

Title IX and Mandatory Reporting: What School Employees Need to know



Overview of Title IX

- What is Title IX?
 - “No person in the United States shall, on the basis of sex, be excluded from participation in, denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”
 - What does “sex” mean?
 - Male/Female (biological sex)
 - Gender (identity)
 - Stereotyping
 - Sexual orientation
 - “Sex” as a verb (i.e. sexual assault)



➤ **New Rules – How They Came to Be**

- Effective August 14, 2020
- Most comments ever submitted for a proposed rulemaking
- An attempt to bring balance to Title IX responses (mostly at college campuses)
- Any formal reversal would take at least 1 year
- Effective **August 1, 2024**, there are changes to the roles on school teams, and stricter definitions of actual knowledge and deliberate indifference



Who Must Comply?

“Recipients” of federal funds,
including districts and charter schools

Ascend College Prep! 😊



New Requirements

- Roles (Title IX Personnel)
 - **Title IX Coordinator**
 - Investigates all Title IX complaints
 - **Appeals Body/Officer**
 - Cannot be the Coordinator
 - May want to consider a back-up
 - **Informal Resolution Facilitator**
 - Must be trained/competent in resolving disputes



Types of Interactions that Could be Covered

- Student/Student
 - Employee/Student
 - Employee/Employee
-
- Could be applicants for enrollment or employment
 - Not exhaustive, but most commonly



Procedures/Processes

- Concerns/Reports
- Informal Complaints
- Formal Complaints
- Investigation
- Decision-making
- Appeals
- Or Informal Resolution



The School can be found liable if it has “actual knowledge” of a Title IX violation and fails to act accordingly.

“Actual Knowledge” means any employee notified of a violation is imputed to the School. So reporting is necessary for all employees.



Important to note that employee’s still have an independent obligation to report child abuse - so even if they’ve reported for Title IX purposes, that doesn’t cover them as a mandatory reporter (if warranted).

ALSO, it is an employee’s responsibility to report any and all concerns or claims, and not investigate to determine any facts.

What is "Sexual Harassment"?

- Quid Pro Quo. An employee of the school conditioning the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct.
- Unwelcome Conduct: effectively denies a person equal access to the recipient's education program or activity.
 - Examples: unwelcome or unlawful sexual advances, sexual touching, comments, jokes, depictions, stories, etc. Must be based on sex (see definition).
- Sexual assault, dating violence, domestic violence, or stalking



What is the Scope of a School's Educational Program or Activities?

- On school property, including vehicles
- School sanctioned events
- School exercises “substantial control” over both the respondent and the context in which the sexual harassment occurs



What is "Sexual Harassment"?

- Sexual Assault, Dating Violence, Domestic Violence, and Stalking.
 - Not evaluated for severity, pervasiveness, offensiveness, or denial of equal education, because such misconduct is sufficiently serious to deprive a person of equal access.
 - But it is evaluated for Scope of School's Educational Program or Activities



▶ The School's Responsibility

- Respond promptly when actual knowledge of allegations is received
- Response can't be deliberately indifferent, i.e. "clearly unreasonable in light of the known circumstances"
 - Take action to protect parties
 - Investigate
 - Inform law enforcement
 - No retaliation
 - Take appropriate remedial action, including discipline
 - Take steps to stop the offenses in the future

Retaliation

- No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX . . . or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing . . .
- Charging an individual with code of conduct violations that do not involve sexual harassment but arise out of the same facts or circumstances as a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX constitutes retaliation.



Who Can File a Report or Informal Complaint?

- Any person at any time – cannot be ignored

Who is required to file or forward a report?

- All school employees when they observe, hear about, or have any notice of sexual harassment or allegations of sexual harassment.

