

Preventing and Responding to Sexual Harassment and Violence:

School and District Duties Under Title IX

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Agenda

- Title IX overview
- Title IX issues
- Title IX responsibilities
 - District
 - Title IX Coordinator
- Sex-Based Harassment
- Sexual Misconduct Policies
 - Grievance Procedures
 - Investigations
- Resources
- Questions



Title IX Overview

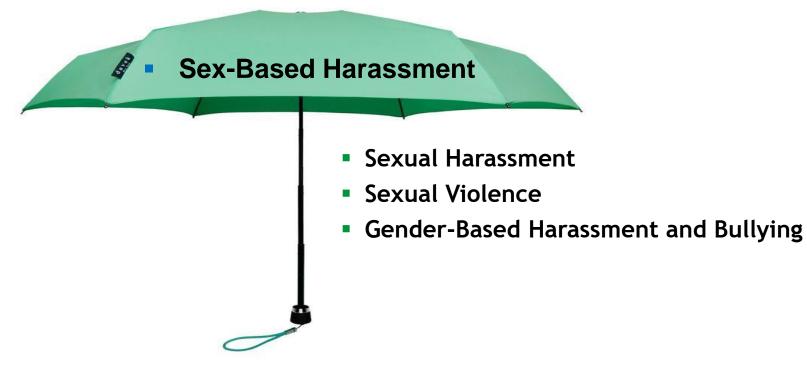


Title IX States

"No person in the U.S. 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 Issues



- Athletic Opportunities and Benefits
- Pregnant or Parenting Students
- Single Sex Classes and Schools
- STEM



Title IX Responsibilities

District Responsibilities

- 1. Designation of at least one responsible employee to coordinate and carry out district compliance with Title IX
- 2. Write and publish a nondiscrimination policy
- **3. Adopt and publish grievance procedures** providing for prompt, equitable resolution of student and employee Title IX complaints
- 4. Ensure that students and employees are trained to report sex discrimination, including sexual harassment, and how to respond appropriately
- **5. Investigate all Title IX issues** that the school knows or reasonably should know of

Title IX Coordinator Responsibilities

- > Be the Title IX Coordinator
- > Participate in writing the **nondiscrimination policy**
- > Coordinate writing of grievance procedures for resolving Title IX complaints
- Provide education and information regarding Title IX requirements. Help students, parents/guardians, employees, and school law enforcement understand grievance procedures
- > Coordinate response to all Title IX complaints



1. Designation of Title IX Coordinator

Designation of a Title IX Coordinator

- At least one, possibly multiple
- If multiple, must designate lead
- Avoid designating an employee whose other job responsibilities may create a conflict of interest
- Lead coordinator should report directly to senior leadership

Notify all students and employees of the lead Title IX contact's:

- Name
- Office address
- Telephone number
- E-mail address (can be generic)
- If multiple, include contact information for both the lead Title IX Coordinator and for the Title IX contact assigned to the school



Title IX Coordinator contact information must be widely distributed and should be easily found on the school/district website and communicated through various publications such as:

- Staff communication—district newsletters, letters from human resources, other district memoranda
- Families/community—school newsletters, local newspapers, other school or district communications to families/community



2. Notice of Nondiscrimination

Notice of nondiscrimination for Title IX must include:

- School/district does not discriminate on the basis of sex
- Title IX coordinator's contact information
- Questions may be referred to the Title IX coordinator or to the Office for Civil Rights

 For information on requirements for notices of nondiscrimination for Title IX of the Education Amendments of 1972, Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act, and the Boy Scouts of America Equal Access Act, including:

- combined requirements
- methods of notification
- a sample notice of nondiscrimination

Go to: Office for Civil Rights Aug 2010 Notice of Nondiscrimination



Notice of nondiscrimination must be widely distributed to all applicants for admission and employment, all students and parents/guardians of elementary and secondary schools and should be "prominently posted" on the school/district website, at various locations on campus, and in electronic and printed publications.

