

TITLE IX SEXUAL HARASSMENT TRAINING

Investigators and Decision-Makers

Presented by School Board Attorney:
Lajuana Ransaw, Esq. and Grant McBride, Esq.
Smith, Welch, Webb & White, LLC
Office of Legal Compliance:
Erica Harrison Arnold



September 6, 2024



A VISION TO

ensure a
**high-quality,
world-class**
education for
every student.

— and a singular —

MISSION TO

empower all students with
**exceptional
opportunities**
and **access**
that lead to
success

in a global society.

Unified Governance

An system for educating, led by the Henry County Board of Education



COREBELIEFS | We believe

Each student can learn at or above grade level and will have an equal opportunity to do so

Family and community involvement is critical to student success

All learning environments should be supportive, safe, and secure

Effective teachers, leaders, and staff, produce excellent results

STRATEGICACTIONS | To advance

And accelerate learning opportunities and experiences for students

And support effective school leaders and teachers

Community and stakeholder engagement so that all students, families and employees feel welcomed and valued

Student and employee health, wellness, and support structures

A high-performing operational culture

Community-Inspired **2021-2026 Strategic Plan**

Developed by the Henry County Board of Education
ATTORNEY LEGAL TRAINING

A COMPASS FOR THE FUTURE

COREPOLICIES | BAB, IAB, and IB, call for

An Aligned System of Teaching & Learning

A System of Accountability

A Framework for Continuous Improvement

A Plan to Advance Opportunities, Access, and Outcomes

PRIORITYOUTCOMES | Every student will be

Ready for kindergarten

Ready to read and write at or above grade level each year with a curriculum rich literature and world languages

Ready for success in advanced coursework at every grade level

Ready for life with strong soft skills, personal health, and well-being

Ready for college, career and post-secondary successes with industry certifications, competitive test scores and scholarship awards

In Pursuit of *Exceptional*

PLEASE BE ADVISED

THERE ARE CHANGES PROPOSED FOR
TITLE IX AND SEXUAL HARASSMENT
PROCEDURES THAT WERE ADOPTED IN 2024
BY THE U.S. DEPARTMENT OF EDUCATION.

AT THIS TIME, THE MOST RECENT CHANGES
ARE STAYED FROM IMPLEMENTATION, AND
HENRY COUNTY SCHOOLS WILL FOLLOW THE
CURRENT PROCEDURES AND LEGAL
PRINCIPLES THAT ENSURE COMPLIANCE
WITH TITLE IX LAWS THAT PROTECT AGAINST
SEX BASED DISCRIMINATION AND SEX-BASED
HARASSMENT FOUND IN 2020 TITLE IX FINAL
RULE.

IF THERE ARE ANY CHANGES IN THE POLICIES
OR RULES THAT GOVERN TITLE IX, WE WILL
ADVISE YOU.

The intent of this Policy/Regulation is to comply with Title IX law concerning sex-based discrimination and sex-based/sexual harassment. On April 19, 2024, the U.S. Department of Education released a new rule related to discrimination and harassment in schools, and on August 22, 2024, a Federal Court over Georgia issued an Opinion on that rule. If there are any inconsistencies between our current policy, procedures, or practices and the new federal rule or court decisions, the law will take precedence. Any conflicting practices will not be implemented.

WHAT DOES THIS MEAN?

THE GOALS OF BOTH VERSIONS OF THE TITLE IX PROCEDURES ARE THE SAME:

- TO ENSURE FAIRNESS TO BOTH PARTIES
- TO ENSURE A THOROUGH INVESTIGATION OF CLAIMS OF SEXUAL HARASSMENT OR SEXUAL DISCRIMINATION
- TO ENSURE DUE PROCESS FOR BOTH PARTIES
- ENSURE THAT THERE IS EQUAL ACCESS TO THE EDUCATIONAL PROGRAM OR ACTIVITY FREE FROM DISCRIMINATION OR HARASSMENT

TITLE IX TRAINING

For Investigators and Decision-makers



Presented by:

SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

Presented by law firm of Smith, Welch, Webb & White LLC (School Board Attorneys)

TOPICS:

1. Updated HCBOE Board Policy JCAC and Regulation JCAC to comply with Title IX of the Education Amendments of 1972
2. General legal principles of new U.S. Dept. of Education Title IX Rule
3. New definition of sexual harassment **(under the 2024 Rule it is referred to as Sex-Based Harassment)**
 - A. Notice of sexual harassment
 - B. The District's obligation to respond
3. Options to address sexual harassment
 - A. Supportive measures
 - B. The Formal Complaint and Grievance Process
4. Investigator and Decision-Maker specific training



Title IX Training

Presented by:



SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

Legal Principles (2020)

- Title IX prohibits discrimination **on the basis of sex** in education
- New Rule focuses on sexual harassment as discrimination
- Sexual harassment denies students the benefits of and participation in school on the basis of sex
- What is **sexual harassment**? **New definition in 2024 (more details later):**
 - “Quid pro quo” harassment
 - Unwelcome conduct that is so severe, pervasive **AND** objectively offensive that it effectively denies a person equal access to the school’s education program or activity
 - “sexual assault,” “dating violence,” “domestic violence” or “stalking” under the Clery Act and VAWA



Title IX Training

Legal Principles (Goals of 2020 Rule Change)



Presented by:
SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

Focus on Due Process

- Fairness to complainant and respondent
- Formal complaint process to provide these rights before discipline can be imposed
- Substantial information rights for victims and the accused

No Bias / Must be Neutral

- Between Men / Women
- Between **Complainants / Respondents**
- **Not** based on stereotypes

Preserve Free Speech Rights



Title IX Training

Presented by:



SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

Actual Knowledge (Policy JCAC) (2020)

- School must respond to “actual knowledge” of harassment
- When school personnel personally observes sexual harassment
- When school is put on notice that person may have been victimized by sexual harassment
 - **ANY** person can put the school on notice (victim, parent, friend, bystander, etc.)
 - School is put on notice when **ANY** employee is put on notice of incident
- Employees have been trained to alert the school principal or the district’s Chief of Staff as the Title IX Coordinators when they are put on notice of sexual harassment.



Title IX Training

Response to Sexual Harassment (2020 and 2024)



Presented by:

SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

- What does a school do when it is put on notice of sexual harassment?
 - It must respond in a way that is not “deliberately indifferent”
 - Response cannot be clearly unreasonable in light of the known circumstances
 - Most important thing you can do is take complaints seriously when you have notice of them – do not ignore complaint or hope that it will just go away on its own
 - Must respond promptly



Title IX Training

Sexual Harassment Response Process (2020 and 2024)



Presented by:

SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

- Title IX coordinators can accept reports of sexual harassment (at any time) in person, by mail, by telephone, by email, or by any verbal or written means
- Once a report is received, the Title IX Coordinator will
 - promptly and confidentially reach out to complainant to discuss options
 - Discuss the availability of supportive measures with or without a formal complaint
 - Discuss the right to file a formal complaint and how to do so
- Title IX Coordinator will also provide and effectively implement supportive measures, including after the grievance process is completed
- Preserve evidence or information



Title IX Training

Presented by:



SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

Supportive Measures (2020 and 2024)

- Must be offered with or without filing of formal complaint
- Must be offered to complainant, can be offered to respondent
- **What are supportive measures?**
 - Free, individualized services designed to restore or preserve equal access to education, protect safety, or deter sexual harassment
 - Designed to support student, cannot be punitive or disciplinary with respect to another student
 - Cannot unreasonably burden another person
- Title IX Coordinators will consider the victim's wishes regarding supportive measures
- Title IX Coordinators will keep supportive measures confidential unless it impairs the ability to provide the supportive measure.



Title IX Training

Supportive Measures (2020 and 2024)



Presented by:
SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

- Range of supportive measures offered:
 - counseling by a school staff person, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, mutual restrictions on contact between the parties, changes in classroom transition routes, increased security and monitoring of certain areas of the school campus, and/or a combination of local interventions and supports.
- Title IX Coordinators (principals) are responsible for determining appropriate supportive measure and effectively implementing the supportive measure.



