ТІТІ	LE IX – WHERE ARE WE?	
	Megan Morris, Esq. Kaleva Law Office	
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WHY ARE WE DISCUSSING THIS?

August 2020 – Regulations went into effect for the first time governing the handling of sexual harasument complaints

Loss of concern regiment per process
July 2021 – Proposed changes to 2020 regulations issued by US DOE significantly changing the process and cope of complaints to be addressed

April 2024 – US DOE sussed the "new" final regulations

- Intended to become delican-lay, 1,2024

- The main concern was that these new regulations specifically included gooder detertly under the didination of sex.

- 2024 – Science of concern for concern regulations and concerns a concern results and concerns a concerns a concerns a concern results and concerns a concerns a concerns a concerns a concern results and concerns a concerns a concerns a concerns a concern results and concerns a concerns a concerns a concerns a concern results and concerns a concerns a concerns a concerns a concern results.

- The man concern west rat mose new registories operating recitized ground relating under the control of the plane 2024 a Ford Court in Louisian engloists the new regulations in Louisians, Missistepyl, Montana, and Islaho. The 5° and 6° Circuit Court of Appeals rejected requests to stay the injunctions due to the litigation.

 August 2014 U.S. Supreme Court rejects requests to stay the injunctions.

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WHAT DOES THIS MEAN?

Until there is final resolution on the litigation regarding the "new" regulations, Montana school districts must continue to implement the August 2020 regulations.

Montana school districts cannot implement the "new" regulations, and US DOE cannot enforce the "new" regulations in those states and other school districts subject to the injunctions.

**117	IT DO THE 2020 REGULATIONS GENERALLY ADDRESS?
• Whe	n and how should schools respond to sexual harassment allegations:
ind kno	nerally, the regulations require a school or district to respond "promptly" and not in a "deliberately different" manner (i.e., not "clearly unreasonable in light of the known circumstances") when it has "actual whelegie" of sexual harassment" in its "education program or activity" against a person in the United tes.
• Pro	mpt response that is not deliberately indifferent - Implementation of Grievance Process

POLICY AND PROCEDURES

- The 2020 regulations require a district to notify stakeholders and publish on its website and in its handbooks and catalogs:
 Tide IX Coordinator contact information: Names, office addresses, emails, phone numbers.
 General statement regarding nondiscrimination on the basis of sex.
 DOES NOT HANETO BETHROUGH POLICY
 A district also must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging sex discrimination and grievance process specific to sexes a present process specific to sexes specific to sexes a final harassment allegations that meets certain minimum requirements.
 This does not have to be through policy but has to be published!

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GENERAL REQUIREMENTS THE GRIEVANCE PROCESS

- Provide for the "prompt and equitable" resolution of student and employee complaints.

 Treat complaintes and respondents equitably.

 Require an objective evaluation of all relevant evidence.

 Require that "Tills It conclusions have a proposed to the proposed of the prop

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GRIEVANCE PROCEDURES	Districts should have them – REVIEWTHE GRIEVANCE PROCEDURES IN PLACE!! KLO procedures are different than the MTSBA template. Pay attention to the timelines! Many grievance procedures have a 60-day timeline, which requires a written determination within 60 days of receipt of complaint. Make sure grievance process is followed!		
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TITLE IX CO	ORDINATOR		

The Investigator carries out an investigation by conducting interviews of the involved individuals and witnesses, collecting documentary and other evidence, and drafting an investigative report. The Title IX Coordinator may serve as Investigator, but the person cannot have a conflict of interest or bias. Districts can outsource the investigation.

District must have at least one district-level Title IX Coordinator and can designate a Title IX Coordinator at each school. This role cannot be outsourced.

The district-level or school-based Title IX Coordinator's overall responsibility is to coordinate compliance efforts by, among other things:

Developing materials and ensuring that professional development occurs for staff involved in Title IX efforts.

Do effors.

Creating systems to centralize records and gather relevant data.

Meeting with complainant and his or her parents/guardinas once made aware of alleged sexual harassment (ganage be delegated to support staff).

Coordinating implementation of support measures.

Signing a formal complaint to initiate grevance process (cannot be delegated to support staff).

