

# New Title IX: Important Changes That You Need to Know When Students Return to the Classroom

Important Changes That You Need to Know When Students Return to the Classroom



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# Agenda

- Title IX Overview
  - Title IX Purpose
  - Legal Liability Arising Out Of Title IX
  - Title IX Legal Liability for School Districts
- Title IX Changes Effective August 2020
- District Policies



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# The Law Says:

“Title IX of the Education Amendments of 1972” is a federal statute, found at 20 U.S.C. 1681:

**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.**



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# Title IX Basics

**Title IX protects people from discrimination based on sex in education programs or activities that receive Federal financial assistance.**

- School Districts receive federal funds and therefore must comply with Title IX.
- “Education program or activity” includes locations, events, or circumstances wherein the District exercised substantial control over the harasser and the context in which the sexual harassment occurs.
- Thus, sexual discrimination occurring off-campus (such as during school field trips) may in some circumstances also be covered by Title IX laws.



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# Title IX – Discriminatory Conduct

- Title IX protections include discriminatory conduct that is:
  - Between Students
  - Between Employees and Students
  - Between the District in its capacity as Employer and its employees
  - Others who would otherwise receive the benefits of or participate in educational programs
- Any “person” is protected, not just students or employees.
- Title IX regulations apply to *all* students in the United States and across *all* grade levels
- On August 14, 2020, \*new\* Title IX regulations took effect that impact school districts.



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# Prohibited Discrimination

- Examples of discrimination covered by Title IX includes, but not is not limited to:
  - Sexual harassment
  - Sexual violence
  - Failure to provide equal athletic opportunity
  - Sex-based discrimination in programs such as STEM courses, and
  - Discrimination based on pregnancy.
- Not all sex-based behavior may rise to the level of “discrimination.”
- New regulations now include a definition of sexual harassment:
  1. A District employee conditioning benefits or services on a person participating in unwelcome sexual conduct.
  2. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offense that it denies a person’s equal access to education program or activity.



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# Current Landscape

- In 2011, the Obama Administration released guidance on Title IX compliance, prompted in part by various high-profile sexual assault and sexual violence cases occurring at colleges and universities.
- In 2017, Secretary of Education, Betsy DeVos revoked the Obama-era guidance and announced that new regulations pertaining to Title IX would be released.
- The new regulations were developed after a lengthy comments process and took effect on August 14, 2020.
- We will more thoroughly discuss the key changes in Title IX laws later in this presentation.
- Because the regulations are newly-implemented, Courts have not yet explored the impact of the new regulations and the legal landscape may change in the future.



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# Why Title IX Knowledge is Important

- As a public school district, districts are shielded from being sued and/or being held liable for a vast majority of legal claims because of sovereign/governmental immunity.
- However, Title IX, a federal statute that outlaws sex discrimination in any federally-funded educational program, **can be used as the basis for a lawsuit against a District.**
- A student claiming sexual harassment or sexual assault committed by either a district employee or district student on district property may pursue a Title IX case against the school district.
- A Title IX case could result in monetary damages against the District.
- Therefore, it is very important for every employee to be familiar with Title IX.



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# Source of Liability

- Schools can be found liable through:
  - **Civil Claims**
    - Accused students are more frequently turning to federal courts to claim due process violations during Title IX proceedings at public schools.
    - Victims may sue school's for failure to comply with Title IX procedures as well.
  - **Undisclosed Settlements**
    - A consequence of this new legal landscape is that districts are settling civil lawsuits filed by students accused of sexual harassment.
  - **Federal Funding**
    - While extremely rare, Title IX violations can result in a loss of federal funding.



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# Title IX Application to Public Schools

- Title IX can be enforced both administratively and through private causes of action.
- For example, the U.S. Department of Education can investigate alleged Title IX violations and in rare instances, revoke funding from Districts.
- Additionally, parents, students, and employees can file federal lawsuits alleging Title IX violations at education institutions and seek monetary damages.
- Monetary damages may only be awarded in certain circumstances and hinge on a case-by-case, fact-specific analyses.



