

Sierra Vista Unified School District

September 28, 2022

Title IX Staff Training: What Is It and How Do I Report It?

Presented by: Lawton L. Jackson, Esq.

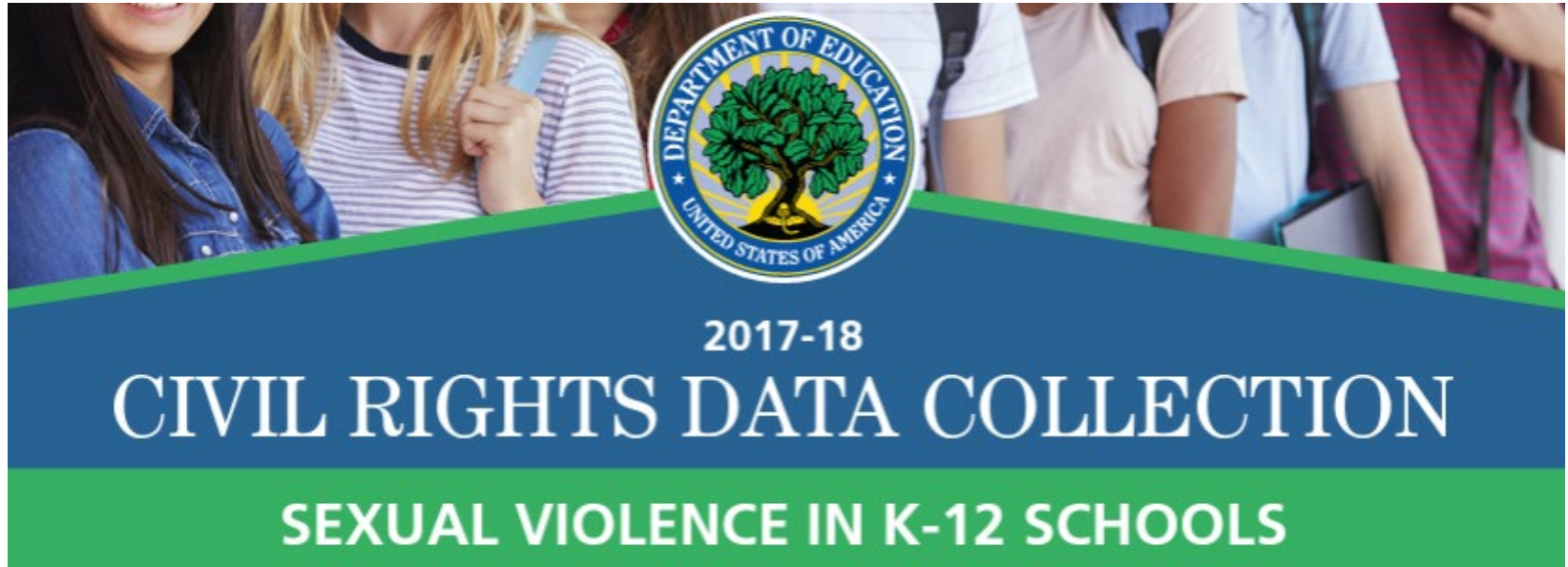
Who Am I?

- Partner with Udall Shumway PLC.
- Practice Education Law
- Worked at the Arizona Attorney General's Office as the Assistant Attorney General representing the Arizona Department of Education
- Worked for the Arizona Department of Education where she ran the state-wide Facilitated IEP program, and traveled throughout the state training school district on IDEA compliance and meeting facilitation strategies
- Experienced special education compliance investigator, having worked in both Arizona and Washington state
- JD from the Sandra Day O' Connor College of Law at Arizona State University, with a certificate in Biotechnology Law and Genomics (2014)
- Teach a graduate level class at ASU, Dispute System Design

What is Title IX

- Title IX protects people from discrimination based on sex in education programs or activities that receive federal financial assistance.
- The U.S. Department of Education's ("USDOE") Office for Civil Rights (OCR) enforces, among other statutes, Title IX of the Education Amendments of 1972.
- How Title IX came to be... continued on next page

How Does a Law Come to Be?



WHO IS IN THE 2017–18 CRDC?



