Anti-Sexual Harassment

Training for District Employees

November 2020
Today’s outcomes

What is Title IX? – what does Title IX govern and what’s new?

Title IX District Obligations – what are they and what’s new?

Washington’s Obligations – what are they?

Title IX Officer/Coordinator Obligations – what are they?

Title IX Investigations – points to remember

District Policies and Procedures – what is required?

Questions?
What is Title IX?
What is Title IX?

• Title IX, a section of the Education Amendments Act of 1972, prohibits sex discrimination in any federally funded educational program.

• This prohibition applies to all institutions receiving certain federal funds, including public school districts, and includes all educational experiences the district offers – academics, athletics, and extracurricular activities.

• Under Washington State law, similar obligations are captured under RCW 28A.640 and RCW 28A.642 and WAC 392-190.
What is Title IX?

Title IX prohibits inequity in athletics, but also applies to:

- Sexual discrimination
- Sexual harassment
- Sexual violence

The U.S. Department of Education’s Office for Civil Rights is responsible for compliance and enforcement.
**Definitions**

*Under Title IX, sexual harassment* means:

- conduct on the basis of sex that satisfies one or more of the following:
  - [Quid Pro Quo]
  - 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 recipient’s education program or activity; or

34 CFR §106.30(a)
Under Washington law, sexual harassment means:

- Unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature if:
  
  - [Quid Pro Quo]
  
  - That conduct or communication has the purpose or effect of substantially interfering with an individual's educational or work performance, or of creating an intimidating, hostile, or offensive educational or work environment.

RCW 28A.640.020
"Hostile Environment" is...

<table>
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<tr>
<th>Under Washington Law</th>
<th>Under Title IX Law</th>
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<td>Sufficiently severe, persistent, or pervasive that it limits or denies a student’s ability to participate in or benefit from the school district’s course offerings, including any educational program or activity</td>
<td>So severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity</td>
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RCW 28A.640.020; WAC 392-190-0555(1)(b)

34 CFR §106.30(a)
What is Title IX?

U.S. Office of Civil Rights defines sexual violence as:

- “Physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol. An individual may also be unable to consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion. All such acts are forms of sexual harassment covered under Title IX.”

Title IX also prohibits retaliation against students or employees who report sexual harassment

- Retaliation prohibition includes not only the school district but also any students or employees accused of harassment
Title IX District Obligations
Title IX District Obligations

Federal law – must designate at least one employee to:

• Coordinate district’s compliance with responsibilities under Title IX
• Investigate complaints alleging sex discrimination, including sexual harassment

Washington law – must designate at least one employee to:

• Monitor and coordinate the district’s compliance with state on discrimination laws and to investigate complaints alleging sex discrimination, including sexual harassment
• Civil Rights Compliance Coordinator
What are the district obligations?

- If a school district knows or in the exercise of reasonable care should have known about sexual harassment or sexual violence that creates a hostile environment, it must take immediate action to end the harassment, prevent its recurrence, and remediate its effects – regardless of whether a student complains.

- All students, employees, and parents/guardians must be notified of the names, office address(es), and telephone number(s) of the Title IX Officer.

- School district’s nondiscrimination policy must be included in each student handbook, announcement, or other publication distributed to students, potential students, parents, and any other persons benefiting from the school district's activities and programs.
New – Supportive Measures

- **Supportive measures** may include counseling, modifications of class schedules, mutual restrictions on contact between parties, or increased security and monitoring of certain areas at school.

- Unlike interim measures, supportive measures are not limited to instances when an investigation is needed nor the time before the final outcome.

- If a district does not provide supportive measures as part of its response to sexual harassment, the district specifically must document why that response was not clearly unreasonable in light of the known circumstances.
Title IX Officer and Coordinator Obligations
Title IX Officer Obligations

Title IX Officer obligations (generally):

• Coordinate and monitor the district’s compliance with Title IX, as well as state civil rights requirements regarding discrimination and harassment based on sex;

• Oversee prevention efforts to avoid Title IX violations from occurring;

• Implement the district’s discrimination complaint procedures with respect to sex discrimination and sexual harassment; and

• Investigate complaints alleging discrimination based on sex, including sexual harassment.
Title IX Officer Obligations

Title IX Coordinator obligations (at each school):

• Know and understand the district’s own sexual harassment policy and Title IX grievance procedures
• Provide policy and procedure to parent and/or student
• Report any potential violations to district Title IX Officer
Title IX Investigations
Title IX Investigations

Points to remember

• Title IX requires that the district utilize an investigator trained in sexual harassment investigations

• Do not wait for a law enforcement investigation to be completed if criminal conduct occurs!

