

Casa Grande Elementary School

District

November 10, 2022

**Sexual Harassment Complaints:
Administrator's Role in Recognizing,
Reporting and Disciplining Allegations of
Sexual Harassment**

Presented by:

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What Are We Doing Here Today?

- Review reporting requirements related to sexual harassment
- Define Title IX
- Recognize an allegation that falls under Title IX (Actual Knowledge)
- Understand Reporting Obligations
- Learn where/how to report potential Title IX matters per District Policy
- Overview of Grievance Procedures

Mandatory Reporting

When in Doubt... Report!



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A.R.S. 15-153 Crime reporting

Requires Districts to adopt policies for reporting to law enforcement

- A suspected crime that is a serious offense or involves a deadly weapon, dangerous instrument or serious or physical injury.
- Conduct that poses a threat of death or serious physical injury to an employee, student, or other person on school property.
- Notification of the parent/guardian of each student involved.

- Requires a process for
 - Documenting and reporting the conduct
 - Documenting which employees are responsible for making reports.
 - Documenting discipline for responsible employees who fail to comply with duties.
- School districts and charters that do not comply are prohibited from applying for school safety program grants.
- Procedures SHALL BE posted on the District website on or before January 1, 2020

Reporting Criminal Activity

- It's not just your job, ... It's the law!
- A.R.S. § 15-515: If any school personnel see **weapons** or **drugs** on school property, they must report the violations to the school administrator who must then report to law enforcement.
- A.R.S. § 15-341(A)(30): [School personnel] must report **serious offenses**; deadly weapons, dangerous instruments, serious physical injury; and conduct that poses a threat of death or serious physical injury to students, employees and others on school property to law enforcement, and may report all other crimes.

“Serious Offense” Includes:

- 1st/2nd degree murder or manslaughter
- Aggravated assault
- Sexual assault
- *Any dangerous crime against children.*
- Arson of an occupied structure.
- Armed Robbery.
- Burglary in the first degree.
- Kidnapping.
- Sexual conduct w/ minor under 15 years of age.



TIP:

When it comes to the safety of your students, staff, and campus, don't get hung up on definitions.

If you suspect criminal activity, report this to your School Resource officer or to your local law enforcement agency. What do you have to lose by reporting? What do you risk if you do nothing?

Reporting Abuse or Neglect



Who Has the Duty to Report?



All “School Personnel” Must Report

- It’s not just the duty of the Principal or School Nurse.
- ALL School Personnel have a duty to report (to law enforcement or DCS) if they have reasonable belief that a minor has been harmed (in a physical, sexual, or neglectful manner).
- This can include, but is NOT limited to: Principals, nurses, teachers, cafeteria workers, secretaries, paraprofessionals, coaches, bus drivers, custodians, psychologists, SECURITY GUARDS, ...

A Report is Required by:

ANY person who

- REASONABLY believes
- A MINOR is the victim of
 - Physical injury
 - Abuse
 - Child abuse
 - A reportable offense (sex offense) or
 - Neglect
- Inflicted by OTHER THAN ACCIDENTAL means or not explained by the medical history

Report to Whom?

Shall IMMEDIATELY REPORT or cause a report to be made to:

- A law enforcement officer.
- Department of Child Safety at 1-888-SOS-CHILD—or if not an emergency, report at:
<https://dcs.az.gov/report-child-abuse>
 - EXCEPT if the suspected abuser does NOT have the care, custody, control of the child—then ONLY CALL LAW ENFORCEMENT.
- Or, if a Native American child on a reservation, to tribal police or a social service agency.

What is meant by “physical injury”?

- ***Intentional/Non-accidental***
- Impairment of physical condition and includes:
 - Skin bruising
 - Bleeding
 - Failure to thrive
 - Malnutrition
 - Dehydration
 - Burns
 - Fracture of any bone
 - Soft tissue swelling
 - Or any physical condition that imperils health or welfare
- The injury need not be serious or life threatening to be “reportable.”

“Abuse” Means:

- The infliction or allowing physical injury; or
- Inflicting or allowing: sexual abuse, sexual conduct with a minor, sexual assault, child molestation, commercial sexual exploitation of a minor, sexual exploitation of a minor, incest, or child prostitution.
- Physical injury resulting from permitting a child to enter or remain in any structure or vehicle in which volatile, toxic or flammable chemicals are found or equipment is possessed by any person for the purpose of manufacturing a dangerous drug.
- Unreasonable confinement of a child.

