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# NEW TITLE IX REGULATIONS AND YOUR RESPONSIBILITY

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# TITLE IX BACKGROUND



## TITLE IX BACKGROUND

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(a).



## TITLE IX BACKGROUND

**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.

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## TITLE IX BACKGROUND

- **Q: Whom does Title IX protect?**
- **A: Any person participating in an educational program in the United States that receives federal financial assistance.**
  - Students.
  - Staff.
  - Applicants for admission.
  - Visitors and community members.



## TITLE IX BACKGROUND

- **Staff are participants in educational programs and activities, so Title IX protects them, too. (As do other employment-specific non-discrimination laws.)**
  - Recruitment, posting of positions, pre-employment inquiries, hiring.
  - Compensation.
  - Decisions on the basis of marital or parental status.
  - Sexual harassment and sexual violence.



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## TITLE IX BACKGROUND

- **Q: What does Title IX protect against?**
- **A: Exclusion from participation in, or denial of benefits of, any educational program or activity on the basis of sex, which includes sexuality and gender identity.**
  - Admissions.
  - Classes and curricular activities.
  - Extracurricular activities (including athletics).
  - Discipline.
  - Sexual harassment.
  - Sexual violence.





## TITLE IX BACKGROUND

- **For example, Title IX prohibits the following:**
  - Excluding participants from certain schools or classes on the basis of sex (with limited exceptions).
  - Denying participants an equal opportunity to participate in athletics and other extracurricular activities on the basis of sex, or disproportionately allocating resources for athletics or extracurricular activities on the basis of sex.
  - Failing to respond to allegations of sexual harassment or violence, or failing to protect participants from sexual harassment or violence or its effects.



## TITLE IX BACKGROUND

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20 U.S.C. § 1681(a).



## TITLE IX BACKGROUND

- **Q: To what institutions does Title IX apply?**
- **A: Any institution receiving federal financial assistance from the United States Department of Education.**
  - K-12 public schools.
  - Other public educational institutions (e.g., career centers, educational service centers).
  - Postsecondary institutions.
  - Community schools.
  - Some private schools.
  - Libraries.
  - Museums.



## TITLE IX BACKGROUND

- **Q: How is Title IX enforced?**
- **A: In part, through regulatory oversight.**
  - United States Department of Education's Office for Civil Rights ("OCR") oversees Title IX compliance. OCR also enforces other federal civil rights laws that apply to schools.
  - OCR issues regulations regarding Title IX. See 34 C.F.R. Part 106.
  - OCR has the power to receive complaints alleging violations of Title IX, investigate complaints, issue remedial measures and sanctions, and even take away a school's federal funding for violations of Title IX (although this has never happened).



## TITLE IX BACKGROUND

- **Q: How is Title IX enforced?**
- **A: In part, through private lawsuits and awards of money damages.**
  - *Gebser v. Lago Vista Independent School District* (1998): A school district is liable for failing to respond to a teacher's sexual harassment of a student if a school official who had authority to institute corrective measures on the district's behalf had **actual notice** of, and was **deliberately indifferent** to the teacher's misconduct.
  - *Davis v. Monroe County Board of Education* (1999): A school district is liable for failing to respond to a student's sexual harassment of another student if the district was **deliberately indifferent** to known acts of harassment in its programs or activities, and the harassment was **so severe, pervasive, and objectively offensive** that it effectively barred the victim's access to an educational opportunity or benefit.



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# RECOGNIZING SEXUAL HARASSMENT OR SEXUAL DISCRIMINATION IN EDUCATION



## DEFINING SEXUAL HARASSMENT

*Conduct on the basis of sex that satisfies one or more of the following:*

- 1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (i.e., quid pro quo 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 recipient's education program or activity;*

**OR**

- 3. "Sexual assault," "dating violence," "domestic violence," or "stalking," as defined by the Clery Act.*



## EXAMPLES OF SEXUAL HARASSMENT OR BOUNDARY VIOLATIONS: STAFF

- Being overly “touchy” with students; lap sitting, hugging.
- Talking about sexual topics that are not related to curriculum.
- Being alone with a student behind closed doors without a legitimate educational purpose.
- Going to a student’s home for non-educational purposes; inviting students to the staff member’s home without proper chaperones.
- Using e-mail, text, or social media to discuss personal matters with students.





