Title IX: Collective Responsibilities for Educators and Administrators

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Abstract
It is imperative that K–12 educational leaders inform themselves and teachers working in their schools of their responsibilities under Title IX. If schools do not follow Title IX guidelines, they subject themselves to lawsuits filed by parents, possible monetary redress, and potential investigations by the Department of Education’s Office for Civil Rights. This paper provides information on the requirements of educational leaders under Title IX, as well as the rights of students under the law. Surveying district administrative personnel by phone in a three-county area in Northeast Ohio revealed that 61 percent had Title IX Coordinators, 15 percent were unaware of Title IX’s requirements, and 92 percent assigned Title IX duties to central office personnel. Drawing from best practices identified in literature and court cases, the authors describe five significant and replicable practices that K–12 schools can adopt to meet the requirements of Title IX and protect students’ civil rights.
“Sexual, racial, gender violence, and other forms of discrimination and violence in a culture cannot be eliminated without changing culture.”

— Charlotte Bunch

Introduction
Title IX is seen by many as the “women’s sports law,” but it is much more than that. Title IX protects students from all forms of sex discrimination, including sexual harassment. Educational leaders should be advocating for the inclusion of Title IX regulations into teacher education and educational leadership programs, as many practicing teachers and administrators do not know that federal law requires school districts to appoint and train at least one Title IX Coordinator to oversee complaints of sex discrimination. Preliminary research in this area reveals that school districts are not always meeting this federal requirement, and are often unaware of it (Author, Kearl, and Murphy, 2013). A lack of compliance has the potential to severely harm students and expose school districts to expensive lawsuits.

Guidance from the United States Department of Education’s Office for Civil Rights issued in the form of “Dear Colleague Letters” provides direction to educational leaders with regard to their responsibilities in protecting the civil rights of students. However, this guidance has not reached teachers, who may encounter issues of sexual harassment on a daily basis. Likewise, this information is often given limited, if any, coverage in teacher education programs. Thus, pre-service teachers are frequently ill prepared for their responsibilities in protecting the civil rights of students and preventing sex discrimination.

This paper provides information on the requirements placed on educators under Title IX, as well as the rights of students under the law, with the intent of educating school administrators so that they are both better able to protect the students they serve and avoid legal pitfalls.

Schools in Compliance with Title IX
An additional requirement of Title IX is that all schools receiving federal funds, including K–12 schools, colleges, and universities, must hire and train, or appoint and train, Title IX Coordinators to oversee complaints of sex discrimination and sexual harassment. Additionally, they are required to make the identity and contact information of the Title IX Coordinator(s) public and available to students and parents. The authors, both former teachers and current education professors, were neither made aware of the identity of the Title IX Coordinators in their respective districts nor of the existence of Title IX requirements placed upon their respective school districts. After information-gathering on the topic of student-based sexual harassment, the authors learned of the Title IX Coordinator requirement placed on districts and sought to determine: a) if districts in their region were in compliance with this legal requirement; b) if so, if the Title IX Coordinators were in administrative roles (e.g., a human resources employee) or in advocacy roles (e.g., a teacher or counselor); and c) if the identity and contact information of Title IX Coordinators were made public as stipulated by the law.

This small-scale, exploratory study examined three large counties surrounding an urban city center to take the pulse of general school district awareness of Title IX regulations. Between 2010 and 2013, the authors surveyed three large counties in a Midwestern state (populations: 1.7 million, 1.2 million, and 854,769, respectively). They made phone calls to all the central administrative offices of the school districts within each county, requesting the name, position, and contact information of the Title IX Coordinator for each district, and whether this information was made known to the public. Results indicated that out of 72 school districts, only 44 (61 percent) had designated Title IX Coordinators. No school or district reported the identity or contact information for the Title IX Coordinator on its websites, and when asked, 15 percent of administrative staff admitted that they were not aware of the Title IX Coordinator requirement, even after checking within their offices.

District responses revealed that individuals in the central office assumed the duties of Title IX Coordinator 92 percent of the time. The role of Title IX Coordinator was combined with other administrative and teaching positions, such as Human Resources Director (39 percent, or 17 out of 44), Superintendent (18 percent, or eight out of 44), Curriculum Director (11 percent, or five out of 44), Athletic Director (7 percent, or three out of 44), Director of Special Education (2 percent, or one out of 44), Executive Business Director (2 percent, or one out of 44), and other (7 percent, or three out of 44). Some districts divided Title IX responsibilities between several people (11 percent, or five out of 44). The largest percentage of Title IX Coordinators was in the human resources department. There was only one district with a Title IX
Coordinator employed in a student advocacy role, as Director of Student Services. Advocacy about their responsibilities under Title IX is crucial for teachers, administrators, and districts. If such advocacy followed by compliance is not addressed, school districts could face severe consequences.

