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**COLORADO**  
Department of Education

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

(part 2)

# Technology

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# Schedule

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

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



# Meet the Presenters



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



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

# Disclaimer



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



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# Agenda

## Webinar part 1: What It Is

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

## Webinar part 2: Steps to Take

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

# Webinar part 1



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





The journey towards implementation



# Updating and Adopting Exhibit, Policies, and Procedures



# For CASB Members

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

## Other Relevant Policies

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



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**Remember...**

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

# How to Use CASB Policies

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



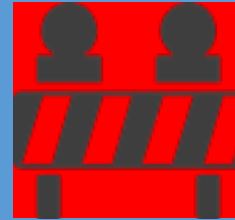
# Additional Considerations for Grievance Process and Procedures

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

# Additional Considerations for Grievance Process and Procedures, continued

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

## Distribute and Post



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



# 1 & 2: Post Policy & Title IX Contact



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

### 3. Post Grievance Procedures



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

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

[January 2001 Revised Sexual Harassment Guidance](#)

## 4. Post Training Materials



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

# Website

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

## Suggestion

Create a page on the website that includes:

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



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

# Example: Cherry Creek School District



[About Us](#)

[Academics](#)

[Programs and Services](#)

[Admissions](#)

[Community](#)

[Careers](#)

[Forward Together 2020-21](#)

[Planning Forward Budget](#)

## Visit Us

4700 South Yosemite Street  
Greenwood Village, CO  
80111

[DISTRICT MAP](#)

## Get in Touch

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

[CONTACT US](#)

## Important Links

[Site Map](#)  
[Financial Transparency](#)  
[Non-Discrimination Policies](#)  
[Website Accessibility](#)

# Example, continued

## Legal Resources

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

## Non-Discrimination Policies

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

## Get In Touch

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

Expand All

American with Disabilities Act (ADA) Compliance +

Section 504 Law +

Website Accessibility +

Title IX +

# Example, continued

## Title IX

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

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

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

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

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

### Title IX Forms & Training Materials

[Complaint Form ↓A](#)

[Complainant Rights ↓A](#)

[District Complaint Form ↓A](#)

[Notice of Complaint & Rights ↓A](#)

[Title IX Training 2020-2021 ↓A](#)

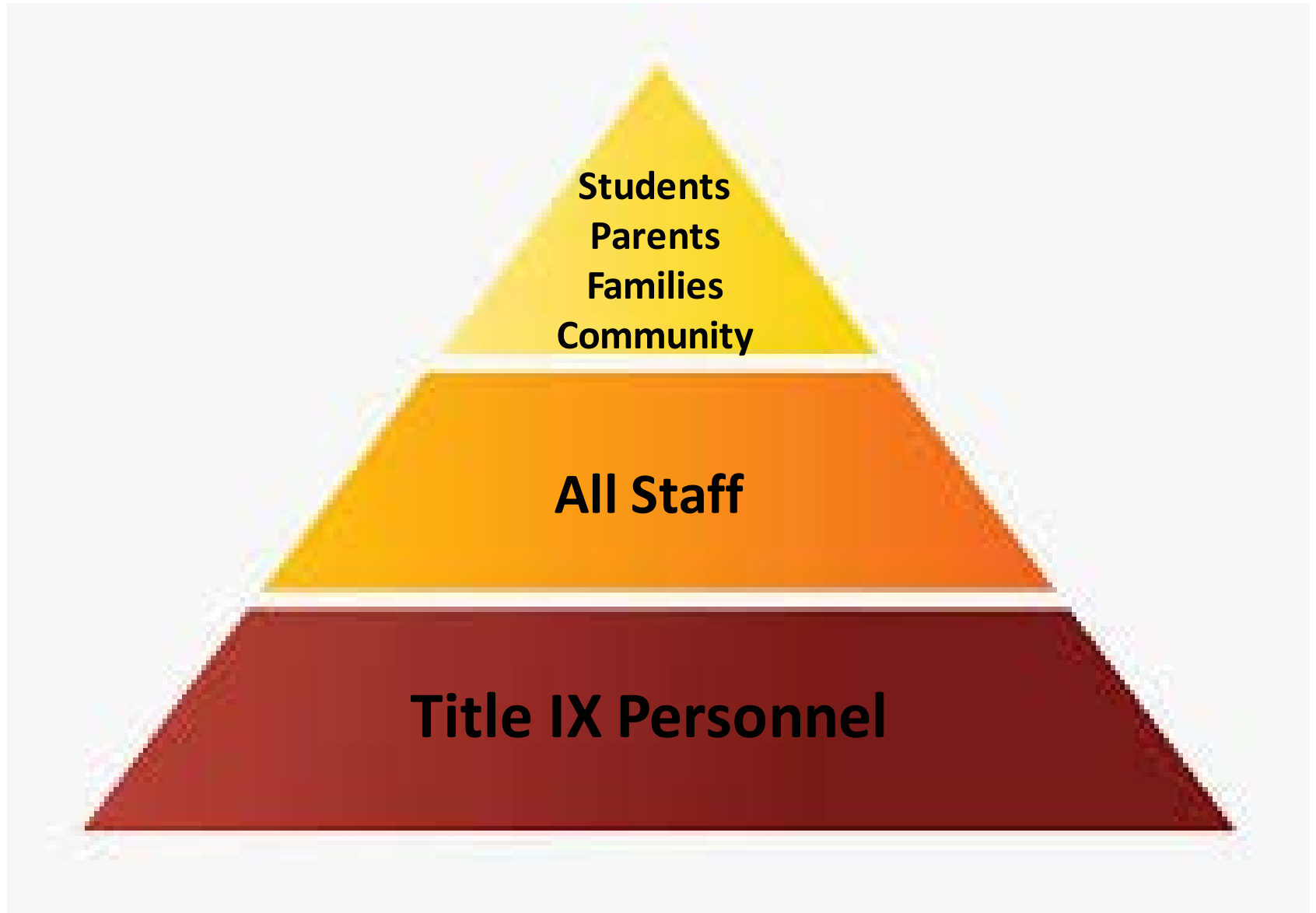
[Title IX Coordinators ↓A](#)

