

National Women's Law Center

Title IX Coordinator Training



CONNECTICUT STATE DEPARTMENT OF EDUCATION

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What to Expect

1. Intro/Overview
2. Defining and Addressing Sexual Harassment
3. Other Title IX areas
 - Athletics
 - Pregnancy/Parenting
 - Single sex
 - STEM and CTE
 - Discipline
4. Formal Responsibilities of Title IX Coordinators

Unit 1: Intro/Overview



Title IX

Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 *et seq.*) prohibits **sex discrimination in education and in employment.**

- *"No person in the United States shall, **on the basis of sex**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."*

Other Relevant Federal Laws

- ❑ Prohibits employment discrimination based on **race, color, religion, sex, or national origin**.
- ❑ Protects men and women who perform substantially equal work in the same establishment from **sex-based wage discrimination**.
- ❑ Prohibits discrimination on the basis of **race, color, and national origin** in federally funded programs and activities.
- ❑ Prohibits discrimination on the basis of **disability** in federally funded programs/activities.

Hate Crimes Legislation

- ❑ Since 1968, federal law covered narrow class of hate crimes, on basis of race, religion & national origin and if victim was engaged in protected activity, such as voting.
 - ❑ Did not cover actual or perceived gender, disability, sexual orientation, gender identity
- ❑ Matthew Shepard & James Byrd, Jr. Hate Crimes Prevention Act of 2009 broadened the definition to include additional protected classes.

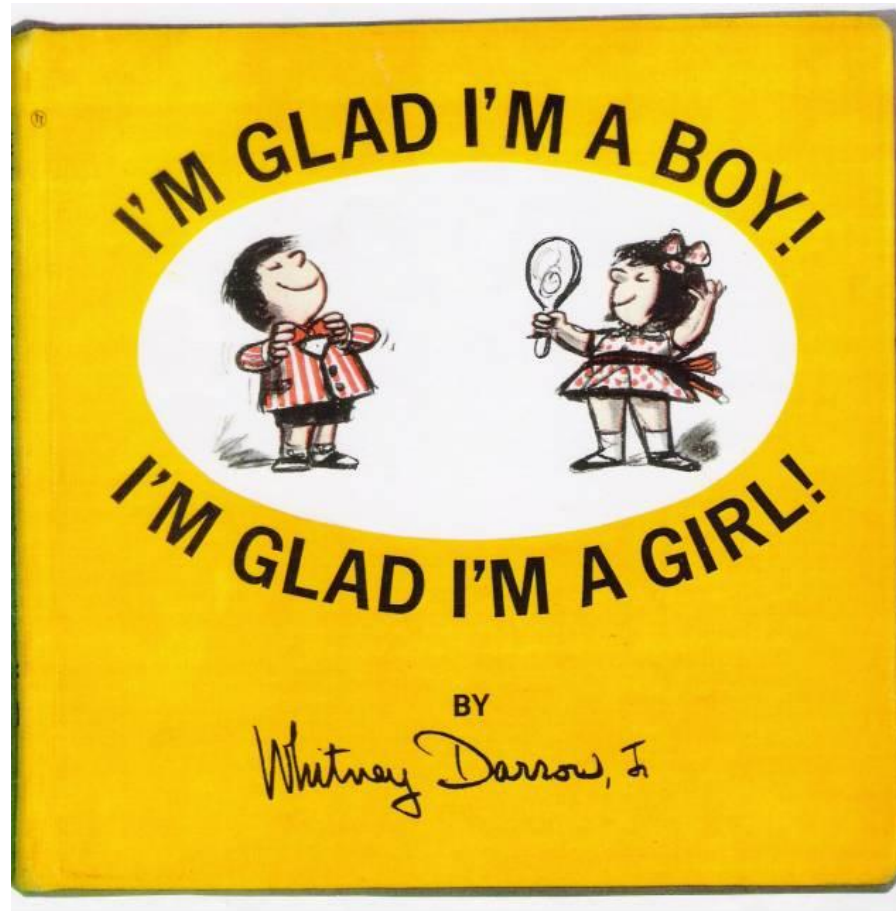
Connecticut Laws

Section 10-15c: *The public schools shall be open to all children five years of age and over . . . and each such child shall have, and shall be so advised by the appropriate school authorities, an **equal opportunity** to participate in the activities, programs and courses of study offered in such public schools . . . **without discrimination on account of race, color, sex, gender identity or expression, religion, national origin, or sexual orientation.***

Rights of transgender students in Connecticut: Pub. Act No. 11-55

- ❑ Prohibits discrimination on the basis of gender identity or expression in all areas in which the laws already prohibit sex discrimination
 - ❑ **Educ.**, employment, public accommodations, housing, credit, etc.
- ❑ “Gender identity or expression” = person’s gender-related identity, appearance or behavior.
- ❑ For more information, see the Connecticut Safe Schools Coalition’s **Guidelines for Schools on Gender Identity and Expression**, at <http://www.ct.gov/chro/>
 - ❑ Name changes, restroom access, locker room placement, sports and gym class placement, dress codes, etc.

Why were these laws enacted?





Boys are doctors.



Girls are nurses.



Boys are policemen.



Girls are metermaids.



Boys build houses.



Girls keep houses.



Boys invent things.



Girls use what boys invent.



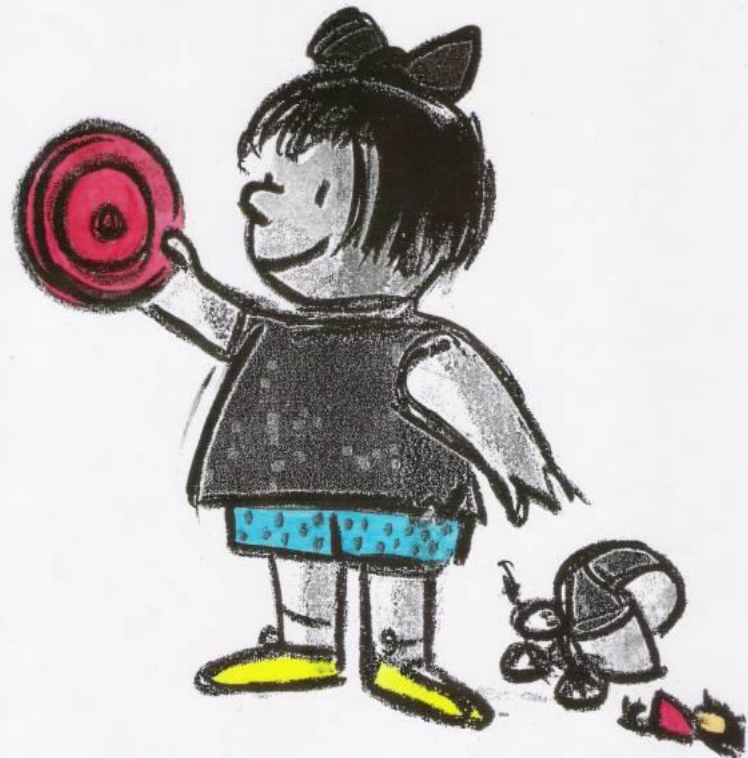
Boys can eat.



Girls can cook.



Boys fix things.



Girls need things fixed.



Boys are Presidents.



Girls are First Ladies.

Who Is Protected by Title IX?

Both men and women

Both staff and students

What Institutions Are Covered by Title IX?

- ❑ Follow the **federal funding**
- ❑ Covered institutions include local school districts, colleges and universities, charter and for-profit schools, as well as athletic associations.
- ❑ Educational programs offered by non-educational institutions that receive federal funds, such as libraries, prisons, and museums, are also covered.

What Educational Activities Are Covered By Title IX?

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

What Is Discrimination “On The Basis Of Sex”?

- ❑ Includes **pregnancy** and related medical conditions
- ❑ Includes **gender stereotyping** but **not sexual orientation**
 - ❑ OCR **October 2010** Dear Colleague Letter
 - ❑ Pending federal laws: **SNDA** and **SSIA**
- ❑ **Gender identity and expression** are covered by “on the basis of sex”

What Is Discrimination “On The Basis Of Sex”?

Intentional Discrimination

- ❑ Does not require intent to harm; difference in treatment is enough
- ❑ Usually proved by circumstantial, not “smoking gun” evidence

Disparate Impact Discrimination

- ❑ Practices that do not explicitly target girls or boys but that nonetheless harm one group
- ❑ Question is whether significantly more members of one sex than the other are affected by the policy
- ❑ If so, question is whether practice is sufficiently related to the goal it is supposed to serve

Examples Of Discrimination?

1. Guidance counselors consistently tell male students about opportunities to take engineering classes, but fail to mention those opportunities to female students.
2. Teachers consistently call on boys more than girls.
3. Recruitment materials feature only girls in child care classes.
4. A principal refuses to promote a woman to assistant principal because he believes it will be better for her after she has a child.

Examples Of Discrimination?

1. A school requires students to pass a weight lifting test before allowing them to enroll in an computer course, and more girls than boys fail the test.
2. An employer that is hiring construction laborers requires applicants to have a high school diploma, and boys tend to have somewhat higher dropout rates than girls.
3. A school refers students for internships based on psychological tests that measure “ambition” and “drive,” and girls have lower scores than boys on these criteria.
4. Black girls who are referred to the principal’s office by their teachers are more likely to receive suspensions than their white peers for similar behavior.

Name That “Discrimination”

Adverse action taken against an individual because s/he protested discrimination.

- ❑ Supreme Court held in 2005 that individuals – including **teachers and coaches** protesting discrimination against their students -- **can sue** under Title IX to challenge this.

What Is Retaliation?

