

FRANCZEK

www.titlelXinsights.com



Amy Dickerson
akd@franczek.com
@AmyKDickerson



et@franczek.com @EmilyMTulloch



Jackie Wernz jw@franczek.com @JackieWernz



THE HILL

New Title IX regulations give expanded rights to those accused of sexual assault on campus |...



IIII Inside Higher Ed

New Title IX regulation sets location-based boundaries for sexual harassment...



FOX []] NEWS

Department of Education releases new Title IX regulations

www.title IX in sights.com



A "Sign" of Things to Come: Title IX Coordinators and

About this Blog

The Title IX team at

E 1.00

https://bit.ly/Franczek_TitleIX_ MayWebinar





New Title IX Rules – in a nutshell



A school board can violate Title IX when there is "sexual harassment"



Occurring in the U.S.



And the school has "substantial control" over the context of the harassment and the harasser



If an official of the school district who has authority to institute corrective measures on the district's behalf

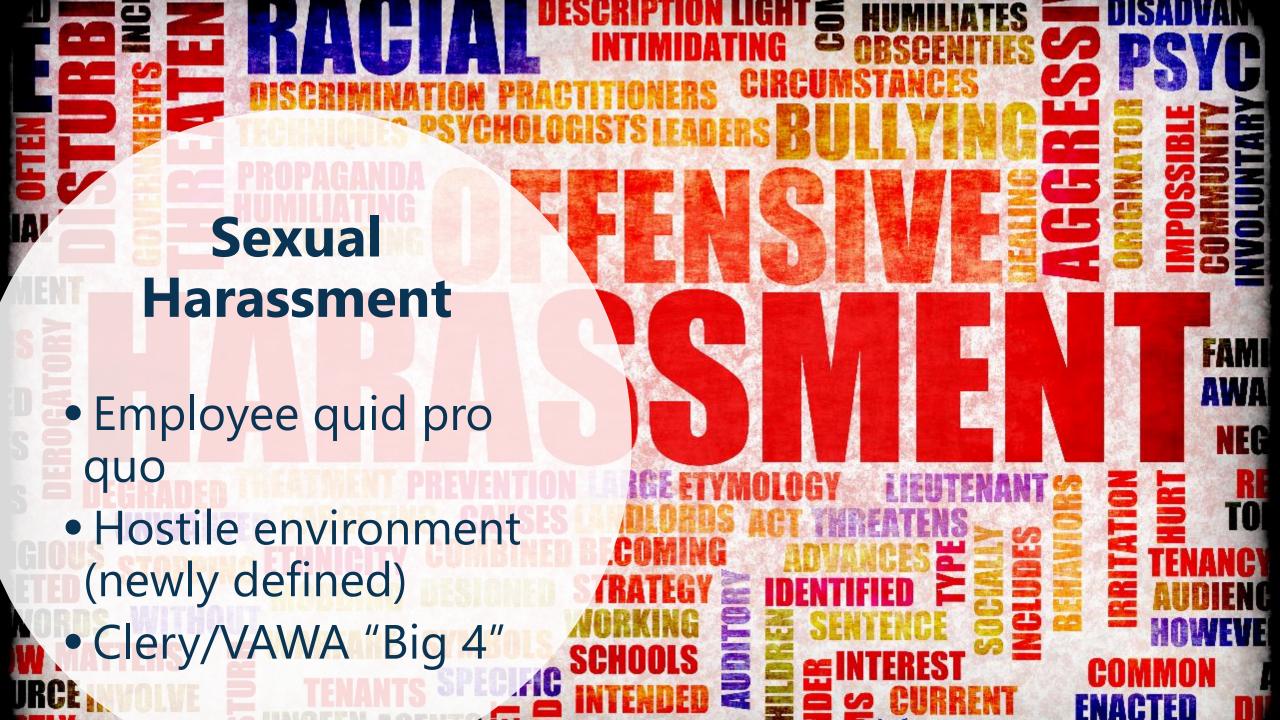


Has actual notice of the misconduct



And the school is deliberately indifferent

"clearly unreasonable in light of the known circumstances"



