

# The New Title IX Regulations

## Required responses to allegations of sexual harassment

October 2020

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# Agenda

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- ❑ The politics of Title IX: How did we get these regulations?
- ❑ What do the new regulations require?
  - ❑ When should schools respond to sexual harassment allegations?
  - ❑ How should schools respond to sexual harassment allegations?
  - ❑ What else should schools know?
- ❑ How does Title IX compare to Connecticut bullying laws?
- ❑ What should schools do to comply with the new regulations?
- ❑ Q&A

## POLL: Fist to Five

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On a scale of 0–5, how accurate is the following statement from your perspective?

*I understand under what circumstances the new Title IX sexual harassment requirements apply.*

0 – Completely inaccurate

1 – Pretty inaccurate

2 – Slightly inaccurate

3 – Not accurate, but not inaccurate

4 – For the most part accurate

5 – Completely accurate

## POLL: Fist to Five

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On a scale of 0–5, how accurate is the following statement from your perspective?

*I understand how to appropriately respond when made aware of alleged sexual harassment.*

0 – Completely inaccurate

1 – Pretty inaccurate

2 – Slightly inaccurate

3 – Not accurate, but not inaccurate

4 – For the most part accurate

5 – Completely accurate

## POLL: Fist to Five

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On a scale of 0–5, how accurate is the following statement from your perspective?

*I understand the nuts and bolts of the investigation and adjudication processes for alleged sexual harassment.*

0 – Completely inaccurate

1 – Pretty inaccurate

2 – Slightly inaccurate

3 – Not accurate, but not inaccurate

4 – For the most part accurate

5 – Completely accurate

## POLL: Fist to Five

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On a scale of 0–5, how accurate is the following statement from your perspective?

*I understand the training and recordkeeping requirements of the new regulations.*

0 – Completely inaccurate

1 – Pretty inaccurate

2 – Slightly inaccurate

3 – Not accurate, but not inaccurate

4 – For the most part accurate

5 – Completely accurate

The politics of Title IX: How did we get these regulations?

# Title IX

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- **Title IX of the Education Amendments of 1972** (20 U.S.C. § 1681) –  
*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 . . .*
- Title IX prohibits sex discrimination in education and in employment.



# What entities are covered by Title IX?

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- Institutions receiving federal funding
- School districts, colleges/universities, charter and for-profit schools and athletic associations
  - Including organizations receiving “significant assistance” from these
- Educational programs offered by non-education institutions that receive federal funds, such as libraries, prisons, and museums



# Who is protected by Title IX?

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- Elementary through professional school
- Staff and students
- Men/boys and women/girls
- Heterosexual, gay, lesbian, bisexual, and transgender persons
- Individuals with and without disabilities
- Individuals of different races, ethnicities and national origin
- U.S. citizens and non-citizens (including undocumented persons)



# What are some of the risks of violating Title IX?

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- Private litigation
  - Students (and parents on behalf of their children) may sue districts. These lawsuits may seek money damages when in the students or parents' opinion, districts violate Title IX by failing to respond appropriately or to address adequately sex discrimination.
- Office for Civil Rights (OCR) complaint/investigation
  - A student, parent, or third party may submit a complaint to OCR, and OCR may investigate.
  - OCR may initiate its own investigations.
  - OCR may refer a case to the U.S. Department of Justice (DOJ).
- DOJ complaint/investigation

# More on OCR

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- The U.S. Department of Education's Office for Civil Rights
- What OCR does:
  - Policy guidance
  - Technical assistance
  - Civil Rights Data Collection (CRDC)
  - Enforcement
    - Complaint process
    - Compliance reviews



***"The mission of the Office for Civil Rights is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights."***

# Title IX historical overview

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- **1975** → Regulations first issued by the Department of Health, Education, and Welfare did not address sexual harassment as a form of sex discrimination.
- **1997–2017** → Department of Education addressed the topic through a series of guidance documents.
- **2018** → The Department published proposed regulations to address the topic.
- **2020** → For the first time via regulations, the Department has addressed sexual harassment as a form of sex discrimination.

# Department of Education's approach to new regulations

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The Department used two prior guidance documents as the starting point from which the new regulations were created:

- **2001 Guidance** – *Revised Guidance on Sexual Harassment: Harassment of Students by School Employees, Other Students, or Third Parties* (Jan. 19, 2001).
- **2017 Q&A** – *Q&A on Campus Sexual Misconduct* (Sept. 22, 2017).

“The 2017 Q&A along with the 2001 Guidance represent the ‘status quo’ or ‘baseline’ against which these final regulations make further changes to the Department’s enforcement of Title IX obligations.”

85 Fed. Reg. 30,026, 30,029 (May 19, 2020)

# WITHDRAWN Obama administration guidance documents

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## UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

September 22, 2017

Dear Colleague:

The purpose of this letter is to inform you that the Department of Education is withdrawing the statements of policy and guidance reflected in the following documents:

- Dear Colleague Letter on Sexual Violence, issued by the Office for Civil Rights at the U.S. Department of Education, dated April 4, 2011.
- Questions and Answers on Title IX and Sexual Violence, issued by the Office for Civil Rights at the U.S. Department of Education, dated April 29, 2014.

# WITHDRAWN Obama administration guidance documents

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According to the Trump Administration:

*The 2011 and 2014 guidance documents may have been well-intentioned, but those documents have led to the deprivation of rights for many students – both accused students denied fair process and victims denied an adequate resolution of their complaints. The guidance has not succeeded in providing clarity for educational institutions or in leading institutions to guarantee educational opportunities on the equal basis that Title IX requires. Instead, schools face a confusing and counterproductive set of regulatory mandates, and the objective of regulatory compliance has displaced Title IX's goal of educational equity . . . The Department will not rely on the withdrawn documents in its enforcement of Title IX.*

U.S. Department of Education Dear Colleague Letter (Sept. 22, 2017)



# Proposed regulations – Nov. 2018

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## ARCHIVED INFORMATION

### Secretary DeVos: Proposed Title IX Rule Provides Clarity for Schools, Support for Survivors, and Due Process Rights for All


Department of Education Welcomes Public Comment on Draft Rule

NOVEMBER 16, 2018

Contact: Press Office, (202) 401-1576, [press@ed.gov](mailto:press@ed.gov)

WASHINGTON — Continuing its efforts to ensure equal access to education free from discrimination, today the U.S. Department of Education released its proposal on improving schools' responses to sexual harassment and assault. The proposed regulation under Title IX, the federal civil rights law that prohibits discrimination on the basis of sex in education programs or activities that receive federal funding, was developed after more than a year of research, deliberation, and gathering input from students, advocates, school administrators, Title IX coordinators, and other stakeholders.