Number of school districts:

17,604



Number of schools:

97,632

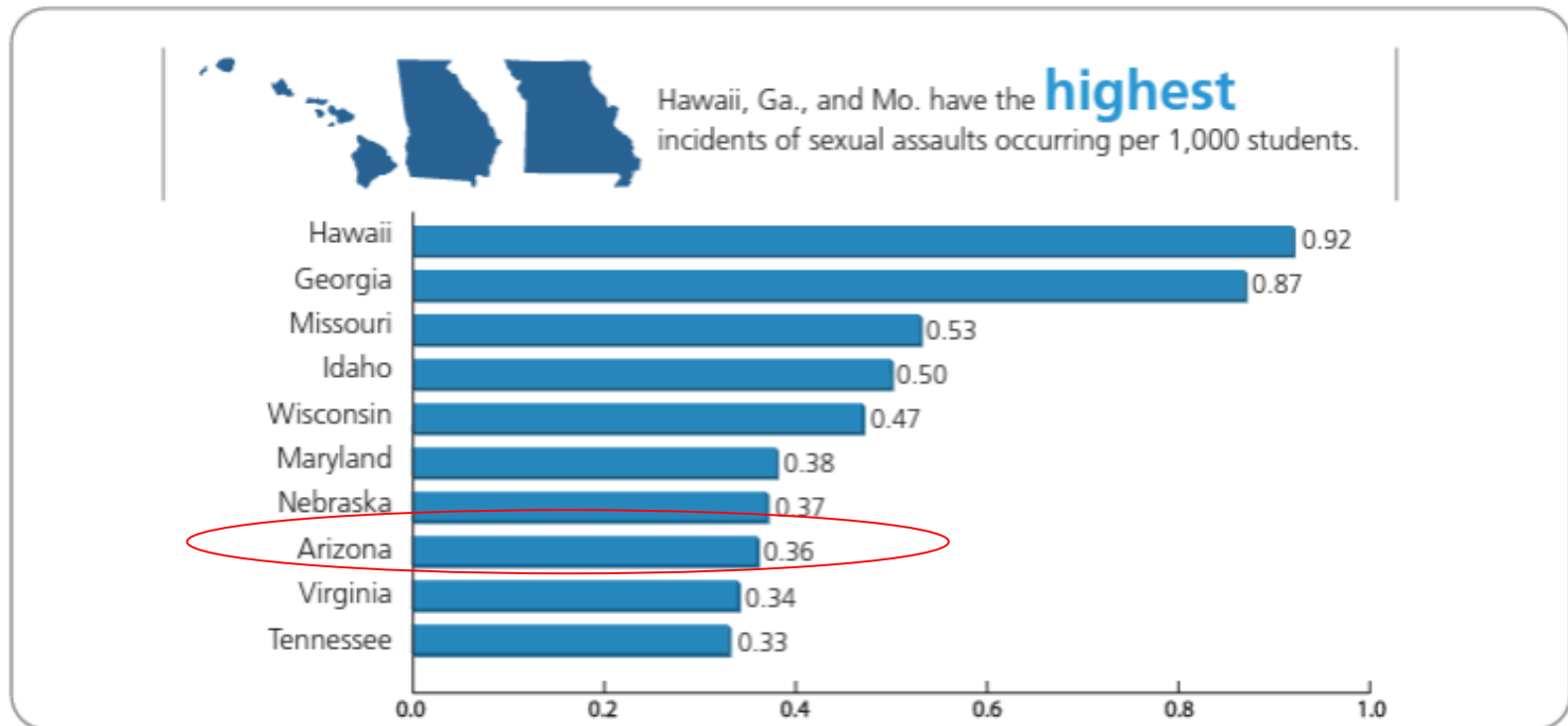


Total number of students:

50.9 million

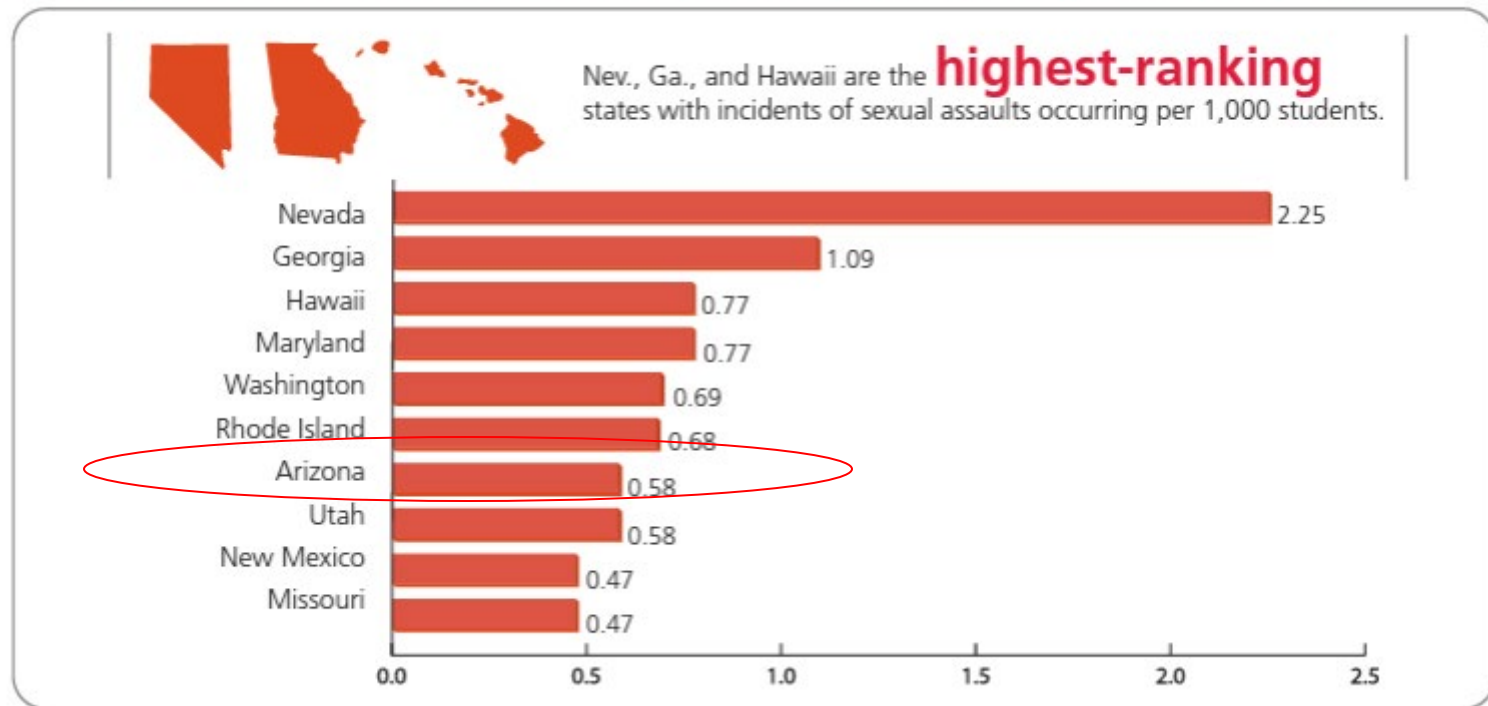
How Does a Law Come to Be?

Figure 4. 2015-16 Highest-Ranking States for Sexual Assaults (Rate per 1,000 students)



How Does a Law Come to Be?

Figure 6. 2017-18 Highest-Ranking States for Sexual Assaults (Rate per 1,000 students)



How Does a Law Come to Be?

Eyes Wide Shut

Pew Research Center “Children’s engagement with digital devices, screen time” (2020)



- 47% of parents “do little or nothing” to monitor online behavior.
- 67% of teenagers know how to hide what they do online from parents.
- 43% of teens would change their online behavior if they knew that their parents were watching them.
- 39% of teens think their online activity is private.

How Does a Law Come to Be?

2020 Teen Sexting Data Cyberbullying Research Center (2020)



- **Largest increase seems in number of students who have been asked asked to share sexts (from 17.5% in 2016 to 23.8% in 2019).**
 - 1 in 4 middle and high school students has been asked by someone to send them a sexually explicit image.
- **Bigger problem is increase in unauthorized sharing of explicit images.**

What Are We Doing Here Today?

- Define Title IX
- Recognize an allegation that falls under Title IX (Actual Knowledge)
- Understand Reporting Obligations
- Learn where to report potential Title IX matters
- Overview of SVUSD Grievance Procedures



WHAT IS TITLE IX ABOUT?

Scope of Title IX for Schools

- Prohibits discrimination and harassment based on sex in education programs and activities at schools that receive federal funding.

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 under any education program or activity receiving Federal financial assistance.

Scope of Title IX for Schools

- If any part of a K-12 school or college receives federal funding for any purpose, then all operations of the school or college are covered by Title IX
- Protects students, employees, applicants for employment, students who are applying to the school and any other person who may participate in the School's activities and/or programs
- Includes sexual harassment prohibitions for employees and students as well

Definition: Sexual Harassment

Conduct on the basis of sex that meets one or more of the following:

1. A District employee conditions the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct;

Definition of Sexual Harassment

2. Unwelcome sexual conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it “*effectively denies a person equal access*” to the District’s education program or activity;
3. Sexual assault, dating violence, domestic violence, or stalking.

