

2

# Introduction Ititle IX Background & State Law Implications Requirements for Title IX Compliance Duty to Respond & Jurisdiction Ititle IX Coordinator Ititle IX Grievance Procedures Decisionmaking & Appeals Training & Recordkeeping Mandated Reporting Student Boundaries

к**м**в 3

# What is Title IX? PUBLIC LAW 92-318-JUNE 23, 1972 TITLE IX—PROHIBITION OF SEX DISCRIMINATION SEX DISCRIMINATION PROHIBITED Spc. 901. (a) 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, except that:

4

# Legal Landscape

- □ August 14, 2020: 2020 Title IX regulations effective
- August 1, 2024: 2024 Title IX regulations effective
- January 9, 2025: District Court ruling effectively vacates 2024 Title IX regulations
- □ January 20, 2025: Executive Order from President Trump defines "sex" as "an individual's immutable biological classification as either male or female" and prohibits the use of federal funds to promote gender ideology/gender identity
- □ February 4, 2025: U.S. Department of Education ("USDOE") confirms in a Dear Colleague Letter that USDOE will enforce the 2020 Title IX rule, consistent with the January 9 ruling and the January 20 Executive Order

К₩В

5

## Discrimination on the Basis of Sex

 $\label{thm:title-likelihood} \textbf{Title-IX prohibits} \ \underline{\textbf{discrimination on the basis of sex}, including \ \textbf{sexual harassment}$ 

- □ Sexual harassment is conduct on the basis of sex that satisfies one or more of the following:

  \* An employee of SACS conditions the provision of an aid, benefit, or service of SACS on an individual's participation in unwelcome sexual conduct (i\_e\_, quid pro que);

  \* Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that

  - it effectively denies a person equal access to SACS's education program or activity; or Sexual assault, dating violence, domestic violence, or stalking.
- ☐ Respondent means an alleged "perpetrator" of sex discrimination.
  - □ The 2020 Title IX Regulations do not expressly recognize sexual orientation and gender identity in the prohibition against discrimination on the basis of sex
  - BUT those categories have arguably <u>always</u> been included under the umbrella of discrimination based upon "sex", particularly under Massachusetts ("MA") law, and often are included in school policies as well.

## 7 Massachusetts State Law Implications

- Schools are prohibited under state law (see G.L. c. 76, §5; c. 151B; and c. 151C) from discriminating on the basis of sex, including on the bases of sexual orientation and gender identity.
- On February 7, 2025, the Acting Commissioner of the Massachusetts Department of Elementary and Secondary Education ("DESE")
  - □ reiterated that MA state law prohibits discrimination in public schools based on, among other things, sex, gender identity, and sexual orientation; and
  - □ confirmed the continued application of DESE's guidance on non-discrimination on the basis of gender identity. See: <a href="https://www.doe.mass.edu/sfs/lgbtq/genderidentity.html">https://www.doe.mass.edu/sfs/lgbtq/genderidentity.html</a>
- MA Pregnant Workers Fairness Act (see G.L. c. 151B, §4) prohibits employment discrimination on the basis of pregnancy or related conditions

 $K \otimes B$ 

7

## 8 Massachusetts State Law Implications

- Massachusetts public schools and private schools that receive federal financial assistance should adopt/implement anti-harassment and anti-discrimination policies that are compliant with state and local laws (i.e., policies that prohibit discrimination and harassment on the bases of sexual orientation and gender identity), while ALSO adopting/implementing Title IX policies and procedures that comply with the 2020 Title IX regulations.
- Again, Massachusetts law and DESE policies have included robust protections against sex-based discrimination for many years, including protections against discrimination/harassment based upon gender identity, sexual orientation, and pregnancy and related conditions.

K₩B

8

# Requirements for Title IX Compliance

- Respond promptly in a manner that is not deliberately indifferent when has actual knowledge of sex discrimination
- 2) Designate Title IX Coordinator
- 3) Publish a notice of nondiscrimination (announcing prohibition against discrimination on the basis of sex)
- 4) Adopt, publish, and implement a **nondiscrimination policy** AND **grievance** 
  - The "SACS Title IX Policy and Grievance Procedures"
- 5) Ensure that relevant people are **trained** on their Title IX duties
- 6) Maintain appropriate records

K₩B

# "A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent." 34 CFR § 106.44 "Actual knowledge means notice of sexual harassment in an education program or activity of the recipient of the program of the

# 11 Jurisdiction

Title IX grievance procedures apply only to sex discrimination, including sexual harassment, that is alleged to have occurred:

- $\hfill\Box$  "in an education program or activity of [SACS]," including
  - locations, events, or circumstances over which SACS exercised substantial control over both the respondent and the context in which the sexual harassment occurs; and
  - any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.
- AND "against a person in the United States."
  - Note: No jurisdiction over school programs and activities outside of the U.S. (such as foreign exchange programs).

