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K–12 Title IX Comprehensive Training

August 9, 2026

- Overview of State Department Title IX Support
- School Obligations
- Title IX Coordinator
- Investigations
- Advisors and Informal Resolution
- Decision Making and Appeals
- Q&A



Idaho State Department of Education Title IX Supports

- Monthly PLC
- Comprehensive Training
- Idaho Title IX Toolkit
- On demand consultation
- Dan Skinner
  skinnerlawidaho@gmail.com
  208-971-5135



Monthly PLC Training

Sept. 8, 2026	District/Charter Level Title IX Requirements
Oct. 13, 2026	Title IX Coordinator Training
Nov. 10, 2026	Investigations 101
Dec. 8, 2026	Advisors
Jan. 12, 2027	Informal Resolution
Feb. 9, 2027	Decision Making
Mar. 9, 2027	Appeals
Apr. 13, 2027	Title IX and Sports
May 11, 2027	TBD



- Second Tuesday of the Month
- 9 a.m. MST
- 60 minutes - with time for questions
- Slides distributed within the week

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K–12 Title IX Comprehensive Training

Module 1: Overview of School Obligations, August 10, 2026



Title IX - Federal Law

- 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.

- Enforced by the Office for Civil Rights (OCR)

Which Regulations Apply?

- 2020 Regulations - 34 CFR Part 106
    - Subsequent revisions have been blocked by Federal Court.
- Federal Resources
    - 2020 Title IX Regulations
    - Title IX Dear Colleague Letter Enforcement of 2020 Regulations
    - Title IX and Sex Discrimination – U.S. Department of Education



District Requirements

- Implement District Policy and Procedure
- Designate Title IX Coordinator
- Train Staff
- Preserve and publish training materials
- Notify Students
- Maintain records
- Stop, Remediate, Mitigate



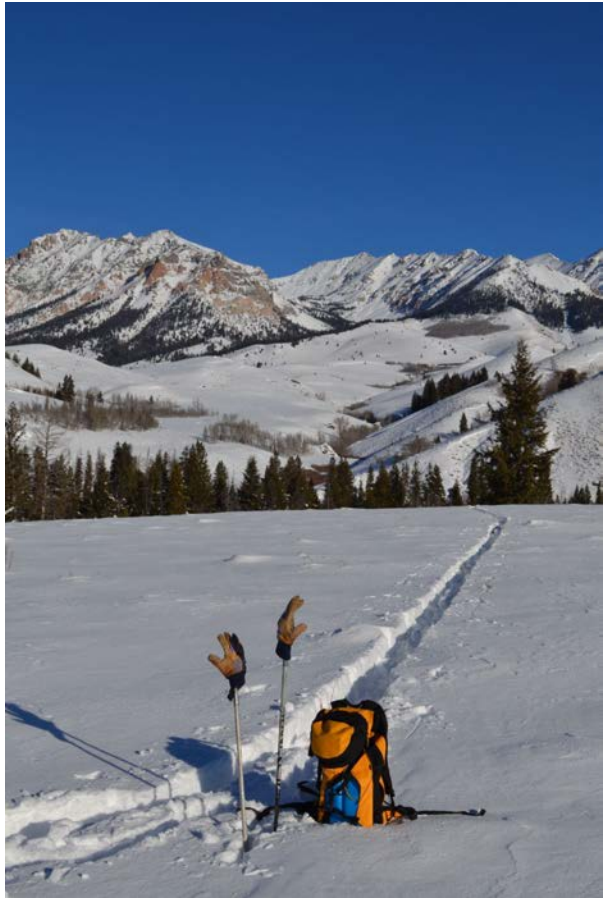
The Coordinator must be identifiable and reachable

Designate at least one employee to coordinate compliance.

Publish the Coordinator's name or title, office address, email, and telephone number.

Notify students, parents or guardians, employees, applicants, and relevant unions.

Reports may be made at any time—including outside business hours.



Title IX Coordinator

- Training
  - ATIXA
  - ICS
- Notice and Post:
  - Must notify staff and students who the Title IX Coordinator is and provide address, phone, email
  - Can be “title” and not specific person.
- Point of Contact
- Initial screening
- Monitor compliance of investigations
- Document EVERYTHING



District Policy

- …actually two.
    - #1 prohibits and defines
    - #2 procedure
- Idaho School Boards Association draft policy
- Regulations have the force of law - don't waiver
    - Examples:
        - West Ada School District
        - Boise School District
    - Email me
        - skinnerlawidaho@gmail.com



Staff Training

- Title IX Team:
  - Investigator
  - Decision Maker
  - Title IX Coordinator
  - Informal Resolution facilitator
  - Appellate decision maker
- All staff
  - Mandatory reporters
  - All reports of sexual harassment made to any employee must be promptly reported to the Title IX Coordinator.
  - Sexual assault/abuse - law enforcement and Title IX Coordinator
- Post materials and training online



Notice of Title IX Rights

- **Who?**
  - students, parents, guardians, employees, applicants and unions.
- **Where?**
  - Staff Training
  - Email
  - Handbook
  - Website
- **What?**
  - The school does not discriminate on the basis of sex and prohibits sexual harassment in any education program or activity
  - Reports may be made to the T9 coordinator - title, address, email, phone
  - Link to policy and complaint procedure
  - How to report
- **Be Ready!**
  - If you build it, they will come.



Functional Overview

1. Scope: when does Title IX apply?
2. Definition: What is sexual harassment?
3. How to respond?
    a. Tracking Sheet
    b. Supportive Measures
    c. Other policies?
    d. Informally Resolve!
    e. Timeline for each case



Scope of Title IX

1. Programs or activities
    a. Any property owned.
    b. Any event organized.
    c. "locations, events, or circumstances over which [the school/district] **exercised substantial control over both the respondent and the context in which the sexual harassment occurs** . . ."
    d. Social Media?
        i. Was it posted while at school?
        ii. Shared at school?

2. Outside events:
    a. Allowed to have a separate policy that applies to events that happen outside school programs and activities.



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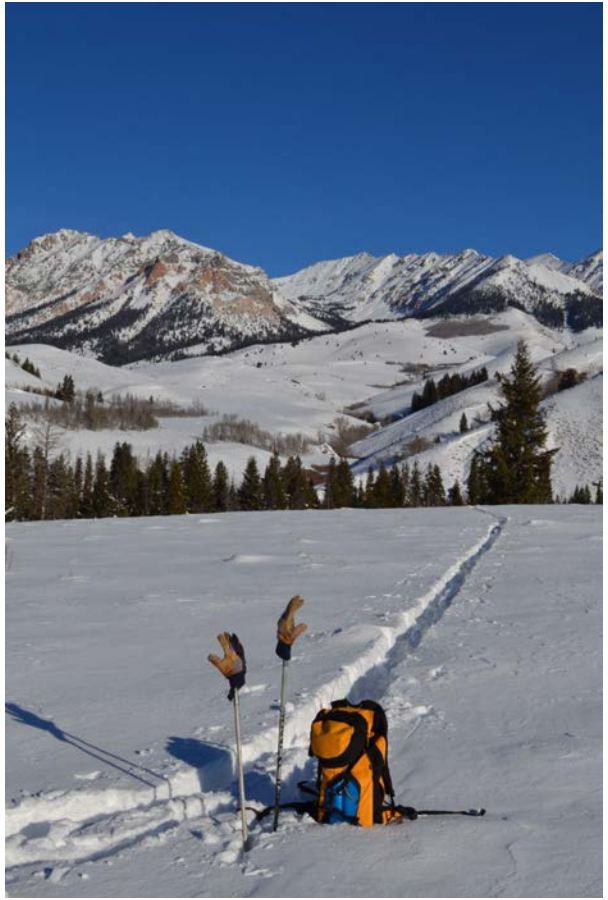
Title IX reaches every school operation

Title IX applies across federally funded school operations:

- Academics, counselling, CTE and extracurriculars
- Athletics and equal opportunity
- Pregnancy and parental status
- Employment and staff practices*

  * use Title VII!
- Sex-based harassment and retaliation



Sexual Harassment Defined

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

1. Quid pro quo

2. **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 recipient's education program or activity; or

3. "Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.



How to Respond?

- Intake Form for your staff.
- Notice of rights every time.
    - create a simple document that provides notice of rights to the family.
- Supportive Measures.
    - Candy - hand them out!
    - NO complaint needed
    - No Contact Orders
    - Change classes (who?)
- Other policies?
    - Can you solve the problem with another policy?
- Informally Resolve!
    - A negotiated settlement often leads to the same resolution.
- Timeline
    - Keep a spreadsheet of every action and point of contact



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Every district needs a visible compliance system

Coordinator • public notice • grievance procedures • reporting channels • trained personnel • records



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Compliance beyond complaint response

- Course access, counseling and CTE pathways
- Athletic participation, benefits and treatment
- Pregnancy and parenting accommodations
- Employee hiring, assignments and advancement
- Facilities, discipline and retaliation protections



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Five actions for Monday morning

Verify the Coordinator listing • refresh website notices and procedures • train employees to route reports • audit role training and public materials • confirm seven-year recordkeeping



Questions?



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K–12 Title IX Comprehensive Training

Module 2: Title IX Coordinators, August 10, 2026



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Title IX Coordinator

System ownership, role assignment and federal training requirements



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The Coordinator owns the system—not every decision

- Coordinate compliance; track training; receive and evaluate initial reports; arrange supportive measures; explain complaint options; assign trained, impartial personnel; monitor timelines; implement remedies; maintain records.

  The Coordinator may serve as the investigator, but may not serve as the decision-maker in the same formal grievance process.

The role requires access, authority, and independence

- Give the Coordinator direct access to senior leadership and records.

  Avoid conflicting duties that create bias or an appearance of bias.

  The title may be used in public notices, but families must be able to reach a real person promptly.



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Title IX Coordinator Required Training:

no specific hours, does not have to be annual

- **The definition of sexual harassment** under the 2020 regulations.
- **The scope of the recipient's education program or activity**, including when Title IX applies.
- **How to conduct the grievance process**, including:
  - investigations,
  - hearings (for postsecondary institutions),
  - appeals, and
  - informal resolution processes, when offered (no staff).
- **How to serve impartially**, including avoiding:
  - prejudgment of the facts,
  - conflicts of interest, and
  - bias for or against complainants or respondents.
- **Issues of relevance**, including:
  - how to determine whether evidence or questions are relevant,
  - the rape shield provisions limiting questions about a complainant's prior sexual behavior or predisposition.

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When does the federal harassment process apply?

Definition of sexual harassment • U.S. education program or activity • formal complaint • standing



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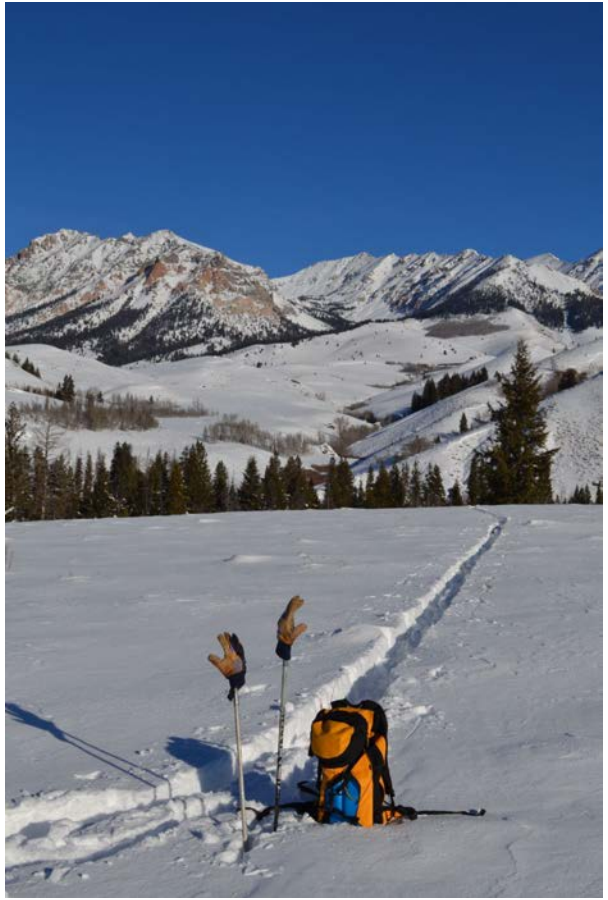
The 2020 definition of sexual harassment has three categories

1. **Quid pro quo** harassment

2. Unwelcome conduct that a reasonable person would find so **severe, pervasive AND objectively offensive** that it effectively denies equal access.

3. Sexual assault, dating violence, domestic violence or stalking – as defined by federal law.



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Definitions of sexual assault



- **Rape**: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- **Fondling**: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- **Incest**: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape**: Sexual intercourse with a person who is under the statutory age of consent under Idaho law.

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dating violence, stalking, domestic violence

- Read the definitions carefully.

Prior dating relationship?
Stalking – is it based on sex?
Domestic violence – live together?



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In K–12, notice to any employee triggers the response duty

- Notice to any elementary or secondary school employee gives the district “actual knowledge.”
- Protect immediate safety, preserve information, route the report promptly, and do not promise secrecy or conduct a side investigation.





Make the Coordinator easy to find before a crisis

- Publish name or title, office address, email, and phone.

  Notify students, parents or guardians, employees, applicants, and unions.

  Accept reports in person, by mail, phone, email, or any method that reaches the Coordinator.

  Reports may be made at any time.

  No statute of limitations.

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The first response must be prompt and supportive

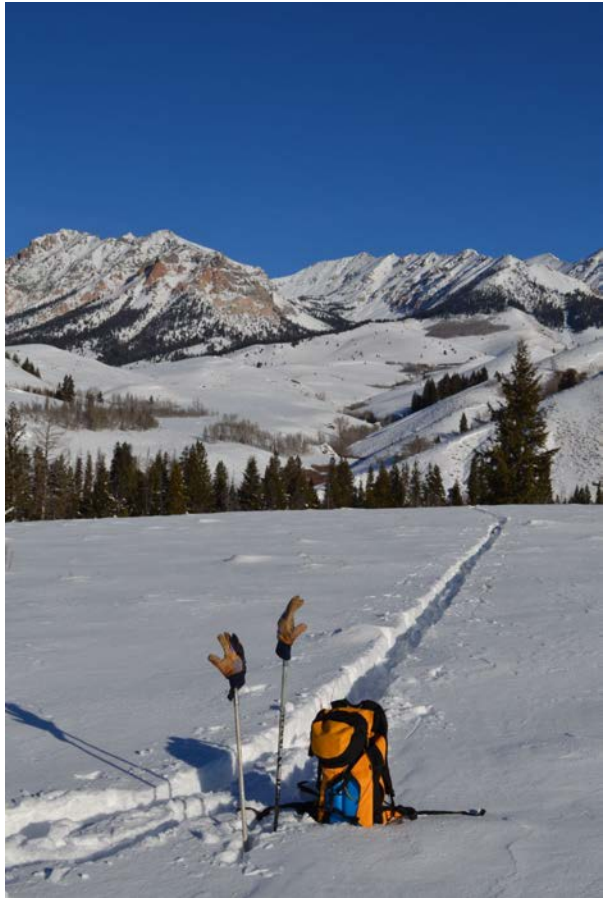


- The Coordinator promptly contacts the complainant, discusses supportive measures, considers the complainant's wishes, explains how to file a formal complaint, and documents the response.
- Explain confidentiality: must you report to law enforcement? Anonymous reporting is not an option in Title IX.
- Supportive measures are available with or without a formal complaint.

Every report triggers outreach—not necessarily an investigation

Coordinator is the gate keeper – if it is not Title IX level harassment, use other tools.

Screen jurisdiction and immediate safety concerns without prejudging responsibility.



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Intake is a response workflow, not an interrogation

- confirm immediate safety
- listen without pressing for a full account
- explain privacy limits
- discuss supportive measures
- explain the formal complaint option
- document what was offered and why

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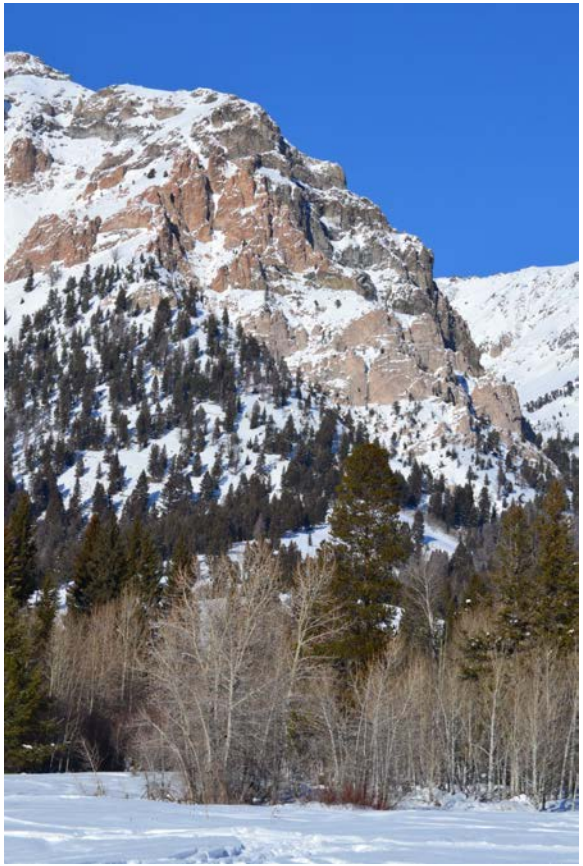
Tools: support, emergency removal and discipline

- **Supportive measures: individualized, non-disciplinary, non-punitive and no fee.**

  Emergency removal: individualized safety and risk analysis; immediate threat to physical health or safety; notice and immediate challenge opportunity.

  Discipline: only after the grievance process determines responsibility.



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The grievance process ….it's SLOW

two real 10-day review periods.

- Report → formal complaint → notice → investigation → evidence review (at least 10 days) → report → report review (at least 10 days before decision or hearing) → decision maker assigned → written questions → determination → appeal.

  Must wait to interview Respodent until AFTER notice, and a "sufficient" time to prepare.

- Manage expectations

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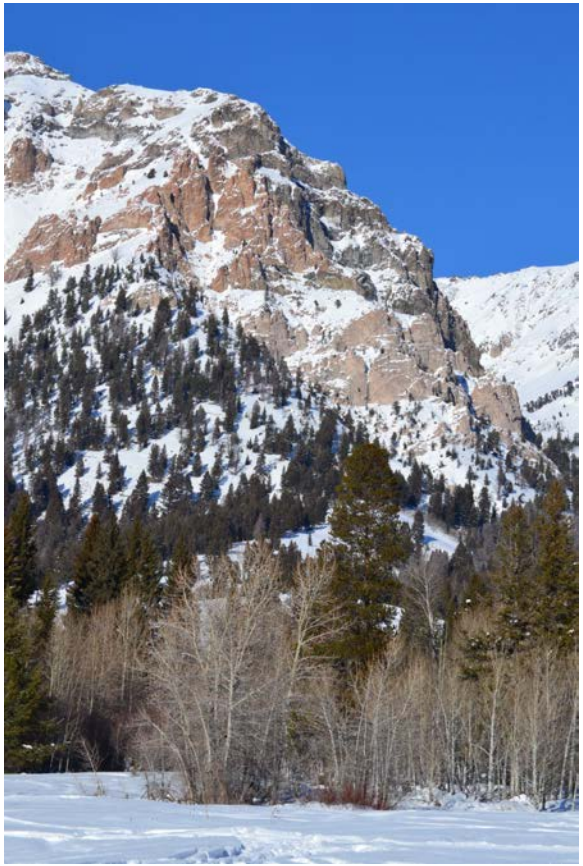
Determine Title IX application without abandoning other duties

- Federal grievance process: regulatory definition + U.S. education program or activity + required complaint conditions.

  If Title IX scope is not met, consider other district policies, safety obligations, disability law, mandatory reporting and supportive action.

  A Title IX dismissal is not a directive to ignore the conduct.



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Supportive measures should be individualized and monitored

No fee • non-disciplinary • non-punitive • preserve equal access • do not unreasonably burden the other party • adjust as circumstances change



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Formal complaints and role assignments

Use authority carefully • separate functions • ensure impartiality



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A formal complaint starts the federal grievance process

- It is a document or electronic submission filed by the complainant—or signed by the Coordinator—requesting an investigation.

  Parents and guardians may exercise rights for minors.

  A Coordinator signature initiates the process but does not make the Coordinator a party or advocate.

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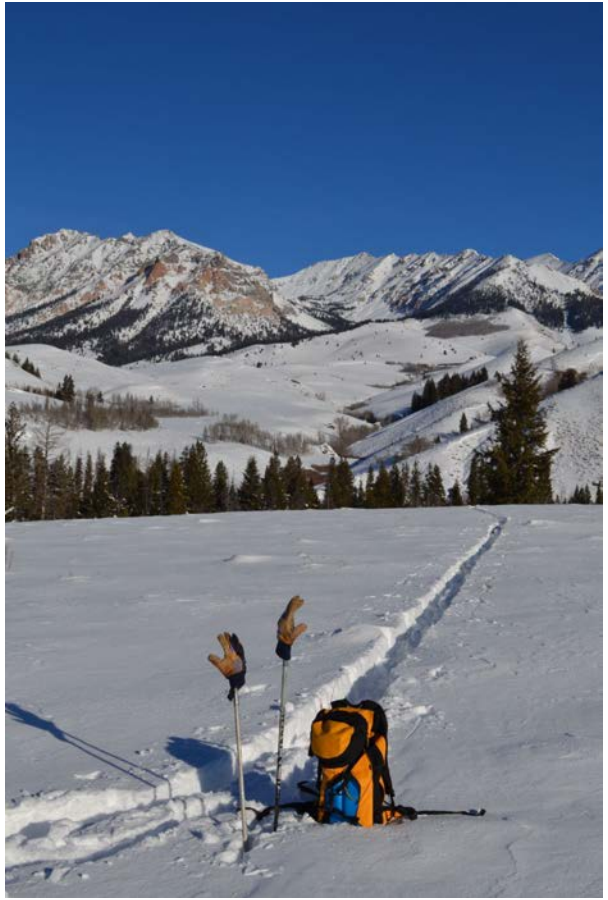
Separate the key functions and check conflicts

- Coordinator: system owner and remedy implementation
- Investigator: evidence gathering and report
- Decision-maker: independent responsibility determination
- Appeal decision-maker: not the original decision-maker, dismissal official, investigator or Coordinator
- Informal Resolution Facilitator: trained, neutral and conflict-free



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Four roles share the same federal training core

Coordinators, investigators, decision-makers and informal-resolution facilitators must be trained on

- 2020 definition of sexual harassment;
- program/activity scope;
- the grievance process—including hearings, appeals and informal resolution as applicable; and
- impartial service without prejudgment, conflicts or bias.

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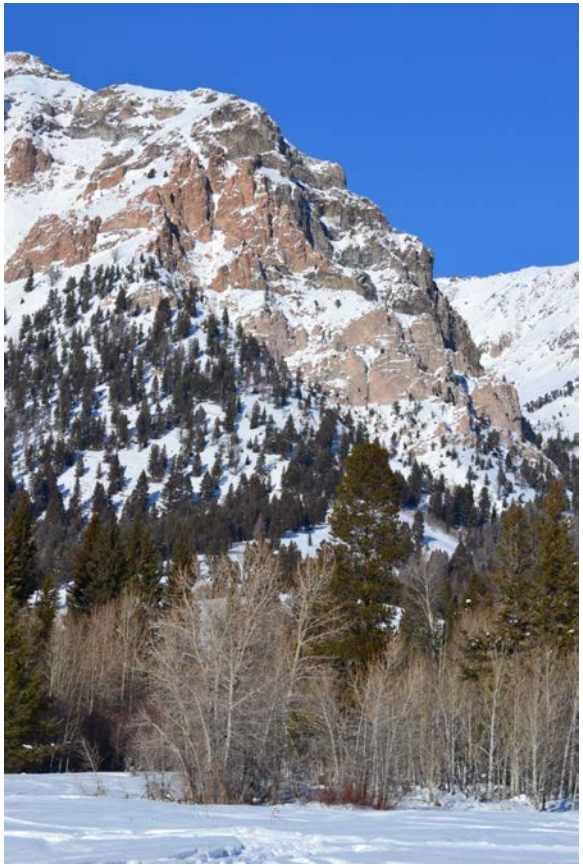
Role-specific training adds practical competencies

- Investigator: relevance needed for a fair summary of relevant evidence.
- Decision-maker: relevance—including sexual-history limits—and live-hearing technology if a hearing is used.
- Appeal decision-maker: the same decision-maker training and independence rules.
- Facilitator: the informal-resolution process as applicable.
- Advisors have no federal training mandate.



Impartiality — The Core Duty

34 C.F.R. § 106.45(b)(1)(iii)

- **No prejudgment**
  Presume the Respondent is not responsible until the process concludes
- **No conflicts of interest**
  No financial, personal, or professional stake in the outcome
- **No bias**
  Not for or against complainants or respondents — generally, or in this specific case
- Applies to every role: Coordinator, investigators, decision-makers, facilitators, appeal officers



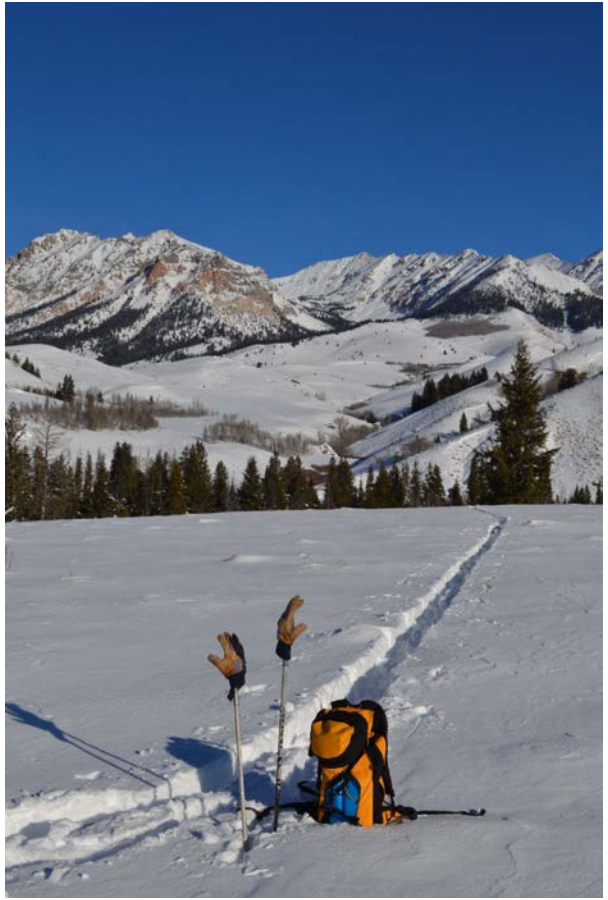
If it is not documented, it is difficult to defend

Retain for seven years:

- Investigations, determinations, sanctions, remedies, appeals, and informal resolutions
- Supportive measures and the basis for the response
- Training materials for Title IX personnel

Post training materials publicly on the district website.

Use a case log to track every contact, deadline, decision, and rationale.



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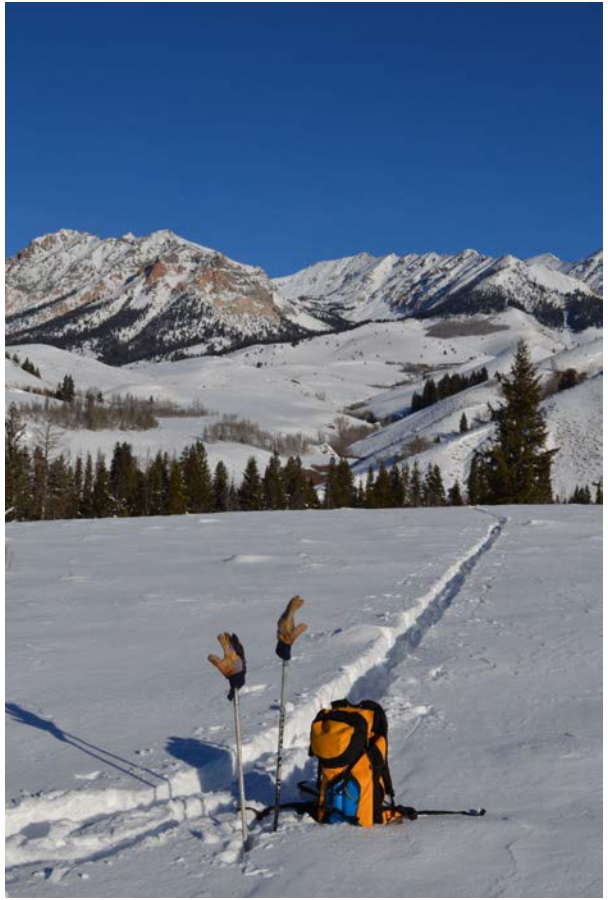
Build a compliance calendar and program map

- Website notice and Coordinator contact information
- Grievance procedures and reporting methods
- Athletics, CTE, pregnancy/parenting and employment checks
- Annual policy review—not a federally mandated annual training rule
- Role training, public materials and seven-year records



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Snapshot Compliance

train staff • post training materials on the district website • avoid sex stereotypes • promote impartiality • retain training and case records seven years



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Questions?



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Investigations

Module 3: Build a complete, impartial and reliable record



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The investigator builds the record—the decision-maker decides

- Gather inculpatory **and** exculpatory evidence; give both parties equal opportunity; follow relevance and privacy limits; document the process; and prepare a fair summary of relevant evidence.

  Do not decide responsibility or advocate for either party.

  Keep an open mind.

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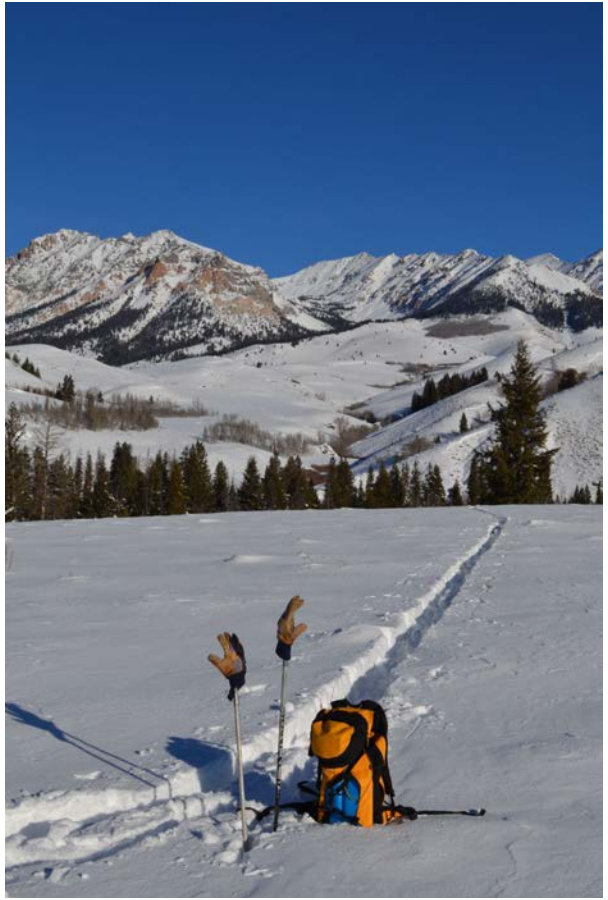
The roadmap includes two review windows—with built in delays

- Formal complaint and notice of allegations
- Investigation and evidence gathering
- Give “sufficient time to prepare” before any initial interview of respondent
- Directly related evidence: at least 10 days to respond *right to comment
- Investigative report completed: at least 10 days before hearing or decision *right to comment



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Confirm the complaint, scope and notice before interviews



- Identify each allegation, parties, conduct, date and location; confirm the federal scope analysis; review the notice of allegations; and issue supplemental notice if new allegations arise during the investigation.

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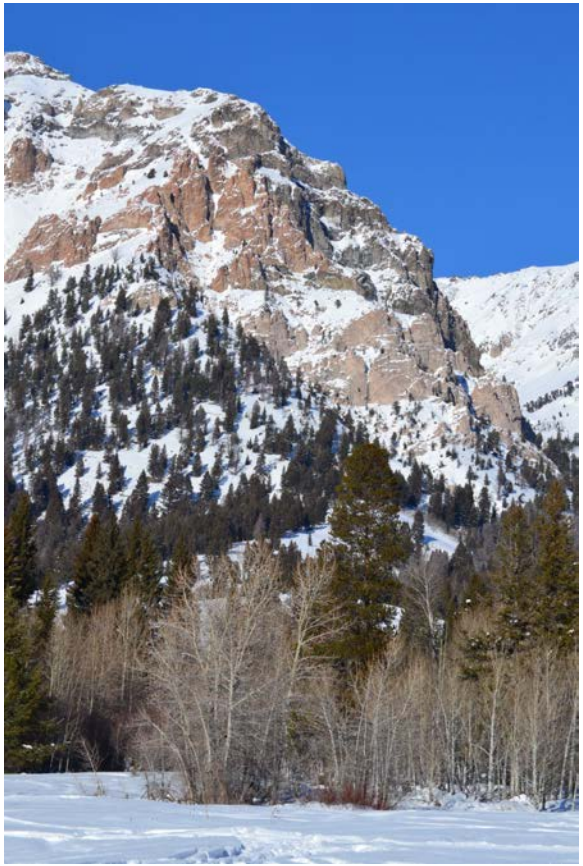
An investigation plan keeps the process neutral and complete

For each allegation, map:

- Policy elements and disputed facts
- Potential witnesses and documents
- Digital, video and communication evidence
- Interview order and logistics
- Known privilege, treatment-record or sexual-history issues
- Target dates and required party notices



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Dismissal?

- **Not "sexual harassment"** The behavior described, even if true, does not count as Title IX sexual harassment.
- **Outside program or activity:** The incident did not happen in the school's own educational program, activity, or a building it controls.
- **Outside the United States:** The event took place against a person outside of the United States



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Evidence and fairness

Equal opportunity • relevant evidence • transparent review • neutral report



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Interview from open narrative to focused clarification

Explain the process • start broad • ask necessary specifics • avoid leading questions and prejudgment • allow an advisor under equal rules • preserve approved recordings, notes and communications



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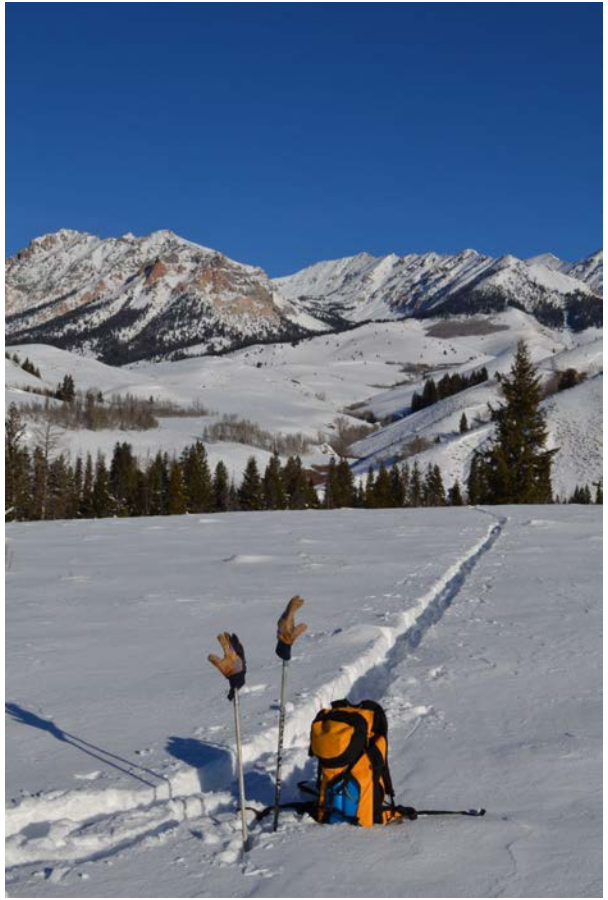
Collect broadly, then apply the evidence rules carefully

- The district bears the burden of gathering sufficient evidence
- Either party may submit whatever they wish
- Seek inculpatory and exculpatory information
- Respect legally recognized privilege unless waived
- Obtain voluntary written consent for treatment records
- Apply the two narrow sexual-history exceptions
- Focus on relevance—not character or propensity



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Relevance is not defined by Title IX

- Idaho Rule of Evidence 401
- Evidence is relevant if:

  (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and

  (b) the fact is of consequence in determining the action.

