

# Title IX Coordinator Training

## Part 1 of 3

*Training materials are copyrighted by T9Now and are licensed for the exclusive use of purchasers. No unauthorized or unlicensed use is permitted. These training materials are informational in nature and should not be construed as legal advice.*



# Title IX Coordinator Training

---

*July 2020*

Christine Galdston, J.D., LL.M.

Title IX Consultant

[Christine@T9Now.com](mailto:Christine@T9Now.com)

[www.T9NOW.com](http://www.T9NOW.com)



# Organization & Content

## 01

- History & Context
- Conflicts of Interest, Bias & Impartiality
- Title IX Personnel
- Key Terms
- Record-keeping

## 02

- Sexual Harassment
- Mandatory Response Obligations
- What to do When You Receive a Report/Complaint

## 03

- Investigation
- Hearing
- Dismissals
- Appeals
- Sanctions & Remedies



# Part 1

History & Evolution of Title IX

Underlying Principles

Supreme Court Framework

Overview of Major Provisions & Procedural Protections

Training Requirements

Bias, Conflict of Interest & Impartiality

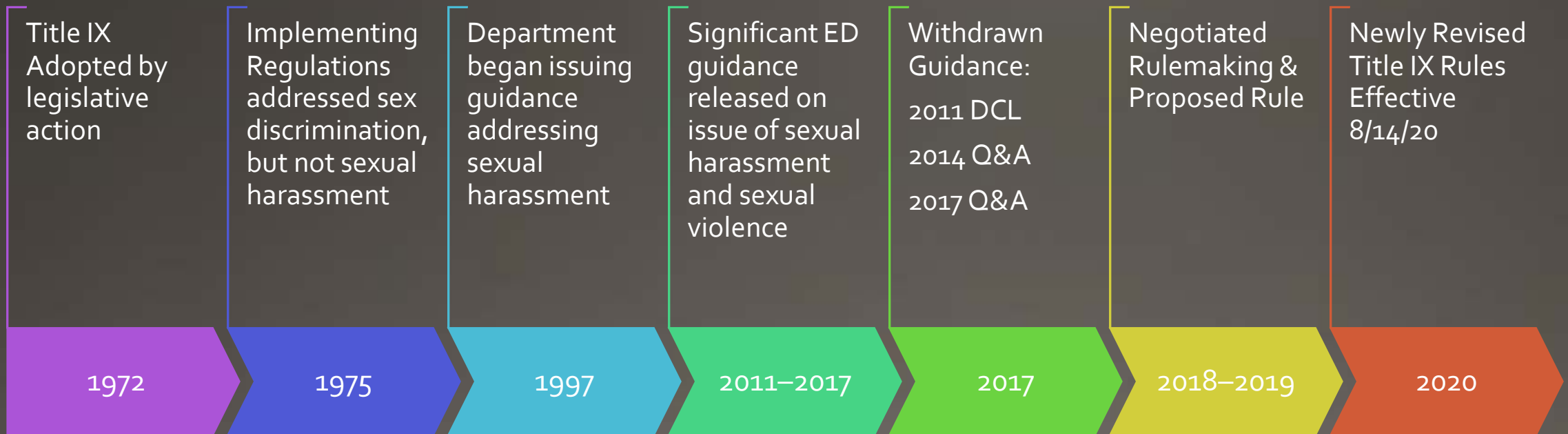
Title IX Personnel

Key Terms & Definitions

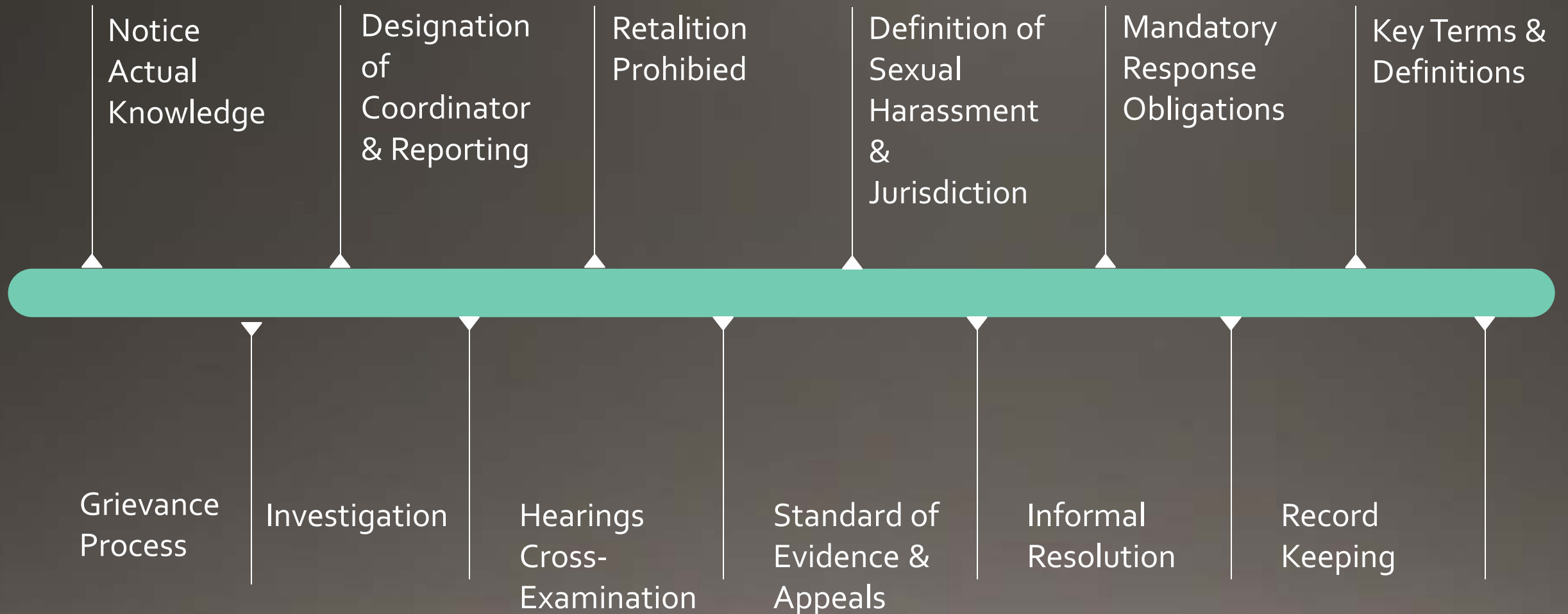
Record Keeping



# History & Evolution



# FINAL TITLE IX RULE MAJOR PROVISIONS



# Principles Underlying the New Rules

Protect	Protect Due Process & Fundamental Fairness
Improve	Improve Integrity of the Grievance Process
Effectuate	Effectuate Purpose of the Law in Preventing Sex Discrimination





# Supreme Court Framework

*Gebser v. Lago Vista Independent School District (1998 524 U.S. 274)*

*Davis v. Monroe County Board of Education (1999 526 U.S. 629)*





# Supreme Court Framework

1. Sexual Harassment
2. Actual Knowledge
3. Deliberate Indifference



# Three-Pronged Definition of Sexual Harassment

1. Unwelcome sexual conduct that is so severe and pervasive and objectively offensive it effectively denies a person equal educational access
2. Quid Pro Quo
3. Clery/VAWA Sex Offenses

*\*Quid Pro Quo and Clery prongs do not have to be severe, pervasive and objectively offensive; a single incident falling within the scope of either could constitute prohibited sexual harassment*



# Actual Knowledge

- Notice of sexual harassment or allegations of sexual harassment
- Made to the Title IX Coordinator
- Or to any school official who has the authority to institute corrective measures on behalf of the school



# Deliberate Indifference

- Was the school's response clearly unreasonable in light of the known circumstances?
- Did the school respond meaningfully to every report of alleged sexual harassment whether or not it triggered the formal grievance process?



