

Pre-Conference Survey & Online Materials

Please complete this pre-conference survey! You can also access materials for today's sessions using the QR code for materials.

Pre-Conference Survey



<https://forms.gle/U4dUrYSru45S5XUB7>

Materials



<https://bit.ly/MaterialsBSUIU>

1

2024 Title IX in "Jeopardy"

Title IX Conference:
Higher Ed & K-12 Training
July 23-24, 2024



Sponsored By



2

Join the Vevox session

Go to **vevox.app**

Enter the session ID:
169-120-111

Or scan the QR code

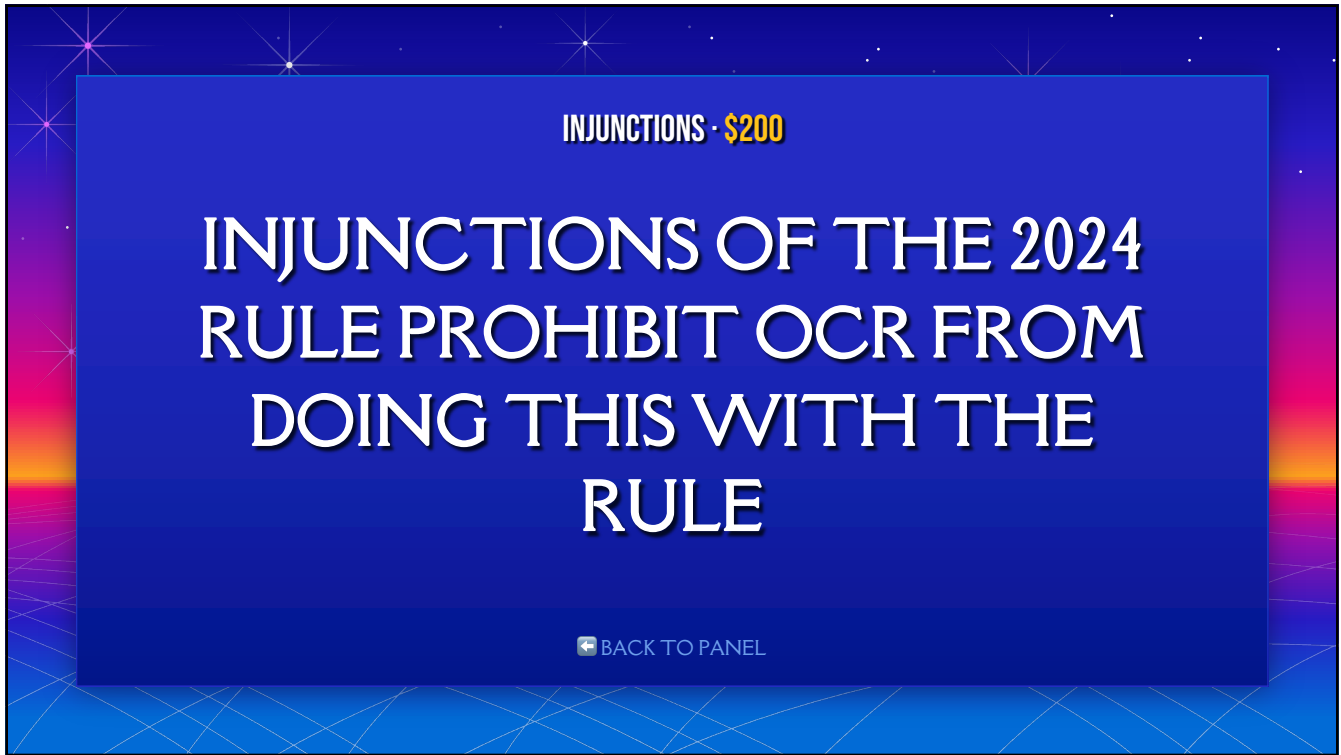


3

PANEL

INJUNCTIONS	STATES	IDAHO LAW	FIRST AMENDMENT	2020 & 2024 OVERLAP	THE PLAN
\$200	\$200	\$200	\$200	\$200	\$200
\$400	\$400	\$400	\$400	\$400	\$400
\$600	\$600	\$600	\$600	\$600	\$600
\$800	\$800	\$800	\$800	\$800	\$800
\$1000	\$1000	\$1000	\$1000	\$1000	\$1000

4



5

0/1

Join at: **vevox.app**

ID: 169-120-111

Question slide

Injunctions of the 2024 Rule prohibit OCR from doing this with the rule

Effectuate it	<input type="text"/>	0%
Implement it	<input type="text"/>	0%
Enforce it	<input type="text"/>	0%

6

0/1

Join at: **vevox.app**

ID: 169-120-111

Preparing Results

Injunctions of the 2024 Rule prohibit OCR from doing this with the rule

Effectuate it	<div></div>	0%
Implement it	<div></div>	0%
Enforce it	<div></div>	0%

RESULTS SLIDE

7

INJUNCTIONS - \$200

INJUNCTIONS OF THE 2024
RULE PROHIBIT OCR FROM
DOING THIS WITH THE
RULE

BACK TO PANEL


8

INJUNCTIONS - \$400

INJUNCTIONS OF THE 2024
RULE HAVE FOCUSED ON
THE DEFINITION OF THIS
KEY TERM IN TITLE IX

← BACK TO PANEL

9

 ###/##

Join at: **vevox.app**

ID: 169-120-111

Question slide

Injunctions of the 2024 Rule have focused on the definition of this key term in Title IX

Harassment

0%

Sex

0%


Gender

0%

LGBTQ+

0%

10

 ###

Join at: **vevox.app**

ID: 169-120-111

Results slide

Injunctions of the 2024 Rule have focused on the definition of this key term in Title IX


Harassment	<div></div>	0%
Sex	<div></div>	0%
Gender	<div></div>	0%
LGBTQ+	<div></div>	0%

RESULTS SLIDE

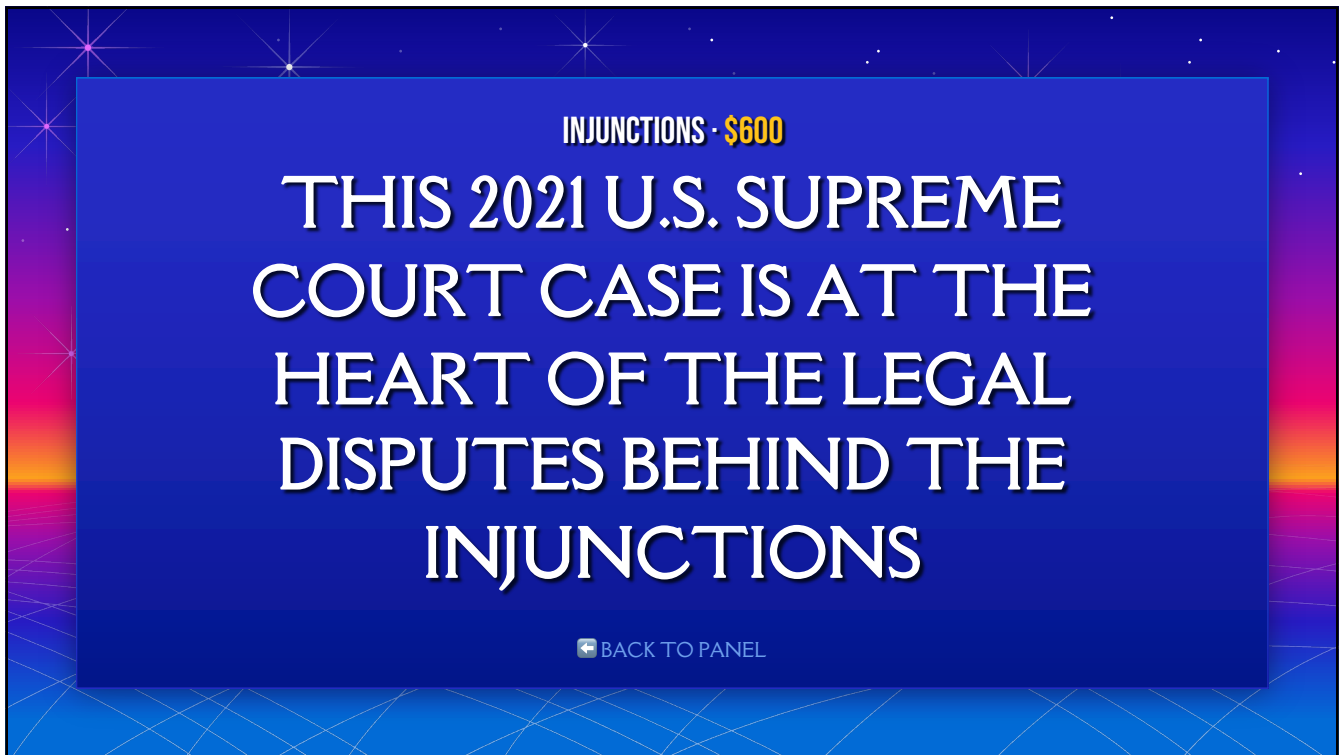
11

INJUNCTIONS · \$400

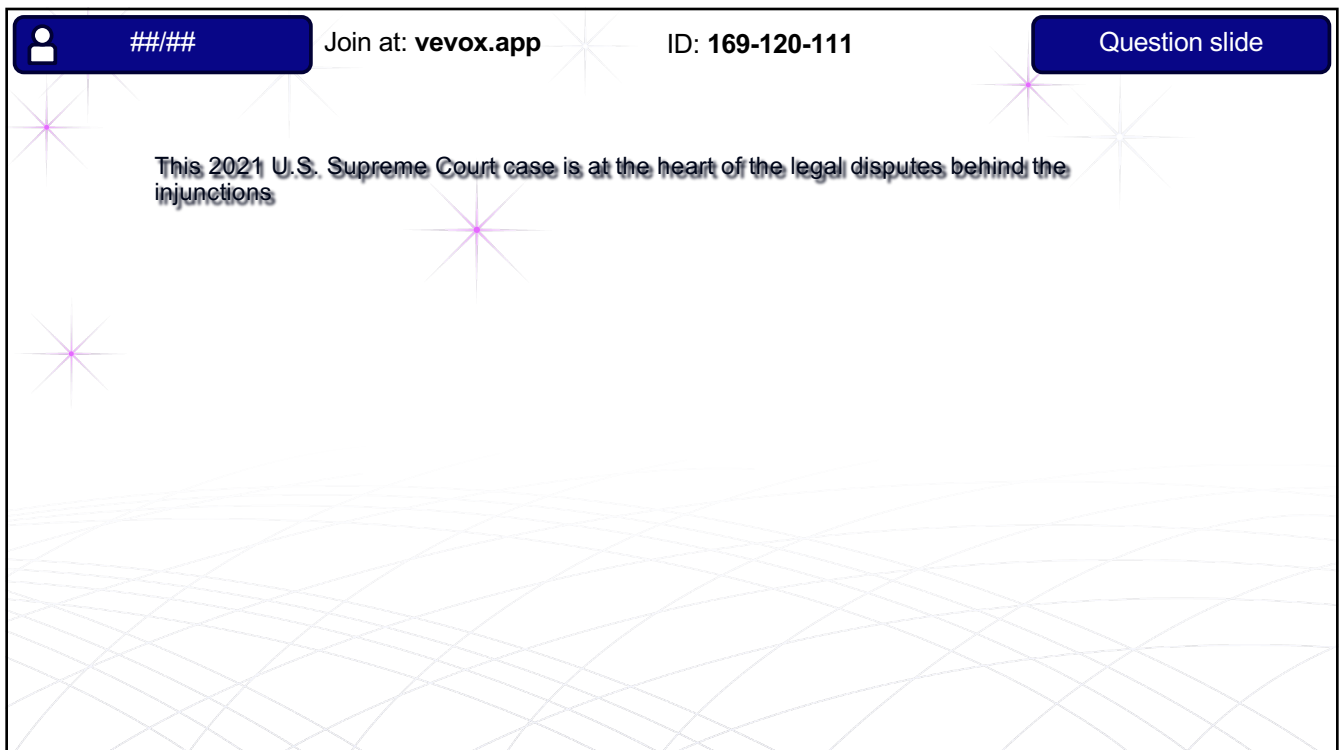
INJUNCTIONS OF THE 2024
RULE HAVE FOCUSED ON
THE DEFINITION OF THIS
KEY TERM IN TITLE IX

 BACK TO PANEL


12



13



14

 ###

Join at: **vevox.app**

ID: 169-120-111

Results slide

This 2021 U.S. Supreme Court case is at the heart of the legal disputes behind the injunctions.

Correct answers will be shown here

RESULTS SLIDE

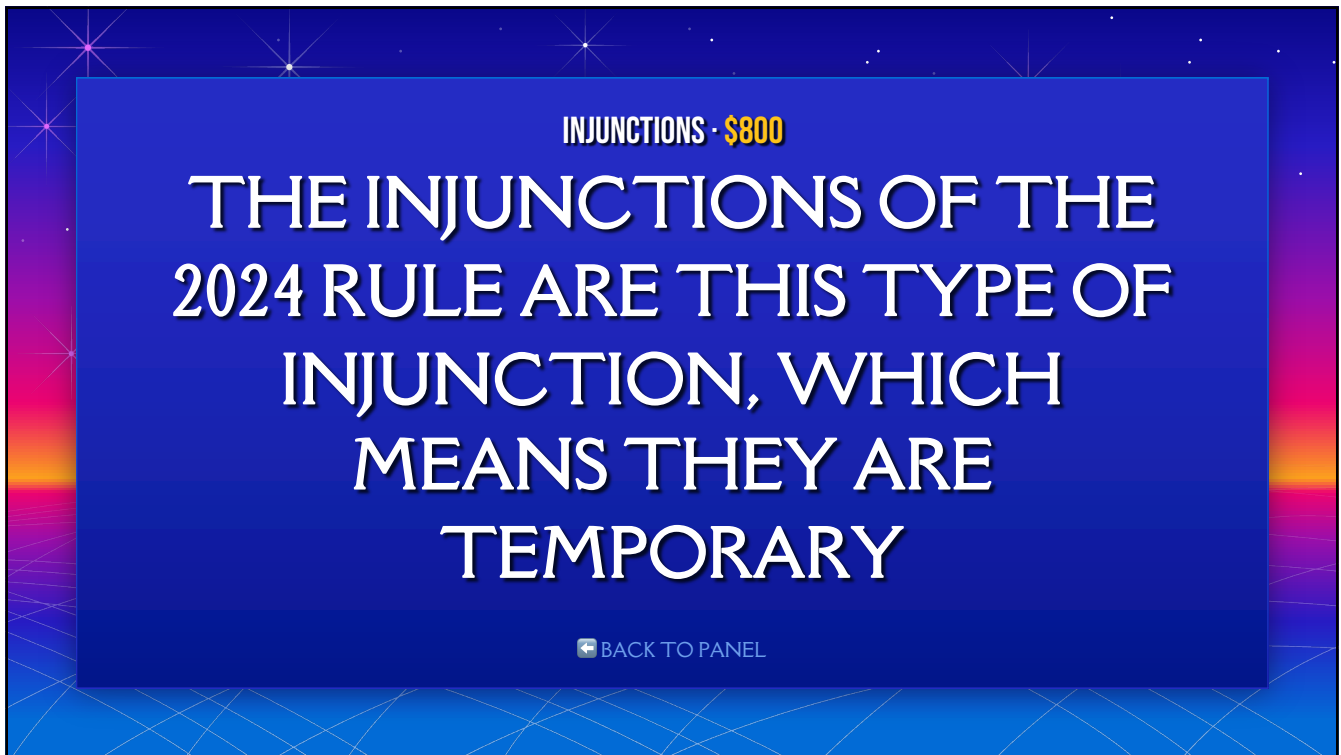
15

INJUNCTIONS · \$600

THIS 2021 U.S. SUPREME COURT CASE IS AT THE HEART OF THE LEGAL DISPUTES BEHIND THE INJUNCTIONS

← BACK TO PANEL

16



17



18

 ###

Join at: **vevox.app**

ID: 169-120-111

Results slide

The injunctions of the 2024 Rule are this type of injunction, which means they are temporary

Correct answers will be shown here

RESULTS SLIDE

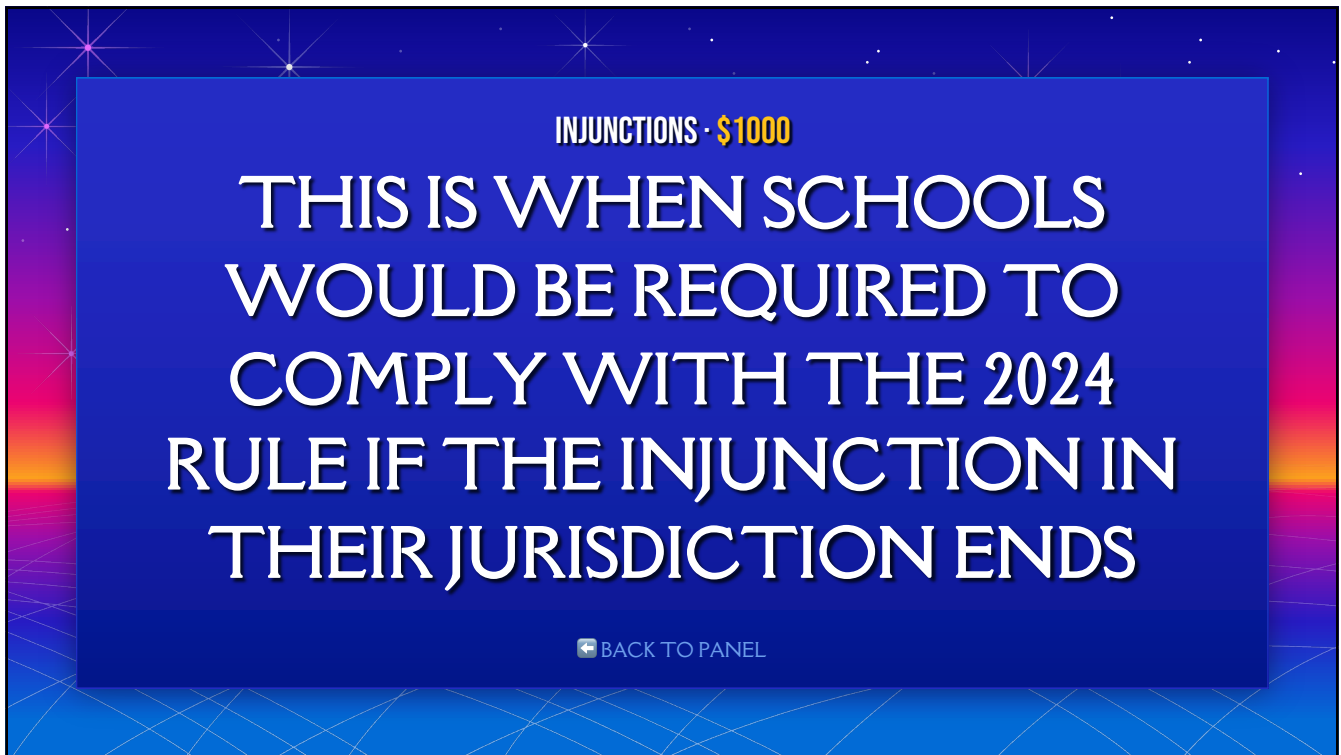
19

INJUNCTIONS · \$800

THE INJUNCTIONS OF THE 2024 RULE ARE THIS TYPE OF INJUNCTION, WHICH MEANS THEY ARE TEMPORARY

← BACK TO PANEL

20



21



22

Join at: **vevox.app** ID: **169-120-111** Results slide

###

This is when schools would be required to comply with the 2024 Rule if the injunction in their jurisdiction ends

Correct answers will be shown here

RESULTS SLIDE

23

INJUNCTIONS · \$1000

**THIS IS WHEN SCHOOLS
WOULD BE REQUIRED TO
COMPLY WITH THE 2024
RULE IF THE INJUNCTION IN
THEIR JURISDICTION ENDS**

← BACK TO PANEL


24

STATES · \$200

THIS STATE JOINED
LOUISIANA, MONTANA, AND
MISSISSIPPI IN SECURING THE
FIRST INJUNCTION AGAINST
THE 2024 RULE IN JUNE 2024

← BACK TO PANEL

25

 ###/###

Join at: **vevox.app**

ID: 169-120-111

Question slide

This state joined Louisiana, Montana, and Mississippi in securing the first injunction against the 2024 Rule in June 2024

Arizona	<input type="text"/>	0%
Idaho	<input type="text"/>	0%
Utah	<input type="text"/>	0%
Wyoming	<input type="text"/>	0%

26

###

Join at: **vevox.app**

ID: 169-120-111

Results slide

This state joined Louisiana, Montana, and Mississippi in securing the first injunction against the 2024 Rule in June 2024

Arizona

0%

Idaho

0%

Utah

0%

Wyoming

0%

RESULTS SLIDE

27

STATES · \$200

THIS STATE JOINED

LOUISIANA, MONTANA, AND

MISSISSIPPI IN SECURING THE

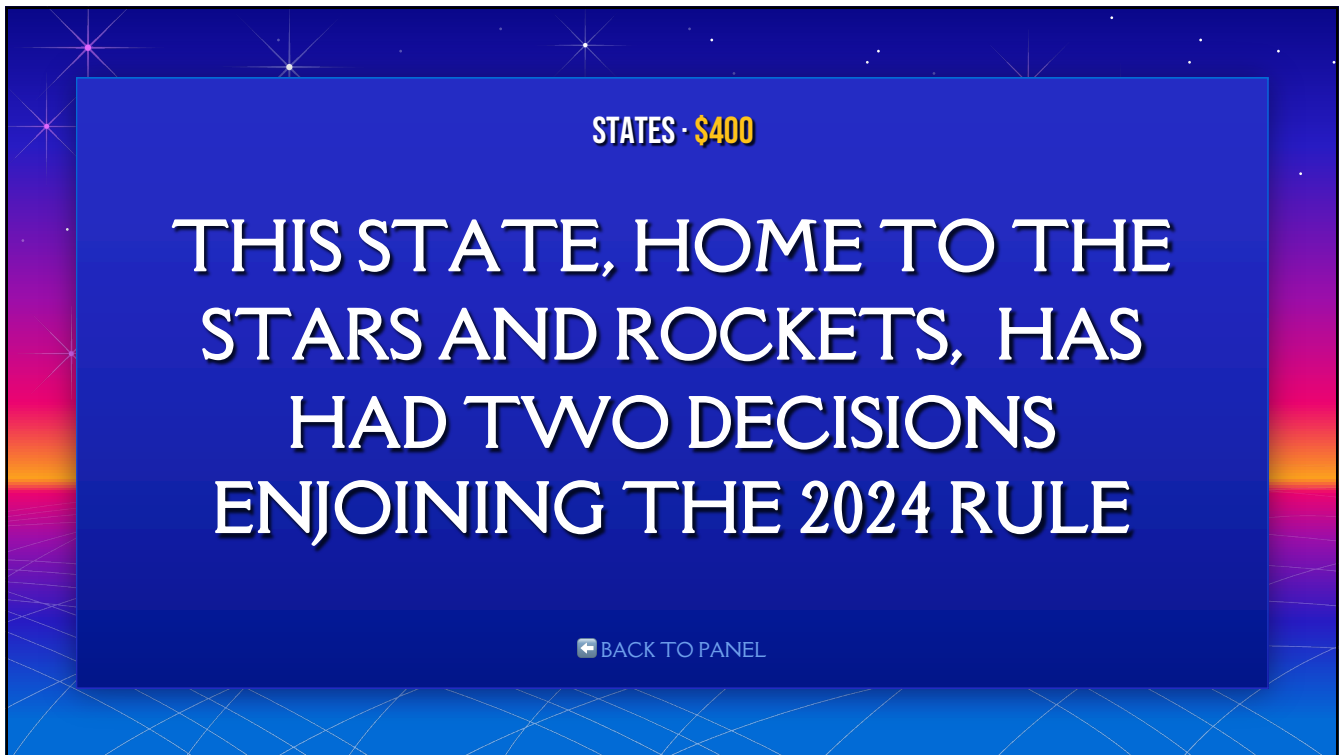
FIRST INJUNCTION AGAINST

THE 2024 RULE IN JUNE 2024

←

BACK TO PANEL

28



29



30

Join at: **vevox.app** ID: **169-120-111** Results slide

###

This state, home to the Stars and Rockets, has had two decisions enjoining the 2024 Rule

