

**O'NEILL PUBLIC SCHOOLS
BOARD OF EDUCATION**

Monday, February 18, 2019
5:00 PM

Administrative Office
410 E. Benton
O'Neill, NE 68763

**Board of Education Work Session
Agenda**

Posted Date:

1. Call to Order	
A. Roll Call	
B. Excused/Unexcused Board Members	
2. Pledge of Allegiance	
3. Approve Meeting Agenda	
4. Reception of Visitors	
5. Oral and Written Communications	
6. Old Business	
7. New Business	
A. Rule 10 - School Improvement	
B. Staffing Review	2
2019 Title IX Webinar - KAH	2
Elementary Numbers and Staff Needs	39
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Staffing Comparison - 2019-2020-2	41
C. Review of Current Programs and Funding Sources	42
OPS Programs and Initiatives and Funding Sources	42
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Leases and Payments - Sheet1-3	44
E. Building Project Costs Not Within the GMP	45
Additional Parking - Proposed	45
Required Items Not Included in the GMP - Sheet1-4	46
8. Adjournment	

The agenda sequence is provided as a courtesy only. The board reserves the right to consider each item in any sequence it deems appropriate. Therefore, we encourage visitors to attend the meeting from the beginning. As a result of a majority vote by the board, certain agenda items may be clearly necessary to discuss in executive session in order to protect the public interest or to prevent needless injury to the reputation of an individual, and if the individual has not requested a public meeting.

2019 Title IX Training for Nebraska's School Leaders:

KSB SCHOOL LAW

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Questions Today?

Text: (402) 499-1869

We will have occasional breaks,
but send questions in anytime
you have them.

Introduction to Title IX

- A federal statute that prohibits discrimination:
 - On the basis of sex
 - In education programs or activities
 - Receiving federal financial assistance

20 U.S.C. § 1681 et seq.

34 C.F.R. § 106 et seq.

What Is Discrimination "On The Basis Of Sex"?

- Any disparate treatment based on a person's sex
 - Does not require hostility or intent to harm; difference in treatment is enough
 - Usually proved by circumstantial, not "smoking gun" evidence
- Includes "sexual misconduct"
- Includes gender stereotyping (and maybe sexual orientation and gender identity)

Introduction To Title IX: Key Terms

- Unwelcome Conduct
 - By an employee, student, third party
 - Of a sexual nature: Sexual advances, requests for sexual favors, nonverbal or physical conduct of a sexual nature; or
 - Nonsexual gender-based conduct: Aggression, intimidation, hostility based on sex/gender

Introduction To Title IX: Key Terms

- Sexual violence:
 - Physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to age or use of drugs/alcohol or intellectual/other disability
 - Acts that fall into this category include - rape, sexual assault, sexual battery, sexual abuse, and sexual coercion
 - Is a form of sexual harassment

New Sheriff in Town

- In 2017 speech, Education Secretary Betsy DeVos declared that “the era of ‘rule by letter’ is over”
 - Referring to the rescinded guidance letters seen as expanding Title IX’s requirements without rulemaking
 - Promised in 2017 Q&A guidance to engage in formal, collaborative rulemaking efforts

Revised Guidance on Sex Assault (September 2017)



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

September 2017

Q&A on Campus Sexual Misconduct

Under Title IX of the Education Amendments of 1972 and its implementing regulations, an institution that receives federal funds must ensure that no student suffers a deprivation of her or his access to educational opportunities on the basis of sex. The Department of Education intends to engage in rulemaking on the topic of schools’ Title IX responsibilities concerning complaints of sexual misconduct, including peer-on-peer sexual harassment and sexual violence. The Department will solicit input from stakeholders and the public during that rulemaking process. In the interim, these questions and answers—along with the *Revised Sexual Harassment Guidance* previously issued by the Office for Civil Rights—provide information about how OCR will assess a school’s compliance with Title IX.

Proposed Regulations

- On Nov. 29, 2018 Education Department announced proposed Title IX regulations
 - Published in Federal Register
 - Initiates 60-day comment period ending 1/28/19

General Duties Under Title IX

- Upon notice of sexual harassment or sexual violence occurring within an educational program/activity:

Return to Deliberate Indifference

- 34 CFR § 106.44 would prohibit districts from being “deliberately indifferent” to sexual harassment if it has *actual knowledge* of
 - Rejecting the “known or reasonably should have known” standard imposed by rescinded guidance

General Duties Under Title IX

- Upon notice district must:
- Take prompt and effective action to:
 - End the misconduct
 - Prevent its recurrence
- General expectation:
 - Conduct investigation and
 - Institute remedies as appropriate
 - Within 60 days

Title IX Coordinator

“Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under [Title IX], 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”

