



CIVIL RIGHTS TITLE IX TRAINING FOR INDEPENDENT SCHOOLS

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GOALS, PURPOSE, AND LEARNING OUTCOMES

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GOALS, PURPOSE, LEARNING OUTCOMES



- Provide a foundation of federal compliance obligations for CARES Act “Recipients”
 - Title IX
 - Title VI
 - Section 504 of the Rehabilitation Act
 - Age Discrimination Act
- Provide new tools to support your work to stop, prevent, and remedy discrimination that may occur in your schools.

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STAY ABOVE THE FLOOR



- Law, Caselaw, and Federal Regulations set the floor
 - OCR Guidance typically elevates the floor
 - States can pass laws that exceed federal requirements (e.g.: New York and California)
- Practicing at the floor = doing the bare minimum
 - Will not address the cycle of inequity and unfairness
- Civil Rights issues demand more than bare minimum
- Industry standards already exceed the floor
 - Regression to the floor increases risk of legal liability

INTRODUCTION & OVERVIEW

WHY WHAT HOW

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WHY



- Congress enacted the CARES Act to provide stopgap relief to businesses to assist with job support and economic hardship as a result of the COVID-19 pandemic. The Small Business Association administers these loans under the Paycheck Protection Program with funding through the U.S Treasury.
- As a recipient of a loan through any Small Business Association program, your school will be bound by the requirements of certain non-discrimination obligations.
- Generally these non-discrimination obligations are short-term, once the loan is paid or forgiven, but may extend longer depending on the purpose for which the financial support was extended. For example, if funds are used in connection with real property of structures, the obligations may extend as long as the property or building is used to provide educational programs or activities.

WHAT



- Independent schools accepting these loans are considered recipients of federal financial assistance and therefore have certain obligations under several federal civil rights laws.
- You may not discriminate on the basis of race, color, religion, sex, handicap, age or national origin with regard to goods, services or accommodations.
 - These do not limit faith-based entity's autonomy with respect to membership or employment decisions connected to its religious exercise.
- The key applicable laws include Title VI of the Civil Rights Act of 1964; Title IX (1972); the Age Discrimination Act (1975), and some basic provisions of 504 of the Rehabilitation Act (1973)

HOW



- Your school may already have existing non-discrimination policies and practices based on existing federal and state laws, particularly in relation to hiring and employment.
- However, your current policies and practices are not necessarily compliant with or co-extensive to the specific regulatory requirements under these additional federal civil rights laws.
- As a PPP recipient you must certify that you will comply with the federal civil rights provisions specified on your application form, that included Title VI, Title IX, Age Discrimination Act, and 504 of the Rehabilitation Act.

WHY, WHAT, HOW DISCUSSION



- Each of the civil rights laws prohibit discrimination on the basis of a certain protected class. The required protected categories are:
 - Title VI of the Civil Rights Act of 1964, prohibits discrimination on the basis of race, color, or national origin
 - Title IX of the Education Amendments of 1972, prohibits discrimination on the basis of sex in any education program or activity
 - The Age Discrimination Act of 1975, prohibits discrimination on the basis of age
 - 504 of the Rehabilitation Act of 1973 prohibits discrimination against qualified individuals with a disability
- You may have identified other protected class categories based on federal or state law or by your own policy.
- You can apply the same notice and response to those protected categories as to the mandated ones under the CARES Act.

MORE ABOUT THE LAWS

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EQUITY IS THE GOAL



- Equitable = fair under the circumstances.
- Each party's rights, privileges and opportunities need to be balanced.
- Equitable procedures that reach equitable outcomes that impose equitable remedies.
- What you do for one party, consider whether you need to do for the other(s).

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EQUITY EXAMPLE

EQUALITY VERSUS EQUITY



In the first image, it is assumed that everyone will benefit from the same supports. They are being treated equally.



In the second image, individuals are given different supports to make it possible for them to have equal access to the game. They are being treated equitably.



In the third image, all three can see the game without any supports or accommodations because the cause of the inequity was addressed. The systemic barrier has been removed.

TITLE VI

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IMPETUS FOR CIVIL RIGHTS ACT OF 1964



- Civil rights demonstrations throughout the South, most notably in Birmingham, AL in 1963 protesting segregation and Jim Crow laws.
- President John F. Kennedy announced his support for the passage of the legislation in June of 1963.
- JFK assassinated 5 months later.
- Signed into law by President Lyndon B. Johnson in July of 1964.
- Covers discrimination in employment and places of public accommodation; school desegregation; created the EEOC.

TITLE VI OF THE CIVIL RIGHTS ACT



“No person in the United States shall, on the ground of **race, color, or national origin**, be **excluded from participation in, be denied the benefits of, or be subjected to discrimination** under any **program or activity receiving Federal financial assistance.**”

- 42 U.S.C. § 2000e-2(a)

- 13 C.F.R. Part 112

TITLE VI OF THE CIVIL RIGHTS ACT



- The protections under Title VI extend broadly to applicants, employees, students, parents and others.
- You are required to have a complaint procedure that allows for the reporting and investigation of any complaint or discrimination or harassment on the basis of race, color or national origin.
- You are also be required to allow the SBA to investigate complaints and provide access to books, records, accounts or other sources of information to determine if unlawful conduct occurred.
- This law also prohibits retaliation.

