

Title IX: A Proactive (REACT)ion to Sexual Misconduct

Shasta County Office
of Education

April 13, 2018

Presented by:
Stephanie M. White

LS

Interactive Presentation

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Interactive Presentation!

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PHONES
UP

Use one word to describe your biggest challenge in handling Title IX matters.

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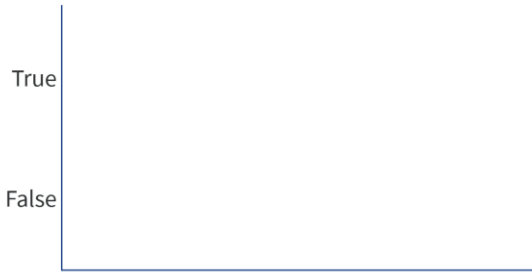
Sexual harassment in schools impacts approximately 25% of all students.

True

False

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All students who are subjected to sexual harassment are negatively impacted by the harassment.



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PHONES
DOWN

Impact of Sexual Harassment and Sexual Violence



- Impaired learning
- Culture of discrimination
- Civil liability
- Negative media attention and public outcry

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How to Approach Sexual Harassment and Sexual Violence

Federal Laws

State Laws

Ed Code

OCR Guidance

Case Law

Board Policies

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CLARIFY THE PROCESS AND RESPONSE

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REACT to Sexual Misconduct

Recognize

Evaluate

Act

Corrective Measures

Thoughtful Reflection

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REACT
RECOGNIZE

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Examples of Conduct



- Flirtations or propositions
- Derogatory comments
- Sexual jokes or gestures
- Spreading sexual rumors
- Massaging, grabbing or touching
- Comments on a student's body
- Sexual acts without consent or based on coercion
- Non-consensual "sexting"
- Exploitation

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Sexual Harassment

1. Unwelcome conduct of a sexual nature
2. That is severe, persistent or pervasive, AND
3. The conduct:
 - a) Has a negative impact on student's ability to benefit from the educational environment; OR
 - b) Creates an intimidating, hostile or offensive environment;

Ed. Code, § 212.5 - Sexual harassment; 2001 Dear Colleague Letter
Ed. Code, § 48900.2 - Expulsion/suspension for sexual harassment

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Sexual Assault

- Actual or intentional physical sexual acts against a person without consent that may include:
 - Rape, rape and seduction, sodomy, lewd and lascivious acts, oral copulation, sexual penetration, sexual battery, and sexual assault
- “No consent” may include:
 - Force, duress, violence, fear of immediate harm, inability to consent

Ed. Code, § 48900.2 – Expulsion/suspension for sexual harassment
Ed. Code, § 48900(n) – Mandatory expulsion for sexual assault/battery
Pen. Code, §§ 261, 266c, 286, 288, 288a or 289 – Sexual assault

Sexual Battery

- Touching another person’s intimate part against that person’s will.
 - “Touch” means direct physical contact or contact through clothing of either person
 - “Intimate part” means sexual organ, anus, groin, or buttocks of any person; breast of a female
- Touching is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse.
- Actual touching is required.

Ed. Code, § 48900(n) – Mandatory expulsion for sexual assault/battery
Pen. Code, § 243.4 – Sexual battery

Cyber Sexual Bullying

1. Electronic dissemination of OR solicitation or incitement to electronically disseminate;
2. A sexually explicit image or recording;
3. By a student to another student or to school personnel;
4. That causes:
 - a) The student to be in fear of harm, OR
 - b) A substantially detrimental effect on the student’s physical or mental health, or the student’s ability to benefit from the educational environment.

Ed. Code, § 48900.2 – Expulsion/suspension for sexual harassment
Ed. Code, § 48900(r)(2)(A)(iii) – Expulsion/suspension for cyber sexual bullying

Parties May Include

- Student-on-student
- Employee-on-student
- Employee-on-employee
- Outsiders as accused
- Both men and women
- Same-sex parties



Where Violations May Occur

1. At school or a school-sponsored event
2. Off campus
 - a) Nexus to school
 - b) No nexus, but a negative impact on the complainant/victim's educational environment

Ex: A party over the summer that is not related to school activities

Your Duty to Identify and Report

Responsible Employee

- Duty to report incidents of alleged sexual misconduct to the Title IX Coordinator or designee
- Responsible employees should know who they are!

