

A photograph of a school hallway. On the left side, there is a long row of green metal lockers. The hallway floor is highly reflective, showing the overhead fluorescent lights. At the end of the hallway, there is a large glass door or entrance. The perspective is looking down the length of the hallway.

Title IX Training: Requirements of the New Title IX Regulations



A Webinar Presented by Sara Leon & Associates, LLC

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Meet the Presenters

Sara Leon & Associates, LLC



JOHN JANSSEN
Attorney



MICHELLE ALCALA
Attorney



MICHAEL ROSEBERRY
Attorney



AUSTIN:
2901 Via Fortuna
Suite 475
Austin, Texas 78746
T: 512-637-4244

HOUSTON:
5847 San Felipe Street
Suite 1700
Houston, Texas 77057
T: 713-965-7623

CORPUS CHRISTI:
800 North Shoreline Blvd.
Suite 1000, South Tower
Corpus Christi, Texas 78401
T: 361-288-7340

Part I: *For All School District Employees*



What You Will Learn

- 1. What is Title IX?**
- 2. What the term “sexual harassment” means under the new Title IX regulations, including examples of each recognized form and where it applies.**
- 3. You are required to report any sexual harassment you witness or that is reported to you to the District’s Title IX Coordinator.**
- 4. How to identify the Title IX Coordinator and locate District policy relating to the protection of students and employees from sexual harassment.**
- 5. Failure on your part to report as required a notice or allegation of the sexual harassment could have bad consequences for the victim, for the District and for your employment.**



Why You Need This Training

If you have knowledge of sexual harassment, the District has knowledge.

If you fail to do your part to make sure that the Title IX Coordinator knows about an incident or report of sexual harassment, you may be viewed as:

- 1) violating District policy and law;
- 2) failing to protect a potential victim, and
- 3) as having contributed to the liability of the District;

Therefore, you likely could face disciplinary consequences, including termination of employment.



What is “Title IX?”

Title IX, part of the Education Amendments of 1972, refers to a federal civil rights law **that reads** as follows:

“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.” 20 U.S. Code § 1681.

Federal regulations, by design, explain how to implement federal law, and, as such, are treated by courts as having the weight of law.

- ✓ The regulations that we are here to discuss today explain in detail how school districts, as recipients of federal funds, are to implement Title IX civil rights protections for all K-12 students in districts.





Sexual Harassment

The new regulations define “**sexual harassment**,” as will be reviewed below, and **expressly recognize sexual harassment as a form of sex discrimination.**

- Previously, the U.S. Department of Education addressed sexual harassment only through guidance documents. Starting August 14, 2000, it will be addressed through federal regulations.
- Guidance letters do not have the force of law. ***Federal regulations do.***





What is “sexual harassment” under the new regulations?

Under the Title IX regulations, ***sexual harassment*** is defined as conduct on the basis of sex that meets one or more of the following descriptions.

1. Quid pro quo (“this for that”) – the conditioning the provision of an aid, benefit, or service of the school district on an individual’s (e.g., a student’s) participation in unwelcome sexual conduct.



QUESTION

Suppose a teacher tells a student that if she has sex with him, she will earn an “A” in his class. Is this a form of sexual harassment?

ANSWER

This is an example of *quid pro quo* sexual harassment.

Please also be reminded that if an educator engages in an improper relationship with a student, the educator has committed a crime.





What is “sexual harassment” under the new regulations?

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 District’s education program.





What is “sexual harassment” under the new regulations?

Hostile environment (continued)

“Unwelcome conduct” refers to behavior or actions that a reasonable person considers unwanted, offensive, hostile, or intimidating, and may include:

- unwelcome sexual advances (even if victim joins in or does not complain at the time),
- requests for sexual favors;
- other verbal or physical conduct of a sexual nature.

➤ “Severity” refers to seriousness, and “pervasiveness” refers to frequency.

Please note: The intention of the accused is or may be irrelevant as compared with the perception of the person claiming harassment.





What is “sexual harassment” under the new regulations?

Examples of “hostile environment” sexual harassment could include:

- ✓ Explicit or offensive jokes or slurs based on sex;
- ✓ Degrading words used to describe an individual based on sex;
- ✓ A single incident of physical contact, depending on severity or offensiveness of the contact.



