

The Leona Group, L.L.C.

Title IX Policy Training for All Staff

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What is Title IX?

- Title IX is a federal law that prohibits discrimination on the basis of sex, including sexual orientation and gender identity, in education programs and activities that receive federal funding.
- The prohibition against discrimination extends to admission and employment.
- “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)

Who is Protected Under Title IX?

Title IX protects **ALL** staff, students, and third-parties who are participating or attempting to participate in a school's education programs or activities within the United States.

The Title IX applies to Sexual Harassment:

- Between 2 students
- Between 2 staff members
- Between a student and a staff member
- Between Third Parties and a student or a staff member

Education Programs or Activities includes any location, event, or circumstance over which the school exerts substantial control over the alleged harasser and the context in which the harassment occurred, whether on or off campus.

- For example: In-person & remote instruction, field trips, school bus, extracurricular & athletic programs, professional development

Title IX Regulations

- On May 6, 2020, the U.S. Dept. of Education, Office for Civil Rights (“OCR”), released new rules which amended existing Title IX regulations.
- New regulations went into effect on August 14, 2020
- These regulations inform educational institutions how to implement and comply with Title IX, and have the force of law.
- The changes were substantial and caused all educational institutions that receive federal funds to completely overhaul their Title IX policies and procedures regarding how they address, investigate, and adjudicate allegations of sexual harassment.

Title IX Regulations

- The new regulations provide:
 - When a school needs to respond to allegations of sexual harassment
 - How to respond to allegations of sexual harassment
 - Requirements of the written formal grievance procedure that must be in place
 - Required notices
 - Required training
 - Recordkeeping obligations

Definition of Sexual Harassment

- For the first time, the Title IX regulations define Sexual Harassment
- **Sexual Harassment** is defined as one of the following 3 types of behaviors:
 - Conditioning aid, benefits, or services on an individual's participation in unwelcome sexual conduct (i.e. quid pro quo harassment)
 - 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
 - Sexual Assault, dating violence, domestic violence, or stalking (as defined by the Clery Act and the Violence Against Women Act)
 - Sexual Assault includes: rape, sodomy, sexual assault with an object, fondling, and incest

When Do We Have to Respond?

- Upon actual knowledge of sexual harassment or allegations of sexual harassment - promptly and in a manner that is not **deliberately indifferent**.
- **“Actual Knowledge”** means notice of sexual harassment or allegations of sexual harassment to:
 - Title IX Coordinator
 - Any school official who has the authority to institute corrective measures on behalf of the school
 - Likely includes Board Members
 - **ANY employee of a K-12 school**
- A school is “deliberately indifferent” only if its response is clearly unreasonable in light of known circumstances - refusal to take any action to bring school in compliance with Title IX - can’t stick your head in the sand.

Who Can Put the School on Notice?

- Any person, whether they are the alleged victim, parent/guardian of the alleged victim, friend, or bystander, has the right to report sexual harassment to put the school on notice
- A school employee personally witnessing sexual harassment puts the school on notice
- A school employee receiving a verbal or written report of possible sexual harassment from any person, whether that person is the alleged victim, parent/guardian of the alleged victim, friend, or bystander puts the school on notice

Importance of Staff Reporting

1. Safety of all students and staff
2. Avoid civil lawsuits - money damages
3. Avoid Office of Civil Rights (OCR) investigations
4. Avoid withholding of federal funds

****Please immediately report any incidents of possible Sexual Harassment to the Title IX Coordinator*****

- You do not need to determine whether any incident actually violates any school policy, the Title IX Coordinator and Title IX Team will make those determinations.

What kind of conduct may be Sexual Harassment?

