




Title IX Decision-Maker Training

K12 School Districts
2022-2023

Downtown Prep
June 9, 2023



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Importance of Title IX in Today's K12 Schools

Overview



- Sexual violence, harassment and assault
- K12 school climate concerns
- Evolution of Title IX Law
- Intersection of federal law, state law, and other binding and non-binding guidance
- Current Title IX regulations
- Important role of Title IX Coordinator and other key Title IX roles on campus
- Practical application

Statistics on Sexual Assault

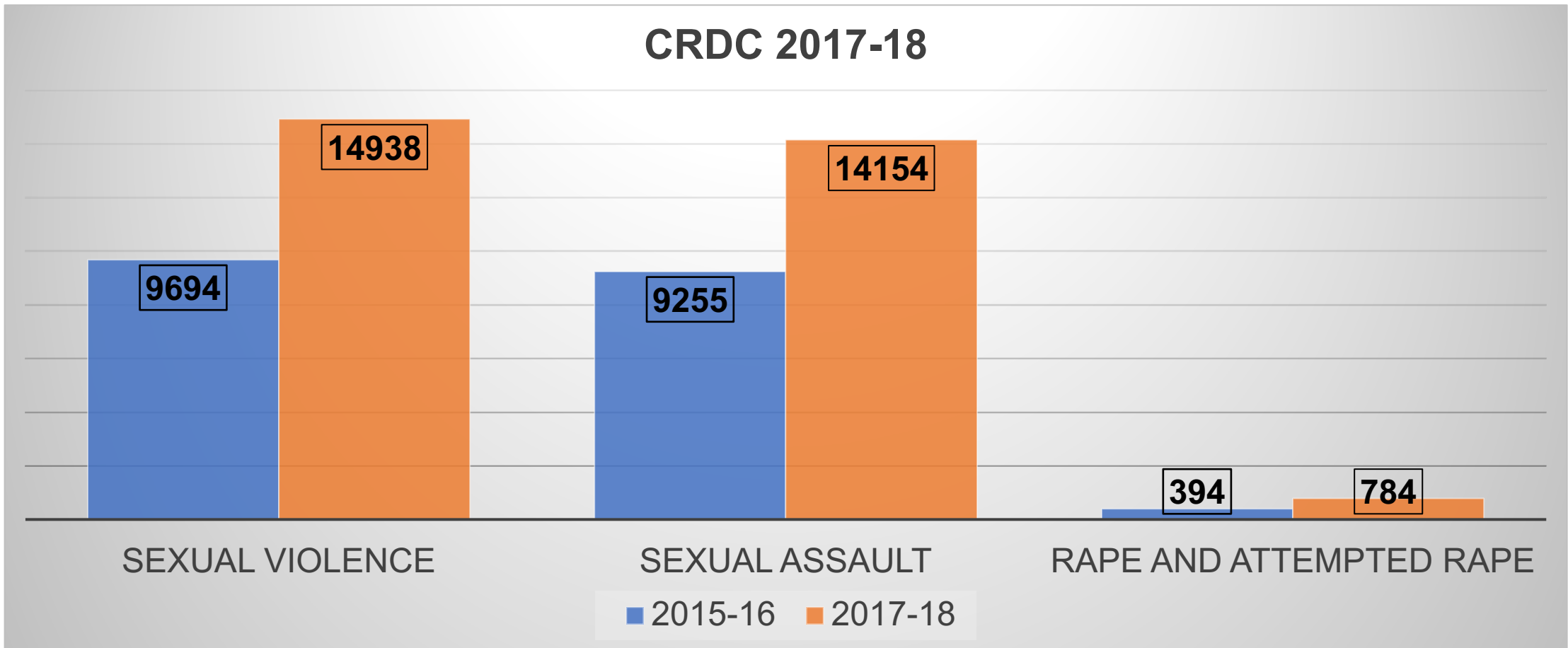


- Somewhere in America, a woman is raped every 2 minutes.
- National surveys of adults suggest that between 9-32% of women and 5-10% of men report that they were victims of sexual abuse and/or assault during their childhood.
- 22% of victims were younger than age 12 when they were first raped, and 32% were between the ages of 12 and 17.
- The majority of male and female rape victims knew their perpetrator.
- Of surveyed college women, about 90% of rape and sexual assault victims knew their attacker prior to the assault.