QUESTION

Suppose a student subjects a fellow student to unwelcome sexual advances before, during, and after class. The instructor does nothing. The victim student withdraws from the class. Hasn't the victim addressed the problem by withdrawing from the class?

ANSWER

No. This is one example of a hostile environment for sexual harassment.





What is “sexual harassment” under the new regulations?

3. Sexual Assault, Dating Violence, Domestic Violence and Stalking, as these terms are defined under other specific federal laws.

The next slides provide some insight into these other forms of sexual harassment. The regulations provide sexual harassment includes any of the following forcible or nonforcible conduct:





What is “sexual harassment” under the new regulations?

Sexual assault includes any of the following forcible or nonforcible conduct:

Forcible nature:

- rape
- sodomy
- sexual assault with an object
- forcible fondling

Nonforcible nature (as when victim lacks capacity to consent):

- incest
- statutory rape



SCENARIO

A student gropes another student in a sexual manner without that student's consent.

A student physically forces another student to engage in a sexual act against his or her will.

Are these examples of sexual harassment?

ANSWER

Yes, these are instances of sexual assault.

Sexual assault also has potential criminal implications.





What is “sexual harassment” under the new regulations?

Dating violence

The term “dating violence” involves violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.



QUESTION

Jaden is student who been in a dating relationship with another student, Emma. Angry that Emma is now dating another boy, Jaden uses physical, verbal and emotional abuse to threaten, intimidate or control Emma. Is Jaden sexually harassing Emma?

ANSWER

Yes, this is an example of dating violence.





What is “sexual harassment” under the new regulations?

Domestic violence includes crimes of violence committed by a current or former spouse or intimate partner of the victim.

Examples of the conduct could include:

- physical abuse
- sexual abuse
- threats





What is “sexual harassment” under the new regulations?

Stalking. The term “stalking” means 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.

The following are some examples of stalking behavior:

- following a person
- spying on a person
- waiting at places in order to make unwanted contact with or to monitor the victim
- leaving unwanted items and gifts for the victim
- posting information or spreading rumors about the victim on the internet, in a public place, or by word of mouth





What about sexual orientation or gender identity?

The U.S. Department of Education has stated that its definition of sexual harassment applies to the protection of any person who experiences sexual harassment, **regardless of sexual orientation or gender identity**.

So, for example, harassment of a gay student because of his sexual orientation is sexual harassment.





What about off-campus conduct?

The Title IX regulations protect students against sexual harassment in educational programs and activities of schools who receive federal funds.

- ✓ Under the regulations, the relevant education program or activity includes locations, events, or circumstances over which the recipient exercises **substantial control** over both the respondent (that is, the alleged perpetrator) and the context in which the sexual harassment occurs.
- ✓ Can “substantial control” include cyberbullying that originates off-campus? **Yes**, according to Texas law, if it interferes with a student’s education opportunities or substantially disrupts school or school-related operations or activities.





Notice of sexual harassment

If you have knowledge of a student being sexually harassed, the District has knowledge.

The Title IX Coordinator, an official with authority to institute corrective measures on behalf of the recipient, **and any employee of an elementary and secondary school** may receive notice through:

- an oral report of sexual harassment by a complainant or anyone else
- a written report
- personal observation
- a newspaper article
- through an anonymous report
- or through various other means



Reporting is Required

If you (1) witness sexual harassment, (2) hear about sexual harassment, or (3) are told by a student, employee or other person about an incident that is or could be sexual harassment:

- **Immediately report the allegations to the Title IX Coordinator named and posted by the District.**



How do you report?

The District is required to allow for the reporting of sex discrimination, including sexual harassment:

- ✓ **By any person** – whether or not the person reporting is the person alleged to be the victim.
- ✓ **Through a variety of means** –
 - ✓ in person,
 - ✓ by mail,
 - ✓ by telephone, or by email, using the contact information listed for the Title IX Coordinator –
 - ✓ ***“or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report.”*** (Emphasis added, new Title IX regulations)
- ✓ **At any time – including during non-business hours** (by telephone, e-mail, or by mail to the address listed for the Title IX Coordinator).





