



OCTOBER 21, 2020

VIRTUAL CONFERENCE



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Legal Update: The Cases and Changes Since October 2019

Presented by:
Dennis J. Eichelbaum

October 21, 2020



TITLE IX LEGAL UPDATE: THE CASES AND CHANGES SINCE OCTOBER 2019

Dennis J. Eichelbaum
 EICHELBAUM WARDELL
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WESTLAW SEARCH

Since October 14, 2019 ... 513 Federal Opinions that include "Title IX"*

Since August 1, 2020 ... 92 Federal Opinions that include "Title IX"*

Since October 14, 2019 ... 59 Federal Opinions in Fifth Circuit include "Title IX"*

*As of 9/25/20

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JACKSON V. VALDEZ N.D. TEXAS, NOV. 2019

- Jackson, who is transgender, attempted to have the judge in her case against her employer (the City of Dallas) recused because of the The Honorable United States District Judge Brantley Starr's "apparent bias"
- This request was denied
- Appointed in 2019

JACKSON V. VALDEZ N.D. TEXAS, NOV. 2019

- Participated in the Attorney General's opinion condemning Fort Worth ISD for implementing the Obama administration's Dear Colleague letter allowing transgender students to use the bathroom of their gender identity
- Spoke at a panel discussion and stated he supported the right of county clerks to refuse issuing marriage licenses to same-sex couples in October 2015
- Testified before Texas legislature supporting legislation that allowed adoption agencies to refuse placing children with same-sex couples
- Supported the judicial nomination of Jeffrey Mateer, who stated that transgender children were part of "Satan's plan." He never withdrew support from Mateer after the statement was made.

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DOEV. KATY ISD S.D. TEX., DEC. 2019

- Jane Doe showed enough evidence to raise a material fact issue as to whether Katy ISD was deliberately indifferent to a pedophile teacher (student-teacher relationship)
- Some **teachers were suspicious**, but never reported suspected pedophile to appropriate administrator
- **Told fellow teachers**
- **Told school secretary**
- Never told assistant principal, principal, superintendent until too late

Notice is when any school employee has notice

POLOCENOV. DALLAS INDEP. SCH. DIST., 2019 WL 7305216 (N.D. TEX. DEC. 30, 2019)

- Student had to do "ceiling jumps," got ill, condition grew worse, and she was hospitalized for almost a week and diagnosed with rhabdomyolysis, breakdown of muscle tissue.
- Plaintiff alleged that Teacher **treated boys and girls the same** even though professional standards of care required him to treat them differently. She asserted that teacher's P.E. program violated Title IX because it **did not consider the physical and metabolic differences between boys and girls**. Plaintiff alleged DISD was liable under Title IX because A.I.'s school principal and nurse both knew that female students were more likely than males to be injured by Washington's punishment.
- Pl: Plaintiff **should have been treated "substantially different."**

(Cirkiel Special) Affirmed by 5th Circuit September 10, 2020

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J.B. V. KLEIN INDEP. SCH. DIST.
2020 WL 813020 (S.D. TEX. FEB. 18, 2020)

- Student claimed bullied from 3rd through withdrawal in 8th grade
- J.B.'s counsel conceded on the record at the hearing that the bullying and teasing J.B. experienced in third grade was not sexual in nature.
- J.B. was taunted by the same student through elementary school and most of middle school; vulgar insults and sexual remarks on a daily basis.
- J.B.'s mother emailed the middle school principal to inform them of J.B.'s bully, and the two were purposefully placed in different classes.
- Cont.

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J.B. V. KLEIN ISD
S.D. TEXAS, FEB. 2020

- J.B. alleges she told her middle school principal about the bullying and was told to wear earphones in the hallway so she would not hear him.
- School district never conducted an investigation, took any action in response to J.B.'s sexual harassment complaints, or took any disciplinary action against C.E. or any other student for harassing J.B. during middle school.
- MSJ granted for elementary school conduct, denied for middle school

(Cirkiel Special)

8

RUVALCABA V. ANGLETON INDEP. SCH. DIST.
2020 WL 1431602 (S.D. TEX. MAR. 23, 2020)

- Student claims she was sexually assaulted, district investigated and did not believe her
- Student claimed she had given district notice of bullying multiple times
- MSJ Granted for AISD: Reports of generalized bullying were insufficient to place AISD on actual notice of severe sexual harassment and certainly did not place AISD on notice that Student was at risk of sexual assault.

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**GRUVER V. LOUISIANA BD. OF SUPERVISORS
FOR LOUISIANA STATE UNIV. AGRIC. & MECH.
COLL., 959 F.3D 178 (5TH CIR. 2020)**

- Tragic death of Maxwell Gruver after a fraternity hazing event at LSU. His parents sued LSU for violations of Title IX and state law alleging that LSU discriminated against male students by **policing hazing in fraternities more leniently than hazing in sororities.**
- State does not have immunity under Title IX, MTD denied.

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BREND V. COPPERAS COVE ISD
5TH CIRCUIT, SEP. 15, 2020

- Student sued District because she was subjected to the tradition of "Slap Butt Friday," "Titty Twister Thursday" and sexual name calling and rumors
- The 5th Circuit affirmed the lower court's summary judgment in favor of the District because the District was **not deliberately indifferent**
- After investigating, the District found the Student who sued herself had been participating in "Slap Butt Friday" in the girl's locker room
- The District also spoke with Student's teachers, and warned male students who taunted Student to stay away from her with written and verbal warnings

(Cirkiel Special)

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ARNOLD V. BARBERS HILL INDEP. SCH. DIST.
2020 WL 4805038, (S.D. TEX. AUG. 17, 2020)

- **Dreadlocks** case brought under many causes of action, including Fourteenth Amendment's Equal Protection Clause; Title VI of the Civil Rights Act of 1964; sex discrimination under the Fourteenth Amendment's Equal Protection Clause; sex discrimination under Title IX; (5) violation of his First Amendment right to free speech.
- Injunction Granted – not on Title IX

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SEWELL V. MONROE CITY SCH. BD 2020 WL 5416305 (5TH CIR. SEPT. 10, 2020)

- EE harassment of Sewell stemmed from a discriminatory view that African American males should not have two-toned blonde hair.
- And even though white students and black female students wore a variety of dyed hairstyles, Sewell was the only student punished during the school year for violating the hair policy.
- EE's verbal abuse also tied Sewell's hair to his race and sex.
- EE asked if Sewell "was gay with 'that mess' in his head," which could imply animus toward males who do not conform to stereotypical notions of masculinity.
- MSJ Reversed for Title IX (male/hair) Title VI (race)

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IDAHO TRANSGENDER SPORTS PARTICIPATION BILL

- Two bills signed into law in Idaho March 31, 2020.
- One bill prohibits transgender people from changing the sex on their birth certificates, and the other bans trans girls and women from competing in women's sports.



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SOULE V. CONNECTICUT ASS'N OF SCHOOLS, INC.

- Three high school female runners are suing through their mothers because they have two transgender females competing in races with them.
- The two transgender athletes have been winning their races by an average of .2 seconds faster than the other female competitors.
- Connecticut Association of Schools, Inc. has a policy which allows transgender athletes to compete on the gendered sports team of their identity.
 - They also do not require transgender students to share their medical histories in order to compete (this is common in other states).
- The Department of Justice intervened on March 25, 2020, on behalf of Soule to further advocate that transgender athletes should compete according to their assigned sex at birth.
- The ACLU has intervened on behalf of the Connecticut Association of Schools.

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TEXAS TEENAGER EXPELLED FROM CHRISTIAN SCHOOL OVER HIS SEXUAL ORIENTATION

10/16/20

COLLEYVILLE, Texas (NewsNation Now) — Devin Bryant, a Dallas-area senior who was expelled from his private Christian academy for being gay is speaking out about the experience. For the 18-year-old senior in Colleyville, Texas, talking about his newly proclaimed identity is still a fresh and delicate topic. "I came out on my birthday, so it was October 2nd, and my reasoning behind it was to give myself the best birthday gift I could think of," said Bryant.

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BETSY DEVOS' NEW TITLE IX INITIATIVES

- U.S. Secretary of Education Betsy DeVos announced a new Title IX enforcement initiative, led by the Department's Office for Civil Rights (OCR), to combat the troubling rise of sexual assault in K-12 public schools.
- Department's Office of Elementary and Secondary Education's announcement that it will publish an extensive study of measures taken by states and school districts to prevent the phenomenon known as "Pass the Trash." The study examines best practices for prevention and raises awareness of the requirement under Section 8546 of ESSA, which prohibits state education agencies, school districts, schools and school employees from assisting an individual in obtaining new employment if the individual has engaged in sexual misconduct with a student or minor.

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OCR: TITLE IX

Changes include:

- Empowers persons to make decisions about how a school responds to incidents of sexual harassment
- Restores fairness by upholding all students' right to written notice of allegations, the right to an advisor, and the right to submit, cross-examine, and challenge evidence
- Protects students and faculty by prohibiting schools from using Title IX to deprive students/EEs of rights guaranteed by the First Amendment

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TITLE IX – BUT SERIOUSLY, FOLKS

- Requires schools to select one of two standards of evidence, the **preponderance of the evidence** standard or the **clear and convincing evidence** standard
- Districts have option of having hearings (required for colleges)
- New positions created, totally new process, new training required.
- Took effect **August 14, 2020**
- Title IX Coordinator and new procedures need to be on website, new policies, included in handbooks, training too

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TITLE IX

New Positions:

- Title IX Coordinator – coordinates [High Level Administrator]
- Investigators – investigates [HR investigators]
- Decision Makers – makes final decisions [Principal?]
- Facilitators – mediates [Counselors?]
- Advisors – helps complainant/respondent [Assistant Principals?]

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TITLE IX

- Victims are now Complainants
- Perpetrators/Accused are now Respondents
- Investigations include notice to Respondent, cannot tell them to maintain confidentiality, let them know who witnesses are, let them watch and provide questions
- Maintain neutrality
- Hearing? Cross examination

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DOE V. EDGEWOOD INDEP. SCH. DIST. 964 F.3D 351, 362 (5TH CIR. 2020)



- Who is an "appropriate person" to report Title IX sexual abuse to in a district
- EISD doesn't contest that Hernandez (the peace officer) knew that the teacher was abusing Doe. Nor does EISD contest that Hernandez responded with deliberate indifference.
- Employee must "at a minimum ha[ve] authority to institute corrective measures on the district's behalf."
 - Such as:
 - anyone with the ability to fire people on the District's behalf,
 - anyone with the ability to contract on the District's behalf,
 - receive or hold real or personal property or funds on the District's behalf, or
 - be assigned any administrative tasks.

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OH, AND DID YOU SEE TITLE VII NOW APPLIES TO LGBTQ?

Bostock v. Clayton County, GA 6/15/20

- "An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids."
- "So long as the plaintiff's sex was one but-for cause of that decision, that is enough to trigger the law."

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BOSTOCK, CONT.

- “[A]n employer who intentionally treats a person worse because of sex—such as by firing the person for actions or attributes it would tolerate in an individual of another sex—discriminates against that person in violation of Title VII.”
- “That distinguishes these cases from countless others where Title VII has nothing to say. Take an employer who fires a female employee for tardiness or incompetence or simply supporting the wrong sports team.”

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ACLU
American Civil Liberties Union

Texas Association of School Boards
TASB
1727 West 17th Street, Suite 1000, Austin, Texas 78701-1700
www.tasb.org

TEXAS VALUES
txvalues.org
October 12, 2020

September 2, 2020

In applying the he...

TI
Depart
boards
Board

TASB
Texas Association of School Boards
Legal Services
P.O. Box 400 • Austin, Texas 78767-0400 • 512.467.3610 • 800.580.5345 • legal.tasb.org • legal@tasb.org
Serving Texas Schools Since 1949

based on
U.S. Su

To: TASB Member School District Officials
From: TASB Legal Services
Date: October 19, 2020

Re: Letters from ACLU and Texas Values

including
from se

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“comparable burdens” or “eq
clearly rejected this framewo

U.S.
school
school

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G.G. V. GLOUCESTER COUNTY SCH. BD 4TH CIRCUIT (8/26/20)

- (After Supreme Court remanded to trial court)
- Court of Appeals affirmed trial court granting of summary judgment based upon the Fourteenth Amendment and equal protection and Title IX.
- September 22, 2020 Court denied petition for en banc consideration
- Will it go to the Supremes again? 90 days to “appeal”...
December 21, 2020



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ANY QUESTIONS?



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TEA Educator Investigations: 19-20 Overview and Investigative Best Practices

Presented by:
David Rodriguez, Texas Education Agency

October 21, 2020

TEA
Texas Education Agency

TEA Division of Educator Investigations
19-20 Overview & Investigative Best Practices

Texas Title IX Administrator Conference
Eichelbaum Wardell
Hansen Powell & Muñoz, P.C.

October 21, 2020

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Division Objective and Responsibilities

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Educator Investigations: **Objective**

Protect the safety and welfare of Texas students by investigating allegations of misconduct against certified educators and school employees

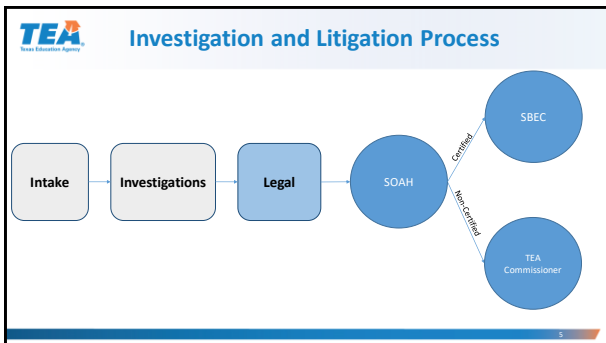
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Educator Investigations: **Responsibilities**

- Facilitate the fingerprinting process for Texas public schools
- Develop and maintain the Do Not Hire Registry; provide customer support to schools
- Intake and review reports of misconduct and criminal histories
- Conduct administrative investigations of certified educators and school employees
- Make recommendations for appropriate sanctions and settle matters informally

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HB3 86th Educator Misconduct

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HB 3 86th

HB 3 (Article 2A) was passed to further protect the safety and welfare of Texas students by:

- ✓ Requiring schools to report certain allegations of misconduct against **non-certified** employees and,
- ✓ Creating a **Registry** of individuals who are **not eligible for hire** in a Texas public school based on misconduct or criminal history.

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The Do Not Hire Registry

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What is the "Do Not Hire" Registry?

The "Do Not Hire" Registry is an online list of individuals who are not eligible for employment in a Texas public school based on misconduct or criminal history.

In Statute In Statute: Registry of persons not eligible for employment in public schools - TEC §22.092 as created by HB 3, individuals not eligible for employment - TEC §22.0832, §22.0833, §22.085 and §21.058(b)

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Who Will be Placed on the Registry?

- Individuals who had an **SBEC certificate revoked** who
 - Abused a student or minor; or
 - Involved in a romantic relationship with or solicited / engaged in sexual contact with a student or minor
- **Non-certified employees** who were found to have:
 - Abused a student or minor; or
 - Involved in a romantic relationship with or solicited / engaged in sexual contact with a student or minor
- Individuals who were
 - Placed on the **sex offender registry** after receiving deferred adjudication or being convicted; or
 - **Convicted of a Title V offense where the victim was under 18**
 - Certain criteria for charter school employees

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Responsibilities for Texas Public Schools and Administrators

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Public School Reporting Requirements

	Certified Educators	Non-certified Educators and Employees
What to report:	✓ Abused or otherwise committed an unlawful act with a student or minor	✓ Abused or otherwise committed an unlawful act with a student or minor
	✓ Was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor	✓ Was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor
	✓ Possessed, transferred, sold, or distributed a controlled substance	
	✓ Illegally transferred, appropriated, or expended school funds or property	
	✓ Attempted by fraudulent means to obtain or alter any certificate to gain employment or additional compensation	
	✓ Committed a criminal offense on school property or at a school-sponsored event	

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Public School Reporting Requirements

	Certified Educators	Non-certified Educators and Employees
Principal requirement:	<ul style="list-style-type: none"> Report to Superintendent within 7 business days of learning that an individual was terminated or resigned 	
Superintendent requirement:	<ul style="list-style-type: none"> Report to TEA within 7 business days of learning that an individual was terminated or resigned By mail, fax, or internet reporting portal (when launched). Do not submit through email. 	

