



TITLE IX in the Real World

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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[.]”

- Discrimination based on sex, gender, gender identity, or sexual orientation
- Sexual harassment 
- Sexual violence (sexual assault, rape, inappropriate touching,  physical sexual advances)



= most common questions!

The Mission ...

A recipient with actual knowledge of sexual harassment or sexual violence in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent.



End	Prevent	Remedy
End the harassment	Prevent the recurrence	Remedy the harm, restore equal access

~~"I KNOW IT WHEN I SEE IT ..."~~

Learning Objectives:

- Clearing up confusion around common Title IX questions, with a focus on *sexual harassment* and *improper touching*
- What to do when harassment or improper touching **meets** the Title IX threshold
- What to do when harassment or improper touching **does not meet** the Title IX threshold.

TITLE IX SEXUAL HARASSMENT

- District has **substantial control** over the location, events, or circumstances
- Conduct (verbal, physical, visual) is **unwelcome** by the *victim*
- Conduct is of a **sexual** nature
- Conduct is **severe, pervasive, AND objectively offensive**
- Review **totality of the circumstances**

Quid Pro Quo

Hostile environment

Defining Severe, Pervasive, and Objectively Offensive

Severe:

- The more severe, the less necessary to prove repetitive series of incidents
- Physical is more likely to be severe
- More likely to be severe if accompanied by threats or violence

Pervasive:

- Widespread or openly practiced
- Well-known among students or employees
- Occurs regularly
- Unreasonable interference with school or job

Objectively Offensive (totality of circumstances):

- Age and relationship of parties
- Number of persons involved
- Frequency
- Physical threats, humiliation, intimidation, or ridicule

Scenarios

- Kindergarten girl flashes panties or privates at kindergarten boy
- Fourth grade boy gooses another boy
- Middle grade students slap each other's butts
- Fourth grader tells another student I like your cantaloupes, or you're gay or I want to grab your boobies
- Elementary schooler de-pants another student
- Middle school male humping another middle school male
- Middle schooler masturbating in school while watching porn on phone
- Sexting on or off campus
- Grab of another student's butt or a touch of breasts or genitals

TITLE IX “SEXUAL VIOLENCE” INCLUDES:

- **Sexual Assault (including fondling)**
- **Dating violence**
- **Stalking**

WHEN IS IMPROPER TOUCHING BETWEEN STUDENTS A “SEXUAL ASSAULT” UNDER TITLE IX?

Touching of the *private body parts* of another person for the *purpose of sexual gratification, without the consent* of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Scenario

- Kissing or humping accompanied by threats of violence if don't participate in sexual activity
- Rape (substantial control?)
- Middle or high schooler sends repeated unwelcome messages to another student (substantial control?)
- Middle school male repeatedly puts penis in female's hand

It Isn't Title IX Sexual Harassment or Sexual Assault. Then What?

- **Alleged victim is still entitled to file a Title IX complaint (refer to Title IX website, which has link to formal complaint form)**
- **Supportive Measures – Is there something that the alleged victim or accused might need? (Note: supportive measures are also used in a Title IX scenario to ensure equal access to education during the investigation).**

Common Supportive Measures

- Designed to restore or preserve equal access to education program/activity
- Mutual no contact agreement
- Counseling
- Extension of deadlines
- Classroom or school changes
- Safety escorts (bathroom, classes, end of day)
- Increased security/surveillance
- Emergency removals from school (rare)



Q&A