

Title IX



An Overview of Title IX for Employees (with 2020 updates)

Presented by Priscilla de Mata, Esq.

January 4, 2021



BLANCO
ORDOÑEZ
MATA &
WECHSLER, P.C.
Attorneys and Counselors At Law

Topics to cover

1. **What is Title IX?**
 - Prohibitions
 - Definitions
 - 2020 Updates
2. **Title IX Officers and The Formal Complaint Process**
3. **Your Responsibilities under Title IX**
4. **Do's and Don'ts**
5. **Questions, Discussion & Quiz**

What is Title IX anyway?

- Title IX of the Education Amendments of 1972 (“**Title IX**”), 20 U.S.C. §1681 et seq., is a **Federal civil rights law that prohibits discrimination on the basis of sex**—including pregnancy and parental status—in educational programs and activities.
- All public and private schools, **school districts**, colleges, and universities receiving any Federal funds **must comply with Title IX**.

Title IX reads...

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

20 USC 1681(a) (“Prohibition against discrimination”)

WHAT is
prohibited and
WHO is
protected?

- *Prohibits* both Sex Discrimination and Harassment (examples to follow)
- *Protects* both **Students and Employees**
- But what constitutes an “education program or activity” for purposes of prohibited Title IX discrimination/harassment?

“Education Program or Activity” Defined

- The Title IX statute itself defines “education program or activity” effectively to cover all operations of the school.
- The latest definition of “education program or activity” includes locations, events, or circumstances over which the school exercises **substantial control** over both the respondent and the context in which the sexual harassment occurs.

