



## Civil Rights and Title IX Training: Level 1

with Katy Osborn



**Bricker & Eckler**  
ATTORNEYS AT LAW



# **Civil Rights Laws: Key Laws, Regulations, and Guidance**

# Discrimination = Treating people differently

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Discrimination is the act of treating people **differently** based on a protected characteristic (or stereotypes based on that characteristic)

- Focus on access to education opportunities, resources, programs
- Disparate treatment in the workplace/school
- Disparate impact claims (neutral policies that have discriminatory impacts)

# Common Types of Protected Traits

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- Race
  - Color
  - Religion
  - Sex (gender)
  - Military status
  - National origin
- Disability
  - Age
  - Ancestry
  - Marital status
  - Pregnancy
  - Genetic information

# Disability Harassment

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- Denying participation in or benefits of school's programs and services on the basis of a disability
- Intimidation or abusive behavior based on disability can create a hostile environment
- Look to Policy/Handbook



# Title VI and Title VII

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- Title VI – “Any program, activity receiving Federal financial assistance”
- Race, color, or national origin
- Contracts, grants, educational activities



# Title VI and Title VII

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- Title VII – “An unlawful employment practice for any employer...”
- Fail or refuse to hire, or discriminate, on the basis of race, color, religion, sex\*\*, or national origin
- Limit, segregate, or classify employees that would deprive or limit employment opportunities based on...

# What does “race” mean?

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- Ancestry
  - Physical characteristics
  - Race-linked illness
  - Culture
  - Association
- Perception that someone belongs to a certain race
  - “Race-Plus”
  - Reverse race discrimination



# Sex Discrimination and Harassment

## Title VII and Title IX

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“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...”

# Sex Discrimination under Title IX

34 C.F.R. § 106.31(b)

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- Treat one person **differently** from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service
- Provide **different** aid, benefits, or services, or provide aid, benefits, or services in a different manner
- Deny any person such aid, benefit, or service
- Subject any person to separate or **different** rules of behavior, sanctions, or other treatment

