

## ***Title IX Update & Responding to Discrimination and Harassment***

Strafford Learning Center

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**Presented by:**  
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## **AGENDA / MATERIALS**

What we are covering today:

- (Brief) Title IX orientation/update
- Conduct covered under related laws
- Review of (updated) policies
- The Assessment task and possible scenarios
- Additional topics per Title IX
- Q & A

# Title IX

## A Brief History

- Title IX became law in 1972
- The law states in relevant part, *"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.C. § 1681 *et seq.*
- Scope of Title IX is broad
- Supreme Court caselaw → OCR Policy → New Regulations [Effective August 14, 2020]

## The 2020 Title IX Regulations – General Principles *When Must Schools Act and Who Must Report?*

- The 2020 regulations return the focus of Title IX requirements for response by schools to **actual knowledge** and **deliberate indifference**.
- Only if the school has **actual knowledge** of **sexual harassment** (as sexual harassment is defined in the regulations) in its education programs and activities, against a person **in the United States**, does Title IX require a school to respond promptly in a manner that is not **deliberately indifferent** – meaning not clearly unreasonable in light of the known circumstances.
- **Actual knowledge** means notice of sexual harassment or allegations of sexual harassment to a **Title IX Coordinator** or any official who has the authority to institute corrective measures on behalf of the school (e.g., Superintendent, building administrator).
- **ALL employees in a K-12 school are required to report suspected sexual harassment to the school's Title IX Coordinator.**

## The 2020 Title IX Regulations – General Principles, *continued*

- There is now a difference between a **REPORT** of sexual harassment and a **FORMAL COMPLAINT**.
  - A "Report" triggers "*Supportive Measures*" to the alleged victim, but not an investigation.
  - Generally, only the victim (or parent/legal guardian for K-12 student) can file a formal complaint; this triggers an investigation.
  - The Title IX Coordinator can also trigger an investigation in certain circumstances (such as repeated accusations against the same student or employee).
  - If a Formal Complaint is filed, the decision-maker cannot be the same person as the investigator or Title IX Coordinator.
- Schools must treat complainants and respondents (those alleged to have committed sexual harassment) "equitably" in terms of the process.
- Schools must not presume responsibility on the part of a respondent until the process has run its course (and must state as much in the initial notice to parties of formal complaint).

## The 2020 Regulations - *Who is Covered Now: A Broader Scope*

- All students enrolled in the school.
- All students seeking to enroll in the school.
- Any individual participating in school programs, activities, and events.
- Employees, applicants for employment, and volunteers of the school.




The addition of employees is a significant change.

## The 2020 Regulations – *Where Does Title IX Apply: “Education Programs and Activities”*

- Under the new regulations, schools only have a duty to respond to sexual harassment which occurs:
  - In education programs, activities or other events sponsored by the school and taking place at school (e.g. classes, extra-curriculars, professional development activities).
  - Off school property, but only in the context of an education program or activity and when the school has **substantial control** over the person who allegedly engaged in sexual harassment (e.g. field trips, away athletic events).
  - In the United States.

## How is Title IX Sexual Harassment Defined

- **Sexual harassment** means conduct on the basis of sex that falls into one of the following categories:
  1. **“Quid Pro Quo”** harassment by an **employee** (conditioning provision of a school's aid, benefit or service on an individual's participation in unwelcome sexual conduct) against another employee or a student (e.g. a good evaluation for an employee; a better grade for a student).
  2. **“Hostile Environment”**: Unwelcome conduct based on sex that is so **severe, pervasive AND objectively offensive** that it effectively denies a person's access to the school's education programs and activities.  
  
 Prior OCR Guidance definition was broader: “severe, persistent, **OR** pervasive so as to limit participation”.
  3. **Sexual Assault, Dating Violence, Domestic Violence, and Stalking**
- **Retaliation**: Prohibited but addressed only through other student and employee disciplinary processes.

## Key Procedural Differences under Title IX

- More detailed notice requirements (with time to prepare for interview)
- Right to an Advisor
- Supportive measures for both parties
- Presumption of innocence
- Separate Investigator and Decision-maker
- Review of evidence and investigation reports
- Opportunity to raise questions to other party
- Appeal rights
- And others . . . See school policies

# Other Laws & Policies

## Sexual Harassment Under Other Laws

- schools need to comply with both Title IX and the other applicable nondiscrimination/harassment laws (e.g., State law & Title VII).
  - ➔ school policies/procedures address both Title IX and non-Title IX harassment and discrimination.
- schools will need to carefully review all harassment-related reports/complaints to ensure the appropriate procedure is followed.
- ***If non-Title IX – follow existing procedure.***

