

Association of
Title IX Administrators

Title IX Coordinator Foundations Level One: Compliance Essentials for K-12 Education

Training and Certification Course

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Content Advisory

The content and discussion in this course will necessarily engage with sexual harassment, sex discrimination, violence, and associated sensitive topics that can evoke strong emotional responses.

ATIXA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles including slang, profanity, and other graphic or offensive language. It is not used gratuitously, and no offense is intended.

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Introduction



This course focuses on providing Title IX practitioners and School/District leaders with foundational information to understand the scope of their roles and their varied responsibilities under Title IX.



Practitioners will explore the essential components of the Title IX Coordinator role, including detailed responsibilities under the 2020 Title IX Regulations, structuring the Title IX Team, and additional components of Title IX compliance best practices.



Our goal is to provide a comprehensive foundation that will allow Title IX Coordinators and district leaders to serve their School/District with the robust skills necessary to excel in their roles and lead and/or support Title IX compliance with confidence.

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2024 Title IX Regulations Vacated

All federal funding recipients are now subject to the 2020 Title IX Regulations

- **January 9, 2025:** a federal district court in Kentucky vacated the 2024 Title IX Regulations in their entirety; other federal courts have followed suit
  - The 2024 Title IX Regulations are now vacated (null and void) and **not** in effect for **any** state, institution, or school
- Institutions must revert to **2020-compliant** policies and procedures for Title IX cases
  - Ensure compliance with all 1975 and 2020 regulatory requirements
  - Revisit any complaints decided under 2024 Regulations to ensure compliance

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Department of Education (ED) Updates

- Department changes include:
  - Significant staffing reductions, but increased focus in some areas
  - Closure of 7 of 12 OCR regional offices
  - Federal funding and oversight shifts
- Executive Order (EO): *Improving Education Outcomes by Empowering Parents, States, and Communities* (3/20/25)
  - Directed the Secretary of Education to "facilitate closure of the Department" and "return authority to the States and local communities"
- Civil Rights enforcement remains in ED's Office for Civil Rights (OCR), but other agencies (e.g., Health and Human Services (HHS) and Department of Justice (DOJ)) appear to be ramping up enforcement in certain areas
- Increased focus on Title VI

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Dear Colleague Letter (02/04/25)

ED released a Title IX-focused Dear Colleague Letter (DCL) on 02/04/25

- OCR will enforce the 2020 Regulations, not 2024
- Institutions must immediately shift open investigations to use 2020 Regulations
- OCR will enforce *Defending Women from Gender Ideology* EO
  - Quoting the EO, OCR will:
    - "'enforce all sex-protective laws to promote [the] reality' that there are 'two sexes, male and female,' and that '[t]hese sexes are not changeable and are grounded in fundamental and incontrovertible reality.'"

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Executive Order re: Sex and Gender

***Defending Women from Gender Ideology Extremism and restoring Biological Truth to the Federal Government* (01/20/25)**

- Defines sex as a binary concept – man or woman
- All agencies must ensure that intimate spaces are designated by sex, not gender identity
- Limited *Bostock v. Clayton County*'s holding, says it only applies to Title VII
  - Dept of Justice issued guidance on 02/12/25 that *Bostock* does not apply to Title IX
- Prohibits federal funds and grants from promoting gender ideology
- Revokes all Biden administration EOs addressing gender identity
- Directs OCR to prioritize investigations/litigation to enforce rights and freedoms based on the binary nature of sex
- Does not address sexual orientation

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Executive Order re: Gender and Athletics

***Keeping Men Out of Women's Sports* (02/05/25)**

- Prohibits transgender women from playing women's sports
  - Cited as necessary for "safety, fairness, dignity, and truth"
- Applies definitions from *Defending Women from Gender Ideology* EO
- Threatens withdrawal of federal funds
- Will use Title IX to enforce on a prioritized basis
- Seeks to eliminate Olympic competition based on gender identity or testosterone reduction
- Does not prohibit transgender men from participation
- Subject of active and rapid enforcement by Federal government

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Rescinded Prior Guidance

Rescinds all guidance documents inconsistent with the EO or subsequent guidance including:

- White House Toolkit on Transgender Equality
- 2024 Title IX Regulations: Pointers for Implementation
- ED Toolkit: Creating Inclusive & Nondiscriminatory School Environments for LGBTQ Students
- Supporting Intersex Students
- Supporting Transgender Youth in School
- Letter of Educators on Title IX's 49th Anniversary
- Confronting LGBTQ Harassment in Schools
- Enforcement of Title IX - Based on Sexual Orientation and Gender Identity in light of *Bostock v. Clayton County*
- AG's memorandum "Application of *Bostock v. Clayton County* to Title IX"
- EEOC's "Enforcement Guidance on Harassment in the Workplace"

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Review: Title IX Statute

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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 education program or activity receiving federal financial assistance."

