

# 2024 Title IX Training Module: All Employees August 2024

# Title IX Employee Training Module

August 2024

Pamela A. Leist

[pleist@ennisbritton.com](mailto:pleist@ennisbritton.com)

Jeremy J. Neff

[jneff@ennisbritton.com](mailto:jneff@ennisbritton.com)

© Ennis Britton Co., L.P.A. 2024

1

1

# Title IX Basic Concepts

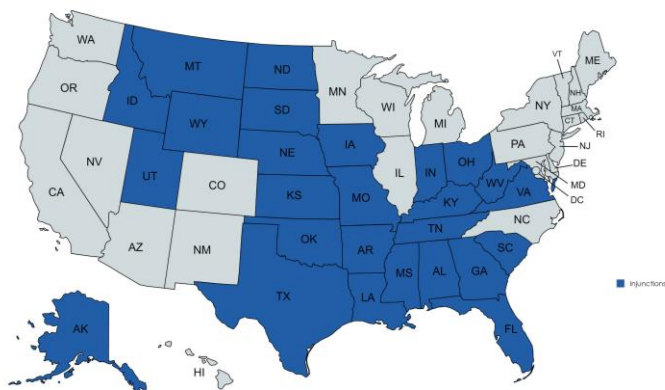
2

1

## Title IX

- Title IX prohibits discrimination in federally funded educational programs on the basis of sex.
- Title IX was enacted in 1972 as part of amendments to the Higher Education Act of 1965.
- Any school district receiving any Federal funds must comply with Title IX.
  - Regulations provide details for compliance
  - Regulations were updated in 2020 and again in 2024\*
- The US Department of Education's Office for Civil Rights (OCR) enforces Title IX.

## Title IX Injunctions (2024 regulations)



## Title IX prohibits sex discrimination in federally funded educational programs.

“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.”

5

5

## Responsibility of School Districts

- Districts are responsible for appropriately responding to discriminatory and harassing conduct.
- The actions of an individual can create liability when a district has actual knowledge of sexual harassment and fails to respond promptly in a manner that is not deliberately indifferent.

6

6

## What is Prohibited?

Students may not be **discriminated against** on the basis of sex.

Students may not be **retaliated against** for making complaints regarding sexual harassment or discrimination.

School Districts cannot be **deliberately indifferent** to complaints of sexual harassment by students.

(Employees are protected under Title VII)

## Types of Prohibited Discrimination Include:

- Sex stereotypes
- Sexual harassment
- Failure to provide equal opportunity in athletics
- Discrimination based on pregnancy or parental status
- Sexual violence
- Scheduling and other things such as equipment and access to facilities
- Discipline
- Retaliation
- (2024 regulations explicitly protect students based on sexual orientation and transgender status)

## Sexual Harassment

9

### 2020 Sex-Based Harassment

Quid pro quo harassment- Conditions the provision of an aid, benefit or service on an individual's participation in unwelcome sexual conduct

Specific offenses: sexual assault, dating violence, stalking, domestic violence

Hostile environment harassment- Conduct that is determined by a reasonable person to be:

1. Unwelcome
2. Severe,
3. Pervasive
4. Objectively offensive
5. That it **effectively denies** a person's ability to participate in or benefit from the educational program or activity.

## 2024 Sex-Based Harassment:

Quid pro quo harassment- Unwelcome conduct by an employee, agent, or other person offering aid, benefit, or service under the educational programs or activities of the entity while explicitly or implicitly conditioning the same on participation in unwelcome sexual conduct

Specific offenses: sexual assault, dating violence, stalking, domestic violence

Hostile environment harassment- Conduct that is:

1. Unwelcome
2. Sex-based
3. Subjectively **and** objectively offensive
4. So severe **or** pervasive
5. That it **limits or denies** a person's ability to participate in or benefit from the educational program or activity.

## Comparing the Changes on Hostile Environment

### ■ On Hold 2024:

- Unwelcome sex-based conduct that based on totality of circumstances is subjectively **and** objectively offensive **and** is so severe **or** pervasive it **limits or denies** a person's ability to participate in or benefit from the educational program or activity.

### ■ 2020 – ongoing pending court action:

- Unwelcome sex-based conduct must be “so severe, pervasive **and** objectively offensive” that it **effectively denies** access to or participation in education programs or activities.