- What is NOT allowed

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What evidence is barred?

- **Character evidence**
- Complainant's **prior sexual behavior or sexual predisposition**: unless for consent.
- Medical/mental health **treatment records** without written consent.
- **Privileged communications** attorney-client, doctor-patient, clergy
    - NOT School counselor. Mandatory reporting trumps confidentiality.
    - Practice point: school counselors need coaching.



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Trauma-responsive practice must remain outcome-neutral

- Explain what will happen; offer breaks and supports; use developmentally appropriate questions; avoid assumptions about how a person “should” behave; and ask the questions needed to test the facts.

  Empathy is compatible with neutrality. Sex stereotypes are not.

Beware of implicit bias – they would have, they should have, fragmented memories, delayed reporting

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Nonparticipation does not end the investigation



- The district cannot compel an interview or manufacture subpoena power. Document contact efforts, protect against retaliation, evaluate the evidence that is available, and avoid unsupported assumptions from silence or incomplete participation.

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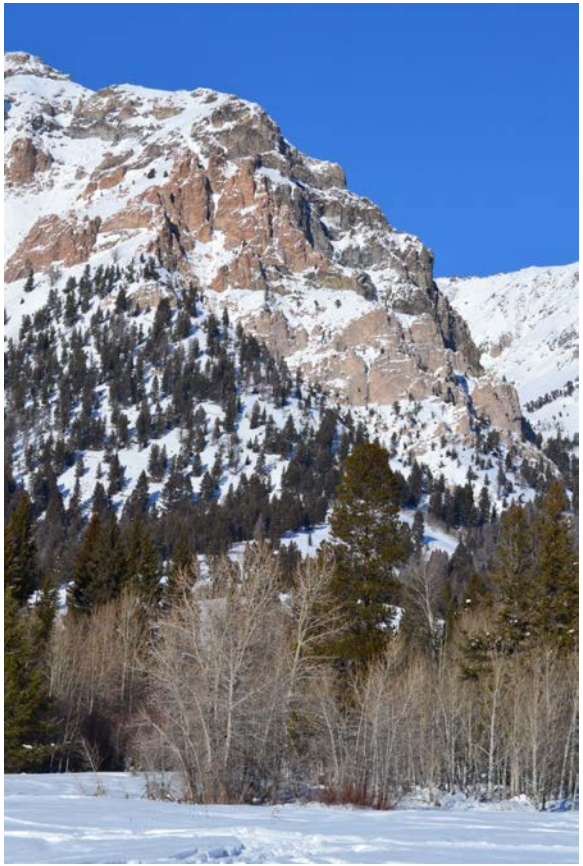
Evidence review and the report are separate quality checks

- Evidence review: provide both parties and advisors the directly related evidence, allow at least 10 days for a written response, and consider it before completing the report.
    - Practice Point: Do NOT provide draft report.
    - Don’t let parties or witnesses edit your work.
- Report: fairly summarize relevant evidence, identify procedural steps and allegations, include party responses as appropriate, and avoid a responsibility conclusion.



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Report of Investigation

Procedural history
Charge
Policy
Interview summaries
Evidence

*No Conclusions



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Close the file with a documented handoff.

- **Dismissal**: If dismissal is required or permitted, send simultaneous written notice with reasons and appeal rights.
- **Informal Resolution**: all parties get a notice of the conclusion.
- **Final Report**: deliver the report and record to an independent decision-maker.
  All relevant admissible evidence is attached.
  All parties get the same record.

*preserve the complete file for seven years



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Questions?



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Advisors and Informal Resolution

Module 4: Support the parties • protect voluntariness • keep the process impartial



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The roles support different parts of the process

Advisor: chosen by a party to provide support and process help.

Facilitator: neutral person who manages an optional informal-resolution process.

Coordinator: gives notice, confirms voluntary consent, monitors conflicts, and documents the result or return to the formal process.

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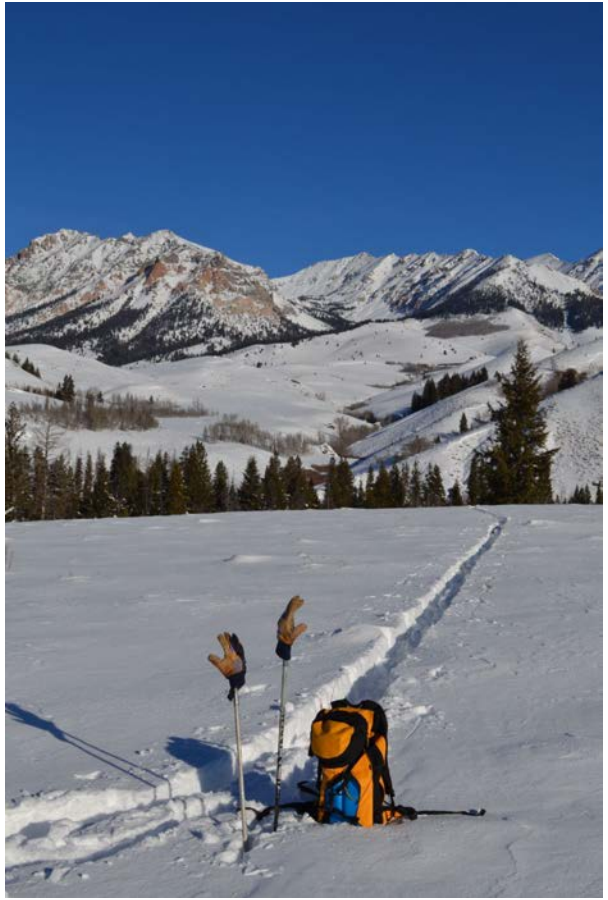
A party may choose almost any advisor

- Family member, friend, counselor, union representative or attorney
- The district need not provide an advisor for K–12 proceedings *unless a live hearing
- Federal regulations do not impose role-specific advisor training
- District rules may address conflicts, disruption and confidentiality
- A witness should not also function as the party's advisor



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Advisors support the party; they do not replace the party

- Advisors do not answer questions.
- Help understand notices and deadlines; attend permitted meetings; review evidence and the report; assist with written questions, impact information and appeals; and support informal resolution if the party chooses it.

*Even if they are a lawyer.

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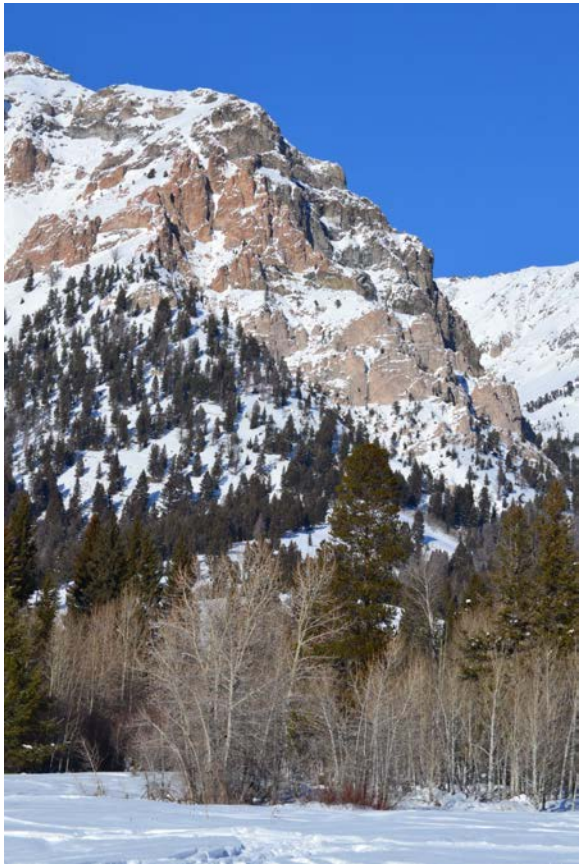
District participation rules must apply equally

- Advisors may not disrupt, intimidate, retaliate or disclose protected student information outside authorized use.

  Attorneys may advise, but district process rules still control.

  Restrictions must be applied equally.



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K–12 does not require a live hearing or advisor cross-examination

Before the decision, each party receives the other party's relevant written questions, answers and limited follow-up questions.

A district may choose a hearing, but federal regulations do not require one. If a hearing is provided – Advisors are mandatory.



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Informal resolution is an optional off-ramp

Voluntary • informed • impartial • available only between students



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Informal Resolution may begin only after a formal complaint

- A district may offer informal resolution after a formal complaint and before a responsibility determination.

  It may not require participation or make enrolment, employment or another right conditional on waiving the formal process.

  It is not available for an allegation that an employee sexually harassed a student.

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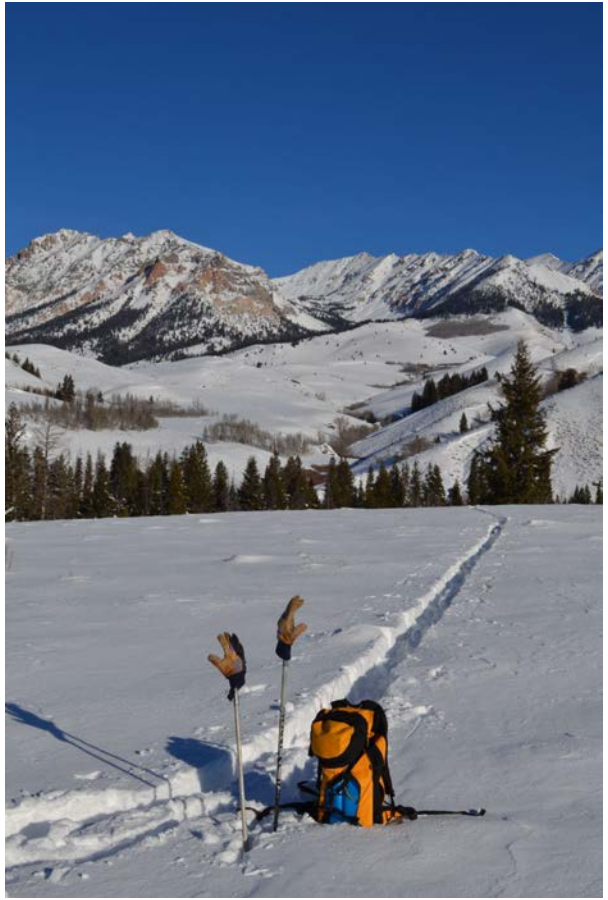
Written notice and voluntary consent protect the process

- Describe the informal process
- Explain circumstances that prevent resuming the same allegations
- Identify records that will be maintained or shared
- Explain the right to withdraw before a final agreement
- Obtain voluntary written consent from both parties



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The facilitator must be trained, neutral and conflict-free



- The Coordinator may facilitate if impartial and free of conflict, but separation is best. Do not use the investigator, decision-maker or a witness.
- Avoid pressure, promised outcomes and the appearance that agreement is inevitable.

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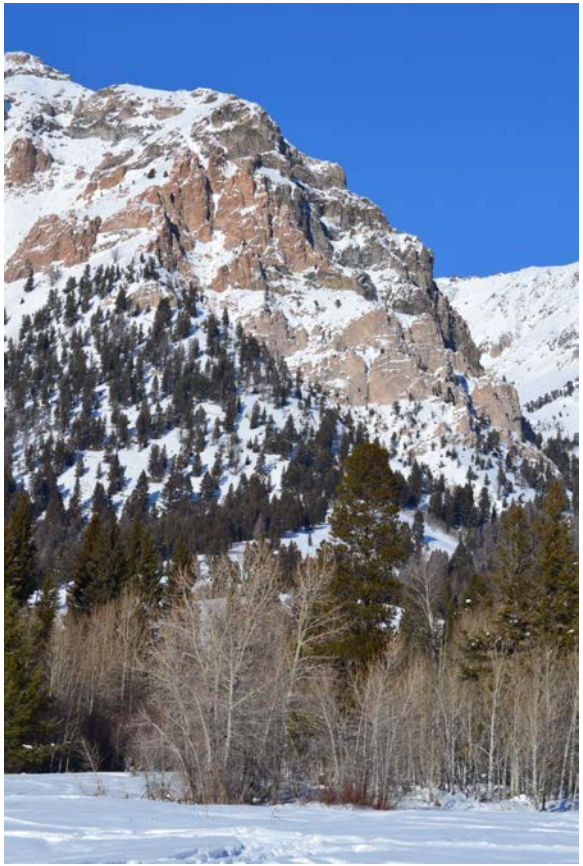
Choose a process that protects choice and access

- Options may include mediation, shuttle negotiation, offer-and-response or restorative practices.

  Set ground rules; clarify what may be shared; use age- and disability-appropriate supports; do not force face-to-face contact; remain neutral; document communications; and confirm that proposed terms are lawful, specific and feasible.



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End with a clear written status

No agreement: either party may withdraw before final agreement and the district resumes the grievance process under the notice and policy.

Agreement: document every term, deadline, monitoring duty, response to noncompliance and record handling



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Decision Making and Appeals

Module 5: Independent findings • reasoned outcomes • limited appellate review





Decision Makers share the same federal training core

- 2020 definition of sexual harassment;
- program/activity scope;
- the grievance process—including hearings, appeals and informal resolution as applicable; and
- impartial service without prejudgment, conflicts or bias.

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The decision-maker applies policy to the record

- Review the report and evidence; manage the K–12 written question process or any optional hearing; rule on relevance; assess credibility; address specific allegations; apply the district's standard of evidence; and issue the written determination.

  The decision-maker may not be the Coordinator or investigator.

  The decision-maker may remand for more evidence. 10 day rules apply again.

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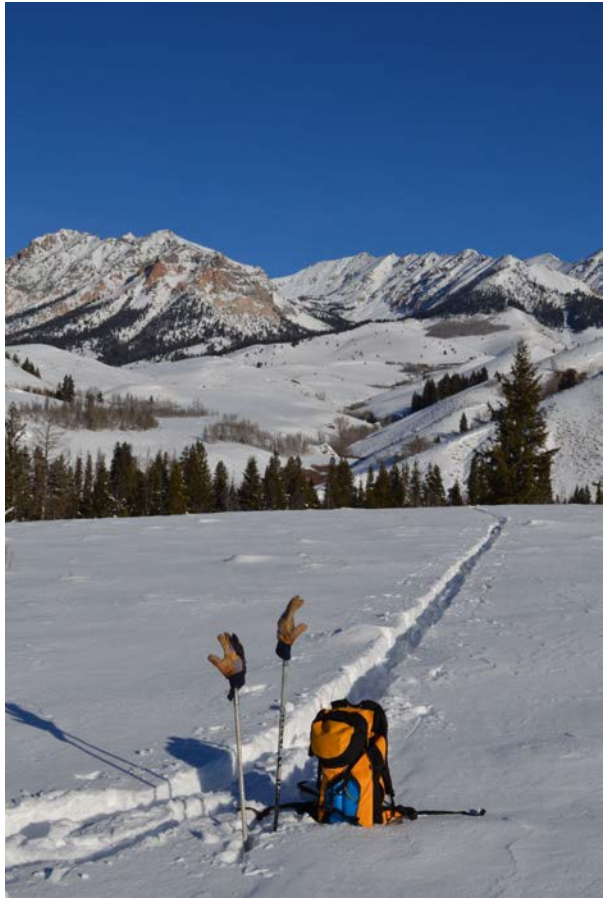
K–12 requires written questions, not a live hearing

- Send each party the other party's relevant written questions *impose a deadline
- Provide each party the answers
- Allow limited, relevant follow-up questions *impose a deadline
- Explain any decision to exclude a question as not relevant
- A district may choose a live hearing, but the 2020 rule does not require one for K–12



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Use the district's chosen evidence standard consistently

- The policy must select either preponderance of the evidence or clear and convincing evidence and apply that standard to all formal complaints—including complaints involving students and employees.

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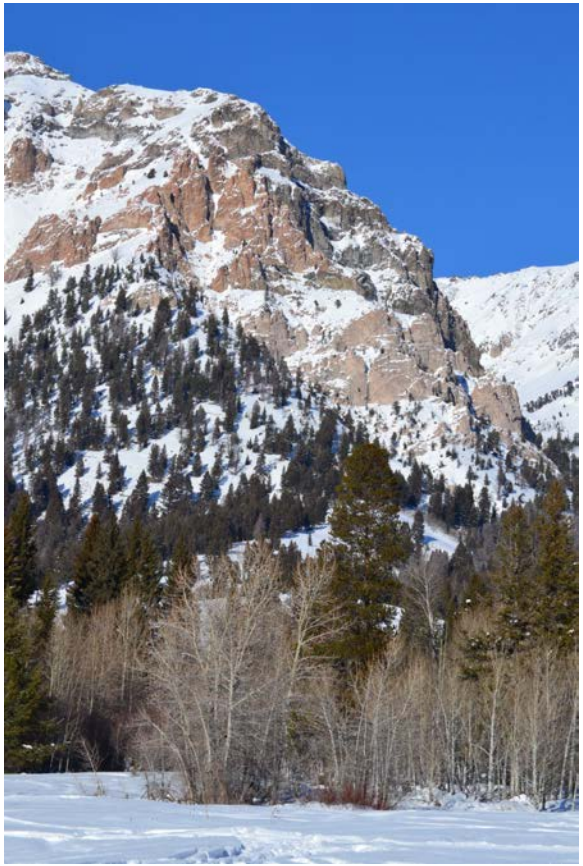
Relevance focuses the decision on facts that matter

- Consider evidence that tends to make a consequential fact more or less probable.

  Exclude privileged information unless waived and treatment records without voluntary written consent.

  Character evidence barred.

  Questions about the complainant's sexual predisposition or prior sexual behavior are barred except for the two regulatory exceptions.



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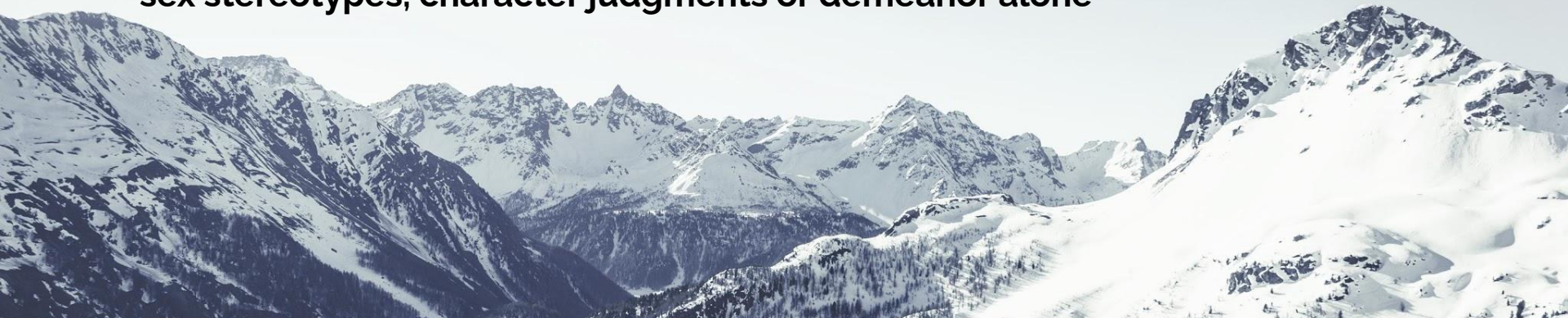
Credibility findings must rest on evidence—not stereotypes

Compare plausibility, internal consistency, detail, corroboration and motive • account for development, trauma and ordinary memory gaps • do not rely on sex stereotypes, character judgments or demeanor alone



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Apply the specific definitions of sexual harassment



Impartiality — The Core Duty

34 C.F.R. § 106.45(b)(1)(iii)

- **No prejudgment**
  Presume the Respondent is not responsible until the process concludes
- **No conflicts of interest**
  No financial, personal, or professional stake in the outcome
- **No bias**
  Not for or against complainants or respondents — generally, or in this specific case
- Applies to every role: Coordinator, investigators, decision-makers, facilitators, appeal officers



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From findings to finality

Reasoned determination • credibility analysis • remedies • notice • limited appeal



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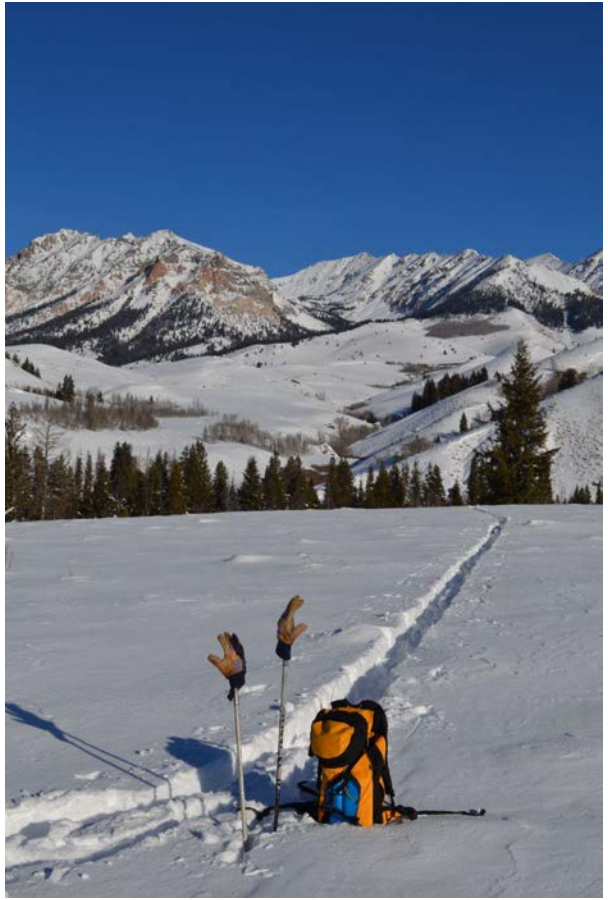
Sanctions and remedies serve different functions

- Team decision
- Sanctions address a responsible respondent under district policy
- Consider severity, circumstances, history and proportionality
- Remedies restore or preserve the complainant's equal access
- The Coordinator is responsible for effective implementation of remedies
- Responsive action should end, prevent and remedy discrimination



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The notice of decision must show the work



- Identify allegations; procedural steps; findings of fact; policy conclusions; the result and rationale for each allegation; sanctions; whether remedies will be provided; and appeal procedures.

- Send it simultaneously to both parties.

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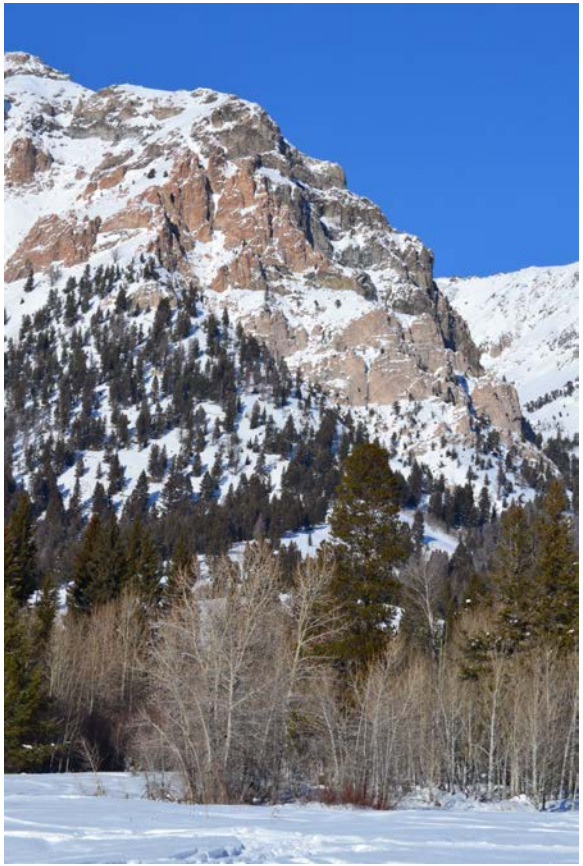
Appeal is limited review—not a second investigation

- A right to appeal arises from a responsibility determination or from a dismissal.

The appeal decision-maker may not be the original decision-maker, dismissal official, investigator or Coordinator and must satisfy the decision-maker training and impartiality requirements.

Review the record only through the stated appeal ground. No additional evidence. Nothing outside the record.



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Three federal grounds

Procedural irregularity affecting outcome • new evidence not reasonably available that could affect outcome • conflict or bias affecting outcome



One written, even-handed process

Notify both parties

Equal reasonable opportunity to submit statements

Written result and rationale delivered simultaneously



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Questions?



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Takeaways



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Compliance is not a binder—it is a response system people can use.



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Clear policy. Visible contact. Prompt outreach. Neutral process. Trained team. Complete records.



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Dan Skinner
skinnerlawidaho@gmail.com
208-971-5135

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Dan Skinner - Skinner Law PLLC - skinnerlawidaho@gmail.com - 208-971-5135

Idaho K-12 Title IX PLC #1

Title IX District Requirements and Functional Compliance



Road Map

- Introduction
- Regulations
- General Title IX District requirements
- How to set up a functional system



PLC Format

- Second Tuesday of the Month
- 60 minutes - with time for questions
- Slides will be distributed within the week



Title IX - Federal Law

- 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.

- Enforced by the Office for Civil Rights (OCR)

Which Regulations Apply?

- 2020 Regulations - 34 CFR Part 106
    - Subsequent revisions have been blocked by Federal Court.
- Federal Resources
    - 2020 Title IX Regulations
    - Title IX Dear Colleague Letter Enforcement of 2020 Regulations
    - Title IX and Sex Discrimination – U.S. Department of Education



District Requirements

- **Implement District Policy and Procedure**
    - A functional system for receiving and investigating complaints of sexual harassment.
- **Designate Title IX Coordinator**
- **Train Staff**
- **Notify Students**
- **Stop, Remediate, Mitigate**



District Policy

- …actually two.
    - #1 prohibits and defines
    - #2 procedure
- Idaho School Boards Association draft policy
- Regulations have the force of law - don't waiver
    - Examples:
        - West Ada School District
        - Boise School District
    - Email me
        - skinnerlawidaho@gmail.com



Title IX Coordinator

- **Training**
  - ATIXA
  - ICS
- **Notice and Post**:
  - Must notify staff and students who the Title IX Coordinator is and provide address, phone, email
  - Can be “title” and not specific person.
- **Responsibilities**
  - Point of Contact
  - Initial screening
  - Assign roles
  - Monitor compliance of investigations
  - Document EVERYTHING



Staff Training

- Title IX Team:
  - Investigator
  - Decision Maker
  - Title IX Coordinator
  - Informal Resolution facilitator
  - Appellate decision maker
- All staff
  - Mandatory reporters
  - All reports of sexual harassment made to any employee must be promptly reported to the Title IX coordinator.
  - Sexual assault/abuse - law enforcement
- Post materials and training online



Notice to Patrons

- **Who?**
  - students, parents, guardians, employees, applicants and unions.
- **Where?**
  - Staff Training
  - Email
  - Handbook
  - Website
- **What?**
  - The school does not discriminate on the basis of sex and prohibits sexual harassment in any education program or activity
  - Reports may be made to the T9 coordinator - title, address, email, phone
  - Link to policy and complaint procedure
  - How to report
- **Be Ready!**
  - If you build it, they will come.



Functional Overview

- When does Title IX apply?
- What is sexual harassment?
- How to respond?
  - Tracking Sheet
  - Supportive Measures.
  - Other policies?
  - Informally Resolve!
  - Timeline for each case



When does Title IX apply?

- **Programs or activities**
  - Any property owned.
  - Any event organized.
    - "locations, events, or circumstances over which [the school/district] **exercised substantial control over both the respondent and the context in which the sexual harassment occurs** . . ."
  - Social Media?
    - Was it posted while at school?
    - Shared at school?

- **Outside events**:
  - Allowed to have a separate policy that applies to events that happen outside school programs and activities.



Sexual Harassment Defined

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

1. Quid pro quo

2. **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 recipient's education program or activity; or

3. "Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.
    a. Look at the definitions.
    b. Includes any sex for humans under the age of consent (15 and under).



How to Respond?

- Intake form for your staff.
- Notice of rights every time.
    - create a simple document that provides notice of rights to the family.
- Supportive Measures.
    - Candy - hand them out!
    - NO complaint needed
    - No Contact Orders
- Other policies?
    - Can you solve the problem with another policy?
- Informally Resolve!
    - A negotiated settlement often leads to the same resolution.
- Timeline
    - Keep a spreadsheet of every action and point of contact



Questions?



Next Training:

Investigations 101 - November 10



Dan Skinner - Skinner Law PLLC - skinnerlawidaho@gmail.com - 208-971-5135

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  - Decision Maker
  - Title IX Coordinator
  - Informal Resolution facilitator
  - Appellate decision maker
- All staff
  - Mandatory reporters
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Notice

- **Who?**
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  - Email
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  - Link to policy and complaint procedure
  - How to report
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  - If you build it, they will come.



Functional Overview

1. When does Title IX apply?
2. What is sexual harassment?
3. How to respond?
    a. Tracking Sheet
    b. Supportive Measures.
    c. Other policies?
    d. Informally Resolve!
    e. Timeline for each case



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    d. Social Media?
        i. Was it posted while at school?
        ii. Shared at school?

2. Outside events:
    a. Allowed to have a separate policy that applies to events that happen outside school programs and activities.



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How to Respond?

- Flow chart for your staff.
- Notice of rights every time.
  - create a simple document that provides notice of rights to the family.
- Supportive Measures.
  - Candy - hand them out!
  - NO complaint needed
  - No Contact Orders or Plan
- Other policies?
  - Can you solve the problem with another policy?
- Informally Resolve!
  - A negotiated settlement often leads to the same resolution.
- Timeline
  - Keep a spreadsheet of every action and point of contact



Questions?



Next Trainings:

Repeat - October 21
Investigations 101 - November 11



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Idaho K-12 Title IX PLC #3

Decision Makers



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Road Map

- Scope of Title IX
- Grievance process
  - Investigation
  - Determination phase:
    - Notice of Decision Maker
    - Admissible Evidence
    - Weighing Credibility
    - Bias avoidance
    - Sexual harassment definitions
    - Consent
- Hearings, or not
- Final Written Decision



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Title IX - Federal Law

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Scope of Title IX

1. Programs or activities
    a. Any property owned.
    b. Any event organized.
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2. Outside events:
    a. Allowed to have a separate policy that applies to events that happen outside school programs and activities.



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Title IX Investigation Process

- Report of Sexual Harassment
- Written Complaint
- Notice of Allegations
  - Wait 10 days to interview Respondent
- Investigation
- Review Evidence
  - 10 days to respond to evidence
- Investigation Report
- Decision Maker
  - 10 days to respond to report
  - Question and Answer procedure



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Roles in Title IX Investigation

- Complainant
- Respondent
- Parent/Guardian
- Advisor
- Witnesses
- Investigator
- Decision Maker
- Title IX Coordinator



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Decision Maker Role

Has the Respondent violated policy? If so, what to do about it.

- Review investigation report and all evidence
- May conduct pre-trial meetings with each party (when necessary and/or at your discretion)
- May question party or witnesses
- Rule on relevance for each question asked
- Manage hearing (if any)
  - Manage advisors during hearing
  - Question and answer process
- Determine if policy was violated
  - If yes, work with Title IX Coordinator and administrators on sanctions
- Draft notice of outcome
  - Procedural History
  - Findings of Fact
  - Credibility Assessment
  - Sanctions



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Notice of Assignment of Decision Maker

- Identify Decision Maker
- Timelines and deadlines
- Process
- Right to challenge Decision Maker
- Exchange of questions procedure [or hearing]
- Confidentiality
- Bar on retaliation



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Sexual Harassment Defined

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

1. **Quid pro quo**
2. **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 recipient's education program or activity; or**
3. **"Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.**



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Sexual Assault

- An offense that meets the definition of rape, fondling, incest or statutory rape as used in the FBI's Crime Reporting system.
- A sex offense is any sexual act directed against another person, **without the consent of the victim, including instances where the victim is incapable of giving consent.**



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Consent



- **Knowing, voluntary, and clear grant of permission, by word or action, to engage in sexual activity.**
- It is the **responsibility of each party to determine that the other has consented** before engaging in the activity.
- If consent is not clearly provided prior to engaging in the activity, **consent may be ratified by word or action at some point during the interaction or thereafter,** but clear communication from the outset is strongly encouraged.
- **Consent may be withdrawn**.
- A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. **It is a violation of policy if a respondent engages in sexual activity with someone who is incapable of giving consent, or is otherwise incapacitated**.

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Federal Definitions of Sexual Assault



- **Rape**: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- **Fondling**: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- **Incest**: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape**: Sexual intercourse with a person who is under the statutory age of consent under Idaho law.

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Federal Definition of Dating Violence

- Violence, on the basis of sex, committed by a person, who **is in or has been in a social relationship of a romantic or intimate nature with the Complainant**.

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Federal Definition of Domestic Violence



- Violence, on the basis of sex, committed by
  - a current or former spouse or intimate partner of the Complainant,
  - by a person with whom the Complainant shares a child in common, or
  - by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
  - by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Idaho, or
  - by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Idaho.

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Federal Definition of Stalking



- Course of conduct, on the basis of sex
  - 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.
- Course of conduct means two or more acts.

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Evidentiary Standard

Check your policy!

- **Discretion of District,** but must be consistent throughout ALL processes - Faculty, Staff and Students

- **Clear and Convincing**
  - highly probable to be true
  - Reasonably certain to be true

  OR

- **Preponderance of the Evidence**
  - "more likely than not" to be true
  - 50% plus a feather



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Hearings



- Record
- Impartial
  - Don't prejudge facts
  - No conflict of interest
  - No leading questions
  - Be mindful of implicit bias
- Hearing officer questions witnesses and parties
  - Parties may cross examine.
- Either party allowed to present any evidence they wish, BUT
- Limited by relevance.
- Parties:
  - Parents present
  - Counselor present if not a parent
  - Advisor
- No direct questions between the parties.
- Technology - must train Decision Maker

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Relevance and Inadmissible Evidence



- **Relevance:**
  - has any tendency to make a fact more or less probable than it would be without the evidence; and
  - the fact is of consequence in determining the action.

