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# Investigating Gender Based Violence in Schools

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## **Iowa Code Section 280.28. Harassment and bullying.**

“Harassment” and “bullying” shall be construed to mean any electronic, written, verbal, or physical act or conduct toward a student which is based on any actual or perceived trait or characteristic of the student and which creates an objectively hostile school environment that meets one or more of the following conditions:



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- (1) Places the student in reasonable fear of harm to the student's person or property.
- (2) Has a substantially detrimental effect on the student's physical or mental health.
- (3) Has the effect of substantially interfering with a student's academic performance.
- (4) Has the effect of substantially interfering with the student's ability to participate in or benefit from the services, activities, or privileges provided by a school.



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“Trait or characteristic of the student” includes but is not limited to age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical attributes, physical or mental ability or disability, ancestry, political party preference, political belief, socioeconomic status, or familial status.



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# Title IX, 20 § U.S.C. 1681

## *Sexual Discrimination*

- Prohibits discrimination “on the basis of sex”;
- Education programs and federally funded schools;
- Protects students, employees, applicants for admission, applicants for employment & all other persons



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## *Title IX Implementing Regulations*

- Designation of a Title IX Coordinator;
  - *See 2015 Dept. of Ed. “Resource Guide” and 2015 Dear Colleague Letter on Title IX Coordinator responsibilities, designation, etc.*
- Adopt “Grievance” Procedures;
  - *Attn: Sexual Harassment and Violence*
- Disseminate Notice of Policy/Title IX Obligations



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## *Title IX Guidance - Sexual Harassment and Violence*

2011

*Dear Colleague Letter*



2014

*Questions and Answers on Title  
IX & Sexual Violence*

U.S. Department of Education's Office of Civil Rights ("OCR") interprets Title IX to prohibit sexual violence and harassment as forms of "sex discrimination".



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## *Title IX Guidance - Transgender*

“On the Basis of Sex”:

- DOE & DOJ *Joint Guidance to Help Schools Ensure the Civil Rights of Transgender Students*
  - Issued May 13, 2016
  - States, “... treat a student’s gender identity as the student’s sex for purposes of Title IX and its implementing regulations...”
- Iowa Code 216.9:
  - Prohibits discrimination or discriminatory harassment in education.





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## *Enforcement/Remedies- Title IX*

### 1) Agency Enforcement

- Administrative claim for violations of Title IX;
- OCR employs essentially a negligence standard –  
“knew or should have known” = failure to respond = noncompliance
- Remedies: (1) voluntary resolution negotiations; or (2) pursue administrative proceedings for suspension or termination of federal financial assistance to the institution.
  - *No Individual Monetary Remedies*



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## *Enforcement/Remedies- Title IX*

### 2) Private Litigation

- Individual litigant can pursue Title IX claims as a private cause of action
- Standard – *Deliberate Indifference*
  - Plaintiff must prove officials had actual knowledge AND
  - Harassment was so severe, pervasive & objectively offensive that it interfered the plaintiff's access to educational program/activities.
  - Liability can be avoided by responding to harassment in a manner that is not unreasonable

*Injunctive relief and monetary damages*



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## Internal Grievance Procedures and Student Discipline

- Complaints and Investigations: Thorough investigation & “opportunity to be heard” without formality of hearing or “re-victimization”
- Steps:
  - Matter assigned to trained investigator;
  - Complainant interviewed – interim protective measures implemented;
  - Respondent informed and interviewed;
  - Investigation (witnesses, tangible evidence, opportunity to comment);
  - Report, Due Process, and Sanctions
  - Equal amount of Due Process



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## Internal Grievance Procedures and Student Discipline

- Hearings: Many OCR procedural requirements suit traditional due process and trial-like “hearing” model of student discipline.
- Parties/representatives present evidence, examine and cross-examine witnesses (or provide questions to be answered by the party or witness), and present argument to a hearing officer, board, or panel.
- OCR requires “Equal Rights” of the parties



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## *Interaction with Criminal Investigations:*

- Must inform alleged victims of their right to file a criminal complaint with outside law enforcement.
- Investigations may take place at the same time.
- Accused could face school sanction even if no criminal punishment.
- Schools cannot delay investigation until the criminal case is concluded.



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## *Informal Resolution Process:*

- Conclusion of report of misconduct short of all steps of a formal investigation.
- Clear rules expressed in OCR guidance:
  - Mediation is not acceptable even on a voluntary basis for allegations of sexual assault;
  - Should not be used when there is power differential between parties;
  - Parties can request formal process at any time.



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## *“Gender-Based” Harassment, Transgender, Sexual Orientation, and Gender Identity*

- Recent Title IX guidance includes the concept of discrimination/harassment “based on sex” as that “based on gender-identity”
- Previous OCR guidance uses “gender-based harassment”;
- Iowa Code Sec 216.9: “Gender Identity,” “Sexual Orientation,” and “Sex” separate, but protected, classes



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## *Confidentiality Versus School's Obligation to Respond:*

- If a student/parent requests confidentiality, school must:
  - Inform student/parent that may limit their ability to respond;
  - Inform student/parent that Title IX includes protection against retaliation, will only provide info to those with a “right to know”;
- If the student/parent still requests confidentiality, the school must determine whether or not it can honor the request and still provide all students with a safe environment – may need to disclose.





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*Interim Protective Measures/  
Accommodations:*

*Action is needed before the investigation is  
started or completed.*



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# Training and Educational Programming

## Title IX

- Title IX Training for Coordinators & Investigators
- Title IX Training for Employees (including “Responsible Employees”) and Students



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Questions?

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