Correct answers will be shown here

RESULTS SLIDE

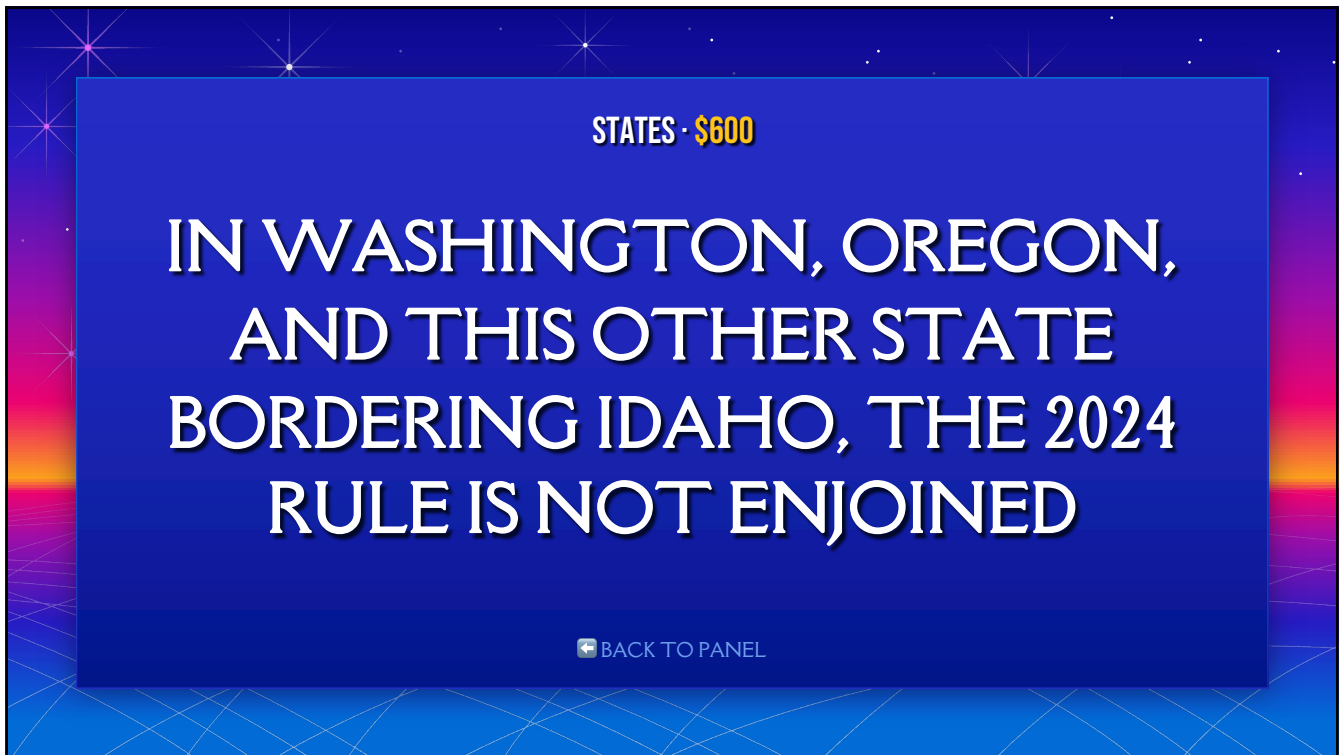
31

STATES · \$400

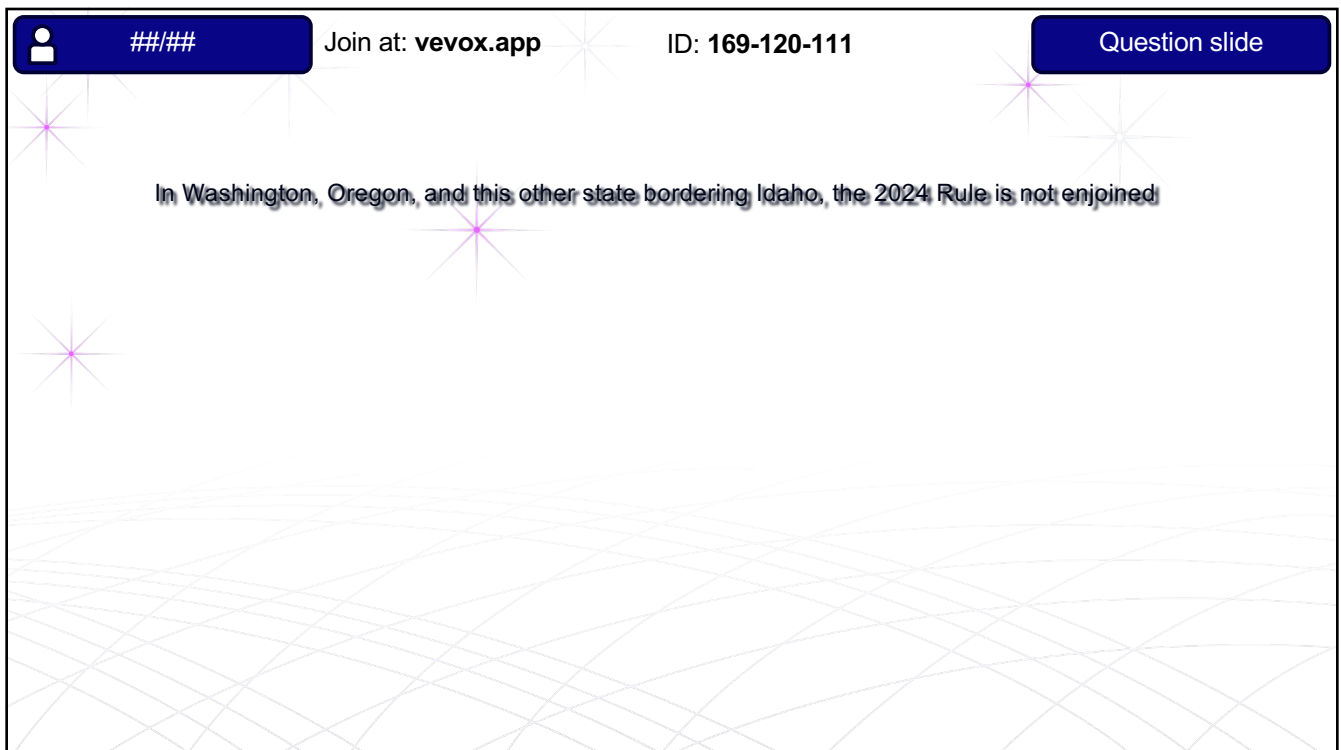
THIS STATE, HOME TO THE
STARS AND ROCKETS, HAS
HAD TWO DECISIONS
ENJOINING THE 2024 RULE

← BACK TO PANEL


32



33



34

 ###

Join at: **vevox.app**

ID: 169-120-111

Results slide

In Washington, Oregon, and this other state bordering Idaho, the 2024 Rule is not enjoined

RESULTS SLIDE

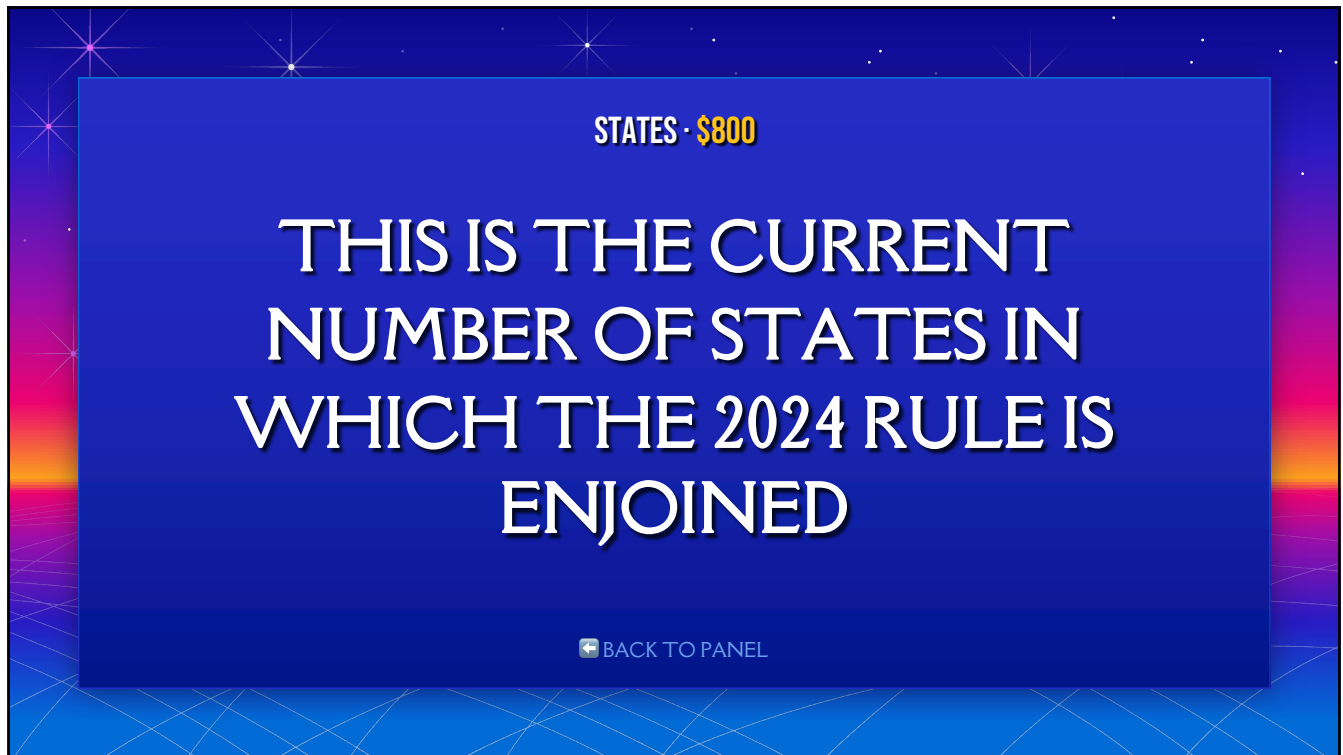
35

STATES · \$600


IN WASHINGTON, OREGON,
AND THIS OTHER STATE
BORDERING IDAHO, THE 2024
RULE IS NOT ENJOINED

← BACK TO PANEL

36



37

 ###/##

Join at: **vevox.app**


ID: 169-120-111

Question slide

This is the current number of states in which the 2024 Rule is enjoined

10	<input type="text"/>	0%
15	<input type="text"/>	0%
26	<input type="text"/>	0%
32	<input type="text"/>	0%
	<input type="text"/>	0%

38

 ###

Join at: **vevox.app**

ID: 169-120-111

Results slide

This is the current number of states in which the 2024 Rule is enjoined


10	<div></div>	0%
15	<div></div>	0%
26	<div></div>	0%
32	<div></div>	0%

RESULTS SLIDE

39

STATES · \$800

THIS IS THE CURRENT
NUMBER OF STATES IN
WHICH THE 2024 RULE IS
ENJOINED

 BACK TO PANEL

40

STATES · \$1000

IF INJUNCTIONS ARE ISSUED EVERYWHERE THEY WERE REQUESTED, THE 2024 RULE WILL BE ENJOINED IN THIS MANY STATES

← BACK TO PANEL

41

 ###/###

Join at: **vevox.app**

ID: 169-120-111

Question slide

If injunctions are issued everywhere they were requested, the 2024 Rule will be enjoined in this many states

10	<input type="text"/>	0%
15	<input type="text"/>	0%
26	<input type="text"/>	0%
32	<input type="text"/>	0%

42

###

Join at: **vevox.app**

ID: 169-120-111

Results slide

If injunctions are issued everywhere they were requested, the 2024 Rule will be enjoined in this many states

10	<div></div>	0%
15	<div></div>	0%
26	<div></div>	0%
32	<div></div>	0%

RESULTS SLIDE

43

STATES · \$1000

IF INJUNCTIONS ARE ISSUED
EVERYWHERE THEY WERE
REQUESTED, THE 2024 RULE
WILL BE ENJOINED IN THIS
MANY STATES

BACK TO PANEL

44

IDAHO LAW - \$200

**BETWEEN FEDERAL AND
IDAHO LAW, THIS TYPE OF
LAW "PREEMPTS" THE
OTHER WHEN THERE IS A
CONFLICT**

← BACK TO PANEL

45

Join at: **vevox.app** ID: **169-120-111** Question slide

Between Federal and Idaho law, this type of law "preempts" the other when there is a conflict

Federal Law

Idaho Law

Neither - they can coexist

0% 0% 0%

46

###

Join at: **vevox.app**

ID: 169-120-111

Results slide

Between Federal and Idaho law, this type of law "preempts" the other when there is a conflict

Federal Law

Idaho Law

Neither - they can coexist

0%

0%

0%

RESULTS SLIDE

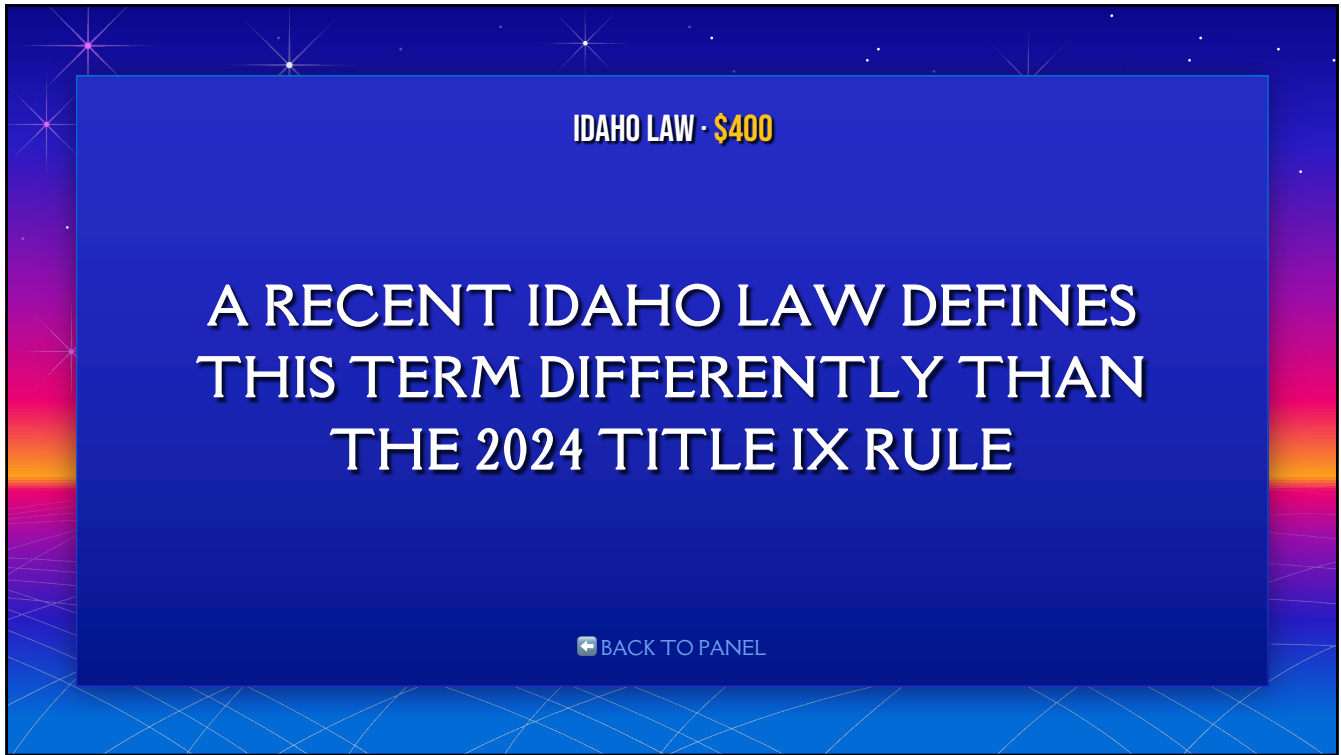
47

IDAHO LAW · \$200

BETWEEN FEDERAL AND
IDAHO LAW, THIS TYPE OF
LAW "PREEMPTS" THE
OTHER WHEN THERE IS A
CONFLICT

BACK TO PANEL

48



49

###/###

Join at: **vevox.app**

ID: 169-120-111


Question slide

A recent Idaho law defines this term differently than the 2024 Title IX Rule

Harassment

<input type="text"/>	0%
Sex	
<input type="text"/>	0%
Gender	
<input type="text"/>	0%
LGBTQ+	
<input type="text"/>	0%

50

 ###

Join at: **vevox.app**

ID: 169-120-111

Results slide

A recent Idaho law defines this term differently than the 2024 Title IX Rule

Harassment

0%

Sex

0%

Gender

0%

LGBTQ+

0%

RESULTS SLIDE

51

IDAHO LAW · \$400

A RECENT IDAHO LAW DEFINES
THIS TERM DIFFERENTLY THAN
THE 2024 TITLE IX RULE

← BACK TO PANEL


52

IDAHO LAW · \$600

A RECENT IDAHO LAW THAT
CONFLICTS WITH THE 2024
RULE PROHIBITS PUBLIC
SCHOOLS FROM REQUIRING
EMPLOYEES TO USE THESE

← BACK TO PANEL

53

 ###/###

Join at: **vevox.app**

ID: **169-120-111**


Question slide

A recent Idaho law that conflicts with the 2024 Rule prohibits public schools from requiring employees to use these

Bathrooms with transgender individuals

<input type="text"/>	0%
Preferred names	
<input type="text"/>	0%
Preferred pronouns	
<input type="text"/>	0%
"Sex" to include gender identity	
<input type="text"/>	0%

54

 ###

Join at: **vevox.app**

ID: 169-120-111

Results slide

A recent Idaho law that conflicts with the 2024 Rule prohibits public schools from requiring employees to use these

Bathrooms with transgender individuals

<input type="text"/>	0%
Preferred names	
<input type="text"/>	0%
Preferred pronouns	
<input type="text"/>	0%
"Sex" to include gender identity	
<input type="text"/>	0%

RESULTS SLIDE

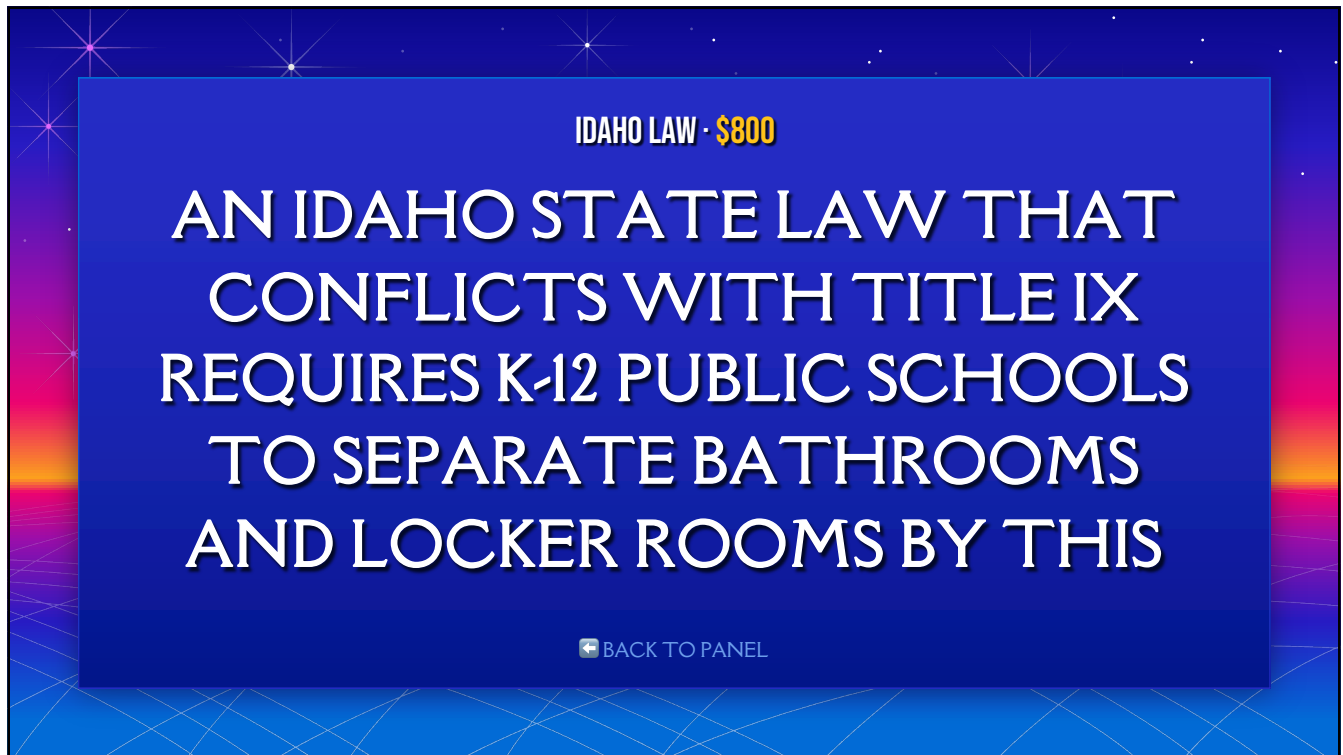
55

IDAHO LAW - \$600

A RECENT IDAHO LAW THAT
CONFLICTS WITH THE 2024
RULE PROHIBITS PUBLIC
SCHOOLS FROM REQUIRING
EMPLOYEES TO USE THESE

← BACK TO PANEL

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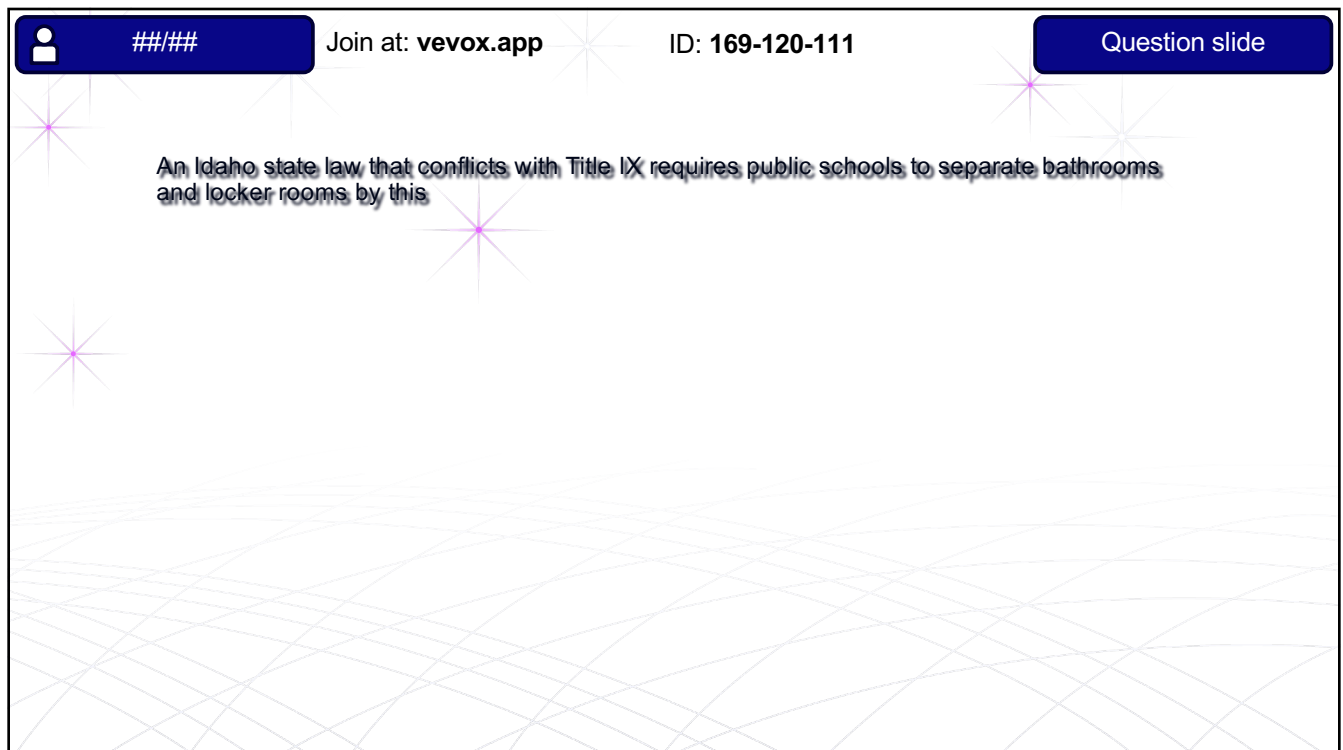


IDAHO LAW · \$800

AN IDAHO STATE LAW THAT
CONFLICTS WITH TITLE IX
REQUIRES K-12 PUBLIC SCHOOLS
TO SEPARATE BATHROOMS
AND LOCKER ROOMS BY THIS

← BACK TO PANEL

57



Join at: **vevox.app** ID: 169-120-111 Question slide

An Idaho state law that conflicts with Title IX requires public schools to separate bathrooms and locker rooms by this

58

Join at: **vevox.app** ID: **169-120-111** Results slide

An Idaho state law that conflicts with Title IX requires public schools to separate bathrooms and locker rooms by this

Correct answers will be shown here

RESULTS SLIDE

59

IDAHO LAW - \$800

AN IDAHO STATE LAW THAT
CONFLICTS WITH TITLE IX
REQUIRES K-12 PUBLIC SCHOOLS
TO SEPARATE BATHROOMS
AND LOCKER ROOMS BY THIS

← BACK TO PANEL


60

IDAHO LAW · \$1000

THIS IDAHO LAW CONFLICTS
WITH OCR'S INTERPRETATION OF
TITLE IX ALLOWING A STUDENT
TO PARTICIPATE IN A SPORT
MATCHING THEIR GENDER
IDENTITY

← BACK TO PANEL

61

 ###/###

Join at: **vevox.app**

ID: 169-120-111

Question slide

This Idaho law conflicts with OCR's interpretation of Title IX, allowing a student to participate in a sport matching their gender identity

The Women's Fairness in Sports Act

0%

The Fairness in Women's Sports Act

0%

The Sports Fairness Act for Women

0%

The Sports Women's Fairness Act

0%

62

###

Join at: **vevox.app**

ID: **169-120-111**

Results slide

This Idaho law conflicts with OCR's interpretation of Title IX, allowing a student to participate in a sport matching their gender identity

The Women's Fairness in Sports Act	<input type="text"/>	0%
The Fairness in Women's Sports Act	<input type="text"/>	0%
The Sports Fairness Act for Women	<input type="text"/>	0%
The Sports Women's Fairness Act	<input type="text"/>	0%

RESULTS SLIDE

63

IDAHO LAW - \$1000

THIS IDAHO LAW CONFLICTS
WITH OCR'S INTERPRETATION OF
TITLE IX ALLOWING A STUDENT
TO PARTICIPATE IN A SPORT
MATCHING THEIR GENDER
IDENTITY

BACK TO PANEL


64

FIRST AMENDMENT · \$200

THE FIRST AMENDMENT PROTECTIONS OF FREEDOM OF SPEECH AND FREEDOM OF ____ ARE OFTEN IMPORTANT IN TITLE IX CASES

← BACK TO PANEL

65

 ###/###

Join at: **vevox.app**


ID: 169-120-111

Question slide

The First Amendment protections of freedom of speech and freedom of ____ are often important in Title IX cases

Expression	<input type="text"/>	0%
Association	<input type="text"/>	0%
Religion	<input type="text"/>	0%
Press	<input type="text"/>	0%

66


###

Join at: **vevox.app**

ID: 169-120-111

Results slide

The First Amendment protections of freedom of speech and freedom of ____ are often important in Title IX cases

Expression	<input type="text"/>	0%
Association	<input type="text"/>	0%
Religion	<input type="text"/>	0%
Press	<input type="text"/>	0%

RESULTS SLIDE

67

FIRST AMENDMENT - \$200

THE FIRST AMENDMENT
PROTECTIONS OF FREEDOM
OF SPEECH AND FREEDOM OF
____ ARE OFTEN IMPORTANT
IN TITLE IX CASES

← BACK TO PANEL


68

FIRST AMENDMENT - \$400

**THIS TYPE OF SPEECH IS NOT
PROTECTED BY THE FIRST
AMENDMENT IF IT IS SEVERE AND
TARGETED AT A MEMBER OF THE
SCHOOL COMMUNITY**

[← BACK TO PANEL](#)

69


####

Join at: **vevox.app**


ID: **169-120-111**

Question slide

This type of speech is not protected by the First Amendment if it is severe and targeted at a member of the school community

Defamation	0%
True threats	0%
Harassment	0%
All of the above	0%

70


###

Join at: **vevox.app**

ID: 169-120-111

Results slide

This type of speech is not protected by the First Amendment if it is severe and targeted at a member of the school community

Defamation	<input type="text"/>	0%
True threats	<input type="text"/>	0%
Harassment	<input type="text"/>	0%
All of the above	<input type="text"/>	0%

RESULTS SLIDE

71

FIRST AMENDMENT - \$400

THIS TYPE OF SPEECH IS NOT
PROTECTED BY THE FIRST
AMENDMENT IF IT IS SEVERE AND
TARGETED AT A MEMBER OF THE
SCHOOL COMMUNITY

← BACK TO PANEL

72

FIRST AMENDMENT - \$600

THE FIRST AMENDMENT
GENERALLY PROTECTS SPEECH
OCCURRING HERE UNLESS IT
CREATES A SUBSTANTIAL
DISRUPTION OR RISK THEREOF

← BACK TO PANEL

73

Join at: **vevox.app** ID: 169-120-111 Question slide

The First Amendment generally protects speech occurring here unless it creates a substantial disruption or risk thereof

74

Join at: **vevox.app** ID: **169-120-111** Results slide

The First Amendment generally protects speech occurring here unless it creates a substantial disruption or risk thereof

