

THE NEW TITLE IX REGULATIONS



AUGUST 4,
2020



NCSA

Nebraska Council of
School Administrators

WHY DO I CARE?

- The ultimate penalty for noncompliance with Title IX regulations is the withdrawal of federal funds.

AUGUST
14, 2020



AGENDA

-
- Action Plan-Required Changes
 - Definition of Sexual Harassment
 - Scope of Education Program or Activity
 - Grievance Procedure
 - Investigations
 - Appeals
 - Informal Resolution
 - Impartiality
 - Burden of Proof
 - Relevance
 - Role of Title IX Coordinator
 - Grooming
 - Additional Training
 - Lawsuits

YOUR ACTION PLAN

01

Adopt Grievance Procedure

- Who is on your Title IX Team?
- What standard will you choose?
- Will you hold hearings?

02

Put Title IX Coordinator Contact information on school webpage

03

Provide Training to your Title IX Team– put materials onto school webpage

04

Have statement of non-discrimination and notice of grievance procedure:

- Parent/student handbooks
- Professional agreements/union contracts
- Applicants
- Webpage

BASICS FOR GRIEVANCE PROCEDURE

-
- Equity
 - Objective evaluation of all relevant evidence
 - Training
 - Presumption of non-responsibility (for respondent)
 - Reasonably prompt time frames
 - Describe range of possible disciplinary sanctions and remedies
 - Standard of evidence
 - Appeals
 - Supportive measures
 - Privilege recognized

CHOICES YOU NEED TO MAKE

Who is on your Title IX Team

- Title IX Coordinator; Investigator; Decision-Maker; Appeals; Informal Process

What standard of evidence will you use?

- Preponderance of the Evidence or Clear and Convincing Evidence

Will you allow in person hearings?

TRAINING ON THE FOLLOWING TOPICS

- Definition of Sexual Harassment
- Scope of District's education program or activity
- How to investigate
- Grievance process
- How to serve impartially including avoiding prejudgment of facts at issue, conflicts of interest, and bias
- Technology
- Relevance of questions and evidence
 - Complainant's sexual predisposition or prior sexual behavior

DOCUMENTATION

- District must maintain the following documents for a period of seven years:
 - Each sexual harassment investigation
 - Any determination of responsibility
 - Any disciplinary sanctions
 - Any remedies provided to complainant
 - Any appeals and results
 - Any informal resolutions and results
 - Materials used to train Title IX team



LET'S DIG IN!

DEFINITION OF SEXUAL HARASSMENT

SEXUAL HARASSMENT DEFINITION

- Employee Quid Pro Quo
- Hostile Environment
- VAWA “Big Four”

SEXUAL HARASSMENT-QUID PRO QUO

- **Definition:** An employee of the District conditioning an aid, service, or benefit of the District on an individual's participation in unwelcome sexual contact
- In this situation- you do not have to analyze severity or harm. It is presumed.
- This definition only applies to employees (not volunteers, or other students, etc.)

SEXUAL HARASSMENT-HOSTILE ENVIRONMENT

- **Definition:** Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity.

SEXUAL HARASSMENT – VAWA BIG 4

- Sexual Assault 20 U.S.C. 1092(f)(6)(A)(v)
- Domestic Violence 34 U.S.C. 12291(a)(8)
- Dating Violence 34 U.S.C. 12291(a)(10)
- Stalking 34 U.S.C. 12291(a)(30)

SEXUAL ASSAULT 20 U.S.C. 1092(f)(6)(A)(v)

- The term “sexual assault” means an offense classified as forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation

SEXUAL ASSAULT 20 U.S.C. 1092(f)(6)(A)(v)

- **Forcible 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.

Important Points:	Rape by an object can be as traumatic as penile/vaginal rape
Includes instances in which the victim is unable to give consent because of temporary or permanent mental or physical incapacity	Recognizes that a victim can be incapacitated by drugs or alcohol and thus unable to consent
Physical resistance is not required to demonstrate lack of consent	Rape can occur to any gender
Recognizes legal incapacity to consent because of age	Nebraska: Age of sexual consent is 16. Statutory Rape = person below 15 + person 20 years or older. Sexual Assault of a child includes victim twelve years or younger

DOMESTIC VIOLENCE 34 U.S.C. 12291 (a)(8)

- **Definition:** The term “domestic violence” includes 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 laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction



DOMESTIC VIOLENCE 34 U.S.C. 12291 (A)(8)

How does “Domestic Violence” occur in a elementary or secondary school setting?

This definition is much more likely to occur in a post-secondary school environment.

DATING VIOLENCE 34 U.S.C. 12991 (a)(10)

- The term “**dating violence**” means violence committed by a person:
 - Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship
 - The type of relationship
 - The frequency of interaction between the persons involved in the relationship
- **Takeaway: Do not dismiss complaints of violence or sexual assault if the victim and alleged perpetrator are “dating”**

STALKING 34 U.S.C. 12291 (a)(30)

- The term “**stalking**” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to
 - Fear for his or her safety or the safety of others; or
 - Suffer substantial emotional distress

SCOPE OF THE EDUCATION PROGRAM OR ACTIVITY



SCOPE OF EDUCATION PROGRAM OF ACTIVITY

- When do we have to respond?
- If you have **actual knowledge** of sexual harassment (earlier definitions) that occur *within* an education program or activity.
- **Education Program or Activity Means:** locations, events, or circumstances over which the School exercised substantial control over both the respondent and the context in which the sexual harassment occurs.

