

Title IX Training for Fine Arts Aug 10, 2023

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Title IX - 37 Very Important Words!

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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.

Regulations

- All employees have a duty to report Title IX complaints.
- Investigations
 - Robust procedures & timelines
 - 3 administrators in every investigation (minimum)
- Defines sexual harassment specifically
- Supportive measures
- Training required for all staff

New Regulations

- Changes forthcoming from Biden Administration...allegedly in October 2023
- Will require re-training for all staff

Response: No deliberate indifference



Schools must promptly respond in a manner that is **not deliberately indifferent** when they have **actual knowledge** of sexual harassment in an education program or activity, against a person in the **United States**.

Title IX Application to Fine Arts

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Title IX ensures

- safe participation for all students, the hallmark of the law.
- equity in all co-curriculars for their students, particularly in those where gender-based participation is a gatekeeper. Example: a barbershop group offered if there is a Sweet Adelines, a men's chorus to balance a women's choir.
- inclusivity in every way possible

AND ALSO
“Sexual Harassment”

Effects of a Complaint

When a formal complaint is received, notice must be given to the parties, stating:

- The grievance process, including any informal resolution process.
- Allegations of sexual harassment
- The respondent is presumed not responsible for the alleged conduct
- The determination of responsibility is made at the conclusion of the investigation process
- Parties may have an advisor/attorney
- Consequences for submitting false information

Discipline Caution

This gets tricky with Title IX - We **cannot** issue consequences or discipline until due process is given and the investigation is complete.

- Emergency removal has to be for dangerous situations is allowed with deliberation committee.
- Some conduct will be investigated under the code of conduct/extracurricular code of conduct and Title IX.
- Supportive measures can be put in place for both parties during the investigation and should begin as quickly as possible.
- LEO may ask us to abate our process while they investigate.

Equitable Treatment of Parties

Treat complainants and respondents equitably.

- Provide remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent
- Follow Title IX complaint process before imposing disciplinary sanctions against the respondent.
- Require objectivity when evaluating all relevant evidence

Investigation Timeline (Example)

- Sept. 1: Formal complaint filed
 - Sept. 1-3: Evaluate formal complaint
 - Sept. 3: Notice of allegations to parties
 - Must wait a “sufficient time” for the parties to prepare for questioning
 - Sept. 10: Interviews
 - Sept. 14: Allow parties to inspect evidence & submit questions
 - Must wait 10 business days before proceeding
 - Sept. 28: Receive & consider parties’ written response
 - Sept. 30: Issue Investigative Report (by Investigator)
 - Must wait 10 business days for parties to review report & issue written response
 - Oct. 14: Receive & consider written responses from parties
 - Oct. 16: Issue Determination (by Decision Maker)
- **Time for Appeal and Final Determination

Sexual Harassment Definition

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

1. **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;
2. **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 recipients education program or activity; or
3. **Sexual violence:** sexual assault, dating violence, domestic violence, stalking

Example of Quid Pro Quo

What does it look like in Fine Arts?

Hostile Environment

What does this look like for your students in Fine Arts settings?

Supportive Measures

- Offered to the complainant or the respondent before and after the filing of a formal complaint or where not complaint is filed.
 - Counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus chaperones, mutual restrictions on contact, increased security and monitoring of certain areas of the campus....

IN THE FINE ARTS WORLD, SUPPORTIVE MEASURES WILL LIKELY INVOLVE **CLOSER SUPERVISION AND INCREASED SUPERVISION.**

What to Watch For

- Language that can be categorized as harassment or discriminatory.
- An imbalance of power between players or a group of students targeting other students.
- Inappropriate touch - even if it has historically been seen as “messing around”.
- Technology - Snaps, texts, emails, DM’s between players and between directors and students.

What To Do If:

You witness verbal harassment/discrimination based on sex, gender or gender identity...

- Call Cindy x50567 and notify campus admin
- Implement supportive measures as appropriate

You witness inappropriate touch between students or coaches and students...

- Call Cindy x50567 and notify campus admin
- Implement supportive measures as appropriate

A student/parent/staff member reports possible harassment based on gender or gender identity...

- Call Cindy x50567 and notify campus admin
- Implement supportive measures as appropriate

What Not To Do If:

You witness verbal harassment/discrimination based on gender or gender identity...

- Ignore the behavior
- Blow off the behavior as “boys being boys” or “mean girls”
- Issue discipline before we can identify possible Title IX violations.

You witness inappropriate touch between students or coaches and students...

- Ignore the behavior
- Blow off the behavior as “boys being boys” or “mean girls”
- Issue discipline before we can identify possible Title IX violations.

A student/parent/staff member reports possible harassment based on gender or gender identity...

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- Blow off the behavior as “boys being boys” or “mean girls”
- Issue discipline before we can identify possible Title IX violations.

