

Title IX Overview for All Employees

Fulton County Schools

Content Notice

- The content and discussion in this training will necessarily engage with sex- and gender-based harassment, discrimination, violence, and associated sensitive topics that can evoke strong emotional responses.
- During this training, we may offer examples that emulate the language and vocabulary that Title IX practitioners (you!) may encounter in your roles including slang, profanity, and other graphic or offensive language. It is not used gratuitously, and no offense is intended.



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Title IX: A Primer



What is Title IX?

- Title IX of the Education Amendments of 1972
- Protects people from discrimination based on sex in education programs or activities that receive federal financial assistance.
- Enforced by the Office of Civil Rights ("OCR").
- Protects all persons from discrimination, including parents and guardians, students, and employees.
- What does Title IX say?
  - 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.



Sexual Harassment
Access to STEM Programs
Pregnancy and Parental Status
Athletics

Pregnancy or Parental Status

- Title IX prohibits a school from discriminating against a student based on the student's:
  - Pregnancy
  - Childbirth
  - False pregnancy
  - Termination of pregnancy
  - Recovery from any of these conditions.
- Title IX also prohibits a school from applying any rule related to a student's parental, family, or marital status that treats students differently based on their sex.



Title IX Policies and Procedures

- Fulton County Schools has its own comprehensive Title IX policies and procedures.
- They are currently being updated to comply with applicable Title IX Regulations, but should be each employee's starting point with respect to Title IX matters.
- The District's Title IX Coordinator and Title IX staff are valuable resources for school-level staff members.
- Make sure you are familiar with Board policies associated with Title IX, discrimination, harassment, grievance procedures – available on District website.



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Student-on-Student Sexual Misconduct

- According to data from the U.S. Department of Education's Office for Civil Rights, there were 14,938 incidents of sexual violence in K–12 schools in 2017 – 2018 compared with 9,649 in 2015 – 2016, representing a 55 percent increase.
- According to a 2019 report from the National Center for Educational Statistics, the number of reported forcible sex offenses on school campuses increased from 2,200 in 2001 to 10,400 in 2017 (a 372 percent increase).
- Both the 2015 – 2016 Civil Rights Data Collection and the Data Highlight on School Climate and Safety published in 2018 indicated that students reported approximately 9,700 incidents of sexual assault, rape, or attempted rape at elementary and secondary schools in the 2015 to 2016 academic year.
- Research from Hofstra University found that roughly 1 in 10 students in K-12 schools have suffered "some form of sexual misconduct by an educator," but student-on-student sexual misconduct continues to be a matter of great concern to the District.



Student-on-Student Sexual Misconduct: Prevention

- Create a culture of consent.
- Partner with parents and other trusted adults in students' lives.
- Share age-appropriate resources for education.
- Monitor high-risk areas or activities (but know that sexual misconduct or abuse can and does take place in areas that may not be deemed "high risk").
- Dispel common sexual misconduct myths and misconceptions.



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Student-on-Student Sexual Misconduct: Identification

- Student-on-student sexual misconduct can take many forms. Misconduct might include, but is not limited to:
  - Title IX specific offenses, hostile environment, or quid pro quo;
  - Transmitting sexually explicit images, photos, videos or any other media without the consent of the recipient and all involved parties;
  - Soliciting or promoting sexual performance using minors;
  - Inappropriate touching of private body parts;
  - Invasions of privacy;
  - Sexual exploitation;
  - Other inappropriate behaviors of a sexual nature.
- If you see (or hear or otherwise become aware of) something, say something!



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Student-on-Student Sexual Misconduct: Identification

- **Non-exhaustive** behaviors to look out for:
  - Ducking behind desks, lab benches, gym mats, or using other methods to avoid detection;
  - Shushing or motioning for other students to be quiet so as not to draw attention;
  - Removal or alteration of clothing;
  - Inappropriate physical contact with others or with oneself;
  - Fear of physical contact;
  - Excitement surrounding a cell phone or mobile device;
  - Unwelcome touching, pinching, or restraining of students by another student;
  - Catcalling or suggestive comments;
  - Obscene gestures;
  - Refusal to sit next to or near another student;
  - Behavioral changes.



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Student-on-Student Sexual Misconduct: Reporting

If you see or hear or are told about something, say something.

ALL allegations of conduct that **MIGHT** qualify as sex discrimination—in any form—**MUST** be reported as quickly as possible.