# Deliberate Indifference

*The school's response:*

- **Must be Prompt**
- **Must Include offering supportive measures to complainant**
- **Ensures the Title IX Coordinator contact each complainant to discuss supportive measures**
- **Considers complainant's wishes regarding supportive measures**
- **Informs the complainant of the availability of supportive measures with or without filing a formal complaint**
- **Explains the process for filing a formal complaint**
- **Treat the parties equitably (*i.e. not identically, but equitably*)**
- **Follows the grievance process before imposing any disciplinary sanctions on respondent**
- **Effectively implements remedies designed to restore or preserve educational access**



# Procedural Protections 106.45

CITATION	SUMMARY
106.45(a)	School's treatment of parties may constitute discrimination
106.45(b)(1)(i)-(x)	Grievance Process Requirements
106.45(b)(2)	Written Notice of Allegations to Both Parties
106.45(b)(3)-(b)(4)	Formal Complaints Must be Investigated, Dismissals, Consolidation
106.45(b)(5)(i)-(vii)	Investigation Requirements
106.45(b)(6)	Cross Examination Conducted by Advisor
106.45(b)(7)	Independent/Neutral Decision-maker, Standard of Evidence Same, Written Determination
106.45(b)(8)	Appeals: Procedural Irregularities, New Evidence, Bias or Conflict of Interest
106.45(b)(9)	Informal Resolution: Voluntary, Written Consent. Not Allowed for Employee Respondent
106.45(b)(10)	Record Keeping, Publication of Training Material



# Mandatory Training Requirements 106.45(b)

- ✓ *On Title IX's definition of "sexual harassment"*
- ✓ *On the scope of the school's education program or activity*
- ✓ *On how to serve impartially, including by avoiding prejudgment of the facts at issue*
- ✓ *On how to avoid conflicts of interest and bias*
- ✓ *Any materials used to train must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.*
- ✓ *On how to conduct an investigation and grievance process*
- ✓ *Decision-makers must receive training on any technology to be used at a live hearing, and on issues of relevance of questions and evidence, including when questions and evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant*
- ✓ *Investigators must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence*



## Mandatory Training Requirements 106.45(b)

*\*ALL training materials must be made publicly available on school's website.*

*\*Training materials must be maintained for seven years.*







# How to Serve Impartially, Including by Avoiding Prejudgment of the Facts



# How to Avoid Conflicts of Interest and Bias





## *Avoiding Sex Stereotypes*

Any materials used to train must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment



# Title IX Personnel

Title	Responsibilities	Training	Status
Title IX Coordinator (multiple &/or deputies)	Coordinate, Intake Reports & Complaints, T9 analysis, Initiate Formal Complaint, Implement Supportive Measures	Sexual Harassment, Investigation & Grievance Procedure, Hearings, Appeals & Informal Resolution (as applicable); Impartiality, Relevance, Privilege	Must be Employee May Not Serve as Decision-Maker
Investigator	Conduct Fair, Objective and Impartial Investigation, Differentiate b/w Related & Relevant Evidence & Privilege	Sexual Harassment; How to Conduct an Investigation, Impartiality, Relevance, Privilege, Report-Writing	Staff or External May Not Serve as Decision-Maker
Decision Makers	Evaluate Evidence, Make & Write Decision, "Rule" on Relevancy during Cross-Examination	Sexual Harassment, Hearing Process, Technology, Evidence/Relevancy	Staff or External Cannot Serve in Any Other Capacity
Advisor(s)	Question Opposing Party & Witnesses	None required	Party provided Staff or External
Informal Resolution Facilitator	Informal Resolution Processes	Informal Resolution Processes	Staff or External



# Title IX Personnel: Official with Authority(OWA)

- Described in 34 CFR 106.30
- Notice to OWA is Actual Knowledge
- OWA determination is fact specific, depending on circumstances unique to each school
- Training, ability or obligation to report does not equal OWA
- School may designate OWA



School “must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities” under Title IX

Intake reports and complaints

Threat & T9 Applicability Assessments

Offer & coordinate supportive measures

- “The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures”

*May investigate if can do so objectively & without bias*

- *ED cautions against conflict of interest*

“Responsible for effective implementation of any remedies”