Title IX Coordinator

- OCR recommends Title IX Coordinator
 - Have knowledge of policies and procedures
 - Be involved in policy adoption/revision
 - Receive annual training

2015 Title IX Coordinator DCL

Title IX Coordinator

- Job* responsibilities:
 - Coordinate compliance, including procedure for resolving Title IX complaints
 - Identify patterns or systemic problems revealed by Title IX reports

2015 Title IX Coordinator DCL

Administrative Changes under 34 CFR § 106.45

- Requires that Title IX determinations be rendered by an individual who is *not* the Title IX coordinator or investigator
 - Determination must be made in writing, include an explanation, and be provided to both parties
- Training materials for Title IX Coordinators, investigators and decision-makers must foster impartiality
 - Ties back to prohibition against bias and conflicts of interest on behalf of these individuals

Revised Guidance on Sex Assault (September 2017)

- District now has to make two choices:
 - Clear and convincing vs. preponderance
 - Appeal procedures

[Link to Q&A](#)

Investigations and Responses

Responding to Harassment Complaints

▪Step 1: Stop Any Ongoing Harassment Immediately.

- Moving quickly tells everyone that such behavior is not acceptable and that your school takes harassment seriously.
- You also must take steps necessary to ensure that the harassment does not recur.

Dangerous Words

▪When responding to a complaint, be careful that these words don't come out of your mouth:

- It's just teasing- no big deal.
- The people in our school would never do...
- I know he/she didn't mean anything like that.
- You need to learn to handle these things.
- If you won't file a written complaint our hands are tied
- When it is he said she said I can't do anything
- Boys will be boys or Kids will be kids

During Investigation: OCR Requires "Interim Measures"

- Provide complainant with periodic updates on status of the investigation
- Minimize burden on the parties to the complaint
- Make sure parties understand the process.
- Keep parties informed of the status of the investigation.

Responding to Harassment Complaints

▪Step 2: Create a plan.

- Written list of interviewees
- Written list of questions
- Written list of documents/video/other evidence
- Review time line
 - Within 60 days
 - Check your policy!

Responding to Harassment Complaints

▪Step 3: Interviews

- Complainant, alleged aggressor, all possible witnesses
- Remind parties and witnesses that they are protected from retaliation.
- Interview strategies:
 - Ask open-ended questions
 - Move from general to specific
 - Make the students describe EXACTLY what happened (even if it is awkward)

Administrative Changes under 34 CFR § 106.45(b)(3)

- School District bears burden of proof
- Must provide equal opportunity for both parties to introduce evidence
- May not restrict ability of either party to talk
- Must allow parties to have others present
- Must allow sufficient time to prepare for interviews
- Must allow either live hearing or questions and follow up in writing

Responding to Harassment Complaints

▪Step 4: Review Documents and Other Evidence

- Take steps to preserve digital evidence
- Confer with IT experts
- Urban dictionary might be your best friend

Responding to Harassment Complaints

▪Step 5: Prepare written summary of investigation and take action

- Must inform victim of results of investigation, but not discipline (if any)
- Not required to provide written report to parties

Administrative Changes under 34 CFR § 106.45(b)(3)

- Must issue Written Investigation Report
 - Must summarize evidence
 - Must be issued 10 days before hearing or time determination is made
 - Must give copy to both parties
- Before Investigation Report Issued
 - Must provide all evidence in electronic format 10 days before written report issued
 - Must allow parties to respond to evidence before report is issued

**Administrative Changes under
34 CFR § 106.45(b)(3)**

- **Written Decision**
 - Must be issued to both parties simultaneously
 - Must include
 - Identification of code of conduct section allegedly violated
 - Description of investigatory process
 - Findings of fact
 - Conclusions of application of policy to facts
 - Rationale for any sanctions or remedies
 - Appeal process if any

**After Investigation:
Corrective Action**

- **School-wide responses**
 - Problem areas? (e.g. track team)
 - re-evaluate and re-distribute policies and procedures
 - training for staff, students and parents

**After Investigation:
Corrective Action**

- **Follow up with the victim**
 - Be sure it's stopped
 - Be sure no retaliation
 - Be sure you haven't made things worse
 - SAT for counseling if needed

**After Investigation:
Corrective Action**

- Follow up with aggressor
 - Social skills?
 - Monitoring

Questions?

Text: (402) 499-1869

Title IX Scenarios

Scenario #1: Sex Assault

You are the high school principal. Cindy comes to you and reports that Dylan grabbed her in the parking lot last night after practice. According to Cindy, Dylan dragged her into his car and forced her to perform fellatio on him.

Reporting Sex Assaults to Law Enforcement

Neb. Rev. Stat. 79-293(1): The principal of a school or the principal's designee shall notify as soon as possible the appropriate law enforcement authorities . . . of any act of the student described in section 79-267 which the principal or designee knows or suspects is a violation of the Nebraska Criminal Code.

