

## **Title IX Regulations and Information for K-12 Educators**

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## **What is Title IX?**

Title IX is a federal civil rights law passed as part of the Education Amendments of 1972. This law protects people in education programs or activities that receive Federal financial assistance from being discriminated against based on sex.

Title IX states:

“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.”

Title IX applies to any institution receiving federal financial assistance from the Department of Education, including state and local educational agencies. Educational programs and activities that receive federal funds from the Department of Education must operate in a nondiscriminatory manner.

In addition, a recipient of Federal funds may not retaliate against any person for opposing an unlawful educational practice or policy, or because a person made charges, testified, or participated in any complaint action under Title IX.

## A Brief History of Title IX

For many years, Title IX in K-12 schools focused on the enforcement of equitable quality and access for females in education and athletics. However, over time, the law began to include a focus on sexual harassment. While Title IX, as the law is written, does not contain the term “sexual harassment,” federal courts have held that sexual harassment constitutes a form of sex discrimination under Title VII of the Civil Rights Act, and in the 1980s the courts began to establish liability rules for employers. In the 1990s, courts applied similar rules to schools under Title IX. The Department of Education’s Office for Civil Rights (OCR) subsequently issued a series of guidance documents building upon these judicial precedents.

In 1979, in *Cannon v. University of Chicago*, the Supreme Court held that a private right of action exists under Title IX. In 1998 and 1999, the Supreme Court handed down two key Title IX decisions that established the context for how schools should handle Title IX. Through decisions based on *Gebser v. Lago Vista Independent School District* and *Davis v. Monroe County Board of Education*, the Supreme Court held that any school receiving federal money could be held liable for sexual harassment of students by their teachers or peers only if it **(1) had “actual knowledge” of the misconduct and (2) responded with “deliberate indifference.”** Moreover, the misconduct in question must be **“so severe, persistent, and objectively offensive that it effectively bars the victim’s access to educational opportunity.”**

On May 6, 2020, new regulations by the U.S. Department of Education were released that changed how K-12 schools are required to respond to a student’s report of sexual assault and harassment. These new regulations marked the first time the department had established rules under the gender equity law, Title IX, detailing what schools must do when dealing with sexual harassment cases involving students.

### Question

Is the following statement true or false?

Title IX is a law that focuses on gender equity in education and athletics and has nothing to do with sexual harassment.

The correct answer is "false".

While Title IX, as the law is written, does not contain the term "sexual harassment," federal courts have held that sexual harassment constitutes a form of sex discrimination under Title VII of the Civil Rights Act, and in the 1980s the courts began to establish liability rules for employers. In the 1990s, courts applied similar rules to schools under Title IX. The Department of Education's Office for Civil Rights (OCR) subsequently issued a series of guidance documents building upon these judicial precedents.

## Important Terms Under the 2020 Title IX Regulations

### **Actual Knowledge:**

Notice of sexual harassment or allegations of sexual harassment to a school's Title IX Coordinator or any official of the school who has authority to institute corrective measures, or to any employee of an elementary and secondary school.

### **Sexual Harassment:**

*Quid Pro Quo:* An employee of the recipient conditioning the provision of aid, benefit, or service of the recipient or an individual's participation in unwelcome sexual conduct.

*Hostile Environment:* **Unwelcome** conduct determined by a reasonable person to be so severe, **pervasive**, and **objectionably offensive** that it effectively denies a person equal access to the recipient's educational program or activity.

*Sexual Assault:* (Examples)- seduction, incest, indecent exposure

*Domestic Violence:* Violence against a person committed by a current or former spouse, a current or former intimate partner, a current or former cohabitation person, a person similarly situated as a spouse, or any other person

*Dating Violence:* Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship.
- The type of relationship.
- The frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to sexual or physical abuse or the threat of such abuse.