In Statute Required reporting of allegations against SBEC certificate holders - TEC §21.006 / TAC §249.14, Exception to reporting requirement - TEC §21.006(b),(c), and (c-2) as amended by SB 1476, Required reporting of allegations against non-certified employees - TEC §22.093 as added by HB3, Internet portal - TEC §22.095

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Public School Reporting Requirements

	Certified Educators	Non-certified Educators and Employees
School investigation:	<ul style="list-style-type: none"> Required to complete, despite employee resignation 	
Exception to requirement:	<ul style="list-style-type: none"> Not required to report if school investigation determines educator did not abuse or engage in inappropriate relationship 	<ul style="list-style-type: none"> None. However, all reports will be reviewed upon receipt to determine if a TEA investigation is justified
Penalty for non-reporting:	<ul style="list-style-type: none"> SBEC sanctions Criminal offense if intent to conceal Admin penalty (fines) 	<ul style="list-style-type: none"> SBEC sanctions Criminal offense if intent to conceal

In Statute Required reporting of allegations against SBEC certificate holders - TEC §21.006 / TAC §249.14, Exception to reporting requirement - TEC §21.006(b),(c), and (c-2) as amended by SB 1476, Required reporting of allegations against non-certified employees - TEC §22.093 as added by HB3, Internet portal - TEC §22.095

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Administrator and School Responsibilities

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Questions

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2019-2020 Outcomes

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2019 - 2020 Outcomes

- 2019
 - Sept - Began investigations of non-certified employees
 - Dec - Developed online resources for schools
 - Available on TEA website
- 2020
 - Jan - Launched Do Not Hire Registry for schools
 - ~ 1000 school districts and charter schools have access
 - ~ 1800 names on the Registry
 - Feb - Rulemaking finalized
 - TAC 153 (Commissioner Rule) and 249 (SBEC Rule)
 - Mar - Launched DNH Registry for public search, Launched Misconduct Reporting Portal
 - Delivered training presentations throughout the year

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Fingerprinting and Registry Support

Provide training and customer support for:

- SBEC certificate applicant fingerprinting
- Public-school employee fingerprinting
- Access to the Do Not Hire Registry (HB3)
- Access to the Misconduct Reporting Portal

Fingerprinting for SBEC certificate applicants

Website

Help Desk

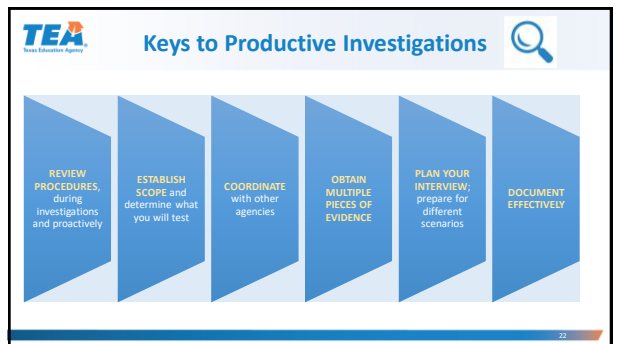
Process Documents

Training Videos

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Investigations - Best Practices

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Review Procedures

During investigations

- Needed to establish path forward
- Safeguard against scrutiny down the road

Proactively

- Important if investigation process not often used (e.g. smaller districts)
- Be aware of security camera policies

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Establish Scope

- What are the alleged violations?
- What will you be testing?
 - Read the rules
 - Are there multiple allegations in play?
 - e.g. Tx PC Code, TAC 247, 249, Title IX policies
 - What are "lessor-included" allegations?
 - What are the suspicions?

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Coordinate

What is the scope of each agency?

What are required timelines?

What facts have been established?

Police department	CPS
Do they have enough evidence to prove criminal?	Do they need help locating victim?

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Obtain Evidence

Seek multiple pieces of evidence

Safeguard against case falling apart and scrutiny

Is there electronic communication?	Information requests	Explore rumors
Texts are most common	Did witnesses see messages?	Follow-up; don't be satisfied with lack of response
Document as you receive it	Evidence may be available after dust has settled	
Snapchat, Instagram, Twitter common	Did investigator see messages?	Ask for help from Legal, PD, TEA
	What is the significance?	If necessary "Go Global", look for a pattern

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Interview

Witnesses

Build rapport

Inform witness of process, provide predictability

Interview others

Ask questions in simple language, you don't have to be the expert

Ask questions in different ways

Don't just focus on apparent witnesses

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Interview

Victim

The victim's emotional response to incident may impact their statement and cooperation

Seek cooperation

Listen intently

Prepare for reluctance to pursue

Review social media for related posts

Be prepared to be convincing

Reassure victim they do not have to recall everything right away

Obtain the basic information upfront

Ask if they recall specific emotions

Ask about possible harm to other victims

Obtain several pieces of contact information; keep track of victim

Look for statements that may relate to the incident

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Interview

Subject / Alleged Perp

Determine prior knowledge

Ask to review electronic devices

Confessions

Be aware when someone appears "likeable"

Obtain prior reports and training record

Important in harassment or boundary cases

What apps have they downloaded?

Have they deleted any messages?

What exactly are they confessing? Listen for nuance

Does confession conflict with evidence?

Ask for further explanation

Threats and liability are often confused with "harassment" (see 2017)

Recognize your own biases

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Document Effectively

If it's not documented, it didn't happen

Record the version that you received

Remain objective

Be transparent

Don't extrapolate

Okay to make a case if you focus on the facts

Disclose conflicting evidence


Disclose deviations from procedure

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Questions



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THANK YOU

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Student Behavior Threat Assessment

Presented by:
Dr. Kathy Martinez-Prather & Dr. Celina Bely
Texas School Safety Center at Texas State University

October 21, 2020



School Behavioral Threat Assessment & Title IX Requirements

Kathy Martinez-Prather, Ph.D.
Director

Celina Bley, Ph.D.
Associate Director of Training & Education



Presentation Overview

- Who We Are
- What We Do
- What is School Behavioral Threat Assessment
- Title IX Overlap
- Trainings & Resources Available

TEXAS  STATE[®]
TEXAS SCHOOL SAFETY CENTER

Mission

The Texas School Safety Center serves schools and communities to create safe, secure, and healthy environments.





Tasked

*Chapter 37 of the Texas Education Code
and the Governor's Homeland Security
Strategic Plan with key school safety
initiatives and mandates*



Clearinghouse

Dissemination of safety and security information through research, training, and technical assistance for K-12 schools, charter schools, and junior colleges in Texas

86th Legislative Additions

- Provide behavioral threat assessment training for Safe and Supportive School Program Team members
- Review/Approve Emergency Operations Plans
- Provide guidance to TEA for Drill Mandates
- Provide School Safety Committee Guidance
- Develop review/approval process for Safety and Security Consultant Registry





Safe and Supportive School Program

Senate Bill 11 (September 2019) defined:

- Composition of behavioral threat assessment team
- Threat assessment training by TxSSC or an ESC
- Data submissions on trainings & threat assessments (TEA)
- TEA to adopt SSSP rules- **The Commissioner Rules are in progress (ETA: December/January)**. The Rules detail 6 functions of the SSSP.

Safe and Supportive School Program



The Safe and Supportive School Program:
A comprehensive approach to school safety driven by six
primary responsibilities

Safe and Supportive School Program Team

- 1 Promotes a positive school climate
- 2 Builds Multi-Tiered Systems of Support
- 3 Conducts Behavior Threat Assessments
- 4 Ensures staff is well-trained
- 5 Collects data to continuously improve
- 6 Supports facility, safety and security



Safe and Supportive School Program

SB 11

Team members that **conduct threat assessments** shall have **expertise** in:

- Counseling
- Behavior Management
- Mental Health and Substance Use
- Classroom Instruction
- Special Education
- School Administration
- School Safety and Security
- Emergency Management
- Law Enforcement

Safe and Supportive School Program

The team may serve more than one campus of a school district, provided that each district campus is assigned a team that can conduct behavioral threat assessments.



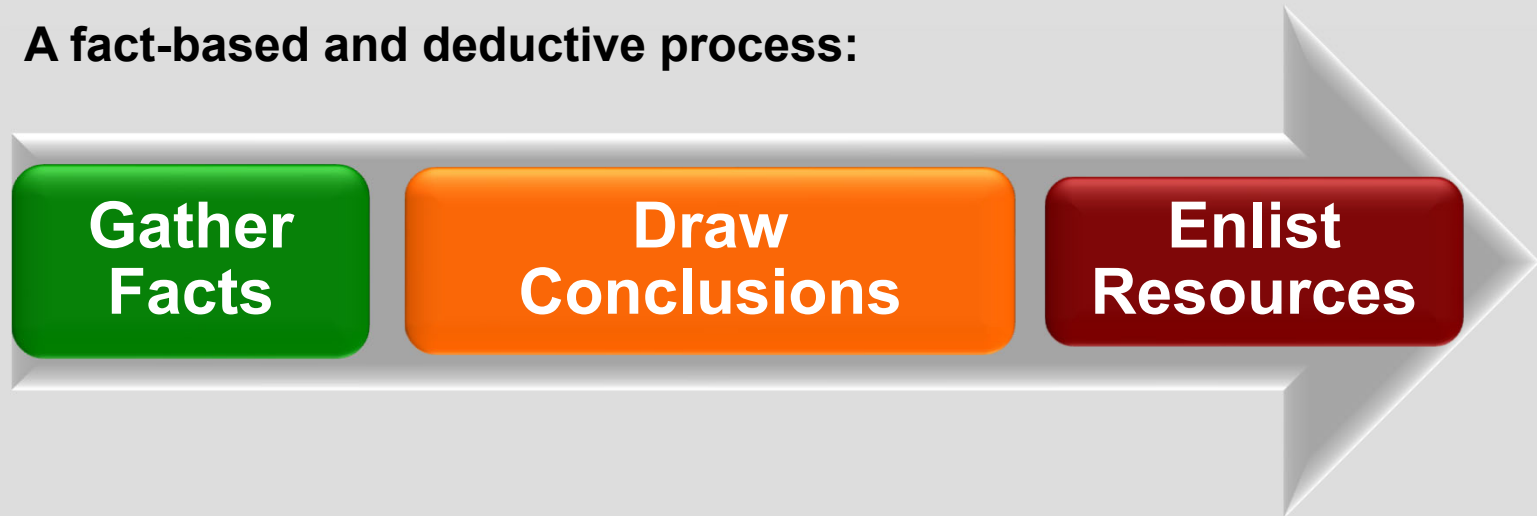
What Threat Assessment IS

A systematic process to:

- 1 Identify persons of concern
- 2 Gather more information
- 3 Assess whether person poses a threat
- 4 If needed, manage situation to reduce risk

What Threat Assessment IS

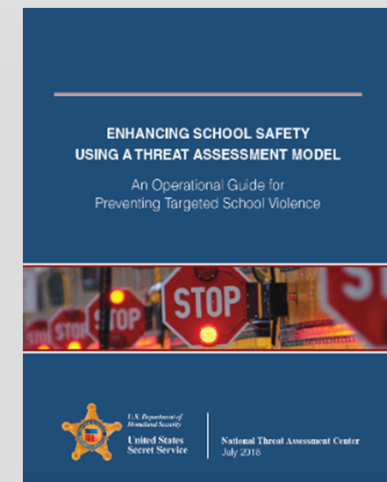
A fact-based and deductive process:



What Threat Assessment IS NOT

Behavioral Threat Assessment is

- NOT profiling
- NOT adversarial
- NOT the same as a disciplinary process
- NOT a panacea for safe schools
- NOT the same as a “behavioral assessment”



Why Threat Assessment Works

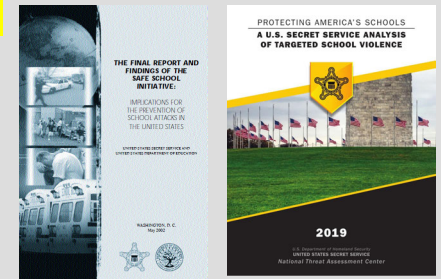
School threat assessment is based on research of US school shootings. Research shows that:

- School shooters typically don't "just snap." These are rarely impulsive events.
- Instead, school shooters plan out their attacks beforehand.
- Their planning behavior often follows a "pathway to violence."

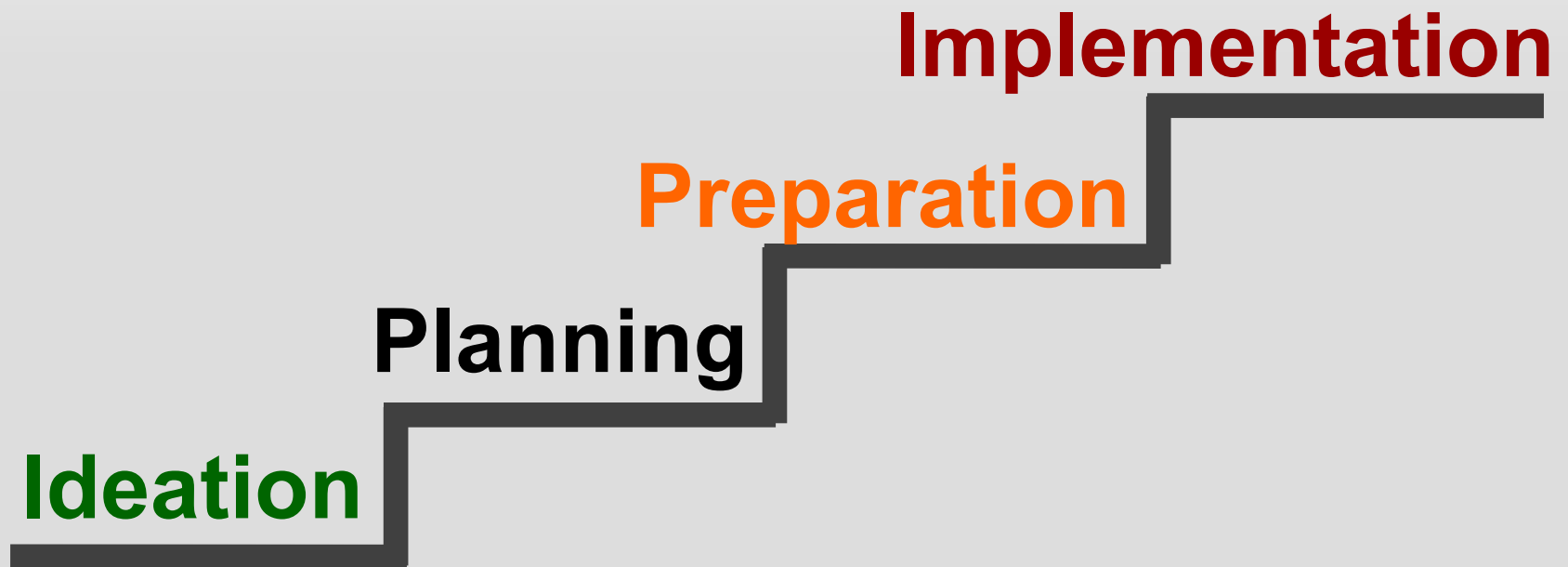
For more information:

U.S. Secret Service and U.S. Department of Education, *Final Report and Findings of the Safe School Initiative: Implications for the Prevention of Targeted School Violence in the U.S.* (2002). Washington, DC: Authors.

National Threat Assessment Center (2019). *Protecting America's Schools: A U.S. Secret Service Analysis of Targeted School Violence.* U.S. Secret Service, Department of Homeland Security.



Pathway to Violence



Why Threat Assessment Works

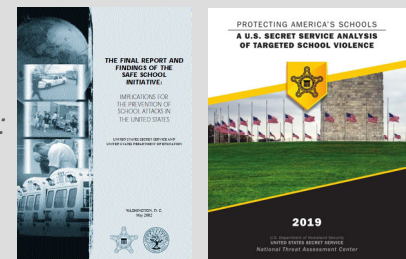
School threat assessment is based on research on US school shootings. Research shows that:

- In most cases, school shooters tell other people beforehand that they are planning a school shooting.
- There is no accurate or useful profile of a “school shooter.”

For more information:

U.S. Secret Service and U.S. Department of Education, *Final Report and Findings of the Safe School Initiative: Implications for the Prevention of Targeted School Violence in the U.S.* (2002). Washington, DC: Authors.

National Threat Assessment Center (2019). *Protecting America’s Schools: A U.S. Secret Service Analysis of Targeted School Violence*. U.S. Secret Service, Department of Homeland Security.



Why Threat Assessment Works

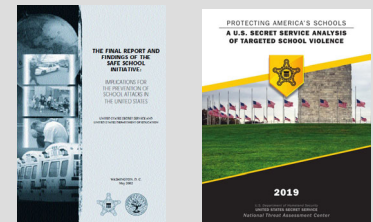
School threat assessment is based on research on US school shootings. Research shows that:

- Most school shooters had seriously concerned others in their lives prior to the attack.
- Most had significant difficulty coping with losses or failures.
- Most were experiencing despair / hopelessness, or even suicidal.
- We have resources to help those who are despondent or suicidal.

For more information:

U.S. Secret Service and U.S. Department of Education, *Final Report and Findings of the Safe School Initiative: Implications for the Prevention of Targeted School Violence in the U.S.* (2002). Washington, DC: Authors.

National Threat Assessment Center (2019). *Protecting America's Schools: A U.S. Secret Service Analysis of Targeted School Violence*. U.S. Secret Service, Department of Homeland Security.



Why Schools Use Threat Assessment

- Many incidents of school violence can be prevented.
- Information about a student's ideas and plans for violence can be observed or discovered before harm can occur.
- Available information is likely to be scattered and fragmented.
- We must act quickly when alerted about a threat to gather more information (collect the dots), make an assessment (connect the dots), and take steps to move the person OFF the pathway to violence.

