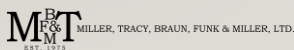


UNDERSTANDING THE 2024 TITLE IX REGULATIONS

THE ROLE OF THE TITLE IX COORDINATORS



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TITLE IX COORDINATORS

- § 106.8(a) (Title IX Coordinator)
- § 106.40(b)(3) (Parental, family, marital status; pregnancy)
- § 106.44(f) (Title IX Coordinator Responsibilities)
- § 106.44(g) (Supportive Measures)
- Recordkeeping system and requirements of § 106.8(f)
- Any other training to coordinate compliance with Title IX
- Training required of all other employees (Tier 1), and investigators/decision-makers (Tier 2 and Tier 3).



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§ 106.8(a)

TITLE IX COORDINATOR



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SINGLE TITLE IX COORDINATOR

A single Title IX Coordinator must be designated to retain ultimate oversight over those responsibilities and ensure the recipient's consistent compliance with its responsibilities under Title IX.



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DESIGNEE

As necessary, a district may delegate, or permit a Title IX Coordinator to delegate specific duties to one or more designees.

IDENTIFYING THE TITLE IX COORDINATOR

Practical Considerations:

Who should serve this role in your district?

§ 106.40(b)(3)

PARENTAL, FAMILY, MARITAL STATUS; PREGNANCY



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PREGNANCY

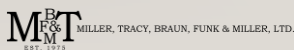
A District must take specific actions to promptly and effectively prevent sex discrimination and ensure equal access to the education program or activity once a student or person who has a legal right to act on behalf of a student notifies the Title IX Coordinator of a student's pregnancy or related condition.



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UPON NOTICE OF PREGNANCY...

1. The recipient must inform the student (or person who notified the Title IX Coordinator and has a legal right to act on behalf of the student) of the recipient's obligations not to discriminate against students because of their pregnancy status or related condition.
2. The recipient must provide the student or person with legal right right to act on behalf of the student, of the Title IX Coordinator's contact information and that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure equal access.



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UPON NOTICE OF PREGNANCY...

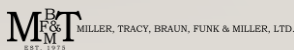
3. The right to reasonable modifications, and that those can be accepted or rejected
4. The right to voluntarily access any separate and comparable portion of the education program.
5. The right to a voluntary leave of absence.
6. The right to lactation space.



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REASONABLE MODIFICATIONS

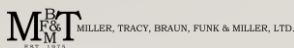
- The recipient must make reasonable modifications to the recipient's policies, practices, or procedures as necessary to prevent sex discrimination and **ensure equal access** to the recipient's education program or activity.
- In determining reasonable modifications, the District must consult with the student. A modification that the District can demonstrate would **fundamentally alter the nature of its education program or activity is not a reasonable modification.**



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REASONABLE MODIFICATIONS

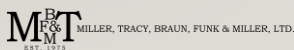
- A student may accept or decline reasonable modifications offered.
- If accepted, those must be implemented.



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REASONABLE MODIFICATIONS

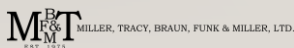
- Breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, or using the restroom;
- Intermittent absences to attend medical appointments;
- Access to online or homebound education;
- Changes in schedule or course sequence;
- Extensions of time for coursework and rescheduling of tests and examinations;
- Allowing a student to sit or stand or carry or keep water nearby;
- Counseling;
- Changes in physical space or supplies (larger desk or footrest);
- Elevator access;
- Or other changes to policies, practices, or procedures.



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VOLUNTARY ACCESS TO SEPARATE AND COMPARABLE PORTIONS OF THE PROGRAM OR ACTIVITY

- A student must be allowed to take a voluntary leave of absence which is required to cover, at minimum, the period of time determined to be medically necessary by the student's licensed healthcare provider.
- If the District has student leave policy allowing for a greater than medically necessary period of time, the student must be permitted to take leave under that policy, if the student chooses. When the student returns, the student must be reinstated to the academic status, and to the extent practicable, to the extracurricular status the student held when the leave began.



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HOMEBOUND INSTRUCTION—ILLINOIS STATE LAW

- The *Illinois School Code* provides for a pregnant student to be provided with up to three months of homebound instruction after the birth of a child, and homebound instruction prior to birth, if medically certified.
- There is a July 2025 change coming that will expand Illinois protections for pregnant students under Article 26A of the *Illinois School Code*.