## Bullying

### ***RSA 193-F: NH Bullying Law***

- Scope of Conduct: Bullying; cyberbullying; harassment and sexual harassment covered under ACAA; retaliation; making knowingly false accusations of bullying behavior.
- "Bullying" means a single significant incident or a pattern of incidents involving a written, verbal, or electronic communication, or a physical act or gesture, or any combination thereof, directed at another pupil which:
  - (1) Physically harms a pupil or damages the pupil's property;
  - (2) Causes emotional distress to a pupil;
  - (3) Interferes with a pupil's educational opportunities;
  - (4) Creates a hostile educational environment; or
  - (5) Substantially disrupts the orderly operation of the school.
- "Bullying" shall include actions motivated by an imbalance of power based on a pupil's actual or perceived personal characteristics, behaviors, or beliefs, or motivated by the pupil's association with another person and based on the other person's characteristics, behaviors, or beliefs.
- "Cyberbullying" means conduct defined in paragraph I of this section undertaken through the use of electronic devices. "Electronic devices" include, but are not limited to, telephones, cellular phones, computers, pagers, electronic mail, instant messaging, text messaging, and websites.

## Other Relevant Laws

- ***Americans with Disabilities Act***
  - Protects qualified individuals with disabilities in their places of work/education
- ***NH Human Rights Act, RSA 354-A***
  - Prohibits discrimination against employees and students based on age, sex, sexual orientation, gender identity, race, color, marital status, familial status (students only), physical or mental disability, religious creed, or national origin.
- ***Section 504 of the Rehabilitation Act of 1973***
  - Prohibits discrimination against employees and students with disabilities
- ***Title VI of the Civil Rights Act of 1964***
  - Prohibits discrimination based on race, color or national origin.

## Policies and Procedures

Updated Non-Discrimination/Harassment Policies:

- **AC** – Nondiscrimination/Equal Opportunity and Affirmative Action
- **ACAA** – Unlawful Harassment and Sexual Harassment of Students
- **ACAA-R** – Student Discrimination/Harassment and Title IX Sexual Harassment Complaint Procedures
- **ACAB** – Harassment and Sexual Harassment of School Employees
- **ACAB-R** – Employee Discrimination/Harassment and Title IX Sexual Harassment Complaint Procedures

Plus:

- **JICK** – Bullying
- **JICIA** – Weapons, Violence and School Safety
- Other conduct policies that may apply

## Assessment & Investigation



## Internal Communication Protocols

- Staff - School Administration
- Clarity of Roles (e.g., Title IX now requires separation of investigator and decision-maker)
- Title IX Coordinator/AAO oversight
- When consult counsel?
- How handle messaging (while maintaining privacy)?

## HYPOTHETICALS

**Please review the following scenarios, assess the allegations, and identify:**

- 1) The type(s) of prohibited conduct described in each situation if any – e.g., bullying; discrimination/harassment; sexual harassment, etc.
- 2) Which procedure would you follow to address the alleged conduct?

### Scenario 1:

On a Friday afternoon, Audrey's mom Amy files a complaint in your office claiming that Audrey has been subject to discrimination because of the way she looks. Amy states that over the last several weeks, Audrey has been picked on, online, by a group of female classmates. Amy explains that the classmates have told Audrey her hair is "disgusting," encourage her to shave her head, and tell her that if they had frizzy hair like hers, they would never come to school. The classmates also make fun of Audrey's weight. According to Amy, Audrey is incredibly shaken by this, and is now stating she will only access remote learning. Prior to this incident Audrey had been very excited to return to in-person learning.

### Scenario 2:

A parent calls to tell you that his daughter Emily has complained that her teacher (Mr. Robinson) has treated her poorly all year, interrupts her constantly, and mocks her in front of the entire class. Emily also said that when she tried to explain her concerns to the teacher after class one day, Mr. Robinson "acted really creepy" toward her. Then yesterday, Mr. Robinson passed Emily and her friend Nora in the hallway, stopped to speak with them and put his arm around Emily. The parent demands that Mr. Robinson be fired immediately.

## Other Scenarios

1. Circle time in 3<sup>rd</sup> grade. A boy walks around the circle and puts his hand down the back of a girl's pants. Her parents complain.
2. You learn that an employee, Ms. Smith, was subjected to offensive, sexualized comments by a student with an emotional disability when working with the student.
3. A teacher is talking about racism and asks a student of color what her experience has been.
4. After a difficult meeting with the staff, you receive a complaint that a male supervisor talks over certain female teachers when they raise issues about safety.
5. Others?

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## *Additional Topics*

## *Q & A's*

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# Thank You



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