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



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Applicability

- Education program or activity in the United States
- School/District has control over the harasser
- School/District has control over the context of the harassment
- Applies to both students and employees
- Out-of-school jurisdiction is limited with regards to Title IX



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Title IX Scope

Title IX

Sex Discrimination

- Disparate Treatment
- Disparate Impact

Retaliation

Sexual Harassment*

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

* 2020 Regulations only apply to Sexual Harassment

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Sex Discrimination

- **Sex Discrimination** encompasses:
  - Unfair treatment based on sex
  - Exclusion from participating on the basis of sex
- **Disparate Treatment:** occurs when a School/District policy, practice, or procedure (or an agent thereof) **intentionally** discriminates
- **Disparate Impact:** occurs when a School/District policy, practice, or procedure (or an agent thereof) **unintentionally** discriminates
  - A policy may be intended to be neutral as written, but it may be applied in a discriminatory manner or in a way that has a discriminatory effect

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Sexual Harassment Definitions

- **Hostile Environment**
  - 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/District's education program or activity
- **Sexual Assault** includes:
  - Rape
  - Fondling
  - Incest
  - Statutory Rape
  - Sodomy
  - Sexual Assault with an Object



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ATIXA Model Policy Definitions

- Consent
- Retaliation
- Common additional offenses
  - Sexual Exploitation
  - Harm/Endangerment
  - Intimidation
  - Hazing
  - Bullying



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School/District Title IX Obligations

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Essential Compliance Elements

The requirement to **Stop, Prevent,** and **Remedy** guides School/District response in its compliance work

1

STOP discriminatory conduct

2

PREVENT recurrence, on both individual and School/District levels

3

REMEDY the effects of discrimination, for both individual and School/District community

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School/District Title IX Obligations

- **Designate** at least one employee to serve as the Title IX Coordinator (TIXC)
- **Adopt, publish, and implement a policy** stating that the School/District does not discriminate on the basis of sex and prohibits sex discrimination
- **Adopt, publish, and implement grievance procedures**
- **Provide notice** of nondiscrimination to current and prospective students, parents/guardians, current and prospective employees, and any union or collective bargaining agencies
  - TIXC contact information
  - How to report conduct that may constitute sex discrimination or sexual harassment
- **Train** the Title IX Team
- **Maintain documentation** related to Title IX notification, training, and complaints

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Title IX Compliance

- School/District responses must not be **deliberately indifferent** to known sex discrimination or sexual harassment **AND**
- School/District must act **reasonably in light of known circumstances** to stop, prevent, and remedy
- A School/District is deliberately indifferent when:
  - The School/District has **actual notice** of harassment,
  - The harassment is **severe, pervasive, and objectively offensive**, and
  - The indifference is **systemic** in nature

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Monitoring and Barrier Analysis

ATIXA Recommends:

TIXC **monitors** for barriers to reporting

- Take steps to address such barriers

- Barrier examples:
  - Reporting process accessibility
  - Confusing or delayed procedures
  - Difficulty finding information or contacting Title IX staff
  - Perceptions of bias



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Employee Training

ATIXA Recommends: All employees complete training upon hiring and annually on:

- School/District obligation to address sex discrimination and sexual harassment
- Scope of conduct that constitutes sexual harassment
- Reporting and information sharing requirements

- Consider whether in-person, online/virtual, asynchronous, conducted by internal or external trainer(s)



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Title IX Team

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Title IX Core Team

Individuals designated, hired, or contracted to fulfill a School/District's Title IX compliance obligations, including:

- TIXC
- Deputy/Building TIXC(s)
- Investigator(s)
- Decision-maker(s) (DM)
- Appeal Decision-maker(s)
- Informal Resolution (IR) Facilitator(s)
- Advisor(s)



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School/District Team

- Schools/Districts **must designate a school- or district-based TIXC**
- Schools/Districts have discretion in structuring their Title IX Team, including:
  - Whether or not to have **Deputy Coordinators**
  - **One Investigator vs. two Investigator** model
  - **Distinction and separation of roles** throughout Title IX process, and whether to appoint district-based administrators, school-based administrators, or contractors
  - **Contract with a trained third-party** to fulfill the roles of Investigator, DM, IR Facilitator, Appeal Decision-maker, and Advisor

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Title IX Coordinator

- Oversees School/District Title IX compliance, including oversight of the Title IX Team
  - Must have autonomy and independence
- May serve as Investigator but may not serve as a DM
- Responsibilities fall into two categories:
  - Responding to reports or complaints of sex discrimination, sexual harassment and retaliation
  - Leading efforts to ensure compliance across the School/District



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Title IX Compliance Oversight

Responsibilities (any of these roles can be shared/delegated):

- Assess compliance efforts and program effectiveness
  - Create and disseminate annual compliance report
- Maintain Title IX records
- Manage policy and procedures prohibiting sex discrimination and sexual harassment
- Oversee complaint Grievance Process and program compliance
- Point person for all reports, complaints, and supportive measures related to Title IX
- Recruit, supervise, and train Title IX Team
- Track systemic issues or patterns
  - Take remedial action to prevent recurrence

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Deputy Title IX Coordinator(s)

- Not required, **but may alleviate the burden** on one administrator
- Deputy TIXC responsibilities may vary based on School/District needs
- **Possible responsibilities:**
  - Assist TIXC with training
  - Conduct initial assessments
  - Consult with TIXC on complaints
  - Coordinate supportive measures
  - Oversee investigations
  - Receive reports and complaints



