

Title IX Guidance Document

This guidance document is a resource for understanding new legislation and does not constitute legal advice.

Overview:

Title IX of the Education Amendments of 1972 is a Federal civil rights law that prohibits discrimination based on sex in education programs and activities. All public and private elementary and secondary schools, school districts, colleges, and universities receiving Federal funds must comply with Title IX. Under Title IX, discrimination based on sex can include sexual harassment or sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion.

Any person (bystander or victim) may report sex discrimination or sexual harassment. A report may be registered in person, by mail, by telephone, or by e-mail, using the contact information for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the report. Reports are accepted at any time.

Key Definitions of Title IX Sexual Harassment

- Unwelcome conduct based on sex that is so severe, pervasive, and objectively offensive that it denies a person equal educational access to an education program or activities, including conduct based on sex stereotyping, sexual assault, dating violence, domestic violence, or stalking.
- Title IX applies to all a school's education programs or activities, whether such programs or activities occur on-campus, off-campus, or virtually. A school may address sexual harassment affecting its students or employees that falls outside Title IX's jurisdiction in any manner the school chooses, including providing supportive measures or pursuing discipline.

Notice to the Schools

- K-12 schools must respond whenever any employee or student has notice of sexual harassment, including allegations of sexual harassment.
- All teachers and staff are trained, and the Title IX Coordinator's contact information is provided.
- All teachers and staff must report misconduct allegations to the Title IX Coordinator.
- Allegations include locations, events, or circumstances over which the recipient exercised substantial control over the respondent and the context in which the sexual harassment occurred.
- Training of Title IX personnel must include training on the definition of sexual harassment in the Final Rule, the scope of the school's education programs, how to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, and how to serve impartially.
- Schools must prominently display materials used to train Title IX personnel on their websites and contact information for the Title IX Coordinator.

Title IX Coordinator Accessibility

- An employee (Title IX Coordinator) is designated to coordinate training and comply with Title IX responsibilities
- The school must ensure the educational community knows how to report to the Title IX Coordinator
- In addition to students and employees, the Title IX Coordinator's contact information is shared with parents or legal guardians of elementary and secondary school students and all unions of the name or title, office address, e-mail address, and telephone number of the Title IX Coordinator

School's Mandatory Response Obligations: The Deliberate Indifference Standard

- Once a school knows, the response must be reasonable in light of the known circumstances
- Schools' mandatory response must:
 - Include prompt contact by the Title IX Coordinator to the complainant
 - Follow a grievance process before imposing discipline or sanctions
 - Not restrict constitutional rights
 - Observe meticulous record-keeping requirements to protect against accusations of deliberate indifference.
 - Provide supportive measures

School's Mandatory Response Obligations: Defining "Complainant," "Respondent," "Formal Complaint," "Supportive Measures"

- **Complainant:** an individual who has reported being the victim of conduct that could constitute sexual harassment or on whose behalf the Title IX coordinator has filed a formal complaint. Parents may file complaints for their child.
- **Respondent:** an individual who reports the perpetrator of sexual harassment conduct.
- **Formal Complaint:** a filed document from a complainant or the Title IX coordinator alleging sexual harassment and requesting an investigation.
- **Supportive Measures:** individualized services reasonably available that are nonpunitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.

Grievance Process

- Treat complainants equitably by providing remedies and treat respondents equitably by not imposing disciplinary sanctions without following the grievance process.
- Remedies must be designed to maintain the complainant's equal access to the educational program and may include the same individualized services described in the Final Rule as supportive measures.
- Require objective evaluation of all relevant evidence and avoid credibility determinations based on a person's status as a complainant, respondent, or witness.
- Require Title IX personnel to be free from conflicts of interest or bias for or against complainants or respondents.
- The presumption that the respondent is not responsible for the alleged conduct until a determination is made
- Include **reasonably prompt time frames** for the conclusion of the grievance process.
- Provide a list of possible remedies a school may provide a complainant and disciplinary sanctions a school might impose on a respondent.
- Describe the school's appeal procedures and the range of supportive measures available to complainants and respondents.
- Any provisions, rules, or practices other than those required by the Final Rule that a school adopts must apply equally to both parties.

Investigations

- Schools must investigate the allegations in any formal complaint and send written notice to both parties of the allegations upon receipt of a formal complaint, any investigative interviews, meetings, or hearings
- During the grievance process and when investigating:
 - Schools are responsible for gathering evidence and proof and sharing with all parties involved
 - Schools must provide equal opportunity for the parties to present facts, expert witnesses, and other inculpatory and exculpatory evidence.
 - Schools must not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no "gag orders")
 - Schools must send all parties the evidence in electronic format or hard copy, with at least ten days for the parties to inspect, review, and respond to the evidence.
 - Schools may, at their discretion, dismiss a formal complaint or allegations therein if the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein, if the respondent is no longer enrolled or employed by the school, or if specific circumstances prevent the school from gathering sufficient evidence to reach a determination.
 - Schools must give the parties written notice of a dismissal and the reasons for the dismissal.
 - The Final Rule protects the privacy of a party's medical, psychological, and similar treatment records by stating that schools cannot access or use such records unless the school obtains the party's voluntary, written consent to do so
 - Hearings are optional for K-12 schools.

Standard of Evidence & Written Determination

- Schools must apply the same standard of evidence for all formal complaints of sexual harassment, whether the respondent is a student or an employee.
- The decision-maker (not the Title IX Coordinator or the investigator) must issue a written determination with findings of fact, conclusions about whether the alleged conduct occurred, the rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent, and whether remedies are provided to the complainant.
- The written determination must be sent simultaneously to the parties, along with information about how to file an appeal.

Appeals

- The Final Rule states that a school must offer both parties an appeal on the following bases:
 - procedural irregularity that affected the outcome of the matter
 - newly discovered evidence that could affect the outcome of the matter
 - or Title IX personnel had a conflict of interest or bias that affected the outcome of the matter

Informal Resolutions

- Schools, at their discretion, can offer informal resolution options such as mediation or restorative justice
- At any time before agreement on a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process.
- To pursue this option, both parties must give voluntary, informed written consent.
 - Schools cannot offer informal resolution unless a formal complaint has been filed.
 - Schools cannot offer an informal resolution for allegations that an employee sexually harassed a student.

Retaliation Prohibited

- Expressly prohibits retaliation against any individual for exercising Title IX rights.
- The exercise of rights protected under the First Amendment does not constitute retaliation.
- Charging an individual with a code of conduct violation for making a materially false statement in bad faith during a Title IX grievance proceeding does not constitute retaliation.

Resources

- [TITLE IX FINAL RULE](#)
- [SITE FOR DEPARTMENT OF EDUCATION TITLE IX POLICY](#)
- [TITLE IX FACT SHEET](#)
- [U.S. DEPARTMENT OF EDUCATION TITLE IX FINAL RULE OVERVIEW](#)
- [TITLE IX REGULATIONS ADDRESSING SEXUAL HARASSMENT WEBINAR](#)
- [QUESTIONS AND ANSWERS REGARDING THE DEPARTMENT'S FINAL TITLE IX RULE](#)
- [OCR WEBINAR ON NEW TITLE IX PROTECTIONS AGAINST SEXUAL ASSAULT](#)
- [Summary of Major Provisions of the Department of Education's Title IX Final Rule \(PDF\)](#)