



Overview of Current Title IX Regulations for K12

*Projected changes forthcoming in 2024

Clezel Sewell | Title IX Coordinator
Patty McKernan, Independent Contractor

November 6, 2023



Agenda

- Introduction to Title IX Regulations and Legal Obligations
- Definitions of Sexual Harassment and Consent
- Title IX Complaint Procedures
- Title IX Key Changes
- Title IX Staff Roles
- Ensuring District Compliance



Introduction to Title IX Regulations

&

Legal Obligations





Federal Law – Title IX

- 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
- Enforced through the Department of Education, Office for Civil Rights (“OCR”)



Title IX Covers

- **Prohibition of Sex Discrimination**
 - ✓ Harassment/Sexual Harassment
 - ✓ Equality in Athletics
 - ✓ Rights of Pregnant Students
 - ✓ Recruitment, Admissions

History of Title IX

- Title IX was passed in 1972
- Title IX affords female athletes in educational institutions the right to equal opportunity in sports





Title IX Timeline

1997 Guidance on Sexual Harassment

2001 Revised Sexual Harassment Guidance**

2011 Dear Colleague Letter (The "DCL")*

Questions and Answers on Title IX and Sexual Violence April 2014*

2015 Dear Colleague Letter, Dear Coordinator Letter & Resource Guide

2016 Guidance on Transgender Students*

2017 Interim Guide: Q & A on Campus Sexual Violence**

2018 Proposed Title IX Regulations

2020 Final Rule on Title IX Regulations

*Rescinded – 2017 7

**Rescinded – 2020



New Title IX Regulations – August 14, 2020

- Changes the way District is required to respond to sexual harassment complaints:
 - Title IX definition of sexual harassment is different from State law definition
 - New complaint process for allegations meeting Title IX definition of sexual harassment (AR 5145.71)
 - All other sexual harassment allegations investigated under Uniform Complaint Procedures “UCP” (BP/AR 5145.7 & BP/AR 1312.3)



East Side's Legal Obligation

Educational institutions must respond in a manner that is not deliberately indifferent when it has actual knowledge of sexual harassment occurring in the institution's education program or activity against a person in the United States.



“ACTUAL KNOWLEDGE”

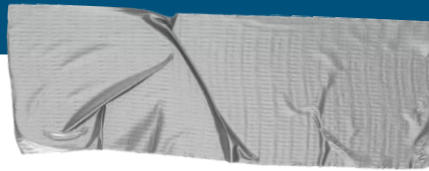
NOTICE OF SEXUAL HARASSMENT OR ALLEGATIONS OF SEXUAL HARASSMENT BY:

- TITLE IX COORDINATOR
- ANY DISTRICT OFFICIAL HAVING AUTHORITY TO INSTITUTE CORRECTIVE MEASURES
- ANY EMPLOYEE OF SECONDARY SCHOOL

“DELIBERATE INDIFFERENCE”

DISTRICT’S RESPONSE TO TITLE IX SEXUAL HARASSMENT WAS CLEARLY UNREASONABLE IN LIGHT OF THE KNOWN CIRCUMSTANCES

(i.e., caused harm or denied the student equal access to the District’s education program/activity)



Notice

- For K-12 School Districts, ALL staff/employees must report notice of sexual harassment and/or allegations of sexual harassment received to the Title IX Coordinator
- No employee of the District can promise confidentiality to a party or witness and/or make the decision not to report

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Definitions of Sexual Harassment & Consent

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Title IX Sexual Harassment Definition

Defined conduct on the basis of sex and includes:

- Quid Pro Quo harassment
- Hostile environment harassment
- Sexual assault
- Dating/domestic violence
- Stalking



Quid Pro Quo sexual harassment:

- occurs when a school employee (or agent of the school) creates a situation in which a student's participation in an education program or activity is conditioned on the student's submission to sexual conduct, whether verbal, nonverbal, or physical in nature

Hostile environment sexual harassment:

- defined as unwelcome conduct determined by a reasonable person to be so severe, pervasive, *and* objectionably offensive that it effectively denies a person equal access to the school's education program or activity

What Is Unwelcome/Nonconsensual Conduct?

Consent is knowingly and voluntarily giving clear permission to engage in sexual activity through words and/or by actions.

