


Title IX
Virtual Training for
School Districts



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Established 1926

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TITLE IX OVERVIEW

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TITLE IX OVERVIEW



- Title IX of the Education Amendments was signed into law by President Nixon on June 23, 1972.
 - “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 and activity receiving federal financial assistance.” *See* 20 U.S.C. § 1681.

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TITLE IX OVERVIEW



- Title IX protects students, employees, applicants for admission and employment, and other persons from all forms of sex discrimination, including discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity. *See* U.S.D.E. Office of Civil Rights, *Title IX Resource Guide* (April 2015), available at <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>.

- 78% of K-12 students reported experiencing at least one incident of sexual harassment since starting high school (Carlson, 1995; Potopitz, 1995).

- Female high school students reported, on average, 4.5 incidents of unwanted behavior, while male high school student reported 1.6 incidents.

See Nan Stein, Ph.D. *Sexual Harassment in Schools*, available at <https://mainweb-v.musc.edu/vawprevention/research/exharass.shtml>.

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TITLE IX OVERVIEW



- On May 6, 2020, the U.S. Department of Education announced its final Title IX regulations, *to be effective August 14, 2020*.
 - Secretary of Education Betsy DeVos stated “This new regulation requires schools to act in meaningful ways to support survivors of sexual misconduct, without sacrificing important safeguards to ensure a fair and transparent process. We can and must continue to fight sexual misconduct in our nation's schools, and this rule makes certain that fight continues.” See U.S. Department of Education, Secretary DeVos Takes Historic Action to Strengthen Title IX Protections for All Students, available at <https://www.ed.gov/news/press-releases/secretary-devos-takes-historic-action-strengthen-title-ix-protections-all-students>.

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TITLE IX OVERVIEW



- The final May 6, 2020 Title IX regulations included the following notable changes:
 - Required school districts to appoint and grant authority to the “Title IX Coordinator.” See 34 C.F.R. § 106.8(a).
 - Updated Title IX notification requirements. See 34 C.F.R. § 106.8.
 - Established new definitions for process and parties, specifically “formal complaint,” “complainant,” and “respondent.” See 34 C.F.R. § 106.30(a).

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TITLE IX OVERVIEW



- The final May 6, 2020 Title IX regulations included the following notable changes, *continued*:
 - Specified that “sexual harassment” constitutes “sex discrimination” under Title IX and defined “sexual harassment.” *See* 34 C.F.R. § 106.30(a).
 - Updated sexual harassment reporting requirements. *See* 34 C.F.R. § 106.8(a).
 - Outlined when and how a school must respond to complaints under Title IX. *See* 34 C.F.R. § 106.44.

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TITLE IX OVERVIEW



- Title IX prohibits sex discrimination in educational programs.
 - Considerations of Discriminatory, Harassing, and Retaliatory Conduct

THE BIG THREE:
DISCRIMINATION
HARASSMENT
RETALIATION

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SEX DISCRIMINATION



- “Sex discrimination” is defined as:
 - An individual “be[ing] excluded from participation in, be[ing] denied the benefits of, or be[ing] subjected to discrimination” in any education program or activity because of that individual’s sex.
See 20 U.S.C. § 1681.
 - Students AND Employees
 - The protected class of “sex” is defined broadly.
 - Consider how someone was treated compared to “similarly situated” individuals.

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SEXUAL HARASSMENT



- “Sexual harassment” (under the new regulations) is defined under the final regulations as:
 - Quid Pro Quo
 - Hostile Environment Sexual Harassment
 - Sexual Violence, including (a) sexual assault, (b) domestic violence, (c) dating violence, and (d) stalking (*as outlined in the Violence Against Women Act (VAWA) and the Cleary Act*).

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SEXUAL HARASSMENT



- Definition of “hostile environment:”
 1. Unwelcome conduct,
 2. On the basis of sex,
 3. That a reasonable person would consider,
 4. To be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school district’s education program or activity.
 - Understand definition of “education program or activity.”

