



Association of
Title IX Administrators

Implementing the 2024 Title IX Regulations for K-12 Schools and Districts

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.
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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.

2024 Title IX Final Rule

- Issued **April 19, 2024**
- Effective and enforceable **August 1, 2024**
- Apply to incidents occurring **on or after August 1, 2024**, regardless of when the incident is reported
 - Incidents occurring from August 14, 2020, to July 31, 2024, will still be resolved using 2020 Regulations training and procedures, in perpetuity
- Combination of 2011 Dear Colleague Letter, 2020 Regulations, and new approaches
- 1561 pages total (1504 Preamble and 57 Regulations)
- More flexibility for Recipients in how to structure and staff resolution processes

Scope

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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 policies, procedures, and training for the **2020** Regulations and **2024** Regulations





Decision Point: Retroactivity

How will the school/district train and maintain its ability to apply both the 2020 and 2024 Regulations?

What resources/options are available to meet this need?

How will the school/district communicate to the community about this issue?

How will the school/district keep two sets of policies and procedures “alive” at once?

Applicability

Recipient's education program or activity in the United States

- Conduct that is subject to the Recipient's **disciplinary authority**
- A sex-based hostile environment under Recipient's education program or activity, even when some alleged conduct occurred outside the Recipient's education program or activity or outside the United States
 - **Downstream or in-program effects of out-of-school conduct**

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





Decision Point: *De Minimis* Harm

How will the school/district approach the expanded sex discrimination definition to include sexual orientation and gender identity?

- States with restrictive sex/gender laws

How can the school/district expand capacity to respond to increased reports from the broadened scope?

How will the school/district approach the *de minimis* harm provision?

- Bathroom use
- Locker room use

Terminology and Definitions

Selected Terminology

- Complainant
- Complaint
- Confidential Employee
- Evaluation
- Parental Status
- Peer Retaliation/Retaliation
- Pregnancy or Related Conditions
- Relevant Evidence
- Respondent
- Student



Sex-Based Harassment

- Subset of sex discrimination
- Includes:
 - Quid Pro Quo (QPQ)
 - Hostile Environment Harassment
 - Sexual Assault (SA)
 - Dating Violence (DV)
 - Domestic Violence (DV)
 - Stalking
- No consent definition provided
 - Use your own



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
 - If 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 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
 - Type, frequency, and duration of the conduct
 - Parties' ages, roles, and previous interactions
 - Location and context of the conduct
 - School/District's control over the Respondent
- These are **factors**, not requirements
 - There could also be other factors to consider

Retaliation

Defined as:

- Intimidation, threats, coercion, or discrimination against any person
 - By the school/district, a student, an employee, or other person...
 - “For the purpose of interfering with any right or privilege under Title IX,” **OR**
 - “Because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing in the Title IX grievance process”
- **May require** employees to participate in the Resolution Process as witnesses
 - Still cannot require students to participate
 - Retaliation allegations should be resolved under the Title IX Resolution Process, § 106.45



**Decision Point:
Sex-Based Harassment Definitions**

How will the school/district define consent?

How will the school/district navigate the new hostile environment standard and its intersection with the First Amendment?

Will the school/district require the its employees to participate as witnesses in the Resolution Process?

Title IX Jurisdiction

Jurisdiction Refresher

Title IX Coordinator (TIXC) is responsible for evaluating Title IX jurisdiction:

- Is the conduct of a nature that it “may reasonably constitute sex discrimination?”
- Who is the Complainant?
- Who is the Respondent?
- Is it part of a school/district education program or activity?



Education Program or Activity

- Within education program or activity
 - Conduct subject to school/district's **disciplinary authority**
 - Includes full range of student and employee policies
- Downstream (in-program) effects
 - Including off-campus and outside the United States
 - Brings the effect, not the external conduct, within jurisdiction



