

# Title IX Training

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# What does Title IX say:

- “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education program or activity receiving federal financial assistance.”
  - The Patsy T. Mink Equal Opportunity in Education Act, Title IX of the Education Amendment of 1972, 20 U.S.C. § 1681 (a)



# Scope of Title IX

- Recruitment, admissions, and counseling
- Financial assistance
- Athletics
- Sex-based harassment (including sexual assault and violence)
- Treatment of pregnant and parenting students
- Treatment of LGBTQI+ students
- Discipline
- Single-sex education
- Employment
- Retaliation



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# Title IX “Sexual Harassment”

- The Title IX “Big Five”
  - Employee Quid Pro Quo
  - Sexual Assault
  - Domestic Violence
  - Dating Violence
  - Stalking
- Title IX “Hostile Environment”
  - Unwelcome Conduct that is based on sex that is so severe, pervasive, and objectively offensive that it effectively denies equal access to the education program or activity.



# Scenario 1

- A student reports that their teacher has been sexually harassing them. The teacher claims that the student is angry about a grade on a test. An investigation finds insufficient evidence to support the allegations and so concludes the teacher is not responsible for sexual harassment. The teacher returns from leave to teach the class that the student is in but asks that the student be moved to a different classroom because of fear that the student will misinterpret things again. The teacher also tells several other teachers at the school to “be careful” because the student might do this to them, too.



# Scenario 1 Questions

1. Did the aggrieved person engage in protected activity?
2. Did they suffer an adverse consequence?
3. Is there a causal connection between the activity and the consequence?
4. Is there a legitimate, non-retaliatory reason for the adverse conduct?
5. Is there evidence that the reason is pretext for unlawful retaliation?



# Employee Quid Pro Quo

- An employee of the educational institution
- Conditioning the provision of an aid, benefit, or service of the educational institution
- On an individual's participation in unwelcome sexual conduct



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# Examples of Quid Pro Quo

- “Sleep with me and you will receive an A”
- “Your low grade had nothing to do with you not wanting to go out with me”
- “If you don’t sleep with me, I won’t renew your position”
- “Go for a drink with me and I’ll make sure you get that raise you’ve been seeking”
- “Come to my room tonight at this conference so we can talk about that recommendation you asked me for. I feel like I need to get to know you better.”





# Dating Violence

- Violence or threat of violence
- Committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim
- Where the existence of such a relationship will be determined by considering the length of the relationship, the type of the relationship, and the frequency of interactions



# Examples of Dating Violence

- Intimidation
- Name calling and put downs
- Maintaining control over the victim's financial or other resources
- Threats to commit suicide or homicide if the victim ends the relationship
- Attempts to isolate the victim from friends or family
- Encouraging others to engage in such behaviors



# Sexual Assault

- Rape (sexual penetration—anal or vaginal—however slight with any body party or object without consent)
- Forced sexual acts, including oral sex
- Fondling (touching of the private body parts of another person without consent and for the purpose of sexual gratification)
- Incest
- Statutory Rape



# Examples of Sexual Assault

- Forced vaginal or anal penetration with a body part or object
- Forced oral sex (giving or receiving)
- Unwelcome touching or groping of the breast, genitalia, or buttocks
- The use of coercion, threats, force, or intimidation to compel another person to initiate or continue sexual activity against the person's will
- Sexual activity with a person who is substantially physically or mentally impaired by illness, alcohol, or drugs, or who is physically incapable of communicating, asleep, or unconscious
- Sexual activity with a person who is unable to consent because of age or ability



# Stalking

- A course of conduct
- Directed at a specific person
- That would cause a reasonable person to feel fear for their safety or the safety of another or suffer substantial emotional distress



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# Examples of Stalking

- Calling, texting, emailing, or mailing the victim's repeatedly at home or work
- Repeated, uninvited appearances at the victim's residence or workplace
- Breaking into the victim's home or vehicle
- Stealing the victim's belongings
- Checking the victim's electronic devices or social media accounts
- Reading a person's mail or other private writings or communications



