

TITLE IX UPDATES

For Principals

with School Board Attorneys

at Smith, Welch, Webb, and White LLC

& Office of Legal Compliance

Tuesday, July 21, 2020

MS/HS: 9:40 am - 10:30 am

ES: 2:00 pm - 2:50 pm



Legal Compliance & School Board Attorneys

On Title IX Matters (*involving students*)

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Title IX

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Title IX Updates | Agenda

Framework of Title IX, Board Policy and Regulation JCAC

Board Attorneys

Grievance Process

Legal Compliance

Q & A

Principals



Title IX Updates | Materials

Board Policy JCAC

Board Regulation JCAC

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HENRY COUNTY BOARD OF EDUCATION BOARD POLICY

JCAC: Sexual Harassment	Status: Under Review
Original Adopted Date: 2/1/1995	Last Revised Date: 4/30/2013
Last Reviewed Date: TBD	

Sexual Harassment Policy

It is the policy of Board to maintain an environment that is free from all forms of discrimination and harassment on the basis of sex. The Henry County Board of Education (the "Board") does not discriminate on the basis of sex in the education program or activity that it operates. The Board is required by Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681, et seq.) and its regulations (34 C.F.R. § 106.6) not to discriminate in such a manner. The requirement not to discriminate in the education program or activity extends to admission and employment. Inquiries about the application of Title IX and its regulations to the Board may be referred to the Board's Title IX Coordinators, the Assistant Secretary for Civil Rights of the Department of Education, or both. Retaliation against individuals who file complaints of alleged sexual harassment or those who assist in the investigation of complaints of alleged sexual harassment is expressly prohibited.

It shall be a violation of this JCAC policy for any student or employee of the District to engage in sexual harassment. 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. "Sexual assault" as defined in 20 U.S.C. 1092(f)(8)(A)(i), "dating violence" as defined in 34 U.S.C. 12291(a)(3), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(5).

Any student or employee who believes that he or she has been exposed to sexual harassment or retaliation in the Board's education program or activity should immediately report the act to the Board's Title IX Coordinators. Any employee that is in actual notice of sexual harassment or retaliation must immediately report the act to the Board's Title IX Coordinators.

Any student or employee has the right to file a formal complaint alleging sexual harassment or retaliation to the Board's Title IX Coordinators. The Board has adopted a grievance process to address all formal complaints filed. That grievance process:

1. Treats complainants and respondents equitably;
2. Requires an objective evaluation of all relevant evidence;
3. Assures that all Title IX Coordinators, investigators, decision-makers, or any person designated to facilitate an informal resolution process do not have a conflict of interest or bias.

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HENRY COUNTY BOARD OF EDUCATION ADMINISTRATIVE REGULATION

Code: JCAC Sexual Harassment Grievance Process	Status: Under Review
Original Adopted Date: new	Last Revised Date: new
Last Reviewed Date: new	

Pursuant to Henry County Board of Education (the "Board's") Policy JCAC, Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681, et seq.) and its regulations (34 C.F.R. § 106.6), together referred to as "Title IX", the Board hereby adopts the following grievance process for handling formal complaints of sexual harassment within the Henry County School District (the "District").

1. Definitions


A. As defined in Policy JCAC and defined in Title IX, the following definitions constitute "sexual harassment" 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 ("Sexual Offense Reporting and Campus Security Policy and Campus Crime Statistics Act", 20 U.S.C. 1092(f)(8)(A)(i)). Any sexual act directed against another person, besides and/or against the person's will, and forcibly or against the person's will when the victim is incapable of giving consent.
 - b. **Dating violence** as defined in the VAWA ("Violence Against Women Act" of 1994, 34 U.S.C. 12291(a)(3)). 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 evidence 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.
 - c. **Domestic violence** as defined in the VAWA ("Violence Against Women Act" of 1994, 34 U.S.C. 12291(a)(2)). 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 cohabitated 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 the jurisdiction.
 - d. **Stalking** as defined in the VAWA ("Violence Against Women Act" of 1994, 34 U.S.C. 12291(a)(5)). 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.

