



# **Title IX Training - The 2020 Regulations**

Susan Keating Anderson, Shareholder

# AGENDA

- What is Title IX?
- 2020 Title IX Regulations
- Sexual Harassment Under Title IX
- Title IX Complaint Process
- Complaint Process Flow Chart
- Key Takeaways

# What Is Title IX?

- Federal civil rights statute enacted in 1972 that prohibits discrimination based on sex/gender in education programs and activities.
- Office for Civil Rights (“OCR”) is a subsidiary of the United States DOE, and is responsible for enforcing laws regarding non-discrimination (Title IX, Section 504, ADA, Age Discrimination Act, etc.) for programs or activities which receive federal funding from the DOE
- “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

# Landmark Title IX Cases - Franklin

- Franklin v. Gwinnett County Public Schools, (1992):
- Student claimed that she was sexually abused by her teacher, who was also a coach in the District
- District became aware of matter, chose not to take action, and even encouraged student not to press charges.
- Student persisted and District began to investigate, after which teacher resigned, and District ceased investigations
- Student sued under Title IX – alleging that District failed to respond “promptly and efficiently” and failed to take “immediate action” as required
- District argued that individual could not get monetary relief under Title IX, and lost in 9-0 unanimous decision
- Supreme Court acknowledged that sexual harassment and/or abuse of student by teacher may mean the school district engaged in intentional sexual discrimination.

# Landmark Title IX Cases - Gesber

- Gesber v. Lago Vista Independent School District (1998):
- Teacher made sexually suggestive comments to student during school and initiated sexual contact during home visit – engaged student in sexual activity for almost 6 months, but never on school grounds.
- Teacher was arrested after both were discovered engaging in sexual intercourse
- Student never notified District about the relationship
- Supreme Court clarified that school district can be liable for engaging in discrimination where it has actual knowledge of employee engaging in sexual harassment, and responds with deliberate indifference – subjecting District to monetary damages in private action under Title IX.

# Landmark Title IX Cases - Davis

- Davis v. Monroe County Board of Education (1999):
- Fifth grade student sexually harassed and abused other student – attempted to fondle her, touched her, and directed offensive language at her.
- Allegedly tried to touch student's breasts and genitals and said "I want to get in bed with you" and "I want to feel your boobs"
- Student reported this to her teachers, and her Parent called the District to see what could be done
- No disciplinary action was taken, requests for protection were not granted, and even request to change seats was not granted until student did this for 3 months
- Student was eventually charged with sexual battery and pled guilty
- Supreme Court held that District can be liable for student-on-student harassment when they are **deliberately indifferent** to harassment that is "so **severe, pervasive, and objectionably offensive** that it can be said to **deprive the victims access to the educational opportunities or benefits provided by the school.**"

# 2020 Title IX Regulations

- In 2017, previous (Trump – DeVos) administration withdrew *Dear Colleague* Letter issued by the Department of Education in 2011 regarding Title IX
- Then-Secretary of Education Betsy DeVos indicated:
  - “Too many students have lost access to their education because their school inadequately responded when a student filed a complaint of sexual harassment or sexual assault...”
- As of February of 2020, the number of K-12 sexual harassment and violence complaints filed with the Office of Civil Rights (OCR) is nearly **fifteen times greater** than it was a decade ago.

# 2020 Title IX Regulations

- In May of 2020, the Department issued a 2,000+ page document which amended prior regulations that implemented Title IX and which contained new Final Regulations
- The 2020 Regulations override previous guidance issued by OCR or DOE, and are legally binding upon recipients of federal funding
- Specify how recipients (such as school districts) must treat allegations of sexual harassment



## **“Do Both”**

- The Title IX regulations requires that school districts:
  - (1) Respond meaningfully to allegations of sexual harassment (including sexual assault)
  - (2) While also providing due process protections for both parties
- “The Department believes that recipients can and must ‘do both,’ because sexual harassment impedes the equal educational access that Title IX is designed to protect and because no person’s constitutional rights or right to fundamental fairness should be denied.”

