



# Title IX Training

August 29, 2024

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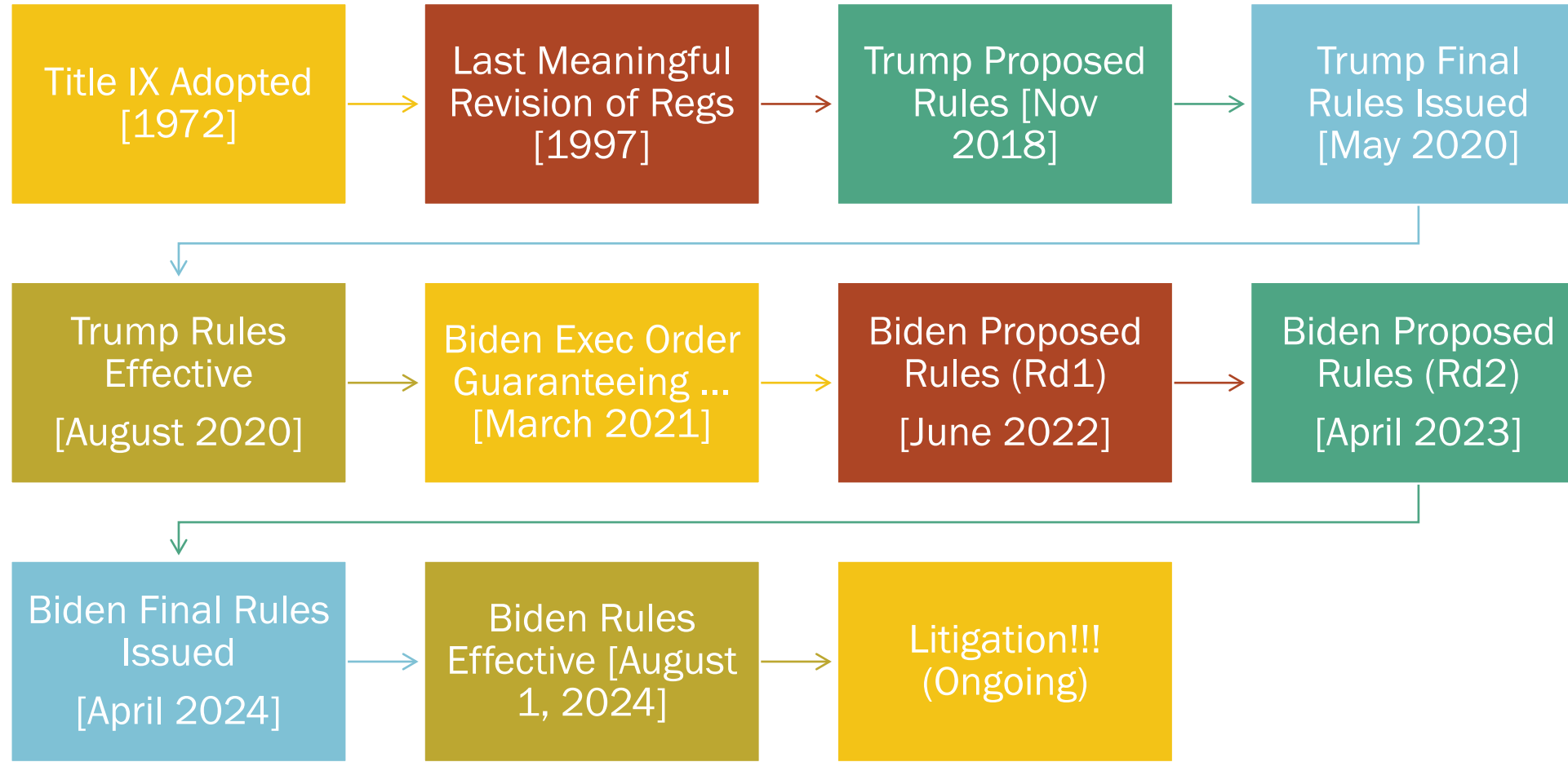
# History & Background

# Background – The Law

Title IX of the Education Amendments of 1972 provides:

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...

