

Title IX and Equity Compliance:  
A Primer for Charter School Boards

Training prepared for Members of the  
Colorado League of Charter Schools

 SISU Investigations

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Agenda

- Overview of Equity Laws applicable to Charter Schools
- Special considerations for complaints under Title IX
- Discrimination & Harassment
- Retaliation
- School Policies and Procedures
- Supporting School Operations as a Board Member

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Handouts

1. May 2014 Dear Colleague Letter (DCL) regarding Charter Schools
2. Summary of Major Provisions of Title IX regulations in effect August 14, 2020
3. April 2013 DCL regarding Retaliation

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Overview of  
Applicable  
Laws

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Anti-discrimination  
and harassment  
laws that apply to  
charter schools in  
Colorado

- ▶ 1964 Civil Rights Act
  - ▶ Title VI of the Civil Rights Act prohibits discrimination on the basis of **race, color, national origin**
  - ▶ Title IV of the Civil Rights Act prohibits discrimination on the basis of **religion**
  - ▶ Title VII (employment-based) prohibits discrimination on the basis of **sex/gender** (inc. sexual orientation & gender identity), race, color, national origin, creed, religion, pregnancy
  - ▶ Title IX of the Education Amendments prohibits discrimination on the basis of **sex/gender**
- ▶ Section 504 of the Rehabilitation Act & the Americans with Disabilities Act prohibits discrimination on the basis of **disability**
- ▶ Age Discrimination Act & Age Discrimination in Employment Act– prohibits discrimination on the basis of **age**
- ▶ Colorado Anti-Discrimination Act prohibits discrimination on the basis of **all of the statuses listed above**

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These laws are  
enforced by  
various  
governmental  
agencies.

- ▶ U.S. Department of Education’s Office of Civil Rights (OCR)
- ▶ U.S. Department of Justice (DOJ)
- ▶ U.S. Equal Employment Opportunity Commission (EEOC)
- ▶ Colorado Civil Rights Division (CCRD)

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## Child Abuse Mandatory Reporting Requirements

- ▶ C.R.S. § 19-3-304 sets forth statutory requirements for reporting child abuse or neglect.
  - ▶ <https://leg.colorado.gov/sites/default/files/images/olls/crs2019-title-19.pdf>
- ▶ Applies to public school employees and officials **including Board members**
- ▶ Mandates reporting of suspected child abuse
- ▶ To whom do you report?
  - ▶ Local law enforcement
  - ▶ County Department of Human Services
  - ▶ Colorado Child Abuse & Neglect Hotline 1-844-CO-4-KIDS or
  - ▶ Online training available at <https://coakids.org/>

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## Sex & Gender Protections in Education Programs: Special Considerations for Title IX

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## Title IX

- ▶ *"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."*
  - ▶ Federal law passed in 1972 as a part of Educational Amendments to the 1964 Civil Rights Act
- ▶ Protects students, employees, applicants, etc.
- ▶ Applies to academic and non-academic activities, such as sports and extra-curricular programs
- ▶ Prohibits discrimination and harassment on the basis of sex and gender, including sexual harassment and sexual violence.

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Title IX

- ▶ *"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."*
- ▶ "Receiving Federal financial assistance" means it is enforced against all public schools, including charter schools (see Handout 1 - May 2014 DCL)
- ▶ Enforced by the US Department of Education (DOE)

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Title IX

- ▶ The Bush and Obama administrations developed an enforcement structure that was based on Dear Colleague Letters (DCLs) which are statements of how the Department of Education interprets and intends to enforce Title IX.
- ▶ The Trump administration revoked the Obama-era DCLs and enacted Title IX compliance regulations that went into effect in August 2020.
  - ▶ See Handout 2 – Summary of Major Provisions of these regulations.
- ▶ Expect significant changes in Title IX interpretation and enforcement under the Biden administration under the direction of Miguel Cardona who will likely serve as education secretary.

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August 14, 2020  
 Title IX  
 Regulations

- ▶ K-12 schools must investigate or act upon a formal complaint of sex harassment but absent a formal complaint, it must offer support services to complainant/victim.
- ▶ Provides specific guidance regarding the structure for handling sexual harassment claims brought by students and employees.
- ▶ Allows for formal and informal resolutions of sex harassment claims to be facilitated by the school.
- ▶ Outlines requirements for sex harassment policies, procedures, and investigations.
- ▶ Requires schools to designate a Title IX Coordinator and staff their Title IX programs adequately.

