

The New Title IX Regulations

An Overview

Title IX provides that:

- 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 educational program or activity receiving Federal financial assistance.

Examples of Sexual Misconduct

- Unwelcome sexual advances
- Sexual jokes, gossip regarding another's sex life, sexual orientation, or gender identity
- Leering, whistling, obscene gestures
- Sexual assault, violence, threats, stalking, rape, acquaintance rape and relationship violence (including dating and domestic violence)
- Sexual exploitation
- Insults or threats based on sex or gender
- Change of academic or employment responsibilities based on sex, gender identity or expression, or sexual orientation
- Quid pro quo: "This for that"

Allegations of Title IX Misconduct

- Student conduct involving sexual discrimination/sexual misconduct automatically invokes Title IX and must be handled differently than other conduct matters
 - Must involve the Title IX Coordinator
 - Must follow different procedures for investigation
 - Determination as to whether there has misconduct must not be made by individual who conducted the investigation

New Definitions of Sexual Harassment

- **Quid Pro Quo** - A school employee conditioning an educational benefit or service upon a person's participation in unwelcome sexual conduct
- **Hostile School Environment** - Unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity
- **Sexual Assault** - Actual or attempted sexual contact with another person without the person's consent

Mandatory Reporting

- All employees of CPS have an obligation to report instances of sexual harassment and sexual misconduct
 - Report instances involving students to the student's Principal, Head of Upper School, Assistant Principal, Dean or CPS' Title IX Coordinator
 - Report instances involving employees to CPS' Title IX Coordinator

Basic Elements of Complaint Process

- The complainant **MUST** be a current student or student attempting to or in the process of enrolling
- Covers any school event and any location where a school event was taking place (does not cover actions off campus that are not school-related)
- If the complaint involves a former employee, then the Title IX investigation process does not need to be followed in connection with any investigation of the complaint
- If the respondent is no longer enrolled, the school *may* end its investigation
- The complainant may withdraw the complaint and the school *may* end its investigation

Online Sexual Harassment

- A student sexually harassing a student online while off campus is not covered under the new Title IX regulations; therefore, there is no requirement to investigate under Title IX procedures and process

an HOWEVER, if this activity finds its way back to campus then you have obligation to investigate

You can ALWAYS investigate the matter under CPS policies, even if not required by Title IX

Formal Complaint

- School must investigate any complaint, whether written or verbal
 - If a student makes a verbal complaint, you can ask the student to write out the complaint
- The Title IX Coordinator may initiate the complaint
- If the complainant withdraws a complaint, this must be respected and the investigation ends under Title IX
 - **HOWEVER**, the Title IX coordinator can continue to investigate the complaint if it is severe and it makes sense to continue the investigation
 - i.e. you have multiple complaints against the same student
 - i.e. the complainant has withdrawn the complaint out of fear

Responsibility to Respond

- School **MUST** respond to any complaint so it can prove it is not “deliberately indifferent” to a report of sexual harassment/sexual misconduct
- Emphasis on “fair, equitable and without bias” process

INVESTIGATION PROCESS

- The Investigator cannot be the Decision-Maker
- Ideal Investigation includes:
 - Witness statements
 - Follow-up
 - Notifying Parents/Guardians/Caregivers
 - Detailed notes by the investigator
 - Reviewing video footage
 - Reviewing any documents



INVESTIGATION PROCESS, continued

- BOTH parties get a copy of all the evidence collected
- Best Practice
 - Use initials when possible
 - Redact student witness names from final report, but names of student witnesses are not treated as confidential and should not be redacted
 - Provide adult witness names
 - Notify parents/guardians/caregivers when their student is involved in a Title IX investigation (if under 18)

Investigation Process, continued

- Hearing not required
- A final report must be issued and parties must be advised of the outcome of the investigation
- Standard to be used in making a determination is a “preponderance of the evidence”

Appeal Process

- Either party is allowed an appeal
- Principal is the decider  Superintendent could hear appeal
- Superintendent is the decider  School Committee can hear the appeal
- Appeals should be allowed for
 - Procedural irregularity
 - Newly discovered evidence
 - Investigator had a conflict of interest

Mandatory “Supportive Measures”

- Complainant **MUST** be provided supportive measures regardless of the findings of the investigation
 - Move student(s) from classes (cannot be punitive)
 - Mental health support
 - Altered schedules for complainant
 - Safe room or safe spaces
- These supportive measures cannot be punitive to any student, complainant or respondent
- Respondent is considered “innocent” during the investigation

Rape Shield

- Not allowed to ask questions or seek evidence about prior sexual acts prior sexual history because deemed irrelevant

UNLESS, it is used to prove someone other than the respondent committed the offense

Retaliation Prohibited

- All parties, including the witnesses are protected
- New Title IX regulations provide that a party can exercise free speech by talking about the investigation
- K-12- there is always a strong emphasis on confidentiality, so be cautious here

Training Required

- All Title IX Coordinators must have training covering
 - Anti-bias training
 - Avoiding stereotypes
 - Reporting requirement for all employees
- Annual training for all staff who may conduct Title IX investigations or serve as Title IX decision-makers
- 51A abuse and neglect & Title IX reporting requirements are necessary yearly training for all staff