



Title IX in Schools

Training for ALL District Personnel

Jill Williams
Powell Law Group, LLP

Objectives

- Identify the key components of Title IX of the Education Amendments of 1972.
- Define sexual harassment under Title IX.
- Describe required responses for allegations of sexual harassment in schools.



What is Title IX?

A federal law that prohibits discrimination on the basis of sex, including sexual harassment, in educational programs and activities that receive federal assistance, including state and local educational agencies.



Not Only Athletics



- Courses
- Tutoring
- Financial assistance
- Counseling
- Student Health
- Etc.

In Schools

“No person...excluded from any academic, extracurricular, research, occupational training, or other education program or activity.”



Enforcement

US Department of Education Office of Civil Rights (OCR)

Not Allowed

Under Title IX, schools may not:

- Provide for equal facilities.
- Subject any person to separate or different rules of behavior, sanctions, or other treatment.
- Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner.
- Treat players in an equal manner.
- Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service.

Exceptions to: Access to classes and schools

- Contact sports in physical education classes

The regulations do not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports for the purpose or major activity of which involves bodily contact.

- Ability grouping in physical education classes

The regulations do not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

Exceptions to:

Access to classes and schools

- Human sexuality classes

Classes or portions of classes in elementary and secondary schools that deal primarily with human sexuality may be conducted in separate sessions for boys and girls.

- Choruses

Recipients may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

Exceptions to: Access to classes and schools

Single-sex classes and extracurricular activities may be provided under limited circumstances.

- Must be to improve educational achievement of its students.
- To meet the particular, identified educational needs of its students.
- The recipient implements its objective in an evenhanded manner.
- Student enrollment in a single-sex class or extracurricular activity is completely voluntary.
- The recipient provides to all other students, including students of the excluded sex, a substantially equal coeducational class or extracurricular activity in the same subject or activity.

Athletics: Exception

- Separate teams based on skill, or for contact sports.
- Boxing, wrestling, rugby, ice hockey, football, basketball, etc.



The Equal Opportunity Requirement

- Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes
- The provision of equipment and supplies
- Scheduling of games and practice time
- Travel and per diem allowance
- Opportunity to receive coaching and academic tutoring;
- Assignment and compensation of coaches and tutors
- Provision of locker rooms, practice and competitive facilities
- Provision of medical and training facilities and services
- Provision of housing and dining facilities and services
- Publicity

Sexual Harassment of Students

*“...sexual misconduct... so severe, persistent, **AND** pervasive so as to deny or limit a student’s ability to participate in or benefit from the school’s programs or activities”*

New definition of sexual harassment:

Hostile environment—must meet criteria as defined above

Quid Pro Quo – Actions of Employees

Dating Violence – Violence Against Women’s Act

Sexual Harassment of Students

“...does not include simple acts of teasing and name-calling among school children, however, even when the comments target differences in gender.”

Sexual Harassment of Students

- Sexual violence or sexual touching
- Coercion or pressure to engage in sexual acts
- Sexual comments
- Sexually explicit drawings or written materials
- Sexually charged names
- Spreading sexual rumors
- Rating students on sexual activity
- Circulating e-mails or websites of a sexual nature

Sexual harassment?

- A. Logan gropes Emma in the school hallway.
- B. Teacher Robert Davis gives Emma only Ds for the term. (only harassment if there is quid pro quo)
- C. Logan threatens to spread the rumor that Emma is a slut, if she does not give him a kiss.

Types of Sexual Harassment

- Sexual comments, jokes, or gestures
- Writing graffiti or displaying sexually explicit drawings, pictures, or written materials
- Texting unsolicited nude photos
- Posting inappropriate photos or videos on social media platforms
- Let's talk about Snapchat group messages

Types of Sexual Harassment

- Calling students sexually charged names
- Spreading sexual rumors
- Example: a story about a boy behaving in a sexual manner at a party if spread throughout a school, may constitute a “sexual rumor.”

