

FRANCZEK WEBINAR

The Road to Compliance

Essentials for K-12 Schools Under the New Title IX

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www.titleXinsights.com



Amy Dickerson

akd@franczek.com

[@AmyKDickerson](https://twitter.com/AmyKDickerson)



Emily Tulloch

et@franczek.com

[@EmilyMTulloch](https://twitter.com/EmilyMTulloch)



Jackie Wernz

jw@franczek.com

[@JackieWernz](https://twitter.com/JackieWernz)



THE HILL

New Title IX regulations give expanded rights to those accused of sexual assault on campus |...



IHE Inside Higher Ed

New Title IX regulation sets location-based boundaries for sexual harassment...



FOX NEWS

Department of Education releases new Title IX regulations



A “Sign” of Things to Come: Title IX Coordinators and

About this Blog

The Title IX team at
Florida State University

https://bit.ly/Franczek_TitleIX_MayWebinar





New Title IX Rules – in a nutshell



A school board can violate Title IX when there is “sexual harassment”



Occurring in the U.S.



And the school has “substantial control” over the context of the harassment and the harasser



If an official of the school district who has authority to institute corrective measures on the district’s behalf



Has actual notice of the misconduct



And the school is deliberately indifferent

“clearly unreasonable in light of the known circumstances”



Sexual Harassment

- Employee quid pro quo
- Hostile environment (newly defined)
- Clery/VAWA "Big 4"

Hostile Environment

- Unwelcome conduct
- Determined by a reasonable person
- To be so severe, pervasive, and objectively offensive that it effectively denies a person's equal access to the recipient's education program or activity

Hypothetical (OCR 2010 Guidance)

Shortly after enrolling at a new high school, a female student had a brief romance with another student. After the couple broke up, other male and female students began routinely calling the new student sexually charged names, spreading rumors about her sexual behavior, and sending her threatening text messages and e-mails. One of the student's teachers and an athletic coach witnessed the name calling and heard the rumors, but identified it as "hazing" that new students often experience. They also noticed the new student's anxiety and declining class participation. The school attempted to resolve the situation by requiring the student to work the problem out directly with her harassers.

What if the students also made comments based on race, color, nationality, or disability?

What must a school district do to respond?

A recipient with actual knowledge of sexual harassment in an education program or activity against a person in the United States must respond promptly and in a manner that is not deliberately indifferent.

Title IX: The Road to Compliance





Who do we need to get this done by August 14?



Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

Describe your role

Board Member

Superintendent

Business/Finance Office

Human Resources

Student Services

Legal Counsel

Building Administrator

Who do we need to get this done by August 14?

- **Board**
- **Superintendent**
- **Other District-Level Administrators**
- **Building-Level Administrators**
- **Committees**
- **Administrative Staff**





Key Roles

Title IX Administrators



Title IX Coordinator

- Must be called Title IX Coordinator
- Must be designated + “authorized” to coordinate compliance efforts
- Must meet with alleged victims of sexual harassment covered by the new Title IX regulations



Investigator(s)

- Consider your actual practices, including for non-Title IX matters
- Can be the Title IX Coordinator



Decisionmaker(s) (Complaint)

- Cannot be the Title IX Coordinator or the investigator(s)



Decisionmaker(s) (Appeal)

- Cannot be the Title IX Coordinator or the investigator(s) or the decisionmaker (complaint)



Informal Resolution Facilitators

- Cannot be the Title IX Coordinator or investigator(s) or decisionmakers (complaint and app)



Hypothetical #1

- Small school district
- Few administrators

Hypothetical #1 (One Answer)

- Administrator #1 – Title IX Coordinator
- Administrator #1 – Investigator
- Administrator #2 – Decisionmaker (Complaint)
- Board of Education – Decisionmaker (Appeal)

*concerns: appearance of conflict/bias (consider parties involved); board involvement

Who handles informal facilitated resolution?

External Resources/Options

- Investigators
- Appeal Decisionmakers
- Informal resolution facilitators

Franczek Title IX Toolkit

<https://www.franczek.com/practices/k-12-education/title-ix/>

Hypothetical #1 (Another Answer)

- Administrator #1 – Title IX Coordinator
- Outside Investigator
- Administrator #2 – Decisionmaker (Complaint) with some involvement by Board of Education on Discipline
- Outside Appellate Review

*although not a concern with this setup, always consider appearance of conflict/bias when choosing team members for a specific case



Hypothetical #2

- Large unit school district
- Multiple buildings

Hypothetical #2 (One Example)

- District Administrator #1 – Title IX Coordinator (consider deputies)
- District or Building Administrators #2, 3, 4, etc. – Investigator(s)
- Superintendent – Decisionmaker (Complaint)
- Board of Education – Decisionmaker (Appeal)

*concerns: board involvement

*although not a concern with this setup, always consider appearance of conflict/bias when choosing team members for a specific case

Hypothetical #2 (One Example)

- District Administrator #1 – Title IX Coordinator (consider deputies)
- District or Building Administrators #2, 3, 4, etc. – Investigator(s)
- Superintendent – Decisionmaker (Complaint) with some involvement by Board of Education on Discipline
- Outside Appellate Review

*although not a concern with this setup, always consider appearance of conflict/bias when choosing team members for a specific case

“Officials with
Authority”

“Officials with Authority”

1. Title IX Coordinator
2. All K-12
“employees”
3. Any other officials
who have been
given authority to
institute corrective
measures by the
school district

“Actual Knowledge”

OLD RULE (OCR Guidance)

A school has a responsibility to respond promptly and effectively if a school **knows or should have known** about sexual harassment

NEW RULE (Final Rule)

A school with **actual knowledge** of sexual harassment in a program or activity against a person in the United States must respond promptly and in a manner that is not deliberately indifferent

P **O** **L** **I** **C** **Y**





One Policy or Two?

Considerations

- Campus climate and culture
- Ease/difficulty of implementation
- Burdens imposed by the rules and associated resources

Our district subscribes to a policy service (e.g., IASB PRESS for Illinois)

Yes

No

I don't
know

Policy Timing

- For policy service providers policies will not be released until later this summer (early August for PRESS)
- For others, policies will need to be created
- All policies must be customized

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Training

A large, empty room with rows of white chairs and a screen displaying the word 'Training'. The chairs are arranged in a grid pattern, and the screen is at the front of the room. The room has a dark, perforated wall and a light-colored floor.

**Coordinators,
Investigators,
Decisionmakers,
Informal
Resolution
Facilitators**

- Definition of sexual harassment
- Scope of recipient's education program or activity
- How to conduct investigation and grievance procedures
- How to serve impartially, including by avoiding prejudgment, conflicts of interest, and bias

Decisionmakers

- Any technology to be used at a live hearing, if live hearings will be offered
- Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant

Investigators

- Issues of relevance to create an investigation report that fairly summarizes relevant evidence

**Title IX
Coordinator,
K-12
“Employees,”
and “Officials
with Authority”**

- Identifying “sexual harassment”
- Duty to report to Title Coordinator

Questions?

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Amy Dickerson

akd@franczek.com

[@AmyKDickerson](https://www.instagram.com/AmyKDickerson)



Emily Tulloch

et@franczek.com

[@EmilyMTulloch](https://www.instagram.com/EmilyMTulloch)



Jackie Wernz

jw@franczek.com

[@JackieWernz](https://www.instagram.com/JackieWernz)