- **Inadmissible Evidence**
  - Incidents not directly related to the possible violation, unless they evidence a pattern
  - The character of the parties
  - Questions and evidence about the complainant's sexual predisposition or prior sexual behavior, unless offered to prove that someone other than the respondent committed the conduct alleged, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

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Credibility Assessment

When parties present materially conflicting versions of events, the decision-maker weighs the parties' credibility. When determining credibility, the following basic factors are considered:

1. **Inherent plausibility** – Is the party's statement believable on its face? Does it make sense?

2. **Motive to falsify** – Did the party have reason to lie?

3. **Corroboration** – Is there witness testimony or physical evidence that corroborates the party's statement?

4. **Prior history** – Does the party have a history of similar behavior in the past?



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Sanctions



Factors to consider:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker and the Administration

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Final Written Decision

- Identification of the allegations
- Procedural steps taken
  - notice to parties
  - interviews with parties and witnesses
  - site visits
  - methods used to gather evidence
  - hearings held (if any)
- Findings of fact supporting the determination of each allegation
- Conclusions regarding application of District Policy to the facts for each allegation.
- Sanctions, if any.
- Process and grounds for appeal.
- Send to all parties simultaneously.



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Questions?



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Next Training:

Informal Resolution, January 13, 2026



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Idaho K-12 Title IX PLC #4

Informal Resolution



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Informal Resolution Procedure

- Sexual Harassment reported
- Formal complaint
- Notice of allegations
- Informal Resolution Process
- Agreement in Writing
- …or not
- Notice of Outcome



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Roles in Title IX Informal Resolution

- Complainant
- Respondent
- Parent/Guardian
- Advisor
- Informal Resolution Facilitator
- Title IX Coordinator
    - Can be the same person
      NOT advised



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Title IX - Federal Law

- 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.

- Enforced by the Office for Civil Rights (OCR)

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Scope of Title IX

1. Programs or activities
    a. Any property owned.
    b. Any event organized.
    c. "locations, events, or circumstances over which [the school/district] **exercised substantial control over both the respondent and the context in which the sexual harassment occurs** . . ."
    d. Social Media?
        i. Was it posted while at school?
        ii. Shared at school?

2. Outside events:
    a. Allowed to have a separate policy that applies to events that happen outside school programs and activities.

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Sexual Harassment Defined



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

1. Quid pro quo

2. 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 recipient's education program or activity; or

3. "Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.

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Informal Resolution Scope



Allowed:

- Any time after complaint, before final decision
- Withdraw from informal resolution process at any time
- Must agree to all terms

Not Allowed:

- Informally resolve complaint for student against staff person
- Informally resolve without formal complaint

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Who?

Informal Resolution Facilitator cannot be the Investigator, Decision Maker or a Witness.

It can be the Title IX Coordinator, but be cautious

- **Avoid pressure**
- **Avoid inevitability**



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Written Consent Required

- Both Parties
- Title IX Coordinator
  - Why not?
  - Repeat claims
  - Multiple parties
  - Serious offense

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Notice

- After consent
- Include
  - Allegations
  - Overview of process
  - Right to withdraw
  - What will happen with the records
    - Negotiations and admissions are confidential
    - Results may not be
  - Consensus



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Potential Tools

- Formal Mediation
  - Set a day, all present, different rooms, work out a deal.
- Shuttle Negotiation
  - Work with each side independently
  - Act as go between
  - Propose solutions
- Offer and Response
  - Once side proposes solution
  - Other side may respond
  - Work to an agreement
- Do not force the complainant to face the respondent in person.
  - Unless requested by the complainant.



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How to Facilitate

- Listen
- Empathize
- Communicate clear expectations
  - For facilitator
  - For parties
  - For evidence
- Define goals/objectives
- Document the process
- Create a clear understanding with each party on what you will share with the other side.
- Stay flexible
  - The solution may be creative.
- Remain neutral
  - You are a "go between" or “middle person” not an advocate.

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Conflicts of Interest and Bias

Explicit bias: prior dealings?

Implicit bias: it's real.

Conflict of Interest:

- Appearance of impropriety
- Coach, Teacher, future contact.



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Be Patient

- Discussion between parties/parents/guardian in writing.
  - Follow up conversations with emails so there is a written record.
- Set deadlines
- Sometimes it's just an apology.
- Sometimes it's just being heard.



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Trauma Informed

- Find common ground
- Start broad
  - Tell me what happened
- You are not a fact finder
- Empathize
- Stereotypes are True
- Offer supports
  - Counselling
  - Safe person at school



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Potential Terms

- Voluntarily unenroll
- Transfer schools
- No Contact Orders
- No classes together
- Non disparagement agreement
- Counselling
- Education
- Restorative Practices



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No agreement

- Requested by either party
- Any time prior to agreement
- No explanation necessary
- What records can be used in formal process when transitioning back?
    - None.
- Written notice when resuming formal process



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Written Agreement

- Parties must agree in writing to the final outcome.
- Outline all terms, all expectations of behavior, include everything agreed upon.
- Define remedies for noncompliance.
- Title IX Coordinator has review power.



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Notice of Outcome

- Include signed agreement
  - Emails work.
- Expectations of parties
- Deadlines
- Follow up requirements
- How records will be maintained
  - Federal law: 7 years
  - Forever?
- Who to contact if questions



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Questions?



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Next Training:

Advisors - February 10, 2026



Dan Skinner - Skinner Law PLLC - skinnerlawidaho@gmail.com - 208-971-5135

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Idaho K-12 Title IX PLC #5

Advisors



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Title IX Procedure in General

- Sexual Harassment reported
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  - …or not
- Decision Making Process (hearing or not)
- Notice of Outcome



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Roles in Title IX

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- Respondent
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- Advisor
- Investigator
- Informal Resolution Facilitator
- Decision Maker
- Title IX Coordinator



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Who can be an Advisor?

- Anyone NOT connected to the claim
  - No training necessary
  - Family
  - Friend
  - Counselor
- Lawyer?
  - Yes, but…



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Advisor's Role

- Support person
- Understand the process
- Assure supportive measures work
- Point of Contact
- Present for interviews if requested
- Review all evidence
- Participate in informal resolution if sought by parties
- Cross examination if hearing

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Supportive Measures

- Fluid
- Bilateral
- Preserve equal access to education
- No Contact Orders
- Change of Classes
- Counselling
- Can't be Discipline
- Removal from School?
    - Immediate threat of physical health or safety to others
    - Individualized safety and risk analysis
    - Right to appeal



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What can't an Advisor do?



- Parties may bring an advisor of their choice to any meeting with an investigator or a hearing,
- Advisor **may not actively participate in the meeting**.
  - This is a fine line.
  - The party has to answer the questions, not the advisor.
  - The advisor may ask questions, engage, but not drive the meeting.
  - Advisors may not interrupt an interview/hearing
- Advisors cannot be parties (including witnesses) to a case.
- **Lawyers love to lawyer - short leash!**

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Relevance and Inadmissible Evidence



- **Relevance:**
  - has any tendency to make a fact more or less probable than it would be without the evidence; and
  - the fact is of consequence in determining the action.

- **Inadmissible Evidence**
  - Incidents not directly related to the possible violation, unless they evidence a pattern
  - The character of the parties
  - Questions and evidence about the complainant's sexual predisposition or prior sexual behavior, unless offered to prove that someone other than the respondent committed the conduct alleged, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

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Decision Making Stage

- Help prepare written comment on evidence
- Help prepare written comment on investigation report
- Help prepare impact statement
- If a hearing, cross examination
- If no hearing, help facilitate exchange of questions
- Appeal?

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Appeal?

- **Procedural irregularity** that affected outcome.
- **New evidence** that was not reasonably available at the time of the determination that could affect outcome.
- **Conflict or Bias** by Title IX Coordinator, Investigator, or Decision-Maker.



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Questions?



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Next Training:

Appeals - March 10, 2026



Dan Skinner - Skinner Law PLLC - skinnerlawidaho@gmail.com - 208-971-5135

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Idaho K-12 Title IX PLC #6

Appeals



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  - …or not
- Decision Making Process (hearing or not)
- Notice of Outcome/Final Decision/Determination of Responsibility
- Appeal



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Roles in Title IX

- Complainant
- Respondent
- Parent/Guardian
- Advisor
- Investigator
- Informal Resolution Facilitator
- Decision Maker
- Title IX Coordinator
- Appeal Decision Maker



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Who Can Be Appeal Decision Maker?

- Check your Policy: some may provide for panel.
- Can NOT be:
    - The Decision-Maker that issued the written determination of responsibility
    - the person who issued the dismissal
    - the Investigator
    - the Title IX Coordinator



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Appeal Decision Maker Required Training

- Understand policy
  - definition of sexual harassment
  - scope of the school's education program or activities.
- Impartiality and Bias
  - Avoid prejudgment of facts
  - conflicts of interest
- Evidence and Relevance
- Procedural Knowledge
  - appeal procedures
  - bases for appeal, and
  - the role of the appellate officer.
- Technology: If applicable, training on the tech for a live hearing

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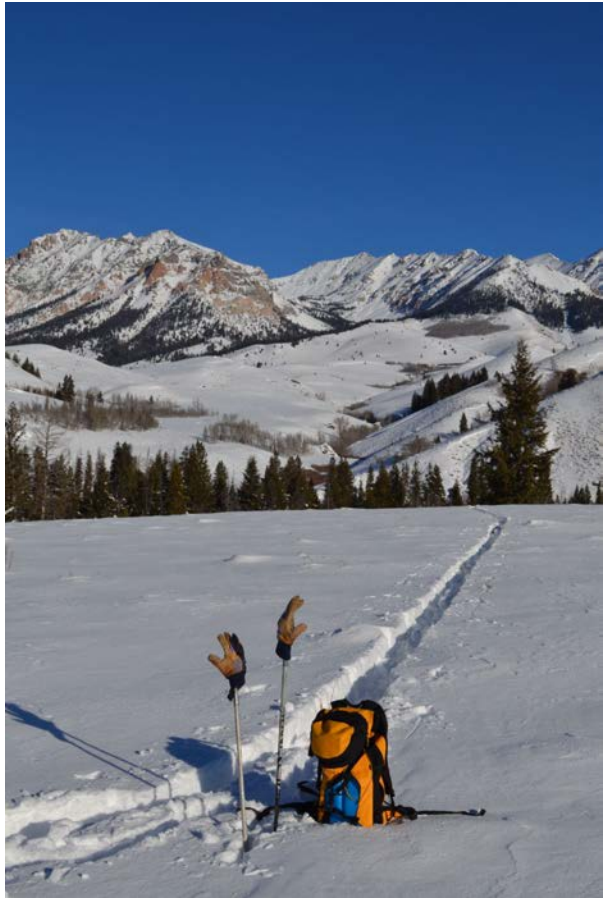
When Does a Right to Appeal Arise?

Initial Complaint is Dismissed

- Allegations, if proven, do not meet the definition of sexual harassment
- conduct did not occur in a school program or activity
- conduct occurred outside the United States
- Complainant withdraws allegations
- Respondent withdraws from school or quits
- If specific circumstances prevent investigator from gathering sufficient evidence

Final Decision/Determination of Responsibility



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Notice of Right to Appeal



- In writing
- Include in Notice of Dismissal
- Include in Final Decision/Determination of Responsibilit
- Include deadlines
- Include grounds
- Include process

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Notice of Appeal



- In writing
- Inform both parties that an appeal has been received.
- Assign Appellate Decision Maker
  - Use same language as prior assignment of decision maker, with right to challenge within three (?) days.
- Procedure
  - Ten (?) days following the notice of the appeal to submit a written statement in support of the appeal and challenging the outcome.
  - Ten days for Responding party to do the same.
  - Times can be changed by agreement, but both parties get the same amount of time.

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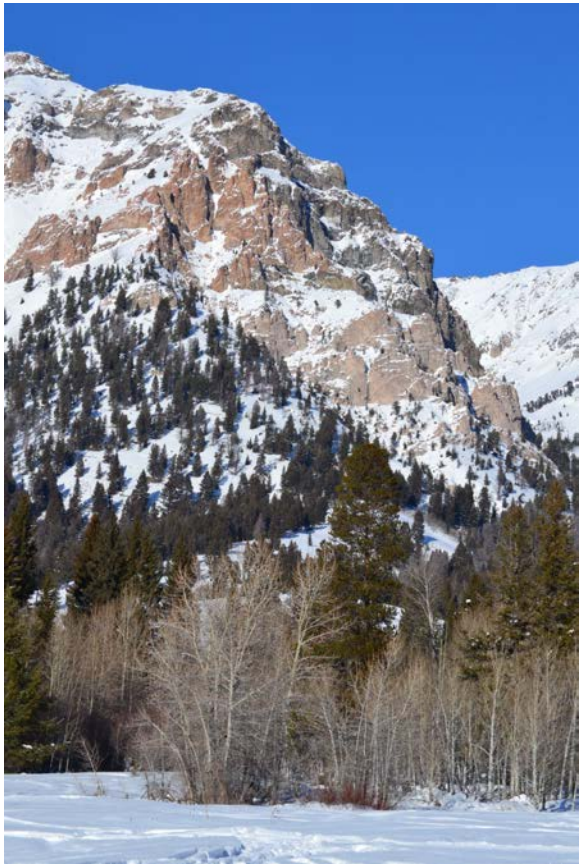
Grounds for Appeal Are Limited

- **Procedural irregularity** that affected the outcome of the matter
- **New evidence that was not reasonably available** at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
- **Conflict of interest or bias**
  - Coordinator, Investigator, Decision Maker
  - against complainants or respondents generally or the specific complainant or respondent
  - that affected the outcome of the matter.



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Decision on Appeal

- In writing
- Result
  - identify the bases and rationale for the decision.
- Provide the written decision simultaneously to all parties.
- No further right to appeal

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Questions?



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Next Training:

OCR Investigations - April 14, 2026



IDAHO K-12 TITLE IX PROFESSIONAL LEARNING COMMUNITY #6

Annie Hightower, Hightower Consulting, LLC

January 2025

Annie Hightower: Hightowerconsultingllc@gmail.com

MEETINGS THROUGH JUNE

- 9 am MT/8 am PT – 60 mins
  - Feb 11
  - March 11
  - April 8
  - May 6
    - Note May date is on the 1st Tuesday
  - June 10

Annie Hightower: Hightowerconsultingllc@gmail.com

UPDATES

- ICS training through state
- Update on 2024 Regs

Annie Hightower: Hightowerconsultingllc@gmail.com

CASE SCENARIOS

Annie Hightower: Hightowerconsultingllc@gmail.com

WHAT'S COME UP FOR YOU?

Annie Hightower: Hightowerconsultingllc@gmail.com

SCENARIO

- As a Title IX Coordinator:
  - What do you want to know about this situation?
  - How do you assess what to do next?
  - What role can the team coach play in handling this situation?

IMPORTANT DEFINITIONS – 34 CFR 106.30

- Actual knowledge - Notice of sexual harassment or allegations there of to the TIX Coordinator OR to ANY employee of an elementary or secondary school
- Formal Complaint – A document filed by the complainant or signed by the TIXC alleging sexual harassment against a respondent requesting the school investigate
  - Complainant must be participating in or attempting to participate in an educational program or activity

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RESPONSE WITH OR WITHOUT FORMAL COMPLAINT – 34 CFR 106.44

- When you have actual knowledge of sexual harassment in an education program or activity – must respond in a way that is not deliberately indifferent
- You must:
  1. Treat complainants and respondents equitably
  2. Follow a 106.45 compliant grievance process BEFORE implementing disciplinary measures or other actions that are not supportive measures

Annie Hightower: Hightowerconsultingllc@gmail.com

RESPONSE WITH OR WITHOUT FORMAL COMPLAINT – 34 CFR 106.44

Students - Emergency removal can only be done for sexual harassment on an emergency basis that:

1. Uses an individualized safety and risk analysis,
2. Determines an immediate threat from the allegations of sexual harassment that justify removal, and
3. Provides an opportunity of notice and to challenge the decision immediately

Cannot otherwise remove without engaging in compliant grievance process!

Staff – A non-student employee respondent can be placed on administrative leave pending a compliant grievance process.

Annie Hightower: Hightowerconsultingllc@gmail.com

RESPONSE WITH OR WITHOUT FORMAL COMPLAINT – 34 CFR 106.44

- Title IX Coordinator should promptly contact the complainant to:
  - discuss the availability of supportive measures,
  - consider their wishes, and
  - explain the process for filing a formal complaint
- Document, document, document!

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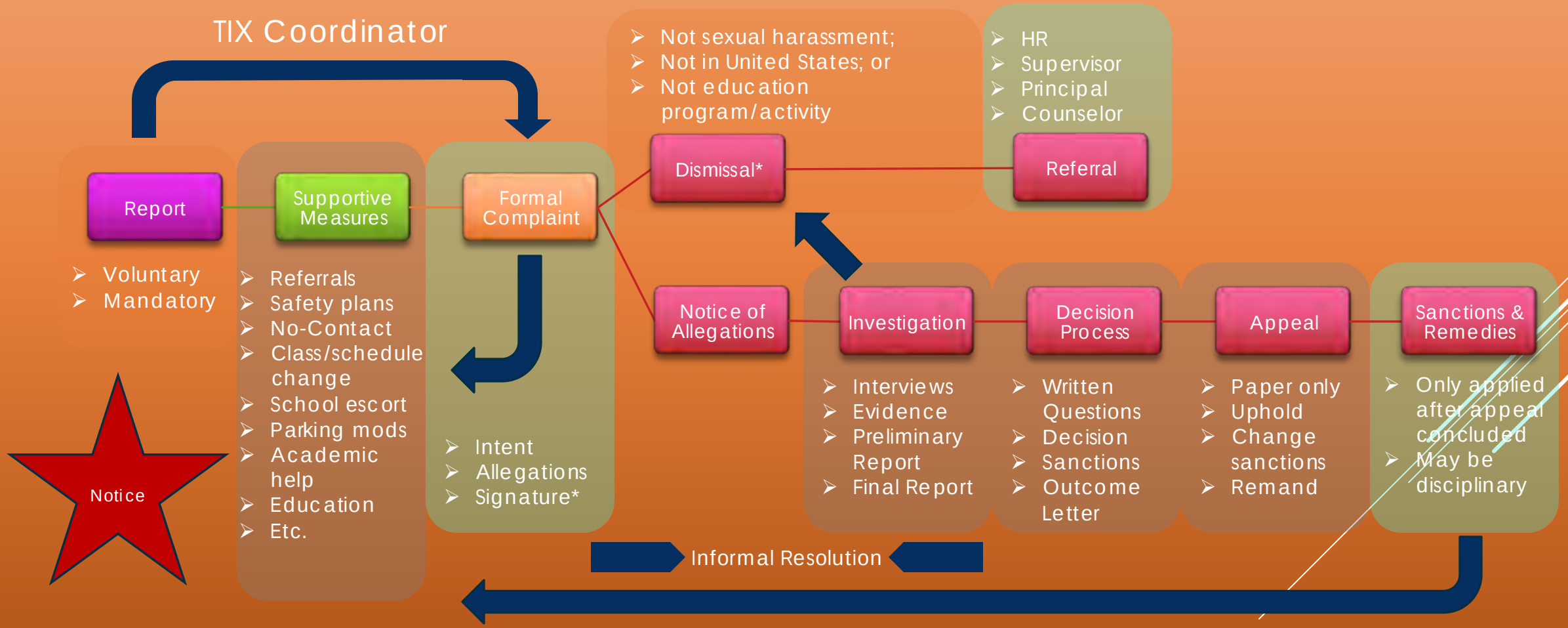
TITLE IX FORMAL GRIEVANCE PROCESS – MUST PROVIDE FOR "PROMOTE AND EQUITABLE RESOLUTIONS OF STUDENT AND EMPLOYEE COMPLAINTS"



Annie Hightower - Hightowerconsultingllc@gmail.com

Slide courtesy of Danielle Charters– modified for K-12

INFORMAL RESOLUTION

- May be offered after formal complaint and prior to any decision regarding responsibility
- Must provide to parties a written notice disclosing:
  - Allegations
  - Process requirements
  - When a party is precluded from resuming a formal complaint – right to withdraw from informal process
  - Consequences resulting from participating in process
- Must have voluntary written consent of parties

Annie Hightower: Hightowerconsultingllc@gmail.com

INFORMAL RESOLUTION

- Informal resolution cannot be:
  - Required
  - Offered unless a formal complaint is filed
  - Used to resolve allegations that an employee sexually harassed a student

Annie Hightower: Hightowerconsultingllc@gmail.com

INFORMAL RESOLUTION

- Considerations
  - Who does it?
  - What happens if IR fails?

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WHAT QUESTIONS OR CONCERNS HAVE ARISEN FOR YOU THIS MONTH?

hightowerconsultingllc@gmail.com

IDAHO K-12 TITLE IX PROFESSIONAL LEARNING COMMUNITY #6

Annie Hightower, Hightower Consulting, LLC

February 2025

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UPDATES

- Update on 2024 Regs
- Recission of prior guidance

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WHAT'S COME UP FOR YOU?

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SCENARIO

- Background:

Ms. Carter, a 5th-grade teacher at Lincoln Elementary School, notices that one of her students, Sophia (10 years old), has become unusually withdrawn in class. During recess, Sophia confides in Ms. Carter that a classmate, Jake (11 years old), has been making inappropriate comments about her body and has tried to touch her in ways that make her uncomfortable. She also mentions that Jake has shared inappropriate drawings with her and a few other students. Sophia is visibly upset and says she doesn't feel safe in class.

Ms. Carter is unsure of how to handle the situation. What should she do?

SCENARIO

- Mandatory Reporting & Response:
- What steps should Ms. Carter take immediately after hearing Sophia's concerns?
- Who else should be informed of the allegation, and what are the school's responsibilities in responding to the complaint?

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SCENARIO

- Identification of Sexual Harassment:
- Does Jake's behavior meet the Title IX definition of sexual harassment?
- What types of conduct are covered under Title IX's definition of sexual harassment in K-6 settings?

Annie Hightower: Hightowerconsultingllc@gmail.com

SCENARIO

- Grievance Process & Investigation:
- What does the school need to do before it starts investigating?
- What steps must the school take to investigate the claim while ensuring due process for all involved?
- What supportive measures could be considered?

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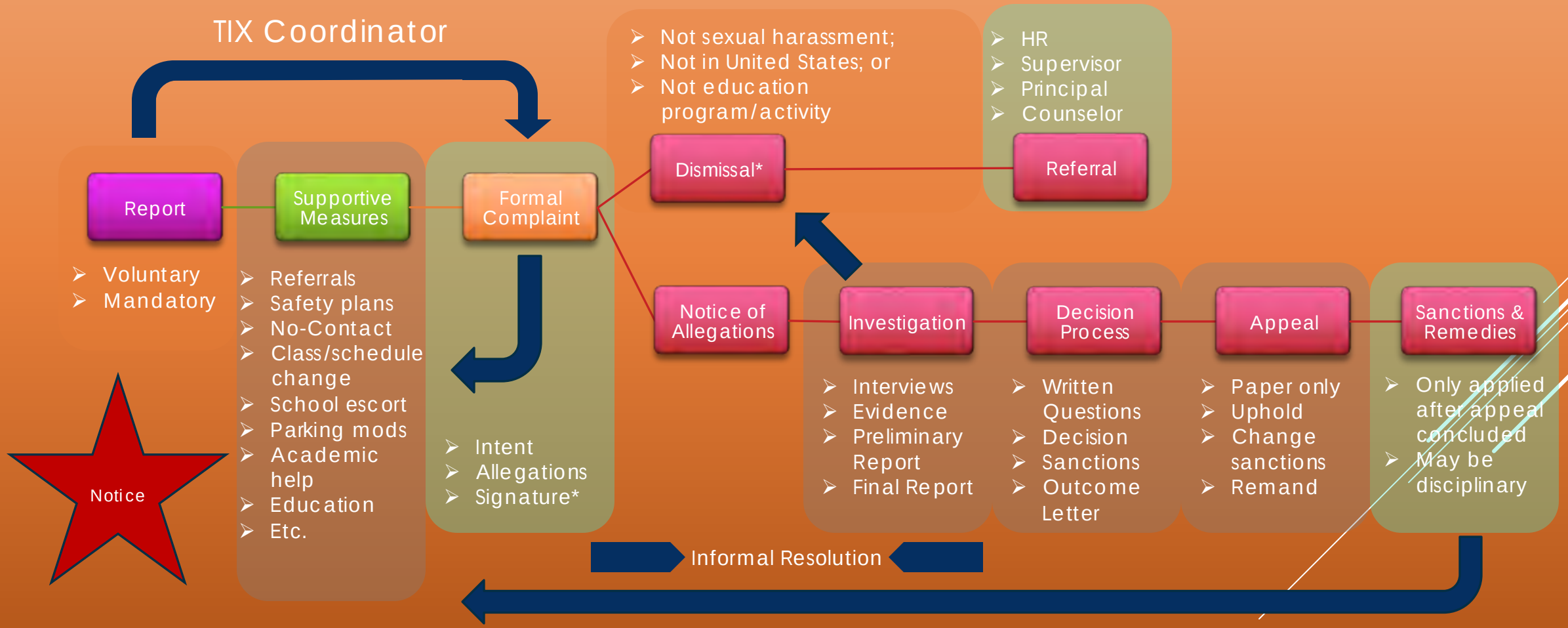

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Slide courtesy of Danielle Charters– modified for K-12

FOLLOW UP

- Training & Prevention:
- How can teachers proactively educate students about appropriate behavior and respect to prevent similar incidents?
- What resources or training should the school provide to ensure all staff understand their role in enforcing Title IX policies?

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hightowerconsultingllc@gmail.com

IDAHO K-12 TITLE IX PROFESSIONAL LEARNING COMMUNITY #7

Annie Hightower, Hightower Consulting, LLC

March 2025

Annie Hightower: Hightowerconsultingllc@gmail.com

MEETINGS THROUGH JUNE

- 9 am MT/8 am PT – 60 mins
  - April 8
  - May 6
    - Note May date is on the 1st Tuesday
  - June 10

Annie Hightower: Hightowerconsultingllc@gmail.com

CASE SCENARIOS

Annie Hightower: Hightowerconsultingllc@gmail.com

WHAT'S COME UP FOR YOU?

Annie Hightower: Hightowerconsultingllc@gmail.com

SCENARIO

At Lincoln Middle School, an eighth-grade student, Emily, confides in her friend that she has a crush on a classmate, Jake. Unbeknownst to Emily, her friend, Sarah, secretly records their conversation on her cell phone. Later that day, Sarah shares the recording in a group chat, adding false claims that Emily and Jake have been engaging in inappropriate behavior.

The rumor quickly spreads, and another student edits a photo of Emily to make it appear as though she is in a compromising position. The altered image is then circulated through Snapchat and text messages. Over the next few days, Emily becomes the target of classmates making inappropriate comments, sending her degrading messages, and mocking her in person. She begins avoiding school activities to the emotional distress.

A teacher overhears students discussing the rumors and notices a change in Emily's demeanor.

Annie Hightower: Hightowerconsultingllc@gmail.com

SCENARIO

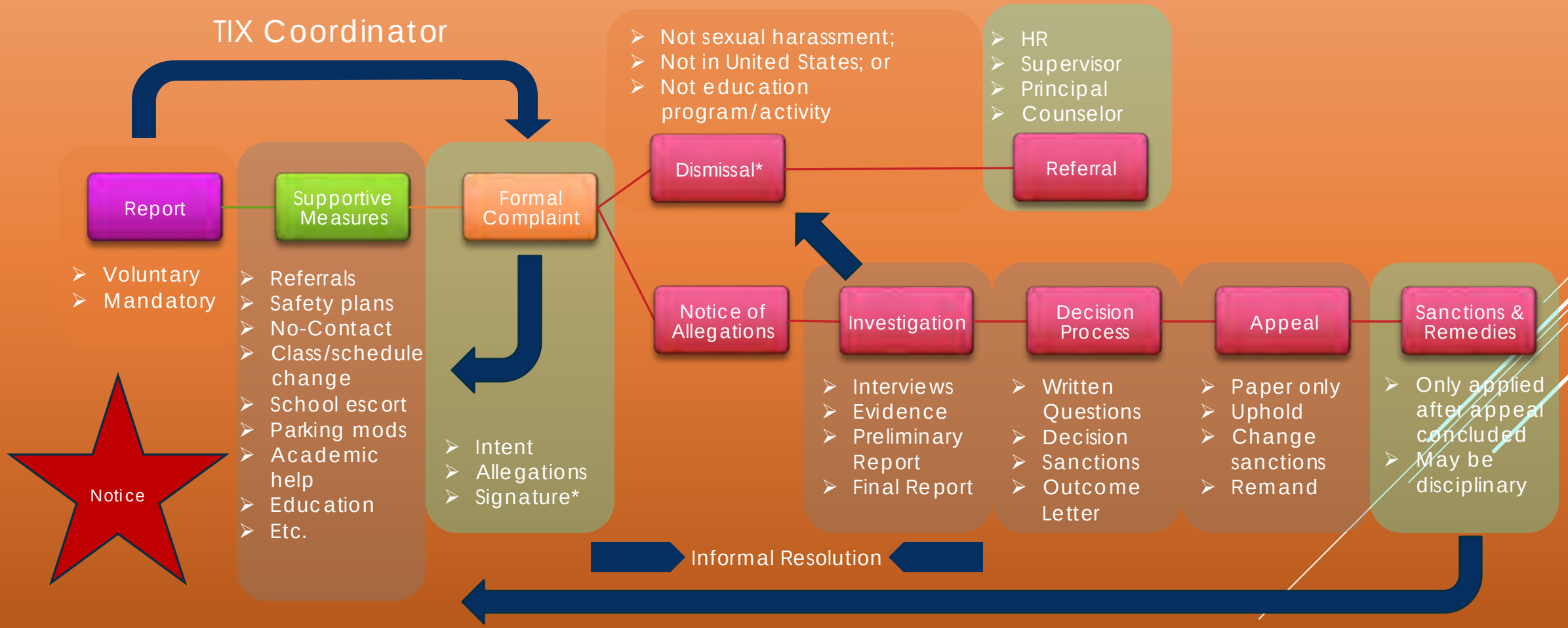
- A teacher is a responsible employee: Who else needs to know?
- Key questions for TIXC
  - What immediate steps should be taken to support Emily and ensure her safety?
  - What does the school need to do before it starts investigating?

Annie Hightower: Hightowerconsultingllc@gmail.com

SCENARIO

- Grievance Process & Investigation:
- Where is the conduct occurring?
- Does the conduct meet the threshold of severe, pervasive, and objectively offensive harassment under Title IX?
- What steps must the school take to investigate the claim while ensuring due process for all involved?

TITLE IX FORMAL GRIEVANCE PROCESS – MUST PROVIDE FOR "PROMOTE AND EQUITABLE RESOLUTIONS OF STUDENT AND EMPLOYEE COMPLAINTS"



Annie Hightower - Hightowerconsultingllc@gmail.com

Slide courtesy of Danielle Charters– modified for K-12

FOLLOW UP

- Training & Prevention:
  - How should the school address the role of social media and digital communication in the spread of harassment?
  - How can the school implement prevention strategies to educate students about digital responsibility and harassment?

Annie Hightower: Hightowerconsultingllc@gmail.com

IMPORTANT DEFINITIONS – 34 CFR 106.30

- Actual knowledge - Notice of sexual harassment or allegations there of to the TIX Coordinator OR to ANY employee of an elementary or secondary school
- Formal Complaint – A document filed by the complainant or signed by the TIXC alleging sexual harassment against a respondent requesting the school investigate
  - Complainant must be participating in or attempting to participate in an educational program or activity

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  - Stalking – a course of conduct directed at a specific person that would cause a reasonable person fear for their safety or other's safety or to suffer substantial emotional distress.

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RESPONSE WITH OR WITHOUT FORMAL COMPLAINT – 34 CFR 106.44

- When you have actual knowledge of sexual harassment in an education program or activity – must respond in a way that is not deliberately indifferent
- You must:
  1. Treat complainants and respondents equitably
  2. Follow a 106.45 compliant grievance process BEFORE implementing disciplinary measures or other actions that are not supportive measures

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Students - Emergency removal can only be done for sexual harassment on an emergency basis that:

1. Uses an individualized safety and risk analysis,
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3. Provides an opportunity of notice and to challenge the decision immediately

Cannot otherwise remove without engaging in compliant grievance process!

Staff – A non-student employee respondent can be placed on administrative leave pending a compliant grievance process.

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RESPONSE WITH OR WITHOUT FORMAL COMPLAINT – 34 CFR 106.44

- Title IX Coordinator should promptly contact the complainant to:
  - discuss the availability of supportive measures,
  - consider their wishes, and
  - explain the process for filing a formal complaint
- Document, document, document!

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WHAT QUESTIONS OR CONCERNS HAVE ARISEN FOR YOU THIS MONTH?

hightowerconsultingllc@gmail.com

IDAHO K-12 TITLE IX PROFESSIONAL LEARNING COMMUNITY #8

Annie Hightower, Hightower Consulting, LLC

April 2025

Annie Hightower: Hightowerconsultingllc@gmail.com

MEETINGS THROUGH JUNE

- 9 am MT/8 am PT – 60 mins
  - May 6
    - Note May date is on the 1st Tuesday
  - June 10
  - Summer break

Annie Hightower: Hightowerconsultingllc@gmail.com

Co-Occurring Investigations: Working with Law Enforcement

Annie Hightower: Hightowerconsultingllc@gmail.com

Reminder: Title IX in K-12 Settings

- Title IX prohibits sex discrimination in federally funded education programs
- Sexual harassment includes quid pro quo, hostile environment, sexual assault, dating violence, domestic violence, stalking
- K–12 schools must respond when any employee has actual knowledge of sexual harassment

Your Obligations Under Title IX

- Offer supportive measures even if no investigation is requested and regardless of whether law enforcement is involved
- If a formal complaint is filed, investigate promptly and equitably
- Ensure due process for complainants and respondents (following 34 CFR 106.45)
- Must not delay Title IX obligations while waiting on law enforcement outcomes, but can temporarily delay

Annie Hightower: Hightowerconsultingllc@gmail.com

Law Enforcement v. School Roles

	Law Enforcement	School/District Federal obligation under Title IX
Focus of Investigation	Criminal conduct under state law	School/district policy violations
Purpose of investigation	Determining criminal liability	Continuing access to education and determining policy liability
Standard of Evidence	Probable cause Beyond a reasonable doubt	Preponderance of the evidence
Potential Outcomes	May arrest/prosecute	Supportive measures and may discipline and provide other remedies

Annie Hightower: Hightowerconsultingllc@gmail.com

Before a Dual Investigation

✅ Build a relationship with law enforcement and discuss your Title IX obligations now!