*Any form of adverse treatment, which for **employees** can include:*

- Demotion or termination
- Reduction in pay
- Material change in job duties
- Harassment on the job
- Refusal to give positive job references

What Is Retaliation?

*Any form of adverse treatment, which for **students** can include:*

- Suspension or expulsion
- Reduction in grades
- Denial of permission to participate on teams, or change in position on team, amount of playing time, etc.
- Harassment in class or on field

Retaliation Case Law

Roderick Jackson v. Birmingham Board of Education (U.S. Supreme Court, 2005)

- ❑ Individuals who complain about sex discrimination have a private right of action for retaliation under Title IX.

UNIT 2: Defining and Addressing Sexual Harassment & Bullying



Harassment /s Discrimination

Harassment includes:

- Sexual harassment
- Gender-based harassment (name calling, stereotyped remarks)

Sexual Harassment Is:

- ❑ Conduct of a **sexual nature**
- ❑ That is **unwanted** and **unwelcome**.

Sexual Harassment Includes:

- ❑ Unwelcome **sexual advances** or requests for **sexual favors**;
- ❑ Other verbal, nonverbal, or physical conduct of a sexual nature.
 - ❑ Suggestive or lewd remarks or jokes
 - ❑ Derogatory or pornographic posters, cartoons, screen savers
- ❑ **Sexual violence**, including **rape**, is a type of sexual harassment.

NWLC School Sexual Violence Cases

- NWLC filed a lawsuit on behalf of a Michigan high school student, who was sexually assaulted by a star athlete in a soundproof band room. The principal did not properly investigate the claim or protect the student from subsequent cyberbullying and retaliatory peer harassment. Two weeks after the first incident, the same athlete sexually assaulted another student in the parking lot.
- NWLC sued an Alabama middle school whose policy of not investigating sexual harassment claims unless the harasser was “caught in the act” led to the rape of a 7th grade girl. The girl was told by a teacher to act as “bait” in a failed sting operation to catch a boy with a history of inappropriate sexual behavior.

Gender-based Harassment Is:

- ❑ Harassment based on failure to conform to **stereotypical** notions of **masculinity** or **femininity**.
- ❑ May include acts of **verbal**, nonverbal, or physical aggression, intimidation, or **hostility**.

Bullying

- ❑ Extremely serious and underreported problem - recently, 50 percent of students report being bullies and more report being victims.
- ❑ Two key aspects of bullying:
 1. Repeated harmful acts
 2. Imbalance of power

Connecticut's Anti-Bullying Law - Definition

- ❑ “Bullying”
 - ❑ Repeated
 - ❑ written, oral, or electronic communication, or
 - ❑ Physical act or gesture that
 - ❑ Causes phys. or emotional harm or damage to property,
 - ❑ Places student in reasonable fear of harm to himself or herself or damage to his/her property
 - ❑ Creates a hostile school environment for the student, or
 - ❑ Substantially disrupts the education process or orderly operation of a school

Connecticut's Anti-Bullying Law – Protected Classes

- ❑ Bullying shall include, *but not be limited to*,
 - ❑ conduct **based on** any “*actual or perceived differentiating characteristic*” such as
 - ❑ Race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity or expression, socioeconomic status, academic status, physical appearance, or mental, physical, developmental or sensory disability;
 - ❑ Or conduct based on **association with** an individual or group who has or is perceived to have one or more such characteristics.

Connecticut's Anti-Bullying Law – Highlights

- ❑ Includes **cyberbullying**
- ❑ Requires repeated behavior
- ❑ Definition of bullying does not depend on where the behavior occurred (i.e, **can be off-campus**)
- ❑ List of protected characteristics is **not exclusive**
- ❑ Any school employee who witnesses bullying or receives reports of such must **report** the allegation to the Safe School Climate Specialist
- ❑ Disciplinary action is not always required, but may be appropriate. It may not, on its own, constitute an adequate response
- ❑ Citation: Pub. Act 11-232; Conn. Gen. Stat. § 10-222d

Bullying: Oct. 2010 Dept of Ed Guidance

- ❑ Clarifies that bullying is form of harassment when based on protected characteristic
- ❑ Protections exist under Title IX and anti-gay harassment is often covered by Title IX
- ❑ <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>
- ❑ One-stop site for federal resources on bullying: www.stopbullying.gov

Harassment Can Be:

- ❑ Perpetrated by a teacher, student or third party
- ❑ Directed by either gender at the other
- ❑ Directed at a victim of the same gender as the harasser

Harassment Creates:

- ❑ A **hostile environment** when the conduct is sufficiently **severe, pervasive, OR persistent** that it **interferes with** or limits a student's ability to participate in or benefit from the **services, activities, or opportunities** offered by the school.

How to Tell If There Is a Hostile Environment

Assess several factors:

- Severity** of conduct
- Frequency** of conduct
- Relationship and ages** of harasser and victim
- Impact on victim** (both subjective and objective)

Harassment Can Take Place:

- On campus
- At sporting events
- At an off-campus training program
- At professors' offices or homes
- Off-campus (i.e., online), if it has continuing effects on a student's educational experience.

Harassment Can Cause:

- Physical or emotional injury to victims
- Disruption of education
- Damage to a school's reputation
- Legal liability for a school

What Must Schools Do?

- ❑ If the school **knows or reasonably should know** about harassment;
- ❑ That creates a **hostile environment**;
- ❑ The school must take **immediate action** to **eliminate** harassment, **prevent** its recurrence, and **address** its effects.

Civil Liability for Harassment of Students

*The Supreme Court has said that schools can be liable for **money damages** to remedy pain and suffering associated with sexual harassment if:*

- Harassment so severe, pervasive, AND objectively offensive that it interfered with education;
- School official with authority to stop harassment actually knew about harassment; AND
- Official was “deliberately indifferent” to harassment

Are These Examples of Prohibited Harassment?

1. Victor Goyle is regularly mocked by his male classmates for his effeminate mannerisms and nontraditional choice of extracurricular activities.
2. Becky and Brandon were an item last year but broke up over the summer. Brandon keeps asking Becky out but she is not interested. Now other students are spreading rumors about Becky's sexual behavior on the internet.
3. Hagrid School's athletic director insults all athletes who lose games, calling them "sissies" and "girls."

DOE April 2011

Guidance on Sexual Violence

- ❑ The requirements of Title IX for sexual harassment also include sexual violence
- ❑ Lays out the specific Title IX requirements applicable to sexual violence.
 - ❑ Schools' obligations to respond
 - ❑ Procedural requirements
 - ❑ Notice of nondiscrimination
 - ❑ Title IX Coordinator
 - ❑ Grievance procedures
- ❑ <http://www2.ed.gov/about/offices/list/ocr/letters/college-201104.pdf>

Recent Guidance on Sexual Violence

- In April 2014, OCR issued a comprehensive document answering 50+ common questions related to Title IX and sexual violence, including:
 - Who is obligated to report incidents of school violence?
 - How should a school handle same-sex sexual violence complaints?
 - How should a school respond to a student's request for confidentiality?
 - Elements that should be included in a school's Title IX investigation

- <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

White House Task Force Report

- White House Task Force to Protect Students from Sexual Assault established January 2014
 - Recommends and provides toolkit for administering school climate surveys
 - Contains checklist for comprehensive sexual misconduct policy
 - Encourages schools to comprehensively train teachers and staff to appropriately investigate sexual assault claims
 - <https://www.notalone.gov>

Practically Speaking, What Does Title IX Require?

- ❑ Title IX requires schools to have a Title IX Coordinator, and an **anti-discrimination policy and grievance process** to address sex discrimination, including sexual harassment.
- ❑ Legal obligation to take steps to **prevent harassment and address any harassment that occurs**
- ❑ Need to **step in before** conduct amounts to unlawful harassment

Sexual Harassment Grievance Process & Policy

Make the Policy User-Friendly.

- ❑ Gather input from the community, e.g. by distributing survey to students.
- ❑ Use plain language that will be accessible to students and employees.
- ❑ Provide notice to students and employees of the grievance procedures, including where complaints may be filed.

Sexual Harassment Grievance Process & Policy

Clearly Define Sexual Harassment.

- Clearly explain the **types of behavior** that constitute sexual harassment.
- Provide specific **examples** of prohibited behaviors.
- Make clear that **all students and staff are protected** from sexual harassment—regardless of who the harasser is.
- Spell out that harassment **need not occur on campus** to be prohibited.

Sexual Harassment Grievance Process & Policy

Clearly Explain the Grievance Process.

- Describe the **steps of process**.
- Identify **staff responsible** for each step of process.
- Provide reasonably prompt **time frames** for each step of process.
- Assure the parties they will be **informed of the outcome**.
- Lay out **possible disciplinary actions** for harassment.
- Explain how to file an **appeal**.

Sexual Harassment Grievance Process & Policy

Ensure Confidentiality and Prohibit Retaliation.

- ❑ Ensure that complaints will be handled with as much **confidentiality** as possible.
- ❑ Make clear that **retaliation** is prohibited.
- ❑ Confidentiality will help to prevent retaliation against students or witness's cooperating in an investigation, but you should explicitly forbid such conduct in your official policy and provide specific illustrations of retaliatory acts.

Sexual Harassment Grievance Process & Policy

Remember...

- ❑ Use the **preponderance of the evidence standard**. Give both parties opportunity to present witnesses and evidence, and similar access to info that will be used at hearing.
- ❑ Complaining parties may simultaneously pursue other legal remedies such as filing a criminal complaint, bringing a lawsuit or filing a claim with the U.S. Department of Education's OCR.
- ❑ In addition to (but not in lieu of) formal grievance procedure, you may facilitate informal actions in less serious cases of sexual harassment by providing a mediation process.
 - ❑ **In cases of sexual assault, mediation is never appropriate.**
 - ❑ Students must be told they can end informal actions at any time in favor of the formal procedures.

