

Title IX Overview and Changes in the New Regulations

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What is Title IX?

◆ Title IX:

- Federal civil rights law that prohibits discrimination on the basis of sex in education programs and activities. Includes all public elementary and secondary schools. Under Title IX, discrimination on the basis of sex can include sexual harassment or sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion.



What is Title IX?

◆ Title IX:

- Civil Rights Act of 1964
 - Title IX made it easier to move civil rights cases from state courts to federal courts.
- Education Amendments of 1972
 - “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 educational program or activity receiving federal financial assistance.”
 - 20 U.S.C. § 1681 & C.F.R. Part 106 (1972)



Related Board Policies

- ❖ Board Policy AC – Prohibition of Discrimination, Harassment, and Retaliation
- ❖ Board Policy GAAA - Equal Employment Opportunity and Nondiscrimination
- ❖ Board Policy GAAB – Complaints of Discrimination
- ❖ Board Policy KN - Complaints



Board Policy GAAA – Equal Employment Opportunity and Nondiscrimination

- ❖ The board shall hire all employees on the basis of ability and the district's needs.
- ❖ The district is an equal opportunity employer and shall not discriminate in its employment practices and policies with respect to hiring, compensation, terms, conditions, or privileges of employment because of an individual's race, color, national origin, relation, sex gender, age, disability, genetic information, or any other basis prohibited by law. Discrimination on any of these characteristics will not be tolerated. If requested, the district will make reasonable accommodations to applicants and employees who need them for medical or religious reasons, as required by law.



Board Policy GAAB – Complaints of Discrimination

- ❖ The district is committed to maintaining a working and learning environment free from discrimination, insult, intimidation or harassment due to race, color, ethnicity, national origin, religion, sex/gender (to include orientation, identity, or expression), age, genetic information, disability, or any other basis that is prohibited by law.
- ❖ **Any incident of discrimination** in any form **shall promptly be reported** to an employee's immediate supervisors, the building principal or the district compliance coordinator for investigation and corrective action by the building or district compliance officer. Any employee who engages in discriminatory conduct shall be subject to disciplinary action, up to and including termination.



Board Policy GAAB – Complaints of Discrimination

- ❖ Complaints of discrimination should be addressed to an employee's supervisor or to the building principal or the compliance coordinator.
- ❖ Complaints of discrimination will be resolved using the district's discrimination complaint procedures. (See KN)
- ❖ The district prohibits retaliation or discrimination against any person for opposing discrimination, including harassment, for participating in the complaint process; or making a complaint, testifying, assisting, or participating in any investigation, proceeding, or hearing.



Board Policy AC – Prohibition of Discrimination, Harassment, and Retaliation

- ❖ This District is committed to maintaining an educational environment and workplace that is free from discrimination, harassment, and retaliation in admission or access to, or treatment or employment in, its programs, services, activities, and facilities. The District will provide equal opportunity in all areas of education, recruiting, hiring, retention, promotion, and contracted service. The District strictly prohibits discrimination and harassment against students, employees, or others on the basis of race, color, ethnicity, national origin, religion, sex/gender (to include orientation, identity or expression), age, disability, genetic information or any other basis prohibited by law. **Any form of discrimination or harassment toward any person associated with the District, regardless of where the conduct occurs, is a violation of this policy.** The District also strictly prohibits retaliatory actions against those who engage in protected activities.



Board Policy AC – Prohibition of Discrimination, Harassment, and Retaliation

- ❖ Statement of Compliance with Non-Discrimination and Equal Access Laws
 - The District will comply with the provisions and requirements of:
 - Title VI of the Civil Rights Act of 1964;
 - Title VII of the Civil Rights Act of 1964;
 - Title IX of the Education Amendments of 1972;
 - Section 504 of the 1973 Rehabilitation Act;
 - Individuals with Disabilities Education (IDEA);
 - Americans with Disabilities Act (ADA);
 - Age Discrimination in Employment Act (ADEA);
 - Genetic Information Nondiscrimination Act (GINA);
 - Kansas Act Against Discrimination and Kansas Age Discrimination in Employment Act;
 - Boys Scouts of America Equal Access Act; and
 - U.S. Department of Agriculture (USDA) civil rights regulations and policies.