Hostile Environment

- Unwelcome conduct
- Determined by a reasonable person
- To be so severe, pervasive, and objectively offensive that it effectively denies a person's equal access to the recipient's education program or activity

Hypothetical (OCR 2010 Guidance)

Shortly after enrolling at a new high school, a female student had a brief romance with another student. After the couple broke up, other male and female students began routinely calling the new student sexually charged names, spreading rumors about her sexual behavior, and sending her threatening text messages and e-mails. One of the student's teachers and an athletic coach witnessed the name calling and heard the rumors, but identified it as "hazing" that new students often experience. They also noticed the new student's anxiety and declining class participation. The school attempted to resolve the situation by requiring the student to work the problem out directly with her harassers.

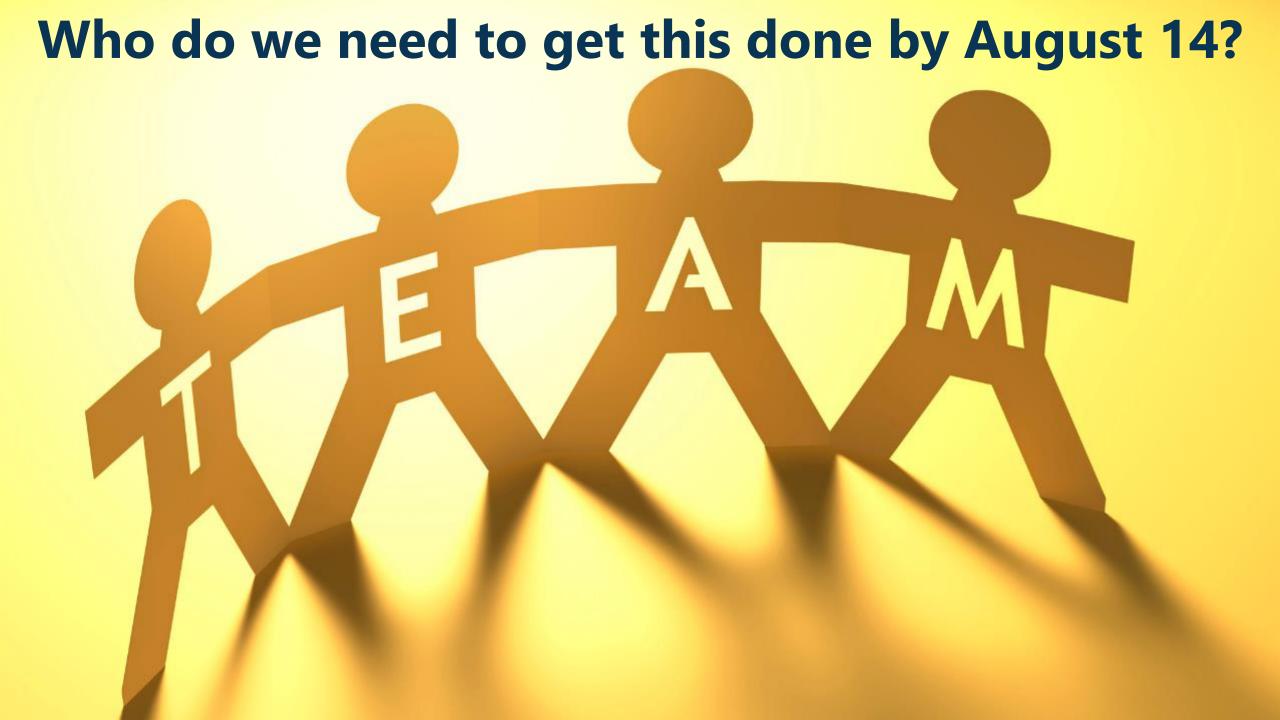
What if the students also made comments based on race, color, nationality, or disability?