SCOPE OF EDUCATION PROGRAM OF ACTIVITY

- Title IX applies to **all** of a school's operations, including all of the academic, educational, extra-curricular, athletic, and other programs of the school, whether they take place in the facilities of the school, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere within the United States.
- **A school may address sexual harassment affecting its students or employees that falls outside Title IX's jurisdiction in any manner the school chooses, including providing supportive measures or pursuing discipline.**

ACTUAL KNOWLEDGE

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

ACTUAL KNOWLEDGE

Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge



This standard is not met when the only official with actual knowledge is the respondent.



“Notice” is not limited to a report to the Title IX Coordinator using mail, telephone, or e-mail.



THE GRIEVANCE PROCEDURE

WHY?

- “A recipient’s response must . . . Follow a grievance process that complies with section 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures . . . Against the respondent.”
- 34 CFR Part 106.44(a)

YOUR ROLE IN THE PROCEDURE

Title IX Coordinator



Investigator



Decision-Maker



**Others who help facilitate an appeal or
informal resolution process**

IMPORTANT DEFINITIONS

- **Complainant:** an individual who is alleged to be the victim of conduct that could constitute sexual harassment
 - A complainant must be participating in or attempting to participate in the education program or activity of the School with which the formal complaint is filed.
- **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

IMPORTANT DEFINITIONS-SUPPORTIVE MEASURES

- **Supportive Measures:** non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent before or after the filing of a formal complaint or where no formal complaint has been filed. **Such measures are designed to restore or preserve equal access to the School's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the School's educational program or activity, or deter sexual harassment**
- 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 or other similar measures

IMPORTANT DEFINITIONS-SUPPORTIVE MEASURES

- **Confidentiality:** The School 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 to provide the supportive measures
- **The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.**

NO Formal Complaint

A School must respond promptly to Title IX sexual harassment in a manner that is not **deliberately indifferent**

YES Formal Complaint

In response to a formal complaint, a District must follow a specific grievance procedure. (Described later in this presentation)

RESPONSE OBLIGATIONS TO ACTUAL NOTICE OF SEXUAL HARASSMENT

DELIBERATE INDIFFERENCE

- Not clearly unreasonable in light of the known circumstances
- Case law: “[T]he response must amount to deliberate indifference to discrimination. The administrative enforcement scheme presupposes that an official who is advised of a Title IX violation **refuses** to take action to bring the School into compliance. The premise, in other words, is **an official decision by the School not to remedy the violation.**” *Gebser*

DELIBERATE INDIFFERENCE



- What actions do we take so that we are not deliberately indifferent?
- Title IX Coordinator promptly contacting the complainant 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, and explain the process for filing a formal complaint.

FIRST STEP



- The Title IX Coordinator sends the formal notices to all parties (i.e. the Complainant and Respondent, if known) which includes:
 1. The grievance procedure of the school; and
 2. A notice of the allegations which includes:
 - a. The identities of all known parties involved
 - b. The conduct allegedly constituting sexual harassment; and
 - c. The date and location of the alleged incident.

SECOND STEP INVESTIGATION



- We discuss HOW to conduct a fair and impartial investigation later in this presentation
- The School must designate an Investigator who shall promptly begin an investigation into the allegations.

SECOND STEP- INVESTIGATIONS

RIGHTS OF THE PARTIES

- The investigator must provide an **equal opportunity** for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- The investigator shall **not restrict the ability** of either party to discuss the allegations under investigation or to gather and present relevant evidence
- The investigator shall provide the parties with **the same opportunities** to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice.
 - *Investigator may establish restrictions on how an advisor participates (but those restrictions must apply equally to both parties' advisors)*

SECOND STEP- INVESTIGATIONS

RIGHTS OF THE PARTIES

- Up until the conclusion of the investigation, the parties shall have an **equal opportunity to inspect and review** any evidence obtained in the investigation that is directly related to the allegations raised in the formal complaint.
- *This includes evidence upon which the Investigator does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence obtained from any source*

RIGHTS OF THE PARTIES DURING THE INVESTIGATION

During the investigation the District retains the right to place a non-student employee respondent on **administrative leave** during the investigation

The district also retains the right to remove a student from the District's educational program prior to the conclusion of the investigation. **BUT**, in the event of a removal, the respondent shall have the opportunity to challenge the decision for removal.

THIRD STEP

AFTER THE INVESTIGATION



- **PRIOR** to the conclusion of the investigation, the investigator shall send each party and the party's advisor, if any, the evidence that is subject to inspection and review in an electronic format or hard copy.
- **THEN**, the parties shall have at least 10 days to submit a written response, which the Investigator must consider
- **THEN**, the investigator will complete the investigative report and send to the parties, their advisors, if any, and the decision-maker.

FOURTH STEP

DECISION OF RESPONSIBILITY



- THEN the decision maker shall consider all relevant evidence, including the inculpatory and exculpatory evidence.
- Prior to coming to a determination- the decision maker shall provide **10 days** for each party to submit written relevant questions. Decision maker provides answers.
- The decision maker shall not consider the credibility of the evidence solely based on a person's status as the complainant, respondent, or witness.

