



TITLE IX COORDINATOR BOOT CAMP

OCTOBER 18, 2022



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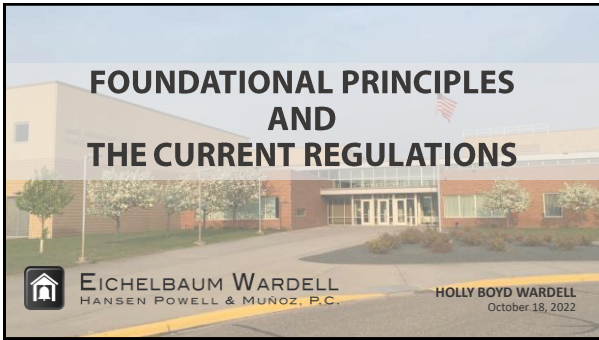
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Foundational Principles and the Current Regulations

Presented by: Holly Boyd Wardell

October 18, 2022



Title IX: 1972

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education programs or activity receiving federal financial assistance.

Signed into law by President Richard Nixon on Friday, June 23, 1972.

Title IX: 1972

- 1973: Battle of the Sexes - Billie Jean King defeated Bobby Riggs in an exhibition tennis match
- 1975: First Title IX regulations adopted
- 1976: NCAA challenged the legality of Title IX regarding athletics in a lawsuit was dismissed two years later
- 1977: Three female students at Yale, two graduates, and a male faculty member became the first to sue over sexual harassment under Title IX (Alexander v. Yale). The cause of action failed on appeal.
- 1979: Three-prong test for compliance in athletics established.
- 1979: Students can sue for sex discrimination (Cannon v. Univ. of Chicago)
- 1980: Oversight for compliance was given to the Office for Civil Rights (OCR) in the U.S. Department of Education
- 1982: Employees could sue for sex discrimination
- 1992: Students can sue for money damages for discrimination by employees (Franklin v. Gwinnett County Public Schools)
- 1999: Students can sue for sexual harassment by students
- 1997: OCR issued "Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties" containing the first explicit reference to "gay or lesbian students" as being covered by federal prohibitions against sexual harassment

Title IX: 1972

- 1998: Student can sue for teacher's sexual harassment only if the school had "actual notice" and acted with "deliberate indifference" (Gebser v. Lago Vista ISD)
- 1999: Title IX covers student-to-student harassment; damages available only if school had actual notice and acted with deliberate indifference (Davis v. Monroe County)
- 2001: OCR issued revised guidance on sexual harassment – Gebser and Davis did not apply to OCR enforcement actions
- 2005: Coaches and teachers have a right of action under Title IX for retaliation (Jackson v. Birmingham Bd of Educ.)
- 2006: OCR issued guidance allowing single-sex programs/schools
- 2014: Obama Administration OCR issued DCL saying transgender students should be allowed to use the bathroom or locker room that matches their gender identity
- 2018: Trump Administration OCR rescinded the 2014 Obama Guidance
- 2020: Second version of Title IX Regulations adopted - amended to address sexual harassment investigations
- 2021: Biden Administration – Exec. Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation

OUTLINE FOR 2020 MODEL YOU STILL NEED TO KNOW

1. What is sexual harassment?
2. When is a school on notice of sexual harassment?
3. What must a school do to support alleged victims?
4. What personnel and policies do schools need?
5. What grievance process must a school generally follow before making findings and disciplining?
6. What are other features of the 2020 regulations?
7. How do the 2020 regulations "protect" free speech?
8. Who needs to be trained?

1. What is considered "sexual harassment"?

- **Quid Pro Quo** harassment
- **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 school's education programs or activities.* (Hostile environment definition used by courts for student to student)
- **"Sexual assault," "dating violence," "domestic violence," or "stalking"** as those terms are defined under the Federal laws called the Clery Act and the Violence Against Women Act. (These have their own definitions.)

2. When does a school have notice?

- Once a school has **actual knowledge** of sexual harassment or allegations of sexual harassment, the school has to respond and take action.
- A school has **actual knowledge** when the school has **notice** that a person may have been the victim of sexual harassment.
- By policy, all school staff have the duty to report.
- 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.



REPORTS MAY BE MADE BY:

- Filling out form
- Verbal
- Mail
- Telephone
- Email

Reports may be made at any time, including non-school hours.



Actual Knowledge and School Personnel

- The Title IX Coordinator for the school district or school.
- Schools have to provide the contact information for the Title IX Coordinator. (see next slide)
- Other people within the school who have authority to institute corrective measures. This could vary from school to school, but always includes the Title IX Coordinator.
- In elementary and secondary schools, knowledge by any school employee puts the school district on notice. This includes food service, substitute teachers, bus drivers, custodians, clerks.
- This means schools should train ALL employees.



NOTICE

Title IX Coordinator's Contact Information must be given to:

- Students
- Employees
- Applicants for Admission
- Employee Applicants
- Parents/Legal Guardians

Contact Information: Name, title, office address, email address, and telephone number. Must be "prominently displayed" on website.



3. What kind of response must the school provide?

The school cannot be "**deliberately indifferent**." Deliberate indifference = liability. That also means that it cannot be "**clearly unreasonable**" in light of the known circumstances. The clearly unreasonable standard may protect districts who "do not do enough, but were not clearly unreasonable"

The Title IX Coordinator must provide information to **Complainant**:

- The availability of **supportive measures**;
- The **right to file a complaint**, and
- How to file a complaint and the process.



4. What personnel and policies must schools have?

- **Title IX Coordinator**;
 - Specific information about how to contact the Title IX Coordinator must be provided by the school.
 - Currently also need Investigator, Decision Maker, Appellate Decision Maker
- **Non-Discrimination policy**;
- Written **grievance procedures**;
- Information about how to file a **formal complaint** regarding sexual harassment.



Formal Complaints

- A formal complaint is an official document alleging sexual harassment.
- It's **filed** and signed by the student (or parent/legal guardian) or in some cases the Title IX Coordinator.
- In cases where an alleged victim doesn't file a formal complaint, a Title IX Coordinator might initiate grievance procedures where discipline is appropriate.
- Discipline for Title IX-sexual harassment will be difficult without using procedure.



Written Grievance Procedures

- **For now**, grievance procedures dealing with sexual harassment must abide by the 2020 regulations.
- The 2020 regulations refer to alleged victims as **complainants** and alleged perpetrators as **respondents**, whether or not the grievance process has begun.
- The grievance procedures cannot discriminate on the basis of sex, and provisions **must apply equally** to complainants as respondents.
- Written grievance procedures need to include 10 other specific items.



Requirement 1: Treat Parties "Equitably"

- The school's grievance process must treat complainants and respondents equitably by providing **remedies** to a complainant if a respondent is found responsible, and by following the prescribed **grievance process before** imposing **discipline** on a respondent.
- The **remedies** for a complainant must be **designed to restore or preserve equal access** to the school's education program or activity.
- Unlike supportive measures in place with or without a grievance process pending, a complainant's **remedies CAN be punitive** or disciplinary against the respondent.



Requirement 2: Objective Evaluation of Evidence

- The school's grievance process must ensure an **objective evaluation of all relevant evidence** – including inculpatory and exculpatory evidence.
- **Credibility determinations** cannot be made on the basis of a person's status as a complainant, respondent, or witness.

The term "grievance process" by OCR refers to the investigative process by a school.



Requirement 3: Training; No Conflicts of Interest

- The individuals involved in the process - the **Title IX Coordinator, investigators, decision-makers, or facilitators of informal, voluntary resolution efforts** – must not have any **bias or conflict of interest**.
- These individuals must also be **trained**. The materials used to train Title IX personnel cannot rely on sex stereotypes, must promote impartial investigations and adjudications, and must be **posted on each school's website**. (Must have copyright permission to publish.)



Requirement 4: Presumption of Innocence

- Under the school's grievance procedures, **the respondent must be initially presumed not responsible**, so that any finding of responsibility only comes at the conclusion of a grievance process.



Requirement 5: Reasonably Prompt Time Frames

- The grievance process must include **reasonably prompt time frames** for resolving formal complaints of sexual harassment.
- **Temporary delays** are permitted only for **good cause**. Good cause can include law enforcement activities, the absence of a party or witness, the absence of a party's advisor of choice, or the need to provide language assistance or accommodation of disabilities. District policy and handbooks should include these reasons along with any other reason deemed good cause.



Requirement 6: Description of Outcomes

The grievance process must describe or list the range of possible remedies and disciplinary sanctions that could occur following a determination of responsibility.

This means "the range" should be listed in handbook and any administrative regulations. See, e.g., [STUDENT WELFARE - FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION](#) dash.org.



Requirement 7: Standard of Evidence

- The grievance process must state which standard of evidence the school will use to reach a determination regarding responsibility.
- Schools can **choose** between the **preponderance of the evidence** standard and the **clear and convincing evidence** standard.
- Whichever standard the school chooses, it has to use that standard for all formal complaints of sexual harassment, whether the respondent is a student or employee.
- All sexual harassment proceedings must have the same standard of evidence.



Requirement 8: Right to Appeal

- The grievance procedures must contain the **right to appeal the result of the grievance process**.
- Appeal process should be explained in handbooks and administrative regulations



Requirement 9: Description of Range of Supportive Measures

The grievance process must describe the **range of supportive measures** available to complainants and respondents.

Examples need to go into handbooks and administrative regulations that are published.



Supportive Measures

Supportive measures may include:

- individualized services that are non-punitive, non-disciplinary, and do not unreasonably burden the other party yet are designed to restore or preserve a person's equal access to education;
- placing students immediately in separate classes pending the results of the school's investigation;
- notify the complainant of the options to avoid contact with the respondent and allow students to change academic situations as appropriate;
- counseling.



Requirement 10: Privileges

- No information protected by a legal privilege (such as the attorney-client privilege or the doctor-patient privilege) can be used during an investigation unless the person holding that privilege has waived it.
- Neither a party nor the school is allowed to seek, permit questions about, or allow the introduction of evidence that is protected by a recognized privilege.
- Individuals can always opt to waive their own privileges.



5. What is required in this Grievance Process?

- The process is triggered when a **report** is filed.
- An investigation is triggered when a **formal complaint** is filed
- A formal complaint can be filed by an individual or the Title IX Coordinator.

The "Grievance Process" contains multiple parts, including the "investigation," which must be conducted before you come to any "conclusions," and before any "appeal."



Written Notice to the Parties

- When the school begins an investigation, it must provide the parties with written notice of certain information before anyone is questioned.



Details of Written Notice

1. The actual allegations and facts that would constitute sexual harassment.
2. The presumption of innocence.
3. A statement that the parties are entitled to advisor of their choice.
4. A statement that the parties can request to inspect and review certain evidence.
5. Information regarding the code of conduct and false statements.



Emergency Removals

- A school may remove a respondent from the school's education programs or activities on an emergency basis if the respondent poses an immediate threat to anyone's physical health or safety.
- If the respondent is a school employee, the final regulations do not prevent a school from placing that employee on administrative leave during the investigation.



Mandatory Dismissal

A school must dismiss a complaint:

- that does not describe conduct that meets the definition of sexual harassment;
- that alleges sexual harassment that did not occur in the school's education program or activity;
- that alleges sexual harassment that **did not occur in the United States** (e.g., schools trips out of U.S.).*

*Schools can still address these complaints under their code of conduct, even if the misconduct is not sexual harassment under Title IX.



Discretionary Dismissals

A school may dismiss a complaint:

- if the complainant notifies the Title IX Coordinator in writing that he/she wishes to withdraw the formal complaint or some of its allegations;
- if the respondent is no longer enrolled or employed by the school;* or
- if specific circumstances prevent the school from gathering evidence sufficient to reach a determination about the allegations.



*For employees, continue to SBEC/DNHR.

Dismissal Procedures

- Whenever a school dismisses a formal complaint, or any allegations in it, the school must promptly send written notice of the dismissal and the **reasons to the parties**.
- Both parties have the right to appeal a school's dismissal decisions (more later).



Gathering Evidence: Schools and Parties

- The school must give both parties equal rights and protections. These protections apply whether the complainant filed the formal complaint or whether the Title IX Coordinator began the investigation by signing the formal complaint.
- The school is not allowed to access a party's personal records if they are maintained by a physician, psychiatrist, psychologist, or other professional for the purpose of treatment to the party, without consent.



Gathering Evidence: Schools and Parties

- The school must provide an equal opportunity for the parties to present witnesses and evidence, including expert witnesses, as well as inculpatory or exculpatory evidence.
- The school cannot restrict the ability of either party to discuss allegations under investigation or to gather and present relevant evidence. (Note: This is for parties, not witnesses.)
- The school has to provide the same opportunities to the parties to have others present during the grievance proceedings, including access to an **advisor of choice for any meetings** or hearings. Both complainant and respondent are entitled to an "advisor" of their choice.



Gathering Evidence: Schools and Parties

- The school has to provide written notice of the date, time, location, participants, and purpose of all hearings, interviews, or other meetings, with sufficient time for the party to prepare.
- The school must also provide equal opportunities for the parties and their advisors to inspect and review the evidence obtained by the school as part of its investigation, if the information is directly related to the allegations raised in the formal complaint.
- The school must also give the parties a meaningful opportunity to respond to the evidence.



Investigative Reports

- After gathering evidence, the school must prepare an investigative report on the allegations of the formal complaint.
- A school must give the parties at least 10 days to respond to the evidence in writing. If a response is submitted, the school must consider that response before finalizing the investigative report. The investigative report can then be finalized and provided to the parties.
- That report must be circulated to the parties at least another 10 days before any determination of responsibility. This means before there can be a conclusion, at least 20 days will occur.



Hearings

- For elementary and secondary schools, the school has the **option**, but never the obligation, to hold a hearing.
- Even without a hearing, the elementary or secondary school must still give the parties equal opportunity to submit relevant, written questions to each other, before the decision-maker reaches a determination.
- Questions and evidence about a complainant's prior sexual history are **not** relevant, with two limited exceptions:
 - to prove someone other than the respondent committed the alleged misconduct or
 - to prove consent.



Participation and Cross-Examination

- Every person has the right to choose to participate or not participate in any part of a grievance process. No one may be forced, threatened, coerced, or discriminated against for choosing not to be part of the school's grievance process.
- The decision-maker is not supposed to make inferences about the determination regarding responsibility based on the fact that a party or witness did not fully participate in the process.



Decision-Making: Objective and Unbiased

- The school's decision-maker must objectively evaluate the relevant evidence and reach conclusions about whether the respondent is responsible for the alleged sexual harassment.
- A school's decision-maker needs to use independent judgment: **cannot be the same person who conducted the investigations or the Title IX Coordinator.**

Who are the decision-makers?

