

SEXUAL HARASSMENT ADVISORY COMMITTEE

MEETING AGENDA

Date: January 15, 2020
Time: 4:00 – 5:00 p.m.
Location: Berkeley High School, 1980 Allston Way, Berkeley, CA 94704
Building H Room #104

Agenda and Discussion Topics

1. New Title IX rules are about to be published after January 28, 2020.

The U.S. Department of Education via Secretary Betsy DeVos are likely to release the new Title IX regulations in the next few weeks. The following is a summary of the new rules:

SUMMARY

The Secretary of Education proposes to amend regulations implementing Title IX of the Education Amendments of 1972 (Title IX). The proposed regulations would clarify and modify Title IX regulatory requirements pertaining to:

1. The availability of remedies for violations
2. The effect of Constitutional protections
3. The designation of a coordinator to address sex discrimination issues
4. The dissemination of a nondiscrimination policy
5. The adoption of grievance procedures and
6. The process to claim a religious exemption

The proposed regulations would also specify how recipient schools and institutions covered by Title IX must respond to incidents of sexual harassment consistent with Title IX's prohibition against sex discrimination.

The proposed regulations are intended to promote the purpose of Title IX by requiring recipients to address sexual harassment, assisting and protecting victims of sexual harassment and ensuring that due process protections are in place for individuals accused of sexual harassment.

Summary of the Major Provisions of This Regulatory Action

With regard to sexual harassment, the proposed regulations would:

Define the conduct constituting sexual harassment for Title IX purposes;

Specify the conditions that activate a recipient's obligation to respond to allegations of sexual harassment and impose a general standard for the sufficiency of a recipient's response;

Specify situations that require a recipient to initiate its grievance procedures; and

Establish procedural safeguards that must be incorporated into a recipient's grievance procedures to ensure a fair and reliable factual determination when a recipient investigates and adjudicates a sexual harassment complaint.

In addition, the proposed regulations would: Clarify that in responding to any claim of sex discrimination under Title IX, recipients are not required to deprive an individual of rights that would be otherwise guaranteed under the U.S. Constitution; prohibit the Department's Office for Civil Rights (OCR) from requiring a recipient to pay money damages as a remedy for a violation of any Title IX regulation; and eliminate the requirement that religious institutions submit a written statement to qualify for the Title IX religious exemption.¹

The National Women's Law Center has issued the following comments on the proposed Title IX rules:

The proposed rules ignore the public's overwhelming support for the pre-2017 approach.²

- First, the proposed rules are contrary to OCR's 2001 guidance, which was issued after undergoing notice and comment and enforced under both Republican and Democratic administrations.
- Second, the proposed rules are contrary to the 96% of Title IX commenters who supported the 2011 guidance during the Fall 2017 deregulation comment period.
- Finally, the proposed rules were strongly opposed by more than 100,000 comments, including from an association of 13,000+ school superintendents; an organization of 3,500 Title IX coordinators; 900+ mental health professionals; 800+ graduate school faculty/students; 143 state legislators from 40 states and DC; 75 scientific societies (representing thousands of member scientists); a coalition of 73 law professors; 36 United States senators; 21 survivors from Ohio State University's men's wrestling team; 19 state Attorneys General; and countless students, parents, educators, advocates, and community members who care about ending sexual harassment in schools
- If ED is allowed to issue the final rules, it will defy public consensus yet again. ,

¹ The full text of the proposed rules can be located online at <https://www.federalregister.gov/documents/2018/11/29/2018-25314/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>

² https://docs.google.com/document/d/1QqYt_to7fRdkbm4xBDIR1UY-2mHC88XbgtiseiMtRbc/edit

2. Request for agenda item by Heidi Goldstein which includes the position BUSD will take after the proposed TIX Rules are made final. Per Heidi's request:

"It is likely that most of the proposed rules will remain intact but Heidi Goldstein requests that BUSD policy will be updated to clearly articulate plans to keep to the preponderance of evidence standard, embrace the more stringent institutional awareness standard, and eschew the cross examination process permitted by the proposed. Making the BUSD position clear to students and parents will be important as these are significant determinants in student willingness to report incidents."

It is unlikely that the cross examination provision will be allowed in the K-12 environment due to protections afforded minors. Regardless, board policies, compliance protocols and other district related materials will have to be updated.

Recommendation:

In order to provide this committee with an opportunity to provide input with regard to the updating of BUSD policies and compliance protocols, the Title IX office can forward revised policies to committee members who desire to make input.