In addition, the notice must be included in any:

- Bulletins
- Announcements
- Publications
- Catalogs
- Application forms
- Recruitment materials



3. Adopt and Publish Grievance Procedures

Provide for prompt and equitable resolution of complaints of sex discrimination

 Written in language that is easily understood, appropriate for the age of the audience, and is accessible to English learners and students with disabilities

 Incorporate all of the elements required for prompt and equitable resolution of Title IX complaints, consistent with the Title IX regulations and Office for Civil Rights (OCR) guidance



Grievance procedures must be widely disseminated.

Some recommendations for distribution:

- Readily accessible on website
- Have copies of the procedures available at various locations throughout the school or campus
- Publish the procedures as a separate document
- Include a summary of the procedures in major publications issued by the school, such as handbooks and catalogs for students, parents, faculty, and staff
- Identify individuals who can explain how the procedures work.

Revised Sexual Harassment Guidance Jan 2001



Page 20

Colorado Desktop Review

- Not "easy to find"
- Sample policies still say "sample"
- Disclosure statement is blank
- Multiple policies posted (option 1 and option 2)
- Old policies posted (not updated)
- Name on disclosure statement does not match name elsewhere on website
- Lead not designated
- No email address



Anti-Retaliation Provision

 It is unlawful to retaliate against individuals, including Title IX Coordinators, for:

- Filing a Title IX complaint
- Participating in a Title IX investigation, hearing or proceeding
- Advocating for others' Title IX rights
- Retaliation may look like:
 - Preventing the student from participating in school activities
 - Giving the student a failing grade
 - Threatening expulsion



"A grievance procedure applicable to sexual harassment complaints cannot be prompt or equitable unless students know it exists, how it works, and how to file a complaint."

Revised Sexual Harassment Guidance January 2001

page 20



4. Education and Prevention

OCR recommends preventative education programs that include:

- What constitutes sexual harassment and sexual violence
- School's policies, procedures, and consequences
- How to report sexual harassment and sexual violence
- For educators, students and parents

 Schools should regularly assess student activities to ensure they do not violate policies against sexual harassment and sexual violence



Suggestion > Create a page on the website that includes:

- The Title IX Coordinator's contact information
- The Notice of Nondiscrimination
- Relevant Title IX policies and grievance procedures
- Other resources related to Title IX compliance and gender equity

* A link to this page should be prominently displayed on the school/district homepage.

Education and Prevention Avenues

- School safety resource officers
- Student athletes and coaches
- New student orientation
- School assemblies
- Back to school nights
- Health class
- Class meetings
- Mentoring



Educational Programs for Students

Kidpower (PK-12th grades)

http://kidpowercs.org/

Safety Smarts (PK-12th grades)

http://www.voicescarrycac.org/

• S.A.R.A., Inc.

http://www.sarainc.org/programs services

- Stop Bullying NOW! (3rd-6th grades)
- Safe Dates (5th-12th grades)
- Voices (Middle and High School)
- Shifting Boundaries (Middle School)

http://www.preventconnect.org/wpcontent/uploads/2013/05/Shifting-Boundaries-w-Copyrigh-at-Lib-ofcongresst.pdf

Jana's Campaign (Middle and High School)

http://www.janascampaign.org/

Coaching Boys Into Men (High School)

http://www.coachescorner.org/

Colorado School Safety Resource Center

www.colorado.gov/CSSRC

* Note that you will need to add district/school specific grievance procedures





5. Coordination of Response to Title IX Complaints

Ensure all complaints are handled properly, may include:

- Informing all parties regarding the process
- Notifying all parties regarding grievance decisions
- Right to and procedures for appeal, if any
- Monitoring compliance with all requirements and timelines
- Maintaining grievance and compliance records
- Providing assistance to school law enforcement, if applicable
- Identify and address patterns or systemic problems
- Assess effects on school/district climate
 - Could include coordination and analysis of an annual climate survey
- Make recommendations



Conflict of Interest

"Title IX does not specify who should determine the outcome of Title IX complaints or the action the school will take...The Title IX Coordinator could play this role, provided there are no conflicts of interest, but does not have to."

Letter to Title IX Coordinators

Page 4

A person free of actual or perceived conflicts of interest and biases must lead the investigation.