Types of Sexual Harassment

- Rating students on sexual activity or performance
- Example:

Tik Tok videos titled school news:

taking video polls and posting them to social media platforms.

Sexual harassment?

- A. A picture labeled “Scott” is drawn on the bathroom wall, with the figure committing a sexual act.

- B. A teacher gives a new girl a nickname, “Hot Stuff,” after she wears a short skirt to class.

- C. A teacher threatens to cancel the school musical if students continue to misbehave.

Types of Sexual Harassment

- Circulating, showing, or creating e-mails or Websites of a sexual nature
- In today's digitized world, rumors can travel quickly, and sexual harassment can be very common.



Repeated Conduct...

- Repeated conduct over time can constitute harassment
- Hostile environment (new definition)
- One use of a derogatory term may not be considered sexual harassment under Title IX

Who is Harassing?

- By staff

Examples:

- Intentional stroking of a student in the classroom
- Discussion inappropriate topics with a student
(whether in person or by electronic means)
- Quid pro quo suggestions

Who is Harassing?

- By students
- Example: Sexual nickname for 8th grader Alli, spread over social media, is a typical example of student-led harassment



Employee/Student Harassment

- Mr. Fischer asked Alli whether she was sexually active with her boyfriend, and she replied, “that was a weird question.”
- He became flustered and promised her a good grade if she kept this conversation to herself.

Grooming

- Some sexual harassment (abuse) occurs when an adult manipulates or “grooms” a child—
over time—into trust and sexual contact.
- This type of offender may even “groom” parents and other educators into thinking the child is safe with them.
- Red flags are a teacher being alone with a student, offering rides home, etc.

Off-Campus

- Dating Violence
- Occurs when a person in a current or past dating relationship uses physical, sexual, verbal, or emotional abuse to harm, threaten, intimidate, or control the other person in the relationship
- Can occur at school, home, or out in the community

Sexual harassment?

- A. A picture that has been “photoshopped” to show student Julie having sex is shared among students in her grade.
- B. Ms. Smith, a math teacher, asks student Bryan to tell her “all about” his sex life.
- C. Travis warns his ex-girlfriend Alyssa not to speak to other boys at school.

Retaliation Prohibited

...prohibits retaliation...against a student alleged to have experienced harassment...or another student who makes a report, serves as a witness, or participates in an investigation.

Response

Investigation & Accountability

- Now that we have defined sexual harassment and we have worked through some examples and scenarios of sexual harassment under Title IX, let's consider methods of response, investigation, and accountability



Title IX Coordinator

- Duties:
- Coordinating efforts to comply with the law
- Overseeing any investigation of complaints alleging noncompliance with Title IX

- The district is required to notify students, employees and the public if the name and contact information for the Title IX Coordinator

Student Reporting

- Any student who believes he or she has experienced sexual harassment (or believes another student has experienced it) should immediately report the alleged acts to a teacher, counselor, or any other district employee
- A report to or observation by *any employee of the district provides the district with actual knowledge*

Student Reporting

- In the case of a student report, the student shall not be required to make this report to the person alleged to have committed the conduct.
- For example, if harassment involves the campus principal, the student may report to the Superintendent or **any other district employee.**

School Requirements

The school must have adequate sexual harassment procedures in place:

- Provide notice of the procedures
- Respond to complaints
- Ensure a full investigation
- Follow a prompt time frame
- Notify the parties of the outcome
- Take steps to prevent recurrence



Employee reporting

Any district employee who suspects or receives notice that a student may have experienced sexual harassment shall **immediately** notify the appropriate district official and take any other steps required by policy.

Title IX Coordinator

Screen report for “prohibited conduct”

If so, investigate.



Reporting covered also by State Law

- Report within 48 hours
- District policy will usually require reporting within 8 hours (same school day) or as immediate as possible under the circumstances
- Waiting to report can subject the district to liability

Sexual Contact with a Student is a Felony

- There are criminal penalties for sexual harassment or abuse of a student
- Report immediately pursuant to policy so that campus administrators can involve law enforcement when necessary
- CPS reports should still be made according to reporting requirements

Report

- Duty cannot be delegated.
- It is not enough to tell someone else and rely on them to make the report.
- Any district employee who has cause to believe there is abuse or neglect must file the report within 48 hours.

