



TITLE IX TRAINING

November 8, 2023

1:00 PM – 4:00 PM

Agenda

- Scope of Title IX, how it applies to charter schools, and recent changes
- Definitions
- Personnel on the School's Title IX Team
- How to serve impartially: avoiding prejudgment, conflicts of interest, and bias
- Handling reports of sexual harassment and initial response
- Grievance procedures for formal complaints
 - How to conduct an investigation, relevant evidence, investigative report, appeals, informal resolution process, etc.

Scope of Title IX, how it applies to charter schools, and recent changes



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What is Title IX?

- Title IX is a federal civil rights law dating back to 1972 that prohibits discrimination on the basis of sex, including sexual harassment, in all schools that receive federal funding:
 - *“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.”*
- Examples of the types of discrimination that are covered under Title IX include sexual harassment, failure to provide equal athletic opportunity, sex-based discrimination in a school’s courses and programs, and discrimination based on pregnancy

Does Title IX Apply to Charter Schools?

- All public and private elementary and secondary schools, school districts, colleges, and universities receiving any Federal funds must comply with Title IX
 - **note the requirements are different for colleges/universities than TK-12*
- The application of Title IX to charter schools receiving federal funds has not changed in recent years. However, since 2020, the process and requirements for *all* schools have changed significantly
 - Many charter schools previously used their UCP process to address Title IX complaints, which was recommended by CDE
- Schools follow the Title IX requirements that were in place at the time of the alleged incident (notwithstanding the date of school's response)

Recent Changes

- In mid-2020, the Secretary of Education under the former federal administration amended the Title IX regulations, in particular the process for how schools must handle sexual harassment complaints
 - Many thought that the new federal administration would change the 2020 amendments (see next slide)
- In mid-2021, the U.S. Department of Education issued guidance for K-12 schools to implement the 2020 regulations
 - Updated Title IX grievance procedures are now part of CDE's review for schools selected for Federal Program Monitoring (FPM) and many authorizers' oversight requirements.
- In mid-2021, the USDOE also clarified that Title IX applies to discrimination based on sexual orientation and gender identity
 - *Note this broadens what constitutes "sexual harassment" triggering the grievance procedures*

More Changes Coming?

- On June 23, 2022—the 50th anniversary of Title IX—the USDOE released proposed changes to the Title IX regulations
 - USDOE received more than 235,000 comments during 60-day public comment period!
- Today's training is on the current requirements that apply to charter schools
- USDOE had targeted October 2023 but is yet to publish new Title IX regulations
 - What does this mean for charter schools?

What Does Title IX Now Require (among other things)?

- Schools must adopt grievance procedures for addressing formal complaints of sexual harassment
- Any time a school has actual knowledge of sexual harassment in the school's education programs or activities (whether employees and/or students), the school has an obligation to respond promptly
 - “Actual knowledge” means notice to any school employee
- The school's Title IX Team must receive training on the grievance procedures and other topics
- Schools must post training materials and Title IX statement to website

Definitions



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Definition of Sexual Harassment under Title IX

- **Sexual harassment** under Title IX includes any of the following, per 34 C.F.R. 106.30:
 - Quid Pro Quo Harassment: school employee conditions provision of aid, benefit, or service on an individual's participation in unwelcome sexual conduct
 - Denial of equal access to education program: 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 education program or activity
 - How is this standard determined?
 - Other sexual acts: sexual assault, dating violence, domestic violence, or stalking as defined per federal statutes (see next slides)

Sexual Harassment under Title IX (cont.)

- **Sexual Assault** can be forcible and nonforcible:
 - Forcible: any sexual act directed against complainant forcibly, against their will or without consent
 - Nonforcible: offenses that do not involve force where complainant is incapable of giving consent

Sexual Harassment under Title IX (cont.)

- **Dating Violence** is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim
 - Whether a relationship exists is determined based on a consideration of the following factors:
 - Length of relationship
 - Type of relationship
 - Frequency of interaction between the persons in the relationship

Sexual Harassment under Title IX (cont.)

- **Domestic Violence** is violence committed by:
 - Current or former spouse or intimate partner of the victim
 - Person with whom the victim shares a child in common
 - Person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
 - Person similarly situated to a spouse of the victim under the domestic or family violence laws of the state
 - Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state

Sexual Harassment under Title IX (cont.)