- Decision-makers must be free from conflicts of interest or bias for or against complainants or respondents and must receive special training about how to be impartial and how to decide what evidence is relevant.
- The decision-maker will weigh the relevant evidence and decide whether it meets the school's standard of evidence for sexual harassment allegations.



Decision-Making: Written Decisions

After the evidence has been weighed, DM must issue a **written decision**. It must include:

1. The **portion** of the school's **policies** that was **violated**.
2. A description of the that were taken by the school on the way to getting to that point. **procedural steps**
3. A **findings of fact** section
4. A section that draws **conclusions** after applying the facts to the portion of the school's policy that applies
5. A **statement and rationale** for the ultimate **determination of responsibility**.



Decision-Making: Written Decisions

6. **Any disciplinary sanctions** that the school will impose on the respondent and state whether the school will provide remedies to the complainant.
7. A statement and rationale for any remedies for the complainant, addressing **how those remedies will restore or preserve equal access**.
8. A statement of the recipient's procedures, a statement that the parties have a **right to appeal** the initial determination regarding responsibility, and the permissible bases for appeal.



Decision-Making: After the Decision

- The school must **send the written determination to the parties simultaneously, along with information about how to appeal the determination**.
- A school has discretion to set deadlines of when an appeal must be filed, bearing in mind the obligation to conclude the entire grievance process and bring resolution to the situation for both parties, within a reasonably prompt time frame.
- The Title IX Coordinator is responsible for ensuring that the remedies contained in the written decision are carried out.



Remedies

The District's remedies are designed to "restore or preserve equal access to the school's education program or activity." Possible "range of remedies" - verbal warning to assignment to disciplinary alternative placement/expulsion. Consider:

- training program for those involved in the complaint
- comprehensive education program for the school community
- counseling to the complainant and the respondent who engaged in prohibited conduct
- increasing staff monitoring of areas where prohibited conduct has occurred
- reaffirming the District's policy against discrimination and harassment.

Respondents who are employees may be subject to a range of discipline from a written warning up to and including termination of employment.



Appeals

- **Both parties have the right to appeal.**
- Appeals can be taken from two different steps in the process.
 - After a dismissal before the grievance process, whether mandatory or discretionary
 - At the end of the grievance process



Grounds for Appeal

1. A **procedural irregularity** affected the outcome of the matter.
2. **New evidence** has been discovered that was not reasonably available at the time of the determination of responsibility or dismissal.
3. A **conflict of interest** on the part of a Title IX Coordinator, an investigator who compiled the evidence, or a decision-maker, and the conflict of interest affected the outcome.
4. Schools can offer additional grounds for appeals, if they want to, so long as the grounds apply on an equal basis to the parties.



Appellate Process

- The recipient must notify the parties in writing and implement appeal procedures equally.
- Both parties must have equal opportunity to submit a written statement supporting or challenging the outcome
- The person who decides the appeal cannot be the same person **who reached the determination regarding responsibility, or the same person as the investigator or Title IX Coordinator.***
- After considering the parties' written statements, the decision-maker on appeal must issue a written decision and send it to the parties simultaneously.
- The school's determination about whether the respondent is responsible for the sexual harassment allegations **becomes final after appeal.** Final does not mean an employee is denied due process if the District wishes to terminate.



Informal Resolution

- Schools can offer informal resolution in appropriate cases:
 - Exception: Where the respondent is an employee of the school
- Informal resolution only if voluntary by each party.
- A school can never force, threaten, or require informal resolution.
- If informal resolution proceeds, the school must provide a facilitator who is unbiased and who has received special training.
- The school still needs to provide complainant and respondents with notice of the allegations, notice of their rights, information about whether an informal process is confidential, and about withdrawing from the process.



6. Other Issues: Record-Keeping

This duty extends for **7 years** and includes several categories of documents:

1. Records of investigation.
2. Records of any appeal/materials associated with an appeal.
3. Records of any informal resolution process
4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution (and remain posted on District's website).
5. Records of the supportive measures that they took in response to a report or complaint of sexual harassment.



Other Issues: Retaliation

- No school or person is allowed to retaliate against anyone for exercising rights under Title IX.
- Any person **retaliated** against may file a complaint with the school, and the school must have procedures in place for the prompt and equitable resolution of such complaints.
- The school should keep the identities of parties and witnesses confidential, unless disclosure of someone's identity is required under other laws (e.g. FERPA) or is necessary in order to conduct the grievance process.



7. How does this process protect free speech?

- The 2020 regulations prohibit a school from telling complainants and respondents that they cannot talk about the allegations, investigation, or grievance process.
- When OCR investigates a school for possible Title IX violations, OCR will never view a school's attempt to suppress free speech as an appropriate response to sexual harassment.



8. Who needs to be trained?

- Title IX Coordinator
- Investigators
- Informal Resolution Facilitators
- Decision Makers
- Appellate Decision Makers



More on Training:

Training must include:

- Definition of sexual harassment
- The Scope of the school's education program/activity (what is included)
- How to conduct an investigation/grievance process
- Hearing (if you have them)
- Appeals
- Informal Resolution Process
- Avoiding prejudgment of the facts at issue, conflicts of interest, bias
- Investigators must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence



Record Keeping - Training

A recipient must maintain for a period of **seven** years records of:

- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.
- Training materials must be made publicly available on a district's website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.



The information in this handout was prepared by Eichelbaum Wardell Hansen Powell & Muñoz, P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If special legal advice is sought, consult an attorney.




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Understanding Your Role as a Title IX Administrator

Presented by: Emma J. Darling

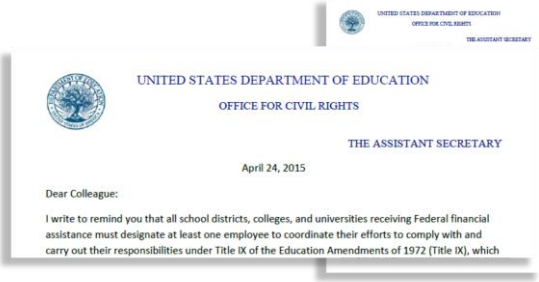
October 18, 2022



Understanding Your Role as a Title IX Administrator and How to Handle Common Campus Scenarios

Emma J. Darling

Title IX Coordinators



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

April 24, 2015

Dear Colleague:

I write to remind you that all school districts, colleges, and universities receiving Federal financial assistance must designate at least one employee to coordinate their efforts to comply with and carry out their responsibilities under Title IX of the Education Amendments of 1972 (Title IX), which


Dear Colleague Letters (DCLs)

- Advisory in nature*
- Guidance to recipients of federal funding
- DOE's policies in reviewing Title IX compliance
- Not legislative rules/law
- OCR cannot create new law, rights, or duties through a DCL

*The Office for Civil Rights is an administrative agency of the federal government and, therefore, constrained by the Administrative Procedure Act (APA). If an agency proposes a rule that would impose new obligations on the public, the APA requires the agency to subject those proposed rules to notice and comment before they may be adopted.

Title IX Coordinators


- **Position cannot be vacant**
- **Sufficiently independent**
- **Avoid conflicts of interest**
- **Full-time T9 Coordinator ensures sufficient time to perform responsibilities**
- **Qualifications, training, authority and time**
- **Multiple T9 Coordinators**



DESIGNATION OF T9 COORDINATOR(S)

Title IX Coordinators


- **Monitor outcomes**
- **Identify and address patterns**
- **Assess effects on campus climate**
- **Educate school community on how to file complaint**
- **Promptly and appropriately resolve complaints**
- **Provide technical assistance on school policies**
- **Work with law enforcement**
- **Offer supportive measures**



RESPONSIBILITIES AND AUTHORITY OF T9 COORDINATOR

Title IX Coordinators

- **District's policies and procedures**
- **Drafting and revising policies/procedures**
- **Collecting information**
- **Participation in subject areas, athletics**
- **Administration of school discipline**
- **Incidents of sex-based harassment**
- **Retaliation**
- **Aware of all T9 complaints**
- **Visible in the school community**



RESPONSIBILITIES AND AUTHORITY OF T9 COORDINATOR

Title IX Coordinators

B. Training of Title IX Coordinators

Recipients must ensure that their Title IX coordinators are **appropriately trained** and possess comprehensive knowledge in all areas over which they have responsibility in order to effectively carry out those responsibilities, including the recipients' policies and procedures on sex discrimination and all complaints raising Title IX issues throughout the institution. The resource

Training on Policies and Grievance Procedures

RELEVANT POLICIES AND PROCEDURES

- FB (LEGAL) Equal Educational Opportunity
- FB (LOCAL) Equal Educational Opportunity
- FFG (LEGAL) Student Welfare: Child Abuse and Neglect
- FFG (LOCAL) Student Welfare: Child Abuse and Neglect
- FFH (LEGAL) Freedom from Discrimination, Harassment, & Retaliation
- FFH (LOCAL) Freedom from Discrimination, Harassment, & Retaliation
- FM (LOCAL) Student Activities
- FNE (LEGAL) Pregnant Students
- FNE (LOCAL) Pregnant Students
- FNG (LEGAL) Student & Parent Complaints
- FNG (LOCAL) Student & Parent Complaints
- DAA (LEGAL) Equal Employment Opportunity
- DGBA (LOCAL) Employee Complaints
- DGBA (LOCAL) Employee Complaints
- EHAA (LEGAL) Required Instruction
- GF (LOCAL) Public Complaints
- GRA (LEGAL) Relations with Governmental Entities – State and Local Authorities
- GRA (LOCAL) Relations with Governmental Entities – State and Local Authorities

Responsibilities from 2020 Sexual Harassment Regulations

T9 Coordinator Responsibilities Under the Reigning Regulations

- The reigning regulations pertain to reports and formal complaints of sexual harassment.
- The proposed regulations are not final yet, but we'll let you know what may be subject to change.
- Neither set of regulations affect responsibilities pertaining to equity in athletics, inequities, or discrimination in course selections, etc.

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Title IX Coordinator Responsibilities

- Ensure policies reflect current information about T9 Coordinator
- Ensure website and publications contain proper notices
- For all reports of sexual harassment, contact alleged victims (complainant) to discuss the availability of supportive measures
- Consider a complainant's wishes re supportive measures
- Inform complainants of the right to file formal complaint and right to supportive measures with or without a formal complaint
- Decide whether to file a formal complaint when the complainant does not

*Many of these tasks can be delegated but must be overseen by the Title IX Coordinator.

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Title IX Coordinator Responsibilities

- Decide whether to dismiss a formal complaint (or who should decide dismissal)
- Assist with emergency removal and administrative leave decisions
- Provide notice to parties of grievance process in case of formal complaints
- Post all training materials to district's website
- Ensure proper record keeping

*Many of these tasks can be delegated but must be overseen by the Title IX Coordinator.

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All of these individuals must be informed of the Title IX Coordinators...

Name or Title	Office address	E-mail address	Telephone number
Applicants for admission and employment	Students and parents or legal guardians of elementary and secondary students	Employees	All unions or professional organizations holding collective bargaining or professional agreements with the recipient

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Reporting sexual harassment...

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment)...

Using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

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Reporting sexual harassment...

Such report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

34 C.F.R. § 106.8(a).

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SCENARIOS: The Players

- Higgins (paraprofessional)
- Jamie (student-athlete)
- Nate (student)
- Keely (student)
- Roy (student)
- Jan Maas (new student)
- Coach Beard (teacher)
- Principal Lasso (Title IX C'r – Students)
- Ms. Rebecca (Title IX C'r – Employees)
- Sam (employee)

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SCENARIO: Reporting sexual harassment...

Higgins (paraprofessional) sees Jamie (student-athlete) and his minions harassing Nate (student) for being namby-pamby and womanish.

Higgins mentions this in passing to Coach Beard, who says nothing to anyone about this. Higgins does not report this to Principal Lasso (Title IX C'r – Students) or to Ms. Rebecca (Title IX C'r – Employees).

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SCENARIO: Reporting sexual harassment...

After months of this treatment, Nate finally tells his mother. She immediately calls Principal Lasso to report that her son is being bullied.

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SCENARIO: Failing to Report

Relevant Policies: FFI/FFH - Employee report to appropriate official listed in policy

Action Needed: Students: 1) review policy – FFI or FFH?; 2) contact parents/student – offer info about TIX process; 3) offer supportive measures; 4) employee documentation/retraining

Documentation Required/Recommended: 1) supportive measures offered; 2) whether FC filed; 3) if FC filed...

Retention of Documentation: At least 7 years

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Standard TASB Policy-A

Reporting Procedures

Student Report

Any student who believes that he or she has experienced prohibited conduct or believes that another student has experienced prohibited conduct should immediately report the alleged acts to a teacher, school counselor, principal, other District employee, or the appropriate District official listed in this policy.

Employee Report

Any District employee who suspects or receives direct or indirect notice that a student or group of students has or may have experienced prohibited conduct shall immediately notify the appropriate District official listed in this policy and take any other steps required by this policy.

Definition of District Officials

Title IX Coordinator

For the purposes of this policy, District officials are the Title IX coordinator, the ADA/Section 504 coordinator, and the Superintendent.

Reports of discrimination based on sex, including sexual harassment, gender-based harassment, or dating violence, may be directed to the designated Title IX coordinator for students. [See FFH(EXHIBIT)]

ADA / Section 504 Coordinator

Reports of discrimination based on disability may be directed to the designated ADA/Section 504 coordinator for students. [See FFH(EXHIBIT)]

Superintendent

The Superintendent shall serve as coordinator for purposes of District compliance with all other nondiscrimination laws.

Standard TASB Policy-A

Model EWHPM Policy/Regulation

Reporting Procedures

Student Report

Any student who believes that he or she has experienced prohibited conduct or believes that another student has experienced prohibited conduct should immediately report the alleged acts to a teacher, school counselor, principal, assistant principal, or the Title IX Coordinator/designee.

Employee Report

Any District employee who suspects or receives notice that a student or group of students has or may have experienced prohibited conduct shall promptly notify a campus administrator or the Title IX Coordinator.

Definition of District Officials

For the purposes of this regulation, District officials are the Title IX Coordinator/designee and campus administrators.