# Proposed regulations – Nov. 2018




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 **Title IX of the Education Amendments of 1972**

**Docket Folder Summary**  [View all documents and comments in this Docket](#)

**Docket ID:** ED-2018-OCR-0064    **Agency:** Department of Education (ED)

**Summary:**


On November 29, 2018, the Secretary issued a notice of proposed rulemaking to clarify and modify the obligations of recipients of Federal financial assistance in redressing sex discrimination, including complaints of sexual misconduct, and the procedures by which they must do so.

**RIN:** 1870-AA14    **Impacts and Effects:** None    **CFR Citation:** 34 CFR 106




**Priority:** Other Significant

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**124,196**  
Comments Received\*

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# Examples of Title IX in the headlines

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## **Groups Urge DeVos to Pause Title IX Rulemaking as Schools Face Coronavirus**

By Evie Blad on March 25, 2020 12:15 PM

## **Secretary DeVos Takes Historic Action to Strengthen Title IX Protections for All Students**

**New regulation defines sexual harassment, requires supportive measures for survivors, restores due process on campus**

MAY 6, 2020

Contact: Press Office, (202) 401-1576, [press@ed.gov](mailto:press@ed.gov)

# Department of Education – May 6 press release

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## Quotes from Secretary DeVos and Asst. Secretary Marcus (OCR)

“Too many students have lost access to their education because their school inadequately responded when a student filed a complaint of sexual harassment or sexual assault. 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.”

– Secretary DeVos

“There is no reason why educators cannot protect all of their students – and under this regulation there will be no excuses for failing to do so.”

– Asst. Secretary Marcus



# Examples of Title IX in the headlines

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U.S. NEWS

## **K-12 schools keep mishandling sexual assault complaints. Will new Title IX regulations help?**

Federal investigations uncovered schools that failed to meet the most basic legal requirements – like having someone in charge of Title IX.


## **Title IX Rule Details How K-12 Schools Must Address Sexual Harassment, Assault**

By Evie Blad on May 6, 2020 12:52 PM

**EDUCATION WEEK**






# Examples of Title IX in the headlines

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**ACLU SUES BETSY DEVOS FOR ALLOWING  
SCHOOLS TO IGNORE SEXUAL HARASSMENT  
AND ASSAULT**



MAY 14, 2020

## Attorneys General Sue DeVos, Education Department Over Title IX Rule

**INSIDE**  
HIGHER ED

By **Greta Anderson** // June 5, 2020

# Examples of Title IX in the headlines

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## Legal Challenges on Many Fronts

Four lawsuits have been filed against new Department of Education regulations for how colleges must respond to sexual misconduct on campus. The lawsuits question the merits of the regulations and seek to block their implementation.

By [Greta Anderson](#) // July 13, 2020

**INSIDE**  
HIGHER ED

## Title IX Rule Set to Take Effect After Judge Denies Request From States to Halt It

By [Evie Blad](#) on August 12, 2020 1:59 PM

**EDUCATION WEEK**

# TRUE/FALSE POLL

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The new regulations apply to all sex discrimination prohibited by Title IX.



# TRUE/FALSE POLL

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Because of COVID-19 and the upcoming elections, schools are not required to comply with the new regulations just yet.

# What do the new regulations require?

- **When should schools respond to sexual harassment allegations?**
- How should schools respond to sexual harassment allegations?
- What else should schools know?

# What do the new regulations require?

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Generally, the new regulations require a school or district to respond “promptly” and not in a “deliberately indifferent” manner (i.e., not “clearly unreasonable in light of the known circumstances”) when it has “actual knowledge” of “sexual harassment” in its “education program or activity” against a person in the United States.

- **May 6:** The Department issued a press release and related resources regarding the new regulations.
- **May 19:** The new regulations were published in the Federal Register (85 Fed. Reg. 30,026).
- **August 14:** The new regulations became effective.

# Where can I find the text of the new regulations?

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You can find the new regulations by clicking this link:

<https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>

The text of the new regulations begins at page 30,572.

## In a nutshell, what basic steps are outlined in the new regulations?

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1. District or school receives actual knowledge of conduct that may constitute sexual harassment.
2. District-level or school-based Title IX Coordinator meets with alleged victim to discuss supportive measures and the process for filing a formal complaint.
3. Investigator leads the investigation after the formal complaint is in place and written notice is given to the involved individuals and their parents/guardians. Investigator gathers and reviews evidence, allows responses to the evidence, and prepares an investigative report; the involved individuals and their parents/guardians review and respond to the report.
4. Decision-maker provides opportunity for involved individuals and their parents/guardians to prepare written questions to be answered by the other side. Decision-maker reviews all materials and makes a written responsibility determination – an impartial determination as to whether the alleged conduct occurred – including sanctions.

# Who's who – Title IX Coordinator

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- The regulations require that a district have at least one district-level Title IX Coordinator. Connecticut law requires a Title IX Coordinator at each school, which is best practice.
- The district-level or school-based Title IX Coordinator's overall responsibility is to coordinate compliance efforts by, among other things:
  - Developing materials and ensuring that professional development occurs for staff involved in Title IX efforts.
  - Creating systems to centralize records and gather relevant data.
  - Meeting with alleged victim and parents/guardians once made aware of alleged sexual harassment (cannot be delegated to support staff).
  - Coordinating implementation of supportive measures.
  - Signing a formal complaint to initiate grievance process (cannot be delegated to support staff).