- **Stalking** is engaging in a course of conduct directed at the complainant that would cause a reasonable person to:
 - Fear for their safety or safety of others; or
 - Suffer substantial emotional distress

Education Program or Activity

- Includes locations, events, or circumstances over which the educational institution exercised substantial control over both the respondent and the context in which the sexual harassment occurs
 - E.g., at a school or resource center, on remote learning platforms, at school-sponsored activities, etc.
 - Off-campus and online settings may require fact-specific determination

Complainant vs. Respondent

- **Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment
- **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment

Note on California Law

- Definitions of sexual harassment and required responses under California law and under Title IX overlap but are not the same
 - Today's training is limited to Title IX requirements
- However, any complaints alleging unlawful discrimination or harassment on the basis of sex may also be eligible to be investigated under school's Uniform Complaint Procedures ("UCP") or other process, but UCP does not supplant Title IX
- Only formal complaints alleging sexual harassment as defined under Title IX may be investigated under school's Title IX grievance procedures

The Title IX Team



Roles

- **Title IX Coordinator** receives reports and formal complaints of sexual harassment, and coordinates the investigation and resolution process
 - Your school's policy will name the Title IX Coordinator
- **Investigator** gathers all evidence related to a formal complaint and creates an “Investigative Report” summarizing the relevant evidence
 - Investigator does not need to be named in policy but does need to be trained. Investigator can also be the Title IX Coordinator

Roles

- **Decision-Maker** evaluates evidence in order to make a written determination of findings regarding a formal complaint
 - Decision-Maker cannot be the Title IX Coordinator, the Investigator, or any individual involved in the investigation of the formal complaint
- **Title IX Appeals Officer** evaluates an appeal of the Decision-Maker's final determination (if an appeal is filed)
 - Title IX Appeals Officer cannot be the Title IX Coordinator, Investigator, or any individual involved in the investigation of the formal complaint

Training Requirements

- Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process must receive training on the definition of sexual harassment, the scope of Title IX, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias

Training Content

- Decision-makers must receive training on 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
- Investigators must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence
- Training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment

Serving Impartially



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Requirement to be Neutral

- All members of the Title IX Team must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent
 - Must serve impartially and avoid prejudgment of the facts

Avoid Conflicts of Interest

- There is no definition of a conflict under Title IX
- A conflict of interest generally occurs when an individual has a personal interest in the matter that affects their decision-making
 - Could be a familial interest, financial interest, etc.
- *Example:* the Investigator is related by marriage to the respondent
- *Example:* the Decision-Maker's spouse works at a business owned by the complainant

Avoid Bias

- Bias is an unfair preference for or dislike of something, and is often associated with a person's gender, age, race, etc.
 - It's usually a function of experiences we have had or beliefs we have developed over time
- Bias inhibits impartial judgment
 - Our own experiences and perceptions are not universal
 - Perceptions can be as powerful as reality

Avoid Bias

- Bias is oftentimes implicit, meaning the individual is unaware that their behavior is “discriminatory”
- *Example:* male Decision-Maker who quickly believed witness “Tom” but is skeptical of witness “Chloe”
- You can prevent bias by learning to recognize it, being aware of it, and actively focusing on remaining impartial

Handling reports of sexual harassment and initial response



Overview

- Who can make a report of sexual harassment and how? (next slide)
- What are the initial response steps? (next slides)
 - Contact complainant
 - Determine need for supportive measures
 - Explain Title IX grievance process (i.e., reports vs. formal complaints)
 - Determine need for emergency removal
- Overarching standard: school must “respond promptly in a manner that is not deliberately indifferent,” i.e. not clearly unreasonable in light of the known circumstances

Reports of Sexual Harassment

- Any individual (e.g., the alleged victim, a student, an employee, a parent/guardian, etc.) may report sexual harassment directly to the Title IX Coordinator, or to any other available school employee who shall immediately inform the Title IX Coordinator
 - Reports can be made by any means (e.g., in-person, by phone, by mail, by email, etc.)
- Timing of report

Initial Response: Contact Complainant

- Title IX Coordinator must:
 - Promptly contact the complainant, listen to allegations, and discuss the availability of supportive measures regardless of whether a formal complaint is filed (see next slides)
 - Consider the complainant's wishes with regard to supportive measures
 - Explain the Title IX grievance process for filing a formal complaint
 - Definition of formal complaint

