TRACKING TITLE IX: What School Administrators Need to Know

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Kayla Cook, Esq.
Bowles Rice LLP

1

Before we begin:

- Today we are necessarily speaking in generalities rather than specifics
- The information provided is not legal advice
- Information in this presentation may quickly become outdated
  (New Title IX regulations are expected to be released this fall)
- Always research original sources of authority and update this information to ensure accuracy when dealing with a specific matter
- Do not act or rely upon the information contained in this presentation without seeking the advice of an attorney

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2

Today we will cover:

- The scope of Title IX related to educational program or activity
- Expected changes to Title IX
- Definitions of sexual harassment and other terms
- Roles of the Investigator and Decision-maker
- Importance of impartially
- Title IX Grievance Process
- Supportive Measures
- Appeals and Informal Resolution Process

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The Fundamentals of Title IX

Title IX, Education Amendments of (1972)

"No person . . . shall,

Does Title IX protect only students?

- No. Title IX protects everyone who interacts with a school from discrimination, including parents and guardians, students, employees, and applicants.

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5

ATHLETICS, INTRAMURALS, INTERSCHOLASTIC, CLUBS

6

- Under Title IX, schools have a legal duty to provide equal athletic opportunities based on sex.
- All the programs and activities that the district operates or sponsors—including its athletic program—are covered by Title IX.
  - Students have the right to participate in interscholastic, intramural, or club athletic programs free from discrimination based on sex.
- Equal opportunity in K-12 school athletic programs is measured by:

1) The benefits, opportunities, and treatment given to boys and girls teams.
2) How a school is meeting students' athletic interests and abilities.

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7

PREGNANCY

8

Can a school require a pregnant student to obtain a doctor's permission before allowing her to attend school?

- NO!
- Schools cannot require a pregnant student to produce a doctor's note in order to stay in school or participate in activities, including interscholastic sports, unless the same requirement to obtain a doctor's note applies to all students being treated by a doctor.
- Even when a student is in the later stages of pregnancy; schools should not presume that a pregnant student is unable to attend school or participate in school activities.

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Office of Student Rights Guidance on Supporting The Academic Success of Pregnant and Parenting Students, June 2013

Does Title IX Apply to Pregnancy?

- YES Title IX specifically prohibits discrimination against a student based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions.
- Title IX also prohibits a school from applying any rule related to a student's parental, family, or marital status that treats students differently based on their sex.
- It is illegal for schools to exclude a pregnant student from participating in any part of an educational program.

- a school must excuse a student's absences because of pregnancy or childbirth for as long as the student's doctor deems the absences medically necessary. When a student returns to school, she must be allowed to return to the same academic and extracurricular status as before her medical leave began.
- Any special services provided to students who have temporary medical conditions must also be provided to a pregnant student.
- A school may require a pregnant student or student who has given birth to submit medical certification for school participation only if the school also requires such certification from all students with physical or emotional conditions requiring the attention of a physician.

Office of Student Rights Guidance on Supporting The Academic Success of Pregnant and Parenting Students, June 2013

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11

SEXUAL HARASSMENT

12

2020 Title IX Regulations

- Only applies to sexual harassment allegations
- Released informally by the United States Department of Education on May 6, 2020 (34 CFR Part 106)
- Effective August 14, 2020
- Does NOT apply retroactively
- Requires training for Title IX Coordinators, Investigators, Decision-makers, Appellate Decision-makers, and Facilitators of informal resolution processes

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13

Title IX Requirements

- The District has a responsibility to respond promptly and effectively . If the District knows or reasonably should know about sexual harassment or sexual violence that creates a hostile environment, it must take immediate action to eliminate the sexual harassment or sexual violence, prevent its recurrence, and address its effects.
- Even if a student or his or her parent does not want to file a complaint or does not request that the District take any action on the student's behalf, if a District knows or reasonably should know about possible sexual harassment or sexual violence, it must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation.

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14

EACH SCHOOL DISTRICT MUST…

- Have and distribute a Title IX Policy

CHANGE IS ON THE WAY…

TITLE IX TERMS YOU NEED TO KNOW

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19

SEXUAL HARASSMENT

is defined as:

- Quid pro quo harassment —that is, conditioning any educational opportunity or benefit on the granting of sexual favors—constitutes a per se violation of Title IX, regardless of its severity or pervasiveness. Quid pro quo harassment constitutes conduct without any constitutional protection.
- Any form of sexual assault, dating violence, domestic violence, or stalking as defined by the Clery Act/VAWA constitutes sexual harassment. These forms of misconduct are so serious in and of themselves that no finding of "pervasiveness" is required.
- Unwelcome conduct of a sexual nature that is "so serious, pervasive, and objectively offensive that it effectively denies a person equal access" to an educational program as determined under a reasonable person standard.

