

# Addressing the New Title IX Changes in K-12 Schools

A panel hosted by CCASA

**Alexis King: Rocky Mountain Victim Law Center**  
**Rebekah Ottenbreit: Colorado Department of Education**



# Panelists

- **Alexis King**
  - Rocky Mountain Victim Law Center
  - Title IX Staff Attorney
  - [aking@rmvictimlaw.org](mailto:aking@rmvictimlaw.org)
- **Rebekah Ottenbreit**
  - Colorado Department of Education
  - English Language Development Specialist and Title IX State Coordinator
  - [ottenbreit\\_r@cde.state.co.us](mailto:ottenbreit_r@cde.state.co.us)



# Overarching Questions

- What are the changes?
- Compliance requirements for K-12
- How to build and maintain structures to support students and staff
- Practical ideas and best practices

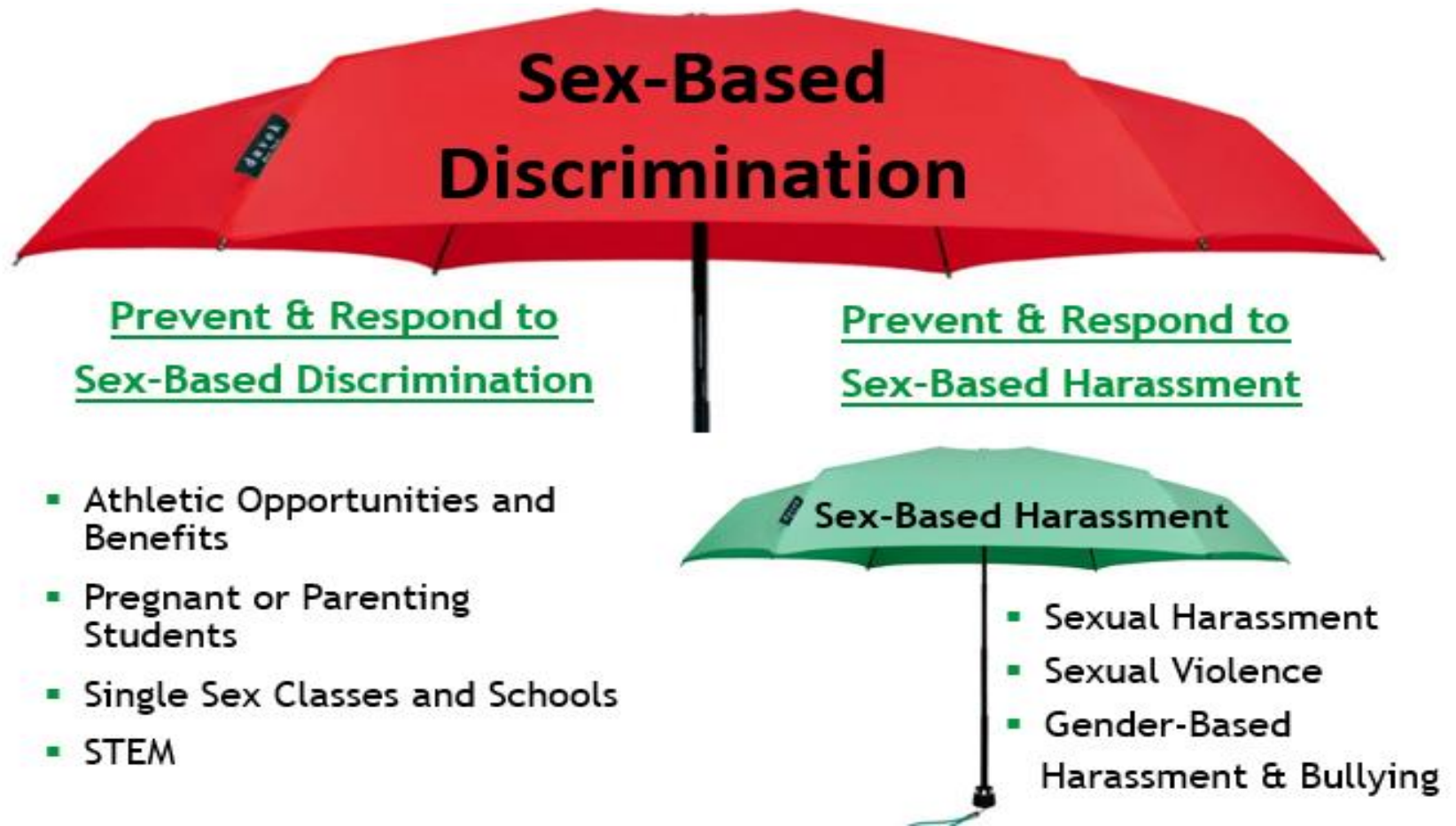


# Title IX

*“No person in the U.S. 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”*



# What Falls Under Title IX?



# Rules, Regulations & Guidance

- Implementing regulations
  - [34 CFR, part 106](#)
- Guidance documents
- **NEW Title IX Regulations**
  - Specific to sexual harassment
  - In addition to existing regulations
  - Draft regulations released for public comment Nov 29, 2018 - Jan 28, 2019
  - Over 100,000 comments submitted.
  - Final rule released May 6, 2020
  - 2033 pages
  - Effective Aug 14, 2020

# Practical Ideas

- Establish a Title IX team
- Include:
  - district attorney
  - district policy writer
- Use table of contents and search function
- Talk to other districts



# New Definition: Sexual Harassment

1. **Quid pro quo** sexual harassment by an employee
2. Davis Court's phrasing verbatim: unwelcome conduct **that a reasonable person would determine is "so severe, pervasive and objectively offensive"** that it effectively denies a person equal access to education
3. Sexual assault as defined in the Clery Act/ amended by the Violence Against Women Act, **a single instance of:**
  - dating violence
  - domestic violence
  - stalking





# **New Definition: Actual Knowledge**

1. A student may report to any employee of an elementary or secondary school
2. Students do not need to report to a specific employee such as a Title IX Coordinator
3. If an employee observes sexual harassment



# **New Definition: Education Program or Activity**

1. "all of the operations of" a recipient
2. "locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the harassment occurs"
