Public Education and Title IX: Quick Facts, Highlights and Case Reviews

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Perceptions About Title IX

- Athletics
- Girls
- Students
- Employee
- Equal Access
Title IX

- 20 U.S.C.A. Section 1681 (a)

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefit of, or be subjected to discrimination under any education program of activity receiving federal funds.”
Among OCR’s requirements:
- Identify a Title IX Coordinator
- Take effective steps to protect the complainant
- Take action to investigate
- Use a preponderance of the evidence (51%) standard
April 2011, DCL cont...

- Mediation is eliminated as an option to resolve alleged sexual assault claims
- Insure equitable due process allowances
- Process must allow a right to appeal
- Outcomes of the investigation must be shared with both parties
Title IX True or False

- Title IX has been a law for 41 years
- Lilly Ledbetter Equal Pay Act violations may be considered Title IX violations
- Sex-segregated schools and classrooms are not typically based on verified research
- 70% of teenage girls who give birth leave school
- Under 42 USC Section 1983, a school officer can be held liable for damages
Bullying can be or become a Title IX issue
Learning environments can have a desperate impact on access by sex
Sexual harassment based on actual or perceived sexual orientation is a violation of Title IX
Sexual assault at school, regardless of the sex of the parties, is a violation of Title IX
Every school entity must have a designated Title IX Administrator/Coordinator
Positive Results in Compliance with Title IX

- Access and Inclusion
- Risk Management and Risk Mitigation
- Student Learning and Development
- Demonstrates a commitment to every student
Examples of violations

- Sexual advances, requests for sexual favors and sexually motivated physical conduct
- Overt or subtle pressure for sexual activity
- Sexually offensive verbalization including remarks, “teasing”, slurs, and innuendo
- Inappropriate jokes or comments about sex or gender specific traits
- Conduct that is demeaning or derisive and occurs substantially because of one’s gender
Learning Environment

- Recruitment (Charter and Magnet schools)
  - (and special school programs like JROTC, ATC trade-tech, Domestic Engineer-;0)
- Drop-out rates
- Fee waiver—or not (State constitutionally free education)
- Discipline referrals
- Services for pregnant or parenting teens
- Referrals and services for Special Needs, ELL programs, tutoring
- Sexual harassment policies and training
Learning Environment

- Field Trips
- Extra-Curricular Activities
- School Buses
- Prohibition against RETALIATION
“By putting women in a situation where they’re not preoccupied with negative gender stereotypes, you can significantly reduce the gender gap in standardized testing performance.” –Dr. Mathew McGlone
Heightened Gender Identity Can lead to stereotypic conduct

- Subtle cues in the testing environment can effect results, i.e., having students report their sex for testing demographics (girls aren’t good at math)
- The gender composition of a class
- Overt statements—’Boys will be boys’
- Girls are sugar and spice
- Big boys don’t cry
- Frequency and maintenance of instructor eye contact by gender
Practices you have seen which may reinforce learning environment bias?
Sex–Segregated Schools/Classrooms

- Rationale is often based on questionable science and faulty premises
- Deprives students of the real experience of the coeducational worlds of work and family
- Limits education of both boys and girls
Reinforces Harmful Gender Stereotypes, such as:

- Boys need competitive/confrontational environment, while girls need to work cooperatively
- Boys are biologically programmed to read smiles as signs of weakness
- Girls’ brains cannot function well under time constraints
- Boys are better at math because of daily surges of testosterone, girls can only understand math well a few days each month when estrogen is surging
Sex-segregated classrooms are **NOT** legal if they:

1. Perpetuate stereotypes about the interests or abilities of either gender

2. Perpetuate stereotypes about learning styles of either gender

3. Result in unequal educational opportunities
United States v. Commonwealth of Virginia (VMI)

Males–only admission policy challenged:

- 1996 SCOTUS ruled that Virginia had failed to justify its exclusion of women from VMI’s unique educational program
Examples:

- Boys are permitted to move around the classroom to exert energy
- Boys’ classrooms are lit more brightly than the girls’, based on the mistaken notion that boys see better in bright, cool light
- The girls are encouraged to sit quietly and share feelings in dimly lit rooms
- Girls sent to the boys’ classroom for punishment
- Based on the mistaken notion that girls learn best through auditory input, a female student was prohibited from reading and writing things down
2008–2009, single sex–classrooms based on the principal’s dissertation research needs

Supposed to be voluntary– no consent forms were signed

Post–experiment– principal’s’s documentation demonstrated:
  ◦ a reduction in discipline
  ◦ significant improvement in academics
  ◦ survey that 95% of parents wanted single sex classes in all subjects
Doe v. Vermillion, cont...