This study was limited by a small sample size and the potential limited awareness of the contact persons at district offices to answer questions about Title IX. The research methodology was exploratory in nature and was not intended to provide causal or conclusive information about the condition of schools in regard to Title IX. The results should serve merely as a caution for Title IX Coordinators and district and school administrators about the need to instruct their educational communities about Title IX, and as a reminder to make necessary adaptations to current policies and practices. More rigorous research is needed on this topic.

**Title IX Cases: Litigation, Outcomes, and Consequences**

It is imperative that educational leaders inform themselves and the teachers working in their schools of their responsibilities under Title IX. If schools do not follow Title IX guidelines, they may be subject to lawsuits by parents, including monetary redress, and potential investigations by the Department of Education’s Office for Civil Rights. In *Wolfe v. Fayetteville, Arkansas School District*, the parents of William (Billy) Wolfe filed suit against the Fayetteville School District in the United States District Court for the Western District of Arkansas for alleged student-on-student sexual harassment encountered at school.

Billy was interviewed by *Dateline, 20/20, The Today Show*, and *The New York Times* after a video was uploaded to YouTube portraying his classmates violently punching him as he walked home from school. Billy argued that the various incidents of physical abuse and name-calling amounted to sex-based discrimination. The video provided verification that classmates used the terms “faggit,” “queer bait,” and “homo.” Billy’s classmates explained that they accosted him because he had bullied a friend of theirs who suffered from cerebral palsy, and not as sexual harassment.

The court’s instructions stated that for the plaintiffs to prevail on the Title IX claim, they had to prove that: 1) Billy was harassed on the basis of sex; 2) the harassment rose to a certain level of severity; 3) the school district had actual notice of the behavior; and 4) the district remained deliberately indifferent to the harassing behavior. The court further explained that there must be proof that the harassment was motivated by the victim’s sex. A 12-person jury found in favor of Fayetteville School District. The plaintiffs then appealed to the United States Court of Appeals for the Eighth Circuit, requesting a new trial based on the claim that the lower court erred in instructing the jury, and arguing that Title IX does not require proof of the harasser’s motivation. In affirming the district court’s instructions, the appeals court held that proof of gender-based motivation or intent is required to prevail on a Title IX claim.

In many court cases, federal district courts have recognized peer harassment of sexual minority students as actionable under Title IX. In 1996, the U.S. Court of Appeals for the Seventh Circuit ruled in favor of a student who was subjected to anti-gay harassment (*Nabozny v. Podlesny, et al*).

In 2001, the U.S. Court of Appeals for the Seventh Circuit sided with the plaintiff on a Fourteenth Amendment claim of failure to protect (*Henkle v. Washoe County School District*). Derek Henkle was an openly gay high school student who was subjected to prolonged sexual harassment. Despite his reports of a variety of incidents over an extended period, school officials did nothing to alleviate the situation, but rather advised Henkle to hide his sexuality to stop the harassment. Henkle sued the district for failing to protect him from peer sexual harassment based on sexual orientation under the Fourteenth Amendment, and for denying his expression of his sexual identity under the First Amendment.

**Consequences of Noncompliance**

Many cases illustrate the cost of noncompliance with Title IX for schools. Prior to the court’s decision *Henkle v. Washoe County School District*, the district agreed to a settlement of $451,000, including attorney fees and court costs. Part of the settlement required the district to revise its policy on anti-harassment, train students and staff on what constitutes harassment, and acknowledge students’ freedom to express their sexual orientation.

In the 2013 case of *Doe v. Anoka-Hennepin School District*, the plaintiff argued that the district’s response to reported harassment and its neutrality policy were inadequate.
The case was settled for $270,000, and the district agreed to make changes to its policies and procedures for dealing with harassment (Bolt, 2013).

The takeaway here is that school personnel must have knowledge of their legal obligations to address sex discrimination and sexual harassment under Title IX. By advocating their commitment to learning environments that are free from discrimination, districts can place themselves in the best position to prevent sex discrimination from occurring, are more likely to respond appropriately when it does happen, and may ultimately avoid litigation.

However, schools often ignore claims of sexual harassment on behalf of students who are sexual minorities (Martin, Kearl, and Murphy, 2013). Under Title IX, parents can sue for monetary damages if their charges of sexual harassment are met with “deliberate indifference” on the part of schools. Creating anti-bullying policies is a step in the right direction for schools; however, conflating the terms “bullying” and “harassment” can be dangerous. If the sexual harassment of students is deemed as bullying (or simply harassment), then parents may believe that they are not entitled to Title IX protection. Moreover, they may not be aware of their rights under Title IX.