Title IX Coordinator

Reports of discrimination based on sex, including sexual harassment or gender-based harassment, may be directed to the designated Title IX Coordinator for students. [See FFH(EXHIBIT)]



Sexual Harassment TITLE IX GRIEVANCE PROCESS

For Reports, Complaints, Investigations, Appeals

(Effective August 14, 2020)

<p>Sexual Harassment is conduct based on sex that satisfies one or more of the following:</p> <p>1. An employee conditioning an aid, benefit, or service of the school on an individual's participation in sexual conduct.</p> <p>2. Unwelcome sexual harassment, including sexual harassment, advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature that is directed at an individual and creates a hostile or abusive work environment.</p> <p>3. Sexual assault, dating violence, domestic violence, or stalking.</p> <p>Stalking is a course of conduct that causes fear or emotional distress in an individual who is alleged to be the victim of sexual harassment.</p> <p>Retaliation is an individual who attempts to file a complaint or report a sexual harassment or sexual assault or who cooperates with an investigation or proceeding.</p> <p>Complaint is a written or verbal communication by an individual who alleges that a person has engaged in sexual harassment or sexual assault or who cooperates with an investigation or proceeding.</p> <p>Investigation is a process by which a designated investigator or investigators investigate and report on the alleged conduct.</p> <p>Appeal is a process by which a designated appeals officer reviews the findings of an investigator or investigators.</p> <p>Resolution is a process by which a designated resolution officer resolves a complaint or report of sexual harassment or sexual assault.</p> <p>Resolution Officer is an individual who is designated to resolve a complaint or report of sexual harassment or sexual assault.</p> <p>Investigator is an individual who is designated to investigate and report on the alleged conduct.</p> <p>Appeals Officer is an individual who is designated to review the findings of an investigator or investigators.</p> <p>Resolution Officer is an individual who is designated to resolve a complaint or report of sexual harassment or sexual assault.</p>	<p>RESPONSIBILITY:</p> <p>All Employees (SCHOOL)</p> <p>All Employees (SCHOOL)</p>
--	---

- Use the checklist.
- Red text = suggested procedures

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Dissemination of policy

- District does not discriminate on the basis of sex in the education program of activity that it operates
- It is required by Title IX to not discriminate in this manner
- Requirement not to discriminate extends to admission and employment
- Inquiries about the application of Title IX to the district may be referred to the Title IX Coordinator, the Assistant Secretary for Education (USDOE), or both

Applicants for admission and employment

Students and parents or legal guardians of elementary and secondary students

Employees

All unions or professional organizations holding collective bargaining or professional agreements with the recipient

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34 C.F.R. § 106.8(b)

August 2010



U.S. Department of Education

Sample Notice of Non-discrimination

The following sample notice of non-discrimination meets the minimum requirements of the regulations enforced by OCR:



The (Name of Recipient) does not discriminate on the basis of race, color, national origin, sex, disability, or age in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups. The following person has been designated to handle inquiries regarding the non-discrimination policies:

Name and/or Title
Address
Telephone No.

<https://www2.ed.gov/about/offices/list/ocr/docs/nondisc.html>
Accessed 2020-10-11

Publications

Must promptly display Title IX Coordinator's contact information:

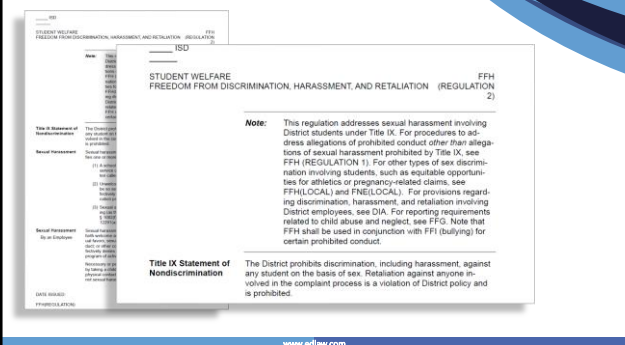
- On district's website 
- In each handbook or catalog 

www.edlaw.com 34 C.F.R. § 106.8(b)

District must adopt and publish grievance procedures and provide notice of process including...

1. How to report or file a complaint of sex discrimination;
2. How to report or file a formal complaint of sexual harassment; and
3. How the district will respond.

www.edlaw.com 34 C.F.R. § 106.8(b)



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The 2020 regulations...

Seek to create a separation between the investigation and decision-making of formal complaints (sexual harassment).

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While it is best to separate roles...

- The Title IX Coordinator can also be the investigator and the informal resolution facilitator.
- The Title IX Coordinator cannot also serve as the decision-maker on a formal complaint or on appeal.*
- All roles can be outsourced, except the Title IX Coordinator (e.g., investigator, decision-maker, informal resolution facilitator, appellate decision maker).

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Remember that anyone serving as a Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate an information resolution process must not have a **conflict of interest or bias** for or against **complainants or respondents generally** or an **individual** complainant or respondent.

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SCENARIO: Conflicts of Interest

An employee files a Formal Complaint of sexual harassment against Sam (Employee). Rebecca is the Director of HR and the Title IX Coordinator for employee-related complaints. She usually serves as the investigator for Formal Complaints. Sam and Rebecca were previously romantically involved.

- Can she serve as the investigator?
- Can she serve as the Title IX Coordinator in this case?

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The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures...consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without filing a formal complaint, and explain to the complainant the process for filing a formal complaint."

- Respond to every report of sexual harassment
- Must not be deliberately indifferent
- For OCR purposes, actual knowledge is imputed to the district if any employee is aware of sexual harassment.

34 C.F.R. § 106.44(a).

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- Respond to every report of sexual harassment
- Must not be deliberately indifferent
- For OCR purposes, actual knowledge is imputed to the district if any employee is aware of sexual harassment.

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SCENARIO: Verbal reports

Nate does not tell his parents, but another student reports the situation to his parents, who calls Principal Lasso.

Principal Lasso tells her that he is going to need her to put her concerns in writing, so he can address the situation.

This parent will not put her concerns in writing and wants to remain anonymous.

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SCENARIO: Verbal reports



Ask for written report: An administrator may ask the individual to provide a written statement, but the reporter is not required to put the report in writing. This District may request, but not require, a written report. If a report is made orally, an administrator will put the report in written form and provide it to the Title IX Coordinator.

FFH(LOCAL)

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CONTACTING THE COMPLAINANT

Regulations do not dictate the medium of contact.

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CONTACTING THE COMPLAINANT

K-12 SETTING

- Phone call, followed by email/letter.
- In person parent conference, followed by email/letter.

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DISTRICT LETTERHEAD

This letter may be sent to adult students or parents of minor students after initial verbal contact by school officials about a report of alleged sexual harassment involving their child when no Formal Complaint is filed.

[Date]

[Adult Student Complainant/Parent/Guardian]
[Address]

Re: Title IX Complaint – Response to Sexual Harassment Report
Supportive Measures

Dear Mr./Ms. _____:

This letter is to confirm receipt of a report of alleged sexual harassment involving your child. It is our understanding that, at this time, you do not wish to file a Formal Complaint and pursue this matter further. If you change your mind, please contact my office immediately.

Even though you have not filed a Formal Complaint, the District is implementing the following supportive measures for your child, because school board policy FFH prohibits discrimination on the basis of sex, including sexual harassment and other prohibited conduct, against students in all of its educational programs. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, without fee or charge to students, when a report of alleged sexual harassment is made.

Supportive Measures: *(Select only those that apply and provide details. Delete the options below that will not be implemented.)*

- Counseling of students regarding appropriate behavior expectations
- Review of district and code of conduct expectations with students by administrator
- Change of class schedule/lunch schedule/locker location
- Campus-class escort
- Increased school monitoring of [location] for [time period e.g., next 9 weeks]
- School counseling
- Stay away agreement/No contact directives
- Limitation on extracurricular activities
- Training
- Other: _____

“

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.”

34 C.F.R. § 106.30.

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SUPPORTIVE MEASURES

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Supportive Measures means...

- **Non-disciplinary, non-punitive individualized services**
- Offered as appropriate, as reasonably available
- Without fee or charge to the complainant or respondent
- Before or after filing of a formal complaint or where no formal complaint has been filed
- Designed to restore or preserve equal access to the district's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment or deter sexual harassment

34 C.F.R. § 106.30

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Supportive Measures examples

- 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
- Other similar measures

34 C.F.R. § 106.30

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- Counseling of students regarding appropriate behavior expectations
- Review of district and code of conduct expectations with students by administrator
- Change of class schedule/lunch schedule/locker location
- Campus/class escort
- Increased school monitoring of [location] for [time period e.g., next 9 weeks]
- School counseling - # sessions
- No contact/no communication agreements
- No contact/communication directives
- Limitation on extracurricular activities
- Social Skills Training
- Staff Training
- Other: _____

Add a term to the supportive measures (e.g., pending resolution of the grievance process; four weeks; end of semester; end of the school year).

Supportive Measures means...

The recipient must maintain as confidential any supportive measures provided to the complainant or respondent—to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures.

34 C.F.R. § 106.30

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Keep **documentation** of supportive measures (e.g., no contact/communication agreements, log of counseling sessions, copies of social skills stories/trainings, summary of schedule changes, summary of campus escorts).

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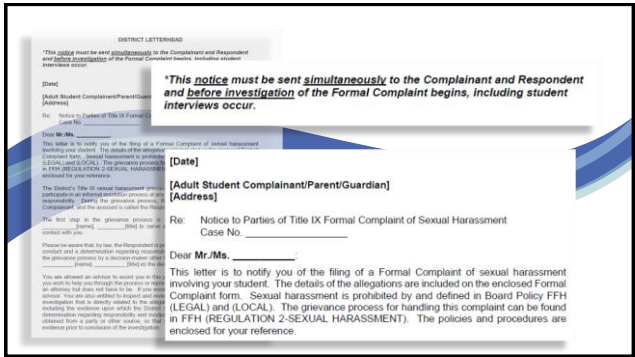
SCENARIO: Emergency Removal

If a Formal Complaint is filed, Principal Lasso and Coach Beard cannot remove Jamie (et al) from the team until the Title IX Investigative Process is completed and a determination of "responsibility" is made, unless the criteria for an "emergency removal" are met.

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NOTICE TO PARTIES IF FORMAL COMPLAINT IS FILED

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SENT BY TITLE IX COORDINATOR or DESIGNEE

Investigation of Formal Complaint – Appoint Investigator and Decision Maker
Provide Notice to Parties: Simultaneous notice must be provided to all known parties that includes:

- Allegations of sexual harassment, known at the time, with sufficient detail to prepare before any initial interview;
- Identities of the parties involved;
- Date, location of alleged incident(s);
- Statement that **respondent is presumed not responsible** and that a determination will not be made until the conclusion of the grievance process
- Statement that the parties have the right to an advisor of their choosing, who can be a parent/guardian or another individual who may, but is not required to be, an attorney and who may inspect and review evidence; and
- Statement that the Code of Conduct prohibits knowingly making false statements.
- An offer of informal resolution.

ASSISTING WITH EMERGENCY REMOVAL OR ADMINISTRATIVE LEAVE DECISIONS

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Emergency Removal: The Title IX Coordinator/designee and the campus administration/HR will determine whether a respondent should be removed on an emergency basis. The District must first undertake an individualized safety and risk analysis to determine whether an **immediate threat** to the physical health and safety of others, arising from the alleged sexual harassment, justifies removal.

*Title IX does not modify the rights of students with disabilities regarding change of placement under the Individuals with Disabilities Education Act and Section 504 still apply.

- Title IX Coordinator
- Campus Administrator
- Threat Assessment
- Personnel

**SCENARIO:
Locker Room Bums & Arses**

Several of the school's soccer players are annoyed by a new student, Jan Maas, who has recently moved to the district from another country with different cultural norms. Jan is more direct when communicating with others and does not always appreciate the subtleties of local customs and relationships.

A handful of teammates decide to "take him down a notch" by holding him down and sticking something "up his bum."

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SCENARIO:

Relevant Policies: FFI/FFH

Action Needed: Students: 1) review policy – FFI or FFH? - both; 2) contact parents/student – offer info about FFH process; 3) contact law enforcement; 4) offer supportive measures; 5) determine whether immediate threat to physical health or safety of students

Documentation Required/Recommended: 1) supportive measures offered; 2) that reported to law enforcement; 3) whether FC filed; 3) if FC filed...

Retention of Documentation: At least 7 years (or 2 years passed 18)

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Emergency Removal: The Title IX Coordinator/designee and the campus administration/HR will determine whether a respondent should be removed on an emergency basis. The District must first undertake an individualized safety and risk analysis to determine whether an **immediate threat** to the physical health and safety of others, **arising from the alleged sexual harassment**, justifies removal.

*Title IX does not modify the rights of students with disabilities regarding change of placement under the Individuals with Disabilities Education Act and Section 504 still apply.

• Title IX Coordinator
• Campus Administrator
• Threat Assessment
• Personnel

SCENARIO:

Keeley and Jamie used to date. Jamie has “nudes” of Keeley. After they break up, Jamie sends the pics to other students who show them around school. Keeley’s new boyfriend, Roy, finds out about this and “avenges” Keeley’s honor by punching Jamie in the nose at school.

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SCENARIO:

What do about:

- Jamie
- Roy
- Keeley

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SCENARIO:

Relevant Policies: FFI/FFH

Action Needed: Students: 1) review policy – FFI or FFH? - both; 2) contact parents/student – offer info about FFH process; 3) contact law enforcement; 4) offer supportive measures; 5) determine whether immediate threat to physical health or safety of students

Documentation Required/Recommended: 1) supportive measures offered; 2) that reported to law enforcement; 3) whether FC filed; 3) if FC filed...

Retention of Documentation: At least 7 years (or 2 years passed 18)

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**DETERMINING WHETHER TO
DISMISS A FORMAL COMPLAINT**

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Title IX Discrimination Dismissal Form
 Title IX of the Education Amendments of 1972 (20 U.S.C. § 1081) is a federal law that prohibits discrimination based on the sex of students in educational institutions that receive federal financial assistance. A Formal Complaint of sexual harassment must be dismissed if alleged conduct, acts or events would not constitute sexual harassment, did not occur in a school district program or activity, or did not occur in the United States. A Formal Complaint may be dismissed by a Complainant within the Title IX Coordinator that receives evidence to authorize the complaint or any of the respondents denies the allegations in the complaint or the District, or specific circumstances prevent the district from gathering evidence sufficient to reach a determination.

Complainant
 Case No.: _____
 District: _____
 Complainant: _____
 Respondent: _____
 Email: _____

Dismissal Basis: (Check all that apply)
 Does not constitute sexual harassment Did not occur in district program or activity
 Did not occur in the U.S. Dismissal requested by Complainant
 Respondent no longer enrolled in district
 Circumstances prevent the district from gathering evidence sufficient to reach a determination

Reasoning for Dismissal: Describe the reasoning behind the dismissal of this complaint.

