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Webinar Goals

- Defining Supportive Measures
- Title IX Coordinator Responsibilities
- Informal Resolution
- Examples

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Continuing Education Credits

The following credits are pending approval.

- Federal CLE
- State CLE
- SHRM

We will send an email to all attendees once we have official approval.

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TOPIC #1

Defining Supportive Measures

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Deliberate Indifference Standard

- Recipient must respond to allegations of sexual harassment in an education program or activity "promptly in a manner that is not deliberately indifferent"
- Recipients are deliberately indifferent only if response is clearly unreasonable in light of the known circumstances
- Must treat complainants and respondents equitably

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Regulatory Definition of Supportive Measures § 106.30(a)

- Non-Disciplinary, non-punitive individualized services
- Offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent

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Regulatory Definition of Supportive Measures § 106.30(a)

- Offered before or after the filing of a formal complaint or where no formal complaint has been filed
- Continue through the conclusion of the grievance process when applicable
- Can be continued even after a finding of non-responsibility

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Regulatory Definition of Supportive Measures § 106.30(a)

- Designed to restore or preserve equal access to the recipient's education program or activity
- Without unreasonably burdening the other party
- Measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment

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What is Unreasonably Burdensome?

- No specific definition – consider unique circumstances
- Does not depend solely on continued access to academic programs
- Must take into account:
  - Nature of the educational programs, activities, opportunities, and benefits – not solely those programs that are "academic" in nature

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What is Unreasonably Burdensome?

Comments suggest that the district's grievance process must be conducted in a reasonably timely manner to avoid the supportive measures imposed pending the outcome of a grievance process being unreasonably burdensome.

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Regulatory Definition of Supportive Measures § 106.30(a)

- Counseling
- Extension of Deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- Mutual restrictions on contact between the parties
- Leaves of absence
- Increased security and monitoring
- Other similar measures

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Other Examples from Comments

- Sending student to principal's office
- Educational conversations
- Changing student seating
- Changing class assignments

These are not "inherently…punitive or disciplinary," and may be taken to maintain order, protect student safety, and counsel students about inappropriate behavior.

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Regulatory Definition of Supportive Measures § 106.30(a)

- Recipient must maintain confidentiality of supportive measures to the extent possible so as to not impair the ability to provide them
- Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures

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Caution!

- Comments specify that a school district's identified disciplinary sanctions should NOT be used as supportive measures
  - Must go through grievance process
- Example: If removal from student activities is a potential sanction, you cannot remove a Complainant or Respondent from student activities as an interim measure
- Suspension, expulsion, and termination of employment are inherently disciplinary

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Emergency Removal (Student)

- May remove a Respondent from an education program or activity after:
  - Undertaking an individualized safety and risk analysis
  - Determining an immediate threat to physical health or safety of any student or individual arising from the allegations justifies removal
- Must provide Respondent with notice and an opportunity to challenge the decision immediately following the removal

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Emergency Removal (Student)

- Note that any decision to remove a student for more than ten (10) school days requires a Board hearing.
  - Iowa Code 282.4 – suspension and expulsion
  - Iowa Code 282.3 – removal of a student whose "presence [is] injurious to the health of other pupils"

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Administrative Leave (Employee)

- Non-student employee may be placed on administrative leave during pendency of grievance process
- Note that employees must be placed on administrative leave under certain circumstances (e.g., complaint of abuse of a student by a school employee under Chapter 102)

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Interaction with Other Laws

Students and employees are still entitled to applicable provisions of the Individuals with Disabilities in Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA)

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Interaction with Other Laws

- For students:
  - Consider whether a manifestation determination is necessary for students with an IEP or Section 504 Plan (10 days of disciplinary removal)
  - Consider provisions of an IEP or Section 504 Plan in designing interim supportive measures

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Interaction with Other Laws

- For employees:
  - Consider whether interactive dialogue is necessary to discuss reasonable accommodations due to a known disability

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TOPIC #2

Title IX Coordinator Responsibilities

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Responsibility for Supportive Measures