# Background – The Timeline



# Definitions & Comparisons

# Comparison of Title IX Coverage

## 2020 Regulations

- “In the ...Education Program or Activity” included conduct at:
  - Buildings or other locations that are part of school’s operations, including remote learning platforms;
  - Off-campus settings if school exercised substantial control over the respondent and the context in which the alleged sexual harassment occurred;
  - Off-campus buildings owned or controlled by a student organization officially recognized by a post-secondary school, such as a building owned by a recognized fraternity or sorority

## 2024 Regulations

- “Under Education Program or Activity” includes:
  - Covers conduct that is subject to the College’s disciplinary authority.
  - Still includes conduct that occurs in a building owned or controlled by a student organization that is officially recognized by the College.
  - College must also address conduct that allegedly contributed to a sexually hostile environment at KVCC, even if it occurred outside the College’s education program or activity.

# 2020 Regulations – “Sexual Harassment”

- 2020 Title IX Regulations
  - Applied to “sexual harassment,” which included:
    - Conditioning an aid, benefit, or service on an individual’s participation in unwelcome sexual conduct (quid pro quo)
    - Unwelcome conduct [on the basis of sex] determined by a reasonable person to be **so severe, pervasive, and objectively offensive** that it **effectively denies a person equal access** to a program or activity offered by the school
    - “Sexual assault,” “dating violence,” “domestic violence,” or “stalking,” as defined by federal statutes known as the Clery Act and the Violence Against Women Act (VAWA)

# 2024 Regulations– “Sex Discrimination”

- 2024 Title IX Regulations
  - Broadened application of grievance procedures and other responsibilities to apply to “sex discrimination,” including “sex-based harassment”
    - Sex Discrimination means “discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity”
    - Sex-based Harassment is a form of Sex Discrimination.



# 2024 Regulations– “Sex Discrimination”

- Special Rules for Pregnancy or Related Conditions
  - “Pregnancy or related conditions” means:
    - pregnancy, childbirth, termination of pregnancy, or lactation;
    - medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
    - recovery from pregnancy, childbirth, termination of pregnancy, childbirth, lactation, or related conditions

# 2024 Regulations– Special Rules Related to Pregnancy or Related Conditions

- Employee Notification Obligations
  - When a student (or person with a legal right to act on student’s behalf) informs **any employee** of the student’s pregnancy or related condition, the employee must:
    - Provide contact information for Title IX Coordinator; and
    - Explain that the Title IX Coordinator can coordinate actions to prevent sex discrimination and ensure equal access to the College’s education programs and activities

# 2024 Regulations– Special Rules Related to Pregnancy or Related Conditions

- The College must make reasonable modifications to its policies, practices, or procedures as necessary to prevent sex discrimination and ensure equal access to its education programs and activities.
- A modification that would fundamentally alter the nature of the education program or activity is not a reasonable modification.

# 2024 Regs – Rules Related to Pregnancy or Related Conditions

- Reasonable modifications may include:
  - breaks during class to express breast milk, breastfeed, and attend to related health needs, including eating, drinking and using restroom;
  - intermittent absences for medical appointments;
  - access to online/homebound education;
  - changes in schedule or course sequence;
  - extensions of time for coursework and rescheduling tests and examinations;
  - allowing student to sit/stand or carry/keep water nearby;
  - counseling;
  - changes in physical space or supplies;
  - elevator access

# 2024 Regs – Rules Related to Pregnancy or Related Conditions

- Reasonable modifications may also include:
  - Allowing student to voluntarily access any separate and comparable portion of the College’s program or activity
  - Allowing student to take voluntary leave of absence to cover,
    - Upon return, student must be reinstated to the academic status and, as practicable, the extracurricular status the student held when leave began
  - Providing lactation space for student, which is not a bathroom, is clean, shielded from view, and free from intrusion by others, for use for breastfeeding or expressing milk

# 2024 Regs – Rules Related to Pregnancy or Related Conditions

- Cannot require supporting documentation, unless necessary and reasonable, to determine whether reasonable modification or other accommodation is needed
- Must treat “pregnancy or related conditions” the same as other temporary medical conditions
- Cannot require student to provide medical proof that student is physically able to participate in class, program, or activity, unless:
  - The certified level of physical ability/health is necessary to participate
  - All students participating are required to provide certification; and
  - Information is not used to discriminate based on pregnancy or related conditions

