

Tredyffrin/Easttown School District Administrator Summer Retreat

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Title IX Update

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Training Requirements



- All employees must be trained on:
 - The obligation to address sex discrimination in the recipient’s education program or activity
 - The scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment
 - All applicable notification and information requirements under the regulations
- Training must occur “promptly upon hiring or change of position that alters their duties under Title IX” AND “annually thereafter”

Background Information

Title IX

- “Title IX” refers to Title IX of the Education Amendments of 1972
 - Statutory language: “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...” 20 U.S.C. §1681
 - Intent - to prevent women from being denied college admission and achieving tenure as college professors based on their sex
 - It has since been expanded to address Title IX sexual harassment

Title IX

- Consequences for non-compliance with Title IX:
 - Federal funding for the program that was found to be in noncompliance can be terminated
 - Possible investigation by the Office for Civil Rights in the U.S. Department of Ed.
 - Federal lawsuits filed by individuals who have been harmed due to noncompliance

Observations Re: 2020 Regs.

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- Increasing number of complaints every year from 2020 to 2024
- Schools that trained extensively saw increasing number of reports at the elementary and middle school grades
- Interaction with school discipline procedures
 - *Requirement under 2020 and 2024 – discipline cannot be enacted for a Title IX violation until the conclusion of the grievance process.*
- Interaction with law enforcement investigations/prosecutions
- Prevalence of social media issues (more-recently, A.I. issues)

Observations Re: 2020 Regs.

- Examples of Title IX reports/complaints: (**biggest areas of growth**)
 - **Student on student physical touching/smacking/grabbing**
 - **Student on student verbal/written conduct**
 - Employee on student physical conduct
 - Employee on student verbal/written conduct
 - Employee on employee physical conduct
 - Employee on employee verbal/written conduct
 - Student on Employee conduct (physical, verbal, and/or written)

Analysis of Final Regulations

Title IX

- Authority for regulations:
 - When Congress passed Title IX, it directed those federal departments that extend federal financial assistance to education programs to issue rules or regulations designed to help achieve the objective of eliminating discrimination on the basis of sex.



Chronology of Events



May 2020 – Dept. of Education issued regulations, which contained the three-role grievance process.



April 2024 - Dept. of Education issued new regulations, which expanded the definition of Title IX and provided K-12 entities more leeway on how to set up grievance procedure.

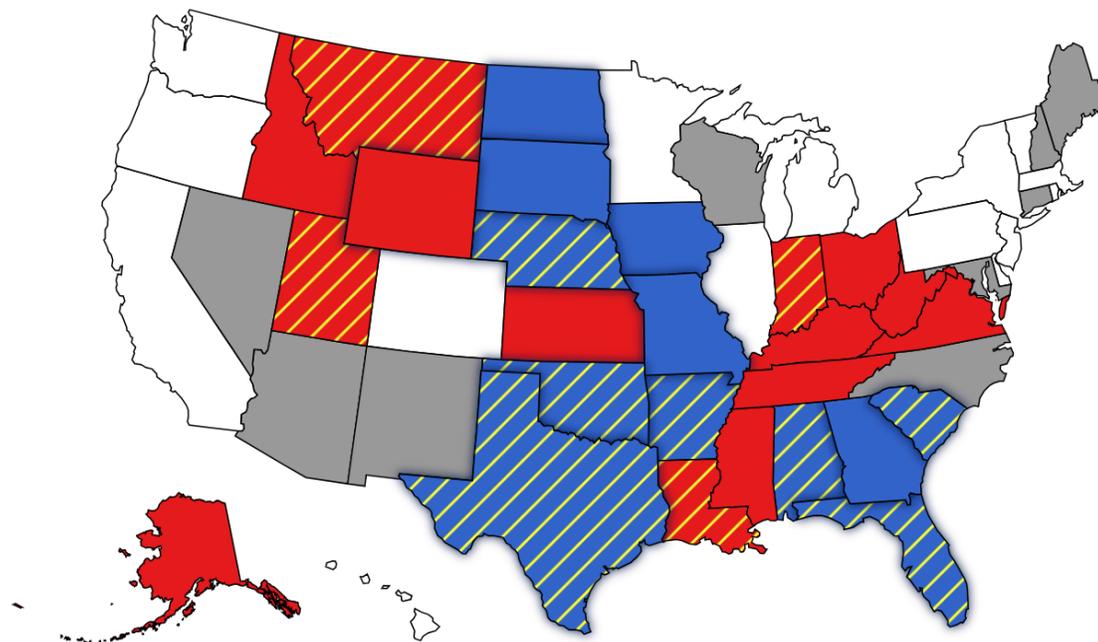


August 1, 2024 – Compliance deadline!