Report to Law Enforcement and DFPS

Report must be made to:

- Any local or state law enforcement agency, and/or
- The Department of Child Protective Services

- Failure to report is a Class A Misdemeanor with a fine not to exceed \$4,000, or jail not to exceed 1 year, or both.

Investigations

- Who may conduct an investigation?

When a sexual harassment report is made, investigations may be conducted by the Title IX Coordinator, campus principal or other Administrator as designated by the Superintendent, or even a third party, such as an attorney.

Under new regulations, the Superintendent now designates the Title IX personnel to serve in the new Title IX roles.

Investigation

Harassment, discrimination or retaliation?



All relevant persons interviewed.

Documents, emails or websites reviewed.

Investigation

Investigation report is provided to both parties

Investigator now makes only *findings of fact* without determining responsibility

Title IX Coordinator then turns the files over to the Decision Maker (who must be a different individual—Title IX Coordinator (or investigator –if a different individual) cannot serve as the decision maker.

Taking Action

The District is required to respond to the allegations in manner that is not deliberately indifferent.

Office for Civil Rights (OCR) states that the district's response must not be *clearly unreasonable in light of the known circumstances*.

Story of unreasonable response:

Order of Title IX Process

1. Report made
2. Title IX Coordinator leads the formal complaint process (60 days)
3. Investigation Report provided to parties at 30 days, but no specific findings are released
4. Title IX Coordinator assigns Decision-Maker
5. Decision-Maker provides both parties with a written report that does include specific findings

OCR May Issue Corrective Action

- Training program for those involved
- Training program for school community
- Counseling to victim and the offender
- Follow-up inquiries to look for new incidents or retaliation





Appeal and OCR

Appeal to Title IX Coordinator

Only 3 specific grounds for appeal

Student or Employee may file Formal Complaint with Office for Civil Rights

Sexual abuse must be reported to the superintendent and SBEC.

Source:

https://tea.texas.gov/Texas_Educators/Investigations/Superintendent_Reporting_Educator_Misconduct/

OCR

- Investigate complaints
- Obtain requested information
- Issue findings
- Monitor resolution agreements
- Initiate Enforcement Action, including referral to the U.S. Department of Justice

OCR Process

Full investigation

- OCR has right of access to materials during recipient's business hours
- OCR may conduct interviews and focus groups
- Parental consent
- Resolution can be pursued prior to conclusion
- Determinations of noncompliance

OCR Process

- Monitor Resolution Agreement
- Initiation of Enforcement Action
 - Initiate proceedings to suspend, terminate or refuse to grant financial assistance
 - Refer the cases to DOJ for judicial proceedings

SCENARIOS

“Hazing” or “Harassment”?

Emalee, a new student, ended a brief romantic relationship with Bryan. After the break-up, Bryan and his friends began calling her sexually charged names, spreading rumors about her sexual behavior, and sending her threatening text messages.

Scenario 1

- One of Emalee teachers witnessed the name calling and also noticed the new student's anxiety and declining class participation. The school attempted to mediate the situation by requiring Emalee to resolve the problem directly with her harassers. Bryan later confronted Emalee at her home, threatened her and her family, and assaulted her brother. Law enforcement then got involved, arrested Bryan and questioned students known to have participated in the "hazing." When Emalee's parents complained to the school as to how this whole matter had been handled, the principal of the campus proudly observed that Bryan had been charged by the police.

Scenario 1

“Hazing” or “Harassment”?

