

Title IX Regulations

Sexual Harassment At School

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CCPS provides nondiscriminatory equal access to school facilities in accordance with its Use of Facilities rules to designated youth groups (including, but not limited to, the Boy Scouts).

Objectives

- ❖ Answer “Why are we here?”
- ❖ Define sexual harassment and recognize it as a Title IX issue
- ❖ Know organizational responsibilities for options and prevention
- ❖ Describe steps that schools must take following knowledge of harassment or a complaint
- ❖ Recognize sexual offenses and sexual harassment
- ❖ Understand when to involve administration and/or other agencies
- ❖ Become familiar with reporting, investigation forms, procedures, and timelines

We are here because:

The U.S. Department of Education found that reports of sexual violence at schools rose from about 9,600 in the 2015-2016 school year to nearly 15,000 in the 2017-2018 school year. That's an increase of more than 50 percent (56.25%).

We Are Here Because of: Federal Title IX Law

- ❖ Title IX of the Education Amendments of 1972....states that

No person in the United States shall, on the basis of sex, be excluded from participating in, be denied the benefit of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.

- ❖ Title IX protects both male and female students from sexual harassment by any school employee, another student, or a non-employee third party.

We are Here Because the Final Rule states:

A school must respond when:

- ❖ the school has actual knowledge of sexual harassment;
- ❖ the act occurred within the school's education program or activity;
- ❖ it was against a person in the United States.

The Final Rule expands “actual knowledge” to include notice to *any elementary or secondary school employee, and states that any person may report to the Title IX Coordinator in person or by e-mail, phone, or mail.*

Definition of Sexual Harassment

- ❖ Sexual harassment is unwanted sexual and/or gender-based behavior that occurs when one person has formal or informal power over the other.
- ❖ Sexual harassment is conduct that:
 - ❖ is sexual in nature
 - ❖ is unwelcome; and
 - ❖ denies or limit's a student's ability to participate in or benefit from a school's educational program.

The Final Rule defines sexual harassment broadly to include any of three types of misconduct on the basis of sex, including:

- ❖ any instance of *quid pro quo* harassment by a school's employee
- ❖ any unwelcome conduct that **a reasonable person** would find so severe, pervasive, **and** objectively offensive that it denies a person equal educational access; (contact District Coordinator if it does not reach this criteria for guidance)
- ❖ any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

Definitions From New Regulations

- ❖ **Complainant:** an individual who is alleged to be the victim of conduct that could constitute sexual harassment
 - ❖ Parents and guardians who have a legal right to act on behalf of parties may do so, including filing formal complaints
- ❖ **Respondent:** an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment

Quid Pro Quo Sexual Harassment

- ❖ Quid pro quo sexual harassment (“this for that”) occurs when one person with more authority (e.g., team captain, popular student) or person in a position of control, offers a person under his/her control (e.g. less popular student) a benefit in exchange for sexual favors, or retaliates when rebuffed in his/her advances.
- ❖ Quid pro quo harassment may also occur if a teacher or other employee makes an educational decision or benefit conditional on the student’s submission to unwelcome sexual conduct.

Hostile Environment Sexual Harassment

- ❖ The conduct is unwelcome, based on sex or gender, and a *reasonable person* would find so severe, pervasive, and objectively offensive that it creates a hostile or abusive environment that alters a term, condition, or privilege of education

What is considered “unwelcomed”?

- ❖ The victim does not request or invite the conduct and views it as offensive or undesirable
- ❖ The conduct may be welcomed at first but becomes unwelcome if it persists, such as a request for a date, repeated comments about a student’s appearance, etc.
- ❖ The victim feels powerless, uncomfortable, humiliated, angry, or fearful

What is considered “unwelcomed”?

- ❖ The victim does not have to state that the conduct is unwelcome for a claim to go forward
- ❖ The victim is not required to confront the harasser
- ❖ The victim may decide not to make the objection known for fear that may lead to even further harassment or threats
- ❖ If the situation involves an adult and a student, even if it seems consensual, it should be considered unwelcome and inappropriate

What “conduct” may be considered sexual harassment?

- ❖ Demands for sexual favors
- ❖ Making sexual propositions
- ❖ Repeated requests for dates
- ❖ Unwanted sexual advances
- ❖ Sexual assault
- ❖ Fondling/unwanted sexual touching
- ❖ Ogling or sexual looking
- ❖ Sexting

“Conduct” continued

- ❖ Posting of sexually explicit materials
- ❖ Writing graffiti of a sexual nature
- ❖ Vulgar language and obscenities
- ❖ Making sexual gestures
- ❖ Sexually derogatory comments, innuendo, or jokes
- ❖ Circulating or showing emails or websites of a sexual nature, air dropping sexual content to others
- ❖ Many others...

Gender Based

- ❖ The harassment must be based on gender in order to be considered sexual harassment
- ❖ Harassers may be the same sex as the victim
- ❖ Can be male to female; female to male; male to male; female to female

Is conduct “severe, pervasive, and objectively offensive” *to a reasonable person*?