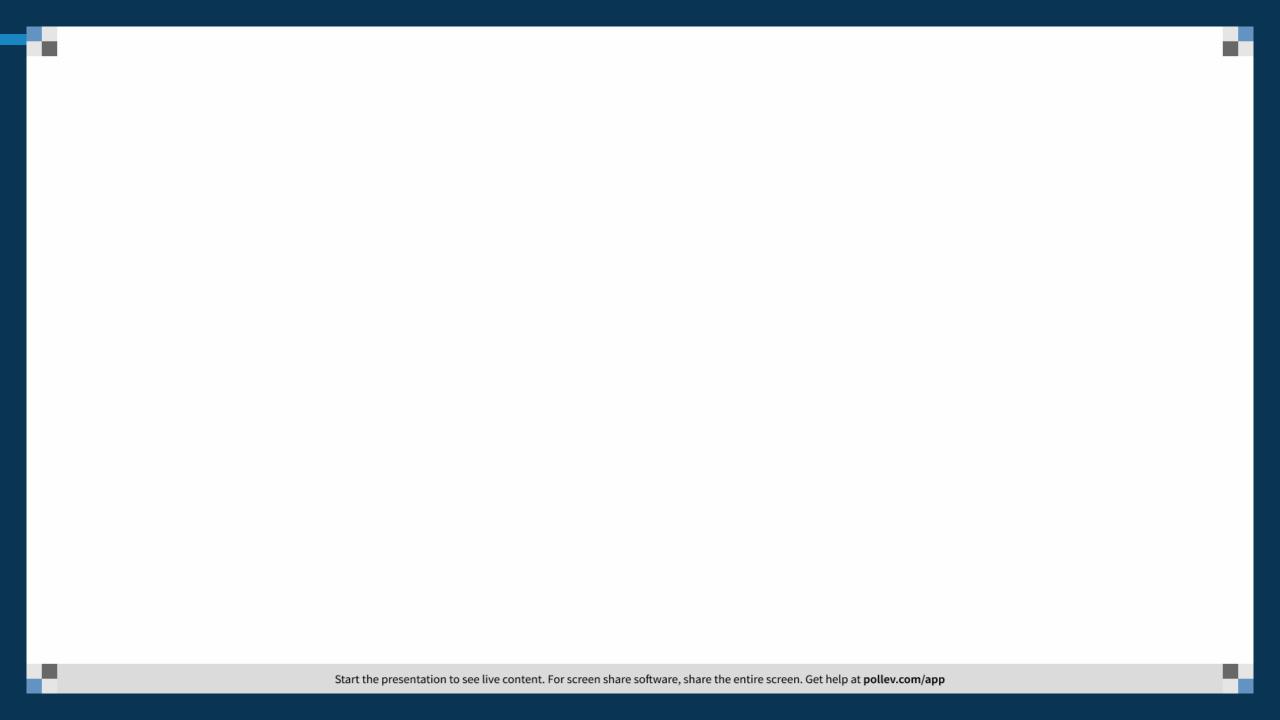
What must a school district do to respond?

A recipient with actual knowledge of sexual harassment in an education program or activity against a person in the united States must respond promptly and in a manner that is not deliberately indifferent.









Describe your role

Board Member Superintendent Business/Finance Office **Human Resources Student Services** Legal Counsel **Building Administrator**

Who do we need to get this done by August 14?

- Board
- Superintendent
- Other District-Level Administrators
- Building-Level Administrators
- Committees





Title IX Administrators



Title IX Coordinator

- Must be called Title IX Coordinator
- Must be designated + "authorized" to coordinate compliance efforts
- Must meet with alleged victims of sexual harassment covered by the new Title IX regulations



Investigator(s)

- Consider your actual practices, including for non-Title IX matters
- Can be the Title IX Coordinator



Decisionmaker(s) (Complaint)

 <u>Cannot</u> be the Title IX Coordinator <u>or</u> the investigator(s)



Decisionmaker(s) (Appeal)

Cannot be the Title IX
 Coordinator or the
 investigator(s) or the
 decisionmaker (complaint)



Informal Resolution Facilitators

<u>Cannot</u> be the Title IX
 Coordinator <u>or</u> investigator(s)
 <u>or</u> decisionmakers (complaint and app



Hypothetical #1

- Small school district
- Few administrators

Hypothetical #1 (One Answer)

- Administrator #1 Title IX Coordinator
- Administrator #1 Investigator
- Administrator #2 Decisionmaker (Complaint)
- Board of Education Decisionmaker (Appeal)

*concerns: appearance of conflict/bias (consider parties involved); board involvement

Who handles informal facilitated resolution?