## EXAMPLES OF SEXUAL HARASSMENT OR BOUNDARY VIOLATIONS: STAFF

- Telling a student “secrets” and having “secrets” with a student.
- Talking to a student about problems normally discussed with adults (e.g., marital issues).
- Favoring certain students by inviting them to come to the classroom at non-class times; getting a student out of class to visit with the staff member.
- Telling sexual jokes to students; engaging in sexual innuendo.
- Invading a student’s privacy (e.g., bathroom, locker-room, asking questions about bra size, sexual experiences, etc.).



## EXAMPLES OF SEXUAL HARASSMENT OR BOUNDARY VIOLATIONS: STUDENTS

- Starting rumors about a student's sexual behavior.
- Grabbing a classmate or "accidentally" touching them.
- Bullying (in person or on social media) based on sex.
- Fake social media accounts about a person; exchanging pictures.
- Sexual jokes; engaging in sexual innuendo.
- Relationship harassment – stalking; physical or emotional abuse.



## DEFINING SEXUAL DISCRIMINATION IN EDUCATION

“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.”



## EXAMPLES OF SEXUAL DISCRIMINATION IN EDUCATION

- Sex Stereotypes
- Athletics
- Sex-Based Discrimination
- Discipline
- Dress Codes
- Behavior Shaming
- Stalking
- Social Media



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# WHAT ARE MY OBLIGATIONS UNDER TITLE IX?



## REPORT WHEN YOU HAVE KNOWLEDGE

- The new regulations require a school district to respond to potential sexual harassment when the district has **ACTUAL KNOWLEDGE** of the sexual harassment or allegations of sexual harassment.
- A district has **ACTUAL KNOWLEDGE** when there has been **NOTICE** to **ANY EMPLOYEE** of an elementary or secondary school.
- Report to the Title IX Coordinator.



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# DUTY TO REPORT SUSPECTED ABUSE OR NEGLECT



## DUTY TO REPORT SUSPECTED ABUSE OR NEGLECT

- In addition to the obligation to report discrimination or harassment, school employees also have a duty to report suspected abuse or neglect.
- School employees are **MANDATORY REPORTERS**.
- Failure to report can impact:
  - Your license
  - Your livelihood
  - Your finances
  - Your freedom





## WHEN IS THERE A MANDATORY DUTY TO REPORT?

- When a mandated reporter is:
  - acting in an official or professional capacity, and
  - knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect,
  - that a child under eighteen years of age, or a person under twenty-one years of age with a developmental disability or physical impairment,
  - has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child.
- Must report **IMMEDIATELY**.



## WHEN MUST THE SCHOOL EMPLOYEE REPORT ABUSE? TO WHOM?

- Must IMMEDIATELY REPORT.
- Report must be made to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred.



## WHAT SHOULD BE REPORTED?

- Factual information about the situation.
- If you are not sure, say so.
- Check Board Policy on documenting the report.
- Keep your own records about who you spoke to, when and what you shared.
- If you are reporting a school employee, also report to an administrator.



## WHAT HAPPENS WHEN A SCHOOL EMPLOYEE MAKES A REPORT?

- Law enforcement and/or the appropriate public children's services agency will investigate and make recommendations regarding potential prosecution.



## ARE REPORTS CONFIDENTIAL?

- Reports are confidential.
- The public children's services agency must not provide any information to the accused person that identifies the person who made the report, statements of witnesses, or police or other investigative reports.
- But remember Board Policy may require you to share with the school district that you made a report.



## WHAT ARE THE CONSEQUENCES FOR FAILING TO REPORT?

- **Criminal:** Failure of a school employee to make the report is a fourth degree misdemeanor punishable by up to 30-days in jail and/or a \$150 fine. Penalty is raised to a first degree misdemeanor if the child is under the offender's direct care, or a subordinate's care, when the child suffers the abuse or neglect.
- **Compensatory and exemplary damages:** A person who fails to report is liable to the child who would have been the subject of the report that was not made.
- **Employment:** Courts have recognized the failure to report suspected child abuse when required is good and just cause for termination from employment.
- **Licensure:** Failing to report known or suspected child abuse may be conduct unbecoming the education profession under the Licensure Code of Professional Conduct for Educators.



## EDUCATOR SEXUAL MISCONDUCT IS PREVENTABLE.

- An estimated 10% of K-12 students are susceptible to school employee sexual misconduct while the child is in the employee's care in a school setting.
- Many times, after a well-publicized case, educators or parents will reveal they had suspicions.
- Reporting misconduct of a sexual nature to the district may prevent a child from being abused.
- Reporting known or suspected child abuse may prevent a child from being further abused.



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THANK YOU!

