

# **TITLE IX**

**Sexual Harassment in the School Setting**

# SEXUAL HARASSMENT STATUTES

## Title VII

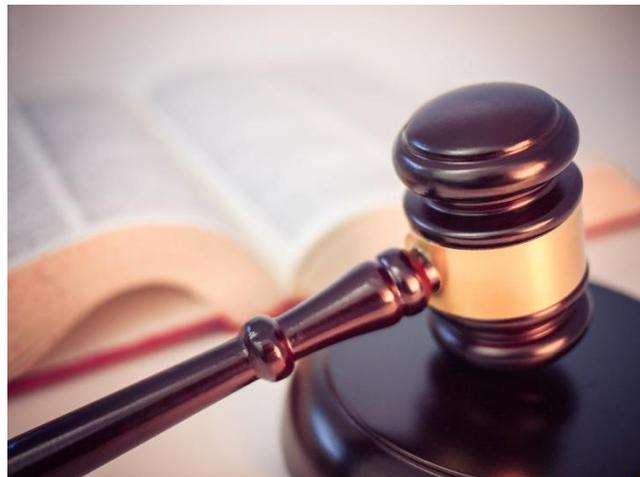
- *Protects employees of covered employers*
- *All employees entitled to protection*
- *GB Policy ACA*
- *EEOC/AZ Civil Rights are the enforcement agencies*
- *Applies to employees*

## Title IX

- *Covers all individuals in a school setting where federal funds are received*
  - *GB Policy ACAA*
  - *OCR/US Dept of Ed are the enforcement agencies*
  - *Applies to students*
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# TITLE IX

- Implementing regulations did not include a sexual harassment provision.
- May 6, 2020 U.S. Department of Education, Office of Civil Rights (OCR) issued a rule amending Title IX regulations.
- The final rule went into effect on August 14, 2020.



# WHAT IS NEW?

- Sexual Harassment is now expressly addressed in Regulation.
- Designation of Title IX Coordinator is required.
- New requirements regarding ***Notice*** & informing *Title IX Coordinator*.
- ***Notice*** v. ***Formal Complaint*** and how to address each one.
- Publication of ***Notice*** in handbooks and on website.

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# NOTICE

- **Notice** is imputed to the District when ANY school employee becomes aware that sexual harassment may have occurred.
- The District becomes liable for sexual harassment when it has been *deliberately indifferent* to actual notice of harassment.

Teachers

Custodians

Bus Drivers

Cafeteria Staff

Secretaries

Groundskeepers

Paraeducators

***ANY SCHOOL EMPLOYEE!***



# NOTICE RECEIVED: NOW WHAT?

1. Notice triggers obligation!
2. Immediately contact Haidee Ruiz, *TIXC* & your supervisor (one of you must make contact.)
3. *TIXC* will follow up with victim and parent.
4. If *Formal Complaint* desired by victim, an investigation will occur.
5. Results of Investigation will be shared with both sides as well as *Decision Maker*.



## OF NOTE:

- Formal Complaints can only be filed by the alleged victim.
- Investigation must follow grievance procedure.
- *Title IX Coordinator, Investigator, and Decision Maker* must be trained in Title IX regulations.



# DISSEMINATION OF POLICY

*Notify students, parents, employees of:*

- Name, address, email, telephone number of *Title IX Coordinator*
- Statement of non-discrimination that includes statement that Title IX prohibits discrimination, including in admission and employment, and that complaints may be made to the *Title IX Coordinator* or the Office of Civil Rights (OCR).
- Display contact information for *TIXC* & non-discrimination policy on the website and in each handbook
- Publish grievance procedure on website/handbook



# DEFINITION OF SEXUAL HARASSMENT UNDER TITLE IX

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

1. A school employee conditions the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct.
2. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it "effectively denies a person equal access" to the school's education program or activity.
3. Sexual assault, dating violence, domestic violence, or stalking.



# DEFINITION OF SEXUAL HARASSMENT: ELEMENT 1

Element 1 is *quid pro quo* harassment.

- Does not require a severe, pervasive, and objectively offensive analysis
- By its very terms, it will deny access to the program

*Example:*

- *A teacher requires sexual favors for a better grade*
- *A staff member demands sexual favors or he/she will post compromising pictures.*



# DEFINITION OF SEXUAL HARASSMENT: ELEMENT 2

Harassment based on speech requires the  
unwelcome conduct to be:

- Severe
- Pervasive
- Objectively offensive

Such that the victim is denied equal access to the  
school's programs and activities.

Narrowly tailored to protect 1<sup>st</sup> Amendment rights



# DEFINITION OF SEXUAL HARASSMENT: ELEMENT 3

Offenses based on violence (sexual assault, dating violence, domestic violence, stalking)

- Does not require severe and pervasive analysis
- When it occurs, equal access is denied as in Element 1, it is *per se* actionable

**per se**

*/ˌpər 'sā/*

**adverb**

*by or in itself or themselves; intrinsically.*



## ELEMENT 3 DEFINITIONS

- Sexual assault: an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
- Stalking: means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: 1) fear for his or her safety or the safety of others; or 2) suffer substantial emotional distress.



# DATING VIOLENCE

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- 1) the length of the relationship
- 2) the type of relationship
- 3) the frequency of interaction between the persons involved in the relationship



# DOMESTIC VIOLENCE

Violence committed by a current or former spouse or intimate partner of the victim, a person whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Arizona, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.



# SCHOOL LIABILITY

A school will violate Title IX where it has *actual knowledge* of an allegation of sexual harassment experienced by an individual in the educational program and the school acts with *deliberate indifference* to that notice.

*Who has a duty to report Notice?*

*Any School Employee!*



# WHAT IS *ACTUAL KNOWLEDGE* OF HARASSMENT?

- A report to ANY school employee
  - *All employees must be trained to immediately communicate any report of conduct that would meet the definition of harassment to administration.*
- A report to the *Title IX Coordinator* made at any time via any method of communication

RECEIVED



# WHEN IS A DISTRICT REQUIRED TO ACT?

*Schools are required to address sexual harassment in the education program or activity for any:*

- Location
- Event
- Circumstance

*Over which the school exhibits substantial control over both the alleged harasser and the context in which the harassment occurred.*



# WHAT IS DELIBERATE INDIFFERENCE?

*A response to notice of sexual harassment that is clearly unreasonable in light of the known circumstances*

The new regulations set out the required response to Notice within the context of:

- Protecting 1st Amendment rights
- A presumption of non-responsibility of the accused
- Provision of supportive measures



# AVOIDING DELIBERATE INDIFFERENCE

*Title IX Coordinator must PROMPTLY contact every complainant to discuss:*

1. Wishes regarding supportive measures
2. The fact that supportive measures are available with or without filing a formal complaint
3. The process for filing a formal complaint

## *Furthermore...*

- Treat complainants & respondents equitably.
- Offer supportive measures in all cases.
- Use procedures set out in regulations.
- Provide complainant remedies if respondent is found responsible.



# WHAT IS YOUR RESPONSIBILITY?

- If you SEE or HEAR something regarding the sexual harassment of a student, ***REPORT IT immediately to your supervisor and Title IX Coordinator, Haidee Ruiz.***



