

Title IX Training

What is Title IX?

- Title IX is a Federal Civil Rights law that prohibits discrimination on the basis of sex (including pregnancy and parental status) in educational programs and activities.
- Originally enacted in 1972 and was significantly overhauled in 2020
 - Further expected updates in later 2023
- 20 U.S.C 1681 et seq and 34 CFR 106
- “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 educational program or activity receiving Federal financial assistance.” (20 U.S.C. 1681)

Other Relevant Laws and Board Policy

- South Carolina Laws
 - 16-3-755 (Sexual Battery with a Student)
 - 63-7-310 (Mandatory Reporting)
- Federal Laws
 - 20 U.S.C. 1092(f)(6)(A)(v) (Sexual Assault)
 - 34 U.S.C. 12291(a)(10) (Dating Violence)
 - 34 U.S.C. 12291(a)(8) (Domestic Violence)
 - 34 U.S.C. 12291(a)(30) (Stalking)
- Board Policies
 - GBAA (Sexual Harassment and Retaliation)
 - JICDA (Code of Conduct)
 - JIAA (Sexual Harassment and Retaliation)
 - JICFAA (Harassment, Intimidation, or Bullying)

Title IX Roles

- **Complainant:** Person filing the complaint, alleged victim. The Title IX coordinator is not the complainant if they have initiated a complaint on behalf of an alleged victim.
- **Respondent:** Accused person
- **Title IX Coordinator:** Staff member assigned to oversee Title IX compliance
- **Investigator:** Staff member assigned to conduct investigation
- **Decision-Maker:** Staff member assigned to review the investigative report and determine outcome
- **Appeals Officer:** Staff member assigned to hear appeal of decision-maker's decision
- **Facilitator of Voluntary Resolution:** Staff member assigned to mediate voluntary resolution of complaint

Title IX Terms

- Impartiality: Equal treatment of all disputants
 - All Title IX positions must serve impartially. If you believe anything will keep you from serving impartially in any Title IX role or process, you must notify the Title IX Coordinator immediately.
- Bias
 - Explicit: Conscious attitudes and beliefs we hold about a person or group
 - Implicit: Unconscious attitudes and stereotypes
- Conflict of Interest
 - Conflict between the private interests and the official or professional responsibility (Merriam-Webster)
 - Can include your previous relationship with any involved party including personally or professionally

What is Sexual Harassment under Title IX?

- Quid Pro Quo Harassment: Conditioning the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct;
- Unwelcome Conduct: Conduct on the basis of sex that is 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 or activity;
- Sexual Assault: An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the FBI

Sexual Harassment Definition Continued

- Sexual Assault: An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the FBI (20 u.s.c. 1092(f)(6)(A)(v));
- Dating Violence: 34 u.s.c. 12291(a)(10);
- Domestic Violence: 34 u.s.c. 12291(a)(8);
- Stalking: 34 u.s.c. 12291(a)(30).

Sexual Harassment Definition Continued

- Unwelcome conduct on the basis of sex;
- Unwelcome sexual advances;
- Requests for sexual favors; and
- Other verbal, nonverbal, or physical conduct of a sexual nature by an employee, by another student, or by a third party
 - Verbal: Discussing sexual topics, telling sexual jokes, making sexual comments about someone's body or appearance, spreading rumors of a sexual nature
 - Nonverbal: Displaying sexually suggestive forms of art, making sexual facial or body movements, exposing oneself sexually, sending sexually offensive communications
 - Physical: Touching oneself sexually, touching someone else in an unwanted manner, blocking someone's path

Sexual Assault

- Sexual Assault includes but is not limited to:
 - Rape: Penetration, no matter how slight, of the vagina or anus with any body part or object or oral penetration by the sex organ of another person without the consent of the victim
 - Fondling: Touching of private body parts of another person for the purpose of sexual gratification without the consent of the victim
 - Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law
 - Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent

Scope of Title IX

- Education Program or Activity
 - Consider location, event, and circumstance
 - Includes buildings owned or controlled by the District
 - Includes online context
 - Does not require a specific geographic location
 - International Field Trips
- Title IX applies when the District has substantial control over both the respondent and the context in which the behavior occurs

