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BEYOND THE BASICS!

Sexual Harassment, Abuse, and Mandatory Reporting

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DIFFERENT
BY DESIGN

Discrimination, Harassment, and Retaliation

- Prohibited by law
 - Missouri Human Rights Act
 - Title VII
 - Title IX
- On the basis of “sex”:
 - Sexual orientation
 - Perceived sexual orientation
 - Gender identity (??)
 - Transgender (??)

Discrimination, Harassment, and Retaliation

- Prohibited conduct
 - Discrimination
 - Treating a student, employee, or other person differently on the basis of sex
 - Harassment
 - A form of discrimination that involves creating a hostile work or learning environment
 - Retaliation
 - Engaging in negative behavior toward a person who had complained about discrimination, harassment, or retaliation (against themselves or others) – or who has engaged in other protected behavior

Discrimination, Harassment, and Retaliation

- Consequences and Enforcement
 - Office for Civil Rights complaints
 - Special education due process hearings
 - EEOC and MCHR complaints
 - Lawsuits
 - Institutional liability
 - Individual liability
 - Remediation
 - Discipline
 - Loss of employment

Discrimination, Harassment, and Retaliation

- What to do?
 - Be familiar with nondiscrimination policy
 - Consider your actions carefully
 - Be consistent with expectations
 - Communicate clearly
 - Don't discriminate, harass, or retaliate
 - Report!!
 - Employee
 - Student
 - Communicate with Title IX Coordinator / District Administration
 - **AND REMEMBER MANDATORY REPORTING!!!!**

Title IX

Title IX of the Education Amendments of 1972 (Title IX) provides that:

“[n]o 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. . . .”

What Does Title IX Affect?



Current Title IX Regulations

- In May 2020, the Department of Education (under Betsy DeVos) issued new Title IX regulations related to claims of sexual harassment.
- The 2020 regulations were implemented on August 14, 2020.
- New regulations were issued in 2024 under the Biden Administration. They are not in effect.

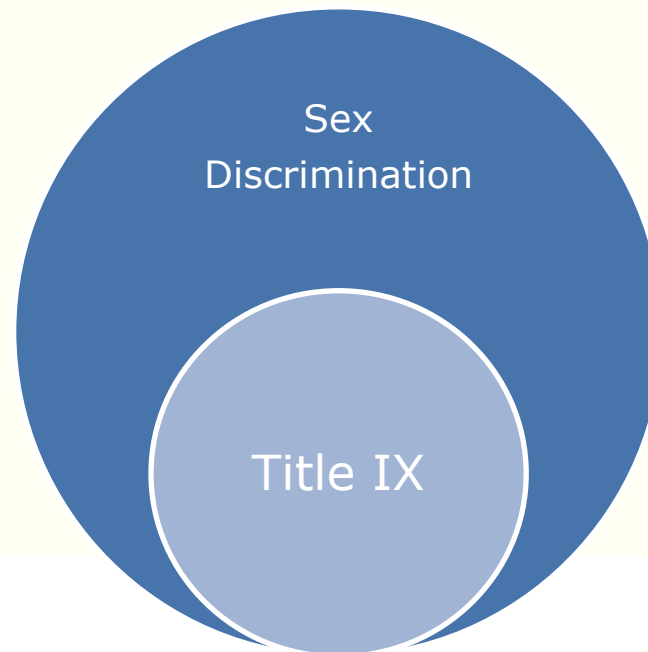
Title IX Regulations

- Requirement to specifically designate employee called “Title IX Coordinator”.
- Any person may report sex discrimination (including sexual harassment) to the Title IX Coordinator.
- Requirement to adopt a grievance procedure with specific provisions for addressing “sexual harassment,” as that term is defined in the Title IX regulations.

Title IX Regulations

And. . .

Requirements related to district's response to addressing "sexual harassment" (not required for all issues of sex *discrimination*).



When must a school respond to sexual harassment under Title IX?

A recipient with **actual knowledge** of **sexual harassment** in an education program or activity against a person in the United States must **respond promptly** and in a manner that is **not deliberately indifferent**.

Title IX Regulations – District Response to “Sexual Harassment”

- Jurisdictional Changes / Definitions
- Procedural Requirements

Definition – “Sexual Harassment”

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct;
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 recipient’s education program or activity; or
3. “Sexual assault” as defined in Violence Against Women Act (VAWA) 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

Definition – “Sexual Harassment”

“In a Program or Activity”

- Any location, events, or circumstance over which the recipient exhibits substantial control over both the alleged harasser and the “context” in which the harassment occurred.
- Regulations specify “in the United States.”

Actual Knowledge

- 2020 Regulations adopt the standard from Supreme Court case law.
 - Means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, **or to any employee of an elementary and secondary school.**
 - Constructive notice is not sufficient.
 - BUT note – **any employee!**

Deliberate Indifference

- Old OCR Guidance – The school must take immediate action to eliminate the sexual harassment or sexual violence, prevent its reoccurrence, and address its effects.
- 2020 Regulations – Failure to respond reasonably in light of known circumstances.

Hypothetical #1

- Imagine a middle school teacher reports to you that during one of her classes, she could hear a group of boys teasing a girl about getting her period. The girl looked very upset, and she told the boys to stop. The boys complied. The next day, one of the boys wore red pants, and the group started laughing and calling the boy by the girl's name—again, mocking her for getting her period. The teacher again intervened and stopped the boys' conduct. After class, the teacher asked the girl how often this behavior is happening. She reported that it has been happening constantly for a week, and she doesn't want to come to school anymore. The teacher writes a referral for the boys for bullying.