Reasons:

Name: _____ Title IX Coordinator/Designee Date: _____

Once signed, a copy of this dismissal form will be placed in the file for this complaint and sent to all parties involved.



What are examples of remedies?

- Not defined in Title IX
- No list of examples in regulations
- Money damages were removed as possible remedy in final rules

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Remedies - Purpose

Designed to restore or preserve the complainant's equal access to education

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Remedies for Complainants

- Supportive measures
- Counseling
- Opportunity to make up work, retake exams
- Change of class, lunch period, campus
- Escort on campus
- Increase security
- Training efforts

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Remedies for Complainants

- Disciplinary sanctions against respondent per the Student Code of Conduct (e.g., OSS, DAEP, expulsion)
- Removal of respondent from extracurricular activity/activities
- Unilateral no-contact order on respondent
- Other sanctions applicable to respondent

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“

The Department believes that a complainant entitled to remedies should not need to file an appeal to challenge the recipient's selection of remedies; instead, we have revised [the rules] to require that Title IX Coordinator be responsible for effective implementation of remedies. This permits a complainant to work with the Title IX Coordinator to select and effectively implement remedies designed to restore or preserve the complainant's equal access to education.”

p. 940 – Commentary

Selection of Remedies Not Appealable

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Selection of Remedies Not Appealable

Bases for Appeal of Decisions

- Procedural irregularity
- Bias or conflict of interest
- That affected the outcome

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Written Determination must include

- any sanctions the recipient imposes on the respondent; and
- whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided to the complainant



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REMEDIES

- Shared with complainant – complainant's remedies and respondent's sanctions
- Shared with respondent – sanctions and whether remedies were provided to complainant (not details of the remedy, unless the sanctions overlap with remedies)



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POSTING TRAINING MATERIALS

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What to post:

- Notice of non-discrimination policy
- Title IX Coordinator's contact information
- Links to FFH and DIA – LEGAL, LOCAL, EXHIBIT, REGULATIONS
- Training materials used to train T9 Coordinator, Investigators, Decision-Makers, Facilitators

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Permission from the copyright holder should be obtained, but failure to obtain permission does not relieve a district from the requirement to post.

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Where to post:



- Non-discrimination policy and Title IX Coordinator's contact information must be prominently displayed.
- There is no requirement that the materials be on the homepage or linked to the homepage.

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Where to post:



- There is no requirement to have a section of the website dedicated to Title IX requirements.
- There is no requirement that Title IX information be located on multiple pages of a district's website.
- Title IX information could be added as a drop-down option in any of the following areas: Required Notices, Public Information, Departments, Students, Employees, Community

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RECORD KEEPING

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DISTRICT LETTERHEAD

Title IX Record Keeping Cover Sheet

All records related to a report of sexual harassment must be kept for a period of seven (7) years from the date of conclusion of the grievance process.

Date of Initial Complaint: _____

Date of Final Decision: _____

DISTRICT LETTERHEAD

Title IX Record Keeping Cover Sheet

*All records related to a report of sexual harassment must be kept for a period of seven (7) years from the date of conclusion of the grievance process.

Date of Initial Complaint: _____

Date of Final Decision: _____

DISTRICT LETTERHEAD

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DISTRICT LETTERHEAD

Title IX Record Keeping Cover Sheet

*All records related to a report of sexual harassment must be kept for a period of seven (7) years from the date of conclusion of the grievance process.

Date of Initial Complaint: _____

Date of Final Decision: _____

- Initial Intake Report
- Response to Sexual Harassment Report – Supportive Measures
- Formal Complaint, if any
- Notice to Parties
- Emergency Removal, if applicable
- Administrative Leave – Personnel, if applicable
- Informal Resolution Paperwork
- Notices to Parties of Interviews
- Evidence Submitted to Parties, including witness statements, photographs, electronic communications
- Draft Investigative Report and Notice of Opportunity to Submit Response Sent to Parties
- Final Investigation Report
- Notice of Opportunity to Submit Questions
- Questions Submitted and Answers
- Determination of Responsibility
- Documentation of Supportive and Other Measures Imposed After Determination of Responsibility
- Appeals Documentation, if any
- Decision on Appeal

U.S. Department of Education - 2020

- Overview of New Rule
- Fact Sheet
- Summary of New Rules
- Comparison to Proposed Rules

Resources for Title IX Coordinators

U.S. Department of Education

Student Loans | Grants | Laws | Data

ARCHIVED INFORMATION

Secretary DeVos Announces New, Proactive Civil Rights Compliance Center within Office for Civil Rights

'OPEN Center' will focus on Outreach, Prevention, Education and Non-discrimination to Promote Compliance with Education

JANUARY 21, 2020

Contact: Press Office, (202) 401-1576, opssi@ed.gov

WASHINGTON — U.S. Secretary of Education Betsy DeVos announced today that the Office for Civil Rights (OCR) at the U.S. Department of Education will launch the **Outreach, Prevention, Education and Non-discrimination (OPEN) Center** to focus on promoting compliance with federal civil rights laws. The OPEN Center will provide assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws.

"The creation of the OPEN Center is yet another example of this Department's focus on supporting school districts, colleges, and those closest to students," said Secretary DeVos. "The OPEN Center underscores OCR's efforts to support all schools and provide technical assistance to help them come into compliance with federal civil rights law prior to the filing of a complaint. This agency will continue supporting school districts and colleges by working with them cooperatively to ensure that every child has access to a quality education."

While OCR typically enforces federal civil rights laws through the traditional complaint-resolution process, OCR will, through the provision of targeted support to recipient institutions and the public, also be able to work more proactively—prior to the filing of a complaint.

How Do...
 • Student to...
 • College as...
 • Every Stu...
 • FERPA
 • FAFSA
 • 1066, tax
 • More...

Search p...
 Search...

Office for Civil Rights Blog

THE DEFINITION OF SEXUAL HARASSMENT UNDER THE TITLE IX RULE PROVIDES CLARITY TO SCHOOLS

October 7, 2020



The new Title IX Rule went into effect on August 14, 2020. Since that time, the Office for Civil Rights (OCR) has received inquiries regarding the definition of sexual harassment under the Final Rule. All references and citations are to the unofficial version of the Title IX Rule, which is available here. A link to the official version of the Rule published in the Federal Register is here.


Sexual harassment under Section 106.30 of the new Title IX Rule (found in the Code of Federal Regulations at 34 C.F.R. Part 106) means conduct on the basis of sex in an education setting that satisfies one or more of the following:

Previous Blogs

- 20180726
- 20200109
- 20200915
- 20200518
- 20200521
- 20200522
- 20200623
- 20200702
- 20200707

<https://www2.ed.gov/about/offices/list/ocr/blog/index.html>

The information in this handout was prepared by Eichelbaum Wardell Hansen Powell & Muñoz, P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If special legal advice is sought, consult an attorney.



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Report Writing, Forms, Record Retention, and Paperwork Requirements

Presented by: Holly Boyd Wardell

October 18, 2022

TITLE IX TEXAS
REPORT WRITING, FORMS, RECORD RETENTION, AND PAPERWORK REQUIREMENTS
 Administrator Conference

Holly Boyd Wardell
 EICHELBAUM WARDELL
 HANSEN POWELL & MUÑOZ, P.C.
 October 18, 2022

TITLE IX GRIEVANCE PROCESS SEXUAL HARASSMENT

- Prevent or stop sexual harassment
- Provide equitable process for handling reports/complaints
- Implement supportive measures to individuals
- Document efforts to ensure compliance, have record for future action, identify patterns
- Avoid finding of deliberate indifference

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TITLE IX GRIEVANCE PROCESS SEXUAL HARASSMENT

- A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the U.S. must respond promptly in a manner that is not deliberately indifferent.
- A recipient is **deliberately indifferent only** if its response to sexual harassment is clearly unreasonable in light of known circumstances.

34 CFR 106.44(a).

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LIABILITY

A recipient is liable for its own actions in response to known harassment.

Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999).

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LIABILITY

Liability under Title IX does not extend to school officials, teachers, and other individuals.

Plummerv. Univ. of Houston, 860 F.3d 767 (5th Cir. 2017).

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LIABILITY

Remember that Title IX is not the exclusive mechanism for addressing gender discrimination in schools.

For example: 14th Amendment – substantive due process
 Right to bodily integrity

Fitzgerald v. Barnstable Sch. Comm., 555 U.S. 246 (2009).

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RECORD KEEPING

- Initial intake report
- Response to sexual harassment report – supportive measures
- Formal complaint
- Notice to parties
- Emergency removal
- Administrative leave
- Informal resolution
- Notice to parties of interviews
- Evidence submitted to parties
- Investigative report
- Notice of opportunity to submit questions
- Questions and submitted answers
- Determination of responsibility
- Documentation of remedies and sanctions
- Appeal documentation
- Decision of appeal

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Hypothetical:

Lashonda, 5th grade cisgender female

Allegations

- Male classmate repeatedly groped and touched on Lashonda's breast and in her genital area
- Made vulgar statements: *I want to get in bed with you. I want to feel your boobs.*
- Placed a door stop in his pants and proceeded to act in a sexually suggestive manner toward Lashonda in PE class.
- Rubbed his body against her in the hallway
- On campus and the school bus
- Repeatedly over a 5-month period

- Parent says already reported to campus administration and nothing done.
- Calls Director of Student Services office.

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Record of Reports

STUDENT WELFARE
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION (LOCAL)

Employee Report

Any District employee who suspects or receives direct or indirect notice that a student or group of students has or may have experienced prohibited conduct shall promptly notify the appropriate District official listed in this policy and take any other steps required by this policy.

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Record of Reports

Definition of District Officials

For the purposes of this policy, District officials are the Title IX coordinator, the ADA/Section 504 coordinator, and the Superintendent.

Title IX Coordinator

Reports of discrimination based on sex, including sexual harassment, gender-based harassment, or dating violence, may be directed to the designated Title IX coordinator for students. [See FFH(EXHIBIT)]

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Intake

Title IX Discrimination Intake Form

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on the sex of students in educational institutions that receive federal financial assistance. This form is to be completed by an individual reporting sexual harassment or an individual in the Title IX Coordinator's office when a student, parent, or district employee reports possible sexual harassment to the Title IX Coordinator's office.

REPORTER INFORMATION:

Case Number: 2020-10-2145

Reporter Name: Aurelia Davis (Parent)

Email: adavis@gmail.com

Phone Number: (479) 867-5309

Student ID: 1191961 Campus: Hubbard Elem. Sch.

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Intake

Type of Prohibited Conduct:

- Discrimination based on: (Check all that apply)
- Sexual Harassment Sexual Assault Gender Based Harassment Dating Violence
- Stalking Retaliation Cyber Bullying Other

Date Incident Occurred:

Earliest: Sept 2020

Latest: Oct 15, 2020

- Continuing Action

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Intake

ALLEGED VICTIM'S INFORMATION:


Name: Lashonda Davis

School/Department: Hubbard E.S. Job Title: NA

Email: NA Employee ID: NA


Student ID: 1191661 Campus: HES

Extra-Curricular Activities: After school chess club



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Intake



- Description of prohibited conduct
- Any witnesses
- Previously discussed with witnesses
- Identify any administrators or district employees reported to
- Signature and date of person taking initial report

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Child Abuse Report?

If the incident could be child abuse, the employee(s) receiving the report must report to CPS or law enforcement within 48 hours.



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Promptly Contact Complainant

The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures...consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

34 CFR §106.44(a).

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If Complainant wants to file formal complaint...

Title IX Discrimination Formal Complaint Form

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on the sex of students in educational institutions that receive federal financial assistance. When the form has been completed and signed by a Complainant or the Title IX Coordinator, the alleged sexual harassment will be investigated by the District. A copy of this completed form, as well as information about the District's Title IX grievance process (FTH - Regulation 2), will be provided to the Complainant and Respondent.

- **Complainant:** An individual who is alleged to be the victim of sexual harassment.
- **Respondent:** An individual who is alleged to be the perpetrator of sexual harassment.
- **Formal Complaint:** A document filed by a Complainant (or parent/guardian) or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the District investigate the allegation.

COMPLAINANT PERSONAL INFORMATION (Please Print):

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If Complainant does not want to file formal complaint...

DISTRICT LETTERHEAD

**This letter may be sent to adult students or parents of minor students after initial verbal contact by school officials about a report of alleged sexual harassment involving their child when no Formal Complaint is filed.*

October 21, 2020

Via email: adaid@gmail.com
Original via First Class Mail

Aurelia Davis
862 Georgia Drive
Macon, Texas 75467

Re: Title IX Complaint - Response to Sexual Harassment Report Supportive Measures

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Dear Ms. Davis:

This letter is to confirm receipt of a report of alleged sexual harassment involving your child. It is our understanding that, at this time, you do not wish to file a Formal Complaint and pursue this matter further. If you change your mind, please contact my office immediately.

Even though you have not filed a Formal Complaint, the District is implementing the following supportive measures for your child, because school board policy FFH prohibits discrimination on the basis of sex, including sexual harassment and other prohibited conduct, against students in all of its educational programs. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, without fee or charge to students, when a report of alleged sexual harassment is made.

Supportive Measures: (Select only those that apply and provide details. Delete the options below that will not be implemented.)

- Counseling of students regarding appropriate behavior expectations
- Review of district and code of conduct expectations with students by administrator
- Change of class schedule/lunch schedule/locker location
- Campus/class escort
- Increased school monitoring of [location] for [time period e.g., next 9 weeks]
- School counseling
- Stay away agreement/No contact directives
- Limitation on extracurricular activities
- Training
- Other: _____

The District's goal is for you/your child to feel safe and comfortable on campus. If you have questions about the District's Title IX grievance process or supportive measures, please contact the Title IX Coordinator's Office at (XXX) XXX-XXXX or [email].

If the district does not provide the supportive measures, the Title IX Coordinator must document why not.

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Emergency Removal

Nothing in the Title IX grievance process precludes a recipient from removing a respondent from the recipient's education program or activity on an emergency basis, provided that the recipient undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

34 CFR 106.44(c)

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Removals requiring analysis:

- OSS
- DAEP
- Expulsion
- Change of class/schedule*
- Change of campus*

- Teams
- Clubs
- Organizations
- Student activities (STUCO)

*Could be a supportive measure if doesn't unreasonably burden the respondent. See p. 770-777 - Commentary

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Emergency Removal Form

Emergency Removal Form

Name of Respondent Student: Croper, Flanders (G.F.)