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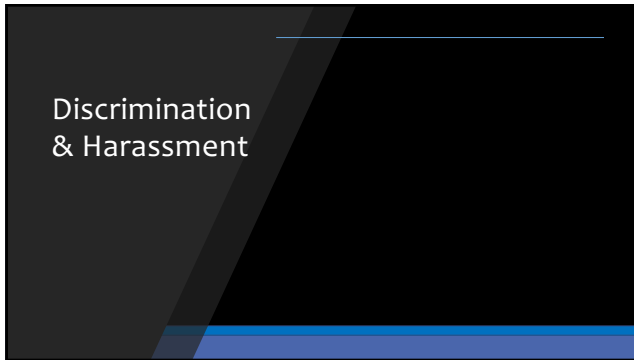
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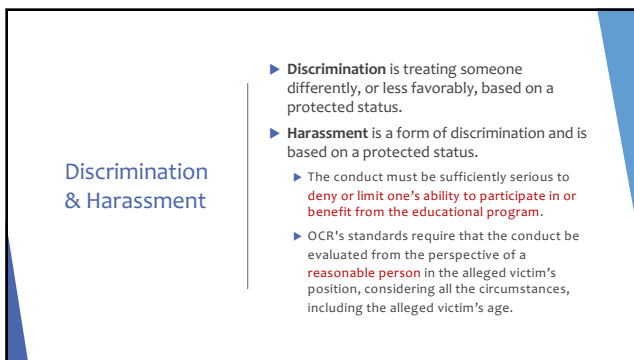
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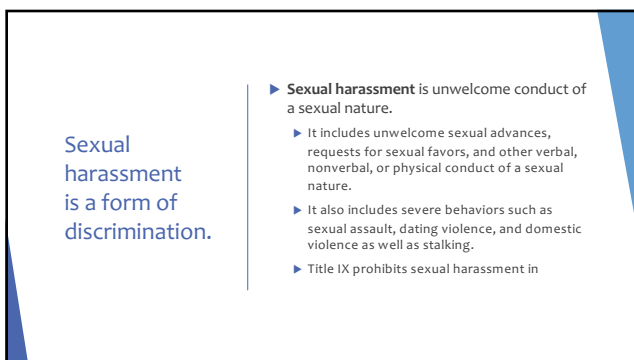
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## Retaliation

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## Retaliation

- ▶ From OCR's website:  
*"Retaliatory acts, which may include giving students failing grades, preventing students from participating in school activities, and threatening expulsion against any individual who exercises his or her rights under Title IX, are considered to be discrimination and are unlawful. Recipients of federal funds are prohibited from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX."*
- ▶ Schools cannot take adverse action against a student for engaging in protected activities, such as advocating for or exercising their federal education civil rights.

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## Legal Elements of Retaliation

1. The individual experienced an adverse action caused by the school.
2. The school knew an individual engaged in activity protected by federal or state law or believed the individual might engage in such activity in the future.
3. A causal connection existed between the protected activity and the adverse action.
4. If there is a causal link between any adverse action and any protected activity, OCR will determine whether the school has a legitimate, non-retaliatory reason for its action and whether the reason is a pretext for retaliation.

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## Legal Elements of Retaliation: Adverse Action

\*An act of intimidation, threat, coercion, or discrimination constitutes adverse action if it is likely to dissuade a reasonable person in the complainant's position from making or supporting a charge of discrimination or from otherwise exercising a right or privilege secured under the statutes or regulations enforced by OCR.

"The action must be materially adverse 'to separate significant from trivial harms,' such as 'petty slights, minor annoyances, and simple lack of good manners . . . .'" *Hiatt v. Colo. Seminary*, 858 F.3d 1307, 1316 (10th Cir. 2017) (quoting *White*, 548 U.S. at 68).

[T]he significance of any given act of retaliation will often depend upon the particular circumstances. Context matters. "The real social impact of . . . behavior often depends on a constellation of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed."

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## Legal Elements of Retaliation: Knowledge of Protected Activity

- ▶ Protected activity: the expression of opposition to any practice made unlawful by a statute or regulation that OCR enforces. Such expression can come in the form of speaking out against discrimination, including discrimination against others.
- ▶ Note that OCR also references "believ[ing] the individual might engage in such activity in the future."

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## Legal Elements of Retaliation: Casual Connection

- ▶ Casual connection can be shown by:
  - ▶ Proximity in time (adverse action came after the protected activity)
  - ▶ The school did not follow its own policies or procedures.
  - ▶ Pattern of antagonism

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Legal Elements  
of Retaliation:  
Legitimate,  
non-retaliatory  
reason and  
pretext

- ▶ Were there other reasons for the adverse action?
- ▶ OCR examines whether the school treated the individual in a manner that was consistent with established policies and procedures, and whether there is any other evidence of retaliation

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Retaliation can  
occur without  
underlying  
discrimination  
or harassment

- ▶ A person can establish retaliation even if the underlying protected activity does not result in a finding of discrimination or harassment.
- ▶ Retaliation is a separate claim – OCR has characterized it as another form of discrimination.