TITLE IX

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TITLE IX



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

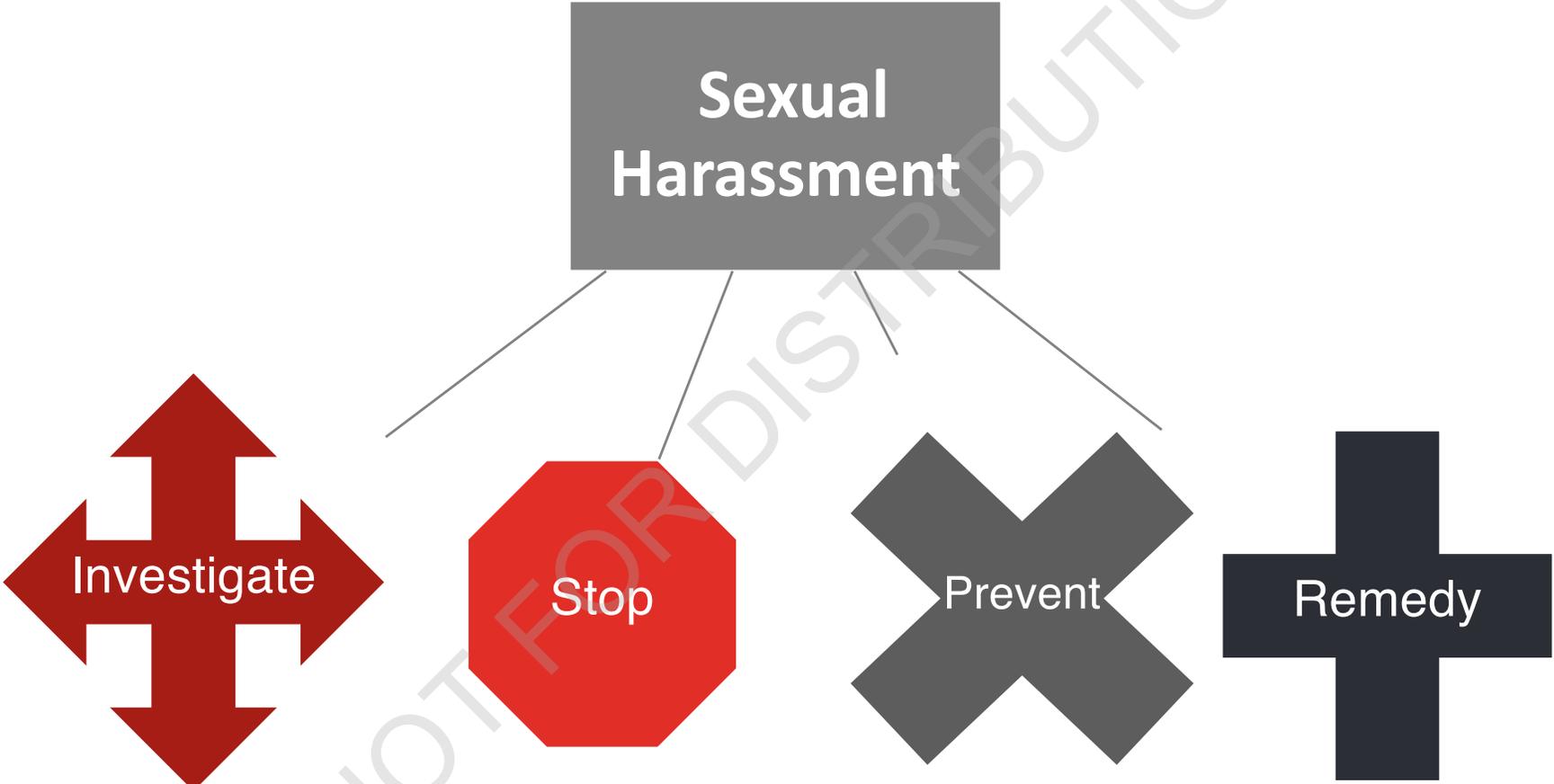
“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.”

