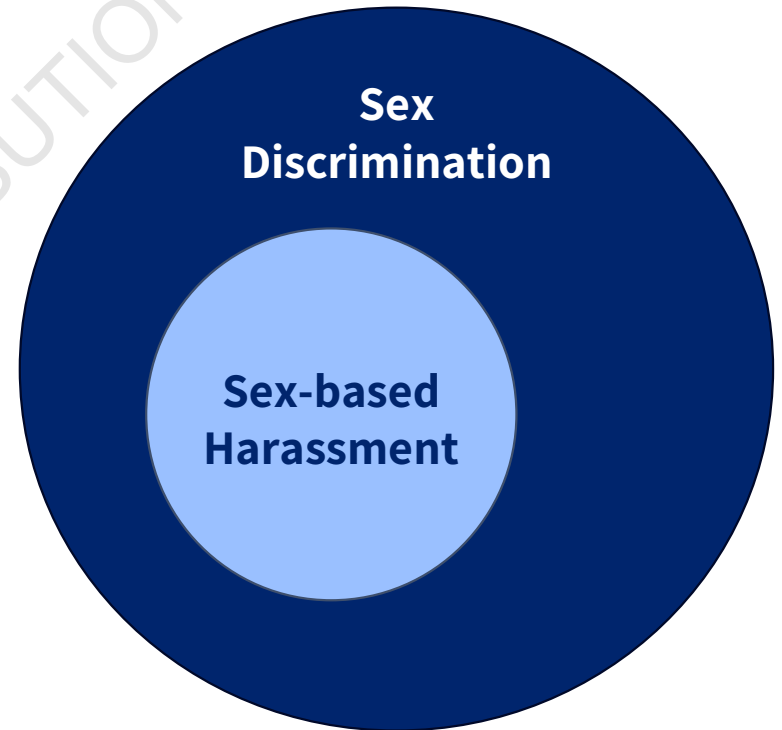
De Minimis Harm

- In limited circumstances where Title IX permits different treatment or separation based on sex, a School/District **must not** implement differential treatment by means that subjects a person to **more than *de minimis* harm**
- Adopting a policy or practice preventing someone from participating in a program/activity **consistent with their gender identity** violates the *de minimis* provision
- Notable exceptions:
 - Religious exemptions
 - Athletics



Sex-Based Harassment

- Subset of sex discrimination
- Includes (the “Big Six” offenses):
 - *Quid Pro Quo* (QPQ)
 - Hostile Environment Harassment
 - Sexual Assault
 - Dating Violence
 - Domestic Violence
 - Stalking
- No consent definition provided
 - Develop or adopt one for the School/District



Quid Pro Quo

- “An employee, agent, or **other person authorized by the Recipient** to provide an aid, benefit, or service under the Recipient’s education program or activity
 - Explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person’s participation in unwelcome sexual conduct”
- If a **student** occupied a position as some “other person authorized by the Recipient...” then QPQ **could** apply
- Definition encompasses:
 - Extracurriculars and academics
 - Detriment or threat thereof
 - Circumstances in which an individual purports to have authority to provide some aid, benefit, or service, even if they are unable to do so

Hostile Environment Harassment

- Definition:
 - 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
- Regulations outline a series of additional considerations
- Lower/broader standard than the 2020 Regulations, with First Amendment implications

Hostile Environment Harassment

- Definition provides factors for evaluating whether a hostile environment exists:
 - Complainant's ability to access the education program or activity
 - Conduct type, frequency, and duration
 - Parties' ages, roles, and previous interactions
 - Conduct location and context
 - School/District control over the Respondent
- These are **factors**, not requirements
 - There could also be other factors to consider

Sexual Assault

- **Sexual Assault:** An offense classified as a forcible or nonforcible sex offense under the Federal Bureau of Investigation's Uniform Crime Reporting system
 - Must include the six sub-offenses:
 - **Rape**, involves a lack of consent
 - **Sexual Assault with an Object**, involves a lack of consent
 - **Sodomy**, involves a lack of consent
 - **Fondling**, involves a lack of consent
 - **Incest**, violation irrespective of consent
 - **Statutory Rape**, violation irrespective of consent

Rape

- **Sexual Assault:** An offense classified as a forcible or nonforcible sex offense under the Federal Bureau of Investigation's Uniform Crime Reporting System
 - **Rape:**
 - Penetration,
 - Without the consent of the Complainant,
 - Including instances where the Complainant is incapable of giving consent
 - Because of age **or**
 - Because of temporary or permanent mental or physical incapacity

Sodomy

- **Sexual Assault:** An offense classified as a forcible or nonforcible sex offense under the Federal Bureau of Investigation's Uniform Crime Reporting System
 - **Sodomy**
 - Oral or anal sexual penetration
 - Of the Complainant by the Respondent
 - Without the consent of the Complainant,
 - Including instances where the Complainant is incapable of giving consent
 - Because of age **or**
 - Because of temporary or permanent mental or physical incapacity

