

## **NOTICE OF NONDISCRIMINATION TITLE IX INFORMATION**

The Ada Board of Education is committed to a policy of nondiscrimination in relation to race, color, religion, sex, age, national origin, alienage, handicap, or veteran status. This policy will prevail in all matters concerning staff, events, students, the public, employment, admissions, financial aid, educational programs and services, facilities access, and individuals, companies, and firms with whom the board does business. Racial discrimination shall include racial slurs or other demeaning remarks concerning another person's race, ancestry, or country of origin and directed toward an employee, a student or a visitor.

“Ada City Schools does not discriminate on the basis of race, color, national origin, sex, disability, or age in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups. See the contact information below for the person who has been designated to handle inquiries regarding the nondiscrimination policies:”

### Initial Process and Contact Information for Filing Complaints Alleging Discrimination and/or Title IX Issues:

Prior to the filing of a written complaint, the student, parent or guardian, employee or patron is encouraged to visit with the building principal or the District's Grievance and Title IX Coordinator, as applicable, and reasonable effort should be made by the District at this level to resolve the problem or complaint.

#### **Ada City Schools Title IX Coordinator:**

Bryan Harwell  
Executive Director of Human Resources  
324 W. 20th Street  
Ada, Oklahoma 74820  
(580) 310-7200

## SEXUAL HARASSMENT OF STUDENTS

The policy of this school district forbids discrimination against, or harassment of any student on the basis of sex. The Ada Board of Education will not tolerate sexual harassment by any of its employees or students. This policy applies to all students and employees including non-employee volunteers whose work is subject to the control of school personnel. Policy DA applies to sexual harassment of employees.

1. Sexual Harassment is defined as conduct on the basis of sex that satisfies one or more of the following:
  - a. An employee of the school district conditioning the provision of an aid, benefit, or service of the school district on a student's participation in unwelcome sexual conduct. This is referred to as quid pro quo sexual harassment;
  - b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a student equal access to the school district's educational program or activity; or
  - c. Sexual assault, dating violence, domestic violence or stalking as defined by federal law.

For the purpose of this policy, examples of sexual harassment include, but are not limited to:

Verbal or physical sexual advances, including subtle pressure for sexual activity; touching, pinching, patting, or brushing against; comments regarding physical or personality characteristics of a sexual nature; and sexually-oriented "kidding" "teasing," double meanings, and jokes.

Demeaning comments about a girl's ability to excel in a class historically considered a "boy's" subject, privately talking to a student about sexual matters, hugging or touching a student inappropriately may constitute sexual harassment.

Writing graffiti that names a student or otherwise identifies a student is potentially slanderous and constitutes sexual harassment. Graffiti of any kind will not be tolerated on school property. The superintendent is directed to cause any graffiti or unauthorized writings to be removed immediately. Use of e-mail, the internet, or technology may constitute sexual harassment as much as use of in-person, postal mail, handwritten or other communication.

Any of the aforementioned conduct that effectively deprives a student of equal access to educational opportunities or benefits provided by the school.

2. Specific Prohibitions
  - A. Administrators and Supervisors
    1. It is sexual harassment for an administrator, supervisor, support employee, or teacher to use his or her authority to solicit sexual favors or attention from students.
    2. Administrators, supervisors, support personnel, or teachers who either engage in sexual harassment of students or tolerate such conduct by other employees shall be subject to sanctions, as described below.

**SEXUAL HARASSMENT OF STUDENTS (Cont.)**

3. The "off-duty" conduct of school personnel that has or will have a negative impact on the educational process of the school or constitutes an illegal or inappropriate relationship with a student may subject the employee to disciplinary action which could include termination of employment. Any romantic or sexual affiliation between school personnel and students, including students who have reached the age of majority (18), during school hours will have a negative impact on the educational process and shall constitute a violation of school policy. Such violations may result in suspension of the student and suspension or termination for the employee. Any sexual affiliation between teachers and students under the age of 20 constitutes a crime under Oklahoma law and will most likely result in the suspension of certification by the State of Oklahoma.
3. Notice of this policy and grievance procedure, including how to file or report sexual harassment and how the district will respond shall be provided to applicants for admission and employment, students, parents or legal guardians, and unions or professional organizations holding agreements with the school district.
4. Reporting Allegations of Sexual Harassment
  - A. It is the express policy of the board of education to encourage student victims of sexual harassment to come forward with such claims.
    1. Students who feel that administrators, supervisors, support personnel, teachers, or other students are subjecting them to sexual harassment are encouraged to report these conditions, or have their parents report these conditions, to the appropriate administrator or teacher. If the student's immediate administrator or teacher is the alleged offending person, the report will be made to the next higher level of administration or supervision or to any responsible adult person. The employee to whom the report was made will provide notice of the report to the Title IX coordinator. The Title IX coordinator should then provide the appropriate paperwork to the student or parent/guardian so that the student (complainant) may file a formal complaint with the Title IX coordinator by mail, e-mail or as directed by the Title IX coordinator.
    2. Every attempt will be made to maintain confidentiality; however, absolute confidentiality cannot be guaranteed because of due process concerns that arise in sexual harassment investigations. No reprisals or retaliation will be allowed to occur as a result of the good faith reporting of charges of sexual harassment.
  - B. Upon notice from an employee that a student or parent/guardian has reported possible sexual harassment, the Title IX coordinator will promptly contact the student (alleged victim) to discuss the availability of supportive measures, consider the student's wishes with regard to supportive measures, and explain the process that will be involved with a formal complaint.
5. Grievance Procedure.
  - A. Equitable Treatment. Both the alleged victim (complainant) and the alleged respondent (respondent) will be treated equitably by the school district.