Title IX Case No. 2020-10-21-45 Current Campus: Hubbard E.S.

*A Respondent may be removed from the district's educational program or activities if the District makes an individualized safety and risk analysis and determines that an immediate threat, arising from the allegations of sexual harassment, to anyone's physical health or safety justifies removal. This analysis may involve the campus/district threat assessment team. A student who is removed on an emergency basis must be provided with notice and an opportunity to challenge the decision. A student with a disability has rights under the Individuals with Disabilities Education Act and/or Section 504 of the Rehabilitation Act and may not be removed without following the procedural safeguards of those laws.

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Emergency Removal Form

Does the student receive special education or Section 504 supports? If so, refer to ARD/504 committee. See Texas Education Code § 37.004

If the Respondent has already been removed for behaviors other than sexual harassment, list the basis for the removal from the Student Code of Conduct (e.g., bullying, cyberbullying, use of profanity, lewd or vulgar language on campus or school-related activity; violation of technology acceptable use policy; assault, hazing): _____

Examples of removal include OSS, DAEP, expulsion, change of campus, removal from extracurricular activity.

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Emergency Removal Form

Removal Determination:

- No – Respondent does not pose an immediate threat arising from the allegation of sexual harassment to anyone's physical health or safety.
- Yes – Respondent poses an immediate threat arising from the allegation of sexual harassment to the physical health or safety of the self or others.

Basis for Removal: Due to on-going physical nature of alleged conduct, G.F. is being removed from the after school chess program where there is less student supervision than regular classroom instruction pending the results of the Title IX investigation and grievance process. G.F. is also temporarily suspended from the bus.

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Emergency Removal Form

Length Removal: Semester Year Indefinite Trial Basis Other: pending grievance process

School employees involved in making Emergency Removal Decision:
Threat Assessment Team: B. Query (Principal/Behavior Coordinator); A. Kennedy (School Counselor);
Rehnquist (LSSP); C. Thomas (Title IX Coordinator); A. Scalia (Exec. Dir. Special Education)

*The district threat assessment and safe and supportive school team should be notified of removal determination.

*Upon removal, Respondent student must be notified of opportunity to challenge emergency removal. Parent was informed of right to challenge emergency removal under FNG(LOCAL).

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Dismissal of a Formal Complaint

Dismissal Basis: (Check all that apply)

- Does not constitute sexual harassment
- Did not occur in district program or activity
- Did not occur in the U.S.
- Dismissal requested by Complainant
- Respondent no longer enrolled in district
- Circumstances prevent the district from gathering evidence sufficient to reach a determination

Reasoning for Dismissal: Describe the reasoning behind the dismissal of this complaint.

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Written Notice of Interviews

As you are aware, the District has received a Formal Complaint alleging sexual harassment involving your student. I plan to interview your student at [Time] on [Date] regarding this pending complaint. The interview will occur at [Location].

You and/or an advisor for the student may accompany the student to the interview to observe the process. However, the student will be expected to respond to questions directly, as developmentally appropriate. While an advisor may attend the meeting, he/she may not question the student, others, or the investigator.

34 CFR §106.45(b)(5).

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Written Notice of Interviews

DISTRICT LETTERHEAD
 You have the right to submit evidence for consideration. You may submit evidence to me via email, flash-drive, or hard-copy. For all evidence you submit, please retain the original and provide only a copy. Include your student's name and the date on all information submitted. Please keep in mind that all evidence may be shared with all parties prior to the issuance of my investigative report.

Before the issuance of my investigative report, you and the other party(ies) will have the opportunity to receive a copy of the evidence and an opportunity to submit a written response on behalf of your student.

34 CFR §106.45(b)(5).

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Investigation & Evidence

- Notes = evidence
- Evidence must be provided to both parties prior to completion of investigative report.
- Parties must have 10 days to submit a written response to the evidence before completion of the IR.
- Parties must have an opportunity to review the IR and respond another 10 days before a determination of responsibility is made.

34 CFR §106.45(b)(5).

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Witness Statement Form

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Opportunity to Review Evidence

Letter to Parent of Complainant Letter to Parent of Respondent

You have the right to review any evidence obtained as part of the investigation of sexual harassment involving your student. Please contact me at (XXX) XXX-XXXX or [email] by [date] if you would like the opportunity to inspect and review the evidence.

The evidence may be provided in a format that prevents copying or downloading in order to protect the confidentiality of information in education records for the students involved.

You may submit a written response within 10 days of reviewing the evidence. Your written response will be considered before I draft the investigative report.

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Investigative Report



- A report of alleged sexual harassment was received by the campus/Title IX Coordinator's office on [date]
- The alleged victim was contacted by the Title IX Coordinator's office and provided with information about the grievance process and supportive measures
- A Formal Complaint was filed on [date]
- The Title IX Coordinator provided the Complainant and Respondent with written notice of their rights in the grievance process and information about the availability of supportive measures.
- The following supportive measures were implemented: _____
- Campus administration and the Title IX Coordinator made a determination regarding Emergency Removal of the Respondent. [or] The Title IX Coordinator and Human Resources made a determination regarding Administrative Leave for the Respondent.

Procedural Steps



- The Title IX Coordinator appointed the undersigned to investigate the Formal Complaint. Investigator.
- The Investigator reviewed the Formal Complaint and relevant district policy and student code of conduct provisions beginning [date].
- The Investigator sent written notice of interviews and right to an advisor on [date].
- The Investigator interviewed the Complainant on [date].
- The Investigator interviewed witnesses provided by Complainant on [dates].
- The Investigator interviewed the Respondent on [date].
- The Investigator interviewed witnesses provided by the Respondent on [dates].
- The Investigator [add other steps taken during investigation—review of physical evidence, location].

Procedural Steps



- The parties were given the opportunity to submit evidence, which was reviewed by the Investigator.
- The Investigator completed secondary interviews with Complainants, witnesses, additional witnesses, or Respondent.
- The parties were given the opportunity to inspect and review evidence and submit a written response.
- The draft investigation report written was sent to all parties with an opportunity to respond within 10 calendar days.
- The parties did/did not submit written responses that were considered by the Investigator.

Procedural Steps



- I. Factual information about the parties
- II. The allegations in the Formal Complaint
- III. Timeline/dates
- IV. Relevant sections of board policy and the student of code of conduct
- V. Whether a CPS report was necessary
- VI. Whether there is a related criminal/juvenile investigation
- VII. Evidence from witnesses
- VIII. Physical or other evidence
- IX. Consideration of written responses to draft investigative report.

Findings of Fact



Investigative Report

The 2020 Title IX grievance process does not prohibit the investigator from making recommendations, but the decision maker must make an independent decision based on an objective review of the evidence.



This is the final investigative report in this matter. The Decision Maker will allow the parties to submit relevant questions for the other party(ies) or witnesses before making a determination of responsibility for sexual harassment.

Title IX Investigator

Date

Opportunity to Submit Questions



Determination of Responsibility

The new Title IX grievance process does not prohibit the investigator from making recommendations, but the decision maker must make an independent decision based on an objective review of the evidence.



Determination of Responsibility

- Nature of allegations
- Procedural steps
- Findings of fact
- Determinations based on preponderance of evidence/beyond reasonable doubt
- Remedies provided
 - Supportive measures to complainant
 - Supportive measures/sanctions to respondent
- Appeal information



SUPREME COURT:

Whether gender-oriented conduct rises to the level of actionable "harassment" under Title IX depends on a constellation of surrounding circumstances, expectations, and relationships, including, but not limited to, the ages of the harasser and the victim and the number of individuals involved, and courts must bear in mind that children may regularly interact in a manner that would be unacceptable among adults; damages are not available for simple acts of teasing and name-calling, even where these comments target differences in gender, and the behavior must be serious enough to have the systemic effect of denying the victim equal access to an educational program or activity.

Davis v. Monroe County Bd. of Educ.,
526 U.S. 629, 651 (1999).

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APPEAL FORMS

- Appeal form
- Letter – Notice to Other Party
- Decision on Appeal



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OFFICE FOR CIVIL RIGHTS

Thirty-two (32) times in the commentary to the new Title IX regulations, OCR promises to not second guess the substantive decisions of recipients, so long as procedures are followed.

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- *Remember the purposes for documenting.*
- *Consider the ultimate audience.*
- *As educational experts, an administrator must ensure that errors in writing do not undermine his/her credibility.*
- *Date and sign final reports.*
- *Make sure Title IX Coordinator gets a copy of all related documents and evidence.*

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TYPES OF INVESTIGATIVE REPORTS

1. Sexual harassment (2020 content requirements)
2. Other types of sex discrimination
3. Athletics

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The 2020 regulations pertaining to sexual harassment complaints...

seek to create a separation between the investigation and decision-making of formal complaints (sexual harassment).

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While it is best to separate roles...

- The Title IX Coordinator can also be the investigator and the informal resolution facilitator.
- The Title IX Coordinator cannot also serve as the decision-maker on a formal complaint or on appeal.
- All roles can be outsourced, except the Title IX Coordinator (e.g., investigator, decision-maker, informal resolution facilitator, appellate decision maker).

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Remember that anyone serving as a Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate an information resolution process must not have a **conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.**

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SCENARIO:

Keeley and Jamie used to date. Jamie has “nudes” of Keeley. After they break up, Jamie sends the pics to other students who show them around school. Keeley’s new boyfriend, Roy, finds out about this and “avenges” Keeley’s honor by punching Jamie in the nose at school.

- Both Jamie and Roy play on the soccer team.
- Keeley’s parents decide to file a Formal Complaint against Jamie.

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INVESTIGATIVE REPORT

- Prepare an investigative report that summarizes relevant evidence.
- The report may include proposed findings of fact.

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INVESTIGATIVE REPORT

Prior to completion of the investigative report, the investigator must send an electronic or hard copy of the relevant evidence gathered to the parties and the parties’ advisors, if any. The parties must be provided at least 10 calendar days to submit a written response that the investigator must consider before completing the investigative report. The evidence may be provided using a platform that prevents downloading and copying to protect the confidentiality of information about students or victims of sexual offenses.

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INVESTIGATIVE REPORT



COMPLAINANT: Jones, Keeley
RESPONDENT: Jatt, Jamie
DATE: Mar. 11, 2021
CASE NO.: T9-2021-4 Jones, K.

Title IX Final Investigation Report

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on sex in educational institutions that receive federal financial assistance. The Complainant and Respondent may submit relevant questions that they would like asked of a party or witness to the Decision Maker.

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INVESTIGATIVE REPORT



A Formal Complaint was filed on February 17, 2021, by Mr. & Mrs. Jones on behalf of their minor daughter, Keeley Jones. This report contains a summary of the evidence gathered through the District’s investigation of the Formal Complaint, as part of the District’s Title IX grievance process.



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INVESTIGATIVE REPORT

This investigation was conducted by: High School Principal Ted Lasso from February 17, 2021 to March 1, 2021. The parties have been given the opportunity to inspect and review the evidence gathered in this investigation and an opportunity to provide a written response.

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INVESTIGATIVE REPORT

Allegations

Identify the allegations potentially constituting sexual harassment:.

Keeley Jones (Student) alleges that Jamie Tarrt (Student) electronically distributed to classmates at school nude pictures of Keeley that Jamie obtained while they were in a relationship. Mr. & Mrs. Jones claim that other students are bullying and making fun of Keeley at school and on social media, causing her to be humiliated and embarrassed to the extent she no longer wants to attend school and is threatening to kill herself.

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INVESTIGATIVE REPORT

Procedural Steps

Describe the procedural steps taken from the receipt of the Formal Complaint to date:

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INVESTIGATIVE REPORT

- Assistant Principal Coach Beard received a report of alleged sexual harassment on February 15, 2021. Coach Beard notified the Principal, District Title IX Coordinator, and the School Resource Officer (SRO) of the report via email on February 15, 2021.
- The Title IX Coordinator's office contacted alleged victim (Keeley Jones) and her parents and provided with information about the grievance process and supportive measures on February 16, 2021.
- The Jones filed a Formal Complaint on February 17, 2021.
- The Title IX Coordinator provided the Complainant and Respondent with written notice of their rights in the grievance process and information about the availability of supportive measures on February 18, 2021.

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INVESTIGATIVE REPORT

- By February 19, 2021, the following supportive measures were implemented:
 - For Jones & Tarrt: no contact agreement, opportunity to meet with campus counselor, increased monitoring of students in cafeteria.
 - For Jones: one-week extension to take Algebra II test scheduled for February 15, 2021; one-week extension to turn in history project; campus escort to and from lunch; opportunity to eat lunch in front office
 - For Tarrt: schedule change to different Algebra II class

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INVESTIGATIVE REPORT

- On February 18, 2021, the Title IX Coordinator appointed the undersigned (Lasso) to investigate the Formal Complaint. I was trained to conduct Title IX sexual harassment investigations in accordance with the May 2020 federal regulations at the Texas Title IX Administrators Conference, October 19-20, 2021.
- This Investigator/I reviewed the Formal Complaint and relevant district policy and student code of conduct provisions beginning February 18, 2021.

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- The State of Texas mandates that threat assessments must be conducted when students display "harmful, threatening, or violent behavior" which includes threats of self-harm, bullying, cyberbullying, fighting, the use or possession of a weapon, sexual assault, sexual harassment, dating violence, stalking, or assault, by a student. On February 18, 2021, Campus administration (Lasso, Beard) and the Title IX Coordinator (Welton) requested that the campus Threat Assessment Team determine whether Respondent Tartt should be removed from school on an emergency basis. On February 19, 2021, the Threat Assessment Team undertook an individualized safety and risk analysis to determine whether an immediate threat to the physical health and safety of Complainant Jones or others, arising from the alleged sexual harassment, justified removal. The Threat Assessment Team's determined that Tartt's presence on campus did not pose a threat to the physical health or safety of Jones or others. Tartt remained on campus with the supportive measured cited above. The Threat Assessment also reviewed Complainant's parents' comments about suicidal ideation and provided Complainant and her parents with information about community and school resources. A plan was developed for Complainant to have access to a school counselor.

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INVESTIGATIVE REPORT

- I sent both Complainant and Respondent a letter including written notice of interviews and rights under the Title IX investigation process on February 19, 2021.
- I interviewed the Complainant on February 22, 2021. She was accompanied by her parents.
- I interviewed witnesses provided by Complainant on February 22, 2021 – February 24, 2021. I gave the witnesses an opportunity to provide written statements. For students who declined to provide a written statement, I took notes of their verbal statements. I interviewed all witnesses separately. Dr. Sharon Fieldstone observed the interviews and assisted me in the development of my investigation notes.

