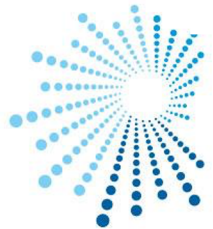




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K-12 and Title IX: What to Know About the New Regulations

Part One



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Founder
Rebecca Leitman Veidlinger, PLLC



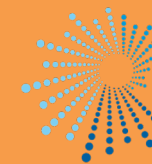
Jody Shipper

Co-founder and Managing Director
Grand River Solutions



Agenda for Today

- Definition of sexual harassment
- People, functions, and impartiality
- Scope and jurisdiction
- Supportive measures and informal resolution processes
- Overview of formal process options



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The May 2020 Title IX Regulations Cover A Narrow Scope of Title IX

- Sex Discrimination
- Achievement Awards
- Athletics
- Benefits
- Leaves of absence and re-entry policies
- Opportunities to join groups
- Pay rates
- Recruitment
- Safety
- Screening Exams
- Student and Employee Benefits
- Vocational or College Counseling
- Letters of recommendation
- Entry into special programs

Conduct Constituting
Sexual Harassment as
Defined in
Section 106.30



NOT defined in regulations

Defined in
regulations

**Only THESE get the new
processes**



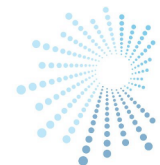
What is covered in the new regulations?

(And what can we do about
bad conduct that falls
outside this coverage?)



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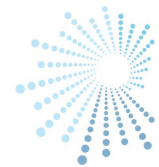


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Definition of Sexual Harassment

Sexual harassment means 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;
- (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**" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "**dating violence**" as defined in 34 U.S.C. 12291(a)(10), "**domestic violence**" as defined in 34 U.S.C. 12291(a)(8), or "**stalking**" as defined in 34 U.S.C. 12291(a)(30).



Definition of Sexual Harassment Quid Pro Quo

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;

Meaning: You do this for me, I'll do that for you. Quid Pro Quo

Not covered here: A student leader tells another student, "If you won't go out with me, I'll make sure you never get into the glee club."



Definition of Sexual Harassment 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

Examples: Comments, emails, posters, actions, gestures, physical contact, images, jokes, sexual advances

Effectively Denies *Equal* Access to a Program or Activity

What does this mean? Is it...

- It was harder to feel really comfortable there
- I found it really annoying
- Their mere presence upset me too much to study
- I no longer felt safe enough to go to class

Sexual Assault Definitions

- 20 U.S.C. 1092(f)(6)(A)(v) – Federal Definitions
- Sex Offenses Forcible and Non-Forcible
 - Forcible:
 - Rape, Sodomy, Sexual Assault with an Object, Non-Consensual Fondling
 - Non-Forcible: Incest, Statutory Rape

Domestic Violence (on the basis of sex)

Includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person.

Dating Violence

Violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship (iii) The frequency of interaction between the persons involved in the relationship.

Stalking (on the basis of sex)

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.



People, Functions and Impartiality

A Good Start: One Coordinator

Only One?

Can't someone else help out?

How big is that job?

What, exactly, am I supposed to be doing?

Can One Coordinator Do It All?



INVESTIGATOR



DECISION-
MAKER



APPEALS
OFFICER

WHY NOT?

Is the Title IX Coordinator an Advocate?

- For Process
- Impartiality
- Avoidance of Prejudgement
- Avoidance of Conflicts of Interest
- Avoidance of Bias

Impartiality

WHAT DOES THIS *REALLY* MEAN?

Prejudging

- “Believe all victims”?
- Is bringing forward a case a “judgment”?
- Avoiding any presumption of responsibility

Bias? Conflict of Interest

- Being anti-rape
- The investigator once took a women's studies course
- The appeals officer wrote on Facebook last week that if a boy is accused, he definitely did at least *something* wrong
- The Title IX Coordinator went to the same college as the Complainant's mother
- The Title IX Coordinator's daughter works for the Complainant's mother



Scope and jurisdiction

Mandatory jurisdiction to respond



- Actual knowledge
- Sexual harassment
- Education program or activity
- Person in the United States

Worksheet on coverage of new Title IX regulations

1. Definition:

Does this meet the definition?

If yes, continue. If no, not IX

2. Location:

On campus, within the United States;

In building owned/controlled by a recognized student org., in the U.S.;

Part of a program or activity, and within the United States.

If yes to one of the above, continue. If no, not IX

3. The institution has control over the respondent

If yes, continue. If no, not IX

4. Complainant is in the U.S.

If yes, institution has a duty to respond according to new Title IX Process

Hypo #1

Nancy Hodges is the assistant softball coach at Fairview High School. Josie, a player, approaches her after practice and tells her that another player, Liz, has been telling people that a senior on the softball team sexually assaulted Liz in the locker room a week ago. Josie said no one believes Liz because she always causes drama. Nancy herself has had previous interactions with Liz related to softball when Liz was not always honest.