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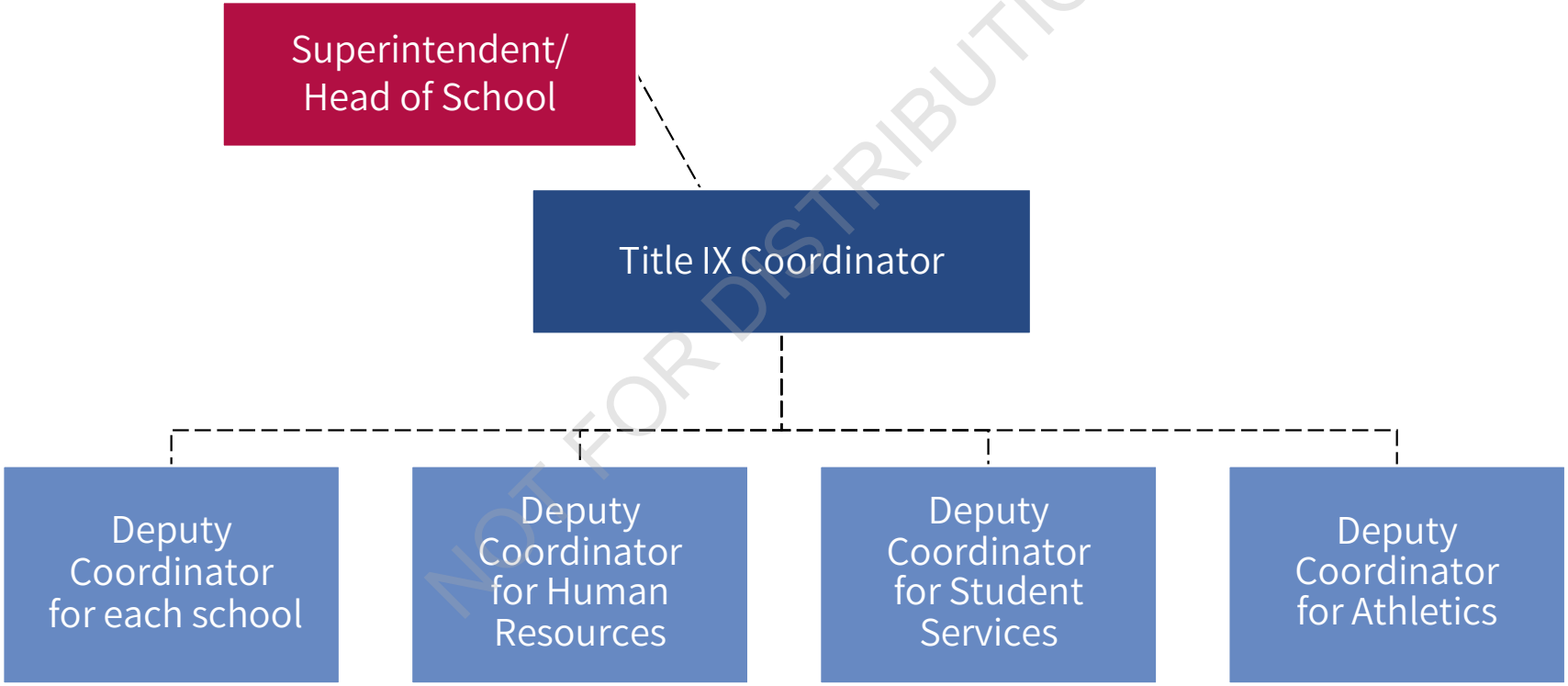
Sample Title IX Team Structure

Schools/Districts will determine a structure that best works for their unique needs



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Bias and Conflict of Interest

- Title IX administrators have no “side” other than the **integrity of the process**
- Title IX Regulations **prohibit conflicts of interest or bias** against parties generally, an individual party, or related to the substance of the complaint for Coordinators, Investigators, and DMs
- **Training materials** cannot include sex stereotypes and should promote impartiality



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Title IX Extended Team

- Include key constituencies not represented on core team:
  - Legal Counsel
  - School Resource Officers
  - School Counselors
  - Student Health/School Nurses
  - Housing (if applicable)
- Regular meetings and coordination
- Training and programming
- Interaction with behavioral intervention or threat assessment teams or groups



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Required Training

The Title IX Team (including TIXC, Deputy Coordinators, Investigators, DMs, and Informal Resolution Facilitators) are **required to have training on the following topics:**

- Definition of **Sexual Harassment**
- **Scope** of the School/District's education program or activity
- **Title IX Grievance Process** including conducting investigations, decision-making, appeals, and facilitating Informal Resolutions
- **Serving impartially**, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- **Relevance of questions and evidence**, including restrictions on questions and evidence about the Complainant's sexual predisposition or prior sexual behavior
- Creating an **investigation report** that fairly summarizes relevant evidence

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Title IX Grievance Process

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All K-12 Employees: Mandated Reporters

- The School/District is **"on notice"** of sex discrimination or sexual harassment when a report is made to:
  - **TIXC**, or
  - **Any employee** of the School/District is made aware of the incident or concern
- Notice includes information K-12 employees witness, hear about, or receive a written or verbal complaint about, including from parents/guardians
- **In addition to other applicable mandated reporting**:
  - Abuse/child abuse of minors
  - Supervisors/managers under Title VII
  - Any other mandated reporting under state law or district policy