Consent:

- ✓ Can be withdrawn at any time once clearly communicated
- ✓ Being in a relationship does not mean consent is automatic
- ✓ One sexual act does not imply consent for another act
- ✓ Can never be given if a person is asleep, incapacitated, or unconscious
- ✓ Can never be given by a minor
- ✓ Can never be given by someone with a mental disability
- ✓ Cannot be inferred from silence or lack of resistance
- ✓ Cannot be gained by force, threats, intimidation, or coercion

SEXUAL ASSAULT

TOUCHING OR FONDLING OF AN INTIMATE PART OF ANOTHER PERSON'S BODY FOR THE PURPOSE OF SEXUAL GRATIFICATION WITHOUT THE PERSON'S CONSENT (includes touching with a foreign object)

STALKING

ENGAGING IN A COURSE OF CONDUCT DIRECTED AT
COMPLAINANT THAT WOULD CAUSE A REASONABLE PERSON
TO:

- Fear for their safety or the safety of others; or
- Suffer substantial emotional distress

DOMESTIC/DATING VIOLENCE

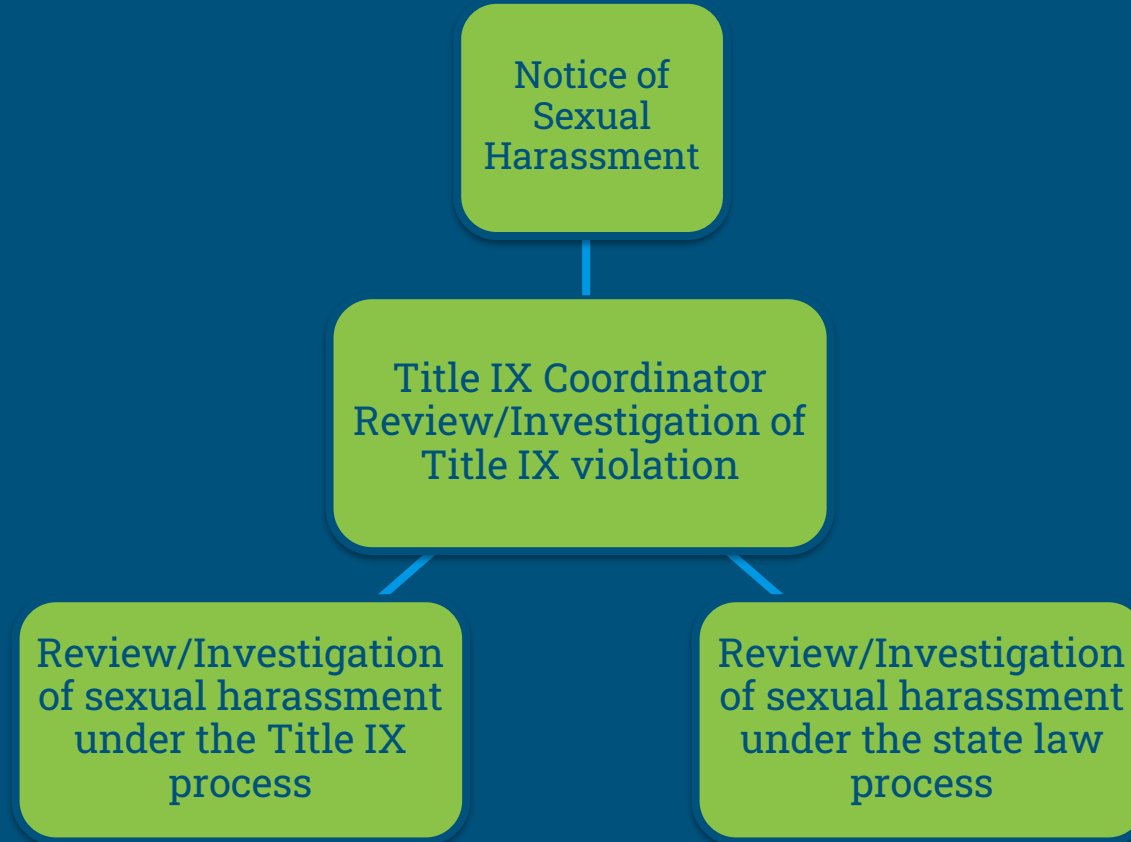
- DATING VIOLENCE: Violence committed by a person who is or has been in a romantic or intimate relationship with the victim
- DOMESTIC VIOLENCE: The use or attempted use of physical or sexual abuse or a pattern of other coercive behavior committed to gain power over a victim. Includes verbal, psychological, economic, or technological abuse by a current or former intimate partner