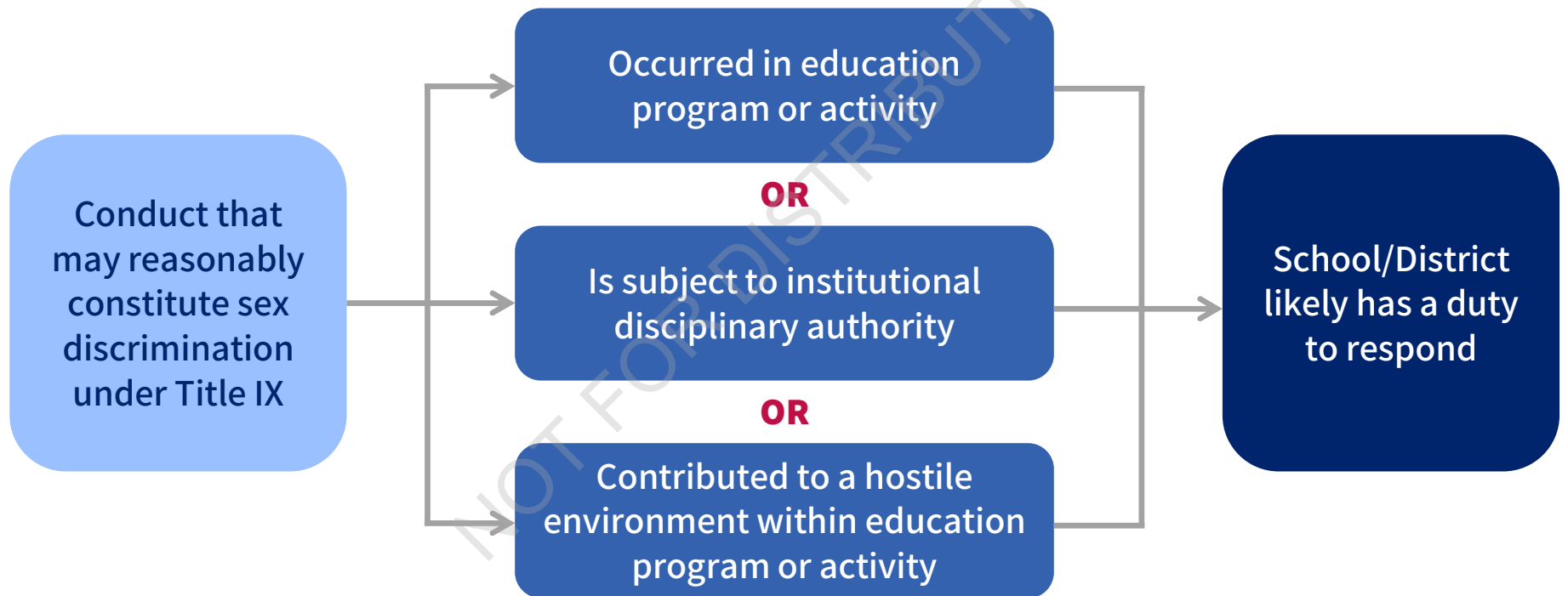
Disciplinary Authority

- “Conduct that is subject to Recipient’s disciplinary authority”
 - Fact-specific analysis
 - “To the extent a Recipient addresses other student misconduct...a Recipient may not disclaim responsibility for addressing sex discrimination that occurs in a **similar context**”
- Similar context
 - Ex: Theft or non-sexual assault, other forms of discrimination
- “Obligation to **investigate** conduct occurring under [school/district’s] disciplinary authority is only ever as broad as Recipient’s **reasonable ability** to do so”

Downstream Effects

- “Obligation to address sex-based hostile environment under its education program or activity...
 - Even when **some conduct** alleged to be contributing to the hostile environment occurred **outside** the [school/district’s] education program or activity”
- Do **not** need to determine whether the conduct occurring outside the program/activity is itself sex-based harassment
 - Alleged conduct outside the program/activity may be relevant to investigation or school/district response
 - No need to respond independently to alleged underlying conduct, but practically speaking, addressing effects may only be a band-aid

Visualizing Jurisdiction





Implementation

Determine the school/district's "disciplinary authority"

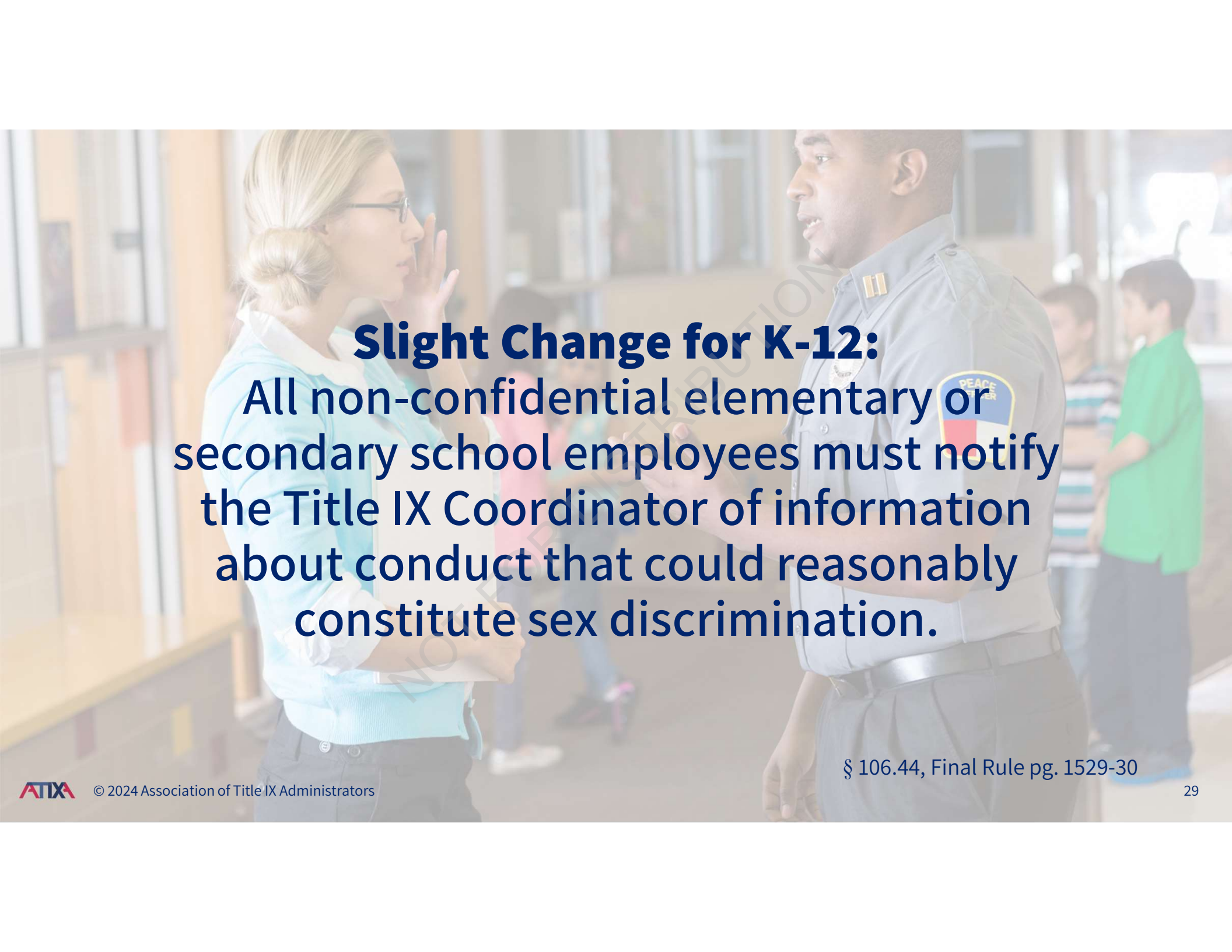
- Does the the student or employee conduct code include off-campus conduct?

