

The Leona Group, L.L.C.

Title IX Policy Primer For School Leaders

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What is Title IX?

- Title IX is a federal law that prohibits discrimination on the basis of sex, including sexual orientation and gender identity, in education programs and activities that receive federal funding.
- The prohibition against discrimination extends to admission and employment.
- “No person...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...” 20 U.S.C. § 1681(a)

Who is Protected Under Title IX?

Title IX protects **ALL** staff, students, and third-parties who are participating or attempting to participate in a school's education programs or activities within the United States.

The Title IX applies to Sexual Harassment:

- Between 2 students
- Between 2 staff members
- Between a student and a staff member
- Between Third Parties and a student or a staff member

Education Programs or Activities includes any location, event, or circumstance over which the school exerts substantial control over the alleged harasser and the context in which the harassment occurred, whether on or off campus.

- For example: In-person & remote instruction, field trips, school bus, extracurricular & athletic programs, professional development

Title IX Regulations

- On May 6, 2020, the U.S. Dept. of Education, Office for Civil Rights (“OCR”), released new rules which amended existing Title IX regulations.
- New regulations went into effect on August 14, 2020
- These regulations inform educational institutions how to implement and comply with Title IX, and have the force of law.
- The changes were substantial and caused all educational institutions that receive federal funds to completely overhaul their Title IX policies and procedures regarding how they address, investigate, and adjudicate allegations of sexual harassment.

Title IX Regulations

- The new regulations provide:
 - When a school needs to respond to allegations of sexual harassment
 - How to respond to allegations of sexual harassment
 - Requirements of the written formal grievance procedure that must be in place
 - Required notices
 - Required training
 - Recordkeeping obligations

Definition of Sexual Harassment

- For the first time, the Title IX regulations define Sexual Harassment
- **Sexual Harassment** is defined as one of the following 3 types of behaviors:
 - Conditioning aid, benefits, or services on an individual's participation in unwelcome sexual conduct (i.e. quid pro quo harassment)
 - Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to an education program or activity
 - Sexual Assault, dating violence, domestic violence, or stalking (as defined by the Clery Act and the Violence Against Women Act)
 - Sexual Assault includes: rape, sodomy, sexual assault with an object, fondling, and incest

When Do We Have to Respond?

- Upon actual knowledge of sexual harassment or allegations of sexual harassment - promptly and in a manner that is not deliberately indifferent.
- **“Actual Knowledge”** means notice of sexual harassment or allegations of sexual harassment to:
 - Title IX Coordinator
 - Any school official who has the authority to institute corrective measures on behalf of the school
 - Likely includes Board Members
 - **ANY employee of a K-12 school**
- A school is **“deliberately indifferent”** only if its response is clearly unreasonable in light of known circumstances - refusal to take any action to bring school in compliance with Title IX - can't stick your head in the sand.

Who Can Put the School on Notice?

- Any person, whether they are the alleged victim, parent/guardian of the alleged victim, friend, or bystander, has the right to report sexual harassment to put the school on notice
- A school employee personally witnessing sexual harassment puts the school on notice
- A school employee receiving a verbal or written report of possible sexual harassment from any person, whether that person is the alleged victim, parent/guardian of the alleged victim, friend, or bystander puts the school on notice
- Reports can be made by mail, telephone, in-person, or by email
- Reports can be made at any time, including non-business hours

Importance of Staff Reporting

1. Safety of all students and staff
2. Avoid civil lawsuits - money damages
3. Avoid Office of Civil Rights (OCR) investigations
4. Avoid withholding of federal funds

****Setting up training for ALL staff is extremely important****

Types of Responses

There are 2 types of responses:

1. Response after a report of sexual harassment or potential sexual harassment
 - a. At a minimum, the Title IX Coordinator must promptly reach out to the alleged victim and confidentially discuss:
 - i. Availability of free Supportive Measures
 - ii. How to file a Formal Complaint, which will initiate the Formal Grievance Process, which includes an investigation, determination of responsibility, and appeals
 - iii. Availability of Supportive Measures even if a Formal Complaint is not filed
2. Response after a Formal Complaint is filed - initiation of the Formal Grievance Process

Supportive Measures

- Free, individualized services designed to restore or preserve equal access to education, protect safety, or deter sexual harassment
- Available to alleged victim and/or alleged harasser
- Available whether or not a Formal Complaint is filed
- Supports a student, but is not punitive or disciplinary with respect to another student - does not unreasonably burden another person
- Examples:
 - Counseling
 - Extending deadlines or other course related adjustments
 - Modifications of work/class schedules
 - Campus escort services
 - Changes in work location
 - Increased security or monitoring of parts of campus
 - Mutual restrictions on contact between individuals