B. The following are considered "parties" to this grievance process:

1. Complainant: an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
2. Respondent: an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
3. The Superintendent including any designee is responsible for day-to-day oversight of this grievance process.
4. The following have been designated in the respective roles under this grievance process:

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Introduction | Principals SY 2020-21



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Code: **00 00 00**

Welcomes to TITLE IX UPDATES For Principals! How many years have you been a principal IN HCS?



- None - this is first year
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10+

Title IX Updates

Framework of Title IX, Board Policy and Regulation JCAC

Board Attorneys

- **Set Expectations.** Goal today is to tell you what the Department of Education expects of us.
- **Learn principles.** Talk about general principles of the new Rule.
- **Get Feedback.** Talk through issues and get your feedback about how we implement this Rule in a way that satisfies Department of Education and works for our schools.

Title IX Training

(Regulation JCAC, Section XI)

Framework of Title IX, Board Policy and Regulation JCAC

Board Attorneys

- Legal Principles
- Jurisdiction
- Actual Knowledge
- Role of the Principal as Title IX Coordinator



Title IX Training



Legal Principles - Goals of New Rule Change

Focus on Due Process (Regulation JCAC, Section II.B)

- Fairness to victim and accused
- 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 (Regulation JCAC, Section XI.B)

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

Preserve Free Speech Rights (Regulation JCAC, Section IV.F)

Title IX Training

Legal Principles (Regulation JCAC, Section I.A)

- 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:
 - “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

Jurisdiction (Policy JCAC)

- Not all places, but not just “on campus” or “at school.”
- Must occur in the United States
- Covers sexual harassment that happens **in a school’s “education program or activity”**
 - Locations, events, circumstances where a school exercises substantial control over the context of the harassment and the person accused of committing the harassment
 - At school, on school bus, on field trip, at school sponsored activities (athletics), academic conferences
- Includes harassment by or against students **or** staff

Title IX Training

Actual Knowledge (Policy JCAC)

- 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
- Usual contacts for notice are Title IX Coordinators - school principals



Title IX Training

New Rule... “Who dis”?

(Regulation JCAC, Sections I)

- Parties
 - Complainant and Respondent
- Title IX Coordinators
 - Information
- Investigators
 - Investigation + Advisors
- Decision-Makers
 - Written Decisions
- Appellate Decision-Makers
 - Decisions about Written Decisions
- Informal Resolution
 - Voluntary Alternative Process

Title IX Training

Role of the Principal as Title IX Coordinator

(Regulation JCAC, Sections I.D.1 and II)

- 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

Role of the Principal as Title IX Coordinator

What is your role in the process?

(Regulation JCAC, Section I.D.1, Section II, Section III, Section VI.A and B)

- Must accept reports of sexual harassment (at **any** time) in person, by mail, by telephone, by email, or by any verbal or written means
- Major role is to provide information
 - When you receive notice of sexual harassment, **promptly** and **confidentially** reach out to alleged victim to discuss options
 - Availability of supportive measures with or without a formal complaint
 - The right to file a formal complaint
 - How to file a formal complaint
- Must also provide and effectively implement supportive measures, including after the grievance process is complete

Title IX Training

Supportive Measures (Regulation JCAC, Section II.A and B, Section III, Section IX)

- 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 Training


Supportive Measures (Regulation JCAC, Section II.A and B, Section III, Section IX)

- **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

Supportive Measures (Regulation JCAC, Section II.A and B, Section III, Section IX)

- Must consider the victim's wishes when it comes to their request for supportive measures
- Must keep supportive measures confidential
 - So long as confidentiality does not impair ability to provide the supportive measure

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Title IX Training

Right to File Formal Complaint

(Regulation JCAC, Section I.F, Section II.A, Section VI)

- Must inform student about the right to file a formal complaint
- **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**
- Cannot 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**

Title IX Training

Information about How to File a Formal Complaint

(Regulation JCAC, Section II and VI, Handbook pp. 36 - 40)

Must notify students, employees, applicants for admission and employment, parents, legal guardians of students, and unions of Title IX Coordinator(s):

Name

Title

Office address

Email address

Telephone number

Must also put this information **prominently**

- on the website
- and each handbook

Must be the individual who accepts reports of sex discrimination and sexual harassment in person, by mail, by telephone, or by e-mail

- Reports must be able to be made at any time, including non-business hours

Title IX Training

Code of Conduct Issues

- Cannot punish respondent *for sexual harassment* without following grievance process
- If a code of conduct violation is not for sexual harassment, standard discipline process applies
- If during the discipline process, you are put on notice of a potential sexual harassment claim, you must follow Title IX procedure. This may require putting discipline process on hold while grievance process plays out.



