
Title IX

PUTTING THE NEW TITLE IX RULES INTO
PRACTICE

Presented by Christina Lane

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 SUBJECT TO DISCRIMINATION UNDER ANY EDUCATIONAL PROGRAM OR ACTIVITY RECEIVING FEDERAL FINANCIAL ASSISTANCE.

Title IX Changes in 2020-20 Frequently Asked Questions

1. When do the new regulations become effective? *

The regulations are set to become effective on August 14, 2020.

*The Pennsylvania Attorney General and 14 other states attorney generals filed suit against the USDOE seeking a stay of the implementation date. Argument was heard on July 24, 2020 and the court ordered briefing on whether the Department of Education has authority to make “failure to comply with the final rule a violation of Title IX.”

2. What must my school district do prior to August 14, 2020?

- Adopt new policy and share with all staff
- Identify and appoint Title IX Coordinator
- Update student/employee handbooks with Title IX Coordinator and policy
- Update Title IX Officer contact information on website

3. What is the role of the Title IX Coordinator?

The Title IX Coordinator is responsible for the coordination of the school district’s efforts to comply with its responsibilities under Title IX.

4. When must training required under the new rule be completed?

School districts should work to schedule training on all required components with the beginning of the 2020-2021 school year. Priority for training should be given to those individuals tasked with implementing the grievance process.

5. Why does the policy refer to “sexual harassment” and “sexual assault”?

The new rule has defined “sexual harassment” as conduct on the basis of sex, that satisfies one or more of the following:

- 1) An employee of the recipient conditioning the provision of an aid, benefit, or service on an individual’s participation in unwelcome sexual conduct;
- 2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s educational program or activity; or
- 3) “Sexual assault” as defined in 34 U.S.C. 12291(1)(10) of the Violence Against Women’s Act (“VAWA”), “domestic violence as defined in 34 U.S.C. 12291(a)(10) of the VAWA, or stalking as defined in 34 U.S.C. 12291(a)(30) of the VAWA.

6. What is meant by recipient?

A recipient is any public or private educational entity to whom Federal financial assistance is extended directly or through another recipient and which operates an educational program or activity which receives such assistance.

7. Who is responsible for reporting possible sexual harassment?

All employees of K-12 schools are required to report possible sexual harassment. Actual knowledge of sexual harassment to impose liability against a school district is as notice of sexual harassment or allegations of sexual harassment to a Title IX Coordinator or to any employee of an elementary and secondary school.

8. Who can file a complaint?

Any person may file a complaint of possible sexual harassment.

9. The policy refers to complainant and respondent what is meant by these terms?

The new rule requires equitable treatment of both the complaining party and the party responding to the allegations. A “complainant” is an individual who is alleged to be the victim of conduct that could constitute sexual harassment. A “respondent” is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. The respondent is to be treated as not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

10. Will both parties be involved in each stage of the grievance process?

Yes. The new rule requires equitable treatment of both the complaining party and the party responding to the allegations. Both parties will be provided an equal opportunity to participate in the investigation and appeal.

11. What notice are the parties required to receive?

Upon receipt of a formal complaint of sexual harassment, the school district must provide written notice to the parties explaining the grievance process. The notice to the respondent must include sufficient details known at the time concerning the allegations and that the respondent is presumed not to be responsible for the alleged conduct and that a determination of responsibility will be made following the grievance process. This notice must also inform both parties of any code of conduct provision prohibiting the making of false accusations or knowingly submitting false information. Each party will also receive notice of any meetings concerning the allegations.

12. Will both parties have equal access to materials/evidence collected during the investigation?

Yes, during the investigation, both parties will be given an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the complaint, including any evidence the school district does not intend to rely in reaching a determination of responsibility.

13. How can a person file a complaint?

A complaint can be received verbally, phone, phone message, email, or regular mail.

14. Can a parent file a complaint? Will parents receive notice?

Yes, any person can file a complaint. Parents will be notified if a complaint is received involving their son or daughter and will nothing in the new rule restricts a parents' legal right to act on behalf of their son or daughter.

15. How will the school district determine responsibility?

The new rule requires an objective evaluation of all relevant evidence-including both inculpatory and exculpatory evidence-and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness.

16. Who will hear appeals?

Following a determination, each party has the opportunity to file an appeal with the Board of School Directors.

17. What are supportive measures?

The new rule requires school districts to restore or preserve equal access to its educational program or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment to deter sexual harassment. Supportive measures are non-punitive and may include counseling, escorts, extensions of deadlines, modifications to work or class schedules, and mutual restrictions on contact.

18. Will complainants and respondents be required to meet face-to-face?

No. Live hearings are optional in the K-12 setting. The policy permits each party to submit relevant, written cross-examinations simultaneously exchanged by the decision-maker.

