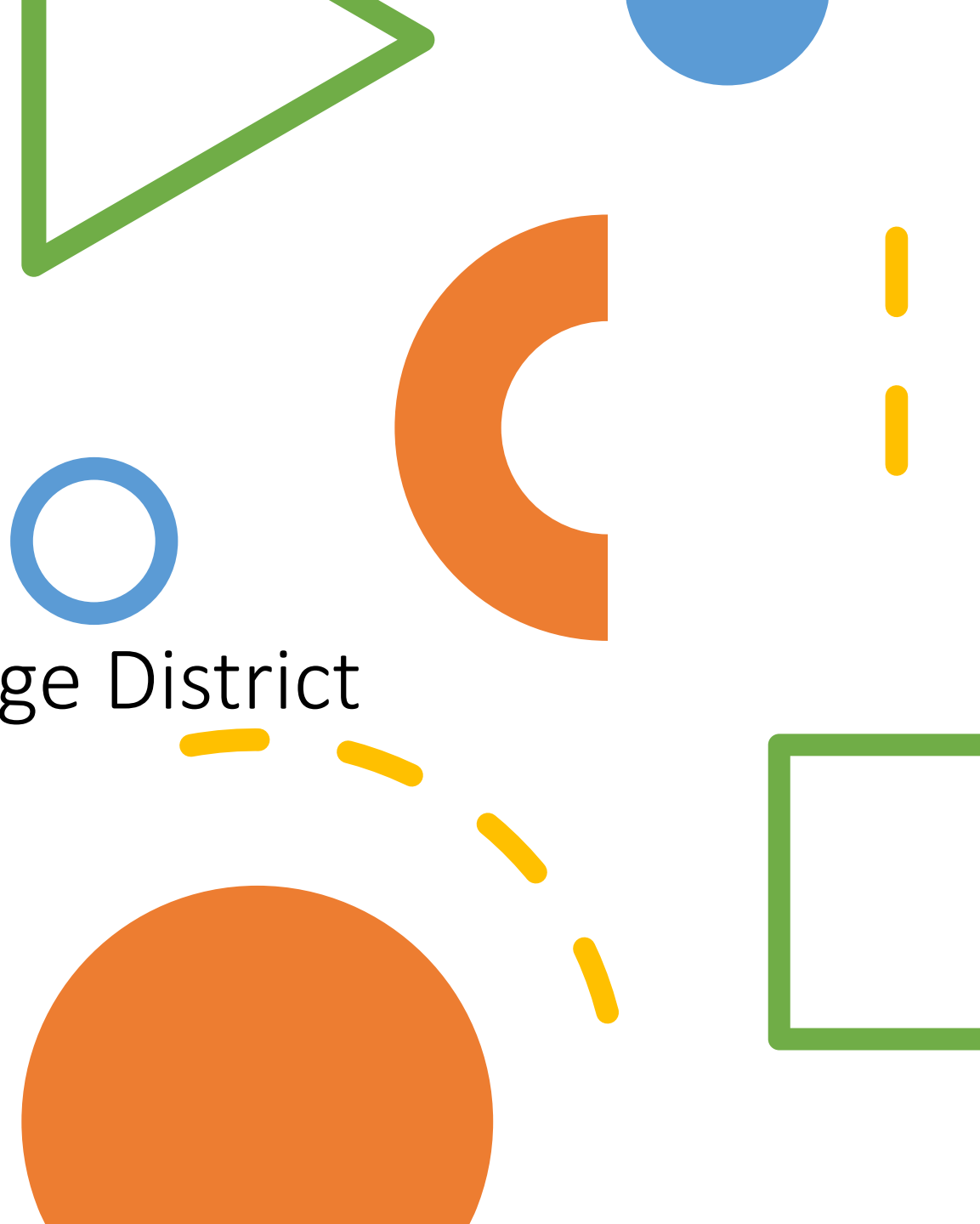


# Title IX Training for Associated Students

Southwestern Community College District

Mardi Walters, Ed.D.  
2.9.2024



# Agenda



- What is Title IX?
- What does it do?
- Actual notice and knowledge
- Responsible Employee
- Definitions
- How do I report?
- What should I do?