Scope of Title IX Continued

- 1) Is the Complainant a student or staff member (could include volunteer)?
 - 1) Yes = Continue
 - 2) No = This does not fall under Title IX
- 2) Does the District have substantial control of the Respondent?
 - 1) Yes = Continue
 - 2) No = This does not fall under Title IX
- 3) Does the District have substantial control over the context in which the behavior occurred?
 - 1) Yes = Continue
 - 2) No = This does not fall under Title IX

Behavior that occurs off campus may need to be addressed by the District if there is a connection to the school program

Title IX Process in Dorchester School District Two

Notice of Allegations

- ANY school employee having knowledge of sexual harassment or allegations of sexual harassment is required to report such knowledge
 - Actual Knowledge
- Supportive Measures should be put into place regardless of complaint status
 - Supportive measures should be taken, even if a formal complaint is not filed

Supportive Measures

- Purpose
 - Restore and preserve equal access to educational programs
 - Deter sexual harassment and retaliation
 - Protect safety of students and staff
- Supportive measures are not intended to be disciplinary or punitive
- Title IX Coordinator is responsible for enforcement of supportive measures
- Supportive measures shall be documented but remain confidential to the extent possible

Common Supportive Measures

- Referral to School Counselor
- Change of Schedule
- Increased Supervision
- Temporary Change in Supervisor

Formal Complaint

- Formal Complaint may be filed by the alleged victim or the Title IX Coordinator
- Completion of Form JIAA-E(1)
- Title IX Coordinator will assign an Investigator and a Decision-Maker
- Issue written notice to complaint and accused

Written Notice

- Upon receipt of a formal complaint, the District must provide written notice to the Complainant and the Respondent
 - Relevant board policy
 - Grievance process and estimated reasonable timeline
 - Facts sufficient to allow each party to prepare and respond appropriately
 - Name of the Complainant
 - Prohibition on Retaliation
 - Right of parties to have an advisor (including an attorney)
 - Right of party to review and inspect evidence
 - Statement of presumption of innocence

Meet with Complainant

- Obtain any additional information relevant to the complaint and investigation
- Be objective
- Explain that retaliation will not be tolerated and how to proceed if they feel it occurs
- Provide written notice
- Give anticipated timeline and explain the process

Conducting the Investigation

- Investigation shall be conducted by the Investigator
 - Final Determination shall be made by Decision Maker
- Interview Complainant, Respondent, and all Relevant Witnesses
 - Use open-ended, non-leading questions
 - Request written statements
- Review any documentation including photos or video evidence
 - Provide written notice of interview time, location, and scope to all witnesses and parties
 - Interviewees may bring 'advisors' which may include an attorney

Conclusion of Investigation

- Written investigative report shall be sent to both parties
- Parties shall be given 10 days to respond to investigative report
 - Pose additional questions
 - Provide additional information
 - Provide evidence
- Investigator can modify report based on responses, if appropriate
- Report sent to Decision-Maker for final decision

Decision-Making

- Decision-Maker must be a neutral third-party
- Decision-Maker shall review final investigative report
- Decision-Maker shall render a final decision and draft written findings
 - Allegations and responsibility for each allegation
 - List all procedural steps, evidence reviewed, and witnesses
 - Evidence and findings
 - Remedies and supportive measures (to the extent this information is not confidential)
 - Appeal procedures
- Preponderance of Evidence shall be the standard (more than 50% likelihood of occurrence)

Potential Outcomes

Remedies for Finding of Sexual Harassment

- Remedies should be aimed to:
 - Eliminate harassment
 - Prevent recurrence
 - Address effects
 - Restore access to programming
- Expulsion/Termination
- Separation
- Counseling

Other Outcomes

- Emergency Removal
- Dismissal of Complaint
- Informal Resolution

Appeal Process

- Grounds for Appeal
 - Procedural violation
 - Additional evidence/ information which was not previously available
 - Bias in process
- Written Notice of Appeal within 10 days of decision
- Referral to Appeals Officer
- If Expulsion/Termination—appeal is through the already established process

Appeal Timeline

- Request for appeal must be submitted within 10 business days of the decision notification
- District will immediately notify all parties of appeal request
- Parties will have 5 business days to submit written statements
- Appeals Officer will make a final determination within 10 business days of receiving the parties' appeal statements

Documentation

- Must maintain records for 7 years
- Must document:
 - Formal Complaints
 - Investigations
 - Outcomes
 - Evidence
 - Findings
 - Appeal
 - Other remedies, supportive measures offered, etc.
- DOCUMENTATION IS KEY!

QUESTIONS?