- Prevents confusion or conflict during active investigations
- Ensures both entities understand their distinct roles and legal boundaries
- Promotes a unified approach to student safety and rights

Annie Hightower: Hightowerconsultingllc@gmail.com

Before a Dual Investigation

✅ Establish Regular Contact
- Identify and introduce key school and law enforcement contacts
- Schedule periodic check-ins (e.g., quarterly meetings)

✅ Provide Cross-Training Opportunities
- Offer training to law enforcement on:
  - Title IX basics and definitions of sexual harassment
  - Required timelines and due process requirements under Title IX
  - FERPA constraints and what info can/can't be shared
  - Invite law enforcement to observe or participate in Title IX-focused staff PD days

Annie Hightower: Hightowerconsultingllc@gmail.com

Before a Dual Investigation

✅ Develop Clear Communication Protocols
- Clarify what triggers police notification vs. internal response
- Create written guidance on:
  - What info will be shared and when
  - Who in the school district communicates with police to coordinate investigations

✅ Draft or Update an MOU that outlines:
- Mutual responsibilities
- Limits of involvement
- Procedures for emergency removals and coordinated response

Annie Hightower: Hightowerconsultingllc@gmail.com

Before a Dual Investigation

✅ Discuss Sensitive Topics Ahead of Time

- How to handle dual investigations - consider working through several scenarios
- Managing press or parent inquiries during active cases
- Student fear of police involvement as a barrier to reporting

Annie Hightower: Hightowerconsultingllc@gmail.com

Dual Investigations

- Law enforcement may be involved simultaneously with a Title IX process
- Schools must not wait for police to finish investigating before starting or continuing a Title IX investigation
  - BUT: Temporary delay is allowed if requested by law enforcement for evidence gathering (short-term, documented)

Coordination Considerations

- Understand establish MOUs or protocols with local law enforcement
- Identify points of contact in both school and police
- Clarify:
  - When/how to notify law enforcement
  - Who communicates with families
  - How information will be shared legally between entities
- Always document communications

Annie Hightower: Hightowerconsultingllc@gmail.com

Supporting Students Through Dual Processes

- Ensure supportive measures (counseling, schedule changes, etc.) regardless of legal case

- Inform students and families about:
  - Rights under Title IX
  - The school's process and timeline
  - The separate role of police

- Avoid actions that discourage participation in the Title IX process

Annie Hightower: Hightowerconsultingllc@gmail.com

Dos and Don’ts for Educators

✅ DO:

- Report any known sexual harassment to the Title IX Coordinator
- Cooperate with both internal and external investigations
- Ensure students have support regardless of process outcome

❌ **DON’T:**

- Promise confidentiality you can’t legally guarantee
- Delay Title IX action while waiting on outcome of LE
- Discourage a student from filing a complaint

Annie Hightower: Hightowerconsultingllc@gmail.com

Summary and Key Takeaways

- Title IX and criminal investigations are parallel but separate
- Must act promptly and independently
- Coordination helps—but law enforcement activities cannot be complete substitute for Title IX responsibilities
- Keep students' educational access and safety at the center

Annie Hightower: Hightowerconsultingllc@gmail.com

WHAT QUESTIONS OR CONCERNS HAVE ARISEN FOR YOU THIS MONTH?

hightowerconsultingllc@gmail.com

IDAHO K-12 TITLE IX PROFESSIONAL LEARNING COMMUNITY #10

Annie Hightower, Hightower Consulting, LLC

May 2025

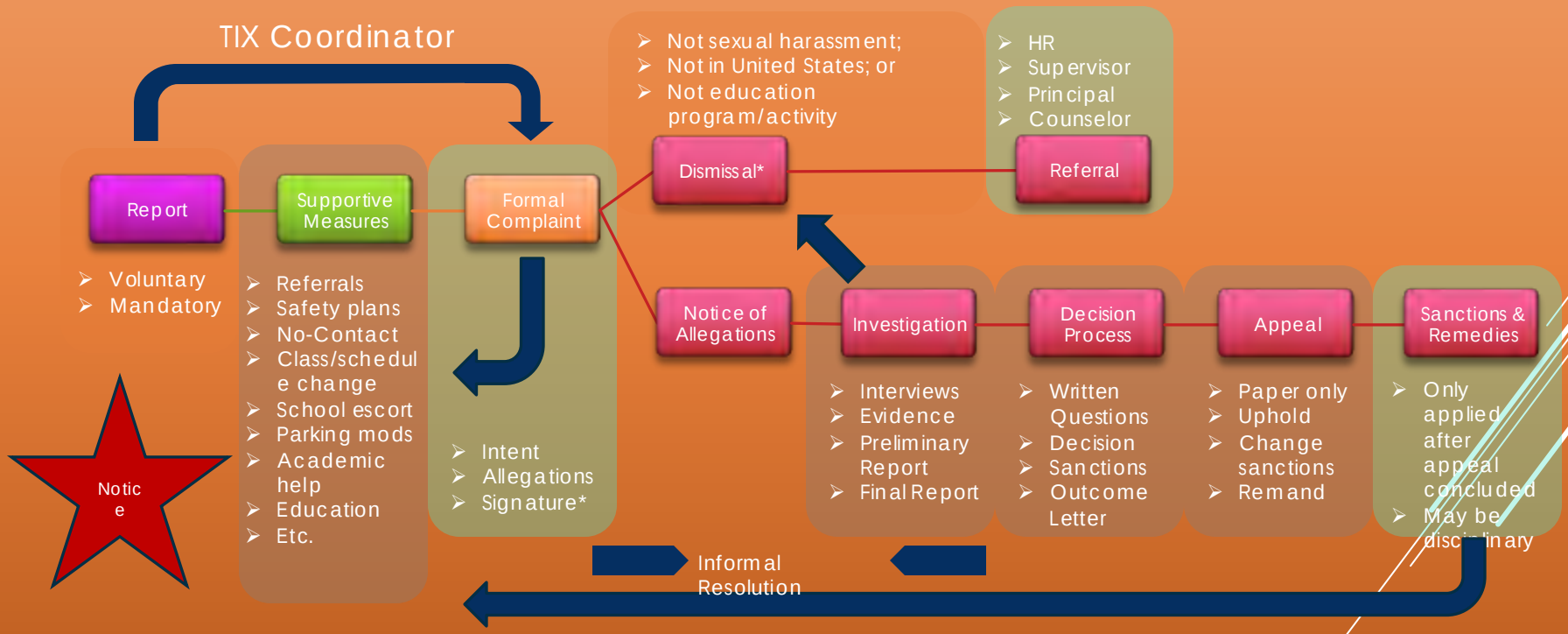
Annie Hightower: Hightowerconsultingllc@gmail.com

MEETINGS THROUGH JUNE

- 9 am MT/8 am PT – 60 mins
  - June 10

Annie Hightower: Hightowerconsultingllc@gmail.com

TITLE IX FORMAL GRIEVANCE PROCESS – MUST PROVIDE FOR "PROMOTE AND EQUITABLE RESOLUTIONS OF STUDENT AND EMPLOYEE COMPLAINTS"



Slide courtesy of Danielle Charters– modified for K-12

Annie Hightower - Hightowerconsultingllc@gmail.com

SUPPORTIVE MEASURES UNDER TITLE IX: ENSURING ACCESS AND SAFETY

Annie Hightower: Hightowerconsultingllc@gmail.com

WHAT ARE SUPPORTIVE MEASURES?

- Non-punitive, non-disciplinary individualized services offered without fee to complainant or respondent.
- Aim is to restore or preserve access to education without unreasonably burdening the other party.

Annie Hightower: Hightowerconsultingllc@gmail.com

PURPOSE OF SUPPORTIVE MEASURES

- Protect safety of ALL parties
- Prevent potential ongoing harassment
- Preserve access to your programs and activities

Annie Hightower: Hightowerconsultingllc@gmail.com

KEY REQUIREMENTS

- Must be offered to every complainant, whether or not they file a formal complaint
- Title IX Coordinator must:
  - Promptly contact the complainant
  - Discuss available supportive measures
  - Consider the complainant's wishes
  - Explain the formal complaint process

Annie Hightower: Hightowerconsultingllc@gmail.com

CONSIDERATIONS FOR RESPONDENTS

- Should be offered to respondents if needed to preserve access
- Supportive measures for complainants may not unreasonably burden respondent (and vice versa)
- Not intended as a presumption of responsibility

Annie Hightower: Hightowerconsultingllc@gmail.com

OTHER CONSIDERSATIONS

- No requirement for indentical supportive measures
  - Should be based on individualized need aiming at preserving safety and access
- You maintain discretion within these constraints

Annie Hightower: Hightowerconsultingllc@gmail.com

EXAMPLES OF SUPPORTIVE MEASURES

- Mutual no-contact orders
- Class or passing period adjustments
- Other schedule or building/based adjustments
  - Lockers, parking, etc.
- Increased security and monitoring
  - Cameras, escorts, etc.
- Transportation accommodations
- Academic support (e.g., tutoring, incomplete, extended leave, remote work)
- Referrals to medical/advocacy/counseling (consider partnerships)

IMPLEMENTATION RESPONSIBILITIES

- Title IX Coordinator is responsible for:
  - Coordinating effective implementation
  - Ensuring the burden does not fall on the student
  - Working with other offices, or community partners when reasonable, to develop and facilitate supportive measures

DOCUMENTATION AND COMPLIANCE

- If provided, document what was offered
  - Notify party to talk to TIXC if supportive measures are not working
- If not provided, document why (rationale)
- Maintain documentation for required periods under state law and federal regulations

SCENARIO

Oak Valley Middle School is a rural public 6–8 grade campus. During lunch, a 7th grade student, Ava, tells her homeroom teacher that another student, Liam, has been making repeated inappropriate comments about her body in front of their peers. Ava says she asked him to stop, but the behavior has continued for over a week.

Ava seems upset, says she doesn't want "drama," and asks the teacher *not to tell anyone*. The teacher, however, is concerned and shares the report with the school principal that afternoon. The principal notifies the Title IX Coordinator.

Annie Hightower: Hightowerconsultingllc@gmail.com

INITIAL RESPONSE

The Title IX Coordinator meets with Ava the next day to:

- Acknowledge the report
- Offer supportive measures
- Explain Ava's right to file a formal complaint, making clear she is not required to do so
- Clarify that regardless of a complaint, supportive measures can still be put in place

WHAT ARE SOME SUPPORTIVE MEASURES YOU COULD OFFER?

SUPPORTIVE MEASURES

- Adjusting seating or class schedules
- Providing Ava with support from the school social worker
- Offering a check-in schedule with a trusted adult
- Implementing a mutual no-contact order
- Alerting hallway and lunchroom monitors to discreetly supervise interactions
- Providing Liam with behavioral supports, pending further investigation

KEY TAKEAWAYS

- Supportive measures are a central pillar of TIX compliance
- Designed to fairly support complainants and respondents with out any presumptions as to outcome
- Must be timely, tailored, and non-punitive
- Proper documentation is essential for understanding and appropriate record keeping

WHAT QUESTIONS OR CONCERNS HAVE ARISEN FOR YOU THIS MONTH?

hightowerconsultingllc@gmail.com

IDAHO K-12 TITLE IX PROFESSIONAL LEARNING COMMUNITY #11

Annie Hightower, Hightower Consulting, LLC

June 2025

Annie Hightower: Hightowerconsultingllc@gmail.com

NEXT MEETINGS

- TBD

- What topics would you like covered next year?

Annie Hightower: Hightowerconsultingllc@gmail.com

WHEN SHOULD A TITLE IX COORDINATOR SIGN A FORMAL COMPLAINT?

Annie Hightower: Hightowerconsultingllc@gmail.com

WHAT IF COMPLAINANT DOESN'T FILE A COMPLAINT?

- When should a Title IX Coordinator file a complaint?
- Consider a variety of factors:
  - What would you consider?
    - Practical considerations
    - Risk assessment
- Document analysis and ultimate decision!

Annie Hightower: Hightowerconsultingllc@gmail.com

INFORMAL RESOLUTION

Annie Hightower: Hightowerconsultingllc@gmail.com

INFORMAL RESOLUTION

- May be offered after formal complaint and prior to any decision regarding responsibility
- Must provide to parties a written notice disclosing:
  - Allegations
  - Process requirements
  - When a party is precluded from resuming a formal complaint – right to withdraw from informal process
  - Consequences resulting from participating in process
- Must have voluntary written consent of parties

Annie Hightower: Hightowerconsultingllc@gmail.com

INFORMAL RESOLUTION

- Informal resolution cannot be:
  - Required
  - Offered unless a formal complaint is filed
  - Used to resolve allegations that an employee sexually harassed a student

Annie Hightower: Hightowerconsultingllc@gmail.com

RECORD KEEPING

Annie Hightower: Hightowerconsultingllc@gmail.com

RECORD KEEPING

- Must maintain for 7 years (also look at district/school policies and state law)
  - Each investigation file
    - Anything that needs to be in writing and important documentation should be saved!
  - Any appeals and results
  - All materials used to train TIX team + make available on website

Annie Hightower: Hightowerconsultingllc@gmail.com

RECORD KEEPING

- Any other relevant records, such as what a school did even if no formal complaint was filed, or other actions taking during after formal complaint filed
- Document
  - Reasoning for action
  - How action is not deliberately indifferent
  - Measures taken to restore or preserve access to education
  - If no supportive measures provided – why?

Annie Hightower: Hightowerconsultingllc@gmail.com

QUESTIONS?

Annie Hightower: Hightowerconsultingllc@gmail.com

IDAHO K-12 TITLE IX PROFESSIONAL LEARNING COMMUNITY #2

Annie Hightower, Hightower Consulting, LLC

September 2024

Annie Hightower: Hightowerconsultingllc@gmail.com

MEETINGS THROUGH JUNE

- 9 am MT/8 am PT – 60 mins
  - Oct 8
  - Nov 12
  - Dec 10
  - Jan 14
  - Feb 11
  - March 11
  - April 8
  - May 13
  - June 10

ICS training through state

Annie Hightower: Hightowerconsultingllc@gmail.com

EXECUTIVE ORDER NO. 2024-08

Annie Hightower: Hightowerconsultingllc@gmail.com

EO 2024-08
DEFENDING WOMEN'S SPORTS ACT

- https://gov.idaho.gov/wp-content/uploads/2024/08/eo-2024-08.pdf

- Title IX regulatory amendments regarding eligibility for athletic teams NOT published for final implementation
  - BUT if they had, we have the Fairness in Women's Sports Act (Idaho Code 33-6201 et seq)
  - AND the new Title IX regs (enjoined in Idaho) discuss application opposing state laws + supremacy clause

- WHAT DOES THIS MEAN FOR YOU??

Annie Hightower: Hightowerconsultingllc@gmail.com

CASE SCENARIOS

Annie Hightower: Hightowerconsultingllc@gmail.com

WHAT'S COME UP FOR YOU?

Annie Hightower: Hightowerconsultingllc@gmail.com

SCENARIO #1

- As a Title IX Coordinator:
  - What do you want to know about this situation?
  - How do you assess what to do next?
  - What role can the team coach play in handling this situation?

IMPORTANT DEFINITIONS – 34 CFR 106.30

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  - explain the process for filing a formal complaint
- Document, document, document!

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SCENARIO #1

- What do you do if the student files a formal complaint?
- What do you do if the student doesn't want to file a formal complaint?

Annie Hightower: Hightowerconsultingllc@gmail.com

WHAT QUESTIONS OR CONCERNS HAVE ARISEN FOR YOU THIS MONTH?

hightowerconsultingllc@gmail.com

IDAHO K-12 TITLE IX PROFESSIONAL LEARNING COMMUNITY #3

Annie Hightower, Hightower Consulting, LLC

October 2024

Annie Hightower: Hightowerconsultingllc@gmail.com

MEETINGS THROUGH JUNE

- 9 am MT/8 am PT – 60 mins
  - Nov 12
  - Dec 10
  - Jan 14
  - Feb 11
  - March 11
  - April 8
  - May 13
  - June 10

Annie Hightower: Hightowerconsultingllc@gmail.com

UPDATES

- ICS training through state
- Other Training Opportunities
- Complaints re Athletics

Annie Hightower: Hightowerconsultingllc@gmail.com

CASE SCENARIOS

Annie Hightower: Hightowerconsultingllc@gmail.com

WHAT'S COME UP FOR YOU?

Annie Hightower: Hightowerconsultingllc@gmail.com

SCENARIO

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SCENARIO

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WHAT QUESTIONS OR CONCERNS HAVE ARISEN FOR YOU THIS MONTH?

hightowerconsultingllc@gmail.com

IDAHO K-12 TITLE IX PROFESSIONAL LEARNING COMMUNITY #4

Annie Hightower, Hightower Consulting, LLC

November 2024

Annie Hightower: Hightowerconsultingllc@gmail.com

MEETINGS THROUGH JUNE

- 9 am MT/8 am PT – 60 mins
  - Dec 10
  - Jan 14
  - Feb 11
  - March 11
  - April 8
  - May 13
  - June 10

Annie Hightower: Hightowerconsultingllc@gmail.com

UPDATES

- ICS training through state
- Other training opportunities
- Election and what it means for 2024 Regulations

Annie Hightower: Hightowerconsultingllc@gmail.com

CASE SCENARIOS

Annie Hightower: Hightowerconsultingllc@gmail.com

WHAT'S COME UP FOR YOU?

Annie Hightower: Hightowerconsultingllc@gmail.com

SCENARIO

- Tenth grade student is a member of your school's basketball team.
- On the way to off site games, student repeatedly gets slapped/grabbed on the butt while getting on and off the bus.
- The student has requested to take alternative transportation to the games and when pressed about why, discloses the behavior but does not give any specific names.

Annie Hightower: Hightowerconsultingllc@gmail.com

SCENARIO

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  - Domestic violence - misdemeanor or felony crime; OR
  - Stalking – a course of conduct directed at a specific person that would cause a reasonable person fear for their safety or other's safety or to suffer substantial emotional distress.

Annie Hightower: Hightowerconsultingllc@gmail.com

RESPONSE WITH OR WITHOUT FORMAL COMPLAINT – 34 CFR 106.44

- When you have actual knowledge of sexual harassment in an education program or activity – must respond in a way that is not deliberately indifferent
- You must:
  1. Treat complainants and respondents equitably
  2. Follow a 106.45 compliant grievance process BEFORE implementing disciplinary measures or other actions that are not supportive measures

Annie Hightower: Hightowerconsultingllc@gmail.com

RESPONSE WITH OR WITHOUT FORMAL COMPLAINT – 34 CFR 106.44

Students - Emergency removal can only be done for sexual harassment on an emergency basis that:

1. Uses an individualized safety and risk analysis,
2. Determines an immediate threat from the allegations of sexual harassment that justify removal, and
3. Provides an opportunity of notice and to challenge the decision immediately

Cannot otherwise remove without engaging in compliant grievance process!

Staff – A non-student employee respondent can be placed on administrative leave pending a compliant grievance process.

Annie Hightower: Hightowerconsultingllc@gmail.com

RESPONSE WITH OR WITHOUT FORMAL COMPLAINT – 34 CFR 106.44

- Title IX Coordinator should promptly contact the complainant to:
  - discuss the availability of supportive measures,
  - consider their wishes, and
  - explain the process for filing a formal complaint
- Document, document, document!

Annie Hightower: Hightowerconsultingllc@gmail.com

SCENARIO

- What do you do if the student files a formal complaint?
- What do you do if the student doesn't want to file a formal complaint?

Annie Hightower: Hightowerconsultingllc@gmail.com

WHAT QUESTIONS OR CONCERNS HAVE ARISEN FOR YOU THIS MONTH?

hightowerconsultingllc@gmail.com

IDAHO K-12 TITLE IX PROFESSIONAL LEARNING COMMUNITY #5

Annie Hightower, Hightower Consulting, LLC

December 2024

Annie Hightower: Hightowerconsultingllc@gmail.com

MEETINGS THROUGH JUNE

- 9 am MT/8 am PT – 60 mins
  - Jan 14
  - Feb 11
  - March 11
  - April 8
  - May 13
  - June 10

Annie Hightower: Hightowerconsultingllc@gmail.com



MY TITLE IX STORY

Annie Hightower: Hightowerconsultingllc@gmail.com

"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."

Annie Hightower: Hightowerconsultingllc@gmail.com

Title IX Covers All Aspects of Education:

Admissions and recruitment	Educational Programs and Activities	Housing	Facilities
Access to Classes and Schools/Voc. Ed.	Counseling/Guidance	Financial Assistance	Employment (student and otherwise)
Health and insurance benefits	Marital and parental status	Textbooks and curricular material	Standards for measuring skill or progress in PE

Annie Hightower: Hightowerconsultingllc@gmail.com



Including Athletic Opportunities:

- If you offer athletics, you must provide an equal opportunity based on sex
  - Club, intramural, and interscholastic teams
- Compliance is measured by:
  - How the school is meeting students' athletic interests and abilities
  - Benefits, opportunities, and treatment given to boys and girls teams

Annie Hightower: Hightowerconsultingllc@gmail.com

Meeting Students' Athletic Interests and Abilities

"Three-Part Test"

1. Substantial Proportionality: Athletic opportunities align with student enrollment percentages.
2. History of Expansion: Evidence of expanding programs for underrepresented sex.
3. Full Accomodation: Addressing all interests and abilities where sufficient demand, skill and talent exists.

Annie Hightower: Hightowerconsultingllc@gmail.com

Equal Benefits and Treatment

Schools must provide equivalent:

1. Equipment and supplies.
2. Scheduling of games and practices.
3. Travel arrangement and per diems (or meals).
4. Coaching quality and availability.
5. Facilities (locker rooms, fields, courts, etc.).
6. Medical/training services.
7. Publicity.

This is assessed on a full athletic program level.

Annie Hightower: Hightowerconsultingllc@gmail.com

Assessing Compliance

Recommend: Regular evaluations to ensure parity between boys' and girls' programs.

Consider:

- Are facilities and resources equally accessible?
- Do boys' and girls' teams have equivalent practice times?
- Are travel and meal arrangements comparable?

Annie Hightower: Hightowerconsultingllc@gmail.com

Common Compliance Challenges

- Unequal scheduling or facilities.
- Disparities in funding and booster club contributions.
- Limited coaching resources for one sex.
- Over-reliance on outdated practices/information or lack of oversight.

Annie Hightower: Hightowerconsultingllc@gmail.com

Role of TIX Coordinator

- Oversee implementation and compliance efforts.
- Address grievances and investigate complaints.
  - Less procedurally intensive process.
- Act as a liaison between stakeholders and administration.

Annie Hightower: Hightowerconsultingllc@gmail.com

QUESTIONS?

hightowerconsultingllc@gmail.com



Association of Title IX Administrators

Idaho Department of Education Title IX & the First Amendment

Presented by
Saundra K. Schuster, Esq.
Partner, TNG Consulting, LLC
Saundra.Schuster@TNGconsulting.com

December 13, 2022

THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

1791

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FREE SPEECH TENSIONS

THE CONFLICT OF VALUES

- Public schools strive to create and sustain a learning environment that promotes diversity, maintains civility, and establishes an atmosphere of mutual respect.
- At the same time, schools want to support and promote exploration of new ideas.
- These important goals can create conflict when the expression of an individual's opinion is articulated in such a way that it offends, embarrasses or degrades another.
- This challenge is a complex one for public schools who must uphold the First Amendment rights of students, faculty and staff while maintaining the values of civility.

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INTERSECTION OF TITLE IX WITH FREE SPEECH ISSUES

- There is an inherent tension between addressing biased speech in the educational community and promoting free speech.
- Expression/speech protected by the **First Amendment**
  - Merely offensive conduct cannot be disciplined at a public school
  - Must be **severe, pervasive (persistent), and objectively offensive**
  - Subjectively offensive conduct cannot be disciplined at a public school unless it is also objectively offensive

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GUIDING PRINCIPLES

- Sexual harassment by students is governed by Title IX.
- Title IX of the Educational Amendments of 1972 is a Federal law that prohibits gender discrimination in the education context.
- The U.S. Supreme Court established the context of sexual harassment (hostile environment) in a K-12 case called *Davis v. Monroe County Board of Education*, that involved a 5th grade girl by the name of Lashonda Davis who was subjected to persistent sexually harassing behavior by a boy in her class.
- The Court stated that the language directed toward Ms. Davis must be unwelcome sexual expression and must be so "severe, pervasive and objectionably offensive" such that it undermined her educational experience and denied her equal access to the school's resources and opportunities".

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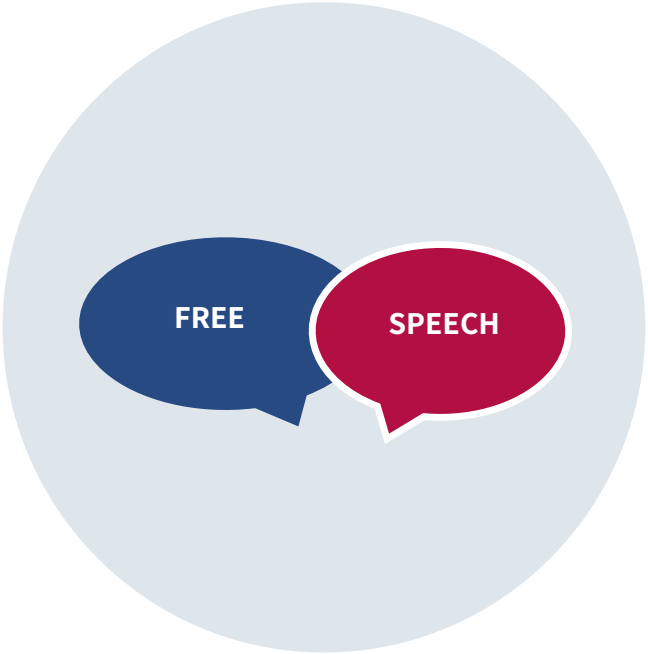
NAVIGATING FIRST AMENDMENT PROTECTIONS



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NAVIGATING FIRST AMENDMENT PROTECTIONS

"Congress shall make no law…abridging the freedom of speech…"

- The Department of Education reaffirms First Amendment protections in the Title IX Regulations
- An important concern for all public schools
- Impacts policy language regarding expression
  - Be clear about what is acceptable and not acceptable
    - Location
    - Standards

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NAVIGATING FIRST AMENDMENT PROTECTIONS

- **Issues to consider:**
  - Content neutral time, place, and manner restrictions (sound level, sign size, location)
  - Understand importance of location: Public Forum, Designated Public Forum, Limited Public Forum, and Non-public Forum and the degree you can limit speech in each category
  - Policy Language
  - Speech unprotected by the First Amendment (see next slide)

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UNPROTECTED SPEECH SEMINAL CASES

- **FIGHTING WORDS**
  - **Chaplinsky v. New Hampshire**, 315 U.S. 568 (1942)
- **OBSCENITY**
  - **Miller v. California,** 413 U.S. 15 (1973)
- **INCITEMENT OF IMMINENT LAWLESS ACTION**
  - **Brandenburg v. Ohio,** 39 U.S. 444 (1969)
- **TRUE THREAT**
  - **Virginia v. Black**, 538 U.S. 343 (2003)
- **DEFAMATION**
  - **Milkovich v. Lorain Journal Co**., 497 U.S. 1 (1993)
  - **Hustler Magazine v. Falwell**, 485 U.S. 46 (1988)

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THE IMPORTANCE OF ANALYZING THE ACTIVITY BEFORE TAKING ACTION

Considerations
Three-Step Analysis

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CONSIDERATIONS

- Free expression in public schools does not guarantee unfettered access to property simply because it is owned or controlled by a government entity
- Public schools have the right to impose reasonable regulations compatible with the educational mission by carefully applying the type of expression to the location of the expression and using a viewpoint neutral time, place and manner approach based on the location
- Not all locations on campus have the same type of standards on restricting expression

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THREE-STEP ANALYSIS

STEP 1: Are there 1St Amendment implications in the activity presented?

- Does it include any components of "expression" (not conduct)
  - Consider: not just speech, but leafleting, signs, bulletin boards, chalking, clothing, etc.
- Does it have a religious component?
- Does it involve a campus newspaper, radio, TV station?
- Does it involve a group activity on school property, i.e., demonstration, protest, walkout, rally?
- Is there a request for meeting room space in one of the classrooms?

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THREE-STEP ANALYSIS (CONT.)

STEP 2: Are there any clear exceptions to the 1St Amendment at issue?

- Each potential exception requires a separate analysis to the specific set of facts presented
- Courts will apply exceptions **very narrowly**
- Must be applied with extreme caution

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THREE-STEP ANALYSIS (CONT.)

STEP 3: Analysis of facts identified in Steps 1 & 2 in consideration of the location on campus (the "forum")

- Any restriction based solely on the message to be delivered will always be prohibited (unless it's one of the exceptions)
- The school can apply a content (message) neutral "time, place, and manner" limitation, but it must do so with careful consideration of the facts and the location and document the decision

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UNDERSTANDING THE IMPORTANCE OF LOCATION IN REGULATING A FIRST AMENDMENT ACTIVITY

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UNDERSTANDING LOCATION (FORUM)

- **Traditional Public Forum**
  - Campus mall, public streets through campus, public sidewalks (most limited restrictions on speech)
- **Designated Public Forum**
  - Areas the institution designates for “free speech” such as green space, green space around the school (also limited in ways we can restrict speech the same as Traditional Public Forum)
- **Limited Public Forum**
  - Auditoriums, meeting rooms, athletic facilities (any limitations on speech must be reasonable based on the nature of the space)
- **Non-public Forum**
  - Classrooms, offices (the broadest limitations applied here)

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EXAMPLES OF SPEECH CHALLENGES

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SPEECH ON SOCIAL MEDIA AND TRUE THREATS

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LAYSHOCK V. HERMITAGE SCHOOL DISTRICT
J.S. V. BLUE MOUNTAIN SCHOOL DISTRICT

- These were two, almost identical, cases that went before separate 3-judge panels of the 3rd Circuit Court of Appeals with different results.
- Ultimately the full court, sitting en banc rendered a decision reconciling the two cases.
- The court held that public school students cannot be punished for off-campus speech that fails to cause a substantial disruption to the in-school activities
- The facts of each case are as follows:

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J.S. V. BLUE MOUNTAIN SCHOOL DISTRICT

- In the J.S. case, two eighth grade students created a fake MySpace profile for the principal of their school
- Although the page did not identify the principal by name, it included his picture from the school's website and referred to him as "principal"
- The profile characterized him as a sex-obsessed pedophile, and included profanity and negative comments about the principal's family

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J.S. V. BLUE MOUNTAIN SCHOOL DISTRICT

- The school determined that, based on the creation of the fake profile, the students violated the school's discipline code and computer use policy
- The students were suspended
- "J.S." sued for violation of her 1st Amendment rights for engaging in out of school speech
- The court ruled the school could discipline for lewd and vulgar off-campus speech that had an effect on campus, even though the effect did not rise to a "substantial disruption" under *Tinker v. Des Moines*

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LAYSHOCK V. HERMITAGE SCHOOL DISTRICT

- Mr. Layshock created a MySpace profile of his school principal (from his grandmother's house)
- The profile poked fun of the principal, made references to sexuality, steroids, intimidation and drinking
- He identified himself as the author of the profile and was suspended for 10 days, given an alternative education program and barred from all school activities.

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LAYSHOCK V. HERMITAGE SCHOOL DISTRICT

- Layshock filed a lawsuit arguing that his free speech rights had been violated
- The school argued that the speech began on campus, and they should have the right to respond to student off-campus speech and discipline students for improper conduct
- The 3-judge panel ruled in favor of Mr. Layshock stating that the parody of the principal did not disrupt school and thus the discipline violated his rights

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DISTRICT
J.S. V. BLUE MOUNTAIN SCHOOL

- LESSONS FOR CAMPUSES
  - Provocative, even offensive speech will generally be protected – even if created on-line
  - Institutions must apply standards set forth by courts for on-campus speech that are exceptions to free speech rights, such as “clear and present danger”, “true threat”, and the framework set forth in Tinker that states that expression must pose a substantial (not speculative) challenge of campus disruption before it can be prohibited.

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RESPONDING TO OFF-CAMPUS SPEECH

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MAHANOY AREA SCHOOL DISTRICT V. B.L

141 S. CT. 2038 (2021)

- Freshman student, Brandi Levy learned that she did not make the varsity cheer squad and also did not get her desired position on a softball team (unaffiliated with the school)
  - As a part of her tryouts she agreed to a set of rules requiring cheerleaders to respect the school, coaches, other teams and other cheerleaders
- On a Saturday afternoon, off the school grounds, she posted a snapchat that read, “F*** school, f*** softball, f*** cheer, f*** everything”
- A member of the cheer squad saw the post and showed it to the coach. The school felt because she used profanity in her postings in regard to cheer she violated the cheer team rules
- The school suspended her from cheering for one year

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MAHANOY (CON'T)

- Ms. Levy sued, arguing that her comments were protected by the First Amendment.
- The trial court (federal) ruled in favor of Ms. Levy as did the Court of Appeal for the 3rd Circuit saying her post did not create a substantial disruption at the school as established in the *Tinker* case (1969).
- The school appealed to the U.S. Supreme Court arguing that participating in cheerleading is a privilege and there are conduct standards for the cheerleaders. She was not suspended from school itself so there was not a disruption to her education.

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MAHANOY (CON'T)

- The Court said:
  - Schools do not stand in loco parentis to students in regard to off-campus speech
  - Courts are skeptical of school official's regulatory interest in policing student social media speech
  - Schools should have an interest in protecting even unpopular speech as a "nursery of democracy"
  - However, schools should have an interest in social media speech that is harassing, threatening or breaches school security

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SPEECH AND COUNTER SPEECH

FRESNO STATE UNIVERSITY

- A student group at Fresno State sought to write their message, which was controversial, by chalking it on the sidewalk.
- A faculty member recruited his class to help him erase the message on campus. When confronted by the student group he claimed that he was engaging in his own free speech by erasing the messages.
- The group filed a lawsuit against the professor stating he was acting as the “speech police” on campus and was teaching students that the correct way to deal with speech you disagree with is to censor it. The court found in favor of the students.

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PORTLAND STATE UNIVERSITY

- In March 2019, the Portland State University College Republicans student organization hosted Michael Strickland to discuss his appeal from a conviction for brandishing a firearm during a demonstration.
- The police took no action when a protester disrupted Mr. Strickland's talk for over an hour by ringing a cowbell and standing in front of the projector.

Was this the protester's right?

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HECKLER'S VETO

- Generally, No, because the Constitution requires the government to control the crowd in order to defend the communication of ideas, rather than to suppress them.
- What the protester and the professor engaged in is called the "Heckler's Veto"
  - Occurs in circumstances when opponents to a message block the delivery of that message by direct action or shouting down a speaker through protest
  - Also occurs when a representative of the public entity accepts limits or restrictions on speech that overrides another speaker, or when the public entity restricts or cancels a speech based on anticipated or actual reactions of the opponents of the speech
  - Only when the opposition moves from counter speech to violence the government may step in and is expected to protect the speaker and others.

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CONSIDERATIONS FOR RESPONDING TO SPEECH AND EXPRESSION

SEXUAL HARASSMENT POLICY LANGUAGE

- In order to avoid First Amendment challenges, schools should ensure that their student sexual harassment policies contain language that clearly articulates what behavior or expression is prohibited and the context within which this prohibited behavior will rise to the level of sexual harassment (hostile environment) leading to discipline.
- Incorporating words such as “offends”, “belittles an individual”, etc. in a sexual harassment policy makes the school vulnerable to challenges of having a policy that is too vague, that is, the student must guess at how this would translate to their actions.

Or

- Using language that encompasses a substantial amount of protected speech along with prohibited speech, which would be considered overbroad.

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Questions?

