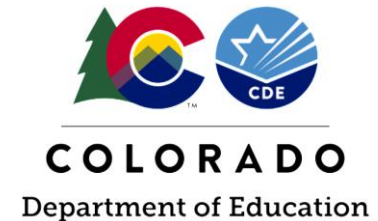


# Addressing the New Title IX Changes in K-12 Schools

A panel hosted by CCASA

**Alexis King: Rocky Mountain Victim Law Center**  
**Rebekah Ottenbreit: Colorado Department of Education**



# Panelists

- **Alexis King**
  - Rocky Mountain Victim Law Center
  - Title IX Staff Attorney
  - [aking@rmvictimlaw.org](mailto:aking@rmvictimlaw.org)
- **Rebekah Ottenbreit**
  - Colorado Department of Education
  - English Language Development Specialist and Title IX State Coordinator
  - [ottenbreit\\_r@cde.state.co.us](mailto:ottenbreit_r@cde.state.co.us)



# Overarching Questions

- What are the changes?
- Compliance requirements for K-12
- How to build and maintain structures to support students and staff
- Practical ideas and best practices

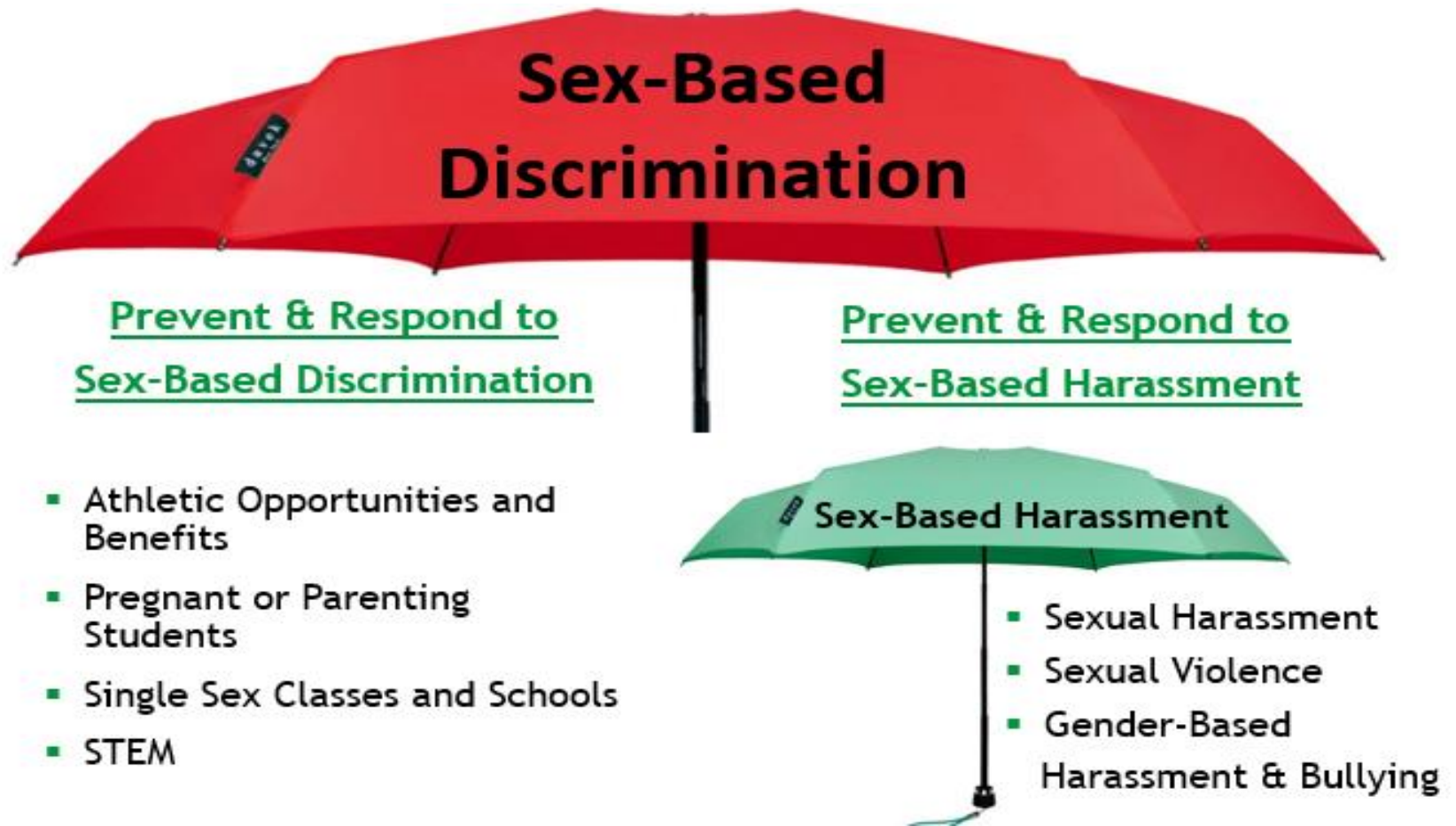


# Title IX

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



# What Falls Under Title IX?



# Rules, Regulations & Guidance

- Implementing regulations
  - [34 CFR, part 106](#)
- Guidance documents
- **NEW Title IX Regulations**
  - Specific to sexual harassment
  - In addition to existing regulations
  - Draft regulations released for public comment Nov 29, 2018 - Jan 28, 2019
  - Over 100,000 comments submitted.
  - Final rule released May 6, 2020
  - 2033 pages
  - Effective Aug 14, 2020



# Practical Ideas

- Establish a Title IX team
- Include:
  - district attorney
  - district policy writer
- Use table of contents and search function
- Talk to other districts



# New Definition: Sexual Harassment

1. **Quid pro quo** sexual harassment by an employee
2. Davis Court's phrasing verbatim: unwelcome conduct **that a reasonable person would determine is "so severe, pervasive and objectively offensive"** that it effectively denies a person equal access to education
3. Sexual assault as defined in the Clery Act/ amended by the Violence Against Women Act, **a single instance of:**
  - dating violence
  - domestic violence
  - stalking





# **New Definition: Actual Knowledge**

1. A student may report to any employee of an elementary or secondary school
2. Students do not need to report to a specific employee such as a Title IX Coordinator
3. If an employee observes sexual harassment



# **New Definition: Education Program or Activity**

1. "all of the operations of" a recipient
2. "locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the harassment occurs"
3. off-campus building owned or controlled by a student organization officially recognized by a postsecondary institution
  - Incidents that occur off campus, if any of the above three conditions are met
  - Must be in the United States



# Is cyber-bullying “off-campus?”

That depends...

- Is it part of “all of the operations of” the school/district?
- Does the school/district exercise “substantial control?”
- Is the device being used owned by the school?
- Is harassment occurring during class time?
- Is the harassment occurring using school wifi, school purchased software, or a school email address?
- Is the harassment occurring on a school designated platform or website?



# Updating Policies

- AC - Nondiscrimination/Equal Education Opportunity
- ADD - Safe Schools?
- GBAA - Sexual Harassment?
- JB - Equal Education Opportunity
- JBB - Sexual Harassment
- JII - Student Concerns, Complaints, and Grievances

# Updating Procedures

## Include:

- Title IX Coordinator(s)
- Definitions
- Rights of both parties
- How the school will respond
- Timelines
- Forms
- Appeals process



# New Posting Requirements

1. Notice of Nondiscrimination
  - school/district does not discriminate on the basis of sex
  - any person may submit questions/file a complaint with the Title IX Coordinator or the Office for Civil Rights
2. Title IX Coordinator's name, address, phone number, & email
  - if more than one Title IX Coordinator, must identify lead
3. Grievance Procedures
4. Title IX training materials used



# New Roles & the Role of Parents

- Title IX Coordinator
- Investigator
- Decision Maker
- Advisor
- Person who facilitates an informal resolution



# Due Process

- Burden of Gathering Evidence
- Conflict Free
- Reasonable Timing
- Written Notice
- Opportunity to Inspect
- Differentiate Evidence
- 10 Day response





# Due Process Continued

- Investigative Report
- Issue 10 days prior to any hearing or final determination
- May provide a hearing
- Opportunity to submit questions
- Written determination
- Appeal



# University vs K-12

- Coaches not mandatory reporters: **does not apply to K12**
- Cross-examination and hearings: **may to K12**
- Rape Shield



# Formal vs Informal

- Informal = elusive
- Similarly, a recipient **may not require** the parties to participate in an informal resolution process under this section and **may not offer** an informal resolution process unless a formal complaint is filed.

# How must the school respond to a complainant?

## MUST:

- Be prompt
- Title IX coordinator must contact each complainant
  - To offer supportive measures
  - With or without a formal complaint
  - Explain process for filing a formal complaint
- Treat complainants and respondents equitably
  - Follow grievance procedures before disciplining



# Supportive Measures

- Non-disciplinary, non-punitive
- Individualized, as appropriate
- As reasonably available
- Free of charge
- No formal report required



# Examples of Supportive Measures

- “course- related adjustments” includes opportunities to retake classes or exams or adjusting an academic transcript
- Counseling
- Deadline extensions
- Modified work or schedules
- Change in work or housing locations



# How must the school respond?

If respondent is found to be responsible for sexual harassment > **MUST:**

- Written determination
- Options for Appeal
- Coordinator to effectively implement remedies for the complainant
  - designed to restore or preserve equal access to education program or activity
  - Any disciplinary sanctions

# Title IX and Remote Learning

- Does it impact the child's ability to access their education?
- Is the behavior unwelcome conduct **determined by a reasonable person** to be so severe, pervasive, and objectively unreasonable, that it denies equal access to educational activity?
- You cannot wait until after COVID





# Practical Ideas

- What relationship are you trying to foster with the complainant?
  - Changing classes
  - Changing schools
  - Gathering information



# Title IX & Law Enforcement

## Advantages

- Immediate impact for student

## Disadvantages

- Every word counts
- Privacy

Is your team trauma informed?



