

What District Officials Need to Know about the 2020 Title IX Regulations

Presented by: Joey Moore



WALSH GALLEGOS
TREVIÑO RUSSO & KYLE P.C.

UFG

Background: How We Got Here

Background: How We Got Here

- ❑ Title IX of the Education Amendments of 1972
 - ❑ Title IX is all of 37 words.
 - ❑ It prohibits discrimination based on sex in educational institutions that receive federal financial assistance.
- ❑ Harassment based on sex is a form of sex discrimination. This has been established in the law for a long time.
- ❑ Specific guidance on compliance has been limited, until now.
 - ❑ No officially adopted regulations addressing sexual harassment or school response
 - ❑ Primary guidance from court interpretations and "Dear Colleague" letters issued by the Department of Education (DOE).

Background: How We Got Here

- ❑ Title IX prohibits discrimination based on sex in education (students)
 - ❑ Enforced through a loss of federal funds, and also lawsuits by private parties
 - ❑ OCR--agency that handles complaints
- ❑ Title VII prohibits discrimination in employment based on a number of characteristics, including sex (employees)
 - ❑ Enforced through lawsuits
 - ❑ EEOC—agency that handles complaints

Background: How We Got Here

- ❑ 1980: OCR gains authority to enforce Title IX.
- ❑ 1992: USSC holds that students can sue a school district for sexual harassment.
- ❑ 1997: OCR issues first sexual harassment guidance.
- ❑ 1998: *Gebser v. Lago Vista ISD* (monetary damages for employee-to-student sexual harassment if an official with authority to institute corrective measures on the district's behalf has actual notice of the misconduct and is deliberately indifferent).

Background: How We Got Here

- ❑ 1999: *Davis v. Monroe Co. Bd. of Educ.* USSC holds district can be liable under Title IX for student-to-student sexual harassment if *Gebser* standards are met (person with authority has actual notice of conduct and is deliberately indifferent)
AND
- ❑ District has substantial control over the context in which the harassment occurs and over the harasser; and,
- ❑ The conduct is "so severe, pervasive, and objectively offensive" that it denies equal access to educational opportunities.

Background: How We Got Here

EE-to-Student Harassment

- District official with authority to address
- has actual notice
- And is deliberately indifferent

Student-to-Student Harassment

- Standard above, PLUS
- Substantial control over context and harasser
- that is so severe, pervasive, and objectively offensive, it denies equal education

Background: How We Got Here

- ❑ Office for Civil Rights is a division within the US Department of Education.
- ❑ Direction and philosophy of governmental agencies tend to change or mirror the executive in charge (President).
- ❑ Obama administration issued a lot of guidance regarding Title IX, including guidance related to transgender students.
- ❑ Trump administration, under leadership of Sec. Betsy DeVos has rolled back some of that guidance, and has issued these new regulations.

Now....

- New Regulations Effective August 14, 2020

UIG

What Is Sexual Harassment?

Types of Sexual Harassment

- ❑ Types of Sexual Harassment
 - ❑ Quid pro quo
 - ❑ Hostile environment
 - ❑ Sexual assault (Clery Act), Dating violence, Domestic violence, or Stalking (Violence Against Women Act)
 - ❑ These are specific types of sexual harassment with different definitions (but it may be easier to think about them as one “form.”)

Sexual Harassment: Quid Pro Quo

- ❑ *Quid pro quo*: When an employee conditions favorable treatment on the acceptance of unwelcome sexual attention.
- ❑ This definition applies only to actions of employees.
- ❑ The unwelcome nature and severity is presumed.

Examples:

- ❑ Teacher offers good grades to student in exchange for sexually explicit photographs.
- ❑ Coach offers playing time for sexual contact.

Sexual Harassment: Hostile Environment

- ❑ Unwelcome conduct that it is so SEVERE, PERVASIVE AND OBJECTIVELY OFFENSIVE that it effectively DENIES a person EQUAL ACCESS to the program.
- ❑ What has changed from prior guidance?
 - ❑ OR → AND
 - ❑ LIMITS → DENIES
 - ❑ These changes are consistent with judicial interpretations but a departure from prior OCR guidance.
- ❑ This could be student-to-student conduct or employee-to-student conduct.
- ❑ Note: A lot of things happen in schools that are inappropriate and sexually oriented, but fall short of this definition. More on that later.