What process adjustments does the school/district need to identify and respond to downstream effects?

Assess available in-school supportive measures for addressing downstream effect

The Office for Civil Rights (OCR) takes an expansive view of the conduct of teachers interacting with students off-campus as likely within the program/activity

Reporting Requirements

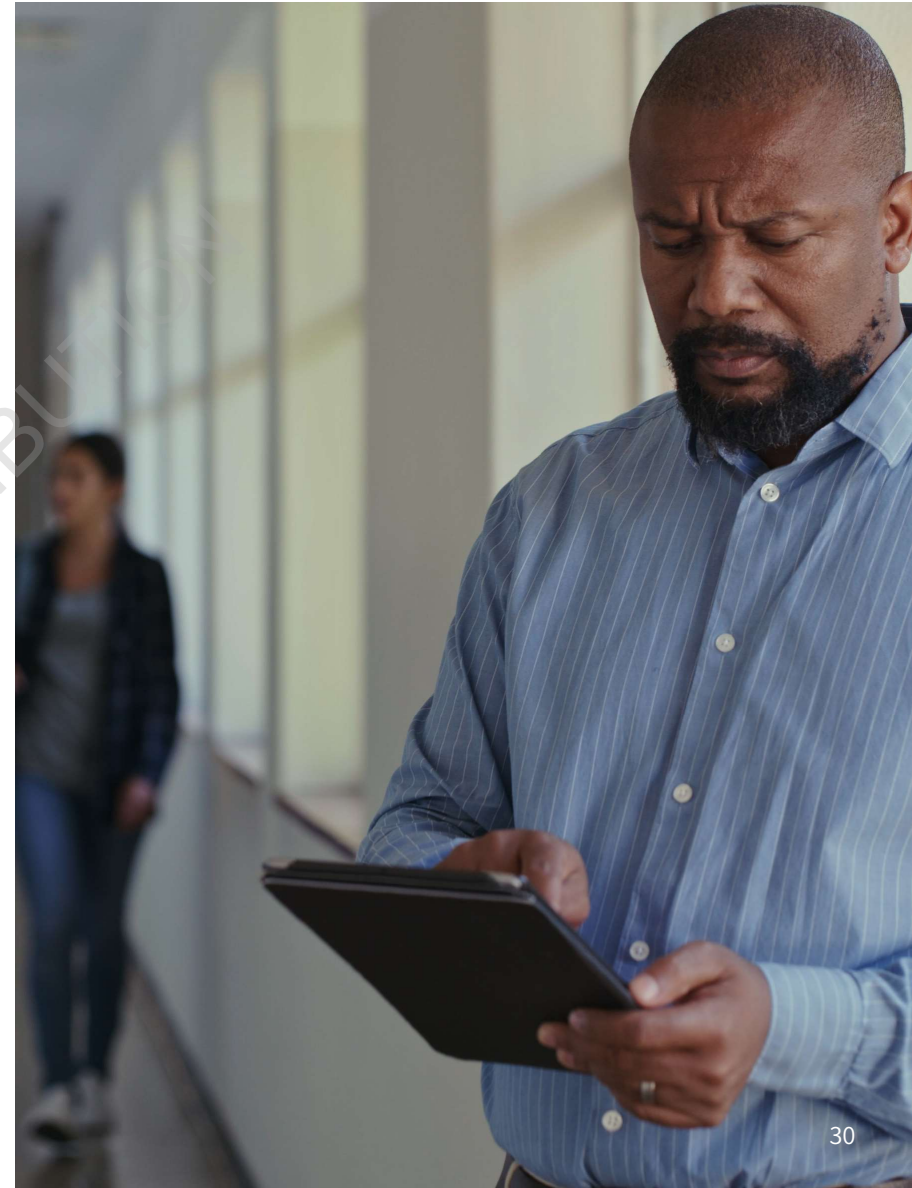
A woman with blonde hair in a bun, wearing glasses and a light blue sweater, is gesturing with her hand while talking to a school police officer. The officer is wearing a grey uniform with a "PEACE OFFICER" patch. They are in a school hallway with bookshelves and other students in the background.