Sept 2017 Interim Guidance

Question 6





Letter to Title IX Coordinators

http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ixcoordinators.pdf

Title IX Resource Guide

http://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf



Sex-Based Harassment



Sex-Based Harassment

Defined as:

- Sexual in nature
- Unwelcome
- Denies or limits a student's ability to participate in or benefit from a school's education program



Can affect male or female students

- The harasser and the victim can both be of the same sex
- Conduct can be verbal, nonverbal or physical



A 2011 study conducted by the American Association of University Women (AAUW) found that nearly half of students surveyed in grades 7-12 experienced some form of sexual harassment within the past school year.

Crossing the Line: Sexual Harassment at School



Between fiscal years 2009-2016, the Office for Civil Rights received 265 sexual violence related complaints at the elementary and secondary levels.

Achieving Simple Justice Highlights of Activities Office for Civil Rights

Page 10



Gender-Based Harassment and Bullying

Title IX "prohibits sexual harassment and gender-based harassment of all students, regardless of the actual or perceived sexual orientation or gender identity of the harasser or target."

Oct 26, 2010 Dear Colleague Letter on Harassment and Bullying

Page 8

Gender-based harassment includes:

- Verbal, nonverbal, or physical
- Aggression, intimidation, or hostility
- Based on sex or sex-stereotyping
- Even if the acts do not involve sexual conduct



 It can be sex discrimination if students are harassed for exhibiting what is perceived as stereotypical characteristics for their sex or for failing to conform to stereotypical notions of masculinity or femininity.

 Title IX prohibits sexual and gender-based harassment of all students regardless of the actual or perceived sexual orientation or gender identity of the harasser or the target.

 Title IX protects all students, including LGBT students, from sex discrimination.

Oct 26, 2010 Dear Colleague Letter on Harassment and Bullying



Transgender Students Gender-Based Harassment and Bullying

May 13, 2016 Dear Colleague Letter on Transgender Students

https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf

 Examples of Policies and Emerging Practices for Supporting Transgender Students

https://www2.ed.gov/about/offices/list/oese/oshs/emergingpractices.pdf

Rescinded

Replaced with Feb 22, 2017 Dear Colleague letter

Emphasizes that withdrawal of May 2016 transgender guidance does not alleviate schools of their responsibility to "ensure that all students, including LGBT students, are able to learn and thrive in a safe environment."

https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf



Colorado Bullying Definition

Colorado House Bill 11-1254, section 22-32-109 (1)(11)(I) defines bullying as "any written or verbal expression, or physical or electronic act or gesture, or pattern thereof, that is intended to coerce, intimidate, or cause any physical, mental, or emotional harm to any student" and states that "bullying is prohibited against any student for any reason" (page 9).



Hostility Toward LGBT Students May Be Rising in Schools, Survey Finds

GLS N'

The 2017 National School Climate Survey

The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools



Education Week, Oct 15, 2018

http://blogs.edweek.org/edweek/rulesforengagement/2018/10/lgbt_students_may_be_facing_more_hostile_school_en vironments_report_finds.html?cmp=eml-enl-eunews2&M=58641493&U=1699359&UUID=3ed1b4036bc01084d4b526284f1599be

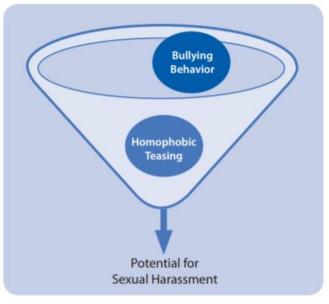
GLSEN 2017 National School Climate Survey

https://www.scribd.com/document/390913279/GLSEN-2017-National-School-Climate-Survey#from_embed

The Bully-Sexual Violence Pathway in Early Adolescence

- 3 year study
- Overlap between bullying and sexual violence
- Homophobic teasing in the Bully-Sexual Violence
 Pathway
- "If you hear this>say this"

https://www.cdc.gov/violenceprevention/pdf/ASAP_BullyingSV-a.pdf



Colorado Anti-Discrimination Law

- Senate Bill 08-200
 - Protects all regardless of "disability, race, creed, color, sex, sexual orientation, marital status, national origin, or ancestry" in all places of public accommodation.

http://www.cde.state.co.us/cde_english/titleix-transgenderstudents

- Department of Regulatory Agencies
 Civil Rights Commission Rules and Regulations
 - 3 CCR708-1
 - "All [public] covered entities shall allow individuals the proper use of gender-segregated facilities that are consistent with their gender identity. Gender-segregated facilities include but are not limited to, restrooms, locker rooms, dressing rooms and dormitories."