Sexual Harassment Grievance Process & Policy

Make Sure the Policy is Well-Publicized and Effectively Implemented.

- ❑ Every student and school employee should receive a **copy** of the policy and complaint procedures or a brochure or pamphlet summarizing it, as well as regular **reminders** about it.
- ❑ **Posters** about the policy and sexual harassment should be placed in locker rooms, classrooms, administrators' offices, student activity areas, or other public places.
- ❑ A description or summary of the policy, with names of persons to contact for more information, should be included **online** and in all major school **publications** such as handbooks, course catalogs, or orientation materials.

Good Policies Not Enough

2011 AAUW study on sexual harassment at middle and high schools shows harassment is still too common:

- **48%** of the students surveyed experienced some form of sexual harassment during the 2010-11 school year.
 - 56% of girls and 40% of boys.
- **87%** of those who experienced sexual harassment said it had a negative effect on them.
- **30%** of students surveyed were harassed electronically—by text, email, Facebook, etc.
- *The majority of harassment goes unreported—only **9%** of students who were sexually harassed **reported it** to an adult at school.*

What Should You Do If Harassment Occurs?

- ❑ Investigate and address harassment promptly and thoroughly whenever you become aware of it, **whether or not a formal complaint is filed.**
- ❑ A law enforcement investigation does not relieve the school of its **independent obligation** to investigate the conduct.
- ❑ Ensure **no retaliation** against victim.
- ❑ Protect **confidentiality** to the extent possible.
- ❑ Take **interim measures** as necessary.
- ❑ Take effective and appropriate **remedial action.**

What Should You Do If Harassment Occurs?

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.
- Be sure to minimize the burden on the complainant/target.

What Should You Do If Harassment Occurs?

Investigate All Allegations of Harassment.

- ❑ Investigate and determine what occurred, **regardless of whether formal complaint filed**.
- ❑ The inquiry must be ***prompt, thorough, and impartial***. At a minimum, investigation should include interviews with victim, alleged harasser, and anyone else who may have relevant information.
- ❑ In cases of potential criminal conduct, determine whether state/local law requires **notifying authorities**,

Dangerous Words

When responding to a complaint, be careful not to say the following:

- The people in our school would never do that.
- I know he/she didn't mean anything like that.
- It's your fault for dressing so provocatively.
- You need to learn to handle these things.

Dangerous Words

- Just ignore it.
- He puts his arms around everyone.
- Why can't you learn to accept a compliment?
- You must have wanted it- otherwise you would have told him no.
- That's how they do things where he comes from.
- It's a joke. Lighten up.
- No one's filed a charge so our hands are tied.

Dangerous Words

- We've never had a complaint, so we don't have a problem.
- This kind of behavior is all a part of growing up.
- It's a matter of hormones, we can't control that.
- If we had to discipline every student who used bad language we'd never get anything else done.
- Its just a prank that got out of hand.
- Oh well, boys will be boys.

What Should You Do If Harassment Occurs?

Take Steps to Stop the Harassment from Happening Again.

- Take steps *reasonably calculated* to prevent harassment from recurring.
- If needed, revise and re-distribute harassment policies/procedures, and provide training so students and staff can recognize and respond to harassment.
- Be sure your actions do not create additional harm for the student who has already suffered harassment.
- Follow up with student victim to make certain the harassment has stopped and no retaliation has occurred.

What Is Effective and Appropriate Remedial Action?

Protect and minimize burden on complainant, including taking interim steps before final outcome.

- Providing an escort between classes, counseling, medical services, and academic support (tutoring).
- Do NOT remove complainants from classes while allowing alleged perpetrators to remain.
- Removing negative grades or evaluations that resulted from the harassment from the student's record, or allowing a student to retake a test or class.
- Providing damages to compensate for out of pocket costs and emotional distress.

Strategies for Administrators

- ❑ Ensure all necessary anti-discrimination policies and procedures are in place.
- ❑ Develop sexual harassment training programs for administrators, employees, and students.
- ❑ Conduct self-evaluation of school to determine what kind of educational environment exists for female students.
- ❑ Make certain that orientation programs for students, employees, and administrators include materials about sexual harassment.
- ❑ Be sure that all school programs and activities, even those that occur off-school premises, are free from sexual harassment.

Preventing & Addressing Sexual Harassment/Violence

Implement education and training programs

ALL STUDENTS AND STAFF:

- * What constitutes sexual harassment and violence, warning signs, how to respond
- * Policies, disciplinary procedures and consequences.

Inform students that primary concern is student safety so other rules violations will be addressed separately, e.g., use of alcohol or drugs never makes victim at fault for sexual violence.

Make victim resources available

Develop specific sexual violence materials that include schools' policies, rules, and resources for students, faculties, coaches, and administrators.

Responding to Sexual Harassment and Violence

Enforcement and Liability

- OCR will seek appropriate remedies for complainant and broader student population when a school does not voluntarily comply with Title IX.
- Can withdraw federal funding
- Can refer case to the U.S. Department of Justice
- Private suits for damages under Title IX

Did These Schools Respond Effectively?

1. A student complains that she was sexually assaulted by a classmate. The university transfers her out of the class they share, she receives a “W” on her transcript, and no further harassment occurs.
2. On two occasions, the women’s basketball team is harassed by a particular opposing team. Afterwards, the university speaks to the coach of the opposing team and asks the referee to be alert to any problems. The university also sends an administrator to police the conduct of the opposing team.

How Would You Conduct This Investigation?

A parent just reported to you that his 2d grade son told him that a 5th grader had been touching his private parts on the playground for several days.

- What questions should you ask the parent?
- What information should you *give* the parent?

How Would You Conduct This Investigation?

- What should you do after the interview with the student who complains?
- Who should you talk to during the investigation? What question should you ask?
- Are there interim measures you should take while the investigation is ongoing?

How Would You Conduct This Investigation?

- If the police investigate and decide not to prosecute, is your job over?
- What if it seems more likely than not that harassment occurred, but we can't tell beyond a reasonable doubt?
- What steps should you take if you find that the allegations are true?

Unit 3: Other Title IX Areas

- 1. Athletics**
- 2. Pregnancy and Parenting**
- 3. Single sex education**
- 4. STEM and CTE**
- 5. Discipline**

Title IX: Athletics



Three basic requirements:

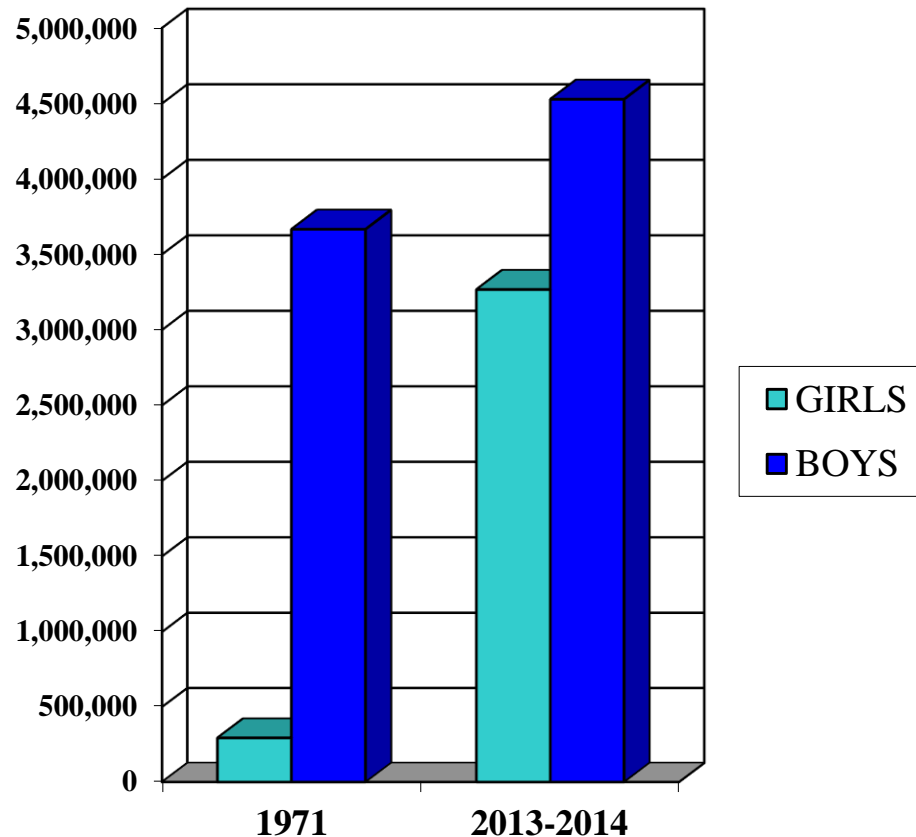
1. Schools must offer male and female students **equal opportunities to _____**.
2. Schools must **allocate _____ dollars equitably**.
3. Schools must provide male and female athletes with **equal _____**.

Benefits of Sports for Girls

- ❑ Girls who play sports are more likely to graduate from high school, have higher grades, better test scores, and better employment outcomes.
- ❑ Female athletes are more likely to do well in science classes than their classmates who do not play sports.
- ❑ Sports participation decreases a young woman's chance of developing heart disease, osteoporosis, and other problems.
- ❑ Sports participation reduces the risk of obesity in adolescent girls, and for adult women who played sports in school.
- ❑ Young women who play sports have higher self-esteem, lower incidence of depression and more positive body image.
- ❑ Female student-athletes are less likely to smoke or use drugs and have lower rates of both sexual activity and pregnancy.