Correct answers will be shown here

RESULTS SLIDE

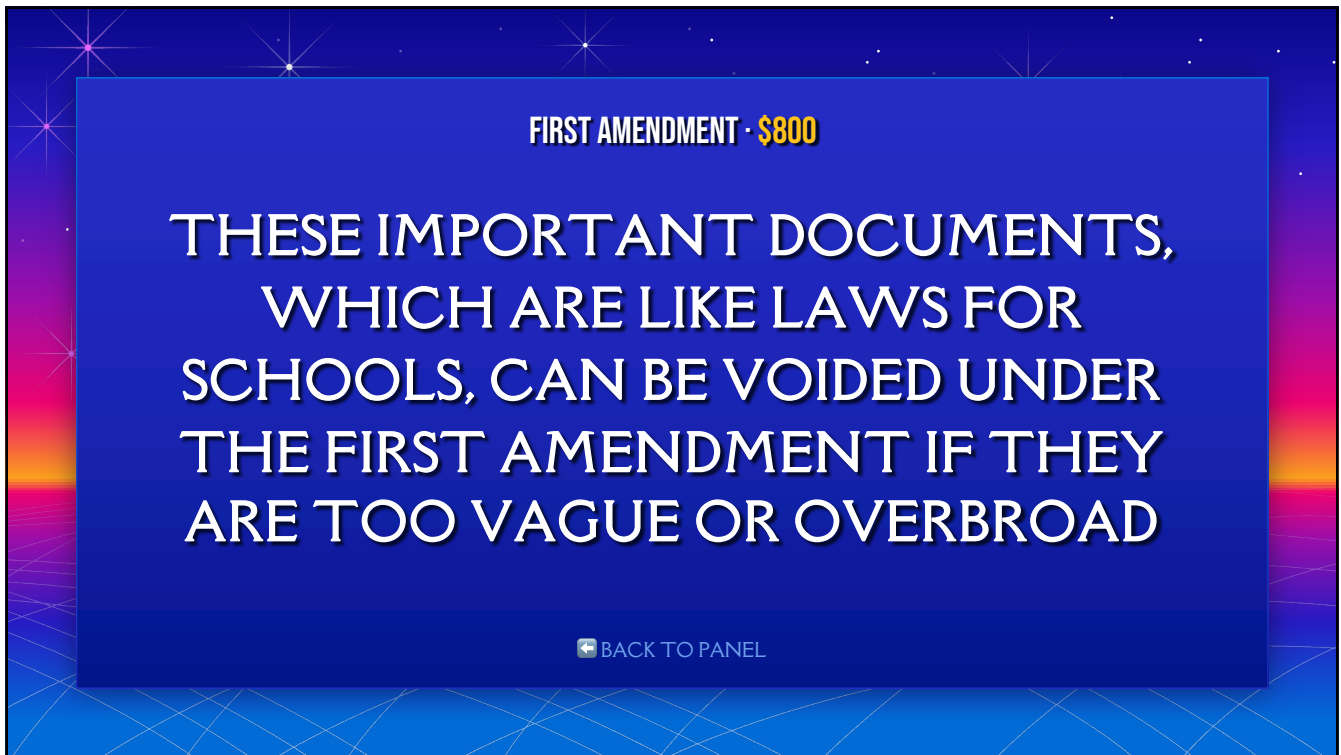
75

FIRST AMENDMENT - \$600

THE FIRST AMENDMENT
GENERALLY PROTECTS SPEECH
OCCURRING HERE UNLESS IT
CREATES A SUBSTANTIAL
DISRUPTION OR RISK THEREOF

← BACK TO PANEL


76



77



78


###

Join at: **vevox.app**

ID: 169-120-111

Results slide

These important documents, which are like laws for schools, can be voided under the first amendment if they are too vague or over broad

Correct answers will be shown here

RESULTS SLIDE

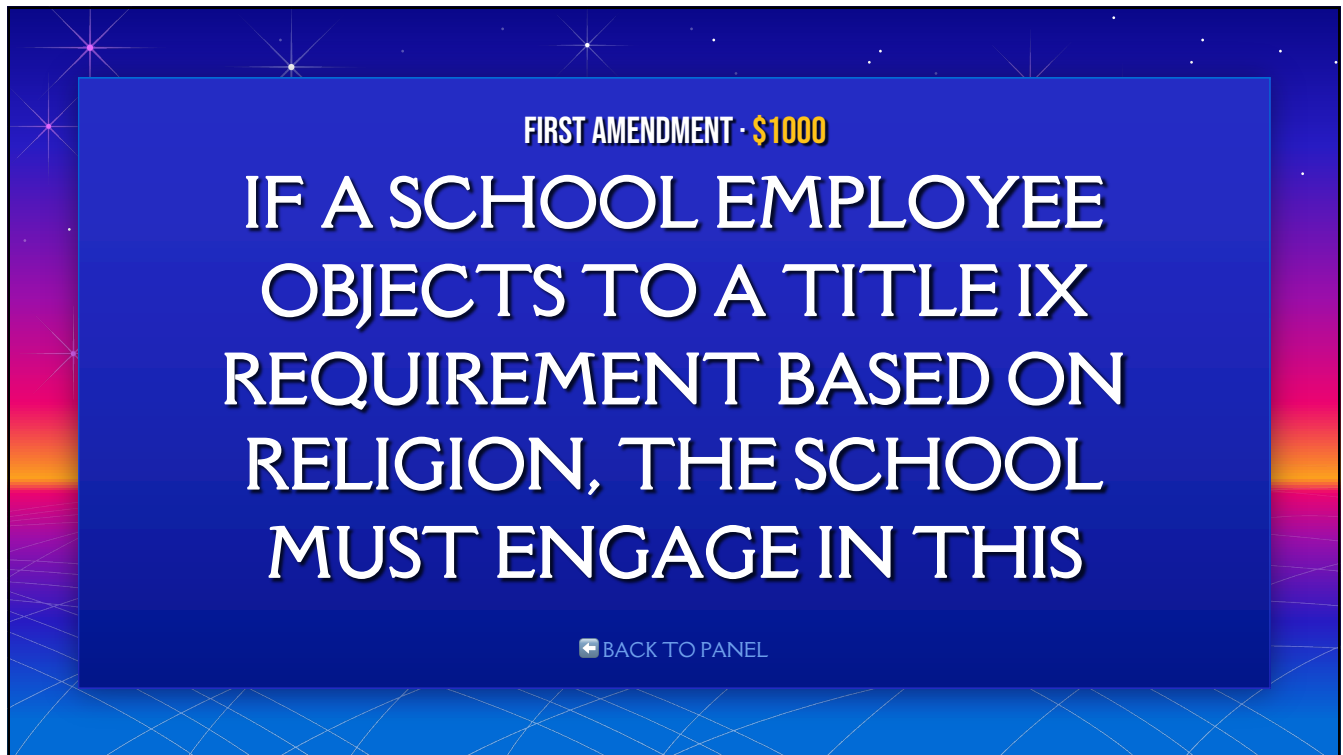
79

CATEGORY 4 · \$800

THESE IMPORTANT DOCUMENTS,
WHICH ARE LIKE LAWS FOR
SCHOOLS, CAN BE VOIDED UNDER
THE FIRST AMENDMENT IF THEY
ARE TOO VAGUE OR OVERBROAD

← BACK TO PANEL

80



81



82


###

Join at: **vevox.app**

ID: 169-120-111

Results slide

If a school employee objects to a Title IX requirement based on religion, the school must engage in this

Correct answers will be shown here

RESULTS SLIDE

83

FIRST AMENDMENT · \$1000

IF A SCHOOL EMPLOYEE
OBJECTS TO A TITLE IX
REQUIREMENT BASED ON
RELIGION, THE SCHOOL
MUST ENGAGE IN THIS

← BACK TO PANEL


84

2020 & 2024 OVERLAP · \$200

UNLESS AND UNTIL THE
INJUNCTION IS REMOVED,
IDAHO EDUCATIONAL
INSTITUTIONS SHOULD USE
THIS TITLE IX RULE

← BACK TO PANEL

85

 ###/###

Join at: **vevox.app**

ID: 169-120-111

Question slide

Unless and until the injunction is removed, Idaho educational institutions should use this Title IX rule

The 2024 Title IX Rule

0%

The 2020 Title IX Rule

0%

The 2024 & the 2020 Title IX Rule

0%

Neither Rule

0%

86

###

Join at: **vevox.app**

ID: 169-120-111

Results slide

Unless and until the injunction is removed, Idaho educational institutions should use this Title IX rule

The 2024 Title IX Rule

0%

The 2020 Title IX Rule

0%

The 2024 & the 2020 Title IX Rule

0%

Neither Rule

0%

RESULTS SLIDE

87

2020 & 2024 OVERLAP · \$200

UNLESS AND UNTIL THE
INJUNCTION IS REMOVED,
IDAHO EDUCATIONAL
INSTITUTIONS SHOULD USE
THIS TITLE IX RULE

← BACK TO PANEL


88

2020 & 2024 OVERLAP - \$400

IF THE 2024 RULE GOES INTO EFFECT, SCHOOLS MUST CONTINUE TO USE THE 2020 TITLE IX RULE FOR CONDUCT THAT OCCURRED BEFORE THIS DATE

← BACK TO PANEL

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 ###/###

Join at: **vevox.app**

ID: 169-120-111

Question slide

If the 2024 Rule goes into effect, schools must continue to use the 2020 Title IX Rule for conduct that occurred before this date

August 14, 2020

0%

August 1, 2024

0%

The effective date of the rule

0%

Never - the 2024 Rule will apply to all cases filed after it becomes effective

0%

90

###

Join at: **vevox.app**

ID: 169-120-111

Results slide

If the 2024 Rule goes into effect, schools must continue to use the 2020 Title IX Rule for conduct that occurred before this date

August 14, 2020	<div></div>	0%
August 1, 2024	<div></div>	0%
The effective date of the rule	<div></div>	0%
Never - the 2024 Rule will apply to all cases filed after it becomes effective	<div></div>	0%

RESULTS SLIDE

91

2020 & 2024 OVERLAP · \$400

IF THE 2024 RULE GOES INTO EFFECT, SCHOOLS MUST CONTINUE TO USE THE 2020 TITLE IX RULE FOR CONDUCT THAT OCCURRED BEFORE THIS DATE

BACK TO PANEL

92

2020 & 2024 OVERLAP • \$600

**FOR NEARLY 40 YEARS, OCR
HAS PROHIBITED BULLYING
AND HARASSMENT BASED ON
FAILURE TO COMPLY WITH
THESE NORMS**


← BACK TO PANEL

93

Join at: **vevox.app** ID: 169-120-111 Question slide

For nearly 40 years, OCR has prohibited bullying and harassment based on failure to comply with these norms

94


###

Join at: **vevox.app**

ID: 169-120-111

Results slide

For nearly 40 years, OCR has prohibited bullying and harassment based on failure to comply with these norms

Correct answers will be shown here

RESULTS SLIDE

95

2020 & 2024 OVERLAP - \$600

**FOR NEARLY 40 YEARS, OCR
HAS PROHIBITED BULLYING
AND HARASSMENT BASED ON
FAILURE TO COMPLY WITH
THESE NORMS**

← BACK TO PANEL

96

2020 & 2024 OVERLAP · \$800

SINCE THE TRUMP ADMINISTRATION,
OCR HAS CONSISTENTLY REQUIRED
SCHOOLS TO RESPOND TO BULLYING OF
STUDENTS BASED ON SEXUAL
ORIENTATION AND THIS


← BACK TO PANEL

97

Join at: **vevox.app** ID: 169-120-111 Question slide

Since the Trump administration, OCR has consistently required schools to respond to bullying of students based on these two aspects of their disability

98

 ###

Join at: **vevox.app**

ID: 169-120-111

Results slide

Since the Trump administration, OCR has consistently required schools to respond to bullying of students based on these two aspects of their disability

RESULTS SLIDE

99

2020 & 2024 OVERLAP · \$800

SINCE THE TRUMP ADMINISTRATION,
OCR HAS CONSISTENTLY REQUIRED
SCHOOLS TO RESPOND TO BULLYING OF
STUDENTS BASED ON SEXUAL
ORIENTATION AND THIS

← BACK TO PANEL

100

2020 & 2024 OVERLAP - \$1000

SINCE THE TRUMP ADMINISTRATION,
OCR HAS CONSISTENTLY REQUIRED
EQUAL TREATMENT OF STUDENTS
BASED ON THIS ASPECT OF IDENTITY
EXCEPT WITH RESPECT TO
BATHROOMS, LOCKER ROOMS, AND
ATHLETICS

← BACK TO PANEL

101

Join at: **vevox.app** ID: **169-120-111** Question slide

Since the Trump Administration, OCR has consistently required equal treatment of students based on this aspect of identity except with respect to bathrooms, locker rooms, and athletics.

102

 ###

Join at: **vevox.app**

ID: 169-120-111

Results slide

Since the Trump Administration, OCR has consistently required equal treatment of students based on this aspect of identity except with respect to bathrooms, locker rooms, and athletics.


Correct answers will be shown here

RESULTS SLIDE

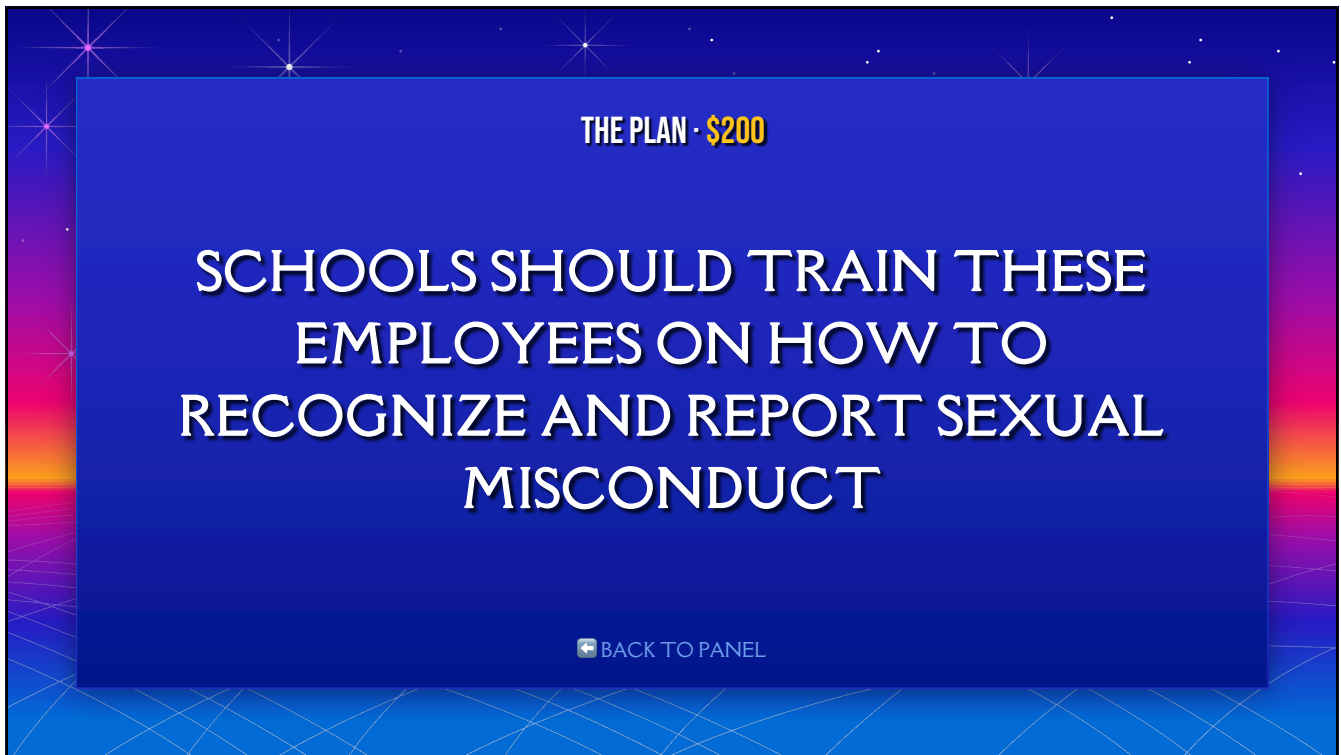
103

2020 & 2024 OVERLAP - \$1000


SINCE THE TRUMP ADMINISTRATION,
OCR HAS CONSISTENTLY REQUIRED
EQUAL TREATMENT OF STUDENTS
BASED ON THIS ASPECT OF IDENTITY
EXCEPT WITH RESPECT TO
BATHROOMS, LOCKER ROOMS, AND
ATHLETICS

 BACK TO PANEL

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105

 ###/###

Join at: **vevox.app**

ID: 169-120-111

Question slide

Schools should train these employees on how to recognize and report sexual misconduct

Confidential employees

0%

Mandatory reporters

0%


All T9 Team Members

0%

All employees

0%

106


###

Join at: **vevox.app**

ID: **169-120-111**

Results slide

Schools should train these employees on how to recognize and report sexual misconduct

Confidential employees

0%

Mandatory reporters

0%

All T9 Team Members

0%

All employees


0%

RESULTS SLIDE

107

THE PLAN · \$200

SCHOOLS SHOULD TRAIN THESE
EMPLOYEES ON HOW TO
RECOGNIZE AND REPORT SEXUAL
MISCONDUCT

 BACK TO PANEL


108

THE PLAN · \$400

SCHOOLS SHOULD NOT
DELAY IN PREPARING
THESE DOCUMENTS FOR
THE 2024 RULES

← BACK TO PANEL

109

 ####

Join at: **vevox.app**

ID: 169-120-111

Question slide

Schools should not delay in preparing these documents for the 2024 Rules

Policies & Procedures

0%

Forms & Templates

0%


Staff & T9 Team Trainings

0%

All of the Above

0%

110

 ###

Join at: **vevox.app**

ID: 169-120-111

Results slide

Schools should not delay in preparing these documents for the 2024 Rules

Policies & Procedures	<input type="text"/>	0%
Forms & Templates	<input type="text"/>	0%
Staff & T9 Team Trainings	<input type="text"/>	0%
All of the Above	<input type="text"/>	0%

RESULTS SLIDE

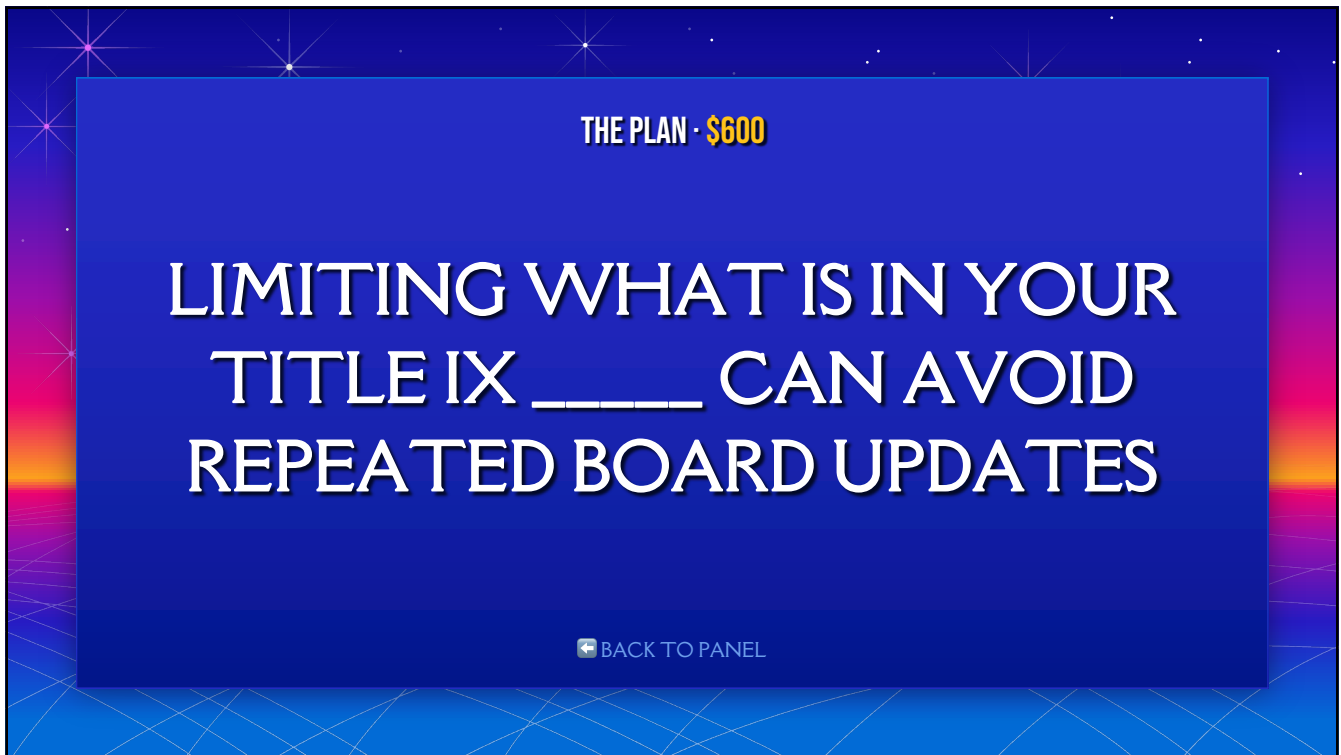
111

THE PLAN - \$400

SCHOOLS SHOULD NOT DELAY IN PREPARING THESE DOCUMENTS FOR THE 2024 RULES

← BACK TO PANEL

112



113



114

Join at: **vevox.app** ID: 169-120-111 Results slide

Limiting what is in your Title IX ____ can avoid repeated Board updates.

Correct answers will be shown here

RESULTS SLIDE

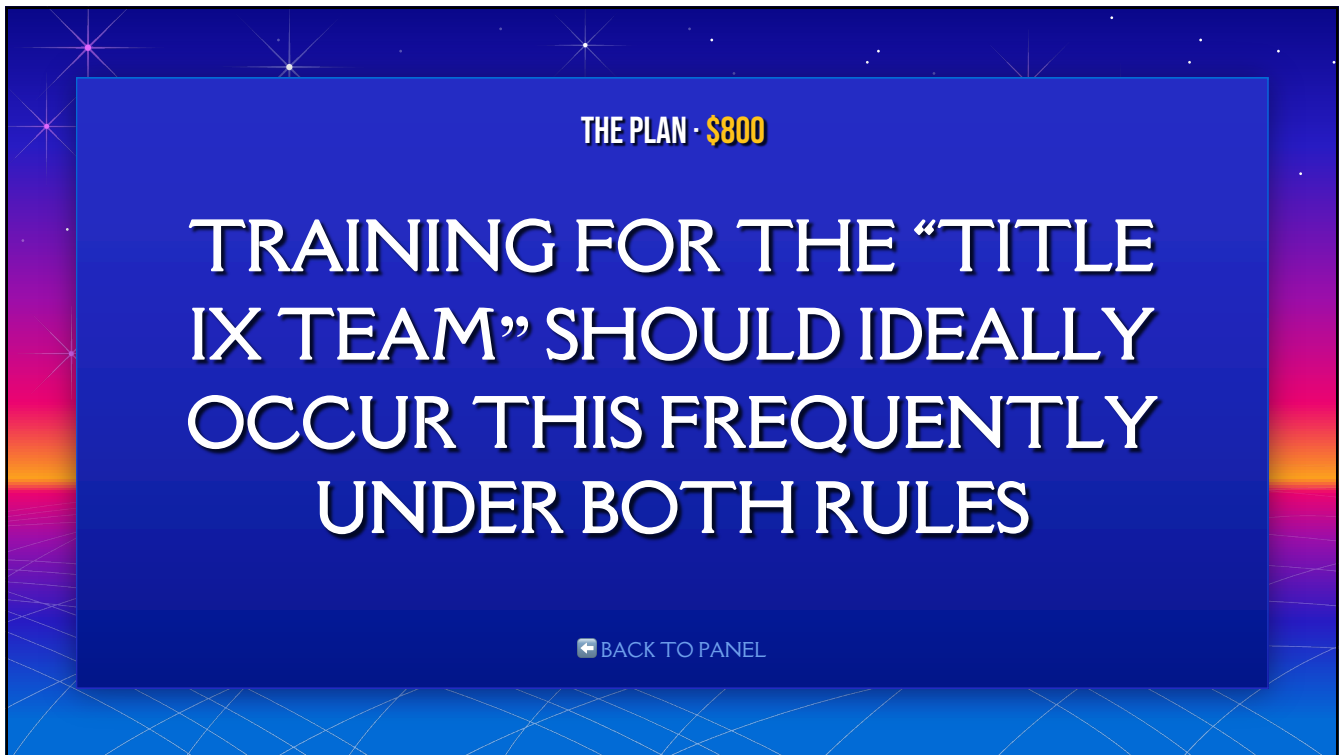
115

THE PLAN - \$600

LIMITING WHAT IS IN YOUR TITLE IX ____ CAN AVOID REPEATED BOARD UPDATES

← BACK TO PANEL

116



117

####

Join at: **vevox.app**


ID: 169-120-111

Question slide

Training for the “Title IX Team” should ideally occur this frequently under both rules

Each semester	<input type="text"/>	0%
Annually	<input type="text"/>	0%
Biannually	<input type="text"/>	0%
When changes to the rule are made	<input type="text"/>	0%

118


###

Join at: **vevox.app**

ID: 169-120-111

Results slide

Training for the "Title IX Team" should ideally occur this frequently under both rules

