



# Title IX Training

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# Title IX Regulations

## What is Title IX

Title IX is a federal civil rights law that was passed as part (Title IX) of the Education Amendments of 1972. It **prohibits sex-based discrimination in any school or any other education program that receives federal funds**



TITLE  
IX

# Title IX



"No person in the **United States** shall, on the basis of sex, shall be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education program or activity receiving federal financial assistance.."

**Educational program or activity** includes location, events, or circumstances over which the recipient exercises **substantial control** over both the **respondent** and **context** in which **the sexual harassment occurs**.

Title IX regulation underwent extensive review by the USDOE during the Trump administration. New regulations were mandated to go in effect August 14, 2020; additional updates are anticipated.

# Who is covered under Title IX?



**STUDENTS**



**ALL EMPLOYEES**



**THIRD PARTIES**

**WHILE ENROLLED OR EMPLOYED AT THE SCHOOL**

# This includes Complainants/Respondents:

- STUDENT/STUDENT
- EMPLOYEE/STUDENT
- MALE/FEMALE
- FEMALE/FEMALE
- MALE/MALE
- **EMPLOYEE/EMPLOYEE**
  - Depending on the nature of the complaint, this may be covered under Title VII)
  - Must consider if the employee is being excluded from participation in, denied the benefit of, or subject to discrimination in a school activity or program  
(Fact driven)

# Scope/Jurisdiction



**All School Sponsored Programs/Activities/Events (Before/During/After School)**

**Occurring on school property/vehicles**

**Messages/emails sent during school hours**

**Professional Development (Employees)**

# Title IX Prohibits Discrimination

- A recipient of federal funds must operate its programs or activities in a non-discriminatory manner free of discrimination on the bases of sex. Sex includes:
  - gender
  - sex based harassment
  - Sexual violence/assault
  - sex stereotype

# School's Obligation

When the school has actual knowledge of sex-based discrimination or harassment, it must:



- Investigate thoroughly & impartially



- Take prompt, effective actions to stop discrimination

- Act reasonably to prevent recurrences,



- Provide equitable supportive measures

A school has actual knowledge when any employee has been notified by anyone

**Any person**, whether the alleged victim or a parent, friend or bystander, has the right to report sexual harassment to put the school on notice



# Employee/Administrator's Obligation

- Know the District's Title IX Coordinator
- Recognize a potential Title IX violation
- Report any potential Title IX violation to the Title IX Coordinator the same day you receive notice
- Review the district's anti-discrimination and anti-harassment policies
- Prohibit Retaliation
- Provide Supportive Measures

# NOTICE

- Once a school has actual knowledge, the school must respond promptly
- The school cannot be **deliberately indifferent** – Clearly unreasonable in light of the known circumstances (fail to investigate, delay investigation, etc.)
- Law Enforcement or DHR involvement does not relieve the district of its Title IX obligations

We cannot defer to an outside agencies investigation; however, we should work closely with law enforcement so as not to interfere with their investigation (i.e. they may want to interview the complainant or witnesses first)

# Schools obligation...

Prevent sex-based discrimination in:

- Recruitment
- Admissions
- Counseling
- Financial Assistance
- Athletics
- Sex-based harassment
- Sexual Assault/Battery
- Sexual Violence
- Treatment of Pregnant & Parenting Students
- Discipline
- Single-Sex Education
- Employment
- Stalking

# Pregnant & Parenting Students

- Title IX protects Pregnant & Parenting students  
Protects expectant mother/father during pregnancy, childbirth, false pregnancy, termination of pregnancy & recovery.
- Schools must provide services and accommodations equal to those provided to non-pregnant students
- Accommodations may include:
  - makeup missed assignments
  - extend deadlines/reschedule tests/exam
  - provide a larger chair or desk or reasonable breaks during class
  - Provide homebound services
  - excuse absences due to pregnancy or related conditions
  - holding and restoring their status/retake course w/o penalty
  - excuse absences for pregnancy, childbirth, or related conditions

# Retaliation Prohibited

- Schools may never intimidate, threaten, coerce or discriminate against any individual for the purposes of interfering with any right or privilege secured by Title IX.
- Retaliate against any individual for filing a report, complaint, testifying, assisting, participating, or refusing to participate in a Title IX formal or informal proceeding
- Schools must respond promptly to all reports of retaliation