Good News: Female Sports Participation Has Skyrocketed

Girls' Participation in Athletics Before and After Title IX



Bad News: Discrimination Persists

- ❑ Women and girls at all levels of education are still being denied opportunities to play sports, and equal benefits and services.
- ❑ Schools are providing 1.3 million fewer chances for girls to play sports in high school than boys.
- ❑ Female athletes at the typical Division I-FBS (formerly Division I-A) school receive roughly 28% of the total money spent on athletics, 31% of the recruiting dollars, and 42% of the athletic scholarship dollars.



Participation: The “Three-Part Test”



Schools are providing equal participation opportunities to their male & female students if:

- ❑ Prong 1: Athletic participation opportunities for males and females are substantially proportionate to their respective enrollments; **OR**
- ❑ Prong 2: The school has a history and continuing practice of expanding athletic participation opportunities for the underrepresented sex; **OR**
- ❑ Prong 3: The school has fully and effectively accommodated the interests and abilities of the underrepresented sex.

Prong One: Proportionality

Percentage of athletes who are female must mirror percentage of students who are girls.

- ❑ So, if 50% of students are girls, then about 50% of athletes must be girls.

Example: Quinnipiac University case

- ❑ School cut volleyball and counted cheerleading as sport to increase participation numbers
- ❑ Court said reinstate volleyball and cannot count cheerleading because too underdeveloped to count as competitive sport
- ❑ Without cheer, 3.62% participation gap, which does not meet prong one

Does Cheerleading Count?

Quinnipiac case

- ❑ Competitive cheer activity “still too underdeveloped and disorganized to be treated as offering genuine varsity athletic participation opportunities for students”

2008 Dept of Ed Dear Colleague Letter

- ❑ Discussed when activity is a sport for Title IX compliance

Update:

- ❑ USA Cheer working with some schools to get “Stunt” recognized by NCAA.
- ❑ USA Gymnastics working with others to get “Team Acrobatics and Tumbling” recognized.

Prong Two: Program Expansion

The school has a history and continuing practice of expanding athletic participation opportunities for the underrepresented sex.

- ❑ Record of adding female participation opportunities
- ❑ Current plan of expansion responsive to developing interests and abilities of women

Bottom line: Should see a pattern of consistently expanding opportunities in response to developing interests/abilities



Prong Three:

Full And Effective Accommodation

The school has fully and effectively accommodated the interests and abilities of the underrepresented sex.

April 2010 Clarification

- Rescinded 2005 Clarification that enabled schools to send email survey and count non-response as lack of interest and receive presumption of compliance.
- Restored previous policy, under which schools must evaluate multiple factors (including surveys) to demonstrate compliance with prong three.

2010 Clarification: Requires More to Assess Interest

The following indicators should be evaluated:

- Requests by students to add or elevate a sport;
- Participation in particular club or intramural sports;
- Interviews with students, coaches and administrators;
- Participation rates in high schools and community leagues in areas from which school draws students; and
- Results of questionnaires regarding interests in particular sports.

<http://www2.ed.gov/print/about/offices/list/ocr/docs/clarific.html>

Have These Schools Met the Three-Part Test?

1. Prong One: Hogwarts High School has a student body that is 49% male and 51% female. Its athletes are 51% male and 49% female.
2. Prong Two: Potter Regional High School last added a team for girls in 2003.
3. Prong Three: Snape High School does not offer proportionate opportunities to girls and does not have a history and practice of adding opportunities for them. It has sent a survey to its female students asking about their athletics interests but got very few responses.

Adequate Defenses to Not Meeting Three-Part Test?

1. “Girls are less interested in sports than boys, and boys need them more to stay engaged in school.”
2. “Giving girls additional opportunities to play would require cutting boys’ teams.”
3. “Boys’ sports bring in more money than girls’ sports.”

Finishing Last: Girls of Color and School Sports Opportunities (NWLC 2015)

Key Findings:

- ❑ 42 percent of our nation's public high schools are 90 percent or more white, or over 90 percent minority.
- ❑ 40 percent of heavily minority high schools have large female opportunity gaps compared to 16 percent of heavily white schools.
- ❑ http://www.nwlc.org/sites/default/files/pdfs/final_nwlc_girlsfinishinglast_report.pdf

Rally for Girls' Sports: She'll win more than a game

Public Education & Outreach

- Outreach on E-mail, Facebook and Twitter
- Public Education Opportunities
- Technical Assistance
- Hotline: 1-855-HER-GAME (1-855-437-4263)
to report inequities



Enforcement

- 12 Title IX complaints filed with the Department of Education against school districts for failing to provide girls with equal opportunities to play sports

NWLC Complaints

- ❑ Filed against 12 school districts—one in each OCR region—representative of a much larger problem.
- ❑ Districts picked based on own CRDC data, which show failure to provide girls with equal opportunities to play sports.
- ❑ Districts vary in size, locale (urban, rural, suburban), and diversity of the student population.
- ❑ OCR asked to investigate all high schools in the districts.
- ❑ Resolutions issued require schools to conduct comprehensive assessments of unmet interests among middle and high school girls and add opportunities based on results.

Complaints Highlight Huge Participation Gaps

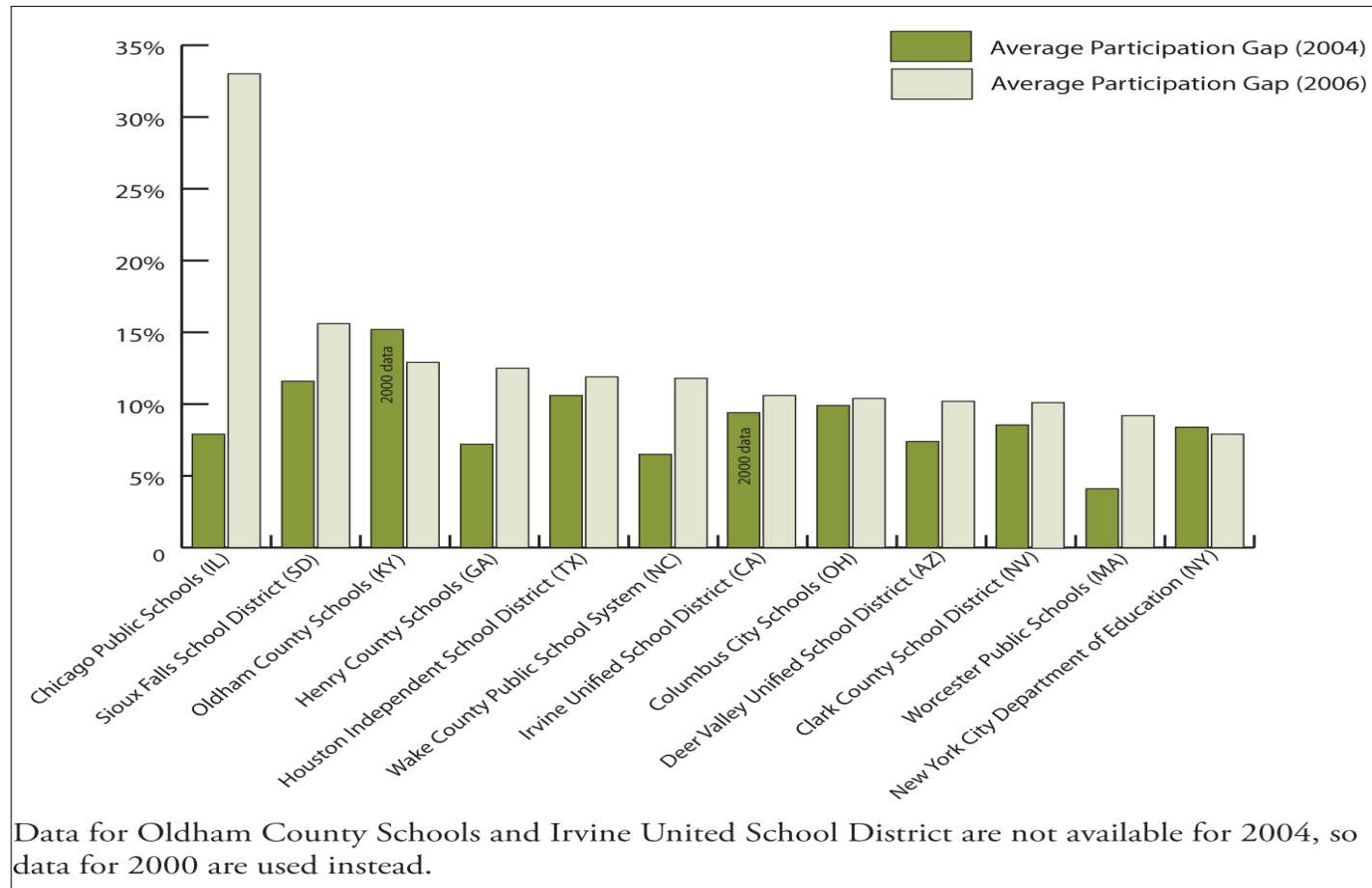
SCHOOL DISTRICTS			SAMPLE SCHOOLS		
SCHOOL DISTRICT	AVERAGE PARTICIPATION GAP*	NUMBER OF GIRLS' OPPORTUNITIES LOST**	SAMPLE SCHOOL	PARTICIPATION GAP	NUMBER OF GIRLS' OPPORTUNITIES LOST
Chicago Public Schools (IL)	33.0%	7294	Marshall Metropolitan High School	40.8%	116
Sioux Falls School District (SD)	15.6%	569	Washington High School	19.9%	241
Oldham County Schools (KY)	12.9%	193	Oldham County High School	18.8%	73
Henry County Schools (GA)	12.5%	430	Stockbridge High School	28.9%	124
Houston Independent School District (TX)	11.9%	2404	Sterling High School	20.3%	138
Wake County Public School System (NC)	11.8%	2,620	Wake Forest-Rolesville High School	18.7%	233
Irvine Unified School District (CA)	10.6%	767	Northwood High School	11.5%	223
Columbus City Schools (OH)	10.4%	982	West High School	15.5%	74
Deer Valley Unified School District (AZ)	10.2%	739	Deer Valley High School	14.1%	202
Clark County School District (NV)	10.1%	3,591	Coronado High School	13.7%	228
Worcester Public Schools (MA)	9.2%	657	North High School	18.1%	108
New York City Department of Education (NY)	7.9%	16,993	Washington Irving High School	11.2%	291

Source: 2006, Department of Education, Office for Civil Rights, Civil Rights Data Collection, <http://ocrdata.ed.gov/Default.aspx>. (Schools are included when data are available regarding both enrollment and athletic participation.)

