



Title IX Sexual Harassment

Wilmette Public Schools #39

Hodges Loizzi —————
Eisenhammer Rodick & Kohn LLP



Title IX of the *Education Amendments Act of 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 subjected to discrimination under any education program or activity receiving Federal financial assistance.”

20 U.S.C.A. § 1681



Title IX: Brief History

- 1972: Title IX enacted
- 1974: Title IX regulations issued
- 1980: Title IX enforcement transferred to the new U.S. Department of Education Office for Civil Rights (“OCR”)
- 1992: U.S. Supreme Court recognizes student right to damages for sexual harassment (*Franklin v. Gwinnett County Schools*)




Title IX: Brief History

- 1998: U.S. Supreme Court sets standard for teacher-on-student harassment liability as “deliberate indifference” after “actual notice” of misconduct (*Gebser v. Lago Vista School District*)
- 1999: U.S. Supreme Court narrows the definition of “sexual harassment” to require *Gebser* standard + “severe, pervasive, and objectively offensive” harassment (*Davis v. Monroe County Board of Education*)
- Late 1990s to 2017: Several OCR guidance documents issued on the response of educational institutions to allegations of sexual harassment and sexual assault/violence



May 2020 – Amended Title IX Sexual Harassment Regulations



Title IX Regulations – Sexual Harassment

- On May 6, 2020, the U.S. DOE released its long-awaited final rule amending Title IX regulations (34 C.F.R. Part 106)
- Effective August 14, 2020
- Significant changes to the Title IX grievance procedure and, thus, the way school districts respond to allegations of sexual harassment under Title IX



Title IX Regulations: General Overview

The District can violate Title IX when sexual harassment occurs:

- In the District's education program or activity;
- By any person, against any person in the United States;
- Any District employee has notice of the allegations of sexual harassment ("actual knowledge"); and
- The District is deliberately indifferent in its response

34 C.F.R. § 106.30(a)



Title IX: What Has Not Changed?

- Obligation to investigate allegations of sexual misconduct
 - Previously, school districts investigated such allegations pursuant to Board Policy 2:260, *Uniform Grievance Procedure*; or Board Policy 7:180, *Preventing Bullying and Other Aggressive Behaviors*
- Title IX investigations of allegations not relating to sexual harassment
- Rules regarding athletic participation, employment, and single-sex education



Title IX: What Has Changed?

For Title IX Sexual Harassment:

- Terminology and Definitions
- Grievance Procedure
- Policy, Notice, and Website Posting Requirements



Title IX: Sexual Harassment

- Previously, Title IX regulations did not refer to or define “sexual harassment”
- Amended Title IX regulations explicitly define sexual harassment



Title IX: Sexual Harassment

Conduct on the basis of sex that satisfies one of more of the following:

- An employee of the recipient conditioning the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct (*quid pro quo*);
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the District's education program or activity (*hostile environment*); or
- Sexual assault, dating violence, domestic violence, or stalking as defined under the *Clery Act / Violence Against Women Act*

34 C.F.R. § 106.30(a)

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Title IX: Sexual Harassment

Examples:

- Touching
- Crude jokes or pictures
- Discussions of sexual experiences
- Teasing related to sexual characteristics
- Spreading rumors related to a person's alleged sexual activities
- Rape
- Sexual battery
- Sexual abuse
- Sexual coercion



Title IX: Education Program or Activity

- The District must respond when sexual harassment occurs in the District's education program or activity, against a person in the United States
- Education program or activity includes any location, event, or circumstance over which the District exhibits substantial control over both the alleged harasser and the context in which the harassment occurred
 - Examples: school, field trip, extracurricular activity
 - Includes via technology (email, internet, social media, etc.)

