



Title IX Training

Creating Awareness and Action

Kenowa Hills Administrative Cabinet PD

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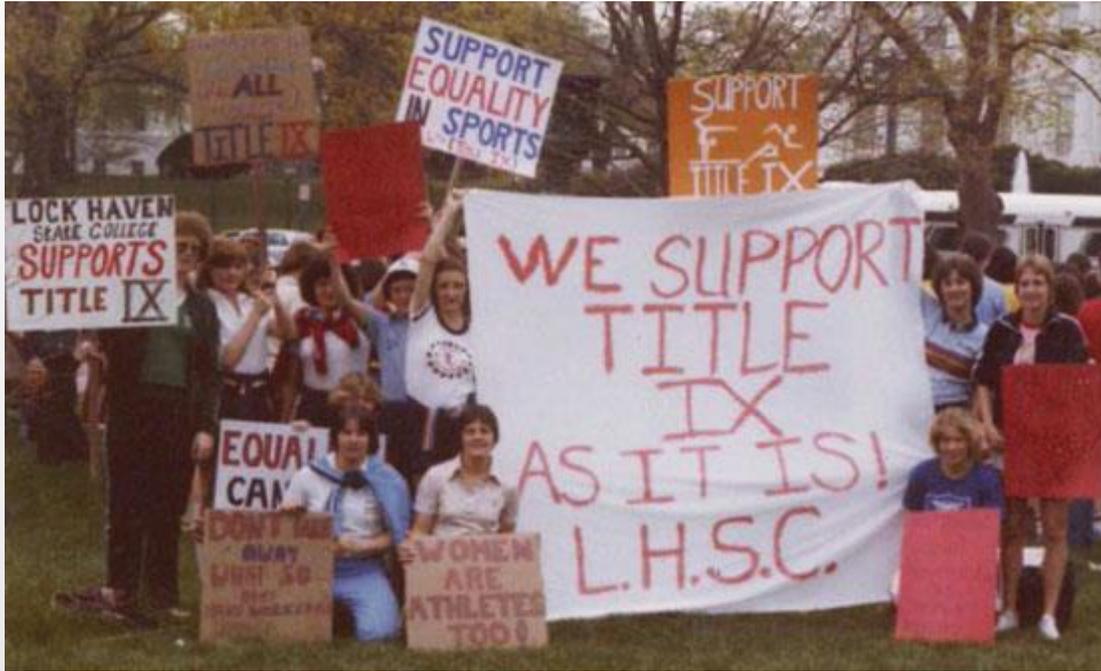
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What is Title IX?

“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)

Translation:

We want an educational environment free from sex-based harassment



□
Then



Now
□



Title IX Scope

- Historical Context = Sports
- Not-So-Historical Context = Sex Discrimination
- Modern Context = LGBTQ Students & Sexual Violence/Assault on Campus
 - Sex discrimination includes sexual violence and gender-based harassment
 - **The protections of Title IX extend to all academic, educational, extracurricular, athletic, and other programs of a school**, whether those programs take place on campus, in a school facility, at an off-campus class, seminar, or event that the school sponsors, or elsewhere
 - **Title IX protects both male and female students** and faculty and staff from sexual harassment by any school employees, non-employee third parties, and other students



Pause and Clarify

- Title IX
 - Federal
 - Office of Civil Rights (OCR)
- Section 1310 - Revised School Code
 - Specific to the state of Michigan
 - Addresses discipline for off-campus sexual assault who “*commits criminal sexual conduct in a school building, school grounds, and now....off campus criminal sexual conduct against another student.*”
 - Mandates (*subject to the 7 factors*) permanent expulsion for a student who “pleads to, is convicted of, or is adjudicated for criminal sexual conduct”

Turn and Talk

Scenario: Is it possible to have an issue that is **not** considered a Title IX violation **but** is considered a violation of Section 1310 of the Revised School Code...yes/no and why?

Title IX Enforcement - three

- Process/Responsibility
 - U.S. Department of Education, Office of Civil Rights (OCR)
- OCR Investigations
 - Investigates Complaints
 - Document Collection and Review
 - Interviews Staff
 - Details, details, details
 - Time-Intensive
- Lawsuits (Private Right of Action)
 - Present Trend ... as you might imagine





School District Must ...