**SEXUAL HARASSMENT OF STUDENTS (Cont.)**

- B. Objective Evaluation of Evidence. All evidence both inculpatory and exculpatory will be evaluated objectively. Credibility determinations will not be made based upon the party's status as complainant, respondent, or witness.
  - C. Conflict of Interest. Any person serving as the Title IX coordinator, investigator, decision-maker, or any person designated to facilitate the process shall not have a conflict of interest against complainants and respondents generally or against the particular complainant and respondent.
  - D. Presumption. There will be a presumption that the respondent is not responsible for the alleged conduct until a determination is made at the conclusion of the grievance process.
  - E. Timeliness. The grievance process will proceed in a timely manner. Any delay in the process for good cause such as law enforcement involvement, absence of a party, witness or advisor, translation, or accommodation needs will be documented, and written notice provided to both parties explaining the reason for the delay.
  - F. Possible outcomes. A description or listing of possible disciplinary outcomes and remedies that may be implemented following a determination of responsibility must be provided to both parties.
  - G. Standard of Review. The school district will utilize a preponderance of the evidence standard to determine responsibility.
  - H. Privileged Information. The school district will not require, allow or use evidence or questions that constitute or seek legally privileged information, unless the privilege is waived.
6. Written Notice. Upon receipt of a formal complaint, the school district will provide written notice to all known parties in sufficient time to give the respondent time to prepare a response before an initial interview. The written notice must include:
- A. Notice of the grievance process, including any informal resolution process;
  - B. Notice of the allegations, including sufficient details to allow the respondent to prepare a response;
  - C. A statement that the respondent is presumed not responsible for the conduct and that responsibility will be determined at the conclusion of the grievance process;
  - D. Notice of the parties' right to have an advisor and to inspect and review evidence. The advisor may but is not required to be an attorney.
  - E. Notice of any provision in the student discipline code that prohibits knowingly making false statements or providing false information in the grievance process.

If in the course of an investigation, the school district obtains additional information about the respondent or complainant that was not included in the original written notice, notice of the additional allegations must be provided in writing to both parties.

**SEXUAL HARASSMENT OF STUDENTS (Cont.)**

7. Investigation of the Allegations. The school district will designate an investigator to conduct a thorough investigation of allegations. Contact information for the investigator will be provided to both the complainant and the respondent.
  - A. The burden of proof and of gathering evidence remains on the school district.
  - B. An equal opportunity will be provided to both parties to present witnesses and evidence during the investigation.
  - C. Neither the complainant or respondent will be prohibited from discussing the allegations or gathering and presenting evidence to the investigator.
  - D. Both parties will have the opportunity to have others present during interviews or related proceedings. This may include an advisor who may but is not required to be an attorney.
  - E. Written notice of the date, time, participants, purpose and location of any investigate interview, hearing, or other meeting shall be provided to the party who is invited or expected to attend.
  - F. Both parties and their advisors, if any, will be provided an opportunity to review all evidence that is directly related to the allegations in the formal complaint. This would include any evidence on which the school district does not intend to rely and any exculpatory or inculpatory evidence from any source. Such evidence must be provided prior to the completion of the final investigation report and in time to give the parties at least ten (10) days to prepare a written response, which the investigator must consider prior to completing the investigation report.
  - G. A written investigation report will be provided that summarizes the relevant evidence. This report will be provided to the parties and their advisors, if any, for their review and written response at least ten (10) days before a hearing or determination of responsibility.
8. Hearing. The Title IX coordinator will determine whether a live hearing is necessary on a case-by-case basis if both parties request or consent to such a hearing (the live hearing component is optional for K-12 schools). Regardless of whether a live hearing is held, or a written hearing is conducted, each party will have ten (10) days from the receipt of the investigation report to submit written, relevant questions that the party wants asked of another party or witness. Both parties will be provided with the answers and follow up questions. Federal law determines when questions regarding a complainant's prior sexual behavior or sexual predisposition are considered relevant in a hearing provided by a school district.
9. Determination of Responsibility. A decisionmaker, who is not the Title IX coordinator or the investigator, will apply a preponderance of the evidence standard to determine responsibility, and will issue a written determination of responsibility that:
  - A. Identifies the allegations that potentially constitute sexual harassment;

**SEXUAL HARASSMENT OF STUDENTS (Cont.)**

- B. Describes the school district's procedural steps taken from the receipt of the complaint to the determination;
  - C. Includes findings of fact to support the determination;
  - D. Includes conclusions regarding applicants of the discipline code to the facts;
  - E. Includes a statement of, and rationale for, the result as to each allegation, including a determination of responsibility, any disciplinary sanctions, and whether remedies to restore or preserve equal access to the school's educational programs or activities will be provided to the complainant; and
  - F. The procedures and permissible basis for appeals.
10. Appeals. Within ten (10) days of a determination of responsibility, dismissal of a complaint or any allegations therein either party may appeal for one of the following reasons:
- A. A procedural error affected the outcome.
  - B. New evidence that was not reasonably available at the time of the determination and could affect the outcome;
  - C. Conflicts of interest on the part of the Title IX coordinator, investigator or decision maker that affected the outcome.

If an appeal is made, the school district will provide written notice to both parties of the appeal. Both parties will be provided an equal opportunity to submit a written statement in support of or challenging the determination within ten (10) days of the written notice to both parties of the appeal being filed. The appeal will be heard by an appeal decision maker who is not the Title IX coordinator, the investigator or the original decisionmaker. The appeal decisionmaker cannot have a conflict of interest or bias against complainants and respondents generally or the particular complainant and respondent. The appeal decisionmaker will receive training as mandated by law. The decision of the appeal decisionmaker will be final and nonappealable. The written decision of the appeal decisionmaker will be provided within ten (10) days of the deadline for written statements supporting or challenging the initial determination. The written decision will be provided simultaneously to both parties.

11. Recordkeeping. The school district will keep records related to reports of alleged sexual harassment for a minimum of seven (7) years. Records maintained will include investigation records, disciplinary sanctions, remedies, appeals, and records of any action taken including supportive measures. Records will document in each instance that the school district's response was not indifferent and that measures were taken to restore or preserve equal access to educational programs or activities. If the school does not offer supportive measures in response to a report, the records should document why the response was not clearly unreasonable under the known circumstance.

**SEXUAL HARASSMENT OF STUDENTS (Cont.)**

The district will also post the training materials used to train Title IX coordinators, investigators, and decisionmakers on the district website at: [www.adacougars.net](http://www.adacougars.net). These materials will also be available to the public.

12. Retaliation. The board of education prohibits retaliation by the school district or any employees of the school district against any person for the purpose of interfering with Title IX rights or because the person has participated or refused to participate in any manner in a proceeding under Title IX regulations. Complaints of retaliation will be addressed under the district's grievance process.