DECISION-MAKER'S REPORT INCLUDES:

- The portion of the school's policies that was violated
- A description of the procedural steps that were taken by the school on the way to getting to the decision
- A findings of fact section
- A section that draws conclusions after applying the facts to the portion of the school's policy that applies
- A statement of rationale for the ultimate determination of responsibility
- Any disciplinary sanctions that the school will impose on the respondent, and state whether the school will provide remedies to the complainant
- A statement of rationale for any remedies for the complainant, addressing how those remedies will restore or preserve equal access; and
- A statement of the recipient's procedures, a statement that the parties have a right to appeal the initial determination regarding responsibility, and the permissible bases for appealing.

FOURTH STEP

DECISION OF RESPONSIBILITY



- FINALLY the decision maker will send the written determination to both parties simultaneously, along with the appeal procedures.



HOW TO CONDUCT INVESTIGATIONS

INVESTIGATING FORMAL COMPLAINTS

- REMEMBER:
- Upon Receipt of a Formal Complaint, the Title IX Coordinator shall notify the Investigator
- The Investigator will **promptly Investigate** all complaints of discrimination

CONDUCTING INTERVIEWS

■ TAKE NOTES

- If possible, have someone else present who can also take notes
 - This person can also serve as a witness if the interviewee later recants.
- Ask the witness not to talk with other witnesses, the respondent or the complainant
- Find out if the witness is also a potential complainant.
- If witnesses are going to guess or give an opinion, make sure they tell you it is guess/opinion.

CONDUCTING INTERVIEWS

- Does the witness know other witnesses?
- Does the witness know of other incidents?
- What does the witness know about the complainant – other incidents/information?
- Advise the witness to come to you if anyone threatens him/her
- Advise the witness to contact you if he/she thinks if anything else
- Is there any documentary evidence?

EXAMPLES OF QUESTIONS TO ASK

- “What happened then,” “then what happened,” “what happened next”
 - Make sure the questions you ask are not leading questions.
- “Anything else ...Anything else ...?”
- Keep linking pronouns to actual proper names- “when you say ‘she’, who do you mean?”

INVESTIGATING

- Adopt a calm, impartial, fair, and deliberate mindset; do not prejudge the allegations or create that perception
 - Open ended questions
 - Be the calm one in the storm; no witch-hunts.
 - Your actions will be reviewed and challenged
 - The materials you develop, and your communications may be subject to later disclosure

INVESTIGATING WHEN POLICE ARE INVOLVED

- Remember –OCR says you cannot rely on outcome of police investigation
- Important not to interfere with police investigation ... BUT
- Not the best practice to wait for police investigation to end before taking action.



INVESTIGATING WHEN POLICE ARE INVOLVED

TALK TO POLICE ABOUT TITLE IX REQUIREMENTS FOR CONCURRENT INVESTIGATION

Models for Concurrent Investigation

Independent: Each investigator works on their own. Information is shared only through formal process as investigations reach certain stages

Joint: Investigators communicate frequently through informal and formal methods with status updates

Simultaneous: Investigators work together by coordinating efforts

DIFFERENCE BETWEEN POLICE INVESTIGATION AND ADMINISTRATIVE INVESTIGATION

Police Investigator

- Trying to establish probable cause for arrest
- Uses a wide lens
- Employs a variety of tactics
- Works for society and in the interest of justice

Administrative Investigator

- Concerned with equity-civil right issue
- Looks only at the reported case
- Generally straight forward approach
- Works for school to ensure compliance



APPEALS

Procedural irregularity that affected the outcome of the matter



New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and




The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against the complainant or respondent generally or the individual complainant or respondent that affected the outcome of the matter.

THREE REASONS FOR APPEAL

STEPS FOR APPEAL


First Step: Party in writing sends Title IX Coordinator its reason for the appeal and briefly states why their case should be appealed. This is within 15 days of notice by the Decision-Maker



Second Step: The other party is notified of the appeal. They have 15 days to respond to the opposing party's written statement.



Third Step: Who ever is in charge of appeals reviews the investigative report, the decision-makers' determination and the written statements of the parties. Then they issue a written decision describing the result of the appeal and the rationale for the result. The written decision is sent to the parties simultaneously



THE APPEAL PROCESS REPRESENTS THE FINAL DECISION OF THE DISTRICT AND THE PARTIES ARE NOT ENTITLED TO ANY FURTHER APPEALS



INFORMAL RESOLUTION PROCESS

INFORMAL RESOLUTION

- A School may not require, as a precondition condition to enjoyment of any employment right, the waiver of the employee's right to a proper grievance procedure
- A School may not require or offer that the parties participate in an informal resolution process until a formal complaint is filed
- At any time prior to reaching a determination, the School may facilitate an informal resolution process that does not involve a full investigation

REQUIREMENTS FOR INFORMAL RESOLUTIONS

Before beginning the informal process, School must:

1. Provide written disclosures to the parties
 - Disclosing allegations, requirements of the informal resolution process
 - Circumstances which may preclude the parties from resuming the formal complaint
 - The party has the right to withdraw from the informal process and resume the formal process
 - Any consequences resulting from participating in the informal process (including that records will be maintained or could be shared)
2. Obtain both parties' voluntary, written consent
3. Note offer the informal process for allegations between employees and students

INFORMAL RESOLUTION

- The following still apply during the informal resolution process
 - Confidentiality
 - Impartiality
 - Equal opportunities

A photograph of a classical building's roofline against a blue sky with light clouds. The central focus is a large stone statue of a female figure, likely Justice, standing and holding a pair of scales in her left hand and a sword in her right. To her left, another statue of a seated female figure is visible. The building's facade below the roofline features intricate carvings and columns.