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LACTATION SPACE

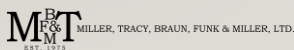
- The District must ensure a lactation space, which must be space other than a bathroom, which is clean, shielded from view, free from intrusion of others, and may be used by a student for expressing milk or breastfeeding as needed.



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LIMITATION ON SUPPORTING DOCUMENTATION

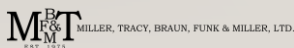
- The District must not require supporting documentation for reasonable modifications, voluntary access to separate and comparable portions of the program or activity, voluntary leaves of absence, or lactation space unless the documentation is necessary and reasonable for the District to be able to determine what reasonable modifications to make.



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LIMITATION ON SUPPORTING DOCUMENTATION

- It is not reasonable to request supporting documentation when the need is obvious, such as when the student needs a larger uniform; when the student has previously provided sufficient supporting documentation; when the reasonable modification at issue is allowing a student to carry or keep water nearby and drink, use a bigger desk, sit or stand, or take breaks to eat, drink, or use the restroom; when the student has lactation needs; or when the reasonable modification is available to students for reasons other than pregnancy or related conditions without submitting supporting documentation.



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CERTIFICATION TO PARTICIPATE

- A District may not require a student who is pregnant or who has related conditions to provide certification from a healthcare provider or any other person that the student is physically able to participate in the District’s class, program, or extracurricular activity unless:
 - The certified level of physical ability or health is necessary for participation in the class, program, or extracurricular activity;
 - The recipient requires such certification of all students participating in the class, program, or extracurricular activity; and
 - The information obtained is not used as a basis for discrimination.



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§ 106.44(f)

TITLE IX COORDINATOR RESPONSIBILITIES



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RECEIPT OF NOTIFICATION OF CONDUCT

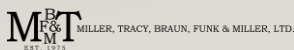
- When the Title IX Coordinator is notified of conduct which may reasonably constitute sex discrimination, the Title IX Coordinator must take the following actions to **promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects:**

FORGOTTEN FOLKS

- Contractors
- Substitute Employees
- Coaches (who are not otherwise employed by the school)

RECEIPT OF NOTIFICATION OF CONDUCT

1. Treat the Complainant and Respondent equitably;
2. Offer and coordinate supportive measures, as appropriate, for the Complainant. If the Respondent has been notified of the allegations either through the grievance process or the informal resolution process, also coordinate supportive measures for the Respondent;



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RECEIPT OF NOTIFICATION OF CONDUCT

3. Notify the Complainant or the reporting party (if the Complainant is not known) of the grievance process and informal resolution process, if available and appropriate, and if a complaint is made, notify the Respondent of the grievance process and informal resolution process, if available and appropriate;
4. If a complaint is made, initiate the grievance procedures or the informal resolution process



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RECEIPT OF NOTIFICATION OF CONDUCT

- 5. In the absence of a complaint, in the withdrawal of a complaint or the allegations therein, or in the absence or termination of informal resolution, determine whether to initiate a complaint of sex discrimination through the grievance process based on an analysis of at minimum, the following eight factors:



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FACTORS FOR TITLE IX COORDINATOR TO CONSIDER REGARDING INITIATING THE GRIEVANCE PROCESS

- | | |
|--|---|
| i. The Complainant's request not to proceed with initiation of a complaint; | v. The age and relationship of the parties, including whether the Respondent is an employee of the District; |
| ii. The Complainant's reasonably safety concerns regarding initiation of a complaint; | vi. The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals; |
| iii. The risk that additional acts of sex discrimination would occur if no complaint was initiated; | vii. The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred; and |
| iv. The severity of the alleged sex discrimination, including whether if the allegations were established, whether the Respondent would be subject to removal or imposition of other disciplinary sanction to end the discrimination and prevent its recurrence; | viii. Whether the District could end the sex discrimination and prevent recurrence without initiating the grievance procedures. |



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IF INITIATING A COMPLAINT...

- Notify Complainant prior to doing so to:
 - Address reasonable concerns about Complainant's safety or safety of others;
 - Provide supportive measures;



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REGARDLESS OF WHETHER A COMPLAINT IS INITIATED...

- Take other appropriate prompt and effective steps, in addition to steps necessary to effectuate the remedies provided to an individual Complainant, if any, to ensure that sex discrimination does not continue or recur within the education program or activity.



