



#### **ADE Vision**

Every Arkansan is **equitably** prepared, supported, and inspired to succeed in school, career, community, and life.

#### **DESE** Mission

The Arkansas Department of Education provides leadership, support, and service to schools, districts, and communities so every student graduates prepared for college, career, and community engagement.



#### **Equity Assistance Center**



This training is technical assistance and guidance.

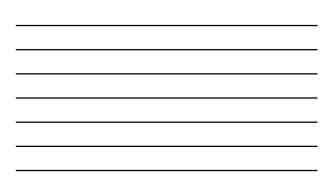
The EAC cannot provide legal advice.

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#### USDOE – Office for Civil Rights









#### What is Title IX?

Prohibits discrimination on the basis of sex in education programs and activities that receive federal financial assistance.

#### Some examples: Failure to provide equal opportunity in athletics Discrimination in STEM courses and programs Discrimination based on pregnancy Title IX Sexual Harassment

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### History of Title IX

Education Amendments of 1972
US Dept. of Education (USDOE) published 34 CFR Part 106, which implements Title IX
13/5 Guidance documents were used when law had not specifically addressed an issue Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties.
 USDDE publiches in 1937
 USDDE revise in 2001 Dear Colleague Letters
 USDOE publishes in 2011 and 2016

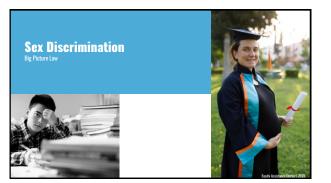
- New Regulations

   • USDOE PUBLISHES New Regulations

   • Agent 2020

   • Depart 2020

   • CURRENT Law
- USDOE PROPOSES New Regulations
- July 2022
  NOT the current law.



#### Academics, Athletics, & Activities

#### Deny participation in; Deny the benefits of; Treat differently from another person; OR Otherwise discriminate against May operate separate teams • Selection for such teams is based upon competitive skill; • Or activity involved is a contact sport. Must provide equal athletic opportunity for both sexes May have single-sex classes or extracurricular activities

On the basis of sex, the district must not

May larder Singler-Sec Tradses of extractionical activities Based on the school is important objective • To improve educational achievement of its students: AND • To meet the particular, identified educational needs of its students • Implemented in an evenlanded manner • Completely unultary. • Periodic Evaluation - at least every 2 years.

Must provide a substantially equal extracurricular activity to excluded students in the same activity

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34 CFR § 106.31(a & b), 106.41(b)



#### **Pregnancy/Parental Status**

• Shall not apply any rule concerning a student's actual or potential: parental, family, or marital status which treats students differently on the basis of sex.

- Shall not discriminate or exclude any student on the basis of student's pregnancychildbirth
- false pregnancy
  termination of pregnancy or recovery therefrom.

• Must allow student to return to the same academic or extracurricular status as before their medical leave began.













General Response to Title IX Sexual Harassment

#### **Actual Knowledge**\*

\* Actual knowledge means notice (report) of Title IX sexual harassment or allegations of Title IX sexual harassment to a recipient's Title IX Coordinator or to **any employee of an elementary and secondary school**.

#### Grievance Process for Title IX Sexual Harassment

#### Formal Complaint^

Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment.

	RESPOND PROMPTLY     Contact District Title IX Coordinator.
General Response to Title IX Sexual Harassment	• RESPOND EQUITABLY
IX Sexual Harassment	• DISCUSS SUPPORTIVE MEASURES
<u>Actual Knowledge</u> *	• EXPLAIN FORMAL COMPLAINT
*Actual knowledge means notice (report) of Title IX sexual harassment or allegations of Title IX sexual harassment to a recipient's Title IX Coordinator or to any employee of an elementary and secondary school.	• EMERGENCY REMOVAL OR ADMINISTRATIVE LEAVE
34 CFR §§ 106.44(a), 106.45	Equity Assistance Center   2023





34 CFR § 106.30(a)

# TILLE LIX SEXUAL HARASSMENT MEANSCONDUCT ON THE BASIS OF SEX THAT SATISFIES ONE OR MORE OF THE FOLLOWING:OPPOUT ON THE BASIS OF SEX THAT SATISFIES ONE OR MORE OF THE FOLLOWING:OPPOUT ON THE BASIS OF SEX THAT SATISFIES ONE OR MORE OF THE FOLLOWING:OPPOUT ON THE BASIS OF SEX THAT SATISFIES ONE OR MORE OF THE FOLLOWING:OPPOUT ON THE BASIS OF SEX THAT SATISFIES ONE OR MORE OF THE FOLLOWING:OPPOUT ON THE BASIS OF SEX THAT SATISFIES ONE OR MORE OF THE FOLLOWING:OPPOUT ON THE BASIS OF SEX THAT SATISFIES ONE OR MORE OF THE FOLLOWING:OPPOUT ON THE BASIS OF SEX THAT SATISFIES ONE OR MORE OF THE FOLLOWING:OPPOUT ON THE BASIS OF SEX THAT SATISFIES ONE OF MORE OF THE FOLLOWING:OPPOUT ON THE BASIS OF SEX THAT SATISFIESOPPOUT ON THE BASIS OF SEX THAT SATISFIES ONE OF MORE OF THE FOLLOWING:OPPOUT ON THE BASIS OF SEX THAT SATISFIESOPPOUT ON THE BASIS O