- Principal made a proposal for significant increase in single sex classrooms 2009–2010
- Parents/students were not given an option
- Fall, 2009, Doe filed suit.
- Basis– Violation of:
  - The Equal Protection Clause of the Fourteenth Amendment
  - The Equal Educational Opportunities Act of 1974
  - Title IX
  - Plaintiffs also asserted that such discrimination “is not based on an exceedingly persuasive justification or substantially related to an important state interest.”
Plaintiffs:

- “[b]y segregating classes by sex, on the basis of overbroad, imprecise, and/or inaccurate gender stereotypes and generalizations and by treating boys and girls differently and unequally, Defendants have intentionally discriminated against Plaintiffs on the basis of their sex.”

- Such discrimination “is not based on an exceedingly persuasive justification or substantially related to an important state interest.”
In 2006–2007, only sex–segregated schools were to be offered at Southside Jr. High
Girls will be taught ‘good character’
Boys will be taught about ‘heroic’ behavior and what it means to be a man
Rationale was based on:
• The different ways that boys and girls “process” information
• Differences in boys and girls brain structure/brain maturation
Mid-May, 2006, presentation by Principal Murphy for parents:

- Sex segregation was to help “teachers and parents understand the neurological, developmental, and hormonal differences/similarities by gender in order to identify strengths and weaknesses of boys and girls.”
Girls’ classes will:
- Receive character education
- Be subject to high expectations both academically and socially
- Would teach math through “hands-on” approaches
- Field trips, physical movement, and multisensory strategies would be incorporated
- Girls would act as mentors for elementary school girls
Boys’ classes:
- Teachers would teach ‘heroic’ behavior
- Show adolescents what it means to truly ‘be a man’
- Would include consistently applied discipline systems
- Would offer tension release strategies
- Feature more group work assignments
Program was based, in part on the work of Dr. Leonard Sax, a medical doctor with a PhD in Psychology— he does not perform scientific research and has no background in education.
Some of his opinions from his book, *Why Gender Matters*

- Girls have more sensitive hearing than boys
  - Teachers should not raise their voices when talking to girls
  - Teachers should yell at boys due to their lack of hearing sensitivity

- Boys need to practice pursuing and killing prey, thus, they should be permitted to roughhouse during recess and play contact sports to learn the rules of aggression
  - Because girls are less biologically able to manage aggression, such play is dangerous for girls

- Teachers should smile at girls and look them in the eye
  - Teachers should not look boys directly in the eye
Gender-based Violence—Schools’ Obligations

1. Once a school knows, or reasonably should have, of possible sexual violence, immediate and appropriate steps must be taken to investigate/determine what occurred.

2. If sexual violence has occurred, prompt and effective steps to end the violence must be taken.
3. Must provide a procedure for students to file complaints of sexual violence/discrimination

4. A school’s grievance procedures must use the preponderance of the evidence standard to resolve complaints

A school must notify both parties of the outcome of the complaint
6. Must have and distribute a policy against sex discrimination

7. Must have a Title IX coordinator:
   - Title IX of the Education Amendments of 1972 states:
     *Designation of responsible employee. Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.*

8. Must take steps to protect the Complainant must be taken, including interim steps prior to the outcome of the investigation
Schools CANNOT

- Require that victim/harasser “work it out,” “talk it out,” enter into mediation...

- Require the victim to change schools, transportation, classes, extracurricular activities...

