



Book: MI Local Policies for Update

Section: Special Update - Title IX - June 2024 MI

Title: Special Update - Title IX - June 2024 USDOE Title IX Regulations and Future Guidance

Number: 03 - Memorandum

Memorandum

Date: June 7, 2024

To: Neola Clients

Subject: US DOE Title IX Regulations and Future Guidance

This update provides an update to Neola clients on the following:

- the status of the final Title IX regulations;

- Neola's release of a revised policy and guideline that incorporate the revisions to the Title IX final regulations; and

- Neola's plan to review all guidance (including state-specific guidance) issued regarding the Title IX final regulations and, for those clients who are interested, release a revised policy and guideline consistent with state-specific guidance.

The "Special Update - Title IX" is now available and includes a new policy (Policy 2264) and a new Administrative Guideline (AG 2264). Importantly, the new policy and guideline strictly adhere to the

requirements of the Title IX regulations issued by US DOE that become effective August 1, 2024. They do not include any state-specific guidance.

Moving forward, Neola will continue to monitor litigation challenging the Title IX regulations, as well as guidance issued by the State. In the event an injunction is entered impacting the effective date of the Title IX regulations, you will need to consult with your Board legal counsel regarding the need to delay implementation of the new policy and guideline.

For those clients that desire to wait until guidance is issued by the State (if any), Neola's plan is to incorporate any such guidance into state-specific versions of Policy 2264 and AG 2264 as quickly as possible.

The Neola pledge to clients is to provide legally sufficient policies and guidelines under Federal and State law. In this particular circumstance, in the event of any potential conflict between the final Title IX regulations and state-specific versions of Policy 2264 and AG 2264 (incorporating future guidance from State leadership), Neola will make them known to you at the time of the release as well as any impact on our policy warranty.

If you have legal questions regarding the final Title IX regulations, litigation challenges to the final Title IX regulations, potential impacts on the School Board's Federal and State funding, and whether to delay adopting the policy included in this Special Update, you are strongly encouraged to consult with your Board legal counsel.

roke-width: 0px; white-space: normal; background-color: rgb(255, 255, 255); text-decoration-thickness: initial; text-decoration-style: initial; text-decoration-color: initial;">AG 8305B - Cybersecurity Event and Incident Management (Revised)

This AG has been revised to incorporate a procedure for engaging the district's cybersecurity insurance carrier when a suspected cybersecurity event occurs, and to provide a definition for cybersecurity event. In addition, we have revised the guideline to distinguish between cybersecurity events and cybersecurity incidents. These revisions were developed in collaboration with SET SEG.

AG 8305C - Notification of Cybersecurity Incident (Revised)

This AG has been revised to incorporate a procedure for engaging the district's cybersecurity insurance carrier when a suspected cybersecurity event occurs. In addition, we have revised the guideline to distinguish between cybersecurity events and cybersecurity incidents. These revisions were developed in collaboration with SET SEG.

AG 8500D - Procedure for the Collection and Payment for Charged Meals **(Revised)**

The language removed from this administrative guideline has been moved to Policy 8351 - Free and Reduced-Price Meals.

COMMENTS

Reviewing Board Minutes

A feature of your subscription to the Update Service is the review of your District's Board minutes to identify actions that result in new policy or revision to existing policy. If such action has been taken and copies of the related materials have not been submitted to the Coshocton Office, the District will be contacted and additional information regarding the action will be requested. Please take advantage of this valuable service by sending copies of your Board minutes to the Coshocton Office for review.



Book: MI Local Policies for Update
Section: Special Update - Title IX - June 2024 MI
Title: Special Update - Title IX - June 2024 OVERVIEW
Number: 01 - OVERVIEW

MI LOCAL UPDATE OVERVIEW AND COMMENTS

SPECIAL UPDATE - TITLE IX - NEW POLICY AND AG 2264

JUNE 2024

This Special Update is issued to Neola Clients in response to the recent release of revisions to the Title IX regulations. The new policy and administrative guideline, along with the new form, provide structure and procedure for meeting the requirements of this Federal regulation.

Nearly twenty-two (22) months after the United States Department of Education ("ED") Office for Civil Rights ("OCR") issued a Notice of Proposed Rule Making ("NPRM"), on April 19, 2024, OCR released the Final Rule (aka "2024 Title IX Regulations"). In response, Neola has developed a new Policy 2264 and a new Administrative Guideline 2264. Neola is compelled to keep its existing Title IX policy and AG (2266), which it originally drafted after OCR released the 2020 Title IX regulations in May of 2020, because OCR stated when it released the 2024 Title IX regulations that any "reports" or "Formal Complaints" involving allegations of sex-based harassment (e.g., sexual harassment) that involve conduct alleged to have occurred prior to August 1, 2024 (the effective date of the 2024 Title IX regulations) must be processed in accordance with the 2020 Title IX regulation. A new introduction regarding the effective date has been added to each. For this reason, clients will need to continue to train their staff in the requirements and procedures delineated in the 2020 Title IX regulations (Policy 2266 and AG 2266) at the same time they train their staff to implement the 2024 Title IX regulations (and new Policy 2264 and AG 2264).

It is important to notice that new Policy 2264 is broader in scope than its predecessor. Whereas the 2020 Title IX regulations focused on sexual harassment, the 2024 Final Rule covers all forms of sex discrimination, not just “sex-based harassment” – e.g., claims of unequal athletic opportunities, admissions discrimination, discrimination in courses or academic programs (i.e., excluding students from certain classes or programs based on their sex), pregnancy discrimination, unequal treatment based on parental, family or marital status, discrimination in employment (including in hiring, promotion, and compensation), and retaliation.