https://www.sos.state.co.us/CCR/3%20CCR%20708-1.pdf?ruleVersionId=6008&fileName=3%20CCR%20708-1





Resources: Sex-Based Harassment and Bullying

October 2010 Dear Colleague Letter on Harassment and Bullying

http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf

- Colorado School Safety Resource Center, Bullying and Harassment
 https://www.colorado.gov/pacific/cssrc/bullying-harassment
- Colorado Department of Education, Bullying Prevention

http://www.cde.state.co.us/mtss/bullying

PACER Center Kids Against Bullying (elementary students)

https://www.pacerkidsagainstbullying.org/

PACER Center Teens Against Bullying (secondary students)

https://www.pacerteensagainstbullying.org/

Ability Path (students with disabilities)

http://abilitypath.org/2014/06/23/bullying-special-needs-antibully-programs/

One Colorado (LGBT students)

http://www.cde.state.co.us/mtss/makeitsafe

June 2011 Dear Colleague Letter on Gay-Straight Alliances

https://www2.ed.gov/policy/elsec/guid/secletter/110607.html



Resources: Sexual Harassment and Sexual Violence

Sept 2017 Interim Guidance

https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf

Sexual Harassment: It's Not Academic pamphlet

http://www2.ed.gov/about/offices/list/ocr/docs/ocrshpam.pdf

Revised Sexual Harassment Guidance (Jan 2001)
 http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf

 Stop SV: A Technical Package to Prevent Sexual Violence <u>https://www.cdc.gov/violenceprevention/pdf/sv-prevention-technical-package.pdf</u>

Colorado School Safety Resource Center, Sexual Assault
<u>https://www.colorado.gov/pacific/cssrc/sexual-assault-0</u>



Resources to Support Juveniles Who Have Committed Sexually Abusive and Offending Behavior

Colorado Sex Offender Management Unit

https://www.colorado.gov/pacific/dcj/sex-offender-management-unit

Reference Guide for School Personnel

https://cdpsdocs.state.co.us/somb/RRP/REPORTS/REFERENCEGUIDEFORSC HOOLPERSONNELFINAL.pdf



Resources for Parents

Teach Your Child the Underwear Rule

http://www.underwearrule.org/Default_en.asp

The Underwear Rule

http://www.underwearrule.org/source/text_en.pdf

The Underwear Rule: The Book

http://www.underwearrule.org/Source/Book_en.pdf



Bullying Prevention Training for Educators

Department of Health and Human Services

Centers for Disease Control and Prevention

Stopbullying.gov

https://www.stopbullying.gov/index.html

- How to Assess Bullying
 - Cyberbullying
- Prevention at School
 - Engage Parents and Youth
 - Set Policies and Rules
- Working in the Community
- Videos
- Free Online Course--Bullying Prevention at School

https://www.stopbullying.gov/prevention/training-center/bullying-prevention-trainingcourse/index.html



The National Center on Safe Supportive Learning Environment

U.S. Department of Education Office of Safe and Healthy Students

Safe Supportive Learning

https://safesupportivelearning.ed.gov/safe-place-to-learn-k12

- 4 online training modules
- Preventing peer-to-peer sexual harassment
- Recognizing and responding to sexual harassment
- Guide for administrators
- Coordinated response team planning guide
- Trauma sensitivity training module
- Resources



Teen Dating Violence Prevention Training for Educators

U.S. Department of Health and Human Services Centers for Disease Control and Prevention Dating Matters: Understanding Teen Violence Prevention (MS & HS)

Free Online Course

https://www2a.cdc.gov/TCEOnline/registration/detailpage.asp?res_id=5057

Capacity Assessment and Planning Tool

http://vetoviolence.cdc.gov/apps/datingmatterscapt/

Interactive Guide on Informing Policy

https://vetoviolence.cdc.gov/apps/datingmatterspolicy/

- Case Scenarios
- Resources—embedded and separately

https://vetoviolence.cdc.gov/apps/datingmatterspolicy/content/additional-resources