Title IX Training

Filing Formal Complaints (2020)



Presented by:
SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

- Title IX Coordinator will inform student about the right to file a formal complaint
- Title IX Coordinator will not encourage or discourage student to file a formal complaint
- Formal complaints can be filed by the student (or their parent or legal guardian)
- Formal complaints also can be filed by the Title IX Coordinator
- Formal complaint begins the formal process of adjudicating whether sexual harassment has occurred, and can result in discipline against the respondent and additional supportive measures for the complainant



Title IX Training

Grievance Process (2020)

(Regulation JCAC)



Presented by:
SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

- The grievance process protects the rights of both the complainant and the respondent
 - District cannot discipline respondent for sexual harassment without going through the grievance process
 - Respondent is entitled to a presumption of innocence
 - District always bears the burden to prove sexual harassment by a preponderance of the evidence
- All parties have the right to give and review evidence
- Title IX Investigator will impartially and fairly gather all evidence and provide an investigative report to the parties.
- Title IX Decision-maker will objectively review the evidence and make a written determination regarding responsibility.
- Both parties have the right to file an appeal to an appellate decision-maker
 - Limited to new evidence, bias, conflict of interest, or a procedural irregularity



Title IX Training

Grievance Process (2020)

(Regulation JCAC)

- Once a formal complaint has been filed, the Title IX Coordinator will give a copy of the formal complaint to the relevant decision-maker and send notice to the parties
 - Regulation JCAC, informal resolution, allegations, presumption of innocence, right to an advisor, inspection of evidence, any statement regarding false information
- Within ten (10) days, the decision-maker must review the formal complaint and make a determination whether the complaint should be dismissed; must send written notice (with reasoning) to the parties if the complaint is to be dismissed. This can be appealed.
- **MUST** dismiss if: (1) conduct could not constitute sexual harassment even if proved; (2) conduct did not occur in the education program or activity or (3) did not occur against a person in the U.S.
- **MAY** dismiss if (1) complainant notifies the Title IX coordinator in writing that they want to withdraw the formal complaint or allegations therein; (2) the respondent is no longer enrolled or employed by the District; or (3) specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the complaint or allegations.



Presented by:
SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

Title IX Training

Presented by:



SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

Prong 1 - “Quid pro quo” harassment *(2020 and 2024)*

- “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”
- Involves employees (for example, teacher, faculty member, coach, etc.)
- Does not involve non-employees (students, volunteers, etc.)
- Broad interpretation
 - Includes both express and implied situations
 - Does not need to be severe, or pervasive; can be one-time instance



Title IX Training

Presented by:



SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

Prong 2 - “Davis standard” harassment (2020)

- “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”
- Evaluate under reasonable person standard (from the complainant’s perspective); many factors to consider including student age, disability status, position of authority of involved parties, etc.
- Must be all three – severe, pervasive and objectively offensive (look to conduct)
 - Severe – is conduct extreme?
 - Pervasive – *generally* means a one-time incident is not enough (could be if it impacts several individuals or is widespread – ie, “sexting” or sharing inappropriate photos to several people)
 - Objectively offensive – from a reasonable complainant’s perspective
- AND must effectively deny a person equal access to education program or activity (impact)
 - Skipping class to avoid harasser, decline in GPA, difficulty concentrating, etc.
 - Does not need to completely deny access, just deny *equal* access; does not require dropping out of school, failing class, having panic attack, etc. (Be careful about applying stereotypes here (expectations of the “perfect” victim))



Title IX Training

Presented by:



SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

Prong 3 - VAWA / Clery Act Definitions (2020)

“sexual assault,” “dating violence,” “domestic violence” or “stalking” under the Clery Act and VAWA – any of these can be sexual harassment regardless of severity or the number of times they occur

- “Sexual Assault”
 - defined in the Clery Act (“Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act”, 20 U.S.C. 1092(f)(6)(A)(v)): Any sexual act directed against another person, forcibly and/or against the person’s will; not forcibly or against the person’s will when the victim is incapable of giving consent.
 - Includes rape, statutory rape, fondling, or attempts to do the same
 - Note on fondling and “butt slaps” and the like; requires an element of touching for the purpose of sexual gratification. Situations like “playing doctor” or other types of conduct that are not for the purpose of sexual gratification will not satisfy this prong
 - Could be an issue with voluntary sexual activities between students who are not of the age of consent (are both complainants? Likely will be a problem for discipline)



Title IX Training

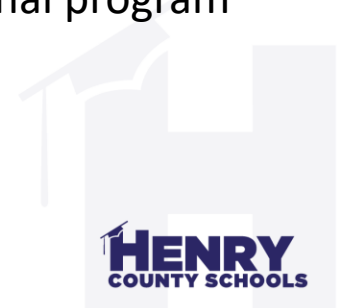
Presented by:



SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

Prong 3 - VAWA / Cleary Act Definitions (2020)

- “dating violence”
 - dating violence as defined in the VAWA (“Violence Against Women Act” of 1994, 34 U.S.C. 12291(a)(10)): Any act of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of the relationship; and the frequency of the interaction of the persons involved in the relationship.
 - Generally, “date rape” situations in college context
 - In K-12, this could come into play where students are dating and an episode of violence has occurred
 - Be mindful of the location of the incident as it may or may not be in the district’s educational program or activity



Title IX Training

Presented by:



SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

Prong 3 - VAWA / Cleary Act Definitions (2020)

- “domestic violence”
 - domestic violence as defined in the VAWA (“Violence Against Women Act” of 1994, 34 U.S.C. 12291(a)(8)): Any felony or misdemeanor act of violence committed by a current or former spouse or intimate partner of the victim; a person with whom the victim shares a child in common; a person who is cohabitating with the victim or who has cohabited with the victim as a spouse or intimate partner; a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or; 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 this jurisdiction.
 - Consider mandatory reporting obligations
 - Be mindful of the location and method of the incident as it may or may not be in the district’s educational program or activity



Title IX Training

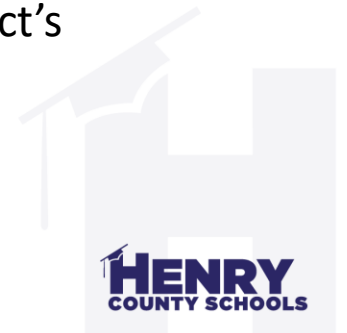
Presented by:



SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

Prong 3 - VAWA / Cleary Act Definitions (2020)

- “stalking”
 - stalking as defined in the VAWA (“Violence Against Women Act” of 1994, 34 U.S.C. 12291(a)(30): May be defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.
 - During remote learning, this may well be one of the most important definitions
 - Could include online harassment (if a “course of conduct”) that either causes a student to fear for safety or suffer substantial emotional distress
 - Be mindful of the location and method of the incident as it may or may not be in the district’s educational program or activity



Title IX Training

Grievance Process (2020)

(Regulation JCAC)

- If the formal complaint is not dismissed, grievance process continues.
- Parties can submit evidence to investigators within ten (10) days of notice of formal complaint.
 - Both parties have the right to submit evidence.
 - Cannot requires, allow, or rely upon evidence that is protected by privilege unless it is waived (attorney/client, clergy, psychiatric, etc.)
 - Must give a party at least 24 hour notice of any interview or meeting and written notice of the date, time, location, participants, and purpose of the meeting.
- Investigators have twenty (20) business days to obtain evidence and complete initial review of evidence.
- Investigators will send a copy to each party and advisor (electronic or hard copy).
- Parties have ten (10) days to respond to the evidence. Investigators have to review and consider evidence prior to completing report.
- Investigators will complete an investigative report thirty-five (35) business days after complaint was filed
 - Must fairly summarize relevant evidence



Presented by:
SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW



Title IX Training

Grievance Process

(Regulation JCAC)

- Parties get three (3) days to review report and submit written, relevant questions to the decision maker.
 - However, parties cannot ask about complainants sexual predispositions or prior sexual behavior unless offered to prove that someone other than the respondent committed the conduct, that the conduct was consensual (only if student is over the age of 16), or if questions concerning specific incidents of prior sexual behavior were with the respondent.
- Decision-maker must determine whether questions are relevant.
 - If not relevant, must explain to the party requesting the decision why not.
- If a party or witness refuses to answer a relevant question, decision-maker cannot relay on any statement of that party or witness in reaching a decision; however, you cannot base your decision solely on the refusal to answer
- Answers must be provided within five (5) business days of submission; parties are allowed two (2) days to submit limited follow up questions, answers to which must also be provided within five (5) days.



Presented by:
SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW



Title IX Training

Presented by:



SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

Grievance Process (2020)

(Regulation JCAC)

- Not sooner than ten calendar (10) days following the parties' receipt of the investigative report and not later than ten calendar (10) days following the last response to any party's written question or follow-up question, the Board's decision-maker(s) will issue a written determination regarding responsibility simultaneously to both parties.
- Decision must include the following: (1) identify the allegations; (2) describe the procedural steps taken from receipt of the formal complaint through determination; (3) make findings of fact; (4) make conclusions regarding how the code of conduct applies to the facts; (5) make a statement of and rationale for the results as to each allegation, including responsibility and any disciplinary sanction as a result, and what remedies are available to the complainant; and (6) describe the appeal process.