2024 Title IX Regulations Injunction Tracker



■ No Action ■ Amicus Brief ■ Complete Injunction ■ Do Not Implement (DNI) Directive
■ Current or Pending Litigation ■ Litigation & DNI ■ Injunction and DNI



Source, ATIXA injunction tracker (accessed 7/14)
<https://www.atixa.org/reg/#2024-Regulations>

The Philadelphia Inquirer

EDUCATION



More than 100 Pa. schools with kids of Moms for Liberty members will be exempt from new Title IX rules

The rules prohibiting discrimination based on gender identity were opposed by the self-described parental rights group, which won a federal court order barring their enforcement in schools.

Kansas Litigation

Kansas Litigation –
*State of Kansas et. al. v. United States
Department of Education*

The court found that the plain language and legislative history of Title IX makes it clear that the term "sex" means the traditional concept of biological sex in which there are only two sexes, male and female, and therefore the Final Rule would subvert Congress' goal of protecting biological women in education and exceeds the DoE's statutory authority by expanding the definition of sex discrimination to include gender identity

As of July 31, 2024, pursuant to Federal court orders, the Department is currently enjoined from enforcing the 2024 [Final Rule](#) in the states of Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming; the Department is also currently enjoined from enforcing the 2024 Final Rule at the schools on the list located at <https://www2.ed.gov/about/offices/list/ocr/docs/list-of-schools-enjoined-from-2024-t9-rule.pdf>. Per Court order, this list of schools may be supplemented in the future. The Final Rule and this resource do not currently apply in those states and schools. Pending further court orders, the Department's Title IX Regulations, as amended in 2020 ([2020 Title IX Final Rule](#)) remain in effect in those states and schools.

TESD Schools Identified on List (as of 8/5)

| TESD School | Date of List |
|----------------------|--------------|
| Beaumont Elementary | 7/31 |
| TESD Middle School | 7/31 |
| Conestoga | 7/26 |
| New Eagle Elementary | 7/26 |
| Valley Forge Middle | 7/26 |

USDOE Purpose for Issuing New Regulations

- To provide greater clarity regarding:

The definition of sex-based **discrimination,**

which includes sex-based **harassment.**

What is Sex-Based Discrimination?

§106.10 “Discrimination on the basis of sex includes discrimination on the basis of....

1. sex stereotypes,
2. sex characteristics,
3. pregnancy or related conditions,
4. sexual orientation, and
5. gender identity.”

District Policy 6141 - Equal Opportunity and Nondiscrimination of Students in School and Classroom Practices

“The District will provide an equal opportunity, for all students to achieve their maximum potential through the programs and activities offered by the District without discrimination on the basis of actual or perceived race, color, age, creed, religion, **sex, gender, sexual orientation, gender identity, gender expression**, ancestry, national origin/ethnicity, veteran status, marital status or handicap/disability, as required by Title VI, Title IX and Section 504....”



PHRC Definitions

'Sex' includes:

- Pregnancy status
- Childbirth status
- Breastfeeding status
- Sex assigned at birth
- Gender identity or expression
- Affectional or sexual orientation
- Differences in sex development



What is Sex-Based Harassment?

A form of sex discrimination. But, like in 2020, there are three specific definitions -

(1) Quid pro quo harassment – expansion from simply “employee”

(2) Hostile environment –conduct that, **based on the totality of the circumstances**, is **subjectively and objectively offensive** and is so **severe or pervasive** that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity.