# Title IX Accountability

- Reports must go in tandem
  - Police
  - Title IX
- Civil Action
- Office of Civil Rights



# Next Steps for Districts & Schools

- Establish a Title IX team
- Update Title IX policies
  - Adopt policies
- Update grievance procedures
  - Adopt new procedures
- Post online and widely distribute
- Train staff and collaborators
- Educate parents, students, and community
- Maintain records
  - 7 years minimum



# Who to Train or Educate

- Title IX team
  - Title IX Coordinator, investigator, decision-maker, and person who facilitates an informal resolution
- Employees
- Collaborators
  - SROs, advocates, outside trainers
- Students
- Parents, families
- Community



# What to Train On

- Definitions
  - Sexual Harassment
  - Updated policies and procedures
- Differentiated
  - Each role many require a different type of training
  - Title IX team must understand the scope of the district's education programs or activities
    - \* On-going
    - \* In multiple formats

# How to Train: Practical Ideas

- ❑ Title IX Team Members
  - In-depth, specific, includes law
  - Law firm, ATIXA and school specific
- ❑ Employees and collaborators
  - In house, district/school specific
  - Conducted by trained Title IX team
- ❑ Students
  - In house, grants, specific to school
  - Conducted by school personal and grant programs
- ❑ Parents, families, community
  - In house, grants, specific to school
  - Conducted by school personal and grant programs



# Supporting Schools

- Victim Centered v. Trauma Informed
- Accessible Title IX procedures
- Accessible Title IX Training info
- Supporting student activists





# Lawsuits and Advocacy

- Attorney General's Lawsuit
- <https://coag.gov/app/uploads/2020/06/TitleIX-Complaint.pdf>
- Title IX Advisory Committee

# Other Questions Received

- How does Title IX intersect with working with students with disabilities?
- How can I support girls of color and QTBIPOC youth of color?



# Requests

- Sample policies & training appreciated
- Recommendations for student code of conduct process
- A flowchart of title 9 procedures that reflect the changes

# Resources

- Colorado Department of Education
  - Title IX homepage:  
[http://www.cde.state.co.us/cde\\_english/titleix](http://www.cde.state.co.us/cde_english/titleix)
  - Sex-Based Harassment:  
[http://www.cde.state.co.us/cde\\_english/titleixsexbasedharrassment](http://www.cde.state.co.us/cde_english/titleixsexbasedharrassment)
- Rocky Mountain Victim Law Center
  - <http://www.rmvictimlaw.org/>
- Legal Information Network of Colorado
  - <http://www.coloradolinc.org/>

# To submit further questions:





---

**COLORADO**  
Department of Education



An Overview of the New Title IX Rule:  
What it is and Steps to Take

(webinar will be delivered in 2 parts)

# Technology



- This webinar is being recorded
- You have been muted
- The chat has been disabled
- If you cannot hear, raise your hand



- A PDF of the power point can be downloaded in lower left
- If you are having a tech issue, email Alana Foy at [Foy\\_a@cde.state.co.us](mailto:Foy_a@cde.state.co.us)



# Schedule

Webinar part 1:  
What It Is, date  
and time

Webinar part 2:  
Steps to Take,  
date and time



# Meet the Presenters



Josie Lewis  
Chief Legal Counsel  
and General Counsel  
Colorado Association of  
School Boards (CASB)  
[jlewis@casb.org](mailto:jlewis@casb.org)



Rebekah Ottenbreit  
ELD Specialist and  
Title IX State Coordinator  
Colorado Department of  
Education (CDE)  
[Ottenbreit\\_r@cde.state.co.us](mailto:Ottenbreit_r@cde.state.co.us)

# Disclaimer



***The information contained in this presentation is for informational purposes only and does not constitute a certified training or legal advice. Districts should work with the district's local counsel to ensure that these, and other Title IX resources, are tailored to the needs of the local district.***



Colorado Association  
of School Boards



# Agenda

## Webinar part 1: What It Is

- Title IX of the Education Amendments of 1972
- Essential background information on Title IX
- New Title IX Rule RE: Sexual Harassment
- Top Questions Asked

## Webinar part 2: Steps to Take

- Update and adopt exhibit, policies, and procedures
- Distribute and post
- Educate and Train
- Document and Maintain Records
- Top Questions Asked

# Important Information



- Part 1 of this webinar series may be used to provide some staff level education. The slides are available for your district to use and update, as appropriate.
- Information is not exhaustive, but rather provides options that may be used for training.
- Your district's local context is critically important. Please be sure to supplement with local policies and procedures that are tailored to your district's needs.





## Title IX of the Education Amendments of 1972

*“No person in the U.S. 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”*



# Title IX Interpretation through Rule & Guidance

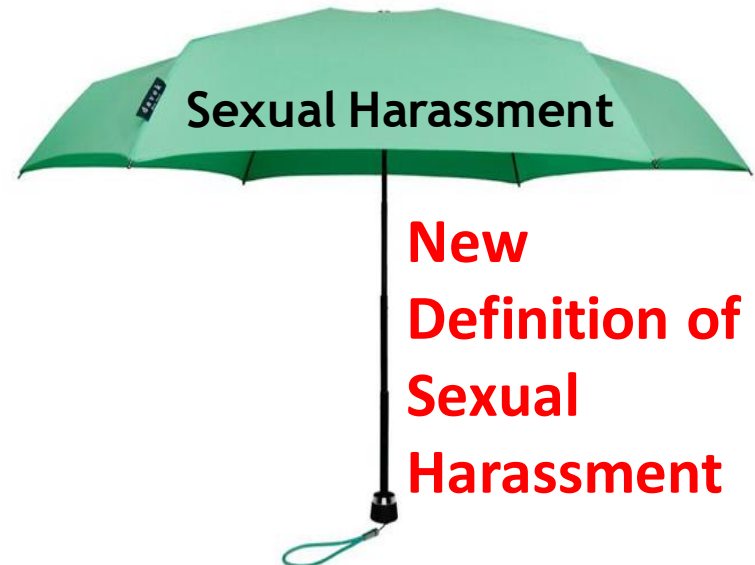


## Sex-Based Discrimination

### Prevent & Respond to Sex-Based Discrimination

- Athletic Opportunities and Benefits
- Pregnant or Parenting Students
- Single Sex Classes and Schools
- STEM
- Gender-Based Harassment & Bullying

### Prevent & Respond to Sexual Harassment



# The New Title IX Rule



1. Specific to sexual harassment
  - [Final Rule, Federal Register](#)
2. Amends existing regulations
  - [34 C.F.R. Part 106](#)
3. In addition to guidance documents that have not been rescinded, which address:
  - Athletic opportunities and benefits
  - Pregnant or Parenting Students
  - Single Sex Classes and Schools
  - STEM
  - Gender-Based Harassment & Bullying

# Essential Background Information on Title IX



# History of the New Title IX Rule

- **June 23, 1972:** Title IX signed into law by President Richard Nixon
  - Follow up to Title VI of the Civil Rights Act of 1964
  - Title VI prohibits discrimination on basis of race, color, or national origin
  - Title VI does not address sex-discrimination
  - Title IX written to fill the gap
- **1975:** limited rule-making, did not include sexual harassment
- **1997: sexual harassment included under Title IX through guidance**
- **1998:** Gebser vs Lago Vista – an educational entity is liable for Title IX teacher-on-student harassment if it is “**deliberately indifferent**” to “**actual notice**” of discrimination
- **1999:** Davis vs. Monroe Board of Education--peer-on-peer harassment is actionable under Title IX
  - school “act[ed] with **deliberate indifference to known acts of harassment in its programs or activities,**” and
  - the harassment at issue was “**so severe, pervasive, and objectively offensive that it effectively bar[red] the victim's access to an educational opportunity or benefit.**”

# History of the New Title IX Rule

continued

- **2001:** interim measures issued through guidance
- **2011 and 2014:** additional guidance on sexual harassment
- **Sept 2017:** guidance documents on sexual harassment rescinded and replaced with interim guidance and notice of rule-making
- **Nov 29, 2018:** draft regulations released for 60 days of public comment
  - Over 100,000 comments submitted
- **May 6, 2020:** unofficial copy of Final Rule released
  - 2033 pages
- **May 19, 2020:** official copy published in Federal Register
- **Aug 14, 2020:** regulations took effect



## Big Picture Shifts

- Focus on addressing sexual misconduct through specific procedures
- Emphasis on due process and impartiality

# What's new?



- Terminology
- New and Amended Definitions
- Roles
- Notification and Posting Requirements
- Policy Requirements
- Procedural Requirements
- Documentation and Maintenance of Records
- Role Specific Training

# New Terminology

## ■ Complainant

- an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- parents and guardians do not become complainants (or respondents)

## ■ Respondent

- an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment

## ■ Formal complaint

- a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment

## ■ Supportive measures

- individualized services reasonably available that are nonpunitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.

# Other Terminology



## ■ Recipient

- Elementary and secondary schools, as well as post secondary institutions that receive federal financial assistance

## ■ Informal resolutions

- Must start with formal grievance process
- Parties voluntarily participate and provide written consent
- Consent can be withdrawn at any time (either party can choose to go back to a formal process)
- Informal resolution may end in an agreement under which the respondent agrees to a disciplinary sanction without the recipient completing a formal grievance process
- Informal processes are **not** permitted in employee to student allegations

## ■ Advisor of Choice

- Assists a party in “navigating the process”
- May be, but does not have to be, an attorney

# New Definitions

# New Definition of Sexual Harassment



## Sexual Harassment

1. **Quid pro quo** by an employee **OR**
2. Davis Court: unwelcome conduct that a **reasonable person** would determine is “**so severe, pervasive and objectively offensive**” that it effectively **denies** a person **equal access to education OR**
3. **Sexual assault as defined in the Clery Act**, as amended by the Violence Against Women Act, **a single instance of:**
  - **dating violence**
  - **domestic violence**
  - **stalking**



# Who is covered?

- The complainant **MUST** be a current student, someone who is attempting to enroll, or the Title IX Coordinator
  - If the respondent is no longer enrolled in the school, the school/district may end its investigation
  - If the respondent is no longer an employee of the school/district, the school/district may end its investigation
- If the complainant withdraws the complaint, the school may end its investigation
  - The Title IX Coordinator can continue the investigation if the complaint is severe, and if it makes sense to do so
    - Ex: you have multiple complaints against the same student
    - Ex: the complainant withdrew the complaint out of fear

# New Definition of Actual Knowledge

1. A student may report to any employee of an elementary or secondary school
2. Students do not need to report to a specific employee such as a Title IX Coordinator
3. If an employee observes sexual harassment

**\* All K-12 employees are obligated to report and considered mandatory reporters under Title IX**

# New Definition of Education Program or Activity

1. “all of the operations of” a recipient **OR**
2. “locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the harassment occurs” **OR**
3. Incidents that occur off campus, if any of the above conditions are met

**\* Must be in the United States**




# What About Off-Campus Activities?

- “Off campus” does not automatically mean that the incident occurred outside the recipient’s education program or activity.
- In situations involving some allegations of conduct that occurred in an education program or activity, and some allegations of conduct that did not, the recipient must investigate the allegations of conduct that occurred in the recipient’s education program or activity.
- Recipient can also choose to address allegations of conduct outside the recipient’s education program or activity.