**Education
programs and
activities
include ...**

School Campus

School Bus

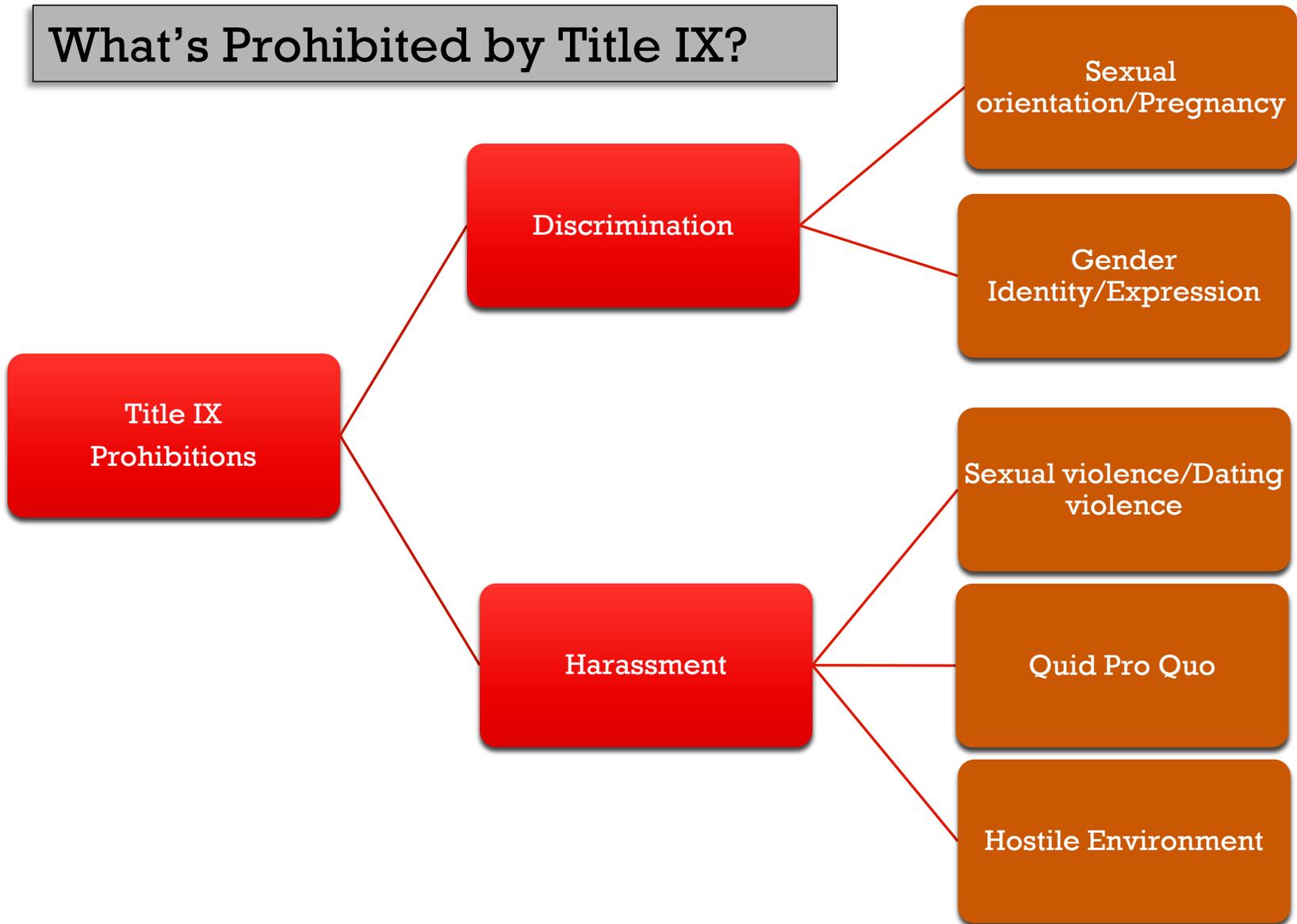
**District
Buildings/Central
Office**

Academic conferences

Clubs & Sporting events

Field Trips

What's Prohibited by Title IX?



Recap of Areas Within Title IX Protection

**Protects both student and employees in
the areas as follows:**

- Admission, Recruitment & Education
 - Career & Vocational Education
 - Athletics
- Employment Discrimination
- Pregnant & Parenting Students
 - Sexual Harassment

Athletics, Example

Male and female athletes must be treated equally throughout the athletic program. This includes

- similar financial support, equipment, fairness in scheduling of games, assignment of coaches/pay, and access to tutoring, locker rooms, arenas, etc.

Career Education, Examples

- Females should receive information about all career opportunities (CTE, vocational programs, etc.), not just those stereotyped as better suited for women

Employment Discrimination, Examples

Title IX protects all school district employees against discrimination in the workplace, in areas such as:

- Recruitment
- Hiring, promotion, layoff, rehiring
- Termination
- Employee benefits
- Job classification (limiting certain jobs to only one gender)

Pregnancy & Parental/Marital Status

Title IX prohibits discrimination on the basis of pregnancy, parental status or marital status.

Specific protections follow ...

Pregnancy: Classes and School Activities

- Students must be allowed to continue participating in classes and extracurricular activities despite being pregnant.
- Students must be allowed to choose whether to participate in special instructional programs or classes for pregnant students. District cannot require participation. The alternative program must provide the same types of academic, extracurricular and enrichment opportunities as the school's regular program.
- Students must be allowed to participate in classes and extracurricular activities without being required to submit a doctor's note unless the school district requires a doctor's note from all students who have a physical or emotional condition requiring treatment by a doctor.
- The school must not require a doctor's note from the student after having been hospitalized for childbirth unless it requires a doctor's note from all students who have been hospitalized for other conditions.
- Reasonable adjustments should be provided to students when necessary due to pregnancy (examples: a larger desk, elevator access, or more frequent trips to the restroom).

Pregnancy: Excused Absences and Medical Leave

- Absences due to pregnancy or childbirth should be excused for as long as student's doctor says it is necessary.
- Student is entitled to return to the same academic and extracurricular status as before her medical leave began, which should include the opportunity to make up any work missed while she was out.
- Ensure that teachers understand the Title IX requirements related to excused absences/medical leave. Teachers may not refuse to allow student to submit work after a deadline missed due to pregnancy or childbirth. If teacher's grading is based in part on class participation or attendance and student should be allowed to make up the participation or attendance credits she didn't have the chance to earn due to pregnancy or childbirth.
- Provide pregnant students with the same special services provided to students with temporary medical conditions. This includes homebound instruction/at-home tutoring/independent study.

Pregnancy: Harassment

- Prohibited harassment based on sex, includes harassment because of pregnancy or related conditions.
- Comments that could constitute prohibited harassment include:
 - Making sexual comments or jokes about the complainant's pregnancy
 - Being called sexually charged names
 - Spreading rumors about the person's sexual activity
 - Making sexual propositions or gestures
- Comments described above are **prohibited** if the comments are sufficiently serious that it interferes with the complainant's ability to benefit from or participate in your school's program.

