

Title IX Coordinator Training

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Educational Service Center of Northeast Ohio

Robert J. McBride Sr.
rmcbride@ennisbritton.com

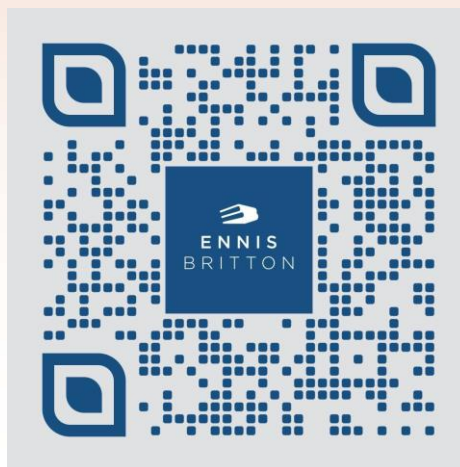
Giselle S. Spencer
gspencer@ennisbritton.com

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Today's Presentation:



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Title IX Coordinator: Designation and Notice

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Title IX Coordinator: Designation and Notice

- Every school receiving federal funds must designate at least one Title IX coordinator who must be referred to as the “Title IX Coordinator.”
- Specific contact information for the Title IX Coordinator must be communicated to:
 - All applicants for admission
 - All applicants for employment
 - Current students and their parents/guardians
 - Current employees
 - All unions or employee organizations with collective bargaining agreements with the school

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Title IX Coordinator: Designation and Notice

- Specific contact information of the Title IX Coordinator listed must include:
 - Name or title*
 - Office address
 - Electronic mail address
 - Telephone number
- This contact information must be “prominently displayed” on the school’s website and in each handbook or catalog made available to the individuals listed on the previous slide.
 - Student codes of conduct
 - Employee handbooks
 - Prospective student catalogs.
 - Each of these items must include how to report or file a complaint.

Title IX Coordinator: Training Requirements

Title IX Coordinator: Training Requirements

- Statutory definition of sexual harassment
- Scope of Educational program or activity
- How to serve impartially – avoiding prejudgment of the facts, conflicts of interest, bias
- Conducting an investigation and grievance process, including hearings, appeals, and information resolution processes

2020 Sex-Based Harassment

Quid pro quo harassment- Conditions the provision of an aid, benefit or service on an individual's participation in unwelcome sexual conduct

Specific offenses: sexual assault, dating violence, stalking, domestic violence

Hostile environment harassment- Conduct that is determined by a reasonable person to be:

1. Unwelcome
2. Severe,
3. Pervasive
4. Objectively offensive
5. That it **effectively denies** a person's ability to participate in or benefit from the educational program or activity.

2024 Sex-Based Harassment:

Quid pro quo harassment- Unwelcome conduct by an employee, agent, or other person offering aid, benefit, or service under the educational programs or activities of the entity while explicitly or implicitly conditioning the same on participation in unwelcome sexual conduct

Specific offenses: sexual assault, dating violence, stalking, domestic violence

Hostile environment harassment- Conduct that is:

1. Unwelcome
2. Sex-based
3. Subjectively **and** objectively offensive
4. So severe **or** pervasive
5. That it **limits or denies** a person's ability to participate in or benefit from the educational program or activity.

Comparing the Changes on Hostile Environment

■ On Hold 2024:

- Unwelcome sex-based conduct that based on totality of circumstances is subjectively **and** objectively offensive **and** is so severe **or** pervasive it **limits or denies** a person's ability to participate in or benefit from the educational program or activity.

■ 2020 – ongoing pending court action:

- Unwelcome sex-based conduct must be “so severe, pervasive **and** objectively offensive” that it **effectively denies** access to or participation in education programs or activities.

Scope of Educational Program or Activity

- The 2020 regulations only apply to sex discrimination occurring against a person in the United States and that discrimination is a part of the educational program or activity.
 - On school grounds or situations over which the school exercises “substantial control.”
 - Fact specific analysis to review the allegations and whether the discrimination is on school property, during a school activity, has a nexus to school, etc.
- Note: the 2024 regulations not in effect in Ohio, amended the scope to administer Title IX in educational programs and activities now includes conduct that occurs off campus and even outside the U.S. Under the 2024 regulations, the question would have been “whether the recipient has disciplinary authority over the respondent’s conduct in the context in which it occurred.”