# Education and Training





# Depth of Knowledge





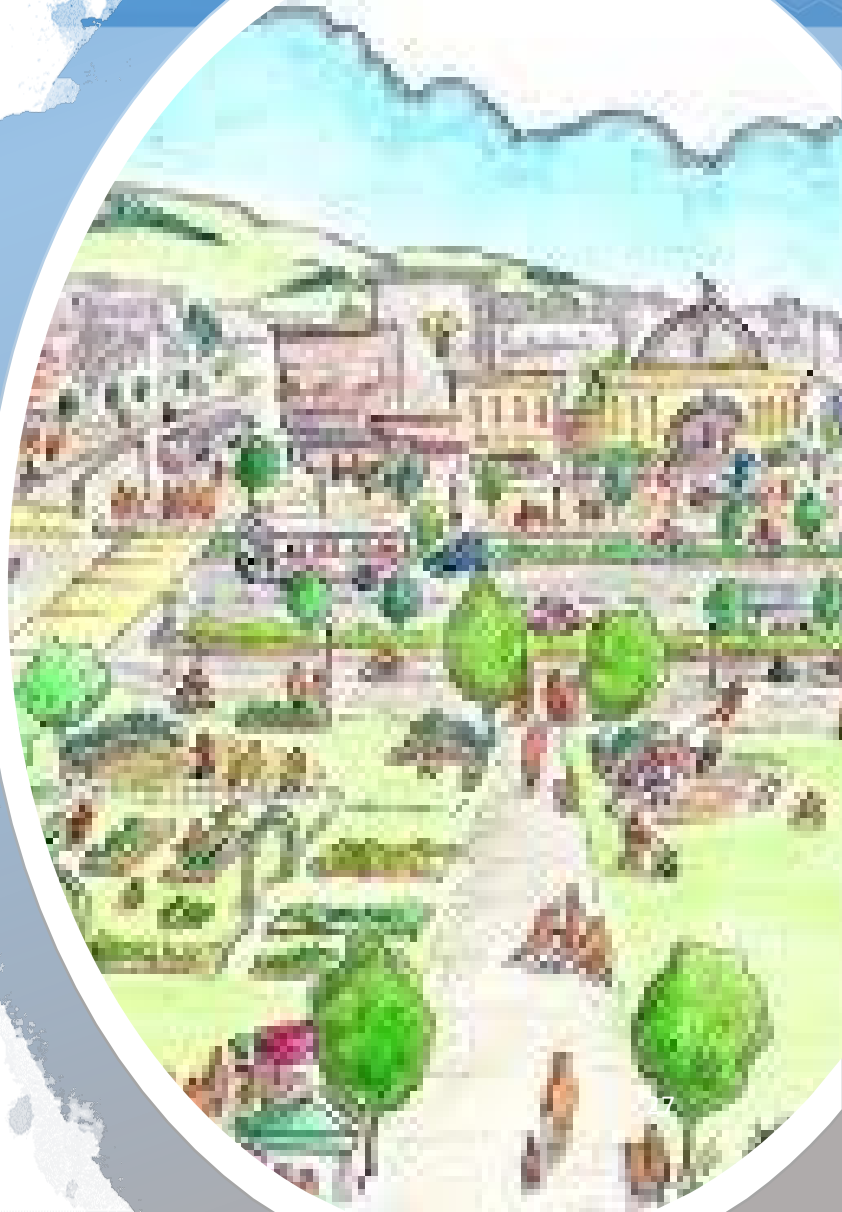
# **Educating Students, Parents, Families, and the Community**