Identifying and Contacting the Title IX Coordinator

Under the new regulations, the District will be required to:

- **Post on its website detailed contact information (e.g., physical location, telephone number, email address) for its Title IX Coordinator, as well as other publications.** (Some larger school districts may have more than one such coordinator.)
- Provide all job applicants, employees, and relevant unions with contact information regarding the Title IX Coordinator as well as information on the District's non-discrimination policies.
- Provide all employees with its updated grievance policies regarding reporting sexually harassment. **FFH policy, for example, pertains to the protection of students from discrimination and harassment.**





Additional Required Postings

Under the new regulations, the District is also required to:

- **Adopt and publicize new grievance procedures** “that provide for
 - the prompt and equitable resolutions of student and employee complaints alleging any action that would be prohibited” by Title IX regulations; and
 - a grievance process that complies with both the new definition of ***formal complaint*** and with the grievance process for such complaints as required by the new Title IX regulations.
- **Provide notice of the District’s grievance process** to all those entitled to notification of the Title IX Coordinator’s contact information, including
 - How to report or file a complaint of sex discrimination;
 - How to report or file a complaint of sexual harassment; and
 - How the District will respond.

Board policies will be posted on the District website together with other school board policies.





Employee Reporting and *In Loco Parentis*

Why are school district employees required to report any notice of sexual harassment of students rather than having the student victims report the conduct?

The short answer is because we are dealing with children. Here is how the U.S. Department of Education explains its decision to mandate that all employees provide such notice:

- School Districts “and their employees stand in a special relationship regarding their students, captured by the legal doctrine that school districts act in loco parentis with respect to authority over, and responsibility for, their students.”





Employee Reporting and *In Loco Parentis*

- “We agree that it is unreasonable to expect young children to seek out specific employees for the purpose of disclosing Title IX sexual harassment. Elementary and secondary school employees other than the Title IX Coordinator, teachers, or officials with authority may observe or witness sexual harassment or have notice of sexual harassment through other means such as a third-party report, and we agree that **in the elementary and secondary school context such notice must trigger the school’s mandatory response obligations** because otherwise, a young complainant may not be offered supportive measures or know of the option to file a formal complaint that initiates a grievance process against the respondent.”

U.S. Department of Education Responses to Comments on Proposed Regulations.



What if you don't believe the allegations of sexual harassment?

Receiving notice of a sexual harassment allegation **triggers a duty to report it.**

Your opinion as to whether someone actually did or did not commit sexual harassment is irrelevant. If you fail to report the allegation, the District will not be complying with federal regulations and could face serious consequences—so could you.



What if you fear being retaliated against for reporting?

The regulations protect any person for having made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding of hearing under the regulations.

“No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX . . .”



Consequences of Not Reporting Sexual Harassment

✓ **For the District:**

- *Violation of the regulation could result in investigation and findings by the U.S. Department of Education's Office for Civil Rights (OCR).*
- An aggrieved victim could sue the District for violation of Title IX.
- Both of the above could happen, and a finding of discrimination by a federal enforcement agency could make a lawsuit easier to bring.



Consequences of Not Reporting Sexual Harassment

- ✓ **For all employees**, failure to report could result in negative consequences regarding your employment record or even dismissal.
- ✓ **For educators**, a failure to report could also result in those educators being reported to SBEC.

(Employees are also required to report child abuse as a matter of state law and bullying and various forms of discrimination as matters of school board policy.)



Let's Practice: *Reporting* Sexual Harassment

What if you see what looks like sexually explicit graffiti on the walls of the girls' bathroom that is threatening or hostile to one or more students? Do you need to report it?

Yes. This example is derived directly from the U.S. Department of Education's published regulations.



QUESTION

Suppose you overhear students talking about Facebook or Instagram posts describing a student in sexually degrading terms and referencing an explicit photograph of the student?

Suppose one of the student sees you and wants to show you the explicit photograph as part of her report of the incident?

ANSWER

Report the conduct. There also may be cyberbullying or child pornography implications. Make sure the campus principal and Title IX Coordinator know. Do not view the photograph/image.



QUESTION

Suppose over drinks after hours a colleague tells you he has been texting with a student at night and that he thinks she is romantically interested in him or that he has been spending time student in his classroom after hours behind closed doors tutoring her--which he says with a wink?

ANSWER

Report this activity. You are not accusing nor deciding what is taking place. But if you fail to report it, you are impeding the District's ability to determine what is happening and to take appropriate action. You could be turning a blind eye to a crime and harm to a student.