# 2024 Regulations – “Sex-Based Harassment”

- Means harassment on the basis of sex – including harassment on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity – that falls within one of the following categories:
  - Quid Pro Quo Harassment
  - Hostile Environment Harassment, or
  - Specific Offenses
    - Sexual Assault
    - Dating or Domestic Violence
    - Stalking

# Comparison of “Sexual Harassment”

## Quid Pro Quo - 2020

- An **employee** conditioning an aid, benefit, or service of the College on an individual’s participation in unwelcome sexual conduct

## Quid Pro Quo - 2024

- An employee, **agent, or other person with authority** to provide an aid, benefit, or service under the College’s education program or activity explicitly **or impliedly** conditioning the provision of such an aid, benefit, or service on a person’s participation in unwelcome sexual conduct



# Comparison of “Sexual Harassment”

## Hostile Environment - 2020

- Unwelcome conduct [on the basis of sex] determined by a reasonable person to be **so severe, pervasive, and objectively offensive** that it **effectively denies** a person **equal access** to a program or activity offered by the district

## Hostile Environment - 2024

- Unwelcome **sex-based conduct** that, based on the **totality of the circumstances**, is subjectively and objectively offensive, and is so **severe or pervasive** that it **limits** or denies a person’s ability to participate in the education program or activity (i.e., creates a hostile environment)

# 2024 Regulations – Hostile Environment

- Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:
  - The degree to which the conduct affected the complainant’s ability to access the College’s education program or activity;
  - The type, frequency, and duration of the conduct;
  - The parties’ ages, roles within the College’s education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
  - The location of the conduct and the context in which the conduct occurred; and
  - Other sex-based harassment in the College’s education program or activity

# Comparison of “Sexual Harassment”

## Specific Offenses - 2020

- “Sexual assault,” “dating violence,” “domestic violence,” or “stalking,” as defined by federal statutes known as the Clery Act and the Violence Against Women Act (VAWA)

## Specific Offenses - 2024

- Sexual assault, dating violence, domestic violence, and stalking
- Same standards, but includes more specific definitions instead of cross-referencing the Clery Act and VAWA

# 2024 Regulations – “Specific Offenses”

- Sexual Assault: An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the FBI
  - These offenses include: forcible rape, forcible sodomy, sexual assault with an object, forcible fondling, incest, statutory rape
- Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - Fear for the person’s safety or the safety of others; or
  - Suffer substantial emotional distress

# 2024 Regulations – “Specific Offenses”

- Dating Violence: Violence committed by a person:
  - Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - Where the existence of such a relationship shall be determined based on a consideration of the following factors: (1) length of relationship; (2) type of relationship; (3) frequency of interaction between the persons involved in the relationship.
- Domestic Violence: Felony or misdemeanor crime committed by a person who:
  - Is a current/former spouse or intimate partner of the victim under the family or domestic laws of the jurisdiction, or a person similarly situated to the victim
  - Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
  - Shares a child in common with the victim; or
  - Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction

# 2024 Regulations - Retaliation

- Retaliation means:
  - Intimidation, threats, coercion, or discrimination against any person by the school, a student, an employee or another person authorized by the college to provide an aid, benefit or service under the college's program or activity for the purpose of interfering with any right or privilege secured by Title IX... or because the person has reported information, made a complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding, hearing or other Title IX process.
  - The 2024 regulations also expressly prohibit retaliation from peers (i.e., by a student against a student)

# Hypotheticals

# “Sex-Based Harassment” - Hypotheticals

- A faculty member who:
  - Asks a female student who is in a bad mood if “it’s that time of the month”
- What if the faculty member asks the student this every class?
- What if the other students start teasing the female student after the faculty member makes this statement?