Hypothetical #1

- What steps do you take as the administrator?
- Report to Title IX Coordinator?
- Discipline the boys?

Hypothetical #2

- Imagine you get a call from the high school French Club sponsor, who just returned from a Spring Break trip to Paris with a group of seniors. While in the airport returning to the US, Student A told the teacher that Student B inappropriately touched Student A in the bathroom while a group of students were at a restaurant the night before. Student A felt very uncomfortable and is not sure what to do about the incident. Student A asked for the teacher's advice, and now the teacher is contacting you.

Hypothetical #2

- Is this an incident that will be handled by the Title IX Coordinator?
- What steps do you take next?

Hypothetical #3

- Imagine you get a call from the parent of a kindergarten student. The parent is furious because another student in the class has been talking about the differences between girls' and boys' private areas, using correct anatomical terms. The parent complained that this student is harassing other students and causing confusion, as her child uses the terms "flower" and "pee pee" rather than vagina and penis. The parent demands a Title IX investigation.

Hypothetical #3

- Is this an incident that should be reviewed by the Title IX Coordinator?

Hypothetical #4

- A teacher who is also a coach for a community basketball team (separate from school) hears one of the players talking at a Saturday practice about an incident at a party the weekend before. Evidently, a girl who attended the party was saying she was sexually assaulted that night, and the kids were weighing in on whether they believed her or not. Based on information shared, the teacher deduces that both kids involved in the alleged assault are students who attend your school and he reports the information to you. What should you do?

Hypothetical #4

- Is this an incident that will be investigated by the Title IX Coordinator?
- What actions should you take?

Reporting Takeaways

- **If you see/hear something, say something – and encourage your staff to do the same!**
- Consider the circumstances surrounding the incident (who, what, when, where)
- Document, document, document!

TIX Investigation Overview



Intake Analysis

- Dismissal?
- Informal Resolution?
- Emergency Removal?



Investigation

- Meet with both parties and witnesses
- Review of evidence
- Issue Investigation Report



Decision

- Review Investigation Report
- Issue decision
- Option for Appeal

Things to Know

- “Supportive measures” are available to both the complainant and respondent at any time (and even without a formal complaint).
 - Non-disciplinary
 - Individualized services
 - Kept confidential to extent possible

Things to Know

- When Title IX investigation is ongoing, student **cannot** be disciplined until found responsible for alleged conduct.
- Emergency removal may be necessary safety measure depending on circumstances.
- Employees may still be placed on administrative leave pending outcome of investigation.

Things to Know

- Parties may have advisors support them through the investigation process.
- Parties are able to review **all** evidence directly related to the allegations in formal complaint.
- Unlike colleges and universities, a live hearing is NOT required.

Things to Know

- Retaliation is specifically prohibited.
 - Cannot take action or encourage others to take action against an individual for the purpose of interfering with Title IX rights or because a person has participated or refused to participate in a proceeding under Title IX regulations.
 - If you witness or experience retaliation, inform Title IX Coordinator immediately.

A Word about Staff-Student Harassment

- **MAIN ISSUE:** *Educators should not rely upon students to meet educators' own social needs.*
 - Maintain professionalism
 - If relationship with student becomes too close, **the educator is the adult** and is responsible for establishing professional boundaries.
- **MAIN ISSUE:**
 - Small number of individuals –> Disproportionate harm to students & profession
 - Other educators in best position to stop it!

A Word about Staff-Student Harassment

- **SEXUAL MISCONDUCT BY EDUCATORS**

- **PREDATORY:**

- Deliberate grooming of a student to engage in sexual behavior

- **OPPORTUNISTIC:**

- No conscious predatory motivation
 - Allows a special relationship with student to be formed, resulting in situations where professionalism is compromised
 - Then relationship becomes predatory

A Word about Staff-Student Harassment

Boundary Invasions:

- Situations where the educator does not respect the student's personal physical & psychological boundaries
- Inappropriate when there is conduct which under the totality of circumstances does not have valid & bona fide educational or health reasons
- **REPORT!**

A Word about Staff-Student Harassment

CAUTION:

*Don't put yourself –
or allow your staff to put themselves –
in a position where you/they appear
to fit this profile, even if when there
is no harmful intent!*

MANDATORY REPORTING

REPORTING OBLIGATIONS

MANDATORY REPORTING

- Employee who:
 - **Knows** that a child has been subjected to abuse or neglect;
 - Has **reasonable cause to suspect** that a child has been subjected to abuse or neglect;
 - **Observes a child** being subject to conditions or circumstances that **would reasonably result** in abuse or neglect.
- Must immediately report to Children's Division
 - If a student reports sexual misconduct by a school employee to a school employee – employee plus superintendent must report within 24 hours
- Notify Principal or building designee

Board Policy

REPORTING & INVESTIGATING CHILD ABUSE & NEGLECT

- “Shall directly and immediately make a report to the CD”
- No internal investigation
- No supervisor or administrator can impede reporting under state law
- No retaliation / no sanction

REPORTING OBLIGATIONS

FAILURE TO REPORT

- When a mandatory reporter fails to report suspected abuse or neglect, he or she is guilty of a class A misdemeanor, which means he or she could be sentenced to up to one year in the county jail and/or fined \$1,000.00.



BEST PRACTICES

- Do not engage in discriminatory/harassing conduct! (DUH.)
- Remember your legal obligation to report any allegations of sexual harassment.
- Encourage your staff to report any allegations of sexual harassment – or boundary invasions.
- Remember your legal obligation to hotline abuse.
- Document actions you take and why! Store in safe place!
- Do not be afraid to speak up!



QUESTIONS?