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# Administrative Liability

- The DOE Office of Civil Rights (OCR) investigates allegations of prohibited sex-based discrimination under Title IX.
- Any person who suffers sex discrimination at a school can file a complaint with the DOE OCR.
- As part of its administrative enforcement powers, the OCR may conduct investigations, including conducting employee interviews, site-visits, and requesting documents and position statements.
- Though the loss of federal funding is rare, it is not uncommon for OCR to issue corrective action to a District.



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# U.S. Dept of Education – Office of Civil Rights

- Corrective Action issued by OCR may require that the District take certain steps to come into compliance with Title IX and to provide documentation evidencing that corrective action has been implemented.
- Examples of Corrective Action include:
  - Policy revisions
  - Heightened staff training
  - Changes to the District’s recordkeeping procedures
  - Increased Awareness of Sexual Discrimination in schools
- The Corrective Action may include multi-year requirements, such as requiring the District to provide compliance documentations for several years.
- As with all agency actions, an OCR investigation and resulting Corrective Action can be tedious, time-consuming, and costly to the District.



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# Private Civil Liability arising out of Title IX Violations

- A School District may also be liable for private claims under Title IX sex-based harassment.
- In other words, a party could bring a civil lawsuit in federal court against a School District alleging Title IX sex discrimination.
- Even if Administrative Enforcement through the OCR does not expose the District to monetary damages and likely would not result in a loss of federal funding, the District may be found liable for monetary damages in a private lawsuit.



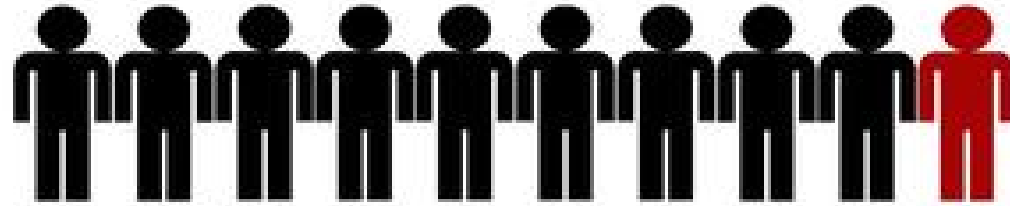
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# Employee –On-Student Sexual Harassment

- According to a 2004 U.S. Department of Education report, an estimated **1 in 10 students will experience school employee sexual misconduct** by the time they graduate from high school.



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# Gebser v. Lago Vista Independent School District (1998)

- To establish liability in a lawsuit alleging a Title IX violation when a teacher commits harassment against a student, the District is liable only when:
  - **An appropriate person in the District had actual knowledge of the harassment, and**
  - The District's response was deliberately indifferent.
- An “appropriate person” for purposes of the Court’s analysis is “a school district official who at a minimum has authority to institute corrective measures on the district’s behalf.”
- Who constitutes an “appropriate person” is a case-by-case analysis depending on the District’s circumstances.



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# Gebser v. Lago Vista Independent School District (1998)

- To establish liability in a lawsuit alleging a Title IX violation when a teacher commits harassment against a student, the District is liable only when:
  - An appropriate person in the District had actual knowledge of the harassment, and
  - **The District's response was deliberately indifferent.**
- "Deliberate indifference" is a high standard; thus, if a school official with the authority to institute corrective action responds reasonably to the discrimination, then liability would not incur.
- Under Gebser, "deliberate indifference" equates to a District's decision to *not* address the allegations.



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# Summary of Legal Analysis for Student-Teacher Harassment

- If there is an allegation of student-to-teacher harassment, a complaining party (Complainant) would have to prove that:
  - An “Appropriate Person” at the District
    - an employee who, at a minimum, has authority to institute corrective measures on the District’s behalf
  - Had Actual Knowledge of the harassment
    - The appropriate person had actual knowledge
    - Note: this element is not met if the only Appropriate Person who had knowledge was the person causing the harassment.
  - The District’s response was Deliberately Indifferent
    - The response is “clearly unreasonable in light of the known circumstances”
    - “Inept, erroneous, ineffective, or negligent” responses do not amount to deliberate indifference. *Doe v. Dallas Indep. Sch. Dist.*, 153 F.3d 211 (5th Cir. 1998).
    - Whether a District acted with deliberate indifference is a case-by-case inquiry based on the facts.
- Illustration: To recover damages from a school district for a teacher's sexual abuse of a student, the plaintiff must allege and prove that "(1) a school district employee with supervisory power over the offending teacher (2) had actual notice of the [abuse] and (3) responded with deliberate indifference."