3. Request for Agenda item by Heidi Goldstein regarding the 11/6/19 School Board meeting item 14.1 for the CA Dashboard cited LCFE goal 6 School Climate progress, reproduced below. I note the narrative lacks mention of any diagnostic tool other than the CHKS. Given that Green Dot is in its 3rd year of implementation and is a major element of BHS climate work, the Dashboard narrative should include work tied to this initiative, which is as follows:

<https://agendaonline.net/public/Meeting.aspx?AgencyID=232&MeetingID=74721&AgencyTypeID=1&IsArchived=False>

While I cannot attend the SHAC meeting scheduled for 11/20/19, I ask that this be included as an agenda item for discussion and ultimately recommendation to the Superintendent for future CA Dashboard narratives.

Item 14.1 from 11/6 Agenda:

(LCFF Priority 6) School Climate The LEA administers a local climate survey at least every other year that provides a valid measure of perceptions of school safety and connectedness, such as the California Healthy Kids Survey, to students in at least one grade within the grade span(s) that the LEA serves (e.g., K-5, 6-8, 9-12), and reports the results to its local governing board at a regularly scheduled meeting of the local governing board and to stakeholders and the public through the Dashboard.

BERKELEY UNIFIED SCHOOL DISTRICT'S RESPONSE: Student Services will be collaborating more closely with the sites for future implementations to assure a larger sample size at all grades for more reliable data to take action. The district is also considering expanding the survey areas beyond the minimum requirement as well as giving the survey every year instead of every other year. BUSD

Student Services and Berkeley Research and Evaluation and Assessment (BREA) partners with WestEd to administer and evaluate findings from the CHKS.

4. Resignation of Mardi Walters, Ed.D.

It is with heavy heart that I tender my resignation as Title IX and Compliance Coordinator at BUSD. I will likely stay on until the end of February 2020, until suitable staffing can fill in. I will be moving on to a new role in Title IX and Clery compliance.

5. Title IX Office organization

A Title IX Coordinator cannot be coordinator, investigator, decision maker and appellate level decision maker. Each of these tasks must be separate to afford the protections of due process and to provide a prompt, equitable response to discrimination, harassment, retaliation and sexual assault allegations.

Thus, from my brief time here at BUSD, I recommend, at a minimum, the following staffing be created in the Title IX office: A full time coordinator of Title IX and compliance, a full time investigator that can be shared 50:50 between Title IX and Human Resources and a full time Administrative Assistant that can support the daily operations of the office, with file management, CANRA reporting, calendaring and data entry.

The Superintendent handles all Title IX appeals.

6. Title IX District Wide Action Recommendations by Mardi Walters, Ed.D.

a). Deputize School Site Vice Principals and or Principals as Deputy Title IX Coordinators

b). Online training for all BUSD school site personnel (T9, reporting, implicit bias, cultural competency, consent, sexual assault and trauma informed response).

c). Deputy Title IX officers from school sites attend annual Title IX civil rights investigator training, and training in implicit bias, cultural competency and investigations of sexual assault. Training is attended as a group so that attendee get to know each other and discover the true importance of this work.

d). Establish online reporting chain of sexual assault, harassment, discrimination, retaliation

e). Obtain LiveSafe application for Berkeley High School. Visit: <https://www.livesafemobile.com/>. We need financial support for this.

f). Obtain Callisto as an option for reporting at BHS and elsewhere. Visit: <https://www.projectcallisto.org/>.

g). Train athletic coaches and personnel on consent, appropriate conduct, sexual assault, harassment, discrimination and retaliation

h). Data based decision making: 1). Accountability for district employees' completion of district's mandated reporter training (CANRA); and 2). Data reflecting types of complaints filed by school site location with intervention, mediation, training and accountability as response.

i). Develop pamphlet to identify reporting protocols and resources for victims of sexual assault, dating violence, domestic violence, stalking, harassment, discrimination and retaliation. Need resource input and clearly defined reporting options (VAWA).

7). SHAC Membership Drive. Searching for BHS students and faculty who may wish to join SHAC – perhaps a poster advising the group and posted at BHS? Or place information in the school newsletter? What about the E serve list at BHS?

8). Future SHAC meetings

Google calendar invites will be sent by Tanisha Wilson.

Future meetings will be one hour in length, same location, on the following dates in the same location:

Feb. 12, 2020	4:00 – 5:00 p.m.
March 18, 2020	4:00 – 5:00 p.m.
April 22, 2020	4:00 - 5:00 p.m.
May 13, 2020	4:00 – 5:00 p.m.
June 3, 2020	4:00 – 5:00 p.m.

cc: Tanisha Wilson

SIGN IN SHEET FOR 01/15/2020		
	NAME	EMAIL
1	Mardi Walters, Ed.D.	marthawalters@berkeley.net
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