All District Personnel Title IX Training

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Presented To:

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Title IX

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.C 1681(a) Title IX Education Amendments of 1972

Where and When?

34 CFR Part 106 – Amendments to Title IX Regulations and New Sections

Effective date: August 14, 2020

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Complainant

The individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Respondent

The individual who has been reported to be the perpetrator of the conduct that could constitute sexual harassment.

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Definition of Sexual Harassment under Title IX

Conduct on the basis of sex that meets one or more of the following:

Prong 1:

An employee of the recipient (i.e. educational institution such as a school district that receives federal funds) conditioning the provision of an aid, benefit or service of the educational institution on an individual's participation in unwelcome sexual conduct (quid pro quo sexual harassment);

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Definition of Sexual Harassment under Title IX

Cont.

Conduct on the basis of sex that meets one or more of the following:

Prong 2:

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 educational institution's education program or activity (hostile environment);

Prong 2 –Hostile Environment

Requires the most analysis, generally, to determine if the allegations "meet" the segments of each description



Severe, pervasive AND objectively offensive



Evaluated under a reasonable person standard



Effectively denies equal access to the school's program or activity

Definition of Sexual Harassment under Title IX

Cont.

Conduct on the basis of sex that meets one or more of the following:

Prong 3:

"Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v),

"dating violence" as defined in 34 U.S.C. 12291(a)(10),
"stalking" as defined in 34 U.S.C. 12291(a)(30), or

"domestic violence" as defined in 34 U.S.C. 12291(a)(8)

Brief Detour: Title VII Sexual Harassment

Unlawful harassment based on applicant's or employee's sex.

- Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.
- Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general.
- Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.

EEOC.gov/sexual-harassment

Brief Detour: Title VII Sexual Harassment

Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a parent.

EEOC.gov/sexual-harassment

Can the harasser be a student under Title VII? Can the person harassed be a student under Title VII?

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Comparing Title IX sexual harassment and Title VII sexual harassment

Title VII:

- Rights attach to Employees only
- Unwelcome conduct that is severe, pervasive OR objectively offensive
- Protects Employees in the workplace
- Administrative requirements (EEOC) before going to court
- Policy GACN

Title IX

- Students and Employees
- Unwelcome conduct that is severe, pervasive AND objectively offensive
- Applies to education program or activity in education institution
- Specific, internal due process procedures are required
- Policy GBR and JB

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Back to Title IX: Education Program or Activity

Title IX previously defined as all the "operations of a [district]…"

However, in 34 C.F.R. § 106.44(a), the definition has been enlarged to include any location, event or circumstance over which the district exercised substantial control over both the respondent and the context in which the harassment occurs.

Education Program or Activity - Preamble Comments

No single factor is determinative – fact specific inquiry

"A teacher's [or school employee's] sexual abuse of a student 'undermines the basic purposes of the educational system' thereby implicitly recognizing that a teacher's [or school employee's] sex harassment of student is likely to constitute sex harassment 'in the program' of the school even if the harassment occurs off campus."

Student using personal device to perpetrate online sexual harassment during class time may constitute a circumstance over which the district exercises substantial control.

Training ALL EMPLOYEES on Actual Knowledge and Reporting

"Actual knowledge" of sexual harassment is notice of sexual harassment or allegations of sexual harassment to ANY EMPLOYEE



Easy call – Complainant reports it verbally or in writing

Anonymous reporting? Yes, also included





Includes third party reporting (parent, friend or community member) verbally or in writing

Training ALL EMPLOYEES on Actual Knowledge and Reporting



"Actual knowledge" of sexual harassment is the same thing as a "Report" of sexual harassment. Tell the Title IX Coordinator and that person takes it from there.



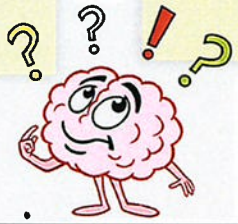


Which of the Below Examples are Actual Knowledge?

Employee 1 overhears students discussing another student having a sexual relationship with Employee 2

Employee sees Student 2 staring at and following Student 1. Saw Student 2 touch Student 1 on the butt. Student 1 laughed.

A community member tells Employee 1 about a rumor that Student 1 was seen in the car with Employee 2 late at night in a parking lot and the two were kissing



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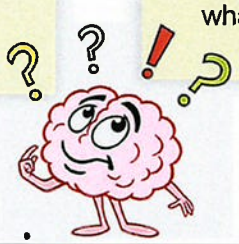
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Which of the Below Examples are Actual Knowledge?

Employee overhears a group of girls talking about a boy who makes vulgar comments and is "handsy"

A teacher co-worker tells you that the principal has rubbed his arm, grabbed his crotch, and asked what he was doing after work

Student 1 tells you that Student 2 pulled her under the bleachers at the football game, groped her, and tried to kiss her. She pushed him off and got away.



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Retaliation



Retaliation is prohibited against any person for the purpose of interfering with Title IX rights or because the person participated, or refused to participate, in any manner in a proceeding under Title IX regulations.

Complaints of retaliation are handled under the District disciplinary procedures.

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Confidentiality

The District must keep confidential the identity of a person who complains of or reports sexual harassment, including parties and witnesses, except as permitted by law to carry out the purpose of the regulations with regard to conducting an investigation into the complaint.

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Stay Tuned....

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