## Must the Conduct Occur at School?

- The 2020 regulations only apply to sex discrimination occurring against a person in the United States and when that discrimination is a part of the educational program or activity.
  - On school grounds or situations over which the school exercises “substantial control.”
  - Fact specific analysis to review the allegations and whether the discrimination is on school property, during a school activity, has a nexus to school, etc.
- Note: the 2024 regulations not in effect in Ohio, amended the scope to administer Title IX in educational programs and activities now includes conduct that occurs off campus and even outside the U.S. Under the 2024 regulations, the question would have been “whether the recipient has disciplinary authority over the respondent’s conduct in the context in which it occurred.”

## Precautions

- These claims are not only against the other sex.
- Bullying may also be sexual harassment. Sexual harassment must be processed in accordance with Title IX.
- While the context of the school setting can be considered in determining whether conduct is inappropriate, beware of generalizations (e.g. “boys will be boys”).
- Be mindful of application outside of the school building (field trips, athletic events, banquets, class trips, school concerts, etc.)



## School Employee and District Response

15

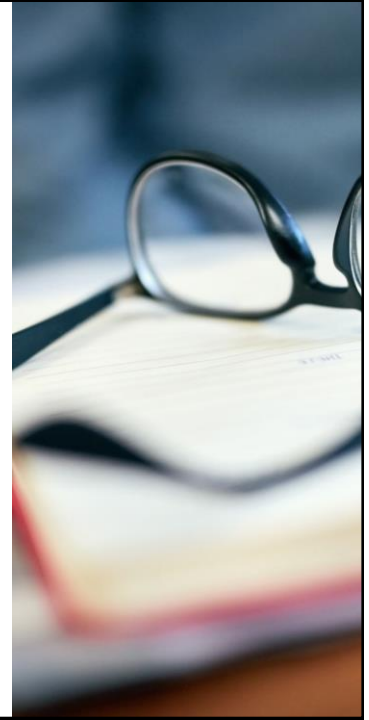
### “Actual Knowledge” Defined

- When any school employee has notice of sexual harassment
  - A report to any school employee
  - A report from any individual
  - Personal observation by any school employee
  - “various other means”
- When notice is received this starts the clock on responding to the complaint promptly.
  - This means notice must very quickly result in a report to a Title IX coordinator

16

## “Actual Knowledge” of What?

- **Err on the side of caution!** There are many examples in which notice of sexual harassment may be obtained other than by direct complaint:
- Examples:
  - Teacher hears a rumor about a sexual relationship between another teacher and a student;
  - A staff member watching a student speak in a sexually inappropriate way to another student;
  - The school receiving notice that that an off-campus sexual violence event is creating retaliation at school.
  - Incident on the bus where a student grabs another student.
- Although the law is still not quite settled on what constitutes notice, it is recommended these types of instances be reported to the district’s Title IX coordinator for follow-up.



## General Response to Sexual Harassment

Districts must respond **promptly** and in a way that is not intentionally indifferent, when it has **actual knowledge** of sexual harassment.

Districts must treat complainants and respondents equally in offering supportive measures to the complainant and by following a compliant grievance process **before** issuing disciplinary sanctions on the respondent.

## What are These “Supportive Measures”?

- Defined as:
  - “Individualized services reasonably available that are nonpunitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.”
  - Examples: changing classes, stay away orders, different schedules, assigning buses, guidance counselor access, checking in regularly, etc., etc.

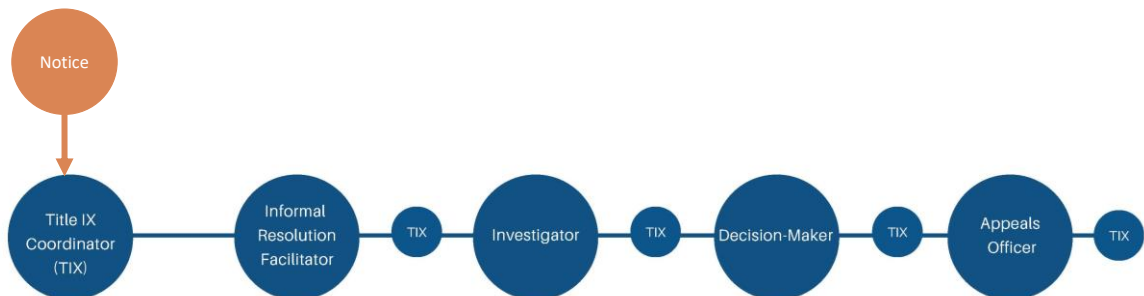
## When Must a Complaint be Submitted?