External Resources/Options

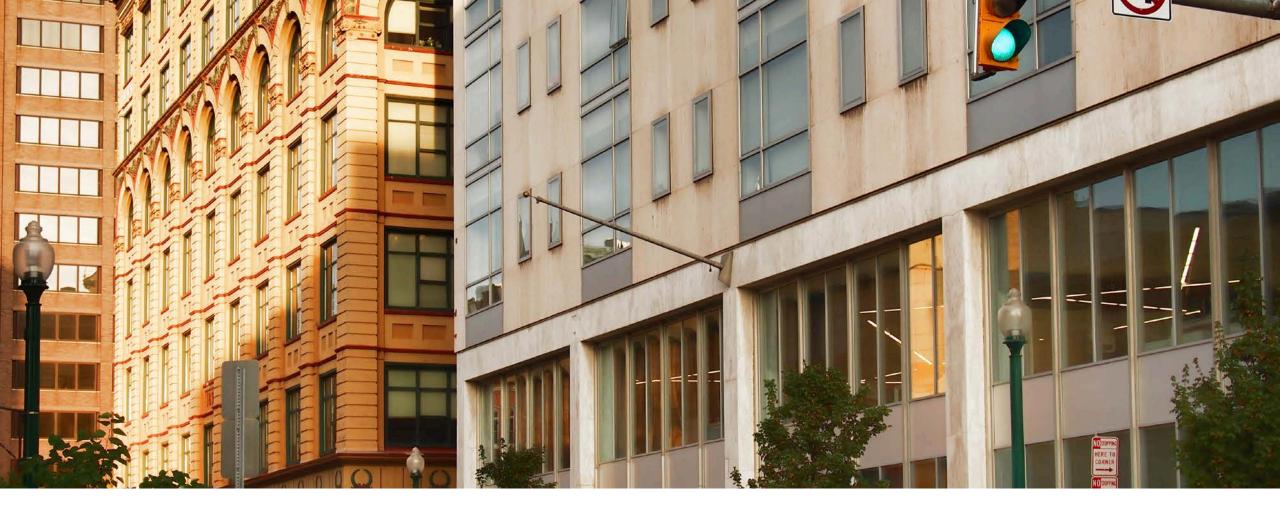
- Investigators
- Appeal Decisionmakers
- Informal resolution facilitators

Franczek Title IX Toolkit https://www.franczek.com/practices/k-12-education/title-ix/

Hypothetical #1 (Another Answer)

- Administrator #1 Title IX Coordinator
- Outside Investigator
- Administrator #2 Decisionmaker (Complaint) with some involvement by Board of Education on Discipline
- Outside Appellate Review

*although not a concern with this setup, always consider appearance of conflict/bias when choosing team members for a specific case



Hypothetical #2

- Large unit school district
- Multiple buildings

Hypothetical #2 (One Example)

- District Administrator #1 Title IX Coordinator (consider deputies)
- District or Building Administrators #2, 3, 4, etc. Investigator(s)
- Superintendent Decisionmaker (Complaint)
- Board of Education Decisionmaker (Appeal)

*concerns: board involvement

*although not a concern with this setup, always consider appearance of conflict/bias when choosing team members for a specific sae

Hypothetical #2 (One Example)

- District Administrator #1 Title IX Coordinator (consider deputies)
- District or Building Administrators #2, 3, 4, etc. Investigator(s)
- Superintendent Decisionmaker (Complaint) with some involvement by Board of Education on Discipline
- Outside Appellate Review

*although not a concern with this setup, always consider appearance of conflict/bias when choosing team members for a specific case

"Officials with Authority"

"Officials with Authority"

- 1. Title IX Coordinator
- 2. All K-12 "employees"
- 3. Any other officials who have been given authority to institute corrective measures by the school district

"Actual Knowledge"