Each semester

0%

Annually

0%

Biannually

0%

When changes to the rule are made


0%

RESULTS SLIDE

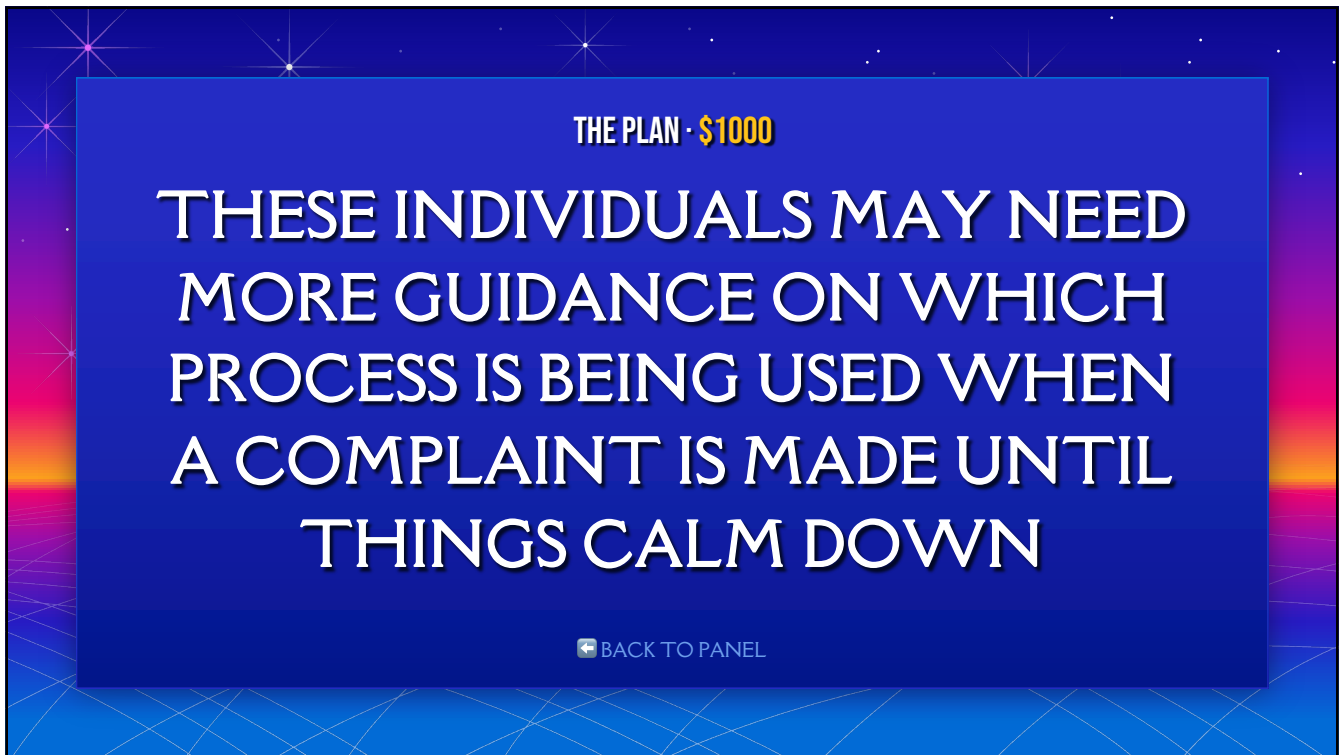
119

THE PLAN - \$800

TRAINING FOR THE "TITLE IX TEAM" SHOULD IDEALLY OCCUR THIS FREQUENTLY UNDER BOTH RULES

 BACK TO PANEL

120

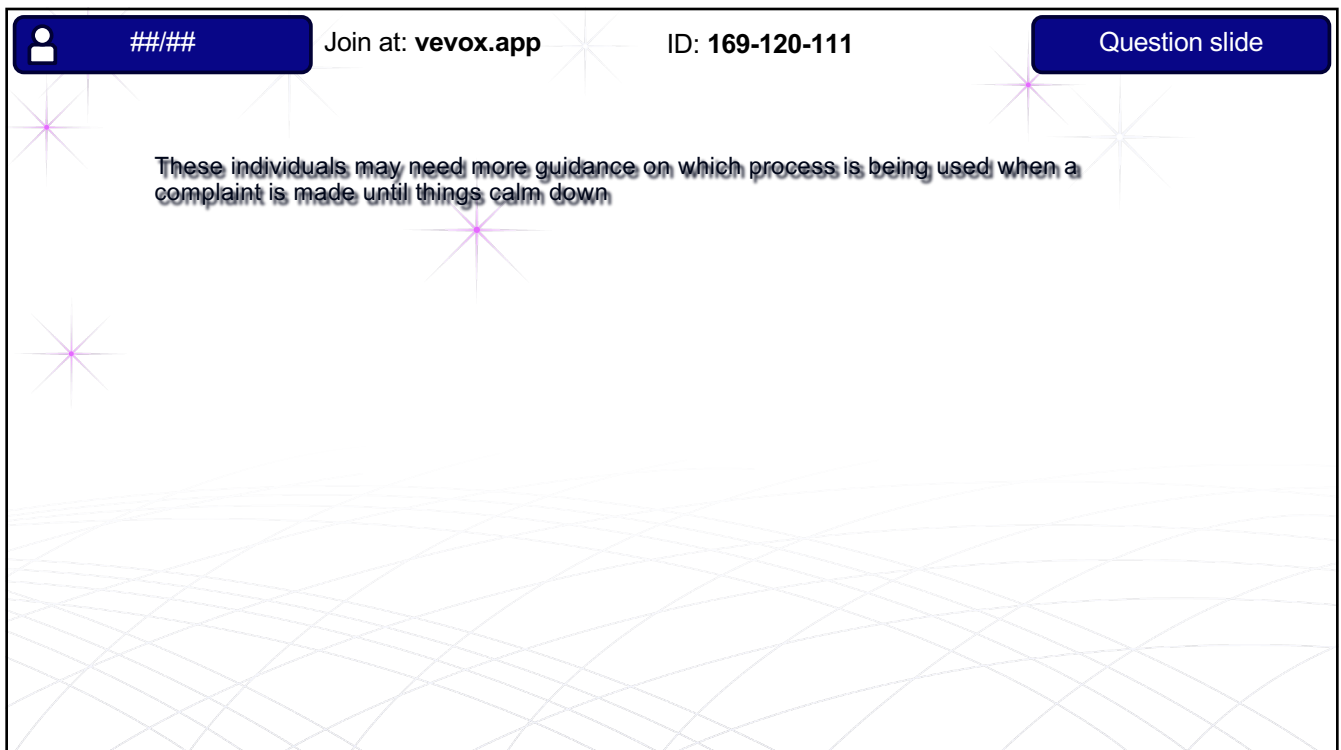


THE PLAN - \$1000

THESE INDIVIDUALS MAY NEED
MORE GUIDANCE ON WHICH
PROCESS IS BEING USED WHEN
A COMPLAINT IS MADE UNTIL
THINGS CALM DOWN

← BACK TO PANEL


121



Join at: **vevox.app** ID: 169-120-111 Question slide

These individuals may need more guidance on which process is being used when a complaint is made until things calm down

122

 ###

Join at: **vevox.app**

ID: 169-120-111

Results slide

These individuals may need more guidance on which process is being used when a complaint is made until things calm down

Correct answers will be shown here

RESULTS SLIDE

123

THE PLAN • \$1000

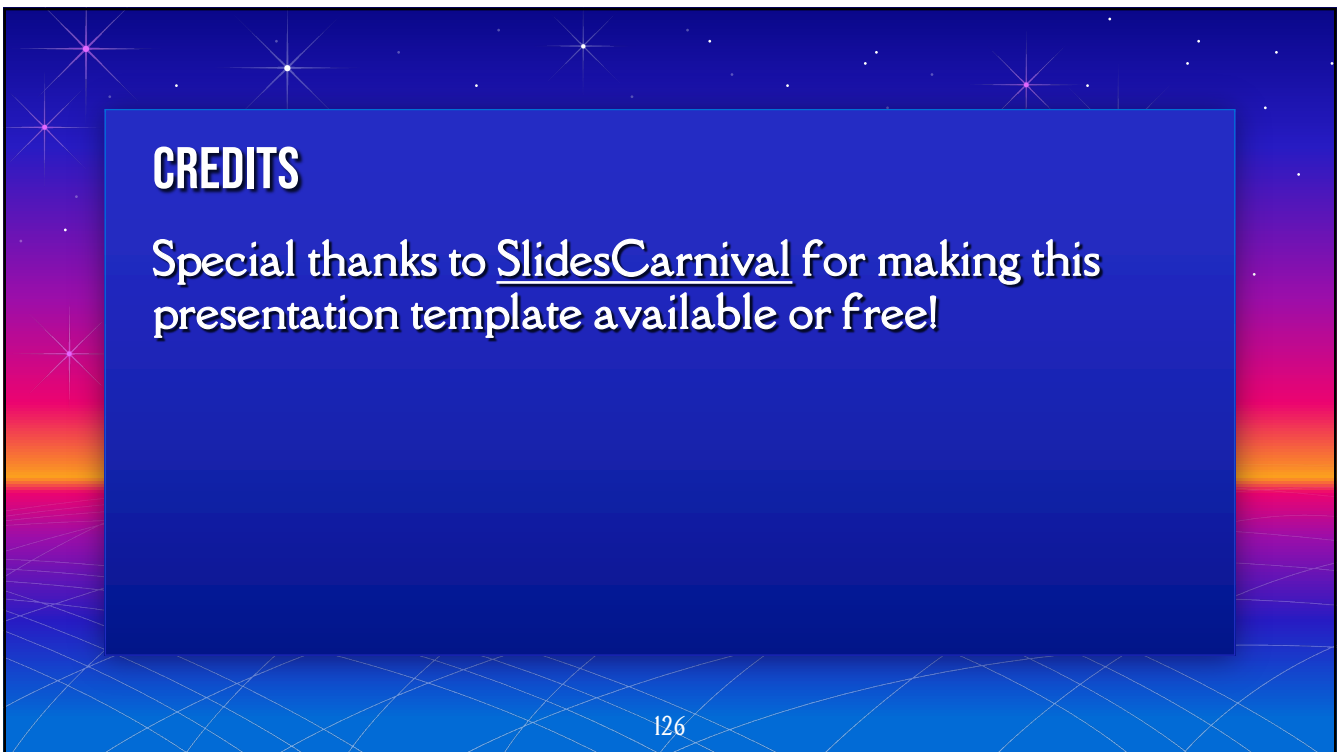
THESE INDIVIDUALS MAY NEED
MORE GUIDANCE ON WHICH
PROCESS IS BEING USED WHEN
A COMPLAINT IS MADE UNTIL
THINGS CALM DOWN

← BACK TO PANEL

124



125



126

Speed Dating with The New Title IX

Title IX Conference:
Higher Ed & K-12 Training
July 23-24, 2024



Sponsored By



1

Your Presenters



**Jackie Gharapour
Wernz**

Director of Civil Rights
and Investigations
University of Idaho



Danielle Charters

AVP for Title IX,
Institutional Equity,
and Compliance
Boise State University

2

2020 Rule: The Basics

- Proposed November 16, 2018
- Final Rule Issued May 6, 2020
- Effective Date of August 14, 2024
- Applicable to incidents occurring after the effective date
- Over 2000 pages of preamble and rule

3

2024 Rule: The Basics

- Proposed June 23, 2022
- Final Rule Issues April 19, 2024
- "Effective Date" of August 1, 2024 (enjoined in Idaho and 14 other states and 1000+ individual schools, colleges, and universities)
- Applicable to incidents occurring after the effective date
- Over 1500 pages of rule (57) and preamble (1504)

4

Break Up or Stay Together?

The Ex



The One?



5

What is Speed Dating Again?

Dictionary

Definitions from [Oxford Languages](#) · [Learn more](#)



speed dat·ing

noun

an organized social activity in which people seeking romantic relationships have a series of short conversations with potential partners in order to determine whether there is mutual interest.

6

Why Speed Dating With the 2024 Rule?



Efficiency: Meet all the elements of the rules you need quickly



Reduced Pressure: We don't know whether these rules are here to stay, so it's too early to commit



Fun: It might even be a little fun?

7

2024 Rule – Required Training

All Employee Training

- The school's obligation to address sex discrimination in its education program or activity
- The scope of conduct that constitutes sex discrimination under Title IX and its regulations, including the definition of sex-based harassment, and
- Responsibilities of non-confidential and confidential employees to report information about conduct that reasonably may be sex discrimination to the Title IX Coordinator or provide certain information to the reporting party if not required to report
- Responsibilities of all employees to provide certain information to a student or a person with a legal right to act on behalf of the student informs the employee of the student's pregnancy or related condition

8

2024 Rule – Required Training

Informal Resolution Facilitators

- All “all employee” training topics
- The rules and practices associated with the school’s informal resolution process
- How to serve impartially, including by avoiding conflicts of interest and bias

9

2024 Rule – Required Training

Investigators, Decisionmakers, and Individuals With Authority to Modify or Terminate Supportive Measures

- All “all employee” training topics
- The school’s required response to sex discrimination (§ 106.44)
- The school’s grievance procedures for sex discrimination complaints (§ 106.45 and, for higher ed, § 106.46)
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- The meaning and application of the term “relevant” in relation to questions and evidence and the types of evidence that are impermissible regardless of relevance under the school’s Title IX grievance procedures

10

2024 Rule – Required Training

Coordinators and Designees

- *All training topics stated so far*
- Their specific responsibilities related to:
 - Their role as Title IX Coordinator or designee
 - The right of the Coordinator to delegate to designees
 - Specific actions the school must take to prevent discrimination and ensure equal access for pregnancy and related conditions, if relevant to the person's role
 - The school's required response to sex discrimination (§ 106.44), including supportive measures, if relevant to the person's role
 - The school's recordkeeping requirements
- Any other training necessary to coordinate the school's compliance with Title IX

11

2020 Rule – Required Training

Coordinators, investigators, Decision-makers (initial and appellate), and Informal Resolution Facilitators:

- The definition of sexual harassment
- The scope of the education program or activity
- How to conduct an investigation and grievance process, including hearings (for higher ed), appeals, and informal resolution processes
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias

12

2020 Rule – Required Training

Investigators:

- Issues of relevance to create an investigative report that fairly summarizes relevant evidence

13

2020 Rule – Required Training

Initial Decision-makers:

- Any technology used at live hearings (for higher ed)
- Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant

14

What Conduct is Covered?



15

Scope (2020 & 2024)

The **2020 Rule** provides a grievance process only for "sexual harassment" complaints

- Recipients must address other Title IX discrimination and retaliation, but not through any specific process

The **2024 Rule** applies to **all** reports or complaints of sex discrimination

- For higher ed, there is a different grievance procedure for sex-based harassment complaints involving a student



16

What is "Sex Discrimination"?



17

What is Sex Discrimination? (2020 & 2024)

Harassment

Different or
Disparate
Treatment

Disparate
Impact

Retaliation

Failure to
Accommodate

18

Areas of Concern (2020 & 2024)

- Recruitment, Admissions, Counseling (Higher Ed only)
- Financial Assistance (Higher Ed only)
- Pregnancy and Related Conditions
- Parenting Status
- Student Discipline
- Single-Sex Programs
- LGBTQI+ Issues
- Employment
- Harassment
- Sex-Based Assault & Violence



19

The Takeaway

An educational institution **must** use the **Title IX process** to address allegations of conduct that, if substantiated, would be sex discrimination, including sex-based harassment (2024 Rule) or sexual harassment (2020 Rule). Using another disciplinary process or code can lead to significant consequences to the institution (from OCR) and to individual employees who use the wrong process to address reports.

20

LGBTQI+ Status (2024 Rule)



"Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity" – 34 C.F.R. § 106.10 (2024 Version).

"Adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex" except for in athletics or housing in higher education – 34 C.F.R. § 106.31 (2024 Version).

These provisions are the focus of state lawsuits against the rule; changes seem likely

21

What Harassment is Prohibited?



22

Sex(ual or –Based) Harassment

The Ex: Sexual Harassment

- Employee Quid Pro Quo
- Hostile Environment
- “The Big Four” as defined in the Violence Against Women Act/Clery Act
 - Sexual Assault
 - Dating Violence
 - Domestic Violence
 - Stalking

Speed Date: Sex-Based Harassment

- Employee or Agent Quid Pro Quo
- Hostile Environment Harassment
- Specific Offenses
 - Sexual Assault
 - Dating Violence
 - Domestic Violence
 - Stalking

23

Title IX Quid Pro Quo Sex Harassment

The Ex: Sexual Harassment

An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct

Speed Date: Sex-Based Harassment

An employee, **agent, or other person authorized by the recipient** to provide an aid, benefit, or service under the recipient’s education program or activity **explicitly or impliedly** conditioning the provision of such an aid, benefit, or service on a person’s participation in unwelcome sexual conduct

24

Hostile Environment Sex Harassment

The Ex: Hostile Environment

Defined as 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 recipient's education program or activity

Speed Date: Hostile Environment

Defined as unwelcome sex-based conduct that is sufficiently severe *or* pervasive, that, based on the totality of the circumstances and evaluated subjectively and objectively, denies or limits a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment).

25

Hostile Environment Factors (2024 Rule)

The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity

The type, frequency, and duration of the conduct

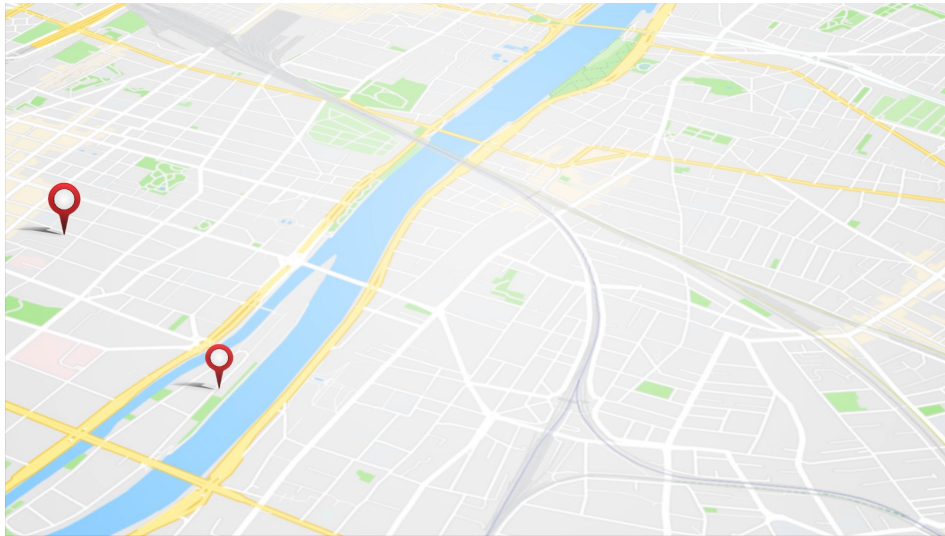
The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct

The location of the conduct and the context in which the conduct occurred

Other sex-based harassment in the recipient's education program or activity

26

Where Must Prohibited Conduct Occur



27

Education Program or Activity

The Ex: EP/A

School operations + locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and **the context in which the sexual harassment occurs**, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution

Speed Date: EP/A

School operations + conduct that occurs under a recipient's education program or activity includes but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by a postsecondary institution, and subject to the recipient's **disciplinary authority**.

28

Education Program or Activity

The Ex: EP/A

If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in § 106.30 even if proved, did not occur in the recipient's education program or activity, or did not occur against a person **in the United States**, then the recipient **must dismiss the formal complaint** with regard to that conduct for purposes of sexual harassment under title IX or this part

Speed Date: EP/A

- A recipient has an **obligation** to address a sex-based hostile environment under its education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient's education program or activity or outside the United States

29

What Information Requires Institutional Response?



30

Notice/Knowledge

The Ex: Notice/Knowledge

- Actual knowledge
- By a Title IX Coordinator or "Official With Authority"
- Includes all K-12 employees

Speed Date: Notice/Knowledge

- "Information about conduct that may constitute sex discrimination"
- By the Title IX Coordinator
- Requires the educational institution to require certain non-confidential employees to report to the Title IX Coordinator
- Requires confidential employees and other employees not required to report to the Title IX Coordinator to provide information to reporting party

31

Higher Ed Employee Reporting

The Ex: Notice/Knowledge

- Actual knowledge of "sexual harassment"
- By a Title IX Coordinator or "Official With Authority"
- Includes all K-12 employees

Speed Date: Notice/Knowledge

- "Information about conduct that may constitute sex discrimination"
 - By the Title IX Coordinator
- BUT**
- Requires the educational institution to require certain non-confidential employees to report to the Title IX Coordinator
 - Requires confidential employees and non-confidential employees who are not required to report to the Title IX Coordinator to provide information to reporting party about the Title IX Coordinator and process

32

Exception to Reporting Requirements

The Ex: Exception to Reporting

Actual knowledge does not exist when the only official of the recipient with actual knowledge is the person who allegedly engaged in discrimination (the **respondent**).

Speed Date: Exception to Reporting

An employee who is the person allegedly subjected to discrimination (a **complainant**) is not required to report.

Information learned at a public awareness event, although the Title IX Coordinator must use the information to inform efforts to prevent sex-based harassment

33

Higher Ed Reporting

Type of Employee	Report to Title IX Coordinator?	Provide Information to Reporting Party?
Non-confidential employee who has authority to institute corrective measures on behalf of the recipient or responsibility for administrative leadership, teaching, or advising	Yes	Yes
All other non-confidential employees	Must Do One or the Other	
Confidential Employees	No	Yes

34

Notices to Reporting Parties (2024 Rule)

Non-Confidential Employee Not Required to Report

If they do not report the information to the Title IX Coordinator, must provide to any person who provides the employee with information about conduct that reasonably may constitute sex discrimination under Title IX:

- The contact information for the Title IX Coordinator
- Information about how to make a complaint

Confidential Employee

Must explain to any person who informs the confidential employee of conduct that reasonably may constitute sex discrimination under Title IX:

- The employee's status as confidential and what that means
- How to contact the Title IX Coordinator and make a complaint
- That the Title IX Coordinator may be able to offer and coordinate supportive measures and initiate informal resolution or the formal grievance process

35

Students Employees – Higher Ed (2024 Rule)

36

A higher education institution must determine how to handle students who also are employees, considering, at minimum:

- The person's *primary relationship* with the institution (employment or education)
- Whether the individual learned of the information while performing employment-related work

36

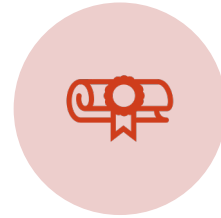
Confidential Employees (2024 Rule)



PRIVILEGED UNDER LAW



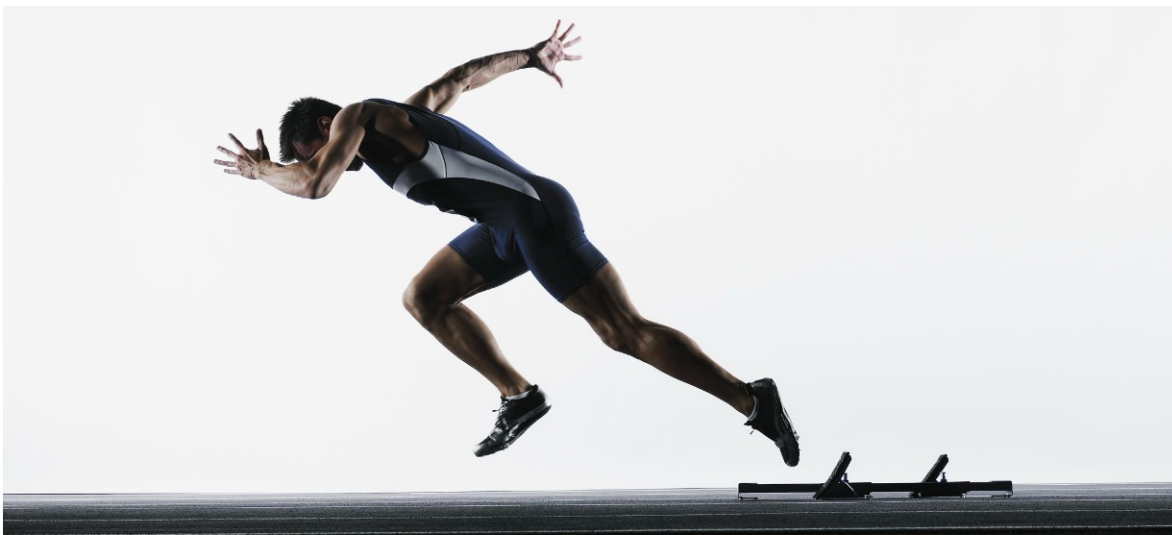
**DESIGNATED AS
PRIVILEGED BY
EDUCATIONAL
INSTITUTION**



**POSTSECONDARY
EMPLOYEE CONDUCTING
CERTAIN APPROVED
RESEARCH ON SEX
DISCRIMINATION**

37

What Initial Response is Required?



38

Initial Response to Notice

The Ex: Title

The Title IX Coordinator must promptly contact 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 to the complainant the process for filing a formal complaint

Speed Date: Title

The Title IX Coordinator must:

- Treat the parties equally
- Offer and coordinate supportive measures to complainant (and respondent once informal resolution is offered or the grievance process begins)
- Notify the complainant or, if unknown, the reporting party of the grievance procedures and, if relevant, informal resolution process

39

Supportive Measures

The Ex: Supportive Measures

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. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment

Speed Date: Supportive Measures

Supportive measures must not unreasonably burden either party and must be designed to protect the safety of the parties or the recipient's educational environment or to provide support during the recipient's grievance procedures and if applicable during the informal resolution process. A recipient must not impose such measures for punitive or disciplinary reasons.

40

Examples of Supportive Measures

The Ex: Examples of SMs

- 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

Speed Date: Examples of SMs

- Counseling
 - Extensions of deadlines or other course-related adjustments
 - Changes in class, work, housing, or extracurricular or any other activity, **regardless of whether there is or is not a comparable alternative**
 - Campus escort services
 - Restrictions on contact applied to one or more parties
 - Leaves of absence
 - Increased security and monitoring of certain areas of the campus
 - Training and education programs
- For complaints other than sex-based harassment or retaliation, an educational institution, its employee, or any other person is not required to alter the alleged discriminatory conduct as a SM

41

More Supportive Measures Rules (2020 & 2024 Rules)

Supportive measures:

- Must be maintained as confidential unless necessary to release information to implement (or allowed by law)

The 2024 Rule also requires educational institutions to:

- Provide a timely opportunity to seek, from an appropriate and impartial employee (other than the person who made the decision), modification or reversal of any supportive measure decision related to the party
- Allow parties to seek additional modification or termination of supportive measures applicable to them if circumstances change materially
- Ensure the Title IX Coordinator coordinates with one or more members of a student with a disability's K-12 students IEP or Section 504 team regarding supportive measures (allowed to coordinate with ODS in Higher ed)

42

Emergency Removals

The Ex: Title

- The recipient must undertake an individualized safety and risk analysis, determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal
- Must provide notice and opportunity to challenge immediately after the removal

Speed Date: Title

- The recipient must undertake an individualized safety and risk analysis, determine that an immediate and serious threat to the health or safety of students, employees, or other persons arising from the allegations of sex discrimination justifies removal
- Must provide notice and opportunity to challenge immediately after the removal

43

Administrative Leave

The Ex: Title

- Nothing in this subpart precludes a recipient from placing a non-student employee respondent on administrative leave during the pendency of a grievance process that complies with § 106.45. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

Speed Date: Title

- Nothing in this part precludes a recipient from placing an employee respondent on administrative leave from employment responsibilities during the pendency of the recipient's grievance procedures. This provision must not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, or Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131-12134.

