



Title IX Overview for Administrators

BRIGHTEN ACADEMY CHARTER SCHOOLS

What is Title IX?

- ▶ Title IX of the Education Amendments of 1972
- ▶ Protects people from discrimination based on sex in education programs or activities that receive federal financial assistance.
- ▶ Enforced by the Office of Civil Rights (“OCR”).
- ▶ Protects all persons from discrimination, including parents and guardians, students, and employees.
- ▶ What does Title IX say?
 - ▶ 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.

Doesn't Title IX Only Apply to Athletics?

- ▶ NO!
- ▶ Title IX also applies to:
 - ▶ Recruitment, admissions and counseling
 - ▶ Sex based harassment
 - ▶ Treatment of pregnant and parenting students
 - ▶ Discipline
 - ▶ Single sex education
 - ▶ Employment matters

Pregnancy or Parental Status

- ▶ Title IX prohibits a school from discriminating against a student based on the student's:
 - ▶ Pregnancy
 - ▶ Childbirth
 - ▶ False pregnancy
 - ▶ Termination of pregnancy
 - ▶ Recovery from any of these conditions.
- ▶ Title IX also prohibits a school from applying any rule related to a student's parental, family, or marital status that treats students differently based on their sex.

Title IX in Athletics

- ▶ School districts must provide equal athletic opportunities for both sexes.
- ▶ OCR considers whether an institution is effectively accommodating the athletic interests and abilities of students of both sexes.
- ▶ Factors that are considered by OCR:
 - ▶ Equipment and supplies;
 - ▶ Game and practice times;
 - ▶ Travel and per diem allowances;
 - ▶ Coaching and academic tutoring;
 - ▶ Assignment and compensation of coaches and tutors;
 - ▶ Locker rooms, practice and competitive facilities;
 - ▶ Medical and training facilities and services;
 - ▶ Housing and dining facilities and services; and
 - ▶ Publicity.

Other Examples of Title IX Issues



- ▶ Discrimination in student discipline
- ▶ Unequal access to educational resources
 - ▶ Example 1: STEM opportunities / programs
 - ▶ Example 2: Career / technical education

Recent Changed to Title IX Regulations

- ▶ OCR recently amended Title IX Regulations, focusing on those Regulations pertaining to sexual harassment.
- ▶ This presentation will focus on those changes that are relevant to K12 school districts.



Sexual Harassment

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

“Actual Knowledge”

- ▶ “Actual knowledge” means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient **or to any employee of an elementary and secondary school.**
 - ▶ Administrators
 - ▶ Teaching staff
 - ▶ Clerical staff
 - ▶ Custodial and food service staff

“Education Program or Activity of School District”

- ▶ What is “an education program or activity of the school district”?
 - ▶ Any location, event, or circumstance over which the school district exhibits substantial control over both the alleged harasser and the context in which the harassment occurred.
- ▶ Title IX does not impose a duty to report purely off-campus conduct.

“Education Program or Activity of School District”

- ▶ If conduct occurs in a building owned or controlled by a student organization that is officially recognized by the District, this qualifies as an “activity of the school district.”
- ▶ If conduct occurs on an international field trip or at any location outside the United States, it is excluded from this definition.
- ▶ What about sexual misconduct that occurred offcampus but has an out-campus effect?
 - ▶ This falls outside the DOE's jurisdictional requirements and would be addressed through other District policies.

“Deliberate Indifference”

- ▶ A school district is “deliberately indifferent” if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

Three Categories of Sexual Harassment

- ▶ There are three categories that meet OCR's definition of sexual harassment and must be reported
 - ▶ Quid pro quo
 - ▶ Sexual assault, dating violence, domestic violence, stalking
 - ▶ "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 recipient's education program or activity"

Sexual Harassment: Category 1

- ▶ “Quid pro quo”
- ▶ If an employee of the school district conditions the provision of an aid, benefit, or service of the school district on an individual’s participation in unwelcome sexual conduct, this is sexual harassment.
- ▶ This conduct must be reported.

Sexual Harassment: Category 2

- ▶ “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) • “Stalking” as defined in 34 U.S.C. § 12291(a)(30)
- ▶ Conduct that falls within any of these definitions must be reported.

Sexual Harassment: Category 3

- ▶ “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 recipient’s education program or activity.”
- ▶ This conduct must be reported.

What Happens After Report of Sexual Harassment

- ▶ Upon a report or formal complaint of sexual harassment, a school district must treat complainants and respondents equitably by offering supportive measures to both and following a grievance process before disciplining/sanctioning respondents.
 - ▶ Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
 - ▶ Respondent means a person who has been reported to be a perpetrator of conduct that could constitute sexual harassment.

