

Capital Area School for the Arts Charter School

Title IX – New Guidance

JOSHUA E. POLLAK, ESQUIRE
CAROLYN N. FLYNN, ESQUIRE
JAMES J. MUNNELLY, ESQUIRE
MCKENNA SNYDER LLC
350 EAGLEVIEW BOULEVARD, SUITE 100
EXTON, PA 19341

JPOLLAK@MCKENNALAWLLC.COM
CFLYNN@MCKENNALAWLLC.COM
JMUNNELLY@MCKENNALAWLLC.COM



Learn More at
mckennalawllc.com

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not constitute legal advice. ATTORNEY/CLIENT PRIVILEGE

McKenna Snyder

McKENNA SNYDER LLC



Attorneys At Law

Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq.

- ▶ Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq., protects students from discrimination based on sex in educational programs or activities that receive Federal financial assistance.
- ▶ On May 6, 2020, the U.S. Department of Education issued the Final Rule on Title IX of the Education Amendments of 1972 (“Title IX”) regulations. The Final Rule goes into effect on Friday, August 14, 2020.



Key Provisions of the DOE's New Title IX Regulation

- ▶ Defines sexual harassment to include sexual assault, dating violence, domestic violence and stalking, as unlawful discrimination on the basis of sex.
- ▶ Provides a consistent, legally sound framework on which survivors, the accused and schools can rely.
- ▶ Requires schools to offer clear, accessible options for any person to report sexual harassment.
- ▶ Requires the school to offer survivors supportive measures, such as class or dorm reassignments or no-contact orders.
- ▶ Protects K-12 students by requiring elementary and secondary schools to respond promptly when any school employee has notice of sexual harassment.

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Key Provisions of the DOE's New Title IX Regulation

- ▶ Holds colleges and universities responsible for off-campus sexual harassment at houses owned or under the control of school-sanctioned fraternities and sororities.
- ▶ Requires colleges and universities to provide students the right to written notice of allegations, the right to an adviser and the right to submit, cross-examine and challenge evidence at a live hearing.
- ▶ Shields survivors from having to come face to face with the accused during a hearing and from answering questions posed personally by the accused.



Key Provisions of the DOE's New Title IX Regulation

- ▶ Requires schools to select one of two standards of evidence, the preponderance of the evidence standard or the clear and convincing evidence standard—and to apply the selected standard evenly to proceedings for all students and employees, including faculty.
- ▶ Provides “rape shield” protections and ensures survivors are not required to divulge any medical, psychological or similar privileged records.



Key Provisions of the DOE's New Title IX Regulation

- ▶ Requires schools to offer an equal right of appeal for both parties to a Title IX proceeding.
- ▶ Gives schools flexibility to use technology to conduct Title IX investigations and hearings remotely.
- ▶ Protects students and faculty by prohibiting schools from using Title IX in a manner that deprives students and faculty of rights guaranteed by the First Amendment.



Defining Sexual Harassment

- ▶ Title IX protects students' rights to educational opportunities free from sex discrimination. While courts have previously interpreted Title IX to include sexual harassment as a form of sex discrimination, the newly published regulations establish in law that sexual harassment, including sexual assault, is unlawful sex discrimination.



Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq.

- ▶ Title IX states that:
 - ▶ No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient, which receives Federal financial assistance.



Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq.

- ▶ We recommend having a Board Policy for your School to comply with Title IX.
- ▶ This policy covers student on student as well as employee on student sexual harassment.



When Does Title IX Apply?

- ▶ Title IX covers sexual harassment that happens in a school's "education program or activity."
- ▶ This includes locations, events, and circumstances where a school exercises substantial control over the context of the alleged harassment and the person accused of committing the sexual harassment.



Sexual Harassment

- ▶ Title IX prohibits the following conduct on the basis of sex that satisfies one or more of the following:
 - ▶ 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.



