

In compliance with the requirements of Title IX, 34 C.F.R. section 106.45(b)(10), all materials used to train the District's Title IX personnel are available here and are also available for inspection upon request by contacting the Title IX Coordinator.

Welcome to the e-learning module Title IX in Schools. Title IX federal legislation has had a powerful impact on education since its inception in the 1970s. This course, aimed at faculty and school administrators, will focus on the Sexual Harassment prohibitions in Title IX. For more detailed overview of Title IX in general, please see the module "Title IX and Schools."

Except where noted, this course is based upon Preventing Students From Discrimination, Harassment, And Retaliation Based On Sex: A Title IX Guide For Texas Public School Districts.(2017) by Mackenzie Lewis, John J. Janssen, (Attorneys, Powell & Leon, LLP).

We also want to make you aware of a couple of major changes in the regulations, which include a new definition of sexual harassment concerning sexual misconduct that creates a hostile environment, and now, under the new rules, any district employee who personally observes sexual misconduct or receives a report of sexual misconduct must immediately report that misconduct to the Title IX Coordinator. The prior rules stated that the district's responsibility to respond was not prompted until a person who had the authority to take corrective action knew or should have known about the sexual misconduct—that is no longer the threshold. Under the new rules, when any employee of a K-12 school district notifies the Title IX Coordinator of an incident(s) of sexual misconduct, it triggers the district's responsibility to respond to the allegations.

When you complete this module, you will be able to identify the components of Title IX of the Education Amendments of 1972, sexual harassment under Title IX, and describe the required responses for allegations of sexual harassment in schools.

Let's begin this course with three scenarios that highlight potential sexual harassment incidents in schools. At the end of the course, we'll return and re-examine each scenario to determine whether violations indeed occurred.

Elizabeth, a new student, ended a brief romantic relationship with Bryan. After the break-up, Bryan and his friends began calling her sexually charged names, spreading rumors about her sexual behavior, and sending her threatening text messages and e-mails.

One of Elizabeth's teachers witnessed the name calling and also noticed the new student's anxiety and declining class participation. The school attempted to mediate the situation by requiring Elizabeth to resolve the problem directly with her harassers.

Bryan later confronted Elizabeth at her home, threatened her and her family, and assaulted her brother. Law enforcement then got involved, arrested Bryan and questioned students known to have participated in the "hazing." When Elizabeth's parents complained to the school as to how this whole matter had been handled, the principal of the campus proudly observed that Bryan had been charged by the police.

Was Title IX implicated in this situation? Did the campus handle this situation properly? We'll return to this scenario later in this course.

Over the course of a school year, Robert, an openly gay public high school student, was called names (including anti-gay slurs and sexual comments) both to his face and on social networking sites. He was physically assaulted, threatened and ridiculed by other students.

As a result, Robert dropped out of the drama club to avoid further harassment. Based on the student's self-identification as gay and the nature of some of the harassment, the school did not determine that the misconduct included discrimination covered by Title IX.

Is Title IX relevant to this type of situation? We'll return to this scenario later in the course.

A junior high school teacher repeatedly makes comments in class suggesting that male students are more fit for certain types of academic work and jobs than female students. He consistently laments 21st century American morals, the degradation of the traditional family, and encourages his students to look at episodes of *Leave it to Beaver* for an example of the way things “used to be.”

A parent of a female student complains, saying that his daughter is not being encouraged to succeed, and does not feel welcome in the class.

Does this scenario represent a potential Title IX violation? We’ll find out later in the course.

First, let’s look at the Title IX guidelines in general.

Title IX of the Education Amendments of 1972 is a federal law that prohibits discrimination on the basis of sex, including sexual harassment, in educational programs and activities that receive federal assistance, including state and local educational agencies. **The new rules make it clear that even if an incident occurs in an education program or activity of the district, Title IX does not apply to incidents that occur outside of the United States (e.g., Spring Break trips outside of the U.S., or study abroad programs). However, the misconduct may still be addressed under another of the district’s grievance policies.**

Prior to the passage of Title IX, women in school sports did not have the same opportunities that men had. For example, before 1972, vastly more scholarships and funding was available for male athletes than for female athletes. [Click for more.](#)

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After Title IX, over time, there has been a huge expansion of female involvement in school activities, especially in the area of sports. This change has occurred from elementary through college athletics. The Department of Education has expanded the definition of Title IX to include sexual harassment as a form of discrimination.