2020 Update – Title IX Definitions

- **“Complainant” = the alleged victim of sex discrimination/sexual harassment**
- **“Respondent” = the alleged perpetrator of the discrimination of harassment**
- **“Sexual harassment” = conduct on the basis of sex that satisfies one or more of the following:**

See FFH (Legal)



2020 Update - Sexual Harassment, defined

1. **“Quid Pro Quo”** or an employee of the district conditioning the provision of an aid, benefit, or service of the district on an individual’s participation in unwelcome sexual conduct.
 - Example: Teacher seeks sexual favor from student in return for a passing grade.
2. **“Hostile Work/Learning Environment”** or unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district’s education program or activity.
 - Example: A student constantly shaming and ridiculing another student during class time for rumors about her sexual promiscuity

See FFH (Legal)



2020 Update - Sexual Harassment, defined

3. “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

- Example: Physical abuse between students whether in a dating relationship or not

See FFH (Legal)



2020 Update - Title IX Definitions, cont'd

- **“Actual knowledge”** = notice of sexual harassment OR allegations of sexual harassment to a district’s Title IX Coordinator or any official of the district who has authority to institute corrective measures on behalf of the district, or to any employee of an elementary and secondary school. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge.
 - This standard is not met when the only official of the district with actual knowledge is the respondent.
 - The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the district.

See FFH (Legal)



2020 Update - “Actual Knowledge”

- Actual knowledge of sexual harassment or allegations of sexual harassment occurs when notice is made to any one of the following individuals:
 - The Title IX Coordinator has notice of sexual harassment or allegations of sexual harassment;
 - School personnel with authority to institute corrective measures have notice of sexual; OR
 - **Any elementary or secondary school employee.**
- Additional notes on actual knowledge ...
 - Anyone can report the sexual harassment to the school/district
 - Bystanders, parents, friends have a right to report sexual harassment.
 - On occasion, school employees may personally witness sexual harassment

See FFH (Legal)



2020 Update - Title IX Definitions, cont'd

- **“Deliberate indifference”** = A district with actual knowledge of sexual harassment in an education program or activity of the district against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. A district is deliberately indifferent if its response to sexual harassment is clearly unreasonable in light of the known circumstances.
- Simply put ...
 - Actual Knowledge + Deliberate Indifference = Title IX Liability & Damages

See FFH (Legal)



2020 Update - Title IX Definitions, cont'd

- **“Supportive measures”** to restore/preserve equal access to district’s education program or activity should be non-disciplinary, non-punitive individualized services.
- Examples: 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 assigned locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

See FFH (Legal)



2020 Update - Supportive Measures

- The district must consider the complainant's wishes/request for supportive measures.
- The district must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the district to provide the supportive measures.
- The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

See FFH (Legal)



2020 Update - The Formal Complaint Process

- A formal complaint is the official document alleging sexual harassment.
- The formal complaint process must be impartial and ensure that no conflicts of interest exist.
- The formal complaint may be filed by student, parent or legal guardian or the Title IX Coordinator.
- Even if the complainant does not file a formal complaint, the Title IX Coordinator may choose to start a grievance process where discipline would be appropriate.

Title IX Roles & Responsibilities (for Employee Matters)



Lizeth Carroll
Title IX Coordinator

- Employee designated to coordinate district efforts to comply with its responsibilities under Title IX
- Provides complainant with options, supportive measures and information on how to file a formal Title IX complaint



Lizeth Carroll
Investigator

- Provides notice to all parties and opportunities to respond;
- Gathers evidence; and
- Prepares a written report for parties and decision maker



**Superintendent
Rosy Vega-Barrio**
Decision-Maker

- The Title IX “Judge”
- Presides over hearings, if applicable
- Monitor questioning and cross-examination process and identify irrelevant questions
- Weighs the evidence and reaches a determination of guilt or innocence from the investigative process
- Produce a written statement to both parties describing their



**Georgina
Miramontes**
Appeal Officer

- Gives both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- Issues written decision describing the result of the appeal and the rationale for the result; and
- Provides the written decision simultaneously to both parties



Carlos Garcia
Informal
Resolution
Facilitator

- Serves as a type of mediator between the parties to help resolve the complaint without further investigation or a determination

Title IX Roles & Responsibilities (for Student Matters)



Rodrigo Portillo Title IX Coordinator

- Employee designated to coordinate district efforts to comply with its responsibilities under Title IX
- Provides complainant with options, supportive measures and information on how to file a formal Title IX complaint