# 2020 Final Regulations

- “Because these final regulations represent the Department’s interpretation of a recipient’s legally binding obligations, **rather than** best practices, recommendations, or guidance, these final regulations focus on precise legal compliance requirements governing recipients. In many regards, as discussed throughout this preamble, **these final regulations leave recipients the flexibility to choose to follow best practices and recommendations contained in the Department’s guidance** or, similarly, best practices and recommendations made by non-Department sources, such as Title IX consultancy firms, legal and social science scholars, victim advocacy organizations, civil libertarians and due process advocates, and other experts.”

# Sexual Harassment Under Title IX

- 3 types of misconduct on the basis of sex:
  - 1) any instance of **quid pro quo** harassment by a school's employee;
  - 2) hostile educational environment - any unwelcome conduct that a reasonable person would find so **severe, pervasive and objectively offensive** that it effectively denies a person equal educational access; and
  - 3) any instance of **sexual assault** (as defined in the Clery Act), **dating violence**, **domestic violence**, or **stalking** (as defined in the Violence Against Women Act (VAWA)).

# Quid Pro Quo

- An employee of the School District “conditioning the provision of an aid, benefit, or service” of the School District on a student’s “participation in unwelcome sexual conduct.”
- Examples:
- Teacher promises student extra credit in exchange for sexual act
- Counselor promises to write recommendation letter for student in exchange for nude photos

# Severe & Pervasive

- “Severe” – takes into account circumstances of complainant, such as age, disability status, sex, and other characteristics
- Complainant does not have burden to “prove severity,” and need only describe what occurred
- Elements of severity, pervasiveness, objective offensiveness, and denial of equal educational access are determined under “reasonable person” standard.
- District’s Title IX Coordinator must determine whether conduct was severe from the perspective of a reasonable person in the complainant’s position.

# Sexual Assault

- An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting program
- **Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent

# Consent

- School districts are not required to adopt a particular definition of consent with respect to sexual assault – districts may adopt their own definition
- Ohio law does not define “consent”
- The legal age to consent to sexual activity in the state of Ohio is sixteen (16)
- Factors to consider:
  - Involvement of drugs, intoxicants, or controlled substances by one party to the other
  - Mental or physical condition or advanced age
  - Compulsion by one party to submit by threat or force

# Dating Violence

- Defined as violence committed by a person:
- (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (B) where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - (i) The length of the relationship
  - (ii) The type of relationship
  - (iii) The frequency of interaction between the persons involved in the relationship



# Domestic Violence

- Felony or misdemeanor crimes of violence committed:
- by a current or former spouse or intimate partner of the victim,
- by a person with whom the victim shares a child in common,
- by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies,
- or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

# Stalking

- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - (A) fear for his or her safety or the safety of others; or
  - (B) suffer substantial emotional distress

# Scope of District's Education Program or Activity

- **Education program or activity:** Includes “locations, events, or circumstances over which the District exercised substantial control over both the respondent and the context in which the sexual harassment occurs”
- Title IX obligations apply to sexual harassment incidents that take place **off-campus** if any of the following apply:
  - (i) If an off-campus incident occurs as part of the District’s “operations”
  - (ii) if the District exercised substantial control over the respondent and the context of the alleged sexual harassment that occurred off campus
  - (iii) If sexual harassment incident takes place at an off-campus building that is owned or controlled by a student organization officially recognized by a post secondary institution

## Scope of District's Education Program or Activity

- Must occur in United States
- No bright-line geographic test for off-campus conduct
- School Districts are still permitted to discipline students for conduct that is not within the purview of Title IX (such as conduct that occurs outside the District's education program or activity, or outside the U.S.)
- While a formal complaint must be dismissed if the allegations do not meet the Title IX definition of sexual harassment, School Districts are still permitted to discipline students under the District's Code of Conduct or Policies/Administrative Guidelines

# What is NOT per se Sexual Harassment Under Title IX?

- Staring
- Sexual or inappropriate advances
- Jokes based on gender
- Questions/Comments about sex or sexual history
- Disrespectful comments/terms
- Drawing or viewing inappropriate/pornographic images
- Touching

# Title IX 2020 Regulations

## Unpacking the Complaint Process

# Grievance Process

A District's grievance process must:

- 1) Treat complainants equitably by providing remedies any time a respondent is found responsible and treat respondents equitably by not imposing disciplinary sanctions without following the grievance process.
- 2) Include remedies designed to provide equal access to education to the Complainant, and can be disciplinary, punitive and burden the Respondent.
- 3) Require objective evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person's status as a complainant, respondent, or witness.