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INVESTIGATIVE REPORT

- I interviewed the Respondent on February 23, 2021. He was accompanied by his mother and an attorney/advisor, Dewey Cheatham.
- I interviewed witnesses identified by the Respondent on February 23-25, 2021.
- I gave the parties the opportunity to submit evidence. Complainant submitted text messages, which I reviewed.
- I then completed secondary interviews with the Complainant, witnesses, additional witnesses, and the Respondent.

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INVESTIGATIVE REPORT

- The parties were given the opportunity to inspect and review evidence and submit a written response. Specifically, on March 1, 2021, I emailed a secure, password protected and link for the parties to access electronic copies of all evidence collected in this investigation (except the photos). The parties agreed that additional access to the photos was not necessary. All evidence was provided in an electronic format that prevented alteration, editing, and copying.
- On March 5, 2021, the Respondent submitted written responses that were considered by the Investigator. The Complainant did not submit a response.

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INVESTIGATIVE REPORT

SUMMARY OF EVIDENCE:

Factual information about the parties

On February 14, 2021, Assistant Principal Coach Beard broke-up a fight in the cafeteria between two students: Jamie Tartt and Roy Kent. When investigating the cause of the fight, Coach Beard learned that Roy was avenging the honor of his girlfriend, Keeley Jones, who had previously been in a dating relationship with Jamie Tartt. Jones and Tartt are both 15 year old sophomores; they were a couple in a dating relationship during their freshman year of high school. Until February 18, 2021, they were in the same class for Algebra II (5th period). Kent is a senior. Tartt and Kent are both members of the men's soccer team.

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INVESTIGATIVE REPORT

Relevant sections of board policy and the student of code of conduct

Richmond ISD Board Policy FFH(LOCAL) prohibits discrimination, including harassment, against any student on the basis of race, color, religion, sex, gender, national origin, age, disability, or any other basis prohibited by law. The District further prohibits dating violence. Retaliation against anyone involved in the complaint process is also a violation of District policy and is prohibited. Discrimination, harassment, dating violence, and retaliation as defined in policy are considered "prohibited conduct," even if the behavior does not rise to the level of unlawful conduct. Prohibited conduct also includes sexual harassment as defined by Title IX.

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INVESTIGATIVE REPORT

Prohibited sexual harassment means conduct on the basis of sex that satisfies one or more of the following: 1) a school employee conditioning an educational benefit or service upon a student's participation in sexual conduct (often called "quid pro quo" harassment); 2) 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 District's education programs or activities; or 3) Sexual assault, dating violence, domestic violence, or stalking.

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INVESTIGATIVE REPORT

Additionally, dating violence, prohibited by state law and Board policy, includes behavior 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. Tex. Family Code §71.0021.

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INVESTIGATIVE REPORT

Under the Richmond ISD 2020-2021 Student Code of Conduct:

- **Sexual harassment** is a Group III Behavior.
- **Sexual harassment** that involves physical conduct is a Group IV Behavior.
- **Dating violence** is a Group IV Behavior.

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INVESTIGATIVE REPORT

The range of consequences for **Group III** behaviors include: parent/administrator/teacher/SEL support staff/student conference; restorative practices; peer mediation; loss of privilege to have any telecommunication device on campus; suspension; emergency removal from school; referral to law enforcement agencies; and/or any other corrective action deemed appropriate by campus administration and approved by the Office of Student Services.

The range of consequences for **Group IV** behaviors include: parent/administrator/teacher/SEL support staff/student conference; restorative practices; campus reassignment; assignment to DAEP; expulsion; and/or any other corrective action deemed appropriate by campus administration and approved by the Office of Student Services.

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INVESTIGATIVE REPORT

To the extent that federal law, including Title IX federal regulations pertaining to sexual harassment investigations, conflicts with the RISD policy or its SCOC, federal law supersedes.

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INVESTIGATIVE REPORT

Whether a CPS report was necessary

The allegations as presented did not indicate child abuse or neglect as defined by the Texas Family Code. The investigation did not yield facts indicating suspected child abuse or neglect.

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INVESTIGATIVE REPORT

Whether there is a related criminal/juvenile investigation

The campus SRO was notified of the allegations; local law enforcement will determine whether there has been a penal code violation. Law enforcement did not request that the school district delay or abate its investigation in this situation. Law enforcement did not suggest a forensic interview.

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INVESTIGATIVE REPORT

Evidence collected or provided by witnesses, including physical evidence

- Formal Complaint Form completed by Complainant's Parents
- Notice of Rights Letters to Complainant and Respondent
- Complainant's Statement Form
- Student Discipline Log for Respondent Tatt
- During Complainant's interview, she identified 4 students who reportedly received pictures: messages with copies of nude photographs of her: Student A, B, C, and D.
- Witness Statement Forms from A, B, C, and D.
- Transcription of Statement from Witness D.
- Respondent's Statement Form
- During Respondent's interview, he identified 2 students who reported that Complainant allowed Gosselin E and F to have access to his phone to view the nude photographs.
- Witness Statements Forms from E and F.
- Statement from AP Coach Board regarding initial report
- Interview Notes of All Witnesses
- Photographs of Complainant
- Board Policy FPA
- ISDP Student Code of Conduct
- Athletic Code of Conduct and Respondent's Signature for same

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INVESTIGATIVE REPORT

*Photographs in this case were viewed by the undersigned but not maintained as part of the investigative file. The lewd nature of the photographs is not in dispute and maintaining a copy is not necessary for a determination in this matter...

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INVESTIGATIVE REPORT

Consideration of written responses to evidence.

After reviewing the evidence, Respondent Tatt submitted an additional statement to the effect that: 1) Complainant Jones voluntarily took and sent the pictures to him; 2) no school devices or technology were involved; 3) Complainant sent the pictures to him outside of the school setting and at night when they were in a relationship; 4) at no time did Complainant ask Respondent not to show the pictures to others; and 5) he did not show the pictures to other students at school.

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INVESTIGATIVE REPORT

This is the final investigative report in this matter. The Decision Maker will allow the parties to submit relevant questions for the other party(ies) or witnesses before making a determination of responsibility for sexual harassment.

Ted Lasso

March 11, 2021

Title IX Investigator

Date

cc: Title IX Coordinator – Ms. Rebecca Welton
Title IX Decision Maker – Mr. Leslie Higgins

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DETERMINATION OF RESPONSIBILITY

1. Identification of the **allegations** that constitute sexual harassment;
2. Description of the **procedural steps** taken since the receipt of the Formal Complaint through the Decision, including notifications, interviews with the parties and witnesses, site visits, methods used to gather other evidence;
3. **Findings of Fact**
4. **Conclusions** regarding the application of the District's Code of Conduct to the facts;

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DETERMINATION OF RESPONSIBILITY

5. A statement of and the **rationale** for the results of **each allegation**, including a **determination of responsibility**;
6. Any **disciplinary sanctions** imposed on the Respondent;
7. A statement **whether remedies** to the Complainant have been designed to **restore or preserve equal access** to the District's education program or activity; and
8. Information about the ability of the parties to **appeal** the decision.

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DETERMINATION OF RESPONSIBILITY

- Note the burden of proof standard (e.g., preponderance, clear and convincing)
- Note the evidence relied upon and not relied upon
- Summarize and assess credibility

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DETERMINATION OF RESPONSIBILITY

- Describe how your finding meets the standard of proof (e.g., POE)
- If more than one allegation, make a separate finding for each allegation.

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DETERMINATION OF RESPONSIBILITY

- Describe how your finding meets the standard of proof (e.g., POE)
- Identify any specific sanctions imposed and explain the basis for choosing those (e.g., precedent, history, cumulative violations, pattern of behavior, aggravating or mitigating factors, Complainant's request, etc.)

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DETERMINATION OF RESPONSIBILITY

- Write in active voice (e.g., I determined that...) rather than passive voice (e.g., It was determined that...)
- Write in the past tense
- If there is more than one Respondent, write a separate decision for each Respondent.

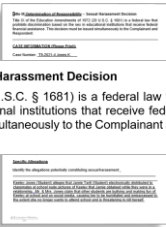
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DETERMINATION OF RESPONSIBILITY

Title IX Determination of Responsibility – Sexual Harassment Decision

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on the sex in educational institutions that receive federal financial assistance. This decision must be issued simultaneously to the Complainant and Respondent.



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DETERMINATION OF RESPONSIBILITY

DE-10 Determination of Responsibility - Sexual Harassment Process
 This is the District's process for determining if a student is responsible for sexual harassment. The process is outlined in the District's Student Code of Conduct. The process is outlined in the District's Student Code of Conduct. The process is outlined in the District's Student Code of Conduct.

CASE INFORMATION (Please Print):

Case Number: T9-2021-4 Jones, K.
 Complainant: Keeley Jones Campus: Richmond High School
 Respondent: Jamie Tartt Campus: Richmond High School

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DETERMINATION OF RESPONSIBILITY

DE-10 Determination of Responsibility - Sexual Harassment Process
 This is the District's process for determining if a student is responsible for sexual harassment. The process is outlined in the District's Student Code of Conduct. The process is outlined in the District's Student Code of Conduct. The process is outlined in the District's Student Code of Conduct.

Type of Complaint:

Discrimination based on: (Check all that apply)
 Sexual Harassment Sexual Assault Gender Based Harassment Dating Violence Stalking Retaliation Other

DE-10 Determination of Responsibility - Sexual Harassment Process
 This is the District's process for determining if a student is responsible for sexual harassment. The process is outlined in the District's Student Code of Conduct. The process is outlined in the District's Student Code of Conduct. The process is outlined in the District's Student Code of Conduct.

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DETERMINATION OF RESPONSIBILITY

DE-10 Determination of Responsibility - Sexual Harassment Process
 This is the District's process for determining if a student is responsible for sexual harassment. The process is outlined in the District's Student Code of Conduct. The process is outlined in the District's Student Code of Conduct. The process is outlined in the District's Student Code of Conduct.

Nature of Allegations:

- A school employee conditioning an educational benefit or service upon a student's participation in sexual conduct
- 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 District's education programs or activities
- Sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined in the Clery Act, 20 U.S.C. § 1092(f), and the Violence Against Women Act, 34 U.S.C. § 12291(a))

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DETERMINATION OF RESPONSIBILITY

DE-10 Determination of Responsibility - Sexual Harassment Process
 This is the District's process for determining if a student is responsible for sexual harassment. The process is outlined in the District's Student Code of Conduct. The process is outlined in the District's Student Code of Conduct. The process is outlined in the District's Student Code of Conduct.

Specific Allegations

Identify the allegations potentially constituting sexual harassment:
Keeley Jones (Student) alleges that Jamie Tartt (Student) electronically distributed to classmates at school nude pictures of Keeley that Jamie obtained while they were in a relationship. Mr. & Mrs. Jones claim that other students are bullying and making fun of Keeley at school and on social media, causing her to be humiliated and embarrassed to the extent she no longer wants to attend school and is threatening to kill herself.

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DETERMINATION OF RESPONSIBILITY

Decisional Steps

1. Identify the parties to the complaint.
2. Review the complaint and determine if it falls within the scope of the District's Student Code of Conduct.
3. Determine if the complaint is a Title IX violation.
4. Determine if the complaint is a Clery Act violation.
5. Determine if the complaint is a Violence Against Women Act violation.
6. Determine if the complaint is a sexual harassment violation.
7. Determine if the complaint is a dating violence violation.
8. Determine if the complaint is a domestic violence violation.
9. Determine if the complaint is a stalking violation.
10. Determine if the complaint is a sexual assault violation.
11. Determine if the complaint is a gender-based harassment violation.
12. Determine if the complaint is a retaliation violation.
13. Determine if the complaint is a discrimination violation.
14. Determine if the complaint is a harassment violation.
15. Determine if the complaint is a violation of the District's Student Code of Conduct.

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DETERMINATION OF RESPONSIBILITY

Findings of Fact

- Complainant is Keeley Jones is a 15 year old sophomore at RHS.
- Respondent is Jamie Tartt is a 15 year old sophomore at RHS.
- Complainant and Respondent were in a dating relationship during their freshman year of high school, 2019-2020. They are no longer dating.
- During their relationship, Complainant took photos of herself in a state of undress using her personal cell phone and while in her home. In her interview, Complainant stated that Respondent asked for "nudes," which she understood to mean nude photos of herself.

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DETERMINATION OF RESPONSIBILITY

Findings of Fact

- In Respondent's interview, he admitted to asking for and receiving "nudes" of Complainant during the 2019-2020 school year. He received them on his cell phone through a text message. He saved the photos to his cell phone. Respondent provided a supplemental statement in which he stated that Complainant voluntarily took and provided him the photos; no school devices or technology were used in the transmission of the photos; Complainant sent the photos outside of the school setting and at night when they were in a relationship; at no time did Complainant ask Respondent to not show the photos to others; and that he did not show the pictures to other students at school.

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DETERMINATION OF RESPONSIBILITY

Findings of Fact

- Complainant claimed that, after Complainant and Respondent were no longer in a dating relationship, Respondent showed the "nudes" to fellow schoolmates, Students C and D. Complainant was told by Students A and B that Students C and D claimed to have seen the photos.

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DETERMINATION OF RESPONSIBILITY

Findings of Fact

- Students C and D denied having seen or possessed the photos. Student C provided a written statement denying being shown the photos. Student D declined to write a statement. The investigator interviewed Student D and made notes of the interview.
- Respondent claims that Complainant showed Students E and F the photographs from her own cell phone. Complainant denies this. Students E and F also deny seeing any photographs.

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DETERMINATION OF RESPONSIBILITY

Findings of Fact

- Neither Complainant nor Respondent identified an adult/employee witness to these events. However, the investigator obtained a statement from English Teacher, Trent Crimm, who overheard students talking about seeing pictures of Complainant.
- Complainant claims that she did not share the photos or show the photos with anyone other than Respondent and that others must have seen them because details of the photos have been the subject of comments made on social media. Those details included descriptions of Complainant's physique, what Complainant was doing in the photographs, and a specific object Complainant had in her hand. Complainant provided copies of two social media posts that contained these details.

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DETERMINATION OF RESPONSIBILITY

Findings of Fact

- Complainant provided copies of text messages between Complainant and Respondent in which he apologized for "hurting her" and stated that he has "deleted the pics." This text message exchange occurred after Complainant heard from Students C and D that other students had seen the photos.
- Complainant provided a letter from a private counselor stating the effects this situation has had on Complainant, which include an inability to sleep, loss of appetite, inability to focus and complete schoolwork, and comments about self-harm.