**1972**

What is Title IX?

“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 educational program or activity receiving federal financial assistance.”

20 U.S.C. §1681 & 34 C.F.R. Part 106 (1972)

# History Leading up to Title IX

Title VI of the Civil Rights Act –  
Prohibits discrimination **on the basis of race, color, or national origin** in any program or activity receiving federal financial assistance.

1964

Executive Order 11246 –  
Prohibits federal contractors from **discriminating on the basis of race, color, religion, or national origin**. “Sex” was added in 1968; renamed Exec. Order 11375.

1965

Title VII of the Civil Rights Act –  
Prohibits discrimination in the **terms, conditions, or privileges of employment on the basis of an employee’s race, sex, color, religion, or national origin**.

1964

**Title IX passed and signed into law by President Nixon**

1972

# History of Title IX Post Enactment



1975: Department of Health, Education, and Welfare (HEW) **codified Title IX regulations**. HEW was the precursor to the current U.S. Dept. of Ed.



1979: Supreme Court **created a private right of action under Title IX** in Cannon v. U. of Chicago, 441 U.S. 677 (1979)



1979: HEW **promulgated three-part test for athletics to evaluate equity in athletic participation** and access to resources and equitable opportunities.



1980: U.S. Department of Education **created Title IX oversight** transferred to Dept. of Ed.'s Office for Civil Rights (OCR)

# Recent History of Title IX

Supreme Court holds  
“Employment discrimination  
comes within Title IX’s  
prohibition” *North Haven Bd. of  
Education v. Bell*, 452 U.S. 512.

Supreme Court holds that discrimination  
based on sexual orientation and  
discrimination based on gender identity  
inherently involve treating individuals  
differently because of their sex under  
Title VII

2020

1982

2020

**Title IX sexual harassment regulations issued**

# Where does Title IX stand today?

- **2021:** Department of Education issues “Notice of Interpretation: Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*”
- **2021:** OCR announces intent to issue a Notice of Proposed Rulemaking (NPRM) related to Title IX by April 2022
- **2022:** OCR publishes NPRM July 12, 2022
- **2024:** Awaiting new regulations from the Biden Administration

# Title IX Related Areas

## Sex Based Discrimination

Program Equity	Recruitment, Admissions, & Access	Pregnancy
Athletics	Employment, Recruitment, & Hiring	Extra-curricular activities
Housing	Access to Course Offerings	Salaries & Benefits
Financial Assistance	Facilities	Funding
	Sex, Sexual Orientation, & Gender Identity	

## Sexual Harassment

- Quid Pro Quo
- Hostile Environment
  
- Sexual Assault
- Domestic Violence
- Dating Violence
- Stalking

## Retaliation



## Examples of Discrimination

**Failing to provide equal athletic opportunity.**

**Sex-based discrimination in recruitment, selection and admission to (STEM) courses and programs.**

**Sex-based discrimination in recruitment, selection and hiring of faculty in any program.**

**Failing to provide lactation spaces for females on campus.**

**Failure to stop harassment in the classroom.**

# When does Title IX apply?

Title IX applies, and **jurisdiction is required**, when the Recipient has:

- Control over the harasser (Respondent) AND
- control over the context of the harassment.

“Education program or activity” means...

- locations, events, or circumstances under substantial control.

Greeks and Student Organizations

- **any** building owned or controlled by an officially recognized student organization



# Ensuring jurisdiction test

## Personal Jurisdiction

- At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the Recipient's education program or activity.

**The OCR adopts a fairly broad definition of what could constitute “attempting to participate.”**

- Can include dual enrollment students, alumni, prospective students/employees, medical residents, etc.