Providing Safe Environments

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Supervision is Key

- Practice Rooms
- Parking Lots
- Storage Rooms
- Travel
- Group events
- Overnight Trips

Title IX vs Academic Freedom

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<https://www.calpublicagencylaboremploymentblog.com/first-amendment/art-projects-and-the-collision-of-title-ix-and-academic-freedom-some-practical-tips/>

Junior Doe, et al. & United States v. Allentown School District

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On May 5, 2006, Junior Does filed a complaint against the Allentown School District alleging that, as six- and seven-year-old students, they were sexually assaulted by another student in the bathrooms at Central Elementary School during the 2003-2004 school year. On April 21, 2009, Junior Does amended their complaint to include a sex discrimination claim pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, and on July 10, 2009, the Division intervened. On August 3, 2011, Junior Does again amended their complaint to include allegations that a fifth student was sexually assaulted, adding another minor plaintiff as a party.

In the case, the Division alleged the following: that sexual assaults occurred on at least five separate occasions; that the district was made aware of each incident immediately after it occurred; and that despite this notice, the district did not take appropriate action, and in some circumstances took no action, to prevent the harassment from recurring. Furthermore, the department alleged that both before and after the sexual harassment of the students, the district failed to adopt and implement adequate and effective sexual harassment policies and procedure as required by federal law; had the district adopted and implemented such policies and procedures, the district would have prevented the continued sexual assault of students.

After extensive discovery, the Division and the school district negotiated a [consent decree](#). The court approved the proposed consent decree on July 31, 2012. The consent decree provides for substantial systemic relief and requires the school district to take the following steps: develop and implement a comprehensive plan for addressing and preventing sexual harassment in all district schools; retain an expert consultant in the area of student-on-student harassment to draft and implement a sexual harassment policy and procedures; provide training to administrators, faculty, staff, students and parents on sex-based harassment; select qualified district and school-based equity coordinators to ensure proper implementation of the district's harassment policies and procedures and compliance with Title IX, including prompt investigation, resolution and reporting of sexual harassment complaints and allegations; create procedures for identifying, monitoring, and supervising students with a confirmed history of sexual harassment toward other students; develop and implement policies and procedures for communicating with outside agencies, such as police, hospital and child protection agencies, of allegations of sexual harassment in the district; and submit annual compliance reports to the Division.

Lovins & United States v. Pleasant Hill Public School District

The Section intervened in this same-sex peer harassment case alleging the school district violated Title IX of the Education Amendments of 1972 and the Equal Protection Clause of the Fourteenth Amendment by failing to respond appropriately to harassment of a student on the basis of sex. Specifically, the Section alleged in our complaint-in-intervention : from the eighth grade through the eleventh grade, Jeremy Lovins was subjected to harassment on the basis of sex (ostensibly because other students believed he was gay); Jeremy and his parents repeatedly informed school officials of the harassment but the harassment continued; and Jeremy was eventually subjected to an assault and forced to leave school because of the harassment. On July 31, 2000, the Court entered a consent decree settling the case.

The consent decree included monetary relief for Mr. Lovins in the amount of \$72,500 and injunctive relief. Under the consent decree, the school district agreed, among other things: to conduct a climate assessment of student-to-student and teacher-to-student relations within its schools; to develop a comprehensive plan to identify, prevent, and remedy harassment and discrimination on the basis of sex and sexual orientation; to educate and train teachers, staff, and students about the operation of the policy and procedures; to maintain written records of complaints and investigations; and to file implementation reports with the Section and the court.

Pratt v. Indian River Central School District

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In April 2009, Plaintiff filed a complaint in the United States District Court for the Northern District of New York alleging, inter alia, that the Indian River Central School District, its Board of Education, and eight of its employees violated his rights under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and Title IX of the Education Amendments Act of 1972, 20 U.S.C. § 1681 *et seq.* On June 11, 2010, the Defendants filed a motion to dismiss the Equal Protection Clause and Title IX claims. On August 13, 2010, the United States filed a [motion](#) seeking leave to participate as amicus curiae in order to provide the court with the proper legal standards governing harassment on the basis of sex under the Equal Protection Clause and Title IX. The United States argues in its [amicus brief](#) that **harassment based on sex stereotyping** is a legally cognizable claim under Title IX and the Equal Protection Clause; that **sexual orientation harassment does not preclude a harassment claim based on non-conformity to sex stereotypes**; and that a hostile environment claim in primary and secondary schools can span classes, grades, and schools.

Putman v. Board of Education of Somerset Independent Schools

In this peer-on-peer sexual harassment case, a student alleged his rights were violated under Title IX and the Equal Protection Clause of the Fourteenth Amendment. More specifically, the student contended the school district failed to take adequate steps to protect him from an ongoing campaign of sexual harassment by his peers.

The harassment included: three written death threats, repeated and unwanted sexual contact, offensive and hostile verbal abuse, and other acts involving intimidation and humiliation.

