

Title IX and Special Education
Consultation for the Win!


T&H Webinar
April 3, 2023

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1


Meet Your Hosts




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2

Sexual Harassment Impacts on Sped Students

Students with disabilities are more likely than their peers to experience sexual harassment and less likely to report it



3


Duty to Provide FAPE

Duty to ensure harassed student receive FAPE

Harassment may impede a student's ability to benefit from educational services, needs of student and IEP or Section 504 Plan may need to be reevaluated

Duty to ensure harassing student receives FAPE

Repeated misconduct may indicate unmet needs that warrant review and revision of the student's IEP or Section 504 Plan



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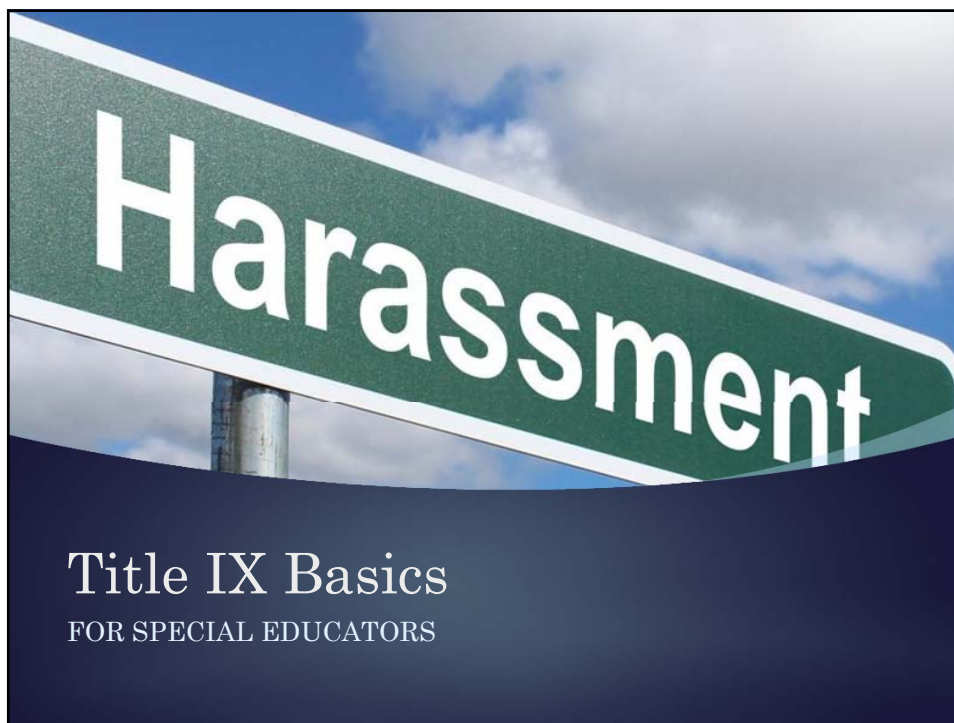


AGENDA

1. Title IX Basics (for special educators)
2. Hypotheticals
 - Child Find
 - MDRs
 - Consent and Supportive Measures
3. Key Takeaways



5



Harassment

Title IX Basics
FOR SPECIAL EDUCATORS

6




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8

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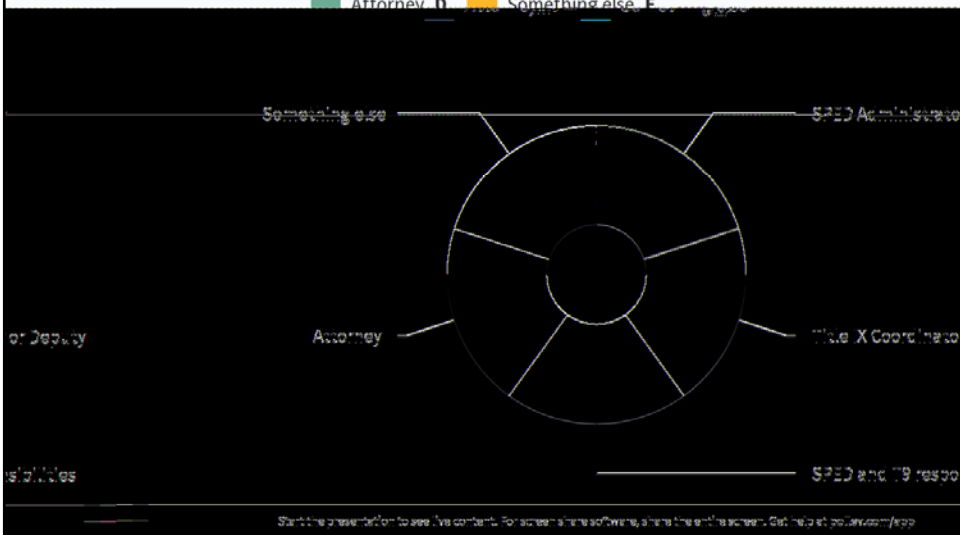
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9

What is your role?