**Discussion**

School policy must provide for the prompt and equitable investigation and resolution of Title IX claims, including time frames for resolution and an anti-retaliation statement. Once they are made aware of sex discrimination or the potential for such, school authorities must thoroughly investigate the allegations. They must act to determine what happened and take appropriate steps to resolve the situation. An educational entity is liable if it knows or reasonably should have known about sexual harassment that creates a hostile environment but fails to address it (Simpson v. University of Colorado, Boulder). A fully informed response, in which information is gathered, alternatives are considered, and consequences are weighed, is always the best course of action. Ensuring that districts learn of sex discrimination or the potential for such requires designating a Title IX Coordinator to oversee compliance and grievance procedures, as mandated by law. Further, the identity and contact information of the Title IX Coordinator must be made public and be readily available to students, staff, and parents.

School policies must specifically indicate that sexual assault is covered under Title IX and inform students of their right to file a complaint with the school if their rights are violated. Victims may also file a complaint with the Department of Education’s Office for Civil Rights if a school’s policies or handling of a complaint are not compliant with Title IX, and they may recover monetary damages under Title IX if the school shows deliberate indifference in dealing with the discrimination or related retaliation. However, without proper policies and procedures in place, districts may unknowingly allow allegations of sex discrimination to remain contained within departments or schools, instead of initiating investigations.

Bullying, sexual harassment, and sexual assault are often conflated or used interchangeably. Such mislabeling does not alleviate schools’ responsibility of responding properly and enforcing Title IX’s provisions. Schools additionally have the authority and responsibility to address sexual harassment, even if the behavior occurs off campus, in social media, and other cyber venues. For example, in Kowalski v. Berkeley County Schools, the court ruled that schools can discipline students for online content, consistent with the Tinker Standard.

**Recommendations**

School districts are required to appoint, train, and make available to the public a Title IX Coordinator to ensure their compliance with the law, respond to complaints, and oversee reporting procedures. The following recommendations are made to assist Title IX Coordinators and school district administrators in the compliance of Title IX:

1. Consider the Title IX Coordinator’s role as one of advocacy for an equitable process and to provide a learning environment free from discrimination. Title IX Coordinators should be in positions of advocacy in their daily responsibilities, such as teachers and counselors, affording them direct access to the students.

2. Ensure that Title IX Coordinators, teachers, and staff are adequately trained. Training should cover Title IX regulations and related anti-discrimination laws, sexual harassment, recent case law, grievance procedures, and how to establish a positive school climate. Furthermore, teachers should be expected to intervene when they witness harassment in their classrooms or on school grounds, and should know how to do so. Teachers must recognize and report
on the harasser/victim dynamic (including what harassment is, what behaviors constitute harassment, and the effects of harassment on victims). Staff training on lesbian, gay, bisexual, and transgender issues, and other aspects of identity is also instrumental in creating a safe school climate for all students.

3. Make contact information for the Title IX Coordinator easily accessible. This information should be posted publicly and made available to students, parents, and employees. Posting this information on the district’s website is an expectation of OCR.

4. Districts that have not yet done so are advised to conduct a Title IX compliance review to determine if they are in compliance with the law and begin to think beyond compliance. Start by examining school policies and procedures, sports scheduling, and facilities to ensure gender equity. Create an anti-harassment policy that provides details for reporting, investigation, and resolution, and that mention sexual minorities. Under Title IX, the following categories are protected: gender, sexual orientation (real and perceived), and gender identity and expression (real and perceived). Make sure that other categories are enumerated as well, such as race, class, national origin, ableism, etc. Include an anti-retaliation statement and provide for the prompt and equitable investigation and resolution of complaints.

5. Offer resources and materials on Title IX to stakeholders. Consider creating and disseminating handbooks for students and parents defining “harassment” and providing examples of behaviors that are prohibited. Another idea is to expand the library collection to incorporate titles that reflect diversity and ensure that the curriculum reflects this as well.

6. Provide assertiveness training and support groups for students so they can share their experiences and gain strength from one another.

7. Educate teachers and school leaders to help them understand trauma-informed survivor support, including distinguishing between helpful and harmful language and the problem of victim-blaming. Cultivate in educators a self-reflective insight to help them become aware of how issues of identity, power, biases, and positionality may be at play.

8. Create environments inside and outside of the classroom that teach students how to disrupt a culture of sexual violence all along the continuum of harm.

The authors advise school personnel to consult the Office for Civil Rights “Dear Colleague Letters” for more information about the legal requirements of Title IX to protect students from sex discrimination and sexual harassment in schools under the law and inform themselves of other anti-discrimination laws. The goal should not be mere compliance, but rather to move beyond compliance. As Bunch implores in the epigraph of his essay, we cannot expect the alleviation of violence in its many forms from our schools if we do not take the lead in changing the culture to this end. We must be proactive in changing our school cultures (Bunch, n.d.). We can begin by advocating for Title IX compliance and compliance with other civil rights laws, for it is our collective responsibility.

References


Henkle v. Gregory, Hausauer, Rende, Anastasio, Floyd, Robb, Ramilo, and Selby; and the Washoe County School
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