# Sex Discrimination under Title IX

34 C.F.R. § 106.31(b)

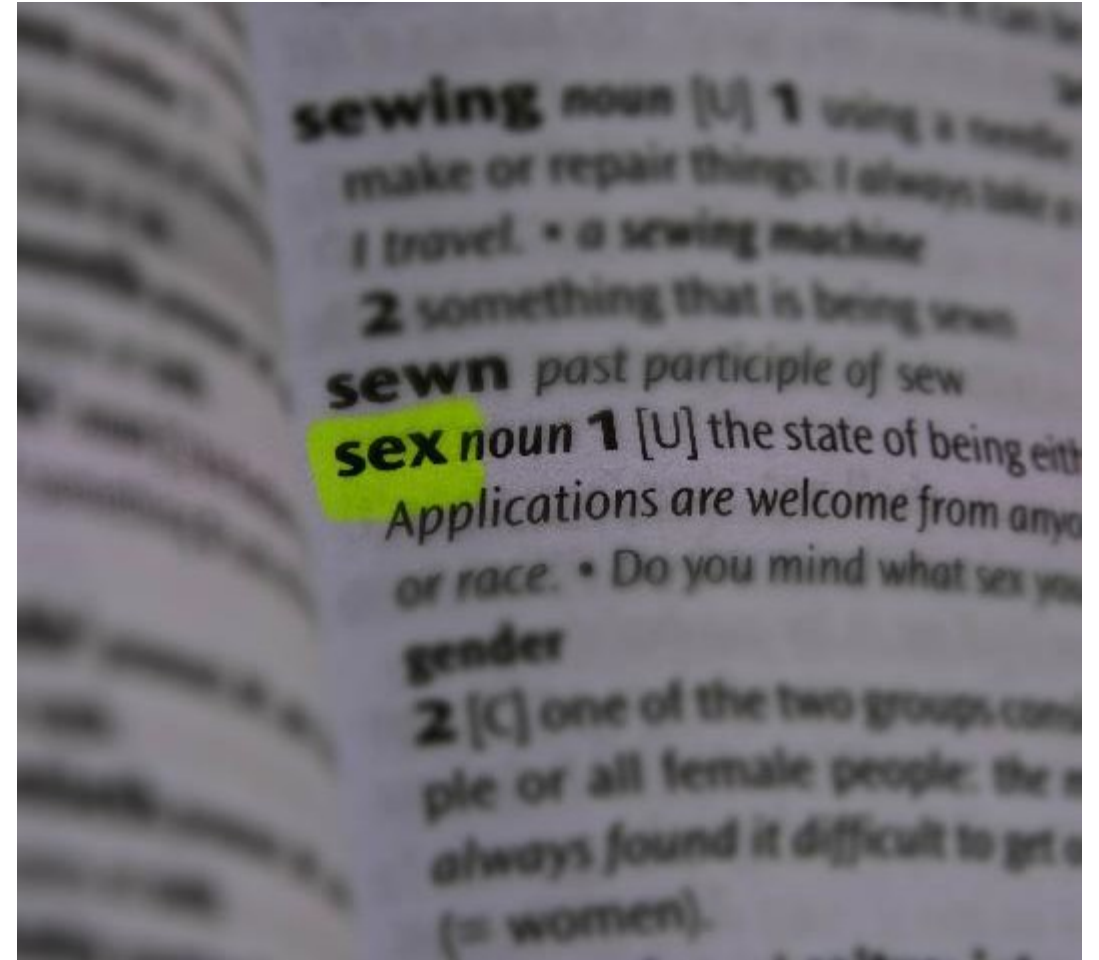
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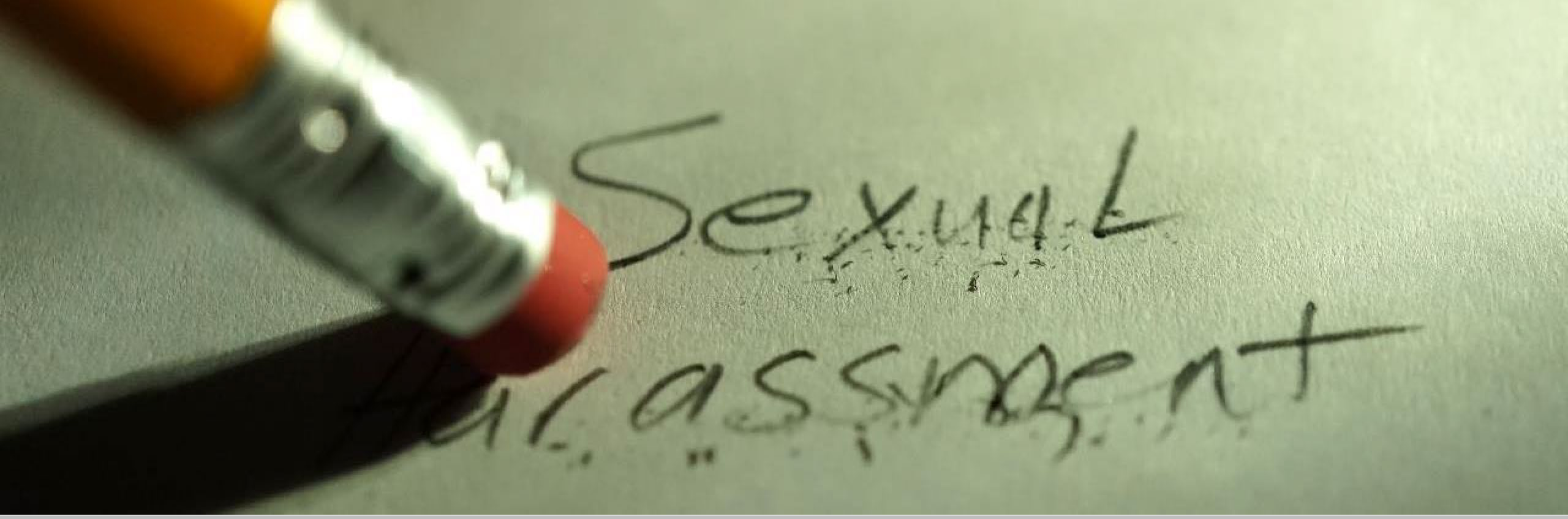
- Apply any rule concerning the domicile or residence of a student or applicant
- Aid or perpetuate discrimination against any person by **providing significant assistance to any agency, organization, or person which discriminates on the basis of sex** in providing any benefit or service to students or employees
- Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity

# What does “sex” mean?

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- Biological sex
- Gender
- Sex stereotyping
- Sexual orientation and gender identity\*\*
- “Sex” as a verb





## **Sexual Harassment Definitions under the New Title IX Regulations**

# When does a school have notice of a complaint?

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**Actual knowledge** = 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 or secondary school**

34 C.F.R. § 106.30(a)



# The School's Obligation

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A recipient with **actual knowledge** of sexual harassment in an **educational program or activity** of the recipient against a person in the United States, must **respond promptly in a manner that is not deliberately indifferent**. A recipient is only deliberately indifferent if its response to sexual harassment is unreasonable in light of known circumstances.