Evidence-Based Programs

https://vetoviolence.cdc.gov/apps/datingmatterspolicy/content/preventing-teen-dating-violence

Technical Packages

https://www.cdc.gov/violenceprevention/pub/technical-packages.html



Guidance on Sexual Misconduct Policies



Federal Guidance on Sexual Misconduct Policies

April 4, 2011 Dear Colleague Letter on Sexual Violence *Rescinded*

April 29, 2014 Questions and Answers on Title IX Sexual Violence

Rescinded

 Replaced with Sept 2017 Interim Guidance (Q&A on Campus Sexual Misconduct)

Emphasizes continued reliance on the January 2001 Revised Sexual Harassment Guidance and the Jan 25, 2006 Dear Colleague Letter on Sexual Harassment



 Title IX does not require separate grievance procedures specific to sexual harassment

 Rather, a school/district's nondiscrimination policy and grievance procedures "must provide effective means for preventing and responding to sexual harassment"

Revised Sexual Harassment Guidance Jan 2001





Considerations for Sexual Misconduct Policies

 However, in Sept 2016, the White House Task Force to Protect Students from Sexual Assault highlighted considerations for drafting sexual misconduct policies, including why a district might benefit from having a separate sexual misconduct policy.

Considerations include:

- Who should participate in drafting the policy
- How to measure if the policy is clear and understandable to the audience
- Other documents that should be considered during policy development
- Specific items to consider including
- Next steps

Considerations for School District Sexual Misconduct Policies



Grievance Procedures



Grievance Procedures must be prompt and equitable





What constitutes "prompt"?

"There is no fixed time frame under which a school must complete a Title IX investigation."

• "The Office for Civil Rights (OCR) will evaluate a school's good faith effort to conduct a fair, impartial investigation in a timely manner designed to provide all parties with resolution."

Sept 2017 Interim Guidance



What constitutes "prompt"?

• "...whether complaint resolutions are timely will vary depending on the complexity of the investigation and the severity and extent of the harassment."

 "During the investigation, it is good practice for schools to inform students who have alleged harassment about the status of the investigation on a periodic basis."

Jan 2001 Revised Sexual Harassment Guidance





What constitutes "equitable"?

• "The burden is on the school, not the parties, to gather sufficient evidence to reach a fair, impartial determination"

 A trained investigator must analyze, document, and synthesize the evidence and objectively evaluate the credibility of witnesses

 Any opportunities that are made available to one party during the investigation should be made to the other party on equal terms

Sept 2017 Interim Guidance



Equitable, cont.

What constitutes "equitable"?

 Once the decision to open an investigation has been made, the school should provide written notice of the allegations to the responding party, including sufficient details and time to prepare before an initial interview

- Each party should receive advance written notice prior to any interview or hearing with sufficient time and equal access to any information to prepare
- The investigation should result in a written report summarizing relevant evidence



Elements Used to Evaluate Prompt and Equitable

- i. Provides notices of the school's grievance procedures, including how and where to file a complaint
- ii. Applies grievance procedures to all Title IX complaints regardless of who files the complaint
- iii. Ensures an adequate, reliable, and impartial investigation, including the opportunity to present witnesses and other evidence
- iv. Designates and follows a reasonably prompt time frame for major stages of the complaint process
- v. Notifies parties of the outcome
- vi. Provides assurance that the school will take steps to prevent recurrence and to remedy its discriminatory effects, as appropriate





Common Elements of Title IX Grievance Procedures

- Notice to students, parents, and employees of the grievance procedures and how to file a complaint
- Statement that procedures apply to complaints alleging harassment by employees, other students, or third parties
- Definitions of sex discrimination, sexual harassment and consent
- A promise of adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and evidence
- Designated and reasonably prompt time frames to complete the major stages of the process
- Notice to parties (parents, if students are minors) of the investigation's outcome
- Assurance that the school will take steps to prevent recurrence of any harassment and correct any discriminatory effects
- Prohibition of retaliation, how to report subsequent problems, and how the district will respond
- Standard used to investigate ("preponderance of evidence" vs "clear and convincing")
- Appeal process, if any, including timeframe
- Contact information for filing a complaint with the Office for Civil Rights



Title IX and Sexual Harassment in K-12 Public Schools



September 2017 Interim Guidance

https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf

Title IX and Sexual Harassment in K-12 Public Schools: Key Steps to Compliance

https://www.ue.org/uploadedFiles/Title%20IX%20and%20Sexual%20Harassment%2 0in%20K-12%20Public%20Schools.pdf



Investigations



Sexual Harassment Investigations

 A school is obliged to investigate alleged sex-based harassment that the school knows of or reasonably should know of, regardless of whether or not a complaint has been filed.