Sexual Harassment: The Clery Act and VAWA

- ❑ The Clery Act and the Violence Against Women Act address four types of violence that are each considered forms of sexual harassment under Title IX:
 - ❑ Sexual Assault
 - ❑ Dating Violence
 - ❑ Domestic Violence
 - ❑ Stalking

Sexual Harassment: Sexual Assault

- ❑ Sexual assault: Forcible or non-forcible sexual offenses under the Uniform Crime Reporting System of the FBI.
 - ❑ 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 unable to consent (age, disability)
 - ❑ Incest: Sexual intercourse between persons who are related to each other and unable to marry.
 - ❑ Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.

Sexual Harassment: Dating Violence

- ❑ 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.
- ❑ Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

Sexual Harassment: Domestic Violence

- ❑ Domestic violence: A felony or misdemeanor crime of violence committed by:
 - ❑ a current or former spouse or intimate partner of the victim;
 - ❑ a person with whom the victim shares a child in common;
 - ❑ a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - ❑ a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
 - ❑ any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Sexual Harassment: Stalking

- ❑ Stalking: A course of conduct directed at a specific person that would cause a reasonable person to fear for personal safety of self or others; or to suffer emotional distress.
- ❑ Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.
- ❑ Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.
- ❑ Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

UIC

Other New Terminology

New Terminology: 34 CFR 106.30(a).

- Definition of Sexual Harassment
- Complainant
- Respondent
- Formal Complaint vs. "Report"
- Actual knowledge
- Substantial control
- Supportive Measures

Terminology: Complainant

- ❑ This term always refers to the victim of sexual harassment, even if someone else is the one who made the complaint.
- ❑ Parent complains that Child is being harassed. Parent has made the complaint, but Child is the "complainant."
- ❑ Teacher reports that Student is being harassed. Teacher makes the Report, but Student is the "complainant."

Terminology: Respondent

- ❑ This term refers to the person accused of sexual harassment.
- ❑ Note: these terms (Complainant, Respondent) apply even when there is a Report, but no Formal Complaint.
- ❑ Example: Mom complains that Billy is being harassed by a coach based on his sex. The Title IX Coordinator (T9C) meets with Mom and explains the Formal Complaint process. Mom does not want that. T9C also decides not to initiate Formal Complaint process.
- ❑ So there is no Formal Complaint, but there is a Report, and Billy is still the Complainant, and Coach is the Respondent.

Actual Knowledge

- ❑ This term is important because the school's duty to respond arises only when it has "actual knowledge" of sexual harassment, or of allegations of conduct that, if true, would be sexual harassment.
- ❑ Under the regs, the school has "actual knowledge" when any employee of the school—*other than the actual perpetrator of the harassment*—has actual knowledge.
- ❑ What has changed?
 - ❑ Previously, actual knowledge was imputed to the school only when it was known by someone who had the authority to address it.
 - ❑ Now, it is *any* employee.

Actual Knowledge: Why the Change?

- ❑ The standard for “actual knowledge” at the post-secondary level remains as it was—someone with authority to take corrective action.
- ❑ DOE notes that with young children in K-12 schools, an adult is an adult.
 - ❑ K-12 students may not understand the distinctions between an aide and a teacher, for example.
 - ❑ Regulation expanded to put the school on notice if *any* employee has actual knowledge.
- ❑ Let’s consider some scenarios....
- ❑ SEE NEXT SLIDE!!

Scenarios – Is there “actual knowledge”?

- ❑ My fellow teacher and drinking buddy confides in me that he’s been “fooling around” with a student. Makes sure she gets an A and a college recommendation.
- ❑ Custodian witnesses an act of sexual harassment in the bathroom.
- ❑ Student confides in a teacher’s aide about what happened on the school field trip.
- ❑ All three of these are examples of situations that, in the past, did not put the school on notice of “actual knowledge.” Now they do.

Terminology: Substantial Control

- ❑ The school is not responsible for responding to allegations of sexual harassment unless the school had “substantial control” over the harasser and the “context.”
- ❑ Consider how this will be applied to:
 - ❑ extracurricular activities;
 - ❑ field trips;
 - ❑ out of town, overnight trips;
 - ❑ cyberbullying off campus.
- ❑ Scenario: Student engages in cyberbullying off campus and on the weekend.
 - ❑ Does the school have “substantial control”?
 - ❑ What about state law which gives schools the authority to discipline students for certain off campus cyberbullying?