# Example



*If a student is sexually assaulted outside of an education program or activity but subsequently suffers Title IX sexual harassment in an education program or activity, then these final regulations apply to the latter act of sexual harassment, and the recipient may choose to address the prior assault through its own code of conduct.*

A map of the United States, including Alaska and Hawaii, with a light blue background. The text "Must be in the United States" is overlaid in the center in a bold, italicized black font. The Great Lakes region is highlighted in a darker blue color.

***Must be in the United States***

# What about study abroad programs?

The Department agrees with the rationale applied by a Federal district court in *Phillips v. St. George's University* that regardless of whether a study abroad program is part of a recipient's education program or activity, Title IX does not have extraterritorial application.

- Schools may face difficulties interviewing witnesses and gathering evidence outside the US.

**\* However, under Title IX, the school can offer supportive measures for incidents that occur outside the United States**

**\* And, a school can choose to address incidents that occur outside the United States through their own student conduct policy**





## What About Cyber-Bullying?

*Online bullying may have repercussions that could raise to the level of Title IX.*



# Does the harassment fall under the school/district operations/jurisdiction?

## Ask yourself these questions?

- Is harassment occurring during class time?
- Is the harassment occurring over a school designated platform or website?
- Is the harassment occurring using school designated software?
- Is the device being used owned by the school?
- Is the harassment occurring using school Wi-Fi?
- Is the harassment occurring using a school email address?
- Is the harassment occurring while in the process of completing a school assignment?



# Does the cyber-bullying meet the definition of sexual harassment?


- Is the harassment so severe, pervasive, and objectively offensive that it is affecting the complainant's ability to engage in school?
  - **Also reference:**
    - [Oct 26, 2010 Dear Colleague Letter on Harassment and Bullying](#)
    - [Harassment and Bullying Background, Summary, and Fast Facts Oct 26, 2010](#)

\* Even if a school/district is not required to address certain misconduct under Title IX, these final regulations allow a recipient to address such misconduct under its own code of conduct



# Title IX Roles

# New Roles

- ❖ Mandatory reporters  all K-12 staff
- ❖ Each party has the right to an Advisor

## Title IX Personnel

- ❖ Title IX Coordinator
- ❖ Investigator, Appellate Investigator
- ❖ Decision Maker, Appellate Decision Maker
- ❖ Person who facilitates an informal resolution process

**\* Title IX personnel must be free from conflicts of interest or bias for or against complainants or respondents.**

# The Role of All K-12 Staff



**Every school employee is deemed a “responsible employee.” If a responsible employee is aware of sexual misconduct, then a school has “actual knowledge,” and is therefore obligated to respond.**

## **This includes ALL:**

- Teachers, paraprofessionals, cafeteria workers, bus drivers, receptionist, secretary, nurse, counselors, janitorial staff
- Collaborators, contractors, outside trainers
- School Resource Officers
- Volunteers
- All other staff

# The Role of the Advisor



- Rationale behind the role: ensure fairness by allowing each party to receive advice and assistance navigating the grievance process.
- Must provide all parties with the opportunity to have an advisor present and participate in proceedings. (Note: The recipient may impose equal restrictions on the participation).
- May be, but is not required to be, an attorney
- The party is in the best position to select an advisor. The advisor may be “friends, family members, attorneys, or other individuals with whom the party has a trusted relationship.”
- Advisor must be fully informed throughout the process.



# Title IX Personnel



# The Role of the Title IX Coordinator

*Must designate and authorize at least one employee to coordinate the recipient's Title IX obligations.*

*\* Must be called the "Title IX Coordinator"*

## Some duties may include:

1. Participate in writing and updating the nondiscrimination policy and grievance procedures for resolving Title IX complaints
2. Provide education and information regarding Title IX requirements
3. Help students, parents/guardians, employees, school law enforcement, volunteers, and contractors at the school understand grievance procedures
4. Coordinate response to all Title IX complaints, including overseeing investigations
5. Monitor outcomes, identify and address patterns, assess effects on the campus climate
6. Maintain records
7. Survey and monitor the school climate

## References:

- [April 24, 2015 Dear Colleague Letter to Title IX Coordinators](#)
- [Title IX Resource Guide April 2015](#)





- Final regulations require a “trained investigator” to objectively evaluate the evidence and prepare an investigative report, summarizing relevant evidence
- A recipient may outsource to professionally trained investigators
- The Office for Civil Rights (OCR) does not elaborate on what it means for an investigator to be “trained”
- Investigator *can* be the Title IX Coordinator, but possibly should not be

## The Role of the Investigator



# The Role of the Decision Maker

- Can not be the Title IX Coordinator or the Investigator
- Must objectively evaluate all of the relevant evidence and avoid credibility determinations based on a person's status as a complainant, respondent, or witness.
- A recipient may outsource to a professionally trained Decision Maker
- Must be trained

# The Role of the Person Who Facilitates an Informal Resolution

- Know the process
- Must be free from conflicts of interest, bias, and trained to serve impartially.
- The same training requirements that apply to Title IX Coordinators, investigators, and decision-makers now also apply to any individuals who facilitate informal resolution processes



# Who Might Serve in These Roles?

## **Option A**

- Title IX Coordinator - District Employee A
- Investigator – District Employee B
- Decision Maker – Superintendent

## **Option B**

- Title IX Coordinator – District Employee A
- Investigator – Outside Consultant
- Decision Maker – Superintendent

## **Option C**

- Title IX Coordinator – District Employee A
- Investigator – District Employee B or Superintendent
- Decision Maker – Outside Consultant

## **Option D**

- Title IX Coordinator – District Employee A
- Investigator – Outside Consultant A
- Decision Maker – Outside Consultant B

## **Option F**

- Title IX Coordinator – Superintendent
- Investigator – District Employee A
- Decision Maker – Board

## **Option G**

- Title IX Coordinator – Superintendent or District Employee A
- Investigator – Outside Consultant
- Decision Maker – Board

## **Option H**

- Title IX Coordinator – Superintendent or District Employee A
- Investigator – Superintendent or District Employee A
- Decision Maker – Board

A large billboard on a highway overpass. The billboard is white with black text. The text reads "Required Notifications and Postings". The billboard is supported by a metal structure and a white pillar. In the background, there are highway lights and a clear blue sky.

# **Required Notifications and Postings**

# 1. Notification of Title IX Coordinator

## **Must notify:**

- Applicants for admission
- Applicants for employment
- Students
- Parents or legal guardians of elementary and secondary school students
- Employees
- All unions or professional organizations holding collective bargaining or professional agreements with the recipient

of the **name** or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator

**AND**

**that “any person” may report sex discrimination in person or by mail, phone, or e-mail, verbally or in writing, at any time 24/7**

## 2. Notification and Dissemination of Nondiscrimination Policy

**Must** notify all applicants for admission and employment that:

- The school/district does not discriminate on the basis of sex
- This is required under Title IX not to discriminate on the basis of sex
- This requirement extends to admissions and employment
- Inquiries may be referred to the Title IX Coordinator, to the Office for Civil Rights, or to both

**Must** include in all:

- Catalogs
- Handbooks

**\* And on the website**



# How to Use CASB Policies



- CASB sample policies cannot simply be adopted “as is.” Districts must make selections for options language, include district specific information, and remove CASB notes and copyright information.
- When receiving the Special Policy Updates, districts should:
  - Review the policies in their entirety, including ‘note boxes.’
  - Make selections for optional language.
  - Fill in information that is highlighted.
  - Add district specific content.
  - Remove note boxes and copyright information.
  - Consult with legal counsel.
  - Present the documents for board review and adoption.



# CASB Sample Notice



Colorado Association  
of School Boards

File: AC-E-1

*NOTE: This exhibit does not need to be filed in the Board's policy manual. It is provided as informational only and if applicable, may be kept by the district in another location.*

## **Nondiscrimination/Equal Opportunity** (Sample Notice)

In compliance with Titles VI & VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act of 2008, and Colorado law, (Name of School District) does not unlawfully discriminate against otherwise qualified students, employees, applicants for employment, or members of the public on the basis of disability, race, creed, color, sex, sexual orientation, marital status, national origin, religion, ancestry, or need for special education services. Discrimination against employees and applicants for employment based on age, genetic information, and conditions related to pregnancy or childbirth is also prohibited in accordance with state and/or federal law.

# CASB Sample Notice AC-E-1 continued



Complaint procedures have been established for students, parents, employees, and members of the public. The following person(s) have been identified as the compliance officer for the district:

---

Name(s) of employee(s) designated as compliance officer

---

Address

---

Telephone number

---

Email Address

---

Name(s) of employee(s) designated as the Title IX Coordinator



Insert district/school notice here



*NOTE: Colorado school districts are required by law to adopt a policy on this subject and the law contains some specific direction as to the content or language. This sample contains the content/language that CASB believes best meets the intent of the law. However, the district should consult with its own legal counsel to determine appropriate language that meets local circumstances and needs.*

## **Nondiscrimination/Equal Opportunity**

The Board is committed to providing a safe learning and work environment where all members of the school community are treated with dignity and respect. The schools in the district are subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, sex, sexual orientation, marital status, national origin, religion, ancestry or need for special education services. Accordingly, no otherwise qualified student, employee, applicant for employment, or member of the public may be excluded from participation in, be denied the benefits of, or be subjected to unlawful discrimination under any district program or activity on the basis of disability, race, creed, color, sex, sexual orientation, marital status, national origin, religion, ancestry, or need for special education services. Discrimination against employees and applicants for employment based on age, genetic information, and conditions related to pregnancy or childbirth is also prohibited in accordance with state and/or federal law.