Board Policy AC – Prohibition of Discrimination, Harassment, and Retaliation

- ❖ In addition to the prohibitions and protections outline above, retaliation is prohibited by civil rights laws, and individuals who exercise their rights under those laws are protected from retaliatory acts.
- ❖ All complaints about discrimination, harassment or retaliation should be reported and investigated as provided in Policy KN.
- ❖ The District will provide annual training to employees on identifying and reporting acts that may constitute discrimination, harassment or retaliation. The Compliance Coordinator, designation investigators, designated decisionmakers, designated appeal officer, and any District administrators who are designated to facilitate informal resolution processes, will receive additional annual training on this policy and implementation of the complaint process.
 - The District will provide, as appropriate, instruction to students regarding discrimination, harassment, and retaliation.



Board Policy KN – Complaints

- ❖ Except as otherwise provided by Board policy or negotiated agreement, all complaints concerning the district, its board members, employees, volunteers, agents or students will be governed by this policy.
- ❖ Any complaint received should be reduced to writing and reported to administration for study, investigation and possible resolution. Whenever possible, complaints should be resolved at the lowest possible administrative level. Any employee who receives a complaint shall inform the individual making the complaint of the employee's obligation to report the complaint to the administration.
- ❖ Complaint Process will be outlined during the course of the training.



Title IX

- ❖ “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 educational program or activity receiving federal financial assistance.”

20 U.S.C. § 1681 & C.F.R. Part 106 (1972)



Title IX

- ❖ “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 educational program or activity receiving federal financial assistance.”
20 U.S.C. § 1681 & C.F.R. Part 106 (1972)
- ❖ Federal Regulations interpreting the above - 34 C.F.R. § 106.45
 - Department of Education Office of Civil Rights (OCR)
 - Guidance Documents
 - New Regulations – August 14, 2020
 - Pending lawsuits seeking to delay implementation



Violations Under Title IX

- ❖ Discrimination
 - Sex-Gender Discrimination
 - Program Equity
- ❖ Harassment
 - Quid Pro Quo
 - Hostile Environment
 - Retaliation



Key Title IX Related Issues

❖ Sex Based Discrimination

- Program Equity
- Pregnancy
- Athletics
- Employment, Recruitment, & Hiring
- Extra-curricular Activities
- Salaries and Benefits
- Facilities
- Funding
- Sex, Gender, Gender Identity

❖ Sexual Harassment

- Stalking
- Domestic Violence
- Dating Violence
- Sexual Assault
- Sexual Violence
- Sexual Exploitation
- Sexual Intimidation
- Sexual Misconduct
- Bullying and Cyberbullying
- Retaliation



Board Policy KN - Discrimination

- ❖ Discrimination: Unequal, adverse, or native treatment, including harassment, of a person or class of persons based on one or more protected classifications that denies or limits the person's ability to obtain educational benefits or that interferes with the educational or work environment.
- ❖ Conduct that could constitute prohibited discrimination includes, but is not limited to, the following if based on a protected class: unequal treatment in regard to the terms and conditions of employment (e.g., hiring, firing, compensation, benefits, assignment, transfer, recall, layoff or RIF, recruitment, testing, access to facilities and programs, training, etc.); unequal treatment in terms of education programs or opportunities (e.g., discipline, grading, class assignments, testing, internships, access to facilities, admission to programs, etc.); employment or academic decisions based on stereotypes or assumptions about a person's abilities, traits, or performance.



Definition of Sexual Harassment

- ❖ New Title IX Regulations from the Department of Education Office of Civil Rights to be implemented August 14, 2020.
- ❖ Includes new definition of sexual harassment
 - Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
 1. 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;
 2. 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
 3. Conduct defined by federal law to include: Sexual assault, dating violence, domestic violence, and stalking.