# Who's who – Title IX Coordinator

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- As a practical matter, certain Title IX Coordinator responsibilities are more appropriately carried out at one level – district or school.
- The district-level Title IX Coordinator should, for example:
  - Develop materials and ensure that professional development occurs for staff involved in Title IX efforts.
  - Create systems to centralize records and gather relevant data.
- The school-based Title IX Coordinator should, for example:
  - Meet with alleged victim and parents/guardians once made aware of alleged sexual harassment (cannot be delegated to support staff).
  - Coordinate implementation of supportive measures.
  - Sign a formal complaint to initiate grievance process (cannot be delegated to support staff).

# Who's who – Investigator

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- The school-based Investigator carries out an investigation by conducting interviews of the involved individuals and witnesses, collecting documentary and other evidence, and drafting an investigative report.
- The school-based Title IX Coordinator also may serve as Investigator.
- As a practical matter, the Investigator may be an administrator, such as the assistant principal.



# Who's who – Decision-maker

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- The school-based Decision-maker reaches the responsibility determination by applying the standard of evidence selected by the district: “preponderance of the evidence” or “clear and convincing.”
- Neither the district-level Title IX Coordinator, school-based Title IX Coordinator, nor Investigator may also be the Decision-maker. However, the Investigator may offer recommendations to the Decision-maker.
- As a practical matter, the Decision-maker may be the principal (i.e., the highest school-level administrator).

# THINK ABOUT IT: Assessing coordination, staffing needs

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At the district level, do you:

- Ensure Title IX compliance by developing and providing professional development to individual schools?
- Require the school-based Title IX Coordinator or Investigator to also be the Decision-maker? If so, this needs to change – How will you identify and train additional personnel?

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# When am I required to respond to alleged sexual harassment?

## Examples of requirements that have changed under the new regulations

2001/2017 Prior Department Guidance	New Regulations
<b>Knowledge</b> = The school district “knows or reasonably should know” of the conduct	<b>Knowledge</b> = The school district has “actual knowledge” of the conduct
<b>Conduct</b> = “so severe, persistent, <u>or</u> pervasive”	<b>Conduct</b> = “so severe, pervasive, <u>and</u> objectively offensive”

# “Actual knowledge”

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A school or district has **actual knowledge** when notice or allegations of sexual harassment are reported to any school employee; or any employee personally observes such behavior. A school or district employee includes the Title IX Coordinator, administrators, teachers, teacher’s aides, bus drivers, cafeteria workers, counselors, school resource officers, maintenance staff workers, or any other employee.

Actual knowledge is met when any employee:

- Witnesses the conduct.
- Hears about the conduct from the alleged victim or anyone else (e.g., parent, friend, peer, anonymous reporter).
- Receives a written report of the conduct from the alleged victim or anyone else.



## YES/NO POLL: Is this actual knowledge?

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A student reports to her guidance counselor that she has been repeatedly called derogatory names disparaging her gender transition.

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## **YES/NO POLL:** Is this actual knowledge?

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A custodian witnesses a male coach hitting the buttocks of an assistant coach after winning a basketball game.

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## YES/NO POLL: Is this actual knowledge?

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Based on a text message, a student's parents speculate that a teacher is having sexual relations with their child's friend.

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# “Sexual harassment” is conduct on the basis of sex that is...

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## Category 1

Quid pro quo harassment by a school employee to a student – the employee conditions some type of aid, benefit, or service on the student’s participation in unwelcome sexual conduct

## Category 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 education program or activity”

## Category 3

Other conduct defined by federal law:

- Sexual assault
- Dating violence
- Domestic violence
- Stalking

“Where conduct is sexual in nature, or where conduct references one sex or another, that suffices to constitute conduct ‘on the basis of sex.’”

85 Fed. Reg. at 30,146



## **YES/NO POLL:** Is this sexual harassment?

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A bus driver hears rumors that non-consensual sex occurred between unsupervised students in the school gym.

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## **YES/NO POLL:** Is this sexual harassment?

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After every after-school staff meeting, an office assistant asks a colleague to go for a drink with her. The colleague always declines the invitation.

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## YES/NO POLL: Is this sexual harassment?

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A teacher tells a failing student that he will give her a passing grade if the student sends nude pictures to his personal cell phone.

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## YES/NO POLL: Is this sexual harassment?

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Every day, a teacher remarks about the physical appearance of an aide, including by making sexually suggestive comments.

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## **YES/NO POLL:** Is this sexual harassment?

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A custodian finds graffiti depicting sexual content and images in a bathroom stall.

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# “Education program or activity”

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- “Education program or activity” includes locations, events, or circumstances over which a school district exercised substantial control over the alleged perpetrator and the context in which the sexual harassment occurred.
- Depending on the circumstances, may cover incidents that occur off school district property or online (e.g., field trip, school district’s digital platform).

## YES/NO POLL: Education program or activity?

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A group of 2<sup>nd</sup> graders takes a field trip to the zoo. That evening, a student's parent reports that their child was sexually harassed by one of the chaperones, a teacher's aide.

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## YES/NO POLL: Education program or activity?

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A 7<sup>th</sup> grader's phone goes off during class. After the student reads something, she becomes visibly upset. The teacher learns that the student has been sexually harassed online by a classmate, to the point where she has been skipping the classes they have in common.

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# What do the new regulations require?

- When should schools respond to sexual harassment allegations?
- **How should schools respond to sexual harassment allegations?**
- What else should schools know?

# Response checklist

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- Incident-specific response:
  - Victim(s) and parents
  - Perpetrator(s) and parents
  - Staff who knew or should have known
- School-wide response:
  - Students
  - Staff
  - Parents



The nature of these steps will depend on the ages/status of the victim(s) and perpetrator(s), and the context of the harassment.

# “Dangerous Words,” compiled by National Women’s Law Center

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- Just ignore it.
- He puts his arms around everyone.
- Why can’t you learn to accept a compliment?
- You must have wanted it - otherwise you would have told him no.
- That’s how they do things where he comes from.
- It’s a joke. Lighten up.
- No one’s filed a charge so our hands are tied.
- We’ve never had a complaint, so we don’t have a problem.
- This kind of behavior is all a part of growing up.
- It’s a matter of hormones, we can’t control that.
- If we had to discipline every student who used bad language we’d never get anything else done.
- It’s just a prank that got out of hand.
- Oh well, boys will be boys.