44

Informal Resolution

The Ex: Title

- Requires a formal complaint
- Must be voluntary
- Cannot require IR or waiver of right to adjudication
- Formal Complaint required
- Written notice required
- Written consent required
- Cannot be offered for employee-on-student cases

Speed Date: Title

- No formal complaint required
- Must be voluntary
- Cannot require or pressure IR or waiver of right to adjudication
- Supportive measures required
- Written notice required
- Consent required
- Cannot be offered in employee-on-student cases

45

Informal Resolution Notice

The Ex: Notice of IR

- In writing
- The allegations
- Requirements of IR
- Right to withdraw prior to agreement and resume the grievance process with respect to the formal complaint
- Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared

Speed Date: Notice of IR

- In writing or oral, *except* for sex-based harassment allegations involving a student (must be in writing)
- The allegations
- Requirements of IR
- Right to withdraw prior to agreement and to initiate or resume the recipient's grievance procedures
- Potential terms that could be in an agreement
- Which records will be maintained and could be shared
- That if the grievance procedure resume, no one can access, consider, disclose, or otherwise use information, including records, obtained solely through the IR process
- That the IR facilitator may serve as a witness in the grievance procedure if resumed

46

Informal Resolution Limits

The Ex: IR Limits

- Cannot offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

Speed Date: IR Limits

- Cannot offer if there are allegations that an employee engaged in sex discrimination toward a student or such a process would conflict with Federal, State or local law
- The informal resolution facilitator cannot be the investigator or decisionmaker for the case

47

Responding to Complaints



48

What is a Complaint

The Ex: Formal Complaint

- Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator
- Can consolidate complaints

Speed Date: Complaint

- A complaint includes an oral or written request to initiate a grievance
- In the absence of a complaint or informal resolution process, determine whether to initiate a complaint of sex discrimination if necessary to address conduct that may constitute sex discrimination under Title IX in the recipient's education program or activity
- Can consolidate complaints; if one includes allegations of sex-based harassment involving a student, must use procedures for those types of cases

49

Complaints

The Ex: Who Can File/Sign?

An individual who is alleged to be the victim of conduct that could constitute 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 recipient with which the formal complaint is filed.

Speed Date: Who can Make/Initiate

- A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
- A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX and who was participating or attempting to participate in the recipient's education program or activity when the alleged sex discrimination occurred.

50

Response to a Complaint

The Ex: Title

- Initiate the grievance procedures or informal resolution process
- Send a notice of allegations to all known parties

Speed Date: Title

- Explicitly requires contacting the respondent to notify of grievance procedures and informal resolution process and to offer and coordinate supportive measures
 - For allegations of *sex discrimination* alleging the educational institution's policy or practice discriminates on the basis of sex, the educational institution is not considered the respondent
- Initiate the grievance procedures or informal resolution process
- Send a notice of allegations to all known parties

51

Grievance Procedures



52

Grievance Process Requirements

The Ex: Grievance Process Requirements

- Treat parties equally by providing supportive measures to complainant and not finding a respondent responsible until after the grievance process
- Require no conflict of interest or bias and require training for all roles
- Include a presumption of non-responsibility
- Include reasonably prompt time frames for conclusion of the grievance process, including for filing and resolving appeals and the IR process, and a process for extensions
- Describe the range of or list possible disciplinary sanctions and remedies
- State the standard of evidence to be used
- Include the procedures for appeal
- Describe the range of supportive measures
- Require an objective evaluation of all relevant evidence (inculpatory and exculpatory)
- Provide the credibility determinations not be based on status

Speed Date: Grievance Process Requirements

- Treat parties equitably
- Prohibit conflicts of interest or bias and require training for all roles
- Include a presumption of non-responsibility
- Establish reasonably prompt time-frames for “major stages” and a process for extensions
- Take reasonable steps to protect privacy
- Applicable to allegations of sex-based harassment
 - Describe the supportive measures available to the parties
 - Describe the range of or list possible disciplinary sanctions and remedies
- Require an objective evaluation of all relevant evidence (inculpatory and exculpatory)
- Provide that credibility determinations not be based on status
- Requires use of preponderance of the evidence standard unless using clear and convincing in all other comparable proceedings, including those related to other discrimination complaints

53

The Title IX Team

The Ex: Title IX Team

- Title IX Coordinator, investigator, and informal resolution facilitator can be the same person
- Must be a different decision-maker
- Must be a different appellate decision-maker

Speed Date: Title IX Team

- The Title IX Coordinator, investigator, and decision-maker can be the same person
- Must be a different appellate decision-maker
- Must be a different informal resolution facilitator

54

Dismissal of Complaint Allegations

The Ex: Dismissals

- Provides grounds for mandatory or permissive dismissal
- Upon dismissal, institution must send written notice of dismissal, reasons for dismissal, and notice of right to appeal
- Party can appeal dismissal on three bases

Speed Date: Dismissals

- No more mandatory dismissal, all permissive
- Must provide written notice of dismissal, basis, and notice of right to appeal to party's who have notice of the complaint (in writing for sex-based harassment complaints involving a student in higher ed)
- Party can appeal dismissal on three bases
- Even after dismissal, must take appropriate and prompt steps to ensure sex discrimination does not continue or recur

55

Dismissal Bases

The Ex: Dismissal Bases

Mandatory

- Conduct alleged, even if substantiated, not Title IX "sexual harassment" in an education program or activity and against a person in the U.S.

Permissive

- Respondent's enrollment or employment ends
- Complainant requests to withdraw the complaint and would not be deliberately indifferent to dismiss
- Specific circumstances prevent collecting sufficient evidence to make a determination

Speed Date: Dismissal Bases

All Permissive

- Unable to identify the respondent after taking reasonable steps
- Respondent is not participating in the education program or activity and is not employed
- Complainant voluntarily withdraws any or all of the allegations in the complaint in writing, the Title IX Coordinator declines to initiate a complaint, and the educational institution determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX
- After making reasonable efforts to clarify the allegations with the complainant, the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX

56

Dismissal Bases

The Ex: Dismissal Bases

Mandatory

- Conduct alleged, even if substantiated, not Title IX "sexual harassment" in an education program or activity and against a person in the U.S.

Permissive

- Respondent's enrollment or employment ends
- Complainant requests to withdraw the complaint and would not be deliberately indifferent to dismiss
- Specific circumstances prevent collecting sufficient evidence to make a determination

Speed Date: Dismissal Bases

All Permissive

- Unable to identify the respondent after taking reasonable steps
- Respondent is not participating in the education program or activity and is not employed
- Complainant voluntarily withdraws any or all of the allegations in the complaint in writing, the Title IX Coordinator declines to initiate a complaint, and the educational institution determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX
- After making reasonable efforts to clarify the allegations with the complainant, the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX

57

Notice of Allegations

The Ex: NOA

Must be in writing, be updated if new allegations are added, and include:

- Notice of grievance & IR processes
- Sufficient information including identities of parties involved in the incident and details about the alleged discrimination, including date and location
- Presumption of non-responsibility
- Inform parties of advisor rights and right to inspect and review "directly related evidence"
- Cite any code of conduct provision that prohibits knowingly making false statements or providing false information

Speed Date: NOA

Must be updated if new allegations are added, and include:

- Notice of grievance and IR processes
- Sufficient information including identities of parties involved in the incident and details about the alleged discrimination, including date and location
- A statement that retaliation is prohibited

For Higher Ed complaints of sex-based harassment involving a student, must be in writing & also include:

- Presumption of non-responsibility + determination only made at end of the grievance procedure and only after having an opportunity "to present relevant evidence to a trained, impartial decisionmaker"
- Right to receive access to relevant evidence or to an investigative report with summary of evidence

58

Delay of NOA (2024 Rule)

- For higher education institution cases with allegations of sex-based harassment involving a student, the 2024 Rule will allow a reasonable delay in providing the NOA if there are legitimate concerns for the safety of any person as a result of providing the notice
- The legitimate concerns must be based on an individualized safety and risk analysis and not on mere speculation or stereotypes

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Investigations

The Ex: Investigations

Seven general requirements

- Burden of proof and evidence on institution
- Equal opportunity to present witnesses, including expert witnesses, and evidence
- No "gag rules" or limits on right to gather/present evidence
- Same opportunity to advisor, but can limit role if equally applied
- Provide written notice of interviews and meetings (with specifics) with time to prep
- Parties can inspect, review, and respond to directly related evidence
- Parties can review and respond to investigation report

Speed Date: Investigations

Retains most general requirements, with some modification

- Burden on institution to gather sufficient evidence for determination
- Equal opportunity to present relevant fact witnesses and evidence; expert witnesses can be allowed, but not required (must be equal between parties)
- Investigator must review all evidence gathered to evaluate if "relevant"
- Provide each party with a description of all relevant evidence and an opportunity to respond

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Higher Ed Sex-Based Harassment Cases w/Student

The Ex: Investigations

Seven general requirements

- Burden of proof and evidence on institution
- Equal opportunity to present witnesses, including expert witnesses, and evidence
- No “gag rules” or limits on right to gather/present evidence
- Same opportunity to advisor, but can limit role if equally applied
- Provide written notice of interviews and meetings (with specifics) with time to prep
- Parties can inspect, review, and respond to directly related evidence
- Parties can review and respond to investigation report

Speed Date: Investigations

For higher education complaints with sex-based harassment allegations involving a student, must also:

- Provide written notice of interviews and meetings (with specifics) with time to prep
- Same opportunity to advisor, but can limit role if equally applied
- Must allow parties the same opportunities to have others in addition to advisors present during meetings and proceedings
- Discretion regarding experts
- Extensions for good cause with written notice
- Equitable access to and right to respond to evidence or summary in report
- Institutions also required to take reasonable steps to prevent unauthorized disclosure

61

Sharing Evidence

The Ex: Sharing Evidence

For all formal complaints (both K-12 and higher ed):

- Review of directly related evidence with 10 days to respond
- Review of investigation report with 10 days to respond

Speed Date: Sharing Evidence

For K-12 and non-harassment higher ed complaints, all that is required is “provide each party with a description of relevant/permissible evidence with a reasonable opportunity to respond”

62

Higher Ed Sex-Based Harassment Cases w/Student

The Ex: Sharing Evidence

For all formal complaints (both K-12 and higher ed):

- Review of directly related evidence with 10 days to respond
- Review of investigation report with 10 days to respond

Speed Date: Sharing Evidence

- Reasonable opportunity to review or respond to the evidence before a decision
- Provide either equitable access to the relevant and not otherwise impermissible evidence, **or** to the written investigative report that accurately summarizes this evidence
- If report provided, must also provide the parties with equitable access to the relevant and not otherwise impermissible evidence upon the request of any party

63

Higher Ed Sex-Based Harassment Cases w/Student

The Ex: Sharing Evidence

For all formal complaints (both K-12 and higher ed):

- Review of directly related evidence with 10 days to respond
- Review of investigation report with 10 days to respond

Speed Date: Sharing Evidence

- If a higher ed institution conducts a live hearing as part of its grievance procedures, it must provide this opportunity to review the evidence in advance of the live hearing
- It is at the institution's discretion whether to provide this opportunity to respond prior to the live hearing, during the live hearing, or both prior to and during the live hearing

64

Excluded Evidence #1

The Ex: Excluded Evidence #1

Cannot require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

Speed Date: Excluded Evidence #1

- Exclude the following types of evidence, and questions seeking that evidence, as impermissible (i.e., must not be accessed, considered, disclosed, or otherwise used), regardless of whether they are relevant:
- Evidence that is protected under a privilege as recognized by Federal or State law, unless the person holding such privilege has waived the privilege voluntarily in a manner permitted in the recipient's jurisdiction;

65

Excluded Evidence #2

The Ex: Excluded Evidence #2

Cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, without the party's (or their parent's) written consent.

Speed Date: Excluded Evidence #2

Exclude the following types of evidence, and questions seeking that evidence, as impermissible (i.e., must not be accessed, considered, disclosed, or otherwise used), regardless of whether they are relevant:
(Health records) - A party's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent for use in the recipient's grievance procedures; and

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Excluded Evidence #3

The Ex: Excluded Evidence #3

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

Speed Date: Excluded Evidence #3

Exclude the following types of evidence, and questions seeking that evidence, as impermissible (i.e., must not be accessed, considered, disclosed, or otherwise used), regardless of whether they are relevant:

(Sexual interests or conduct) - Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is offered to prove consent with evidence concerning specific incidents of the complainant's prior sexual conduct with the respondent. The fact of prior consensual sexual conduct between the complainant and respondent does not demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

67

Decisionmakers

The Ex: Different Decision-maker

Decision-maker cannot be Title IX Coordinator or investigator

Speed Date: Investigator-Decisionmaker

- Same person can be investigator and Decisionmaker
- If Decisionmaker is not persuaded under the applicable evidentiary standard that sex discrimination occurred, whatever the quantity of evidence is, the decision-maker should not determine that sex discrimination occurred

68

Credibility

- The 2024 Rule requires an educational institution to provide a process that allows the decisionmaker to adequately assess the credibility of the parties and witnesses to the extent credibility is **both** in dispute **and** relevant to evaluating one or more allegations of sex discrimination
- For higher education grievance procedures with allegations of sex-based harassment involving a student, the decisionmaking process must include either a decisionmaker asking their and the parties' proposed questions and follow-up questions of other parties and witnesses either at individual meetings or a live hearing, or an advisor asking such questions and follow-up questions

69

Higher Ed Hearings

The Ex: Hearings Required

- For postsecondary institutions, the recipient's grievance process must provide for a live hearing
- Can hold hearing (either at a party's request or the institution's discretion) in separate rooms using technology. Must audio or audio visually record and make the recording available to the parties

Speed Date: Hearings Allowed

- A postsecondary institution's sex-based harassment grievance procedures for cases involving students may, but need not, provide for a live hearing
- If a live hearing is offered, can still do so (either at a party's request or the institution's discretion) in separate rooms using technology
- Must continue to audio or audio visually record and make the recording available to the parties

70

Higher Ed Hearings

The Ex: Cross-Examination

- Detailed provisions regarding questions and cross-examination of parties and witnesses
- If party does not have an advisor, recipient must provide an advisor of the recipient's choice without fee or charge

Speed Date: Cross-Examination

- Institutions have the option under Title IX to have the decision-maker ask questions and follow-up questions to parties and witnesses, including those proposed by the parties to the decision-maker, either in one-on-one meetings with the parties/witnesses or in a live hearing
- Institutions can still choose to allow advisors to question parties and witnesses at a hearing; if they do, must provide advisor to party who does not have one

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Higher Ed Hearings

The Ex: Relevance Determinations

- Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

Speed Date: Relevance Determinations

- Decisionmaker must determine whether a proposed question is relevant and not otherwise impermissible prior to the question being posed to the witness or party, and must explain any decision to exclude a question as not relevant
- If decisionmaker determines that a party's question is relevant and not otherwise impermissible, then it must be asked except that a postsecondary institution must not permit questions that are unclear or harassing of the party being questioned

72

Decision

The Ex: Written Determination

- Written determination required for all cases
- Must include:
 - Allegations
 - Procedural steps taken
 - Findings of fact
 - Conclusions regarding application of code of conduct to the facts
 - Statement and rationale for the result as to each allegation, including determination regarding responsibility
 - Any disciplinary sanctions imposed
 - Whether remedies will be provided
 - Appeal procedures

Speed Date: Determination

- Written determination only required for higher education complaints of sex-based harassment involving a student party; must include:
 - Allegations
 - Procedural Steps
 - Findings of Fact
 - Application of Policy to Facts
 - Statement and Rationale for Determination for Each Allegation
 - Procedures and Bases for Appeal
- For all other cases, sufficient to notify parties of the outcome, including the determination of whether sex discrimination occurred under Title IX, the reasons for the decision, and appeal rights

73

Remedies and Disciplinary Sanctions

The Ex: Written Determination

- Must be included in the written determination

Speed Date: Notice of Outcome

- Institution—not Decisionmaker—responsible for deciding remedies and disciplinary sanctions
- Title IX Coordinator to provide and implement remedies and other appropriate prompt and effective steps to ensure sex discrimination does not continue

74

Relevance Definition (2024 Rule)

- The 2020 Rule does not define “relevant”
- The 2024 Rule defines “relevant” as “related to the allegations of sex discrimination under investigation as part of the grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred. Evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

75

Appeals

The Ex: Appeal Bases

- Required for all dismissals and determinations for all formal complaints of sexual harassment
- Decision-maker(s) for appeal cannot be decision-maker(s) that reached the determination or dismissal, the investigator(s), or the Title IX Coordinator;
- Required on three bases
- Can offer appeal for other bases, but must offer equally

Speed Date: Appeal Bases

- Required for all dismissals and for determinations in complaints of sex-based harassment involving a student party on same three bases from 2020 Rule
- Remaining cases require the same appeal as used for comparable cases
- Decisionmaker for appeal must be person who did not take part in an investigation or decision being appealed
- Appeal Decisionmaker must be trained

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Specified Appeal Bases (2020 & 2024 Rules)

- Procedural irregularity + affected the outcome
- New evidence not reasonably available at the time of the determination + could affect the outcome
- Bias or conflict of interest of Title IX team member + affected the outcome

* Remember these are only applicable under the 2024 Rule to higher education cases involving an allegation of sex-based harassment with a student party and to dismissal

** Under both Rules, an educational institution can offer appeals on other bases as long as it does so equally between the parties

77

Appeals

The Ex: Appeal Requirements

- Written notification when an appeal is filed
- Implement appeal procedures equally
- Equal opportunity to parties to submit a written statement in support of, or challenging, the outcome;
- Written decision provided to both parties describing the result and the rationale

Speed Date: Appeal Requirements

- Notify when appeal is filed
- Implement appeal procedures equally
- Provide parties a reasonable and equal opportunity to make a statement in support of, or challenging, the dismissal
- Notify parties of result of appeal and rationale for result

** Notices must be in writing for complaints of sex-based harassment involving a student party at a postsecondary institution

78

Serving Impartially



79

Bias, Conflicts of Interest, and Prejudgment

- Both the 2020 and 2024 Rules require Title IX team members to be impartial
- We will discuss impartiality regarding specific roles other than the Title IX Coordinator in other sessions
- Let's look at some examples Title IX Coordinators might face

80

Bias in Title IX Coordination

- Bias can affect the coordinator's decisions regarding case management, policy enforcement, and support resources
- Example: A coordinator who has personal beliefs about gender roles might unknowingly favor one gender over another in providing support or making decisions on disciplinary actions

81

Conflicts of Interest in Title IX Coordination

- Conflicts of interest can arise if the coordinator has personal or professional relationships with any party involved in a case
- Example: A coordinator who has previously worked closely with a respondent or complainant might find it difficult to remain impartial during the investigation process

82

Prejudgment in Title IX Coordination

- Forming opinions about the merits of a case before fully reviewing the evidence can lead to biased decisions and undermine the fairness of the process
- Example: A coordinator might prematurely judge the credibility of a complainant or respondent based on initial reports or their own experiences, affecting their objectivity in handling the case

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Conflicts of Interest in Title IX Coordination

- Training and Education
- Clear Policy and Procedures
- Self-Assessment and Reflection
- External Review and Consultation
- Transparency and Documentation
- Disclosure and Recusal
- Focus on Fairness Between Parties



84

Don't Forget Your Records & Trainings

- Under both the 2020 and 2024 Rules, educational institutions must maintain records related to Title IX cases for no less than 7 years
- The 2020 Rule requires posting of all trainings for Title IX Team members (including these!) on your educational institution's website
- The 2024 Rule would only require that the training materials be maintained and made available if requested

85

Questions



86

An Informal Occasion: Maximizing Informal Resolution in Title IX Cases

Title IX Conference:
Higher Ed & K-12 Training
July 23-24, 2024



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Your Presenters



Erin Agidius

Consultant
TNG



**Jackie Gharapour
Wernz**

Director of Civil
Rights and
Investigations
University of Idaho

Agenda

- What is Informal Resolution?
- 2020 and 2024 Title IX Rules for Informal Resolution
- Practical Skills for Informal Resolution
- How to Maximize Benefits of Informal Resolution



Join the Vevox session

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My role in informal resolution is

Supervisor (T9C, Deputy, etc.)

0%

Faciliator

0%

Support for Faciliators

0%

Party Attorney

0%

Other Party Advisor

0%

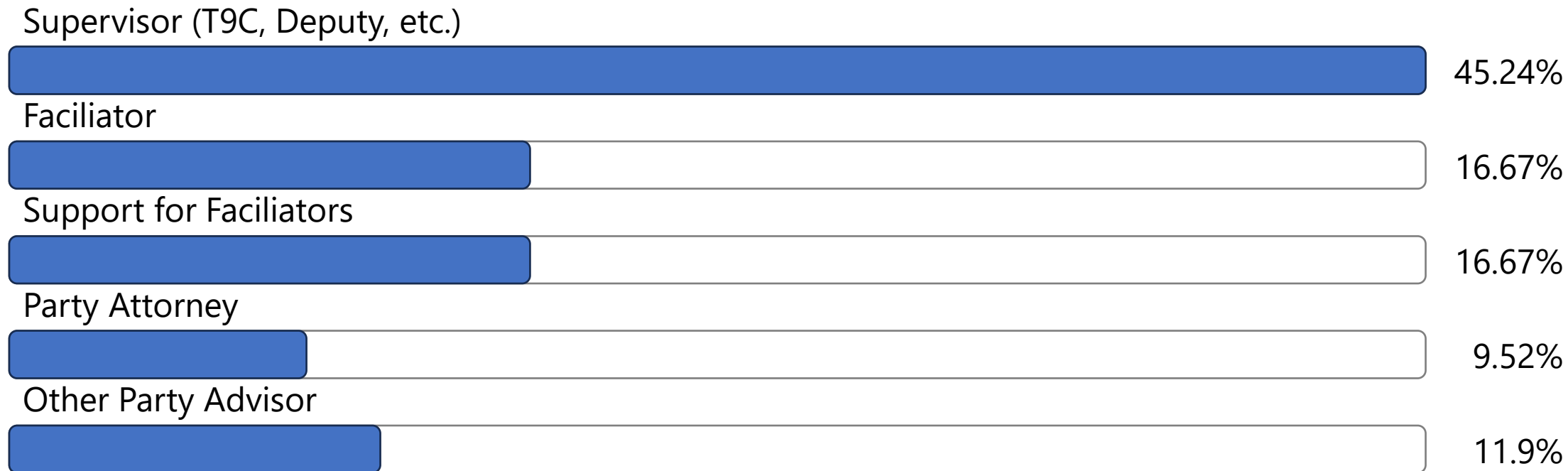


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My role in informal resolution is



RESULTS SLIDE



What is Informal Resolution?

What is Informal Resolution?

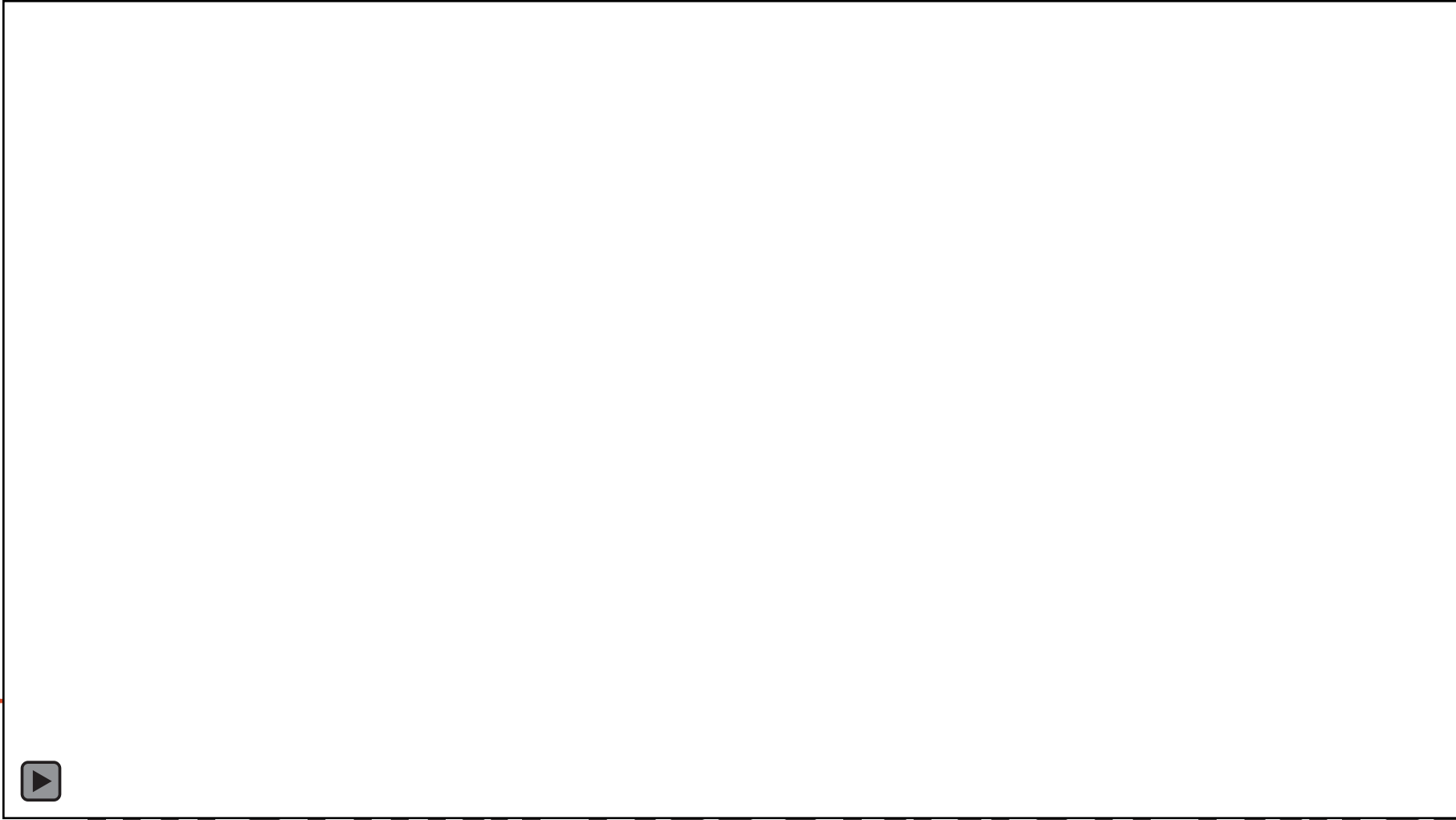


- A voluntary, structured interaction between complainant(s) and respondent(s) to resolve the Title IX allegations without an investigation, hearing, or appeal
- In practice, typically an informal problem-solving conversation facilitated by an experienced third party who is outside the problem
- Uses a voluntary, consensus-based approach

Potential Benefits

- Flexibility
- Timeliness
- Cost-Effectiveness
- Empowerment
- Increased Confidentiality
- No Cross-Examination
- Restorative Nature
- Relationship Preservation
- Reduced Retaliation Risk
- Mutual Agreement (Not Zero Sum)





Informal Resolution (2020 & 2024 Rules)

- Schools can but are not required to offer informal resolution
- Informal resolution facilitators must be trained on specific topics
- IR facilitators must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent

Informal Resolution (2020 & 2024 Rules)

- Can be offered at any time prior to a determination of whether prohibited conduct occurred
- If a formal process has begun, it can pause during the informal resolution; you would return to the formal process if IR is not successful
- There must be reasonable timeframes for informal resolution (must be in grievance procedures under 2024 Rule) with possibility to extend for good cause with written notice to the parties
- Before agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the formal grievance procedures

Informal Resolution (2020 & 2024 Rules)

- Informal resolution must be entirely voluntary, and cannot be explicitly or implicitly required; parties cannot be required or pressured into participation
- May not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment
- All parties must give voluntary, informed consent (parents/guardians of minor parties, too)

Scenario

You reach out to a minor student Complainant and their parents as the first step in your informal resolution process. You introduce yourself, describe the process, and ask if they have any questions. They have none. After the phone call ends, the Complainant emails you the following:

I don't really want to do this; my parents are making me. The Respondent deserves to be expelled and I know that can only happen if there is an investigation.