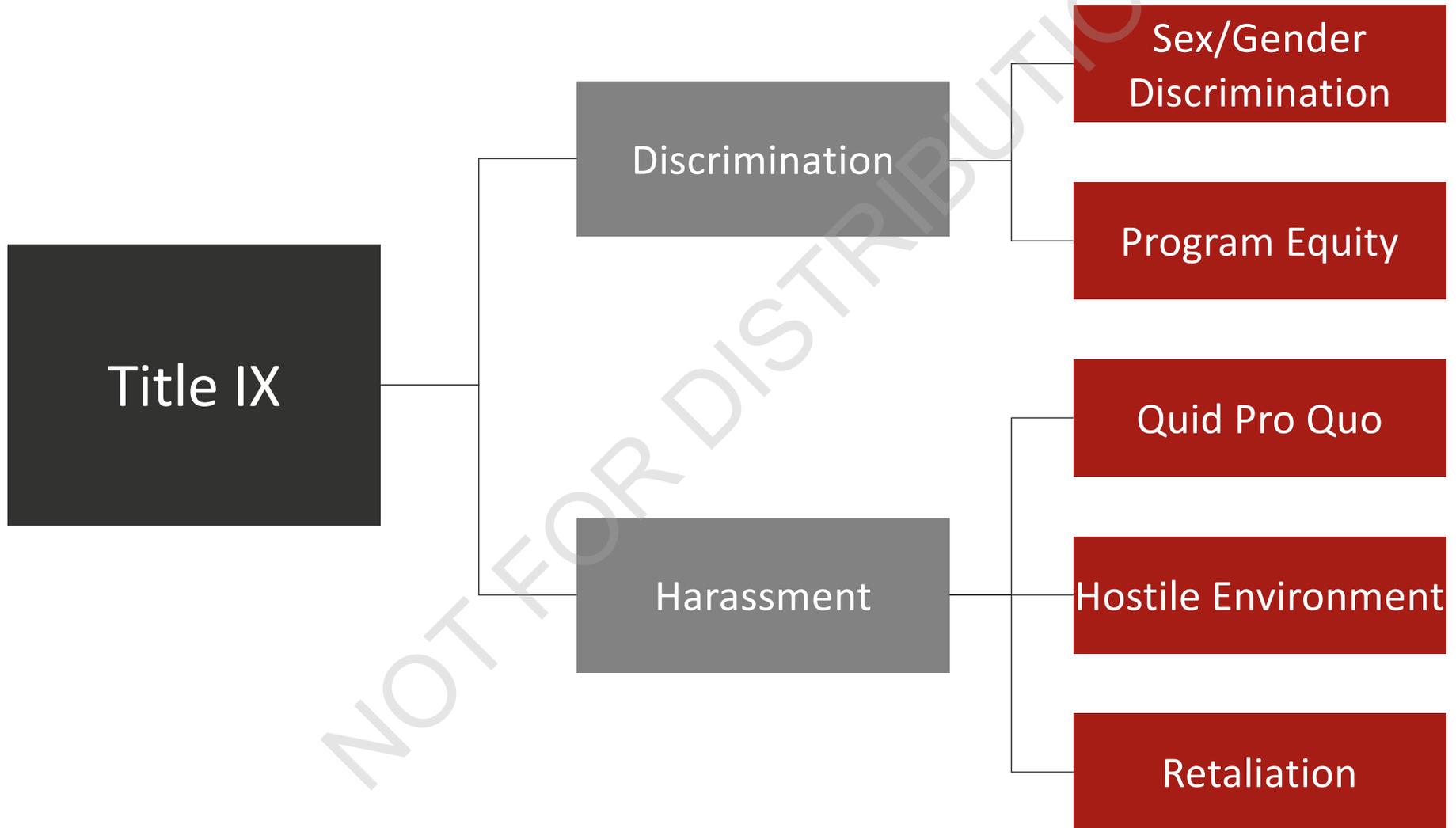
THE IX COMMANDMENTS



Thorough	Reliable	Impartial	Investigation
Prompt	Effective	Equitable	Process
End the Discrimination	Prevent its Recurrence	Remedy the effects upon the victim & community	Remedies

SCHOOL'S OBLIGATIONS UNDER TITLE IX





WHEN DOES TITLE IX APPLY?



Jurisdiction

- Jurisdictional Limitations.
 - Geographic.
 - Temporal.
- When is a student a “student”?
 - What about winter and summer **breaks**?
- When is an employee an employee?
 - Exempt vs. Non-Exempt Employees

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WHEN DOES TITLE IX APPLY?



Jurisdiction for Off-site Incidents:

- For Sexual Harassment and Discrimination cases.
 - There is an expectation that you should exercise SOME jurisdiction over off-site/off-campus incidents - “Nexus.”
- If Title IX jurisdiction is not present, the behavior could still violate:
 - Institutional harassment/discrimination policies.
 - Student Handbook/Conduct policies.
 - Technology/Acceptable Use policies.
 - Employee Handbook/Policies.
 - Professionalism standards.

WHEN DOES TITLE IX APPLY?



Jurisdiction for Off-Campus Incidents:

- This means you will be taking discretionary jurisdiction over incidents off-campus or on non-school property.
- When?
 - Whenever your policy says.
 - Nexus.
 - When the behavior occurs on property you own or control.
 - When the behavior occurs in programs/events you sponsor.
 - When the downstream effects of purely off-site conduct cause a discriminatory impact at school/on campus.

WHEN DOES TITLE IX APPLY?



Covered Programs

- All programs run by a federal funding recipient.
- It does not matter whether the program receives federal funding or not, **all** institutional programs are covered.
- All programs using facilities of the funding recipient.
 - (e.g. camps using your fields/stadium).

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WHEN DOES TITLE IX APPLY?



Covered Individuals

- Students – In-school/On-campus & online/distance.
 - Dual Enrollment students.
 - Faculty.
 - Staff.
 - Subcontractors, vendors.
 - Guests/visitors.
- (as either Complainant or Respondent)

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WHEN DOES TITLE IX APPLY?



- If Respondent is not affiliated with the institution in any way, the institution lacks authority to take disciplinary action.
 - Employee of an outside company (e.g.: vendor, construction worker, etc.).
 - Guest or invitee.
 - Prospective student.
 - Former student.
 - Former employee
 - Student from another school.

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WHEN DOES TITLE IX APPLY?



- Examples where institution lacks disciplinary authority:
 - A student is sexually harassed by a student from another school.
 - A student withdraws, or an employee resigns in the midst of an investigation.
- Institution must still:
 - Provide support and resources to the reporting party and the community.
 - Determine if there are patterns or institutional variables that contributed to the alleged incident.
 - Take what action it can (e.g.: trespass the person).

WHEN DOES TITLE IX APPLY?



Subject Matter

- Unwelcome sex-based and gender-based conduct.
- Unwelcome conduct of a sexual nature.
- Sex discrimination.
- Gender discrimination.
 - Including gender identity discrimination; and
 - Sexual orientation discrimination that implicates gender.
- Pregnant and parenting student discrimination.

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THREE TYPES OF SEXUAL HARASSMENT



1.
Hostile
Environment

2.
Quid Pro Quo

3.
Retaliatory
Harassment

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ATIXA MODEL DEFINITIONS: HOSTILE ENVIRONMENT



- A hostile environment is created when sexual harassment is:
 - Sufficiently *severe*, or
 - *Persistent or pervasive*, and
 - *Objectively offensive* that it:
 - *Unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from the school's/district's educational [and/or employment], social, and/or residential program.*
- From both a subjective (the reporting party's) and an objective (reasonable person's) viewpoint.