# How should schools respond to sexual harassment allegations?

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## The basic command

- If a school has actual knowledge of sexual harassment allegations, the school must respond promptly and in a manner that is not deliberately indifferent (i.e., not “clearly unreasonable in light of the known circumstances”).
- A school must offer “supportive measures” to the alleged victim (complainant) and follow a grievance process that meets certain minimum requirements before imposing discipline or other actions that are not supportive measures against an alleged perpetrator (respondent).
- A school may not continue with the grievance process in the absence of a formal complaint.

# How should schools respond to sexual harassment allegations?

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## First, ensure that procedures comply with the new regulations

- The new regulations require a district to notify stakeholders and publish on its website and in its handbooks and catalogs:
  - Title IX Coordinator contact information: Names, office addresses, emails, phone numbers.
  - General statement regarding nondiscrimination on the basis of sex.
- A district also must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging sex discrimination and a grievance process specific to sexual harassment allegations that meets certain minimum requirements.
  - The grievance procedures and grievance process must describe how to report or file a complaint of alleged sex discrimination, how to report or file a formal complaint of alleged sexual harassment, and how schools will respond.

# How should schools respond to sexual harassment allegations?

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## Overview of select general requirements for the grievance process

- Provide for the “prompt and equitable” resolution of student and employee complaints.
- Treat complainants and respondents equitably.
- Require an objective evaluation of all relevant evidence.
- Require that Title IX Coordinator, Investigator, Decision-maker, or any other key player have no conflicts of interest or bias for or against complainants or respondents, and that all such individuals receive specified professional development.
- Include a presumption of innocence for respondents.

# How should schools respond to sexual harassment allegations?

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## Overview of select general requirements for the grievance process

- Designate reasonably prompt time-frames for resolution and the range of possible disciplinary actions.
- Use either the “preponderance of the evidence” or “clear and convincing” standard and apply it equally to employee and student complaints.
- Provide complainant and respondent (and their parents/guardians) an equal opportunity to review any evidence obtained that is directly related to the allegations raised in a formal complaint.
- Address certain other procedural steps enumerated at 34 C.F.R. § 106.45 of the new regulations, many of which we address below.

# How should schools respond to sexual harassment allegations?

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## Revisiting the basic steps outlined in the new regulations

1. District or school receives actual knowledge of conduct that may constitute sexual harassment.
2. District-level or school-based Title IX Coordinator meets with alleged victim to discuss supportive measures and the process for filing a formal complaint.
3. Investigator leads the investigation after the formal complaint is in place and written notice is given to the involved individuals and their parents/guardians. Investigator gathers and reviews evidence, allows responses to the evidence, and prepares an investigative report; the involved individuals and their parents/guardians review and respond to the report.
4. Decision-maker provides opportunity for involved individuals and their parents/guardians to prepare written questions to be answered by the other side. Decision-maker reviews all materials and makes a written responsibility determination – an impartial determination as to whether the alleged conduct occurred – including sanctions.



# Meeting to offer supportive measures

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- A school's Title IX responsibilities are triggered once it is put on notice of alleged sexual harassment (i.e., actual knowledge). The school-based Title IX Coordinator must “promptly” contact the alleged victim and their parents/guardians to discuss the availability of and consider their wishes regarding supportive measures.
- The grievance policy must describe the range of available supportive measures. Examples include:
  - Counseling.
  - Extensions of deadlines or other course-related adjustments.
  - Changes to class schedules.
  - Increased monitoring/security of certain areas.
- The school must inform the alleged victim and their parents/guardians that supportive measures are available with or without the filing of a formal complaint, and also explain the process for filing a formal complaint.

# Formal complaint to initiate the rest of the grievance process

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- No investigation of alleged sexual harassment may occur until after a formal complaint has been filed.
- The formal complaint must be filed by the alleged victim or their parent/guardian. It must describe the sexual harassment allegations and request that the school district investigate.
  - The formal complaint may be filed at any time as long as the alleged victim is “participating in or attempting to participate in the education program or activity” of the school district at the time of filing (e.g., current student or current employee).
  - The school or district should create a standard formal complaint form.
- The school-based Title IX Coordinator may initiate a formal complaint and investigation on his or her own if the decision is not clearly unreasonable in light of the known circumstances (e.g., alleged perpetrator may pose an ongoing safety threat).

## YES/NO POLL: Continue with grievance process?

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An 8<sup>th</sup> grader experiences alleged sexual harassment. The alleged perpetrator is someone in her theater class, but she doesn't know exactly who. She wants to file a formal complaint.

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## **YES/NO POLL:** Continue with grievance process?

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A teacher experiences alleged sexual harassment by his department chair, who is known within the department for his sexually explicit jokes. The teacher does not want to file a formal complaint.

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## YES/NO POLL: Continue with grievance process?

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An anonymous report names a high school junior as the alleged perpetrator of sexual harassment against several sophomores. None of the alleged victims is identified.

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## YES/NO POLL: Continue with grievance process?

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A 5<sup>th</sup> grader experiences alleged sexual harassment by a teacher's aide. The alleged victim is embarrassed and his parents/guardians don't want that information to get out, so they decline to file a formal complaint.

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# Response checklist revisited

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- Incident-specific response:
  - Victim(s) and parents
  - Perpetrator(s) and parents
  - Staff who knew or should have known
- School-wide response:
  - Students
  - Staff
  - Parents



The nature of these steps will depend on the ages/status of the victim(s) and perpetrator(s), and the context of the harassment.

# Grievance process after a formal complaint is filed

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- What are the basic parts of the grievance process after a formal complaint is filed?
  - Notice
  - Investigation
  - Written questions and answers
  - Responsibility determination
  - Appeal
- A district must set reasonably prompt timeframes for carrying out the grievance process.



# Notice

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- Once a formal complaint is filed, the school must provide to known involved individuals, including parents/guardians:
  - Written notice of the sexual harassment allegations in sufficient detail by including the identities of the involved individuals (if known), the conduct allegedly constituting sexual harassment, and the date and location of the incident (if known).
  - A copy of the grievance policy.
- The written notice also must:
  - Include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
    - Generally, no disciplinary action may be taken against a respondent until after the grievance process is carried out. The grievance policy must describe the range of possible sanctions or remedies.
  - Inform the involved individuals that they may have an advisor of their choice and may inspect and review evidence.
  - Inform the involved individuals of any code of conduct provision that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

# Investigation

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## General requirements to remember

- The school or district must ensure that it has the burden of proof and the burden of gathering evidence sufficient to reach a responsibility determination; these burdens do not belong to the involved individuals.
- The school or district must not restrict the ability of the involved individuals to discuss the allegations under investigation or gather and present relevant evidence.