- ❖ Consider factors such as:
 - ❖ the degree to which the conduct affected one or more students’ education
 - ❖ the type, frequency, and duration of the conduct
 - ❖ the number of individuals involved
 - ❖ the ages of alleged harasser and victim
 - ❖ the context in which the incident occurred

Is conduct “severe, pervasive, and objectively offensive” *to a reasonable person*?

- ❖ Consider the type, frequency, and duration of the conduct
 - ❖ A one-time joke may not be offensive, but numerous comments may be
 - ❖ A request for a date may not be sexual harassment, but repeated, unwelcome requests may be
 - ❖ A one-time violent sexual assault could certainly create a hostile environment for the victim

Is conduct “severe, pervasive, and objectively offensive” *to a reasonable person*?

- ❖ The behavior must be serious enough to have a systemic effect of denying equal access to an education
 - ❖ Generally, a single instance of inappropriate touching would not be found to be severe or pervasive. Hill v. Cundiff, 797 F.3d948 (11th Cir. 2015).

Facts: Three 2nd grade students alleged that they were sexually harassed by another second grade student over several months. The students found it unwelcomed and intimidating and faked being sick several times and stayed home from school.

Held: Not severe enough to have a systemic effect. Hawkins v. Sarasota Cnty. Sch. Bd., 322 F.3d 1279 (11th Cir. 2003).

Is conduct “sexual and/or gender related”?

- ❖ The conduct must be sexual and/or gender related in nature in order to be sexual harassment (as opposed to bullying or other harassment)
- ❖ In general, non-sexual teasing or name calling among students, even if it targets differences between genders, is not sexual harassment

Is conduct “sexual and/or gender related”?

- ❖ Harassment-not based on gender
 - ❖ “You are stupid!”
- ❖ Harassment based on gender, but not sexual harassment (perhaps sexual discrimination)
 - ❖ “Everybody knows girls suck at math!”
- ❖ Sexual harassment (sexual and gender based)
 - ❖ “That girl is packing!”

What is a “hostile” working or learning environment?

- ❖ Legally, the complainant must prove that the harassment affected his/her ability to benefit from or learn in the educational environment
- ❖ Missing school may be one indicator, but everyone reacts differently-look for other indicators
- ❖ School administrators should not wait until there is some negative effect on the victim before acting

Complainant must demonstrate that the harassment effectively barred the students access to an educational opportunity or benefit.

- ❖ “Hav[ing] a concrete, negative effect on the victim’s education or access to school-related resources, which could include dropping grades, being diagnosed with behavioral or anxiety disorders, becoming homebound/hospitalized due to harassment, physical violence, or sexual assault.”

Roe ex rel. Callahan v. Gustine Unitifed School Dist., 678 F.Supp.2d 1008 (E.D.Cal. 2009).

**Seeing any of these outcomes should be red flags.
Remediation/student supports are needed.**

Facts: A male student made sexually explicit and vulgar remarks to 3 second grade students. He also offensively touched the girls. The girls faked being sick several times but suffered no decline in grades, teachers observed no behavior changes, and the girls didn’t tell their parents for months. Hawkins v. Sarasota Cnty Sch. Bd., 11th Cir. 2003.

Held: Access to education **not** denied.

When must a school respond?

A school must respond when:

- ❖ the school has *actual knowledge* of sexual harassment;
- ❖ which occurred within the school's education program or activity (situations over which the school exercised substantial control);
- ❖ against a person in the United States

The Final Rule expands “actual knowledge” to include notice to any elementary or secondary school employee.

How should schools respond?

- ❖ School administrators must respond promptly to Title IX sexual harassment *in a manner that is not deliberately indifferent* which means a response that is not clearly unreasonable in light of the known circumstances.
- ❖ School administrators should not ignore obvious signs of sexual harassment or wait until a student files a formal complaint before intervening.

How should schools respond?

- ❖ A school administrator (principal or vice principal) must inform the school based Title IX Coordinator or the CCPS Title IX Coordinator when an alleged sexual harassment report has been made. (After statements are collected, assess need to notify Title IX Coordinator)
- ❖ The Title IX Coordinator should implement the grievance process if a formal complaint is filed and inform the school administration.
- ❖ School administrators should take no further disciplinary action for sexual harassment against the alleged harasser unless and until the result of that process is a finding of sexual harassment.
- ❖ If any other discipline is called for, then the respondent should be informed verbally or through the suspension form that additional discipline may result if a sexual harassment determination is made at the later time.
- ❖ If no formal complaint is filed, then the Title IX Coordinator should inform the school administrator, who would then be free to impose appropriate disciplinary actions, if called for. That discipline should be for “bullying and harassment” or any other applicable violation, but **NOT** for “sexual harassment.”

What not to do!!

- ❖ Schools should not ever say:
 - ❖ “You shouldn’t dress that way.”
 - ❖ “That joke actually was funny.”
 - ❖ “Don’t take things so seriously.”
 - ❖ “You are the only one who complained.”
 - ❖ “I have other more serious complaints to deal with.”
 - ❖ “Why don’t you just confront the person?”