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IF THE ALLEGATIONS COULD NOT CONSTITUTE SEX DISCRIMINATION, EVEN IF PROVEN...

- There is no need to conduct the analysis as to whether initiate the grievance procedure or to take other prompt and effective steps to end sex discrimination and prevent its recurrence.

§ 106.44(g)

SUPPORTIVE MEASURES

SUPPORTIVE MEASURES

Individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to:

1. Restore or preserve that party’s access to the District’s education program or activity, including measures that are designed to protect the safety of the parties or the District’s educational environment; or
2. Provide support during the grievance process or informal resolution process.

Supportive measures may vary depending on what the District deems to be reasonably available.



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SUPPORTIVE MEASURES

Supportive measures may vary depending on what the District deems to be reasonably available. These measures may include, but are not limited to:

- Counseling;
- Extensions of deadlines and other course-related adjustments;
- Campus escort services;
- Increased security and monitoring of certain areas of the campus;
- Restrictions on contact applied to one or more parties;
- Leaves of absence;
- Changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and
- Training and education programs related to sex-based harassment.



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SUPPORTIVE MEASURES

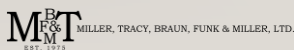
Supportive measures, as may be appropriate, can be modified or terminated at the conclusion of the grievance process or the informal resolution process, or the District can continue supportive measures beyond the process.

SUPPORTIVE MEASURES TIP

- Put an end date or triggering event on supportive measures and communicate that with the individual receiving the supportive measure.

SUPPORTIVE MEASURES CHALLENGE

- The District must provide a Complainant or Respondent with a timely opportunity to seek, from an appropriate and impartial employee, modification or reversal of the recipient's decision to provide, deny, modify, or terminate supportive measures applicable to them.
- The District must also provide a party with the opportunity to seek additional modification or termination of a supportive measure applicable to them if circumstances change materially.



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SUPPORTIVE MEASURES CHALLENGE

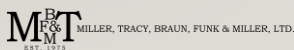
- The impartial employee must be someone other than the employee who made the challenged decision and who has the authority to modify or reverse the decision, if the impartial employee determines that the decision to provide, deny, modify or terminate the supportive measure was inconsistent with the definition of supportive measure.



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SUPPORTIVE MEASURES CHALLENGE

- A District must not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party's access to the education program or activity, when there is written consent, or as required by law.



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SUPPORTIVE MEASURES FOR STUDENTS WITH DISABILITIES

- If the Complainant or Respondent is a K-12 student with a disability, the District must require the Title IX Coordinator to consult with one or more members, as appropriate, of the student's IEP team, if any, or one or more members, as appropriate, of the group of persons responsible for the student's placement decision under 34 CFS 104.35(c), if any, to determine how to comply with IDEA or Section 504, in the implementation of supportive measures.



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SUPPORTIVE MEASURES TIP

- Choose the IEP team member carefully—Special Education Director, administrator, etc., not parent, general education teacher, service provider.
- Consultation with one IEP team member does not allow changes to a student's IEP. Consider whether an IEP team meeting is necessary.

SUPPORTIVE MEASURES CHALLENGE

- If the Complainant or Respondent is a K-12 student with a disability, the District must require the Title IX Coordinator to consult with one or more members, as appropriate, of the student's IEP team, if any, or one or more members, as appropriate, of the group of persons responsible for the student's placement decision under 34 CFS 104.35(c), if any, to determine how to comply with IDEA or Section 504, in the implementation of supportive measures.

RECORDKEEPING SYSTEM AND REQUIREMENTS OF § 106.8(f)



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RECORDKEEPING

- For seven years, the District—through the Title IX Coordinator—must maintain:
 1. **EACH** complaint of sex discrimination, records documenting informal resolution or the grievance procedures, and the resulting outcome.



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RECORDKEEPING

- For seven years, the District—through the Title IX Coordinator—must maintain:
2. **EACH notification** received of information about conduct that reasonably may constitute sex discrimination under Title IX and records documenting the actions the recipient took to meet its obligations to promptly and effectively stop sex discrimination, prevent it from recurring, and to provide remedies to those affected.



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RECORDKEEPING

- For seven years, the District—through the Title IX Coordinator—must maintain:
3. **All materials** used to provide training to its employees.