**YOU ARE A RESPONSIBLE
EMPLOYEE!**

Designate a Title IX Coordinator

- Must designate at least one employee
- Duties and authority:
 - Independence in order to avoid conflicts of interest.
 - Report directly to a member of senior leadership (e.g., superintendent or assistant superintendent).
 - Coordinate the investigation of all Title IX complaints.
 - Monitor outcomes, identify and address patterns, and assess effects on campus climate.

REACT
EVALUATE

Your Duties as an Employee

1. Responsible employee
2. Mandated reporter
3. Other designated duties



Evaluate the Allegations

- 1. Nature of the allegations
- 2. Imminent harm to others
- 3. Criminal acts
- 4. Complainant's request for actions

Evaluate Options for Proceeding

- 1. Informal resolution
- 2. Investigation
- 3. Disciplinary action
- 4. Other actions needed immediately

REACT
ACT



PHONES
UP

ACT: Respond to the Incident



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What should the principal do?

- Notify the
Title IX
Coordinator
- Call the
Police
- File a CPS
Report
- Talk to the
Other
Student
- All of the
above

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ACT: Respond to the Incident



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What should the principal do?

Notify the Title IX Coordinator Call the Police File a CPS Report Initiate an Investigation Immediately Call Their Parents

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You begin your investigation by interviewing the reporting student. What would you ask her?

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PHONES
DOWN

Informal Resolution

- Informal resolution, such as *mediation*, is permissible if:
 - The parties are *informed* of the allegations and the options for formal resolution;
 - The parties *agree* to an informal resolution; and
 - The school district determines the complaint is *appropriate* for informal resolution.

**Best Practice Tip:* In most matters, mediation will not be appropriate for addressing allegations of sexual assault or violence, or for complaints that are filed by students against adults.

Interim Measures

- Determine on a case-by-case basis
- No retaliation
- “Avoid depriving *any student* of his/her education.”
- Examples:
 - Counseling
 - Medical services
 - Academic support
 - No contact orders
 - Changed schedules
 - Leaves of absence (mandatory leave for sex offenses)

Investigation Timelines



- Investigate in a “timely manner”
- Uniform Complaint Procedures 60 day timeline
- Know your district’s policies for investigating complaints of sexual misconduct

Disciplinary Procedures

- Disciplinary procedures may be used in lieu of Uniform Complaint Procedures
- Timeline: 30 school days
 - Complainant still needs “equitable resolution”
 - Notice of outcome
 - Right to appeal the findings of the fact

Notice to the Respondent



- Written notice **prior** to any interview or hearing:
 - Identities of the parties involved
 - Specific allegations
 - Code of conduct violated
 - Date and location of the alleged incident
- “Sufficient time” to prepare
- **Balance confidentiality requests**

Investigation and Disciplinary Procedures

Equal Opportunity to Present Evidence



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Criminal Investigation

1. A police investigation does *not* relieve a district of its obligations under Title IX or state laws
2. Gathering evidence
 - A brief delay is permissible
 - Criminal reports may be useful for fact gathering
 - Working with local law enforcement
3. Crime v. Impact

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Make Findings

- Preponderance of the Evidence*
(All Title IX Complaints)
- Substantial Evidence
(Student Discipline)



*Check your school policies

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Investigation Findings (Student Complaints)

Uniform Complaint Procedures – BP/AR 1312.3

1. Findings of Fact
2. Conclusions of Law (i.e., policy violations)
3. Disposition of the Complaint
4. Rationale for the Disposition
5. Corrective Actions
6. Appeal Rights

***Check your district's policies**

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Appeal Rights



1. (Optional) Right to Appeal to the Board (complainant only)
2. California Department of Education – 15 days (complainant and respondent)
3. Office for Civil Rights – 180 days (new complaint filed by complainant)

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PHONES
UP

ACT: Respond to the Incident



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Using one word, who should the principal notify first?