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- The Decision Maker reaches the responsibility determination by applying the standard of evidence selected by the district: "preponderance of the evidence" or "clear and convincing."
- Neither the Title IX Coordinator nor Investigator may also be Decision Maker. However, Investigator may offer recommendations to Decision Maker.

APPELLATE DECISION MAKER

- A different decision maker must be assigned to handle any appeals of the decision maker's determination.
- $\label{eq:Appellate Decision Maker cannot be Title IX Coordinator, Investigator, or Decision Maker.$

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HOW SHOULD SCHOOLS RESPOND TO SEXUAL HARASSMENT ALLEGATIONS?

- If a school has actual knowledge of sexual harassment allegations, the school must respond promptly and in a manner that is not deliberately indifferent (i.e., not "clearly unreasonable in light of the known circumstances").

 A school must offer "supportive measures" to the alleged victim (compainant) and follow a grievance process that meets certain minimum requirements before imposing discipline or other actions that are not supportive measures against an alleged perpetrator (respondent).
- A school may not continue with the grievance process in the absence of a formal complaint. There is no such thing as an "informal" process or investigation.

ACTUAL KNOWLEDGE

- A school or district has actual knowledge when notice or allegations of sexual harasment are reported to any chool employee; or any employee personally observes such behavior A school or district employee includes Title IX Coordinator, administrators, teachers, teacher's aides, bus drivers, cafeteria workers, counselors, school resource officers, maintenance staff workers, or any other employee.

 Actual knowledge is met when any employee:

- Principase the Conduct.

 Hears about the conduct from the alleged victim or anyone else (e.g., parent, friend, peer, anonymous reporter).

 Receives a written report of the conduct from the alleged victim or anyone else.

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Category I Quid pro quo harassment by a school employee to a student — the employee conditions some type of aid, benefit, or service on the student's participation in unwelcome sexual conduct "SEXUAL HARASSMENT" "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" IS CONDUCT ON THE BASIS Category 3 Other conduct defined by federal law: Sexual assault Dating violence Domestic violence Stalking OF SEX THAT IS... © 2024 Kaleva Law Office

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"UNWELCOME CONDUCT"

Severe, Pervasive and Objectively Offensive as determined by Reasonable Person

AND

- "Effectively denies a person's right to equal access to its education program or activity"
- Determined in comparison to similarly situated person not suffering alleged sexual harassment
- No actual loss required but could be shown by school avoidance, academic decline, behavior issues, quitting team/activity

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SEXUAL ASSAULT

Sexual Assault: An offense that meets the definition of rape, fondling, incest or statutory rape as used in the #81s Crime Reporting system. A sex offense is any sexual act directed against another person, without the consent of the victim, including instructes where the victim is incapable of giving

Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Fondling: The touching of the private body parts of another person for the purpose of sexual granfication, without the consent of the victim, including intrances where the victim is incapable of giving consent because of higher tage or because of higher temporary or permanent mental.

Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.

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JURISDICTION -- "EDUCATION PROGRAM OR ACTIVITY"

- Education program or activity
 - Locations, events, circumstances (operations) over which the district exercised substantial control fact dependent
 - Over both the respondent AND the context in which the sexual harassment occurs.
- Includes online sexual harassment but it must be analyzed to determine if it occurs in education program or activity.
- Does not crace or apply a geographic test, does not draw the line between "off-campus/property" and "on campus/property", and does not create a distinction between sexual harassment occurring in person versus online.
- EVEN IF OUTSIDE JURISDICTION OFFER SUPPORTIVE MEASURES

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WHAT ARE THE BASIC STEPS REQUIRED?

- Duzrict receives actual knowledge of conduct that may constitute sexual harassment.

 This IX Coordinator meets with alleged victim (complainant) to discuss supportive measures and the process for fileg a formal complaint.

 Written notice to complaint and alleged perparative (respondent) regarding the complaint and process. Interest process to complaint and alleged perparative (respondent) regarding the complaint and process in lessestigative report, the investigation confuses period post orderion. Investigation prepares in investigative report, the prints and their parent/guindlines review and respond to the report. Described Parlies and the parent/guindlines review and respond to the report.