# Domestic Violence

- Felony or misdemeanor crimes of violence
- Committed by:
  - The victim's current or former spouse or intimate partner
  - A person with whom the victim shares a child
  - A person cohabitating with or who has cohabitated with the victim of a spouse or intimate partner
  - A person similarly situated to a spouse of the victim under state domestic or family violence laws
  - Any other person against an adult or youth victim who is protected from that person's acts under state domestic or family violence laws



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# Hostile Environment Sexual Harassment

- Unwelcome conduct
- Based on sex
- That is so severe
- And pervasive
- And objectively offensive
- That it effectively denies equal access to the educational program or activity of the educational institution (effective denial is a very low bar under OCR standards)





# Unwelcome Conduct

- The complainant did not welcome or invite the conduct and found the conduct to be objectionable or offensive
- Unwelcomeness is determined from the perspective of the complainant (subjective)
- But whether conduct is deemed unwelcome also depends on the context and totality of the circumstances as interpreted by a reasonable person (objective)



# “Based on Sex”

- “Sexual”
- Otherwise “sex based” (e.g., private body parts involved)
- Based on perceived or actual failure to comply with gender-based norms
- Based on perceived or actual sexual orientation or gender identity



# Severe, Pervasive, and Objectively Offensive

- Severe
  - More than just juvenile, crass, even sex-based behavior.
- Pervasive
  - Typically, repeated conduct (more than one time)  
Other facts or circumstances can make a single instance widespread (e.g., technology, observers, maybe even severity?)
- Objectively Offensive
  - Offensive to a reasonable person, not to the person who is the alleged victim of the conduct



# Scenario 2

- Two high school students, Cleo and Reese, are drinking heavily and surreptitiously at a football game. They go to the bathroom during halftime and sneak into a stall together and start “making out” and proceeded to have sex. According to Cleo, they remember wanting to make out but didn’t want to do more and remembered trying to say no. Cleo acknowledged being “super drunk” and not being sure how clear they were. According to Reese, they asked Cleo’s permission before doing anything and felt comfortable that Cleo was consenting.



# How Title IX works in D20



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# Report vs. Complaint

## Report

- A report is someone sharing information that suggests that sex-based harassment has been, is, or might be occurring.

## Complaint

- A complaint is someone sharing information that suggests that sex-based harassment has been, is, or might be occurring **and** asking that the educational institution respond to it.

Both reports and complaints to **any** staff member are “actual notice” triggering the Title IX process. So is any observation by a staff member.

Deliberate indifference – Doing nothing is always wrong!



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# Mandatory Reporter

- Public school officials and employees have a legal obligation to report suspected child abuse or neglect [C.R.S. § 19-3-304(2)(I)]
- “Any school official or employee who has **reasonable cause to know or suspect** that a child has been subjected to abuse or neglect . . . **shall** immediately report or cause a report to be made to the local law enforcement agency or the El Paso County Department of Social Services.” (emphasis added).
- **Child Abuse or Neglect Hotline:**  
719-444-5700
- **Safe 2 Tell report does not absolve the obligation!**



# Red and Green Intake Form

- What happened?
- Who did it?
- When did it happen?
- Where did it happen?
- Who was present?
- Why did it happen?
- How did it happen?
- Anything else you would like to report?



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# Supportive Measures

- Non-punitive, individualized services
- Offered as appropriate, without charge, as reasonably available
- Before or after the filing of a formal complaint, or even if no formal complaint has been filed
- Should be designed to restore or preserve equal access to the education program or activity
- Without “unreasonably” burdening the other party
- Should be confidential



# Small Group/Table

- Discuss with your group and come up with a list of supportive measures
- Think outside the box! What has worked/not worked for you in the past?
- Get ready to report back so we can create a solid list!



# Emergency Removal

- Done by the Title IX Coordinator
- Emergency removal is based on an individualized safety and risk analysis
- Only available when necessary to protect a student or other individual from immediate threat to physical health or safety
- Must provide notice and an opportunity to challenge immediately after the removal
- Consider other laws such as state discipline laws and IDEA/Section 504



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# Please Remember!