ACTIONS/CLAIMS  
THAT FALL UNDER  
TITLE IX



TITLE  
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# SEX STEREOTYPES



The belief/practice of ascribing certain gender roles, attributes, or characteristics to males or females

i.e. girls should play with dolls, boys should play with trucks

Boys learn slower than girls

Only boys/men commit sexual assault

Only girls should take Home Economics classes



**STALKING** - “a course of conduct directed at a specific person that causes a reasonable person to fear his/her safety, the safety of others or suffer emotional distress” (i.e. spying, hacking, tracking, spreading rumors sending unwanted messages, making verbal, written threats) – two or more acts

## **HARASSMENT/DATING VIOLENCE**

- Unwelcomed conduct on the basis of sex
- Violence committed by a person
- Who has been in a social relationship of a romantic or intimate nature with the victim
- Where the existence of such a relationship shall be determined based on a consideration of the following factors: Length of the relationship Type of relationship Frequency of interaction between the persons involved in the relationship Acts of violence may include, but are not limited to: recklessly causing bodily injury; attempts to cause bodily injury; and causing fear of immediate, physical harm through threat of force.



# What is Sexual Harassment?



- **Quid Pro Quo Harassment** – conditioning an educational benefit in exchange for unwelcomed sexual conduct. Only a school employee can commit this act. This is an abuse of a school official's authority
- **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 school's education program or activity which may create a hostile environment  
(includes sexual advances, sexual touching, comments, jokes, depictions, stories, sexual innuendo)

"Sexual assault," "dating violence," "domestic violence," or "stalking" as those terms are defined under other Federal laws called the Clery Act and the Violence Against Women Act.

# SEXUAL ASSAULT



- Includes rape, sodomy, sexual assault with an object, or fondling
- Must determine if there was no consent, or
- whether Complainant was incapable of giving consent because of temporary/permanent mental or physical incapacity

[34 C.F.R. 106.30(a); 20 U.S.C. 1092(f)(6)(A)(v);

# Consent

- The Title IX regulations do not define consent..
- Consent can be determined by a party's words or actions
- A thorough investigation will ascertain whether a person
  - **Knowingly Consented** – occurs when one is aware of his or her conduct, mutually agrees, and willingly participates
  - **Voluntarily Consented** – freely and actively consents
  - **Consented** by words or actions
- Actions that may negate consent – age, physical force, coercion, intimidation, incapacitation or intoxication of complainant, & employee/student interactions
- Questions to ask – who initiated physical contact, who removed clothing items, who said what, was consent withdrawn,
- Consent to one act of sexual contact does not equate to consent for another act. Sexual contact without consent to the specific contact is sexual assault.
- Consent can never be implied by silence or implied by previous acts with the Respondent

# Code of Alabama on Statutory Rape Employee/Student Acts

Ala. Code 1975 Section 13A-6-81

A person commits the crime of being a school employee engaging in a sex act or deviant sexual intercourse with a student under the age of 19 years if he/she is employed and engages in a sex or deviate sexual intercourse with a student, regardless of whether the student is male or female. (Class C Felony) 1 yr and day up to 10 years \$15K fine

Ala. Code 1976 13A-6-82 ... school employee solicit a sex act (Class A misdemeanor) up to 1 year and \$6K fine

# Code of Alabama on Statutory Rape

## Student/Student Acts

### **Ala. Code 13A-6-67**

19 years or older makes sexual contact with one who is less than 16, but more than 12 (Class A Misdemeanor 1<sup>st</sup> time offender 1 yr up to \$6k fines– Class C Felony 2<sup>nd</sup> Offender) 1-10 years and up to 15K fines

### **Ala Code 13A-6-61** – Class A Felony -10 -99 years or life up to 60K fines

16 years or older who engages in sexual conduct with a person who is less than 12 years old (Class B Felony)

### **Ala Code 13A-6-62** – Class B Felony Class B Felony – 2 – 20 years up to \$30K fines

16 years or older who engages in sexual conduct with a person of the opposite sex who is less than 16 and more than 12 years or younger provided that the actor is at least two years older than the victim

### **Ala Code 13 A-6-69.1** Class B Felony – 2 – 20 years up to \$30K fines

16 year old with child less than 12 years old

# Juvenile Sex Offender Act 16-1-51.1

- Law enforcement will notify the school
- School Principal/Administration must schedule a Safety Plan meeting with the parents/school staff to devise an **Individualized Student Safety Plan (include IEP Team if student, if applicable)**
- The **Safety Plan** should include at minimum
  - Identify persons to escort the student to/from restroom
  - Determine how student will transitions from class
  - Ways to monitor the student during lunch/PE, extra-curricular activities/field trips/bus transportation, during instructional time/athletic events/all school sponsored activities
  - Consider whether student should have unfettered access to electronic devices
- Must ensure procedures for **continual review** of each plan by staff for monitoring and changing the plan as needed (if staff notice an increase/escalation of behaviors, a Safety Plan meeting should be held to revise the plan)
- Have **Safeguards** for **protecting the confidential information**. School Principal may notify only the teachers/staff responsible for supervising the student or implementing the safety plan (otherwise the information must remain confidential. May not directly or indirectly disclose the confidential information to anyone except those responsible for supervising/implementing the plan)
- Once a student withdraws, the school has a duty to notify the receiving school's principal and forward the safety plan