FORWARD CONCERNS OR COMPLAINTS TO
THE TITLE IX COORDINATOR [Jenny Minor]



“Supportive Measures”

- Individuals going through the process are afforded “supportive measures”
- Non-punitive individualized services offered as appropriate and without charge to a complainant or a respondent
- Must be designed to preserve educational access without unreasonably burdening the other party
 - Schedule changes
 - Class changes
 - Course modifications
 - Counseling resources
 - Deadline extensions for assignments
 - Mutual restrictions on contact
 - Monitoring/supervision
 - Online Learning
 - Other



Confidentiality

- Must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator, any respondent, and any witness except as:
 - Permitted by FERPA
 - Required by law
 - Or to carry out the purposes of Title IX



Mandatory Reporter: The Law

- The Law
 - “...any person specified in subsection (2) of this section who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions that would reasonably result in abuse or neglect shall immediately upon receiving such information report or cause a report to be made of such fact to the county department, the local law enforcement agency, or through the child abuse reporting hotline system.”

Mandatory Reporter: Who?

- Who are mandatory reporters?
 - Over 40 professions including "...Public or private school official or employee.."

Mandatory Reporter: The Law

- The Law
 - The reporting requirement does not apply if the person who is otherwise required to report does not:
 - Learn of the suspected abuse or neglect until after the alleged victim of the suspected abuse or neglect is eighteen years of age or older; and
 - Have reasonable cause to know or suspect that the perpetrator of the suspected abuse or neglect:
 - Has subjected any other child currently under eighteen years of age to abuse or neglect or to circumstances or conditions that would likely result in abuse or neglect; or
 - Is currently in a position of trust with regard to any child currently under eighteen years of age.

Mandatory Reporter: Legal Definition of Child Abuse/Neglect

- A child is neglected or dependent if (parent = legal guardian or custodian):
 - A parent has abandoned the child or has subjected him or her to mistreatment or abuse or a parent has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring;
 - The child lacks proper parental care through the actions or omissions of the parent;
 - The child's environment is injurious to his or her welfare;
 - A parent fails or refuses to provide the child with proper or necessary subsistence, education, medical care, or any other care necessary for his or her health, guidance, or well-being;
 - The child has run away or is not domiciled with his or her parent;
 - The child is born affected by alcohol or substance exposure, except when taken as prescribed or recommended and monitored by a licensed health care provider, and the newborn child's health or welfare is threatened by substance use.

Mandatory Reporter: Legal Definition of Child Abuse/Neglect

“Abuse” or “child abuse or neglect” means an act or omission in one of the following categories that threatens the health or welfare of a child:

- Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, or death and either: Such condition or death is not justifiably explained, the history given concerning such condition is at variance with the degree or type of such condition or death, or the circumstances indicate that such condition may not be the product of an accidental occurrence;
- Any case in which a child is subjected to unlawful sexual behavior;
- Any case in which a child is in need of services because the child's parent, legal guardian, or custodian fails to take the same actions to provide adequate food, clothing, shelter, medical care, or supervision that a prudent parent would take. (Religious exceptions)
- Any case in which a child is subjected to emotional abuse, meaning an identifiable and substantial impairment of the child's intellectual or psychological functioning or development or a substantial risk of impairment of the child's intellectual or psychological functioning or development.
- Any case in which, in the presence of a child, or on the premises where a child is found, or where a child resides, a controlled substance is manufactured or attempted to be manufactured;
- Any case in which a child is subjected to human trafficking of a minor for involuntary servitude or human trafficking of a minor for sexual servitude.

Mandatory Reporter: Legal Definition of Child Abuse/Neglect

- A child is neglected or dependent if:
 - A parent has subjected another child or children to an identifiable pattern of habitual abuse; and such parent has been the respondent in another proceeding under this article in which a court has adjudicated another child to be neglected or dependent based upon allegations of sexual or physical abuse, or a court of competent jurisdiction has determined that such parent's, guardian's, or legal custodian's abuse or neglect has caused the death of another child; and the pattern of habitual abuse pose a current threat to the child.

▶ **Mandatory Reporter: Reporting vs. Investigating**

- It is the duty of a mandatory report to report, not investigate.

Mandatory Reporter: Criminal Aspects

- Potential liability if I report or fail to report?
 - Failure to report is a class 3 misdemeanor and is punishable \$50 fine minimum, maximum of \$750 fine and up to 6 months in prison
 - Intentional false report is a Class 2 misdemeanor if intentional false report made and is punishable by minimum 3 months in prison and \$250 fine or both, and a maximum 364 days in prison and \$1,000 fine or both. Liable for damages proximately caused thereby.
 - Good faith report or participation of the investigation/adjudication ... shall be immune from any liability, civil or criminal, or termination of employment that otherwise might result by reason of such acts of participation, unless a court of competent jurisdiction determines that such person's behavior was willful, wanton, and malicious. For the purpose of any proceedings, civil or criminal, the good faith of any such person ... shall be presumed.

