

# New Title IX Regulations

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# New Title IX Regulations cont'd

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- Clarify legal standards.
- Set automatic investigation/complaint process for multiple incidences
- Formalized investigation, report, and determination process
  - Access and timing issues

# Title IX

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

# Introduction to Title IX

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- Federal statute that prohibits discrimination:
  - On the basis of sex; \*\*
  - In education programs or activities;
  - Receiving federal financial assistance;
    - 20 USC Section 1681, *et seq.*
    - 34 CFR Section 106, *et seq.*
- \*\*DOJ: Section 504 and Title IX both “modeled after: Title VI, so “may provide guidance” in interpretation.

# What is Discrimination “On the Basis of Sex”?

- Any disparate treatment based on a person’s sex.
  - Does not require hostility or evil intent;
  - Difference in treatment is enough.
  - Usually proved by circumstantial, not direct “smoking gun”) evidence.
- Includes “sexualized misconduct.”
- Includes pregnancy or related conditions.

# What is Discrimination “On the Basis of Sex”? cont’d

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- Includes “disparate impact.”
- Includes “retaliation.”
- Includes gender stereotyping.
  - Sexual orientation and gender identity?

# What is “Unwelcome Conduct”?

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- Conduct by an employee, student, or third party.
  - Of a sexual nature.
    - Sexual advances, requests for sexual favors, nonverbal or physical conduct of a sexual nature; or
    - Nonsexual gender-based conduct.
      - Aggression, intimidation, hostility based on sex or gender.

# What is “Sexual Violence”?

- Physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to age or use of drugs/alcohol or intellectual/other disability.
  - Acts that fall into this category include rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.
  - Is a form of sexual harassment.



# On or Off Campus?

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- Must respond effectively to reports of sexual misconduct creating a hostile educational environment regardless of whether or not the alleged misconduct took place on, or off, campus.
- “Schools are responsible for redressing a hostile environment that occurs on campus even if it relates to off-campus activities.” Q & A on Campus Sexual Misconduct, 117 LRP 40855 (OCR 09/27/17).

# Title IX Duties are Responsive

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- Triggered upon notice of sexual harassment or sexual violence occurring within an educational program/activity.
- Rescinded OCR guidance used to suggest that “notice” includes “known or reasonable should have known.”
  - Preamble to regulations discusses a return to actual knowledge.
  - Courts consider actual knowledge.

# Title IX Duties

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- Upon notice WCS MUST:
  - Take prompt and effective action to:
    - End the misconduct; and
    - Prevent its reoccurrence.
- General Expectation:
  - Conduct Investigation.
  - Institute remedies as appropriate.
  - Generally within **60 days\*\***

# Specific Regulatory Obligations

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- Designation of Title IX Coordinator.
- Adopt nondiscriminatory policy and grievance procedures.
- Investigation.
- Interim measures.
- Effective remedial action.
- Training and education.

# Who is the Title IX Coordinator?

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“Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under [Title IX], including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part.”

# Responsible Employees & Duty to Report

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- Must report any possible sexual misconduct to the Title IX Coordinator or other appropriate school designee.
- Title IX reporting obligation often overlaps with other reporting obligations.
  - Child abuse reporting obligations.
  - Responsible employee's knowledge may trigger child find obligations or constitute knowledge of suspected disability on behalf of WCS.

# Dangerous Words

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- When responding to a complaint, the response should NEVER be:
  - It's just teasing.
  - It's no big deal.
  - The people in our school would never do that.
  - I know she/he didn't mean anything like that.
  - You need to learn to handle these things.
  - Without a written complaint, our hands are tied.
  - When it is he said, she said, we can't do anything.
  - It's all hearsay.
  - Boys will be boys or kids will be kids.

# Interim Measures

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Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct, prior to an investigation or while an investigation is pending. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, restrictions on contact between the parties, and other similar accommodations. 117 LRP 40855 (OCR 9/22/17)



# Investigations

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- Investigate:
  - Even if law enforcement/child services is investigating.
  - Even if you are not certain you should believe the accuser.
  - Even if you think interim measures took care of it.

# Investigations cont'd

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# Investigating Harassment Complaints

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- Step 1: Stop any ongoing harassment immediately.
- Step 2: Create a plan.
- Step 3: Interviews.
- Step 4: Review documents and other evidence.
- Step 5: Prepare written summary of investigation and take action.

# Schoolwide Responses

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- Problem areas? (e.g. track team, locker rooms, etc.)
- Reevaluate and redistribute policies and procedures.
- Training for staff, students and parents.

# Follow Up

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- Be sure misconduct is stopped.
- Be sure no retaliation.
- Be sure you haven't made things worse.
- Offer counseling if needed.
- Consider additional services.
- Be proactive with your follow up.

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**QUESTIONS?**

**CONTACT ME!**

