

Sexual Harassment:

1

WHAT ALL SCHOOL DISTRICT EMPLOYEES NEED TO KNOW ABOUT SEXUAL HARASSMENT UNDER THE 2020 FEDERAL TITLE IX REGULATIONS

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Overview

2

Title IX is a federal law that prohibits sex discrimination (including sexual harassment) in a school district's education programs, activities, and operations. It is one of the many anti-discrimination laws that apply to school districts and one of several such laws that prohibit sexual harassment.

This training module addresses sexual harassment under Title IX and the federal regulations that have been issued under Title IX.

This training module is intended to supplement other district training and/or informational initiatives that further address sexual harassment and the treatment of sexual harassment under applicable laws and school district policies.

If you have questions about this training, please refer the questions to the district's Title IX Coordinator.

Overview

3

At the end of this training, you should be able to answer the following questions about sexual harassment under Title IX:

- ▶ How does Title IX uniquely define sexual harassment?
- ▶ What is the role of the district's Title IX Coordinator(s)?
- ▶ When does a school district have "actual knowledge" of Title IX sexual harassment?
- ▶ What obligations does the district have to respond to "actual knowledge" of Title IX sexual harassment?
- ▶ What should you do if you are sexually harassed in connection with your district employment, or if you see sexual harassment, receive a report of alleged sexual harassment, or have other knowledge of conduct that might constitute sexual harassment?

The big picture: A harassment-free environment

4

- ▶ The school board's goal and intent is to provide an educational and workplace environment, across all aspects of the school district's operations, that is free of all forms of unlawful harassment.
- ▶ Unlawful harassment that is based on any legally-protected status (as examples: race, color; national origin, sex, sexual orientation, and disability) is a form of unlawful discrimination.
- ▶ The school district's leadership team is committed to:
 - ▶ Responding to reports, complaints, and questions about prohibited harassment in a timely and effective manner.
 - ▶ Providing employees with information about their rights and responsibilities related to anti-harassment laws and the school district's anti-harassment policies.

Why did Title IX start to receive renewed attention in 2020?

7

- ▶ The US Department of Education, which is responsible for the administration and enforcement of Title IX, issued new regulations under Title IX that took effect on August 14, 2020. The Title IX regulations have the force of law.
- ▶ Examples of some of the significant changes made by the 2020 amendments to the Title IX regulations include the following:
 - ▶ The new regulations create a

How does Title IX define sexual harassment?

9

Under Title IX, sexual harassment means conduct on the basis of sex that occurs in any education program or activity of the school district and that also satisfies one or more of the following:

1. An employee of the district has conditioned the provision of an aid, benefit, or service of the district on an individual's participation in unwelcome sexual conduct;
2. 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 district's education program or activity; OR
3. The conduct is any of the following:
 - a. "sexual assault," as defined in 20 USC, 1092(f)(6)(A)(v);
 - b. "stalking," as defined in 34 USC, 12291(a)(30);
 - c. "dating violence," as defined in 34 USC, 12291(a)(10); or
 - d. "domestic violence," as defined in 34 USC, 12291(a)(9).

What is the significance of Title IX's unique definition of sexual harassment?

10

- ▶ District employees and students generally do not need to know the

What is the significance of Title IX's unique definition of sexual harassment?

11

- ▶ Particularly with respect to allegations that someone's conduct has created an unlawful "hostile environment," the Title IX definition of sexual harassment generally requires conduct that is somewhat more serious/substantial than is required under other legal standards. In other words, it can sometimes be harder to allege and prove a "hostile environment" claim under Title IX than under other legal standards.
- ▶ A school district is only required to implement a full Title IX response to allegations of sexual harassment when the allegations reflect conduct that, if proven, could constitute a violation of Title IX's definition of sexual harassment.
- ▶

How is the district required to respond to “actual knowledge” of sexual harassment under Title IX?

13

- ▶ The legal standard is that the district must respond to Title IX sexual

How is the district required to respond to “actual knowledge” of sexual harassment under Title IX?

15

- ▶ For any individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment under Title IX (i.e., a Title IX “respondent”), the district’s obligations include the following:
 - ▶ The district must ensure that any “supportive measures” do not unreasonably burden any party.
 - ▶ Before the district imposes any disciplinary sanctions against a respondent, the district must follow the district’s formal Title IX grievance process and make a determination of responsibility.
 - ▶ The district must apply a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- ▶ The Title IX regulations make limited allowances for certain “emergency removals” of a respondent and for the use of administrative leave for a respondent who is an employee.