Slight Change for K-12:
All non-confidential elementary or secondary school employees must notify the Title IX Coordinator of information about conduct that could reasonably constitute sex discrimination.

§ 106.44, Final Rule pg. 1529-30

Confidential Employees

- School/District may designate confidential employees
 - Notify all employees and students of confidential employees' identities
- Confidential employees must explain their confidential status
- 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 allegations of child abuse**





Decision Point: Reporting

What reporting and notification structure will the school/district adopt?

How will the school/district train its community to understand and implement their reporting responsibilities?

Will the school/district designate confidential employees?

- If so, why?

Who should be confidential employees?

Initial Evaluation

Reports and Complaints

- No more “Formal Complaint” requirement
- Complaint defined:
 - “**Oral** or **written** request to the Recipient that **objectively** can be understood as a request for the Recipient to investigate and make a determination about alleged discrimination”
 - Complaints require action by the school/district when they are made to the TIXC, or any other non-confidential employee (almost everyone)

Reports and Complaints

- TIXC retains ability to file a complaint when:
 - Imminent and serious threat exists; **OR**
 - The alleged conduct prevents the Recipient from ensuring equal access
- Parent, guardians, or authorized legal representative may file complaint on behalf of students
- For complaints of sex discrimination **only**, any student, employee, or any person participating or attempting to participate (P/ATP) may file a complaint
 - Not for sex-based harassment complaints, though the school/district is not prohibited from acting on such knowledge

Initial Evaluation

- Identified as a **major stage** of the Resolution Process
 - Described as “the Recipient’s decision whether to dismiss or investigate a complaint of sex discrimination”
- NOIA no longer required immediately after complaint
- Provides TIXC with opportunity to clarify allegations
- May reduce dismissals



Dismissal

All dismissals involving conduct occurring after August 1, 2024, are **discretionary**, under the following circumstances:

- Unable to identify Respondent after **reasonable** steps to do so
- Respondent no longer participating in education program or employed by School/District
- Complainant withdraws all or a portion of complaint and any remaining conduct would not be discrimination under Title IX
- Alleged conduct, if proven, would not be discrimination under Title IX
 - School/District must make reasonable efforts to clarify allegations before dismissal

Dismissal

Upon dismissal of a complaint:

- Promptly notify Complainant
- Notify Respondent only if Respondent has already been notified of complaint
- Offer supportive measures as appropriate
- Inform Complainant of their right to appeal
 - Also inform Respondent if they have been notified of the complaint
- Take other appropriate, prompt, and effective steps to ensure that sex discrimination does not continue or recur



Dismissal Appeals

- Appeal Grounds:
 - Procedural irregularity that would change the outcome **OR**
 - The decision to investigate was biased **OR**
 - A conflict of interest impacted the school/district's efforts to clarify the initial allegations
- Appeal Decision-Maker (DM) must **not** have taken part in investigation of allegations or dismissal of complaint
- Ensure the Appeal DM is trained and free of bias or conflicts of interest
- Provide parties a reasonable and equal opportunity to make a statement
- Implement appeal procedures equally for the parties
- Notify parties of the appeal result and rationale



Decision Point: Dismissals

What, if any, timeframes will the school/district establish for the major stages of the Resolution Process?

