



20-21 Sexual Harassment Course Transcript

Slide 1.1 Welcome

Slide 1.2 Title Screen Sexual Harassment

Slide 1.3 Instructions

- Instruction 01: There is a path of learning that you will follow to get through all of the required material using the buttons on each page and the Next Button on the player.
- Instruction 02: The Quiz button will not be available until you have visited each topic.
- Instruction 03: The course menu on the side will show you what is in the course. You may revisit sections but it will not allow you to start new sections.
- Instruction 04: The resources link in the right upper top of the player has material for further exploration.
- Instruction 05: You may Exit the course by clicking the Exit in the right upper top of the player

Slide 1.4 Objective

- Objective one: You will be able to identify what sexual harassment is.
- Objective two: You will have a basic understanding of the laws that are associated with sexual harassment.
- Objective three: You will learn the different types of sexual harassment
- Objective four: You will understand how Title IX protects students.

Slide 1.5 Main Menu (buttons to differing sections.

- What is Harassment
- Legal Issues
- Title IX
- Scenarios
- Quiz that will be available after ALL sections are visited.

Slide 1.25 Sexual Harassment (What is Harassment)

- Definition: Sexual Harassment Is threatening to cause bodily harm or injury, engaging in sexually intimidating conduct, causing physical damage to property, physically confining or restraining someone, or maliciously taking any action that substantially harms another person's physical or emotional health or safety.
- Buttons to more information in this section
 - Types of Harassment

- Stories in the News
- Court Cases

Slide 1.34: Types of Harassment

- Quid Pro Quo: Literally means “this for that”. In the case of sexual harassment, quid pro quo is when people in power exert influence to receive sexual favors from someone under their authority.
- Hostile Environment: Created through persistent physical and verbal actions. Such as: unwanted hugging, kissing, rubbing up against a person on purpose, or purposely blocking someone’s way, dirty jokes, stories or names, comments on a person’s body, pressure for dates etc...
- Gender Based: Department of Education defines this as unwelcome conduct based on a student’s sex, harassing conduct based on a student’s failure to conform to sex stereotypes

Slide 1.26 Stories in the News

- Buttons to stories
 - Story 1
 - Story 2
 - Story 3

Slide 1.27: Story 1

- On November 1, 2018 Google employees across the world staged a walkout protesting the lack of transparency of sexual harassment claims against its executives.
Source: NPR

Slide 1.28: Story 2

- Students have accused a Sociology faculty member at the University of Colorado Boulder of sexual harassment. It was reported by students that the harassment has been going on for over a decade. With the faculty member in a place of authority students were afraid to cross her for fear of their future careers since she had the ability to make their lives difficult.
Source: Chronicle of Higher Education

Slide 1.29: Story 3

- A lawsuit is moving forward in Florida against a Broward County Public School Principal who is accused of sexually harassing a teacher. The principal in question had a disciplinary history of similar issues.
Source: Local 10 News

Slide 1.30 Court Cases

- Buttons to cases
 - Case 1
 - Case 2
 - Case 3

Slide 1.31 Case 1

- Eden Prairie ISD was sued by the mother of a 7 year old who had been verbally harassed by peers. She was the youngest person to win such a lawsuit
Source: Chicago Tribune

Slide 1.32 Case 2

- Queen Anne County of Public Schools was cited by the U.S. Department of Education Office for Civil Rights that a student was discriminated against.
Source: Department of Education

Slide 1.33 Case 3

- Prince George County School District was found to not be taking reasonable steps to ensure that students were not subject to sexual harassment. They had mandated steps to complete in order to help future students.
Source: Department of Education

Slide 1.6 Legal Issues

- Sexual Harassment is illegal. The Federal Government and the State of Texas have laws against it.
- Buttons to more information
 - Federal Law
 - Texas Law

Slide 1.8 Federal Laws

- The Supreme Court has ruled that sexual harassment can exist if a hostile environment is created where unwelcome sexually harassing conduct is so severe that it affects a person's ability to participate in or benefit from a school setting.
- At the federal level, sexual harassment rights and protections are covered under Titles VI and VII of the Civil Rights Act of 1964 and Titles VI and IX of the Education Amendment of 1972.

Slide 1.7 Texas Laws

- The Texas Penal Code addresses sexual harassment under section 39.02, Official Oppression. If a person, under cover of their office, intentionally subjects another to: misconduct, sexual harassment or denies or impedes individual rights they are in violation of the law.
- The consequences for violating the law, found in Texas Penal Code Section 12.21, is a fine not to exceed \$4,000, jail time not to exceed 12 months, or both. Be aware authorities can also independently file criminal charges against either students or school district personnel for sexual harassment assault.