SPED Administrator **A**Title IX Coordinator or Deputy **B**SPED and T9 responsibilities **C**Attorney **D**Something else **E**



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Be honest... If we call on you, can you tell me the name of your Title IX Coordinator?

Yes No

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11


Overview of 2020 Regulations

Define sexual harassment and scope of protections

Detailed grievance procedures for formal complaints must be used to discipline covered conduct

Any K-12 employee's knowledge triggers duty to respond

For minor parties, parents are always given the same right at the minor party



12

Overview of 2020 Regulations

Upon Notice

- Meet with alleged victim (“Complainant”) to offer supportive measures and provide info on how to file a formal complaint
- Emergency removal/admin leave allowed (in limited circumstances)

After Formal Complaint

- Notice of Allegations
- Informal Resolution (if offered)
- Investigation
- Decision
- Appeal



13

Proposed Rules

Generally

- Propose to broaden the application of the regulations by expanding the definition of Title IX sexual harassment and applying the grievance process to other types of Title IX disputes
- Propose to decrease the procedural requirements for responding to Title IX sexual harassment

For SPED

- Propose to require the Title IX Coordinator to consult with the IEP or 504 Team “throughout the implementation of grievance procedures” and when implementing supportive measures



14

Proposed Rules: Consultation Questions

When and how often is “throughout the grievance procedures?”

Is the whole IEP or 504 team required to meet every time?

What are the respective roles of the Title IX coordinator, Special Education administrator, and parents?

Must an IEP or 504 meeting be held before supportive measures are decided and implemented?



15

Case Studies in Consultation



16



17



18

Case Study #1: Sam

Teacher: I need to talk to you about Sam from my class. You know Sam, the PTA President's son? Sam has a problem with butts.

Principal: Butts? What?! He's seven!

Teacher: Yeah. Sam likes to grab butts. He has been doing it almost nonstop to this one group of girls in the class. I've disciplined him in the classroom every time, but he just isn't stopping.



19

Case Study #1: Sam

Principal: Soooo... this butt grabbing, when does this happen exactly?

Teacher: Any time I assign the kids to do group work he does it. I never knew group work could get someone so excited!

Principal: Does this kid receive any special services?

Teacher: No, he's gen ed.



20

What should the teacher and the Principal do next?

- 1. Have the teacher intervene by standing near the group during group work and giving Sam a fidget to keep his hands busy*
- 2. Call the special ed director because of Sam's repeated misconduct during group work*
- 3. Call the girls' parents to tell them they've been touched inappropriately*
- 4. Call the Title IX Coordinator to report possible sexual harassment*



21

What should the teacher and the Principal do next? (choose all that apply)

Have the teacher intervene by standing near the group during group work and giving Sam a fidget to keep his hands busy **A**

Call the special ed director because of Sam's repeated misconduct during group work **B**

Call the girls' parents to tell them they've been touched inappropriately **C**

Call the Title IX Coordinator to report possible sexual harassment **D**

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22

Case Study #1: Sam

The special ed director holds a pre-referral meeting with Sam's teachers and learns that in addition to the butt grabbing, he has no friends, he often says inappropriate things like boob jokes, and he has a hard time with boundaries.



23

What should the special ed director do next?

- 1. Nothing, these behaviors are typical for seven-year-olds*
- 2. Initiate MTSS or 504 process*
- 3. Contact the parent to discuss evaluation*
- 4. Call an ARD meeting*



24

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25

Was it appropriate for the teacher to discipline Sam at the classroom level?

- 1. Yes, because teachers should always try to manage classroom behavior before escalating the situation*
- 2. Yes, because the teacher didn't know if the conduct was sexual in nature*
- 3. No, because the conduct involved touching of someone else's private body part*
- 4. No, because it is the parent's responsibility to teach the student personal boundaries*



26

Was it appropriate for the teacher to discipline Sam at the classroom level?