Doe v. Forest Hills Sch. Dist.

2015 U.S. Dist. LEXIS 175321 (W.D. Mich. 2015)

- High school girl alleged boy sexually assaulted her at school
- Security footage inconclusive
- Principal called the cops; cops did not initially charge*
- Victim alleged she was harassed by peers after report

Doe v. Forest Hills Sch. Dist.

2015 U.S. Dist. LEXIS 175321 (W.D. Mich. 2015)

- Family sued under Title IX
- School: not deliberately indifferent
- Court: "Here, the school admitted that it was waiting for the police investigation to make its determination and did not suspend MM until after he pled guilty to state charges."

Doe v. Forest Hills Sch. Dist.

2015 U.S. Dist. LEXIS 175321 (W.D. Mich. 2015)

Court: Principal "failed to interview Doe's friends, and waited months for someone else to make a conclusion as to whether the assault happened. Based on the record, a jury could find that the investigation in its scope and the delay to ultimate conclusion was clearly unreasonable and represented deliberate indifference by the school and administrators."

**Revised Guidance on Sex Assault
(September 2017)**

- Focus on OCR compliance investigations will be on whether the school's response was prompt and equitable
 - OCR will first look to ensure that the school has adopted and published grievance procedures "that provide for a prompt and equitable resolution of complaints of sex discrimination, including sexual misconduct."

"Prompt and Equitable"

"OCR has identified a number of elements in evaluating whether a school's grievance procedures are prompt and equitable, including whether the school (i) provides notice of the school's grievance procedures . . . (ii) applies the grievance procedures to complaints filed by students or on their behalf alleging sexual misconduct . . . (iii) ensures and adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; (iv) designates and follows a reasonably prompt time frame for major stages of the complaint process; (v) notifies the parties of the outcome of the complaint; and (vi) provides assurance that the school will take steps to prevent reoccurrence of sexual misconduct and to remedy its discriminatory effects, as appropriate."

Due Process under 34 CFR § 106.45

- Proposed regulation would outline grievance procedures for Title IX complaints that require:
 - Equitable treatment for complainant and respondent in grievance and appeals
 - Notice of formal complaints to respondent
 - Objective evaluation of all evidence
 - Unbiased administrative actors
 - Presumption of innocence
 - Reasonably prompt resolution
 - Description of potential sanctions, remedies, and available supports
 - Description of evidentiary standard to be used

Due Process under 34 CFR § 106.45

- Notably, proposed changes would afford both the complainant and the respondent the right to question the other party
 - May be in written form in elementary/secondary context
 - May be in live hearing
 - Questioning would occur by the advisors of each party
 - No personal confrontation

So about Cindy and Dylan?

- First: call the police
- Second: conduct your own investigation
 - Under proposed regs, Title IX Coordinator cannot do the investigation
- Complete school investigation promptly (within 60 days)
- Take appropriate discipline re Dylan (SAT?)
- Accommodate Cindy as needed (SAT?)

Questions?

Text: (402) 499-1869

Scenario #2: Snapchat Mean Girls

You are the English teacher. Kim comes to you and says that there is a group of popular senior girls who have a "burn book" Snapchat group. The girls target Kim as "fat," "slutty," "bitchy" and "ugly."

Responsible Employees

- District designation should include:
 - Employees authorized to take action to redress sexual misconduct, duty to report misconduct,
- and
 - Employees who a student reasonably believes has such authority

2017 Q&A; 2001 Guidance; 34 C.F.R. §106.8(a);

Responsible Employees

- Duties:
 - Must report any possible sexual misconduct to the Title IX coordinator or other appropriate school designee
 - Note: Mental health counselors, health center employees, professionals with license requiring confidentiality & volunteer counselors are RE's for training purposes, but not reporting purposes

Responsible Employee 34 CFR § 106.44(e)(6)

- District has "actual knowledge" of sex harassment when any teacher knows of it
 - Applies to student-on-student only

**Sexual Harassment under
34 CFR § 106.44**

- Proposed regulation defines sexual harassment as "unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity."

**Higgins v. Saavedra,
2018 U.S. Dist. LEXIS 2985 (D. N.M. 2018)**

- During cheerleading camp, 2 girls film another in the shower against her will, post to SnapChat
- Cheer coach refused to cooperate with the police, forced victim to apologize to the entire squad for ruining the weekend, ostracized her from squad activities, and demoted her from her squad position.

