



Sexual Harassment Complaints Under the New Title IX Regulations— A Course for Regional Education Service Centers (Part I)

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Part I: *Identifying and Reporting Sexual Harassment*



What You Will Learn

- 1. What is Title IX?**
- 2. What the term “sexual harassment” means under the new Title IX regulations (including as compared with Title VII), with examples of each recognized form and attention to where Title IX applies.**
- 3. That ESC employees are required to report any sexual harassment witnessed by or reported to them to the ESC’s Title IX Coordinator, and that employees of elementary and secondary schools are required to report sexual harassment or allegations thereof to the school’s or district’s Title IX Coordinator.**
- 4. How to identify the Title IX Coordinator and locate ESC policy relating to the protection of students and employees from sexual harassment.**
- 5. Failure on your part to report as required a notice or allegation of the sexual harassment could have bad consequences for the victim, for the ESC and for your employment.**



Why You Need This Training

If you have knowledge of sexual harassment, the ESC may have knowledge.

If elementary or secondary school employees have knowledge of sexual harassment, their school district has knowledge.

Knowledge triggers a duty to act.

If you fail to do your part to make sure that the Title IX Coordinator knows about an incident or report of sexual harassment, you may be viewed as:

1. violating ESC policy and law;
2. failing to protect a potential victim, and
3. as having contributed to the liability of the ESC.

Therefore, you likely could face disciplinary consequences.



What is “Title IX?”

Title IX refers to a federal civil rights law:

“No person in the United States 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. Code § 1681.

Federal regulations explain how to implement federal law and are treated as the law by courts.

- ✓ The regulations to be discussed today explain Title IX civil rights protections for all K-12 students in public schools and for employees of subject education-related institutions.

What does it mean to be “excluded from participation or denied benefits of education”?

- An effective denial of equal access to educational opportunities may include skipping class to avoid a harasser, a decline in a student’s grade point average, or having difficulty concentrating in class.
- Examples of specific situations that likely constitute effective denial of equal access to educational opportunities also include “a third grader who starts bed-wetting or crying at night due to sexual harassment, or a high school wrestler who quits the team but carries on with other school activities following sexual harassment.”
- **A complainant does not need to have “already suffered loss of education before being able to report sexual harassment.”**



Sexual Harassment Under Title IX

The Title IX regulations define “**sexual harassment**” and **expressly recognize sexual harassment as a form of sex discrimination.**

Previously, the U.S. Department of Education addressed sexual harassment only through guidance documents. Starting August 14, 2000, sexual harassment became addressed through federal regulations.

Why does it matter? Guidance letters do not have the force of law, but ***Federal regulations do.***



Sexual Harassment Before the New Regulations

Sexual harassment in the workplace:

Title VII of the Civil Rights Act generally prohibits discrimination in the workplace, including discrimination based on sex.

Discrimination on the basis of sex **remains unlawful under Title VII and corresponding ESC employment policy DHA (Legal).**

The new Title IX regulations also add another layer of protection against sexual harassment in the workplace.

What is “sexual harassment” under Title IX?

Title IX regulations define ***sexual harassment*** as conduct **on the basis of sex** that meets one or more of the following descriptions:

- ***Quid pro quo*** (“this for that”)
- **Hostile Environment**
- **Sexual assault, dating violence, domestic violence, and stalking**





What is “sexual harassment” under Title IX?

Quid pro quo (“this for that”) – the conditioning the provision of an aid, benefit, or service of the school district on an individual’s (e.g., a student’s) participation in unwelcome sexual conduct.



What is “sexual harassment” under Title IX?

Hostile environment - 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 District’s education program.

*The Title VII (employment/working conditions) definition of “hostile environment” tends to focus on whether the harassment was sufficiently pervasive to affect a term or condition of employment and the employer knew or should have known and failed to take prompt corrective action.



What is “sexual harassment” under Title IX?

Hostile environment (continued)

“Unwelcome conduct” refers to behavior or actions that **a reasonable person considers unwanted, offensive, hostile, or intimidating**, and may include:

- unwelcome sexual advances (even if victim joins in or does not complain at the time),
 - requests for sexual favors;
 - other verbal or physical conduct of a sexual nature.
- “Severity” refers to **seriousness**, and “pervasiveness” refers to **frequency**.

Please note: The intention of the accused is or may be irrelevant as compared with the perception of the person claiming harassment.

What is “sexual harassment” under Title IX?

