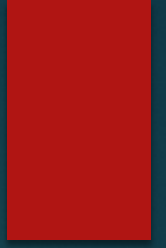


# Affirmative Action/Title IX/Title II



# What is Affirmative Action

- ▶ A policy or program that seeks to redress past discrimination through active measures to ensure equal opportunity, as in education and employment
  - ▶ American Heritage Dictionary



# Role of the Affirmative Action and Title IX Officer

- ▶ Completes Investigations
- ▶ To inform you of Affirmative Action Policies and Procedures on an annual basis
- ▶ To insure that the School district complies with state law and code
- ▶ To be responsible that all employment practices follow Affirmative Action requirements
- ▶ To create the multi year equity plan
- ▶ To address all harassment issues
- ▶ To serve as the Title IV office which prohibits gender discrimination in schools that receive federal funding.



# What is Title IX

- ▶ The U.S. Department of Education's [Office for Civil Rights](#) (OCR) enforces, among other statutes, Title IX of the Education Amendments of 1972. Title IX protects people from discrimination based on sex in education programs or activities that receive Federal financial assistance. Title IX states that:
- ▶ 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.

*Source: U.S. Department of Education, Office for Civil Rights*



# What is Title IX

- ▶ Educational programs and activities that receive Federal funds must operate in a nondiscriminatory manner. Some key issue areas in which recipients have Title IX obligations are: recruitment, admissions, and counseling; financial assistance; athletics; sex-based harassment; treatment of pregnant and parenting students; discipline; single-sex education; and employment.
- ▶ Title IX applies to institutions that receive federal financial assistance from ED, including state and local educational agencies.

*Source: U.S. Department of Education, Office for Civil Rights*



# What is Title IX

- ▶ Title IX is part of the Education Amendment Act of 1972, which is part of the Civil Rights Act of 1964 (Department of Labor).
- ▶ We cannot be a single gender school.
- ▶ What is done for one gender must be done for the other.
- ▶ There cannot be any single gender career major area(s).
- ▶ If there is a single gender activity, then another activity must be offered; for example, a Mother / daughter dance.
- ▶ There must be no preferential program(s) toward one gender.
- ▶ There must be equal opportunities in High School Sports.
- ▶ Counselors must offer non traditional career choices to all students.
- ▶ A recipient institution that receives Department funds must operate its education program or activity in a nondiscriminatory manner free of discrimination based on sex, including sexual orientation and gender identity.



# Sexual Harassment

- ▶ Title IX requires a school to respond whenever any employee has notice of sexual harassment including allegations of sexual harassment.
- ▶ This includes notice to a teacher, teacher's aide, bus driver, cafeteria worker, counselor, school resource officer, maintenance staff worker, coach, athletic trainer, or any other school employee.
- ▶ The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, regardless of whether a formal complaint is filed, and to explain the process for filing a formal complaint.
- ▶ In addition, if a formal complaint is filed, either by the complainant or the Title IX Coordinator, a school must:
  - ▶ offer supportive measures to the respondent, and
  - ▶ follow the Title IX grievance process



# Defining Sexual Harassment

- ▶ Unwelcome conduct of a sexual nature
- ▶ “Conduct of a sexual nature” includes both physical and verbal conduct, relating to the victim’s gender, sexual orientation or sexual identity
- ▶ Key test – conduct would not have occurred “but for” the victim’s gender or sex
- ▶ Two types of sexual harassment:
  - ▶ Quid Pro Quo
  - ▶ Hostile Work Environment



# Defining Sexual Harassment

- ▶ Verbal abuse / Ridicule
  - ▶ Epithets, derogatory comments, slurs, unwanted sexual advances, invitations, comments, inappropriate e mails
  - ▶ Interference with work: Physical contact, blocking movement
- ▶ Making sexual or racial innuendoes
- ▶ Demanding favors ( sexually or otherwise), explicitly or implicitly ,as a condition of employment, promotion, transfer, or any other condition of employment or school work--Quid pro Quo
- ▶ Sending “broadcast” emails that a reasonable person would consider inappropriate

# What does this mean

- ▶ **No one** is allowed to ask for:
  - ▶ Sexual favors for anything
  - ▶ Sexually oriented conduct that is unwelcomed, hostile, offensive, intimidating or humiliating to any male or female staff member or student



# Important Laws

- ▶ New Jersey Law against Discrimination – N.J.S.A. 10:5-12
- ▶ CROWN Act – Amends NJLAD to address hairstyle discrimination
- ▶ New Jersey's Anti-Bullying Bill of Rights
- ▶ New Jersey Conscientious Employee Protection Act (CEPA)
- ▶ New Jersey Equal Pay Act
- ▶ New Jersey Civil Union Act of 2007
- ▶ Title I, II & V of the Americans with Disabilities Act of 1990 (ADA)