Title IX is not limited to athletics programs, however. The law prohibits discrimination based on sex in almost every school activity: courses available, tutoring, financial assistance, counseling, student health, and more.

Select each item covered under Title IX, then select Submit.

The scope of Title IX in educational programs and activities is broad.

Discrimination based on sex is banned for any “*academic, extracurricular, research, occupational training, or other education program or activity*” operated by a recipient of federal financial assistance.

Drag and drop the correct terms to the blanks in the statements about Title IX.

Title IX is enforced by the United States Department of Education, Office of Civil Rights (or OCR). Any complaints of gender discrimination may be made to OCR, including by persons who are not alleged victims.

A student may bring a civil cause of action for damages under Title IX against the institution, but not individual employees.

We’ll discuss the elements of an OCR investigation later in this course.

What does Title IX law apply to? Drag and drop each topic to the correct box.

Click each item to break this down further. According to Title IX, a school or district that receives federal funding shall not:

- (1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;
- (2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;
- (3) Deny any person any such aid, benefit, or service;
- (4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;
- (5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;
- (6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;
- (7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

Which of these items are not allowed by Title IX? Select all of the correct items, then the Submit button.

A key concept behind Title IX is the requirement for “comparable facilities.” Click for more.

A school may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided students of the other sex.

There are several exceptions to the access rule. These include contact sports in physical education classes and ability grouping in physical education classes. Select each to explore.

Human sexuality classes (known as “Sex Ed”) and groups like school choruses may also be exceptions to the requirement. Select each to explore.

Under certain other circumstances, single-sex classes and extracurricular activities are allowed. Select the image to explore.

Drag and drop the correct terms to the blanks in the statements about Title IX.

While Title IX covers many areas in education, its impact on athletics is the most well-known.

In general, “no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics.”

An important exception to this rule is that separate teams are allowed, based on competitive skill, or for contact sports.

However, when a recipient operates a team in a particular sport for members of one sex but does not operate a team for members of the other sex, members of

the excluded sex must be allowed to try-out for the team offered, unless the sport involved is a contact sport.

What, exactly, are “contact sports”?

For this exception to the athletics rule, “contact sports” are defined to include boxing, wrestling, rugby, ice hockey, football, basketball and other sports in which the purpose or major activity involves bodily contact.

When are separate facilities or activities for boys and girls allowed under Title IX? Drag and drop each topic to the correct box.

Which of these are considered “contact sports” under Title IX?

A recipient of federal funds that operates or sponsors interscholastic, intercollegiate, club or intramural athletics must provide equal athletic opportunity for members of both sexes. “Opportunity” means more than just time on a playing field, however...

Click to reveal the requirements.

Which of these items fall under the “Equal Opportunity” requirements of Title IX? Select the correct items, then the Submit button.

Match the description to the correct type of exception.

Let’s now focus on Title IX and the specific issue of sexual harassment. Since 1972, the Department of Education has expanded the definition of Title IX to include sexual harassment as a form of discrimination.

According to the current law, sexual harassment of students is: *“sexual misconduct...so severe, persistent, **and** pervasive as to deny or limit a student’s ability to participate in, or benefit from, the school’s programs or activities”* **The new regulations have narrowed the definition of sexual harassment when determining whether the misconduct creates a hostile environment. Now, you must consider whether the conduct is severe, and pervasive, and objectively offensive. For example, the use of a highly derogatory term based on sex—even though it may be offensive, may not rise to the level of hostile environment because it is not also alleged to have been pervasive. The old rule said that it**

could be severe or pervasive. **But, keep in mind, that for the other 2 categories of sexual harassment—where an employee engages in quid pro quo....For example, if a teacher offers a student a good grade in exchange for sexual favors, or a principal offers a teacher a promotion in exchange for sexual favors—or if you have an incident of one of the federal law terms such as dating violence –it only takes one incident of those types of misconduct to be considered sexual assault under the new definition. You don’t need to consider whether those types of misconduct are severe and pervasive.**

The level of severity and impact of the actions makes a difference. If the actions do not deprive the victim of access to the “educational opportunities or benefits,” it may not be considered harassment.