- "The burden is on the school, not the parties, to gather sufficient evidence to reach a fair, impartial determination"
- A trained investigator, free from conflict of interest, must analyze, document, and synthesize the evidence and objectively evaluate the credibility of witnesses
- Once the decision to open an investigation has been made, the school should provide written notice of the allegations to the responding party, including sufficient details and time to prepare before an initial interview
- Each party should receive advance written notice prior to any interview or hearing with sufficient time and equal access to any information to prepare



Sept 2017 Interim Guidance

Sexual Harassment Investigations, cont.

 Any opportunities that are made available to one party during the investigation should be made to the other party on equal terms

- The investigation should result in a written report summarizing relevant evidence
- OCR recommends that both parties receive written notification of the outcome concurrently as well as:
 - Remedies offered to the reporting party
 - Sanctions imposed on the responding party
 - Steps taken to eliminate the hostile environment, if found to exist

• A district may choose to allow appeals solely by the responding party or by both parties.



Hostile Environment

Schools may have an obligation to respond to sexual harassment that initially occurred off school grounds.

 "Schools are responsible for redressing a hostile environment that occurs on campus even if it relates to off-campus activities."

(Sept 2017 Interim Guidance, pg. 1)

Students often experience the continuing effects of sexual harassment within the school setting, resulting in a hostile educational environment.

 "When sexual misconduct is so severe, persistent, or pervasive as to deny or limit a student's ability to participate in or benefit from the school's programs or activities, a hostile environment exists and the school must respond."

(Sept 2017 Interim Guidance, pg. 1)



A law enforcement investigation does not relieve the school from the obligation to conduct it's own Title IX investigation

"Although a school may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, once notified that the police department has completed its gathering of evidence (not the ultimate outcome of the investigation or the filing of any changes), the school must promptly resume and complete the fact-finding for the Title IX investigation. Moreover, the criminal investigation should not prevent a school from notifying complainants of their Title IX rights and the school's grievance procedures, or from taking interim steps to ensure the safety and wellbeing of the complaint and the school community while the law enforcement agency's fact-gathering is in progress."

Nov 6, 2013 Compliance Review, West Contra Costa Unified School District, Legal Authority, paragraph 7



Standard Used

The findings should be reached by applying either:

The "preponderance of the evidence" standard

> It is more likely than not that sexual harassment or violence occurred

OR

The "clear and convincing" standard

It is highly probable or reasonably certain that the sexual harassment or violence occurred

"The standard of evidence for evaluating a claim of sexual misconduct should be consistent with the standard the school applies in other student misconduct cases." (Sept 2017 Interim Guidance, pg. 5 footnote 19)

Interim Measures

- Prior to or during a sexual harassment investigation, interim measures may be offered to either party, as appropriate, and may include but are not limited to:
 - Counseling
 - Extended time or other course related adjustments
 - Modifications of work
 - Modified class schedules
 - Campus escort services
 - Restrictions on contact between the parties
 - Changes in work locations
 - Leaves of absence
 - Increased security and monitoring of certain areas
 - Other similar accommodations

"Interim measures should be individualized and appropriate based on the information gathered by the Title IX Coordinator, making every effort to avoid depriving any student of her or his education. The measures needed by each student may change over time, and the Title IX Coordinator should communicate with each student throughout the investigation to ensure that any interim measures are necessary and effective based on the students' evolving needs."

(Sept 2017 Interim Guidance, pgs. 2-3)



Informal Resolution of Complaints

A school can not require a student to confront his/her harassers.

(Oct 26, 2010 Dear Colleague letter, pg. 7)

If all parties agree voluntarily and if the school determines that the particular Title IX complaint is appropriate for such a process, the school may facilitate an informal resolution.