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RECORDKEEPING TIP

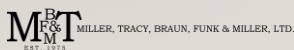
- Make sure you can quickly find **ALL DOCUMENTS** related to a specific case or incident report. Everything goes in a single file.
- Do not store 50% of them in a Title IX file, another 25% of them in a student's file, and the last 25% only in the Title IX Coordinator's email.

OTHER RESPONSIBILITIES

EVALUATE BARRIERS TO REPORTING

A Title IX Coordinator must:

1. Monitor the recipient's education program or activity for barriers to reporting information about conduct that reasonably may constitute sex discrimination under Title IX
2. Take steps reasonably calculated to address such barriers.



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EVALUATING BARRIERS TIPS

- Conduct climate surveys
- Seek targeted feedback from students and employees who have reported sex discrimination
- Participate in public awareness events to receive feedback from student and employee attendees
- Regularly publicizing and monitoring an email address designated for receiving anonymous feedback about barriers to reporting.

87 Fed. Reg. 41436



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MISTAKES OCR WILL NOTICE!

PRACTICAL THOUGHTS ON HANDLING DISCRIMINATION AND HARASSMENT CLAIMS

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NASH COUNTY PUBLIC SCHOOLS (NC), SEPT 2023.

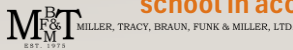
- OCR's investigation reflects that during the first week of the 2022-2023 school year, an individual posted on social media an anonymous threat of sexual violence against freshman girls at a district high school; and that staff members at the high school were generally aware of potentially harassing social media posts, including posts of a sexual nature, as early as February 2022. Based on its investigation to date, OCR is concerned that the district did not respond as required by Title IX to notice that students at the school may have been sexually harassed in a manner that impeded their access to the school's education program and activities and that the district selectively enforced its dress code based on sex stereotypes, inconsistent with Title IX.

MT
EST. 1973
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NASH COUNTY PUBLIC SCHOOLS (NC), SEPT 2023.

- The district’s commitments in the resolution agreement include: (1) reviewing and, as necessary, revising its dress code to ensure it does not discriminate based on sex and informing people that they may contact the district’s Title IX coordinator if they believe the dress code has been administered in a discriminatory manner; (2) training staff at the high school about their Title IX obligations including with respect to responding to reports of sexual harassment, enforcing the dress code, and not separating students based on sex except as permitted by Title IX; and (3) **reviewing and, where necessary, investigating reports of sexual harassment at the high school in accordance with Title IX and the district’s grievance procedures.**



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NEWARK PUBLIC SCHOOLS (NJ), AUG 2023.

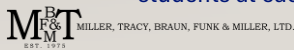
- OCR determined that the district discriminated against students based on sex by failing to respond to incidents of sexual harassment and assault and that it **failed to coordinate its responses through its designated Title IX Coordinator**. Specifically, OCR found that the Title IX Coordinator did not, and currently does not, coordinate the district’s efforts to comply with its responsibilities under Title IX. Additionally, OCR found that the district failed to investigate confirmed Title IX concerns about employees’ sexually harassing students and deferred its Title IX obligations to respond to such sexual harassment to a state agency for several years without ensuring those obligations were met. OCR further found that the district repeatedly failed to respond to incidents of student-to-student sexual harassment, to address its effect on targeted students, to prevent its recurrence, and to notify the parties of investigation outcomes. OCR also determined that the district did not consistently notify employees, students, and their parents of its designated Title IX Coordinator and that its notice of nondiscrimination and grievance procedures did not comply with Title IX. Lastly, OCR identified concerns about the district’s recordkeeping of sexual harassment incidents.



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NEWARK PUBLIC SCHOOLS (NJ), AUG 2023.

- The district’s commitments in the voluntary resolution agreement include: ensuring that the Title IX coordinator coordinates all of the district’s efforts to comply with Title IX moving forward; developing a program to assess the effectiveness of the district’s Title IX anti-discrimination efforts; revising policies and procedures to comply with the Title IX regulations; training staff and students regarding the district’s Title IX procedures regarding sexual harassment; maintaining required records about reports of sexual harassment; reviewing case files for reported incidents of sexual harassment of district students from school years 2017-2018 through 2021-2022 to determine if further action is needed to resolve each incident equitably; disseminating a notice of nondiscrimination that complies with Title IX; and administering an annual school climate survey to district employees and students at each district school.