“Reportable Offense”

Includes:

- Indecent Exposure
- Public Sexual Indecency
- Sexual Abuse
- Sexual Conduct With a Minor

(Note: You are not required to report the consensual sexual contact of minors with other minors ages 14,15,16, or 17)

- Sexual Assault
- Molestation of a Child
- Bestiality
- Sexual Misconduct by a Behavioral Health Professional
- Unlawful Sexual Conduct by Corrections Personnel
- Voyeurism
- Unlawful Distribution of Nude Images

“Reportable Offense”

Includes:

- Commercial Sexual Exploitation of a Minor
- Sexual Exploitation of a Minor
- Luring and Aggravated Luring a Minor for Sexual Exploitation
- Admitting Minors to Public Displays of Sexual Conduct
- Furnishing Harmful Items to Minors Via the Internet
- Surreptitious Photographing, Videotaping, Filming or Digitally Recording of a Minor
- Child Prostitution
- Incest
- Unlawful mutilation or Knowing Transportation of a female under 18 for the purpose of mutilation

What is Meant by “Neglect”

“Neglect” Includes:

- A parent, guardian or custodian failing to provide the child with supervision, food, clothing, shelter or medical care if that failure causes unreasonable risk of harm to the child's health or welfare,
- Permitting a child to enter or remain in any structure or vehicle [that is used for] manufacturing a dangerous drugs.
- Deliberate exposure (or reckless disregard of whether or not the child is present) of a child by a parent, guardian or custodian to sexual conduct, to sexual contact, oral sexual contact or sexual intercourse, bestiality, or explicit sexual materials.

Immunity from Lawsuits

- “A person who furnishes a report, information or records required or authorized under this section, or a person who participates in a judicial or administrative proceeding or investigation resulting from a report, information or records required or authorized under this section, is immune from any civil or criminal liability by reason of that action unless the person acted with malice or unless the person has been charged with or is suspected of abusing or neglecting the child or children in question.”
- A.R.S. 13-3620(J)



TIP:

Again, don't get hung up on definitions.

If you suspect that a child has been harmed or is at risk of being harmed in some physical, sexual, or neglectful manner, make a report to DCS or to your local law enforcement agency (or SRO).

What do you have to lose by reporting?

What do you risk if you do nothing?

TITLE IX OVERVIEW & LEGAL REQUIREMENTS

Title IX

Title IX states that:

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.

YOUR TITLE IX COORDINATOR & THEIR ROLE/RESPONSIBILITIES



Title IX Coordinator Responsibilities

- Development, implementation, and monitoring of meaningful efforts to comply with Title IX
- Develop and maintain a working knowledge of Title IX and relevant state laws
- Ensure District has required policies and procedures
- Conduct self-evaluations of policy compliance
- Coordinate/ conduct investigations of formal complaints
- Develop training programs for staff and students
- Identifying and addressing any patterns of discrimination

Grievance Process Requirements

- Treat all parties equitably
- Upon receipt of a formal complaint, provide written notice
- Objectively evaluate all evidence, including allowing the Respondent to prepare a response before any initial interview
- Ensure there is no conflict of interest for the investigator and decisionmaker
- Include a presumption that the Respondent is not responsible

Grievance Process Rqmnt's Cont'd

- Include reasonably prompt timeframes
- Include a description or list of possible discipline or other remedies
- Include a statement of the standard used = preponderance of the evidence
- Include appeal procedures and when appeal is available
- Include a range of supportive measures available

Title IX Policy

- Casa Grande School District Policies and Procedures contains the grievance process
- <https://policy.azsba.org/asba/browse/casagrande/elementary/casagrande/elementary/ACAA>
- <https://policy.azsba.org/asba/browse/casagrande/elementary/casagrande/elementary/ACAA-R>

The School Will Violate Title IX Where It Has:

- ***Actual knowledge*** of an allegation of sexual harassment;
- Experienced by an ***individual in the School's educational program/activity***; and
- The School acts with ***deliberate indifference*** to that notice.

What is Deliberate Indifference?

A response to notice of sexual harassment that is clearly unreasonable in light of the known circumstances

The new regulations set out the required response to notice within the context of:

- Protecting 1st Amendment rights
- A presumption of non-responsibility of the accused
- Provision of supportive measures

Knowledge: What Do You Do With It?