# BCS TITLE IX PROCEDURES



TITLE  
IX



# TITLE IX REQUIRED DISTRICT PERSONNEL

- TITLE IX COORDINATOR
- INVESTIGATOR
  - May serve as the Title IX Coordinator but cannot be a Decision-maker
- DECISION-MAKER
  - May not serve as the Title IX Coordinator/Investigator or Decision Maker on Appeal
- DECISION-MAKER ON APPEAL
  - May not serve as the Title IX Coordinator/Investigator or Initial Decision Maker
- INFORMAL RESOLUTION FACILITATOR
  - May not serve as any of the above



# BCS TITLE IX COORDINATOR

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BCS TITLE IX  
COORDINATOR

# TITLE IX PROCEDURE

STEP 1 – DETERMINE IF IT IS NECESSARY TO NOTIFY LAW ENFORCEMENT OR DHR

(Notify DHR if it involves an adult/student; notify law enforcement if it implicates a crime)

STEP 2 – USE THE TITLE IX INTAKE FORM TO TAKE IMPORTANT NOTES UPON RECEIPT OF THE CLAIM

STEP 3 – NOTIFY THE DISTRICT'S TITLE IX COORDINATOR

STEP 4 – IDENTIFY A SCHOOL TITLE IX LIAISON TO ASSIST THE TITLE IX COORDINATOR THROUGHOUT THE TITLE IX INVESTIGATION/PROCEEDINGS

STEP 5 – IMPLEMENT ALL SUPPORTING MEASURES

UNDER TITLE IX – THE COMPLAINANT AND RESPONDENT HAVE AMPLIFIED DUE PROCESS RIGHTS

i.e. Right to an advisor of their own choosing (can be a parent/attorney or appointed employee).

All meetings require prior written notice to give the party an opportunity to prepare and bring an advisor (all investigative/witness meetings/hearings etc.

**SCHOOL'S DUTY  
TITLE IX LIAISON**

NO DISCIPLINARY ACTIONS CAN BE TAKEN AGAINST STUDENTS BEFORE A FINAL DECISION REGARDING RESPONSIBILITY HAS BEEN MADE

# SUPPORTIVE MEASURES



**EXTEND  
DEADLINES**



**MORE TIME TO  
COMPLETE  
ASSIGNMENTS**



**REFER FOR THERAPY  
(PARENTAL CONSENT  
REQUIRED)**



**CONSIDER VIRTUAL  
SCHOOL**



**REVISE SCHEDULE**



**ASSIGN AN AIDE**



**REQUIRE NO CONTACT  
BETWEEN PARTIES**



**INCREASE SUPERVISION**

**SCHOOL'S DUTY  
TITLE IX LIAISON**

**GIVE CONSIDERATION TO THE COMPLAINANT'S WISHES**

# TITLE IX PROCEDURES (continued)

**STEP 6** – ONCE THE DISTRICT'S TITLE IX COORDINATOR IS NOTIFIED, SHE WILL NOTIFY THE PARTIES OF THE DISTRICT'S TITLE IX PROCEDURES AND THE PARTY'S RIGHTS

- Parties may mutually agree to an informal process, but may change their minds at any time)
- All employee related matters require a formal proceeding regardless as to whether the Complainant wishes to participate
- Upon receipt of notice, Respondent will have 7 calendars to submit a response to the allegations; however a response is not required

**STEP 7** – TITLE IX COORDINATOR WILL DETERMINE IF EMERGENCY REMOVAL IS NECESSARY

(i.e. employees can be placed on leave, students can be removed if there is imminent fear of harm/danger)

**STEP 8** – TITLE IX COORDINATOR WILL COMMENCE INVESTIGATION WITH THE AID OF THE SCHOOL'S TITLE IX LIAISON

**STEP 9** – TITLE IX COORDINATOR WILL DEVELOP A PRELIMINARY REPORT

(Complainant & Respondent have 10 days to review/respond to preliminary report & inspect all evidence)