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Should the district investigate and respond to the sexual assault?

No, because the incident happened over the summer

No, if the police are involved.

Yes, the district is required to respond.

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Which of the following is an interim measure that may be appropriate?

Suspend the accused student
Academic support/ Counseling services
No contact orders
Change schedules
All of the above

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**PHONES
DOWN**

REACT
CORRECTIVE MEASURES

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Corrective Measures

For the Respondent

1. Discipline
2. Loss of privileges or changed schedules
3. No contact orders

For the Complainant

1. Counseling
2. Academic supports
3. Safety measures

REACT

THOUGHTFUL REFLECTION

Thoughtful Reflection



1. Reflect on REACT
 - Staff responses
 - Policies and procedures
 - Evidence of systemic issues
2. Education to prevent future harm
 - Staff trainings
 - Student trainings

PREVENTION


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Prevention


Taking the right proactive measures is just as important as how you respond.




Proactive
Reactive

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Was to Prevent Sexual Misconduct and Inappropriate Responses to Allegations



- ✓ Adopt clear policies
- ✓ Publish and disseminate the policies
- ✓ Designate a Title IX coordinator
- ✓ Train staff and students

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Adopt Appropriate Written Policy & Complaint Procedure

- Title IX policy must include the following:
 - A statement of nondiscrimination.
 - Definition of sexual harassment.
 - Examples of sexual harassment.
 - The Title IX coordinator’s name and contact information.
 - A complaint procedure that includes prompt and equitable timelines.

Publish and Disseminate the Policy

Policy must be widely available to students, employees, parents, volunteers and vendors.

- Ex: District’s website, student handbooks, codes of conduct, school catalogues, and employee materials.



Website Posting Requirements (SB 1375)

- Name and contact information for the Title IX Coordinator;
- Rights of a pupil and the public and the responsibilities of the district under Title IX;
- List of rights specified in Education Code § 221.61;
- A description of how to file a complaint under Title IX, including the timeline for filing a complaint.
- An explanation of how the complaint will be investigated
- Web links to the agencies identified in Education Code § 221.61, including the Office for Civil Rights

Train Staff and Students

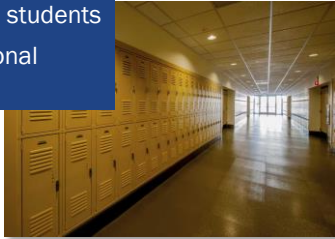


Training should include:

- Overview of **Title IX** and **District policy**
- Practical information on how to **prevent and identify** sexual harassment
- Obligations to **report** and guidance for **responding**
- Dealing with **difficult situations**, including requests for confidentiality

Proactive REACTION Districtwide

- Legal compliance
- Help affected students
- Safe educational environment



Hypotheticals

Final Thoughts...

"Effectiveness has always been the measure of an adequate response under Title IX. This does not mean a school must overreact out of fear of being judged inadequate. Effectiveness is measured based on a reasonableness standard."

Questions



HYPOTHETICAL 1

PROBLEM UNIFIED SCHOOL DISTRICT

INTER-DISTRICT TRANSFER REQUEST

This form to be used for requests to be released from the Problem Unified School District.

Office Use Only
Date Received

Please release my child/ren from attending school in the Problem Unified School District for the 2017 - 18 school year.

STUDENT NAME(S)	BIRTHDATE	GRADE (FOR YEAR)	PRESENT SCHOOL	REQUESTED SCHOOL & DISTRICT
Vicky Tim	1/1/04	9	PHS	Solution HS/District

PARENT/GUARDIAN:
M. D. Tim

HOME PHONE:
(445) 555-5555

STREET ADDRESS:

WORK OR CELL PHONE:
(445) 555-5555

REASON FOR INTERDISTRICT TRANSFER REQUEST

Reason for request: (Attach additional page, if necessary):
See attached

Check any category which applies to your child:

- Resource 504 Plan Other: _____
 Speech English Learner

Parent/Guardian Signature:

[Signature]
SIGNATURE

3/22/18
DATE

APPROVAL OR DENIAL

Approved Denied Reason(s): _____

SUPERINTENDENT'S SIGNATURE DATE

Disapproval may be appealed within thirty (30) days to the County Office of Education.