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Report vs. Complaint

- A **report** is different than a **Formal Complaint**:
  - **Report**
    - Notifies the TIXC of an incident and
    - Obligates the TIXC to offer supportive measures and explain the process
  - **Formal Complaint**
    - Written request to initiate an investigation
    - Physical document or electronic submission from Complainant
      - OR signed by TIXC
    - Alleging sex discrimination or sexual harassment
    - Complainant must be **participating or attempting to participate** (P/ATP)

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Obligation to Act

Once notified of conduct that may reasonably constitute sex discrimination, sexual harassment, or retaliation, **TIXC must take action to promptly and effectively stop, prevent, and remedy**

- Initiate Grievance Process if a complaint is filed
- Absent a complaint or if complaint is withdrawn, determine whether the TIXC should initiate a complaint
- Regardless of whether a complaint is initiated, take appropriate steps to stop, prevent, and remedy

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Title IX Grievance Process Overview

1 INCIDENT

- Complaint/ Notice to TIXC

2 INTIAL ASSESSMENT

- Formal Complaint
- Jurisdiction
- Dismissal
- Supportive Measures
- Emergency Removal
- Referral to Another Process
- Informal/Formal Resolution

3 FORMAL INVESTIGATION

- NOIA
- Interviews
- Evidence Collection
- Draft Report
- Share Draft & Evidence
- Review/ Comment
- Final Report

4 DECISION-MAKING

- Questioning
- Credibility Assessment
- Determination & Rationale
- Sanctions
- Remedies
- Option for Live Hearing

5 APPEAL

- Appeal Grounds
- Determination & Rationale

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Parties' Rights

- Be accompanied by Advisor of their choice
- Discuss the allegations under investigation without restriction
- Gather and present relevant evidence without restriction
- Inspect and review directly related evidence and investigation report
- Present witnesses
- Present inculpatory and exculpatory evidence
- Receive written detailed Notice of Investigation and Allegations (NOIA)
  - Must include information about the School/District's Title IX Grievance Process
- Receive written notice of the date, time, location, participants, and purpose of interviews or meetings, with sufficient time to prepare

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Parent/Guardian Rights

- **Access** their student's education records, including Title IX complaint file
- **Attend** all interviews/meetings/hearings with their student, regardless of whether they are serving as the student's Advisor
- **Make decisions** throughout the Title IX Grievance Process on behalf of their student, such as whether to pursue Informal Resolution
- **Pursue Title IX Grievance Process** on behalf of their student
- **Seek supportive measures** on behalf of their student



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First Amendment Protections

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First Amendment

- Schools/Districts must implement their Title IX Grievance Process consistent with the First Amendment
- Natural tensions arise between:
  - Free speech and expression
  - Harassment and/or hostile environment claims
- Types of unprotected speech
  - Incitement of disruption and breach of peace
  - Defamation
  - True threat
  - Obscenity



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Time, Place, and Manner

- First Amendment rights must be balanced against the school's interest in providing a safe and effective learning environment
- The Supreme Court has allowed certain limitations on students' speech/expression to maintain an educational environment
  - **Time:** schools may limit when speech occurs
  - **Place:** schools can designate certain areas where speech is allowed or restricted
  - **Manner:** schools can regulate how speech is conducted
- Time, place, and manner restrictions must be content-neutral, narrowly tailored to serve a significant interest, and leave open ample alternative channels for communication

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Disciplinary Referrals

- Not all behavior will rise to the level of a policy violation
- Policy violations should be routed through student conduct/discipline or human resources with all due process rights intact; can be challenging in mass protest situations
- Behavior that does not substantiate a policy violation can still be addressed
  - Should be non-punitive and voluntary
  - Must not retaliate against any individual for exercising their First Amendment rights
  - May include referral to support services, behavioral intervention and threat assessment, etc.
- In addressing speech/expression that occurs in out-of-school settings, Schools/Districts must evaluate how the speech/expression impacts and disrupts the education program or mission

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Analyzing Speech and Expression: Step 1

***ATIXA recommends* conducting a three-step analysis of speech related conduct prior to taking action**

- **Step 1:** Are there First Amendment implications in the activity or conduct?
  - Does it include any components of "expression"?
  - Does it involve a group activity on school property?
    - Demonstration, protest, walkout, rally, etc.



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Analyzing Speech and Expression: Steps 2 and 3

- **Step 2:** Are there any clear exceptions to the First Amendment? (e.g., unprotected speech)
  - Each potential exception requires an analysis of the specific set of facts presented
  - Exceptions must be applied with caution
- **Step 3:** Analyze the facts identified in Steps 1 and 2 in consideration of the forum (Time, Place, and Manner)
  - Schools can apply a content-neutral time, place, and manner limitation after careful considerations of the facts
  - Document the decision with rationale

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Considerations

- When does the School/District policy allow you to restrict speech/expression?
- How does your School/District handle off-site bullying or harassment?
- How does the School/District handle technology-facilitated bullying or harassment?
- In Title IX complaints involving potential First Amendment implications, who will the TIXC consult with, if needed?