Sexual Harassment

- ▶ Title IX prohibits the following conduct on the basis of sex that satisfies one or more of the following:
 - ▶ School employee conditioning educational benefits on participation in unwelcomed sexual conduct, otherwise known as “Quid pro Quo” harassment.
 - ▶ “Sexual assault,” as defined in 20 U.S.C. 1092(f)(6)(A)(v) “dating violence,” as defined in 34 U.S.C. 12291(a)(10) “domestic violence,” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30)



Charter School's Response to Allegations/Knowledge of Sexual Harassment

- ▶ Once the Charter School has actual knowledge of sexual harassment or allegations of sexual harassment, the Charter School must respond or take action.
- ▶ The Charter School has “actual knowledge” when it has been given notice that a person may have been victimized by sexual harassment.



Charter School's Response to Allegations/Knowledge of Sexual Harassment

- ▶ Any person, whether the alleged victim or a parent, friend, or bystander, has the right to report sexual harassment to put the Charter School on notice.
- ▶ A report to any school employee will result in the Charter School having “actual knowledge.”



Charter School's Response to Allegations/Knowledge of Sexual Harassment

- ▶ Further, Charter School personnel who personally witness sexual harassment can mean that the Charter School has “actual knowledge.”



Charter School's Response to Allegations/Knowledge of Sexual Harassment

- ▶ The Charter School cannot be “deliberately indifferent” in responding to a complaint of sexual harassment.
- ▶ That means that it cannot be “clearly unreasonable” in light of the known circumstances.



Charter School's Response to Allegations/Knowledge of Sexual Harassment

- ▶ Upon receipt of a complaint, the Title IX Coordinator must act promptly, and must provide the following information to the complainant:
 - ▶ The availability of supportive measures
 - ▶ The right to file a complaint
 - ▶ How to file a complaint



Supportive Measures

- ▶ Supportive measures are free, individualized services designed to restore or preserve equal access to education, protect or preserve equal access to education, protect safety, or deter sexual harassment.
- ▶ A complainant does not need to file a formal complaint for him/her to receive supportive measures.



Supportive Measures

- ▶ Supportive measures are intended to support a student and are not punitive or disciplinary with respect to another student.
- ▶ These measures do not unreasonably burden any other person.
- ▶ Each student, the complainant and respondent, must have equal access to education prior to any determination of responsibility.



Supportive Measures

- ▶ Examples of supportive measures include:
 - ▶ Counseling
 - ▶ Extension of deadlines
 - ▶ Modification of work or class schedules
 - ▶ Escort services
 - ▶ Mutual restrictions on contact between individuals



Supportive Measures

- ▶ The Title IX Coordinator is responsible for implementing these supportive measures and must consider the alleged victim's wishes when it comes to requests for supportive measures.
- ▶ Generally, these measures must remain confidential between the parties and any School personnel who are responsible for implementing these measures.



Title IX Coordinator

- ▶ Per Title IX federal funding mandates, the Charter School shall designate a Title IX Coordinator whose duties will include:
 - ▶ Receiving reports from victims and third parties of sexual discrimination or sexual harassment in person or by mail, telephone, email, or any other means that results in the Title IX Coordinator receiving the report at any time, including nonbusiness hours;



Title IX Coordinator (duties cont.)

- ▶ Oversee mandated (seven-year) recordkeeping regarding investigations, appeals, informal resolutions, and training for Coordinator, investigators and decision-makers on the definition of sexual harassment in the Final Rule, the application of the Title IX policy, how to make relevancy determinations (including how to apply rape shield protections for complainants),



Title IX Coordinator (duties cont.)

- ▶ and the grievance process, including how to conduct investigations, hearings (including technology for live hearings), appeals, informal resolution processes, how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
- ▶ Maintaining current contact information in Charter School's nondiscrimination notices and website;



Title IX Coordinator (duties cont.)

- ▶ Ensuring Charter School is compliant with Title IX, coordinating the investigation and disciplinary process and looking for patterns or systematic problems with compliance to ensure Charter School fulfills federal obligations;



Title IX Coordinator (duties cont.)