*Stalking:* Conduct directed at a person that would cause a reasonable person to:

- Fear for own safety or others safety OR
- Suffer substantial emotional distress

## Important Terms Under the 2020 Title IX Regulations

### **Complainant:**

- An individual who is alleged to be the victim of conduct that could constitute sexual harassment
  - In the K-12 setting, this also includes the Parent or guardian of student alleged to be the victim of sexual harassment
- Any person can report sexual harassment and trigger recipient's obligation to respond
  - This includes: the Victim, a bystander, a witness, a friend, or any other person

### **Respondent:**

An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment

### **Recipient:**

The school district that has the responsibility to respond

### Question

Is the following statement true or false?

When considering the legal requirement of Title IX, the term “actual Knowledge” means that an employee has personally seen an event constituting sexual harassment.

The correct answer is “false”.

Under Title IX regulations, “Actual Knowledge” means that notice of sexual harassment or allegations of sexual harassment have been relayed to a school’s Title IX Coordinator or any official of the school who has authority to institute corrective measures, or to any employee of an elementary and secondary school.

### **Title IX Regulations: Addressing Actual Knowledge of Sexual Harassment**

While most states have a law requiring school employees to report criminal sexual abuse cases to authorities, Title IX requires schools to respond internally as well, regardless of law enforcement action.

Requirements include the following:

- The school is obligated to respond when there is actual knowledge of sexual harassment, when the act occurred within the **school's own educational program or activity**, against any person. A school must respond meaningfully to every report of sexual harassment. K-12 schools are required to investigate students' claims whenever the school's Title IX coordinator or **any** district employee (teacher, counselor, administrator, para professional, bus driver, maintenance worker, etc.) learns of a sexual assault or harassment incident—regardless of who reports it (student, friend, parent, bystander- anyone).
- Schools are required to investigate cases that happen on campus or as part of school activities like field trips, athletic events, or conferences.
- A district or school must respond promptly, offer supportive measures to the complainant and the respondent, and must explain the process for filing a formal complaint.



### **What are supportive measures?**

- Non-disciplinary, non-punitive individual services designed to restore or preserve equal access to educational program or activity without unreasonably burdening the other party (examples: counseling, deadline extensions, modifications of class or work schedules, restricting contact between parties, revised seating or assignments, increased monitoring, emergency removals)
- Without fee or charge

### Question

Is the following statement true or false?

If an act that violates the provisions of Title IX occurs off campus, during a conference, schools are not required to investigate.

The correct answer is "false".

If a violation of the provisions of Title IX occurs off campus, though still a part of a school activity, the school is required to investigate the allegations.

### **A School or District's Process for Handling Title IX Complaints Should . . . .**

- Provide accessible options for how sexual harassment can be reported: verbally, in writing, email, or telephone
- Treat the complainant and respondent equally
- Evaluate all relevant evidence objectively
- Ensure that the Title IX Coordinator, investigator, and decision-maker are free from conflict of interest and trained to be impartial
- Preserve the innocence of the respondent
- Provide prompt time frames for the process
- Consider a range of remedies and sanctions which may be imposed
- Offer a standard of proof – record the preponderance of evidence
- Develop appeal procedures
- Protect certain evidence unless a waiver is signed
- Tell the students involved and their parents in writing about the allegations and the evidence that is gathered
- Give the accused person at least 10 days to respond
- Tell the victim in writing if the school decides to punish a student for a sexual assault allegation
- Keep written records of actions taken in response to sexual misconduct reports for at least 7 years

The person who investigates a sexual assault case under Title IX cannot be the same person who decides whether the accused student is responsible.

Due process assumes a presumption of innocence throughout the grievance process and provides an equal opportunity for both parties to present and review all the evidence. Opportunities should be provided for both parties to submit written questions to challenge credibility.

