



Title IX Overview

Liberty-Benton Administrative Team
August 12 2021





New Title IX Rule (One Year Later)

- U.S. Department of Education, Office of Civil Rights (OCR), released the final rule amending Title IX Regulations on May 6, 2020.
- New Final Rule went into effect on August 14, 2020.
- One year later confirms that the new Title IX process is extremely cumbersome: OCR released 4 guidance documents since Final Rules went into effect.





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 in **educational programs and activities**





Applicability of Title IX

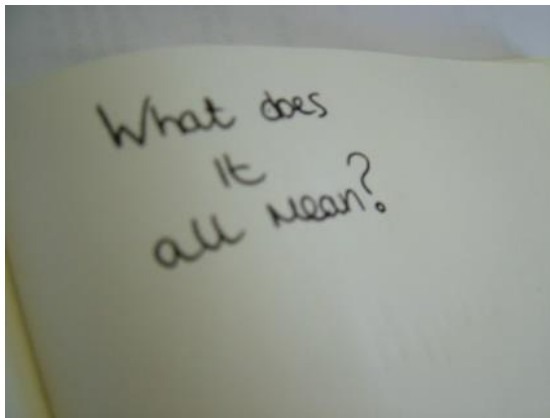
- Title IX impacts **many** aspects of school district operations particular from discrimination standpoint
 - Not limited to athletics (although this is the context in which most people think of the regulations)
- Also has applicability to:
 - Recruitment, admissions and counseling
 - Funding (including booster groups)
 - Facilities
 - Discipline





What Does Title IX Cover In Schools?

- Discrimination (based on sex, including *gender identity and sexual orientation*)
- **Sexual Harassment – FOCUS OF NEW REGULATIONS UNDER TITLE IX**





New Title IX Regulations – Sexual Harassment “Defined” – Key Terms

- Allegation – an assertion that someone has engaged in sexual harassment
- Complaint – person who has experienced the alleged sexual harassment. Person also referred to as “Complainant”
- Respondent – person accused of the alleged sexual harassment
- Grievance Process – the formal name used for the school’s process of addressing formal complaints of sexual harassment under Title IX
- Actual Knowledge – in K-12 setting, any time a school employee has notice that sexual harassment might have occurred, the school **MUST RESPOND**



When Must A School Respond To Sexual Harassment or Sex Discrimination?

- A school recipient with actual knowledge of sexual harassment or sex discrimination in an education program or activity must respond promptly and in a manner that is not deliberately indifferent.





“Actual Knowledge”

- Notice of allegations to **ANY** K-12 employee is “**actual knowledge**”
 - Board Policy 2266 requires report be made to Title IX Coordinator within 2 business days!
 - *Also may require report to children’s services
- Deliberate indifference is failure to respond reasonably in light of known circumstances.





What Is “Sexual Harassment”

- Unwelcome sexual conduct, sexual assault, dating violence, domestic violence, and stalking.
 - NOTE: these may also constitute crimes/mandated reporting
- Further defined as conduct on the basis of sex (including sexual orientation &/or gender identity) that involves:
 - An employee of the school conditioning provision of aid, benefit, or service 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 a person equal access to the school’s education program or activity (“**hostile environment**”)



Supportive Measures

- Supportive measures are actions that are intended to assist both the complainant and respondent when an allegation of sexual harassment is made.
- Differs from “interim remedial measures”; careful with automatic removals.
- Examples:
 - Counseling
 - Course modifications
 - Schedule changes
 - Increased monitoring or supervision





Grievance Process Overview

- Title IX Coordinator provides both complainant and respondent with overview of grievance process and notice of allegations
- Appointed investigator(s) undertake investigation of complaint
 - Gather/review evidence
 - Interview complainant, respondent, witnesses
 - Weigh evidence, credibility of witnesses using preponderance of evidence standard
 - Draft investigative report
 - Allows parties to respond to investigative report
 - Provide investigative report to decision-maker
 - Determination appeals process



Grievance Process Overview

- Decision-maker must:
 - Review the investigation report and the evidence.
 - Review the parties’ responses to the investigation report.
 - Provide the parties with notice of their opportunity to submit questions (through Title IX Coordinator)
 - Oversee the question and answer process, including any follow-up questions and answers (through Title IX Coordinator)
 - Issue the written decision that complies with the Title IX regulations, including making a determination of responsible or not responsible and consequences.
 - Notify the parties of the determination and their right to appeal.



Determination

- Decision-maker may not be Title IX Coordinator or investigator
- Remedies must be designed to restore or preserve equal access to the school's educational program or activity.
- Need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.



Appeal

- Determination of responsibility for sexual harassment under Title IX may be appealed to separate appeal decision-maker/appeal panel

- Grounds for appeal of determination:
 - Procedural irregularity that affected the outcome of the matter;
 - New evidence that was not reasonable available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter;
 - Title IX Coordinator, investigator, decision-maker had a conflict of interest or bias for or against the Complainant or Respondent generally or individually that affected the outcome of the matter



4 Guidance Documents Released Post-Adoption

- 1 Q&A regarding Regulation terms and processes (January 2021)
- 1 Q&A regarding OCR's Interpretation of Title IX and Single Sex Scholarships, Clubs and Other Programs (January 2021)
- 1 Guidance Document regarding OCR's Enforcement of Title IX with respect to Discrimination Based on Sexual Orientation and Gender Identity (June 2021)
- 1 Q&A regarding Regulation implementation (July 2021)