Sexual Assault With An Object

- **Sexual Assault:** An offense classified as a forcible or nonforcible sex offense under the Federal Bureau of Investigation's Uniform Crime Reporting System
 - **Sexual Assault With An Object**
 - Respondent's use of an object or instrument
 - To unlawfully penetrate, however slightly, the genital or anal opening
 - Of the body of the Complainant,
 - Without the consent of the Complainant,
 - Including instances where the Complainant is incapable of giving consent
 - Because of age **or**
 - Because of temporary or permanent mental or physical incapacity

Fondling

- **Sexual Assault:** An offense classified as a forcible or nonforcible sex offense under the Federal Bureau of Investigation's Uniform Crime Reporting System
 - **Fondling**
 - The touching of the private body parts (breast, buttocks, groin) of the Complainant by the Respondent
 - Or causing the Complainant to touch the Respondent's private body parts
 - Intentionally for a sexual purpose
 - Without the consent of the Complainant, including instances where the Complainant is incapable of giving consent
 - Because of age **or**
 - Because of temporary or permanent mental or physical incapacity

Incest and Statutory Rape

- **Sexual Assault:** An offense classified as a forcible or nonforcible sex offense under the Federal Bureau of Investigation's Uniform Crime Reporting System
 - **Incest**
 - Nonforcible sexual intercourse between persons who are related to each other
 - Within the degrees wherein marriage is prohibited by law
 - **Statutory Rape**
 - Nonforcible sexual intercourse with a person
 - Who is under the statutory age of consent

Dating Violence

- **Dating Violence:** Violence committed by a Respondent:
 - Who is or has been in a social relationship of a romantic or intimate nature with the Complainant; **and**
 - Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - Length of the relationship
 - Type of relationship
 - Frequency of interaction between the persons involved in the relationship

Domestic Violence

- **Domestic Violence:** Felony or misdemeanor crimes committed by a Respondent who:
 - Is a current or former spouse or intimate partner of the Complainant under the family or domestic violence laws of the jurisdiction of the school/district, or a person similarly situated to a spouse of the Complainant;
 - Is cohabitating, or has cohabitated, with the Complainant as a spouse or intimate partner;
 - Shares a child in common with the Complainant; **or**
 - Commits acts against a youth or adult Complainant who is protected from those acts under the family or domestic violence laws of the jurisdiction

Stalking

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

- Fear for the person's safety or the safety of others; **or**
- Suffer substantial emotional distress
- **“Reasonable person”** and **“Substantial Emotional Distress”** are not defined in the Title IX regulations
- **Course of conduct** requires that there be more than one incident and the conduct must be directed at a specific person
 - Can occur in person or using technology
- Should consider the duration, frequency, and intensity of the conduct

Retaliation

Defined as:

- Intimidation, threats, coercion, or discrimination against any person
 - By the school/district, a student, an employee, or other person authorized by school/district to provide aid, benefit, or service under education program or activity:
 - For the purpose of interfering with any right or privilege under Title IX, **OR**
 - Because the person has reported information, made a complaint, assisted, or participated or refused to participate in any manner in any part of a Title IX Resolution Process
- **Schools/Districts may require** employees to participate as witnesses without it being considered retaliation
 - Cannot require students to participate as parties or witnesses
 - Retaliation allegations should be resolved under the Title IX Resolution Process

ATIXA Model Policy Definitions

- Consent
- Common additional offenses with a potential Title IX intersection
 - Sexual Exploitation
 - Harm/Endangerment
 - Intimidation
 - Hazing
 - Bullying



Definitions: Consent

- **Consent** is not defined by the regulations, so school/district policy should define (some states prescribe a definition applicable in that state)
- **ATIXA's Definition:**
 - Informed, knowing, and voluntary (freely given)
 - Active (not passive)
 - Creates mutually understandable permission regarding the conditions of sexual activity
 - No means no, but nothing also means no
 - Silence and passivity do not equal consent
 - To be valid, consent must be given immediately prior to or contemporaneously with the sexual or intimate activity
 - Consent can be withdrawn at any time, so long as it is clearly communicated verbally or non-verbally
 - Consent to one form of sexual activity does not imply consent to other forms of sexual activity

Title IX Team

NOT FOR DISTRIBUTION

Title IX Core Team

Individuals designated, hired, or contracted to fulfill a school/district's Title IX compliance obligations, including:

- TIXC
- Deputy TIXC(s)
- Investigator(s)
- Decision-maker(s) (DM)
- Appeal Decision-maker(s) (if applicable)
- Informal Resolution (IR) Facilitator(s)
- Advisor(s) (if applicable)



School/District Team

- Schools/Districts **must designate a school- or district-based TIXC**
- Schools/Districts have discretion in structuring their Title IX Team, including:
 - Whether to have **Deputy Coordinators**
 - **Investigator only investigates vs. Investigator also serves as DM**
 - **Distinction and separation of roles** throughout Title IX Resolution Process, and whether to appoint district-based administrators, school-based administrators, or contractors
 - **Contract with a trained third party** to fulfill Investigator, DM, IR Facilitator, and Advisor roles

