




# Human Resources


# Agenda

- Purpose & Goals
    - Not a sports Equity Law
  - Regulations
  - Challenges
  - Recent Changes
  - MCPSS Policy & Procedure Changes
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# Agenda

- Training
    - Required for all employees, Title IX Coordinator, Title IX Investigator, Advisors, Hearing Panel Participants and Informal Resolution Specialists.
    - Topics for training are set forth in 34 CFR, Part 106.45 (b)(1)(iii)
      - Specific slides and information provided on each topic
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# Overview of Title IX

- *No person in the United States shall, based on sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving financial assistance.*
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# Overview of Title IX

- 2020 Regulations & Final Rule
    - Carry the Force of Law
    - A comprehensive overhaul on school disciplinary matters involving sexual harassment.
    - First regulations of their kind under Title IX and replaced many previously issued guidance documents • 2000 pages long
    - Focus on schools' response to allegations of sexual harassment and provide specific procedures and require specific personnel
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# Overview of Title IX

- Applicable Policies & Procedures – Board Policy 3.31 – Title IX
    - Board Policy 5.281 – Student Sexual Harassment • Procedures to 5.281
    - Board Policy 6.461 – Employee Sexual Harassment
    - Excerpts in Employee Handbook
    - Excerpts in Student Handbook
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# Overview of Title IX

- Required by Statute
- Train your staff on where to find the information



## Title IX – Primary Focus

- A school system will face liability for sexual harassment where the offending conduct took place in an educational activity or program, in the United States, the system has “actual knowledge of the conduct” and responds with “deliberate indifference”



# Title IX

- Sexual Harassment Defined
  - Quid Pro Quo Sexual Harassment
    - Employee conditioning the provision of a district aid, benefit, or service on an individual's participation in unwelcome sexual conduct.
  - Hostile Environment Sexual Harassment
    - Expressive activity. 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.  
(GEBSER/DAVIS CASE)

# Title IX

- **Sexual Harassment Defined (cont.)**
  - **Sexual Assault** as defined by 20 USC 1092(f)(6)(A)(v)
  - **Dating violence** as defined in 34 USC 12291 (a)(10)
  - **Domestic violence** as defined in 34 USC 12291(a)(8)
  - **Stalking** as defined in 34 USC 12291(a)(30). 34 CFR 106.30(a).

# Title IX

- Sexual Harassment Defined (cont.)
    - Sexual Assault means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.” (sometimes referred to as the Clery Act)
    - Dating Violence is violence committed by one who has been in a romantic or intimate relationship with the victim and the existence of such a relationship is determined by looking at factors like the length and type of relationship and frequency of interaction between the alleged perpetrator and victim
    - Domestic Violence is a felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim, cohabitation, sharing a child. The statute references the family and domestic violence laws of the state in question, so we would look at Alabama law here as well.
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# Title IX

- Sexual Harassment Defined (cont.)
  - Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.
  - Examples of Sexual Harassment found in the Board Policy 5.281 •
    - Demands for sexual favors with promises or preferential treatment or threats with regard to a student's educational status.
    - Unwelcome, inappropriate sexual touchings;
    - Repeated unwelcome solicitations of sexual activity or sexual contact
    - Verbal harassment or abuse of a sexual nature including graphic comments
    - The display of sexually suggestive objects or pictures
    - Sexual propositions

# Title IX

- Sexual Harassment Defined (cont.)
  - Sex Assault is any offense classified as a forcible or non forcible sex offense by the FBI.
  - Forcible means without consent including incidents when victim is incapable of giving consent.
  - Consent – the willingness in fact for conduct to occur. Revoked at any time.
    - Age, Incapacity, Disability, Lack of Information, or other circumstances.

# Title IX - Obligation

If you have a student that comes to you, or a staff member comes to you about a student, with a complaint about conduct that could violate the Title IX Policy, you have an obligation to notify the Title IX Coordinator and to respond.