# “Sex-Based Harassment” - Hypotheticals

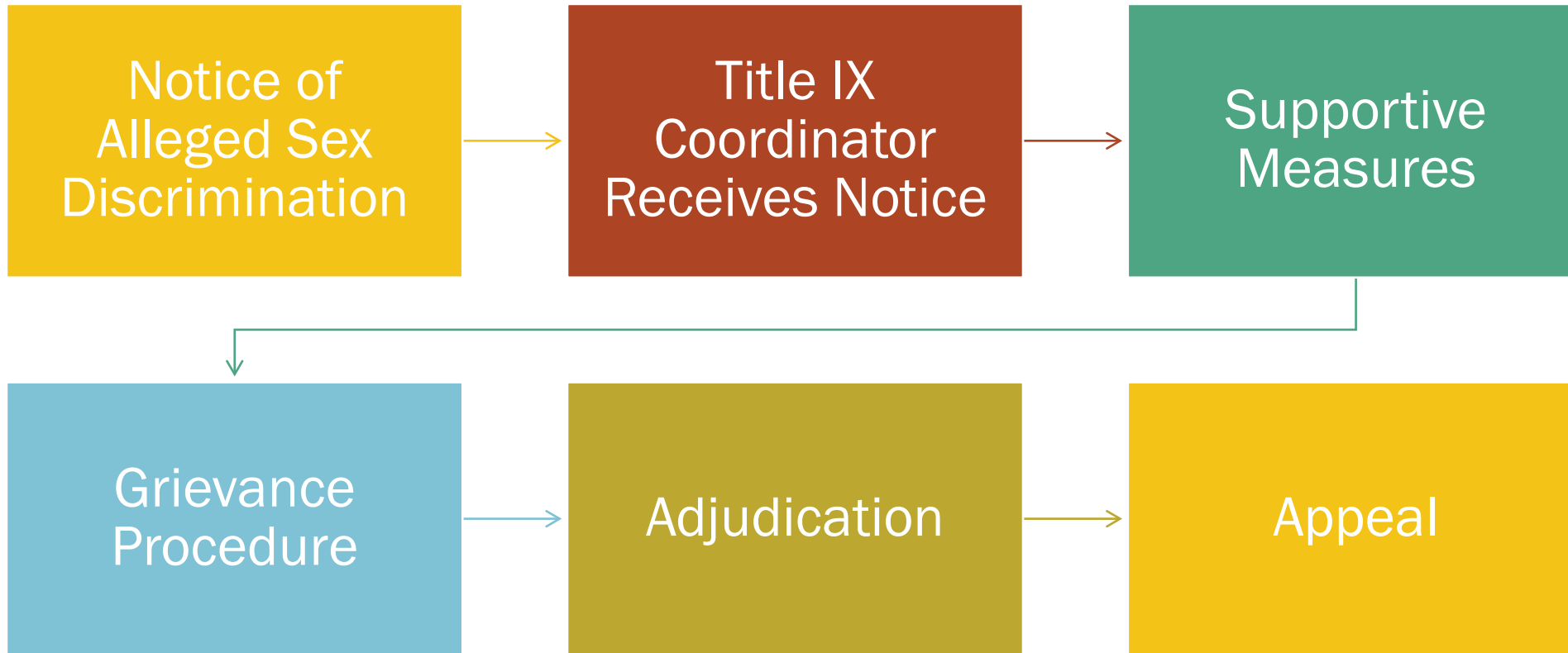
- A female student:
  - Teases a male student once about his sexual orientation in the cafeteria?
- What if the female student teases the male student every time she sees him?
- What if she squeezes the male student’s bottom and call him sexy. It bothers him and he’s told her to stop, but it hasn’t really impacted his daily life or education

# “Sex-Based Harassment” - Hypotheticals

- A male student messages a female student during class, telling her she “looks hot today” and asking her on a date.
- The female student is deeply uncomfortable because she has a history of trauma and starts skipping class.
- What if the male student also stops by her residence and knocks on the door.