**Higgins v. Saavedra,
2018 U.S. Dist. LEXIS 2985 (D. N.M. 2018)**

- Former teammates continued to harass victim, sought transfer to a new high school.
- Student transferred, sued under Title IX

**Higgins v. Saavedra,
2018 U.S. Dist. LEXIS 2985 (D. N.M. 2018)**

- Court:
 - Name calling not enough
 - Single incident of video recording not enough
 - School not liable under Title IX (but found liable for retaliation)

**Krebs v. New Kensington-Arnold Sch.,
69 IDELR 9 (W.D. Pa. 2016)**

- 8th Grade girl bullied:
 - Name calling: "slut, whore, stupid, bitch"
 - Texted picture of a bloody wrist, KYS
 - Physically assaulted
- Principal
 - Told student to document; then told parents he could not stop the conduct.
 - "This is just something adolescent girls do"

**Krebs v. New Kensington-Arnold Sch.,
69 IDELR 9 (W.D. Pa. 2016)**

- Court:
 - "While infrequent name calling and bullying among adolescent peers at school may not always rise to the level of harassment required under Title IX, the constant and pervasive harassment with sex based terms alleged to have been endured by Destinee does"

So about Kim?

- First: Make sure the English teacher reports
- Second: conduct your own investigation
 - Under proposed regs, Title IX Coordinator cannot do the investigation
- Follow up to make sure she does not continue to be harassed or to struggle
- Consider referral to SAT

Do you discipline the mean girls?

- Where a respondent has been found responsible for sexual harassment, any disciplinary sanction decision rests within the discretion of the recipient, although the recipient must also provide remedies, as appropriate, to the complainant designed to restore or preserve the complainant’s educational access, as provided for in proposed section 106.45(b)(1)(i).” (p. 28)

Do you discipline the mean girls?

- “... teachers and local school leaders with unique knowledge of the school culture and student body are best positioned to make disciplinary decisions; thus unless the recipient’s response to sexual harassment is clearly unreasonable in light of known circumstances, the Department will not second guess such decisions.” [pg. 28 of NOPRM]

Questions?

Text: (402) 499-1869

Scenario #3: Pantsing on the Playground

You are a paraeducator. During first grade recess, a group of students thinks it is funny to run up behind a peer who is wearing sweatpants and pull them down exposing the student's underwear.

First Question:

▪Is the paraeducator a "responsible employee?"

Responsible Employee
34 CFR § 106.44(e)(6)

- In K-12 schools, reporting student-on-student harassment to any teacher at that school gives the school actual knowledge.
- For all schools . . . the test is whether the person who knows "an official with authority to take corrective action"

Neb. Rev. Stat. 79-258

"Administrative and teaching personnel may take actions regarding student behavior . . . which are reasonably necessary to aid the student, further school purposes, or prevent interference with the educational process. Such actions may include, but need not be limited to, counseling of students, parent conferences, rearrangement of schedules, requirements that a student remain in school after regular hours to do additional work . . ."

Second Question:

- Is this behavior "because of sex?"
- Age of students not determinative
- We would advise you to investigate as a Title IX issue
 - New regs will complicate investigation

Scenario #4: Transgendered Student

You are the Assistant Principal. Pat is a student who is biologically male but presents as female. A group of parents is threatening to sue you if you allow Pat to change in the girls' locker room, claiming that this would constitute sex harassment.

Questions?

Text: (402) 499-1869

A Hot-Button Topic

- Trump administration action on prior transgender guidance has kept the issue in the news
- Anecdotally, Nebraska schools are increasingly looking for guidance on how to accommodate transgender students
 - Look at this as a "when" not "if" issue

OCR and DOJ

- 2015/2016 guidance: Transgender students are Title IX protected class
- 2017 Dear Colleague Letter
 - Withdrew guidance to “further and more completely consider the issues involved”
 - Assured continued protection of all students, including LGBT students, from harassment and discrimination

**OCR’s Internal Guidance
(6/6/17*)**

- OCR may open investigation for allegations of:
 - Sex discrimination against transgender students
 - Sex harassment against transgender students
 - Hostile environment based on sex or sex-stereotyping, “such as refusing to use a transgender student’s preferred name or pronouns when the school uses preferred names for gender-conforming students or when the refusal is motivated by animus toward people who do not conform to sex stereotypes”
 - Retaliation against a transgender student who complains

**OCR’s Internal Guidance
(6/6/17*)**

- What’s Missing?
 - Bathrooms, locker rooms, field trips, etc.
 - “It is permissible, for example, for one allegation in a complaint (such as harassment based on gender stereotypes) to go forward while another allegation (such as denial of access to restrooms based on gender identity) is dismissed.”
- According to news reports, OCR has closed bathroom complaints under the Trump administration, and is receiving significantly fewer complaints on the issue

OCR and DOJ

- OCR/DOJ withdrew participation in related transgender litigation
- In a case related to Title VII, DOJ argued to SCOTUS that protections on basis of "sex" do not include protections for gender identity
 - Title IX precedent often draws from Title VII case law
- NYT has reported Trump admin. Will propose a definition of "sex" excluding gender identity

So Where Do We Stand?