19. Is a student's or employee's right to free speech abrogated by this policy?

No. The new rule does not restrict any rights that would otherwise be protected from governmental action by the First Amendment.

20. The policy prohibits retaliation not only against an individual raising an allegation but also against anyone cooperating in an investigation. What does that mean?

Retaliation is prohibited against persons who are cooperating with the grievance process in any way, including the complainant, respondent and any witness or other persons who have provided information.

Title IX Coordinator

Title IX Coordinator Checklist

- Share the Title IX Coordinator's contact information to include the school name, title, office address, email, and telephone number.**
- Establish system to remind Building level administrators and staff to report instances of sexual harassment /sexual allegations to you**
- Develop a system of tracking emails-creating flag for Title IX reports**
- Acknowledge receipt of Title IX Complaint**
- Contact complainant within 10 days of receipt of complaint**
 - In the initial contact by the Title IX Coordinator to the complainant the Title IX Coordinator must take four specific actions:
 - (i) discuss the availability of supportive measures as defined in § 106.30;
 - (ii) consider the complainant's wishes with respect to supportive measures;
 - (iii) (iii) inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and;
 - (iv) (iv) explain to the complainant the process for filing a formal complaint
 - Review /Assist Formal Complaint Form
- Send Notice of Complaint to both parties**
 - Respondent Notice Form

TITLE IX COORDINATOR SUPPORTIVE MEASURES

***Prepare a list of available resources**

***Review Measures and engage in dialogue with Complainant**

***Respect Complainant's wishes**

***Supportive Measures can also be offered to Respondent**

- Non-disciplinary, non-punitive individual
- These services must be offered “as appropriate, as reasonably available, and without fee or charge.”
- Can include services such as “counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, escort services, mutual restrictions on contact between the parties, changes in ingress/egress and/or movement through building, increased security and monitoring of certain areas of the campus, and other similar measures
- Keep confidential unless necessary to provide the service
- Document services offered and utilized, and services rejected
- Maintain record of 7 years of supportive measures offered or any actions taken in response to a formal complaint of sexual harassment

Title IX Sexual Harassment Formal Complaint Form

Pursuant to Policy _____

I am filing this complaint as a (check one): Employee Parent/Guardian Student

Submitting Person's Full Name

Mailing Address

Home Phone

Mobile Phone

Email Address

- I. If this Complaint is filed on behalf of a _____ student, provide the following:

Student's Full Name

Student's Grade

Student ID (if known)

Student's School of Enrollment

- II. If this Complaint is filed on behalf of an employee, provide the following:

Employee's Full Name

Title

Employee's ID (if known)

Department or Assigned School

- III. Carefully read and complete each section.

1. Please state the basis of your complaint for sexual harassment. Check all that apply. In the lined space below, describe the details of your complaint. Be sure to describe the date, time, and location of the harassment, and the identity of all parties involved in the harassment. Attach supporting documentation and additional pages, if necessary. (For example: copies of emails, voicemails, medical records, personal

3. Please identify any other person who either witnessed the incident that is the basis of your complaint or who you believe may have additional information regarding this matter. State whether the identified person is a student or employee, and provide a telephone number or email address, if known.

Full Name	Student or Employee	Contact Information
Full Name	Student or Employee	Contact Information
Full Name	Student or Employee	Contact Information

4. Have you informed any other School District employee of this complaint? If so, identify all persons with whom you have discussed this matter and approximate dates of your prior discussion(s).

I attest the aforementioned is true and correct to the best of my knowledge. I understand that the District may need to disclose the identity of parties listed in my complaint to complete a required investigation of the allegation(s) of sexual harassment.

Complainant's Signature Date

This completed form should be submitted to the Title IX Coordinator. Contact information for the Title IX Coordinator is below:

To be completed by Title IX Coordinator

Complaint taken by:

Initial Print Full Name Date

**NOTICE OF COMPLAINT
TITLE IX COORDINATOR LETTERHEAD**

Name
Address
City, PA Zip

RE: NOTICE OF TITLE IX COMPLAINT

Dear [STUDENT/EMPLOYEE]

I am contacting you as the SCHOOL DISTRICT Title IX Coordinator to inform you of a complaint filed where you are named as a person responsible for sexual harassment. Under Title IX, a person who files a complaint is referred to as a "Complainant." As the responding party you are referred to as the "Respondent. You are presumed not responsible for the alleged conduct and a determination regarding responsibility will be made at the conclusion of the Grievance Process. I have enclosed a copy of the SCHOOL DISTRICT'S SEXUAL HARASSMENT POLICY which explains the Grievance Process. You may also contact me with any questions.

The purpose of this written notice is to help ensure that the nature and scope of the investigation, and the SCHOOL DISTRICT'S procedures, are clearly understood by the all parties at the commencement of an investigation.