RECEIVING DISTRICT ACTION

Approved Denied Reason(s): _____

SIGNATURE DATE

Please return a signed copy to the Problem Unified School District

REASON FOR INTERDISTRICT TRANSFER REQUEST

Our daughter, Vicky, has been assaulted and constantly bullied over the past two-years, and the district has done nothing. The bullying and abuse started after 7th grade when Vicky went to summer camp. She knew some of the other campers from school, but whenever they saw her they called her a "slut" and "bitch." One time, they hit and grabbed Vicky and wiped bodily fluids on her. When we reported this to the school, we were told there was nothing they could do because it happened at a camp that was "unaffiliated with the district."

In 8th grade, these same students targeted Vicky and they recruited other students to join them. Most days, Vicky came home from school in tears. Every time we reported the bullying, we were told the school was taking care of it.

We thought things would be different in high school, but the same kids are still bullying Vicky. On Friday, they attacked Vicky in the locker room. Vicky is recovering at home and doesn't want to return to school. Her doctor is concerned and said she should stay at home.

Dr. I.M. Concerned
1 Hospital Way
Problem City, CA

Patient Name: Vicky Tim Date: 3/16/18
Address: Problem City, CA

Bed rest
fluids, tylenol as needed
concussion and lacerations

Signature:  _____

HYPOTHETICAL 2

March 22, 2018

Principal Holmes
Problem High School
Problem Unified School District
123 School Street
Problem City, CA 12345

Dear Principal Holmes:

I am submitting this letter as an anonymous complaint against the school's Choir Teacher/Coach Peter Pann because I believe that he may be having an affair with one of his female students. My daughter, Notta, and her best friend, Dee Nial, are both in Problem High School's choir program. Notta has been complaining lately that Dee is never available to hang out anymore because Dee is getting private voice lessons with Mr. Pann and, now that Dee is 16 and can drive, she prefers to drive to Mr. Pann's house for her lessons. Notta said that Dee is addicted to Snapchat and that Dee showed her some pictures a few weeks ago of a man's abdomen and penis. Dee bragged, "Not bad for a guy who's 33." Notta asked Dee if the picture was of Mr. Pann because they had talked about how old he was. Dee said it was no one she knew. Dee asked Notta, "Don't you ever send any pictures of yourself to see what you can get in return?" When Notta told her, "No, that's gross," Dee walked away. I don't have any proof, but I am concerned that something is not right. Can you do something? Notta asked me not to tell anyone about Dee, so I ask that you keep this complaint anonymous.

Sincerely,

Ima Fraid

INTERVIEW NOTES

Dee Nial is in 10th grade. She is in Mr. Pann's 3rd Period Choir class and she takes voice lessons from him.

Did not communicate with Mr. Pann through Snapchat.

Did not go to his house for lessons.

She babysits Mr. Pann's son at his house.

She asked if Mr. Pann was going to get in trouble.

Dee said, "I lied," and she started to cry.

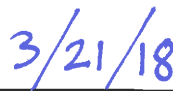
Dee prepared the below written statement.

Statement of Dee Nial

It started when Mr. Pann and I found out that we both use SnapChat. I sent him a few pictures and he sent me a few. We were just friends having a good time. It was nothing bad for a while. Then I sent him a picture of me in my new shirt and he sent me a picture of down there. I didn't think he meant to send that picture, so I just kind of laughed and ignored it. Then he sent more. I was going to his house a lot for lessons. I didn't mean for anything to happen. I was taking a break on his couch because I was tired. He came over and rubbed my back. It felt good, but just because my back hurt. Then he rubbed under my shirt. The next thing I knew he took off my clothes. We had sex. All he said was, "That was fun." I couldn't believe it. I didn't think it would happen again, but we did it again the next week. I went over to his house on Wednesdays. I usually liked it, but I felt like I couldn't say no because I was afraid he would kick me out of the program. I told him I would keep doing it as long as he didn't do it to anyone else. He told me he wouldn't.