- ▶ Signing formal complaints alleging sexual harassment;
- ▶ Receiving notice of sexual harassment or allegations of sexual harassment (or authorized Charter School representative authorized to institute corrective measures), triggering actual knowledge designation;



Title IX Coordinator (duties cont.)

- ▶ Upon receipt of the complaint, the Title IX Coordinator must provide the parties with written notice including the names of the parties, the date and location of the alleged misconduct, and a description of the alleged misconduct. The notice must further:
 - ▶ Provide the allegations and facts that would constitute sexual harassment
 - ▶ State the presumption of innocence
 - ▶ A statement that the parties are entitled to an advisor of their choice
 - ▶ A statement that the parties can request to inspect and review certain evidence
 - ▶ Provide information regarding the Charter School's Code of Conduct and penalties for false statements.
 - ▶ If additional allegations come to light, notice must be supplemented.



Title IX Coordinator (duties cont.)

- ▶ The Title IX Coordinator shall meet with every complainant and respondent. The complainant may have his or her Parent(s) present during any such meeting. The respondent, if he or she is a student, shall also have the right to have his or her parent(s) present at any meetings with the Title IX Coordinator as well.
- ▶ The Title IX Coordinator shall provide written notice of the date, time, location, participants, and purpose of all interviews, or other meetings, with sufficient time for the party to prepare.



Duties of Title IX Coordinator, cont'd

- ▶ From these meetings, the Title IX Coordinator will conduct an adequate, reliable, and impartial investigation of complaint(s), which includes interviewing and obtaining statements from any witnesses of both the complainant and alleged perpetrator, and the review of all evidence presented. Parties will be provided updates until a determination is made in writing.



Duties of Title IX Coordinator, cont'd

- ▶ After gathering evidence, the Title IX Coordinator must prepare an investigative report on the allegations of the formal complaint. The report, along with physical evidence (including written witness statements), must be provided to the parties. The Title IX Coordinator will give each party ten (10) days to respond to the evidence in writing.



Title IX Coordinator (duties cont.)

- ▶ Dismissing a complaint (1) when complainant provides written notice to the Title IX Coordinator to do so, (2) when allegations do not constitute sexual harassment, (3) if the allegations did not occur in the Charter School's educational program or activity, (4) if the allegations did not occur in the United States, (5) if respondent is no longer enrolled or employed by the Charter School, or (6) when specific circumstances prevent the gathering of evidence sufficient to reach a determination;



Title IX Coordinator (duties cont.)

- ▶ Respecting a complainant's wishes regarding whether the Charter School investigates, unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances;



Title IX Coordinator Duties Do NOT Include:

- ▶ The ability to be named the decision-maker tasked with issuing a written determination regarding responsibility with findings of fact, conclusion about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent and whether remedies should be provided to the complainant (Title IX Coordinator or the investigator cannot be named decision-maker);



Title IX Coordinator Duties Do NOT Include:

- ▶ The ability to be named as the decision-maker on any appeal (cannot be the same person as the initial decision-maker on the formal complaint, the investigator, or the Title IX Coordinator);



Title IX Coordinator Duties Do NOT Include:

- ▶ Any other job responsibility that creates a conflict of interest with responsibilities under Title IX;
- ▶ Becoming a complainant or a party during the grievance process upon the signing of a formal complaint; and



Title IX Coordinator Duties Do NOT Include:

- ▶ A requirement that the Title IX Coordinator file a formal complaint any time the Charter School received notice of multiple reports against a particular respondent and corresponding safe harbor.



Grievance Procedures

- ▶ The Charter School should follow a grievance process, that complies with the Final Rule, before the imposition of any disciplinary sanctions or other actions against a respondent that are not supportive measures.
- ▶ The Charter School should not restrict rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment, when complying with Title IX.



Grievance Procedures

- ▶ The Title IX Coordinator should be capable of conducting a thorough and complete investigation and should seek advice and assistance from the Board of Trustees if the Title IX Coordinator believes that he or she lacks the capacity to conduct a thorough and complete investigation of the alleged misconduct.