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# Additional Legal Standard for Student to Student harassment: *Davis v. Monroe Cty. Bd. Of Educ.* (1999)

- In a Title IX lawsuit alleging student to student sexual harassment, a complainant must also prove:
  - The harassment is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school. *Davis v. Monroe Cty Bd. Of Educ.*
- Whether conduct arises to a level of “harassment” is a fact-specific inquiry.
  - ✓ For example, the *Davis* Court illustrated that a case in which male students physically threatened their female peers every day, successfully preventing the female students from using a school resource like an athletic field or computer lab might rise to harassment.
- Thus, a school district may be liable for monetary damages if the Complainant proves that the student on student conduct rose to the level of harassment and deprived the student of educational opportunities or benefits.
- Districts should therefore take prompt meaningful action to prevent the harassment from continuing and to ensure that the conduct does not deprive the student of any educational benefits or opportunities.



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# Why Title IX and § 1983 Liability Matters

- Many of the monetary damages sought in a Title IX lawsuit will either not be covered by the District's insurance or will exceed coverage.
- If a large judgment is issued against a district that exceeds insurance coverage, this will impact the general fund or district's taxpayers.
- Penalties include Schools losing federal funds for violating the law or paying substantial damages and attorney fees in litigated court cases.
- There is no statutory cap for the recovery damages against a school district for Title IX claims.



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# *Brend v. Copperas Cove Indep. Sch. Dist.,*

No. 20-50090, 2020 WL 5540132 (5<sup>th</sup> Cir. Sept. 25, 2020) (percuriam).

- **Court affirmed dismissal of student’s “Slap Butt Friday” Title IX claims.**
- B.L., a middle school student at Copperas Cove ISD, claimed that she was subjected to the mostly male-on-female student practice of “Slap Butt Friday” and “Titty Twister Thursday.”
- She also alleged that male students wrote her a note saying that they wanted to grab her “booty cheeks,” that J.A., one of the authors of the note, made lewd comments about her, and that female students called her names.
- An assistant principal investigated the conduct after she became aware of “Slap Butt Friday,” and a male student involved in the conduct was issued a written warning.
- The district court dismissed B.L.’s Title IX lawsuit on the grounds that this “juvenile teasing” did not rise to the level of sexual harassment under federal law. The Fifth Circuit Court of Appeals affirmed, reasoning that, even if B.L. had alleged actionable sexual harassment, the district had responded in a way that was not clearly unreasonable.



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# *Brend v. Copperas Cove Indep. Sch. Dist.,*

No. 20-50090, 2020 WL 5540132 (5<sup>th</sup> Cir. Sept. 15, 2020) (per curiam).

## • **Lessons Learned:**

- Courts will always consider whether schools acted reasonably and promptly to allegations of sexual harassment.
  - For a Title IX claim to be actionable, the sexual harassment must rise to the level proscribed under federal law.
- School districts enjoy flexibility in responding to student-on-student harassment.
  - Courts should refrain from second-guessing the disciplinary decisions made by school administrators
  - Schools should respond in a way that is *not* clearly unreasonable when it receives harassment allegations.



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# School's Responsibility to Address Sexual Harassment

- A school has a responsibility to respond promptly and effectively. If a school knows or reasonably should know about sexual harassment or sexual violence that creates a hostile environment, the school must take immediate action to eliminate it.
- Even if a student or his or her parent does not want to file a complaint or take any action on the student's behalf, if a school 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.
- A criminal investigation into allegations of sexual harassment or sexual violence does not relieve the school of its duty under Title IX to resolve complaints promptly and equitably.



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# Takeaways as to Liability

- Title IX sexual discrimination claims can result in administrative action that may result in the reduction of federal funding or administrative investigations by the OCR.
- Title IX sexual discrimination claims can also result in private lawsuits and a complaining party could obtain monetary relief if they succeed on their claims in court.
- A complaining party could also bring a lawsuit on the basis of § 1983 violations, alleging that the Title IX discrimination deprived his or her constitutional rights. § 1983-based suits can be brought against District employees in their personal and official capacities and can also be brought against the District as an entity.
- A District should ensure that it is *not* deliberately indifferent to allegations of sexual harassment and that it document all reasonable efforts it took to address the allegations.