- Unwelcome sexual propositions, invitations, and flirtations
- Unwanted physical and/or sexual contact
- Implying a person's education or employment may be negatively affected by not submitting to sexual advances
- Unwelcome sexual verbal expressions, including graphic sexual comments about a person's body, dress, appearance, or sexual activities
- Unwelcome sexually degrading language, profanity, jokes or innuendoes
- Sexually suggestive objects, pictures, graffiti, videos, posters, audio recordings or literature
- Unwelcome and inappropriate touching, patting, or pinching
- Asking about, or telling about sexual fantasies, sexual preferences, or remarks about one's own sexual activities or sexual history
- Giving unwelcome personal gifts such as lingerie that suggest a desire for a romantic or sexual relationship
- Leering or staring at someone in a sexual way, such as staring at a person's breasts, buttocks , or groin

How to make a Report of Sexual Harassment

- All reports of Sexual Harassment must be made to the Title IX Coordinator
- The reports should be written, detailed as possible and to the extent known:
 - Identify the alleged victim(s), perpetrator(s) and witness(es)
 - Describe in detail what occurred, including date(s), time(s), and location(s)
- Reports may be made at any time, including non-business hours

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Mandatory Reporter - State Law

- Title IX and its implementing regulations do not negate any mandatory reporter obligations under state law.
- If you suspect child abuse or neglect, you still need to report it to local law enforcement or child protective services in addition to reporting it to the Title IX Coordinator.

How to act if you receive a Report of Sexual Harassment

- Respect Privacy
 - Let survivor know upfront what you have to share and who you have to share it with
 - Don't tell others what was shared with you, except for the Title IX Coordinator and/or law enforcement
- Avoid judgmental and victim-blaming language
 - "I believe you," "It's not your fault," "I'm sorry this happened to you."
 - Asking, "How did it happen?" is different than "What were you doing/wearing when it happened?"
 - "How can I help you?" and/or "You have options."
- Ask questions at the survivor's pace - this is not an interrogation, be patient
- Be aware of your body language
 - Don't fold your arms or look angry
 - Ask for consent before giving comforting touches, such as hugs

Types of Responses

There are 2 types of responses:

1. Response after a report of sexual harassment or potential sexual harassment
 - a. At a minimum, the Title IX Coordinator must promptly reach out to the alleged victim and confidentially discuss:
 - i. Availability of free Supportive Measures
 - ii. How to file a Formal Complaint, which will initiate the Formal Grievance Process, which includes an investigation, determination of responsibility, and appeals
 - iii. Availability of Supportive Measures even if a Formal Complaint is not filed
2. Response after a Formal Complaint is filed - initiation of the Formal Grievance Process

Supportive Measures

- Free, individualized services designed to restore or preserve equal access to education, protect safety, or deter sexual harassment
- Available to alleged victim and/or alleged harasser
- Available whether or not a Formal Complaint is filed
- Supports a student, but is not punitive or disciplinary with respect to another student - does not unreasonably burden another person
- Examples:
 - Counseling
 - Extending deadlines or other course related adjustments
 - Modifications of work/class schedules
 - Campus escort services
 - Changes in work location
 - Increased security or monitoring of parts of campus
 - Mutual restrictions on contact between individuals

Title IX Response Team

- Title IX Coordinator(s)
 - Point person for implementation of and compliance with Title IX Policy
 - Receives reports of and formal complaints of potential sexual harassment
- Investigator(s)
 - Investigates formal complaints
 - Drafts investigative report
- Decision-Maker(s)
 - Receives investigative report and decides if Title IX violation occurred
- Appeal Officer(s)
 - Decides if Decision-Maker's determination of responsibilities was correct
- Informal Grievance Procedure Facilitator(s)

Required Elements of the Formal Grievance Procedure

- Must treat parties equitably
- Must evaluate all evidence objectively
- No conflict of interest
- Must presume that the respondent is not responsible
- Must provide reasonably prompt time frames for resolving complaint
- Must describe range of outcomes (i.e. list possible discipline/other remedies)
- Statement of standard of proof used
- Appeal procedure
- Range of Supportive Measures available
- No breach of privilege without consent (e.g. attorney/client, doctor/patient)

Informal Grievance Procedure

- Optional - not required by Title IX
- May only offer if:
 - A Formal Complaint is filed
 - The respondent is not a staff member
 - Both parties enter the informal grievance process voluntarily and in writing
- May encompass a broad range of conflict resolution strategies:
 - Arbitration
 - Mediation
 - Restorative justices

Any Questions????