

BULLETIN BOARD

Keeping an Eye on Title IX

With so much of the present dialogue concerning Title IX focusing on LGBTQ situations, it may be time to reacquaint yourself with some of the other aspects of this Educational Amendment. While the current debate, regarding whether or not Title IX provides protections for transgender students as part of its mandate banning discrimination “on the basis of sex,” continues unabated, it is important that districts do not lose sight of the other, more established, Title IX requirements; including equal access to athletic opportunities and addressing sex-based harassment or discrimination.

While the Office of Civil Rights has indicated that it will no longer be investigating complaints involving transgender discrimination, it will, at least ostensibly, continue to investigate other perceived Title IX transgressions, and has the power to enforce Title IX on a fairly comprehensive scale. This makes it crucial for districts to avoid OCR attention by understanding what is expected of each and every school, having the proper protocols in place, and making sure that staff members are trained with respect to recognizing a potential Title IX issue and knowing how to respond properly.

More often than not, a teacher will be the very first district employee to become aware of a possible Title IX complaint; whether it be a parent complaining about a lack of perceived support for a female athletic team (in comparison to a male team) or a student reporting an incident of sexual harassment, abuse or discrimination that they either witnessed or were the victim of. School staff must understand that their initial reaction in such situations is critical, as the “first contact” often sets the tone for the interplay between the complainant and the district moving forward. Situations in which a school employee appears unconcerned or dismissive when such matters are reported to them can significantly hamper attempts by the district to resolve the situation appropriately and without OCR intervention. It is important to understand that, per OCR guidelines, any employee who has the “authority” (perceived or otherwise) to take action to stop, prevent or redress a sexual misconduct issue is considered a “responsible” employee; and the failure of a “responsible” employee to take appropriate action when necessary can result in a Title IX violation.

Of equal importance is identifying and training a proper Title IX Coordinator (or perhaps two, one of each gender) who can become the district’s primary contact for guidance as well as its single voice with respect to navigating such issues. Title IX Coordinators are responsible for facilitating the ongoing training of faculty, staff and students, keeping policies up to date and in compliance, as well as overseeing investigations (in addition to many other things). Demonstrating that your Title IX Coordinator has received not only proper training, but the necessary ongoing support from the district, is vital should a situation arise that draws the attention of OCR. These individuals should have the demeanor and competency to effectively carry out the grievance process, as well as an understanding of not just Title IX

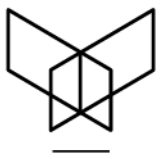


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but other state and federal antidiscrimination laws. While conducting a Title IX investigation, OCR does not merely examine the facts and circumstances at issue but will also look into whether or not the Title IX officer was trained and capable of being effective.

Of course, the Department of Education and the Office of Civil Rights are not the only entities that may become involved in a potential Title IX matter. In addition to an OCR complaint, individuals claiming discrimination under Title IX often file federal lawsuits, which may then be joined by advocacy groups such as the American Civil Liberties Union. As with any OCR investigation, such suits are often time consuming, always costly and usually result in negative publicity for the district.

Today's public school students are, in general, well aware of their rights under both federal and state law, particularly as it relates to possible discrimination. Resources that interpret and explain Title IX are widely available on the internet, and students are being actively encouraged to speak up, to speak out and to demand enforcement of their rights to the fullest extent of the law. As such, mistakes in training can lead to mistakes in enforcement, which can have significant consequences for a district.



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