




Berkeley Unified School District
District Civil Rights & Compliance Office

Stephen Jimenez-Robb
Title IX Coordinator



Title IX Nondiscrimination and Sexual
Harassment Training - Administrators



Title IX Nondiscrimination and Sexual Harassment

Goal

Gain knowledge about Title IX Nondiscrimination and Sexual Harassment and how to create safe learning environments for students.

Objectives

To be able to...

- Understand law and policy.
- Create a safe learning environment for students.
- Create classrooms that are inclusive and equitable.

Title IX Nondiscrimination and Sexual Harassment

Question:

What is your understanding of Title IX?

Title IX Nondiscrimination

Title IX prohibits discrimination in publicly funded educational institutions based on the following protected characteristics: sex, sexual orientation, gender, gender identity and gender expression.

What this means is that no student cannot be barred from or denied access to any District educational program, service, activity or event based on the above protected characteristics.

Title IX Nondiscrimination

Legal Elements of Discrimination

- Different treatment based on a protected class.
- In the context of an educational program or service.
 - Without a legitimate nondiscriminatory reason.
- Interferes with an individual's ability to participate in, or benefit from, the programs, activities, services or benefits provided by the District.

Title IX Nondiscrimination

Dress Code

Acceptable for students to wear attire that is in alignment with their gender, as long as it adheres to the District's dress code policy.

Activities & Events

No prohibitions on sex, sexual orientation, gender, gender identity, and gender expression.

Title IX Nondiscrimination

Student Discipline/Corrective Actions

All student discipline should be equitable and fair to prevent an over-representation of one sex over another.

Counseling and Guidance

Counseling and guidance should be accepting, fair and gender neutral. Females and males are encouraged to explore all elective and extra-curricular classes and should be encouraged to pursue non-stereotypical career goals.

Title IX Nondiscrimination

Classroom Expectations

- Celebrate diversity
- Inclusive curriculum, themes and topics
 - Integrated activities
 - No opposite-sex challenges
 - No separation of the sexes
 - Gender neutral language

Title IX Nondiscrimination

Physical Education

- Coed instruction
 - Emphasis on skill development
 - No opposite sex challenges
 - Educational rationale for separating the sexes
- No over-representation of one sex over another in enrollment
 - Gender neutral language
- Accepting of gender non-conforming students

Title IX Nondiscrimination

Sports

- Equitable treatment
 - Equitable funding
- Equitable access to facilities and playing fields
- Females and LGBTQ students are encouraged to participate

Sexual Harassment

Sexual harassment is defined as unwelcome conduct of a sexual nature that involves the following:

- Physical touch
- Verbal comments or sounds
- Leering or staring in a suggestive manner
- Written or electronic communications
- Rumor or gossip

Sexual Harassment

Sexual Harassment and the Law

- Federal Law - Title IX Sexual Harassment Regulations
- California Law - Education Code 212.5
- Berkeley Unified School District - Sexual Harassment Policy

Federal Law: Title IX Sexual Harassment

As of August 14, 2020, Sexual Harassment defined under Federal Law

- **Quid Pro Quo** - A district employee conditioning the provision of a district aid, benefit, or service on the student's participation in unwelcome sexual conduct. Or;
- **Hostile Environment** - 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 District's education program or activity. Or;
- **Severe** - Sexual assault, dating violence, domestic violence, or stalking.

California Education Code 212.5

"Sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

- (a) Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.
- (b) Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.
- (c) The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.
- (d) Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

Sexual Harassment

Legal Elements of Sexual Harassment

- Unwelcome conduct
 - Conduct of a sexual nature
- Conduct that is objectively offensive to a reasonable person with similar characteristics
 - Conduct that is severe, persistent or pervasive
- Interferes with the individual's ability to participate in, or benefit from, the programs, services, activities or benefits provided by the District.

Sexual Harassment

Hostile Environment

- Poor school attendance
- Tardy to class
- Drop in academic performance
- Poor class participation
- Dramatic changes in personality (i.e. withdrawn, moody, aggressive)
- Self-harm or harm to others
- No longer interested in or participating in school programs, activities and events.

Sexual Harassment

Filing a Sexual Harassment Complaint

- A student, parent, employee, third party or member of the community may file an informal or formal complaint of sexual harassment.
- It is the responsibility of the school administration or the Title IX Coordinator to inform the complainant of the formal complaint process.
- Sexual harassment complaints defined under California Law are filed under the Uniform Complaint Procedures process.
- Sexual harassment complaints defined under Federal Law are filed under the District's new Federal Law Sexual Harassment complaint form.