Terminology: Supportive Measures

- ❑ Non-disciplinary, non-punitive measures to support the Complainant or Respondent after a Report of harassment is made. These measures must:
 - ❑ Be offered at no charge;
 - ❑ Be designed to maintain equal access to educational services; and
 - ❑ Not unreasonably burden either party.
- ❑ The Respondent might be “burdened” but not “unreasonably burdened.”

Supportive Measures

- ❑ Designed to “restore or preserve equal access to...the education program or activity without unreasonably burdening the other party.”
- ❑ Examples:
 - ❑ counseling,
 - ❑ extension of deadlines,
 - ❑ modification of schedule,
 - ❑ campus escort services,
 - ❑ mutual restrictions on contact,
 - ❑ leave of absence,
 - ❑ increased security/monitoring. 34 CFR 106.30.

UIG

The Role of the Title IX Coordinator

Role of Title IX Coordinator (T9C) Overview

- ❑ Every district must have at least one, and that person must be designated as and identified as the “Title IX Coordinator” (T9C).
 - ❑ Must have authority to coordinate the school district’s compliance efforts.
 - ❑ May investigate complaints, but may not be the “decision maker.”
 - ❑ Must be referred to as the “Title IX Coordinator” in district policies and publications, including website.
 - ❑ A district must notify **all potential reporters** of sexual misconduct of the T9C’s contact information: name/title, office and email addresses, and telephone number.



Reporting and Responding

- ❑ Any person may report. Not just the alleged victim.
- ❑ A report can be verbal or written.
- ❑ Reports can be made by mail, by telephone, or by email at any time (business or non-business hours) to the T9C.
- ❑ The T9C may also receive a report from an employee of an elementary or secondary school who receives notice of sexual harassment or alleged sexual harassment: what we would consider *actual knowledge*.
- ❑ If the district has “actual knowledge” of “sexual harassment” it “must respond promptly in a manner that is not deliberately indifferent.”



Responding to a “Report”

- ❑ T9C must promptly contact a complainant to discuss:
 1. The Report
 2. Supportive Measures
 3. Process to file Formal Complaint
 4. Make an initial determination if all things are taken as true, does the allegation rise to Title IX Sexual Harassment.



Responding to a “Report”

- ❑ If the allegations **DO NOT** meet the definition of sexual harassment above, the Title IX Coordinator must dismiss the claim.
- ❑ The Campus is free to continue disciplinary action against the Respondent, if warranted, under the provisions of the SCOC.
- ❑ T9C must notify the Respondent and the Complainant in writing that the allegations have been dismissed for not meeting the threshold for sexual harassment and must also alert both parties to their opportunity to appeal the dismissal.



Dismissal Notice for Reports that Are Not Sexual Harassment

- ❑ Must document the rationale for the decision to dismiss
- ❑ Must detail why the dismissal is not a deliberately indifferent action
- ❑ Must be maintained for seven (7) years



Report Meets Definition of Sexual Harassment

- ❑ T9C must discuss with the Complainant whether or not the Complainant wishes the allegations to be elevated to the level of a **Formal Complaint**.
- ❑ A Formal Complaint must be signed by the Complainant, BUT
- ❑ If Complainant does not wish to sign the complaint, the T9C can sign the complaint so as to elevate the allegations to a Formal Complaint.



When is the “Grievance Process” Required?

- ❑ If a Formal Complaint is filed, the school must use the formal grievance process.
- ❑ If the school intends to impose disciplinary sanctions for “sexual harassment” as defined in these regulations, the formal grievance process must be completed before sanctions are imposed.

UIG

Reports vs. Formal Complaints

What is the difference between a Report and Formal Complaint

- ❑ A Report does not have to take any specific form - a person (complainant or other) reports sexual harassment to an employee verbally or in writing.
- ❑ The district must respond to a Report promptly and equitably.
 - ❑ The T9C must promptly meet with the Complainant.
 - ❑ Among other things, the T9C must explain the Formal Complaint Process and consider the wishes of the Complainant about pursuing it or not.
 - ❑ The T9C must offer "supportive measures."
- ❑ After a Report is made, a Formal Complaint process may be initiated on that Report:
 - ❑ Only Complainant and the T9C can initiate.
 - ❑ T9C may initiate the process even when the Complainant chooses not to.