According to the law, the definition does not include *“simple acts of teasing and name-calling among school children, however, even when the comments target differences in gender.”*

Of course, it is important that the school be a safe environment, and sexual harassment never approach this level of legal liability. In the school, all types of sexual harassment should be avoided, regardless of the severity or whether they negatively effect the student’s education.

The “letter of the law,” in this case, is a minimum standard.

Click the images to see what can be considered sexual harassment under Title IX.

Select the items that can be considered sexual harassment under Title IX. Then select Submit.

Let’s look more closely at the types of prohibited sexual harassment. Sexual violence, such as rape, is included, as well as sexual touching, meaning intentional unwanted sexual contact either directly or through clothing. These are probably some of the most recognized types of sexual harassment.

Drag and drop the correct items to complete the sentence.

Coercion, or pressure to engage in sexual acts, is considered sexual harassment. This includes a “quid pro quo” (meaning “this for that”) arrangement, such as a teacher offering a student a passing grade in exchange for a sexual act.

Select each of the descriptions that may be considered sexual harassment, then select submit.

Sexual harassment can include sexual comments, jokes, or gestures. This is especially true if there is a pattern of such comments, or they are conducted by a group of students. Graffiti or sexually explicit pictures can constitute harassment. Sexual harassment can be purely verbal, such as a group of students creating a sexually-charged “nickname” for a student. Sexual rumors are treated similarly by the law. For example, a story about a boy behaving in a sexual manner at a party, if spread throughout a school, may constitute a “sexual rumor.”

“Ratings” or similar forms of discussion about a student can, in some cases, be considered sexual harassment.

Select each of the descriptions that may be considered sexual harassment, then select submit.

In today’s very digitized world, students and teachers frequently communicate by the internet and social media. This creates an environment where rumors can travel quickly and sexual harassment can be very common. For example, a revealing photo sent, in confidence, to another student, can easily be shared online, subjecting the student in the photo to ridicule or further harassment.

Name-calling and the circulation of rumors can be very rapid - and often, anonymous - on social media. Students who are the victims of this type of harassment can feel particularly isolated and hurt.

In some cases, individual instances of particular conduct may not constitute sexual harassment, but repeated conduct over time will.

Sexual harassment, as defined under Title IX, can be by students or staff. For example, a sexual nickname for 8th grader Alyssa, spread on social media, is a typical example of student-led harassment.

Staff members can be harassers, as well. Examples include intentionally stroking a student in a classroom, discussing inappropriate sexual topics with a student, or “quid pro quo” suggestions. Sometimes there can be a combination of these. For example, when Mr. Sparks, a science teacher, asked Emma about whether she was sexually active with her boyfriend, she replied that it was a “weird question.” He became flustered, and told her that if she kept the conversation to herself, he’d make sure she made a good grade.

Some sexual harassment (and abuse) occurs when an adult manipulates or “grooms” a child or youth - over time - into trust and sexual contact. This type of offender may even “groom” parents and other educators into thinking the child is safe with them.

While actual sexual contact may not be observable by others, “grooming” activities – a teacher being alone with a youth, offering rides home, etc. – may be observable. These may be “red flags” of possible harassment or abuse.

Note that harassment under Title IX can also be off-campus. For example, dating violence occurs 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. This can occur at school, at home, or out in the community.

Select each of the descriptions that may be considered sexual harassment, then select submit.

Retaliation is prohibited against anyone who participates in the report or investigation of a Title IX issue. This applies to all forms of discrimination under Title IX. Someone who reports or witnesses sexual harassment, or reports unequal facilities for male and female athletes, is protected under Title IX.

Now that we have defined sexual harassment under Title IX, let’s consider the correct methods of response, investigation and accountability.

School districts are required to designate at least one employee to coordinate Title IX issues. Duties of the Title IX Coordinator include overseeing efforts to

comply with the law, and overseeing any investigation of Title IX complaints. Click for more.