- There are **no timelines** to initiate a complaint.
  - Statutes of limitations don’t really confine board’s duty to investigate.
  - Policy may recommend that individuals make every effort to report within a certain number of days. However, from an investigation standpoint...the sooner the better.
  - Failure to adhere to this deadline **is not** sufficient reason to ignore the investigation process.

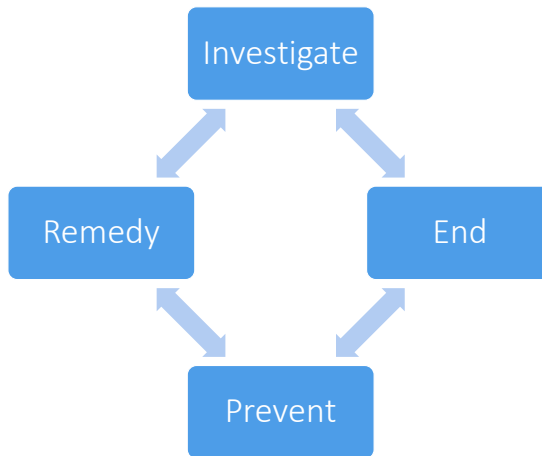
## I Have Become Aware of Potential Sexual Harassment! What Do I Do?

- **Promptly report** to the District's Title IX Coordinator for investigation.
  - If you don't know who the coordinator is, the name and contact information should be displayed on the District's website. You can also ask a principal or supervisor to whom reports should be directed.
- Maintain the confidentiality of the situation outside of discussing with the coordinator or investigator.
- Participate in interviews as requested.
- Review your district's Title IX policy.

## The Line-Up



## District's Title IX Obligations with Respect to Sexual Misconduct



ENNIS  BRITTON

23

## Scenarios

ENNIS  BRITTON

24

## Scenario

You overhear two male students talking about a text they received from a school district employee. In the text, the staff member allegedly states the students are “hot” and “it is too bad they don’t date older women.” What do you do?

## Scenario

A high school experiences a lot of teen pregnancies in the school year. In response, it decides to isolate the students and place them in separate classes. The students receive the same curriculum. Is this a Title IX violation?

## Scenario

The cheerleading coach is concerned that it is not safe for the student to participate in cheerleading while she is pregnant. May she be prohibited from participating for medical reasons? May the district require her to submit a medical certification?

## Scenario

The baseball booster club donates \$25,000 to a school district to update the baseball field bleachers after the boy's baseball team wins the state championship. The money is raised by the boosters, and parent volunteers agree to install the bleachers. No updates are scheduled for the adjacent girls softball field, which is old and run down. Could this be a Title IX violation?

## Scenario

A teacher overhears two students talking about another student who punched her boyfriend in the mouth at a party over the weekend, making him bleed. The boyfriend is also a student at the school.

## Scenario

High School tennis coach is complaining that the girls on the team won't follow team expectations for dress code. The girls keep insisting they wear their sports bras and shorts to practice because it is 90+ degrees outside. The coach insists it is inappropriate. Girls are frustrated because they see the cross-country team running near the courts and the boys on the cross-country team are allowed to run without their shirts on



## Questions?

Pamela A. Leist

[pleist@ennisbritton.com](mailto:pleist@ennisbritton.com)

Jeremy J. Neff

[jneff@ennisbritton.com](mailto:jneff@ennisbritton.com)



31

31



## CONTACT US

### CINCINNATI OFFICE

1714 West Galbraith Road  
Cincinnati, Ohio 45239

Phone: (513) 421-2540  
Toll-Free: (888) 295-8409  
Fax: (513) 562-4986

### CLEVELAND OFFICE

6000 Lombardo Center  
Suite 145  
Cleveland, Ohio 44131

Phone: (216) 487-6672  
Fax: (216) 674-8638

### COLUMBUS OFFICE

8740 Orion Place  
Suite 315  
Columbus, Ohio 43240

Phone: (614) 705-1333  
Fax: (614) 423-2971

*The information in this handout and presentation was prepared by Ennis Britton Co., L.P.A. It is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, please consult an attorney.*

© Ennis Britton Co., L.P.A. 2024 32

32