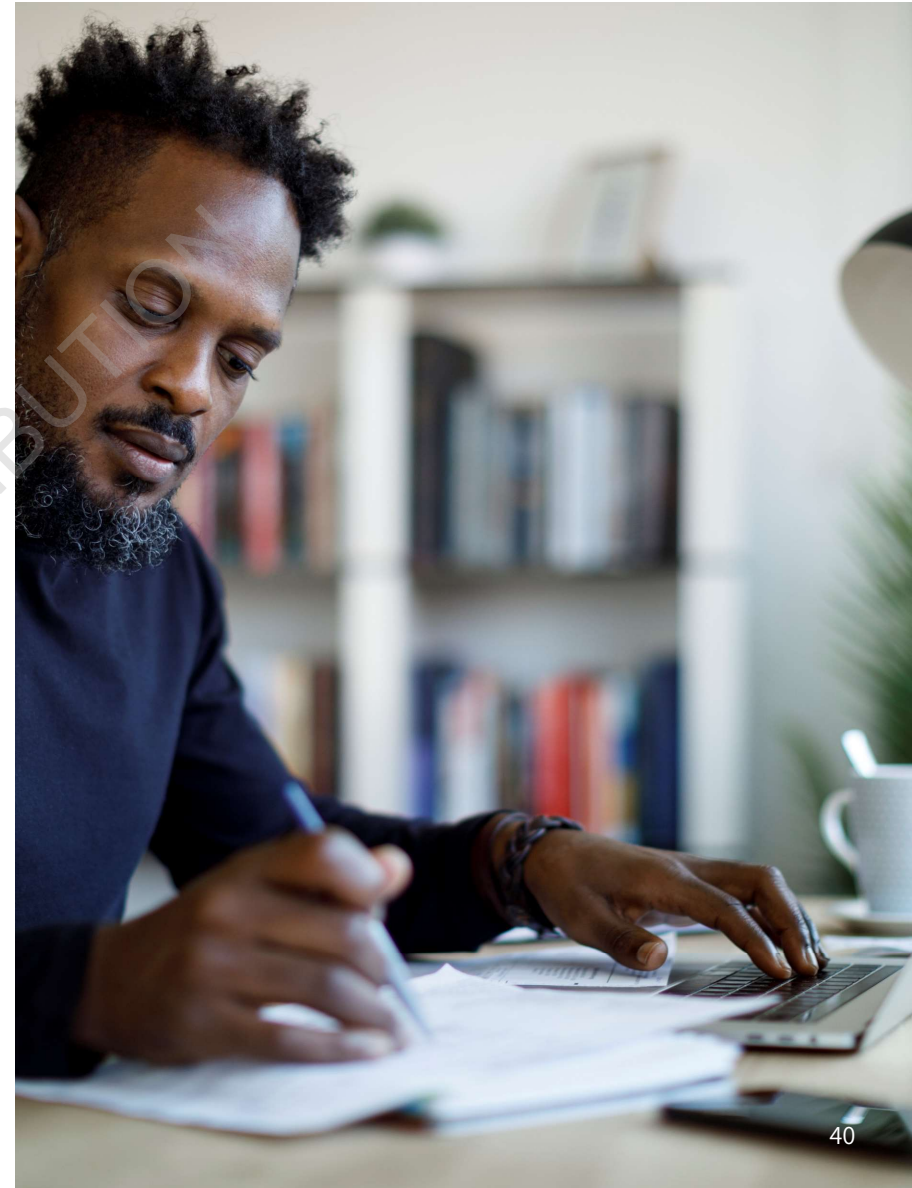
Who will hear dismissal appeals?

How will the school/district structure the dismissal appeal?

- Timeframe for appeal
- Timeframe for rendering a decision
- Appeal grounds available
- Will the school/district add additional grounds?

Supportive Measures

- Individualized measures designed to:
 - Restore or preserve access
 - Protect safety of parties or educational environment
 - Provide support during Resolution Process
- May not **unreasonably** burden a party
- May **not** be for **punitive** or **disciplinary** reasons
- Must be **without** fee or charge



Supportive Measures

- School/District may deem which supportive measures are **reasonably available**
 - Must provide a **timely opportunity** to seek modification, reversal, or denial
 - An impartial employee, uninvolved in initial decision, must have authority to modify or reverse
 - Review considers whether the original decision was **inconsistent** with the definition of supportive measures
 - Permit additional opportunity to contest if circumstances change materially
 - Disclosure about supportive measures is need-to-know
- Measures may be continued, modified, or ended at conclusion of the Title IX Resolution Process



Decision Point: Supportive Measures

What supportive measures is the school/district able to offer parties?

Who will hear challenges of supportive measures decisions?

How will the school/district structure the challenge process?

- Timeframe for challenge
- Timeframe for rendering a decision

How will the school/district maintain privacy?

Students with Disabilities

- **TIXC required to consult** with:
 - One or more members of the student's Individualized Education Program (IEP) team (and/or 504 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 (Section 504)
 - Throughout the school/district's Title IX Resolution Process
- Includes decisions related to Emergency Removal

Removals

- May remove Respondent after an individualized safety and risk analysis
 - An **imminent and serious threat** to the health or safety of the Complainant, any students, employees, or other persons must exist
 - Threat arises from sex discrimination allegations
- Provide Respondent an opportunity to challenge the decision **immediately**



Emergency Removal

- School/District must provide Respondent notice and opportunity to challenge Emergency Removal
- Emergency Removal process must maintain the rights granted by:
 - IDEA
 - Section 504
 - Americans with Disabilities Act



Supportive Measures & Partial Removals

- In some instances, a partial removal from the education/program may be appropriate as a supportive measure
 - The partial removal must be consistent with the definition of supportive measures
 - May **not** be for disciplinary or punitive purposes
 - May be for preserving access, protecting safety, or providing support during the Resolution Process
- If a TIXC determines that a partial removal is disciplinary or punitive, the Emergency Removal provision applies



Decision Point: Emergency Removal

How will the school/district structure its Emergency Removal process?

Who will implement the safety and risk analysis?

Who will hear challenges to the removal?

Will the school/district consider partial removals as a supportive measure?