Grievance Procedures

- ▶ If the Title IX Coordinator or the CEO is the one accused of sexual harassment, or the Title IX Coordinator has bias or a conflict of interest, the Board should appoint a qualified individual who is not employed by the Charter School to conduct the investigation.



Grievance Procedures

- ▶ If the Title IX Coordinator submits the complaint, the Title IX Coordinator must recuse him/herself from the investigation and allow the Board to appoint a qualified individual who is not employed by the Charter School to conduct the investigation.



Key Players

- ▶ Who are the Investigators, Neutral Decision Makers, and Informal Resolution Facilitators?



Investigator

- Assigned by the Title IX Coordinator
 - ▶ Title IX Coordinator can serve as the Investigator
- Must be impartial, unbiased and free from conflicts
- If the investigator is not the Title IX Coordinator, the investigator will assume the investigatory role from the Title IX Coordinator discussed above.



Decision Maker

- ▶ Oversees the hearing, administrative determination proceeding or reviews appeals
 - Must be impartial, unbiased and free from conflicts – cannot be the same person to oversee the hearing and appeal
 - Must receive training on any technology to be used at a live hearing, and on issues of relevance of questions and evidence, including when questions and evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant
 - Title IX Coordinator and Investigators cannot serve as the Decision Maker



Informal Resolution Facilitator

- ▶ Serves as a mediator and oversees the informal resolution process seeking a resolution to a formal complaint that both parties agree, in writing, to resolve using restorative justice or mediation practices
- ▶ Must also be impartial, unbiased and free from conflict



Grievance Procedures

- ▶ Once the Title IX Coordinator completes his/her investigatory report, the case should be turned over to a neutral decision maker for the hearing process.
- ▶ A neutral decision maker must be a person(s) who is free from all conflicts of interest or bias for or against complainants or respondents and must receive special training about how to be impartial and how to decide what evidence is relevant.



Grievance Procedures

- ▶ A school can remove a respondent from the Charter School's educational programs or activities on an emergency basis if the respondent poses an immediate threat to anyone's physical health or safety.
- ▶ If the respondent is an employee, the Charter School may place the employee on administrative leave pending the investigation.



Grievance Procedures

- ▶ Both complainant and respondent have equal rights throughout the entire investigation and hearing process, including, but not limited to, the opportunity to present witnesses and evidence, including expert witnesses.
- ▶ K-12 schools do not need to hold a hearing, live or otherwise, but parties may submit written questions for the other parties and witnesses to answer;



Grievance Procedures

- ▶ The Charter School should further comply with all disability laws to ensure that all participants are appropriately accommodated.
- ▶ No one should be forced, threatened, coerced, or discriminated against for choosing not to be a part of this grievance process.



Grievance Procedure, cont'd

- ▶ Protect parties' privacy by requiring a party's written consent before using the party's medical, psychological, or similar treatment records during a grievance process;
- ▶ Protect all complainants from inappropriately being asked about prior sexual history ("rape shield" protections)



Grievance Procedure, cont'd

- ▶ Apply a presumption that the respondent is not responsible during the grievance process (often called a “presumption of innocence”), so that the school bears the burden of proof and the standard of evidence is applied correctly;
- ▶ Use either the preponderance of the evidence standard or the clear and convincing evidence standard (and use the same standard for formal complaints against students as for formal complaints against employees);



Grievance Procedure, cont'd

- ▶ Preponderance: This standard requires the party with the burden to convince the fact finder that there is a greater than 50% chance that the claim is true.
- ▶ Clear and convincing: This is a medium level of burden of proof and a more rigorous standard to meet than the preponderance of the evidence standard, but a less rigorous standard than proving evidence beyond a reasonable doubt. The party alleging the contention must prove that the contention is substantially more likely than not that it is true.



Informal Resolution

- ▶ The regulations permit the school to offer and facilitate informal resolution options, such as mediation or restorative justice, if both parties give voluntary, informed, written consent after both parties have been given written notice of the allegations in the complaint. This consent may be withdrawn at any time in favor of a formal grievance procedure. The school may not provide the informal resolution process when the allegations involve employee sexual harassment of a student. The school cannot offer the informal resolution process as a condition of enrollment or employment or waiver of the right to a formal investigation. Additionally, the school can only provide an informal resolution process after receiving a formal complaint.