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# Moving Forward

- The new regulations state that a school district has “actual knowledge” of sexual harassment so long as notice is given to any elementary or secondary school employee. 34 CFR 106.30.
- This is a departure from the old regulars, and accordingly, Districts should adequately train all staff on how to handle a report of an alleged sexual harassment.
- The new regulations were developed by the current U.S. Department of Education, under the Administration of Betsy De Vos.
- Vice President Joe Biden has indicated that if he were elected president, he would put a “quick end” to the Trump/De Vos era regulations.
- The regulations were implemented in August 2020 and therefore have not yet been interpreted by the Courts. Additional insight as to the effect of the new regulations will occur once Courts begin to interpret the regulations, and we anticipate continued developments in the Title IX arena.



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# Update On Changes To Title IX That You Need To Know



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# U.S. Dep't of Educ., OCR

## Title IX Regulations Addressing Sexual Harassment (Unofficial Copy) (May 6, 2020)

- Prior to this amendment, existing Title IX regulations did not refer to sexual harassment.
- A long line of federal court cases established the definitions and standards that are commonly used when adjudicating allegations of sexual harassment in schools and colleges. OCR's nonbinding "Dear Colleague Letters" set out standards for administrative liability.
- The newly issued Title IX regulations define sexual harassment and establish detailed procedures for how school districts must respond to allegations of sexual harassment. The final rule's changes to the Title IX regulations are significant, but they are narrowly focused. Existing regulations on topics such as athletic participation, employment, and single-sex education were not impacted by the final rule.



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# U.S. Dep't of Educ., OCR

## Title IX Regulations Addressing Sexual Harassment (Unofficial Copy) (May 6, 2020)

### Lessons Learned

- New Title IX Regulations went into effect August 14, 2020.
- Existing regulations on topics such as athletic participation, employment, and single-sex education are not addressed and therefore have not been changed.



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# Summary of 2020 Title IX Final Rule

- Effective Aug. 14, 2020, the new Title IX Rule codifies the term sexual harassment.
- The new regulations intend to “rebalance the scales of justice.”
- New regulations are an attempt to secure due process rights for both the victims and the accused.
- Requires administrators to more formally investigate claims and share the evidence with accused students and their parents.
- The Burden of Proof is raised from by “preponderance of the evidence” (Obama era) to a “clear and convincing” standard (Trump Era).
- TASB Policy = **preponderance of the evidence**



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# Preponderance of the Evidence v. Clear and Convincing

- Standards of Burden of Proof:
  - **Preponderance of the Evidence** means there is more than a 50% chance that a plaintiff's claims are true. The burden of proof is satisfied by demonstrating a claim is more likely to be true than not true.
  - **Clear and Convincing** requires a higher standard of proof to be met. This means evidence presented by a party during the trial must be highly and substantially more probable to be true than not and the trier of fact must have a firm belief or conviction in its factuality.



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# Summary of 2020 Title IX Final Rule Cont'd

- The new regulations specify the district's responsibilities and when districts must dismiss formal complaints.
- Adds provisions to the “live hearing with cross-examination” requirement for postsecondary institutions and clarifies that hearings are optional for K-12 schools.
- New regulations codify additional investigative requirements.
- They require districts to designate additional positions, including investigators and decision-makers.
- Districts are prohibited from responding in a manner that is “clearly unreasonable in light of the known circumstances.”



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# What Are People Saying?

- **Pros:**

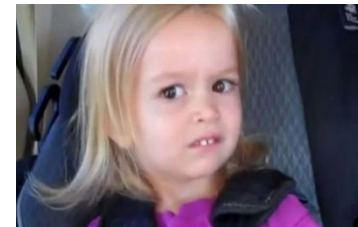
- Protects students on both sides.
- Protection that truly carries the force of law.
- Those accused of sexual misconduct may now present their side of the story and challenge the accusers.
- Does away with campus sex “witch hunts.”
- Cross examination effectively leads to the truth.