IMPARTIALITY

IMPARTIALITY

- Impartial means that you do not have any **prejudice** towards the complainant or respondent i.e. lack of bias
- Impartial means that you will render a decision based **ONLY** on the **evidence**
- Impartial means you do not opine about the facts before considering **ALL** the **facts**
- Impartial means you avoid **conflicts of interest**: an investigator or decision maker should recuse themselves from a particular case if they have a conflict of interest

AVOIDING BIAS



Confirmation Bias: placing more value on information that supports our existing belief




Anchoring Bias: being overly influenced by the first piece of evidence/information we receive



Misinformation effect: the tendency for post-event information to interfere with the memory of the original event. Knowledge of this effect has led to a mistrust of eyewitness information.



Halo effect: your overall impression of a person influences how you feel and think about their character. This especially applies to physical attractiveness influencing how you rate their other qualities.



RELEVANCE
& BURDEN
OF PROOF

BURDEN OF PROOF- PREPONDERANCE OF THE EVIDENCE

**“More likely
than not”**

**“Greater
Weight of
Evidence”**

BURDEN OF
PROOF-
CLEAR AND
CONVINCING
EVIDENCE



Evidence that is highly and substantially more likely to be true than untrue



The fact finder must be convinced that the contention is highly probable



Closer to beyond a reasonable doubt than preponderance of the evidence



“85 to 90 percent certainty” versus “51 percent certainty”

FEDERAL RULES OF EVIDENCE 401: TEST FOR RELEVANT EVIDENCE

- Evidence is relevant if:
 - (a) it has a tendency to make a fact more or less probable than it would be without the evidence; and
 - (b) the fact is of consequence in determining the action.

LET'S PRACTICE!

-
- Allegation: Complainant was forcibly sexually assaulted by respondent (classmate) during after school baseball practice.
 - Which evidence is relevant?
 - (a) The complainant is a female and the respondent is a male.
 - (b) The respondent comes from a good family/The respondent is well liked by his/her colleagues
 - (c) There were no witnesses to the alleged sexual harassment
 - (d) The complainant has had sexual intercourse with 10 people

LET'S
PRACTICE!

WHICH
EVIDENCE IS
RELEVANT?

- (a) The complainant is a female and the respondent is a male.
- Not relevant
- There is a presumption of non-responsibility for the respondent regardless of gender.
- Policy forbids favoring evidence simply because it came from the complainant.
- Credibility of witness does not depend on gender.

LET'S
PRACTICE!

WHAT
EVIDENCE IS
RELEVANT?

- (b) The respondent comes from a good family/The respondent is well liked by his/her colleagues
- Not relevant
- ANYONE can commit sexual abuse and harassment
- Statistically- grooming behaviors are more often seen in adults whom are well liked by their colleagues
- Treat all complaints equally regardless of the status.

LET'S PRACTICE

WHICH EVIDENCE IS RELEVANT?

- (c) There were no witnesses to the alleged sexual harassment
- Not necessarily relevant
- May become relevant if complainant has inconsistencies in memory
- Several complaints likely will revolve around one-on-one interactions

LET'S PRACTICE

WHICH EVIDENCE IS RELEVANT?

- (d) The complainant has had sexual intercourse with 10 people
- Questions and evidence about the complainant's sexual predisposition or prior sexual behavior **are not relevant, unless** such questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.



WHAT IS A TITLE
IX
COORDINATOR?

WHAT IS A TITLE IX COORDINATOR?

- The Title IX coordinator is responsible for coordinating the recipient's responses to all complaints involving possible sex discrimination including:
 - Monitoring outcomes
 - Identifying and addressing any patterns
 - Assessing effects on the school climate
- *How do you do this?*

WHAT IS A TITLE IX COORDINATOR?

- Title IX does not specify who should determine the outcome of Title IX complaints or the actions the school will take in response to such complaints
- The recipient must inform the Title IX coordinator of all reports and complaints raising Title IX issues

WHAT IS A TITLE IX COORDINATOR?