Grievance Procedure, cont'd

- ▶ Send both parties a written determination regarding responsibility explaining how and why the decisionmaker reached conclusions;
- ▶ Effectively implement remedies for a complainant if a respondent is found responsible for sexual harassment;
- ▶ Offer both parties an equal opportunity to appeal.



Training

- ▶ Title IX mandates that Charter School employees that address sexual violence complaints have appropriate training.
- ▶ The U.S. Department of Education (ED) recommends that teachers, campus security, administrators, counselors, nurses, cleaning staff, coaches, and others likely to receive reports be trained on how to identify and report sexual harassment and violence.



Training

- ▶ Per the Department of Education, the Charter School should:
 - ▶ Ensure that responsible employees with the authority to address sexual violence know how to respond appropriately to reports of sexual violence;
 - ▶ That other responsible employees know that they are obligated to report sexual violence to appropriate school officials; and
 - ▶ That all other employees understand how to respond to reports of sexual violence.



Training

- ▶ The Charter School should ensure that counselors and advocates understand the extent to which they may and should keep a report confidential.
- ▶ The Charter School should provide training to all employees likely to witness or receive reports of sexual violence, including teachers, campus security, school administrators, school counselors, general counsels, athletic coaches, and nurses.



Training

- ▶ The Charter School should train responsible employees to inform students of:
 - ▶ The reporting obligations of responsible employees;
 - ▶ Students' option to request confidentiality and available confidential advocacy, counseling, or other support services; and
 - ▶ Their right to file a Title IX complaint with the Charter School and to report a crime to campus security or local law enforcement.



Training

- ▶ The Charter School should ensure that the Title IX Coordinator, investigator, decision-maker, and/or facilitator of an informal resolution process be free of conflicts of interest or bias against a party.



Training

- ▶ The Charter School should maintain and make publicly available on its website all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process (or available in response to a request from the public if it does not maintain a website).



Training

- ▶ Additionally, the Charter School should ensure that staff members are capable of providing culturally competent counseling to all complainants.
- ▶ Counselors and other staff who are responsible for receiving and responding to complaints of sexual violence, including investigators and hearing board members, should receive appropriate training about working with Lesbian/Gay/Bi-sexual/Transgender and gender-nonconforming students and same-sex sexual violence.



Training

- ▶ The Charter School should ensure that any reporting forms, information, or training about sexual violence be provided in a manner that is accessible to students and employees with disabilities, by providing electronically-accessible versions of paper forms to individuals with print disabilities, or by providing a sign language interpreter to a deaf individual attending a training.



Training

- ▶ To ensure that students understand their rights, the Charter School should provide age-appropriate training to its students regarding Title IX and sexual violence.
- ▶ Training may be provided separately or as part of the Charter School's broader training on sex discrimination and sexual harassment.



Training

- ▶ The Charter School may include these education programs in its orientation programs for new students, faculty, staff, and employees, training for student athletes and coaches, and assemblies and “back to school nights.”
- ▶ These programs should include a discussion of what constitutes sexual harassment and sexual violence, the Charter School’s policies and disciplinary procedures, and the consequences of violating these policies.



Training

- ▶ The Charter School should include such information in their employee handbook and any handbooks that student athletes and members of student activity groups receive.
- ▶ These materials include where and to whom students should go if they are victims of sexual violence.
- ▶ These materials should tell students and Charter School employees what to do if they learn of an incident of sexual violence.



Other Reporting Requirements in Compliance with Local and State Laws:

- ▶ If the complaint involves sexual assault, rape or conduct of a criminal nature, the local Police Department shall be contacted and a report of the incident made by the Charter School, in accordance with its Memorandum of Understanding with local law enforcement.
- ▶ A report must also be made by the mandatory reporter to ChildLine and the Department of Public Welfare for students under 18 y.o. in accordance with the Charter School's Board approved Mandatory Reporter Policy.