# Investigation

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## What must the Investigator do?

- Provide an equal opportunity for the involved individuals to present witnesses (including fact and expert witnesses) and other inculpatory and exculpatory evidence. Privilege considerations apply.
- Provide an equal opportunity to the involved individuals and their parents/guardians to inspect and review evidence and respond prior to completing the investigative report.
- Create an investigative report that fairly summarizes relevant evidence, and share with the involved individuals and their parents/guardians for review and response.

# Investigation: Step #1

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**Review applicable statutes, regulations, and school district policies and procedures. Follow all applicable policies and procedures throughout the investigation.**

- As Investigator, your first step is to review your district's sexual harassment policies and procedures, which should incorporate the federal requirements. Follow those procedures throughout your investigation!



# Investigation: Step #2

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**Ask the complaining student or staff member for a full narrative of the facts to supplement the information initially provided.**

- The Investigator should double-check to ensure that the complainant has provided all relevant information, including:
  - Who, what, when, where;
  - Race, ethnicity, and gender of victim;
  - Students, teachers, or other staff involved;
  - Witnesses to the incident; and
  - The specific nature of the alleged sexual harassment.
- The Investigator should review the complainant's responses carefully before conducting any further interviews.



# Investigation: Step #3

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## **Review student/staff files of individuals allegedly involved in the incident.**

- Reviewing the files will provide the Investigator with key background facts that can inform his or her questioning of the victim, the alleged perpetrator, and witnesses.



# Investigation: Step #4

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## Interview all alleged victims.

In addition to the standard factual information, the Investigator should consider asking the victim(s) the following questions:

- How did you react to the harassment?
- How has the alleged harassment affected you and your experience at school?
- Are there any other students, teachers, or staff that might have relevant information?
- Do you have any notes, emails, text messages, documentation, or other physical evidence related to the incident?
- How would you like to see this situation resolved?

Note: Hold separate interviews with each alleged victim.

Provide interviewees – whether they are the victim, a witness, or the alleged perpetrator – with appropriate translation services if the interviewee is an English Language Learner.



# Investigation: Step #5

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## **Interview other witnesses individually.**

- A full investigation includes interviews with all potential witnesses, even if the first few witnesses interviewed have provided identical information.
- The Investigator should explain briefly the reasons for the interview and ask whether the witness has any relevant information about the alleged incident.
- The Investigator should consider asking the following questions:
  - Describe the alleged perpetrator's general behavior toward the victim.
  - What, if anything, did the victim tell you about the incident?
  - Do you know of anyone else who might have relevant information?
  - Are you aware whether the alleged perpetrator has ever engaged in similar conduct in the past?
- Be sure that you have captured all potential witnesses by encouraging your interviewees to list any other students or school personnel who could possibly have information about the incident.





# Investigation: Step #6

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## **Interview the alleged perpetrator(s).**

- The Investigator should inform the alleged perpetrator(s) of the allegations against them.
- The investigator should ask the alleged perpetrator(s) about the basic facts surrounding the incident and give the alleged perpetrator(s) an opportunity to explain the reasons for their actions.

Note: Hold separate interviews with each alleged perpetrator.



# Investigation: Step #7

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## **Review the notes from the interviews.**

- Follow up on any factual inconsistencies. Re-interview witnesses as necessary.
- If the alleged perpetrator says something that directly contradicts what the alleged victim reported to you, circle back with the alleged victim to clarify their version of the events.



# Investigation: Step #8

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## **Allow the alleged victim and perpetrator to review the evidence.**

- Any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint must be made available to each party in electronic or hard copy form.
- The Investigator must allow the parties 10 days to submit a written response to the evidence, and the Investigator must consider such responses prior to completion of an investigative report.



# Investigation: Step #9

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## **Prepare an investigative report, and share with the alleged victim and perpetrator.**

- The investigative report must fairly summarize the relevant evidence.
- The investigative report must be sent to the parties in electronic or hard copy form for their review and written response. Parties must have at least 10 days to respond before continuing on with the grievance process.



# Written questions and answers

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- A school must use written questions and answers as part of its grievance process.
- Decision-maker must:
  - Allow the involved individuals and their parents/guardians to submit written, relevant questions to ask the other side (including witnesses).
  - Decision-maker must explain any decision to exclude a question as irrelevant.
    - The alleged victim's prior sexual behavior is not relevant unless offered to prove that someone other than the alleged perpetrator committed the alleged conduct, or to prove consent. Consent is not defined in the new regulations.
  - Provide each side with the answers to their questions.
  - Allow for additional, limited follow-up questions.

# Responsibility determination

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- A school must use a Decision-maker who is not the same person as the Title IX Coordinator or Investigator.
- Decision-maker must apply the standard of evidence selected by the district – “preponderance of the evidence” or “clear and convincing standard” – to reach a determination as to whether the alleged conduct occurred.
- Decision-maker must issue a written determination that:
  - Identifies the allegations.
  - Describes the procedural steps taken by the school district.
  - Lays out the responsibility determination, including findings of fact, disciplinary sanctions, applicability of code of conduct, and remedies.
  - Outlines appeal procedures.

# Appeal

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- Appeal of the responsibility determination or dismissal of a formal complaint must be offered if an involved individual or his or her parents/guardians assert that:
  - A procedural irregularity affected the outcome.
  - New evidence may affect the outcome and was not previously reasonably available.
  - The Title IX Coordinator, Investigator, or Decision-maker had a conflict of interest or bias that affected the outcome.
- The Decision-maker on appeal may not be the initial Decision-maker, the Investigator, or the Title IX Coordinator.

