2001 Title IX Revised Guidance Summary
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Pertains to the harassment of students by school employees, other students, or third parties, as released by the U.S. Department of Education, Office of Civil Rights.

I. Introduction
Focuses on school’s fundamental compliance responsibilities under Title IX and Title IX regulations to address sexual harassment of students as a condition of continued receipt of federal funding.

II. Sexual Harassment
... is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors and other verbal, nonverbal, or physical conduct of a sexual nature. Said behavior can deny or limit on the basis of sex, the student’s ability to participate in or to receive services, benefits or opportunities of the school’s program.

III. Applicability of Title IX
Recipients of federal funds secondary and elementary schools, school districts, colleges and universities.
- Title XI protects students in connection with all of the academic, educational, extracurricular, athletic or other programs of the school, whether in the facilities of the school, school bus, at a class or training program sponsored by the school at other locations or elsewhere.
- Both male and female protected under Title IX even if the harasser and the person being harassed are members of the same sex.
- Sexual harassment directed at gay or lesbian students that is sufficiently serious to limit or deny a student’s ability to participate in or benefit from the school’s program, constitutes sexual harassment prohibited by Title IX.


Gebser- if a school official has knowledge of harassment, and is then officially indifferent in responding to a teacher sexually harassing a student, a school can be liable for monetary damages.
Davis- Court announced that a school also may be liable for monetary damages if one student sexually harasses another student in the school’s program and the conditions of Gebser are met.

V. Determining a School’s Responsibilities (p.5).

2 Types Recognized:
- Quid pro Quo- Employee conditions and educational decision or benefit predicated on the student’s submission to unwelcome sexual conduct.
- Hostile Environment Theory - Sexual harassment can occur that does not explicitly or implicitly condition a decision or benefit on submission to sexual conduct.

Factors used to evaluate hostile environment

Sexual harassment.

In evaluating the severity and pervasiveness of the conduct OCR considers all relevant surrounding circumstances, expectations and relationships.

1. The degree to which the conduct affected one or more student’s education
   - Falling grades
   - Physical injuries or emotional distress
   - Ability to continue school. Things which would alter a reasonable student’s educational environment and adversely affect the student’s ability to participate in or benefit from the school’s program on the basis of sex.

2. The type, frequency and duration of the conduct
   - Pattern or practice of harassment
   - The more severe the conduct the less need to show a repetitive series of incidents.

3. The identity of and relationship between the alleged harasses and the subject(s) of the harassment
   - Power differential

4. The number of individuals involved

5. The age and sex of the alleged harasser and their subject(s) or harassment
   - Older student worse
6. The size of the school, location of the incidents and context in which they occurred

7. Other incidents at the school series of events = hostile environment

8. Incidents of gender based but non-sexual harassment
   - Acts of verbal, nonverbal or physical aggression, intimidation or hostility based on sex but not involving sexual activity or language can create a sexual harassing environment.

Use common sense and reasonable judgment in determining if a hostile environment was created.

**Welcomeness**

In order for conduct of a sexual nature to be sexual harassment it must be unwelcomed.

Note: Acquiescence in the conduct or the failure to complain does not always mean that the conduct was welcome.

Note: Power differential may make it harder to say “no”.

Note: If elementary students are involved, welcomeness will not be an issue. Strong presumption that sexual conduct of secondary students by teachers is not consensual.

OCR considers:
   - Nature of the conduct and relationship of the school employee to the student (degree of inference)
   - Whether the student was legally or practically unable to consent to the sexual conduct in question

**Welcomeness- determination based on:**
   - Statements by witnesses
   - Evidence of relative credibility
   - Evidence of previous harassment
   - Reaction to behavior
   - Timeline of reporting- may differ based on fear of retribution.

**Nature of School’s Response to address Sexual Harassment**
Harassment by Teachers and Other Employees

The extent of recipient’s responsibilities if an employee sexually harasses a student is determined by whether or not the harassment occurred in the context of the employee’s provision of aid, benefits or services to students. (Teaching, counseling, supervising, advising, transporting students) - and the harassment denies or limits a students’ ability to participate in or benefit from a school program on the basis of sex, the employee is responsible for discriminatory conduct.

School responsible for remedying effects ending harassment and preventing its recurrence.

If employee conditions the provision of aid, benefit, etc. = quid pro quo harassment.