Other Reporting Requirements in Compliance with Local and State Laws

- ▶ Section 2070.9a of the Educator Discipline Act (Act), 24 P.S. § 2070.9a, imposes mandatory reporting responsibilities on all educators as well as specific reporting responsibilities on chief school administrators of all school entities or their designees.
- ▶ The portion of the Act which is triggered by a Title IX allegation is:
 - ▶ All educators must file a mandatory report with the Department of Education whenever they know of any action, inaction or conduct which constitutes sexual abuse or exploitation or sexual misconduct under this Act. The educator must also report such misconduct to his or her chief school administrator and immediate supervisor. The report shall be filed with the Department of Education within 15 days of the discovery of the sexual abuse or exploitation or sexual misconduct.



Other Reporting Requirements in Compliance with Local and State Laws:

- ▶ If there is any question of whether the conduct complained of constituted criminal activity, the Charter School's Board Solicitor should be contacted immediately.
- ▶ Knowledge of a law enforcement investigation does not relieve the Charter School of its independent obligation to investigate the misconduct.



Other Reporting Requirements in Compliance with Local and State Laws:

- ▶ Documents regarding substantiated charges of sexual harassment should be placed in the accused student's file.
- ▶ Documents regarding unsubstantiated charges should not be placed in student files, but should be maintained by the Board of Trustees in a confidential file established expressly for retaining Title IX complaints against students.



Retaliation

- ▶ Charging an individual with code of conduct violations that do not involve sexual harassment, but arise out of the same facts or circumstances as a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX constitutes retaliation.



Retaliation

- ▶ The Charter School should keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding.



Retaliation

- ▶ Complaints alleging retaliation may be filed according to the Charter School's prompt and equitable grievance procedures.
- ▶ The exercise of rights protected under the First Amendment does not constitute retaliation.



Retaliation

- ▶ Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX grievance proceeding does not constitute retaliation;
- ▶ However, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.



Appeals

- ▶ Both the complainant and respondent are permitted to appeal a determination of responsibility.
- ▶ Appeals can be taken:
 - ▶ After a dismissal before the grievance process, whether mandatory or discretionary
 - ▶ At the end of the grievance process



Grounds for Appeal

- ▶ A procedural irregularity affected the outcome of the matter;
- ▶ New evidence has been discovered that was not reasonably available at the time of the determination on responsibility or dismissal;
- ▶ A conflict of interest on the part of a Title IX Coordinator, an investigator who compiled evidence, or a decision maker, and the conflict of interest affected the outcome;



Additional Grounds

- ▶ Appeals will be referred to the Charter School Board of Trustees, unless the Board has or is scheduled to preside over a formal disciplinary hearing pursuant to 22 Pa.Code §12.6 and §12.8.
- ▶ In those cases, the Charter School Board of Trustees will appoint a neutral hearing officer to hear appeals of a determination of responsibility who is 1) not an employee of the Charter school, 2) not the investigator of the complaint, and 3) not the neutral decision-maker who made the initial determination.



Additional Grounds

- ▶ Both parties will have equal opportunities to submit a written statement supporting or challenging the outcome to the Board of Trustees or neutral hearing officer
- ▶ After considering the parties' written statements, the Board of Trustees or neutral hearing officer must issue a written decision and send it to the parties simultaneously. This decision is final.



Impartiality, Conflicts of Interest, Bias

- ▶ Recipients are not required to use outside unaffiliated Title IX personnel to avoid conflicts and may use their own employees to comply with the final regulations.
- ▶ Administrative hierarchy, employment relationships and professional experiences or affiliations (such as a self-described survivor or feminist) are not automatically prohibited conflicts of interest.
- ▶ Recipients have discretion to decide how best to implement the prohibition on conflicts of interest and bias, including providing a process for parties to assert claims of conflict of interest or bias during the investigation.