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Pregnancy and Related Conditions

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Pregnancy and Related Conditions

- TIXC is responsible for coordinating and overseeing necessary supportive measures and modifications for those experiencing pregnancy and related conditions
- Schools/Districts should **publicize supports available** for pregnancy and pregnancy-related conditions, including **how to request support**
- **Pregnancy includes:**
  - Pregnancy, childbirth, termination of pregnancy, or lactation
  - Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation
  - Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or their related medical conditions

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School/District Obligations

- Allow access to separate and comparable program
- Allow for **voluntary leave of absence**
- Prohibit sex discrimination
- Provide, coordinate, and document **reasonable modifications and supportive measures**
- Provide:
  - Lactation time and space
  - **Grievance procedures** for sex discrimination complaints
  - Comparable treatment to temporary disabilities or conditions

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Reasonable Modifications

- Reasonable modifications to **policies**, **practices**, or **procedures**
  - Based on individualized needs
  - In consultation with the student and parent/guardian
- Student (or parent/guardian) has discretion to accept or decline a reasonable modification
- **Examples:**
  - Access to online education
  - Breaks during class to express breast milk, breastfeed, eat, or drink
  - Changes to academic schedule
  - Extensions for coursework or rescheduling of tests
  - Intermittent absences to attend medical appointments

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Supporting Documentation

- Medical documentation is typically unnecessary to determine reasonable modifications
- Proceeding based on a student's self-attestation of their needs will be the least burdensome for the student and enable the School/District to promptly meet the student's needs
- Should only be required in limited circumstances when:
  - **Necessary** and **reasonable** under the circumstances to determine:
    - Reasonable modifications to offer
    - Other specific actions to take

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Certification to Participate

- Must **not** require health care provider or other certification that the student is **physically able to participate** in the program or activity, unless:
  - The certified level of physical ability or health is necessary for participation;
  - The School/District requires such certification of all students participating; **and**
  - The information obtained is not used as a basis for pregnancy-related discrimination

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Intersection with ADA/504 and IDEA

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Key Laws

Americans with Disabilities Act (ADA)

Section 504 of the Rehabilitation Act (Section 504)

Individuals with Disabilities Education Act (IDEA)

State Laws

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Section 504 of the Rehabilitation Act (1973)

- **Prohibits discrimination** on the basis of disability in **all programs or activities** that receive federal financial assistance
- Forbids Schools/Districts from excluding or denying individuals with disabilities an **equal opportunity** to receive program benefits and services
- Enforced by the U.S. Dept. of Education's Office for Civil Rights (OCR)

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Who is a Qualified Individual with a Disability Under Section 504/ADA?



Has a Physical or Mental Impairment

- Which substantially limits one or more major life activities



Record of Having an Impairment

- Mental or physical



Regarded as Having an Impairment

- Mental or physical

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IDEA for K-12 Students

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Individuals with Disabilities Education Act (1975)

- Public K-12 students with disabilities are supported by Section 504, the ADA, and the Individuals with Disabilities Education Act (IDEA)
- Ensures eligible students with a disability receive a **Free Appropriate Public Education (FAPE**) that is tailored to their individual needs and in the **least restrictive environment**
- Provides children with disabilities an **equal education** to students who do not have a disability
- Allocates **funding** to state and local education agencies for **special education and related services** and **early intervention services** for students with specified disabilities

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IDEA Framework and Obligations

- IDEA is more comprehensive and prescriptive than ADA and Section 504
- IDEA provides for an **equal outcome**
- IDEA requires School/District to provide an education that is:
  - Consistent with the child's IEP
  - Designed to meet the unique needs of each student
  - Provides access to the general curriculum to meet the challenging expectations established for all children (i.e., grade-level standards)
  - Results in an educational benefit to the child
- Each state has regulations to enact IDEA

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IDEA Processes and Procedures

- Typically overseen by district-level person who coordinates Special Education or Special Services
- IDEA requires more specific procedural and due process protections, specifically:
  - Time frames
  - Parent/Guardian participation
  - Documentation



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Individualized Education Plan (IEP)

- Eligible students under IDEA must have an IEP to meet the unique needs of each child
- IEP must be reviewed on a yearly basis, at a minimum



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IEP Plan vs. 504 Plan

IEP Plan

- Goal to provide **equal outcome**
- Ensures that a child who is a qualified person with a disability and is attending a K-12 school will receive specialized instruction
- Provides more specific identification, eligibility, and due process protections
- Requires documentation of measurable growth and is updated annually

504 Plan

- Goal to provide **equal opportunity**
- Ensures that a child who is a qualified person with a disability will receive accommodations and access to the learning environment
- No requirement for annual update to ensure student is receiving the most effective accommodation

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Student Discipline, Title IX, and IDEA

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Intersection with Title IX



IDEA has special procedures for disciplining a student with an IEP



Schools/Districts must ensure that Title IX Regulations are implemented consistently with the requirements of ADA/504/IDEA

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Students with Disabilities

- **TIXC should consult** with:
  - One or more members of the student's Individualized Education Program (IEP) team; **OR**
  - One or more members of the group of persons responsible for the student's placement decision
- TIXC should determine how to comply with the requirements of ADA/IDEA/504 throughout the School/District's Title IX Grievance Process

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Implications for Title IX Complaints