- Recently proposed Title IX regulations do not seek to redefine "sex"
- Some guidance documents remain in place
- Change of approach on policy level
- Internal OCR Memo indicates reduced DC oversight
- No legal determination on whether transgender students are protected under Title IX

Transgender Cases

Blank area for notes under the 'Transgender Cases' header.

General Litigation Trends

- Transgender students are winning
 - Title IX
 - Equal Protection Clause
- Opponents to transgender bathroom access are losing
 - Also arguing under Title IX

Adams v. Sch. Bd. (M.D. Fla. 2018)

- Plaintiff identifies as male
- School district had long standing policy requiring students to use the sex-segregated facilities in line with "biological sex"
 - In face of "emerging LGBTQ issues" school created guidelines allowing transgender students access to gender neutral facilities

Adams v. Sch. Bd. (M.D. Fla. 2018)

- Student was not permitted access to boys' bathroom, but not required to use girls' bathroom
 - In all other respects treated student as a boy
- Civil rights suit alleging that the district was violating the Equal Protection Clause and Title IX
 - Case unique in that it went to trial

**Adams v. Sch. Bd.
(M.D. Fla. 2018)**

- Court: District’s bathroom policy is a sex-based classification subject to intermediate scrutiny
 - Under this level of scrutiny, school must show "its gender classification is substantially related to a sufficiently important government interest" with an "exceedingly persuasive" justification
- School: Concern for safety and privacy sufficient to withstand intermediate scrutiny

**Adams v. Sch. Bd.
(M.D. Fla. 2018)**

- Court: Found school’s justification insufficient; violation of Equal Protection Clause
- Next, turned to Title IX Claims, finding that to prevail plaintiff must show:
 - Discrimination in educational program/activity
 - Discrimination was "on basis of sex"
 - The school board receives federal funding (a given)
 - The discrimination caused plaintiff harm

**Adams v. Sch. Bd.
(M.D. Fla. 2018)**

- Court: Issue is whether Adams’ exclusion from boy’s restroom is discrimination "on the basis of sex"
 - Noted that Title IX does not define "sex"
 - Noted that OCR guidance had been rescinded
 - Turned to Title VII precedent to find that "sex" included "gender identity" and found here for the plaintiff as well

Adams v. Sch. Bd.
(M.D. Fla. 2018)

- Plaintiff awarded attorney fees, \$1,000 in damages, and injunction allowing access to boys' restroom

Whitaker v. Kensosha USD
(7th Cir. 2017)

- Student identified as female at birth, transitioned in 8th grade
- Junior year: teacher reported student using boys' bathroom
- School directed student to use either its gender-neutral bathroom or girls' bathroom
- Student sued for injunction, claiming violation of Title IX and Equal Protection

Whitaker v. Kensosha USD
(7th Cir. 2017)

- 7th Circuit:
 - Upheld District's Court's preliminary injunction allowing students' use of boys' bathroom during senior year
 - Policy that requires an individual to use bathroom that does not confirm with his/her gender identity violates Title IX
 - Remanded
- School District: settled for \$800,000

J.A.W. v. Evansville Vanderburgh Sch. Corp
(S.D. Ind. 2018)

- Strikingly similar to Adams, but adjudication came at preliminary injunction stage
- Began using boys' locker room during required PE classes with another transgender student
 - Parents of two boys complained of girls using boys locker room
 - School told the students not to use boys' locker room- provided access to separate room

J.A.W. v. Evansville Vanderburgh Sch. Corp
(S.D. Ind. 2018)

- J.A.W. attended classes in two buildings
 - Told to use girls' or nurses office bathroom
 - Required to obtain permission to go to nurse's
 - Would restrict fluid intake to limit amount of times using the bathroom was necessary
- Relying on Whitaker, counsel for J.A.W. sent request to school that he be permitted access to boys' restrooms

J.A.W. v. Evansville Vanderburgh Sch. Corp
(S.D. Ind. 2018)

- School denied the request, and J.A.W. sought injunction
- Court: Applied Whitaker, found J.A.W. is likely to be successful on Title IX and Equal Protection Clause Claims
 - Rejected school's argument that J.A.W.'s circumstances were distinguishable

Doe v. Boyertown Area Sch. Dist.
(3rd Cir. 2018)

- Group of cisgender high school students brought suit to enjoin school from permitting transgender students’ access to sex-segregated facilities consistent with gender identity
 - Argued violation of privacy rights under the Constitution & Title IX
- District court ruled against the students on all theories

Doe v. Boyertown Area Sch. Dist.
(3rd Cir. 2018)