# Grievance Process

- 4) Require Title IX personnel to be free from conflicts of interest or bias for or against complainants or respondents.
- 5) Include Title IX training on the definition of sexual harassment, scope of education program or activity, how to conduct an investigation and hearing process including hearings, if applicable, appeals, and informal resolution processes, and how to avoid conflicts of interest and/or bias.
- 6) Include training for decision makers on how to use technology at live hearings, if applicable, and how to apply rape shield protections to Complainants.



# Grievance Process

- 7) Include in the initial letters a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- 8) Post materials used to train Title IX personnel on school website, if any, or make materials available for public to inspect.
- 9) Follow procedure for the submission of written questions: after the investigative report has been sent to both parties, but before reaching a determination regarding responsibility, the decision-maker must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, and provide each party with the answers, and allow for limited follow-up questions from each party.

# Grievance Process

- 10) Provide rape shield protections for Complainant.
- 11) State whether the evidentiary standard is preponderance of the evidence or clear and convincing evidence.
- 12) Certain treatment records cannot be obtained or considered without voluntary, written consent.
- 13) With or without a hearing, afford each party, after the investigative report has been sent and before reaching a decision on responsibility, the opportunity to submit written, relevant questions, and allow time for answers and follow-up questions.
- 14) Offer an appeal to both parties regarding a determination regarding responsibility, and from a school's dismissal of a formal complaint or any allegation therein for the following reasons:
  - 1) procedural irregularity that affected outcome of matter;
  - 2) new evidence not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect outcome of matter;
  - 3) conflict of interest or bias that affected the outcome of the matter.

# Relevant Personnel

- Title IX Coordinator(s)
- Investigator(s)
- Decision-Maker(s) (Panel)
- Advisor (only applicable for “live” hearings)
- Informal Resolution Facilitator
- Appeal Decision-Maker(s)
- Other Relevant Personnel
  - School Counselor / Guidance Counselor
  - School Resource Officer
  - Human Resources Director

# Relevant Personnel

- School Districts must make sure that Title IX Coordinators, Investigators, Decision-Makers, and those who facilitate the formal or informal resolution process receive training in:
  - The definition of sexual harassment
  - The scope of the District's education program or activity
  - How to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes
  - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias

# Reports of Sexual Harassment/Discrimination

- Anyone can report – including a student or employee, a parent or guardian, or a third party
- Reports can be verbal or written, and can be received in-person, by mail, or electronic mail
- Reports can be made at any time, and school districts must make it possible for a person to submit a report at any time

# Actual Knowledge- K-12

- Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a school's Title IX Coordinator or any official of the school who has authority to institute corrective measures on behalf of the school, or to any employee of an elementary and secondary school.

- Limitation:

Districts must respond to allegations/complaints when sexual harassment occurs in the school's education program or activity, against a person in the United States.

- Shift from prior OCR guidance indicating standard of “knew or should have known” with regard to sexual harassment

# Required Notifications – Title IX Coordinator

- Each District must designate and authorize **at least one** employee as its Title IX Coordinator, responsible for coordinating the District's efforts to comply with Title IX
- District must notify applicants for admission and employment, unions, and professional organizations holding CBA's with the District of: **name or title, office address, e-mail address, telephone number** of the Title IX Coordinator(s)
- District must prominently display contact information for Title IX Coordinator on its website, and in each handbook or catalog that it makes available to persons entitled to notification
- District cannot use or distribute publication indicating that it treats applicants, students, or employees differently on the basis of sex (except as permitted by Title IX).