3. off-campus building owned or controlled by a student organization officially recognized by a postsecondary institution
  - Incidents that occur off campus, if any of the above three conditions are met
  - Must be in the United States



# Is cyber-bullying “off-campus?”

That depends...

- Is it part of “all of the operations of” the school/district?
- Does the school/district exercise “substantial control?”
- Is the device being used owned by the school?
- Is harassment occurring during class time?
- Is the harassment occurring using school wifi, school purchased software, or a school email address?
- Is the harassment occurring on a school designated platform or website?



# Updating Policies

- AC - Nondiscrimination/Equal Education Opportunity
- ADD - Safe Schools?
- GBAA - Sexual Harassment?
- JB - Equal Education Opportunity
- JBB - Sexual Harassment
- JII - Student Concerns, Complaints, and Grievances

# Updating Procedures

## Include:

- Title IX Coordinator(s)
- Definitions
- Rights of both parties
- How the school will respond
- Timelines
- Forms
- Appeals process



# New Posting Requirements

1. Notice of Nondiscrimination
  - school/district does not discriminate on the basis of sex
  - any person may submit questions/file a complaint with the Title IX Coordinator or the Office for Civil Rights
2. Title IX Coordinator's name, address, phone number, & email
  - if more than one Title IX Coordinator, must identify lead
3. Grievance Procedures
4. Title IX training materials used



# New Roles & the Role of Parents

- Title IX Coordinator
- Investigator
- Decision Maker
- Advisor
- Person who facilitates an informal resolution



# Due Process

- Burden of Gathering Evidence
- Conflict Free
- Reasonable Timing
- Written Notice
- Opportunity to Inspect
- Differentiate Evidence
- 10 Day response





# Due Process Continued

- Investigative Report
- Issue 10 days prior to any hearing or final determination
- May provide a hearing
- Opportunity to submit questions
- Written determination
- Appeal



# University vs K-12

- Coaches not mandatory reporters: **does not apply to K12**
- Cross-examination and hearings: **may to K12**
- Rape Shield



# Formal vs Informal

- Informal = elusive
- Similarly, a recipient **may not require** the parties to participate in an informal resolution process under this section and **may not offer** an informal resolution process unless a formal complaint is filed.