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UNPROTECTED SPEECH

- Fighting Words
- Obscenity
- Incitement of Imminent Lawless Action
- True Threat
- Defamation
- Hate Speech

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SEMINAL CASES

FIGHTING WORDS

Chaplinsky v. New Hampshire, 315 U.S. 568 (1942)

OBSCENITY

Miller v. California, 413 U.S. 15 (1973)

INCITEMENT OF IMMINENT LAWLESS ACTION

Brandenburg v. Ohio, 39 U.S. 444 (1969)

TRUE THREAT

Virginia v. Black, 538 U.S. 343 (2003)

DEFAMATION

Milkovich v. Lorain Journal Co., 497 U.S. 1 (1993)

Hustler Magazine v. Falwell, 485 U.S. 46 (1988)

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Fighting Words

Chaplinksy v. New Hampshire, 315 U.S. 568 (1942)

Chaplinsky was convicted under a state statute for verbally attacking the City Marshall by calling him a “damned racketeer” and a “damned Fascist”

This case took place during WWII, at a time in which accusations of racketeering or fascism were taken quite seriously

The Court held that Chaplinsky’s epithets were “fighting words” which were “likely to provoke the average person to retaliation, and thereby cause a breach of the peace”

There have been no other holdings on fighting words since 1942

Do you think there are words that would rise to that level today?

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Obscenity

Miller v. California, 413 U.S. 15 (1973)

Marvin Miller sent advertisements for adult books and films he had for sale through a mass mailing campaign which depicted sexual acts.

Recipients who received the mail did not willingly request or grant permission to receive the mailed advertisements.

The Court ruled in favor of the State of California, saying Miller engaged in obscenity.

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Obscenity (cont.)

Miller v. California, 413 U.S. 15 (1973)

The court found obscenity was determined by:

- Whether the average person, applying contemporary standards of the community, would find that the work only appeals to the prurient interest of others
- Whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law
- Whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value

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Incitement of Imminent Lawless Action

Brandenburg v. Ohio, 39 U.S. 444 (1969)

The leader of the Ku Klux Klan was convicted under the Ohio statute for threatening that "if our President, our Congress, our Supreme Court, continues to suppress the white, Caucasian race, it's possible that there might have to be some revengeance [sic] taken"

The Court found in favor of the Klan, stating **"speech that merely advocates rather than actually incites violence shall be protected by the First Amendment"**

The Court stated that a governmental entity may not forbid or proscribe advocacy of the use of force or law violations except where such advocacy incites or produces imminent lawless action and is likely to produce such action

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True Threat

Virginia v. Black, 538 U.S. 343 (2003)

Barry Black and others were convicted of violating a Virginia statute that makes it a felony "for any person..., with the intent of intimidating any person or group..., to burn...a cross on the property of another, a highway or other public place," and specifies that "any such burning...shall be prima facie evidence of an intent to intimidate a person or group"

The Court held that while a State, consistent with the First Amendment, may ban cross burning carried out with the intent to intimidate, treating any cross burning as prima facie evidence of intent to intimidate renders the statute unconstitutional

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Defamation

Milkovich v. Lorain Journal Co., 497 U.S. 1 (1993)

Milkovich, Maple Heights High School's wrestling coach, testified at a hearing concerning a physical altercation at a recent wrestling meet

After the hearing, Theodore Daidium published an article in the local newspaper saying that anyone at the wrestling meet "knows in their heart" that Milkovich lied at the hearing

Milkovich sued Daidium and the paper for defamation, alleging that the article accused him of perjury, damaged his occupation, and constituted libel

The Supreme Court found against the newspaper, stating that Milkovich was not a public figure and the defamatory statements were factual assertions, not constitutionally-protected opinions

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But…See Another Case

Hustler Magazine v. Falwell, 485 U.S. 46 (1988)

Jerry Falwell, a world-famous minister, brought a lawsuit against Hustler magazine for defamation for portraying him in a cartoon parody which suggested he had an incestuous relationship with his mother and preached only when he was drunk

The Court found the parody to be protected speech, saying public figures like Falwell, and public officials, may not have a defamation claim without showing actual malice by the author, because such a standard is necessary to give adequate breathing space to the First Amendment

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The Importance of Analyzing the Activity Before Taking Action

Considerations

Three-Step Analysis

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Considerations

Free expression on public college campuses does not guarantee unfettered access to property simply because it is owned or controlled by a government entity

Public institutions have the right to impose reasonable regulations compatible with the institutional mission by carefully applying the type of expression to the location of the expression and using a viewpoint neutral time, place and manner approach based on the location

Not all locations on campus have the same type of standards on restricting expression

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Three-Step Analysis

STEP 1: Are there 1St Amendment implications in the activity presented?

Does it include any components of “expression” (not conduct)

Consider: not just speech, but leafleting, signs, bulletin boards, chalking, clothing, etc.

Does it have a religious component?

Does it involve a campus newspaper, radio, TV station?

Does it involve a group activity on campus, i.e., demonstration, protest, walkout, rally?

Is there a request for meeting room space?

Does it involve group or organization official recognition?

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Three-Step Analysis (cont.)

STEP 2: Are there any clear exceptions to the 1St Amendment at issue?

Each potential exception requires a separate analysis to the specific set of facts presented

Courts will apply exceptions **very narrowly**

Must be applied with extreme caution

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Three-Step Analysis (cont.)

STEP 3: Analysis of facts identified in Steps 1 & 2 in consideration of the location on campus (the "forum")

Any restriction based solely on the message to be delivered will always be prohibited (unless it's one of the exceptions)

Institution can apply a content (message) neutral "time, place, and manner" limitation, but it must do so with careful consideration of the facts and the location and document the decision

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For Example…

Campus Occupation or Mass Sit-In Demonstrations

There is no First Amendment right to occupy or block egress to a campus building, office or interfere with university operations (Chermerinsky & Gillman, 2017).

- Concordia University in February of 2020 – upon announcing the University would close at the end of the spring 2020 semester, students engaged in a walk-out and staged a sit-in at the University President's office.
  - One main talking point was that the University had not created space for the students to voice their opinions and concerns.

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UNDERSTANDING THE IMPORTANCE OF LOCATION IN REGULATING A FIRST AMENDMENT ACTIVITY

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Understanding Location (Forum)

Traditional Public Forum

Campus mall, public streets through campus, public sidewalks

Designated Public Forum

Areas the institution designates for “free speech” such as green space, campus mall areas

Limited Public Forum

Auditoriums, meeting rooms, athletic facilities

Non-public Forum

Classrooms, residence halls, campus offices

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Traditional Public Forum & Designated Public Forum

A traditional public forum requires the most limited application of restrictions to any form of expression

Any limitation to the speech, assembly, or other forms of expression must serve a significant interest of the institution:

- Not disrupting the delivery of education
- Not posing a significant health or safety risk (but one can't speculate on the risk—it must be imminent and specific)
- Placing a priority on the use of the space to support the institutional mission
- Not blocking the ingress or egress of buildings, hallways, offices

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Limited Public Forum

The institution is only required to meet a "reasonableness" standard when applying limitations in this space

- An activity may be limited based on the nature of the location and type of activity, but it cannot be limited based on the message of the activity
- Any limitation must be related to legitimate, clearly articulated standards based on the type of the location
- Limitations cannot restrict more speech or expression than is necessary
- Schools must be careful about "prior restraints of speech," that is anything that would be unnecessary and may limit or chill the expression

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Non-Public Forum

Any location that the institution has not opened for general public discourse, such as classrooms, offices, etc.

May limit the location (forum) for its intended purpose only

- May apply limitations on the subject matter being discussed and the identity of the speaker, but not based on the speaker's message
  - For example, institution may limit classroom discussion to the subject matter of the course being taught, but not on the opinion that the faculty member or student would have about what is being discussed
- May restrict commercial solicitation in residence halls
- May restrict someone from an office whose message is not consistent with the nature of the office
- Any limitation must maintain viewpoint neutrality
- Limitation must be reasonable

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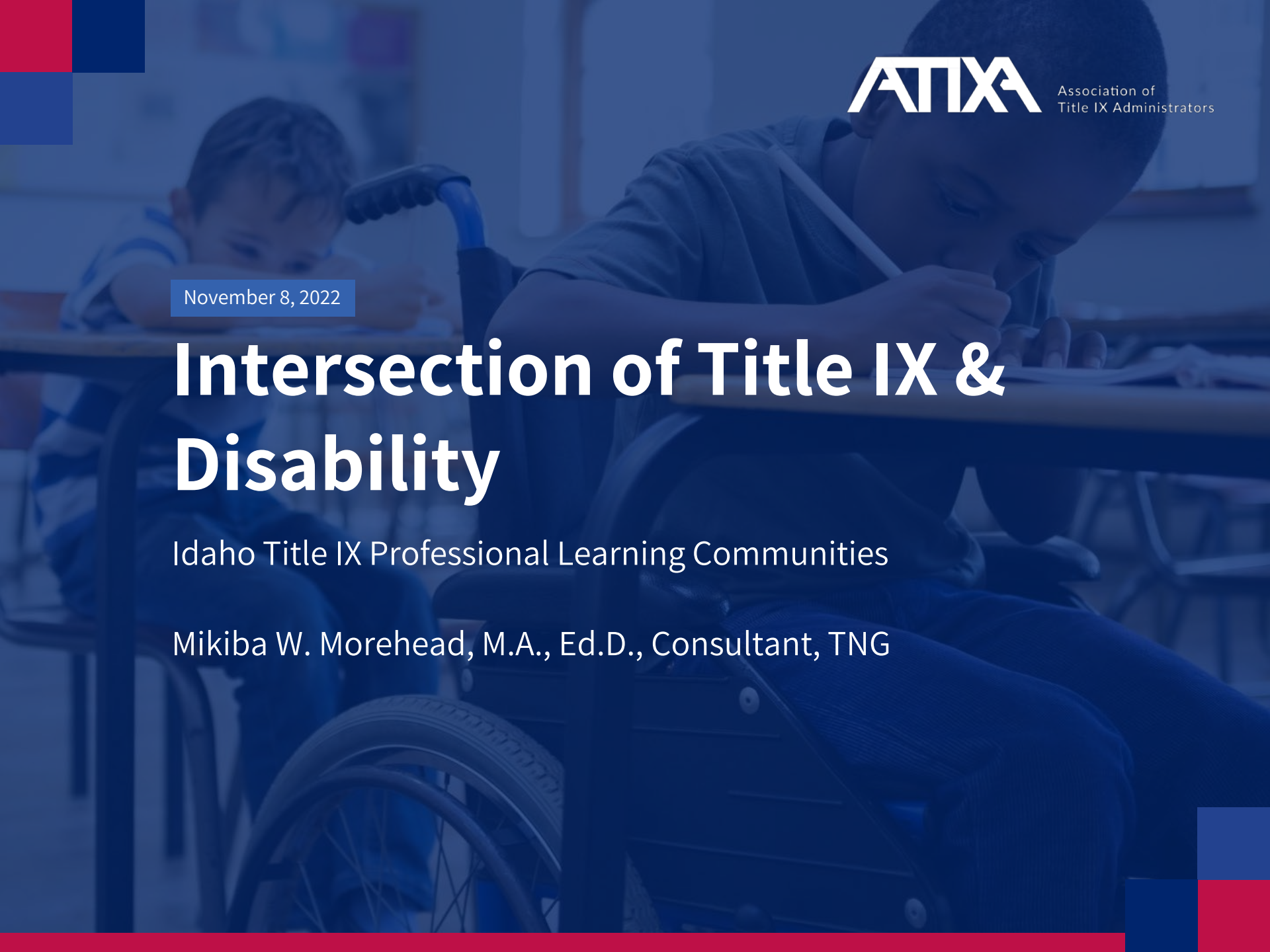
Strategic Risk
Management Solutions

THANK YOU!

Saundra K. Schuster, Esq.
Partner, TNG Consulting, LLC

Saundra.Schuster@tngconsulting.com

www.tngconsulting.com



Association of Title IX Administrators

November 8, 2022

Intersection of Title IX & Disability

Idaho Title IX Professional Learning Communities

Mikiba W. Morehead, M.A., Ed.D., Consultant, TNG







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

AGENDA

1. Section 504 Overview
2. Other Disability Laws
3. Accommodation Process
4. Students with Disabilities as Parties
5. Pregnancy & Related Conditions
6. Q&A

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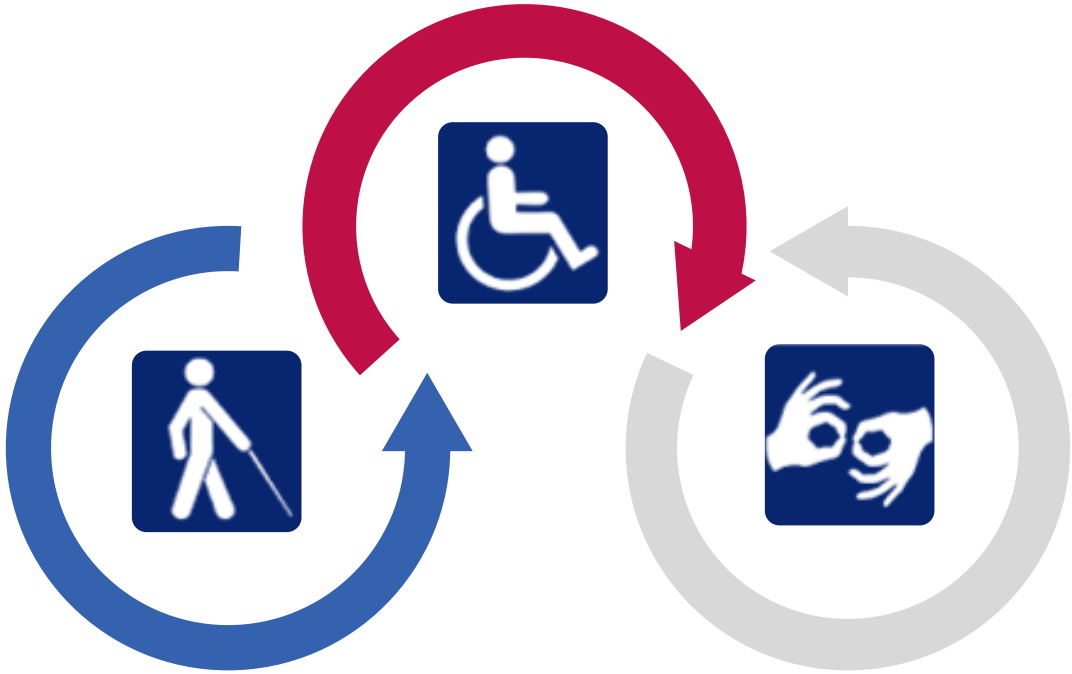
SECTION 504 & THE ADA



Sec. 504 and the ADA are not designed to ensure equal results…

but to create a "just result" and to provide **equal opportunities** for success.

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KEY ISSUE

- All individuals with a qualifying disability must be provided with aids, benefits, or services that provide an equal opportunity to achieve the same result or level of achievement as others
- Institutions may provide a different or separate aid, benefit, or service only if doing so is necessary to ensure that the aid, benefit or service is as effective as others

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DISABILITY LAWS

Section 504 of the Rehabilitation Act

Americans with Disabilities Act

Individuals with Disabilities Education Act

Fair Housing Act

State Laws

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SECTION 504 OF THE REHABILITATION ACT (1973)

- **Prohibits discrimination** on the basis of disability in **all programs or activities** that receive federal financial assistance
- Forbids institutions from excluding or denying individuals with disabilities an **equal opportunity** to receive program benefits and services
- Enforced by the U.S. Dept. of Education, Office for Civil Rights
- Codified at 29 U.S.C. § 701

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SECTION 504

"No otherwise qualified individual with a disability in the United States, as defined in Sec. 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Section 704(a) Promulgation of nondiscriminatory rules and regulations

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HOW IS SEC. 504 DIFFERENT FROM THE ADA?

Section 504 and the ADA are both civil rights laws; however:

- Section 504 was created to protect individuals with disabilities from discrimination for reasons related to their disabilities
  - 504 protections are applied to programs or businesses that receive federal funds
- The ADA Titles I, II, & III add to the strength of Section 504 by extending it to private institutions, workplaces, and to state and local government-funded programs
- Between the two laws, all government-funded programs are covered

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INDIVIDUALS WITH DISABILITIES EDUCATION ACT (1975)

- The IDEA is a four-part piece of legislation that ensures eligible students with a disability receive a **Free Appropriate Public Education** (FAPE) that is tailored to their individual needs and in the **least restrictive environment**
- The overall goal of the IDEA is to provide children with disabilities an **equal education** to students who do not have a disability
- Provides **funding** to state and local education agencies for **special education and related services and early intervention services** for students with specified disabilities
- However, the IDEA is not a civil rights law like Sec. 504 and the ADA
- Enforced by Dept of Education's Office of Special Education Programs

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WHO IS PROTECTED UNDER SEC. 504, THE ADA & IDEA ?

Under these laws, qualified individuals with disabilities are defined as:

- Persons **with a physical or mental impairment** which substantially limits one or more major life activities;
- Persons who have a **record of having a physical or mental impairment**; or
- Persons who are **regarded as having a physical or mental impairment** that substantially limits one or more major life activities.

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WHO IS A "QUALIFIED INDIVIDUAL WITH A DISABILITY"?

- Someone who, with or without reasonable modifications to rules, policies, or practices or provision of auxiliary aids and services, meets the essential eligibility requirements to be able to receive the receipt of services or to participate in programs or activities of the educational entity
- All qualified individuals with a disability must be provided with aids, benefits, or services that provide an equal opportunity to achieve the same result or level of achievement as others

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WHO IS A "QUALIFIED INDIVIDUAL WITH A DISABILITY"? (CONT.)

- Institutions may provide a different or separate aid, benefit, or service than requested by the qualified individual with a disability only if doing so is necessary and ensures that the aid, benefit, or service is as effective as the one requested

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SPECIFIED DISABILITIES UNDER THE IDEA

- IDEA applies to an eligible child in mandatory age ranges who is evaluated as having one or more specific conditions:
  - Mental impairment
  - Hearing impairment (including deafness)
  - Speech or language impairment
  - Visual impairment (including blindness)
  - Autism
  - Traumatic brain injury
  - Other health impairments
  - Emotional disturbance
  - Orthopedic impairments
  - Specific learning disabilities
  - Deaf-blindness
  - Multiple disabilities

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ACCOMMODATION PROCESS: SECTION 504 AND IDEA

K-12 ACCOMMODATION PROCESS

- In the K-12 environment, students with disabilities are not only supported by Section 504 and the ADA, but also by the Individuals with Disabilities Education Act (IDEA)
- The provisions under the IDEA are more comprehensive and prescriptive than those under Sec. 504 and the ADA
- Under Section 504 and the IDEA , schools have an obligation to:
  - Identify and locate every qualified student with a disability
  - Provide a free and appropriate public education that meets the individual needs of the student

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ACCOMMODATION PROCESS: IDEA

- If a student is eligible for special education and related services under the IDEA, they must have an IEP that is designed to meet the unique needs of each child (an IEP Plan)

- The IEP:
  - Specifies the services to be provided and how often;
  - Describes the student's present levels of performance and how the student's disabilities affect academic performance; and
  - States the accommodations and modifications to be provided

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ACCOMMODATION PROCESS: IDEA

- When a child qualifies for an IEP, a team is convened to design the plan
- The team must include:
  - The child's parent(s)/guardian(s);
  - At least one regular teacher;
  - A special education teacher;
  - Someone who can interpret the educational implications of the child's evaluation, such as a school psychologist;
  - Any relevant service personnel; and
  - A school administrator who has knowledge of the availability of services in the district and authority to commit those services on behalf of the child

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DIFFERENCE BETWEEN AN IEP AND A 504 PLAN

- An IEP is a plan or program developed to ensure that a child who is a qualified person with a disability and is attending a K-12 school will receive specialized instruction
- A 504 plan is a plan developed to ensure that a child who is a qualified person with a disability and is attending a K-12 school receives accommodations that will ensure their academic success and access to the learning environment
- Not all students with a disability require specialized instruction
- For those students that do require specialized instruction, the IDEA guidelines control those procedural requirements

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STUDENTS WITH DISABILITIES AS PARTIES IN THE TITLE IX GRIEVANCE PROCESS

STUDENTS WITH DISABILITIES AS PARTIES

- If a Complainant or Respondent is a student with a disability,
  - Throughout the grievance process the Title IX Coordinator should work closely with the student's
    - IEP team; or
    - Section 504 team
  - The Title IX Coordinator should also work with the IEP/504 team when managing supportive measures for a student with a disability
- If a student with a disability is subject to an Emergency Removal all rights under IDEA and Section 504 still apply and must be respected

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THE PROCESS



- Complaint or notice to the Title IX Coordinator
- Strategy development

Following a formal complaint

- Jurisdiction?
- Dismissal?
- Policy violation implicated?
- Reinstatement to another process?
- Informal or formal resolution?

- Notice to parties
- Identification of witnesses, interview scheduling, and evidence collection
- Report drafted
- Evidence and draft investigation report shared
- Investigation report finalized and shared

- Exchange of written questions and answers
- Determination
- Sanction?
- Remedies

- Standing?
- Vacate?
- Remand?
- Substitute?

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ADDRESSING INVOLUNTARY WITHDRAWAL

Engaging in involuntarily removing a student or employee with a disability is complex

- As of 2011, the law no longer applies "harm to self" as a basis for involuntary withdrawal, only "harm to others"
- OCR says **due process** is necessary to challenge assumptions that behavior is a threat that would support involuntarily removing a student or employee
  - Signification due process protections also afforded to students under the IDEA

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ADDRESSING INVOLUNTARY WITHDRAWAL (CONT.)

- The school must either:
  - Follow appropriate disciplinary procedures for students or employees who engage in conduct that would violate the codes of conduct;
  - Engage in applying the ADA-created “Direct Threat” Test prior to removing an individual from school or work, UNLESS there is an immediacy of harm; or
  - Conduct a manifestation determination under the IDEA before removing or seeking an alternative placement of a student with a disability due to conduct issues

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"DIRECT THREAT" TEST

- "Direct Threat" means a significant risk to the health or safety of self or others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services.
- OCR says DUE PROCESS is necessary to challenge factual assumptions that behavior being exhibited represents is "Direct Threat" of harm to others that would support involuntarily removing a student or employee from the institution
- A "Direct Threat" analysis applies to any individual who poses a "significant risk" of substantial harm or safety to others that cannot be eliminated or reduced by reasonable accommodation.

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APPLICATION OF THE DIRECT THREAT TEST

1. To rise to the level of a direct threat, there must be a **high probability of substantial harm and not just a slightly increased, speculative, or remote risk.**
2. Then there must be an Individualized **and** objective assessment of the student's ability to safely participate in the school's program
3. This assessment must be based on a reasonable medical judgment relying on the most current medical knowledge **or** the best available objective (non-medical) evidence

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APPLICATION OF THE DIRECT THREAT TEST (CONT.)

4. The assessment must determine:
   - The nature, duration, and severity of the risk;
   - The probability that the potentially threatening injury will actually occur; and
   - Whether reasonable modifications of policies, practices, or procedures (accommodations) would sufficiently mitigate the risk.

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MANIFESTATION DETERMINATION

- Under the IDEA, if seeking to remove a student with a disability for longer than 10 days, the student is entitled to a Manifestation Determination to review relevant information regarding the student's disability and services provided to determine if the student's behavior was:
  - the result of the student's disability or
  - the result of an inappropriate placement
- Student can not be removed if either is answered affirmatively
- Parent/guardian entitled to an appeal hearing

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POLICY IMPLICATIONS

- The Direct Threat Test (as proscribed by the ADA) may only be applied when a student's conduct represents an "unreasonable threat of harm to others"
- The student conduct process should be applied when the student's conduct creates a disruption to the education environment or violates other behavior standards
- Both approaches provide due process before involuntary removal from the institution
- Thus, offer appropriate due process and follow your process.

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RESPONSE CONSIDERATIONS

- Involve your accessibility/disability services office and a student's IEP team when applicable
- Offer appropriate due process and follow your process if you plan to involuntarily remove from school or job
- Use clearly written policies and referrals based on **behaviors**, not disabilities or conditions
- Address **actual** significant disruptions to the school, not simply **risk** of disruption
- Be consistent in referrals – the same disruptive behavior should warrant a conduct process regardless of the individual

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RESPONSE CONSIDERATIONS (CONT.)

- Absent a manifestation determination:
  - Sanctioning should also be consistent
  - Do not treat students or employees with disabilities differently than other students or employees other than providing reasonable accommodations under the law

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PREGNANCY & RELATED CONDITIONS

PREGNANCY, SEC. 504, & TITLE IX: 2013 DCL*

June 25, 2013 DCL on pregnancy and parenting students:

- Educators must ensure pregnant and parenting students are **not discriminated against**
- Educators must ensure that pregnant and parenting students are **fully supported in preparation for graduation and careers**
- Secondary school administrators, teachers, counselors, and parents must be well-educated on the rights of pregnant and parenting students as provided under Title IX

*Dear Colleague Letter from the U.S. Department of Education's Office for Civil Rights

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PREGNANCY, SEC. 504, & TITLE IX: REGULATORY LANGUAGE

Pregnancy defined:

- "Pregnancy and related conditions":
  - A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's **pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom**, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient." (34 C.F.R. 106.40)

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PREGNANCY, SEC. 504, & TITLE IX: OCR GUIDANCE

Doctor's Note to Participate

- "**Schools cannot require a pregnant student to produce a doctor's note in order to stay in school or participate in activities**, including interscholastic sports, unless the same requirement to obtain a doctor's note applies to all students being treated by a doctor."

- "That is, schools cannot treat a pregnant student differently from other students being cared for by a doctor, even when a student is in the later stages of pregnancy; **schools should not presume that a pregnant student is unable to attend school or participate in school activities**."

Source: U.S. Department of Education (June 2013), *Supporting the Academic Success of Pregnant and Parenting Students*, p. 8.

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PREGNANCY, SEC. 504, & TITLE IX: REGULATORY LANGUAGE

Physician Certification

- A recipient **may require** such a student to **obtain the certification of a physician** that the student is physically and emotionally able to continue participation in the normal education program or activity **so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician."**

- "Thus, for example, a student who has been hospitalized for childbirth must not be required to submit a medical certificate to return to school if a certificate is not required of students who have been hospitalized for other conditions."

Source: 34 C.F.R. 106.40

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PREGNANCY, SEC. 504, & TITLE IX: REGULATORY LANGUAGE

Pregnancy as Temporary Disability

- A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom **in the same manner and under the same policies as any other temporary disability** with respect to any medical or hospital benefit, service, plan, or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity."

Source: 34 C.F.R. 106.40

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PREGNANCY, SEC. 504, & TITLE IX: REGULATORY LANGUAGE

Leave Policies

- In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as **a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began**."

Source: 34 C.F.R. 106.40

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PREGNANCY, SEC. 504, & TITLE IX: OCR GUIDANCE

- "When the student returns to school, she must be reinstated to the status she held when the leave began, which should include giving her the opportunity to make up any work missed."
- "A school may offer the student alternatives to making up missed work, such as:
  - Retaking a semester,
  - Taking part in an online course credit recovery program, or
  - Allowing the student additional time in a program to continue at the same pace and finish at a later date, especially after longer periods of leave."
- "The student should be allowed to choose how to make up the work."

Source: U.S. Department of Education (June 2013), *Supporting the Academic Success of Pregnant and Parenting Students*, p. 8.

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ADDITIONAL SPECIAL ISSUES TO ADDRESS

- Nursing rooms, mothers' lounges, etc.
- Children at school and in the classroom…No
- Labs, chemicals, exposure to diseases, etc.
  - Reasonable restrictions for health and safety (as deemed by a physician) are permitted
- Residence halls (if applicable)
  - Cannot remove prior to birth of child
  - Refund

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Questions?

mikiba.morehead@tngconsulting.com

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IDAHO K-12 TITLE IX PROFESSIONAL LEARNING COMMUNITY #2

TITLE IX: GRIEVANCE PROCEDURE OVERVIEW

Annie Hightower, Hightower Consulting, LLC

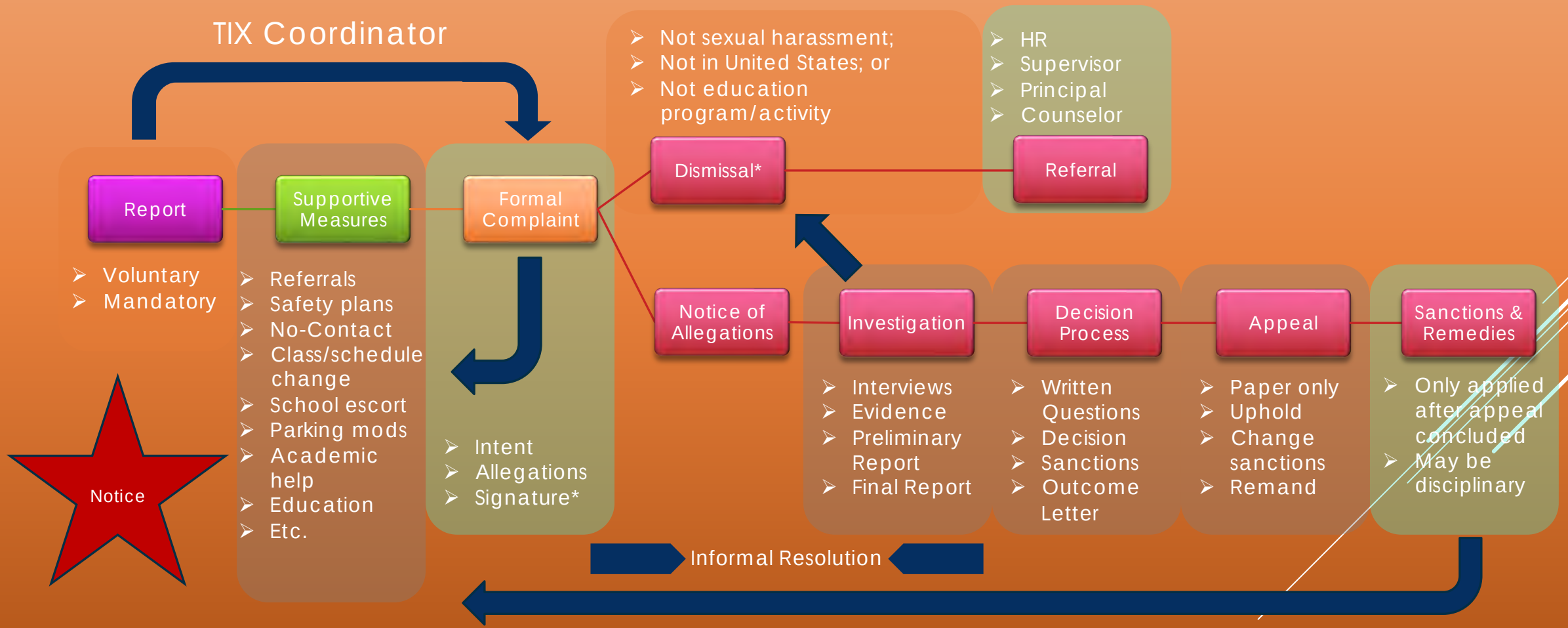
May 9, 2023

Annie Hightower: Hightowerconsultingllc@gmail.com

GRIEVANCE PROCEDURES – AN OVERVIEW

Annie Hightower: Hightowerconsultingllc@gmail.com

TITLE IX FORMAL GRIEVANCE PROCESS – MUST PROVIDE FOR "PROMOTE AND EQUITABLE RESOLUTIONS OF STUDENT AND EMPLOYEE COMPLAINTS"



Annie Hightower - Hightowerconsultingllc@gmail.com

Slide courtesy of Danielle Charters– modified for K-12

IMPORTANT DEFINITIONS – 34 CFR 106.30

- Actual knowledge - Notice of sexual harassment or allegations there of to the TIX Coordinator OR to ANY employee of an elementary or secondary school
- Formal Complaint – A document filed by the complainant or signed by the TIXC alleging sexual harassment against a respondent requesting the school investigate
  - Complainant must be participating in or attempting to participate in an educational program or activity

Annie Hightower: Hightowerconsultingllc@gmail.com

IMPORTANT DEFINITIONS – 34 CFR 106.30

- Sexual Harassment – conduct on the basis of sex that is:
  - Quid pro quo by an employee (conditioning of a benefit, help, etc. on participation in sexual contact); OR
  - Unwelcome conduct that is so severe, pervasive and objectively offensive that it effectively denies access; OR
  - Sexual assault – forcible or nonforcible sex offense; OR

Annie Hightower: Hightowerconsultingllc@gmail.com

IMPORTANT DEFINITIONS – 34 CFR 106.30

- Sexual Harassment (con't)– conduct on the basis of sex that is:
  - Dating violence – violence committed within an intimate or romantic relationship; OR
  - Domestic violence - misdemeanor or felony crime; OR
  - Stalking – a course of conduct directed at a specific person that would cause a reasonable person fear for their safety or other's safety or to suffer substantial emotional distress.

Annie Hightower: Hightowerconsultingllc@gmail.com



Gender Identity in Education

Idaho Title IX Professional Learning Communities

W. Scott Lewis, Managing Partner, TNG Consulting

TNG Strategic Risk Management Solutions







Any advice or opinion provided during this workshop, either privately or to the entire group, is never to be construed as legal advice. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law, 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, and 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.

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AN EXAMPLE TO INITIATE OUR DISCUSSION

Sam comes to the Title IX office with a complaint that he's being both publicly misgendered and deadnamed in class by his history professor. The professor asserts that there are only two genders and refuses to use the name and pronouns by which Sam identifies

What is the Title IX office to do?

THE ISSUES

- Individuals who identify differently from their sex assigned at birth may wish to be addressed by a chosen term, name, and/or pronouns
- What is the obligation of the school to support chosen names/pronouns?
- What are the rights of teachers and administrators to refuse to honor a student's chosen name or pronouns?
- Navigating legal name changes so as not to out someone as trans or transitioning
- A trans person is in MY bathroom – whose rights are at risk?
- Do you investigate or dismiss a complaint?

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TERMINOLOGY

- Cisgender: Denoting or relating to a person whose sense of personal identity and gender corresponds with their sex assigned at birth
- Transgender: Denoting or relating to a person whose sense of personal identity and gender does not correspond with their birth sex. A trans male has transitioned or is transitioning F→M. A trans female has transitioned or is transitioning M→F.
  - A person's current identity is likely the only identity that matters, unless they make it point to make sure you know they are trans
- Gender–Variant/Diverse: Denoting or relating to a person whose behavior or appearance varies or is diverse from prevailing cultural and social expectations about what is appropriate for their gender

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TERMINOLOGY (CONT.)

- Gender Fluid: Denoting or relating to a person who does not identify themselves as having a fixed gender
- Nonbinary: a term used to describe individuals who may experience a gender identity that is neither exclusively woman or man or is in between or beyond both genders
- Queer: Denoting or relating to a sexual or gender identity that does not correspond to established ideas of sexuality and gender, especially heterosexual norms
- Intersex: A term used for a variety of conditions in which a person is born with a reproductive or sexual anatomy that doesn't seem to fit the typical definitions of female or male

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TERMINOLOGY (CONT.)