The new policy contains updated definitions, including for complaints (which can be oral or written; previously a Formal Complaint had to be in writing), complainants (which now includes persons who participated in or attempted to participate in the District’s education program or activity at the time of the alleged sex discrimination – i.e., it includes persons who previously were involved in the District’s education program or activity, but no longer are), and hostile environment harassment (which now entails behaviors that are unwelcome, sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive, and is so severe OR pervasive, that it limits or denies a person’s ability to participate in or benefit from the District’s education program or activity; previously the conduct had to be objectively offensive, severe AND pervasive), along with new definitions related to confidential employees (be sure to review the **DRAFTING NOTE** that accompanies this term) and pregnancy or related conditions.

This last new definition is relevant because the 2024 Title IX regulations include a significant amount of content pertaining to protecting students and employees who are pregnant or have related conditions.

Also note the “reports” of sexual harassment found in the 2020 Title IX regulations are now referred to as “notifications” of alleged sex discrimination in the 2024 Final Rule.

Additionally, while the Board can continue to designate more than one Title IX Coordinator, it must designate one (1) primary Title IX Coordinator who is responsible for all key decisions. This change may cause districts to develop alternative names for the persons who are designated to assist the Title IX Coordinator – e.g., the Assistant or Deputy Title IX Coordinator.

Turning to the grievance procedures, the 2024 Final Regulations provide greater flexibility to the District. For example, the Title IX Coordinator can now serve as both the investigator and decisionmaker, in appropriate circumstances. In addition, we are hopeful that districts will be able to

complete the grievance procedures in less time since the two (2), ten (10) day mandatory periods associated with (1) the parties' opportunity to review the evidence before the investigator's report is finalized, and (2) the period after the investigator's report is completed and the decisionmaker can issue a determination of responsibility, have been altered or eliminated. Further, the District can now implement an informal resolution process – with the mutual agreement of the parties – without a Formal Complaint having been filed first.

When it comes to the District's obligation to offer supportive measures to complainants and respondents, there now is a review mechanism for a person to challenge or request new or different supportive measures.

With respect to dismissal of a complaint prior to an investigation, the Title IX Coordinator still has discretion to take such an action, but it is no longer mandatory in certain circumstances. Likewise, the Title IX Coordinator can still elect to file a complaint – in place of a complainant – in specific situations, but the 2024 Final Rule outlines several factors the Title IX Coordinator needs to consider before taking such an action.

The 2024 Final Rule also expands the District's responsibility to address sex discrimination that occurs in any setting over which the District asserts disciplinary authority. As such, the Board may want to evaluate how it handles cyberbullying and whether its Athletic Code of Conduct is enforced 24/7/365. It further requires the District to address a sex-based hostile environment under its education or activity, even when some of the conduct alleged to be contributing to the hostile environment occurred outside the education program or activity, or outside the United States.

The District also will want to pay particular attention to the following sections of new Policy 2264:

The content of the Notice/Statement of Nondiscrimination and where it needs to be published. To aid in this area, Neola is offering a new Form 2264F1 that can be utilized to comply with the Notice/Statement of Nondiscrimination requirements of the 2024 Final Rule.

The enhanced and expanded training requirements (training has to be completed promptly upon employment and when a person's responsibilities with respect to Title IX implementation change, and annually thereafter).

Finally, as discussed in an early **DRAFTING NOTE** in the new policy, the 2024 Title IX regulations

expressly state that discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. It is this language that has resulted in a significant portion of the negative reaction that has been voiced concerning the 2024 Final Rule and led to litigation related to whether OCR exceeded its authority when reading the holding from the Bostock decision – that involved Title VII – into Title IX. The Board will want to be sensitive to the language in the 2024 Final Rule that states that in the limited circumstances when Title IX permits different treatment or separation on the basis of sex, the District shall not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm, except as otherwise permitted under Title IX. The Title IX regulations continue by stating that adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex. This latter language has direct implications for bathroom and locker room usage.

Both new Policy 2264 and AG 2264 contain numerous **OPTIONS** and **DRAFTING NOTES** to assist the Board and the Administration with tailoring the template documents to the District's individual needs and preferences. Adopting the new documents, however, is necessary to remain consistent with the 2024 Title IX regulations, which "carry the force and effect of law" as a result of the U.S. Department of Education going through the notice and comment rulemaking process prior to promulgating them.

As always, your Neola Associate is available to answer questions concerning the content of the new policy and AG; however, given there is pending litigation pertaining to the 2024 Final Rule and many of the topics covered by the documents may be viewed as locally sensitive, Neola encourages the Board to consult with its Legal Counsel as it (1) selects among the various options, and (2) ultimately implements its Title IX nondiscrimination policy and grievance procedures.

This Update includes the following documents:

**Policy 2264 - Nondiscrimination on the Basis of Sex in Education Programs or Activities
(New)**

**Policy 2266 - Nondiscrimination on the Basis of Sex in Education Programs or Activities
(Revised)**

Administrative Guideline 2264 - Nondiscrimination on the Basis of Sex in Education Programs or Activities (New)

Administrative Guideline 2266 - Nondiscrimination on the Basis of Sex in Education Programs or Activities (Revised)

Form 2264 F1 - Notice and Statement of Nondiscrimination (New)

These documents may be downloaded from the Policy Update and the AG Update menus in your BoardDocs console. If you have questions about any of these Special Update materials, contact your Neola Associate.

If you have questions about any of these Special Update materials, please contact your Neola Associate. All production-related materials and questions should be directed to the Production Office - Coshocton at 632 Main Street, Coshocton, Ohio 43812 (phone 800-407-5815, fax 740-622-2557). Billing and other questions should be directed to the Business Office - Stow at 3914 Clock Pointe Trail, Suite 103, Stow, Ohio 44224 (phone 330-926-0514, fax 330-926-0525).

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