Mandatory Reporter: Recognizing Abuse

- IDENTIFYING CHILD ABUSE AND NEGLECT
- Effects you might notice in the school setting:
 - Identification is a key factor in the prevention and intervention of abuse and neglect. Educators have the opportunity and can often identify a particular type of maltreatment by becoming aware of and recognizing certain physical and behavioral indicators. Please note that not any single indicator proves that abuse is taking place, but the repeated presence of an indicator or a combination of indicators should alert educators to the possibility of abuse.*

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Adapted from CDE Guidance on Child Abuse and Neglect

PHYSICAL AND BEHAVIORAL INDICATORS OF PHYSICAL ABUSE*

Physical Indicators	Behavioral Indicators of Child	Behavioral Indicators of Caregivers
<p>Unexplained bruises and welts:</p> <ul style="list-style-type: none"> ▪ On face, lips, mouth ▪ On torso, back, buttocks, thighs ▪ In various stages of healing ▪ Clustered, forming regular patterns ▪ Reflecting shape of article used to inflict (electric cord, belt buckle) ▪ On several different surface areas ▪ Regularly appear after absence, weekend, or vacation <p>Unexplained burns:</p> <ul style="list-style-type: none"> ▪ Cigar, cigarette burns, especially on soles, palms, back or buttocks ▪ Immersion burns (sock-like, glove-like) ▪ Doughnut-shaped on buttocks or genitalia ▪ Patterned like electric burner, iron, etc. ▪ Rope burns on arms, legs, neck or torso <p>Unexplained fractures:</p> <ul style="list-style-type: none"> ▪ To skull, nose, facial structure ▪ In various states of healing ▪ Multiple or spiral fractures <p>Unexplained lacerations or abrasions:</p> <ul style="list-style-type: none"> ▪ To mouth, lips, gums, eyes ▪ To external genitalia ▪ Human bite marks ▪ Bald spots 	<ul style="list-style-type: none"> ▪ Wary of adult contacts, apprehensive when other children cry ▪ Aggressiveness or. withdrawal ▪ Overly compliant ▪ Afraid to go home ▪ Reports injury by parents ▪ Exhibits anxiety about normal activities, i.e., napping, toileting ▪ Complains of soreness and moves awkwardly ▪ Destructive to self and others ▪ Early to school or stays late as if afraid to go home ▪ Accident-prone ▪ Wears clothing that covers body when not appropriate ▪ Chronic runaway (especially adolescents) ▪ Cannot tolerate physical contact or touch ▪ Seems frightened of parents ▪ Shows little or no distress at being separated from parents ▪ Explanation of injuries changes 	<ul style="list-style-type: none"> ▪ Seems unconcerned about child ▪ Sees child as bad, evil, a monster, etc. ▪ Alcohol/drug misuse. ▪ Attempts to conceal child's injury or to protect identity of person responsible ▪ History of abuse as a child ▪ Discipline not consistent with child's age, condition or behavior ▪ Explanation of child's injury not consistent with type of injury ▪ Offers no explanation for child's injury ▪ Excessive attention to toilet training ▪ History of domestic violence

*Please note that not any single indicator proves that abuse is taking place, but the repeated presence of an indicator or a combination of indicators *should alert* educators to the possibility of abuse.