Title IX Coordinator

- Oversees school/district Title IX compliance, including oversight of the Title IX Team
 - Must have autonomy and independence
- May serve as Investigator and/or DM
- Responsibilities fall into two categories:
 - Responding to complaints of sex discrimination, sex-based harassment, and retaliation
 - Leading efforts to ensure sex and gender equity across the school/district



Title IX Compliance Oversight

Responsibilities (any of these roles can be shared/delegated):

- Manage policy and procedures prohibiting sex discrimination, sex-based harassment, and retaliation
- Provide notification of nondiscrimination and Title IX information to current and prospective school/district community members, including students, parents/guardians, employees, and union/contract employees
- Develop and maintain accurate web and print-based Title IX publications
- Train all school/district employees on Title IX compliance
- Recruit, supervise, and train Title IX Team
- Serve as point person for all reports and complaints

Title IX Compliance Oversight

- Oversee complaint Resolution Process and program equity
- Monitor for barriers to reporting and take steps to address them
 - Track systemic issues or patterns
 - Take remedial action to prevent recurrence
- Assess compliance efforts and program effectiveness
 - Create and disseminate annual compliance report (best practice, not a requirement)
- Liaise with school/district legal counsel
- Maintain Title IX records
- Respond to government inquiries

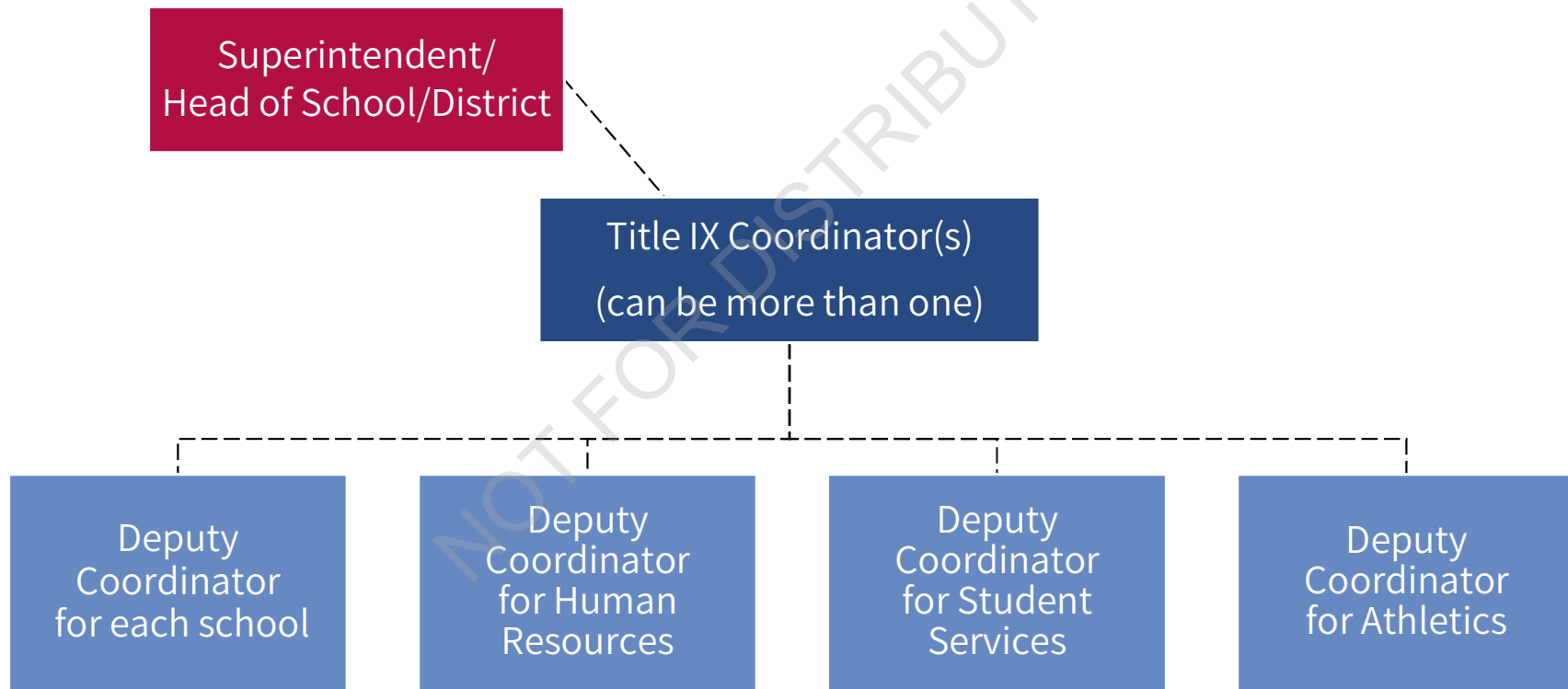
Deputy Title IX Coordinator(s)

- Not required, **but may alleviate the burden** on one administrator
- Deputy TIXC responsibilities may vary based on school/district needs
- **Possible responsibilities:**
 - Receive reports and complaints
 - Assist TIXC with trainings
 - Conduct initial evaluations
 - Coordinate supportive measures
 - Oversee investigations
 - Consult with TIXC on complaints