(3) Specific offenses

- Sexual assault
- Dating violence
- Domestic violence
- Stalking

Hostile Environment Factors

- Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:
 - (i) The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;
 - (ii) The type, frequency, and duration of the conduct;
 - (iii) The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
 - (iv) The location of the conduct and the context in which the conduct occurred; and
 - (v) Other sex-based harassment in the recipient's education program or activity

Most Significant Revisions from Current Regulations

- Elimination of “formal complaint”
- A “complaint” is now defined as:
 - An oral **or** written request to the [school district] that objectively can be understood as a request for the [school district] to **investigate** and **make a determination about alleged discrimination under Title IX**.
- **Takeaway:** it is much easier for a student/parent/employee to file a complaint

Who can Make a Complaint?

A sex-based harassment claim can be made by:

- A complainant, now more broadly defined (a student or employee who is **alleged to have been subjected to conduct** that could constitute Title IX sex discrimination)
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of the complainant;
- The Title IX Coordinator, in limited circumstances and after considering eight factors now set forth in §106.44(f)(1)(v)(A)(1)-(8).

A sex-based discrimination claim can only be made by:



AND

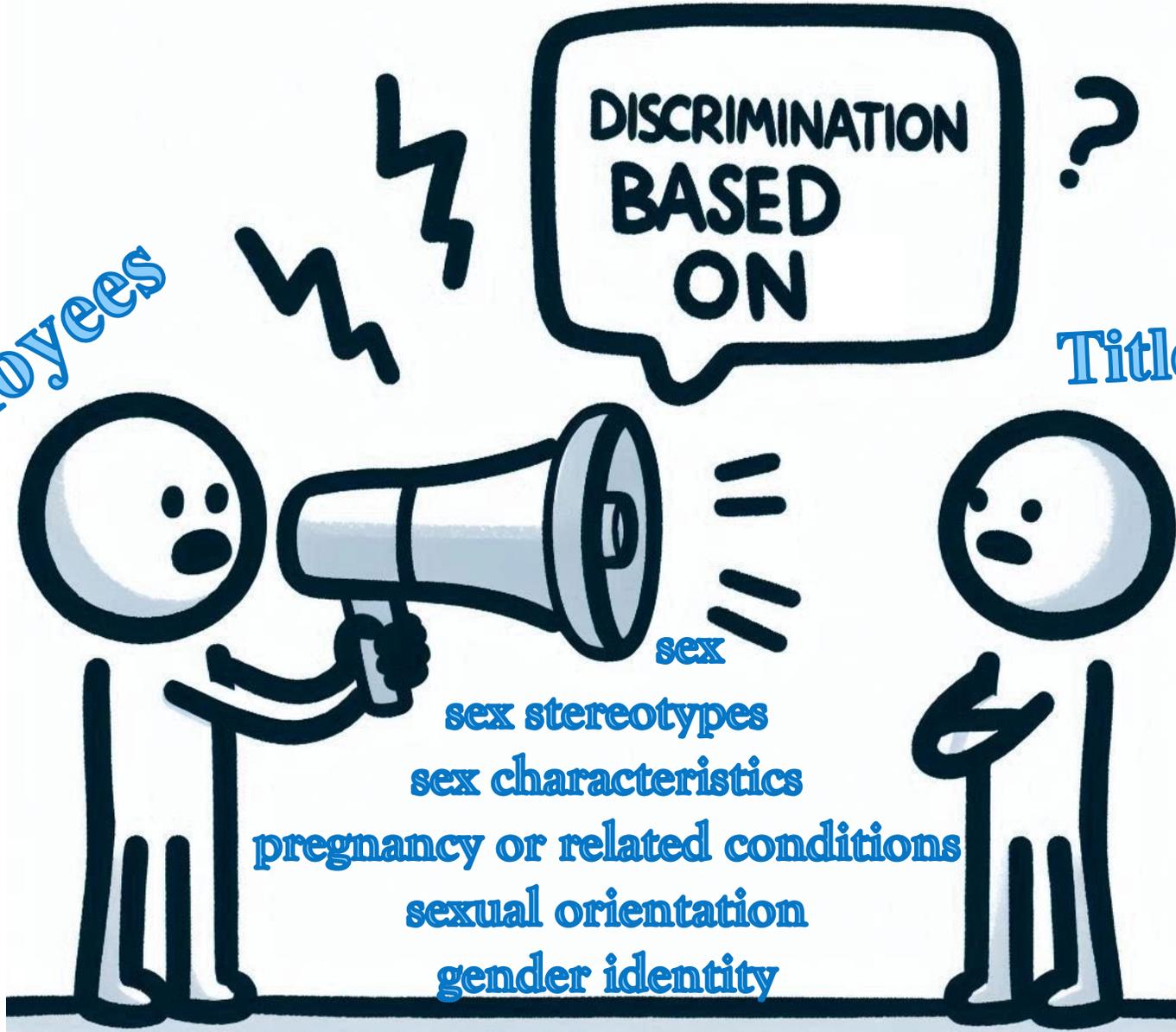
- Any student or employee;
- Any person other than a student or employee who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination.

