The Intersectionality of Title IX and Students with Disabilities

Presented by:
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Colleen Potts currently serves as the Supervising Attorney for the Education team at Disability Rights Texas where she oversees a talented and passionate statewide team of advocates and attorneys. Before practicing law, she earned her B.A. in Psychology from the University of New Mexico and her M.A. in Marriage and Family Therapy from Friends University. Colleen was a practicing MFT at a Family Preservation agency and had her own private practice prior to attending law school.

She earned her J.D. from Texas Tech School of Law where she served on the Board of Barristers; as Vice President of the Texas Tech Health Lawyers Association; and on the National Mock Trial Team. Colleen earned numerous academic and advocacy awards. After law school, Colleen earned an Equal Justice Works Fellowship where she represented students with disabilities in the juvenile justice and juvenile probation systems in education issues. While at Disability Texas, Colleen has represented students in hundreds of districts across the state and has presented at conferences locally as well as at the state and national levels.
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Protecting and advocating for the rights of Texans with disabilities - because all people have dignity and worth.
Title IX Complaint Allegations Received by OCR in FY 2022

- Total Number of Complaints Raising Title IX Issues, FY 2022 = 9,498
  - Athletics = 4,387
  - Sexual/gender harassment/sexual violence = 1030
  - Different treatment/denial of benefits = 722
  - Retaliation = 508

The ADA and Rehabilitation Act

**ADA**

“No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of ... services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

**Section 504**

“No otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance ...”
Individuals with Disabilities Education Act

- IDEA is a law that makes available a free appropriate public education to eligible children with disabilities throughout the nation and ensures special education and related services to those children.

- The IDEA governs how states and public agencies provide early intervention, special education, and related services to more than 7.5 million (as of school year 2020-21) eligible infants, toddlers, children, and youth with disabilities.

Why is the intersection between Title IX and students with disabilities so important?

- Students with disabilities are almost three times more likely to be sexually assaulted than their peers.
- 12% of college students and 2% of girls ages 14-18 report sexual assault.
- Students with disabilities are six times less likely than their peers to report sexual assault.
- Sexual harassment will often lead to anxiety disorders, depression, post-traumatic stress, and self-harm.
- Students who report sexual harassment are often punished by their schools for engaging in sexual conduct on school property—even when the interaction was not consensual.
- More than 90% of all people with developmental disabilities will experience sexual assault.
How does ignoring the problem harm students?

❖ Complainant students may develop disabilities as a result of their experience, or pre-existing disabilities may exacerbate the impact of gender-based misconduct on their ability to recover and learn.

❖ A lack of interdepartmental cooperation can undercut the efficacy of a district’s approach.

❖ Students cannot learn where they do not feel safe.

What Procedures Are Needed

Protective Measures
- Every school must conduct a Title IX training for all staff.
- A policy against sex discrimination for your school should be in place.
- Have a Title IX Coordinator.
- Have and make known procedures for students to file complaints.

During the Investigation
- Supportive measure must be offered to both parties—the accused and the complainant.
  - Supportive measures may include:
    - Counseling
    - Extensions of deadlines or other course related adjustments
    - Modifications of work or class schedules
Child Find

- Mandate that district’s identify, locate and evaluate children with disabilities for special education and related services
- Sexual harassment can cause students to experience anxiety disorders, depression, post-traumatic stress, and self-harm.
- Students who experience sexual violence are also more likely to have trouble studying, miss school, or get in trouble at school
- Stages of emotional reactions over time
**Emergency removals**

- Title IX requirements
- IDEA/504: MDR
- IDEA/504: Change of placement

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**Complainants with disabilities**

- Are often punished by their schools for engaging in so-called “consensual” sex acts, for defending themselves against their harassers, or for merely telling other people about the harassment in violation of a settlement agreement.
- Complainants with disabilities are even more likely than their complainants without disabilities to be disbelieved, ignored, or punished due to both sex- and disability-based stereotypes.

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**Respondents with disabilities**

- They may sometimes be unfairly or excessively disciplined because of ableism (and other unlawful stereotypes based on race, color, national origin, sexual orientation, and/or gender identity).
- Boys with disabilities are not more likely than their peers to be disciplined for sex-based misconduct (although they are more likely than their peers to be disciplined for general misconduct).
Sports And Disability

- Mental health
- Physical disability
- Trans issues

 Spruill v. Sch. Dist. of Phil.
 569 F Supp. 3d 253
 (E.D. Pa. 2021)

The student was verbally and physically abused by his classmates who called him homophobic slurs. After a delayed implementation of an IEP and persistent bullying, the student took his own life.