Insert district/school nondiscrimination policy here

### 3. Notification of Grievance Procedures

106.8 (c) A recipient **must provide to persons entitled to a notification...the recipients grievance procedures and grievance process,** including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the recipient will respond.



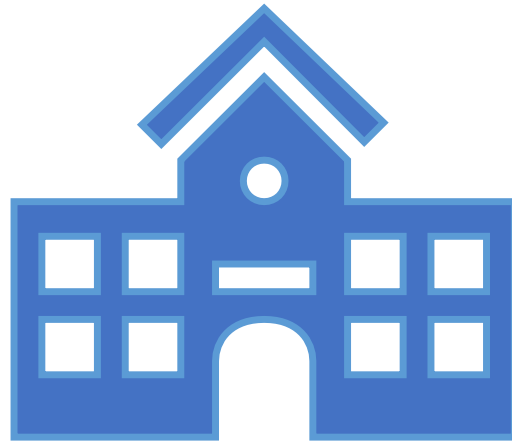
*NOTE: Colorado school districts are required by law to adopt a policy and regulations (or procedures) on this subject and the law contains some specific direction as to the content or language. This sample contains the content/language that CASB believes best meets the intent of the law. However, the district should consult with its own legal counsel to determine appropriate language that meets local circumstances and needs.*

## **Sexual Harassment Investigation Procedures** (Title IX)

The district is committed to maintaining a learning environment that is free from sex-based discrimination, including sexual harassment. It is a violation of policy for any staff member to harass students or for students to harass other students through conduct or communications of a sexual nature, or to retaliate against anyone that reports sex-based discrimination or harassment or participates in a harassment investigation.

### **Definitions**

For purposes of this regulation, these terms have the following meanings:



Insert district/school grievance procedures here



# CASB Sample Complaint Form



Colorado Association  
of School Boards

File: AC-E-2

*NOTE: This exhibit does not need to be filed in the Board's policy manual. It is provided as informational only and if applicable, may be kept by the district in another location.*

## **Nondiscrimination/Equal Opportunity** (Complaint Form)

Date: \_\_\_\_\_

Name of complainant: \_\_\_\_\_

School: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Please check here for allegations of sex-based discrimination and/or sexual harassment. (Note: Investigator will use investigation procedures consistent with allegations of sex-based discrimination and/or sexual harassment).



Insert district/school grievance complaint form here

# Posting Requirements

1. Notice of Nondiscrimination
2. Title IX Coordinator's name, address, phone number, & email
3. Grievance Procedures
4. Title IX training materials used

# 1 & 2: Post Policy & Title IX Contact

106.8 (b) Each recipient **must prominently display** the **Notice of Nondiscrimination Policy** and the **Title IX Coordinator's required contact information** on its **website and in each handbook or catalog** to the person's entitled to a notification

### 3. Post Grievance Procedures

106.8 (b) A recipient shall **adopt and publish grievance procedures** providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

# Post Grievance Procedures continued

“A grievance procedure...cannot be prompt or equitable unless students know it exists, how it works, and how to file a complaint.”

“Distributing the procedures to administrators or including them in the school’s administrative or policy manual **may not by itself be an effective way of providing notice, as these publications are usually not widely circulated to and understood by all members of the school community.**”

[January 2001 Revised Sexual Harassment Guidance](#)

## 4. Post Training Materials



106.45(b)(10)(D) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. **A recipient must make these training materials publicly available on its website**, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.

# Post Training Materials



- For proprietary material, the Department advises a recipient in that situation to secure permission from the consultant to publish the training materials.
- For proprietary materials purchased from the Association of Title IX Administrators (ATIXA), this link explains their policy on how to publicly post ATIXA's training materials.
  - <https://atixa.org/2020-regulations-requirement-posting-of-training-materials/>





“the recipient’s non-discrimination statement, designation of a Title IX Coordinator, policy, grievance procedures, and training materials should be **readily accessible to all students** pursuant to 106.8 and 106.45(b)(10(i)(D)).”

## Suggestion

Create a page on the website that includes:

- Title IX Coordinator’s contact information
- Nondiscrimination Policy
- Grievance Procedures
- Any other Title IX related resources

\* *Directly link to this page from the “prominently posted” notice of nondiscrimination/nondiscrimination statement*



Insert link to district/school website with all Title IX information, including training materials here

# Obligation to Respond



# How to Prevent and Respond



**Prevent**



**Investigate**



**STOP**



**Remedy**

# A Recipient's Obligation to Respond to Complaints

- A school must respond promptly in a manner that is “**not deliberately indifferent**” or “**clearly unreasonable in light of the known circumstances.**”
- **The Title IX Coordinator must promptly contact the complainant confidentially to discuss the availability of supportive measures**
  - consider the complainant's wishes with respect to supportive measures
  - inform the complainant of the availability of supportive measures with or without the filing of a formal complaint
  - explain to the complainant the process for filing a formal complaint
- Schools must follow a grievance process that complies with the Final Rule before imposing any disciplinary sanctions or other actions that are not supportive measures, against a respondent.
- A school must investigate sexual harassment allegations in any formal complaint

# Supportive Measures



---

## What

- Non-disciplinary
- Non-punitive
- Individualized
- As private as possible

## Offered

- To both parties
- As reasonably available
- Free of charge

## When

- Promptly
- No formal report required

**\* Must be documented**



# Examples of Supportive Measures

- Counseling
- Increased supervision
- Course related adjustments
  - opportunities to retake classes or exams
  - adjusting an academic transcript
  - deadline extensions
- Schedule changes

*A supportive measure that removes the respondent from an activity would likely be considered punitive, except for “emergency removals” for students and “administrative leave” for employees*

# Emergency Removals

106.44 (c): Nothing in this part precludes a recipient from removing a respondent from the recipient's education program or activity on an emergency basis, provided that the recipient:

- Undertakes an individualized safety and risk analysis
- Determines an immediate threat
- Provides respondent with notice and an opportunity to challenge the decision following the removal



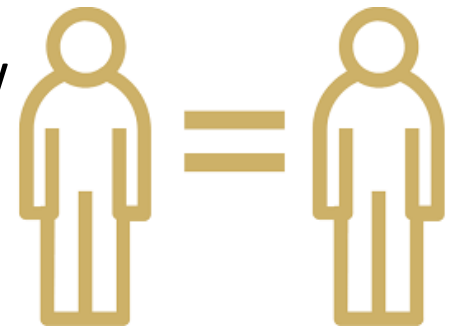




## Rights and Procedures to Protect Those Rights

# The Rights of Both Parties

- Prompt, effective, and unbiased process
- Right to an advisor, offered to both parties
- Supportive measures offered to both parties
- Equitable treatment for both parties
- Impartial investigation
- Presumption of innocence
- Due process
- Equal access to review evidence
- Impartial decision maker
- Confidentiality, to the extent permitted by law
- Right to appeals, offered to both parties
- Protection from retaliation



# Grievance Process Must Be:

- Prompt
- Effective
- Equitable



# Procedural Requirements



- Must start with formal process, can later move to informal, under certain conditions
- Written notice sent to complainant and respondent (or their parent/guardian, if the student is a minor)
- Presumption of innocence
- Prompt timeframe
- Certain required timelines
- Objective evaluation of evidence
- Optional Hearings for K-12
- Standard of Evidence
- Written report provided to both parties and advisors
- Remedies and sanctions

# Formal vs Informal Processes

1. Must start with formal grievance process
2. Can move to informal, if both parties voluntarily provide written consent
3. Consent can be withdrawn at any time (either party can choose to go back to a formal process)

\* **Informal processes are not permitted in employee to student allegations**

# Formal Grievance Process



snapshot

1. Title IX Coordinator receives and signs formal complaint
2. Title IX Coordinator must offer supportive measures to both parties
3. Title IX Coordinator sends written notice to both parties (or their parent/guardian, if the student is a minor)
4. Investigator interviews each party, witnesses, and collects and reviews evidence
5. Investigator sends written report to both parties
6. Each party has 10 days to review and present further evidence prior to determination (or hearing, if applicable)
7. Investigator revises report, as needed, and sends report to Decision Maker
8. Decision maker determines outcome
9. Decision maker writes and sends final written report to both parties



# Written Notice of Allegations Must Include

- Procedures for formal and informal processes
- Allegations (names of known parties, conduct alleged, date and location of conduct, if known)
- Presumption that the respondent is not responsible
- Right to an advisor
- Opportunity to review and inspect evidence
- Any provision in the code of conduct that prohibits knowingly making false statements or knowingly submitting false information

# Investigation Must Be:

- Thorough
- Reliable
- Impartial





# Due Process During Investigation

- Ensure the burden of proof is on the school/district, not the parties
- Provide equal opportunity to present witnesses and evidence
- Can not restrict ability of either party to discuss the allegations or present evidence (no gag orders)
- Must provide written notice of all interviews or hearings with sufficient time to prepare
- Must provide equal opportunity to inspect and review evidence
- Must follow a grievance process before disciplining or sanctioning respondent


# Considerations for Sharing Evidence

Protect	Protect student information to the extent possible
Provide	Provide adult witnesses' names
Notify	Notify parents when their child is involved in a Title IX investigation (if child is under 18)
Document	Document what evidence you have, when you share what and to whom

# Standard of Evidence

Recipient may adopt either:

- The “preponderance of the evidence” standard
  - It is **more likely than not** that sexual harassment or violence occurred
- OR
- The “clear and convincing” standard
  - It is **highly probable or reasonably certain** that the sexual harassment or violence occurred



Preponderance  
of the  
Evidence

Clear and  
Convincing

Beyond a  
Reasonable  
Doubt

# Standard of Evidence

- **Must use the same standard of evidence for complaints against students as it does for complaints against employees**
  - Requiring a higher standard of evidence for a student's complaint against an employee than a student's complaint against another student is "unfair," especially due to the power differential between student and employee.
- **Must state in grievance process and in written notice** whether the standard of evidence used is the preponderance of the evidence standard or the clear and convincing standard
- \* **Must apply the same standard of evidence to all formal complaints of sexual harassment**