Sample Title IX Team Structure

Schools/Districts will determine a structure that works best for their unique needs



Title IX Team Training Requirements

- In addition to the training requirements for all employees, **those involved in the Title IX Resolution Process must receive additional training, including:**
 - School/District's Title IX Resolution procedures
 - How to serve impartially; avoiding prejudgment, conflicts of interest, and bias
 - The meaning and application of “relevant” and impermissible evidence
- IR Facilitators must be trained on the school/district IR policy and procedures
- TIXCs must be trained on their specific responsibilities and recordkeeping systems

Bias and Conflicts of Interest

- Title IX administrators have no “side” other than the **integrity of the process**
- Title IX Regulations **prohibit** Coordinators, Investigators, DMs, and IR Facilitators **from having conflicts of interest or bias** for or against Complainants or Respondents generally, an individual party, or the substance of the Complaint
- **Training materials** must not rely on sex stereotypes and should promote impartiality

Title IX Extended Team

- Include key constituencies not represented on core team:
 - Legal Counsel
 - School Resource Officers
 - School Counselors
 - Student Health/School Nurses
 - Housing (if applicable)
- Regular meetings and coordination
- Training and programming
- Interaction with behavioral intervention or threat assessment teams or groups



Public Notice Requirements

Notice of Nondiscrimination

Schools/Districts must provide notification of nondiscrimination to current and prospective school/district community members, including students, parents/guardians, employees, and union/contract employees

- **Notice must include:**

- Statement that the school/district does not discriminate on the basis of sex and prohibits sex discrimination
- Statement that inquiries about the application of Title IX may be referred to the School/District TIXC, the Department of Education's Office for Civil Rights, or both
- TIXC's name or title, office address, email, and phone number
- How to locate the nondiscrimination policy and Resolution Process
- How to report information or make a complaint about conduct that may constitute sex discrimination

Notice Publication

- Schools/Districts must prominently publish their notice of nondiscrimination
 - All elements must be included on:
 - School/District website
 - Student and Employee Handbooks
 - Announcements, bulletins, and application forms used in connection with student or employee recruitment
 - Due to format or space restrictions, the School/District may include the statement of prohibiting sex discrimination, that individuals may report concerns to the TIXC, and provide the location of the notice on the school/district website
- School/District may not use or distribute a publication stating that it treats applicants, students, or employees differently on the basis of sex, except as such treatment is permitted by Title IX

Title IX Resolution Process

Title IX Complaint

- A report or complaint triggers the school/district's Title IX obligations
- **Complaint: Verbal** or **written** request to the school/district that **objectively** can be understood as a request for the school/district to investigate and make a determination about alleged discrimination
- Parent, guardian, or authorized legal representative may make a complaint on behalf of their student
- For complaints of sex discrimination **only**, any student, employee, or any person participating or attempting to participate may make a complaint
 - Not for sex-based harassment complaints, though TIXC is not prohibited from acting on such knowledge if they wish by initiating a complaint

School/District Obligation

- Once a TIXC has knowledge of conduct that may reasonably constitute sex discrimination, they must take action to promptly and effectively stop, prevent and remedy
 - Treat parties equitably
 - Offer and coordinate supportive measures for Complainant
 - Do the same for Respondent if Resolution Process has started
 - Notify Complainant of the Resolution Process, including IR options
 - Do the same for Respondent if a complaint is made
 - This is regardless of whether the Complainant or their parent/guardian makes a complaint or asks the school/district to take action

School/District Obligation

- Once a TIXC is notified of conduct that may reasonably constitute sex discrimination, they must take action to promptly and effectively stop, prevent, and remedy
 - Initiate Resolution Process if a complaint is made
 - Absent a complaint or if complaint is withdrawn, determine whether the TIXC should initiate a complaint
 - Regardless of whether a complaint is initiated, take appropriate steps to stop, prevent, and remedy