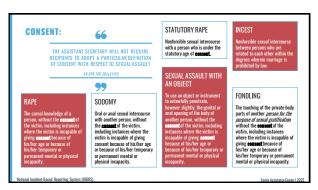
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unwelcome sexual conduct; (Often called "Quid Pro Quo")

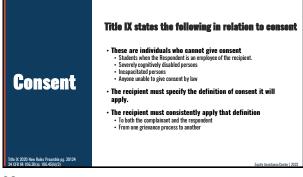
106 30(4)(1,3)

 $^{\star}$  Recipient - institution that receives federal financial assistance

SEXUAL ASSAULT An afferse classified as a forcible or nonintroble sex defines under the indent of chine trapeting system of the federal Barsau Investigation (FB). 20 USE & 102377(6)(407)	DATING VIOLENCE Violence committed by a person a) who is or has been in a sucial relationship of a romatic or initiate nature with the widim: and by where the existence of such a relationship shall be determined backd on a consideration of the following technic and be determined backd on a consideration of the following technic of the relationship. II. The type of relationship. III. The type of relationship. III. The type of relationship. III. The type of relationship.	DOMESTIC VIOLENCE Includes folany ar mindemean ar arine at outcome cannot be by a part of a dwe text, by a part of a dwe text, be dwe text, be dwe text, be a dwe	STALKING Engaging in a course of conduct directed at a specific person that would cause a reasonable person to- A. Fear for his on ber safety or the safety of others: or B. suffer substantial mentional distress. <i>A USC B 1220(MAR)</i> <sup>1</sup> This includes cyber staffing (notifi- though ensuging pathema) <i>Abuschmund Guardian and Color</i> 200
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#### Is it Title IX Sexual Harassment?

• Student 1 asks Student 2 out. Student 2 says I have plans.

• Student 1 asks again. Student 2 says I have a paper due the next day.

Student 2 won't go to class with Student 1 because they're afraid Student 1 is going to ask them out again.

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#### Is it Title IX Sexual Harassment?

- Student 1 talks to Student 2. Student 2 is uncomfortable for undefined reason.
- Student 1 talks with Student 2 again. Student 2 is uncomfortable again.

Student 2 won't go to class with Student 1 because they're afraid Student 1 is going to make them uncomfortable.

8<sup>th</sup> Grade Student 1 grabs 6<sup>th</sup> Grade Student 2's rear end in the hallway between classes.

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#### Is it Title IX Sexual Harassment?

5th grade Student 1 attempts to touch a 5th grade Student 2's breasts and genital area and makes vulgar statements such as 'I want to get in bed with you" and 'I want to feel your boobs."



 $10^{th}~Grade~Student~1$  repeatedly grabs and rubs his crotch whenever  $10^{th}~Grade~Student~2$  enters into their English class.

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#### Is it Title IX Sexual Harassment?

5th grade Student 1 purportedly placed a door stop in his pants and proceeded to act in a sexually suggestive manner toward 5th grade Student 2 during physical education class.

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7<sup>th</sup> Grade Student 1 from another school in the district is at an evening extracurricular activity at your school. Student 1 meets 9<sup>th</sup> Grade Student 2 from your school and repeatedly sends text messages and calls asking for sexual favors.

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#### Is it Title IX Sexual Harassment?

A teacher who worked at your school last year, but is now employed by another school district is accused of sending text messages this year to many of the students at your school requesting "nudes."

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#### **TITLE IX SEXUAL HARASSMENT?**

- 1. Is the complainant participating in or attempting to participate in our education program or activity?
- 2. Did the actions allegedly occur in **our education program** or activity?
- Did we have substantial control over the respondent? .
- Did we have substantial control over the context?
- 3. Did the actions allegedly occur against someone in the United States?
- 4. If proven true, would the alleged actions be one of the following?
  - "Quid Pro Quo"
- Sexual Assault, Dating Violence, Domestic Violence, or Stalking •
- . Severe, Pervasive AND Objectively Offensive to a reasonable person (peer)

#### **TITLE IX SEXUAL HARASSMENT?**

#### **YES** to ALL FOUR questions

 You must follow the Title IX Sexual Harassment Grievance Process BEFORE investigating allegations OR implementing ANY disciplinary sanctions.

