



Willamette
EDUCATION SERVICE DISTRICT

Title IX

Navigating Compliance in a Changing Landscape

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Title IX

“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.”

2020 → 2024 → 2020

- 2024: Federal courts in multiple jurisdictions enjoined the 2024 Title IX Rule, which amounted to a prohibition against its enforcement in 26 states.
- January 9, 2025: United States District Court for the Eastern District of Kentucky issued a decision vacating the 2024 Title IX Rule, which prohibited the United States Department of Education from enforcing it in *any* jurisdiction.
- January 31, 2025: Dear Colleague Letter from OCR
 - “[T]he binding regulatory framework for Title IX enforcement includes the principles and provisions of the 2020 Title IX Rule and the longstanding Title IX regulations outlined in 34 C.F.R. 106 *et seq.*, but excludes the 2024 Title IX Rule. Accordingly, open Title IX investigations initiated under the 2024 Title IX Rule should be immediately reoriented to comport fully with the requirements of the 2020 Title IX Rule.”

2020 Title IX Regulations

- Significantly expanded and changed the roles and responsibilities of all staff with respect to allegations of sexual harassment
- Narrow definition of sexual harassment
- Formal Complaint process

Key Roles and Responsibilities



Title IX Team

- Title IX Coordinator
 - Investigator
 - Decision Maker
 - Appellate Decision Maker
 - (Optional) Informal Resolution Facilitator
- All of these roles must be filled by individuals trained in Title IX. Only the Title IX Coordinator/Investigator roles can be filled by the same person. These positions can be contractors or non-district personnel.

Title IX Coordinator

- Each district must appoint at least one individual to serve as the “**Title IX Coordinator**,” who must be clearly designated and identified.
- Must have authority to coordinate the “district’s efforts to comply with its responsibilities” under Title IX.
- The Title IX Coordinator should be explicitly named as such in district policies, publications, and on the district website.
- All individuals who may report incidents of sexual misconduct must be informed of the Title IX Coordinator’s contact details, including their name, title, office, email, and phone number.
- Primary duties include overseeing the grievance process.

Investigator

- Primary duties include:
 - Gathering evidence.
 - Organizing evidence.
 - Presenting evidence.
 - Making findings of fact.

Decision Maker

- Primary duties include:
 - Reviewing evidence.
 - Analyzing evidence.
 - Drawing conclusions.
 - Determining responsibility.

Appellate Decision Maker

- Primary duties include:
 - Reviewing entire record.
 - Receiving and reviewing arguments on appeal.
 - Determining sufficiency of appeal.
 - Preparing and producing appeal decision.

Informal Resolution Facilitator

- Receive complaint file.
- Review Formal Complaint and any investigation documentation to date.
- Conduct informal resolution.
- Prepare resolution agreement.
- Provide resolution file to Title IX Coordinator.

Impartiality

- Members of the Title IX team cannot have a conflict of interest or bias against complainants or respondents, generally, or against the involved Complainant or Respondent, specifically.
- **Conflict of interest**
 - Actual or apparent
 - Can arise from conflicting relationships, duties, financial interests, etc.
- **Bias/prejudice**
 - Actual or apparent
 - Positive or negative
 - Can arise from personally-held beliefs, ideals, sympathies, stereotypes, etc.

Impartiality

- Confirm that there are no conflicts of interest when a report is received.
 - Ensure all employees involved in the Title IX process are free of conflicts before a formal complaint is assigned.
- Discard any preconceived notions or stereotypes about the parties involved.
- Assess allegations based on facts, not assumptions.
- Apply supportive measures in an equitable manner, without assuming guilt or innocence.
- Provide both parties with equal access to communication and information throughout the process.

Terminology



Sexual Harassment

- Three types of conduct on the basis of sex that constitute sexual harassment under the regulations:
 1. Quid pro quo by an employee;
 2. Hostile environment;
 3. Conduct that meets the definitions under federal law for sexual assault, dating violence, domestic violence, and stalking.

Quid Pro Quo Sexual Harassment

- *Quid pro quo*: When an employee conditions the provision of a district aid, benefit, or service on participation in unwelcome sexual conduct.
- This definition applies only to actions of **employees**.

Hostile Environment Sexual Harassment

- Unwelcome conduct that is so severe, pervasive, **AND** objectively offensive that it effectively denies a person equal access to the district's programs or activities.
 - This could be student-to-student conduct, employee-to-student conduct, or employee-to-employee conduct.