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Title IX Complaint Procedures

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Sexual Harassment Complaint Process





Requirements of a Title IX Formal Complaint

- School Districts are required to investigate complaints received
- If the Complainant does not file a formal complaint, the wishes of the complainant should be respected
 - unless the Title IX Coordinator decides to initiate the complaint and it “is clearly not unreasonable in light of the known circumstances”
- The Title IX Coordinator may file and sign a formal complaint

Overview of the Title IX Grievance Process

Initial complaint – Title IX Coordinator

- **Report of incident***
- Formal complaint process offered/ *Informal Resolution*
- **Supportive measures**
- Complaint filed/investigation initiated
- Potential dismissal (*Jurisdiction*, Allegation)
- Notice of allegations, includes a presumption of innocence

Decision-making – Title IX Decision-Maker

- Evaluate the evidence
- Determine if follow-up questions required
- **Issue decision on policy violation and discipline**

Investigation – Title IX Investigator

- Interviews
- Documents reviewed
- **Sharing information with both parties and reviewing feedback**
- Completing investigative report
- Gathering feedback from parties on report



Deeper Dive into the Investigation Process

- Initial Notice
- Letter of Evidence Shared
- Investigation Report
- Written Decision
- Appeal Option



Appeals Process

- An appeal process for dismissal of a formal complaint or a finding of policy violation must be in place
- Policy must allow for appeal if:
 - ✓ Procedural irregularity affected the outcome of the matter
 - ✓ Newly discovered evidence that could affect the outcome
 - ✓ Title IX personnel had a conflict of interest or bias that affected the outcome



Retaliation is Prohibited

- Protections for all participants in the Title IX investigation
- Prohibition against retaliation is required and requires some level of District/school action
- School Districts must keep confidential the identity of parties except as necessary to carry out the investigation to avoid a potential retaliation claim
- Bringing a code of conduct matter for providing false information in the Title IX process does not constitute retaliation

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Timeline

- 60-day timeline no longer applies under Title IX (prior to 2020)
- District deadline of 60 days
- Seeking reasonable time to complete investigation

Title IX Key Changes

Changes to Title IX have significantly impacted our policies, procedures, and practices



Title IX Key Regulatory Changes

1. Definition of Sexual Harassment
2. Grievance Procedures
 - a. Notice to Parties
 - b. Supportive Measures
 - c. **Informal Resolution**
 - d. Right to Review Evidence
 - e. Right to Review Draft Investigation Report Before Finalized
3. **Jurisdiction**
 - a. Substantial Documentation Requirements
 - b. Significant Training Requirements



Informal Resolution Process

- Informal resolution is permitted after the filing of a formal complaint, review of the process by the parties, and agreement to participate in the informal process
- Either party can leave the process and return to the formal process at their election before a final decision is made
- Participation in the informal process is not required
- Not allowed when involving a student and an adult
- Parent or Guardian permission required



Jurisdiction Requirements for Title IX

Complainant must:

- be currently enrolled in the educational institution conducting the investigation

Sexual harassment must:

- occur in a school's/District's "education program or activity" and must be in the United States
- include locations, events, or circumstances over which the school exercised substantial control over both the Complainant and Respondent in the context in which the sexual harassment occurred



Jurisdictional Dismissal - Mandatory and Permissive

Mandatory dismissal

- Would not constitute sexual harassment as defined in regulations
- Did not occur in an education program or activity of the school/district
- Did not occur against a person in the United States

Permissive dismissal

- Complainant notifies Title IX Coordinator in writing that Complainant would like to withdraw the formal complaint or allegations
- Respondent or Complainant is no longer enrolled or employed by school district
- Specific circumstances prevent the school district from gathering evidence sufficient to reach a determination



