Title IX

Michelle Cooper
mcooper@lewis-kappes.com
(317) 750-3814 (Cell)

What is Title IX?

- Title IX of the Education Amendments of 1972 – 20 U.S.C. §§ 1681-1688
  - "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 is Title IX?

- Educational programs and activities must not discriminate based on gender.

Regulation Update Applicable to Sexual Harassment Title IX Claims

- Effective August 14, 2020, new regulations went into effect that apply specifically to sexual harassment Title IX claims.

What's New with the 2020 Changes?

- Updated definition of sexual harassment
- Title IX Coordinator requirements
- Policy requirements
- Reporting requirement – ALL staff
- Robust and specific procedural requirements – formal and informal – grievance, appeal, mediated resolution
- Limits on pre-determination discipline/corrective action
- Training requirements
- Record-keeping requirements

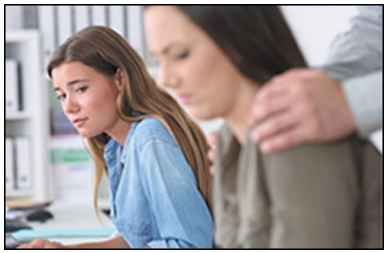
Claims Encompassed Under Title IX

Examples:

- Sex-based harassment
- Sexual assault
- Sexual harassment
- Athletics
- Pregnancy
- Parenting students

Sexual Harassment – Quid Pro Quo

- When a school employee conditions receiving an aid, benefit, or service of the school on a student's participation in unwelcome sexual conduct ("quid pro quo")

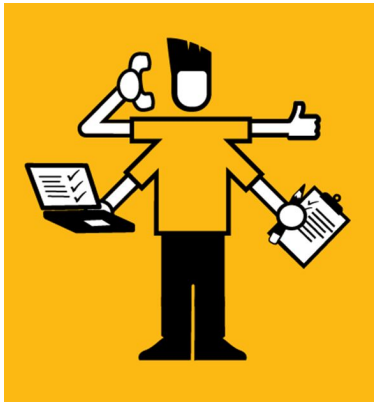


- Employee - student
- Sexual conduct can include:
  - Sexual advances
  - Requests for sexual favors
  - Verbal, nonverbal, or physical conduct of a sexual nature

Sexual Harassment – Hostile Environment

- Unwelcome conduct that a reasonable person would conclude to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity ("hostile environment")
- Employee – student OR student – student (even if not specifically targeted)

Title IX Coordinator



- Must designate "Title IX Coordinator" to coordinate compliance – include in job title.

Notifications

- Notify all applicants, students, parents/legal guardians and employees:
  - Name/title, address, email, telephone number of Title IX Coordinator (and post on website and in handbook)
  - Non-discrimination policy
  - Grievance procedures – how to report or file a complaint and how school will respond
- School policies are being updated to comply with these requirements.

Reporting Requirements

- Every employee must report sex discrimination to the Title IX Coordinator.

- Reporting requirement applies to ALL staff.
  - Tell the Title IX Coordinator
- You may also have other reporting requirements – e.g. child abuse – this is separate and BOTH must be done
  - Report child abuse or neglect to DCS first, and then the Title IX Coordinator next.

General Response

- If school has actual knowledge of a claim, then must promptly respond in a manner that is not deliberately indifferent
  - Actual knowledge = notice to ANY employee (except respondent)
  - Deliberately indifferent = clearly unreasonable in light of the known circumstances

Confidentiality

- Confidentiality needs to be maintained to the extent permitted by law.

Procedural Requirements

- Prompt and equitable resolution of complaints
- Title IX Coordinator must promptly contact complainant when s/he learns of potential sexual harassment to discuss availability of supportive measures with or without a formal complaint, consider complainant's wishes with respect to supportive measures, and explain complaint process for formal complaint.

Supportive Measures

- Non-disciplinary/non-punitive individualized services
  - Offered to complainant and/or respondent
  - Before or after formal complaint or when no formal complaint has been filed – NO DISCIPLINE BEFORE GRIEVANCE PROCESS IS COMPLETE!

Supportive Measures

- Designed to restore or preserve equal access to educational programs and activities without unreasonably burdening the other party
  - Protect safety
  - Protect educational environment
  - Deter sexual harassment
- Examples: counseling, extensions of deadlines or other course-related adjustments, modifications of class schedules, escort services, mutual contact restrictions, leave of absence, increased security

Supportive Measures

- Confidential – must maintain confidentiality to the extent that it would not impair the ability to provide the supportive measures
- Title IX Coordinator responsible for coordinating effective implementation

Emergency Removal of Student

- Respondent may only be removed from school pre-determination if the school:
  - Undertakes an individualized safety and risk analysis
  - Determines that an immediate threat to the physical health or safety of any student or individual arising from the allegations justifies removal
  - Provides respondent with notice and opportunity to challenge the decision immediately following removal
- Still must follow special ed requirements

Paid Administrative Leave

- May place an employee on administrative leave while grievance process is pending

Informal Resolution

- Mediation or similar informal resolution
- Voluntary process – written consent required
- Only if formal complaint is filed
  - Cannot use for employee-student cases

Formal Complaint – Grievance Process

- This is a more formal investigative process and is overseen by the Title IX Coordinator.

Training

- Title IX Coordinators, investigators, decision-makers, and any person that facilitates informal resolution must be trained on:
  - Definition of sexual harassment
  - Scope of school's education program or activity
  - How to conduct an investigation and grievance process
  - How to serve impartially – stereotypes, bias, conflicts

No Retaliation

- No one may intimidate, threaten, coerce, or discriminate against anyone for the purpose of interfering with any right or privilege secured by Title IX or because someone has made a report or complaint, testified, assisted, or participated or refused to participate in an investigation or proceeding.

THANK YOU!

Michelle L. Cooper
(317) 750-3814 – Cell
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