- Take Immediate Action to End **Sex-Based Harassment** and Prevent its Occurrence
- Appoint a Title IX Coordinator
- Develop and Publish District-Wide Policies and Procedures
- Train Employees and Students
- Create a Climate that Encourages Reporting
- Investigate Claims

“Two Roads Diverged ...”

OCR
Guidance
(2000-2016)



SCOTUS
Standards
(1992-1999)



Evolution of New Title IX Regulations

- Issued by the Department of Education in November 2018; first overhaul since 1997 ...
 - Impacts how schools will handle allegations of sexual harassment/assault
 - College-focused ... ***with an attempt to apply to K-12***
- Public comment period concluded in January 2019
- Final Title IX rule submitted for approval in November 2019
- Final rule announced on May 6, 2020
- New rules take effect on **August 14, 2020**

New Vocabulary

Complainant = an individual who is alleged to be the victim of conduct that could constitute sexual harassment

Respondent = an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment



(Re)Defining Sexual Harassment

- “*For the First Time, Title IX Regulations Define Sexual Harassment*”
- Sexual harassment means one of the following 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 Clery Act and the Violence Against Women Act (VAWA)]
 - Mostly postsecondary, but need to familiarize with these definitions



When Do We Have to Respond?

A recipient with **actual knowledge** of sexual harassment **in an education program or activity** against a person **in the United States** must respond promptly and in a manner that is **not deliberately indifferent**.

- Any person may report sexual harassment/sex discrimination, regardless of whether the person is the alleged victim of the reported conduct
- Reports can be made by mail, telephone, in-person, or by email, using the contact information for the Title IX Coordinator
- Reports can be made at any time, including non-business hours

What Does That Mean?

- **“Actual knowledge”** of sexual harassment ...
 - Report to a Title IX Coordinator
 - Report to an official who has the authority to institute corrective measures on behalf of the school district (Gebser)
 - **Report to any employee of an elementary or secondary school**
 - ***“arguably broadens ... an elementary or secondary school’s obligation to respond to Title IX sexual harassment”***
 - “unreasonable to expect young children to seek out specific employees for the purpose of disclosing Title IX sexual harassment”
- **“In a Program or Activity”** ...
 - Any location, event, or circumstance over which the recipient exhibits substantial control over the alleged harasser and the “context” in which the harassment occurred
 - Only have to address issues occurring against a person in the United States



Formal Complaint Response

- Must investigate **every** formal complaint – can be filed by a complainant OR signed by the Title IX Coordinator (does not render impartial)
- Specific steps for investigating, dismissing, and determining responsibility in formal complaint
- **Required elements for grievance procedures:**
 - Treat parties equitably
 - Objective evaluation of all evidence
 - No conflict of interest for investigator or decision-makers
 - Presumption respondent is not responsible
 - Reasonably prompt timeframes
 - Description or list of possible discipline/other remedies
 - Statement of standard used (preponderance v. clear and convincing)
 - Appeals procedures and bases
 - Range of supportive measures available
 - No breach of privilege without waiver



Odds & Ends from New Regs

- Decision-maker cannot be the investigator or the Title IX Coordinator
- Informal resolution is PROHIBITED, except in limited circumstances
- Appeals permitted – with different decision-maker
- Training required; materials to be posted online
- Must maintain records for 7 years
- Mandatory dismissals available if complaint can't meet definition of “sexual harassment”



Essential – Staff Support

- Administrators must understand importance of role in supporting Title IX compliance
- Awareness of policy
- Awareness of procedures
- Model behavior
- Foster a culture of accountability
- Create a culture of reporting
- ***Be the “eyes and ears” for Title IX Coordinator/District***
- May need to serve as investigator, decision-maker, or appellate officer



Test Time!

Title IX Scenarios

Work as a table team



Scenario # 1

Kendra and Samantha are 9th graders who snuck into a party held by Chris, a 12th grader, on a Saturday night. After the party, Kendra tells Samantha she was cornered by Chris and that he touched her in a way that made her uncomfortable. Samantha becomes worried about Kendra and, on Monday, tells one of her teachers about the incident.

Is the teacher required to do anything?