Charging a person with a discipline violation or code of conduct violation based on a person's knowingly making a materially false statement in bad faith in an investigation is not retaliation.

**REFERENCE:**            **Title VII of the Civil Rights Act of 1964**  
                                 **42 U.S.C. §2000e-2**  
                                 **29 C.F.R. §1604.1, et seq.**  
                                 **U.S. Department of Education of Education, OCR, Title IX Regulations Addressing Sexual Harassment.**

**SEXUAL HARASSMENT INCIDENT REPORT FORM**

Date: \_\_\_\_\_ Time: \_\_\_\_\_ Room/Location: \_\_\_\_\_

Student(s) Initiating Alleged Sexual Harassment:

\_\_\_\_\_ Grade: \_\_\_\_\_ Class: \_\_\_\_\_

\_\_\_\_\_ Grade: \_\_\_\_\_ Class: \_\_\_\_\_

Student(s) Affected:

\_\_\_\_\_ Grade: \_\_\_\_\_ Class: \_\_\_\_\_

\_\_\_\_\_ Grade: \_\_\_\_\_ Class: \_\_\_\_\_

Check all spaces below that apply. Adult stated or identified inappropriate behaviors as:

Name Calling

Stalking

Inappropriate Gesturing

Staring/Leering

Writing/Graffiti

Threatening

Taunting/Ridiculing

Inappropriate Touching

Other \_\_\_\_\_

Spitting

Demeaning Comments

Stealing

Damaging Property

Shoving/Pushing

Hitting/Kicking

Flashing a Weapon

Intimidation/Extortion

Describe the incident:

\_\_\_\_\_  
\_\_\_\_\_

Witnesses Present: \_\_\_\_\_

Physical evidence: Graffiti \_\_\_\_\_ Notes \_\_\_\_\_ E-mail \_\_\_\_\_ Web sites \_\_\_\_\_ Video/audio tape \_\_\_\_\_

Other \_\_\_\_\_

Staff signature \_\_\_\_\_

Parent(s) contacted: Date \_\_\_\_\_ Time \_\_\_\_\_

Administrative response taken:

\_\_\_\_\_



**WRITTEN NOTICE TO KNOWN PARTIES  
REGARDING ALLEGATIONS OF SEXUAL HARASSMENT**

On the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, the district received formal notification of an allegation of sexual harassment. The respondent is presumed not responsible for the conduct. Responsibility will be determined at the conclusion of the grievance process. Both parties are entitled to have an advisor and to review and inspect evidence. The district's student discipline policies prohibit making false statements or providing false information in the grievance process. Both parties will be treated equally during the investigation and process to resolve the allegations. The district's grievance procedure is located at policy FB, a copy of which is attached to this correspondence, and includes the following steps:

1. Informal resolution. If the parties' consent, informal resolution procedures may be utilized to revolve the allegation.
2. Notice and Summary of Allegations. (Sufficient details must be included here to allow the respondent to prepare a response).
3. Investigation of Allegations. The school district has designated the Title IX Coordinator to act in the role of the investigator. Contact information is as follows: Mr. Bryan Harwell, Title IX Coordinator, at [harwellb@adapss.com](mailto:harwellb@adapss.com), phone: 580-310-7215.
4. Interviews. Interviews may be scheduled in accordance with school district policy.
5. Evidence. Both parties will have the right to review all evidence that is directly related to the allegations in the complaint.
6. Report. A written investigation report will be provided to both parties at least ten days prior to a hearing or determination of responsibility.
7. Hearing. The Title IX coordinator will determine on a case by case basis as to whether the hearing will be a live hearing or whether it will be a written hearing.
8. Determination of Responsibility. A decisionmaker, who is not the Title IX coordinator or the investigator, will apply (a preponderance of the evidence or a clear and convincing evidence standard) to determine responsibility and will issue a written determination.
9. Appeals. An appeal may be filed by either party in accordance with district policy.

Records of this allegation will be maintained for a minimum of seven (7) years.

At this time, the respondent may prepare a written response before an initial interview. The interview is tentatively scheduled for \_\_\_\_\_, and will be held at \_\_\_\_\_. If you have any questions, please contact me at \_\_\_\_\_.

Sincerely,

\_\_\_\_\_  
Title IX Coordinator

# Title IX School District Training

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BY JOHN E. PRIDDY

# Relevant School District Policies

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- Know your policies on sexual harassment.
- Your School should have a Title IX policy.
- Include relevant information in your handbooks.

# What is Title IX?

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Title IX of the Education Amendments of 1972 sets forth 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 subjected to discrimination under any educational program or activity receiving Federal financial assistance.

# *Gebser v. Lago Vista Sch. Dist.*, U.S. Supreme Court (1998)

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The Supreme Court explained that Title IX conditions an offer of federal funding “on a promise by the recipient not to discriminate, in what amounts essentially to a contract between the government and the recipient of federal funds.”

# Title IX—Forms of Sexual Harassment

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The Federal Courts have held that Title IX protects against the following forms of sexual harassment:

## ***Gender Discrimination***

- Student-on-student sexual harassment
- Employee-on-student sexual harassment

## ***Discrimination Based on Pregnancy***

## ***Claims of Retaliation***

- > Claim by a Plaintiff that their child was retaliated against for reporting sexual harassment.

# Title IX—Transgender Discrimination

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In 2020, the U.S. Supreme Court decided *Bostock v. Clayton Cty., Ga.*, which held that it was a violation of Title VII's prohibition on discrimination because of sex to fire an employee because of their sexual orientation or transgender status.

Furthermore, multiple U.S. Courts of Appeals, most notably the 4<sup>th</sup> Circuit in *Grimm*, have held that it is a violation of Title IX to prohibit transgender students from using a bathroom that affirms their gender. In other words, a school must allow a transgender boy to use the boy's bathroom and a transgender girl to use the girl's bathroom. The U.S. Supreme Court denied certiorari and allowed the 4<sup>th</sup> Circuit's opinion in *Grimm* to stand, signaling an unwillingness to overturn the circuit court's opinion.