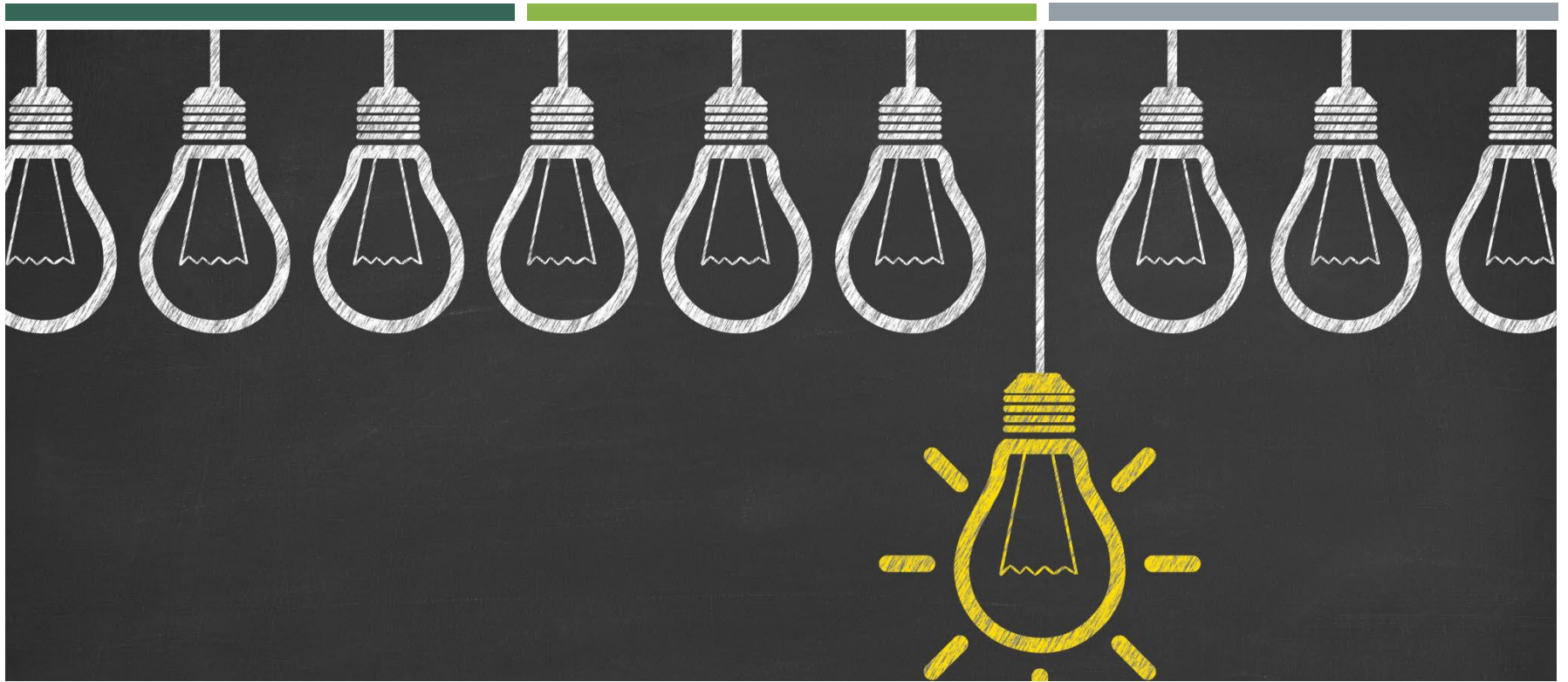
- Must have **knowledge** of the recipient's **policies and procedures on sex discrimination** and should be involved in the **drafting and revision** of such policies and procedures to ensure that they comply with the requirements of Title IX.
- Recipients should provide Title IX coordinators with access to information regarding **enrollment** in particular subject areas, participation in athletics, administration of school discipline, and incidents of sex-based harassment.

WHAT IS A TITLE IX COORDINATOR?

- Give **regular training for faculty and staff** outlining their rights and obligations under Title IX including:
 - Appropriate responses to reports of sexual misconduct
 - Obligation to report sexual misconduct
 - The extent to which counselors and advocates may keep a report confidential

WHAT IS A TITLE IX COORDINATOR?

- Give **regular training of students** outlining their rights under Title IX
 - What constitutes sexual misconduct?
 - What is a hostile environment?
 - Definition of consent
 - Reporting options
 - Grievance procedures
 - Disciplinary codes
 - Who at the school to speak to in confidence
 - Protections against retaliation



IMPORTANCE AND CONTEXT

GROOMING TECHNIQUES TO LOOK OUT FOR

STATISTICS

■ **A survey conducted by the American Association of University Women(AAUW) on 2,064 students in 8th through 11th grade:**

- **83% of girls have been sexually harassed**
- **78% of boys have been sexually harassed**
- **38% of the students were harassed by teachers or school employees**
- **36% of school employees or teachers were harassed by students**
- **42% of school employees or teachers had been harassed by each other**