* Average Participation Gap: The average of the participation gaps of schools in the district.

** Number of Girls' Opportunities Lost: The sum of the number of opportunities lost at each school in the district.

Participation Gaps Go From Bad to Worse



Sample Sports Not Offered to Girls in Districts

- Soccer
- Softball
- Tennis
- Swimming & Diving
- Golf
- Lacrosse
- Field Hockey
- Bowling
- Gymnastics



* Examples of sports sponsored by relevant state high school athletic associations that are not offered to girls at one or more of the 12 districts

Athletic Scholarships

- ❑ The total scholarship dollars awarded to male and female athletes must be within one percent or one scholarship, whichever is greater, of their participation rates, absent a legitimate nondiscriminatory reason.
- ❑ Focus is on the overall dollar amount provided rather than the number of scholarships.



Gender Equity in Difficult Economic Times

- ❑ Any cuts in athletic opportunities or benefits due to budget issues must not exacerbate existing gender inequalities or create new ones.
- ❑ If not already equal, cuts likely to aggravate existing inequality and violate Title IX.
- ❑ If already equal but cuts made disproportionately, could create inequality and violate Title IX.

Equal Benefits/Services

*Boys' and girls' athletics programs must be **equal overall**,* including:*

- Scheduling
- Travel
- Coaching
- Locker rooms/facilities
- Medical/training services
- Publicity
- Recruiting
- Tutoring
- Housing/dining

* No “booster club” exception

Adequate Defenses to Unequal Treatment?

1. “There aren’t enough fields or facilities to allow girls and boys to play in the same season.”
2. “Even if the girls’ soccer team is treated worse than the boys’ soccer team, the girls’ basketball team is treated better than the boys’ basketball team.”
3. “The boys’ equipment costs more than the girls’ equipment.”
4. “More people come to the boys’ games so they deserve the better schedule.”

Additional Points

- ❑ There is no requirement that schools spend the same amount of money on male and female athletes, but differences in spending can raise red flags about second-class treatment.
- ❑ That money is provided by a booster club or other outside funding to support a team is not a defense to disparities in benefits or services.
- ❑ Provisions addressing coaching and tutoring create two sets of rights: those of the coaches/tutors not to be discriminated against and those of the student-athletes to receive equal quality coaching and tutoring.
- ❑ Schools must treat males and females equally with respect to recruitment.

Eligibility/Inclusion of Transgender Athletes

- ❑ CT law follows recommendation of the National Center for Lesbian Rights in their report, *On the Team*, which includes policy recs, best practices.
- ❑ High school: Students are eligible to compete on teams consistent with their gender identity, regardless of whether they have undertaken any medical treatment.
- ❑ NCLR report encourages school community to use appropriate pronouns regarding transgender students, regardless of team on which student competes.

Transgender Athletes at Post-Secondary Level

- ❑ NCAA: New policy released, intended to increase inclusion and to be make NCAA policies consistent with school diversity/anti-discrimination policies.
- ❑ Any transgender student-athlete who is not taking hormone therapy related to gender transition may participate on the team consistent with their assigned birth gender.
- ❑ Female transgender students, (male-to-female transition) may participate on a female team after undergoing one year of testosterone-suppression therapy.
- ❑ Male transgender students (female-to-male transition) who have received testosterone therapy (after obtaining a “medical exception” waiver for the use of a banned substance), may compete on a men’s team, but may no longer compete on a women’s team.

Title IX: Pregnancy



BASIC RULES

- ❑ Schools may not discriminate (in academic or extracurricular activities) based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions.
- ❑ Schools must treat students affected by pregnancy and related medical conditions the same as students similarly affected by temporary disabilities AND must excuse all pregnancy-related absences for as long as medically necessary.

Pregnancy and Parenting: Effect on Educational Attainment

- ❑ Child Trends study: 51% of women who were teen mothers do not get high school diploma by age 22; one in three teenage mothers get neither diploma nor GED by age 22.
- ❑ National Campaign to Prevent Teen & Unplanned Pregnancy: Only 2% of young teen mothers (that gave birth by age 18) get college degree by age 30.

Title IX Regulations on Pregnancy

- ❑ Absences must be excused for as long as student's doctor deems medically necessary.
- ❑ Students must be given a reasonable amount of time to make up missed work.
- ❑ Services for temporarily disabled students must be offered on same basis to pregnant students.
- ❑ Doctor's note for continued participation can be requested only if done for all students with conditions requiring medical care.
- ❑ Special programs or schools must be voluntary and offer same range of learning opportunities.

New Department of Education Guidance on Title IX and Pregnancy

- ❑ June 2013 Dear Colleague Letter and Booklet: *Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972*
- ❑ Sent to all districts, state superintendents, college and university presidents
- ❑ Applies to secondary and post-secondary
- ❑ FAQs re: how to interpret Title IX regulations
- ❑ Suggests strategies and programs that can address the educational needs of PPS
- ❑ <http://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf>

2013 Guidance: Absences

- ❑ Must excuse absences due to pregnancy and related conditions, incl. recovery from childbirth, for as long as student's doctor deems medically necessary.
- ❑ “When the student returns to school, she must be reinstated to the status she held when the leave began, *which should include giving her the opportunity to make up any work missed.*”

2013 Guidance: Make-Up Work

- “School may offer student alternatives to making up missed work, such as retaking a semester, taking part in an online course credit recovery program, or allowing the student additional time in a program to continue at the same pace and finish at a later date, especially after longer periods of leave. ***The student should be allowed to choose how to make up the work.***”

2013 Guidance: Adjustments for Pregnant Students

- “To ensure a pregnant student’s access to its educational program, when necessary, a school must make adjustments to the regular program that are reasonable and responsive to the student’s temporary pregnancy status. For example, a school might be required to provide a larger desk, allow frequent trips to the bathroom, or permit temporary access to elevators.”

2013 Guidance: Harassment

- Harassment based on pregnancy is sexual harassment, including “making sexual comments or jokes about a student’s pregnancy, calling a pregnant student sexually charged names, spreading rumors about her sexual activity, and making sexual propositions or gestures.”

2013 Guidance: Clubs, Activities, and Sports

- Cannot exclude pregnant student from extracurriculars of any kind
- She also must be eligible to hold leadership positions
- Even if activity is not operated directly by the school (e.g. local nonprofit rents school facilities to conduct an after-school activity)

Teachers and Staff Must Know and Follow Title IX Requirements

- Schools must ensure individual teachers do not discriminate
- If grading based in part on class attendance/participation, must allow student to earn credits she missed
- Teacher cannot refuse to accept work after deadline if missed because of pregnancy/childbirth absences.

Was Guidance Really Necessary?

- Yes! PPS still face many discriminatory barriers, including:
 - Environment of discouragement
 - Punitive absence policies
 - The Unequal Alternative
 - Inaccessible Homebound Services

Environment of Discouragement

- Shift in way treated by peers, teachers, and school administrators; school officials give up on them and talk about them in diminished terms
- Lack of guidance, support, encouragement
- Stereotypes often internalized, affects school engagement
- Examples:
 - Steering to lesser alternatives
 - Forbidding pregnant student from walking at graduation
 - Excluding eligible students who are or were pregnant from induction into National Honor Society

BUT Research Contradicts Stereotypes

- Study of young mothers revealed that almost all teens (regardless of status) described the emergence of new priorities and concerns for their future as they anticipated motherhood.
- This determination can be thwarted by competing work demands, family and child care responsibilities, and educational barriers.
- Young parents who drop out say they would have worked harder if school had demanded more of them and provided the necessary support.

Rigid Application of Rules; Discipline

- Example: Threatening a young woman who no longer fit into school uniform with detention; turning pregnant students away *at the door* because not dressed in uniform.
- Truancy
 - Automatic in some places
 - Most states lack clear policy on excused absences for PPS
 - Exceptions: CA, FL, OR, NC, ME, and AZ.

Unequal Alternatives

- PPS steered/pushed into alternative programs
- Some programs inferior, dead-ends
- Example: NYC “P Schools” (shut down in 2007)
 - Average daily attendance was only 47%
 - Less than half of students transitioned back into mainstream high schools
 - NYT reporter who visited “P school” found a dozen girls perched at their desks:

No pencils, no textbooks, no Pythagorean theorem. Instead, they sewed a quilt...That is what passes for math in one of New York City’s four high schools for pregnant girls, this one in Harlem. “It ties into geometry,” said Patricia Martin, the principal. “They’re cutting shapes.”

