



# TITLE IX TRAINING

**JOHN ADAMS ACADEMIES, INC.**

**February 10, 2022**

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# Topics we will cover



- Scope of Title IX, Recent Changes, and Definitions
- Personnel on Title IX Team
- Conflicts of Interest and Bias
- Reports of Sexual Harassment and Initial Response
- Grievance Procedures for Formal Complaints
  - Issues of Relevance, Appeals, Informal Resolution Process, etc.
- Questions?

\*Disclaimer: this presentation does not substitute for legal advice specific to individual situations.

# Title IX: Scope, Definitions

# What is Title IX?

- Title IX is a federal civil rights law that prohibits discrimination on the basis of sex, including sexual harassment, in all federally-funded schools:
  - “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.”

# What Does Title IX Require (among other things)?

- Any time JAA has actual knowledge of sexual harassment in the school's education programs or activities (whether employees and/or students), the school has an obligation to respond promptly
  - “Actual knowledge” means notice to any JAA employee
- JAA must adopt grievance procedures for addressing formal complaints of sexual harassment
- JAA's Title IX Team must receive training on the grievance procedures and other topics
  - More on this later...

# Recent Changes

- In mid-2020, the Secretary of Education under the former federal administration amended the regulations implementing Title IX
- The new federal administration did not change the 2020 amendments (yet), and in mid-2021, the U.S. Department of Education issued guidance for K-12 schools to implement the 2020 regulations
  - CDE has been slow to update website, but updated Title IX grievance procedures are now part of CDE's review for schools selected for Federal Program Monitoring (FPM)
- Schools follow the Title IX requirements that were in place at the time of the alleged incident (notwithstanding the date of school's response)

# Sexual Harassment under Title IX

- **Sexual harassment** under Title IX includes any of the following:
  - Quid Pro Quo Harassment: employee conditions provision of aid, benefit, or service on an individual's participation in unwelcome sexual conduct
  - Denial of equal access to education program: unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the education program or activity
    - How is this standard determined?
  - Other sexual acts: sexual assault, dating violence, domestic violence, or stalking as defined per federal statutes (see next slides)

# Sexual Harassment under Title IX (cont.)

- **Sexual Assault** can be forcible and nonforcible:
  - Forcible: any sexual act directed against complainant forcibly, against their will or without consent
  - Nonforcible: offenses that do not involve force where complainant is incapable of giving consent

# Sexual Harassment under Title IX (cont.)

- **Dating Violence** is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim
  - Whether a relationship exists is determined based on a consideration of the following factors:
    - Length of relationship
    - Type of relationship
    - Frequency of interaction between the persons in the relationship

# Sexual Harassment under Title IX (cont.)

- **Domestic Violence** is violence committed by:
  - Current or former spouse or intimate partner of the victim
  - Person with whom the victim shares a child in common
  - Person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
  - Person similarly situated to a spouse of the victim under the domestic or family violence laws of the state
  - Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state

# Sexual Harassment under Title IX (cont.)

- **Stalking** is engaging in a course of conduct directed at the complainant that would cause a reasonable person to:
  - Fear for their safety or safety of others; or
  - Suffer substantial emotional distress

# Education Program or Activity

- Includes locations, events, or circumstances over which the educational institution exercised substantial control over both the respondent and the context in which the sexual harassment occurs
  - E.g., in class, during break or lunch periods, on remote learning platforms, at school-sponsored activities, etc.
  - Off-campus and online settings may require fact-specific determination

# Complainant vs. Respondent

- **Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment
- **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment

# Note on California Law

- Definitions of sexual harassment and required responses under California law and under Title IX overlap but are not the same
  - Today’s presentation is limited to Title IX requirements
- Any complaints alleging unlawful discrimination or harassment on the basis of sex may also be eligible to be investigated under JAA’s Uniform Complaint Procedures (“UCP”), but UCP does not supplant Title IX
- Only formal complaints alleging sexual harassment as defined under Title IX may be investigated under JAA’s Title IX grievance procedures

# Title IX Team

# Roles

- **Title IX Coordinator** (Joseph Benson) receives reports and formal complaints of sexual harassment, and coordinates the investigation and resolution process
- **Investigator** gathers all evidence related to a formal complaint and creates an “Investigative Report” summarizing the relevant evidence
  - Investigator can also be the Title IX Coordinator

# Roles

- **Decision-Maker** evaluates evidence in order to make a written determination of findings regarding a formal complaint
  - Decision-Maker cannot be the Title IX Coordinator, the Investigator, or any individual involved in the investigation of the formal complaint
- **Title IX Appeals Officer** evaluates an appeal of the Decision-Maker's final determination (if an appeal is filed)
  - Title IX Appeals Officer cannot be the Title IX Coordinator, Investigator, or any individual involved in the investigation of the formal complaint

