



Title IX

Gender Equity and Sexual Harassment

Federal Laws

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex, or national origin.

Federal Laws

Equal Pay Act of 1963 (EPA), which protects men and women who perform substantially equal work in the same establishment from **sex-based wage discrimination.**

Federal Laws

Title VI - Enacted as part of the landmark Civil Rights Act of 1964. It prohibits discrimination on the basis of **race, color, and national origin in programs and activities receiving federal financial assistance.**

Federal Laws

Rehabilitation Act - prohibits discrimination on the basis of **disability in programs and activities receiving federal financial assistance.**

TITLE IX

Title IX of the Education Amendments of 1972, 20 U.S.C. § § 1681 *et seq.* (Title IX),

Covers: **sex in education and education employment**

What is Title IX?

*"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 education program or activity receiving Federal financial assistance."*

Who is protected under Title IX?

- Both men and women
- Both staff and students

What institutions are covered by Title IX?

- ❑ Title IX covers any educational institution **receiving any form of federal funding, including guaranteed student loans.**
- ❑ These institutions include local school districts, colleges and universities, charter and for-profit schools.
- ❑ Educational programs offered by non-educational institutions that receive federal funds, such as libraries, prisons, and museums, are also covered.

What educational activities are covered by Title IX?

- Recruitment
- Admissions (to some schools)
- Financial aid/scholarships
- Facilities and housing
- Course offerings and access
- Counseling
- Health insurance benefits and services
- Athletics and other extracurricular activities
- Employment assistance

What is discrimination “on the basis of sex”?

- ❑ Includes pregnancy and related medical conditions
- ❑ Includes gender stereotyping but not sexual orientation

What is “discrimination”?

Intentional decisions to treat students or staff differently because of their sex

- ❑ Does not require hostility or intent to harm; difference in treatment is enough
- ❑ Usually proved by circumstantial, not “smoking gun” evidence

What are examples of “intentional” discrimination?

- ❑ Guidance counselors consistently tell male students about opportunities to take engineering classes, but fail to mention those opportunities to female students.
- ❑ Teachers consistently call on boys more than girls.
- ❑ Recruitment materials feature only girls in child care classes.
- ❑ Administrator refuses to promote a woman because she/he believes she will soon get pregnant and leave.

What is “discrimination”?

Practices that **do not explicitly or intentionally target** girls or boys but that **nonetheless harm** them – called “disparate impact” discrimination

- Question is whether **significantly more members of one sex than the other are affected** by the policy
- If so, question is whether practice is **sufficiently related to the goal** it is supposed to serve

What is “discrimination”?

Retaliation – adverse action taken against an individual because s/he protested discrimination.

Supreme Court held in 2005 that individuals – including **educators and coaches** protesting discrimination against their students -- **can sue** under Title IX to challenge retaliation

What is **retaliation**?

Any form of adverse treatment

For employees, can include:

- Demotion or termination
- Reduction in pay
- Material change in job duties
- Harassment on the job
- Refusal to give positive job references

What is **retaliation**?

Any form of adverse treatment

- For students, can include:
 - Suspension or expulsion
 - Reduction in grades
 - Denial of permission to participate on teams, or change in position on team, amount of playing time, etc.
 - Harassment in class or on the playing field

What is “discrimination”?

Sexual or sex-based harassment

Special Rules: Athletics

Athletics policies promulgated by the OCR have **three basic requirements**:

- ❑ Schools must offer male and female students **equal opportunities to participate** in sports
- ❑ Schools must **allocate scholarship dollars equitably**
- ❑ Schools must **treat male and female athletes fairly** in all aspects of athletics

Special Rules: **Single Sex Programs**

Both the U.S. Constitution and Title IX set **limits** on when single sex programs are permissible.

WHY?

- ❑ **Students are excluded** from programs from which they may benefit based solely on their gender.
- ❑ Single sex programs can reinforce **gender stereotypes** that are harmful to *both* boys and girls
- ❑ Girls have historically received, and will likely continue to receive, **fewer resources and opportunities** in all-female environments.