Informal Resolution (IR)

- Available without a complaint
- TIXC must:
 - Agree to the use of IR for each request
 - Obtain the parties' voluntary consent
 - Provide the parties Notice of Allegations (NOA) and IR Process
- Parties may:
 - Request IR at any time prior to determination
 - Withdraw from IR at any time prior to agreement
- Parties are precluded from initiating or resuming investigation and resolution process if agreement is reached



Informal Resolution

- Forms of IR not defined (e.g., facilitated dialogue, shuttle negotiation, restorative practices, etc.)
- Regulations do not specify “Informal Resolution” procedures
- Resolution may include restrictions the school/district could have imposed as disciplinary sanctions or remedies
- IR Facilitator:
 - May **not** serve as Investigator or Decision-Maker (DM)
 - Must be trained in IR process and Title IX
- Expanding IR options may help decrease barriers to reporting



Decision Point: Informal Resolution

Will the school/district offer IR options?

- If yes, what types of IR will be offered?

Who will the school/district designate as IR Facilitator(s)?

What training will be provided?

Resolution Process

Basic Requirements

§ 106.45 provides a Civil Rights Resolution Process for resolving complaints

- Must treat parties equitably
- Require TIXCs, Investigators, or DMs have **no conflict of interest or bias**
 - DMs may be the same person as the TIXC or Investigator
- Presume that Respondent is not responsible for sex discrimination
- Establish reasonably prompt timeframes for “major stages” of the process
 - E.g., Evaluation, Investigation, Determination, Appeal (if available)
- Advisors not required, but parents/guardians have the right to participate

Basic Requirements

- Take reasonable steps to protect the privacy of the parties and witnesses
 - Cannot restrict ability of parties to:
 - Obtain and present evidence
 - Consult with family members, confidential resources, or Advisors
 - Otherwise prepare for or participate in the Resolution Process
- Require an objective evaluation of relevant evidence and not otherwise impermissible
- Respondent requirements apply only to individuals
 - Schools/Districts are not considered Respondents in policy or practice complaints

Notice of Allegations and Investigation

- Does **not** need to be in writing
- **Must include:**
 - Resolution Process, including IR (if available)
 - Sufficient available information to permit parties to respond to the allegations
 - Identities (who), allegations (what), date (when), location (where)
 - Statement that retaliation is prohibited
 - Statement that parties can view relevant evidence or description of the evidence

Types of Evidence

Relevant

Impermissible
(regardless of relevance)

Not Relevant

Investigator as Decision-Maker

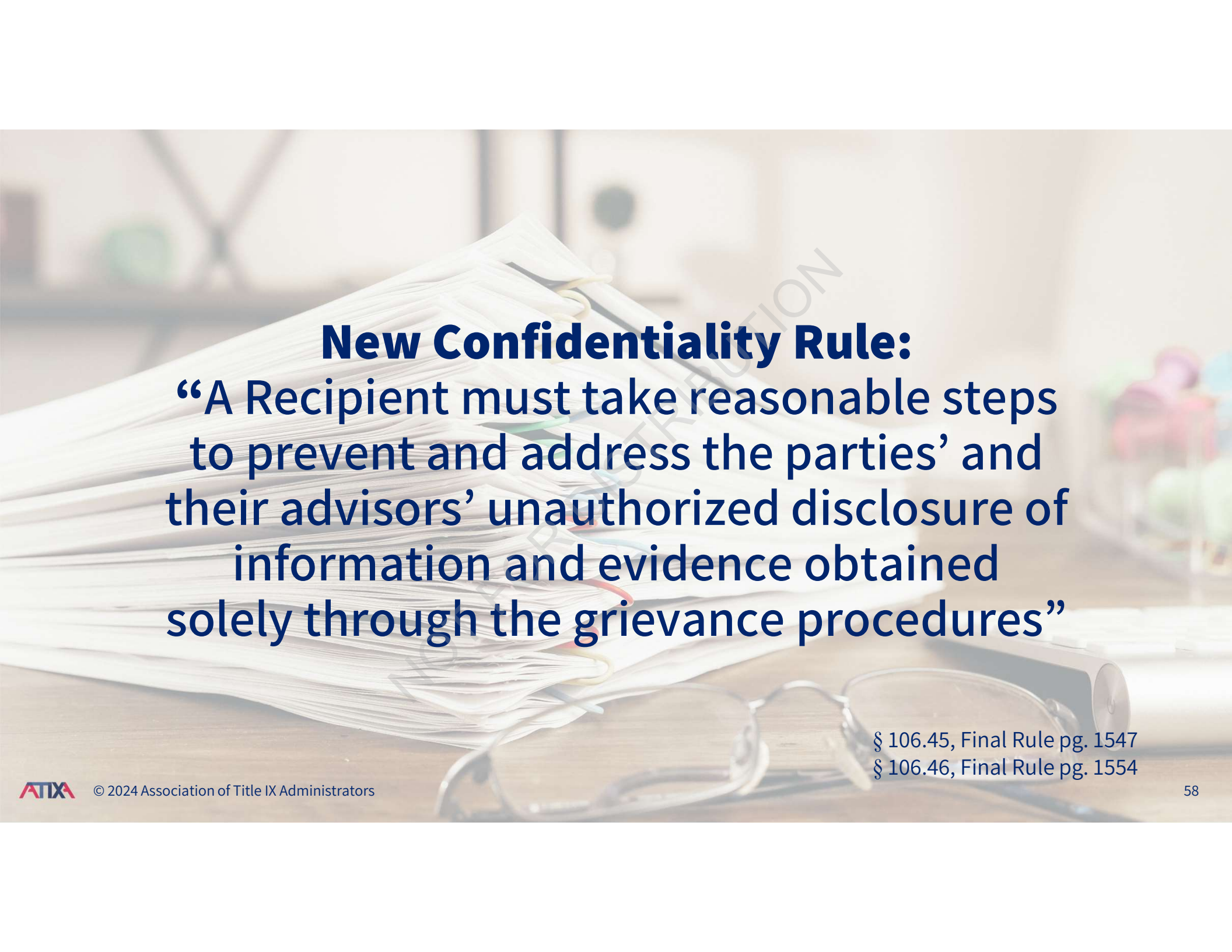
- Investigator and DM can be the same person
 - Permissible for TIXC to serve as the Investigator and/or DM
- Conflicts of interest and bias still prohibited