Homebound Instruction

- Most PPS will not be able to attend school for some period of time before or after giving birth.
- Michigan and Georgia used to offer homebound, hospital, or online learning to K-12 students who were temporarily disabled, but not to PPS, which violated Title IX; those regulations now fixed.
- Only NC has a law *requiring* schools to offer homebound and online learning to PPS – even those whose *children* have temporary illnesses or who are unable to attend school because can't access childcare.

NWLC Report – June 2012

A Pregnancy Test for Schools: The Impact of Education Laws on Pregnant and Parenting Students

- ❑ NWLC examined state education laws and policies for all 50 states, Puerto Rico, and D.C.
- ❑ Identified promising state policies/programs, state laws that might be harmful to the educational success of PPS, and states that are doing nothing.
- ❑ Ranks states
- ❑ Recommendations and Toolkit
- ❑ www.nwlc.org/pregnancytestforschools

Problems at Postsecondary Level Too

- CUNY Settlement May 2013 required policy changes across entire CUNY system, including:
 - **Policy memo** on Title IX and pregnancy distributed to all faculty and staff, colleges' legal departments, and student affairs and academic departments.
 - College **student handbooks and website** will include info on Title IX and pregnancy
 - All Title IX Coordinators and Directors of Student Affairs will get **training on new policy**.
 - Information about the university's obligations relating to student pregnancy will be included in **Title IX trainings** given to faculty and students.

Frequent Concern: Lactation needs

Schools' unwillingness to provide breaks of necessary duration, and clean, private space (not restroom) to express breast milk can pose serious hardship for student mothers

- Failure to express milk on schedule can lead to engorgement = discomfort, pain, fever, infection, reduced supply
- Serious distraction; can negatively impact ability to learn
- Refusal to accommodate these needs sends message that being mother is incompatible with educational success
- Choice women should not have to make
- Required by ACA in employment context

Examples of Title IX Violations

Recent Pregnancy Discrimination Complaints

- ❑ This summer, NWLC filed an OCR Complaint against a school district in Georgia; high school principal told pregnant student she would not receive credit for work completed while on bed rest, refused to excuse pregnancy-related absences, and denied student homebound instruction offered to other eligible students with medical conditions.

Examples of Title IX Violations

- ❑ Encouraging student to get GED instead of high school diploma
- ❑ Refusing to send work home for student recovering from childbirth
- ❑ Pregnant or postpartum students cannot run for homecoming queen
- ❑ Refusing to print yearbook photo of pregnant student
- ❑ Not allowing pregnant student to walk at graduation.

Title IX is a Floor

- Beyond non-discrimination, there is a lot more that schools can and should do to support PPS.
- **CT State Dept of Ed Teen Parent Program:**
 - ❑ Shelby Pons, Director: shelby.pons@ct.gov or 860-807-2103; Susan Radway: susan.radway@ct.gov or 860-807-2070
 - ❑ Support to: Hartford, New Haven, Bridgeport, New Britain & Waterbury
 - ❑ Each district to provide services to pregnant and parenting teens via a coordinated model.

Recommendations

- Ensure compliance with Title IX and a welcoming school climate
- Excuse absences for illness or medical appt. of student's child
- Flexibility in scheduling
- Goal-setting and guidance, encouragement
- Individualized graduation plans
- Home instruction during maternity leave
- Child care, transportation assistance
- Secondary pregnancy prevention
- Access to social services and health care
- "Parenting" classes teaching range of life skills
- Outreach to dropouts

FAQs

- ❑ *“How do we know if a student can continue going to school or doing sports or other activities once she is pregnant?”*
- ❑ *“Isn’t it dangerous for a pregnant student to attend school late in her pregnancy? Our school does not want to be responsible for her health and safety at that point.”*

FAQs

- ❑ *“I’m a school administrator and it is fine with me if pregnant girls keep coming to school but one of my teachers does not want them in his class. That means I’m not violating Title IX myself, right?”*
- ❑ *“If we give special treatment to pregnant and parenting students, other students will want to get pregnant too. Shouldn’t we instead “make an example” out of the students who get pregnant?”*

Title IX: Single-Sex Programs

Both Title IX and the U.S. Constitution set **limits** on when single sex programs are permissible.

Why?

- ❑ **Students are excluded** from programs from which they may benefit based solely on their gender.
- ❑ Single sex programs can reinforce **gender stereotypes** that are harmful to *both* boys and girls
- ❑ Girls have historically received, and will likely continue to receive, **fewer resources and opportunities** in all-female environments.

Title IX and Single-Sex Schools

Title IX statute specifically exempts:

- ❑ non-vocational elementary and secondary institutions
- ❑ private undergraduate institutions
- ❑ public undergraduate institutions that traditionally and continually from their establishment have had a policy of admitting only students of one sex
- ❑ institutions whose primary purpose is the training of individuals for the military services or the merchant marine

Title IX and Single-Sex Classes

Since its enactment, Title IX regulations have permitted single-sex classes:

1. Under common-sense circumstances:

- Human sexuality classes
- Physical education classes in contact sports
- Choirs for a specific vocal range

2. To compensate for historical discrimination that has denied students of one gender access to equal educational opportunities.

Title IX: 2006 Regulations

- ❑ Allow schools to make decisions to adopt single-sex programs based on their own assessments of the needs of students, simple assertions of educational benefit, or a desire to provide a variety of choices.
- ❑ Don't comport with Title IX or constitutional standards.
- ❑ Do not require equality of opportunity for the excluded gender.

OCR Q&A on Title IX and Single-Sex Programs (Dec. 2014)

To offer single-sex classes/extracurricular activities, schools must:

- ❑ Identify an important objective they seek to achieve by offering a single-sex class (such as improving academic achievement);
- ❑ Demonstrate that the single-sex nature of the class is substantially related to achieving that objective;
- ❑ Ensure that enrollment in the single-sex class is completely voluntary (through opt-in, rather than an opt-out, process);
- ❑ Offer a substantially equal coed class in the same subject;
- ❑ Offer single-sex classes evenhandedly to male and female students;
- ❑ Conduct evaluations at least every two years to ensure compliance;
- ❑ Avoid relying on gender stereotypes;
- ❑ Provide equitable access to single-sex classes to students with disabilities and English language learners; and
- ❑ Avoid discriminating against faculty members based on gender when assigning educators to single-sex classrooms.

<http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>.

U.S. Constitution and Single-Sex Programs

Single-sex programs will survive constitutional scrutiny only if they:

- Are **substantially related** to
- An **exceedingly persuasive justification**;

and

- They provide **equal opportunity to the excluded gender**.

What Is An “Exceedingly Persuasive Justification”?

Compensatory purposes – i.e., to overcome barriers that have limited opportunities for students of one gender



What Is “Substantially Related”?

Evaluate fit between **means** and
justifiable **ends**

What Is “Equal Opportunity for the Excluded Gender”?

Unless the single sex program is adopted for affirmative action purposes, a school must show that each gender is treated equally in all **tangible** and **intangible** ways.

Do Current Title IX Regs Meet These Legal Standards?

NO!

- Permit single-sex programs based on vague objectives that can **rely on stereotypes and parental preferences**
- Assume “substantial relationship” based on **equivocal evidence**
- Do not require **equal opportunity for the excluded gender**

Do Current Title IX Regs Meet Good Policy Standards?

- Encourage schools to divert resources from proven educational reforms
- Provide no effective accountability for experimentation

Gender Stereotypes Persist

- ❑ “Girls have difficulty learning some math . . . for biological reasons. Adolescent males receive surges of the hormone testosterone five to seven times a day; this can increase spatial skills, such as higher math.” Girls may perform well on math tests only “a few days per month” due to their “menstrual cycle.”
- ❑ “[I]t’s useful for young males to engage in play-fighting,” while for females, it’s useful to practice “taking care of a little baby.”

What's wrong with gender stereotypes?

- ❑ Our Constitution guarantees Equal Protection of the laws
 - ❑ The Supreme Court has rejected government classifications based on assumptions about the roles and abilities of males and females
- ❑ Real harm:
 - ❑ Reinforcing sex stereotypes in the minds of boys and girls themselves, thus further limiting students' opportunities.
 - ❑ “By teaching to perceived differences, in many cases, educators unwittingly ignored the power of schooling in shaping gender ideologies.” (Diane Halpern)
 - ❑ Career patterns, occupational segregation

Doe v. Vermilion Parish

- ❑ Program flawed; principal falsified dissertation on which program was based
- ❑ Harmful stereotypes
 - ❑ Boys' quiz about bikes, girls' quiz about bracelets
 - ❑ Boys read *Where the Red Fern Grows*, girls read *The Witch of Blackbird Pond*
 - ❑ Teacher: "boys are more interested in sports and fishing and hunting and . . . girls were interested in princesses and magic and fairy tales."
- ❑ No coeducational option (special ed only)

West Virginia Case

- ❑ August 2012: federal judge in WV finds middle school's single-sex program illegal because not voluntary
- ❑ Boys' classrooms brightly lit, boys permitted to move around during class to exert energy; girls told to sit quietly and share feelings in dimly lit rooms.
- ❑ Girl with ADD reprimanded for not sitting still; legally blind girl forced to read in dim light.

West Virginia, Aug. 2012

- Judge observed that “the science behind single-sex education appears to be, at best, inconclusive, and certain gender-based teaching techniques based on stereotypes and lacking any scientific basis may very well be harmful to students.”