Scenario #1 - Options

1. **No**; the issue happened outside of school / off-campus and was not reported by the potential victim
2. **Maybe**; the teacher could talk to the student about her feelings and see if she wants to file a formal complaint
3. **Yes**; the teacher should report the concern to administration so an investigation can be completed



Scenario #2

A middle school student is accused by a fellow student of sexual harassment. The accuser is a student with a long discipline record, multiple in- and out-of-school suspensions, and has, on at least on one occasion, falsely accused another student of theft. In short, none of the school's staff is willing to accept the accusation as true.

In light of the student's checkered past, should the school consider these allegations seriously?



Scenario #2 – Options

1. **No**; given the student's track record for lying, there is no reason to trust that what she is claiming now is truthful
2. **Yes**; the reputation of the complaining party makes no difference and the district must be responsive to the complaint

Scenario #3

Jordan, a 10th grader, tells a teacher at his school that he was sexually assaulted by a fellow student. The teacher informs Jordan the offense is a crime, so it must be reported to police.

What else, if anything, does the teacher need to do?



Scenario #3 - Options

1. **Nothing**; she told Jordan to contact the police, so she has met her obligation under the law.
2. **Contact the police herself** and then let the police investigate
3. **Advise** building administration so a school investigation can be done



Scenario #4

A middle school principal overhears teachers discussing an incident where a student inappropriately touched another student while on a school bus. The principal interviews the students. Both students seem dismissive of the incident and deny that they are bothered or hurt by what occurred.

Because the students deny they were negatively affected by the incident, is the principal required to report the incident to the students' parents or investigate?



Scenario #4 - Options

1. The principal is required to report to the parents and investigate
2. The principal should tell the parents, but no investigation is needed
3. The principal should see if either of the parents want to file a formal complaint and investigate if they do
4. The principal doesn't need to do anything because the students said there is no issue



Kenowa Hills Public School Process

Fairness & Impartiality

Title IX Coordinator - Mike

High School and Pathways:

- Investigator = Eric Haik
- Decision-maker = Abby Wiseman

Middle School:

- Investigator = Jim Smith
- Decision-maker = Nate Robrahn



Kenowa Hills Public School Process Fairness & Impartiality Alpine & Zinser

Alpine Elementary

- Investigator = Chris Bernard
- Decision-maker = Cherie Horner

Zinser Elementary

- Investigator = Chris Bernard
- Decision-maker = Cherie Horner



Kenowa Hills Public School Process Fairness & Impartiality Central & ECC

Central Elementary

- Investigator = Ross Willick
- Decision-maker = Jason Snyder

ECC

- Investigator = Ross Willick
- Decision-maker = Jason Snyder



Kenowa Hills Public School Process Fairness & Impartiality Administration

- Administration Building and Ad Cabinet
 - Title IX Coordinator will appoint investigator and decision-maker

Appeals to decision-maker = Jerry Hopkins



Important Reminders and Additional Information



Actual Notice - Definition

- A school district is deemed to have actual notice of alleged sexual harassment if *any* school district employee believes an employee or student has been sexually harassed
- This standard is **significantly broader** than the actual notice standard established in the *Gebser* and *Davis* cases



Definition of Sexual Harassment (first time in 2020 - even though Title IX is 48 years old!)

- Sexual harassment is:
 - Conditioning an aid, benefit, or service on an individual's participation in unwelcome sexual conduct (*quid pro quo*)
 - Unwelcome sexual behavior determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a program or activity offered by the school district
 - "Sexual assault," "dating violence," "domestic violence," or "stalking," as defined by federal statutes known as the Clery Act and the Violence Against Women Act (VAWA)
- Sexual harassment under Title IX *likely* includes harassment based on sexual orientation and gender identity. See *Obergefell v Hodges*, 576 US 644 (2015) and *Bostock v Clayton Cnty*, 590 US ___ (2020)