Definition of Sexual Harassment

- ❖ “Where conduct is sexual in nature, or where conduct references one sex or another, that suffices to constitute conduct ‘on the basis of sex.’” – 85 Fed. Reg. at 30,146
- ❖ Unwelcome conduct can include sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.
 - New regulations require though that this unwelcome conduct be severe, pervasive, **and** objectively offensive
 - Objectively offensive – unreasonably interferes with, denies, or limits someone’s ability to participate in or benefit from the school district’s education [and/or employment], social, and or residential/program.
 - Looked at from an objective and subjective point of view



Board Policy KN – Sexual Harassment

- ❖ Sexual Harassment: A form of harassment based on sex-gender (to include orientation, identity or expression) involving unwelcome conduct of a sexual nature. Behaviors that could constitute prohibited sexual harassment include: conditioning the provision of an aid, benefit, or service on a person's participation in unwelcome sexual conduct (quid pro quo); punishing or reprimanding persons who refuse to comply with sexual requests, activities, or contact; sexual violence, including but not limited to sexual assault, unwanted sexual contact, or sexual coercion perpetrated against a person's will or where a person is incapable of giving consent; stalking; physical contact or touching of a sexual nature, including touching of intimate parts and sexually-motivated or inappropriate patting, pinching or rubbing; sexual advances and requests or pressure of any kind for sexual favors, activities, or contact; name-calling, slurs, jokes, gestures or communications of a sexual nature or based on sex; comments about an individual's body, sexual activity or sexual attractiveness.
- ❖ Sexual harassment may occur between persons of the same or opposite sex. Any conduct of a sexual nature directed by an employee toward a student is presumed to be unwelcome.



Factors to Consider for Unwelcome Conduct Creating a Hostile Environment

- ❖ Consider the totality of the circumstances
 - The frequency (persistence or pervasiveness), nature, and severity of the conduct.
 - Whether the conduct was physically threatening.
 - Whether the conduct was humiliating.
 - The relationship between the alleged harasser and the subject or subjects of harassment.
 - The age of the alleged harasser and the subject or subjects of the harassment.
 - The size of the school, location of the incident(s), and the context in which conduct occurred.



Factors to Consider for Unwelcome Conduct Creating a Hostile Environment

- ❖ Consider the totality of the circumstances
 - The effect on the reporting party.
 - Whether the conduct was directed at more than one person.
 - Whether the conduct unreasonably interfered with the reporting party's educational or work performance.
 - If statement, whether it was an utterance of an epithet which was offensive, or offended due to discourtesy or rudeness.
 - Whether the speech/conduct deserves protections of academic freedom or the First Amendment protection.
- ❖ Concerns regarding new requirement for unwelcome conduct:
 - One instance of severe and offensive unwelcome conduct may not constitute sexual harassment under Title IX if it does not meet another one of the definitions



Quid Pro Quo Sexual Harassment

- ❖ Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
 - By a person having power or authority over another, when
 - New regulations state “employee of recipient”
 - Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational [or employment] progress, development, or performance.
- ❖ Case example: *Wilson v. Tulsa Junior College*, 164 F.3d 534, 542-43 (10th Cir. 1998).



Retaliatory Harassment

- ❖ Any adverse employment or educational action taken against a person because of the person's participation in a complaint or investigation of discrimination or sexual misconduct.
 - Includes retaliation against a reporting party by the responding party or responding party's friends.
 - Can include retaliation directed toward a third party because of that party's participation in a grievance process or for supporting a grievant.
- ❖ Board Policy KN: Retaliation – Intimidation, threats, coercion, or discrimination against a person based on the person engaging in a protected activity.
 - Protected Activity – Making a complaint of prohibited discrimination or harassment, reporting prohibited discrimination or harassment, or participating in an investigation, formal proceeding or informal resolution, whether conducted internally or outside the District, concerning prohibited discrimination or harassment.