Key Take-Aways

In a nutshell, threat assessment involves asking:

- Is this person on a pathway to violence?
- If so, why are they on the pathway to violence? Why are they considering or resorting to violence?
- How can we get this person off the pathway to violence? How can we help them solve their problem, fix their situation, or address their condition in a non-violent way?

Threat assessment is most effective when it is non-adversarial and focused primarily on support and problem-solving. **Interventions!**

Texas Definitions

“Harmful, threatening, or violent behavior”:

Behaviors by a student such as:

- Verbal threats
- Threats of self harm
- Bullying
- Cyberbullying
- Fighting
- Use or possession of weapon
- Sexual assault
- Sexual harassment
- Dating violence
- Stalking
- Assault

Receive and Screen Report

Screen for two issues

A. Is it an emergency or imminent?

If **YES**:

- IMMEDIATELY notify law enforcement
- Notify superintendent
- Conduct full threat assessment
- If report involves student suicide risk, follow district's suicide prevention program (in addition to threat assessment)
- Notify others (anyone directly impacted)

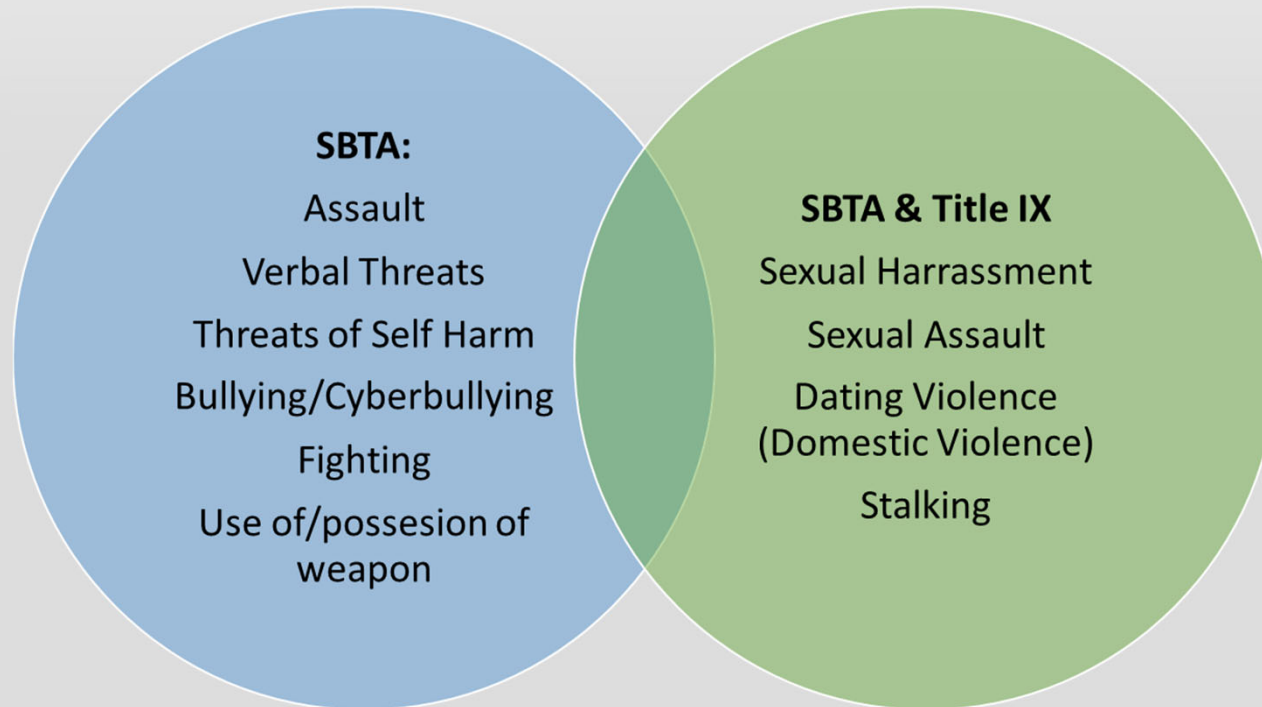
If **NO**:

- Screen for threat assessment

B. Need to conduct full threat assessment?

- Threat of violence?
- Harmful, threatening, or violent behavior?
 - verbal threats
 - threats of self harm
 - bullying / cyberbullying
 - fighting
 - use / possession of weapon
 - sexual assault / sexual harassment
 - dating violence
 - stalking
 - assault

SBTA & Title IX Overlap



Title IX Response to Sexual Harassment

“A recipient (i.e., a school district)

- 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 C.F.R. § 106.44(a)

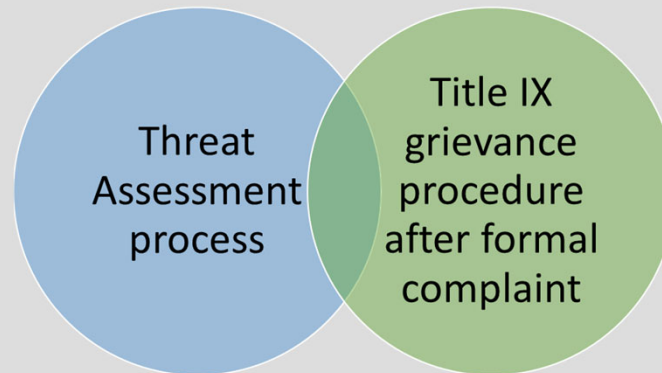
What is “actual knowledge”

Notice of sexual harassment or **allegations** of sexual harassment to:

1. Title IX Coordinator
2. Any official with authority to institute corrective measures
3. **Any employee** of an elementary and secondary school
(this includes the SSSP team that conducts threat assessments)

TxSSC Guidance

- **Notify Title IX Coordinator of any threat reported that falls under the definitions of sexual harassment, sexual assault, dating violence, stalking or assault that could be attributed to domestic violence**



Can use threat assessment process for a removal—if justified.

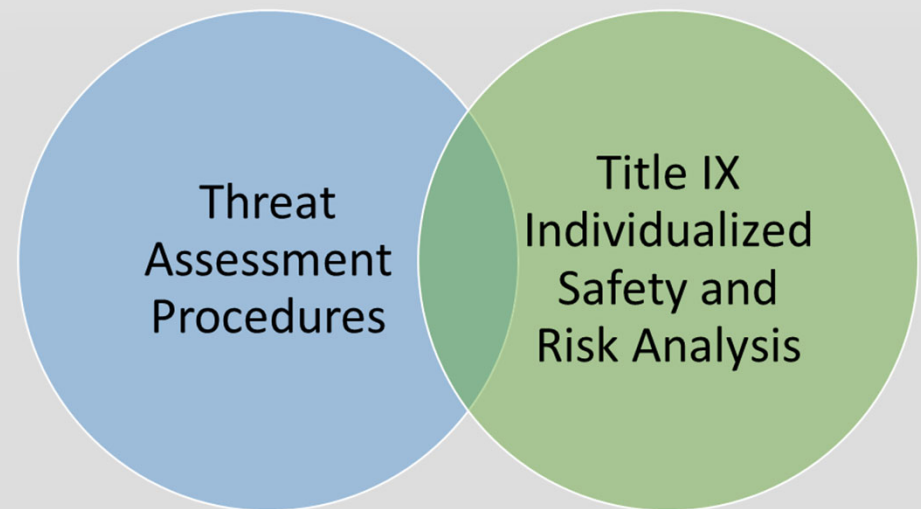
- **34 C.F.R. 106.44(c)**
- A district may remove a student who is alleged to have engaged in sexual harassment, without first following the complex grievance procedures that the regulations normally require, if the school undertakes an **“individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal.”**
- District must provide the student with notice and an opportunity to challenge the decision immediately after the removal.

“Safety and Risk Analysis”

- Your threat assessment team could perform that safety and risk analysis as they are trained to assess threats.
- Only for physical threats
- Threat can be to *any* individual (including the harasser if, for example, threatens suicide)

TxSSC Guidance

- Title IX procedures should align the individualized safety and risk analysis with your District's Threat Assessment procedures.
- See Texas School Safety Center Model Policies and Procedures in the School Behavioral Threat Assessment Toolkit for more information.



Data Collection from TEA

Update: September 17, 2020 (TTA)

- TEA will be phasing in the Senate Bill (SB) 11 mandatory data reporting requirement for your Safe and Supportive School Program teams.
- TEA will issue a two-part survey via *Qualtrics* to all school districts and open-enrollment charters to collect a minimal amount of data regarding LEA behavioral threat assessments conducted by SSSP teams and training received.
- **The SSSP survey will be sent to superintendents on or about November 1, 2020 and must be completed by November 30, 2020.**
- **Step One** of the survey is the mandatory reporting requirement for the time period of September 1, 2019, through August 31, 2020.
- **Step Two** is a set of optional questions to help TEA understand what gaps and needs LEAs may still have in terms of the implementation of their SSSP programs.
- The information will be used by TEA and the Texas School Safety Center to help improve and support SSSP teams and programs throughout Texas.

Data Collection per TEA (continued)

Mandatory Questions

1. *Has your LEA established Safe and Supportive School Program team(s)? Yes/No*

2. *If Yes, answer the following:*

- a. Number of campuses in your LEA served by your SSSP team(s)? (enter number)
- b. How many people from your LEA's SSSP team(s), have been trained in the Behavioral Threat Assessment prior to September 1, 2020 (enter number)?
- c. Estimate the extent to which your team(s) are trained in behavioral threat assessment at the time of this survey (select one):
 - i. All team members
 - ii. More than half of the team members
 - iii. Less than half of the team members
 - iv. No team members are trained

Data Collection per TEA (continued)

Mandatory Questions (continued)

3. *Provide the following data regarding threats in your LEA for the period of September 1, 2019, through August 31, 2020:*

- a. Number of threats reported (enter number)
- b. Number of threats assessed as not posing a risk and not referred for interventions or help/supports (enter number)
- c. Number of threats assessed as not posing a risk but referred for interventions or help/ supports (enter number)
- d. Number of threats assessed as posing a risk and referred for interventions or monitoring (enter number)
- e. Number of threats assessed as posing an emergency/eminent risk and referred to law enforcement, the superintendent and referred for interventions and monitoring (enter number)

Virtual Training Opportunities



80 virtual trainings for the 20-21 school year
Conducted most Tuesdays and Thursdays

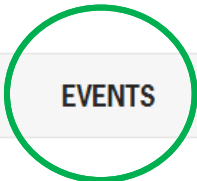
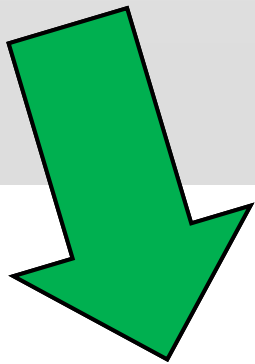
Training Available



All trainings have been moved to a live virtual platform using Zoom:

- School Behavioral Threat Assessment Training
- Digital Threat Assessment Training
- Standard Response Protocol & Reunification Training
- Law Enforcement TCOLE 4064
- Charter School Training
- Sandy Hook Promise Training

<https://txssc.txstate.edu/>



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Events



Charter School Safety Requirements Trainings >

Virtual Training July 2020 - Oct 2020

This one-day training will serve as an introduction to what open-enrollment charter schools need to know regarding Texas legislative requirements that impact school safety and security. Topics that will be covered include: emergency operation planning, assembling a school safety and security committee, conducting a safety and security audit, assembling a behavioral threat assessment team and other safety requirements that are now new for charter schools.



School Behavioral Threat Assessment Trainings >

Virtual Training Sept 2020 - Nov 2020

Threat Assessment provides a proactive, evidence-based approach for identifying individuals who may pose a threat and providing interventions before a violent incident occurs. With the passage of Senate Bill 11, Texas public school districts and open-enrollment charter schools are mandated to establish a threat assessment team to serve at each campus, and each team is required to complete training provided by the TxSSC or a Regional Education Service Center.



SRP/SRM Train-The-Trainer Training >

Virtual Training Aug - Dec 2020

The Texas School Safety Center, in collaboration with the I Love U Guys Foundation, is hosting a no cost Standard Response Protocol/Standard Reunification Method (SRP/SRM) Train-the-Trainer Virtual Training. This is a 7-hour training, with the expected outcome that participants complete the training with the ability to perform the SRP classroom training, implement the program, train other trainers in their own district, school, department, or agency and handle advanced questions related to the SRP.



Digital Threat Assessment Trainings >

Virtual Training Sept 2020 - Dec 2020

Digital Threat Assessment was developed to address the need to keep pace with the ever-evolving technology challenges that face our students currently. Successful Violence Threat Risk Assessment requires a have a solid understanding of all data needed to appropriately assess an individuals' potential for violence. An overall assessment of risk cannot be determined without looking at social media and online activity. It is imperative to understand the tools and methods available to identify online threat related behavior.

New Training

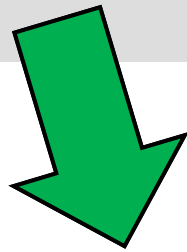


Sandy Hook Promise is partnering with the Texas School Safety Center to bring *Say Something*, the proven violence prevention program to middle and high schools in Texas. *Say Something* is a no-cost, easy-to-implement, and life-saving program that will help school personnel and/or school-based law enforcement to teach students how to recognize warning signs of potential violence or self-harm and act immediately to intervene. The training will take 2.5 hours with a wide range of activities and resources to ensure training integration within the school culture, supported by student-led SAVE Promise Clubs.

After the *Say Something* training, educators will:

- Develop an action plan to carry-out the *Say Something* message year-round
- Learn how to reinforce the *Say Something* three-step process through the use of easy-to-implement mini-lessons
- Learn how to cultivate a culture of trusted adults

<https://txssc.txstate.edu/>



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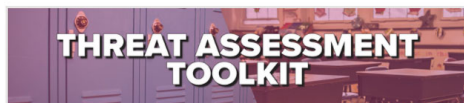
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Home

Behavioral Threat Assessment and Management provides a proactive, evidence-based approach for identifying individuals who may pose a threat and for providing interventions before a violent incident occurs. This toolkit introduces the concept of threat assessment and outlines how a threat assessment program functions in a school setting.

An effective, functioning threat assessment team is a critical component of keeping your school safe and preventing violence. This toolkit presents the process of how a threat assessment team identifies, assesses, and manages threats. The toolkit also includes guidance and resources for forming and implementing a team in your school or district.

As required by the 86th Texas Legislature and SB 11, the Texas School Safety Center, in coordination with the Texas Education Agency, has developed model policies and procedures to assist school districts in establishing and training threat assessment teams now mandated by TEC Sec. 37.220.

[Download Model Policies and Procedures](#)

[Download Threat Assessment Data Collection Info from TEA: Sept 2020](#)

START

SECTION 1

Introduction to Behavioral Threat Assessment and Management (IAM)

SECTION 2

Legal Requirements and Guidelines



Questions?



Thank you for your service!

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“Boys will be Boys” Gender Stereotyping and Title IX

Presented by:
Matthew Coleman & Emma Darling

October 21, 2020

“Boys will be Boys”

Title IX and Gender Stereotyping

Emma Darling
Matthew Coleman

EICHELBAUM WARDELL
HANSEN POWELL & MUÑOZ, P.C.

1

Session Topics:

- Definitions and Legal Background
- Transgender Students and Bathroom Debates
- Recent Case Law and Hypotheticals

2

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

20 U.S.C.A. § 1681

3

Price Waterhouse v. Hopkins

US Supreme Court (1989)

- This is a Title VII case, but it laid the foundation for future Title VII and Title IX gender stereotype caselaw and interpretation. (Title VII cases interpreting “sex discrimination” are frequently cited in Title IX cases and discussions.)
- Hopkins was not promoted at PWC because she “needed a course in charm school,” didn’t wear makeup, and was “too aggressive.”
- Of the 622 partners at Price Waterhouse, 7 were women
- A 6-3 U.S. Supreme Court determined that it was discrimination, and that PWC passed over Hopkins due to her not conforming to perceived gender stereotypes

4

“Stereotype”

A widely held but fixed and oversimplified image or idea of a particular type of person or thing.

5

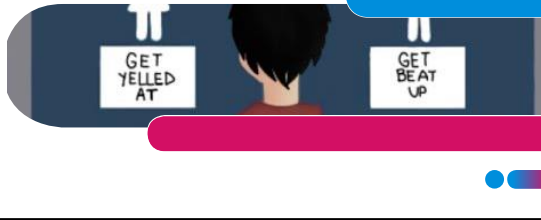
“Gender/Sex Stereotype”

An overgeneralization of characteristics, differences and attributes of a certain group based on their gender or sex.

6

Does “gender stereotype” discrimination cover transgender students?

The Heated Debate Over Bathroom Practices



7

Fast Facts

- Since 2014, the issue of transgender students and which bathroom they may use has been a hot legal topic and a political landmine.
- 44 states and the District of Columbia prohibit discrimination based on sex in public accommodations (including educational institutions).
- Texas state law does not protect from discrimination on the basis of sexual orientation or gender identity or expression, though various bills have been introduced to modify the law. Some local ordinances may prohibit this discrimination, but these have been opposed on a state level.
- Many school districts choose to address these issues on a case-by-case basis.