Title IX Staff Roles



Title IX – Parties and Administrators

Parties

- Complainant – alleged victim/survivor
- Respondent – accused/responds the allegation

Administrators of Claims

- Title IX Coordinator
- Title IX Investigator
- Title IX Decision-maker
- Title IX Appeals Officer
- Title IX Informal Resolution Facilitator
- Title IX Advisors (n/a)



Role of the Title IX Coordinator

- Coordinates Title IX compliance and training
- **Accepts formal complaint and assign an unbiased investigator**
- Conducts Complainant intake meeting/interview
- Explains the grievance process
- **Offers supportive measures to the Complainant and Respondent**
- Evaluates emergency removal
- **Sends written notices to known parties describing said allegations with sufficient details and the identity of the parties involved**



East Side's Title IX Team

Title IX Coordinator: Clezel Sewell

Title IX Investigators: Clezel Sewell, Patty McKernan, or designee

Decision Makers: Honey Gubuan, Dr. Anne Tran, Kelly Daugherty, Ginny Davis Liz Gutierrez, (Michael McCoy, Paul Landshof, Marco Osuna, Mary Pollett, and Andrew Lott*)

Informal Resolution Facilitators: Clezel Sewell, (Andrew Campbell, Anna Thomas, Lyra Hua, Nancy Pereira, and Nygoc-Hung ("JD") Do*)

Appeals Officer: Teresa Marquez

*Beginning 2023-2024

Equity Matters





Ensuring Title IX Compliance





Best Practices for Schools dealing with Reported Sexual Assault

- Any reports of sexual assault are to be immediately reported to local law enforcement following contact with parents or guardians
- Report an alleged incident to Child Protective Services, if warranted
- Report all Sexual Assault allegations to the Title IX Coordinator



Things to Know as it Pertain to Minors in California

- An individual must be 18 years old or older to be able to legally participate in sexual intercourse
- Generally, school officials and police may question minors without their parents' or guardians' consent
- CA Ed. Code 48980-48985 – Covers school notification to parents or guardians – in short, police do not need to obtain parental consent in order to interrogate a student
- Board Policy **5145.11** (“Questioning and Apprehension by Law Enforcement”)...” At the law enforcement officer's discretion and with the student's approval, the principal or designee may be present during the interview. *Except in cases of child abuse or neglect, the principal or designee shall attempt to notify the student's parent/guardian as soon as practicable after the law enforcement officer has interviewed the student on school premises...*”

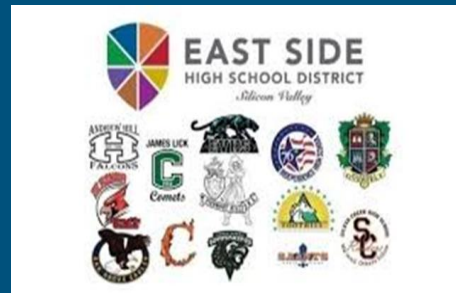
East Side's Related Policies

- Administrative Regulation: Title IX Sexual Harassment Complaint Procedures (**5145.71 AR**)
- Board Policy & Administrative Regulation: Sexual Harassment (**5145.7 BP/AR**)
- Board Policy & Administrative Regulation: Uniform Complaint Procedures ("UCP") (**1312.3 BP/AR**)



Next Steps for East Side

- Ensure that key areas in our Title IX policies and procedures are updated on an ongoing basis
- Train the Title IX team and post training materials annually
- Define Consent
- Incorporate Title IX training into annual school year trainings
- Adopt a grievance process for retaliation and published it
- Update Web Page (ongoing)



Questions or Comments?





For questions or comments, please contact me:

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Overview Attendees

- Bjorn Berg
- David Boostani
- Bruce Corbett
- Ngoc- Hung JD Do
- Shelby Edwards
- Cecilia Granados
- Martha Guerrero
- Kyle Kleckner
- Sandrine Legrand
- Teresa Marquez
- Namrata Mohan
- Yovi Murillo
- Michael Payne-Alex
- Jenner Perez
- Alexis Pimentel
- Noemi Ramirez
- Adriana Rangel
- Joel Robison
- Erica King
- Thanh Barretto
- Joel Villasenor
- Ricardo Salgado
- Truc Chau