(Sept 2017 Interim Guidance, pg. 4)

The complainant must be notified of the right to end an informal process at any time and begin the formal complaint process.

(Jan 2001 Revised Sexual Harassment Guidance, pg. 30)



Conclusion of the Investigation

If the results of the investigation are that sexual harassment has occurred, the school must take prompt and effective steps to:

- End the harassment
- Eliminate any hostile environment
- Address the effects of the harassment
- Prevent the harassment from recurring
- Protect the student from retaliation
 - At minimum, includes making sure the harassed students and their parents know how to report any subsequent problems and making follow-up inquiries to see if there have been any new incidents or any retaliation.



Possible Remedies for the Complainant

Some ideas may include, but are not limited to:

- Provide an escort to ensure the complainant can safely move between classes/activities
- Ensure complainant and perpetrator do not attend the same classes
- Moving the complainant or perpetrator to another school within the district
- Providing counseling services
- Providing medical services
- Providing academic support, such as tutoring
- Arranging for the complainant to re-take a course
- Reviewing any disciplinary actions taken against the complainant to check for a causal connection between the harassment and the misconduct

"Any separation of the target from the harasser should be designed to minimize the burden on the target's educational program." (Oct 26, 2010 Dear Colleague letter, pg. 3)

"Responsive measures...should be designed to minimize, as much as possible, the burden on the student who was harassed." (Jan 2001 Revised Sexual Harassment Guidance, pg. 25)



Proposed Title IX Rule



Proposed Title IX Rule

- Would adopt a "clear definition of sexual harassment" that is "actionable under Title IX"
 - Quid pro quo or
 - "Unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity;" or
 - Sexual assault, as the Clery Act defines it in 34 CFR 668.46(a)
- Would narrow a school's responsibility to "actual knowledge" of sexual harassment within the school's own "educational program of activity"
 - Reporting it constitutes actual knowledge
 - Would require schools to investigate every formal complaint and to respond meaningfully to every known report of sexual harassment
- Would require "due process protections"
- Would add new sections specific to sexual harassment.
 - What constitutes sexual harassment for purposes of rising to the level of a civil rights issue under Title IX
 - What triggers a school's legal obligation to respond to incidents or allegations of sexual harassment



How a school must respond

66

Proposed Title IX Rule, cont.

- Investigation determinations would be made by someone who is not the Title IX Coordinator and not the Investigator
 - Determinations would have to be made "by applying either the preponderance of the evidence standard or the clear and convincing evidence standard; however, a school can use the lower preponderance standard only if it uses that standard for conduct code violations that do not involve sexual harassment but carry the same maximum disciplinary sanction. Further, schools must use the same standard of evidence in cases against student respondents that it uses in cases against employee respondents, including faculty."
- If a school chooses to offer any appeal, it would have to allow both parties to appeal
 - The appeal decision-maker cannot be the same person who served as the Title IX Coordinator, investigator or decision-maker
- There would be rules around record keeping
- Employee rights under Title VII would not be affected
- Faith-based institutions would no longer have to submit a statement to the Assistant Secretary in order to claim the religious exemption contained in the Title IX statute.
- The Department would not assess damages against a school for a violation of these regulations but would focus enforcement efforts on bringing schools into compliance ⁶⁷ with Title IX.

Public Comment

- Open for public comment Nov 29, 2018-Jan 28, 2019
- One page summary: <u>Proposed Title IX Regulation Fact</u>
 <u>Sheet</u>
- Section by section summary: <u>Background & Summary of</u> <u>the Education Department's Proposed Rule</u>
- Proposed rule, in it's entirety: <u>Federal Register</u>
- The period of time for public comment has ended.



Enforcing Agency

Denver Office for Civil Rights

Region VIII Office

U.S. Department of Education

Phone: 303-844-5695

Email: <u>OCR.Denver@ed.gov</u>

How to File a Complaint

https://www2.ed.gov/about/offices/list/ocr/docs/howto.html

How the OCR Handles Complaints

https://www2.ed.gov/about/offices/list/ocr/complaints-how.html

Case Processing Manual, updated Nov 19, 2018

https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf





Thank You!

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303-866-6285

https://www.cde.state.co.us/cde_english/titleix