EDUCATION LAW: A YEAR IN REVIEW JUNE 12, 2024

Title IX Update: New Federal Regulations and Implications for Schools

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New Title IX Regulations Are Here!





A (Not So) Brief History

OCTOBER 2023 – Administration Announces Another Delay. (New Anticipated Effective Date March 2024)

APRIL 19, 2024 - 2024 Title IX Rules Published.

AUGUST 1, 2024 – 2024 Title IX Rules Take Effect.

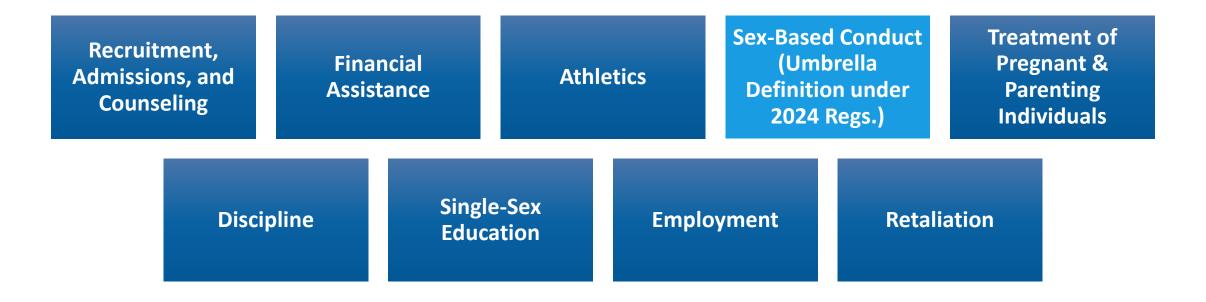
Title IX Statute

(20 U.S.C. §§ 1681–1688)

"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."



What falls under Title IX?





Title IX Regulations

(34 C.F.R. Part 106 – NEW Amendments in effect 8/1/24)

- Prohibit discrimination on the basis of sex
- Establish procedural requirements
 - Policy
 - Detailed grievance procedure
 - Designation of Title IX coordinator(s)
 - And many more requirements!



When Must a School Respond to Sex Discrimination?

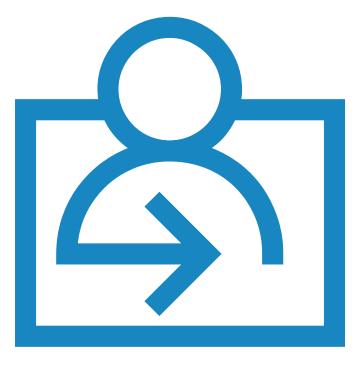
When must a school respond?

2020 Regulations	2024 Regulations
A recipient with actual	A recipient with knowledge of
knowledge of [Title IX] sexual	conduct that reasonably may
harassment in an education	constitute sex discrimination in its
program or activity against a	education program or activity must
person in the U.S. must respond	respond promptly and effectively.
promptly and in a manner that is	
not deliberately indifferent.	

Employee Reporting

K-12: All employees (except confidential employees) must notify the Title IX Coordinator when the employee has information about conduct that **reasonably may constitute** sex discrimination.

Higher Ed: **All employees** (except confidential employees) must notify Title IX Coordinator **or** provide Title IX Coordinator's contact information to the reporter.



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Sex Based Harassment

Hostile Environment

Quid pro quo

Sexual Assault Domestic Violence Dating Violence Stalking



Quid Pro Quo Harassment

Definition: An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service in the recipient's education program or activity explicitly or implicitly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.



Clery Act/VAWA "Big Four"

Sexual Assault 20 U.S.C. 1092(f)(6)(A)(v)

Domestic Violence 34 U.S.C. 12291(a)(8)

Dating Violence 34 U.S.C. 12291(a)(10)

Stalking 34 U.S.C. 12291(a)(30)



Key Elements of a Legal Claim of Hostile Environment Sexual Harassment

Title IX – What is a Hostile Environment

2020 Regulations	2024 Regulations (8/1/24)
Unwelcome conduct determined	Unwelcome sex-based conduct
by a reasonable person to be so	that, based on the totality of the
severe, pervasive, and	circumstances is subjectively and
objectively offensive that it	objectively offensive and is so
effectively denies a person's	severe or pervasive that it limits
equal access to the school's	or denies a person's ability to
education program or activity	participate in or benefit from the
	recipient's education program or

activity.

Hostile Environment Factors

Context, Type, Frequency, Duration, and Location of the Incidents

Identity, Number, Ages, and Relationships of the Persons involved

What about.... casual or isolated comments or conduct?



Title IX Sexual Harassment Must Be "In a Program or Activity"



Program or Activity (2020) Program or Activity (2024)

Any location, events, or circumstance over which the recipient exhibits substantial control over both the alleged harasser and the "context" in which the harassment occurred. Conduct that occurs in any building owned or controlled by a student organization that is officially recognized by a postsecondary institution; and

Conduct that is subject to the recipient's disciplinary authority.

 2020: Schools need only address sex discrimination occurring against a person *in the* United States.