# Title IX—Prohibits Discrimination Based On:

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- Sex
- Gender
- Sexual Orientation
- Gender identity or expression
- Sexual harassment
- Sexual violence
- Dating Violence
- Stalking



# Basic Elements of an Actionable Claim against a School District under Title IX:

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A school district can only be liable under a Title IX claim for an employee's sexual harassment of a student if the following elements are present:

1. The employee did, in fact, sexually harass the student;
2. School officials with authority to institute corrective measures had actual knowledge of the sexual harassment;
3. The school officials were deliberately indifferent to the sexual misconduct; and
4. The sexual harassment was so severe, pervasive and objectively offensive that it deprived the student of access to the educational benefits or opportunities provided by the school district.

# What Is “Actual Knowledge?”

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A school district is “liable only where it has made a conscious decision to permit sex discrimination in its programs, and precludes liability where the school district could not have remedied the harassment because it had no knowledge thereof or had no authority to respond to the harassment.”

*Murrell v. Sch. Dist. No. 1*, 186 F.3d 1238 (10th Cir. 1999).

# What Is “Deliberate Indifference?”

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Deliberate indifference “is a stringent standard of fault requiring proof that a municipal actor disregarded a known or obvious consequence of his action.”

*Bd. of Cty. Comm’rs of Bryan Cty. v. Brown*, 520 U.S. 397 (1997).

- This is a higher degree of fault than negligence, or even gross negligence.
- Title IX does not require flawless investigation or perfect solutions.
- Good faith but ineffective measures to address the sexual harassment can satisfy a school district’s duty under Title IX.

# Reporting Employee Sexual Harassment of Student(s)

## Step 1(a)—Internal Reporting Requirements

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- All employees shall be told:
  - What to report [details, time, place, circumstances];
  - How to report [verbal—followed up with written documents];
  - Where to report; and
  - To whom to report.

# Reporting Employee Sexual Harassment of Student(s) Step 1(b)—External Reporting Requirements

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## *Abuse or Neglect*

- If reason to believe student is a victim of abuse or neglect, report to DHS.
- Oklahoma law requires:
  - Every person having reason to believe that a child under the age of eighteen (18) years is a victim of abuse or neglect shall report the matter promptly to DHS. Reports shall be made to the DHS hotline.
  - No privilege relieves duty to report.
  - Reporting obligations are individual.
  - Any person who knowingly and willfully fails to promptly report or interferes with the prompt reporting can be charged with a misdemeanor.

## *Criminal Behavior:*

- If student is a victim of criminal conduct, notify law enforcement (i.e., rape or lewd molestation).
  - Consensual sexual intercourse between students is not criminal behavior and does not trigger a school district's duty to report *as long as* the younger student is over the age of fourteen years old and the older student is under the age of eighteen years old at the time of the conduct.

# Reporting Employee Sexual Harassment of Student(s)

## Step 2—Investigation

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### What About the Accused Employee?

**Suspend** immediately – best practice to err on side of caution while investigating.

**Secure** employee's email/computer – make sure employee does not have access.

**Investigate** what happened, who is involved, and identify all potential witnesses/evidence.

**Preserve** any video, text messages, and social media posts.

**Document** with handwritten witness statements that include the date/signature of the witness.

**Keep detailed notes** of all activities related to the complaint/investigation.

**Be mindful** of any potential conflicts of interest. Also, be mindful of the circumstances of the complaint. (i.e. a female student might be more comfortable speaking to a female employee involving allegations of sexual harassment by a male).

**Review** applicable District policies (i.e. sexual harassment, bullying, etc.).

# New Definition of Sexual Harassment

## 34 C.F.R. § 106.30(a)

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Sexual Harassment is conduct on the basis of sex that satisfies one or more of the following:

1. A school employee conditioning the provision of aid, benefit or service on an individual's participation in unwelcome sexual conduct.
2. 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 school's education program or activity.
3. Any of these four situations (defined on subsequent slides):
  1. Sexual Assault;
  2. Dating Violence;
  3. Domestic Violence; or
  4. Stalking.

# Title IX “Sexual Assault” Definition

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34 C.F.R. § 106(a)(3) points to the FBI Uniform Crime Reporting Program’s definition of sex offenses, which includes:

- **Rape**—The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- **Sodomy**—Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- **Sexual Assault with an Object**—To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- **Fondling**—The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- **Incest**—Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape**—Nonforcible sexual intercourse with a person who is under the statutory age of consent.



# Title IX “Dating Violence” Definition

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34 C.F.R. § 106(a)(3) adopts the statutory definition of dating violence that is codified at 34 U.S.C. 12291(a)(10), which states:

The term “dating violence” means violence committed by a person:

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship.

(ii) The type of relationship.

(iii) The frequency of interaction between the persons involved in the relationship.

# Title IX “Domestic Violence” Definition

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34 C.F.R. § 106(a)(3) looks to local state law for its definition of domestic violence. In Oklahoma, domestic violence refers to assault and battery between family members. The Oklahoma criminal code sets forth that domestic abuse can only occur between an offender and the following people:

- A current or former spouse.
- A current spouse of the offender’s former spouse.
- A former spouse of the offender’s current spouse.
- Parents.
- A foster parent.
- A child.
- A person related by blood or marriage.
- A person that the offender is or was in a dating relationship with.
- A person that the offender has a child with.
- A person that formerly lived in the same house as the offender.
- A person that currently lives in the same house as the offender.

# Title IX “Stalking” Definition

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34 C.F.R. § 106(a)(3) adopts the definition of stalking codified at 34 U.S.C. § 12291(a)(30), which states:

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.

# New Notice Requirements

## 34 C.F.R. § 106.8(b)

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The School District must provide notice of the school district's nondiscrimination policy and grievance procedures, including how to file or report sexual harassment and how the school district will respond to the following:

- Students
- Employees
- Parents or legal guardians
- Unions or professional organizations holding agreements with the school district.

The School District must state that the requirement not to discriminate extends to its admissions process.

The School District must provide the designated Title IX Coordinator's:

- Title;
- Office address;
- Electronic mail address; and
- Telephone number.