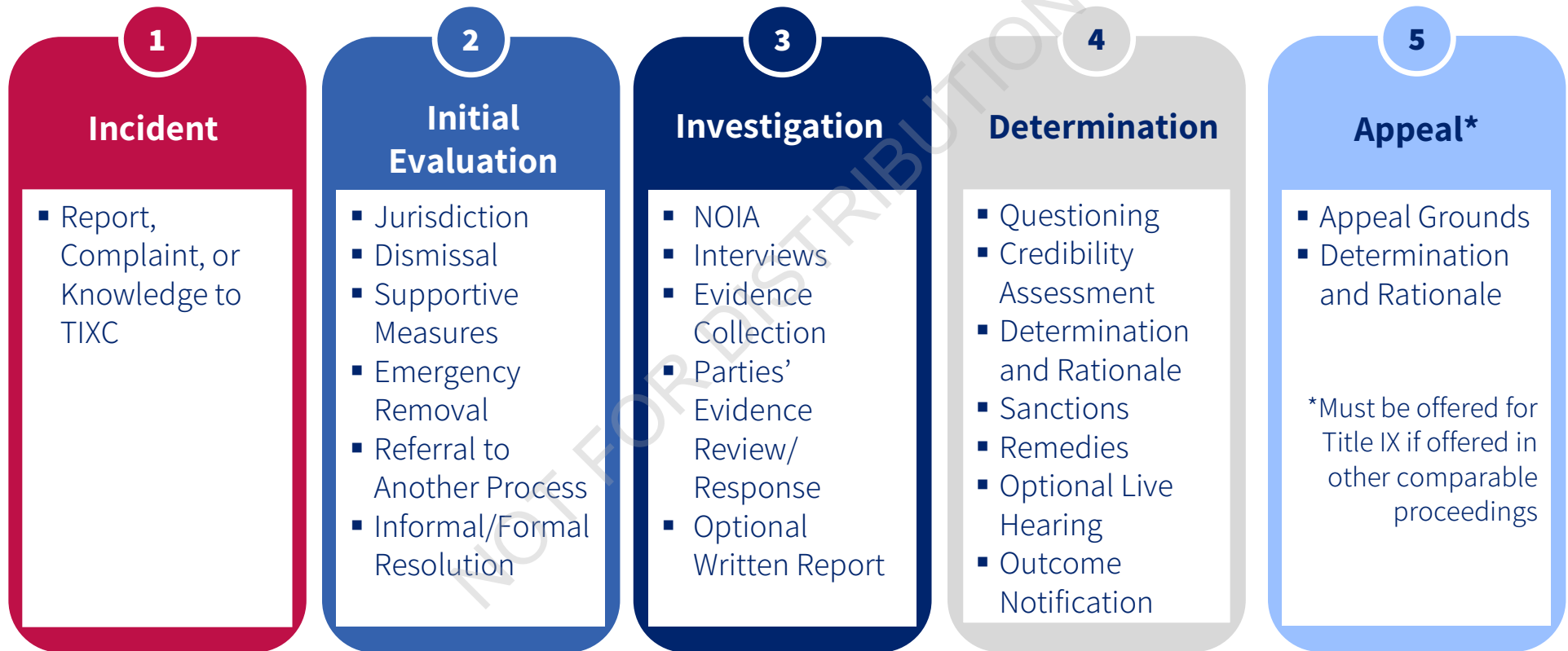
Initiating a Complaint

- TIXC retains ability to initiate a complaint when:
 - Imminent and serious threat exists; **OR**
 - The alleged conduct prevents the school/district from ensuring equal access
- TIXCs should also consider the following in determining whether to initiate a complaint when one has not been filed:
 - Complainant's request not to proceed
 - Complainant's reasonable safety concerns regarding initiation of a complaint
 - Risk that additional acts of sex discrimination would occur if a complaint is not initiated
 - Age and relationship of the parties, including whether the Respondent is an employee

Initiating a Complaint

- TIXCs should also consider the following in determining whether to initiate a complaint when one has not been filed
 - The severity of the allegation and whether, if established, it would warrant removal or other disciplinary sanction to stop and prevent
 - The scope of the alleged sex discrimination
 - E.g., a pattern, ongoing sex discrimination, impacts multiple people
 - The availability of other evidence that could be used to make a finding
 - Whether the school/district can stop and prevent without going through the Resolution Process

Title IX Resolution Process Overview



Basic Requirements

Section 106.45 provides a Civil Rights Resolution Process for resolving K-12 Title IX complaints

- Must treat parties equitably
- Require TIXCs, Investigators, or DMs have **no conflicts of interest or bias**
 - DMs may be the same person as the TIXC or Investigator
- Presume that Respondent is not responsible
- Establish reasonably prompt timeframes for “major process stages”
 - I.e., Evaluation, Investigation, Determination, Appeal (if available)
- Must take reasonable steps to protect the parties’ and witnesses’ privacy
- Require an objective evaluation of relevant and not otherwise impermissible evidence
- Prohibit retaliation against parties, witness, and those involved in the Title IX Resolution Process

Investigation Overview

Investigation Steps:

- Receive Notice/Complaint
- Initial Evaluation and Jurisdiction Determination
- Determine Investigation Basis
- NOIA
- Establish Investigation Strategy
- Adequate, Reliable, Impartial Investigation
- Relevant Evidence Summary (investigation report)
- TIXC Reviews Evidence
- Parties Review Evidence Summary or Relevant Evidence with opportunity to respond

Parties' Rights

- Receive detailed Notice of Investigation and Allegations (NOIA)
 - NOIA does not need to be in writing
 - Must include information about the school/district's Title IX Resolution Process
- Be informed of and receive appropriate and available supportive measures
- Gather and present evidence and witnesses
- Review all relevant evidence or an accurate description of the evidence
- If a student, be accompanied by parent/guardian to all meetings, interviews, and hearings (if applicable)
- To choose not to participate in the Title IX Resolution Process
- Receive a written outcome notification with rationale

First Amendment Protections

First Amendment

- Schools/Districts must implement their Title IX Resolution Process consistent with the First Amendment
- Natural tensions arise between:
 - Free speech and expression
 - Harassment and/or hostile environment claims
- Types of unprotected speech
 - Incitement of disruption and breach of peace
 - Defamation
 - True threat
 - Obscenity
 - Hate speech