Below is the information known at this time:

[Date of Incident}
[Location of Incident]
[Complainant]
[Witnesses]
[Alleged Conduct]

If during the process of the investigation of the complaint subsequent information is revealed, the SCHOOL DISTRICT will provide you additional notice of the newly obtained information. You have the right to an advisor of your choice, who may be, but is not required to be an attorney. You will have the right to review and inspect and will receive copies of all evidence received as part of the investigation.

As part of the investigation, I or an investigator assigned to this Complaint will contact you to schedule an initial interview. This interview will be scheduled in order to provide you sufficient time to prepare.

The SCHOOL DISTRICT'S Code of Conduct prohibits knowingly making false statements or knowingly submitting false information during the Grievance Process. (If applicable) Additionally, SCHOOL DISTRICT POLICY prohibits any person from intimidating, threatening, coercing, or discriminating "against any individual for the purpose of interfering with any right or privilege secured by Title IX because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding.

Signature
ENCLOSURE/policy

Investigator

Investigator Checklist

- 1. Impartially and fairly gathers all evidence
 - a. **Meet with Complainant**
 - b. **Meet with Respondent**
 - c. **Interview all individuals provided by both parties with information**
 - i. Must be thorough and complete
 - ii. Follow all leads
 - iii. Circle back and re-interview
 - d. **Collect evidence from all parties**
- 2. Prior to completion of the investigative report, send to each party and the party's advisor, if any, the evidence subject to inspection and review.
 - a. **Intent to provide an equal opportunity in process**
- 3. Parties have 10 days to file a Written Response to evidence shared
- 4. Review Parties Written Response to Evidence shared prior to completion of Investigative Report
- 5. Complete Investigative Report
 - a. **Purpose to summarize relevant evidence**
 - b. **Keep strictly factual-no opinions**
 - c. **Use a neutral tone**
 - d. **Use simple and concise language**

- e. **Report Must Include**
 - i. Overview of Complaint/Identify Parties
 - ii. Statement of Jurisdiction-Policy/Date, time, location
 - iii. Identification of Investigator, role, and training received
 - iv. Purpose of Investigation
 - v. Alleged conduct
 - vi. Witness Interviews
 - vii. Summary of Evidence
 - 1. Description of Process/timeline
 - viii. Appendix
 - 1. All evidence
 - a. Seek assistance with any information which must be redacted and creation of a privilege log
 - 2. Include summary of evidence, date of receipt
 - 3. Append Policy
 - 4. Append Timeline of information gathering noting any requests by either party for additional time.
- 6. Parties have 10 days to respond to Investigation Report in writing
- 7. Share completed Investigation File with Decision-Maker

Decision- Maker

Final Written Determination

- 1. Introduction
 - a. Identify Role/Purpose of Final Determination
 - b. Identify trainings received by decision-maker
 - c. Identify the standard of evidence per policy
- 2. Identification of the allegations potentially constituting sexual harassment
- 3. Provide a description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence
 - a. Include date of receipt of allegations by respondent
 - b. Include information on who performed investigation and include reference to properly trained.
 - i. The written determination should also describe the process undertaken to inspect and review the evidence and disseminate the investigative report, including the adherence to mandated procedural timelines
 - c. Include list of witnesses interviewed and when
 - d. Identify any witnesses provided by either party who were unavailable and why
 - e. Include type of evidence reviewed
 - f. Address any procedural issues raised by either party
 - g. Address whether for good cause the process was delayed
- 4. Issue Findings of fact supporting the determination of responsibility or non-responsibility for the alleged conduct.
- 5. Provide conclusions regarding the application of the recipient's code of conduct (discipline recommendations) to the facts.

- a. This must be based on objective review of the evidence
- 6. Provide recommendations for any disciplinary sanctions the school district seeks to impose on the respondent
- 7. Identify whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the SCHOOL DISTRICT to the complainant
 - a. Remedies that do not impact the respondent should not be disclosed in the written determination
- 8. Appeal Rights. The written determination must indicate the right to appeal, the grounds for appeal, and the deadlines for bringing an appeal.

Notice of Appeal Rights

Either party may appeal the Final Determination regarding responsibility, and from dismissal of a formal complaint or any allegations therein on the following bases:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- (C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

To file an Appeal, either party shall submit a written statement in support of, or challenging the responsibility determination or dismissal.

A parties Written Statement must be filed with the Superintendent of Schools [Name, address, Email] within ____ days of receipt of the Final Determination.

FAILURE TO FILE AN APPEAL WITHIN THIS TIMEFRAME
RENDERS THE FINAL DETERMINATION AN ADJUDICATION BY
THE SCHOOL DISTRICT.