School District's Obligations Under Title IX

❖ Sexual Harassment

- Investigate
- Stop
- Prevent
- Remedy

- ❖ Important to properly identify sexual harassment issues from the beginning and that they are being reported up to the Title IX Coordinator. While conduct can be addressed through the student code of conduct or employee discipline process, it must also be analyzed through the school district's obligations under the law.



School District's Obligations Under Title IX

- ❖ If the District has actual knowledge of sexual harassment in an education program or activity of the District, then it must respond promptly in a manner that is not deliberately indifferent.
 - Actual Knowledge – A school or district has actual knowledge when notice or allegations of sexual harassment are report to **any** school employee; or any employee personally observes such behavior. A school or district employee includes the Title IX Coordinator, administrators, teachers, teacher's aides, bus drivers, cafeteria workers, counselors, school resource officers, maintenance staff workers, or any other employee.
 - Can be met when an employee:
 - Witnesses the conduct.
 - Hears about the conduct from the alleged victim or anyone else (e.g., parent, friend, peer anonymous report).
 - Receives a written report of the conduct from the alleged victim or anyone else.



School District's Obligations Under Title IX

- ❖ For K-12 School Districts, education program or activity includes any location, event, or circumstance over which the district exhibits substantial control over both the alleged harasser and the context in which the harassment occurred – 34 C.F.R. § 106.44(a)
 - Concern that this definition narrows the scope of a District's duty to respond to sexual harassment as it relates to technology.
 - District still under obligations of bullying and cyber-bullying statutes.
 - OCR commentary states that this definition does not make sexual harassment dependent on the method by which the harassment is carried out and the use of technology such as e-mail or the internet can still constitute sexual harassment.
 - How does this affect incidents that occur off school property or outside of school hours?
 - Still obligated to investigate under Board Policies



School District's Obligations Under Title IX

- ❖ Once the District has actual knowledge of possible sexual harassment then it must respond promptly and in a manner that is not deliberately indifferent.
 - The District would only be deliberately indifferent if its response to sexual harassment is clearly unreasonable in light of known circumstances.
- ❖ The Title IX Coordinator or designee must promptly contact the complainant to discuss the availability of supportive measures, must 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, and explain to the complainant the process for filing a formal complaint.



Supportive Measures

- ◆ **Non-disciplinary, non-punitive, individualized services** offered as appropriate, as reasonably available, and without fee or charge to a complainant or respondent before or after the filing of a formal complaint or where no formal complaint has been filed, which are designated to restore or preserve equal access to education or employment programs and/or activities **without unreasonably burdening the other party**, including measures designed to protect the safety of parties or the education/work environment or to deter prohibited conduct.



Supportive Measures

- ❖ The range of supportive measures for **students** include, but are not limited to: separating or restricting contact between the parties; altering class schedules, passing periods, or class seating arrangements; offering counseling, social emotional programming or other supportive resources; providing additional supervision or monitoring for a student; placing an employee-respondent on leave during the pendency of an investigation; and assisting with filing criminal charges.
- ❖ The range of supportive measures for **employees** include, but are not limited to: separating or restricting contact between the parties; altering duties, work schedules, or work locations; placing an employee/respondent on leave during the pendency of an investigation; and assistance with filing criminal charges.
- ❖ **Emergency removal** of a respondent is allowed as long as the District undertakes an individualized safety and risk analysis, and 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.
 - Must provide notice and an opportunity for the Respondent to challenge the decision.



School District's Obligations Under Title IX

- ❖ The District must follow a grievance process before imposing discipline or other actions that are not supportive measures against the alleged respondent.
- ❖ The District may not continue with the grievance process in the absence of a formal complaint.
 - A Formal Complaint can only be submitted by the complainant or the Title IX Coordinator.
 - Parents allowed if a student under 18.
 - Formal Complaint may be filed at any time as long as the complainant is “participating in or attempting to participate in the education program or activity” of the school district at the time of filing.
 - Raises concerns about the investigation and ability to conduct it properly.
 - Can still investigate under Board Policy and Student Code of Conduct without a Formal Complaint.
 - Board Policy KN – A formal complaint should be filed within 30 days after the conduct occurs. Encouraged to be as soon as possible.