Preponderance  
of the  
Evidence

Clear and  
Convincing

# Rape Shield Protection

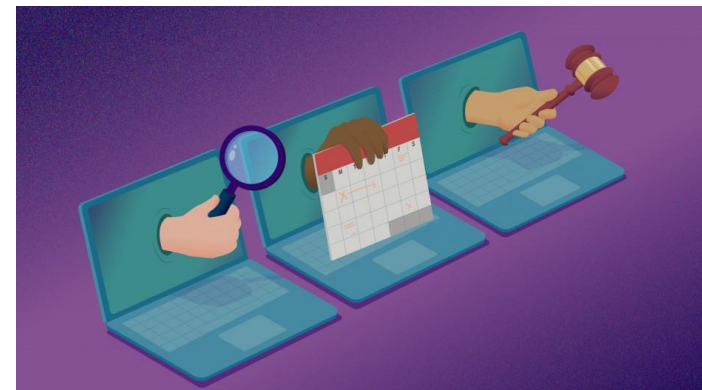


- Purpose: Protect complainant from being asked about or having evidence considered regarding sexual behavior
- Questions about a complainant's prior sexual behavior or sexual predisposition are not permitted, with two exceptions:
  - Unless to establish that another person committed the alleged conduct; or
  - Offered to prove the conduct was consensual

# Conducting Remote Investigations

- Is the behavior so severe, pervasive, and objectively offensive, that it denies equal access to the education program or activity?
- Cannot wait until after COVID to begin or conclude an investigation or to make a determination
  - Can postpone only if both parties agree to postpone
  - Document!!!
- The Association of Title IX Administrators (ATIXA) has some information on conduction remote interview, visit their website

<https://atixa.org/>



# When Title IX and Law Enforcement Intersect

- The criminal justice system and the Title IX grievance process serve distinct purposes
- School grievance process occurs independently of any criminal investigation that may occur concurrently
- School grievance process must be concluded in a “reasonably prompt” time frame
- Flexibility to temporarily delay the grievance process due to concurrent law enforcement activity
- Only permits “temporary” “brief” delays or “limited” extensions of time frames
- Must have “good cause”
- Delays based only on law enforcement request or due to a memorandum of understanding with law enforcement are not permitted
- Recipients’ obligations under Title IX are independent of recipients’ obligations to cooperate or coordinate with law enforcement
- Any delay requires written notice to the parties and an explanation for the delay or extension
- Still implement supportive measures while grievance procedures are pending.

# Investigative Report



- 
- Must fairly summarize the relevant evidence
  - Must be provided to both parties and advisors at least 10 days before a hearing or other determination of responsibility



# Determination of Responsibility

- Hearings are optional for K-12
- Even without a hearing, each party is permitted to submit written, relevant questions to be asked of another party or witness
- Decision Maker will provide each party with the answers and the opportunity to ask follow-up questions
- **Rape Shield:** Questions about a complainant's prior sexual behavior or sexual predisposition are not permitted unless to establish that another person committed the alleged conduct or that the conduct was consensual



# Written Determination Must Include

---

- Allegations
- Steps followed
- Determination
- Findings supporting determination
- Conclusions and statements of rationale for the determination of each allegation
- How to file an appeal
- Sanctions and remedies
- Retaliation prohibited



# Remedies

- Must end the discrimination
- Must prevent its recurrence
- Must restore or preserve equal access to the educational program or activity
- Must remedy the effects on the victim and the educational community
- Must protect the victim from retaliation





## Must offer appeals process based on:

1. Procedural irregularities that affected the outcome
2. New evidence not previously available
3. Conflict of interest or bias (on the part of the Title IX Coordinator, Investigator, or Decision Maker) that affected the outcome

**\* A school may offer an appeal equally to both parties on additional bases.**



## Retaliation is prohibited.

“No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part.”



“...charging an individual with a code of conduct violation that does not involve sexual harassment but arise out of the same fact or circumstances as sexual harassment allegations, for the purpose of interfering with rights under Title IX, constitutes retaliation.”

**\* A complaint of retaliation re-initiates the grievance procedures.**

# Resources

- [Press Release: Historic Action to Strengthen Title IX Protections for All Students](#)
- [U.S. Department of Education Title IX Final Rule Overview](#)
- [Summary of Major Provisions of the Department of Education's Title IX Final Rule](#)
- [Summary of Major Provisions of the Department of Education's Title IX Final Rule and Comparison to the NPRM](#)
- [Final Rule](#)

## [Western Educational Equity Alliance Center](#)

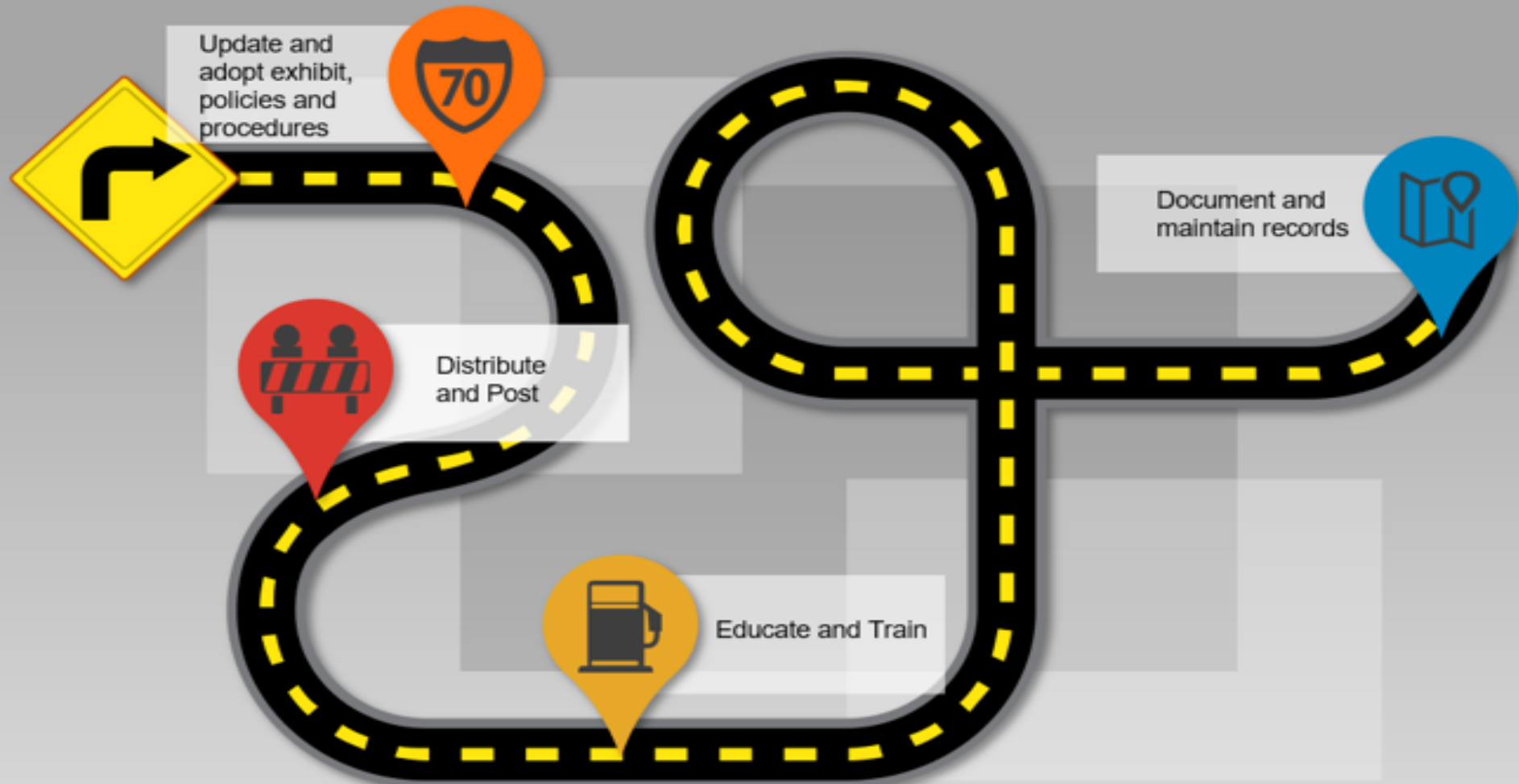
- Checklist for Evaluating Title IX Policy
- Checklist for Evaluating Grievance Procedures
- Checklist for Informal Resolution
- Checklist for Formal Investigations

# Prerecorded Webinars

- [OCR webinar: New Title IX Protections Against Sexual Assault](#)
- [OCR webinar: How to Report Sexual Harassment Under Title IX](#)
- [OCR webinar: Due Process Protections Under the New Title IX Regulations](#)
- [OCR webinar: Title IX Regulations Addressing Sexual Harassment](#)
- [ATIXA webinar: Ten Things to Know About the New Title IX Regulations](#)
- [K-12 ICS webinar: New Title IX Regulations](#)
- [WEEAC webinar: An Overview of the New Title IX Regulations](#)



# Next Time



The journey towards implementation

# Top Questions Received

- What are some resources available for training and investigations?
- What are the different roles and associated responsibilities?
- What are the changes in the new rules?



# Contact Us



Josie Lewis  
Chief Legal Counsel  
and General Counsel  
Colorado Association of  
School Boards (CASB)  
[jlewis@casb.org](mailto:jlewis@casb.org)



Rebekah Ottenbreit  
ELD Specialist and  
Title IX State Coordinator  
Colorado Department of  
Education (CDE)  
[Ottenbreit\\_r@cde.state.co.us](mailto:Ottenbreit_r@cde.state.co.us)



---

**COLORADO**  
Department of Education

---



An Overview of the New Title IX Rule:  
What it is and Steps to Take

(part 2)

# Technology

- This webinar is being recorded
- You have been muted
- The chat has been disabled
- If you cannot hear, raise your hand



- A PDF of both power points can be downloaded in lower left
- To facilitate connectivity, we suggest closing open webpages and disconnecting from VPM
- If you are having a tech issue, email Alana Foy at [Foy\\_a@cde.state.co.us](mailto:Foy_a@cde.state.co.us)

# Schedule

Webinar part 1:  
What It Is, Oct 20,  
3:00 pm-5:00 pm

Webinar part 2:  
Steps to Take, Oct 23,  
11:00 am-1:00 pm



# Meet the Presenters



Josie Lewis  
Chief Legal Counsel  
and General Counsel  
Colorado Association of  
School Boards (CASB)  
[jlewis@casb.org](mailto:jlewis@casb.org)



Rebekah Ottenbreit  
ELD Specialist and  
Title IX State Coordinator  
Colorado Department of  
Education (CDE)  
[Ottenbreit\\_r@cde.state.co.us](mailto:Ottenbreit_r@cde.state.co.us)



# Disclaimer



***The information contained in this presentation is for informational purposes only and does not constitute a certified training or legal advice. Districts should work with the district's local counsel to ensure that these, and other Title IX resources, are tailored to the needs of the local district.***



Colorado Association  
of School Boards



# Agenda

## Webinar part 1: What It Is

- Title IX of the Education Amendments of 1972
- Essential background information on Title IX
- New Title IX Rule RE: Sexual Harassment
- Top Questions Asked

## Webinar part 2: Steps to Take

- Update and adopt exhibit, policies, and procedures
- Distribute and post
- Educate and Train
- Document and Maintain Records
- Questions Received
- Open Q and A

# Webinar part 1



Webinar part 1 covered details on what needs to be updated and posted. This webinar is a continuation and assumes knowledge of part 1. If you were unable to attend part 1, please email [Ottenbreit\\_r@cde.state.co.us](mailto:Ottenbreit_r@cde.state.co.us) to request a copy of the recording.