- The employee in possession of the information must get that information to the designated site person, who then must provide it to Title IX Coordinator immediately (or can report directly to Coordinator)
- This information ALWAYS triggers the Title IX Coordinator's responsibilities so timely reporting is vital

Knowledge: What Don't You Do With It?

- Do not ignore it or fail to recognize that it is notice of possible sexual harassment
- **Do not** interview the person accused of sexual harassment at this time
 - There are procedural requirements that you cannot meet when you initially receive notice
- Do not make judgements or assumptions or otherwise investigate to determine whether sexual harassment has occurred

DO NOT DISCIPLINE

- Administrators CANNOT discipline a student for sexual harassment until the entire grievance process is complete and he/she has been determined responsible
- Cannot record a conduct violation as sexual harassment unless there was a formal investigation that has been completed and a decision-maker has determined responsibility and identified discipline as a remedy

Education Program or Activity

The School is only required to address sexual harassment in the education program or activity, which is:

- Any location, event, or circumstance over which the School exhibits **substantial control over both the alleged harasser and the context in which the harassment occurred**

What is Deliberate Indifference?

A response to notice of sexual harassment that is clearly unreasonable in light of the known circumstances.



How to Avoid Deliberate Indifference

- Notify Title IX Coordinator of all reports of sexual harassment
- Treat Complainants and Respondents equitably
- Offer supportive measures in all cases
- **Investigate every instance of a formal complaint**
- Use procedures set out in the School's regulation
- Provide Complainant remedies if Respondent is found to have responsibility

Avoiding Deliberate Indifference Cont'd

Title IX Coordinator must PROMPTLY contact every Complainant (whether formal complaint or not) to discuss:

- Wishes regarding supportive measures
- That supportive measures are available with or without filing a formal complaint
- The process for filing a formal complaint



In order to investigate and make decisions about sexual harassment, you must

UNDERSTAND THE REGULATION'S DEFINITION OF SEXUAL HARASSMENT

Title IX Definition

The Regulations use a definition of sexual harassment that is designed to protect 1st Amendment rights of students and teachers by:

- Distinction between physical conduct and speech
- Speech is largely protected unless it rises to high standard
- Physical conduct is *per se* actionable

Sexual Harassment = Conduct on the Basis of Sex that is One or More of the Following:

1. A school employee conditions the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct;
2. Unwelcome sexual conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it **“effectively denies a person equal access”** to the school's education program or activity;
or
3. Sexual assault, dating violence, domestic violence, or stalking.

Sexual Harassment: Element 1

Element 1 is considered “*quid pro quo*” harassment:

- Does not require a severe, pervasive, and objectively offensive analysis
- By its very terms, it will deny access to the program and is *per se* actionable
- Examples: A teacher requires sexual favors for a better grade; a staff member demands sexual favors or s/he will post compromising pictures

Sexual Harassment: Element 2

- This prong requires the unwelcome sexual conduct to be:
 - Severe AND
 - Pervasive AND
 - Objectively offensive
- Such that the victim is denied **equal access** to the School's programs and activities
- Narrowly tailored to protect 1st Amendment rights

Sexual Harassment: Element 3

Offenses based on violence (sexual assault, dating violence, domestic violence, stalking):

- Does not require severe and pervasive analysis
- When it occurs, equal access is denied
- Like Element 1, it is *per se* actionable

Sexual Assault

An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. 20 U.S.C. 1092(f)(6)(A)(v)

- Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent
- Including “forcible fondling” – touching of the private body parts of another person for the purpose of sexual gratification without consent

Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- A. Fear for his or her safety or the safety of others;
or
- B. Suffer substantial emotional distress

34 U.S.C. 12291(a)(30)

Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- 1) the length of the relationship;
- 2) the type of relationship;
- 3) the frequency of interaction between the persons involved in the relationship

34 U.S.C. 12291(a)(10)

Domestic Violence

Violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of [Arizona], or by 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 [Arizona].

34 U.S.C. 12291(a)(8)



Informal v. Formal

PROCEDURES UPON RECEIPT OF REPORT OF SEXUAL HARASSMENT

How is it Reported?