Sexual Violence in Public K12 Schools



CRDC 2017-18



Student Activism and Climate Issues



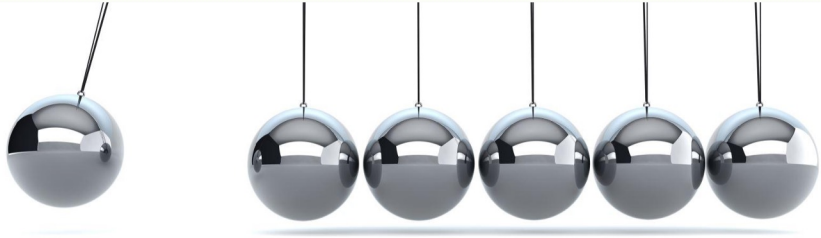
- Walk-outs
- Instagram postings with accusations of sexual violence and allegations of school inaction
- Rape culture
- Harassment against students accused of wrongdoing
- College outreach to school districts

- Influenced by COVID, accusations of rape culture, social media postings



Title IX Law and Regulation

Title IX Guidance



- Law
- Regulations
- Other sources of mandatory and recommended guidance
 - Case law
 - Advocacy
 - Best Practices



- Federal law passed in 1972
- 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.
 - Prohibits sex discrimination and sexual harassment
- Enforced through the Department of Education, Office for Civil Rights (OCR)

TITLE IX LAW & REGULATION TIMELINE



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Title IX Regulatory Guidance



- Regulations 2001
- Dear Colleague Letters
 - 2011 Dear Colleague Letter: Sexual Violence, Background, Summary and Fast Facts
 - 2014 Questions and Answers on Title IX and Sexual Violence
 - 2015 Dear Colleague Letter on Title IX Coordinators
 - 2016 Dear Colleague Letter on Transgender Students
 - 2017 Questions and Answers on Sexual Misconduct
- Regulations 2020
 - March 8, 2022 - Executive Order on Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals
- New regulations will be released in October 2023

Title IX Regulatory Guidance - Resolution Agreements



- Following a report of sexual harassment to the Office for Civil Rights (OCR)
- OCR initiates an investigation
- OCR may seek an informal resolution
- Negotiated agreement is set forth in a resolution agreement
- OCR may impose fines and penalties against a school if resolution not reached

Title IX Case Law



- Title IX protects against student sexual harassment
 - Gebser v. Lago Vista Independent School District (1998)
 - Davis v. Monroe County Board of Education (1999)
- Litigation
- State law addressing controversial topics related to Title IX enforcement
 - Hearings
 - Transgender rights

Best Practices



- Various guidance documents from Office for Civil Rights
- Legal obligations
- Advocacy groups
- Adopting practices
 - Trauma informed practices
 - Incorporate school culture
 - Reflect needs of your campus





Title IX Obligations for K12 School Districts

Title IX Covers



Sex
Discrimination

Sexual
Harassment

Sexual Assault

Athletics

Pregnant
Students

Recruitment
Admissions
Programs

Legal Obligation

- Educational institution must respond in a manner that is not **deliberately indifferent** when it has actual knowledge of sexual harassment occurring in the institution's education program or activity against a person in the United States.



Actual Knowledge of Sexual Harassment



- When sexual harassment or allegations of sexual harassment come to the attention of **ANY EMPLOYEE** of a K-12 district, all employees **MUST** report to the **TITLE IX COORDINATOR**
- Failure to report could lead to an inadequate response
 - Proof of deliberate indifference
 - Legal responsibility for sexual harassment



In order for Title IX to apply, the behavior must occur in the school’s “education program or activity,” further defined as:

includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

Off-campus activities covered if one (1) of three (3) requirements are met:

1. the off-campus incident occurs as part of the school’s operations;
2. the school exercised substantial control over the respondent and the context of alleged sexual harassment that occurred; or
3. the incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially recognized by a college



- A licensed mental health professional at the school can maintain confidentiality.
- All other employees are required to report the matter to the Title IX Coordinator.
 - Title IX Coordinator is responsible for ensuring a proper response
- Failure to report to the Title IX Coordinator could lead to an inadequate response by the school and could be used to demonstrate deliberate indifference.
- In instances of potential sexual harassment, employees cannot offer to keep the matter confidential and must contact the Title IX Coordinator.



Title IX Sexual Harassment

Title IX (TIX) Definition of Sexual Harassment



Defined conduct on the basis of sex and includes:

- Quid pro quo harassment
- Hostile environment harassment
- Sexual assault
- Dating/domestic violence
- Stalking



Defines conduct “on the basis of sex” and includes:

- Quid pro quo - An employee of the school conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct;
- Hostile environment - 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;



The definition includes:

- **Sexual Assault** means any sexual act directed against a Complainant without consent. Sexual Assault includes fondling, incest, rape, sexual assault with an object, sodomy, and statutory rape.
- **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.



