

BARRINGTON PUBLIC SCHOOLS

TITLE IX TRAINING

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Sara A. Rapport
Staci L. Kolb
Caroline R. Thibeault



WHELAN CORRENTE & FLANDERS LLP

100 Westminster Street, Suite 710
Providence, RI 02903
(401) 270-4500

AGENDA

- I. Title IX – New Regulations & BPS Policy
- II. Hypotheticals
- III. Questions

This presentation is provided for training and informational purposes only and should not be considered legal advice.



TITLE IX

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving Federal financial assistance.”

Title IX of the Education Amendments of 1972



TITLE IX SEXUAL HARASSMENT – A BRIEF HISTORY

1975 – US Dept. of Ed. promulgates regulations under Title IX (no mention of sexual harassment)

1997 – US Dept. of Ed. issues sexual harassment guidance

1998 – US Supreme Court holds a school can be held liable under Title IX for teacher-on-student harassment if it has “actual notice” of the harassment and it is deliberately indifferent to the harassment. *Gebser v. Lago Vista Indep. Sch. Dist.*

1999 – US Supreme Court holds student-on-student harassment is actionable under Title IX. *Davis v. Monroe County Bd. of Educ.*

2001 and 2011– OCR “Dear Colleague” Letters

2014 – OCR “Questions and Answers” on Sexual Violence

2017 – OCR rescinded earlier guidance on sexual harassment

2020 – US Dept. of Ed. promulgates sexual harassment regulation:



TITLE IX REGULATIONS – SEXUAL HARASSMENT

- Took effect **August 14, 2020**
- Significant changes to the regulatory definition of sexual harassment to align with the court definition
- Significant changes to the process for investigating and ruling on allegations of sexual harassment
- Explicitly applicable to both students and employees

BPS POLICY PROHIBITING SEXUAL HARASSMENT

- Approved September 3, 2020
- Aligned to the Title IX regulations on sexual harassment

SEXUAL HARASSMENT DEFINED (34 C.F.R. 106.30)

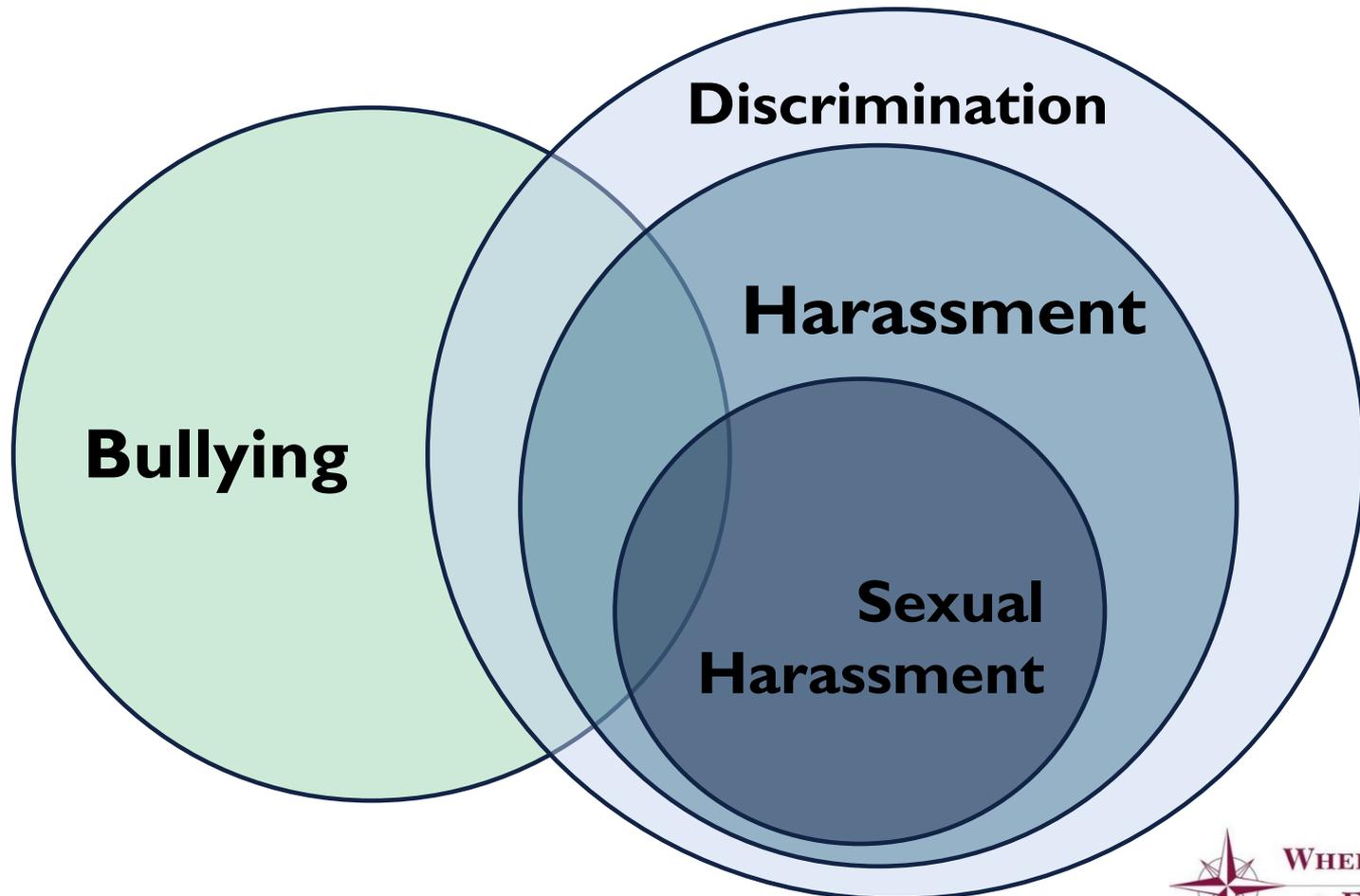
Unwelcome conduct on the basis of sex that satisfies one or more of the following:

- An employee [of BPS] conditioning the provision of an aid, benefit, or service [of BPS] on an individual's participation in unwelcome sexual conduct (“**quid pro quo**” harassment);
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to [a BPS] education program or activity (“**hostile environment**” harassment); or
- Sexual assault, dating violence, domestic violence, or stalking.

TITLE IX SEXUAL HARASSMENT – ONE TYPE OF UNLAWFUL CONDUCT

Title IX Sexual Harassment	Bullying/Cyberbullying	Discrimination
<ul style="list-style-type: none"> • Quid pro quo • Hostile environment • Sexual assault 	<p>The use by one or more students of a written, verbal or electronic expression or a physical act or gesture or any combination thereof directed at a student that:</p> <p>Causes physical or emotional harm to the student or damage to the student’s property;</p> <p>Places the student in reasonable fear of harm to himself/herself or of damage to his/her property;</p> <p>Creates an intimidating, threatening, hostile, or abusive educational environment for the student;</p> <p>Infringes on the rights of the student to participate in school activities; or</p> <p>Materially and substantially disrupts the education process or the orderly operation of a school.</p>	<p>Unlawful differential treatment on the basis of:</p> <ul style="list-style-type: none"> • Race • Color • Creed • National/ethnic origin • Gender • Gender identity/expression • Disability • Religion • Sexual orientation • Citizenship • Veteran/military status

TITLE IX SEXUAL HARASSMENT – ONE TYPE OF UNLAWFUL CONDUCT



NEW LIMITS ON SCOPE OF TITLE IX

(34 C.F.R. 106.45(b)(3))

- The new Title IX grievance process is not triggered if:
 - The alleged conduct did not occur within an “education program or activity” – defined as “locations, events, or circumstances over which [BPS] exercised substantial control over both the complainant and the respondent” AND “the context in which the sexual harassment occurred”; or
 - The alleged conduct would not constitute sexual harassment even if proved; or
 - The alleged conduct did not occur within the United States.