- Misgendering: Refers to an inadvertent -- or more commonly intentional -- reference to a nonbinary person or transgender or transitioning person by a binary sex assignment or pronouns that do not match their gender identity or expression, or that are not their chosen pronoun(s)
  - Those who are cisgender should consider how it would feel if others insisted on calling you by a pronoun, name, or title that did not reflect your sex/gender
- Deadnaming: The use of the birth or other former name of any of the above categories of people without their consent when the individual has identified a different name or pronoun

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LITIGATION IMPACT ON SCHOOL POLICY ENFORCEMENT

MERIWETHER V. HARTOP

992 F.3D 492 (6TH CIR. 2021)

Facts

- Case against Shawnee State University (SSU) (Ohio)
- In 2016, SSU informed faculty "they had to refer to students by their 'preferred pronouns.'" If not, they were subject to discipline.
- Meriwether is a tenured faculty member said his religious beliefs prevented him from communicating about gender identity that he believes to be false.
- Meriwether suggested 2 compromises (adding a caveat to his syllabus or just using last names) and both were rejected.
- Meriwether filed a grievance, but was denied an opportunity to be heard.
- Meriwether alleged he could not address a "high profile issue of public concern that has significant philosophical implications." He filed a lawsuit under the 1st Amendment.

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MERIWETHER V. HARTOP

992 F.3D 492 (6TH CIR. 2021)

Decision

- The Court held that the First Amendment protects the academic speech of university professors.
- Citing to the *Tinker*[1] case the court said, "Government officials violate the First Amendment whenever they try to prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion."
- Citing to *Keyishian v. Bd of Regents*[2] the court said the First Amendment "does not tolerate laws that cast a pall of orthodoxy over the classroom."
- This decision was returned to the district court for trial, resulting in a $400,000 settlement in 2022.

[1] *Tinker v. Des Moines Independent Community School District,* 393 U.S. 503 (1969).
[2] *Keyishian v. Board of Regents,* 385 U.S. 589 (1967).

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BOSTOCK V. CLAYTON COUNTY, GEORGIA

590 U.S. (2020)

- Employment case decided by the U.S. Supreme Court June 15, 2020.
- The Court ruled that Title VII's prohibition on discrimination "because of sex" covers discrimination on the basis of gender identity and sexual orientation.
- Following this ruling, the Fourth, Eleventh, Sixth and Seventh Circuits reached decisions supporting trans and gender diverse individuals

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WHITAKER V. KENOSHA UNIFIED SCHOOL DIST.

858 F.3D 1034 (7TH CIR. 2017)

Facts

- After Ash Whitaker came out as transgender during his sophomore year, the school engaged in a series discriminatory acts against him. These included:
  - Barring him from using the boys' restroom and monitoring his restroom use
  - Pulling him out of class to threaten him with disciplinary action if he continued to use the boys' restroom
  - Refusing to call him by his chosen name
  - Referring to him with female pronouns
  - Isolating him from his peers on overnight school trips
  - Refusing to let him run for prom king

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WHITAKER V. KENOSHA UNIFIED SCHOOL DIST.

858 F.3D 1034 (7TH CIR. 2017)

Decision

- Whitaker filed a lawsuit under Title IX and the Equal Protection clause of the 14th Amendment
- The Seventh Circuit issued a unanimous ruling in favor of Whitaker, stating, "A policy that requires an individual to use a bathroom that does not conform with his or her gender identity punishes that individual for his or her gender non-conformance, which in turn violates Title IX."
- This represented the first federal appellate decision to find that Title IX, as a matter of law, requires public schools to permit transgender students to use restrooms corresponding to their gender identities.

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PRESIDENT BIDEN'S EXECUTIVE ORDERS

- EO 13988: issued January 20, 2021, citing to the Equal Protection clause of the Constitution set forth the prohibition of discrimination on the basis of gender identity or sexual orientation and declared a policy to prevent and combat discrimination on these bases
- EO 14021: issued March 8, 2021, "Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity."
  - This order declared that all students should be guaranteed an educational environment free from discrimination in the form of sexual harassment, which encompasses sexual violence and includes discrimination on the basis of sexual orientation or gender identity.

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OTHER ADMINISTRATIVE ACTIONS

- Following Executive Order 13988, the U.S. Dept of Housing and Urban Development incorporated prohibitions on discrimination on the basis of gender identity or sexual orientation in housing on February 11, 2021.
  - While regulations and/or specific guidance is still forthcoming, and enforcement has not yet been announced, this rule will be binding on residential colleges and schools.
  - At this point, no religious exception has been announced, but one is likely to be recognized, as is an exception for single-sex residence halls.
- On March 26, 2021, the U.S. Department of Justice declared that the ruling in *Bostock* would also be applicable to Title IX, but it is unclear what force that opinion carries.

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OCR NOTICE OF INTERPRETATION

- On June 16, 2021, the U.S. Department of Education's Office for Civil Rights issued a Notice of Interpretation (NOI) for enforcement of Title IX with respect to discrimination based on sexual orientation and gender identity
- "This interpretation will guide the Department in processing complaints and conducting investigations, but it does not itself determine the outcome in any particular case or set of facts."
- "Consistent with the Supreme Court's ruling and analysis in *Bostock*, the Department interprets Title IX's prohibition on discrimination "on the basis of sex" to encompass discrimination on the basis of sexual orientation and gender identity."

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OCR NOTICE OF INTERPRETATION (CONT.)

- "[T]he Department finds no persuasive or well-founded basis for declining to apply *Bostock*'s reasoning — discrimination "because of . . . sex" under Title VII encompasses discrimination based on sexual orientation and gender identity — to Title IX's parallel prohibition on sex discrimination in federally funded education programs and activities."
- The NOI and Title IX apply to both employees and students.
- The NOI is effective upon publication in the Federal Register.

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ARE THERE BEST PRACTICES?

- Training, education, empathy induction
- Working one-on-one with informal resolutions
- Disruption policies (can you disrupt your own classroom?)
- Name-calling or nickname policies (not gender-specific)
- Policies on outing someone without consent
- Bullying policies
- Are there distinctions between public and private institutions that are worth considering?
- Is there a difference between speech that touches on a matter of public concern and speech directed to one individual only?

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ARE THERE BEST PRACTICES? (CONT.)

- Discuss with your legal counsel – what is worth fighting for, and what's worth litigation risk?
- Clarify policy intersections and how you will approach complaints (have a clear, consistent roadmap)
- Many complaints related to trans rights will invoke retaliation
- The 2020 Title IX regulations allow retaliation to be addressed by a separate process, outside the regulations.
  - Is that something that you should consider/prefer?

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ARE THERE BEST PRACTICES? (CONT.)

- How does your institution clarify the policy basis for disparate treatment and/or disparate impact?
  - Both of these offenses could also be policies that are invoked in trans rights complaints.
  - Are they addressed in a regulation-compliant context? Do you want them to be?
- If a disparate treatment allegation is also severe, pervasive, and objectively offensive (SPOO), must the regulations apply? Is that a lens to consider in all such allegations?

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Questions?

CONTACT INFORMATION

Scott Lewis, JD
Scott.lewis@tngconsulting.com

Thanks for joining us today.



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K-12 Investigation Report Overview

Idaho State Department of Education

February 14, 2023

PURPOSE OF THE INVESTIGATION REPORT

- Title IX Regulations Requirements
- Relevant and Directly Related Evidence
- Separating Evidence

TITLE IX REGULATION REQUIREMENTS

- Federal regulations require an investigation report that fairly summarizes relevant evidence (34 C.F.R. § 106.45(b)(5)(vii))
  - While the regulations use the term "summary," the preamble specifies the report will summarize **all** relevant evidence, meaning the report is comprehensive, not skeletal
- Any individual designated as an Investigator may not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent (34 C.F.R. § 106.45(b)(1)(iii))
- A recipient also must ensure that Investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence (34 C.F.R. § 106.45(b)(1)(iii))

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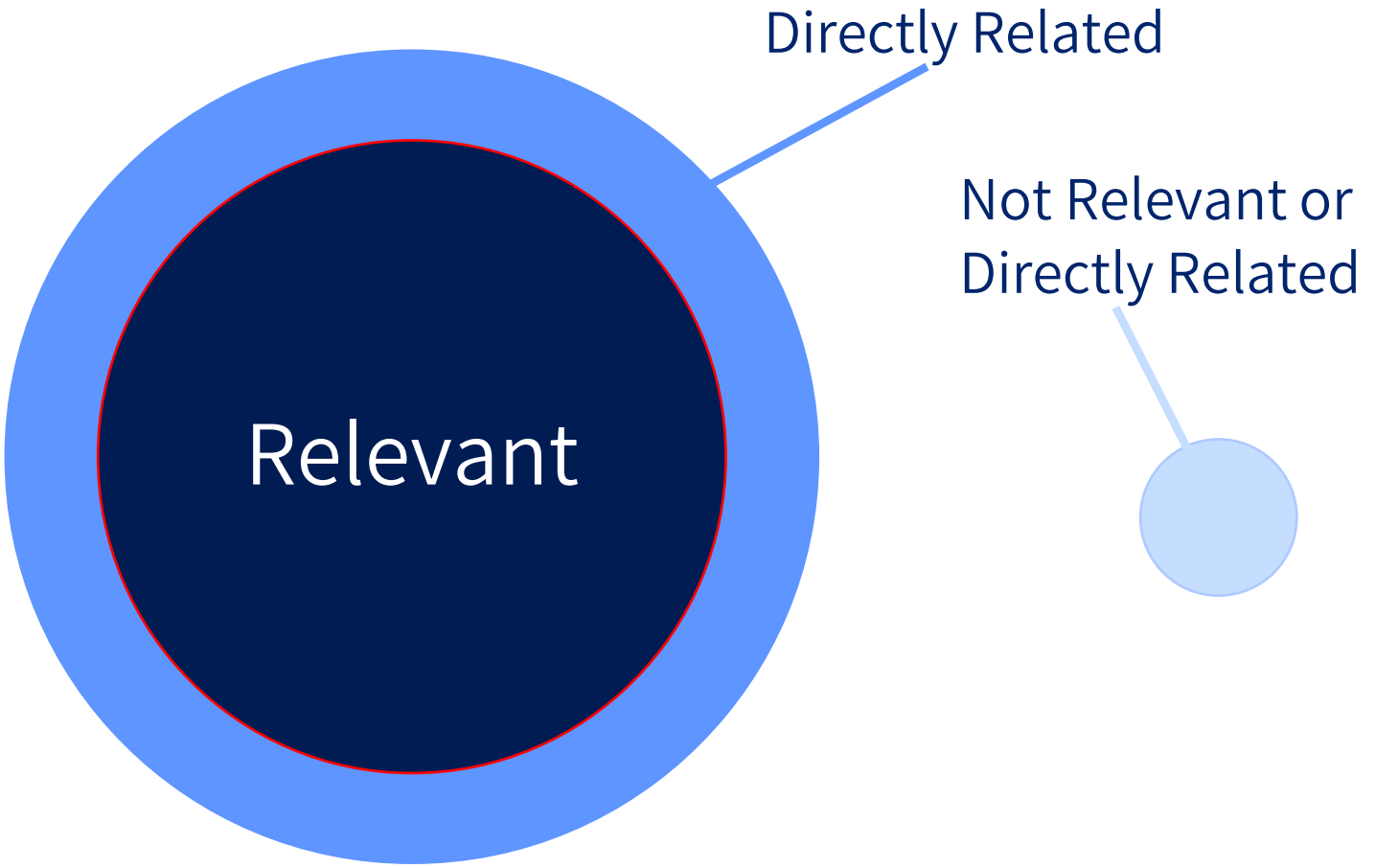
UNDERSTANDING EVIDENCE



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RELEVANT AND DIRECTLY RELATED EVIDENCE

- Evidence is generally considered relevant if it has value in proving or disproving a fact at issue
- While directly related evidence (DRE) is not defined by the regulations, it may be helpful to think of DRE as evidence connected to the complaint, but which is not inculpatory or exculpatory, and/or which is explicitly excluded by the regulations

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SEPARATING EVIDENCE

- Investigation Report = only relevant evidence
- Evidence File = all relevant evidence and DRE
- The report is the narrower document, and the evidence file is a broader file

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INVESTIGATION REPORT SECTIONS

- Complaint Information
- Introduction
- Relevant Background
- Jurisdiction & Scope of the Investigation
- Applicable Policies & Relevant Definitions
- Investigation Timeline
- Reported Incident(s) Timeline(s)
- Summary of Relevant Statements & Evidence

COMPLAINT INFORMATION

- Complaint date
- Complainant's name and recipient ID
- Initial notice date
- Initial notice received from
- Respondent name and recipient ID
- Date assigned to Investigator(s)
- Assigned Investigator(s)
- NOIA date
- Final investigation report date

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COMPLAINT INFORMATION EXAMPLE

[RECIPIENT] INVESTIGATION REPORT

CONFIDENTIAL

Complaint Date:	**[Date]**
Complainant:	**[Complainant's Full Name] ([RecipientID])**
Initial Notice Date: (if different)	**[Date]**
Initial Notice Received From: (if different)	**[Third Party's Full Name] ([RecipientID])**
Respondent:	**[Respondent's Full Name] ([RecipientID])**
Date Assigned:	**[Date]**
Investigator(s):	**[Investigator(s)' Full Name(s) and Titles]**
Investigation Report Date:	**[Date]**

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INTRODUCTION

- Summarize when and how the report/formal complaint was made and received
- Summarize the allegations, including applicable policy violation(s)
- Request for a formal investigation or TIX Coordinator's decision to sign a formal complaint
- Who investigated the complaint and in accordance with which law(s) and/or policies was the investigation conducted

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INTRODUCTION EXAMPLE

INTRODUCTION

On Tuesday, October 6, 2020 the Deputy Title IX Coordinator met with the Complainant and her father. The Complainant reported that on Friday, October 2, 2020 the Respondent forced the Complainant to perform oral sex on him in the boys' locker room. The Complainant requested to file a Formal Complaint and completed the complaint form during the meeting.

As a result of this allegation and additional evidence presented at the time of intake, the Deputy Title IX Coordinator asked the Title IX Investigator to conduct a through and impartial investigation using the provisions outlined in the District's Nondiscrimination and Sexual Misconduct Policy and in accordance with Title IX, following guidelines from the U.S. Department of Education's Office for Civil Rights.

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RELEVANT BACKGROUND

- Include additional background information as necessary to understand relationship history, context, etc.
- Any concurrent external investigation(s), if applicable (e.g., law enforcement, child protective services, etc.)

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JURISDICTION

- Provide a statement of jurisdiction including:
  - Incident date, time, and location
  - Individuals involved
  - Relevant policies and procedures related to jurisdiction
    - Information and analysis for subject matter jurisdiction
    - School/District control of the context of the alleged misconduct
    - Indicate whether Title IX requires the school/district to investigate, or whether jurisdiction is discretionary and Title IX does not apply

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JURISDICTION EXAMPLE

According to available information, the Respondent is currently a full-time teacher at Brookside High School, and the Complainant is currently a sophomore student at the same school. Both parties maintained the same school affiliations at the time of the reported incident.

The reported incident occurred in the photography lab at Brookside High School in Mulkiteo, Washington, United States. If true, the reported incident would constitute sexual assault under District policy and Title IX.

The District controls the location of the reported incident. The Respondent is an employee, and the Complainant is participating in the District's educational program as a student; therefore, the District has jurisdiction over this complaint pursuant to District Policy 2.2.

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SCOPE OF THE INVESTIGATION

- **Scope:** the purpose of and parameters around the investigation
  - Allegations it will explore
  - Timeframe being considered
  - Who will be involved
  - Outcome
- The Title IX Coordinator or designee will determine the scope of the investigation
- Most investigations will originate from a formal complaint, but the content of the complaint is not the sole determiner of the scope of the investigation

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SCOPE OF THE INVESTIGATION (CONT.)

- List the parties and relevant witnesses, while providing basic context for who the witness is in relation to the school/district and the parties.
- Include when each individual was interviewed and by whom
  - If there were witnesses or parties who were contacted and were either nonresponsive or declined to participate, include that information as well

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SCOPE OF THE INVESTIGATION EXAMPLE

The Office of Institutional Equity, which oversees Title IX compliance, commenced an investigation to determine:

1. If the Respondent engaged in behavior which constitutes sexual assault under District policy in a school facility on October 2, 2020
2. If the Respondent engaged in behavior which constitutes sexual exploitation under District policy in a school facility on October 2, 2020

Investigator(s) Felicia Morris conducted an investigation in accordance with guidelines and requirements set forth by the U.S. Department of Education Office for Civil Rights for Title IX investigations and District policy. Her efforts were overseen by Melanie Wallace, Title IX Coordinator. Witnesses interviewed include current students.

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SCOPE OF THE INVESTIGATION EXAMPLE (CONT.)

This investigation was designed to collect all available information to allow a decision-maker to determine whether District policy was violated.

The following individuals were interviewed for this investigation:

- Complainant, current student
- Respondent, current student
- Witness 1, current student, Complainant's best friend
- Witness 2, current student, teammate of Respondent

CONSIDER:
Does including demographic information potentially bias the Decision-maker(s)?

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APPLICABLE POLICIES AND RELEVANT DEFINITIONS

- Include the full text of ALL applicable policy sections
  - Alleged violation(s)
  - Relevant definitions (e.g., consent)
  - Standard of Evidence
- This section should be consistent with the Notice of Investigation and Allegations (NOIA), including any amendments thereto

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INVESTIGATION TIMELINE

- The Decision-maker or TIXC will need to include "a description of the procedural steps taken from the receipt of the formal complaint through the determination" in the written outcome letter provided to the parties following a determination; this information is usually drawn from this section of the investigation report
  - Notifications to the parties
  - Interviews with parties and witnesses
  - Site visits
  - Methods used to gather other evidence
  - Meetings held
- Note any process delays, including rationale

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Source: 34 C.F.R. § 106.45(b)(7)(ii)

INVESTIGATION TIMELINE EXCERPT EXAMPLE

Date	Action
10/26/19	▪ Complainant notified [NAME] of allegations.
10/27/19	▪ No contact order put in place between parties.
11/01/19	▪ Meeting between Complainant and Title IX Coordinator ▪ Formal complaint submitted by Complainant ▪ Assigned to Investigators
11/03/19	▪ Law enforcement requests delay to allow for criminal evidence gathering
11/15/19	▪ Parties sent Notice of Investigation and Allegation ▪ Emailed interview requests to parties and witnesses
11/21/19	▪ Investigators interview Complainant
12/2/19	▪ Investigators interview Respondent
12/3/19	▪ Investigators interview W1, W2, and W3

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REPORTED INCIDENT(S) TIMELINE(S)

- Timelines are a visual representation or list that shows events in chronological order
- Investigators should develop one timeline for the reported incident(s) based on all information collected during interviews and submitted as evidence
- Reference evidence which substantiates with the timeline (e.g., timestamped text messages, receipts, call logs)
- Timelines are especially helpful in cases where incapacitation may be involved

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REPORTED INCIDENT(S) TIMELINE EXAMPLE

Date/Time	Event
9/18/19 ~ 9:50 pm	Complainant goes to [name] house (Address) before [event].
9/18/19 ~ 10:45 pm	Complainant and [names] walk to [location].
9/18/19 ~ 11:00 pm	Complainant and [names] others arrive at [location, plus brief description of activity].
9/18/19 ~ 11:30 pm	Complainant vomited [where].
9/18/19 ~ 12:15 am	Complainant starts [specific activity] with Respondent. They [engage in activity] for approximately [time frame]. [Add brief details re: drug/alcohol consumption, potential witnesses, etc.]
9/18/19 ~ 1:30 am	Parties agree to leave and go back to [location].

SUMMARY OF RELEVANT STATEMENTS & EVIDENCE

- The content of the investigation may dictate the most logical organization structure for this section
  - Chronological by interview
  - Chronological by incident timeline
  - Parties first, then witnesses
- Should not be a full cut and paste of entire interview transcripts/notes
- For evidence, note the relevant information that was obtained from each piece of evidence gathered

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CREDIBILITY ASSESSMENT

- Specific and detailed analysis of credibility of:
  - Each party
  - Each witness
  - Any other relevant evidence
- Point to specific details that you have considered that have aided in your assessments
- May or may not include conclusions about credibility, depending on school/district policy
  - ATIXA does not recommend making conclusions

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CREDIBILITY ASSESSMENT EXAMPLE 1

RESPONDENT

Respondent stated that Complainant initiated contact with Respondent and continued to pursue conversation of a non-academic nature after Respondent asked Complainant to only communicate with Respondent regarding academic topics. Respondent provided excerpts from the text message and social media conversations but declined to provide complete copies for the investigation.

Respondent denies engaging in any physical contact with the Complainant in the photography lab. The Complainant reported that the Respondent fondled her breasts by standing behind her and reaching around her and placing Respondent's hands on her breasts. No additional evidence was available to corroborate or refute this allegation.

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CREDIBILITY ASSESSMENT EXAMPLE 2

- Mark's testimony about X contrasts with Mariana's testimony about X, and the accounts of Witness 1 and Witness 7 aligned with Mariana's testimony, not Mark's, during the investigation.
- The decision-maker may benefit from looking carefully at Mark's assertions about having received consent and explore this more deeply with the parties and witnesses during the hearing.

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CREDIBILITY ASSESSMENT EXAMPLE 3

Complainant stated that the Respondent began communicating with the Complainant via text message and social media in September 2020. After a few weeks, Complainant informed Witness 1 about the communication, including sharing screenshots of conversations between the Complainant and Respondent with Witness 1. Witness 1's statements are consistent with Complainant's, and screenshots provided by Complainant are consistent with both individuals' statements.

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DISCUSSION & SYNTHESIS

- Discuss and synthesize the relevant information
  - Consider the elements of each policy at issue
  - Refer back to relevant evidence cited
  - Refer to the credibility assessment(s)
- Summarize all areas of contested and uncontested facts/evidence
- School/District procedure may allow the Investigator(s) to conduct analysis and make recommended findings or may limit the Investigator(s) to synthesis
- ATIXA does not recommend making recommendations for findings or final determination

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DISCUSSION AND SYNTHESIS EXAMPLE

The parties agree on the order of events on the date of the reported incident including sitting next to each other on the bus, the Respondent asking the Complainant for a blanket, the Respondent placing the blanket over the top of both parties, and the Respondent touching the Complainant's breasts under her shirt without consent.

The parties disagree about the following:

- Whether the Respondent digitally penetrated the Complainant
- Whether the Respondent forced the Complainant to touch his genitals

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DISCUSSION AND SYNTHESIS EXAMPLE (CONT.)

During her interview, the Complainant reported that she was wearing a skirt at the time of the alleged incidents and the Respondent moved her underwear to the side in order to digitally penetrate her vagina despite the Complainant pushing his hand away and attempting to cross her legs while sitting in the bus seat. The Respondent denies these allegations. Witness 2 recalls observing the Complainant attempting to turn away from the Respondent in the bus seat and do what appeared to be pulling her legs up closer to her chest.

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DISCUSSION AND SYNTHESIS EXAMPLE (CONT.)

The Complainant also reported that the Respondent grabbed her hand and placed it on his genitals without her consent. She stated that she pulled her hand away and said, “stop,” after the first time it happened, and the Respondent then grabbed her hand more firmly and placed her hand on his genitals again. The Respondent denies these allegations. No evidence was provided or available to corroborate or refute this allegation.

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RECOMMENDED FINDINGS

- This section is only applicable if permitted by school/district policy
- Did the conduct occur as alleged?
  - List recommended findings by the standard of evidence for each alleged policy violation
- Include a statement that the recommended findings are not binding on the Decision-maker(s)

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RECOMMENDED FINAL DETERMINATION

- This section is only applicable if permitted by school/district policy
- Did the conduct violate policy?
  - List recommended final determination by the standard of evidence for each alleged policy violation
- Include a statement that the recommended determination is not binding on the Decision-maker(s)

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CONCLUSION

- Guide for the Decision-maker(s) determination
- Akin to jury instructions

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CONCLUSION EXAMPLE PART 1

Complainant's allegations describe misconduct that implicates the District's prohibition of sexual harassment as well as several provisions of prohibited conduct outlined in the District's Student Conduct Code. Some provisions of the policies, like the prohibition of sexual harassment, require a threshold determination regarding the severity and pervasiveness of the alleged behavior in order to support a determination of a policy violation. Other provisions, such as the prohibition against providing alcohol to minors, may be determined by the decision-maker to be satisfied by a single occurrence.

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CONCLUSION EXAMPLE PART 2

Analysis of the allegations for the purpose of determining whether a preponderance of the evidence supports a determination that one or more of the District's policies were violated should proceed by first determining whether each allegation is supported by a preponderance of the evidence.

Allegations are presented separately and relevant evidence supporting and refuting each allegation is outlined within each respective section of the report. Because most, if not all, of the allegations are supported and refuted solely by the testimony of the parties and witnesses, the decision-maker should carefully evaluate the credibility of the information offered as well as the credibility of the individual providing the information.

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CONCLUSION EXAMPLE PART 3

This report is intended to provide an exhaustive summary of the relevant evidence related to the allegations made by the Complainant. It is not intended to draw any conclusions regarding the accuracy of the allegations or the credibility of the parties and witnesses. The investigators submit this report for consideration by a decision-maker appointed by the District and remain available to answer any questions regarding the investigation or information contained in this report.

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EVIDENCE FILE/APPENDICES

- Include all applicable evidence and documentation
  - Formal complaint
  - Verified full transcript or complete notes from each interview
  - Any written statements, photos, screenshots, etc.
  - Always include a copy of the full policies in place at the time of the incident(s) and investigation

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EVIDENCE FILE/APPENDICES EXAMPLE

A. Formal Complaint Submitted [Date]
B. Verified Transcript of Complainant's Interview on [Date]
C. Verified Transcript of Respondent's Interview on [Date]
D. Questions Submitted by Complainant
E. Questions Submitted by Respondent
F. Complainant's Response to Draft Investigation Report
G. Respondent's Response to Draft Investigation Report
H. Applicable School/District Policy (provided by link)

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SECTION/APPENDIX COVER PAGE EXAMPLE

APPENDIX A

Description:	Formal Complaint Submitted by Complainant
Date Received:	11/1/2019
Submitted By:	[Complainant's Full Name]
Received By:	TIXC's Full Name, Title
[Authenticated By]:	[Full Name, Title, and Means]

[Additional context or explanatory information]

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Questions?

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IDAHO K-12 TITLE IX PROFESSIONAL LEARNING COMMUNITY AY23-24 #1

TITLE IX: RESPONSIBILITIES AND RESOURCES

Annie Hightower, Hightower Consulting, LLC

December 2023

Annie Hightower: Hightowerconsultingllc@gmail.com



PLC format
Title IX basics
Resources for compliance
Updates on pending grievance process changes

Annie Hightower: Hightowerconsultingllc@gmail.com

PLC FORMAT

Annie Hightower: Hightowerconsultingllc@gmail.com

TITLE IX BASICS

Annie Hightower: Hightowerconsultingllc@gmail.com

What is Title IX?



Annie Hightower: Hightowerconsultingllc@gmail.com

"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."

Annie Hightower: Hightowerconsultingllc@gmail.com

CURRENT TITLE IX RULES ON SEXUAL HARASSMENT EFFECTIVE 8/14/20

- Have the force and effect of law
- Changes coming soon current administration

Annie Hightower: Hightowerconsultingllc@gmail.com



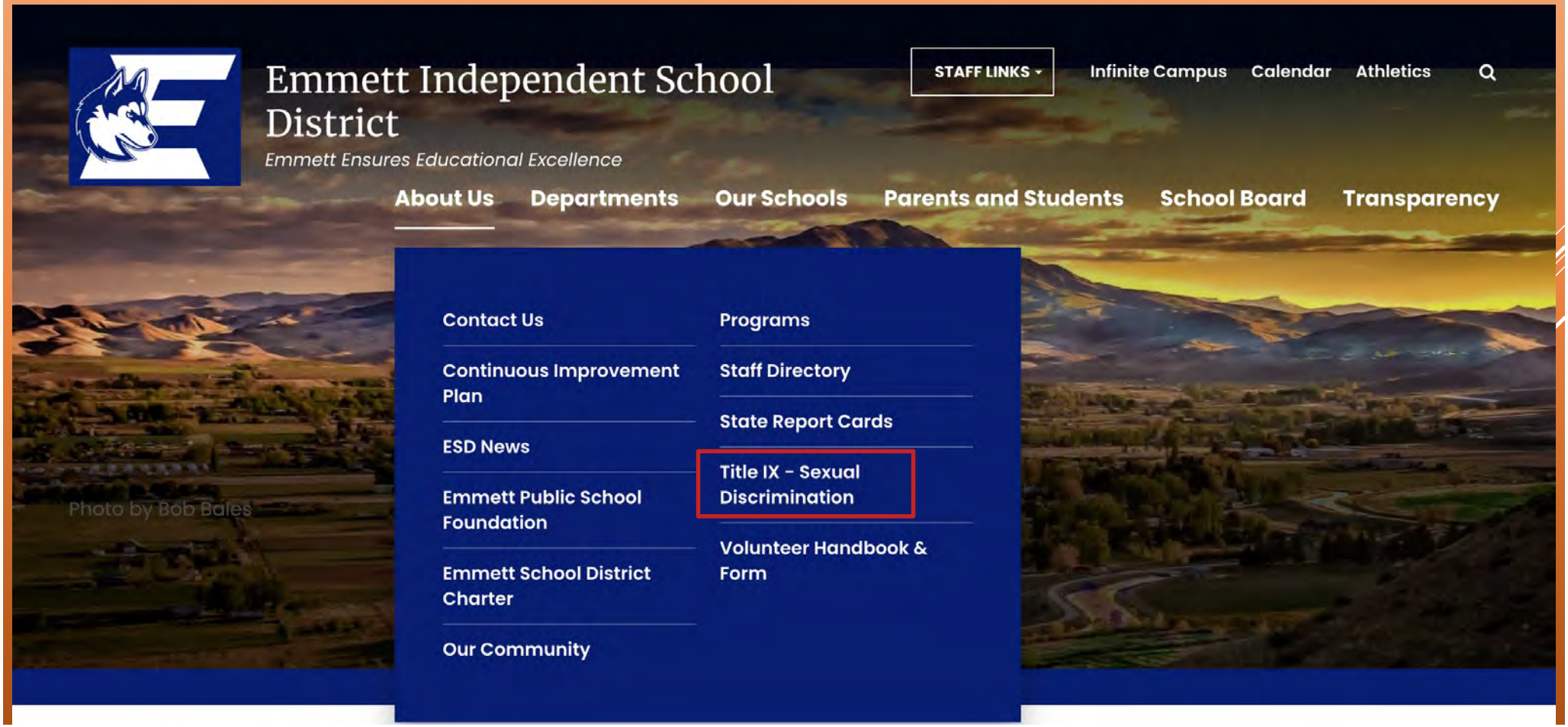
MAJOR REQUIREMENTS

1. Policy of non-discrimination and notice of policy
2. Title IX Coordinator – identify and inform
3. Title IX sexual harassment grievance procedures reflecting new rules – adopt and publish
4. Title IX team – designate and train (publication requirement)
5. All K12 employees – mandatory reporters

Annie Hightower: Hightowerconsultingllc@gmail.com



EXAMPLE: TIX INFO ON WEBSITE



TIX WEBSITE

- How does TIX apply/what is it?
- TIX Coordinator – Name, phone, email, *physical address*
- Policy and grievance process
- Trainings completed with links to training materials
- Info on how to file a complaint

Annie Hightower: Hightowerconsultingllc@gmail.com

RESOURCES

Annie Hightower: Hightowerconsultingllc@gmail.com

idsba.org/member-services/policy/

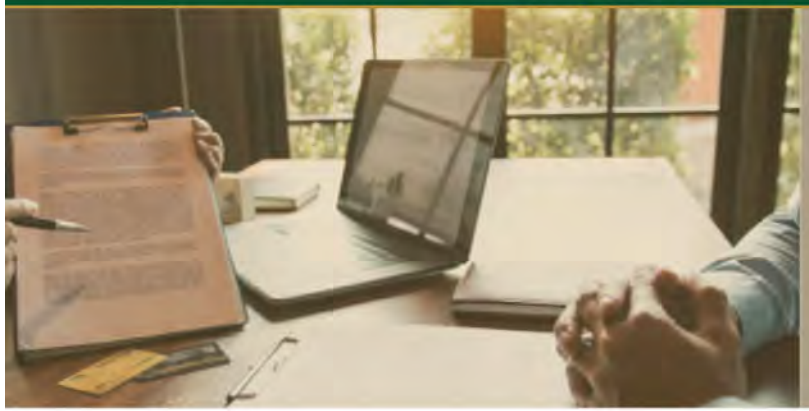
sunshine_laws.pdf MCLE Application... North Junior High...

Update

IDAHO SBA School Boards Association

Policy Services Member Login

ABOUT BOARD DEVELOPMENT ADVOCACY SERVICES RESOURCES EVENTS MEMBER HUB search



POLICY



The Idaho School Boards Association advocates for Idaho students and public education with leadership and service for local school boards.

Championing Education Since 1942

RESOURCE: TITLE IX UNIVERSITY



10 lessons from 4-15 minutes each

Annie Hightower: Hightowerconsultingllc@gmail.com

RESOURCE: TITLE IX UNIVERSITY

- Low-cost basic training
  - Title IX Basics for K-12
  - Title IX Coordinator Certification Course
  - Title IX Investigator and Decision Maker Course
  - Title IX Informal Resolutions
  - Title IX Appellate Decision-Makers
  - Title IX Athletics

Annie Hightower: Hightowerconsultingllc@gmail.com

RESOURCE: DOCUMENT TEMPLATES

- ICS Title IX Survival Kit and report triage tool
- Discounted rate on ICS virtual courses
  - https://icslawyer.com/ics-events/k-12/

Annie Hightower: Hightowerconsultingllc@gmail.com

RESOURCE: OTHER RESOURCES

- Professional Learning Communities
- On demand process compliance assistance

Annie Hightower: Hightowerconsultingllc@gmail.com

PENDING UPDATES TO GRIEVANCE PROCESS

Annie Hightower: Hightowerconsultingllc@gmail.com

GRIEVANCE PROCESS CHANGES

- Expected publication date – March 2024
  - Effective date currently unknown
  - Definition changes (coverage and SPOO)
  - Application to all complaints
  - Jurisdictional change
  - Exclusion of confidential employees from reporting requirements
  - Training
  - Information resolution

Annie Hightower: Hightowerconsultingllc@gmail.com

QUESTIONS?

hightowerconsultingllc@gmail.com

(208) 389-8050

IDAHO K-12 TITLE IX PROFESSIONAL LEARNING COMMUNITY #5

TITLE IX: COMPLIANT GRIEVANCE PROCESS PT 4

Annie Hightower, Hightower Consulting, LLC

January 2022

Annie Hightower: Hightowerconsultingllc@gmail.com

NEXT MEETINGS

- February, April, May
  - 4th Tuesday at 9 am MT/8 am PT
  - 4th Thursday at 12 pm MT/11 am PT
- March
  - 3rd Thursday (March 17th) at 12 pm MT/11 am PT
  - 4th Tuesday at 9 am MT/8 am PT

- What topics would you like covered?