# What Must Initial Written Notice to Parties Include?

After receiving a formal complaint, Districts must provide the following via written notice to all known parties:

- Notice of grievance process, including the informal resolution process;
- Notice of allegations, in sufficient detail to allow respondent to prepare a response (names of known parties, conduct alleged, date and location of conduction, if known);
- Statement that respondent is presumed not responsible and that responsibility is determined at conclusion of grievance process;
- Notice of rights to have an attorney or non-attorney advisor and to inspect and review evidence;
- Notice of any provision in the code of conduct that prohibits knowingly making false statements or providing false evidence during the grievance process; and
- Supplement if new allegations opened for investigation.



# Supportive Measures

1. Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.
2. Such measures are designed to restore or preserve equal access to the District's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment.
3. May include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

## Supportive Measures

4. The District must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures.
5. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

# Administrative Leave

- School District can place non-student employee respondents on administrative leave during the pendency of the grievance process
- District must still comply with Section 504 and ADA, where applicable

# Emergency Removal

- School Districts are permitted to **remove** a respondent from the District's education program or activity if the District determines that an **immediate threat to the physical health or safety** of another student or other individual arising from allegations of sexual harassment.
- Must be based on an individualized safety and risk analysis that concludes: (1) immediate threat exists; and (2) removal is justified under the circumstances
- Must provide respondent with notice and an opportunity to challenge the decision (following removal)
- District must still comply with IDEA, Section 504, and ADA, where applicable

## 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 District investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the District with which the formal complaint is filed.

# Mandatory Dismissal of Formal Complaint

- A District must dismiss a Complaint from the Title IX process if alleged conduct:
  - (i) does not meet the definition of sexual harassment under Title IX regulations; or
  - (ii) did not occur in the District's educational program or activity; or
  - (iii) did not occur against a person in the U.S.

# Discretionary Dismissal of Formal Complaint

- A District may dismiss a Complaint from the Title IX process, at any time, if:
  - (i) Complainant notifies Title IX coordinator in writing that Complainant would like to withdraw the formal complaint or any allegations therein; or
  - (ii) Respondent is no longer employed or enrolled in the District; or
  - (iii) Specific circumstances prevent the District from gathering evidence sufficient to reach a determination

# Informal Resolution

- Districts retain the discretion to informally resolve formal complaints if both parties give voluntary, informed, and written consent.
- Informal resolution only applies if a formal complaint has been filed, and a District may not require parties to participate in informal resolution.
- Parties can withdraw from the informal resolution process and resume the grievance process any time prior to agreeing to a resolution.
- Districts must not offer informal resolution to resolve allegations that an employee sexually harassed a student.



# Investigation

- Free from bias, partiality and conflict of interest;
- No gag orders;
- Written notice to parties of date, time, participants, purpose, and location of each investigative interview with sufficient time to prepare;
- Opportunity for attorney or non-attorney advisor to be present during interviews or related proceedings;
- All evidence provided to parties and their advisors with 10 days to respond before report;
- Written investigative report “fairly summarizes the relevant evidence” provided to parties at least 10 days before determination of responsibility

# Investigation Process - Investigator

- (1) Send notice in writing to both parties of allegations set forth in a formal complaint
- (2) Interview both parties (separately) and obtain witness statements from both parties (separately)
- (3) Provide both parties the opportunity to identify witnesses and submit evidence
- (4) Interview any witnesses identified by the parties and obtain witness statements, ask each witness to identify any other potential witnesses, and ask each witness to provide the Investigator with relevant evidence

# Investigation Process - Investigator

- (5) Continue to interview witnesses, obtain witness statements, and collect relevant evidence until the Investigator determines that the relevant witnesses have been interviewed and the relevant evidence has been identified, to the extent possible.
- (6) Send evidence to both parties (and any advisors) for inspection and review, and provide both parties 10 days to submit a written response
- (7) Consider all evidence, including responses from both parties, prior to completing the investigation report
- (8) Create an investigation report that objectively summarizes relevant evidence, and provide copies of the investigation report to both parties (and any advisors)

## **Determinations of Responsibility – Decision-Maker**

- The Decision-Maker cannot be the Investigator or the Title IX Coordinator;
- Decision cannot be rendered sooner than 10 days after receipt by parties of investigative report
- Before rendering the decision, must:
  - Allow parties to submit questions to be asked of other party (subject to limitations)
  - Provide answers
  - Allow limited follow up
- Questions must be submitted to Coordinator within 3 calendar days of investigator's report