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GARLAND ISD (TEXAS), JULY 2023.

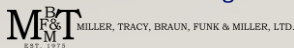
- OCR determined the District violated Title IX by routinely delaying its investigation of Title IX complaints when law enforcement was involved, and, in some instances, failing to conduct a Title IX investigation and instead relying on law enforcement findings. OCR had a concern regarding the District’s lack of a centralized system for tracking and maintaining Title IX complaint files, which resulted in significant gaps in its recordkeeping. OCR also identified a concern regarding the District’s failure to provide adequate Title IX training for its Title IX Coordinator, administrators, and staff. Additionally, OCR is concerned about the Title IX Coordinator’s ability to coordinate the District’s efforts to comply with its Title IX responsibilities while holding multiple positions in the District. Lastly, OCR also found Title IX violations and had concerns related to the District’s Title IX policies and grievance procedures.



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GARLAND ISD (TEXAS), JULY 2023.

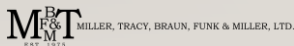
- The resolution agreement provides that the District will: (1) take the necessary steps to ensure the District does not discriminate on the basis of sex by reviewing and revising its Title IX grievance procedures and its notice of nondiscrimination, to secure compliance with the Title IX regulation; (2) develop and implement a centralized record-keeping system and procedures that adequately and accurately document and preserve all complaints of sexual harassment and sexual assault; (3) provide OCR with information regarding the District's processing of each formal complaint of sexual harassment and sexual assault filed with the District during the previous and upcoming school years; (4) provide Title IX training to District staff and age-appropriate education or other resources to students; and (5) conduct a climate survey to be distributed to its students and staff regarding sexual harassment, including sexual assault.



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RHINELANDER SCHOOL DISTRICT (WIS.), JULY 2023.

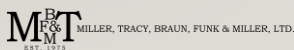
- Based on the evidence in the investigation to date, OCR is concerned that the District response to the persistent harassment limited the student's participation in school activities. OCR is also concerned that the District records miscoded sex-based harassment, including the use of a slur for gay people, as "peer mistreatment"; did not document the multiple complaints of sex-based harassment brought by the student and their parent; and did not adequately document the District's responses. Moreover, the District Title IX Coordinator reported that she was unaware of reports of sex-based harassment of the student until after the complainant filed with OCR and therefore had not coordinated a response consistent with Title IX.



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RHINELANDER SCHOOL DISTRICT (WIS.), JULY 2023.

- The District's commitments in the voluntary resolution agreement include evaluating whether compensatory services or other services are necessary for the harassed student due to the instructional time the student missed when attending in-person classes on an only part-time basis; providing training to all District administrators and staff regarding the District's obligation to respond to complaints of sex-based harassment; providing age-appropriate information programs for students to address sex-based harassment, including what students should do if they believe they or other students have experienced such harassment; and conducting a climate survey to assess the prevalence of sex-based harassment and obtain suggestions for effective ways to address harassment.



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ALPINE SCHOOL DISTRICT (UTAH), 123 LRP 29859 (OCR 09/20/23)

OCR reviewed evidence obtained during an investigation and identified multiple compliance issues relating to Title IX:

- It did not coordinate Title IX compliance **through the designated Title IX coordinator**.
- It did not notify employees and students of the **name and contact information** of the Title IX coordinator.
- It did not adopt and publish grievance **procedures that comply with the Title IX regulations** in effect during the review period.
- It did not take appropriate steps to **investigate reports** of employee-to-student sexual assaults.

(continued)



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ALPINE SCHOOL DISTRICT (UTAH), 123 LRP 29859 (OCR 09/20/23)

OCR reviewed evidence obtained during an investigation and identified multiple compliance issues relating to Title IX (*continued*):

- It did not investigate some student-to-student sexual assaults, including whether they created a **hostile environment** for the harassed students.
- It did not provide **interim measures** to students alleged to have been sexually assaulted by employees & students.
- It did not take steps to **prevent the recurrence** of substantiated sexual assaults and remedy the resulting hostile environment.
- It did not consistently notify harassed students and parents of investigation **outcomes**.