- **Cons:**

- Live questioning could retraumatize victims, silencing them.
- “Clear and convincing evidence” standard favors the accused.
- Harder for survivors to report sexual violence.
- Easier for a school to sweep it under the rug.
- The definition of sexual harassment is more narrow than previous guidance.



How to Make a Quality Meme



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# Definition of Sexual Harassment

- Sexual harassment is conduct on the basis of sex, being:
  1. A district employee conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcome sexual conduct (this is otherwise known as *quid pro quo* sexual harassment);
  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. "Sexual assault," "dating violence," "domestic violence," or "stalking," as defined by federal law.
- True or false:
  - A student is constantly receiving emails and text messages that are derogatory and threatening. The student's grades begin to drop and quits his/her sports team. This does not qualify as sexual harassment.



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# Factors to Consider for Sexual Harassment

- What exactly constitutes a claim for Sexual Harassment?
  - “Unwelcome conduct that is so severe, pervasive, **and** objectively offensive...”
    - **One incident alone most likely no longer suffices.**
    - must be evaluated in light of the known circumstances and depend on the facts of each situation, but must be determined from the perspective of a **reasonable person** standing in the shoes of the complainant.



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# Severe, Pervasive, Objectively Offensive

What does this mean?

- Is one pinch on the bottom enough to establish a claim for sexual harassment?
- What about 2 pinches?
  - Such incidents will likely be an issue for a district's Title IX Coordinators.
  - Unless the claim of sexual harassment satisfies all three elements, the claim will likely have to be dismissed.



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# Education Program or Activity

- The regulations define an “education program” or “activity” as including any location, event, or circumstance over which the district exhibits substantial control over both the alleged harasser and the context in which the harassment occurred.
- According to the DOE, the definition of sexual harassment does not make it dependent on the method by which it is carried out; use of e-mail, **the internet, or other technologies** may constitute sexual harassment as much as use of in-person, mail, handwritten, or other communications.
- **This likely applies the definition to virtual learning environments.**



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# Notice to the School: Actual Knowledge

- The Final Rule requires a K-12 school to respond whenever any employee has notice of sexual harassment
- Any person (e.g., the alleged victim or any third party) may report to a Title IX Coordinator in person or by e-mail, phone, or mail.
- For all schools, notice to a Title IX Coordinator, or to an official with authority to institute collective measures on the recipient's (victim's) behalf, charges a school with actual knowledge and triggers the school's response obligations.



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# Responding as a District

Generally, a District must respond when:

- 1) the school has actual knowledge of sexual harassment;
- 2) that occurred within the school's education program or activity;
- 3) against a person in the United States.



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# Responding as a School District: Notice

- Responding to a “notice” of sexual harassment is distinguished from responding to a “formal complaint.”
- Actual knowledge of sexual harassment requires a prompt response to avoid “deliberate indifference.”
- **A deliberately indifferent response is one that is clearly unreasonable under the known circumstances.**
- The grievance process must be followed before imposing disciplinary consequences on a respondent.
- **Supportive measures must be offered: non-disciplinary, non-punitive, individualized services, offered as appropriate and without charge to either a complainant or respondent.**



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# Supportive Measures

- Similar to “interim measures” discussed in past administration guidance.
- Counseling, course modifications, schedule changes, increased monitoring or supervision, etc.
- The supportive measures must restore or preserve equal access to the education program or activity without “unreasonably” burdening the other party.
- **In practice, completely removing a respondent from an activity or program would likely be considered “punitive” and thus, likely not allowed!**



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# Complainant

- A “complainant” is defined as the person who is alleged to be the victim of conduct that could constitute sexual harassment.
- The complainant may file a formal complaint with the Title IX Coordinator via email, mail, or other method made available by the ISD.
- The complainant must be participating in or attempting to participate in the education program or activity of the ISD that the formal complaint is filed with.
- The Title IX Coordinator may sign the complaint, but that does not make him/her a party in the grievance process.



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# Emergency Removal / Administrative Leave

- However, immediate removal of a respondent from an education program or activity on an emergency basis is allowed.
- The ISD must conduct an individualized safety and risk analysis and determine that the emergency removal is necessary in order to **protect a student or other individual from an immediate threat to physical health or safety.**
- The ISD must still provide the respondent with notice and a chance to challenge the removal decision.
- **An example: respondent reacts to allegation with threat of physical self-harm.**



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# Interplay with Existing Laws

- Emergency removal does not modify rights under the IDEA, Section 504, or the ADA.
- In other words, emergency removal of certain students may require the district to coordinate with special education staff.
- Placement issues under IDEA or Section 504 still exist.