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DETERMINATION OF RESPONSIBILITY

Conclusion regarding the Code of Conduct and Rationale

Based on a preponderance of the evidence, it is determined that:

- I. Allegation:
Keeley Jones (Student) alleges that Jamie Tartt (Student) electronically distributed to classmates at school nude pictures of Keeley that Jamie obtained while they were in a relationship. Mr. & Mrs. Jones claim that other students are bullying and making fun of Keeley at school and on social media, causing her to be humiliated and embarrassed to the extent she no longer wants to attend school and is threatening to kill herself.

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DETERMINATION OF RESPONSIBILITY

Conclusion regarding the Code of Conduct and Rationale

Based on a preponderance of the evidence, it is determined that:

- I have determined that it is more likely than not that the Respondent engaged in sexual harassment and dating violence under the district's FFH policy and student code of conduct.
- Rationale for determination: It is undisputed that Complainant provided nude electronic images of herself to Respondent while they were in a dating relationship. Other students had knowledge of specific details about the photos that they would not have, if they had not seen them, as evidenced by the social media posts provided by Complainant. Complainant has been

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DETERMINATION OF RESPONSIBILITY

- Complainant has been consistent in her version of events.
- Respondent's version of events has evolved or differed slightly. When interviewed Respondent denied having shown the photos or sent the photos to anyone. However, in his post-evidence review statement, Respondent stated that he did not show the pictures to other students at school. I infer from this subsequent statement that he did show the pictures to students away from school.
- The timing of this matter also corresponds to Complainant's new relationship with another student on campus.
- I have determined that Respondent showed the photographs in retaliation for Complainant entering a new relationship and that Respondent was jealous of Complainant's new relationship.

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DETERMINATION OF RESPONSIBILITY

- This matter has had an effect at school by affecting Complainant's ability and desire to participate in school programming, causing disruption by students gossiping about this matter as overhead by at least one teacher, and resulting in this investigation.
- Respondent's action of sharing nude photos of Complainant with other students in an attempt to embarrass her was unwelcome conduct that was so severe, pervasive, and objectively offensive that it effectively denied equal access to the District's education programs or activities.
- I also find that, because Complainant and Respondent had been in a past dating relationship, Respondent's actions constitute emotional abuse to intimidate or control Complainant by subjecting her to ridicule and making her uncomfortable at RHS.

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DETERMINATION OF RESPONSIBILITY

Remedies Provided

Disciplinary Sanctions

Due to the severity of the impact Respondent's actions have had on Complainant, the following disciplinary sanctions are to be imposed upon the Respondent:

- Respondent will be suspended from the soccer team for the remainder of the 2020-21 school year.
- A recommendation will be made that Respondent be placed in DAEP for 30 school days.

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Supportive Measures to Complainant: (Select only those that apply and provide details. Delete the options below that will not be implemented.)

- Counseling of students regarding appropriate behavior expectations
- Review of district and code of conduct expectations with students by administrator
- Change of class schedule/lunch schedule/locker location
- Campus/class escort
- Increased school monitoring of [location] for [time period e.g., next 9 weeks]
- School counseling
- Stay away agreement/No contact directives
- Limitation on extracurricular activities
- Training

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Supportive Measures to Respondent: (Select only those that apply and provide details. Delete the options below that will not be implemented.)

- Counseling of students regarding appropriate behavior expectations
- Review of district and code of conduct expectations with students by administrator
- Change of class schedule/lunch schedule/locker location
- Campus/class escort
- Increased school monitoring of [location] for [time period e.g., next 9 weeks]
- School counseling
- Stay away agreement/No contact directives
- Limitation on extracurricular activities: removal from soccer team for remainder of 20-21 SYr
- Training
- Change of work schedule/reassignment
- Other: DAEP - 30 days

DETERMINATION OF RESPONSIBILITY

The remedies and measures listed above are designed to restore or preserve equal access to the district's educational programs.

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DETERMINATION OF RESPONSIBILITY

Appeal

Either party may appeal this determination of responsibility on a form provided by the District **within 10 calendar days** of issuance of this decision. The only allowable bases for appeal are:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time of the decision that could affect the outcome; and
3. The Title IX Coordinator, Investigator(s), or Decision Maker has a conflict of interest or bias for or against Complainants or Respondents.

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DETERMINATION OF RESPONSIBILITY

Name _____ Date _____
Title IX Decision Maker

cc: Title IX Coordinator

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The information in this handout was prepared by Eichelbaum Wardell Hansen Powell & Muñoz, P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If special legal advice is sought, consult an attorney.



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Booster Club Equity and Athletic Audits

Presented by: Jennifer A. Powell

October 18, 2022



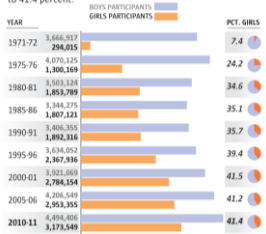
Athletic Audits and Booster Clubs

Jennifer A. Powell

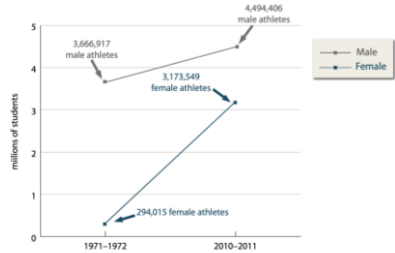
TITLE IX JUNE 23, 1972

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education programs or activity receiving federal financial assistance."

In 1971-72, the year before the passage of Title IX, girls represented just 7.4 percent of the participants in high school sports in the United States. By 2010-11, the number had risen to 41.4 percent:



- “Sports” or “athletics” not referenced in original law, but significant impact in this area
- Female high school sports participation grew from less than 300,000 to 1.3 million in 1974 (within 2 years of passage)



SOURCE: National Federation of State High School Associations, 2011.

TITLE IX

Two Basic Requirements

- Equal Access to the program
- Equal Treatment once in the program



OCR INVESTIGATIONS

- As of 9/2/2022 there are 109 open investigations into athletic issues, including 12 in Texas.
- If OCR finds problems, they will encourage the district to enter into a Resolution Agreement.
- No known cases of federal funds being withheld because of athletic violations of Title IX, but the Resolution Agreements can be burdensome.
- Some districts decide to approach proactively and audit their program.
- Can be done by administration, consultant, or law firm.



BENEFITS OF A TITLE IX ATHLETICS AUDIT

- Uncover and remedy compliance issues before OCR does.
- Gain the confidence of the community.
- Students and coaches feel heard.
- Avoid negative publicity.



LEVEL ONE AUDIT

- Directed at the equal access prong
- We address this by looking at accommodation of interests and abilities, which includes what is known as the three-part test.



THREE-PART TEST

Institutions must meet ONE of the following:

1. Test One – Proportionality
2. Test Two – Program Expansion – underrepresented sex
3. Test Three – Full Accommodation – underrepresented sex



TEST ONE - PROPORTIONALITY

- Provide male and female students with interscholastic participation opportunities at rates substantially proportionate to their respective rates of enrollment.



TEST ONE - PROPORTIONALITY

- Step one: Calculate the rate of enrollment.
- Example: A district has 74 students, 45 girls and 29 boys, so the girl's enrollment rate is .61.



TEST ONE - PROPORTIONALITY

- Step two: Calculate the rate of participation
- Who to count?
 - Anyone on the squad list as of the first countable contest, those who join after
 - Count the same individual more than once – once for each team
 - Count all levels of participation, not just varsity
 - If someone quits or is cut after first contest, they still count
 - Don't count academically ineligible
 - Don't count student managers
- Ex: there are 116 participants, 54 girls and 62 boys, so the girls' rate of participation is .47



TEST ONE - PROPORTIONALITY

- Step three: Compare the rate of participation to the rate of enrollment.
- Ex.: the girls' rate of enrollment compared to participation (.61 - .47) is a difference of .14



TEST ONE - PROPORTIONALITY

- Step four: Is the rate of participation substantially proportionate to the rate of enrollment?
- OCR will generally tolerate differences between two and five percentage points with the smaller differential tolerated for programs with the largest participation numbers.
- Ex.: 14 percentage points is not close enough – the rates are not substantially proportionate – girls are underrepresented so test one is not met.



TEST TWO – PROGRAM EXPANSION

- Must demonstrate a history of and continuing practice of program expansion for the underrepresented sex
- **Expansion is:**
 - adding teams that increases opportunities for participation
 - adding opportunities on existing teams
- **Expansion is not:**
 - increasing the rate of participation
 - improving benefits for existing team (equipment, scheduling, travel)



TEST THREE – FULL AND EFFECTIVE ACCOMMODATION

- Must show that you are fully and effectively accommodating the interests and abilities of the underrepresented sex.
- That means offering every sport and team for girls for which there is sufficient **interest** and **ability** for a viable team and sufficient interscholastic **competition** for that team in the school's normal competitive region.
- All three factors must exist before a school is obligated to offer a team under test three.



TEST THREE – FULL AND EFFECTIVE ACCOMMODATION

- For interest – look at on-campus programs and off-campus programs.
- On campus
 - Participation in intramural sports, recreation programs, or elective PE courses can be evidence of interest on campus.
 - Surveys can be used to identify interest levels for a team not currently offered to the underrepresented sex.
- Off campus
 - Participation at other schools in the local community can be evidence of potential interest in that sport.
 - Participation in community and regional recreation programs can also be evidence of interest.



TEST THREE – FULL AND EFFECTIVE ACCOMMODATION

- For ability OCR looks at students' athletic experience and accomplishments in on-campus and off-campus programs.
- However, at interscholastic level, lack of ability is unlikely to justify failure to offer a team.



TEST THREE – FULL AND EFFECTIVE ACCOMMODATION

- For competition there must be sufficient interscholastic competition in the school's normal competitive region.
- Normal competitive region can be identified by looking at miles from campus or geographic area.
- Once the region is identified, all schools within that region offering interscholastic sports for girls that are currently not offered at the school should be identified.
- At that point you can analyze whether there is sufficient competition at an appropriate competitive level for that sport
- It can make sense to start with this analysis rather than interest and abilities because if there is not sufficient competition, then the school complies with test three regardless of interest or ability levels.



RELATED CONSIDERATIONS

- Financial constraints are not a justification for noncompliance with Title IX.
- In some situations, girls must be allowed to tryout for boys' teams:
 - no girls' team for the sport
 - noncontact sport
 - girls' athletic opportunities have been limited previously
- UIL sponsorship not required to add sports.



RELATED CONSIDERATIONS

- "Roster management" may be used to achieve compliance with Test One.
 - Can avoid the expense of adding a girls' team and the difficulties of eliminating a boys' team.
 - It involves boys' teams cutting participants while girls' teams retain more participants.



RELATED CONSIDERATIONS

- Cheerleading and dance teams generally don't count.
 - OCR considers them extracurricular activities, not athletic teams.
 - OCR will recognize a competitive cheer team if they schedule enough contests to form a reasonable competitive schedule and don't perform at events for other sports.
- No word on esports



LEVEL TWO AUDIT

- This is addressed to the equal treatment prong.
- Involves looking at program components to determine whether the benefits enjoyed by the girls are equivalent to the benefits enjoyed by the boys.
- First we look at the levels of competition.



TWO-PART TEST – LEVELS OF COMPETITION

- Schools must meet ONE part:
 - Equivalently Advanced Competitive Opportunities
 - Continuous Upgrades of Competitive Opportunities



TEST ONE – EQUIVALENTLY ADVANCED COMPETITIVE OPPORTUNITIES

- This test involves calculating the percentage of female and male participants competing at each level such as varsity, junior varsity, and freshman levels and comparing those percentages.
- As a general rule, differences within five percentage points are not significant.



TEST TWO – CONTINUOUS UPGRADES OF COMPETITIVE OPPORTUNITIES

- Must demonstrate a history and continuing practice of upgrading of opportunities.
- This means that opponents from higher competitive levels have been scheduled more over time.



OTHER ATHLETIC BENEFITS AND OPPORTUNITIES

- | | |
|--|---|
| 1. EQUIPMENT AND SUPPLIES | 7. MEDICAL AND TRAINING FACILITIES AND SERVICES |
| 2. SCHEDULING OF GAMES AND PRACTICE TIMES | 8. HOUSING AND DINING FACILITIES AND SERVICES |
| 3. TRAVEL AND PER DIEM ALLOWANCES | 9. PUBLICITY |
| 4. TUTORING | 10. SUPPORT SERVICES |
| 5. COACHING | 11. RECRUITMENT OF STUDENT-ATHLETES |
| 6. LOCKER ROOMS, PRACTICE AND COMPETITIVE FACILITIES | |



REVIEW OF COMPONENTS

- Analyze compliance in the overall program, not by comparing individual sports.
- Offsetting benefits are recognized.
 - Where students of one sex are provided an advantage in some aspect of the program, while students of the other sex are provided an advantage in a different aspect of the program.
 - If the benefits are of equivalent weight or importance, they may offset each other or provide a balance of benefits.
- Much information is gleaned from surveys given to coaches and students.