- Dating violence
- School should not have had Emalee confront her harassers
- School has obligation even though law enforcement was involved
- OCR would have found them noncompliant

Scenario 2: Harassment & Sexual Orientation

- Over the course of the school year, Robert, an openly gay high school student, was called names (anti-gay slurs and sexual comments) both to his face and on social networking sites.
- He was physically assaulted, threatened and ridiculed by other students

Scenario 2

- Robert dropped out of theatre class to avoid further harassment
- Based on the student's self-identification as gay and the nature of some of the harassment, the school determined not to investigate under Title IX

Scenario 2

- Harassment & Sexual Orientation
- Student is being harassed. Appropriate action needs to be taken by the school.
- Reprimands and disciplinary action
- District/school needs to take corrective action

Assessment

1. Title IX is a federal law that prohibits discrimination on the basis of _____.

- A) funding
- B) sex
- C) Race
- D) religion

Assessment

2. Title IX requirements apply to any:
 - A) Private company not receiving federal financial assistance.
 - B) Food or agricultural co-op
 - C) Education program or activity receiving federal financial assistance
 - D) Foreign entity

Assessment

3. Title IX applies only to the school athletics programs.
- True
 - False

Assessment

4. There are exceptions to Title IX prohibitions. For example:
- A) Boys and girls cannot be separated for human sexuality classes.
 - B) Boys and girls can be separated for human sexuality classes.
 - C) Boys and girls must have separate dining facilities.
 - D) Higher math can be available only to girls.

Assessment

5. Examples of “contact sports” that can have separate teams for males and females are:

- A. Boxing
- B. Wrestling
- C. Hockey
- D. All of these

Assessment

6. Men's and women's soccer uniforms, if provided by the school, must be:

- A) Of approximately equal value and utility
- B) The same color
- C) The same size
- D) Different colors

Assessment

7. The following actions can be considered sexual harassment under Title IX:
- A. Sexual violence or sexual touching
 - B. Coercion or pressure to engage in sexual acts
 - C. Sexual comments
 - D. All of these

Assessment

8. The following actions can be considered sexual harassment under Title IX:

- A) Organizing a student protest
- B) Circulating e-mails or websites of a sexual nature
- C) Writing an editorial against a rule
- D) Spray painting the team name on the school wall

Assessment

9) A teacher offering a student a passing grade in exchange for a sexual act can be considered sexual harassment.

- True
- False

Assessment

10. Sexual harassment or abuse is not only a violation of Title IX, but also _____.

- A) An acceptable part of school life
- B) Unavoidable
- C) A violation of international law
- D) A violation of state law

Assessment

11. When a sexual harassment report is made, investigations may be conducted by the district coordinator or a designee, such as a principal, or

- A) A parent of the accused
- B) A parent of the victim
- C) A third party, such as an attorney
- D) A foreign entity

Assessment

12. A notice of the _____ should be provided to the parties to the dispute.

- A) PTA meeting
- B) Outcome of the investigation
- C) Identities of all accusers
- D) Addresses of accusers

Assessment

13. Sexual harassment is permissible, provided it is not ongoing, severe, or interfere with a student's education.

- True
- False

Assessment

14. Corrective action may include:
- A. A training program for those involved
 - B. A training program for school community
 - C. Counseling to victim and the offender
 - D. All of these

Assessment

15. The Department of Education's _____, or OCR, may investigate a Title IX complaint.

- A) Office for Complaint Resolution
- B) Operations Control Room
- C) Opportunity Citizen Rights
- D) Office for Civil Rights

Assessment

16. A student or parent dissatisfied with the outcome of an investigation may appeal to the local school board, and has a right to file a complaint with OCR.

True

False

Assessment

17. When conducting an investigation, OCR does not have the right to access a district's materials and records.

- True
- False

Assessment

18. In an investigation, OCR will attempt to determine if _____ has occurred.

- A) Noncompliance
- B) Compliance
- C) Incomplete partnership
- D) Conscriptation

Assessment

19. In certain situations, OCR may refer a case to the _____.

- A) Hall of Justice
- B) Department of Justice
- C) Justice League
- D) President's Council on Fitness



Thank You!

Questions?

Jill Williams

Powell Law Group, LLP

jwilliams@plg-law.com

512-494-1177