- Court:
 - Constitutional right to privacy
 - school justified invasion of privacy by demonstrating necessity of avoiding discrimination against transgender students
 - Title IX Claims
 - Students failed to show hostile environment
 - Students failed to show discrimination on basis of sex, as policy applied to all students regardless of sex

Students and Parents for Privacy v. USDOE
(N.D. Ill 2018)

- Bathroom access case with OCR; school entered resolution agreement allowing transgender students to use facilities in conformance with gender identity
- Parent group sued school and USDOE alleging agreement violated Title IX rights of gender conforming girls

**Students and Parents for Privacy v. USDOE
(N.D. Ill 2018)**

- District court:
 - Denied injunction
 - "federal protections against sex discrimination are substantially broader than based on only on genitalia and chromosomes."
 - Student will suffer no irreparable harm
 - "Any student who fears their privacy would be impaired by encountering a transgender student in the bathroom or locker room simply has to access existing and available single-user facilities."

Practical Tips

- Avoid making sweeping policy or procedure decisions until the law becomes more clear
- Work collaboratively with transgender students and their families to see if there is a way to accommodate the student's requests without triggering either a federal lawsuit or a strong political reaction

Questions?

Text: (402) 499-1869

Scenario #5: Creepy Teacher

You are the Activities Director. Ben comes to you and says that the head track coach, Mrs. Smith, has been texting and SnapChatting him. At first the communication was about track, but now it is starting to include Mrs. Smith's comments about Ben's appearance and asking him if he finds her to be attractive.

Application of Title IX

- 2001 Revised Sexual Harassment Guidance made clear that Title IX may apply to staff-on-student sexual harassment
 - "Sexual harassment of a student by a teacher or other school employee can be discrimination in violation of Title IX."
 - "Schools are responsible for taking prompt and effective action to stop the harassment and prevent its recurrence. A school also may be responsible for remedying the effects of the harassment on the student who was harassed."

Extent of Responsibilities

- The extent of a recipient's responsibilities if an employee sexually harasses a student is determined by whether or not the harassment occurred in the context of the employee's provision of aid, benefits, or services to students.
 - Ex., quid-pro-quo harassment seen as clearly occurring in the context of employee's provision of aid or services

Title IX Liability (Damages)

- Teacher-student sexual harassment
- The test:
 - (1) an official with the authority to institute corrective measures on the recipient's behalf;
 - (2) had actual knowledge of the harassment; and
 - (3) the recipient's response to such knowledge exhibited deliberate indifference.

Title IX Liability (Damages)

"It is not the harassment itself that constitutes the Title IX violation but, instead, the deliberate failure to curtail known harassment."

Grooming

- Refers to adult actions to establish an emotional connection with a child in order to prepare the child for abuse
 - Intended to preserve the secrecy of subsequent abuse
 - Often seen in the context of sexual abuse
- Increasingly taking place over social media or other electronic means

Steps in the Grooming Process

- Identifying vulnerable child
- Gaining child's trust through gifts or engaging in peer-like conduct
- Desensitizing child to inappropriate conduct – violating boundaries
- Isolating the child – requiring the child to keep secrets
- Engaging in sexual conduct – and then blaming the child

Recent Headlines

- Teacher arrested after allegedly 'grooming' young student (2/4/19 Yahoo! Lifestyle)
 - 41 y/o high school business teacher texting a 16 y/o student
 - School told him to stop, so he used more private means
 - Would you be my teenage bride?
 - Vaped with the student in his school office, took her for rides in his car, took her out to eat, invited her on trip to France



Recent Headlines

- Crystal Lake Central faculty member on leave after grooming charge (2/3/19 Daily Herald)
 - Arrested after attempting to use website to induce a minor to engage in sexual acts



Stop Grooming – Stop Abuse

- 99% of sexual misconduct committed by school employees was accompanied by grooming
- Establish and enforce clear boundaries between staff and students
- Educate staff, students, and parents to recognize grooming behavior and other inappropriate conduct

Cases

Blank area for case notes.

King v. Curtis, W.D. Mich (2016)

- Athletic trainer assaults multiple students
- Dispute over when district had “actual knowledge” assault had occurred
- Court finds not until police contacted school about allegations
 - Prior complaints and situations did not rise to the level of actual knowledge

**King v. Curtis,
W.D. Mich (2016)**

- Once school definitely has knowledge, still need to demonstrate they were not "deliberately indifferent"
- Superintendent on investigation:
 - "there was no reason to investigate" because the allegations against Defendant Curtis "were being investigated by the police"

**King v. Curtis,
W.D. Mich (2016)**

- Superintendent when asked about training:
 - Never attended any training concerning teacher-on-student sexual harassment
 - Never received any training to identify signs of sexual harassment or sexual abuse of children
 - No employee handbook or written materials provide guidance to staff regarding the warning signals that might appear that a child is being sexually abused

**King v. Curtis,
W.D. Mich (2016)**

- Court:
 - These positions reflect a misunderstanding of the school district's obligations under Title IX. As the United States Department of Education had previously informed educators, "the school's Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve the school of its independent Title IX obligation to investigate the conduct."