Being Impartial and Unbiased

- Serving impartially means avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- **Key:**
 - Presumption that the respondent is not responsible for the alleged conduct and that a determination will be made on responsibility at the conclusion of the grievance process.
- Prohibited prejudgment would include:
 - Assuming what happened if there are ‘signs’ suggesting truth or falsity.
 - Assumptions based on sex or other stereotypes.
- Being unbiased requires an objective approach that does not prejudice or have a preference for the complainant or the respondent, or the characteristics of the parties.

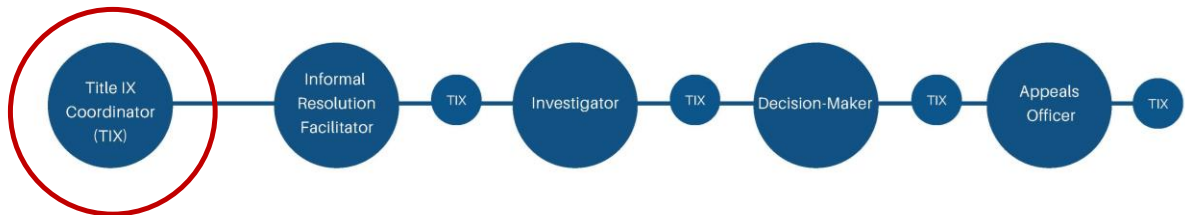
Conflict of Interest

- There are no specific examples of a conflict of interest in the regulations; this is left to the discretion of the school district.
- Conflict of interest:
 - When a personal interest or relationships might interfere with a school employee's ability to act neutrally on a complaint regarding a staff member, student or other person.
 - When a person working on a particular matter may not be impartial due to the circumstances or persons involved. Conflicts may be:
 - » **Direct** (actual issue between personal interests/relationships and official responsibilities),
 - » **Perceived** (someone might believe there is a conflict) or
 - » **Potential** (conflict could develop).
 - Disclose potential conflicts before serving on the matter. District can always get someone else to avoid a claim of conflict or bias.

Conflict of Interest

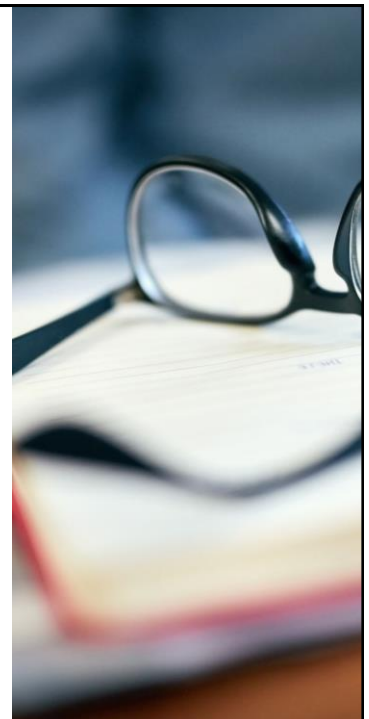
- A conflict of interest could be present if:
 - The Title IX staff demonstrates preference for or against complainants or respondents generally, or
 - Title IX staff has a conflict with a particular complainant or respondent
 - Examples: assuming everything a complainant says is true, or scrutinizing factual inconsistencies or errors of respondents more closely as this would be inconsistent with prohibition on prejudging the facts, conflict of interest, or bias.
- One of the bases for an appeal of a decision-maker's decision is that a conflict of interest or bias affected the decision.

The Line-Up



Conducting the Investigation and Grievance Process

- Title IX Coordinator responsible for receiving:
 - Reports of conduct that could meet the definition of sex discrimination or harassment
 - Formal complaints of sex discrimination or harassment
- Remember – Actual knowledge occurs when notice is received by an official of the school who has the authority to institute corrective measures or an employee of the school.
 - It is not only when the Title IX Coordinator receives notice.



Conducting the Investigation and Grievance Process

- Actual knowledge means that the school is now required to:
 - Respond promptly in a manner that is not deliberately indifferent.
 - Treat complainant and respondent equitably by offering supporting measures.
 - Following the grievance process before disciplinary sanctions are imposed.

Conducting the Investigation and Grievance Process



Actual knowledge is communicated to the Title IX Coordinator resulting in the following required actions:

Title IX Coordinator promptly contacts the complainant with information regarding supportive measures.