FCSD's Title IX Coordinators are Jose Mena and Jim Yerich. They can be reached at MenaJ@fultonschools.org (for student matters) or YerichJ@fultonschools.org (for employee matters).



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Student-on-Student Sexual Misconduct: Investigation

- Must be adequate, reliable, and impartial.
- Burden on the school to conduct the investigation and gather evidence.
- Equal opportunity to be accompanied by an advisor.
- Parties must have equal opportunity to present fact and expert witnesses, inculpatory & exculpatory evidence that is relevant and permissible.
- Determine what evidence is relevant and what evidence is impermissible even if it's relevant.
- Provide equal opportunity to access relevant and not otherwise impermissible evidence: investigative report and evidence inspection (10 day timeline).
- Take reasonable steps to prevent and address unauthorized disclosure.



Student-on-Student Sexual Misconduct: Resolution

- Standard of Proof: Preponderance of the evidence.
  - "More likely than not" that the conduct occurred.
  - "50% and a feather"
- If the Decision-Maker is not persuaded under that standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the Decision-Maker **must not** determine that sex discrimination occurred.
- Under both the 2020 and 2024 Regs the District is not required to allow a live hearing.
- Determination must be issued in writing and must include:
  - The rationale for the determination, and
  - The procedures and bases for appeal.
- Title IX Coordinator must coordinate provision and implementation of remedies and sanctions.



Students With Disabilities: Additional Considerations

Students with disabilities may be at an increased risk of experiencing sex discrimination or sex-based harassment, due in part to:

- Communication barriers that prevent giving consent and disclosing abuse;
- Potential decreased capacity to consent to sexual activity;
- Limited sexual education and knowledge;
- Increased personal care needs requiring close contact.

Students traveling on Special Education busses or in in Special Education classrooms are not inherently or automatically safer than those students on General Education busses or in General Education classrooms.

Students with Disabilities: Additional Considerations

- The Assistant Secretary [OCR] will not require recipients [schools] to adopt a particular definition of consent with respect to sexual assault, as referenced in this section [the 2020 Title IX Regulations].
- Educating students about consent:
  - For students:
    - Consent means that you agree to something. You say YES. But consent isn't just saying YES.
    - We need our consent to be "informed." Informed consent means that when you say YES, you understand exactly what you are agreeing to and what the results may be.
    - Your body belongs to you, and someone needs to ask to get consent from you before touching you. Remember, "My body belongs to me."
    - You can say NO to someone touching you, or say YES to one thing (hugging) and NO to another (kissing).
    - You must also get consent from other people before you touch them. The other person must say YES.



Consent Considerations and Intersection with Students with Disabilities

- When considering whether or not a student consented, their special education status/disability needs to be considered.
- Non-verbal students may have trouble giving or communicating consent.
- Students with severe intellectual disabilities cannot provide informed consent to sexual activity.
- Consent cannot and should not be assumed, particularly in the case of students with disabilities. Not all disabilities are visible, and cognitive disabilities may prevent students who physically or developmentally resemble their peers from fully understanding their conduct or its consequences.

Title IX Life Cycle



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Sexual Harassment

If a school district has actual knowledge of sexual harassment in an education program or activity of the school district against a person in the United States, it must respond promptly in a manner that is not deliberately indifferent.



“Actual Knowledge”

- “Actual knowledge” 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.***
  - Administrators
  - Teaching staff
  - Clerical staff
  - Custodial and food service staff
  - Transportation staff
  - **YOU!!**

“Education Program or Activity of School District”

- What is “an education program or activity of the school district”?
  - Any location, event, or circumstance over which the school district exhibits substantial control over both the alleged harasser and the context in which the harassment occurred.
- Title IX does not impose a duty to report purely off-campus conduct.



“Education Program or Activity of School District”

- If conduct occurs in a building owned or controlled by a student organization that is officially recognized by the District, this qualifies as an “activity of the school district.”
- If conduct occurs on an international field trip or at any location outside the United States, it is excluded from this definition.
- What about sexual misconduct that occurred off-campus but has an on-campus effect?
    - This falls outside the DOE’s jurisdictional requirements and would be addressed through other District policies.