“SEVERE”



“The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. Indeed, a single or isolated incident of sexual violence may create a hostile environment.”

—(Q&A: A-3)

- Physical is more likely to be severe without need for repetition:
 - Non-consensual sexual intercourse or contact are almost always sufficiently severe.
 - Consider the circumstances: E.g., the ability for victim to escape the harassment.
- Assess whether accompanied by threats or violence.

(2001 Guidance).

“PERVASIVE”



- Widespread.
- Openly practiced.
- Well-known among students or employees – reputation of a department, person, etc.
- Occurring in public spaces (more likely to be pervasive).
- “Harassment is pervasive when incidents of harassment occur either in concert or with regularity” (2001 Guidance: Footnote 44).
- Frequency of the conduct is often a variable in assessing pervasiveness. (look to intensity and duration)
- Unreasonable interference with school or job.
- A “gauntlet of sexual abuse” *Meritor v. Vinson*, 477 U.S. 57 (1986).

“PERSISTENT”



- Repeated.
 - Intensity.
 - Duration.
 - Welcomeness.
- Defined:
 - Continuing to do something or to try to do something even though other people want you to stop.
 - Continuing beyond the usual, expected, or normal time; not stopping or going away (Merriam-webster.com).

“OBJECTIVELY OFFENSIVE”



- Reasonable person standard in context.
- “I know it when I see it...”
 - Age and relationships of accuser and accused.
 - Number of persons involved.
 - Frequency.
 - Severity.
 - Physically threatening.
 - Humiliation.
 - Intimidation.
 - Ridicule.
 - Abusive.

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ATIXA'S SUGGESTED ANALYSIS: HOSTILE ENVIRONMENT



- Totality of the circumstances to consider:
 - The frequency (persistence or pervasiveness), nature, and severity of the conduct.
 - Whether the conduct was physically threatening.
 - Whether the conduct was humiliating.
 - The relationship between the alleged harasser and the subject or subjects of the harassment.
 - The age of the alleged harasser and the subject or subjects of the harassment.
 - The size of the school, location of the incident(s), and context in which conduct occurred.

ATIXA'S SUGGESTED ANALYSIS: HOSTILE ENVIRONMENT



- Totality of the circumstances to consider:
 - The effect on the reporting party.
 - Whether the conduct was directed at more than one person.
 - Whether the conduct unreasonably interfered with the reporting party's educational or work performance.
 - If statement, whether it was an utterance of an epithet which was offensive or offended due to discourtesy or rudeness.
 - Whether the speech/conduct deserves protections of academic freedom or the First Amendment protection.
 - “Constellation of surrounding circumstances.”

- **Sample Definition**

- *Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature,*
- *By a person having power or authority over another, when*
- *Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational [or employment] progress, development, or performance.*

RETALIATORY HARASSMENT



- ***Sample Definition***

- *Any adverse employment or educational action taken against a person because of the person's participation in a complaint or investigation of discrimination or sexual misconduct.*
- Also includes retaliation against a reporting party by the respondent or respondent's friends.
- Also can include retaliation directed toward a third party because of that party's participation in a grievance process or for supporting a grievant.

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KEY TITLE IX-RELATED ISSUES



Sex Based Discrimination

- Program Equity
- Recruitment, Admissions and Access
- Pregnancy
- Athletics
- Employment, Recruitment & Hiring
- Extra-curricular activities
- Housing
- Access to Course Offerings
- Salaries and Benefits
- Financial Assistance
- Facilities
- Funding
- Sex, Gender, Gender Identity

Sexual Harassment

- Stalking
- Domestic Violence
- Dating Violence
- Sexual Assault
- Sexual Violence
- Sexual Exploitation
- Sexual Intimidation
- Sexual Misconduct
- Bullying and Cyberbullying
- Retaliation

SECTION 504 OF REHABILITATION ACT

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504 AND ADA



504 and ADA are not designed to ensure equal results...

But to create a “just result” and
to provide equal opportunities for success.

SECTION 504 STATES:



- “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.”

*Sec. 704(a) Promulgation of nondiscriminatory
rules and regulations*

- 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

SECTION 504 OF THE REHABILITATION ACT OF 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.

SECTION 504 ADMINISTRATIVE REQUIREMENTS



- Schools must have clearly defined policies and procedures and implement them consistently.
- Schools must have preventive measures in place to position themselves to manage reports of disability-based discrimination.
- Schools must provide notice of:
 - Nondiscrimination.
 - 504 Coordinator.
 - 504 grievance procedures.
 - How to obtain academic adjustments and auxiliary aids.

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SECTION 504 DISABILITIES COMPLIANCE OVERSIGHT



- The Section 504 regulations require that schools:
 - “Designate at least one person to coordinate its efforts to comply.”
 - Adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of discrimination.
 - Must provide oversight of disability program compliance.
 - Must ensure dissemination of notice of the school’s non-discrimination policy.
 - Must ensure civil-rights-based grievance procedures are in place to address complaints of discrimination.

AGE DISCRIMINATION ACT

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AGE DISCRIMINATION ACT OF 1975



- The purpose of this act is to prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance.
- “No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.”
- Also prohibits retaliation.

SBA Regulations: 13 CFR Part 117

AGE DISCRIMINATION ACT OF 1975



- The Age Discrimination Act of 1975 does not cover employment discrimination. Complaints of employment discrimination based on age (under the ADEA) may be filed with the Equal Employment Opportunity Commission, under the Age Discrimination in Employment Act.
- The Age Discrimination Act does not modify or amend the ADEA. It does not target older Americans like the ADEA does, but it protects age in general by not defining an age group. This means that individuals of various ages are protected from discrimination.
- The Age Discrimination Act applies to a wider range of individuals affected by federally funded programs, including students as well as employees. In fact many of the groups filing complaints for violations under the Age Discrimination Act are students of various ages, many of whom have filed complaints citing age discrimination in admissions.