Investigator - Campus Administrator

- Provides notice to all parties and opportunities to respond;
- Gathers evidence; and
- Prepares a written report for parties and decision maker

Superintendent Rosy Vega Barrio Decision-Maker

- The Title IX "Judge"
 - Presides over hearings, if applicable
 - Monitor questioning and cross-examination process and identify irrelevant questions
 - Weighs the evidence and reaches a determination of guilt or innocence from the investigative process
 - Produce a written statement to both parties describing their

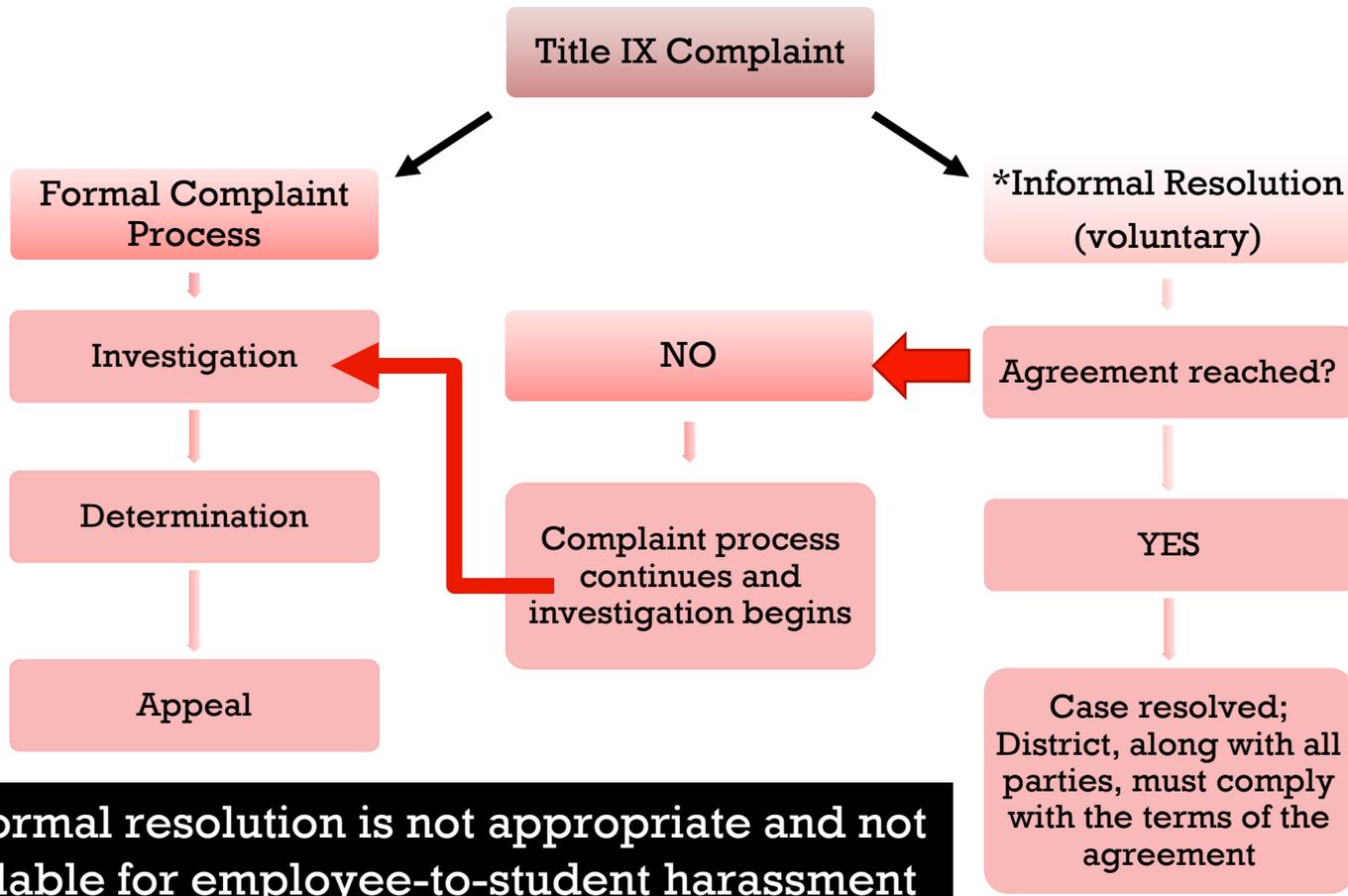
Georgina Miramontes Appeal Officer

- Gives both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- Issues written decision describing the result of the appeal and the rationale for the result; and
- Provides the written decision simultaneously to both parties

