

Sexual Harassment Complaints Under the New Title IX Regulations

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Part I: *Identifying and Reporting Sexual Harassment*

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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.

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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.

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What is “Title IX?”

Title IX refers to a federal civil rights law:

“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 explain how to implement federal law and are treated as the law by courts.

✓ The regulations discussed today explain how school districts must implement Title IX civil rights protections for all K-12 students in districts.

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“excluded from participation or denied benefits of education”

- An effective denial of equal access to educational opportunities may include skipping class to avoid a harasser, a decline in a student’s grade point average, or having difficulty concentrating in class.
- Examples of specific situations that likely constitute effective denial of equal access to educational opportunities also include “a third grader who starts bed-wetting or crying at night due to sexual harassment, or a high school wrestler who quits the team but carries on with other school activities following sexual harassment.”
- A complainant does not need to have “already suffered loss of education before being able to report sexual harassment.”

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What is “sexual harassment”?

Title IX regulations define ***sexual harassment*** as conduct **on the basis of sex** that meets one or more of the following descriptions:

- ***Quid pro quo*** **(“this for that”)**
- **Hostile Environment**
- **Sexual assault, dating violence, domestic violence, and stalking**

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What is “sexual harassment”?

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.

For example, A teacher tells a student that if she has sex with him, she will earn an “A” in his class. This is sexual harassment, and the teacher is soliciting an improper relationship with a student which is a crime.

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What is “sexual harassment”?

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.

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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.

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What is “sexual harassment”?

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.

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What is “sexual harassment”?

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

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What is “sexual harassment”?

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.

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What is “sexual harassment”?

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

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What is "sexual harassment"?

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 or 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

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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.

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What about off-campus conduct?

The Title IX regulations protect students against sexual harassment in educational programs and activities.

Education program or activity includes locations, events, or circumstances over which the District 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.

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Notice of sexual harassment

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

The Title IX Coordinator **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

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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.**

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How do you report?

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

- ✓ **By any person** – the person reporting does not have to be the alleged 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).

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Identifying and Contacting the Title IX Coordinator

The District is 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.
- 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.**

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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 is <u>irrelevant</u>.

If you fail to report the allegation, the District will not be complying with federal regulations and could face serious consequences—so could you.

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What if you fear being retaliated against for reporting?

The law protects 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 person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX . . .”

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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 it easier for the District to be successfully sued.

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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, bullying, and various forms of discrimination as matters of school board policy and state law.

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Let's Practice: *Reporting* Sexual Harassment

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QUESTION

You see 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?

ANSWER

Yes.

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



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QUESTION

You overhear students talking about TikTok posts describing a student in sexually degrading terms and referencing an explicit video of the student.

A student wants to show you the explicit video when she reports the incident to you.

ANSWER

Report the conduct. Do not collect or view the video.

You have notice of potential sexual harassment. There also may be cyberbullying or child pornography implications. Make sure the campus principal and Title IX Coordinator know.

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QUESTION

During Happy Hour, a colleague tells you he has been texting with a student at night and that he thinks she is romantically interested in him and that he has been spending time student in his classroom after hours behind closed doors tutoring her.

ANSWER

Report this activity.

You are not accusing or deciding guilt. 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.

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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 you report campus principal AND Title IX Coordinator.

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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 you report to the campus principal AND Title IX Coordinator.

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QUESTION

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.

What must you do?

ANSWER

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

There may be criminal implications.

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QUESTION

You hear about a student who is sexually groping and grabbing at students in the back on the school bus.

What must you do?

ANSWER

Report the conduct. All employees, including bus drivers, report this conduct to the Title IX Coordinator.

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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 principals 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.

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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 creating a hostile environment.

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.

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SCENARIO

You notice that a fellow employee is being sexually harassed by a supervisor or other employee.

What must you do?

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 also apply to sexual harassment in the workplace.

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.

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Let’s Review: What You Learned Today

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Key Takeaways

- ✓ Sexual harassment in 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

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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 identity 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.**

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Questions?

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