School District's Obligations Under Title IX

❖ Formal Complaint:

- A complainant may file a formal complaint by submitting the complaint in person, by mail, by telephone, or by e-mail to the Compliance Coordinator or designee. If a verbal report of prohibited conduct is made, the complainant will be asked to submit a written complaint. If a complainant refuses or is unable to submit a written complaint, the Compliance Coordinator or other District employee to whom the report was made will summarize the verbal complaint in writing and sign the summary.
- If a complainant does not file a formal complaint, the **Compliance Coordinator in their sole discretion** may sign a formal complaint and initiate the complaint process. The Compliance Coordinator **will initiate the complaint process over the wishes of the complainant only where such action is not clearly unreasonable in light of the known circumstances.**



Grievance Process

❖ Upon receipt of a Formal Complaint:

- Assignment of an investigator
- Prior to beginning the investigation – The designated investigator will send written notice to the parties of the allegations, including the identities of the parties involved, the alleged prohibited conduct, and the date and location of the alleged incident.
 - If the complaint involves students under 18 – Notifications to the parents.
- **Regulations:** Must provide notice of the grievance process, including any informal resolution process, to the parties.
 - Must also include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
 - Must inform the parties that they may have an advisor of their choice, who may be, but is not required to be an attorney, and that they may inspect and review evidence as prescribed under the regulations.
 - Must inform the parties of any provision in the District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.



Grievance Process

- Investigator conducts an objective evaluation of all relevant evidence that includes the following: the surrounding circumstances; the nature of the conduct; the relationships between the parties involved; past incidents; and the context in which the alleged incidents occurred. Investigations begin with the **presumptions that the respondent did not engage in any prohibited conduct, and that the complainant is credible**. A determination that the harassment policy has been violated and credibility determinations will only be made at the conclusion of an investigation.
 - In no event will past sexual behavior of a complainant be considered, except in the limited circumstance where the evidence is offered to prove consent or that someone other than the respondent committed the alleged misconduct.
 - Must allow respondent to have a sufficient amount of time to prepare a response before an interview



Grievance Process

❖ Formal Investigation:

- Title IX coordinator, investigator, and decision-maker must not have any conflicts of interest with the involved parties.
- In no event will past sexual behavior of a complainant be considered, except in the limited circumstance where the evidence is offered to prove consent or that someone other than the respondent committed the alleged misconduct.
- Must allow respondent to have a sufficient amount of time to prepare a response before an interview.
- Provide an equal opportunity for the parties to present witnesses, and other inculpatory and exculpatory evidence.



Grievance Process

❖ Formal Investigation:

- Cannot restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. (Balanced with provisions for confidentiality and retaliation)
- Parties must have the same opportunities to have an advisor present for hearings or meetings, though the District may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restriction apply equally to both parties.
- Presumption that the respondent is not responsible for the alleged conduct until a determination has been made at the conclusion of the grievance process.
- Investigation must be within a reasonably prompt time period, though there are exceptions for situations including law enforcement involvement.
 - Timeframes for investigation in Board Policy KN
 - Can be extended – notice to the parties.



Grievance Process

❖ Completing the Investigation:

- Allow for both parties and their advisors an equal opportunity to review all evidence that is directly related to the allegations in the formal complaint, including evidence on which the District does not intend to rely and any exculpatory or inculpatory evidence from any source.
 - Must be provided prior to the completion of the final investigation report and in time to give the parties at least 10 days to prepare a written response, which the investigator must consider prior to completing the investigation report.
 - Investigation report will include a determination as to whether the investigator believes a policy has been violated, using the applicable standard of evidence – preponderance of the evidence.
 - Investigative Report must also be provided to the parties and their advisors for their review and written response, at least 10 days before a hearing or other determination of responsibility.
 - Raises significant privacy concerns that will need to be addressed.
- K-12 School Districts are not required to have live hearings.