Whose opinion prevails?

The minor student

0%

The minor student's parent

0%

The educational institution decides

0%



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Whose opinion prevails?

The minor student



50%

The minor student's parent



34.38%

The educational institution decides



15.63%

RESULTS SLIDE

Informal Resolution Differences

2020 Rule

- A formal complaint must be filed/signed before informal resolution can be offered
- Informal resolution facilitator can do multiple roles (e.g., Coordinator, Investigator, Decision-maker)

2024 Rule

- No complaint must be made/initiated to offer informal resolution
- Informal resolution facilitator cannot be Investigator or Decisionmaker

Scenario



Students Casey and Ryan were formerly dating. Casey reports that Ryan sexually assaulted Casey on campus during the relationship. Ryan says that all conduct between the couple was consensual. Both parties have expressed interest in informal resolution.



Should you offer informal resolution?

Yes, if both parties agree

0%

Yes, if the institution chooses to offer informal resolution for sexual assault cases

0%

No, the institution should not use informal resolution for cases involving sexual assault because of the risk of retraumatization

0%

No, the institution cannot use informal resolution for cases involving sexual assault under Title IX

0%

The History of Sexual Assault and IR

"Grievance procedures generally may include voluntary informal mechanisms (e.g., mediation) for resolving some types of sexual harassment complaints" but "in cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis." (2011 Guidance)

The 2020 Rule put some limits on informal resolution, but not related to sexual assault; so, IR can be used for sexual assault cases that meet other rule requirements (2020 Rule)

Informal resolution can be used in all cases so can be used for sexual assault cases (2017 Q&A)

The 2024 Rule does not add any new limits for sexual assault cases (2024 Rule)

Circumstances to Consider

- Sexual Assault
- Domestic Violence
- Dating Violence
Stalking





My institution offers informal resolution....

For all allowed cases

0%

For all allowed cases other than sexual misconduct

0%

For all allowed cases with our limitations

0%

For no cases

0%

I'm not sure

0%



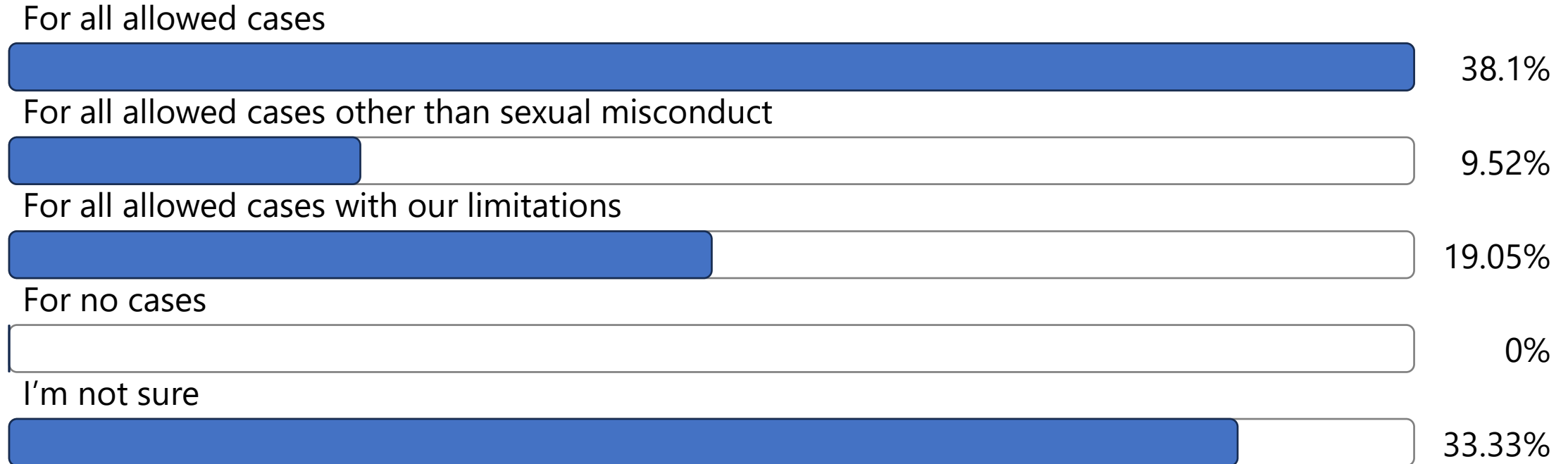
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My institution offers informal resolution....



RESULTS SLIDE

Scenario



Cleo is a student in Mr. Reed's class and reports that the professor regularly makes comments that are denigrating to students of one sex in class, making Cleo uncomfortable. The conduct allegedly occurred during the spring semester of 2024 but is just now being reported.



##/##

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Question slide

Should you offer informal resolution?

Yes, if requested and both parties agree

0%

Yes, if the institution chooses to offer informal resolution for cases involving employee-on-student
harsasment

0%

No, because the case involves employee-on-student harassment

0%



##/##

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Showing Results

Should you offer informal resolution?

Yes, if requested and both parties agree

0%

Yes, if the institution chooses to offer informal resolution for cases involving employee-on-student
harsasment

0%

No, because the case involves employee-on-student harassment

0%

RESULTS SLIDE

2020 Rule

May not offer informal resolution if an employee is the respondent



Other Circumstances to Consider

- Other situations involving power imbalances
- Severity of possible sanction (suspension or expulsion/termination)
- Nature or severity of the alleged conduct
- Whether there is an ongoing risk of harm
- Whether the Respondent is a repeat accused
- Whether the parties will participate in good faith
- Whether the parties will comply with terms in good faith



So, When to Offer IR?



- **2020 Rule:** Cannot offer without a formal complaint or in cases involving employee-on-student harassment
- **2024 Rule:** Cannot offer in cases involving employee-on-student harassment in K-12 or if it would violate federal or state law
- **The institution decides in all other cases**
- Best practice is to include information about situations where IR will not be offered in grievance procedures
- Steps should be taken to avoid discriminatory application of discretion

Notice & Consent (2020 & 2024 Rules)

- The educational institution can offer IR *or* either party can request it
- Before commencing IR, the institution must provide notice of the process and obtain consent

2020 Rule	2024 Rule
Under the 2020 Rule, the notice must be in writing	Under the 2024 Rule, the notice must be in writing only for complaints of sex-based harassment involving student complainants or student respondents at postsecondary institutions.



What does the educational institution do if a party violates the agreement?

Nothing - it's out of their hands

0%

Whatever the parties decided in the agreement, except that they cannot agree that the Title IX process begins again

0%

Whatever the parties decided in the agreement, including that the Title IX process begins again if that is what they wanted

0%

The Title IX process begins again

0%



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What does the educational institution do if a party violates the agreement?

Nothing - it's out of their hands



Whatever the parties decided in the agreement, except that they cannot agree that the Title IX process



Whatever the parties decided in the agreement, including that the Title IX process begins again if that



The Title IX process begins again



RESULTS SLIDE

IR Notice Contents

2020 Rule

- Allegations
- Requirements of the process, including:
 - Circumstances when IR precludes resuming a formal complaint arising from the same allegations
 - Right to withdraw and resume the grievance process at any time before agreeing to a resolution
- Any consequences resulting from participating in IR, including the records that will be maintained or could be shared

2024 Rule

- Allegations
- Requirements of the process
- That, prior to agreeing to a resolution, any party has the right to withdraw and initiate or resume the grievance procedures
- That the parties agreement to a resolution precludes initiating or resuming grievance procedures arising from the same allegations
- The potential terms that may be requested, including notice that an agreement is binding only on the parties
- What information the educational institution will maintain and whether and how it could disclose such information in grievance procedures, if initiated or resumed

Scenario

After suggesting IR, a party asks if the information shared during the process will make its way back to the investigation and decision-making process should informal resolution fails





Can information from the IR be used in the formal grievance process if it is initiated or resumed?

No, all information in IR must be maintained as confidential

0%

No, as long as the parties agree that it is confidential

0%

No, if the educational institution's policy or procedures say it is confidential

0%

Yes, the educational institution cannot guarantee confidentiality in IR

0%



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Can information from the IR be used in the formal grievance process if it is initiated or resumed?

No, all information in IR must be maintained as confidential



No, as long as the parties agree that it is confidential



No, if the educational institution's policy or procedures say it is confidential



Yes, the educational institution cannot guarantee confidentiality in IR



RESULTS SLIDE



Steps in a Successful IR

Steps in a Successful Informal Resolution

- Identify the Process
- Identify the Facilitator
- Preparation
- Facilitate Resolution
- Assist with Memorializing Agreement
- Enforcement

Identify the Process

- Can be “mediation” or other informal process (e.g., facilitated communication between the parties)
- May or may not include in-person meetings between the facilitator and each party or between the facilitator and all parties
- Consider how advisors, support persons, and others will participate and how to ensure confidentiality/privacy
- Consider length of time needed and use natural time limits (lunch, end of the business day)
- Take care to ensure the parties are comfortable with and in any environment chosen



I support face-to-face mediation in sexual harassment cases

Yes, in all cases

0%

Yes, but not in cases involving sexual assault or violence

0%

No

0%

Unsure

0%



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I support face-to-face mediation in sexual harassment cases



RESULTS SLIDE

Identify the Facilitator

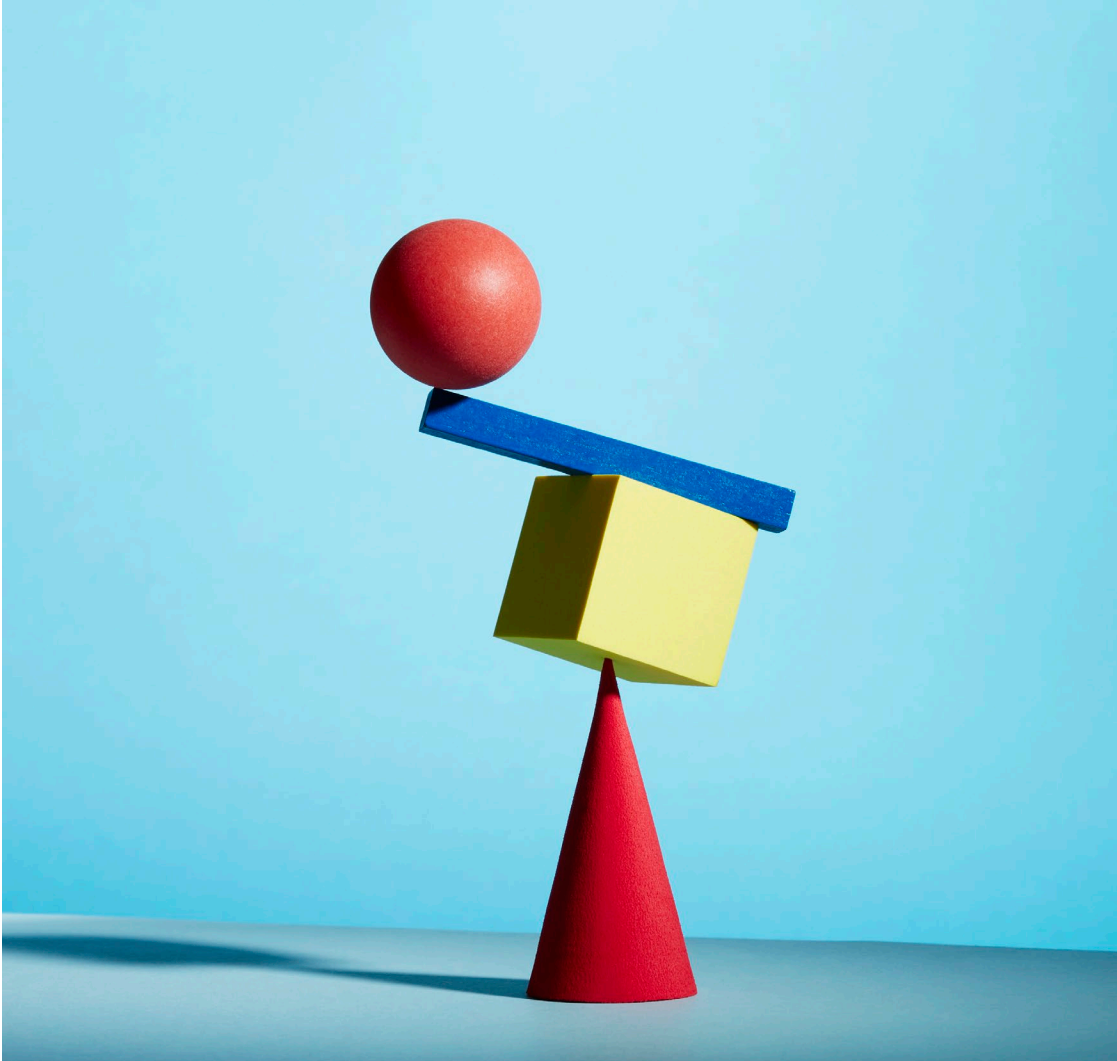
- Training & Expertise
- Experience with Informal Resolutions
- Knowledge of Institutional Policies & Procedures
- Impartiality
- Communication Skills
- Confidentiality & Discretion



Serving Impartially

- Informal resolution facilitators are in a unique role
- The IR facilitator is not a judge or arbitrator who decides the issues for the parties; instead, the IR facilitator helps the parties define the issues, identify solutions, and memorialize their agreement
- Although they are required to be impartial and not have conflicts of interest, IR facilitators are perhaps more properly known as “omnipartial” (on both parties’ sides at the same time) than “impartial”
- The IR facilitator is not practicing law or psychology but may provide insight from the law or psychology to help parties reach an agreement

Tips: Serving Impartially



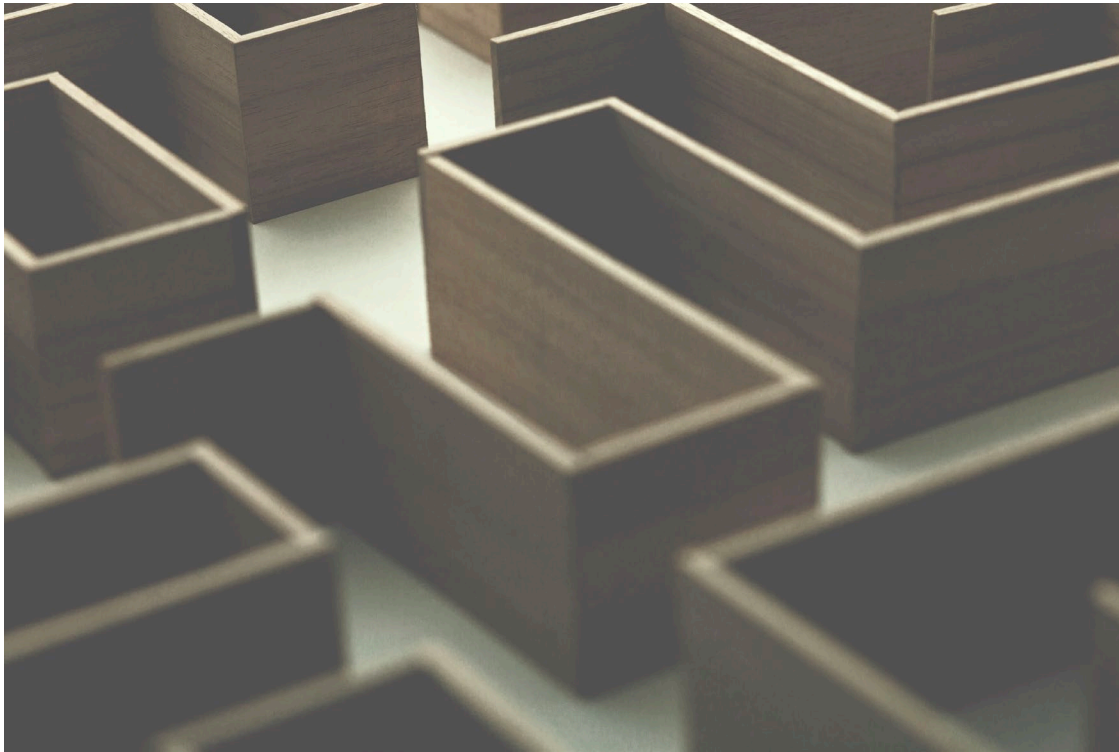
- Treat parties equally at all times
- Commit to aiding all parties equally
- Consider culture, disability, communications needs, etc.
- Avoid accusatory language/placing blame on any party during discussions
- Do not invest emotionally
- Stay objective; focus on facts
- Do not consider external factors

Prepare

- Introductory communications to the parties
 - Consider having parties, advisors, and support persons read, sign, and return written information regarding the process and ground rules
- Review relevant information and evidence prior to mediation, but do not predetermine the outcome
 - Bring relevant documents to IR meetings
- Considering asking parties to submit information
- Prepare questions and brainstorm potential institutional representatives who may need to be involved



Facilitate Resolution



- Introductions, Ground Rules, and Clear Goals
- Opportunity to Be Heard
 - Active Listening
 - Mirroring
 - Sympathy
- Creative Problem Solving
 - Position Sharing
 - Solution-Focused Questioning
 - Brainstorming
 - Emotional Processing
 - Collaborative Negotiation
 - Impasse Resolution

Introductions, Ground Rules, and Goals

Introduction

- Welcome and Purpose
- Confidentiality & Voluntariness
- Clarification of Role

Ground Rules

- Openness to Resolution
- Willingness to Listen
- Honesty & Openness
- Confidentiality
- Focus on the Present & Future

Goals

- Understand All Perspectives
- Identify Common Interest
- Develop Mutually Agreeable Solutions
- Create a Clear Agreement
- Ensure Follow-Up and Enforcement

Hearing Parties' Stories – Active Listening

- Start with open ended questions: "Why are we here?" "Tell me about" "Help me understand"
- Recognize and verbalize the party's emotions without agreeing with them – "Am I hearing you correctly that you are feeling...?" "It seems like..." "It sounds like...."
- Sympathy comments are ok: "I can tell this is hard for you" "I'm sorry this is difficult"
- Summarize key points of the party's narrative to ensure clarity and show understanding
- Use the final three words of a person's statement in you follow up questions to show attentiveness and encourage elaboration "Tell me more about" "What did it look like when...."
- Physical mirroring – wait two seconds to avoid mimicking

Solution-Focused Question Examples

- Again, start open ended: "What do you think would help resolve this issue?"
- Use "who, what, when, where, why, and how" to gather more information and promote discussion
- Avoid yes/no questions, which can stifle conversation
- Encourage parties to offer solutions rather than dictating solutions; this fosters ownership of the resolution
- "Have you ever been in a similar situation? How did you successfully deal with it?"
- "You mentioned you had concerns about contact with the other party at [example]. Let's think hypothetically about what that might look like and what guardrails we could put in place to avoid it."

Brainstorming

- Use “what if” questions to generate ideas
- Be prepared to offer options, but take care not to exert pressure
- Break down issues into “bite sized” pieces and focus on resolving those smaller issues, gradually building towards a comprehensive resolution
- Highlight consensus to gain momentum



Impasse Resolution

- The fact that there is an impasse is often much less important than the reason for the impasse
- Ask questions to understand the “why”; not just ““The other party offered [explain], what is your response?” but “Why is that your response”
- Turn the tables: “What terms would help you reach a resolution in this case?”
- Offer options if helpful: “I want to provide some options to consider, but these are just suggestions to help get/keep the conversation going”
- Convey optimism
- Encourage parties to focus on resolution and not act defensively
- Avoid “rehashing” events if unhelpful

Assist with Memorializing Agreement

- Use a solid template with common terms (no contact agreement, confidentiality, anti-retaliation, school responsibility for enforcement, etc.)
- Involve necessary institutional representatives on agreements that require use of the educational institution's resources (e.g., enforcement, counseling, training)
- Ensure parties are clear on all agreed points to avoid misunderstandings or lack of accountability

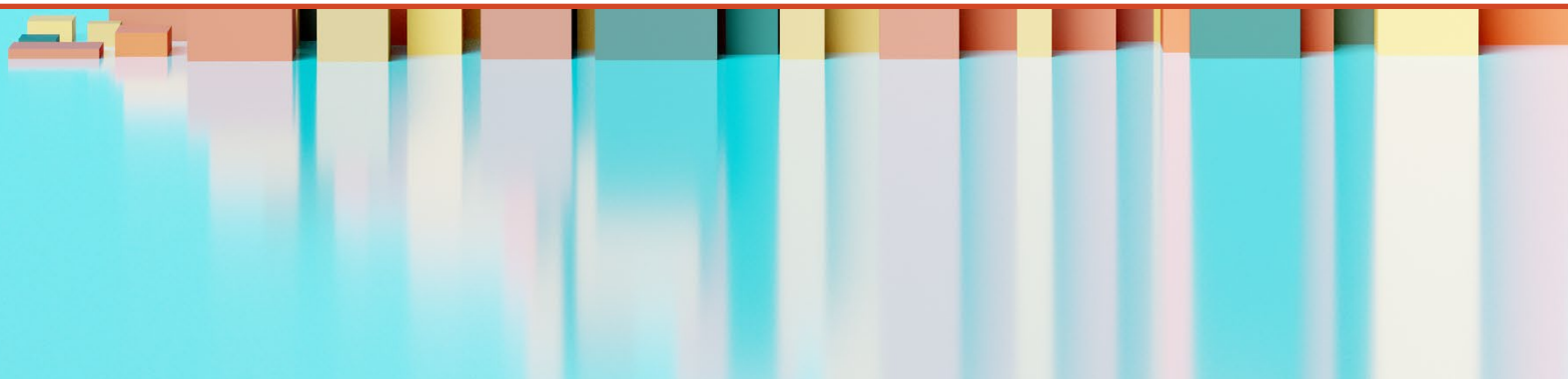
If parties cannot reach mutual agreement, proceed with formal Grievance Process

Enforcement

- Ensure that the agreement is documented clearly and comprehensively
- Define specific, measurable, achievable, relevant, and time-bound (SMART) terms within the agreement
- Clearly outline the educational institution's role in the enforcement process as agreed by the parties
- Identify which school officials are responsible for monitoring compliance and what actions they will take if the agreement terms are not met and ensure those officials understand their roles and responsibilities
- Consider whether support may be needed to help parties meet their obligations and offer to help address difficulties they may encounter
- Encourage parties to communicate openly with the Title IX Coordinator about any issues with complying or with the other party's compliance with the agreement
- Keep detailed records of compliance efforts, issues encountered, and steps taken in response



Popularity of Informal Resolution





0/11

Join at: **vevox.app**

ID: **158-512-262**

Question slide

How popular is informal resolution at your institution?

Very popular

0%

Moderately popular

0%

Barely used

0%



0/11

Join at: **vevox.app**

ID: **158-512-262**

Preparing Results

How popular is informal resolution at your institution?

Very popular



0%

Moderately popular



0%

Barely used

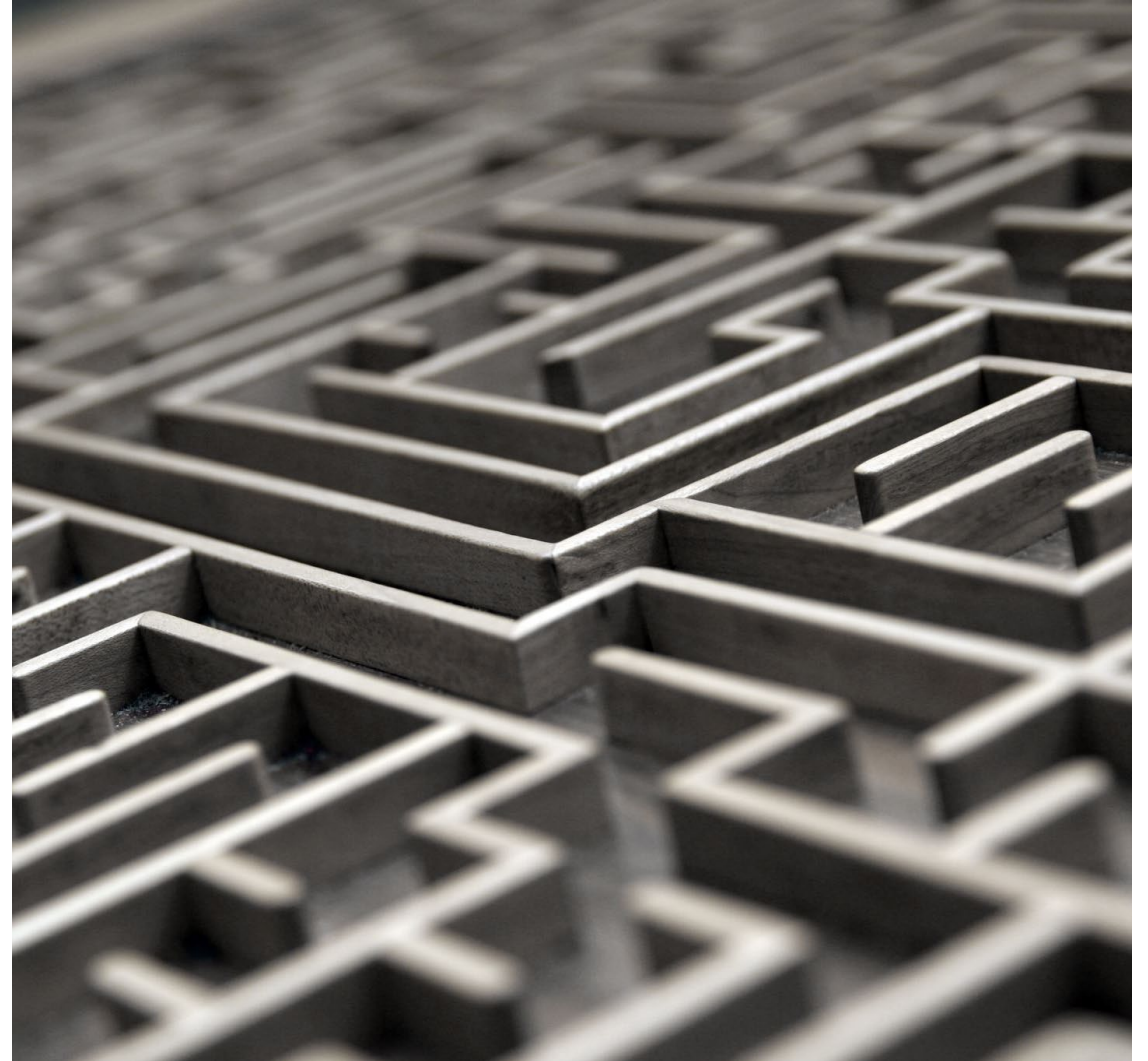


0%

RESULTS SLIDE

Barriers to Use

- Lack of Awareness
- Lack of Information □ Intimidation
- Fear of Retaliation
- Lack of Trust in Effectiveness
- Emotional Readiness



Trauma & Informal Resolution

Trauma Concerns

Informal Resolution can force parties into a situation that is re-traumatizing

Potential Benefits

Informal Resolution can promote:

- Empowerment
- Recognition
- Resolution

Overcoming Barriers



- Awareness Campaigns
- Information Sessions
- Confidentiality Assurances
- Share Success Metrics
- Emotional Support
- Highlight Anti-Retaliation Protections

Questions



The Need for Speed: Achieving Prompt(er) Investigations Under Title IX

Title IX Conference:
Higher Ed & K-12 Training
July 23-24, 2024



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**University
of Idaho**

Today's Panel



Danielle Charters

AVP for Title IX,
Institutional Equity,
and Compliance

Boise State University



Annie Hightower

AVP for Finance and
Operations

Boise State University



**Shasta Kilminster
Hadley**

Senior Compliance
Investigator

Boise State University



Erin Agidius

Consultant
TNG Consulting

General Requirements for Grievance Procedures

2020 Rule

- Treat parties equitably by following the grievance process required by the Rule
- Objectively evaluate all relevant evidence—including both inculpatory and exculpatory evidence
- Presume that the respondent is not responsible until a decision is made
- If additional procedures are adopted, must be applied fairly between parties
- Investigator must be trained
- Investigator **cannot be the same person as the decisionmaker or appellate decisionmaker**

2024 Rule

- Treat parties equitably throughout the grievance process
- Objectively evaluate all relevant **and permissible** evidence—including both inculpatory and exculpatory evidence
- Presume that the respondent is not responsible until a decision is made
- If additional procedures are adopted, must be applied fairly between parties
- Investigator must be trained
- Investigator **can also serve as a/the decisionmaker**

Remember

- Under OCR regulations, a school, college, or university **may not** use a grievance procedure other than the Title IX grievance procedure to address conduct that the OCR regulations say must be handled using the Title IX grievance procedure—doing so can risk losing federal funding
- Although courts use a “deliberate indifference” standard for Title IX lawsuits for money damages, it is increasingly common for plaintiffs to point to noncompliance with OCR regulations as evidence of deliberate indifference and to support state law claims (e.g., negligence, breach of contract)

What Precedes an Investigation?