AGE DISCRIMINATION ACT OF 1975



- Although the statute expressly forbids age discrimination, it is permissible to use certain age restrictions under the following conditions:
 - If the age distinction is necessary for the normal operation of the activity or program; or
 - If there are factors other than age that have a substantial relationship to the activity or program objectives.

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APPOINTING A TITLE IX COORDINATOR ("RESPONSIBLE EMPLOYEE")

Title IX Coordinator role

- Description
- Role



PROCEDURAL REQUIREMENTS



- Appoint a Title IX Coordinator to receive and investigate complaints.
- Provide notice to all students and employees the name and contact information of the Coordinator.
- Adopt a Title IX compliant grievance procedure to ensure a prompt and equitable resolution of complaints.
- Provide notice of non-discrimination statement to all applicants for admission and employment, students, parents and employees in all materials related to admissions and employment and all handbooks.

THE TITLE IX COORDINATOR



- The school's Title IX Coordinator is an administrator with significant authority and wide-ranging responsibilities.
- Must be able to affect change across many departments, including Human Resources, Teachers/Faculty, Athletics, and Student Conduct & Behavior.
- Some schools will allocate part-time responsibilities to the coordinator. Others will dedicate a full-time position.
- To alleviate the burden on one administrator, schools should consider identifying multiple deputy coordinators if there are multiple schools or multiple large buildings.

THE ROLE OF THE TITLE IX COORDINATOR



- Prevention and remediation of:
 - Gender Discrimination
 - Sexual Harassment
 - Sexual Assault
 - Stalking
 - Intimate Partner/Relationship Violence
 - Bullying and Cyberbullying
 - Retaliation
- Assurance of compliance with requirement to stop, prevent, remedy.
- Assurance of compliance with final sanctions.

THE ROLE OF THE TITLE IX COORDINATOR

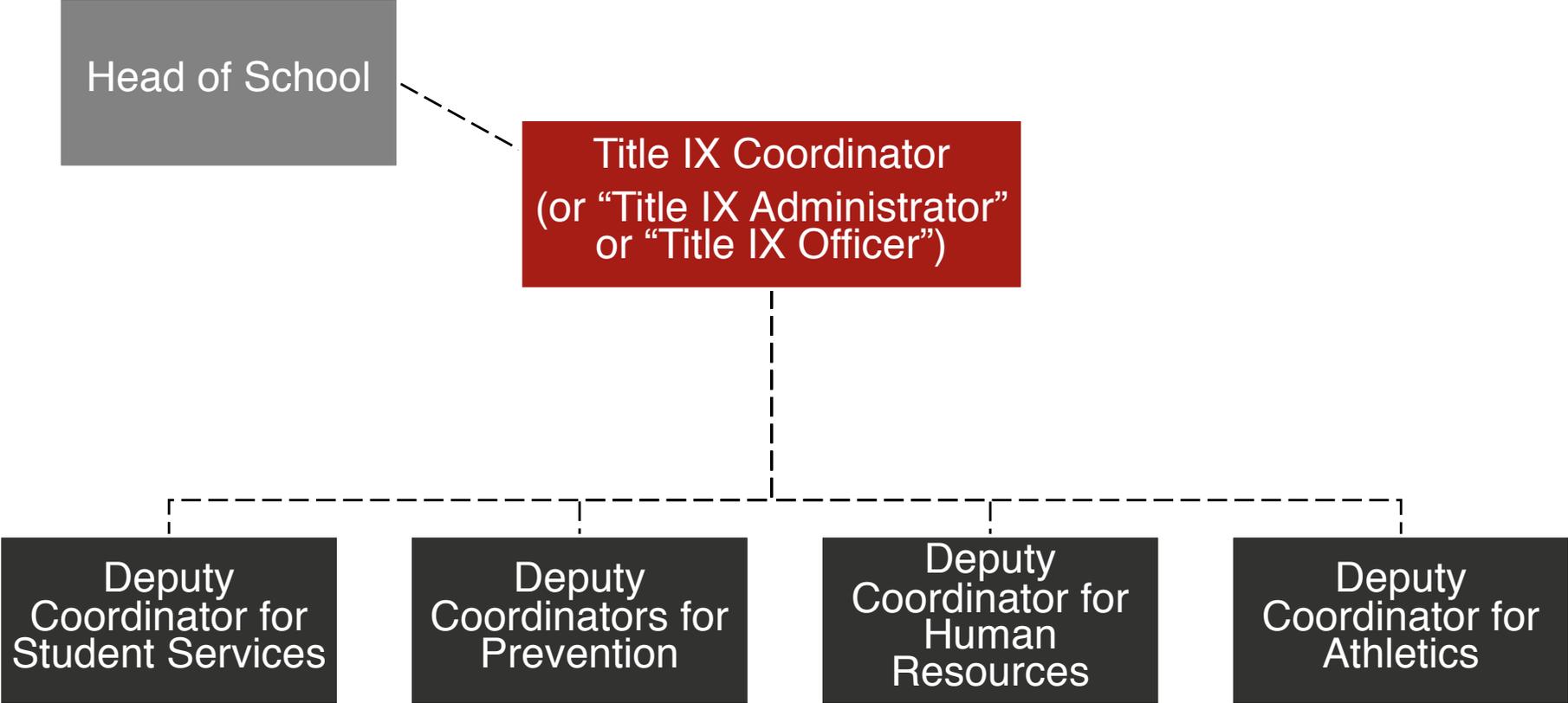


- Contact for government inquiries.
- Point person for reports and complaints.
- Oversight and coordination of prompt and equitable grievance procedures (faculty, student, and staff).
- Creator and implementer of appropriate policies.
- Compliance auditor.
- Training oversight: Faculty, staff, students, investigators, hearing officers, and appellate officers.
- Assurance of First Amendment protections.
- Section 504 disabilities compliance oversight.
- Athletics gender equity.
- Title VI and Age Discrimination Act Coordinator?