**King v. Curtis,
W.D. Mich (2016)**

- Court: failure to train staff resulted in violation of plaintiff's constitutional rights
 - Failure to investigate exacerbated hostile environment for students, many in the community believed allegations were fabricated
 - Investigation could have uncovered that Curtis admitted a sexual relationship with a student to a school board member

Questions?

Text: (402) 499-1869

Implications of New Regs

- Return to deliberate indifference standard is a positive change for schools
- Allowance of questioning between complainant and respondent raises difficult policy issues that will take time and consideration to get right
- Greater flexibility in Title IX response procedures
- Requirement of decision-maker who is not coordinator completely changes structure and training


Title IX

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 /KSBschoollaw

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Current Numbers

- PK-38 (SPED=5; 3 severe/profound) -- This number will increase @ Kindergarten graduation
- K-57 (SPED=9; 4 severe/profound)
- 1-55 (SPED=11, with one in testing; 3 severe/profound)
- 2-69 (SPED=9; 2 severe/profound)
- 3-46 (SPED=3)
- 4-61 (SPED=14; 4 severe/profound)
- 5-63 (SPED=4)

Enrollment Trends-

- 18-19--31(-46)
- 17-18--68(-45)
- 16-17--61(-51)
- 15-16--50(-50)
- 14-15--75(-42)

Recommendations

- Four sections of 3rd grade due to high numbers and HIGH Special Education needs
- One teacher $\frac{3}{4}$ reading $\frac{1}{4}$ Title
- Four sections of Kindergarten

Jewel Swanson- Heartland Counseling School-Based Therapist position at O'Neill Schools

Data from August 2018-January 31, 2019

Month	Total # Students Seen for HCS	# By grade level														
		Pre-K	K	1	2	3	4	5	6	7	8	9	10	11	12	
August 2018	4										1	2				1
September 2018	10					1		1	1	2	3					2
October 2018	15		1		1	1		2	1	1	6					2
November 2018	20		1	1	1	1	1	3	2	1	5	3				1
December 2018	23		1	1	1	1	1	3	2	1	6	4				2
January 2019	25		1	1	1	1	3	4	2	1	7	3				1

School Social Work

Total # Students Seen: 11
 Groups Facilitated: 3
 Other SSW Activities:

presented at District FCCLA on self-harm, attended SAT/MDT/IEP meetings, continue to stock all non-food items of Basic Needs Pantry which serves 45-70 families every week including many of our students' families, assisted parents and students with connecting with resources and programs, made referrals to Professional Partners, assisted students with school projects relating to volunteerism and community service opportunities

Non-Returning Staff	2018-2019 Salary	FICA	Ret	Insurance	Total Amount	2019-2020 Salary	FICA	Ret	Insurance	Total Amount	FTE
Staff #1	\$60,716.00	\$4,644.77	\$5,997.41	\$7,040.64	\$78,398.82	\$61,598.50	\$4,712.29	\$6,084.58	\$7,392.36	\$79,787.72	1.000
Staff #2	\$63,812.00	\$4,881.62	\$6,303.22	\$14,407.08	\$89,403.92	\$64,739.50	\$4,952.57	\$6,394.84	\$15,141.84	\$91,228.75	1.000
Staff #5	\$25,490.00	\$1,949.99	\$2,517.85		\$29,957.84	\$26,890.46	\$2,057.12	\$2,656.19	\$7,392.36	\$38,996.13	
	\$150,018.00	\$11,476.38	\$14,818.48	\$21,447.72	\$197,760.58	\$153,228.46	\$11,721.98	\$15,135.60	\$29,926.56	\$210,012.60	2.000
New Staff	2018-2019 Salary	FICA	Ret	Insurance	Total Amount	2019-2020 Salary	FICA	Ret	Insurance	Total Amount	FTE
Staff #1						\$38,041.00	\$2,910.14	\$3,757.61	\$13,381.08	\$58,089.83	1.000
Staff #2						\$39,611.50	\$3,030.28	\$3,912.74	\$7,392.36	\$53,946.88	1.000
Staff #3						\$15,017.40	\$1,148.83	\$1,483.39	\$7,392.36	\$25,041.98	
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$92,669.90	\$7,089.25	\$9,153.75	\$28,165.80	\$137,078.69	2.000
									Increase/Decrease	-\$72,933.90	0.000

