

New Title IX Guidance and Requirements

IX

Title IX of the Education Amendments Act of 1972 is a federal law that states

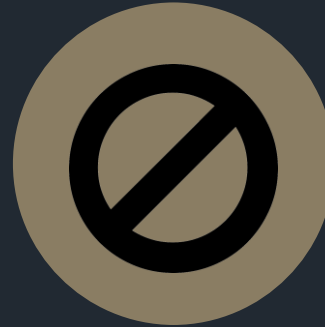
"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

Applies to all educational institutions that receive federal funds.

Impact to American Schools



Equity in
Athletics



Prohibits
Sexual
Harassment
and Sexual
Violence



Protects Rights
of Pregnant
Students

IX

Updates to Title IX

- The Office for Civil Rights, or OCR, reviewed over 124,000 public comments on Title IX beginning in November 2018.
- First regulations to go through the formal notice-and-comment process since 1997.
- These regulations will have the force of law behind them, unlike guidance issued in 2011 and 2014.
- Education Department's Office of Civil Rights is no longer taking discrimination cases based on sexual orientation.

IX

"The new Title IX regulation is a game-changer. It establishes that schools and colleges must take sexual harassment seriously, while also ensuring a fair process for everyone involved. It marks the end of the false dichotomy of either protecting survivors, while ignoring due process, or protecting the accused, while disregarding sexual misconduct. There is no reason why educators cannot protect all of their students – and under this regulation there will be no excuses for failing to do so."

- Kenneth L. Marcus, Assistant Secretary of the Office of Civil Rights

Changes to Title IX Procedures:

- New definition of sexual harassment
- Title IX Coordinator Requirements
- Due Process Changes
- Judicial approach to complaints

New Definition of Sexual Harassment

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- A school employee conditioning education benefits on participation in unwelcome sexual conduct;
- Unwelcome conduct that a reasonable person would determine 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, dating violence, or stalking as defined by the Violence Against Women Act (VAWA)

Title IX Coordinator

OLD RULE

Schools had to designate Title IX coordinator and provide notice of students and employees of how to contact them.

NEW RULE

- Must be referred to as the Title IX Coordinator
- Schools must provide the name and contact information for the Title IX Coordinator

Investigation

OLD RULE

Schools must respond in a manner that is not deliberately indifferent.

NEW RULE

A school's mandatory response must also include:

- Supportive measures
- Allow grievance process
- Comply with the U.S. Constitution.

Complaint Process and Response

- The Title IX Coordinator must be free from conflicts and bias
- Policy updates
- Written notice to both parties
- Parties may present facts and witnesses

School Investigation Requirements

- Investigative report must include summary of evidence
- Mandatory dismissal if complaint does not meet definition of sexual harassment

Standard of Evidence and Written Summary

- Grievance process must identify standard of evidence (preponderance of the evidence OR clear and convincing evidence)
- No single-investigator model
- Written determination must be sent simultaneously to the parties along with information about how to file an appeal

Appeal

- Must offer both parties opportunity to appeal decision
- Must offer appeal of decision to dismiss complaint based on
 - Procedural;
 - new evidence;
 - and/or conflict of interest.

Informal Resolution

- May offer informal resolution
- Informal resolution not allowed for employee – student sexual harassment allegations

IMPLEMENTATION

School Policies

- FFH(Legal) Student Welfare
- FFH (Local) Student Welfare
- FNE (Legal) Student Rights & Responsibilities
- DAA (Legal) Equal Employment Opportunity
- DIA (Local) Employee Welfare
- FB (Legal) Equal Educational Opportunity
- FB (Local) Equal Educational Opportunity

IX

QUESTIONS?
