

UNDERSTANDING TITLE IX

2020 Regulations

STAFF TRAINING
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What is Title IX?

- Title IX of the Education Amendments of 1972 is a federal law that prohibits discrimination against students, employees, and other individuals (e.g., third parties, applicants for employment) based on sex in school's education programs, activities, operations that receive federal financial assistance.
- Title IX states: "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."

What Are Schools Required To Do Under Title IX?

Since the U.S. Department of Education issued regulations that went into effect August 14, 2020, Schools are required to:

- Designate a Title IX Coordinator
- Train staff to understand the definition of sexual harassment and gender discrimination under Title IX
- Respond immediately to reports of sexual harassment
- Adopt and implement a grievance process for formal complaints of sexual harassment
- Ensure all parties involved in complaints are treated equitably
- Train school administration and staff involved in the Title IX process

What Is The Role Of The Title IX Coordinator?

- The Title IX Coordinator coordinates the district and school efforts to comply with responsibilities under Title IX.
- The Title IX Coordinator has primary responsibility for coordinating Title IX compliance efforts, including answering questions about sex discrimination from the school community, responding to reports of sexual harassment, receiving formal complaints, initiating and overseeing the grievance process, and implementing supportive measures and remedies.

Definition Of Sexual Harassment

- Conduct **on the basis of sex** that **occurs in any education program or activity** of the school in the U.S. that satisfies one or more of the following:
 - An employee of the institution **conditioning** the provision of an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct (quid pro quo); or
 - 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 institution's education program or activity; or
 - Sexual assault, dating violence, domestic violence, or stalking (as defined by law).

Examples Of Sexual Harassment In Schools

Sexual harassment is a form of sex discrimination under Title IX.

- Examples of conduct that may constitute Sexual Harassment include:
 - Assault
 - Threats
 - Slurs
 - Insults
 - Dehumanizing gestures
 - Online comments or pictures
 - Nicknames implying stereotypes
 - Epithets
 - Exclusion
 - Jokes
 - Offensive cartoons, drawings, symbols, or gestures
 - Sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.
 - Jokes, insults, etc.

Scenario

- Two boys in class repeatedly tease a girl they sit next to about her physical appearance.
- You've had to address it several times in the semester.
- You notice that the female student has been quieter and more reserved in class.
- On the most recent occasion, you see the boys showing the girl inappropriate pictures on their phone and making comments to her.
- The girl starts crying and asks to leave class. She starts to miss class frequently.
- Does this trigger Title IX?

Triggering The School's Obligation To Act

- When the school has actual knowledge of conduct that could constitute sexual harassment under Title IX in an education program or activity of the school, the school must respond promptly in a manner that is not deliberately indifferent.
- The school is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstance.

What Does “Actual Notice” Mean For School Staff?

- The school has actual knowledge if the Title IX Coordinator or **any school employee** knows of conduct or allegations of conduct that could constitute sexual harassment in violation of Title IX.
- **A school employee has notice if**, for example, the employee witnesses the harassment, another person reports the harassment to the employee, the employee sees an online social media post about an incident at a school function or activity.

What Constitutes An “Education Program Or Activity?”

- This includes locations, events, or circumstances over which the **school exercised substantial control** over both the accused and the context in which the sexual harassment occurs.
- May be on or off school grounds (e.g., on the bus, at another school, at hotel etc.)
- May include social media or other online communication where there is sufficient connection to the workplace or to a school program or activity.
- An education program or activity includes circumstances over which the recipient exercised substantial control over both the respondent and the context in which the harassment occurred.

Examples Of Unreasonable Responses

- Allowing the same or small group of students to continually harass one student can be evidence of deliberate indifference.
- Failure of staff to report observed harassment.
- Responding to multiple allegations of harassment with verbal warnings when the harassment continues.
- Making no effort to investigate or put an end to the harassment.

Title IX Sexual Harassment: Staff Reporting Obligations

- **Obligation to Report.** All school district employees who witness or otherwise learn of conduct that may constitute sexual harassment or other types of sex discrimination must promptly to the Title IX Coordinator.
- **Mandatory reporting.** if the evidence suggests that the sexual harassment constitutes a crime or requires mandatory reporting, the Title IX Coordinator must report the harassment to social services and/or law enforcement agency.

Title IX Sexual Harassment: Staff Reporting Obligations

- When a report of sexual harassment is made, the Title IX Coordinator must promptly:
 - Contact the alleged victim to discuss the availability of supportive measures and consider the alleged victim's wishes with respect to supportive measures.
 - Explain to the alleged victim the process for filing a formal complaint.
 - Ensure both parties are treated equally and apply a presumption that the accused is not responsible for the conduct until a determination is made following the grievance process.
- Title IX allows for an emergency removal of a student if the student poses a threat to the physical safety of the alleged victim or others.
- Title IX allows the school to put an employee on administrative leave pending the completion of the grievance process.

Overview Of The Title IX Process

- **Formal Complaint:** a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the district investigate the allegation(s) of sexual harassment.
 - At the time of filing a formal complaint with the district, a Complainant must be participating in or attempting to participate in the district's education program or activity.
- **Grievance Process:** an up to 90-day investigation and decision process and serves as the District's response to allegations of sexual harassment.
- **Parties:**
 - ✓ **Complainant:** an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
 - ✓ **Respondent:** an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Discipline

- If the conduct constitutes sexual harassment under the law, a student cannot be disciplined until a determination is made through the Grievance Process.
- Schools are not required to take particular (or any) disciplinary action against every student accused of misconduct.

Key Takeaways

- Understand the definition of sexual harassment.
- Know the name of your Title IX coordinator.
- Learn the reporting process.
- If in doubt, check with administration.
- If it is a Title IX matter, do not discipline prematurely.
- Don't forget to report all sex discrimination (treating someone differently on the basis of sex) including sexual harassment (see above).

Thank You.