OCR will consider:

- Types and degree of responsibility- formal and informal
- Degree of influence over student
- Where and when harassment occurred
- Age and education level

Above factors apply to all education levels.

Harassment by other students or third parties

If sexual harassment between two students seriously limits or denies ability to participate in or benefit from the program and school knows or should have known, the school is responsible for taking immediate, effective action to eliminate the hostile environment and prevent its recurrence.

If the school fails to take prompt, effective action the school is responsible.

Third party- same conditions.

The steps the institution/school can take with regard to a third party differ depending upon the level of control that school has over the harasser. School must stop the harassment, prevent its recurrence, and remedy the effects of harassment on the victim.

Notice of employee, peer or third party harassment

A school has notice if a responsible employee knew or in the exercise of reasonable care should have known about the harassment.

- Authority to take action
- Has a duty to report to appropriate school officials
• Or individual who a student could reasonably has this authority or responsibility

Schools need to ensure that employees are trained so that those with authority to address harassment know how to respond appropriately.

If a school otherwise knows or reasonably should know of a hostile environment and fails to take prompt and effective corrective action, a school has violated Title IX even if the student has failed to use the school’s existing grievance procedures or otherwise inform the school of the harassment.

**Role of Grievance Procedures**

• Schools required to adopt and publish grievance procedures providing for prompt and equitable resolution of sex discrimination. Complaints including sexual harassment. Schools must disseminate policy.

**Once reported, schools are to:**

• Stop harassment
• Prevent recurrence
• Remedy effects
• Prevent retaliation

**OCR Case Resolution**

OCR will consider whether:

1. School disseminated policy and effective procedures
2. School appropriately investigated and /or responded to allegations of sexual harassment
3. School has taken immediate and effective corrective action responsive to the harassment

**Recipient’s Response**

Prompt investigation

**Take interim steps if necessary**

• Move housing of alleged perpetrator
• Change academic schedule
• Educate community (other students)
• Independent reassessment of grades

**Confidentiality**

• If requested – may limit the school’s ability to respond
• Tell students retaliation is prohibited

A school should evaluate confidentiality request in the context of its responsibility to provide a safe and non-discriminatory environment.

• Consider seriousness of alleged harassment
• Age of harassed
• Whether there have been other complaints against the accused
• Rights of the accused individual

If confidentiality precludes direct action other means like training or doing a survey might help. Multiple reports or prior reports might help identify possible accuser without revealing confidentiality.

**Consider source and nature of information, seriousness of allegations. Specificity of information, objectivity and credibility of the source of the report, whether any individuals can be identified who were subject to the alleged harassment.

**Prevention:**

• Training for administrators, teachers and staff. What it is (sexual harassment) and how to respond

It is a violation of Title IX if the school doesn’t have procedures and policy in place

Policy must include complaints filed by school employees, other students and third parties

Title IX does not require a separate grievance procedure for sexual harassment complaints
Policy must include what kind of conduct constitutes sexual harassment

**Elements in evaluating whether a school’s grievance procedures are prompt and equitable.**

• Notice to students’ parents of elementary/secondary students
• Application of procedures to complaints alleging harassment by employees, students or third parties
• Adequate, reliable, impartial investigation
• Prompt timelines for major stages of complaint process
• Notice to the parties of the outcome of the complaint
• Assurance the school will take steps to prevent recurrence and correct discriminatory effects
• Statement prohibiting retaliation
• Inform students about status of the investigation on a periodic basis
Procedures can’t be prompt and equitable unless students know it exists, how it works, and how to file a complaint.

Written in language appropriate to age. Publicized widely.

School must designate at least one employee to coordinate its efforts to comply with Title IX. Name, address, phone of designee. Give one person overall coordination and oversight responsibility. Be sure designee has adequate training.

Not appropriate to have student complaining of harassment be required to work out problem directly with person accused. Use trained mediator or counselor. Complainant may stop and move to formal procedures.

Police investigations or reports may not be determinative of whether harassment occurred under Title IX and do not relieve the school of its duty to respond promptly and effectively.

Must investigate even if reported to OCR.

Due Process Rights of Accused:

- Required in public and state supported schools. Protecting rights of both parties will lead to sound and supportable decisions

First Amendment—reminder that comments/conduct must be serious enough to deny or limit a student’s ability to participate in or benefit from the education program.