Examples of “hostile environment” sexual harassment could include:

- ✓ Explicit or offensive jokes or slurs based on sex;
- ✓ Degrading words used to describe an individual based on sex;
- ✓ A single incident of physical contact, depending on severity or offensiveness of the contact.





What is “sexual harassment” under Title IX?

Sexual assault includes any of the following forcible or nonforcible conduct:

Forcible nature:

- rape
- sodomy
- sexual assault with an object
- forcible fondling

Nonforcible nature (as when victim lacks capacity to consent):

- incest
- statutory rape





What is “sexual harassment” under Title IX?

Dating violence

The term “dating violence” involves violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.



What is “sexual harassment” under Title IX?

Domestic violence includes crimes of violence committed by a current or former spouse or intimate partner of the victim.

Examples of the conduct could include:

- physical abuse
- sexual abuse
- threats



What is “sexual harassment” under Title IX?

Stalking. The term “stalking” means engaging in a **course of conduct** directed at a specific person **that would cause a reasonable person** to (a) **fear for his or her safety or the safety of others**; or (b) suffer **substantial emotional distress**.

The following are some examples of stalking behavior:

- following or spying on a person
- waiting at places in order to make unwanted contact with or to monitor the victim
- leaving unwanted items and gifts for the victim
- posting information or spreading rumors about the victim on the internet, in a public place, or by word of mouth





What about sexual orientation or gender identity?

The U.S. Department of Education has stated that its definition of sexual harassment applies to the protection of any person who experiences sexual harassment, **regardless of sexual orientation or gender identity.**

So, for example, harassment of a gay student because of his sexual orientation is sexual harassment.



What about off-campus conduct?

The Title IX regulations protect students against sexual harassment in educational programs and activities.

Education program or activity includes locations, events, or circumstances over which the subject entity exercises **substantial control** over both the respondent (that is, the alleged perpetrator) and the context in which the sexual harassment occurs.

- ✓ Can “substantial control” include cyberbullying that originates off-campus? **Yes**, according to Texas law, if it interferes with a student’s education opportunities or substantially disrupts school or school-related operations or activities.



Notice of sexual harassment under Title IX

If the Title IX Coordinator or any official of the ESC who has authority to institute corrective measures has knowledge of sexual harassment or allegations of sexual harassment, the ESC has knowledge.

If any employee or an elementary or secondary school has such knowledge, the school has knowledge.



How do you report?

- ✓ **By any person** – the person reporting does not have to be the alleged victim.
- ✓ **Through a variety of means** –
 - ✓ in person,
 - ✓ by mail,
 - ✓ by telephone, or by email, using the contact information listed for the Title IX Coordinator –
 - ✓ ***“or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report.”*** (Emphasis added, new Title IX regulations)
- ✓ **At any time** – including during non-business hours (by telephone, e-mail, or by mail to the address listed for the Title IX Coordinator).

Notice of sexual harassment under Title IX

The Title IX Coordinator and any employee of an elementary and secondary school may receive notice through:

- an oral report of sexual harassment by a complainant or anyone else
- a written report
- personal observation
- a newspaper article
- through an anonymous report
- or through various other means (a social media post?)

A report to the Title IX Coordinator may be made (whether or not the report is made by the person who is the alleged victim) at any time in person, by mail, telephone, e-mail or any other means that results in the Title IX coordinator being notified



Reporting is Required!

If you (1) witness sexual harassment, (2) hear about sexual harassment, or (3) are told by a student, employee or other person about an incident that is or could be sexual harassment:

- **Immediately report the allegations to the Title IX Coordinator.**
- See ESC-13 Policy FBA (Local), DHA (Local).



Identifying and Contacting the Title IX Coordinator

The ESC is required to:

- Post on its website detailed contact information (e.g., physical location, telephone number, email address) for its Title IX Coordinator, as well as other publications.
- Provide to all job applicants, employees, students, parents/guardians, and professional organizations holding agreements with the ESC contact information regarding the Title IX Coordinator as well as information on the ESC's non-discrimination policies. DHA (Legal).



What if you don't believe the allegations of sexual harassment?

Receiving notice of a sexual harassment allegation **triggers a duty to report it.**

Your opinion is irrelevant.

If you fail to report the allegation, the ESC will not be complying with policy or federal regulations and could face serious consequences—so could you.



What if you fear being retaliated against for reporting?

Title IX protects any person for having made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding of hearing under the regulations.

