



Title IX Sexual Harassment

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What is Sexual Harassment Under Title IX?



OFFERING A BENEFIT CONDITIONAL ON THE INDIVIDUAL'S PARTICIPATION IN SEXUAL CONDUCT.



USING THE REJECTION OF SEXUAL CONDUCT AS A BASIS FOR ACADEMIC DECISIONS AFFECTING THAT INDIVIDUAL.



THE CONDUCT IS UNWELCOMED AND DETERMINED TO BE REASONABLY SO SEVERE, PERVASIVE AND OFFENSIVE THAT IT DENIES EQUAL ACCESS TO EDUCATION.

What is Sexual Harassment?

ANYTHING THAT CONSTITUTES:

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

EXAMPLES:

- Making Sexual Propositions or pressuring for Sexual activity
- Unwelcome touching
- Telling sexual or crude jokes
- Discussions of sexual experiences
- Name calling in relation to sex or gender roles

What is Sexual Harassment, Continued...

Actionable sexual harassment is generally established when an individual is exposed to a pattern of objectionable behaviors or when a single, serious act is committed. What is, or is not, sexual harassment will depend upon all of the surrounding circumstances and may occur regardless of the sex(es) of the individuals involved.

What is Sexual Harassment- School Setting

Sexual harassment in a school setting may look much milder but must still be taken seriously.

- **Male student brushing against a female in the hallway**
- **Male student thrusting himself against a female student**
- **Student sending unsolicited and unwelcomed “sex pics”**
- **Male student making suggestive comments to female student**

Bullying or Sexual Harassment??

Evaluate every complaint to determine if it can be handled through your bullying policies/procedures, first.

A Title IX investigation will cover all bases (including bullying), but it is more rigorous. An investigation under the bullying policy may be warranted and is preferable, if applicable.

Ex: Johnny the Bully- if he is bullying kids because of their funny hair, and they are majority female students, that can typically be handled under the bullying policy. If Johnny is targeting girls, because they are girls, then you need to bring in Title IX procedures.

TITLE IX COORDINATOR

EVERY DISTRICT **MUST** HAVE A TITLE IX COORDINATOR

- LISTED ON THE WEBSITE (INCLUDING ADDRESS, EMAIL AND PHONE)
- TRAINED ANNUALLY
- SHOULD NOT BE THE PERSON DOING THE INVESTIGATION, BUT OVERSEEING IT FOR COMPLIANCE
- SERVES AS AN EXTRA LAYER OF COMPLIANCE
- HAS A SEPARATE RECORD KEEPING SYSTEM
- MUST BE SEPARATE FROM THE INVESTIGATOR AND DECISION MAKER

TITLE IX COORDINATOR

THE TITLE IX COORDINATOR NEEDS TO BE INFORMED OF THE HARASSMENT CLAIM

- Parents and Students can bring concerns to any employee of the District
- That District employee must take the those concerns to the Title IX coordinator

TITLE IX COORDINATOR SHALL CONTACT COMPLAINANT TO:

- Discuss the availability of **supportive measures**;
- Consider the complainant's wishes with respect to supportive measures;
- Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and
- Explain to the complainant the process for filing a **formal complaint**.