# The journey towards implementation



# Updating and Adopting Exhibit, Policies, and Procedures



# For CASB Members

- **AC-E-1**—Exhibit—brief Nondiscrimination Policy for prominently posting
- **AC**—Full Nondiscrimination/Equal Opportunity Policy
- **JBB**—Sexual Harassment
- **AC-R-2**—Sexual Harassment Investigation Procedures (Grievance Procedures)
- **AC-E-2**—Complaint Form

## Other Relevant Policies

- **AC-R-1**--Option 1 or Option 2—Complaint and Compliance Process for Grievances that are NOT about Sexual Harassment
- **JII**—Student Complaints, Concerns and Grievances



Colorado Association  
of School Boards



**Remember...**

**\* Don't just post  
CASB samples**

# How to Use CASB Policies

- CASB sample policies cannot simply be adopted “as is.” Districts must make selections for options language, include district specific information, and remove CASB notes and copyright information.
- When receiving the Special Policy Updates, districts should:
  - Review the policies in their entirety, including ‘note boxes.’
  - Make selections for optional language.
  - Fill in information that is highlighted.
  - Add district specific content.
  - Remove note boxes and copyright information.
  - Consult with legal counsel.
  - Present the documents for board review and adoption.





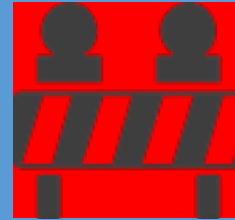
# Additional Considerations for Grievance Process and Procedures

- Definitions: sexual harassment, education program or activity, etc.
- How to file or report sexual harassment
- Who can file a complaint
- How the school will respond
- Statement that respondent is presumed not responsible until a determination is made at the conclusion of the grievance process
- Right to and range of supportive measures
- Rights of both parties to an advisor
- Right to review evidence

# Additional Considerations for Grievance Process and Procedures, continued

- Timeframes
- Formal process
- Informal process
- Standard used for the investigation
- Notice of any provision in code of conduct that prohibits knowingly making false statements or providing false evidence
- List of possible sanctions and remedies
- Appeals process and bases for appealing
- Anti-retaliation statement

## Distribute and Post



1. Notice of Nondiscrimination
2. Title IX Coordinator's name, address, phone number, & email
3. Grievance Procedures
4. Title IX training materials used

# 1 & 2: Post Policy & Title IX Contact



106.8 (b) Each recipient **must prominently display** the Notice of Nondiscrimination Policy and the Title IX Coordinator's required contact information **on its website and in each handbook or catalog** to the person's entitled to a notification

### 3. Post Grievance Procedures



“A grievance procedure...cannot be prompt or equitable unless students know it exists, how it works, and how to file a complaint.”

“Distributing the procedures to administrators or including them in the school’s administrative or policy manual **may not by itself be an effective way of providing notice, as these publications are usually not widely circulated to and understood by all members of the school community.**”

[January 2001 Revised Sexual Harassment Guidance](#)

## 4. Post Training Materials



- For proprietary material, the Department advises a recipient in that situation to secure permission from the consultant to publish the training materials.
- For proprietary materials purchased from the Association of Title IX Administrators (ATIXA), this link explains their policy on how to publicly post ATIXA's training materials.
  - <https://atixa.org/2020-regulations-requirement-posting-of-training-materials/>

# Website

“the recipient’s non-discrimination statement, designation of a Title IX Coordinator, policy, grievance procedures, and training materials should be **readily accessible to all students** pursuant to 106.8 and 106.45(b)(10(i)(D).”

## Suggestion

Create a page on the website that includes:

- Title IX Coordinator’s contact information
- Nondiscrimination Policy
- Grievance Procedures
- Training Materials
- Any other Title IX related resources



\* *Directly link to this page from the “prominently posted” notice of nondiscrimination/nondiscrimination statement*

# Example: Cherry Creek School District



[About Us](#)

[Academics](#)

[Programs and Services](#)

[Admissions](#)

[Community](#)

[Careers](#)

[Forward Together 2020-21](#)

[Planning Forward Budget](#)

## Visit Us

4700 South Yosemite Street  
Greenwood Village, CO  
80111

[DISTRICT MAP](#)

## Get in Touch

303-773-1184 Main Line  
720-886-7400 Transportation  
720-886-7480 Admissions  
1-877-542-7233 Safe2Tell

[CONTACT US](#)

## Important Links

[Site Map](#)

[Financial Transparency](#)

[Non-Discrimination Policies](#)

[Website Accessibility](#)



# Example, continued

## Legal Resources

- > Office of Legal Resources
- ▼ Non-Discrimination Policies
  - > Website Accessibility
- > Student Records Requests & FERPA Notice

## Non-Discrimination Policies

Cherry Creek School District No. 5 does not discriminate on the basis of race, color, national origin, sex, age or disability in admission to its programs, services or activities, in access to them, in treatment of individuals, or in any aspect of their operations. The lack of English language skills shall not be a barrier to admission or participation in the district's activities and programs. The Cherry Creek School District No. 5 also does not discriminate in its hiring or employment practices. This notice is provided as required by Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans with Disabilities Act of 1990. Questions, complaints, or requests for additional information regarding these laws may be forwarded to the designated compliance officer or directly to the U.S. Department of Education, Office for Civil Rights, Region VIII, Federal Office Building 1244 North Speer Blvd., Suite #310, Denver, CO 80204.

## Get In Touch

District Equity Compliance Office  
Stephanie Davies and/or Hope Griffin  
720-554-4372  
equitycompliance@cherrycreekschools.org

Expand All

- American with Disabilities Act (ADA) Compliance +
- Section 504 Law +
- Website Accessibility +
- Title IX +

# Example, continued

## Title IX

Cherry Creek School District (CCSD) complies with Title IX and the implementing regulations.

Sexual harassment is recognized as a form of sex discrimination and thus a violation of the laws which prohibit sex discrimination. A learning environment that is free from sexual harassment shall be maintained. It shall be a violation of CCSD Board Policy for any staff member to sexually harass students or for students to sexually harass other students.

In accordance with CCSD Board Policy AC-R-5, **Sexual Harassment of Students (Grievance Procedure) ↓A**, if you believe an individual has been sexually harassed that rises to the level of discrimination in violation of Title IX, please contact the building's Title IX Coordinator (**Title IX Coordinators ↓A**) or complete the Title IX Complaint Form (**Complaint Form ↓A**) and submit it to the building's Title IX Coordinator.

Employees that feel they have been sexually harassed should report allegations to the Office of Human Resources.

In accordance with CCSD Board Policy AC, *Nondiscrimination/Equal Opportunity Interpersonal/Human Relations*, and its corresponding regulations, no discrimination on the basis of sex is permitted in the programs or activities CCSD operates. If you believe an individual has been discriminated against based on their sex in violation of Title IX, you can file a formal complaint with CCSD's Equity Compliance Officer (**District Complaint Form ↓A**).

### Title IX Forms & Training Materials

[Complaint Form ↓A](#)

[Complainant Rights ↓A](#)

[District Complaint Form ↓A](#)

[Notice of Complaint & Rights ↓A](#)