**STEP 10** – TITLE IX COORDINATOR WILL COMPLETE THE FINAL INVESTIGATION REPORT WITH CONSIDERATION TO THE COMPLAINANT & RESPONDENT'S RESPONSES

(Complainant & Respondent will have another 10 days to review/provide written response to the final report)

**TITLE IX  
COORDINATOR**

# TITLE IX PROCEDURES (continued)

**STEP 11** – COMPLAINANT & RESPONDENT WILL HAVE 5 DAYS TO SUBMIT WRITTEN QUESTIONS TO THE OPPOSING PARTY

**STEP 12** – EACH PARTY WILL HAVE 5 DAYS TO RESPOND AND PROVIDE FOLLOW UP WRITTEN Q & A

**STEP 13** – HEARING OFFICER WILL REVIEW THE RECORDS AND PROVIDE A FINDING AS TO RESPONSIBILITY

**STEP 14** – COMPLAINANT AND RESPONDENT WILL HAVE 5 DAYS TO FILE AN APPEAL

## LIMITED GROUNDS FOR APPEAL

- Procedural irregularity that affected the outcome of the matter.
- Conflict of interest or bias of the Title IX Coordinator, the investigator, or the decisionmaker.
- Newly discovered evidence that could affect the outcome. That evidence must be provided at the time of the appeal. Speculation about the potential of additional evidence is not a basis for appeal.

**DECISION MAKER**

# Mandatory Dismissal

A school must dismiss a complaint that :

- Does not describe conduct that meets the definition of sexual harassment
- That alleges sexual harassment that did not occur in the school's education program or activity
- That alleges sexual harassment that did not occur in the U.S.
- Schools can still address these complaints under the Code of Student Conduct, if the misconduct is not sexual harassment under Title IX

# Permissive Dismissal

A school may dismiss a complaint:

- If the complainant notifies the Title IX Coordinator in writing that the complainant wishes to withdraw the formal complaint or some of its allegations
- If the respondent is no longer enrolled or employed by the school; or
- If specific circumstances prevent the school from gathering evidence sufficient to reach a determination about the allegations

Whenever a school dismisses a formal complaint, or any allegations in it, the school has to promptly send written notice of the dismissal and the reasons to the parties

Both parties have a right to appeal a school's decision

HOW TO SERVE  
IMPARTIALLY?



TITLE  
IX

A dark gray square containing the words "TITLE" and "IX" in white, serif, all-caps font. The word "TITLE" is on the top line and "IX" is on the bottom line. A yellow dashed line arches over the top left corner of the square. A large yellow circle is partially visible in the bottom right corner of the slide.



# REMAIN IMPARTIAL

- The Investigator, Title IX Coordinator, Decision Maker (s) have a duty under Title IX to remain impartial and unbiased
  - Do not give credence to statements made by one party over another
  - Do not speculate
  - Refrain from lecturing during the interview (watch your tone, facial expressions)
  - Remain neutral at all times
  - Avoid prejudging the facts at issue
  - Do not make credibility determinations based on a party's status as Complainant/Respondent or based on a party's refusal to participate in the Title IX investigation (Remember 5<sup>TH</sup> Amendment Rights)
  - Identify any actual or perceived conflicts of interest
    - Did you ever serve as a coach/advisor, or teacher for the Complainant or Respondent?
    - Do you bear a familial or personal relationship to the Complainant/Respondent or a family member of one of the parties?
    - Have you ever disciplined the Complainant or Respondent?
    - Have you previously advocated for Complainant or Respondent?
- If yes to any of the above, you should not assist in any capacity during the Title IX Investigation

# BIAS

- Bias: an inclination of temperament or outlook; bent or tendency (Merriam Webster's Dictionary).
- Whether bias exists requires examination of the particular facts of a situation. Apply an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased.
- Avoid inferences based on party status – athlete, trusted teacher, “good” student, high ranking official.
- Avoid sex stereotypes
- Avoid making assumptions
- Avoid Cultural Biases
- Objectively evaluate all relevant evidence—including both inculpatory and exculpatory evidence

## Evidence of Bias

- Jumping to conclusions, only hearing one side of a story, using favorable evidence and discounting unfavorable evidence, etc.

# Confidentiality/First Amendment Rights

Complainants/Respondents have a constitutional right to discuss/disclose information concerning the Title IX investigation at will.