OPS Programs and Initiatives

Non-mandated Programs

- 24/7 Learning Initiative – This is funded this through a four year lease, with payments made out of the Depreciation Fund.
- O’Neill Four-year old Pre-school Program – This was grant funded for two years, now we fund this through the general fund and occasional federal grants.
- O’Neill Career Academy – This was grant funded for a couple of years, now we fund this through the general fund and Perkins grants.
- Marzano Instructional Framework and Other Staff Development – This is funded with federal grants.
- MTSS (Multi-tiered Systems of Support) – This is funded with a state MTSS consortium grant and General Funds.
- PBIS (Positive Behavioral Interventions and Supports) – This is funded with a state PBIS grant
- TeamMates – This is funded by the Holt County TeamMates program.
- School Social Worker/Therapist – This is funded by a Title IV grant and Heartland Counseling
- Truancy Prevention – This is funded by the General Fund.
- Developing Eagles After-School and Summer Program – This is funded by a Title I grant and the General Fund.
- HAL (High Ability Learners) Program – This is funded by a state grant and the General Fund.
- Title I – This is funded by a Title I grant and the General Fund
- Summer School – This was funded by Title I Accountability grants in the past and well as a Migrant Education grant. The Title I Accountability grants are no longer available.

Mandated Programs

- The Center for Teaching and Learning – This is funded by the General Fund and we are reimbursed approximately 40% - 45% a year after we spend the money from Federal funds.
- Special Education and Early Intervention (Both O’Neill Public and St. Mary’s) – This is funded by the General Fund and we are reimbursed approximately 40% - 45% a year after we spend the money from Federal funds.
- EL (English Language) Program – This is funded with a Title III grant and General Funds.
- School Safety – This is funded with General Funds.
- Transportation (Parent and Special Education) – This is funded with General Funds.
- Textbook Loan Program – This is funded with a state grant and/or General Funds.
- Title IX – Discrimination on the basis of sex (locker room supervision, etc.)

Lease and Payments

Lease	Lease Amount	Total Amount including Interest	Payment	Payment Date	Fund
HS Energy Project	\$4,145,000.00	\$4,247,491.67	\$535,616.67	12-12-16	General Fund
		\$3,711,875.00	\$527,682.50	5-15-17	Building Fund
		\$3,184,192.50	\$530,897.50	11-13-17	Building Fund
		\$2,653,295.00	\$533,708.75	5-14-18	General Fund
		\$2,119,586.25	\$100,000.00	11-12-18	Building Fund
		\$2,019,586.25	\$431,368.75	11-12-18	General Fund
		\$1,588,217.50			
HS Project 2A,B, & C	\$3,778,066.00	\$4,286,542.02	\$197,306.24	1-25-19	Building Fund
		\$4,089,235.78			
HS Project 2D	\$3,723,299.00	\$4,603,999.25			
HS Project 4	\$4,487,133.00	\$5,091,039.74	\$234,336.66	1-25-19	Building Fund
		\$4,856,703.08			
Equipment	\$1,308,864.00	\$1,485,019.20	\$68,354.30	1-25-19	Building Fund
		\$1,416,664.90			
Total HS Project	\$13,297,362.00	\$15,466,600.21			
		\$14,966,603.01			

Required Items Not Included in the GMP

System/Item	Proposed Cost	Possible Funding Sources	
Security Cameras	\$22,000 - \$54,157	Title IV \$10,000 and Contingency	
Phone System	\$10,747 - \$35,111	Depreciation	
Score Boards	\$127,200.00	Contingency, \$55,000 from Advertising Account and we could finance this through Daktronic at no interest for 5 years	
Marquee Sign	\$6,440.00	Depreciation	
Server/Router/Switches/Airports	\$37,862.00	80% (\$30,290) Funding Through E-rate and remainder from General Fund	
Whirlpool Tubs and Ice Machine for Training Room	May Re-use what we currently have.	Depreciation Fund if Needed	
SMARTBoards/Projectors	\$39,000.00	General Fund an/or Contingency	
Additional Parking			
Appliances for the CTL/Science Wing	\$3,000.00	Contingency	
Furniture	\$18,000.00	Contingency	
Current Owner Contingency			\$147,871.00
Less Security System Cost	\$12,000.00		\$135,871.00
Less Scoreboard System Cost	\$72,200.00		\$63,671.00
Less Appliances Cost	\$3,000.00		\$60,671.00
Less Furniture Cost	\$18,000.00		\$42,671.00
Less SMARTBoards	\$39,000.00		\$3,671.00
Current Depreciation Account Balance			\$587,154.00
Less Phone System Cost	\$19,740.00		\$567,414.00
Marquee Signs Cost	\$6,440.00		\$560,974.00