

Updated Title IX Regulations



Esperanza Cyber
Charter School

History of Title IX

Title IX is a civil rights' statute enacted in 1972 to prohibit discrimination based on sex in education programs and activities.

- Historically, people have commonly thought of Title IX addressing gender equity in sports but Title IX has always had a mandate to address sex discrimination in hiring, admissions and other aspects of a school's education programs or activities.
- Today, Title IX's reach is much broader.

What does Title IX state?

“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.”

What is the Purpose of Title IX?

- ✓ Enforce nondiscrimination on the basis of sex in education programs or activities receiving federal financial assistance
- ✓ Title IX is a statute to prevent recipients of Federal financial assistance from using the funds in a discriminatory manner.
- ✓ A potential consequence for violation of Title IX is loss of federal funding

What is Prohibited Under Title IX?

Title IX prohibits the following conduct based on sex that satisfies one or more of the following:

- Unwelcome conduct that is objectively offensive and effectively denies a person equal access to the school's education program or activity.
- School employees condition educational benefits on participation in unwelcome sexual conduct, otherwise known as "Quid Pro Quo" harassment.
- Sexual assault, dating violence, domestic violence, or stalking
 - all definitions are found in the Clery Act and the Violence Against Women Act (VAWA)

What are the Updated Regulations?

- These Final Regulations specify how recipients (defined as schools, LEAs, postsecondary institutions) of federal financial assistance must respond to allegations of sexual harassment consistent with Title IX's prohibition against sex discrimination.
- Final Regulations, *unlike past guidance* issued in 2011 and 2014 from the Office of Civil Rights (OCR) within the Department, **have the full effect of law and override any past guidance.**

SCHOOLS MUST KEEP THESE TERMS IN MIND AS THEY CREATE AND IMPLEMENT THEIR POLICIES AND PROCEDURES.

- ✓ Prompt
- ✓ Equitable
- ✓ Supportive Services
- ✓ Due Process
- ✓ Remedies

What do the Final Regulations Require?

- Requires schools to
 - ✓ Respond **Promptly** and **Supportively** to persons alleged to have been victimized by sexual harassment;
 - ✓ Resolve allegations of sexual harassment **promptly and accurately** under a **predictable, fair grievance process** that provides **due process** protections to the alleged victim and alleged perpetrators of sexual harassment; and
 - ✓ Effectively implement remedies for victims.

New Regulations

Took effect on **August 14, 2020.**

Every school that has a website must post important information about the school's Title IX policies and procedures on their website.

The new Title IX Rule specifically requires schools to post on their websites:

- ✓ The *contact information* for the school's Title IX Coordinator(s);
- ✓ The school's *non-discrimination policy*; and
- ✓ *Training materials*

Title IX Staff

Decision-Maker:

- Oversees the hearing or evaluation of the evidence
- Applies standard of proof, understands relevance, rape shield, inculpatory and exculpatory evidence, use of technology, applies standard of proof and issues Final Outcome Determination

Title IX Coordinator:

- Manages the process
- Can investigate a complaint
- Trains and notifies the school community about Title IX.
- Cannot be the decision maker

Appeal Decision-Maker:

- Evaluates the investigation report
- Issues a final outcome determination and a decision on the appeal based one of the three basis for appeal: newly discovered evidence, procedural error, or bias.

Investigators:

- Gathers facts: determines relevance, determines inculpatory and exculpatory evidence
- Understands rape shield
- Issues report

Responsibility of Title IX Staff

All participants in the Title IX Process must be and remain:

- ✓ Impartial
- ✓ Unbiased and
- ✓ Free from any Conflict of Interests
- ✓ Cannot prejudge the outcome of an reported incident

Role of the Investigator and Decision-Maker must be separate and distinct to maintain fairness and impartiality.

Confidentiality and FERPA

- The Department clarifies that schools must follow relevant State and Federal health care privacy laws throughout the grievance process. Nothing should divulge the complainant's (or respondent's) medical information or other sensitive information, nor is it require disclosure of such information
- Family Educational Rights and Privacy Act
 - Schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, allows schools to disclose those records, without consent, to the certain parties or under the specifically conditions outlined by the Department

(34 CFR § 99.31)

Supportive Measures

- Ensure that schools respond to sexual harassment by offering supportive measures that restore and preserve equal educational access without treating the alleged as responsible until after a fair grievance process.
- Such supporting measures could include:
 - ⊠ Counseling
 - ⊠ Extension of deadlines
 - ⊠ Modification of work or class schedules
 - ⊠ Escort services
 - ⊠ Mutual restrictions on contact between individuals

Questions



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