ACLU campaign and report: Teach Kids, Not Stereotypes

- ❑ http://www.aclu.org/files/assets/doe_ocr_report2_0.pdf
- ❑ ACLU filed many open records requests
- ❑ Notes from meeting of PA community working group for single-sex programs showed desire to ensure students experience “male-hood and female-hood defined space” exhibiting characteristics of “warrior, protector, and provider” for boys and giving girls “space/time to explore things that young women like [including] writing, applying and doing make-up & hair, art.”

2013: ACLU Filed OCR Complaints Against Single-Sex Programs

- ❑ Birmingham, AL settlement in June 2013: Middle school agreed to abandon single-sex classes that were based on stereotypes; test scores showed no real improvement
- ❑ 2 cases pending in Wisconsin
- ❑ 1 case pending in Idaho
- ❑ All relied on discredited theories of Leonard Sax about “hard wired” brain differences of boys and girls

ACLU Complaints/Campaign: Policy Goal

- Calling on OCR to issue guidance to make clear that 2006 regs do not authorize programs based on sex stereotypes, theories about brain differences are discredited, and schools have to provide specific justifications for every single-sex class offered.

Debunking Myths

- ❑ “Overall, boys’ and girls’ brains are remarkably alike.” (Dr. Lise Eliot: *Pink Brain, Blue Brain*)
- ❑ In reality, the differences *among* boys and *among* girls are far greater than average differences between boys and girls as groups (Janet Shibley Hyde, Univ. of Wisconsin)

“The Pseudoscience of Single Sex Schooling”

- ❑ Science magazine, September 2011,
<http://www.sciencemag.org/content/333/6050/1706.full>
- ❑ By social scientists who founded American Council for Coeducational Schooling
- ❑ No scientific evidence supports idea that single-sex leads to better outcomes.
- ❑ Leads to stereotyping

Are These Single Sex Programs Permissible?

1. Weasley High School offers a remedial reading class for boys only because tests show that boys generally lag behind girls in this subject.
2. Granger Regional School District wants to separate boys and girls for physical education based on the belief that girls will work out harder if there are no boys around.
3. Lupin School offers an all-girls' technology club. To ease girls in, it focuses on practical computer applications rather than programming.

Title IX: STEM and CTE

- ❑ Women and girls must be given equal opportunities to pursue STEM fields and enroll in CTE programs w/o discriminatory barriers.
- ❑ Title IX covers careers counseling and guidance, admissions, recruitment, outreach, and retention practices.

STEM and CTE Barriers

- Stereotypes
- Discrimination
- Stereotype threat
- Fewer female role models and mentors

Title IX: STEM & Educational Resources

- ❑ African American students are more likely to attend schools that lack quality resources.
 - Only 57% of African American students have access to the full range of math & science offerings compared to 71% of white students.
 - Students of color are more likely to be taught by teachers who either lack experience and/or an advanced degree.
- ❑ When combined with gender-based barriers to classes and extracurriculars, racial disparities in educational resources could implicate both Title IX and Title VI.

DOE October 2014 Guidance on Educational Resources

- Under Title VI, schools must not treat students differently based on race, color, or national origin when providing educational resources.
 - Educational resources include: academic programs, courses, facilities, school personnel, technology, instructional materials.

- OCR looks for policies that intentionally discriminate in providing education resources & policies with disparate impact.

- OCR Dear Colleague Letter
 - <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-resourcecomp-201410.pdf>

Title IX: Discipline

- ❑ In 2011-12 school year, 12% of African American girls were suspended (six times rate of white girls and higher than any other group of girls and white, Asian and Latino boys)
- ❑ Students of color disproportionately impacted by zero-tolerance policies.
- ❑ Students who are suspended, expelled, or arrested in school are more likely to fall behind and drop out.

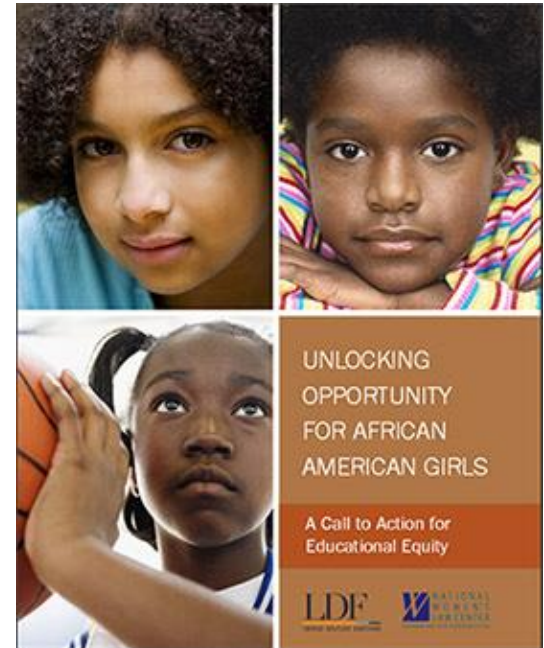
Discipline (cont.)

- ❑ Girls of color are disproportionately punished for minor infractions or subjective offenses like “defiance,” “disrespect,” or “attitude.”
 - Intersection of sex and race stereotypes at play - could be a Title IX , Title VI, and Title IV issue
- ❑ Because of stereotypes of African American girls as hyper-sexualized and aggressive, those who report sexual harassment/violence often are not taken seriously or even seen as the aggressors and disciplined; blamed for own victimization.

NWLC Report – September 2014

Unlocking Opportunity for African American Girls: A Call to Action for Educational Equity

- ❑ Coauthored by NAACP Legal Defense and Educational Fund
- ❑ Examines barriers to educational achievement for African American girls, such as unequal discipline practices.
- ❑ Includes recommendations to combat these barriers and increase educational and life outcomes for African American girls.
- ❑ www.nwlc.org/unlockingopportunity.



DOE & DOJ January 2014

Guidance on School Discipline

- A jointly issued Dear Colleague letter describes two types of disciplinary policies that can be racially discriminatory under Title IV and Title VI:
 - Different treatment occurs when schools intentionally discipline students differently based on race.
 - Disparate impact discrimination occurs when schools adopt neutral policies that have an unjustified effect of discriminating against students based on race.

DOE & DOJ January 2014

Guidance on School Discipline (cont.)

- ❑ Different treatment policies take many forms:
 - Similarly situated students of different races are disciplined differently for the same offense.
 - Administrators selectively enforce a policy against students of one race.
 - A school adopts a facially neutral policy with the intent to target students of a particular race for bad reasons.
 - Teachers or administrators act based on racially discriminatory motives .

Three Prongs for Different Treatment

- Did school discipline student of one race differently from a similarly situated student of another race?
 - Students are similarly situated when they are comparable in relevant respects (e.g., similar discipline histories)

- If yes, can the school articulate a legitimate, nondiscriminatory reason for the different treatment?

- If yes, is the reason articulated a pretext for discrimination (i.e., not the true reason for the school's action)?

DOE & DOJ January 2014

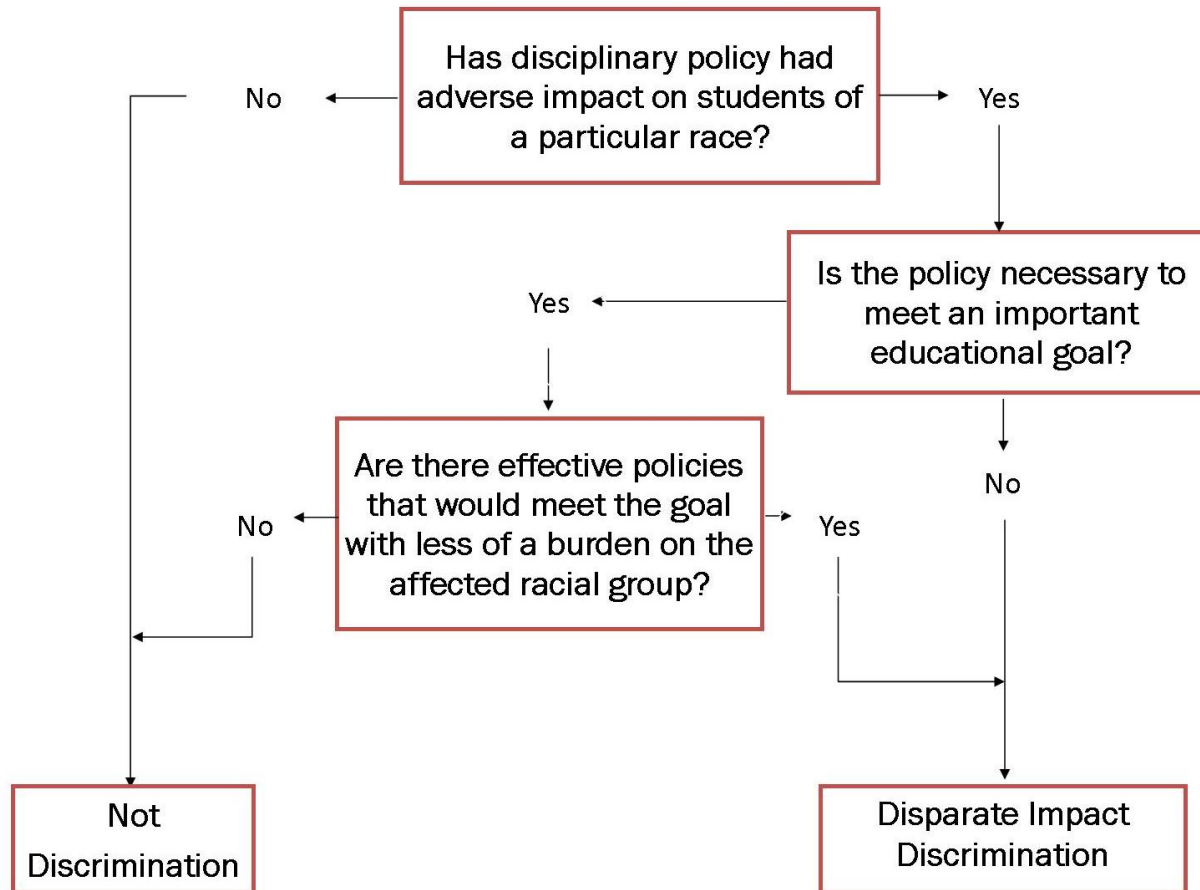
Guidance on School Discipline (cont'd)

- ❑ Disparate impact discrimination occurs when schools evenhandedly implement facially neutral policies that, while not adopted with an intent to discriminate, have an unjustified effect of adversely impacting students of a certain race.