Annie Hightower: Hightowerconsultingllc@gmail.com

UPDATES AND FOLLOW UP INFORMATION

- Updates?
  - ISBA insurance and Title IX
  - April NPRM

- Follow up on question about anonymous witnesses
  - Let witnesses know what will happen with their information up front

Annie Hightower: Hightowerconsultingllc@gmail.com

WEBSITE REQUIREMENTS

School websites must include the following:

- Name/Title of Title IX Coordinator, office address, phone number and email address
  - Consider including other ways to contact the coordinator, if any
- School's non-discrimination policy and Title IX compliant grievance procedures
- All materials used to train Title IX personnel

REVIEW

Annie Hightower: Hightowerconsultingllc@gmail.com

LAST MONTH WE REVIEWED -

- Investigations – Baseline Considerations
- Hearings alternatives for K-12 and relevancy of questions about prior sexual history
- Determinations regarding responsibility

Annie Hightower: Hightowerconsultingllc@gmail.com

CONTINUANCE – AFTER RECEIVING FORMAL COMPLAINT – 34 CFR 106.45 REQUIRED GRIEVANCE PROCESSES

Annie Hightower: Hightowerconsultingllc@gmail.com

APPEALS

- MUST OFFER BOTH PARTIES an appeal from:
  - A determination of responsibility
  - The dismissal of a formal complaint or any allegations therein
- Required bases of appeal:
  - Procedural irregularity
  - New evidence
  - Conflict of interest or bias

Annie Hightower: Hightowerconsultingllc@gmail.com

APPEALS

- For all appeals, you must:
  - Notify the other party in writing an appeal was filed
  - Have a trained, non-biased, and conflict-free appeal decision-maker available
  - Provide parties an equal opportunity to submit a response
  - Issue a written decision
  - Provide the decision to both parties at the same time

Annie Hightower: Hightowerconsultingllc@gmail.com

INFORMAL RESOLUTION

- May be offered after formal complaint and prior to any decision regarding responsibility
- Must provide to parties a written notice disclosing:
  - Allegations
  - Process requirements
  - When a party is precluded from resuming a formal complaint – right to withdraw from informal process
  - Consequences resulting from participating in process
- Must have voluntary written consent of parties

Annie Hightower: Hightowerconsultingllc@gmail.com

INFORMAL RESOLUTION

- Informal resolution cannot be:
  - Required
  - Offered unless a formal complaint is filed
  - Used to resolve allegations that an employee sexually harassed a student

Annie Hightower: Hightowerconsultingllc@gmail.com

RECORD KEEPING

- Must maintain for 7 years (also look at district/school policies and state law)
  - Each investigation file
    - Anything that needs to be in writing and important documentation should be saved!
  - Any appeals and results
  - All materials used to train TIX team + make available on website

Annie Hightower: Hightowerconsultingllc@gmail.com

RECORD KEEPING

- Any other relevant records, such as what a school did even if no formal complaint was filed, or other actions taking during after formal complaint filed
- Document
  - Reasoning for action
  - How action is not deliberately indifferent
  - Measures taken to restore or preserve access to education
  - If no supportive measures provided – why?

Annie Hightower: Hightowerconsultingllc@gmail.com

WHAT QUESTIONS OR CONCERNS HAVE ARISEN FOR YOU THIS MONTH?

hightowerconsultingllc@gmail.com

(208) 389-8050

IDAHO K-12 TITLE IX PROFESSIONAL LEARNING COMMUNITY #6

COMMON QUESTIONS

Annie Hightower, Hightower Consulting, LLC

February 2022

Annie Hightower: Hightowerconsultingllc@gmail.com

NEXT MEETINGS

- March
  - 3rd Thursday (March 17th) at 12 pm MT/11 am PT
  - 4th Tuesday at 9 am MT/8 am PT
- April and May
  - 4th Tuesday at 9 am MT/8 am PT
  - 4th Thursday at 12 pm MT/11 am PT

- What topics would you like covered?

Annie Hightower: Hightowerconsultingllc@gmail.com

UPDATES

- Updates
  - IREA Update
  - Others?

Annie Hightower: Hightowerconsultingllc@gmail.com

PROGRAM OR ACTIVITY

Annie Hightower: Hightowerconsultingllc@gmail.com

WHEN DOES TITLE IX APPLY TO A COMPLAINT?

A school with actual knowledge of sexual harassment in an education program or activity of the recipient ...

- If met:
  - And there is a formal complaint, must process per required grievance procedures before any disciplinary measures (except admin leave or emergency removal).
  - And there is no formal complaint, there can be no disciplinary measures (Title IX Coordinator may need to sign a complaint under some circumstances).
- If not met, may apply alternative employee/student processes.

Annie Hightower: Hightowerconsultingllc@gmail.com

PROGRAM OR ACTIVITY

- When you have actual knowledge of sexual harassment in an education program or activity – must respond in a way that is not deliberately indifferent
- Education program or activity – Includes ALL operations of a local educational agency (all incidents that occur on LEA property)
  - Also includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs

Annie Hightower: Hightowerconsultingllc@gmail.com

DISCUSSION QUESTIONS/TOPICS

Annie Hightower: Hightowerconsultingllc@gmail.com

WHAT IS SPOO?

- Sexual Harassment – conduct on the basis of sex that is:
  - Quid pro quo by an employee (conditioning of a benefit, help, etc. on participation in sexual contact); OR
  - Unwelcome conduct that is so severe, pervasive and objectively offensive that it effectively denies access; OR
  - Sexual assault – forcible or nonforcible sex offense; OR
  - Dating violence, domestic violence, or stalking.

Annie Hightower: Hightowerconsultingllc@gmail.com

SPOO ATIXA CASE STUDIES

Review of three case studies from ATIXA TIXKit. To view case studies, log onto the Idaho Department of Education ATIXA account. Look under the subsection for “Decision Maker/Hearing” and click on the ”SPOO v Not SPOO Case Studies” (last document).

Annie Hightower: Hightowerconsultingllc@gmail.com

SPOO AND YOU

What have you seen?

What situations do you have questions about?

Annie Hightower: Hightowerconsultingllc@gmail.com

NEXT MONTH

- When should a Title IX Coordinator file a complaint?
  - What should you consider?
- How to identify dating violence in middle school?
  - How are students in your middle school talking about dating?
- Addressing non-forcible sexual violence.

Annie Hightower: Hightowerconsultingllc@gmail.com

WHAT QUESTIONS OR CONCERNS HAVE ARISEN FOR YOU THIS MONTH?

hightowerconsultingllc@gmail.com

(208) 389-8050

IDAHO K-12 TITLE IX PROFESSIONAL LEARNING COMMUNITY #7

COMMON QUESTIONS PART 2

Annie Hightower, Hightower Consulting, LLC

March 2022

Annie Hightower: Hightowerconsultingllc@gmail.com

NEXT MEETINGS

- April and May
  - 4th Tuesday at 9 am MT/8 am PT
  - 4th Thursday at 12 pm MT/11 am PT

- What topics would you like covered?

Annie Hightower: Hightowerconsultingllc@gmail.com

UPDATES

Watching – reauthorization of VAWA – establishes task force on sexual violence in education

Idaho Education News Title IX Series – published this week

Is there any thing that's come up for you this month that you want to talk about?

Annie Hightower: Hightowerconsultingllc@gmail.com

WHEN SHOULD A TITLE IX COORDINATOR SIGN A FORMAL COMPLAINT?

Annie Hightower: Hightowerconsultingllc@gmail.com

WHAT IF COMPLAINANT DOESN'T FILE A COMPLAINT?

- When should a Title IX Coordinator file a complaint?
- Consider a variety of factors:
  - What would you consider?
- Document analysis and ultimate decision!

Annie Hightower: Hightowerconsultingllc@gmail.com

DATING VIOLENCE – HOW DO YOU IDENTIFY IT?

Annie Hightower: Hightowerconsultingllc@gmail.com

HOW TO IDENTIFY DATING VIOLENCE IN MIDDLE SCHOOL

- Dating violence – violence committed by a person:
  - Who is or has been in a social relationship of a romantic or intimate nature with the victim, and
  - Where the existence of such a relationships is determined on the length of the relationship, type of relationship, and the frequency of the interactions

- How are you identifying if a "dating" relationship exists?

Annie Hightower: Hightowerconsultingllc@gmail.com

NEXT MONTH:
SEXUAL ASSAULT DEFINITIONS – COMMON CHALLENGES

Annie Hightower: Hightowerconsultingllc@gmail.com

QUESTIONS?

hightowerconsultingllc@gmail.com

(208) 389-8050

IDAHO K-12 TITLE IX PROFESSIONAL LEARNING COMMUNITY #1

TITLE IX: RESPONSIBILITIES AND RESOURCES

Annie Hightower, Hightower Consulting, LLC

October 11, 2022

Annie Hightower: Hightowerconsultingllc@gmail.com

What is Title IX?



Annie Hightower: Hightowerconsultingllc@gmail.com

"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."

Annie Hightower: Hightowerconsultingllc@gmail.com

NEW TITLE IX RULES ON SEXUAL HARASSMENT EFFECTIVE 8/14/20

- Have the force and effect of law
- Changes coming …
  - BUT still current regs!

Annie Hightower: Hightowerconsultingllc@gmail.com

MAJOR REQUIREMENTS

1. Policy of non-discrimination (and notice)
2. Title IX Coordinator – identify and inform
3. Title IX sexual harassment grievance procedures reflecting current regulations – adopt and publish
4. Title IX team – designate and train (publish training)
5. All K12 employees – mandatory reporters
6. Website!

Annie Hightower: Hightowerconsultingllc@gmail.com



RESOURCE: GRIEVANCE POLICY/PROCEDURE



EXAMPLE: TIXC CONTACT INFO ON WEBSITE

HOME | OUR DISTRICT | OUR SCHOOLS | DEPARTMENTS | BOND 2021 | PARENTS/STUDENTS | SCHOOL BOARD | STAFF RESOURCES | FEDERAL PROGRAMS

CLASSLINK | TITLE IX - SEXUAL DISCRIMINATION | IDAHO REPORT CARD | CALENDAR

EMMETT INDEPENDENT SCHOOL DISTRICT

Emmett Ensures Educational Excellence

Translate Language | *User Options*

District Home | Our Schools

Huskie Help Desk | Infinite Campus – Parent/Student | Infinite Campus – Staff | School Calendars | School Menus/Food Service | Simbli Board Minutes/Policies

Have you seen our latest newsletter?



Annie Hightower: Hightowerconsultingllc@gmail.com

EXAMPLE: TIXC CONTACT INFO ON WEBSITE

What is Title IX?

Title IX is a federal civil rights law passed as part of the Education Amendments of 1972. This law protects people from discrimination based on sex, including sexual harrassment and sexual assualt, in education programs or activities that receive Federal financial assistance. Title IX states that:

> *"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."*

What is Sexual Harassment?

- Quid pro quo by an employee;
- Unwelcome conduct that is so severe, pervasive and objectively offensive that it effectively denies a person equal access to a school's education program or activity; and/or
- Sexual assault as defined by the Clery Act, and dating violence, domestic violence and stalking as defined by the Violence Against Women's Act.

Read Emmett School District's Title IX Policy

Annie Hightower: Hightowerconsultingllc@gmail.com

Title IX Sexual Harassment Grievance Process

Isa DeArmas, Title IX Coordinator



208-365-6301

idearmas@isd221.net

To File A Complaint

Contact the Title IX Coordinator

400 S. Pine Street Suite 1
Emmett Idaho, 83617
208-365-6301

EXAMPLE: TIXC CONTACT INFO IN HANDBOOK

District Information

Title IX Officer

Pursuant to Idaho Code 92-318, notice is hereby given that the Title IX Officer for the Coeur d'Alene School District is: Kelly Ostrum, Human Resource Director, 1400 N Northwood Center Court, CdA, ID 83814. 208-664-8241

Inquiries, complaints and information regarding Title IX should be directed to the Title IX Officer at the address above.

Annie Hightower: Hightowerconsultingllc@gmail.com

RESOURCE: TITLE IX UNIVERSITY



Annie Hightower: Hightowerconsultingllc@gmail.com

RESOURCE: TITLE IX UNIVERSITY

- Training Includes:
  - Title IX Basics for K-12 (optional)
  - Title IX Investigator and Decision Maker Certification Course
  - Title IX Coordinator Certification Course
  - Title IX Decision Maker Appeals
  - Title IX Informal Resolution
  - Title IX Athletics

  - https://pdlearn.nnu.edu/modules/shop/index.html?action=section&OfferingID=1966155

Annie Hightower: Hightowerconsultingllc@gmail.com

RESOURCE: EMPLOYEE NOTICE TEMPLATE (TIXKIT)

Official with Authority (OWA) Initial Notice Template
K-12 Version

Title IX of the Education Amendments of 1972 is a federal sex/gender equity law which governs how educational institutions receiving federal funds must respond to allegations of sex and gender-based discrimination, harassment, and violence and/or retaliation.

The U.S. Department of Education's Office for Civil Rights issued new Title IX compliance regulations on May 8, 2020 which specifically dictate how schools must respond to incidents of sexual harassment, sexual assault, dating and domestic violence, and stalking.

In accordance with the new regulations, [School/District] has revised its [Policy] policy, available at: [weblink].

The regulations state: "[N]otice to the recipient's Title IX Coordinator or to 'any official of the recipient who has authority to institute corrective measures on behalf of the recipient' (referred to herein as "officials with authority") conveys actual knowledge to the recipient and triggers the recipient's response obligations."

Official with Authority (OWA) means [a/an] [School/District] employee explicitly vested with the responsibility to implement corrective measures for sex or gender-based discrimination, harassment, or violence and/or retaliatory conduct.

Notice means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of sex or gender-based discrimination, harassment, violence, and/or retaliatory conduct.

[School/District] has determined that you are an Official with Authority. This means if you receive notice of any of the following behaviors, you are required to promptly report [(within two (2) business days)] all known information regarding the alleged misconduct to the Title IX Coordinator, and may be needed to help coordinate the school's response:

[Insert Applicable Policy Definitions or a list of conduct that must be reported]

Annie Hightower: Hightowerconsultingllc@gmail.com

RESOURCE: ATIXA

TIXKIT for K-12 and 20 Minutes to Trained Videos

https://www.atixa.org/resources/atixa-title-ix-toolkit-tixkit/

Annie Hightower: Hightowerconsultingllc@gmail.com

RESOURCE: OTHER RESOURCES

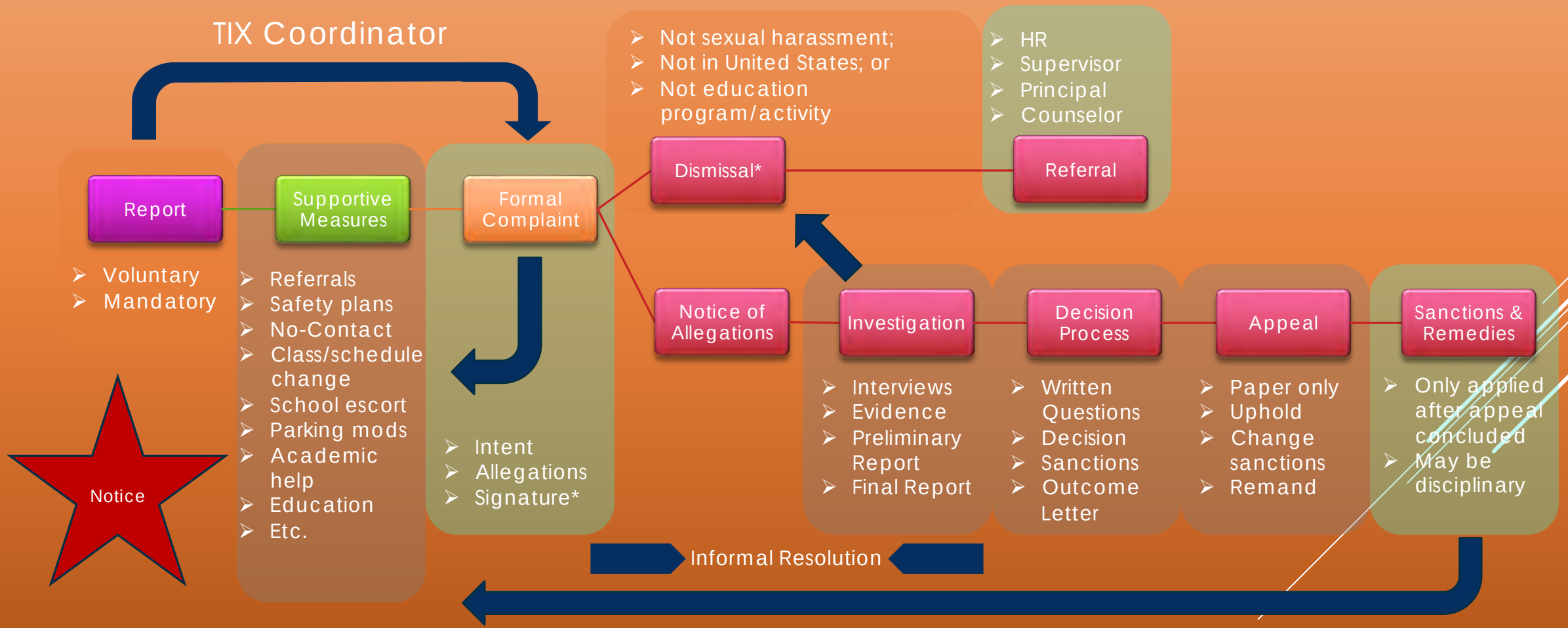
- Professional Learning Communities
  - ATIXA will join us for 6!
- One on one individualized technical assistance

Annie Hightower: Hightowerconsultingllc@gmail.com

IMPORTANCE OF GRIEVANCE PROCEDURES

Annie Hightower: Hightowerconsultingllc@gmail.com

TITLE IX FORMAL GRIEVANCE PROCESS – MUST PROVIDE FOR "PROMOTE AND EQUITABLE RESOLUTIONS OF STUDENT AND EMPLOYEE COMPLAINTS"



Annie Hightower - Hightowerconsultingllc@gmail.com

Slide courtesy of Danielle Charters– modified for K-12

NEXT MEETINGS

- Second Tuesday of every month at 9 am MT/8 am PT
  - Zoom link will always be the same

Annie Hightower: Hightowerconsultingllc@gmail.com

QUESTIONS?

hightowerconsultingllc@gmail.com

(208) 389-8050

IDAHO K-12 TITLE IX PROFESSIONAL LEARNING COMMUNITY #3

TITLE IX: COMPLIANT GRIEVANCE PROCESS PT 2

Annie Hightower, Hightower Consulting, LLC

November 2021

Annie Hightower: Hightowerconsultingllc@gmail.com

NEXT MEETINGS

- Tuesday, December 7th, at 9 am MT/8 am PT
- January – May
  - 4th Tuesday at 9 am MT/8 am PT
  - 4th Thursday at 12 pm MT/11 am PT

Annie Hightower: Hightowerconsultingllc@gmail.com

REVIEW

Annie Hightower: Hightowerconsultingllc@gmail.com

WHEN DO TITLE XI SH GRIEVANCE PROCESSES APPLY? – 34 CFR 106.44

- When you have actual knowledge of sexual harassment in an education program or activity – must respond in a way that is not deliberately indifferent
- You must:
  1. Treat complainants and respondents equitably
  2. Follow a 106.45 compliant grievance process BEFORE implementing disciplinary measures or other actions that are not supportive measures
- What if incident doesn't meet one or all parts of definition but still violates school policy?

Annie Hightower: Hightowerconsultingllc@gmail.com

WHEN DEFINITION IS MET, CAN YOU PROCEED? – 34 CFR 106.30

- Formal Complaint – A document filed by the complainant or signed by the TIXC alleging sexual harassment against a respondent requesting the school investigate
  - Complainant must be participating in or attempting to participate in an educational program or activity

Annie Hightower: Hightowerconsultingllc@gmail.com

RESPONSE WITH OR WITHOUT FORMAL COMPLAINT – 34 CFR 106.44

- Title IX Coordinator should promptly contact the complainant to:
  - discuss the availability of supportive measures,
  - consider their wishes, and
  - explain the process for filing a formal complaint
- Document, document, document!

Annie Hightower: Hightowerconsultingllc@gmail.com

CONTINUANCE – AFTER RECEIVING FORMAL COMPLAINT – 34 CFR 106.45 PT 2 ET SEQ.

Annie Hightower: Hightowerconsultingllc@gmail.com

NOTICE OF ALLEGATIONS

- After receipt of formal complaint
- Must provide WRITTEN notice to parties who are known
  - Grievance process
  - Statement of no presumption of guilt and determination made at end of process
  - Info re false statements
  - Right to an advisor of choice

NOTICE OF ALLEGATIONS

- Right to review and inspect evidence
- Notice of allegations of sexual harassment potentially constituting sexual harassment under 106.30
  1. Sufficient details known at time
  2. Sufficient time to prepare a response

Annie Hightower: Hightowerconsultingllc@gmail.com

DISMISSAL OF A FORMAL COMPLAINT

- Must investigate allegations in formal complaint
- Mandatory Dismissal
  - MUST dismiss if definitional and jurisdictional components not met
    - Dismissed as to conduct for the purposes of TIX
    - Does not preclude charges under other provisions of your student policies

Annie Hightower: Hightowerconsultingllc@gmail.com

DISMISSAL OF A FORMAL COMPLAINT

- Permissive Dismissal
  - MAY dismiss all or part of complaint at any time during the investigation, if:
    - Complainant requests withdrawal
    - Respondent is no longer enrolled with the recipient
    - Circumstances prevent recipient from gathering evidence sufficient to reach a determination
  - Permissive dismissal does not necessarily allow for alternative methods of adjudication

Annie Hightower: Hightowerconsultingllc@gmail.com

NOTICE OF DISMISSAL

- If matter is dismissed must provide notice
  - Written
  - Include reason(s) for dismissal
  - Must provide to all parties at the same time

Annie Hightower: Hightowerconsultingllc@gmail.com

CONSOLIDATION OF COMPLAINTS

- Formal complaints against more than one respondent OR by multiple complainants against one or more respondents
- Can only consolidate (process through same investigation/decision making process) if:
  - Allegations of SH arise out of same facts or circumstances

Annie Hightower: Hightowerconsultingllc@gmail.com

NEXT MONTH – GRIEVANCE PROCEDURES PT. 3

- Investigation (continued if needed)
- Opportunity to submit questions or live hearing
- Determination regarding responsibility
- Appeals
- Informal resolution
- Record keeping

Annie Hightower: Hightowerconsultingllc@gmail.com

WHAT QUESTIONS OR CONCERNS HAVE ARISEN FOR YOU THIS MONTH?

hightowerconsultingllc@gmail.com

(208) 389-8050

IDAHO K-12 TITLE IX PROFESSIONAL LEARNING COMMUNITY #4

TITLE IX: COMPLIANT GRIEVANCE PROCESS PT 3

Annie Hightower, Hightower Consulting, LLC

December 2021

Annie Hightower: Hightowerconsultingllc@gmail.com

NEXT MEETINGS

- January – May
  - 4th Tuesday at 9 am MT/8 am PT
  - 4th Thursday at 12 pm MT/11 am PT
- What topics would you like covered?
- Investigator training offerings

Annie Hightower: Hightowerconsultingllc@gmail.com

REVIEW

Annie Hightower: Hightowerconsultingllc@gmail.com

LAST MONTH WE REVIEWED -

- Reviewed definitions that brings something into the scope of Title IX sexual harassment regulations
- Notice of allegations
- Mandatory and permissible dismissal of complaints
- Notice of dismissal
- Consolidation of Complaints

Annie Hightower: Hightowerconsultingllc@gmail.com

CONTINUANCE – AFTER RECEIVING FORMAL COMPLAINT – 34 CFR 106.45 REQUIRED GRIEVANCE PROCESSES

Annie Hightower: Hightowerconsultingllc@gmail.com

INVESTIGATION

- Baseline considerations
  - Parties are not responsible for proving the claim or defending their innocence
  - Must provide equal opportunity to present witnesses and evidence
  - Cannot restrict either party from discussing the allegations or from gathering evidence

Annie Hightower: Hightowerconsultingllc@gmail.com

INVESTIGATION

- Baseline considerations
  - Provide same opportunities to have people present
  - Provide WRITTEN notice of date, time, location, involved people, and purpose for all hearings, interviews, and other meetings if expected to participate
  - Provide equal opportunity to inspect and review evidence directly related to allegations in complaint
    - Must have at least 10 days to review and respond
    - Must consider responses prior to finalization of report

INVESTIGATION

- Baseline considerations
  - Create a final investigation report
    - Fairly summarize all RELEVANT evidence
    - Send to the party and advisor at least 10 days before determination (may be longer if no hearing)
    - Parties can respond in writing again – which becomes a part of your file

HEARINGS

- K-12 NOT REQUIRED TO HAVE HEARINGS – "grievance processes may, but need not, provide for a hearing."
  - If no hearing, the decision-maker must allow each party to submit written (relevant) questions that they want asked of another party or witness
  - If decision-maker believes questions are relevant, they must ask them and provide responses to the requesting party
  - Must allow for limited follow up questions

Annie Hightower: Hightowerconsultingllc@gmail.com

HEARINGS

- QUESTIONS ABOUT COMPLAINANT'S PRIOR SEXUAL HISTORY GENERALLY NOT RELEVANT
- Only relevant if:
  - Used to prove someone other than respondent violated policy, or
  - Specific prior incidents between parties to demonstrate consent was present

DETERMINATIONS REGARDING RESPONSIBILITY

- Made by decision-maker
  - Cannot be Title IX Coordinator or Investigator
- Decision-maker must issue written determination
  - Must be based on the standard of evidence you have opted to use
    - Preponderance of evidence OR
    - Clear and convincing

Annie Hightower: Hightowerconsultingllc@gmail.com

WRITTEN DETERMINATION OF OUTCOME

- A written determination must include
  - Identification of the allegation
  - Procedural summary
  - Findings of fact supporting the determination
  - Conclusions regarding application of policy to the facts
  - Rational for findings and any disciplinary actions
  - Information on how to appeal

Annie Hightower: Hightowerconsultingllc@gmail.com

WRITTEN DETERMINATION OF OUTCOME

- Must be provided to the parties at the same time
- Becomes final upon appeal decision OR if no appeal is filed, when possibility to appeal expires

- The Title IX Coordinator is responsible for ensuring effective implementation of any remedies

Annie Hightower: Hightowerconsultingllc@gmail.com

NEXT MONTH – GRIEVANCE PROCEDURES PT. 4

- Appeals
- Informal resolution
- Record keeping

Annie Hightower: Hightowerconsultingllc@gmail.com

WHAT QUESTIONS OR CONCERNS HAVE ARISEN FOR YOU THIS MONTH?

hightowerconsultingllc@gmail.com

(208) 389-8050



Association of Title IX Administrators

Idaho State Department of Education

Post-Investigation Complications

April 11, 2023

Presented by: Alisha Carter Harris, M.S., Senior Consultant

TNG 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. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law, 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, and 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.

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POST-INVESTIGATION ISSUES

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FAILURE TO FOLLOW POLICY

Don't

- Fail to read the implicated policy(ies).
- Fail to understand the procedure's requirements.
- Materially deviate from the institution's written procedures.
- Use the incorrect policy/procedure for the investigation.

Do

- Read the policy and procedures prior to commencing an investigation.
- Understand what is required under the procedures.
- Use the policy in place at the time of the incident and the procedures in place at the time the complaint was filed.

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FAILURE TO DOCUMENT INVESTIGATION

Don't

- Fail to maintain adequate records.
- Fail to document investigative activities such as phone calls.
- Fail to provide the comprehensive case file to the TIXC.
- Fail to create an investigation timeline.
- Fail to document the source of the evidence obtained.

Do

- Maintain a communication log of all contacts.
- Document all investigation activities.
- Understand the requirements of the institution's record retention policy.
- Get interviewee verification of transcripts/notes.
- Maintain complete and detailed notes.
- Think about who may view your file (*e.g.,* judges, public).

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FAILURE TO USE MODELS OF PROOF

Don't

- Fail to identify implicated policy provisions.
- Misunderstand the scope of the investigation.
- Misapply policy definitions (*i.e.,* apply a harassment definition where there was no allegation that the conduct was based on a protected characteristic).

Do

- Understand the scope of the investigation.
- Break the prohibited conduct definition into specific key elements.
- Gather relevant evidence that addresses each key policy definition element.
- Ensure that the scope and prohibited conduct definitions are accurate as the investigation unfolds.

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FAILURE TO ADDRESS NEW EVIDENCE

Don't

- Tell a party that they cannot submit new evidence after the fact-finding portion of the investigation concludes.
- Fail to provide the other party(ies) with the opportunity to review/comment on new evidence.
- Fail to update the draft report/evidence file.
- Fail to review new evidence for relevancy.

Do

- Document the new evidence in the draft investigation report and allow the parties a second ten-day review period.
- Consider additional written responses a party may provide.
- Document the rationale for the additional review in the final investigation report.
- Explain the additional review to the parties/advisors.

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MISUNDERSTAND RELEVANT EVIDENCE

Don't

- Include evidence that discusses the Complainant's sexual predisposition or sexual history.
- Include evidence that does not answer the question(s) the investigation seeks to answer.
- Forget to redact irrelevant evidence from the evidence files shared with the parties.

Do

- Review each piece of evidence and consider whether it proves or disproves an issue in the complaint.
- Include evidence when it is regarding a party or witness's credibility.
- Include a separate and organized directly related evidence file.

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THOROUGH AND RELIABLE INVESTIGATIONS

Don't

- Fail to gather all relevant evidence available.
- Fail to interview witnesses who may have relevant evidence.
- Fail to test the veracity of evidence.
- Only gather inculpatory evidence.
- Fail to interview outcry witnesses.

Do

- Document the inability to gather evidence and the reason why.
- Document witnesses who did not participate in the investigation.
- Verify documentary evidence with others (such as screenshots of messages).
- Gather relevant evidence from all sources, internal and external to the institution.

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INADEQUATE NOIAS

Don't

- Fail to read the NOIA and understand what is being alleged and investigated.
- Observe gaps in the NOIA and fail to address them with the TIXC.
- Receive additional allegations from the Complainant and fail to update the NOIA.
- Mischarge, unclear charges, or broad charges (i.e., sexual assault only).

Do

- Read the NOIA and understand the allegations.
- Assess the Complainant's interview statement to ensure the appropriate charges are included in the NOIA.
- Ensure the TIXC includes overlapping charges like FHA sexual harassment and dating violence for a sexual assault allegations between individuals who are dating.
- Ensure the investigation report reflects the information included in the NOIA.

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BIAS IN INVESTIGATIONS

Don't

- Only consider certain types of evidence or evidence that supports a certain belief.
- Refuse to explore contradictory information presented by an interviewee.
- Avoid jumping to conclusions or forming a belief as to whether you believe a policy was violated.
- Have a stake in the outcome.

Do

- Remain a neutral fact-finder.
- Understand your biases and how to ensure the don't seep into investigation.
- "Flip it to test it."
- Have your work reviewed by TIXC or General Counsel.
- Be mindful of the language used to communicate and write reports.
- Engage in professional development around recognizing and preventing bias.

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INADEQUATE INVESTIGATION REPORT

Don't

- Include irrelevant evidence.
- Use biased language.
- Create a summary of the evidence.
- Switch tenses.
- Write in passive voice.
- Fail to assess the credibility of the parties, witnesses, and evidence.

Do

- Create a comprehensive report that includes all relevant evidence.
- Consider your audience (parties, legal counsel, court, etc.).
- Use formal language and write from the third-person objective point of view.
- Have the report reviewed prior to submitting to parties.

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APPEALS

- Appeal Bases
- Appeal Process

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APPEALS

The Appeal Decision-maker may be an individual or a panel

- Cannot be the Title IX Coordinator
- Cannot be the Investigator or Decision-maker in the original grievance process
- Recipient may have a pool of Decision-makers who sometimes serve as hearing or appeal Decision-makers
- Recipient may have dedicated Appeal Decision-makers

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APPEALS (CONT.)

- When an appeal is filed, the Recipient must notify the other party and implement appeal procedures equally for all parties
- Give the parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
- The Chair may be called upon by the Appeal Decision-maker to inform the appeal process
  - Likely a paper exchange; not in-person

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BASES FOR APPEAL

- Title IX Regulations specify three bases for appeal:
  - Procedural irregularity that affected the outcome
  - New evidence that was not reasonably available when the determination of responsibility was made that could affect the outcome
  - Title IX Coordinator, investigator, or decision-maker had a general or specific conflict of interest or bias against the complainant or respondent that affected the outcome. Recipients may offer appeals equally to both parties on additional bases.
- Recipients may offer additional bases for appeal so long as they are offered equally to both parties

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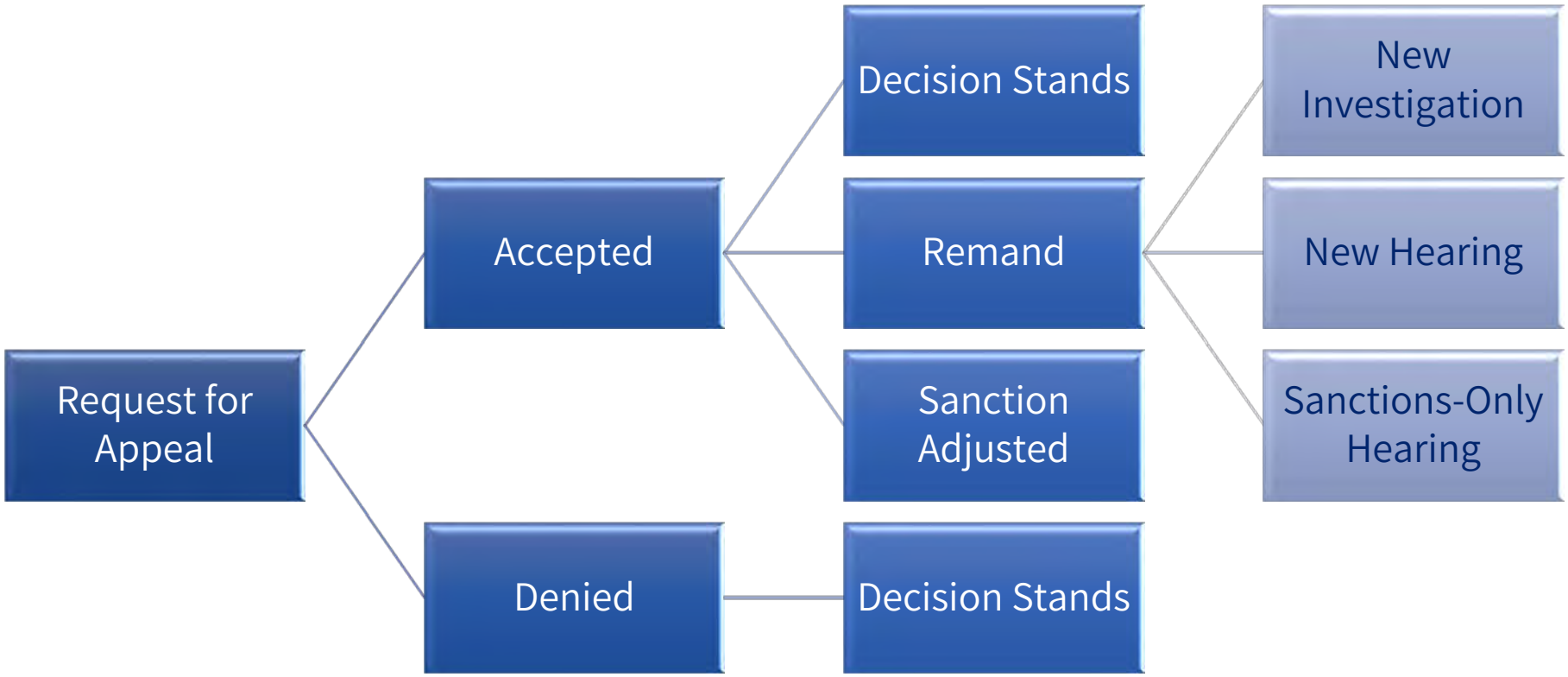
APPEALS: THE PROCESS



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INFORMAL RESOLUTION OVERVIEW

- ATIXA's Informal Resolution Framework
- Terminology
- Informal Resolution Goals
- Informal Resolution Foundations
- Relational vs. Structural Complaints
- Flexibility
- Contextual Limitations

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ATIXA'S INFORMAL RESOLUTION FRAMEWORK

Supportive Measures Only

Accepted Responsibility

Alternative Resolution

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TERMINOLOGY

For the purposes of this training, the following definitions apply:

- **Informal Resolution** – a complaint resolution approved by the Parties and the Recipient that occurs prior to a formal Final Determination being reached.
  - Under ATIXA's Informal Resolution Model, this includes:
    - Supportive Measures Only
    - Accepted Responsibility
    - Alternative Resolution
- **Supportive Measures Only** – a type of Informal Resolution in which the Title IX Coordinator resolves the matter by providing supportive measures (only) to remedy the situation

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TERMINOLOGY (CONT.)