EQUIPMENT AND SUPPLIES

- **QUALITY**
suitability, replacement schedules
- **AMOUNT**
number of items
- **MAINTENANCE**
storage
professional and student managers
laundry
- **AVAILABILITY**



EQUIPMENT AND SUPPLIES

- Information to review:
 - Questionnaires – information from coaches and athletes about quality and amount of equipment and supplies and the convenience and adequacy of storage space
 - Interviews – follow up with coaches and athletes about their responses
 - Facilities tour – visually inspect equipment storage facilities



SCHEDULING OF GAMES AND PRACTICE TIMES

- Number of competitive events
- Time of day of competitive events
- Number and length of practices
- Time of day of practices
- Opportunities for pre-season and post-season events
- Length of season
- Season of sport
- Number of sports per season



SCHEDULING OF GAMES AND PRACTICE TIMES

- Information to review:
 - Printed competitive schedules for current and previous years
 - Printed schedules for pre-season events, including scrimmages with other teams and exhibition games
 - Questionnaires about the desirability of practice and game schedules for regular, pre, and post season
 - Interviews to clarify questionnaire responses



TRAVEL AND PER DIEM ALLOWANCES

- Modes of transportation
- Housing and dining furnished during travel
- Length of stay before and after competitive events
- Per diem allowances



TRAVEL AND PER DIEM ALLOWANCES

- Information to review:
 - Questionnaires about modes of transportation, quality of housing, the number of athletes per room, length of stay before and after, dining arrangements and per diem amounts
 - Interviews to clarify
 - Budget information related to team travel
 - Schedules showing location of away contests



COACHING

Opportunity to receive coaching:

- Availability of coaches
- **Number of coaches per team**
- Length of contract
- Association with school - **on-campus versus off-campus**

Assignment of Coaches:

- Qualifications
- Years of experience
- Success as coach

Compensation of Coaches:

- Total dollars proportionate to participation



COACHING

Items to review:

- Names of coaches for each team and length of contract, nature of duties, time assigned to other duties, compensation for coaching and non-coaching
- Questionnaires regarding the availability and qualification of coaches
- Interviews



LOCKER ROOMS, PRACTICE AND COMPETITIVE FACILITIES

Practice and Competitive Facilities

- Quality
- Availability
- Exclusivity
- **Focus on facilities used by just one gender**
- **Calculate proportions using each facility**

Locker Rooms

- Number of Locker Rooms
- Quality of Locker Rooms
- Exclusivity



LOCKER ROOMS, PRACTICE AND COMPETITIVE FACILITIES

Information to review:

- Facilities tour to visually inspect all locker rooms, practice, and competitive facilities
- Questionnaires regarding the quality and availability of locker rooms, practice, and competitive facilities
- Interviews to follow up



MEDICAL AND TRAINING FACILITIES AND SERVICES

- **Medical Personnel and Assistance**
- **Qualifications/Availability of Trainers**
- **Training Rooms**
- **Weight Rooms**
- **Insurance**



MEDICAL AND TRAINING FACILITIES AND SERVICES

Information to review:

- Questionnaire to coaches, athletes, and head athletic trainer regarding the assignment of medical and athletic training personnel to home games, away games, and practices and the availability and quality of training room and weight room
- Interviews to follow up
- Facilities tour to visually inspect all training and weight rooms
- Review insurance policy for student-athletes



PUBLICITY

- Attendance by support groups (cheerleaders, band, drill team, etc.)
- Equivalent publicity and promotions
- Equivalent types and quality of publications
- Availability of sports information personnel



PUBLICITY

Information to review:

- Questionnaires regarding participation of support groups, publications, and other publicity and promotion
- Interviews to follow up
- Obtain copies of publications for each team, including media guides, programs, schedule cards, press releases, posters, website



SUPPORT SERVICES

- Equivalent clerical and administrative support so that boys' and girls' coaches spend the same hours per week performing clerical and administrative tasks
- Boys' and girls' coaches should have equivalently adequate and convenient office space and equipment



SUPPORT SERVICES

- Information to review:
 - Questionnaires regarding the number of hours coaches say they spend per week on clerical and administrative tasks and the support staff available for their teams
 - Interviews to follow up
 - Facilities tour to inspect the office space for coaches and clerical staff.



Title IX does **NOT** require an institution to provide:

- An athletics program
- A good athletics program – programs need to be equally good or equally pathetic for male and female students
- The same funding:
 - to the overall women's and men's programs
 - to men's and women's teams in the same sports (funding source cannot justify disparities)
- Specific benefits such as coaching, facilities, equipment
- Same number of teams or same sports for men and women
- Same benefits to men's and women's teams in the same sport
- Compete at a specific level or join a specific conference

Courtesy of: Valerie McMurtrie Bonnette, Title IX and Interscholastic Athletics: How it all Works – In Plain English



FUNDING SOURCE CAN'T JUSTIFY DISPARITY

- Booster Clubs
 - Any benefits provided by booster clubs are subject to Title IX.
 - If booster club provides benefits that create a disparity under Title IX, then the school is responsible for offsetting that disparity.
 - Example: If a booster club's contributions provide football athletes with benefits superior to those provided to all female athletes, the school may reallocate the funds it would have spent on football to girls' teams as necessary to provide equivalent benefits and achieve compliance.



FUNDING SOURCE CAN'T JUSTIFY DISPARITY

- Booster Clubs
 - OCR has always taken that position.
 - In 1992 a district court in Rhode Island adopted OCR's position.
 - Then in 1997, a district court in Florida rejected a school district's argument that it cannot be held responsible if the fund-raising activities of one booster club is more successful than another.
 - Then in 2002, the 8th Circuit Court of Appeals stated: "Once a university receives a monetary donation, the funds become public money, subject to Title IX's legal obligations in their disbursement."



FUNDING SOURCE CAN'T JUSTIFY DISPARITY

- Donations
 - The same rule applies for other private donations.
 - It is not the money itself that Title IX is concerned with; it's the benefits that money buys.
 - If the benefits are disparate, look at ways to offset the disparities.



FUNDING SOURCE CAN'T JUSTIFY DISPARITY

- Fundraising
 - No specific Title IX requirements
 - Opportunities cannot be limited or imposed discriminatorily.
 - Priority for more lucrative fundraisers cannot be based on sex.
 - Giving benefits to boys' teams that girls' teams must pay for through fundraisers creates compliance problems.
 - Athletes may not receive lesser benefits on the basis of sex because of their coach's inability to fundraise.
 - Disparate benefits on the basis of sex cannot be the result of coaches' differing abilities to fundraise.



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Special Education and Title IX: What Could Possibly Go Wrong?

Presented by: Heather R. Rutland

October 18, 2022

Special Education and Title IX: What Could Possibly Go Wrong?



Heather R. Rutland



Why Do We Care About Sped and Title IX?

- There is a body of federal law specific to the intersection of these concepts, and plaintiff attorneys working hard to change standards.
- Claims under IDEA, Section 504 and Title IX are being increasingly brought together from the same set of facts.
- One event or series of events can serve as the basis for multiple causes of action so you must be prepared to defend your district on several fronts, and within different departments.
- A SpEd Due Process complaint is no longer the worst-case scenario...FAPE violations come in all shapes and sizes and price tags.



FAPE

- Failure to provide FAPE underlies all IDEA and § 504 claims:
 - Free
 - Appropriate
 - Public
 - Education
- FAPE is demonstrated by a student making appropriately ambitious progress (academically, behaviorally, socially)
 - Plaintiffs maintain that all harassed students will fail/have failed to make progress due to the T9 violations
 - That failure to make progress violates a student's right to FAPE
 - They argue therefore, that harassment/assault is a *de facto* finding of FAPE violation.



Title IX

- Elements of a Title IX Claim:
 - Plaintiff must show that*
 - 1) The sexual harassment was so severe and pervasive and objectively offensive that it can be said to have deprived the student access to the educational opportunities or benefits provided by the school;
 - 2) The district must have actual knowledge of the sexual harassment;
 - 3) The district must have been deliberately indifferent to the harassment.

Davis v. Monroe Civ. Bd. of Educ., 526 U.S. 629 (1999).



Title IX

- KNOW YOUR POLICIES!!
- Train Special Ed administrators and staff on board policy FFH and the concept of deliberate indifference.
- They should know what to look for and what to do if a complaint is made.
- Make sure your Special Ed staff members are aware of how their actions (or inaction) can later serve as fodder for a lawsuit.



SPECIAL EDUCATION T9 COMPLICATIONS

Investigation Complications

The victim and/or the harasser may be unreliable

- Time, place, details are harder than usual to determine
 - Story may change unintentionally due to cognitive deficits
- May be completely made up; issues with reality versus make-believe
- Often even more susceptible to parental influence

Consent between students especially fraught

- Does student have the ability to consent?
 - SpEd students often more "persuadable"
 - Reading "social cues" often a deficit
- Student version versus Parent version
 - Implications of "bad" and "good" especially powerful



Special Education Concerns

- SpEd students are more vulnerable to harassment of all kinds
 - Seen as easy targets by other students
 - Less likely to fight back or resist
 - Less likely to report
 - More likely to be re-victimized
 - Easier to intimidate
 - **May not realize they are being harassed or were assaulted**
 - **May not understand the implications/consequences of actions**



Special Education Concerns

- **Harm from Harassment is Often Magnified**
 - Special ed students may be impacted in different and more severe ways than their Gen Ed peers
 - Current disabilities manifest more severely
 - New disabilities develop
 - Re-evaluations may be necessary
 - Revised IEPs required to ensure educational benefit
 - **SpEd students can be more traumatized by the investigation than the alleged act itself**



Infinite Possibilities for Disaster

- Dyslexic gay student subjected to homophobic slurs
- Down's syndrome student talked into oral sex by fellow student
- Life Skills student makes outcry against aide
- Male ED student continually exposes self to female classmates
- ADHD student shares pictures of girlfriend after bad breakup
- Teacher finds 2 autistic students making out; parent complains

Some of these would raise Title IX red flags, others might not
Depends on the student, the parent, and the impact on educational progress



Special Education Concerns

- **Educational benefit easily derailed**
 - District is already working hard to ensure progress for SpEd students
 - A team of experts has developed a plan, which has to be revisited/revised
 - “Progress” for many students is already a precarious proposition
- **The “optics” are especially ugly**
- **It is often easier to meet the “objectively offensive” standard when the recipient is SpEd.**



Special Education Concerns

- **Special Ed staff are rarely trained to recognize, investigate, or address incidents giving rise to Title IX claims.**
- **Title IX implicates how you investigate claims, and what you do with the information you find.**
 - Any Special Ed perpetrator will likely require a new/revised Behavior Intervention Plan (BIP) and Individualized Education Plan (IEP)
 - Many victims will as well
 - Additional evaluations likely required and ARD Committee should meet, but now parent trust is low(er)
 - Discipline under Student Code of Conduct; MDR trigger
 - Criminal charges possible against perpetrator



Special Education Concerns

- **Implications for Discipline**
 - Manifestation Determination Reviews (MDRs) required for disabled students accused of harassment
 - May find harassing behavior was function of disability so not able to discipline legally
 - May find harassing behavior the result of district failure to implement IEP, so no discipline
 - Very difficult to explain this to parents and staff
 - Must revise BIP and/or conduct Functional Behavior Analysis (FBA)
 - Even if not a Title IX violation, still SCOC...



Special Education Concerns

- **Failure to Protect claims**
 - “Failure to supervise” claims common – for both students
 - Harassment may be result of inappropriate BIP or failure to implement BIP/IEP
 - Did school have any prior knowledge of the aggressor?
- **Parent trust may never be restored**
- **Sex education especially difficult issue for SpEd students**
 - Biology versus social mores
 - Cognitive roadblocks to understanding
 - Struggle to appreciate consequences
 - Social cues, impulse control, sensory issues...



Special Education Concerns

- **Student-on-student harassment quickly becomes a Special Ed matter.**
 - The Due Process hearing under IDEA is the typical starting point
 - Can be an early opportunity to settle ALL claims
 - Settlement asks often factor in “loss” of any Title IX recovery
 - Each side can access the discovery process; see evidence before get to federal court
 - Discovery can expose other weak spots
 - Admin Hearing Officer likely find for parents under IDEA if go to hearing
 - HOs are people, too – even though no T9 jurisdiction
 - May have to litigate whether harassment occurred in an administrative proceeding – even if the claim is about education
 - Loss means approx. \$50k-70k in district fees – plus parent fees
 - Still vulnerable to federal Title IX claim, especially with sworn testimony and HO findings of fact.



Recommendations

- **Take all complaints and allegations seriously**
 - Do not dismiss the source of any outcry
 - Do not dismiss any allegation, no matter how over-the-top
 - Be quick to review any available video footage
- **All employees should know who the district Title IX coordinator is and what triggers an investigation**
- **Be ready to take action to stop the alleged harassment that also comports with all IEPs**
 - Separating students can end up violate their IDEA rights
 - Failure to sufficiently separate can mean deliberate indifference



Recommendations

- **Conduct a least abbreviated Title IX training for SpEd staff.**
 - Even if they are not conducting the investigation, they should know what's important and whom to contact.
- **Develop a plan for the student(s) involved during an investigation.**
 - Moving students may not be as easy as in Gen Ed
 - Disruptions of any kind can have negative impact
 - Must still comply with student's IEP
 - If change in placement occurs, ARD required; pay attention to timelines and “10-day” rule
 - Deliberate indifference can be a problem at this level
 - At the very least, increased supervision should occur
- **Ensure that your Special Ed staff knows the circumstances that could trigger a Title IX investigation, and what to do during the investigation.**



Recommendations

- Be prepared to contact law enforcement, CPS, etc.
- Continue to assure students and parents that you take all allegations seriously.
- Maintain confidentiality and follow district policies and procedures throughout investigation process.
- **Be mindful of what ends up in writing;** contact your attorney for help in this regard.
 - Carefully document your efforts after the claim to avoid deliberate indifference allegations.
 - Plan on Plaintiff's counsel serving you with discovery in IDEA Due Process.



Investigation is Complete... Now What?

- **Take appropriate actions depending on your findings.**
 - This includes revising BIPs, conducting FBAs, and revisiting IEPs...for all students impacted
- **Lack of evidence of sexual harassment doesn't mean it didn't happen.**
 - The student(s) may each be impacted by the experience of an allegation in ways that require changes to IEP and/or BIPs
 - Student (and parent) versions of the truth may be all that matters
 - Student discipline still possible
- **Keep close eye on both accuser and accused for future behaviors of concern.**
 - This is where many districts get into trouble
 - Students who want to be together will find a way
 - Failure to supervise will be primary complaint – if it happens/happens again, parent will claim you failed despite having knowledge of threat



Next Steps after Investigation...

- **Notify parents immediately and keep them informed.**
 - Special Ed parents are often used to more communication
 - An ARD may be required; send notices promptly
 - Parents may need help understanding legal nuances depending on findings
 - "Unsubstantiated" does not mean we do not believe their child
 - Title IX elements may not have been met, but we may still take action
- **Even lame ideas can be seen as "taking action," as long as you do not end up placing a student in future peril.**
- **Keep the legal requirements for Title IX in mind:**
 - **Must deprive the student of educational opportunity.**
 - ARD Committee actions and data collection efforts can disprove educational deprivation
 - If can show student continues to progress, it weakens damages claims



Takeaways

- Title IX violations can result in a denial of FAPE, exposing district to several lawsuits.
- Prevention is ultimate goal – adequate student supervision required.
 - Both in the plan AND the execution
 - Staff training and accountability measures are critical to ensure implementation
- SpEd staff must be able identify and take steps when possible Title IX violation, and then make decisions and revisit IEPs based on findings of any investigation.
- Take prompt action in keeping with IEP immediately and make plans after the investigation as appropriate for the individual student.



The information in this handout was prepared by Eichelbaum Wardell Hansen Powell & Muñoz, P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If special legal advice is sought, consult an attorney.



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