# Title IX Coordinator & Other Notification Requirements

# Anatomy of a Complaint



# The Title IX Coordinator

- Every College is required to:
  - Designate at least one Title IX Coordinator who is responsible for overseeing and coordinating the College's compliance efforts
    - College may have multiple "Title IX Coordinators," but one must retain ultimate oversight
    - Title IX Coordinator may delegate specific duties to designees
  - Adopt and publish Notice of Nondiscrimination & Grievance Procedures
    - KVCC's new Policy can be found on the website at:  
<https://www.kvcc.edu/services/safety/>

# Notification Requirements By Other Employees – Generally

- Duty to notify the Title IX Coordinator
  - Non-Confidential Employees with authority to take corrective action on behalf of the College
  - Employees with responsibility for administrative leadership, teaching or advising
- Duty to notify the Title IX Coordinator or provide the Title IX Coordinator's contact information and how to make a complaint
  - All other non-confidential employees

# Notification Requirements – Confidential Employees

- Confidential employees are:
  - Employees whose communications are privileged or confidential under state/federal law
  - Employees designated by the College as “confidential” for the purpose of providing confidential services regarding sex discrimination
    - Only “confidential employee” when serving in designated role
- Typically, no to duty to report information to the Title IX Coordinator
  - BUT...must comply with mandatory reporting or other legal obligations

# Notification Requirements – Confidential Employees

- Upon receipt of report, Confidential Employees must explain:
  - Status as “confidential employee”
  - When they are **not** required to notify Title IX Coordinator of conduct that may reasonably constitute sex discrimination
  - How to contact the Title IX Coordinator
  - How to make a complaint of sex discrimination
  - That the Title IX Coordinator may be able to offer/coordinate supportive measures; initiate informal resolution process; or initiate an investigation



# Notification Requirements – Title IX Coordinator

- When notified of conduct that may reasonably constitute sex discrimination, the Title IX Coordinator must:
  - Treat complainant/respondent equitably
  - Provide notice of the grievance procedures and informal resolution option (if appropriate) to complainant/reporting person
  - Offer and coordinate “supportive measures” to complainant
  - If complaint made or informal resolution requested, provide notice to respondent, and offer and implement supportive measures

# Informal Resolution

- Facilitator attempts to help parties reach agreement, which may include restrictions on contact or on respondent's participation in one or more programs/activities, attendance at events, or other restrictions that could be imposed if grievance procedures had resulted in finding that sex discrimination occurred
  - Facilitator may not be investigator/decisionmaker and must be unbiased/no conflict of interest
  - Parties must be given appropriate notice
  - College and parties must voluntarily agree to process

# Supportive Measures

# Supportive Measures

- “Supportive Measures” are individualized measures offered as appropriate, as **reasonably available, without unreasonably burdening** the complainant or respondent, **not for punitive or disciplinary reasons**, and without fee or charge to the complainant or respondent to:
  - (1) restore or preserve that party’s access to KVCC’s education program or activity, including measures that are designed to protect the safety of the parties or the educational environment; or
  - (2) provide support during the KVCC’s grievance procedures...or during the informal resolution process.

# Supportive Measures

- Supportive measure may include:
  - Counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restrictions on contact applied to one or more parties; leaves of absence; changes in class, work, housing, or extracurricular or any other activity, regardless of whether there a comparable alternative; and training and education programs related to sexual harassment.
- Supportive measures are confidential
- Decisions related to supportive measures may be challenged

# Emergency Removal / Administrative Leave

- Emergency Removal
  - Student-Respondent may be removed “on an emergency basis” if, after an individualized safety and risk analysis, school determines that an “imminent and serious threat to the health or safety” of a complainant or others justifies removal
    - Respondent must be provided notice and opportunity to challenge the decision “immediately following removal”
- Administrative Leave
  - Employee-Respondent may be placed on administrative leave pending grievance procedures

# Grievance Procedures

# Title IX Coordinator Obligations

- When notified of conduct that may reasonably constitute sex discrimination, the Title IX Coordinator must:
  - If complaint made, initiate grievance procedures (or informal resolution, if appropriate and agreed to by all parties)
  - If no complaint, consider whether to initiate grievance process
  - Take any other appropriate prompt and effective steps, in addition to any remedies provided to complainant, to ensure sex discrimination does not continue or recur



# Grievance Procedures – The Complaint

- “Complaint” means “**an oral or written request...** that objectively can be understood as a request for the [College] to investigate and make a determination” about alleged sex discrimination under Title IX
- Complaints against more than one respondent, or by more than one complainant, or by one party against another party, may be consolidated when the allegations of sex discrimination arise out of the same facts or circumstances.