Student Discipline

- Best practices in navigating tensions regarding student speech require school/district administrators to determine whether the speech:
 - **“Materially and substantially interferes” with the requirements of appropriate discipline in the operation of the school/district**
 - Reasonable anticipation of substantial disruption; mere speculation is not enough
 - “More than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint”
 - **Or intrudes upon the rights of other students**
- In addressing speech that occurs in out-of-school settings, schools/districts must evaluate how the speech impacts and disrupts the education program or mission

Pregnancy and Related Conditions

Pregnancy and Related Conditions

- School/District may not discriminate in its program/activity against any **student or employee** based on their current, potential, or past pregnancy or related conditions
- **Includes the full spectrum of processes and events connected with pregnancy:**
 - Pregnancy, childbirth, termination of pregnancy, or lactation
 - Related medical conditions
 - Recovery therefrom

Pregnancy and Title IX Compliance

- **TIXC is responsible for coordinating and overseeing** necessary reasonable modifications for those experiencing pregnancy and related conditions
- When a pregnant student informs any employee of their pregnancy or related condition, the employee must inform the student of:
 - TIXC's contact information
 - Information about support available through the TIXC
- When TIXC learns of pregnancy, they should reach out to coordinate actions to ensure equal access
- Treat pregnancy or related conditions in the “same manner” and under the same policies as other temporary medical conditions

School/District Obligations

- Publicize supports available for pregnancy and related conditions, including how to request support
- Provide, coordinate, and document reasonable modifications
- Allow access to separate and comparable programs (but not require)
- Allow for a voluntary leaves of absence
- Provide lactation time and space (required for students and employees)
- Provide Resolution Process for sex discrimination complaints
- Provide comparable treatment to temporary medical conditions

Reasonable Modifications

- Reasonable modifications to **policies, practices, or procedures**
 - Based on individualized needs
 - In consultation with the student and parent/guardian
- Student (or parent/guardian) has discretion to accept or decline a reasonable modification
- Reasonable modifications do not apply to employees
- Examples:
 - Breaks during class to express breast milk, breastfeed, eat, or drink
 - Intermittent absences to attend medical appointments
 - Changes to academic schedule
 - Access to online education
 - Extensions for coursework or rescheduling of tests

Supporting Documentation

- Medical documentation is typically unnecessary to determine reasonable modifications
- Proceeding based on a student's self-attestation of their needs will be the least burdensome for the student and enable the school/district to promptly meet the student's needs
- Can only be required in limited circumstances when:
 - **Necessary** and **reasonable** under the circumstances to determine:
 - Reasonable modifications to offer
 - Other specific actions to take

Pregnancy and Documentation

- May **not** require certification from a medical provider or other individual that the student is able to participate in class or activity
 - Unless certification required of all students in the class or activity, **or**
 - A certified level of physical ability or health is necessary, **or**
 - The information obtained is not used for discriminatory purposes
- Cannot require documentation, generally, unless necessary for reasonable modifications

Other Considerations

- Must permit students or employees to take a **voluntary** leave of absence
 - Student or employee must be reinstated to the same status held prior to leave
- Must ensure student and employee access to lactation spaces
 - Cannot be a bathroom
 - Must be clean, shielded from view, and free from intrusion



Intersection with ADA/504 and IDEA

Key Laws

Americans with
Disabilities Act

Section 504 of the
Rehabilitation Act

Individuals with
Disabilities
Education Act

Intersection with Title IX



IDEA has special procedures for disciplining a student with an IEP



Schools/Districts must ensure that Title IX Regulations are implemented consistently with the requirements of ADA/504/IDEA

Students with Disabilities

- **TIXC required to consult** with:
 - One or more members of the student's Individualized Education Program (IEP) team; **OR**
 - One or more members of the group of persons responsible for the student's placement decision
- To determine how to comply with the requirements of
 - Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act
 - Throughout the school/district's Title IX Resolution Process

Implications for Title IX Complaints

- Title IX Regulations specifically require adherence to ADA/504/IDEA
- Special education disciplinary rules (and manifestation determinations) apply to all phases of Title IX Resolution Process:
 - Emergency Removals
 - Supportive Measures
 - IR
 - Final determinations and sanctions/remedies
- Special education disciplinary provisions apply for all interim or permanent actions that cause a change in placement for more than 10 days
 - Inherent tension or conflict between IDEA and Title IX

Manifestation Determination Review

- If school officials seek to change a student's placement for more than 10 days, the IEP team must review all relevant documentation
 - Emergency removal or supportive measures that necessitate a change in placement
 - Resolution Process outcome



Manifestation Determination Review

- **Manifestation Determination Review (MDR) for Emergency Removal or Supportive Measures (that result in a change of placement):**
 - Focus on **alleged misconduct**
 - IEP team determines if the behavior is a manifestation of the disability by asking two questions:
 - Did the behavior have a direct and substantial relationship to the disability?
 - Was the behavior a result of a failure to implement the IEP?
 - **Does not** impact whether a Title IX investigation proceeds
- If the answer to either question is “yes,” then the student returns to the original placement and the IEP team conducts a functional behavioral assessment and implements a behavioral intervention plan
 - Team should also modify the IEP