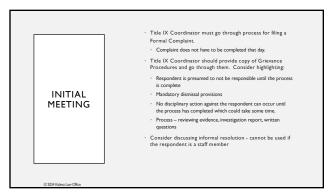
 Described Parlies provides opportungly for investigation and preventing and respond to the report.

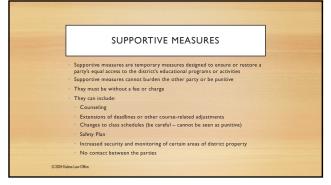
 Described Parlies provides opportungly for investigation and preventing and respond to the report.

 Described Parlies provides and the parent guintless review and respond to the report.
- Parties can appeal on a limited basis to appellate Decision Maker.

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INITIAL MEETING	With actual knowledge: Title IX Coordinator must "promptly" contact the alleged victim and his or her parents/guardians to discuss the availability of and consider their wishes regarding supportive measures Supportive measures are available with or without the filing of a formal complaint. Must consider alleged victim's wishes THIS IS NOTTHE INVESTIGATION!
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FORMAL COMPLAINT → THE GRIEVANCE PROCESS

No investigation of alleged sexual harassment may occur until after a formal complaint has been filed.

- The formal complaint must be filed by the complainant or his or her
- parent/guardian. It must describe the sexual harassment allegations.
- parentiguardian. It must describe the sexual harassment allegations.

 The formal complain may be field at any time as long as the complainant is "participating in or attempting to participate in the education program or activity" of the district at the time of filing (e.g. current sudent or employee).

 The Title IX Coordinator may initiate a formal complaint on his or her own if the decision is not clearly unreasonable in light of the known circumstances ("deliberately indifferent").

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WHEN MUST OR MAY A SCHOOL DISMISS A FORMAL COMPLAINT?

A school mast dismiss a formal complaint for <u>our posts</u> of <u>Trife IX "sexual harastment"</u> under certain the contractives, including — The adaptic conduct were from, would not constitute seasonal harastment.
— The adaptic conduct were from, would not course in the school destrict education program or activity.
— The adaptic conduct, were from, do not occur against a person in the United States.
— A school <u>mast</u> discretionary) dominals formal complaint during the grivarious process under certain contractives.

- Irromatia/Text, including:

 The allegade preparation in no longer enrolled or no longer employed by the district.

 The complainate and his or her parental/pardians notified set Tide IX Coordinator in writing that the formal complains or any alleginess there are a writing that the formal complains or any alleginess there are a writing that the formal complains or alleginess there are writing that the formal complains or alleginess therein.

 Specific commissions prevent the school district from gathering evidence sufficient to reach a determination regarding the horizon (complaint or alleginess therein.)

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POTENTIAL SITUATIONS WHERE TITLE IX COORDINATOR MAY NEED TO SIGN A FORMAL COMPLAINT

- Allegations involving staff member as the alleged perpetrator
- Allegations involving multiple complainants
- Allegations of multiple incidents over a period of time involving the same perpetrator
- Allegations against multiple perpetrators
- Allegations against minippe per ped ators
 Allegations involving potential sexual
 harassment where complainant will not
 sign a formal complaint and not moving
 forward with the grievance process (i.e.,
 investigation) would be deliberately
 indifferent given the severity of the
 allegations

CRITICAL QUESTIONS FOR TITLE IX COORDINATOR

I. Do the allegations allege conduct within the district's education programs or activities?

programs or activities?

2. Do the allegations actually allege conduct which could be sexual harassment?

If NO → Title IX does not apply

3. If the alleged conduct is sexual in nature, even if true, is it sexual harassment as that term is defined?

If NO → Mandatory Dismissal even if Formal Complaint is signed

CONDUCT AT ISSUE SHOULD BE INVESTIGATED UNDER STANDARD INVESTIGATION PROCEDURES AND CAN BE ADDRESSED UNDER OTHER POLICY/CODD OF CONDUCT IF FOUND TO BE INVISITION

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INFORMAL RESOLUTION PROCESS

- Not Required

 May be offered only after a formal complaint has been filled.

 Look as givenore procedures for process.