Three Categories of Sexual Harassment

- There are three categories that meet OCR's definition of sexual harassment and must be reported
  - Quid pro quo
  - Sexual assault, dating violence, domestic violence, stalking
  - "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"
  - Remember, though, that **ALL** incidents of sexual misconduct—even misconduct that doesn't fall into the above categories—should be reported promptly to your supervisor and to the Title IX office for review.



Sexual Harassment: Category 1

- “Quid pro quo”
- If an **employee** of the school district conditions the provision of an aid, benefit, or service of the school district on an individual’s participation in **unwelcome** sexual conduct, this is sexual harassment.
- This conduct must be reported.



Sexual Harassment: Category 2

- “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)
- “Domestic violence” as defined in 34 U.S.C. § 12291(a)(8)
- “Stalking” as defined in 34 U.S.C. § 12291(a)(30)

- Conduct that falls within any of these definitions must be reported.



Sexual Harassment: Category 3

- “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.”
- This conduct must be reported.



What Happens After Report of Sexual Harassment

- Upon a report or formal complaint of sexual harassment, a school district must treat complainants and respondents equitably by offering supportive measures to both and following a grievance process before disciplining/sanctioning respondents.
  - Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
  - Respondent means a person who has been reported to be a perpetrator of conduct that could constitute sexual harassment.



“Supportive Measures”

- Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.
- Designed to restore or preserve equal access to the school district’s education program or activity, without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the school district’s educational environment, or deter sexual harassment.
- Cannot be punitive.

Examples of Supportive Measures

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- Mutual restrictions on contact between the parties
- Changes in work or housing locations
- Leaves of absence
- Increased security and monitoring of certain areas of the campus
- Special supports for special education students
- Other similar measures



Retaliation Prohibited

- Cannot retaliate against a person for purpose of interfering with any right under Title IX or because that person has been involved in a Title IX investigation, proceeding or hearing.
- What constitutes “retaliation”?
  - Intimidation, threats, coercion, or discrimination that arises out of the same facts/circumstances as report or complaint of sex discrimination or report/complaint of sexual harassment.



Grievance Process: Basic Requirements

- Require an objective evaluation of all relevant evidence.
- Provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness.
- The Title IX Coordinator, investigator, decision-maker, or any person facilitating the informal resolution process may not have a conflict of interest or bias and must receive adequate training.
- Training materials cannot rely on sex stereotypes and must promote impartial investigations / adjudications

Grievance Process: Basic Requirements Continued

- The respondent is presumed not responsible until a determination regarding responsibility is made at the conclusion of the grievance process.
- Prompt timeframes for conclusion of the entire grievance process, including informal resolution process and appeals are required.
- Must allow temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the parties.
    - "Good cause" includes the absence of a party, party's advisor or witness; concurrent law enforcement activity; and the need for language assistance or accommodation of disabilities.

Grievance Process: Basic Requirements Continued

- A school district's grievance process:
  - Must describe range of potentially available disciplinary sanctions and remedies;
  - Must specify the standard of evidence that will be used and apply that standard to all complaints:
    - Preponderance of the evidence;
    - Clear and convincing evidence;
  - Must include procedures and permissible bases for parties to appeal;
  - Must describe the range of supportive measures available to the parties;
  - May not allow any evidence or questions that would invade a legally recognized privilege, unless the privilege holder waives it.

Grievance Process: Record Keeping Requirements

- School districts must maintain the following records for 7 years:
  - Each sexual harassment investigation, including determination, sanctions, and remedies resulting therefrom;
  - Any appeals therefrom;
  - Any informal resolutions thereof; and
  - All training materials, which the recipient must also make available for public inspection.
- School districts must also maintain records of any other actions it takes, including supportive measures, in response to reports or formal complaints of sexual harassment.
- This is why understanding the entirety of the process is so important—your actions (the District's actions) will be memorialized for years and it's important to get it right.



Reporting

- ALL employees are responsible for reporting sexual harassment AND allegations of sexual harassment.
- Reports should be made IMMEDIATELY.
- Staff can report sexual harassment to their principal, who can assist in ensuring this conduct is reported properly.
- The District's Title IX Coordinator and Title IX staff are valuable resources for school-level administrators as they receive complaints, investigate allegations, and make determinations regarding responsibility.
- FCSD's Title IX Coordinators are Jose Mena and Jim Yerich. They can be reached at MenaJ@fultonschools.org (for student matters) or YerichJ@fultonschools.org (for employee matters).