Title IX Training

Relevance (2020 and 2024)

(Regulation JCAC)



Presented by:

SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

- A piece of evidence is relevant if it has a tendency to make something more or less probably than it would be without the evidence and it is of consequence in determining the question of sexual harassment.
 - Relevance is fairly broad and can include questions about the who, what, when, when, and how of allegations, as well as issues related to motive or bias, among others
- This comes up largely in the context of investigators preparing a report with relevant, unbiased evidence and decision-makers allowing certain questions
 - Relevant evidence includes both exculpatory and exculpatory evidence (in other words, should include both evidence that is favorable or unfavorable to any party)
- **IMPORTANT**: *Complainants* receipt “rape shield” protections. Questions about a complainants sexual predisposition is never relevant, while questions regarding prior sexual behavior are not relevant, except in two circumstances: (1) to prove that someone other than the respondent committed the conduct or (2) prior sexual behavior with the respondent is offered to prove consent.

Title IX Training

Presented by:



SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

Bias, Stereotypes, Conflicts of Interest (2020 and 2024)

(Regulation JCAC)

- Important focus is to avoid any claims of bias or conflicts of interest.
- Moreover, investigators and decision makers cannot evaluate or collect the evidence in a way that is based on stereotypes or that favors complainants over respondents or men over women.
- Investigator must collect evidence impartially and must include evidence that is both favorable and unfavorable to both parties, so long as it is relevant.
- Decision maker must make determination based on preponderance of the evidence – whether the respondent is more likely than not responsible.
- This decision must be based on an objective evaluation of the evidence, and you must be able to show your work in this regard.



Title IX Training



SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

New to 2024 Regulations (if they go into effect...) ***Pregnancy or Related Conditions***

When a **student or parent/person with legal rights informs any employee** about student's pregnancy (or related conditions)...

The **employee**:

- Must provide Title IX Coordinator (principal) contact information and
- Must say the Title IX Coordinator can help with preventing sex-based discrimination



Title IX Training



SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

New to 2024 Regulations (if they go into effect...)

- What is **sex-based harassment**? New definition:
 1. “Quid pro quo” harassment
 2. Hostile environment harassment : unwelcome sex-based conduct that is subjectively and objectively offensive **and** is so severe **OR** pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity
 3. Specific offenses: “sexual assault,” “dating violence,” “domestic violence” or “stalking” under the Clery Act and VAWA



Title IX Training



SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

New to 2024 Regulations (if they go into effect...)

Actual Knowledge (Policy JCAC)

- No longer requires “actual knowledge” of harassment, obligation is triggered where any employee has “knowledge of conduct that reasonably may constitute sex discrimination in its education program or activity.”
- When school is put on notice that person may have been victimized by sex-based harassment
 - **ANY** person can put the school on notice (victim, parent, friend, bystander, etc.)
 - School is put on notice when **ANY** employee is put on notice of incident
- **If you are put on notice, you must alert the school principal or the district’s Chief of Staff, these are the “Title IX Coordinators”.**

Title IX Training



SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

New to 2024 Regulations (if they go into effect...)

Hostile Environment (Policy JCAC)

- **If an employee has information** about conduct that reasonably may constitute sex-based discrimination, report it to the Title IX Coordinator
- **If an employee detects any barriers to reporting information** about conduct that reasonably may constitute sex-based discrimination, report it to the Title IX Coordinator.



Title IX Training



SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

New to 2024 Regulations (if they go into effect...)

... an updated Regulation JCAC will be posted and become districtwide practice (copies provided)

HENRY COUNTY BOARD OF EDUCATION			ADMINISTRATIVE REGULATION
Code: JCAC Sex-Based Harassment Grievance Process		Status: pending legal	
Original Adopted Date: 07/28/2020	Last Revised Date: pending	Last Reviewed Date: pending	

Pursuant to Henry County Board of Education (the "Board") Policy JCAC; (students) and Policy GAEB (employees), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681, *et seq.*) and its regulations (34 C.F.R. § 106.8, *et seq.*), together referred to as "Title IX", the Board hereby adopts the following grievance process for handling formal complaints all elements of sexual the sex-based harassment grievance procedures within the Henry County School District (the "District"). The District will comply with Title IX in the event of a conflict with State law or the Family Educational Rights and Privacy Act (20 U.S.C. § 1232, *et seq.*) and its regulations (34 CFR 99.31 *et seq.* together "FERPA").