# Training Requirements

- Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process must receive training on the definition of sexual harassment, the scope of Title IX, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias

# Training Content

- Decision-makers must receive training on 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 must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence

# Conflicts of Interest and Bias

# Requirement to be Neutral

- All members of the Title IX Team must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent
  - Must serve impartially and avoid prejudgment of the facts

# Conflicts of Interest

- There is no definition of a conflict under Title IX
- A conflict of interest generally occurs when an individual has a personal interest in the matter that affects their decision-making
  - Could be a familial interest, financial interest, etc.
- *Example:* the Investigator is related by marriage to the respondent
- *Example:* the Decision-Maker's spouse works at a business owned by the complainant

# Bias

- Bias is an unfair preference for or dislike of something
  - It's usually a function of experiences we have had or beliefs we have developed over time
- Bias inhibits impartial judgment
  - Our own experiences and perceptions are not universal
  - Perceptions can be as powerful as reality

# Bias

- Bias is oftentimes implicit, meaning the individual is unaware that their behavior is “discriminatory”
  - It’s often associated with a person’s gender, age, race, etc.
- *Example:* male Decision-Maker who quickly believed witness “Tom” but is skeptical of witness “Chloe”
- You can prevent bias by learning to recognize it, being aware of it, and actively focusing on remaining impartial

# Reports of Sexual Harassment and Initial Response

# Overview

- Who can make a report of sexual harassment and how? (next slide)
- What are the initial response steps? (next slides)
  - Contact complainant
    - Determine need for supportive measures
    - Explain Title IX grievance process (i.e., reports vs. formal complaints)
  - Determine need for emergency removal
- Overarching standard: school must “respond promptly in a manner that is not deliberately indifferent,” i.e. not clearly unreasonable in light of the known circumstances

# Reports of Sexual Harassment

- Any individual (e.g., the alleged victim, a student, an employee, a parent/guardian, etc.) may report sexual harassment directly to the Title IX Coordinator, or to any other available JAA employee who shall immediately inform the Title IX Coordinator
  - Reports can be made by any means (e.g., in-person, by phone, by mail, by email, etc.)
- Timing of report

# Initial Response: Contact Complainant

- Title IX Coordinator must:
  - Promptly contact the complainant, listen to allegations, and discuss the availability of supportive measures regardless of whether a formal complaint is filed (see next slides)
  - Consider the complainant's wishes with regard to supportive measures
  - Explain the Title IX grievance process for filing a formal complaint
    - Definition of formal complaint

# Initial Response: Supportive Measures

- Non-disciplinary, non-punitive individualized services available free of charge at any point during the Title IX investigation
- Designed to restore or preserve equal access to JAA's education program or activity without unreasonably burdening the other party
  - Examples include wellness check-ins, counseling services, extension of deadlines or course-related adjustments, modifications of work or class schedules, changes in work locations, leaves of absence, etc.

# Initial Response: Determine Need for Emergency Removal

- Title IX Coordinator will review the facts to determine whether respondent may need to be removed from the school setting to prevent further sexual harassment and/or maintain safety of students and staff
  - If respondent is a **student**, respondent may be removed from educational program based on individualized safety and risk analysis. Respondent shall be provided with notice and opportunity to challenge the decision immediately following the removal
    - Applicable laws concerning student discipline and expulsion apply
  - If respondent is an **employee**, respondent may be placed on administrative leave during formal complaint investigation

# Grievance Procedures for Formal Complaints

# Step-by-Step Overview

- Step 0. Report and initial response, including consideration of supportive measures and potential temporary removal (see previous slides)
  
- Step 1. Initial review of formal complaint
- Step 2. Send written notice of formal complaint
- Step 3. Conduct investigation
- Step 4. Prepare and share investigative report
- Step 5. Issue written decision
- Step 6. Provide remedies
- Step 7. Appeals
- Step 8. Recordkeeping

# Step 1: Initial Review

- Title IX Coordinator must review complaint and determine whether it should be dismissed within 10 calendar days from receipt of formal complaint
- **Must** dismiss complaint if the alleged conduct:
  - Does not constitute sexual harassment under Title IX; or
  - Did not occur in JAA's educational program/activity or against an individual in U.S.
- **May** dismiss complaint if:
  - Complainant has notified JAA in writing of desire to withdraw complaint/allegations;
  - Respondent is no longer enrolled in or employed by JAA; or
  - Specific circumstances prevent JAA from gathering evidence to reach a determination

# Step 1: Initial Review (cont.)

- If Title IX Coordinator dismisses complaint:
  - Must send written notice simultaneously to both parties
  - State reason for dismissal and inform parties of their right to appeal
  - If Title IX Coordinator determines another JAA grievance procedure (e.g., UCP) is appropriate, inform parties of JAA's intent to investigate the complaint through that procedure