8

Title IX Transgender Timeline: OCR’s Back and Forth of Bathroom Bills

- **March 2016** - North Carolina’s legislature passes House Bill 2, banning trans youth from using the bathroom aligned with their gender identity.
- **May 2016** - The Departments of Justice and Education state that discriminating against transgender students because of their gender identity violates Title IX.
- **May 2016** - Officials from the Justice and Education Departments issue a memo to all school districts concerning discrimination in schools that, unless schools uphold the Obama administration’s trans-inclusive interpretation of Title IX, they risk being confronted with a lawsuit or loss of funding.
- **August 2016** - Judge Reed O’Connor in Texas halts enforcement of the Obama administration’s directive for allowing transgender students to use the bathroom corresponding with their gender identity.

9

Title IX Transgender Timeline: OCR’s Back and Forth of Bathroom Bills

- **February 2017** - President Trump revokes the Obama-era interpretation of Title IX that protects transgender students from discrimination based on gender.
- **May 2018** - A federal judge finds in favor of Gavin Grimm, a transgender student in Virginia who sued the school board for prohibiting him from using the boys’ restrooms. Gavin asserted that the school board’s insistence on his using bathrooms corresponding to his biological sex constituted sex discrimination and a violation of the law.
- **July 2018** - In Florida, a U.S. District Court ruled that, by denying Drew Adams access to the boys’ room, a local school board had violated his right to equal protection of the law under the Constitution’s Fourteenth Amendment, as well as violating Title IX. The U.S. Court of Appeals upheld a Pennsylvania school district’s decision to implement a trans-inclusive restroom policy in the *Doe v. Boyertown* case.

10

Recent(ish) Caselaw on Gender Stereotyping



11

Doe v. Brimfield Grade School

C.D. of Illinois (2008)

- Doe sued on behalf of her son who she claims was subject to physical and verbal harassment by six boys in her son’s middle school.
- The boys had a practice that the school had nicknamed “sac stabbing” where the boys hit each other’s testicles.
- Plaintiffs assert that the school “essentially told [John] to toughen up and stop acting like a little girl,” to “stick up for himself.”
- Doe suffered so badly he required surgery on his testicles, and after returning to school post-surgery suffered a split in his incision due to continued “sac stabbing.”
- The plaintiff’s Title IX claim survived the district’s motion to dismiss and strike and was allowed to proceed.

12

Doe Deliberations

- Would the outcome of the case change if the school hadn't told Doe to "man up" and take it? If they had just remained silent to the activity without invoking gender norms?
- How would the case change if this were girls hitting one another?

Maybe not. The Court focused on the district's failure to act because of their perception that he needed to stop complaining or handle it himself.

Might have a harder time stating a Title IX gender stereotype claim without some creative pleading by the attorneys.

13

Quigg v. Thomas County School

Eleventh Circuit (2016)/Title VII (but instructive)

- Quiggs was named Superintendent in 2007.
- Quiggs claimed multiple members of the school board discriminated against her by saying the following:
 - A statement to a school parent that "it is time to put a man in there";
 - A recommendation to Quigg that she hire a tough "hatchet man" to serve as assistant superintendent;
 - A statement to Quigg that she should consider a male assistant superintendent because it is important to achieve gender balance in the school administration; and
 - A comment by shortly after the renewal vote that she voted against Quigg because Quigg "needed a strong male to work under her to handle problems, someone who could get tough."
- The Circuit ruled Quiggs may bring her lawsuit under Title VII.

14

Quigg Questions

What if this were a student body president?

Then this may have Title IX implications if the student was denied educational opportunity or showed true signs of distress.

15

Sewell v. Monroe City School Board

Fifth Circuit (Sept. 2020)

- Monroe City School Board had a policy that students were not allowed to have "unnaturally dyed" hair.
- Sewell, an African American boy, had dyed his hair "two-toned blonde."
- Sewell was the only student sent to the office for violating the hair policy, despite plenty of other students (mostly females) with outlandish or unnaturally colored hair.
- School officials called Sewell a "thug" and "fool" repeatedly.
- The Court ruled that Sewell could bring his Title IX claim for harassment because the district may have known about the harassment and did nothing to stop it.

16

Sewell con't

- **Intersectionality** - the interconnected nature of social categorizations such as race, class, and gender as they apply to a given individual or group, regarded as creating overlapping and interdependent systems of discrimination or disadvantage.
- Rarely are Title IX gender discrimination cases ONLY about gender stereotypes:
 - Religion
 - Race
 - National Origin
- A complaint that starts off about Title IX gender stereotypes for hair color could morph into an equal protection claim, a due process claim, a retaliation claim, or more.

17

Sewell Speculations

Would this case have come out differently if:

- Instead of "thug" he were called "gay" or "fairy?"
- The plaintiff was a female student sent to the office for her:
 - Hair Color?
 - Having close-cropped or buzzed hair?

What about:

- If the district had investigated Sewell's claims, and:
 - Started enforcing the policy against female students?
 - Decided to let Sewell's violation "slide" for now?
- It were students making the disparaging statements?

Female students in the same situation would have a harder time arguing a Title IX gender discrimination claim.

Students making fun would make this a bullying case, and there wouldn't be the same standing under Title IX.

18

Chisholm v. Saint Mary's School Board of Education

Sixth Circuit (Jan. 2020)

- A football coach often called his players "pussy" when they were not playing to his standards.
- Two students sued and claimed this was a violation of Title IX.
- The Court held that although the language was crude, it did not rise to the level of a Title IX violation.
- "Toughness, while sometimes celebrated in men, is certainly not discouraged in women, especially in a professional or team setting."

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Chisholm Conjectures

- What if the Coach called the players: "Ladies," "girls," "sissies," or "bitches?"
- What if the activity weren't football? If this were chess club, drama club, or mathletes?

Terminology matters. Although the term "pussy" has protections, "ladies" or "bitches" do not. They aren't analogous for toughness. There'd be a stronger Title IX claim.

Should football or other physically intense sports be given special treatment under the law because they "require toughness?"

20

Doe v. University of Denver

Tenth Circuit (March, 2020)

- Doe, a male, was accused of sexual assault on campus by a female student.
- The female student filed a complaint with the University, who conducted a Title IX investigation.
- Ultimately, Doe was expelled from University of Denver.
- Doe sued claiming the University was biased against males and always sided with females who brought claims of Title IX violations.
- The Tenth Circuit dismissed this claim by saying the University was biased towards complainants, but that complainants are not necessarily all female.

21

Doe Discussion

- Why does Doe's claim sound so familiar?
- Would the outcome have been the same if Doe were a female accused of sexual assault?
- What if the university had failed to investigate a claim of sexual assault because a male victim "got lucky" or "obviously consented" to the encounter?

The ruling and reasoning behind the outcome in *Doe* were the basis of recent federal changes to the Title IX Investigation and Hearing procedures championed by current Secretary of Education Betsy DeVos.

If the plaintiff could show that their complaint was ignored because the school (through words or deeds) thought a male couldn't be a victim, there could be a viable Title IX gender stereotype claim.

22

Boys will be Boys...

- Jon was bullied by fellow male middle school students for not being masculine enough. One time, the middle school boys "stripped [Jon] nude and tied him up" and "placed [Jon] into a trash can" while calling him "fag," "queer," and "homo."
- One of these students "videotaped the attack and uploaded it to YouTube."
- One teacher, after being told by another teacher that she was concerned about the bullying, "essentially replied that 'boys will be boys' and told the teacher to leave it alone."

23

Boys will be Boys...

- *Carmichael v. Gialbraith*, 5th Circuit (2014)
- The 5th Circuit declined to address the issue of whether this was considered discrimination on the basis of gender stereotypes and declined to do a *Price Waterhouse*-style analysis of the facts.
- However, the Title IX claim was allowed to proceed on the basis that the same-sex harassment "plausibly fall[s] outside the list of simple 'insults, banter, teasing, shoving, pushing, and gender-specific conduct' which are 'understandable ... in the school setting' and are not actionable under Title IX."

24

Not Just You, But All Women...

- Third grade female dealt with a boy named [C.E.] and his friends who decided they didn't like her and started to bully her. They called her "ugly," "short" and told kids on the playground not to play with her. He pushed her off the monkey bars and slammed her head against a pole on the way to PE class.
- In fourth grade, he and his two friends would call her a "fat," "stupid," "ugly," and "bitch" almost daily.
- The bully said it wasn't just this girl that he thought were those things; he thought she, her mom and all women were.

25

Not Just You, But All Women...

J.B. v. Klein Independent School District, S.D. Texas (Feb. 2020)

- The Court stated that "[the] only allegation typing C.E.'s [elementary school] bullying to J.B.'s sex is his alleged comment that all women are fat, stupid, bitches. Even if this comment could be characterized as sexual, this single comment falls far short of the type of conduct that meets the legal standard of sex-based severe, pervasive, and objectively offensive conduct necessary to support a Title IX claim."
- But, J.B. also alleged that "she was taunted with vulgar, sexually suggestive comments, **every single day** from sixth grade until she withdrew from school halfway through eighth grade." This was enough to allege a severe and pervasive pattern of sex-based behavior and the Court allowed the Title IX claim on these allegations to proceed.

26

Bostock v. Clayton County

US Supreme Court (2020) / Title VII Making Waves Again

- Gerald Bostock, a gay man, began working for Clayton County, Georgia, as a child welfare services coordinator in 2003. Over his 10-year tenure he received positive performance reviews.
- When Bostock joined a gay softball league, he was criticized at work and later terminated for behavior "unbecoming of employees."
- In a 6-3 decision, SCOTUS determined discrimination for being LGBTQ is against Title VII.
- "An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids."
- "[A]n employer who intentionally treats a person worse because of sex—such as by firing the person for actions or attributes it would tolerate in an individual of another sex—discriminates against that person in violation of Title VII."

27

OCR and Transgender Athletes

- In Connecticut, the Connecticut Interscholastic Athletic Association (CIAC) had a policy which permitted transgender athletes to compete with their transitioned sex in athletic competitions.
- A cis-female student complained and filed a lawsuit because she competed against two transgender female athletes who beat her in track races.
- This female claimed the transgender athletes had an unfair advantage competing in track because they were born male.
- The timing of races did not show an unfair advantage.
- CIAC reversed their policy due to these complaints in 2019.
- In August, after *Bostock*, the DOE decided to reinterpret this decision to be more in line with *Bostock's* ruling and how this will affect Title IX.

28

De'Andre Arnold v. Barbers Hill ISD

Ongoing in Texas Federal Courts

- Arnold, a male high school student, wishes to wear his hair long.
- To comply with the Barbers Hill ISD dress code, he put his hair into a bun that was collectively above his shirt collar.
- In the middle of the school year, BHISD changed the dress code to prohibit hair that, when undone, grows below the shirt collar.
- Arnold sues under Title IX and claims that because girls do not have a hair length under the dress code neither should he.

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Questions?

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Sexual Harassment of Employees: Title IX v. Title VII

Presented by:
Jennifer A. Powell

October 21, 2020



TITLE VII V. TITLE IX
Handling Employee Complaints of Sexual Harassment

Jennifer A. Powell
EICHELBAUM WARDELL
HANSEN, POWELL & MUÑOZ, P.C.

1

Title VII Protections

- Title VII protects against discrimination and harassment based on race, color, national origin, and religion, as well as sex.
- As to sex, since *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731 (2020), we know that sex includes sexual orientation and transgender status.

2

Title IX Protections

- Title IX protects only against sex discrimination, including sexual harassment.
- Does that include sexual orientation and transgender status?
 - OCR has issued an interpretation indicating that it is not a given that *Bostock* applies to Title IX.
 - In any event, they state that *Bostock* does not prohibit the assignment to sports teams based on biological sex.
 - But the preamble to the regulations indicates there is protection for those in the LGBTQ community: the final regulations will help protect against sex discrimination regardless of a person's race or ethnicity, age, sexual orientation, or gender identity

3

Title VII Enforcement

- Equal Employment Opportunity Commission (EEOC) is the federal agency that enforces Title VII.
- EEOC can sue an employer directly
- Private parties can enforce through civil lawsuit after they have exhausted administrative remedies through EEOC.

4

Title IX Enforcement

- U.S. Department of Education's Office of Civil Rights (OCR) is the federal agency that enforces Title IX through an administrative process – funding at stake.
- Private parties can enforce through civil lawsuit without having to exhaust administrative remedies through OCR.

5

Title VII Definition of Sexual Harassment

Unwelcome verbal or physical conduct based on sex that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.

6

Title IX Definition of Sexual Harassment – 34 C.F.R. § 106.30

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

(1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct,

quid pro quo

(2) 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 recipient's education program or activity, or

"Schools are unlike the adult workplace and ... children may regularly interact in a manner that would be unacceptable among adults."

(3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v)(Clery Act), "dating violence" as defined in 34 U.S.C. 12291(a)(10)(VAWA), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

7

Title IX Definition

"Sexual assault" - an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. From the 2019 UCR:

Sex Offenses (previously forcible) — Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

- Rape—(Except Statutory Rape) The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- Sodomy—Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- Sexual Assault With An Object—To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- Fondling—The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

8

Title IX Definition

Sex Offenses, Non-Forcible - Unlawful, non-forcible sexual intercourse

- Incest - Non-Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law
- Statutory Rape - Non-Forcible sexual intercourse with a person who is under the statutory age of consent

9

Title IX Definition

"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.

10

Title IX Definition

"Domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

11

Title IX Definition

"Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to--

- (A) fear for his or her safety or the safety of others; or
- (B) suffer substantial emotional distress.

12

Title VII Liability – Depends on who the harasser is

- If employer's alter ego, i.e., sufficiently high enough to speak for the district, e.g., the superintendent, then it's strict liability
- If it's a supervisor and there's a tangible employment action, then there is liability
- If it is a supervisor and no tangible employment action, there is liability unless the employer can prove an affirmative defense:
 - that the employer took reasonable steps to prevent and promptly correct sexual harassment in the workplace AND
 - the aggrieved employee unreasonably failed to take advantage of the employer's preventive or corrective measures
- If it's a coworker, if the employer should have known and failed to take prompt, remedial action

13

Title IX Liability

- Liable for deliberate indifference to known harassment
- Regulations state that actual knowledge = knowledge of sexual harassment or allegations of sexual harassment by any school employee
- Deliberate indifference = a response that is clearly unreasonable in the light of known circumstances
- OCR will find fault if fail to follow grievance process for addressing formal complaints because they can enforce the regulations

14

Title VII Remedies

- Back pay
- Reinstatement or front pay
- Punitive damages not available against governmental entity
- Compensatory damages are capped:
 - \$50,000 for employers with 15-100 employees;
 - \$100,000 for employers with 101-200 employees;
 - \$200,000 for employers with 201-500 employees; and
 - \$300,000 for employers with 501 or more employees.
- Attorney's fees

15

Title IX Remedies – Depends if court or OCR

- Injunctions
- Compensatory damages
- Punitive damages should not be available but there is not a definitive case from the Supreme Court saying they are not.
- Attorney's fees
- Loss of federal funding by OCR action

16

Can Employees Sue Under Title IX?

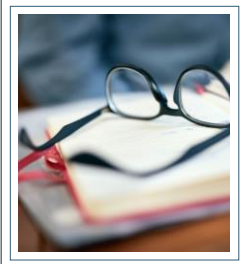
Some courts, including the Fifth Circuit, have said that Title VII preempts a judicial cause of action for discrimination or harassment under Title IX

17

Do the new regulations and grievance process apply to employees being harassed?

- Clearly, they are focused on harassment of students.
- But, OCR states multiple times that they are not carving out employees.

18



Language from the 2,000 pages of preamble and commentary provides some guidance

19

"the definitions of 'complainant' and 'respondent' do not restrict either party to being a student or employee" p. 167

20

"administrative enforcement of Title IX obligations is vital to the protection of students' and employees' civil rights" p. 168 (emphasis added)

21

"proceedings to investigate and adjudicate a formal complaint of sexual harassment under these final regulations are designed to reach accurate determinations regarding responsibility so that students and employees are protected from sex discrimination in the form of sexual harassment" p. 288 (emphasis added)

22

"These final regulations require all recipients with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, to respond promptly in a manner that is not deliberately indifferent, irrespective of whether the complainant and respondent are students or employees." p. 1261

23

"For respondents (whether students or employees) and for complainants (whether students or employees), it is important for a Title IX grievance process to reach a reliable outcome." p. 1284

24

"The Department appreciates support for its final regulations, which apply to employees." p. 1510

25

"These final regulations may apply to reports and formal complaints by employees against students and other employees, and also may apply to third-party complaints against students."