# Determinations of Responsibility – Decision-Maker

- The written determination must address:
  - Allegations
  - Procedural steps taken
  - Findings of fact
  - Application of code of conduct to facts
  - Statement and rationale for result as to each allegations which includes (1) determination of responsibility; (2) any disciplinary sanctions; and (3) whether remedies to restore or preserve equal access to the educational program or activity will be provided.
  - The procedures and permissible bases for either party to appeal

## **Determinations of Responsibility – Decision-Maker**

- The written determination must generally be issued within 60 days of receipt of complaint
- Determination becomes final on either:
  - The date that the appeal decision is issued, if an appeal is filed or
  - Date in which time to appeal has expired
- If determination of responsibility is made against Respondent, district must provide remedies to Complainant that are designed to restore or preserve equal access to educational program/activity
- Title IX coordinator is responsible for implementing remedies

# Standard of Proof

- Districts must identify the standard for evidence used in the grievance process:
  - **preponderance of the evidence standard vs.**
  - **clear and convincing standard**
- The chosen standard of proof should be used for all formal complaints involving alleged sexual harassment (students and employees/staff)

# Appeals

Appeals must be offered to both parties for dismissals and final determinations in the following circumstances:

- Procedural irregularity that may have affected the outcome
- New evidence not reasonably available that may have affected the outcome and/or
- Conflict of interest against Title IX Coordinator, Investigator, or Decision-maker that may have affected the outcome



# Appeals

Procedural irregularity may include:

- an alleged failure to objectively evaluate all relevant evidence
- Alleged erroneous relevancy determinations if they affected the outcome
- If dismissed for failing to meet the definition of sexual harassment, may appeal that the conduct does meet such definition

# Appeals

- Appeals must be filed within 7 calendar days of receipt of determination
- Filed with Title IX Coordinator
- If an appeal is filed, a district must:
  - Notify the other party in writing and implement appeal procedures equitably for both parties
  - Ensure that the Decision-Maker for the appeal is not the same Decision-Maker(s) that reached the written determination, the Investigator(s), or Title IX Coordinator(s)

# Appeals

- If an appeal is filed, a district must:
  - Grant both parties an opportunity to submit a written statement supporting or challenging the outcome
  - Issue a written decision describing the result of the appeal and the rationale behind the result
  - Provide the written decision simultaneously to both parties
  - Decision on appeal must be provided in writing to both parties simultaneously, and generally within 10 calendar days of date the appeal was filed

# Retaliation Prohibited

- Retaliation specifically prohibited for (1) the purpose of interfering with Title IX rights, or (2) because a person has participated or refused to participate in any manner in a proceeding under Title IX regulations.
- Complaints of retaliation may be addressed under Title IX grievance process.
- Retaliation can include charging a code of conduct violation for same facts and circumstances or charging a code of conduct violation for making a false statement based only upon losing the Title IX process.

# Avoiding Bias, Partiality and Conflict of Interest

- 1) Treat complainants and respondents equitably under the regulations. The regulations require Districts to offer complainants supportive measures with or without a formal complaint. The regulations also require Districts to provide a presumption of non-responsibility to a respondent until a decision is rendered in the grievance process.
- 2) Treat each person as individual, not as a member of a class. The obligation under Title IX is to treat each person as an individual, not as a member of a class subject to prejudgment and prejudice on the basis of sex. Prohibited bias may also be based on race, color, or national origin.

# Avoiding Bias, Partiality and Conflict of Interest

- 3) Objectively examine relevant evidence before reaching determination: Title IX personnel should objectively examine relevant evidence, and avoid prejudgment of facts, before reaching a determination on responsibility.
- 4) Provide both parties with equal opportunity to present witnesses and evidence.
- 5) Carefully document the finding from each party/witness interview.
- 6) Continue to evaluate issues of bias and conflicts of interest throughout the grievance process.