PHYSICAL AND BEHAVIORAL INDICATORS OF NEGLECT*

Physical Indicators	Behavioral Indicators of Child	Behavioral Indicators of Caregiver
<ul style="list-style-type: none"> ▪ Consistent hunger ▪ Inappropriate dress--clothing dirty or wrong for the weather ▪ Poor hygiene ▪ Often tired, no energy ▪ Consistent lack of supervision, especially in dangerous activities or long periods of time ▪ Unattended physical problems or medical needs ▪ Abandonment ▪ Lice ▪ Distended stomach, emaciated 	<ul style="list-style-type: none"> ▪ Begging, stealing food ▪ Constant fatigue, listlessness or falling asleep ▪ States there is no caretaker at home ▪ Frequent school absence or tardiness ▪ Destructive, pugnacious ▪ School dropout (adolescents) ▪ Early emancipation from family (adolescents) ▪ Alcohol/drug misuse ▪ Sexual misconduct 	<ul style="list-style-type: none"> ▪ Alcohol/drug misuse ▪ Disorganized, upset home life ▪ Isolated from friends, relatives, neighbors; lacks social skills ▪ Long-term chronic illnesses ▪ History of neglect as a child ▪ Lacks motivation, lethargic ▪ Fails to provide medical care ▪ Keeps child home from school without good cause

PHYSICAL AND BEHAVIORAL INDICATORS OF EMOTIONAL ABUSE*

Physical Indicators	Behavioral Indicators of Child	Behavioral Indicators of Caregiver
<ul style="list-style-type: none"> ▪ Speech disorders ▪ Lags in physical development ▪ Failure to thrive (especially in infants) ▪ Asthma, severe allergies, or ulcers ▪ Substance Abuse 	<ul style="list-style-type: none"> ▪ Habit disorders (sucking, biting, rocking, etc.) ▪ Conduct disorders (antisocial, destructive, etc.) ▪ Neurotic traits (sleep disorders, inhibition of play) ▪ Compliant, passive ▪ Aggressive, demanding ▪ Torture or maiming of animals ▪ Inappropriately adult ▪ Inappropriately infantile ▪ Developmental lags (mental, emotional) ▪ Delinquent behavior (especially adolescents) 	<ul style="list-style-type: none"> ▪ Treat children in the family unequally ▪ Blames or belittles child ▪ Cold and rejecting ▪ Withholds love ▪ Lacks nurturing skills ▪ Ignores children's problems

*Please note that not any single indicator proves that abuse is taking place, but the repeated presence of an indicator or a combination of indicators *should alert* educators to the possibility of abuse.

PHYSICAL AND BEHAVIORAL INDICATORS OF SEXUAL ABUSE*

Physical Indicators	Behavioral Indicators of Child	Behavioral Indicators of Caregiver
<ul style="list-style-type: none"> ▪ Difficulty in walking or sitting ▪ Torn, stained or bloody underclothing ▪ Pain or itching in genital area ▪ Bruises or bleeding in external genitalia, vaginal or anal areas ▪ Sexually-transmitted infections ▪ Frequent urinary or yeast infection ▪ Frequent unexplained sore throat ▪ Red or swollen genital area ▪ Pregnancy 	<ul style="list-style-type: none"> ▪ Inability to concentrate ▪ Frequent absences from school, many times justified by parent/caretaker ▪ Abrupt change in child's behavior/moodiness ▪ Depression – excessive crying ▪ Reluctance to undress for physical education/nurse ▪ Newly acquired bodily complaints (stomach aches, vaginal pain) ▪ Afraid to be alone with adults ▪ Severe drop in school performance ▪ Seductive, promiscuous behavior toward peers or adults ▪ Persistent and inappropriate sexual behavior ▪ Repeated attempts to run away from home ▪ Sexually explicit proposals/threats, including written notes ▪ Repeated or chronic peeping/exposing/obscenities/ ▪ Pornographic interests/frottage ▪ Oral, vaginal, and anal penetration of dolls, children, animals ▪ Forced touching of genitals ▪ Simulating intercourse with peers with clothing off ▪ Any genital injury or bleeding not explained by accidental cause ▪ Threatened by physical contact, closeness ▪ Role reversal, overly concerned for siblings ▪ Self-destructive behaviors 	<ul style="list-style-type: none"> ▪ Jealous or overly protective of child ▪ Isolation/alienation of child and family members within the community ▪ Frequent absences from home by one of the caretakers/parents of the child ▪ Blurring of generational boundaries ▪ Rigid, restrictive home environment ▪ Alcohol/drug misuse ▪ Parental/child role reversal ▪ Seductive behavior toward child ▪ Sexualized punishment for misbehavior

*Please note that not any single indicator proves that abuse is taking place, but the repeated presence of an indicator or a combination of indicators should alert educators to the possibility of abuse.

*Often there are no visible indicators.