In response to defendants' motion to dismiss the case, the Section submitted an amicus curiae brief in support of the plaintiff. In this brief, the Section argued a Title IX claim was appropriate because of the nature and severity of harassment involving conduct of a sexual nature. Furthermore, the Section argued the student's Equal Protection claim, challenging discrimination based on his actual or perceived sexual orientation, should not be dismissed. Following the amicus participation of the Section and mediation between the plaintiff and defendants, the case settled. In addition to monetary relief for the plaintiff, the school district modified its sexual

harassment policies, applicable to both students and employees, to prohibit discrimination based on actual or perceived sexual orientation. The modified policies also describe the school district's responsibilities and the recourse available to victims of discrimination.

Tehachapi Unified School District

On June 30, 2011, the Educational Opportunities Section of the Civil Rights Division and the Department of Education's Office for Civil Rights (OCR) reached a [resolution agreement](#) with the Tehachapi Unified School District in Tehachapi, California, to resolve a complaint regarding the harassment of a middle school student based on his nonconformity with gender stereotypes. The complaint arose from the September 2010 death of Jacobsen Middle School student Seth Walsh, who took his own life at the age of 13. Following OCR's investigation, the Section joined OCR in working with the school district to resolve the complaint. The investigation found that Walsh suffered sexual and gender-based harassment by his peers for more than two school years because of his nonconformity with gender stereotypes.

As summarized in a detailed [letter of findings](#), the departments determined that the harassment, which included ongoing and escalating verbal, physical and sexual harassment by other students at school, was sufficiently severe, pervasive and persistent to interfere with his educational opportunities, and that the school district failed to appropriately respond to notice of the harassment. The departments concluded that the school district violated Title IX of the Education Amendments of 1972 and Title IV of the Civil Rights of 1964, both of which prohibit discrimination on the basis of sex, including harassment based on nonconformity with gender stereotypes and sexual harassment. Under the terms of the agreement, the district agreed to take a variety of steps to prevent sexual and gender-based harassment at all of its schools, to respond appropriately to harassment that occurs, and to eliminate the hostile environment resulting from harassment. These steps include adopting revised policies and procedures for handling sexual and gender-based harassment complaints, conducting trainings for faculty, staff, and students, and reporting data to OCR and DOJ for five years. For more information, please see this [press release](#).

Tooley v. Van Buren Public Schools

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The Department of Justice and the Department of Education filed a [statement of interest](#) on February 20, 2015 with the U.S. District Court for the Eastern District of Michigan in Tooley v. Van Buren Public Schools. In this case, the plaintiff, a transgender boy, alleges that several Michigan school districts unlawfully subjected him to harassment and denied him equal treatment and benefits based on his sex. In the statement of interest, the departments advised the court that Title IX of the Education Amendments of 1972 and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution prohibit discrimination against students because of their sex, including on the basis of a student's gender identity, transgender status, or nonconformity to sex stereotypes. The departments concluded that plaintiff's allegations of sex discrimination on each of these bases under Title IX and the Equal Protection Clause were sufficient to deny the motion to dismiss filed by defendant Wyandotte Public Schools.

Real Life Examples of Title IX Violations

Upper-class football players sexually assaulted a freshman teammate at a school sponsored camp by blowing pressurized air into his rectum with a battery-powered air pump. The teammates also groped him in the shower and beat him on the head and face with a pillowcase full of heavy objects. After the weekend, the freshman became the target of anti-gay taunts.

Real Life Examples of Title IX Violations

Doe v Hutchinson (2018)

Coach made “gender-based, sexually charged comments to Student despite the District’s instruction to stop making such comments. Hutchinson asked Student to ‘twerk’ for the class, implied to the class that Student was sexually active, called her ‘dumb,’ and encouraged Student’s boyfriend to discuss their sexual lives.” Court found against Coach.

Real Life Examples of Title IX Violations

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At Northwest ISD...Title IX reports include these broad categories:

Real Life Example of Title IX - What Not to DO

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An eighth-grader at Sedgwick Middle School was repeatedly sexually assaulted in and around the locker room during gym class. On one occasion, the student was grabbed by three other students in gym class who were yelling out to rape him. They dragged him into a closet where they assaulted him with a broom and groped him. A teacher entered the closet, told the boys to knock it off, and took no further action.

Real Life Example of Title IX - What Not to DO

Five former high school students were sexually abused by their water polo coach. At least seven school administrators were aware of allegations, **but failed to report to CPS or interview alleged victims.** After a former student emailed a teacher allegations against the same coach, the school launched an investigation that it completed in less than 24 hours finding the coach not responsible. The coach went on to harass and abuse several other students in subsequent years because of the district's failure to take action.

Example of Title IX - Equity

- Do we have issues of equity in Fine Arts programs?

DUTY TO REPORT

Anyone in the district who is told means the district is PUT ON NOTICE.

You should contact your campus administrator AND Cindy Bauter.

TRAINING TRAINING TRAINING TRAINING

If you would like for me to come talk to your team or program,
I am happy to do so.

Resources

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[Title IX Guiding Principles](#)

[List of Cases Where District's Were Found at Fault - Monetary Settlements](#)

Questions?

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