TITLE IX TERMINOLOGY

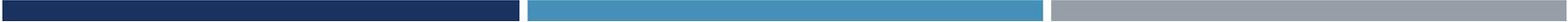
- **Complainant** – a student or employee who is alleged to be the victim of conduct that could constitute sexual harassment
- **Respondent** – a person who has been reported to be the perpetrator of conduct that could constitute sexual harassment (could be a student, teacher, administrator, other BPS employee, or visitor, volunteer, consultant, or other third party)
- **Title IX Coordinator (Dr. Dillon)** – administrator responsible for coordinating the district’s response to complaints of sexual harassment and answering questions about the process



TITLE IX TERMINOLOGY

- **Supportive Measures** – individualized services that are designed to restore or preserve equal access to the district’s education program or activity, protect student and employee safety, and deter sexual harassment – for example:
 - Counseling
 - Extensions of time or other course-related adjustments
 - Modifications of work or class schedules
 - Campus escort services
 - Restrictions on contact between the parties
- **Formal Complaint** – a written document or electronic submission (such as an e-mail) that alleges sexual harassment against a respondent and requests that BPS investigate the allegation.





THE “FORMAL COMPLAINT” PROCESS

34 C.F.R. 106.45

REPORTING

- Students
 - Report to any trusted BPS employee (teacher, administrator, counselor, etc.)
- Employees
 - Report directly to the Title IX Coordinator (Dr. Dillon)
 - Employees who observe or receive reports of sexual harassment from a student, or who otherwise know of possible sexual harassment, **MUST** report to Dr. Dillon.

****All reports of known or suspected sexual harassment must make their way to Dr. Dillon****

PRELIMINARY RESPONSE

- Dr. Dillon must decide if the Title IX policy applies to the reported conduct
 - Could the conduct constitute “sexual harassment” if true?
 - Did the conduct occur within a BPS “program or activity?”
 - Did the conduct occur in the United States?



PRELIMINARY RESPONSE

- If Title IX applies, Dr. Dillon will contact the complainant to discuss:
 - The availability of supportive measures; and
 - The complainant's option (or complainant's parent's option) to file a formal complaint (i.e., to trigger the Title IX investigation process)
 - No formal complaint = no Title IX investigation
 - What if the complainant doesn't want an investigation?
 - What if the complainant asks to remain anonymous?

INVESTIGATING A FORMAL COMPLAINT

- Investigating sexual harassment is a legal responsibility
- Failure to investigate can subject the district to legal liability and may result in continued harassment
- All investigations must be:
 - Equitable
 - Objective
 - Prompt

BEGINNING THE INVESTIGATION

STEP ONE

- Dr. Dillon will designate an appropriate investigator and notify the parties of the investigation
- For students: the investigator could be a building principal, assistant principal, social worker, or other appropriate administrator, or an outside investigator
- For staff: the investigator could be the Director of Finance and Administration or designee

STEP TWO

- The investigator conducts interviews and collects evidence
 - Evidence: witness statements, photos, video, texts/e-mails, social media, medical reports
 - Remember: advance written notice, opportunity to bring advisor
 - Documentation is key



INVESTIGATING SEXUAL HARASSMENT

STEP THREE

- Both parties review the evidence
- Parties have 10 days to submit written response to the evidence

STEP FOUR

- Investigator drafts the investigation report that “**fairly summarizes relevant evidence**”
 - Credibility determinations may not be based on a person’s status as complainant, respondent, or witness
- Parties get a copy of the report and option to submit written response to the report

WHAT IS “RELEVANT”?

“With or without a hearing, questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.”

34 C.F.R. 106.45(b)(6)(ii).



INVESTIGATING SEXUAL HARASSMENT

STEP FIVE

- The investigation report and the parties' written responses (if any) go to Superintendent Messore
- Parties can submit “written, relevant” questions (to the other party or to a witness) through Superintendent Messore
 - Option for limited follow-up questions

STEP SIX

- Superintendent Messore applies a “preponderance of the evidence” standard to determine whether the alleged harassment occurred
- Superintendent Messore issues a written decision to the parties



KEY CONSIDERATIONS

■ **Due Process**

- Equal opportunities for both sides to present witnesses and evidence
- Fair notice of the investigation, the allegations, and notice of all investigatory interviews
- Parties must have the opportunity to review the evidence
- Parties must be allowed to bring an advisor
- No gag orders
- Presumption that respondent is not responsible until a determination is made at conclusion of process

■ **“Reasonably Prompt” Timeframe**

- Delays permitted for good cause only – criminal investigation not necessarily “good cause” for delay
- Unreasonable delay may subject the district to legal liability