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The district is required to notify students and employees of the name and contact information for the Title IX coordinator.

Under the new regulations, school districts will have to appoint additional personnel to serve in the roles of investigator, decision-maker, and facilitators. The persons appointed to these roles will be required to do some additional training to serve in their individual roles.

Any student who believes that he or she has experienced sexual harassment (or believes that another student has experienced it) should immediately report the alleged acts to a teacher, counselor, principal, or other district employee.

In the case of a student report, the student shall not be required to make this report **to the person** alleged to have committed the conduct. For example, if the harassment involves the school principal, the student may report to the Superintendent or the Board.

Drag the correct term to the blank to complete the sentences.

Title IX requires that schools must have adequate sexual harassment procedures. The school must:

- Provide notice of the grievance procedures, including how to file a complaint, to students, parents, and employees;
- Respond to complaints filed by students alleging sexual misconduct;
- Ensure a full investigation of complaints, including the opportunity to present witnesses and evidence;
- Follow a reasonably prompt time frame;
- Notify the parties of the outcome of the complaint; and
- Take steps to prevent recurrence of sexual misconduct.

Any district employee who suspects or receives notice that a student may have experienced sexual harassment shall **immediately** notify the appropriate district official and take any other steps required by policy.

If the report is a gender-related matter, it must ultimately be reported to the Title IX Coordinator, who then has a judgment call to make: would the report, if allegations are taken as true, constitute “prohibited conduct” (sexual harassment, in this case) as defined in the policy? If the answer is “yes,” then the district shall undertake an investigation.

Sexual harassment or abuse is not only a violation of Title IX, but also State Law. A professional who has cause to believe that a child has been or may be abused or neglected shall make a report required by law **within 48 hours** after the professional first suspects abuse or neglect. This includes sexual harassment.

It is important to be aware that there are criminal sanctions for sexual harassment or abuse of a student. Sexual contact with a student, even an adult student, is a felony.

Choose the correct term to complete the sentence.

The duty to report cannot be delegated to another school employee. It is not enough to tell someone else and rely on them to make the report. The school professional who has cause to believe there is abuse or neglect **must** file the report within 48 hours.

The report must be made to any local or state law enforcement agency, and/or the Department of Child Protective Services.

Click for more.

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Failure to report is a Class A Misdemeanor with a fine not to exceed \$4,000, or jail not to exceed 1 year, or both.

Within the school or district, when a sexual harassment report is made, investigations may be conducted by the District coordinator, principal, or even a third party, such as an attorney. The campus principal shall generally be involved.

Anyone who is the subject of the allegations would not, of course, be an appropriate investigator.

The investigation should be directed toward the harassment, discrimination or retaliation. All persons who may have information on the relevant facts or events should be interviewed.

Click for more.

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In some cases, documents, emails or websites will need to be reviewed by the investigators.

The investigation must be structured in a clear way. Investigators should set out the scope of investigation and the method. Finally, the specific findings on the issues must be released.

A notice of the outcome of the investigation should be provided to the parties to the dispute; the notice should be careful, however, not to divulge information about a student protected under the Family Educational Rights and Privacy Act (or FERPA).

If it is found that harassment occurred, the district must promptly take appropriate disciplinary action in accordance with the Student Code of Conduct (if the harassment is between students). The district must take corrective action reasonably calculated to address the conduct.

Order the items correctly to reflect a proper investigation.

According to a recent Q & A from the Department of Education, schools must make sure that sexual misconduct claims are treated by the same standard as other misconduct claims. According to the document, “when a school applies special procedures in sexual misconduct cases, it suggests a discriminatory purpose, and should be avoided.”

What is considered to be corrective action in a sexual harassment case? Some examples include a training program for those involved; a training program for

school community; counseling to victim and the offender; and follow-up inquiries to look for new incidents or retaliation.

A student or parent dissatisfied with the outcome of the investigation may appeal to the local school board, and has a right to file a complaint with the Department of Education Office for Civil Rights.

Note that the discrimination reporting procedures for a school district do not preclude a parent or student from filing a complaint with OCR. Which of these items would be considered corrective action? Select each, then select "Submit."