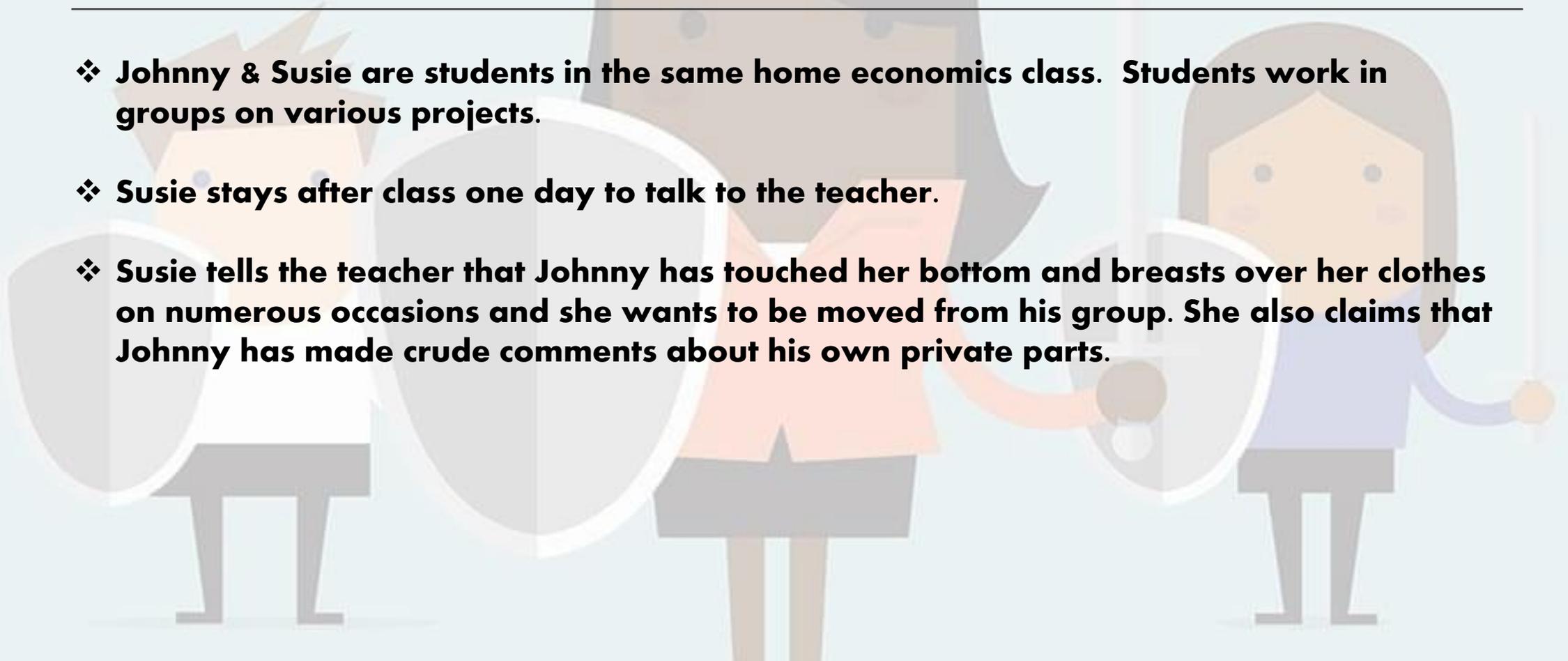
Supportive Measures

- Designed to restore or preserve equal access to the District's education program without unreasonably burdening the other party before or after the filing of a formal complaint, or where no formal complaint has been filed.
- The District shall provide individualized supportive measures to complainant.
- If they choose to deny the measures, a complainant must notify the district in writing that they have declined the supportive measures.
- The complainant can decide later to request supportive measures, and the District shall provide appropriate measures based on the circumstances.



Example

- ❖ **Johnny & Susie are students in the same home economics class. Students work in groups on various projects.**
- ❖ **Susie stays after class one day to talk to the teacher.**
- ❖ **Susie tells the teacher that Johnny has touched her bottom and breasts over her clothes on numerous occasions and she wants to be moved from his group. She also claims that Johnny has made crude comments about his own private parts.**



Overview of Grievance Process

- **First, a formal complaint is filed with the district alleging the sexual harassment.**
 - This can be a phone call or email from a parent, student or staff member.
 - However, if the complaint is “casual” only, get a confirmation that the complainant actually wants to file a formal complaint and start a grievance process.
 - Title IX Coordinator needs to get involved when the District determines the issues raise Title IX (i.e. sex, sex or more sex is at issue)
 - Title IX Coordinator needs to confirm with the Complainant that he/she indeed wants an investigation to occur.
 - **SIDE BAR:** Office of Civil Rights (OCR) places emphasis on the complainant having right to privacy and decision to move forward or not. However, the District can still investigate if it makes sense. I.e. District has multiple complaints against this same student or District believes the Complaint was withdrawn out of fear.
- **UNDERSTAND THIS:** When you get a complaint against Johnny that raises Title IX issues- you can no longer go directly to Johnny to discuss like may have in the past. Johnny has safeguards, too.

Overview of Grievance Process

- **Formal Complaint and Susie....**

- The teacher needs to report what Susie told her to the Title IX Coordinator.
- It is only an informal complaint at this point. Title IX Coordinator needs to determine if this is a Title IX matter or if it can be handled as bullying/poor conduct.
- If we go the Title IX route, Title IX Coordinator must contact Susie's parent(s) and share the information so the parent(s) can decide if a formal complaint needs to be filed.
 - But still, the District will still need to act regardless...
- Supportive Measures: These can be put in place during the investigation. I.e. separating Susie and Johnny in the class.

Grievance Process & Investigating Sexual Harassment

The District Shall:

- Ensure that the burden of proof and evidence gathering rests with the District and not on the parties;
- Not use information or evidence that constitutes legally privileged information without consent of the party or the party's legal guardian;
- Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses at a grievance proceeding;
- Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.