# When must or may a school dismiss a formal complaint?

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- A school must dismiss a formal complaint for purposes of Title IX sexual harassment under certain circumstances, including:
  - The alleged conduct, even if true, would not constitute sexual harassment.
  - The alleged conduct, even if true, did not occur in the school district's education program or activity.
  - The alleged conduct, even if true, did not occur against a person in the United States.
- A school has discretion to dismiss a formal complaint during the grievance process under certain circumstances, including:
  - The alleged perpetrator is no longer enrolled or no longer employed by the school district.
  - The alleged victim and his or her parents/guardians notifies the Title IX Coordinator in writing that the formal complaint or any allegations therein are withdrawn.
  - Specific circumstances prevent the school district from gathering evidence sufficient to reach a determination regarding the formal complaint or allegations therein.



# TRUE/FALSE POLL

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Only the alleged victim can file a formal complaint of sexual harassment.

# TRUE/FALSE POLL

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Supportive measures must be offered to an alleged victim, even if a formal complaint is never filed.

# TRUE/FALSE POLL

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The Title IX Coordinator also can be the Decision-maker, but cannot be the Investigator.

# TRUE/FALSE POLL

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A district can decide whether it wants to offer an appeal process.

# Comparing prior guidance to the new regulations

## Examples of requirements that have changed

2001/2017 Prior Department Guidance	New Regulations
It may be appropriate for a school to take <b>interim measures</b> during the investigation of a complaint	<b>Supportive measures</b> must be offered once a school has actual knowledge of sexual harassment allegations
Decision-maker <b>can</b> be same person as Title IX Coordinator or Investigator	Decision-maker <b>cannot</b> be same person as Title IX Coordinator or Investigator
A school <b>may</b> offer the right to appeal a responsibility determination	A school <b>must</b> offer the right to appeal a responsibility determination

# Professional development requirements

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- A district must provide professional development to individuals designated as a Title IX Coordinator, Investigator, Decision-maker, or Facilitator of an informal resolution process.
- Training materials must be made publicly available via district website.
- As good practice, the district should also provide professional development to other employees who are not part of the core Title IX team.

# Professional development requirements

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- Required professional development topics for individuals designated as a Title IX Coordinator, Investigator, Decision-maker, or Facilitator of an informal resolution process include:
  - Definition of sexual harassment.
  - Scope of the school district's education program or activity.
  - How to conduct an investigation and grievance process.
  - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
  - Relevance determinations, both for questions and evidence, and for information to be included in investigative report.

# Recordkeeping requirements

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A district must maintain certain records for a seven-year period. Examples of required recordkeeping include:

- Investigation, appeal, and informal resolution records.
- Records of any actions – including any supportive measures – taken in response to a report of formal complaint of sexual harassment.
  - Among other things, the school must document why its response was not deliberately indifferent or “clearly unreasonable in light of the known facts.”
- Records of professional development training materials.



# THINK ABOUT IT: Professional development, recordkeeping

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At the district level, how will you:

- Create standardized approaches to professional development and recordkeeping practices?
- Prepare appropriate professional development materials for the Title IX team?
- Ensure that public-facing materials remain accurate and up to date?
- Facilitate effective communication between the school district and individual schools?

**Putting the  
regulations into  
practice**

# What do the new regulations require?

- When are school districts required to respond to sexual harassment allegations?
- How are school districts required to respond to sexual harassment allegations?
- **What else should schools know?**

# What else should schools and districts know?

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## Emergency removal and administrative leave

Generally, a school may not sanction an alleged perpetrator until after the grievance process is carried out. However, the regulations provide exceptions for emergency removal and administrative leave under certain circumstances and in compliance with disability laws.

- Emergency removal may occur if the school district has (1) undertaken an individualized safety and risk analysis; (2) determined that an immediate threat to the physical health or safety of a student or other individual arising from the allegations justifies removal; and (3) provided the alleged perpetrator with notice and an opportunity to challenge the decision immediately following the removal.
- A school district may place an employee on administrative leave for the duration of the grievance process without having to follow the emergency removal criteria outlined above.

# What else should schools and districts know?

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## Informal resolution process

Though not required, a district may offer an informal resolution process to involved individuals and their parents/guardians after a formal complaint has been filed.

- Informal resolution cannot be offered if the alleged perpetrator is an employee.
- The district must develop and share its procedures for informal resolution.
- A school must obtain voluntary, written consent from the involved individuals and their parents/guardians to participate in informal resolution after sharing:
  - The allegations.
  - The requirements of the informal resolution process.
  - Any consequences resulting from participation in the informal resolution process (e.g., records that will be maintained or could be shared).
- Anyone may withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

# What else should schools and districts know?

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## Other aspects of the new regulations

- The new regulations contain provisions prohibiting retaliation.
- A school or district may consolidate formal complaints where the sexual harassment allegations arise out of the same facts and circumstances.
- Hearings are discretionary. A district “retain[s] discretion to decide how to conduct hearings if [it] selects that option” as long as the hearing rules apply equally to both sides.

# What else should schools and districts know?

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## Relation to other laws

- A school or district may not restrict rights protected under the U.S. Constitution, including the First, Fifth, and Fourteenth Amendments.
- The new regulations set minimum requirements for Title IX compliance. State and local law may prescribe additional responsibilities related to a district's response to sexual harassment allegations. In cases of conflict, however, the new regulations preempt state and local law.
- When employees are involved in alleged sexual harassment, a school or district may need to consider its obligations under both Title IX and Title VII.



# What else should schools and districts know?

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## Secretary DeVos Announces New Civil Rights Initiative to Combat Sexual Assault in K-12 Public Schools

FEBRUARY 26, 2020

Contact: (202) 401-1576, [press@ed.gov](mailto:press@ed.gov)

In February 2020, OCR announced an initiative to combat sexual assault in districts through –

- **Compliance Reviews:** OCR will examine how sexual assault cases are handled under Title IX and will work with school districts to identify and correct compliance concerns.
- **Public Awareness and Support:** OCR will focus on raising awareness of the issue of sexual assault, including making information available to educators, school leaders, parents, and families.
- **Data Quality Reviews:** OCR will review sexual assault/offenses data and work to ensure incidents are accurately recorded and reported.
- **Proposed CRDC Data Collection:** OCR has proposed to collect more detailed data on sexual assault, including incidents perpetrated by school staff or school personnel.

How does Title IX compare to Connecticut bullying laws?