- Pressure or suggest a victim wait to take action to make a complaint
Department of Justice:

- Policy Guidance: 2010
- When bullying/harassment based on sex or gender creates a hostile environment that is serious enough to limit or interfere with a student’s ability to benefit from the-
  - Services
  - Activities
  - Opportunities

The harassment violates Title IX.
DOJ 2010 Title IX violations

- Failing to effectively respond to bullying/harassment of LGBT students
- Failing to respond to bullying/harassment based on actual or perceived sexual orientation
- Failing to respond to bullying/harassment based on gender-based expectations for boys or girls (gender stereotypes)
Bullying and Harassment

- Aggression or intentional harm
- Negative behavior
- Carried out repeatedly
- Often involves an imbalance of power
- Verbal and/or physical and/or visual
Cyberbullying:

Flaming, stalking, impersonation, posts to or about, etc…

DOJ definition of cyber-stalking:

“The use of Internet, e-mail or other electronic communication devices to stalk another person.”

Sending or posting repeated messages that are intimidating or threaten harm.
Bullying and/or harassment

Name calling
Denigration
Isolation/alienation
Violence

Threat of Harm
Outing
“Ganging-Up”

Often includes comments about other “class” or “status”
Gender-Based Violence

- Rape
- Sexual Assault
- Sexual Battery
- Sexual Coercion
- Dating violence
Sexual Violence Remedies

1. Schools address alleged sexual violence as a Title IX civil rights issue
2. Provide interim protection and services for victims
3. Systemize cooperation between school officials and local law enforcement
4. Establish comprehensive advisory committees to advise and monitor climate
5. Conduct climate surveys
6. Conduct peer–peer sexual harassment training
Sexual Violence Remedies...

5. Conduct climate surveys
6. Conduct peer–peer sexual harassment training
7. Conduct employee sexual harassment training
8. Publicize school policies
   Where and with whom to file
   What to expect from the process
Approximately 70% of teenage girls who give birth leave school

Examples of discrimination by schools:

◦ Refusal to give excused absences for doctor appointments
◦ Refusal to allow make-up work
◦ Excluded from school activities based on “morality” codes
◦ Staff and faculty make or allow disparaging, discouraging and/or disapproving comments
Pregnant/Parenting... Discrimination

- Students are told they have to go to an “alternative school”
- Students are told outright they can’t stay in school
- Students are routed to ‘home–ec’ or other requirements are made different from the rest of the student body
Delhi Charter School: Forced pregnancy exam
Hicks v. Edsitty–Beach: Pregnant 15 y.o. initially kicked out, then publicly humiliated at a school assembly–by the school’s director
Antelope Valley Union High School–P/P students funneled into sub–standard programs
Doe and Roe v. Reid: Truant students required to undergo highly intrusive medical exams (pregnancy, STD and HIV tests) before returning to school
Compliance Public Notice

- Student Handbooks
- Brochures
- Catalogs
- Application Forms
- Recruitment material
- Staff and faculty employment applications
- Website
Department of Education MANDATES identification of a campus or district Title IX Administrator/Coordinator, *without defining the position or job responsibilities.*

April 4, 2011 Dear Colleague Letter provides some clarification.
Title IX Coordinator – Requirements

- Adequate training & experience handling complaints of sexual harassment & sexual violence
- Knowledge and experience with the grievance procedures
- Knowledge and adherence to confidentiality requirements
- Identification and disclosure of conflicts of interest
- Working knowledge of Title IX & stay informed of current research, judicial decisions, and complaint trends
- Knowledge of state laws, regulations, policies and any intersecting federal and state laws (ADA, FERPA, etc.)
- Knowledge of material from DOL, DOJ, DOE, and OCR.
Title IX Coordinator – Duties

- Develop nondiscrimination policy and notify the school community of the policy and the Title IX Coordinator contact information
- Oversee all Title IX complaints
- Identify & address any patterns or systemic problems that arise during review of complaints
- Be available to meet with students as needed
- Make sure other job responsibilities don’t create a conflict of interest
Title IX Coordinator – Duties

- Provide assistance to Law Enforcement
- Have access to Law Enforcement Investigation notes and findings, as necessary
- Understand how grievance procedures operate
- If more than one Coordinator is identified, describe each Coordinator’s responsibilities and designate a Coordinator with ultimate oversight
Notice of Nondiscrimination