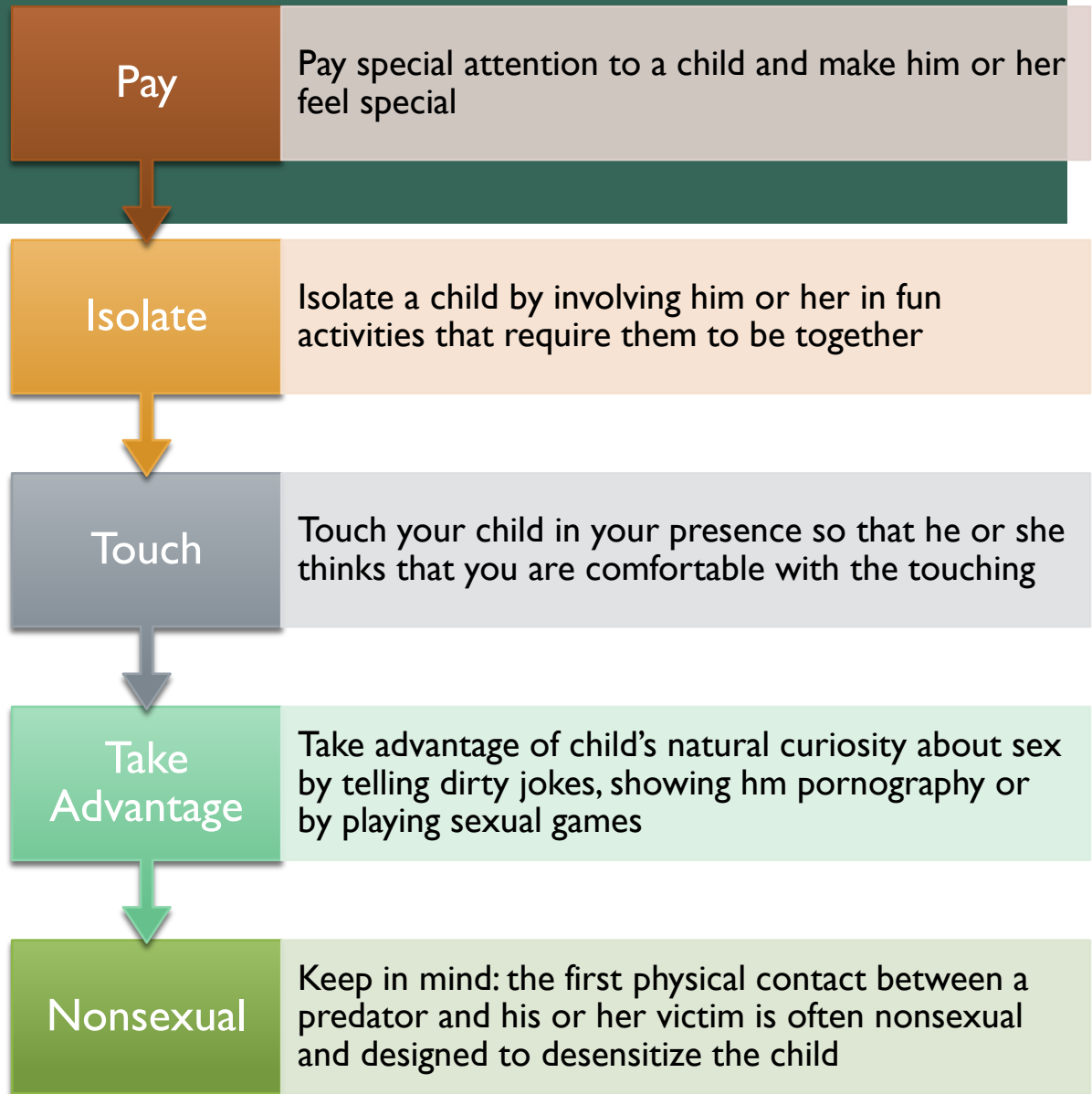
STATISTICS

■ Table 2. Percent of Abusers by Job Title Job Title %*:

- Teacher 18
- Coach 15
- Substitute Teacher 13
- Bus Driver 12
- Teacher's Aide 11
- Other School Employee 10
- Security Guard 10
- Principal 6
- Counselor 5

■* *Educator Sexual Abuse, Charol Shakeshaft, Hofstra*

HOW DOES IT HAPPEN? GROOMING TECHNIQUES



HOW DOES IT HAPPEN? GROOMING TECHNIQUES

- The most common lure used by child molesters, called the “Affection Lure”, is used both offline and online to exploit unsuspecting youngsters in need of love and attention.
- Most victims of abuse are befriended and "groomed" over a period of hours, days, weeks, months, or years.
- Child molesters have repeatedly admitted: **When there's a physically or emotionally absent parent in the picture, it makes the child more vulnerable to grooming and abuse.**

■ ROSEMARY WEBB AND JENNIFER MITCHELL, NATIONAL CHILD SAFETY EXPERTS AND CO-PRESIDENTS OF CHILD LURES PREVENTION/TEEN LURES PREVENTION. <https://childluresprevention.com/resources/molester-profile/>

HOW DOES IT HAPPEN?

- **VIP Effect:**

- **To kids –**

- **The “Coach” is a V.I.P.**
 - **The “Teacher” is a V.I.P.**
 - **The “Athletic Trainer” is a V.I.P.**
 - **The local “Doctor” is a V.I.P.**

They are told, “I am important. No one will believe you. Keep silent. I like you.”

- ROSEMARY WEBB AND JENNIFER MITCHELL, NATIONAL CHILD SAFETY EXPERTS AND CO-PRESIDENTS OF CHILD LURES PREVENTION/TEEN LURES PREVENTION.
<https://childluresprevention.com/resources/molester-profile/>

HOW DOES IT HAPPEN? GROOMING TECHNIQUES

- Most child molesters are **expert at getting children and families to trust them.**
- Many target their victims and attempt to involve themselves in the child's life, including their family, school, house of worship, sports, and hobbies.
- They are often the first to offer to babysit or drive your child to activities. Child molesters will smile at you, look you right in the eye and make you believe they are trustworthy.