# TRUE/FALSE POLL

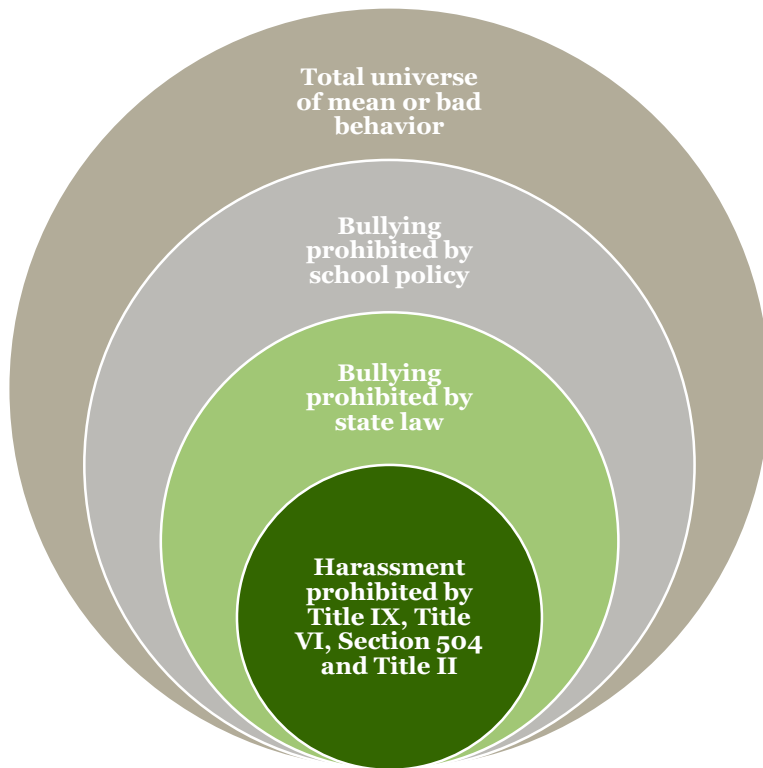
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The definition of bullying and harassment is the same under state and federal law.

# The universe of bullying & harassment

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# Connecticut law: Nondiscrimination in public schools

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- “The public schools shall be open to all children five years of age and over . . . and each such child shall have. . . **an equal opportunity to participate in the activities, programs and courses of study** offered in such public schools . . . without discrimination on account of race, color, **sex, gender identity or expression**, religion, national origin **or sexual orientation**. . . .”

-- Conn. Gen. Stat. § 10-15c

# Connecticut law: Bullying

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- How does Connecticut law currently define **bullying**?
  - The repeated use by one or more students of a written, oral, or electronic communication, such as cyberbullying, directed at or referring to another student attending school in the same school district; **OR**
  - A physical act or gesture by one or more students repeatedly directed at another student attending school in the same school district, that:
    - Causes physical or emotional harm or damage to the student's property;
    - Places the student in reasonable fear of harm to himself or herself, or of damage to his or her property;
    - Creates a hostile environment at school for the student;
    - Infringes on the rights of such student at school; or
    - Substantially disrupts the education process or the orderly operation of a school.

# Connecticut law: Bullying

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- “Bullying’ shall include, but not be limited to, a written, oral or electronic communication or physical act or gesture based on any actual or perceived differentiating characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity or expression, socioeconomic status, academic status, physical appearance, or mental, physical, developmental or sensory disability, or by association with an individual or group who has or is perceived to have one or more of such characteristics”

-- Conn. Gen. Stat. § 10-222d

## **YES/NO POLL:** Is this bullying under *current* CT law?

---

On one occasion, a male student non-consensually spanked a bandmate during band practice, which he claimed was a “rite of passage” for all new female members of the drum line.

**Putting  
state law into  
practice**

## **YES/NO POLL:** Is this sexual harassment under the Title IX regulations?

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On one occasion, a male student non-consensually spanked a bandmate during band practice, which he claimed was a “rite of passage” for all new female members of the drum line.

**Putting the  
regulations into  
practice**

# Connecticut law: Bullying

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- Effective July 2021, how will Connecticut law define **bullying**?
  - Public Act 19-166 redefines **bullying** as an act that is “direct or indirect” and “severe, persistent *or* pervasive,” which
    - (A) causes physical or emotional harm to an individual,
      - What will change → **from** “student” **to** “individual”
    - (B) places an individual in reasonable fear of physical or emotional harm, or
      - What will change → **from** “reasonable fear of harm to himself or herself, or of damage to his or her property” **to** “reasonable fear of physical or emotional harm”
    - (C) infringes on the rights or opportunities of an individual at school.
      - What will change → **from** “rights” **to** “rights and opportunities”
  - A single act may be sufficient to constitute bullying



## **YES/NO POLL:** Is this bullying under *upcoming* CT law?

---

On one occasion, a male student non-consensually spanked a bandmate during band practice, which he claimed was a “rite of passage” for all new female members of the drum line.

**Putting  
state law into  
practice**

# Connecticut law: Bullying

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- How does Connecticut law define **cyberbullying**?
  - “[A]ny act of bullying through the use of the Internet, interactive and digital technologies, cellular mobile telephone or other mobile electronic devices or any electronic communications.”
    - “**Mobile electronic device**” means any hand-held or other portable electronic equipment capable of providing data communication between two or more individuals, including, but not limited to, a text messaging device, a paging device, a personal digital assistant, a laptop computer, equipment that is capable of playing a video game or a digital video disk, or equipment on which digital images are taken or transmitted.
    - “**Electronic communication**” means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photo-optical system.
- Is one action enough to qualify as bullying or cyberbullying?
  - **NO for now** – Now, under Connecticut law, bullying requires “*repeated*” written, oral or electronic communication.
  - **YES as of July 2021** – Then, under Connecticut law, a single “severe” incident will be sufficient.

# Hypothetical

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Cate, a high school student, sent topless photos of herself to her boyfriend, Rick, via Snapchat throughout their 3-month relationship, expecting the photos will automatically delete after 10 seconds. Rick took a screenshot of one of the photos. Following their break-up some weeks later, Rick texted the screenshot to his friends, who in turn posted sexually suggestive comments on Cate's social media pages and made similar comments at school, which affected Cate's attendance. When Cate shared this information with her guidance counselor, the counselor said there wasn't much he could do because the photos were taken voluntarily outside of school, and there is no evidence that the photos had been shown at school.