Grievance Process

- ❖ Completion of the Investigation Report and Submission to the Decision-Maker:
 - The investigator will simultaneously send the investigation report to: (a) parties for their review and written response; and (b) the decision-maker.
 - The parties will have 10 working days to submit a response to the investigator's report, including proposed relevant questions for the decision-maker to ask the other party and/or any witnesses. In their sole discretion, the decision-maker may re-interview parties and/or witnesses to ask follow-up questions.
 - The decision-maker will review the investigation, including any of the following steps: review of the evidence gathered and investigation report, re-interviewing a party or witness, and gathering additional evidence if deemed necessary.



Grievance Process

- ❖ Decision-Maker will issue a written determination as to whether the preponderance of the evidence shows that board policy was violated. The written determination will be sent to each party and must including the following information as appropriate:
 - Identification of the allegations;
 - A description of the procedural steps taken;
 - Findings of fact;
 - A concise statement of the rationale supporting the conclusion on each allegation;
 - Any disciplinary sanctions imposed on the respondent;
 - What remedies will be instituted;
 - Notice of the appeal procedure.
- The decision-maker's determination is final, unless a timely appeal is filed.



Grievance Process

- ❖ Both parties may appeal from a determination regarding responsibility, and from the District's dismissal of a formal complaint or any allegations therein, for the following reasons only:
 - Procedural irregularity that affected the determination;
 - New evidence that was not reasonably available at the time the determination was made;
 - Or conflict of interest or bias on behalf of the Compliance Coordinator, investigator, or decision-maker.
- ❖ Upon receipt of appeal, the appeal officer will issue a written confirmation to the parties that the appeal was received. In their sole discretion, the appeal officer's review of the investigation may include any of the following steps: review of the evidence gathered and written reports and determinations, re-interviewing a party or witness, and gathering additional evidence if deemed necessary.
 - Appeal officer will issue a written decision to the parties describing the result of the appeal and a concise rationale for the result. The appeal officer's decision is final.



Grievance Process

❖ Other Provisions:

- Confidentiality under Policy KN: Except as necessary to complete a thorough and effective investigation and complaint process under this policy and as required by law or Board policy, the identity of complainants, respondents, and witnesses, information related to investigations, evidence gathered, and records created during the investigations will be maintained in strict confidence.
 - Information and records regarding any disciplinary sanctions imposed on an employee or student will be maintained and disclosed in the same manner as any other disciplinary record.



Grievance Process

❖ Informal Resolution:

- At any time during the complaint process before a determination is reached, the parties may be offered or request an informal resolution process, such as mediation or restorative justice, in lieu of a full investigation and determination.
 - NOT ALLOWED for complaints involving staff-on-student sexual harassment.
- Informal resolution requires all parties to voluntarily agree in writing.
- If a resolution is reached during the informal resolution process and agreed to in writing by the parties, then the formal complaint will be dismissed.
 - Complainant restricted from filing a second complaint concerning the original allegations, but patterns of conduct can be considered in subsequent complaints involving the same respondent.
- Parties may withdraw at any time prior to agreeing to a resolution. In that case the formal complaint process will resume.



Failure to Meet Obligations Under Title IX

❖ Lawsuit

- Filed in Federal Court
- Monetary Damages/Injunction
- Requires:
 - Actual Notice
 - Employee with Authority to Take Action (May change with new regulations)
 - Deliberate Indifference

❖ Administrative Action

- Initiated by Department of Education OCR
- Voluntary Compliance or Findings
 - Actual or Constructive Notice (Knew or should have known)
 - Investigate/End Harassment/Remedy Impact/Prevent Recurrence



Title IX Case Examples

❖ Franklin v. Gwinnet Public Schools, 503 U.S. 60 (1992)