Four More Types of Sexual Harassment

- The federal Clery Act and the Violence Against Women Act (VAWA) address four types of violence that are each considered forms of sexual harassment under Title IX:
 - Sexual assault: Forcible or non-forcible sexual offenses under the Uniform Crime Reporting System of the FBI
 - Dating violence: Violence done by a person who is, or has been, in a dating relationship with the other person
 - Domestic violence: Violence by a current or former intimate partner
 - Stalking: A course of conduct directed at a specific person that would cause a reasonable person to fear for personal safety of self or others; or to suffer emotional distress

Other Important Terms

- **Complainant:** individual who is alleged to be the victim of conduct that could constitute sexual harassment
- **Respondent:** individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment
- **Report:** verbal or written, by *anyone*
- **Formal Complaint:** written document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the district investigate the allegation of sexual harassment
- **Supportive Measures:** individualized, non-disciplinary and non-punitive services offered as appropriate
- **Education program or activity:** any academic, extracurricular, vocational, or other education program operated by a district

Reporting and Responding

- ALL employees are required to report any observed or learned incidents of potential sexual misconduct.
- Report can be made verbally or in writing.
- Reports can be submitted by mail, phone, or email at any time, whether during business hours or after-hours, directly to the Title IX Coordinator.
 - Your district may have an existing reporting system in place for submitting these reports.

Deliberate Indifference and Actual Knowledge

- **Any** district employee who becomes aware that a student or employee is being sexually harassed (*actual knowledge*) **must report** the incident. Failure to report could expose both the district and the employee to legal liability.
- Employees should not attempt to investigate the matter or impose disciplinary actions. These responsibilities are assigned to the Title IX Coordinator.
- **Deliberate indifference** means to act in a way that is clearly unreasonable given the known circumstances.
 - Can include failure to report, failure to investigate and address known harassment, or failure to appropriately discipline the respondent if the allegations are substantiated.
- Comprehensive training for *all* employees is essential to ensure compliance and understanding of reporting duties and responsibilities.

Substantial Control

- Under the Title IX rules, the district has authority over alleged sexual misconduct if it had “substantial control” over the respondent and the “context in which the harassment occurred.”
- This means:
 - The respondent must have been a student or employee of the district at the time the alleged misconduct took place AND
 - The alleged misconduct must have occurred in a setting where the district has control or authority (e.g., on campus or during school-related activities).
- Other laws or district policies, such as those addressing cyberbullying or staff ethics, may still apply in situations where Title IX jurisdiction does not.

Supportive Measures

- **Supportive measures:** non-disciplinary, non-punitive, individualized services offered to Complainant and Respondent at no charge.
- Must be designed to “restore or preserve equal access to . . . the education program or activity without unreasonably burdening the other party” whether a formal complaint is filed or not.
- Examples:
 - Counseling
 - Mutual no-contact agreements
 - Modification of schedule
 - Campus escort services

Emergency Removal

- Title IX regulations permit the district to place a non-student respondent (employee) on administrative leave while a Title IX review or formal complaint process is ongoing.
- To remove a student respondent on an emergency basis, the district must “undertake[] an individualized safety and risk analysis, determine[] that **an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment** justifies removal, and provide[] the respondent with notice and an opportunity to challenge the decision immediately following the removal.”

Guide for Responding to a Title IX Complaint



Basic Requirements for Grievance Process

- Equal access/treatment
- Objective evaluation of all relevant evidence
- Impartiality
- Presumption of innocence
- Reasonably prompt time frames
- Range of possible disciplinary sanctions or remedies
- Designated standard of evidence
- Range of supportive measures
- Protection of privilege
- Appeal process available

Responding to the Report

- Sexual harassment reports can be made either verbally or in writing by the reporting party. Efforts should be made to document any verbal reports.
- The report must be directed to the Title IX Coordinator.
- The Title IX Coordinator must promptly reach out to the Complainant (and their parent/guardian if under 18) to:
 - Discuss the details of the report;
 - Explain the Formal Complaint process and provide the Complainant with a copy of the district's Title IX Formal Complaint procedure;
 - Inform the Complainant about available supportive measures; and
 - Discuss the Complainant's preferences regarding supportive measures and whether to proceed with a Formal Complaint.

Supportive Measures

- Supportive measures can be provided with or without the filing of a Formal Complaint.
- These measures should be documented and kept confidential, to the greatest extent possible.
- Supportive measures can be adjusted as needed, based on the situation or at the request of the Complainant or Respondent.

Is it Sexual Harassment?

- The Title IX Coordinator is responsible for determining whether the alleged behavior meets the definition of sexual harassment under Title IX.
 - Quid pro quo
 - Hostile environment
 - Sexual assault, dating violence, domestic violence, stalking

Dismiss or Formal Complaint?

- If the conduct **does not** meet the definition of sexual harassment, the claim will generally be dismissed.
 - However, the conduct may still be investigated and addressed under other district policies and regulations.
- The Complainant can still file a Formal Complaint, though it may later be dismissed if it does not meet the Title IX criteria.
- If the conduct **does** meet the definition of sexual harassment, the Title IX Coordinator must discuss the claim with the Complainant.
 - The Complainant decides whether to elevate the report to a Formal Complaint.
 - The Title IX Coordinator may elevate the claim to a Formal Complaint if necessary to ensure the district does not act with deliberate indifference.

Mandatory and Permissive Dismissals

- Mandatory Dismissal
 - When the conduct does not meet the regulatory definition of sexual harassment;
 - When the allegations did not occur against a person in the United States; or
 - When the allegations did not occur in the district's education program or activity.
- Permissive Dismissal
 - If a Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegation in the complaint;
 - If the Respondent is no longer enrolled in or employed by the district;
 - If circumstances prevent the district from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations; or
 - If the Complainant no longer has any involvement with the district.

1. Written Notice of Formal Complaint

- Upon receiving a Formal Complaint, the Title IX Coordinator must provide written notice to all known parties. The notice should include:
 - A description of the grievance process, including whether an informal resolution process is available.
 - A summary of the allegations involved, with updates if new allegations arise during the investigation.
 - A statement affirming the presumption of innocence for the Respondent.
 - The parties' right to an advisor of their choice (who may be an attorney).
 - The parties' right to inspect and review evidence relevant to the allegations.
 - A notice of any district policies or codes of conduct that prohibit knowingly making false statements or providing false information.

2. Investigate Formal Complaint

- Investigator must:
 - Clearly define the allegations under investigation and gather all relevant evidence.
 - Ensure both parties have equal opportunity to have others present during any part of the grievance process.
 - Provide all involved parties with written notice in advance of interviews, meetings, or other proceedings, allowing sufficient time for preparation.

2. Investigate Formal Complaint

- Prior to the completion of the investigation report, the Investigator must:
 - Provide equal opportunity to both parties to inspect and review evidence obtained as part of the investigation (including evidence the Investigator does not intend to rely on).
 - Send a copy of the preliminary investigation report to each party and their respective advisors.
- Each party has 10 days from receipt of the evidence to inspect and review it.
- Each party then has an additional 10 days to submit a written response to the preliminary report, which the Investigator must consider when preparing the final investigation report.

2. Investigate Formal Complaint

- After the 20 days have passed, the Investigator must:
 - Finalize the investigation report and submit it to the Title IX Coordinator, along with any evidence relied upon in the report. The Title IX Coordinator will then forward it to the Decision Maker.
 - Provide the final investigation report to both the Complainant and the Respondent simultaneously.

3. Written Questions from Decision Maker

- The Decision Maker must:
 - Provide each party the opportunity to submit written questions to be asked of the other party or any witnesses.
 - Share the answers to those questions with each party.
 - Provide for limited, written follow-up questions.
- Irrelevant questions may be rejected, but the reason for the rejection must be explained.

Note about the “Rape Shield” Provision

- Questions and evidence about a Complainant’s sexual predisposition or prior sexual behavior are not relevant to a Title IX investigation, **unless**:
 - Evidence is offered to prove someone other than the Respondent committed the alleged conduct; or
 - Evidence concerns the Complainant’s prior sexual history with the Respondent and is offered to prove consent.

Live Hearings

- In the decision-making process, *postsecondary institutions* are required to hold live hearings in which the parties and their representatives are present and allowed to ask questions of each other.
- For K-12 settings, live hearings are optional and often not utilized.

4. Determination of Responsibility

- No sooner than 10 days after both parties receive the final investigation report and have had the opportunity to exchange questions and answers, the Decision Maker must issue a written determination of responsibility that includes:
 - Clear identification of the allegations;
 - A summary of the procedural steps taken throughout the investigation;
 - Findings of fact that support the determination;
 - Conclusions regarding whether the alleged misconduct occurred;
 - Explanations for each conclusion; and
 - Any disciplinary sanctions or remedies being imposed.
- A written copy of the determination must be sent simultaneously to both parties, along with information about the appeal process.
- Title IX disciplinary actions or remedies cannot be implemented until the appeal deadline has passed or both parties are notified of the appeal decision.

5. Appeal

- Both parties must be notified in writing about their right to appeal the determination of responsibility, but only for the following reasons:
 - Procedural irregularity that affected the outcome of the matter;
 - New evidence that was not reasonably available at the time the determination or dismissal was made that could affect the outcome of the matter; and/or
 - A member of the Title IX team had a conflict of interest or bias that affected the outcome of the matter.
- A district may allow other grounds for appeal in its policy, as long as both parties are given equal access to the appeal process.
- Appeals must be reviewed by a new, impartial decision maker.

5. Appeal

- If an appeal is filed, the district must:
 - Notify the other party that an appeal has been filed;
 - Ensure that both parties are subject to the same appeal procedures;
 - Ensure the Decision Maker for the appeal is a different individual than the Title IX Coordinator, Investigator, or original Decision Maker; and
 - Allow both parties to submit written statements supporting or opposing the determination.

6. Appellate Decision Maker

- The Appellate Decision Maker must have received Title IX training.
- In districts, it is common for the school board to handle grievance appeals according to local policies and procedures. However, districts must assess whether it is feasible for the school board to serve in this role under the Title IX process, considering the specific training requirements and the prohibition on conflicts of interest.

7. Written Decision from Appellate Decision Maker

- The Appellate Decision Maker may make a decision based on the evidence from the investigation and any appeal documentation submitted.
- The appeal process must conclude with a written decision, which must be provided to both parties at the same time.

Informal Resolution

- Informal resolution cannot be offered for allegations of sexual harassment by an employee against a student.
- Informal resolution options can only be offered after a Formal Complaint is filed, and both parties must provide voluntary, informed, written consent.
- No party can be required to waive their right to an investigation or to participate in informal resolution as a condition for enrollment or employment.
- Any party may withdraw from the informal resolution process and return to the formal complaint process at any time before an agreement is reached.

Tips for Investigating



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Key Investigation Steps

- Once there is a Formal Complaint, determine who will investigate.
- Review Board policies related to the alleged conduct.
 - *GBN/JBA Sexual Harassment*
 - *Student Code of Conduct*
 - *Employee Handbook or CBA*
- Assess whether interim actions are needed to protect any individual involved or to preserve the integrity of the investigation.

Key Investigation Steps

- Interview the Complainant first, if possible.
 - Get a clear understanding of what is being alleged, including **who, what, where, when, why**
- Interview the person who made the report, if different than the Complainant.
- Interview witnesses.
- Interview the Respondent.

Key Investigation Steps

- Consider obtaining written, signed, and dated statements from each person interviewed.
- Gather any relevant documentation or evidence:
 - Emails, texts, or other correspondence or notes
 - Surveillance video, cell phone video, photos
 - Electronic messages, posts to social media
- Prepare investigation report to be provided to parties.

Documentation Tips

- Ensure notes are comprehensive and precise.
- Include the date, start and end times, location, and names of those present.
- When possible, document exact quotes from individuals.
- Clearly identify any information as rumors if applicable.
- Keep personal opinions or interpretations out of the notes.
- Review the notes with the witness to ensure accuracy and understanding.
- Obtain the signature of any witness for statements they have made.

Interview Tips

- Always remain professional and neutral.
- Acknowledge and address any concerns or reluctance expressed by the interviewee.
- Frame questions in an open-ended manner, avoiding any judgmental tone.
- Ask the witness to distinguish between rumors/speculation and what was actually seen or heard.
- Encourage the witness to identify any additional witnesses who may have relevant information.
- Address any concerns about ongoing interactions with the Respondent, if applicable.
- Invite the parties to provide additional information as it becomes available.
- Request a written statement from the witness.
- Collect copies of any documents referenced or identified by the witness or parties.

Interview Tips

- Do not promise confidentiality or speculate about the outcome of the investigation.
- Interview all witnesses individually.
- Clearly explain the purpose of the meeting and the investigative process.
- Stick to the facts and avoid suggesting guilt or innocence, or implying a decision has already been made.
- Ensure witnesses understand they are protected from retaliation for participating in the investigation.
- Do not reveal the identities of other witnesses or discuss the merits of the complaint.

Interview Tips - Respondent

- Generally, interview the Respondent last, after interviewing the Complainant, the reporting individual, and any witnesses identified by the complainant.
- Prepare a checklist of specific allegations to address during the interview with the respondent.
- If the allegations involve criminal behavior and the Respondent refuses or has been advised not to respond, document your efforts to interview the Respondent.
- Interview any witnesses identified by the Respondent.

Other Considerations



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Record Keeping

- Seven-year retention for records of:
 - Each sexual harassment investigation of a Formal Complaint, including any documented dismissal and the reasons for the same;
 - Any appeal;
 - Any informal resolution; and
 - Training materials.
- Retention and publication of training materials
 - Retain all training materials used for Title IX Coordinators, Investigators, Decision Makers, and anyone involved in facilitating an informal resolution process.
 - These training materials must be made publicly available on the district's website.

Retaliation

- Retaliation is prohibited against any individual for filing a complaint, participating in a Title IX investigation, or being involved in any related proceedings.
- Examples:
 - Threats
 - Intimidation
 - Spreading rumors
 - Assault
 - Coercion
- Any conduct that would discourage someone from reporting sexual harassment or participating in an investigation is also considered retaliation.
- Charging someone with a code of conduct violation for making a materially false statement in bad faith during a Title IX proceeding does not count as retaliation.



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Questions?