



Brandywine Heights Area School District Title IX Training

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Presented by:

Benjamin L. Pratt, Esq.

Kegel Kelin Litts & Lord LLP

pratt@kkll.law



Why is this Training Needed?

The passage of new Title IX Regulations became effective August 14, 2020.

Mandates a higher burden on school entities to create, enforce policies and procedures, and maintain compliance with the new regulations.



What will the Training Entail?

Training will address the following topics:

- Rules and responsibilities
- Definition of sexual harassment
- How to conduct an investigation
- How to be impartial
- Responsibilities of school district personnel and administration



Brandywine Heights Area School District Policies

103 Students

104 Staff

Includes forms to use when an individual files a complaint, investigation forms and findings template.



New Regulations: Roles and Responsibilities

1. Title IX Coordinator;
2. Investigator;
3. Informal Facilitator;
4. First-level Decisionmaker;
5. Appeal Decisionmaker.



New Regulations: Fundamental Premise

The regulations are premised on setting forth clear legal obligations that require schools to:

- 1) promptly respond to individuals who are alleged to be victims of sexual harassment by
- 2) offering supportive measures



What Have We Learned?

- A formal complaint can only be made by:
 1. Complainant
 2. Title IX Coordinator
- Why is this important?
- No formal complaint, the grievance process does not need to be followed



New Regulations: Basic Requirement

A school entity with actual knowledge of sexual harassment in an education program or activity of the school entity against a person in the United States, must respond promptly in a manner that is not deliberately indifferent.



New Regulations: Defining Sexual Harassment

- Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
 1. An Employee of the school conditioning the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct (i.e., quid pro quo)



New Regulations: Defining Sexual Harassment

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 school's education program or activity (i.e., hostile environment)
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30)

"Sexual assault" means an offense classified as a forcible or nonforcible sex offense under the uniform crim reporting system of the Federal Bureau of Investigation. 20 U.S.C.A. § 1092(f)(6)(A)(v).



New Regulations: Actual Knowledge

Notice to any of the following constitutes notice to the school:

1. Title IX Coordinator;
2. Any official of the school who has authority to institute corrective measures on behalf of the school; or
3. Any employee of an elementary and secondary school, including custodians, bus drivers, cafeteria workers, etc.



New Regulations: Formal Complaint

Formal complaint means:

1. A document (a) filed by a complainant or (b) signed by the Title IX Coordinator;
2. Alleging sexual harassment against a respondent; and
3. Requesting that the school investigate the allegation of sexual harassment.



New Regulations: Formal Complaint

At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school entity with which the formal complaint is filed.

New Regulations: Defining Supportive Measures

Supportive measures means, (1) non-disciplinary, (2) non-punitive, (3) individualized services offered (4) as appropriate, as reasonably available, and without fee or charge (5) to (A) the complainant or (B) the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

New Regulations: Defining Supportive Measures

Supportive measures are designed (1) to restore or preserve equal access to the school's education program or activity *without unreasonably burdening the other party*, including measures designed (2) to protect the safety of all parties or the school's educational environment, or (3) deter sexual harassment.

New Regulations: Defining Supportive Measures

Supportive measures may include (1) counseling, (2) extensions of deadlines or other course-related adjustments, (3) modifications of work or class schedules, (4) campus escort services, (5) mutual restrictions on contact between the parties, (6) changes in work . . . Locations, (7) leaves of absence, (8) increased security, and (9) monitoring of certain areas of the campus, and other similar measures.



New Regulations: Responding to Sexual Wrongdoing

With or without a formal complaint, school must do the following:

1. Promptly respond;
2. Title IX Coordinator must promptly contact complainant;
3. Must not be “deliberately indifference” (reckless disregard of the consequences);
4. Must treat complainant and respondent equitably by offering supportive measures to complainant;
5. Must follow the grievance process when formal complaint is filed.



New Regulations: Grievance Process – Notice of Allegations

“Sufficient details” include:

1. The identities of the parties involved in the incident, if known;
2. The conduct allegedly constituting sexual harassment;
3. The date; and
4. Location of the alleged incident, if known.



New Regulations: Grievance Process – Notice of Allegations

The written notice must include a statement that (1) the respondent is presumed not responsible for the alleged conduct and (2) that a determination regarding responsibility is made at the conclusion of the grievance process.

- Presumed Innocent -



New Regulations: Grievance Process – Dismissal of Complaint

Complaint must be dismissed;

1. If the conduct alleged in the formal complaint would not constitute sexual harassment even if proved;
2. Did not occur in the school's education program or activity; or
3. Did not occur against a person in the United States; but - - - -



New Regulations: Grievance Process – Dismissal of Complaint

Dismissal of a formal complaint does not preclude action under another provision of the school's code of conduct.



