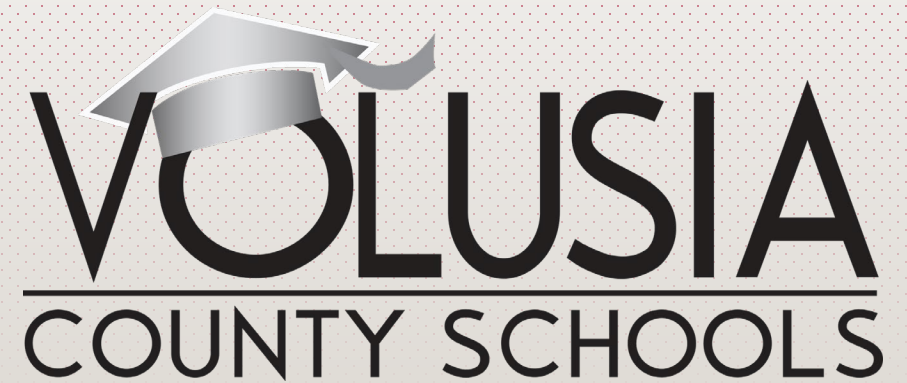


TITLE IX & THE NEW REGULATIONS

WHAT YOU NEED TO DO TO COMPLY



TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

- Is a federal law prohibiting discrimination on the basis of sex in all education programs and activities operated by recipients of federal funds
- The law states: “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”
- Enforced by the U.S. Department of Education’s Office for Civil Rights (OCR)

NEW TITLE IX REGULATIONS WENT INTO EFFECT ON AUGUST 14, 2020

Key Concepts:

- Sets the standard for administrative enforcement of Title IX
- Triggers very specific institutional obligations in certain situations

Title IX = AK + SH + EP + US

- Broad new mandatory reporting obligation for employees
- Enhanced Title IX Coordinator responsibilities

TITLE IX COORDINATOR

District Title IX Coordinator

Anne Marie Wrenn

Equity and Compliance Officer

Office of Professional Standards

200 North Clara Ave., DeLand, FL 32720

386-734-7190, ext. 20313

- Each school must also designate a school-based Title IX Coordinator who will investigate student on student Title IX complaints. This should be an administrator.

WHEN DO TITLE IX OBLIGATIONS KICK IN?

- **Title IX = AK** (Actual Knowledge) of **SH** (Sexual Harassment) in an **EP** (Educational Program or Activity) in the **US** (United States)
- If any of these elements do not exist, there is no obligation under Title IX
- Just because it may not be a Title IX complaint does **NOT** mean we don't investigate or deal with it

ACTUAL KNOWLEDGE (AK)

- WHO: Notice to “any employee of an elementary and secondary school”
- WHAT: Title IX Coordinator must promptly reach out to the alleged victim and offer supportive services
- Explain to the complainant the process for filing a formal complaint
- Actual Knowledge does not necessarily trigger an obligation to conduct a formal Title IX investigation

SCENARIO A

A school cafeteria worker overhears Student A tell Student B that Student A was sexually abused by Student A's girlfriend in a classroom last weekend after band practice.

Does the cafeteria worker have to report this?



SCENARIO B

A teacher in the breakroom hears a teacher say another teacher grabbed her butt in the hallway.

Does the teacher have an obligation to report this?



“SEXUAL HARASSMENT” (SH)

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

- Quid Pro Quo - An employee conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcomed sexual conduct
- 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 recipient's education program or activity
- “Sexual assault” as defined in Clery Act, “dating violence”, “domestic violence” or “stalking” as defined in the Violence Against Women Act of 1994 (VAWA)

EDUCATIONAL PROGRAM OR ACTIVITY (EP)

- Locations, events, or circumstances over which the school/district exercises substantial control over both the respondent and the context in which the sexual harassment occurs
- “Substantial control” - Did the school/district fund, promote, or sponsor the event or circumstance where the alleged harassment occurred?
- Title IX obligations can extend to incidents of sexual harassment that occur off campus

SUPPORTIVE MEASURES

- Must be offered to an alleged victim once the school has AK (Actual Knowledge)
- Must also be offered to the respondent once a formal complaint is filed
- Non-disciplinary in nature; no disciplinary measure until the end of investigation and grievance process

Examples of Supportive Measures:

- Counseling
- Extensions of deadlines
- Modification of class schedule
- Mutual restrictions on contact between the parties
- Leave of absence

INTERIM REMOVALS

Permissible for students only when an Individualized assessment finds:

- There is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment
- Must be given the opportunity to challenge immediately after the removal
- Employees can be placed on paid administrative leave by the Office of Professional Standards

FORMAL COMPLAINT PROCESS

Explain to the Complainant the Process for filing a formal complaint.