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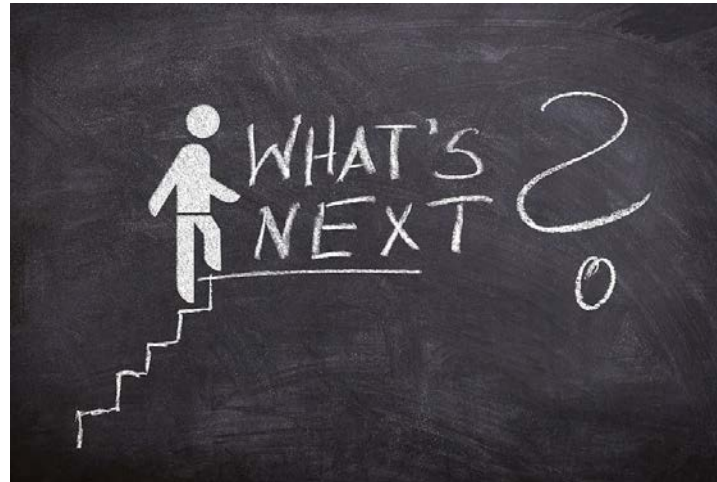
Initial Response: Supportive Measures

- Non-disciplinary, non-punitive individualized services available free of charge at any point during the Title IX investigation
- Designed to restore or preserve equal access to school's education program or activity without unreasonably burdening the other party
 - Examples include wellness check-ins, counseling services, extension of deadlines or course-related adjustments, modifications of work or class schedules, changes in work locations, leaves of absence, etc.

Initial Response: Determine Need for Emergency Removal

- Title IX Coordinator will review the facts to determine whether respondent may need to be removed from the school setting to prevent further sexual harassment and/or maintain safety of students and staff
 - If respondent is a **student**, respondent may be removed from educational program based on individualized safety and risk analysis. Respondent shall be provided with notice and opportunity to challenge the decision immediately following the removal
 - Applicable laws concerning student discipline and expulsion apply
 - If respondent is an **employee**, respondent may be placed on administrative leave during formal complaint investigation

Grievance Procedures for Formal Complaints of Sexual Harassment



Step-by-Step Overview

Step 0. Report and initial response, including consideration of supportive measures and potential temporary removal (see previous slides)

Step 1. Initial review of formal complaint

Step 2. Send written notice of formal complaint

Step 3. Conduct investigation

Step 4. Prepare and share investigative report

Step 5. Issue written decision

Step 6. Provide remedies

Step 7. Appeals

Step 8. Recordkeeping

Step 1: Initial Review

- School reviews complaint
 - Your policy will provide a process and timeline for this
- Mandatory and discretionary dismissals of a formal complaint
 - **Must** dismiss complaint if the alleged conduct:
 - Does not constitute sexual harassment under Title IX; or
 - Did not occur in school's educational program/activity or against individual in U.S.
 - **May** dismiss complaint if:
 - Complainant has notified school in writing of desire to withdraw complaint/allegations;
 - Respondent is no longer enrolled in or employed by school; or
 - Specific circumstances prevent school from gathering evidence to reach a determination

Step 1: Initial Review (cont.)

- If Title IX Coordinator dismisses complaint:
 - Must send written notice simultaneously to both parties
 - State reason for dismissal and inform parties of their right to appeal
 - If Title IX Coordinator determines another school grievance procedure (e.g., UCP) is appropriate, inform parties of school's intent to investigate the complaint through that procedure

Step 2: Send Written Notice

- School must provide parties with notice of formal complaint
 - Your policy will provide a process and timeline for this
- Notice shall include:
 - Copy of school's Policy on Title IX
 - Description of allegations with sufficient detail (e.g., parties involved, specific conduct, date and location of alleged incident, etc.)
 - Statement that respondent is presumed not responsible and determination made at end of process
 - Statement informing parties of opportunity to have advisor of their choice throughout grievance process and ability to inspect and review evidence
 - Statement informing parties that they must not knowingly make false statements or submit false information

Step 3: Conduct Investigation

- Timelines and extensions
- Presumption of innocence
 - School must presume respondent is **not** responsible for alleged conduct
- Evidence gathering
 - Investigator has burden to gather sufficient evidence
 - Cannot gather privileged information without voluntary, written consent (e.g., medical records)
 - Must provide written notice for all interviews with sufficient time for the individual to prepare to participate
 - School has discretion to permit parties to appear virtually
 - No live hearing requirement for TK-12; Q&A process

Step 3: Conduct Investigation (cont.)