# Important Laws

- ▶ ADA Amendments Act of 2008 (ADAAA)
- ▶ Title VI of the 1964 Federal Civil Rights Act
- ▶ Title VII of the 1964 Federal Civil Rights Act
- ▶ Title IX of the Education Amendments of 1972
- ▶ Equal Protection Clause of the 14<sup>th</sup> Amendment
- ▶ The Age Discrimination in Employment Act of 1967 (ADEA)
- ▶ The Individuals with Disabilities in Education Improvement Act (IDEIA/IDEA), 20 U.S.C. § 1400 *et seq.*, 2004
- ▶ Section 504 of the Rehabilitation Act of 1973
- ▶ Pregnant Worker's Fairness Act (PWFA) – 2014



# Protected Characteristics

- ▶ Race
- ▶ Color
- ▶ Age
- ▶ Creed
- ▶ Religion
- ▶ Sex
- ▶ Sexual Orientation
- ▶ National Origin
- ▶ Social Status
- ▶ Marital Status

# Protected Characteristics



- ▶ Pregnancy
- ▶ Vocal Accent
- ▶ Ancestry
- ▶ Childbirth status
- ▶ Pregnancy Disabilities
- ▶ Handicapping Condition
- ▶ Liability for Military Service
- ▶ Potential Parenthood
- ▶ Parenthood
- ▶ Family Status
- ▶ Atypical heredity cellular or blood trait



# Equal Employment Opportunity

The following are historical events about equal rights under the law:

- ▶ Civil rights Act of 1964 (Title VII)
- ▶ Equal Pay Act of 1963
- ▶ Age Discrimination in Employment Act of 1967
- ▶ Title I and Title V of the Americans with Disabilities Act (ADA)
- ▶ Section 501 & 504 of the Rehabilitation Act of 1973
- ▶ Civil Rights Act of 1991

# Addressing Disability Discrimination and Mental Health

- ▶ Title II of the Americans with Disabilities Act of 1990 (**ADA**)
- ▶ Americans with Disabilities Act Amendments Act of 2008
- ▶ The Individuals with Disabilities in Education Act (**IDEA**), 20 U.S.C. § 1400 *et seq.*, 2004
- ▶ **Section 504** of the Rehabilitation Act of 1973
- ▶ New Jersey Law against Discrimination (**NJLAD**)
  - ▶ Includes ...*mental, psychological* or developmental disability



# NJ Legislation

## L. 2021, CHAPTER 32

**AN ACT** concerning diversity and inclusion instruction in school districts and supplementing chapter 35 of Title 18A of the New Jersey Statutes.

*BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:*

C.18A:35-4.36a Curriculum to include instruction on diversity and inclusion.

1. a. Beginning in the 2021-2022 school year, each school district **shall incorporate instruction on diversity and inclusion** in an appropriate place in the curriculum of students in grades kindergarten through 12 as part of the district's implementation of the New Jersey Student Learning Standards.

b. The instruction shall:

(1) highlight and promote diversity, including economic diversity, equity, inclusion, tolerance, and belonging in connection with gender and sexual orientation, race and ethnicity, disabilities, and religious tolerance;

(2) examine the impact that unconscious bias and economic disparities have at both an individual level and on society as a whole; and

(3) encourage safe, welcoming, and inclusive environments for all students regardless of race or ethnicity, sexual and gender identities, mental and physical disabilities, and religious beliefs.

c. The Commissioner of Education shall provide school districts with sample learning activities and resources designed to promote diversity and inclusion.

2. This act shall take effect immediately.



# NJ Legislation

- ▶ **P.L. 2019, c. 222 (8/9/19)** – Requires health curriculum for public school students in grades kindergarten through grade 12 to include instruction on mental health. The instruction in mental health shall be adapted to the age and understanding of the students and shall be incorporated as part of the district's implementation of the New Jersey Student Learning Standards in Comprehensive Health and Physical Education. 2020-2021 school year.
- ▶ **P.L.2018, c.80 (8/10/18)** - Requires school districts to include instruction on consequences of distributing and soliciting sexually explicit images through electronic means (sexting) as part of New Jersey Student Learning Standards in Comprehensive Health and Physical Education. 2019-2020 school year



# Laws Against Retaliation



Employees who report any form of discrimination are not to be retaliated against in the workplace for their reporting

- ▶ Civil Rights Act of 1964, 42 U.S.C.A. Section 2000e-2(A)