Reporting procedures

- ❖ Ensure that all students and staff are familiar with Bullying, Harassment and Intimidation reporting procedures
- ❖ The Bullying, Harassment and Intimidation Reporting Form is now included in the Code of Student Conduct
- ❖ The reporting Form is also on the CCPS website and can be downloaded or submitted electronically
- ❖ Make sure the form is offered to the complainant or they know where they can find it
- ❖ In 2014, MSDE added new categories to the BHI Reporting and Investigating forms which specifically include sexual harassment and human trafficking/prostitution recruitment
- ❖ In 2016, MSDE made additional changes to the Reporting and Investigation forms (alleged victim, defining Bullying, Cyberbullying, Harassment, via internet-on/off school property, determined not to be Bullying, Harassment, or Intimidation broken into separate categories)
- ❖ Please review Superintendent's Rule 5117 for follow-up procedures
- ❖ 2 week follow up with complainant and respondent
- ❖ 6 week follow up with complainant

Fair Grievance Process

- ❖ Schools must take immediate and appropriate steps to remedy the situation after notification of sexual harassment.
- ❖ End the harassment/behavior
- ❖ Discuss and provide supportive measures to the Complainant with or without the filing of a formal complaint
- ❖ Provide Complainant with information of options to file a formal complaint
- ❖ Review and be specific with the process and timelines
- ❖ Act to prevent further harassment

End Harassment

- ❖ In taking action to end the harassment, be careful not to take disciplinary action at this point. The goal is first to end the behavior, protect the victim, and prevent further harassment.
- ❖ Advise both parties to report further incidents, including retaliation.

Give Notice

- ❖ Review the report with the complainant and complete the information form to determine Complainant's choice for filing a formal complaint. Be sure the form is signed and dated.
- ❖ If Complainant or Title IX Coordinator choose to file a formal complaint, provide the Complainant and Respondent written notice of the allegations.
- ❖ Once a formal complaint is signed, send all documents to the District Title IX coordinator and Safety & Security Investigator. (Must send what you have even if you have not acquired all statements)
- ❖ The Title IX coordinator must dismiss the formal complaint if the conduct alleged in the formal complaint would not constitute sexual harassment as defined in the policy even if proved, or is outside the jurisdiction of the school, or did not occur against a person in the United States (call District Coordinator for guidance). The Title IX Coordinator will forward the dismissed complaint to an appropriate school administrator that will determine whether the conduct alleged violated a separate policy or the Code of Student Conduct. Written notice to both parties will be given to both parties.

Formal complaint procedures

New Investigative Requirements

- ❖ A formal complaint may be filed by the Title IX coordinator if deemed appropriate and the Complainant chooses not to.
- ❖ Report all information to the Office of School Safety & Security for investigation. (The formal investigation will not move forward until the case has been adjudicated by law enforcement which could be up to 3 months or more.)
- ❖ Both parties must now receive written notice of the allegations with sufficient detail for a Respondent to respond (i.e. who, when, where, etc.) with at least 10 days for the parties to inspect, review, and respond to the evidence.
- ❖ The parties have the right to select an advisor of their choice to be present at all stages of the investigative process
 - ❖ May be an attorney and can be in addition to their parent, in the case of a student respondent, and in addition to a union representative in the case of an employee respondent

Requirements continued:

- ❖ The parties have the right to submit and review evidence throughout the investigation
- ❖ There is a presumption of innocence during the process
- ❖ The standard of proof must be stated. Usually “preponderance of evidence” which simply means “more likely than not”.
- ❖ Schools must send the parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the parties to respond.

Investigative process

- ❖ The school must conduct an investigation unless child abuse or a crime is suspected. In that case, a report must be made to the police and/or DSS, and no school system investigation should be conducted until their investigations are completed.
- ❖ The Office of School Safety and Security will conduct the investigation for the school after a formal complaint is made.
- ❖ All rights or opportunities that a school makes available to one party during the investigation will be made available to the other party on equal terms.
- ❖ A file will be prepared with all related information including witness statements of all parties involved, and the investigators findings.

Investigative process continued

- ❖ The Investigator allows the parties to inspect and review all evidence collected.
- ❖ Both parties are allowed to respond to the evidence within 10 days.
- ❖ The Investigator creates an investigative report and sends it to all parties as well as the Decision-Maker.
- ❖ The Decision-Maker assesses all evidence and relevant materials and applies the standard of evidence (chosen at the discretion of the Board) to make determination regarding responsibility.
- ❖ The Decision-Maker issues a written determination regarding responsibility to each party.
- ❖ The Title IX Coordinator and school administration will implement any remedies and any further supportive measures, if needed.
- ❖ Both parties may file an appeal within 30 days. The Title IX coordinator decides if the appeal was filed timely) and will notify the parties of the decision to initiate the appeals process or inform them that it was denied and give the reason for the denial.