# New Requirements for Title IX Coordinator

## 34 C.F.R. § 106.8(a)

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1. Must have “designated employee” who coordinates Title IX efforts and has the job title of Title IX Coordinator.
2. Reports of sex discrimination must be reported to the Title IX coordinator by any means that results in the Title IX Coordinator receiving the person’s report. (i.e. in person, email, mail, phone etc.)

# New Regulations for Reporting 34 C.F.R. § 106.8(a)

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## Reporting Sexual Harassment - Who, How and When?

- Any person may report sex discrimination, regardless of whether the person is the alleged victim of the reported conduct.
- Such a report may be made at any time, including during non business hours, by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

# New Publication Requirements

## 34 C.F.R. § 106.8(b)(2)(i)

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Schools must prominently display the Title IX contact information and the policy against sex discrimination in their handbook and on their website, if they have a website.

# New Regulations for “Actual Knowledge”

## 34 C.F.R. § 106.30(a)

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**Old Rule:** A school had the responsibility to respond promptly and effectively if a person with authority knew or should have known about the sexual harassment. (Not the legal standard set forth in case law.)

**New Rule:** Every employee of a primary or secondary school who has actual knowledge (notice) is imputed to the school. (i.e. teacher, janitor)

1. Must respond promptly and reasonably in light of known circumstances.
2. Cannot be deliberately indifferent.
3. All employees must be trained on reporting sexual harassment.



# The Initial Response

## 34 C.F.R. § 106.44(a), .30(a)

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1. Must treat complainants and respondents equitably;
2. Must offer supportive measures to both parties; and
3. Must follow grievance process before disciplining or sanctioning a respondent.

# The Initial Response (Continued)

## 34 C.F.R. § 106.44(a), .30(a)

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Title IX Coordinator must promptly, even if no formal complaint is filed:

- **Contact** the complainant to discuss the availability of “supportive measures”;
- **Consider** the complainant’s wishes with respect to supportive measures;
- **Inform** the complainant of the availability of supportive measures with or without the filing of a formal complaint;
- **Explain** the process for filing a formal complaint.

# Initial Response 34 C.F.R. § 106.30(a)

## Examples of Supportive Measures

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- Counseling
- Course Modifications
- Schedule changes
- Increased monitoring or supervision
- Extracurricular activity modifications
- Addressing transportation issues
- Withdraw from/retake class without penalty
- Academic support
- Campus escort service
- Distance learning arrangements
- “No contact order” between parties during investigation

# Initial Response 34 C.F.R. § 106.44(a)

## What Not To Do

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Completely removing a respondent from an activity would likely go beyond a supportive measure and be considered punitive. This should only be done when an “emergency removal” is warranted.

Emergency removals are only permissible when the School District:

- Does an individualized safety and risk analysis;
- Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal; and
- Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

## Basic Required Elements 34 C.F.R. § 106.45(b)(1)

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- Treat parties equitably
- Objective evaluation of all evidence
- No conflict of interest for investigator or decisionmakers
- Presumption that respondent is not responsible
- Reasonably prompt time frames
- Descriptions or list of possible discipline/other remedies
- Statement of standard—preponderance of evidence
- Appeal procedures and bases
- Range of supportive measures available
- No breach of privilege without waiver

# Written Notice Requirements

## 34 C.F.R. § 106.45(b)(2)

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- Written notice to known parties “upon receipt of written complaint”
- Give respondent sufficient time to prepare response before any *initial* interview
- Must include:
  1. Notice of grievance process, including any informal resolution process;
  2. Notice of allegations, in sufficient detail to allow respondent to prepare a response (names of known parties, conduct alleged, date and location of conduct, if known)

# Written Notice Requirements (continued)

## 34 C.F.R. § 106.45(b)(2)(i)(B)

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3. Statement that respondent is presumed not responsible and that responsibility will be determined at the conclusion of grievance process;
  4. Notice of parties' rights to have an attorney or non-attorney advisor and to inspect and review evidence;
  5. Notice of any provision in the code of conduct that prohibits knowingly making false statements or providing false evidence during the grievance process.
- Notice must be supplemented if new allegations are opened for investigation.

# Determinations of Responsibility

## 34 C.F.R. § 106.45(b)(6)(i)–(ii)

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- Live hearing with live cross-examination by party advisors *required* for higher education, not K-12;
- Non-live hearings permitted for K-12, with each party allowed to submit relevant written questions to decisionmaker—to be asked of other party or witness—who will provide each party with the answers and opportunity for follow-up questions;
- Questions about a complainant’s prior sexual behavior or sexual predisposition are only permissible to establish that another person committed the alleged conduct or that the conduct was consensual. NOT allowed otherwise.



# Determinations of Responsibility—Investigation

## 34 C.F.R. § 106.45(5)(i)

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The burden of gathering evidence and burden of proof must remain on the district—not the parties. The investigation will be conducted by the Title IX official and include:

- Meeting complainant in-person (unless extraordinary circumstances prevent personal meeting);
- Meeting respondent in-person (unless extraordinary circumstances prevent personal meeting);
- Meeting witnesses in-person (unless extraordinary circumstances prevent personal meeting);
- Presumption the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made;
- Collecting any physical evidence;
- Reviewing any documentary evidence; and
- Preparing a report of the investigation.

# Determinations of Responsibility

## 34 C.F.R. § 106.45(b)(5)

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The investigation of complaints will be adequate, reliable and impartial. The investigation process can take up to 60 days. When investigating a complaint and throughout the grievance process, the district must do the following:

1. Ensure burdens of proof and gathering evidence rest on district rather than the parties;
2. Provide an equal opportunity for the parties to present witnesses and evidence;
3. Not restrict either party's ability to discuss the allegations or gather/present evidence;
4. Provide the parties the same opportunities to have others present during interviews or related proceedings, including an advisor;
5. Provide, to a party who is invited or expected to attend, written notice of the date, time, participants, purpose, and location of any investigative interview, hearing or other meeting with enough time to allow the party to prepare and participate;

# Determinations of Responsibility (continued)

## 34 C.F.R. § 106.45(b)(5)–(6)

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6. Provide both parties and their advisors an equal opportunity to review all evidence directly related to the allegations in the formal complaint (both exculpatory and inculpatory) at least 10 days prior to completion of the final investigation;
7. Ensure that if the district obtains additional information from or about the respondent or complainant, during the course of the investigation—not included in original notice to the parties—both parties will be provided written notice of additional allegations and a reasonable opportunity to respond in writing to the new information or documents;
8. Prepare written report that fairly summarizes relevant evidence and provide the report to both parties and their advisors for review and written response at least 10 days before a hearing or determination of responsibility; and
9. Ensure that parties will have 10 calendar days to respond to the investigator's report; any response will be considered in connection with any hearing that is conducted.