Further, at the time a formal complaint is filed with SACS, the **Complainant must be participating in or attempting to participate** in SACS's education program or activity.

Note: SACS has no jurisdiction over complaints from former students or employees.

K₩B

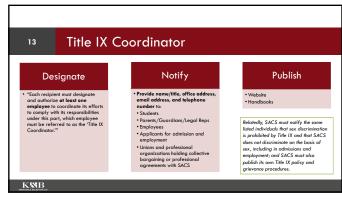
11

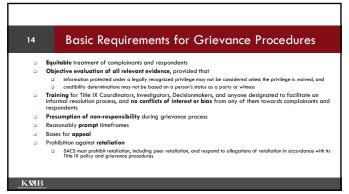
# Employee Duties and Responsibilities

Employee Duty to Report: <u>All</u> elementary and secondary school employees must notify a Title IX Coordinator when they have any information about conduct that reasonably may constitute sex discrimination, including sexual harassment, under Title IX.

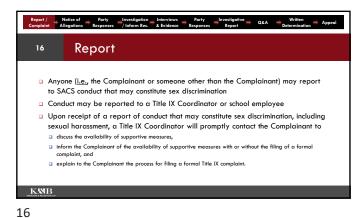
There may be other reporting obligations in addition to Title IX (e.g., mandated reporting under G.L. c. 119, § 51A). (See Slides 39-40 for additional details.)

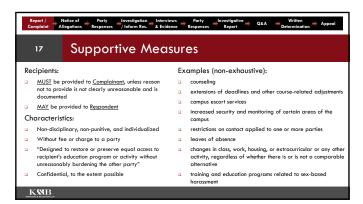
К₩В

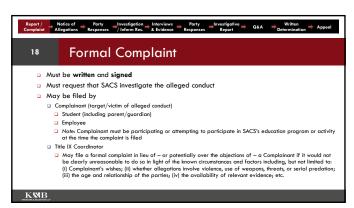




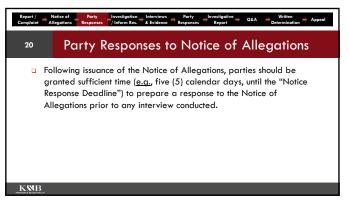


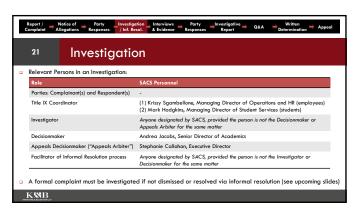


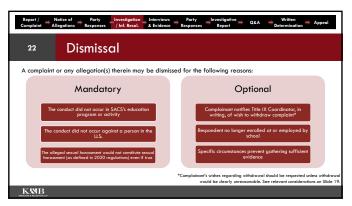




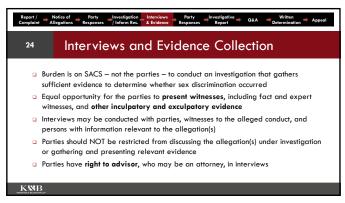


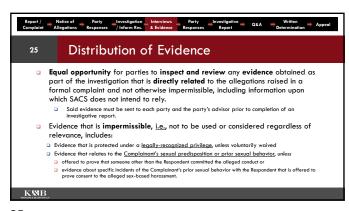


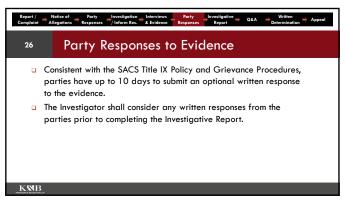




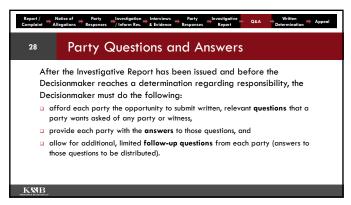


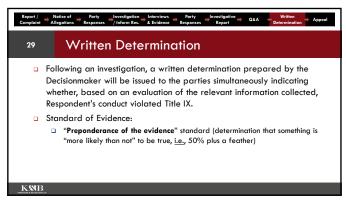




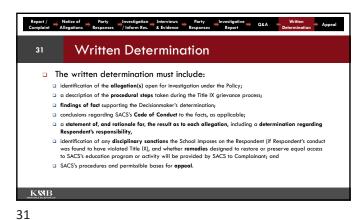




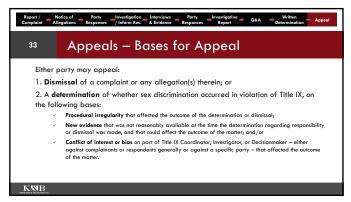


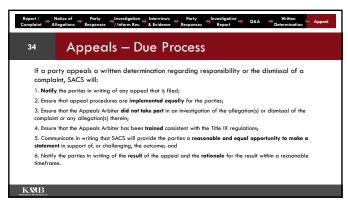






| Natice of Responses | Numerical Policy | Investigation | Natice of Responses | Numerical Policy | Numerica