Sexual Harassment

Complaint Processes and Timelines

Uniform Complaint Procedures

- 5 days - Acknowledgment Letter
 - 60 days - Letter of Findings
- 30 days - Appeal to the California Department of Education

Sexual Harassment

Complaint Processes and Timelines

Title IX Sexual Harassment Complaint

- 5 days - Acknowledgment Letter
 - 60 days - Letter of Findings
- 10 days - Appeal to the Office of the Superintendent

Sexual Harassment

Complaint Forms

- Located at all schools
- Located at all district offices
- Located at the District Civil Rights & Compliance Office website
- Walk-ins are welcome to fill out a complaint form at the District Civil Rights & Compliance Office located at 2020 Bonar Street.

Sexual Harassment

Filing Complaints: Statute of Limitations

- Sexual harassment complaints, as defined under Federal Law Title IX, are not limited to the six months statute of limitations.
- Sexual harassment complaints, as defined under California Law, *may* adhere to the six months statute of limitations, unless it involves an adult.
- Assembly Bill 218 allows victims of childhood sexual assault another 22 years from the age of majority - or until the age of 40 - to file a civil liability claim.
- Under California Law, claims of sex crimes committed against children on or after January 1, 2017, may commence at any time for criminal liability.

Sexual Harassment

District Jurisdiction

- On-campus programs, activities, and events
- Off-campus programs, events and activities, such as sports, field trips, and prom.
- Lunch
- Students coming to and from school

Sexual Harassment

Exceptions to District Jurisdiction

- The off-campus conduct has a continuing effect on or creates a hostile environment to the target.
- If it is determined that a hostile environment is created as a result of the conduct, the target's complaint shall be investigated and resolved in the same manner as if the conduct occurred on campus.

Sexual Harassment

Employee Responsibilities

- Within one day of witnessing sexual harassment, report the incident to the administration or Title IX Coordinator, regardless of whether the alleged target reports it or files a complaint.
- Intervene to stop the harassment (Ed Code 234.1)
- When students are in distress, faculty and staff should refer them to a counselor or administrator.

Sexual Harassment

Supportive Measures

- Counseling - School counselor and/or outside referral
- Assigned classroom seating
- Mutual restrictions on contact - No Contact Order
- Increased monitoring and supervision
- Increased security
- Course-related adjustments
- Modification of class schedules

Sexual Harassment

Emergency Removal

- District conducts a safety and risk analysis with the accused student.
- District determines if the accused student is an immediate threat to the physical health or safety of any student or students associated with the allegations.
- Emergency removal does not modify the accused student's rights under the Individuals with Disabilities Act (IDEA) or Section 504.
- The accused student is entitled to due process to challenge the decision.

Sexual Harassment

Discipline Measures

- Students in grades 4 - 12 may be suspended and/or expelled from school for sexual harassment pursuant to Ed Code 48900.2.
- Expulsion is recommended for any student, irrespective of grade, who commits sexual assault or battery as defined in the Penal Code.

Sexual Harassment

Best Practices: School-Site Administrators

- Have a school-climate plan in place for day-to-day routines, activities and events.
- Identify areas on campus that require greater supervision.
- Ongoing sexual harassment training for faculty, staff and students.
- Ongoing campaigns on school safety and respectful treatment.
- Ongoing assemblies for students on positive behavior expectations.
- Creating a school culture where everyone knows how to report and to whom to report sexual harassment.

Sexual Harassment

Best Practices: Counselors, Teachers & Staff

- Creating safe and welcoming spaces for students.
- Reinforcing appropriate behaviors.
- Guidance, support and resources for the target and accused.
- Integrating themes of respectful treatment into the curriculum.
- Identifying students with challenging behaviors to the administration.
- Always be on the alert during supervision duties.
- Always report sexual harassment.

Sexual Harassment

Other Forms of Sexual Harassment

- Targeting students who are or perceived as gay.
- Targeting students who don't conform to gender stereotypical norms.
- Targeting students based on their gender, gender identity or gender expression.
- Targeting students whose attire, manner or expression is non-binary or fluid.

Sexual Harassment

Sexual harassment is a symptom of sex discrimination, and occurs when we marginalize individuals or groups as unequal, inferior or unworthy.

Title IX Nondiscrimination/Sexual Harassment

Berkeley Unified School District

District Civil Rights & Compliance Office

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