When are single sex programs **legally permissible?**

Common-sense circumstances:

- Human sexuality classes
- Physical education classes in contact sports
- Choirs for a specific vocal range

When are single sex programs **legally permissible?**

Where they:

- Are **substantially related** to
- An **exceedingly persuasive justification**;
and
- Provide **equal opportunity to the excluded gender**

What is an “**exceedingly persuasive justification**”?

Compensatory purposes – i.e., to overcome **gender-based barriers** that have limited opportunities for students of one gender

What is “substantially related”?

Evaluate fit between means and justifiable ends

What is “equal opportunity for the excluded gender”?

Unless the single sex program is adopted for affirmative action purposes, a school must show that each gender is treated equally in all **tangible** and **intangible** ways.

Special Rules: Pregnancy

BASIC RULES

- ❑ Schools may not discriminate based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from pregnancy
- ❑ Schools must treat students affected by pregnancy and related medical conditions the same as students similarly affected by temporary disabilities

Special Rules: Pregnancy

SPECIAL ARRANGEMENTS

- Schools must allow pregnant students a **leave of absence** and reinstate them upon their return.

Special Rules: **Affirmative Action**

What is affirmative action?

- Measures designed to **ensure equal access to educational opportunities** and to **overcome barriers** that have limited the participation of women and minorities in the past – *not* preferences or quotas.

What kinds of steps are affirmative action?

- ❑ Targeted outreach and recruitment
- ❑ Collecting data on enrollment, retention, graduation and investigating for potential problems
- ❑ Evaluating admissions processes to ensure criteria don't exclude qualified women and minorities
- ❑ Taking race or gender into account in decisionmaking

When can schools take race or gender into account in their decisions?

- ❑ To combat discrimination
- ❑ To promote diversity

Note that affirmative action plans must be carefully structured to ensure they meet applicable legal requirements.

UNIT II: Defining and Addressing **Sexual Harassment**

Harassment /s Discrimination

Harassment includes:

- Sexual harassment
- Gender-based harassment
(name calling, stereotyped remarks)

Sexual harassment is...

- ❑ Conduct of a **sexual nature**;
- ❑ That is **unwanted and unwelcome**; and
- ❑ That **interferes with a student's right** to learn, study, work, achieve, or participate in school activities in a comfortable and supportive atmosphere.

Bullying is:

“overt acts by a student or a group of students directed against another student with the intent to ridicule, harass, humiliate or intimidate the other student while on school grounds, at a school-sponsored activity or on a school bus, which acts are repeated against the same student over time.”

Unlawful sexual harassment can be:

- ❑ Perpetrated by a teacher, student or third party
- ❑ Directed by either gender at the other
- ❑ Directed at a victim of the same gender as the harasser, as long as the harassment is based on sex, not sexual orientation

Unlawful harassment can take place:

- In classrooms
- In hallways
- On campus property
- During extra curricular events
- At sporting events
- In Faculty offices or homes

Unlawful harassment can cause:

- ❑ Physical or emotional injury to victims
- ❑ Disruption of education
- ❑ Damage to a school's reputation
- ❑ Legal liability for a school

Two types of sexual harassment:

- **Quid Pro Quo:** benefits (or penalties) are conditioned on an individual's submission to (or failure to submit to) requests for sexual favors
- **Hostile Environment:** Harassment that does not result in a tangible benefit or penalty but that is sufficiently severe and pervasive to limit the victim's ability to participate in classes, activities, or other aspects of the educational program.

Examples of **hostile environment harassment**

Physical Conduct

- Unwelcome sexual advances
- Unwanted hugs, touches or kisses

Non-Physical Conduct

- Suggestive or lewd remarks or jokes
- Derogatory or pornographic posters, cartoons, screen savers

How can you tell if advances are “unwelcome”?

Put yourself in the position of the alleged harasser and ask:

- Would you want your behavior to **appear on the evening news**?
- Is there a **difference in status or power** between you two?
- Would you behave the same way if a family member were standing next to you?
- Would you want someone else to act this way toward your **spouse or significant other**?

