



Title IX Training

Creating Awareness and Action

Facilitator: Mike Burde, Title IX Coordinator

***The majority of slides & content from:
Kevin T. Sutton***

Attorney, Lusk Albertson PLC

LuskAlbertson.com • @LuskAlbertson





Agenda

- Awareness of Title IX - policy and procedures
- Scenarios
- Key Issues and Other Information
- Q & A



What is Title IX?

“No person . . . 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.”

-20 U.S.C. § 1681 (a)

Translation:

We want an educational environment free from sex-based harassment



Then

Now





Title IX Scope

- Historical Context = Sports
- Not-So-Historical Context = Sex Discrimination
- Modern Context = LGBTQ Students & Sexual Violence/Assault on Campus
 - Sex discrimination includes sexual violence and gender-based harassment
 - **The protections of Title IX extend to male and female students in all academic, educational, extracurricular, athletic, and other programs of a school**, whether those programs take place on campus, in a school facility, at an off-campus class, seminar, or event that the school sponsors, or elsewhere
 - **Title IX protects faculty and staff** from sexual harassment by any school employees, non-employee third parties, and other students

Title IX Enforcement - three

- Process/Responsibility
 - U.S. Department of Education, Office of Civil Rights (OCR)
- OCR Investigations
 - Investigates Complaints
 - Document Collection and Review
 - Interviews Staff
 - Details, details, details
 - Time-Intensive
- Lawsuits (Private Right of Action)
 - Present Trend ... as you might imagine





Evolution of New Title IX Regulations

- Issued by the Department of Education in November 2018; first overhaul since 1997 ...
 - Impacts how schools will handle allegations of sexual harassment/assault
 - College-focused ... ***with an attempt to apply to K-12***
- New rules take effect on **August 14, 2020**



(Re)Defining Sexual Harassment

- “*For the First Time, Title IX Regulations Define Sexual Harassment*”
- Sexual harassment means:
 1. Conditioning aid, benefits, or services on an individual’s participation in unwelcome sexual conduct (i.e., **quid pro quo 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 an education program or activity
 3. Sexual assault, dating violence, domestic violence, or stalking [as defined by Clery Act and the Violence Against Women Act (VAWA)]
 - Mostly postsecondary, but need to familiarize with these definitions



When Do We Have to Respond?

A recipient with **actual knowledge** of sexual harassment **in an education program or activity** against a person **in the United States** must respond promptly and in a manner that is **not deliberately indifferent**.

- **Any person** may report sexual harassment/sex discrimination, **regardless** of whether the person is the alleged victim of the reported conduct
- Reports can be made by mail, telephone, in-person, or by email, using the contact information for the Title IX Coordinator
- Reports can be made at any time, including non-business hours





What Does That Mean?

- **“Actual knowledge”** of sexual harassment ...
 - Report to a Title IX Coordinator
 - Report to an official who has the authority to institute corrective measures on behalf of the school district (Gebser)
 - **Report to any employee of an elementary or secondary school**
 - ***“arguably broadens ... an elementary or secondary school’s obligation to respond to Title IX sexual harassment”***
 - “unreasonable to expect young children to seek out specific employees for the purpose of disclosing Title IX sexual harassment”
- **“In a Program or Activity”** ...
 - Any location, event, or circumstance over which the recipient exhibits substantial control over the alleged harasser and the “context” in which the harassment occurred
 - Only have to address issues occurring against a person in the United States



Staff Support

- We all must understand importance of role in supporting Title IX compliance
- Awareness of policy
- Awareness of procedures
- Model behavior
- Foster a culture of accountability
- Create a culture of reporting
- ***Be the “eyes and ears” for Title IX Coordinator/District***



Test Time!

Title IX Scenarios

Work as a table team



Scenario # 1

Kendra and Samantha are 9th graders who snuck into a party held by Chris, a 12th grader, on a Saturday night. After the party, Kendra tells Samantha she was cornered by Chris and that he touched her in a way that made her uncomfortable. Samantha becomes worried about Kendra and, on Monday, tells one of her teachers about the incident.

Is the teacher required to do anything?



Scenario #1 - Options

1. **No**; the issue happened outside of school / off-campus and was not reported by the potential victim
2. **Maybe**; the teacher could talk to the student about her feelings and see if she wants to file a formal complaint
3. **Yes**; the teacher should report the concern to administration so an investigation can be completed



Scenario #2

A middle school student is accused by a fellow student of sexual harassment. The accuser is a student with a long discipline record, multiple in- and out-of-school suspensions, and has, on at least on one occasion, falsely accused another student of theft. In short, none of the school's staff is willing to accept the accusation as true.