 Max clean voluntary, writing consuct from parties to participate in informal resolution after sharing
- The allegations.
 The requirements of the informal resolution process.
 Any consequences resulting from participation in the informal resolution process (e.g., records that will be maintained or cools be stifred.)

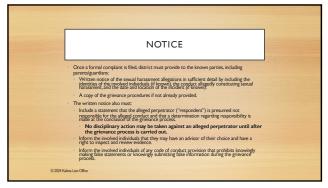
Anyone may withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

BUT Informal Resolution cannot be offered if the alleged perpetrator is an employee.

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- √ Notice
- ✓Investigation
- √Party Review of Investigation Evidence and Report
- √Written questions and answers
- √Responsibility determination
- √ Appeal
 - Must have reasonably prompt timeframes for carrying out the grievance process.



EMERGENCY REMOVAL AND ADMINISTRATIVE LEAVE

- A district may not sanction or remove a student except:
- Emergency removal may occur if the district has (I) undertaken an individualized safety and risk analysis; (2) determined that an immediate threat to the physical health or safety of a student or other individual arising from the allegations justifies removal; and (3) provided the allegad perpetrator with notice and an opportunity to challenge the decision immediately following the removal.
- A district may place an employee on administrative leave for the duration of the grievance process

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INVESTIGATION

- Provide an equal opportunity for the involved individuals to present witnesses (including fact and expert witnesses) and other inculpatory and exculpatory evidence.
 Privilege considerations apply.
- Provide an equal opportunity to the involved individuals and their parents/guardians to inspect and review evidence and respond prior to completing the investigative report.
- Create an investigative report that fairly summarizes relevant evidence and share with the involved individuals and their parents/guardians for review and response.

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	CONDU	JCTING THE INVESTIGATION	
		s (note that individuals can refuse to participate)	
	 Interview parties 	ns for parties and witnesses and witnesses – take notes! – internal (i.e., district sources) and external (parties and	
	witnesses) Determine any fo		
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_			_
		 Role of Investigator is to determine 	
	RELEVANCY	whether information is RELEVANT • Something is relevant if it has value in	
		proving or disproving a fact at issue	
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			٦
		• Role of Investigator is to assist with	
		 Role of Investigator is to assist with credibility determination but not actually make ultimate determination 	
		 Ask questions to test a witness's memory Identify where a witness may 	
	CREDIBILITY	 Identify where a witness may corroborate or contradict previous statements, or other witnesses, and physical evidence 	
		physical evidence Gather facts on credibility to assist decision maker	
		Consider impact of potential trauma	

INSPECTION AND REVIEW OF EVIDENCE

- · Provide ALL Evidence to both parties
- · Include everything directly related to allegations
- If something is not relevant, should be noted but must still be shared Allow 10 days for parties to review

- Allow written response from parties within 10 days Investigator may follow up where necessary Consider responses when preparing report

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WRITTEN INVESTIGATION REPORT

- Summarize facts
- · Assess credibility for Decision Maker
- No determination is made regarding whether "sexual harassment" occurred
- Must be provided simultaneously to both parties
- Allow 10 days to review and submit a written response

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DECISION MAKER

- First step is facilitation of the written questions
- Questions

 Can be concurrent with investigation report review check your grievance procedures!

 If concurrent, possible party may object and claim inadequate process
- Next step is analysis of evidence and investigation report as well as responses by parties
- Final step is preparing the written determination

WRITTEN QUESTIC	ONS AND ANSWERS
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ROLE OF DECISION MAKER

- Conduct an independent, objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence
- If this has not occurred previously by the Title IX Coordinator, mandatorily dismisses Title IX complaints that do not rise to the level of "sexual harassment," did not occur in the (districts) education program or activity, or did not occur and the the districts).

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RELEVANCY

Ultimate determination of relevance is the Decision Maker's even if the investigator determines something is not relevant.



This means that the Decision Maker must look at EVERYTHING (both what investigator determined to be relevant and what is directly related to the complaint) and then make an independent determination on relevancy.

