

We are giving webinar participants a few minutes to log in. We will begin at 12:05.

New Title IX Regulations

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Nine Things you Need to Know about the New Title IX Regulations

(In effect August 14, 2020)

The Top 9



**TITLE IX
BACKGROUND**



**NEW TITLE IX
TERMINOLOGY**



**BUILDING YOUR
TITLE IX TEAM**



**POLICY
DEVELOPMENT**



**JURISDICTION
REQUIREMENTS**



**THE
INVESTIGATION**



REPORT WRITING

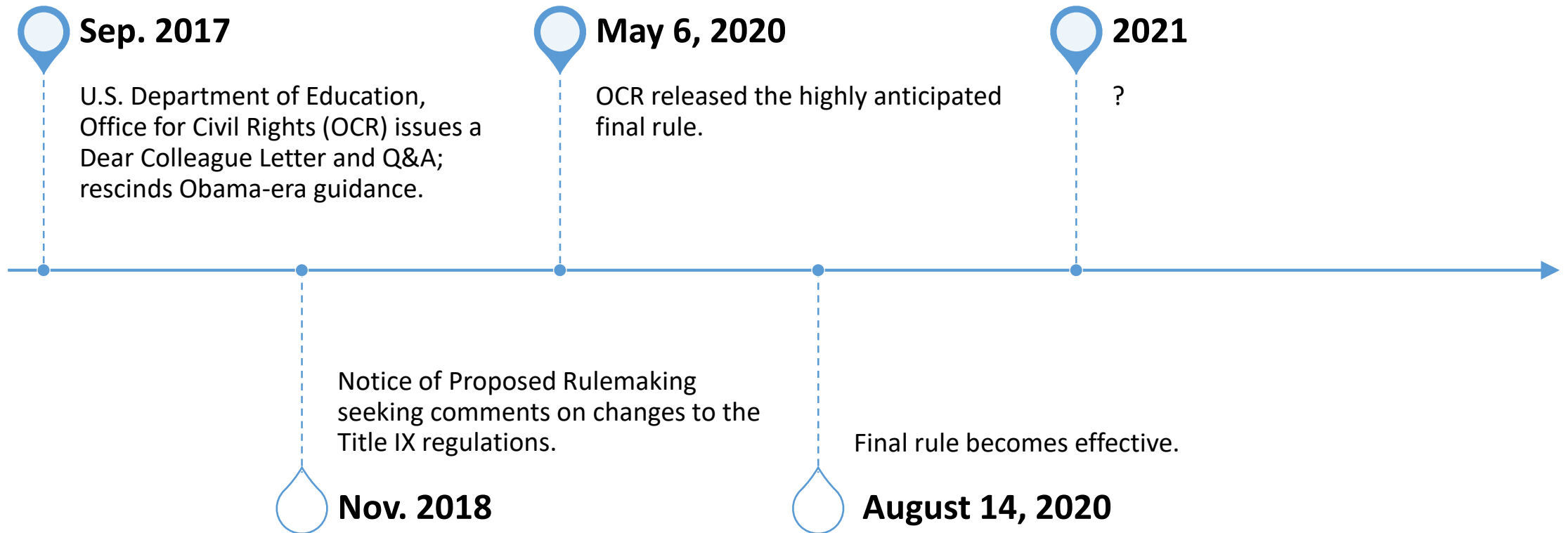


CONFIDENTIALITY



TRAINING

Background on Title IX Regulations



New Title IX Lingo (terms)

Recipients. School districts are now referred to as “recipients.”

Complainant. A person alleged to be the victim of conduct that could constitute sexual harassment.

Respondent. A person who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Supportive Measures. These are your “interim measures.”

Determination of Responsibility. This is your report/decision.

New Title IX Lingo (definitions)

Actual Knowledge

Old Rule:

- A school has a responsibility to respond **promptly and effectively** if a school **knows or should have known** about sexual harassment.

New Rule:

- A school with **actual knowledge** of sexual harassment in a program or activity against a person in the U.S. must respond promptly and in a manner that is **not deliberately indifferent**.

Definition of Actual Knowledge:

- Notice of sexual harassment or allegations of sexual harassment **to any employee**.