## Questions to consider:

- Does this constitute sexual harassment under Title IX?
- Does this constitute cyberbullying under Connecticut law?
- Was the school's (i.e., the guidance counselor's) response appropriate?
- What, if anything, should the school have done differently?

# P.A. 19-166 (“An Act Concerning School Climates”)

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- Redefines “school climate”
  - “[T]he quality and character of school life based on patterns of students’, parents’ and guardians’ and school employees’ experiences of school life, including, but not limited to, norms, goals, values, interpersonal relationships, teaching and learning practices and organizational structures”
- Defines “positive school climate”
  - “[A] school climate in which (A) the norms, values, expectations and beliefs that support feelings of social, emotional and physical safety are promoted, (B) students, parents and guardians of students and school employees feel engaged and respected and work together to develop and contribute to a shared school vision, (C) educators model and nurture attitudes that emphasize the benefits and satisfaction gained from learning, and (D) each person feels comfortable contributing to the operation of the school and care of the physical environment of the school.”
- Defines “emotional intelligence” and “social and emotional learning”

# P.A. 19-166 (“An Act Concerning School Climates”)

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- Creates a 33-member “social and emotional learning and school climate advisory collaborative” charged with developing:
  - A model state-wide school climate survey and a model positive school climate policy;
  - A “plain language” notice of rights and remedies available for parents and guardians; and
  - a student suicide risk assessment.
- Requires school boards to publish the “plain language” notice of rights and remedies for parents and guardians
  - Within 48 hours of completing an investigation into alleged bullying, schools must notify the parents or guardians of the student who committed the bullying and the student against whom the bullying was directed.
  - The notification must include the results of the investigation, and inform parents/guardians that they may refer to the plain language explanation of their legal rights and remedies.

# Reconciling Title IX with state and local Law

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## Takeaways:

- The new Title IX requirements apply only to alleged sexual harassment as defined in the regulations. Connecticut requirements apply to a broader range of conduct.
- The Department of Education has indicated that if the new Title IX regulations conflict with state or local law, the federal regulations preempt such laws.
- Please consult legal counsel to ensure you understand the applicable requirements.

# Key Contact Information

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For complaints regarding bullying based on protected characteristics (such as race, gender, religion, and sexual orientation) and other acts of bias and discrimination, please contact:

Dr. Adrian R. Wood  
State Title IX Coordinator  
CT State Department of Education  
Turnaround Office  
450 Columbus Boulevard, Suite 602  
Hartford, CT 06103-1841  
Telephone: (860) 713-6795  
E-mail: [adrian.wood@ct.gov](mailto:adrian.wood@ct.gov)

Formal complaints based on protected characteristics may be directed to:

The Commission on Human Rights and Opportunities (CHRO)  
450 Columbus Boulevard, Suite 2  
Hartford, Connecticut 06103  
Telephone: 860-541-3400  
Toll Free (CT): 1-800-477-5737  
Web site: <http://www.state.ct.us/chro/>

What should schools do to comply with the new regulations?



# Title IX is still being challenged in the courts

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## Legal Challenges on Many Fronts

Four lawsuits have been filed against new Department of Education regulations for how colleges must respond to sexual misconduct on campus. The lawsuits question the merits of the regulations and seek to block their implementation.

By [Greta Anderson](#) // July 13, 2020

**INSIDE**  
HIGHER ED

## Title IX Rule Set to Take Effect After Judge Denies Request From States to Halt It

By [Evie Blad](#) on August 12, 2020 1:59 PM

**EDUCATION WEEK**

# The outcome of the 2020 Presidential Election may impact the rule

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# For now, though, the Title IX regulations stand

## Examples of school and district actions to get into compliance



Review and revise Title IX policies and procedures.



Review and revise codes of conduct and handbooks.



Conduct professional development for Title IX team and staff, both at the centralized school district level and at individual schools.



Educate and train students and parents/guardians.



Provide via the district website information such as Title IX Coordinator contact information, grievance process, and professional development materials.

The new regulations  
became effective  
August 14.

# Wrap-Up and Q&A

# Agenda Revisited

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- ✓ The politics of Title IX: How did we get these regulations?
- ✓ What do the new regulations require?
  - ✓ When should schools respond to sexual harassment allegations?
  - ✓ How should schools respond to sexual harassment allegations?
  - ✓ What else should schools know?
- ✓ How does Title IX compare to Connecticut bullying laws?
- ✓ What should schools do to comply with the new regulations?
- ✓ Q&A

## POLL REVISITED: Fist to Five

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On a scale of 0–5, how accurate is the following statement from your perspective?

*I understand under what circumstances the new Title IX sexual harassment requirements apply.*

0 – Completely inaccurate

1 – Pretty inaccurate

2 – Slightly inaccurate

3 – Not accurate, but not inaccurate

4 – For the most part accurate

5 – Completely accurate

## POLL REVISITED: Fist to Five

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On a scale of 0–5, how accurate is the following statement from your perspective?

*I understand how to appropriately respond when made aware of alleged sexual harassment.*

0 – Completely inaccurate

1 – Pretty inaccurate

2 – Slightly inaccurate

3 – Not accurate, but not inaccurate

4 – For the most part accurate

5 – Completely accurate

# POLL REVISITED: Fist to Five

---

On a scale of 0–5, how accurate is the following statement from your perspective?

*I understand the nuts and bolts of the investigation and adjudication processes for alleged sexual harassment.*

0 – Completely inaccurate

1 – Pretty inaccurate

2 – Slightly inaccurate

3 – Not accurate, but not inaccurate

4 – For the most part accurate

5 – Completely accurate



## POLL REVISITED: Fist to Five

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On a scale of 0–5, how accurate is the following statement from your perspective?

*I understand the training and recordkeeping requirements of the new regulations.*

0 – Completely inaccurate

1 – Pretty inaccurate

2 – Slightly inaccurate

3 – Not accurate, but not inaccurate

4 – For the most part accurate

5 – Completely accurate

# Questions?

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# Presenters

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