In light of the student's checkered past, should the school consider these allegations seriously?



Scenario #2 – Options

1. **No**; given the student's track record for lying, there is no reason to trust that what she is claiming now is truthful
2. **Yes**; the reputation of the complaining party makes no difference and the district must be responsive to the complaint

Scenario #3

Jordan, a 10th grader, tells a teacher at his school that he was sexually assaulted by a fellow student. The teacher informs Jordan the offense is a crime, so it must be reported to police.

What else, if anything, does the teacher need to do?



Scenario #3 - Options

1. **Nothing**; she told Jordan to contact the police, so she has met her obligation under the law.
2. **Contact the police herself** and then let the police investigate
3. **Advise** building administration so a school investigation can be done



Key Issues and Other Information



Kenowa Hills Public School Process

Fairness & Impartiality

Title IX Coordinator - Mike

Investigators

Decision Makers

Appeals Officer




Actual Notice - Definition

- A school district is deemed to have actual notice of alleged sexual harassment if *any* school district employee believes an employee or student has been sexually harassed
- This standard is **significantly broader** than the actual notice standard established in the *Gebser* and *Davis* cases



Responding to Reports of Sexual Harassment

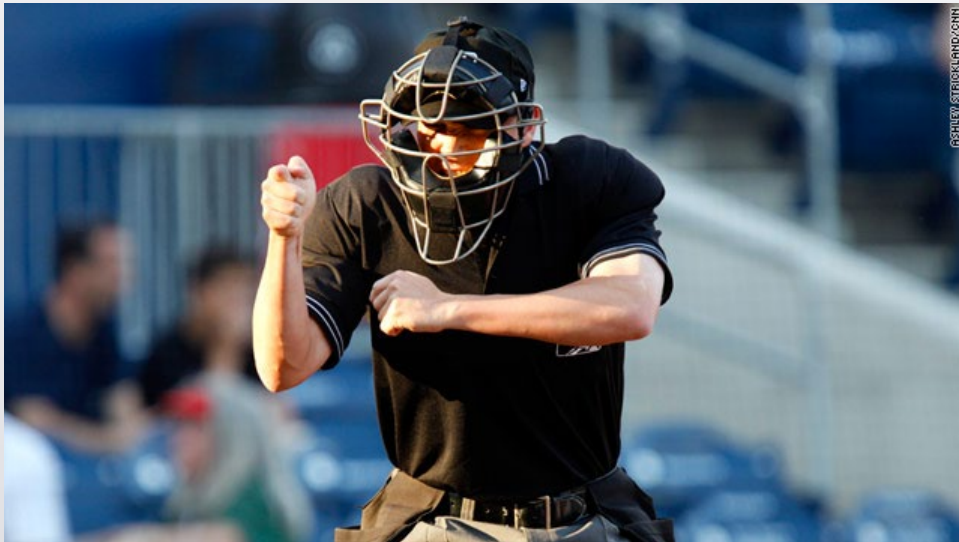
- Reports of sexual harassment may be verbal or written and may be received at any time
- Communication, by all, is key



Supportive Measures (once called interim measures)

- Title IX was enacted to prevent sex discrimination and harassment from adversely affecting access to educational opportunities
- Supportive measures should restore or ensure continued access to educational opportunities, must be free to Complainant, and may not be punitive or unreasonably burden Respondent
- Non-exclusive examples of supportive measures include: **no-contact orders, counseling, course modifications, schedule changes, transfers, increased security and monitoring**
- The Title IX Coordinator must consider, *but is not bound by*, Complainant's wishes

Temporary Removal



- The temporary removal of a Respondent-student is not a supportive measure
 - A Respondent-student may be removed based on an individualized assessment that he/she poses an immediate threat to the physical health or safety of Complainant or others
 - Due process must follow immediately
- A Respondent-employee may be placed on a temporary administrative leave



Disabled Students

- A disabled student's status as a Respondent does not waive or otherwise affect his/her protections under the IDEA, the ADA, or Section 504
- Generally, but subject to statutory exceptions, an IDEA or Section 504-eligible student may not be disciplined for misconduct that is a manifestation of his/her disability



Q & A