Discusses the options of supportive measures with the complainant, including they are available with or without a formal complaint.

Explains the formal complaint process to the complainant.



Best Practice: memorialize this conversation in writing, email, etc. and include a copy of the school's policy

Supportive Measures Defined:

- “Individualized services reasonably available that are:’
 - nonpunitive,
 - non-disciplinary, and
 - not unreasonably burdensome to the other party
 - while designed to ensure equal educational access, protect safety, or deter sexual harassment.”
- Examples: changing classes, stay away orders, different schedules, assigning buses, guidance counselor access, checking in regularly, etc., etc.



Supportive Measures

- 2024 regulations further refined “supportive measures” to state that supportive measures:
 - May vary depending on what the recipient deems to be reasonably available.
 - Must not unreasonably burden either party.
 - Must be designed to protect safety of the parties or provide support during the recipient’s grievance procedures or informal resolution process.
 - Not imposed for punitive or disciplinary reasons.
 - May modify, terminate, or continue supportive measures at the end of the grievance procedure or informal resolution process.
 - If modified or terminated, must provide timely opportunity to complainant/respondent to challenge the decision with an impartial employee.
 - Must not be the employee who made the decision.
 - If there is a material change in circumstances, complainants/respondents may seek a modification of supportive measures.

The Line-Up



Conducting the Investigation and Grievance Process

- Formal complaint is filed. This is permitted to be verbal or written at any time.
- Consider informal resolution, if appropriate, cannot be required.
 - Never appropriate when a staff member is the respondent.
- Title IX Coordinator can offer informal resolution to the complainant provided the parties involved are provided with written notice of the allegations, the requirements of the informal resolution, and the ability for either party to withdraw from the informal resolution process at any time.
 - Must have voluntary written consent.

Complaints – Ability to Dismiss

- If moving forward with formal complaint, check for ability to dismiss:
 - Outside of scope of educational program or activity, or
 - Even if true the allegations would not constitute sexual harassment as defined in statute and school policy; or
 - Respondent is no longer enrolled or employed; or
 - Circumstances prevent recipient from gathering evidence sufficient to reach a determination.*
- Document any decision if able to dismiss at this stage.

The Line-Up



Conducting the Investigation and Grievance Process

- If still moving forward with formal complaint, the Title IX Coordinator is the coordinator of the process.
- Title IX Coordinator
 - Serves as or assigns an investigator.
 - Sends Notice of Allegations

Conducting the Investigation and Grievance Process

- Notice of Allegations must include:
 - Sufficient details known at the time and with sufficient time to prepare a response before meeting with the investigator (e.g. identities of parties, details on conduct, date/location, etc.).
 - Presumption that the respondent is not responsible for the alleged conduct and that a determination will be made on responsibility at the conclusion of the grievance process.
 - Right to have an advisor of their choice, can be an attorney, not required to be
 - Right to inspect and review evidence
 - Prohibition on making false statements or knowingly submitting false information
 - Prohibition on retaliation.

The Line-Up



Conducting the Investigation and Grievance Process

- If not acting as the investigator, Title IX Coordinator allows the Investigator to do their role and facilitates the process, as needed.
 - May be necessary for the Title IX Coordinator to assist in party inspection of the evidence obtained as part of the investigation.
- Consider Title IX Coordinator the manager of the investigation process.
 - Once investigator is done with initial, draft report, the draft report is sent to each party for at least 10 days review and ability to submit a written response. Investigator must consider any written response before making report final.
 - This can often be run by the Title IX Coordinator.

Conducting the Investigation and Grievance Process

- The Title IX Coordinator is not decision-maker for the investigation.
- Consider Title IX Coordinator as manager of the decision-making process.
 - Once investigation report is made final, Title IX Coordinator provides the final report to the parties at least ten days in advance of a final decision (determination of responsibility) and assigns a decision-maker who is also provide written determination.
 - Title IX Coordinator can assist in facilitating exchange of written questions or any hearing process as required and set by policy.

The Line-Up



Conducting the Investigation and Grievance Process

- Final decision provided by decision-maker or Title IX Coordinator simultaneously to both parties.
- Title IX Coordinator is responsible for implementing any action provided by decision-maker.
- Title IX Coordinator also offers both parties opportunity to appeal determination of responsibility based on one of the following:
 - Procedural irregularity
 - New evidence not available at the time dismissal or determination was made; or
 - Conflict of interest for investigator, decision-maker or Title IX Coordinator.