26

"The Department's longstanding position is that its Office for Civil Rights (OCR) addresses, under Title IX, sex discrimination in the form of sexual harassment, including by or against employees." p. 1512

27

"employers must fulfill both their obligations under Title VII and Title IX, and there is no inherent conflict between Title VII and Title IX" p. 1514

28

"These regulations do not preclude a recipient from enforcing a code of conduct that is separate and apart from what Title IX requires, such as a code of conduct that may address what Title VII requires." p. 1516

29



- This language sounds like the regulations apply across the board to employees
- But some other language qualifies that.

30

"Title IX, thus, applies to any person in the United States who experiences discrimination on the basis of sex in any education program or activity receiving Federal financial assistance. Similarly, these final regulations, which address sexual harassment, apply to any person, including employees, **in an education program or activity** receiving Federal financial assistance."

31

"The Department notes, however, that employment status may not always be the most relevant determination as a complainant must be participating in or attempting to participate in an **education program or activity** of the recipient at the time of filing a formal complaint as explained in the definition of 'formal complaint' in § 106.30."

32

Plus, what about the definition of sexual harassment other than sexual assault, dating violence, and stalking: "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 recipient's education program or activity.**"

33



- So, inclination might be to interpret this as requiring an employee to be trying to get an education
- But some of the commentary indicates that is not required, that working in an education program or activity is accessing it.

34

"The Department will interpret a recipient's education 'program or activity' in accordance with the Title IX statute and its implementing regulations, which generally provide that an educational institution's program or activity includes 'all of the operations of' a postsecondary institution or elementary and secondary school." p. 250

35

"an education program or activity includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the harassment occurs" p. 587

36

"A complainant may be 'attempting to participate' in the recipient's education program or activity in a broad variety of circumstances that do not depend on a complainant being, for instance, enrolled as a student or employed as an employee." p. 709

37

The notification of policy "must state that the requirement not to discriminate in the education program or activity extends to admission (unless subpart C of this part does not apply) and employment, and that inquiries about the application of title IX and this part to such recipient may be referred to the recipient's Title IX Coordinator, to the Assistant Secretary, or both. 34 C.F.R. § 106.8(b)

38

So . . .

- The most conservative approach is that if conduct that is reported meets the definition of sexual harassment under Title IX, then the regulations apply.
- Meaning that, if an employee wants to file a formal complaint, following the grievance process will be required.
- Also, remember that supportive measures are available to any complainant or respondent, including employee-complainants and employee-respondents.

39

But . . .

- If conduct does not meet the definition of sexual harassment under Title IX, but does under Title VII, take the usual steps you would take to investigate harassment under Title VII.
- The regulations expressly provide that nothing in them may be read in derogation of an individual's rights, including an employee's rights, under Title VII.
- So, even though Title IX may not be implicated, the employee still has all the rights under Title VII.

40



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HANSEN POWELL & MUÑOZ, P.C.

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QUESTIONS?

41



Working with Media and Controlling the Message

Presented by:
Linsae Snider, Texas School Public Relations Association


October 21, 2020

COMMUNICATIONS ADDRESSING TITLE IX ISSUES
EICHELBAUM WARDELL
HANSEN POWELL & MUÑOZ, P.C.
 LINSAE SNIDER, EXECUTIVE DIRECTOR



Texas School Public Relations Association
 406 East 11th Street, Suites 101-105, Austin, TX 78701
 512.474.9107 www.tspra.org

1



Each and every time you **COMMUNICATE**, you shape public opinion about **YOU**, your **PROFESSION** and your **DISTRICT**.


2

FOUR SCENARIOS WILL BE ADDRESSED

1. Employee arrested for improper relationship with student
2. Former employee arrested for possession of child pornography
3. Lawsuit against district and administrators alleging deliberate indifference and cover up of sexual assault of student
4. Family alleges on social media that school officials have discriminated against LGBTQ student

3

MEDIA "PECKING" ORDER




1. Weather
2. Tragedy
3. Sports
4. National News
5. Politics
6. City
- 7. Education**
8. County

4

WHAT VIEWERS WANT TO SEE AND HEAR ABOUT EDUCATION AND SCHOOLS


1. **Safety and security in schools** (disasters, emergencies, health issues, inappropriate teacher/student relationships, bus issues, suicides, traffic issues)
2. ***Quality of education in and within area schools** (testing, cheating scandals, financial disparities, classroom sizes, teacher quality and shortages, discipline issues, employee disputes, quality of facilities, teacher certifications, districts of innovation, budget shortfalls, board mishaps)
3. **Violence in schools** (including illegal happenings, racial tensions, walk-outs, concealed weapon issues, shootings.)
4. **National/state news brought to the local level** (clowns, charter operators, vouchers, teacher salaries, cameras in the health issues, pandemic/COVID, immunizations)

*If a reporter issues an open records request for any of these, 100% chance surrounding districts got the same open records request.



5

IN CRISIS, LEADERS MORE THAN EVER NEED TO PROVIDE EVIDENCE OF:



- Trust
- Compassion
- Stability
- Hope

6


COMPASSION

- Safety and well-being of our students is a priority...
- Our heart, thoughts, prayers are extended to the family, community...
- Our education family is grieving at the loss, thought, tragedy...
- We are reaching out to the students, families affected

TRUST


- Time of incident and when district was notified and did something about it
- We are cooperating with the authorities
- We continue to monitor the situation
- Provide additional information as it becomes available
- Conducted thorough investigation...

STATEMENT STARTERS:



7

STATEMENT STARTERS:




STABILITY

- XYZ ISD follows state law and locally adopted procedures
- Fingerprint
- Background checks
- Minimum of three references
- Counselors are available
- TEA, authorities notified

HOPE

- We take threats, occurrences, incidents such as this seriously
- Moving forward with a productive day of teaching and learning
- Individual placed on administrative leave

8




Address the Public's THREE Main Concerns

1. That you care about the harm caused.
2. What happened?
3. How will you fix it so it doesn't happen again?

9


YOUR STATEMENT SHOULD INCLUDE:

- ◆ When did you know?
- ◆ When should you have known?
- ◆ Who was involved and where did it happen?
- ◆ What did you do when you found out?
- ◆ Were your actions appropriate?
- ◆ What are you doing to move forward and how will things be different?



10

TIPS TO CONSIDER



- Have attorney review any public statement regarding personnel or student
- Check what you know about FERPA and Texas Open Record Laws
- Determine if it is your story to tell?
- While under investigation information may not be reportable
- Distinguish what is school information to share and what is information is for authorities to share.
- Determine one source for posting information and direct all other outlets to that source

11

TITLE IX SCENARIO #1

Employee arrested for improper relationship with student

12

1. Safety and well being of students...
2. Learned of incident [date & time] involving employee
 - Or notified by authorities [date/time]
 - Can mention involving minor/student enrolled in district (I would not mention the campus)
3. Placed individual on leave [date/time]
4. Conducted [internal investigation]
 - Alerted authorities...
 - Cooperating with authorities
 - Reported incident to TEA as required by law
5. No further information can be divulged while the investigation is on-going.
6. Matters related to the arrest can be directed to the authorities/
7. The district will continue to conduct background checks, fingerprint checks and contact a minimum of three references in our hiring practices to include a character reference prior to hiring
8. XYZ ISD will continue to follow all requirements of new Title IX laws.

Title IX Tips:

- Title IX coordinator received complaint [date/time]
- Title IX investigator implemented procedures required of federal law...
- Title IX advisor working closely with the family of the complainer

13

Our first and foremost concern is the safety of our students.

When the allegations were brought to our attention, we immediately reported them to law enforcement and Texas Education Agency.

School officials are cooperating with law enforcement during the ongoing investigation.

At this time, the teacher has been placed on (paid/unpaid administrative leave) until further notice.

All faculty and staff in XYZ ISD go through a thorough background check prior to hiring.

14

TITLE IX SCENARIO #2

Former employee arrested for possession of child pornography

15

Not your story!

Tip:

School district technology/equipment could be part of the investigation. If so...

- "SRO is cooperating with authorities regarding the use of any district equipment and technology during the time of employment"
- "the authorities have sequestered district technology and equipment used during time of employment."

Why is this not your story?

- FORMER employee
- "We are disturbed to learn that a former XYZ ISD employee has been arrested..."
- Do know you need to share the following:
 - Confirm the individual has/had not been employed by your district
 - Date of employment/date of termination
 - Can include job/position during employment
 - Title IX Coordinator and/or SRO is cooperating with authorities
- Such behavior is not acceptable or tolerated at XYZ ISD.

Refer to authorities to provide information related to:

- Arrest
- Details leading to arrest

16

Statement for IF the accused is employed by the district

The subject of the arrest was unrelated to his/her employment, and the arrest did not occur on school/district property.

The employee has not been in the classroom since the arrest, and until the matter is resolved will remain out of the classroom.

While this is a personnel issue that is under investigation, I can share that the employee is currently on unpaid leave.

The safety and well-being of our students is always our highest priority.

School administrators and district staff will be supporting students enrolled in this teacher's courses.

17

TITLE IX SCENARIO #3

Lawsuit against district and administrators alleging deliberate indifference and cover up of sexual assault of student


18

BE MINDFUL....

Lawsuit against district and administrators alleging deliberate indifference and cover up of sexual assault of student.

- **Trust** may likely be compromised.
 - **Empathy/Compassion** is paramount!
 - "It is heartbreaking that such an accusation has occurred. We take this seriously and are in the process of tasking our highly trained Title IX staff to conduct a fair and accurate investigate following the guidelines of the federal mandate and with the guidance of the district legal counsel."
- **Stability** can be addressed by repeating **internally and externally** regarding efforts to move forward and preventive measures being implemented **to assure it does not happen again.**
 - New policy/procedures/practices
 - Continued training of staff
 - Continue to cooperate with the authorities
- **Hope** can be established in a statement such as, "in the 90-year history of XYZ ISD, such an incidence has never been reported and every measure is being taken to assure it never happens again."

19



Title IX Tips:

- Complainer – not victim
- Respondent – not an accused

- Consult with attorney on everything!
- Communicate internally and externally
- Confirm the investigation is on-going.
- Follow FERPA guidelines with the use of names.

Take opportunity of your Title IX roles to verify fairness

- **Title IX coordinator** is trained and overseeing the process
- **Title IX Investigator** is trained to conduct an impartial investigation
- **Title IX decision-maker** is trained to determine which evidence is relevant and weigh the evidence upon certain standards and statutory mandates
- **Title IX facilitator** trained in unbiased processes for best reaching resolutions
- **Title IX Advisor** is available to assist the student and family

20

TITLE IX SCENARIO #4


Family alleges on social media that school officials have discriminated against LGBTQ student

21

Let's talk about this one!

- Is alleging on social media the same as a formal complaint?
- Where are the posts taking place? District social media pages/platforms? Individual or group pages/platforms?
- How is your district's perception affected by the postings?
- What do you know about deleting posts?

22



Title IX Tips:

- Refer to policy
- Post policy for easy access on all district/campus website pages

Next steps:

- Contact the complainer directly.
- Avoid a Facebook/Twitter war.
- Attempt to resolve the issue between the complainer and accused.
- Listen. Listen. Listen.
- If there is no formal complaint, it is likely that the accuser just needs to be heard.

23

ON THE PR FRONT ...

- Is your policy accessible and easy to locate?

The more difficult to locate, perception is it is not important
- Do your photos and videos include students and families with a wide range of diversity?

The less diversity in visuals can create perception that inclusion is not important


24

MORE...

About Title IX:

- Is your Title IX Coordinator name and contact information prominently displayed on the district website?
- Is your nondiscrimination notice readily accessible on your website?
- Is your Title IX grievance procedure posted on your website?

25



**Address the Public's
THREE
Main Concerns**

1. That you care about the harm caused.
2. What happened?
3. How will you fix it so it doesn't happen again?

26

**TEXAS SCHOOL PUBLIC
RELATIONS ASSOCIATION**



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Documenting Title IX Claims

Presented by:
Holly Boyd Wardell


October 21, 2020

DOCUMENTING TITLE IX CLAIMS OF SEXUAL HARASSMENT

Under the New Regulations



Holly Boyd Wardell



October 21, 2020

1

TITLE IX GRIEVANCE PROCESS SEXUAL HARASSMENT

- Prevent or stop sexual harassment
- Provide equitable process for handling reports/complaints
- Implement supportive measures to individuals
- Document efforts to ensure compliance, have record for future action, identify patterns
- Avoid finding of deliberate indifference

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2

TITLE IX GRIEVANCE PROCESS SEXUAL HARASSMENT

- New regulations adopted standards from Supreme Court cases (Davis, Gebser).

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3

LIABILITY

A private damages action may lie against a school board under Title IX in cases of student-on-student sexual harassment but only where the funding recipient acts with **deliberate indifference** and the harassment is so severe that it effectively bars the victim's access to an educational opportunity or benefit.

Davis v. Monroe County Bd. of Educ.,
526 U.S. 629 (1999).

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4

TITLE IX GRIEVANCE PROCESS SEXUAL HARASSMENT

- A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the U.S. must respond promptly in a manner that is not deliberately indifferent.
- A recipient is **deliberately indifferent** only if its response to sexual harassment is clearly unreasonable in light of known circumstances.

34 CFR 106.44(a).

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5

LIABILITY

A recipient is liable for its own actions in response to known harassment.

Davis v. Monroe County Bd. of Educ.,
526 U.S. 629 (1999).

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6

LIABILITY

Liability under Title IX does not extend to school officials, teachers, and other individuals.

Plummer v. Univ. of Houston,
860 F.3d 767 (5th Cir. 2017).

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7

LIABILITY

Remember that Title IX is not the exclusive mechanism for addressing gender discrimination in schools.

For example: 14th Amendment – substantive due process
Right to bodily integrity

Fitzgerald v. Barnstable Sch. Comm., 555
U.S. 246 (2009).

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8

RECORD KEEPING

- Initial intake report
- Response to sexual harassment report – supportive measures
- Formal complaint
- Notice to parties
- Emergency removal
- Administrative leave
- Informal resolution
- Notice to parties of interviews
- Evidence submitted to parties
- Investigative report
- Notice of opportunity to submit questions
- Questions and submitted answers
- Determination of responsibility
- Documentation of remedies and sanctions
- Appeal documentation
- Decision of appeal

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9

Hypothetical:

Lashonda, 5th grade cisgender female

Allegations

- Cisgender male classmate repeatedly groped and touched on Lashonda's breast and in her genital area
- Made vulgar statements: *I want to get in bed with you. I want to feel your boobs.*
- Placed a door stop in his pants and proceeded to act in a sexually suggestive manner toward Lashonda in PE class.
- Rubbed his body against her in the hallway
- On campus and the school bus
- Repeatedly over a 5-month period

- Parent says already reported to campus administration and nothing done.
- Calls Director of Student Services office.

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10

Record of Reports

STUDENT WELFARE
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION
FFH (LOCAL)

Employee Report Any District employee who suspects or receives direct or indirect notice that a student or group of students has or may have experienced prohibited conduct shall promptly notify the appropriate District official listed in this policy and take any other steps required by this policy.

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11

Record of Reports

Definition of District Officials For the purposes of this policy, District officials are the Title IX coordinator, the ADA/Section 504 coordinator, and the Superintendent.

Title IX Coordinator Reports of discrimination based on sex, including sexual harassment, gender-based harassment, or dating violence, may be directed to the designated Title IX coordinator for students. [See FFH(EXHIBIT)]

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12

Intake

Title IX Discrimination Intake Form
 Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on the sex of students in educational institutions that receive federal financial assistance. This form is to be completed by an individual reporting sexual harassment or an individual in the Title IX Coordinator's office when a student, parent, or district employee reports possible sexual harassment to the Title IX Coordinator's office.

REPORTER INFORMATION:
 Case Number: 2020-10-2145
 Reporter Name: Aurelia Davis (Parent)
 Email: adavis@gmail.com
 Phone Number: (478) 867-5309
 Student ID: 1191661 Campus: Hubbard Elem. Sch.

13

Intake

Type of Prohibited Conduct:
 Discrimination based on: (Check all that apply)
 Sexual Harassment Sexual Assault Gender Based Harassment Dating Violence
 Stalking Retaliation Cyber Bullying Other

Date Incident Occurred:
 Earliest Sept, 2020
 Latest Oct, 15, 2020
 Continuing Action

14

Intake

ALLEGED VICTIM'S INFORMATION:
 Name: Lashonda Davis
 School/Department: Hubbard E.S. Job Title: NA
 Email: NA Employee ID: NA
 Student ID: 1191661 Campus: HES
 Extra-Curricular Activities: After school chess club

15

Intake

- Description of prohibited conduct
- Any witnesses
- Previously discussed with witnesses
- Identify any administrators or district employees reported to
- Signature and date of person taking initial report

16

Child Abuse Report?

If the incident could be child abuse, the employee(s) receiving the report must report to CPS or law enforcement within 48 hours.

17

Promptly contact complainant

The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures...consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

34 CFR §106.44(a).

18

If Complainant wants to file formal complaint...