If it is determined that sexual abuse has occurred, the law requires this be reported to the district superintendent, and that the superintendent must notify the State Board for Educator Certification (SBEC).

OCR, part of the Department of Education, enforces various civil rights laws, including Title IX. OCR can investigate complaints; obtain requested information; issue findings; monitor resolution agreements; and initiate Enforcement Action, including referral of a case to the U.S. Department of Justice.

OCR's Case Processing Manual (or CPM) provides detail as to how complaints are assessed, processed, concluded, resolved, or referred to DOJ. Review the CPM at the link shown.

<http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

When OCR gets involved, the first step is an evaluation of the complaint, to determine whether the OCR has jurisdiction in the case, and to determine if there is a pattern or there are widespread reports of the issue.

The next step will be the Early Complaint Resolution, which is a facilitated attempt to resolve the complaint by and between the parties.

In this confidential process, OCR will facilitate an agreement, but does not sign, approve, endorse or monitor the agreement. OCR may also suspend the investigation for up to 30 days, to facilitate an agreement between the parties.

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As an alternative, Rapid Resolution Process may be implemented. This can occur if the recipient already has taken action that will resolve the complaint, or has taken action that requires monitoring. In this situation, OCR must have obtained sufficient information to make a compliance determination.

If the Early Complaint Resolution or the Rapid Resolution Process is not done, then a full investigation would occur. Click each image to see the elements of the investigation.

- OCR has the right of access during a recipient's regular business hours to the recipient's facilities. This includes access to records, accounts, including electronic storage media, etc.
- OCR may conduct interviews and focus groups.
- OCR needs parent consent for interviews of minors, unless questions are of a general nature and not related to any specific events in which the minor was involved and there are no records kept to identify the student.
- In some cases, resolution can be pursued prior to conclusion of investigation.
- At conclusion of investigation, OCR will determine whether noncompliance has occurred.

OCR may attempt to initiate and monitor a resolution agreement with the school. When this is not possible, OCR will initiate an Enforcement Action, which means they will:

- Initiate proceedings to suspend, terminate or refuse to grant financial assistance; or
- Refer the cases to DOJ for judicial proceedings.

Drag the correct term to complete the sentences about OCR enforcement.

Let's now return to the first scenario from the beginning of this course, when a new student, Elizabeth, broke up with Bryan. He and his friends began calling her sexually charged names, spreading rumors about her sexual behavior, and sending her threatening text messages and e-mails. The school encouraged Elizabeth to confront her harassers, but Bryan was later arrested for a confrontation at Elizabeth's home.

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This case is a classic “dating violence” scenario, and the school’s request to have Elizabeth confront her harassers was inappropriate. Although law enforcement did get involved, this does not absolve the school of responsibility to deal with the harassment. Had OCR become involved, the school would likely have been found to be noncompliant.

Let’s now look at Scenario 2, when Robert, a gay high school student was called names, assaulted, threatened and ridiculed for his sexuality by other students. Since Robert self-identified as gay, the school did not recognize that the misconduct included discrimination covered by Title IX.

(after click)

The threats and the impact on the victim’s activities (for example, his dropping out of drama club) suggests that the student is being harassed. Appropriate action needs to be taken by the school.

Reprimands and disciplinary action are, or may be part of, an appropriate response on the part of the district. Beyond this, the district/school needs to take corrective action: demonstrable steps toward preventing this type of conduct from happening again.

Let’s look now at the case of the teacher who stated often that male students are more fit for certain types of academic work and certain types of vocations than the female students.

Does this scenario represent a potential Title IX violation? Click to reveal.

(after click)

The teacher is entitled to have his own world view, but he is not allowed to impose his views of the proper role of women or men in society upon students. Title IX is relevant if the conduct is severe, pervasive or persistent and negatively impacts the student’s education program.

Please see these additional resources for more information about Title IX, schools and sexual harassment. For an overview of Title IX requirements, please see the module, "Title IX in Schools."

Congratulations! You have completed Sexual Harassment and Title IX in Schools. You should now be able to identify the key components of Title IX of the Education Amendments of 1972, define sexual harassment under Title IX, and describe the required responses for allegations of sexual harassment in schools.

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