- Reports can be made by anyone and by mail, telephone, email to Title IX Coordinator or by any means that results in the Title IX Coordinator receiving the report
- Any report triggers School responsibilities – *Send notice of any report to Title IX Coordinator*
- Only victim, who is student or employee of School, can file a **formal complaint**

Informal vs Formal Complaint

- **Informal complaint** is where notice is made but no written document filed
- **Formal complaint** = a written document filed by a Complainant *or one that is signed by the Title IX Coordinator* alleging sexual harassment against a respondent **and** requesting that the School investigate the allegation of sexual harassment
- Title IX Coordinator can sign a formal complaint where victim will not also triggering investigation

All Notice Triggers Responsibility

Even if no formal complaint filed, Title IX Coordinator MUST initially:

- Contact Complainant to discuss supportive measures
- Consider the Complainant's wishes with respect to supportive measures
- Inform Complainant of the availability of supportive measures with or without the filing of a formal complaint
- Explain the process to file a formal complaint

Supportive Measures

Supportive measures are non-disciplinary, non-punitive, individualized services, offered as appropriate and without charge to a Complainant or a Respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

Examples of Supportive Measures

- Counseling
- Course modifications
- Schedule changes
- Increased monitoring or supervisions
- Designed to restore or preserve equal access to education program or activity
- Do not unreasonably burden either a Complainant or Respondent



Supportive Measures Cautions

Do not sanction or discipline Respondent in any way until grievance procedure has been followed

- Do not completely remove a student Respondent from an activity as a supportive measure for complainant
- UNLESS there is need for an emergency removal; which can only happen if necessary to protect an individual from IMMEDIATE THREAT TO **PHYSICAL HEALTH OR SAFETY**



DISTRICT OBLIGATIONS UNDER TITLE IX

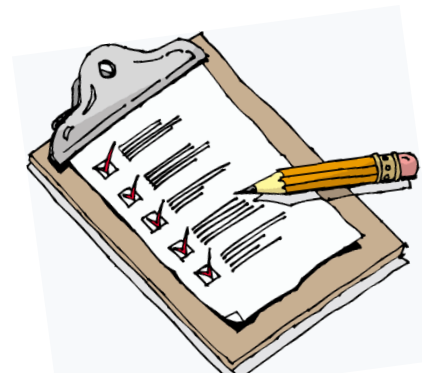
What Affirmative Steps Does Title IX Require?

- Employ a Title IX Coordinator
- Have and disseminate a policy and grievance process to address sex discrimination, including sexual harassment
- Post on the District's website:
 - Nondiscrimination Notice
 - The contact information for the Title IX Coordinator
 - The training materials for the investigators and decision makers
 - The grievance process

**REPORTS OF SEXUAL
HARASSMENT & THE GRIEVANCE
PROCESS**

How are sexual harassment allegations Reported to Staff?

- Reports can be made by anyone and by mail, telephone, email to Title IX Coordinator or by any means that results in the Title IX Coordinator receiving the report
- Any report triggers District responsibilities – **Important to send notice of any report to Title IX Coordinator**
- When deciding to elevate to TIX Coordinator, treat each allegation as if all the alleged facts are true
- Do not make a judgment as to whether the report is sexual harassment – that is the Title IX Coordinator's job in responding



How Should I Train My Staff to Elevate Allegation of potential sexual harassment?

- Any report to staff triggers District responsibilities – **Important to send notice of any report to Title IX Coordinator**
- Any employee with actual knowledge of an incident or allegation of sexual harassment must **report to their principal/lead administrator** as soon as practicable
- Do not bypass campus leadership
- Do not make a judgment as to whether the report is sexual harassment – that is the Title IX Coordinator's job in responding

How Should Administrators Elevate?

- As soon as Administrators/Principals are made aware of a potential Title IX matter, call your District Title IX Coordinator
- Do not investigate
- Do not discipline
- Do not make a judgment as to whether the report is sexual harassment – that is the Title IX Coordinator's job in responding
- Prepare to remain engaged in potential Title IX matter

Your Title IX Coordinator

Robert Quinones

Director of Leadership & Engagement

Title IX Coordinator

Casa Grande Elementary School District

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Administrator/Principal's Role in Title IX Process

- Title IX Coordinator and Administrator/Principal will discuss next steps
 - Preparing an actual knowledge report
 - Getting clarifying information
 - Getting teacher statements
- What happens next?
 - If Title IX investigation is appropriate and a formal complaint is filed, duties may be paused – but do not stop
 - If Title IX investigation is not opened, Administrator/Principal maintains responsibility to Discipline
 - If there was additional conduct outside of Title IX, Administrator/Principal may proceed with investigation/discipline ****as long as the conduct doesn't fall under Title IX****

Questions?



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