# Institutional Responsibilities

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Once an official with authority has actual notice of Discrimination/Harassment/Retaliation (DHR) and or sexual harassment/sexual misconduct, the institution must:

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Take immediate and appropriate steps to **investigate** what occurred. The obligation to investigate is absolute, even if just an Initial Assessment is completed

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Take prompt and effective action to: **Stop** the behavior

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**Prevent** the recurrence

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**Remedy** the effects

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This is regardless of whether the Reporting Party makes a formal complaint or asks the school to take action.

# What is “actual notice” mean?

§ 106.30(a) of the Final Rule defines what exactly constitutes such **actual knowledge**:

**“Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has the authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school.”**

**Translation: When you are told something, or witness something, REPORT IT to Title IX.**

# Role of the Responsible Employee

The Department of Education applies a “**responsible employee**” rubric to trigger response obligations by an institution.

A “responsible employee” is an employee who:

- **has authority to take action** to redress the harassment, or
- **has the duty to report** to appropriate school officials sexual harassment or any other misconduct by students or employees, or
- is an individual “**who a student could reasonably believe has this authority or responsibility.**”

A postsecondary institution or an elementary or secondary school was deemed to have notice requiring responsive action when a responsible employee “knew” or “should have known” about possible sexual harassment.

How do I  
fulfill my  
role?

**1. Upon witnessing an incident or upon receipt of a report of:**

- discrimination
- harassment
- retaliation



**File a DHR report on the Title IX webpage**



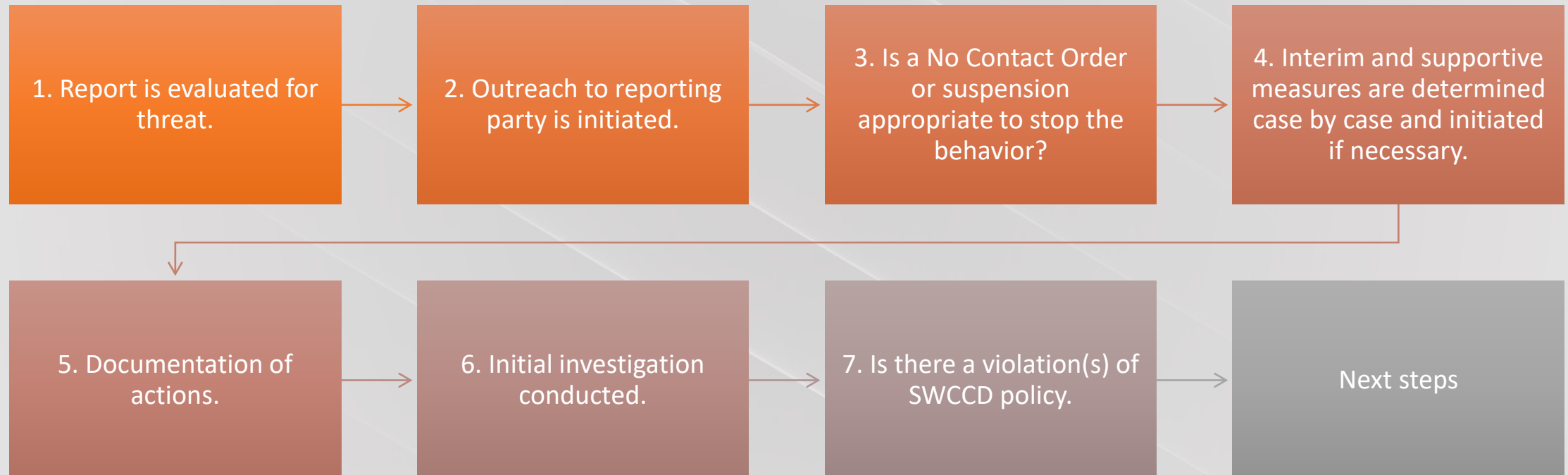
**2. Upon witnessing an incident or upon receipt of a report of:**

- sexual assault
- dating or domestic violence
- stalking



**File a Sexual Misconduct report on the Title IX webpage.**

# What happens after a report is received by Title IX?





# What are the supportive measures a school must offer?

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A school must offer supportive measures that “are designed to restore or preserve equal access to the [school’s] education program or activity.”