Schools are prohibited from disciplining any party from discussing the complaint or requiring parties to keep the information confidential

Employees; however, are prohibited from discussing the information with anyone who is not a necessary participant under Title IX

# HOW TO CONDUCT AN INVESTIGATION



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# Interviewing a Witness/Party

- When interviewing a witness/party ask open ended questions
- Let the witness/party lead the discussion
- Request evidence that may corroborate the witnesses' accounts
  - Identify witnesses that may corroborate changes in behavior soon after the incident
- Ask clarifying questions
- Repeat the witnesses' testimony to allow an opportunity for the witness to add anything you may have left out
- Seek to determine if the witness may have any biases or ulterior motives
- Seek to determine if there are any additional witnesses
- Make every effort to document the witnesses' statements as accurate as possible
- Use direct quotes for relevant statements
- Document questions that were asked but not answered, evidence that was requested but not provided, evidence that was no longer available at the investigation, and parties/witnesses that were not available

ISSUES OF RELEVANCY



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# ISSUES OF RELEVANCY

Evidence is relevant if it has value in proving or disproving a fact at issue

## EVIDENCE WHICH IS NOT RELEVANT

- Any information concerning the Complainant's prior sexual behavior unless it is offered to prove
  - That someone other than the Respondent committed the alleged conduct
  - Concerns specific incidence of the Complainant's sexual behavior with respect to the Respondent and is offered to prove consent
  - Rape Shield law does not apply to the Respondent; therefore, evidence concerning the respondent's prior sexual behavior can be offered to show a pattern of behavior, motive, absence of mistake

# PRIVILEGED INFORMATION

## EXCLUDE MEDICAL RECORDS

“School “cannot access, consider, disclose, or otherwise use a party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional’s or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party’s voluntary, written consent to do so for a grievance process under this section.”

## EXCLUDE PRIVILEGED INFORMATION

Schools cannot require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

- i.e. Attorney-Client communications, Fifth Amendment Privilege, Confessions to clergy, Spousal Testimony



# INFORMAL RESOLUTION PROCESS

The informal resolution process is available when students are the Complainant/Respondents

It can never be used for employee involved allegations

An Informal Resolutions Facilitator serves as the mediator that will facilitate the parties in determining a mutually agreeable resolution

The goal is to restore access to the educational program/activity

## BEST PRACTICES

- Place complainant/respondent with their parent/advisor in separate rooms
- The mediator will go room to room and allow the parties to recite their account of events and determine what is necessary for them to resolve the complaint (i.e. What would make one feel safer)
- Return to the Formal Complaint Process if parties cannot agree to a resolution
- If parties are able to reach a resolution, document it in writing
- Information learned during the informal process is confidential and may not be shared with anyone

\*\*\* If the Informal Resolution process breaks down and a party opts to move forward with a Formal Complaint, the Informal Resolution Facilitator MAY NOT serve in any other capacity.

CHECKING FOR  
UNDERSTANDING

TITLE  
**IX**

# QUESTION 1

A student would like to file an anonymous Title IX Formal Complaint. Is this a permissible action under Title IX?

## QUESTION 2

Is it permissible for a school to delay their Title IX investigation until law enforcement/DHR complete their investigation?

## QUESTION 3

A student filed a Title IX Complaint with an employee as the Respondent. The Complainant has now advised that she would like to withdraw her formal complaint and pursue the district's Informal Resolution Process. Can the district dismiss the complaint per the student's request and assign an Informal Resolution Facilitator?

## QUESTION 4

The school sponsored a trip abroad to Italy through the History Department. A student alleges that another student sexually assaulted her while in Italy. She would like to file a Formal Complaint under Title IX? The Title IX Coordinator offered supportive measures but advised that the Title IX Grievance Policy, is not applicable. Is she correct?

## QUESTION 5

A student alleges that she was sexually assaulted by another student at a house party. She further alleges that she has been ostracized and called derogatory names at school by several students since the incident. Her attendance and grades have declined and she is seeking therapy. The Title IX Coordinator has provided supportive measures but dismissed her complaint on the grounds that the alleged assault did not occur on school grounds or at a school sponsored event. Was the Title IX Coordinator correct in dismissing the complaint?

## QUESTION 6

A student alleges that another student sent sexually explicit unwanted harassing text messages and pictures to his phone after a breakup. He would like to file a Title IX Formal Complaint. Does the district have jurisdiction to move forward under Title IX?



# TRUE OR FALSE

An Informal Resolution Facilitator may also serve as the Investigator but may never serve as the Decision-Maker

# TRUE OR FALSE

The Title IX Coordinator may also serve as the Investigator, but may never serve as the Decision Maker

# TRUE OR FALSE

The Investigator may serve as the  
Decision Maker on Appeal.

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