➤ **The agreement requires the district to address the identified violations and show proof of ongoing compliance.**

ALPINE SCHOOL DISTRICT (UTAH), 123 LRP 29859 (OCR 09/20/23)

Example 1

According to District records, in 2018, Teacher 1 performed a "sexual act" on Student 1 in Teacher 1's classroom at HS 2, immediately after school. [Redacted content], Student 1 told a third party, who reported the incident to law enforcement. Law enforcement questioned and arrested Teacher 1, who later pleaded guilty to unlawful sexual conduct with a [redacted content]-year-old. The District learned of the matter and reported it to the UPPAC but allowed Teacher 1 to resign without conducting a Title IX investigation to determine whether this conduct created a hostile environment for Student 1 or whether other District students were subjected to an ongoing hostile environment.

ALPINE SCHOOL DISTRICT (UTAH), 123 LRP 29859 (OCR 09/20/23)

Example 3

In 2017, a parent complained to the District about an employee who hugged and kissed on the cheek several ES 2 female students as they exited the school bus on several occasions. The only record the District produced of its investigation of this complaint was a letter from the Director of Transportation to the employee, stating, "Video footage from days prior revealed that you have hugged and kissed students on other occasions." OCR found no evidence that the District conducted any interviews or contacted the parents of other female students to determine if a hostile environment existed for them on the school bus. On the basis of the video footage and the employee's admission to the conduct, the Director of Transportation informed the employee that he would recommend to Human Resources to suspend the employee without pay for four days, place him on probation, and move him to a new bus route. The District could not confirm whether the recommended disciplinary action was imposed on the employee. In addition, the District produced no evidence that it offered any remedies to the female students whom the employee hugged and kissed.



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ALPINE SCHOOL DISTRICT (UTAH), 123 LRP 29859 (OCR 09/20/23)

Example 5

According to District records, in 2017, Student 4 reported to her parent and a school counselor that Student 5 raped her in the school's parking lot. The counselor notified the assistant principal, who notified law enforcement. Law enforcement interviewed Student 4 and arrested Student 5, but the case was never adjudicated. The alleged rape was [redacted content]. Another school employee notified the assistant principal that Student 5 was bragging to others student about having had sex with a female student in the parking lot. When the assistant principal notified the principal of this, the principal told the assistant principal that Student 5 would not be returning to the school. OCR did not find evidence that the District conducted an investigation to determine if Student 5 raped Student 4 in the school's parking lot and if the alleged rape created a hostile environment for Student 4, or took any steps to remedy its effects on Student 4. Even if Student 5 was not returning to the school and law enforcement did not prosecute the alleged rape, the District had obligations under Title IX to determine if the rape occurred and created a hostile environment for Student 4, so that the District would know what remedies to provide Student 4 and whether Student 5 posed a risk to students in other schools.



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ALPINE SCHOOL DISTRICT (UTAH), 123 LRP 29859 (OCR 09/20/23)

Example 7

In January 2020, Student 8's parents notified Teacher 4, via email, that after multiple days of Student 8 crying after school and struggling to sleep, he finally revealed that Student 9 had been grabbing his penis at school. Student 8's parents requested a meeting with school personnel and interventions to prevent further harassment. Teacher 4 forwarded the email to the principal. The principal wrote in Student 9's discipline report, "I talked with parents who were supportive but out of town on vacation. I also talked to [Student 9]. He neither confirmed or [sic] denied touching the other student." The District's records do not indicate that the District took any additional measures in response to the January 2020 report, including offering interim measures to Student 8.

(continued)

ALPINE SCHOOL DISTRICT (UTAH), 123 LRP 29859 (OCR 09/20/23)

Example 7 (continued)

In May 2020, Student 10's parents notified Teacher 4 and the principal, via email, that: (a) Student 9 had repeatedly grabbed Student 10's penis. The parents shared with the teacher and principal that Student 10 had become depressed and started saying things like, "I feel hollow," "I feel like I'm nothing," "I hate my life," and "I should just die." The principal wrote in Student 9's discipline report, "I called [Student 9]'s parents about the reported incidents. I also notified them that DCFS would be reaching out to them about the report." The District's records do not reflect that the District continued investigating Student 9's conduct to determine whether he assaulted any other students. Nor do the records reflect the offer or provision of supports such as counseling services to Student 10.

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Example 10

The District's discipline records reflect that in 2018, Student 14 held down Student 15, kissed her, and followed her home. The District gave Student 14 a one-day out-of-school suspension. The records do not indicate that the District took any further actions to protect Student 15 from further harassment (e.g., ensuring she could travel home safely) or to address any hostile environment that resulted from the assault by offering her counseling or other supports.