# All Title IX training materials must be posted to SACS's website. All SACS employees\* must be trained on: SACS's obligation to address sex discrimination in its education program or activity; the scope of conduct that constitutes sex discrimination under Title IX, including the definition of sexual horassment; and all applicable notification and information requirements required by the Title IX regulations. \*The term "employees" includes individuals employed directly by SACS as well as independent contractors, volunteers, activisors, and third-party agents who are performing roles that are directly involved in carrying out SACS's Title IX dides, Lie, roles involving the responsibilities of Title IX Coordinators, Investigators, Decisionmakers, facilitators of an informal resolution process, and Appeals Arbiters.

# In addition to the training requirements for employees, all Title IX Coordinators, Investigators, Decisionmakers, Appeals Arbiters, and other persons who are responsible for implementing SACS's grievance procedures or who have the authority to modify or terminate supportive measures must be trained on the following topics to the extent related to their responsibilities: SACS's obligations to respond promptly and effectively upon receipt of information regarding conduct that may reasonably constitute sex discrimination in SACS's education program or activity; SACS's grievance procedures and how to conduct a grievance process; how to serve importially, including by avoiding prejudgment of the foats at issue, conflicts of interest, and bias; and the meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance. Title IX Coordinators and their designees must also be trained on their specific responsibilities, including with regard to SACS's recordkeeping system. Facilitators of an informal resolution process must also be trained on the informal resolution process.

# SACS must maintain for a period of at least seven (7) years: For all reports or complaints submitted under Title IX, records documenting the grievance procedures or informal resolution process applied, including: Investigation materials Determination regarding responsibility Any disciplinary sonctions imposed on respondent and/or remedies provided to complainant Appeals and results of appeals If no supportive measures provided to complainant, documentation about why that was not clearly unreassonable in light of the known circumstances Records of other actions taken in response to a report or formal complaint Documentation supporting conclusion that SACS's response was not deliberately indifferent Training materials (must also be publicly available on website)



# School personnel, including teachers, nurses, educational administrators, guidance counselors, psychologists, and school attendance officers, are "mandated reporters" with a duty to report certain information if, in their professional capacity, they have reasonable cause to believe that a child under the age of 18 is suffering physical or emotional injury resulting from: 1. abuse, which causes harm or substantial risk of harm to the child's health or welfare, including sexual abuse; 2. neglect, including malnutrition; 3. physical dependence upon an addictive drug at birth; 4. being a sexually exploited child; or 5. being a human trafficking victim.

### Mandated Reporting (G.L. c. 119, § 51A) 40

- All SACS employees are considered mandated reporters.
- Upon reasonable cause (see previous slide), a SACS employee must **notify a member of the Student Services Team**, who shall become responsible for notifying the Department of Children and Families ("DCF").
- If the Student Services Team decides not to file a complaint with DCF regarding the reporter's concerns (e.g., because it does not agree there is reasonable cause), the reporter may file a report with DCF and/or law enforcement directly.
- A school employee **may not face retaliation** in their employment for complying in **good faith** with the mandated reporter statute and is **not subject to civil or criminal liability** for filling a report with DCF.
- Mandated reporters who are professionally licensed by the Commonwealth must complete training to recognize and
- report suspected child abuse or neglect.

  The state offers mandated reporter training. (See <a href="https://mandatedreportertraining.com/massachusetts/">https://mandatedreportertraining.com/massachusetts/</a>)
- Failure to make a report when there is reasonable cause for concern can result in a fine of up to \$1000;
- Knowingly/willfully filing a frivolous report can result in a fine of up to \$2000 and/or imprisonment; and
- Willingly failing to report known harm can result in a fine of up to \$5000 and/or imprisonment.

40



# **Student Boundaries**

41

### 42 **Student Boundaries**

- □ The SACS Student Boundaries Policy intended to guide all faculty and staff ("SACS Adults") in how to best conduct themselves in a way that reflects the high standards of behavior and professionalism required of SACS employees and to specify the appropriate boundaries between SACS Adults and students and recent alumni ("SACS Students").
- Trespassing the boundaries of a student/employee relationship and violation of the policy may lead to disciplinary consequences up to and including termination of employment. In addition, criminal penalties and sanctions against an educator's licensure may result for certain conduct with students.
- It is each staff member's obligation to avoid situations that could prompt suspicion by
  - parents/guardians, students, colleagues, or school leaders.

    When you are unsure if certain conduct is acceptable, ask yourself, "Would I engage in this conduct if my family or colleagues were standing next to me?"