POINT PERSON FOR REPORTS AND COMPLAINTS

- All school employees are considered “mandatory reporters” and must notify the Title IX Coordinator when receiving a report.
- In addition, Heads or Assistant Heads of School, supervisors, and individuals appointed as deputy coordinators may also be identified in publications and policies as individuals to whom a report may be made.
- The Title IX Coordinator must create a structure of documentation and reporting by these designated individuals to ensure that the Title IX Coordinator is aware of the issue and will either designate an individual to lead the Title IX-based response protocol or will implement that process.

SAMPLE TITLE IX TEAM STRUCTURE



NOTICE, REPORTING, & CONFIDENTIALITY

- Actual and constructive notice
- Additional reporting requirements
- When do you investigate?

Actual Notice

- Individual files a Title IX report.
- Individual notifies the Title IX Coordinator or other responsible employee.
- Individual complains to school police or security official.
- Staff member witnesses harassment.

Constructive Notice

- Broader standard
- Knew or should have known

ADDITIONAL REPORTING REQUIREMENTS



- Supervisors and Managers (per Title VII)
 - Mandated to report harassment or other misconduct of which they are aware.
- Abuse or Suspected Abuse of Minors
 - All employees are required to report abuse or suspected abuse of minors consistent with the law of your state. This generally includes reporting immediately to law enforcement and to the state's child welfare agency.
- Additional state reporting requirements (e.g., elder abuse and felony reporting)

ATIXA'S RECOMMENDED APPROACH



- All employees report
 - Enables school/district to best support those who have experienced harassment or discrimination
 - Better enables tracking patterns
 - Gets information to those trained to handle it
 - Also key to tracking patterns.

WHY REPORT?



- Often we focus on the legal obligations and the negative consequences of not reporting.
- More effective if we focus on the real reason reports should be made: Providing support and resources.
 - Provide Complainants with school-wide assistance through a single individual (TIXC).
 - Access to the full range of support and resources.
 - Long-range view: ATIXA has seen countless cases where Complainants do not experience the negative effects until months later when they are failing their classes, become ill, miss work, considering self-harm, etc.

REQUESTS FOR CONFIDENTIALITY



- If a Complainant requests confidentiality and/or does not want the institution to investigate:
 - The institution should take all reasonable steps to respond and investigate consistent with that request.
 - So long as doing so does not prevent the school from responding effectively and preventing the harassment of other students or the Complainant.
 - Institution will offer support and resources.
 - Proceeding without a Complainant's participation has due process implications for the Respondent.

REQUESTS FOR CONFIDENTIALITY



- The school should explain to the Complainant that:
 - Its responsive action/remedial abilities may be limited based on the level of confidentiality or privacy requested by Complainant.
 - It cannot guarantee privacy if doing so would jeopardize the safety of the reporting party or others.
 - Only those with a need to know will be informed.
 - Train those who will be informed about confidentiality expectations
 - **If the Respondent is an employee, the institution may need to proceed due to Title VII.**

RELUCTANCE TO REPORT



- The Complainant should be notified as to their options:
 - That the process will still be available to them, regardless of how long they wait.
 - That the institution will support them in any way it can (e.g. classes, no contact orders, etc.). Engage in ways to limit the effect of the behavior on the Complainant.
 - That, if information is brought to the attention of the of the institution that may involve a threat to the community, the office may be forced to proceed with an investigation, but that the Complainant will be notified of this process.

ANALYZING A REPORTING PARTY REQUEST FOR CONFIDENTIALITY



- Institution may need to proceed if any of the following are present:
 - PPTVWM
 - Pattern
 - Predation
 - Threat
 - Violence/Weapon.
 - Minors (will always be reported to proper authorities)

INVESTIGATION PROCESS

WHEN DO YOU INVESTIGATE?



- When you have notice!
- When the Coordinator deems an investigation is warranted.
- Rumors, gossip, social media, etc. can be notice.
 - Investigating on these bases is discretionary (but often recommended).
- Once actual notice exists, the duty to investigate is absolute.

THE PROCESS



STEPS OF AN INVESTIGATION



- Receive Notice or Allegation.
- Preliminary Inquiry (initial issue-spotting).
- Notice of Investigation to Respondent and Complainant and Notice of Formal Allegation (“Charges”).
- Issue spotting by investigator (will continue as new information is added).
- Preliminary investigation strategy.
- Formal comprehensive investigation.
 - Witness interviews
 - Evidence gathering.
- Write report.
- Meet with Title IX Coordinator, and then parties, to review report & evidence (follow-up as needed).
- Synthesize and analyze evidence.

