

TITLE IX POLICY BASICS

August 12, 2021
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What is Title IX?

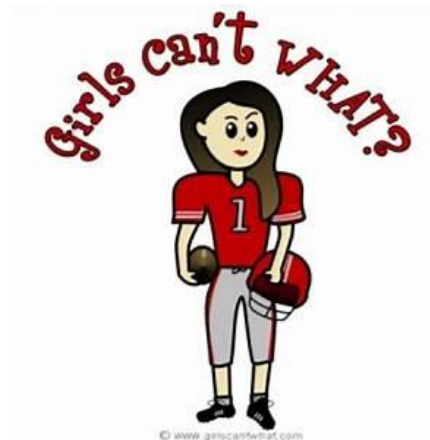
- **Title IX** of the Education Amendments Act of 1972 is a federal law that states:

"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."
- Title IX prohibits sex-based discrimination (including on basis of gender identity and sexual orientation) and sexual harassment in educational programs and activities.



Discrimination

- Discrimination is the act of treating people differently based on a protected characteristic (or stereotypes based on that characteristic)





Common Types of Protected Traits (follow GENERAL Anti-Harassment Policy)

- Race
- Color
- Religion
- Sex (gender)
- Military status
- National origin
- Disability
- Age
- Ancestry
- Marital status
- Pregnancy
- Genetic information



GENERAL Anti-Harassment Policies

- Administrative, professional, support staff policy as well as student policy
- Informal and formal complaint processes
- Same “Compliance Officers”
- Shorter timeline to complete investigation
- Less due process rights; more confidentiality
- Interim remedial measures
- No appeal



Title IX Policy - Sexual Harassment

- Any unwelcome sexual advance, request for sexual favors, or other unwanted verbal or physical conduct of a sexual nature when one or more of the following conditions are present
 - Quid pro quo
 - Hostile environment



wikiHow



Quid Pro Quo

- Quid Pro Quo (this for that) Harassment occurs when submission to **OR** rejection of sexual advances/requests is used as the basis for participation in an activity or class, or the provision of aide, benefit, or service

Example: Teacher pressures a student into an intimate relationship by suggesting acquiescence will result in good grades. When teacher's advances are spurned, she issues an "F."

Example: Superintendent requests sexual attention from elementary school principal with a promise that if she goes out with him, he will recommend the issuance of a new employment contract.



Quid Pro Quo

- May involve a power differential between parties
- Voluntary conduct between some may put observers in the position of believing that something sexual is necessary to get something favorable





Hostile Environment

To establish unlawful harassment based on hostile environment, one must show that the harassment was:

- A. Based on his/her sex;
- B. Unwelcome; and
- C. 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 program or activity.



Sexual Harassment

- Example: Teacher routinely tells sexual jokes in class, has a reputation for cornering female students and purposefully brushes up against and touches female students in a sexual manner
- Example: A male high school principal routinely inquires about the new female science teacher’s “chemistry” with her husband, comments about her appearance and how lucky her husband is to be married to her, shares explicit details regarding his own marriage, and asks her to do the same



Hostile Environment – Based on Sex

A. Based on protected class status or lack thereof

- Must be based on protected class, i.e. sex.
 - If a principal is mean to a teacher because he does not like the teacher's pink clothes, this is not unlawful harassment under the anti-harassment laws.
- Can be the protected class of either the victim or the harasser.
- Verbally harassing conduct need not explicitly mention the protected class status, i.e. jokes may be chauvinist even if they do not mention "women" (or men) specifically.



Hostile Environment - Unwelcome

B. Unwelcome

- Person did not solicit or invite the conduct and regards it as offensive.
- District must evaluate all surrounding circumstances to determine if conduct is unwelcome, i.e. a consensual conversation.
- If the victim complains, that's an obvious indication the conduct is unwelcome, but the district should not wait for a complaint to investigate potentially prohibited conduct.



“Welcomeness” of Conduct

- In order for conduct of a sexual nature to constitute sexual harassment, it must be “unwelcome.”
 - OCR always views sexual conduct between an adult and an elementary student as unwelcome and OCR strongly presumes that sexual conduct between an adult and secondary student is unwelcome.
 - Whether student-to-student sexual conduct is welcome or unwelcome must be determined on a case-by-case basis.



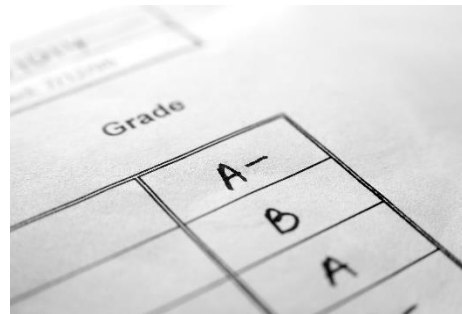
C. “Severe or Pervasive”

- Generally, a single or isolated incident is not enough to create a hostile environment.
- However, a single incident of harassment which is egregious or unusually severe may be sufficient to create a hostile work environment, particularly when the harassment is physical.
 - E.g. Assault.



“Severe or Pervasive” (cont’d)

- Factors to consider include whether the conduct was: abusive, derogatory, frequent, humiliating, or physically threatening.
- Severe or pervasive prong is met if the conditions of an individual’s employment or education are altered.
 - E.g. student’s semester grade hinges on the submission to a sexual advance by a teacher.





C. “Effectively denied equal access”

- OCR cites following non-exclusive examples:
 - Skipping class to avoid harasser
 - Decline in student’s grade point average
 - Difficulty concentrating in class
 - School avoidance
 - Quitting an athletic team but remaining engaged in other school activities
- No concrete injury required to prove an effective denial of equal access



“Effectively denied equal access” (cont’d)

- **School officials turning away a complainant by deciding the complainant was “not traumatized enough”**



Harassment

- The *intent* of a harasser does not matter – the test for harassment is from the viewpoint of a reasonable person and victim – it is an objective standard.





Other Violations of Title IX Policy

- **Retaliating** against a person who has made a report or filed a complaint alleging harassment, or who has participated as a witness in a harassment investigation;
- Filing a malicious or knowingly false report or complaint of harassment;
- Disregarding, failing to investigate adequately, or delaying investigation of allegations of harassment, when responsibility for reporting and/or investigating harassment charges comprises part of one's supervisory duties.



Policy Requirements

- Statement prohibiting harassment, intimidation, or bullying
- Definition of harassment
- Name and contact information for Title IX Coordinators prominently displayed
- Procedure to be used for reporting incidents
- Procedure for responding to and investigating reports (“grievance procedure”)

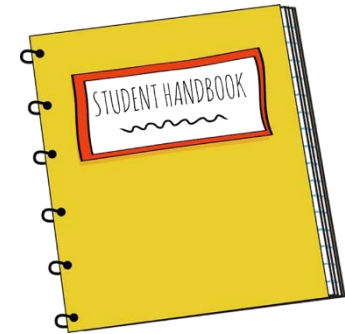


Policy Requirements

- Strategy for protecting victim or other person from new or additional harassment
- Strategy for protecting from retaliation following a report
- All personnel must report incidents
- Parent/guardian must be notified to the extent applicable
- Procedure for documentation (must retain for a period of 7 years)
- Means by which a person may report anonymously



Notice of Policy



- The policy must be put in:
 - Student handbooks
 - Any publications that set forth comprehensive rules, procedures, and standards of conduct for schools and students in the district
- Train employees
- Train students annually
- Notify parents annually