- A Formal Complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment and requesting an investigation into the allegation.
- At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.

WHAT HAPPENS NEXT WHEN IT'S IX + FC?

- Must provide written notice to the accused “upon receipt of a formal complaint”
- Must provide sufficient details known at the time (parties involved, alleged conduct, date and location) and allow sufficient time for the accused to prepare a response before the initial interview

Written Notice MUST:

- Include a statement that the accused is presumed not responsible
- Inform the parties they may have an advisor of their choice and may review and inspect evidence
- Inform the parties of any provision in the school's code of conduct that prohibits knowingly making false statements or knowingly submitting false information

THE 7 RULES OF TITLE IX INVESTIGATIONS

RULE #1 OF INVESTIGATIONS

When investigating a formal complaint and throughout the grievance process, the school must ensure the burden of proof and the burden of gathering evidence, sufficient to reach a determination, rests on the school and not on the parties.

RULE #2 OF INVESTIGATIONS

Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses

RULE #3 OF INVESTIGATIONS

- Do not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- This provision applies to discussion of the allegations under investigation and not to the evidence subject to the parties' inspection and review.
- Also applies to Title IX investigations involving employees

RULE #4 OF INVESTIGATIONS

- Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice
- Do not limit their choice or presence of an advisor for either the complainant or accused
- Advisor could be an attorney, parent, etc.

RULE #5 OF INVESTIGATIONS

Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with sufficient time for the party to prepare to participate.

RULE #6 OF INVESTIGATIONS

- Provide both parties an equal opportunity to inspect and review ANY evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint
- This includes evidence upon which the school/district does not intend to rely on in reaching a determination regarding responsibility

RULE #6 CONTINUED...

- Prior to the completion of the investigative report, the school/district must send each party and the party's advisor, all evidence subject to inspection and review, in an electronic format or hard copy.
- The parties must have at least ten (10) days to submit a written response, which the investigator will consider prior to the completion of the investigative report.
- The school/district must make all such evidence, subject to the parties' inspection and review, available at any hearing, to give each party an equal opportunity to refer to such evidence during the hearing.

RULE #7 OF INVESTIGATIONS

- Create an investigative report that FAIRLY summarizes relevant evidence
- At least 10 days prior to the determination regarding responsibility, send to each party and the party's advisor, the investigative report in electronic format or hard copy, for their review and written response

DETERMINATIONS

- After the school/district has sent the investigative report and before reaching a determination, the decision maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional limited follow-up questions from each party.
- The decision maker(s), who cannot be the same person as the Title IX Coordinator or the investigator, must issue a written determination regarding responsibility.

INFORMAL RESOLUTION

- Permissible only AFTER a formal complaint is filed
- Parties must provide voluntary, written consent after receiving detailed notice of the allegations and an explanation of the informal resolution process
- NEVER permitted where an accusation is that an employee sexually harassed a student

APPEALS

Must be offered to both parties on the following grounds:

- Procedural irregularity that affected the outcome
- New evidence not reasonably available that could affect the outcome
- Conflict of interest by school/district participants that affected the outcome
- Non-appealing party must be given a chance to respond

RECORDS RETENTION

Complete records of every case must be kept for a period of seven (7) years

- Formal Cases
- Informal resolutions
- Cases where only supportive measures are provided (must include rationale for not proceeding formally)

All parties have the right to access the records

QUESTIONS ABOUT TITLE IX OR REGARDING THIS WEBINAR?

- Please call or e-mail Anne Marie Wrenn, Equity and Compliance Officer, at extension 20313 or amwrenn@volusia.k12.fl.us