Formal Complaint

- ❑ A “formal complaint” is a printed document or electronic submission filed by a complainant that alleges sexual harassment and requests the recipient school investigate the allegation.
- ❑ At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.
- ❑ The T9C may also sign a complaint, which does not make the T9C a party in the grievance process.
- ❑ A third party reporter may not file a formal complaint, but the T9C can and often may need to do so to protect the District.



Formal Complaint Considerations

- ❑ *Must* dismiss a Formal Complaint if the conduct alleged does not constitute “sexual harassment.”
 - ❑ Does not preclude action under another provision of the district’s code of conduct.
- ❑ *May* dismiss a Formal Complaint if:
 - ❑ Complainant notifies T9C in writing that the complainant wishes to withdraw the Formal Complaint.
 - ❑ Complainant is no longer enrolled or employed by the district.
 - ❑ Circumstances prevent the district from gathering sufficient evidence to make a determination.



Benchmarks of the Formal Complaint Process: 34 CFR 106.45.

1. Equal treatment of the parties.
2. Objective evaluation of evidence, including no credibility determinations based on the person's status as Complainant, Respondent or witness.
3. Bias-free training for T9C and others involved in the process. No conflicts of interest.
4. Presumption of innocence for the Respondent until the process is complete. The burden of proof and the duty to gather sufficient evidence is on the school—not on either party.
5. Reasonable time frames.



More Benchmarks

6. Description of possible outcomes, such as disciplinary sanctions and remedies.
7. Standard of proof: either “preponderance of the evidence” or “clear and convincing.” District chooses, but must always use the same standard.
8. Appeal available for either party.
9. Description of Supportive Measures.
10. Protection of privileged information.
11. Protection of Constitutional rights of free speech, due process.

What if there is no Formal Complaint?

- ❑ If neither the Complainant nor the T9C makes a Formal Complaint, you still have to report. The district still has a duty to seek a “prompt and equitable resolution.”
- ❑ Supportive Measures must be offered.
- ❑ Let’s look at the definition in more detail: SEE NEXT SLIDE!!

How does all this mesh with our Code of Conduct?

- ❑ The regulations restrict the use of “emergency removal” of a person from the educational program unless:
 - ❑ 1) there is an individualized safety/risk analysis;
 - ❑ 2) there is an immediate threat to the physical health or safety of the person to be removed or others; *and*
 - ❑ 3) the person removed is given notice and an opportunity to challenge the decision immediately after the removal.
- ❑ “Emergency removal” could include out of school suspension.
- ❑ But remember: this restriction applies only when the removal is based on allegations that meet the definition of “sexual harassment.”

Respecting the Complainant's Wishes

- While a complainant's wishes regarding filing a Formal Complaint should be considered, the T9C may need to initiate a Formal Complaint without the complainant's permission to make sure that the district is not responding to sexual harassment with deliberate indifference.



Consider this....

- ❑ Dad alleges that his daughter was called a slut, and tapped on the backside by a boy during school hours, at the school. *This is a Report of conduct that is sexual in nature.*
- ❑ T9C offers supportive measures and informs Dad of the Formal Complaint process.
- ❑ Dad files a Formal Complaint.
- ❑ “The recipient must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in 106.30 even if proved....then the recipient must dismiss the formal complaint for purposes of sexual harassment under Title IX or this part; such a dismissal does not preclude action under another provision of the recipient’s code of conduct.” 34 CFR 106.45(b)(3)(i).

Consider this....

- ❑ Dad calls A/P alleging his daughter was called a slut, and tapped on the backside by a boy during school hours, at the school. *This is a Report of conduct that is sexual in nature.*
- ❑ T9C offers supportive measures and informs Dad of the Formal Complaint process. (Could be campus level)
- ❑ Dad just wants the behavior stopped and does not file a Formal Complaint.
- ❑ Boy admits conduct, but conduct falls short of the Title IX definition of "sexual harassment."
- ❑ Stop Title IX actions and issue "no-finding" report. Discipline in accordance with Student Code of Conduct but do not call it sexual harassment.