I. Definitions

A. ~~As~~ The definition outlined in Policy JCAC and defined in Title IX, the following definitions shall constitute "sex-based harassment" (formerly called sexual harassment²) for purposes of this grievance process. Sexual harassment is defined as conduct on the basis of sex that satisfies one or more of the following criteria:

1. An employee of the Board conditioning the provision of an aid, benefit, or service of the Board on an individual's participation in unwelcome sexual conduct;
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 Board's education program or activity; or
3. Any of the following as defined in federal law. Should these federal definitions change, so shall the definitions within this regulation to comply with law:
 - a. sexual assault as defined in the Clery Act ("Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act", 20 U.S.C. 1092(f)(6)(A)(v)(i)); Any sexual act directed

HYPOTHETICAL

- An elementary student tells her male friend that the substitute teacher was creepy. She tells her friend that the substitute told her to sit on his lap and placed his hand on her thigh while the other students were taking a nap. The male friend tells his mom about the situation and his mother demands that the substitute is removed from the classroom. She says that her son and the other female student do not want to come to school, and that she spoke to the other student's mother about the situation. The students' mothers have come to the school and are demanding to speak to the principal to complain about the substitute teacher's inappropriate actions.

Questions to Consider

- Does this hypothetical involve Title IX?
- Why or why not?
- How do you know whether Policy JCAC/Title IX applies?
- As an Investigator / Decision Maker, discuss the steps that you would take if you received information regarding this situation.



RECENT CASES AND OCR FINDINGS

- **MEMPHIS-SHELBY COUNTY SCHOOLS (2024)**

- OCR INVESTIGATION BEGAN MARCH 12, 2020, regarding the District's handling of sexual assault cases that involved both student and staff.
- Investigation found there were at least 7 incidents in which teachers or substitute teachers sexually assaulted students. 53 incidents of reported sexual harassment between staff and students. 88 reports of student-to-student complaints of harassment.
- **OCR FOUND THAT THE DISTRICT WAS IN VIOLATION OF TITLE IX**



MEMPHIS-SHELBY COUNTY SCHOOLS (2024)

Title IX Violations

- OCR determined that the District violated Title IX as follows:
- The District did not have a designated Title IX Coordinator, as required by 34 C.F.R. Section 106.8(a), for substantial portions of the Review Period. In addition, District files and administrator interviews confirm that the District did not coordinate its response to reports of sexual harassment, including sexual assault, through its Title IX Coordinator, as Title IX requires: the Title IX Coordinator was not involved in the majority of sexual harassment files reviewed for this investigation.
- The District's nondiscrimination statement and harassment policies did not comply with 34 C.F.R. Section 106.8(a).
- The District's recordkeeping practices – including an absence of any file at all for the majority of the cases addressing sexual assault allegations as well as inconsistent reporting of the same data to OCR for purposes of the mandatory Civil Rights Data Collection (CRDC) in 2017-2018 and for this compliance review – did not fulfill the District's Title IX obligation pursuant to 34 C.F.R. Section 106.71 to maintain records sufficient for the District itself or for OCR to make compliance determinations.

MEMPHIS-SHELBY COUNTY SCHOOLS (2024)

Title IX Violations

- OCR also identified the following concern:
- **District documentation produced to date suggests that the District did not respond either promptly or equitably to complaints of sexual assault of students during the 2018-2019 and 2019-2020 school years. In particular, District records reflect that the District generally did not assess whether a hostile environment existed for students and what remedies students may have needed as a result (e.g., counseling or course-related adjustments). In addition, the records reflect inconsistencies with interviews of complainant, respondent, and witnesses as well as inconsistent provision of notice to the parties and their families regarding investigations and their outcomes.**



TITLE IX TRAINING

For Investigators and Decision-makers



SMITH WELCH
WEBB & WHITE_{LLC}
ATTORNEYS AT LAW

Thank you! Please find more information and resources by contacting the Office of Legal Compliance.