# Determinations of Responsibility (continued)

## 34 C.F.R. § 106.45(b)(6)

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10. The Title IX Coordinator will determine if a Title IX hearing is necessary. In making this determination, the Coordinator will consider whether both parties request or consent to a hearing and will agree to participate in a hearing. If it is determined that the district will proceed with a hearing, the complainant and the respondent will be notified in writing of the hearing.

# Determinations of Responsibility (continued)

## 34 C.F.R. § 106.45(b)(3)

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11. Mandatory dismissal *must* occur if it is determined during the investigation that allegations in a formal complaint: (1) did not occur in the district's program or activity; (2) did not constitute sexual harassment as defined, or (3) did not occur against a person within the United States. Both parties must receive written notice of a mandatory dismissal and reasons.
12. Permissive dismissal *may* occur during the investigation or hearing when: (1) complainant notifies the Title IX Coordinator in writing that they would like to withdraw; (2) respondent is no longer enrolled or employed by the district; or (3) specific circumstances prevent the district from gathering evidence sufficient to reach a determination. Both parties must receive written notice of permissive dismissal and reasons.

# Informal Resolutions

## 34 C.F.R. § 106.45(b)(9)

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Informal resolution may include conflict resolution or a restorative agreement between the parties with a trained Title IX Officer presiding over the informal resolution conference. Participation in informal resolution is never mandatory and may only be used:

1. When a formal complaint of sexual harassment is filed;
2. Prior to a Notice of Hearing being issued;
3. When a Title IX Officer determines this is a suitable option for resolving the concern;
4. If the complaint does not involve sexual violence as defined in the Title IX Policy; and
5. When both parties acknowledge receipt of written notice of their rights under this policy, and both parties provide written, voluntary consent to the use of informal resolution.

# Informal Resolutions (continued)

## 34 C.F.R. § 106.45(b)(9)

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Informal resolution is *not* available when the complaint alleges a district employee sexually harassed a student.

Because the outcomes of voluntary resolution conversations are mutually developed and agreed upon by parties involved, an appeal of the process and its result is not permitted. However, either the Complainant or the Respondent may withdraw from informal resolution at any time prior to the entry of a voluntary resolution agreement and proceed with the Title IX hearing. If the parties are unable to agree on a voluntary resolution, the matter will be referred by the Title IX Coordinator to a Title IX Hearing. No offers to resolve the conflict that were made or discussed during the informal voluntary resolution process may be introduced during the Title IX Hearing.

# Title IX Hearing

## 34 C.F.R. § 106.45(b)(7)

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The district has determined that, absent extraordinary circumstances, the hearing process will be conducted through written exchanges, and a live hearing will not be conducted.

Prior to the hearing, the decisionmaker must:

- Read and understand the Title IX Policy and Procedures, which include the hearing process;
- Read and understand all information provided by the Coordinator prior to the Title IX hearing in the hearing packet;
- Have a clear understanding of the incident(s) in question before making a decision;
- Decide the outcome and sanctions if needed based on evidence presented, hearing notes, and district Title IX Policy;
- Maintain copies of all notes, inform parties of decision at the live hearing, and send letter as described in this policy;
- Ensure that parties have had ample time and opportunity to ask questions and obtain responses before the hearing officer renders a decision (live or non-live); and
- Ensure that the determination (decision) includes a statement of and rationale as to each allegation, a determination of responsibility, any disciplinary sanctions, and whether remedies to restore equal access to the district's educational programs or activities will be provided to the complainant.



# Complainant's Rights

## 34 C.F.R. § 106.45(b)

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1. Be given a written explanation of the allegations and the hearing process;
2. Have access to evidentiary material in advance of the hearing;
3. Be present during the entire live hearing or fully aware of the process used in a non-live hearing;
4. Be accompanied by an advisor during the hearing. The advisor is limited to advising the student and may not present the case or make statements during the proceedings. Students should provide the district with the contact information for the student's advisor as soon as practical but at least three (3) calendar days prior to the hearing;
5. Be given a timely live or non-live hearing;
6. Be assured of exclusion of evidence of the victim's past sexual history from discussion during the hearing. The past sexual history of the victim with persons other than the respondent shall be presumed irrelevant;
7. Be permitted to clarify that evidence of a prior consensual dating or sexual relationship between the parties by itself does not imply consent (remember students cannot consent to sexual harassment) or preclude a finding of sexual harassment;
8. Be given written notification of the outcome of the hearing including any sanctions, remedies/accommodations for the complainant, additional remedies for the school community, and any external counseling services that may be available;
9. Be provided written notification of options for changing academic, extracurricular, transportation, school-site, or work-site situations, if reasonable;
10. Be provided written notification of an avenue for appeal.

# Respondent's Rights

## 34 C.F.R. § 106.45(b)

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1. Be given written notice of the allegations and the hearing process;
2. Be given access to evidentiary material in advance of the hearing;
3. Be present during the entire hearing;
4. Have no violation presumed until found responsible;
5. Be given a timely hearing;
6. Be accompanied by an advisor during the hearing. The advisor is limited to advising the student and may not present the case, or make statements during the proceedings. Students should provide the district with the name and contact information for the student's advisor as soon as practical but at least three (3) days prior to the hearing;
7. Be informed that evidence of the victim's past sexual history will be excluded from discussion during the hearing or hearing process. Similarly, the past sexual history of the victim with persons other than the respondent shall be presumed irrelevant;
8. Be provided written notification of the outcome of the hearing including any sanctions, remedies/accommodations for the complainant or respondent, additional remedies for the school community, and external counseling services that may be available;
9. Be provided written notification of options for changing academic, extracurricular, transportation, school-site, or work-site situations, if reasonable; and
10. Be provided written notification of an avenue for appeal.