“Supportive Measures”

- ▶ Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.
- ▶ Designed to restore or preserve equal access to the school district's education program or activity, without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the school district's educational environment, or deter sexual harassment.
- ▶ Cannot be punitive.

Examples of Supportive Measures

- ▶ Counseling
- ▶ Extensions of deadlines or other course-related adjustments
- ▶ Modifications of work or class schedules
- ▶ Campus escort services
- ▶ Mutual restrictions on contact between the parties
- ▶ Changes in work or housing locations
- ▶ Leaves of absence
- ▶ Increased security and monitoring of certain areas of the campus
- ▶ Other similar measures

Supportive Measures Continued

- ▶ Title IX Coordinator must promptly contact complainant to:
 - ▶ Discuss the availability of supportive measures
 - ▶ Consider the complainant's wishes with respect to supportive measures
 - ▶ Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint
 - ▶ Explain to the complainant the process for filing a formal complaint

Grievance Process

- ▶ A school district's response must treat complainants and respondents equitably by following a grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

Grievance Process Continued

- ▶ Emergency removal of a respondent from an educational program or activity is permitted on an emergency basis IF the school district:
 - ▶ Undertakes an individualized safety and risk analysis,
 - ▶ Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and
 - ▶ Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. •
- ▶ Emergency removal is subject to the student's rights under the IDEA, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act.



Grievance Process Continued

School districts may place non-student employee-respondents on administrative leave during the pendency of a formal grievance process subject to the employee's rights under Section 504 and the ADA.

Grievance Process: Retaliation Prohibited

- ▶ Cannot retaliate against a person for purpose of interfering with any right under Title IX or because that person has been involved in a Title IX investigation, proceeding or hearing.
- ▶ What constitutes “retaliation”?
 - ▶ Intimidation, threats, coercion, or discrimination that arises out of the same facts/circumstances as report or complaint of sex discrimination or report/complaint of sexual harassment.

Grievance Process: Retaliation Prohibited

- ▶ First Amendment
 - ▶ The exercise of rights protected under the First Amendment does not constitute retaliation.
- ▶ Materially False Statements
 - ▶ Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation IF the determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Grievance Process: Other Considerations

- ▶ A school district's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute sex discrimination under Title IX.
- ▶ Grievance process must treat complainants and respondents equitably:
 - ▶ Provide remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent; and
 - ▶ Follow a grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

Grievance Process: Basic Requirements

- ▶ Require an objective evaluation of all relevant evidence.
- ▶ Provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness.
- ▶ The Title IX Coordinator, investigator, decision-maker, or any person facilitating the informal resolution process may not have a conflict of interest or bias and must receive adequate training.
- ▶ Training materials cannot rely on sex stereotypes and must promote impartial investigations / adjudications

Grievance Process: Basic Requirements Continued

- ▶ The respondent is presumed not responsible until a determination regarding responsibility is made at the conclusion of the grievance process.
- ▶ Prompt timeframes for conclusion of the entire grievance process, including informal resolution process and appeals are required.
- ▶ Must allow temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the parties.
 - ▶ “Good cause” includes the absence of a party, party’s advisor or witness; concurrent law enforcement activity; and the need for language assistance or accommodation of disabilities.

Grievance Process: Basic Requirements Continued

- ▶ A school district's grievance process:
 - ▶ Must describe range of potentially available disciplinary sanctions and remedies;
 - ▶ Must specify the standard of evidence that will be used and apply that standard to all complaints:
 - ▶ Preponderance of the evidence;
 - ▶ Clear and convincing evidence;
 - ▶ Must include procedures and permissible bases for parties to appeal;
 - ▶ Must describe the range of supportive measures available to the parties;
 - ▶ May not allow any evidence or questions that would invade a legally recognized privilege, unless the privilege holder waives it.

Grievance Process: Notice of Allegations

- ▶ Upon receipt of a formal complaint, a school district must provide known parties with written notice of various matters, including:
 - ▶ The formal complaint's allegations;
 - ▶ The formal grievance procedures; and
 - ▶ Any code-of-conduct provision that prohibits knowingly making false statements or submitting false information during the grievance process.

Grievance Process: Dismissal

- ▶ Mandatory Dismissal
 - ▶ Dismissal is required if the alleged conduct does not meet “basic jurisdictional requirements” under Title IX.
- ▶ Permissive dismissal
 - ▶ A formal complaint or any allegation within the complaint CAN be dismissed at any time during the investigation or hearing IF:
 - ▶ The complainant notifies Title IX Coordinator in writing that he/she would like to withdraw the formal complaint or any allegations therein;
 - ▶ The respondent is no longer enrolled in or employed by school district; or
 - ▶ Specific circumstances prevent the school district from gathering evidence sufficient to reach a determination as to the formal complaint or the allegations therein.
- ▶ Upon dismissal, the school district must provide prompt written notice to the parties.