2020 Rule

- Title IX Coordinator communicates with the complainant regarding the process and supportive measures
- Complainant files or Title IX Coordinator signs a formal complaint
- Notice of allegations sent to all known parties

2020 Rule

- Title IX Coordinator communicates with the complainant regarding the process and supportive measures
- Eligible person makes or Title IX Coordinator initiates a complaint
- Notice of allegations sent to all known parties
- Title IX Coordinator communicates with the respondent regarding the process and supportive measures

Framing the Investigation: The NOA

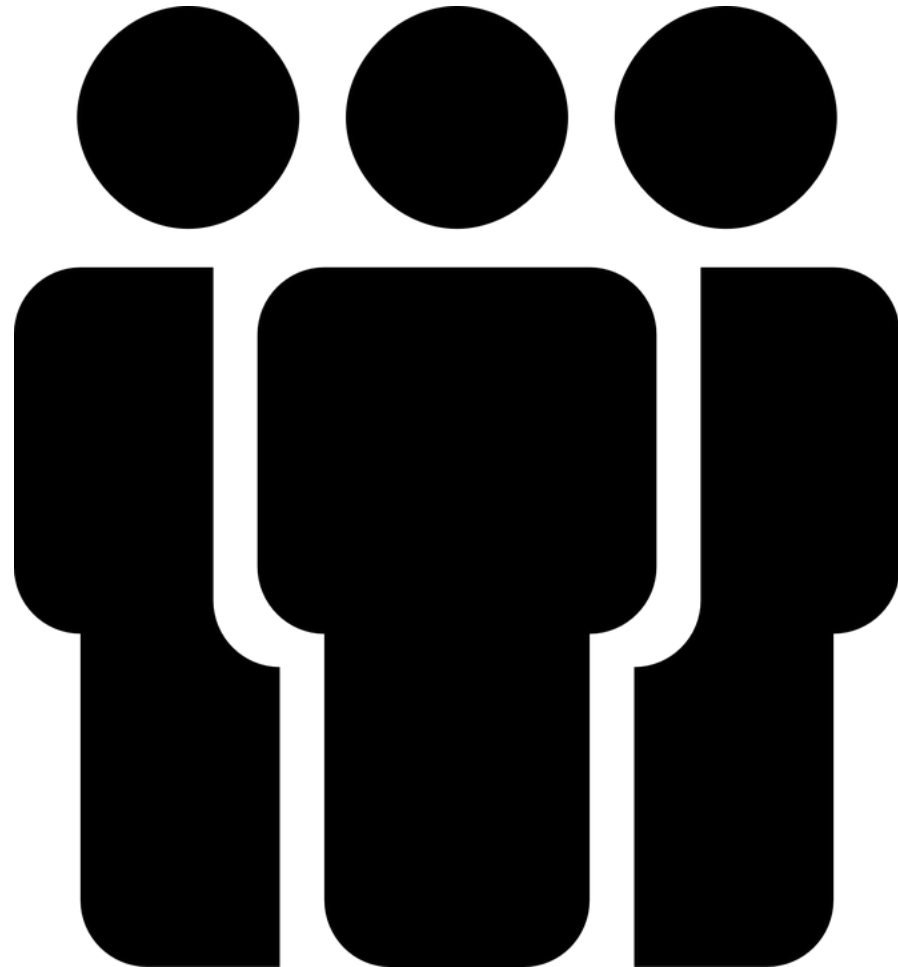
2020 Rule

- Parties must receive a notice of allegations before the investigation begins
- Must include sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known
- NOA must be supplemented if, during the investigation, the educational institution decides to investigate allegations that were not in the original NOA

2024 Rule

- Parties must receive a notice of allegations before the investigation begins
- Must include sufficient information available at the time to allow the parties to respond to the allegations. Sufficient information includes the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s), to the extent that information is available
- NOA must be supplemented if consolidation or if, during the investigation, the educational institution decides to investigate allegations that were not in the original NOA

What are the pros/cons of single investigator-decisionmaker model?



Overriding Investigation Themes

2020 Rule

An educational institution with actual knowledge of sexual harassment in an education program or activity of the educational institution against a person in the United States, must respond **promptly** in a manner that is **not deliberately indifferent**. An educational institution is deliberately indifferent only if its response to sexual harassment is **clearly unreasonable in light of the known circumstances**.

2024 Rule

An educational institution must provide for **adequate, reliable, and impartial** investigation of complaints.

Implied Requirements for Investigations

- Use a preponderance of the evidence standard (both 2020 and 2024 rules technically allow clear and convincing, but not really)
- Do not consider credibility during the investigation part of the process except as necessary to understand what evidence to probe/consider and what evidence is relevant
- Both the 2020 and 2024 rules allow oral notice in many circumstances where notice is required to the parties (more frequently in 2024), but OCR will nonetheless expect you to prove that those communications were made

What are the pros/cons of the flexibility to use more oral (instead of written) notice?



Timeframes

2020 Rule

Include reasonably prompt time frames for conclusion of the grievance process ... and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with **written notice** to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

2024 Rule

Establish reasonably prompt timeframes for the major stages of the grievance procedures, including a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with **notice** to the parties that includes the reason for the delay. The investigation is a major stage for which a timeframe should be provided and complied with.

New Provision: 2024 Rule

- The 2024 Rule includes a provision allowing the reasonable delay of the NOA for to the extent the postsecondary institution has reasonable concerns for the safety of any person as a result of providing the notice
- Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes

Tips to avoid losing time if there are safety concerns or other delays at the start of the investigation?



OCR Case Processing Manual – Case Planning

SECTION 301 **CASE PLANNING**

Case planning will begin as early as possible, will be thorough, and will continue throughout the processing of every case to ensure high quality decisions, prompt investigations and the efficient use of OCR resources. Planning decisions will reflect sound legal standards and will be adjusted as necessary to consider information obtained during case processing. See section 702. The scope of OCR's investigation and resolution activities will depend upon the allegation(s), issue(s), applicable legal standard(s), and the evidence obtained during the investigation.

Regional Office management and investigative staff are accountable for effective planning and will participate in critical planning decisions commensurate with the nature and complexity of the case to ensure consistent and high-quality casework.

The following essential elements of case planning will be addressed in every OCR file (unless inapplicable):

- The allegation(s);
- OCR's jurisdiction over the subject matter and entity;
- The legal standards, statutory and regulatory authority, and elements of proof;
- The scope of the investigation;
- The investigative strategy (i.e., what data and/or information are necessary to resolve the case and The means and methods OCR will employ to obtain the relevant data and/or information); and
- The resolution.

The case file will contain documentation that supports the decisions OCR makes. Planning documentation will be organized so that it can be readily located in the case file.

What case planning methods do you find most effective to improve timeliness in investigations?



Collecting Evidence

2020 Rule

- Burden of proof and of gathering evidence on the institution, not the parties
- Focus of investigation is on “relevant evidence” (not defined) but must share all “directly related evidence” collected during the investigation
- Three categories of evidence that is excluded from relevance

2024 Rule

- Burden of conducting an investigation that gathers sufficient evidence to make a determination is on the institution, not the parties
- Focus on “relevant” and “not otherwise impermissible” evidence
- Three categories of evidence that is not permissible even if relevant

“Relevant” Definition (2024 Rule)

- “Relevant” is defined as “related to the allegations of sex discrimination under investigation as part of the grievance procedures....”
- States further that “questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred
- States further that “Evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.”
- The Federal Rules of Evidence helpfully define “relevant” as evidence that makes a fact or issue in dispute more or less likely to be true.
- Per the preamble to the final rule: “These regulations adopt a definition of ‘relevant’ that reflects its plain and ordinary meaning and is intended to provide clarity for recipients that do not have extensive familiarity with legal concepts. The Department therefore declines to adopt the Federal Rules of Evidence’s definition of ‘relevant.’”

Impermissible Evidence (2024 Rule)

The following types of evidence, and questions seeking that evidence, must not be accessed or considered except to determine whether an exception applies; must not be disclosed; and must not otherwise be used, regardless of whether they are relevant:

- **Medical Evidence.** A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the educational institution obtains that party's or witness's voluntary, written consent for use in the educational institution's grievance procedures
- **Privileged Evidence.** Evidence that is protected under a privilege as recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality
- **Rape Shield Evidence.** Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred

Rights of Parties to Present Witnesses & Evidence

2020 Rule

- Provide an equal opportunity to parties to present witnesses, including fact witnesses, and other evidence

2024 Rule

- Provide an equal opportunity to parties to present fact witnesses and other evidence
- When investigating a complaint alleging sex-based harassment involving a student party, can allow expert witnesses as long as parties have the same right to do so

Right to Discuss Allegations Under Investigation

2020 Rule

- Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence

2024 Rule

- Take reasonable steps to prevent and address unauthorized disclosure of information and evidence obtained solely through the grievance process
- Must protect the privacy of parties and witnesses without restricting the parties' ability to obtain and present evidence, consult with family, confidential resources, or advisors, or prepare for grievance procedures
- Disclosures for administrative proceedings or litigation related to the complaint are authorized

How do party and witness disclosures of information impact investigations and how can you avoid those concerns?



Consider Party and Witness Warnings

“Please be aware that while you have the right to discuss this case with others for authorized purposes, disclosing information can have significant consequences. Whether you intend it or not, widely sharing information can lead others involved in the case to feel retaliated against, which can lead to complaints. Sharing information before a party or witness’s interview can also impact the credibility of parties or witnesses in the case. These actions could affect the investigation’s integrity and impact the outcome of the case. We urge you to limit your disclosure of information and evidence obtained solely through the grievance process to only what is necessary to obtain and present evidence, consult with family, confidential resources, or advisors, prepare for grievance procedures, or participate in any administrative proceedings or litigation related to the complaint. If you have any questions, please contact me before sharing the information.”

Advisor Requirements

2020 Rule

- Provide the parties the same opportunity to have others present
- Includes the opportunity to have an advisor of choice at any related meeting or proceeding
- The educational institution may establish restrictions regarding the advisor's participation if they are equally applied to the parties

2024 Rule

- Provide the parties the same opportunity to have others present
- In investigations involving a complaint alleging sex-based harassment involving a student party, must provide the parties the same opportunity to have an advisor of choice at any related meeting or proceeding

How do advisors positively and negatively impact the timing of Title IX investigations? How can you limit any negative impact?



Notice of Interviews

2020 Rule

The investigator must provide to any party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate

2024 Rule

Only when a higher education institution is investigating a complaint alleging sex-based harassment involving a student party must the investigator provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the party to prepare to participate

Where do you fall on the question of whether to provide notice in all cases, even if not required? In writing or is oral ok? Is the answer different in K-12?



IMPORTANT

New Provision: 2024 Rule

K-12: If a complainant or respondent is an elementary or secondary student with a disability, the educational institution **must** require the Title IX Coordinator to consult with one or more members, as appropriate, of the student's IEP team or 504 team, if any, to determine how to comply with the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 ("Section 504"), throughout the educational institution's implementation of grievance procedures under § 106.45.

Higher Ed: If a complainant or respondent is a postsecondary student with a disability, the Title IX Coordinator **may** consult, as appropriate, with the individual or office that the educational institution has designated to provide support to students with disabilities to determine how to comply with Section 504.

Evidence Sharing

2020 Rule

Must send, in an electronic format or hard copy, to each party and the party's advisor, if any, any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source

2024 Rule

- For a complaint alleging sex-based harassment involving a student party, a postsecondary institution must provide each party and the party's advisor, if any, either (1) access to the relevant and not otherwise impermissible evidence or (2) a written investigative report that accurately summarizes this evidence, with the option to request access to the relevant and permissible evidence
- For all other cases, must provide each party and the party's advisor, if any, either (1) access to the relevant and not otherwise impermissible evidence or (2) an accurate description of the evidence, with the option to request access to the relevant and permissible evidence

Party Response to Evidence

2020 Rule

- The parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report

2024 Rule

- A recipient must provide a reasonable opportunity to respond to the evidence or to the accurate description of the evidence
- For a complaint alleging sex-based harassment involving a student party, a postsecondary institution must provide the parties with a reasonable opportunity to review and respond to the evidence or the investigative report prior to the determination of whether sex-based harassment occurred

Investigative Report

2020 Rule

Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response

2024 Rule

- For a complaint alleging sex-based harassment involving a student party, a postsecondary institution must either provide access to the relevant and permissible evidence or to an investigative report that accurately summarizes this evidence, with the option to request access to the relevant and permissible evidence
- An investigation report is not required for any other cases

What methods can help speed up the evidence-sharing and report review process?



Bias in Investigations

- Personal biases, whether conscious or unconscious, can influence an investigator's judgment, leading to partiality in gathering evidence, interviewing witnesses, and making determinations
- Example: An investigator might subconsciously give more weight to testimony from someone they perceive as more credible based on irrelevant characteristics such as gender, race, or socioeconomic status

Conflicts of Interest in Investigations

- Investigators with a conflict of interest might have a personal or professional stake in the outcome of the investigation, which can compromise their impartiality.
- Example: An investigator who has a close relationship with one of the parties involved might inadvertently favor that party in their investigation.

Prejudgment in Investigations

- Forming opinions about the case before all evidence is collected and reviewed can lead to a biased investigation and flawed conclusions
- Example: An investigator who assumes a respondent's guilt based on previous unrelated incidents might not thoroughly investigate exculpatory evidence

What tips can you provide to help avoid bias, conflicts of interest, or prejudgment



Questions



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Summer 2024 Title IX Conference,
Day 1



Braving the Elements: Identifying, Investigating, and Analyzing Claims Under Title IX

Title IX Conference:
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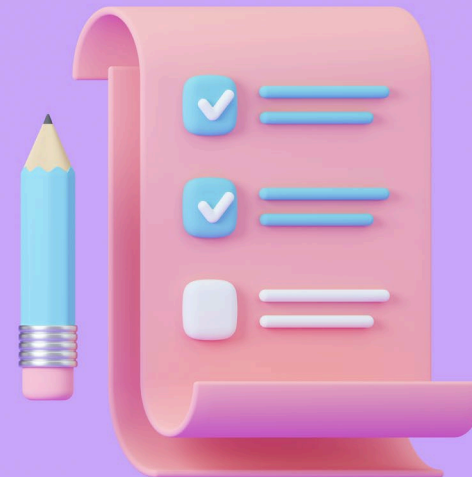
**BOISE STATE
UNIVERSITY**



**University
of Idaho**

Agenda

- Introduction to Elements
 - What are elements
 - Why elements matter
 - Evaluation
 - Notice of Allegations
 - Investigations
 - Decisions
- The elements in Title IX cases
 - Sex(ual or -Based) Harassment
 - Different Treatment
 - Disparate Impact
 - Failure to Accommodate
 - Athletics Equity
 - Retaliation
- Practice





Introduction to “Elements”

What are Elements?

- In the context of legal proceedings, including Title IX cases, the “elements” of a claim refer to the specific components or factors that must be proven to establish that a policy violation occurred
- The elements are different for different claims, and there are important differences between the elements of some claims between the 2020 and 2024 Title IX rule

Example

"My brother stole my cookie."

Claim: Theft

Elements: (1) the unlawful taking (2) of the property of another (3) without their consent (4) and with the specific intent to permanently deprive the owner of that property.

Ownership: Is there evidence to support or refute that the cookie was mine in the first place?

Taking: Is there evidence to support or refute that my brother took the cookie?

Without Permission: Is there evidence to support that the cookie was taken without my permission?

Intent to Deprive: Is there evidence that my brother meant to deprive me of the cookie?

Why Elements Matter

Elements serve as the building blocks of the case and provide a framework for understanding the nature and scope of the allegations from start to finish

Evaluation

Evaluation: Could the alleged facts, if substantiated, violate a policy of the educational institution? How do you know? Look at **the elements** in the policy.

At the restaurant tonight I wasn't hungry after my meal, so I got a cookie to go. I left the cookie on the counter in the kitchen while I showered. The cookie was gone when I got out of the shower. When I asked my brother if he had seen the cookie, he said no. He had crumbs on his shirt when I asked him. I think he took and ate the cookie.

Notice of Allegations

Notice of Allegations: The facts described in each allegation should match up with **each element** of the claim

The Complainant alleges that on July 23, 2024, the Respondent took and ate a cookie that belonged to the Complainant without the Complainant's consent.

Notice of Allegations

Notice of Allegations: The facts described in each allegation should match up with **each element** of the claim

The Complainant alleges that on July 23, 2024, the Respondent took **[taking]** and ate **[intent to permanently deprive]** a cookie that belonged **[property]** to the Complainant without the Complainant's consent **[consent]**.

Investigation

Notice of Allegations: The investigation should be focused on finding evidence related to any disputed element of the allegations

- The Respondent says that the cookie did not belong to the Complainant [property]
- The Respondent denies taking the cookie [taking]
- The Respondent denies eating the cookie [intent to permanently deprive]

Investigation

Notice of Allegations: The investigation should be focused on finding evidence related to any disputed element of the allegations

- The Respondent says that the cookie did not belong to the Complainant [property]
 - What do the grandparents say about whose cookie it was?
 - What supports the parties' claims about ownership – what details can they provide?
 - Is there any documentation to show ownership

Decision

Written Determination: The decision must analyze each disputed element to determine if there is sufficient evidence to support it

The parties dispute whether the cookie belonged to the Complainant. The evidence in support of the allegation includes the Complainant's statement that the cookie belonged to them and the grandparents' statements that they believed the Complainant did not eat their cookie at dinner but that they did not see the Complainant bring the cookie home. The evidence refuting the allegation includes the Respondent's statement that the cookie was leftover from a birthday party earlier in the week and a photograph of a wrapper with "happy birthday" on it that the Respondent said was from the cookie. When asked about the birthday party, the Complainant and the grandparents said they were not aware of a birthday party that the Respondent attended in the prior weeks. The Complainant also said that the Respondent regularly hides wrappers in their room and that the wrapper could have been months old for all they knew.

The background of the slide is a close-up photograph of numerous light-colored wooden blocks, similar to those used in a game like Tetris. The blocks are arranged in a complex, interlocking pattern, with some blocks partially visible at the edges. The wood grain is clearly visible on the surfaces of the blocks. A solid white horizontal band runs across the middle of the image, serving as a background for the title text.

Elements in Title IX Cases

Prohibited Conduct – Title IX

- Sex Discrimination
- In an Education Program or Activity
- Against a Person in the United States

Title IX Sex Discrimination

- Sex(ual or -Based) Harassment
- Different Treatment
- Disparate Impact
- Failure to Accommodate
- Retaliation

Sexual Harassment (2020 Rule)

- Employee quid pro quo
- Sexual assault
- Domestic Violence
- Dating Violence
- Stalking
- Hostile Environment Sexual Harassment

Sex-Based Harassment (2024 Rule)

- Employee or agent quid pro quo
- Sexual assault
- Domestic Violence
- Dating Violence
- Stalking
- Hostile Environment Sexual Harassment

Employee Quid Pro Quo (2020 Rule)

- An employee of the educational institution
- Conditioning the provision of an aid, benefit, or service on
- A person's participation in unwelcome sexual conduct

Employee Quid Pro Quo (2020 Rule)

- Is the Respondent an employee of the educational institution?
- Did the Complainant participate in conduct with the Respondent?
- Was the conduct sexual?
- Was the sexual conduct unwelcome?
- Did the Respondent condition an aid, benefit, or service on the unwelcome sexual conduct?

Employee or Agent Quid Pro Quo (2024 Rule)

- An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity
- Explicitly or impliedly conditioning the provision of such an aid, benefit, or service on
- A person's participation in unwelcome sexual conduct;

Employee or Agent Quid Pro Quo (2024 Rule)

- Is the Respondent an employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity?
- Did the Complainant participate in conduct with the Respondent?
- Was the conduct sexual?
- Was the sexual conduct unwelcome?
- Did the Respondent explicitly or impliedly condition an aid, benefit, or service on the unwelcome sexual conduct?
-

Sexual Assault

Rape

- Was there sexual penetration of the Complainant?
- Was it by the Respondent?
- Was there consent?

Fondling

- Did the Respondent touch the private body parts of the Complainant?
- Was there consent?
- Was it for purposes of sexual gratification?

Dating Violence

- Was there violence against the Complainant?
- Based on the length of the relationship, the type of relationship, and the frequency of interaction between the parties, was the violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant?

Domestic Violence

- Was there a crime of violence against the Respondent?
- Would it be a felony or misdemeanor under state law?
- Is the Respondent a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim?
- If not, is the Respondent cohabitating, or has cohabitated, with the victim as a spouse or intimate partner
- If not, did the Respondent share a child in common with the Complainant, or
- If not, was the crime committed against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction?

Stalking

- Was there a course of conduct?
- Was the conduct directed at a specific person?
- Would the conduct cause a reasonable person to fear for their safety or the safety of another?
- If not, would it cause a reasonable person to suffer substantial emotional distress?

Hostile Environment Sexual Harassment (2020 Rule)

- Was there unwelcome conduct?
- Was it based on sex?
- Was it severe?
- Was it pervasive?
- Was it objectively offensive?
- Was it so severe, pervasive, and objectively offensive that it effectively denied equal access to the education program or activity?

Hostile Environment Sex-Based Harassment (2024 Rule)

- Was there unwelcome conduct?
- Was it based on sex?
- Was it objectively offensive?
- Was it severe?
- If not, was it pervasive?
- Was it so severe or pervasive that it limited or denied the Complainant's ability to participate in or benefit from the recipient's education program or activity

Different Treatment Discrimination

- Different Treatment Discrimination occurs where, based on the totality of relevant facts, looking to direct evidence, circumstantial evidence, or both, an individual or a group of individuals is intentionally treated differently, at least in part, because of an actual or perceived Protected Characteristic or actual or perceived membership in a Protected Class
- Evidence that may support a finding of Different Treatment Discrimination includes direct evidence, such as a statement from a decision-maker that expresses a discriminatory motive or express or admitted classifications explicitly distributing benefits or burdens based on a Protected Characteristic

Different Treatment Discrimination

Absent direct evidence of discriminatory intent, examine the circumstantial evidence, typically asking the following questions:

- Did the educational institution or a member of the educational institution's community limit or deny educational or employment services, benefits, or opportunities to one or more members of a Protected Class by treating them differently from one or more individuals who are not members of that Protected Class? If yes, ask:
- Do the context and circumstances support finding a legitimate, nondiscriminatory reason for the different treatment? If no, there is sufficient evidence of Discrimination. If yes, ask:
- Is there sufficient evidence that the legitimate, nondiscriminatory reason is a pretext for Discrimination—in other words, it is not the true reason for the action? If yes, there is sufficient evidence of Discrimination.

Different Treatment Discrimination

- In evaluating claims of Different Treatment Discrimination, OCRI may also consider other circumstantial evidence to determine whether there was discriminatory intent underlying an action.
- Such circumstantial evidence may include but is not limited to whether the impact of the action weighs more heavily on members of a Protected Class, whether there is a history of discriminatory conduct toward members of a Protected Class, the administrative history behind a policy or decision, and whether policies or practices have been applied inconsistently to individuals of a Protected Class.

Disparate Impact Discrimination

Disparate Impact Discrimination occurs where:

- (1) A facially neutral policy, procedure, or rule has an adverse impact on one or more individuals based on a protected characteristic
- (2) The policy, procedure, or rule is not necessary to meet an important education goal or job-related and consistent with business necessity
- (3) Even if the policy, procedure, or rule is necessary to meet such a goal or necessity, there is a comparably effective alternative policy, procedure, or rule that would meet the goal or necessity with less adverse impact on the individuals disproportionately impacted, and
- (4) Even if there is not a comparable effective alternative, if the important education goal or job-related business necessity is a Pretext for Discrimination

Disparate Impact Discrimination

In evaluating claims of Disparate Impact Discrimination, consider:

- Does a facially neutral policy, procedure, or rule have an adverse impact on one or more individuals based on a Protected Characteristic? If yes, ask:
- Is the facially neutral policy, procedure, or rule necessary to meet an important educational goal or job-related and consistent with business necessity? If no, there is sufficient evidence of Discrimination. If yes, ask:
- Is there a comparably effective alternative policy, procedure, or rule that would meet the important goal or business necessity with less of a burden or adverse impact on the individuals disproportionately impacted? If yes, there is sufficient evidence of Discrimination. Even if no, ask:
- Is reliance on the goal or business necessity a pretext for discrimination? If yes, there is sufficient evidence of Discrimination.

Failure to Accommodate

- Discrimination can occur when the educational institution fails to reasonably accommodate or make reasonable modifications in policies, practices, or procedures based on pregnancy or a related condition when such accommodation or modification is necessary to avoid discrimination based on pregnancy or a related condition
- A member of the educational institution's community's decision to deny a request for a reasonable accommodation or modification can also constitute different treatment discrimination if the requirements of different treatment are established

Failure to Accommodate

When considering a complaint that a student was not reasonably accommodated, the educational institution will consider:

- Whether the student is a student who is experiencing pregnancy or a related condition
- Whether the student provided adequate notice to the educational institution that they believed they needed one or more academic adjustments, educational auxiliary aids or services, or modifications to one or more policies, practices, or procedures, and
- Whether a requested academic adjustment, auxiliary aid or service, or modification is or was necessary, and either:
 - The educational institution did not provide the academic adjustment, auxiliary aid or service, or modification, or
 - The academic adjustment, auxiliary aid or service, or modification provided were not of adequate quality or effectiveness.