## **Formal Complaints**

Upon receipt, the recipient must provide written notice to the known parties that includes:

- Following the District's formal complaint procedures with regard to timelines, investigation and response
- Notice of the grievance process and of informal resolution
- Notice of allegations in sufficient detail and time to allow for the preparation of a response prior to the initial interview
- The identities of known parties, alleged conduct, date, and location of conduct, if known
- A statement that the respondent is not responsible for the alleged conduct and that the determination will be made at the conclusion of the process
- Notice that parents may inspect and review the evidence
- Notice of any provision in the student code of conduct about making false statements

## **Informal Resolutions**

An informal resolution may be offered before a determination is made, and the school must facilitate the process.

The school cannot require a waiver of the right to the investigation of the complaint, may not require parties to participate in an informal resolution, and may not offer an informal resolution unless a complaint is filed.

An Informal Resolution Must Provide Parties with the Following:

- Notice that discloses the allegations
- The requirements for resolution
- Notice that any party can withdraw prior to a resolution
- Obtain consent from the parties; it must be voluntary

An informal resolution cannot be used when an employee harassed a student.

### **Specifics About an Investigation**

- The decision-maker must be someone other than the Title IX Coordinator or the investigator; it is recommended that the investigator, the Title IX coordinator, and the decision-maker are three separate staff members who have been trained in their role related to Title IX investigations.
- The burden of gathering evidence and the determination of responsibility is on the recipient.
- Certain evidence is protected unless a waiver/release is signed.
- All parties must be given the same opportunity to present witnesses and evidence.
- Each party is obligated to discuss allegations and/or gather and present relevant evidence.
- Each party must be provided with written notice of the date, time, location, participants, and purpose of each investigation interview, with sufficient time for the party to prepare.
- The complainant and the respondent must be provided at least 10 days to review evidence prior to the investigative written report, and they must be given an opportunity to respond.

### Question

When there is a formal complaint of sexual harassment, can the decision-maker also be the Title IX Coordinator or the investigator?

The correct answer is "no".

The decision-maker must be someone other than Title IX Coordinator or the investigator.

## Determination

- The **decision-maker** can't be the **Title IX Coordinator** or the **investigator**.
- Written determination must be issued that includes:
  - Allegations
  - Description of procedural steps taken (notification to and interview of parties and witnesses)
  - Finding of facts
  - Application of code of conduct
  - Statement of and rationale for the result as to each allegation
  - Determination of responsibility
  - Discipline sanctions
  - Equal access to educational program/activity will be provided by the recipient to the complainant



## **Appeals**

The appeal process must be offered to both parties for the following:

- Procedural irregularity that affects the outcome
- New evidence not reasonably available at time of determination
- Conflict of interest on the part of Title IX Coordinator, Investigator, or decision-maker

### **What Should You Do to Prepare for Title IX Complaints and Investigations**

- Be aware of who has what role within the District with regard to Title IX
- Familiarize yourself with your District's Title IX policies
- Report any sexual harassment to your Title IX coordinator

### **Examples of Sexual Harassment/Discrimination**

- Unwelcome sexual advances
- Sexual jokes, gossip regarding another's sex life, sexual orientation, or gender identity
- Leering, whistling, obscene gestures
- Sexual assault, violence, threats, stalking
- Insults or threats based on sex or gender
- Change of academic or employment responsibilities based on sex, gender identity or expression, or sexual orientation

Not all reports need to lead to an investigation.

If you are unsure or uneasy, report it.

## **Title IX and Student Discipline**

- Student conduct involving sexual discrimination or sexual harassment invokes Title IX and should be handled differently than other conduct/discipline matters.
- For example, if a student is bullied because of their hair, that can be handled under the Code of Conduct and bullying procedures alone. However, if the bullying is based on being female or invokes sexual discrimination, then the school also needs to implement Title IX procedures.
  - Involve your Title IX coordinator
  - Follow Title IX procedures
- Discipline alone does not satisfy Title IX requirements.

### **Affirmation Statements**

By clicking on “Next” at the end of these statements, you are affirming that you understand and will abide by the information contained within this module.

You affirm that you are the person completing this module and that you have not had any other person complete it for you.

You also affirm that you understand ComplianceDirector creates a list of individuals who have completed this module, and this list becomes a legal record for your district.