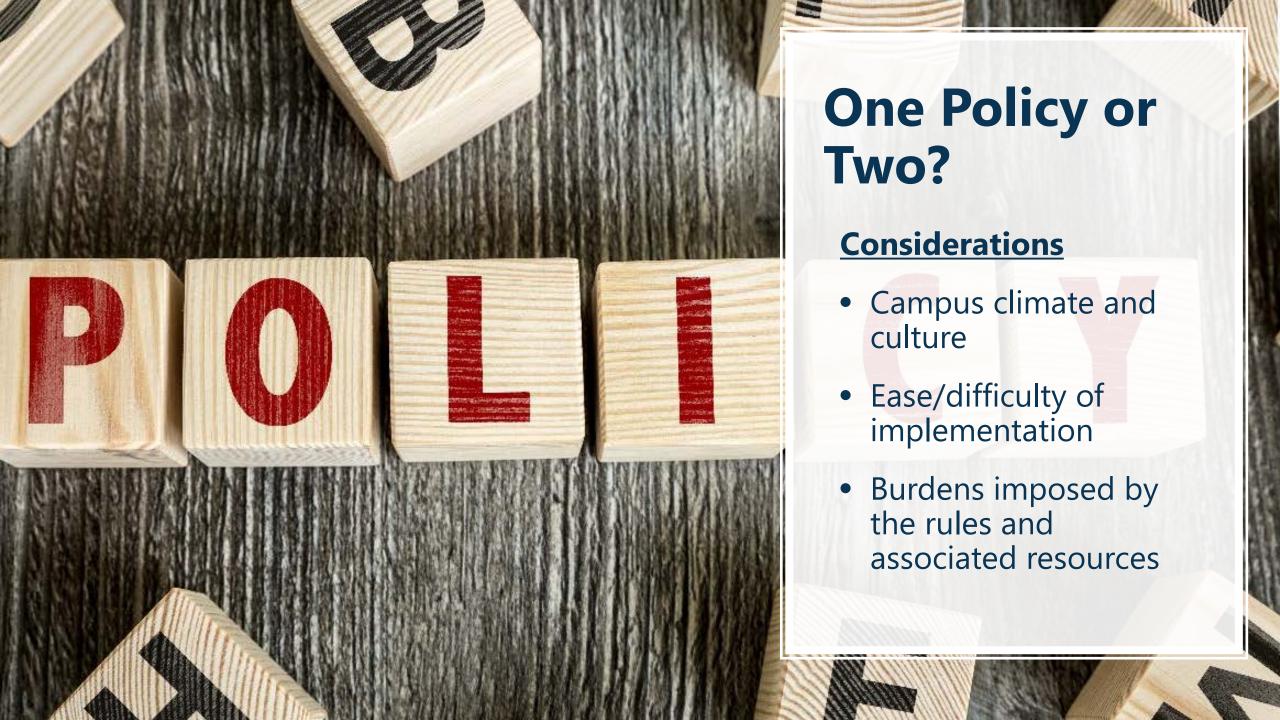
OLD RULE (OCR Guidance)

A school has a responsibility to respond promptly and effectively if a school **knows or should have known** about sexual harassment

NEW RULE (Final Rule)

A school with **actual knowledge** of sexual harassment in a program or activity against a person in the United states must respond promptly and in a manner that is not deliberately indifferent





Our district subscribes to a policy service (e.g., IASB PRESS for Illinois)

Yes

No

I don't know

Policy Timing

- For policy service providers policies will not be released until later this summer (early August for PRESS)
- For others, policies will need to be created
- All policies must be customized

Franczek Title IX Toolkit https://www.franczek.com/practices/k-12-education/title-ix/





Coordinators, Investigators, Decisionmakers, Informal Resolution Facilitators

- Definition of sexual harassment
- Scope of recipient's education program or activity
- How to conduct investigation and grievance procedures
- How to serve impartially, including by avoiding prejudgment, conflicts of interest, and bias

Decisionmakers

- Any technology to be used at a live hearing, if live hearings will be offered
- Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant

Investigators

 Issues of relevance to create an investigation report that fairly summarizes relevant evidence

Title IX Coordinator, K-12 "Employees," and "Officials with Authority"

- Identifying "sexual harassment"
- Duty to report to Title Coordinator



FRANCZEK

www.titlelXinsights.com



Amy Dickerson
akd@franczek.com
@AmyKDickerson



et@franczek.com @EmilyMTulloch



Jackie Wernz jw@franczek.com @JackieWernz