# What Does the Title IX Coordinator Do?



## Title IX Coordinator Role 106.8

- Must be an employee with the specific job title “Title IX Coordinator”
- Must publish and disseminate this employees contact information with your policy
- Must have the requisite authority to fulfill their responsibilities in compliance with the law



# Investigators, Decision-makers & Facilitators

- Rule prohibits “single-investigator model”
- Coordinator *may* serve as investigator as long as can do so conflict and bias-free \* *note the Department cautions on this*
- Schools may structure T9 team as best suits their needs otherwise, as long as they ensure objectivity and impartiality





Complainant  
& Respondent

Formal  
Complaint

Supportive  
Measures

Actual  
Knowledge

Consent

Sexual  
Harassment

# Key Terms & Definitions 34 CFR 106.30



## Complainant & Respondent 106.30

- Parties to the complaint: alleged victim and alleged perpetrator of conduct that could constitute sexual harassment.
- Complainant: participating or attempting to participate in program or activity
- Respondent: enrolled or under recipient's control




## Formal Complaint 106.30

- A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation.
- May be filed in person, by mail, by electronic mail, or by other methods identified by school.
- “document filed by a complainant” is either a document or electronic submission that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the one filing the formal complaint.




# Supportive Measures


Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent before or after the filing of a formal complaint or where no complaint has been filed.



Designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party.



Obligated to offer (with or without a formal complaint) and to engage in an interactive discussion with complainant regarding their wishes.



Must be kept confidential to the extent possible to allow implementation.



# Supportive Measures 106.30

- Non-disciplinary, non-punitive
- Individualized services that may be offered to the complainant *or respondent* free of charge
- That do not **unreasonably** burden the other party
- May include services to protect the safety of all parties as well as the school's educational environment or to deter sexual harassment
- Must be kept confidential to the extent possible
- Schools must document the facts and circumstances that render the supportive measures they have implemented appropriate *and* must also document rationale if they do not implement supportive measures explaining how this decision was not *deliberately indifferent*



## Supportive Measures 106.30

- Must promptly contact the complainant to discuss the availability of supportive measures
- Must consider complainant's wishes
- Must inform complainant of the availability of supportive measures with or without filing a complaint



## Actual Knowledge 106.30(a)

- “Notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient”
- “Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge”
- “the mere ability or obligation” to report “or having been trained to do so” does not equal actual knowledge



# Consent

- Not Defined in Regulations
- Critical Contested Issue in Many Cases
- Affirmative Consent Required in Some States
- California “Yes Means Yes”
- New York “Enough is Enough”





# Consent

- Must clearly define and consistently apply your definition
- The school carries the burden of collecting sufficient evidence to reach a final determination, not the parties
- Especially when using an affirmative consent standard, be mindful that you do not misuse it by requiring the respondent to prove the existence of consent or likewise shift the burden to a complainant to prove the absence of consent



# Record Keeping



# Recordkeeping 106.45(b)(10)

- Seven Year Retention Period
- Reports & Complaints
- Any Action Taken in Response
- Basis for Conclusions that Response Was Not Deliberately Indifferent
- Supportive Measures
- Rationale If No Supportive Measures
- Other Measures to Restore or Preserve Equal Access
- Dismissal Records
- Investigation Records, Determinations, Recording of Hearing
- Record of Sanctions/Discipline or Remedies
- Appeals & Decision
- Training Material
- Informal Resolution & Outcome



## Record Keeping 106.45(b)(10)(ii)

- Schools need to create a record to demonstrate why and how their response and actions were not deliberately indifferent.
- Documentation of emergency removals and administrative leaves for employee respondents must also be maintained.



## Re-Cap & Key Takeaways

- Definition of sexual harassment and scope of rule is significantly narrowed
- Supportive measures are emphasized and always required
- Due process and fundamental fairness must be preserved
- Record keeping requirements include documentation that school's response was not deliberately indifferent



## Part 2 Preview

- Sexual Harassment Defined
- Mandatory Response Obligations
- What to do When You Receive a Report/Complaint