Title IX Discrimination Formal Complaint Form
 Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on the sex of students in educational institutions that receive federal financial assistance. When the form has been completed and signed by a Complainant or the Title IX Coordinator, the alleged sexual harassment will be investigated by the District. A copy of this completed form, as well as information about the District's Title IX grievance process (FFH - Regulation 2), will be provided to the Complainant and Respondent.

- Complainant:** An individual who is alleged to be the victim of sexual harassment.
- Respondent:** An individual who is alleged to be the perpetrator of sexual harassment.
- Formal Complaint:** A document filed by a Complainant (or parent/guardian) or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the District investigate the allegation.

COMPLAINANT PERSONAL INFORMATION (Please Print):

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If Complainant does not want to file formal complaint...

DISTRICT LETTERHEAD

*This letter may be sent to adult students or parents of minor students after initial verbal contact by school officials about a report of alleged sexual harassment involving their child when no Formal Complaint is filed.

October 21, 2020

Va email: adavis@shmail.com
 Original via First Class Mail

Aurelia Davis
 862 Georgia Drive
 Macon, Texas 75457

Re: Title IX Complaint - Response to Sexual Harassment Report
 Supportive Measures

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20

Dear Ms. Davis:

This letter is to confirm receipt of a report of alleged sexual harassment involving your child. It is our understanding that, at this time, you do not wish to file a Formal Complaint and pursue this matter further. If you change your mind, please contact my office immediately.

Even though you have not filed a Formal Complaint, the District is implementing the following supportive measures for your child, because school board policy FFH prohibits discrimination on the basis of sex, including sexual harassment and other prohibited conduct, against students in all of its educational programs. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, without fee or charge to students, when a report of alleged sexual harassment is made.

Supportive Measures: (Select only those that apply and provide details. Delete the options below that will not be implemented.)

- Counseling of students regarding appropriate behavior expectations
- Review of district and code of conduct expectations with students by administrator
- Change of class schedule/lunch schedule/locker location
- Campus/class escort
- Increased school monitoring of [location] for [time period e.g., next 9 weeks]
- School counseling
- Stay away agreement/No contact directives
- Limitation on extracurricular activities
- Training
- Other: _____

The District's goal is for you/your child to feel safe and comfortable on campus. If you have questions about the District's Title IX grievance process or supportive measures, please contact the Title IX Coordinator's Office at (XXX) XXX-XXXX or [email].

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If the district does not provide the supportive measures, the Title IX Coordinator must document why not.

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22

Emergency Removal

Nothing in the Title IX grievance process precludes a recipient from removing a respondent from the recipient's education program or activity on an emergency basis, provided that the recipient undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

34 CFR 106.44(c).

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23

Removals requiring analysis:

- OSS
- DAEP
- Expulsion
- Change of class/schedule*
- Change of campus*
- Teams
- Clubs
- Organizations
- Student activities (STUCO)

*Could be a supportive measure if doesn't unreasonably burden the respondent. See p. 770-777 - Commentary

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Emergency Removal Form

Emergency Removal Form

Name of Respondent Student: Groper Flanders (G.F.)

Title IX Case No. 2020-10-21-45 Current Campus: Hubbard E.S.

**A Respondent may be removed from the district's educational program or activities if the District makes an individualized safety and risk analysis and determines that an immediate threat arising from the allegations of sexual harassment, to anyone's physical health or safety justifies removal. This analysis may involve the campus/district threat assessment team. A student who is removed on an emergency basis must be provided with notice and an opportunity to challenge the decision. A student with a disability has rights under the Individuals with Disabilities Education Act and/or Section 504 of the Rehabilitation Act and may not be removed without following the procedural safeguards of those laws.*

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Emergency Removal Form

- Does the student receive special education or Section 504 supports? If so, refer to ARD/504 committee. See Texas Education Code § 37.004

If the Respondent has already been removed for behaviors other than sexual harassment, list the basis for the removal from the Student Code of Conduct (e.g., bullying, cyberbullying, use of profanity, lewd or vulgar language on campus or school-related activity; violation of technology acceptable use policy; assault; hazing).

Examples of removal include OSS, DAEP, expulsion, change of campus, removal from extracurricular activity.

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Emergency Removal Form

Removal Determination:

- No – Respondent does not pose an immediate threat arising from the allegation of sexual harassment to anyone's physical health or safety.
- Yes – Respondent poses an immediate threat arising from the allegation of sexual harassment to the physical health or safety of the self or others.

Basis for Removal: Due to on-going physical nature of alleged conduct, G.F. is being removed from the after school chess program where there is less student supervision than regular classroom instruction pending the results of the Title IX investigation and grievance process. G.F. is also temporarily suspended from the bus.

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Emergency Removal Form

Length Removal: Semester Year Indefinite Trial Basis Other: pending grievance process

School employees involved in making Emergency Removal Decision:

Threat Assessment Team: B. Query (Principal/Behavior Coordinator); A. Kennedy (School Counselor); Rehnquist (LSSP); C. Thomas (Title IX Coordinator); A. Scalia (Exec. Dir. Special Education)

*The district threat assessment and safe and supportive school team should be notified of removal determination.

*Upon removal, Respondent student must be notified of opportunity to challenge emergency removal: Parent was informed of right to challenge emergency removal under FNG(LOCAL).

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Dismissal of a Formal Complaint

Dismissal Basis: (Check all that apply)

- Does not constitute sexual harassment Did not occur in district program or activity
- Did not occur in the U.S. Dismissal requested by Complainant
- Respondent no longer enrolled in district
- Circumstances prevent the district from gathering evidence sufficient to reach a determination

Reasoning for Dismissal: Describe the reasoning behind the dismissal of this complaint.

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Written Notice of Interviews

As you are aware, the District has received a Formal Complaint alleging sexual harassment involving your student. I plan to interview your student at [Time] on [Date] regarding this pending complaint. The interview will occur at [Location].

You and/or an advisor for the student may accompany the student to the interview to observe the process. However, the student will be expected to respond to questions directly, as developmentally appropriate. While an advisor may attend the meeting, he/she may not question the student, others, or the investigator.

34 CFR §106.45(b)(5).

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- The Title IX Coordinator appointed the undersigned to investigate the Formal Complaint. Investigator.
- The Investigator reviewed the Formal Complaint and relevant district policy and student code of conduct provisions beginning [date].
- The Investigator sent written notice of interviews and right to an advisor on [date].
- The Investigator interviewed the Complainant on [date].
- The Investigator interviewed witnesses provided by Complainant on [dates].
- The Investigator interviewed the Respondent on [date].
- The Investigator interviewed witnesses provided by the Respondent on [dates].
- The Investigator [add other steps taken during investigation—review of physical evidence, location].

Procedural Steps



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- The parties were given the opportunity to submit evidence, which was reviewed by the Investigator.
- The Investigator completed secondary interviews with Complainants, witnesses, additional witnesses, or Respondent.
- The parties were given the opportunity to inspect and review evidence and submit a written response.
- The draft investigation report written was sent to all parties with an opportunity to respond within 10 calendar days.
- The parties did/did not submit written responses that were considered by the Investigator.

Procedural Steps



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- I. Factual information about the parties
- II. The allegations in the Formal Complaint
- III. Timeline/dates
- IV. Relevant sections of board policy and the student of code of conduct
- V. Whether a CPS report was necessary
- VI. Whether there is a related criminal/juvenile investigation
- VII. Evidence from witnesses
- VIII. Physical or other evidence
- IX. Consideration of written responses to draft investigative report.

Findings of Fact



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Investigative Report

The new Title IX grievance process does not prohibit the investigator from making recommendations, but the decision maker must make an independent decision based on an objective review of the evidence.



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This is the final investigative report in this matter. The Decision Maker will allow the parties to submit relevant questions for the other party(ies) or witnesses before making a determination of responsibility for sexual harassment.

Title IX Investigator

Date

Opportunity to Submit Questions



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Determination of Responsibility

The new Title IX grievance process does not prohibit the investigator from making recommendations, but the decision maker must make an independent decision based on an objective review of the evidence.



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Determination of Responsibility



- Nature of allegations
- Procedural steps
- Findings of fact
- Determinations based on preponderance of evidence/beyond reasonable doubt
- Remedies provided
 - Supportive measures to complainant
 - Supportive measures/sanctions to respondent
- Appeal information

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SUPREME COURT:


Whether gender-oriented conduct rises to the level of actionable “harassment” under Title IX depends on a constellation of surrounding circumstances, expectations, and relationships, including, but not limited to, the ages of the harasser and the victim and the number of individuals involved, and courts must bear in mind that children may regularly interact in a manner that would be unacceptable among adults; damages are not available for simple acts of teasing and name-calling, even where these comments target differences in gender, and the behavior must be serious enough to have the systemic effect of denying the victim equal access to an educational program or activity.

Davis v. Monroe County Bd. of Educ.,
526 U.S. 629, 651 (1999).

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APPEAL FORMS

- Appeal form
- Letter – Notice to Other Party
- Decision on Appeal



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OFFICE FOR CIVIL RIGHTS

Thirty-two (32) times in the commentary to the new Title IX regulations, OCR promises to not second guess the substantive decisions of recipients, so long as procedures are followed.

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FFH (REGULATION)

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- Remember the purposes for documenting.
- Consider the ultimate audience.
- As educational experts, an administrator must ensure that errors in writing do not undermine his/her credibility.
- Date and sign final reports.
- Make sure Title IX Coordinator gets a copy of all related documents and evidence.

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DISTRICT LETTERHEAD

Title IX Record Keeping Cover Sheet

*All records related to a report of sexual harassment must be kept for a period of seven (7) years from the date of conclusion of the grievance process.

Date of Initial Complaint: _____

Date of Final Decision: _____

- Initial Intake Report
- Response to Sexual Harassment Report – Supportive Measures
- Formal Complaint, if any
- Notice to Parties
- Emergency Removal, if applicable
- Administrative Leave – Personnel, if applicable
- Informal Resolution Paperwork
- Notices to Parties of Interviews
- Evidence Submitted to Parties, including witness statements, photographs, electronic communications
- Draft Investigative Report and Notice of Opportunity to Submit Response Sent to Parties
- Final Investigation Report
- Notice of Opportunity to Submit Questions
- Questions Submitted and Answers
- Determination of Responsibility
- Documentation of Supportive and Other Measures Imposed After Determination of Responsibility
- Appeals Documentation, if any
- Decision on Appeal

* The Title IX Coordinator must also retain copies of materials used to train the Title IX Coordinator, investigators, decision makers, and facilitators for seven (7) years.

Title IX Discrimination Intake Form

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on the sex of students in educational institutions that receive federal financial assistance. This form is to be completed by an individual reporting sexual harassment or an individual in the Title IX Coordinator's office when a student, parent, or district employee reports possible sexual harassment to the Title IX Coordinator's office.

REPORTER INFORMATION:

Case Number: 2020-10-21:45

Reporter Name: Aurelia Davis (Parent)

Email: adavis@shmail.com

Phone Number: (478) 867-5309

Student ID: 1191661

Campus: Hubbard Elem. Sch.

Employee ID: NA

Job Title: NA

Employee's School/Office Location: NA

Type of Prohibited Conduct:

Discrimination based on: (Check all that apply)

- Sexual Harassment Sexual Assault Gender Based Harassment Dating Violence
 Stalking Retaliation Cyber Bullying Other

Date Incident Occurred:

Earliest Sept. 2020

Latest Oct. 15, 2020

Continuing Action

ALLEGED VICTIM'S INFORMATION:

Name: Lashonda Davis

School/Department: Hubbard E.S. Job Title NA

Email: NA Employee ID: NA

Student ID: 1191661 Campus: HES

Extra-Curricular Activities: After school chess club

Were there any witnesses to this matter? (Please circle) Yes No

If yes, please list those who witnessed the incident(s) or have knowledge of the incident. Please attach additional names if needed.

Name: Sophia (student) School/Department: HES

Phone Number: _____ Email: _____

Name: PE Teacher School/Department: HES

Phone Number: _____ Email: _____

Name: Bus Aide School/Department: Transportation/HES

Phone Number: _____ Email: _____

Did the reporter discuss the incident with any witnesses previously identified? (Please circle) Yes

No

Name: _____ Date: _____

Method or Communication: _____

Please identify any administrators, district employees, or law enforcement agency to whom a report has been made:

Reported to (Name): Mr. Query, Ms. Fort Date: 10/5/20 & 10/10/20

Describe how concerns were reported: called them

Results: nothing

Reported to (Name): _____ Date: _____

Describe how concerns were reported:

Results:

Report taken by:

Sandy O'Connor
Title IX Coordinator/designee

October 21, 2020
Date

Title IX Discrimination Formal Complaint Form

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on the sex of students in educational institutions that receive federal financial assistance. **When the form has been completed and signed by a Complainant or the Title IX Coordinator, the alleged sexual harassment will be investigated by the District.** A copy of this completed form, as well as information about the District's Title IX grievance process (FFH – Regulation 2), will be provided to the Complainant and Respondent.

- **Complainant:** An individual who is alleged to be the victim of sexual harassment.
- **Respondent:** An individual who is alleged to be the perpetrator of sexual harassment.
- **Formal Complaint:** A document filed by a Complainant (or parent/guardian) or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the District investigate the allegation.

COMPLAINANT PERSONAL INFORMATION (Please Print):

Name: _____

Email: _____

Home Address _____

City _____ State _____ Zip code _____

Phone Numbers: (Cell) _____ Work _____

Student ID: _____ Campus: _____

Employee ID: _____ Job Title: _____

Employee's School/Office Location: _____

Type of Complaint:

Discrimination based on: (Check all that apply)

Sexual Harassment Sexual Assault Gender Based Harassment Dating Violence

Stalking Retaliation Cyber Bullying Other

Date Incident Occurred:

Earliest _____

Latest _____

Continuing Action

RESPONDENT INFORMATION: Please list the individual(s) alleged to have engaged in sexual harassment/prohibited conduct:

Name: _____

School/Department: _____

Name: _____

School/Department: _____

Name: _____

School/Department: _____

Name: _____

School/Department: _____

Informal Resolution: Are you interested in the district's voluntary resolution process? (Please Circle)

Yes or No

Were there any witnesses to this matter? (Please Circle) Yes No

If yes, please identify witnesses to the incident(s) or those who have knowledge of the incident(s). Please attach additional names if needed.

Name: _____ Relationship to you: _____

Phone Number: _____ Email: _____

Name: _____ Relationship to you: _____

Phone Number: _____ Email: _____

Name: _____ Relationship to you: _____

Phone Number: _____ Email: _____

Name: _____ Relationship to you: _____

Phone Number: _____ Email: _____

Did you discuss this matter with any of the witnesses previously identified? (Please circle) Yes No

Name: _____ Date: _____

Method of Communication: _____

Please identify any administrators, District employees, or law enforcement agency to whom you have reported your concerns:

Reported to (Name): _____ Date: _____

Describe how concerns were reported:

Results:

Reported to (Name): _____ Date: _____

Describe how concerns were reported:

Results:

I certify the aforementioned is true and correct.

Your signature

Date

Complaint taken by:

Title IX Coordinator/designee

Date

DISTRICT LETTERHEAD

****This letter may be sent to adult students or parents of minor students after initial verbal contact by school officials about a report of alleged sexual harassment involving their child when no Formal Complaint is filed.***

October 21, 2020

Via email: adavis@shmail.com
Original via First Class Mail

Aurelia Davis
862 Georgia Drive
Macon, Texas 75457

Re: Title IX Complaint – Response to Sexual Harassment Report
Supportive Measures

Dear Ms. Davis:

This letter is to confirm receipt of a report of alleged sexual harassment involving your child. It is our understanding that, at this time, you do not wish to file a Formal Complaint and pursue this matter further. If you change your mind, please contact my office immediately.

Even though you have not filed a Formal Complaint, the District is implementing the following supportive measures for your child, because school board policy FFH prohibits discrimination on the basis of sex, including sexual harassment and other prohibited conduct, against students in all of its educational programs. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, without fee or charge to students, when a report of alleged sexual harassment is made.

Supportive Measures: ***(Select only those that apply and provide details. Delete the options below that will not be implemented.)***

- Counseling of students regarding appropriate behavior expectations
- Review of district and code of conduct expectations with students by administrator
- Change of class schedule/lunch schedule/locker location
- Campus/class escort
- Increased school monitoring of [location] for [time period e.g., next 9 weeks]
- School counseling
- Stay away agreement/No contact directives
- Limitation on extracurricular activities
- Training
- Other: _____

The District's goal is for you/your child to feel safe and comfortable on campus. If you have questions about the District's Title IX grievance process or supportive measures, please contact the Title IX Coordinator's Office at **(XXX) XXX-XXXX or [email]**.

Sincerely,

[Name]
Title IX Coordinator/designee

Enclosure: FFH(LOCAL)

DISTRICT LETTERHEAD

Emergency Removal Form

Name of Respondent Student: Groper Flanders (G.F.)

Title IX Case No. 2020-10-21:45 Current Campus: Hubbard E.S.