New Title IX Lingo (definitions)

Sexual Harassment

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 of the recipient on an individual's participation in unwelcome sexual conduct (i.e., *quid pro quo* sexual harassment);
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;

OR

3. "Sexual assault," "dating violence," "domestic violence," or "stalking," as defined by the Clery Act.

New Title IX Lingo (definitions)

Deliberate Indifference

Old Definition (OCR Guidance)

- The school must take immediate action to eliminate the sexual harassment or sexual violence, prevent its recurrence, and address its effects.

New Definition (Title IX Regs)

- Failure to respond reasonably in light of known circumstances.

Building Your Title IX Team

- Title IX Coordinator(s)

- Must be called the "Title IX Coordinator."
- Must be designated and authorized to coordinate compliance efforts.
- Must promptly contact Complainant, discuss available supportive measures (with or without a formal complaint), and explain process for filing a formal complaint.
- Responsible for effective implementation of any remedies.
- New documentation requirements:
 - Measures taken to restore or preserve equal access to the program or activity;
 - The basis for the conclusion that the District's response was not deliberately indifferent.



Investigator

Person designated to investigate, gather evidence and compile an investigation report.



Decisionmaker

Person who issues a written determination regarding responsibility.

Cannot be the same person as the Title IX Coordinator or the Investigator.



Appeals Designee

Must offer both respondent and complainant an opportunity to appeal.

Cannot be the same person as the Title IX Coordinator, Investigator, or the Decisionmaker.

Policy Development

- The new regulations require revisions to your Board Policies addressing Title IX.
- OSBA/NEOLA provide templates.
- Review templates carefully to ensure alignment with your district's operations and preferences:
 - Title IX Team
 - Live hearings are optional.

Required Notices

- Each district is required to provide notice of the following to certain groups:
 - Nondiscrimination Policy Statement.
 - Notice of the Title IX Coordinator's name or title, office address, electronic mail address, and telephone number.
 - Notice of the District's grievance procedures and grievance process, including how to file a complaint of sex discrimination, how to report file a formal complaint of sexual harassment, and how the District will respond.

Nondiscrimination Notice

- The District does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by Title IX and its regulations not to discriminate in such a manner.
- The requirement not to discriminate in the education program or activity extends to admission and employment and inquiries about the application of Title IX and its regulations may be referred to the Title IX Coordinator or the Assistant Secretary for Civil Rights of the U.S. Department of Education.

Nondiscrimination Notice

- Each district must provide notices to the following:
 - Applicants for admission and employment
 - Students
 - Parents/guardians of elementary and secondary school students
 - Employees
 - All unions or professional organizations with collective bargaining agreements or professional agreements with a school or institution

Publication Requirements

- Districts must “prominently” display the name or title, office address, electronic mail address and telephone number of the employee(s) designated as the Title IX Coordinator(s) and its nondiscrimination notice on its website and in handbooks.
- Districts must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part and a grievance process that complies with the requirements for formal complaints.

Jurisdiction

- To file a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient.
- “Education program or activity” includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

Jurisdiction

- Anyone may report sex discrimination (by mail, telephone, email, or any other means that results in the Title IX Coordinator receiving the report), regardless of whether the person is the alleged victim of the reported conduct.
- A Title IX Coordinator can sign a complaint to trigger an investigation over the complainant's objections.

Jurisdiction

- What about off campus conduct?
 - Jurisdiction may still lie if there is control over the Respondent and the context, even if it occurs off campus.
- For off-campus misconduct outside the jurisdiction of the district, there may be in-program effects.
- Even if no jurisdiction under Title IX, a non-disciplinary remedial response would be best practice.
- May also want to look to other policies and code of conduct.

Mandatory Dismissal of Formal Complaint

- Must dismiss a formal complaint if:
 - The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the law/policy, even if proved;
 - If the conduct alleged did not occur in the recipient's education program or activity;
 - If the conduct alleged did not occur against a person in the United States.
- Such dismissal does not preclude other action under the District's code of conduct or other policies.

Discretionary Dismissal of Formal Complaint

- The District may dismiss a formal complaint or any allegations in the complaint if:
 - Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations;
 - The Respondent is no longer enrolled or employed by the District;
 - Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations.
- Upon dismissal, must promptly send written notice of the dismissal and the reasons to the parties.