# Who Needs to Know?

## All of the educational community:

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



# What do they need to know?

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

# Educating All Staff



# Important Information



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



# Who is All Staff?

## Includes:

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

**Any adult working in the school**

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





# What to Include in Staff Level Education

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



# What to Include in Staff Level Education continued

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

# What to Include in Staff Level Education continued

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

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



## Insert links to:

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

# Training Title IX Personnel



# Disclaimer



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



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# Who Can Train Title IX Personnel?



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

# Training Investigators



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

# Training Investigators continued



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





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

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

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

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

# Training Decision Makers



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

# Training Decision Makers continued



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

# Training a Person Who Facilitates Informal Resolutions

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

- Voluntary
- Informed
- In writing



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

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

# Training Coordinators

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

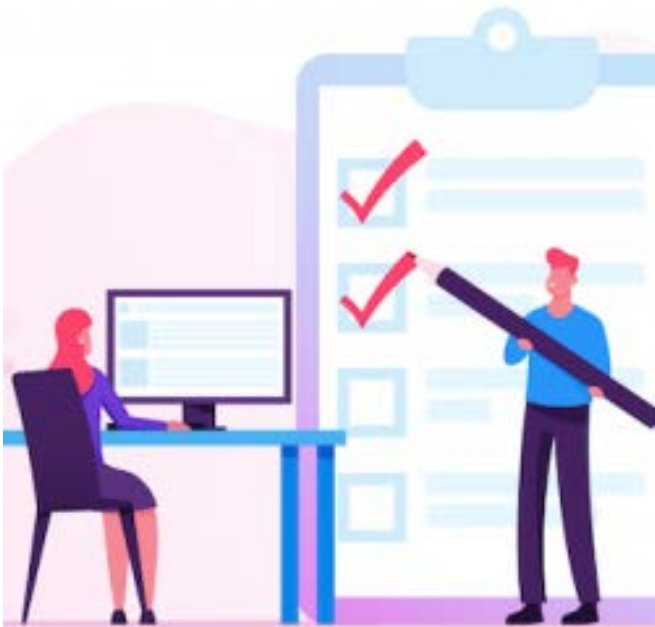


# Documentation and Maintenance of Records



# Documentation

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



# Maintenance of Records

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





# Resources

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

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

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

# Title IX Implementation Checklist



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## **TITLE IX Implementation Checklist**

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



# Prerecorded Webinars

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

# Title IX Interpretation through Rule & Guidance



## Sex-Based Discrimination

### Prevent & Respond to Sex-Based Discrimination

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

### Prevent & Respond to Sexual Harassment



# CDE's Title IX Webpage



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## Title IX of the Education Amendments of 1972

### Title IX States

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

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

### Sex Discrimination

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

[Frequently Asked Questions about Sex Discrimination](#)

[Culturally and Linguistically Diverse Education Home](#)

[Statewide Support](#)

[ELD Program Requirements](#)

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

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

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

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

[Title VI](#)

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

[Athletic Opportunities and Benefits](#)

[Pregnant or Parenting Students](#)

[Sex-Based Harassment](#)

[Single Sex Classes and Schools](#)

[STEM](#)

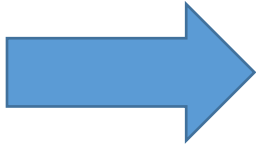
# Title IX List Serve

- Annual collection
- Through the consolidated application for federal funds

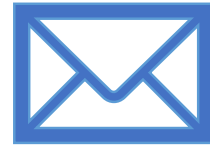
*“No person in the U.S. shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance”*

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

# To be Added to the Title IX List Serve



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



# Questions Received

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





## Questions Received, continued

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

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



# Questions

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

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



# Contact Us



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