• District must conduct its own investigation promptly and reach a conclusion under its anti-harassment policy, imposing any appropriate disciplinary sanctions regardless of the criminal investigation
Title IX Investigations

Under Washington Law

• Conducts a prompt and thorough investigation into the allegations in the complaint. WAC 392-190-065

Under Title IX Law

• Provide an equal opportunity for the parties to present evidence and witnesses (including fact and expert witnesses);

• Not restrict either party’s ability to discuss the allegations or to gather and present evidence;

• Provide parties the same opportunities to have others present during any grievance proceeding, including advisors;
Under Title IX Law (cont’d)

- Provide written notice of the date, time, location, participants, and purpose of all hearings, interviews, or other meetings, with sufficient time for the party to prepare to participate;

- Prior to completion of the investigative report, must send to each party the evidence to inspect and review; the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report;

- Create an investigative report and, at least 10 days prior to a determination regarding responsibility, send to each party, the investigative report, for their review and written response; and

- After sending report, but before reaching determination, the decision-maker give each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. 34 CFR §106.45(b)(5); 34 CFR §106.45(b)(6).
Title IX Investigations

Limits on Disciplinary Actions

• The Title IX rules prohibit a school from imposing disciplinary sanctions, or other actions that are not supportive measures, against a student until the district has followed the Title IX complaint process and determined the student was responsible for sexual harassment.

• If a complainant does not file a formal complaint but the district believes disciplinary action is necessary, the Title IX Coordinator will need to file a complaint to initiate the Title IX complaint process.

• School districts must still comply with Washington’s student discipline rules, chapter 392-400 WAC, when administering discipline to a student who has engaged in sexual harassment.
District Policies and Procedures
Policy 2152/Procedure 2152P – Nondiscrimination on the Basis of Sex in Education Programs and Activities

• Requires formal written survey by district every 3 years regarding their interests and abilities

• Requires each building to participate in an annual building program review and submit it to the Title IX officer for processing

• Title IX Officer required to retain information gathered for five years
Policy 3204/Procedure 3204P – HIB

• Requires staff to take prompt action if they witness HIB

• Minor incidents that can be resolved immediately or do not meet the definition of HIB, require no further action

• If the complaint involves discriminatory harassment as defined under 3210P, then investigation must proceed under both procedures
Policies and Procedures

Policy 3205/Procedure 3205P – Harassment

• Covers all types of harassment, but focuses on discriminatory harassment

• Sets forth the investigatory procedure for complaints of harassment

• Attempt to resolve at building level, but requires the principal or designee to provide complainant with a copy of the policy and the procedure for formal complaints
Policy 3210/Procedure 3210P – Nondiscrimination

• Sets forth the investigatory procedure for complaints of harassment

• Attempt to resolve at building level, but requires the principal or designee to provide complainant with a copy of the policy and the procedure for formal complaints

• Student complaints go to Title IX Officer and staff complaints go to Assistant Superintendent of Human Resources, Equity and Access

• Read 3204 or 3205 in conjunction with 3210
Policy 5010/Procedure 5010P – Affirmative Action/ Nondiscrimination

- Governs discrimination/ADA complaints by staff
- Assistant Superintendent of HR, Equity and Access responsible for investigations
Policies and Procedures

Policy 5160/Procedure 5160P – Sexual Harassment

• Governs sexual harassment complaints by employees and volunteers of the district

• Attempt to resolve informally, expeditiously, and at the closest point of administrative responsibility to the alleged offense

• Supervisor responsible for resolution of informal complaints, but must notify complainant of right to file formal complaint under the policy

• Assistant Superintendent of HR, Equity and Access responsible for investigations of formal complaints
Policies and Procedures

Others to note

- **Policy 2320/Procedure 2320P**
  pertaining to fieldtrips recommends Title IX training for chaperones of overnight/out-of-state fieldtrips

- **Policy 4210/Procedure 4210P**
  pertaining to school support organizations requires such organizations to be aware of Title IX equity issues when donating equipment and/or money to school athletic programs
Questions

What is Title IX? – any questions on what Title IX governs?

Title IX District Obligations – any questions on what they are?

Title IX Officer Obligations – any questions on what they are?

Title IX Investigations – any questions on Title IX investigations?

District policies and procedures – any questions about requirements?

Thank you for your time today.