§ 106.45: Investigations

§ 106.45

- **Adequate, reliable, and impartial**
- Gather evidence
- Permit parties to present fact witnesses and inculpatory and exculpatory evidence
- Recipient must review all evidence gathered through the investigation and determine relevance
- Provide parties opportunity to access relevant evidence or accurate description of such evidence
- Provide parties reasonable opportunity to respond to evidence
- Investigation report not required
- Take reasonable steps to prevent and address parties' unauthorized disclosure of information and evidence obtained through process



New Confidentiality Rule:
“A Recipient must take reasonable steps to prevent and address the parties’ and their advisors’ unauthorized disclosure of information and evidence obtained solely through the grievance procedures”

§ 106.45, Final Rule pg. 1547
§ 106.46, Final Rule pg. 1554

Advisors

- Recipients are not required to permit Advisors in § 106.45 proceedings
 - Advisors may otherwise be required
 - School/District policy
 - Union/collective bargaining agreements (CBA)
- School/District must allow parents/guardians to participate throughout the resolution process





Decision Point: Investigations

What will the school/district's investigation model be?

- Separation between investigation and decision-making functions?
- How will quality of investigations be impacted?

Who will investigate?

Will the school/district's § 106.45 process permit Advisors?

Will the school/district provide written notice ?

Will the process include a comprehensive, written investigation report?

What opportunity will the process provide to review the relevant evidence and respond?

Decision-Making

- Provide a process enabling DM to question parties and witnesses to assess credibility
 - DM may be the same person as the TIXC or Investigator
- Must use preponderance of the evidence standard
 - Unless clear and convincing is used in all “comparable proceedings”
 - “Comparable proceedings”
 - Proceedings for other discrimination complaints involving the same **category of Respondents** (students vs. employees)
 - Similar types of “person-to-person offenses” that are physical in nature but do not pertain to sex

Decision-Making

- **Permitted but not required:**
 - Live hearing
 - Determination Appeal
- School/District must notify the parties in writing of:
 - Determination
 - Rationale
 - Appeal procedures (if applicable)
- TIXC coordinates remedies and disciplinary sanctions as appropriate



Appeals

- School/District can only decline to offer an appeal process if it does so in all comparable proceedings.
- If offered, an appeal process should mirror those in **comparable proceedings**
 - This is a floor, not a ceiling
 - Comparable proceedings may include those used to resolve other discrimination complaints





Decision Point: Decision-making

Who will serve as DM?

What standard of evidence will the school/district's process use?

How will the school/district determine whether to use a live hearing or individual meeting for decision-making?

Will the school/district allow for an appeal of the outcome?

Who will serve as Appeal DM?

Pregnancy & Related Conditions

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



School/District Obligations

- School/District may not discriminate in its program/activity against any **student or employee** based on the their current, potential, or past pregnancy or related conditions
- When a pregnant student informs any employee of their pregnancy or related conditions, the employee must inform the student of:
 - The TIXC's contact information
 - Information about support available through the TIXC
- TIXC reaches 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