- Special education disciplinary rules and manifestation determination review apply to all phases of Title IX Grievance Process:
  - Emergency Removals
  - Supportive Measures
  - Informal Resolution
  - Final determinations and sanctions/remedies
- Special education disciplinary provisions apply for all interim or permanent actions that cause a change in placement for more than 10 days
  - Inherent tension or conflict between IDEA and Title IX

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Manifestation Determination Review (MDR)

If school officials seek to change a student's placement for more than 10 days, the IEP team must review all relevant documentation

- Emergency removal or supportive measures that necessitate a change in placement
- Title IX Grievance Process outcome



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Manifestation Determination Review

- **MDR for Emergency Removal or Supportive Measures (that may result in a change of placement):**
  - Focus on **alleged misconduct**
  - IEP team determines if the behavior is a manifestation of the disability by asking two questions:
    - Did the behavior have a direct and substantial relationship to the disability?
    - Was the behavior a result of a failure to implement the IEP?
  - **Does not** impact whether a Title IX investigation proceeds
- If the answer to either question is "yes," then the student returns to the original placement and the IEP team conducts a functional behavioral assessment and implements a behavioral intervention plan
  - Team should also modify the IEP

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Manifestation Determination Review

- **MDR for Investigation Outcome:**
  - Focus on **investigation findings**
  - IEP team will determine if the behavior is a manifestation of the disability by asking two questions:
    - Did the behavior have a direct and substantial relationship to the disability?
    - Was the behavior a result of a failure to implement the IEP?
  - May impact sanctions and/or remedies
- Alternative placement and MDRs are appealable under special education procedures

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Program Compliance and Athletics

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Title IX and Athletics

Title IX requires a School/District to:

- Provide **equal opportunities** for female and male students to become interscholastic athletes
  - Analyzed by means of a three-part test ("Prongs")
- Provide **fair treatment of participants** in the overall girls' program as compared to the overall boys' program
  - Analyzed according to 13 different program components (e.g., the "Laundry List")

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Athletic Oversight

- Oversight of sex discrimination and Title IX program compliance remains **School/District** TIXC's responsibility
- **Athletic Title IX compliance** may be delegated; for most K-12 Schools/Districts, this will be the School/District athletic director's responsibility
  - There is often a need for comprehensive Title IX training
    - Athletic Directors
    - Coaches and Trainers
    - School/District administrators

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Three-Part Test (1979)

Effective accommodation of interests and abilities

1. Opportunities for boys and girls substantially proportionate to their respective enrollments; **OR**
2. Where one sex has been underrepresented, a history and continuing practice of program expansion responsive to the developing interests and abilities of that sex; **OR**
3. Where one sex is underrepresented and cannot show a continuing practice of program expansion, whether it can be demonstrated that the interests and abilities of that sex have been fully and effectively accommodated by that present program

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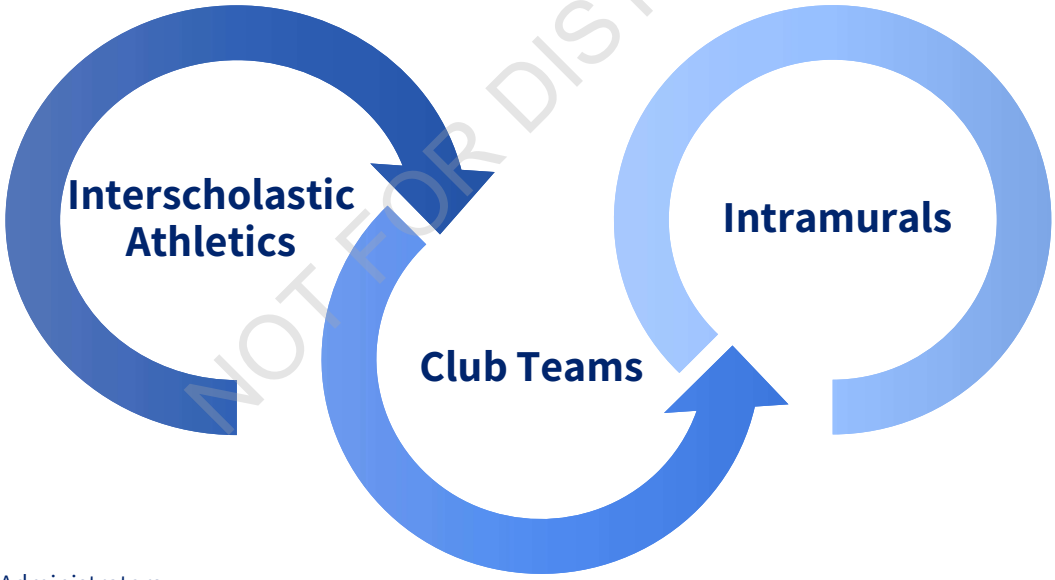
Title IX and Athletics

Three-Part Test and the 13 program components are typically **not** as problematic for intramurals and clubs because those programs tend to be self-initiated with fewer School/District-provided benefits



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Athletic Oversight: Laundry List

- Equipment and supplies
- Scheduling
- Locker rooms and facilities
- Housing and dining
- Coaching
- Publicity
- Travel and per diem
- Support services
- Medical and training services
- Tutoring
- Scholarships