- Title IX Coordinator responsible for coordinating the effective implementation of supportive measures
- Burden of arranging and enforcing measures must remain on the Recipient, not on any party
- Coordinate implementation of measures with appropriate staff
- Serve as point of contact for students to ensure implementation occurs

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- Promptly contact the Complainant to discuss the availability of supportive measures
- Consider the Complainant's wishes with respect to supportive measures

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- Inform the Complainant of the availability of supportive measures with or without filing a formal complaint
- Explain the process for filing a formal complaint to Complainant

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Documentation

- Maintain complete records of each matter (required to be maintained for seven years)
- Must document the facts or circumstances that render certain supportive measures appropriate or inappropriate
- If a Complainant-requested measure was not implemented, document why the response to the Complainant was not clearly unreasonable in light of the known circumstances

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Poll Question 1:

Does your district have an established process for communicating with complainants and respondents about supportive measures (with or without the filing of a formal complaint)?

1. Yes
2. No
3. Unsure

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TOPIC #3

INFORMAL RESOLUTION

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Informal Resolution

- "Default" is that a formal complaint must be investigated and adjudicated by recipient
- Recipient may choose to offer the parties an informal process to resolve the complaint
- Recipients may not offer informal resolution unless a formal complaint has been filed

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Informal Resolution Examples

- Mediation
- Arbitration
- Restorative Justice
  - Requires Respondent to admit wrongdoing

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Alternative to Formal Grievance Procedures

- Informal Resolution may not be required in lieu of the formal grievance procedures
- May be initiated any time prior to reaching a determination regarding responsibility
- Any party may withdraw from the informal resolution process at any time prior to finalizing

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Other Requirements

- Informal Resolution facilitators must be free from conflicts of interest, bias, and trained to serve impartially
- Informal Resolution process must have "reasonably prompt time frames"
- The initial written notice of allegations should alert parties to the availability of any Informal Resolution the Recipient has made available

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Training for Facilitators

- Definition of sexual harassment
- Scope of recipient's education program or activity
- How to conduct informal resolution process
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, or bias

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Recipients Must:

- Provide written notice disclosing the allegations, requirements of informal resolution process, and right to withdraw from informal process
  - Should also be provided to minors' parents or legal guardian
- Obtain parties' voluntary, written consent

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Written Disclosure

- If Recipient plans to allow informal resolution facilitators as witnesses in subsequent formal grievance processes, that fact must be disclosed to parties
- Must disclose consequences of participating in informal resolution process, such as fact that records will be maintained or could be shared or not shared

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Recipients Must Not:

- Offer or facilitate informal resolution to resolve allegations that an employee sexually harassed a student
  - In cases of employee-to-student sexual harassment, follow Chapter 102!

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Confidentiality

- Recipient determines the confidentiality of informal resolutions
  - o May be influenced by the type of informal resolution offered
  - o Must inform parties about the nature and consequences of any confidentiality provisions

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Outcomes

- Written agreement between the parties
- Could include provisions similar to Interim Support Measures
- Could include disciplinary measures
- Provide finality for the parties

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TOPIC #4

Examples

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Example 1: A fifth grade student sexually harassed and assaulted four different first graders in school bathrooms on separate occasions.

- One parent wants their first grader moved to a different school building
- One parent wants the fifth grade student moved to a different school building
- One parent wants the fifth grade student expelled
- All parents want to ensure no contact between their child and the fifth grader

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Questions

- Does this justify an emergency removal?
- What interim supportive measures may be appropriate?
  - Should the first graders or fifth grader have their school buildings reassigned?

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Example 2: A female math teacher reports that a male teacher on her team grabbed her inappropriately at the staff Christmas party. The math team has weekly meetings and the female teacher states she feels uncomfortable attending but that she thinks the male teacher was drunk and doesn't want him to get in trouble.

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Questions

- Should the male teacher be placed on leave?
- What information should the Title IX Coordinator provide the female employee?
- What supportive measures may be appropriate?

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Poll Question 2:

For informal resolution, does your current policy provide for:

1. Mediation
2. Arbitration
3. Restorative justice
4. We do not have informal resolution in our current policy

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