



# Bentonville Schools

Where Excellence Lives

# Objectives

- Final Rule - May 6, 2020
  - Regulations Effective August 14, 2020
- Purpose
- History
- What this means for K-12 Schools

# Title IX Final Rule Guiding Principles

- Title IX Coordinator - Trish Wood
- Title IX Policies and Procedures
- Training for District Personnel
- Define Roles
- Supportive Measures
- Document, Notify, Investigate, Inform
- Prompt and Equitable Grievance Process

# Purpose of Title IX Final Rule

- Ensure all students have equal access to educational opportunities
- Compel schools to respond promptly and appropriately to sexual misconduct
- Protect the rights of both the complainant and the respondent

# History

“No person in the United States shall, on basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.”

20 U.S.C. § 1681  
34 C.F.R. Part 106 (19

# History

- Title VI of the Civil Rights Act of 1964
- Title VII of the Civil Rights Act of 1964
- 1972: Title IX passed and signed into law by President Nixon

# History

- Franklin v. Gwinnett County Public Schools, 503 U.S. 60 (1992)
- Gebser v. Lago Vista Independent School District, 524 U.S. 274 (1998)
- Davis v. Monroe County Bd. of Education, 526 U.S. 629 (1999)

# What this Means for K-12

- What is sexual harassment?
- When is a school on notice of sexual harassment?
- What must a school do to support alleged victims?
- What personnel and policies do schools need?
- What grievance process must a school generally follow before making findings and disciplining?
- What are other features of the new regulations?
- How do the new regulations protect free speech?

# Sexual Harassment Definition

- “Quid Pro Quo” Harassment
- Any unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal educational access
- Any instance of sexual assault (defined by Clery Act), dating violence, domestic violence or stalking as defined in the Violence Against Women Act (VAWA).

[Clery Center](#)

# Sexual Harassment Definition cont...

## Balance of Title IX Enforcement with Respect to Free Speech

- In order for verbal sexual harassment to meet the standard for severe, pervasive and offensive... it must be serious enough to deprive a person of equal access.
  - Example: A one-time event of calling someone a name doesn't meet the standard.
  - If, however, a fellow student consistently greets his/her Calculus peer with a sexually-based vulgar name - it may meet the standard if the peer becomes afraid to go to Calculus.

# Remember

Just because a situation doesn't meet Title definitions for sexual harassment or assault Doesn't mean it's not a disciplinary issue or infraction.

# When is a school on notice?

Once you have knowledge of sexual harassment or an allegation of sexual harassment the school has to respond and take action

- When a school learns a person may have been victimized by sexual harassment
- Any person, whether the alleged victim or a parent, friend, or bystander, has the right to report sexual harassment to put the school on notice
- Or sometimes School personnel will personally witness sexual harassment

# What kind of response must the school provide?

- Respond promptly
- No “deliberate indifference”
- Response must not be “clearly unreasonable”

Tom  
bleeding fast!”  
“What is it?” Strunk  
“God, I hope I haven’t gotten  
Tom shoved past. Strunk and Benny  
were on the top step. Tom was a block away and running till  
till for the poor side of town.  
“Where’s he going?” Strunk asked, grabbing Benny’s  
shoulder.  
Benny shook off the grab and ran after his brother with-  
out answering. It already knew where Tom was going. There  
was only one other person Tom trusted that much.  
Jessie Riley.  
As he ran, Benny repeated a single word over and over:  
“Yu.”

# What kind of response must the school provide cont...?

- Title IX Coordinator must provide information to the individuals
  - Availability of [Supportive Measures](#)
  - The right to file a complaint
  - How to file a complaint

# A complaint will typically begin as an informal statement...

Johnny says to teacher - "Suzy has been rubbing me on the bottom every day when I get to art class. It's embarrassing and I've asked her to quit but she won't. Can you make her stop?"

Bentonville Schools are officially on Notice

Now what?

# Process: Step 1

In any situation which you believe may rise to the standard of sexual harassment or assault – an administrator's first step is to contact the Title IX Coordinator – Trish Wood

## [Incident Reporting System](#)

- The Title IX Coordinator will
  - Contact the complainant
  - Discuss availability of supportive measures (with or without a formal complaint)
  - Explain how a formal complaint may be filed;
  - This can conclude the process if the complainant does not choose to file a formal complaint.