PROCESS OVERVIEW



- The investigation team (or individual), in consultation with supervisors and/or Title IX Coordinator, strategizes the investigation.
 - Methodology
 - Order/timeline
 - Goals
 - Prepare preliminary questions but be prepared to be flexible
 - Potential obstacles
- Interview all witnesses.
- Gather and assesses all available evidence.
- Write a report.
- Depending on process, make finding/recommendation and sanction (vary by school)

CREDIBILITY, EVIDENCE AND ANALYSIS

CREDIBILITY

- To assess credibility is to assess the extent to which you can rely on a witnesses' testimony to be accurate and helpful in your understanding of the case.
 - Credible is not synonymous with truthful – but may involve lack of truthfulness.
 - Memory errors do not necessarily destroy a witness' credibility.
 - Refrain from focusing on irrelevant inaccuracies and inconsistencies.
- Pay attention to the following factors...

FACTORS TO CONSIDER FOR CREDIBILITY

- Is the description of the incident plausible?
 - Logic/Consistency
 - Are there apparent reasons to avoid specific response?
 - Ask “Does this make sense?”
- Is the description corroborated? Corroborating evidence is important.
- Did the witness report his/her account to anyone close to the time of the events?
- Does the witness have a reason or motive to lie or falsify information about the account?
- Does the witness have a past record of behavior that would either substantiate or refute his/her account?

MAKING CREDIBILITY DETERMINATIONS

- Look at consistency of story – substance and chronology of statements also if there are other exact stories from other witnesses.
- Look for the amount of detail (facts) provided, factual detail should be assessed against general allegations, accusations, excuses or denials that have no supporting detail.
- Pay attention to non-verbal behavior (i.e., does the person seem to be telling the truth), but don't read too much into it.

UNDERSTANDING EVIDENCE

- Formal rules of evidence do not apply. If the information is considered relevant to prove or disprove a fact at issue, it should be admitted. If credible, it should be considered.
 - Evidence is any kind of information presented with the intent to prove what took place.
 - Certain types of evidence may be relevant to the credibility of the witness, but not to the charges.
- Consider if drugs or alcohol played a role
 - If so, do you know what you need to know about the role of alcohol on behavior? Timing? Incapacitation?
 - Look for evidence of prior planning.

UNDERSTANDING EVIDENCE (CONT.)



- You may **assign weight** to evidence based on:
 - Direct or testimonial evidence (e.g., personal observation or experience).
 - Documentary evidence (e.g., supportive writings or documents).
 - Electronic evidence (e.g., photos, text messages, and videos).
 - Real evidence (i.e., physical object).
 - Circumstantial evidence (i.e., not eyewitness – but compelling)
 - Hearsay evidence (i.e., statement made outside the hearing but presented as important information).
 - Character evidence (generally not relevant or acceptable).
 - Impact statements (should only be reviewed after a finding).

ANALYZING THE INFORMATION



Withhold judgment until all the evidence has been considered.

ANALYZING THE INFORMATION

- Use your policies in play to begin your analysis.
- Examine only actions that have a direct relation to the situation under review or a pattern of incidents.
- Explore motivation, attitude, and behavior of reporting party, responding party, and witnesses.
- Apply relevant issues:
 - Force, incapacity, and consent.
 - Credibility
- Analyze the most serious violations first and make a determination of each and every violation alleged, element by element.

WHO RENDERS THE FINDING?



- Variations in role of decision process.
 - Investigator renders the finding.
 - Investigator recommends the finding to an administrator or hearing panel.
 - Investigator only presents investigation report to administrator or hearing panel without findings.
- The investigation report is the most critical document. It needs to be thorough, reliable, and impartial.

REVIEW OF PROCESS IF MAKING A FINDING



- Review the institutional policies in play.
- Parse the policy.
 - Specific findings for each policy and each responding party.
- Pose key questions.
- Review the evidence and what it shows (relevance).
- Assess credibility of evidence and statements as factual, opinion-based, or circumstantial.
- Determine whether it is more likely than not policy has been violated.
- Cite concretely the reasons for your conclusions.