*A Respondent may be removed from the district's educational program or activities if the District makes an individualized safety and risk analysis and determines that an immediate threat, arising from the allegations of sexual harassment, to anyone's physical health or safety justifies removal. This analysis may involve the campus/district threat assessment team. A student who is removed on an emergency basis must be provided with notice and an opportunity to challenge the decision. A student with a disability has rights under the Individuals with Disabilities Education Act and/or Section 504 of the Rehabilitation Act and may not be removed without following the procedural safeguards of those laws.

Does the student receive special education or Section 504 supports? If so, refer to ARD/504 committee. See Texas Education Code § 37.004

If the Respondent has already been removed for behaviors other than sexual harassment, list the basis for the removal from the Student Code of Conduct (e.g., bullying; cyberbullying, use of profanity, lewd or vulgar language on campus or school-related activity; violation of technology acceptable use policy; assault; hazing).

Examples of removal include OSS, DAEP, expulsion, change of campus, removal from extracurricular activity.

Removal Determination:

- No - Respondent does not pose an immediate threat arising from the allegation of sexual harassment to anyone's physical health or safety.
[X] Yes - Respondent poses an immediate threat arising from the allegation of sexual harassment to the physical health or safety of the self or others.

Basis for Removal: Due to on-going physical nature of alleged conduct, G.F. is being removed from the after school chess program where there is less student supervision than regular classroom instruction pending the results of the Title IX investigation and grievance process. G.F. is also temporarily suspended from the bus.

Length Removal: Semester Year Indefinite Trial Basis [X] Other: pending grievance process

School employees involved in making Emergency Removal Decision: Threat Assessment Team: B. Query (Principal/Behavior Coordinator); A. Kennedy (School Counselor); Rehnquist (LSSP); C. Thomas (Title IX Coordinator); A. Scalia (Exec. Dir. Special Education)

*The district threat assessment and safe and supportive school team should be notified of removal determination.

*Upon removal, Respondent student must be notified of opportunity to challenge emergency removal: Parent was informed of right to challenge emergency removal under FNG(LOCAL).

Title IX Discrimination Dismissal Form

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on the sex of students in educational institutions that receive federal financial assistance. A Formal Complaint of sexual harassment must be dismissed if alleged conduct, even if proved, would not constitute sexual harassment, did not occur in a school district program or activity, or did not occur in the United States. A Formal Complaint may be dismissed if a Complainant notifies the Title IX Coordinator that he/she would like to withdraw the complaint or any of the allegations therein, the Respondent is no longer enrolled in the district, or specific circumstances prevent the district from gathering evidence sufficient to reach a determination.

COMPLAINT INFORMATION (Please Print):

Case Number: _____

Complainant's Name: _____

Email: _____

Complainant School/Office Location: _____

Respondent's Name: _____

Email: _____

Respondent School/Office Location: _____

Dismissal Basis: (Check all that apply)

- | | |
|---|--|
| <input type="checkbox"/> Does not constitute sexual harassment | <input type="checkbox"/> Did not occur in district program or activity |
| <input type="checkbox"/> Did not occur in the U.S. | <input type="checkbox"/> Dismissal requested by Complainant |
| <input type="checkbox"/> Respondent no longer enrolled in district | |
| <input type="checkbox"/> Circumstances prevent the district from gathering evidence sufficient to reach a determination | |

Reasoning for Dismissal: Describe the reasoning behind the dismissal of this complaint.

Name

Title IX Coordinator/designee

Date

Once signed, a copy of this dismissal form will be placed in the file for this complaint and sent to all parties involved.

DISTRICT LETTERHEAD

****This notice must be sent simultaneously to the Complainant and Respondent and before investigation of the Formal Complaint begins, including student interviews occur.***

[Date]

**[Adult Student Complainant/Parent/Guardian]
[Address]**

Re: Notice to Parties of Title IX Formal Complaint of Sexual Harassment
Case No. _____

Dear **Mr./Ms.** _____:

This letter is to notify you of the filing of a Formal Complaint of sexual harassment involving your student. The details of the allegations are included on the enclosed Formal Complaint form. Sexual harassment is prohibited by and defined in Board Policy FFH (LEGAL) and (LOCAL). The grievance process for handling this complaint can be found in FFH (REGULATION 2-SEXUAL HARASSMENT). The policies and procedures are enclosed for your reference.

The District's Title IX sexual harassment grievance process includes an opportunity to participate in an informal resolution process at any time prior to a determination regarding responsibility. During the grievance process, the filer of the complaint is called the Complainant, and the accused is called the Respondent.

The first step in the grievance process is an investigation. I have appointed _____[name], _____[title] to serve as investigator, and he/she will be in contact with you.

Please be aware that, by law, the Respondent is presumed not responsible for the alleged conduct and a determination regarding responsibility is made only at the conclusion of the grievance process by a decision-maker other than the investigator. I have appointed _____ [name], _____ [title] as the decision-maker in this complaint.

You are allowed an advisor to assist you in this process. This may be any adult whom you wish to help you through the process or represent your student. This person may be an attorney but does not have to be. If you would prefer, you may proceed without an advisor. You are also entitled to inspect and review all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that you can meaningfully respond to the evidence prior to conclusion of the investigation.

Please also be aware that provision **XX** of the District's code of conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If you have any questions regarding this information, please let me know. Thank you for your cooperation during this grievance process to ensure that our students experience an education environment free from discrimination on the basis of sex.

Sincerely,

[Name],
Title IX Coordinator/designee

Enclosures: FFH(LEGAL) & (LOCAL)
FFH(Regulation 2)
Formal Complaint Form

DISTRICT LETTERHEAD

****The Complainant and Respondent are entitled to written notice of the date, time, location, participants, and purpose of investigative interviews with sufficient time to prepare (e.g., 2-5 days).***

[Date]

[Adult Student Complainant/Parent/Guardian]
[Address]

Re: Notice of Title IX Investigative Interview
Case No. _____

Dear Mr./Ms. _____:

As you are aware, the District has received a Formal Complaint alleging sexual harassment involving your student. I plan to interview your student at [Time] on [Date] regarding this pending complaint. The interview will occur at [Location].

You and/or an advisor for the student may accompany the student to the interview to observe the process. However, the student will be expected to respond to questions directly, as developmentally appropriate. While an advisor may attend the meeting, he/she may not question the student, others, or the investigator.

You have the right to submit evidence for consideration. You may submit evidence to me via email, flash-drive, or hard-copy. For all evidence you submit, please retain the original and provide only a copy. Include your student's name and the date on all information submitted. Please keep in mind that all evidence may be shared with all parties prior to the issuance of my investigative report.

Before the issuance of my investigative report, you and the other party(ies) will have the opportunity to receive a copy of the evidence and an opportunity to submit a written response on behalf of your student.

If you have any questions regarding the interview, please contact me at (XXX) XXX-XXXX or [email].

Sincerely,

[Name],
Title IX Investigator

cc: Title IX Coordinator/designee

Title IX Discrimination Witness Form

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on the sex of students in educational institutions that receive federal financial assistance. Students, employees, volunteers, and others may possess information relevant to making a determination of responsibility of a Formal Complaint of sexual harassment. However, no individual can be forced to participate in a Title IX investigation, nor may the district retaliate against any individual for participating in or refusing to participate in a Title IX investigation.

A witness may complete this form. If it is not developmentally appropriate for a student to complete this form, the investigator may interview the student and complete the form based on the student's responses.

PERSONAL INFORMATION (Please Print):

Case Number: _____

Witness's Name: _____

Email: _____

Phone Numbers: (Cell) _____ Work _____

Student ID: _____ Campus: _____

Employee ID: _____ Job Title: _____

Employee's School/Office Location: _____

Type of Complaint:

Discrimination based on: (Check all that apply)

Sexual Harassment Sexual Assault Gender Based Harassment Dating Violence

Stalking Retaliation Cyber Bullying Other

Date Incident Occurred:

Earliest _____

Latest _____

Continuing Action

Does any recording or physical record of this incident exist in your possession? Circle: Yes / No

Have you spoken to anyone else about what you witnessed?

Name: _____ Phone Number: _____

Name: _____ Phone Number: _____

DISTRICT LETTERHEAD

****The Complainant and Respondent are entitled to an electronic or hard copy of the evidence prior to the issuance of the investigative report and must be given an opportunity to submit a written response.***

[Date]

[Adult Student Complainant/Parent/Guardian]

[Address]

Re: Opportunity to Review Evidence Title IX Complaint – Sexual Harassment
Case No. _____

Dear Mr./Ms. _____:

You have the right to review any evidence obtained as part of the investigation of sexual harassment involving your student. Please contact me at **(XXX) XXX-XXXX** or **[email]** by **[date]** if you would like the opportunity to inspect and review the evidence.

The evidence may be provided in a format that prevents copying or downloading in order to protect the confidentiality of information in education records for the students involved.

You may submit a written response within 10 days of reviewing the evidence. Your written response will be considered before I draft the investigative report.

Sincerely,

[Name],
Title IX Investigator

Title IX Final Investigation Report

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on the sex of students in educational institutions that receive federal financial assistance. The Complainant and Respondent may submit relevant¹ questions that they would like asked of a party or witness to the Decision Maker.

A Formal Complaint was filed on [date] by [Name of Complainant or Title IX Coordinator]. This report contains a summary of the evidence gathered through the District's investigation of the Formal Complaint, as part of the District's Title IX grievance process.

This investigation was conducted by: _____ from [date] to [date]. The parties have been given the opportunity to inspect and review the evidence gathered in this investigation and an opportunity to provide a written response.

Allegations

Identify the allegations potentially constituting sexual harassment: _____

Procedural Steps

Describe the procedural steps taken from the receipt of the Formal Complaint to date:

- *A report of alleged sexual harassment was received by the campus/Title IX Coordinator's office on [date]*
- *The alleged victim was contacted by the Title IX Coordinator's office and provided with information about the grievance process and supportive measures*
- *A Formal Complaint was filed on [date]*
- *The Title IX Coordinator provided the Complainant and Respondent with written notice of their rights in the grievance process and information about the availability of supportive measures.*
- *The following supportive measures were implemented: _____*
- *Campus administration and the Title IX Coordinator made a determination regarding Emergency Removal of the Respondent. [or] The Title IX Coordinator and Human Resources made a determination regarding Administrative Leave for the Respondent.*
- *The Title IX Coordinator appointed the undersigned to investigate the Formal Complaint. Investigator.*
- *The Investigator reviewed the Formal Complaint and relevant district policy and student code of conduct provisions beginning [date].*
- *The Investigator sent written notice of interviews and right to an advisor on [date].*
- *The Investigator interviewed the Complainant on [date].*
- *The Investigator interviewed witnesses provided by Complainant on [dates].*
- *The Investigator interviewed the Respondent on [date].*
- *The Investigator interviewed witnesses provided by the Respondent on [dates].*
- *The Investigator [add other steps taken during investigation—review of physical evidence, location].*

¹ Questions regarding a Complainant's sexual predisposition or prior sexual behavior are not allowed, unless the responses are needed to prove that someone other than the Respondent committed the alleged conduct or to prove consent.

- *The parties were given the opportunity to submit evidence, which was reviewed by the Investigator.*
- *The Investigator completed secondary interviews with Complainants, witnesses, additional witnesses, or Respondent.*
- *The parties were given the opportunity to inspect and review evidence and submit a written response.*
- *The draft investigation report written was sent to all parties with an opportunity to respond within 10 calendar days.*
- *The parties did/did not submit written responses that were considered by the Investigator.*

Findings of Facts:

- I. Factual information about the parties*
- II. The allegations in the Formal Complaint*
- III. Timeline/dates*
- IV. Relevant sections of board policy and the student of code of conduct*
- V. Whether a CPS report was necessary*
- VI. Whether there is a related criminal/juvenile investigation*
- VII. Evidence from witnesses*
- VIII. Physical or other evidence*
- IX. Consideration of written responses to draft investigative report.*

This is the final investigative report in this matter. The Decision Maker will allow the parties to submit relevant questions for the other party(ies) or witnesses before making a determination of responsibility for sexual harassment.

Title IX Investigator

Date

Title IX Determination of Responsibility – Sexual Harassment Decision

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on the sex of students in educational institutions that receive federal financial assistance. This decision must be issued simultaneously to the Complainant and Respondent.

CASE INFORMATION (Please Print):

Case Number: _____

Complainant: _____

Campus: _____

Respondent: _____

Campus: _____

Type of Complaint:

Discrimination based on: (Check all that apply)

- Sexual Harassment Sexual Assault Gender Based Harassment Dating Violence Stalking Retaliation Cyber Bullying Other

Nature of Allegations:

- A school employee conditioning an educational benefit or service upon a student's participation in sexual conduct
- 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 District's education programs or activities
- Sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined in the Clery Act, 20 U.S.C. § 1092(f), and the Violence Against Women Act, 34 U.S.C. § 12291(a))

Specific Allegations

Identify the allegations potentially constituting sexual harassment: _____

Procedural Steps

Describe the procedural steps taken from the receipt of the Formal Complaint to date:

- *A report of alleged sexual harassment was received by the campus/Title IX Coordinator's office on [date]*

- *The alleged victim was contacted by the Title IX Coordinator's office and provided with information about the grievance process and supportive measures*
- *A Formal Complaint was filed on [date]*
- *The Title IX Coordinator provided the Complainant and Respondent with written notice of their rights in the grievance process and information about the availability of supportive measures.*
- *Campus administration and the Title IX Coordinator made a determination regarding Emergency Removal of the Respondent. [or] The Title IX Coordinator and Human Resources made a determination regarding Administrative Leave for the Respondent.*
- *The Title IX Coordinator appointed the undersigned to investigate the Formal Complaint. Investigator.*
- *The Investigator reviewed the Formal Complaint and relevant district policy and student code of conduct provisions beginning [date].*
- *The Investigator sent written notice of interviews and right to an advisor on [date].*
- *The Investigator interviewed the Complainant on [date].*
- *The Investigator interviewed witnesses provided by Complainant on [dates].*
- *The Investigator interviewed the Respondent on [date].*
- *The Investigator interviewed witnesses provided by the Respondent on [dates].*
- *The Investigator [add other steps taken during investigation—review of physical evidence, location].*
- *The parties were given the opportunity to submit evidence, which was reviewed by the Investigator.*
- *The Investigator completed secondary interviews with Complainants, witnesses, additional witnesses, or Respondent.*
- *The parties were given the opportunity to inspect and review evidence and submit a written response.*
- *The draft investigation report written was sent to all parties with an opportunity to respond within 10 calendar days.*
- *The parties did/did not submit written responses that were considered by the Investigator.*

Findings of Facts

- I. Factual information about the parties*
- II. The allegations in the Formal Complaint*
- III. Timeline/dates*
- IV. Relevant sections of board policy and the student of code of conduct*
- V. Whether a CPS report was necessary*
- VI. Whether there is a related criminal/juvenile investigation*
- VII. Evidence from witnesses*
- VIII. Physical or other evidence*
- IX. Consideration of written responses to draft investigative report.*

Conclusion regarding the Code of Conduct and Rationale

Based on a preponderance of the evidence *[or beyond a reasonable doubt, depending on the burden of proof selected by the district in its regulations]*, it is determined that:

- I. Allegation 1 [Fully listed]
 - a. The Respondent has been determined to have/have not engaged in sexual harassment or other prohibited conduct under the district's FFH policy and/or student code of conduct....
 - b. The reasoning for the finding. . .
- II. Allegation 2 [Fully listed]
 - a. The Respondent has been determined to have/have not engaged in sexual harassment or other prohibited conduct under the district's FFH policy and/or student code of conduct....
 - b. The reasoning for the finding. . .
- III. Allegation 3 [Fully listed]
 - a. The Respondent has been determined to have/have not engaged in sexual harassment or other prohibited conduct under the district's FFH policy and/or student code of conduct....
 - b. The reasoning for the finding. . .

Remedies Provided

Disciplinary Sanctions

The following disciplinary sanctions are to be imposed upon the Respondent:

- Sanction 1
- Sanction 2
- Etc.

Supportive Measures to Complaint: *(Select only those that apply and provide details. Delete the options below that will not be implemented.)*

- Counseling of students regarding appropriate behavior expectations
- Review of district and code of conduct expectations with students by administrator
- Change of class schedule/lunch schedule/locker location
- Campus/class escort
- Increased school monitoring of [location] for [time period e.g., next 9 weeks]
- School counseling

- Stay away agreement/No contact directives
- Limitation on extracurricular activities
- Training
- Other: _____

Supportive Measures to Respondent: (Select only those that apply and provide details. Delete the options below that will not be implemented.)

- Counseling of students regarding appropriate behavior expectations
- Review of district and code of conduct expectations with students by administrator
- Change of class schedule/lunch schedule/locker location
- Campus/class escort
- Increased school monitoring of [location] for [time period e.g., next 9 weeks]
- School counseling
- Stay away agreement/No contact directives
- Limitation on extracurricular activities
- Training
- Other: _____

The remedies and measures listed above are designed to restore or preserve equal access to the district’s educational programs.