Grievance Process: Investigation

- ▶ The school district is tasked with gathering evidence sufficient to reach a determination.
- ▶ The parties must receive an equal opportunity to present witnesses and any inculpatory and exculpatory evidence.
- ▶ There can be no restriction on the parties' ability to discuss the case and gather evidence.
- ▶ The parties must have opportunity to have others present during a grievance proceeding
 - ▶ Including an advisor of their choice (including attorney)
 - ▶ But the school district can restrict the extent to which advisors may participate IF the restrictions apply equally to both parties.

Grievance Process: Investigation

- ▶ Must provide to the party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.
- ▶ Both parties must receive an equal opportunity to inspect/review any evidence.
 - ▶ Before an investigative report is completed, both parties (and their advisors) must receive the evidence and have ten days to submit a written response.
 - ▶ The investigator must consider the written response before completing the final report.

Grievance Process: Investigation

- ▶ Must create an investigative report that fairly summarizes the relevant evidence and provide the parties (and their advisors) with a copy at least ten days before a hearing “for their review and written response.”
- ▶ A live hearing is NOT required for K12 school districts.

Grievance Process: Hearing

- ▶ After providing investigative report to both parties, each party must have opportunity to submit written questions that a party wants asked of any party or witness.
- ▶ Each party must also receive the answers to the questions and must be allowed to submit additional, limited follow up questions.
- ▶ The decision maker must issue a written determination regarding responsibility which includes:
 - ▶ Allegations constituting sexual harassment;
 - ▶ Description of the matter's procedural history;
 - ▶ Findings of fact supporting the determination;
 - ▶ Conclusions reached by applying the school's code of conduct to the facts; • Explanation of the rationale for the conclusions, including a determination of responsibility, disciplinary sanctions, and remedies; and
 - ▶ Description of the school's appellate procedures.

Grievance Process: Determination of Responsibility

- ▶ The school district must provide the written documentation to the parties simultaneously.
- ▶ The determination regarding responsibility becomes final either on:
 - ▶ The date that the school district provides the parties with the written determination of the result of the appeal (if appeal is filed); OR
 - ▶ The date on which an appeal would no longer be considered timely (if no appeal is filed).

Grievance Process: Determination of Responsibility

- ▶ Title IX Coordinator is responsible for effective implementation of any remedies.
- ▶ Both parties must have opportunity to appeal the following:
 - ▶ Determination regarding responsibility (on limited grounds); and
 - ▶ Dismissal of a formal complaint or any allegation therein.

Grievance Process: Appeals

- ▶ Mandatory grounds for appeal:
 - ▶ Procedural irregularity that affected the outcome of the matter;
 - ▶ New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
 - ▶ The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias that affected the outcome of the matter.
- ▶ School districts can offer appeals equally to both parties on additional bases.
 - ▶ Please see Title IX Grievance Procedure for more information about bases for appeal.

Grievance Process: Informal Resolution

- ▶ A school district may facilitate an informal resolution process, such as mediation, in lieu of a formal grievance process.
- ▶ Must first provide written notice to the parties of their rights, including the right to withdraw from the process at any time, and obtain both parties' voluntary, written consent to informal measures.
- ▶ Informal resolution processes are not allowed for formal complaints involving employee-respondents.

Grievance Process: Record Keeping Requirements

- ▶ School districts must maintain the following records for 7 years:
 - ▶ Each sexual harassment investigation, including determination, sanctions, and remedies resulting therefrom;
 - ▶ Any appeals therefrom;
 - ▶ Any informal resolutions thereof; and
 - ▶ All training materials, which the recipient must also make available for public inspection.
- ▶ School districts must also maintain records of any other actions it takes, including supportive measures, in response to reports or formal complaints of sexual harassment.

Reporting

- ▶ ALL employees are responsible for reporting sexual harassment AND allegations of sexual harassment
- ▶ Reports should be made IMMEDIATELY
- ▶ Staff can report sexual harassment to their principal, who can assist in ensuring this conduct is reported properly
- ▶ Any allegations sexual harassment should be reported to:
 - ▶ Mrs. Lisa McDonald, Title IX Coordinator for Student Matters and Title IX Coordinator for Employee Matters, Brighten Academy Charter School
5897 Prestley Mill Rd. Douglasville, GA 30135
(678)651-3680
lmcdonald@brightenacademy.com