Sexual Assault

An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

20 U.S.C. 1092(f)(6)(A)(v)

- Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent
- Including “forcible fondling” – touching of the private body parts of another person for the purpose of sexual gratification

Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- A. Fear for his or her safety or the safety of others;
or
- B. Suffer substantial emotional distress

34 U.S.C. 12291(a)(30)

Dating Violence

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 existence of such a relationship shall be determined based on a consideration of the following factors:

- 1) the length of the relationship;
- 2) the type of relationship;
- 3) the frequency of interaction between the persons involved in the relationship

34 U.S.C. 12291(a)(10)

Domestic Violence

Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by 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.

34 U.S.C. 12291(a)(8)

Examples of Sexual Harassment

- Suggestive or obscene letters, notes, derogatory comments, slurs, jokes
- Display of sexually suggestive objects, pictures, or cartoons
- Assault, touching, impeding or blocking movement
- Leering or other conduct that is physically threatening, harmful or humiliating
- Continuing to express sexual interest after being informed that the interest is unwelcome
- Includes harassment based on gender identity or expression

Gender Identity and Expression

Bostock v. Clayton County

- Title VII of the Civil Rights Act of 1964
 - SCOTUS concluded that discrimination based on sexual orientation and gender identity inherently involve treating individuals differently because of their sex.
 - It reached this conclusion in the context of Title VII of the Civil Rights Act of 1964 which prohibits sex discrimination in employment.

Gender Identity and Expression

Bostock v. Clayton County

- Courts rely on interpretations of Title VII to inform interpretations of Title IX.
- The USDOE issues this Notice of Interpretation to make clear that it interprets Title IX's prohibition on sex discrimination to encompass discrimination based on sexual orientation and gender identity

Gender Identity and Expression

Bostock v. Clayton County

- Numerous Federal courts have relied on *Bostock* to recognize that Title IX's prohibition on sex discrimination encompasses discrimination based on sexual orientation and gender identity
- A school's policy or actions that treat gay, lesbian, or transgender students differently from other students may cause harm

Office for Civil Rights (OCR)

- OCR will fully enforce Title IX to prohibit discrimination based on sexual orientation and gender identity in education programs and activities that receive Federal financial assistance from the USDOE.
- Stay in effect due to TN legislation
- Still liable for individual civil law suits
- Change is coming in New Title IX Rules

Definition: Sexual Harassment

Prong 2: Conduct on the basis of sex if so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity

OCR interprets Title IX to include harassment on the basis of a person's transgender status or homosexuality

Definition: Sexual Harassment under *Bostock* Interpretation

“On the basis of sex” includes: Unwelcome conduct *on the basis of transgender status or homosexuality* may, if so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity *on the basis of their transgender status or homosexuality*, constitute sexual harassment prohibited by Title IX. 34 C.F.R. § 106.30(a).

District Liability for Sexual Harassment

The District will violate Title IX where it has ***actual knowledge*** of an allegation of sexual harassment experienced by an ***individual in the educational program/activity*** and the District acts with ***deliberate indifference*** to that notice.

What is Actual Knowledge of Harassment?

- A report to ANY elementary or secondary school employee
 - ALL employees must be trained to immediately communicate any report of conduct that would meet the definition of harassment to the Title IX Coordinator
- A report to the Title IX Coordinator made at any time via any method of communication
- A report made to any District official who has authority to institute corrective measures

Is There Actual Knowledge?

- Sally reports to her paraprofessional that Jeff keeps trying to grab her breasts and butt
- Johnny reports to his teacher that almost everyday, during online classes, Jennifer uses a homophobic slur toward him in the chat function
- Jessica reports to the bus driver on her way home one day that Stephanie had photoshopped Jessica's head on a nude photo and sent it to the entire 7th grade class

Actual Knowledge?

David tells his best friend that a coach makes him very uncomfortable because one evening after a training session, the coach got into the shower at the same time David was showering and has, several times since then, rubbed David's shoulders and brushed up against him in a way that David finds creepy. David is really upset now because this coach told him privately that he would like to make David team captain next year, but David is going to need to do "something" for him.

Actual Knowledge?

Parent of Jamie tells her neighbor, who works in the cafeteria at the middle school, that she saw messages from a boy on her daughter's phone that included a demand for a nude photo and threat to tell everyone on social media that she is a whore if she doesn't send him the picture. Parent tells her neighbor that she blocked the student's number but isn't planning to alert the school.



