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TITLE IX AND SEXUAL HARASSMENT: AN OVERVIEW FOR BENNETT SCHOOL DISTRICT

Presented by:

David L. Olson, Esq. and
Kristin C. Edgar, Esq.

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Title IX: What is it?

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Title IX of the Education Amendments of 1972

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 [including sexual harassment] under any education program or activity receiving Federal financial assistance

Title IX: What is it?

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Who must comply with Title IX?

- Agencies receiving federal funds, including “local educational agencies” (*i.e.*, school districts).

What does it do?

- Title IX protects students from harassment connected to any of the academic, educational, extracurricular, athletic, and other programs or activities of schools, regardless of location.

What do you have to do to comply?

- Not discriminate, harass, or retaliate.
- Investigate and respond to reports of discrimination, harassment, or retaliation.

Title IX: Retaliation Prohibited

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- **Title IX prohibits retaliation.**
 - Cannot coerce, intimidate, threaten, or interfere with any individual exercising or enjoying rights granted by Title IX.
 - Cannot discriminate against individuals who oppose or report sex discrimination or sexual harassment.
 - e.g., by filing a charge, testifying, or otherwise participating in an investigation or other proceeding under Title IX.

What is sexual harassment?

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Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, or other sex-based verbal or physical conduct where:

- Submission to such conduct is explicitly or implicitly made a term or condition of an individual's participation in an education program or activity;
- Submission to or rejection of such conduct is used as the basis for affecting an individual's education decisions; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's education by creating an intimidating, hostile, or offensive work or educational environment.

What is sexual harassment?

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- Sexual harassment can be carried out by school employees, other students, and non-employee third parties, such as a visiting speaker.
- Both male and female students can be victims of sexual harassment, and the harasser and the victim can be of the same sex.

What is sexual harassment?

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Examples of sexual harassment include:

- Direct or indirect threats or bribes for unwanted sexual activity
- Sexual innuendos and comments
- Asking or commenting about a person's sexual activities
- Humor or jokes about sex or females/males in general
- Making sexually suggestive remarks, gestures, or jokes, or remarks of a sexual nature regarding a person's appearance
- Pestering a person for dates or sexual behavior
- Sexual touching, pinching, brushing, or patting
- Displaying offensive sexual illustrations in the school
- Graffiti about a person's sexuality

What is sexual harassment?

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Examples of sexual harassment continued:

- Spreading rumors about a person's sexuality
- Name calling such as "bitch", "whore" or "slut"
- Sending letters, notes, telephone calls, email or materials of a sexual nature
- Stalking a person either inside or outside the workplace
- Attempted or actual sexual assault
- Exposure of intimate parts

Investigating reports of sexual harassment

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- Policies JII, JII-E and JII-R regarding student concerns, complaints and grievances.
- Policies JBB and JBB-R regarding sexual harassment and related grievance procedures

Policy JBB-R: Reporting harassment

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Who should report?

- **Anybody** who sees or suspects sexual harassment, including teachers and administrators

To whom should you report?

- Teacher, counselor or principal, or the Superintendent (Title IX coordinator)
- Office for Civil Rights

What do you do if you receive a report of sexual harassment?

- **Immediately** forward the report to the Superintendent
- The Superintendent will appoint another District administrator to act as a grievance officer.

Policy JBB-R: Investigating harassment

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The grievance officer shall ensure that all reports of sexual harassment are promptly and thoroughly investigated, and that effective action is taken.

- Informal resolution of complaints (not available for complaints against school employees)
- Formal complaint and investigation process

Formal complaint and investigation

- Conducted by the grievance officer
- At a minimum, must consist of personal interviews with parties and witnesses involved
- Completed no later than twenty days following receipt of the complaint

May want to consider the following information:

- Statements by any witness related to the incident
- Evidence about the relative credibility of the parties involved
- Evidence regarding whether the alleged harasser has been found to have harassed others
- Evidence of the complainant's reaction to or change in behavior following the alleged harassment
- Evidence about any action(s) the complainant took to protest the alleged conduct
- Evidence and witness statements or testimony presented by the parties involved
- Other contemporaneous evidence
- Any other evidence deemed relevant by the grievance/compliance officer

Practical Considerations

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Determine whether the conduct is sufficiently severe, persistent or pervasive so as to constitute sexual harassment by considering:

- The degree to which the conduct affected one or more students' education
- The type, frequency and duration of the conduct
- The identity of and relationship between the alleged harasser and the allegedly harassed student
- The number of individuals involved as alleged harassers and as subjects of the harassment
- The age and sex of the alleged harasser and the subject of the harassment
- The location of the incident and context in which it occurred
- Other incidents at school

Practical Considerations

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- When appropriate, the District should take measures during the investigation of a harassment report to protect the alleged subject of the harassment from further harassment or retaliation.
- In cases involving potential criminal conduct, the grievance officer shall determine whether appropriate law enforcement officials should be notified.
- If the conduct is determined to be sexual harassment, the District shall take all reasonable action to end the sexual harassment, to prevent its recurrence, to prevent retaliation against the student making the report and anyone participating in the investigation, and to restore lost education opportunities to the harassed student. In addition, the harasser shall be disciplined according to any applicable discipline policy.
- If the inappropriate conduct does not rise to the level of sexual harassment prohibited by law, the matter shall be handled according to any applicable discipline policy.

Administrator Checklist: Responding to Reports of *Employee-to-Student* Sexual Harassment

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- Do not interview the accused employee.
- Place the accused employee on paid administrative leave – it is permissible to inform the employee that he/she is being placed on leave in conjunction with allegations of inappropriate conduct with a student.
- Do not identify the victim to the accused employee .
- Comply with mandatory reporting requirements, if applicable, by reporting incident immediately to law enforcement or DSS as appropriate.
- Review District policies and regulations regarding notification to others such as victim’s parents or law enforcement.
- Encourage neutrality and confidentiality – limit comments to staff and others.
- Take steps to assure that the student victim is not re-victimized by staff or students.
- Let professionals handle the investigation.
- Insist on obtaining prompt results of the investigation.

Administrator Checklist: Responding to Reports of *Student-to-Student* Sexual Harassment

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- Conduct your own investigation immediately; do not wait for law enforcement to investigate the incident.
- Comply with mandatory reporting requirements, if applicable, by reporting incident immediately to law enforcement or DSS as appropriate.
- Notify parents of victim and student perpetrator consistent with policy.
- Impose discipline on student perpetrator as appropriate (check to see if student perpetrator is a student with disabilities before imposing discipline).
- Consider special needs of victim and student perpetrator (i.e. need for special education assessment or counseling).

Title IX Resources

Denver Office for Civil Rights
1244 Speer Boulevard, Suite 310
Denver, Colorado 80204
(303) 844-5695

OCR Reading Room:

<http://www2.ed.gov/about/offices/list/ocr/publications.html>



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One Boulder Plaza, 1800 Broadway, Suite 200

Boulder, CO 80302-5289

Phone: 303-443-8010

www.celaw.com

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