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Example 11

The District's discipline records reflect that in 2019, the District found that Student 16 put his hand down Student 17's pants three times in a school library. Student 16's discipline records stated, "The young lady was so scared and numb by the advance that she just didn't know what to do." The assistant principal who handled the incident told OCR that Student 17 broke down crying during his interview of her. OCR did not find evidence that the District offered any support services to Student 17. The assistant principal told OCR that Student 17 "seemed to be okay" after discussing the incident and the school did not follow up with her.

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Example 13

According to District records, in 2018, Student 20 initiated "intimate sexual contact" with a female student with a disability on at least three occasions while on the school bus, including fondling her breasts and attempting to put his hand down her pants. The records reflect that the Transportation Department observed video footage of the incidents and notified the students' school; and that an assistant principal talked to Student 20 about his behavior, suspended him for two days, and reassigned him to another bus. However, the records do not indicate that the District communicated the outcome of its investigation with the female student or her parent.

ALPINE SCHOOL DISTRICT (UTAH), 123 LRP 29859 (OCR 09/20/23)

Resolution Agreement (in summary):

- ✓ Additional training and resources for Title IX Coordinator (sufficient time, training, authority, etc.).
- ✓ Update and publish policies, and send to all students and parents.
- ✓ Additional training for administrative personnel (OCR approves training materials and trainer).
- ✓ Additional training for all employees (OCR approves training materials and trainer).
- ✓ Training for all students (OCR approves training materials and trainer).
- ✓ Creation of a new tracking system and records maintenance system for all reports and complaints.
- ✓ Must report to OCR every report or complaint of sexual harassment "until OCR closes its monitoring of this Agreement".
- ✓ Annual age-appropriate climate surveys of all students, parents, and employees (OCR must approve content).

MISTAKES OCR WILL NOTICE!

PRACTICAL THOUGHTS
ON HANDLING
DISCRIMINATION AND
HARASSMENT CLAIMS

- What should we be focusing on, as we consider both OCR's expectations and the specific requirements of the Illinois School Code?

MISTAKES OCR WILL NOTICE!

- Failing to acknowledge **current policy** (including failing to remove outdated policy from website, handbooks, etc.).

MISTAKES OCR WILL NOTICE!

- Failing to acknowledge **current policy** (including failing to remove outdated policy from website, handbooks, etc.).
- *Key tip: Don't let your Handbook Committee sabotage the required legal elements of your bullying policy, procedures, and implementation.*

MISTAKES OCR WILL NOTICE!

- Failing to complete an actual, robust **investigation** when a complaint of discrimination or harassment is mentioned.

MISTAKES OCR WILL NOTICE!

- Failing to complete an actual, robust **investigation** when a complaint of discrimination or harassment is mentioned.
 - *Investigation must seek truth (not presume it)*
 - *Investigation must follow the facts (not be restrained by process)*
 - *Investigation must have a target (not devolve into fishing)*
 - *Investigation must follow process (not seek to prove preordained result)*

MISTAKES OCR WILL NOTICE!

- Failing to complete an actual, robust **investigation** when a complaint of discrimination or harassment is mentioned.
- ***An investigation is going to include:***
 - *Evidence from interviews/testimony*
 - *Evidence from documents or electronic sources*
 - *Evidence via witness statements*
 - *Findings of fact, conclusions, and recommendations*

MISTAKES OCR WILL NOTICE!

- Failing to complete an actual, robust **investigation** when a complaint of discrimination or harassment is mentioned.
- **Conclusions should be reached based on a preponderance of the evidence:**
 - *You must make credibility determinations.*
 - *“He said/she said” or “He said/he said” are not an acceptable basis for a conclusion – you can’t wimp out on that basis!*
 - *The facts are either going to support a finding or they will not.*

MISTAKES OCR WILL NOTICE!

- Failing to have the **appropriate personnel** handle the issue.

MISTAKES OCR WILL NOTICE!

- Failing to have the **appropriate personnel** handle the issue.
- *Are the personnel handling the matter:*
 - *Appropriately trained (practically and legally)?*
 - *The individuals designated by policy?*
 - *Free from bias or conflicts of interest?*
 - *Do all personnel understand their obligation to report?*

MISTAKES OCR WILL NOTICE!

