

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.

2

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?

3

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.

4

The scope of this training module

5

This training module assumes that the person accessing the training has been provided with information that establishes a general awareness of key issues and expectations surrounding prohibited sexual harassment, as addressed under applicable laws and under school district policies. Such other information or separate training typically covers content such as the following:

- ▶ General concepts and standards that can be applied to identify prohibited sexual harassment and to guide individual conduct.
- ▶ Examples of conduct that may constitute, or that could contribute to a finding of, sexual harassment in student-related and/or employment-related contexts.
- ▶ School district policies related to sexual harassment, including identifying applicable reporting and complaint procedures.
- ▶ District expectations for employees regarding reporting sexual harassment.

5

What is Title IX?

6

- ▶ Title IX is a federal law that prohibits the school district from unlawfully discriminating against any person on the basis of sex in any education program or activity that the district operates—including in district employment.
- ▶ Title IX extends to protect students, employees, applicants for employment, and other persons from prohibited **sex discrimination**, including **sexual harassment**.
- ▶ The district's obligations to respond to sexual harassment within district programs and activities generally do **not** depend on who is alleged to be responsible for the harassment (e.g., a student, an administrator or other employee, a district-authorized volunteer, etc.).
- ▶ Title IX applies to the school district because the district is a recipient of federal funding.

6

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

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- ▶ The U.S. 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 **definition of sexual harassment** that is unique to Title IX.
 - ▶ The new regulations change the way that **school districts are required to respond to alleged Title IX sexual harassment**, including changing the procedures that school districts will use to investigate and make decisions about such allegations.
 - ▶ The new regulations are intended to promote **equitable treatment** and to protect the rights of **both** alleged victims of Title IX sexual harassment, as well as alleged perpetrators of Title IX sexual harassment.

7

What is a Title IX Coordinator?

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- ▶ Every school district must designate at least one employee to coordinate the district's efforts to comply with its responsibilities under Title IX and the Title IX regulations. The employee must be referred to as the "Title IX Coordinator."
- ▶ A Title IX Coordinator's responsibilities include:
 - ▶ Addressing questions that students, parents, employees, and others may have about the application of Title IX to the school district.
 - ▶ Receiving reports and complaints of possible sex discrimination, including reports and formal complaints of sexual harassment.
 - ▶ Playing an active and important role in the district's response to reports, complaints, or other notices of Title IX sexual harassment.
- ▶ An employee who is a designated Title IX Coordinator often has a different primary job title. Some districts designate more than one Title IX Coordinator.

8

How does Title IX define sexual harassment?

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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 U.S.C. 1092\(f\)\(6\)\(A\)\(v\)](#);
 - b. "stalking," as defined in [34 U.S.C. 12291\(a\)\(30\)](#);
 - c. "dating violence," as defined in [34 U.S.C. 12291\(a\)\(10\)](#); **or**
 - d. "domestic violence," as defined in [34 U.S.C. 12291\(a\)\(8\)](#).

9

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

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- ▶ District employees and students generally do not need to know the specific differences among the various legal definitions of "sexual harassment" to make decisions about their own conduct. Employees and students are expected to avoid engaging in inappropriate conduct no matter whether the conduct is prohibited by one law, by multiple laws, or only by the policies, rules, and expectations that have established by the school district.
- ▶ School district employees are expected to report known or suspected incidents of prohibited harassment that could violate **any** nondiscrimination law. In making an initial referral or report, employees do not have to determine which specific law(s) may have been violated. The Title IX Coordinator and other administrators are responsible for making those determinations once they are aware of the allegations.
- ▶ To the extent an employee is a victim of sexual harassment, or is accused of alleged sexual harassment, it is important to know that special rights and procedures apply when the allegations assert a possible violation of Title IX.

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

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- ▶ 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.
- ▶ Title IX's focus on relatively more serious conduct means that some reports of sexual harassment will not be processed and assessed under the district's Title IX procedures. However, the district may still assess the conduct and process the report under other legal standards and/or under the district's own policies or rules.