Yes, because teachers should always try to manage classroom behavior before escalating the situation

Yes, because the teacher didn't know if the conduct was sexual in nature

No, because the conduct involved touching of someone else's private body part


No, because it's the parent's responsibility to teach the student personal boundaries

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27

What kind of Title IX sexual harassment could this be?

- 1. Stalking*
- 2. Fondling*
- 3. Hostile Environment*
- 4. Dating Violence*
- 5. None – Kids are Too Young*



28

What kind of Title IX Sexual Harassment could this be? (choose all applicable)

Stalking	A
Fondling	B
Hostile Environment	C
Dating Violence	D
None - The kids are too young (no "sexual" purpose)	E

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29

Case Study #2: Billy

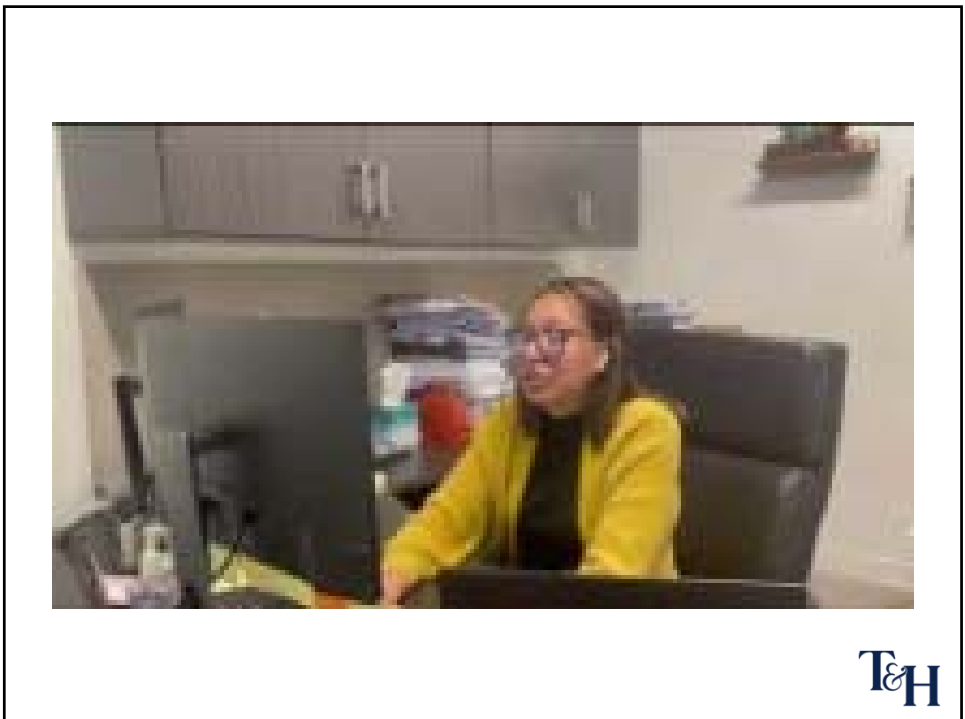
- ▶ Billy, a gen ed student, is alleged to have sexually assaulted a classmate. The Title IX Coordinator wants to do an emergency removal.
- ▶ Early in the Title IX process, the LSSP sends an email to the special education director.



30



31



32

Oops



Lindsey LSSP

To Sandy Sped Director

7:00 PM

I probably should have noticed this sooner. Before the school year started – maybe in mid-August – Billy’s mom brought me an outside evaluation diagnosing him with autism and asking for support from the school. I forgot about it until a few moments ago and realized that I uploaded it to his twin brother Johnny’s cum folder. I remember from my special ed training with our T&H lawyers that I should consider a child referral when getting this kind of info. I know we may need to consider compensatory services due to my error, but I’d like to go ahead and start the referral process. Is that cool?



33

Can the Title IX Coordinator remove Billy on an emergency basis?

- 1. No, because the conduct is not serious enough under the Title IX rules*
- 2. Yes, because Billy is a general education student and the conduct is serious enough under Title IX*
- 3. Yes, but only after they complete the special ed evaluation*
- 4. Yes, but only if they hold an MDR first*



34

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- No, because the conduct is not serious enough under the Title IX rules **A**
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- Yes, but only after they complete the special ed evaluation **C**
- Yes, but only if they hold an MDR first **D**

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35

What behavior is the MDR committee reviewing?