- Equal opportunities
 - Both parties must have equal opportunity to present witnesses and evidence
 - Both parties may have an advisor of their choice present for any meeting, hearing, interview
 - School can restrict advisors' participation in the proceedings if equal
 - Both parties must be provided with all evidence that is directly related to the allegations in the complaint and at least 10 days to submit a written response, which must be considered by the Investigator
 - Your policy should confirm whether calendar days or school days

Step 4: Prepare and Share Investigative Report

- Investigator must prepare an investigative report that fairly summarizes **all** relevant evidence, including both inculpatory and exculpatory evidence
 - “Relevant evidence” is not defined under Title IX
- With limited exception, evidence of complainants prior sexual behavior is not relevant
- Evidence is generally considered relevant when it has any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action

Step 4: Prepare and Share Investigative Report (cont.)

- Investigator must share the investigative report with both parties and their advisors at least 10 days before school issues a written decision
 - Your policy should confirm whether calendar days or school days
- Both parties may submit a written response

Step 5: Issue Written Decision

- ***Before*** making decision, the Decision-Maker must:
 - Inform each party of the right to submit written, relevant questions that a party wants asked of any party or witness, and allow for additional limited follow-up questions from each party (Q&A process)
 - Provide responses to the questions or explain any decision to the party to exclude questions as irrelevant

Step 5: Issue Written Decision (cont.)

- Decision-Maker must use either “preponderance of evidence” standard or “clear and convincing evidence” standard
 - Check your policy
- Written decision should be issued to both parties simultaneously
 - Your policy should provide a reasonable timeline for this
- Written decision must include the specific allegations, description of the investigation process, findings of fact, conclusions, rationale, any disciplinary sanctions for respondent, whether remedies will be provided to the complainant, and procedures/bases for either party to appeal

Step 6: Provide Remedies

- If school determines that respondent engaged in sexual harassment, the Title IX Coordinator will provide appropriate remedies to complainant
- Remedies may be disciplinary and/or punitive and may burden respondent
- School is free to make disciplinary and remedial decisions, but remedies must be designed to restore or preserve equal access to educational program
- Examples include supportive measures, change of class schedule, parent/student conference(s), positive behavior support, warnings, and/or formal discipline (e.g., suspension, expulsion, etc.)
 - Remedies may be the same individualized services the school provided to the complainant as supportive measures
- If employee is found to have engaged in sexual harassment, school will take appropriate disciplinary action (e.g., termination)

Step 7: Appeals

- Either party may appeal the written decision, or dismissal of a formal complaint or allegation in a complaint
 - Your policy will provide a process and timeline for this
- Bases for appeal:
 - Procedural irregularity that affected the outcome
 - New evidence that was not reasonably available and could have affected outcome
 - Conflict of interest or bias by Title IX Coordinator, Investigator, or Decision-Maker
- School must provide written notice to the other party and give both parties a reasonable, equal opportunity to submit a written statement
- Title IX Appeals Officer must issue a written decision simultaneously to both parties
 - Your policy will provide a timeline for this

Step 8: Recordkeeping

- School must maintain records for seven years, including records of:
 - Each sexual harassment investigation
 - Any appeal and result of the appeal
 - Any informal resolution and result of the resolution
 - All materials used to train the Title IX Team (materials must be publicly available on website)
 - Any actions taken in response to a report or formal complaint of sexual harassment

Consider Informal Resolution Processes

- Any time after a formal complaint has been filed, but before reaching a determination, the school may offer an informal resolution process (e.g., mediation, restorative justice, etc.) to complainant and respondent
 - Both parties must voluntarily consent
 - Exception: Informal resolution process is not available where complainant alleges that an employee harassed a student

Title IX Resources

- The Title IX regulations are found in the Code of Federal Regulations at 34 CFR Part 106
- Department of Education's Questions and Answers on the Title IX Regulations (last updated June 28, 2022)
 - <https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>
 - Includes sample policy language, but be careful about differences between elementary/secondary and post-secondary
- Lots of other websites, e.g. www.titleix.info

Questions? Please don't hesitate to contact us!



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