Notification Requirements

“An elementary school or secondary school recipient must require all of its employees who are not confidential employees to notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX”

§ 106.44 (c)

All employees



Title IX Coordinator

Examples from OCR Case – When Title IX May be Implicated

- Val Verde Unified School District (OCR Case No. 09-15-5001) (June 2023)
 - Sexual cyber-bullying
 - Exposure of private body parts
 - Sharing of sexual acts or naked student images at school
 - Inappropriate sexualized ‘games’ such as ‘pantsing’
 - Inappropriate Employee Conduct
 - Male teacher commented on the physical appearance of female students, whispered to students, leaned in close when talking, and made students feel uncomfortable



Title IX Coordinator Duties

- After being notified of conduct that could violate Title IX, the Coordinator must promptly take the following actions & “**effectively end** any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects.”
 - (i) Treat the complainant and respondent equitably;
 - (ii) Offer supportive measures to complainant. If the grievance process or an informal resolution process is commenced, supportive measures must be offered to the respondent
 - (iii) Notify complainant of grievance procedure and informal resolution process if available and appropriate
 - (iv) If a complaint is made – initiate the process and ensure proper notification requirements are sent

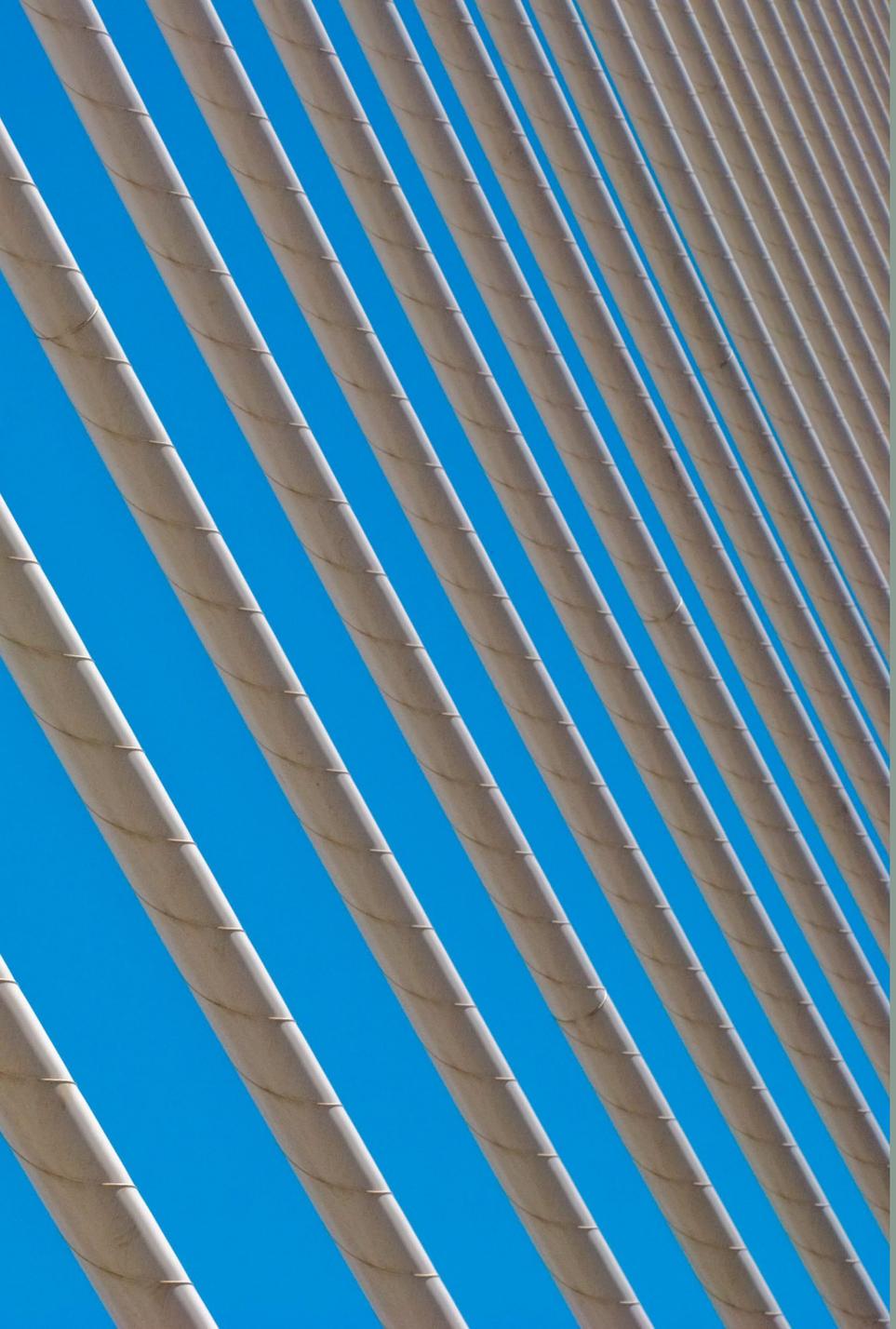
Title IX Coordinator Duties

- Supportive Measures
- “Supportive measures may vary depending on what the recipient deems to be reasonably available. These measures may include but are not limited to:
 - counseling;
 - extensions of deadlines and other course-related adjustments;
 - campus escort services;
 - increased security and monitoring of certain areas of the campus;
 - restrictions on contact applied to one or more parties;
 - leaves of absence;
 - changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative;
 - and training and education programs related to sex-based harassment.”

Title IX Coordinator Duties

- Supportive Measures – Appeal?

