



# Is it or Isn't it

Spotting Title IX Issues with Real World Scenarios

Eva C. Wood (Education Minnesota) and  
Christian R. Shafer (Ratwik, Roszak & Maloney)

1

## Brief Background on Title IX

- Title IX is a federal civil rights law passed as part of the Education Amendments of 1972.
- This law protects people from discrimination based on sex in education programs or activities that receive Federal financial assistance.
- 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.”

2

## Who does Title IX Apply to?

Title IX applies to the following relationships:

Ø Student to Student

Ø Employee to Student

Ø Student to Employee

Ø Employee to Employee

3

## Formal Title IX Complaints

- Under the Title IX Final Rule, sexual harassment/misconduct claims must meet one of the following three conditions to qualify for a formal Title IX Complaint:
  - 1) “An employee of the recipient (the Academy) conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct.”
    - This condition is often called “quid pro quo” or “this for that” harassment. It is when favorable professional or educational treatment is conditioned on a sexual activity
  - 2) “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 school’s education program or activity.”
    - This condition is often called “hostile environment”.
    - This type of sexual misconduct must be based on sex and meet all three measures: severe, pervasive, and objectively offensive.
    - Constitutionally protected speech is protected under Title IX.
  - 3) “Sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined in the Clery Act, and VAWA, expressly including sexual assault, dating violence, domestic violence, and stalking.”
    - Title IX now includes the Clery Act/VAWA definitions of dating violence, domestic violence, and stalking.

4

## Scenario 1

- Casey and Collin are on a band trip over Spring Break in Dublin, Ireland. Casey goes to bed early. The next morning, Casey wakes up in bed with Collin, who references sex the night before while getting out of bed. Casey doesn't remember inviting Colin into bed, nor have they ever dated or been physically intimate.
  - Has a Title IX violation occurred?
  - What other issues might come up?

5

## Scenario 2

- Jane and John are students in the same physical education class. During a game of kickball, Jane is running the bases, and John, while attempting to stop her, bumps Jane's breast with his upper arm. John also says, "watch where you're going, b\*\*\*\*!" Jane reports the incident to her teacher. John is interviewed by school administration, and maintains that he did not intend to touch Jane's breasts, and that she ran into his arm. He admits cursing at her out of frustration. Jane and John both affirm that they have not had any other interactions or issues.
  - Has a Title IX violation occurred?
  - What other issues might come up?
- Jane and John also sit next to each other in Language Arts class. After class, Jane approaches her teacher and reports that John makes her uncomfortable.
  - What should the teacher do?
- *Note: This hypothetical is based in part on the case of Doe v. Dardanelle School District, 928 F.3d 722 (8th Cir. 2019).*

6

## Scenario 3

- Student A and Student B are discussing their mutual friend, Student C. Student A is a heterosexual male, Student B is a heterosexual female, and Student C is a homosexual male.

Student A makes a sexual comment about Student C. Student B found this comment offensive, and later reported it to Student C. Student C approaches his math teacher and relays the comment. Student C specifically states that he does not feel sexually harassed, but is offended because Student A is heterosexual. Student C says “it’s not a huge deal, though, because we don’t have any classes together.” Student C also says that he confronted Student A, who said that he was just joking and has a dark sense of humor.

- Has a Title IX violation occurred?
- Does it matter if Student A reports that he and Student C have joked about having sex before?
- What other issues might come up?

7

- A transgender boy starts 10<sup>th</sup> grade in a new district. He asks the school to use his chosen name rather than his legal name, and he/him pronouns. He also asks the school to use the boys’ bathroom and locker room. At first, administration allows him to use the boys’ bathroom, but then several parents approach the school with privacy concerns about the situation. The district tells the student his use of the bathroom is disruptive to the learning environment, and he can only use the bathroom associated with his biological sex, and the school can only use his legal name. They call that his real name.

- Has a Title IX violation occurred?
- What other issues might come up?

## Scenario 4

8

## Scenario 5

- A science teacher is aware that two students in their class, Betsy and Billy, have been dating since the beginning of the school year. Betsy and Billy hold hands in the halls, will occasionally kiss before leaving the classroom, and sit on each other's laps. This behavior continues throughout the fall semester, and the instructor frequently puts both students together in small groups, hoping to foster their romance.

Unbeknownst to their teacher, Betsy dumped Billy around Halloween. It is now early December, and the teacher still witnesses Billy touching Betsy, holding onto her, and trying to kiss her. The instructor sees Betsy trying to pull away sometimes, but, not knowing anything is wrong, continues to pair them up or put them in small groups together. One day, Betsy emails the instructor and says that she cannot come to class because another student has been making her uncomfortable. The instructor meets with Betsy, and learns of the breakup and Billy's ongoing behavior towards her. Betsy notes that she has been performing poorly in class lately because she is distracted by and cannot get away from Billy, in part because the teacher has continued to pair them up.

- Has a Title IX violation occurred?
- What other issues might come up?
- How could this have been handled better?

9

## Scenario 6

- A school maintenance worker walking through front lobby before school notices that every day a male student approaches the same group of female students and attempts to hug them. Some days the girls let him hug them, while other days some resist, or even run away. On one or two occasions, the girls have made eye contact with the maintenance worker, and have appeared nervous, but have not said anything.

The maintenance worker is familiar with the male student, and strongly suspects that the student is homosexual. Believing that the male student has no sexual or romantic interest in the girls he is hugging, the maintenance worker does not report the behavior or investigate further.

- Has a Title IX violation occurred?
- What other issues might come up?
- Does a student's actual or perceived sexual orientation change whether or not behavior is considered sexual harassment?

10

## Scenario 7

- A principal is told that a thirteen-year-old student and a seventeen-year-old student had sexual intercourse in a school bathroom the previous day. The principal asks the thirteen-year-old student, who confirms the report. The principal takes no further action
  - Has a Title IX violation occurred?
  - What other issues might come up?
- This scenario is also based on a real case. In *Doe v. Pawtucket School Department*, 969 F.3d 1 (1st Cir. 2020), the student was assaulted by a different eighteen-year-old student the following school year, also in a school bathroom. The Court concluded that the case could proceed to discovery on the theory that, had the principal done something, the younger student would have been identified as being particularly vulnerable to being lured into the bathroom by older students.

11



# Questions?

12