This colleague may be your friend, and the report could jeopardize the friendship? Yes, but failure to report could cost you your job.



QUESTION

You notice that student Veronica has been absent several days. After class, you overhear students talking about how Veronica's ex-boyfriend Paul has been threatening her and her family and that he keyed Veronica's car. Should this conduct be reported?

ANSWER

Report this knowledge of dating violence. There could be criminal implications, too. Make sure the campus principal and Title IX Coordinator know.



QUESTION

What if you see one student coercing or forcing another student to engage in a sexual act in the school auditorium after hours?

ANSWER

Report this conduct.

There could be criminal implications, too. Make sure both the campus principal and Title IX Coordinator know.



QUESTION

Suppose you hear about a student coercing or forcing another student to engage in a sexual act behind the bleachers at an out-of-town district football game?

ANSWER

Report what you have heard to the campus principal and Title IX Coordinator.

There may be criminal implications.



QUESTION

What if you hear about a student who is sexually groping and grabbing at students in the back on the school bus?

ANSWER

Report the conduct. If you are a bus driver, report this conduct to the Title IX Coordinator.



SCENARIO

Over the course of several months, a gay high school student is called degrading names by fellow students due to his sexual orientation. A coach ridicules him for not conforming to traditional male stereotypes. The student drops out of track to avoid the ridicule. His parents complain, and the principal offers a standard FNG complaint form.

This is sexual harassment. The harassment has been committed by students and probably also by the teacher. Any employee who has knowledge of these events must report the matter. In this scenario, the principal's offer of an FNG complaint form to the parents is an error. FFH policy governs, and if the parents wish to file a formal complaint, the new grievance process under the Title IX regulations govern.

SCENARIO

A junior high history teacher repeatedly tells his students that American society is in decline because women now spend more time working outside the house. He encourages students to look at episodes of *Leave it to Beaver* for examples of quality American life. Several female students withdraw from the class in frustration.

This is potentially sexual harassment by way of hostile environment. In terms of information to be imparted to students, the teacher's job is to stick to the subject matter standards for the course. In his position of authority, his personal views may be confused with requirements or expectations for the class or knowledge of the subject matter. He is losing students due to frustration with personal views he continues to espouse.

SCENARIO

What if you notice that a fellow employee is being sexually harassed by a supervisor or other employee?

Report it to the Title IX Coordinator. While most attention to the Title IX regulations has focused on the sexual harassment of students, the regulations actually apply to sexual harassment in the workplace, too. Because Title IX applies to any educational program that accepts federal funds, such as a school district, the sexual harassment of employees is also prohibited, and the same grievance process will apply.

Let's Review: What You Learned Today

Key Takeaways

- ✓ Sexual harassment is prohibited under Title IX and the implementing regulations.
- ✓ *Sexual harassment is a form of sex discrimination and defined as conduct on the basis of sex that involves any of the following:*
 - Quid Pro Quo
 - Hostile environment
 - Sexual Assault
 - Dating Violence
 - Domestic Violence
 - Stalking

Key Takeaways

- ✓ You are required to report allegations of sexual harassment to the District's Title IX Coordinator.
- ✓ The District will post and publish the identify of and contact information for the Title IX Coordinator, and District policy relating to sexual harassment will be made accessible.
- ✓ **A failure on your part to report sexual harassment:**
 - 1) could leave a victim unprotected from sexual harassment,
 - 2) could result in a federal agency taking action against the District;
 - 3) could result in the District being sued;
 - 4) could have negative consequences for your employment; and
 - 5) **all of the above.**

Questions?

JOHN JANSSEN

jjanssen@saraleonlaw.com

361.288.7340

MICHELLE ALCALA

malcala@saraleonlaw.com

512.637.4295

MICHAEL ROSEBERRY

mroseberry@saraleonlaw.com

512.637.4294

Sara Leon & Associates, LLC

AUSTIN:

2901 Via Fortuna
Suite 475
Austin, Texas 78746
T: 512-637-4244

HOUSTON:

5847 San Felipe Street
Suite 1700
Houston, Texas 77057
T: 713-965-7623

CORPUS CHRISTI:

800 North Shoreline Blvd.
Suite 1000, South Tower
Corpus Christi, Texas 78401
T: 361-288-7340



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