Formal Complaint and Notices

Upon receipt of a formal complaint, the District must provide these written notices:

- **Notice of the District's grievance process and a copy of the procedures governing the grievance process;**
- **Notice of the allegations of sexual harassment including sufficient details known at the time and with sufficient time to prepare a response before any initial interview**
 - **Details will include all party identities, the alleged conduct constituting sexual harassment, and the date and location of the alleged incident**
- **A statement that the respondent is presume not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process**
- **That the parties may have an advisor of their choice, who may or may not be an attorney.**
- **That the parties may inspect and review evidence relevant to the complaint of sexual harassment.**
- **That the District's code of conduct prohibits knowingly making or submitting false information or statements.**

Overview of Grievance Process

- **Next, the District begins an evidence gathering investigation.**
 - Neither the Title IX Coordinator nor the decision maker can investigate.
 - Title IX Coordinator alert the Complainant that the District is investigating the matter—simple email to confirm the allegations.
 - Attach the sexual harassment policy.
 - The evidence gathering will include statements from parties and witnesses.
 - The respondent (Johnny) has several additional rights in the process:
 - He/ she gets a right to an advisor, copy of the policy, statement that he is presumed not responsible until otherwise, etc.
- Parties will be given the opportunity to present relevant evidence.
- Parties will be notified of relevant evidence so have an opportunity to assess and respond.

Overview of Grievance Process

- **Next, both parties get ALL the relevant evidence collected before a decision.**
- This may feel uncomfortable, but Title IX requires transparency and overrules FERPA concerns
 - Very tricky to navigate
 - Best Practice
 - Use initials when possible
 - Redact student witness names from final report, but witness NEVER get confidentiality
 - Provide adult witness names
 - Notify parents when their student is involved in a Title IX investigation (if under 18)
- Give both parties (complainant and respondent) 10 days to provide additional information

Grievance Proceedings Continued...

The District Shall:

- Provide the parties with equal opportunities to present at the grievance proceeding, including the opportunity to be accompanied by the advisor of their choice;
- Provide written notice to all parties expected to participate in the Grievance proceeding;
- Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that related to the formal complaint, giving each party a meaningful opportunity to respond to the evidence.

Investigative Report

- The District shall create an investigative report that fairly summarizes relevant evidence.
- At least ten (10) days prior to completion of the investigative report, the District shall send each party and the party's advisor, the evidence subject to inspection and review in an electronic format or hard copy.
- The parties will have approximately ten (10) days to submit a written response to the evidence.
- The Investigator will consider the written responses prior to completion of the investigative report.
- The District may hire an individual or individuals to conduct the investigation or to act as the decision-maker when necessary.



Decision Maker

The investigator shall provide an investigative report to a Decision maker who will:

- Provide each party the opportunity to submit written, relevant questions that a party witness wants to ask of any other party or witness;
- Provide each party with the answers;
- Allow for additional, limited follow-up questions from each party; and
- Provide an explanation for excluding a party's question
 - Specifically, questions about complainant's sexual predisposition or prior sexual behavior are not relevant, unless to show the respondent was not the individual that committed the act relevant to the complaint or is otherwise offered to prove consent.

Decision Maker's Decision

Following the completion of the investigation period, the Decision Maker shall issue a written determination regarding responsibility including the following:

- Outline the allegations constituting sexual harassment;
- Outline of the procedural steps taken, beginning with the formal complaint and ending with this written determination;
- What and How the parties were notified;
- Site visits and methods used to gather evidence;
- Hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the District's code of conduct, applicable to the facts found;
- Statement of results regarding each allegation alleged;
 - Who was responsible?;
 - Disciplinary sanction imposed on respondent;
 - What remedies will be provided to the complainant, by the District, to restore or preserve equal access to education?;

Reasons to Dismiss the Formal Complaint:



- The Complainant notifies the Title IX coordinator in writing that they would like to withdraw the formal complaint;
- The respondent is no longer enrolled at the District;
- Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or its allegations;
- If the district determines that the formal complaint would not constitute sexual harassment as defined in the Title IX policy; Did not occur in the District's program; Did not occur against a person in the US;
- Upon Dismissal, all parties shall be notified by written notice, simultaneously.

Appeals

Either party may appeal a determination regarding responsibility or from a dismissal of a formal complaint, or any allegation therein, on the following bases:

- The existence of a procedural irregularity that affected the outcome of the matter;
- Discovery of new evidence that was not reasonably available at the time of the determination or dismissal that could affect the outcome of the matter;
- The Title IX coordinator, investigator, or decision-maker had a conflict of interest or bias that could have affected the outcome of the matter;
- An appeal of the disciplinary sanctions from the initial determination.