# Grievance Procedures – The Complaint

- Who May Make a Complaint?
  - Sex-Based Harassment
    - Complainant
    - Parent/Guardian/Authorized Legal Representative of Complainant
    - Title IX Coordinator
  - Other Sex Discrimination
    - Any student or employee
    - Any other person participating (or attempting to participate) in education program or activity at time of alleged sex discrimination

# Grievance Procedures – Basic Requirements

- Equitable treatment of complainant/respondent
- Title IX Coordinator, Investigator, and Decisionmaker may not have bias or conflict of interest
  - Decisionmaker may be same person as T9 Coordinator/Investigator
  - KVCC uses a “two investigator” model
- Presumption that Respondent Not Responsible
- Reasonably prompt timeframes for major stages (evaluation; investigation; determination; appeal), plus process for reasonable extension of timeframes

# Grievance Procedures – Basic Requirements

- Must take reasonable steps to protect privacy of parties and witnesses
  - May require confidentiality, as long as does not restrict:
    - Ability to obtain/present evidence and speak to witnesses;
    - Consult with family members, confidential resources, or advisors
    - Otherwise prepare for and participate in grievance procedures
- Require objective evaluation of all relevant (and not impermissible) evidence
  - Credibility may not depend on status as complainant, respondent or witness

# Training Requirements

- Training must be provided upon hire (or change of position that alters Title IX duties) – and annually thereafter – to:
  - **All employees**
    - College’s obligation to address sex discrimination in education program or activity; scope of conduct that constitutes sex discrimination; and all applicable notification and information requirements
  - **Investigators, decisionmakers, and others responsible for grievance procedures or making decisions on supportive measures**
    - Plus... obligations to respond promptly and effectively to conduct that may constitute sex discrimination; the grievance procedures; how to serve impartially; and the meaning and application of the term “relevant” in relation to questions and evidence and types of evidence that are impermissible.
  - **Facilitators of informal resolution process**
    - All employees, plus the College’s rules/practices for informal resolution and how to serve impartially
  - **Title IX Coordinator and designees**
    - Plus... their responsibilities, the College’s recordkeeping system, training, etc.

# Recordkeeping Requirements

- College must create and maintain the following records for at least 7 years:
  - For each **notification** the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX, records documenting the actions taken to meet its obligations to respond
  - For each **complaint** of sex discrimination, records documenting the informal resolution process or grievance procedures, and resulting outcome
  - All materials used for training.
    - Training materials no longer need to be posted, but must be available for inspection upon request

# Quiz Time

# Title IX Quiz

- Who is the KVCC Title IX Coordinator?
  - Dannie Alexander, Vice President for Campus Planning and Operations
- Where is KVCC's Title IX Policy located?
  - On the website at <https://www.kvcc.edu/services/safety/>
  - Copies can also be obtained from the Title IX Coordinator's office



# Title IX Quiz

- What is an employee's obligation if a student shares they are pregnant?
  - Provide contact information for Title IX Coordinator; and
  - Explain that the Title IX Coordinator can coordinate actions to prevent sex discrimination and ensure equal access to the College's education programs and activities
  - Do NOT ask students if they are pregnant
- True or False: All Title IX complaints need to be in writing.
  - False. Under the 2024 regulations, Title IX complaints may be submitted orally or in writing

# Title IX Quiz

- Who has KVCC identified as confidential employees?
  - Counselors ONLY
- What is your reporting obligation if you are a confidential employee?
  - Typically, no to duty to report anything to the Title IX Coordinator
  - BUT...must comply with mandatory reporting or other legal obligations
  - Must also explain that you are a confidential employee, and:
    - how the person can contact the Title IX Coordinator,
    - how to make a complaint, and
    - that the Coordinator may be able to offer supportive measures, initiate informal resolution process, or initiate an investigation

# Title IX Quiz

- What is your reporting obligation if you are not a confidential employee?
  - If you have authority to take corrective action on behalf of the College OR you have responsibility for administrative leadership, teaching or advising, you must notify the Title IX Coordinator
  - If you don't fall into one of those categories, you can either notify the Title IX coordinator OR provide the person with the Title IX Coordinator's contact information and how to make a complaint (i.e., show them where to find the policy and tell them to read it)

# QUESTIONS?