The Line-Up



Title IX Coordinator: Responsibilities and Checklist

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Title IX Coordinator: Responsibilities & Checklist

- ☐ Confirm training obtained for:
 - ☐ Title IX Coordinator (See prior slides)
 - ☐ Decision-Makers:
 - ☐ Technology for live hearings
 - ☐ Issues of relevance of questions and evidence
 - ☐ Relevance of sexual predisposition or prior sexual behavior
 - ☐ Same as Title IX Coordinator
 - ☐ Investigators:
 - ☐ Issues of relevance for reporting
 - ☐ Same as Title IX Coordinator
 - ☐ Informal Resolution Mediator
 - ☐ Same as Title IX Coordinator
 - ☐ All Employees:
 - ☐ Title IX definitions and duty to report
 - ☐ Grievance process and investigation outlined in policy

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Title IX Coordinator: Responsibilities & Checklist

- ☐ Recording keeping for 7 years
 - ☐ Training materials to be collected and posted on school's website
 - ☐ Investigatory and appeal records
 - ☐ Including recording or transcript
 - ☐ Disciplinary sanctions and remedies provided
 - ☐ Informal resolution and results
 - ☐ Supportive measures documentation
 - ☐ Denial of supportive measures documentation

Title IX Coordinator: Responsibilities & Checklist

- ☐ Verify grievance procedure is adopted and published.
- ☐ Verify handbooks and codes of conduct include appropriate contact information and how to file a complaint.
- ☐ Verify policy outlines:
 - ☐ School does not discriminate on the basis of sex in the education program or activity that it operates. It is required by Title IX not to discriminate in such a manner which extends to admission and employment. Any questions may be referred to the Title IX Coordinator.

Title IX Coordinator: Responsibilities & Checklist

- ☐ Oversee complaints and possible service as investigator
- ☐ Follow law and policy on grievance procedures
 - ☐ Disseminate policy
- ☐ Ensure supportive measures are offered and followed up on
 - ☐ Coordinates the effective implementation of the supportive measures.
- ☐ Ensure remediation measures are implemented if Title IX complaint is substantiated.

Title IX Coordinator: Responsibilities & Checklist

- ☐ Oversee / provide training in compliance with Title IX
- ☐ Identify and address patterns and/or systemic problems
- ☐ Monitor students' participation in athletics & extra-curricular activities (disproportionality)
- ☐ Monitor students' participation in academic programs (disproportionality)

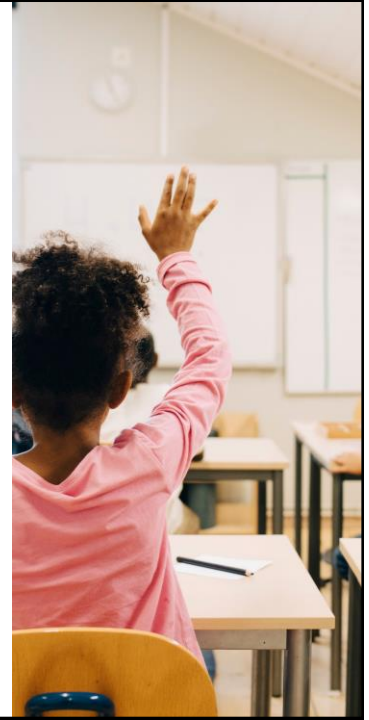
Questions?

Robert J. McBride Sr.

rmcbride@ennisbritton.com

Giselle S. Spencer

gspencer@ennisbritton.com



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CONTACT US

CINCINNATI OFFICE

1714 West Galbraith Road
Cincinnati, Ohio 45239

Phone: (513) 421-2540
Toll-Free: (888) 295-8409
Fax: (513) 562-4986

CLEVELAND OFFICE

6000 Lombardo Center
Suite 145
Cleveland, Ohio 44131

Phone: (216) 487-6672
Fax: (216) 674-8638

COLUMBUS OFFICE

8740 Orion Place
Suite 315
Columbus, Ohio 43240

Phone: (614) 705-1333
Fax: (614) 423-2971

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