“A recipient must provide a complainant or respondent with a timely opportunity to seek, from an appropriate and impartial employee, modification or reversal of the recipient’s decision to provide, deny, modify, or terminate supportive measures applicable to them. The impartial employee must be someone other than the employee who made the challenged decision and must have authority to modify or reverse the decision, if the impartial employee determines that the decision to provide, deny, modify, or terminate the supportive measure was inconsistent with the definition of supportive measures in § 106.2. A recipient must also provide a party with the opportunity to seek additional modification or termination of a supportive measure applicable to them if circumstances change materially.”



Supportive Measures

- Must be kept confidential unless doing so would prevent implementation
- Coordinator must consult with one or more members, as appropriate of the student's IEP team to determine how to comply with the IDEA and/or 504 throughout the grievance process.

Pregnant Students – Notification Requirements

- Employees who are informed by a student of that student's pregnancy must provide that student with the contact information for the Title IX Coordinator and inform the student that the Coordinator can take action to prevent discrimination and ensure equal access.



Pregnant Student – Notification Requirements

- If a student or the student's legal guardian informs the Coordinator of the pregnancy, the Title IX Coordinator must inform the student, and if applicable, the person who notified the Coordinator of the following:
 - Title IX's prohibition on discrimination based on pregnancy, including providing the non-discrimination notice
 - That the student is entitled to reasonable modifications to prevent sex discrimination and ensure equal access to a District program or activity

Pregnant Students – Additional Requirements

- “A recipient must not discriminate in its education program or activity against any student based on the student’s current, potential, or past pregnancy or related conditions...”
- A recipient does not engage in prohibited discrimination when it allows a student, based on pregnancy or related conditions, to voluntarily participate **in a separate portion** of its education program or activity provided the recipient ensures that the separate portion is comparable to that offered to students who are not pregnant and do not have related conditions.”
- Reasonable modifications must be afforded, which the Coordinator must coordinate.
- Pregnant students are entitled to a lactation space, similar to employees
- Limitations on requesting documentation!