THE INVESTIGATION REPORT

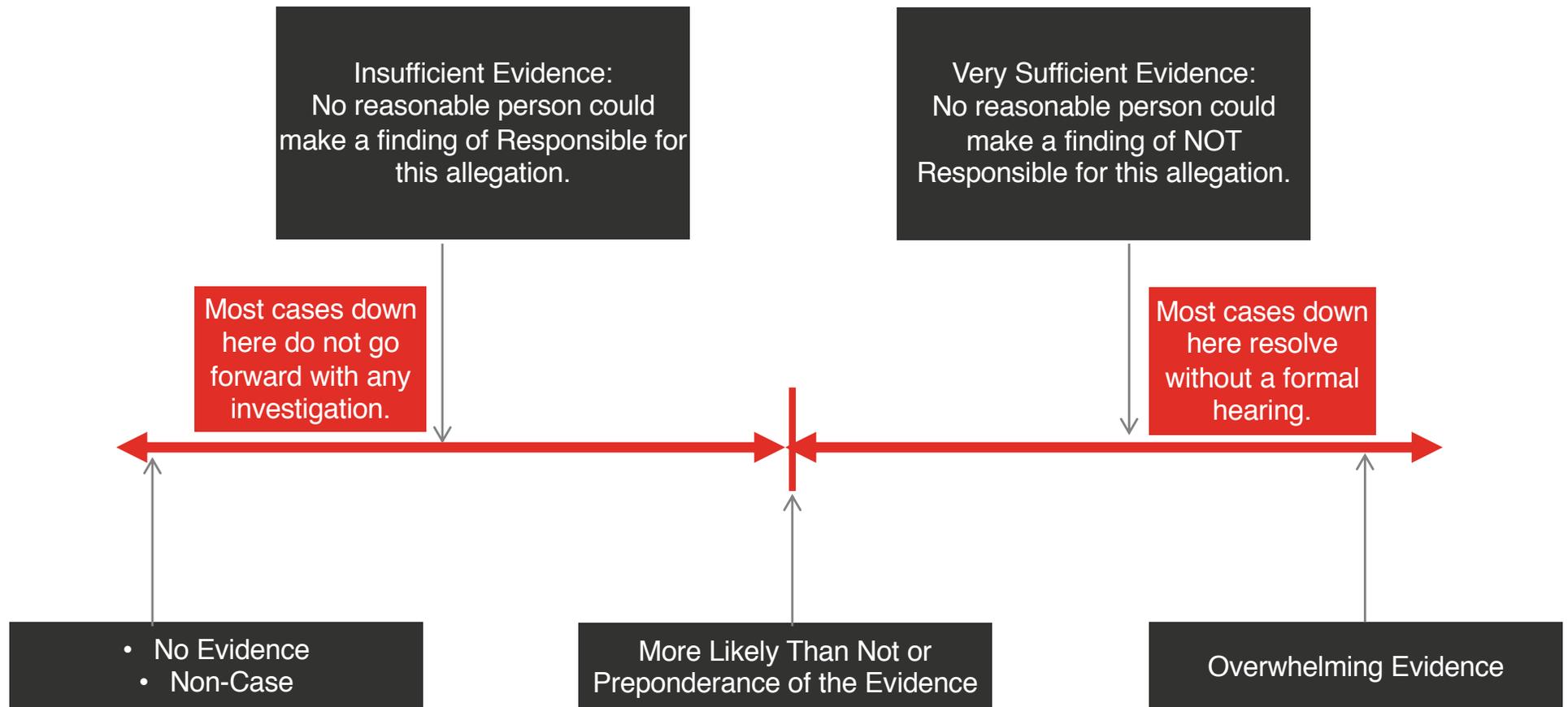
- The investigation report is the one comprehensive document summarizing the investigation.
- Helpful to have a “skeleton” outline of what report will include.
- The report should:
 - Detail the allegations and how they were brought forward.
 - Explain the role of the parties and witnesses, and any relations between them.
 - Summarize information collected.
 - Address evidence collected (e.g., direct, circumstantial, documentary, and expert).

PROMPTNESS



- Five days to resolution is a good guideline for non-complex student cases.
 - Timeline starts from **notice of the incident**, not from the incident itself.
 - No set requirement, other than to have prompt, designated timeframes in your procedures.
 - Goal is to avoid undue delay.
 - What about police or safety/security staff?
 - What about school vacations/breaks?
- Overarching goal – avoid undue delay, prevent ongoing hostile environment.

STANDARD OF PROOF / EVIDENTIARY STANDARD



Case Study Discussion



Complainant: Jorge – Student worker

Respondent: Lily – Student

- Jorge worked as a student worker in the student-run A/V/Tech lab for his high school. Lily needed some help installing software on her new laptop, and she went to the A/V/Tech lab for help. Jorge helped to install the software Lily wanted. As he was working, he asked Lily out. She turned him down, somewhat abruptly, saying that she doesn't date outside her race.

- Shortly after, Lily began to receive unwelcome email and text communications to her laptop and phone from undisclosed addresses and numbers. The messages were sexual and vaguely threatening. She told her parents about the messages, and her father took the computer to a friend who was tech-savvy. The friend blocked the messages but could not find out who sent them.
- Then, Lily started to see social media messages in her apps that came from her account, but that she did not write. Several people contacted her about the fact that she was sending them inappropriate messages. Two students contacted the Title IX Coordinator to report that they were receiving harassing messages from Lily.

- Lily denied sending the messages and claimed that someone was accessing her accounts to do so. Someone left a note on the windshield of her car, “You shouldn’t have blocked me. Now I’ll destroy you.”
- Jorge came forward to complain of race discrimination by Lily

Discussion

- Is this a Title IX issue? Could it be another form of discrimination?
- Would this violate your current policy?
- What steps would you take to investigate?

IMPORTANT
INFORMATION

FAILURE TO COMPLY



- If a school fails to comply with the requirements to address the discrimination elements the SBA has the authority to suspend or refuse any financial assistance not yet provided or to accelerate the maturity of the loan.
- The SBA may also make a referral to the U.S. Dept of Justice.
- An individual may also bring a private legal action against the school.

NBOA/CAIS K-12 LEARNING EXPERIENCE



Advancing Business Excellence in Independent Schools



ALL INCLUSIVE OPPORTUNITY TO PARTNER WITH ATIXA

K-12 Coordinator Level 1 Training June 1, 2020 - 10:00a.m. to 5:00p.m. ET – Zoom Webinar

A customized training program for K-12 Coordinator Level 1 Training. We have modified our standard Certification course into a specialized learning experience training. All attendees who complete the training will be provided with an official document of ATIXA Course Completion to satisfy the Office of Civil Rights' annual Title IX training requirement.

A three-month ATIXA K-12 Educator Membership which includes benefits such as:

- The best source materials on Title IX
- Access to the ATIXA K-12 listserv
- The ATIXA K-12 resource library
- Additional benefits can be found <https://atixa.org/join/overview/communities-of-practice/pk-12-educator/>

An electronic copy of ATIXA's Model Policy for Independent Schools

ATIXA Executive Team of experts and our Advisory Board has created the Model Policy for Independent Schools to reflect best practices, Title IX guidance and compliance mandates. Our Policies and Procedures have helped schools and districts as they strive to comply with Title IX and related legislation, as well as protect the safety of their communities.

Investment: \$375/Person – Registration link to be shared in the chat.

ABOUT ATIXA:

- Primary industry membership association
- 3,600 members from K-12 and higher ed
- 16,500 coordinators and investigators certified since 2011
- Extensive memberships, materials, and resources available

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QUESTIONS?



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