Carlos Garcia Informal Resolution Facilitator

- Serves as a type of mediator between the parties to help resolve the complaint without further investigation or a determination

The Title IX Formal Complaint Process (and voluntary *Informal Resolution)



***Informal resolution is not appropriate and not available for employee-to-student harassment**

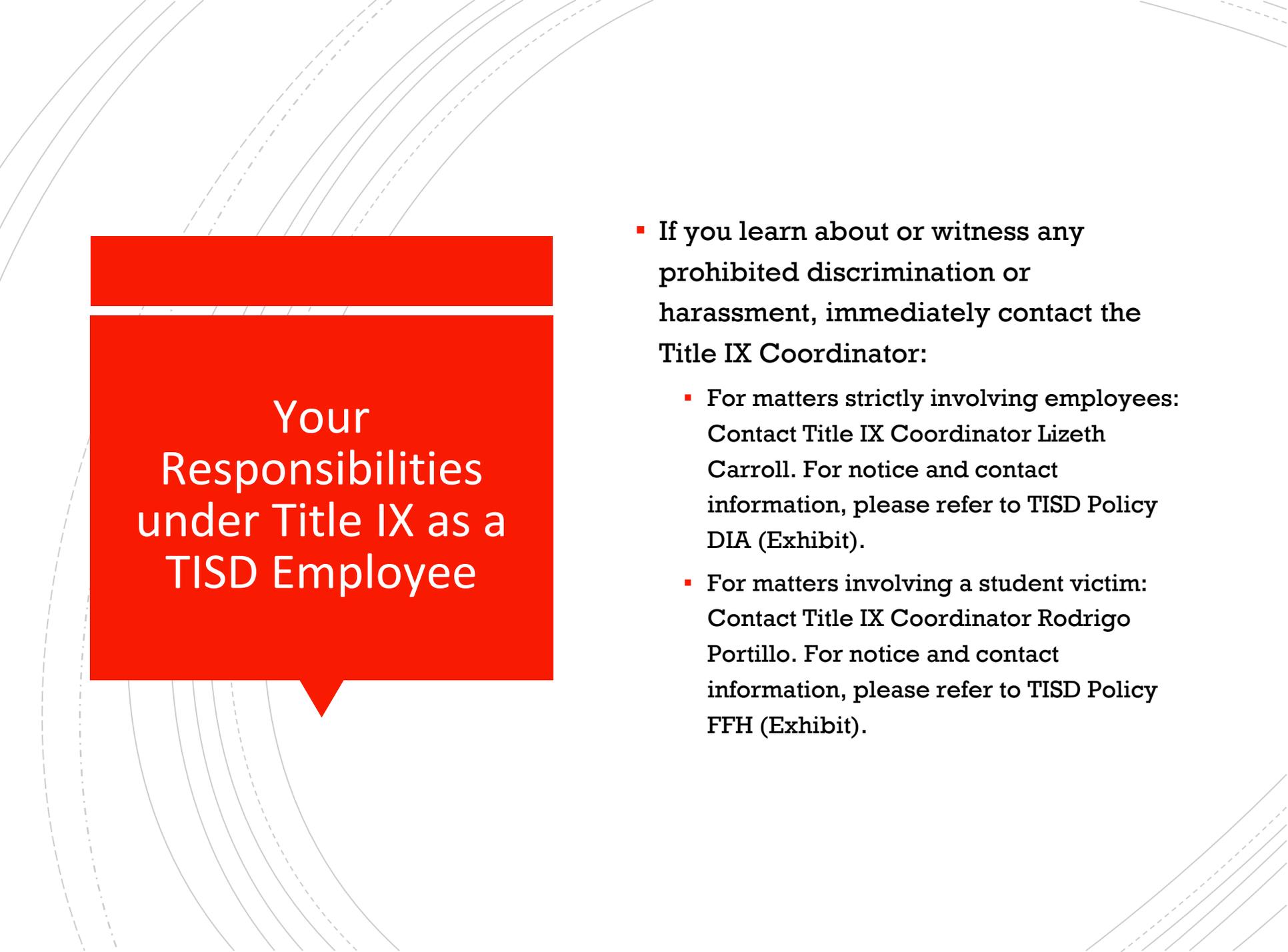
The District has
“actual
knowledge.”
What now?

