

With as much as schools have faced in the last year and a half, Title IX may not be top of mind for many administrators.

But the federal requirements that took effect in August 2020 remain in effect and continue to confuse school districts. The new requirements feature challenging procedural technicalities making it critically important that staff members remain attuned to possible Title IX issues as they arise in order to prevent potential legal issues for districts. We want to share a few of the biggest questions we get and some best practices for addressing Title IX issues.



What is Title IX and what does it prohibit?

Title IX is a federal law that applies to educational programs and prohibits discrimination based on sex. **Sexual harassment is considered sex discrimination under Title IX. Sexual harassment is any sex-based behavior that is unwanted and which is severe, pervasive and objectively offensive enough so as to interfere with the alleged victim's access to your educational program.** This means that any complaint of unwanted sexual comments or sexual behavior triggers a district's Title IX obligations. Examples of behavior that triggers Title IX include sexual assault, sexual jokes or comments, gestures that have sexual implications, etc. If any of these types of behaviors are brought to an administrator's attention, they should be processed under Title IX.

Does Title IX apply to out-of-school activities?

Sometimes. Title IX applies to any program through the school, whether it happens on campus or not. It also applies to a school's technology systems (your email system, Google Classroom communications, etc.). However, behavior that occurs off campus and outside of any school program does not implicate Title IX. For example, if a student alleges a peer made sexual comments to them on the school bus, that is a Title IX issue. If, however, the student instead alleges that a peer made sexual comments to them over the weekend via private text message, that does not implicate Title IX.

Who is obligated to comply with Title IX?

Title IX applies to the conduct and behavior of everyone interacting with your district's programs: students, staff, parents, community members and contractors.

How should you handle discipline under Title IX?

You are prohibited from imposing any discipline for behavior that falls under Title IX until after the full Title IX process is complete. For example, if a student alleges a fellow student sexually assaulted them in the hallway, you cannot discipline the accused student until after you have conducted a full Title IX investigation. There is an option for emergency removal, but that may only be used in very rare circumstances where there is a very serious physical safety concern. You may continue to discipline any non-Title IX behavior pursuant to your normal discipline policies. If behavior falls under Title IX, but the would-be complainant who experienced the sexual conduct does not wish to pursue a Title IX complaint, then you can discipline under your standard code of conduct, but not under your Title IX policy.

What should the Title IX process look like?

Your district is required to have a written Title IX policy in place and posted on your website. For NEOLA districts, this is Policy 2266. For OBSA districts, this is Policy ACA and the ACAA line of policies. You should review your policy, as certain aspects of the Title IX procedure will differ based on your district's individual selections. You should ensure your district's Title IX policy has the following components in place:

- The Title IX Coordinator is clearly identified, ensuring the Coordinator's name and contact information is easy to find on your district's website.
- A procedure for investigating formal complaints, and for resolving informal complaints, is clearly explained. Note that student allegations of sexual harassment against a staff member cannot be resolved through the informal process. It is also important that both parties must agree to the informal process, otherwise you must proceed with the formal process. Finally, note that **only a formal written complaint can trigger the Title IX process**. If someone refuses to file a formal complaint, you cannot even use the informal process.
- Options for supportive measures for the parties involved in any Title IX investigation are clearly explained.
- A plan for who will serve in the various roles throughout the Title IX process is stated. Those roles include the investigator, decision-maker and appeals officer, each of which must be a different person and none of whom may be the Title IX Coordinator.

Best Practices Once an Allegation is Made:

- Notify the Coordinator immediately so that they can reach out to the individual raising the concern and provide the individual with a copy of the Title IX policy and a complaint form. The Coordinator should also discuss supportive measures with the Complainant.
- If the Complainant files a formal, written complaint, the Coordinator should first determine whether the allegations do fall within Title IX by determining the following:
 - The complaint alleges discrimination or retaliation based on the Complainant's sex; and
 - The Respondent is still enrolled/employed by the District; and
 - The alleged behavior occurred as part of the District's educational programs or activities (whether on campus or off); or
 - The alleged behavior occurred off campus, but as part of the District's operations (meaning the District exercised substantial control over the Respondent and the context of the alleged discrimination/retaliation).

If the complaint fits under Title IX, the Coordinator should then assign an investigator.

- The Investigator must conduct interviews and review any relevant evidence. Each party may have an advisor with them throughout the process. The Investigator must notify each party of all interviews ahead of time.
- The Investigator should draft a written report summarizing their factual findings and attaching any relevant evidence. Each party should receive a copy of the draft (at the same time) and then has 10 days to review it and provide any feedback.
- The Investigator then finalizes their report and submits it to the Decision-Maker and the parties.
- The parties then have 10 days to submit written questions they want the other party to answer. The Decision-Maker will exchange the questions.
- The Decision-Maker must issue a report that includes (1) findings of fact on each allegation; (2) conclusions about whether the alleged conduct occurred; (3) rationale for the result as to each allegation; (4) disciplinary sanctions to impose on the Respondent (if any); and (5) remedies provided to the Complainant (if any). This report must go to both parties, along with information about how to appeal.
- If there is an appeal, the Appeals Officer must hear the appeal and render a decision.

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