Responding to Reports of Sexual Harassment

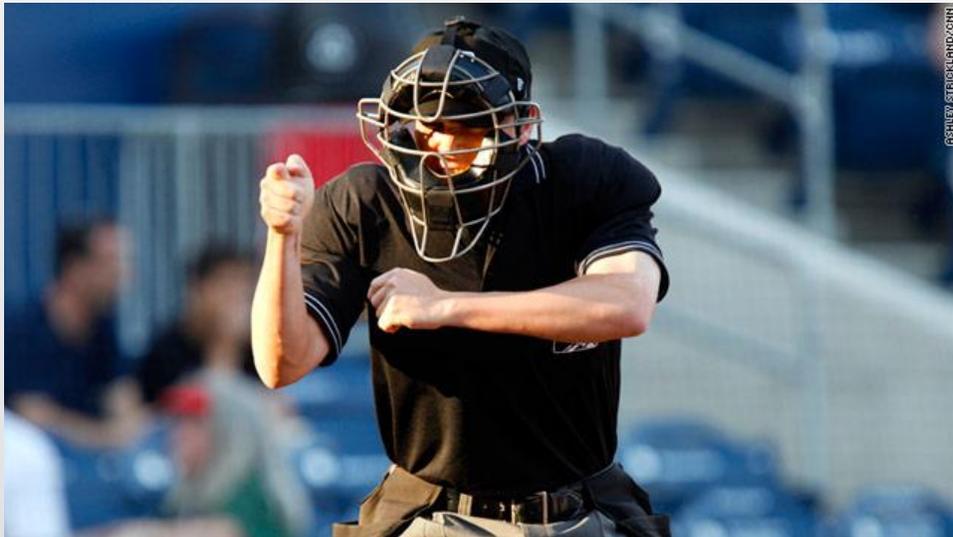
- Reports of sexual harassment may be verbal or written and may be received at any time
- Upon receiving a report, the Title IX Coordinator must:
 - Contact Complainant as soon as practicable
 - Notify Complainant of his/her right to file a formal complaint and the grievance process
 - Discuss and implement “**supportive measures**”



Supportive Measures (once called interim measures)

- Title IX was enacted to prevent sex discrimination and harassment from adversely affecting access to educational opportunities
- Supportive measures should restore or ensure continued access to educational opportunities, must be free to Complainant, and may not be punitive or unreasonably burden Respondent
- Non-exclusive examples of supportive measures include: **no-contact orders, counseling, course modifications, schedule changes, transfers, increased security and monitoring**
- The Title IX Coordinator must consider, *but is not bound by*, Complainant's wishes

Temporary Removal



- The temporary removal of a Respondent-student is not a supportive measure
 - A Respondent-student may be removed based on an individualized assessment that he/she poses an immediate threat to the physical health or safety of Complainant or others
 - Due process must follow immediately
- A Respondent-employee may be placed on a temporary administrative leave



Disabled Students

- A disabled student's status as a Respondent does not waive or otherwise affect his/her protections under the IDEA, the ADA, or Section 504
- Generally, but subject to statutory exceptions, an IDEA or Section 504-eligible student may not be disciplined for misconduct that is a manifestation of his/her disability



The Investigative Report

- The Investigator must complete an investigative report within the timeline specified in the school district's Title IX policy
- The Title IX Coordinator may grant extensions (adjournments) for good cause
- The investigative report must fairly summarize the relevant evidence
- The Investigator should not resolve credibility issues, but should fairly summarize information that may bear on the Decision-Maker's resolution of credibility issues



Decision-Maker's Report

- Required Components
- The Decision-Maker's Report **must** be delivered to the parties and the Title IX Coordinator
 - Complainant's allegations
 - Procedural steps taken to resolve allegations
 - Site visits, or other methods used to gather evidence
 - Findings of fact
 - The application of the school district's Title IX policy and the school district's student code of conduct
 - A statement of and rationale for the result as to each allegation; including determinations of responsibility, disciplinary sanctions, whether Complainant will be provided remedies to restore or preserve his/her equal access to the school district's education programs and activities, and the procedure and bases for appeal

Decision – Standard of Proof

- The standard of evidence may be “**a preponderance of the evidence**” or “**clear and convincing evidence**”
- Proof by a “**preponderance of the evidence**” means the evidence on one side of a question is more convincing than the evidence on the other side
 - This concept must be distinguished from the quantity of the evidence
 - In other words, for a variety of reasons, one witness may be more convincing than two others - **Recommendation for KHPS**
- “**Clear and convincing evidence**” is a higher standard of proof
 - Evidence is “clear and convincing” if the evidence on one side of a question is highly and substantially more probable than the evidence on the other side



Next Steps

1. Staff Training (required)
 - a. Staff meeting - ideal
 - b. Please send Mike some dates/times that work for your building
2. Student training (required)
 - a. Video pushed out via Canvas? Age appropriate messages?
3. Mini PD's with:
 - a. Investigators
 - b. Decision Makers
 - c. Appeals Officer
4. Forms, forms, and more forms
5. Website development