How can you tell when a hostile environment has been created?

Can assess several factors:

- ❑ Severity of conduct
- ❑ Frequency of conduct
- ❑ Relationship and ages of harasser and victim
- ❑ Impact on victim (both subjective and objective)

What should you do about harassment?

- Legal obligation to take steps to prevent harassment and address any harassment that occurs
- Need to *step in before* conduct amounts to unlawful harassment

DON'T WAIT FOR A COMPLAINT

Need to address harassment whenever you become aware of it, whether or not a formal complaint is filed

WHY WOMEN AND MEN DON'T REPORT HARASSMENT

- FEAR OF RETALIATION
- FEAR OF HUMILIATION
- FEAR OF BEING LABELED A TROUBLE MAKER
- ADVISED: IGNORE IT, IT WILL GO AWAY
- DENIAL: YOU'RE OVER REACTING
- TOLD THEY SHOULD BE FLATTERED BY IT
- BLAMED FOR HIS OR HER BEHAVIOR
- FEAR OF BEING OSTRACIZED
- REACTIONS OF HUSBANDS/WIVES OR FRIENDS
- FEAR OF CAREER DAMAGE
- FEAR OF JOB LOSS
- UNAWARE OF RIGHTS

LOOK FOR CUES IN THE ENVIRONMENT

- The following are examples of cues in the educational environment that signal that sexual harassment **may exist** or that **the potential** for sexual harassment **is high**.

CUES IN THE ENVIRONMENT

- ❑ Changes in **student's level of participation** in class or school activity
- ❑ High level of **intoxication** at student/ faculty gatherings
- ❑ Student or employee **avoidance of supervisor, faculty/ co-worker**, or other student(s).
- ❑ Pervasive **display of sexually explicit or graphic material** in offices or public spaces
- ❑ Sexually explicit or gender-based **jokes** at faculty or employee gathering places.

CUES IN THE ENVIRONMENT

- Appearance of **sexual graffiti** on desks, walls, lavatory walls, etc.
- **Recurring disciplinary problems**, e.g. the same students identified as “bothering” females.

What should you have in place to **prevent harassment?**

GRIEVANCE PROCESS

- ❑ Description of **steps of process**
- ❑ Identification of **staff responsible** for each step of process
- ❑ **Time frames** for each step of process
- ❑ Assurance that parties will be **informed of the outcome**

ELEMENTS OF A GOOD ANTI-HARASSMENT POLICY

- States school's commitment against harassment
- Defines types of harassment prohibited
- Includes examples of behaviors
- States where behaviors are prohibited
- Identifies process for submitting and investigating complaints
- Specifies that District will take action to stop and prevent
- States who handles complaints and how she/he can be reached
- Requires staff to report harassment
- Prohibits retaliation
- Confidentiality for complainant
- Where and how records are kept and how complainant will be informed of outcome
- How and when policy will be publicized

GOOD POLICIES ALONE ARE NOT ENOUGH

2001 American Association of University Women (AAUW) Study shows understanding has grown:

96% of students understood sexual harassment

69% said their schools had harassment policies

36% said their schools

distribute handouts on harassment but incidence of harassment is still too common:

81% of students have experienced it

Six in ten students experience physical harassment

38% report that teachers and school employees harass students

WHAT SHOULD YOU DO?

- Take the report seriously.
- Listen, sympathize, but don't judge.
- Don't delay.
- Forward the report to your Title IX Coordinator

Stipulations

1. College/University recipients of federal financial aid must designate at least one employee as the Title IX coordinator to oversee compliance efforts and investigate any complaints of sex discrimination.

Although at least one employee

is required to be designated to coordinate compliance with Title IX, it is the shared responsibility of each College, from top-level administration to individual staff, to foster compliance.

Stipulations

2. All students and employees must be notified of the names, office address(es), and telephone number(s) of the designated coordinator(s) of Title IX.

Who is YOUR Title IX Coordinator?

Stipulations

3. Grievance procedures and nondiscrimination policies must be made public.