Reasonable Modifications

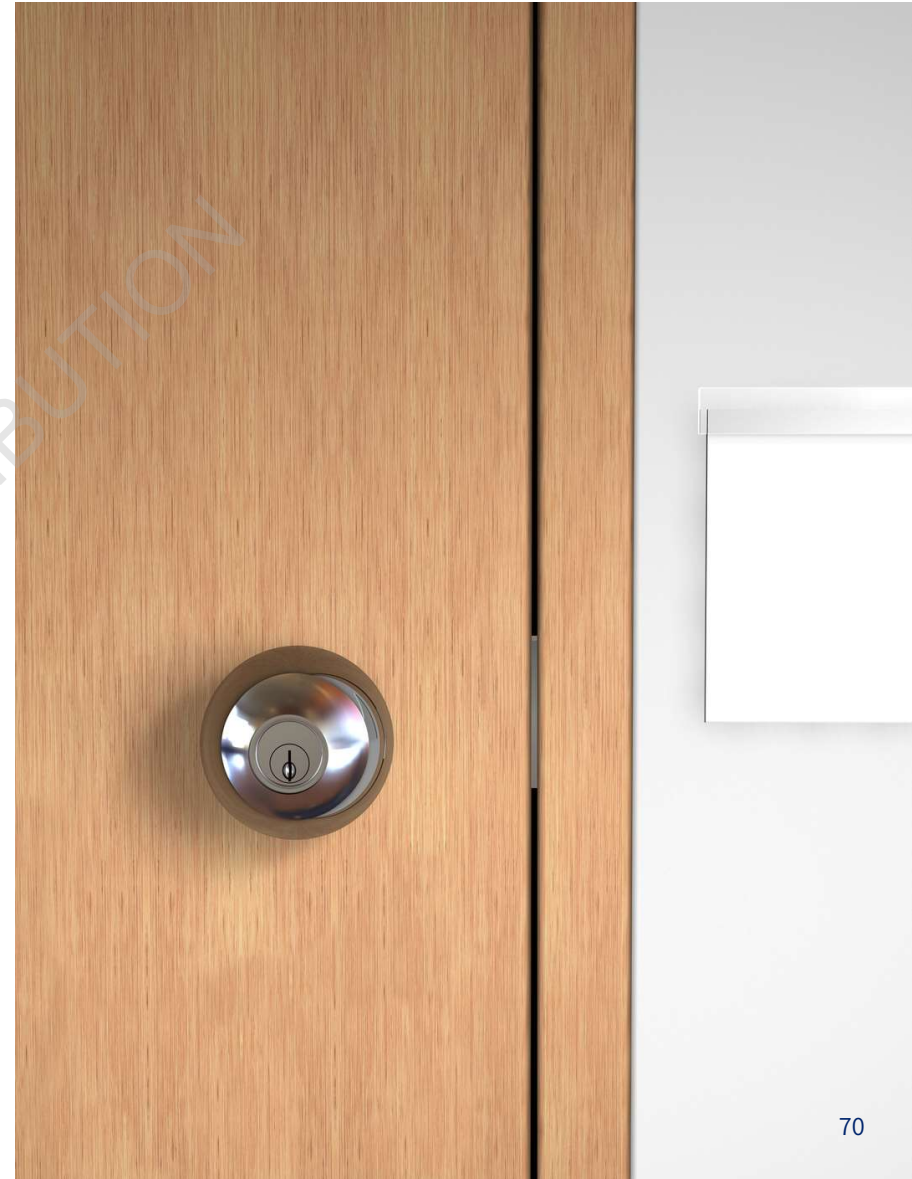
- Reasonable modifications to **policies, practices, or procedures**
 - Based on individualized needs
 - In consultation with the student
- Student (or parent/guardian) has discretion to accept or decline a reasonable modification
- Examples:
 - Breaks during class to express breast milk, breastfeed, eat, or drink
 - Intermittent absences to attend medical appointments
 - Changes to academic or work schedule
 - Access to online education
 - Extensions for coursework or rescheduling of tests

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





Decision Point: Pregnancy

How will the school/district train its community about pregnancy discrimination, reasonable modifications, and obligations to share information?

- Who needs training?

What will be the protocol to determine and implement reasonable modifications?

Where can the school/district provide lactation rooms and how many are reasonable?

What changes, if any, need to be made to the school/district's leave policy?

Title IX Training & Barrier Analysis

Training Requirements

- **All employees upon hiring, change in role, and annually:**
 - School/District obligation to address sex discrimination
 - Scope of conduct that constitutes sex discrimination
 - Reporting and notification requirements
- **Training must be completed, not just made available**
- Method: May be in-person, online/virtual, synchronous or asynchronous, internal or external



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**
- This includes:
 - Investigators
 - Decision-Makers
 - Informal Resolution Facilitators
 - Appeal Decision-Makers
 - Those with the authority to modify or terminate supportive measures

Training Requirements

- **Title IX team training requirements:**
 - School/District's Resolution Process
 - 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's IR policy and procedures
- TIXCs must be trained on their specific responsibilities and recordkeeping systems
- No obligation for student training

Monitoring & Barrier Analysis

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





Decision Point: Training & Monitoring Barriers

How will the school/district train its community annually?

- How will it track completion?

What options or resources does the school/district have available for training?

How will the school/district monitor for barriers?

- What kinds of assessments are available?
- Who should be involved?
- What options or resources are available to analyze data and implement solutions to reduce barriers?

FERPA*

- **For practitioners:**
 - Title IX requirements override any conflicting FERPA provisions
- **For legal counsel:**
 - OCR asserts that the due process protections in Title IX are **constitutional requirements**
 - Not only does Title IX override FERPA where this is a conflict, constitutionally guaranteed due process rights in the Resolution Process add an additional layer of override

*Family Educational Rights and Privacy Act



Recordkeeping and Posting

Must maintain records for seven (7) years

- For each complaint of sex discrimination, any IR or 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 upon request (no requirement to post publicly)



Report Increase

Schools/Districts are **likely to experience an increase** of Title IX reports and complaints requiring a Resolution Process

- Expanded Scope and Jurisdiction
- Broader Sex-Based Harassment definition
- Removal of formal complaint requirement
- Permissive vs. Mandated Dismissal
- Individual meeting option for Determination
- Renewed Title IX awareness

INCIDENT INVESTIGATION
SUMMARY

Incident Date:

Review Date:

by:

Summary:

Root Causes:

Questions?

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Association of
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