Title IX Response Team

- The new regulations eliminated the single investigator/decision-maker model.
- You must now have a separate person for each of the following roles:
 - Title IX Coordinator(s) - Michelle Thomas
 - Investigator(s) - School Leader's choice
 - Decision-Maker(s) - School Leader
 - Appeal Officer(s) - Core Team Leader
 - Informal Grievance Procedure Facilitator(s) - Michelle Thomas
- You may have more than one person perform each role.
- Mandatory training is required for each role and the training materials must be posted to the school's website.
- If the Core Team Leader is the School Leader, then the School Leader may decide whether they want to be the Decision-Maker or the Appeal Officer and assign someone to the role they did not take.

Title IX Coordinator

- Can be an Investigator, but not ideal
- Compliance oversight
- Point person for Title IX complaints
- Ensures required training occurs
- Contact for government entities
- Prevention & remediation of all sex/gender based discrimination/harassment
- Oversight of grievance procedures
- Supervisor of investigations & Investigators
- Coordinates appeals process
- Navigates First Amendment protections
- Implementation of Supportive Measures
- Implementation of Discipline
- Prevention and remediation of Retaliation
- Recordkeeping
- Can facilitate informal grievance process, but not ideal

Investigator

- Conduct reliable, prompt, fair, and impartial investigations
 - Work with Title IX Coordinator to develop strategy for investigations
 - ID and interview parties and witnesses
 - ID, organize, and compile relevant information
 - Maintain accurate and thorough investigation records and notes
 - Share evidence with the parties and their advisors
 - Provide required notices to the parties (may be done in conjunction with Title IX Coordinator)
- Create an investigative report that fairly summarizes relevant evidence
- May make recommendations, but cannot make final decision regarding responsibility

Decision-Maker

- Determines whether policy was violated based on applicable standard of evidence
- Decisions must be based upon independent assessment of the evidence gathered during the investigation, to include assessment of credibility of parties and witnesses
- Decisions must be based on specific policy alleged to have been violated
- Decisions must be impartial and free of substantive bias
- Determines appropriate sanctions/discipline when a policy violation is found
- Drafts written determination that outlines rationale for finding(s)

Appeal Officer

- Makes determination on a party's request for an appeal.
- Reviews written submissions from parties.
- May review investigation report or other evidence gathered during investigation/hearing.
- May need to speak with investigator, parties, or witnesses.
- Review of case should be limited to the grounds noted in the appeal request.
- Drafts a written determination that outlines the rationale for the outcome.

A Few More Definitions

Complainant - an individual who is alleged to be the victim of conduct that constitutes sexual harassment.

Respondent - an individual who is alleged to be the perpetrator of conduct that constitutes sexual harassment.

Required Elements of the Formal Grievance Procedure

- Must treat parties equitably
- Must evaluate all evidence objectively
- No conflict of interest
- Must presume that the respondent is not responsible
- Must provide reasonably prompt time frames for resolving complaint
- Must describe range of outcomes (i.e. list possible discipline/other remedies)
- Statement of standard of proof used
- Appeal procedure
- Range of Supportive Measures available
- No breach of privilege without consent (e.g. attorney/client, doctor/patient)

Informal Grievance Procedure

- Optional - not required by Title IX
- May only offer if:
 - A Formal Complaint is filed
 - The respondent is not a staff member
 - Both parties enter the informal grievance process voluntarily and in writing
- May encompass a broad range of conflict resolution strategies:
 - Arbitration
 - Mediation
 - Restorative justices

Recordkeeping

The following records must be kept for a period of 7 years:

- Records of investigation
- Records of any appeal and materials associated with appeal
- Records of informal resolution
- All materials used to train Title IX Coordinators, investigators, decision-makers, appeal officers, facilitators of informal grievance procedure
- Records of Supportive Measures implemented
- Required to document basis for conclusion that school's response was not deliberately indifferent, and document measures designed to restore or preserve equal access to its education program or activities
- If Supportive Measures are not provided to a Complainant, school must document the reasons why such a response was not clearly unreasonable

Required Public Notices

The following must be posted to the school's website, student handbooks, and employee handbooks:

- Name and contact information for Title IX Coordinator
- Notice of Non-Discrimination Policy
- Title IX Policy and Grievance Procedure
- How to report or file a Formal Complaint possible Sexual Harassment
- How the School will respond
- Training materials

Any Questions????