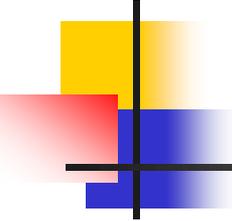


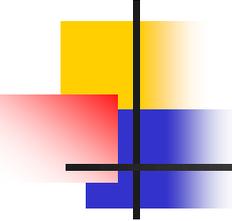
Title IX Decision Maker Training

JEVS Compliance 2020



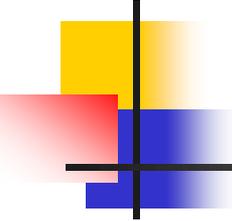
Title IX

- Title IX of the Education Amendments of 1972 prohibits discrimination – by employees, students, and third parties – on the basis of sex, including sexual harassment and sexual violence.
- “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.”



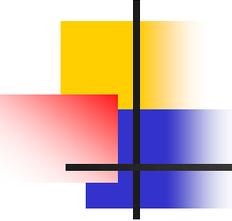
Scope of Title IX

- Title IX applies to institutions that receive federal financial assistance from ED, including state and local educational agencies.
- Educational programs and activities that receive ED funds must operate in a nondiscriminatory manner.
- Some key issue areas in which recipients have Title IX obligations are: recruitment, admissions, and counseling; financial assistance; athletics; sex-based harassment; treatment of pregnant and parenting students; discipline; single-sex education; and employment.
- Also, a recipient may not retaliate against any person for opposing an unlawful educational practice or policy, or made charges, testified or participated in any complaint action under Title IX.



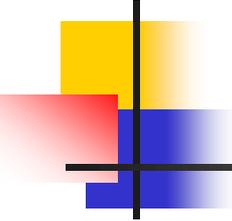
OCR's Enforcement of Title IX

- OCR vigorously enforces Title IX to ensure that institutions that receive federal financial assistance from ED comply with the law.
- OCR evaluates, investigates, and resolves complaints alleging sex discrimination. OCR also conducts proactive investigations, called compliance reviews, to examine potential systemic violations based on sources of information other than complaints.
- OCR Assistance:
 - OCR@ed.gov or 800-421-3481, TDD 800-877-8339.



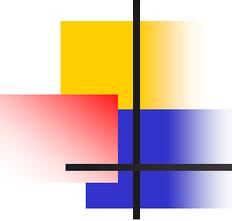
Final Regulations 2020

- Watch and review the OCR Webinar: Title IX Regulations Addressing Sexual Harassment:
 - https://www.youtube.com/watch?feature=youtu.be&utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=&v=TdfT5R8ibm4



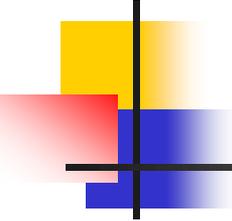
Decision Makers

- Decision maker must objectively evaluate relevant evidence and if respondent is responsible
- Decision maker
 - cannot be title ix coordinator
 - the same person conducting the investigation.
 - must be able to impartially evaluate evidence



Grievance Process

- Key details of alleged incident:
 - Who was involved
 - Date and location if known
 - Alleged misconduct
- The respondent is presumed not responsible and can only be found responsible after process concludes.
- Every formal complaint must be investigated



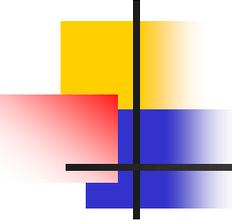
Mandatory and Discretionary Dismissals

■ Mandatory Dismissals

- That does not describe conduct that meets the definition of sexual harassment
- Alleged sexual harassment that did not occur in school's education program or activity
- Did not occur in the US
- Can address misconduct that violates state law or schools own code of conduct even if not sexual harassment

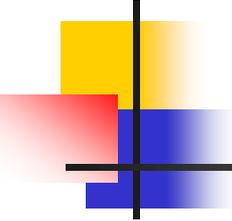
■ Discretionary Dismissals

- If complainant notifies in writing that wishes to withdraw complaint or some of allegations
 - If respondent is no longer enrolled or employed by the school
 - Specific circumstances prevent school from gathering evidence to reach a conclusion
 - Has option to proceed if dismissal is not appropriate
-
- Both parties have the right to appeal dismissal decision