Manifestation Determination Review

- **MDR for Investigation Outcome:**
 - Focus on **investigation findings**
 - IEP team will determine if the behavior is a manifestation of the disability by asking two questions:
 - Did the behavior have a direct and substantial relationship to the disability?
 - Was the behavior a result of a failure to implement the IEP?
 - May impact sanctions and/or remedies
- Alternative placement and MDRs are appealable under special education procedures

Program Equity and Athletics

Title IX and Athletics

Title IX requires a School/District to:

- Provide **equal opportunities** for female and male students to become interscholastic athletes
 - Analyzed by means of a three-part test (“Prongs”)
- Provide **equitable treatment of participants** in the overall girls’ program as compared to the overall boys’ program
 - Analyzed according to 13 different program components (i.e., the “Laundry List”)

Athletic Oversight: Gender Equity

- Oversight of gender equity compliance remains **school/district** TIXC's responsibility
- **Athletic Title IX compliance** may be delegated; for most K-12 schools/districts, this will be the school/district athletic director's responsibility
 - There is often a need for comprehensive Title IX training
 - Athletic Directors
 - Coaches
 - School/District administrators
 - Others?

Three-Part Test (1979)

Effective accommodation of interests and abilities

1

Opportunities for males and females substantially proportionate to their respective enrollments; **OR**

2

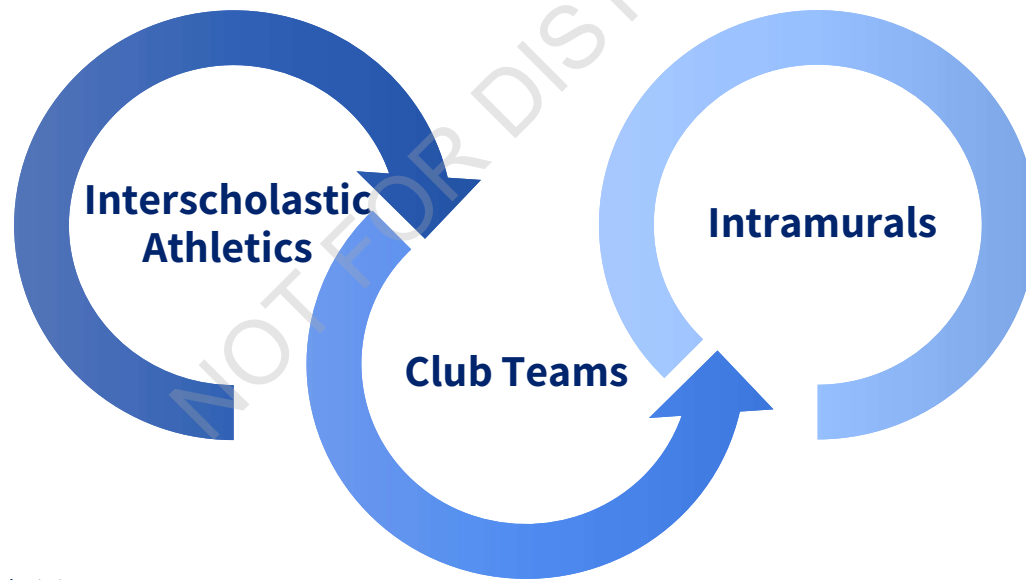
Where one sex has been underrepresented, a history and continuing practice of program expansion responsive to the developing interests and abilities of that sex; **OR**

3

Where one sex is underrepresented and cannot show a continuing practice of program expansion, whether it can be demonstrated that the interests and abilities of that sex have been fully and effectively accommodated by that present program

Title IX and Athletics

- Three-Part Test and the 13 program components are typically **not** as problematic for intramurals and clubs because those programs tend to be self-initiated with fewer School/District-provided benefits



Athletic Oversight: Laundry List

Equipment and
supplies

Scheduling

Locker rooms
and facilities

Housing and
dining

Coaching

Publicity

Travel and
per diem

Support
services

Medical and
training
services

Tutoring

Scholarships

Title IX and Athletics

Title IX does not require a School/District to:

- Provide the same funding to the overall girls' and boys' programs
- Provide the same funding to boys' and girls' teams for the same sport
- Provide specific benefits to teams
- Offer the same number of teams for boys and girls
- Offer the same sports for boys and girls
- Provide the same benefits to boys' and girls' teams in the same sport
- Compete at a specific level

Title IX, Pregnancy, and Athletics

- Pregnant student-athletes must be permitted to participate in athletics without restriction or modification (other than restrictions applied to all students)
- Reasonable Modifications
- Supportive Measures documentation
- The majority of high school athletics associations have not adopted policies related to pregnancy