11

Every employee plays a critical role in the district's Title IX compliance ... Here's why

12

- ▶ Title IX requires a **district response** any time the school district has **actual knowledge** of sexual harassment or allegations of sexual harassment that could constitute a violation of Title IX.
- ▶ Actual knowledge includes **notice** of sexual harassment or allegations of sexual harassment to **any school district employee** (not including the alleged perpetrator of the harassment, if also an employee).
- ▶ An employee has **notice** of the sexual harassment if, for example:
 - ▶ The employee witnesses the harassment.
 - ▶ Another person (including a student or parent) reports an incident or allegation of sexual harassment to the employee.
- ▶ **Q:** How can the Title IX Coordinator initiate an appropriate district response to sexual harassment if the only employee who has notice of the conduct/allegations is (for example) an individual teacher?
A: The employee needs to further report the relevant information.

12

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 harassment promptly and in a manner that is not “clearly unreasonable in light of the known circumstances.”
- ▶ Although the basic standard suggests substantial discretion, the Title IX regulations establish some minimum requirements. Several of those requirements relate to the concept of “**supportive measures**.”
- ▶ “**Supportive measures**” are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent, before or after the filing of a formal complaint or where no formal complaint has been filed. The purpose of supportive measures is to restore or preserve equal access to the district’s education program or activity without unreasonably burdening the other party. Two possible examples are (1) modifications to work or class schedules, and (2) issuing a “no contact” directive.

13

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

14

- ▶ For any individual who is alleged to be the **victim** of conduct that could constitute sexual harassment under Title IX (i.e., a Title IX “**complainant**”), the district is required to take steps such as the following:
 - ▶ The Title IX Coordinator must promptly contact the complainant to discuss the availability of “supportive measures.”
 - ▶ The Title IX Coordinator must inform the complainant of the option of filing a formal complaint and explain the process for filing a **formal complaint**. (A formal complaint needs to take the form of a document or electronic submission and must meet other requirements.)
 - ▶ The district must offer appropriate “supportive measures” regardless of whether the complainant files a formal complaint.
 - ▶ If the complainant files a **formal complaint** of Title IX sexual harassment, then the school district must investigate the allegations using its written Title IX “**grievance process**.”

14

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.

15

One more time for emphasis: 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.

16

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 U.S. 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 harassment under Title IX, as further detailed in this training and in the school district's policies and procedures and/or Title IX notice.
- ▶ Local school district policies and procedures may identify other persons to whom reports can be made. If you are ever uncertain, you can start by contacting the Title IX coordinator, a principal, or the District Administrator to discuss your questions and/or situation.

17

Reminder: Sexual harassment incidents can overlap with other important issues and responsibilities

18

Examples:

- ▶ Some sexual harassment scenarios involving students who are minors can also constitute **child abuse** (or suspected child abuse) that is subject to mandatory reporting to appropriate authorities.
- ▶ Some sexual harassment scenarios can involve a **threat of school violence** that is subject to mandatory reporting to law enforcement.
- ▶ Some sexual harassment scenarios may involve a need to consider whether an administrator needs to make a **report of educator misconduct** to DPI (i.e., for purpose of a licensing-related investigation).
- ▶ Administrators will need to harmonize Title IX obligations and nondiscrimination policies with student bullying policies, codes of conduct, extracurricular codes, employee conduct policies, etc.

18

What else is there to know about Title IX?

19

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), Title IX requires the district to keep confidential the identity of any individual 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 school district must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the school district to provide the supportive measures.

19

What else is there to know about Title IX?

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Title IX (similar to several other anti-discrimination laws) prohibits **retaliation**.

- ▶ It is unlawful for either the school district or any other person to intimidate, threaten, coerce, or discriminate against any individual:
 - ▶ For the purpose of interfering with any right or privilege secured by Title IX or the Title IX regulations, or
 - ▶ Because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the Title IX regulations.
- ▶ The restrictions against retaliatory conduct extend to **any person**—not just to persons who are assigned to act on behalf of the district.
- ▶ The district will accept and process reports of Title IX retaliation using the grievance procedures that the district has established for general complaints of sex discrimination under Title IX.

20

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.

21

Check for Understanding

22

All of the statements **except** for statement #4 are true.

Statement #4 is false: "*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.*"

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.

22

- ▶ 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 U.S. Department of Education, the Equal Employment Opportunity Commission in the U.S. Department of Labor, and the Equal Rights Division of the Wisconsin Department of Workforce Development.