

TITLE IX TRAINING

For All Employees



Presented by:

SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

Presented by law firm of Smith, Welch, Webb & White LLC (School Board Attorneys)

TOPICS:

- 1. Updated HCBOE Board Policy JCAC and Regulation JCAC to comply with Title IX of the Education Amendments of 1972**
- 2. General legal principles of new U.S. Dept. of Education Title IX Rule**
- 3. New definition of sexual harassment**
 - A. Notice of sexual harassment**
 - B. The District's obligation to respond**
- 3. Options to address sexual harassment**
 - A. Supportive measures**
 - B. The Formal Complaint and Grievance Process**
- 4. Employee roles in the process**



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Legal Principles - Goals of New Rule Change

Focus on Due Process (Regulation JCAC, Section II.B)

- Fairness to complainant and respondent
- Formal complaint process to provide these rights before discipline can be imposed
- Substantial information rights for victims and the accused

No Bias / Must be Neutral (Regulation JCAC, Section XI.B)

- Between Men / Women
- Between **Complainants** / **Respondents**
- **Not** based on stereotypes

Preserve Free Speech Rights (Regulation JCAC, Section IV.F)



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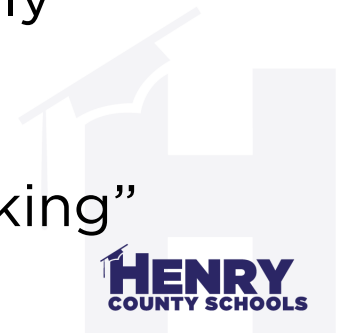
Legal Principles (Regulation JCAC, Section I.A)



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- Title IX prohibits discrimination **on the basis of sex** in education
- New Rule focuses on sexual harassment as discrimination
- Sexual harassment denies students the benefits of and participation in school on the basis of sex
- What is **sexual harassment**? New definition:
 - “Quid pro quo” harassment
 - Unwelcome conduct that is so severe, pervasive **AND** objectively offensive that it effectively denies a person equal access to the school’s education program or activity
 - “sexual assault,” “dating violence,” “domestic violence” or “stalking” under the Clery Act and VAWA



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Jurisdiction (Policy JCAC)



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- Not all places, but not just “on campus” or “at school.”
- Must occur in the United States
- Covers sexual harassment that happens **in a school’s “education program or activity”**
 - Locations, events, circumstances where a school exercises substantial control over the context of the harassment and the person accused of committing the harassment
 - At school, on school bus, on field trip, at school sponsored activities (athletics), academic conferences
- Includes harassment by or against students **or** staff



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Actual Knowledge (Policy JCAC)



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- School must respond to “actual knowledge” of harassment
- When school personnel personally observes sexual harassment
- When school is put on notice that person may have been victimized by sexual harassment
 - **ANY** person can put the school on notice (victim, parent, friend, bystander, etc.)
 - School is put on notice when **ANY** employee is put on notice of incident
- **If you are put on notice, you must alert the school principal** or the district’s Chief of Staff as the Title IX Coordinators.



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Response to Sexual Harassment

(Regulation JCAC, Sections I.D.1 and II)



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- What does a school do when it is put on notice of sexual harassment?
 - It must respond in a way that is not “deliberately indifferent”
 - Response cannot be clearly unreasonable in light of the known circumstances
 - Most important thing you can do is take complaints seriously when you have notice of them – do not ignore complaint or hope that it will just go away on its own
 - **Must respond promptly**



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Sexual Harassment Response Process

(Regulation JCAC, Section I.D.1, Section II, Section III, Section VI.A and B)



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- Title IX coordinators can accept reports of sexual harassment (at **any** time) in person, by mail, by telephone, by email, or by any verbal or written means
- Once a report is received, the Title IX Coordinator will
 - **promptly** and **confidentially** reach out to complainant to discuss options
 - Discuss the availability of supportive measures with or without a formal complaint
 - Discuss the right to file a formal complaint and how to do so
- Title IX Coordinator will also provide and effectively implement supportive measures, including after the grievance process is completed
- Preserve evidence or information



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Supportive Measures (Regulation JCAC, Section II.A and B, Section III, Section IX)

- Must be offered with or without filing of formal complaint
- Must be offered to complainant, can be offered to respondent
- **What are supportive measures?**
 - Free, individualized services designed to restore or preserve equal access to education, protect safety, or deter sexual harassment
 - Designed to support student, cannot be punitive or disciplinary with respect to another student
 - Cannot unreasonably burden another person
- Title IX Coordinators will consider the victim's wishes regarding supportive measures
- Title IX Coordinators will keep supportive measures confidential unless it impairs the ability to provide the supportive measure.



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Supportive Measures (Regulation JCAC, Section II.A and B, Section III, Section IX)



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- Range of supportive measures offered:
 - counseling by a school staff person, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, mutual restrictions on contact between the parties, changes in classroom transition routes, increased security and monitoring of certain areas of the school campus, and/or a combination of local interventions and supports.
- Title IX Coordinators (principals) are responsible for determining appropriate supportive measure and effectively implementing the supportive measure.



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Filing Formal Complaints

(Regulation JCAC, Section I.F, Section II.A, Section VI)



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- Title IX Coordinator will inform student about the right to file a formal complaint
- Title IX Coordinator will not encourage or discourage student to file a formal complaint
- Formal complaints can be filed by the student (or their parent or legal guardian)
- Formal complaints also can be filed by the Title IX Coordinator
- Formal complaint begins the formal process of adjudicating whether sexual harassment has occurred, and can result in discipline against the respondent and additional supportive measures for the complainant



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Grievance Process

(Regulation JCAC)



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- The grievance process protects the rights of both the complainant and the respondent
 - District cannot discipline respondent for sexual harassment without going through the grievance process
 - Respondent is entitled to a presumption of innocence
 - District always bears the burden to prove sexual harassment by a preponderance of the evidence
- All parties have the right to give and review evidence
- Title IX Investigator will impartially and fairly gather all evidence and provide an investigative report to the parties.



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Grievance Process

(Regulation JCAC)

- Title IX Decision-maker will objectively review the evidence and make a written determination regarding responsibility.
- Both parties have the right to file an appeal to an appellate decision-maker
 - Limited to new evidence, bias, conflict of interest, or a procedural irregularity
- Full process is contained in Regulation JCAC.
 - Please review and familiarize yourself with the process.
 - Also review updated Policy JCAC.



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Resources:



https://bit.ly/HCS_Title_IX_Info