Impartiality, Conflicts of Interest, Bias

- ▶ Any individual designated by the Charter School as a Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- ▶ What does that mean?



Conflict of Interest

- ▶ Conflict of Interest is defined in the Ethics Act, and the definition can be useful in this situation:
 - ▶ A conflict of interest exists where there is a use of authority of the public office or of confidential information obtained through the public office for the private pecuniary benefit of self, a member of the immediate family or a business with which the public officer is a member or a business with which the officer's immediate family is associated.
- ▶ A Title IX Coordinator, investigator, neutral decision maker, or leading the informal resolution process, should all consider when investigating a student whether they have anything personal to gain from the outcome of the investigation.



Bias

- ▶ Investigators, decision-makers, and informal hearing facilitators must not have any bias while reviewing the facts.
- ▶ This includes pre-judgment of the facts prior to the investigation/hearing being concluded, or coming to conclusions based on favorites or sex stereotypes.



Questions to Ask

- ▶ If investigating/overseeing a hearing regarding student on student conduct:
 - ▶ Are any of the student's involved a family member?
 - ▶ Are any of the student's parents close friends?
 - ▶ Are any of the student's parents board members or other employees at the school?
- ▶ If investigating/overseeing a hearing regarding employee on student conduct:
 - ▶ What is the employee's position?
 - ▶ Is the employee being investigated a supervisor?
 - ▶ Is the employee being investigated a subordinate?



Relevance

- ▶ Under Pa.R.E. 401, Evidence is relevant if:
 - ▶ It has any tendency to make a fact more or less probable than it would be without the evidence; and
 - ▶ The fact is of consequence in determining the action.
- ▶ Under the Title IX Regulations:
 - ▶ Inculpatory and exculpatory evidence is considered relevant.
 - ▶ Information protected by a legally recognized privilege is not relevant.



Relevant Evidence in Investigative Report

- ▶ An investigative report must fairly summarize relevant evidence
- ▶ Must include evidence that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation



Rape Shield

- ▶ “Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.”



Scenario

A Board Member for Relaxed Charter School receives word that a teacher at the Charter School is involved in an inappropriate sexual relationship with a 16-year old student.

The Board Member does nothing about it for fear that the newspapers will get a hold of the information and it will make the school look bad.

- Appropriate Action?
- Consequence(s) of Action?
 - Alternative Action?



Scenario 2

- ▶ Joe is junior who is gay and a member of the school cheer team. A group of baseball players repeatedly ridiculed Joe about his mannerisms and clothing, calling him a “little girl” and threatened to harm him if they ran into him outside of school
- ▶ Is this Sexual Harassment under Title IX?



Scenario 3

- ▶ Female student is working on a group project with three male students in history class. Female student is struggling in that class, and the male students want her removed from the group as to not drag down her grades. When the female student protests, the male students ask for her to send them a picture of her naked through snapchat, which she complies.
- ▶ Is this Sexual Harassment under Title IX?



Scenario 4

- ▶ Title IX Coordinator receives a complaint from a female student that the male student had sexually assaulted her in the school. Prior to beginning the investigation, the Title IX Coordinator happened to know that the female student had once been disciplined for cheating on a test, and he decided that because of that, she could not be believed and dismissed the complaint against the male student.
- ▶ Was this action proper on the part of the Title IX Coordinator?



Scenario 5

- ▶ During a hearing before the neutral decision maker regarding an allegation that a male student was sexually assaulted by another male student, the respondent's advisor asked the complainant whether he had ever had consensual sexual relationships with other men. The neutral decision maker allowed the question.
- ▶ Was the decision from the neutral decision maker proper?



Questions?

Joshua E. Pollak, Esquire
Carolyn N. Flynn, Esquire
James J. Munnely, Esquire

McKenna Snyder, LLC
350 Eagleview Boulevard, Suite 100
Exton, PA 19341

jpollak@mckennalawllc.com

cflynn@mckennalawllc.com

jmunnelly@mckennalawllc.com



McKenna Snyder
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McKENNA SNYDER LLC



Attorneys At Law