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# Publishing Requirements

The notice of nondiscrimination and of the Title IX Coordinator's contact information must be published on the ISD's website and in any handbook given to applicants for admission and employment, students, parents/legal guardians, and teacher organizations holding agreements with the district (if any).



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# Sexual Harassment Response Policies

- District Board Policy Series FFH contains the district's current policies on student freedom from discrimination, harassment, and retaliation.
- These will likely be updated based on the vast requirements of the new Title IX regulations.



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# Bullying Response Policies

- Although DOE requires investigation of sexual harassment allegations, it does not provide guidance in the new rules of the investigation requirements for allegations that do not implicate sexual harassment.
- However, districts still have Board Policy Series FFI on freedom from bullying, with its own investigations.



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# Reporting and Receiving a Sexual Harassment Complaint

- ***Any person*** can make a report of sex discrimination.
- The reporter does not have to be the victim of the conduct constituting sexual harassment or sex discrimination.
- A report can be made at any time, **including non-business hours**.
- Formal complaint can be made in person, by email, or by mail.
- Initial notice of inappropriate conduct is not the same as a **formal complaint**.



Regulations Require Title IX Coordinator's Name, physical address, email address and telephone number to be prominently displayed on website.



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# Notice to Title Coordinator & Notice to District Employees

- Notice of an allegation of sexual harassment, including allegation of such, to Title IX Coordinator or “***notice to any employee***” triggers the school’s response obligations.
- If you are not sure if something rises to the level of sexual harassment or sexual misconduct, report it to Title IX Coordinator.
- ***An elementary and secondary school must respond whenever any employee has notice of sexual harassment or allegations sexual harassment.***



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# Policy FFH



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# Policy FFH

- This policy addresses discrimination, harassment, and retaliation against District students.
- The District prohibits discrimination, including harassment, against any student on the basis of race, color, religion, sex, gender, national origin, age, disability, or any other basis prohibited by law. The District prohibits dating violence, as defined by this policy. Retaliation against anyone involved in the complaint process is a violation of District policy and is prohibited.
- Prohibited conduct also includes sexual harassment as defined by Title IX.



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# Prohibited Harassment

Prohibited harassment of a student is defined as physical, verbal, or nonverbal conduct based on the student's race, color, religion, sex, gender, national origin, age, disability, or any other basis prohibited by law, when the conduct is so severe, persistent, or pervasive that the conduct:

- Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;
- Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or
- Otherwise adversely affects the student's educational opportunities



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# Sexual Harassment

Sexual harassment of a student by a District employee includes both welcome and unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature when:

- The conduct is so severe, persistent, or pervasive that it:
  - a) Affects the student's ability to participate in or benefit from an educational program or activity, or otherwise adversely affects the student's educational opportunities; or
  - b) Creates an intimidating, threatening, hostile, or abusive educational environment.



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# Reporting Procedures

- Any student who believes that he or she has experienced prohibited conduct or believes that another student has experienced prohibited conduct should immediately report the alleged acts to a teacher, school counselor, principal, other District employee, or the appropriate District official listed in this policy.
- Any District employee who suspects or receives direct or indirect notice that a student or group of students has or may have experienced prohibited conduct shall immediately notify the appropriate District official listed in this policy and take any other steps required by this policy.



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# Title IX Coordinator

The District designates and authorizes the following person as the Title IX coordinator to be responsible for coordinating the Districts efforts to comply with Title IX of the Education Amendments of 1972, as amended, for students:

Name : Rene Chavez

Position: Chief Human Resources Officer

Address: 14521 Horizon Boulevard, El Paso, TX 79928

Email: [rene.Chavez@clint.net](mailto:rene.Chavez@clint.net)

Telephone: (915) 926-4062



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# Thank you!