# Non-live Hearings

## 34 C.F.R. § 106.45(b)(6)(ii)

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Parties involved in non-live hearings will have similar rights and responsibilities, except that the hearing officer will conduct the hearing via written or oral exchanges, and neither the complainant nor the respondent will confront one another; no cross-examination will occur.

However, both parties will be invited to submit questions, receive answers, and present relevant written arguments in connection with the claims and defenses. Parties will have at least 10 days to respond to the receipt of information or documents to which they wish to respond. The investigator's report, all submissions by the parties, the exchange of information, documents and arguments will provide the basis for the hearing officer's decision.

# All Hearings (Live or Non-Live)

## 34 C.F.R. § 106.45(b)(6)

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Witnesses and evidence must be directly related to the claims. Parties will be notified if responses, information or documents are not available because of a privilege (not waived by the party who asserts the privilege) or irrelevant information is involved (e.g., information involving prior sexual behavior or sexual predisposition; attorney-client, doctor-patient, or other privilege bars certain evidence). The standard of proof in Title IX Hearings is preponderance of the evidence, which means the determination to be made is whether it is more likely than not that a violation occurred. This is significantly different from the proof beyond a reasonable doubt standard required for a criminal prosecution.

# Hearing Outcomes

## 34 C.F.R. § 106.45(b)(3)(i)

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If it is determined that the respondent is not responsible for a Sexual Harassment policy violation, the complaint *must* be dismissed.

# Hearing Outcomes (continued)

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Sanctions appropriate where student is found responsible for discrimination:

- Restriction
- Service Project
- Probation
- Suspension

Sanctions appropriate where student is found responsible for sexual harassment:

- Restriction
- Service project
- Probation
- Suspension
- Behavior change requirement

Sanction appropriate where student is found responsible for sexual violence:

- Long-term Suspension

# Appeal Procedures

## 34 C.F.R. § 106.45(b)(8)

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An appeal is not a new hearing but rather a review of the record from the original hearing. It serves as a procedural safeguard for the student or other party. The burden of proof shifts from the district to the party appealing the decision. The appealing party must show one or more of the listed grounds for an appeal.

1. Appeals must be submitted in writing to the Superintendent within five (5) district working/calendar days of receiving the decision. Failure to file an appeal within the prescribed time constitutes a waiver of any right to an appeal.
2. The appeal must cite at least one of the following criteria as the reason for appeal and include supporting argument(s):

# Appeal Procedures—Reasons for Appeal

## 34 C.F.R. § 106.45(b)(8)

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- Procedural irregularity that affected the outcome of the matter.
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter.
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.



# Appeal Procedures (continued)

## 34 C.F.R. § 106.45(b)(8)

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3. The Superintendent will review the record of the original hearing, including documentary evidence. The Superintendent has discretion to convert any sanction imposed to a lesser sanction, to rescind any previous sanction, or to return a recommended sanction to the original hearing officer for review/or reconsideration.
4. The final decision will be communicated in writing by the Superintendent to both parties. The decision will be communicated within ten (10) calendar days of receiving the hearing officer's decision.

# Hearing, Procedural Safeguards

## 34 C.F.R. § 106.45(b)(7)

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- Decisionmaker cannot be the investigator or Title IX Coordinator. Title IX Coordinator may also be the investigator but, cannot be the decisionmaker.<sup>1</sup>
- Must issue written determination addressing:
  - Allegations;
  - Procedural steps taken;
  - Findings of fact;
  - Application of code of conduct to facts;
  - Statement of and rationale for result as to each allegation, including:
    - Determination of responsibility;
    - Any disciplinary sanctions;
    - If remedies to restore or preserve equal access to the educational program/activity will be provided.
  - Right to an appeal.

<sup>1</sup> The commentary to the new Title IX regulations clarifies the investigator and Title IX Coordinator can be the same person: "Section 106.45(b)(7)(i) does not prevent the Title IX Coordinator from serving as the investigator; rather, this provision only prohibits the decision-maker from being the same person as either the Title IX Coordinator or the investigator."

# Reporting Employee Sexual Harassment of Student(s)

## Step 3—Remedial Measures

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- The goal is to stop the sexual harassment, avoid retaliation and, avoid a hostile environment.
- Meet with parent and student who reported misconduct to develop an action plan moving forward. All parties to plan should sign and date.
- Suggested remedial measures:
  - Change class schedules/lockers.
  - Allow student to leave class prior to normal class change times.
  - Provide opportunity to contact parent throughout the school day if needed.
  - Designate individual that the student is comfortable with to report any inappropriate comments or conduct to (i.e. counselor).
  - Conduct daily and/or weekly welfare check-ins with student.

## Contact Information

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John E. Priddy, Esq.  
Rosenstein, Fist & Ringold  
525 South Main, Suite 700  
Tulsa, OK 74103  
(918) 585-9211 (work)  
(918) 261-3498 (cell)  
[johnp@rfrlaw.com](mailto:johnp@rfrlaw.com)

# Title IX Coordinator

## Job Duties Under New Title IX Regulations



### Before the Complaint

- Receive and process reports of sex discrimination. 34 C.F.R. § 106.8(a)
- Receive and process reports of retaliation. 34 C.F.R. § 106.71(a)
- Respond to inquiries about the application of Title IX. 34 C.F.R. § 106.8(b)
- Offer and coordinate effective implementation of supportive measures with or without a formal complaint being filed. 34 C.F.R. § 106.30(a)(3)
- Explain the process of filing a formal complaint to the complainant. 34 C.F.R. § 106.44(a)

### Filing the Complaint

- Receive or sign a qualifying formal complaint alleging sexual harassment. 34 C.F.R. § 106.30(a)
- Provide written notice to known parties including the allegations and resolution process in a timely manner. 34 C.F.R. § 106.45(b)(2)
- Dismiss a formal complaint provided it does not meet the qualifications set out in the statute or if the Complainant notifies in writing that they would like to withdraw the complaint. 34 C.F.R. § 106.45(b)(3)