- **Domestic violence** includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim
 - It includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior,
 - By a person who— (A) is a current or former spouse or intimate partner of the victim; (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (C) shares a child in common with the victim; or (D) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.



- **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
 - fear for his or her safety or the safety of others; or
 - suffer substantial emotional distress.



Question of Consent



- Age of consent
- Affirmative consent laws
- Important elements of consent
 - Freely given
 - Ongoing
 - Manifested



- Questions and evidence about a complainant's prior sexual behavior are prohibited unless:
 - Offered to prove that someone other than the respondent committed the alleged misconduct, or
 - Offered to prove consent.



Role and Responsibility of Title IX Decision-Maker in Title IX Grievance Process

Title IX – Parties and Administrators



Parties

- Complainant – alleged victim/survivor
- Respondent – responds to the allegation(s)

Administration of Claims

- Title IX Coordinator
- Title IX Investigator
- Title IX Decision-maker
- Title IX Appeal Officer
- Title IX Advisor
- Title IX Informal Resolution Officer

Overview of Title IX Grievance Process (TIXGP)



- Respond promptly in a manner that is not deliberately indifferent
- Due process and fundamentally fair procedures to adjudicate the allegations
- Upon notification, supportive measures offered
 - Emergency removal
- Offer of formal process
 - Complainant files or Title IX Coordinator may file
- Both parties receive notice of the allegations
- Both parties participate in investigation and can inspect information gathered
- Separate decision-maker(s)
- Completed in a prompt time-frame
- Retaliation prohibited - define the retaliation complaint process

TIXGP: Separate Investigator and Decision-Makers



- Title IX Coordinator may serve as investigator
- Title IX Coordinator may NOT serve as decision-maker to determine policy violation and discipline
- Hearing panels permitted for K-12s but not required



Investigator Role



- Conducts investigation
- Provides all information collected to both parties
- Examines the requests/additional information/potential questions presented by the parties
- Completes a Title IX investigation report
- Provides the report to the parties
- Receives additional questions from parties
- Forwards the report and additional questions to decision-maker

Decision-Maker Role



- Review all evidence
- Issues decision relying on relevant, credible evidence
 - Policy violation – using policy definitions
 - Sanction/Discipline, if violation found
- Advises of appeal rights

- Can be more than one decision-maker
- Can never be Title IX Coordinator, Investigator, Appeal Officer

- **REVIEWS ALL EVIDENCE, DECIDES WHAT IS DISPUTE, (RE)EXAMINES THE DISPUTES, AND IN THE CONCLUSION, APPLIES THE STANDARD OF PROOF TO FACTS TO REACH A CONCLUSION ON POLICY VIOLATION AND DISCIPLINE**

Selecting Decision-Maker



- Attorney required – NO
- Training required – YES
- Understanding policy – YES

- Considerations in selection:
 - Willingness to serve
 - Objective and unbiased
 - Ability to connect with employees/students
 - Confidentiality
 - Reflective of campus
 - Diversity



Review the Title IX Investigation Process Flow Chart

Overview of Grievance Process



Initial complaint – Title IX Coordinator

TIXGP: Jurisdiction Defined

Occurring in the institution's
education program or activity

- includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred

Against a person in the United
States





Mandatory dismissal

- Would not constitute sexual harassment as defined in regulations
- Did not occur in education program or activity
- Did not occur against a person in the U.S.

Permissive dismissal

- Complainant notifies Title IX Coordinator in writing that Complainant would like to withdraw formal complaint or allegations
- Respondent is no longer enrolled or employed by school district
- Specific circumstances prevent the school district from gathering evidence sufficient to reach a determination

TIXGP: Investigation



- Investigation gathers relevant and irrelevant information
- All information must be shared with both parties
- Parties have ability to review investigation report and outcome, provide comments/written questions and provide answers and limited follow-up

TIXGP: Burden of Proof



- Preponderance of the evidence
- Clear and convincing





- Decision-maker provides the parties with the opportunity to send questions or comments
 - 10 days to respond
- Decision-maker must determine:
 - Policy violation
 - Discipline
- Decision-maker issues an outcome letter to the parties
- In K-12, discipline decisions against students with disabilities may require a manifestation determination
 - A **Manifestation Determination** is a process, required by the Individuals With Disabilities Education Act (IDEA 2004), which is conducted when considering the exclusion of a student with a disability that constitutes a change of placement



Procedural irregularity in the Title IX grievance process affected the outcome;

Newly discovered evidence that was not reasonably available at the time of the determination of responsibility or dismissal that could affect the outcome;
or

Due to a bias or conflict of interest by the Title IX Coordinator, investigator, or decision-maker that affected the outcome.



