

TITLE IX TRAINING – ALL STAFF

INTRODUCTION

- Title IX is a federal civil rights law that protects people from discrimination based on sex in education programs that receive federal funding, like SSD.
- Many perceive Title IX to require equal opportunities in sports and other activities offered by schools, but it also prohibits sexual harassment between students, or between school employees and students.
- As it applies to sexual harassment, Title IX law has developed through decisions of the Office for Civil Rights and the courts, because there were no Title IX regulations specific to sexual harassment. THAT HAS NOW CHANGED
- In May, the US Department of Education adopted final regulations specific to sexual harassment in schools.
- These new regulations represent a major change in the way schools must respond to reports of sexual harassment. They require the adoption of policies, a new grievance process, the appointment of several new positions to implement the new grievance process, and staff training. The staff members who will be filling the key positions have already undergone the required more intensive training for their positions.
- I'm here with your HR Director Jayel Hayden, who also serves as your Title IX coordinator, to give you the highlights of the new regs and help you understand your obligations.

GENERAL PRINCIPLES

- New regs are meant to serve some specific goals or principles
- Focus is to provide due process to both the complainant and respondent
 - This means a formal grievance process that is fair to both parties and must be followed before discipline can be imposed
 - Regs provide substantial rights to both parties as far as the exchange of information and evidence
 - The process must be free of bias, and must be neutral as between the complainant and the respondent, between boys and girls and men and women, and must not be impacted by stereotypes.
 - Grievance process must also protect all parties' constitutional right to freedom of speech.

JURISDICTION

- Title IX regs prohibit sexual harassment that happens in a school's education program or activity. Since you all now have an obligation to report sexual harassment for which you have actual knowledge, let's drill further into this:
- For Title IX to apply, the sexual harassment must have occurred
 - in the United States

- In locations, at events or in circumstances where a school exercises substantial control over the context of the harassment and the person committing the harassment.

STAFF REPORTING OBLIGATIONS

- Under the new TIX regs, as with current Oregon law, all K-12 school employees who become aware of conduct which may constitute sexual harassment must immediately report the conduct.
- The district is charged with responding to a report of sexual harassment anytime it has “actual knowledge” that harassment may have occurred.
- The district is presumed to have actual knowledge when an employee personally observes sexual harassment, or is given information that a person may have been victimized by sexual harassment. Any person – a victim, a parent, a friend, a bystander, etc., - can put the school on actual notice.
- Even if you aren’t sure if the conduct is sexual harassment, or whether it is within the district’s jurisdiction, just report the conduct to your principal or the TIX coordinator, and let them do the analysis.

DEFINITIONS

- Under the new Title IX regs, there are three kinds of sexual harassment
- (1) Quid Pro Quo harassment
- (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 district’s education program or activity. *The change here is the use of the conjunctive “and.” Under the prior definition, the unwelcome conduct had to have been so severe, pervasive or is similar to the prior TIX definition but now, it must be pervasive...which means more than one incident of harassment to qualify
- (3) Sexual assault, domestic violence, dating violence and stalking

COMPARISON TO OREGON LAW

- Oregon has its own set of laws addressing sexual harassment in schools, and it still applies. This means the district has to evaluate which law applies and which grievance process to use depending on whether a report of sexual harassment falls under the Title IX definition, or the Oregon definition.
- For purposes of fulfilling your reporting obligation, again, you should err on the side of caution, and report any conduct you become aware of to your principal or the TIX coordinator.

DISTRICT’S RESPONSE TO SEXUAL HARASSMENT

- The District must respond to reports of sexual harassment in a way that is not deliberately indifferent – which means that the response cannot be clearly unreasonable in light of the known circumstances.

- Most important point is to take all reports and complaints of sexual harassment seriously when you learn of them – do not ignore a report and hope that it will resolve on its own.

DISTRICT’S RESPONSE PROCESS

- TIX Coordinator can accept reports of sexual harassment at any time, by any method – mail, telephone, email, or by other verbal or written means.
- Upon receipt of a report, TIX coordinator will:
 - Promptly and confidentially reach out to the complainant to discuss options
 - Discuss the availability of supportive measures, whether or not a formal complaint is filed
 - Discuss the right to file a formal complaint and how to do so
 - Continue to provide and implement supportive measures, including after the grievance process is completed
 - Preserve evidence and information
 - Initiate and supervise the grievance process

SUPPORTIVE MEASURES

- TIX Coordinator will work with the complainant to consider supportive measures which are individualized services or actions designed to restore or preserve equal access to education, protect the safety of the complainant, and to deter sexual harassment.
- They are designed to support the student, and cannot be punitive or disciplinary with respect to the other student or the respondent. They also cannot unreasonably burden the other student.
- Supportive measures must be offered regardless of whether a formal complaint is filed, but the TIX coordinator will consider the complainant’s wishes when deciding upon them.
- They must be offered to a complainant, and they may be offered to the respondent.
- Examples of supportive measures including counseling with the school counselor, extensions of deadlines, other course-related adjustments, schedule or class changes, mutual no-contact restrictions, increased security during passing times, or a combination of all of these.

FORMAL COMPLAINTS

- Formal complaints can be filed by a student victim of sexual harassment, or their parent or legal guardian.
- In some situations, the TIX coordinator can file a formal complaint
- A formal complaint begins the formal grievance process

GRIEVANCE PROCESS

- The grievance process is designed to protect the rights of both the complainant and the respondent
- The District cannot discipline a respondent for sexual harassment without going through the grievance process
- A respondent is entitled to a presumption of innocence, and the district always bears the burden of proving sexual harassment. The standard of proof that SSD will apply is a preponderance of the evidence, which means more evidence than not
- There are potentially five steps in the grievance process:
 - First Step – Title IX coordinator initiates and supervises the process
 - Second Step – Investigator will conduct a fair investigation. Title IX coordinator can serve as the investigator, but in this District, we will try to avoid that when possible.
 - Under this step, all parties have the right to provide evidence, to review the evidence provided by other parties and witnesses, and to respond to that evidence
 - Under this step, the investigator will prepare an investigation report
 - Under this step, each party is entitled to have an advisor of his or her choice present for interviews
 - Third Step – if parties both agree, complaint will be submitted to a facilitator for informal resolution.
 - Fourth Step – Investigation report is submitted to a decision-maker, who cannot be the investigator or the TIX coordinator
 - Under this step, the decision-maker will objectively review the evidence and will make a written determination regarding responsibility.
 - Fifth step – Parties have the right to file an appeal to an appellate decision-maker, who will likely be the superintendent.
 - Appeals are limited to situations in which there is new evidence, claims of bias or conflict of interest by the investigator or decision-maker, or if there was a procedural irregularity.

DISTRICT POLICIES

- The information provided to you today is reflected in new district policies and ARs, which you are expected to be familiar with. They are at GBN/JBA and GBN/JBA-AR.