Title IX Training

Your Feedback on Potential Implementation Issues

- Supportive measures?
 - Implementing consistency and case-by-case
 - Tracking
- How to actually file the formal complaint?
- How to address and resolve these issues without formal complaints?
- Code of Conduct issues?

Title IX Updates

Grievance Process

Legal Compliance

- ✓ Definitions
- ✓ Formal Complaint
- Records Preservation
- Investigation
- Decision Making
- Appeals



Title IX Updates

Records Preservation

(Regulation JCAC, Section II, Section IV, and Section VI)

- “The burden of proving responsibility for the allegations in a formal complaint **rests on the District**, not the complainant or respondent.”
- **“The parties may inspect and review evidence gathered as part of the investigation.”**
- **“The Board’s investigator(s) will complete the initial review of the evidence.** The investigator(s) will send to each party and the party’s advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy.”

Title IX Updates

Investigation

(Regulation JCAC, Section I.D.2 and Section VI)

Investigator(s):

- a. In all matters where both the complainant and respondent are **students, the District shall recognize the Title IX Investigator in the Office of Legal Compliance** with districtwide responsibility for day-to-day compliance with the investigator duties within this grievance process.
 - b. In any matter where either the complainant or respondent is **employee of the Board, the District shall recognize the HR investigator in the Division of Human Resources** with districtwide responsibility for day-to-day compliance with the investigator duties within this grievance process.
- Completes the initial review of the evidence.
 - Finalize and send an investigative report.

Title IX Updates

Decision-Making

(Regulation JCAC, Section I.D.3 and Section VI)

Decision-Maker(s):

- a. In all matters where both the complainant and respondent are **students**, the **District shall recognize the Strategic Executive in the Office of the Chief of Staff** with districtwide responsibility for day-to-day compliance with the decision-making duties grievance process.
 - b. In any matter where either the complainant or respondent is **employee** of the Board, **the District shall recognize the Employee Relations Executive Director in the Division of Human Resources** with districtwide responsibility for day-to-day compliance with the decision-making duties within this grievance process.
 - c. **In any case, the decision-maker(s) will not be either the Title IX Coordinator(s) or the investigator(s).**
- Dismisses complaints.
 - Answers parties questions on the evidence.
 - Issues written determination (facts and conclusion, including Code of Conduct).

Title IX Updates

Appeals

(Regulation JCAC, Section I.D.4 and Section VII)

Appellate Decision-Maker:

the District shall **recognize the Superintendent or her/his designee** with districtwide responsibility for day-to-day compliance with the appellate decision-maker duties within this grievance process.

- Appeal from written determination or dismissal of complaint.

There are **limited reasons for an appeal** to be considered. Appeals will be considered only on one or more of the following bases:

1. **A procedure was not followed or a procedural irregularity occurred** that affected the outcome;
2. **New evidence** is now available that was that was not reasonably available at the time the determination regarding responsibility or the dismissal was made and that new evidence could affect the outcome of the matter; or
3. **The Title IX Coordinator(s), investigator(s), or decision-maker(s) had a conflict of interest or bias** (a) generally for or against complainants or respondents or (b) for or against the individual complainant or respondent and this affected the outcome of the matter.

Title IX Updates

Questions and Answers

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So what?

Ticket Out of the Door: Commit to one of these...

- **Prioritize.** How will you flag your emails or phone calls to be able to respond promptly if/when a Title IX report is made to you?
- **Coordinate.** What process will you put in place with your Assistant Principals to ensure no student receives punishment based on Title IX reports until and only when a grievance process has been completed and a determination of “responsibility” has been made.
- **Decide.** How will you remind employees of their responsibilities to inform you, as Title IX Coordinator, whenever they receive notice of potential sexual harassment?



TITLE IX UPDATES

For Principals

Legal Compliance & School Board Attorneys

Thank you!

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