INFORMAL RESOLUTION

- “Informal resolution” = something less than a full-blown investigation and adjudication
 - Ex: mediation
- Available as an option only if a formal complaint is filed
 - Must give the parties written disclosure of the allegations and the option to pursue a formal complaint process
 - The parties must give voluntary written consent
 - Not an option to resolve allegations that an employee sexually harassed a student

APPEALS PROCESS

- Parties have the option to appeal:
 - The dismissal of a formal complaint
 - Superintendent Messoré's adjudication of responsibility
- Three bases for appeal:
 - Procedural irregularity
 - New evidence
 - Conflict of interest or bias
- Procedure
 - 10 days to file written appeal to Chair of the School Committee
 - Decided by the full School Committee



HYPOTHETICALS



HYPOS #1 - #3

1. Two male students in a high school science class sabotage the science experiments of all the female students in the class.
 - Is this a Title IX gender-based harassment issue?
 - What should happen next?

2. A math teacher at the high school demeans and calls out the mistakes of female students, but not male students who make similar mistakes. He also makes sexually inappropriate remarks about some of the female teachers.
 - Is this a Title IX gender-based harassment issue?
 - What should happen next?

3. The parents of a transgender student report to the principal that someone has made a fake “snapchat” account using their child’s name and likeness and attributing exaggerated female characteristics to the picture.
 - Is this a Title IX gender-based harassment issue?
 - What should happen next?

HYPO #4

Helen Chi, the mother of Kate Chi, calls you to report that a boy in Kate's 7th grade class has been harassing her over text, calling her "lesbo" and blaming her for bringing the coronavirus from China to Barrington, using racially and ethnically charged words.

As far as you know, Kate has been distance learning for the year.

How should you respond?

HYPO #5

The parents of a high school girl's field hockey player call the field hockey coach to report that their daughter is being bothered by some baseball players. The field hockey coach is a physical education teacher at an elementary school, not the high school. It seems that after her practice, when she is walking by the boys practice field to get to her car, some boys make "cat calls" and rude comments toward her. It has been going on for over 2 weeks. The girl couldn't or wouldn't identify exactly which boys are making the comments, but she is considering quitting field hockey because it is so upsetting to her.

- What should happen next?
- Does BPS have "actual knowledge" of the incident?

HYPO #6

A young history teacher at the Middle School comes to school one Monday morning very upset. When the department head asked her what was wrong, she reported that her ex-boyfriend, the Barrington Police Officer assigned to the middle school as a student resource officer, had been sending her a series of text messages for the past 2 weeks that were very upsetting because she had broken up with him. In the messages, he threatens to show the school principal some pictures of her in very provocative positions.

- Is this a Title IX gender-based harassment issue?
- Does it matter that the police officer is not employed by BPS – just assigned to the school
- What should happen next?

HYPO #7

The mother of a senior student reports to her neighbor, who is an elementary school teacher at BPS that when she was reviewing her daughter's Instagram Account, she noticed a picture of her daughter's friend (also a 17-year-old student at the school) dressed very provocatively and sitting on the lap of the BPS band director. The picture did not appear to take place at school or during school hours. The mother does not want anyone knowing that she reported this incident.

- What should happen next?
- Does BPS have “actual knowledge” of this incident?
- What are the reporting requirements, if any, for BPS?

HYPO #8

A freshman boy with Downs syndrome repeatedly hugs a girl during physical education class. The girl politely tells him to stop and to give her some space. The boy continues to try to hug her and as she is turning away, his arm brushes up against her breast. The physical educator witnessed the incident and separated the students.

- Does this rise to a Title IX issue?
- What are the reporting requirements, if any?
- What happens if the next morning, the girl's father shows up at the school to report the incident to the principal and demands to know what is going to be done to protect his daughter from this boy.

THANK YOU

Sara A. Rapport

Direct: (401) 270-0171

Email: srapport@whelancorrente.com



Staci L. Kolb

Direct: (401) 270-4500

Email: skolb@whelancorrente.com

Caroline R. Thibeault

Direct: (401) 270-3136

Email: cthibeault@whelancorrente.com