

# Controlling Sexual Harassment

## Executive Summary

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**School Districts and Charter Schools should update their policies to cover bullying and harassment based on SEXUAL ORIENTATION AND GENDER-IDENTITY EXPRESSION specifically now that the U.S. Department of Education (ED) has clarified schools' responsibilities.**

- A school's failure to expand sexual harassment policies could result in violation of the Title IX of the Education Amendments of 1972, for not appropriately responding to bullying or harassment based on a student's ***real or perceived sexual orientation***.
- While Title IX does not explicitly exclude sexual orientation discrimination, a recent letter from the Office for Civil Rights (OCR) clearly states that the statute **can** protect lesbian, gay, bisexual and transgender students against harassment based on their inability to satisfy traditional gender expectations.
- The schools' role/responsibility in protecting LGBT students from bullying and harassment is now being questioned because of the high-profile suicides of numerous students/victims who have been tormented by anti-gay bullies.
- According to Russlynn Ali, ED's Assistant Secretary for civil rights, the "Dear Colleague" letter recently sent to the nation's school districts is a reminder of the ***rights obligations***, districts/charter schools, are responsible for with regards to ***safe learning environments***.
- Ali also states, that the Office of Civil Rights (OCR) will take all complaints about bullying of anti-gay or otherwise very seriously.
- Ali states, ***"One quarter of all students report being bullied and harassed, with member of the LGBT community, in particular, being targeted in 'droves'."***
- Case law and research has argued that ***"Homophobic harassment is sexual harassment"***. Therefore, schools allowing sexual harassment of students, who are bothered because of their ***real or perceived sexual orientation*** could be held liable under Title IX, which could use the same standards that apply in more traditional situations.
- To be liable for sexual harassment under Title IX, a student must be able to show the following:
  - The school had actual knowledge of the harassment.
  - A school official with the power to take action was deliberately indifferent or took steps to stop the misconduct that were clearly unreasonable in light of the known circumstances.
  - The school had control over the harasser and the context in which the harassment occurred.
  - The harassment was so severe, pervasive and objectively offensive that it could be said to have deprived the student of equal access to an education program or activity.

- Where the courts have found Title IX violations, those schools have been ordered to:
  - Update their harassment policies to **include sexual orientation identity** language.
  - Establish ongoing staff training and reporting policies
  - Set protocols requiring a rigid response
  - Schools were required to ensure that these policies were widely known and equally enforced.
  
- Those Districts/Charter Schools who are taking pro-active steps to address Title IX policy issues are placing themselves in a better position, in the event, there is a complaint involving harassment, they can demonstrate that they did everything in their power to stop the harassing behavior and protect the victim/student.
  
- Districts/Charter schools can be in violation of Title IX of the Education Amendments Act of 1972, if your school(s) **do not have adequate grievance procedures** in place for parents/students to file sexual harassment complaints.
  
- Remember – Districts/Charter Schools are also responsible for not only establishing specific grievance procedures but clearly instruct students how to use the system to file a sex discrimination or harassment complaint by:
  - Making information (Nondiscrimination statements), etc. easily available on school-issued announcements, bulletins, or catalogs
  - Make available lists with certain details to comply with the law
  - Obtain the full list of Title IX’s compliance requirements for posting purposes

- Adapted and condensed from: Controlling Sexual Harassment, January 2011