DISTRICT OBLIGATIONS UNDER TITLE IX

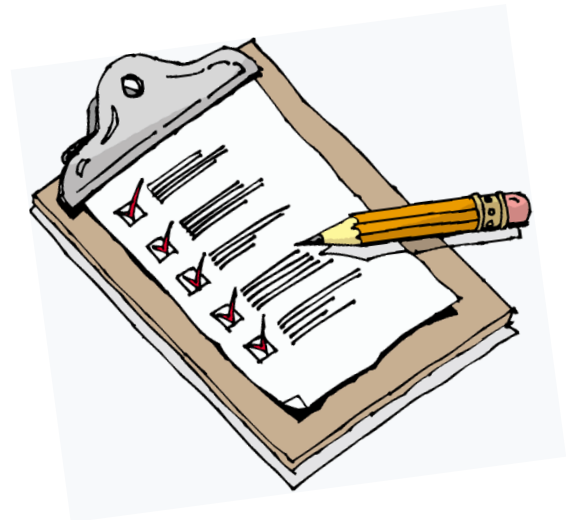
What Affirmative Steps Does Title IX Require?

- Employ a Title IX Coordinator
- Have and disseminate a policy and grievance process to address sex discrimination, including sexual harassment
- Post on the District's website:
 - Nondiscrimination Notice
 - The contact information for the Title IX Coordinator
 - The training materials for the investigators and decision makers
 - The grievance process

REPORTS OF SEXUAL HARASSMENT & THE GRIEVANCE PROCESS

How is it Reported to Staff?

- Reports can be made by anyone and by mail, telephone, email to Title IX Coordinator or by any means that results in the Title IX Coordinator receiving the report
- Any report triggers District responsibilities – **Important to send notice of any report to Title IX Coordinator**
- Do not make a judgment as to whether the report is sexual harassment – that is the Title IX Coordinator's job in responding



How Should Staff Elevate?

- Any report to staff triggers District responsibilities – **Important to send notice of any report to Title IX Coordinator**
- Any employee with actual knowledge of an incident or allegation of sexual harassment must **report to their principal/lead administrator** as soon as practicable
- Do not bypass campus leadership
- Do not make a judgment as to whether the report is sexual harassment – that is the Title IX Coordinator's job in responding

How Should Staff Elevate?

- As soon as Administrators/Principals are made aware of a potential Title IX matter, contact District Title IX Coordinator
- Do not investigate
- Do not discipline
- Do not make a judgment as to whether the report is sexual harassment – that is the Title IX Coordinator's job in responding
- Prepare to remain engaged in potential Title IX matter

Your Title IX Coordinators

- Bonnie Gomez, SVUSD Chief Human Resources
- Lisa Wright, SVUSD Human Resources Manager

3555 E Fry Blvd., Sierra Vista 85635-2972

Bonnie.gomez@svps.k12.az.us

Lisa.wright@svps.k12.az.us

Telephone: (520) 515-2700

Administrator/Principal's Role in Title IX Process

- Coordinator and Administrator/Principal will discuss next steps
 - Preparing an actual knowledge report
 - Getting clarifying information
 - Getting teacher statements
- What happens next?
 - If Title IX investigation is appropriate and a formal complaint is filed, duties may be paused – but do not stop
 - If Title IX investigation is not opened, Administrator/Principal maintains responsibility to Discipline
 - If there was additional conduct outside of Title IX, Administrator/Principal may proceed with investigation/discipline ****as long as the conduct doesn't fall under Title IX****



This Photo by Unknown Author is licensed under CC BY-NC-ND

YOUR TITLE IX COORDINATOR & THEIR ROLE/RESPONSIBILITIES

Title IX Coordinator Responsibilities

- Development, implementation, and monitoring of meaningful efforts to comply with Title IX
- Develop and maintain a working knowledge of Title IX and relevant state laws
- Ensure District has required policies and procedures
- Conduct self-evaluations of policy compliance
- Coordinate/ conduct investigations of formal complaints
- Develop training programs for staff and students
- Identifying and addressing any patterns of discrimination

Grievance Process Requirements

- Treat all parties equitably
- Upon receipt of a formal complaint, provide written notice
- Objectively evaluate all evidence, including allowing the Respondent to prepare a response before any initial interview
- Ensure there is no conflict of interest for the investigator and decisionmaker
- Include a presumption that the Respondent is not responsible

Grievance Process Rqmnt's Cont'd

- Include reasonably prompt timeframes
- Include a description or list of possible discipline or other remedies
- Include a statement of the standard used = preponderance of the evidence
- Include appeal procedures and when appeal is available
- Include a range of supportive measures available

Where Can I find the Grievance Process?

Sierra Vista Unified School District Title IX Sexual Harassment Policies and Grievance Procedures

https://policy.azsba.org/asba/browse/sierravista/sierravista/z220201014095157325_829

****Procedures to be updated**

Questions?





LAWTON L. JACKSON

UDALL SHUMWAY PLC
1138 North Alma School Road, Suite 101
Mesa, Arizona 85201
www.udallshumway.com

llj@udallshumway.com | (480) 461-5331