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School/District Obligations

Title IX does not require a School/District to:

- Compete at a specific level
- Offer:
  - The same number of teams for boys and girls
  - The same sports for boys and girls
- Provide:
  - The same benefits to boys' and girls' teams in the same sport
  - The same funding to the overall girls' and boys' programs
  - The same funding to boys' and girls' teams for the same sport
  - Specific benefits to teams

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Title IX, Pregnancy, and Athletics

- Pregnant student-athletes must be permitted to participate in athletics without restriction or modification (other than restrictions applied to all students)
- Reasonable Modifications
- Supportive Measures documentation
- The majority of high school athletics associations have not adopted policies related to pregnancy



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Public Notice Requirements

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Notice of Nondiscrimination

Schools/Districts must provide notification of nondiscrimination to current and prospective School/District community members, including students, parents/guardians, employees, and union/contract employees

- **Notice must include:**
  - Statement that the School/District does not discriminate on the basis of sex and prohibits sex discrimination
  - Statement that inquiries about the application of Title IX may be referred to the School/District TIXC, the Department of Education's Office for Civil Rights, or both
  - TIXC's name or title, office address, email, and phone number
  - How to:
    - Locate the nondiscrimination policy and Grievance Process
    - Report information or make a complaint about conduct that may constitute sex discrimination or sexual harassment

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Notice Publication

- Schools/Districts must prominently publish their notice of nondiscrimination
  - All elements must be included on:
    - School/District website
    - Student and Employee Handbooks
    - Announcements, bulletins, and application forms used in connection with student or employee recruitment
  - Due to format or space restrictions, the School/District may include the statement of prohibiting sex discrimination, that individuals may report concerns to the TIXC, and provide the location of the notice on the School/District website
- School/District may not use or distribute a publication stating that it treats applicants, students, or employees differently on the basis of sex, except as such treatment is permitted by Title IX

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Compliance Oversight and Assessment

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Pattern and Climate Issue Assessment

Complaint closure assessment can assist TIXCs in identifying and monitoring pattern and climate issues:

- Conduct periodic School/District climate surveys
- Establish a system for monitoring future incidents and patterns
- Identify patterns and systemic problems
- Issue School/District-wide policy statements, informational campaigns
- Provide regular training for School/District students, employees, parents/guardians

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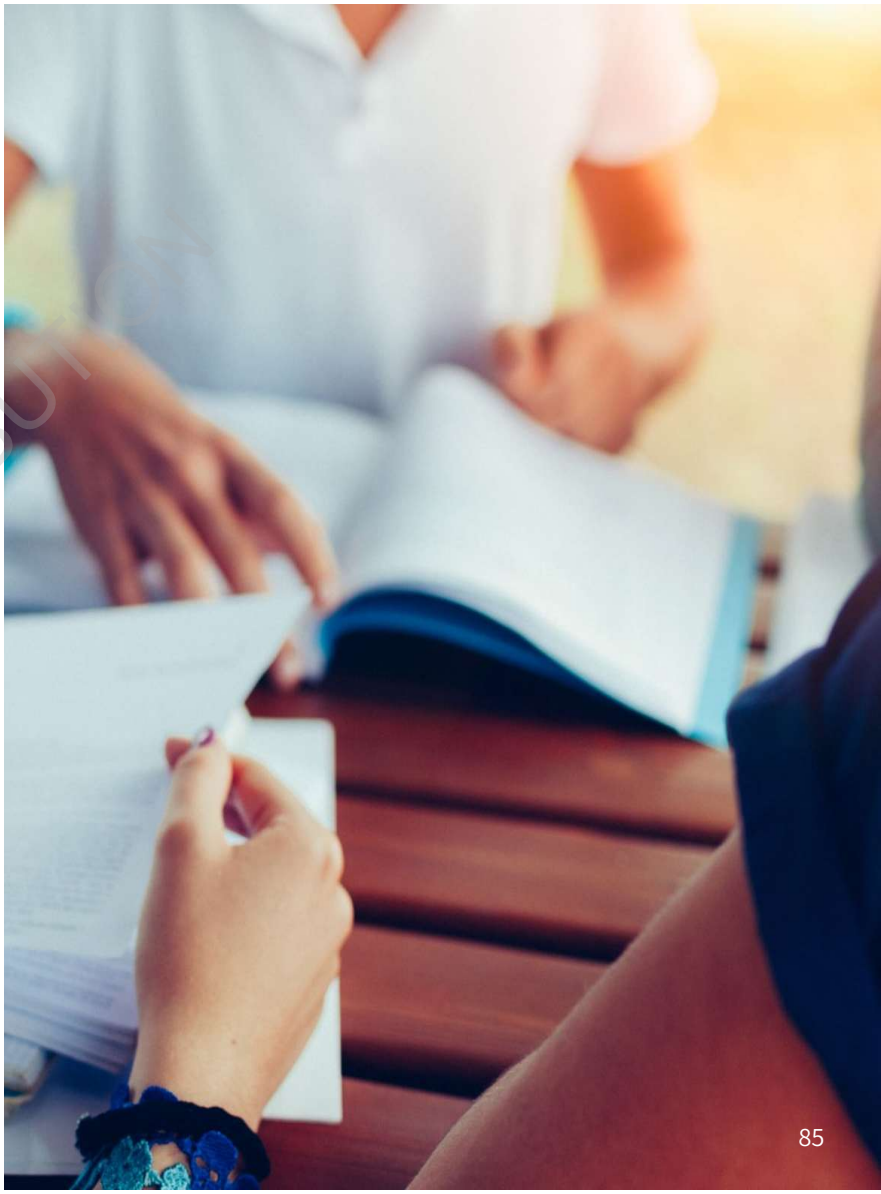
Compliance Assessment