Appeal

Either party may appeal this determination of responsibility on a form provided by the District **within 10 calendar days** of issuance of this decision. The only allowable bases for appeal are:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time of the decision that could affect the outcome; and
3. The Title IX Coordinator, Investigator(s), or Decision Maker has a conflict of interest or bias for or against Complainants or Respondents.

Name

Title IX Decision Maker

Date

cc: Title IX Coordinator

Title IX Decision Appeal Form

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on the sex of students in educational institutions that receive federal financial assistance. Either party may appeal the determination of responsibility under the district’s Title IX grievance process by filing an appeal within 10 calendar days of the date of the decision on this form. The other party will be provided a copy of this appeal.

APPEAL REQUESTER’S INFORMATION (Please Print):

Case Number: _____

Name: _____

Date of Title IX Decision: _____

Basis for Appeal:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time of the decision that could affect the outcome; and
- The Title IX Coordinator, Investigator(s), or Decision Maker has a conflict of interest or bias for or against Complainants or Respondents.

Please describe the basis for your appeal.

Your signature

Date

This appeal must be submitted to the Title IX Coordinator within 10 calendar days. Once an appeal is received, the other party will be notified and provided with an opportunity submit a written response within five calendar days. An administrator who was not the Investigator, Title IX Coordinator, or Decision Maker will make a decision on the appeal. Both parties will be notified of the outcome.

DISTRICT LETTERHEAD

***This notice must be sent to a party when the other party has filed an appeal of the determination of responsibility.**

[Date]

[Adult Student Complainant/Parent/Guardian]

[Address]

Re: Notice of Appeal of Determination of Responsibility
Case No. _____

The Complainant/Respondent in the above referenced matter filed an appeal of the Decision Maker's determination of responsibility. A copy of the appeal is enclosed. You may, but are not required to, submit a written statement in support of or challenging the appeal. If you would like to submit a response, please do so no later than **[date]**. Please send this statement via mail or email to the Title IX Coordinator who will provide the statement to the administrator who will issue a final decision.

Sincerely,

[Name],
Title IX Coordinator

Title IX Discrimination Appeal Decision

Title IX of the education Amendments of 1972 (20 U.S.C. § 1681) is an all-encompassing federal law that prohibits discrimination based on the gender of students and employees of educational institutions which receive federal financial assistance.

APPEAL REQUESTER'S INFORMATION (Please Print):

Case Number: _____

Complainant's Name: _____

Email: _____

Home Address _____

City _____ State _____ Zip code _____

Phone Numbers: (Cell) _____ Work _____

Employee ID: _____ Job Title: _____

Employee's School/Office Location: _____

Appeal Basis:

Appeal was based on: (Check all that apply)

Procedural Error Substantive Error New Information Other

After carefully considering the appeal and the submissions of all parties, there **will/will not** be a change in the decision made by the District.

Rationale: _____

Decision Maker on Appeal

Date

cc: Copy of decision to both parties simultaneously
Title IX Coordinator




Title IX & Chapter 37


Presented by:
Holly Boyd Wardell and Tyler P. Ezell

October 21, 2020

The Relationship Between Title IX and Chapter 37 of the Texas Education Code




Holly Boyd Wardell
Tyler P. Ezell
Oct. 21, 2020



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To the extent of a conflict between State or local law and title IX...the obligation to comply...is not obviated or alleviated by any State or local law.”

Preemptive effect. 34 C.F.R. § 106.6(h).

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Title IX trumps Chapter 37 of the Texas Education Code and locally adopted Student Codes of Conduct.

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New Title IX Requirement – Sexual Harassment

A recipient’s response must treat complainants and respondents equitably by offering supportive measures and by following a grievance process **before the imposition of any disciplinary sanctions** or other actions that are not supportive measures **against a respondent**.

General response to sexual harassment. 34 CFR §106.44(a)
Basic requirements for grievance process. 34 CFR §106.45(b)(1)

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Title IX: Definition Sexual Harassment

1. Employee conditioning aid, benefit, or service on participation in unwelcome sexual conduct;
2. Unwelcome **conduct** that is severe, pervasive, and objectively offensive and denies a person of equal access to education/activity
3. **Sexual assault, dating violence, domestic violence, stalking**

34 CFR 106.30

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Texas Education Code

- § 25.0341 – Transfer of Students Involved in **Sexual Assault**
- § 37.001(a)(7)&(b) – Student Code of Conduct – **harassment**
- § 37.0051 – Placement of Students Committing **Sexual Assault** Against Another Student
- § 37.007 – Expulsion for Serious Offenses – **sexual assault**
- § 37.083 – Discipline Management Programs; **Sexual Harassment** Policies
- § 38.0831 – **Dating Violence** Policies
- § 37.115 – Threat Assessment and Safety and Supportive School Program and Team

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Imposition of Disciplinary Sanctions

A recipient's treatment of a respondent may also constitute discrimination on the basis of sex under Title IX. The grievance process aims to provide both parties with equal rights and opportunities to participate in the process and to promote impartiality without favor to complainants or respondents, both because treating a complainant or respondent differently based on sex would violate Title IX and because a process lacking principles of due process risks bias that in the context of sexual harassment allegations is likely to involve bias based on stereotypes and generalizations on the basis of sex.

P. 284 - Commentary

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Imposition of Disciplinary Sanctions

Any respondent will receive the due process protections in the Title IX grievance process before the imposition of any disciplinary sanctions for sexual harassment under § 106.44(a).



- Sexual harassment
- Sexual assault
- Dating violence
- Stalking

P. 576 - Commentary

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Non-Title IX Conduct

If the conduct alleged does not involve sexual harassment as defined in the new regulations, the Title IX grievance process does not apply.

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Non-Title IX Conduct

Dismissal: If the conduct alleged in the formal complaint would not constitute sexual harassment even if proved, did not occur in the recipient's education program/activity or did not occur in the U.S., then the recipient must dismiss the formal complaint for sexual harassment purposes under Title IX. Such dismissal does not preclude action under another provision of the recipient's code of conduct.

34 CFR 106.45(b)(3)

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Non-Title IX Conduct

The U.S. Department of Education cautions against using § 106.45 to circumvent the Title IX grievance process by processing sexual harassment complaints under non-Title IX provisions; however, allegations that do not meet the definition of "sexual harassment" may be addressed by the recipient under other provisions of its code of conduct.

P. 264 - Commentary

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Title IX Conduct

Conversely, if the allegations do meet the definition of "sexual harassment" the Title IX grievance procedures apply.

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UNITED STATES DEPARTMENT OF EDUCATION
Office for Civil Rights

September 4, 2020

**Questions and Answers
Regarding the Department's Final Title IX Rule**

The Department of Education's Office for Civil Rights, through its new Outreach, Prevention, Education and Non-discrimination (OPEN) Center, issues the following technical assistance document to support institutions with meeting their obligations under the Title IX Rule, which was announced on May 6, 2020, and which became effective on August 14, 2020. Many of the questions were derived from questions posed to the OPEN center through e-mail.

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Question 3: The Title IX Rule allows schools to continue to address misconduct that does not meet the definition of sexual harassment. Can Title IX personnel still review these complaints, and follow procedures similar to those allegations that do meet the definition of sexual harassment?

Answer 3: Yes. The Title IX Rule does not preclude a recipient from using the same Title IX personnel (including the Title IX Coordinator, who must be an employee of the recipient, and Title IX investigators and decision-makers, who may be a recipient's employees or the employees of a third-party, such as a consortium of schools) to review and investigate allegations of misconduct that fall outside the scope of Title IX. Similarly, the Rule does not preclude a recipient from using a grievance process that complies with § 106.45 with respect to allegations that fall outside the scope of Title IX. In the Preamble to the Rule at pages 481-82, for example, the Department states:

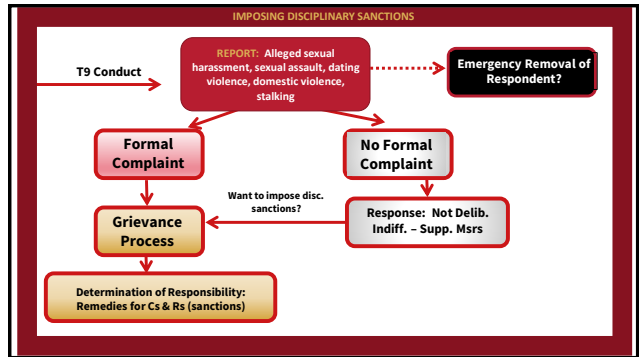
In response to commenters' concerns, the final regulations revise § 106.45(b)(3)(G) to clearly state that dismissal for Title IX purposes does not preclude action under another provision of the recipient's code of conduct. Thus, if a recipient is required under State law or the recipient's own policies to investigate sexual or other misconduct that does not meet the § 106.30 definition, the final regulations clarify that a recipient may do so. Similarly, if a recipient wishes to use a grievance process that complies with § 106.45 to resolve allegations of misconduct that do not constitute sexual harassment under § 106.30, nothing in the final regulations precludes a recipient from doing so. Alternatively, a recipient may respond to non-Title IX misconduct under disciplinary procedures that do not comply with § 106.45. The final regulations leave recipients flexibility in this regard, and preserve a particular grievance process only where allegations concern sexual harassment covered by Title IX.

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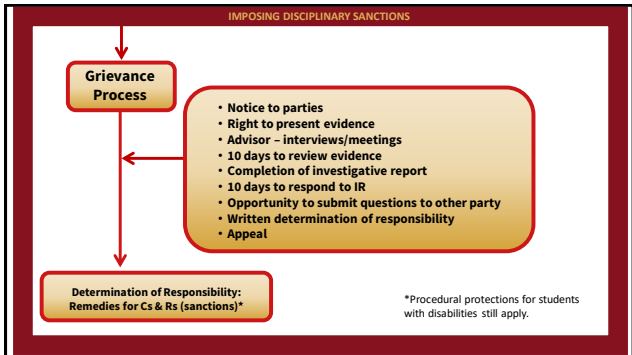
14



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Cartman calls Kyle's mom a bi-atch.


- Not sexual harassment
- Discipline per SCOC

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Cartman calls Kyle a bi-atch, takes his AirPods, and tells other students that Kyle is gay.

Kyle files a formal complaint.
Kyle does not file formal complaint.




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District receives Art. 15.27 notice that a student was arrested for off-campus indecency with a child.

- Not sexual harassment (not in school program/activity)
- Discipline per SCOC, Chapter 37
- Watch for on-campus sexual harassment that may result from off-campus incident




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District receives Art. 15.27 notice that a student was arrested for on-campus sexual assault.

- Sexual harassment
- If complainant, files formal complaint → grievance process
- If complainant does not file formal complaint, Title IX Coordinator can → grievance
- If want to impose disciplinary sanction → grievance process




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Amara and Mateo previously dated. Mateo is jealous of Amara's new relationship and stalks her at school, threatening to kill her.

- Sexual harassment
- If complainant, files formal complaint → grievance process
- If complainant does not file formal complaint, Title IX Coordinator can → grievance process
- If want to impose disciplinary sanction → grievance process
- Remember state dating violence policy requirements




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Ren routinely calls Aki names based on Aki's perceived sexual orientation or gender stereotypes. A teacher reports Ren. Aki does not file a formal complaint.

- Sexual harassment
- If complainant, files formal complaint → grievance process
- If complainant does not file formal complaint, Title IX Coordinator can → grievance
- If want to impose disciplinary sanction → grievance process
- Both students can be provided supportive measures without a formal complaint




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Other Code of Conduct Provisions That Might Apply

MISTREATMENT OF OTHERS	
9.	Threatening a District student, employee, or volunteer, including off school property if the conduct causes a substantial disruption to the educational environment.
10.	Throwing objects that can cause bodily injury or property damage.
11.	Directing profane, vulgar language, or obscene gestures toward other students, District employees or visitors.
12.	Fighting, participating in any manner in fight clubs or boxing.
13.	Fighting or scuffling that does not result in physical pain, illness, or any impairment of a physical condition.
14.	Engaging in horseplay, roughhousing, and other playful behavior that, though not intended to harm, presents a reasonable risk of harm or threatens the safety of others.
15.	Participating in hazing.
16.	Committing extortion, coercion, or blackmail (obtaining money or another object of value from an unwilling person), or forcing an individual to act through the use of force or threat of force.
17.	Engaging in bullying or cyberbullying, including intimidation, teasing, name-calling, ethnic or racial slurs, or derogatory statements that school officials have reason to believe shall substantially disrupt the school program or create violence.
18.	Release or threaten to release intimate visual material of a minor or a student who is eighteen years or older without the student's consent.
19.	Engaging in any conduct that constitutes sexual or gender-based harassment or sexual abuse whether the conduct is by word, gesture, or any other sexual conduct, including requests for sexual favors.
20.	Engaging in harassment of any kind, including, but not limited to, harassment motivated by race, color, religion, national origin, disability or age directed toward another student or District employee.
21.	Engaging in any inappropriate physical or sexual contact.



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Other Code of Conduct Provisions That Might Apply

22. Engaging in inappropriate or indecent exposure of private parts.
23. Making threats, including verbal and written statements, hit lists, mail and e-mail, threats of a graphic nature (drawings, graffiti), and joking about threatening subjects that threaten the safety of another student, a school employee, or school property.
24. Committing simple assault (assault by contact).
25. Participating in consensual hugging, touching, or other displays of affection that are inappropriate.
26. Participating in consensual activities that result in physical alteration or injury to self or of another person's body (i.e. piercing, tattooing, etc.).
27. Failing to immediately report to a school employee knowledge of a device, object, substance, or event that could cause harm to self or others.
28. Engaging in conduct that constitutes dating violence, including the intentional use of physical, sexual, verbal, or emotional abuse to harm, threaten, intimidate, or control another person in a current or past dating relationship.

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BULLYING

Bullying is defined in Section 37.0832 of the Education Code as a single significant act or a pattern of acts by one or more students directed at another student that exploits an imbalance of power and involves engaging in written or verbal expression, expression through electronic means, or physical conduct that:

1. Has the effect or will have the effect of physically harming a student, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or of damage to the student's property.
2. Is sufficiently severe, persistent, or pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student.
3. Materially and substantially disrupts the educational process or the orderly operation of a classroom or school; or
4. Infringes on the rights of the victim at school.

Bullying includes cyberbullying. **Cyberbullying** is defined by Section 37.0832 of the Education Code as bullying that is done through the use of any electronic communication device, including through the use of a cellular or other type of telephone, a computer, a camera, electronic mail, instant messaging, text messaging, social media application, an Internet website, or any other Internet-based communication tool.

The State Law on Bullying prevention applies to:

1. Bullying that occurs on or is delivered to school property or to the site of a school-sponsored or school-related activity on or off school property,
2. Bullying that occurs on a publicly or privately-owned school bus or vehicle being used for transportation of students to or from school or a school-sponsored or school-related activity; and
3. Cyberbullying that occurs off school property or outside of a school-sponsored or school-related activity if the cyberbullying interferes with a student's educational opportunities or substantially disrupts the orderly operation of a classroom, school, or school-sponsored or school-related activity.

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MISUSE OF TECHNOLOGY

34. Violating any of the prohibited behaviors/conduct listed in the LISD Technology Resource Acceptable Use Guidelines. [See Appendix B- Technology Resource Acceptable Use Guidelines for the complete list in the back of the handbook.](#)
35. Recording the voice or image of another without the prior consent of the individuals being recorded, or administrative approval, in any way that disrupts the educational environment or invades the privacy of others.
36. Copying, downloading, reproducing, distributing, retransmitting, redisplaying, or modifying items from the District's website.

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MISCELLANEOUS OFFENSES

47. Engaging in cheating, plagiarism or copying. This offense may result in possible grade reductions and other consequences as permitted by policy.
48. Bringing skateboards onto the bus. (Students with skateboards in their possession shall not be allowed to get on the bus.)
49. Aiding a student or students in committing prohibited behaviors.
50. Participating in gambling or betting money or other things of value.
51. Falsifying records, passes, or other school-related documents.
52. Certain criminal behavior resulting in the student receiving a ticket or citation, being arrested, or having an arrest warrant issued for himself/herself, regardless of where or when the alleged behavior occurred.
53. Using profane language verbally, written, or any electronic form.

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Potentially Overlapping Chapter 37 Provisions

- § 37.001(a)(7)&(b) – Student Code of Conduct – **harassment**
- § 37.0051 – Placement of Students Committing **Sexual Assault** Against Another Student
- § 37.007 – Expulsion for Serious Offenses – **sexual assault**
- § 37.083 – Discipline Management Programs; **Sexual Harassment** Policies
- § 38.0831 – **Dating Violence** Policies
- § 37.115 – Threat Assessment and Safety and Supportive School Program and Team

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Chapter 37 Provisions

§ 37.006 – Removal to DAEP:

- On campus felony
- Public lewdness
- Indecent exposure
- Harassment (Penal Code)
- Off campus Title 5 felony offense (Tex. Penal Code)
- Non-Title 5 felony + safety threat

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The information in this handout was prepared by Eichelbaum Wardell Hansen Powell & Muñoz, P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If special legal advice is sought, consult an attorney.



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