Title IX Compliance Oversight and Assessment

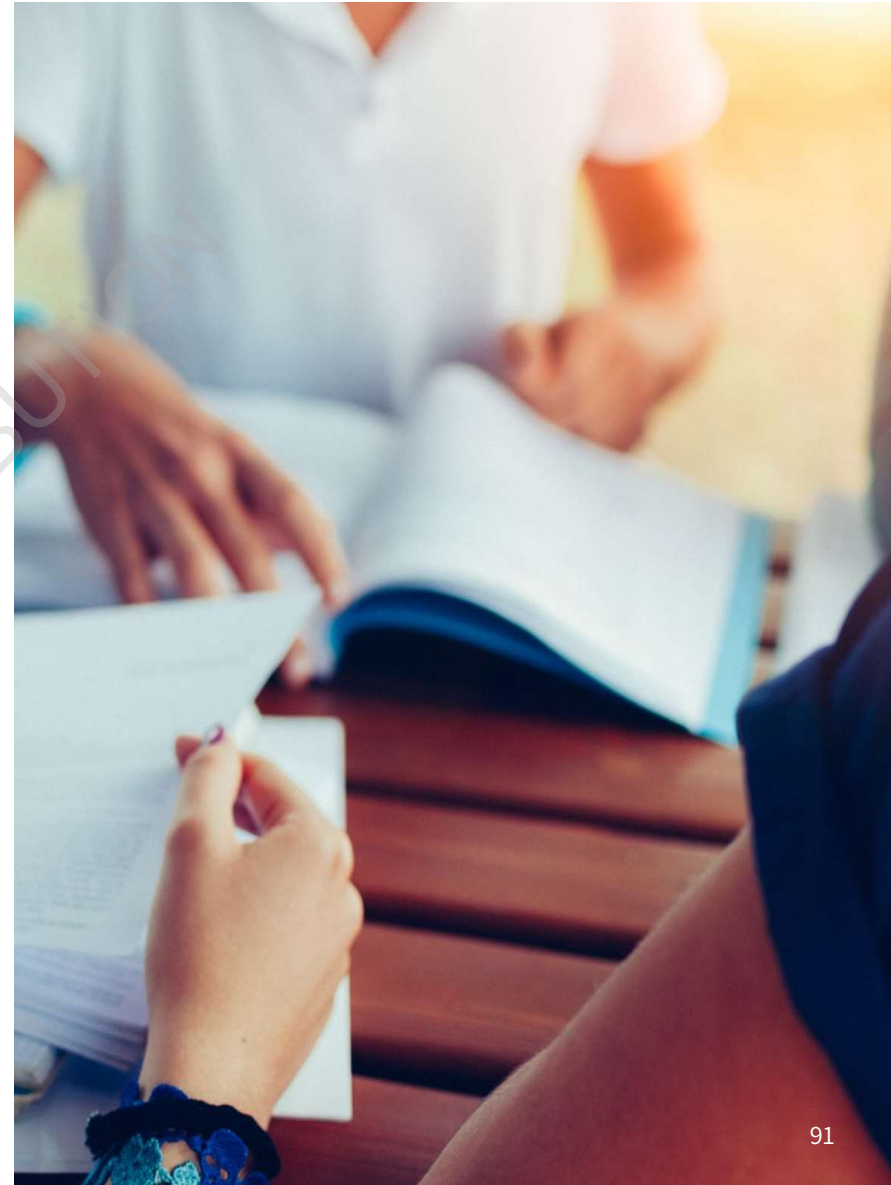
Pattern and Climate Issue Assessment

Complaint closure assessment can assist TIXCs in identifying and monitoring pattern and climate issues:

- Identify patterns and systemic problems
- Issue school/district-wide policy statements, informational campaigns
- Provide regular training for school/district students, employees, parents/guardians
- Conduct periodic school/district climate surveys
- Establish a system for monitoring future incidents and patterns

Compliance Assessment

- **Monitoring: Conduct regular needs assessment**
 - Identify strengths
 - Identify program gaps
 - Barrier analysis
 - Address areas of improvement
 - Assess resources
- **Identify patterns and systemic problems**
 - Internal reviews/audits/assessments
 - Climate assessments
- Complaint/investigation debriefing
- Benchmarking



Addressing Data Gaps

- Leverage staff, administrators, and teacher assessment expertise
- Ask questions that may challenge the status quo
- Be wary of assumptions and bias
- Include data about all school/district members
- Identify populations or services that are not reflected in the data
 - Are there student populations who are not reporting?
 - Which students are not accessing programming or resources?
- Benchmark data against peer comparators

Annual Report

- **Provide an annual, comprehensive overview of Title IX training and resolution outcomes**
- This effort can feel onerous, so it may help to:
 - Maintain ongoing tracking and assessment efforts throughout the year
 - Work collectively with an established school assessment group or coalition
 - Create or follow a template
 - Allot sufficient time for writing and review
- Consider showcasing information that helps tell the full scope of prevention, training, resources, and resolution efforts, both qualitative and quantitative

Assessment Outcome Sharing



Recordkeeping and Posting

Must maintain records for seven years

- For each complaint of sex discrimination, any IR or Title IX Resolution Process documentation and the outcome
- For each notification of sex discrimination, any documentation re: response
- All materials used to provide training post August 1, 2024
 - Make available for review upon request (no requirement to post publicly)





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Questions?

NOT FOR DISTRIBUTION



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