Hypo #2

Jason Franklin is a regular substitute teacher at Engels Middle School. Aaron, a student in geometry, knows Jason both from his substitute teaching and from attending church together. After class on Thursday, Aaron tearfully asked to speak with Jason. Aaron confided in Jason that the prior weekend, Aaron thinks he might have “done something really bad.” Aaron eventually shares with Jason an incident that occurred at Aaron’s house when his parents weren’t home. Aaron shares that Jordan, another Engels Middle School student, came over and became intoxicated from alcohol. Aaron further shares that Aaron fondled Jordan’s breasts when she was unconscious and unaware. Aaron feels badly about the incident and asks Jason what the church would want him to do.



Supportive Measures and Informal Resolution Process

Someone made a report.

We go through the worksheet and our duty to respond is triggered.

Now what?

EASY: Don't Be Deliberately Indifferent

Outreach

Rights, resources, options

Discuss support measures

Can have support without filing formal complaint

Options for resolution and how to File

What the process will look like (*optional step*)

Supportive Measures

Interim, not
forever

Interim also
includes “before
investigation”

Equitable ≠
Equal

Not Punitive?

- No default, always case-by-case
- Right to challenge
- Local education codes may apply



Emergency Removal of Student

- High threshold
- Not a determination of responsibility
- Whether or not grievance is underway
- Individualized
- Immediate threat (physical)
- Opportunity to challenge



Interim Support for a Complainant

- To restore or preserve EQUAL access
- Confidential to extent possible
- Upon filing of report (notice)
- No fee
- Non-disciplinary/not punitive
- Individualized



Interim Support for a Respondent

After complaint is filed



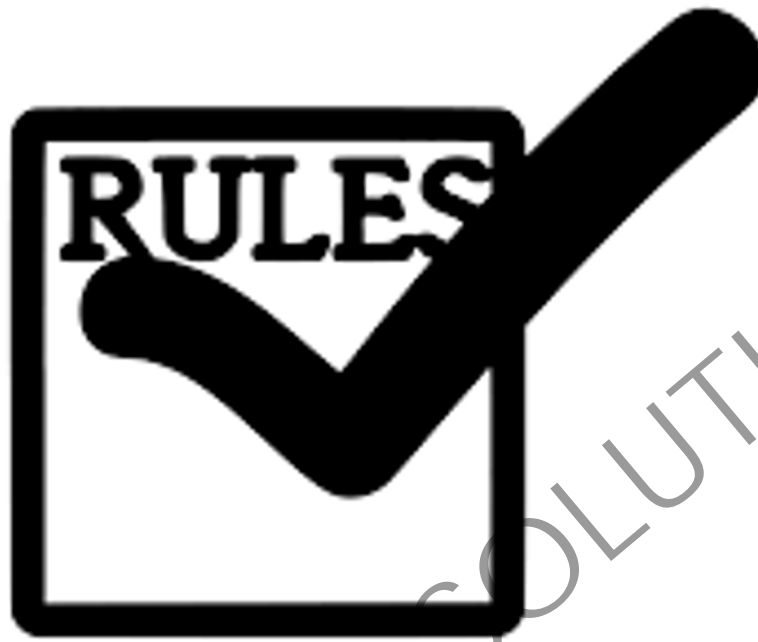
Non-disciplinary
Non-punitive
Individualized

Informal Resolution

Can only be offered after formal complaint has been filed

May include arbitration, mediation, or restorative justice

Facilitators must be trained in informal resolution



Overview of Formal Resolution Process

Mandatory jurisdiction to investigate— formal complaint filed by a complainant

- How to file it/where is it?
- What does it need to say?



Mandatory jurisdiction to investigate— formal complaint filed by Title IX coordinator



When might a Title IX coordinator file a complaint?

Formal complaint is filed . . . what now? NOTICE

- ❖ Grievance process
- ❖ Allegations, including sufficient details
- ❖ Statement of presumption of non-responsibility
- ❖ Right to an advisor/attorney
- ❖ Any provision in code that prohibits making false statements during process

Dismissing Complaints

MANDATORY

- Not sexual harassment
- Did not occur in program or activity
- Not against person in the U.S.

DISCRETIONARY

- Complainant withdraws complaint
- Respondent no longer enrolled/employed
- School unable to collect sufficient info

Overview of investigation



- Trained investigator collects information
- Investigator shares evidence “directly related” to allegations with parties
- Parties have 10 days to respond
- Investigator creates summary of “relevant” evidence and shares with parties
- Parties have 10 days to respond

Overview of adjudication

- K-12 schools have a choice!
Non-hearing v. Hearing
- Hearings and state education laws
- Equal appeal rights with mandatory and discretionary bases



And don't forget to publicize your Title IX information

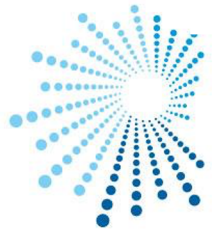


- Nondiscrimination statement
- Title IX coordinator contact information
- Information regarding how to file complaints and grievance procedures



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Join us for part two:

How to conduct investigations
and hearings

September 3, 2020
12:00 pm Central/1:00 pm
Eastern



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