Decision-Maker Outreach to Parties

Decision-Maker Steps



- Receipt of final investigation report
 - *Is it finalized?*
- Outreach to parties to determine if follow-up questions are requested
 - Some discretion about submitting
 - Limited follow-up – facilitated cross-examination
 - Articulate and document decisions restricting this process
- Decision-maker discretion regarding about what follow-up is necessary
 - Decision-maker can ALSO conduct follow-up
- Outreach to parties with follow-up, as designated by decision-maker
- Conclusion and outcome letter

Weighing and Challenging Evidence



- Authentication
- Relevance
- Credibility



- RELEVANCE – Applying to the matter in question; affording something to the purpose (Black’s Law Dictionary)
- NOT permitted:
 - Sexual history of Complainant (see Rape Shield exception)
 - Privileged communications
 - Medical documentation
- Not repetitive



- Corroboration
- Feasibility
- Motivation for truthfulness/untruthfulness
- Consistent
- Reviewed/coached



Outcome Letter

Final Decision Requirements



Decision-maker must issue a written determination regarding responsibility that has to include

- Findings of fact
- Conclusions as to all allegations
- Rationale for reaching the decision
- Sanctions if the respondent is found responsible for policy violations must be included in the written determination.
- Right to appeal

Others to consider:

- Allegations and Procedural Steps
- Categories that highlight compliance with state law

Articulating Your Conclusion in Report



- As to the allegation that _____, I find by a [preponderance of the evidence/clear and convincing standard] that _____.
 - Address each allegation
 - Reasons why evidence supports the conclusion
 - Address disputed evidence
 - Details any questions raised by parties after reviewing report
- As a result of these determinations of responsibility, disciplinary sanctions will be imposed on Respondent. Specifically,
 - Insert here what discipline will be imposed on Respondent, if any.
- Additionally, remedies designed to restore/preserve equal access to the school's educational program or activity will be provided to Complainant and coordinated by the Title IX Coordinator.
 - No requirement to specify what those remedies are under Title IX.

Allegation of Hostile Environment Sexual Harassment under Title IX



Allegation: [pull directly from Notice of Allegations Letter]

DEFINITION: unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectionably offensive that it effectively denies a person equal access to the school's education program or activity.

As to the allegation that _____, I find by a preponderance of the evidence/clear and convincing standard that _____.



- **As to the allegation that _____, I find by a preponderance of the evidence that _____.**
- CA DEFINITION: unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature made against in the educational setting, under any of the following conditions:
 - The conduct has the purpose or effect of having a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment
(definition abbreviated)



Other Title IX Obligations and Considerations

Conflicts of Interest



Relationship
to parties or
witnesses

Professional
conflicts

Personal
conflicts

Actual and
perceived

Impartiality



- Be neutral – neither pro-Complainant nor pro-Respondent
- Consider the evidence as presented
- Maintain open mind as to the potential conclusions



Stereotypes

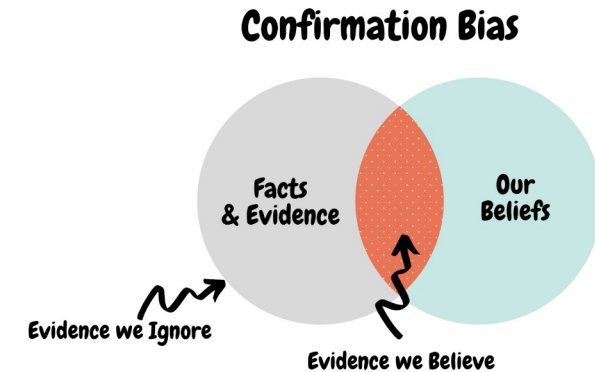


- “A fixed, over generalized belief about a particular group or class of people.”
(Cardwell, 1996)
- Stereotypes around sexual assault
- Stereotypes around sexual harassment
- Complainant and Respondent





- Conscious/Explicit
 - Discriminatory intent
 - Stated preferences
- Unconscious/Implicit
 - For the most part, most people are unaware of these drivers
 - Developed over a period time and can influence many factors in hearing
 - Short cuts developed by the brain often play a role in:
 - Immediate response to conflict
 - Often mimics fear responses





- Many Title IX causes of action involve trauma
- Title IX Coordinators should understand the impact of trauma on:
 - Reaction to trauma
 - Ability to capture memories
 - Recollection of memories
- Expectations around trauma victim



Thank You!

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