The parents successfully argued that “by failing to implement [the student’s] IEP or develop a plan to keep him safe in school, the school district denied him access to its educational programs and activities.”
The student was on an IEP due to PTSD, anxiety, etc. He was subjected to ridicule for having two gay parents, as well as being openly gay at school. The students called him homophobic slurs and mocked his gender identity. The student experienced heightened anxiety and stress to the point of suicidal ideation.

The court held that the plaintiffs survived a motion to dismiss on the issue of the school’s deliberate indifference when the administrators had extensive knowledge of the harassment and did little to nothing to address the issue. The parents were told many times that the comments were not bias-based and when addressing the IEP, bullying was not an appropriate topic in those meetings.

A student in the special education setting sexually assaulted another student while another recorded the incident. The staff determined that the boys had a mutual relationship, and the student could come back to school without a change in schedule.

The fact that the student’s parents did not want him to return to school because they felt it was unsafe to allow their son to be near the other student was enough for a reasonable jury to conclude that the harassment was severe, pervasive, and objectively offensive.
The student was on an IEP for difficulty reading and writing. As a result of pervasive bullying, she was diagnosed with anxiety and depression and had a decline in her academic ability. The court granted the district’s motion to dismiss because the student did not properly allege causation between the disability and her struggles in class. The difficulty she had was due to the anxiety and depression she experienced rather than the alleged disability as stated in her IEP.

Two students with disabilities were supposed to have 1:1 aides at all times, including in the bathroom for safety and hygiene reasons. At lunch, male student takes female student to boy’s bathroom. Both students found naked.

The exhaustion requirement applies only if the plaintiff seeks relief available under the IDEA, which is limited to a student’s right to a FAPE. Because Doe did not seek relief on the basis of FAPE, she did not need to exhaust under IDEA. Look for actual knowledge discussion and the Title IX Coordinator’s presumption of mutuality, despite the victim’s developmental age of six.
Student with a disability was unable to communicate her objection to sexualized touching and was disciplined for engaging in lewd conduct.

District’s focus on consent exposed it to liability under equal protection principles.

The student was diagnosed with ADHD and anxiety, which qualified him for an IEP. The student was bullied based on his nonconformity with gender norms, which caused him heightened symptoms.

The student properly alleged the harassment was based gender-based because the harassment tended to be due to his nonconformity with gender norms. Additionally, the student’s complaint was sufficient to survive a motion to dismiss through showing that the school officials knew of the bullying and its effects on the student and allowed it to continue.
Steckelberg v. Chamberlain Sch. Dist.,
122 LPR 45919
(D.S.D. Nov. 30, 2022)

Student eligible for SPED under SLD and OHI with diagnosis that involved symptoms of psychosis, sexually inappropriate behaviors, tic disorder, and OCD. Teacher caught student masturbating, the admin instructed the teacher not to tell the parent.

Student was denied a FAPE and reimbursement was warranted.

What Would You Do?

- A male high school student who had sexually harassed a female high school student via threatening and harassing texts, wanted to remain on the school’s robotics team where the female student also participates.

- The male student has an IEP for his significant pragmatic speech disability
What Would You Do?

° A transitioning female to male high school student with muscular dystrophy was called names (including ableist slurs and sexual comments) at school and online. The comments centered around her having both male and female body parts.
° One morning, two students (one male and one female) blocked the wheelchair ramp during their verbal assaults regarding gender identity.
  • An Assistant Principal heard/saw this happened and came over to tell the aggressors to stop it
° Student filed a complaint 3 weeks after the blocked wheelchair ramp incident after continued harassment
  • Student's complaint was only about the blocked wheelchair ramp

Practice Tips

° Communication between special education administration and Title IX coordinator
° List special education as a resource in any Title IX FAQ’s
° Consider accessibility in reporting process
MORE TIPS

- Stay up on case law and upcoming changes in regs
- Training for all students
- Training for all employees
- Accommodations for both complainants and respondents
- Amnesty for complainants
- Fair discipline for respondents
- Communication and collaboration with parents

Thank You

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