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- To make a determination of responsibility, there must be evidence to show that it is more likely than not that
 each and every element of the Title IX policy regarding sexual harassment is met.
- · Review the definition

ANALYZING THE ELEMENTS

- Break down the definition into elements by making a checklist
- Re-read the definition.
- Have you accounted for all of the language in the definition?
- Are there any definitions that should be included in your element checklist?
- · Sort evidence according to element

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WRITTEN DETERMINATION

WRITTEN DETERMINATION MUST INCLUDE:

- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any neofficiations to the parties, interviews with parties and witnesses, ties vinits, methods used to gather other evidence, and hearings held Findings of fact supporting the determination
- Conclusions showing the application of the policy to the facts (i.e., showing how the facts support/do not support the elements of the policy)

- - District's procedures and permissible bases for complainant and respondent to appeal

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WRITTEN DET	TERMINATION
Determination MUST be provided to both parties in writing simultaneously	Decision Maker(s) must author the determination.
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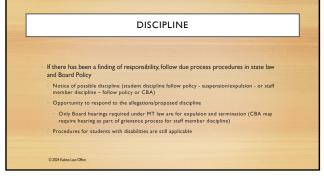
REMEDIES

* There are no particular remedies required if a determination of responsibility is measured.

* Must be "designed to restore to preserve equal access to the [schools] education program or activity"

* Can be punitive, i.e., discipline, and can burden respondent.

* Can be the same as supportive measures or can look different.



	 An opportunity to appeal the responsibility determination or dismissal of a formal complaint must be offered if a party or his 	
	or her parents/guardians assert that: A procedural irregularity affected the outcome.	
	 New evidence may affect the outcome and was not previously reasonably available. 	
APPEAL	 The Title IX Coordinator, Investigator, or Decision Maker had a conflict of interest or bias that affected the outcome. 	
	 The Appellate Decision Maker may not be the initial Decision Maker, the Investigator, or the Title IX Coordinator. 	
	 The Appellate Decision Maker must be trained! 	
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DETERMINATION ON APPEAL

- Both parties have right to submit statement in support of or challenging the appeal
- Written decision on appeal must describe the result and rationale by the Appellate Decision Maker
- · Written decision on appeal must be provided simultaneously to parties

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TRAINING

- Individuals designated as the "Title IX Team" Title IX Coordinator, Investigator, Decision Maker, Appellate Decision Maker or Facilitator of an informal resolution process - MUST be trained.
- Training materials must be made publicly available via district website.
- Train all staff when to recognize and report sexual harassment.

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TRAINING REQUIREMENTS

- Required professional development topics for individuals designated as the Title IX Team include:
- Definition of sexual harassmen
- Scope of the school district's education program or activity.
- How to conduct an investigation and grievance process.

 How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- Relevance determinations, both for questions and evidence, and for information to be included in investigative report.

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RETALIATION

- "Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purposes of interfering with any right or privilege secured by Tride IX"

 Beware of discripilings a student involved in a
- Beware of disciplining a student involved in a Title IX complaint process for any other reason seek legal counsel!

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RECORDKEEPING REQUIREMENTS

- District must maintain certain records for 7 Years. Examples of required recordkeeping include:
- Investigation, appeal, and informal resolution records.
- Records of any actions including any supportive measures taken in response to a report of formal complaint of sexual harassment.
- This includes documenting why the district's response was not deliberately indifferent or "clearly unreasonable in light of the known facts".
- Records of training providing and materials provided in training (including this PowerPoint).

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RELATION TO OTHER LAWS

- A district may not restrict rights protected under the U.S. Constitution, including the First, Fifth, and Fourteenth Amendments.
- The regulations set minimum requirements for Title IX compliance. State and local law may prescribe additional responsibilities related to a district's response to sexual harassment allegations. In cases of conflict, however, the regulations preempt state and local law.

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Recognition of sexual harassment – stop standard investigations when learning of misconduct! Freely give out supportive measures for anything hinting at sexual harassment Critically think about the standard of "Sexual Harassment" – cannot move forward if allegations even if true would not constitute sexual harassment. Remember the standard – deliberate indifference. Do something! Document, document, document. Train staff about recognizing potential "sexual harassment" and what to do.

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QUESTIONS?

Contact: Kaleva Law Office 406-542-1300

Megan Morris mdmorris@kalevalaw.com

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