- **Accepted Responsibility** – a type of Informal Resolution in which the Respondent accepts responsibility for violating policy and accepts the recommended sanction(s), ending the Resolution Process
- **Alternative Resolution** (AR) – a type of Informal Resolution in which the parties agree to resolve the complaint through an alternative resolution mechanism such as facilitated dialogue, mediation, or restorative practices.
  - Alternative Resolution may allow for, but does not require, the parties to communicate directly about the complaint with the assistance of a third-party facilitator.

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INFORMAL RESOLUTION GOALS

- Restoring educational access
- Empowering choice and agency over the resolution
- Identifying, and to the extent possible, addressing participants' needs and community needs
- Addressing past harm
- Preventing future harm
- Creating a space for communication and understanding when desired

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INFORMAL RESOLUTION FOUNDATIONS

- Safety (physical and emotional)
- Focus on needs
- Mutually serving
- Intentionality
  - Informal ≠ casual
- Presence
- Meeting parties where they are
- One IR process will not fix or prevent harm; strong pre- and post-process support and resources are needed

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FLEXIBILITY

- There is no one-size-fits-all approach to Informal Resolution
- Structured modes of AR exist and can be drawn upon (e.g., mediation), but their structures may not fit the unique needs of Title IX complaints
  - Center participants rather than the institution or the process
  - AR needs to meet the needs of the parties AND the institution
- Institutions—and by extension their policies—should allow for flexibility in both structure and strategy
- Systems need to reasonably adjust to the participants not vice versa

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CONTEXTUAL LIMITATIONS

- Informal Resolution offerings within an institutional resolution process are limited by that context
  - Available resources
  - Compliance requirements
  - Liability
  - Fitting into a policy/process
  - Cultural expectations and assumptions
  - Change management
- Institutions should be aware of external resources for resolution (formal and informal) and consider how those entities can interact with the institution

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MAKING INFORMAL RESOLUTION AVAILABLE

Can the institution uphold the key values of IR?

- **Safety** – Are there conditions that could create an unsafe environment?
- **Mutually serving** – Can the institution provide a facilitator who can serve all parties and the institution in the resolution process?
- **Quality** – Do the facilitators have sufficient training, expertise, and sensitivity to facilitate a process?
- **Privacy** – Can the institution ensure the privacy of the process?
- **Self-Determination** – Does the institution allow parties to make fully informed decisions for themselves?

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CONSIDERATIONS FOR APPROPRIATENESS

Informal Resolution may not be appropriate if one or more of the following are present:

- History of emotional, physical, or sexual violence between the parties
- Power imbalances between the parties that cannot be offset by appropriate support measures
- Any situations where the parties' engagement in IR could jeopardize the safety or well-being of a party
- Situations involving minors who have been harmed by adults
- Party or parties not sincere or acting in good faith

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Questions?

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Dan Skinner - Skinner Law PLLC - skinnerlawidaho@gmail.com - 208-971-5135

Idaho K-12 Title IX PLC #1

Title IX District Requirements and Functional Compliance



Road Map

- Introduction
- Regulations
- General Title IX District requirements
- How to set up a functional system



PLC Format

- Second Tuesday of the Month
- 60 minutes - with time for questions
- Slides will be distributed within the week



Title IX - Federal Law

- 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.

- Enforced by the Office for Civil Rights (OCR)

Which Regulations Apply?

- 2020 Regulations - 34 CFR Part 106
    - Subsequent revisions have been blocked by Federal Court.
- Federal Resources
    - 2020 Title IX Regulations
    - Title IX Dear Colleague Letter Enforcement of 2020 Regulations
    - Title IX and Sex Discrimination – U.S. Department of Education



District Requirements

- **Implement District Policy and Procedure**
    - A functional system for receiving and investigating complaints of sexual harassment.
- **Designate Title IX Coordinator**
- **Train Staff**
- **Notify Students**
- **Stop, Remediate, Mitigate**



District Policy

- …actually two.
    - #1 prohibits and defines
    - #2 procedure
- Idaho School Boards Association draft policy
- Regulations have the force of law - don't waiver
    - Examples:
        - West Ada School District
        - Boise School District
    - Email me
        - skinnerlawidaho@gmail.com



Title IX Coordinator

- **Training**
  - ATIXA
  - ICS
- **Notice and Post**:
  - Must notify staff and students who the Title IX Coordinator is and provide address, phone, email
  - Can be “title” and not specific person.
- **Responsibilities**
  - Point of Contact
  - Initial screening
  - Assign roles
  - Monitor compliance of investigations
  - Document EVERYTHING



Staff Training

- Title IX Team:
  - Investigator
  - Decision Maker
  - Title IX Coordinator
  - Informal Resolution facilitator
  - Appellate decision maker
- All staff
  - Mandatory reporters
  - All reports of sexual harassment made to any employee must be promptly reported to the Title IX coordinator.
  - Sexual assault/abuse - law enforcement
- Post materials and training online



Notice to Patrons

- **Who?**
  - students, parents, guardians, employees, applicants and unions.
- **Where?**
  - Staff Training
  - Email
  - Handbook
  - Website
- **What?**
  - The school does not discriminate on the basis of sex and prohibits sexual harassment in any education program or activity
  - Reports may be made to the T9 coordinator - title, address, email, phone
  - Link to policy and complaint procedure
  - How to report
- **Be Ready!**
  - If you build it, they will come.



Functional Overview

- When does Title IX apply?
- What is sexual harassment?
- How to respond?
  - Tracking Sheet
  - Supportive Measures.
  - Other policies?
  - Informally Resolve!
  - Timeline for each case



When does Title IX apply?

- **Programs or activities**
  - Any property owned.
  - Any event organized.
    - "locations, events, or circumstances over which [the school/district] **exercised substantial control over both the respondent and the context in which the sexual harassment occurs** . . ."
  - Social Media?
    - Was it posted while at school?
    - Shared at school?

- **Outside events**:
  - Allowed to have a separate policy that applies to events that happen outside school programs and activities.



Sexual Harassment Defined

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

1. Quid pro quo

2. **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 recipient's education program or activity; or

3. "Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.
    a. Look at the definitions.
    b. Includes any sex for humans under the age of consent (15 and under).



How to Respond?

- Intake form for your staff.
- Notice of rights every time.
    - create a simple document that provides notice of rights to the family.
- Supportive Measures.
    - Candy - hand them out!
    - NO complaint needed
    - No Contact Orders
- Other policies?
    - Can you solve the problem with another policy?
- Informally Resolve!
    - A negotiated settlement often leads to the same resolution.
- Timeline
    - Keep a spreadsheet of every action and point of contact



Questions?



Next Training:

Investigations 101 - November 10



Dan Skinner - Skinner Law PLLC - skinnerlawidaho@gmail.com - 208-971-5135

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Title IX Coordinator Training

Monthly PLC • October 13, 2026

System ownership, role assignment and federal training requirements



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The Coordinator owns the system—not every decision

Coordinate compliance	Track training	Receive & evaluate initial reports
Arrange supportive measures	Explain complaint options	Assign trained, impartial personnel
Monitor timelines	Implement remedies	Maintain records

The Coordinator may serve as the investigator, **but may not serve as the decision-maker** in the same formal grievance process.

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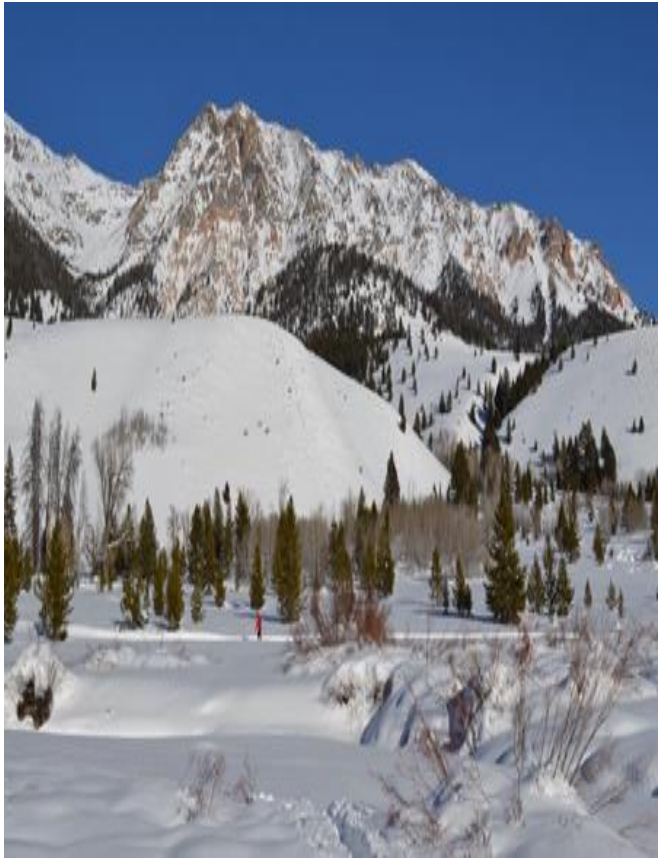
The role requires access, authority, and independence

1. **Access**
   Give the Coordinator direct access to senior leadership and records.

2. **Independence**
   Avoid conflicting duties that create bias or an appearance of bias.

3. **Reachability**
   The title may be used in public notices, but families must be able to reach a real person promptly.



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Title IX Coordinator required training

No specific hours • does not have to be annual

Definition & scope

- The definition of sexual harassment under the 2020 regulations
- The scope of the recipient's education program or activity, including when Title IX applies

The grievance process

- Investigations
- Hearings (postsecondary institutions)
- Appeals
- Informal resolution process
    - not available for complaints against staff

Serving impartially

- Avoid prejudgment of the facts
- Avoid conflicts of interest
- Avoid bias for or against complainants or respondents

Issues of relevance

- How to determine whether evidence or questions are relevant
- Rape shield provisions limiting questions about a complainant's prior sexual behavior or predisposition

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In K–12, notice to any employee triggers the response duty

- Notice to any elementary or secondary school employee gives the district “actual knowledge.”
- Protect immediate safety, preserve information, route the report promptly, and do not promise secrecy or conduct a side investigation.
- Your staff needs to know this!



Make the Coordinator easy to find before a crisis

- Publish name or title, office address, email, and phone
- Notify students, parents or guardians, employees, applicants, and unions
- Accept reports in person, by mail, phone, email, or any method that reaches the Coordinator
- Reports may be made at any time — no statute of limitations

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What is "Sexual Harassment" under Title IX?

1. **Quid pro quo** harassment

2. Unwelcome conduct that a reasonable person would find so **severe, pervasive AND objectively offensive** that it effectively denies equal access

3. **Sexual assault, dating violence, domestic violence or stalking** – as defined by federal law

Threshold questions: definition • U.S. education program or activity • formal complaint • standing



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Definitions: sexual assault, dating violence, domestic violence, stalking

Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Fondling: The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. The forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory rape: Sexual intercourse with a person who is under the statutory age of consent under Idaho law.

- If one person is 16 or older, three year difference max.
- Humans 15 and under cannot legally consent to sex in Idaho.



Read the definitions carefully

Dating violence – prior dating relationship?

Stalking – is it based on sex?

Domestic violence – live together?

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The first response must be prompt and supportive

- The Coordinator promptly contacts the complainant, discusses supportive measures, considers the complainant's wishes, explains how to file a formal complaint, and documents the response.
- Explain confidentiality: must you report to law enforcement? Anonymous reporting is not an option in Title IX.
- Supportive measures are available with or without a formal complaint.
- Explain Informal Resolution option
    - must have formal complaint
    - Cannot be used if complaint is student v. staff

Intake is a response workflow, not an interrogation

1. Confirm immediate safety
2. Listen without pressing for a full account
3. Explain privacy limits
4. Discuss supportive measures
5. Explain the formal complaint option
6. Document what was offered and why

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Every report triggers outreach—not necessarily an investigation

The Coordinator is the gatekeeper – if it is not Title IX-level harassment, use other tools. Screen jurisdiction and immediate safety concerns without prejudging responsibility.



Regulatory definition + **U.S. education program or activity** + **Required complaint conditions**

= Federal grievance process

If Title IX scope is not met, consider other district policies, safety obligations, disability law, mandatory reporting and supportive action. **A Title IX dismissal is not a directive to ignore the conduct.**

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Tools: support, emergency removal and discipline

Supportive measures
Individualized, non-disciplinary, non-punitive and no fee. Preserve equal access, do not unreasonably burden the other party, and adjust as circumstances change.

Emergency removal
Individualized safety and risk analysis; immediate threat to physical health or safety; notice and immediate opportunity to challenge.

Discipline
Only after the grievance process determines responsibility.

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The grievance process… it's SLOW

Two 10-day review periods

Report › Formal complaint › Notice › Investigation › **Evidence review (at least 10 days)** › Report

Report review (at least 10 days) › Decision-maker assigned › Written questions › Determination › Appeal

The report review must be at least 10 days before the decision or hearing.
Informal resolution may occur at any time prior to a final decision.

Must wait to interview the Respondent until AFTER notice, and a "sufficient" time to prepare.
Manage expectations.

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Formal complaints and role assignments

Use authority carefully • separate functions • ensure impartiality

A formal complaint starts the federal grievance process

- A document or electronic submission filed by the complainant—or signed by the Coordinator—requesting an investigation.
- Parents and guardians may exercise rights for minors.
- A Coordinator signature initiates the process but does not make the Coordinator a party or advocate.
    - If signed the Coordinator, the ”complainant” is still the alleged victim.

Separate the key functions and check conflicts

Coordinator
System owner and remedy implementation

Investigator
Evidence gathering and report

Decision-maker
Independent responsibility determination

Appeal decision-maker
Not the original decision-maker, dismissal official, investigator or Coordinator

Informal resolution facilitator
Trained, neutral and conflict-free

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Role-specific training

- **Investigator:** Relevance needed for a fair summary of relevant evidence.
- **Decision-maker:** Relevance—including sexual-history limits—and live-hearing technology if a hearing is used.
- **Appeal decision-maker:** The same decision-maker training and independence rules.
- **Facilitator:** The informal-resolution process as applicable.
- **Advisors:** No federal training mandate.

All four roles need to be trained on the system in general.

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What evidence is barred?

- Complainant's **prior sexual behavior or sexual predisposition**: unless for consent.
- Medical/mental health **treatment records** without written consent.
- **Privileged communications** attorney-client, doctor-patient, clergy
    - NOT School counselor. Mandatory reporting trumps confidentiality.
    - Practice point: school counselors need coaching.



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Impartiality — the core duty

34 C.F.R. § 106.45(b)(1)(iii)

No prejudgment

Presume the Respondent is not responsible until the process concludes.

No conflicts of interest

No financial, personal, or professional stake in the outcome.

No bias

Not for or against complainants or respondents — generally, or in this specific case.

Applies to every role: Coordinator, investigators, decision-makers, facilitators, appeal officers.



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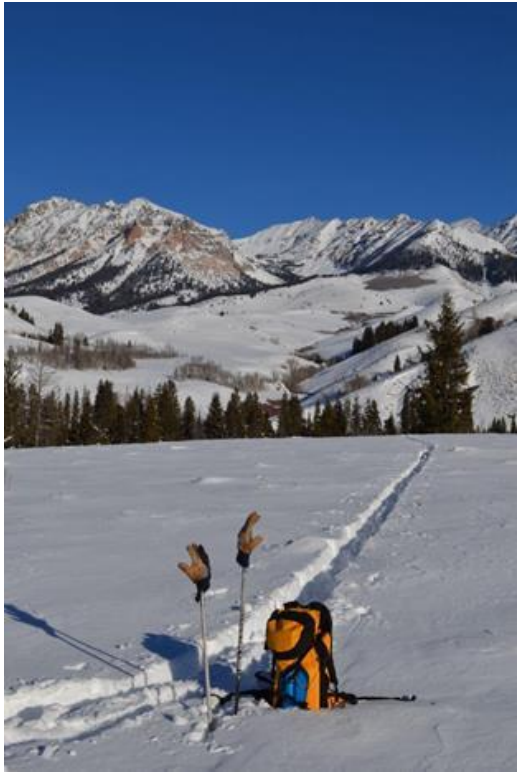
Practical tools in the Investigation

- Supportive Measures
  - No Contact Orders
  - Schedule Changes
  - Extracurricular
  - Counseling
  - Academic accommodations
- Track Investigation
  - Start to finish – every point of contact
- Notices
  - Notice of Allegations
  - Notice of Decision Maker
  - Notice of Decision/Finding of Responsibility
  - Notice of Appeal
- Informal resolution
  - Notice of informal resolution
  - Notice of resolution/lack of



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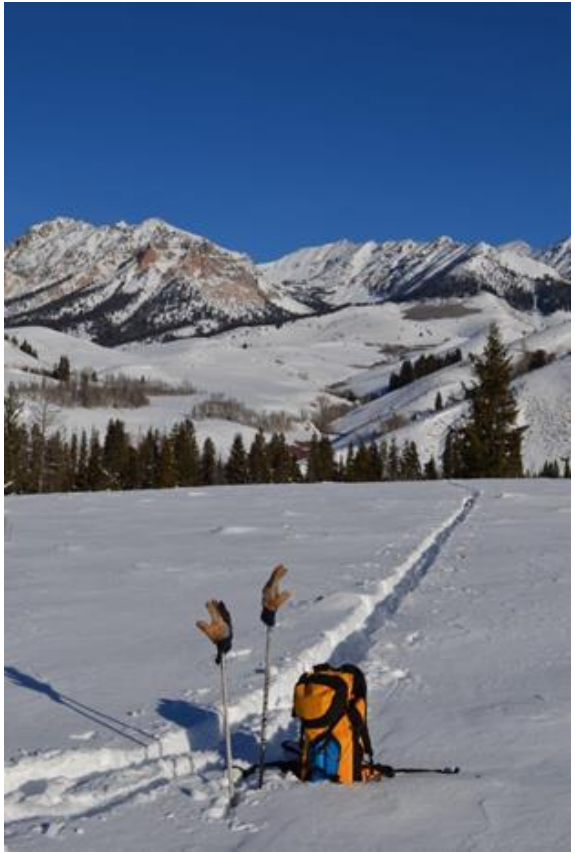

Title IX Coordinators must assure records are maintained

7 years
retention for Title IX records

- Investigations, determinations, sanctions, remedies, appeals, and informal resolutions
- Supportive measures and the basis for the response
- Training materials for Title IX personnel

- Post training materials publicly on the district website.
- Use a case log to track every contact, deadline, decision, and rationale.

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Build a compliance calendar and program map

- [ ] Website notice and Coordinator contact information
- [ ] Grievance procedures and reporting methods
- [ ] Athletics, CTE, pregnancy/parenting and employment checks
- [ ] Annual policy review—not a federally mandated annual training rule
- [ ] Role training, public materials and seven-year records

Snapshot compliance

- Train staff
- Post training materials on the district website
- Avoid sex stereotypes
- Promote impartiality
- Retain training and case records seven years

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Questions?

Next PLC: Nov. 10, 2026 — Investigations 101

Second Tuesday of the month • 9 a.m. MST



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Idaho K-12 Title IX PLC #3

Investigations 101

November 10, 2026



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Investigator Training Requirements



- **Scope of Title IX**: programs and activities
- 2020 **definition of sexual harassment**
- **grievance process**—complaints, investigations, hearings/decision making process, informal resolution and appeals
- **Impartiality**: impartial service without prejudgment, conflicts or bias.
- **Relevance:** what not to investigate

- **Sound familiar?** Coordinators, investigators, decision-makers and informal-resolution facilitators have the same requirements.

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Grievance Process

- Sexual Harassment reported
- Formal complaint
- Notice of allegations
- Investigation
- Informal Resolution?
- Decision
- Appeal



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Investigation Procedure

- **Written Complaint**
- **Notice of Allegations**
  - Wait ”reasonable time” to interview Respondent
- **Investigation**
- **Review Evidence**
  - 10 days to respond to evidence
- **Investigation Report**
  - 10 days to respond to report
- **Decision Maker**



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Investigator Builds the Record; Decision-Maker Decides

The investigator does

- Gather inculpatory AND exculpatory evidence
- Give both parties equal opportunity
- Follow relevance and privacy limits
- Document the process
- Prepare a fair summary of relevant evidence

The investigator does not

- Decide responsibility
- Advocate for either party

Keep an open mind. The Coordinator may serve as investigator — but never as the decision-maker in the same case.

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Supportive Measures

- **Fluid**
- **Bilateral**
- **Preserve equal access to education**
- **Individualized, non-punitive, no fee**
- **No formal complaint needed**
- **Don’t unreasonably burden the other party**
- **No Contact Orders**
- **Change of Classes**
- **Can’t be disciplinary**
- **Removal from School?**
  - Immediate threat of physical health or safety to others
  - Individualized safety and risk analysis
  - Right to appeal



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Investigation

- **Burden of Proof is on the School**
  - Seek inculpatory AND exculpatory evidence
- **Equal opportunity to present witnesses and evidence**
  - Either party may submit whatever they wish
- **Witnesses**
  - Can’t force interviews
  - No subpoena power
  - Contact parents first
- **Equal opportunity to review all evidence**
  - 10 days to review all evidence
- **Investigation Report**
  - 10 days to comment on report



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Before Interviews: Confirm the Scope, Then Plan

1. Confirm the complaint, scope and notice

- Identify each allegation: parties, conduct, date and location
- Confirm the federal scope analysis
- Review the notice of allegations

2. Build an investigation plan — for each allegation, map:

- Policy elements and disputed facts
- Potential witnesses and documents
- Digital, video and communication evidence
- Interview order and logistics
- Known privilege, treatment-record or sexual-history issues
- Target dates and required party notices

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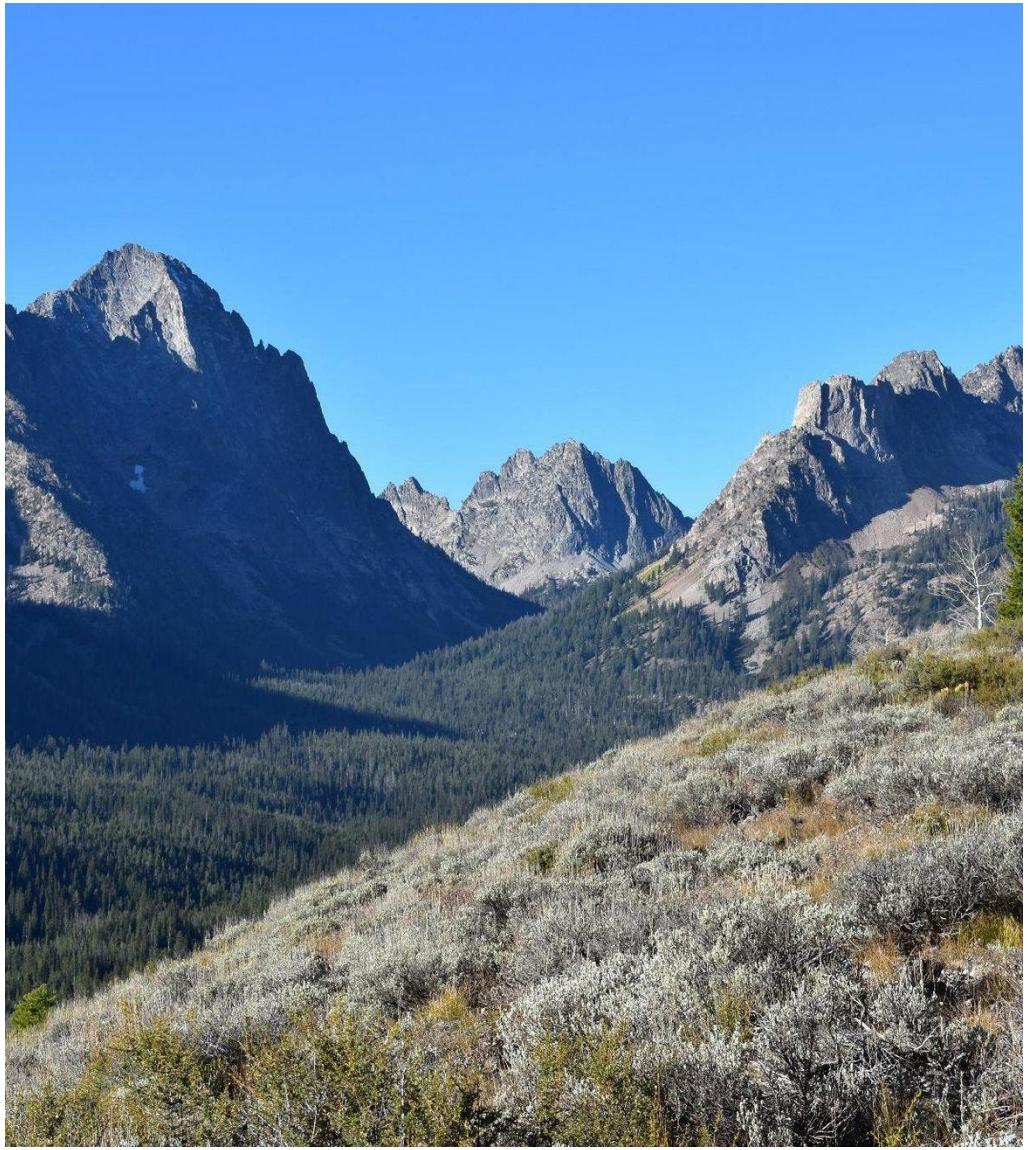
Nonparticipation Does Not End the Investigation

- The district cannot compel an interview or manufacture subpoena power
- Document your contact efforts
- Protect against retaliation
- Evaluate the evidence that is available
- Avoid unsupported assumptions from silence or incomplete participation BUT
    - You can infer from the decision not to participate.



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Impartiality — The Core Duty

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No prejudgment

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No conflicts of interest

No financial, personal, or professional stake in the outcome.

No bias

Not for or against complainants or respondents — generally, or in this specific case.

Applies to every role: Coordinator, investigators, decision-makers, facilitators, appeal officers.

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Sexual Harassment Defined

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

1. Quid pro quo
2. 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 recipient's education program or activity; or
3. "Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.

Sexual Assault: rape, fondling, incest, statutory rape



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Definitions of Sexual Assault

Rape

The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Fondling – Criminal Sexual Touching

The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. The forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. This offense includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

Incest

Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape

Sexual intercourse with a person who is under the statutory age of consent under Idaho law.

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Dating Violence, Stalking, Domestic Violence

Read the definitions carefully.

Dating violence

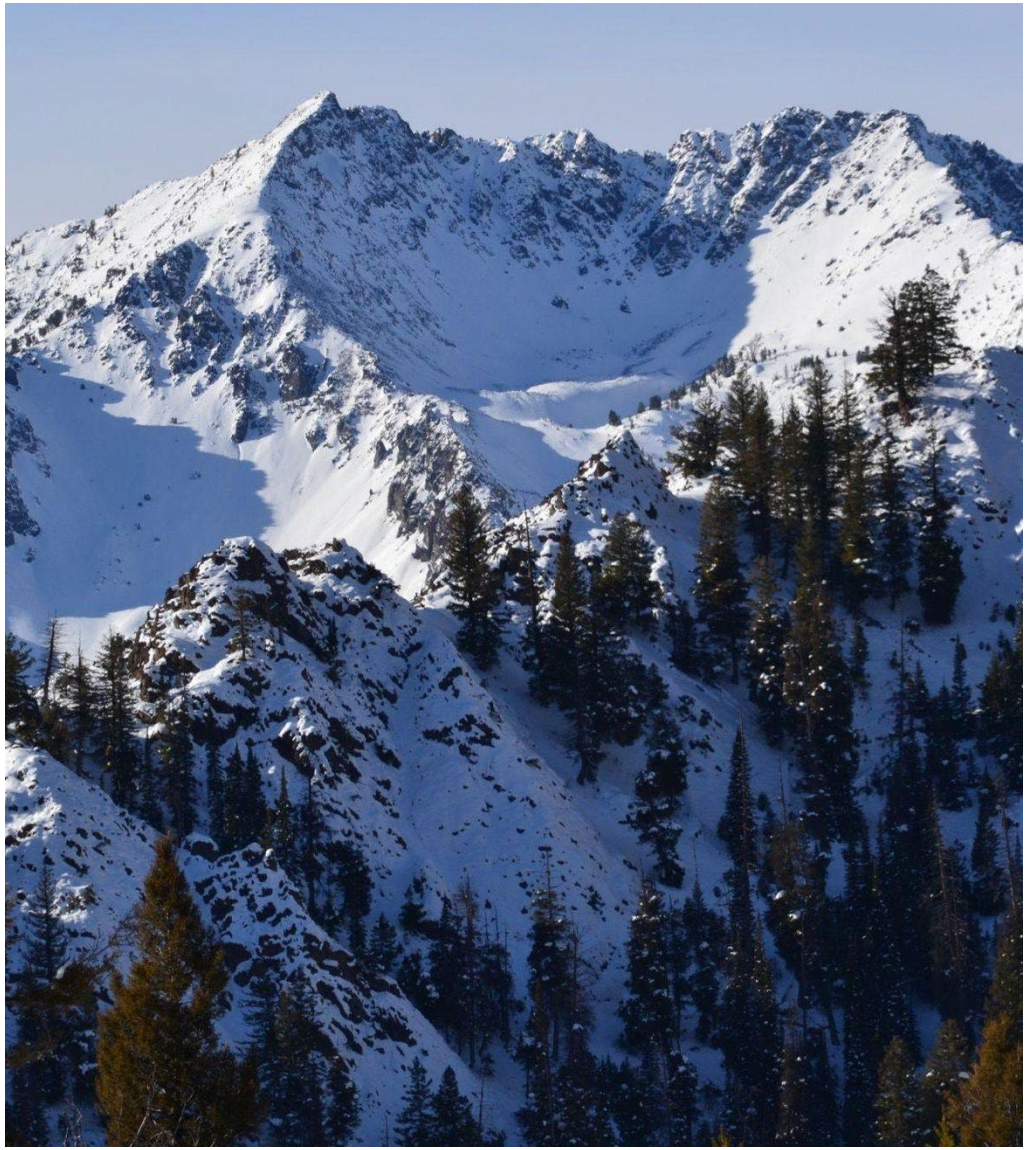
Prior dating relationship?

Stalking

Is it based on sex?

Domestic violence

Do they live together?



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Interviews - Practical Tips

- **Record**
  - Use AI to transcribe
- **Impartial**
  - Don’t prejudge facts
  - No conflict of interest
  - No leading questions
- **Either party allowed to present any evidence they wish**
  - But DON’T interview the whole team.
- **Parties:**
  - Parents present - or not
  - Counselor present if not a parent
- **Use one email string throughout.**
  - Save all communications
- **No Character Evidence**

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Interview: From Open Narrative to Focused Clarification

1 → 2 → 3 → 4 → 5

Explain the process

What will happen and what you do with the information

Start broad

Open narrative:
“Tell me what happened”
“Why are we here?”

Ask necessary specifics

Test the facts with focused clarification

Stay neutral

Avoid leading questions and prejudgment

Preserve

Approved recordings, notes and communications

Allow an advisor under equal rules for both parties.

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Trauma Informed Tools

- **Find common ground**
- **Start broad**
  - Tell me what happened
- **Don’t interrogate**
  - Do ask the key questions
  - Did you consent?
- **Empathize**
- **Stereotypes are True…**
    - For victims of sexual assault, not gender based roles.
- **Offer supports**
  - Counselling
  - Safe person at school
- **Mandatory Reporting**
  - Tell people what you have to do with information.



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Trauma-Responsive Practice Must Remain Outcome-Neutral

- **Explain what will happen**
- **Offer breaks and supports**
- **Use developmentally appropriate questions**
- **Avoid assumptions about how a person "should" behave**
- **Ask the questions needed to test the facts**
- **Beware of implicit bias**
  - "They would have…" / "They should have…"
  - Fragmented memories, delayed reporting

Empathy is compatible with neutrality.
Sex stereotypes are not.



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Relevance Is Not Defined by Title IX

Idaho Rule of Evidence 401 — evidence is relevant if:

(a)

it has any tendency to make a fact more or less probable than it would be without the evidence; and

(b)

the fact is of consequence in determining the action.

Focus on relevance — not character or propensity. The investigator needs relevance to write a fair summary of the relevant evidence.

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Off Limits Evidence

- **Medical/mental health treatment records without voluntary written consent**

- **Privileged communications — unless waived**
  - Attorney-client, doctor-patient, clergy

- **Prior Sexual Activities:** Questions and evidence about the complainant's sexual predisposition or prior sexual behavior, unless offered to prove that someone other than the respondent committed the conduct alleged, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are **offered to prove consent**.

Practice point: don't go there.



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Informal Resolutions –

can't be facilitated by the investigator, but can be offered

Allowed:

- Must agree in writing to try - both parties
- Any time after complaint, before final decision
- Withdraw from informal resolution process at any time
- Must agree to all terms
- Written notice of the process and what records are kept
- Trained, neutral facilitator — not the investigator, decision-maker or a witness

Not Allowed:

- Informally resolve complaint by student against staff person
- Informally resolve without formal complaint.
- Require participation, or condition enrollment or employment on waiving the formal process



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Evidence Review and the Report Are Separate Quality Checks

Evidence review

- Give both parties and advisors the directly related evidence
- Allow at least 10 days for a written response
- Consider responses before completing the report

Investigation report

- Fairly summarize the relevant evidence
- Identify procedural steps and allegations
- Include party responses as appropriate
- Avoid a responsibility conclusion

Practice point: do NOT provide a draft report. Don’t let parties or witnesses edit your work.

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Investigation Report

- **Neutral**
- **Allegations**
- **Charge and policy at issue**
- **Check verifiable facts**
- **Procedural history**
  - Complaint
  - Interviews
  - Evidence provided to parties
- **Summary of all interviews**
- **Summary of documentary evidence**
- **Include comments from parties**
- **No conclusions on responsibility**
- **Provide to Decision Maker**
  - 10 days to review



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Questions?



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Next Training:

Advisors - December 8, 2026