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# Title IX Formal Complaint Procedures

(Sexual Harassment)



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# Response to Sexual Harassment

- All sexual harassment allegations must be reported to the Title IX Coordinator ASAP
- The District's Title IX Coordinator will respond promptly and equitably to any verbal or written report or disclosure of alleged sexual harassment received from any source, including personal observation, that provides a District employee notice of the alleged conduct. The Coordinator will address anonymous reports if there is an identifiable party.
- For all other allegations, the Title IX Coordinator will follow the applicable District policy and procedures.



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# Initial Response

Title IX Coordinator or designee will promptly contact the complainant

1. Provide information about supportive measures;
2. Discuss the availability of supportive measures;
3. Consider the complainant's wishes concerning supportive measures;
4. Explain to the complainant the process for filing a formal complaint under Title IX; and
5. Provide each complainant with a copy of the District's Title IX formal complaint process.



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# Supportive Measures

- Counseling about inappropriate behavior and educational conversations.
- Explaining to a respondent in detail the district's anti-sexual harassment policy and expectations of appropriate conduct;
- Temporarily sending a student to the principal's office.
- Changing seating assignments or class assignments.
- Extending of deadlines or other course-related adjustments, including retaking exams or completing makeup work.



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# Supportive Measures (cont.)

- implementing mutual or unilateral restrictions on contact between parties;
- identifying specific campus employees to serve as regular points of contact for each party
- modifying class or activity schedules;
- changing campus assignments
- increasing security and monitoring of certain areas of the campus



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# Emergency Student Removal or Administrative Leave

- The District has the right to remove a student respondent if justified due to an immediate threat to the physical health or safety of any student or other individual.
- Immediately following the emergency removal, the District shall provide the respondent with an opportunity to challenge the decision in accordance with the applicable board policy or the Student Code of Conduct.
- If the respondent is an employee, the District may place the employee on administrative leave pending an investigation.



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# Presumption of Non-Responsibility

- District must presume respondent is not responsible for the alleged conduct until after a final determination is made during the formal complaint process.
- The respondent will face Title IX sanctions only after a fair process determines responsibility
- Even if a formal Title IX complaint is not filed, the District must respond in accordance with board policies and the student code of conduct.



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# Formal Complaint Process

- A formal complaint must be filed with the Title IX Coordinator.
- Copies of any documents that support the complaint should be attached to the complaint.
- In accordance with law and policy, the Title IX Coordinator will coordinate the assignment of duties to ensure that all obligations under Title IX are completed in a timely manner.
- Absent good cause, the complaint process to include the investigation and final outcome should be completed within 60 days
- Days used for any voluntary informal resolution do not count towards the formal time frame.



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# Formal Complaint Process (cont.)

- Upon receipt of a formal complaint, the Title IX Coordinator will provide written notice to the complainant and respondent about the allegations of sexual harassment and allow sufficient time for the parties to prepare a response before any initial interview with the assigned investigator. The notice must include:
- a. Notice of the alleged sexual harassment including details.
  - b. A statement presuming the respondent is not responsible until investigation is complete and determination will be made after the formal process concludes.
  - c. Notification that each party made be represented, but it is not required.



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# Formal Complaint Process (cont.)

- d. The right of each party to inspect the evidence
- e. The standard evidence that will be used.
- f. Notification of the complete formal complaint process.
- g. Any provision of a District code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the formal complaint process.



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# Investigation

The following serve as investigators:

- Title IX Coordinator
- A trained district employee
- Campus Administration
- External Investigator

Absent good cause, the investigation must be completed within 30 days that the complaint was first filed and the preponderance of evidence will determine responsibility. A written report will be provided to parties.



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# Determination of Responsibility

- A decision-maker appointed by Title IX coordinator will determine the final outcome of responsibility. (cannot be Title IX Coord. or investigator)
- Decision-maker must give both parties a minimum of 10 days to review investigative report.
- The decision-maker will give both parties the opportunity to submit written questions.
- The decision maker issues final written decision



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# Final Steps

- If respondent is determined to be responsible for sexual harassment, implementation of remedies such as, suspension, expulsion, other disciplinary action, or ineligibility of participation in extra curricular activities.
- Title IX sexual harassment training must be provided to all administration and staff.
- The importance of confidentiality throughout the complaint process.
- The reporting of evidence that may require a report to law enforcement, CPS or SBEC.



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