# Title IX - Obligation

- A School must respond when it has
  - Actual knowledge of sexual harassment allegations – That occurred within the school's educational program or activity
  - Against a person in the US, by a student or person attempting to enroll
  - Discipline

# Title IX – Key Concepts

- **Actual Knowledge.** Notice given by any person, in any format, to the Title IX Coordinator, any official of the School System OR ANY OTHER EMPLOYEE.
  - **Any employee receiving notice of allegations of sexual harassment MUST notify their supervisor and the Title IX Coordinator.**
  - Different standard for higher education
  - Principal's Notice to Title IX Coordinator  
imperative – Complaint triggers obligations



# Title IX – Key Concepts

- **Actual Knowledge.** (continued)
  - Train your staff and remind them frequently to bring any possible sexual harassment to you or to the Title IX Coordinator.

# Title IX – Key Concepts

- **Educational Activity or Program**. S/H must occur in “education program or activity” or include locations, events or circumstances over which the School exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred • Some nexus or control is the key.
  - Off campus incident with impact on campus.

# Title IX – Key Concepts

- **Supportive Measures.** Services offered before or after a formal complaint (or where no formal complaint is made) that are designed to restore or preserve equal access to an educational program or activity.
  - Must be offered to complainant and respondent, depending on the circumstances.

# Title IX – Key Concepts

- **Supportive Measures.** (continued)
  - Examples include counseling, schedule modifications, campus escort services, restrictions on contact.
  - Non-punitive and non disciplinary
  - A failure to offer supportive measures will support a finding of deliberate indifference
  - Record keeping requirements

# Title IX – Key Concepts

- **Presumption.** There is 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.
  - Policy, Regulations
  - Impacts current practices
- **NO DISCIPLINE**

# Title IX – Key Concepts

- **Removal from Campus.** A respondent cannot be removed from campus unless the principal:
  - Informs the Title IX Coordinator of the alleged act;
  - Conducts an individualized safety and risk analysis and determines that the removal is necessary to protect a student from an immediate threat to physical health or safety; and,
    - Provides notice to the respondent and an opportunity to challenge.

# Title IX – Key Concepts

- Three Categories of Complaints / Allegations
  - Sex Discrimination not involving sexual harassment
  - Sex Harassment without a formal complaint
  - Sex Harassment with a formal complaint

# Title IX – Complaint Process

- Process
  - Notice of Sexual Harassment
  - Evaluation of allegations
  - Formal Complaint
  - Investigation
  - Decision
  - Appeal
  - Informal Resolution



# Title IX – Policy

- Informal Complaint (Bd Policy 5.281)
  - Report – any method.
  - Principal notifies Title IX Coordinator
    - Determination of whether investigation is required and if so, who will conduct an investigation
  - Supportive Measures discussion
  - System response must be Prompt and not deliberately indifferent
  - Determination
  - Documentation

# Title IX – Policy

- Formal Complaint
  - Filing of Complaint through use of required form
    - Verbal complaints
  - Notice to Title IX Coordinator
  - Supportive Measures
  - Mandatory Notice from Title IX Coordinator – Pre-Investigation determination of dismissal – Investigation Process
  - Preliminary Written Report. (10 Days)

# Title IX – Policy

- Formal Complaint (continued)
  - Final Investigation Report. (10 days).
  - Determination regarding responsibility.
  - Discipline, if appropriate, pursuant to Student Code of Conduct
  - Appeal
  - Record keeping

# Title IX – Policy

- Formal Complaint (continued)
  - Pre-investigation determination of dismissal • Complaint **MUST** be dismissed if
    - Would not fit in the definition of S/H
    - Did not occur in an education program or activity
    - Did not occur in the USA
  - Complaint **MAY** be dismissed if
    - Complainant withdraws formal complaint in writing
    - Respondent is no longer enrolled as a student or employed by School
      - Circumstances prevent the school from gathering evidence that would be sufficient to reach a determination.
- Written determination required

# Title IX – Policy

- Formal Complaint (continued)
  - Pre-investigation determination of dismissal (cont) • A pre-investigation dismissal doesn't prohibit a school from addressing allegations under other codes of conduct.
  - Victim request to withdraw complaint or not pursue.

