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*.

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<th>End</th>
<th>Prevent</th>
<th>Remedy</th>
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<td>End the harassment</td>
<td>Prevent the recurrence</td>
<td>Remedy the harm, restore equal access</td>
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“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*
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