### Investigation

- The investigator and the Title IX coordinator may be the same individual, however, the decision-maker must be someone other than the investigator or Title IX coordinator. 34 C.F.R. § 106.30(b)(7)
- Create an investigative report that fairly summarizes relevant evidence and send to each party and the party's advisor for their review and response. 34 C.F.R. § 106.30(b)(7)(vii)



**TITLE IX REPORTING FORM**

**Name of Employee:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Time report was received:** \_\_\_\_\_

**Name of person/student who made report:** \_\_\_\_\_

**Name of person/student who is alleged to have been subject to sexual harassment:** \_\_\_\_\_

**Name of person/student who is alleged to have committed the act(s) of sexual harassment:** \_\_\_\_\_

**Details or description of what was reported to the employee:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**All employees who receive a report of sexual harassment must complete this form. A copy shall be immediately provided to the Title IX Coordinator and the employee's supervisor. If the allegations involve child abuse or neglect, the Department of Human Services shall be promptly notified at 1-800-522-3511.**



# Responsibilities and Authority of a Title IX Coordinator

Dr. Robyn Miller, Deputy State Superintendent for Educator Effectiveness and Policy Research  
Oklahoma State Department of Education

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# Federal Lawsuit

May 2015



# Video

- <http://woodtv.com/2015/05/27/hartford-schools-sued-over-alleged-bullying/>

# Scope of Title IX

- Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in education programs and activities in federally funded schools at all levels.

# Scope of Title IX

- If any part of a **school district** or college receives any Federal funds for any purpose, all of the operations of the **district** or college are covered by Title IX.

# Scope of Title IX

## Those Protected –

- \* Students
- \* Employees
- \* Applicants for admission and employment



# Scope of Title IX

## Protection Regardless of –

- \* Sex
- \* Sexual orientation
- \* Gender Identity
- \* Part or Full-time Status
- \* Disability
- \* Race or national origin

# Federal Requirement

All recipients of Federal financial assistance must **designate at least one employee** to coordinate their efforts to comply with and carry out their responsibilities under Title IX and must notify students and employees of that designee's contact information.

# Responsibilities and Authority

## *of a Title IX Coordinator*

- Nondiscriminatory environment
- Recipient's compliance
- Implementation and administration of procedures
- Method of survey
- Training and technical assistance

# Title IX Administrative Requirements

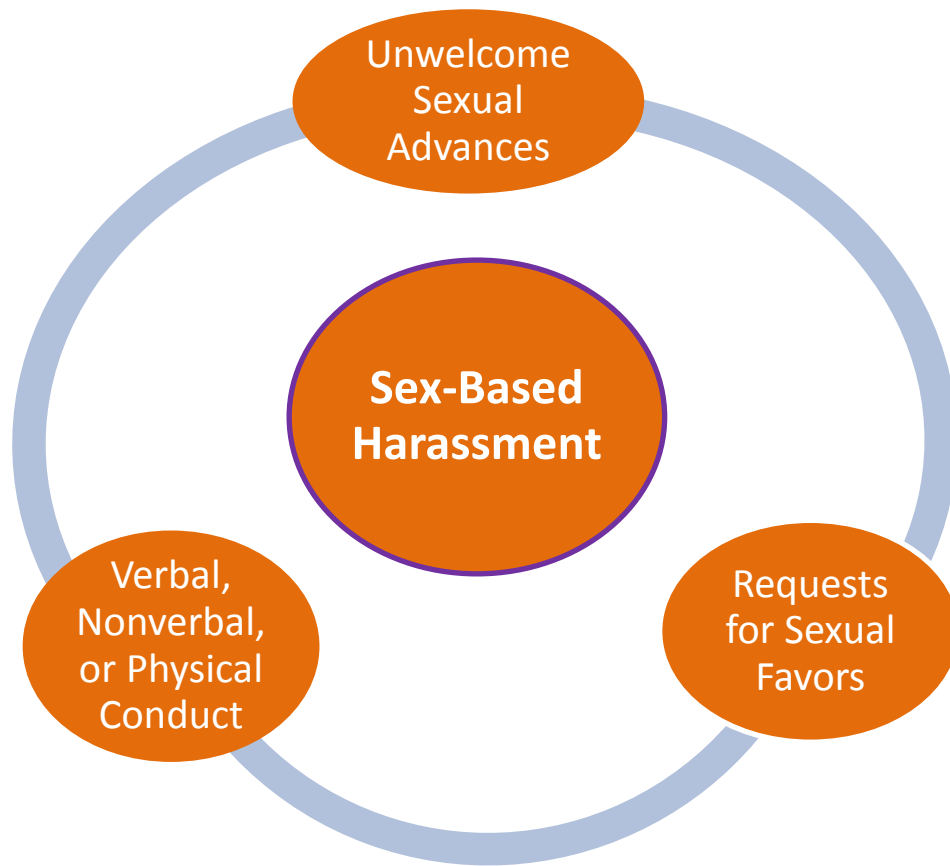
- Grievance Procedures
- Notice of nondiscrimination and contact information





# APPLICATION to ISSUES

- Recruitment, Admissions, Counseling
- Financial Assistance
- Athletics
- Athletic Benefits and Opportunities
- Sex-Based Harassment\*
- Pregnant and Parenting Students
- Discipline
- Single-Sex Education



# Harassment Conduct

- Verbal Acts & Name calling
- Nonverbal: graphic and written statements
- Physical threats that are harmful & humiliating

“HOSTILE ENVIRONMENT”

# Title IX Coordinator

## Accepting and Responding to Complaints

- Training for school community
- Method to survey campus climate
- Confidentiality of reports
- Recordkeeping and Informing
- Recommendations
- Regular review of effectiveness

# IMPORTANT RESOURCES

## ➤ Title IX Resource Guide

*(U.S. Department of Education, Office of Civil Rights, April 2015)*

<http://www.ed.gov/ocr>

✓ *Dear Colleague Letter: Title IX Coordinators (April 24, 2015)*

<http://www.ed.gov/ocr/letters/colleague-201504-title-ix-coordinators.pdf>

✓ *Letter to Title IX Coordinators (April 24, 2015)*

<http://www.ed.gov/ocr/docs/dcl-title-ix-coordinators-letter-201504.pdf>



# Responsibilities and Authority of a Title IX Coordinator

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