Employees – Other Protections for Pregnant Works

DON'T FORGET ABOUT THE PUMP ACT AND PREGNANT WORKERS FAIRNESS ACT!

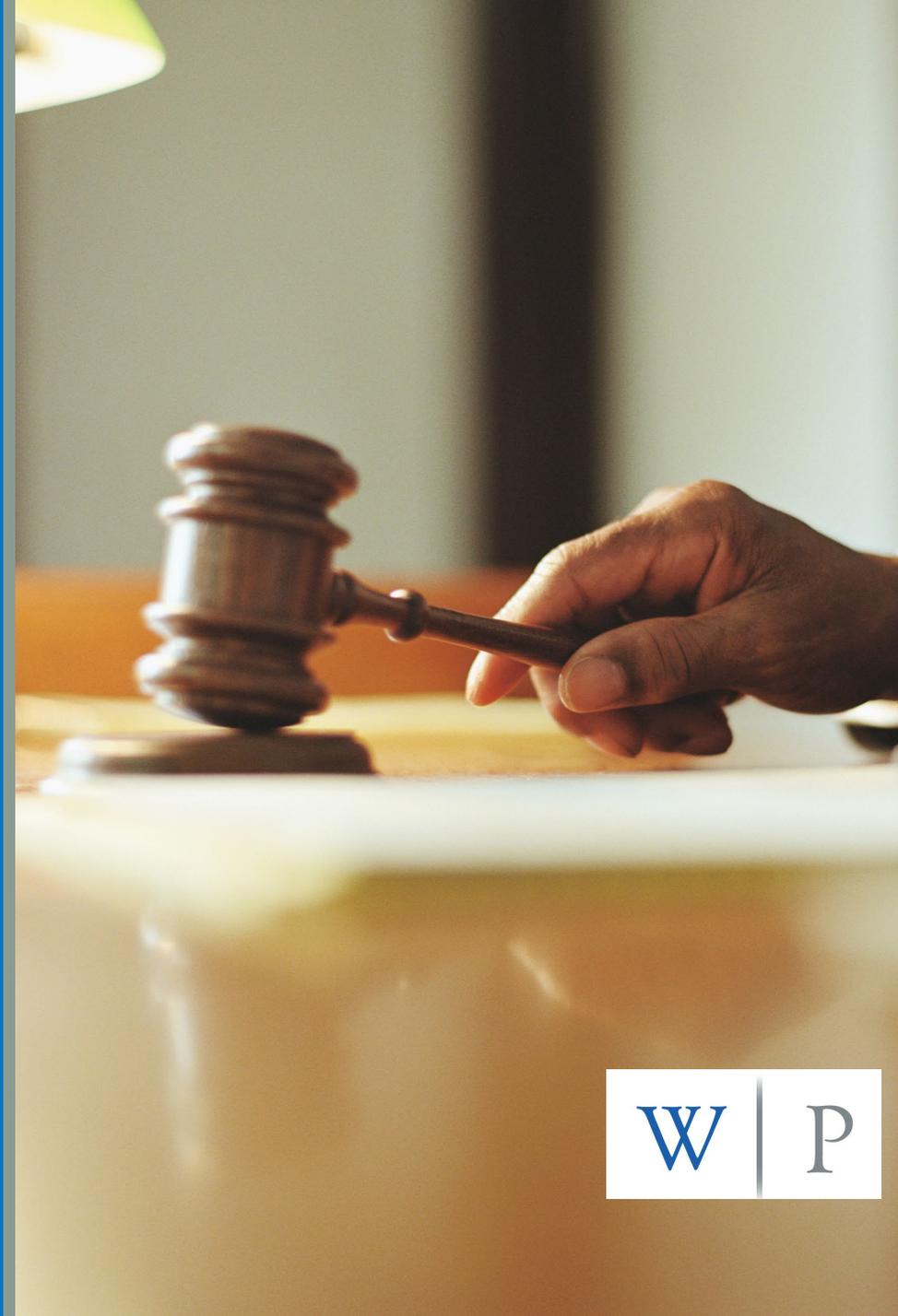
Most Significant Revisions from Current Regulations

- Grievance Process Roles
 - “The decisionmaker may be the same person as the Title IX Coordinator or investigator”
 - **Takeaway:** Districts can opt for a single-investigator model. But, it may be difficult for a Title IX Coordinator to separate out things that were learned during the initial reporting phase and facts gathered during the investigation. Having investigator and decisionmaker be the same person will likely make the most sense for a majority of school entities.