- Failing to **fully document** the response to the complaint and **notify the parties** of the outcome.

MISTAKES OCR WILL NOTICE!

- Failing to **fully document** the response to the complaint and **notify the parties** of the outcome.
- Under Section 27-23.7 of the Illinois School Code, each school must have procedures, consistent with federal and State laws and rules governing student privacy rights, for providing parents and guardians of the students who are parties to the investigation information about the investigation and an opportunity to meet with the principal or school administrator or his or her designee to discuss the investigation, **the findings of the investigation, and the actions taken to address the reported incident** of bullying.

MISTAKES OCR WILL NOTICE!

- Failing to **fully document** the response to the complaint and **notify the parties** of the outcome.
- In *Letter to Soukup*, 115 LRP 18668, 18 FAB 33 (FPCO 2015), the Family Policy Compliance Office noted that districts may disclose to the parents of a harassed student information about the disciplinary sanctions imposed on the students who engaged in the harassment if the sanction “directly relates” to the harassed student. The letter clarified that FERPA does not conflict with civil rights laws such as Title IX, which require districts to notify the parents of a harassed student of the outcome of a harassment investigation.

MISTAKES OCR WILL NOTICE!

- Failing to **fully document** the response to the complaint and **notify the parties** of the outcome.
- *What kind of disciplinary actions would be considered “directly related” to the harassed student? FPCO provided a few examples:*
 - *An order that the harasser stay away from the harassed student.*
 - *The harasser being prohibited from attending school for a period of time.*
 - *The harasser being transferred to other classes.*

MISTAKES OCR WILL NOTICE!

- Failing to see **patterns** by treating all matters as isolated instances.

MISTAKES OCR WILL NOTICE!

- Failing to see **patterns** by treating all matters as isolated instances.
- *Same offender, different victims?*
- *Same victim, different offenders?*
- *Different incidents, same building/classroom/setting?*

MISTAKES OCR WILL NOTICE!

- Failing to **remediate** the victim.

MISTAKES OCR WILL NOTICE!

- Failing to **remediate** the victim.
- While the investigation is pending, the school must provide **supportive measures** are individualized services provided that are **non-punitive, non-disciplinary, and not unreasonably burdensome to the other party** while designed to ensure equal educational access, protect safety, or deter harassment.

MISTAKES OCR WILL NOTICE!

- Failing to **remediate** the victim.
- *Discipline may only follow an investigation and a finding of responsibility.*
- *Remedies are required to be provided to a complainant when a respondent is found responsible. The remedies must be designed to maintain the complainant's equal access to education and may include the same individualized services described as supportive measures.*
- *Remedies after a finding of fault may be disciplinary, punitive, and may burden the respondent.*

MISTAKES OCR WILL NOTICE!

- Failing to **remediate** the victim.
- The School Code requires that the school's policy includes "the interventions that can be taken to address bullying, which may include, but are not limited to, school social work services, **restorative measures**, social-emotional skill building, counseling, school psychological services, and community-based services."

MISTAKES OCR WILL NOTICE!

- Failing to **remediate** the victim.
- *The point is to solve the problem. How can we marshal resources to accomplish this?*

MISTAKES OCR WILL NOTICE!

- Failing to convene the IEP team/504 team when disability is involved.

MISTAKES OCR WILL NOTICE!

- Failing to convene the IEP team/504 team when disability is involved.
- Schools have an obligation to ensure that a student with a disability who is the target of bullying continues to receive FAPE in accordance with his IEP or Section 504 plan.
- The school should, as part of its appropriate response to the bullying, convene the IEP or Section 504 team to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the IEP or 504 plan is no longer designed to provide FAPE. *Dear Colleague Letter*, 61 IDELR 263 (OSERS/OSEP 2013); and *Dear Colleague Letter: Responding to Bullying of Students with Disabilities*, 64 IDELR 115 (OCR 2014).

MISTAKES OCR WILL NOTICE!

No reports of harassment?

*That probably means you
aren't doing it right – no
school is Perfectville.*



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IN SUMMARY

- Effectuate reasonable modifications for pregnant students.
- Ensure all staff have requisite training.
- Receive incident reports of sex discrimination.
- Address supportive measures.
- Initiate and facilitate the grievance process as necessary.
- Maintain records.
- Evaluate barriers for reporting.

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