But What if....

- ❑ Dad calls A/P alleging his daughter was called a slut, and tapped on the backside by a boy during school hours, at the school. *This is a Report of conduct that is sexual in nature.*
- ❑ T9C meets with and offers supportive measures and informs Dad of the Formal Complaint process.
- ❑ Dad decides to file a Formal Complaint.
- ❑ “The recipient must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in 106.30 even if proved.... then the recipient must dismiss the formal complaint for purposes of sexual harassment under Title IX or this part; such a dismissal does not preclude action under another provision of the recipient’s code of conduct.” 34 CFR 106.45(b)(3)(i).

But What if the Conduct Went Further....

- ❑ Dad calls A/P alleging his daughter was called a slut, and tapped on the backside by a boy during school hours, at the school. *This is a Report of conduct that is sexual in nature.*
- ❑ T9C meets with and offers supportive measures and informs Dad of the Formal Complaint process. During this meeting it is alleged that the boy is also leaving sexually explicit notes in the student's notebook, sending sexually suggestive text messages and tweets.
- ❑ Dad is not satisfied that supportive measures are enough and decides to file a Formal Complaint.

Other Title IX Players

Key Roles Outlined in Regulations

- ❑ Title IX Coordinator
- ❑ Following Roles Only Come Into Play with Formal Complaints
 - ❑ Investigator
 - ❑ Decision Maker
 - ❑ Facilitator
 - ❑ Appeals Decision Maker



Handling a Formal Complaint

First Decision: Is It Sexual Harassment?

- ❑ An institution must **dismiss** a Formal Complaint if it finds that the conduct alleged in the complaint does not constitute sexual harassment under Title IX.
- ❑ Does not preclude action under another provision of the institution's code of conduct.



Initial Determination

- ❑ Does the formal complaint meet the definition of “sexual harassment” pursuant to Title IX?
 - ❑ Formal Complaint must be dismissed if it does not meet the definition. That is:
 - ❑ If reported conduct alleged is not “sexual harassment” even if the allegations are true.
 - ❑ If reported conduct did not occur in the school’s program or activity.
 - ❑ If reported conduct did not occur in the United States.
 - ❑ (Dad’s initial formal complaint must be dismissed.)



Emergency Removal

- ❑ Assuming T9C makes determination that the allegations meet the legal definition of sexual harassment, and Complainant or T9C submit a Formal Complaint, emergency removal of the Respondent may be necessary.
- ❑ “Emergency removal” means the removal of the Respondent from the school’s educational programs or activities.
- ❑ Can apply to both employee or student respondents.



Emergency Removal: STUDENT

- ❑ Student Respondent: can only be removed if there is an immediate threat to the PHYSICAL health or safety of any student.
- ❑ Emergency removal is not appropriate to resolve emotional or mental health needs; those are to be handled exclusively by supportive measures.
- ❑ Emergency removal of a student with a disability must be coordinated with special education staff to ensure compliance with federal disability statutes.



Emergency Removal: Employee

- ❑ Employee Respondent
- ❑ T9C, in conjunction with input from the Superintendent or Human Resources Director, as applicable, may determine that administrative leave for the duration of the Title IX grievance process is appropriate.



STEPS IN THE FORMAL GRIEVANCE PROCESS

1. Provide Notice

- ❑ Upon receiving a formal complaint, an institution must provide written notice to the known parties, including:
 - ❑ Description of the process, including informal resolution process
 - ❑ Allegations involved
 - ❑ Statement of presumed innocence of the respondent
 - ❑ The parties' right to an advisor of their choice (who may be an attorney)
 - ❑ Parties' right to inspect evidence relevant to the allegations
 - ❑ Notice any provision in the code of conduct that prohibits knowingly making false statements or providing false information.



2. Investigate Formal Complaint

- ❑ Investigations of Title IX grievances come with additional requirements. Investigations must:
 - ❑ Place the burden of proof and responsibility to gather evidence on the institution, not on the parties; and
 - ❑ Present an equal opportunity for parties to present witnesses and other evidence.
- ❑ Note: the investigation must provide opportunities for the parties to present evidence, but the burden of proof remains on the institution to gather and present evidence



2. Investigate Formal Complaint (cont.)

- ❑ Permit parties to discuss allegations under investigation and gather relevant evidence.
- ❑ Provide parties with equal opportunity to have others present during any grievance proceeding.
- ❑ Provide advance written notice of all hearings, interviews, or other meetings to any involved party, with sufficient time for the party to prepare.