Standard of Proof

Must use “preponderance of the evidence” standard unless “clear and convincing evidence” standard is used in all other comparable proceedings

Takeaway: increases the likelihood that the determination will conclude that sexual harassment has occurred.



Most Significant Revisions from Current Regulations

- Disciplinary Consequences
 - “May not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the recipient’s grievance procedures that the respondent engaged in prohibited sex discrimination”
 - **Takeaway:** arguably more of an ability to discipline for conduct covered by other policies

Most Significant Revisions from Current Regulations

- Confidentiality
 - School entity must “take reasonable steps to protect the privacy of the parties and witnesses during the pendency of a recipient’s grievance procedures, provided that the steps do not restrict the ability of the parties to: obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources or advisors; or otherwise prepare for or participate in the grievance procedures”
 - **Takeaway:** might be able to require confidentiality from employees, but what authority exists over parents/guardians of complainants.

Basic Requirements for Grievance Procedure

Treat complainants and respondents equitably;

Title IX Coordinator, investigator, or decisionmaker does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

Include a presumption that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of the recipient's grievance procedures

Establish reasonably prompt timeframes for the major stages of the grievance procedures

Require the recipient to take reasonable steps to protect the privacy of the parties and witnesses during the pendency of a recipient's grievance procedures,

provided that the steps do not restrict the ability of the parties to: obtain and present evidence, including by speaking to witnesses, subject to § 106.71; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures;

Require an objective evaluation of all evidence that is relevant ...including both inculpatory and exculpatory evidence—and provide that credibility determinations must not be based on a person's status as a complainant, respondent, or witness;

If There's a Determination that Sex Discrimination Occurred

Title IX Coordinator must

- Coordinate the provision and implementation of
 - remedies to complainant and others
 - disciplinary sanctions on the respondent.
- Provide notification of disciplinary action to parties, including to complainant
- Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur

*Reminder – “A recipient **may not** discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the recipient’s grievance procedures that the respondent engaged in prohibited sex discrimination..”*

Title IX In the News...

Title IX In the News...

- *Parents of 5-Year-Old Red Lion Student Accuse School District of Failing to Report Sexual Assault on School Bus (2-8-2024)*
 - York County, Pa. Lawsuit alleges that:
 - 5-year-old was sexually assaulted by another student on a school bus
 - The student accused of assaulting the victim had previously assaulted at least one other student in the past
 - Bus driver failed to report behavior and took no action to separate students
 - District failed to adequately staff the school bus with monitors when they knew of a student with a history of sexual assault
 - The school district's response: "we vehemently deny the salacious allegations"
 - **Takeaway:** Title IX is not just a secondary ed. issue. How to address transportation issues?

Title IX In the News...

- *Mom Sues Pa. School District on behalf of Transgender Teen Who Killed Herself (10-4-2023)*
 - Lawsuit against Wyoming Valley Sch. Dist. alleges that:
 - 15-year-old heard anti-gay and anti-trans slurs every day in classrooms and hallways, sometimes in the presence of school officials
 - Five teachers refused to call her by her chosen name during roll call
 - One teacher had emailed the principal three times about the student being bullied
- **Takeaway:** Title IX applicability to gender identity-related bullying

Title IX In the News...

- *Family's Fight Over Equality in High School Sports Gears Up in Phoenixville: "We Want to Inspire Them" (1-5-2024)*
 - Father of two students filed a Title IX complaint with the U.S. Department of Ed.'s Office for Civil Rights alleging:
 - Inequities between boys' baseball and girls' softball facilities (dugouts, field quality)
 - Special celebrations/recognitions for boys' sports team
- **Takeaway:** Title IX extends beyond just harassment-based conduct

Questions?