The 2020 amendments add that these include “measures designed to protect the safety of all parties or the [school’s] educational environment or deter sexual harassment.”

A school also must consider the complainant’s wishes in determining which supportive measures to provide and may not provide supportive measures that “unreasonably burden the other party.”

Examples of supportive measures include “counseling, extensions of deadlines or other course related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.”



# Definition: Confidential Employee

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Under Title IX, confidential employees are designated as being able to take confidential reports of sexual misconduct.

**They are not required to report** the victim's identity or other confidential information to the Title IX Coordinator.

Confidential employees include licensed medical, clinical or mental-health professionals such as nurses, counselors, social workers, physicians, psychologists and psychiatrists **when acting in their professional role.**

# Definition: Sexual Harassment:

Sexual harassment means conduct **on the basis of sex** that satisfies one or more of the following:

- (1) An employee of the [school] conditions the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;

The first category is commonly referred to as “quid pro quo” sexual harassment, meaning that a school employee offers something to an individual in exchange for sexual conduct.



# Definition: Sexual Harassment

(2) **Unwelcome conduct**, determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity; or

The second category incorporates the definition of sexual harassment set out by the Supreme Court in a case about when **a school may be required to pay financial compensation** in a lawsuit for sexual harassment by one student toward another student. The case is *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999).

# Definition of Sexual Harassment

(3) **'Sexual assault'** as defined in 20 U.S.C. 1092(f)(6)(A)(v),

**'dating violence'** as defined in 34 U.S.C. 12291(a)(10),

**'domestic violence'** as defined in 34 U.S.C. 12291(a)(8), or

**'stalking'** as defined in 34 U.S.C. 12291(a)(30).

# Definition: Sexual Assault

Sexual assault is a form of sexual harassment that is prohibited under Title IX.

It includes any sexual act directed against a complainant without their consent.

This includes acts such as rape, fondling without consent, incest or statutory rape. Any act of vaginal or anal penetration, however slight, with any body part or object, or oral genital contact of another person, without consent, is also considered sexual assault

# Definition: Dating Violence

- Dating violence includes violence committed by a person who has been in a social relationship of a romantic or intimate nature with the complainant; the existence of such a relationship shall be determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

# Definition: Domestic Violence

- Domestic violence includes felony or misdemeanor crimes of violence committed by: a current or former spouse or intimate partner of the complainant, a person with whom the complainant shares a child, a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, a person similarly situated to a spouse of the complainant under the jurisdiction's domestic or family violence laws, or any other person against a complainant who is protected under the domestic or family violence laws of the jurisdiction.



# Definition: Stalking

- Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their own safety or the safety of others or to suffer substantial emotional distress.