The Investigation Process

Written Notice Requirements for Formal Complaints

- ✓ Notice of the grievance process, including any informal resolution process;
- ✓ Notice of the allegations, including sufficient detail (i.e., names of known parties, the conduct alleged to be sexual harassment, and the date and location of the conduct, if known) to allow the respondent to prepare a response before an initial interview;
- ✓ A statement that the respondent is presumed not responsible for the conduct and that responsibility will be determined at the conclusion of the grievance process;
- ✓ Notice of the parties' right to have an advisor (who may be, but is not required to be, an attorney) and to inspect and review evidence; and
- ✓ Notice of any provision in the code of conduct that prohibits knowingly making false statements or providing false information in the grievance process.

The Investigation Process

- No bias approach. Must maintain a presumption that the respondent is not responsible for the alleged conduct until a determination has been made.
- Standard – choose only one. Preponderance of the evidence or clear and convincing?
- Informal Resolution. Arbitration, mediation, or restorative justice is available when a formal complaint is filed. Written notice and written voluntary consent by both parties is required. This is never available where the complaint alleges harassment of a student by an employee. 34 CFR 106.45(b).

The Investigation Process

- Presenting witnesses and evidence. Provide an equal opportunity for the parties to present witnesses and evidence.
- Reviewing evidence. Provide both parties and their advisors (if any) an equal opportunity to review all evidence related to the allegations in the formal complaint, even if you do not intend to rely on that evidence.
- Question exchange. Recipient must provide each party the opportunity after the completion of the investigative report to submit written, relevant questions to another party or witness.
- Hearings. Not required for K-12. Districts may determine they are appropriate on a case by case basis or for a particular grade level.

Report Writing: The Investigator's Responsibility

- Step One:
 - Draft written investigation report.
 - Must fairly summarize the relevant evidence. Must be given prior to completing the final investigation report, hearing, and determination of responsibility.
 - Give at least 10 days for the parties to prepare a written response to the summary, which the investigator must consider in completing the final report.
- Step Two:
 - Draft final investigation report and provide to the Decisionmaker.

Report Writing: The Decisionmaker's Responsibility

The written "Determination of Responsibility:"

- Applies the standard;
- Identifies the allegations that potentially constitute sexual harassment;
- Describes the recipient's procedural steps taken from the receipt of the complaint to the determination;
- Includes findings of fact supporting the determination;
- Includes conclusions regarding application of board policy to the facts;
- Includes a statement of, and a rationale for, the result as to each allegation, including a determination of responsibility, any disciplinary sanctions, and whether remedies to restore or preserve equal access to the recipient's education program or activity will be provided to the complainant; and
- Includes procedures and permissible bases for appeals.

Report Writing: The Appeal After

Grounds for Appeal

Both parties have the right to appeal a determination of responsibility or a dismissal for the following reasons:

- (1) A procedural irregularity affected the outcome;
- (2) New evidence that was not reasonably available at the time of the determination and could affect the outcome;
- (3) Conflict of interest on the part of the Title IX Coordinator, Investigator, or Decisionmaker that affected the outcome; or
- (4) Other reasons as permitted by the recipient.

Appeal Process

Once an appeal is made, the recipient must give both sides written notice and an opportunity to submit a written statement in support of or challenging the determination.

Appeals must result in a written decision that is provided to both parties simultaneously.


Note: Carefully consider the appropriate appeal person(s) to serve as appeal decisionmakers, given the unique training requirements and prohibitions on conflicts of interest.

Confidentiality

Recipients cannot restrict either party's ability to discuss the allegations or gather and present evidence.



Recipients must keep confidential the identity of a person who complains or reports sexual harassment, including parties and witnesses, except as permitted by law or to carry out the purpose of these regulations.



Will these responsibilities be frustrated in practice?

Training Requirements

- Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process must receive training on:
 - the definition of sexual harassment in the regulations,
 - the scope of the recipient's education program or activity,
 - how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and
 - how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Training Requirements

- Districts must ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in the regulations.
- Districts must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in the regulations.

Training Requirements

- Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.
- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution must be made available on its website, if it has one.
- Training materials must be kept for 7 years.

**Thank you for your time and
attention!**