- ❑ Two key inquiries:
 - Does the policy disproportionately affect students of a certain race?
 - Is the policy is the best means to achieve an important educational goal?

- ❑ Policies that impose mandatory suspension, expulsion, or citations upon any student who commits a specified offense, such as being tardy to class or having a cell phone, should raise a red flag.

Disparate Impact Flowchart



More Guidance on School Discipline

- ❑ In April 2014, DOE released school climate and discipline guidance package. The package includes:
 - ❑ Joint Dear Colleague Letter with DOJ
 - ❑ Guiding principles to improve school climate and discipline
 - ❑ Directory of federal resources

- ❑ <http://www2.ed.gov/policy/gen/guid/school-discipline/index.html>

Civil Rights Data Collection

- ❑ Can look up – by district and school – student enrollment and educational programs and services data
- ❑ Data disaggregated by race/ethnicity, sex, limited English proficiency, and disability
- ❑ 2011-12 data available now, for every public school in the nation (includes traditional, alternative, career & technical education, and charter schools)
- ❑ ocrdata.ed.gov

Formal Responsibilities of Title IX Coordinators

- Develop and maintain a working knowledge of Title IX and relevant state laws.

- Monitor school district's compliance with legal requirements.
 - Ensure school district has required policies and procedures in place.
 - Conduct evaluations of school compliance.
 - Arrange for training for staff and students.
 - Provide and update resources.
 - Ensure prompt and effective processing of complaints.

OCR Dear Colleague Letter: Title IX Coordinators (Apr. 2015)

Other requirements or recommendations

- Independence
- Full-Time Title IX Coordinator
- Multiple coordinators

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>

Stipulations

1. School systems or other recipients of federal funds must designate at least one employee as the Title IX coordinator to oversee compliance efforts and investigate any complaints of sex discrimination.

Stipulations

Make sure EVERYBODY knows who you are and how to reach you. Have a backup.



Stipulations

Although at least one employee is required to be designated to coordinate compliance with Title IX, it is the shared responsibility of an entire school district, from top-level administration to individual staff, to foster compliance.

Stipulations

2. All students and employees must be notified of the names, office address(es), and telephone number(s) of the designated coordinator(s) of Title IX.

Who is YOUR Title IX Coordinator?

Stipulations

3. Grievance procedures and nondiscrimination policies must be made public.

Stipulations

Place your complaint/grievance procedure in all your publications where it can be easily found.

Suggest – indicate in Table of Contents and in Index

Title IX - at 34 C.F.R. § 106.9

Require that each recipient publish a statement (notice) that it does not discriminate on the basis of sex in the education programs or activities it operates. The notice must state, at a minimum, that the recipient does not discriminate on the basis of sex in admission to or employment in its education programs or activities. The notice must further state that inquiries to recipients concerning the application of Title IX and its implementing regulations may be referred to the Title IX coordinator or to OCR.

Title IX - Notice

Section 106.9(b) requires that the notice of nondiscrimination be displayed prominently in each announcement, bulletin, catalog, or application form used in connection with recruitment of students or employees. The notice should also include the name, office address, and telephone number for the designated Title IX coordinator.

Notices

Annual

- ❑ **Must be published in local newspaper each year prior to beginning of school**
- ❑ **New policy this year – can be published on school web prominently with caveats**

Continuous

- ❑ **In all official publications**

Publication on Website

Annual notice in newspaper can be waived in lieu of newspaper if:

- Internet accessibility easily available to all families
- No language barriers

Sample Nondiscrimination Statement

Gotham Public Schools does not discriminate in any employment practice, education program, or educational activity on the basis of race, color, religious creed, sex, age, national origin, ancestry, marital status, sexual orientation, gender identity or expression, disability (including, but not limited to, intellectual disability, past or present history of mental disorder, physical disability or learning disability), genetic information, or any other basis prohibited by Connecticut state and/or federal nondiscrimination laws. Gotham Public Schools does not unlawfully discriminate in employment and licensing against qualified persons with a prior criminal conviction. Gotham Public Schools is committed to a policy of equal opportunity/affirmative action for all qualified persons and equal access to Boy Scouts of America and other designated youth groups. Inquiries regarding Gotham Public Schools' nondiscrimination policies and practices should be directed to: Bruce Wayne, Director of Pupil Services, Gotham Public Schools, 123 Main St., Gotham, CT. Tel: 860-123-4567. Bruce.Wayne@gotham.K12,Ct.us.

Nondiscrimination Statement

Place your Nondiscrimination statement in all your publications where it can be easily found.

Suggest – inside front cover.

Nondiscrimination Statement

Have your web person insert Meta tags (key words) on your website that all lead to you.

Examples:

- Sexual harassment
- Sexual assault
- Title IX
- Complaint Procedures

Stipulations

4. Recipient school systems had to perform a one-time self-evaluation, with obligations to modify practices that did not comply with Title IX.

Stipulations

5. School systems may take remedial and affirmative steps to increase the participation of students in programs or activities where bias has occurred.

Informational File Trays

- ❑ Non-Discrimination Statement including name, title, address, email address and phone number of the Title IX/504/ADA Coordinator
- ❑ Copies of the school's policies on non-discrimination and the procedures for both staff and students/parents to file complaints.



Informational File Trays

- ❑ Copies of any forms that are required or at least a guide to what needs to be in a written complaint.



Informational File Trays

- ❑ List of Contacts – school staff responsible for handling complaints, the Regional Office of the USDOE Office for Civil Rights, the State Human Rights Commission, any state commissions or agencies that deal with equity - Permanent Commission on the Status of Women, and the State Dept. of Ed. Equity Contact, and any other appropriate advocacy agency.



Informational File Trays

- ❑ Pertinent state and school Bullying and Harassment Policies.



Where do I put these File Trays?

- School Office
- Hallways
- Cafeteria
- Library
- Nurses Office
- Guidance Office



Where do I put these File Trays?

- Social Worker Office
- Psychologist Office
- Counselor's Office
- PE Teacher & Athletic Director Office
- School Board Meetings
- Website



“Help Me” HOT Line

- ❑ Create a dedicated phone number to handle complaints and inquiries – 1-800-FOR-HELP
- ❑ Create a dedicated email address to handle complaints and inquiries – HELPME@myschool.com
- ❑ Create online complaint forms

ED 607 – Annual Survey of Title IX Coordinators

- Circular Letter from Commissioner of Education – on June 1

- Must be completed by Sept. 1
 - <http://www.state.ct.us/sde/>
 - Click on “[Agency Circular Letters](#)”

Where Can You Get Help?

Available Resources

To File a Complaint or Get Technical Assistance . . .

Boston Office Office for Civil Rights

US Department of Education, 8th Floor

5 Post Office Square

Boston, MA 02109-3921

Telephone: 617-289-0111

FAX: 617-289-0150; TDD: 877-521-2172

Email: OCR.Boston@ed.gov

OCR on the web:

<http://www.ed.gov/about/offices/list/ocr/know.html>

OCR Electronic Complaint Form:

<http://www.ed.gov/about/offices/list/ocr/complaintintro.html>

To File a Complaint or Get Technical Assistance . . .

The Commission on Human Rights and Opportunities (CHRO)

25 Sigourney St., Hartford, Hartford, CT

06106 Tel: 860-541-3400 or

800-477-5737

Web site: <http://www.state.ct.us/chro/>

State Department of Education Website

<http://www.state.ct.us/sde/>

Under Quick Links - click on
[Bullying and Harassment](#)

State Title IX Compliance

Dr. William A. Howe

State Title IX Coord./Civil Rights Compliance

CT State Department of Education

165 Capitol Avenue, Room 222

Hartford, CT 06106

Phone: (860)713-6752

Fax: (860) 713-7030

email: william.howe@ct.gov

You May Also Consider And Advise

- Calling the Police
- Calling DCF
- Obtaining a Lawyer
- Seek Revocation of Teaching Certification
- Combination of the above

National Women's Law Center

National Women's Law Center

11 Dupont Circle

Suite 800

Washington, DC 20036

Tel: (202) 588-5180

Email: info@nwlc.org

Websites: <http://www.nwlc.org>

and www.titleix.info

New England Equity Assistance Center

Maria Pacheco, Ed. D.

Director of Equity and Diversity Projects

New England Equity Assistance Center

The Education Alliance at Brown University

4 Richmond Square, 4th Floor

Providence, RI 02906

(401) 274-9548

fax 401.421.7650

<http://neeac.alliance.brown.edu>

National Center for Lesbian Rights

870 Market Street Suite 370

San Francisco CA 94102

tel 415.392.6257

info@nclrights.org

www.nclrights.org

- PDF of report on Equal Opportunity for Transgender Student Athletes:
<http://www.nclrights.org/site/DocServer/TransgenderStudentAthleteReport.pdf?docID=7901>