New Regulations: Grievance Process – The Investigation

- Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- Do not restrict the ability of either party to discuss the allegations under investigation or to gather and present evidence;



New Regulations: Grievance Process – The Investigation

- Provide the parties with the same opportunities to have others present during *any grievance proceeding*, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be an attorney;
- However, the school entity may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;



New Regulations: Grievance Process – The Investigation

Provide both parties an *equal opportunity to inspect and review any evidence obtained as part of the investigation* that is (1) directly related to the allegations raised in a formal complaint, including the (2) evidence upon which the school entity does not intend to rely and (3) inculpatory or (4) exculpatory evidence whether obtained from a party or other source, *so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.*



New Regulations: Grievance Process – The Investigation

1. Prior to completion of the investigation report, the school must send to (1) each party and (2) the party's advisor, if any, (A) the evidence subject to inspection and review (B) in an electronic format or a hard copy.
2. The parties must have at least 10 days to submit a written response.
3. The investigator must consider the response(s) prior to completion of the investigative report.



New Regulations: Grievance Process – The Investigation - Evidence

The school entity must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.



New Regulations: Grievance Process – The Written Determination

- A written determination must be issued after the investigative report is finalized
- Written determination must be by the “decision-maker”
 - Decision-maker and “due process”
- Decision-maker may not be the Title IX Coordinator or the investigator.



New Regulations: Grievance Process – The Written Determination

Must include:

1. Allegations potentially constituting sexual harassment
2. Description of the procedural steps from receipt of formal complaint to written determination, including:
 - a) Notifications to parties
 - b) Interviews
 - c) Site visits
 - d) Methods used to gather evidence
 - e) Hearings held



New Regulations: Grievance Process – The Written Determination

Must include:

3. Findings of fact supporting determination;
4. Conclusions regarding the application of Code of Conduct to facts;
5. The rationale for each allegation, including determination of responsibility disciplinary sanctions and whether remedies will be provided to victim to restore or preserve equal access;



New Regulations: Grievance Process – The Written Determination

Must include:

6. Procedures for appeal;
 7. Timeline for appeal;
 8. Bases for appeal by complainant and respondent;
- The written determination must be provided to the parties simultaneously.



Must be Impartial and Fair

All investigations, decisions, and actions must be fair and impartial.



Must be Impartial and Fair

- Don't prejudge the facts – wait until you hear all the evidence from all of the witnesses
- Presumes the non-responsibility of respondents until conclusion of the grievance process when a decision is made based on a fair assessment of evidence
- Both parties must have equal opportunity to present witnesses and other evidence



Must be Impartial and Fair

- Written notice of the allegations to both parties
- Does not restrict the parties from discussing the allegations or gathering evidence (What about confidentiality?)
- Gives the parties equal opportunity to select an advisor of the party's choice (who may be, but does not to be, a attorney)



Must be Impartial and Fair

- Both parties have equal opportunity to review and respond to the evidence gathered during the investigation
- Cannot be biased in any way
 - ❖ Due to nature of allegations
 - ❖ Due to identity of the parties or witnesses
 - ❖ Due to the status of the parties or witnesses



Must be Impartial and Fair

- Must not rely upon or consider stereotypes or other irrelevant facts:
 - ❖ Manner of dress
 - ❖ Most past disciplinary issues
 - ❖ Occupation of parents



Must be Impartial and Fair

- Must not rely upon untrustworthy evidence
- Uncorroborated hearsay
 - ❖ Go to the source
- Summaries of descriptions of a document
 - ❖ Get the document

- Best Evidence Rule -



Practical Tips

Listen to all evidence, including hearsay, but do not ‘rely upon” hearsay for making any decisions unless it is corroborated by competent evidence.



Rules of Evidence

Direct evidence vs. Circumstantial evidence

- Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally say, heard, or did.
- Circumstantial evidence is proof of one or more facts from which you could find another fact.



Rules of Evidence

- You should consider both kinds of evidence – direct evidence and circumstantial evidence.
- The law makes no distinction between the weight to be given to either direct or circumstantial evidence.
- You may decide the case solely based on circumstantial evidence.



Deciding Credibility

- Judges say you must consider and weigh the testimony of each witness and give it the weight that, in your judgment, it is fairly entitled to receive.
- The matter of credibility of a witness, that is, whether the testimony is believable in whole or in part, is solely for your determination.



Questions?