HOW DOES IT HAPPEN? GROOMING TECHNIQUES

- Predatory conduct (v. opportunistic)
- Adult befriends the child, fosters a “special” relationship, and lowers the child’s natural inhibitions
- Often target students who are passive or needy, and then engage in “boundary invasion behaviors”
 - Increasingly invasive
- Child gets used to boundary invasions, eventually accepting them as normal
- When inhibitions are down, misconduct may occur

**U.S.
DEPARTMENT
OF
EDUCATION,
EDUCATOR
SEXUAL
MISCONDUCT
:A SYNTHESIS
OF EXISTING
LITERATURE
(2004).**

- **“Unfortunately for School Districts, in the context of schools, students are taught to trust teachers and coaches. But, sexual abusers who use grooming techniques use a variety of techniques to trap students; “they lie to them, isolate them, make them feel complicit, and manipulate them into sexual contact.”**

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(2004).**

- **The school dynamic in particular has the opportunity to create an environment where this behavior goes unnoticed because "schools are also a place where teachers are more often believed than are students" and in which there is a power and status differential that privileges teachers and other educators."**

**U.S.
DEPARTMENT
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:A SYNTHESIS
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LITERATURE
(2004).**

- **Moreover, because these sexual predators often target marginal or vulnerable students, in a school setting, "students that adults regard as marginal are also unlikely to be accepted as credible complainants against a celebrated teacher."**

HOW DOES IT HAPPEN?

- **Often the “abuse” or “molester” tag is reluctantly applied to the teacher or coach – male or female – of adolescent children – ages 12 to 18.**
- **They just did not keep proper “boundaries”.**
 - **A sample boundary policy sets forth what should be an obvious standard for teachers and coaches:**
 - **“Using e-mail, text messaging, instant messaging or social networking sites to discuss with a student a matter that does not pertain to school-related activities”**

The image features a top-down view of several yellow pencils scattered across a vibrant red background. A horizontal yellow line is positioned near the top of the frame. In the lower portion, a teal-colored rectangular box contains the text 'ADDITIONAL TRAINING IDEAS' in white, uppercase, sans-serif font.

ADDITIONAL TRAINING IDEAS

POSSIBLE ADDITIONAL TRAINING AND POLICIES

- **Physical contact**--Discuss what is educationally appropriate versus inappropriate touching.
- What is the school's policy on giving and receiving hugs and other physical affection?
- When does a staff member stand so close that he or she invades a student's personal space?
- Are there different physical contact policies for staff members in varied roles, such as athletic coaches, music teachers, or history teachers?

POSSIBLE ADDITIONAL TRAINING AND POLICIES

- **Verbal and electronic communications---**Boundary issues often arise when staff engage in informal talk and electronic messages (for example, email or instant text messages) with students.
- **Should staff ever use slang or vulgar language with students? Gossip about other students or staff?**
- **Give students a home or cell phone number or a personal email address? Should staff disclose or respond to questions involving their dating history, relationships, or sexual orientation?**

POSSIBLE ADDITIONAL TRAINING AND POLICIES

- **Giving praise---**Staff should be careful of their language when offering praise to students individually or in front of their peers.
- How should teachers compliment students without becoming too personal? Can a teacher commend a student for his or her physical attributes?
- **Off-site school activities.** Trips and outings away from school also raise issues:
 - When should a staff member transport students in his or her personal car?
 - Who enforces curfew?
 - How should staff intervene if students tell stories and jokes of a sexual nature or that are otherwise denigrating to other students?

POSSIBLE ADDITIONAL TRAINING AND POLICIES

- **Attire---** Discuss how staff set an example in their own choice of clothing and accessories as well as their obligation to enforce the dress code with students.
- **When is clothing too revealing or sexual? When does the clothing promote negative influences, such as drugs, sex, violence, and death?**
- **To what extent may clothing reflect membership in an unhealthy culture, such as gangs?**

A photograph of a grand courtroom entrance featuring a wide set of light-colored stone steps leading up to a row of tall, fluted marble columns. A dark green horizontal bar is positioned at the top of the image, with a lighter green segment in the middle. A large, dark green rectangular box is overlaid on the bottom half of the image, containing the title text in white.

SEXUAL HARASSMENT IN THE COURTROOM

LEGAL IMPLICATIONS FOR SEXUAL ABUSE OR HARASSMENT OF STUDENTS



Title IX



42 U.S.C. 1983



State Tort Claims



NEW-Safe Sport Authorization
Act 2017

ELEMENTS OF TITLE IX CASE



- **Title IX Monetary liability requirements:**
 - **School official must have authority to take corrective action to address the alleged discrimination (Appropriate Person);**
 - **Appropriate Person must have “actual knowledge” of discrimination;**
 - **School official’s response amounts to deliberate indifference to discrimination/harassment**

TITLE IX VOCABULARY

- **Said another way:**
- **You do NOT act with deliberate indifference if your actions were**
“NOT CLEARLY UNREAOSNABLE”

42 U.S.C. 1983



- The law is clear that physical sexual abuse of a student by a school teacher [or coach] is actionable under § 1983 if such physical abuse occurred under color of state law.
- In order for a School District to be liable under § 1983 for monetary damages, a Plaintiff must prove that the School District violated his/her constitutional right to liberty either "pursuant to official municipal policy" or as part of "a custom or usage with the force of law." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978).