# How must the school respond to a complainant?

## MUST:

- Be prompt
- Title IX coordinator must contact each complainant
  - To offer supportive measures
  - With or without a formal complaint
  - Explain process for filing a formal complaint
- Treat complainants and respondents equitably
  - Follow grievance procedures before disciplining

# Supportive Measures

- Non-disciplinary, non-punitive
- Individualized, as appropriate
- As reasonably available
- Free of charge
- No formal report required



# Examples of Supportive Measures

- “course- related adjustments” includes opportunities to retake classes or exams or adjusting an academic transcript
- Counseling
- Deadline extensions
- Modified work or schedules
- Change in work or housing locations



# How must the school respond?

If respondent is found to be responsible for sexual harassment > **MUST:**

- Written determination
- Options for Appeal
- Coordinator to effectively implement remedies for the complainant
  - designed to restore or preserve equal access to education program or activity
  - Any disciplinary sanctions

# Title IX and Remote Learning

- Does it impact the child's ability to access their education?
- Is the behavior unwelcome conduct **determined by a reasonable person** to be so severe, pervasive, and objectively unreasonable, that it denies equal access to educational activity?
- You cannot wait until after COVID





# Practical Ideas

- What relationship are you trying to foster with the complainant?
  - Changing classes
  - Changing schools
  - Gathering information



# Title IX & Law Enforcement

## Advantages

- Immediate impact for student

## Disadvantages

- Every word counts
- Privacy

Is your team trauma informed?



# Title IX Accountability

- Reports must go in tandem
  - Police
  - Title IX
- Civil Action
- Office of Civil Rights



# Next Steps for Districts & Schools

- Establish a Title IX team
- Update Title IX policies
  - Adopt policies
- Update grievance procedures
  - Adopt new procedures
- Post online and widely distribute
- Train staff and collaborators
- Educate parents, students, and community
- Maintain records
  - 7 years minimum



# Who to Train or Educate

- Title IX team
  - Title IX Coordinator, investigator, decision-maker, and person who facilitates an informal resolution
- Employees
- Collaborators
  - SROs, advocates, outside trainers
- Students
- Parents, families
- Community



# What to Train On

- Definitions
  - Sexual Harassment
  - Updated policies and procedures
- Differentiated
  - Each role may require a different type of training
  - Title IX team must understand the scope of the district's education programs or activities
    - \* On-going
    - \* In multiple formats

# How to Train: Practical Ideas

- ❑ Title IX Team Members
  - In-depth, specific, includes law
  - Law firm, ATIXA and school specific
- ❑ Employees and collaborators
  - In house, district/school specific
  - Conducted by trained Title IX team
- ❑ Students
  - In house, grants, specific to school
  - Conducted by school personal and grant programs
- ❑ Parents, families, community
  - In house, grants, specific to school
  - Conducted by school personal and grant programs



# Supporting Schools

- Victim Centered v. Trauma Informed
- Accessible Title IX procedures
- Accessible Title IX Training info
- Supporting student activists





# Lawsuits and Advocacy

- Attorney General's Lawsuit
- <https://coag.gov/app/uploads/2020/06/TitleIX-Complaint.pdf>
- Title IX Advisory Committee



# Other Questions Received

- How does Title IX intersect with working with students with disabilities?
- How can I support girls of color and QTBIPOC youth of color?



# Requests

- Sample policies & training appreciated
- Recommendations for student code of conduct process
- A flowchart of title 9 procedures that reflect the changes

# Resources

- Colorado Department of Education
  - Title IX homepage:  
[http://www.cde.state.co.us/cde\\_english/titleix](http://www.cde.state.co.us/cde_english/titleix)
  - Sex-Based Harassment:  
[http://www.cde.state.co.us/cde\\_english/titleixsexbasedharrassment](http://www.cde.state.co.us/cde_english/titleixsexbasedharrassment)
- Rocky Mountain Victim Law Center
  - <http://www.rmvictimlaw.org/>
- Legal Information Network of Colorado
  - <http://www.coloradolinc.org/>



# To submit further questions:

