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The logo for the American Association of School Administrators (AASA), featuring the acronym "AASA" in a bold blue font with an orange swoosh underneath, and the full name "THE SCHOOL SUPERINTENDENTS ASSOCIATION" in a smaller blue font below.

**AASA**  
THE SCHOOL SUPERINTENDENTS ASSOCIATION

The logo for the National Association of Secondary School Principals (NASSP), featuring a red square with a white stylized graphic of a person or flame, followed by the acronym "NASSP" in a bold black font and the full name "National Association of Secondary School Principals" in a smaller black font below.

**NASSP**  
National Association  
of Secondary School Principals

# The New Title IX Regulations

## What School Leaders Need to Know

May 28, 2020

# 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 and districts know?
- ❑ What happens next?
  - ❑ Can the new regulations be delayed or stopped from taking effect?
  - ❑ What should schools and districts start doing now?
- ❑ Q&A

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

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

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- Title IX had become a flash point in higher education in recent years after sexual assault cases rocked high-profile universities and serial sex abuse by staff demonstrated how universities had failed to properly investigate complaints.
- Enforcement of the law has also grown contentious, especially since the Obama administration issued guidance documents in 2011 and 2014 that advised higher education institutions to ramp up investigations of misconduct and warned that their failure to do so could bring serious consequences.
- Critics said schools felt pressured to side with accusers without extending sufficient rights to the accused, which prompted **more than 600 lawsuits** from individuals who alleged they were denied a fair process. In particular, the 2011 Dear Colleague Letter kicked off an era of aggressive Title IX enforcement that led schools nationwide to eliminate procedural Title IX hearings and cross-examination altogether.

# Secretary DeVos response to Title IX controversy

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- When Secretary DeVos announced in 2017 that she was rescinding the Obama-era guidance, she said she would give schools, from kindergarten to college, regulations with the force of law that “balanced those rights.”
- The goal of the regulations
  - Bolster due-process protections for accused students while relieving schools of some legal liabilities.
- Political response to proposed Title IX regulations
  - Republicans: “seems to balance fairness and support for survivors.”
  - Democrats: “trying to take another step toward sweeping the scourge of sexual assault under the rug.”
- Political ramifications
  - Long-awaited Higher Education Act Reauthorization is stymied because of strong, diverging views on proposed regulations (and final regulations)
  - Also complicating reauthorization: every day Congress is working on COVID-19 relief is a day less they have to work on HEA negotiations.

# AASA/NASSP view on the new Title IX regulations

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**Unnecessary – Title IX compliance isn't a huge issue and guidance is a better tool than regulations**



**Jeopardizes ability of students to report and districts to respond to Title IX cases**



**Administratively burdensome**



**Overly complicated**



**Expensive**



**Ties the hands of districts**



**Conflicts with mandated state child reporting laws**

# Title IX historical overview

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

# Department of Education's approach to new regulations

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The Department of Education used two 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.

**ACLU** 100  
YEARS

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



MAY 14, 2020

# 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 and districts 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 become effective.

# Where can I go to read 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, 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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- District must have at least one district-level Title IX Coordinator, and should designate a Title IX Coordinator at each school.
- 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 his or her 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 his or her 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 may serve as Investigator.
- As a practical matter, 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 Decision-maker. However, Investigator may offer recommendations to Decision-maker.
- As a practical matter, Decision-maker may be the principal (the highest school-level administrator).

# THINK ABOUT IT: Assessing coordination, staffing needs

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At the district level, do you:

- Have designated Title IX Coordinators at the district level and at the school level?
- 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 Decision-maker? If so, this needs to change – How will you identify and train additional personnel?

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# “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 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.



# “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. 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.
- B. A custodian finds graffiti depicting sexual content and images in various parts of the school building.
- C. A bus driver hears rumors that non-consensual sex occurred between unsupervised students in the school gym.

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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 digital platform).

# YES/NO POLL: Education program or activity?

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- Scenario A – 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 allegedly sexually harassed by one of the chaperones, a teacher's aide.
- Scenario B – 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 allegedly sexually harassed online by a classmate, to the point where she has been skipping the classes they have in common.

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# Comparing prior guidance to the new regulations

## Examples of requirements that have changed

2001/2017 Prior Department Guidance	New Regulations
<b>Conduct</b> = “so severe, persistent, <u>or</u> pervasive”	<b>Conduct</b> = “so severe, pervasive, <u>and</u> objectively offensive”
<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

# 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 and districts know?

# 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, they need procedures that 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.
- 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, 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 his or her 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 his or her 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 his or her 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).
  - 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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- A. 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.
- B. 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.
- C. 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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# 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 time-frames 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 alleged perpetrator 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 an alleged perpetrator 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.

# 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: Grievance process

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- A. Only the alleged victim can file a formal complaint of sexual harassment.
- B. Supportive measures must be offered to an alleged victim, even if a formal complaint is never filed.
- C. The Title IX Coordinator can also be the Decision-maker, but cannot be the Investigator.
- D. A district can decide whether it wants to offer an appeal process.

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# 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?

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# 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 and districts 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.



# 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.

# What happens next?

- **Can the new regulations be delayed or stopped from taking effect?**
- What should schools and districts start doing now?

# 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](#)

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



MAY 14, 2020

# ACLU lawsuit

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- Complaint for Declaratory and Injunctive Relief filed on May 14 in U.S. District Court, District of Maryland.
- Requests that the court invalidate several provisions of the new regulations as “contrary to law, arbitrary and capricious, and an abuse of discretion”:
  - Definition of “sexual harassment” and requirement to dismiss a formal Title IX complaint if the alleged behavior does not on its face meet that definition or meet the definition of occurring in a recipient’s education program or activity.
  - Provisions specifying that a recipient is only required to respond to sexual harassment if it has “actual knowledge.”
  - Provisions holding a recipient accountable under Title IX only for “deliberate indifference.”
  - Provisions allowing a recipient to use a “clear and convincing evidence standard” and requiring that standard if used for formal complaints of sexual harassment against employees.
- No movement on the docket since May 15.

# What happens next?

- Can the new regulations be delayed or stopped from taking effect?
- **What should schools and districts start doing now?**

# Preparing for Title IX compliance

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## Examples of school and district actions



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Review and revise Title IX policies and procedures.



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Review and revise codes of conduct and handbooks.



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



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Educate and train students and parents/guardians.



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

The new regulations  
become 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 and districts know?
- ✓ What happens next?
  - ✓ Can the new regulations be delayed or stopped from taking effect?
  - ✓ What should schools and districts start doing now?
- ✓ Q&A

# Need more Title IX help?

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- AASA and the Association of Title IX Administrators (ATIXA) will be hosting a free, Q&A style webinar on June 30<sup>th</sup> at 2 pm ET.
  - Opportunity to have you/your team ask specific questions
- Registration will open next week. Reach out to AASA for more details.

# Presenters

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