Slide 1.35 Title IX

- Prohibits discrimination on the basis of sex, including sexual harassment in education programs and activities
- Buttons to more sections
 - What is Title IX Sexual Harassment
 - Reporting Sexual Harassment

- Responding to Sexual Harassment

Slide 1.54 Title IX Student Protection

- Title IX Protects ALL Students From Harassment From:
 - Any school employee
 - Another student
 - Non-employee third party

Slide 1.55: Title IX Definition

- Title IX Defines Sexual Harassment As Conduct That Is:
 - Sexual in nature
 - Unwelcome
 - Denies or limits a student's ability to participate or benefit from an educational program.

Slide 1.56: Sexual Harassment is Defined Broadly

- Quid pro quo harassment by a school employee; causes a person to believe they must submit to unwelcome conduct in order to participate in an activity.
- Any unwelcome conduct that a reasonable person would find so severe and pervasive, and objectively offensive that it denies a person equal educational access.
- Any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act.

Slide 1.57: Title IX Examples

- Examples of Sexual Conduct
 - Making sexual propositions
 - Touching of a sexual nature
 - Sexual visuals
 - Sexual jokes
 - Spreading sexual rumors

Slide 1.58 Title IX Definition

- Sexual harassment is expressly recognized as sex discrimination.
- Previously, the Department of Education addressed sexual harassment only through guidance documents. Starting August 14, 2020, it will be addressed as a federal regulation.
- Guidance letters do not have the force of law. Regulations do.

Slide 1.59 Title IX

- Applies to All Programs
 - Title IX continues to apply to all the school's education programs or activities. It does not matter whether the programs or activities occur on campus or off campus.

Title 1.60 Title IX Definitions

- Final Rule Definitions

- A Complainant is an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- A Formal Complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegations of sexual harassment and includes additional required statements or elements.
- When a formal complaint is filed, the complainant must be participating in, or attempting to participate in, the education program or activity about which the formal complaint is filed.
- This is because Title IX is implicated when a complainant is denied access to a school's education program or activity.

Slide 1.61 Title IX Definitions

- New Definitions
 - Supportive Measures refer to “non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent before or after a complaint has been filed or where no formal complaint has been filed.” These measures are to restore or preserve equal access to the educational program or activity without unreasonably burdening the other party.
 - Actual knowledge means, in part, “notice of sexual harassment or allegations of sexual harassment to a recipient to a recipient’s Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school.” 34 CFR 106.30(a).

Slide 1.36 Reporting and Preventing

- Schools Must
 - Specifically refer to the employee designated to coordinate the district’s Title IX responsibilities as the “Title IX Coordinator.”
 - Display on their websites the Title IX Coordinator’s contact information.
 - Provide notification of that contact information to students and employees, the parents or legal guardians of all elementary and secondary school students, and to all job applicants, and to unions.
 - Post material used to train Title IX personnel on school district websites or make it available for public inspection.

Slide 1.37 Reporting and Preventing

- Reporting and Preventing
 - A person who is not necessarily the alleged victim or “Complainant” may report sexual harassment to the Title IX Coordinator by any form of communication and may be made at any time.
 - A K-12 school with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. 34 CFR § 106.44(a)

Slide 1.38 Reporting and Preventing

- Supportive Measures May Include
 - counseling,
 - extensions of deadlines or other course-related adjustments,
 - modifications of work or class schedules,
 - campus escort services,
 - mutual restrictions on contact between the parties,
 - changes in work or housing locations,
 - leaves of absence,
 - increased security and monitoring of certain areas of the campus, and
 - other similar measures
- Supportive measures provided to complainant or respondent should be kept confidential. The Title IX Coordinator is responsible for coordinating the implementation of supportive measures.

Slide 1.39 Responding to Sexual Harassment

- Responding to Sexual Harassment
 - Responses to reports include mandatory steps to support complainants, even if they choose not to file a formal grievance.
 - The Title IX Coordinator must promptly and confidentially contact the complainant to discuss the availability of supportive measures and explain that those measures are available even if that individual chooses not to participate in the grievance process.
 - The Title IX Coordinator must also explain the process for filing a formal complaint.

Slide 1.40 Schools Must

- The Final Rule affirms that districts should respect a complainant's wishes about whether to investigate unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of a complainant is not clearly unreasonable in light of the known circumstances.

Slide 1.41 Emergency Removal

- A school may remove a respondent from its educational programs or activities on an emergency basis, provided it:
 - Undertakes an individualized safety and risk analysis;
 - Determines that an immediate threat to physical health or safety of any student or other individual arising from the allegations justifies removal (think: threat assessment)
 - Provides the respondent with notice and an opportunity to challenge the decisions immediately following removal.

Slide 1.42 Formal Complaints

- The Final Rule requires a consistent grievance process for resolving complaints of sexual harassment, including these new requirements that the process:

- Treats respondents equally by not imposing disciplinary sanctions without following the grievance process prescribed in the Final Rule;
- Includes a presumption that the respondent is not responsible for alleged conduct until a determination regarding responsibility is made at conclusion of grievance process;
- Requires Title IX personnel to be free from conflicts of interest or bias;
- Describes appeal procedures.