- Before a formal complaint is filed, the District must maintain confidentiality of the Complainant's name and the details of the report unless necessary to implement supportive measures (confirm in writing!)
- No Notice to the Respondent
- No Investigation
- No Determination of Responsibility
- No Punitive or Disciplinary Consequences only Supportive Measures



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# Formal Complaint

- A written document (Complaint form, email, etc.)
- Signed by the complainant (or a minor complainant's parent/guardian)
- Or filed by the Title IX Coordinator
- Requesting that the School or District respond



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# Scenario

- Carey reports another student, Romy, forced Carey to have sex at school. Carey also claims that Romy did the same thing to another student two months ago. Romy admits that “they resisted initially but I got them to agree” to the police, raising concerns of coercion. Neither complainant wants to move forward with a complaint, and sexual assault is a required removal to a disciplinary alternative placement under state law.



# Whole Group Discussion

- How do you warn a complainant about the loss of confidentiality and the challenges of the Title IX process without dissuading the complainant from proceeding with the process? What language should you use, what language should you avoid?



# Whole Group Discussion

- How do you go about telling the Respondent and Family about the allegations in a Title IX investigation? What language should you use, what language should you avoid?



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# Some Investigation Guidelines

1. The burden of proof is on the school/district.
2. Evidence that is off limits:
  - A. Medical treatment records
  - B. Privileged information
  - C. Information about the person's past sexual history unless to show
    - a. Someone other than the respondent engaged in the misconduct
    - b. Behavior between the parties in the past or future to show consent in the instance in question
3. Same opportunities to have advisors (attorney or non-attorney)



# Post investigation discussion

## Formal

- Investigation report is sent to the decision-maker.
- Can be appealed.

## Informal Resolution

- Mediation.
- Informal Resolution Agreement created.



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# The Investigation Report

- Include what is relevant
  - Does the evidence support a fact or issue in dispute in the case?
  - Does the evidence make that disputed fact or issue more or less likely to be true (is it inculpatory or exculpatory)?
- Writing up the report.
- Reach back out to parties.
- Sent to the decision-maker.



# Appeal Bases

Both parties have equal right to appeal based on:

- A procedural issue that affected the outcome
- New evidence that could have affected the outcome if known at the time
- Bias/conflict of interest that affected the outcome



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# Informal Resolution

- Only after a formal complaint has been filed
- Can be offered any time prior to reaching a determination on the merits
- Parties can ask for it or it can be offered
- Cannot be required, explicitly or implicitly
- Both parties must be provided notice of the allegations and their rights and must agree to informal resolution in writing
- Not allowed in cases involving employee-on-student misconduct
- Any party can withdraw prior to a signed agreement
- Once a signed agreement is reached, the Title IX grievance process is over forever.



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# Open Discussion

- A teacher gets a report from Casey saying that another student, Riley, is making comments that Casey does not like while at school. These comments occur in person, in classrooms, during lunch, and at sporting events and other activities at school. Casey says that Riley regularly makes disruptive comments in class with sex-based opinions like LGBTQ people should not be able to adopt children or get married. Riley also says that being transgender “is not real” and that boys are boys and girls are girls, and that parents who let their children transition genders are committing “child abuse.” Casey says that outside of class, Riley has used slurs such as “fa\*\*ot” and “dyk\*” when talking to others and mocks gay people by using a lisp when pretending to talk like a gay man or making fun of a gay woman’s short hairstyles and “butch” clothes. Casey does not identify as LGBTQ but finds the discussions to be personally offensive.



# Scenario

- The school receives notice that a teacher, Teacher Thompson, was arrested over the weekend allegedly for having a sexual relationship with a student, Carson. Teacher Thompson is in custody and is awaiting trial. The school district defers to law enforcement and eventually Teacher Thompson is convicted. Teacher Thompson never set foot in the school after the arrest was reported and their teaching license was suspended.



# Title IX is here to stay!

- New regulations coming in January!
- Senate Bill



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# Questions and Answers



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