## [Incident Reporting System](#)

If it does not end with Step 1 and  
Formal Complaint is filed...

# Process: Step 2

A **formal complaint** may be filed with the Title IX coordinator

- By mail
- In person
- By email
- By electronic form submission (if available)

Step 2 Notes:

A formal Complaint is:

- A document (in writing);
- Must be signed (in person or digitally)
- May be filed by the complainant, parents (of students) or the Title IX Coordinator

At the time of a formal complaint:

- The complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed
- A respondent is presumed not responsible and no disciplinary action may be taken against the respondent until the investigation or grievance process is complete.

# Process: Step 3

The Title IX Coordinator will provide to both the complainant and respondent (simultaneously):

- Notice of the grievance process and a copy of the procedures
- Notice of the allegations - including details such as
  - Identities of the parties involved
  - Conduct in question
  - Date and location of incident (if known)

[Incident Reporting System](#)

# Process: Step 3 cont....

The Title IX Coordinator's notice must also contain:

- A statement that the respondent is presumed not responsible and that a determination will be made at the end of the grievance process;
- A statement that informs parties that they may have an advisor of their choice (attorney or not);
- A statement that the parties may review evidence relevant to the complaint of sexual harassment
- That the District's policies prohibit knowingly making false statements or submitting false information.

# Process: Step 4

Investigator starts their process

- Remain unbiased
- Gather evidence
- Conduct interviews
- Do not restrict the ability of either party to discuss the allegations and to gather evidence
- Document the source and content of all evidence
- Provide all evidence to the appropriate Decision Maker

[Incident Reporting System](#)

# Process: Step 5

## The Decision Makers

- Monitor grievance procedure
- Ensure all parties receive copies of all evidence and all parties have an opportunity to review and respond to the evidence;
- Provide each party with an opportunity to submit and receive answers to any questions regarding the evidence
- Review evidence as presented
- Compose and communicate a written determination to all parties and the Title IX Coordinator

[Incident Reporting System](#)

What if the respondent is found not  
be responsible....

# Process: Step 6: Respondent Not Responsible

- Supports are provided to both the complainant and the respondent
- Title IX investigation is complete
- Other disciplinary measures may be taken which are not related to sexual harassment or assault, if warranted
- Keep all documentation with the Title IX Coordinator for 7 years

[Incident Reporting System](#)

What if the respondent is found to be responsible...

# Process: Step 6: Respondent Responsible

- Supportive measures are provided to both the respondent and the complainant
- Remedies are provided for the complainant – including those which may be considered punitive (change schedules for the respondent, not allowing respondent to participate in a club or activity, etc.)
- Disciplinary measures, if appropriate, may be taken

[Incident Reporting System](#)

What if they do not like the decision....Can they appeal?

# Process: Step 7 (If needed): Appeal Process

Yes, they can appeal to the Executive Director of Student Services - Don Hoover

- Reviews all information
- Allows the opportunity to give additional information
- Makes a decision - Final answer. The parties can not appeal beyond this level.
- Provides written notice to all parties

[Incident Reporting System](#)

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# Recap of Steps

- Notify Title IX Coordinator Incident Reporting System
- Title IX Coordinator provides notice to all parties
- Informal Complaint (hopeful resolution through supports)
- Formal Complaint
- Title IX Coordinator provides notice to all parties
- Investigation by Investigators
- Decision by Decision Makers
- Notice provided to all parties by Decision Maker
- Opportunity to Appeal to Executive Director of Student Services
- Reviews all documents and gives opportunity to provide additional information
- Notice to all Parties

Update Incident Reporting System with every step.

# Additional Information

- Training must be provided to all roles: Title IX Coordinator, Investigators, Decision Makers
- Building Administration should make staff aware that all allegations are to be taken seriously
- Decision Makers and Investigators must have training on how to remain unbiased
- All training must be documented
- Training must be made available to the public by locating it on the website.
- Additional Information at monthly Administration Meetings





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