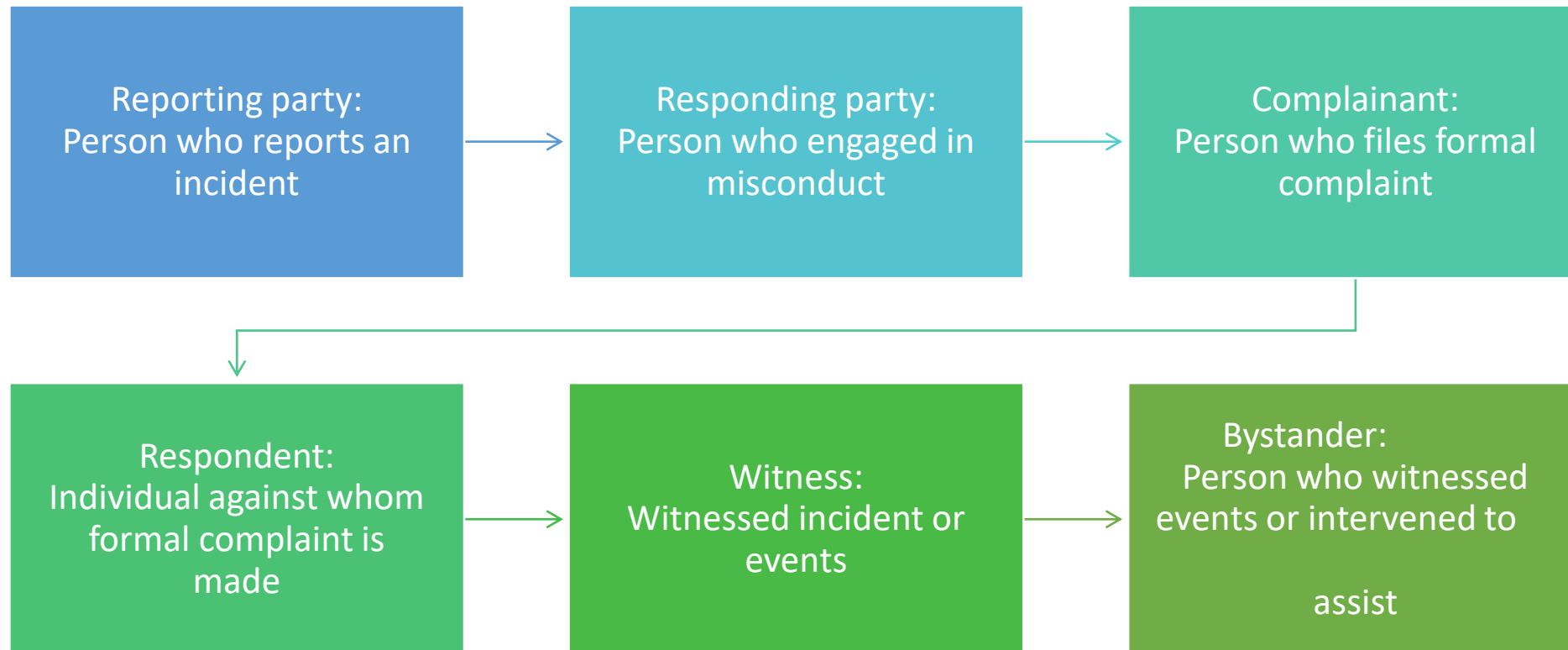
The 2020 amendments cover instances of stalking based on sex—including stalking that occurs online or through messaging platforms, commonly known as cyber-stalking—when it occurs in the school’s education program or activity



What is the address of the Title IX webpage?

[Title IX & Campus SaVE Act \(swccd.edu\)](http://swccd.edu)

# Terms to be familiar with:



# Title IX Must do the following:



## **Investigate:**

Be Thorough

Reliable

Impartial



## **Process:**

Prompt

Effective

Equitable




## **Remedies:**

Act reasonably to stop discrimination

Act reasonably to prevent recurrence

Act equitably to remedy effects

# Role of Office of Civil Rights

- The Office for Civil Rights (OCR) under the U.S. Department of Education is responsible for establishing the **compliance standards to be applied in investigations and enforcement** of Title IX regarding sexual harassment.
  - The OCR administratively enforces Title IX by conducting investigations of complaints filed by an individual, a representative, or a group.
  - Engaging in compliance reviews.
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# Title IX Proceedings

## Civil Lawsuit

Filed in federal court

Monetary damages, injunction

Requires: Actual notice

Employee with authority to take action

Deliberate Indifference

## Administrative Action

Initiated by the OCR

Voluntary compliance or findings

Requires: Actual OR constructive notice (“knew or should have known”)

Investigate

End harassment

Remedy effects

Prevent recurrence



Questions?

# Contact information

Thank you!

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