



DECIPHERING THE NEW TITLE IX REGULATIONS WEBINAR

We did not have a chance to get to all the questions that were posed during the webinar. Accordingly, we've compiled this "Q&A" document which includes all attendee questions asked during the webinar.

QUESTION: Is putting staff on administrative leave punitive?

ANSWER: No, administrative leave for employees IS permitted under the new regulations and is NOT considered punitive.

QUESTION: Is a third party contractor/vendor considered an "employee of an elementary or secondary school?"

ANSWER: The new regulations speak to the actions of employees specifically, but it is reasonable to assume that there will be implications for third party contractors who fail to adhere to the district's policy expectations relative to Title IX.

QUESTION: Is LA or other organizations planning to offer training opportunities for coordinators, investigators, and decision makers?

ANSWER: Absolutely! We often conduct trainings for administrators, Title IX coordinators, and all district staff generally. Contact Kevin Sutton at KSutton@LuskAlbertson.com for more information.

QUESTION: Adjusting the complainant schedule = supportive; adjusting the respondent schedule = punitive?

ANSWER: Not necessarily. The new regulations suggest that simply removing a respondent from the school environment, in the absence of an immediate threat to physical safety, might be viewed as punitive. But adjusting schedules, as a means of providing supportive measures, will very likely be appropriate and acceptable.

QUESTION: Complainant must be outed and all statements made available to the respondent, for a formal process?

ANSWER: The regulations attempt to strike a balance between notice to the respondent and confidentiality for all parties involved. The respondent absolutely has a right to know who has made allegations against him/her and the specifics of those allegations.

QUESTION: What if the complaint is with an ISD employee while they are serving within the local? Does the complainant need to report to the ISD or the LEA?

ANSWER: To be safe, they should report to both. In the final analysis, if the individual is employed by the ISD, the ISD likely carries the burden.

QUESTION: With all the staff that now have to be involved and make a decision, are we required/suggested to have a male and a female Title IX coordinator?

ANSWER: Not required. But that doesn't mean that it's not a good idea. Having more than one Title IX coordinator, especially for larger school districts, can be very helpful.

QUESTION: Does "sex" encompass LGBTQ, sexual orientation, gender identity/expression issues as well?

ANSWER: That debate is at the center of the dozens of federal cases that have been and are presently being litigated in federal courts around the country. The U.S. Supreme Court will soon hear a case on the issue as well. Until that decision comes down, it seems a safe assumption that LGBTQ students do fit within the definition. The guidance from the USDE doesn't agree, but we will side with the repeated federal court decisions that have found "sex" to include LGBTQ.

QUESTION: Can an investigator make a recommendation to a decision maker following the investigation?

ANSWER: That's a great question. We will give a provisional 'yes' response. We think the investigator can provide summative thoughts. But ultimately, the decision-maker has to make his/her own decision. The downside with a recommendation is that, if affirmed by the decision-maker, one might say it was just a "rubber stamp" and nothing more.

QUESTION: How do the new Title IX regulations work with social media with regards to "actual knowledge"?

ANSWER: No clear guidance on that point yet. For years, however, we've operated on the assumption that if the district knows about something, it should act. If we are aware of a social media report – i.e. a parent or student brings it to us – we operate at our own peril if we don't follow-up on it like an in-person report.

QUESTION: What about for ISD's that push out Special Education staff to locals? If reported to them, they are not District employee but the student is a student of the local District. Joint process an option?

ANSWER: See response above. We think a joint process makes a lot of sense.

QUESTION: Does Title IX cover staff to staff sexual harassment as well?

ANSWER: Title IX is focused on the denial of educational programs and activities. That, generally, will not apply in the staff-on-staff dynamic. But it doesn't mean that it's not prohibited elsewhere! Staff-on-staff sexual harassment is more likely covered under the district's harassment and discrimination policies.

QUESTION: Can you get rid of records if employee is no longer employed by the employer?

ANSWER: We would hang on to them for the required 7 years, even if the employee is gone.