# Liability for Deliberate Indifference

A District will be considered deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

## How to Avoid Being Deliberately Indifferent

A District's mandatory response must include:

- a) Supportive measures to the alleged victim ("Complainant");
- b) Prompt contact by the Title IX Coordinator to the Complainant to offer supportive measures, whether or not a formal complaint is filed, consider Complainant's wishes, explain process for filing a formal complaint;
- c) Following the grievance process set forth in Title IX before any disciplinary actions are taken or other actions against respondent;
- d) Non-restriction of First, Fifth and Fourteenth Amendment rights during its response and investigation;



## How to Avoid Being Deliberately Indifferent

- e) Investigate sexual harassment allegations in any formal complaint, which can be filed by a complainant or signed by a Title IX Coordinator.
- f) Respect Complainant's wishes about investigation unless a Title IX Coordinator determines that signing a formal complaint to initiate an investigation, over the wishes of the complainant, is **not clearly unreasonable under the known circumstances.**
- g) Dismiss allegations as to Title IX in formal complaint if they do not meet the definition of sexual harassment, or did not occur in the school's education program or activity against a person in the United States. In this case, a District may still address the allegations in any matter it deems appropriate under Code of Conduct or District policy.

# Liability for Deliberate Indifference

- Section 106.44(b)(2) states: “The Assistant Secretary will not deem a recipient’s determination regarding responsibility to be evidence of deliberate indifference by the recipient, or otherwise evidence of discrimination under Title IX by the recipient, solely because the Assistant Secretary would have reached a different determination based on an independent weighing of the evidence.”

# Publication of Title IX Policy

- District must notify students, employees, applicants, parents/guardians, and others that it does not discriminate on the basis of sex, and that Title IX prohibits any such discrimination
  - The Non-Discrimination Policy must also be available on the District's website
- Notification must state that the requirement not to discriminate extends to admission and employment, and that inquiries regarding applicability of Title IX may be referred to the Title IX Coordinator, the Assistant Secretary of Education, or both.

# Publication of Grievance Procedures

- Districts must adopt and publish grievance procedures that allow for the **prompt** and **equitable** resolution of complaints by students and employees
- Districts must provide notice of their grievance procedures and process, including how to report or file complaints regarding sexual harassment, and how the District will respond
- Grievance process must provide notice of specific items, including:
  - (1) a description of the range of possible disciplinary sanctions and remedies or a list of possible disciplinary sanctions and remedies that the District may implement following any determination of responsibility;
  - (2) a statement of whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard
  - (3) the procedures and permissible bases for the complainant and respondent to appeal; and
  - (4) a description of the range of supportive measures available to complainants and respondents.

# Publication of Training Materials

- The District must make its Title IX training materials publicly available on its website, or if the District does not maintain a website, it must make the materials available upon request for inspection by members of the public.



# Key Takeaways

- New definition of “sexual harassment” and higher burden of proof
- Emphasis on serving impartially, and prohibition against: bias, conflicts of interest, and prejudgment
- Shift from being held responsible for incidents which school “reasonably should” have known of, to “actual knowledge”
- Definition of education “program or activity” expanded
- All school district employees are now considered responsible employees for reporting purposes
- Parents/Guardians of K-12 students can file complaints on behalf of their children, and must be given notice of complaints against their children

# Key Takeaways

- Universities are required to hold hearings in response to student complaints, K-12 schools are not (but may)
- Schools are required to provide “supportive measures” to students which cannot be disciplinary, punitive, or unreasonably burdensome
- Complainants are required to file Formal Complaint
- Schools cannot discipline for sexual harassment under Title IX prior to the grievance procedure
- School districts are held liable under “deliberate indifference” response standard



# Key Takeaways

- Mandatory dismissal of complaints if not within the Title IX definition of sexual harassment
- Confidentiality – District must keep confidential: (i) identity of complainants (with limited exceptions), and (ii) supportive measures (with limited exceptions)
- Emphasis on constitutional protections – (i) First Amendment; (ii) Fifth Amendment; (iii) Fourteenth Amendment (Due Process)
- “Rape shield” provisions
- “Gag orders” prohibited

# QUESTIONS?

Susan Anderson

[sanderson@ralaw.com](mailto:sanderson@ralaw.com)

216.232.3595