## Step 2: Send Written Notice

- Title IX Coordinator must provide parties with notice of formal complaint within 10 calendar days of receipt of formal complaint
- Notice shall include:
  - Copy of JAA's Board Policy on Title IX
  - Description of allegations (e.g., parties involved, specific conduct, date and location of alleged incident, etc.)
  - Statement that respondent is presumed not responsible
  - Statement informing parties of opportunity to have advisor of their choice throughout grievance process and ability to inspect and review evidence
  - Statement informing parties that they must not knowingly make false statements or submit false information

# Step 3: Conduct Investigation

- Timelines and extensions
- Presumption of innocence
  - JAA must presume respondent is **not** responsible for alleged conduct
- Evidence gathering
  - Investigator has burden to gather sufficient evidence
  - Cannot gather privileged information without voluntary, written consent (e.g., medical records)
  - Must provide written notice for all interviews with sufficient time for the individual to prepare to participate
    - School has discretion to permit parties to appear virtually
  - No live hearing requirement for TK-12
    - Q&A process

## Step 3: Conduct Investigation (cont.)

- Equal opportunities
  - Both parties must have equal opportunity to present witnesses and evidence
  - Both parties may have an advisor of their choice present for any meeting, hearing, interview
    - JAA can restrict advisors' participation in the proceedings if equal
  - Both parties must be provided with all evidence that is directly related to the allegations in the complaint and at least 10 calendar days to submit a written response, which must be considered by the Investigator

## Step 4: Prepare and Share Investigative Report

- Investigator must prepare an investigative report that fairly summarizes **all** relevant evidence, including both inculpatory and exculpatory evidence
  - “Relevant evidence” is not defined under Title IX
- With limited exception, evidence of complainants prior sexual behavior is not relevant
- Evidence is generally considered relevant when it has any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action

## Step 4: Prepare and Share Investigative Report (cont.)

- Investigator must share the investigative report with both parties and their advisors at least 10 calendar days before JAA issues a written decision
- Both parties may submit a written response

# Step 5: Issue Written Decision

- ***Before*** making decision, the Decision-Maker must:
  - Inform each party of the right to submit written, relevant questions that a party wants asked of any party or witness, and allow for additional limited follow-up questions from each party (Q&A process)
  - Provide responses to the questions or explain any decision to the party to exclude questions as irrelevant

## Step 5: Issue Written Decision (cont.)

- Decision-Maker must use “preponderance of evidence” standard
  - Whether there is greater than 50% chance that the allegations are true, in determination of Decision-Maker
- Written decision should be issued to both parties simultaneously within 90 calendar days from receipt of formal complaint
- Written decision must include the specific allegations, description of the investigation process, findings of fact, conclusions, rationale, any disciplinary sanctions for respondent, whether remedies will be provided to the complainant, and procedures/bases for either party to appeal

# Step 6: Provide Remedies

- If JAA determines that respondent engaged in sexual harassment, the Title IX Coordinator will provide appropriate remedies to complainant
- Remedies may be disciplinary and/or punitive and may burden respondent
- School is free to make disciplinary and remedial decisions, but remedies must be designed to restore or preserve equal access to educational program
- Examples include supportive measures, transfer from a class, parent/student conference(s), positive behavior support, warnings, and/or formal discipline (e.g., detention, suspension, expulsion, etc.)
  - Remedies may be the same individualized services the school provided to the complainant as supportive measures
- If employee is found to have engaged in sexual harassment, JAA will take appropriate disciplinary action (e.g., termination)

# Step 7: Appeals

- Either party may appeal the written decision, or dismissal of a formal complaint or allegation in a complaint, within 5 calendar days
- Bases for appeal:
  - Procedural irregularity that affected the outcome
  - New evidence that was not reasonably available and could have affected outcome
  - Conflict of interest or bias by Title IX Coordinator, Investigator, or Decision-Maker
- JAA must provide written notice to the other party and give both parties a reasonable, equal opportunity to submit a written statement
- Title IX Appeals Officer must issue a written decision simultaneously to both parties within 30 calendar days from receipt of the appeal

# Step 8: Recordkeeping

- JAA must maintain records for seven years, including records of:
  - Each sexual harassment investigation
  - Any appeal and result of the appeal
  - Any informal resolution and result of the resolution
  - All materials used to train the Title IX Team (materials must be publicly available on website)
  - Any actions taken in response to a report or formal complaint of sexual harassment

# Consider Informal Resolution Processes

- Any time after a formal complaint has been filed, but before reaching a determination, JAA may offer an informal resolution process (e.g., mediation, restorative justice, etc.) to complainant and respondent
  - Both parties must voluntarily consent
  - Exception: Informal resolution process is not available where complainant alleges that an employee harassed a student

# Questions (now or later)?



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