Signature



Date

HYPOTHETICAL 3

Problem School District
321 District Drive
Problem City, CA 12345
COMPLAINT FORM

For Office Use Only
Date Received

PLEASE PRINT

NAME: Jane Doe DATE: March 21, 2018

ADDRESS: 456 Main Street 1 Problem City CA 12345
NUMBER STREET APT. # CITY STATE ZIP CODE

HOME PHONE: (555) 555-5555 OTHER PHONE: ()

I AM A (Please check one): STUDENT EMPLOYEE PARENT OTHER

I WISH TO COMPLAIN AGAINST:

Name of person, program or activity Mr. Jones/Pysch Teacher

Address: Problem High School, 123 School Street, Problem City, CA 12345

I WISH TO COMPLAIN ABOUT THE FOLLOWING

(Please specify what happened, when, where, and how it happened, and who was there: _____

Last semester in psychology Mr. Jones was creepy and biased against girls in class. He flirted with me and my friends Becky and Muriel in class and made comments about our clothes. He asked us to choose our outfits "just for him." He talked about dating and his girlfriends during class. In class he mostly let the male students speak and he ignored the female students, even if we raised our hands. We think he's a predator and a manipulator. I didn't file this complaint until now because I was afraid it would hurt my grade. Please keep this confidential because everyone likes Mr. Jones and I don't want them to know I filed a complaint against him.

Attach additional pages if necessary.

Date of conduct which gave rise to this complaint: October 2017

If there are any witnesses to the alleged conduct or if there is anyone else who could provide more information regarding this, please list names, addresses, telephone numbers: _____

Becky (555) 555-1111, Muriel (555) 555-2222

What do you think would be an appropriate remedy or resolution for this complaint? _____

I certify under penalty of perjury that the foregoing and any attachments are true and correct.

Executed on this 21st day of March, 2018, at Problem City, California.

SIGNATURE OF COMPLAINANT _____

What's Next?

- Is this a Title IX Issue?

- Why or why not?

- What are your first steps?

- What course of action would you recommend?

- Do any reports need to be made?

- Would your answer change if the student graduated prior to filing the report?

- Would your answer change if the genders of the parties involved were reversed?

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EDUCATION

J.D., Golden Gate University
School of Law

B.A., University of California,
Los Angeles

PRACTICE AREAS

Labor & Employment
Students
Community Colleges

BAR ADMISSION

California, 2010

OVERVIEW

Stephanie White is Senior Counsel in Lozano Smith's Walnut Creek Office and co-chair of the firm's Community College practice area. Ms. White represents California public school districts, county offices of education and community college districts in all aspects of education law. She specializes in Labor and Employment and student issues.

EXPERIENCE

Ms. White has extensive experience advising and representing clients with regard to certificated and classified discipline and dismissal proceedings. She also has experience in advising clients on FERPA and student confidentiality issues, student discipline and expulsion proceedings, the Public Records Act, and the Americans with Disability Act. Ms. White's practice includes investigating and responding to unlawful discrimination complaints filed against employers with the Equal Employment Opportunity Commission and Department of Fair Employment and Housing. She also routinely conducts complex, internal investigations on behalf of school districts and community colleges relating to claims of sexual harassment, discrimination and retaliation.

Ms. White has additional experience defending school districts against unfair practice charges brought before the Public Employment Relations Board. She also provides training to school district employees in the areas of sexual harassment (AB 1825), Title IX and employee leaves.

EDUCATION

Ms. White received her Juris Doctor from Golden Gate University School of Law, and earned a Bachelor of Arts in Sociology from the University of California, Los Angeles. While in law school, Ms. White taught practical legal classes to inner-city high school students in San Francisco.

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