42 U.S.C. 1983-VOCABULARY

- **Policy:** A "policy" is an official policy, a deliberate choice of a guiding principal or procedure made by the municipal official who has final authority regarding such matters.
- A deliberate choice to follow a course of action;
- By a final policy maker = BOARD OF EDUCATION!(?)
 - Superintendent, principal, athletic director, coach?
- Decision-making authority is **not** the same as policy making authority

42 U.S.C. 1983-CUSTOM VOCABULARY

1) the existence of a continuing, widespread, persistent pattern of constitutional misconduct by the governmental entity's employees;

2) deliberate indifference to or tacit authorization of such conduct by the governmental entity's policymaking officials after notice to the officials of that misconduct; and

3) that the plaintiff was injured by acts pursuant to the governmental entity's custom, *i.e. that the custom was a moving force behind the constitutional violation.*

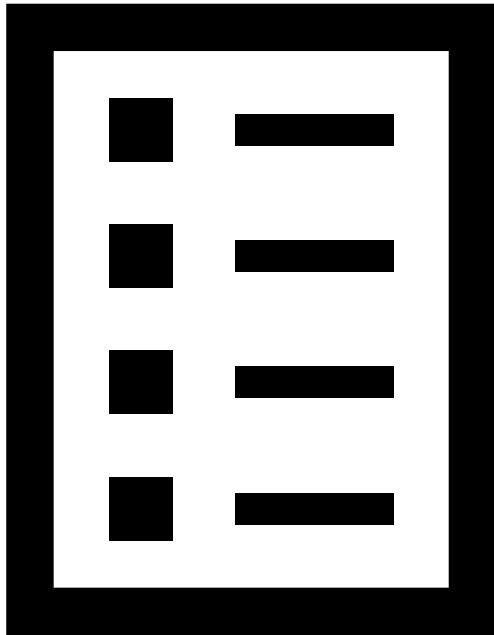
42 U.S.C. 1983-FAILURE TO TRAIN

- **Another angle for Plaintiffs - Failure to Train under § 1983:**
 - **"In limited circumstances, a local government's decision not to train certain employees about their legal duty to avoid violating citizens' rights may rise to the level of an official government policy for purposes of § 1983.**

42 U.S.C. 1983-FAILURE TO TRAIN

- One way to defend a failure to train claim is with strong board policies regarding training and preventing sexual abuse.
- Almost a perfect defense –
 - When the record clearly **indicates that the Board has developed and implemented policies and procedures for handling complaints of sexual abuse, and**
 - when the Board has implemented various programs to instruct principals [or other employees] on reporting procedures, **it is evidence of the Board's sensitivity to the constitutional rights of its students as they relate to incidents of child abuse.**
- *Thelma D. v. Board of Educ.*, 934 F.2d 929 (8th Cir. 1991)

STATE TORT CLAIMS



- **Basis for negligence actions - e.g. duty, breach of duty, proximate cause, damages.**
 - Failure to warn.
 - Failure to supervise.
 - Failure to follow policies, practices or procedures.
 - **Negligent hiring/retention.**
 - Reference letter for teacher who was accused of abuse of students.
 - Retaining teacher who has “crossed the line.”

SAFE SPORTS ACT 2017

- The bill has several new policy and training requirements for organizations directly affiliated with the U.S. Olympic Committee and a national governing body, but ...
- The bill **does** have **direct implications for school districts** with athletic programs that participate in **interstate or international amateur athletic competitions**, and whose membership includes any **adult who is in regular contact with an amateur athlete who is a minor.**

SAFE SPORTS ACT 2017

- If a **school (or activity association)** participates in **interstate or international athletic competition** and whose membership includes any adult who is in regular contact with an amateur athlete who is a minor, **must**:
 1. Comply with the reporting requirements of the **Victims of Child Abuse Act**.
 2. Establish **reasonable procedures** to *limit one-on-one interactions* between an amateur athlete who is a minor and an adult.

SAFE SPORTS ACT 2017

- 3. Offer and provide consistent *training* to adult members who are in contact with amateur athletes who are minors.**
- 4. Prohibit retaliation.**

■ TRAINING –THE CRITICAL COMPONENT OF THE LEGISLATION.

SAFE SPORTS ACT 2017

- The Act amends the Victims of Child Abuse Act of 1990 to:
 - Extend the duty to report suspected child abuse, including sexual abuse, within **24 hours**
 - to certain adults who are authorized to interact with minor or amateur athletes at a facility under the jurisdiction of a national governing body.
- An individual who is required, but fails to report suspected child abuse is subject to criminal penalties.

REMINDER: YOUR ACTION PLAN

- Adopt Grievance Procedure
 - Who is on your Title IX Team?
 - What standard will you choose?
 - Will you hold hearings?
- Put Title IX Coordinator Contact information on school webpage
- Provide Training to your Title IX Team– put materials onto school webpage
- Have statement of non-discrimination and notice of grievance procedure:
 - Parent/student handbooks
 - Professional agreements/union contracts
 - Applicants
 - Webpage



QUESTIONS?