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School  
Policies &  
Procedures

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Nondiscrimination  
and Equal  
Opportunity should  
be addressed in  
school policies.

- ▶ Commit to providing a safe learning and work environment where all members of the school community are treated with dignity and respect.
- ▶ Overtly recognize that it is subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, age, sex, gender, sexual orientation, gender identity, national origin, religion, ancestry or need for special education services.
- ▶ Outline a process to address concerns regarding unlawful discrimination and harassment, and any related retaliation.
- ▶ Provide community members with specific guidance on where to get more information and who to contact to file a complaint in the policy as well as on the school's website.

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Encouraging  
Reports

- ▶ Policies should encourage reporting to the Title IX Coordinator or other responsible school employee(s).
- ▶ Policies should encourage early reporting but include a commitment that the school will investigate regardless of when the report is made.
- ▶ Policies should inform the community that if a report is made, the Title IX Coordinator will be informed.
- ▶ Policies must outline state mandatory reporting obligations.

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Recognize  
Reporting  
Barriers

- ▶ Difficulty in reporting (unclear or unpublished policies)
- ▶ Resources are hard to find
- ▶ Embarrassment
- ▶ Fear
- ▶ Concerns about retaliation
- ▶ Perceived lack of interest from the school

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Overcoming  
Reporting  
Barriers

- ▶ Clear, understandable policies
- ▶ Policies clearly prohibit retaliation
- ▶ Easily accessed resources (through website, trainings, etc.)
- ▶ Confidential processes
- ▶ Training about Title IX and school's compliance program
- ▶ Consistency in process and treatment
- ▶ Reliability

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Supporting  
School  
Operations as  
a Board  
Member

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Title IX  
compliance  
should be  
managed by the  
school's  
leadership.

- ▶ Complaints and reports should be received and managed by school leadership.
- ▶ If reports of discrimination, harassment, or retaliation are brought to your attention, engage with school leadership to ensure that they are aware of the issue.
- ▶ Do not become involved in the complaint.
- ▶ Do not offer resolutions or try to solve the conflict.
- ▶ Consistently refer issues back to school leadership.

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### Referrals to school leadership.

- ▶ Thank people for bringing forth concerns.
- ▶ Don't pre-judge the situation by offering support or questioning the report. Allow the process to work.
- ▶ Acknowledging concerns and opinions isn't the same as agreeing or accepting them.
- ▶ Reiterate the school's no retaliation policy.
- ▶ It is appropriate to check in to determine status of any resolution, but do not get involved.
- ▶ Do not raise expectations that you will be directly involved.

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### Sample Email

Dear Concerned Parent:

Thank you for your email (phone call, text, etc.). I appreciate you bringing your concerns to my attention. I am forwarding your concern to our Title IX Coordinator [Name], who is your best contact at the school to address this issue. Please ask to see a copy of the school's Nondiscrimination/Equal Opportunity Policy. Please know that our policies prohibit any retaliation against someone who raises concerns of this nature. With this email, I am asking our Title IX Coordinator to follow up with you directly.

Sincerely, Board Member

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### What Boards can do to help with equity compliance: Policies

- ▶ Review and understand the school's policies and procedures.
- ▶ Be a role model – don't engage in or condone behavior that could violate the school's policy.
- ▶ Commit to the letter and spirit of the anti-discrimination laws.
- ▶ Report any issues that come to your attention to the Title IX Coordinator or other school leaders.
- ▶ Periodically review the policies and legal updates. Encourage the school to make sure Title IX compliance is prioritized and adequately staffed.
- ▶ Do not tolerate retaliation.
- ▶ Emphasize that reporting is encouraged

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What Boards  
can do to help  
with equity  
compliance:  
Supporting  
School Staff

- ▶ Ask for reports from Title IX staff on compliance activities.
- ▶ Ask for details about the Title IX compliance program and ensure that it has resources.
- ▶ Build your own trust in the people tasked with Title IX compliance.
- ▶ Be transparent to the extent you can be in light of confidentiality obligations.

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What Boards  
can do to help  
with equity  
compliance:  
Training &  
Education

- ▶ Board training helps set a tone and send a message that the rules apply to everyone.
- ▶ Encourage appropriate training provided to key school populations
  - ▶ Staff in charge of Title IX compliance
  - ▶ School Staff and Volunteers
  - ▶ Students
  - ▶ Families
  - ▶ Board members
- ▶ Ensure that training has the same content and take-aways
  - ▶ Everyone should hear the same message.

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Helpful Links

The Title IX Law:  
<https://www.justice.gov/crt/title-ix-education-amendments-1972>  
US Department of Education Site:  
<https://sites.ed.gov/titleix/>  
Colorado Department of Education Resources:  
[https://www.cde.state.co.us/cde\\_english/titleix](https://www.cde.state.co.us/cde_english/titleix)

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