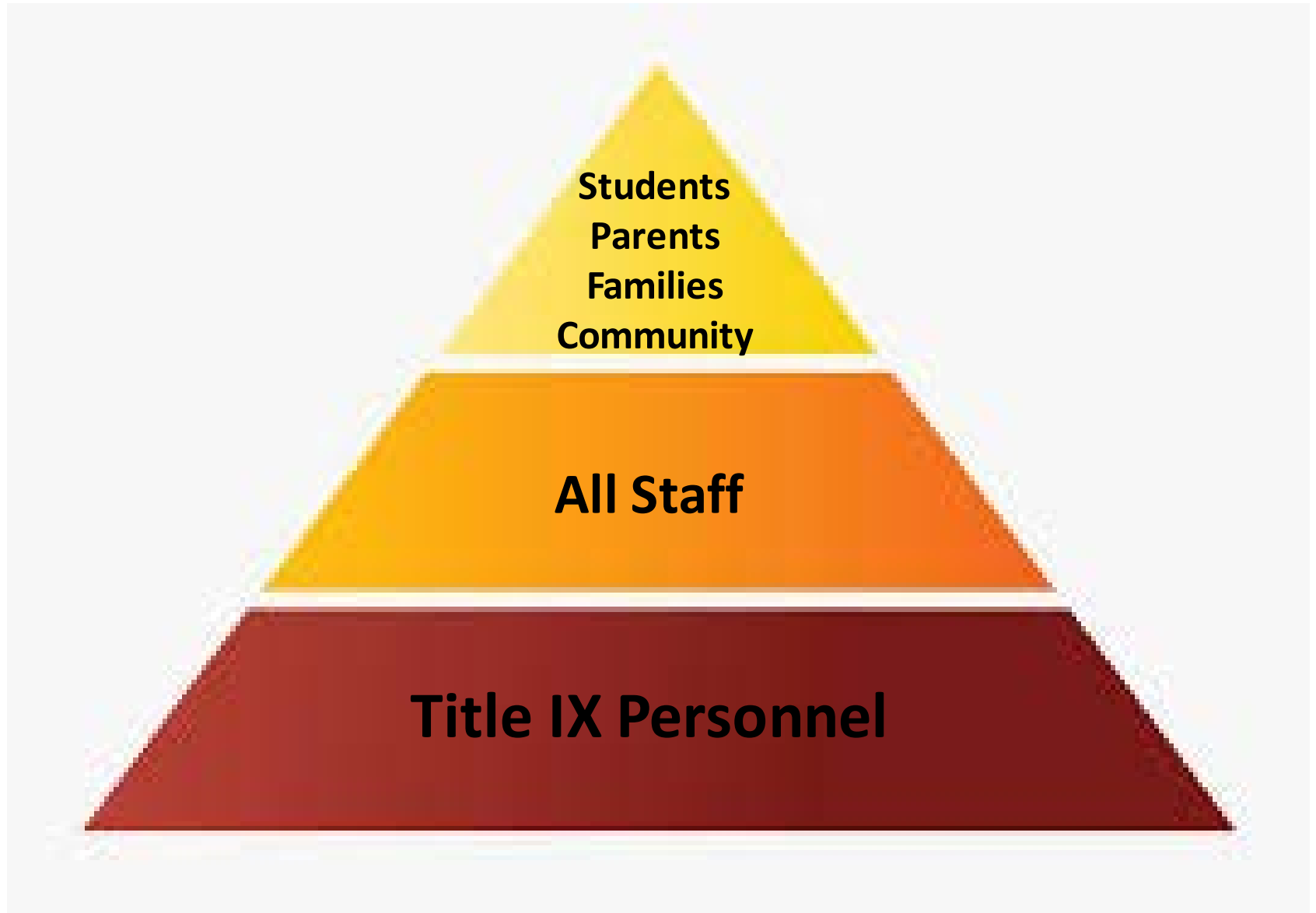
[Title IX Training 2020-2021 ↓A](#)

[Title IX Coordinators ↓A](#)

# Education and Training



# Depth of Knowledge





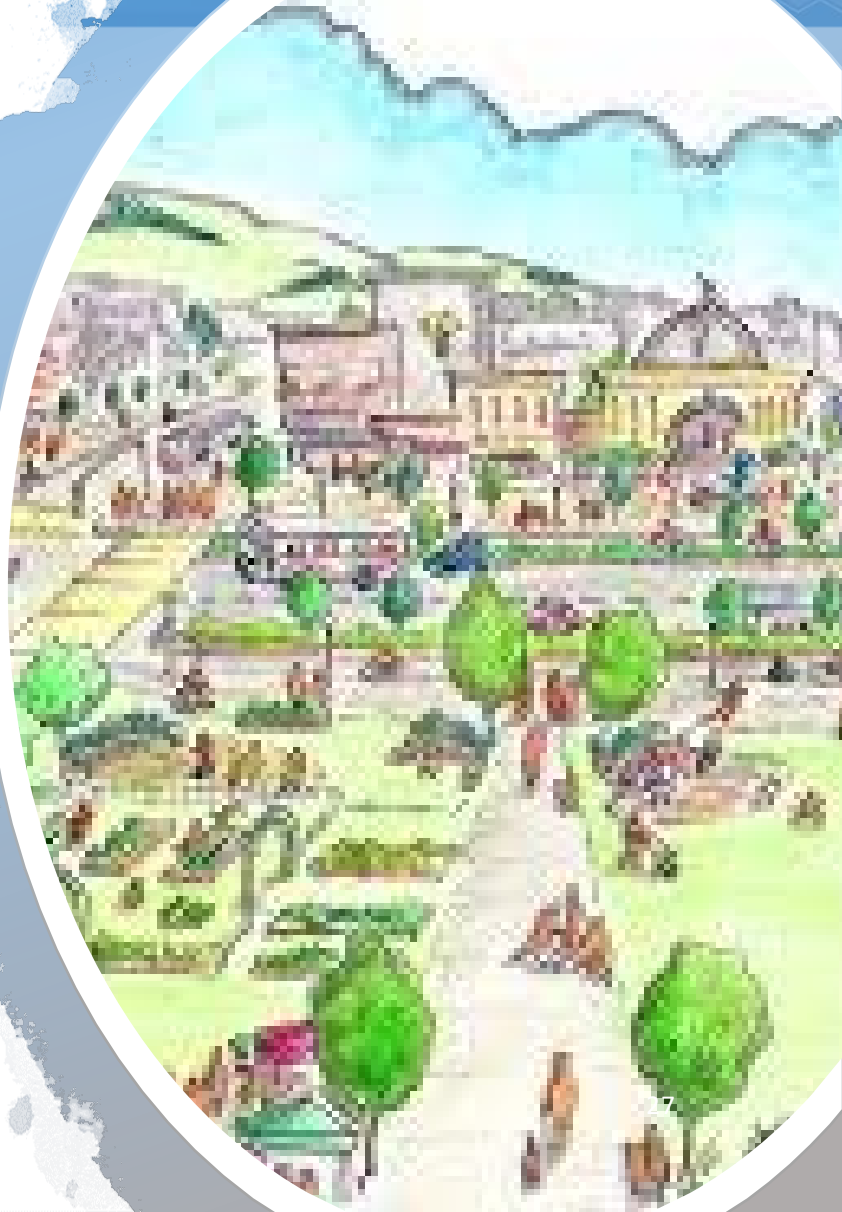
# **Educating Students, Parents, Families, and the Community**



# Who Needs to Know?

## All of the educational community:

- Applicants for admission
- Applicants for employment
- Students
- Parents or legal guardians of elementary and secondary school students
- Employees
- All unions or professional organizations holding collective bargaining or professional agreements with the recipient



# What do they need to know?

- Title IX Coordinator's name and required contact information
- Any person may report sex discrimination at any time 24/7
- The location and content of the exhibit supporting the Nondiscrimination Policy
- The location and content of the full/complete Nondiscrimination Policy
- The location and content of the grievance procedures
- The location of training materials used to train Title IX personnel

# Educating All Staff





# Important Information



- Part 1 of this webinar series may be used to provide some staff level education. The slides are available for your district to use and update, as appropriate.
- Information is not exhaustive, but rather provides options that may be used for training.
- Your district's local context is critically important. Please be sure to supplement with local policies and procedures that are tailored to your district's needs.



# Who is All Staff?

## Includes:

- ✓ Employees—teachers, paraprofessionals, cafeteria workers, bus drivers, receptionist, secretary, nurse, consolors, janitorial staff
- ✓ Collaborators, contractors, outside trainers
- ✓ School Resource Officers
- ✓ Volunteers
- ✓ All other staff

**Any adult working in the school**

**Any adult a student may perceive as having authority**



# What to Include in Staff Level Education

1. What constitutes sexual harassment under the new Title IX Rule
  - Discuss behaviors that do not meet the definition of sexual harassment under Title IX but are addressed by other school or district policies
2. Obligation to respond
3. All K-12 staff are mandatory reporters under Title IX
4. The scope of the school's/district's education programs or activities
  - Cyber-bullying
5. The name and contact information of the Title IX Coordinator(s) and how to report a potential Title IX issue to the Title IX Coordinator, including during non-work hours

# What to Include in Staff Level Education continued

6. Show all staff location of Nondiscrimination statement/exhibit which is prominently posted on website
  - AC-E-1
7. Show all staff location of and walk through Nondiscrimination Policy
  - AC-R-2
8. Presumption that respondent is not responsible for alleged conduct until determination is made at end of grievance process
9. Must start with formal grievance process
  - Can move to informal, if both parties voluntarily provide written consent
  - Consent can be withdrawn at any time

# What to Include in Staff Level Education continued

## 10. Show all staff location of and walk through Grievance procedures, including:

- Formal process
- Informal process
- Written notice and timeframe
- Both parties' rights, including the right to an advisor and the right to supportive measures
- Emergency removals
- Investigation procedures and timeframes, including remote investigations
- Standard of evidence used
- When Title IX and law enforcement intersect
- Written report
- Appeals process and timeframes
- Range, or list of, sanctions and remedies
- Retaliation



## Insert links to:

- Notice of Nondiscrimination
- Nondiscrimination Policy
- Grievance Procedures
- Complaint form
- Title IX webpage

# Training Title IX Personnel



# Disclaimer



*The following training information provided is not exhaustive of all possibilities but reflects possible options for how districts may approach training.*



Colorado Association  
of School Boards





# Who Can Train Title IX Personnel?



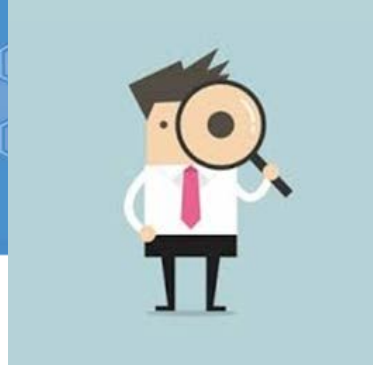
- Your district's legal counsel may be able to provide district specific trainings for the Title IX Coordinator and other members of the Title IX team.
- However, to ensure Title IX personnel are appropriately trained, districts may also wish to receive trainings from outside organizations and combine these trainings with local policies and procedures.
- Title IX organizations provide trainings to Title IX personnel, by role, and can be hired as external Investigators or Decision Makers.
- During this webinar, we reference the Association of Title IX Administrators (ATIXA) which is a nationwide Title IX training organization that was founded in 2011.
- There are several other resources and organizations that the district may use. Research the organization and whether they focus specifically on K-12, as there are differences in the rules for higher education institutions.