An Appeal is NOT a Do-Over, but only opportunity to correct the Appealable Issue

For all appeals, the District Shall:

- As always, notify all parties in writing;
- Provide all parties a written copy of the District's procedures governing the appeal process;
- Implement appeal procedures equally for both parties;
- Use a different decision-maker for the appeal;
- If the investigator or Title IX coordinator had a conflict, or contributed to the appealable issue, ensure you have different individuals to inherit those roles.
- Provide parties a reasonable, equal opportunity to submit a written statement in support of, or challenging the outcome;
- Issue a written decision, to both parties, describing the result of the appeal and the rationale for the result.

Reports of sexual harassment, both informal reports and formal complaints, will be treated in a confidential manner to the extent possible. Limited disclosure may be provided to:

- Investigators and decision-makers involved in the determination of the Districts grievance process;



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- Submission of a report to the child maltreatment hotline;
- Submission of a report to the Professional Licensure Standards Board for reports alleging sexual harassment by an employee towards a student;
- The extent necessary to provide either party due process during the grievance process.

Important Information

EMERGENCY REMOVAL

The District may remove a respondent from the District's education program on an emergency basis only after the completion of an individualized safety and risk analysis that determines that there is an immediate threat to the physical health or safety of any student or individual.

RETALIATION PROHIBITED

Any student or parent that submits a formal complaint, or participates in a grievance process, shall not be subject to retaliation or reprisal in any form.

The District shall be responsible to take steps to prevent all forms of retaliation.

Important Information Continued...

DISCIPLINARY SANCTIONS

- No disciplinary action, other than supportive measures, may be taken against a respondent until the conclusion of the grievance process;
 - Any student who is found by the evidence to have “more likely than not” engaged in sexual harassment may be subject to expulsion, or any other disciplinary action up to expulsion;
 - A student who knowingly fabricates allegations of sexual harassment or purposely provides inaccurate facts shall be subject to disciplinary action up to and including expulsion;
 - A finding that the allegations do not rise to sexual harassment is not in itself sufficient evidence to conclude an allegation is false or in bad faith.
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Important Information Continued...

THE DISTRICT SHALL MAINTAIN THE FOLLOWING **RECORDS** FOR A MINIMUM OF SEVEN (7) YEARS:

- Each sexual harassment investigation;
 - Any determination regarding responsibility;
 - Any disciplinary sanctions imposed on the respondent;
 - Any remedies provided to the complainant designed to restore or preserve equal access to the District's education program or activity.
 - Any appeal and the result therefrom;
 - All materials used to train Title IX coordinators, investigators, and decision-makers;
 - Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, which must include:
 - The basis for the District's conclusion that its response was not deliberately indifferent
 - Document the supportive measures provided to restore or preserve equal access to education
 - If no supportive measures taken, document why it was not clearly unreasonable to do so, in light of the circumstances.
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The U.S. Department of Education recently released new Title IX requirements that will become effective Friday, August 14, 2020. The Final Rule defines sexual harassment (including sexual assault, dating violence, domestic violence, and stalking) as unlawful sex discrimination, and imposes important legal obligations on school districts and charter schools.

TITLE IX SEXUAL HARASSMENT: GETTING STARTED CHECKLIST

This non-exhaustive list serves as a starting point for school districts and charter schools.

Superintendent and Principal:

Develop

- Process for responding to sexual harassment
- Process for filing a formal complaint
- Process for responding to formal complaints
- Grievance process
- Appeal process

Determine

- The supportive measures the school will use
- If school will conduct hearings
- Standard of Evidence
- If school will offer informal resolution option

Schools must determine whether they will use the preponderance of evidence standard or the clear and convincing standard for all formal complaints of sexual harassment.

Title IX Coordinator:

Appoint a Title IX Coordinator

Display the Title IX Coordinator's contact information on School's Website

Notify the following groups of the Title IX Coordinator's contact information

- Students
- Parents or Legal Guardians
- Employees
- Applicants for Admission and Employment
- Unions

The Title IX Coordinator's contact information needs to include name or title, office address, e-mail address, and telephone number.

Title IX Personnel Team:

Appoint a Title IX Personnel Team

- Title IX Coordinator
- Investigators
- Decision-Makers

Train the Title IX Personnel Team

- Definition of Sexual Harassment
- Scope of school's education program or activity
- "How to" of school's processes
- How to serve impartially
- Confidentiality Training

Train Decision-Makers and Investigators on issues of relevance

Post materials used to train the Title IX Personnel Team on the school's website

The Title IX Coordinator and the Investigator cannot be Decision-Makers.

THE END