“No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX”



Consequences of Not Reporting Sexual Harassment

✓ **For a public school or school district:**

- Violation of the regulation could result in investigation and findings by the U.S. Department of Education's Office for Civil Rights (OCR).
- An aggrieved victim could sue the district for violation of Title IX.
- Both of the above could happen, and a finding of discrimination by a federal enforcement agency could make it easier for the District to be successfully sued.



Consequences of Not Reporting Sexual Harassment

✓ For an ESC:

- Violation of the regulation could result in investigation and findings by a federal enforcement agency such as OCR.
- An aggrieved employee could sue the ESC on a claim of employment discrimination.
- Both of the above could happen, and a finding of a school or school district to be successfully sued.



Consequences of Not Reporting Sexual Harassment

- ✓ **For all employees**, failure to report could result in negative consequences regarding your employment record or even dismissal.
- ✓ **For educators**, a failure to report could also result in those educators being reported to SBEC.

As applicable, employees are also required to report child abuse and neglect as a matter state law and board policy.

Let's Practice: *Reporting Sexual Harassment*

QUESTION

You see sexually explicit graffiti on the walls of the girls' bathroom that is threatening or hostile to one or more students.

Do you need to report it?

ANSWER

Yes.

This example is derived directly from the U.S. Department of Education's published regulations.



QUESTION

You overhear students talking about TikTok posts describing a student in sexually degrading terms and referencing an explicit video of the student.

A student wants to show you the explicit video when she reports the incident to you.

ANSWER

Report the conduct. Do not collect or view the video.

You have notice of potential sexual harassment. There also may be cyberbullying or child pornography implications. Make sure the campus principal and Title IX Coordinator know.



QUESTION

During Happy Hour, a colleague tells you he has been texting with a student at night and that he thinks she is romantically interested in him and that he has been spending time with the student in his classroom after hours behind closed doors tutoring her.

ANSWER

Report this activity. You are not accusing or deciding guilt. But if you fail to report it, you are impeding the educational entity's ability to determine what is happening and to take appropriate action. **You could be turning a blind eye to a crime and harm to a student.**

This colleague may be your friend, and the report could jeopardize the friendship? **Yes, but failure to report could cost you your job.**



QUESTION

You notice that student Veronica has been absent several days from her program. You overhear students talking about how Veronica's ex-boyfriend Paul has been threatening her and her family and that he keyed Veronica's car. Should this conduct be reported?

ANSWER

Report this knowledge of dating violence.

There could be criminal implications, too. Make sure you report this to the various pertinent officials/authorities, including your Title IX Coordinator.



QUESTION

A parent seeks to file a complaint regarding how the ESC responded to a student's report of sexual harassment? Should an ESC administrator direct the parent to FC (Local) policy?

ANSWER

No. The complaint implicates action under FBA (Local) and DHA (Local).



QUESTION

You hear about an ESC employee, who in the course of his duties, hears a student who has been sexually groping and grabbing at students. May the ESC employee turn a blind eye to this situation?

ANSWER

No. The ESC employee should report the allegations, and failure to report the allegations should be considered a breach of the ESC's employment duties.



SCENARIO

You notice that a fellow employee is being sexually harassed by a supervisor or other employee.

What must you do?

Report it to the Title IX Coordinator.

While most attention to the Title IX regulations has focused on the sexual harassment of students, the regulations also apply to sexual harassment in the workplace.

Because Title IX applies to any educational program that accepts federal funds, such as a school district, the sexual harassment of employees is also prohibited, and the same grievance process will apply.



Let's Review: What You Learned Today

Key Takeaways

- ✓ Sexual harassment is prohibited under Title IX and the implementing regulations.
- ✓ Sexual harassment is a form of sex discrimination and defined as conduct on the basis of sex that involves any of the following:
 - *Quid Pro Quo*
 - Hostile environment
 - Sexual Assault
 - Dating Violence
 - Domestic Violence
 - Stalking

Key Takeaways

- ✓ You are required to report allegations of sexual harassment in both student and employment contexts to the ESC's Title IX Coordinator.
- ✓ The ESC shall post and publish the identity and contact information for the Title IX Coordinator, and ESC policy relating to sexual harassment will be made accessible.
- ✓ **A failure on your part to report sexual harassment:**
 - 1) could leave a victim unprotected from sexual harassment,
 - 2) could result in a federal agency taking action against the ESC;
 - 3) could result in the ESC being sued;
 - 4) could have negative consequences for your employment; and
 - 5) **all of the above.**

Questions?

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