2. Investigate Formal Complaint (cont.)

- ❑ Provide equal opportunity to both parties to inspect and review evidence obtained as part of the investigation (including evidence which the institution does not intend to rely on), and send to each party the evidence at least 10 days before completion of the investigative report.
- ❑ Create an investigative report summarizing relevant evidence.
 - ❑ Must send a copy of the report to each side 10 days prior to the time of determination to permit them an opportunity to send a written response.



3. Live Hearings

- ❑ Postsecondary institutions are required to hold live hearings as a component of the grievance process, but for K-12, live hearings are optional.



4. Written Questions

- ❑ Whether or not a hearing takes place, the District must:
 - ❑ provide each party the opportunity after the investigation report is completed to submit written questions to be asked of another party or witness;
 - ❑ Provide each party with the answers;
 - ❑ Provide for limited follow-up questions.



A Note: “Rape Shield” Provision

- ❑ Questions and evidence about a complainant’s sexual predisposition or behavior are categorically not relevant to a Title IX Investigation, unless:
 - ❑ Evidence is offered to prove someone other than the respondent committed the alleged conduct.
 - ❑ Evidence concerning the complainant’s prior sexual history with the respondent and is offered to prove consent.



5. Determination of Responsibility

- ❑ The school's decision-maker in a Title IX proceeding cannot be the T9C or any investigator of the allegations.
- ❑ The decision-maker must issue a written determination of responsibility with:
 - ❑ Findings of fact;
 - ❑ Conclusions about whether the misconduct occurred;
 - ❑ Explanations of each conclusion; and
 - ❑ Any disciplinary sanctions or remedies being enacted
- ❑ Written copy of determination must be sent simultaneously with information on filing an appeal.



6. Appeal

- ❑ A school must offer both parties an opportunity to appeal a determination of responsibility based on:
 - ❑ Procedural irregularity that affected the outcome of the matter;
 - ❑ Newly discovered evidence that could affect the outcome of the matter; and/or
 - ❑ Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter
- ❑ A school may offer an appeal on additional bases, as long as the appeal is offered equally to both parties.
- ❑ Requires new decision-maker.



7. Informal Resolution

- ❑ A school may choose to offer informal resolution options like mediation, as long as both parties give voluntary, informed, written consent to attempt informal resolution.
- ❑ Cannot require a party waive their right to investigation as a condition of enrollment or employment, and also may not require parties to participate in informal resolution.
- ❑ Schools cannot offer informal resolution until a formal complaint is filed and cannot ever offer informal resolution of allegations that an employee sexually harassed.
- ❑ Any party may withdraw from the informal resolution process and resume the grievance process at any point before an agreement is reached.



Retaliation

- ❑ Retaliation is prohibited against any individual for the purpose of interfering with Title IX rights or because an individual has made a complaint or been involved with a Title IX investigation.
- ❑ Cannot charge an individual with a code of conduct violation not involving sex discrimination or sexual harassment but arising out of the same events as a report of sexual harassment, for the purpose of interfering with Title IX rights.
- ❑ An individual's exercise of a First Amendment right will not constitute retaliation.
- ❑ Charging an individual with a code of conduct violation for making a materially false statement in bad faith during a Title IX grievance proceeding does not constitute retaliation.



8. Record-Keeping

- ❑ Maintain all documents from the Formal Complaint for seven (7) years:
 - ❑ Dismissal;
 - ❑ Determination;
 - ❑ Any Disciplinary Sanctions issued;
 - ❑ Remedies provided to the Complainant;
 - ❑ Any appeal; and
 - ❑ Any Supportive Measures implemented or if none were provided, the reasons why.



Records of Investigations?

“For each response required under 106.44, a recipient must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the recipient must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient’s education program or activity. If a recipient does not provide a complainant with supportive measure, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.”

34 CFR 106.45(b)(10)(D)(ii).

Joey Moore



jmoore@wabsa.com

The information in this presentation was prepared by Walsh Gallegos Treviño Russo & Kyle P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.