34 C.F.R. § 106.44(a)



Title IX Coordinator

- The District must designate and authorize an employee to coordinate the District's efforts to implement the law; must be identified as the "Title IX Coordinator"
- Title IX Coordinator(s):

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Title IX: Actual Knowledge

- When the District has *actual knowledge* of sexual harassment in the District's education program or activity against a person in the United States, it must respond promptly and in a manner that is not deliberately indifferent
- **The District has *actual knowledge* when ANY District employee has notice of the allegations of sexual harassment**
- A report/notice of sexual harassment may be made by *any* person, at any time, verbal or written, in person, by mail, phone, email, or any means that results in the Title IX Coordinator receiving the report, and may be anonymous

34 C.F.R. §§ 106.30(a), 106.8(a)



Reporting to the Title IX Coordinator

- **ALL** District employees must *immediately* report sexual harassment allegations to the Title IX Coordinator (and building administrator/supervisor)
- Failure to make or forward a report to the Title IX Coordinator (and building administrator/supervisor) may result in employee discipline, up to and including discharge
- Also immediately report to DCFS if allegations raise suspicion of child abuse or neglect

34 C.F.R. § 106.30(a)



Title IX Grievance Procedure

Two-fold District response:

- (1) Upon “actual knowledge” of allegation:
 - Title IX Coordinator promptly contacts the Complainant to discuss the availability of supportive measures and explain the process for filing a Formal Title IX Sexual Harassment Complaint
- (2) Upon receiving/filing Formal Complaint:
 - Title IX Coordinator initiates Formal Title IX Sexual Harassment Complaint Grievance Process

34 C.F.R. §§ 106.44(a), 106.45

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Title IX Grievance Procedure

- Board Policy [2:265, Title IX Sexual Harassment Grievance Procedure](#)



Title IX: Notice of Policy and Procedures

- Must provide notice of the District's nondiscrimination policy and grievance procedures (Board Policies [2:260](#) and [2:265](#)) to the following groups:
 - Students
 - Parents/Legal Guardians
 - Employees
 - Unions or professional organizations holding agreements with the District
 - Applicants for employment

34 C.F.R. § 106.8(b)



Title IX: Notice and Website Posting Requirements

- Must post policies and grievance procedures on the District's website
- Must post Title IX Coordinator's contact information (name, title, address, phone number, email) on the District's website and print in any handbook to persons entitled to notification (see previous list)
- Must post Title IX training materials on the District's website; if the District does not have a website, must have the training materials available for members of the public to inspect

34 C.F.R. §§ 106.8, 106.45(b)(i)(10)(d)



Title IX: Relevant Board Policies to Review

- [2:260](#), *Uniform Grievance Procedure*
- [2:265](#), *Title IX Sexual Harassment Grievance Procedure* – NEW
- [5:10](#), *Equal Employment Opportunity*
- [5:20](#), *Workplace Harassment Prohibited*
- [5:90](#), *Abused and Neglected Child Reporting*
- [7:10](#), *Equal Educational Opportunities*
- [7:20](#), *Harassment of Students Prohibited*
- [7:180](#), *Prevention of and Response to Bullying, Intimidation, and Harassment*
- [7:185](#), *Teen Dating Violence Prohibited*
- [7:190](#), *Student Behavior*



Title IX: Enforcement

- Any District employee who is determined, at the conclusion of the Title IX grievance process, to have engaged in sexual harassment will be subject to disciplinary action, up to and including discharge
- Any District employee making knowingly false accusations regarding sexual harassment will be subject to disciplinary action, up to and including discharge
- Any District employee who retaliates against others for reporting or complaining of violations of sexual harassment or for participating in any manner in the sexual harassment grievance procedure will be subject to disciplinary action, up to and including discharge
 - Employees should report claims of retaliation under Board Policy 2:260, *Uniform Grievance Procedure*



Title IX: Training

- All District employees:
 - Definition of sexual harassment
 - Scope of the District's education program or activity
 - All relevant District policies and procedures
 - Requirement to promptly forward all reports of sexual harassment to Title IX Coordinator
- Additional training for individuals serving in Title IX roles—Title IX Coordinator(s), Investigator(s), Initial and Appellate Decision-Makers, and Informal Resolution Process Facilitator(s):
 - How to conduct an investigation and implement the grievance process
 - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
 - Investigators: Issues of relevance to create an investigation report that fairly summarizes relevant evidence
 - Decision-Makers: Issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant