Title IX and Sexual Harassment in K-12 Public Schools: Key Steps to Compliance

Recent media attention has highlighted student-on-student sexual harassment and sexual violence and the requirement under Title IX that educational environments be harassment-free. While the focus has been sexual violence involving college students, the problem of sexual harassment and sexual violence also exists on the K-12 school level.

What Is Title IX?

Title IX, a section of the Education Amendments Act of 1972, prohibits sex discrimination in any federally funded educational program. This prohibition applies to all institutions receiving certain federal funds, including public school districts and publicly funded charter schools, and includes all educational experiences the district offers—academics, athletics, and extracurricular activities.

1. While most public school districts receive federal funds that make the district subject to the requirements of Title IX, some do not. To confirm whether your district is covered by Title IX, consult the definition of “Federal Funds Recipient” in the statute or your district’s attorney.
People most often associate Title IX with inequity in athletics, because that is where efforts at achieving gender equality have concentrated. However, the Department of Education’s Office for Civil Rights (OCR) has issued guidance and enforced the law’s application to sex discrimination, which includes sexual harassment and sexual violence, for many years.

This publication will address key steps public school districts and public charter schools can take to address student-on-student sexual harassment under Title IX. Recommendations are based on written OCR guidance and components of settlement agreements between OCR and individual school districts.

What Is Sexual Harassment?

Sexual harassment is unwelcome sexual conduct that creates an intimidating, hostile, or abusive environment that is so severe or pervasive it prevents a student from fully participating in an educational program or activity. Harassment includes unwanted verbal or written sexual statements, graffiti, name-calling, and sexual advances in person or via cellphones or the Internet. OCR guidance stresses that there does not need to be intent to harm nor does the activity need to be directed at a specific person to be considered harassment. OCR states that “the more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical.” Male and female students may be subject to sexual harassment. In addition, harassment based on gender stereotypes is sexual harassment.

What Is Sexual Violence?

OCR defines sexual violence as “physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol. An individual may also be unable to consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion. All such acts are forms of sexual harassment covered under Title IX.”

Approximately 40 school districts are under OCR investigation for their handling of sexual harassment and/or sexual violence claims. Many believe these investigations and related lawsuits will increase, especially in light of OCR’s April 2015 “Dear Colleague” letter (DCL), which emphasizes expectations for K-12 schools. Yet, despite these indicators of growing scrutiny, many K-12 schools appear to be out of compliance with Title IX’s sexual harassment requirements.

Example

In 2013, the Hawaii School for the Deaf and the Blind, a public institution for children, settled a class action lawsuit brought by 35 students and their families. It alleged that a gang of students systematically and repeatedly raped fellow students over nearly 10 years, and that the school’s administration covered up and did not properly address the sexual violence. The lawsuit settled for $5.75 million.

2. In July 2015, the U.S. Senate introduced the Teach Safe Relationships Act of 2015 as part of its broader Every Child Achieves Act (an update of No Child Left Behind). The Teach Safe Relationships Act would award grants to public schools to teach safe relationship skills.
OCR Guidance

Since 2001, OCR has issued significant Title IX guidance for K-12 schools on sexual harassment prevention and response. Recommendations from these documents are included below. However, UE recommends that each of these documents be reviewed by all those involved with Title IX procedures. These documents include:

- Revised Sexual Harassment Guidance (2001)
- Sexual Harassment: It’s Not Academic (2008)
- DCL: Sexual Violence (2011)
- DCL: Retaliation (2013)
- Title IX Questions & Answers (2014)
- DCL: Charter Schools (2014)
- DCL: Title IX Coordinators (2015)

This guidance can be downloaded from the OCR website.

What Must School Districts Do?

If a school district knows or reasonably should have known about sexual harassment or sexual violence that creates a hostile environment, it must take immediate action to end the harassment, prevent its recurrence, and remediate its effects—regardless of whether a student complains. For example, widespread sexual graffiti on a public school campus would create a hostile environment resulting in sexual harassment. Failure to take action, or demonstrating “deliberate indifference” to harassment—a response that is “clearly unreasonable in light of the known circumstances”—could result in civil liability for the school district under Title IX in addition to any OCR enforcement action.

OCR enforces Title IX through administrative complaints brought by students or legal compliance reviews. Violations can result in removal of all federal funding. Traditionally, complaints are resolved through a Voluntary Resolution Agreement (VRA), a form of settlement, with the district. Several VRAs with school districts have been finalized in the past few years. OCR can find a Title IX violation if a “responsible employee” knows of sexual harassment and fails to remedy the situation.

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3. The U.S. Department of Justice (DOJ) enforces Title IV of the Civil Rights Act of 1964, which also prohibits public school districts from discriminating against students on the basis of sex. Sexual harassment in schools may also violate Title IV of the Civil Rights Act. DOJ can also enforce Title IX through intervention in private lawsuits or upon referral from OCR.
In 2012, the Allentown (Pennsylvania) School District entered into a settlement agreement with the U.S. Department of Justice after the department intervened in a private lawsuit. The suit alleged violations of Title IX after a 12-year-old fifth-grade student sexually harassed and assaulted four 6-year-old first-graders in separate occasions in school bathrooms. Despite reports of each incident, administrators did not address them or take steps to prevent future assaults. As part of the settlement, the school district agreed to implement a sexual harassment policy, train its students and employees on sexual harassment, work with an equity coordinator to ensure ongoing compliance, and submit to DOJ’s enforcement of the agreement for three years. A federal court was recently asked to intervene because the school district allegedly failed to comply with the settlement terms.

Individual students may also bring private lawsuits against the school district under Title IX for failure to prevent and remedy sexual harassment under the deliberate indifference standard. United Educators has received a number of claims related to student-on-student sexual harassment and sexual violence, some of which became lawsuits (See “UE Claims Data,” p. 11.). To prevail in a private lawsuit, a student must prove that a school official with the authority to take action had actual notice or knowledge of alleged harassment that was sufficiently severe, pervasive, and objectively offensive to bar the victim’s access to an educational opportunity or benefit, and the school official was deliberately indifferent to the harassment.

Title IX also prohibits retaliation against students or employees who report sexual harassment. The retaliation prohibition includes not only the school district but also any students or employees accused of harassment. Further, a student can prevail on a claim, or OCR may find Title IX violations, if the district did not prevent retaliation even if there was no finding of harassment in the initial reported incident.
Title IX Compliance Steps

Many school districts are confounded by the wealth of guidance available from OCR and are unsure of where to begin. The four actions below can have the biggest impact on combating sexual harassment in a school district and begin the process toward compliance.

- Appoint a full-time Title IX coordinator
- Develop and publish a districtwide anti-discrimination policy and grievance procedure
- Conduct training
- Select a qualified investigator

Appoint a Full-Time Title IX Coordinator

OCR’s April 2015 guidance reminds schools to designate a qualified, full-time Title IX coordinator—with oversight responsibility for the district’s Title IX compliance. Deputy coordinators may also be appointed.

The coordinator should report directly to senior leadership and must be allowed to operate independently. Schools should not appoint the athletic director, principal, or district superintendent as coordinator given their primary responsibilities and the potential for a conflict of interest. If necessary, a school principal may act as a deputy coordinator at an individual school.

As described below, OCR also provides guidance on training, authority level, and communicating contact information.

Train the Title IX Coordinator Team

OCR specifies that the coordinator must be trained in Title IX compliance requirements and other applicable state and federal laws. Training must encompass all OCR guidance. The coordinator must know and understand the district’s own sexual harassment policy and Title IX grievance procedures. He or she should continue periodic training to keep abreast of developments in Title IX law and the district’s compliance obligations.

Common Components of VRAs

School districts entering into VRAs with OCR following a compliance review or a student complaint have been required to:

- Retain the services of an outside, independent equity consultant to oversee steps toward Title IX compliance
- Create a system for reporting and tracking all incidents of sexual harassment
- Implement and conduct annual climate surveys to determine the extent of sexual harassment in the district
- Create an anti-harassment task force consisting of administrators, employees, students, and parents to oversee the district’s ongoing efforts to end harassment.
Grant Authority

According to OCR, the district should give the Title IX coordinator the authority to fulfill the district’s compliance responsibility by:

- Allowing him or her to make training and policy recommendations
- Providing adequate funding and time to fulfill Title IX responsibilities
- Granting access to information on student discipline and incidents of sexual harassment

The coordinator should accept reports of harassment and coordinate the district’s response to all complaints of sex discrimination, including hiring an outside investigator if necessary. Records of all incidents of sexual harassment, the district’s response, and the outcome of any investigation must be maintained by the coordinator for Title IX compliance and to address patterns of concerning behavior.

Communicate Contact Information

Publish the Title IX coordinator’s name, office address, telephone number, and email address to the school community, including on the district’s website. If the district has more than one Title IX coordinator, the contact information for the primary and all deputy coordinators must also be published in the district’s nondiscrimination policy. The lead Title IX coordinator must be prominently designated, and deputy coordinators’ assignments to specific schools or regions should be noted. The Title IX coordinators should communicate regularly with one another, such as weekly or monthly, to ensure consistent application of the district’s policies.

Monitor the Climate

The Title IX coordinator must monitor outcomes of sex discrimination complaints, identify and address any patterns of harassment, and assess the effects of harassment on the district’s campuses. He or she should be aware of problematic school locations and activities or members of the student body, such as locker rooms, playgrounds and study halls, school dances and games, and students with records of previous harassing incidents. Give the Title IX coordinator authority to identify and address discrimination issues before they become systemic problems. Seek the coordinator’s input in drafting or revising the district’s anti-harassment policy and grievance procedures.
Example

West Contra Costa Unified School District (California) entered into a VRA with OCR in 2013 after a compliance review revealed that sexualized behavior permeated the environment at a number of school sites (both elementary and secondary) and that the district took no action to correct the harassment. OCR determined that at least two students were raped on district property but the district did not adequately respond to make the student body feel safe. In surveying students, OCR found that there was frequent nonconsensual sexual touching, including in hallways between class periods, and in locker rooms, stairwells, and outside areas where students congregated, and that female students often feared additional abuse if they did not submit to the touching. Students said they did not feel comfortable reporting sexual harassment for fear of reprisal, and that district employees often ignored overt sexual conduct.

Under the agreement, West Contra Costa appointed a Title IX coordinator, hired a consultant to conduct sexual harassment prevention training for students and employees, revised its policy and grievance procedures, and agreed to create a task force to improve the school climate. The district also agreed to ongoing OCR monitoring of its compliance efforts.

Develop and Publish a Districtwide Anti-Discrimination Policy and Grievance Procedure

Anti-Discrimination Policy

The Department of Education requires each school district to publish a statement confirming that it “does not discriminate on the basis of sex in education programs or activities it operates.” Prominently publish and disseminate the district’s nondiscrimination statement to all members of the district community. Include in the policy definitions of sexual harassment and sexual violence along with instructions on how and where students, parents, and employees can make complaints, with contact information for the district’s Title IX coordinator.

Example

OCR launched an investigation into Berkeley School District (California) in January 2015 after receiving a complaint about how the district handled sexual harassment reports. While the OCR investigation is ongoing as of this publication date, the district has indicated it will review its sexual harassment policies and grievance procedures. In May 2015, students said the district denied them access to OCR investigators visiting the campus, according to media reports. The district has said that students and teachers will be interviewed in later OCR visits.
Grievance Procedure

School districts must also adopt and publish a grievance procedure for resolving Title IX-related complaints. Oversight of the grievance procedure should rest with the district’s Title IX coordinator to ensure that individual complaints are appropriately investigated. It should be available and accessible to all employees, students, and parents in the district, including English language learners and students with disabilities.

While each district’s grievance procedures may vary, tailor the language so it is easily understood by differing age groups, and include examples of inappropriate conduct, to encourage reporting.

Common elements of Title IX grievance procedures include:

- Notice to students, parents, and employees of the grievance procedures and how to file a complaint
- A statement that the procedures apply to complaints alleging harassment by employees, other students, or third parties
- Definitions of sex discrimination, sexual harassment, other prohibited conduct, and consent
- A promise of an adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and other evidence
- Designated and reasonably prompt time frames to complete the major stages of the process (OCR urges institutions to do so within 60 calendar days)
- Notice to parties (or parents, if the students are minors) of the investigation’s outcome
- An assurance that the school will take steps to prevent recurrence of any harassment and correct any discriminatory effects on the complaining party and others
- A prohibition of retaliation (including intimidation, threats, coercion, or discrimination in any form, through any medium) along with information on how to report subsequent problems and how the district will investigate them
- Use of the preponderance of evidence standard (meaning it is more likely than not that harassment occurred) in determining whether a violation of the anti-discrimination policy occurred
- The right of both parties to appeal the outcome of the investigation

Upon receipt of a harassment complaint, the coordinator should explain the district’s grievance process to the parties or their parents if the parties are minors. Districts are required to provide support services for victims through district counseling resources or other victim support resources in the community. A victim may wish the allegations to remain confidential. If so, the district should still take reasonable steps to investigate and respond in a manner consistent with the confidentiality request. A district may inform the complaining party that the confidentiality request may limit the response, but should explain that retaliation is prohibited and offer the victim any
necessary or requested support. Explain that in certain circumstances, such as sexual contact involving a minor, a mandatory report to state authorities—including the name of the victim—may be required.

A complaining party is entitled to safety, security, and freedom from retaliation after making a complaint. The district may need to provide interim remedial measures, such as limiting contact between parties, changing the alleged harasser’s classes, and providing other academic accommodations and support to the victim as needed. These actions must not penalize the complaining party. Upon notice of an incident, the district must take these or other affirmative steps to prevent further harassment.

When an investigation is complete, the coordinator should notify both parties, or their parents if the students are minors, of the outcome and remind them of time frames for filing an appeal. Communications should include contact information for other options a student, parent, or employee may have, such as those provided by OCR and state enforcement agencies.

**Train Employees and Students**

OCR’s Title IX guidance requires training of all employees and students. Train employees annually on how to identify, stop, and prevent sexual harassment, including sexual violence. Any training should include the district’s anti-discrimination policy and grievance procedures, how to make a complaint, and resources available to victims. OCR prefers this training to be separate and apart from other professional development opportunities. For example, East Allen County Schools in Indiana has an online harassment training module for teachers and administrators.

For students, age-appropriate training should focus on how to identify and report harassment if a student witnesses or experiences an incident. As with employees, train students on the anti-harassment policy and grievance procedure, including how to make a complaint, resources available to victims, and how to file an appeal. Use language students will understand and provide specific examples of prohibited conduct.

Consider training parents about how to identify, stop, and prevent sexual harassment. Parental training sessions should also include an overview of the district’s grievance procedure and resources available to victims.

Identify and train other constituents in your district, such as bus drivers, dining workers, volunteer coaches, and other contractors who may help identify, report, and prevent harassment.

Make sure the trainer is well-versed in Title IX and the district’s policies and procedures.
Select a Qualified Investigator

Conducting a systematic, professional investigation is paramount in school sexual harassment and sexual violence cases. Each district’s investigation procedures may vary, but all investigations must be prompt, thorough, and impartial. Do not wait for a law enforcement investigation to be completed if criminal conduct occurs. The district must conduct its own investigation promptly and reach a conclusion under its anti-harassment policy, imposing any appropriate disciplinary sanctions regardless of the criminal investigation.

The district’s Title IX coordinator and/or deputy coordinator may be expected to conduct all investigations. If so, be sure these professionals have received proper training in conducting investigations of sexual harassment and sexual violence, including how to properly recognize trauma and appropriately question sexual assault victims. Consider national and local organizations that could provide effective training. Trainers may include law enforcement or district attorneys with sexual violence investigation experience.

When hiring an outside investigator, determine whether he or she has an appropriate temperament, is nonjudgmental and can connect with witnesses, and understands the importance of confidentiality. Be sure they are familiar with the law and your district’s anti-discrimination policy. Confirm they have received training on handling victims of trauma and sexual assault. Request examples of similar completed investigations to evaluate quality.

Make sure any investigator will have adequate time to ensure a prompt and thorough investigation.

Example

A federal court lawsuit filed by a female student who was sexually assaulted by a male student on school property in the Forest Hills School District (Michigan) was recently settled for $600,000. It alleged Title IX violations and other equal protection claims when the district failed to conduct its own timely investigation and instead relied on the law enforcement investigation of criminal charges in the assault. The court also found that the school principal investigating the incident had not been trained in investigating sexual harassment and assault. In depositions, the district admitted that it did not train its employees to respond to sexual assault complaints. The court found that “failing to train a school principal on how to investigate sexual assault allegations constitutes deliberate indifference.” In addition, before the district completed its investigation of the initial complaint, a second student reported a sexual assault allegation involving the same perpetrator, who ultimately pled guilty to criminal charges. In addition to the lawsuit settlement, the district entered into a resolution agreement with OCR.
Don’t Forget State Law

Some states are codifying OCR’s Title IX guidance. While these efforts have primarily targeted higher education, you should know your state requirements, including any mandatory reporting or disclosure laws. Allegations of criminal misconduct should be reported to the appropriate law enforcement agency, and suspected child abuse should be reported to child protective services or other appropriate agency.

Conclusion

Preventing sexual harassment and sexual violence in schools enhances the learning environment for all students. Taking these steps will advance that goal and move your district toward Title IX compliance.

For more detailed information on complying with Title IX, please see the EduRisk series, *Title IX and Beyond* and the online training course, *Show Some Respect! Prevent Harassment*, for students.

UE Claims Data

A review of more than 150 UE claims of student-on-student sexual harassment and sexual assault from 2010 through June 2015 revealed the data presented below.

- 53% of the claims identified the gender of the victim
- 60% of identified victims were female
- 83% of victims were subject to a single incident of sexual harassment
- 17% of victims were subject to multiple incidents of harassment

- 74% of harassment incidents involved a single perpetrator
- 25% involved multiple perpetrators

Most of the alleged harassers were male (87% compared to 4% women; 9% of the alleged harassers were not identified by gender)

The alleged harassment occurred in a variety of locations:

- 22% School bus
- 12% Classroom
- 20% Bathroom
- 8% Off campus
- 5% Locker room

*Due to rounding, statistics do not always add up to 100 percent.*
Acknowledgment

This Public School News was written by Heather A. Salko, senior risk management counsel at United Educators.

Resources
Sample Policy and Procedure Documents

Yakima School District Sexual Harassment Policy
Yakima School District Complaint Procedure

Sample Complaint Form

Rockwood School District, Missouri Sexual Harassment Complaint Forms

Selected Resolution Agreements

West Contra Costa School District Resolution Agreement 2013
Norfolk Public Schools Resolution Agreement 2014
Yakima School District Resolution Agreement 2015
Public Schools of Robeson County Resolution Agreement 2014
Allentown School District Consent Decree 2012