# Training Investigators

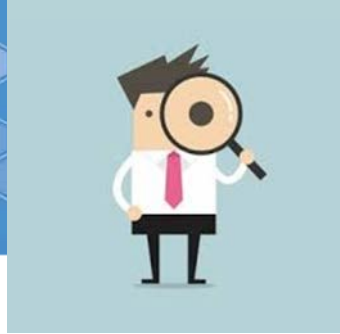


1. How to serve impartially by avoiding prejudgment of the facts, conflicts of interest, and bias
2. How to conduct an investigation using the adopted grievance process
3. Range of supportive measures available to complainants and respondents
4. Hearings, appeals, and informal resolution processes (if applicable)
5. Rape shield protections for complainants, deeming irrelevant questions and evidence about a complainant's prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.
6. Standard the school has chosen to use for all formal complaints of sexual harassment

# Training Investigators continued



7. Appeals procedures
8. The burden of gathering evidence proof is on the school, not on the parties
9. Must provide equal opportunity for parties to present witnesses and evidence
10. Must not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no “gag orders”)
11. Parties must have the same opportunity to select an advisor of the party’s choice
12. Must send written notice of any investigative interviews, meetings, or hearings
13. Must send parties, and their advisors, evidence directly related to the allegations, electronically or hard copy, with at least 10 days for the parties to inspect, review, and respond



14. Must dismiss allegations that do not meet Final Rule's definition of sexual harassment or did not occur in a school's education program or activity against a person in the U.S.

- Such dismissal is only for Title IX purposes. School may still address the conduct under code of conduct

15. Schools must give the parties written notice of a dismissal and the reasons for the dismissal.

16. Privacy protections of a party's medical, psychological, and similar treatment records. Schools cannot access or use such records unless the school obtains the party's voluntary, written consent to do so.

# Training Decision Makers



1. How to serve impartially by avoiding prejudgment of the facts, conflicts of interest, and bias
2. Use of any technology to be used at a live hearing (if applicable)
3. Hearings, appeals, and informal resolution processes (if applicable)
4. Standard the school has chosen to use for all formal complaints of sexual harassment
5. Appeals procedures
6. Range, or list, of the possible remedies a school may provide a complainant and disciplinary sanctions a school might impose on a respondent, following determinations of responsibility.
7. With or without a hearing, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.

# Training Decision Makers continued



8. Rape shield protections for complainants, deeming irrelevant questions and evidence about a complainant's prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.
9. Decision Maker must issue a written determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant
  - The written determination must be sent simultaneously to both parties and their advisors, along with information about how to file an appeal.
10. Privacy protections of a party's medical, psychological, and similar treatment records. Schools cannot access or use such records unless the school obtains the party's voluntary, written consent to do so.

# Training a Person Who Facilitates Informal Resolutions

Schools may offer and facilitate informal resolution, such as mediation or restorative justice, **so long as both parties give consent that is:**

- Voluntary
- Informed
- In writing



**Any person who facilitates an informal resolution must be “well trained.”**

1. A school may not require waiver of the right to a formal investigation
2. A school may not require the parties to participate in an informal resolution process
3. A school may not offer an informal resolution process unless a formal complaint is filed
4. Any party has the right to withdraw from the informal resolution process and resume the formal grievance process at any time
5. **Schools must not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.**

# Training Coordinators

1. How to serve impartially by avoiding prejudgment of the facts, conflicts of interest, and bias
2. Title IX Coordinators should have an awareness of all aspects of the Title IX process (for more information, see slides for other Title IX personnel)



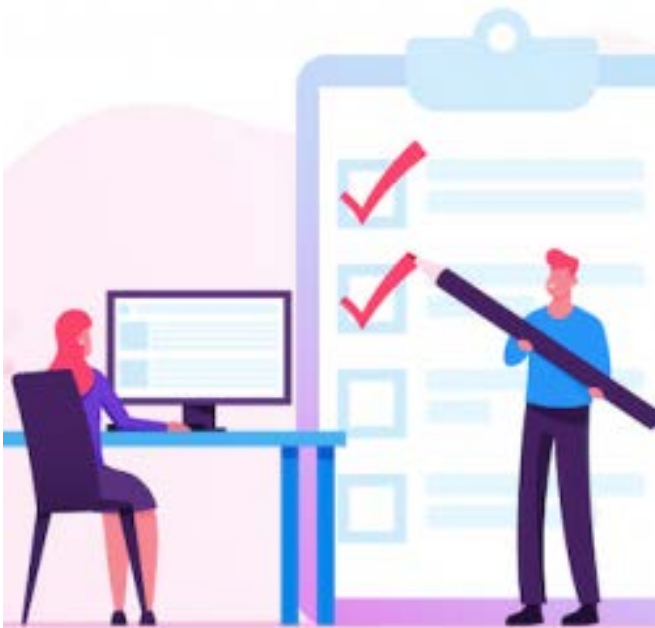


# Documentation and Maintenance of Records



# Documentation

- Of each investigation
- District action taken
- Why response was not deliberately indifferent
- Supportive measures (or reasons not provided)
- Any informal resolution process and result
- Any record of live hearing
- Any appeal and result
- Disciplinary sanctions imposed
- Remedies issued
- Training materials posted



# Maintenance of Records

- 7 years
- the date of the record's creation begins the seven-year retention period
- Recipients may choose to keep each record for longer than seven years
- to the extent possible, should be interpreted consistently with a recipient's obligations under FERPA



# Resources

- [Press Release: Historic Action to Strengthen Title IX Protections for All Students](#)
- [U.S. Department of Education Title IX Final Rule Overview](#)
- [Summary of Major Provisions of the Department of Education's Title IX Final Rule](#)
- [Summary of Major Provisions of the Department of Education's Title IX Final Rule and Comparison to the NPRM](#)
- [Final Rule](#)

## [Western Educational Equity Alliance Center](#)

- Checklist for Evaluating Title IX Policy
- Checklist for Evaluating Grievance Procedures
- Checklist for Informal Resolution
- Checklist for Formal Investigations

# Title IX Implementation Checklist



**COLORADO**

Department of Education

## **TITLE IX Implementation Checklist**

*This checklist is provided to districts as a tool to facilitate Title IX implementation under the May 6, 2020 rule. This checklist is not all inclusive and is not legal advice. Title IX Coordinators should work with their district legal counsel to understand how the new regulations affect the district's Title IX policies and procedures and make revisions, as necessary.*



# Prerecorded Webinars

- [OCR webinar: New Title IX Protections Against Sexual Assault](#)
- [OCR webinar: How to Report Sexual Harassment Under Title IX](#)
- [OCR webinar: Due Process Protections Under the New Title IX Regulations](#)
- [OCR webinar: Title IX Regulations Addressing Sexual Harassment](#)
- [ATIXA webinar: Ten Things to Know About the New Title IX Regulations](#)
- [K-12 ICS webinar: New Title IX Regulations](#)
- [WEEAC webinar: An Overview of the New Title IX Regulations](#)

# Title IX Interpretation through Rule & Guidance



## Sex-Based Discrimination

### Prevent & Respond to Sex-Based Discrimination

- Athletic Opportunities and Benefits
- Pregnant or Parenting Students
- Single Sex Classes and Schools
- STEM
- Gender-Based Harassment & Bullying

### Prevent & Respond to Sexual Harassment



# CDE's Title IX Webpage



**COLORADO**  
Department of Education

Search [SITE INDEX](#)

[LICENSING](#) | [ABOUT CDE](#) | [STATE BOARD](#) | [OFFICES](#) | [STAFF DIRECTORY](#) | [NEWS](#) | [CAREERS](#)

FAMILIES

EDUCATORS

DISTRICTS

COMMUNITIES

SCHOOLview®



**STAY INFORMED:** [Visit CDE's COVID-19 Resources for Schools page](#)

[Home](#)

## Title IX of the Education Amendments of 1972

### Title IX States

"No person in the U.S. 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"

[Title IX of the Education Amendments of 1972](#)

### Sex Discrimination

The purpose of Title IX of the Education Amendments of 1972 is to eliminate discrimination on the basis of sex in any education program or activity receiving Federal financial assistance. The following link addresses frequently asked questions about sex discrimination and describes the schools and programs that are covered by Title IX, who is protected under Title IX, and provides a brief summary of the school and program responsibilities under Title IX.

[Frequently Asked Questions about Sex Discrimination](#)

[Culturally and Linguistically Diverse Education Home](#)

[Statewide Support](#)

[ELD Program Requirements](#)

[Colorado English Language Proficiency \(CELP\) Standards](#)

[Colorado Dual Language Immersion \(DLI\)](#)

[English Language Proficiency Act \(ELPA\)](#)

[Title III \(ESEA\)](#)

[Title VI](#)

[Title IX \(Education Amendments of 1972\)](#)

[Athletic Opportunities and Benefits](#)

[Pregnant or Parenting Students](#)

[Sex-Based Harassment](#)

[Single Sex Classes and Schools](#)

[STEM](#)



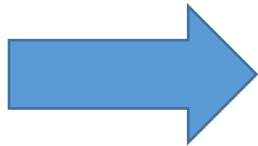
# Title IX List Serve

- Annual collection
- Through the consolidated application for federal funds

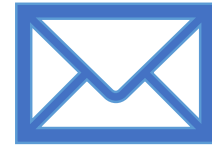
*“No person in the U.S. shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance”*

- \* Please let your grant writer know who the Lead Title IX Coordinator is for your district and any other Title IX Coordinators you would like included

# To be Added to the Title IX List Serve



E-mail Rebekah Ottenbreit at  
[Ottenbreit\\_r@cde.state.co.us](mailto:Ottenbreit_r@cde.state.co.us)



# Questions Received

1. Does this fulfill the new training requirements?
2. Are we allowed to link to this as the "content" requirement of training on our website?
3. Request for an updated check list for investigations
4. If the Superintendent is also the Title IX coordinator what is the chain of command for a complaint?
5. Does the local board need to receive training if they are serving as the "decision maker"?



## Questions Received, continued

**6.** The new law is not clear about when law enforcement is involved in investigations. Can the district use the information from law enforcement for their investigation as well?

**7.** Is there an 'obligation' like with Child Find where we seek out and investigate anything that might be a Title IX violation? Or is it only if the victim makes a formal complaint? If they say they don't want to do file a formal complaint, what is our action?



# Questions

➤ Meeting One Conference Line:  
1-866-601-0566

\* Please mute your computer  
speakers when talking on the phone.



# Contact Us



Josie Lewis  
Chief Legal Counsel  
and General Counsel  
Colorado Association of  
School Boards (CASB)  
[jlewis@casb.org](mailto:jlewis@casb.org)



Rebekah Ottenbreit  
ELD Specialist and  
Title IX State Coordinator  
Colorado Department of  
Education (CDE)  
[Ottenbreit\\_r@cde.state.co.us](mailto:Ottenbreit_r@cde.state.co.us)