- 1. The behavior as reported from a building administrator based on the building investigation*
- 2. The behavior Billy admits to have done*
- 3. The alleged conduct; you are assuming it is true*
- 4. Billy's rumored sex life*



36

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37

Case Study #3: Nitasha & Rex

Leila Gary starring as
"the Assistant Principal"

Emily Adams starring as
"the Special Education Teacher"

David Giddens starring as
"the Title IX Coordinator"

38

38



39

Case Study #3: Nitasha & Rex

Assistant Principal: Hey! How've you been, I haven't seen you in awhile. You'll never believe what happened. I went in the bathroom last week and your kiddos, Nitasha and Rex, were getting after it in the bathroom, groaning and moaning.

Special Ed Teacher: What? What did you do?

Assistant Principal: I suspended them both for inappropriate sexual behavior at school.



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40

Case Study #3: Nitasha & Rex

Special Ed Teacher: You know they both have IEPs, right?

Assistant Principal: So? They were still doing the deed.... I heard Nitasha say “Do you want to?” and Rex said “Yes, Yes!” They were both laughing and clearly were willing participants.



41

Was the Assistant Principal's approach correct?

- 1. Yes, because both parties consented*
- 2. Yes, because the conduct only happened once so it couldn't trigger Title IX*
- 3. No, he should have checked to see if either student's disability impacted their ability to consent*
- 4. No, he should have done an MDR first*



42

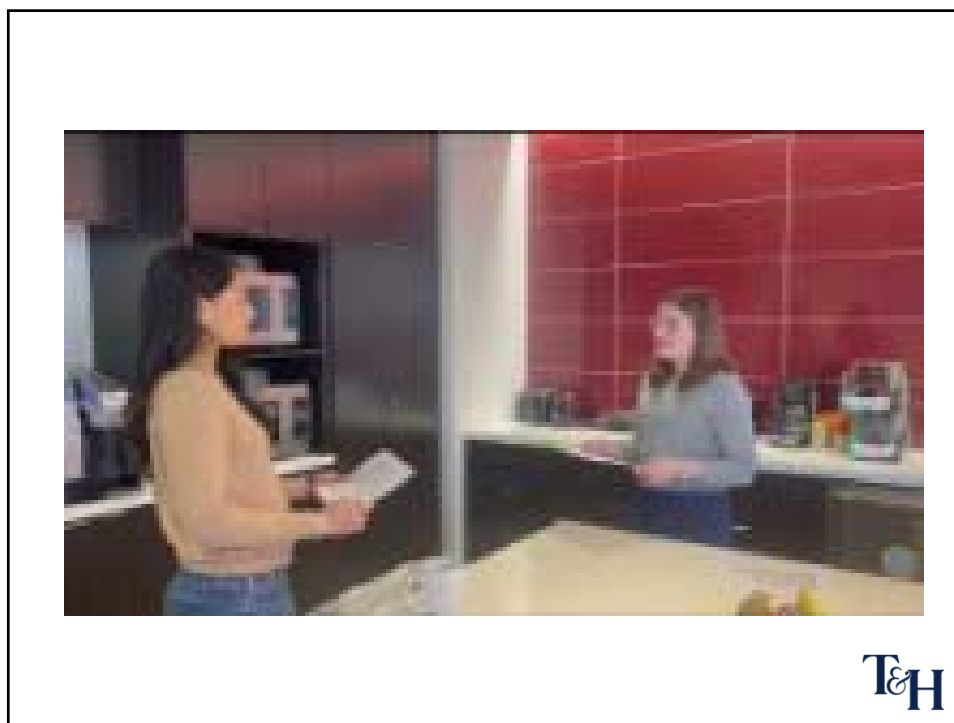
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Was the Assistant Principal's approach correct?

- Yes, because both parties consented
- Yes, because the conduct only happened once so it couldn't trigger Title IX
- No, he should have checked to see if either student's disability impacted their ability to consent before deciding it was consensual
- No, he should have done an MDR first
- None of the above

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43



44

Case Study #3: Nitasha & Rex

Special Ed Teacher: I don't know, I don't think Rex is capable of consenting.

Assistant Principal: What do you mean?

Special Education Teacher: Sweet Rex has an intellectual disability. His cognitive functioning is so low that he couldn't possibly know what's going on, let alone consent! But come to think of it, Nitasha is one of my students with autism and she has difficulty reading social cues from other people.



45

Who is responsible for sexual assault under Title IX?