- **Conduct regular needs assessment**
  - Address areas for improvement
  - Assess resources
  - Barrier analysis
  - Identify strengths and program gaps
- **Identify patterns and systemic problems**
  - Climate assessments
  - Internal reviews/audits/assessments
- Complaint/Investigation debriefing
- Benchmarking



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Annual Report

Provide an annual, comprehensive overview of Title IX training and Grievance Process outcomes

- This effort can feel onerous, so it may help to:
  - Allot sufficient time for writing and review
  - Create or follow a template
  - Maintain ongoing tracking and assessment efforts throughout the year
  - Work collectively with an established school assessment group or coalition
- Consider showcasing information that helps tell the full scope of prevention, training, resources, and resolution efforts, both qualitative and quantitative

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Assessment Outcome Sharing



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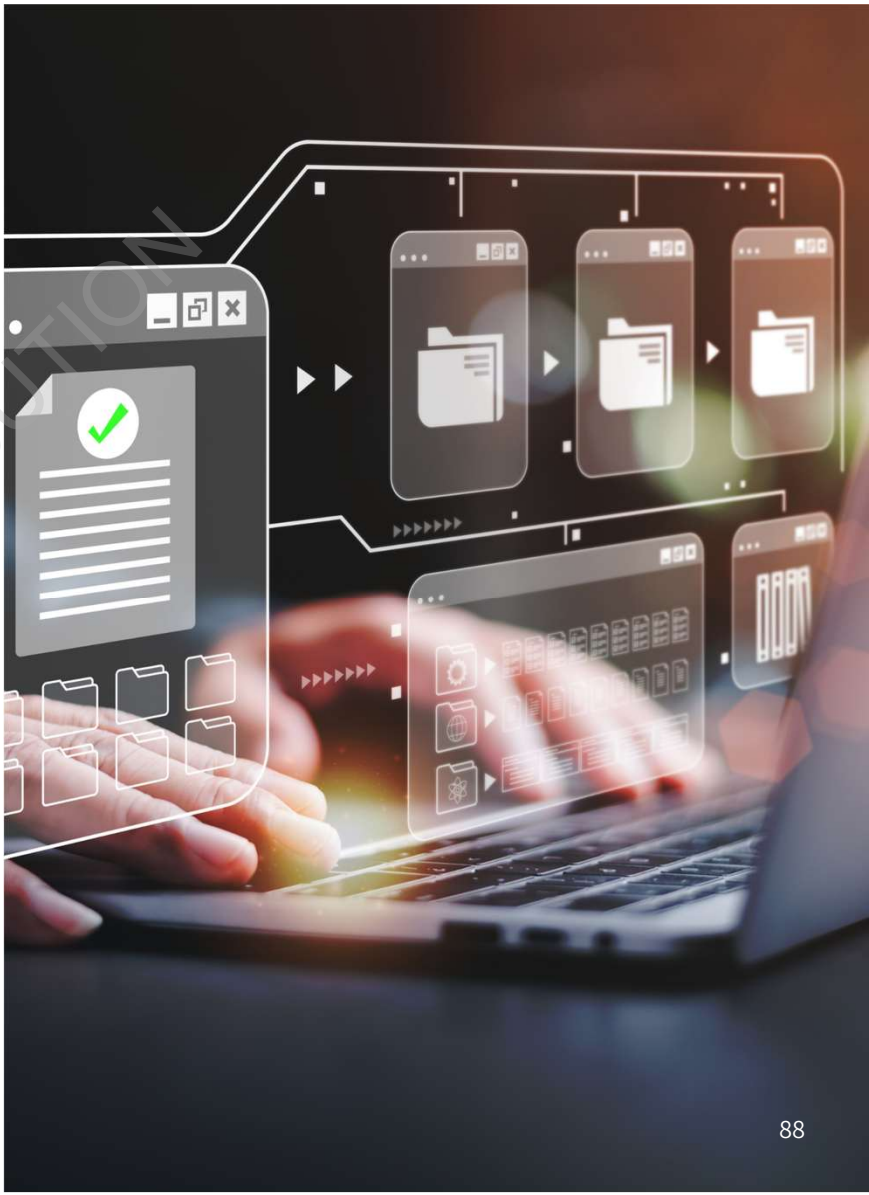
Recordkeeping

- School/District must maintain records for a minimum of **seven** years:
  - Sexual harassment and discrimination complaints, including determination, discipline, and/or remedies
  - Appeals and results
  - Rationales for all determinations
  - Informal Resolution
  - Supportive measures
  - Measures taken to preserve/restore access
  - All training materials
- Document how response was **not** deliberately indifferent



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Questions?

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