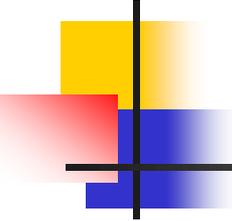
Protections to Both Parties

- Equal opportunity to parties to produce evidence and witnesses
- Same opportunities to have others present, including advisor of choice
- Provide written notice of date, time, location, participants, and purpose of meetings with sufficient time to both parties
- Equal opportunities to inspect and review evidence.
 - Documents
 - Notes from interviews
 - Other evidence
 - Includes evidence the school doesn't think it will use
 - Can be sent in electronic format or hard copy
 - Must be available at hearing



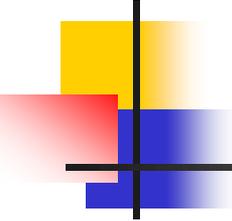
Hearing

- Must hold live hearing
- Advisors must be allowed to cross examine with questions and follow up questions, including challenging credibility
- No party can personally question anyone
- Cross examination questions must be relevant and decision makers decide before party has to answer
- If any party requests, hearing must be held with parties in separate rooms w tech to see and hear each other
- Cross examination questions must be relevant and decision makers must decide if the question is relevant and appropriate before the other party or witness answers
- If any party shows up without an advisor – the school chooses an advisor solely for cross examination
- Hearing must be recorded



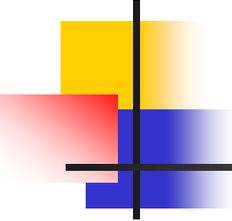
Hearing

- Complainants privacy is protected concerning prior sexual history with the exception of two narrow circumstances:
 - Prove someone other than respondent
 - Offered to prove consent
- If any party chooses not to appear or answer questions
 - Final regs protect student's right to choose - if not appear or answer questions
 - Decision maker excludes that parties statements
 - Cannot draw an inference about the refusal to participate or testify
 - Allow hearing to be held virtually - or some participants to participate virtually
 - Have to create audio or audio visual recording or transcript of any live hearing and make available for inspection or review



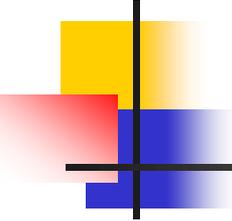
After the Hearing

- The Adjudicator's determination has to be written:
 - Include the portion of school's policy that was violated
 - Describe procedural steps, site visits, and the hearing itself
 - Finding of fact section - adjudicator explains the facts introduced at hearings
 - Include a section that draws conclusions after applying the facts
 - Include a statement and rationale for the determination of responsibility
 - Include the disciplinary measures imposed on respondents and remedies for complainant
 - The school is required to give complainant remedies to restore educational access and, at this stage, the remedies may burden the respondent
 - Include a statement of the rationale for remedies to the complainant
 - Include a statement of the procedures, right to appeal, and permissible basis for appeal
- Send simultaneously with appeal
 - Final if parties don't appeal
 - Can set deadlines when appeal can be filed - reasonably prompt
 - Title IX Coordinator is responsible for carrying out remedies



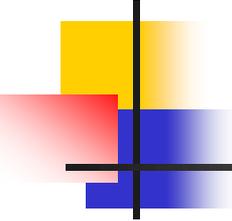
Appeal

- Must offer appeal for:
 - Procedural irregularity affected outcome
 - New evidence not available
 - Conflict of interest on title ix coordinator, investigator, decision maker and affected outcome
 - Can offer additional grounds so long as they are equal
- Recipient has to notify parties in writing and implement appeal procedures equally
- Person that decides the appeal cannot be the same person deciding responsibility, investigator, or title ix coordinator
- After considering written statements, decision maker has to make decision and send to parties simultaneously
- Determination on responsibility becomes final



Informal Resolution

- School has the option to offer informal resolution
- Can never be for employee harassing a student
- Mediation to resolve other issues:
 - Can only be attempted if both parties are entering voluntarily
 - Cannot force any party or ahead of time
 - Must provide facilitator free of conflict of interest or bias
- Provide complaints and respondents notice of allegations, rights, information about whether informal process is confidential, can withdraw from informal at any time before agreement reached



Other Issues

- Record keeping duties
 - 7 years
 - Records of investigation and determination/ appeal/ audio visual/ remedies
 - Appeal records
 - Informal resolution process
 - Retain all materials used to train coordinators, investigators, decision makers; have to be posted on website
 - Records of supportive measures
- Retaliation
 - No person allowed to retaliate
 - If believed to be, can file complaint with school and school must have procedures in place for prompt resolution
 - Require school to keep identities of parties and witnesses confidential unless required under other laws
 - It is not retaliation to punish someone who makes false statements
- Not intended to regulate the content of speech
 - OCR can never require school to violate 1st amendment
 - Cannot restrict free speech rights