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20

Does Title IX Prohibit Discrimination Based on Sexual Orientation and Gender Identity?

- Yes. Title IX prohibits discrimination based on sexual orientation and gender identity in education programs and activities that receive federal financial assistance. This includes situations where individuals are harassed; disciplined in a discriminatory manner; excluded from, denied equal access to, or subjected to sex stereotyping in academic or extracurricular opportunities and other education programs or activities; denied the benefits of a school's programs or activities; or otherwise treated differently because of their sexual orientation or gender identity.

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21

- A Complainant means an individual who is alleged to be a victim of sexual harassment
- A Respondent means any individual who is reported to be the perpetrator of sexual harassment
- Importantly, a person may be a complainant, or a respondent, even where no formal complaint has been filed and no grievance process is pending.

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22

ACTUAL KNOWLEDGE

- A school district has actual knowledge when any employee knows of sexual harassment.
  - An employee knows of sexual harassment when they have observed it or have heard about it.
  - Notice to a Title IX Coordinator or to an official with authority to institute corrective measures is actual knowledge.
  - When a school district with actual knowledge of sexual harassment in its education program or activity refuses to respond to sexual harassment or a report of sexual harassment, such a refusal is clearly unreasonable under § 106.44(a) and constitutes a violation of the final regulations.

- A formal complaint is a document that initiates a school district's grievance process.
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Can a Complainant file Anonymously?

- NO
- A complainant (i.e., a person alleged to be the victim of sexual harassment) cannot file a formal complaint anonymously because § 106.30 defines a formal complaint to mean a document or electronic submission (such as an e-mail or using an online portal provided for this purpose by the recipient) that contains the complainant's physical or digital signature or otherwise indicates that the complainant is the person filing the formal complaint.
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SUPPORTIVE MEASURES

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- The Department of Education will not deem a school district's determination regarding responsibility to be evidence of deliberate indifference by the school district, or otherwise evidence of discrimination under Title IX by the school district, solely because the Department would have reached a different determination based on an independent weighing of the evidence.

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33

CONSOLIDATION OF FORMAL COMPLAINTS

- A Title IX Coordinator, in their discretion, may consolidate formal complaints where the allegations arise out of the same facts
- What about FERPA?

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34

THE TITLE IX GRIEVANCE PROCESS

What is it and when does it officially begin?

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The Grievance Process

- Begins once a formal complaint is filed
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TITLE IX TEAM ROLES

Avoiding Conflicts and Serving Impartially

What is impermissible bias?

- Impermissible bias is deciding based on the characteristics of the parties, rather than based on the facts.
- This includes treating a party differently on the basis of the party's sex or stereotypes about how men or women behave with respect to sexual violence
- It also includes blaming, ignoring, or punishing a party due to stereotypes about the party

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43

REQUIREMENTS DURING THE INVESTIGATION

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44

Only the Decision-Maker can make determination that a Title IX violation has or hasn't occurred.

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49

THE PRINCIPAL IS NOT THE TITLE IX DECISION-MAKER.

A principal cannot impose discipline for a violation for an incident that falls under Title IX jurisdiction, unless and until the discipline has been issued by the decision-maker following the conclusion of the Title IX Grievance Process.

DO NOT CONFUSE TITLE IX WITH POLICY 4373!

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50

Tasks of the Decision-Maker

- Provide the parties the opportunity to cross examine the other party and/or witnesses through

THE APPEAL

- Both parties must be offered an appeal from a determination regarding responsibility, and from a school district's dismissal of a formal complaint or any allegations therein.

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LIMITED GROUNDS FOR APPEAL

- An appeal may be made on the following grounds:
  1. Procedural irregularity that affected the outcome of the matter;
  2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
  3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

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56

“I want to appeal this decision”

- If you receive written notice of a party’s desire to appeal the Decision-Makers decision OR your dismissal of a Title IX formal complaint, ask the party to provide a written statement specifying t.1( )-t1cft

Record Keeping

- For each response required under § 106.44, a school district must create, and maintain for a period of 7 years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.
- In each instance, the school district must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the school district's education program or activity.
- If a school district does not provide a complainant with supportive measures, then the school district must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.
- The documentation does not limit the school district in the future from providing additional explanations or detailing additional measures taken.

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59

QUESTIONS?

60