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RETALIATION



- “Retaliation” is defined as:
 - A school district and individuals cannot retaliate against an individual for filing a complaint alleging a violation of Title IX, for participating in (or refusing to participate in) a Title IX investigation or proceeding, or for advocating for another person’s Title IX rights. *See* 34 C.F.R. § 106.71.
 - Any adverse treatment
 - No intimidation, threats, coercion, or discrimination.
 - No processing under another policy/procedure.

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TITLE IX COMPLAINT

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ACTUAL KNOWLEDGE



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- The school district has “knowledge” as follows:
 - School district has knowledge when it has “**actual knowledge**” of sexual harassment in an educational program or activity.
 - Who can have this knowledge on behalf of the school district?
 - Also consider the school district’s *response* once they have actual knowledge.

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DELIBERATE INDIFFERENCE



- The school district with knowledge of a complaint *generally* must respond as follows:
 - School district must respond “promptly” and “in a manner that is not deliberately indifferent.” See 34 C.F.R. § 106.44(a).

DELIBERATE
INDIFFERENCE

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COMPLAINT RESPONSE



- The school district with knowledge of a complaint *specifically* must respond as follows:
 1. School district must respond under a bifurcated response approach:
 - a) Having “actual knowledge,” and
 - b) Receiving a “Formal Complaint.”
 2. Under both an informal report and Formal Complaint, provide “supportive measures.”

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COMPLAINT RESPONSE



- The school district with knowledge of a complaint *specifically* must respond as follows, *continued*:
 3. Ensure no conflict of interest and that all individuals investigating complaint are impartial and unbiased.
 - Always operate with a presumption of non-responsibility for respondent until the process is complete.
 4. Formal Complaint → Consider informal resolution.

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COMPLAINT RESPONSE



- The school district with knowledge of a complaint *specifically* must respond as follows, *continued*:
 5. Formal Complaint → Title IX Coordinator provides written notice to both parties.
 - Provide sufficient time to respondent to respond.
 - **IMPORTANT:** Must include specific notifications regarding the allegations, the process, and the rights of the parties, including right of complainant to file a formal complaint. See 34 C.F.R. § 106.44(a).

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COMPLAINT RESPONSE



- The school district with knowledge of a complaint *specifically* must respond as follows, *continued*:
 6. Formal Complaint → Title IX Investigator starts the investigation pursuant to the grievance procedures.
 - Review applicable Board policies.
 - Interview witnesses and gather evidence.
 7. Formal Complaint → Title IX Investigator provides both parties “all evidence related to allegations” *at least 10 days* before releasing Investigative Report.

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COMPLAINT RESPONSE



- The school district with knowledge of a complaint *specifically* must respond as follows, *continued*:
 8. Formal Complaint → Title IX Investigator prepares Investigative Report.
 9. Formal Complaint → Title IX Investigator provides both parties Investigative Report and provides both parties *at least 10 days* to submit (a) written, relevant questions to be asked of party/witness and (b) written response to Investigative Report.

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COMPLAINT RESPONSE



- The school district with knowledge of a complaint *specifically* must respond as follows, *continued*:
 10. Formal Complaint → Title IX Decision-Maker reviews all evidence, drafts a written decision, and provides to both parties contemporaneously.
 - Written decision must:
 - Specifically identify each allegation.
 - Provide overview of all procedural steps, notices, and investigatory methods.
 - Apply evidence to elements to each allegation.
 - Determine conclusion for each allegation, etc.

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COMPLAINT RESPONSE



- The school district with knowledge of a complaint *specifically* must respond as follows, *continued*:
 11. Formal Complaint → If either party appeals, Title IX Coordinator provides written notice of appeal to both parties.
 - Provide reasonable opportunity for party to respond.
 12. Formal Complaint → Title IX Appellate Decision-Maker reviews matter, drafts a written decision, and provides to both parties contemporaneously.

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RESOURCES



OCR's Guidance Under Title IX

<https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/sex.html>

- 2001 OCR's Revised Sexual Harassment Guidelines
 - <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>
- 2015 OCR's DCL and Resource Guide
 - DCL - <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>
 - Resource Guide - <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>
- 2017 OCR's DCL and Q&A
 - DCL - <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf>
 - Q&A - <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>

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QUESTIONS?



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