One more time forenphasis: Employee reporting of possible sexual harassment is critical

16

- ▶ As a district employee, your knowledge of conduct that could constitute sexual harassment under Title IX triggers the district’s obligation to respond to the situation promptly and in a manner that otherwise complies with Title IX.
- ▶ In many cases, the only way that the Title IX Coordinator (and other employees who are responsible for responding to harassment on behalf of the district) will be able to comply with Title IX is for the employee who has knowledge/notice of the situation to report the relevant information to the Title IX Coordinator (or as otherwise provided under the district’s local procedures).
- ▶ If an employee fails to further report known or reasonably suspected unlawful harassment, the employee compromises the district’s ability to meet its legal obligations and exposes himself/herself to possible consequences.

Reporting Sexual Harassment

17

- ▶ Usually, the appropriate person to contact for reporting conduct that could be sexual harassment is the district's Title IX Coordinator
- ▶ A report may be made to a Title IX Coordinator either in person, by US mail, by telephone, or by electronic mail, using the coordinator's district provided contact information
- ▶ A report may also be made by any other means that results in a Title IX Coordinator actually receiving the verbal or written report
- ▶ If you are the alleged victim of the conduct, you may also consider documenting and submitting a "formal complaint" of sexual

What else is there to know about Title IX?

District employees who are aware of Title IX matters in connection with their job responsibilities are expected to adhere to the relevant confidentiality requirements, including the following:

- ▶ With limited exceptions (such as to the extent disclosure is necessary to comply with and carry out the purpose of Title IX and its regulations), individual who makes a report or complaint of sex discrimination, any alleged victim of sexual harassment, any person who has been reported to be the perpetrator of sex discrimination (including sexual harassment) and any witness

Note: This does not prevent intra-district disclosure of such information based on a legitimate educational or supervisory/managerial interests

- ▶ The District will provide appropriate measures provided to the complainant or respondent, to the extent that maintaining such confidentiality will not be an undue burden or risk to the health or safety of the complainant or respondent.

Check for Understanding

21

Are the following statements TRUE or FALSE?

1. Title IX prohibits sex discrimination, including sexual harassment, in the district's programs and activities, and Title IX extends to cover both students and school district employees.
2. It can be somewhat harder to allege and prove sexual harassment based on the creation of a "hostile environment" under Title IX than under other laws.
3. Title IX requires school districts to treat both alleged victims and alleged perpetrators of Title IX sexual harassment in an equitable manner.
4. Title IX requires a school district response to reported sexual harassment only if the alleged victim has filed a written complaint directly with the district's Title IX Coordinator.
5. Alleged victims of Title IX sexual harassment may file a formal complaint of the allegations. If a formal complaint is filed, Title IX requires the school district to follow a detailed Title IX "grievance process" that includes a formal investigation and that provides various procedural rights and protections to the parties.
6. All district employees should focus on recognizing and reporting situations that could constitute prohibited sexual harassment. The Title IX Coordinator and other administrators can be expected to determine which specific legal or policy standards should be applied to the reported conduct.

Check for Understanding

22

All of the statements _____ for statement #4 are true.

Statement #4 is false: "

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School districts have obligations to respond to alleged or reported Title IX sexual harassment any time the school district has "actual knowledge" of the relevant conduct. Actual knowledge can be based not only on notice to the Title IX Coordinator and other key administrators, but also on notice to any school district employee. In addition, any person (not just the alleged victim) may report an allegation of sexual harassment. A report of sexual harassment also does not have to be in writing, nor does the report always have to be submitted directly to the Title IX Coordinator.

As indicated by Statement #5, alleged victims of Title IX sexual harassment do have the additional right to file a "formal complaint." The filing of a formal complaint of Title IX sexual harassment changes the extent of the district's obligations to respond.

- ▶ This training addresses legal concepts and legal issues. However, this training is not legal advice.
- ▶ If you have individual concerns about any topic or issue related to this training and think you may be in need of personal legal advice, please contact a lawyer or an anti-discrimination agency. Examples of anti-discrimination agencies include the Office for Civil Rights in the US Department of Education, the Equal Employment Opportunity Commission in the US Department of Labor, and the Equal Rights Division of the Wisconsin Department of Workforce Development.