Title IX Coordinator must promptly

- 1.** Discuss the availability of supportive measures and inform the complainant that they are available, with or without the filing of a formal complaint;
- 2.** Consider the complainant's wishes with respect to supportive measures; and
- 3.** Explain to the complainant the option and process for filing a formal complaint.

See FFH (Local)





**Your
Responsibilities
under Title IX as a
TISD Employee**

- **If you learn about or witness any prohibited discrimination or harassment, immediately contact the Title IX Coordinator:**
 - **For matters strictly involving employees:** Contact Title IX Coordinator Lizeth Carroll. For notice and contact information, please refer to TISD Policy DIA (Exhibit).
 - **For matters involving a student victim:** Contact Title IX Coordinator Rodrigo Portillo. For notice and contact information, please refer to TISD Policy FFH (Exhibit).

Employee Responsibilities, Cont'd ... Retaliation Prohibited

- No district or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX.
- 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 purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

See FFH (Legal)



**Employee
Responsibilities,
Cont'd ...
Retaliation
Prohibited,
cont'd**

- **Complaints alleging retaliation may be filed according to the Process for Title IX Formal Complaint.**
- **The exercise of rights protected under the First Amendment does not constitute retaliation prohibited by Title IX.**
- **Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX formal complaint proceeding does not constitute retaliation prohibited by Title IX, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.**

See FFH (Legal)



Employee Responsibilities , Cont'd ... Record Retention

Records related to complaints of discrimination or harassment prohibited by Title IX must be retained for 7 years. This rule applies to all records related to the following events or Title IX requirements or procedures:

- Investigations
- Appeal
- Informal Resolution
- Title IX Training Material
- Supportive Measures taken in response to a Title IX report/complaint of sexual harassment.

Title IX Do's and Don'ts

- **DO** notify the Title IX Coordinator of any and all possible incidents of discrimination or harassment.
- **DON'T** take it upon yourself to investigate or determine whether an incident rises to the level of prohibited discrimination or harassment. When in doubt, report it and do so immediately.

Title IX Do's and Don'ts

- **DO** preserve any records related to an incident of discrimination or harassment.
- **DON'T** delete electronic communication simply because it is on a personal device or personal email or social media account—those records may constitute student education records under FERPA or public records under the Public Information Act if they relate to District business/students. You may have a legal obligation to preserve, protect and disclose them under state and federal law and district policy.

Title IX Do's and Don'ts

- **DO** document in writing all incidents of discrimination or harassment you witness or learn about. Memory often fails and notes taken as close to the time of the incident are critical in the investigation process.
- **DON'T** depend on others' interpretation or "facts" of the incident. You should only rely on your own observations and be clear when you are simply repeating what you have learned from others.

Title IX Do's and Don'ts

- **DO** ensure that the incident is reported to the Title IX Coordinator and assure the complainant that the matter will be addressed by the Coordinator in a prompt and professional manner while maintaining confidentiality as much as possible unless the law or complaint process requires otherwise.
- **DON'T** promise strict confidentiality. Certain laws may require disclosure of certain records to parents, healthcare providers, law enforcement, Child Protective Services, etc.

Title IX Resources

- **US Department of Education:**
<https://sites.ed.gov/titleix/>
 - **Fact Sheet**
<https://sites.ed.gov/titleix/policy/#fact-sheet>
 - **Q&A Regarding the Department's Final Title IX Rule**
<https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-20200904.pdf>
 - **OCR Webinar: Title IX Regulations Addressing Sexual Harassment**
<https://www.youtube.com/watch?v=TdfT5R8ibm4>
 - **Conducting and Adjudicating Title IX Hearings: An OCR Training Webinar**
https://www.youtube.com/watch?v=yQ4-S5_Jahw&feature=youtu.be&utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=
- **Texas Association of School Boards:**
<https://www.tasb.org/services/community-college-services/resources/tasb-college-law/documents/incorporating-new-title-ix-regulations-into-policy.pdf>

Questions,
Discussion &
Quick Quiz
(time
permitting)



Stay safe and healthy!



BLANCO
ORDOÑEZ
MATA &
WECHSLER, P.C.
Attorneys and Counselors At Law

PRISCILLA DE MATA

BLANCO ORDOÑEZ MATA & WECHSLER, P.C.

5715 CROMO DRIVE EL PASO, TX 79912 / TEL: (915) 845-5800 / FAX: (915) 845-5555

PMATA@BOMWLAW.COM