# New Definitions of Sexual Harassment under Title IX

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**Sexual harassment** means conduct on the basis of sex that satisfies one or more of the following:

- **Quid pro quo** – An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct
- **Hostile environment** – 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; or
- **Clery crimes** – Sexual assault, dating violence, domestic violence, or stalking [Clery regulatory definition cites omitted]

# Final Regulations Apply to Employees

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- Recipients that are subject to both Title VII and Title IX must comply with both
- “Deliberate indifference” standard applies
  - Because Title IX recipients are “in the business of education”
  - “Marketplace of ideas”

# Quid Pro Quo

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- They do/won't do this, so...
- They will/won't put up with this, so...
- If you do/don't... I will/won't...



# Quid Pro Quo

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- May involve a power differential
- “Everyone knows that so-and-so...”
- Voluntary conduct between some may put observers in the position of believing that something sexual is necessary to get something favorable

# Hostile Environment – What does this look like?

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Be aware of things that are **not** elements:

- “Happened more than once”\*\*
- “Parties weren’t dating at the time”
- “Must involve two people of compatible sexual orientations”
- “Must occur on school property” \*\* (but remember state law restrictions)
- “Must have bad intent”



# Jurisdictionally Important

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From 34 C.F.R. § 106.44:

“If the conduct alleged in the formal complaint would not constitute sexual harassment... even if proved, did not occur in the recipient’s education program or activity, or did not occur against a person in the United States, then the recipient **must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX or this part**; such a dismissal does not preclude action under another provision of the recipient’s code of conduct.”

# Mandatory Reporting

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- Child Abuse
- Felonies
- If a school employee engages in sexual conduct with a student, it must be reported
  - Even if the student is 18
- ODE Conduct Reporting



# Retaliation

## Section added to new Title IX regs

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Retaliation defined in part: “No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part...”

34 C.F.R. § 106.71

# Retaliation

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- Report this **immediately** to the Title IX Coordinator
- Is there already a no-contact order and, if not, do you want one?
- Adverse action against an individual
- Abuse, violence, threats, and intimidation
- More than just someone expressing their opinion

# District Obligations

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- Update district policies
  - Address complainant and provide supportive measures
  - Mandatory reporting
  - Informal resolution
- Investigation
  - Formal grievance process:
    - Notice
    - Report
    - Decision
    - Appeal

# Employee Obligations

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- Know who the District Title IX Coordinator is (their information will be posted on the school's website)
- Recognize a potential Title IX violation
- Report any potential Title IX violation to the Title IX Coordinator **the same day** you receive notice of it
- Review your district's anti-discrimination and anti-harassment policies as soon as they are updated



# How do you make a report on your own behalf?

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- Promptly report incidents of unlawful discrimination and/or retaliation to your District's Title IX Coordinator so that the Board may address the conduct
- Remember – retaliation is prohibited



# How do you make a report on your own behalf?

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- The Title IX Coordinator can describe for you the difference between formal and informal complaints, discuss the criminal reporting process, determine appropriate supportive measures, and identify other available resources
- You can then choose how you wish to proceed (i.e., a formal or informal resolution process)

# How do you make a report on your own behalf?

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- If you make a report, the Title IX Coordinator should discuss **supportive measures** with you
- May include counseling, extensions of deadlines, modifications of work or class schedules, escort services, mutual no-contact orders, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures

# Key Takeaways for Staff

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- Understand the definition of sexual harassment
- Know to whom you should report any complaints of sexual harassment (whether witnessed yourself, or reported to you by someone else)
- Recognize or know responsibility to report any acts of retaliation
- Understand supportive measures you may need to help implement

# Key Takeaways for Administrators

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- Everything listed in the previous slide for staff
- Update the Title IX policy by **August 14, 2020**
- Follow notice and posting requirements for anti-discrimination, Title IX policies, and training materials

# Training Requirements for Your Title IX Team

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- The definition of sexual harassment as defined in 34 C.F.R. § 106.30
- The scope of the district's education program or activities
- How to conduct an investigation
- How to consistently apply definitions used by the district with respect to consent (or the absence/negation of consent)
- The grievance process, including hearings, appeals, and informal resolution processes, as applicable
- How to serve impartially and avoid prejudgment of facts at issue, conflicts of interest, and bias



**Thank you for attending!**

Remember – additional information available at:

**Title IX Resource Center**  
at [www.bricker.com/titleix](http://www.bricker.com/titleix)

Find us on **Twitter** at  
**@BrickerEdLaw**