- 1. Neither student is responsible for sexual assault, because they were both willing participants.*
- 2. Neither student is responsible for sexual assault; although Rex could not consent, Nitasha would not reasonably have known that because of her disability*
- 3. Nitasha is responsible for sexual assault, because Rex could not consent due to his disability.*
- 4. Both students are responsible for sexual assault because neither could consent due to disability*



46

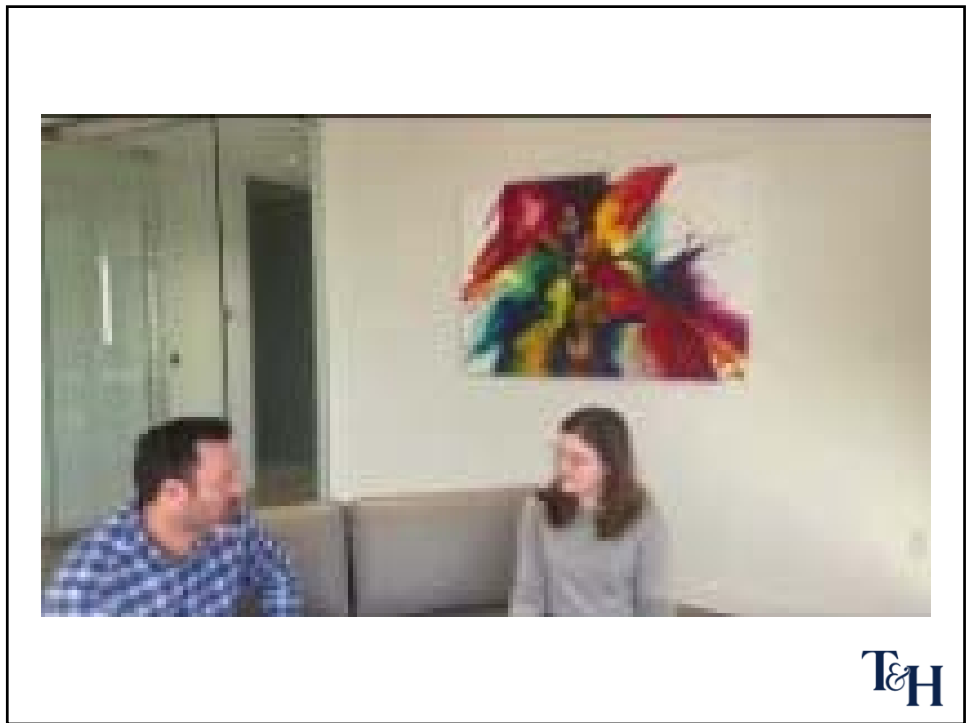
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- Nitasha is responsible for sexual assault, because Rex could not consent due to his disability.
- Both students are responsible for sexual assault because neither could consent due to disability

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47



48

Case Study #3: Nitasha & Rex

Title IX Coordinator: Rex's mom demanded that Nitasha be taken out of their shared class. I told her I can't move Nitasha at this point, but I can change Rex's schedule.

Special Education Teacher: They are both in my life skills class. There is only one. If you take Rex out, we can't implement his IEP.



49

What supportive measures should the Title IX Coordinator implement?

- 1. Move Rex to a resource class with an aide.*
- 2. Move Rex to a life skills class at a different campus.*
- 3. Move Nitasha and Rex to different parts of the classroom, add a para to monitor them, do not allow them out of class at the same time.*
- 4. Call an ARD meeting to consider these options as a team.*



50

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51

Case Study #3: Nitasha & Rex

- ▶ The Title IX Coordinator next proposes, as a supportive measure, to have Nitasha talk with the counselor about boundaries. She suggests twice a week for 45 minutes and a daily 15-minute check in.
- ▶ Nitasha already has counseling on her IEP.



52

Can additional counseling be provided to Nitasha as a supportive measure?

- 1. Yes, but only if the ARD committee adds it to her IEP.*
- 2. Yes, but only if her parents agree and it is done by an LSSP.*
- 3. Yes, but only if it does not interfere with her special education services.*
- 4. Maybe, call an ARD meeting to consider these issues as a team.*



53

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Maybe, call an ARD meeting to consider these issues as a team.

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54

Key Takeaways

- ▶ School districts must comply with **both** the IDEA and Title IX, even when they are at times confusing and even seemingly conflicting
- ▶ Consultation should be occurring now in any case in which a student with an IEP is a part, even under the current Title IX rules
- ▶ For the most effective consultation, train special education employees on Title IX and train Title IX and student discipline employees on special education requirements



55

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Questions? Thank You!

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