- General statement
- Identify Coordinator & how to contact
- Widely distribute to:
  - Students
  - Parents
  - Employees
  - Applicants for admission & employment
  - Other relevant persons
- Post:
  - Website
  - Locations throughout school
  - Printed publications
  - Electronic publications
  - Send electronically to members of the school community
How to report, and to whom
How to recognize the nature of sexual harassment and sexual violence
Preventive education
 Victim resources/services
 Include students, teachers, employees, school law enforcement, administrators, counselors, general counsel, health personnel, advisors, hearing officers/boards, investigators, appeals officers, community members, vendors, etc.
Law enforcement should be trained on Title IX grievance procedures and any other procedures used for investigating sexual violence allegations
Establish a Grievance Procedure

- Prompt & equitable resolution
  - Notice of procedures & how to file complaints
  - Apply procedures
  - Designate reasonably prompt time frames for major stages of the process
  - Notice to the parties of the outcome
  - Assurance that preventative measures will be implemented to prevent recurrence or correct discriminatory effects

- Written language appropriate to the age of the students
- Easily understood, easily located, widely distributed
Establish Investigation Procedures

- Law enforcement investigation does not relieve the school of its obligation to investigate
- Prompt, thorough, reliable, impartial
- Inform & obtain consent from complainant’s parents before beginning
- How to handle a request for confidentiality
- Take immediate steps to protect the student
- Don’t wait for conclusion of criminal investigation
- Clear policies regarding when to refer to law enforcement
- Parties must have an equal opportunity to present relevant witnesses & other evidence
- Address attorney involvement
- Provide an appeal process
Title IX Coordinator—Job Description

- Develop, Implement, Enforce & Monitor:
  - Policies, Procedures & Practices
  - Training & Educational Materials
  - Processes Regarding Intake, Investigation, Findings & Resolution of Complaints
  - Appropriate Dissemination of Information
  - Institutional Compliance
  - Recordkeeping

- Establish a process for continual improvement

- Appropriate dissemination of information (notices of charge, hearing outcome, duty to warn, remedies)

- Oversee institutional compliance

- Record keeping – may become subject of litigation
Basic Title IX Compliance Checklist

- At least one Title IX coordinator has been designated to coordinate efforts to comply with Title IX, including investigation of any complaints
  - All students and employees have been notified of the name(s), office address(es), and telephone number(s) of the coordinator(s)
- Grievance procedures for students have been adopted and published
- Grievance procedures for employees have been adopted and published
- Climate check
- Contingency protection plan for the victim during the investigation
- The following have been notified of a policy of nondiscrimination on the basis of sex:
  - Applicants for admission and employment
  - Students and parents of students
  - Employees
  - Sources of referral of applicants
  - Unions, professional organizations
- Notification of a policy of nondiscrimination on the basis of sex has been placed in the following:
  - Local newspapers
  - School newspapers and magazines
  - Memoranda or other written communications distributed annually to each student and employee
  - Announcements, bulletins, catalogs, student and faculty handbooks
  - Application forms
- The above-listed publications are free of text and illustrations suggesting differential treatment on the basis of sex
- Admission and recruitment representatives (including counselors or student advisors and personnel officers) have been advised of the nondiscriminatory policy and required to adhere to the policy
- Training is provided for students, staff and faculty.
References

- OCR REVISED SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES: www2.ed.gov/about/offices/list/ocr/docs/shguide.html
- Information about Women’s Rights Project and ACLU supported projects– www.aclu.org
- Information regarding bullying, cyberstalking and other covered issues by the Department of Justice– www.justice.gov
- Department of Justice Title IX Legal Manual– www.justice.gov/crt/about/cor/coord/ixlegal.php
References, cont...

- Title IX Enforcement Highlights–Office for Civil Rights–www.ed.gov/ocr
- For technical assistance from OCR–wdcrobcollp01.ed.gov/CFAPPS/OCR/contactus.cfm
- For information about discrimination based on sex–www2.ed.gov/about/offices/list/ocr/publications.html#TitleIX
- :Crossing the Line, Sexual Harassment at School” AAUW– www.aauw.org
References, cont...

- And, of course, ATIXA!
  www.atixa.org

Thank you!

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