# Title IX – Policy

- Formal Complaint (continued)
  - Mandatory Notice from Title IX Coordinator • To both Parties
    - Information required
      - Summary of Board’s grievance process and any informal resolution options available
      - Notice of the allegations potentially constituting sexual harassment with sufficient details including identity of parties involved, alleged conduct and date and location of alleged incident, if known.
      - Presumption

# Title IX – Policy

- Formal Complaint (continued)

- Mandatory Notice from Title IX

- Coordinator • Information required (cont)

- Statement that evidence gathered is available to both parties
      - Statement regarding false statements or information

# Title IX – Policy

- Formal Complaint (continued)
  - Investigation Process & Written Report
    - Title IX Coordinator, Resource Officer, Principal or third party
      - Training is required
    - Purpose is to discover and examine the facts related to the incident
    - Both parties have equal opportunity to submit information and corroborating evidence, identify witnesses and submit questions to be asked of the other party.



# Title IX – Policy

- Formal Complaint (continued)
  - Investigation Process & Written Report
- (cont) • Draft Investigation Report
  - Report that “fairly summarizes the relevant evidence.”
  - Preponderance of the evidence
  - Address each allegation – substantiated, unsubstantiated or insufficient information to substantiate
  - May draw conclusions as to potential violations
  - Provided to both parties who have 10 days to respond
  - Responses considered before completion of Final Report.

- Both parties have 10 days to review and respond to Final Report.

## Title IX – Policy

- Formal Complaint (continued)
  - Determination of Responsibility
    - The formal complaint and grievance process must be concluded before discipline may be levied.
    - Decision maker cannot be the investigator or Title IX Coordinator
    - Unbiased, fair, not reliant on stereotypes
    - Written determination required based upon a review of the investigation report, documentary evidence and any other relevant information.
      - Required content, suitably redacted

# Title IX – Policy

- Formal Complaint (continued)
  - Determination of Responsibility
    - Presumption that the respondent is not responsible continues until there is a finding that there is sufficient evidence (based on the preponderance of the evidence) that the respondent has violated the Board's policy.
    - No bias, conflict of interest by the decision maker. Objective decision based on the evidence presented.

# Title IX – Policy

- Formal Complaint (continued)
  - Appeals
    - Limited right to appeal – 5 days
    - Procedural irregularity
    - New evidence not reasonably available at the time determination of responsibility made
    - Conflict of interest or bias by Title IX coordinator, investigator or decision maker.

# Title IX – Policy

- Formal Complaint (continued)
  - Appeals Process
    - Notice to other party
    - 5 days to submit written statement of support for decision
    - Superintendent, or designee, will hear appeal.
    - Notice to parties about decision if appeal doesn't satisfy grounds

- Appeal Authority will review and render decision within 14 days.

## Title IX – Policy

- Informal Resolution
  - Mediator trained in informal resolution
  - Cannot require informal resolution
  - Either party can withdraw from informal resolution at any time
  - Not eligible for employee – student and formal complaint must be filed.

- No Retaliation

## Title IX – Policy

- Miscellaneous info – Investigative Process –
  - Investigator has discretion – questions, relevance
  - Separate meetings with parties
  - Protect privacy as much as possible. FERPA considerations
  - Can't require complainant to report to Respondent

or meet with the Respondent

– No live hearings for

## Title IX – Policy

- Miscellaneous info – Investigative Process –  
NO questions about the sexual predisposition or  
prior sexual behavior unless offered to prove  
consent.
  - Parties may be represented by advisors



# Title IX

- Critical Concepts
  - Liability
  - Definition of Sexual Harassment
  - Scope of an Educational Program or

# Activity – Informal vs. Formal Complaint Process

- Investigation Process
- Presumption of no responsibility
- Rules on Removal of a Student

## Title IX

- Next Steps
  - Additional Training

- Actual Knowledge / Reporting – All Employees
- Investigation Process
  - Resource Officers are top notch, but its required
- More info on Sexual Harassment with specific examples
- Principal Training of staff
  - Location of Title IX Information
  - Reporting Obligation

## Title IX

- Next Steps
  - All training materials will be on line

- Finalizing form documents and templates to use as part of a Title IX investigation