Failure to Accommodate

If the answer to all questions is yes, there is sufficient evidence of Discrimination. For purposes of deciding whether a requested academic adjustment, auxiliary aid or service, or modification to one or more policies, practices, or procedures is necessary, the educational institution is not required to modify academic requirements that are essential to a program of instruction being pursued or to any directly related licensing requirement; provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature as auxiliary aids or services; or modify policies, practices, or procedures if doing so would fundamentally alter the nature of the service, program or activity.

Retaliation

- Retaliation is taking an Adverse Action against a person because the person engaged in or might engage in Protected Activity.
- Evidence that may support a finding of Retaliation includes direct evidence, such as a statement from a decision-maker that expresses a retaliatory motive or express or admitted classifications explicitly distributing benefits or burdens based on engagement in Protected Activity.

Retaliation

Absent direct evidence of retaliatory intent, OCRI examines the circumstantial evidence, typically asking the following questions:

- Did the Complainant engage in Protected Activity or did the Respondent believe the Complainant might engage in Protected Activity? If yes, ask:
- Did the Complainant subsequently experience an Adverse Action? If yes, ask:
- Is there some evidence that the Adverse Action was caused by the Protected Activity? If yes, ask:
- Do the context and circumstances support finding a legitimate, nonretaliatory reason for the Adverse Action? If no, there is sufficient evidence of Retaliation. If yes, ask:
- Is there sufficient evidence that the legitimate, nonretaliatory reason is a pretext for Retaliation? If yes, there is sufficient evidence of Retaliation

Retaliation

- In evaluating claims of retaliation, you may also consider other circumstantial evidence to determine whether there was retaliatory intent underlying an action
- Such circumstantial evidence may include but is not limited to whether the impact of the action weighs more heavily on individuals who engaged in protected activity, whether there is a history of discriminatory conduct toward those who engage in protected activity, the administrative history behind a policy or decision, and whether policies or practices have been applied inconsistently to individuals who engaged in protected activity



Brave the Elements



Brave the Elements

An employee reports that athletes on a particular team regularly slap each other on the butt during games



Brave the Elements

- Two employees begin dating and move in together
- One reports that the other is hitting them

Brave the Elements

- The parties in a sexual assault case attempt informal resolution, but the respondent decides to end the process before a resolution is reached
- While the investigation is ongoing, the respondent reports that the complainant has been telling students on campus that the respondent is a rapist and that people should avoid the respondent
- The respondent believes that the complainant is upset that the respondent did not agree to the terms the complainant proposed during informal resolution and is attempting to apply pressure to get the respondent to reconsider

Brave the Elements

An unknown student anonymously shared, on campus, an explicit video of a student

Brave the Elements

- A student files a sex harassment complaint against a teacher/faculty member
- The faculty member denies the charge and it is found to be unsubstantiated during investigation
- The student reports that the faculty member excludes the student from academic and social opportunities associated with the class, goes out of their way to avoid the student, making it difficult to get help after and outside of class, and gives off negative vibes toward the student (looks and body language)
- The faculty member acknowledges they have created some distance but says it is only for self-protection

Brave the Elements

A complainant student reports that another student put a hand on the complainant's chair when the complainant was sitting down and touched the complainant's crotch through the clothing

Brave the Elements

- A student alleges that their teacher/professor treats students of the complainant's gender differently in classes
- Students of complainant's gender are called on less frequently even when they raise their hands
- The students all talk about their grades, and students of the complainant's gender receive lower grades even though they generally have higher GPAs
- The teacher/professor allegedly makes comments in class about members of the complainant's gender

Brave the Elements

- A student asks their teaching assistant for some additional help in a class
- The teaching assistant sets up a time for the two to work
- During the session, the teaching assistant asked the student for a back massage while they discussed the project



Brave the Elements

- A student complainant reports that another student, the respondent, who is an individual with autism, won't take the hint that the complainant is not interested in the respondent
- The complainant says the respondent regularly waits outside the complainant's classes, comes to the complainant's sporting events and sits in the front row, and texts the complainant, sometimes sending dozens of messages back to back when the complainant does not answer

Brave the Elements

A student complainant reports that another student, the respondent, initiated sexual intercourse without asking while the two were "making out"

The complainant was so shocked they did not say no; they just froze and waited until the respondent finished

After, the complainant did not say much and just asked the respondent to leave

Questions?



Learning for Two: Pregnancy & Parenting Under Title IX and Related Laws

Title IX Conference:
Higher Ed & K-12 Training
July 23-24, 2024



Sponsored By



**BOISE STATE
UNIVERSITY**



**University
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Today's Panel



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Introduction

Discrimination based on pregnancy and parenting = discrimination based on sex

A few things to remember and consider:

- Do not ask (and definitely do not assume)
- Abortion and post-abortion conditions – talk to your GC
- How much do you document pregnancy and related conditions – talk to your GC



Overarching Principles

Title IX of Education Amendments of 1972

- Title IX prohibits discrimination based on sex in education programs or activities that receive Federal financial assistance. The Department's Title IX regulations prohibit discrimination based on pregnancy and related conditions in institutions that receive Federal funds (referred to here as "schools").'
- Has been in place since 1975



Pregnancy Protections Since 2020

- 2020 Title IX rule did not address pregnancy and parenting specifically

What they did do:

- Banned discrimination on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy (abortion, miscarriage, or stillbirth) and recovery
- Prohibited rules treating students differently based on actual or potential parental, family, or marital status
- Required schools to provide pregnant students the same services provided to students with temporary disabilities
- Did not clearly limit the types of medical documentation educational institutions could require to establish the need for those services
- Allowed schools to require a student to provide a physician's certification of ability to participate (physical or emotional) if required of other students under a physician's care
- No clear notice requirement for pregnant or parenting students
- Offered no clear right to lactation space
- Provided limited and unclear guidance on what efforts were required to prevent and respond to pregnancy and parenting discrimination claims
- Provided privacy protections for certain information collected during investigations

Students



Discrimination and Exclusion

Clearly covers pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

- Must not exclude from their education program or activity, including any class or extracurricular activity

Students

Discrimination and Exclusion

Classroom policies and practices must not discriminate against students.

Examples:

- A teacher may not refuse to allow a student to submit work after missing a deadline because of related absences due to pregnancy or childbirth.
- If grading is based in part on attendance/participation, the student should be allowed to earn the missed credit.

The student should be reinstated to their pre-leave status.



Students



Harassment

Title IX protects students against harassment by school employees and other students due to pregnancy and related conditions.

May file a grievance with TIXC.

Students

Equal Access

Schools must ensure:

- Pregnant students have access to the same educational opportunities as their peers
- *If you provide special services to students with temporary medical conditions, you must also provide them to pregnant and related condition students.*
- Examples could include homebound instruction/virtual instruction, tutoring, or independent study



Students

Reasonable Adjustments

- Required to provide
 - Larger desk, frequent trips to restroom, temporary breaks as needed, access to elevators

**Schools can only require pregnant students to provide medical certification for continued participation in the program or activity only if the same requirement is applied to all students with physical or emotional conditions requiring medical attention*

Leave Policies

- If a school does not have a leave policy for students, or the student does not otherwise qualify for leave under the policy, a school must provide leave to a student for pregnancy and related conditions for as long as the student's physician deems medically necessary. A
- After that leave, the student must be reinstated to the status the student held when the leave began.
- Any limits on excused absences should be equal to those provided for other temporary conditions or situations

Students



Reasonable Accommodations

Academic
Requirements

Safety Concerns

Excessive Financial
or Administrative
Burden

Program Structure

Absences

Employees

Nondiscrimination

- Schools must not discriminate against any employee, or exclude them from employment opportunities, on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom

Employment Policies and Practices

- Schools must ensure practices and policies do not discriminate on the basis of pregnancy (includes hiring, promotion, and benefits)

Leave Policies

- Must treat pregnancy-related conditions the same as other temporary disability for all job-related purposes

Employees



Reasonable Accommodations

Schools must provide reasonable accommodations for pregnant employees if they are requested and are reasonable under the circumstances. This can include adjustments to job duties or work schedules, similar to accommodations provided for other temporary disabilities.

Abortion and related conditions

20 U.S.C. §§ 1681 – 1688

Provides that nothing in Title IX requires or prohibits any person or entity from providing or paying for any benefit or service related to abortion.

Nothing in Title IX permits a penalty to be imposed on any person because the person is seeking or has received any benefit or service related to abortion.



We received a complaint. Now what?



If a student, employee, or applicant feels they have been discriminated against based on pregnancy or related conditions, including termination of pregnancy, they may file a complaint through their school's grievance procedures.

Must have a mechanism to investigate and evaluate complaints and must provide for prompt and equitable resolution of complaints.

Obligation to make sure these procedures are widely known to staff, students, parents, etc.

2024 Rule

Applies to all levels of education including students and staff – K12, undergraduate, graduate, students at professional schools, vocational students, incarcerated students, and non-employee postdoctoral trainees.

Specifically require:

- 1) Non-Discrimination against students
- 2) Equal Access and Adjustments (reasonable accommodations)
- 3) Medical and Parental Leave
- 4) Lactation Breaks (private, non-bathroom)
- 5) Must communicate grievance procedures to students and families, ensure they know how to report discrimination or request accommodations

2024 Rule: Protects all pregnancy related conditions



- Now includes infertility
- Since 1975 has included protections for "termination of pregnancy"
- At a minimum, leave must be provided for as long as medically necessary as determined on an individual basis by the person's health care provider
- A common presumption is 6 weeks of recovery for an uncomplicated vaginal birth and 8 weeks for an uncomplicated cesarean birth. Any leave must be entirely voluntary

2024 Rule – Title IX Coordinator Responsibility

Title IX Coordinators are ultimately responsible for ensuring that individualized reasonable modifications for pregnancy-related conditions are provided to students who needs them

- may delegate but TIXC must still oversee efforts

- not identical to disability accommodation standards



2024 Rule – Medical Documentation



When is it okay to ask?

- Faculty members should never request (instead, their obligation is to inform the student that the TIXC can help facilitate modifications and provide them with the TIXC contact information)

- The TIXC may request only under certain circumstances

- Remember to keep information on a need-to-know basis only

The institution has an obligation to protect personally identifiable information under section 106.44(j)

2024 Rule – Lactation Spaces



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2024 Rule

- A note about Licensing programs
- Modifications only required for students who have pregnancy-related conditions, not all parents
- Schools may make leave policies or provide changes for parenting students (for the purpose of caregiving). Parental leave or accommodation policies for caregiving purposes must be administered without distinction on the basis of sex or gender

Other Pregnancy Related Laws

Title VII of the Civil Rights Act of 1964

Pregnancy Workers Fairness Act (PWFA)



Other Pregnancy Related Laws

Fair Labor Standards Act (FLSA) as amended by the Affordable Care Act of 2010 & the Providing Urgent Maternal Protections (PUMP) Act

- Affordable Care Act 2010 amended FLSA to require break times for nonexempt employees who are nursing (but did not cover exempt employees)
- PUMP Act extends protections to exempt employees
- One year after child's birth, an employer must provide all nursing employees with:
 - Reasonable break times to lactate
 - A private place to express milk free from intrusion
 - Full regular salaries regardless of breaks (exempt), nonexempt breaks can be unpaid

Exception: less than 50 employees

Panel Discussion

Maria is a sophomore at your educational institution. She is five months pregnant and finds it increasingly challenging to sit through long classes due to back pain and frequent bathroom breaks. Maria requests modifications that will help her continue her studies comfortably.

Panel Discussion

Devin is in the last semester of her nursing program. Her due date is March 30 , which is about one month before classes end, and she is currently on track to graduate. She currently completes about 10 clinical hours a week at a local hospital. Devin contacts the nursing program in early February, which then sends her to the Title IX Coordinator for help with accommodations. At the time she meets with the Title IX Coordinator, she estimates that if she continues at her current rate of clinical hours, she will be 40 hours short at her due date.

Panel Discussion

For employees who are pregnant, what are some examples of accommodation requests you have heard that the school was not able to provide?

Panel Discussion

What are some things you have all seen go wrong in the process and what were your takeaways?

Panel Discussion

What types of documentation are you keeping on file regarding pregnancy and pregnancy-related conditions right now?

Panel Discussion

Questions from you?

Believe It or Not: Credibility Under Title IX

Title IX Conference:
Higher Ed & K-12 Training
July 23-24, 2024



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Credibility – 2020 Rule

Overall, the 2020 rules made it clear that investigators and decision-makers should evaluate and ask questions designed to help judge the credibility of the parties and witnesses. But, the 2020 rules also had words of caution...

From the 2020 preamble: If a recipient chooses to include a credibility analysis in its investigative report, the recipient must be cautious not to violate § 106.45(b)(7)(i), prohibiting the decision-maker from being the same person as the Title IX Coordinator or the investigator. Section 106.45(b)(7)(i) prevents an investigator from actually making a determination regarding responsibility. If an investigator's determination regarding credibility is actually a determination regarding responsibility, then § 106.45(b)(7)(i) would prohibit it.



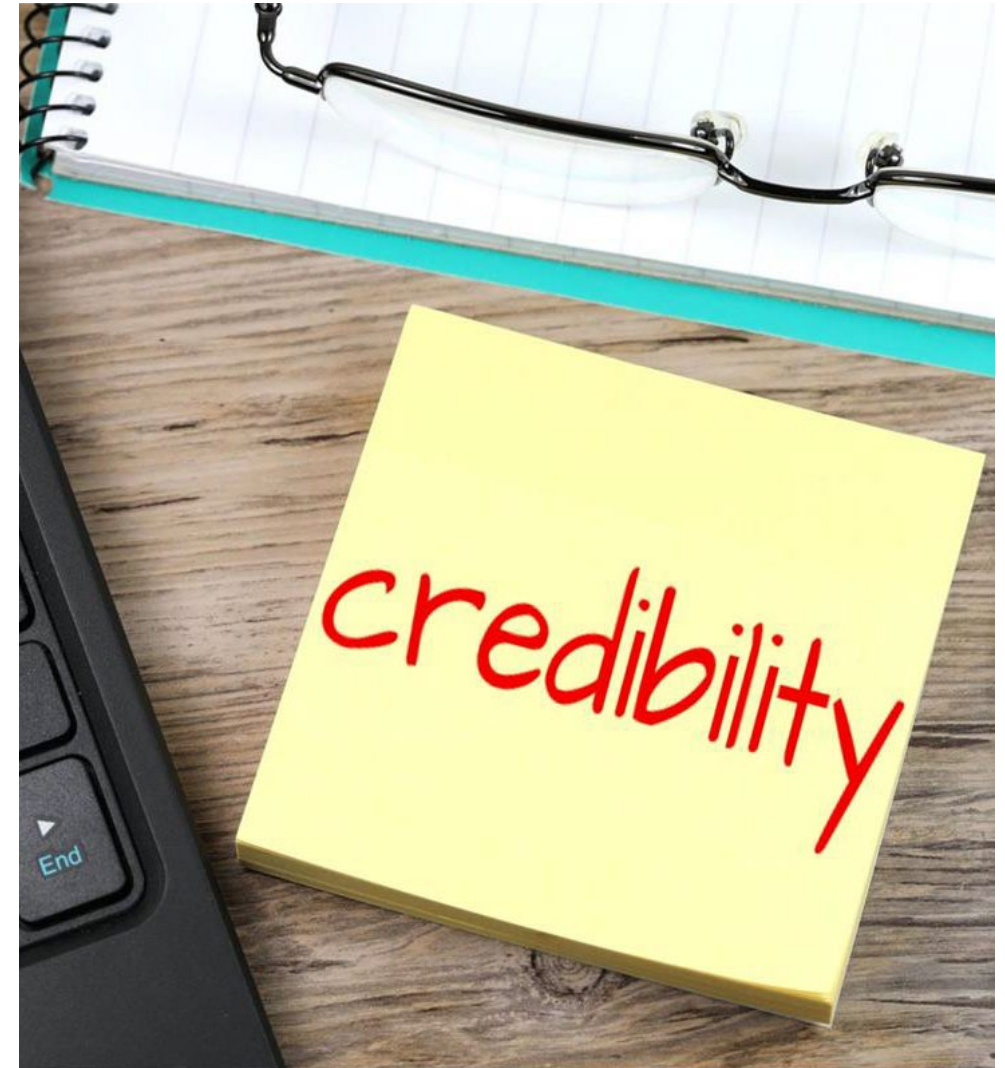
Credibility - 2020 Rule

More from the 2020 preamble:

We decline to expressly require the written determination to address evaluation of contradictory facts, exculpatory evidence, “all evidence” presented at a hearing, or how credibility assessments were reached, because the decision-maker is obligated to objectively evaluate all relevant evidence, including inculpatory and exculpatory evidence (and to avoid credibility inferences based on a person’s status as a complainant, respondent, or witness), under § 106.45(b)(1)(ii).

So, what is the overall theme?

- Avoid inferences based solely on a person’s status as a complainant, respondent, or witness
- We must assess credibility, but the Dept of Ed is leaving it up to us how to do so



2024 Rule - What has changed?

Section 106.45 requires institutions to provide a process enabling the decisionmaker to question parties and witnesses to assess credibility.

106.46

Individual Meetings (no hearings)

Each party may propose questions to be asked of any party or witness, AND

Has the right to have those relevant questions, including questions challenging credibility, asked by the investigator or decisionmaker during individual meetings

Hearings

Allow decisionmaker to ask questions and either:

A) Allow parties to propose questions and have asked by decision-maker or advisor

Prohibit basing credibility determinations on a person's status as a complainant, respondent, or witness.

§ 106.45(b)(6).

A recipient must provide a process that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility, to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination. For additional discussion of the evaluation of allegations and assessment of credibility, see the discussion of § 106.45(g).

When is credibility in dispute?

When the recipient's determination relies on testimonial evidence, including cases in which a recipient "has to choose between competing narratives to resolve a case."

2024 Rule

- *Refusal to respond to questions and inferences based on refusal to respond to questions.* A decisionmaker may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The decisionmaker must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.



Haven't we been using this all along?

Yes, the factors we will now cover in greater detail have been published since 1999 by the Equal Employment Opportunity Commission's (EEOC) Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors

- Panel - If we had to define credibility, how would you?



Credibility Factors

- Inherent Plausibility
- Motive to Falsify
- Corroboration
- Consistency
- Past Record
- Effect on Complainant*
- Demeanor*

Inherent Plausibility

- A few questions to ask yourself:
 - Is this testimony believable on its face?
 - Does it make sense?

Motive to Falsify

A few questions to consider:

- Did the person have a reason to lie?
- Why might someone lie? Is it the reason you think (watch for bias). If unsure, explore more within permissible bounds.

Corroboration

A few questions to ask yourself:

Is there witness testimony

First-hand eyewitnesses?

People who saw a Party immediately after
and discussed the events?

Physical Evidence that supports the testimony?

Consistency

A few questions to ask yourself:

- How is the person's testimony consistent overtime?
- Within interview?
- Between interviews?
- With witnesses?
- At decisionmaking or hearing phase?
- Subtle differences in how the person phrases events

A few questions to ask yourself:

- Does the Respondent have a history of similar behavior in the past

Past Record

Effect on
Complainant

A few questions to ask yourself:

- How might a reasonable person react after event? (there is NO right or wrong answer)
- Not determinative
- *Could* add some weight if immediately after there is some sort of adverse reaction by complainant

Demeanor

A few questions to ask yourself:

- Did the person seem to be lying or telling the truth?
- Other factors
- What other reasons could someone be acting in that way?

Panel Discussion



Panel Discussion



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A Fair Hearing? Mastering Procedures for Title IX Sex-Based Harassment Decisions

Title IX Conference:
Higher Ed & K-12 Training
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Insider's view on Hearings

This session will explore:

- What makes for a successful hearing under 2020 rules
- 2024 regulations – what should we do? To keep or not to keep hearings, that is the question.
- Conducting hearings with impartiality, equity, and through a trauma-informed lens



Elements of a Successful Hearing (2020 Regulations)

What do the regulations require?

- A “Decision-Maker” to determine whether the Respondent violated policy
- Treat the parties equitably; no conflicts of interest or biases
- Separation of roles (no single investigator model)
- Objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence
- Credibility determinations
- A “Live” Hearing
 - Cross - examination
 - In- person or video conference
 - Parties must have advisors conduct cross - examination



2020 Rule - Elements of a Successful Hearing cont.

Other procedural rights at the hearing:

- Notice of date, time, location, participants, etc. prior to hearing (10 day notice minimum)
- Inspect and review evidence and draft investigation report before it is finalized
- Ability to argue for the inclusion of "directly related" evidence at the hearing
- Notice of evidentiary standard being used (choice in regs)
- Presumption of non-responsibility

Preponderance of the evidence =
"More likely than not"

50% plus a penny or a feather



2020 Rule

**What happened prior to hearing
(simplified)?**



2024 Rule - Choices!



2024 Rule - Choices, Choices (but not really)

The 2024 rules state that the institution **MUST** provide a process that enables the decision-maker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.

*Standard of evidence used must be the same as what you use for all other comparable proceedings (did not change)

May establish restrictions on the extent to which advisors may participate (so long as they apply equally to the parties)

During evidence review period, institution **may** decide to allow parties to respond to the evidence prior to the hearing, during the live hearing, or after the live hearing.

Hearing is optional...so long as...

2024 Rule - Process for questioning

No Hearing

- Investigator or decisionmaker to ask questions challenging credibility during individual meetings with party or witness
- Allow each party to propose such questions, have them asked in individual meetings, including follow-up meetings
- Provide each party with an audio/video recording or a transcript with enough time for the party to have a reasonable opportunity to provide follow-up questions

2024 Rule – Process for questioning

Hearing

- Must allow decisionmaker to ask questions challenging credibility during individual meetings with party or witness
- Allow each party to propose such questions that the party wants asked of any party or witness and have those asked by decisionmaker, OR
- Allow each party's advisor to ask any party or witness such questions (if you choose this option, each party **MUST** have an advisor, and if they do not, institution still must appoint one)
- If advisors are allowed to ask questions, process should mirror current process (i.e., decisionmaker must determine if question is relevant, must explain any decision to exclude a question as not relevant or as otherwise impermissible, give a party opportunity to clarify or revise a question that is unclear or harassing)
- Must record and keep record available
- If a party or witness refuses to answer a question, they must not draw inference about whether sex-based harassment occurred based solely on a party or witness refusing to answer live question(s)

Choosing the "right" decision-maker(s)

Curiosity

Patience

Ability to weigh
evidence

Questioning skills

"Control" of the
hearing

Impartiality

Understands
definitions

Trauma informed

Strong writer

Understanding
of mental health
issues and impact

Effects of trauma
on the brain

Cultural
competencies

Panel Discussion

What are some challenges you have faced as a decision-maker during a hearing?



Conflicts of Interest - Panel Discussion

CONFLICT
OF INTEREST

- What is a conflict of interest?
- What creates them?
- How do you handle them being raised prior to or at the hearing?



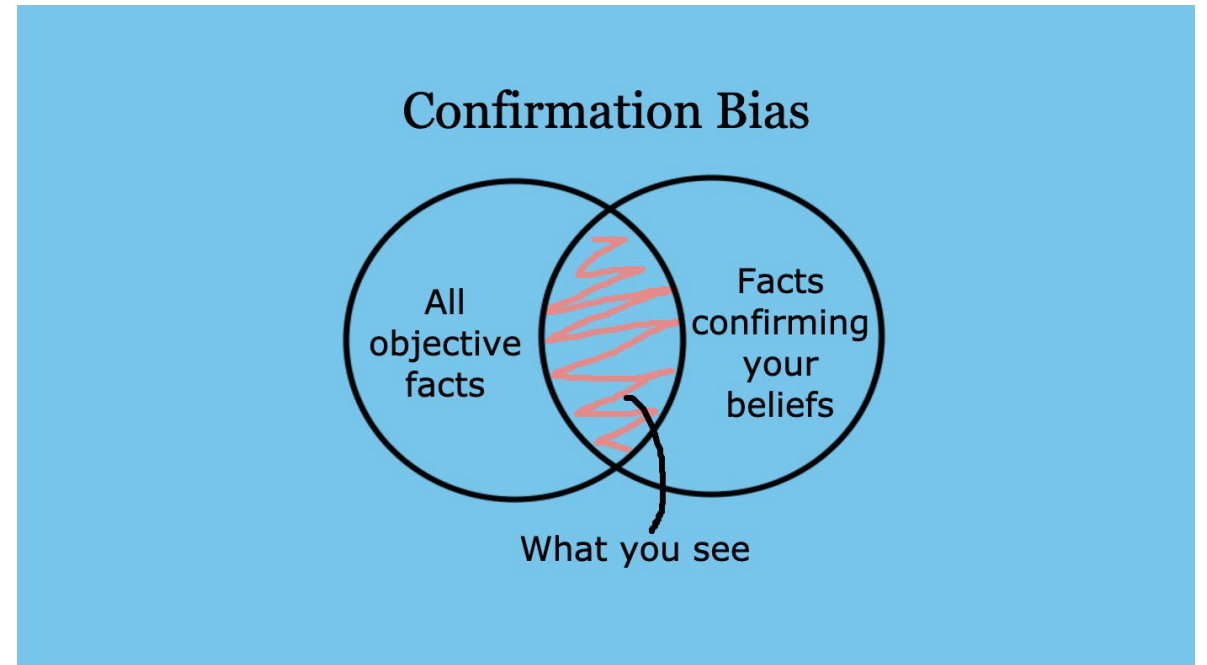
Quick Bias Overview

Why is this important?

- We all have it
- How do we define it? (did it improperly influence the decision)
 - Examples?

When must someone recuse?

Title IX Coordinator makes final call.



What tips can you provide to help avoid bias, conflicts of interest, or prejudgment



Let's Talk Due Process

Substantive

The decision must be:

- Impartial and fair
- Made in good faith
- Neither arbitrary nor capricious
- Based on policy
- Be substantially based upon the evidence

Procedural

- Did we follow our process
- Substantial compliance with policies and procedures

Reminder: Excluded Evidence

- 1) **Protected under Privilege:** Evidence protected under a privilege as recognized by Federal or State law unless person to whom the privilege or confidentiality is owed has voluntarily waived
- 2) **Medical Documentation:** A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional unless there is voluntary, written consent
- 3) **Prior Sexual History:** Evidence that relates to the complainant's sexual interests or prior sexual conduct unless that evidence is being used to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the Respondent that is offered to prove consent to the alleged conduct

Written Determination

2020 Rule

- Allegations
- Description of procedural steps
- Findings of fact supporting the determination
- Conclusions regarding the application of recipient's code to facts
- Statement of, and rationale for, the result as to each allegation, including a determination of responsibility, any disciplinary sanctions and remedies
- Bases for appeal
- Provide written determination simultaneously

2024 Rule

- Allegations
- Policies and procedures that the institution used to evaluate the allegations
- Decisionmaker's evaluation of the relevant and not otherwise impermissible evidence and determination whether sex-based harassment occurred
- Disciplinary sanctions, remedies imposed
- Appeal procedures
- Date decision becomes final

Panel Discussion and Audience Questions