Slide 1.43 Consent Required

- “The Final Rule states that the school cannot access, consider, disclose, or otherwise use a party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional’s or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the school obtains that party’s voluntary, written consent to do so.”

Slide 1.44 Districts Must

- Require objective evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on the person’s status as a complainant, respondent, or witness.
- State in their grievance policies “whether the standard of evidence to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard” and then
- Apply that same standard of evidence for all formal complaints of sexual harassment regardless of whether the respondent is a student or an employee.

Slide 1.45 Evidence Required

- Inculpatory Evidence that shows or tends to establish guilt.
- Exculpatory: Evidence that shows or tends to establish innocence.
- Preponderance of the evidence: Evidence leads to conclusion that the fact at issues is more probably true than not.
- Clear and Convincing Evidence: Evidence that the claim is highly probably. It is a higher standard of proof than preponderance of the evidence.

Slide 1.46 Investigations

- Investigate allegations in any formal complaint and send written notice to both complainants and respondents of the allegations upon receipt of the formal complaint.
- The burden of gathering evidence and burden of proof is the school's responsibility.
- Provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence.
- Send written notice of any investigative interviews, meetings or hearings.

Slide 1.47 Investigations

- Send to the parties, and their advisors, evidence directly related to the allegations, in electronic format or hard copy, within at least 10 days for the parties to inspect, review, and respond to the evidence.
- Send to the parties, and their advisors, an investigative report that fairly summarizes relevant evidence with at least 10 days for the parties to respond.
- Dismiss allegations that do not meet the definition of sexual harassment or did not occur in a school's education program or activity.
- Hearings including cross-examination are required for post secondary institutions and are optional for K-12 schools. (Several procedural protections are mandated when live hearings are held.)

Slide 1.48 Written Questions

- With or without a hearing, after the school has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party:
 - the opportunity to submit written, relevant questions that a party wants asked of any party or witness;
 - provide each party with the answers; and
 - allow for additional, limited follow-up questions from each party.

Slide 1.49 Written Questions

- However, the Final Rule provides complainants with rape shield protections:
 - "Questions and evidence about the complainant's prior sexual behavior are deemed irrelevant "unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent."

Slide 1.50 Standard of Evidence

- When applying either standard (preponderance of the evidence or clear and convincing evidence), the decision-maker(s) – who cannot be the Title IX Coordinator or investigator – must issue a written determination regarding responsibility with:
 - Description of all procedural steps taken;
 - Findings of fact;
 - Conclusions about whether the alleged conduct occurred;
 - Rational for result as to each allegation;
 - Any disciplinary sanctions imposed on the respondent; and
 - Whether remedies will be provided to the complainant.

Slide 1.51 Concluding Investigation

- Both parties must be offered an appeal from a determination regarding responsibility and from any dismissal of the complaint or allegations therein. Appeals are available on various specified bases.
- The Final Rule:
 - allows schools to offer informal resolution options (provided a formal complaint has been filed);

- protects against retaliation; and requires that schools keep confidential the identity of the complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding.
- The Title IX Coordinator is responsible for effective implementation of any remedies

Slide 1.52 Dismissing Formal Complaints

- Formal complaints are dismissed for Title IX purposes if:
- The allegations filed in the Formal Complaint:
 - do not meet the File Rule's definition of sexual harassment, or
 - did not occur in the school district's education program or activity against a person in the United States
- Then:
 - The school district must dismiss the allegations for purposes of Title IX.
 - The conduct may still be addressed in any manner the school deems appropriate under the district's own code of conduct.

Slide 1.53: Records Retention Requirement

- Maintain for a period of 7 years:
 - Each sexual harassment investigation
 - Any appeal
 - Any resolution
 - All materials to train Title IX Coordinators, investigators and related personnel
 - Actions taken, including supportive measures, in response to a report or formal complaint of sexual harassment

Slide 1.9 Scenarios Menu

- You will be going through several different scenarios to see how to handle different situations. These will not be read.
- Buttons to:
 - Scenario 1
 - Scenario 2
 - Scenario 3

Slide 1.22 Scenario 1:

- I can't believe that my boss kept asking me out. I'm not interested and have said no but it keeps happening.
- What is this?

Slide 1.23 Scenario 2:

- I used to enjoy eating lunch in the breakroom. Lately though I am not comfortable as the other teachers are making comments about what I must look like without a shirt during a workout. It was funny at first, but now it's not.
- What do I do?

Slide 1.24 Scenario 3:

- I'm the receptionist at the school so I have to interact with all the deliveries. There is one person who keeps asking me out and bringing in treats. I am not interested but don't know what to do.

Slides 1.10-1.21 is the Quiz