...A recipient's response is not simply a matter of the recipient's own codes of conduct or policies: a recipient's response is a matter of fulfilling obligations under a Federal civil rights law.

#### **NO to ANY ONE of the four questions**

• The Office for Civil Rights (OCR) CANNOT DIRECT YOU on how to respond

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#### Severe, Pervasive and Objectively Offensive?

"Signs of enduring unequal educational access due to severe, pervasive, and objectively offensive sexual harassment may include:

- skipping class to avoid a harasser
- a decline in a student's grade point average, or
  having difficulty concentrating in class

however, **no concrete injury is required to conclude that serious harassment** would deprive a reasonable person in the complainant's position of the ability to access the recipient's education program or activity on an equal basis with persons who are not suffering such harassment."

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#### Severe, Pervasive and Objectively Offensive?

- · Courts must bear in mind that schools are unlike the adult workplace and that children may regularly interact in a manner that would be unacceptable among adults.
- Whether gender-oriented conduct rises to the level of actionable "harassment" thus depends on a constellation of surrounding circumstances, expectations, and relationships, ...including, but not limited to, the ages of the harasser and the victim and the number of individuals involved.
- Damages are not available for simple acts of teasing and name-calling among school children, however, even where these comments target differences in gender.

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tv Bd. of Ed., 526 U.S. 629
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Classmates photoshopped sexually suggestive pictures of **Student** when she was a freshman in high school and posted them on flyers in school hallways and bathrooms that included her phone number.

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#### Is it Title IX Sexual Harassment?

Student 1 punches Student 2 after Student 2 tells Student 1 that his voice is not "manly enough." Student 1's mother tells the AP that Student 1 is not one to complain but Student 2 has been making fun of Student 1 since the beginning of the year saying Student 1 is not manly enough in actions, voice or choice of extracurricular classes.

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#### Is it Title IX Sexual Harassment?

A senior female **Student** states that a male **Teacher** refused to provide afterschool tutoring to her multiple times because no other student was going to stay those days so they would be alone in the classroom. **Student** claims **Teacher** often provided one on one afterschool tutoring to male students this term.

5th grade Student 1 allegedly rubs their body against  $5^{\rm th}$  grade Student 2 in the school hallway in what the other student considered a sexually suggestive manner.

**Grievance Process for Title IX** 

Sexual Harassment 34 CFR § 106.45

**Formal Complaint** 

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- COMPLAINANT MUST BE PARTICIPATING IN OR ATTEMPTING TO PARTICIPATE
   in the education pergegam or activity of the recipient with which the formal eventpains its field
- PARENT OR GUARDIAN MAY FILE A FORMAL COMPLAINT
   one behalf of complement
- "DOCUMENT FILED BY A COMPLAINANT" MEANS
   a decument or electronic submission that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the temperature interview.



#### Must be provided

- By the recipient
  To the parties who are known
  Upon receipt of a formal complaint

#### Must

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- Contain notice of grievance process
   Contain notice of allegations of sexual harassment
   Including sufficient drait location
   Including sufficient drait location
   The conduct alleged
   Date and location of the alleged incident
   State ther respondent is presumed not responsible
   Inform parties that they may have an advisor of
   their choice
   Inform parties regarding false statements or false
   information information

Additional Allegations = New Notice of Allegations

**Grievance Process for Title IX Sexual Harassment** 34 CFR § 106 45

#### **Notice of Allegations**

**Grievance Process for Title IX** 

**Sexual Harassment** 

**Investigation** 

34 CFR § 106.45

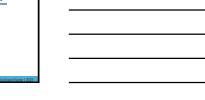
#### **Guidelines**

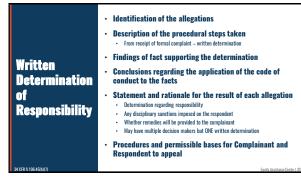
- ENSURE
   burden of proof and burden of gathering evidence
   rest on the recipient
- PROVIDE EQUAL OPPORTUNITY
  - for parties to present witnesses and other evidence • for parties to have others present during any

  - grievance proceeding for parties to inspect and review any evidence
- DO NOT RESTRICT the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence

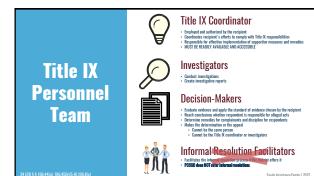
PROVIDE WRITTEN NOTICE
 to a party whose participation is invited or
 expected













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## **QUESTIONS?**