- Christine Franklin was a high school sophomore in Gwinnett County, Georgia
- Franklin alleged that she was subjected to sexual harassment and abuse by Andrew Hill, who was a teacher and coach at the school
 - Sexually explicit conversations (discussion of her sexual experiences with her boyfriend and whether she would consider having intercourse with an older man)
 - Forcibly kissed her on the mouth in the school parking lot
 - Called her at home to ask her to meet with him socially
 - On three occasions, Hill interrupted class and requested that the teacher excuse Franklin. He then took her to his office where he engaged in forcible intercourse



Title IX Case Examples

- ❖ Franklin v. Gwinnet Public Schools, 503 U.S. 60 (1992)
 - Franklin claimed that teachers and administrators were aware of the harassment, as well as Hill harassing other female students, but even though they conducted an investigation they did nothing to stop the problem
 - School officials discouraged Franklin from bringing charges against Hill
 - Investigation ended after Hill resigned
- ❖ Case established that sexual harassment constituted sex discrimination under Title IX
- ❖ Supreme Court held that monetary damages could be awarded in Title IX cases



Title IX Case Examples

- ❖ Gebser v. Lago Vista Indep. School Dist., 524 U.S. 274 (1998)
 - Gebser was an eighth grade student at a middle school in the Lago Vista Independent School District.
 - She joined a high school book discussion group led by a high school teacher, Frank Waldrop
 - During the book discussion, Waldrop often made sexually suggestive comments to the school. Gebser entered high school and was assigned to a classes taught by Waldrop.
 - Waldrop continued making inappropriate remarks to students, and began making more suggestive comments toward Gebser, including when they were alone in the classroom.
 - Waldrop first initiated sexual contact when he went to Gebser's home to drop off a book.



Title IX Case Examples

◆ Gebser v. Lago Vista Indep. School Dist., 524 U.S. 274 (1998)

- Had sexual intercourse on a number of occasions during the school year. Continued into the summer and the following school year. Had sexual contact during class time, but never on school grounds.
 - Gebser did not report the incidents with Waldrop to any school officials.
 - Parents of two other students complained to the high school principal about Waldrop's comments in class.
 - Principal met with Waldrop, who claimed that he had not made any offensive comments, but he apologized and said it would not happen again.
 - Principal advised Waldrop to be careful about what he said in class and told the school guidance counselor about the meeting, but did not report the incident to the superintendent who was the district Title IX coordinator.
 - A couple of months later, a police officer discovered Gebser and Waldrop engaging in sexual conduct and arrested Waldrop.
- ◆ No monetary damages – A school official with authority to institute corrective measures has to have actual notice of harassment and must have acted with deliberate indifference.



Title IX Case Examples

❖ Davis v. Monroe County Board of Ed., 526 U.S. 629 (1999)

- LaShonda Davis was a fifth grade student who was subjected to an ongoing pattern of harassment by a male classmate.
 - Male student made statements such as, “I want to get in bed with you”, and “I want to feel your boobs.”
 - Acted in a sexually suggestive manner toward Davis.
 - Would rub against her in a suggestive manner.
 - Touched her breasts and genitals.
- Davis repeatedly reported this conduct to teachers. Her mother also reported the conduct to teachers multiple times.



Title IX Case Examples

- ❖ Davis v. Monroe County Board of Ed., 526 U.S. 629 (1999)
 - Mother was told that the principal was aware of the situation. No action was taken.
 - Davis' assigned seat was next to the harassing student throughout the course of the ongoing behavior. She was not allowed to change seats for over three months.
 - Male student was not disciplined.
 - Davis' grades declined and her father found a suicide note. She told her mom that she did not know how much longer she could keep the male student off of her.
 - Other students in the class also faced harassment from the same student. This group of students tried to complain to the principal, but were not allowed. Parents complained to three teachers and the principal, the students had also complained to three teachers.
- ❖ Found in favor of Davis. Student on student harassment included under Title IX. Expanded the Gebser ruling.