• 2024: May be inclusive of offenses outside of the U.S.



EVALUATING COMPLAINTS & DISMISSALS

- 1. Respondent unable to be identified
- Respondent is not participating in recipient's education program or activity, or is not employed by the recipient
- 3. Complainant withdraws complaint
- 4. Complainant withdraws allegations in the complaint and, without withdrawn allegations, the remaining conduct would not constitute sex discrimination under Title IX
- 5. Even if true, conduct would not constitute sex discrimination under Title IX (reasonable efforts to clarify required)

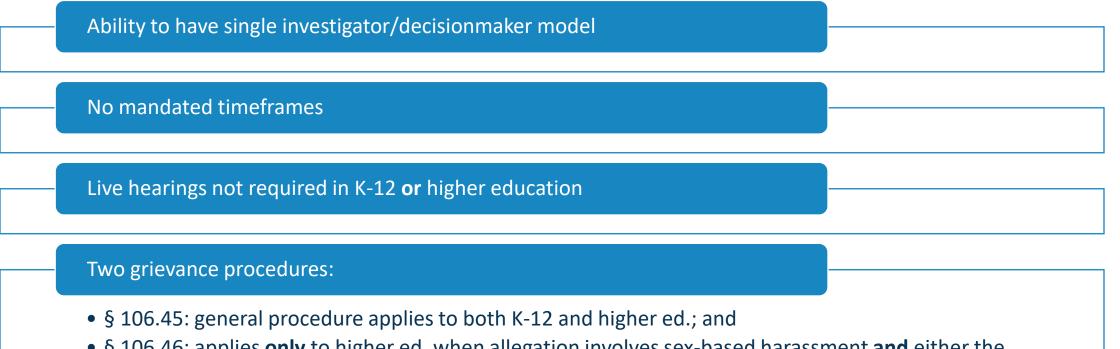


Adequacy of Response





Key Changes to Grievance Procedure(s)



• § 106.46: applies **only** to higher ed. when allegation involves sex-based harassment **and** either the Complainant or Respondent (or both) is a student

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One grievance procedure or two?

§ 106.45 General Grievance Procedure

Complaint

An oral or written request to the recipient that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX or its implementing regulations.

complain

Supportive Measures

- Title IX Coordinator may offer supportive measures to parties even in the absence of a complaint or where a complaint is withdrawn
- Must provide process for a party to modify or reverse the school's decision to provide, deny, modify, or terminate supportive measures



Students with Disabilities





K-12: Title IX Coordinator **must** consult and coordinate with IEP/504 team throughout the grievance process.

Higher Ed.: Title IX Coordinator **may** consult and coordinate with Section 504 office throughout grievance process.

Informal Resolution

- May be offered for any conduct that could reasonably be interpreted as sex discrimination
- No complaint required
- Informal resolution still not permitted for conduct where a student is the alleged complainant and an employee is the alleged respondent (K-12)





Informal Resolution Facilitators

CANNOT be the Title IX Coordinator <u>or</u> investigator <u>or</u> decision-maker

Investigation

- Burden of proof on school
- "Reasonable steps" to protect privacy of parties and investigation; cannot submit parties to gag order(s)
- Equal, reasonable opportunity to produce witnesses and to produce, review, and respond to evidence
- Process that enables decisionmaker to question parties and witnesses and assess credibility
- No requirement to draft investigation report

Determinations of Responsibility

- Preponderance of the evidence standard*
- Notify parties of determination in writing

Appeal Process

- Available to both parties
- Appeal dismissal or determination
- Same process as in all other comparable proceedings

§ 106.46 Sex-Based Harassment and CP/RP is a Student (Higher Ed. ONLY)

Key Differences

- 1. Notice of allegations may be delayed due to safety concerns.
- 2. Written notice of investigation meetings with parties is required
- 3. Parties must have equal opportunity to bring an advisor and support person(s).
- 4. Access to evidence or written investigation report and opportunity to respond.
- 5. Specific processes based on whether a live hearing is provided.
- 6. Written determination must be provided simultaneously.
- 7. Appeal bases.



Training

- Annual training for all employees
- Annual training for members of your Title IX team
 - Additional training upon change of position that alters duties under Title IX
- No requirement to post training materials



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All Employee Training

- •School's obligations to address sex discrimination under Title IX
- Scope of conduct that constitutes sex discrimination under Title IX, including definition of sex-based harassment
- •All notification and information requirements under §§ 106.40(b)(2) and 106.44



All Employee Training + Role-Specific Training

Investigators & Decisionmakers	Informal Resolution Facilitators	Title IX Coordinator
 School's obligation under § 106.44 School's grievance procedures How to serve impartially, including avoiding conflicts of interest and bias Meaning and application of "relevance" for questions and evidence 	 Rules and practices of school's informal resolution process How to serve impartially, including avoiding conflicts of interest and bias 	 All other role specific trainings and: Title IX Coordinator's specific responsibilities under Title IX School's recordkeeping system and recordkeeping requirements under Title IX Other topics as needed to perform duties

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Questions



